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Sup. Ct

Vol. I

TRANSCRIPT OF RECORD

(Pages 1 to 830)

Supreme Court of the United States

OCTOBER TERM, 1947

No. 10

SCHINE CHAIN THEATRES, INC., ET AL.,
APPELLANTS,

vs.

THE UNITED STATES OF AMERICA

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE WESTERN DISTRICT OF NEW YORK

FILED OCTOBER 4, 1946.

SUPREME COURT OF THE UNITED STATES

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THE WESTERN DISTRICT OF NEW YORK

VOL. I

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386	Letter dated January 27, 1938 from F. J. A. McCarthy to Geo. Lynch, Schine Theatrical Enterprises Co	6111	3897
387	Letter dated January 28, 1938 from Nate Sauber, Branch Manager, to G. V. Lynch, Schine Enterprises Corp.	6112	3898
388	Letter dated February 1, 1938 from W. B. Kraemer to F. J. A. McCarthy, Universal Film Exchanges, Inc., Rockefeller Center, N. Y.	6113	3899
389	Letter dated February 7, 1938 from P. T. Dana, Branch Manager, to A. J. Herman, District Manager.	6114	3899
390	Letter dated February 15, 1938 from L. Goldstein, Schine Circuit, Inc., to Nate Sauber, Buffalo, N. Y.	6116	3901
391	Inter-office letter dated November 14, 1938, from Paul Baron, Acting Branch Manager, Washington, to A. J. Herman, Home Office	6117	3901
392	Letter dated December 14, 1938 from F. J. A. McCarthy to Paul Baron, Washington Exchange	6118	3902
393	Cancellation or Alteration of Contract dated December 15, 1938, Roxy Theatre, Corbin, Kentucky; also Contract dated January 13, 1939, Hippodrome and Kentucky Theatres, Corbin, Ky.	6119	3902
396	Inter-office letter dated May 23, 1939 from John J. Scully, Branch Manager, to F. J. A. McCarthy, Eastern Sales Manager, Home Office; also attached memorandum dated May 19, 1939 from F. J. A. McCarthy to J. J. Scully, Buffalo, Exchange	6120	3903
397	Letter dated June 8, 1939 from B. B. Kreisler, Branch Manager, Washington, to F. J. A. McCarthy, Eastern Division Manager	6123	3905
409	Letter, P. T. Dana to Frank McCarthy, September 23, 1935	6124	3907
412	Letter of September 10, 1932 from G. V. Lynch, Schine Enterprises, Inc., Gloversville, N. Y., by Jack E. Flynn, MGM Corp., Detroit, Michigan	6125	3907
413	Letter of September 12, 1932 from Jack E. Flynn, MGM to Cincinnati, Ohio, branch office, and Geo. V. Flynn, Schine Enterprises, Inc., Gloversville, N. Y.	6126	3908
421	Inter-office memorandum on MGM Distributing Corp. letterhead, dated October 13, 1933 from E. K. O'Shea to W. F. Rodgers	6128	3909

EXHIBITS PRINTED IN FULL—Continued

		Original	Print
425	Letter dated October 21, 1933 from G. V. Lynch to Jack Flynn	6129	3910
426	Inter-office memorandum on MGM Distributing Corp. letterhead, dated January 4, 1934, from Ralph Pielow to J. E. Flynn	6130	3911
430	Inter-office memorandum on MGM Distributing Corp. letterhead, dated August 1, 1935, from Ralph Pielow to J. E. Flynn	6131	3912
433	Letter dated August 26, 1935, from G. V. Lynch to Ralph Pielow	6132	3913
435	Letter dated September 27, 1935 from G. V. Lynch to Ralph Pielow	6133	3913
441	Unsigned letter (WFR) to G. V. Lynch dated February 7, 1936	6134	3914
444	Inter-office memorandum on Metro-Goldwyn-Mayer Distributing Corporation letter head, dated June 15, 1936, from E. K. O'Shea to J. E. Flynn	6135	3915
455	Inter-office letter dated August 28, 1937 (E. K. O'S) to E. M. Booth	6136	3916
456	Inter-office memorandum dated August 30, 1937, from E. M. Booth to E. K. O'Shea	6137	3917
457	Unsigned letter dated September 1, 1937 (EKO'S) to E. M. Booth	6138	3918
459	Inter-office communication dated November 1, 1937 from E. M. Booth to E. K. O'Shea	6139	3919
476	Letter dated July 13, 1938, G. V. Lynch to Ralph Maw, Buffalo, New York	6140	3920
488	Inter-office memorandum dated May 15, 1939, from R. W. Maw, Buffalo, New York to E. K. O'Shea	6141	3920
491	Inter-office memorandum dated June 8, 1939, from W. F. Rodgers to T. J. Connors	6143	3923
494	Inter-office memorandum dated November 7, 1935, from Ralph Pielow to J. E. Flynn, Detroit, Michigan	6144	3924
496	Letter dated February 28, 1936, from E. W. Aaron to Ralph Pielow	6145	3925
497	Inter-office memorandum from Ralph Pielow. Albany, New York, to J. E. Flynn, Cincinnati, Ohio, dated November 30, 1936	6146	3925
499	Letter from Mr. G. V. Lynch, Schine Theatre Enterprises, to Mr. F. Drew, Metro-Goldwyn-Mayer Pictures, Cleveland, Ohio	6147	3926
500	Telegram, G. V. Lynch to J. E. Flynn, Metro-Goldwyn-Mayer Pictures, at Detroit, Michigan	6148	3927
509	Memorandum from E. W. Aaron, Loew's, Inc., to W. F. Rodgers, dated August 2, 1938	6149	3927
510	Letter, W. F. Rodgers to T. J. Connors, dated July 29, 1938	6150	3928
511	Letter, T. J. Connors to Essick and Fine, dated December 7, 1938	6151	3929

EXHIBITS PRINTED IN FULL—Continued

		Original	Print
518	Inter-office memorandum dated September 16, 1932, from C. R. Halligan, Branch Manager, Albany, to E. L. McEvoy, Home Office	6152	3929
519	Inter-office letter, dated October 17, 1933, from C. R. Halligan, Branch Manager, Albany, N. Y., to E. L. McEvoy, Home Office	6155	3932
520	Agreement, dated September 22, 1933, between the Schine Theatrical Co., Inc., and the RKO Distributing Corp.	6157	3933
524	Agreement, dated October 29, 1934, between Schine Theatrical Co., Inc., and RKO Distributing Corp.	6158	3935
526	Inter-office letter from H. T. Dixon, Branch Manager, Buffalo, N. Y., to E. L. McEvoy, Eastern Sales Manager, dated January 8, 1935	6159	3936
527	Letter from E. L. McEvoy, Eastern Sales Manager, to Harry Dixon, Buffalo, N. Y., dated January 10, 1935	6160	3937
528	Inter-office letter from H. T. Dixon, Buffalo, N. Y., to E. L. McEvoy, Eastern Sales Manager, dated February 18, 1935	6161	3937
530	Contract Modification, Palace Theatre, Corning, N. Y., dated December 11, 1935	6162	3938
539	Inter-office communication, dated September 10, 1932, from S. B. Kramer, Branch Manager, Cleveland, Ohio to A. W. Smith, Jr., Home Office.	6163	3939
542	Inter-office letter, dated January 12, 1934, from R. S. Smith, Branch Manager, Albany, N. Y., to A. W. Smith, Jr., Home Office	6164	3940
546	Inter-office communication, dated June 25, 1934 from R. S. Smith, Branch Manager, to A. W. Smith, Jr., Home Office	6166	3941
549	Inter-office letter, dated August 31, 1934, from R. S. Smith, Branch Manager, to R. Mochrie, Home Office	6167	3942
550	Inter-office letter, dated September 1, 1934, from H. A. Seed, Branch Manager, Buffalo, N. Y., to A. W. Smith, Jr., Home Office	6168	3943
554	Inter-office communication, dated February 26, 1935, from R. S. Smith, Branch Manager, Albany, N. Y., to A. W. Smith, Jr., Home Office	6170	3945
559	Inter-office communication from M. A. Mooney to R. Mochris, dated December 27, 1935	6171	3946
560	Carbon copy of telegram from A. W. Smith, Jr., Home Office to Mooney, Vitagraph, dated March 25, 1936	6172	3947
561	Carbon copy of telegram from Mochrie to Mooney, dated April 1, 1936	6173	3947
566	Contract recommendation signed M. A. Mooney, dated September 16, 1936	6174	3948

EXHIBITS PRINTED IN FULL—Continued

		Original	Print
567	Carbon copy of Contract Recommendation with Belpik Theatres, Inc., dated October 21, 1936	6175	3948
574	Contract recommendation dated June 22, 1937	6176	3948
597	Inter-office letter dated December 9, 1940, from Arthur Sachson, Home Office, to R. H. Dunbar, Cincinnati	6178	3949
598	Inter-office letter dated December 13, 1940, from Branch Manager, (RHD), Cincinnati, to Arthur Sachson, Home Office	6179	3949
599	Inter-office letter dated December 20, 1940, from Arthur Sachson, Home Office, to R. H. Dunbar, Cincinnati	6180	3950
600	Inter-office letter dated December 23, 1940, from Branch Manager, (RHD), Cincinnati, to Arthur Sachson, Home Office	6181	3951
601	Letter dated December 27, 1940, from Arthur Sachson to Geo. V. Lynch, Schine Circuit	6182	3951
602	Inter-office letter dated September 5, 1941, from R. H. Dunbar, Branch Manager, Cincinnati to S. W. Hatch, Home Office	6182a	3952
618	Loew's franchise (10/1/36) letters and deal sheets	6184	3952
619	Metro-Goldwyn-Mayer release schedules	6246	3998
634	RKO release schedules	6282	4078
645	Warner release schedules	6296	4109
648	Agreement, Medina Temple Theatre Company and Schine Medina Corp., 2/28/39	6306	4143
648A	Copy of lease of Princess, Medina, dated April 1, 1937	6327	4160
649	Letter, 5/5/33, O'Shea to Grafiades	6333	4167
650	Letter, 5/8/33, Universal (Sauber) to Grafiades	6334	4168
651	Letter, 5/16/33, Robinson (Para) to Grafiades	6335	4169
652	Letter, 6/1/33, Paramount (Unger) to Grafiades	6336	4170
653	Letter, 6/28/33, M. G. M. (Rodgers) to Grafiades	6337	4170
662	Columbia contracts	6338	4172
682	Columbia release schedules	6340	4173
685 (A to Y)	Columbia release schedules for 1938–1939 to 1941–1942 seasons	6345a	4186
686	List of Columbia release dates	6345c	4186
687	List of Paramount release dates supplied by Morgan	6346	4228
688	Contract, 6/17/35, unsigned, Shannon et al. and G. C. Theatre Corporation	6359	4248
690	Notice of sale of Dickinson Estate assets	6369	4254
691	Memorandum, 4/20/36, Shannon et al. and Dipson et al.	6371	4256
704 (A to W)	Distribution statistics	6377a	4261
717	Release schedule 1919–1941 (United Artists)	6378	4285
718 (A to I)	Distribution statistics	6400a	4296
719	Answers of United Artists Corp. to interrogatories 15 and 16	6402	4314
765	Letter, 4/9/37, Fenyvessy to Rodgers	6411	4328

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		Original	Print
773	Letter, 8/3/38, Fenyvessy to Maw	6412	4328
774	Letter, 8/11/38, O'Shea to Fenyvessy	6413	4329
775	Letter, 8/16/38, Fenyvessy to O'Shea	6414	4330
776	Letter, 8/16/38, Maw to Fenyvessy	6415	4330
790	Non-competitive agreement, C. & D. Fenyvessy to Munmad	6416	4331
800	Letter, 10/4/38, Belinson to Wm. Rodgers Metro.	6418	4332
801	Letter, 10/9/39, Rodgers to Belinson	6420	4333
802	Letter, 9/12/40, O'Shea to Belinson	6421	4334
805	Telegram, 5/10/38, Jenkins to Lauer	6422	4335
812	Lease, Syracuse-Strand to Syracuse Commun. Theatre Co., 9/11/41	6423	4335
818	Memorandum containing deal offered by Fox to Wallace	6451	4353
820	Telegram, RKO to Strand, 9/18/41	6454	4355
823	Agreement, 9/15/39, re Paris, Schine Lexington and Southland, Charles and Harry Schwartz	6455	4355
824	Letter, Fox to Schwartz, 11/17/38	6463	4360
825	Letter, RKO to Schwartz, 11/7/38	6464	4360
826	Letter, Universal to Schwartz, 11/10/38	6465	4361
828	Agreement, 9/15/39, re Opera House, Schine Lexington and Southland, Charles and Harry Schwartz	6466	4362
832	List of playoffs at Empire, Syracuse, beginning 9/12/41 to 2/10/42	6484	4374
834	Letter, Warner to Vournakis, 7/16/34	6486	4375
845	Agreement, 9/20/39, Lynch and Vournakis	6488	4376
846	Copy of affidavit of P. Vournakis, 9/20/39	6489	4376
864	Letter, Boumansour to Grassgreen	6490	4377
873	Rider attached to Fox contract, 4/20/35	6491	4378
879	Certified copy of Minutes of Common Council, Ogdensburg, 9/4/40	6492	4378
882	Letter enclosing copy of proposed lease, 9/30/40	6495	4380
886	Letter, 11/4/33, Warners (A. W. S.) to Smalley and attached copy of letter to O. W. Van Horne, 11/1/33	6496	4381
887	Letter, 8/9/34, Smalley to Smith and reply	6498	4382
888	Wire, 5/22/34, Smalley to Smith and reply letter	6500	4383
889	Letter, Strumer (United Artists) to Smalley, 7/27/33.	6503	4384
891	Letter, Smalley to Lichtman, 8/9/34, and reply 8/14/34	6504	4385
892	Letter, Smalley to Streimer, 11/2/33, and reply 11/4/33	6506	4386
893	Letter, Smalley to Streimer, 11/9/33	6507	4387
894	Letter, Streimer to Smalley, 11/11/33	6508	4387
896	Telegram, 6/26/33, Van Horne to Sauber (Universal) and reply 7/10/33	6509	4388
897	Letter, 11/2/33, Smalley to Sauber and reply 11/4/33	6512	4389
899	Telegram, 5/27/40, Smalley to Columbia	6514	4390

EXHIBITS PRINTED IN FULL—Continued

		Original	Print
900	Copy of letter 12/4/39, Smalley to Moross, Columbia. Answers letter of 11/13	6516	4391
901	Telegram, 5/4/39, Montague to Van Horne	6517	4391
902	Telegram, 5/2/39, Smalley to Montague	6518	4392
903	United Artists Clearance schedule 1940–41	6520	4392
958–959	United Artists Clearance schedules	6520a	4393

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		Original	Print
980	Deal sheet bearing date 9/20/23	6521	4399
985	Letter, G–C Theatre Corp. to Bates Estate, 6/30/41.	6525	4399
986	Stipulation re play-off of Paramount pictures in Auburn, N. Y.	6526	4400
987	Stipulation re gross film rentals received by Fox from Schine, for seasons 1935–36 through 1939–40	6536	4405
988	Same stipulation re Loew's Inc., film rentals for periods ending 8/27/36, 8/26/37, 9/1/38, 8/31/39 and 8/29/40	6537	4406
989	Same for Paramount—seasons 1934–35 through 1939–40	6538	4407
990	Same for RKO—seasons 1935–36 through 1939–40	6539	4408
991	Same for Vitagraph, Inc.—seasons 1934–35 through 1939–40	6540	4408
992	Stipulation re Universal Pictures Co., Inc. Positions of J. M. Schine and W. S. McKay with respect to Universal	6541	4409
993	Stipulation re servicing of prints to Schine theatres from various exchanges	6543	4410
994	Stipulation re operating companies which operate various Schine theatres listed in answer to Int. 15 referred to [illegible] par. 2 of subpoena returnable 10/2/44	6544	4411
999	Letter, 10/28/35, Miller to Lynch, cc. McCarthy re Van Wert and Bucyrus	6549	4414
1004	Agreement, 10/3/35, B. F. Keith Corp., Dom. Op. Co. Ltd., and SK. E. Op. Co. Ltd.	6550	4415
1005	Agreement, 7/31/39, B. F. Keith Corp., Dom. Op. Co. Ltd. and S. K. E. Op. Co., Ltd.	6561	4422
1006	Letter, Masonic Temple Co. to J. M. Schine, 3/25/37	6566	4425
1007	Letter, Morgan (Para) to Marcus, 10/26/44	6568	4427
1009	Clearance Schedule, Universal and Schine 1936–37 season	6570	4428
W3	Agreement, Vitagraph, Inc. and Schine, 8/22/38.	6571	4429
W4(1)	Deal sheet, Vitagraph and Schine, 9/28/37	6606	4456
W4(2)	Deal sheet, second run, Amsterdam, N. Y., 9/28/37	6607	4457
W4(3)	Deal sheet, first run, Ballston, N. Y., 9/28/37	6608	4458
W4(4)	Deal sheet, first run, Carthage, N. Y., 9/28/37	6609	4459

EXHIBITS PRINTED IN FULL—Continued

		Original	Print
W4(5)	Deal sheet, first run, Glens Falls, N. Y., 9/28/37.	6610	4460
W4(6)	Deal sheet, second run, Glens Falls, N. Y., 9/28/37	6611	4461
W4(7)	Deal sheet, first run, Glover ville, N. Y., 9/28/37	6612	4462
W4(8)	Deal sheet, second run, Gloversville, N. Y., 9/28/37	6613	4463
W4(9)	Deal sheet, first run, Granville, N. Y., 12/16/38.	6614	4464
W4(10)	Deal sheet, first run, Granville, N. Y., 12/16/38.	6615	4465
W4(11)	Deal sheet, first run, Hamilton, N. Y., 9/28/37	6616	4466
W4(12)	Deal sheet, first run, Herkimer, N. Y., 9/28/37	6617	4467
W4(13)	Deal sheet, first run, Hudson Falls, N. Y., 9/28/37	6618	4468
W4(14)	Deal sheet, first run, Ilion, N. Y., 9/28/37	6619	4469
W4(15)	Deal sheet, first run, Little Falls, N. Y., 9/28/37.	6620	4470
W4(16)	Deal sheet, first run, Malone, N. Y., 9/28/37	6621	4471
W4(17)	Deal sheet, first run, Massena, N. Y., 9/28/37	6622	4472
W4(18)	Deal sheet, first run, Mechanicville, N. Y., 9/28/37	6623	4473
W4(19)	Deal sheet, first run, Norwich, N. Y., undated	6624	4474
W4(20)	Deal sheet, first run, Norwich N. Y., 9/28/37	6625	4475
W4(21)	Deal sheet, first run Ogdensburg, N. Y., 8/22/38	6626	4476
W4(22)	Deal sheet, first run, Ogdensburg, N. Y., 9/28/37	6627	4477
W4(23)	Deal sheet, first run, Oneonta, N. Y., undated	6628	4478
W4(24)	Deal sheet, first run, Oneonta, N. Y., 9/28/37	6629	4479
W4(25)	Deal sheet, first run, Saranac Lake, N. Y., 9/28/37	6630	4480
W4(26)	Deal sheet, first run, Tupper Lake, N. Y., 9/28/37	6631	4481
W4(27)	Deal sheet, first run, Whitehall, N. Y., 9/28/37.	6632	4482
W4(28)	Deal sheet, first run, Watertown, N. Y., 9/27/38.	6633	4483
W4(29)	Deal sheet, second run, Watertown, N. Y., 9/28/37	6634	4484
W4(30)	Deal sheet, first run, Ashland, Chio, 9/28/37	6635	4485
W4(31)	Deal sheet, first run, Bowling Green, O., 11/2/39	6636	4486
W4(32)	Deal sheet, first run, Bucyrus, O., 9/28/37	6637	4487
W4(33)	Deal sheet, first run, Delaware, O., 9/28/37	6638	4488
W4(34)	Deal sheet, first run, Fostoria, O., 9/28/37	6639	4489
W4(35)	Deal sheet, first run, Kent or Ravenna, O., 9/28/37	6640	4490
W4(36)	Deal sheet, repeat run, Kent or Ravenna, O., 9/28/37	6641	4491
W4(37)	Deal sheet, first run, Medina, Ohio, 9/28/37	6642	4492
W4(38)	Deal sheet, first run, Norwalk, Ohio, 9/28/37	6643	4493
W4(39)	Deal sheet, first run, Shelby, Ohio, 9/28/37	6644	4494
W4(40)	Deal sheet, first run, Tiffin, Ohio, 9/28/37	6645	4495
W4(41)	Deal sheet, first run, Van Wert, Ohio, 9/28/37	6646	4496

EXHIBITS PRINTED IN FULL—Continued

		Original	Print
W4(42)	Deal sheet, first run, Wooster, Ohio, 9/28/37	6647	4497
W4(43)	Deal sheet, first run, Auburn, N. Y., 9/28/37	6648	4498
W4(44)	Deal sheet, second run, Auburn, N. Y., 9/28/37	6649	4499
W4(45)	Deal sheet, second run, Auburn, N. Y., 3/6/39	6650	4500
W4(46)	Deal sheet, first run, Bath, N. Y., 9/28/37	6651	4501
W4(47)	Deal sheet, first run, Buffalo, N. Y., 9/28/37	6652	4502
W4(48)	Deal sheet, first run, Buffalo, N. Y., 9/28/37	6653	4503
W4(49)	Deal sheet, first run, Canandaigua, N. Y., 9/28/37	6654	4504
W4(50)	Deal sheet, first run, Corning, N. Y., 9/28/37	6655	4505
W4(51)	Deal sheet, second run, Corning, N. Y., 9/28/37	6656	4506
W4(52)	Deal sheet, first run, Cortland, N. Y., 9/28/37	6657	4507
W4(53)	Deal sheet, second run, Cortland, N. Y., 9/41/40	6658	4508
W4(54)	Deal sheet, first run, East Rochester or Fairport, N. Y., 11/2/39	6659	4509
W4(55)	Deal sheet, second run, East Rochester or Fairport, N. Y., 11/2/39	6660	4510
W4(56)	Deal sheet, first run, Geneva, N. Y., 9/28/37	6661	4511
W4(57)	Deal sheet, second run, Geneva, N. Y., 1/16/39	6662	4512
W4(58)	Deal sheet, first run, Lockport, N. Y., 9/28/37	6663	4513
W4(59)	Deal sheet, second run, Lockport, N. Y., 9/28/37	6664	4514
W4(60)	Deal sheet, first run, Newark, N. Y., 9/28/37	6665	4515
W4(61)	Deal sheet, first run, Oswego, N. Y., 9/28/37	6666	4516
W4(62)	Deal sheet, second run, Oswego, N. Y., 9/28/37	6667	4517
W4(63)	Deal sheet, first run, Penn Yan, N. Y., 9/28/37	6668	4518
W4(64)	Deal sheet, first run, Perry, N. Y., 9/28/37	6669	4519
W4(65)	Deal sheet, first run, Rochester, N. Y., 9/28/37	6670	4520
W4(66)	Deal sheet, first run, Rochester, N. Y., 9/28/37	6671	4521
W4(67)	Deal sheet, first run, Rochester, N. Y., 9/28/37	6672	4522
W4(68)	Deal sheet, first run, Rochester, N. Y., 3/23/39	6673	4523
W4(69)	Deal sheet, first run, Rochester, N. Y., 3/23/39	6674	4524
W4(70)	Deal sheet, third run, Rochester, N. Y., 9/28/37	6675	4525
W4(71)	Deal sheet, repeat run, Rochester, N. Y., 9/28/37	6676	4526
W4(72)	Deal sheet, third run, Rochester, N. Y., 9/28/37	6677	4527
W4(73)	Deal sheet, repeat run, Rochester, N. Y., 9/28/37	6678	4528
W4(74)	Deal sheet, first [illegible] Rochester, N. Y., 3/23/39	6679	4529
W4(75)	Deal sheet, first run, Salamanca N. Y., 9/28/37	6680	4530
W4(76)	Deal sheet, first run, Seneca Falls, N. Y., 9/28/37	6681	4531
W4(77)	Deal sheet, first run, Syracuse, N. Y., 11/2/39	6682	4532
W4(78)	Deal sheet, first run, Athens, N. Y., 9/28/37	6683	4533
W4(79)	Deal sheet, first run, Lexington, Ky., 9/28/37	6684	4534
W4(80)	Deal sheet, second run, Lexington, Ky., 9/28/37	6685	4535
W4(81)	Deal sheet, third run, Lexington, Ky., 9/28/37	6686	4536
W4(82)	Deal sheet, first run, Richmond, Ky., 9/28/37	6687	4537
W4(83)	Deal sheet, first run, Bellefontaine, O., 9/28/37	6688	4538

EXHIBITS PRINTED IN FULL—Continued

		Original	Print
W4(84)	Deal sheet, first run, Mount Vernon, O., 9/28/37	6689	4539
W4(85)	Deal sheet, first run, St. Michaels, Md., 11/2/39	6690	4540
W4(86)	Deal sheet, first run, Hurlock, Md., 10/12/38	6691	4541
W4(87)	Deal sheet, first run, Laurel, Del., 4/2/40	6692	4542
W4(88)	Deal sheet, first run, Paris, Ky., 9/28/37	6693	4543
W4(89)	Deal sheet, second run, Paris, Ky., 12/1/38	6694	4544
W4(90)	Deal sheet, first run, Maysville, Ky., 10/12/38	6695	4545
W4(91)	Deal sheet, first run, Middlesboro, Ky., 12/1/38	6696	4546
W4(92)	Deal sheet, first run, Piqua, Ohio, 9/28/37	6697	4547
W4(93)	Deal sheet, first run, Corbin, Ky., 12/1/38	6698	4548
W4(94)	Deal sheet, fourth run, Lexington, Ky., 1/12/39	6699	4549
W4(95)	Deal sheet, first run, Cambridge, Md., 10/12/37	6700	4550
W4(96)	Deal sheet, first run, Easton, Md., 10/12/38	6702	4552
W4(97)	Deal sheet, first run, Federalsburg, Md., 10/12/38	6704	4554
W4(98)	Deal sheet, first run, Milford, Del., 4/2/40	6706	4556
W4(99)	Deal sheet, first run, Salisbury, Md., 10/12/38	6707	4557
W5	Letter agreement, Vitagraph Inc. and Schine, 3/24/36	6709	4559
W7	Letter agreement, Vitagraph Inc. and Schine, 4/24/35 and supplement letter of 4/29/35	6711	4561
W34(1)	Deal sheet, first run, Cortland, N. Y., 9/11/40	6714	4565
W34(2)	Deal sheet, first run East Rochester, N. Y. or Fairport, N. Y., 12/6/40	6715	4566
W34(3)	Deal sheet, first run, Geneva, N. Y., 9/11/40	6716	4567
W34(4)	Deal sheet, first run, Glens Falls, N. Y., 9/11/40	6717	4568
W34(5)	Deal sheet, second run, Glens Falls, N. Y., 9/11/40	6718	4569
W34(6)	Deal sheet, second run, Gloversville, N. Y., 12/6/40	6719	4570
W34(7)	Deal sheet, first run, Gloversville, N. Y.	6720	4571
W34(8)	Deal sheet, first run, Granville, N. Y., 9/11/40	6721	4572
W34(9)	Deal sheet, first run, Hamilton, N. Y., 9/11/40	6722	4573
W34(10)	Deal sheet, first run, Herkimer, N. Y., 9/11/40	6723	4574
W34(11)	Deal sheet, first run, Hudson Falls, N. Y., 9/11/40	6724	4575
W34(12)	Deal sheet, first run, Ilion, N. Y., 9/11/40	6725	4576
W34(13)	Deal sheet, first run, Little Falls, N. Y., 12/6/40	6726	4577
W34(14)	Deal sheet, first run, Malone, N. Y., 9/11/40	6727	4578
W34(15)	Deal sheet, first run, Massena, N. Y., 9/11/40	6728	4579
W34(16)	Deal sheet, first run, Mechanicville, N. Y., 9/11/40	6729	4580
W34(17)	Deal sheet, first run, Norwich, N. Y., 9/11/40	6730	4581
W34(18)	Deal sheet, first run, Ogdensburg, N. Y., 9/11/40	6731	4582
W34(19)	Deal sheet, second run, Ogdensburg, N. Y., 9/11/40	6732	4583
W34(20)	Deal sheet, first run, Oneonta, N. Y., 9/11/40	6733	4584
W34(21)	Deal sheet, second run, Oneonta, N. Y., 9/11/40	6734	4585

EXHIBITS PRINTED IN FULL—Continued

		Original	Print
W34(22)	Deal sheet, first run, Oswego, N. Y., 9/11/40	6735	4586
W34(23)	Deal sheet, second run, Oswego, N. Y., 9/11/40	6736	4587
W34(24)	Deal sheet, first run, Perry, N. Y., 9/11/40	6737	4588
W34(25)	Deal sheet, first run, Salamanca, N. Y., 9/11/40	6738	4589
W34(26)	Deal sheet, first run, Saranac Lake, N. Y., 9/11/40	6739	4590
W34(27)	Deal sheet, first run, Seneca Falls, N. Y., 9/11/40	6740	4591
W34(28)	Deal sheet, first run, Tupper Lake, N. Y., 9/11/40	6741	4592
W34(29)	Deal sheet, second run, Watertown, N. Y., 9/11/40	6742	4593
W34(30)	Deal sheet, first run, Watertown, N. Y., 9/11/40	6743	4594
W34(31)	Deal sheet, first run, Whitehall, N. Y., 9/11/40	6744	4595
W34(32)	Deal sheet, first run, Ashland, O., 9/11/40	6745	4596
W34(33)	Deal sheet, first run, Athens, Ohio, 9/11/40	6746	4597
W34(34)	Deal sheet, first run, Bowling Green, O., 9/11/40	6747	4598
W34(35)	Deal sheet, second run, Bowling Green, O., 9/11/40	6748	4599
W34(36)	Deal sheet, first run, Bucyrus, O., 9/11/40	6749	4600
W34(37)	Deal sheet, first run, Delaware, O., 9/11/40	6750	4601
W34(38)	Deal sheet, first run, Fostoria, O., 9/11/40	6751	4602
W34(39)	Deal sheet, first run, Kent or Ravenna, O., 9/11/40	6752	4603
W34(40)	Deal sheet, second run, Kent or Ravenna, O., 9/11/40	6753	4604
W34(41)	Deal sheet, first run, Medina, O., 9/11/40	6754	4605
W34(42)	Deal sheet, first run, Norwalk, Ohio, 9/11/40	6755	4606
W34(43)	Deal sheet, first run, Piqua, Ohio, 9/11/40	6756	4607
W34(44)	Deal sheet, first run, Shelby, Ohio, 9/11/40	6757	4608
W34(45)	Deal sheet, first run, Tiffin, Ohio, 9/11/40	6758	4609
W34(46)	Deal sheet, first run, Van Wert, O., 9/11/40	6759	4610
W34(47)	Deal sheet, first run, Wooster, Ohio, 9/11/40	676[illegible]	4611
W34(48)	Deal sheet, second run, Wooster, O., 9/11/40	6761	4612
W34(49)	Deal sheet, first run, Corbin, Ky., 9/11/40	6762	4613
W34(50)	Deal sheet, first run, Lexington, Ky., 9/11/40	6763	4614
W34(51)	Deal sheet, second run, Lexington, Ky., 9/11/40	6764	4615
W34(52)	Deal sheet, third run, Lexington, Ky., 9/11/40	6765	4616
W34(53)	Deal sheet, fourth run, Lexington, Ky., 9/11/40	6766	4617
W34(54)	Deal sheet, first run, Maysville, Ky., 9/11/40	6767	4618
W34(55)	Deal sheet, first run, Middlesboro, Ky., 9/11/40	6768	4619
W34(56)	Deal sheet, first run, Paris, Ky., 9/11/40	6769	4620
W34(57)	Deal sheet, first run, Richmond, Ky., 9/11/40	6770	4621
W34(58)	Deal sheet, first run, Cambridge, Md., 9/11/40	6771	4622
W34(59)	Deal sheet, first run, Easton, Md., 9/11/40	6772	4623
W34(60)	Deal sheet, first run, Federalsburg, Md., 9/11/40	6773	4624
W34(61)	Deal sheet, first run, Salisbury, Md., 9/11/40	6774	4625
W34(62)	Deal sheet, first run, Salisbury, Md., 9/11/40	6775	4626

EXHIBITS PRINTED IN FULL—Continued

		Original	Print
W34(63)	Deal sheet, first run, Amsterdam, N. Y., 9/11/40	6776	4627
W34(64)	Deal sheet, second run, Amsterdam, N. Y., 9/11/40	6777	4628
W34(65)	Deal sheet, second run, Auburn, N. Y., 9/11/40	6778	4629
W34(66)	Deal sheet, first run, Auburn, N. Y., 9/11/40	6779	4630
W34(67)	Deal sheet, first run, Ballston, N. Y., 9/11/40	6780	4631
W34(68)	Deal sheet, first run, Bath, N. Y., 9/11/40	6781	4632
W34(69)	Deal sheet, first run, Canandaigua, N. Y., 9/11/40	6782	4633
W34(70)	Deal sheet, first run, Carthage, N. Y., 9/11/40	6783	4634
W34(71)	Deal sheet, second run, Corning, N. Y., 9/11/40	6784	4635
W34(72)	Deal sheet, first run, Corning, N. Y., 9/11/40	6785	4636
W34(73)	Deal sheet, first run, Bellefontaine, N. Y., 9/11/40	6786	4637
W34(74)	Deal sheet, first run, Mount Vernon, O., 9/11/40	6787	4638
W34(75)	Deal sheet, first run, Hurlock, Md., 9/11/40	6788	4639
W34(76)	Deal sheet, first run, St. Michels, Md., 9/11/40	6789	4640
W34(77)	Deal sheet, first run, Laurel, Del., 9/11/40	6790	4641
W34(78)	Deal sheet, first run, Milford, Del., 9/11/40	6791	4642
W34(79)	Deal sheet, second run, Lockport, N. Y., 9/11/40	6792	4643
W34(80)	Deal sheet, second run, Geneva, N. Y., 9/11/40	6793	4644
W35A	Agreement, Vitagraph Inc. and Schine, 9/11/40	6794	4645
W35B	Agreement, Vitagraph Inc. and Schine, 9/11/40	6795	4646
U137	Agreement, Universal and Schine, 9/7/38	6796	4649
U137(1)	Deal sheet, first run, Amsterdam, N. Y., 8/26/38	6797	4650
U137(2)	Deal sheet, first run, Ballston, N. Y., 9/26/38	6798	4651
U137(3)	Deal sheet, first run, Carthage, N. Y., 9/26/38	6799	4652
U137(4)	Deal sheet, first run, Glens Falls, N. Y., 9/26/38	6800	4653
U137(5)	Deal sheet, second run, Glens Falls, N. Y., 9/26/38	6801	4654
U137(6)	Deal sheet, first run, Gloversville, N. Y., 9/26/38	6802	4655
U137(7)	Deal sheet, second run, Gloversville, N. Y., 9/26/38	6803	4656
U137(8)	Deal sheet, first run, Granville, N. Y., 9/26/38	6804	4657
U137(9)	Deal sheet, first run, Hamilton, N. Y., 9/26/38	6805	4658
U137(10)	Deal sheet, first run, Herkimer, N. Y., 9/26/38	6806	4659
U137(11)	Deal sheet, first run, Hudson Falls, N. Y., 9/26/38	6807	4660
U137(12)	Deal sheet, first run, Ilion, N. Y., 9/26/38	6808	4661
U137(13)	Deal sheet, first run, Little Falls, N. Y., 9/26/38	6809	4662
U137(14)	Deal sheet, first run, Malone, N. Y., 9/26/38	6810	4663
U137(15)	Deal sheet, first run, Massena, N. Y., 8/26/38	6811	4664
U137(16)	Deal sheet, first run, Mechanicville, N. Y., 8/26/38	6812	4665
U137(17)	Deal sheet, first run, Norwich, N. Y., 8/26/38	6813	4666

EXHIBITS PRINTED IN FULL—Continued

		Original	Print
U137(18)	Deal sheet, first run, Ogdensburg, N. Y., 8/26/38	6814	4667
U137(19)	Deal sheet, first run, Oneonta, N. Y., 8/26/38	6815	4668
U137(20)	Deal sheet, first run, Saranac Lake, N. Y., 8/26/38	6816	4669
U137(21)	Deal sheet, first run, Tupper Lake, N. Y., 8/26/38	6817	4670
U137(22)	Deal sheet, first run, Watertown, N. Y., 8/26/38	6818	4671
U137(23)	Deal sheet, second run, Watertown, N. Y., 8/26/38	6819	4672
U137(24)	Deal sheet, first run, Whitehall, N. Y., 8/26/38	6820	4673
U137(25)	Deal sheet, first run, Auburn, N. Y., 8/26/38	6821	4674
U137(26)	Deal sheet, second run, Auburn, N. Y., 8/26/38	6822	4675
U137(27)	Deal sheet, Buffalo, N. Y., 8/26/38	6823	4676
U137(28)	Deal sheet, Buffalo, N. Y., 8/26/38	6824	4677
U137(29)	Deal sheet, first run, Bath, N. Y., 8/26/38	6825	4678
U137(30)	Deal sheet, first run, Canandaigua, N. Y., 8/26/38	6826	4679
U137(31)	Deal sheet, first run, Corning, N. Y., 8/26/38	6827	4680
U137(32)	Deal sheet, second run, Corning, N. Y., 8/26/38	6828	4681
U137(33)	Deal sheet, first run, Cortland, N. Y., 8/26/38	6829	4682
U137(34)	Deal sheet, first run, Geneva, N. Y., 8/26/38	6830	4683
U137(35)	Deal sheet, first run, Lockport, N. Y., 8/26/38	6831	4684
U137(36)	Deal sheet, second run, Lockport, N. Y., 8/26/38	6832	4685
U137(37)	Deal sheet, first run, Newark, N. Y., 8/26/38	6833	4686
U137(38)	Deal sheet, first run, Oswego, N. Y., 8/26/38	6834	4687
U137(39)	Deal sheet, first run, Penn Yan, N. Y., 8/26/38	6835	4688
U137(40)	Deal sheet, first run, Perry, N. Y., 8/26/38	6836	4689
U137(41)	Deal sheet, Rochester, N. Y., 8/26/38	6837	4690
U137(42)	Deal sheet, Rochester, N. Y., 8/26/38	6838	4691
U137(43)	Deal sheet, Rochester, N. Y., 8/26/38	6839	4692
U137(44)	Deal sheet, Rochester, N. Y., 8/26/38	6840	4693
U137(45)	Deal sheet, repeat run, Rochester, N. Y., 8/26/38	6841	4694
U137(46)	Deal sheet, Rochester, N. Y., 8/26/38	6842	4695
U137(47)	Deal sheet, repeat run, Rochester, N. Y., 8/26/38	6843	4696
U137(48)	Deal sheet, first run, Salamanca, N. Y., 8/26/38	6844	4697
U137(49)	Deal sheet, first run, Seneca Falls, N. Y., 8/26/38	6845	4698
U137(51)	Deal sheet, first run, Bellefontaine, O., 8/26/38	6846	4699
U137(52)	Deal sheet, first run, Corbin, Ky., 11/10/38	6847	4700
U137(53)	Deal sheet, second run, Corbin, Ky., 1/16/39	6848	4701
U137(54)	Deal sheet, first run, Delaware, Ohio, 8/26/38	6849	4702
U137(55)	Deal sheet, first run, Maysville, Ky., 1/16/38	6850	4703
U137(56)	Deal sheet, first run, Middlesboro, Ky., 11/10/38	6851	4704
U137(57)	Deal sheet, first run, Piqua, Ohio, 8/26/38	6852	4705
U137(58)	Deal sheet, first run, Lexington, Ky., 8/26/38	6853	4706
U137(59)	Deal sheet, second run, Lexington, Ky., 8/26/38	6854	4707

EXHIBITS PRINTED IN FULL—Continued

		Original	Print
U137(60)	Deal sheet, first run, Paris, Ky., 8/26/38	6855	4708
U137(61)	Deal sheet, first run, Ashland, Ohio, 8/26/38	6856	4709
U137(62)	Deal sheet, first run, Bucyrus, O., 8/26/38	6857	4710
U137(63)	Deal sheet, first run, Fostoria, O., 8/26/38	6858	4711
U137(64)	Deal sheet, first run, Mt. Vernon, O., 8/26/38	6859	4712
U137(65)	Deal sheet, first run, Norwalk, O., 8/26/38	6860	4713
U137(66)	Deal sheet, first run, Tiffin, O., 8/26/38	6861	4714
U137(67)	Deal sheet, first run, Van Wert, O., 8/26/38	6862	4715
U137(68)	Deal sheet, first run, Wooster, O., 8/26/38	6863	4716
U137(69)	Deal sheet, first run, Cambridge, Md., 8/26/38	6864	4717
U137(70)	Deal sheet, first run, Easton, Md., 11/10/38	6865	4718
U137(71)	Deal sheet, first run, Federalsburg, Md., 11/10/38	6866	4719
U137(72)	Deal sheet, first run, Hurlock, Md., 11/10/38	6867	4720
U137(73)	Deal sheet, first run, Laurel, Del., 4/17/39	6868	4721
U137(74)	Deal sheet, Milford, Del., 4/17/39	6869	4722
U137(75)	Deal sheet, first run, Salisbury, Md., 10/21/38	6870	4723
U207	Agreement Universal and Schine, 6/27/39	6871	4724
U207(1)	Deal sheet, Universal and Schine, 6/27/39	6872	4725
U207(2)	Deal sheet, Universal and Schine, 6/27/39	6873	4726
U207(3)	Deal sheet, Universal and Schine, 6/27/39	6874	4727
U207(4)	Deal sheet, Universal and Schine, 6/27/39	6875	4728
U207(5)	Deal sheet, Universal and Schine, 6/27/39, Glens Falls, second run	6876	4729
U207(6)	Deal sheet, Universal and Schine, 6/27/39, Gloversville, first run	6877	4730
U207(7)	Deal sheet, Universal and Schine, 6/27/39, Gloversville, second run	6878	4731
U207(8)	Deal sheet, Universal and Schine, 6/27/39, Granville, first run	6879	4732
U207(9)	Deal sheet, Universal and Schine, 6/27/39, Hamilton, first run	6880	4733
U207(10)	Deal sheet, Universal and Schine, 6/27/39, Herkimer, first run	6881	4734
U207(11)	Deal sheet, Universal and Schine, 6/27/39, Hudson Falls, first run	6882	4735
U207(12)	Deal sheet, Universal and Schine, 6/27/39, Ilion, first run	6883	4736
U207(13)	Deal sheet, Universal and Schine, 6/27/39, Little Falls, first run	6884	4737
U207(14)	Deal sheet, Universal and Schine, 6/27/39, Malone, first run	6885	4738
U207(15)	Deal sheet, Universal and Schine, 6/27/39, Massena, first run	6886	4739
U207(16)	Deal sheet, Universal and Schine, 6/27/39, Mechanicville, first run	6887	4740
U207(17)	Deal sheet, Universal and Schine, 6/27/39, Norwich, first run	6888	4741
U207(18)	Deal sheet, Universal and Schine, 6/27/39, Ogdensburg, first run	6889	4742

EXHIBITS PRINTED IN FULL—Continued

		Original	Print
U207(19)	Deal sheet, Universal and Schine, 6/27/39, Oneonta, first run	6890	4743
U207(20)	Deal sheet, Universal and Schine, 6/27/39, Saranac Lake, first run	6891	4744
U207(21)	Deal sheet, Universal and Schine, 6/27/39, Tupper Lake, first run	6892	4745
U207(22)	Deal sheet, Universal and Schine, 6/27/39, Watertown, first run	6893	4746
U207(23)	Deal sheet, Universal and Schine, 6/27/39, Watertown, second run	6894	4747
U207(24)	Deal sheet, Universal and Schine, 6/27/39, Whitehall, first run	6895	4748
U207(25)	Deal sheet, Universal and Schine, 6/27/39, Auburn, first run	6896	4749
U207(26)	Deal sheet, Universal and Schine, 6/27/39, Auburn, second run	6897	4750
U207(27)	Deal sheet, Universal and Schine, 6/27/39, Bath, first run	6898	4751
U207(28)	Deal sheet, Universal and Schine, 6/27/39, Buffalo (Granada), second run	6899	4752
U207(29)	Deal sheet, Universal and Schine, 6/27/39, Buffalo (Riverside) 2nd run	6900	4753
U207(30)	Deal sheet, Universal and Schine, 6/27/39, Canandaigua, first run	6901	4754
U207(31)	Deal sheet, Universal and Schine, 6/27/39, Corning, first run	6902	4755
U207(32)	Deal sheet, Universal and Schine, 6/27/39, Corning, second run	6903	4756
U207(33)	Deal sheet, Universal and Schine, 6/27/39, Cortland, first run	6904	4757
U207(34)	Deal sheet, Universal and Schine, 6/27/39, E. Rochester or Fairport, first and repeat	6905	4758
U207(35)	Deal sheet, Universal and Schine, 6/27/39, Geneva, first run	6906	4759
U207(36)	Deal sheet, Universal and Schine, 6/27/39, Lockport, first run	6907	4760
U207(37)	Deal sheet, Universal and Schine, 6/27/39, Lockport, second run	6908	4761
U207(38)	Deal sheet, Universal and Schine, 6/27/39, Newark, first run	6909	4762
U207(39)	Deal sheet, Universal and Schine, 6/27/39, Oswego, first run	6910	4763
U207(40)	Deal sheet, Universal and Schine, 6/27/39, Penn Yan, first run	6911	4764
U207(41)	Deal sheet, Universal and Schine, 6/27/39, Perry, first run	6912	4765
U207(42)	Deal sheet, Universal and Schine, 6/27/39, Rochester, Cameo	6913	4766
U207(43)	Deal sheet, Universal and Schine, 6/27/39, Rochester—Dixie or State	6914	4767

EXHIBITS PRINTED IN FULL—Continued

		Original	Print
U207(44)	Deal sheet, Universal and Schine, 6/27/39, Rochester—Dixie or State repeat	6915	4768
U207(45)	Deal sheet, Universal and Schine, 6/27/39, Rochester, Grand	6916	4769
U207(46)	Deal sheet, Universal and Schine, 6/27/39, Rochester, Lake	6917	4770
U207(47)	Deal sheet, Universal and Schine, 6/27/39, Rochester—Rivera or Liberty	6918	4771
U207(48)	Deal sheet, Universal and Schine, 6/27/39, Rochester—Liberty repeat	6919	4772
U207(49)	Deal sheet, Universal and Schine, 12/15/39, Rochester, Madison	6920	4773
U207(50)	Deal sheet, Universal and Schine, 12/15/39, Rochester, Monroe	6921	4774
U207(51)	Deal sheet, Universal and Schine, 12/5/40, Rochester—Webster	6922	4775
U207(52)	Deal sheet, Universal and Schine, 12/18/41, Rochester—Webster	6923	4776
U207(53)	Deal sheet, Universal and Schine, 12/18/39, Rochester—West End	6924	4777
U207(54)	Deal sheet, Universal and Schine, 6/27/39, Salamanca, first run	6925	4778
U207(55)	Deal sheet, Universal and Schine, 6/27/39, Seneca Falls, first run	6926	4779
U207(56)	Deal sheet, Universal and Schine, 6/27/39, Syracuse—Palace	6927	4780
U207(57)	Deal sheet, Universal and Schine, 6/27/39 Athens, Ohio—first run	6928	4781
U207(58)	Deal sheet, Universal and Schine, 6/27/39, Corbin, Ky., first run	6929	4782
U207(59)	Deal sheet, Universal and Schine, 6/27/39, Lexington, Ky.—first run	6930	4783
U207(60)	Deal sheet, Universal and Schine, 6/27/39, Lexington, Ky.—second run	6931	4784
U207(61)	Deal sheet, Universal and Schine, 3/4/40, Lexington, Ky. (Opera House) third run	6932	4785
U207(62)	Deal sheet, Universal and Schine, 1/22/41, Lexington, Ky.—(Ada Meade) fourth run	6933	4786
U207(63)	Deal sheet, Universal and Schine, 6/27/39, Maysville, Ky.—first run	6934	4787
U207(64)	Deal sheet, Universal and Schine, 6/27/39, Middlesboro, Ky.—first run	6935	4788
U207(65)	Deal sheet, Universal and Schine, 6/27/39, Paris, Ky.—first run	6936	4789
U207(66)	Deal sheet, Universal and Schine, 6/27/39, Piqua, Ohio—first run	6937	4790
U207(67)	Deal sheet, Universal and Schine, 6/27/39, Richmond, Ky.—first run	6938	4791
U207(68)	Deal sheet, Universal and Schine, 6/27/39, Ashland, Ohio—first run	6939	4792

EXHIBITS PRINTED IN FULL—Continued

		Original	Print
U207(69)	Deal sheet, Universal and Schine, 6/27/39, Bellefontaine, Ohio—first run	6940	4793
U207(70)	Deal sheet, Universal and Schine, 6/27/39, Bowling Green, Ohio—first run	6941	4794
U207(71)	Deal sheet, Universal and Schine, 6/27/39, Bucyrus, Ohio—first run	6942	4795
U207(72)	Deal sheet, Universal and Schine, 6/27/39, Delaware, Ohio—first run	6943	4796
U207(73)	Deal sheet, Universal and Schine, 6/27/39, Fostoria, Ohio—first run	6944	4797
U207(74)	Deal sheet, Universal and Schine, 6/27/39, Kent or Ravenna, first run	6945	4798
U207(75)	Deal sheet, Universal and Schine, 6/27/39, Kent or Ravenna, repeat	6946	4799
U207(76)	Deal sheet, Universal and Schine, 6/27/39, Medina, first run	6947	4800
U207(77)	Deal sheet, Universal and Schine, 6/27/39, Mt. Vernon, first run	6948	4801
U207(78)	Deal sheet, Universal and Schine, 6/27/39, Norwalk, first run	6949	4802
U207(79)	Deal sheet, Universal and Schine, 6/27/39, Tiffin, first run	6950	4803
U207(80)	Deal sheet, Universal and Schine 6/27/39, Van Wert, first run	6951	4804
U207(81)	Deal sheet, Universal and Schine, 6/27/39, Wooster, first run	6952	4805
U207(82)	Deal sheet, Universal and Schine, 6/27/39, Cambridge, Md. first run	6953	4806
U207(83)	Deal sheet, Universal and Schine, 6/27/39, Easton, first run	6954	4807
U207(84)	Deal sheet, Universal and Schine, 6/27/39, Federalsburg, first run	6955	4808
U207(85)	Deal sheet, Universal and Schine, 12/15/39, Hurlock, first run	6956	4809
U207(86)	Deal sheet, Universal and Schine, 6/27/39, Laurel, Del., first run	6957	4810
U207(87)	Deal sheet, Universal and Schine, 6/27/39, Milford, first run	6958	4811
U207(88)	Deal sheet, Universal and Schine, 6/27/39, Salisbury, Md., first run	6955	4812
U207(89)	Deal sheet, Universal and Schine, 12/15/39, St. Michaels, first run	6960	4813
R1	Agreement, RKO and Schine, 11/20/36	6961	4814
R2(1)	Deal sheet, first run, Auburn, N. Y.	6962	4815
R2(2)	Deal sheet, first run, 11/20/36, Bath, N. Y.	6963	4816
R2(3)	Deal sheet, first run, 11/20/36, Canandaigua, N. Y.	6964	4817
R2(4)	Deal sheet, first run, 11/20/36, Carthage, N. Y.	6965	4818
R2(5)	Deal sheet, first and second runs, 11/20/36, Corning, N. Y.	6966	4819

EXHIBITS PRINTED IN FULL—Continued

		Original	Print
R2(6)	Deal sheet, first run, Cortland, N. Y., 11/20/36.	6967	4820
R2(7)	Deal sheet, first run, Geneva, N. Y., 11/20/36.	6968	4821
R2(8)	Deal sheet, first and second runs Glens Falls, N. Y., 11/20/36	6969	4822
R2(9)	Deal sheet, first run, Gloversville N. Y., 11/20/36	6970	4823
R2(10)	Deal sheet, first run, Hamilton, N. Y., 11/20/36.	6971	4824
R2(11)	Deal sheet, first run, Herkimer, N. Y., 11/20/36.	6972	4825
R2(12)	Deal sheet, first run, Hudson Falls, N. Y., 11/20/36	6973	4826
R2(13)	Deal sheet, first run, Little Falls, N.Y., 11/20/36	6974	4827
R2(14)	Deal sheet, first and second runs, Lockport, N. Y., 11/20/36	6975	4828
R2(15)	Deal sheet, first run, Malone, N. Y., 11/20/36.	6976	4829
R2(16)	Deal sheet, first run, Massena, N. Y., 11/20/36.	6977	4830
R2(17)	Deal sheet, first run, Newark, N. Y., 11/20/36.	6978	4831
R2(18)	Deal sheet, first run, Norwich, N. Y., 11/20/36.	6979	4832
R2(19)	Deal sheet, first run, Oneonta, N. Y., 11/20/36.	6980	4833
R2(20)	Deal sheet, first run, Ogdensburg, N. Y., 11/20/36	6981	4834
R2(21)	Deal sheet, first run, Oswego, N. Y., 11/20/36.	6982	4835
R2(22)	Deal sheet, first run, Penn Yan, N. Y., 11/20/36.	6983	4836
R2(23)	Deal sheet, first run, Perry, N. Y., 11/20/36	6984	4837
R2(24)	Deal sheet, first run, Rochester, N. Y., 11/20/36.	6985	4838
R2(25)	Deal sheet, first run, Rochester, N. Y., 11/20/36.	6986	4839
R2(26)	Deal sheet, first run, Rochester, N. Y., 11/20/36.	6987	4840
R2(27)	Deal sheet, first run, Rochester, N. Y., 11/20/36.	6988	4841
R2(28)	Deal sheet, first run, Rochester, N. Y., 11/20/36.	6989	4842
R2(29)	Deal sheet, first run, Rochester, N. Y., 11/20/36.	6990	4843
R2(30)	Deal sheet, first run, Salamanca, N. Y., 11/20/36	6991	4844
R2(31)	Deal sheet, first run, Saranac Lake, N. Y., 11/20/36	6992	4845
R2(32)	Deal sheet, first run, Seneca Falls, N. Y., 11/20/36	6993	4846
R2(33)	Deal sheet, first run, Tupper Lake, N. Y., 11/20/36	6994	4847
R2(34)	Deal sheet, first and second runs, Watertown, N. Y., 11/20/36	6995	4848
R2(35)	Deal sheet, first run, 11/19/36, Ashland, Ohio	6996	4849
R2(36)	Deal sheet, first run, Athens, O., 11/30/36	6997	4850
R2(37)	Deal sheet, first run, Bellefontaine, O., 11/20/36.	6998	4851
R2(38)	Deal sheet, first run, Bucyrus, O., 11/19/36	6999	4852
R2(39)	Deal sheet, first run, Fostoria, O., 11/20/36	7000	4853
R2(40)	Deal sheet, first run, Norwalk, O., 11/19/36	7001	4854
R2(41)	Deal sheet, first run, Piqua, O., 11/30/36	7002	4855
R2(42)	Deal sheet, first run, Van Wert, O., 11/19/36	7003	4856
R2(43)	Deal sheet, first run, Wooster, O., 11/19/36	7004	4854
R2(44)	Deal sheet, first run, Paris, Ky., 11/30/36	7005	4858
R2(45)	Deal sheet, first run, Richmond, Ky., 11/30/36.	7006	4859
R2(46)	Deal sheet, first run, Tiffin, O., 11/20/36	7007	4860

EXHIBITS PRINTED IN FULL—Continued

		Original	Print
R2(47)	Deal sheet, subsequent run, Buffalo, N. Y., 11/20/36	7008	4868
R2(48)	Deal sheet, subsequent run, Buffalo, N. Y., 11/20/36	7009	4862
R2(50)	Deal sheet, first run, Mt. Vernon, O., 11/20/36.	7010	4863
R2(51)	Deal sheet, first run, Lexington, Ky., 11/30/36.	7011	4864
R20	Letter agreement, 10/18/35	7012	4865
R37			
R37(1)	Deal sheet, first run, RKO and Schine, Amsterdam, N. Y., 11/2/36	7013	4866
R37(2)	Deal sheet, second run, Amsterdam, N. Y., 8/15/38	7014	4867
R37(3)	Deal sheet, first run, Ballston, N. Y., 8/15/38	7015	4868
R37(4)	Deal sheet, first run, Glens Falls, N. Y., 8/15/38.	7016	4869
R37(5)	Deal sheet, second run, Glens Falls, N. Y., 8/15/38	7017	4870
R37(6)	Deal sheet, first run, Gloversville, N. Y., 8/15/38	7018	4871
R37(8)	Deal sheet, first run, Hamilton, N. Y., 8/15/38.	7019	4872
R37(9)	Deal sheet, first run, Herkimer, N. Y., 8/15/38.	7020	4873
R37(10)	Deal sheet, first run, Hudson Falls, N. Y., 8/15/38	7021	4874
R37(11)	Deal sheet, first run, Ilion, N. Y., 8/15/38	7022	4875
R37(12)	Deal sheet, first run, Malone, N. Y., 8/15/38	7023	4876
R37(13)	Deal sheet, first run, Massena, N. Y., 8/15/38	7024	4877
R37(14)	Deal sheet, first run, Mechanicville, N. Y., 8/15/38	7025	4878
R37(15)	Deal sheet, first run, Norwich, N. Y., 8/15/38	7026	4879
R37(16)	Deal sheet, first run, Ogdensburg, N. Y., 8/15/38	7027	4880
R37(17)	Deal sheet, first run, Oeonta, N. Y., 8/15/38	7028	4881
R37(18)	Deal sheet, first run, Saranac Lake, N. Y., 8/15/38	7029	4882
R37(19)	Deal sheet, first run, Tupper Lake, N. Y., 8/15/38	7030	4883
R37(20)	Deal sheet, first run, Watertown, N. Y., 8/15/38.	7031	4884
R37(21)	Deal sheet, second run, Watertown, N. Y., 8/15/38	7032	4885
R37(22)	Deal sheet, first run, Whitehall, N. Y., 8/15/38.	7033	4886
R37(23)	Deal sheet, first run, Auburn, N. Y., 8/15/38	7034	4887
R37(24)	Deal sheet, second run, Auburn, N. Y., 1/11/30.	7035	4888
R37(25)	Deal sheet, first run, Bath, N. Y., 8/15/38	7036	4889
R37(26)	Deal sheet, first run, Canandaigua, N. Y., 8/15/38	7037	4890
R37(27)	Deal sheet, first run, Corning, N. Y., 8/15/38	7038	4891
R37(28)	Deal sheet, second run, Corning, N. Y., 8/15/38.	7039	4892
R37(29)	Deal sheet, first run, Cortland, N. Y., 8/15/38	7040	4893
R37(30)	Deal sheet, first run, Geneva, N. Y., 8/15/38	7041	4894
R37(31)	Deal sheet, first run, Lockport, N. Y., 8/15/38	7042	4895

EXHIBITS PRINTED IN FULL—Continued

		Original	Print
R37(32)	Deal sheet, second run, Lockport, N. Y., 8/15/38	7043	4896
R37(33)	Deal sheet, first run, Newark, N. Y., 8/15/38	7044	4897
R37(34)	Deal sheet, first run, Penn Yan, N. Y., 8/15/38.	7045	4898
R37(35)	Deal sheet, first run, Perry, N. Y., 8/15/38	7046	4899
R37(36)	Deal sheet, subsequent run, Rochester, N. Y., 8/16/38	7047	4900
R37(37)	Deal sheet, RKO and Schine, subsequent run Rochester, N. Y., 8/15/38	7048	4901
R37(38)	Deal sheet, subsequent run, Rochester, N. Y., 8/15/38	7049	4902
R37(39)	Deal sheet, subsequent run, Rochester, N. Y., 8/20/38	7050	4903
R37(40)	Deal sheet, subsequent run, Rochester, N. Y., 8/20/38	7051	4904
R37(41)	Deal sheet, repeat run, Rochester, N. Y., 8/15/38	7052	4905
R37(42)	Deal sheet, first run, Salamanca, N. Y., 8/15/38.	7053	4906
R37(43)	Deal sheet, first run, Seneca Falls, N. Y., 8/15/38	7054	4907
R37(44)	Deal sheet, first run, Ashland, O., 8/15/38	7055	4908
R37(45)	Deal sheet, first run, Athens, O., 8/15/38	7056	4909
R37(46)	Deal sheet, first run, Bellefontaine, O., 8/15/38.	7057	4910
R37(47)	Deal sheet, first run, Bucyrus, O., 8/15/38	7058	4911
R37(48)	Deal sheet, first run, Delaware, O., 8/15/38	7059	4912
R37(49)	Deal sheet, first run, Fostoria, O., 8/15/38	7060	4913
R37(50)	Deal sheet, first run, Kent or Ravenna, Ohio, 8/15/38	7061	4914
R37(51)	Deal sheet, repeat run, Kent or Ravenna, Ohio, 8/15/38	7062	4915
R37(52)	Deal sheet, first run, Medina, Ohio, 8/15/38	7063	4916
R37(53)	Deal sheet, first run, Mt. Vernon, Ohio, 8/15/38.	7064	4917
R37(54)	Deal sheet, first run, Norwalk, O., 8/15/38	7065	4918
~~R37(55)~~	~~Deal sheet, first run, Shelby, Ohio, 8/15/38~~	~~7066~~	~~4919~~
R37(56)	Deal sheet, first run, Tiffin, Ohio, 8/15/38	7067	4920
R37(57)	Deal sheet, first run, Van Wert, Ohio, 8/15/38	7068	4921
R37(58)	Deal sheet, first run, Wooster, Ohio, 8/15/38	7069	4922
R37(59)	Deal sheet, first run, Lexington, Ky., 8/15/38	7070	4923
R37(60)	Deal sheet, second run, Lexington, Ky., 8/15/38.	7071	4924
R37(61)	Deal sheet, third run, Lexington, Ky., 8/15/38.	7072	4925
R37(62)	Deal sheet, first run, Paris, Ky., 8/15/38	7073	4926
R37(63)	Deal sheet, first run, Piqua, Ohio, 8/15/38	7074	4927
R37(64)	Deal sheet, first run, Richmond, Ky., 8/15/38	7075	4928
R37(65)	Deal sheet, first run, Little Falls, N. Y., 8/15/38.	7076	4929
R37(66)	Deal sheet, RKO and Schine, first run, East Rochester or Fairport, N. Y., 11/28/39	7077	4930
R37(67)	Deal sheet, fourth run, Lexington, Ky., 4/21/41	7078	4931
R37(68)	Deal sheet, first run, Oswego, N. Y., 10/26/38	7079	4932
R37(69)	Deal sheet, first run, Pikesville, Ky., 3/9/39	7080	4933
R37(70)	Deal sheet, first run, Salisbury, Md., 11/3/38	7081	4934

EXHIBITS PRINTED IN FULL—Continued

		Original	Print
R37(71)	Deal sheet, first run, Hurlock, Md., 10/9/40	7082	4935
R37(72)	Deal sheet, first run, 8/15/38, Cambridge, Md.	7083	4936
R37(73)	Deal sheet, first run, Maysville, Ky., 8/15/38	7084	4937
R37(74)	Deal sheet, first run, Easton, Md., 11/3/38	7085	4938
R37(75)	Deal sheet, first run, Federalsburg, Md., 11/3/38	7086	4939
R37(76)	A-deal sheet, RKO and Schine, first run, Granville, N. Y., 12/27/38	7087	4940
	B-deal sheet RKO and Schine, first run, Granville, N. Y., 12/27/38	7088	4941
R37(77)	Deal sheet, no run, Carthage, N. Y., 8/15/38	7089	4942
R37(78)	Deal sheet, RKO and Schine, Rochester, N. Y., 11/28/39	7090	4943
R37(79)	Deal sheet, Rochester, N. Y., 11/28/39	7091	4944
R37(80)	Deal sheet, Rochester, N. Y., 11/28/39	7092	4945
R37(81)	Deal sheet, Rochester, N. Y., 4/1/41	7093	4946
R37(82)	Deal sheet, Syracuse, N. Y., 4/1/41	7094	4947
R37(83)	Deal sheet, Salisbury, Md., 10/9/40	7095	4948
R42	Agreement, RKO and Schine, 10/29/34	7096	4949
R43	Letter, RKO and Schine, 11/1/34	7098	4950
F1	Agreement, Fox and Schine, 8/5/36	7099	4951
F102	Deal sheet, Fox and Schine, 6/17/38, Hamilton, N. Y., 1st run	7103	4955
F103	Deal sheet, Fox and Schine, 6/17/36, Glens Falls, N. Y., 2nd run	7104	4956
F104	Deal sheet, Fox and Schine, 6/17/36, Herkimer, N. Y., 1st run	7105	4957
F105	Deal sheet, Fox and Schine, 6/17/36, Hudson Falls, 1st run	7106	4958
F106	Deal sheet, Fox and Schine, 6/17/36, Little Falls, N. Y	7107	4959
F107	Deal sheet, Fox and Schine, 6/17/36, Malone, N. Y	7108	4960
F108	Deal sheet, Fox and Schine, 6/17/36, Athens, O., 1st run	7109	4961
F109	Deal sheet, Fox and Schine, 6/17/36, Gloversville and Oneonta, 2nd run	7110	4962
F110	Deal sheet, Fox and Schine, 10/27/37, Fostoria, O.	7111	4963
F111	Deal sheet, Fox and Schine, 10/11/39, Medina, O.	7112	4964
F112	Deal sheet, Fox and Schine, 10/28/36, Watertown, Palace, 3rd run	7113	4965
F113	Deal sheet, Fox and Schine, 8/11/37, Perry, 1st run	7114	4966
F114	Deal sheet, Fox and Schine, 8/11/37, Penn Yan, 1st run	7115	4967
F115	Deal sheet, Fox and Schine, 4/27/37, Ilion, N. Y.	7116	4968

EXHIBITS PRINTED IN FULL—Continued

		Original	Print
F193	Agreement, Twentieth Century-Fox and Schine, 6/5/39	7116a	4969
C100	Agreement, Columbia and Schine, 10/17/38	7117	4971
C101	Letter, Columbia to Schine, 11/28/38	7119	4973
C102(1)	Deal Sheet, Columbia and Schine, second run, Auburn, N. Y., 10/17/38	7120	4975
C102(2)	Deal Sheet, first run, Bath, N. Y., 10/17/38	7121	4976
C102(3)	Deal sheet, subsequent run, Buffalo, N. Y., 10/17/38	7122	4977
C102(4)	Deal sheet, subsequent run, Buffalo, N. Y., 10/17/38	7123	4978
C102(5)	Deal sheet, first run, Canandaigua, N. Y., 10/17/38	7124	4979
C102(6)	Deal sheet, first run, Cortland, N. Y., 10/17/38	7125	4980
C102(7)	Deal sheet, first run, Geneva, N. Y., 10/17/38	7126	4981
C102(8)	Deal sheet, first run, Lockport, N. Y., 10/17/38	7127	4982
C102(9)	Deal sheet, second run, Lockport, N. Y., 10/17/38	7128	4983
C102(10)	Deal sheet, first run, Newark, N. Y., 10/17/38	7129	4984
C102(11)	Deal sheet, first run, Oswego, N. Y., 10/17/38	7130	4985
C102(12)	Deal sheet, first run, Penn Yan, N. Y., 10/17/38	7131	4986
C102(13)	Deal sheet, first run, Perry, N. Y., 10/17/38	7132	4987
C102(14)	Deal sheet, subsequent run, Rochester, N. Y., 10/17/38	7133	4988
C102(15)	Deal sheet, Subsequent run, Rochester, N. Y., 10/17/38	7134	4989
C102(16)	Deal sheet, subsequent run, Rochester, N. Y. 10/17/38	7135	4990
C102(17)	Deal sheet, subsequent run, Rochester, N. Y., 10/17/38	7136	4991
C102(18)	Deal sheet, repeat run, Rochester, N. Y., 10/17/38	7137	4992
C102(19)	Deal sheet, subsequent run, Rochester, N. Y., 10/17/38	7138	4993
C102(20)	Deal sheet, repeat run, Rochester, N. Y., 10/17/38	7139	4994
C102(21)	Deal sheet, first run, Salamanca, N. Y. 10/17/38	7140	4995
C102(22)	Deal sheet, first run, Seneca Falls, N. Y., 10/17/38	7141	4996
C102(23)	Deal sheet, "You Can't Take It With You"	7142	4997
C102(24)	Deal sheet, First run, Amsterdam, N. Y., 10/18/38	7144	4999
C102(25)	Deal sheet, first run, Ballston, N. Y., 10/17/38	7145	5000
C102(26)	Deal sheet, first run, Carthage, N. Y., 10/17/38	7146	5001
C102(27)	Deal sheet, first run, Glens Falls, N. Y.. 10/17/38	7147	5002
C102(28)	Deal sheet, second run, Glens Falls, N. Y., 10/17/38	7148	5003
C102(29)	Deal sheet, first run, Gloversville, N. Y., 10/17/38	7149	5004
C102(30)	Deal sheet, first run, Hamilton, N. Y., 10/17/38	7150	5005

EXHIBITS PRINTED IN FULL—Continued

		Original	Print
C102(31)	Deal sheet, first run, Herkimer, N. Y., 10/17/38	7151	5006
C102(32)	Deal sheet, first run, Hudson Falls, N. Y., 10/17/38	7152	5007
C102(33)	Deal sheet, first run, Ilion, N. Y., 10/17/38	7153	5008
C102(34)	Deal sheet, first run, Little Falls, N. Y., 10/17/38	7154	5009
C102(35)	Deal sheet, first run, Malone, N. Y., 10/17/38	7155	5010
C102(36)	Deal sheet, first run, Mechanicville, N. Y. 10/17/38	7156	5011
C102(37)	Deal sheet, first run, Norwich, N. Y., 10/17/38	7157	5012
C102(38)	Deal sheet, first run, Ogdensburg, N. Y., 10/17/38	7158	5013
C102(39)	Deal sheet, first run, Oneonta, N. Y., 10/17/38	7159	5014
C102(40)	Deal sheet, first run, Saranac Lake, N. Y., 10/17/38	7160	5015
C102(41)	Deal sheet, first run, Tupper Lake, N. Y., 10/17/38	7161	5016
C102(42)	Deal sheet, first run, Watertown, N. Y., 10/17/38	7162	5017
C102(43)	Deal sheet, second run, Watertown, N. Y., 10/17/38	7163	5018
C102(44)	Deal sheet, first run, Whitehall, N. Y., 10/17/38	7164	5019
C102(45)	Deal sheet, first run, Easton, Md., 10/17/38	7165	5020
C102(46)	Deal sheet, first run, Federalsburg, Md., 10/17/38	7166	5021
C102(47)	Deal sheet, first run, Hurlock, Md., 10/17/38	7167	5022
C102(48)	Deal sheet, first run, Salisbury, Md., 10/17/38	7168	5023
C102(49)	Deal sheet, "You Can't Take It With You," Easton, Hurlock, Federalsburg, and Salisbury	7169	5024
C102(50)	Deal sheet, first run, Athens, Ohio, 10/17/38	7170	5025
C102(51)	Deal sheet, first run, Lexington, Ky., 10/17/38	7171	5026
C102(52)	Deal sheet, third run, Lexington, Ky., 10/17/38	7172	5027
C102(53)	Deal sheet, first run, Maysville, Ky., 10/17/38	7173	5028
C102(54)	Deal sheet, first run, Paris, Ky., 10/17/38	7174	5029
C102(55)	Deal sheet, first run, Piqua, Ohio, 10/17/38	7175	5030
C102(56)	Deal sheet, first run, Richmond, Ky., 10/17/38	7176	5031
C102(57)	Deal sheet, first run, Ashland, Ohio, 10/17/38	7177	5032
C102(58)	Deal sheet, first run, Bellefontaine, Ohio, 10/17/38	7178	5033
C102(59)	Deal sheet, first run, Bucyrus, Ohio, 10/17/38	7179	5034
C102(60)	Deal sheet, first run, Delaware, Ohio, 10/17/38	7180	5035
C102(61)	Deal sheet, first run, Fostoria, Ohio, 10/17/38	7181	5036
C102(62)	Deal sheet, first run, Kent or Ravenna, Ohio, 10/17/38	7182	5037
C102(63)	Deal sheet, repeat run, Kent or Ravenna, 10/17/38	7183	5038
C102(64)	Deal sheet, first run, Norwalk, Ohio, 10/17/38	7184	5039
C102(65)	Deal sheet, first run, Tiffin, Ohio, 10/17/38	7185	5040
C102(66)	Deal sheet, first run, Van Wert, Ohio, 10/17/38	7186	5041
C102(67)	Deal sheet, first run, Wooster, Ohio, 10/17/38	7187	5042

EXHIBITS PRINTED IN FULL—Continued

		Original	Print
C102(68)	Subsequent run, deal sheet, Rochester, N. Y., 12/28/39	7188	5043
C102(69)	Deal sheet, subsequent run, Rochester, N. Y., 12/28/39	7189	5044
C102(70)	Deal sheet, first run, Rochester, N. Y., 12/28/39	7190	5045
C102(71)	Deal sheet, after fourth run, Syracuse, N. Y., 9/28/39	7191	5046
C102(72)	Deal sheet, first run, Cambridge, Md., 4/11/39	7192	5047
C102(73)	Deal sheet, first run, Corbin, Ky., 9/28/39	7193	5048
C102(74)	Deal sheet, first and repeat runs, East Rochester or Fairport, N. Y., 9/28/39	7194	5049
C102(75)	Deal sheet, first run, Laurel, Del., 4/11/39	7195	5050
C102(76)	Deal sheet, first run, Maysville, Ky., 10/23/39	7196	5051
C102(77)	Deal sheet, first run, Middlesboro, Ky., 9/28/39	7197	5052
C102(78)	Deal sheet, first run, Milford, Del., 4/11/39	7198	5053
C102(79)	Deal sheet, second run, Lexington, Ky., 3/4/40	7199	5054
C102(80)	Deal sheet, "You Can't Take It With You," 10/17/38	7200	5055
C102(81)	Deal sheet, first run, Bowling Green, Ohio, 9/29/39	7201	5056
C180	Agreement, Columbia and Schine, 11/19/40	7202	5057
C181(1)	Deal sheet, first run, Bath, N. Y., 11/19/40	7205	5061
C181(2)	Deal sheet, subsequent run, Buffalo, N. Y., 11/19/40	7206	5062
C181(3)	Deal sheet, subsequent run, Buffalo, N. Y., 11/19/40	7207	5063
C181(4)	Deal sheet, first run, Canandaigua, N. Y., 11/19/40	7208	5064
C181(5)	Deal sheet, first run, Corning, N. Y., 11/19/40	7209	5065
C181(6)	Deal sheet, first run, Cortland, N. Y., 11/19/40	7210	5066
C181(7)	Deal sheet, first run, East Rochester or Fairport, N. Y., 11/19/40	7211	5067
C181(8)	Deal sheet, repeat run, East Rochester or Fairport, N. Y., 11/19/40	7212	5068
C181(9)	Deal sheet, first run, Geneva, N. Y., 11/19/40	7213	5069
C181(10)	Deal sheet, first run, Lockport, N. Y., 11/19/40	7214	5070
C181(11)	Deal sheet, second run, Lockport, N. Y., 11/19/40	7215	5071
C181(12)	Deal sheet, first run, Newark, N. Y., 11/19/40	7216	5072
C181(13)	Deal sheet, first run, Oswego, N. Y., 11/19/40	7217	5073
C181(14)	Deal sheet, first run, Penn Yan, N. Y., 11/19/40	7218	5074
C181(15)	Deal sheet, first run, Perry, N. Y., 11/19/40	7219	5075
C181(16)	Deal sheet, subsequent run, Rochester, N. Y., 11/19/40	7220	5076
C181(17)	Deal sheet, second run, Rochester, N. Y., 11/19/40	7221	5077
C181(18)	Deal sheet, subsequent run, Rochester, N. Y., 11/19/40	7222	5078
C181(19)	Deal sheet, subsequent run, Rochester, N. Y., 11/19/40	7223	5079

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C181(20)	Deal sheet, subsequent run, Rochester, N. Y., 11/19/40	7224	5080
C181(21)	Deal sheet, subsequent run, Rochester, N. Y., 11/19/40	7225	5081
C181(22)	Deal sheet, subsequent run, Rochester, N. Y., 11/19/40	7226	5082
C181(23)	Deal sheet, second run, Rochester, N. Y., 11/19/40	7227	5083
C181(24)	Deal sheet, second run, Rochester, N. Y., 11/19/40	7228	5084
C181(25)	Deal sheet, subsequent run, Rochester, N. Y., 11/19/40	7229	5085
C181(26)	Deal sheet, subsequent run, Rochester, N. Y., 11/19/40	7230	5086
C181(27)	Deal sheet, first run, Salamanca, N. Y., 11/19/40	7231	5087
C181(28)	Deal sheet, first run, Seneca Falls, N. Y., 11/19/40	7232	5088
C181(29)	Deal sheet, first run, Cambridge, Md., 11/19/40	7233	5089
C181(30)	Deal sheet, first run, Easton, Md., 11/19/40	7234	5090
C181(31)	Deal sheet, first run, Federalsburg, Md., 11/19/40	7235	5091
C181(32)	Deal sheet, first run, Milford, Del., 11/19/40	7236	5092
C181(33)	Deal sheet, first run, Salisbury, Md., 11/19/40	7237	5093
C181(34)	Deal sheet, first run, Salisbury, Md., 10/8/40	7238	5094
C181(35)	Deal sheet, first run, Ashland, Ohio, 11/19/40	7239	5095
C181(36)	Deal sheet, first run, Bellefontaine, Ohio, 11/19/40	7240	5096
C181(37)	Deal sheet, first run, Bowling Green, Ohio, 11/19/40	7241	5097
C181(38)	Deal sheet, first run, Bucyrus, Ohio, 11/19/40	7242	5098
C181(39)	Deal sheet, first run, Delaware, Ohio, 11/19/40	7243	5099
C181(40)	Deal sheet, first run, Fostoria, Ohio, 11/19/40	7244	5100
C181(41)	Deal sheet, first run, Kentor Ravenna, Ohio, 11/19/40	7245	5101
C181(42)	Deal sheet, repeat run, Kent or Ravenna, Ohio, 11/19/40	7246	5102
C181(43)	Deal sheet, first run, Norwalk, Ohio, 11/19/40	7247	5103
C181(44)	Deal sheet, first run, Tiffin, Ohio, 11/19/40	7248	5104
C181(45)	Deal sheet, first run, Van Wert, Ohio, 11/19/40	7249	5105
C181(46)	Deal sheet, first run, Athens, Ohio, 11/19/40	7250	5106
C181(47)	Deal sheet, first run, Corbin, Ky., 11/19/40	7251	5107
C181(48)	Deal sheet, second run, Harlan, Ky., 11/19/40	7252	5108
C181(49)	Deal sheet, first run, Lexington, Ky., 11/19/40	7253	5109
C181(50)	Deal sheet, second run, Lexington, Ky., 11/19/40	7254	5110
C181(51)	Deal sheet, third run, Lexington, Ky., 11/19/40	7255	5111
C181(52)	Deal sheet, second run on "Mr. Smith Goes to Washington," Lexington, Ky., 11/19/40	7256	5112
C181(53)	Deal sheet, first run, Maysville, Ohio, 11/19/40	7257	5113
C181(54)	Deal sheet, first run, Middlesboro, Ky., 11/19/40	7258	5114

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		Original	Print
C181(55)	Deal sheet, first run, Paris, Ky., 11/19/40	7259	5115
C181(56)	Deal sheet, first run, Piqua, Ohio, 11/19/40	7260	5116
C181(57)	Deal sheet, first run, Richmond, Ky., 11/19/40.	7261	5117
C181(58)	Deal sheet, first run, Amsterdam, N. Y., 11/19/40	7262	5118
C181(59)	Deal sheet, first run, Ballston, N. Y., 11/19/40.	7263	5119
C181(60)	Deal sheet, first run, Carthage, N. Y., 11/19/40.	7264	5120
C181(61)	Deal sheet, first run, Glens Falls, N. Y., 11/19/40	7265	5121
C181(62)	Deal sheet, second run, Glens Falls, N. Y., 11/19/40	7266	5122
C181(63)	Deal sheet, first run, Gloversville, N. Y., 11/19/40	7267	5123
C181(64)	Deal sheet, second run, Gloversville, N. Y., 11/19/40	7268	5124
C181(65)	Deal sheet, first run, Granville, N. Y., 1/23/41.	7269	5125
C181(66)	Deal sheet, first run, Hamilton, N. Y., 11/19/40.	7270	5126
C181(67)	Deal sheet, first run, Herkimer, N. Y., 11/19/40.	7271	5127
C181(68)	Deal sheet, first run, Hudson Falls, N. Y., 11/19/40	7272	5128
C181(69)	Deal sheet, first run, Ilion, N. Y., 11/19/40	7273	5129
C181(70)	Deal sheet, first run, Little Falls, N. Y.,11/19/40	7274	5130
C181(71)	Deal sheet, first run, Malone, N. Y., 11/19/40	7275	5131
C181(72)	Deal sheet, first run, Mechanicville, N. Y., 1/23/41	7276	5132
C181(73)	Deal sheet, first run, Odgensburg, N. Y., 11/19/40	7277	5133
C181(74)	Deal sheet, first run, Oneonta, N. Y., 11/19/40.	7278	5134
C181(75)	Deal sheet, first run, Saranac Lake, N. Y., 11/19/40	7279	5135
C181(76)	Deal sheet, first run, Tupper Lake, N. Y., 11/19/40	7280	5136
C181(77)	Deal sheet, first run, Watertown, N. Y., 11/19/40	7281	5137
C181(78)	Deal sheet, second run, Watertown, N. Y., 11/19/40	7282	5138
C181(79)	Deal sheet, first run, Whitehall, N. Y., 11/19/40.	7283	5139
S73	Agreement, Palace Lockport Corporation, et al. and N. Dipson, et al., 10/10/36	7284	5141
S74	Agreement, Jack Frisch, et al. and J. M. Schine, et al., 1/11/39	7285	5141
S75	Agreement, Charles Brown, et al., and Phoenix Amusement Company, 1/14/39	7286	5142
D1	Letter, Long to Schmertz, Fox, 11/8/35	7287	5143
D2	Letter, Long to McEvoy, RKO, 10/30/36	7288	5144
D3	Letter, Long to Schmertz, Fox, 4/4/35	7289	5145
D4	Letter, Long to Manager, RKO, 4/11/35	7290	5146
D5	Letter, Long to Drew, MGM, 4/20/38	7291	5147
D6	Letter, Drew to Long, 4/12/38	7292	5148
D7	Letter, Long to Mgr., Warners, 4/14/35	7293	5149

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D9	Letter, Long to McEvoy, RKO, 10/30/35	7295	5151
D10	Contract recommendation for Memorial Theatre, Mt. Vernon, Ohio, 9/8/37	7296	5152
D12	Letter, Himmelein, Paramount, to Mrs. Moore, 1/5/36	7299	5153
D13	Letter, Moore to Silverman, 4/12/36	7300	5153
D14	Letter, Moore to May, 4/13/36	7302	5154
D15	Letter, Moore to Lazar, 5/12/36	7304	5154
D16	Letter, Moore to Lichter, (Fox) 6/1/36	7305	5155
D25	Contract, Angelas and Norwalk Theatre Corp., 5/19/39	7307	5155
D27	Letters, 1/18/40 and 2/3/40—United Artists to A. Felice	7311	5159
D38	Letter, 8/24/35, Chaynas to Paramount	7313	5161
D43	Copy of resolution of stockholders of Bellefontaine Amusement Co.	7314	5161
D44	Agreement between Daniel Gutilla and Bellefontaine Amusement Co.; 7/28/31	7315	5162
D46	Agreement, March 18, 1937, Yudelewitz, Willis and Belpik Theatre Corp. re lease of Princess and proposed new theatre	7317	5162
D50	Letter, Kaplan to Grafiades, 1/16/34	7320	5165
D51	Telegram, 1/30/34, Lichtman to Reliance	7321	5166
D52	Telegram, 1/31/34, Lichtman to Reliance	7322	5166
D53	Telegram, 2/26/34, Lichtman to Reliance	7323	5166
D54	Telegram, 5/10/34, Lichtman to Reliance	7324	5167
D55	Telegram, 6/12/34, Lichtman to Reliance	7325	5167
D56	Letter, 6/14/34, Bykowski to Grafiades	7326	5167
D57	Telegram, 6/23/34, Lichtman to Reliance	7327	5168
D58	Letter, 11/7/34, U. A. to Grafiades	7328	5168
D59	Letter, 1/18/35, Bykowski to Grafiades	7329	5169
D60	Letter, 9/21/35, Kaplan to Dickinson	7330	5169
D61	Letter, 11/13/35, Kelly to Reliance	7331	5170
D116	Photostat of Syracuse Post-Standard, Sept. 18, 1941	7332	5170
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D122	Photograph of Capitol Theatre, Auburn, about 1/1/39	7334	5172
D130	Letter, Wallace to Paramount, 7/4/32	7335	5173
D131	Letter, Wallace to U. A., 6/22/23	7336	5174
D132	Letter, Fox to Wallace, 1/27/39	7338	5175
D133	Copy of letter, Boumansour to Department of Justice, April 4, 1941	7337	5176
D137	Salesman's report, 2/4/37, by Struwe	7339	5176
D138	Photograph of Smalley billboard on Gloversville, Johnstown road	7340	5176
D139	Photograph of Smalley billboard in Gloversville	7341	5176
D143	Letter, Picker to Smalley, 6/3/40	7342	5177
D144	Letter, Moross to Smalley, 11/13/39	7343	5178

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D148B	Letter attached to contract of 7/13/35, Brand to Mooney..........................	7346	5181
D148C	Agreement, 7/13/35, signed for Vitagraph by W. J. Brandt and State Bucyrus Co. by M. Bryer..............................	7347	5181
D148E	Notification of cancellation, 12/2/35, house taken over by Schine. New contract cancels contract No. 4447 dated 7/13/35 attached to contract exhibit 148D re First National Product..............................	7348	5182
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D150	Memorandum showing cost of acquisition and improvements to various Schine theatres, etc.	7350	5183
D153	Copy of ordinance No. A of Board of Council, City of Paris, 10/5/37..................	7356	5185
D153A	Permit from City of Paris, 10/7/37...........	7358	5187
D154	Photostat of page from Bucyrus Telegraph—Forum, 9/6/35 showing advertisement of "Page Miss Glory" at State Theatre........	7359	5188

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D158	Memorandum consisting of 1 sheet dated 10/3/41, written by Rowell—3rd proposition.	7362	5190
D163	Report (salesman) written by Rowell 10/10/41 re counter-proposition made by Rowell to to Wallace..............................	7363	5190
D170	Copy of letter, Mooney (War) to Bryer, 9/9/35.	7364	5190
D171	Percentage engagement report on Page Miss Glory at State, Bucyrus on 9/8–10/35—signed by M. Bryer and refers to contract No. 4447..............................	7365	5190
D173	Warner Bros. and First National exhibition contract with Belpik Theatre Corp., Medina, Ohio, 10/27/37........................	7367	5190
D174	Copy of telegram, Himes to Lauer, 6/15/38....	7369	5191
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81	Lease, 2/14/41, Boumansour and Schine, Plaza, Malone	7374	5193
83	Agreement, 8/23/40, Croucher and Schine, re Crescent, Newark	7381	5193
85	Agreement, 5/27/37, Young and Whitney, Inc. and Perry Theatrical Corp., re Ilion	7386	5195
96	Agreement, Shreffler and Belpik, re Shelby, Ohio, 9/21/37	7406	5196
111	Agreement, 8/12/38, Chesapeake and Insley-employment	7412	5200
118	Agreement, 9/29/38, Chesapeake Theatres Corp. and Gollner-employment, Salisbury	7419	5203
644A	Warner letter agreements (1934/5 season) and deal sheets	7426	5206
646	Lease, Gutilla and Schine Theatrical Co., Inc., April 30, 1938, covering Strand Theatre, Bellefontaine, Ohio	7435	2512
647	Lease, Gutilla and Schine Theatrical Co., Inc., July 1, 1940, covering Strand theatre, Bellefontaine, Ohio	7551	5214
806	Copy of newspaper page, Canandaigua "Daily Message," 5/10/38	7450	5217
807	Copy of newspaper page, Perry Record, 7/11/35.	7451	5218
811	Lease, Syracuse-Strand to S. K. E., 8/24/39 (2 yrs.)	7452	5219
854	Salamanca Republic, 12/24/38	7472	5221
871	Agreement, Y. & W., Inc. and Perry Theatre Corp., 12/10/36	7473	5221
872	Agreement, Whitney & Pierce and J. G. Selmser, 5/24/37	7476	5223
883	Proposed lease, City of Ogdensburg to L. Carkey, 9/28/40, unsigned	7479	5225
910	Lease, S. Boal and Sidney Theatre Corp., 5/16/31, Bijou, Piqua, Ohio, to 6/30/34	7486(1)	5226
911	Lease, Boal Estate to Belpik Theatre Corp., 2/23/34, Bijou, Piqua, Ohio, to 2/28/36	7487	5227
912	Lease, Boal Estate to Belpik Theatre Corp., 2/15/36, Bijou, Piqua, Ohio, to 2/28/38	7491(1)	5229
913	Lease, Boal Estate to Belpik Theatre Corp., 11/27/37, Bijou, Piqua, Ohio, to 2/28/40		
914	Lease, Boal Estate to Belpik Theatre Corp., 1/10/40, Bijou, Piqua, Ohio, to 2/28/45	7492	5230
915	Lease and option to purchase, Landry, et al. to Schine Chain Theatres, Inc., 10/25/41, Star, Ogdensburg, to 9/6/46	7497	5232
916	Lease and option to purchase, Ogdensburg Theatre Co. to Schine Chain Theatres, Inc., 8/20/36, Star, Ogdensburg, to 9/5/41	7513	5234

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917	Lease, Ogdensburg Strand Theatre Co. and Schine Chain Theatres, Inc., 9/6/26, Star, Ogdensburg, to 9/5/36	7525(1)	5236
918	Lease, Henry and Reb. Pohl to J. Steel and Wm. Selman, 10/31/34, Forum, Norwalk, to 2/31/44	7526	5237
919	Agreement, Pohl and Norwalk Theatre Corp., Jan. 5, 1942, cancels Forum, Norwalk lease	7536	5239
920	Lease, G. W. Croucher and Newark Theatres, Inc., 4/15/26, Crescent, Newark, to 4/14/31	7540	5239
921	Lease, Rose Croucher and Dominion Operating Co., Ltd., 5/15/34, Crescent, Newark, to 9/30/36	7544	5239
922	Extension agreement, Rose Croucher and Dominion Operating Co., Ltd., 5/14/36, Crescent, Newark, to 9/30/41	7546	5240
923	Lease, J. J. Lanigan and Hi-Art Theatre Corp., 1/8/26, Hi-Art, Lockport, to 1/9/36	7548	5241
924	Lease, J. J. Lanigan and Schine Theatrical Co., Inc., 5/25/33, Hi-Art, Lockport, to 1/9/36	7569	5242
925	Option to renew, J. J. Lanigan and Schine Theatrical Co., Inc., 10/5/33, Hi-Art, Lockport, to 1/9/41	7588	5242
926	Agreement, J. J. Lanigan and Schine Theatrical Co., Inc., 12/31/37, Hi-Art, Lockport, to 1/9/51	7591	5243
927	Lease, Odd Fellows Temple Ass'n. and Schine Theatrical Co., Inc., 6/29/36, Hippodrome, Little Falls, to 6/30/41	7597	5244
928	Agreement, United Odd Fellows Ass'n. and Schine Ilion Corp., 4/18/42, Temple, Ilion, to 5/4/47	7607	5246
929	Lease Charles and C. W. Mickey to C. M. Kahn, 6/25/35, Roxy, Fostoria, Ohio, to 6/30/40	7610	5248
930	Lease, Charles and C. W. Mickey to Fostoria Theatre Corp., 6/11/40, Roxy, Fostoria, Ohio, to 6/30/45	7614	5251
931	Lease, National City Bank of Cleveland, Trustee to Crawford Theatre Co., 4/1/36, Southern, Bucyrus, Ohio, to 3/31/41	7621	5252
932	Lease, National City Bank of Cleveland, Trustee to Crawford Theatre Co., 4/1/41, Southern, Bucyrus, Ohio, to 3/31/43	7631	5253
933	Lease, Opera Block Co. to Schine Theatrical Co., Inc., 8/1/33, Opera House, Bellefontaine, to 8/31/34	7640	5254
934	Lease, Opera Block Co. to Schine Theatrical Co., Inc., 8/3/37, Opera House, Bellefontaine, to 8/31/38	7646	5255

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		Original	Print
935	Lease, Opera Block Co. to Schine Theatrical Co., Inc., 8/31/38, Opera House, Bellefontaine, to 8/31/39	7653	5255
936	Lease, Opera Block Co. to Schine Theatrical Co., Inc., 8/31/39, Opera House, Bellefontaine, to 8/31/40	7658	5256
146	Contract, United Artists—Schine—undated rider—"My son, Monte Cristo, Two Years Before Mast, Valentino"	7844	5353
155	Contract, United Artists—Schine, undated rider—"Great Dictator"	7847	5356
159	Contract, United Artists—Schine, undated rider—"Westerner"	7849	5358
192	Contract, Group K-4, dated December 15, 1936, Kentucky or Ben Ali or Strand or State theatres, Lexington, Kentucky. Contract dated Feb. 17, 1937, Hippodrome or Kentucky Theatres, Corbin, Kentucky	7855	5364
268	Contract, Group S-11 for New or Ulman's Theatre, Salisbury, Maryland, dated July 18, 1939	7856	5365
324(A-C)	Fox contracts for Norwich, Amsterdam, Little Falls, Massena, Norwalk, Tiffin, Mt. Vernon, Corbin, Paris, Van Wert, Bucyrus	7857	5366
326(A-I)	Fox contracts for Corning	7864	5373
328(A-D)	Fox contracts for Watertown	7873	5382
330(A-C)	Fox contract for Van Wert	7878	5387
333(A-)	Fox contract for Lexington	7881	5390
339(A-J)	Paramount contracts for Auburn, Norwich, Amsterdam, Little Falls, Tiffin, Corbin, Paris, Van Wert, Bucyrus, Delaware	7882	5391
341(A-E)	Paramount contracts for Corning	7893	5402
343(A-G)	Paramount contracts for Watertown	7898	5407
344(A-C)	Paramount contracts for Van Wert, Ohio	7905	5414
563	Contract for First National Pictures for Colonial Theatre dated May 18, 1936	7908	5417
569	Contract with Belpik Theatres Corp. relative to the Civic or Roxy Theatres with Warner Bros., dated October 21, 1936	7909	5418
604(A-J)	Loew's contracts for Bucyrus, Van Wert, Tiffin, Medina, Mt. Vernon, Corbin, Lockport, Norwich, Amsterdam, Massena, Little Falls	7910	5419
611(A-B)	Loew's contracts for Corning	7922	5431
613(A-B)	Loew's contracts for Watertown	7925	5434
622A	RKO contracts for unspecified town, Norwalk, Van Wert, Tiffin, Corbin, Paris, Shelby, Mt. Vernon, Delaware, Bucyrus, Auburn, Norwich, Amsterdam, Little Falls	7927	5436
628(A-F)	Photostats of RKO contracts for Corning, N. Y., 1933–34 and 1934–35 seasons	7928	5437

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635(A-K)	Warner contracts for Auburn, Norwich, Amsterdam, Little Falls, Norwalk, Van Wert, Fostoria, Medina, Tiffin, Corbin, Paris	7934	5443
637(A-H)	Warner contracts for Corning	7952	5461
642(A)	Warner contracts for Cumberland, St. Michaels, Easton, Maysville, Federalsburg, Hurlock, Harlan, Salisbury, Richmond, Paris, Corbin.	7971	5480
672(A-F)	Columbia contracts for Norwalk, Van Wert, Tiffin, Corbin, Paris, Delaware, Norwich, Amsterdam, Little Falls, Ashland	7972	5481
698(A & B)	Contracts Universal and Schine, State Theatre, Corning, 1933–34	7978	5487
698(c)	Contract Universal and Gaby & Cohen, Plaza Theatre, Corning, 1933–34	7980	5489
720	Contract, Warner Bros. & Fenyvessy, Madison, 7/20/31	7981	5490
721	Contract, First National & Fenyvessy, Madison, 7/20/31	7982	5491
722	Contract, Warner Bros. & Fenyvessy, Madison, 11/14/32	7983	5492
723	Contract, First National & Fenyvessy, Madison, 11/14/32	7984	5493
724	Contract, Warner Bros. & Fenyvessy, Madison, 11/20/33	7985	5494
725	Contract, First National & Fenyvessy, Madison, 11/20/33	7986	5495
726	Contract, RKO & Fenyvessy, Madison, 1/15/31.	7987	5496
727	Contract, RKO & Fenyvessy, Madison, 1/15/31.	7988	5497
728	Contract, RKO & Fenyvessy, Strand and Madison, 9/28/32	7989	5498
729	Contract, RKO & Fenyvessy, Madison, 12/8/33.	7990	5499
730	Contract, RKO & Fenyvessy, Monroe, 12/8/33.	7991	5500
731	Contract, RKO & Fenyvessy, 1935–36, Monroe, 1/25/35	7992	5501
732	Contract, RKO & Fenyvessy, 1935–36, Madison, 1/16/35	7993	5502
733	Contract, Paramount and Fenyvessy, Madison, 12/11/31	7994	5503
734	Contract, Paramount and Fenyvessy, Madison, 3/2/33	7995	5504
735	Contract, Paramount and Fenyvessy, Monroe, 10/29/34	7996	5505
736	Contract, Paramount & Fenyvessy, Madison, 10/29/34	7997	5506
737	Contract, Loew's & Fenyvessy, 1934–35, Monroe, 11/28/34	7998	5507
738	Contract, Loew's & Fenyvessy, 1934–35, Madison, 11/28/34	7999	5508
739	Contract, Loew's & Fenyvessy, 1935–36, Madison, 10/11/35	8000	5509

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740	Contract, Loew's & Fenyvessy, 1935–36, Monroe, 10/11/35	8001	5510
741	Contract, Loew's & Fenyvessy, 1937–38, Madison, 6/23/38	8002	5511
742	Contract, Loew's & Fenyvessy, 1937–38, Monroe, 6/23/38	8003	5512
743	Contract, Loew's & Fenyvessy, 1938–39, Madison, 6/23/38	8004	5513
744	Contract, Loew's & Fenyvessy, 1938–39, Monroe, 6/23/38	8005	5514
745	Contract, Fox and Fenyvessy, 1932–33, Madison, 10/2/32	8006	5515
746	Contract, Fox and Fenyvessy, 1933–34, Madison, 8/18/33	8007	5516
747	Contract, Fox and Fenyvessy, 1933–34, Monroe, 8/18/33	8008	5517
748	Contract, Fox and Fenyvessy, 1934–35, Monroe, 3/20/35	8009	5518
749	Contract, Fox and Fenyvessy, 1934–35, Madison, 3/20/35	8010	5519
750	Contract, Columbia and Fenyvessy, 1937–38, Monroe, 6/18/37	8011	5520
751	Contract, Columbia and Fenyvessy, 1936–37, Madison, 11/2/36	8012	5521
752	Contract, Warner and Fenyvessy, after Schine Madison, 10/11/35	8013	5522
753	Contract, Warner and Fenyvessy, Monroe, 12/10/37	8014	5523
754	Contract, Warner and Fenyvessy, Madison, 12/10/37	8015	5524
755	Contract, RKO and Fenyvessy, Madison, 12/7/36	8016	5525
756	Contract, RKO and Fenyvessy, Monroe, 12/7/36	8017	5526
757	Contract, Loew's—Liberty, 10/11/34	8018	5527
758	Contract, Loew's—Dixie or State, 10/11/34	8019	5528
759	Contract, Loew's—State or Dixie, 10/11/34	8020	5529
760	Contract, Loew's—Riviera or Liberty, 10/12/34	8021	5530
761	Contract, Loew's—State or Dixie, 7/26/35	8022	5531
762	Contract, Loew's State or Dixie, 7/26/35	8023	5532
763	Contract, Loew's Liberty, 7/26/35	8024	5533
764	Contract, Loew's Riviera or Liberty, 7/26/35	8025	5534
779	Contract, RKO and Fenyvessy, Madison, 11/30/32	8026	5535
780	Contract, RKO and Fenyvessy, Monroe, 1/14/32	8027	5536
781	Contract, RKO and Fenyvessy, Madison, 1/14/38	8028	5537
782	Contract, RKO and Fenyvessy, Monroe, 9/15/38	8029	5538

EXHIBITS PRINTED IN PART—Continued

		Original	Print
783	Contract, RKO and Fenyvessy, Madison, 9/15/38	8030	5539
784	Contract, Fox and Fenyvessy, 12/8/31	8031	5540
785	Contract, MGM–Fenyvessy, 1/15/37	8032	5541
786	Contract, Warner–First National and Fenyvessy, 11/5/36	8033	5542
787	Contract, Warner–First National and Fenyvessy, 11/5/36	8034	5543
788	Contract, Warner–First National and Fenyvessy, 1/30/35	8035	5544
789	Contract, First National and Fenyvessy, 1/30/35	8036	5545
791	Contract, 1/6/39, Columbia and Fenyvessy, Madison	8037	5546
792	Contract, 1/6/39, Columbia and Fenyvessy, Monroe	8038	5547
793	Contract, Columbia and Belinson, Little, Craig's Wife—Theodora Goes Wild—2nd Pennies from Heaven	8039	5548
794	Contract, Columbia and Belinson, Little, When You Are in Love—2nd	8040	5549
795	Contract, Columbia and Belinson, Little, Holiday—2nd	8041	5550
796	Contract, Columbia and Belinson, Little, Awful Truth—2nd	8042	5551
797	Contract, Columbia and Belinson, Little, Lost Horizon—2nd	8043	5552
798	Contract, Columbia and Belinson, Little, You Can't Take It With You—2nd	8044	5553
799	Contract, Columbia and Belinson, Little, Mr. Smith Goes to Washington—2nd	8045	5554
813	Contract, RKO and Auburn Capitol Theatrical Corp., Capitol, Auburn, 11/15/32	8046	5555
814	Contract, Paramount and Auburn Capitol Theatrical Corp., Capitol, Auburn, 3/3/34	8047	5556
829	Photostatic copy of Fox contract, 8/6/37	8048	5557
840	Contract, Fox and Vournakis, 10/21/35, 1935–36	8049	5558
841	Contract, Fox and Vournakis, 6/22/36, 1936–37	8050	5559
842	Contract, Fox and Vournakis, 11/2/36, 1936–37	8051	5560
847	Contract, Fox and Vournakis, 10/4/33, 1933–34	8052	5561
848	Contract, Warner and Vournakis, 11/20/33, 1933–34, Strand	8053	5562
849	Contract, Warner and Vournakis, 11/8/35, 1935–36, Strand	8054	5563
850	Contract, Warner and Vournakis, 12/7/36, 1936–37, Strand	8055	5564
851	Contract, Warner and Vournakis, 10/18/37, 1937–38, Strand	8056	5565
852	Contract, Warner and Vournakis, 9/18/39, 1939–40, Strand	8057	5566

EXHIBITS PRINTED IN PART—Continued

		Original	Print
853	Contract, Warner and Vournakis, 11/22/40, 1940-41, Strand	8058	5567
937	Lease, Opera Block Co. to Schine Theatrical Co., Inc., 8/14/40, Opera House, Bellefontaine, to 8/31/41	7664	5256
938	Lease, Opera Block Co. to Schine Théatrical Co., Inc., 8/18/41, Opera House, Bellefontaine, to 8/31/42	7669	5256
939	Lease, Dan Gutilla and Schine Enterprises, Inc., 7/28/31, Strand, Bellefontaine, to 6/1/34	7675	5256
940	Lease, Dan Gutilla and Schine Treatrical Co., Inc., 3/29/34, Strand, Bellefontaine, to 6/1/36	7681	5258
941	Lease, Dan Gutilla and Schine Theatrical Co., Inc., 5/22/36, Strand, Bellefontaine, to 6/1/38	7685	5259
942	Lease, Thos. Osborne to M. A. Shea, 3/9/18, Jefferson, Auburn, to 10/15/28	7690	5261
943	Lease, Thos. Osborne Estate to M. A. Shea, 8/5/29, Jefferson, Auburn, to 10/15/34	7696	5261
944	Lease, M. A. Shea to Upstate Amusement Co., 5/5/37, Jefferson, Auburn, to 10/15/41	7702	5262
945	Lease, Osborne Estate to Upstate Amusement Co., 7/9/38, Jefferson, Auburn, to 5/15/48	7712	5263
946	Agreement, Hi-Art Theatre Corp. and Lockport Enterprises, Inc., 10/1/27, Assigns lease of Hi-Art, Lockport, N. Y.	7716	5264
947	Lease, J. & S. Palfi to Sidney Theatre Corp., 5/20/36, Opera House, Kent, Ohio, to 5/31/41	7720	5265
960	Lease, 9/16/33, City of Wooster to Wooster Theatres, Inc., Opera House, Wooster, Ohio, to 8/31/35	7724	5266
961	Agreement, 10/3/35, City of Wooster to Wooster Theatres, Inc., Opera House, Wooster, Ohio, extends lease to 8/31/38	7730	5271
962	Lease, pursuant to resolution of 4/4/38, City of Wooster to Wooster Theatres, Inc., Opera House, Wooster, Ohio, to 8/31/41	7733	5273
982	Lease, Bates Estate to G-C Theatre Corp., 6/15/33, Richardson, Oswego, and exercise of option to 7/31/38	7736	5275
983	Lease, Bates Estate to G-C Theatre Corp., 7/5/38, Richardson, Oswego, and exercise of option to 7/31/40	7741	5277
984	Lease, Bates Estate to G-C Theatre Corporation, 6/17/40, Richardson, Oswego, and exercise of option to 7/31/40	7747	5277
1008	Agreement 11/6/41, between Pohe and Norwalk Theatre Corp.	7749	5277
S68	Agreement, J. M. Schine, et al. and M. A. Shea, 8/16/35, re purchase of one-half interest, Amsterdam, N. Y.	7754	5281

EXHIBITS PRINTED IN PART—Continued

		Original	Print
S69	Agreement, Bieberson and Belpik Theatre Corp., 1/17/36, re purchase of one-half interest in Athens, Ohio	7762	5285
S70	Agreement, Bieberson and Schine Delaware Corporation, 1/17/36, re purchase of one-half interest	7766	5287
S71	Agreement, J. M. Schine, et al. and Maurice A. Shea, 8/16/37, re purchase of Shea interest	7769	5289
S72	Bill of sale, John Buchmann to Schine Delaware Corp., 3/21/38	7778	5293
S76	Agreement, Hoppes and Chesapeake Theatre Corporation, 7/16/40, re purchase of Wicomico, Salisbury, Md.	7785	5294
S77	Bill of Sale, Jos. Constantino to Schine Theatre Company, Inc.	7790	5299
D112	Map of City of Rochester showing location of theatres	7793	5302

DIGESTS OF LICENSE CONTRACT EXHIBITS

		Original	Print
Statement re digests of License Contract Exhibits		7794	5303
P14	Contract, Paramount 1938-38—11/4/38—Mt. Vernon	7795	5304
P15	Contract, Paramount 1939-40, 1940-41—Mt. Vernon, second run	7797	5306
P19	Contract, Scott—Universal—First run	7798	5307
P23	Contract, 9/1/39, Columbia—Murphy	7799	5308
P24	Contract, 9/1/39, Columbia—Murphy	7800	5309
P27	Contract, 9/21/39, Metro—Schine, Kentucky Theatre, Corbin	7801	5310
P28	Contract, 12/1/38, Paramount—Schine, Hippodrome or Kentucky	7802	5311
P29	Contract, 6/6/39, Fox—Schine, Corbin	7803	5312
P30	Contract, 6/6/39, Fox—Schine, Corbin	7805	5314
P31	Contract, 1/23/39, Fox—Schine, Corbin	7806	5315
P37	Contract, 11/10/38, Universal—Schine, Corbin	7807	5316
P42	Contract, 12/2/38, Fox—Schine, Corbin	7808	5317
P61	Contract, 9/28/35, MGM—Bryer	7809	5318
P62	Contract, Warners—Schine, 7/25/35, Bucyrus	7811	5320
P66	Contract, Fox—Charnas, 8/20/34, Southern, Bucyrus	7812	5321
P67	Contract, Fox—Schine, 8/5/35, Bucyrus	7813	5322
P68	Contract, Fox and Schine, 8/5/35, Bucyrus	7814	5323
P69	Contract, Paramount—Charnas, 9/11/34, Bucyrus	7815	5324
P70	Contract, Paramount—Schine, 9/17/35, Bucyrus	7816	5325
122	Contract, United Artists—Schine—8/22/33—"I Knew Her When"	7818	5327
126	Contract, United Artists—Schine, 11/18/35—"Call of the Wild"	7821	5330

DIGESTS OF LICENSE CONTRACT EXHIBITS—Continued

		Original	Print
128	Contract, United Artists—Schine, 11/18/35—"Dark Angel"	7823	5332
129	Contract, United Artists—Schine, 10/2/35—"Barbary Coast"	7825	5334
131	Contract, United Artists—Schine—undated rider—"Garden of Allah, Star is Born and untitled Colman"	7830	5339
135	Contract, United Artists and Schine—undated rider—"Vogues"	7833	5342
138	Contract, United Artists and Schine—undated rider—"Goldwyn Follies, Hurricane," Marco Polo"	7836	5345
140	Contract, United Artists—Schine—undated rider—"Stella Dallas, Dead End"	7838	5347
141	Contract, United Artists—Schine—undated rider—"Cowboy and Lady, Lost Frontier, Daring Age"	7841	5350
863	Contract, Warners and Boumansour	8059	5568
865	Contract, Paramount to Y & W Inc., 8/20/35, Capitol, Ilion	8060	5569
866	Contract, Paramount to Y & W Inc., The Crusades, undated	8061	5570
867	Contract, Columbia to Y & W Inc., (application undated)	8062	5571
868	Contract, Warners & First National and Y & W Inc., 10/17/35, 1935–36	8063	5572
869	Contracts (5), United Artists & Y & W Inc., 2/1/36, These Three, Strike Me Pink, Splendor, Barbary Coast and Dark Angel	8064	5573
870	Contracts (2), RKO—Y & W Inc., 1/20/36	8065	5574
874(A-D)	Contracts (4), RKO—Y & W Inc., 1932/33, 33/34, 34/35, 1936/37	8066	5575
875(A-E)	Contract, Warner—Y & W, Inc., 1932–33, 2/6/33	8070	5579
	Contract, First National—Y & W, Inc., 1932–33, 2/6/33	8071	5580
	Contract, First National—Y & W, Inc., 1933–34, 10/28/33	8072	5581
	Contract, Warner—Y & W, Inc., 1933–34, 10/28/33	8073	5582
	Contract, First National—Y & W, Inc., 1934–35, 10/11/34	8074	5583
	Contract, Warner—Y & W, Inc., 1934–35, 10/11/34	8075	5584
	Contract, Warner—First National—Y & W, Inc., 1935–36, 10/17/35	8076	5585
	Contract, Warner—First National—Y & W, Inc., 1936–37, 8/31/36	8077	5586
876(A-D)	Contracts (4), MGM—Y & W, Inc., 1933/34, 34/35, 35/36, 36/37	8078	5587

DIGESTS OF LICENSE CONTRACT EXHIBITS—Continued

		Original	Print
877(A-E)	Contracts (5), Fox—Y & W, Inc., 1933-34, 34/35, 35/36, 35/36, 36/37	8082	5591
878(A-E)	Contracts (5), Paramount—Y & W, Inc., 1932/33, 33/34, 34/35, 35/36, 36/37	8087	5591
905(A-E)	Contracts (5), Paramount and Boumansour	8092	5601
906(A-H)	Contracts (8), Loew's Inc., and Boumansour	8097	5606
907(A-E)	Contracts (5), RKO and Boumansour, 1936/37, 37/38, 38/39, 39/40	8105	5614
908(A-E)	Contracts (5), Vitagraph, Inc. and Boumansour, 1938/39, 39/40	8110	5619
909	Contract, Vitagraph, Inc. and Boumansour, app. 6/14/37	8115	5624
948	Contracts (2), War. & F. N. with State-Bucyrus, 8/20/34	8116	5625
949	Contract, MGM and Long, Memorial, Mt. Vernon, 1937-38, 5/31/38	8118	5627
950	Contract, MGM and Long, 5/31/38, Memorial, Mt. Vernon, 1938-39	8119	5628
951	Contract, MGM and Long, 12/14/36, Memorial, Mt. Vernon, 1936-37	8120	5629
952	Contract, MGM and Long, Memorial, Mt. Vernon, 1936-37, Great Ziegfield	8121	5630
953	Contract, Columbia and Schine, Forum, Norwalk, 1936-37	8122	5631
954	Contract, Columbia and Frederick, Moose, Norwalk, 1935-36	8123	5632
955	Contract, Columbia and Schine, Colonial, Norwich, N. Y. 1936-37	8124	5633
956	Contract, Columbia and Garl Moore, Ohio, Van Wert, 1935-36	8125	5634
957	Contract, Columbia and Schine, Van Wert or Strand, 1936-37, 10/5/36	8126	5635
963	Contract, Fox & S. K. E., 10/14/41, Paramount, Strand, 8/8/41	8127	5636
964	Contract, Fox & S. K. E., 10/14/41, Eckel (move-over)	8128	5637
965	Contract, Fox and Syracuse Cameo Theatre, Inc., 9/25/41, Cameo	8129	5638
966	Contract, Fox and Syracuse Novelty Theatre, Inc., 9/24/41, Novelty	8130	5639
967	Contract, Fox and Syracuse Happy Hour Theatre, Inc., 9/24/41, Happy Hour	8131	5640
968	Contract, Fox and Larkin, 9/24/41, Harvard	8132	5641
969	Contract, Fox and Theatorium Co., 10/17/41, Turn Hall	8133	5642
970	Contract, Fox and Sidney Grossman, 10/25/41, Elmwood	8134	5643
971	Contract, Fox and Corrin, 10/30/31, Alcazar	8135	5644
972	Contract, Fox and Merriman, 10/30/31, Franklin	8136	5645

DIGESTS OF LICENSE CONTRACT EXHIBITS—Continued

		Original	Print
973	Contract, Fox and Matty Dale Amusement Corp., 10/30/31, Hollywood	8137	5646
974	Contract, Fox and Stotnick & Cantor, 12/18/41, Acme	8138	5647
975	Contract, Fox and Stotnick, 12/18/41, Globe	8139	5648
976	Contract, Fox and Stotnick, 1/12/42, Grant	8140	5649
977	Contract, Fox and Davidson, 1/21/42, Avon	8141	5650
978	Contract, Fox and Erin Theatre Co., 4/13/42, Erin	8142	5651
979	Contract, Fox and Kallett, Regent, Syracuse	8143	5652
981(1-81)	Contracts, Loew's and Schine, 9/6/40, 1940–41 (81)	8144	5653
981(82-83)	Contracts (2), Loew's and Schine, 11/22/40, 1940–41	8224	5734
W6(1-17)	First run contracts (17), 4/3/36	8262	5736
W6(19-41)	First run contracts (22)	8243	5753
W8(1-2)	First run contracts (2), 8/16/35	8266	5776
W8(3)	First run contract (1), 8/8/35	8268	5778
W8(4-17)	First run contracts (13), 8/16/35	8269	5779
W33(16)	Contracts, First National–Warner–Schine, Rochester, 9/11/34	8283	5793
W33(17)	Contracts, First National–Warner–Schine, Rochester, 9/11/34	8285	5795
W18	Contract, Warner Bros.–First National & Schine, 8/5/35, Liberty or Riviera, Rochester, N. Y.	8287	5797
W19	Contract, Warners–First Nat'l & Schine, 8/5/35, State or Dixie, Rochester, N. Y	8288	5798
R3	Contract, RKO and Schine, 11/20/36, Auburn, N. Y.	8289	5799
R4	Contract, Bath, N. Y., 11/12/34	8290	5800
R5	Contract, Canandaigua, N. Y., 11/12/34	8291	5801
R6	Contract, Carthage, N. Y., 11/12/34	8292	5802
R7	Contract, Corning, N. Y., 11/12/34	8293	5803
R8	Contract, Cortland, N. Y., 11/12/34	8294	5804
R9	Contract, Geneva, N. Y., 11/12/34	8295	5805
R10	Contract, Glens Falls, N. Y., 11/12/34	8296	5806
R11	Contract, Gloversville, N. Y., 11/12/34	8297	5807
R12	Contract, Hamilton, N. Y., 3/29/35	8298	5808
R13	Contract, Herkimer, N. Y., 11/12/34	8299	5809
R14	Contract, Little Falls, N. Y., 11/12/34	8300	5810
R15	Contract, Lockport, N. Y., 11/12/34, (first run)	8301	5811
R16	Contract, Lockport, N. Y., 11/12/34, (second run)	8302	5812
R17	Contract, RKO–Schine, 1934–35, Malone, Malone, N. Y.	8303	5813
R18	Contract, Massena, N. Y., 11/12/34	8304	5814
R21	Contract, Ogdensburg, N. Y., 11/12/34	8305	5815
R22	Contract, Oneonta, N. Y., 11/14/34	8306	5816
R23	Contract, Oswego, N. Y., 11/12/34	8307	5817

DIGESTS OF LICENSE CONTRACT EXHIBITS—Continued

		Original	Print
R24	Contract, Rochester, N. Y., 11/12/34, (repeat run)	8308	5818
R25	Contract, Rochester, N. Y., 11/12/34, (third run)	8309	5819
R26	Contract, Rochester, N. Y., 11/12/34, (repeat run)	8310	5820
R27	Contract, Rochester, N. Y., 11/12/34, (Subsequent run)	8311	5821
R28	Contract, Salamanca, N. Y., 11/12/34	8312	5822
R29	Contract, Saranac Lake, N. Y., 11/12/34	8313	5823
R30	Contract, Tupper Lake, N. Y., 5/22/35	8314	5824
R31	Contract, Watertown, N. Y., 11/14/34	8315	5825
R32	Contract, Bellefontaine, Ohio, 12/19/34	8316	5826
R33	Contract, Piqua, Ohio, 12/19/34	8317	5827
R34	Contract, Wooster, Ohio, 12/19/34	8318	5828
P168	First run contract, Ballston, N. Y., 9/27/40	8319	5829
P169	First run contract, Carthage, N. Y., 9/27/40	8320	5830
P170	First run contract, Hamilton, N. Y., 9/27/40	8321	5831
P171	First run contract, Saranac Lake, N. Y., 9/27/40	8322	5332
P172	First run contract, Whitehall, N. Y., 9/27/40	8323	5333
P173	First run contract, Salamanca, N. Y., 9/27/40	8324	5334
P174	First run contract, Bath, N. Y., 9/27/40	8325	5335
P175	First run contract, Canandaigua, N. Y., 9/27/40	8326	5336
P176	First run contract, Perry, N. Y., 9/27/40	8327	5337
P177	First run contract, Oswego, N. Y., 9/27/40	8328	5338
P178	Second run contract, Oswego, N. Y., 9/27/40	8329	5339
P179	First run contract, Hurlock, Md., 9/27/40	8330	5340
P180	First run contract, Easton, Md., 9/27/40	8331	5341
P181	First run contract, Cambridge, Md., 9/27/40	8332	5342
P182	First run contract, Richmond, Ky., 9/30/40	8333	5343
P183	First run contract, Paris, Ky., 9/30/40	8334	5344
P184	First run contract, Middlesboro, Ky., 9/30/40	8335	5345
P185	First run contract, Lexington, Ky., 9/30/40	8336	5346
P186	Second run contract, Lexington, Ky., 9/30/40	8337	5347
P187	Third run contract, Lexington, Ky., 9/30/40	8338	5348
P188	First run contract, Milford, Del., 9/27/40	8339	5349
P189	Run blank contract, Laurel, Del., 9/27/40	8340	5350
P190	First run contract, Delaware, Ohio, 9/30/40	8341	5351
P192	First run contract, Harlan, Ky., 9/30/40	8342	5352
P193	First run contract, Maysville, Ky., 9/30/40	8343	5353
P194	First run contract, Pikeville, Ky., 9/30/40	8344	5354
P195	Contract, Cumberland, Md., 1/17/41	8345	5355.
P196	First run contract, Salisbury, Md., 1/17/41	8346	5856
P197	First run contract, Amsterdam, N. Y., 9/27/40.	8347	5857
P198	First run contract, Auburn, N. Y., 9/27/40	8348	5858
P199	Second run contract, Auburn, N. Y., 9/27/40	8349	5859
P200	First run contract, Corning, N. Y., 9/27/40	8350	5860
P201	Second run contract, Corning, N. Y., 9/27/40	8351	5861
P202	First run contract, Cortland, N. Y., 9/27/40	8352	5862
P203	First run contract, Geneva, N. Y., 9/27/40	8353	5863

DIGESTS OF LICENSE CONTRACT EXHIBITS—Continued

		Original	Print
P204	Second run contract, Geneva, N. Y., 9/27/40	8354	5864
P205	First run contract, Glens Falls, N. Y., 9/27/40	8355	5865
P206	First run contract, Gloversville, N. Y., 9/27/40	8356	5866
P207	First run contract, Herkimer, N. Y., 9/27/40	8357	5867
P208	First run contract, Hudson Falls, N. Y., 9/27/40	8358	5868
P209	First run contract, Ilion, N. Y., 9/27/40	8359	5869
P210	First run contract, Little Falls, N. Y., 9/27/40	8360	5870
P211	First run contract, Lockport, N. Y., 9/27/40	8361	5871
P212	Second run contract, Lockport, N. Y., 9/27/40	8362	5872
P213	First run contract, Malone, N. Y., 9/27/40	8363	5873
P214	First run contract, Massena, N. Y., 9/27/40	8364	5874
P215	First run contract, Newark, N. Y., 9/27/40	8365	5875
P216	First run contract, Norwich, N. Y., 9/27/40	8366	5876
P217	First run contract, Ogdensburg, N. Y., 9/27/40	8367	5877
P218	First run contract, Oneonta, N. Y., 9/27/40	8368	5878
P219	First run contract, Penn Yan, N. Y., 9/27/40	8369	5879
P220	First run contract, Seneca Falls, N. Y., 9/27/40	8370	5880
P221	First run contract, Tupper Lake, N. Y., 9/27/40	8371	5881
P222	First run contract, Watertown, N. Y., 9/27/40	8372	5882
P223	Second run contract, Watertown, N. Y., 9/27/40	8373	5883
P224	First run contract, Ashland, Ohio, 9/30/40	8374	5884
P225	First run contract, Athens, Ohio, 9/30/40	8375	5885
P226	First run contract, Bellefontaine, Ohio, 9/30/40	8376	5886
P227	First run contract, Bucyrus, Ohio, 9/30/40	8377	5887
P228	First run contract, Fostoria, Ohio, 9/30/40	8378	5888
P229	First run contract, Kent or Ravenna, Ohio 9/30/40	8379	5889
P230	Repeat run contract, Kent or Ravenna, Ohio, 9/30/40	8380	5890
P231	First run contract, Medina, Ohio, 9/30/40	8381	5891
P232	First run contract, Mount Vernon, Ohio, 9/30/40	8382	5892
P234	First run contract, Norwalk, Ohio, 9/30/40	8383	5893
P235	First run contract, Shelby, Ohio, 9/30/40	8384	5894
P236	First run contract, Tiffin, Ohio, 9/30/40	8385	5895
P237	First run contract, Van Wert, Ohio, 9/30/40	8386	5896
P238	First run contract, Wooster, Ohio, 9/30/40	8387	5897
PP1	Contract, Paramount and Schine, 2/8/40 9/30/40, 1939–40, 1940–41, Piqua, Ohio, first run	8388	5898
PP2	Contract, Paramount and Schine, 2/8/40, 9/27/40, 1939–40, 1940–41, Rochester, N. Y., Cameo, subsequent run	8389	5899
PP3	Contract, Paramount and Schine, 2/8/40, 9/27/40, 1939–40, 1940–41, Rochester, N. Y., Grand subsequent run	8390	5900
PP4	Contract, Paramount and Schine, 2/8/40, 9/27/40, 1939–40, 1940–41, Rochester, N. Y., Liberty, repeat run	8391	5901

DIGESTS OF LICENSE CONTRACT EXHIBITS—Continued

		Original	Print
PP5	Contract, Paramount and Schine, 2/8/40, 9/27/40, 1939–40, 1940–41, Rochester, N. Y., Riviera or Liberty, third run	8392	5902
PP6	Contract, Paramount and Schine, 2/8/40, 9/27/40, 1939–40, 1940–41, Rochester, N. Y., Monroe, After Riviera, etc.	8393	5903
PP7	Contract, Paramount and Schine, 2/8/40, 9/27/40, 1939–40, 1940–41, Rochester, N. Y., Madison, After Riviera, etc.	8394	5904
PP8	Contract, Paramount and Schine, 2/8/40, 9/27/40, 1939–40, 1940–41, Rochester, N. Y., State, Repeat run	8395	5905
PP9	Contract, Paramount and Schine, 2/8/40, 9/27/40, 1939–40, 1940–41, Rochester, N. Y., State, Dixie, third run	8396	5906
PP10	Contract, Paramount and Schine, 2/8/40, 9/27/40, 1939–40, 1940–41, Rochester, N. Y., West End Open with Arnett	8397	5907
F2	Contract, Fox and Schine, 6/17/36, Amsterdam, N. Y., 1936–37—1st	8398	5908
F3	Contract, Fox and Schine, Amsterdam, N. Y., 6/17/36, 1936–37, 2nd run	8399	5909
F4	Contract, Fox and Schine, 8/5/36, 1936–37, Auburn, N. Y., 1st run	8400	5910
F5	Contract, Fox and Schine, 8/5/36, 1936–37, Bath, N. Y., 1st run	8401	5911
F6	Contract, Fox and Schine, 8/5/36, 1936–37, Canandaigua, N. Y., 1st run	8402	5912
F7	Contract, Fox and Schine, 8/5/36, 1936–37, Carthage, N. Y., 1st run	8403	5913
F8	Contract, Fox and Schine, 8/5/36, 1936–37, Corning, N. Y., 1st run	8404	5914
F9	Contract, Fox and Schine, 8/5/36, 1936–37, Corning, N. Y., 2nd run	8405	5915
F10	Contract, Fox and Schine, 8/5/36, 1936–37, Cortland, N. Y., 1st run	8406	5916
F11	Contract, Fox and Schine, 8/5/36, 1936–37, Geneva, N. Y., 1st run	8407	5917
F12	Contract, Fox and Schine, 6/17/36, 1936–37, Glens Falls, N. Y., 1st run	8408	5918
F13	Contract, Fox and Schine, 6/17/36, 1936–37, Glens Falls, N. Y., 2nd run	8409	5919
F14	Contract, Fox and Schine, 6/17/36, 1936–37, Gloversville, N. Y., 1st run	8410	5920
F15	Contract, Fox and Schine, 6/17/36, 1936–37, Gloversville, N. Y., 2nd run	8411	5921
F16	Contract, Fox and Schine, 6/17/36, 1936–37, Hamilton, N. Y., 1st run	8412	5922
F17	Contract, Fox and Schine, 6/17/36, 1936–37, Herkimer, N. Y., 1st run	8413	5923

DIGESTS OF LICENSE CONTRACT EXHIBITS—Continued

		Original	Print
F18	Contract, Fox and Schine, 6/17/36, 1936–37, Hudson Falls, N. Y., 1st run	8414	5924
F19	Contract, Fox and Schine, 6/17/36, 1936–37, Little Falls, N. Y., 1st run	8415	5925
F20	Contract, Fox and Schine, 8/5/36, 1936–37, Lockport, N. Y., 1st run	8416	5926
F21	Contract, Fox and Schine, 8/5/36, 1936–37, Lockport, N. Y., 2nd run	8417	5927
F22	Contract, Fox and Schine, 6/17/36, 1936–37, Malone, N. Y., 1st run	8418	5928
F23	Contract, 20th Century-Schine, 8/17/36, Massena, Massena, N. Y.	8419	5929
F24	Contract, 20th Century-Schine, 8/17/36, Colonial, Norwich, N. Y.	8420	5930
F25	Contract, Fox and Schine, 6/17/36, 1936–37, Ogdensburg, N. Y., 1st run	8421	5931
F26	Contract, Fox and Schine, 6/17/36, 1936–37, Oneonta, N. Y., 1st run	8422	5932
F27	Contract, Fox and Schine, 6/17/36, 1936–37, Oneonta, N. Y., 2nd run	8423	5933
F28	Contract, Fox and Schine, 8/5/36, 1936–37, Perry, N. Y., 1st run	8424	5934
F29	Contract, Fox and Schine, 8/11/37, 1937–38, 1938–39, Perry, N. Y., 1st run	8425	5935
F30	Contract, Fox and Schine, 8/5/36, 1936–37, Rochester, N. Y., State or Dixie, 2nd run	8426	5936
F31	Contract, Fox and Schine, 8/5/36, 1936–37, Rochester, N. Y., State or Dixie, repeat run	8427	5937
F32	Contract, Fox and Schine, 8/5/36, 1936–37, Rochester, N. Y., Lake, sub. run	8428	5938
F33	Contract, Fox and Schine, 8/5/36, 1936–37, Rochester, N. Y., Grand, sub. run	8429	5939
F34	Contract, Fox and Schine, 8/5/36, 1936–37, Rochester, N. Y., Cameo, after Madison and Monroe	8430	5940
F35	Contract, Fox and Schine, 8/5/36, 1936–37, Salamanca, 1st run	8431	5941
F36	Contract, Fox and Schine, 8/5/36, 1936–37, Saranac Lake, 1st run	8432	5942
F37	Contract, Fox and Schine, 8/5/36, 1936–37, Seneca Falls, N. Y., 1st run	8433	5943
F38	Contract, Fox and Schine, 6/17/36, 1936–37, Tupper Lake, N. Y., 1st run	8434	5944
F39	Contract, Fox and Schine, 6/17/36, 1936–37, Watertown, N. Y., 1st run	8435	5945
F40	Contract, Fox and Schine, 10/28/36, 1936–37, Watertown, N. Y., third run	8436	5946
F41	Contract, Fox and Schine, 9/5/36, 1936–37, Ashland, Ohio, 1st run	8437	5947

DIGESTS OF LICENSE CONTRACT EXHIBITS—Continued

		Original	Print
F42	Contract, Fox and Schine, 1936–37, Athens, N. Y., 1st run	8438	5948
F43	Contract, Fox and Schine, 8/5/36, 1936–37, Bellefontaine, O., 1st run	8439	5949
F44	Contract, Fox and Schine, 8/5/36, 1936–37, Bucyrus, O., 1st run	8440	5950
F45	Contract, Fox and Schine, 8/5/36, 1936–37, Delaware, O., 1st run	8441	5951
F46	Contract, Fox and Schine, 8/5/36, 1936–37, Mt. Vernon, O., 1st run	8442	5952
F47	Contract, Fox and Schine, 9/5/36, 1936–37, Norwalk, O., 1st run	8443	5953
F48	Contract, Fox and Schine, 6/17/36, 1936–37, Piqua, O., 1st run	8444	5954
F49	Contract, Fox and Schine, 10/20/37, 1937–38, Lexington, Ky., 2nd run	8445	5955
F50	Contract, Fox and Schine, 12/15/36, 1936–37, Lexington, Ky., 1st run	8446	5956
F51	Contract, Fox and Schine, 12/15/36, 1936–37, Richmond, Ky., 1st run	8447	5957
F52	Contract, Fox and Schine, 4/27/37, 1937–38, Ilion, N. Y., 1st run	8448	5958
F53	Contract, Fox and Schine, 4/27/37, 1938–39, Ilion, N. Y., 1st run	8449	5959
F54	Contract, Fox and Schine, 12/22/37, 1937–38, Kent or Ravenna, 1st run	8450	5960
F55	Contract, Fox and Schine, 12/22/37, 1937–38, Kent or Ravenna, repeat run	8451	5961
F56	Contract, Fox and Schine, 6/14/38, 1937–38, Tiffin, O., 2nd run	8452	5962
F57	Contract, Fox and Schine, 8/5/36, 1936–37, Tiffin, O., 1st run	8453	5963
F59	Contract, Fox and Schine, 8/5/36, 1936–37, Oswego, N. Y., 1st run	8454	5964
F60	Contract, Fox and Schine, 8/5/36, 1936–37, Oswego, N. Y., 2nd run	8455	5965
F61	Contract, Fox and Schine, 8/5/35, 1936–37, Penn Yan, N. Y., 1st run	8456	5966
F62	Contract, Fox and Schine, 8/11/37, 1937–38, and 1938–39, Penn Yan, N. Y., 1st run	8457	5967
F63	Contract, Fox and Schine, 8/5/36, 1936–67, Van Wert, Ohio, 1st run	8458	5968
F64	Contract, Fox and Schine, 8/5/36, 1936–37, Wooster, O., 1st run	8459	5969
F87	Contract, Fox-Schine, 6/20/34, State or Dixie, Rochester, N. Y.	8460	5970
F101 (1-40)	Contracts, Fox and Schine, 8/5/35, 1935–36, (80)	8461	5971
F101(42,43)	Contracts (4), Fox and Schine, 8/5/35, 1935–36 (Fox and 20th Century)	8537	6047

DIGESTS OF LICENSE CONTRACT EXHIBITS—Continued

		Original	Print
F117	Contract, Fox and Schine, 12/2/38, 1938–39, Pikeville, Ky., 1st run	8541	6051
F118	Contract, Fox and Schine, 12/3/38, 1938–39, Paris, Ky., second run	8542	6052
F119	Contract, Fox and Schine, 12/2/38, 1938–39, Middlesboro, Ky., 1st run	8543	6053
F120	Contract, Fox and Schine, 12/15/38, 1938–39, Granville, N. Y., 1st run	8544	6054
F121	Contract, Fox and Schine, 12/2/38, 1938–39, Harlan, Ky.	8545	6055
F122	Contracts, Fox and Schine, 12/16/39, 1938/39, 1939/40, 7/24/39, 1940/41, 41/42, Lexington, Ky.	8546	6056
F125	Contract, first run, Maysville, Ky., 1/23/39	8547	6057
F126	Contract, first run, Maysville, Ky., 6/6/39	8548	6058
F127	Contract, first run, Milford, Del., 8/10/39	8549	6059
F128	Contract, first run, Lexington, Ky., 6/6/39	8550	6060
F129	Contract, second run, Lexington, Ky., 6/6/39	8551	6061
F130	Contract, first run, Middlesboro, Ky., 6/6/39	8552	6062
F131	Contract, first run, Paris, Ky., 6/6/39	8553	6063
F132	Contract, first season, Richmond, Ky., 6/6/39.	8554	6064
F133	Contract, first run, Cambridge, Md., 8/10/39	8555	6065
F134	Contract, first run, Easton, Md., 8/10/39	8556	6066
F135	Contract, first run, Federalsburg, Md., 8/10/39.	8557	6067
F136	Contract, first run, Amsterdam, N. Y., 6/9/39	8558	6068
F137	Contract, second run, Amsterdam, N. Y., 6/9/39	8559	6069
F138	Contract, first run, Auburn, N. Y., 6/7/39	8560	6070
F139	Contract, first run, Bath, N. Y., 6/7/39	8561	6071
F140	Contract, first run, Canandaigua, N. Y., 6/7/39.	8562	6072
F141	Contract, first run, Corning, N. Y., 6/7/39	8563	6073
F142	Contract, second run, Corning, N. Y., 6/7/39	8564	6074
F143	Contract, first run, Cortland, N. Y., 6/7/39	8565	6075
F144	Contract, first run, East Rochester or Fairport, N. Y., 2/29/40	8566	6076
F145	Contract, second run, East Rochester or Fairport, N. Y., 2/29/40	8567	6077
F146	Contract, first run, Geneva, N. Y., 6/7/39	8568	6078
F147	Contract, second run, Glens Falls, N. Y., 6/9/39	8569	6079
F148	Contract, first run, Glens Falls, N. Y., 10/8/40.	8570	6080
F149	Contract, first run, Gloversville, N. Y., 6/9/39.	8571	6081
F150	Contract, second run, Gloversville, N. Y., 6/9/39	8572	6082
F151	Contract, first run, Granville, N. Y., 6/9/39	8573	6083
F152	Contract, first run, Hamilton, N. Y., 6/9/39	8574	6084
F153	Contract, first run, Herkimer, N. Y., 6/9/39	8575	6085
F154	Contract, first run, Hudson Falls, N. Y., 6/9/39	8576	6086
F155	Contract, first run, Ilion, N. Y., 6/9/39	8577	6087

DIGESTS OF LICENSE CONTRACT EXHIBITS—Continued

		Original	Print
F156	Contract, first run, Little Falls, N. Y., 6/9/39	8578	6088
F157	Contract, first run, Glens Falls, N. Y., 6/9/39	8579	6089
F158	Contract, first run, Pikesville, Ky., 6/6/39	8580	6090
F159	Contract, first run, Carthage, N. Y., 6/6/39	8581	6091
F160	Contract, first run, Lockport, N. Y., 6/7/39	8582	6092
F161	Contract, second run, Lockport, N. Y., 6/7/39	8583	6093
F162	Contract, first run, Malone, N. Y., 6/9/39	8584	6094
F163	Contract, first run, Massena, N. Y., 6/9/39	8585	6095
F164	Contract, first run, Norwich, N. Y., 6/9/39	8586	6096
F165	Contract, first run, Ogdensburg, N. Y., 6/9/39	8587	6097
F166	Contract, first run, Oneonta, N. Y., 6/9/39	8588	6098
F167	Contract, second run, Oneonta, N. Y., 6/9/39	8589	6099
F168	Contract, first run, Perry, N. Y., 6/9/39	8590	6100
F169	Contract, subsequent run, Rochester, N. Y., 2/29/40	8591	6101
F170	Contract, subsequent run, Rochester, N. Y., 2/29/40	8592	6102
F171	Contract, subsequent run, Rochester, N. Y., 2/29/40	8593	6103
F172	Contract, subsequent run, Rochester, N. Y., 12/14/39	8594	6104
F173	Contract,second run, Rochester, N. Y., 2/29/40	8595	6105
F174	Contract, repeat run, Rochester, N. Y., 2/29/40	8596	6106
F175	Contract, subsequent run, Rochester, N. Y., 12/14/39	8597	6107
F176	Contract, first run, Salamanca, N. Y., 6/7/39	8598	6108
F177	Contract, first run,Saranac Lake, N. Y., 6/9/39	8599	6109
F178	Contract, first run, Seneca Falls, N. Y., 6/9/39	8600	6110
F179	Contract, subsequent run, Syracuse, N. Y., 9/1/39	8601	6111
F180	Contract, first run, Tupper Lake, N. Y., 6/9/39	8602	6112
F181	Contract, first run, Watertown, N. Y., 6/9/39	8603	6113
F182	Contract, second run, Watertown, N. Y., 6/9/39	8604	6114
F183	Contract, Seven (7) days after first run, Ashland, Ohio	8605	6115
F184	Contract, first run, Athens, O., 6/6/39	8606	6116
F185	Contract, first run, Bellefontaine, O., 6/8/39	8607	6117
F186	Contract, first run, Bucyrus, O., 6/8/39	8608	6118
F187	Contract, first run, Delaware, O., 6/8/39	8609	6119
F188	Contract, first run, Fostoria, O., 6/8/39	8610	6120
F189	Contract, first run, Kent or Ravenna, O., 6/8/39	8611	6121
F190	Contract, second run, Kent or Ravenna, O., 6/8/39	8612	6122
F191	Contract, first run, Medina, O., 10/10/39	8613	6123
F192	Contract, first run, Mount Vernon, O., 6/8/39	8614	6124
F194	Contract, first run, Norwalk, O., 6/8/39	8615	6125
F195	Contract, first run, Piqua, O., 6/6/39	8616	6126
F196	Contract, first run, Shelby, O., 6/8/39	8617	6127
F197	Contract, first run, Tiffin, O., 6/8/39	8618	6128

DIGESTS OF LICENSE CONTRACT EXHIBITS—Continued

		Original	Print
F198	Contract, first run, Van Wert, O., 6/8/39	8619	6129
F199	Contract, first run, Wooster, O., 6/8/39	8620	6130
F200	Contract, first run, Cumberland, Md., 3/24/41	8621	6131
F201	Contract, first run, Ballston, N. Y., 9/17/40	8622	6132
F202	Contract, first run, Mechanicville, N. Y., 9/17/40	8623	6133
F203	Contract, first run, Whitehall, N. Y., 9/17/40	8624	6134
F204	Contract, subsequent run, Rochester, N. Y., 12/14/39	8625	6135
F205	Contract, first run, Newark, N. Y., 6/7/39	8625	6136
F206	Contract, first run, Oswego, N. Y., 6/7/39	8627	6137
F207	Contract, second run, Oswego, N. Y., 6/7/39	8628	6138
F208	Contract, first run, Penn Yan, N. Y., 6/7/39	8629	6139
F209	Contract, first run, Harlan, Ky., 6/6/39	8630	6140
F210	Contract, first run, Hurlock, Md., 1/6/41	8631	6141
F211	Contract, first run, Hurlock, Md., 11/30/39	8632	6142
F212	Contract, first run, Saint Michaels, Md., 1/6/41.	8633	6143
D213	Contract, first run, Saint Michaels, Md., 11/30/39	8634	6144
F214	Contract, first run, Laurel, Del., 6/22/39	8635	6145
D42	Contract, RKO and Kemper, 3/23/39, 1938–39	8636	6146
D47	Contract, Columbia and Reliance, Palace	8637	6147
D48	Contract, Columbia and Reliance, Palace	8638	6148
D49	Contract, Columbia and Reliance, Palace	8639	6149
D69	Contract, 1/27/34, U.A. & Reliance, Arrowsmith, 1st run	8640	6150
D70	Contract, 1/27/34, U.A. & Reliance, Scarface, 1st run	8642	6152
D71	Contract, U.A. & Reliance, Tonight or Never, 1st run, ./27/34	8643	6153
D72	Contract, U.A. & Reliance, Cock of the Air, 1st run, 1/27/34	8644	6154
~~D73~~	~~Contract, U.A. & Reliance, Bitter Sweet, 1st~~ run, 1/27/34	8646	6156
D74	Contract, U.A. & Reliance, Unholy Garden, 1st run, 1/27/34	8647	6157
D75	Contract, U.A. & Reliance, Secrets, 1st run, 2/16/34	8649	6159
D76	Contract, U.A. & Reliance, Emperor Jones, 1st run, 2/16/34	8650	6160
D77	Contract, U.A. & Reliance, Private Life Henry 8th, 1st run, 2/10/34	8651	6161
D78	Contract, U. A. & Reliance, Catherine The Great, 1st run, 5/7/34	8652	6162
D79	Contract, U. A. & Reliance, Greeks Had A Word, 1st run, 2/26/34	8653	6163
D80	Contract, U. A. & Reliance, Sorrell and Son, 1st run, 6/9/34	8655	6165
D81	Contract, U. A. & Reliance, Born To Be Bad, 1st run, 7/28/34	8656	6166

DIGESTS OF LICENSE CONTRACT EXHIBITS—Continued

		Original	Print
D82	Contract, Mundus Distributing Company, 12/15/34	8658	6168
D83	Contract, Mundus Distributing Company, 3/20/35	8659	6169
D84	Contract, U. A. & Reliance, Congo Raid, 4/22/35	8660	6170
D85	Contract, U. A. & Reliance, Private Life Don Juan, 1st run, 4/22/35	8661	6171
D86	Contract, U. A. & Reliance, Runaway Queen, 1st run, 4/22/35	8662	6172
D87	Contract, U. A. & Reliance, Our Daily Bread, 1st run, 4/22/35	8663	6173
D88	Contract, U. A. & Reliance, Transatlantic Merry Go Round, 1st run, 4/ /35	8664	6174
D89	Contract, U. A. & Reliance, Clive of India, 1st run, 4/22/35	8665	6175
D90	Contract, U. A. & Reliance, Folies Bergere, 1st run, 4/22/35	8666	6176
D91	Contract, U. A. & Reliance, Bulldog Drummond, 1st run, 4/22/35	8667	6177
D92	Contract, U. A. & Reliance, Cellini, 1st run, 4/22/35	8668	6178
D93	Contract, U. A. & Reliance, Brewsters Millions, 1st run, 5/14/35	8669	6179
D94	Contract, U. A. & Reliance, Cardinal Richelieu, 1st run, 5/14/35	8670	6180
D95	Contract, U. A. & Reliance, Les Miserables, 1st run, 5/14/35	8671	6181
D96	Contract, U. A. & Reliance, Scarlet Pimpernel, 1st run, 4/22/35	8672	6182
D97	Contract, U. A. & Reliance, Thunder in The East, 1st run, 5/11/35	8673	6183
D98	Contract, U. A. & Reliance, Rain, 1st run, 4/5/34	8674	6184
D99	Contract, U. A. & Reliance, Let Have It, 1st run, 5/11/35	8675	6185
D100	Contract, U. A. & Reliance, Escape Me Never, 1st run, 10/23/35	8676	6186
D101	Contract, U. A. & Reliance, Nell Gwyn, 1st run, 10/23/35	8677	6187
D102	Contract, U. A. & Reliance, Amateur Lady, 1st run, 5/11/35	8678	6188
D103	Contract, U. A. & Reliance, Red Salute, 1st run, 12/27/35	8679	6189
D104	Contract, U. A. & Reliance, Melody Lingers On, 1st run, 5/11/35	8680	6190
D105	Contract, U. A. & Reliance, 2 Kordas, 1st run, 9/21/36	8681	6191
D106	Contract, U. A. & Reliance, Amateur Gentlemen, 1st run, 9/28/36	8682	6192

DIGESTS OF LICENSE CONTRACT EXHIBITS—Continued

		Original	Print
D107	Contract, U. A. & Reliance, Street Scene, 1st run, 4/5/34	8683	6193
D110	Contract, Paramount and Reliance, 3 features, 1st run, 7/27/34	8684	6194
D111	Contract, Paramount and Reliance, 5 features, 4/23/34	8685	6195
D117	Contract, RKO & Wallace, 10/7/41	8686	6196
D118	Contract, RKO & Wallace, 10/7/41	8687	6197
D123	Contract, Columbia and Wallace, 1934–35, Capitol, Auburn	8688	6198
D124	Contract, Columbia and Wallace, 1935–36, Capitol, Auburn	8689	6199
D125	Contract, Columbia and Wallace, 1937–38, Capitol	8690	6200
D126	Contract, Columbia and Wallace, 1938–39, Capitol	8691	6201
D127	Contract, Columbia and Wallace, 1939–40, Capitol	8692	6202
D128	Contract, Columbia and Wallace, 1936–37, Capitol	8693	6203
D129	Contracts (2), Columbia and Wallace, 1940/41, 41/42, Capitol	8694	6204
D140	Contract, RKO and Smalley, 9/7/37, 1937–38, features for Norwich	8698	6208
D141	Contract, Columbia and Smalley, 8/12/35	8699	6209
D142	Contract, Columbia and Smalley, 5/6/37	8700	6210
D147	Contract, Columbia and Smalley, 12/20/40	8701	6211
D148A	Contract, Warner and State-Bucyrus, 7/13/35.	8702	6212
D148D	Contract, Warners—First National and State—Bucyrus, 9/5/35	8703	6213

[fol. 1]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NEW YORK

Civil Action No. 223

UNITED STATES OF AMERICA, Plaintiff,

v.

SCHINE CHAIN THEATRES, INC., SCHINE CIRCUIT, INC., Schine Theatrical Co., Inc., Schine Enterprises Corporation, Schine Chain Theatres of Ohio, Inc., Schine Lexington Corporation, Chesapeake Theatres Corporation, J. Meyer Schine, Louis W. Schine, John A. May, Loew's Incorporated, Radio-Keith-Orpheum Corporation, Universal Pictures Company, Inc., Universal Film Exchanges, Inc., Twentieth Century-Fox Film Corporation, United Artists Corporation, Columbia Pictures Corporation, Warner Bros. Pictures, Inc., Vitagraph, Inc., Paramount Pictures, Inc., and Paramount Film Distributing Corporation, Defendants

COMPLAINT

To the Honorable, the Judges of the District Court of the United States for the Western District of New York.

I. JURISDICTION AND VENUE

1

The United States of America, by George L. Grobe, United States Attorney for the Western District of New [fol. 2] York, acting under the direction of the Attorney General, brings this proceeding under Section 4 of the Act of Congress of July 2, 1890, 26 Stat. 209, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies," said Act being commonly known as the Sherman Anti-Trust Act, against the above named defendants in order to prevent violations by them, jointly and severally, as hereinafter alleged, of Sections 1 and 2 of said Act.

2

The alleged unlawful acts and violations hereinafter described, including the unlawful monopoly, attempts to monopolize, combinations and conspiracies to monopolize, and contracts, combinations and conspiracies to restrain trade and commerce among the several States of the United States and with foreign countries, have been and are conceived, carried out and made effective, in part, within the Western District of New York, and many of the unlawful acts done in pursuance thereof have been performed by the defendants, or some of them, and their respective representatives, within said District. The interstate trade and commerce involved in the motion picture-industry, as hereinafter described, is carried on, in part, within the said District.

II. Description of Defendants

3

Schine Chain Theatres, Inc., is a corporation organized and existing under the laws of the State of New York and has its principal place of business in Gloversville, New York.

4

Schine Circuit, Inc., is a corporation organized and existing under the laws of the State of New York and has its principal place of business in Gloversville, New York.

[fol. 3]

5

Schine Theatrical Co., Inc., is a corporation organized and existing under the laws of the State of New York and has its principal place of business in Gloversville, New York.

6

Schine Enterprises Corporation is a corporation organized and existing under the laws of the State of New York and has its principal place of business at 1250 Sixth Avenue, New York, New York.

7

Schine Chain Theatres of Ohio, Inc., is a corporation organized and existing under the laws of the State of Delaware with David M. Donley, Union Commerce Building, Cleveland, Ohio, as agent.

8

Schine Lexington Corporation is a corporation organized and existing under the laws of the State of New York and has its principal place of business in Gloversville, New York.

9

Chesapeake Theatres Corporation is a corporation organized and existing under the laws of the State of Maryland and has its principal place of business in Gloversville, New York.

10

J. Meyer Schine is a resident of Gloversville, New York.

11

Louis W. Schine is a resident of Gloversville, New York.

[fol. 4] 12

John A. May is a resident of Gloversville, New York.

13

The defendants named and described above in paragraph 3 to 12, inclusive, are sometimes hereinafter collectively referred to as the "Schine defendants."

14

Loew's Incorporated, hereinafter referred to as Loew's is a corporation organized and existing under the laws of the State of New York, and has its principal place of business at 1540 Broadway, in the City of New York, New York.

15

Radio-Keith-Orpheum Corporation, hereinafter referred to as RKO, is a corporation organized and existing under the laws of the State of Maryland, and has its principal place of business at 1270 Sixth Avenue, in the City of New York, New York.

16

(a) Universal Pictures Company, Inc., hereinafter referred to as Universal, is a corporation organized and existing under the laws of the State of Delaware, and has its principal place of business at 1250 Sixth Avenue, in the City of New York, New York.

(b) Universal Film Exchanges, Inc., hereinafter referred to as Universal Film, a subsidiary of Universal, is a corporation organized and existing under the laws of the State of Delaware, and has its principal place of business at 1250 Sixth Avenue, in the City of New York, New York.

[fol. 5] 17

Twentieth Century-Fox Film Corporation, hereinafter referred to as Fox, is a corporation organized and existing under the laws of the State of New York, and has its principal place of business at 444 West 56th Street, in the City of New York, New York.

18

United Artists Corporation, hereinafter referred to as United Artists, is a corporation organized and existing under the laws of the State of Delaware, and has its principal place of business at 729 Seventh Avenue, in the City of New York, New York.

19

Columbia Pictures Corporation, hereinafter referred to as Columbia, is a corporation organized and existing under the laws of the State of New York, and has its principal place of business at 729 Seventh Avenue, in the City of New York, New York.

20

(a) Warner Bros. Pictures, Inc., hereinafter referred to as Warner Bros., is a corporation organized and existing under the laws of the State of Delaware, and has its principal place of business at 321 West 44th Street, in the City of New York, New York.

(b) Vitagraph, Inc., hereinafter referred to as Vitagraph, a wholly owned subsidiary of Warner Bros., is a corporation organized and existing under the laws of the State of New York, and has its principal place of business at 321 West 44th Street, in the City of New York, New York.

[fol. 6] 21

(a) Paramount Pictures, Inc., hereinafter referred to as Paramount, is a corporation organized and existing under the laws of the State of New York, and has its principal place of business at 1501 Broadway, in the City of New York, New York.

(b) Paramount Film Distributing Corporation, hereinafter referred to as Paramount Film, a wholly owned subsidiary of Paramount, is a corporation organized and existing under the laws of the State of Delaware, and has its principal place of business at 1501 Broadway, in the City of New York, New York.

22

The defendants named and described above in paragraphs 14 to 21, inclusive, are sometimes hereinafter collectively referred to as the "distributor defendants."

23

The Schine defendants are engaged in the business of exhibiting motion pictures in the States of New York, Ohio, Kentucky, Delaware, and Maryland, the Dominion of Canada, and other localities unknown to plaintiff, and operate and control what is commonly referred to in the motion-picture industry as a circuit of theatres. The corporate Schine defendants, directly or through subsidiaries or affiliates, and the individual Schine defendants, individually or through corporations and companies controlled by them, own, operate, or control approximately 165 theatres in the following cities and towns, and in other cities and towns unknown to plaintiff. *State of New York:* Amsterdam, Ballston Spa, Carthage, Glens Falls, Gloversville, Hamilton, Herkimer, Hudson Falls, Ilion, Little Falls, Malone, [fol. 7] Massina, Mechanicville, Norwich, Ogdensburg, Oneonta, Saranac Lake, Tupper Lake, Watertown, Whitehall, Auburn, Avon, Bath, Buffalo, Canandaigua, Corning, Cortland, Geneva, Lockport, Newark, Oswego, Penn Yan, Perry, Rochester, Salamanca, Seneca Falls, and Syracuse; *State of Ohio:* Ashland, Athens, Bellefontaine, Bucyrus, Delaware, Fostoria, Kent, Medina, Mt. Vernon, Norwalk, Piqua, Ravenna, Shelby, Tiffin, Van Wert, and Wooster; *State of Kentucky:* Harlan, Lexington, Maysville, Pikesville, Richmond, Paris, and Corbin; *State of Delaware:* Laurel and Milford; *State of Maryland:* Cambridge, Easton, Hurlock, Federalsburg, and Salisbury. The aforesaid towns and cities in which the Schine defendants operate theatres are hereinafter collectively referred to as the Schine towns. There is a relationship between the various corporate Schine defendants; however, the precise function performed by each other corporate Schine defendant and the relationship between it and the other corporate Schine defendants and between it and the individual Schine defendants is unknown to plaintiff. The numerous corporations which form a part of the Schine organization and which are subsidiary to or affiliated with the corporate Schine defendants are also unknown to plaintiff.

24

The defendant J. Myer Schine is President and a Director of the defendant Schine Chain Theatres, Inc.; the defendant Louis W. Schine is Secretary-Treasurer and a Director of the defendant Schine Chain Theatres, Inc.; and the defendant John A. May is Comptroller and a Director of the defendant Schine Chain Theatres, Inc. The said individual defendants own substantial interests in and control and are in active charge of the management, direction, and operation of the corporate Schine defendants, their affiliates and subsidiaries.

[fol. 8]

25

The defendants, Loew's, RKO, Universal, Universal Film, Fox, United Artists, Columbia, Warner Bros., Vitagraph, Paramount and Paramount Film are engaged, either directly or through subsidiary or associated companies, in the business of distributing motion-picture films in interstate commerce throughout the United States and Canada, including the States of New York, Ohio, Maryland, Delaware and Kentucky. All of the distributor defendants maintain branch offices, called film exchanges, in Albany and Buffalo, New York, Philadelphia, Pennsylvania, Washington, District of Columbia, and Cleveland and Cincinnati, Ohio, from which they distribute film to exhibitors in New York, Ohio, Maryland, Delaware, and Kentucky, with the exception of United Artists, which maintains no exchange at Albany, New York. The motion-picture films distributed by the distributor defendants are produced in the studios of motion-picture producers located chiefly in the State of California. The films are transported by the distributor defendants into the States of New York, Ohio, Maryland, Delaware, and Kentucky for exhibition in the various towns and cities of said states; and after the pictures are exhibited in accordance with contractual requirements, the theatre operators return said motion-picture films to the distributor defendants for further circulation and transportation in interstate commerce.

III. DEFINITION OF TERMS

26

Exhibitor—The term "exhibitor" includes, without limitation, all persons, partnerships, associations, and corporations engaged in the ownership or operation of theatres for the exhibition of motion pictures.

[fol. 9] 27

Distributor—A distributor is a person, firm, or corporation engaged in the business of licensing the exhibition of motion pictures and distributing the positive prints of these motion pictures to the exhibitors whom it licenses to exhibit them. Although the prints are usually licensed to the exhibitor, the arrangement is frequently referred to in the industry as a sale.

28

Exchange—An exchange is an office maintained by a distributor for the purpose of soliciting contracts for the exhibition of its pictures in theatres situated throughout the territory surrounding the exchange, and for the physical distribution of such films throughout this territory. An exchange usually has facilities for the receipt, storage and subsequent shipment to exhibitors of films and advertising matter concerning them.

29

Motion-picture season—The motion-picture season is generally spoken of as covering the period from September 1 of one year to August 31 of the next.

30

Feature picture—A feature picture is any motion picture, the length of the film of which is approximately five thousand feet or more (approximately five reels) and the running time for the exhibition of which is generally sixty minutes or more.

31

Short subject—A short subject is a motion picture generally consisting of one or two reels (of approximately one [fol. 10] thousand feet per reel), the running time for the exhibition of which is generally eight minutes for a one reel subject to twenty minutes for a two reel subject.

32

First run—A first run is the initial exhibition of a motion picture in any zone, and is the run which normally grosses larger box-office returns than any other run in the zone. The term has great latitude of meaning, because of indefiniteness of determination of the confines of the zone with reference to which the term may be used in particular instances:

33

Second run—A second run is the exhibition of a motion picture in any zone next subsequent to its first-run showing therein.

34

Subsequent run—A subsequent run is any exhibition of a motion picture in a zone subsequent to its first-run showing therein. Such run may be a second-run, third-run, fourth-run, and so on.

35

First-run theatre—A first-run theatre is a motion picture theatre which customarily exhibits feature pictures on first run.

36

Second-run theatre—A second-run theatre is a motion picture theatre which customarily exhib-ts feature pictures on second run.

[fol. 11] 37

Subsequent-run theatre—A subsequent-run theatre is a motion picture theatre which customarily exhibits feature pictures on subsequent run.

38

Single and double feature programs—A single feature program is ordinarily composed of the exhibition of a single film of feature length accompanied by other entertainment, either in the form of short subjects and news reels, or, sometimes, vaudeville. A double feature program is one composed of the exhibition of two feature length films on one program for a single admission price.

39

First-class picture—A first-class picture is a feature picture which, by reason of either its large cost of production, cast of well-known players, direction, story, advertising exploitation, musical score, or photography, or any combination of those factors, is likely to have strong box office appeal.

40

Protection—Protection is an agreement by a distributor, in licensing the exhibition of a film in a theatre, that it will not permit the exhibition of that film within a specified contiguous area for a specified period of time after the last exhibition thereof in said theatre. The area of protection is designated as the "zone," and the period of time as the "clearance."

41

Closed town—A closed town is a town in which one exhibitor controls and operates all the theatres.

[fol. 12] IV. The Position of the Distributor Defendants in the Industry

42

The distributor defendants have collectively distributed during each of the past ten years approximately ninety percent of the first-class feature pictures distributed throughout the United States, including the states in which the Schine defendants operate theatres.

43

The distributor defendants have collectively distributed during each of the past ten years approximately seventy-five percent of all feature pictures distributed throughout the United States, including the states in which the Schine defendants operate theatres.

44

The feature pictures distributed by other distributors who are not defendants herein and who will be referred to hereinafter as independent distributors are, for the most part, of a secondary or inferior qaulity. They are not widely advertised, the actors in them are not well known, their cost of production is usually small, they are not generally exhibited in first-class theatres or as first-class motion pictures, and the demand by the public to witness their exhibition is comparatively small. The number of satisfactory or suitable feature pictures distributed by independent distributors is wholly inadequate to supply the reasonable needs of any first-class theatre. In order successfully to operate a first class theatre in any of the Schine towns, an exhibitor must be able to exhibit a substantial number of feature pictures distributed by the distributor defendants each year.

[fol. 13] V. VIOLATIONS OF LAW

45

The defendants, each well knowing all the matters and things hereinbefore alleged, for at least the past ten years have violated and are now violating the provisions of the Sherman Anti-Trust Act by monopolizing, attempting to monopolize, combining and conspiring with each other to monopolize, and contracting, combining, and conspiring to restrain interstate trade and commerce in the distribution and exhibition of motion pictures, and, unless restrained and prevented by this Honorable Court, the said defendants will continue to violate the provisions of the Sherman Anti-Trust Act as aforesaid. Said monopoly, attempts to monopolize, combination and conspiracy to monopolize, and contracts, combinations, and conspiracies to restrain interstate trade and commerce in the distribution and exhibition of motion pictures, together with the means and instrumentalities by which they have been brought about and accomplished, will now be described in detail.

46

The Schine defendants have combined and conspired with each other and with the distributor defendants, and the distributor defendants have combined and conspired with each other, to restrain interstate trade and commerce in motion pictures in practically all situations where the Schine defendants, or any one or more of them, operate theatres. The Schine defendants have attempted to monopolize and have monopolized, and have combined and conspired with each other and with the distributor defendants to monopolize the first-and preferred-run exhibition of motion pictures in practically all situations where the Schine defendants, or any one or more of them operate theatres. The above monopolization, combinations and conspiracies [fol. 14] in restraint of trade have been accomplished in the following manner and by other methods to plaintiff unknown:

(a) In practically every situation where the Schine defendants operate theatres, the distributor defendants uniformly grant them the first-and preferred-run in preference to all competing theatres and with protection over said theatres; and in practically all situations where the Schine defendants acquire a theatre, such theatre is thereafter granted priority and preference by all distributor defendants over competing theatres and with protection over said theatres.

(d) The distributor defendants have consistently refused to license motion pictures on a local competitive basis to exhibitors in any situations where the Schine defendants operate theatres. During each of the past ten years the Schine defendants have collectively contracted with each of the distributor defendants for all of the feature pictures annually required for exhibition at all of the theatres operated by the Schine defendants in the Schine towns, in advance of the production and distribution of such feature pictures and before such feature pictures or any of them, have been offered to any other exhibitor in said towns, with the purpose and effect of controlling and monopolizing the supply of feature pictures available for exhibition in said towns.

(c) The distributor defendants have uniformly granted the Schine defendants far greater privileges in their licensing contracts and in the exhibition of pictures than are normally granted other exhibitors. The distributor defendants frequently grant the Schine defendants among other benefits and advantages, [fol. 15] substantial rejection privileges, and the right and privilege to play certain specified feature pictures without assuming any binding obligation to do so. Such rights and privileges are not, as a general rule, granted to other exhibitors.

(d) In many instances the distributor defendants have uniformly refused to sell a second or subsequent run in opposition to a theatre or theatres operated by the Schine defendants.

(e) The distributor defendants have uniformly granted the theatres operated by the Schine defendants unreasonable protection over other theatres.

(f) In many instances the distributor defendants have licensed motion pictures to the Schine defendants at rentals considerably less than those charged other exhibitors for comparable or less favorable runs.

(g) On many occasions the distributor defendants have licensed to the Schine defendants motion pictures greatly in excess of the reasonable exhibition requirements of their theatres, thus preventing other exhibitors from using said pictures at all or from getting them while they are still new.

47

Each of the distributor defendants has granted the uniform advantages to the Schine defendants and has imposed the uniform restraints upon competing exhibitors which have been set forth in subparagraphs 46(a) to 46(g), inclusive, in response to requests made by the Schine defendants and pursuant to agreements made with them and with each other, with knowledge of the uniformity of action taken by all of said distributor defendants and with knowledge of the competitive effect, as herein alleged, of such uniform action.

[fol. 16] 48

The Schine defendants own, control and operate what is commonly referred to in the motion-picture industry as a circuit of theatres. As a result of the acquisition and operation of numerous theatres, for all of which pictures are purchased by the Schine defendants, said defendants have obtained what is commonly referred to in the motion-picture industry as circuit buying power. By the pressure of the combined purchasing power of their theatres, the Schine defendants have induced the distributor defendants to grant them the uniform privileges, contracts, and exclusive rights and to impose upon competing exhibitors the uniform restrictions and restraints set forth in subparagraphs 46(a) to 46(g), inclusive, which privileges, contracts, exclusive rights, restrictions and restraints could not have been obtained by said theatres of the Schine defendants had they been operated by independent rather than chain exhibitors. In many of the Schine towns the only theatre or theatres in operation are the theatres of the Schine circuit. Such towns are referred to as closed towns. By means of this system of circuit buying, the Schine circuit is able to maintain its local monopolies in its closed towns and to combine the power of those monopolies in negotiating for product in areas where some competing theatres exist. This method of circuit buying engaged in by the Schine defendants and the correlative method of circuit selling engaged in uniformly by the distributor defendants disregards completely local competitive factors in the respective areas where the Schine circuit operates theatres and creates a condition where free enterprise and open competition are completely stifled.

49

By virtue of their circuit buying power, as described above, and their assurance of product, the Schine defend-[fol. 17] ants have been enabled, in combination with the distributor defendants, to effectuate and to maintain their monopoly of exhibition and to carry out the restraints of trade set forth herein, in the following manner:

(a) The Schine defendants have acquired and attempted to acquire theatres, and have forced and attempted to force competitors out of business for many years past, in some cases as long as eighteen or twenty years ago, by the following methods and others to plaintiff unknown:

(1) Threatening to build a theatre in opposition to another exhibitor if he does not agree to sell or lease to them.

(2) Building a theatre in opposition to another exhibitor, thereby taking away his product and relegating him to an inferior position.

(3) Threatening to deprive another exhibitor of desirable product or run if he does not agree to sell or lease to them.

(4) Depriving another exhibitor of desirable product or run, thereby relegating him to an inferior position.

(5) Announcing the proposed construction or opening of a theatre or taking an interest in a theatre site in the neighborhood of another exhibitor, with the suggestion conveyed to that exhibitor, either directly or through third parties, that the Schine defendants intend to build and open a theatre if the other exhibitor will not agree to sell or lease to them.

(6) Acquiring the superior title in a theatre controlled or operated by another exhibitor, and taking over the control or operation of such theatre.

[fol. 18] (7) Cutting admission prices in areas where competition exists.

(8) Resorting to unusual and costly games and give-aways in areas where competition exists.

(9) Taking unreasonable protection over other exhibitors.

(b) The Schine defendants have continuously for, at least, the past ten years restrained trade and monopolized the exhibition of motion pictures in the Schine towns in the following manner, and by other methods to plaintiff unknown:

(1) Monopolizing the first and preferred runs of all the high-class feature pictures distributed by the distributor defendants in practically all situations where the Schine defendants operate theatres, and also in some of their situations the most desirable feature pictures distributed by independent distributors.

(2) Contracting for more feature pictures distributed by the distributor defendants than the Schine defendants can reasonably exhibit, thus denying other exhibitors the opportunity of contracting for or exhibiting said feature pictures.

(3) Demanding and receiving unreasonable protection over other exhibitors.

(4) Demanding and receiving more favorable rental terms than other exhibitors in comparable or less favorable situations.

(5) Demanding and receiving more favorable rejection privileges than other exhibitors, and other more advantageous benefits and privileges.

[fol. 19] (6) Inducing the granting of privileges and advantages by the distributor defendants through entertainments, gifts, and favors tendered to their representatives.

(c) In order to maintain and perpetuate their monopoly and in order actively to discourage competition in the Schine towns, the Schine defendants have engaged in the following practices, and in others to plaintiff unknown:

(1) Keeping theatres closed in many of their towns, and opening them or announcing their opening whenever there is any indication that another exhibitor intends to open a theatre in a Schine town.

(2) Keeping theatre sites or acquiring interests in theatre sites in Schine towns and announcing the proposed construction of a theatre whenever there is any indication that another exhibitor intends to open a theatre in a Schine town.

(3) Announcing the proposed construction of a theatre in a Schine town whenever there is any indication that another exhibitor intends to open a theatre in a Schine town.

(4) Communicating with the distributor defendants whenever there is any indication that another exhibitor intends to open a theatre in a Schine town and reserving for themselves in that town the feature pictures and the run that would normally have been available to such other exhibitor.

(5) Interfering with arrangements, financial, real estate, contractual, or otherwise, being negotiated by other exhibitors with third parties for the acquisition [fol. 20] of theatre sites or the acquisition, construction, or operation of theatres by such other exhibitors in Schine towns.

VI. EFFECT OF VIOLATIONS OF LAW

50

As a result of the contracts, combinations, and conspiracies of the Schine defendants with each other and with the distributor defendants, and of the contracts, combinations, and conspiracies of the distributor defendants with each other, and as the result of the circuit buying power of the Schine circuit and of the monopolization of the exhibition of the first or preferred runs of high-class motion pictures by the Schine defendants in the Schine towns as above alleged, in most instances all other exhibitors who operate a theatre, or theatres, in competition with the Schine defendants, or any of them, are systematically excluded from the opportunity to procure high-class pictures under fair, competitive conditions on first or preferred run.

51

Furthermore, as the result of the contracts, combinations, and conspiracies alleged above and of the circuit buying power of the Schine circuit and of the monopolization of the exhibition of the first or preferred runs of high-class motion pictures by the Schine defendants in the Schine towns, in practically every situation where any other exhibitor is in competition with the Schine defendants, or any of them, he is systematically relegated to a secondary, inferior position where he may obtain motion pictures only on second or subsequent run, no matter how fine his theatre, or theatres, may be and no matter how much he would be willing to pay for pictures in a free, open, and untrammeled market.

[fol. 21] 52

In many of the Schine towns, other exhibitors have been forced out of business or compelled to dispose of their theatres by the Schine defendants in combination with the distributor defendants, leaving the Schine defendants as the only exhibitors in said towns. Other exhibitors competing with the Schine defendants have been caused to sustain losses or reduced revenue from the operation of their theatres.

53

In the closed towns controlled by the Schine defendants, the public has been denied the benefits of free enterprise and open competition in the exhibition of motion pictures. In such towns there is no competition between theatres in admission prices, variety of entertainment, service, or in other respects. In practically all the Schine towns the public has been deprived of the benefits which flow from free enterprise and open competition.

54

By virtue of the monopolistic power of the Schine defendants, individuals are denied the right of engaging in the business of exhibiting motion pictures in the Schine towns, or any of them, on a fair, competitive basis.

55

As the result of the monopolization and contracts, combinations and conspiracies, as alleged above, interstate trade and commerce in motion-picture films has been unreasonably restrained, and the public has been subjected to the evils incident to the restraint of competition among exhibitors of motion-picture films.

[fol. 22] 56

Unless perpetually enjoined by the order of this Court, the defendants herein will continue to engage in the alleged unlawful monopoly and contracts, combinations and conspiracies to monopolize and restrain trade, with the result that the monopoly and the attempted monopoly by the Schine defendants will be strengthened and interstate trade and commerce in motion-picture films will be unreasonably restrained.

57

Furthermore, the circuit buying power of the Schine defendants is now so great that its continued existence will unreasonably restrain trade and stifle competition in the exhibition of motion pictures in violation of the Sherman Anti-Trust Act in all towns where the Schine defendants have or may hereafter acquire theatres, and will subject competing exhibitors to other and additional restraints, even if the foregoing restraints are enjoined, unless the circuit buying power is eliminated. Said circuit buying power can be eliminated only by the dissolution of the Schine circuit.

VII. Relief Prayed

Wherefore, Plaintiff prays:

(1) That summons issue directed to each and every defendant commanding it or him to appear herein and answer the allegations contained in this complaint and to abide by and perform such order and decrees as the Court may make in the premises.

(2) That the Court issue its preliminary injunction restraining the Schine defendants, and each of them, from opening any of their closed theatres and from building, [fol. 23] buying, leasing, or otherwise acquiring or operating any additional theatres, or from acquiring any further interest, or interests, in any additional theatres or theatre sites, either directly or indirectly, through the acquisition thereof by subsidiary or association corporations, or otherwise, until the final decree herein or until the further order of this Court.

(3) That upon final hearing of this cause, the Court order, adjudge and decree that the contracts, combinations and conspiracies in restraint of interstate trade and commerce, together with the attempts to monopolize and the monopolization of the same, hereinbefore described, are illegal and violative of the Sherman Anti-Trust Act.

(4) That the defendants herein, and each of them, and each and all of their respective officers and directors, and each and all of their respective agents, servants and employees, and all persons acting or claiming to act on behalf of the defendants, or any of them, be perpetually enjoined and restrained from continuing to carry out, directly or indirectly, expressly or impliedly, the attempts at monopolization, the monopolies, the contracts, combinations and conspiracies, and all restraints of said interstate trade and commerce in motion pictures described herein, and from entering into and carry out, directly or indirectly, expressly or impliedly, any monopolies, contracts, combinations, and conspiracies, or restraints of interstate trade and commerce similar to those alleged to be illegal.

(5) That the distributor defendants herein, and each and all of their respective officers and directors, and each and all of their respective servants, agents and employees, and all persons acting or claiming to act on behalf of said defendants, or any of them, be perpetually enjoined and restrained from licensing feature pictures for exhibition on [fol. 24] any run at any theatre in any of the Schine towns, except upon a local competitive basis whereby all theatres operating in each of said towns will have an equal apportunity to license pictures for exhibition without regard to whether those theatres, or any of them, form or constitute a part of a circuit of theatres.

(6) That the corporate Schine defendants, and each of them, be dissolved, and that the respective properties of said corporate defendants and of the individual Schine defendants be divested and rearranged under several separate and independent corporations or companies in such manner as to terminate effectively the aforesaid monopolistic control in the licensing and exhibition of motion pictures and to prevent further violations of the Sherman Anti-Trust Act, and that said Schine defendants, their officers, directors, agents and representatives be required to make such divestiture and conveyances of their stockholdings and properties as shall be necessary in order to accomplish such dissolution.

(7) That the Court appoint such receivers and trustees as may be necessary and appropriate to effectuate a dissolution of the corporate Schine defendants, and each of them, and a divestiture and rearrangement of the respective properties of said corporate defendants and of the individual Schine defendants in such manner as may effectively bring about the elimination of the aforesaid monopoly in the licensing and exhibition of motion pictures.

(8) That, after such dissolution and divestiture and rearrangements of properties, the Schine defendants, and each of them be perpetually enjoined and restrained from acquiring any additional theatres or financial interests therein, except where they shall establish to the satisfaction of this Court that such acquisitions will not unreasonably [fol. 25] restrain competition or create, or tend to create, a monopoly in the licensing of feature pictures or in the operation of motion picture theatres in any of the cities or towns

in which the Schine defendants may be permitted by order of this Court to operate theatres.

(9) That the plaintiff recover its costs and disbursements.

(10) That the plaintiff shall have such other and further relief as the Court shall deem just and proper.

United States of America. By George L. Grobe,
United States Attorney for the Wsetern District of New York.

Frank Murphy, Attorney General; Thurman Arnold, Assistant Attorney General; Wendell Berge, Holmes Baldridge, Paul Williams, Shelby Fitze, Special Assistants to the Attorney General; Seymour Krieger, Special Attorney.

[fol. 26] *Duly sworn to by Shelby Fitze. Jurat omitted in printing.*

[fol. 27] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

AMENDED COMPLAINT

To the Honorable, the Judges of the District Court of the United States for the Western District of New York:

I. Jurisdiction and Venue

1

The United States of America, by George L. Grobe, United States Attorney for the Western District of New York, acting under the direction of the Attorney General, brings this proceeding under Section 4 of the Act of Congress [fol. 28] of July 2, 1890, 26 Stat. 209, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies," said Act being commonly known as the Sherman Anti-Trust Act, against the above named defendants in order to prevent violations by them, jointly and severally, as hereinafter alleged, of Sections 1 and 2 of said Act.

2

The alleged unlawful acts and violations hereinafter described, including the unlawful monopoly, attempts to monopolize, combinations and conspiracies to monopolize, and contracts, combinations and conspiracies to restrain trade and commerce among the several States of the United States and with foreign countries, have been and are conceived, carried out and made effective, in part, within the Western District of New York, and many of the unlawful acts done in pursuance thereof have been performed by the defendants, or some of them, and their respective representatives, within said District. The interstate trade and commerce involved in the motion picture industry, as hereinafter described, is carried on, in part, within the said District.

II. Description of Defendants and Non-defendant Distributors

3

Schine Chain Theatres, Inc., is a corporation organized and existing under the laws of the State of New York and has its principal place of business in Gloversville, New York.

4

Schine Circuit, Inc., is a corporation organized and existing under the laws of the State of New York and has its principal place of business in Gloversville, New York.

[fol. 29] 5

Schine Theatrical Co., Inc., is a corporation organized and existing under the laws of the State of New York and has its principal place of business in Gloversville, New York.

6

Schine Enterprises Corporation is a corporation organized and existing under the laws of the State of New York and has its principal place of business at 1250 Sixth Avenue, New York, New York.

7

Schine Chain Theatres of Ohio, Inc., is a corporation organized and existing under the laws of the State of Delaware with David M. Donley, Union Commerce Building, Cleveland, Ohio, as agent.

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10

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[fol. 30] 12

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13

The defendants named and described above in paragraph 3 to 12, inclusive, are sometimes hereinafter collectively referred to as the "Schine defendants."

14

Loew's, Incorporated, hereinafter referred to as Loew's, is a corporation organized and existing under the laws of the State of New York, and has its principal place of business at 1540 Broadway, in the City of New York, New York.

15

R. K. O. Radio Pictures, Inc., hereinafter referred to as RKO, is a corporation organized and existing under the laws of the State of Delaware, and has its principal place of business at 1270 Sixth Avenue, in the City of New York, New York.

16

(a) Universal Pictures Company, Inc., hereinafter referred to as Universal, is a corporation organized and existing under the laws of the State of Delaware, and has its principal place of business at 1250 Sixth Avenue, in the City of New York, New York.

(b) Universal Film Exchanges, Inc., hereinafter referred to as Universal Film, a subsidiary of Universal, is a corporation organized and existing under the laws of the State of Delaware, and has its principal place of business at 1250 Sixth Avenue, in the City of New York, New York.

[fol. 31] 17

Twentieth Century-Fox Film Corporation, hereinafter referred to as Fox, is a corporation organized and existing under the laws of the State of New York, and has its principal place of business at 444 West 56th Street, in the City of New York, New York.

18

United Artists Corporation, hereinafter referred to as United Artists, is a corporation organized and existing under the laws of the State of Delaware, and has its principal place of business at 729 Seventh Avenue, in the City of New York, New York.

19

Columbia Pictures Corporation, hereinafter refer-ed to as Columbia, is a corporation organized and existing under the laws of the State of New York, and has its principal place of business at 729 Seventh Avenue, in the City of New York, New York.

20

(a) Warner Bros. Pictures, Inc., hereinafter referred to as Warner Bros., is a corporation organized and existing under the laws of the State of Delaware, and has its principal place of business at 321 West 44th Street, in the City of New York, New York.

(b) Vitagraph, Inc., hereinafter referred to as Vitagraph, a wholly owned subsidiary of Warner Bros., is a corporation organized and existing under the laws of the State of New York, and has its principal place of business at 321 West 44th Street, in the City of New York, New York.

[fol. 32] 21

(a) Paramount Pictures, Inc., hereinafter referred to as Paramount, is a corporation organized and existing under the laws of the State of New York, and has its principal place of business at 1501 Broadway, in the City of New York, New York.

(b) Paramount Film Distributing Corporation, hereinafter referred to as Paramount Film, a wholly owned subsidiary of Paramount, is a corporation organized and existing under the laws of the State of Delaware, and has its principal place of business at 1501 Broadway, in the City of New York, New York.

22

The defendants named and described above in paragraphs 16, 18 and 19 are sometimes hereinafter collectively referred to as the "distributor defendants" and the companies named in paragraphs 14, 15, 17, 20 and 21 as "non-defendant distributors."

23

The Schine defendants are engaged in the business of exhibiting motion pictures in the States of New York, Ohio, Kentucky, Delaware, and Maryland, the Dominion of Canada, and other localities unknown to plaintiff, and operate and control what is commonly referred to in the motion picture industry as a circuit of theatres. The corporate Schine defendants, directly or through subsidiaries of affiliates, and the individual Schine defendants, individually or through corporations and companies controlled by them, own, operate, or control approximately 165 theatres in the following cities and towns, and in other cities and towns unknown to plaintiff: *State of New York:* Amsterdam, Ballston Spa, Carthage, Glens Falls, Gloversville, Hamilton, [fol. 33] Herkimer, Hudson Falls, Ilion, Little Falls, Malone, Massina, Mechanicville, Norwich, Odgensburg, Oneonta, Saranac Lake, Tupper Lake, Watertown, Whitehall, Auburn, Avon, Bath, Buffalo, Canadaigua, Corning, Cortland, Geneva, Lockport, Newark, Oswego, Penn Yan, Perry, Rochester, Salamanca, Seneca Falls, and Syracuse; *State of Ohio:* Ashland, Athens, Bellefontaine, Bucyrus, Delaware, Fostoria, Kent, Medina, Mt. Vernon, Norwalk, Piqua, Revenna, Shelby, Tiffin, Van Wert, and Wooster; *State of Kentucky:* Harlan, Lexington, Maysville, Pikesville, Richmond, Paris, and Corbin; *State of Delaware:* Laurel and Milford; *State of Maryland:* Cambridge, Easton, Hurlock, Federalsburg, and Salisbury. The aforesaid towns and cities in which the Schine defendants operate theatres are hereinafter collectively referred to as the Schine towns. There is a relationship between the various corporate Schine defendants; however, the precise function performed by each corporate Schine defendant and the relationship between it and the other corporate Schine defendants and between it and the individual Schine defendants is unknown to plaintiff. The numerous corporations which form a part of the Schine organization and which are subsidiary to or affiliated with the corporate Schine defendants are also unknown to plaintiff.

24

The defendant J. Myer Schine is President and a Director of the defendant Schine Chain Theatres, Inc.; the defendant Louis W. Schine is Secretary-Treasurer and a Director of the defendant Schine Chain Theatres, Inc.; and the defendant John A. May is Comptroller and a Director of the defendant Schine Chain Theatres, Inc. The said individual defendants own substantial interests in and control and are in active charge of the management, direction, and [fol. 34] operation of the corporate Schine defendants, their affiliates and subsidiaries.

25

The distributor defendants, viz., Universal, Universal Film, United Artists, and Columbia and the non-defendant distributors, viz., Warner Bros., Vitagraph, Paramount Film, Loew's, R. K. O. and Fox are engaged, either directly or through subsidiary or associated companies, in the business of distributing motion picture films in interstate commerce throughout the United States and Canada, including the States of New York, Ohio, Maryland, Delaware, and Kentucky. These distributors maintain branch offices, called film exchanges, in Albany and Buffalo, New York, Philadelphia, Pennsylvania, Washington, District of Columbia, and Cleveland and Cincinnati, Ohio, from which they distribute films to exhibitors in New York, Ohio, Maryland, Delaware, and Kentucky, with the exception of United Artists, which maintains no exchange at Albany, New York. The motion picture films distributed by said distributors are produced in the studios of motion picture producers located chiefly in the State of California. The films are transported by them into the States of New York, Ohio, Maryland, Delaware, and Kentucky for exhibition in the various towns and cities of said states; and after the pictures are exhibited in accordance with contractual requirements, the theatre operators return said motion picture films to them for further circulation and transportation in interstate commerce.

III. Definition of Terms

26

Exhibitor—The term "exhibitor" includes, without limitation, all persons, partnerships, associations, and corpo-[fol. 35] rations engaged in the ownership or operation of theatres for the exhibition of motion pictures.

27

Distributor—A distributor is a person, firm or corporation engaged in the business of licensing the exhibition of motion pictures and distributing the positive prints of these motion pictures to the exhibitors whom it licenses to exhibit them. Although the prints are usually licensed to the exhibitor, the arrangement is frequently referred to in the industry as a sale.

28

Exchange—An Exchange is an office maintained by a distributor for the purpose of soliciting contracts for the exhibition of its pictures in theatres situated throughout the territory surrounding the exchange, and for the physical distribution of such films throughout this territory. An exchange usually has facilities for the receipt, storage and subsequent shipment to exhibitors of films and advertising matter concerning them.

29

Motion picture season—The motion picture season is generally spoken of as covering the period from September 1 of one year to August 31 of the next.

30

Feature picture—A feature picture is any motion picture, the length of the film of which is approximately five thousand feet or more (approximately five reels) and the running time for the exhibition of which is generally sixty minutes or more.

[fol. 36]

31

Short subject—A short subject is a motion picture generally consisting of one or two reels (of approximately one thousand feet per reel) the running time for the exhibition of which is generally eight minutes for a one reel subject to twenty minutes for a two reel subject.

32

First run—A first run is the initial exhibition of a motion picture in any zone, and is the run which normally grosses larger box office returns than any other run in the zone. The term has great lattitude of meaning, because of indefiniteness of determination of the confines of the zone with reference to which the term may be used in particular instances.

33

Second run—A second run is the exhibition of a motion picture in any zone next subsequent to its first-run showing therein.

34

Subsequent run—A subsequent run is any exhibition of a motion picture in a zone subsequent to its first-run showing therein. Such run may be second-run, third-run, fourth-run, and so on.

35

First-run Theatre—A first-run theatre is a motion picture theatre which customarily exhibits feature pictures on first run.

36

Second-run Theatre—A second-run theatre is a motion picture theatre which customarily exhibits feature pictures on second run.

[fol. 37]

37

Subsequent-run Theatre—A subsequent-run theatre is a motion picture theatre which customarily exhibits feature pictures on subsequent run.

38

Single and double feature programs—A single feature program is ordinarily composed of the exhibition of a single film of feature length accompanied by other entertainment, either in the form of short subjects and news reels or, sometimes, vaudeville. A double feature program is one composed of the exhibition of two feature length films on on program for a single admission price.

39

First class picture—A first class picture is a feature picture which, by reason of either its large cost of production, cast of well-known players, direction, story, advertising exploitation, musical score, or photography, or any combination of those factors, is likely to have strong box office appeal.

40

Protection—Protection is an agreement by a distributor, in licensing the exhibition of a film in a theatre, that it will not permit the exhibition of that film within a specified contiguous area for a specified period of time after the last exhibition thereof in said theatre. The area of protection is designated as the "zone", and the period of time as the "clearance."

41

Closed town—A closed town is a town in which one exhibitor controls and operates all the theatres.

[fol. 38] IV. THE POSITION OF THE DISTRIBUTOR DEFENDANTS AND THE NON-DEFENDANT DISTRIBUTORS IN THE INDUSTRY

42

The distributors named in paragraphs 14 through 21, above, have collectively distributed during each of the past ten years approximately ninety percent of the first class feature pictures distributed throughout the United States, including the states in which the Schine defendants operate theatres.

43

Said distributors have collectively distributed during each of the past ten years approximately seventy-five percent of all feature pictures distributed throughout the United States, including the state in which the Schine defendants operate theatres.

44

The feature pictures distributed by distributors other than those named in paragraphs 14 through 21, above, and who will be referred to hereinafter as independent distributors are, for the most part, of a secondary or inferior quality. They are not widely advertised, the actors in them are not well known, their cost of production is usually small, they are not generally exhibited in first class theatres or as first class motion pictures, and the demand by the public to witness their exhibition is comparatively small. The number of satisfactory or suitable feature pictures distributed by independent distributors is wholly inadequate to supply the reasonable needs of any first class theatre. In order successfully to operate a first class theatre in any of the Schine towns, an exhibitor must be able to exhibit a substantial number of feature pictures distributed by the distributors named in paragraphs 14 through 21, above, each year.

[fol. 39]

V. VIOLATIONS OF LAW

45

The defendants, each well knowing all the matters and things hereinbefore alleged, for at least the past ten years have violated and are now violating the provisions of the Sherman Anti-Trust Act by monopolizing, attempting to monopolize, combining and conspiring with each other to monopolize, and contracting, combining, and conspiring to restrain interstate trade and commerce in the distribution and exhibition of motion pictures, and unless restrained and prevented by this Honorable Court, the said defendants will continue to violate the provisions of the Sherman Anti-Trust Act as aforesaid. Said monopoly, attempts to monopolize, combination and conspiracy to monopolize, and contracts, combinations, and conspiracies to restrain interstate trade and commerce in the distribution and exhibition of motion pictures, together with the means and instrumentalities by which they have been brought about and accomplished, will now be described in detail.

46

The Schine defendants have combined and conspired with each other and with the distributor defendants and the non-defendant distributors to restrain interstate trade and commerce in motion pictures in practically all stituations where the Schine defendants, or any one or more of them, operate theatres. The Schine defendants have attempted to monopolize and have monopolized, and have combined and conspired with each other and with the distributor defendants and the non-defendant distributors, to monopolize the first- and preferred-run exhibition of motion pictures in practically all situations where the Schine defendants, or any one or more of them operate theatres. The above monopilization, combinations and conspiracies in restraint of trade have been accomplished in the following [fol. 40] manner and by other methods to plaintiff unknown:

(a) In practically every situation where the Schine defendants operate theatres, the distributor defendants and the non-defendant distributors uniformly grant them the first- and preferred-run in preference to all competing theatres and with protection over said theatres; and in practically all situations where the Schine defendants acquire a theatre such theatre is thereafter granted priority and preference by all distributor defendants and non-defendant distributors over competing theatres and with protection over said theatres.

(b) The distributor defendants and the non-defendant distributors have consistently refused to license pictures on a local competitive basis to exhibitors in any situations where the Schine defendants operate theatres. During each of the past ten years the Schine defendants have collectively contracted with each of the distributor defendants and the non-defendant distributors for all of the feature pictures annually required for exhibition at all of the theatres operated by the Schine defendants in the Schine towns, in advance of the production and distribution of such feature pictures and before such feature pictures or any of them, have been offered to any other exhibitor in said towns, with the purpose and effect of controlling and monopolizing the supply [illegible] feature pictures available for exhibition in said towns.

(c) The distributor defendants and the non-defendant distributors have uniformly granted the Schine defendants far greater privileges in their licensing contracts and in the exhibition of pictures than are normally granted other exhibitors. They frequently grant the Schine defendants, among other benefits and ad- [fol. 41] vantages, substantial rejection privileges, and the right and privilege to play certain specified feature pictures without assuming any binding obligation to do so. Such rights and privileges are not, as a general rule, granted to other exhibitors.

(d) In many instances the distributor defendants and the non-defendant distributors have uniformly refused to sell a second or subsequent run in opposition to a theatre or theatres operated by the Schine defendants.

(e). The distributor defendants and the non-defendant distributors have uniformly granted the theatres operated by the Schine defendants unreasonable protection over other theatres.

(f) In many instances the distributor defendants and the non-defendant distributors have licensed motion pictures to the Schine defendants at rentals considerably less than those charged other exhibitors for comparable or less favorable runs.

(g) On many occasions the distributor defendants and the non-defendant distributors have licensed to the Schine defendants motion pictures greatly in excess of the reasonable exhibition requirements of their theatres, thus preventing other exhibitors from using said pictures at all or from getting them while they are still new.

47

Each of the distributor defendants and the non-defendant distributors has granted the uniform advantages to the Schine defendants and has imposed the uniform restraints upon competing exhibitors which have been set forth in subparagraphs 46(a) to 46(g), inclusive, in response to requests made by the Schine defendants and pursuant to agreements made with them, with knowledge of the com- [fol. 42] petitive effect, as herein alleged, of the uniformity of action taken by all of said distributor defendants and non-defendant distributors.

48

The Schine defendants own, control and operate what is commonly referred to in the motion picture industry as a circuit of theatres. As a result of the acquisition and operation of numerous theatres, for all of which pictures are purchased by the Schine defendants, said defendants have obtained what is commonly referred to in the motion picture industry as circuit buying power. By the pressure of the combined purchasing power of their theatres, the Schine defendants have induced the distributor defendants and the non-defendant distributors to grant them the uniform privileges, contracts, and exclusive rights and to impose upon competing exhibitors the uniform restrictions and restraints set forth in subparagraphs 46(a) to 46(g), inclusive, which privileges, contracts, exclusive rights, restrictions and restraints could not have been obtained by said theatres of the Schine defendants had they been operated by independent rather than chain exhibitors. In many of the Schine towns the only theatre or theatres in operation are the theatres of the Schine circuit. Such towns are referred to as closed towns. By means of this system of circuit buying, the Schine circuit is able to maintain its local monopolies in its closed towns and to combine the power of those monopolies in negotiating for product in areas where some competing theatres exist. This method of circuit buying engaged in by the Schine defendants and the correlative method of circuit selling engaged in uniformly by the distributor defendants and the non-defendant distributors disregards completely local competitive factors in the respective areas where the Schine circuit operates theatres and creates a condition where free enterprise and open competition are completely stifled.

/49

[fol. 43] By virtue of their circuit buying power, as described above, and their assurance of product, the Schine defendants have been enabled, in combination with each of the distributor defendants, and the non-defendant distributors, to effectuate and to maintain their monopoly of exhibition and to carry out the restraints of trade set forth herein, in the following manner:

(a) The Schine defendants have acquired and attempted to acquire theatres, and have forced and attempted to force competitors out of business for many years past, in some cases as long as eighteen or twenty years ago, by the following methods and others to plaintiff unknown:

(1) Threatening to build a theatre in opposition to another exhibitor if he does not agree to sell or lease to them.

(2) Building a theatre in opposition to another exhibitor, thereby taking away his product and relegating him to an inferior position.

(3) Threatening to deprive another exhibitor of desirable product or run if he does not agree to sell or lease to them.

(4) Depriving another exhibitor of desirable product or run, thereby relegating him to an inferior position.

(5) Announcing the proposed construction or opening of a theatre or taking an inteerst in a theatre site in the neighborhood of another exhibitor, with the suggestion conveyed to that exhibitor, either directly or through third parties, that the Schine defendants intend to build and open a theatre if the other exhibitor will not agree to sell or lease to them.

[fol. 44] (6) Acquiring the superior title in a theatre controlled or operated by another exhibitor, and taking over the control or operation of such theatre.

(7) Cutting admission prices in areas where competition exists.

(8) Resorting to unusual and costly games and giveaways in areas where competition exists.

(9) Taking unreasonable protection over other exhibitors.

(b) The Schine defendants have continuously for, at least, the past ten years restrained trade and monopolized the exhibition of motion pictures in the Schine towns in the following manner, and by other methods to plaintiff unknown:

(1) Monopolizing the first and preferred runs of all the high class feature pictures distributed by the dis-

tributor defendants and the non-defendant distributors in practically all situations where the Schine defendants operate theatres, and also in some of their situations the most desirable feature pictures distributed by independent distributors.

(2) Contracting for more feature pictures distributed by the distributor defendants and the non-defendant distributors than the Schine defendants can reasonably exhibit, thus denying other exhibitors the opportunity of contracting for or exhibiting said feature pictures.

(3) Demanding and receiving unreasonable protection over other exhibitors.

(4) Demanding and receiving more favorable rental terms than other exhibitors in comparable or less favorable situations.

[fol. 45] (5) Demanding and receiving more favorable rejection privileges than other exhibitors, and other more advantageous benefits and privileges.

(6) Inducing the granting of privileges and advantages by the distributor defendants and the non-defendant distributors through entertainment, gifts, and favors tendered to their representatives.

(c) In order to maintain and perpetuate their monopoly, and in order actively to discourage competition in the Schine towns, the Schine defendants have engaged in the following practices, and in others to plaintiff unknown:

(1) Keeping theatres closed in many of their towns, and opening them or announcing their opening whenever there is any indication that another exhibitor intends to open a theatre in a Schine town.

(2) Keeping theatre sites or acquiring interests in theatre sites in Schine towns and announcing the proposed construction of a theatre whenever there is any indication that another exhibitor intends to open a theatre in a Schine town.

(3) Announcing the proposed construction of a theatre in a Schine town whenever there is any indication that another exhibitor intends to open a theatre in a Schine town.

(4) Communicating with the distributor defendants and the non-defendant distributors, whenever there is any indication that another exhibitor intends to open a theatre in a Schine town and reserving for themselves in that town the feature pictures and the run that would normally have been available to such other exhibitor. [fol. 46] (5) Interfering with arrangements, financial, real estate, contractual, or otherwise, being negotiated by other exhibitors with third parties for the acquisition of theatre sites or the acquisition, construction, or operation of theatres by such other exhibitors in Schine towns.

VI. Effect of Violations of Law

50

As the result of the aforesaid contracts, combinations, and conspiracies of the Schine defendants with each other and with the distributor defendants and the non-defendant distributors, and as the result of the circuit buying power of the Schine circuit and of the monopolization of the exhibition of the first or preferred runs of high class motion pictures by the Schine defendants in the Schine towns as above alleged, in most instances all other exhibitors who operate a theatre, or theatres, in competition with the Schine defendants, or any of them, are systematically excluded from the opportunity to procure high class pictures under fair, competitive conditions on first or preferred run.

51

Furthermore, as the result of the contracts, combinations, and conspiracies alleged above and of the circuit buying power of the Schine circuit and of the monopolization of the exhibition of the first or preferred runs of high class motion pictures by the Schine defendants in the Schine towns, in practically every situation where any other exhibitor is in competition with the Schine defendants, or any of them, he is systematically relegated to a secondary, inferior position where he may obtain motion pictures only on second or subsequent run, no matter how fine his theatre, or theatres, may be and no matter how much he would be [fol. 47] willing to pay for pictures in a free, open, and untrammeled market.

52

In many of the Schine towns, other exhibitors have been forced out of business or compelled to dispose of their theatres by the Schine defendants in combination with the distributor defendants and the non-defendant distributors, leaving the Schine defendants as the only exhibitors in said towns. Other exhibitors competing with the Schine defendants have been caused to sustain losses or reduced revenue from the operation of their theatres.

53

In the closed towns controlled by the Schine defendants, the public has been denied the benefits of free enterprise and open competition in the exhibition of motion pictures. In such towns there is no competition between theatres in admission prices, variety of entertainment, service or in other respects. In practically all the Schine towns the public has been deprived of the benefits which flow from free enterprise and open competition.

54

By virtue of the monopolistic power of the Schine defendants, individuals are denied the right of engaging in the business of exhibiting motion pictures in the Schine towns, or any of them, on a fair, competitive basis.

55

As the result of the monopolization and contracts, combinations and conspiracies, as alleged above, interstate trade and commerce in motion picture films has been unreasonably restrained, and the public has been subjected to the [fol. 48] evils incident to the restraint of competition among exhibitors of motion picture films.

56

Unless perpetually enjoined by the order of this Court, the defendants herein will continue to engage in the alleged unlawful monopoly and contracts, combinations and conspiracies to monopolize and restrain trade, with the result that the monopoly and the attempted monopoly by the Schine defendants will be strengthened and interstate trade and commerce in motion picture films will be unreasonably restrained.

Furthermore, the circuit buying power of the Schine defendants is now so great that its continued existence will unreasonably restrain trade and stifle competition in the exhibition of motion pictures in violation of the Sherman Anti-Trust Act in all towns where the Schine defendants have or may hereafter acquire theatres, and will subject competing exhibitors to other and additional restraints, even if the foregoing restraints are enjoined, unless the circuit buying power is eliminated. Said circuit buying power can be eliminated only by the dissolution of the Schine circuit.

VII. Relief Prayed

Wherefore, Plaintiff prays:

(1) That summons issue directed to each and every defendant commanding it or him to appear herein and answer the allegations contained in this complaint and to abide by and perform such order and decrees as the Court may make in the premises.

[fol. 49] (2) That the Court issue its preliminary injunction restraining the Schine defendants, and each of them, from opening any of their closed theatres and from building, buying, leasing, or otherwise acquiring or operating any additional theatres, or from acquiring any further interest, or interests, in any additional theatres or theatre sites, either directly or indirectly, through the acquisition thereof by subsidiary or associated corporations, or otherwise, until the final decree herein or until the further order of this Court.

(3) That upon final hearing of this cause, the Court order, adjudge and decree that the contracts, combinations and conspiracies in restraint of interstate trade and commerce, together with the attempts to monopolize and the monopolization of the same, hereinbefore described, are illegal and violative of the Sherman Anti-Trust Act.

(4) That the defendants herein, and each of them, and each and all of their respective officers and directors, and each and all of their respective agents, servants and employees, and all persons acting or claiming to act on behalf of the defendants, or any of them, be perpetually enjoined and restrained from continuing to carry out, directly or

indirectly, expressly or impliedly, the attempts at monopolization, the monopolies, the contracts, combinations and conspiracies, and all restraints of said interstate trade and commerce in motion pictures described herein, and from entering into any carrying out, directly or indirectly, expressly or impliedly, any monopolies, contracts, combinations, and conspiracies, or restraints of interstate trade and commerce similar to those alleged to be illegal.

(5) That the distributor defendants herein, and each and all of their respective officers and directors, and each and all of their respective servants, agents and employees, [fol. 50] and all persons acting or claiming to act on behalf of said defendants, or any of them, be perpetually enjoined and restrained from licensing feature pictures for exhibition on any run at any theatre in any of the Schine towns, except upon a local competitive basis whereby all theatres operating in each of said towns will have an equal opportunity to license pictures for exhibition without regard to whether these theatres, or any of them, form or constitute a part of a circuit of theatres.

6) That the corporate Schine defendants, and each of them, be dissolved, and that the respective properties of said corporate defendants and of the individual Schine defendants be divested and rearranged under several separate and independent corporations or companies in such manner as to terminate effectively the aforesaid monopolistic control in the licensing and exhibition of motion pictures and to prevent further violations of the Sherman Anti-Trust Act, and that said Schine defendants, their officers, directors, agents and representatives be required to make such divestiture and conveyances of their stockholdings and properties as shall be necessary in order to accomplish such dissolution.

(7) That the Court appoint such receivers and trustees as may be necessary and appropriate to effectuate a dissolution of the corporate Schine defendants, and each of them, and a divestiture and rearrangement of the respective properties of said corporate defendants and of the individual Schine defendants in such manner as may effectively bring about the elimination of the aforesaid monopoly in the licensing and exhibition of motion pictures.

(8) That, after such dissolution and divestiture and rearrangement of properties, the Schine defendants, and each of them be perpetually enjoined and restrained from ac- [fol. 51] quiring any additional theatres or financial interests therein, except where they shall establish to the satisfaction of this Court that such acquisitions will not unreasonably restrain competition or create, or tend to create, a monopoly in the licensing of feature pictures or in the operation of motion pictures theatres in any of the cities or towns in which the Schine defendants may be permitted by order of this Court to operate theatres.

(9) That the plaintiff recover its costs and disbursements.

(10) That the plaintiff shall have such other and further relief as the court shall deem just and proper.

United States of America, by George L. Grobe, United States Attorney for the Western District of New York.

Thurman Arnold, by S. S., Assistant Attorney Geenral; Holmes Baldridge, by S. S., Herbert Borkland, by S. S., Special Assistants to the Attorney General; Seymour Simon, Special Attorney.

[fols. 52-53] *Duly sworn to by Herbert Borkland. Jurat omitted in printing.*

[fol. 54] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

SECOND AMENDED COMPLAINT

To the Honorable, the Judges of the District Court of the United States for the Western District of New York:

I. Jurisdiction and Venue

1

The United States of America, by George L. Grobe, United States Attorney for the Western District of New York, acting under the direction of the Attorney General, brings this proceeding under Section 4 of the Act of Congress of July 2, 1890, 26 Stat. 209, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies", said Act being commonly known as the Sherman Anti-Trust Act, against the above named defendants in order to prevent violations by them, jointly and severally, as hereinafter alleged, of Sections 1 and 2 of said Act.

2

The alleged unlawful acts and violations hereinafter described, including the unlawful monopoly, attempts to monopolize, combinations and conspiracies to monopolize, and contracts, combinations and conspiracies to restrain trade and commerce among the several States of the United States and with foreign countries, have been and are conceived, carried out and made effective, in part, within the Western District of New York, and many of the unlawful acts done in pursuance thereof have been performed by the defendants, or some of them, and their respective representatives, within said District. The interstate trade and commerce involved in the motion picture industry, as hereinafter described, is carried on, in part, within the said District.

II. Description of Defendants and Distributors

3

Schine Chain Theatres, Inc., is a corporation organized and existing under the laws of the State of New York and has its principal place of business in Gloversville, New York.

[fol. 55]

4

Schine Circuit, Inc., is a corporation organized and existing under the laws of the State of New York and has its principal place of business in Gloversville, New York.

5

Schine Theatrical Co., is a corporation organized and existing under the laws of the State of New York and has its principal place of business in Gloversville, New York.

6

Schine Enterprises Corporation is a corporation organized and existing under the laws of the State of New York and has its principal place of business at 1250 Sixth Avenue, New York, New York.

7

Schine Chain Theatres of Ohio, Inc., is a corporation organized and existing under the laws of the State of Delaware with David M. Donley, Union Commerce Building, Cleveland, Ohio, as agent.

8

Schine Lexington Corporation is a corporation organized and existing under the laws of the State of New York and has its principal place of business in Gloversville, New York.

9

Chesapeake Theatres Corporation is a corporation organized and existing under the laws of the State of Maryland and has its principal place of business in Gloversville, New York.

10

J. Myer Schine is a resident of Gloversville, New York.

11

Louis W. Schine is a resident of Gloversville, New York.

12

John A. May is a resident of Gloversville, New York.

13

The defendants named and described above in paragraph 3 to 12, inclusive, are sometimes hereinafter collectively referred to as the "Schine defendants."

14

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(b) Vitagraph, Inc., hereinafter referred to as Vitagraph, a wholly owned subsidiary of Warner Bros., is a corporation organized and existing under the laws of the State of New York, and has its principal place of business at 321 West 44th Street, in the City of New York, New York.

21

(a) Paramount Pictures, Inc., hereinafter referred to as Paramount, is a corporation organized and existing under the laws of the State of New York, and has its principal place of business at 1501 Broadway, in the City of New York, New York.

[fol. 57] (b) Paramount Film Distributing Corporation, hereinafter referred to as Paramount Film, a wholly owned subsidiary of Paramount, is a corporation organized and existing under the laws of the State of Delaware, and has its principal place of business at 1501 Broadway, in the City of New York, New York.

22

The distributors named and described above are sometimes hereinafter collectively referred to as "the distributors."

23

The Schine defendants are engaged in the business of exhibiting motion pictures in the States of New York, Ohio, Kentucky, Delaware, and Maryland, the Dominion of Canada, and other localities unknown to plaintiff, and operate and control what is commonly referred to in the motion picture industry as a circuit of theatres. The corporate Schine defendants, directly or through subidiaries or affiliates, and the individual Schine defendants, individually or through corporations and companies controlled by them, own, operate, or control approximately 165 theatres in the following cities and towns, and in other cities and towns unknown to plaintiff: *State of New York:* Amsterdam, Ballston Spa, Carthage, Glen Falls, Gloversville, Hamilton, Herkimer, Hudson Falls, Ilion, Little Falls, Malone, Massina, Mechanicville, Norwich, Ogdensburg, Oneonta, Saranac Lake, Tupper Lake, Watertown, Whitehall, Auburn, Avon, Bath, Buffalo, Canadaigua, Corning, Cortland, Geneva, Lockport, Newark, Oswego, Penn Yan, Perry, Rochester, Salamanca, Seneca Falls, and Syracuse; *State of Ohio:* Ashland, Athens, Bellefontaine, Bucyrus, Delaware, Fostoria; Kent Medina, Mt. Vernon, Norwalk, Piqua, Revenna, Shelby, Tiffin, Van Wert, and Wooster; *State of Kentucky:* Harlan, Lexington, Maysville, Pikesville, Richmond, Paris, and Corbin; *State of Delaware:* Laurel and Milford; *State of Maryland:* Cambridge, Easton, Hurlock, Federalsburg, and Salisbury. The aforesaid towns and cities in which the Schine defendants operate theatres are hereinafter collectively referred to as the Schine towns. There is a relationship between the various corporate Schine defendants; however, the precise function performed by each corporate Schine defendant and the relationship between it and the other corporate Schine defendants and between it and the individual Schine defendants is unknown to plaintiff. The numerous corporations which form a part of the Schine organization and which are subsidiary to or affiliated with the corporate Schine defendants are also unknown to plaintiff.

24

The defendant J. Myer Schine is President and a Director of the defendant Schine Chain Theatres, Inc.; the defendant Louis W. Schine is Secretary-Treasurer and a Director of the defendant Schine Chain Theatres, Inc.; and the defendant John A. May is Comptroller and a Director of the defendant Schine Chain Theatres, Inc. The said individual defendants own substantial interests in and control and are in active charge of the management, direction, and operation of the corporate Schine defendants, their affiliates and subsidiaries.

25

The distributors, viz., Universal, Universal Film, United Artists, and Columbia, Warner Bros., Vitagraph, Para- [fol. 58] mount Film, Loew's R. K. O. and Fox are engaged, either directly or through subsidiary or associated companies, in the business of distributing motion picture films in interstate commerce throughout the United States and Canada, including the States of New York, Ohio, Maryland, Delaware, and Kentucky. These distributors maintain branch offices, called film exchanges, in Albany and Buffalo, New York, Philadelphia, Pennsylvania, Washington, District of Columbia, and Cleveland and Cincinnati, Ohio, from which they distribute films to exhibitors in New York, Ohio, Maryland, Delaware, and Kentucky, with the exception of United Artists, which maintains no exchange at Albany, New York. The motion picture films distributed by said distributors are produced in the studios of motion picture producers located chiefly in the State of California. The films are transported by them into the States of New York, Ohio, Maryland, Delaware, and Kentucky for exhibition in the various towns and cities of said states; and after the pictures are exhibited in accordance with contractual requirements, the theatre operators return said motion picture films to them for further circulation and transportation in interstate commerce.

III. Definition of Terms

26

Exhibitor. The term "exhibitor" includes, without limitation, all persons, partnerships, associations, and corporations engaged in the ownership or operation of theatres for the exhibition of motion pictures.

27

Distributor. A distributor is a person, firm or corporation engaged in the business of licensing the exhibition of motion pictures and distributing the positive prints of these motion pictures to the exhibitors whom it licenses to exhibit them. Although the prints are usually licensed to the exhibitor, the arrangement is frequently referred to in the industry as a sale.

28

Exchange. An Exchange is an office maintained by a distributor for the purpose of soliciting contracts for the exhibition of its pictures in theatres situated throughout the territory surrounding the exchange, and for the physical distribution of such films throughout this territory. An exchange usually has facilities for the receipt, storage and subsequent shipment to exhibitors of films and advertising matter concerning them.

29

Motion Picture Season. The motion picture season is generally spoken of as covering the period from September 1 of one year to August 31 of the next.

30

Feature Picture. A feature picture is any motion picture, the length of the film of which is approximately five thousand feet or more (approximately five reels) and the running time for the exhibition of which is generally sixty minutes or more.

31

Short Subject. A short subject is a motion picture generally consisting of one or two reels (of approximately one thousand feet per reel) the running time for the exhibition of which is generally eight minutes for a one reel subject to twenty minutes for a two reel subject.

32

First Run. A first run is the initial exhibition of a motion picture in any zone, and is the run which normally grosses larger box office returns than any other run in the zone. The term has great latitude of meaning, because of indefiniteness of determination of the confines of the zone with reference to which the term may be used in particular instances.

33

Second run. A second run is the exhibition of a motion picture in any zone next subsequent to its first-run showing therein.

34

Subsequent Run. A subsequent run is any exhibition of a motion picture in a zone subsequent to its first-run showing therein. Such run may be second-run, third-run, fourth-run, and so on.

35

First-run Theatre. A first-run theatre is a motion picture theatre which customarily exhibits feature pictures on first run.

36

Second-run Theatre. A second-run theatre is a motion picture theatre which customarily exhibits feature pictures on second run.

37

Subsequent-run Theatre. A subsequent-run theatre is a motion picture theatre which customarily exhibits feature pictures on subsequent run.

38

Single and Double Feature Programs. A single feature program is ordinarily composed of the exhibition of a single film of feature length accompanied by other entertainment, either in the form of short subjects and news reels, or sometimes, vaudeville. A double feature program is one composed of the exhibition of two feature length films on one program for a single admission price.

39

First Class Picture. A first class picture is a feature picture which, by reason of either its large cost of production, cast of well-known players, direction, story, advertising exploitation, musical score, or photography, or any combination of those factors, is likely to have strong box office appeal.

40

[fol. 60] *Protection*—Protection is an agreement by a distributor, in licensing the exhibition of a film in a theatre, that it will not permit the exhibition of that film within a specified contiguous area for a specified period of time after the last exhibition thereof in said theatre. The area of protection is designated as the "zone," and the period of time as the "clearance."

41

Closed Town—A closed town is a town in which one exhibitor controls and operates all the theatres.

IV. The Position of the Distributors in the Industry

42

The distributors named in paragraphs 14 through 21, above, have collectively distributed during each of the past ten years approximately ninety percent of the first class feature pictures distributed throughout the United States, including the states in which the Schine defendants operate theatres.

43

Said distributors have collectively distributed during each of the past ten years approximately seventy-five percent of all feature pictures distributed throughout the United States, including the states in which the Schine defendants operate theatres.

44

The feature pictures distributed by distributors other than those named in paragraphs 14 through 21, above, and who will be referred to hereinafter as independent distributors are, for the most part, of a secondary or inferior quality. They are not widely advertised, the actors in them are not well known, their cost of production is usually small, they are not generally exhibited in first class theatres or as first class motion pictures, and the demand by the public to witness their exhibition is comparatively small. The number of satisfactory or suitable feature pictures distributed by independent distributors is wholly inadequate to supply the reasonable needs of any first class theatre. In order successfully to operate a first class theatre in any of the Schine towns, an exhibitor must be able to exhibit a substantial number of feature pictures distributed by the distributors named in paragraphs 14 through 21, above, each year.

V. Violations of Law

45

The defendants, each well knowing all the matters and things hereinbefore alleged, for at least the past ten years have violated and are now violating the provisions of the Sherman Anti-Trust Act by monopolizing, attempting to monopolize, combining and conspiring with each other to monopolize, and contracting, combining, and conspiring to restrain interstate trade and commerce in the distribution [fol. 61] and exhibition of motion pictures, and, unless restrained and prevented by this Honorable Court, the said defendants will continue to violate the provisions of the Sherman Anti-Trust Act as aforesaid. Said monopoly, attempts to monopolize, combination and conspiracy to monopolize, and contracts, combinations, and conspiracies to restrain interstate trade and commerce in the distribution and exhibition of motion pictures, together with the means and instrumentalities by which they have been brought about and accomplished, will now be described in detail.

46

The Schine defendants have combined and conspired with each other and with the distributors to restrain interstate trade and commerce in motion pictures in practically all situations where the Schine defendants, or any one or more of them, operate theatres. The Schine defendants have attempted to monopolize and have monopolized, and have combined and conspired with each other and with the distributors, to monopolize the first-and preferred-run exhibition of motion pictures in practically all situations where the Schine defendants, or any one or more of them operate theatres. The above monopolization, combinations and conspiracies in restraint of trade have been accomplished in the following manner and by other methods to plaintiff unknown:

(a) In practically every situation where the Schine defendants operate theatres, the distributors uniformly grant them the first-and preferred-run in preference to all competing theatres and with protection over said theatres; and in practically all situations where the Schine defendants acquire a theatre such theatre is thereafter granted priority and preference by all distributors over competing theatres and with protection over said theatres.

(b) The distributors have consistently refused to license motion pictures on a local competitive basis to exhibitors in any situations where the Schine defendants operate theatres. During each of the past ten years the Schine defendants have collectively contracted with each of the distributors for all of the feature pictures annually required for exhibition at all of the theatres operated by the Schine defendants in the Schine towns, in advance of the production and distribution of such feature pictures and before such feature pictures or any of them, have been offered to any other exhibitor in said towns, with the purpose and effect of controlling and monopolizing the supply of feature pictures available for exhibition in said towns.

(c) The distributors have uniformly granted the Schine defendants far greater privileges in their licensing contracts and in the exhibition of pictures than are normally granted other exhibitors. They frequently grant the Schine defendants, among other benefits and advantages, substantial rejection privileges, and the right and privilege to play certain [fol. 62] specified feature pictures without assuming any binding obligation to do so. Such rights and privileges are not, as a general rule, granted to other exhibitors.

(d) In many instances the distributors have uniformly refused to sell a second or subsequent run in opposition to a theatre or theatres operated by the Schine defendants.

(e) The distributors have uniformly granted the theatres operated by the Schine defendants unreasonable protection over other theatres.

(f) In many instances the distributors have licensed motion pictures to the Schine defendants at rentals considerably less than those charged other exhibitors for comparable or less favorable runs.

(g) On many occasions the distributors have licensed to the Schine defendants motion pictures greatly in excess of the reasonable exhibition requirements of their theatres, thus preventing other exhibitors from using said pictures at all or from getting them while they are still new.

47

Each of distributors has granted the uniform advantages to the Schine defendants and has imposed the uniform restraints upon competing exhibitors which have been set forth in subparagraphs 46(a) to 46(g), inclusive, in response to requests made by the Schine defendants and pursuant to agreements made with them, with knowledge of the competitive effect, as herein alleged, of the uniformity of action taken by all of said distributor defendants and non-defendant distributors.

48

The Schine defendants own, control and operate what is commonly referred to in the motion picture industry as a circuit of theatres. As a result of the acquisition and operation of numerous theatres, for all of which pictures are purchased by the Schine defendants, said defendants have obtained what is commonly referred to in the motion picture industry as circuit buying power. By the pressure of the combined purchasing power of their theatres, the Schine defendants have induced the distributors to grant them the uniform privileges, contracts, and exclusive rights and to impose upon competing exhibitors the uniform restrictions and restraints set forth in subparagraphs 46(a) to 46(g), inclusive, which privileges, contracts, exclusive rights, restrictions and restraints could not have been obtained by said theatres of the Schine defendants had they been operated by independant rather than chain exhibitors. In many of the Schine towns the only theatre or theatres in operation are the theatres of the Schine circuit. Such towns are referred to as closed towns. By means of this system of circuit buying, the Schine circuit is able to maintain its local monopolies in its closed towns and to combine the power of those monopolies in negotiating for product in areas where some competing theatres exist. This method of circuit buying engaged in by the Schine defend- [fol. 63] ants and the correlative method of circuit selling engaged in uniformly by the distributor defendants and the non-defendant distributors disregards completely local competitive factors in the respective areas where the Schine circuit operates theatres and creates a condition where free enterprise and open competition are completely stifled.

49

By virtue of their circuit buying power, as described above, and their assurance of product, the Schine defendants have been enabled, in combination with each of the distributors, to effectuate and to maintain their monopoly of exhition and to carry out the restraints of trade set forth herein, in the following manner:

(a) The Schine defendants have acquired and attempted to acquire theatres, and have forced and attempted to force competitors out of business for many years past, in some cases as long as eighteen or twenty years ago, by the following methods and others to plaintiff unknown:

1. Threatening to build a theatre in opposition to another exhibitor if he does not agree to sell or lease to them.

(2) Building a theatre in opposition to another exhibitor, thereby taking away his product and relegating him to an inferior position.

(3) Threatening to deprive another exhibitor of desirable product or run if he does not agree to sell or lease to them.

(4) Depriving another exhibitor of desirable product or run, thereby relegating him to an inferior position.

(5) Announcing the proposed construction or opening of a theatre or taking an interest in a theatre site in the neighborhood of another exhibitor, with the suggestion conveyed to that exhibitor, either directly or through third parties, that the Schine defendants intend to build and open a theatre if the other exhibitor will not agree to sell or lease to them.

(6) Acquiring the superior title in a theatre controlled or operated by another exhibitor, and taking over the control or operation of such theatre.

(7) Cutting admission prices in areas where competition exists.

(8) Resorting to unusual and costly games and giveaways in areas where competition exists.

(9) Taking unreasonable protection over other exhibitors.

(b) The Schine defendants have continuously for, at least, the past ten years restrained trade and monopolized the exhibition of motion pictures in the Schine towns in the following manner, and by other methods to plaintiff unknown:

[fol. 64] (1) Monopolizing the first and preferred runs of all the high class feature pictures distributed by the distributors in practically all situations where the Schine defendants operate theatres, and also in some of their situations the most desirable feature pictures distributed by independent distributors.

(2) Contracting for more feature pictures distributed by the distributors than the Schine defendants can reasonably exhibit, thus denying other exhibitors the opportunity of contracting for or exhibiting said feature pictures.

(3) Demanding and receiving unreasonable protection over other exhibitors.

(4) Demanding and receiving more favorable rental terms than other exhibitors in comparable or less favorable situations.

(5) Demanding and receiving more favorable rejection privileges than other exhibitors, and other more advantageous benefits and privileges.

(6) Inducing the granting of privileges and advantages by the distributors through entertainment, gifts, and favors tendered to their representatives.

(c) In order to maintain and perpetuate their monopoly, and in order actively to discourage competition in the Schine towns, the Schine defendants have engaged in the following practices, and in others to plaintiff unknown:

(1) Keeping theatres closed in many of their towns, and opening them or announcing their opening whenever there is any indication that another exhibitor intends to open a theatre in a Schine town.

(2) Keeping theatre sites or acquiring interest in theatre sites in Schine towns and announcing the proposed construction of a theatre whenever there is any indication that another exhibitor intends to open a theatre in a Schine town.

(3) Announcing the proposed construction of a theatre in a Schine town whenever there is any indication that another exhibitor intends to open a theatre in a Schine town.

(4) Communicating with the distributors, whenever there is any indication that another exhibitor intends to open a theatre in a Schine town and reserving for themselves in that town the feature pictures and the run that would normally have been available to such other exhibitor.

(5) Interfering with arrangements, financial, real estate, contractual, or otherwise, being negotiated by other exhibitors with third parties for the acquisition of theatre sites or the acquisition, construction, or operation of theatres by such other exhibitors in Schine towns.

VI. Effect of Violations of Law

50

As the result of the aforesaid contracts, combinations, and conspiracies of the Schine defendants with each other and with the distributors, and as the result of the circuit buying power of the Schine circuit and of the monopolization of the exhibition of the first or preferred runs of high class motion pictures by the Schine defendants in the Schine towns as above alleged, in most instances all other exhibitors who operate a theatre, or theatres, in competition with the Schine defendants, or any of them, are systematically excluded from the opportunity to procure high class pictures under fair, competitive conditions on first or preferred run.

51

Furthermore, as the result of the contracts, combinations, and conspiracies alleged above and of the circuit buying power of the Schine circuit and of the monopolization of the exhibition of the first or preferred runs of high class motion pictures by the Schine defendants in the Schine towns, in practically every situation where any other exhibitor is in competition with the Schine defendants, or any of them, he is systematically relegated to a secondary, inferior position where he may obtain motion pictures only on second or subsequent run, no matter how fine his theatre, or theatres, may be and no matter how much he would be willing to pay for pictures in a free, open, and untrammeled market.

52

In many of the Schine towns, other exhibitors have been forced out of business or compelled to dispose of their theatres by the Schine defendants in combination with the distributors, leaving the Schine defendants as the only exhibitors in said towns. Other exhibitors competing with the Schine defendants have been caused to sustain losses or reduced revenue from the operation of their theatres.

53

In the closed towns controlled by the Schine defendants, the public has been denied the benefits of free enterprise and open competition in the exhibition of motion pictures.

In such towns there is no competition between theatres in admission prices, variety of entertainment, service or in other respects. In practically all the Schine towns the public has been deprived of the benefits which flow from free enterprise and open competition.

54

By virtue of the monopolistic power of the Schine defendants, individuals are denied the right of engaging in the business of exhibiting motion pictures in the Schine towns; or any of them, on a fair, competitive basis.

55

As the result of the monopolization and contracts, combinations and conspiracies, as alleged above, interstate trade and commerce in motion picture films has been unreasonably [fol. 66] restrained, and the public has been subjected to the evils incident to the restraint of competition among exhibitors of motion picture films.

56

Unless perpetually enjoined by the order of this Court, the defendants herein will continue to engage in the alleged unlawful monopoly and contracts, combinations and conspiracies to monopolize and restrain trade, with the result that the monopoly and the attempted monopoly by the Schine defendants will be strengthened and interstate trade and commerce in motion picture films will be unreasonably restrained.

57

Furthermore, the circuit buying power of the Schine defendants is now so great that its continued existence will unreasonably restrain trade and stifle competition in the exhibition of motion pictures in violation of the Sherman Anti-Trust Act in all towns where the Schine defendants have or may hereafter acquire theatres, and will subject competing exhibitors to other and additional restraints, even if the foregoing restraints are enjoined, unless the circuit buying power is eliminated. Said circuit buying power can be eliminated only by the dissolution of the Schine circuit.

VII. *Relief Prayed*

Wherefore, Plaintiff prays:

(1) That summons issue directed to each and every defendant commanding it or him to appear herein and answer the allegations contained in this complaint and to abide by and perform such order and decrees as the Court may make in the premises.

(2) That the Court issue its preliminary injunction restraining the Schine defendants, and each of them, from opening any of their closed theatres and from building, buying, leasing, or otherwise acquiring or operating any additional theatres, or from acquiring any further interest, or interests, in any additional theatres or theatre sites, either directly or indirectly, through the acquisition thereof by subsidiary or associated corporations, or otherwise, until the final decree herein or until the further order of this Court.

(3) That upon final hearing of this cause, the Court order, adjudge and decree that the contracts, combinations and conspiracies in restraint of interstate trade and commerce, together with the attempts to monopolize and the monopolization of the same, hereinbefore described, are illegal and violative of the Sherman Anti-Trust Act.

(4) That the defendants herein, and each of them, and each and all of their respective officers and directors, and each and all of their respective agents, servants and employees, and all persons acting or claiming to act on behalf of the defendants, or any of them, be perpetually enjoined and restrained from continuing to carry out, directly or indirectly, expressly or impliedly, the attempts at monopolization, the monopolies, the contracts, combinations and conspiracies, and all restraints of said interstate trade and commerce in motion pictures described herein, and from entering into any carrying out, directly or indirectly, expressly or impliedly, any monopolies, contracts, combinations, and conspiracies, or restraints of interstate trade and commerce similar to these alleged to be illegal.

• • • • • • •

[fols. 67-68] (6) That the corporate Schine defendants, and each of them, be dissolved, and that the respective properties of said corporate defendants and of the individual Schine defendants be divested and rearranged under several separate and independent corporations or companies in such manner as to terminate effectively the aforesaid monopolistic control in the licensing and exhibition of motion pictures and to prevent further violations of the Sherman Anti-Trust Act, and that said Schine defendants, their officers, directors, agents and representatives be required to make such divestiture and conveyances of their stockholdings and properties as shall be necessary in order to accomplish such dissolution.

(7) That the Court appoint such receivers and trustees as may be necessary and appropriate to effectuate a dissolution of the corporate Schine defendants, and each of them, and a divestiture and rearrangement of the respective properties of said corporate defendants and of the individual Schine defendants in such manner as may effectively bring about the elimination of the aforesaid monopoly in the licensing and exhibition of motion pictures.

(8) That, after such dissolution and divestiture and rearrangement of properties, the Schine defendants, and each of them be perpetually enjoined and restrained from acquiring any additional theatres or financial interests therein, except where they shall establish to the satisfaction of this Court that such acquisitions will not unreasonably restrain competition or create, or tend to create, a monopoly in the licensing of feature pictures or in the operation of motion picture theatres in any of the cities or towns in which the Schine defendants may be permitted by order of this Court to operate theatres.

(9) That the plaintiff recover its costs and disbursements.

(10) That the plaintiff shall have such other and further relief as the court shall deem just and proper.

United States of America, by George L. Grobe, United States Attorney for the Western District of New York. Thurman Arnold, Assistant Attorney General; Holmes Baldridge, Herbert Borkland, Special Assistants to the Attorney General; Seymour Simon, Special Attorney.

[fol. 69] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

ANSWER OF THE DEFENDANTS, SCHINE CHAIN THEATRES, INC., SCHINE CIRCUIT, INC., SCHINE THEATRICAL CO., INC., SCHINE *I*NTERPRISES CORPORATION, SCHINE-LEXINGTON CORPORATION, CHESAPEAKE THEATRES CORPORATION, J. MYER SCHINE, LOUIS W. SCHINE AND JOHN A. MAY

The defendants, Schine Chain Theatres, Inc., Schine Circuit, Inc., Schine Theatrical Co., Inc., Schine Enterprises Corporation, Schine-Lexington Corporation, Chesapeake Theatres Corporation, J. Myer Schine, Louis W. Schine and John A. May, by their solicitors, Edmund McCarthy and Willard S. McKay, for their answer to the second amended complaint herein, as modified and limited by plaintiff's bill of particulars, allege as follows:

First: Admit that the Plaintiff is attempting to bring this proceeding under Section 4 of the Act of Congress of July 2, 1890, 26 Stat. 209, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopo- [fol. 70] lies," said Act being commonly known as the Sherman Anti-Trust Act, but deny that the answering defendants or any of them, have in any way violated or are violating, or intend or are about to violate any section or sections of the Act of July 2, 1890, commonly known as the Sherman Anti-Trust Act.

Second: The answering defendants deny each and every allegation contained in paragraph 2 of the amended complaint and aver that they have not, nor has any one or more of them, acted unlawfully or in violation of the Act of June 2, 1890, within the Western District of New York or elsewhere. The answering defendants further aver and allege that they are not, nor is any one or more of them, engaged in interstate commerce.

Third: Admit the allegations of Paragraphs 3, 4, 5, 6, 8, 9, 10, 11 and 12 of the amended complaint, except that they allege that the principal place of business of Schine Enterprises Corporation is at Gloversville, New York, and that the principal place of business of Chesapeake Theatres Corporation is in the State of Maryland.

Fourth: Answering the allegations of Paragraph 7 of the amended complaint, the answering defendants admit that Schine Chain Theatres of Ohio, Inc. was originally incorporated under the laws of the State of Delaware, but deny that they have knowledge or information sufficient to form a belief as to its present status, or as to its status since the year 1930.

Fifth: Answering the allegations of Paragraph 13 of the amended complaint, for the purposes of this action only, the defendants accept the designations of the answering defendants as the "Schine defendants", except insofar as the said term may be deemed to include Schine Chain Theatres of Ohio, Inc.

[fol. 71] Sixth: Deny that they have knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 14, 15, 16, 17, 18, 19, 20 and 21 of the amended complaint.

Seventh: Deny each and every allegation contained in Paragraph 23 of the amended complaint, except that they admit that the corporate Schine defendants, or corporate subsidiaries or affiliates of one or more of the corporate Schine defendants, operate or participate in the operation of motion picture theatres in each of the cities and towns enumerated in said Paragraph 23 except the town of Avon, New York. The answering defendants further admit that the theatres operated by the corporate Schine defendants or their subsidiary or affiliated corporation are sometimes known as a "Circuit". Except as above admitted the answering defendants deny each and every allegations contained in said Paragraph 23.

Eighth: Answering the allegations of Paragraph 24 of the amended complaint, the answering defendants admit the allegations of the first sentence thereof and further admit that the defendants J. Myer Schine and Louis W. Schine, directly or indirectly, own substantial interests in and are in active management of the defendant, Schine Chain Theatres, Inc., and further admit that the defendant, John A. May, owns a small amount of preferred stock [illegible] the corporate defendant, Schine Chain Theatres, Inc., and further admit that the individual defendants, or some of them, are officers and/or directors of most of the corporate Schine defendants their affiliates or subsidiaries, Except as above admitted the defendants deny each and every allegation contained in said paragraph.

Ninth: Deny that they have knowledge or information sufficient to form a belief as to the truth of the allegations [fol. 72] or any of them, contained in Paragraph 25 of the amended complaint, except that the answering defendants admit that the theatres operated by the corporate Schine defendants or their subsidiaries receive positive prints of motion pictures from the "distributor defendants" and "non-defendant distributors", which positive prints are delivered by branch offices or film exchanges in Albany and Buffalo, New York, Philadelphia, Pennsylvania, Washington, D. C., and Cleveland and Cincinnati, Ohio, and that after the said positive prints are exhibited in the respective theatres to which they have been shipped, they are returned to the distributor's exchange from which they were received unless different shipping instructions have been received from the film exchange which delivered such print. The answering defendants deny that such positive prints are received, exhibited or returned in interstate trade or commerce. Except as above pleaded the answering defendants deny each and every allegations contained in Paragraph 25 of the amended complaint.

Tenth: Deny the allegations of Paragraph 26 of the amended complaint except that they admit that the term "exhibitor" includes all persons, partnerships, associations and corporations engaged in the ownership or operation of theatres for the exhibition of motion pictures.

Eleventh: Admit the allegations contained in Paragraphs 27, 28, 30, 31, 33, 34 and 38 of the amended complaint.

Twelfth: Deny the allegations contained in Paragraph 29 of the amended complaint. The answering defendants allege that the motion picture season covers generally the period from September of one year to August of the following year, but that the exact period differs with respect to the different distributors.

[fol. 73] Thirteenth: Deny the allegations contained in Paragraph 32 of the amended complaint, except that the answering defendants admit that a first run generally means the first exhibition of a motion picture in a particular locality and a first run generally produces the largest monetary return in such locality. The term has considerable latitude of meaning.

Fourteenth: Deny the allegations of Paragraphs 35, 36, and 37 of the amended complaint.

Fifteenth: Deny the allegations contained in Paragraphs 39 and 41 of the amended complaint.

Sixteenth: Deny the allegations contained in Paragraph 40 of the amended complaint, except that the answering defendants admit and allege that it is customary for a license agreement between a distributor and an exhibitor to provide for a period of time after the exhibition of a motion picture in the exhibitor's theatre, during which the distributor will not permit its exhibition within a specified area for a specified period of time after the last exhibition thereof in such exhibitor's theatre. That the agreement by the distributor is sometimes called "protection", that the area is sometimes referred to as "zone" and that the period of time is sometimes referred to as "clearance".

Seventeenth: Deny that they have knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in Paragraphs 42 and 43 of the amended complaint.

Eighteenth: Deny each and every allegation contained in paragraph 44 of the amended complaint.

Nineteenth: Deny each and every allegation contained in Paragraphs 45, 46, 47, 49, 50, 51, 52, 53, 54, 55, 56 and 57 of the amended complaint.

[fol. 74] Twentieth: Answering the allegations of Paragraphs 48 of the amended complaint, the answering defendants deny each and every allegation thereof, except that they admit that the theatres operated by the corporate Schine defendants or their affiliates or subsidiaries are sometimes known as a "circuit" and except that they admit that in some of the towns in which the Schine corporate defendants or their subsidiaries or affiliates operate a theatre or theatres, there are no other motion picture theatres.

For a First, Separate and Distinct Affirmative Defense the Answering Defendants Allege:

Twenty-First: That the amended complaint fails to state a claim upon which belief can be granted against the said defendants, or any of them.

(a) In that the amended complaint fails to state facts sufficient to constitute a cause of action in favor of the plaintiff against the said defendants or any of them, and

(b) In that the amended complaint fails to state facts sufficient to show that the answering defendants or any of them have ever violated or are now violating any act of the Congress of the United States mentioned in the said amended complaint and especially the provisions of Section 4 of the Act of Congress of July 2, 1890, 26 Stat. 209, entitled "An Act to Protect Trade and Commerce against unlawful Restraints and Monopolies," the said Act being commonly known as the Sherman Anti-Trust Law.

For a Second, Separate and Distinct Affirmative Defense the Answering Defendants Allege:

Twenty-Second: That upon the facts stated in the amended complaint herein, the Court has no jurisdiction [fol. 75] over the alleged cause of action set forth in the amended complaint in that no facts are set forth in the amended complaint showing that the answering defendants or any of them are engaged in interstate commerce.

As and for a third, separate and distinct affirmative defense the answering defendants allege:

Twenty-Third: In or about the month of July, 1938, the plaintiff instituted an action in the United States District Court for the Southern District of New York against Paramount Pictures, Inc. and other defendants therein named, which action is entitled United States of America, petitioner, v. Paramount Pictures, Inc., *et al.*, defendants, and bears Index #87-273 In Equity, alleging and claiming that the defendants named in said action had entered into contracts, combinations and conspiracies in restraint of trade in the distribution and exhibition of motion pictures, in violation of the statutes of the United States in such cases made and provided, and particularly in violation of Section 4 of the Act of Congress of July 2, 1890, 26 Stat. 209 entitled "An Act To Protect Trade and Commerce Against Unlawful Restraints and Monopolies", commonly known as the Sherman Anti-Trust Act.

Twenty-Fourth: Subsequent to the commencement of said action and prior to the trial thereof, negotiations were instituted between the plaintiff and certain defendants in said action, to-wit: Paramount Pictures, Inc., Loew's, Inc., Radio-Keith-Orpheum Corporation, Warner Bros. Pictures, Inc., Twentieth Century-Fox Film Corporation and their subsidiary and affiliated companies.

Twenty-Fifth: As a result of said negotiations an agreement, contract, conspiracy or "consent decree" was entered [fol. 76] into between the plaintiff and the said corporations named in paragraph Twenty-fourth hereof, and such decree was thereafter signed and entered in the said action on or about November 20, 1940.

Twenty-Sixth: As a result of said agreement, contract, conspiracy or "consent decree" and pursuant to such agreement, contract, conspiracy or "consent decree" the said corporations, Paramount Pictures, Inc., Loew's, Inc., Radio-Keith-Orpheum Corporation, Warner Bros. Pictures, Inc., and Twentieth Century-Fox Film Corporation were dismissed as defendants in this action and were likewise dismissed as defendants in the action entitled United States of America, Plaintiff, v. Crescent Amusement Co., *et al.*, defendants, pending in the District Court of the United States for the Middle District of Tennessee, Nashville, Division, and bearing Index No. 54 Civil, and in the action entitled United States of America, plaintiff, v. Griffith Amusement Company, *et al.*, defendants, pending in the District Court of the United States for the Western District of Oklahoma and bearing Index No. 172 Civil.

Twenty-Seventh: That the said Paramount Pictures, Inc., Loew's Inc., Radio-Keith-Orpheum Corporation, Warner Bros. Pictures, Inc., and Twentieth Century-Fox Film Corporation were dismissed as defendants in this action as aforesaid, notwithstanding the fact that in and by a bill of particulars signed by its duly authorized Solicitors and Attorneys, and served and filed in this Court pursuant to the order of July 2, 1941, the plaintiff claims and alleges that the said corporations, Paramount Pictures, Inc., Loew's, Inc., Radio-Keith-Orpheum Corporation, Warner Bros.

Pictures, Inc. and Twentieth Century-Fox Film Corporation, who have been dismissed as defendants in this action, and who are designated in the amended complaint [fol. 77] herein as "non-defendant distributors", have collectively distributed during the past ten years approximately fifty percent (50%) of all feature pictures and approximately eighty percent (80%) of all "first-class feature pictures" distributed throughout the United States, including the States in which the answering defendants operate theatres.

Twenty-Eighty: That the said Paramount Pictures, Inc., Loew's Inc., Radio-Keith-Orpheum Corporation, Warner Bros. Pictures, Inc. and Twentieth Century-Fox Film Corporation were dismissed as defendants in this action as aforesaid, notwithstanding the fact that the plaintiff herein still claims, alleges and avers that the said corporations, Paramount Pictures, Inc., Loew's Inc., Radio-Keith-Orpheum Corporation, Warner Bros. Pictures, Inc. and Twentieth Century-Fox Film Corporation, are conspiring with the answering defendants allegedly in violation of the Statutes of the United States in such cases made and provided, and particularly in violation of Section 4 of the Act of Congress of July 2, 1890, 26 Stat. 209, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies", commonly known as the Sherman Anti-Trust Act.

Twenty-Ninth: Notwithstanding the facts as alleged in Paragraph Twenty-eighth hereof, the plaintiff has made no effort, and upon information and belief does not presently contemplate any effort, to bring any proceedings to prevent or restrain the violation by the so-called "non-defendant distributors", who were parties consentant to the said "consent decree", of the provisions of the Sherman Anti-Trust Act, which plaintiff in its bill of particulars claims are still being violated by the said "non-defendant distributors".

[fol. 78] Thirtieth: By reason of the foregoing, the answering defendants allege that the plaintiff does not come into this Court with clean hands and is not entitled to equitable relief in this action.

As and for a fourth, separate and distinct affirmative defense the answering defendants allege:

Thirty-First: That this case was set for trial before this Court on the 19th day of May, 1944.

Thirty-Second: That upon said date, the plaintiff appeared before this Court and moved the dismissal as defendants in this case, of Universal Pictures Co. Inc, Universal Film Exchanges Inc., United Artists Corp., and Columbia Pictures Corp. .

Thirty-Third: That said motion was granted over the opposition of the Schine defendants. That the dismissal of the defendants Universal Pictures Co. Inc., Universal Film Exchanges Inc., United Artists Corp. and Columbia Pictures Corp. was the result of a secret agreement between the plaintiff and the above mentioned defendants, the details of which are unknown to the remaining defendants.

Thirty-Fourth: That the remaining defendants have been severely prejudiced by the dismissal of this cause as against said four above-mentioned defendants.

Thirty-Fifth: That notwithstanding the dismissal of this cause as against said four above-mentioned defendants, the plaintiff still claims that said defendants are still conspiring with the answering defendants, allegedly in violation of the Statutes of the United States, in such cases made and provided, and particularly in violation of Section 4 of the Act [fol. 79] of Congress of July 2, 1890, 26 Stat. 209, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies", commonly known as the Sherman Anti-Trust Act.

Thirty-Sixth: That notwithstanding the facts as above alleged, the plaintiff has made no effort and upon information and belief does not presently contemplate any effort to bring any proceeding to prevent or restrain the violation by said four above named defendants, who were parties hereto prior to May 19, 1944, of the provisions of the Sherman Anti-Trust Act, which plaintiff still claims are being violated by said defendants.

Thirty-Seventh: By reason of the foregoing, the answering defendants allege that the plaintiff does not come into this Court with clean hands, and is not entitled to equitable relief in this action.

As and for a fifth, separate and distinct affirmative defense the answering defendants allege:

Thirty-Eighty: The answering defendants repeat, reiterate and re-allege the allegations contained in Paragraphs Twenty-third to Thirty-seventh inclusive, with the same force and effect as if herein set forth at length.

Thirty-Ninth: That by reason of the premises the plaintiff is guilty of laches.

Wherefore, the defendants, Schine Chain Theatres, Inc., Schine Circuit, Inc., Schine Theatrical Co. Inc., Schine Enterprises Corporation, Schine-Lexington Corporation, Chesapeake Theatres Corporation, J. Myer Schine, Louis W. Schine and John A. May, having fully answered the amended complaint herein, demand judgment dismissing [fol. 80] the amended complaint herein, together with costs and disbursements of this action.

Willard S. McKay, 630 Fifth Avenue, New York, New York; Edmund M. McCarthy, 70 Pine Street, New York, New York, Solicitors for Schine Chain Theatres, Inc., Schine Circuit, Inc., Schine Theatrical Co. Inc., Schine Enterprises Corporation, Schine-Lexington Corporation, Chesapeake Theatres Corporation, J. Myer Schine, Louis W. Schine and John A. May.

[fol. 81] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

BILL OF PARTICULARS

1

Now comes the United States of America, the plaintiff in this action, by George L. Grobe, United States Attorney for the Western District of New York, and for further and better [fol. 82] particulars of the allegations contained in paragraph 44 of the complaint, and in response to paragraph II.B of the defendants' specification of demands for a bill of particulars, states that the distributors referred to by the phrase "other distributors who are not defendants herein" are all distributors of motion pictures other than those named herein as defendants.

2

With respect to the allegations contained in paragraph 45 of the complaint, the plaintiff has heretofore filed particulars in response to paragraph III of the defendants' specification of demands for a bill of particulars.

3

For further and better particulars of the allegations contained in paragraph 46 of the complaint, and in response to paragraph IV.C of the defendants' specification of demands for a bill of particulars, the plaintiff states that the situations referred to by the phrase "practically all situations" in paragraph 46 of the complaint are as follows: Amsterdam, N. Y.; Ashland, Ohio; Athens, Ohio; Auburn, N. Y.; Bath, N. Y.; Bellefontaine, Ohio; Bucyrus, Ohio; Buffalo, N. Y.; Cambridge, Md.; Canandaigua, N. Y.; Carthage, N. Y.; Corbin, Ky.; Corning, N. Y.; Cortland, N. Y.; Delaware, Ohio; Dolgeville, N. Y.; Easton, Md.; Fostoria, Ohio; Geneva, N. Y.; Glens Falls, N. Y.; Gloversville, N. Y.; Hamilton, N. Y.; Herkimer, N. Y.; Hudson Falls, N. Y.; Hurlock, Md.; Ilion, N. Y.; Kent, Ohio; Lake Placid, N. Y.; Laurel, Del.; Lexington, Ky.; Little Falls, N. Y.; Lockport, N. Y.; Malone, N. Y.; Massena, N. Y.; Maysville, Ky.; Medina, Ohio; Milford, Del.; Mt. Vernon, Ohio; Newark, N. Y.; Norwalk, Ohio; Norwich, N. Y.; Ogdensburg, N. Y.; Oneonta, N. Y.; Oswego, [fol. 83] N. Y.; Paris, Ky.; Penn Yann, N. Y.; Perry, N. Y.; Piqua, Ohio; Ravenna, Ohio; Richmond, Ky.; Rochester, N. Y.; Salamanca, N. Y.; Salisbury, Md.; Saranac Lake, N. Y.; Seneca Falls, N. Y.; Shelby, Ohio; Syracuse, N. Y.; Tiffin, Ohio; Tupper Lake, N. Y.; Van Wert, Ohio; Watertown, N. Y.; Whitehall, N. Y.; Wooster, Ohio.

4

For further and better particulars of the allegations contained in paragraph 46(a) of the complaint, and in response to paragraph V. A(1) of the defendants' specification of demands for a bill of particulars, the plaintiff states that the names and locations of the theatres to which preference or protection were granted by the distributor defendants, and the distributor defendants granting such preferne or protection are respectively as follows:

Theatre	Location	Preference and protection granted by
Strand Theatre	Ogdensburg, N. Y.	All distributor defendants
Capitol Theatre	Newark, N. Y.	All distributor defendants
Strand Theatre	Delaware, Ohio	Paramount and United Artists
Strand Theatre	Hudson Falls, N. Y.	All distributor defendants
Rialto Theatre	Lockport, N. Y.	Fox, Universal, Warner Bros., Vitagraph, Coumbia, Paramount, and R. K. O.
Strand Theatre	Carthage, N. Y.	All distributor defendants
Malone Theatre	Malone, N. Y.	All distributor defendants

[fol. 84]

Theatre	Location	Preference and protection granted by
Vine Theatre	Mount Vernon, Ohio	Paramount, Fox, Warner Bros., R. K. O., Universal, and United Artists
Forum Theatre	Norwalk, Ohio	All distributor defendants
Colonial Theatre	Norwich, N. Y.	All distributor defendants
Van Wert Theatre	Van Wert, Ohio	All distributor defendants

5

In response to paragraph V. D. of the defendants' specification of demands for a bill of particulars, the plaintiff states that the theatres acquired by the Schine defendants, which, after such acquisition, have been granted priority or preference over competing theatres by the distributor defendants, and the distributor defendants granting such priority or preference, are respectively as follows:

Theatre	Location	Preference and protection granted by
Strand Theatre	Ogdensburg, N. Y.	All distributor defendants
Capitol Theatre	Newark, N. Y.	All distributor defendants
Strand Theatre	Delaware, Ohio	Paramount and United Artists

Theatre	Location	Preference and protection granted by
Strand Theatre	Hudson Falls, N. Y.	All distributor defendants
Strand Theatre	Carthage, N. Y.	All distributor defendants
[fol. 85] Forum Theatre	Norwalk, Ohio	All distributor defendants
Colonial Theatre	Norwich, N. Y.	All distributor defendants
Van Wert Theatre	Van Wert, Ohio	All distributor defendants

6

In response to paragraph V. E of the defendants' specification of demands for a bill of particulars, the plaintiff states that the names and locations of competing theatres, over which theatres acquired by the Schine defendants have been granted priority and preference, are set forth below; the distributor defendants granting such priority and preference are stated for the respective situations in the particulars of the allegations of paragraph 46(a) of the complaint heretofore set forth: Star Theatre, Delaware, Ohio; Palace Theatre, Lockport, N. Y.; Plaza Theatre, Malone, N. Y.; Memorial Theatre, Mount Vernon, Ohio; Moose Theatre, Norwalk, Ohio; Smalley Theatre, Norwich, N. Y.; Ohio Theatre, Van Wert, Ohio.

7

For further and better particulars of the allegations contained in paragraph 46(b) of the complaint, and in response to paragraph VI. A (1) of the defendants' specification of demands for a bill of particulars, the plaintiff states that all of the distributor defendants have consistently refused to license motion pictures on a local competitive basis to the Plaza Theatre at Malone, New York; and that the defendant Fox has so refused to license to the Memorial Theatre at Mount Vernon, Ohio.

[fol. 86] 8

With respect to the allegations contained in paragraph 45 of the complaint, the plaintiff has heretofore filed particulars in response to paragraph VII. of the defendants' specification of demands for a bill of particulars.

9

For further and better particulars of the allegations contained in paragraph 46(d) of the complaint, and in response to paragraph VIII. A of the defendants' specification of demands for a bill of particulars, the plaintiff states that the instances comprehended by the phrase "in many instances" appearing in paragraph 46(d) of the complaint, include the following: Palace Theater, Lockport, New York; Plaza Theater, Malone, New York; Memorial Theater, Mount Vernon, Ohio; Capital Theater, Auburn, New York.

10

In response to paragraph VIII. E of the defendants' specification of demands for a bill of particulars, the plaintiff states that it is claimed that the refusal to sell a second or subsequent run to the Plaza Theater at Malone was made at the request of the Schine defendants. With respect to the other instances hereinbefore set forth of refusal to sell a second or subsequent run in opposition to a theater or theaters operated by the Schine defendants, the plaintiff is unable to state at this time whether or not such refusal was made at the request of the Schine defendants.

11

For further and better particulars of the allegations contained in paragraph 46 (e) of the complaint, and in response to paragraph IX. A of the defendants' specification of demands for a bill of particulars, the plaintiff states that the [fol. 87] names and locations of the theaters over which it is claimed that unreasonable protection was granted to the Schine defendants by the distributor defendants, and the distributor defendants granting such unreasonable protection are as follows:

Theatre	Location	Unreasonable protection granted by
American Theatre	Canton, New York	All distributor defendants
Playhouse Theatre	Clyde, New York	All distributor defendants
Avalon Theatre	Lowville, New York	All distributor defendants

12

In response to paragraph IX. A(3) of the defendants' specification of demands for a bill of particulars, the plaintiff is unable to state at this time the precise manner in which such protection was granted.

13

For further and better particulars of the allegations contained in paragraph 46(f) of the complaint, and in response to paragraph X. A of the defendants' specification of demands for a bill of particulars, the plaintiff states that the number of instances comprehended by the phrase "in many instances" contained in paragraph 46(f) of the complaint is four.

14

In response to paragraph X. B of the defendants' specification of demands for a bill of particulars, the plaintiff states that the names and locations of the theatres operated by exhibitors claimed to have been charged more, for com- [fol. 88] parable or less favorable runs, than the Schine defendants include the following: Capital Theatre, Auburn, N. Y.; Palace Theatre, Corning, N. Y.; Madison Theatre, Rochester, N. Y.; Monroe Theatre, Rochester, N. Y.

15

For further and better particulars of the allegations contained in paragraph 46(g) of the complaint, and in response to paragraph XI. A of the defendants' specification of demands for a bill of particulars, the plaintiff states that the number of occasions comprehended by the phrase "on many occasions" contained in paragraph 46(g) of the complaint is four.

16

In response to paragraph XI.C of the defendant's specification of demands for a bill of particulars, the plaintiff states that the names and locations of the exhibitors, who are claimed to have been prevented from using motion pictures which were licensed to the Schine defendants in excess of the reasonable exhibition requirements of their theatres, or from obtaining said pictures while they are still new, include the following: Aleck P. Papayanakos, Canton, N. Y.; Reliance Theatres, Inc., Lockport, N. Y.;

Michael Boumansour, Malone, N. Y.; Emerson W. Long, Mount Vernon, Ohio.

17

In response to paragraph XL.F of the defendant's specification of demands for a bill of particulars, the plaintiff states that the extent to which the licensing of motion pictures to the Schine defendants prevented such other exhibitors from obtaining the same, and the manner in which such result was accomplished in the instances referred to in the preceding paragraph, are as follows:

[fol. 89]

Exhibitor	Extent of Loss of Product	Manner in which such Result was Accomplished
Aleck P. Papayanakos	Delay of 60 to 75 days in exhibition after first run.	Not known.
Reliance Theatres Inc.	Not known.	By contract with the Schine defendants.
Michael Baumansour	No product received.	By contract with the Schine defendants.
Emerson W. Long	No product received.	Not known.

18

For further and better particulars of the allegations contained in paragraph 48 of the complaint, and in response to paragraph XIII.B of the defendants' specification of demands for a bill of particulars, the plaintiff states that the names and locations of the towns in which Schine maintains a local monopoly are as follows: Ashland, Ohio; Athens, Ohio; Ballston, N. Y.; Bath, N. Y.; Bellefontaine, Ohio; Bucyrus, Ohio; Cambridge, Md.; Canandaigua, N. Y.; Carthage, N. Y.; Corbin, Ky.; Cortland, N. Y.; Easton, Md.; Fostoria, Ohio; Geneva, N. Y.; Gloversville, N. Y.; Hudson Falls, N. Y.; Hurlock, Md.; Illion, N. Y.; Kent, Ohio; Laurel, Del.; Little Falls, N. Y.; Lockport, N. Y.; Milford, Del.; Mount Vernon, Ohio; Newark, N. Y.; Norwalk, Ohio; Norwich, N. Y.; Ogdensburg, N. Y.; Oneonta, N. Y.; Paris, Ky.; Penn Yan, N. Y.; Perry, N. Y.; Ravenna, N. Y.; Seneca Falls, N. Y.; Tiffin, Ohio.

19

In response to paragraph XIII.C of the defendants' specification of demands for a bill of particulars, the plain-

[fol. 90] tiff states that the names and locations of the competing theatres are as follows: Orpheum Theatre, Amsterdam, N. Y.; Capital Theatre, Auburn, N. Y.; Jubilee Theatre, Buffalo, N. Y.; New Plaza Theatre, Corning, N. Y.; Strand Theatre, Delaware, Ohio; Park Theatre, State Theatre,

• • • • • • • •

Ohio; Richmond, Ky.; Salamanca, N. Y.; Saranac Lake, and Paramount Theatre, Glens Falls, N. Y.; Smalley's theatre, Hamilton, N. Y.; Ada Meade Theatre and Opera House Theatre, Lexington, Ky.; Plaza Theatre, Malone, N. Y.; Hollywood Theatre and Washington Theatre, Maysville, Ky.; Medina Theatre, Medina, Ohio; Rialto Theatre, Massena, N. Y.; Strand Theatre and Orpheum Theatre, Oswego, N. Y.; Webster Theatre, Rochester, N. Y.; Uhlmans Theatre, New Theatre and Wicomico Theatre, Salisbury, Md.; Opera House Theatre, Shelby Theatre, and State Theatre, Shelby, Ohio; Ohio Theatre, Van Wert, Ohio; Liberty Theatre, Strand Theatre, and Victoria Theatre, Watertown, N. Y.

20

In response to paragraph XIII.D of the defendants' specification of demands for a bill of particulars, the plaintiff states that the identity and location of the towns, in which the plaintiff claims that the only theatre or theatres in operation are the theatres of the Schine circuit, have been set forth heretofore in response to paragraph XIII.B of the defendants' specification of demands for a bill of particulars.

21

In response to paragraph XIII.G of the defendants' specification of demands for a bill of particulars, the plaintiff states that the term "local competitive factors" includes the price offered by an exhibitor for the privilege of exhibiting a picture, and that all of the distributor de-[fol. 91] fendants have disregarded such factors in licensing motion pictures.

22

In response to paragraph XIII.H of the defendants' specification of demands for a bill of particulars, the plaintiff states that the competing exhibitors referred to in the said paragraph 48 of the complaint include Hubert P. Wallace, Auburn, N. Y.; Sidney J. Cohen, Buffalo, N. Y.;

Michael Boumansour, Malone, N. Y.; Ralph T. Kemper, Shelby, Ohio; Carl Brinton Moore, Van Wert, Ohio; Peter C. Vournakis, Watertown, N. Y.

23

For further and better particulars of the allegations contained in paragraph 49(a) of the complaint and in response to paragraph XV A of the defendants' specification of demands for a bill of particulars, the plaintiff states that the motion picture theatres that the Schine defendants have acquired for many years past, as alleged in said paragraph are the following: Regent Theatre, Rialto Theater, Strand Theater, Amsterdam, N. Y.; Opera House Theater, Palace Theater, Ashland, Ohio; Athena Theater, Court Theater, Ohio Theater, Athens, Ohio; Jefferson Theater, Palace Theater, Strand Theater, Auburn Theater, Auburn, N. Y.; Capitol Theater, Ballston, N. Y.; Babcock Theater, Bath, N. Y.; Court Theater, Holland Theater, Strand Theater, Bellefontaine, Ohio; Southern Theater, State Theater, Ohio Theater, Bucyrus Theater, Bucyrus, Ohio; Granada Theater, Jubilee Theater, Riverside Theater, Buffalo, N. Y.; Arcade Theater, Grand Opera Theater, Cambridge, Md.; Playhouse Theater, Canandaigua, N. Y.; Strand Theater, Carthage, N. Y.; Hippodrome Theater, Kentucky Theater, Corbin, Ky.; Fox State Theater, New Fox Theater, Palace Theater, Corning, N. Y.; Cortland Theater, [fol. 92] State Theater, Temple Theater, Cortland, N. Y.; Star Theater, Strand Theater, Delaware, Ohio; Strand Theater, Dolgeville, N. Y.; Music Hall Theater, Avalon Theater, Easton, Md.; Rialto Theater, East Rochester, N. Y.; Temple Theater, Fairport, N. Y.; Roxy Theater, Civic Theater, State Theater, Fostoria, Ohio; Regent Theater, Temple Theater, Geneva Theater, Geneva, N. Y.; Empire Theater, Rialto Theater, Glens Falls, N. Y.; Glove Theater, Hippodrome Theater, Gloversville, N. Y.; State Theater, Hamilton, N. Y.; Liberty Theater, Herkimer, N. Y.; Strand Theater, Hudson Falls, N. Y.; Hurlock Theater, Hurlock, Md.; Capitol Theater, Opera House Theater, Ilion, N. Y.; New Kent Theater, Opera House Theater, Kent, Ohio; Palace Theater, Lake Placid, N. Y.; New Waller Theater, Laurel, Del.; Ben Ali Theater, Kentucky Theater, Strand Theater, State Theater, Lexington, Ky.; Rialto Theater, Hippodrome Theater, Little Falls, N. Y.; Hi-Art Theater, Palace Theater; Rialto Theater, Lockport, N. Y.; Plaza Theater, Malone Theater, Malone, N. Y.; Russel Theater, Maysville, Ky.; Princess Theater, Medina, Ohio; Massena Theater, Massena, N. Y.; Plaza Theater, Milford, Del.; Lyric Theater, Vine Theater, Ohio Theater, Vernon Theater, Mt. Vernon, Ohio; Capitol Theater, Newark, N. Y.; Moose Theater, Forum Theater, Norwalk, O.; Colonial Theater, Smalley Theater, Norwich, N. Y.; Star Theater, Strand Theater, Pontiac Theater, Ogdensburg, N. Y.; Oneonta Theater, Palace Theater, Strand Theater, Oneonta, N. Y.; Capitol Theater, Richardson Theater, Strand Theater, State Theater, Oswego, N. Y.; Bourbon Theater, Paris, Ky.; Elmwood Theater, Penn Yan, N. Y.; Auditorium Theater, Perry, N. Y.; Ohio Theater, Piqua Theater, Miami Theater, Piqua, Ohio; Ravenna Theater, Ravenna, Ohio; Madison Theater, State Theater, Richmond, Ky.; Dixie Theater, Grand Theater, Liberty Theater, Riviera Theater, State Theater, [fol. 93] Cameo Theater, Lake Theater, Rochester, N. Y.; Andrews Theater, Salamanca, N. Y.; Arcade Theater, Salisbury, Md.; Pontiac Theater, Saranac Lake, N. Y., Strand Theater, Seneca Falls, N. Y.; Castamba Theater, Shelby, Ohio; Eckel Theater, Paramount Theater, Keith Theater, Strand Theater, Syracuse, N. Y.; Tiffin Theater, Ritz Theater, Grand Theater, Tiffin, Ohio; State Theater, Tupper Lake, N. Y.; Strand Theater, Van Wert Theater, Ohio Theater, Van Wert, Ohio; Avon Theater, Olympic Theater, Palace Theater, Watertown, N. Y.; Capitol Theater, Whitehall, N. Y.; Wooster Theater, Opera House Theater, Wayne Theater, Wooster, O.

24

In response to paragraph XV.B of the defendants' specification of demands for a bill of particulars, the plaintiff states that the motion picture theatres that the Schine defendants have attempted to acquire as alleged in paragraph 49(a) of the complaint are the Capitol Theater, Auburn, N. Y.; Palace Theater, Lancaster, Ohio; Memorial Theater, Mount Vernon, Ohio; and State Theater, Shelby, Ohio.

25

In response to paragraph XV.C of the defendants' specification of demands for a bill of particulars, the plaintiff states that the competitors that the Schine defendants have forced out of business as alleged in said paragraph, include John Buchman, Delaware, Ohio.

26

In response to paragraph XV.D of the defendants' specification of demands for a bill of particulars, the plaintiff states that the competitors that the Schine defendants have [fol. 94] attempted to force out of business as alleged in said paragraph, include Hubert P. Wallace, Auburn, N. Y.; Reliance Theatres, Inc., Lockport, N. Y.; Emerson W. Long, Mount Vernon, Ohio, Carl Brinton Moore, Van Wert, Ohio.

27

With respect to the allegations contained in paragraph 49(a) of the complaint, the plaintiff has heretofore filed particulars in response to paragraph XV.F of the defendants' specification of demands for a bill of particulars.

28

The plaintiff has likewise filed particulars in response to paragraph XV.G of the defendants' specification of demands for a bill of particulars.

29

For further and better particulars of the allegations contained in paragraph 49(a) (1) of the complaint, and in response to paragraph XVI.A of the defendants' specification of demands for a bill of particulars, the plaintiff states that the instances in which it is claimed that the Schine defendants threatened to build a theater in opposition to another exhibitor, relate to Leo Kessel, Lancaster, Ohio; and Emerson W. Long, Mount Vernon, Ohio.

30

In response to paragraph XVI.B of the defendants' specification of demands for a bill of particulars, the plaintiff states that the theaters that the Schine defendants have acquired for many years past are as follows: Regent Theater, Rialto, Theater, Strand Theater, Amsterdam, N. Y.; Opera House Theater, Palace Theater, Ashland, Ohio; [fol. 95] Athens Theater, Court Theater, Ohio Theater, Athens, Ohio; Jefferson Theater, Palace Theater, Strand

Theater, Auburn Theater, Auburn, N. Y.; Capitol Theater, Ballston, N. Y.; Babcock Theater, Bath, N. Y.; Court Theater, Holland Theater, Strand Theater, Bellefontaine, Ohio; Southern Theater, State Theater, Ohio Theater, Bucyrus Theater, Bucyrus, Ohio; Granada Theater, Jubilee Theater, Riverside Theater, Buffalo, N. Y.; Arcade Theater, Grand Opera Theater, Cambridge, Md.; Playhouse Theater, Canandaigua, N. Y.; Strand Theater, Carthage, N. Y.; Hippodrome Theater, Kentucky Theater, Corbin, Ky.; Fox State Theater, New Fox Theater, Palace Theater, Corning, N. Y.; Cortland Theater, State Theater, Temple Theater, Cortland, N. Y.; Star Theater, Strand Theater, Delaware, Ohio; Strand Theater, Dolgeville, N. Y.; Music Hall Theater, Avalon Theater, Easton, Md.; Rialto Theater, East Rochester, N. Y.; Temple Theater, Fairport, N. Y.; Roxy Theater, Civic Theater, State Theater, Fostoria, Ohio; Regent Theater, Temple Theater, Geneva Theater, Geneva, N. Y., Empire Theater, Rialto Theater, Glens Falls, N. Y.; Glove Theater, Hippodrome Theater, Gloversville, N. Y.; State Theater, Hamilton, N. Y.; Liberty Theater, Herkimer, N. Y.; Strand Theater, Hudson Falls, N. Y.; Hurlock Theater, Hurlock, Md.; Capitol Theater, Opera House Theater, Illion, N. Y.; New Kent Theater, Opera House, Theater, Kent, Ohio; Palace Theater, Lake Placid, N. Y.; New Waller Theater, Laurel, Del.; Ben Ali Theater, Kentucky Theater, Strand Theater, State Theater, Lexington, Ky.; Rialto Theater, Hippodrome Theater, Little Falls, N. Y.; Hi-Art Theater, Palace Theater, Rialto Theater, Lockport, N. Y.; Plaza Theater, Malone Theater, Malone, N. Y.; Russel Theater, Maysville, Ky.; Princess Theater, Medina, Ohio; Massena Theater, Massena, N. Y.; Plaza Theater, Milford, [fol. 96] Del.; Lyric Theater, Vine Theater, Ohio Theater, Vernon Theater, Mt. Vernon, Ohio; Capitol Theater, Newark, N. Y.; Moose Theater, Forum Theater, Norwalk, Ohio; Colonial Theater, Smalley Theater, Norwick, N. Y.; Star Theater, Strand Theater, Pontiac Theater, Ogdensburg, N. Y.; Oneonta Theater, Palace Theater, Strand Theater, Oneonta, N. Y.; Capitol Theater, Richardson Theater, Strand Theater, State Theater, Oswego, N. Y.; Bourbon Theater, Paris, Ky.; Elmwood Theater, Penn Yan, N. Y.; Auditorium Theater, Perry, N. Y.; Ohio Theater, Piqua Theater, Miami Theater, Piqua, Ohio; Ravenna Theater, Ravenna, Ohio; Madison Theater, State Theater, Richmond, Ky.; Dixie Theater, Grand Theater, Liberty Theater, Riviera Theater, State Theater, Cameo Theater, Lake Theater, Rochester, N. Y.; Andrews Theater, Salamanca, N. Y.; Arcade Theater, Salisbury, Md.; Pontiac Theater, Saranac Lake, N. Y.; Strand Theater, Seneca Falls, N. Y.; Castamba Theater, Shelby, Ohio; Eckel Theater, Paramount Theater, Keith Theater, Strand Theater, Syracuse, N. Y.; Tiffin Theater, Ritz Theater, Grand Theater, Tiffin, Ohio; State Theater, Tupper Lake, N. Y.; Strand Theater, Van Wert Theater, Ohio Theater, Van Wert, Ohio; Avon Theater, Olympic Theater, Palace Theater, Watertown, N. Y.; Capitol Theater, Whitehall, N. Y.; Wooster Theater, Opera House Theater, Wayne Theater, Wooster, Ohio.

31

For further and better particulars of the allegations contained in paragraph 49(a) (2) of the complaint, and in response to paragraph XVII. of the defendants' specification of demands for a bill of particulars, the plantiff states that the theatres which it is claimed that the Schine defendants constructed in opposition to another exhibitor, include [fol. 97] the Auburn Theater, Auburn, N. Y.; Riverside Theater, Buffalo, N. Y.; Vernon Theater, Mount Vernon, Ohio; Van Wert Theater, Van Wert, O.

For further and better particulars of the allegations contained in paragraph 49(a) (4) of the complaint, and in response to paragraph XIX. A of the defendants' specification of demands for a bill of particulars, the plaintiff states that the exhibitors other than the Schine defendants who have been deprived of desirable product or runs, and the periods of such deprivations, are as follows;

Theater	Exhibitor	Period of Deprivation
Capitol Theater, Auburn, N. Y.	Hubert P. Wallace	Oct. 1, 1934 to date
Star Theater, Delaware, O.	John Buchman	On or about July 1, 1936 to March 29, 1938
Palace Theater, Lockport, N. Y.	Reliance Theaters, Inc.	Oct. 21, 1933 to 1936
Memorial Theater, Mount Vernon, O.	Emerson W. Long	Dec. 31, 1934 to July 1935
Moose Theater, Norwalk, O.	Joseph H. Felter	July 1935 to Oct. 1936
Ohio Theater, Van Wert, O.	Carl B. Moore	Aug. 1935 to date

33

For further and better particulars of the allegations contained in paragraph 49(a) (5) of the complaint, and in response to paragraph XX. A of the defendants' specification of demands for a bill of particulars, the plaintiff states that the Schine defendants announced the proposed construction and opening of a theater in the neighborhood of another exhibitor at Lancaster, O., and Mount Vernon, O.

[fol. 98] 34

In response to paragraph XX. B of the defendants' specification of demands for a bill of particulars, the plaintiff states that the Schine defendants took an interest in a theater site in the neighborhood of another exhibitor at Malone, N. Y., and that the nature of such interest was an option to purchase real property.

35

In response of paragraph XX. C of the defendants' specification of demands for a bill of particulars, the plaintiff states that the instances referred to in response to paragraphs XX.A and XX. B of the defendants' specification of demands, relating to theaters in the neighborhood of which such construction or opening was announced, or such interest acquired, by the Schine defendants, are of the names and locations and are operated by the exhibitors indicated below:

Theater	Location	Exhibitor
Palace Theater	Lancaster, Ohio	Leo Kessel
Memorial Theater	Mount Vernon, Ohio	Emerson W. Long
Plaza Theater	Malone, New York	Michael Boumansour

36

For further and better particulars of the allegations contained in paragraph 49(a) (6) of the complaint, and in response to paragraph XXI of the defendants' specification of demands for a bill of particulars, the plaintiff states that the Schine defendants, or some of them, acquired superior title in a theater controlled and operated by another exhibitor, and took over the control and operation of such theater in the instance of the Seneca Theater, theretofore operated by Richard DeToto.

[fol. 99]

37

For further and better particulars of the allegations contained in paragraph 49(a) (9) of the complaint, and in response to paragraph XXIV of the defendants' specification of demands for a bill of particulars, the plaintiff states that the Schine defendants took unreasonable protection over other exhibitors in the instances of the following theaters: American Theater, Canton, N. Y.; Playhouse Theater, Clyde, N. Y.; Avalon Theater, Lowville, N. Y.

38

With respect to the allegations contained in paragraph 49(b) of the complaint, the plaintiff has heretofore filed particulars in response to paragraph XXV of the defendants' specification of demands for a bill of particulars.

39

For further and better particulars of the allegations contained in paragraph 49(b) (1) of the complaint, and in response to paragraph XXVI. A of the defendants' specification of demands for a bill of particulars, the plaintiff states that the situations in which it is claimed that the Schine defendants monopolized the first and preferred runs of all the high-class feature pictures distributed by the distributor defendants are as follows: Ogdensburg, N. Y.; Newark, N. Y.; Delaware, Ohio; Hudson Falls, N. Y.; Lockport, N. Y.; Carthage, N. Y.; Malone, N. Y.; Mount Vernon, Ohio; Norwalk, Ohio; Norwich, N. Y.; Van Wert, Ohio.

40

In response to paragraph XXVI. B of the defendants' specification of demands for a bill of particulars, the plaintiff states that at the present time it has no precise knowledge of the situations in which the Schine defendants monopolized the first and preferred runs of the most [fol. 100] desirable feature pictures distributed by indipendent exhibitors.

41

For further and better particulars of the allegations contained in paragraph 49(b) (3) of the complaint, and in response to paragraph XXVIII. A of the defendants' specification of demands for a bill of particulars, the plaintiff states that the Schine defendants have demanded and received unreasonable protection over other exhibitors at Canton, N. Y.; Clyde, N. Y., and Lowville, N. Y.

42

With respect to the allegations contained in paragraph 49(b) (4) of the complaint, the plaintiff has heretofore filed particulars in response to paragraph XXIX of the defendants' specification of demands for a bill of particulars.

43

The plaintiff has likewise filed particulars in response to paragraph XXXII.A of the defendants' specification of demands for a bill of particulars.

44

The plaintiff has likewise filed particulars in response to paragraph XXXII. B of the defendants' specification of demands for a bill of particulars.

45

For further and better particulars of the allegations contained in paragraph 49(c) (1) of the complaint, and in response to paragraph XXXIII. A of the defendants' specification of demands for a bill of particulars, the plaintiff states that the names and locations of the theaters [fol. 101] which it is claimed that the Schine defendants kept closed, as alleged in said paragraphs are the Strand Theater, Seneca Falls, N. Y.; and the Lyric Theater, Mount Vernon, Ohio.

46

For further and better particulars of the allegations contained in paragraph 49(c)(2) of the complaint, and in response to paragraph XXXIV. A of the defendants' specification of demands for a bill of particulars, the plaintiff states that the Schine defendants kept the site of the Temple Theater in Geneva, N. Y., as alleged in paragraph 49(c) of the complaint.

47

For further and better particulars of the allegations contained in paragraph 49(c) (4) of the complaint, and in response to paragraph XXXXV. D of the defendants' specification of demands for a bill of particulars, the plaintiff states that it is claimed that there was an indication that another exhibitor intended to open a theater in Geneva, N. Y., a Schine town, as alleged in said paragraph of the complaint, and that such other exhibitor was Louis Dipillo.

48

For further and better particulars of the allegations contained in paragraph 49(c)(5) of the complaint, and in response to paragraph XXXVI. A of the defendants' specifications of demands for a bill of particulars, the plaintiff states that the Schine defendants interfered with arrangements, financial, real estate, contractual, or otherwise, between other exhibitors and third parties for the acquisition of theater sites, or the acquisition, construction or operation of theaters at Mount Vernon, Ohio, and Seneca Falls, N. Y.

49

In response to paragraph XXXVI. G of the defendants' specification of demands for a bill of particulars, the plaintiff states that it is claimed that another exhibitor was prevented from acquiring a theater or theater site by reason of such alleged interference.

50

In response to paragraph XXXVI. H of the defendants' specification of demands for a bill of particulars, the plaintiff states that the name of such exhibitor is Richard DeToto.

51

For further and better particulars of the allegations contained in paragraph 50 of the complaint, and in response to paragraph XXXVII of the defendants' specification of demands for a bill of particulars, the plaintiff states that the names of the exhibitors claimed to have been systematically excluded from the opportunity of procuring high-class pictures under fair competitive conditions on first or preferred runs, and the locations of the theaters operated by such exhibitors are respectively as follows:

Exhibitor	Location
Irving Cohen and J. Morris Gaby	Corning, N. Y.
John Buchman	Delaware, O.
N. K. Smith	Glens Falls, N. Y.
Reliance Theaters, Inc.	Lockport, N. Y.
Michael Boumansour	Malone, N. Y.
Emerson W. Long	Mount Vernon, O.
Joseph H. Felter	Norwalk, O.
William C, Smalley	Norwich, N. Y.
Carl B. Moore	Van Wert, O.

[fol. 103]

52

For further and better particulars of the allegations contained in paragraph 51 of the complaint, and in response to paragraph XXXVIII of the defendants' specification of demands for a bill of particulars, the plaintiff states that the names of the exhibitors claimed to have been systematically relegated to a secondary, inferior position where they have obtained motion pictures only on second or subsequent runs, are as follows:

Exhibitor	Location
Irving Cohen and J. Morris Gaby	Corning, N. Y.
John Buchman	Delaware, O.
N. K. Smith	Glens Falls, N. Y.
Reliance Theatres, Inc.	Lockport, N. Y.
Michael Boumansour	Malone, N. Y.
Emerson W. Long	Mount Vernon, O.
Joseph H. Felter	Norwalk, O.
William C. Stanley	Norwich, N. Y.
Carl B. Moore	Van Wert, O.

53

For further and better particulars of the allegations contained in paragraph 52 of the complaint, and in response to paragraph XXXIX of the defendants' specification of demands for a bill of particulars, the plaintiff states that the exhibitors claimed to have been forced out of business or compelled to dispose of their theaters are as follows: John Bahas, Ashland, O.; John Buchman, Delaware, O.;

Reliance Theatres, Inc., Lockport, N. Y.; Joseph H. Felter, Norwalk, O.

54.

In response to paragraph XXXIX. B of the defendants' specification of demands for a bill of particulars, the plain- [fol. 104] tiff states that the other exhibitors competing with the Schine defendants claimed to have been compelled to sustain losses or reduced revenue from the operation of their theaters are Clark Amusement Company, Fort Covington, N. Y., and William C. Smalley, Johnstown, N. Y.

55

For further and better particulars of the allegations contained in paragraph 54 of the complaint, and in response to paragraph XLI of the defendants' specification of demands for a bill of particulars, the plaintiff states that the names and locations of the individuals who have been denied the right of engaging in the business of exhibiting motion pictures in the Schine towns or any of them on a fair competitive basis, and the Schine towns referred to are as follows:

Individual	Location and Schine Town
Hubert P. Wallace	Auburn, N. Y.
Sidney J. Cohen	Buffalo, N. Y.
J. Morris Gaby	Corning, N. Y.
Frederick Gerber	Corning, N. Y.
John Buchman	Delaware, O.
Louis Dipillo	Geneva, N. Y.
Richard DeToto	Geneva, N. Y.
Michael Boumansour	Malone, N. Y.
Emerson W. Long	Mount Vernon, O.
Joseph K. Felter	Norwalk, O.
Ralph T. Kemper	Shelby, O.
Carl B. Moore	Van Wert, O.

56

The plaintiff has incomplete knowledge and information as to each of the items contained in this bill of particulars, [fol. 105] and hereby reserves its right to furnish further particulars after it has obtained further knowledge and information.

Dated July 8th, 1940.

United States of America, by George L. Grobe, United States Attorney.

Herbert Borkland, Special Assistant to the Attorney General. Thorold Deyrup, Special Attorney.

[fol. 106] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

BILL OF PARTICULARS

Now comes the United States of America, the plaintiff in this action, by George L. Grobe, United States Attorney for the Western District of New York, and for further and better particulars of certain of the allegations contained in the complaint, and in accordance with the order of this Court entered September 16, 1940, the plaintiff serves this [fol. 107] bill of particulars upon the defendant Columbia Pictures Corporation.

1

The names and locations of the first run theatres in each of the cities and towns in which it is claimed that a Schine defendant operates or controls a theatre or theatres are respectively as follows:

Theatre	*Location*
Auburn	Auburn, N. Y.
Palace; Opera House	Ashland, Ohio
Capitol	Ballston Spa, N. Y.
Babcock	Bath, N. Y.
Playhouse	Canandaigua, N. Y.
Strand	Carthage, N. Y.
Hippodrome	Corbin, Ky.
Strand	Delaware, Ohio
Strand	Geneva, N. Y.
Paramount; Rialto	Glens Falls, N. Y.
Liberty	Herkimer, N. Y.
Rialto	Little Falls, N. Y.

Theatre	*Location*
Rialto	Lockport, N. Y.
Malone	Malone, N. Y.
Plaza	Milford, Delaware
Vine	Mt. Vernon, Ohio
Capitol	Newark, N. Y.
Forum	Norwalk, Ohio
Colonial	Norwich, N. Y.
Bourbon	Paris, Ky.
Elmwood	Penn Yan, N. Y.
Auditorium	Perry, N. Y.
Ravenna	Ravenna, Ohio
Madison	Richmond, Ky.
Andrews	Salamanca, N. Y.
Pontiac	Saranac Lake, N. Y.

[fol. 108]

Theatre	*Location*
Strand	Seneca Falls, N. Y.
Castamba; State	Shelby, Ohio
State	Tupper Lake, N. Y.
Van Wert	Van Wert, Ohio
Avon; Palace; Olympic	Watertown, N. Y.
Capitol	Whitehall, N. Y.

2

The plaintiff is unable at the present time to identify the distributors referred to by the phrase, "other distributors who are not defendants herein."

3

(a) The plaintiff is unable at the present time to state the exact period of time during which the plaintiff claims the Sherman antitrust law has been violated by any act done or omitted to be done by the defendant Columbia Pictures Corporation.

(b) The plaintiff does not claim that the defendants have monopolized, attempted to monopolizze, combined or conspired to monopolize, or contracted, conspired or combined to restrain interstate trade and commerce in the distribution and exhibition of pictures in violation of the provisions of the Sherman antitrust act by any means or instrumentalities other than as alleged in paragraphs 46, 47, 48 and 49 of the complaint.

4

The situations referred to by the phrase, "practically all situations" contained in paragraph 46 of the complaint are as follows:

Amsterdam, N. Y.; Ashland, Ohio; Athens, Ohio; Auburn, N. Y.; Bath, N. Y.; Bellefontaine, Ohio; Bucyrus, Ohio; Buffalo, N. Y.; Cambridge, Md.; [fol. 109] Canandaigua, N. Y.; Carthage, N. Y.; Corbin, Ky.; Corning, N. Y.; Cortland, N. Y.; Delaware, Ohio; Dolgeville, N. Y.; Easton, Md.; Fostoria, Ohio; Geneva, N. Y.; Glens Falls, N. Y.; Hamilton, N. Y.; Herkimer, N. Y.; Hudson Falls, N. Y.; Hurlock, Md.; Illion, N. Y.; Kent, Ohio; Lake Placid, N. Y.; Laurel, Del.; Lexington, Ky.; Little Falls, N. Y.; Lockport, N. Y.; Malone, N. Y.; Massena, N. Y.; Maysville, Ky.; Medina, Ohio; Milford, Del.; Mt. Vernon, Ohio; Newark, N. Y.; Norwalk, Ohio; Norwich, N. Y.; Ogdensburg, N. Y.; Oneonta, N. Y.; Oswego, N. Y.; Paris, Ky.; Penn Yan, N. Y.; Perry, N. Y.; Piqua, Ohio; Ravenna, Ohio; Richmond, Ky.; Rochester, N. Y.; Salamanca, N. Y.; Salisbury, Md.; Saranac Lake, N. Y.; Seneca Falls, N. Y.; Shelby, Ohio; Syracuse, N. Y.; Tiffin, Ohio; Tupper Lake, N. Y.; Van Wert, Ohio; Watertown, N. Y.; Whitehall, N. Y.; Wooster, Ohio.

5

(a) The names and locations of the theatres to which grants of preference or protection were made by each distributer defendant as alleged in paragraph 46 (a) of the complaint are as follows:

Theatre	*Location*
Strand Theatre	Ogdensburg, N. Y.
Capitol Theatre	Newark, N. Y.
Strand Theatre	Delaware, Ohio
Strand Theatre	Hudson Falls, N. Y.
Rialto Theatre	Lockport, N. Y.
Strand Theatre	Carthage, N. Y.
Malone Theatre	Malone, N. Y.
Vine Theatre	Mt. Vernon, Ohio
Forum Theatre	Norwalk, Ohio.
Colonial Theatre	Norwich, N. Y.
Van Wert Theatre	Van Wert, Ohio.

[fol. 110] (b) The names and locations of theatres acquired by Schine defendants which, after such acquisition, have been granted priority and preference over competing theatres by the distributer defendants and the distributer defendants granting such preference and protection are as follows:

Theatre	Location	Preference and Protection Granted By
Strand Theatre	Ogdensburg, N. Y.	All distributor defendants
Capitol Theatre	Newark, N. Y.	All distributor defendants.
Strand Theatre	Delaware, Ohio	Paramount and United Artists
Strand Theatre	Hudson Falls, N. Y.	All distributor defendants
Strand Theatre	Carthage, N. Y.	All distributor defendants
Forum Theatre	Norwalk, Ohio	All distributor defendants
Colonial Theatre	Norwich, N. Y.	All distributor defendants
Van Wert Theatre	Van Wert, Ohio	All distributor defendants

(c) The names and locations of the competing theatres over which theatres acquired by the Schine defendants have been granted priority and preference are set forth below:

Theatre	*Location*
Star Theatre	Delaware, Ohio
Palace Theatre	Lockport, N. Y.
Plaza Theatre	Malone, N. Y.
Memorial Theatre	Mt. Vernon, Ohio
Moose Theatre	Norwalk, Ohio
Smalley Theatre	Norwich, N. Y.
Ohio Theatre	Van Wert, Ohio

[fol. 111] The distributer defendants granting such priority and preference are stated for the respective situations in the particulars of the allegations of paragraph 46 (a) of the complaint heretofore set forth.

6

The names and locations of the theatres which the defendant distributers have refused to license on a local competitive basis are the Plaza Theatre, Malone, New York, and the Memorial Theatre, Mt. Vernon, Ohio.

7

(a) The plaintiff does not claim that the phrase "far greater privileges" includes privileges other than the "substantial rejection privileges" and the "right and privilege to play certain specified feature pictures without assuming any binding obligation to do so."

(b) The plaintiff is unable at the present time to identify each and every one of the "other benefits and advantages" which are claimed to have been granted by each of the distributer defendants to any of the Schine defendants and not as a general rule granted to other exhibitors.

8

(a) The instances comprehended by the phrase "in many instances" appearing in paragraph 46 (d) of the complaint include the following:

Theatre	*Location*
Palace Theatre	Lockport, N. Y.
Plaza Theatre	Malone, N. Y.
Memorial Theatre	Mt. Vernon, Ohio
Capitol Theatre	Auburn, N. Y.

(b) It is claimed that the refusal to sell a second or subsequent run picture to the Plaza Theatre, Malone, New [fol. 112] York, was made at the request of the Schine defendants. With respect to the other instances of refusal to sell a second or subsequent run picture in opposition to a theatre or theatres operated by the Schine defendants, the plaintiff is unable to state at this time whether or not such refusals were made at the request of the Schine defendants.

9

With respect to each instance where it is claimed that Columbia Pictures Corporation granted to the Schine defendants unreasonable protection over other theatres, the names and locations of the Schine theatres and the names and locations of the theatres over which such unreasonable protection was granted are respectively as follows:

Schine Theatre	*Theatre Over Which Protection was granted*
Strand Theatre Ogdensburg, N. Y.	American Theatre Canton, N. Y.
Capitol Theatre Newark, N. Y.	Playhouse Clyde, N. Y.
Strand Theatre Carthage, N. Y.	Avalon Theatre Lowville, N. Y.

The names of the defendants operating each of the Schine theatres mentioned in this paragraph are at the present time unknown to the plaintiff.

10

(a) The approximate number of instances comprehended by the phrase "in many instances" appearing in paragraph 46 (f) of the complaint is four.

(b) The names and locations of the theatres operated by exhibitors claimed to have been charged more "for comparable or less favorable runs" than the Schine defendants are as follows:

[fol. 113]

Theatre	*Location*
Capitol Theatre	Auburn, N. Y.
Palace Theatre	Corning, N. Y.
Madison Theatre	Rochester, N. Y.
Monroe Theatre	Rochester, N. Y.

11

(a) The approximate number of occasions comprehended by the phrase "on many occasions" appearing in paragraph 46 (g) of the complaint is four.

(b) The names and addresses of the "other exhibitors" referred to in said paragraph who are claimed to have been prevented from using pictures or from obtaining them while they are still new are as follows:

Name	*Address*
Aleck P. Papayanakos	Canton, New York
Reliance Theatres, Inc.	Lockport, New York
Michael Boumansour	Malone, New York
Emerson W. Long	Mt. Vernon, Ohio.

(c) The extent to which the licensing of motion pictures to the Schine defendants prevented such other exhibitors from obtaining the same, and the manner in which such result was accomplished in the instances referred to in the preceding paragraph are as follows:

Exhibitor	Extent of Loss of Product	Manner in Which Such Result Was Accomplished
Aleck P. Papayanakos	Delay of 60 to 75 days in exhibition after first run.	Not known.

[fol. 114]

Exhibitor	Extent of Loss of Product	Manner in Which Such Result Was Accomplished
Reliance Theatres, Inc.	Not known.	By contract with the Schine defts.
Michael Baumansour	No product received.	By contract with the Schine defts.
Emerson W. Long	No product received.	Not known.

12

The names and locations of the theatres and the operators thereof which the plaintiff claims were affected by the uniform restraints imposed by the distributer defendants, as alleged in paragraph 47 of the complaint, are respectively as follows:

Theatre	Operator
Capitol Theatre, Auburn, N. Y.	Hubert P. Wallace
Ohio Theatre, Ashland, Ohio	John Bahas
Ohio Theatre, Athens, Ohio,	Henry Bieberson
Columbia Theatre, Athens, Ohio	Henry Bieberson
Jubilee Theatre, Buffalo, New York	Jubilee Realty Company Schwartz & Cohen
American Theatre, Canton, New York	Aleck P. Papayanakos
Playhouse Theatre, Clyde, New York	Caroline Perriello
Plaza Theatre, Corning, New York	Morris J. Gaby
Liberty Theatre, Corning, N. Y	Frederick Gerder
Star Theatre, Delaware, Ohio	John Buchmann
Seneca Theatre, Seneca Falls, N. Y.	Lucy Riccardillo
State Theatre, Glens Falls, N. Y.	N. K. Smith
Town Hall Theatre, Homer, N. Y.	Murray Brisken
Corona Theatre, Groton, N. Y.	Murray Brisken
State Theatre, Waterloo, N. Y.	Murray Brisken

[fol. 115]

Theatre	Operator
Palace Theatre, Lockport, N. Y.	Reliance Theatres, Inc.
Avalon Theatre, Lowville, N. Y.	Ernest J. Wolfe
Ohmann Theatre, Lyons, N. Y.	Burt Ohmann

Theatre	Operator
Plaza Theatre, Malone, N. Y.	Michael Boumansour
Memorial Theatre, Mt. Vernon, N. Y.	Emerson W. Long
Crescent Theatre, Newark, N. Y.	W. G. Croucher
Star Theatre, Northville, N. Y.	C. H. Dopp
Strand Theatre, Johnstown, N. Y.	C. H. Dopp
Hollywood Theatre, Frankfort, N. Y.	C. H. Dopp
Poland Theatre, Poland, N. Y.	C. H. Dopp
Moose Theatre, Norwalk, Ohio	Joseph Felter
Elmwood Theatre, Penn Yan, N. Y.	Mrs. Harry C. Morse
Madison Theatre, Rochester, N. Y.	Fenyvessy Enterprises
Monroe Theatre, Rochester, N. Y.	Fenyvessy Enterprises
State Theatre, Shelby, Ohio	Ralph T. Kemper
Ohio Theatre, Van Wert, Ohio	Carl Brinton Moore
Strand Theatre, Waterloo, N. Y.	Peter C. Vournakis
Liberty Theatre, Waterloo, N. Y.	Peter C. Vournakis

In the case of each of the theatres mentioned, the manner in which such theatre was affected was through financial loss.

13

(a) The towns embraced within the term "closed towns" include the following: Ashland, Ohio; Athens, Ohio; Ballston, New York; Bath, N. Y.; Bellefontaine, Ohio; Bucyrus, Ohio; Cambridge, Md.; Canadaigua, N. Y.; Carthage, N. Y.; Corbin, Ky.; Cortland, N. Y.; Easton, Md.; Fostoria, Ohio; Geneva, N. Y.; Gloversville, N. Y.; Hudson Falls, N. Y.; Hurlock, Md.; Illion, N. Y.; Kent, Ohio; Laurel, Del.; Little Falls, N. Y.; Lockport, N. Y.; Milford, Del.; Mount Vernon, Ohio; Newark, N. Y.; Norwalk, Ohio; Norwich, N. Y.; Ogdensburg, N. Y.; Oneonta, N. Y.; [fol. 116] Paris, Ky.; Penn Yan, N. Y.; Perry, N. Y.; Ravenna, Ohio; Richmond, Ky.; Salamanca, N. Y.; Saranac Lake, N. Y.; Seneca Falls, N. Y.; Tiffin, Ohio.

(b) The names and locations of the towns in which the plaintiff claims that the Schine defendants maintained a local monpoly are the same as those indicated under paragraph 13(a) of this bill of particulars.

(c) The names and locations of the competing theatres are as follows:

Theatre	*Location*
Orpheum Theatre	Amsterdam, New York
Capitol Theatre	Auburn, New York
Jubilee Theatre	Buffalo, New York

Theatre	*Location*
New Plaza Theatre	Corning, New York
Strand Theatre	Delaware, Ohio
Park Theatre	Glens Falls, New York
State Theatre	
Paramount Theatre	
Smalley's Theatre	Hamilton, New York
Ada Meade Theatre and Opera House Theatre	Lexington, Kentucky
Plaza Theatre	Malone, New York
Hollywood Theatre and Washington Theatre	Maysville, Kentucky
Medina Theatre	Medina, Ohio
Rialto Theatre	Massena, New York
Strand Theatre and Orpheum Theatre	Oswego, New York
Webster Theatre	Rochester, New York
Uhlmans Theatre	Salisbury, Maryland
New Theatre	
Wicomico Theatre	
Opera House Theatre	Shelby, Ohio
Shelby Theatre	
State Theatre	
Ohio Theatre	Van Wert, Ohio
Liberty Theatre	Watertown, New York
Strand Theatre	
Victoria Theatre	

[fol. 117]

(d) The names and locations of the towns in which the only theatre or theatres in operation are the theatres of the so-called Schine Circuit are those indicated under paragraph 13 (a) of this bill of particulars.

(e) The competing exhibitors referred to in paragraph 48 of the complaint include the following: Hubert P. Wallace, Auburn, New York; Sidney J. Cohen, Buffalo, New York; Michael Boumansour, Malone, New York; Ralph T. Kemper, Shelby, Ohio; Carl Brinton Moore, Van Wert, Ohio; Peter C. Vournakis, Watertown, New York.

14

(a) The motion picture theatres which the Schine defendants have acquired as alleged in paragraph 49 (a) of the complaint are as follows: Regent Theatre, Rialto Theatre, Strand Theatre, Amsterdam, New York; Opera House Theatre, Palace Theatre, Ashland, Ohio; Athena Theatre, Court Theatre, Ohio Theatre, Athens, Ohio; Jefferson Theatre, Palace Theatre, Strand Theatre, Auburn Theatre, Auburn, New York; Capitol Theatre, Ballston, New York; Babcock Theatre, Bath, New York; Court Theatre, Holland Theatre, Bucyrus Theatre, Bucyrus, Ohio; Granada Theatre, Jubilee Theatre, Riverside Theatre, Buffalo, New York; Arcade Theatre, Grand Opera Theatre, Cambridge, Maryland; Playhouse Theatre, Canandaigua, New York; Strand Theatre, Carthage, New York; Hippodrome Theatre, Kentucky Theatre, Corbin, Kentucky; Fox State [fol. 118] Theatre, New Fox Theatre, Palace Theatre, Corning, New York; Cortland Theatre, State Theatre, Temple Theatre, Cortland, New York; Star Theatre, Strand Theatre, Delaware, Ohio; Strand Theatre, Dolgeville, New York; Music Hall Theatre, Avalon Theatre, Easton, Maryland; Rialto Theatre, East Rochester, New York; Temple Theatre, Fairport, New York; Roxy Theatre, Civic Theatre, State Theatre, Fostoria, Ohio; Regent Theatre, Temple Theatre, Geneva Theatre, Geneva, New York; Empire Theater, Rialto Theatre, Glens Falls, New York; Glove Theatre, Hippodrome Theatre, Gloversville, New York; State Theatre, Hamilton, New York; Liberty Theatre, Herkimer, New York; Strand Theatre, Hudson Falls, New York; Hurlock Theatre, Hurlock, Maryland; Capitol Theatre, Opera House Theatre, Illion, New York; New Kent Theatre, Opera House Theatre, Kent, Ohio; Palace Theatre, Lake Placid, New York; New Waller Theatre, Laurel, Delaware; Ben Ali Theatre, Kentucky Theatre, Strand Theatre, State Theatre, Lexington, Kentucky; Rialto Theatre, Hippodrome Theatre, Little Falls, New York; Hi-Art Theatre, Palace Theatre, Rialto Theatre, Lockport, New York; Plaza Theatre, Malone Theatre, Malone, New York; Russel Theatre, Maysville, Kentucky; Princess Theatre, Medina, Ohio; Massena Theatre, Massena, New York; Plaza Theatre, Milford, Delaware; Lyric Theatre, Vine Theatre, Ohio Theatre, Vernon Theatre, Mt. Vernon, Ohio; Capitol Theatre, Newark, New York; Moose Theatre, Forum Theatre, Norwalk, Ohio; Colonial Theatre, Smalley Theatre, Norwich, New York; Star Theatre, Strand Theatre, Pontiac Theatre, Ogdensburg, New York; Oneonta Theatre, Palace Theatre, Strand Theatre, Oneonta, New York; Capitol Theatre, Richardson Theatre, Strand Theatre, State Theatre, Oswego, New York; Bourbon Theatre, Paris, Kentucky; Elmwood Theatre, Penn Yan, New York; Auditorium Theatre, Perry, New York; Ohio Theatre, Piqua Theatre, Miami [fol. 119] Theatre, Piqua, Ohio; Ravenna Theatre, Ravenna, Ohio; Madison Theatre, State Theatre, Richmond, Kentucky; Dixie Theatre, Grand Theatre, Liberty Theatre, Riviera Theatre, State Theatre, Cameo Theatre, Lake Theatre, Rochester, New York; Andrews Theatre, Salamanca, New York; Arcade Theatre, Salisbury, Maryland; Pontiac Theatre, Saranac Lake, New York; Strand Theatre, Seneca Falls, New York; Castamba Theatre, Shelby, Ohio; Eckel Theatre, Paramount Theatre, Keith Theatre, Strand Theatre, Syracuse, New York; Tiffin Theatre, Ritz Theatre, Grand Theatre, Tiffin, Ohio; State Theatre, Tupper Lake, New York; Strand Theatre, Van Wert Theatre, Ohio Theatre, Van Wert, Ohio; Avon Theatre, Olympic Theatre, Palace Theatre, Watertown, New York; Capitol Theatre, Whitehall, New York; Wooster Theatre, Opera House Theatre, Wayne Theatre, Wooster, Ohio.

(b) The theatres which the Schine defendants have attempted to acquire are: Capitol Theatre, Auburn, New York; Palace Theatre, Lancaster, Ohio; Memorial Theatre, Mount Vernon, Ohio; and State Theatre, Shelby, Ohio.

(c) The competitors whom the Schine defendants have forced out of business include John Buchmann, Delaware, Ohio.

(d) The competitors whom the Schine defendants have attempted to force out of business include Hubert P. Wallace, Auburn, New York; Reliance Theatres, Inc., Lockport, New York; Emerson W. Long, Mount Vernon, Ohio, and Carl Brinton Moore, Van Wert, Ohio.

(e) The plaintiff does not claim that any method other than those set forth in paragraph 49 (a), (1) to (9), inclusive, were used by the Schine defendants for the purpose of acquiring and attempting to acquire theatres and forcing and attempting to force competitors out of business.

[fol. 120] (f) It is claimed that the distributer defendants participated and assisted in doing the acts alleged in subparagraphs (1) to (8), inclusive, of paragraph 49 (a) of the complaint.

(a) The instances in which it is claimed that the Schine defendants threatened to build a theatre in opposition to another exhibitor as alleged in paragraph 49 (a), (1), relate to Leo Kessel, Lancaster, Ohio, and Emerson W. Long, Mount Vernon, Ohio.

(b) The motion picture theatres that the Schine defendants have acquired as alleged in said paragraph are as follows: Regent Theatre, Rialto Theatre, Strand Theatre, Amsterdam, New York; Opera House Theatre, Palace Theatre, Ashland, Ohio; Athens Theatre, Court Theatre, Ohio Theatre, Athens, Ohio; Jefferson Theatre, Palace Theatre, Strand Theatre, Auburn Theatre, Auburn, New York; Capitol Theatre, Ballston, New York; Babcock Theatre, Bath, New York; Court Theatre, Holland Theatre, Strand Theatre, Bellefontaine, Ohio; Southern Theatre, State Theatre, Ohio Theatre, Bucyrus Theatre, Bucyrus, Ohio; Granada Theatre, Jubilee Theatre, Riverside Theatre, Buffalo, New York; Arcade Theatre, Grand Opera Theatre, Cambridge, Maryland; Playhouse Theatre, Canandaigua, New York; Strand Theatre, Carthage, New York; Hippodrome Theatre, Kentucky Theatre, Corbin, Kentucky; Fox State Theatre, New Fox Theatre, Palace Theatre, Corning, New York; Cortland Theatre, State Theatre, Temple Theatre, Cortland, New York; Star Theatre, Strand Theatre, Delaware, Ohio; Strand Theatre, Dolgeville, New York; Music Hall Theatre, Avalon Theatre, Easton, Maryland; Rialto Theatre, East Rochester, New York; Temple Theatre, Fairport, New York; Roxy Theatre, Civic Theatre, State Theatre, [fol. 121] Fost[illegible], Ohio; Regent Theatre, Temple Theatre, Geneva Theatre, Geneva, New York; Empire Theatre, Rialto Theatre, Glens Falls, New York; Glove Theatre, Hippodrome Theatre, Gloversville, New York; State Theatre, Hamilton, New York; Liberty Theatre, Herkimer, New York; Strand Theatre, Hudson Falls, New York; Hurlock Theatre, Hurlock, Maryland; Capitol Theatre, Opera House Theatre, Ilion, New York; New Kent Theatre, Opera House Theatre, Kent, Ohio; Palace Theatre, Lake Placid, New York; New Waller Theatre, Laurel, Delaware; Ben Ali Theatre, Kentucky Theatre, Strand Theatre, State Theatre, Lexington, Kentucky; Rialto Theatre, Hippodrome Theatre, Little Falls, New York; Hi-Art Theatre, Palace Theatre, Rialto Theatre, Lockport, New York; Plaza Theatre, Malone Theatre, Malone, New York; Russell Theatre, Maysville, Kentucky; Princess Theatre, Medina, Ohio; Massena Theatre, Massena, New York; Plaza Theatre, Milford, Delaware; Lyric Theatre, Vine Theatre, Ohio Theatre, Vernon Theatre, Mt. Vernon, Ohio; Capitol Theatre, Newark, New York; Moose Theatre, Forum Theatre, Norwalk, Ohio; Colonial Theatre, Smalley Theatre, Norwich, New York; Star Theatre, Strand Theatre, Pontiac Theatre, Ogdensburg, New York; Oneonta Theatre, Palace Theatre, Strand Theatre, Oneonta, New York; Capitol Theatre Richardson Theatre, Strand Theatre, State Theatre, Oswego, New York; Bourbon Theatre, Paris, Kentucky; Elmwood Theatre, Penn Yan, New York; Auditorium Theatre, Perry, New York; Ohio Theatre, Piqua Theatre, Miami Theatre, Piqua, Ohio; Ravenna Theatre, Ravenna, Ohio; Madison Theatre, State Theatre, Richmond, Kentucky; Dixie Theatre, Grand Theatre, Liberty Theatre, Riviera Theatre, State Theatre, Cameo Theatre, Lake Theatre, Rochester, New York; Andrews Theatre, Salamanca, New York; Arcade Theatre, Salisbury, Maryland; Pontiac Theatre, Saranac Lake, New York; Strand Theatre, Seneca [fol. 122] Falls, New York; Castamba Theatre, Shelby, Ohio; Eckel Theatre, Paramount Theatre, Keith Theatre, Strand Theatre, Syracuse, New York; Tiffin Theatre, Ritz Theatre, Grand Theatre, Tiffin, Ohio; State Theatre, Tupper Lake, New York; Strand Theatre, Van Wert Theatre, Ohio Theatre, Van Wert, Ohio; Avon Theatre, Olympic Theatre, Palace Theatre, Watertown, New York; Capitol Theatre, Whitehall, New York; Wooster Theatre, Opera House Theatre, Wayne Theatre, Wooster, Ohio.

16

The theatres which the Schine defendants constructed as alleged in paragraph 49 (a), (2), of the complaint include the Auburn Theatre, Auburn, New York; Riverside Theatre, Buffalo, New York; Vernon Theatre, Mount Vernon, Ohio; Van Wert Theatre, Van Wert, Ohio.

17

The theatres and exhibitors deprived of desirable product or runs as alleged in paragraph 49 (a), (4), of the complaint, and the respective periods of deprivation are as follows:

Theatre	Exhibitor	Period of Deprivation
Capitol Theatre, Auburn, New York	Hubert P. Wallace	Oct. 1, 1934 to date
Star Theatre, Delaware, Ohio	John Buchmann	On or about July 1, 1936 to March 29, 1938
Palace Theatre, Lockport, New York	Reliance Theatres, Inc.	Oct. 21, 1933 to 1936
Memorial Theatre, Mt. Vernon, Ohio	Emerson W. Long	Dec. 31, 1934 to July, 1935
Moose Theatre, Norwalk, Ohio	Joseph H. Felter	July 1935 to Oct. 1936
Ohio Theatre, Van Wert, Ohio	Carl B. Moore	Aug. 1935 to date.

[fol. 123] 18

(a) The Schine defendants announced the proposed construction and opening of a theatre in the neighborhood of another exhibitor at Lancaster, Ohio, and at Mt. Vernon, Ohio.

(b) The Schine defendants took an interest in a theatre site in the neighborhood of another exhibitor at Malone, New York, and such interest was an option to purchase real property.

(c) The names and locations of the theatres in whose neighborhood the Schine defendants announced construction, or acquired an interest, are as follows:

Theatre	*Location*	*Exhibitor*
Palace Theatre	Lancaster, Ohio	Leo Kessel
Memorial Theatre	Mt. Vernon, Ohio	Emerson W. Long
Plaza Theatre	Malone, New York	Michael Boumansour.

19

The Schine defendants acquired superior title in the theatre operated by another exhibitor in the case of the Seneca Theatre theretofore operated by Richard DeTato.

20

Theatres operated by the Schine defendants took unreasonable protection over the following theatres: American Theatre, Canton, New York; Playhouse Theatre, Clyde, New York; Avalon Theatre, Lowville, New York.

21

(a) The plaintiff does not claim that any methods other than those set forth in paragraph 49 (b), (1) to (6), inclusive, were used by the Schine defendants for the purpose of restraining trade and monopolizing the exhibition of motion pictures in the Schine towns.

[fol. 124] (b) The plaintiff is unable to identify at the present time each Schine town in which it is claimed that the Schine defendants have restrained trade and monopolized the exhibition of motion pictures.

22

(a) The Schine defendants monopolized the first and preferred runs of all the "high class" feature pictures distributed by the distributor defendants in the following towns: Ogdensburg, New York; Newark, New York; Delaware, Ohio; Hudson Falls, New York; Lockport, New York; Carthage, New York; Malone, New York; Mount Vernon, Ohio; Norwalk, Ohio; Norwich, New York; Van Wert, Ohio.

(b) The plaintiff is unable to identify at the present time each situation in which it is claimed that the Schine defendants monopolized the first and preferred runs of the most desirable feature pictures distributed by independent distributors.

23

The Schine defendants have demanded and received unreasonable protection over other exhibitors in Canton, New York, Clyde, New York and Lowville, New York.

24

(a) The phrase "more favorable rental terms" as used in paragraph 49 (b), (4), of the complaint is not intended to apply only to the price paid for pictures.

(b) The phrase "more favorable rental terms" is intended to apply not only to the price paid for pictures, but also to the price paid for the news reels and short subjects distributed by the distributer whose pictures are involved, and also to the score charges paid on such pictures.

25

The plaintiff is unable to state at the present time the nature of each claim, privilege or advantage referred to in [fol. 125] paragraph 49 (b), (6), of the complaint, the granting of which by Columbia was induced through entertainment, gifts and favors tendered to the representatives of the defendant, Columbia.

26

(a) A practice engaged in by the Schine defendants, other than those set forth in paragraph 49 (c), (1) to (5), inclusive, in order to maintain and perpetuate a monopoly and actively to discourage competition in the Schine town, is the taking over of theatres by the Schine defendants for the purpose of closing them, demolishing them, or otherwise eliminating their competition as motion picture theatres.

(b) It is claimed that the distributor defendants participated in and assisted the Schine defendants in doing the acts alleged in subparagraphs (1), (2) and (5) of paragraph 49 (c) of the complaint.

27

The theatres which it is claimed that the Schine defendants kept closed as alleged in paragraph 49 (c), (1), of the complaint are the Strand Theatre, Seneca Falls, New York, and the Lyric Theatre, Mount Vernon, Ohio.

28

The theatre sites or interests kept or acquired by the Schine defendants as alleged in paragraph 49 (c), (2), of the complaint include the site of the Temple Theatre, Geneva, New York.

29

There was an indication that another exhibitor intended to operate a theatre in Geneva, New York, a Schine town, as alleged in paragraph 49 (c), (4), of the complaint and such exhibitor was Louis Dipillo.

[fol. 126] 30

(a) The Schine defendants interferred with arrangements, financial, real estate, contractual or otherwise between other exhibitors and third parties in Mount Vernon, Ohio, and Seneca Falls, New York.

(b) It is claimed that other exhibitors were prevented from acquiring a theatre or theatres by reason of such interference.

(c) The exhibitors include Richard DeToto.

31

(a) The exhibitors claimed to have been excluded from the opportunity to procure pictures as alleged in paragraph 50 of the complaint are as follows:

Irving Cohen and J. Morris Gaby, Corning, New York; John Buchmann, Delaware, Ohio; N. K. Smith, Glens Falls, New York; Reliance Theatres, Inc., Lockport, New York; Michael Boumansour, Malone, New York; Emerson W. Long, Mount Vernon, Ohio; Joseph H. Felter, Norwalk, Ohio; William C. Smalley, Norwich, New York; Carl B. Moore, Van Wert, Ohio.

(b) The names and the locations of the theatres operated by such exhibitors are:

Plaza Theatre, Corning, New York; Star Theatre, Delaware, Ohio; State Theatre, Glens Falls, New York; Palace Theatre, Lockport, New York; Plaza Theatre, Malone, New York; Memorial Theatre, Mt. Vernon, Ohio; Smalley's Theatre, Norwich, New York, and the Ohio Theatre, Van Wert, Ohio.

32

The exhibitors claimed to have been relegated to a secondary or inferior position as alleged in paragraph 51 of the [fol. 127] complaint are as follows: Irving Cohen and J. Morris Gaby; John Buchmann; N. K. Smith; Reliance Theatres, Inc.; Michael Boumansour; Emerson W. Long; Joseph H. Felter; William C. Smalley and Carl B. Moore.

33

(a) The exhibitors claimed to have been forced out of business include the following; John Bahas, Ashland, Ohio; John Buchmann, Delaware, Ohio; Reliance Theatres, Inc., Lockport, New York; Joseph H. Felter, Norwalk, Ohio.

(b) The exhibitors claimed to have sustained losses or reduced revenue are as follows: Clark Amusement Company, Fort Covington, New York, and William C. Smalley, Johnstown, New York.

34

The names and locations of the individuals claimed to have been denied the right of engaging in the business of exhibiting motion pictures as alleged in paragraph 54 of the complaint are as follows:

Individual	*Location and Schine Town*
Hubert P. Wallace	Auburn, New York
Sidney J. Cohen	Buffalo, New York
J. Morris Gaby	Corning, New York
Frederick Gerber	Corning, New York
John Buchmann	Delaware, Ohio
Louis Dipillo	Geneva, New York
Richard DeToto	Geneva, New York
Michael Boumansour	Malone, New York
Emerson W. Long	Mt. Vernon, Ohio
Joseph Felter	Norwalk, Ohio
Ralph T. Kemper	Shelby, Ohio
Carl B. Moore	Van Wert, Ohio.

[fol. 128] 35

The plaintiff has incomplete knowledge and information as to each of the items contained in this bill of particulars, and hereby reserves its right to furnish further particulars after it has obtained further knowledge and information.

Dated October 1, 1940.

United States of America, George L. Grobe, United States Attorney.

Herbert Borkland, Special Assistant to the Attorney General; Thorold Deyrup, Special Attorney.

[fol. 129] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

BILL OF PARTICULARS WITH RESPECT TO AMENDED COMPLAINT

The United States of America, petitioner herein, files the following bill of particulars with respect to the amended complaint in response to the motion of the defendants Schine Chain Theatres, Inc., Schine Circuit, Inc., Schine Theatrical Co., Inc., Schine Enterprises Corporation, Schine Lexington Corporation, Chesapeake Theatres Corporation, J. Myer Schine, Louis W. Schine, and John A. May, in accordance with the order of the Court heretofore entered:

1

For further and better particulars of the allegations of paragraph 42 of the amended complaint plaintiff states:

A. That it will claim that the defendant distributors released approximately 15 per cent of all "first-class" feature pictures during each of the past 10 years;

B. That it will claim that the non-defendant distributors released approximately 80 per cent of all "first-class" feature pictures during each of the past ten years.

[fol. 130] 2

For further and better particulars of the allegations of paragraph 43 of the amended complaint, plaintiff states:

A. That it will claim that the distributor defendants distributed the following approximate percentages of all "feature" pictures distributed during each of the past ten years:

1929-30	between 12 and 22%
1930-31	12%
1931-32	16%
1932-33	16%
1933-34	21%
1934-35	19%
1935-36	15%
1936-37	18%
1937-38	22%
1938-39	22%

B. That it will claim that the "non-defendant distributors" distributed the following approximate percentages of all "feature" pictures distributed during each of the past 10 years:

1929-30	50%
1930-31	50%
1931-32	50%
1932-33	45%
1933-34	52%
1934-35	42%
1935-36	51%
1936-37	43%
1937-38	50%
1938-39	51%

3

For further and better particulars of the allegations of conspiracies and combinations and contracts between the [fol. 131] "Schine defendants" and the "defendant" distributors and "non-defendant" distributors contained in paragraphs 45 and 46 of the amended complaint, plaintiff states:

A. As to each such conspiracy, combination or contract, it claims the existence of a separate and distinct conspiracy, combination or contract between each of the eight major distributors, whether "defendants" or "non-defendants", acting separately, and the "Schine defendants";

B. It claims that each such conspiracy, combination or contract is still in existence, except insofar as the illegal contracts alleged in paragraphs 45 and 46 consist of licensing agreements alone, in which case, said contracts ceased upon their completion.

Dated at Buffalo, New York.
September 4, 1941.

George L. Grobe, United States Attorney for the Western District of New York, Solicitor for Petitioner.

Herbert Borkland, Special Assistant to the Attorney General; Seymour Simon, Special Attorney.

[fol. 132] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

SUPPLEMENTAL BILL OF PARTICULARS

Now comes the United States of America, the plaintiff in this action, by George L. Grobe, United States Attorney for the Western District of New York, and for further and better particulars of certain of the allegations of the complaint with respect to which it has heretofore filed further particulars, states as follows:[1]

3

For further and better particulars of the allegations contained in paragraph 46 of the complaint, and in response to paragraph IV C of the defendants' specification of demands for a bill of particulars, the plaintiff states that the situation referred to by the phrase "practically all situations" in paragraph 46 of the complaint are as follows:

[fol. 133] *New York*

Amsterdam
Auburn
Ballston Spa
Bath
Canandaigua
Carthage
Clifton Springs
Corning
Cortland
Dolgeville
East Rochester
Fairport
Geneva
Glens Falls
Gloversville
Granville
Hamilton
Herkimer
Hudson Falls
Ilion
Little Falls
Lockport
Malone
Massena
Mechanicsville

---

[1] These particulars replace the particulars contained in the following numbered paragraphs of the particulars filed by the plaintiff on August 8, 1940, in response to certain of the defendants' specification of demands for a bill of particulars: 3, 4, 5, 6, 7, 9, 10, 11, 18, 19, 20, 22, 23, 24, 25, 26, 29, 30, 31, 32, 33, 34, 35, 36, 37, 39, 41, 45, 46, 47, 51, 53, 54, and 55. Each paragraph is here numbered the same as the corresponding paragraph in the plaintiff's bill of particulars of August 8, 1940, which it replaces.

New York (Cont.)
- Newark
- Norwich
- Ogdensburg
- Oneonta
- Oswego
- Penn Yan
- Perry
- Rochester
- Salamanca
- Saranac Lake
- Seneca Falls
- Syracuse
- Tupper Lake
- Utica
- Watertown
- Whitehall

Ohio
- Ashland
- Athens
- Bellefontaine
- Bowling Green
- Bucyrus
- Delaware
- Fostoria
- Fremont
- Kent
- Medina
- Mt. Vernon
- Norwalk
- Piqua
- Ravenna
- Shelby
- Tiffin
- Van Wert
- Wooster

Kentucky
- Corbin
- Harlan
- Lexington
- Maysville
- Middlesboro
- Paris
- Pikeville
- Richmond

[fol. 133a]

Maryland
- Cambridge
- Easton
- Federalsburg
- Hurlock
- Salisbury
- St. Michaels

Delaware
- Laurel
- Milford

4

For further and better particulars of the allegations contained in paragraph 46(a) of the complaint, and in response to paragraph V A (1) of the defendants' specification of demands for a bill of particulars, the plaintiff states that the names and locations of the theatres to which preference or protection was granted by the distributor defendants, and the distributor defendants granting such preference or protection are respectively as follows:

Theatre	Location	Preference or Protection Granted By
	Ohio	
Palace and Opera House	Ashland, Ohio	All major distributors
Athena	Athens, Ohio	All major distributors
Holland	Bellefontaine, Ohio	All major distributors
Bucyrus	Bucyrus, Ohio	All major distributors
State	Bucyrus, Ohio	All major distributors
Strand	Delaware, Ohio	All major distributors
Civic and Roxey	Fostoria, Ohio	All major distributors except Loew's
Princess	Medina, Ohio	All major distributors ex-except Columbia and Universal
Vine, Lyric, and Mt. Vernon	Mt. Vernon, Ohio	All major distributors except Columbia
[fol. 133b]		
Forum	Norwalk, Ohio	All major distributors
Schine Theatres in Piqua	Piqua, Ohio	All major distributors
Castamba	Shelby, Ohio	All major distributors
Strand	Van Wert, Ohio	All major distributors
Van Wert	Van Wert, Ohio	All major distributors
	Kentucky	
Kentucky and Hippodrome	Corbin, Kentucky	All major distributors
Margie Grand	Harlan, Kentucky	Unknown to plaintiff
Schine Theatres in Lexington	Lexington, Kentucky	All major distributors
Russell	Maysville, Kentucky	Unknown to plaintiff
Liberty	Pikeville, Kentucky	Unknown to plaintiff
	Maryland	
Strand	Cumberland, Maryland	Unknown to plaintiff
Arcade and Wicomoco	Salisbury, Maryland	All major distributors, particularly Paramount
	New York	
Regent, Rialto and Strand	Amsterdam, New York	All major distributors
Jefferson, Palace and Auburn	Auburn, New York	All major distributors
Fox and State	Corning, New York	All major distributors
State and Temple	Cortland, New York	All major distributors
Geneva and Regent	Geneva, New York	All major distributors

[fol. 133c]

Theatre	Location	Preference or Protection Granted By
	New York (Continued)	
Rialto, Empire, and Paramount	Glens Falls, New York	All major distributors
Schine Theatres in Gloversville, N. Y.	Gloversville, New York	All major distributors
Liberty	Herkimer, New York	All major distributors
Strand	Hudson Falls, New York	All major distributors
Capitol	Ilion, New York	All major distributors
Rialto	Little Falls, New York	All major distributors
Rialto	Lockport, New York	All major distributors
Malone	Malone, New York	All major distributors
Massena	Massena, New York	All major distributors except Columbia
Capitol	Newark, New York	All major distributors
Colonial	Norwich, New York	All major distributors
Strand	Ogdensburg, New York	All major distributors
Oneonta and Palace	Oneonta, New York	All major distributors
Schine Theatres in Oswego	Oswego, New York	All major distributors
Dixie	Rochester, New York	All major distributors
Strand	Seneca Falls, New York	All major distributors
State	Tupper Lake, New York	All major distributors
Avon, Olympic and Palace	Watertown, New York	All major distributors
Schine Theatres in Watertown	Watertown, New York	All major distributors

5

In response to paragraph V D of the defendants' specification of demands for a bill of particulars, the plaintiff [fol. 133d] states that the theatres acquired by the Schine defendants, which, after such acquisition, have been granted priority or preference over competing theatres by the distributor defendants, and the distributor defendants granting such priority or preference, are respectively as follows:

Theatre	Location	Preference or Protection Granted By
	Ohio	
Palace and Opera House	Ashland, Ohio	All major distributors
Athena	Athens, Ohio	All major distributors
Holland	Bellefontaine, Ohio	All major distributors
Bucyrus	Bucyrus, Ohio	All major distributors

Theatre	Location	Preference or Protection Granted By
	Ohio (Continued)	
State	Bucyrus, Ohio	All major distributors
Strand	Delaware, Ohio	All major distributors
Civic and Roxey	Fostoria, Ohio	All major distributors except Loew's
Princess	Medina, Ohio	All major distributors except Columbia and Universal
Vine, Lyric, and Mt. Vernon	Mt. Vernon, Ohio	All major distributors except Columbia
Forum	Norwalk, Ohio	All major distributors
Castamba	Shelby, Ohio	All major distributors
Van Wert	Van Wert, Ohio	All major distributors
Strand	Van Wert, Ohio	All major distributors
	Kentucky	
Margie Grand	Harlan, Kentucky	Unknown to plaintiff
Schine Theatres in Lexington	Lexington, Kentucky	All major distributors
Russell	Maysville, Kentucky	Unknown to plaintiff
Liberty	Pikeville, Kentucky	Unknown to plaintiff

[fol. 133e]

Theatre	Location	Preference or Protection Granted By
	Maryland	
Strand	Cumberland, Maryland	Unknown to plaintiff
Arcade and Wicomoco	Salisbury, Maryland	All major distributors, particularly Paramount
	New York	
Jefferson, Palace and Auburn	Auburn, New York	All major distributors
Fox and State	Corning, New York	All major distributors
Rialto, Empire, and Paramount	Glens Falls, New York	All major distributors
Strand	Hudson Falls, New York	All major distributors
Rialto	Little Falls, New York	All major distributors
Colonial	Norwich, New York	All major distributors
Avon, Olympic and Palace	Watertown, New York	All major distributors
Dixie	Rochester, New York	All major distributors

6

In response to paragraph V E of the defendants' specification of demands for a bill of particulars, the plaintiff states that the names and locations of competing theatres, over which theatres acquired by the Schine defendants have been granted priority and preference, are set forth below.

The distributor defendants granting such priority and preference are stated for the respective situations in the particulars heretofore set forth in paragraph 5 above.

[fol. 133f]

Theatre	*Town*
Ohio	Ashland, Ohio
Opera House	Ashland, Ohio
Court and Ohio	Athens, Ohio
Strand and Opera House	Bellefontaine, Ohio
State and Southern	Bucyrus, Ohio
Star Theatre	Delaware, Ohio
State	Fostoria, Ohio
Temple	Medina, Ohio
Memorial	Mt. Vernon, Ohio
Moose	Norwalk, Ohio
Opera House and State	Shelby, Ohio
Strand and Ohio	Van Wert, Ohio
New Harlan	Harlan, Kentucky
Opera House	Lexington, Kentucky
Washington and Maysville	Maysville, Kentucky
Waddington	Pikeville, Kentucky
Liberty, Maryland, Embassy and Garden	Cumberland, Maryland
Ulman's	Salisbury, Maryland
Capitol	Auburn, New York
Plaza and Regent	Corning, New York
State	Glens Falls, New York
Hippodrome	Little Falls, New —
Smalley's	Norwich, New York
Victoria, Liberty and State	Watertown, New York
Webster	Rochester, New York
Madison, Monroe and West End	Rochester, New York

7

For further and better particulars of the allegations contained in paragraph 46(b) of the complaint, and in response to paragraph VI A (1) of the deefndants' specification of demands for bill of particulars, the plaintiff states that the major distributors indicated below have consistently [fol. 133g] refused to license motion pictures on a local competive basis to the following theatres:

Theatre	Location	Distributors
	Ohio	
Ohio	Ashland, Ohio	All major distributors
Opera House	Ashland, Ohio	All major distributors
Court and Ohio	Athens, Ohio	All major distributors
Strand and Opera House	Bellefontaine, Ohio	All major distributors
State and Southern	Bucyrus, Ohio	All major distributors
Star Theatre	Delaware, Ohio	All major distributors
Star and Capitol	Delphos, Ohio	Unknown to plaintiff
State	Fostoria, Ohio	All major distributors except Loew's
Temple	Medina, Ohio	All major distributors except Columbia and Universal
Memorial	Mt. Vernon, Ohio	All major distributors except Columbia
Moose	Norwalk, Ohio	All major distributors
Opera House and State	Shelby, Ohio	All major distributors
Strand and Ohio	Van Wert, Ohio	All major distributors
Unknown to plaintiff	Troy, Ohio	Unknown to plaintiff
	Kentucky	
Mitchell	Barbourville, Kentucky	All major distributors
Viv	Corbin, Kentucky	All major distributors
New Harlan	Harlan, Kentucky	Unknown to plaintiff
Washington and Maysville	Maysville, Kentucky	Unknown to plaintiff
Waddington	Pikeville, Kentucky	Unknown to plaintiff

[fol. 133h]

Theatre	Location	Distributors
	Maryland	
Liberty, Maryland, Embassy and Garden	Cumberland, Maryland	Unknown to plaintiff
Ulman's	Salisbury, Maryland	All major distributors, particularly Paramount
	New York	
Avon	Addison, New York	All major distributors
Orpheum	Amsterdam, New York	Unknown to plaintiff
Capitol	Auburn, New York	All major distributors
American	Canton, New York	All major distributors
Ideal	Chateaugay, New York	All major distributors
Playhouse	Clyde, New York	All major distributors
Smalley's	Cooperstown, New York	All major distributors
Plaza and Regent	Corning, New York	All major distributors
Smalley's	Delphi, New York	All major distributors
Smalley's	Dolgeville, New York	All major distributors
Palace	Fort Covington, N. Y.	All major distributors except Columbia

Theatre	Location	Distributors
	New York (cont.)	
Smalley's	Fort Plain, New York	All major distributors
Hollywood	Frankfort, New York	All major distributors
State	Glens Falls, New York	All major distributors
Corona	Groton, New York	All major distributors
Town Hall	Homer, New York	All major distributors
Capitol	Ilion, New York	All major distributors
Smalley's	Johnstown, New York	All major distributors
Hippodrome	Little Falls, New York	All major distributors
Palace	Lockport, New York	All major distributors
[fol. 133i]		
Avalon	Lowville, New York	All major distributors
Ohmann	Lyons, New York	All major distributors
Plaza	Malone, New York	All major distributors
Rialto	Massena, New York	All major distributors except Columbia
Star	Northville, New York	All major distributors
Smalley's	Norwich, New York	All major distributors
Elmwood	Penn Yan, New York	All major distributors
Poland	Poland, New York	All major distributors
Smalley's	Sidney, New York	All major distributors
Smalley's	St. Johnsville, N. Y.	All major distributors
Lyric	Tupper Lake, New York	All major distributors
Colonial	Waddington, New York	All major distributors except Columbia
State	Waterloo, New York	All major distributors
Strand, Liberty, Victoria and State	Watertown, New York	All major distributors
Webster	Rochester, New York	All major distributors
Madison, Monroe and West End	Rochester, New York	All major distributors

9

For further and better particulars of the allegations contained in paragraph 46(d) of the complaint, and in response to paragraph VIII A of the defendants' specification of demands for a bill of particulars, the plaintiff states that the theatres referred to include the following:

[fol. 133j]

Theatre	*Location*
Ohio and Opera House	Ashland, Ohio
Strand and Opera House	Bellefontaine, Ohio
Southern	Bucyrus, Ohio
State	Bucyrus, Ohio
Star	Delaware, Ohio
Temple	Medina, Ohio
Memorial	Mt. Vernon, Ohio
Moose	Norwalk, Ohio
Opera House and State	Shelby, Ohio
Ohio	Van Wert, Ohio
Viv	Corbin, Kentucky
New Harlan	Harlan, Kentucky
Waddington	Pikeville, Kentucky
Ulman's	Salisbury, Maryland
Capitol	Auburn, New York
Plaza and Regent	Corning, New York
Hippodrome	Little Falls, New York
Palace	Lockport, New York
Plaza	Malone, New York
Smalley's	Norwich, New York

10

In response to paragraph VIII E of the defendants' specification of demands for a bill of particulars, the plaintiff states that it is claimed that the refusal to sell second or subsequent run to all of the theatres set forth in paragraph 9 above was made at the request of the Schine defendants.

11

For further and better particulars of the allegations contained in paragraph 46(e) of the complaint, and in response to paragraph IX A of the defendants' specification of demands for a bill of particulars, the plaintiff states that the [fol. 134] names and locations of the theatres over which it is claimed that unreasonable protection was granted to the Schine defendants by the distributor defendants, and the distributor defendants granting such unreasonable protection are as follows:

Theatre	Location	Unreasonable Protection Granted By
Town Hall	Homer, New York	All major distributors
Corona	Groton, New York	All major distributors
State	Waterloo, New York	All major distributors
Lyric	Tupper Lake Junction, New York	All major distributors
Ohmann	Lyons, New York	All major distributors
American	Canton, New York	All major distributors
Playhouse	Clyde, New York	All major distributors
Capitol	Ilion, New York	All major distributors
Smalley's	Johnstown, New York	All major distributors
Smalley's	Dolgeville, New York	All major distributors
Smalley's	Fort Plain, New York	All major distributors
Smalley's	St. Johnsville, New York	All major distributors
Smalley's	Delphi, New York	All major distributors
Smalley's	Cooperstown, New York	All major distributors
Smalley's	Sidney, New York	All major distributors
Hippodrome	Little Falls, New York	All major distributors
Star	Northville, New York	All major distributors
Poland	Poland, New York	All major distributors
Hollywood	Frankfort, New York	All major distributors
Strand	Watertown, New York	All major distributors
Liberty	Watertown, New York	All major distributors
Palace	Fort Covington, New York	All major distributors except Columbia
Colonial	Waddington, New York	All major distributors except Columbia
Ideal	Chateaugay, New York	All major distributors
Avalon	Lowville, New York	All major distributors
Elmwood	Penn Yan, New York	All major distributors
Mitchell	Barbourville, Kentucky	All major distributors
Star	Delphos, Ohio	Unknown to plaintiff
Capitol	Delphos, Ohio	Unknown to plaintiff
Avon	Addison, New York	All major distributors
Unknown to plaintiff	Troy, Ohio	Unknown to plaintiff

[fol. 135]

18

For further and better particulars of the allegations contained in paragraph 48 of the complaint and in response to paragraph XIII B of the defendants' specification of demands for a bill of particulars, the plaintiff states that paragraph 48 alleges that the "Schine circuit is able to maintain its local monopolies in its closed towns." Although the Schine circuit has monopolized the most desirable films in towns where there are competing theatres, the allegation to which this request relates refers only to local monopolies in the Schine closed towns and only those are being listed in this answer. They exist in the following towns:

New York
Amsterdam
Ballston Spa
Bath
Buffalo
Canandaigua
Carthage
Cortland
Dolgeville
East Rochester
Fairport
Gloversville
Geanville
Hamilton
Herkimer
Hudson Falls
Ilion
Little Falls
Lockport
Malone
Massena
[fol. 136]
Mechanicsville
Newark
Ogdensburg
Oneonta
Oswego
Penn Yan
Perry
Rochester
Salamanca
Saranac Lake
Seneca Falls
Syracuse
Tupper Lake
Utica

Ohio
Ashland
Athens
Bellefontaine
Bowling Green
Bucyrus
Delaware
Fostoria
Fremont
Kent
Medina
Mt. Vernon
Norwalk
Piqua
Ravenna
Shelby
Tiffin
Wooster

Kentucky
Corbin
Lexington
Maysville
Middlesboro
Paris
Richmond

Maryland
Cambridge
Easton
Federalsburg
Hurlock
St. Michaels

Delaware
Laurel
Milford

19

In response to paragraph XIII C of the defendants' specification of demands for a bill of particulars, the plaintiff states that the names and locations of the competing theatres existing at the present time are as follows:

[fol. 137]

Theatre	*Location*
Ohio	Van Wert, Ohio
Waddington	Pikeville, Kentucky
New Harlan	Harlan, Kentucky
Ulman's	Salisbury, Maryland
Liberty, Maryland, Embassy, and Garden	Cumberland, Maryland
Orpheum	Amsterdam, New York
Capitol	Auburn, New York
Plaza	Corning, New York
Park	Geneva, New York
State	Glens Falls, New York
Smalley's	Norwich, New York
Victoria. Liberty, and State	Watertown, New York

20

In response to paragraph XIII D of the defendants' specification of demands for a bill of particulars, the plaintiff states that the identity and location of the towns in which the plaintiff claims that the only theatre or theatres in operation at the present time are the theatres of the Schine circuit have been set forth heretofore in paragraph 18 above.

22

In response to paragraph XIII H of the defendants' specification of demands for a bill of particulars, the plaintiff states that the competing exhibitors referred to in the said paragraph 48 of the complaint include the following:

Ohio	
B. Bickert	Ashland
John Bahas	Ashland
Custer and Bieberson	Athens
Henry Damm	Bellefontaine
M. Mooney	Bellefontaine

[fol. 138] *Ohio (Cont.)*

H. Moller	Bellefontaine
N. Charnas and P. Charnas	Bucyrus
M. Bryer	Bucyrus
John Buchman	Delaware
Henry Bieberson	Delaware
Arthur and Ural Buck	Fostoria
Essick, Fine and Kramer	Medina
Emerson Long	Mount Vernon
Joseph Felter	Norwalk
Ralph Kemper	Shelby
Carl B. Moore	Van Wert
T. G. Evans	Van Wert

New York

Morris Kronick	Amsterdam
H. P. Wallace	Auburn
George Rosenbaum	Carthage
F. Gerber	Corning
Morris Gaby	Corning
Louis De Pillo	Geneva
Richard De Toto	Geneva
Fred Mausert	Glens Falls
N. K. Smith	Glens Falls
Thomas Warne	Little Falls
William Wood	Little Falls
Reliance Theatres, Inc.	Lockport
Charles Dickinson, Jr.	Lockport
Michael Boumansour	Malone
Frank Karus	Massena
W. G. Croucher	Newark
W. C. Smalley	Norwich
Eli Rosenbaum	Ogdensburg
John Cordingly	Oswego
Katherine Thompson	Rochester

[fol. 139]

Chester & Paul Fenneyvessy	Rochester
Max Fogel	Rochester
Peter C. Vournakis	Watertown
Graham and Ludlow	Watertown
Wm. Tishkoff	Rochester

Kentucky

Hiram Owens	Corbin
M. K. Murphy	Corbin

Kentucky (Cont.)

G. C. Scott	Corbin
Price Coomer	Harlan
Harry Schwartz	Lexington
J. B. Russell	Maysville
W. J. Ward	Pikeville

Maryland

Helen Ulman	Salisbury

23

For further and better particulars of the allegations contained in paragraph 49(a) of the complaint, and in response to paragraph XV A of the defendants' specification of demands for a bill of particulars, the plaintiff states that the motion picture theatres that the Schine defendants have acquired for many years past as alleged in said paragraph are the following:

Theatre	*Location*
Star	Delaware, Ohio
Opera House	Ashland, Ohio
Ohio	Ashland, Ohio
Cort	Athens, Ohio
Ohio	Athens, Ohio
Strand	Bellefontaine, Ohio
Opera House	Bellefontaine, Ohio

[fol. 140]

Theatre	*Location*
State	Bucyrus, Ohio
Southern	Bucyrus, Ohio
State	Fostoria, Ohio
Temple	Medina, Ohio
Memorial	Mount Vernon, Ohio
Moose	Norwalk, Ohio
Strand	Van Wert, Ohio
Viv	Corbin, Kentucky
Opera House	Lexington, Kentucky
Murray	Rochester, New York
Hippodrome	Little Falls, New York
Palace	Lockport, New York
Plaza	Malone, New York
Regent	Corning, New York
Strand	Delaware, Ohio
Strand	Hudson Falls, New York

Theatre	*Location*
Paris	Paris, Kentucky
Madison	Rochester, New York
Monroe	Rochester, New York
West End	Rochester, New York
Seneca	Seneca Falls, New York
Cla-zell	Bowling Green, Ohio
Ada Meade	Lexington, Kentucky
Russell	Maysville, Kentucky
Washington	Maysville, Kentucky
Hollywood	Maysville, Kentucky
Webster	Rochester, New York
Lyric	Bowling Green, Ohio

24

In response to paragraph XV B of the defendants' specification of demands for a bill of particulars, the plaintiff states that the motion picture theatres that the Schine [fol. 141] defendants have attempted to acquire, as alleged in paragraph 49(a) of the complaint, are the following:[2]

Theatre	*Location*
Capitol	Auburn, New York
Palace	Lancaster, Ohio
State	Shelby, Ohio
Harrington	Harrington, Delaware
Ohio	Van Wert, Ohio
Palace	Seaford, Delaware
(Name unknown)	Oxford, Ohio

25

In response to paragraph XV C of the defendants' specification of demands for a bill of particulars, the plaintiff states that the competitors that the Schine defendants have forced out of business, as alleged in said paragraph, include the following:

John Bahas	Ashland, Ohio
Bert Bickert	Ashland, Ohio

---

[2] Inasmuch as the theatres which the Schine defendants have acquired are listed in paragraph 23 above, they are not being listed in the answer to this demand, although attempts may have been made to acquire them before the actual acquisition took place.

Henry Bieberson	Athens, Ohio
Michael Boumansour	Malone, New York
M. Bryer	Bucyrus, Ohio
John Buchman	Delaware, Ohio
Arthur Buck	Fostoria, Ohio
Ural Buck	Fostoria, Ohio
Nat Charnas	Bucyrus, Ohio
Phillip Charnas	Bucyrus, Ohio
E. R. Custer	Athens, Ohio
Henry Damm	Bellefontaine, Ohio
C. L. Dasher	Van Wert, Ohio
Richard De Toto	Seneca Falls, New York

[fol. 142]

Charles E. Dickinson, Jr.	Lockport, New York
Essick and Fine	Medina, Ohio
T. G. Evans	Van Wert, Ohio
Joseph H. Felter	Norwalk, Ohio
Chester Fennyvessy	Rochester, New York
Paul Fennyvessy	Rochester, New York
Max Fogel	Rochester, New York
Frederick Gerber	Corning, New York
Frank Hiltz	Norwalk, Ohio
R. T. Kemper	Shelby, Ohio
Emerson Long	Mount Vernon, Ohio
Milton Mooney	Bellefontaine, Ohio
M. K. Murphy	Corbin, Kentucky
Reliance Theatres, Inc.	Lockport, New York
Eli Rosenbaum	Ogdensburg, New York
George Rosenbaum	Carthage, New York
J. B. Russell	Maysville, Kentucky
Harry Schwartz	Lexington, Kentucky
G. C. Scott	Corbin, Kentucky
Katherine Thompson	Rochester, New York
Thomas Warne	Little Falls, New York
William Wood	Little Falls, New York
Charles Sesonske	Carthage, New York
W. G. Croucher	Newark, New York
Eli Rosenbaum	Ogdensburg, New York
Charles P. Gilmore	Oswego, New York

26

In response to paragraph XV D of the defendants' specification of demands for a bill of particulars, the plaintiff states that the competitors that the Schine defendants have attempted to force out of business, as alleged in said paragraph, include the following:

[fol. 143]

H. P. Wallace	Auburn, New York
Carl B. Moore	Van Wert, Ohio
Louis De Pillo	Geneva, New York
Morris Gaby	Corning, New York
Morris Kronick	Amsterdam, New York
Fred Mausert	Glens Falls, New York
N. K. Smith	Glens Falls, New York
William Tishkoff	Rochester, New York
Helen Ulman	Salisbury, Maryland
Peter C. Vournakis	Watertown, New York

29

For further and better particulars of allegations contained in paragraph 49 (a) (1) of the complaint, and in response to paragraph XVI A of the defendants' specification of demands for a bill of particulars, the plaintiff states that the instances in which it is claimed that the Schine defendants threatened to build a theatre in opposition to another exhibitor relate to the following:

Leo Kessell	Lancaster, Ohio
Emerson W. Long	Mount Vernon, Ohio
Thomas Ayre	Seaford, Delaware
Reese Harrington	Harrington, Delaware
Jack Josey	Oxford, Ohio
Wilmington Amusement Co.	Oxford, Ohio
Harry Schwartz	Paris, Kentucky
Henry Bieberson	Delaware, Ohio

30

In response to paragraph XVI B of the defendants' specification of demands for a bill of particulars, the plaintiff states that the theatres that the Schine defendants have acquired for many years past, as alleged in paragraph 49 (a) (1), are as follows:

[fol. 144]

Theatre	*Location*
Strand	Delaware, Ohio
Paris	Paris, Kentucky
Palace	Ashland, Ohio

31

For further and better particulars of the allegations contained in paragraph 49(a) (2) of the complaint, and in response to paragraph XVII of the defendants' specification of demands for a bill of particulars, the plaintiff states that the theatres which it is claimed that the Schine defendants constructed in opposition to another exhibitor include the following:

Theatre	*Location*
Auburn	Auburn, New York
Vernon	Mount Vernon, Ohio
Holland	Bellefontaine, Ohio
Bucyrus	Bucyrus, Ohio
Van Wert	Van Wert, Ohio

32

For further and better particulars of the allegations contained in paragraph 49(a) (4) of the complaint, and in response to paragraph XIX A of the defendants' specification of demands for a bill of particulars, the plaintiff states that the exhibitors, other than the Schine defendants, who have been deprived of desirable product or runs, and the periods of such deprivations, are as follows:

Theatre	Exhibitor	Period of Deprivation
Orpheum; Amsterdam, New York	Morris Kronick	1934 to date
Capitol; Auburn, New York	H. P. Wallace	1933 to date
Palace; Corning, New York	F. Gerber	1933 to 1938
Plaza; Corning, New York	Morris Gaby	1933 to date
[fol. 145]		
Park; Geneva, New York	Louis De Pillo	1940 to date
State; Glens Falls, New York	Fred Mausert	1936 to date
Hippodrome; Little Falls, New York	Thos V. and Wm. Wood	1932 to June 1937
Palace; Lockport, New York	Reliance Theatres Inc.	1933 to 1936
Plaza; Malone, New York	Michael Boumansour	1936 to 1941
Smalley's; Norwich, New York	William C. Smalley	1932 to date
Strand; Watertown, New York	Peter C. Vournakis	1933 to date
Victoria; Watertown, New York	Graham and Ludlow	1933 to date
Ohio; Ashland, Ohio	John Bahas	1935 to 1938
Opera House; Ashland, Ohio	T. Gutilla	1935 to 1936

Theatre	Exhibitor	Period of Deprivation
Court and Ohio; Athens, Ohio	Custer and Bieberson	1935 to 1936
Strand; Bellefontaine, Ohio	M. Mooney	1931
Opera House; Bellefontaine, O.	H. Moller	1931 to 1933
Southern; Bucyrus, Ohio	P. Charnas	1935 to 1937
Star; Delaware, Ohio	John Buchman	1936 to 1938
State; Fostoria, Ohio	Arthur and Ural Buck	1936 to 1937
Temple; Medina, Ohio	Essick, Fine and Kramer	1937 to 1939
Memorial; Mount Vernon, Ohio	Emerson W. Long	1934 to 1941
Moose; Norwalk, Ohio	Joseph H. Felter	1935 to 1936
State; Shelby, Ohio	Ralph Kemper	1937 to date
Ohio; Van Wert, Ohio	Carl B. Moore	1935 to date
Strand; Van Wert, Ohio	T. G. Evans	1935
Webster; Rochester, New York	Max Fogel	1931 to 1939
Madison, Monroe and West End; Rochester, New York	Fennyvessy Bros.	1931 to 1940

[fol. 146]

Theatre	Exhibitor	Period of Deprivation
Viv; Corbin, Kentucky	M. K. Murphy	1938 to 1940
New Harlan, Harlan, Kentucky	Price Coomer	1941 to date
Waddington; Pikeville, Kentucky	W. J. Ward	1939 to date
Ulman's; Salisbury, Maryland	Helen Ulman	1938 to date

33

For further and better particulars of the allegations contained in paragraph 49(a) (5) of the complaint, and in response to paragraph XX A of the defendants' specification of demands for a bill of particulars, the plaintiff states that the Schine defendants announced the proposed construction and opening of a theatre in the neighborhood of another exhibitor at Lancaster, Ohio, Mount Vernon, Ohio, and Oxford, Ohio.

34

In response to paragraph XX B of the defendants' specification of demands for a bill of particulars, the plaintiff states that the Schine defendants took the following interests in a theatre site in the neighborhood of other exhibitors:

Town	*Nature of Interest*
Malone, New York	Option to buy or lease
Perry, New York	Fee
Seaford, Delaware	Fee

35

In response to paragraph XX C of the defendants' specification of demands for a bill of particulars, the plaintiff states that the instances referred to in response to paragraphs XX A and XX B of the defendants' specification of demands, relating to theatres in the neighborhood of which such construction or opening was announced, or such in- [fol. 147] terest acquired, by the Schine defendants, are the names and locations and are operated by the exhibitors indicated below:

Theatre	*Location*	*Exhibitor*
Palace Theatre	Lancaster, Ohio	Leo Kessel
Memorial Theatre	Mount Vernon, Ohio	Emerson W. Long
Plaza Theatre	Malone, New York	Michael Boumansour
Name unknown	Oxford, Ohio	Jack Josey
Auditorium Theatre	Perry, New York	Unknown to plaintiff
Palace Theatre	Seaford, Delaware	Thos. Ayre

36

For further and better particulars of the allegations contained in paragraph 49(a) (6) of the complaint, and in response to paragraph XXI of the defendants' specification of demands for a bill of particulars, the plaintiff states that the Schine defendants, or some of them, acquired superior title in a theatre controlled and operated by another exhibitor and took over the control and operation of such theatre in the instance of the Seneca Theatre, Seneca Falls, New York, theretofore operated by Richard De Toto; the Memorial Theatre, Mount Vernon, Ohio, theretofore operated by Emerson W. Long; and the State Theatre, Hamilton, New York, theretofore operated by parties unknown to the plaintiff.

37

For further and better particulars of the allegations contained in paragraph 49(a) (9) of the complaint, and in response to paragraph XXIV of the defendants' specification of demands for a bill of particulars, the plaintiff states that the Schine defendants took unreasonable protection over another exhibitor in the instances heretofore enumerated in paragraph 11 above.

[fol. 148] 39

For further and better particulars of the allegations contained in paragraph 49(b) (1) of the complaint, and in response to paragraph XXVI A of the defendants' specification of demands for a bill of particulars, the plaintiff states that the situations in which it is claimed that the Schine defendants monopolized the first and preferred runs of all the high-class feature pictures distributed by the distributor defendants are those set forth in paragraph 3 above.

41

For further and better particulars of the allegations contained in paragraph 49(b) (3) of the complaint, and in response to paragraph XXVIII A of the defendants' specification of demands for a bill of particulars, the plaintiff states that the Schine defendants have demanded and received unreasonable protection over other exhibitors in the instances heretofore set forth in paragraph 11 above.

45

For further and better particulars of the allegations contained in paragraph 49(c) (1) of the complaint, and in response to paragraph XXXIII A of the defendants' specification of demands for a bill of particulars, the plaintiff states that the names and locations of the theatres which it is claimed that the Schine defendants kept closed, as alleged in said paragraphs, are the Strand Theatre, Seneca Falls, New York; Lyric Theatre, Mount Vernon, Ohio; and the Pontiac Theatre, Ogdensburg, New York.

46

For further and better particulars of the allegations contained in paragraph 49(c) (2) of the complaint, and in response to paragraph XXXIV A of the defendants' specification [fol. 149] of demands for a bill of particulars, the plaintiff states that the Schine defendants kept the site of the Temple Theatre in Geneva, New York, and a vacant lot in Norwalk, Ohio, as alleged in paragraph 49(c) of the complaint.

47

For further and better particulars of the allegations contained in paragraph 49(c) (4) of the complaint, and in response to paragraph XXXV D of the defendants' specification of demands for a bill of particulars, the plaintiff states that it is claimed that there were indications that other exhibitors intended to open theatres in Geneva, New York, and Medina, Ohio, both Schine towns, as alleged in said paragraph of the complaint. In the case of Geneva, New York, the name of the other exhibitor was Louis DePillo, and in the case of Medina, Ohio, the other exhibitor was a partnership or corporation in which P. E. Essick, Myer S. Fine, and Abe Kramer, all of Cleveland, were interested.

51

For further and better particulars of the allegations contained in paragraph 50 of the complaint, and in response to paragraph XXXVII of the defendants' specification of demands for a bill of particulars, the plaintiff states that the names of the exhibitors claimed to have been systematically excluded from the opportunity of procuring high-class pictures under fair competitive conditions on first or preferred runs, and the locations of the theaters operated by such exhibitors are respectively as follows:

Exhibitor	*Location*
Ohio	
B. Bickert	Ashland
John Bahas	Ashland
Custer and Bieberson	Athens
Henry Damm	Bellefontaine

[fol. 150]

Exhibitor	*Location*
Ohio (continued)	
M. Mooney	Bellefontaine
H. Moller	Bellefontaine
N. Charnas and P. Charnas	Bucyrus
M. Bryer	Bucyrus
John Buchman	Delaware
Henry Bieberson	Delaware
E. L. Staup	Delphos
Arthur and Ural Buck	Fostoria
Essick, Fine, and Kramer	Medina
Emerson Long	Mount Vernon
Joseph Felter	Norwalk
Ralph Kemper	Shelby
C. F. Pfister	Troy

Exhibitor	*Location*
Carl B. Moore	Van Wert
T. G. Evans	Van Wert
New York	
Morris Kronick	Amsterdam
H. P. Wallace	Auburn
A. Papyanakos	Canton
George Rosenbaum	Carthage
L. E. Quinlan	Chateaugay
C. Perriello	Clyde
F. Gerber	Corning
Morris Gaby	Corning
C. H. Dopp	Frankfort
Louis De Pillo	Geneva
Richard De Tote	Geneva
Fred Mausert	Glens Falls
N. K. Smith	Glens Falls
Murray Briskin	Homer
Robert I. Pierce	Ilion
Thomas Warne	Little Falls

[fol. 151]

Exhibitor	*Location*
New York (Cont.)	
William Wood	Little Falls
Reliance Theatres, Inc.	Lockport
Charles Dickinson, Jr.	Lockport
E. J. Wolfe	Lowville
B. Ohmann	Lyons
Michael Boumansour	Malone
Frank Karus	Massena
W. G. Croucher	Newark
W. C. Smalley	Norwich
Eli Rosenbaum	Ogdensburg
John Cordingly	Oswego
Katherine Thompson	Rochester
Chester and Paul Fenneyvessy	Rochester
Max Fogel	Rochester
Charles Girard	Tupper Lake Junction
William Clark	Waddington
Peter C. Vournakis	Watertown
Graham and Ludlow	Watertown
Wm. Tishkoff	Rochester

Kentucky

Hiram Owens	Corbin
M. K. Murphy	Corbin
G. C. Scott	Corbin
Price Coomer	Harlan
Harry Schwartz	Lexington
J. B. Russell	Maysville
W. J. Ward	Pikeville

Maryland

Helen Ulman	Salisbury

53

For further and better particulars of the allegations contained in paragraph 52 of the complaint, and in response [fol. 152] to paragraph XXXIX of the defendants' specification of demands for a bill of particulars, the plaintiff states that the exhibitors claimed to have been forced out of business or compelled to dispose of their theatres are as follows:

John Bahas	Ashland, Ohio
Bert Bickert	Ashland, Ohio
Henry Bieberson	Athens, Ohio
Michael Boumansour	Malone, New York
M. Bryer	Bucyrus, Ohio
John Buchman	Delaware, Ohio
Arthur Buck	Fostoria, Ohio
Ural Buck	Fostoria, Ohio
Nat Charnas	Bucyrus, Ohio
Phillip Charnas	Bucyrus, Ohio
E. R. Custer	Athens, Ohio
Henry Damm	Bellefontaine, Ohio
C. L. Dasher	Van Wert, Ohio
Richard D. Toto	Seneca Falls, New York
Charles E. Dickinson, Jr.	Lockport, New York
Essick and Fine	Medina, Ohio
T. G. Evans	Van Wert, Ohio
Joseph H. Felter	Norwalk, Ohio
Chester Fennyvessy	Rochester, New York
Paul Fennyvessy	Rochester, New York
Max Fogel	Rochester, New York
Frederick Gerber	Corning, New York
Frank Hiltz	Norwalk, Ohio
R. T. Kemper	Shelby, Ohio
Emerson Long	Mount Vernon, Ohio

Milton Mooney	Bellefontaine, Ohio
M. K. Murphy	Corbin, Kentucky
Reliance Theatres, Inc.	Lockport, New York
Eli Rosenbaum	Ogdensburg, New York
George Rosenbaum	Carthage, New York
J. B. Russell	Maysville, Kentucky
[fol. 153]	
Harry Schwartz	Lexington, Kentucky
G. C. Scott	Corbin, Kentucky
Katherine Thompson	Rochester, New York
Thomas Warne	Little Falls, New York
William Wood	Little Falls, New York
Charles Sesonske	Carthage, New York
W. G. Croucher	Newark, New York
Eli Rosenbaum	Ogdensburg, New York
Charles P. Gilmore	Oswego, New York

54

In response to paragraph XXXIX B of the defendants' specification of demands for a bill of particulars, the plaintiff states that the other exhibitors competing with the Schine defendants claimed to have been compelled to sustain losses or reduced revenue from the operation of their theaters are the following:

Carl B. Moore	Van Wert, Ohio
Price B. Coomer	Harlan, Kentucky
Helen Ulman	Salisbury, Maryland
H. P. Wallace	Auburn, New York
Morris Gaby	Corning, New York
Louis De Pillo	Geneva, New York
Fred Mansert	Glens Falls, New York
William C. Smalley	Norwich, New York
Peter Vournakis	Watertown, New York
W. J. Ward	Pikeville, Kentucky
Morris Kronick	Amsterdam, New York

55

For further and better particulars of the allegations contained in paragraph 54 of the complaint, and in response to paragraph XLI of the defendants' specification of demands for a bill of particulars, the plaintiff states that the names and locations of the individuals who have been denied the [fol. 154] right of engaging in the business of exhibiting motion pictures in the Schine towns or any of them on a fair competitive basis, and the Schine towns referred to are as follows:

Individual	*Location and Schine Town*
Ohio	
B. Bickert	Ashland
John Bahas	Ashland
Custer and Bieberson	Athens
Henry Damm	Bellefontaine
M. Mooney	Bellefontaine
H. Moller	Bellefontaine
N. Charnas and P. Charnas	Bucyrus
M. Bryer	Bucyrus
John Buchman	Delaware
Henry Bieberson	Delaware
E. L. Staup	Delphos
Arthur and Ural Buck	Fostoria
Essick, Fine, and Kramer	Medina
Emerson Long	Mount Vernon
Joseph Felter	Norwalk
Ralph Kemper	Shelby
C. F. Pfister	Troy
Carl B. Moore	Van Wert
T. G. Evans	Van Wert
New York	
Morris Kronick	Amsterdam
H. P. Wallace	Auburn
A. Papyanakos	Canton
George Rosenbaum	Carthage
L. E. Quinlan	Chateaugay
C. Perriello	Clyde
F. Gerber	Corning
[fol. 155]	
Morris Gaby	Corning
C. H. Dopp	Frankfort
Louis De Pillo	Geneva
Richard De Toto	Geneva
Fred Mausert	Glens Falls
N. K. Smith	Glens Falls
Murray Briskin	Homer
Robert I. Pierce	Ilion
Thomas Warne	Little Falls

Individual	*Location and Schine Town*
New York (Cont.)	
William Wood	Little Falls
Reliance Theatres, Inc.	Lockport
Charles Dickinson, Jr.	Lockport
E. J. Wolfe	Lowville
B. Ohmann	Lyons
Michael Boumansour	Malone
Frank Karus	Massena
W. G. Croucher	Newark
W. C. Smalley	Norwich
Eli Rosenbaum	Ogdensburg
John Cordingly	Oswego
Katherine Thompson	Rochester
Chester and Paul Fenneyvessy	Rochester
Max Fogel	Rochester
Charles Girard	Tupper Lake Junction
William Clark	Waddington
Peter C. Vournakis	Watertown
Graham and Ludlow	Watertown
Wm. Tishkoff	Rochester
[fol. 156]	
Kentucky	
Hiram Owens	Corbin
M. K. Murphy	Corbin
G. C. Scott	Corbin
Price Coomer	Harlan
Harry Schwartz	Lexington
J. B. Russell	Maysville
W. J. Ward	Pikeville
Maryland	
Helen Ulman	Salisbury

56

The plaintiff has incomplete knowledge and information as to each of the items contained in this bill of particulars, and hereby reserves its right to furnish further particulars regarding matters concerning which it may hereafter obtain further knowledge and information.

Dated December 4, 1941. Buffalo, New York.

United States of America, by George L. Grobe, United States Attorney.

Herbert Borkland, Special Assistant to the Attorney General.

John F. Clagett, Special Assistant to the Attorney General.

Seymour Simon, Special Attorney.

[fol. 157] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

AMENDMENT TO SUPPLEMENTAL BILL OF PARTICULARS

Now comes the United States of America, the plaintiff in this action, by George L. Grobe, United States Attorney for the Western District of New York, and amends the first paragraph of the "Supplemental Bill of Particulars," heretofore filed on December 4, 1941, to read as follows:

Now comes the United States of America, the plaintiff in this action, by George L. Grobe, United States Attorney for the Western District of New York, and for further and better particulars of certain of the allegations of the "Amended Complaint," heretofore filed on May 12, 1941, with respect to which it has heretofore filed further particulars, states as follows:[1]

Dated December 8, 1941.

Buffalo, New York.

United States of America, by George L. Grobe, United States Attorney.

Herbert Borkland, Special Assistant to the Attorney General. John F. Clagett, Special Assistant to the Attorney General. Seymour Simon, Special Attorney.

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[1] These particulars replace the particulars contained in the following numbered paragraphs of the particulars filed by the plaintiff on August 8, 1940, in response to certain of the defendants' specification of demands for a bill of particulars: 3, 4, 5, 6, 7, 9, 10, 11, 18, 19, 20, 22, 23, 24, 25, 26, 29, 30, 31, 32, 33, 34, 35, 36, 37, 39, 41, 45, 46, 47, 51, 53, 54, and 55. Each paragraph is here numbered the same as the corresponding paragraph in the plaintiff's bill of particulars of August 8, 1940, which it replaces.

[fol. 158] District Court of the United States

[Title omitted]

Interrogatories Propounded by the "Schine Defendants" to Plaintiff, United States of America

Please take notice that pursuant to Rule 33 of the Federal Rules of Civil Procedure, you are required to serve upon the undersigned, and to file within twenty days from the service of this demand upon you, answers to the following interrogatories propounded in behalf of the defendants, Schine Chain Theatres, Inc., Schine Circuit, Inc., Schine Theatrical Co., Inc., Schine Enterprises Corporation, Schine Lexington Corporation, Chesapeake Theatres Corporation, J. Myer Schine, Louis W. Schine and John A. May, herein referred to as the "Schine defendants."

The term "cmplaint" wherever used in tehse Interrgatories, refers to the amended complaint served and filed by petitioner. The term "bill of particulars" refers to the bill of particulars served and filed by petitioner, which, by order of this Court dated July 2, 1941, was deemed extended to and applied to the amended complaint.

I. As to the allegations of paragraph 42 of the complaint:

A. State the total number of "first-class pictures" plaintiff will claim were collectively distributed by the distributor [fol. 159] defendants and the non-defendant distributors in the past ten years.

B. State and itemize the "first-class pictures" distributed by each of the eight so-called "major distributors" in each year during the past ten years, giving the name or title of each picture, the name of the distributor and the year of release.

C. Describe and itemize each factor which plaintiff will claim determines the character of a picture as a "first-class picture."

II. As to the allegations of paragraph 44 of the complaint:

A. (1) Identify by giving name and address of each of the "other distributors who are not defendants herein" referred to as independent distributors in the complaint herein.

(2) Identify by distributor and by year, and by name or title the feature pictures distributed by the said "other distributors" during each of the past ten years, which plaintiff claims are of a "secondary or inferior" quality, and those which plaintiff claims are both "satisfactory or suitable."

(3) State the number of feature pictures and the number of "satisfactory or suitable" feature pictures which plaintiff claims constitute the "reasonable needs" of any first-class theatre.

(4) State the number of feature pictures distributed by the eight so-called "major distributors," which plaintiff claims is necessary to operate successfully a first-class theatre in the "Schine towns," specifying the number with respect to each said "Schine town."

B. (1) Describe in detail the factors which plaintiff will claim as determining whether a theatre is a "first-[fol. 160] class theatre" as contemplated in paragraph 44 of the complaint.

(2) Give the name and location of every theatre in a "Schine town" not operated by the "Schine defendants," which plaintiff claims is a "first-class theatre."

C. Give the name and address of each person having knowledge of relevant facts tending to establish that in order to successfully operate a "first-class theatre" in any of the "Schine towns," an exhibitor must be able to exhibit a substantial number of feature pictures distributed by the eight so-called "major distributors" in each year.

III. As to the allegations of paragraph 46 of the complaint, and the particulars of paragraph 4 of plaintiff's bill of particulars:

A. As to the allegation that the "Schine defendants" have combined and conspired with each other state:

(1) The time when and place where said defendants so combined and conspired with each other.

(2) The manner in which said defendants so combined and conspired.

(3) The name of the agent or agents, if any, through whom each of said defendants became a party to said combination and conspiracy.

(4) The terms of the alleged combination and conspiracy and the means which plaintiff will claim were agreed upon to carry out or execute the same.

(5) Whether the same was oral or in writing; if oral, state the substance thereof; if in writing furnish a copy thereof or identify the same by stating the description and location of each document containing relevant facts, which plaintiff will rely on as tending to establish such charge in whole or in part.

[fol. 161] (6) State in detail the facts which plaintiff will claim tend to establish when and how each of the so-called "major distributors" became a party to such conspiracy and the name of the agent or agents acting in its behalf.

B. As to the allegations that the "Schine defendants" have combined and conspired with each other and with the "distributor defendants" and "non-defendant distributors," state as to each of the eight so-called "major distributors" the following:

(1) The time when and place where each "major distributor" first so combined and conspired with the "Schine defendants" or any of them.

(2) The manner in which each "major distributor" so combined and conspired.

(3) The terms on which each "major distributor" became a party to the alleged combination and conspiracy.

(4) The means agreed upon for carrying out the alleged conspiracy and combination, the nature, scope and objective thereof, and the period throughout which plaintiff will claim the same has been in effect.

(5) The name of each person, firm or corporation claimed to have participated therein, and the nature and extent of his or its participation.

(6) The name and location of each independent exhibitor or other party claimed to have been injured thereby.

(7) Whether the same was oral or in writing, in whole or in part; if oral, the substance thereof; if in writing furnish a copy thereof or identify the same by describing and giving the location of each document containing relevant facts, which plaintiff will claim tends to establish or substantiate such charge in whole or in part.

[fol. 162] (8) Each act and thing done by each such participant as a part of or to effectuate the said conspiracy and combination, together with the date and place of each such act or thing, and the name of the agent, if any, through whom it was done.

C. State the name, address and location of each exhibitor other than the "Schine defendants," in each situation enumerated in paragraph 4 of plaintiff's bill of particulars, which plaintiff will claim was injured by the alleged monopoly of "first-and preferred-run exhibition of motion pictures."

IV. As to the allegations of paragraph 46(a) of the complaint state:

A. If it is claimed that in granting such preference and protection to the "Schine defendants," any "major distributor" acted as a result of an agreement between said "major distributor" and the "Schine defendants," as to such "major distributor" state with respect to such agreement the following:

(1) The times and places plaintiff will claim such agreement or agreements were entered into.

(2) The names of the parties thereto and the time when each became a party thereto.

(3) Whether the same was oral or in writing, in whole or in part; if oral, the substance thereof; if in writing, furnish a copy thereof, if available, or identify the same by describing and furnishing the location of each document containing relevant facts, which plain-

tiff will claim tend to establish or substantiate such charge in whole or in part.

B. Define the words "uniformly granted" as used in paragraph 46 of the complaint and state which of the eight so-called "major distributors" plaintiff will claim "uniformly granted" the privileges referred to in paragraph 46 of the complaint.

[fol. 163] (1) Does plaintiff claim that the distributors mentioned and described in answer to "B" above, each "uniformly granted" the privileges referred to in paragraph 46 by reason of an agreement among them.

(2) If the answer to the preceding interrogatory is in the affirmative state:

(a) The date thereof.

(b) The names of each of the parties thereto.

(c) If plaintiff will claim that said agreement is to be inferred from acts and circumstances, state each particular act relied upon to establish the agreement asserted to be inferred therefrom.

(d) Indicate with respect to each act the date and place where same was committed; the name of the distributor committing such act; the name of the person or persons acting in behalf of each such distributor; the name of the person or persons acting on behalf of each of the "Schine defendants" involved in connection therewith.

V. As to the particulars in paragraph numbered 6 of plaintiff's bill of particulars:

A. With respect to each of the alleged "competing theatres" named in paragraph numbered 6 of plaintiff's bill of particulars, state the following:

(1) Age of each theatre, giving as near as possible the date of construction or date when converted into a motion picture theatre.

(2) Seating capacity of each of said theatres.

(3) Type and quality of seats and other furniture and furnishings.

(4) Type and quality of projection and sound equipment.

(5) Admission prices charged by each theatre.

[fol. 164] VI. As to the allegations of paragraph 46 (b) of the complaint and the particulars of paragraph numbered 7 of plaintiff's bill of particulars:

A. Define and describe the meaning of the words "local competitive basis", indicating each factor or element considered in arriving thereat.

(1) Indicate in what respects plaintiff will claim the application of said meaning and definition to each competitive theatre situation in each "Schine town".

(2) Indicate in what respects plaintiff will claim the application of said meaning and definition in the case of the Plaza Theatre, Malone, New York, and Memorial Theatre, Mount Vernon, Ohio.

B. State as to each of the following whether plaintiff considers the same as a factor in the meaning of the term "local competitive basis":

(1) Size of theatre involved.

(2) Condition of theatre equipment.

(3) Credit standing of operator or owner of theatre.

(4) Prior record of operator or owner of theatre in fulfilling contract commitments.

(5) Length of time during which particular exhibitor or operator has been a customer of the distributor or distributors involved.

C. With respect to each refusal to license motion pictures on a "local competitive basis" in each instance enumerated in paragraph numbered 7 of the plaintiff's bill of particulars, and any additional instances which may have come to the plaintiff's knowledge, since, furnish the following information:

(1) Date of such refusal.

(2) The name of the person or persons acting in behalf of each "major distributor" in connection

[fol. 165] therewith, the name of the exhibitor and the identity and location of his theatre, who plaintiff claims was so refused.

(3) The nature of each offer (if any) claimed to have been made by each such exhibitor for the privilege of licensing the motion pictures distributed by the said "major distributors" and furnish the terms offered, the date of such offer and whether same was oral or in writing in whole or in part.

(a) If oral the substance thereof; if in writing furnish a true copy of such offer.

(b) Describe and state the location of such document which plaintiff will claim tends to establish or substantiate such charge in whole or in part.

(c) Name of the agent or agents, if any, acting on behalf of each "major distributor" in making such refusal.

(4) Enumerate the "local competitive factors" which plaintiff will claim were disregarded in connection with such refusal.

D. Identify each instance in which it is claimed that the "Schine defendants" "have collectively contracted with each of the distributors (defendant and non-defendant) for all of the feature motion pictures annually required for exhibition at all of the theatres operated by the Schine defendants" in the "Schine towns" in advance of the production and distribution of such feature pictures, and before such feature pictures or any of them have been offered to any other exhibitor in said towns, and furnish in each instance such particulars as will identify the particular contract or contracts involved.

VII. As to the allegations of paragraph 46 (c) of the complaint:

[fol. 166] A. State in what respects so-called rejection privileges granted to the "Schine defendants" differed from rejection privileges granted to other exhibitors.

(1) Furnished specific instances of such different rejection privileges, giving name and location of each

theatre in each instance and the precise differences claimed.

(2) Identify fully each instance in which it is claimed the "Schine defendants" "have been granted substantial rejection privileges" not normally granted to other exhibitors, specifying in each instance in which respects the said rejection privileges granted to the "Schine defendants" are greater than those normally granted to other exhibitors.

B. State in what respect so-called "right and privilege to play certain specific feature pictures without assuming any binding obligation to do so" granted to the "Schine defendants" differ from similar privileges granted to other exhibitors.

(1) Furnish specific instances of such different "right and privilege to play certain specific feature pictures without assuming any binding obligation to do so", giving the name and location of each theatre in each instance and the precise differences claimed.

(2) Identify fully each instance in which it is claimed the "Schine defendants" were granted the right and privilege to "play certain specific feature pictures without assuming any binding obligation" to do so.

C. Furnish specific instances of refusal to grant similar privileges to other exhibitors in competition with the "Schine defendants", stating as to each instance:

(1) The name and location of each theatre.

[fol. 167] (2) Date when request was made, and name of distributor from whom request was made.

(3) Date when refusal was made and name of distributor claimed to have made refusal.

(4) Whether the request and subsequent refusal were oral or in writing, in whole or in part; if oral state the substance thereof and by whom made; if in writing, furnish copies thereof, if available, or identify by describing and furnishing the name and location of each document which plaintiff will claim tends to establish and substantiate the charge wholly or in part.

VIII. As to the allegations of paragraph 46(d) of the complaint and particulars of paragraphs numbered 9 and 10 of the plaintiff's bill of particulars:

A. As to the allegation that "distributor defendants and non-defendant distributors have uniformly refused to sell a second or subsequent run in opposition to a theatre or theatres operated by the "Schine defendants", identify by name and location each theatre which it is claimed was refused second or subsequent run by each of the eight so-called "major distributors", stating as to each such instance:

(1) Date when request was made.

(2) Date when refusal was made.

(3) Whether request or refusal were oral or in writing, in whole or in part; if oral, the substance thereof; if in writing, furnish a copy thereof, if available, or identify by furnishing particulars of the name and location of each document which plaintiff will claim tend to establish or substantiate the charge in whole or in part.

(4) The names of the agent or agents, if any, acting on behalf of each "major distributor" in making such refusal.

[fol. 168] (5) The periods during which plaintiff will claim the said refusals were in force and effect in each instance.

B. If it is claimed that the "distributor defendants and non-defendant distributors" made the refusals alleged in paragraph 46(d) of the complaint as the result of a request made by the "Schine defendants" or any of them, state the following:

(1) The date when the request was made.

(2) Whether request was oral or in writing; if oral, the substance thereof, if in writing, furnish a copy thereof, if available, or identify by furnishing particulars of the same.

(3) By whom on behalf of the "Schine defendants" such request was made and to whom on behalf of distributor or distributors, naming each.

C. As to the instance relating to the Plaza Theatre, Malone, New York, as set out in paragraph 10 of the plaintiff's bill of particulars, and any other similar instances which may have come to plaintiff's knowledge since, state the following:

(1) The date of the alleged request.

(2) The place where it was made.

(3) The party making the same.

(4) The party to whom same was communicated.

(5) Whether such request was in writing or oral, in whole or in part; if oral, the substance thereof; if in writing, furnish copies thereof if available, or identify by describing the nature and location of each document which plaintiff will claim tends to substantiate or establish the charge in whole or in part.

IX. As to the allegations of paragraph 46(e) of the complaint:

A. With respect to the claim that the "major distributors" have granted the "Schine defendants" unreasonable [fol. 169] protection over other exhibitors, state with respect to each instance the amount of clearance allegedly so granted in favor of the theatres operated by the "Schine defendants" and the maximum amount of clearance plaintiff claims would have been reasonable in each of such situations.

(1) State each factor or element considered by plaintiff in arriving at its answer to IX A. above.

(2) Set forth each and every instance, if any, which has come to the knowledge of plaintiff in addition to the instances set forth in paragraph 11 of plaintiff's bill of particulars.

B. As to each instance of unreasonable protection claimed by the plaintiff, state the following:

(1) The time or period during which such unreasonable protection will be claimed to have been in force.

(2) The extent to which it is claimed the protection granted was unreasonable.

C. If it is claimed that the unreasonable protection was granted as a result of a request made by the "Schine defendants", or any of them, state:

(1) The date or dates of such request.

(2) By whom the request was made in behalf of the "Schine defendants" and to whom in behalf of the "major distributors".

(3) Whether the request was oral or in writing, in whole or in part; if oral, the substance thereof; if in writing, attach a copy of each such writing if available or furnish a description of the nature and location of each document which plaintiff will claim tends to substantiate or establish the charge in whole or in part.

D. If it is claimed that any of the "major distributors" have granted the unreasonable protection alleged in para- [fol. 170] graph 46(e) of the complaint, pursuant to an agreement between such "major distributors" and the "Schine defendants", state the following:

(1) The times and places plaintiff will claim such agreement or agreements were entered into.

(2) The names of the parties thereto and the time when each became a party thereto.

(3) Whether the same was oral or in writing, in whole or in part; if oral the substance thereof; if in writing furnish a copy thereof or identify the same by describing and furnishing the location of each document containing relevant facts, which plaintiff will claim tend- to establish or substantiate such charge in whole or in part.

X. As to the allegations of paragraph 46(f) of the complaint and paragraphs 13 and 14 of the bill of particulars:

A. Give specific instances which plaintiff will claim of higher rentals for less favorable runs in connection with the four theatres named in paragraphs 13 and 14 of plaintiff's bill of particulars and by other theatres which have come to the knowledge of plaintiff since the service of said bill of particulars, furnishing in each instance:

(1) The name and title of the picture and the name of the distributor.

(2) The rental paid in each instance and designating whether a flat rental or percentage rental, and if a percentage rental, the terms of said rental.

(3) Details of the run claimed to be comparable or less favorable.

(4) Rentals which plaintiff will claim were paid by the "Schine defendants" with respect to the instances enumerated.

[fol. 171] B. If it is claimed that in licensing pictures to the "Schine defendants" at rentals less than those which other exhibitors have paid for comparable or less favorable runs, any of the "major distributors" acted as a result of an agreement between such "major distributor" and the "Schine defendants," state the following:

(1) The times and places plaintiff will claim such agreement or agreements were entered into.

(2) The names of the parties thereto and the time when each became a party thereto.

(3) Whether the same was oral or in writing, in whole or in part; if oral, the substance thereof; if in writing furnish a copy thereof or identify the same by describing and furnishing the location of each document containing relevant facts, which plaintiff will claim tend- to establish or substantiate such charge in whole or in part.

C. State in what respects and to what extent it is claimed that the run licensed to such other exhibitor was comparable to or less favorable than the run licensed to the "Schine defendants."

XI. As to the allegations of paragraph 46(g) of the complaint and paragraphs 15, 16 and 17 of plaintiff's bill of particulars:

A. As to the allegations "that the distributor defendants have licensed to the Schine defendants motion pictures greatly in excess of the reasonable exhibition requirements of their theatres," state the name of each Schine theatre which it is claimed licensed motion pictures greatly in excess of its reasonable exhibition requirements, stating as to each the following:

(1) The period or periods during which it is claimed such excessive licensing occurred.

[fol. 172] (2) The extent to which it is claimed such licensing was in excess of the reasonable exhibition requirements of said theatre.

(3) What plaintiff will claim was the reasonable exhibition requirements of each such theatre.

(4) Each factor and element considered by plaintiff in determining the reasonable exhibition requirements of each such theatre.

B. As to the allegation that the major distributors "prevented other exhibitors from using said pictures at all or from getting them while they are still new", state the following with respect to each exhibitor mentioned in paragraphs 15, 16 and 17 of plaintiff's bill of particulars, and any others which may have come to plaintiff's knowledge since service and filing of said bill of particulars:

(1) The name of every picture which such exhibitor was prevented from using either at all or while still new.

(2) The date when such picture was requested by such exhibitor.

(3) The date when such picture was refused to such exhibitor and the name of the distributor refusing the same.

C. If it is claimed that the other exhibitors were prevented from using the said pictures at all or from getting them while they are still new, at the request of the "Schine defendants" or any of them, state:

(1) The date of said request.

(2) By whom in behalf of the "Schine defendants" such request was made and to whom in behalf of the distributors, naming each.

(3) Whether such request was oral or in writing, in whole or in part; if oral, state the substance thereof;

if in writing, furnish a copy thereof if available, [fol. 173] or identify by describing the nature and location of each document which plaintiff will claim tends to substantiate or establish the charge in whole or in part.

D. If plaintiff claims that in licensing pictures in excess of the reasonable requirements to the "Schine defendants", any of the "major distributors" acted as a result of an agreement between such "major distributors" and the "Schine defendants", state the following:

(1) The time and places plaintiff will claim such agreement or agreements were entered into.

(2) The names of the parties thereto and the time when each became a party thereto.

(3) Whether the same was oral or in writing, in whole or in part; if oral, the substance thereof; if in writing, furnish a copy thereof or identify the same by describing and furnishing the location of each document containing relevant facts, which plaintiff will claim tend- to establish or substantiate such charge in whole or in part.

XII. As to the allegations of paragraph 47 of the complaint.

A. Identify each request of the Schine defendants to any distributor in response to which it is claimed the advantages referred to in said paragraph were granted to the Schine defendants, and the restraints referred to in said paragraph or imposed upon competitors of the Schine defendants, and as to each distributor state with respect to each such request:

(1) The time when and place where it is claimed such request was made.

[fol. 174] (2) The person or persons making such request and the person or persons to whom it is claimed such request was made.

(3) Whether such request was oral or in writing; if oral, state the substance thereof; if in writing, furnish a copy thereof or identify the same.

(4) The town or towns and the theatre or theatres with respect to which it is claimed such request was given.

B. With respect to the allegation that each of the distributor defendants granted "the uniform advantages to the Schine defendants * * * with knowledge of the uniformity of action taken by all said distributors and with knowledge of the competitive effect as hereinafter alleged by such uniform action", as to each such instance in which it is claimed such action was taken, state:

(1) The knowledge, and the source thereof which plaintiff claims each distributor had of the action taken or to be taken by each of the other distributors.

(2) The particular action claimed to have been taken by each distributor.

(3) The agent or agents of each distributor whose knowledge it is claimed constituted the knowledge of each distributor.

C. As to the allegation with respect to "knowledge of the competitive effect as herein alleged of such uniform action" state:

(1) Each and every element or factor which plaintiff will claim constitutes the competitive effect of such alleged uniform action.

(2) The knowledge and source thereof that it is claimed the "Schine defendants" or any of them had with respect to said competitive effect.

[fol. 175] (3) The agent or agents of the Schine defendants or any of them, whose knowledge it is claimed constituted the knowledge of the said "Schine defendants."

(4) State the name of each "competing exhibitor" and the name and location of his theatre, upon whom it is claimed that the distributors imposed "the foregoing uniform restraints", giving with respect to each such instance the date upon which such restraints were imposed and each specific alleged restraint claimed to have been imposed.

XIII. As to the allegations of paragraph 48 of the complaint and paragraphs 18, 19, 20, 21 and 22 of plaintiff's bill of particulars:

A. State as to each of the theatres enumerated as a "competing theatre" in paragraph 19 of plaintiff's bill of particulars, the following information:

(1) The name of the Schine theatre or theatres with which it is alleged to compete.

(2) The names of the owners or operators of each such theatre for the past ten years.

(3) The age of each theatre, giving as near as possible the date of construction, or the date when converted into a motion picture theatre.

(4) Seating capacity of each said theatre, the type and quality of seats, furniture, furnishings, projection and other equipment.

(5) Admission prices charged in each of said theatres for the past ten years.

(6) Describe in detail what factors plaintiff applies in describing each of said theatres as a "competing theatre" other than its location in the same town in which a Schine theatre is located.

(7) State as to each such "competing theatre" whether it is an "independent" theatre or part of a [fol. 176] "chain" of two or more theatres and if the latter, the name of such circuit and the name and location of each theatre in such circuit.

(8) State as to each such "competing theatre" each instance in which plaintiff will claim a disregard of the so-called local competitive factors as described in paragraph 21 of plaintiff's bill of particulars, furnishing in each instance:

(a) The name and location of the theatre involved.

(b) The name of the distributor involved.

(c) The name of the picture or pictures involved, the dates played and rental price offered by the exhibitor, the rental price charged by the distributor and all other details necessary to identify each such instance.

(c) Enumerate the "local competitive factors" which plaintiff will claim were disregarded in connection with such competing theatre.

(9) Describe in detail each instance of "circuit buying" on the part of the Schine defendants and correlative "circuit selling" on the part of the distributors, or any of them, furnishing as to each:

(a). The date of each such "circuit buying" contract.

(b) The name of the distributor with whom made.

(c) The name and location of each Schine theatre involved in such contract.

(d) The product season involved in such contract or if such contract specifies details of pictures, each detail involved.

B. State as to each town enumerated in paragraph 18 of the plaintiff's bill of particulars, the following information:

[fol. 177] (1) The population of said town, 1930 and 1940 census.

(2) Average per capita income of said town.

(3) Nature and extent of industrial activity of said town.

(4) The date when plaintiff will claim competition ceased and local monopoly commenced, giving in each instance the name and address of each competitive theatre during the past ten years, if any, and the circumstances which plaintiff will claim caused such theatre to cease operation.

C. State whether the term "local competitive factors" includes any other factors other than that specifically mentioned in paragraph 21 of the plaintiff's bill of particulars, and if so, itemize, describe and define same in detail.

D. As to the competing exhibitors named in paragraphs 19 and 22 of plaintiff's bill of particulars, state as to each such theatre with respect to feature pictures exhibited therein:

(1) Whether the said feature pictures were licensed for such theatre alone or as part of a single transaction or contract covering two or more theatres in which said exhibitor has or had an interest or participation, or as part of a joint booking arrangement.

(2) If as part of a single transaction covering two or more theatres, state as to each said exhibitor for each of the motion picture seasons involved, the names and locations of the other theatres included in such transaction or contract.

(3) Name each distributor with whom such contract was entered into, stating as to said competing exhibitors or any of them, each instance in which such competing exhibitor in the past ten years contracted for picture requirements in so-called "blocks" in ad- [fol. 178] vance of each season and as to each instance state:

(a) The name and location of each theatre so contracting for product.

(b) The name of each distributor with whom such block booking contracts were entered into.

(c) Date of each such contract.

(d) Period or season covered by same.

XIV. As to paragraph 49 of the complaint:

A. Describe in detail the alleged combination between the Schine defendants and the distributors, including the following:

(1) The names of each of the parties thereto.

(2) The date when each such party joined such combination.

(3) Each act and thing or omission done or committed by each of the parties to such alleged combination as part of or to effectuate the same, together with the date and place of each such act or omission and the name of the person or persons committing such act or omission.

XV. As to the allegations of paragraph 49 (a) of the complaint and the particulars of paragraphs 23, 24, 25, 26, 27 and 28 of the plaintiff's bill of particulars:

A. As to each theatre mentioned in paragraph 23 of the plaintiff's bill of particulars, state:

(1) The date when each such theatre was acquired.

(2) The particular method or means which plaintiff will claim were employed or used by the Schine defendants in connection therewith.

B. As to each theatre mentioned in paragraph 24 of the bill of particulars, state:

(1) The exact date or dates when plaintiff will claim [fol. 179] the Schine defendants attempted to acquire each such theatre.

(2) The precise method or methods claimed to have been used by the Schine defendants in connection therewith.

(3) The name of each person claimed to have acted on behalf of the Schine defendants or any of them.

C. As to each theatre which Schine defendants are alleged to have forced out of business as mentioned in paragraph 25 of plaintiff's bill of particulars, and any others which may have come to plaintiff's knowledge since, state:

(1) The exact date or dates when plaintiff will claim said theatres were forced out of business.

(2) The precise method or methods claimed to have been used by the Schine defendants in connection therewith.

(3) The name of each person claimed to have acted on behalf of the Schine defendants or any of them.

D. As to each theatre which the Schine defendants are alleged to have attempted to force out of business, as enumerated in paragraph 26 of plaintiff's bill of particulars, and any others which may have come to plaintiff's knowledge since, state:

(1) The exact date or dates when plaintiff will claim the Schine defendants attempted to force the said competitors out of business.

(2) The precise method or methods claimed to have been used by the Schine defendants in connection therewith.

(3) The name of each person claimed to have acted in behalf of the Schine defendants or any of them.

E. Give the name of each distributor who plaintiff claims participated in the acts alleged in paragraph 49 of the complaint, stating as to each:

[fol. 180] (1) The manner or method used in such participation.

(2) The alleged acts of participation and the dates thereof.

(3) The name of each person claimed to have acted in behalf of each distributor named in answer to this interrogatory.

XVI. As to the allegations of paragraph 49 (a) (1) of the complaint and paragraphs 29 and 30 of plaintiff's bill of particulars:

A. With respect to each instance in which it is claimed that the Schine defendants threatened to build a theatre in opposition to another exhibitor as enumerated in paragraph 29 of plaintiff's bill of particulars, and any other instances which may have come to plaintiff's knowledge since, state:

(1) The date when such threat was made.

(2) The name of the exhibitor to whom the threat was communicated and the theatre in relation to which such threat was made.

(3) The manner in which such threat was communicated.

(4) By whom on behalf of the Schine defendants such threat was made.

(5) To whom on behalf of exhibitor such threat was made.

(6) If such threat was in writing, furnish a copy; if oral, state the substance thereof.

(7) Whether such other exhibitor sold or leased said theatre to the Schine defendants or any of them.

(8) Whether the plaintiff will claim that such sale or leasing resulted from such threat or threats.

(9) The date of such sale or lease and the terms and conditions thereof.

[fol. 181] B. As to each theatre acquired by the Schine defendants for many years past and enumerated in paragraph 30 of the plaintiff's bill of particulars, state whether plaintiff will claim that the Schine defendants acquired same by threats, intimidation or other unlawful means.

(1) As to each theatre in which the answer is in the affirmative, state the details requested in A, (1) to (9) inclusive, *supra.*

XVII. As to the allegations of paragraph 48 (a) (2) of the complaint and paragraph 31 of plaintiff's bill of particulars:

A. State as to each theatre constructed by the Schine defendants in opposition to another exhibitor, in what respect plaintiff will claim such construction was in violation of law.

B. As to each newly constructed theatre state in detail exactly what product such newly constructed theatre is alleged to have taken away from such other exhibitor.

C. State in detail as to each such other exhibitor in what respects plaintiff will claim his position was inferior to his position prior to the opening of the newly constructed theatre.

XVIII. As to the allegations of paragraph 49 (a) (3) of the complaint:

A. Identify each instance in which it is claimed that the Schine defendants threatened to deprive another exhibitor of desirable product or run in the event of his failure to sell or lease to said defendants, as alleged in said paragraph, and as to each such instance state:

(1) The name of the person who it is claimed made such threat on behalf of the Schine defendants.

[fol. 182] (2) The name of the exhibitor to whom such threat was communicated.

(3) The name and location of the theatre or theatres in relation to which such theatre was made.

(4) The date when such threat was made.

(5) Whether such threat was oral or in writing; if oral, state the substance thereof; if in writing, furnish a copy.

(6) Describe the product or run of which it is claimed the Schine defendants threatened to deprive such other exhibitor.

XIX. As to the allegations of paragraphs 48 (a) (4) of the complaint and paragraph 32 of plaintiff's bill of particulars:

A. As to each theatre named in paragraph 32 of plaintiff's bill of particulars, and any others which may have come to plaintiff's knowledge since, in which it is claimed such theatre was deprived of desirable product or run, state the following:

(1) The product or run which such exhibitor was using prior to such alleged deprivation.

(2) The product or run which such exhibitor used subsequent to such alleged deprivation.

(3) The product or run of which such exhibitor was allegedly deprived.

(4) The manner in which it is claimed the Schine defendants accomplished such deprivation.

(5) The position to which it is claimed such other exhibitor was relegated as a result of such deprivation and to what extent and in what manner it is claimed such new position was inferior to the position previously occupied by him.

B. State the factors or elements which plaintiff claims constitute "desirable product or run" as alleged in said paragraph.

[fol. 183] C. State the name of each distributor and of each person acting in such distributor's behalf, who aided or participated in depriving such other exhibitor of desirable product or run.

XX. As to the allegations of paragraph 49(a) (5) and paragraphs 33, 34 and 35 of plaintiff's bill of particulars:

A. As to each instance mentioned in paragraph 49(a) (5) of the complaint and enumerated in paragraphs 33, 34 and 35 of plaintiff's bill of particulars, and any others which may have come to plaintiff's knowledge since, state:

(1) The time when, place where and manner in which it is claimed the suggestion was conveyed to such other exhibitor that the Schine defendants intended to build or open a theatre if such exhibitor would not agree to sell or lease to them.

(2) If such suggestion was conveyed in writing, furnish a copy; if oral, state the substance thereof.

(3) The name of the person conveying each such suggestion in behalf of the Schine defendants, and whether such person acted as an employee or agent of the Schine defendants directly, or was a "third party" as characterized in the complaint.

XXI. As to the allegations of paragraph 49(a) (6) of the complaint and paragraph 36 of plaintiff's bill of particulars:

A. As to each instance therein enumerated, or any others which may have come to plaintiff's knowledge since, state:

(1) The date of the acquisition of superior title by Schine defendants.

(2) The manner of the acquisition of superior title by the Schine defendants, e. g. whether by purchase of fee, acquisition of lease or other methods.

[fol. 184] (3) The date of the taking over of control or operation of such theatre by the Schine defendants.

XXII. As to the allegations of paragraph 49 (a) (7) of the complaint:

A. Identify each instance in which it is claimed that the Schine defendants cut admission prices as alleged in said paragraph, and with respect to each such instance state:

(1) The name and location of the theatre operated by the Schine defendants which it is claimed cut admission prices.

(2) The name and location of the theatre or theatres with whom it is claimed such theatre was in competition.

(3) The admission scale of the Schine theatre prior to such cut.

(4) The admission scale of the Schine theatre subsequent to such cut.

(5) The admission scale of such competing theatre prior to such cut.

(6) The admission scale of such competing theatre subsequent to such cut.

(7) The dates, both as to the Schine theatre and the competing theatre involved, when any such change in admission prices went into effect and the duration of each such admission price policy.

XXIII. As to the allegations of paragraph 49(a)(8) of the complaint:

A. Identify each instance in which it is claimed that "unusual and costly games and giveaways" were resorted to as alleged in said paragraph and as to each instance state:

(1) The name and location of each theatre operated [fol. 185] by the Schine defendants in which such unusual and costly games and giveaways were resorted to.

(2) The name and location of the theatre or theatres with which each such theatre is alleged to be in competition.

(3) The dates when each such Schine theatre commenced to resort to such games and giveaways.

(4) Whether or not the competing theatres also employed such methods of competition. If so, the time when and manner and extent to which employed.

XXIV. As to the allegations of paragraph 49(a)(9) of the complaint and paragraph 37 of plaintiff's bill of particulars:

A. As to each instance enumerated in paragraph 37 of plaintiff's bill of particulars and any other instances which may have come to plaintiff's knowledge since, in which plaintiff will claim the Schine defendants took unreasonable protection over other exhibitors, state:

(1) The name and location of the Schine theatres in whose favor such unreasonable protection was granted.

(2) The name and location of the theatre or theatres over whom such unreasonable protection was obtained.

(3) The extent by area and period of time of the protection granted such Schine theatre.

(4) The date when such protection was first granted such Schine theatre.

(5) Whether such protection is still in force and effect and if not, when it terminated.

(6) The extent to which it is claimed such protection was "unreasonable."

[fol. 186] (7) The name of each distributor and the names of the persons acting in such distributor's behalf, who granted such alleged unreasonable protection or aided or participated in the granting thereof.

XXV. As to the allegations of paragraph 49 (b) of the complaint:

A. Identify each town in which it is claimed that the Schine defendants have restrained trade and monopolized the exhibition of motion pictures, and with respect to each town so identified, state:

(1) The manner in which it is claimed the Schine defendants have restrained trade and monopolized the exhibition of motion pictures.

XXVI. As to the allegations of paragraph 49(b)(1) of the complaint and paragraphs 39 and 40 of plaintiff's bill of particulars, and any others which may have come to plaintiff's knowledge, since:

A. As to each situation enumerated in paragraphs 39 and 40 of plaintiff's bill of particulars, and any others which may have come to plaintiff's knowledge since, state:

(1) The date when such monopolization commenced and the duration thereof.

(2) A complete list of all "high-class feature pictures" distributed by the distributors, both defendant and non-defendant, which it is claimed the Schine defendants used in effecting such monopolization, giving title, name of distributor and motion picture season in which released.

(3) A complete list of all the "most desirable feature pictures" distributed by the independent distributors, which it is claimed the Schine defendants used in effecting such monopolization, giving title, name of inde-

[fol. 187] pendent distributor and motion picture season in which released.

(4) The names and locations of all theatres and the operators thereof, which were unable to obtain motion picture product because of such alleged monopolization.

B. Define all factors and elements which plaintiff claims make a specific picture a "high-class picture."

C. Define all factors and elements which plaintiff claims make a specific identified picture "more desirable" as distinguished from less desirable independent feature pictures.

XXVII. As to the allegations of paragraph 49 (b) (2) of the complaint:

A. Identify by name and location each theatre in which it is claimed the Schine defendants contracted for "more feature pictures" than the theatre could reasonably exhibit, specifying in each instance:

(1) The date of the contract and the name of the distributor involved.

(2) The product or motion picture season involved.

(3) The extent to which it is claimed such theatre contracted for "more feature pictures" than it could reasonably exhibit, giving the number of pictures which plaintiff claims is reasonably necessary in each situation for the operation thereof.

B. Identify the name and location of each other exhibitor claimed to have been denied the opportunity of contracting for or exhibiting said pictures.

XXVIII. As to the allegations of paragraph 49 (b) (3) of the complaint and paragraph 41 of plaintiff's bill of particulars:

A. As to each theatre enumerated in paragraph 41 of plaintiff's bill of particulars, and any others which may have come to plaintiff's knowledge since, state:

[fol. 188] (1) Name and location of each Schine theatre in whose favor such unreasonable protection was granted.

(2) The name or names and location of the theatre or theatres over whom such unreasonable protection was granted.

(3) The date when such unreasonable protection was granted and the etxent thereof as to area and period of time.

(4) The period during which such unreasonable protection remained in effect.

(5) The name of the party who demanded such unreasonable protection.

(6) The name of the distributor upon whom such demand was made.

(7) If such demand was in writing, set forth a copy; if oral, state the substance thereof.

(8) Whether it is claimed such unreasonable protection was granted as the result of such demand.

(9) The terms and conditions under which such unreasonable protection was granted by each distributor involved.

XXIV. As to the allegations of paragraph 49 (b)(4) of the complaint and paragraph 42 of plaintiff's bill of particulars:

A. State whether the phrase "more favorable rental terms" is limited in its application and intention to the price paid for pictures and the price paid for newsreels and short subjects, and to score charges paid on such pictures.

(1) If the phrase "more favorable rental terms" is not so limited, name and define each additional element or factor claimed by plaintiff.

B. As to each instance where it is claimed the Schine defendants demanded and received more favorable rental [fol. 189] terms than other exhibitors in comparable or less favorable situations, state:

(1) Whether such demand was oral or in writing; if oral, state the substance thereof; if in writing, furnish a copy thereof.

(2) The date when and place where such demand was made fo each distributor involved.

(3) The name of each distributor claimed to have given more favorable rental terms to the Schine defendants.

(4) The name of the person making the demand in behalf of the Schine defendants.

(5) To whom on behalf of each distributor involved, said demand was made.

(6) The name and location of each Schine theatre which it is claimed received such "more favorable rental terms."

(7) The name and location of each such other exhibitor's theatre alleged to have received less favorable rental terms, the rental terms demanded by such other exhibitor and the rentals actually received by such other exhibitor.

(8) The rental terms demanded and received by the Schine defendants and the extent to which plaintiff claims they were more favorable.

(9) Each factor or element considered in determining whether a theatre comes within the classification of "comparable or less favorable situations."

XXX. As to the allegations of paragraph 49 (b)(5) of the complaint:

A. State in detail each and every "more advantageous benefits and privileges" referred to in sub-paragraph (5) of paragraph 49 (a) of the complaint.

B. As to each instance in which it is claimed that the Schine defendants demanded and received "more favor- [fol. 190] able rejection privileges and other more advantageous benefits and privileges", state:

(1) Whether such demand was oral or in writing; if oral, state the substance thereof; if in writing, furnish a copy thereof.

(2) The date when and place where such demand was made to each distributor involved.

(3) The name of each distributor claimed to have given "more favorable rejection privileges and other more advantageous benefits and privileges" to the Schine defendants.

(4) The name of the person making the demand on behalf of the Schine defendants.

(5) To whom on behalf of each distributor involved said demand was made.

(6) The name and location of each Schine theatre which received such "more favorable rejection privi-

leges and other more advantageous benefits and privileges."

(7) The name and location of each other exhibitor's theatre alleged to have received less favorable rejection privileges.

(8) The extent to which plaintiff claims the rejection privileges and other benefits and privileges demanded and received by the Schine defendants, were more favorable and advantageous.

XXXI. As to the allegations of paragraph 49 (b)(6) of the complaint:

A. State the nature of each claimed privilege or advantage referred to in said sub-paragraph (6) of said paragraph of the complaint, the granting of which by the distributors was induced through entertainment, gifts and favors to such distributors' representatives.

[fol. 191] B. Identify each instance of claimed privilege or advantage received by the Schine defendants through entertainment, gifts and favors, and state:

(1) The name and position of each representative who it is claimed has been tendered entertainment, gifts and favors by said defendants.

(2) The time and place where each such representative was entertained or tendered gifts and favors.

(3) The sort of entertainment, gifts and favors tendered each such representative.

(4) The name of the agent or agents, if any, of the Schine defendants, who entertained or tendered gifts and favors to each representative of each distributor involved.

XXXII. As to the allegations of paragraph 49(c) of the complaint and paragraph 43 of plaintiff's bill of particulars:

A. Identify each theatre by name and location alleged to have been acquired by the Schine defendants for the purpose of closing or demolishing same or otherwise eliminating its competition as a motion picture theatre, stating as to each:

(1) The date when such theatre was acquired by the Schine defendants.

(2) The date when such theatre was closed or demolished or otherwise eliminated.

(3) The name of the exhibitor operating such theatre prior to acquisition by the Schine defendants.

XXXIII. As to the allegations of paragraph 49(c) (1) of the complaint and paragraph 45 of plaintiff's bill of particulars:

A. As to each instance enumerated in paragraph 45 of plaintiff's bill of particulars, and any others which may have come to plaintiff's knowledge since, state:

[fol. 192] (1) The date when said theatre was first closed.

(2) The period of time during which said theatre remained closed.

(3) The date when it is claimed that the Schine defendants were given an indication that another exhibitor intended to open a theatre in said town.

(4) The nature of such indication.

(5) The manner in which said indication was communicated to the Schine defendants.

(6) Whether the Schine defendants actually opened said theatre or announced the opening thereof.

(7) The date upon which said Schine defendants opened such theatre or announced the opening thereof.

(8) Each instance, if any, in which it is claimed that the Schine defendants announced the opening of a closed theatre as alleged in said paragraph, and thereafter failed to open the same.

XXXIV. As to the allegations of paragraph 49 (c) (2) and (3) of the complaint and paragraph 46 of plaintiff's bill of particulars:

A. As to each instance enumerated in paragraph 46 of plaintiff's bill of particulars, and any others which may have come to plaintiff's knowledge since, state:

(1) The date of each such announcement.

(2) The manner in which it is claimed such announcement was made.

(3) The name of the person making such announcement on behalf of the Schine defendants.

(4) The date when it is claimed each such theatre site, or interest in theatre site, was acquired by the Schine defendants.

B. As to each "indication that another exhibitor intends to open a theatre in a Schine town" as alleged in said subparagraphs (2) and (3) of said paragraph 49, state:

[fol. 193] (1) The Schine town involved.

(2) The date when such "indication" was given.

(3) The manner or method used by such other exhibitor in giving such "indication".

(4) The manner or method by which it is claimed the Schine defendants acquired knowledge of such "indication" or that it was communicated to them.

(5) The name of such other exhibitor who is claimed to have given such "indication".

XXXV. As to the allegations of paragraph 49 (c) (4) of the complaint and paragraph 47 of plaintiff's bill of particulars:

A. As to each instance enumerated in paragraph 47 of plaintiff's bill of particulars, and any others which may have come to plaintiff's knowledge since, in which it is claimed that the Schine defendants communicated with the distributors, as alleged in said sub-paragraph, state as to each such communication:

(1) The date of such alleged communication.

(2) The name of the distributor or distributors with whom the Schine defendants are alleged to have communicated and the name of the person receiving such communication in behalf of such distributor.

(3) Whether such communication was oral or in writing; if in writing, furnish a copy thereof; if oral,

state the substance thereof.

(4) The name of the person claimed to have made the communication in behalf of the Schine defendants.

(5) Specify the feature pictures and run claimed to have been reserved by the Schine theatres.

(6) Specify the product, feature pictures or run which would normally have been available to such other exhibitor.

(7) Specify the product and run of which such other exhibitor is claimed to have been deprived, the date [fol. 194] when such deprivation commenced and the period during which such deprivation continued.

(8) If it is claimed that such feature pictures and run were reserved pursuant to a written contract or contracts, set forth copies or identify the same.

B. As to each alleged indication as described in said sub-paragraph of the complaint, state:

(1) The name of the other exhibitor and the town involved.

(2) The nature of the indication or method used in giving same.

(3) The manner in which said indication is claimed to have been communicated to the Schine defendants.

(4) The date claimed to have been received by the Schine defendants.

(5) If such indication was communicated to the Schine defendants in writing, set forth copies; if oral, state the substance of same.

XXXVI. As to the allegations of paragraph 49 (c) (5) of the complaint and paragraphs 48, 49 and 50 of plaintiff's bill of particulars:

A. As to each instance enumerated in paragraphs 48, 49 and 50 of the bill of particulars, and any others which may have come to plaintiff's knowledge since, in which it is claimed that the Schine defendants interfered with arrangements of other exhibitors, as alleged in said sub-paragraph of the complaint, state as to each such instance:

(1) The name of the exhibitor and the town affected.

(2) The nature of the arrangements and extent to which negotiations are claimed to have progressed.

(3) The names and addresses of the third parties with whom such negotiations were allegedly being conducted.

[fol. 195] (4) The date when it is claimed the Schine defendants interfered in such negotiations and arrangements.

(5) The manner or method used by the Schine defendants in such interference.

(6) The names of the persons acting in behalf of the Schine defendants in such alleged interference.

(7) Each overt act which plaintiff will rely upon as constituting such alleged interference.

XXXVII. As to the allegations of paragraph 44 of the bill of particulars:

A. Specify each overt act on the part of any distributor which plaintiff will rely on as constituting participation by such distributor in the doing of the acts mentioned and described in paragraph 49 (c), sub-paragraphs (1), (2), (3) and (5) of the complaint, giving in each instance:

(1) The name of the distributor involved.

(2) The name of the person claimed to have acted in behalf of such distributor.

(3) The date when and place where each act took place.

(4) If a writing was used in or as part of commission of said act, set forth a copy.

(5) If such act is claimed to have culminated in a writing, set forth a copy.

XXXVIII. As to the allegations of paragraph 50 of the complaint and paragraph 51 of plaintiff's bill of particulars:

A. As to each instance enumerated in paragraph 51 of the plaintiff's bill of particulars, and any others which may have come to plaintiff's knowledge since, in which it is claimed other exhibitors are "systematically excluded from the opportunity to procure high-class pictures under fair competitive conditions on first or preferred run", state:

[fol. 196] (1) The exact date on which such exhibitor was so excluded.

(2) The exact period of time during which such exclusion continued.

(3) The product by season and distributor which it is claimed each such exhibitor was systematically excluded from procuring.

(4) The title of each "high-class picture" which such exhibitor was so excluded from procuring.

B. State in detail each and every factor and element constituting "fair competitive conditions" in each of such instances:

(1) State as to each instance the "local competitive factors" which plaintiff will claim should have dictated the licensing of the product, so withheld, to such competing theatre under "fair competitive conditions" and "local competitive factors."

XXXIX. As to the allegations of paragraph 51 of the complaint and paragraph 52 of plaintiff's bill of particulars:

A. As to each instance enumerated in paragraph 52 of the plaintiff's bill of particulars, and any others which may have come to plaintiff's knowledge since, in which it is claimed that exhibitors are being "systematically relegated to an inferior position" as described in paragraph 51 of the complaint:

(1) State the run and position such theatre was claimed to have had prior to acquisition by the Schine defendants of a competing theatre.

(2) State the run and position to which such theatre is claimed to have been relegated after acquisition by the Schine defendants of a competing theatre.

(3) State in what respects the present run and position differs from the prior run and position of such theatre.

[fol. 197] (4) Specify each instance in which it is claimed that such other exhibitor's theatre is as fine as or superior to the competing Schine theatre, giving each element or factor used as part of the basis of comparison.

B. Specify each instance in which it is claimed such other exhibitor was denied product upon first or preferred run regardless of the price offered by such exhibitor, giving in each instance:

(1) The name of the distributor involved.

(2) The season's product denied on first or preferred run.

(3) The date of the offer by such other exhibitor and the date of denial by the distributor involved.

(4) If the offer was in writing set forth a copy; if oral, state the substance thereof.

(5) In each instance the price offered by such exhibitor.

XL. As to the allegations of paragraph 52 of the complaint and paragraphs 53 and 54 of plaintiff's bill of particulars:

A. As to each instance enumerated in paragraphs 53 and 54 of plaintiff's bill of particulars, and any others which may have come to plaintiff's knowledge since, in which exhibitors were allegedly forced out of business and caused to sustain losses, etc. as described in paragraph 52 of the complaint, state:

(1) The name and location of each theatre operated by other exhibitors claimed to have been forced out of business or compelled to dispose of their theatres.

(2) The date when such exhibitor was forced out of business or compelled to dispose of his theatre or theatres.

(3) To whom such theatres were disposed of.

(4) Whether such theatres are presently in existence and operating.

[fol. 198] B. With respect to each exhibitor claimed to have sustained losses or reduced revenue, state:

(1) The amount of losses or reduced revenue claimed to have been sustained, as well as the profits claimed in each year of operation by such other exhibitor.

C. As to the combinations of the distributors with the Schine defendants, as alleged in said paragraph 52 of the complaint, state:

(1) The time when and place where any distributor first so combined with the Schine defendants.

(2) The manner in which each distributor so combined.

(3) The terms on which each distributor became a member of the alleged combination.

(4) The means agreed upon for carrying out the alleged combination.

(5) If the said combinations are evidenced by writings, set forth copies thereof; if oral, state the substance of each said combination.

(6) The name of the agent or agents acting on behalf of each distributor in entering into such combination.

XLI. As to the allegations of paragraph 53 of the complaint:

A. Identify each of the "benefits of free enterprise and open competition" which plaintiff claims has been denied to the public in Schine "closed towns."

B. Identify each of the "benefits of free enterprise and open competition" which plaintiff claims is denied to the public in other "Schine towns."

C. State whether it is claimed that the public in said so-called "closed towns" is compelled to pay higher admission prices than is the public in comparable other towns; if so, furnish a list of such towns in which it is claimed that [fol. 199] the public enjoys more favorable admission prices than in the so-called "closed Schine towns."

XLII. As to the allegations of paragraph 54 of the complaint and paragraph 55 of plaintiff's bill of particulars:

A. As to each instance enumerated in paragraph 55 of plaintiff's bill of particulars, and any others which may have come to plaintiff's knowledge since, in which individuals are claimed to have been denied the right to engage in the business of exhibiting motion pictures as alleged in paragraph 54 of the complaint, state:

(1) Each factor or element constituting a "fair competitive basis."

(2) In what respect the competitive situation in each of the towns specified, fails to approximate the standard claimed in A(1) supra.

(3) Describe in detail the competitive situation existing in each of the towns specified, wherein plaintiff claims that individuals were denied the right of engaging in the business of exhibiting motion pictures.

XLIII. With respect to the answers to each of the interrogatories propounded herein and each instance identified, in compliance therewith, plaintiff is required to furnish:

A. The identity and address of each person having knowledge of relevant facts, tending to establish the same in whole or in part, and with respect to each person state the relevant facts of which he is claimed to have knowledge.

B. Describe and state the location of each document containing relevant facts tending to establish such charge in whole or in part.

C. If plaintiff intends to establish such charge in whole or in part as a conclusion or inference to be drawn in whole or in part, from acts, omissions, practices, admissions or [fol. 200] other facts, describe and state the location of each document contained, and state the identity and location of each person having knowledge of such acts, omissions, practices, admissions or other facts, indicating such facts and each person having knowledge thereof, and identify each defendant to which said facts relate.

As to any of the foregoing interrogatories or parts thereof, as to which plaintiff after answering, acquires additional knowledge or information, said defendants ask that from time to time plaintiff serve such further answers to such interrogatories within thirty days after acquiring such additional knowledge or information, and in any event not less than thirty days before the commencement of the trial herein.

Dated: New York, N. Y., September 12th, 1941.

Willard S. McKay, 630 Fifth Avenue, New York, N. Y.; Penney & Penney, 1550 Rand Building, Buffalo, N. Y. Solicitors for Schine Chain Theatres, Inc., Schine Circuit, Inc., Schine Theatrical Co., Inc., Schine Enterprises Corporation, Schine-Lexington Corporation, Chesapeake Theatres Corporation, J. Meyer Schine, Louis W. Schine and John A. May.

To: George L. Grobe, Esq., United States Attorney, Western District of New York, Buffalo, N. Y.

[fol. 201] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

ANSWERS OF THE PLAINTIFF, UNITED STATES OF AMERICA, TO INTERROGATORIES PROPOUNDED BY THE DEFENDANT EXHIBITORS

Now comes the United States of America, plaintiff herein, and for answer to the interrogatories heretofore propounded to it by the defendant exhibitors states as follows:

Plaintiff considers many of the interrogatories answered below to be objectionable as a matter of law, but in order to avoid argument and delay it has determined to answer them to the best of its ability rather than argue the question of their propriety.

I A & B

With respect to Interrogatories I A and B plaintiff states that it does not have the knowledge required to answer these interrogatories.

I C

For answer to Interrogatory I C plaintiff states that the factor which determines the character of a picture as a "first class picture" is its value as a box office attraction, that is, its ability to attract patrons to its showings.

[fol. 202]

II A (1)

For answer to Interrogatory II (A) (1) plaintiff states that it does not have knowledge of all distributors embraced within the words "other distributors who are not defendants herein." It believes, however, that among them are the following:

Monogram Pictures Corp.
1270 Sixth Avenue
New York, N. Y.
Republic Pictures Corp.
1776 Broadway
New York, N. Y.

II A (2)

With respect to Interrogatory II (A) (2) plaintiff states that it does not have the knowledge required to answer this interrogatory.

II A (3)

For answer to Interrogatory II (A) (3) plaintiff states that in order successfully to operate a first-class theatre in any of the Schine towns, an exhibitor must be able to exhibit from 104 to 156 "satisfactory or suitable" features each year.

II A (4)

For answer to Interrogatory II (A) (4) plaintiff states that in order successfully to operate a first-class theatre in any of the Schine towns an exhibitor must be able to exhibit from 104 to 208 feature pictures distributed by the major distributors each year. Plaintiff further states that it does not have the knowledge required to answer that part of Interrogatory II (A) (4) which relates to each Schine town.

[fol. 203]

II B

With respect to Interrogatory II B plaintiff states that it does not have the knowledge required to answer this interrogatory.

II C

For answer to Interrogatory II C plaintiff states that it does not know the identity or location of each person having knowledge of relevant facts tending to establish that in order to operate successfully a "first-class theatre" in any of the "Schine towns" an exhibitor must be able to exhibit a substantial number of feature pictures distributed by the eight major distributors each year. Plaintiff believes, however, that all persons engaged in operating motion picture theatres in such towns and all employees of defendants engaged in negotiating licenses for the exhibition of films therein have such knowledge.

III A and B (1 to 5) and (7 to 8)

For answer to Interrogatories III A and B (1 to 5) and (7 to 8) plaintiff states that it is unable to set forth the details requested therein with respect to the alleged combinations and conspiracies with any more particular-*l*y than has already been stated in its complaint and bill of particulars.

III B (6)

For answer to Interrogatory III B (6) plaintiff states it is advised that the following parties have been injured by the monopolies, combinations and conspiracies alleged in the complaint:

John Bahas	Ashland, Ohio
Bert Bickert	Ashland, Ohio
Henry Bieberson	Athens, Ohio
Michael Boumansour	Malone, N. Y.
[fol. 204] Murray Briskin	Homer, N. Y.
M. Bryer	Bucyrus, Ohio
John Buchman	Delaware, Ohio
Arthur Buck	Fostoria, Ohio
Ural Buck	Fostoria, Ohio
Nat Charnas	Bucyrus, Ohio
Phillip Charnas	Bucyrus, Ohio
William Clark	Waddington, N. Y.
Price Coomer	Corbin, Ky.
E. R. Custer	Athens, Ohio
Henry Damm	Bellefontaine, Ohio
C. L. Dasher	Van Wert, Ohio

Louis De Pillo	Geneva, N. Y.
Richard De Toto	Geneva, N. Y.
Chas. E. Dickinson, Jr.	Lockport, N. Y.
Clarence A. Dopp	Frankfort, N. Y.
Essick & Fine	Medina, Ohio
Thomas G. Evans	Van Wert, Ohio
Joseph H. Felter	Norwalk, Ohio
Chester Fennyvessy	Rochester, N. Y.
Paul Fennyvessy	Rochester, N. Y.
Max Fogel	Rochester, N. Y.
Morris Gaby	Corning, N. Y.
Frederick Gerber	Corning, N. Y.
Chas. Girard	Tupper Lake Junction, N. Y.
Theodore Gutilla	Bellefontaine, Ohio
Frank Hiltz	Norwalk, Ohio
R. T. Kemper	Shelby, Ohio
Morris Kronick	Amsterdam, N. Y.
Emerson Long	Mt. Vernon, Ohio
Fred Mausert	Glens Falls, N. Y.
Chas. R. Mitchell	Barbourville, Ky.
Milton Mooney	Bellefontaine, Ohio
Mr. & Mrs. Harry Morse	Penn Yan, N. Y.
Carl B. Moore	Van Wert, Ohio
[fol. 205] M. K. Murphy	Corbin, Ky.
B. Ohmann	Lyons, N. Y.
A. Papayanakos	Canton, N. Y.
Mrs. C. Perriello	Clyde, N. Y.
C. F. Pfister	Troy, Ohio
Robert I. Pierce	Ilion, N. Y.
Reliance Theatres Inc.	Lockport, N. Y.
Eli Rosenbaum	Ogdensburg, N. Y.
George Rosenbaum	Carthage, N. Y.
Harry Schwartz	Lexington, Ky.
Harry N. Savitt	Tupper Lake Junction, N. Y.
G. C. Scott	Corbin, Ky.
W. C. Smalley	Norwich, N. Y.
Newton K. Smith	Glens Falls, N. Y.
Katherine Thompson	Rochester, N. Y.
Wm. Tishkoff	Rochester, N. Y.
Helen Ulman	Salisbury, Md.
Peter C. Vournakis	Watertown, N. Y.
H. P. Wallace	Auburn, N. Y.
W. J. Ward	Pikeville, Ky.
Thos. Warne	Little Falls, N. Y.

Frank C. Whitney	Ilion, N. Y.
Wm. Wood	Little Falls, N. Y.
Ernest J. Wolfe	Lowville, N. Y.
L. E. Quinlan	Chateaugay, N. Y.
Clarke Young	Bowling Green, Ohio

III C

For answer to Interrogatory III C plaintiff states that the following were the exhibitors injured in the situations set forth in paragraph 4 of plaintiff's bill of particulars:

Theatre	Location	Exhibitor
Strand	Ogdensburg, N. Y.	Eli Rosenbaum, A. Papayanakos and William Clark
[fol. 206]		
Capitol	Newark, N. Y.	Burton C. Ohmann
Strand	Delaware, Ohio	John Buchman
Strand	Hudson Falls, N. Y.	N. K. Smith and Fred Mausert
Rialto	Lockport, N. Y.	Chas. Dickinson and Reliance Theatres Inc.
Strand	Carthage, N. Y.	Geo. Rosenbaum
Malone	Malone, N. Y.	Michael Boumansour and L. E. Quinlan
Vine	Mt. Vernon, Ohio	Emerson Long
Forum	Norwalk, Ohio	(Joseph Felter and (Frank Hilts
Colonial	Norwich, N. Y.	William C. Smalley
Van Wert	Van Wert, Ohio	(Carl B. Moore and (Thomas G. Evans

IV A

For answer to Interrogatory IV A plaintiff states that it is unable to set forth the information requested therein with any more particularity than has already been stated in its complaint.

IV B

For answer to Interrogatory IV B plaintiff states that the words "uniformly granted" as used in paragraph 46 of the complaint mean that all of the defendant distributors granted the privileges, preferences, and advantages in question to the exhibitor defendants and that each of them granted said privileges, preferences, and advantages in a similar manner. Plaintiff further states that all of the eight major distributors have "uniformly granted" the privileges referred to but it does not claim that they have so granted said privileges as the result of any agreement among them.

[fol. 207]

V

With respect to Interrogatory V plaintiff states that it does not have the knowledge required to answer said interrogatory.

VI

For answer to Interrogatories VI A and B plaintiff states that it is unable to define and describe the meaning of the words "local competitive basis" with any more particularity than that contained in its complaint and bill of particulars.

With respect to Interrogatories VI A (1-2), C, and D, plaintiff states that it does not have the knowledge required to answer said interrogatories.

VII

With respect to Interrogatory VII plaintiff states that it does not have the knowledge required to answer said interrogatory.

VIII

With respect to Interrogatory VIII plaintiff states that it does not have the knowledge required to answer said interrogatory.

IX

For answer to that part of Interrogatory IX A which requests a statement as to the amount of clearance granted in each instance in which it is claimed that unreasonable protection has been granted to a Schine theatre, plaintiff states as follows:

[fol. 208]

Name and Location of Theatre Granted Clearance	Name and Location of Theatre Against Which Clearance Taken	Amount of Clearance Plaintiff is Advised was Taken
State, Cortland, N. Y.	Town Hall, Homer, N. Y.	30 days
Temple, Cortland, N. Y.	Town Hall, Homer, N. Y.	30 days
State, Cortland, N. Y.	Corona, Groton, N. Y.	30 days
Temple, Cortland, N. Y.	Corona, Groton, N. Y.	30 days
Geneva, Geneva, N. Y.	State, Waterloo, N. Y.	At least 65 days
Regent, Geneva, N. Y.	State, Waterloo, N. Y.	At least 65 days
Strand, Seneca Falls, N. Y.	State, Waterloo, N. Y.	30 days
State, Tupper Lake, N. Y.	Lyric, Tupper Lake Junction, N. Y.	60 days
Capitol, Newark, N. Y.	Ohmann, Lyons, N. Y.	30 days
Strand, Ogdensburg, N. Y.	American, Canton, N. Y.	30 days prior to 1938-39 season and 14 days since then
Capitol, Newark, N. Y.	Playhouse, Clyde, N. Y.	30 days
Liberty, Herkimer, N. Y.	Capitol, Ilion, N. Y.	30 days, later reduced to 10 days
Schine Theatres in Gloversville, N. Y.	Smalleys, Johnstown, N. Y.	45 days
Rialto, Little Falls, N. Y.	Smalley's Dolgeville, N. Y.	30 days
Rialto, Little Falls, N. Y.	Smalley's, Fort Plain, N. Y.	14 days
Rialto, Little Falls, N. Y.	Smalley's, St. Johnsville, N. Y.	30 days
Oneonta, Oneonta, N. Y.	Smalley's, Delphi, N. Y.	30 days
Palace, Oneonta, N. Y.	Smalley's, Cooperstown, N. Y.	14 days
Colonial, Norwich, N. Y.	Smalley's, Sidney, N. Y.	14 days
Rialto, Little Falls, N. Y.	Hippodrome, Little Falls, N. Y.	90-120 days prior to 1936-37
Schine Theatres in Gloversville, N. Y.	Star, Northville, N. Y.	30 days
Liberty, Herkimer, N. Y.	Poland, Poland, N. Y.	1-7 days

[fol. 209]

Liberty, Herkimer, N. Y.	Hollywood, Frankfort, N. Y.	At least 40 days
Capitol, Ilion, N. Y.	Hollywood, Frankfort, N. Y.	30 days
Schine Second-Run Theatres In Watertown, N. Y.	Strand, Watertown, N. Y. Liberty, Watertown, N. Y.	60 days prior to Sept. 1939
Malone, Malone, N. Y.	Palace, Fort Covington, N. Y.	30 days
Massena, Massena, N. Y.	Palace, Fort Covington, N. Y.	30 days on all products except Columbia
Strand, Ogdensburg, N. Y.	Colonial, Waddington, N. Y.	30 days
Pontiac, Ogdensburg, N. Y.	Colonial, Waddington, N. Y.	30 days
Massena, Massena, N. Y.	Colonial, Waddington, N. Y.	30 days on all products except Columbia
Malone, Malone, N. Y.	Ideal, Chateaugay, N. Y.	30-60 days
Schine First-Run Theatres in Watertown, N. Y.	Avalon, Lowville, N. Y.	14 days
Geneva, Geneva, N. Y.	Elmwood, Penn Yan, N. Y.	30 days prior to 1936
Regent, Geneva, N. Y.	Elmwood, Penn Yan, N. Y.	30 days prior to 1396
Schine Theatres in Corbin, Ky.	Mitchell, Barbourville, Ky.	14 days
Schine Theatres in Van Wert, Ohio	Star, Delphos, Ohio Capitol, Delphos, Ohio	Unknown to plaintiff
Schine Theatres in Piqua Ohio	Theatres in Troy, Ohio	Unknown to plaintiff

With respect to the remainder of Interrogatory IX plaintiff states that it does not have the knowledge required to answer said interrogatory.

[fol. 210]

X A & C

For answer to Interrogatories X A and C plaintiff states that in addition to those theatres listed in paragraph 14 of the plaintiff's bill of particulars, it is informed that the following exhibitors operating the theatres indicated have paid higher film rentals than comparable Schine theatres:

Name of Exhibitor	Name of Theatre	Location of Theatre
Harry Schwartz	Opera House	Lexington, Ky.
Grover C. Scott	Margie Grand Theatre	Harlan, Ky.
W. J. Ward	Waddington Theatre	Pikeville, Ky.
Howard C. Carroll	Strand Theatre	Rochester, N. Y.
Max Fogel	Webster Theatre	Rochester, N. Y.
Frederick Gerber	Palace Theatre	Corning, N. Y.
Wm. Tishkoff	Murray Theatre	Rochester, N. Y.
Katherine Thompson	Dixie Theatre	Rochester, N. Y.
Katherine Thompson	Cameo Theatre	Rochester, N. Y.
Carl B. Moore	Ohio Theatre	Van Wert, Ohio

Plaintiff does not have the knowledge required to furnish any of the other information called for by Interrogatories X A and C.

X B

For answer to Interrogatory X B plaintiff states that it is unable to set forth the information called for with any more particular-*ly* than that already contained in its complaint.

XI

With respect to Interrogatory XI plaintiff states that it does not have the knowledge required to answer said interrogatory.

XII

With respect to Interrogatory XII plaintiff states that it does not have the knowledge required to answer said interrogatory.

[fol. 211]

XIII A, B (2-4), & D

With respect to Interrogatories XIII A, B (2-4), and D plaintiff states that it does not have the knowledge required to answer said interrogatories.

XIII B (1)

For answer to Interrogatory XIII B (1) plaintiff states that the United States Census lists the following 1930 and 1940 populations for the towns enumerated in paragraph 18 of the plaintiff's bill of particulars:

Town	1930 population	1940 population
Ashland, Ohio	26,867	29,785
Athens, Ohio	44,175	46,166
Ballston Spa, N. Y.	4,591	4,443
Bath, N. Y.	4,015	4,696
Bellefontaine, Ohio	9,543	9,808
Bucyrus, Ohio	10,027	9,727
Cambridge, Maryland	8,544	10,102
Canandaigua, N. Y.	7,541	8,321
Carthage, N. Y.	4,460	4,207
Corbin, Ky.	8,036	7,893
Cortland, N. Y.	15,043	15,881
Easton, Maryland	4,092	4,528
Fostoria, Ohio	12,790	13,453
Geneva, N. Y.	16,053	15,555
Gloversville, N. Y.	23,099	23,329
Hudson Falls, N. Y.	6,449	6,654
Hurlock, Maryland	765	800
Ilion, N. Y.	9,890	8,927
Kent, Ohio	8,375	8,581
Laurel, Delaware	2,542	2,884
Little Falls, N. Y.	11,105	10,163
Lockport, N. Y.	23,160	24,379
Milford, Delaware	3,719	4,214
Mount Vernon, Ohio	9,370	10,122
[fol. 212]		
Newark, N. Y.	7,649	9,646
Norwalk, Ohio	7,776	8,211
Norwich, N. Y.	8,378	8,694
Ogdensburg, N. Y.	16,915	16,346
Oneonta, N. Y.	12,536	11,731
Paris, Ky.	6,204	5,308
Perry, N. Y.	4,231	4,468
Ravenna, Ohio	8,019	8,538
Richmond, Ky.	6,495	7,335
Salamanca, N. Y.	9,577	9,011
Saranac Lake, N. Y.	8,020	7,138
Seneca Falls, N. Y.	6,443	6,452
Tiffin, Ohio	16,428	16,102

XIII C

For answer to Interrogatory XIII C plaintiff states that it is unable to itemize, define and describe the term "local competitive factors" with any more particularity than that contained in its complaint and bill of particulars.

XIV A (1) & (2)

For answer to Interrogatories XIV A (1) and (2) plaintiff states that it is unable to set forth the information requested with any more particularity than that with which the information has already been stated in the complaint and bill of particulars.

XIV A (3)

With respect to Interrogatory XIV A (3) plaintiff states that it does not have the knowledge required to answer this interrogatory.

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XV

With respect to Interrogatory XV plaintiff states that it does not have the knowledge required to answer this interrogatory.

XVI, XVII & XVIII

With respect to Interrogatories XVI, XVII and XVIII plaintiff states that it does not have the knowledge required to answer these interrogatories.

XIX A & C

With respect to Interrogatories XIX A and C plaintiff states that it does not have the knowledge required to answer said interrogatories.

XIX B

With respect to Interrogatory XIX B plaintiff states that it is unable to set forth the information requested with any more particularity than that already contained in its complaint and bill of particulars.

XX to XXVII inclusive

With respect to Interrogatories XX to XXVII inclusive plaintiff states that it does not have the knowledge required to answer these interrogatories.

XXVIII

With respect to Interrogatories XXVIII A (1) and (2) and that part of XXVIII A (3) which relates to "period of time," defendants are referred to plaintiff's answer to Interrogatory IX A above.

With respect to the remainder of Interrogatory XXVIII plaintiff states that it does not have the knowledge required to answer said interrogatory.

[fol. 214]

XXIX A

With respect to Interrogatory XXIX A plaintiff states that it is unable at this time to limit the term "more favorable rental terms" with any more particularity than that already contained in its complaint and bill of particulars.

XXIX B

With respect to Interrogatory XXIX B plaintiff states that it does not have the knowledge required to answer said interrogatory.

XXX A

With respect to Interrogatory XXX B plaintiff states that it is unable at this time to define the term "more favorable rejection privileges and other more advantageous benefits and privileges" with the particularity requested by this interrogatory.

XXX B

With respect to Interrogatory XXX B plaintiff states that it does not have the knowledge required to answer said interrogatory.

XXXI A

With respect to Interrogatory XXXI A plaintiff states that it is unable at this time to set forth the nature of each claimed privilege or advantage referred to.

XXXI B

With respect to Interrogatory XXXI B plaintiff states that it does not have the knowledge required to answer this interrogatory.

XXXII to XLII inclusive

With respect to Interrogatories XXXII to XLII inclusive, plaintiff states that it does not have the knowledge required to answer these interrogatories.

[fol. 215]

XLIII

With respect to Interrogatory XLIII plaintiff states that it does not have the knowledge required to answer this interrogatory except that it is possible that the following individuals may be called by it as witnesses:

Thomas Ayre	Seaford, Delaware
John Bahas	Ashland, Ohio
Bert Bickert	Ashland, Ohio
Henry Bieberson	Athens, Ohio
Henry Bieberson	Delaware, Ohio
Michael Boumansour	Malone, N. Y.
Murray Briskin	Homer, N. Y.
M. Bryer	Bucyrus, Ohio
John Buchman	Delaware, Ohio
Arthur Buck	Fostoria, Ohio
Ural Buck	Fostoria, Ohio
Nat Charnas	Bucyrus, Ohio
Phillip Charnas	Bucyrus, Ohio
William Clark	Waddington, N. Y.
Price Coomer	Corbin, Ky.
Price Coomer	Harlan, Ky.
E. R. Custer	Athens, Ohio
Henry Damm	Bellefontaine, Ohio
C. L. Dasher	Van Wert, Ohio
Louis De Pillo	Geneva, N. Y.
Richard De Toto	Geneva, N. Y.
Richard De Toto	Seneca Falls, N. Y.
Chas. E. Dickinson, Jr.	Lockport, N. Y.
Clarence A. Dopp	Frankfort, N. Y.
Essick & Fine	Medina, Ohio
Thomas G. Evans	Van Wert, Ohio
Joseph H. Felter	Norwalk, Ohio
Chester Fennyvessy	Rochester, N. Y.
Paul Fennyvessy	Rochester, N. Y.

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Max Fogel,	Rochester, N. Y.
Morris Gaby	Corning, N. Y.

Frederick Gerber	Corning, N. Y.
Chas. Girard	Tupper Lake Junction, N. Y.
Theodore Gutilla	Bellefontaine, Ohio
Reese Harrington	Harrington, Del.
Frank Hiltz	Norwalk, Ohio
Jack Josey	Oxford, Ohio
R. T. Kemper	Shelby, Ohio
Leo Kessel	Lancaster, Ohio
Morris Kronick	Amsterdam, N. Y.
Max Lefkowich	Wooster, Ohio
Emerson Long	Mt. Vetnon, Ohio
Fred Mausert	Glens Falls, N. Y.
Chas. D. Mervis	Oxford, Ohio
Chas. R. Mitchell	Barbourville, Ky.
Milton Mooney	Bellefontaine, Ohio
Carl B. Moore	Van Wert, Ohio
Mr. & Mrs. H. C. Morse	Penn Yan, N. Y.
E. P. Mott	Wooster, Ohio
M. K. Murphy	Corbin, Ky.
B. Ohmann	Lyons, N. Y.
A. Papayanakos	Canton, N. Y.
Mrs. C. Perriello	Clyde, N. Y.
C. F. Pfister	Troy, Ohio
Robert I. Pierce	Ilion, N. Y.
Eli Rosenbaum	Ogdensburg, N. Y.
George Rosenbaum	Carthage, N. Y.
J. B. Russell	Maysville, Ky.
Harry Schwartz	Lexington, Ky.
Harry N. Savitt	Tupper Lake Junction, N. Y.
G. C. Scott	Corbin, Ky.
Harold Shreffler	Shelby, Ohio
W. C. Smalley	Norwich, N. Y.
Newton K. Smith	Glens Falls, N. Y.

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Katherine Thompson	Rochester, N. Y.
Wm. Tishkoff	Rochester, N. Y.
Helen Ulman	Salisbury, Md.
Peter C. Vournakis	Watertown, N. Y.
H. P. Wallace	Auburn, N. Y.
W. J. Ward	Bikeville, Ky.
Thomas Warne	Little Falls, N. Y.
Frank C. Whitney	Ilion, N. Y.
Ernest J. Wolfe	Lowville, N. Y.

Wm. Wood	Little Falls, N. Y.
L. E. Quinlan	Chateaugay, N. Y.
Clarke Young	Bowling Green, Ohio
Yudelvitz & Wills	Medina, Ohio

United States of America, Plaintiff, by Seymour F. Simon, Special Attorney.

Duly sworn to by Seymour Simon; jurat omitted in printing.

[fol. 218] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

FURTHER ANSWERS OF THE PLAINTIFF, UNITED STATES OF AMERICA, TO INTERROGATORIES PROPOUNDED BY THE DEFENDANT EXHIBITORS

Now comes the United States of America, plaintiff herein, and for further answers to the interrogatories heretofore propounded to it by the defendant exhibitors and pursuant to the directions of an order of the Court, dated February 27, 1942, with respect to a motion of the Schine defendants under Rule 37 (d), states as follows:

Interrogatory No. I

The plaintiff is not now accurately advised of the exact number of first-class pictures released by the eight major distributors during the past ten years. On the basis of its present knowledge, however, the plaintiff estimates that the number of first-class pictures released by each of the eight major distributors during each of the past ten years was as follows:

Paramount, from 15 to 30
Loew's, from 25 to 40
RKO, from 5 to 15
Vitagraph, from 20 to 35
Universal, from 5 to 10
Fox, from 20 to 35
United Artists, from 5 to 20
Columbia, from 5 to 10

[fol. 219] Interrogatory No. II A (1)

The only information plaintiff has with reference to the names and addresses of "other distributors who are not defendants herein" referred to in paragraph 44 of the complaint, other than those already furnished is that appearing in the Film Daily Yearbook for 1941, a trade publication, which at pages 598, 599, and 605 lists the following distributors other than the ones heretofore named in Buffalo, Cleveland, Cincinnati, and Washington, the towns in which film exchanges serving Schine theatres are located.

Buffalo, New York

Film Classic Exchange, 505 Pearl Street
Pam-o-Film Exchange, Inc., 505 Pearl Street

Cleveland, Ohio

Pioneer Film Exchange, 2300 Payne Ave.
Producers' Releasing Corp., Film Building
Selected Pictures Co., 507 Film Exchange Building

Washington, D. C.

Imperial Pictures, 203 Eye Street, N. W.
Liberty Film Exchange, 925 New Jersey Ave., N. W.
Peerless Distributing Co., 203 Eye Street, N. W.
Producers' Releasing Corp. of Washington, 203 Eye Street, N. W.

Plaintiff has no information as to the nature of the business carried on by any of the above-named distributors, but has no reason to believe that the information appearing in the aforesaid Film Daily Yearbook for 1941 is inaccurate.

Interrogatory No. II B (1)

As used in paragraph 44 of the complaint, the term "first-class theatre" refers to theatres which operate on a policy of ordinarily exhibiting first-class pictures on a first or pre- [fol. 220] ferred run for the particular towns in which the theatre is located.

Interrogatory No. II B (2)

The only theatres presently operated in Schine towns other than Buffalo, New York, and Rochester, New York, by exhibitors other than the defendant exhibitors, which are able to exhibit enough first-class pictures on a first or preferred run for the particular town in which the theatre is located, to be regarded in the plaintiff's opinion as first-class theatres, as defined in the answer to Interrogatory No. II B (1), are the following:

New Harlan	Harlan, Kentucky
Waddington	Pikeville, Kentucky
New	Salisbury, Maryland
Liberty and either Embassy or Maryland	Cumberland, Maryland

Interrogatory No. VI A

By licensing films on a "local competitive basis" plaintiff means licensing them with due regard for the terms that a local independent exhibitor may offer for the privilege of exhibiting films in his locality as compared with the terms that the Schine defendants may offer for a similar privilege in the same locality. The plaintiff's claim is that the distributors in licensing feature pictures to theatres in Schine towns are forced to disregard local competition because the Schine circuit compels the distributor to meet its demands in competitive situations as a condition of licensing film in the rest of the circuit, where there are no competing theatres. The result of this practice is that even where a local exhibitor may afford an outlet for the distributor's films in his locality which is more desirable and attractive than that offered by the Schine theatre in that locality, the distributor licenses its product to the Schine theatre instead of [fol. 221] the local operator in order to prevent the exclusion of its films from the numerous localities where the Schine theatres have no opposition.

Interrogatory No. VII

The rejection privileges in question have differed in the following respects:

1. The rejection privileges accorded to the Schine defendants have been greater than those accorded to other exhibitors.

2. The Schine defendants have been given a longer period of time in which to exercise their rejection privileges than have independent exhibitors.

Interrogatory No. VIII

The names and locations of theatres which have been refused second or subsequent runs in opposition to a theatre or theatres operated by the Schine defendants are the following:

Theatre	*Location*
Ohio and Opera House	Ashland, Ohio
Strand and Opera House	Bellefontaine, Ohio
Southern	Bucyrus, Ohio
State	Bucyrus, Ohio
Star	Delaware, Ohio
Temple	Medina, Ohio
Memorial	Mt. Vernon, Ohio
Moose	Norwalk, Ohio
Opera House and State	Shelby, Ohio
Ohio	Van Wert, Ohio
Viv	Corbin, Kentucky
New Harlan	Harlan, Kentucky
Waddington	Pikeville, Kentucky
Ulman's	Salisbury, Maryland

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Capitol	Auburn, New York
Plaza and Regent	Corning, New York
Hippodrome	Little Falls, New York
Palace	Lockport, New York
Plaza	Malone, New York
Smalley's	Norwich, New York

Interrogatory No. XI

The Schine theatres which it is believed have licensed motion pictures greatly in excess of their reasonable exhibition requirements are the following:

Arcade and Wicomico	Salisbury, Maryland
Strand	Cumberland, Maryland
Princess	Medina, Ohio
Civic and Roxy	Fostoria, Ohio
Forum	Norwalk, Ohio
Van Wert	Van Wert, Ohio
Castamba	Shelby, Ohio
Vine, Lyric and Vernon	Mt. Vernon, Ohio
State and Bucyrus	Bucyrus, Ohio

Strand	Delaware, Ohio
Palace and Opera House	Ashland, Ohio
Kentucky and Hippodrome	Corbin, Kentucky
Margie Grand	Harlan, Kentucky
Ben Ali, Kentucky, State and Strand	Lexington, Kentucky
Bourbon	Paris, Kentucky
Palace, Jefferson, and Strand	Auburn, New York
Rialto and Hi-Art	Lockport, New York
Regent, Rialto and Strand	Amsterdam, New York
Fox, State and Palace	Corning, New York
[fol. 223] Rialto	Little Falls, New York
Malone	Malone, New York
Colonia	Norwich, New York

Interrogatory No. XII

The plaintiff is advised that the distributors indicated below with respect to each theatre granted the advantages referred to in paragraph 47 of the complaint. The theatres listed below are those on behalf of which plaintiff is advised the requests referred to in paragraph 47 of the complaint were made.

Theatre	Town	Distributors
Avon, Olympic, and Palace	Watertown, N. Y.	All major distributors
State and Temple	Cortland, N. Y.	All major distributors
Babcock	Bath, N. Y.	All major distributors
Capitol	Newark, N. Y.	All major distributors
Glove and Hippodrome	Gloversville, N. Y.	All major distributors
Oneonta and Palace	Oneonta, N. Y.	All major distributors
Liberty	Herkimer, N. Y.	All major distributors
Capitol	Ilion, N. Y.	All major distributors
Massena and Rialto	Massena, N. Y.	All major distributors except Columbia
Strand	Seneca Falls, N. Y.	All major distributors
Rialto	Little Falls, N. Y.	All major distributors
Malone	Malone, N. Y.	All major distributors
Colonia	Norwich, N. Y.	All major distributors
Strand and Pontiac	Ogdensburg, N. Y.	All major distributors
Dixie Theatre	Rochester, N. Y.	All major distributors
Riviera Theatre	Rochester, N. Y.	All major distributors

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Theatre	Town	Distributors
Schine Theatres in Syracuse,	Syracuse, N. Y.	All major distributors
State	Tupper Lake, N. Y.	All major distributors
Rialto and Hi-Art	Lockport, N. Y.	All major distributors
Rialto, Strand and Regent	Amsterdam, N. Y.	All major distributors
Auburn, Jefferson, and Palace	Auburn, N.Y.	All major distributors except Columbia
Fox, State, and Palace	Corning, N. Y.	All major distributors
Geneva and Regent	Geneva, N. Y.	All major distributors
Rialto, Empire, and Paramount	Glens Falls, N. Y.	All major distributors except Paramount
Strand	Hudson Falls, N. Y.	All major distributors except Paramount
Princess Theatre	Medina, Ohio	All major distributors except Columbia
Forum Theatre	Norwalk, Ohio	All major distributors
Castamba Theatre	Shelby, Ohio	All major distributors except Columbia, Universal and United Artists
Civic and Roxy Theatres	Fostoria, Ohio	All major distributors except Fox
Van Wert and Strand Theatres	Van Wert, Ohio	All major distributors
Holland and Strand Theatres	All major distributors Bellefontaine, Ohio	All major distributors
Strand Theatre	Delaware, Ohio	

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Bucyrus and State Theatres	Bucyrus, Ohio	All major distributors except Columbia
Vine, Lyric and Vernon Theatres	Mt. Vernon, Ohio	All major distributors except Columbia
Opera House and Palace	Ashland, Ohio	Unknown
Athena Theatre	Athens, Ohio	Unknown
Ritz and Grand	Tiffin, Ohio	Unknown
Hippodrome and Kentucky	Corbin, Ky.	All major distributors
Ben Ali, Kentucky, State and Strand	Lexington, Ky.	All major distributors
Bourbon Theatre	Paris, Ky.	All major distributors
Liberty Theatre	Pikeville, Ky.	R. K. O., Loew's; Paramount, Fox, and United Artists

Theatre	Town	Distributors
Margie Grand	Harlan, Ky.	Unknown
Arcade and Wicomico	Salisbury, Md.	Paramount and others unknown
Strand	Cumberland, Md.	Warner and others unknown

Interrogatory No. XIX

By the term "desirable product" as used in paragraph 9 (a) (4) of the complaint, plaintiff means product which is successful in attracting patrons to theatres in the Schine towns. By "desirable run" as used in paragraph 49 (a) (4) of the complaint, plaintiff means a first or preferred run in a particular town. Inasmuch as most of the Schine [fol. 226] towns have no more than two theatres, the desirable run in them would of course be the first run.

Interrogatory No. XX

In addition to the situations listed in paragraph 33 of the bill of particulars heretobefore filed,* plaintiff is advised that the Schine defendants announced the proposed construction and opening of a theatre in the neighborhood of another exhibitor in Delaware, Ohio, Bowling Green, Ohio, and Van Wert, Ohio.

In addition to the situations listed in paragraph 34 of the bill of particulars heretofore filed, the plaintiff is advised that the Schine defendants took the following interests in a theatre site in the neighborhood of other exhibitors:

Town	*Nature of Interest*
Delaware, Ohio	Option to buy
Bowling Green, Ohio	Option to buy
Paris, Kentucky	Fee

Plaintiff is not advised of any situations called for by paragraph XXC of the defendants' specification of demands for a bill of particulars other than those heretofore listed in paragraph 35.

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* As used throughout these answers the term "bill of particulars" refers to all bills of particulars which have been filed in this action including the "Supplemental Bill of Particulars" filed on December 4, 1941.

Interrogatory No. XXI

Plaintiff is not advised of any situations called for by paragraph XXI of the defendants' specification of demands for a bill of particulars other than those heretofore listed in paragraph 36 of its bill of particulars.

[fol. 227]

Interrogatory No. XXII

The theatres operated by the Schine defendants which it is believed cut admission prices are the following:

Forum	Norwalk, Ohio
Castamba	Shelby, Ohio
Strand and Van Wert	Van Wert, Ohio
Strand	Delaware, Ohio
Opera House	Ashland, Ohio
Kentucky and Hippodrome	Corbin, Kentucky
Russell	Maysville, Kentucky
State and Bucyrus	Bucyrus, Ohio
Rialto and Hi-Art	Lockport, New York
Malone	Malone, New York
Strand	Seneca Falls, New York
State	Corning, New York
Colonia	Norwich, New York
Rialto	Little Falls, New York
Name of theatre unknown	Lexington, Kentucky

Interrogatory No. XXIII

Plaintiff is unable at the present time to state the names of Schine theatres which resorted to "unusual and costly games and give-aways," as alleged in the paragraph 45 (a) (8) of the complaint. It is believed, however, that there were no theatres other than those listed in response to the Interrogatory No. XXII which resorted to such practices.

Interrogatory No. XXIV

The Schine theatres which have been granted unreasonable clearance are the following:

State	Cortland, New York
Temple	Cortland, New York
Geneva	Geneva, New York

[fol. 228]

Regent	Geneva, New York
Strand	Seneca Falls, New York
State	Tupper Lake, New York
Capitol	Newark, New York
Strand	Ogdensburg, New York
Liberty	Herkimer, New York
Glove	Gloversville, New York
Hippodrome	Gloversville, New York
Rialto	Little Falls, New York
Oneonta	Oneonta, New York
Palace	Oneonta, New York
Colonia	Norwich, New York
Capitol	Ilion, New York
Avon and Olympic	Watertown, New York
Malone	Malone, New York
Massena	Massena, New York
Pontiac	Ogdensburg, New York
Viv	Corbin, Kentucky
Van Wert	Van Wert, Ohio

Interrogatory No. XXV

The following are the towns in which it is claimed the Schine defendant have restrained and monopolized the exhibition of motion pictures:

Amsterdam, New York
Auburn, New York
Bath, New York
Ballston Spa, New York
Canandaigua, New York
Carthage, New York
Corning, New York
Cortland, New York
East Rochester, New York
Fairport, New York
Geneva, New York

Glen Falls, New York
Gloversville, New York
Hamilton, New York
Herkimer, New York
Hudson Falls, New York
Ilion, New York
Little Falls, New York
Newark, New York
Lockport, New York
Malone, New York
Massena, New York

[fol. 229]

Norwich, New York
Ogdensburg, New York
Oneonta, New York
Oswego, New York
Penn Yan, New York
Perry, New York

Van Wert, Ohio
Wooster, Ohio
Bowling Green, Ohio
Corbin, Kentucky
Lexington, Kentucky
Maysville, Kentucky

Rochester, New York
Salamanca, New York
Saranac Lake, New York
Seneca Falls, New York
Syracuse, New York
Tupper Lake, New York
Watertown, New York
Whitehall, New York
Mechanicville, New York
Ashland, Ohio
Athens, Ohio
Bellefontaine, Ohio
Bucyrus, Ohio
Delaware, Ohio
Fostoria, Ohio
Granville, New York
Kent, Ohio
Medina, Ohio
Mt. Vernon, Ohio
Norwalk, Ohio
Piqua, Ohio
Ravenna, Ohio
Shelby, Ohio
Tiffin, Ohio
Paris, Kentucky
Richmond, Kentucky
Pikeville, Kentucky
Middlesboro, Kentucky
Cambridge, Maryland
Easton, Maryland
Federalsburg, Maryland
Hurlock, Maryland
St. Michaels, Maryland
Salisbury, Maryland
Cumberland, Maryland
Laurel, Delaware
Milford, Delaware
Appalachia, Virginia
Harlan, Kentucky

[fol. 230]

Interrogatory No. XXVI

The following theatres were unable to obtain motion picture product because of the monopolization alleged in paragraph 49 (b) (1) of the complaint:

Strand	Van Wert, Ohio
Ohio	Van Wert, Ohio
Opera House	Bellefontaine, Ohio
Colonial or State	Fostoria, Ohio
Moose	Norwalk, Ohio
State	Bucyrus, Ohio
Southern	Bucyrus, Ohio
State	Shelby, Ohio
Ohio	Ashland, Ohio
Star	Delaware, Ohio
Memorial	Mt. Vernon, Ohio
Temple	Medina, Ohio
Tiffin	Tiffin, Ohio

Viv	Corbin, Kentucky
New Harlan	Harlan, Kentucky
Opera House	Lexington, Kentucky
Ulman's	Salisbury, Maryland
Palace	Lockport, New York
Hippodrome	Little Falls, New York
Plaza	Malone, New York
Orpheum	Amsterdam, New York
Capitol	Auburn, New York
Plaza	Corning, New York
Palace	Corning, New York
Park	Geneva, New York
State	Glens Falls, New York
Liberty	Cumberland, Maryland

The factor which makes a specific picture a high-class picture is its value as a box-office attraction and its quality as entertainment for the general public. The factor which [fol. 231] makes feature pictures distributed by independent distributors "more desirable" as distinguished from "less desirable" is their value as box office attractions and their quality as entertainment for the general public.

Interrogatory No. XXVII

The theatres operated by the Schine defendants which have contracted for more feature pictures than they could reasonably exhibit are the following:

Arcade and Wicimoco	Salisbury, Maryland
Strand	Cumberland, Maryland
Princess	Medina, Ohio
Civic and Roxy	Fostoria, Ohio
Forum	Norwalk, Ohio
Van Wert	Van Wert, Ohio
Castamba	Shelby, Ohio
Vine, Lyric and Vernon	Mt. Vernon, Ohio
State and Bucyrus	Bucyrus, Ohio
Strand	Delaware, Ohio
Palace and Opera House	Ashland, Ohio
Kentucky and Hippodrome	Corbin, Kentucky
Margie Grand	Harlan, Kentucky
Ben Ali, Kentucky, State and Strand	Lexington, Kentucky
Bourbon	Paris, Kentucky

Palace, Jefferson, and Strand	Auburn, New York
Rialto and Hi-Art	Lockport, New York
Regent, Rialto and Strand	Amsterdam, New York
Fox, State and Palace	Corning, New York
Rialto	Little Falls, New York
Malone	Malone, New York
Colonia	Norwich, New York

[fol. 232] Interrogatory No. XXIX B

Plaintiff is unable at the present time to furnish any more information called for by the court's direction with respect to this interrogatory than has already been supplied in its answers to interrogatories X A and C heretofore propounded to the plaintiff by the Schine defendants and in paragraph 14 of its bill of particulars, except that to the aforesaid lists should be added Emerson W. Long, Memorial Theatre, Mt. Vernon, Ohio.

Plaintiff should like to call the attention of the Schine defendants to the fact that it now has in its possession answers to interrogatories filed by defendant Columbia which show film rentals paid in various towns by the Schine defendants and by other exhibitors. It expects that similar interrogatory answers will be filed by the defendants United Artists and Universal within a few days. Plaintiff has not yet examined said interrogatory answers for the purpose of determining the extent and character of discriminatory film rentals they disclose. Plaintiff may, of course, rely on whatever facts may be disclosed by these interrogatory answers.

Plaintiff should also like to call the attention of the Schine defendants to letters dated March 4 directed to Vitagraph, Inc., Paramount Pictures, Inc., RKO Radio Pictures, Inc., Loew's Inc., and Dwight, Harris, Koegel & Caskey, counsel for Twentieth Century-Fox Film Corporation, requesting information with respect to film rentals paid in certain towns. Copies of these letters have been mailed to Mr. McKay and plaintiff may offer proof at the trial of this case with respect to any information requested by the aforesaid letters.

[fol. 233] Interrogatory No. XXX

The only other benefits and privileges received by the Schine defendants which the plaintiff now knows of was a greater extension of credit, in that the Schine defendants were granted a longer period of time in which to pay for films than were independent exhibitors.

Interrogatory No. XXXI A

Plaintiff does not know at this time the precise nature of the privileges and advantages the defendant exhibitors secured by tendering entertainment, gifts, and favors to representatives of the eight major distributors as alleged in paragraph 49 (b) (6).

Interrogatory No. XXXII

The following theatres have been acquired for the purpose of closing and demolishing them or other theatres operated by the defendant exhibitors and located in the same town:

Palace Theatre	Corning, New York (The State Theatre, Corning, New York, was closed shortly after the Palace was acquired)
State Theatre	Oswego, New York
Hippodrome Theatre	Little Falls, New York
Palace Theatre	Lockport, New York (Shortly after the Palace Theatre was re-acquired in October 1936, the Hi-Art was converted into a part-time operation)
Seneca Theatre	Seneca Falls, New York
Court Theatre	Athens, Ohio
[fol. 234]	
State and Southern Theatres	Bucyrus, Ohio
Star Theatre	Delaware, Ohio
Temple Theatre	Medina, Ohio (Shortly after the acquisition of the Temple Theatre, Medina, Ohio, the Princess Theatre was closed)
Moose Theatre	Norwalk, Ohio
Tiffin Theatre	Tiffin, Ohio

	(Shortly after the acquisition of the Tiffin, the Grand Theatre, Tiffin, Ohio, was closed)
Opera House	Bellefontaine, Ohio
Ohio Theatre	Ashland, Ohio
Hollywood Theatre	Maysville, Kentucky
Viv Theatre	Corbin, Kentucky (Shortly after the acquisition of the Viv Theatre, the Kentucky Theatre was converted into a part-time operation)

Interrogatory XXXIII

Plaintiff is not advised of any situations called for by paragraph XXXIII A of the defendants' specification of demands for a bill of particulars other than those heretofore listed in paragraph 45 of its bill of particulars, except that the Seneca Theatre, Seneca Falls, New York, was incorrectly referred to in the plaintiff's Supplemental Bill of Particulars filed on December 4, 1941, as the Strand Theatre, Seneca Falls, New York, and it is desired to correct paragraph 45 of the aforesaid Supplemental Bill of Particulars accordingly.

[fol. 235]

Interrogatory XXXIV A

In addition to the situations listed in paragraph 46 of its bill of particulars, plaintiff is advised that the Schine defendants kept sites in Salamanca, New York, Paris, Kentucky, and Canandaigua, New York, as alleged in paragraph 49 (c) of the complaint.

Interrogatory No. XXXIV B

Plaintiff is advised that exhibitors other than the Schine defendants intended to open theatres in the following Schine towns:

Salamanca, New York
Paris, Kentucky
Canandaigua, New York
Seneca Falls, New York
Norwalk, Ohio
Geneva, New York
Ogdensburg, New York

Interrogatory XXXVI

In addition to the situations referred to in paragraphs 48, 49, and 50 of its bill of particulars, plaintiff is advised that defendant exhibitors attempted to interfere with relations between exhibitors and their lessors with respect to the following theatres:

Castamba	Shelby Ohio
Ohio	Van Wert, Ohio
Opera House	Bellefontaine, Ohio

Plaintiff is further advised that defendant exhibitors interfered with relations between other exhibitors and their financiers and proposed lessors in Cortland, New York, and that they interfered with relations between other exhibitors and their lessors in Hamilton, New York.

[fol. 236] Interrogatory No. XXXVIII

In addition to the situations listed in paragraph 51 of its bill of particulars, plaintiff is advised that Louise Stoll of Tiffin, Ohio, and Harry Schwartz of Paris, Kentucky, have been systematically excluded from the opportunity of procuring high-class pictures under fair competitive conditions on first or preferred runs.

Interrogatory No. XL

Plaintiff is not advised of any situations called for by paragraphs XXXIX and XXXIX B of the defendants' specification of demands for a bill of particulars other than those heretofore listed in paragraphs 53 and 54 of its bill of particulars.

Interrogatory No. XLI

Among the more obvious benefits which result from free enterprise and open competition in a business such as this one are a wider choice with respect to admission prices, features exhibited, runs on which they are shown, and character of the theatres in which they are exhibited than would be available to the public under a monopolistic operation. Monopolistic operation generally results in higher admission prices than those found in competitive situations, and competition provides an incentive toward improved service to the public which is lacking in towns where there is no opposition.

The plaintiff's theory is that a violation of the Act is shown by proof that free enterprise and open competition have been unreasonably suppressed even without specific proof as to particular benefits which have or have not accrued to the public as a result of competition.

[fol. 237]

Interrogatory No. XLII

In addition to the situations listed in paragraph 55 of its bill of particulars, plaintiff is advised that the following individuals have been denied the right of engaging in the business of exhibiting motion pictures in Schine towns:

James Gregory, Shelby, Ohio
Charles V. Martina, Syracuse, New York
Charles Sesonske, Ogdensburg, New York

Interrogatory No. XLIII

Plaintiff has re-examined its prospective list of witnesses and can state that at the present time it expects to call the following:

Thomas Ayre	Seaford, Delaware
John Bahas	Ashland, Ohio
Henry Bieberson	Delaware, Ohio
Micheal Boumansour	Malone, New York
Murray Briskin	Homer, New York
M. Bryer	Bucyrus, Ohio
John Buchman	Delaware, Ohio
Arthur Buck	Fostoria, Ohio
Philip Charnas	Bucyrus, Ohio
William Clark	Waddington, New York
Price Coomer	Harlan, Kentucky
E. R. Custer	Athens, Ohio
C. L. Dasher	Van Wert, Ohio
Louis De Pillo	Geneva, New York
Richard De Toto	Geneva, New York
Richard De Toto	Seneca Falls, New York
Charles E. Dickinson, Jr.	Lockport, New York
Peter Grafiades	Lockport, New York
Clarence A. Dopp	Frankfort, New York
Myer Fine	Cleveland, Ohio
P. E. Essick	Cleveland, Ohio

[fol. 238] Joseph H. Felter	Norwalk, Ohio
Chester Fennyvessy	Rochester, New York
Paul Fennyvessy	Rochester, New York
Max Fogel	Rochester, New York
Morris Gaby	Corning, New York
Robert Gerber	Corning, New York
Charles Girard	Tupper Lake Junction, New York
Theodore Gutilla	Bellefontaine, Ohio
Reese Harrington	Harrington, Delaware
R. T. Kemper	Shelby, Ohio
Leo Kessel	Lancaster, Ohio
Morris Kronick	Amsterdam, New York
Max Lefkowich	Wooster, Ohio
Emerson W. Long	Cadiz, Ohio
Fred Mausert	Glens Falls, New York
Charles R. Mitchell	Barbourville, Kentucky
Milton Mooney	Cleveland, Ohio
Carl B. Moore	Van Wert, Ohio
Mrs. Carl B. Moore	Van Wert, Ohio
Mrs. H. C. Morse	Penn Yan, New York
E. P. Mott	Wooster, Ohio
M. K. Murphy	Corbin, Kentucky
B. Ohmann	Lyons, New York
A. Papayanakos	Canton, New York
Jerry Steele	Oberlin, Ohio
Hubert Whitenack	Corbin, Kentucky
Charles Sesonske	Carthage, New York
Mrs. C. Perriello	Clyde, New York
Robert I. Pierce	Ilion, New York
Eli Rosenbaum	Ogdensburg, New York
George Rosenbaum	Carthage, New York
Harry Schwartz	Lexington, Kentucky
Harry N. Savitt	Tupper Lake Junction, New York
G. C. Scott	Corbin, Kentucky
[fol. 239] Harold Shreffler	Shelby, Ohio
W. C. Smalley	Norwich, New York
Newton K. Smith	Glen Falls, New York
James Gregory	Shelby, Ohio
Katherine Thompson	Rochester, New York
William Tishkoff	Rochester, New York
Helen Ulman	Salisbury, Maryland
Peter C. Vournakis	Watertown, New York
H. P. Wallace	Auburn, New York
W. J. Ward	Pikeville, Kentucky

Thomas Warne	Little Falls, New York
Frank C. Whitney	Ilion, New York
Ernest J. Wolfe	Lowville, New York
Mrs. William Wood	Little Falls, New York
L. E. Quinlan	Chateaugay, New York
T. Neal Howard	Maysville, Kentucky
Harry D. Rumpf	Wyandotte, Michigan
Katherine E. Sheldon	Hamilton, New York
William L. Burke	Hamilton, New York
Leon B. Scott	Harlan, Kentucky
Newell Howard	Salisbury, Maryland
Lawrence Sperry	Mt. Vernon, Ohio
John Ring	Auburn, New York
Charles V. Martina	Syracuse, New York
Charles H. Latham	Norwich, New York
Carl Stambaugh	Shelby, Ohio

WASHINGTON,
District of Columbia, ss:

I, Seymour Simon, being duly swonr, do depose and say that I am a Special Attorney in the Department of Justice and am engaged in the preparation for trial of the case entitled *United States v. Schine Chain Theatres, Inc., et al.,* [fol. 240] now pending in the United States District Court for the Western District of New York.

I have prepared the foregoing interrogatory answers in accord with an order and opinion of the Honorable John Knight dated February 27, 1942, with respect to a motion of the Schine defendants under Rule 37 (d).

It appears from the aforesaid opinion that the purpose of requiring further answers to certain interrogatories was to advise the Schine defendants more fully of the claims which the Government now expects to rely upon at the trial and thus to achieve insofar as possible a simplification of the issues without, however, limiting the Government's proof in any way. I have accordingly attempted to set forth these claims as fully as possible in the foregoing answers, in the light of all the information now in the possession of the Department.

Seymour Simon.

Sworn to and subscribed before me this 5th day of March, 1942. Dorothy J. Heale, Notary Public. (Seal.)

[fol. 241] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

SUPPLEMENT TO FURTHER ANSWERS OF THE PLAINTIFF, UNITED STATES OF AMERICA, TO INTERROGATORIES PROPOUNDED BY THE DEFENDANT EXHIBITORS

Now comes the United States of America, plaintiff herein, and for further answers to the interrogatories heretofore propounded to it by the defendant exhibitors, and pursuant to the directions of an order of the Court, dated March 6, 1942, with respect to a motion of the Schine defendants under Rule 37 (d), states as follows:

Interrogatory No. XVIII

The Schine defendants threatened to deprive the following exhibitors of desirable product or run in case of their failure to sell or lease to said defendants the theatres indicated:

Exhibitor	*Theatre*	*Town*
Harold Shreffler	Castamba	Shelby, Ohio
Carl B. Moore	Ohio	Van Wert, Ohio
Leo Kessel	Palace	Lancaster, Ohio

[fol. 242] WASHINGTON,
District of Columbia, ss:

I, Seymour Simon, being duly sworn, do depose and says that I am a Special Attorney in the Department of Justice and am engaged in the preparation for trial of the case entitled *United States v. Schine Chain Theatres, Inc., et al.* now pending in the United States District Court for the Western District of New York. I have prepared the foregoing interrogatory answer in accord with an order and opinion of the Honorable John Knight, dated March 6, 1942, with respect to a motion of the Schine defendants under Rule 37 (d).

I have set forth the matters called for in the foregoing answer on the basis of all the information now in the possession of the Department.

Seymour Simon.

Sworn to and subscribed before me this 17th day of March, 1942. Dorothy J. Heale, Notary Public. (Seal.)

[fol. 243] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

SUPPLEMENT TO FURTHER ANSWERS OF THE PLAINTIFF, UNITED STATES OF AMERICA, TO INTERROGATORIES PROPOUNDED BY THE DEFENDANT EXHIBITORS

Now comes the United States of America, plaintiff herein, and for further answers to the interrogatories heretofore propounded to it by the defendant exhibitors, and pursuant to the directions of an order of the Court, dated April 10, 1942, with respect to a motion of the Schine defendants under Rule 37 (d), states as follows:

INTERROGATORY No. XXXI A

Plaintiff is unable to state the nature of the privileges and advantages the defendant exhibitors secured, because it does not have such information. It is informed that an automobile was given by the Schine defendants to a representative of Twentieth Century-Fox Film Corporation but it does not know whether such automobile was given in return for any particular privilege or advantage then received by the Schine defendants, or for the friendship and goodwill of the recipient of the gift.

INTERROGATORY No. XLI

The public in the Schine towns has been denied as wide a choice with respect to admission prices, features exhibited, [fol. 244] runs on which they are shown, and character of the theatres in which they are exhibited as would be available to the public under competitive conditions.

WASHINGTON,
District of Columbia, ss:

I, Seymour Simon, being duly sworn, do depose and say that I am a Special Attorney in the Department of Justice and am engaged in the preparation for trial of the case entitled *United States v. Schine Chain Theatres, Inc., et al.*, now pending in the United States District Court for the Western District of New York.

I have prepared the foregoing interrogatory answers in accord with an order of the Honorable John Knight dated April 10, 1942, with respect to a renewal of a motion by the Schine defendants under Rule 37 (d).

I have set forth the matters called for in the foregoing answer on the basis of all the information now in the possession of the Department.

Seymour Simon.

Sworn to and subscribed before me this 14th day of April, 1942. Dorothy J. Heale, Notary Public. (Seal.)

[fol. 245] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted].

REQUEST FOR ADMISSION OF FACTS

Please Take Notice that the defendant in this action requests the plaintiff, for the purposes of this action only, the following facts, subject to all valid objections to the admissibility of such facts as evidence in this action which may be interposed at the trial:

1. For the past thirty years the general, usual and customary method of licensing the exhibition of copyrighted motion picture photoplays in the United States of America, including the states of New York, Ohio, Kentucky, Maryland, Delaware and Virginia, has been and now is on a so-called run basis, to wit: for a first run, to a theatre in a given area with an exclusive right to show the photoplay for the first run for the licensed period, together with a clearance or intervention of time between the end of that exhibition and the next exhibition in said area; for a following run to a theatre (or theatres, if there be more than one such following exhibition in said area) with exclusivity of run together with clearance as against all other subsequent runs, and in like manner with such exclusivity and such clearance down to the last run of said photoplay in said area.

[fol. 246] 2. In order to secure the greater revenue from film rentals in the conduct of the business of producing and distributing motion pictures, it has been usual and customary and is necessary that the distributor agree with its licensees that it will not exhibit or grant a license to exhibit its photoplays for exhibition in conflict with the run licensed the exhibitor or prior to the clearance period agreed upon with the exhibitor.

3. The motion picture industry has developed under the existence of clearance and runs. It is by such a system, with initially large receipts from prior run exhibitions and successive reduction of license charges, that satisfactory revenue can be derived by the producers and distributors, so that costly feature pictures can be made available to the whole public at varying admission prices.

4. In selecting its first or prior run exhibitor in each competitive area, each distributor endeavors to select that customer which will ultimately yield it the greatest revenue having due regard for its past business relations with the customer, the skill and character of the management of the theatre, the size, location, equipment and drawing power of the customer. Each distributor endeavors to license its pictures for successive runs in any given competitive area and to protect each run by the grant of such clearance as in its judgment will yield it the greatest aggregate revenue.

5. There are approximately sixteen thousand theatres exhibiting motion pictures in the United States of America. Each of the distributors named as co-conspirators in the complaint is generally able to service several thousand of these theatres.

6. As a general rule, the negative of each of the motion pictures distributed by the distributors, named as co-conspirators in the complaint, is manufactured at a negative cost (the cost of producing the picture) of from approximately $200,000. to much larger sums. Positive prints [fol. 247] are taken from the negatives of each picture for the purpose of distribution to the motion pictures theatres in the United States, the print cost varying from approximately $150. per print to larger sums.

7. Each distributor named as a co-conspirator in the complaint manufactures approximately 200 positive prints

on the less important photoplays distributed by it, and between 300 and 350 on the more important photoplays.

8. Each distributor named as a co-conspirator in the complaint services all of its accounts in the United States of America with the allotment of prints referred to in the preceding statement of fact.

9. A first class theatre is one which is constituted as such by reason of its physical condition, appointments, seating capacity, manner of operation, extent and character of advertising and admission prices.

10. Of the 17,000 theatres in the United States, a majority are located in towns where there is only one theatre in the town.

11. Of the so-called Schine Theatres, approximately 60% are located in cities or villages with populations under 10,000, and approximately 87% are located in cities or villages with populations under 25,000.

12. Of the 175 cities and villages in New York State having populations between 2,000 and 10,000, Schine has theatres in only 20.

Of the — cities and villages in the state of Ohio having populations between 2,000 and 10,000, Schine has theatres in only 11.

13. It is generally economically unsound and financially impossible to operate more than one theatre in a town having a population under 10,000.

[fol. 248] 14. The Schine defendants built new, modern theatres, to replace or supplement the then existing inadequate theatre facilities in the following towns: Oswego, Cortland, Geneva, Athens, Bucyrus, Mt. Vernon, Norivalle, Bellefontaine, Wooster, Ashland, Paris and Auburn.

15. The Schine defendants, by virtue of the location of their theatres, compete actively in substantially every instance, with other circuits or independents in the same or nearby towns. The transit facilities and wide use of cars in suburban areas is such that people residing there travel great distances to attend the theatre, and go from one town to another with great frequency and in large number.

16. The defendants, by virtue of the diversity of location of their theatres, do not constitute the dominant ele-

ment in any particular geographical area or in any territory in which they operate theatres."

17. It would be utterly impractical for the operators of so-called theatre chains to give up any of their theatre holdings (Hayes argument on presentation of Consent Decree), and they cannot exist under such conditions.

18. The distributor has the right to sell to whom he pleases and under such terms as he pleases, and was so conceded by the government in the Consent Decree.

19. In case of competitive communities, it is quite often necessary that one community be given clearance over another. This is done in order that both the distributor and exhibitor may derive the maximum benefits from each run. "Clearance" means the period of time elapsing between the exhibition of a picture in a given competitive area and the next subsequent exhibition of the same picture in the same area. In the case of clearance it is customary and necessary that the distributor agree with its licensees that it will not exhibit or grant a license to exhibit any photo- [fol. 249] plays for exhibition in conflict with a run already licensed to an exhibitor or prior to the expiration of the clearance period agreed upon with the exhibitor.

20. In selecting its first or prior run exhibitor in each competitive area, each distributor endeavors to select the customer which will yield the greatest revenue, having due regard for its past business relations with the customer, the skill and character of the management of the theatre, and the size, location, appointments and drawing power of the theatre.

21. Each distributor endeavors to license its photoplays for successive runs in each competitive area in such manner and to such theatres as in its opinion will collectively yield it the greatest revenue from that area. Each distributor endeavors to protect each run by the grant of such clearance as in its judgment will yield the greatest aggregate revenue. If the size or character of a community is such that a distributor believes a second or subsequent run will so adversely affect the prior runs as to result over an extended period in a smaller total film rental from the community than the distributor would receive if such second or

subsequent run were not sold, the distributor may reasonably refuse to sell a second or subsequent run.

22. The usual allotment of prints to each of the exchanges or branch offices serving the States of New York, Maryland, Ohio, Delaware, Virginia and Kentucky is approximately eight prints to each exchange for the less important pictures and approximately thirteen prints to each exchange for the more important pictures. With these prints each distributor must service all of the accounts in the territories respectively served by its Washington, Cincinnati, Cleveland, Buffalo and Albany exchanges. It would be physically and economically impossible because [fol. 250] of this print situation to attempt to distribute photoplays on any basis except a stagger run basis.

23. Motion pictures are works of art and are the subject of copyright. They have no uniform or market value, and the revenue which the owner of a copyright can derive from any picture or group of pictures depends upon the ability of the distributor to market them in different situations to the best advantage. The distributor must take all situations in consideration and must impose such conditions, as to run and clearance, as will produce the most revenue.

24. The "quality" of pictures is difficult to guage. When "quality" is referred to in this case, it is box-office appeal rather than the judgment of critics which is referred to, and the tastes of the public vary widely. Pictures which are great box-office attractions in metropolitan centers may not do well in small country towns and vice versa.

25. The absence of competition in the towns where the defendants operate theatres is due mainly to the quality of the theatres, the efficiency of their operation and the fact that ample seating facilities exist for the theatre-going public.

Dated: New York, N. Y., May 24, 1944.

Yours etc., Edmund M. McCarthy, Attorney for Schine Chain Theatres, Inc., et al., 70 Pine Street, New York City, New York.

To George L. Grobe, Esq., United States Attorney for the Western District of New York, Solicitor for Plaintiff.

[fol. 251] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

PLAINTIFF'S ANSWER TO REQUEST FOR ADMISSION OF FACTS

In response to defendants' Request for Admission of Facts, plaintiff states as follows, for the purpose of this trial only:

1. In response to paragraph 1, plaintiff admits that for the past fifteen to twenty years the normal method of licensing the exhibition of copyrighted motion picture photoplays in the United States of America, including the states of New York, Ohio, Kentucky, Maryland, Delaware and Virginia, has been and now is on a so-called run basis, to wit: for a first run, to a theatre in a local competitive area with such exclusive exhibition rights and clearance privilege, if any, as may be appropriate to the successful exploitation of said copyrights in said area; for such subsequent runs in said area, and with such exclusive exhibition rights and clearance privileges, if any, as may be appropriate to the successful exploitation of said copyrights in said area. Except as admitted herein the truth of the facts stated in said paragraph is denied.

2. In response to paragraph 2, plaintiff admits that it has been the usual and customary practice for the distributor [fol. 252] to agree with its licensees that it will not exhibit or grant a license to exhibit its photoplays for exhibition in conflict with the run licensed the exhibitor or prior to the clearance period agreed upon with the exhibitor. Except as admitted herein, the truth of the facts stated in said paragraph is denied.

3. Plaintiff admits the truth of the facts stated in paragraph 3.

4. In response to paragraph 4, plaintiff admits that in each competitive area, under normal business conditions of free competition, each distributor desires to license its films for successive runs in such area under such clearance terms as will yield the maximum total license revenue from the area. In determining which theatre shall have which runs, its past business relations with the theatre, the skill and character of its management, its size, location,

equipment and drawing power are all factors which, among others, may influence such a decision. Except as admitted herein, the truth of the fact stated in said paragraph 4 is denied.

5. Plaintiff admits the truth of the facts stated in paragraph 5.

6. Plaintiff admits the truth of the facts stated in paragraph 6 as to feature pictures only and denies it as to all other motion pictures.

7. Plaintiff admits the truth of the facts stated in paragraph 7.

8. Plaintiff admits the truth of the facts stated in paragraph 8.

9. In response to paragraph 9, plaintiff admits that whether a theatre is a first-class theatre is determined by, [fol. 253] among other things, its physical condition, appointments, seating capacity, manner of operation and the extent and character of advertising and admission prices. Except as herein admitted, the truth of the facts stated in said paragraph is denied.

10. As to paragraph 10, plaintiff states that it does not know the truth or falsity of the statement made therein and, therefore, denies the truth thereof.

11. Plaintiff admits the truth of the facts stated in paragraph 11.

12. Plaintiff does not know the truth or falsity of the statement made in paragraph 12 and, therefore, denies the truth thereof.

13. Plaintiff denies the truth of the facts stated in paragraph 13.

14. Plaintiff does not know the truth or falsity of the statements made in paragraph 14 and, therefore, denies the truth thereof.

15. Plaintiff denies the truth of the facts stated in paragraph 15.

16. Plaintiff denies the truth of facts stated in paragraph 16.

17. Plaintiff denies the truth of the facts stated in paragraph 17.

18. Plaintiff denies the truth of the facts stated in paragraph 18.

19. Plaintiff denies the truth of the statements made in the first two sentences of paragraph 19. The truth of the facts stated in the third sentence is admitted. As to [fol. 254] the fourth sentence, plaintiff admits that in the case of clearance granted to a particular theatre, it is customary for the distributor to agree to license other theatres in accordance with that clearance. Except as admitted in the foregoing sentence, the truth of the facts stated in said fourth sentence is denied.

20. Plaintiff believes that paragraph 20 is answered by its answer to paragraph 4. To the extent that it is not so answered, plaintiff denies the truth of the facts stated in said paragraph 20.

21. Plaintiff believes that paragraph 21 is answered by its answer to paragraph 4. To the extent that it is not so answered, plaintiff denies the truth of the facts stated in said paragraph 21.

22. The truth of the facts stated in the first sentence of paragraph 22 is admitted. The truth of the facts stated in the last two sentences of said paragraph is denied.

23. Plaintiff admits the truth of the facts stated in the first two sentences of paragraph 23. Plaintiff denies the truth of the facts stated in the last sentence of paragraph 23.

24. Plaintiff admits the truth of the facts stated in the first and third sentences of paragraph 24. As to the second sentence plaintiff admits that the tastes of the public vary and that the judgment of critics sometimes differs from that of the public as reflected by box-office receipts. Except as herein admitted, the facts stated in said sentence are denied.

25. Plaintiff denies the truth of the facts stated in paragraph 25.

[fol. 255] 26. Insofar as any of the statements contained in the aforesaid request for an admission of facts are statements of opinion, plaintiff denies the correctness thereof.

Dated: Buffalo, New York, June 5, 1944.

Yours, etc., Robert L. Wright, Attorney for Plaintiff.

To Willard S. McKay, Esq., Seth Richardson, Esq., Saul Rogers, Esq., Edmund D. McCarthy, Esq., Attorneys for Defendants, % Statler Hotel, Buffalo, New York.

[fol. 256] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

DEFENDANTS' ANSWERS TO PLAINTIFF'S INTERROGATORIES

Now come the defendants, Schine Chain Theatres, Inc., Schine Circuit, Inc., Schine Theatrical Co., Inc., Schine Enterprises Corporation, Schine-Lexington Corporation and Chesapeake Theatres Corporation, and make answer to the interrogatories heretofore propounded to said defendants by the plaintiff herein, as modified by stipulation bearing date May 19th, 1941. Although separate interrogatories were served with respect to each corporate defendant, the said interrogatories being identical in form and substance, the said defendants have undertaken to answer the said interrogatories jointly in accordance with the provisions of said stipulation bearing date May 19th, 1941.

The answers herein contained are confidential. The originals thereof are herewith filed with the Clerk of this Court, sealed, and shall not be matters of public record or other- [fol. 257] wise open to inspection unless and until it shall be so ordered by the Court.

Willard S. McKay, 630 Fifth Avenue, New York City; Penney & Penney, 1550 Rand Building, Buffalo, N. Y., Solicitors for defendants Schine Chain Theatres, Inc., Schine Circuit, Inc., Schine Theatrical Co., Inc., Schine Enterprises Corporation, Schine Lexington Corporation, Chesapeake Theatres Corporation.

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Anwser to Interrogatory No. 2

Addresses of principal executive offices and all branch offices of defendant, (excluding offices of each theatre operated by defendant) and the nature and extent of the business which is carried on at each office, name and period of employment of each Manager since August 1, 1931 duties and authority of each Manager and geographical territory covered by each office.

Address	Nature and extent of business	Name and period of employment	Duties and Authority	Geographical Territory
Gloversville, N. Y.	Executive offices	(J. Myer Schine (Louis W. Schine (John A. May Marsh Gollner, District Manager, 10/1/38 to date	Principal executive officers—General supervision of operations	New York, Ohio, Kentucky, Virginia, Maryland and Delaware.

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Answer to Interrogatory No. 3

Names and addresses of all persons who have been Directors or Officers of the defendant, or persons performing similar functions, at any time since August 31, 1931, indicating in each instance the office held and the term thereof As to Schine Chain Theatres, Inc.:

Name	Address	Office Held	Dates
J. Myer Schine	Gloversville, N. Y.	President and Director	8/31/31 to date
Louis W. Schine	Gloversville, N. Y.	Sec'y., Treas. & Director	8/31/31 to date
John A. May	Gloversville, N. Y.	Comptroller & Director	8/31/31 to date
		Vice President	1/17/38 - intermittent periods to date
Willard S. McKay	New York City, N. Y.	Director	8/31/31 - 1/19/32
		Vice President	1/17/38 - intermittent periods to date
George V. Lynch	Gloversville, N. Y.	Director	8/22/32 - 2/10/36
[fol. 260]			
As to Schine Circuit, Inc.:			
Louis W. Schine	Gloversville, N. Y.	Sec'y., Treas. & Director	5/12/37 to date
John A. May	Gloversville, N. Y.	President & Director	5/12/37 to date
Willard S. McKay	New York City, N. Y.	Vice President	8/27/38 - intermittent periods to date
As to Schine Theatrical Co. Inc.:			
J. Myer Schine	Gloversville, N. Y.	President & Director	8/26/26 - 9/7/37
Louis W. Schine	Gloversville, N. Y.	Sec'y., Treas. & Director	8/28/26 to date
John A. May	Gloversville, N. Y.	Director	8/28/26 to date
		Vice President	8/28/26 - 9/7/37
		Comptroller	9/ 6/27 - 9/8/37
		President	9/ 7/37 to date

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As to Schine Enterprises Corporation:

J. Myer Schine	Gloversville, N. Y.	President & Director	2/26/35 – 2/26/37
Louis W. Schine	Gloversville, N. Y.	Sec'y., Treas. & Director	2/26/35 to date
John A. May	Gloversville, N. Y.	Director	2/26/35 to date
		Vice President	2/26/35 – 2/26/37
		President	2/26/37 to date

As to Schine Lexington Corporation:

J. Myer Schine	Gloversville, N. Y.	Pres. & Dir.	10 1/36 – 11/ 4/37
Louis W. Schine	Gloversville, N. Y.	Sec'y., Treas.	10/ 1/36 to date
		Director	10/ 1/36 – 11/10/36
			3/31/37 to date
John A. May	Gloversville, N. Y.	Director	10/ 1/36 to date
		Vice President	10/ 1/36 – 11/ 4/37
		Comptroller	11/10/36 – 11/ 4/37
		President	11/ 4/37 to date
Willard S. McKay	New York City, N. Y.	Vice President	10/ 1/36 – 11/ 4/37
			11/21/38 – 11/ 7/40
Louis Lazar	Bellefontaine, Ohio	Director	11/10/36 – 12/22/36
		Vice President	10/ 1/36 – 11/10/36
			1/ 9/39 to date
		Ass't. Sec'y.	11/10/36 – 12/22/36
		Ass't. Treas.	11/21/38 to date
Eugene Custer		Director	12/22/36 – 3/31/37
		Ass't. Sec'y.	12/22/36 – 3/31/37
Lew Hensler	Lexington, Ky.	Ass't. Sec'y.	12/31/30 – 2/ 1/41

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Interrogatory No. 3 (Continued)
As to Chesapeake Theatre Corporation:

Name	Address	Office Held	Dates
J. Myer Schine	Gloversville, N. Y.	Director	8/ 6/38 to date
		President	8/ 6/38 – 7/16/40
Louis W. Schine	Gloversville, N. Y.	Treasurer	1/12/39 to date
		Director	4/19/39 to date
		Secretary	4/19/39 to date
John A. May	Gloversville, N. Y.	Director	4/26/38 – intermittent periods to date
		President	4/26/38 – intermittent periods to date
Willard S. McKay	New York City, N. Y.	Vice President	10/28/38 – 7/16/40
		Director	4/26/38 – 12/30/38
Marsh Gollner	Salisbury, Md.	Vice President	4/26/38 to date
		Ass't. Secy.	7/16/40 – 4/16/41

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ANSWER TO INTERROGATORY NO. 7

Names and addresses of the ten largest stockholders of record of each class of stock and the number of shares held by each, stating any changes which have occurred from August 31, 1931 to date.

As to Schine Chain Theatres, Inc.:

Name of Stockholder	Address	No. of Shares	Changes from 8/31/31 to date
Class A Common:			
Schinebro, Inc.	Gloversville, N. Y.	30356	Acquired 1331 additional shares 2/19/32—had 29025
John A. May	Gloversville, N. Y.	1331	Disposed of 2/19/32
Universal Chain Theatrical Ent. Inc.	New York, N. Y.	9644	Disposed of 11/9/31
Caroga Corp.	Gloversville, N. Y.	9644	11/9/31 to date
St. Lawrence Holding * Co. Ltd	Charlottetown, Prince Edward Island, Canada	50000	Jan. 1938 to 8/31/41
Class B Common:			
Schinebro, Inc.	Gloversville, N. Y.	7500	None
Universal Chain Theatrical Ent. Inc.	New York, N. Y.	2500	Disposed of 11/9/31
Caroga Corp.	Gloversville, N. Y.	2500	11/9/31 to date

Preference Stock: Ten largest stockholders on the following dates:

As of 8/31/31

Name	Address	No. of Shares
Fred E. Billingham	Gloversville, N. Y.	2405
Frank L. Kemmerer.	Gloversville, N. Y.	458
John A. May	Gloversville, N. Y.	1200

* All of the stock of St. Lawrence Holding Co. Ltd. is owned by the defendant, Schine Chain Theatres, Inc. Papers have been filed and approved providing for the dissolution of St. Lawrence Holding Co. Ltd. as of August 31, 1941. Therefore, the said stock of Schine Chain Theatres Inc. is now considered as treasury stock of Schine Chain Theatres, Inc.

[fol. 266] Interrogatory No. 7 (Continued)—page 2

Name	Address	No. of Shares
Schinebro, Inc.	Gloversville, N. Y.	6433
J. Myer Schine	Gloversville, N. Y.	516
Louis W. Schine	Gloversville, N. Y.	500
George W. Redfield	Oswego, N. Y.	345
First National Bank & Trust Co. of Rochester for acct. of Mrs. Mollie Shafer	Rochester, N. Y.	1000
Rufus Shew	Gloversville, N. Y.	581
Frederick Thompson	Cortland, N. Y.	350
As of 8/31/34		
Fred E. Billingham	Gloversville, N. Y.	3209
Frank L. Kemmerer	Gloversville, N. Y.	441
John A. May	Gloversville, N. Y.	1206
Schinebro, Inc.	Gloversville, N. Y.	7174
J. Myer Schine	Gloversville, N. Y.	1290
Louis W. Schine	Gloversville, N. Y.	1027
Rufus Shew	Gloversville, N. Y.	581
Wm. H. Fuller	Gloversville, N. Y.	200

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ANSWER TO INTERROGATORY NO. 15

List Of All Corporations In Which Defendant Has, At Any Time Since August 31, 1931, Owned Any Financial Interest

Note:

1. All of the corporations herein listed may be reached or addressed in care of Schine Chain Theatres, Inc., Gloversville, N. Y.
2. The phrase "original issue" denotes the acquisitions by the defendant of the stock of the respective corporation from its inception by original issue of such stock directly to defendant.

Name of Corporation	Nature of Business	Extent of Interest	Date Acquired	From Whom	Date Sold or Disposed of	To Whom
Incorporated—State of New York						
Amsterdam Consolidated Corp.	Operating and realty	Stockholder—100%	50%—1938 Balance 1935	Stock purchased from Casey, Thompson, Walter, Summer Operating Co. and Schuyler Securities Co.		
Auburn G. L. Realty Corp.	Realty	" "	Jan. 17, 1936	Original Issue		
Bath Theatres, Inc.	Operating	" "	Oct. 1924	Stock purchased—Dygert-Associated Theatres, Inc.		
Berin-Schine Theatres, Inc.	Operating	" "	Sept. 1935	Stock purchased from one Berinstein		
Bridge & Second Streets Realty Co.	Realty	" "	May 10, 1937	Original issue		
Buffalo-Granada Theater Corp.	Operating and realty	" "	50%—1926 Balance—Nov. 9, 1931	50% original issue balance stock purchased from Universal Enterprises, Inc..		
Buffalo-Riverside Corporation	Operating and realty	" "	Dec. 2, 1926	Original issue		
Canan-Daigua Theatres, Inc.	Realty	" "	Oct. 1924	Stock purchased from Associated Theatres, Inc.		
Carthage-Strand Corp.	Realty	" "	May 14, 1924	Original issue		
Central New York Amusement Co. Inc.	Realty	" "	1925	Stock purchased from one Earl		
Chenango Theatre Corp.	Realty	" "	1921	Stock purchased from one Tennis		
Corning Liberty Corp.	Realty	" "	July 20, 1928	Original issue		
Corning-Opera House Company	Operating	" "	1924	Stock purchased Dygert - Associated Theatres, Inc.		

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Name of Corporation	Nature of Business	Extent of Interest	Date Acquired	From Whom	Date Sold or Disposed of	To Whom
Cortstate Corp.	Realty	Stockholder—100%	Feb. 25, 1927	Original issue		
Dominion Operating Co. Ltd.	Operating	" "	April 26, 1933	" "		
En-Kay Amusement Co.	Realty	" "	June 30, 1932	Stock purchase N. Kornblite, Binghamton, NY		
Fairport Realty Corp.	"	" "	Jan. 19, 1928	Original Issue		
G. C. Theatre Corp.	Operating	" "	August 22, 1927	" "		
Gateway Theatre Corp.	Realty	" "	1925	Stock purchase from one Earl et al		
Geneva Theatres, Inc.	Operating	" "	Oct. 1924	Stock purchase Dygert-Associated Theatres, Inc.		
Glove City Amusement Co. Inc.	"	" "	May 7, 1920	Original Issue		
Glove Theatre Corp.	Realty	" "	May 14, 1924	" "		
Gloversville-Family Corp.	"	" "	May 14, 1924	" "		
Gloversville-Hippodrome Corp.	"	" "	May 16, 1924	" "		
Herzberger Amusement Company, Inc.	Operating	" "	Oct. 1936	Stock purchase from Osborne & Dipson		
Mamyer Operating Co. Inc.	"	" "	50% April 1933 Balance Aug. 1937	50% original issue—balance purchase Aug. 1937		
Massena-Strand Corp.	"	" "	Dec. 3, 1926	Original Issue		
Munmad Theatres Corp.	Operating and Realty	" "	April 18, 1935	Original Issue		
Newark Theatres Inc.	Realty	" "	October 1924	Stock Purchase Dygert-Associated Theatres, Inc.		
Norstate Theatre Corp.	Operating	" "	June 8, 1933	Original Issue		
Oneonta Strand Corp.	Realty	" "	Dec. 12, 1922	Original Issue		
Oswego Orpheum Corp.	Operating	" "	June 27, 1922	" "		
Oswego Strand Corp.	Realty	" "	June 27, 1922	" "		
Otlair Corp.	Operating	" "	Jan. 26, 1937	" "		
Palace Lockport Corp.	Realty	" "	May 6, 1924	" "		
Penn Elm Corp.	"	" "	Oct. 20, 1936	" "		

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Perry Theatre Corp.	Realty	Stockholder—100%	Aug. 7, 1935	Original Issue
Pontiac Saranac Corp.	"	" "	Dec. 3, 1926	" "
Racit Corporation	"	" "	Dec. 19, 1935	" "
Reliance Theatres, Inc.	Operating	" "	Oct. 1936	Stock purchase from Osborne & Dipson
Rochester Grand Corp.	Realty	" "	July 15, 1926	Original Issue
Rochester Liberty Corp.	Operating	" "	Dec. 3, 1926	" "
Rochester Riviera Corp.	None	" "	" " "	" "
Rochester State Corp.	Operating	" "	" " "	" "
Rostate Realty Corp.	Realty	" "	Jan. 19, 1928	" "
S. G. Theatre Corp.	Operating and Realty	" "	Feb. 11, 1927	" "
S. R. Theatre Corp.	Realty	" "	Sept. 6, 1927	" "
Schine-Amsterdam Corp.	Operating	" "	Dec. 22, 1937	" "
Schine Circuit Inc.	Service	" "	May 10, 1937	" "
Schine Clearance Corp.	Operating	" "	May 14, 1924	" "
Schine Enterprises Corp.*	Service	" "	Feb. 20, 1935	" "
Schine Franklin Corp.*	Realty	" "	Jan. 14, 1937	" "
Schine Hamilton Corp.	Operating	" "	Nov. 28, 1938	
Schine Ilion Corp.	"	" "	Aug. 31, 1937	
Schine Lexington Corp.*	"	" "	Sept. 15, 1936	" "
Schine Malone Corp.	"	" "	Dec. 3, 1926	" "
Schine Northern Corp.	Realty	" "	April 20, 1937	" "
Schine Ogdensburg Corporation	Operation	" "	Dec. 3, 1926	" "
Schine Oneonta Corp.	Realty	" "	Dec. 12, 1922	" "
Schine Oswego Corp.	Operating and Realty	" "	June 27, 1922	" "

* Held stock of Benton-Schine Corpn. until August 28, 1939

* Also holds stock of Phoenix Amusement Co and other Kentucky corpns. qualified Kentucky.

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Schine Realty Corp.	Realty	Stockholder—100%	May 6, 1924	Original Issue		
Schine Riviera Corp.	"	" "	Sept. 6, 1938	" "		
Schine Rochester Corp.	Operating	" "	Feb. 7, 1930	" "		
Schine Theatrical Co. Inc.	"	" "	Aug. 26, 1926	" "		
Seneca Theatres Inc.	Realty	" "	July 15, 1926	" "		
Shaferland Corp.	"	" "	July 10, 1922	" "		
Storm King Theatre Corp.	Operating and Realty	" "	April 8, 1940	" "		
Tri-City Theatre Circuit	Realty	" "	50% original issue—balance Nov. 9, 1931	Universal Chain Enterprises, Inc.		
Upstate Amusement Co.	"	" "	50% March 1927—Balance Aug. 1937	50% original issue—balance purchase from Shea interests		
Valley Theatre Corp.	Operating	" "	July 15, 1925	Original Issue		
Winful Realty Corp.	Operating and Realty	" "	July 12, 1937	Original Issue		
Yateswood Corp	Operating	" "	Oct. 22, 1936	Original Issue		
Benton-Schine Corp.	Operating and Realty	Stockholder— 50%	Apr. 8, 1937	" "		
KE Operating Company, Ltd.	Operating	" "	40% Sept. 13, 1935 10% Aug. 16, 1939	40% original issue 10% stock purchase		
olgerville Strand Corp.	Realty	" 100%	May, 1924	Original Issue	1933	Corporation has done no business since
Webster Operating Corp.	Operating	" 50%	August, 1927	Original Issue	Dec. 30, 1933	Fogel & Tishkoff, Rochester, N. Y.
erkimer-Little Falls Corp.	Operating	" 100%	50% Aug. 1925 Balance Nov. 1931	50% Original Issue Bal. stock purchase from Univ. Pic. Corp.	August, 1936	Corporation dissolved
airport Theatres Inc.	Operating	" 100%	December, 1926	Original Issue	August, 1936	Corporation dissolved
tate Enterprises Inc.	Operating	" 100%	February, 1926	Original Issue	1933	Corporation in bankruptcy
Associated Theatres Inc.	Operating and Realty	" 100%	October, 1924	Stock purchase from H. B. Dygert, et al.	Dec. 1932	Corporation liquidated
Lockport Enterprises Inc.	Operating	" 50%	September, 1927	Original Issue	Dec. 1932	Corporation has done no business

ANSWER TO INTERROGATORY No. 15—Continued

Name of Corporation	Nature of Business	Extent of Interest	Date Acquired	From Whom	Date Sold or Disposed of	To Whom
[fol. 273]						Page 5
Lockport-Temple Corp.	Realty	Stockholder 100%	May, 1924	Original Issue	June, 1935	Corporation dissolved
Rego Schine Corp.	Operating	" 50%	June, 1928	Original Issue	May, 1934	Corporation dissolved
Schine Auburn Corp.	Operating	" 100%	October, 1923	Original Issue	June, 1935	Corporation dissolved
Temple Photoplay Inc.	Realty	" 100%	October, 1924	Stock pur. from H. B. Dygert, et al.	June, 1935	Corporation dissolved
Incorporated—State of Ohio						
Belpik Theatre-Corp.	Operating and Realty	Stockholder—100%	March 30, 1933	Original Issue		
Civic Theatre Inc.	Operating	" "	May 31, 1936	Stock purchase from C. Kahn, Fostoria, O.		
The Crawford Theatre Company	"	" "	April, 8 1937	Stock purchase from N. Charnes, Bucyrus, O.		
The Limo Corp.	Realty	" "	Feb. 25, 1930	Original Issue		
Mt. Lyric Real Estate Corp.	"	" "	Jan. 4, 1936	" "		
Schine Ashland Corporation	Operating	" "	75% Nov. 6, 1935 25% Oct. 1937	75% original issue 25% purchase from Bickert, Ashland, O.		
Schine Athens Realty Corp.	Realty	" "	Nov. 9, 1935	Original Issue		
Schine Bucyrus Corp.	"	" "	Aug. 14, 1935	" "		
Schine Delaware Corp.	Operating	" "	50% Jan. 7, 1936 Balance Jan. 11, 1940	50% original issue 50% purchase from H. Bieberson, Delaware, O.		
Schine Kent Improvement Corp.	Realty	" "	Nov. 30, 1937	Original Issue		
Schine Kent Theatre Corp.	Operating	" "	Nov. 30, 1937	" "		
Schine Ravena Improvement Corp.	Realty	" "	Nov. 30, 1937	" "		
Schine Ravena Theatre Corp.	Operating	" "	Nov. 30, 1937	" "		
The Fostoria Theatre Corp.	"	" 50	June 21, 1937	" "		
[fol. 274]						Page 6
Kinney-Mott Corporation	Operating	Stockholder— 50%	July 22, 1931	Original Issue		
Medina-Princess Corp.	"	Stockholder— 25%	April 7, 1939	" "		
Norwalk Theatre Corp.	Operating and Realty	Stockholder—66⅔%	July, 1935	Stock purchase from W. K. Selman, Steel et al Norwalk, O.		
Schine Medina Corp.	" " "	Stockholder— 50%	March 20, 1937	Original Issue		
Schine Shelby Corp.	Operating	" "	Sept. 21, 1937	" "		
Schine Tiffin Corp.	"	" "	Feb., 1938	" "		
				(Britton & Silverman)		
Seneca Theatres Inc.	"	" "	April, 1935	Stock purchase from Britton & Silverman		
Wooster Theatres, Inc.	Realty	" "	1931	Original Issue		
Incorporated—State of Kentucky						
Corbin Theatre Company	Operating	Stockholder—100%	October 1938	Local stockholders, Corbin, Ky.		
Liberty Amusement Company	"	" "	August, 1939	Stock purchase Elliott Ward et al, Lexington, Ky.		
Phoenix Amusement Company	Operating and Realty	" "	November 1936	Stock purchase Elliott Ward et al, Lexington, Ky.		
Phoenix Maysville Theatre Company	Operating	" "	60% Jan. 11, 1939 40% December 1940	60% original issue 40% stock purchase from one Kaplan		
Phoenix Middlesboro Theatre Company	"	" "	Dec. 2, 1938	Original Issue		
Phoenix Harlan Theatre Company	"	Stockholder— 50%	January, 1941	" "		
[fol. 275]						Page 7.
Incorporated—State of Maryland						
The Cambridge Theatres Company	Operating and Realty	Stockholder— 90%+	April 1938	Stock purchase various local stockholders, Cambridge, Md.		
Chesapeake Theatres Corp.	Operating and Realty	Stockholder—100%	April 19, 1938	Original issue		
Hurlock Theatre Corp.	Operating	" "	October 1938	Stock purchase from M. Gollner, Salisbury, Md.		
Wico-Mico Theatre Corp.	"	" "	October 1938	Stock purchase from M. Gollner, Salisbury, Md.		
Incorporated—State of Delaware						
Milford Theatre Corp.	Realty	Stockholder—100%	January 4, 1939	Original Issue		
Sidney Theatre Corp.	Operating and Realty	" "	April 30, 1927	" "		
Incorporated—State of Virginia						
Schine-Virginia Corp.	Operating and Realty	Stockholder—100%	June 7, 1940	Original issue		

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ANSWER TO INTERROGATORY NO. 16

Names And Addresses Of All Corporations Which, At Any Time Since August 31, 1931 Have Owned A Financial Interest In Defendant Directly Or Indirectly.

Name of Corporation	Nature of Business	Nature and Extent of Interest	Date of Acquisition	From Whom Acquired	Date of Disposition	To Whom
I. As to Defendant, Schine Chain Theatres, Inc. (Class A and Class B Common Stock)						
Universal Chain Theatrical Enterprises, Inc.	Ownership and operating of m. p. theatres	9644—Class A 2500—Class B	March 17, 1925	J. M. & L. W. Schine	Nov. 9, 1931	Caroga Corp.
Caroga Corp.	Personal Holding Co.	9644—Class A 2500—Class B	Nov. 9, 1931	Universal Chain Theatrical Enterprises, Inc.	—	—
Schinebro, Inc.	" " "	30,356—Class A	27600—8/25/26	Original Issue	—	—
			1325—4/28/30	Sol. Shafer		
			100— 5/8/30	Halton D. Bly		
			1331—2/19/32	John A. May		
		7,500—Class B	6900—8/16/26	Original Issue	—	—
			600—9/30/26	John A. May		
St. Lawrence Holding Co. Ltd	Holding Company	50,000—Class A	January, 1938	Original Issue	Aug. 31, 1941—	(All of the stock of St. (Lawrence Holding Co. Ltd. is (owned by the defendant (Schine Chain Theatres, Inc. (Papers have been filed and (approved providing for the (dissolution of St. Lawrence (Holding Co. Ltd. as of (August 31, 1941. Therefore, (the said stock of Schine (Chain Theatres, Inc. is now, (considered as treasury stock (of Schine Chain Theatres, Inc.
II. As to Schine Circuit, Inc.						
Schine Chain Theatres, Inc.	Holding Company	Stockholder—100%	May 10, 1937	Original Issue		
III. As to Schine Theatrical Co., Inc.						
Schine Chain Theatres, Inc.	Holding Company	Stockholder—100%	Aug. 26, 1926	Original Issue		
IV. As to Schine Enterprises Corporation						
Schine Chain Theatres, Inc.	Holding Company	Stockholder—100%	Feb. 10, 1935	Original Issue		
V. As to Schine Lexington Corporation						
Schine Chain Theatres, Inc.	Holding Company	Stockholder—100%	Sept. 15, 1936	Original Issue		
VI. As to Chesapeake Theatres Corporation						
Schine Chain Theatres, Inc.	Holding Company	Stockholder—100%	Apr. 19, 1938	Original Issue		

[fol. 277] Interrogatory No. 16 (cont'd)

List of holders of "Preferred Stock" of Schine Chain Theatres, Inc. as of the following dates:

August 31, 1931.
Associated Theatres, Inc., Gloversville, N. Y.—15 sh.
Bowery Savings Bank, New York City for account of Lillian M. Burton—28 sh.
National City Bank of New Rochelle for account of Stephen C. Husler—100 sh.
First National Bank & Trust Co. of Rochester, N. Y. for account of Mrs. Mollie Shafer—1000 sh.
Shinebro, Inc., Gloversville, N. Y.—6433 sh.
* April 1, 1934
Associated Theatres, Inc., Gloversville, N. Y.—15 sh.
Cortland Trust Co., as Admr. of Est. of Theron Houpt—66 sh.
Schinebro, Inc., Gloversville, N. Y.—7174 sh.

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* no stockholders' list available for August 31, 1934 as no dividend declared.

August 31, 1937
Emigrant Industrial Savings Bank, New York City, for account of Lillian M. Burton—28 sh.
Canada Permanent Trust Co., Brantford, Ontario, Can. for account of Mabel Cook—50 sh.
Schinebro, Inc., Gloversville, N. Y.—7524 sh.
August 31, 1940
Canada Permanent Trust Co.—50 shares
Schinebro, Inc., Gloversville, N. Y.—3146 sh.

[fol. 267] Interrogatory No. 7 (Continued)—page 3

Name	Address	No. of Shares
Gordon P. Young	Gloversville, N. Y.	300
Harry J. Stolte	Pleasantville, N. Y.	300
As of 8/31/37		
Fred E. Billingham	Gloversville, N. Y.	3336
Schinebro, Inc.	Gloversville, N. Y.	7524
J. Myer Schine	Gloversville, N. Y.	1654
Louis W. Schine	Gloversville, N. Y.	1522
Helen M. Breese	Schenectady, N. Y.	245
Hildegarde F. Schine	Gloversville, N. Y.	333
Edith Shew	Gloversville, N. Y.	287
Harry J. Stolte	Pleasantville, N. Y.	300
Gordon P. Young	Gloversville, N. Y.	310
Samuel Kovar	Bronx, N. Y.	300
As of 8/31/40		
Fred E. Billingham	Gloversville, N. Y.	3444
Helen M. Breese	Schenectady, N. Y.	245
[fol. 268]		
Schinebro, Inc.	Gloversville, N. Y.	3146
J. Myer Schine	Gloversville, N. Y.	1384
Louis W. Schine	Gloversville, N. Y.	1352
Hildegarde F. Schine	Gloversville, N. Y.	383
Edith Shew	Gloversville, N. Y.	287
Harry J. Stolte	Pleasantville, N. Y.	300
Samuel Kovar	Los Angeles, Cal.	300
Gordon P. Young	Gloversville, N. Y.	310

As to other Schine corporate defendants, all stock held by Schine Chain Theatres, Inc.

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ANSWER TO INTERROGATORY NO. 4

As to each class of stock outstanding at any time during the period from August 31, 1931 to date, state the total amount authorized and outstanding as of August 31, 1931 and indicate all changes with respect thereto which have occurred from August 31, 1931 to date.

As to Schine Theatres, Inc.

	Authorized 8/31/31	Outstanding 8/31/31	Changes 8/31/31 to date	Outstanding 8/31/40
Preference Stock	100,000.	35,000.	None	21,850
Class A Common	100,000.	40,000.	None *	40,000
Class B Common	10,000.	10,000.	None *	10,000

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* Certificate filed 12/31/37 changing classification of Class A and Class B common stock from "no par value" to $1.00 par value.

No changes in preference stock except for retirement of shares purchased in open market from time to time.

As to Schine Circuit, Inc.:
Incorporated—May 10, 1937
Authorized—10 shares common stock—no par value
Outstanding—10 shares—original issue
Changes since 8/31/31—None

As to Schine Theatrical Co., Inc.:
Incorporated—August 26, 1926
Authorized—100 shares common stock—no par value
Outstanding—100 shares—original issue
Changes since 8/31/31—None

As to Schine Enterprises Corp.:
Incorporated—February 20, 1935
Authorized—100 shares common stock—no par value
Outstanding—100 shares—original issue
Changes since 8/31/31—None

[fol. 264]

As to Schine Lexington Corp.:
Incorporated—September 15, 1936
Authorized—10 shares common stock—no par value
Outstanding—10 shares—original issue
Changes since 8/31/31—None

As to Chesapeake Theatres Corp.:
Incorporated—April 19, 1938
Authorized—100 shares common stock—no par value
Outstanding—100 shares—original issue
Changes since 8/31/31—None

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Answer to Interrogatory No. 17

17(A) Theatres owned by defendants and in which defendants have financial interest.

Answer to Interrogatory No. 18

vn ork	Name of Theatre	Nature of Interest	Extent of Interest	Date Acquired	Other Interests If Any and Extent Thereof	Date Disposed of If No Longer Owned	Name of Purchaser If Sold, or Remarks	Seating Capacity	Closed Periods If Any	Remarks Re Closed Periods	Owned or Leased
rdam	Regent	Owner	100%	9/10/28 50% remaining 50% Sept. 1935	Shea interests 50% up to Sept. 1935	....	....	925	Closed part time*	Open occasionally or part time as business warrants	Owned
rdam	Rialto	Lessee	100%	9/10/28 50% remaining 50% purchased Sept. 1935	Shea interests 50% up to 1935	....	....	1380	Closed from 7/18/36 to 9/19/36	Closed for remodeling	Leased
rdam	Strand	Owner	100%	9/10/28 50% balance acquired Sept. 1935	Shea interests 50% up to 1935	....	....	1086	....	....	Owned
n	Jefferson	Lessee	100%	3/21/27 50% balance August, 1937	Shea interests 50% up to August, 1937 (operated by Fox 1929–1933)	....	....	1100	Closed part time*	Part time operation	Leased
n	Palace (formerly Universal)	Lessee	100%	November, 1923	Shea interests from 1927 to 1937 (Fox operation 1929–1933)	....	....	850	....	....	Leased
rn	Auburn	Owner	100%	Acquired land December 1923	none	....	....	1800	Theatre open since Sept. 1938	New construction	Owned
	Babcock	Lessee	100%	October 1924	none—except Fox operation 1929–1933	none	none	693	....	....	Leased
cn	Strand	Owner	100%	Mar. 21, 1927 50%—balance August, 1937	Shea interest 50% up to Aug. 1937 (Operated by Fox 1929–1933)		....		Closed since 1933* Demolished 1939	....	Owned

icates more complete information on attached schedule. The information herein contained should be read together with the information contained on the attached supplemental schedule.

		ANSWER TO INTERROGATORY No. 23
d or ed	If Leased Name of Lessor	Name of Present Opposition Theatre
ed	....	Orpheum—Opposition ceased June, 1941
ed	Edward and Gertrude Clapp, Amsterdam, N. Y.	Orpheum—Opposition ceased June, 1941
ed	....	Orpheum—Opposition ceased June, 1941
ed	Osborne Estate, Auburn, N. Y.	Capitol
ed	Ellen Herron, Auburn, N. Y.	Capitol
ed	....	Capitol
ed	Grace Babcock, Bath, N. Y.	None
ed	....	Capitol

Answer to Interrogatory No. 17—Continued

17(A) Theatres owned by defendants and in which defendants have financial interest.

Town	Name of Theatre	Nature of Interest	Extent of Interest	Date Acquired	Other Interests If Any and Extent Thereof	Date Disposed of If No Longer Owned	Name of Purchaser If Sold, or Remarks
Ballston Spa	Capitol	Lessee	50%	April 1937	50% owned by William Benton, Saratoga NY	....	....
Buffalo	Granada	Owner	100%	Leased Dec. 1926—acquired fee June 1939	None	....	....
Buffalo	Riverside	Owner	100%	Lease August 1926—fee Dec. 1940	None	....	....
Buffalo	Jubilee	Lessee	100%	June 1928	None	March 1933	Lease unprofitable—made settlement with lessor, Jubilee Realty Co. and surrendered lease
Canandaigua	Playhouse	Owner	100%	Oct. 1924	None—except Fox operation 1929-1933	....	....
Canandaigua	Lake	Owner	100%	Leased Nov. 1939—fee Aug. 1940	None	....	....
Carthage	Strand	Owner	100%	Nov. 1922	None—except Fox operation 1929-1933	....	....

Answer to Interrogatory No. 18					Answer to Interrogatory No. 23
Seating Capacity	Closed Periods If Any	Remarks Re Closed Periods	Owned or Leased	If Leased Name of Lessor	Name of Present Opposition Theatre
482	....	....	Leased	Wm. Benton, Saratoga, N. Y.	None
1702	....	....	Leased Dec. 1926 acquired fee June 1939	Ashley-Hager Inc. (lessor) fee from L. N. Whissel Lumber Co.	Not required
1281	....	....	Leased Aug. 1926 acquired fee Dec. 1940	Leased and purchased from Ellsworth Amusement Corp.	Not required
....	......	....	......	......	Not required
1070		....	Owned		None
374		New construction completed April 1941	Leased Nov. 1939 fee acquired Aug. 1940	Leased and purchased from Joseph Soppe, Wellesville, N. Y.	None
786		....	Owned		State to March, 1935

[fol. 280]

ANSWER TO INTERROGATORY No. 17—Continued

17(A) Theatres owned by defendants and in which defendants have financial interest.

Town	Name of Theatre	Nature of Interest	Extent of Interest	Date Acquired	Other Interests If Any and Extent Thereof	Date Disposed of If No Longer Owned	Name of Purchaser If Sold, or Remarks
Corning	Fox (formerly Liberty)	Owner	100%	Oct. 1924	None—except Fox operation 1929–1933	....	....
Corning	State	Owner	100%	Oct. 1924	None—except Fox operation 1929–1933	.....	....
Corning	Palace (formerly Regent)	Lessee	100%	Apr. 1938	None	....	....
Cortland	State	Owner	100%	Site Sept. 1926—Theatre opened 1930	None	....	....
Cortland	Temple	Owner	100%	Sept. 1932	None	....	....
Cortland	Cortland	Owner	100%	Sept. 1932	None	....	....
Dolgeville	Strand	Owner	100%	March 1923	None	March 1933	Sold to William Faville
E. Rochester	Rialto	Lessee	100%	Oct. 1924	None	....	....
Fairport	Temple	Owner	100%	Leased Nov. 1926—fee Jan. 1928	None	....	....

* Indicates more complete information on attached schedule. The information herein contained should be read together with the information co

Answer to Interrogatory No. 18

Answer to Interrogatory No. 23

Seating Capacity	Closed Periods If Any	Remarks Re Closed Periods	Owned or Leased	If Leased Name of Lessor	Name of Present Opposition Theatre
1933	....	....	Owned	....	Plaza-Palace to Apr. 1938
906	Closed since 1939*	Open occasionally or part time as business warrants	Owned	....	Plaza-Palace to Apr. 1938
398	....	....	Leased	Fred Gerber, Corning, N. Y.	Plaza
1632	....	....	Owned	....	Opera House and Temple to June, 1932
588	....	Part time summer of 1935 only	Owned	....	None
....	Closed since acquisition*	Never operated as theatre—converted to commercial use	Owned	....	None
....	....	....	....	....	
900	....	....	Leased	H. Dygert, E. Rochester, N. Y.	None
850	....	....	Leased Nov. 1926—fee acquired Jan. 1928	Leased & purchased from Thomas Demeco, Rochester, N. Y.	None

contained on the attached supplemental schedule.

[fol. 281]

Answer to Interrogatory No. 17—Continued

17(A) Theatres owned by defendants and in which defendants have financial interest—Continued

Town	Name of Theatre	Nature of Interest	Extent of Interest	Date Acquired	Other Interests If Any and Extent Thereof	Date Disposed of If No Longer Owned	Name of Purchaser If Sold, or Remarks
Geneva	Geneva	Owner	100%	Oct. 1924. Built in 1931 to replace opera house burned	None	....	....
Geneva	Regent	Lessee	100%	Oct. 1924	None	....	....
Geneva	Temple	Owner	100%	Oct. 1924	None	....	....
Glens Falls	Rialto	Owner	100%	Leased Mar. 1933 fee Jan. 1937	None	....	....

Answer to Interrogatory No. 18					Answer to Interrogatory No. 23
Seating Capacity	Closed Periods If Any	Remarks Re Closed Periods	Owned or Leased	If Leased Name of Lessor	Name of Present Opposition Theatre
1868	....	....	Owned	....	Park (none until Jan. 1940 when Park Theatre opened and operated intermittently thereafter)
1055	....	Part-time operation during summers only 1931 to 1939 inclusive	Leased	O'Riely Estate, Geneva, N. Y.	Park (none until Jan. 1940 when Park Theatre opened and operated intermittently thereafter)
	Closed	Obsolete—replaced by new Geneva Theatre	Owned		Park (none until Jan. 1940 when Park Theatre opened and operated intermittently thereafter)
1318			Leased Mar. 1933—fee acquired Jan. 1937	Leased & purchased from Rialto Theatre Corp.	State-Empire to June, 1933. Paramount to June, 1940

Answer to Interrogatory No. 17—Continued

Town	Name of Theatre	Nature of Interest	Extent of Interest	Date Acquired	Other Interests If Any and Extent Thereof	Date Disposed of If No Longer Owned	Name of Purchaser If Sold, or Remarks
Glens Falls	Empire	Lessee	100%	June 1933	None	....	....
Glens Falls	Paramount	Lessee	100%	June 1, 1940	None	....	....
Gloversville	Glove	Owner	100%	Apr. 1920	None—except Fox operation 1929–1933	....	....
Gloversville	Hippodrome	Owner	100%	Leased 1917— Fee Feb. 1919	None—except Fox operation 1929–1933	....	....
Hamilton	State	Owner	100%	Aug. 1934	None	....	....
Herkimer	Liberty	Owner	100%	June 1925	None—except Fox operation 1929–1933	....	....
Herkimer	Richmond	Lessee	100%	June 1925	None—except Fox operation 1929–1933	....	....
Hudson Falls	Strand	Owner	100%	July 1935	None	....	....
Iliom	Capitol	Owner	100%	Aug. 1937	None	....	....
Ilion	Temple	Lessee	100%	Aug. 1937	None	....	....
Little Falls	Rialto	Owner	100%	May 1925	None—except Fox operation 1929–1933	....	....
Newark	Capitol	Owner	100%	Oct. 1924	None—except Fox operation 1929–1933	....	....
Newark	Crescent	Lessee	100%	April 1926	None—except Fox operation 1929–1933	....	....

*Indicates more complete information on attached schedule. The information herein contained should be read together with the information contained

Interrogatory No. 18					Interrogatory No. 23
Seating Capacity	Closed Periods If Any	Remarks Re Closed Periods	Owned or Leased	If Leased Name of Lessor	Name of Present Opposition Theatre
750	....	....	Leased	Empire Real Estate Co., Glens Falls, N. Y.	State-Paramount to June, 1940*
1186	....	....	Leased	Paramount Pictures, Inc., N. Y. City	State
1298	9/20/40–10/6/40	Remodelling	Owned	....	None
1151	....	Closed during summers only 1935 and 1938	Leased 1917—fee acquired Feb. 1919	Leased & purchased from Odd Fellows Association	None
712	....	....	Owned	....	None
1046	....	....	Owned	....	None
....	Closed since 1933*	Obsolete—acquired as part of deal for Liberty	Leased	Mary Hines, Herkimer, N. Y.	....
891	....	....	Owned	....	None
1238	....	....	Owned	....	None
....	Closed when acquired	Obsolete—acquired as part of deal for Capitol	Leased	Odd Fellows Association, Ilion, N. Y.	....
1200	....	....	Owned	....	Hippodrome to June, 1936
1210	....	....	Owned	....	None
....	Closed since 1933*	Obsolete and unusable	Leased	R. A. Croucher, Newark, N. Y.	None

contained on the attached supplement schedule.

[fol. 283]

ANSWER TO INTERROGATORY No. 17

Town	Name of Theatre	Nature of Interest	Extent of Interest	Date Acquired	Other Interests If Any and Extent Thereof	Date Disposed of If No Longer Owned	Name of Purchaser If Sold, or Remarks
Little Falls	Hippodrome	Lessee	100%	June 1936	None		
Lockport	Rialto	Owner	100%	June 1924	None, except as below		
Lockport	Hi-Art	Lessee	100%	Oct. 1927	None, except Schine-Paramount operation to Dec. 1932		
Lockport	Palace	Lessee then Owner	100%	Oct. 1927 re-acquired Oct. 1936	Partnership with Paramount during period Oct. 1927 to Dec. 1932	Dec. 1932	Lease cancelled by landlord—re-acquired Oct. 1936 as fee
Malone	Malone (formerly Grand)	Owner	100%	Lease Sept. 1926—fee April 1937	None		
Malone	Plaza	Lessee	100%	Originally acquired Sept. 1926 and disposed of Sept. 1936. Reacquired Feb. 16, 1941	None	Leased terminated Sept. 1936—reacquired 2/16/41	Disposition in 1936, reverted to Lessor, Michael Boumansour, Malone, N. Y., by expiration of lease
Massena	Massena	Lessee	100%	Aug. 1926	None		
Massena	Rialto	Lessee	100%	1926	None	Aug. 31, 1931	Lease expired. Not renewed.

Answer to Interrogatory No. 18					Answer to Interrogatory No. 23
Seating Capacity	Closed Periods If Any	Remarks Re Closed Periods	Owned or Leased	If Leased Name of Lessor	Name of Present Opposition Theatre
555	Closed part time*	Open occasionally or part time as business warrants	Leased	Odd Fellows Association, Little Falls, N. Y.	None
1484			Owned		Palace from Dec. 1932 to Oct. 1936
1062	Closed part time*	Open occasionally or part time as business warrants	Leased	J. J. Lannigan, Buffalo, N. Y.	
1698			Originally leased, subsequently re-acquired by fee ownership	Original lessor Chas. Dickerson	None
1181			Owned		Plaza between 1936 and 1941
610		Operated by owner Boumansour between 1936 and 1941	Leased Sept. 1926 to Sept. 1936	Michael Boumansour Malone, N. Y.	None
1111			Leased	V. Warren, Massena, N. Y.	Rialto
			Leased Aug. 31, 1931		None while under Schine operation. At present this theatre constitutes opposition to Massena Theatre

[fol. 284]

ANSWER TO INTERROGATORY No. 17—Continued

Town	Name of Theatre	Nature of Interest	Extent of Interest	Date Acquired	Other Interests If Any and Extent Thereof	Date Disposed of If No Longer Owned	Name of Purchaser If Sold, or Remarks
Norwich	Colonia	Owner	100%	Nov. 1921	None—except Fox operation 1929–1933	....	....
Ogdensburg	Strand	Lessee	100%	Sept. 1926	None	....	....
Ogdensburg	Pontiac	Lessee	100%	Sept. 1926	None	....	....
Oneonta	Oneonta	Owner	100%	Nov. 1922	None—except Fox operation 1929–1933	....	....
Oneonta	Palace (formerly Maxey)	Owner	100%	Lease Mar. 1923 Fee Sept. 1927	None—except Fox operation 1929–1933	....	....
Oneonta	Strand	Owner	100%	Oct. 1919	None	....	....
Oswego	Strand	Owner	100%	Sept. 1922	None—except Fox operation 1929–1933	....	....
Oswego	Capitol	Owner	100%	Sept. 1922	None—except Fox operation 1929–1933	....	....
Oswego	Oswego	Owner	100%	Land acquired June 1937—theatre completed Jan. 22, 1941	None	....	....
Oswego	Richardson	Lessee	100%	Sept. 1922	None	....	....

Answer to Interrogatory No. 18					Answer to Interrogatory No. 23
Seating Capacity	Closed Periods If Any	Remarks Re Closed Periods	Owned or Leased	If Leased Name of Lessor	Name of Present Opposition Theatre
1045	July 1938	Closed for alterations	Owned	....	Smalley since 1930. Operated by Schine 1922–1930
1311	May 1940	Closed for alterations	Leased	Ogdensburg Strand Theatre Co.	None
460	Closed part time*	Open occasionally or part time as business warrants	Leased	Ogdensburg Strand Theatre Co.	None
1217	....	....	Owned	....	None
866	....	....	First leased then fee acquired	Leased & purchased from Thomas J. Maxey	None
—	Closed since 1933	Obsolete and unusable as theatre	Owned	....	None
950	Part time operation	....	Owned	....	None
696	....	....	Owned		None
1704	....	....	Owned	....	None
....	Closed*	Permanently	Leased	Bates Estate, Oswego, N. Y.	None

[fol. 285]

ANSWER TO INTERROGATORY No. 17—Continued

Town	Name of Theatre	Nature of Interest	Extent of Interest	Date Acquired	Other Interests If Any and Extent Thereof	Date Disposed of If No Longer Owned	Name of Purchaser If Sold, or Remarks
Oswego	State	Owner	100%	Nov. 1934	None	....	....
Penn Yan	Elmwood	Owner	100%	Sept. 19[illegible]	None	....	....
Perry	Auditorium	Lessee	100%	Oct. 1936	None	....	....
Rochester	Dixie	Lessee	100%	Aug. 1932	None	....	....
Rochester	Grand	Owner	100%	Leased June 1924—fee Aug. 1925	None	....	....
Rochester	Liberty	Owner	100%	Leased Oct. 1926—fee Feb. 1939	None—except Paramount interests 1928–1933	....	....
Rochester	Riviera	Owner	100%	Leased Oct. 1926—fee April 1927	None—except Paramount interests 1928–1933	....	....
Rochester	State	Owner	100%	Leased Jan. 1926—fee Jan. 1928	None—except Paramount interests 1928–1933	....	....
Rochester	Cameo	Owner	100%	May 1936	None	....	....
Rochester	Lake	Lessee	100%	Jan. 1936	None	....	....

Answer to Interrogatory No. 18					Answer to Interrogatory No. 23
Seating Capacity	Closed Periods If Any	Remarks Re. Closed Periods	Owned or Leased	If Leased Name of Lessor	Name of Present Opposition Theatre
....	Closed when acquired	Permanently. Converted to commercial use. October 1939	Owned		None
716	Nov. 1936	Closed for renovation	Owned	....	None
652	....	....	Leased	Town of Perry N. Y.	None
892	....	....	Leased	Dixie Theatre Corp., Rochester, N. Y.	Not required
834	....	....	Leased June 1924—fee Aug. 1925	First leased then acquired fee from Owner's Committee—owner incompetent	Not required
1256	....	....	Leased Oct. 1926—fee Feb. 1939	Lease originally from Levy then purchased from Fennyvessy	Not required
1508	....	....	Leased Oct. 1926—fee Apr. 1927	Owner, Joseph Joroslow, Rochester, N. Y.	Not required
1062	....	....	Leased Jan. 1926—fee Jan. 1928	Thos. Demeco, Bldr. & Owner, Rochester, N. Y.	Not required
1258	....	....	Owned	....	Not required
840	....	....	Leased	Name of owner not presently available	Not required

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ANSWER TO INTERROGATORY No. 17—Continued

Town	Name of Theatre	Nature of Interest	Extent of Interest	Date Acquired	Other Interests If Any and Extent Thereof	Date Disposed of If No Longer Owned	Name of Purchaser If Sold, or Remarks
Rochester	Madison	Owner	100%	Feb. 1939	None	....	....
Rochester	Monroe	Owner	100%	Feb. 1939	None	....	....
Rochester	West End	Owner	100%	Feb. 1939	None	....	....
Rochester	Webster	Owner	100%	Sept. 1940	None	Previously operated with Fogel & Tishkoff up to Dec. 1933 when Schine withdrew	Disposed of interest in previous operation to Fogel & Tishkoff in Dec. 1933
Rochester	Plaza	Owner	100%	Sept. 1940	None	9/11/41	Sharp & Huurman d.b.a. Old Fashoned Cracker Co., Rochester, N. Y.
Salamanca	Andrews	Lessee	100%	Oct. 1924	None—except Fox operation 1929–1933	....	....
Saranac Lake	Pontiac	Owner	100%	Mar. 1927	None—except Fox operation 1929–1933	....	....
Seneca Falls	Strand	Lessee	100%	Sept. 1935	None	....	....
Syracuse	Eckel	Lessee	30%	Jan. 1927	B. F. Keith Corp. (Fox operation 1929–1933—RKO-Schine operation since Aug. 1935)	....	....
Seneca Falls	Seneca	Owner	100%	Apr. 1936	None	....	....

* Indicates more complete information on attached schedule.

The information herein contained should be read together with the information

ANSWER TO INTERROGATORY NO. 18					ANSWER TO INTERROGATORY NO. 23
Seating Capacity	Closed Periods If Any	Remarks Re Closed Periods	Owned or Leased	If Leased Name of Lessor	Name of Present Opposition Theatre
1381	....		Owned	....	Not required
1186	....	....	Owned	....	Not required
832	....	....	Owned	....	Not required
1099	....	....	Owned	....	Not required
....	Closed since acquisition*	Never operated as theatre	Owned	....	Not required
735	....	....	Leased	Max Andrews, Olean, N. Y.	None
1218	....	....	Owned	....	None
943	....	....	Leased	Withers, Sayer & Knox, Seneca Falls, N. Y.	None
1408	....	....	Leased	Central Cities Bldg., Utica, N. Y.	Not required
....	Closed permanently	Never operated as theatre since acquisition. Not in operating condition because equipment removed by former operator	Owned		None

contained on the attached supplemental schedule.

[fol. 287]

ANSWER TO INTERROGATORY No. 17—Continued

Town	Name of Theatre	Nature of Interest	Extent of Interest	Date Acquired	Other Interests If Any and Extent Thereof	Date Disposed of If No Longer Owned	Name of Purchaser If Sold, or Remarks
Syracuse	Keith	Lessee	30%	Aug. 1935	B. F. Keith Corp. RKO-Schine operation	....	....
Syracuse	Paramount	Lessee	30%	Aug. 1935	B. F. Keith Corp. RKO-Schine operation	....	....
Syracuse	Strand	Lessee	30%	Aug. 1935	B. F. Keith Corp. RKO-Schine operation	8/31/41	Reverted to landlord on expiration of lease
Syracuse	Palace	Lessee	30%	Feb. 1939	B. F. Keith Corp. RKO-Schine operation, effective 9/1/40	....	....
Syracuse	James	Lessee	30%	June 1940	B. F. Keith Corp. RKO-Schine operation; effective 9/1/40	....	
Syracuse	Empire	Lessee	30%	Jan. 1, 1941	B. F. Keith Corp. RKO-Schine operation		
Tupper Lake	State	Lessee	100%	Jan. 1935	None	....	....
Utica	Avon	Lessee	100%	Jan. 1927	None—except Fox operation 1929-1933	May 1933	Warner's
Utica	Gaiety	Lessee	100%	Jan. 1927	None—except Fox operation 1929-1933	May 1933	Warner's
Utica	DeLuxe	Lessee	100%	Jan. 1927	None	1931	Lease terminated
Utica	Majestic	Lessee	100%	Jan. 1927	None—except sublease to Fox 1929	1929	Lease terminated

Interrogatory No. 18					Interrogatory No. 23
Seating Capacity	Closed Periods If Any	Remarks Re Closed Periods	Owned or Leased	If Leased Name of Lessor	Name of Present Opposition Theatre
2548	....	....	Leased	B. F. Keith Corp., N. Y. City	Not required
1485	....	....	Leased	W. & J. Cahill, Syracuse, N. Y.	Not required
1656	....	....	Leased	Syracuse Strand Theatre Co., Syracuse	Not required
1417	....	....	Leased	A. Dibella, Syracuse, N. Y.	Not required
462	....	....	Leased	E. Dunn, Syracuse, N. Y.	Not required
1452	....	....	Leased	Mass. Mutual Life, Springfield, Mass.	Not required
509	....	....	Leased	Donovan & Prespare, Tupper Lake, N. Y.	Tupper Lake Junction
....	....	....	....	....	....
....	....	....	....	....	....
....	....	....	....	....	....
....	....	....	....	....	....

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ANSWER TO INTERROGATORY No. 17—Continued

Town	Name of Theatre	Nature of Interest	Extent of Interest	Date Acquired	Other Interests If Any and Extent Thereof	Date Disposed of If No Longer Owned	Name of chaser If S or Rema
Watertown	Avon	Lessee	100%	Jan. 1927	None—except Fox operation 1929-1933		
Watertown	Olympic	Lessee	100%	Jan. 1927	None—except Fox operation 1929-1933		
Watertown	Palace	Lessee	100%	Sept. 1936	None		
Whitehall	Capitol	Lessee	50%	Apr. 1937	William Benton, Saratoga, N. Y.		
Mechanicville	State	Lessee	50%	Apr. 1937	William Benton, Saratoga, N. Y.		
Granville	Ritz	Owner	50%	Dec. 1938	William Benton, Saratoga, N. Y.		
Clifton Springs	Palace	Lessee	100%	Aug. 1941	None		
Ohio							
Ashland	Palace	Lessee	100%	Nov. 1935	B. Bickert, Ashland—25% to Oct. 1937		
Ashland	Ohio	Lessee	100%	July 1938	None		
Ashland	Opera House	Lessee	100%	May 1936	None	Feb. 1941	City of Ashlan (theatre conden and dismantled city)
Athens	Athena	Owner	100%	Sept. 1935	None		

ANSWER TO INTERROGATORY NO: 18					ANSWER TO INTERROGATORY NO. 23
Seating Capacity	Closed Periods If Any	Remarks Re Closed Periods	Owned or Leased	If Leased Name of Lessor	Name of Present Opposition Theatre
1376	....	....	Leased	Central Cities Bldg. Inc., Utica, N. Y.	Palace to Sept. 1936. Victoria, Liberty and State
1649	....	.....	Leased	Central Cities Bldg. Inc., Utica, N. Y.	Victoria, Liberty and State
594	Closed part time during summers of 1937, 1938 and 1939	.....	Leased	Northern N. Y. Utilities Corp., Watertown, N. Y.	Palace to Sept. 1936. Victoria, Liberty and State
877	....	.....	Leased	Wm. Benton, Saratoga, N. Y.	None
1129	July 1937	Closed for renovation	Leased	Mechanicville State Theatre Inc., Saratoga, N. Y.	None
525	....	....	Owned	....	None
....	....	....	Leased	Josephine Williamson, Clifton Springs, N. Y.	None
634	....	....	Leased	F. Edwards & C. Clark	Opera House to May 1936 Ohio to July, 1938
307	Part time operation from acquisition 3/1/41	Reopened to replace Opera House 3/1/41.	Leased	S. D. Reed	None
....	Feb. 1941	Theatre condemned	Leased	....	Ohio to July, 1938
893	....	....	Owned	....	Court and Ohio to Jan. 1936

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ANSWER TO INTERROGATORY No. 17—Continued

Town	Name of Theatre	Nature of Interest	Extent of Interest	Date Acquired	Other Interests If Any and Extent Thereof	Date Disposed of If No Longer Owned	Name of Purchaser If Sold, or Remarks
Athens	Court	Lessee	100%	Jan. 1936	None	....	....
Athens	Ohio	Lessee	100%	Jan. 1936	None	....	....
Bellefontaine	Holland	Owner	100%	Land acquired June 1930—theatre completed 1931	None	....	....
Bellefontaine	Strand	Lessee	100%	July 1931	None	....	....
Bellefontaine	Opera House	Lessee	100%	July 1931—re-acquired Sept. 1933	None	Dec 31, 1931	Theatre condemned premises surrendered re-acquired Sept 1, 1933
Bucyrus	Bucyrus	Owner	100%	Acquired land Aug. 1935—theatre completed 1936	None	....	....
Bucyrus	Southern	Lessee	100%	April 1937	None	....	....
Bucyrus	State	Lessee	100%	Sept. 1935	None	Sept. 1937	Owners' lease cancelled and theatre converted to commercial use
Delaware	Strand	Lessee	100%	Jan. 1936	H. Bieberson owned 50% interest to Jan. 11, 1940	....	....
Delaware	Star	Lessee	100%	Mar. 1938	None	....	....

Answer to Interrogatory No. 18					Answer to Interrogatory No. 23
Seating Capacity	Closed Periods If Any	Remarks Re Closed Periods	Owned or Leased	If Leased Name of Lessor	Name of Present Opposition Theatre
267	Closed part time*	Open occasionally or part time as business warrants	Leased	E. E. & G. Byrne, Ashland, O.	None
299	....		Leased	Ullom Heirs, Cleveland, O.	None
1319	....	....	Owned	....	Opera House—between 1/1/32 & 8/31/33
....	Closed part time*	Open occasionally or part time as business warrants	Leased	D. Gutilla, Bellefontaine, O.	Opera House between 1/1/32 & 8/31/33
....	Not leased to Schine between Dec. 31, 1931 and Sept. 1, 1933	Re-acquired Sept. 1, 1933. Closed when reacquired—not reopened—building condemned	Leased	Opera Block Co.	None
1097	....	....	Owned	....	Southern to April, 1937
450	Part time operation*	Open occasionally or part time as business warrants	Leased	Carroll Trust Co., Bucyrus, O.	None
....	Closed since Sept. 1937	....	Leased	....	
777		....	Leased	Delaware Realty Co., Delaware, O.	Star to March, 1938
266	Part time operation*	Open occasionally or part time as business warrants	Leased	Powers Estate, Delaware, O.	None

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ANSWER TO INTERROGATORY No. 17—Continued

Town	Name of Theatre	Nature of Interest	Extent of Interest	Date Acquired	Other Interests If Any and Extent Thereof	Date Disposed of If No Longer Owned	Name of Purchaser If Sold, or Remarks
Fostoria	Civic	Lessee	50%	May 1936	A. Buck, et al., Fostoria, Ohio—50% interest	....	....
Fostoria	Roxy	Lessee	50%	May 1936	A. Buck, et al., Fostoria, Ohio—50% interest	....	....
Fostoria	State	Lessee	50%	July 1937	A. & U. Buck, et al., 50% interest	....	....
Fremont	Opera House	Lessee	100%	Apr. 1931	None	August 1931	Assigned lease to Paramount
Fremont	Strand	Lessee	100%	Apr. 1931	None	August 1931	Assigned lease to Paramount
Kent	Opera House	Lessee	100%	June 1936	None	....	....
Kent	Kent	Owner	100%	Dec. 1937	None	....	....
Medina	Princess	Lessee	25%	Sept. 1937	B. Yudelvitz—25% Fine et al.—50%	....	....
Medina	Temple	Lessee	25%	Apr. 1939	B. Yudelvitz—25% Fine et al.—50%	....	....
Mt. Vernon	Vine	Lessee	100%	Jan. 1934	None	....	....
Mt. Vernon	Vernon (Replaced Lyric Theatre on same site)	Lessee	100%	Apr. 1938	None	....	....

ANSWER TO INTERROGATORY NO. 18					ANSWER TO INTERROGATORY NO. 23
Seating Capacity	Closed Periods If Any	Remarks Re Closed Periods	Owned or Leased	If Leased Name of Lessor	Name of Present Opposition Theatre
516	....	....	Leased	A. Emerine, Fostoria, Ohio	State to July, 1937
280	Closed permanently June 1938	Building condemned	Leased	C. & C. W. Mickey, Fostoria, O.	State to July, 1937
567	....	....	Leased	C. Mergenthaler, Fostoria, O.	None
....	....	....	....	....	....
....	....	....	....	....	....
598	Closed September 1937. Unable to obtain product	....	Leased	J. Palfi, Kent, O.	Kent to Dec. 1937
943	....		Owned	....	None
350	Closed June 1939	....	Leased	B. Udelvitz, Medina, O.	Temple Jan. 1938 to Apr. 1939
857	....	....	Leased	Masonic Temple Co., Medina, O.	None
585	Part time operation since Vernon Theatre opened	....	Leased	A. S. Payne, Cleveland, Ohio	Memorial between 1/1/35 & 12/31/40
1266	....	....	Leased	J. & P. Upham, Mt. Vernon, O.	Memorial between 1/1/35 & 12/31/40

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ANSWER TO INTERROGATORY No. 17—Continued

Town	Name of Theatre	Nature of Interest	Extent of Interest	Date Acquired	Other Interests If Any and Extent Thereof	Date Disposed of If No Longer Owned	Name of Purchaser If Sold, or Remarks
Mt. Vernon	Memorial	Lessee	100%	Feb. 1, 1934 to Sept. 30, 1934 re-acquired Jan. 1, 1941	None	Lease expired Sept. 30, 1934—re-acquired Jan. 1, 1941.	Reverted to Lessor at expiration of lease
Norwalk	Forum	Lessee	66-2/3%	July 1935	W. K. Selman 33-1/3%		
Norwalk	Moose	Owner	66-2/3%	Dec. 1936	W. K. Selman 33-1/3%		
Norwalk	Norwalk	Owner	66-2/3%	Mar. 1940			
Piqua	Piqua	Lessee	100%	May 1931	None		
Piqua	Miami	Lessee	100%	May 1931	None		
Piqua	Bijou	Lessee	100%	May 1931	None		
Ravenna	Ravenna	Owner	100%	Dec. 1937	None		
Ravenna	Ohio	Owner	100%	Dec. 1937	None		
Shelby	Castamba	Lessee	50%	Sept. 1937	H. Shreffler—50%		

* Indicates more complete information on attached schedule. The information herein contained should be read together with the information contained on the attached supplemental schedule.

ANSWER TO INTERROGATORY No. 18					ANSWER TO INTERROGATORY No. 23
Seating Capacity	Closed Periods If Any	Remarks Re Closed Periods	Owned or Leased	If Leased Name of Lessor	Name of Present Opposition Theatre
1065	Not operated by Schine between Sept. 30, 1934 and Dec. 31, 1940*	Operated by opposition from 1/1/35 to 12/31/40	Subleased from 2/1/34 until expiration 9/30/1934. Leased from Jan. 1, 1941	Board of Trustees, Mt. Vernon	None
537	Closed*	....	Leased	H. Pohl, Norwalk	Moose to Dec. 1936
838	Part time operation	....	Owned	....	None
1111	Theatre completed and opened 8/13/41	....	Owned	....	None
958	....	....	Leased	P. & R. Amusement Co., Lancaster, Ohio	None
712	Part time operation since acquisition.	....	Leased	P. & R. Amusement Co., Lancaster, Ohio	None
375	Closed when acquired	Never operated	Leased	Boal Estate, Piqua, Ohio	None
871	....	....	Owned		None
499	Closed when acquired	Remodelled and reopened 6/20/41	Owned	....	None
749	....	....	Leased	Castamba Realty Co., Shelby, O.	Opera House (up to about Oct. 1937). State (since Oct. 1937)

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ANSWER TO INTERROGATORY No. 17—Continued

Town	Name of Theatre	Nature of Interest	Extent of Interest	Date Acquired	Other Interests If Any and Extent Thereof	Date Disposed of If No Longer Owned	Name of Purchaser If Sold, or Remarks
Tiffin	Ritz	Lessee	50%	March 1936	D. Britten 25% Silverman 25%	....	....
Tiffin	Grand	Lessee	50%	March 1936	D. Britten 25% Silverman 25%	....	....
Tiffin	Tiffin	Lessee	50%	Feb. 1938	D. Bitten 25% Silverman 25%	....	....
Van Wert	Van Wert	Lessee	100%	Feb. 1935	None	....	....
Van Wert	Strand	Lessee	100%	Sept. 1935	None	....	....
Wooster	Wooster	Lessee	50%	July 1931	J. J. Kinney 25% E. P. Mott 25%	....	....
Wooster	Opera House	Lessee	50%	Sept. 1933	J. J. Kinney 25% E. P. Mott 25%	....	....
Wooster	Wallace	Lessee		Nov. 1932	....	Theatre dismantled Lease lapsed	....
Wooster	Wayne	Owner	50%	Land—July 1937 Theatre completed 1938	J. J. Kinney 25% E. P. Mott 25%	....	....
Bowling Green	Cla-Zel	Lessee	100%	Apr. 1, 1941	None		....
Bowling Green	Lyric	Lessee	100%	Apr. 1, 1941	None		....

INTERROGATORY No. 18					INTERROGATORY No. 23
Seating Capacity	Closed Periods If Any	Remarks Re Closed Periods	Owned or Leased	If Leased Name of Lessor	Name of Present Opposition Theatre
1322	....	....	Leased	Tiffin Rits Theatre Co., Lima, Ohio	Tiffin to Feb. 1938
750	Closed since 1938	....	Leased	Tiffin Grand Theatre Co., Lima, Ohio	Tiffin to Feb. 1938
825	Part time after February, 1939	....	Leased	Etta Hodgkins, Port Huron, Mich.	None
802	....	....	Leased	H. Metcalf, Van Wert, O.	Ohio-Strand to Sept. 1935
710	Part time operation	....	Leased	Van Wert Amusement Co., Van Wert, Ohio	Ohio
1123	....	....	Leased	J. J. Kinney, Wooster, O.	Wallace to Nov. 1932
1100	Closed when acquired*	Open occasionally or part time as business warrants	Leased	City of Wooster	None
....	....	....	....	....	....
679	....	....	Owned	....	None
776	....	....	Leased	Clark M. Young & Hasel Young, Bowling Green, Ohio	None
348		Part time operation. Prior to and since acquisition	Leased	Clark M. Young & Hasel Young, Bowling Green, Ohio	None

Answer to Interrogatory No. 17—Continued

Town	Name of Theatre	Nature of Interest	Extent of Interest	Date Acquired	Other Interests If Any and Extent Thereof	Date Disposed of If No Longer Owned	Name of Purchaser If Sold, or Remarks
KENTUCKY							
Corbin	Kentucky	Lessee	100%	Nov. 1938	None	....	.....
Corbin	Hippodrome	Lessee	100%	Nov. 1938	None	....	.....
Corbin	Viv	Lessee	100%	May 1940	None	....	.....
Harlan	Margie Grand	Lessee	50%	Jan. 1941	Leon Scott—50%	....	.....
Lexington	Ben Ali	Owner	97% plus	Nov. 1936	Various small stockholders	....	.....
Lexington	Kentucky	Lessee	97% plus	Nov. 1936	Various small stockholders	....	.....
Lexington	State	Lessee	97% plus	Nov. 1936	Various small stockholders	....	.....
Lexington	Strand	Lessee	97% plus	Nov. 1936	Various small stockholders	....	.....
Lexington	Opera House	Lessee	97% plus	Oct. 1939	Various small stockholders	....	.....
Lexington	Ada Meade	Lessee	97% plus	Sept. 1940	Various small stockholders	....	.....

ANSWER TO INTERROGATORY NO. 18					ANSWER TO INTERROGATORY NO. 23
Seating Capacity	Closed Periods If Any	Remarks Re Closed Periods	Owned or Leased	If Leased Name of Lessor	Name of Present Opposition Theatre
394	Part time until 4/4/41—closed since	....	Leased	R. Rowland, Corbin, Ky.	Viv Oct. 1939 to May, 1940
824	.....	....	Leased	Corbin-Hippodrome, Inc., Corbin, Ky.	Viv Oct. 1939 to May, 1940
516	Closed Feb. to May, 1941	Repairs due to fire damage	Leased	H. Owens, Barbourville, Ky.	None
690	....	....	Leased	Margie Noe, Harlan, Ky.	New Harlan
1375	....	....	Owned		Opera House to Oct. 1939. Ada Meade to Sept. 1940
1257	.....		Leased	M. Switow & Sons, Louisville, Ky.	Opera House to Oct. 1939. Ada Meade to Sept. 1940
895	.....		Leased	M. Switow & Sons, Louisville, Ky.	Opera House to Oct. 1939. Ada Meade to Sept. 1940
1255			Leased	Wilson & McClung, Lexington, Ky.	Opera House to Oct. 1939. Ada Meade to Sept. 1940
1188	.....		Leased	Southland Amusement Co., Lexington, Ky.	Ada Meade to Sept. 1940
668	.....	....	Leased	Security Trust Co. Trustee, Nancy B. Clark	None

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ANSWER TO INTERROGATORY No. 17—Continued

Town	Name of Theatre	Nature of Interest	Extent of Interest	Date Acquired	Other Interests If Any and Extent Thereof	Date Disposed of If No Longer Owned	Name of Purchaser If Sold, or Remarks
Maysville	Russell	Lessee	100%	June 1938	S. Kaplan—40% to 12/7/40	....	....
Maysville	Washington	Lessee	100%	Jan. 1939	S. Kaplan—40% to 12/7/40	....	....
Maysville	Hollywood	Lessee	100%	Jan. 1939	S. Kaplan—40% to 12/7/40	....	....
Paris	Bourbon	Lessee	97% plus	Nov. 1936	Various small stockholders	....	....
Paris	Paris	Owner	97% plus	Land Dec. 1937 theatre completed Dec. 1939	Various small stockholders	....	....
Richmond	Madison	Owner	97% plus	Nov. 1936	Various small stockholders	....	....
Richmond	State	Lessee	97% plus	Nov. 1936	Various small stockholders	....	....
Richmond	Alhambra	Lessee	..	Nov. 1936		Dec. 1937	Converted into store—lease expired
Pikeville	Liberty	Lessee	100%	Aug. 1939	None	....	....
Middlesboro	Manring	Owner	100%	Lease Jan. 1939 fee Feb. 1941	None	....	....
Middlesboro	Brownie	Owner	100%	Lease Jan. 1939 fee Feb. 1941	None	....	....

Answer to Interrogatory No. 18					Answer to Interrogatory No. 23
Seating Capacity	Closed Periods If Any	Remarks Re Closed Periods	Owned or Leased	If Leased Name of Lessor	Name of Present Opposition Theatre
700	....	....	Leased	J. B. Russell, Maysville, Ky.	Community (opened Dec. 1940 and closed shortly thereafter). Washington & Hollywood to Jan. 1939
500	....	....	Leased	Washington Theatre Co., Maysville	Community
300	Part of deal for Hollywood Theatre	Permanently	Leased	Limestone Lodge K. of P., Maysville, Ky.	Community
634	Closed Feb. 1940	....	Leased	Paris Opera House Co., Paris, Ky.	None
932		....	Owned	....	None
987		....	Owned		None
666	Closed part time*	Open occasionally or part time as business warrants	Leased	Carr & Gibson, Richmond, Ky.	None
....	Closed since Dec. 1937—lease expired	Converted into store	....	....	
700	....	....	Leased	Lon B. Rogers, Pikeville	Weddington
965		....	Lease Jan. 1939. Fee Feb. 1941	Leased & purchased from Chas. O. Brown	None
418	Part time operation in 1939 only—otherwise full time	....	Lease Jan. 1939. Fee Feb. 1941	Leased & purchased from Chas. O. Brown	None

ANSWER TO INTERROGATORY No. 17—Continued

Town	Name of Theatre	Nature of Interest	Extent of Interest	Date Acquired	Other Interests If Any and Extent Thereof	Date Disposed of If No Longer Owned	Name of Purchaser If Sold, or Remarks
Maryland							
Cambridge	Arcade	Owner	90% plus	April 1938	Various small stockholders	....	....
Cambridge	State	Owner	90% plus	April 1938	Various small stockholders	....	....
Cambridge	Grand	Owner	90% plus	April 1938	Various small stockholders	....	....
Easton	Avalon	Owner	100%	Oct. 1938	None	....	....
Easton	Music Hall (Replaced by Easton Theatre)	Lessee	100%	Oct. 1938	None	May 1940	Talbot County Commissioners—Lease surrendered at request of County—acquired new site Jan. 1940—theatre under construction
Federalsburg	Federal	Owner	100%	Oct. 1938	None	....	....
Hurlock	Hurlock	Lessee	100%	Oct. 1938	None	....	....
St. Michaels	Marada	Lessee	100%	July 1939	None	....	....
Salisbury	Arcade	Lessee	100%	Sept. 1938	None	....	....
Salisbury	Wico-Mico	Owner	100%	Lease Sept. 1938—fee July 1940	None	....	....
Salisbury	Ritz (colored)		100%	Sept. 1940	None	....	....
Cumberland	Strand	Owner	100%	Contract 5/21/40 Fee 5/1/41	None	....	....

ANSWER TO INTERROGATORY No. 18					ANSWER TO INTERROGATORY No. 23
Seating Capacity	Closed Periods If Any	Remarks Re Closed Periods	Owned or Leased	If Leased Name of Lessor	Name of Present Opposition Theatre
933	....	....	Owned	....	None
833	....	....	Owned	....	None
....	Closed When acquired*	....	Owned	....	None
616	....	....	Owned	....	None
....	Replaced by Easton Theatre, 646 seats, completed 7/25/41	....	Leased	....	None
642	....	....	Owned	....	None
471	....	....	Leased	R. Holt, Hurlock, Md.	None
524	....	....	Leased	C. B. Lee, St. Michaels	None.
914	....	....	Leased	Arcade Bldg. Corp., Salisbury, Md.	New & Ullman Theatres
601	....	....	Lease Sept. 1938—fee July 1940	Lessor—M. Gollner. Vendor—L. E. Hoppes	New & Ullman Theatres
462	....	....	....	....	....
1405	....	....	Owned	....	Liberty, Maryland, Embassy and Garden

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ANSWER TO INTERROGATORY No. 17—Continued

Town	Name of Theatre	Nature of Interest	Extent of Interest	Date Acquired	Other Interests If Any and Extent Thereof	Date Disposed of If No Longer Owned	Name of Purchaser If Sold, or Remarks
Delaware							
aurel	Waller	Lessee	100%	Jan. 1939	None	....	....
ilford	Plaza	Owner	100%	Jan. 1939	None	....	....
Virginia							
ppalachia,	Appalachian	Lessee	100%	Feb. 1941	None	....	....
ppalachia	State	Owner	100%	Feb. 1941	None	....	....

* Indicates more complete information on attached schedule. The information herein contained should be read together with the information

Answer to Interrogatory No. 18					Answer to Interrogatory No. 23
Seating Capacity	Closed Periods If Any	Remarks Re Closed Periods	Owned or Leased	If Leased Name of Lessor	Name of Present Opposition Theatre
716	Closed 4/4/40 to Feb. 1941	Theatre destroyed by fire and rebuilt	Leased	Wallen Estate, Laurel, Del.	None
1057	Closed 1/15/39 to 4/8/39	Remodelling and renovation	Owned	....	....
859	....	....	Leased	Appastone Realty Co., Appalachia, Va.	None
379	....	....	Owned	....	None

contained on the attached supplemental schedule.

Supplemental schedule to Interrogatory No. 18 to be read together with the information furnished in answer to Interrogatory No. 18, wherever indicated by *.

Amsterdam, N. Y.—Regent Theatre (see page 1). Open full time except for summer closing through January 6th, 1940; January 7th to May 11th, 1940 operated Saturdays and Sundays only; closed May 11th, 1940 to February 15th, 1941; February 16th, 1941 to May 10th, 1941 operated Saturdays and Sundays only; closed May 11th, to August 29th, 1941; open full time from August 29th, 1941 to date.

Auburn, N. Y.—Jefferson Theatre (see page 1). Open full time through June 3rd, 1939; June 4th to September 16th, 1939 operated Saturdays and Sundays only; September 16th, 1939 to March 23rd, 1940 operated full time; March 24th, 1940 to December 31st, 1940 operated Fridays, Saturdays and Sundays only; January 1st, 1941 to date operated Saturdays and Sundays only.

Auburn, N. Y.—Strand Theatre (see page 1). Operated until the end of 1933 when closed and not operated thereafter; theatre portion demolished September 1939; part of deal with Shea interests.

Corning, N. Y.—State Theatre (see page 3). Operated continuously full or part time through 1938; thereafter operated Saturdays and Sundays only through March 12th, 1939 and closed thereafter.

Cortland, N. Y.—Cortland Theatre (see page 3). Closed upon acquisition and converted to commercial property December, 1936; part of deal for Temple Theatre.

Herkimer, N. Y.—Richmond Theatre (see page 5). Open to December 1926 then closed to 1929, when subleased to Robbins Enterprises, Utica, N. Y., re-acquired in 1932 on default of sublessee; closed since 1933—obsolete.

Newark, N. Y.—Crescent Theatre (see page 5). Open short periods 1926 through 1929 when Fox undertook operation; never opened after re-acquired from Fox in 1933; unusable as theatre in present condition.

Little Falls, N. Y.—Hippodrome Theatre (see page 6). 1937—part time, closed for summer; 1938—part time to February 5th, when closed; 1939—part time to May 20th, when closed for summer.

Lockport, N. Y.—Hi-Art Theatre (see page 6). Summer 1933 part time; 1937 to 1938 part time; 1939 to 1940 part time; closed for summer of 1939 and reopened on or about November 11, 1939 due to repair and reconstruction of street and damage to theatre in course of these repairs.

[fol. 298] *Ogdensburg, N. Y.—Pontiac Theatre (see page 7).* Open part time 1926 through 1929; open full time 1930 while Strand Theatre, Ogdensburg, was undergoing remodelling and then part time to February 1931; closed February, 1931 to September, 1938 when remodelled and reopened part time; part time operation 1939, 1940 and 1941 except for summer closings during each of these years.

Oswego, N. Y.—Richardson Theatre (see page 7). History of this theatre shows part time operation by Schine before 1929; between 1929 and 1933 operated by Fox but defendants have no information as to whether it was closed or opened during that period, but at the time of re-acquisition by Schine in 1933 it was closed and has remained closed since.

Rochester, N. Y.—Plaza Theatre (see page 9). Part of same deal for Webster Theatre, Rochester—closed since acquisition and never operated. The history of this theatre shows that the Webster Theatre property and the Plaza Theatre property were owned by the same institution. The Plaza Theatre was leased to a different tenant at that time but because of the nature of that tenant's operation the fee owner terminated the lease and made a deal with the then operators of the Webster Theatre. In acquiring the Webster Theatre defendants were also compelled to take over the Plaza Theatre. Premises sold on September 11, 1941.

Athens, O.—Court Theatre. 1936—open part time to June 13th; closed balance of the year; 1937 open part time February and April, closed thereafter except for occasional part time use as business warrants. (see page 12)

Bellefontaine, O.—Strand Theatre (see page 12). Part time operation from July 1931 to December 1932; thereafter open for short periods in each year and closed balance of the time. Same deal as the Opera House.

Bucyrus, O.—Southern Theatre (see page 12). 1937—part time operation except summer closing; 1938—part time operation except summer closing; 1939—part time operation during summer; 1940—closed for summer.

Delaware, O.—Star Theatre (see page 12). 1938—open part time except closed for summer; 1939—open part time during summer; 1940—closed for summer.

Norwalk, O.—Forum Theatre (see page 14). Closed August 13, 1941 upon opening of new Norwalk Theatre.

[fol. 299] *Mt. Vernon, O.—Memorial Theatre (see page 14).* The history of this theatre shows that it is owned by the County, which awards leases at stated intervals on the basis of competitive bids. During periods indicated Schine was unsuccessful bidder.

Wooster, O.—Opera House (see page 15). Reopened upon Schine acquisition and operated full time—then part time to summer of 1936 when closed; reopened for part time operation to September 1938 when closed upon opening of new Wayne Theatre.

Richmond, Ky.—State Theatre (see page 17). 1937-1938—open part time except closing during month of August in each year; part of deal for Madison Theatre.

Cambridge, Md.—Grand Theatre (see page !8). Part of deal for other theatres in Cambridge. Although closed when acquired opened by Schine for occasional use.

Whenever the phrase "closed when acquired" is used either in the answer to Interrogatory No. 18 or in this supplemental schedule, it means that at the time of acquisition the theatre was not then being operated by the prior management.

[fol. 300]

Answer to Interrogatories 17(B) and 17(C)

Theatres for which Schine defendants have licensed or booked film since August 7, 1931 or rendered management operative or consultative services.

The Information Contained Herein Is *Confidential*

Name and Location of Theatre	Nature of Services	Date Services Began	Date Services Terminated	Amounts Collected Annually		Terms of Arrangement	Other Consideration If Any
(Capitol—Ballston Spa, NY	Film buying	April, 1937	Presently in force	1937	$ 3,700. (1)	$200. per week (formerly $100. per week) (covering the four theatres)	None
(State —Mechanicsville, NY		" "		1938	7,600.		
(Capitol—Whitehall, NY		" "		1939	10,300.		
(Rits —Grandville, NY		Dec. 1938		1940	10,800.		
(Palace Lake, Placid, NY	Buying & Booking Film	May, 1926	May, 1936	1931	$ 2,840.50(1)	5% of gross receipts	None
(Lake Placid Club, Lake Placid, NY				1932	541.50		
				1933	3,336.79		
				1934	3,339.43		
				1936	850.		
				1937	200.		
				1938	0		
				1939	1.800. (Settlement made for accrued charges due to date of expiration of contract)		
(Cla-Zel, Bowling Green, Ohio	" " " "	June 1939	April 1, 1941	Cla-Zel— 6/11/39-3/1/41	$5,923.82(2)	5% of gross receipts plus percentage of profits over three-year average	None
(Lyric, Bowling Green, Ohio				Lyric — 6/11/39-3/1/41	1,567.29		
Princess, Medina, Ohio	Buying, Booking and Supervising	November, 1937	April, 1939	1937	$ 275.08 (2)	5% of gross receipts	None
				1938	1,861.78		
				1939	492.99		
(Princess, Medina, Ohio	" " " "	April, 1939	Presently in force	1939	1,520. (2)	$40. per week	None
(Medina Temple, Medina, Ohio				1940	2,060.		
Wooster, Wooster, Ohio	" " " "	July, 1931	" " "	1931	$ 615.78(2)	4% of gross receipts	None
				1932	2,877.37		
				1933	3,179.02		
				1934	3,549.94		
				1935	4,167.21		
				1936	5,084.77		
				1937	4,981.43		
				1938	4,579.59		
				1939	4,176.71		
				1940	4,021.11		

[fol. 301]

				1940	4,021.11		
Opera House, Wooster, Ohio	Buying, Booking and Supervising	1935	Presently in force	1935	$ 68.73(2)	4% of gross receipts	None
				1936	403.55		
				1937	693.10		
				1938	308.45		
Wayne, Wooster, Ohio	″ ″ ″ ″	1938	″ ″ ″	1938	622.94(2)	″ ″ ″ ″	None
				1939	1,249.34		
				1940	1,384.17		
Ritz, Tiffin, Ohio	″ ″ ″ ″	March, 1936	″ ″ ″	1936	3,626.91(2)	5% of gross receipts	None
				1937	5,025.07		
				1938	5,101.67		
				1939	5,424.98		
				1940	5,015.18		
Grand, Tiffin, Ohio	″ ″ ″ ″	″ ″	″ ″ ″	1936	833.96(2)		
				1937	1,286.76		
				1938	153.61		
				1939	3.75		
				1940	1.75	″ ″ ″ ″	None
Tiffin, Tiffin, Ohio	″ ″ ″ ″	Feb., 1930	″ ″ ″	1938	1,722.99(2)		
				1939	1,476.83	″ ″ ″ ″	None
				1940	1,657.59		
Forum, Norwalk, Ohio	″ ″ ″ ″	July, 1935	″ ″ ″	1935	845.48(2)	″ ″ ″ ″	None
				1936	2,431.94		
				1937	3,263.50		
				1938	2,942.23		
				1939	2,769.72		
				1940	2,554.76		
Moose, Norwalk, Ohio	″ ″ ″ ″	1936	″ ″ ″	1936	43.23	″ ″ ″ ″	None
				1937	460.45		
				1938	524.37		
				1939	567.06		
				1940	614.25		
Castamba, Shelby, Ohio	″ ″ ″ ″	Sept., 1937	″ ″ ″	1937	575.99(2)	″ ″ ″ ″	None
				1938	1,948.52		
				1939	1,887.25		
				1940	2,028.99		

ANSWER TO INTERROGATORIES 17(B) AND 17(C)

Theatres for which Schine defendants have licensed or booked film since August 7, 1931 or rendered management operative or consultative services.

The Information Contained Herein Is *Confidential*

Name and Location of Theatre	Nature of Services	Date Services Began	Date Services Terminated	Amounts Collected Annually		Terms of Arrangement	Other Consideration If Any
State, Fostoria, Ohio	Buying, Booking and Supervising	July, 1937	Presently in force	1937 1938 1939 1940	$ 2,074.05(3) 3,725.63 3,675.92 3,547.19	5% of gross receipts	None
Civic, Fostoria, Ohio	" " " "	July, 1937	" " "	1937 1938 1939 1940	2,080.76(3) 1,533.08 1,630.07 2,029.62	" " " "	None
Roxy, Fostoria, Ohio	" " " "	July, 1937	" " "	1937 1938	430.57(3) 43.42	" " " "	None
Strand, Delaware, Ohio	" " " "	Jan., 1936	Jan., 1940	1936 1937 1938 1939	3,172.51(3) 4,189.68 4,208.32 4,002.31	" " " "	None
Star, Delaware, Ohio	" " " "	March, 1938	January, 1940	1938 1939	175.34(3) 307.41	" " " "	None
Palace, Ashland, Ohio	" " " "	November, 1935	October, 1937	1935 1936 1937	120.20(3) 2,501.16 2,614.34	" " " "	None
Opera House, Ashland, Ohio	" " " "	May, 1936	October, 1937	1936 1937	1,037.83(3) 1,416.38	" " " "	None
Russell, Maysville, Ky.	" " " "	January, 1939	December 1940	1939 1940	1,889.38(3) 2,270.36	" " " "	None
Washington, Maysville, Ky.	" " " "	" "	" "	1939 1940	1,404.44(3) 1,060.87	" " " "	None
Hollywood, Maysville, Ky.	" " " "	" "	" "			" " " "	None
Liberty, Pikeville, Ky.	" " " "	November, 1938	August, 1939	1/1/39–8/19/39	1,386.93(3)	" " " "	Option to purchase one-half interest
Margie Grand, Harlan, Ky.	" " " "	November, 1938 (prior contract) January, 1941 (new contract)	January, 1941 (prior contract) New contract presently in force	1/1/39–12/31/40	5,532.47	" " " "	Option to purchase one-half interest

Appalachian, Appalachia, Va.	Buying, Booking and Supervising	May, 1940	February 1941	6/8/40–8/3/40	$ 297.36(4) (payments ceased)	5% of gross receipts	Option to purchase one-half interest
Big Stone, Big Stone Gap, Va.	" " " "	" "	" "	7/8/40–8/3/40	208.36(4) (payments ceased)	" " " "	" " "
Webster, Rochester, N. Y.	Buying and Booking	August, 1927	January, 1933	1931 1932	1,100.00 2,600.00	$50. per week	None
Rustic, Sacandaga Park, NY	" " "	Summer, 1937	Presently in force	1937 1938 1939 1940	250.00 250.00 250.00 250.00	—	None
(Palace, Lockport, N. Y. (Rialto, Lockport, N. Y.	" " "	1927	December, 1932	Palace(1931– (1932– Rialto(1931– (1932–	405.00 780.00 255.00 660.00	—	None
(Liberty, Rochester, N. Y. (Riviera " " " (State " " "	" " "	1928	August, 1933	1931 1932 1933	850.00 1,950.00 950.00	—	None

(1) Denotes agreement with Schine Chain Theatres, Inc.
(2) Denotes agreement with Balpik Theatre Corporation.
(3) Denotes agreement with Schine-Lexington Corp.
(4) Denotes agreement with Schine-Virginia Corp.

ANSWER TO INTERROGATORY No. 19

With respect to each financial interest acquired by the defendant on or after August 31, 1931, with respect to theatres listed in answer to Interrogatory No. 17, the following information is herewith furnished:

Name of Town	Name of Theatre	Date Acquired	From Whom Acquired	Details if disp
NEW YORK:				
Amsterdam	Regent Theatre	September 1935 (outstanding 50% interest)	(Originally acquired 50% interest in 1928 (by purchase from Pat Casey, 1600 Broadway, (New York City, Leslie E. Thompson, 1270 (Sixth Avenue, New York City, J. Henry (Walters, 1270 Sixth Avenue, New York City, (Sumal Operating Co. and Schuyler Securities (Co.—then purchased outstanding 50% inter- (est in September 1935 from M. A. Shea, (1540 Broadway, New York City, and Maurice (Goodman, 580 Fifth Avenue, New York City. (	
Amsterdam	Rialto Theatre	September 1935 (outstanding 50% interest)		
Amsterdam	Strand Theatre	September 1935 (outstanding 50% interest)		
Auburn	Palace Theatre	August 1937 (outstanding 50% interest)	(Purchased oustanding 50% interest in (August 1937 from M. A. Shea, 1540 (Broadway, New York City, and Maurice (Goodman, 580 Fifth Avenue, New York (City. (((((	
Auburn	Jefferson Theatre	August 1937 (outstanding 50% interest)		
Auburn	Strand Theatre	August 1937 (outstanding 50% interest)		
Ballston Spa	Capitol Theatre	April 1937	William Benton, Saratoga, N. Y.	
Buffalo	Granada Theatre	Fee, June 1939	L. N. Whissel Lumber Co., Buffalo, N. Y.	
Corning	Palace Theatre	April 1938	By lease from Fred Gerber, Corning, N. Y.	
Cortland	Temple Theatre	September 1932	(Stock purchase N. Kornblite, (Binghamton, N. Y. (	
Cortland	Cortland Theatre	September 1932		
Glens Falls	Rialto Theatre	Lease March 1933 Fee January 1937	Lease and purchase from Rialto Theatre Corp., Glens Falls, N. Y.	
[fol. 305]				
Glens Falls	Empire Theatre	June 1933	By lease from Empire Real Estate Co., Glens Falls, N. Y.	
Glens Falls	Paramount Theatre	June 1940	By lease from Paramount Pictures, Inc., New York City	
Hamilton	State Theatre	August 1934	By purchase from Katherine Sheldon, Hamilton, N. Y.	
Hudson Falls	Strand Theatre	July, 1935	By purchase from J. Fitzgerald, Hudson Falls, N. Y.	
Ilion	Capitol Theatre	August 1937	By purchase from Young & Whitney, Inc., Ilion, N. Y.	
Ilion	Temple Theatre	August 1937	By purchase from Young & Whitney, Inc., Ilion, N. Y.	
Little Falls	Hippodrome Theatre	June 1936	By lease from Odd Fellows Association, Little Falls, N. Y.	
Lockport	Palace Theatre	October 1936	By purchase from John R. Osborn, Batavia, N. Y.	

Malone	Plaza Theatre	February 1941	By lease from M. Boumansour, Malone, N. Y.	
Penn Yan [fol. 306]	Elmwood Theatre	September 1936	By purchase from Estate of former owner, name not available.	
Perry	Auditorium Theatre	October 1936	By assignment of lease from John Osborn, former operator. Renewal of lease with Town of Perry, owner.	
Rochester	Dixie Theatre	August 1932	By lease from Dixie Theatre Corporation, Rochester, N. Y.	
Rochester	Liberty Theatre	Fee, February 1939	By purchase from Fennyvessy, Rochester, N. Y.	
Rochester	Cameo Theatre	May 1936	By purchase from Referee on foreclosure sale.	
Rochester	Lake Theatre	January 1936	By lease from owner.	
Rochester	Madison Theatre	February 1939	By purchase from Fennyvessy, Rochester, N. Y.	
Rochester	Monroe Theatre	February 1939	By purchase from Fennyvessy, Rochester, N. Y.	
Rochester	West End Theatre	February 1939	By purchase from Fennyvessy, Rochester, N. Y.	
Rochester	Webster Theatre	September 1940	By purchase from Bemat Amusement Co., Inc., Rochester, N. Y.	
Rochester	Plaza Theatre	September 1940	By purchase from Bemat Amusement Co., Inc., Rochester, N. Y.	Sold to Sharp & Huuram d.b.a. Ol Fashioned Cracker Co., Rochester, Total consideration $7,500. payabl cash and part mortgage.
Seneca Falls	Strand Theatre	September 1935	By stock purchase from Berinstein Theatres, Inc., Seneca Falls, N. Y.	

ANSWER TO INTERROGATORY No. 19—Continued

Name of Town	Name of Theatre	Date Acquired	From Whom Acquired	Details if disposed of
[fol. 307]				
Seneca Falls	Seneca Theatre	April 1936	By purchase from Seneca Falls Saving Bank	
Syracuse	Keith Theatre	August 1935	Joint operation with B. F. Keith Corporation.	
Syracuse	Paramount Theatre	August 1935	Joint operation with B. F. Keith Corporation.	
Syracuse	Strand Theatre	August 1935	Joint operation with B. F. Keith Corporation.	Lease expired Aug. 31, 1941 and not renewed.
Syracuse	Palace Theatre	February 1939	Joint operation with B. F. Keith Corporation	
Syracuse	James Theatre	June 1940	Joint operation with B. F. Keith Corporation	
Syracuse	Empire Theatre	January 1941	Joint operation with B. F. Keith Corporation	
Tupper Lake	State Theatre	January 1935	By lease from Donovan & Prespare, Tupper Lake, N. Y.	
Watertown	Palace Theatre	September 1936	By assignment of lease from Graham A. Ludlow, former operators, Watertown, N. Y.	
Whitehall	Capitol Theatre	April 1937	William Benton, Saratoga, N. Y.	
Mechanicville	State Theatre	April 1937	William Benton, Saratoga, N. Y.	
Granville	Ritz Theatre	December 1938	By purchase from Adolph Kohn, Granville, N. Y.—Part of Benton-Schine operation.	
Clifton Springs	Palace Theatre	August 1941	By lease from Josephine Williamson, Clifton Springs, N. Y.	
[fol. 308]				
Ashland	Opera House	May 1936	By lease from City of Ashland	Theatre condemned and dismantled by City.
Ashland	Palace Theatre	November 1935	By assignment of lease from B. Bickert, Ashland, Ohio. Thereafter, in October 1927 by purchase of Bickert's 25% interest.	
Ashland	Ohio Theatre	July 1938	By assignment of lease from John Bahas, Ashland, Ohio.	
Athens	Athena Theatre	September 1935	By purchase from Majestic Theatre Co.	
Athens	Court Theatre	January 1936	Stock purchase from E. Custer and H. Bieberson, Athens, Ohio	
Athens	Ohio Theatre	January 1936	Stock purchase from E. Custer and H. Bieberson, Athens, Ohio.	
Bucyrus	Southern Theatre	September 1935	By stock purchase of Crawford Theatre Co. from N. Charnas.	
Bucyrus	State Theatre	September 1935		Lease cancelled by owners.
Delaware	Strand Theatre	January 1936	By purchase of one-half interest from H. Bieberson and outstanding one-half interest on January 11, 1940.	

Delaware	Star Theatre	March 1938	By purchase from John Buchman, Delaware, Ohio, who was on monthly tenancy.
Fostoria	Civic Theatre	May 1936	By stock purchase of Civic Theatre, Inc. from C. Kahn, Fostoria, Ohio.

[fol. 309]

Fostoria	Roxy Theatre	May 1936	By stock purchase of Civic Theatre, Inc. from C. Kahn, Fostoria, Ohio.
Fostoria	State Theatre	July 1937	By purchase of interest of A. & U. Buck, et al, Fostoria, Ohio.
Kent	Opera House	June 1936	By lease from J. Palfi, Kent, Ohio.
Kent	Kent Theatre	December 1937	By purchase from E. Flanigon, as Trustee of owner, Kent, Ohio.
Medina	Princess Theatre	September 1937	By purchase of 25% interest from B. Yudelevitz and Fine of Medina, Ohio. Then formed corporation with operators of Temple Theatre.
Medina	Medina Temple Theatre	April 1939	By stock purchase original issue of operating corporation.
Mt. Vernon	Vine Theatre	January 1934	By lease from A. S. Payne, Cleveland, Oho.
Mt. Vernon	Memorial Theatre	February 1934 Reacquired January 1941	First by assignment of lease which expired September 30, 1934 from one Platt—reacquired by lease from Board of Trustees, Mt. Vernon, Ohio, after competitive bidding.
Norwalk	Forum Theatre	July 1935	By stock purchase of two-thirds interest from W. K. Selman, Steel, et al.
Norwalk	Moose Theatre	December 1936	By purchase jointly with W. K. Selman, et al, from Moose Lodge.

ANSWER TO INTERROGATORY NO. 19—Continued

Name of Town	Name of Theatre	Date Acquired	From Whom Acquired	Det
[fol. 310]				
Ravenna	Ravenna Theatre	December 1937	By purchase from E. Flanigon, as Trustee.	
Ravenna	Ohio Theatre	December 1937	By purchase from E. Flanigon, as Trustee.	
Shelby	Castamba Theatre	September 1937	By purchase of 50% interest from H. Shreffler, Shelby, Ohio	
Tiffin	Ritz Theatre	March 1936	By stock purchase of one-half interest from Britton & Silverman, Tiffin, Ohio.	
Tiffin	Grand Theatre	March 1936	By stock purchase of one-half interest from Britton & Silverman, Tiffin, Ohio.	
Tiffin	Tiffin Theatre	February 1938	By assignment of lease from Lyon Theatre Corp.—Part of Schine operation with Britton & Silverman Tiffin, Ohio.	
Van Wert	Van Wert Theatre	February 1935	By lease from H. Metcalf, Van Wert, Ohio.	
Van Wert	Strand Theatre	September 1935	By lease from Van Wert Amusement Co., Van Wert, Ohio.	
Wooster	Opera House	September 1933	Part of Schine operation with J. J. Kinney, Wooster, Ohio, and E. P. Mott, Wooster, Ohio—50% interest in operating corporation by original issue.	
Bowling Green	Cla-zel Theatre	April 1941	By lease from Clark M. Young and Hazel Young, Bowling Green, Ohio.	
[fol. 311]				
Bowling Green	Lyric Theatre	April 1941	By lease from Clark M. Young and Hazel Young, Bowling Green, Ohio.	
KENTUCKY:				
Corbin	Kentucky Theatre	November 1938	By stock purchase from various local stockholders.	
Corbin	Hippodrome Theatre	Novembeer 1938	By stock purchase from various local stockholders.	
Corbin	Viv Theatre	May 1940	By assignment of lease from M. K. Murphy, former operator, Corbin, Ky.	
Harlan	Margie Grand Theatre	January 1941	By purchase of 50% interest from Leon Scott, Harland, Ky.	
Lexington	Ben Ali Theatre	November 1936	By stock purchase from various local stockholders. (Phoenix Amusement Co.)	
Lexington	Kentucky Theatre	November 1936	By stock purchase from various local stockholders. (Phoenix Amusement Co.)	
Lexington	State Theatre	November 1936	By stock purchase from various local stockholders. (Phoenix Amusement Co.)	

			stockholders. (Phoenix Amusement Co.)
Lexington	Strand Theatre	November 1936	By stock purchase from various local stockholders. (Phoenix Amusement Co.)
Lexington	Opera House	October 1939	By purchase and lease from Southland Amusement Co., Lexington, Ky.
Lexington	Ada Meade Theatre	September 1940	By assignment of lease from Switow & Sons, Louisville, Ky.
Maysville	Russell Theatre	June 1938	By lease from J. B. Russell, Maysville, Ky.—in joint operation with S. Kaplan until December 7, 1940.

[fol. 312]

Maysville	Washington Theatre	January 1939	By original issue of operating corporation—in joint operation with S. Kaplan, former operator—thereafter by purchase of Kaplan's outstanding 40% interest on December 7, 1940.
Maysville	Hollywood Theatre	January 1939	By original issue of operating corporation—in joint operation with S. Kaplan, former operator—thereafter by purchase of Kaplan's outstanding 40% interest on December 7, 1940.
Paris	Bourbon Theatre	November 1936	By stock purchase from various local stockholders. (Phoenix Amusement Co.)
Richmond	Madison Theatre	November 1936	By stock purchase from various local stockholders. (Phoenix Amusement Co.)
Richmond	State Theatre	November 1936	By stock purchase from various local stockholders. (Phoenix Amusement Co.)
Richmond	Alhambra Theatre	November 1936	By stock purchase from various local stockholders. (Phoenix Amusement Co.)
Pikeville.	Liberty Theatre	August 1939	By stock purchase from John B. Elliott, C. W. MayHugh and Anna Bell Ward, Lexington, Ky. (Liberty Amusement Company.)
Middlesboro	Manring Theatre	By lease, January 1939 By fee, February 1941	Charles O. Brown, Middlesboro, Ky.
Middlesboro	Brownie Theatre	By lease, January 1939 By fee, February 1941	Charles O. Brown, Middlesboro, Ky.

ANSWER TO INTERROGATORY No. 19—Continued

Name of Town	Name of Theatre	Date Acquired	From Whom Acquired	Details if disposed of
[fol. 313]				
MARYLAND:				
Cambridge	Arcade Theatre	April 1938	By stock purchase of 90% from group of local stockholders.	
Cambridge	State Theatre	April 1938	By stock purchase of 90% from group of local stockholders.	
Cambridge	Grand Theatre	April 1938	By stock purchase of 90% from group of local stockholders.	
Easton	Music Hall Theatre	October 1938	By lease from Talbot County Commissioners.	Surrendered lease May 1940 at request of County.
Easton	Avalon Theatre	October 1938	By purchase from Talbot Theatres, Inc., former operator, Easton, Md.	
Easton	Theatre under construction	January 1940	By purchase from Easton National Bank (to replace Music Hall surrendered to County).	
Federalsburg	Federal Theatre	October 1938	By purchase from Federalsburg Amusement Co., former operator, Federalsburg, Md.	
Hurlock, Md.	Hurlock Theatre	October 1938	By stock purchase from Marsh Gollner, Salisbury, Md.	
St. Michaels	Marada Theatre	July 1939	By lease from C. B. Lee, St. Michaels, Md.	
Salisbury	Arcade Theatre	September 1938	By assignment of lease from Lee Insley, Salisbury, Md.	
Salisbury	Wicomico Theatre	September 1938	By assignment of lease from Marsh Gollner, Salisbury, Md., thereafter purchase of fee from L. E. Hoppes.	
[fol. 314]				
Cumberland	Strand Theatre	May 21, 1940 Fee, May 1, 1941	By purchase from Cumberland Amusement Company, Cumberland, Md.	
DELAWARE:				
Laurel	Waller Theatre	January 1939	By lease from Waller Estate, Laurel, Delaware.	
Milford	Plaza Theatre	January 1939	By purchase from Milford Playhouse, Inc., Milford, Delaware.	
VIRGINIA:				
Appalachia	Appalachian Theatre	February 1941	By purchase of interest of one Murphy Appalachia, Va.	
Appalachia	State Theatre	February 1941	By purchase of interest of one Murphy, Appalachia, Va.	
[fol. 315]				

[fol. 316] Answer to Interrogatory No. 22

Names of towns in which the theatres listed in answer to Interrogatory 17 are located, where no theatres other than those in which the defendant owns a financial interest have been operated at any time since August 7, 1931.

We list below towns in which there have been no theatres operated other than those in which the defendant owns a financial interest, and in which no theatres other than those in which the defendant owns a financial interest have been operated since the defendant acquired its interest. The defendant is unable to state as to theatres acquired since 1931 whether any other theatres were operated in said towns prior to acquisition by defendant of its interest therein.

New York

Bath
Ballston Spa
Mechanicville
Whitehall
Granville
Oneonta
E. Rochester
Fairport
Gloversville
Perry
Canandaigua
Newark
Hudson Falls
Hamilton
Ilion
Ogdensburg
Saranac Lake
Herkimer
Salamanca
Penn Yan

Maryland

Cambridge
Easton
Federalsburg
Hurlock
St. Michaels

Delaware

Milford
Laurel

Ohio

Ravenna
Bowling Green
Piqua

Kentucky

Paris
Richmond
Middlesboro

[fol. 317]

Answer to Interrogatory No. 31.

List of real estate in which the defendant has had any interest, either by ownership or option to purchase, lease or option to lease, or otherwise, at any time since August 1, 1931, with the exception of real estate on which a threatre has been located continuously during the entire period of defendant's interest therein indicating location, nature of interest, date of acquisition, from whom acquired, date on which interest terminated, nature of any improvements during the period of defendant's interest.

Following is a chart indicating the properties on which a threatre has not been located continuously since 1931, and indicating the improvements now existing on said property:

Location	Nature of Interest	Date of Acquisition	From whom Acquired	Date on which interest terminated	Nature of Improvement now existing.
South Street, Auburn, N. Y.	Fee	December, 1923	Second Presbyterian Church		New Auburn Theatre completed September 1938
Water Street, Auburn, N. Y.	Fee	March, 1927	Fitzer-Auburn, Inc.		Commercial Building
Main Street, Canandaigua, N. Y.	Fee	November, 1939	Joseph Soppe		Remodeled into theatre
State Street, Carthage, N. Y.	Fee	March, 1935	M. Quinn		Store and commercial building
Main Street, Cortland, N. Y.	Fee	November, 1930	E. M. Byrne		Vacant land—used as parking lot for State Theatre adjoining
Groton Avenue, Cortland, N. Y.	Fee	September, 1932	N. Kornblite		Store and commercial building
Glens Falls, N. Y.	Fee	January, 1937	Rialto Theatre Co.		Rialto Hotel Building
Fulton Street, Gloversville, N. Y.	Fee	July, 1937	Getman Estate		Commercial Building
Main Street, Gloversville, N. Y.	Fee	1925	F. Kathan	1932	Kathan Hotel Building
Main Street, Gloversville, N. Y.	Fee	April, 1920	Cady & Dartch		Commercial Building
First Street, Ilion, N. Y.	Fee	August 1937	Young & Whitney, Inc.		Commercial Building
Walnut Street, Lockport, N. Y.	Fee	April 1923	H. F. Thurston		Store Building
Pearl St., Malone, N. Y.	Option to buy or lease	January 10, 1938	Teresa Hinds	February 10, 1939	Commercial Building
Bridge & Second Sts., Oswego, N. Y.	Fee	June, 1937	D. V. Hardie, et al.		New Oswego Theatre completed January 1941
[fol. 318]					
Bridge Street, Oswego, N. Y.	Fee	November, 1934	Oswego County Savings Bank		Store and commercial building
West Second Street, Oswego, N. Y.	Fee	October, 1923	H. Pierce		Garage building
Oswego, N. Y.	Fee	February, 1936	Security Building & Loan Association	June, 1937	Commercial building Dime Bank Building
Main Street, Perry, N. Y.	Fee	July, 1935	Davis		Vacant land
Clinton Avenue, Rochester, N. Y.	Leased	July, 1937	Moore		Vacant land adjoining Cameo Theatre. Used for theatre parking.
Ackerman Street, Rochester, N. Y.	Fee	September, 1940	Bemat Amusement Co.		Vacant land adjoining Webster Theatre. Used for theatre parking.
Main Street, Salamanca, N. Y.	Fee	July, 1927	Ambuski, et al.		None—used as parking lot.
Center Street, Ashland, Ohio	Fee	November, 1940	S. Galvin		Vacant land—Theatre to be constructed.
Main Street, Norwalk, Ohio	Fee	March, 1940	Smith & Williams		New theatre now under construction.
High Street, Seaford, Del.	Fee	August, 1939	Kent & Sussex Building & Loan Association		Residential property consisting of multiple family dwelling.
Washington St., Easton, Md.	Fee	January, 1940	Easton National Bank		New theatre under construction to replace Music Hall Theatre.
Main Street, Corbin, Ky.	Contract to lease	December 2, 1938	G. C. Scott	January, 1939	Vacant land
Lexington, Kentucky	Lessee	November, 1936	Phoenix Amusement Co.	April, 1940	Leonard Hotel Building
Main Street, Paris, Kentucky	Lessee	September, 1939	Schwartz		Vacant land
Main Street, Paris, Kentucky	Fee	October, 1937	O'Brien & Stuart		New Paris Theatre completed December, 1939
[fol. 319]					
Richmond, Kentucky	Lessee	November, 1936	Phoenix Amusement Co.	December, 1937	Store building

[fol. 315]

As to theatres built by the Schine defendants, the following information is furnished pursuant to stipulation:

Name of Town	Name of Theatre	Date of Completion	Cost of construction, including land, building and equipment
NEW YORK:			
Auburn	Auburn Theatre	September 1938	$242,716.88
Canandaigua	Lake Theatre	April 1941	37,109.05
Oswego	Oswego Theatre	January 1941	253,859.00
OHIO:			
Bucyrus	Bucyrus Theatre	March 1936	90,485.96
Mt. Vernon	Vernon Theatre	April 1938	Construction begun by defendant. During construction lease and partially completed building turned over to James and Percy Upham of Mt. Vernon, Ohio, who completed the building and leased same to defendant.
Norwalk	Norwalk Theatre	August 13, 1941	$124,250.00 (estimated and approximate)
Wooster	Wayne Theatre	September 1938	56,426.63
KENTUCKY:			
Paris	Paris Theatre	December 1939	94,683.69
MARYLAND:			
Easton	Easton Theatre	July 25, 1941	52,091.00 (estimated and approximate).

[fol. 320] ANSWER TO INTERROGATORY NO. 32

The facts contained in the foregoing answers to each of the interrogatories were supplied by or under the supervision of the following persons:

1. John A. May, Gloversville, N. Y.
   Comptroller of Schine Chain Theatres, Inc.
   President of Schine Circuit, Inc.
2. F. D. Thompson, Gloversville, N. Y.
   Assistant Secretary of Schine Chain Theatres, Inc.
   Assistant Secretary and Assistant Treasurer of Schine Circuit, Inc.
3. Howard M. Antevil, Gloversville, N. Y.
   Member of Legal Department of Schine Circuit, Inc.

[fol. 321] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

STIPULATION

It is hereby stipulated and agreed between the plaintiff and the defendant Schine Chain Theatres, Inc., Schine Circuit, Inc., Schine Theatrical Co., Inc., Schine Enterprises Corporation, Schine Lexington Corporation, Chesapeake Theatres Corporation, J. Myer Schine, Louis M. Schine and John A. May, by their respective counsel, that the trial of the above-entitled cause may be postponed until May 19, 1944, and a temporary order entered herein, a copy of which is attached hereto and expressly made a part hereof.

Robert L. Wright, Attorney for the Plaintiff. Willard S. McKay, John Fletcher Caskey, Penney & Penney, Attorneys for the Defendants.

[fol. 322] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

TEMPORARY ORDER

The United States of America having filed its complaint herein on August 7, 1939, and its amended complaint on May 12, 1941; the defendants: Schine Chain Theatres, Inc., Schine Circuit, Inc., Schine Theatrical Co., Inc., Schine Enterprises Corporation, Schine Lexington Corporation, Chesapeake Theatres Corporation, J. Myer Schine, Louis W. Schine and John A. May[1] having appeared and filed their answers to such complaint and to such amended complaint, the case having been called for trial on May 19, 1942, and all of said parties having stipulated to a postponement of said trial until May 19, 1944, and all of said parties having severally consented to the entry of this temporary order herein, without trial or adjudication of any issues of fact or law herein, and without admission by any party in respect of any such issue,

Now, therefore, before any testimony has been taken herein, and without trial or adjudication of any issue of [fol. 323] fact or law herein, and upon consent of all parties hereto, it is hereby

Ordered, adjudged and decreed as follows:

I. The trial of this case is postponed until May 19, 1944, and all proceedings herein are suspended until said date, except as hereinafter provided in this order.

II. The following temporary order shall be in effect from the date hereof to and including May 19, 1944.

1. *Jurisdiction.*

The Court has jurisdiction of the parties hereto; and for the purposes of this order and of proceedings for the enforcement thereof, the Court has jurisdiction of the subject matter hereof and the complaint states a cause of action against the defendants under the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies."

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[1] The above-named defendants are referred to hereinafter as the consenting defendants.

The plaintiff not having offered any proof of its allegations that defendants have violated the anti-trust laws, and defendants having denied each and every such allegation, this Court has not determined or adjudicated and by this order does not determine or adjudicate, and this is not an order or decree to the effect that any of said defendants has violated or is now violating any of such laws, or any other statute; and this order relates solely to future conduct herein below specified and is not based upon any finding, determination, or adjudication that any right or statute has yet been or is now being violated.

2. *Enjoinment.*

Each consenting defendant, its successors, officers, directors, agents and employees, and all persons and corporations acting under, through, or for it, hereby is and are [fol. 324] enjoined from doing the acts prohibited by this order, and is and are directed to do the acts thereby required.

3. *Independent Exhibitors.*

The term "independent exhibitor" wherever used in this order shall mean an exhibitor who is not in any way, directly or indirectly, affiliated with any of the consenting defendants, or with a distributor or producer of motion pictures, or with a circuit of fifteen or more theatres.

4. *Divestiture of Theatres.*

Within one year from the date hereof the consenting defendants will dispose of all their interests in the following theatres which have been acquired since the filing of this suit on August 7, 1939; the intent hereof being that the consenting defendants will reinstate the status of each such theatre as it existed immediately prior to said acquisition. These interests are as follows:

(1) The fee of the Webster Theatre, Rochester, N. Y.

(2) The fee of the Strand Theatre, Cumberland, Md.

(3) The leasehold on the Plaza Theatre, Malone, N. Y.

(4) The leasehold on the Memorial Theatre, at Mt. Vernon, Ohio.

(5) The leasehold on the Paramount Theatre, Glens Falls, N. Y.

(6) The leasehold on the Opera House, Lexington, Ky.

(7) The leasehold on the Ada Meade Theatre, Lexington, Ky.

(8) The leasehold on the Palace Theatre, Clifton Springs, N. Y.

(9) The leasehold on the Scotia Theatre, Scotia, N. Y.

[fol. 325] (10) The leasehold on the Viv Theatre, Corbin, Ky.

(11) The fee of the State Theatre, and the leasehold on the Appalachia Theatre, Appalachia, Va., to be handled as a single transaction.

(12) The leasehold of the Cla-Zel Theatre and the Lyric Theatre, Bowling Green, Ohio. The consenting defendants may retain the interest which they had in said theatres immediately prior to the acquisition of said leaseholds.

(13) A fifty per cent (50%) interest in the leasehold of the Margie Grand Theatre, Harlan, Ky. The consenting defendants may retain the interest which they had in said theatre immediately prior to the acquisition of said leasehold interest.

(14) The leasehold on the Liberty Theatre, Pikeville, Ky. The consenting defendants may retain the interest which they had in said theatre immediately prior to the acquisition of said leasehold interest.

A schedule containing a description of each of said interests and the name and address of the person from whom it was acquired, the name and address of the last operator prior to any acquisition, and its cost to the defendants, is attached hereto as Exhibit A. Attached hereto as Exhibit B is a schedule of any other capital investments, including rent deposits, which have been made by the defendants in said theatre properties since their acquisition. The defendants agree that promptly after the entry of this order, they will offer to the persons from whom such interests were acquired the opportunity of reacquiring the same for the amount of the capital investment of the defendants therein, as shown upon said Exhibits A and B. Such offer shall be in writing and shall remain open for 20 days after the making thereof, unless sooner rejected in writing by [fol. 326] the former owner. Where the last operator prior to such acquisition is not the person from whom said interest was acquired, such offer shall be made to said last operator.

As to any theatre or interest therein not reacquired by the former owner or operator under the above provisions, the consenting defendants shall generally offer the same to "independent exhibitors" for the same purchase price and upon fair and reasonable terms and conditions, including the payment by the purchaser of a reasonable commission when the services of a broker are necessary to consummate the sale. Fair and reasonable terms and conditions shall, of course, include adequate assurance to the consenting defendants that the transaction will be consummated. The Court shall, if petitioned by any party, upon notice to all other parties and such hearing as it may deem appropriate, enter such orders as it may deem appropriate, approving or disapproving the terms and conditions of any divestiture provided for herein.

Within thirty (30) days after the date hereof and at the end of each thirty (30) days thereafter, the consenting defendants will furnish to the Department of Justice a detailed report showing the efforts which have been made to dispose of the above-described theatre interests and the names and addresses of persons to whom the above described theatre interests have been sold during each such period.

If at any time it shall appear that the defendants are not exercising due diligence to comply with the provisions of this section of this order, the plaintiff may petition the Court for such further order as may be just in the premises, but no order shall be made which would require the consenting defendants to dispose of any theatre interest at less than the capital investment therein as set forth [fol. 327] in said Schedules A and B, and subject to the conditions hereinabove set forth.

If at the end of one year from the date of the entry of this order the consenting defendants have been unable with due diligence to dispose of all of the above-described theatre interests, they shall file with the Court a complete report stating (1) the theatre interests disposed of; (2) the theatre interests which they have been unable to dispose of; and (3) the efforts which have been made to dispose of the same.

Such report should be filed on notice to the plaintiff, which notice shall include a copy thereof, and the Court shall thereupon grant such extension of time or make such further order as may be just in the premises but no order shall be made which will require the consenting defendants to dispose of any theatre interest at less than the capital investment therein as set forth in said Schedules A and B.

5. *Acquiring Theatres.*

No consenting defendant shall acquire any theatre or interest therein except where such defendant can satisfy the Court that such acquisition will not be against the public interest after giving due consideration to the competitive situation, if any. Any application for an order permitting such acquisition shall be made to the United States District Court for the Western District of New York, upon ten days notice to the plaintiff, and the parties shall have an opportunity to present evidence and be heard by the Court before any such order permitting such acquisition may be entered. Except as to the theatres referred to in Section Four hereof, the provisions of this Section Five shall not prevent the consenting defendants from renewing leases on theatres now operated by them.

[fol. 328] 6. *Franches.*

No consenting defendant shall enter into any franchise or other license agreement which shall license the exhibition of motion pictures released by any distributor during a period of more than one year. All existing franchises or other license agreements between consenting defendants and any distributor, which license the exhibition of motion pictures by any distributor during a period of more than one year which are now in effect are hereby declared to be void as to all motion pictures released after the thirtieth day following the entry of this order, and each consenting defendant is hereby enjoined from enforcing any of the provisions of any such franchise or license agreement.

7. *Licensing of Motion Pictures.*

No consenting defendant will condition the licensing of motion pictures to any theatre or theatres owned or operated by the consenting defendants which is in direct competition with an "independent exhibitor" in the same city, town or village, upon the licensing of motion pictures to any theatre or theatres owned or operated by the consenting defendants in a city, town or village in which all of the motion picture theatres are owned or operated by the consenting defendants.

Proceedings based upon an alleged violation of this Section, brought by the United States, shall be limited to such further specific injunctive relief against the consenting defendant complained against as the Court shall deem appropriate, and if the Court shall find that any "independent exhibitor" has been injured as a direct result of such violation, it may award to such "independent exhibitor" such damages as it shall deem appropriate.

[fol. 329] 8. *Compliance.*

For the purpose of securing compliance with this order, and for no other reason, duly authorized representatives of the Department of Justice shall, on the written request of the Attorney General or the Assistant Attorney General in charge of antitrust matters, and on notice to any consenting defendant reasonable as to time and subject matter, made to such defendant at its principal office, and subject to any legally recognized privilege, (1) be permitted access, during the office hours of such defendants, to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of such defendant, relating to any of the matters contained in this order, and (2) subject to the reasonable convenience of such defendant, and without restraint or interference from it, be permitted to interview its officers or employees regarding any such matters, at which interview counsel for the officer or employee interviewed and counsel for the company may be present. Without in any way limiting the rights granted in the foregoing provisions of this Section each of the consenting defendants shall keep at its principal office current records, which shall be accessible for the purpose aforesaid, showing:

(1) All written offers received by it for the purchase of any of the motion picture theatre interests listed and described in Section 4 thereof;

(2) All agreements or copies thereof relating to the licensing of motion pictures for exhibition in any of the theatres operated by it;

(3) All records relating to the acquisition by it subsequent to the entry of this order of any motion picture theatre or interest therein.

[fol. 330] Information obtained pursuant to the provisions of this Section shall not be divulged by any representative of the Department of Justice to any persons other than a duly authorized representative of the Department of Justice except in the course of legal proceedings to which the United States is a party, or as otherwise required by law.

9. *Proceedings During Period of Order.*

Plaintiff has represented to the Court, and each of the consenting defendants has consented to the entry of this order upon the condition, that plaintiff will not for a period of two years after the entry of this order, either in this action or any other action or proceeding against any such defendant seek, except as provided herein, the relief or any part thereof prayed in the amended complaint filed May 12, 1941.

Any of the parties to this order may apply to the Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this order, for the enforcement of compliance therewith, and for the punishment of violations thereof;

Any of the parties to this order may apply to the Court at any time for a modification of this order in order to conform it to any Act of Congress enacted after the entry of this order;

Any consenting defendant may make any application to the Court referred to in any provision of this order.

Whenever obligations or prohibitions are imposed upon the defendants by the laws of any State or by rules or regulations made pursuant thereto, with which defendants by law must comply, the Court, upon application of the defendants, or any of them, shall from time to time enter orders relieving the defendants from compliance with any [fol. 331] requirements of this order in conflict with such laws, rules or regulations and the right of the defendant to make such applications and to obtain such relief is expressly granted.

In the event that at any time after the entry of this order, a decree or order shall be entered by consent in any Court of the United States, in an action brought by the United States of America against an operator of motion picture theatres under the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies," which decree or order shall contain terms more favorable to the defendant therein than the terms set forth in this order, the consenting defendants herein shall have the right to apply to the Court for an order modifying the provisions of this order to conform to the terms and provisions of such more favorable decree or order.

Any application by any party to this order under the provisions of any Section of this order shall be made in open court upon notice to all of the other parties to this order, and each such party, upon such application, shall have the right and privilege of requiring the production of witnesses upon whose testimony such application is sought or opposed, and of examining and cross-examining such witnesses in accordance with the rules of the Court.

John Knight, United States District Judge.

[fol. 332] The undersigned hereby consent to the signing and entry of the foregoing order.

J. Myer Schine, Louis W. Schine, John A. May, Penney & Penney, Willard S. McKay, John Fletcher Caskey, Solicitors for the Consenting Defendants.
George L. Grobe, United States Attorney.

Thurman Arnold, Assistant Attorney General; Robert L. Wright, J. Stephen Doyle, Jr., John F. Clagett, Special Assistants to the Attorney Geenral; Albert Boggess, Special Attorney.

[fol. 333] IN UNITED STATES DISTRICT COURT

[Title omitted]

TRANSCRIPT OF PROCEEDINGS, MAY 19, 1942

Proceedings before Hon. John Knight, United States District Judge, at Buffalo, New York, May 19, 1942, at 10 A. M.

Appearances:

Robert L. Wright, Esq., and J. Stephen Doyle, Esq., and John F. Clagett, Esq., Special Assistants to the Attorney General, and Albert Boggess, Esq., Special Attorney, Department of Justice, Washington, D. C., appearing for the Plaintiff.

Willard S. McKay, Esq., and Arthur J. Homans, Esq., 630 Fifth Avenue, New York, and John F. Caskey, Esq., 100 Broadway, New York City, and Richard P. Byrne, Esq., Syracuse, New York, appearing for Defendant, Schine Chain Theaters.

Louis D. Frolich, Esq., and Max Rose, Esq., New York City, appearing for Defendant, Columbia Pictures.

* * * * * * *

The Court: Call the case.

The Clerk: United States against Schine Theaters and others.

Mr. Wright: If the Court please, the Government would like to submit at this time for your consideration a proposed stipulation and order in this case. The exhibitor defendants in this case have consented to the immediate entry of an [fol. 334] order which compels them to give up within one year from today all of the theater interests that they have acquired since August 7, 1939 when this suit was filed. That comprises some 15 theaters.

The Court: How many did you say?

Mr. Wright: 15 theaters in 13 different towns in New York, Ohio and Kentucky. Under the terms of this order these theaters are to be first offered to the exhibitors who operated them immediately prior to their acquisition by the Schine Circuit.

The Court: Does that apply to the exhibitors personally? Assuming there were members of the family?

Mr. Wright: It applies to the exhibitor in whatever form he was then operating.

The Court: Individual or the corporation at the time of the acquisition.

Mr. Wright: As the case may be. The people from whom these interests were acquired are listed on schedules which have been attached along with the upset price, which consists of the actual investment that the Schine defendants have in these theaters. Those schedules are attached as Exhibits A and B.

As I say, under the terms of the order they are to be first offered to the exhibitors who last operated them prior to the time that Schine took them over. They have a 20 day period within which to accept or reject such offer, and in the event they do not wish to reacquire the theaters, they are then to be offered to independent exhibitors generally at the same upset price.

The Court: Independent exhibitors anywhere or in the particular city?

Mr. Wright: The only limitation that the order provides as to the definition of "independent exhibitors" is that they be not connected with any of the defendants here, or any [fol. 335] predecessor or distributor, or not affiliated with a circuit of more than 15 theaters.

The Court: Then, that would apply to independent exhibitors in any location?

Mr. Wright: That is right, in any location at all.

In addition to this divestiture provision that I have described, the order further provides during the next two years the exhibitor defendants may not acquire any theater interests during that period, unless they first obtain an order from this Court permitting them to do so. In order to obtain such an order they must petition this Court upon due notice to the Government, and affirmatively establish that such an acquisition would not be against the public interest, due regard being given to competitive considerations.

The Court: Just a moment now. You speak of these theaters being within New York, Ohio and what state?

Mr. Wright: Kentucky, and, I believe, I should have said there was one in Maryland.

The Court: Several in Virginia.

Mr. Wright: That is right, two additional states.

The Court: Kentucky, Virginia, Ohio, New York, Maryland.

Mr. Wright: That is correct, your Honor.

The Court: Very well. Proceed.

Mr. Wright: In addition to the prohibition against the acquisition of any further interests during this period that I have just described, the order also prohibits the defendants from enforcing any of the provisions of existing film licensing franchises to which they are parties, and prohibits them from making any franchises or other license agreements which cover films released during the period of more than one year while this order is in effect.

The order further provides that in licensing films during this two-year period the exhibitors may not condition the [fol. 336] licensing of films in their competitive towns where an independent exhibitor operates an opposition theater.

The Court: Say that again. What do you mean by that?

Mr. Wright: The order provides that the defendant exhibitors, Schine Circuit, in licensing films for theaters in towns where they have independent opposition, that is, where an independent exhibitor operates a theater in competition with them, Schine defendants in licensing films for their theaters in those towns may not condition such licensing upon the licensing of films in the Schine closed towns.

The Court: I suppose that would conform to the consent decree in the other case.

Mr. Wright: I think it goes further than the consent decree in the other case. One of the allegations in the complaint here, if your Honor recalls, is that the——

The Court: The combination.

Mr. Wright: Yes. In substance this prevents the Schine Circuit from combining its closed towns with these competitive situations in making film licenses.

There is also a provision for enforcement of that provision which gives an additional remedy that has not heretofore appeared in decrees to the exhibitor who may be injured by a violation of that section, although the proceeding to enforce the provision must be brought by the United States.

The order also provides that such damage as the Court may find appropriate may be awarded to the injured exhibitor in that proceeding.

In view of the substantial and immediate character of the relief which is offered by this order, the Department is willing to postpone the trial of this case for the two-year period covered by this order. As your Honor knows, the same legal issues that are involved in this suit are now being litigated in the Crescent case at Nashville, Tennessee, and that case [fol. 337] we anticipate, of course, will be ultimately decided by the Supreme Court within this two-year period.

The Court: There has been no decision in the District Court?

Mr. Wright: There has been no decision in the District Court yet, and further action will be taken by the Department with respect to similar issues in the Paramount case in New York where the consent decree is entered, and the period expires in November, 1943, also during this two-year period.

The Government has therefore agreed, subject to your Honor's approval to a continuance of the trial date for two years conditioned upon the immediate entry of this order.

Mr. McKay: If the Court please, I have very little to add to what Mr. Wright has said.

The defendants in this case, the exhibitor defendants, have consented to the entry of this order and they are motivated very largely by consideration of the fact that under the conditions as they exist now the time of this Court, the time of Government attorneys and the time of their own attorneys and their executives should not be taken up for a period which we estimate at six months in the trial of this case.

For that reason we have made what we consider very substantial sacrifices, and for that reason we have consented, subject to your Honor's approval, to the entry of this order.

At this time I want to say something personally to your Honor. It is about two years and eight months since we first appeared before you in this case. It has been a difficult case. There have been procedural matters or construction of rules which were new, for which there was very little precedent, and I, my associates and my client appreciate the patience and consideration and sound judg- [fol. 338] ment which your Honor has exhibited in the handling of this case.

Mr. Frolich: May it please your Honor, I represent Columbia Pictures, one of the three distributing companies. We have had no part in the preparation of this order or decree. We were not consulted, and it is probably, I might say, none of our business. The Government may make any arrangement it wishes with the exhibitors.

So far as the adjournment of the case is concerned, we have no objection to having the case put over for this two-year period. I want it distinctly noted on the record that Columbia, and I may say that United Artists and Universal as well, did not participate and had no knowledge of the terms of this decree until this morning.

The Court: Is there any stipulation to be made by the Columbia?

Mr. Wright: If the Court please, the only agreement between the Government and Columbia, United and Universal is that the case may be continued two years, until 1944.

The Court: In status quo?

Mr. Frolich: That we are in status quo.

The Court: There is nothing in this stipulation——

Mr. Frolich: That binds Columbia.

The Court: Any reference to either of these defendants?

Mr. Frolich: I don't think there is. As far as I know there isn't. We do not feel that we are bound in any way by the decree, as far as being the distributor is concerned.

The Court: There is nothing in the stipulation that says anything about what you should do and cannot do.

Mr. Frolich: That is right.

The Court: I appreciate what Mr. McKay stated. The work has extended over a period of a considerable time. I have briefly gone over this proposed agreement or stipulation, and I think I understand what it includes or proposes. [fol. 339] It has been entered into by the Government and Counsel, and by all the interested parties, and unless the Court could see that it would interfere with the statutes, or significant reasons why it should not be approved, it ought to be approved, I should say.

The terms are understood by all parties. As I understand it, the matters of any failure to observe the conditions of this stipulation would be brought back to the Court, and the carrying out of the stipulation means under the jurisdiction of the Court. So, I am very glad to approve it. Certainly, as pointed out by Counsel, it has its benefits.

Of course, as far as the Court personally is concerned it is pleased to escape the arduous task of trying this case. Trial of it would entail a very large expenditure, I take it, and the devotion of a great deal of time of Counsel and by busy men.

There is another feature also that has been called to my attention by Mr. McKay, and that is that at this time, far from ordinary, these matters where there is a reasonable chance for adjustment in the interest of permitting us to give time to other things more important, we ought to settle these things.

It is true, if these cost prices are under the present value of the properties, the defendants are giving up a substantial amount, and certainly they are undergoing substantial restrictions as to the future which, of course, I know is the object of bringing this action.

So, I am glad to approve the stipulation. Is your order here?

Mr. Wright: Yes, your Honor. The order is attached to the stipulation. It has a space for signature on the last page.

The Court: Oh, yes, I see.

Mr. Wright: I think your Honor need only sign the last page of the order.

[fol. 340] Mr. Frolich: May it please your Honor, my associate has called my attention to the fact that Columbia has a three year franchise with the exhibitor defendants which expires 1943. May I have cleared up this morning the question whether or not Columbia may go on and sell pictures under that franchise until 1943?

Mr. Wright: The decree by its terms, of course, only makes the franchise void in so far as the exhibitor defendants are concerned, and enjoins them from enforcing any of its provisions. It cannot, of course, affect any rights Mr. Frolich has under it.

Mr. Frolich: I suppose under all practical purposes the exhibitor would have no right to go on with the franchise.

The Court: You mean the Schine people?

Mr. Frolich: The Schine people. We have a franchise made two years ago which expires in 1943.

The Court: What does that franchise provide?

Mr. Frolich: I suppose it provides for the leasing of pictures to all of the theatres of the Schine Circuit for that full three-year period.

The Court: Does it specify the theaters?

Mr. Rose: Yes, sir, it does specify the theaters.

The Court: Including, I assume, these mentioned here.

Mr. Rose: No doubt, although I do not know offhand.

The Court: What position are the Schine people put in, then?

Mr. Wright: I do not see that there is any difficulty there. The principal thing about the franchises as far as the Government is concerned is upon the use of them as an excuse by the distributors to discriminate against opposition of the defendant exhibitors. If the exhibitor defendants are enjoined from enforcing the terms, that is all the Government is interested in with respect to these particular franchises.

The Court: The question here is the obligation to Schine. [fol. 341] There has been a franchise agreement with one of these companies here for exhibition in these theatres. Don't they stand to presume a possible loss by reason of that agreement?

Mr. Wright: That is something, I assume, they took into account at the time they agreed to be enjoined from enforcement of the franchise. That will be a matter to settle, I assume, with Columbia.

The Court: It is not a matter concerning you, that is true.

Mr. Frolich: It deprives us of a valuable contract without having had an opportunity to litigate it or negotiate it or have anything to say about it. This is a valuable contract to Columbia. We would like to go on and conclude the contract and carry it out, and it seems to me the interest of all parties would be served if we were permitted to carry it out and let that be an exception to the order. Otherwise, we are deprived of a very valuable right.

The Court: You still have Schine.

Mr. Frolich: If Mr. Schine is disabled from carrying it out, if he has shackled himself by the order, I suppose we would have a remedy for a breach of contract against him, which would be very distasteful, because it means more litigation, and I think there ought to be some exception with regard to the Columbia franchise, because we have had no opportunity to litigate it.

The Court: What do you say about that, Mr. McKay? I suppose that has all been considered?

Mr. Caskey: Our position is simply that this is one of the demands of the Government in Mr. Wright's exact language, and we have accepted it.

Mr. Frolich: And we are the victims.

The Court: I would not say that, because if you have a contract, you may have to go to Schine——

Mr. Frolich: It means for all practical purposes we can- [fol. 342] not enforce the contract. I do not imagine Columbia would want to bring a suit against a man who is disabled from performance by reason of a Government decree. It means we lose the benefit of a contract without being consulted and without having tried an issue. If we went to trial in this case, that is one of the things that we could protect, our contract, and we have lost that opportunity by Mr. Schine signing this order. I think the Government in all fairness to Columbia ought to except the Columbia from the provision of that paragraph in the order. How about that, Mr. Wright?

Mr. Wright: There isn't anything to except. The order by its terms does not apply to Columbia at all. Mr. Frolich has no proper concern with it.

Mr. Frolich: It has a general sweeping provision, and if we carried it out we would be in contempt and Schine would be in contempt. It leaves the distributor rather suspended in the air.

The Court: No, I don't see in this stipulation to which you are not a party how they can write that, in view of the consent of the people that do consent. It only binds them.

Mr. Frolich: That is true, but Schine has bound himself now, and disabled himself from carrying out a franchise with Columbia, and Columbia, which has this franchise which it deems valuable, stands deprived of the use of it without a trial, without any opportunity to defend itself or to be heard. It is an anomolous situation.

The Court: Does Columbia want to go to trial?

Mr. Frolich: Columbia was ready to go to trial this morning. I do not imagine the Court is going to try a case for four or five months with one defendant. I would not ask you to do it. It would be unfair for me to ask you to do that. I would not do that, but I think, so far as Columbia is concerned, it would not hurt the Government [fol. 343] at all to make an exception of the case of Columbia, because if they wanted to deprive Schine of the right to make franchise agreements with others, that is all right, but why should we lose our contract?

The Court: How could they fulfill this contract under this agreement? They say they will dispose of these theaters that you have agreed to supply. It is a question of a new purchaser, I should think.

Mr. Frolich: Except in so far as the other theaters are concerned, not those agreed to part with, we have this contract.

The Court: No, the only relief that I can see is—I do not see any reason why you cannot force the issue of the trial.

Mr. Frolich: Force the issue in this case?

The Court: I assume you could, the issue raised by your pleading.

Mr. Frolich: It is putting me in a spot, your Honor. I don't like to stand here and say, "I want to try on behalf of one defendant this enormous issue of conspiracy under the Sherman Act," just to protect a franchise agreement.

The Court: You are a party to this suit, party defendant to this conspiracy. You have a right to a trial of that issue if you want it or, as suggested by this stipulation, the trial is extended for two years. You have to elect between two things. Of course, if they consent to this, it is satisfactory to the Court, but I have no means to compel them to.

Mr. Frolich: I don't suppose you have. If I said I was going to go to trial this morning I think there would be a lot of unhappy people around here, and I don't want to be in that position. It is not fair to put Columbia in that position, but on the other hand, Columbia is being deprived of its franchise agreement without any opportunity to protect that agreement, and I do not see why the Government [fol. 344] cannot except the Columbia franchise agreement from the general operation of that clause.

The Court: I suppose they could do that, but if they are unwilling to do that, it is a different situation.

Mr. Frolich: May I ask Mr. Wright if he is willing to do that. Are you willing to— it, Mr. Wright?

Mr. Wright: No, we are unwilling to make any exception as to franchises. We believe the Columbia franchise should be treated just like any other.

Mr. Frolich: Well then, I suppose Columbia is left to its rights as against Schine, whatever they are.

The Court: Yes. Very well. Is there anything else you want signed except this order now?

Mr. Wright: No, that is the only thing, your Honor. I would like to join with Mr. McKay in expressing on behalf of the Government our appreciation of the manner in which your Honor has handled the case, and the care and attention given to it.

The Court: I appreciate your comments. Then, there is no work for the Court, so we can take a vacation. We will adjourn until tomorrow morning at 10 o'clock.

[fol. 345] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

ORDER—July 13, 1942

This matter having been duly submitted to the Court, and the Court having considered Schedules A and B annexed to the Temporary Order herein, dated and entered May 19, 1942, the Supplemental Schedule certified by Forrest E. Ferguson, C. P. A., dated May 22, 1942, and filed herein May 23, 1942, and the affidavit of Forrest E. Ferguson sworn to the 25th day of June, 1942, and the plaintiff having appeared by R. M. Hitchcock, Assistant District Attorney, and due deliberation having been had, it is

Ordered that it is the determination of this Court that the capital investment of the Schine Defendants in the Viv Theatre, Corbin, Kentucky, as provided for in Section 4 of said Temporary Order, is the sum of $11,554.91, as indicated in the Supplemental Certificate of Forrest E. Ferguson, sworn to the 25th day of June, 1942.

Dated, July 13, 1942.

(S.) John Knight, United States District Judge.

Entered July 13, 1942.

[fol. 346] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

FINAL REPORT OF SCHINE CHAIN THEATRES, INC., SCHINE CIRCUIT, INC., SCHINE THEATRICAL CO., INC., SCHINE ENTERPRISES CORPORATION, SCHINE LEXINGTON CORPORATION, CHESAPEAKE THEATRES CORPORATION, J. MEYER SCHINE, LOUIS W. SCHINE, JOHN A. MAY, DEFENDANTS, MADE IN ACCORDANCE WITH THE TEMPORARY ORDER ENTERED HEREIN MAY 19, 1942

These Defendants pursuant to the provisions of Section 4 of the Temporary Order entered in the above entitled action on May 19, 1942, hereby report to the Court as follows:

[fol. 347] Section 4 of the temporary order entered in the above entitled action on May 19, 1942, provided that the consenting defendants should file a report within thirty days after the date of said order and at the end of each thirty days thereafter, showing the efforts made to dispose of theatre interests set forth in Section 4 of said order and the names and addresses of persons to whom the theatres or the theatre interests set forth in said order had been sold during each such period. The consenting defendants have filed from the date of said order monthly the reports required by this section, setting forth the information in regard to efforts to dispose of said theatres, and also the names and addresses of persons to whom said theatres were sold.

It was further provided by Section 4 of said order:

> "If at the end of one year from the date of the entry of this order the consenting defendants have been unable with due diligence to dispose of all of the above-described theatre interests, they shall file with the Court a complete report stating (1) the theatre interests disposed of; (2) the theatre interests which they have been unable to dispose of; and (3) the efforts which have been made to dispose of the same.
>
> Such report should be filed on notice to the plaintiff, which notice shall include a copy thereof, and the Court shall thereupon grant such extension of time *or make such further order as may be just in the premises* but no order shall be made which shall require the con-

senting defendants to dispose of any theatre interest at less than the capital investment therein as set forth in said Schedules A and B."

Theatre Interests Disposed of

A. That these Defendants have disposed of the following Theatre interests in the manner hereinafter set forth:

Paramount Theatre

Glens Falls, New York

1. The Leasehold on the Paramount Theatre, Glens Falls, New York, was reacquired by the former operator, Paramount Pictures, Incorporated, on May 31, 1942. It is noted that the former owner to whom the temporary order required preference should be given was a producer-distributor-exhibitor operating at the time approximately 1210 theaters, 107 of which had been acquired since the filing of the suit against it.

[fol. 348]

Webster Theatre

Rochester, N. Y.

2. The fee of the Webster Theatre, Rochester, New York, was reacquired by a Corporation in which the former operator, Max Fogel, was given an interest on June 18, 1942. These Defendants sent a representative to Rochester, New York, for the purpose of consummating the sale of this Theatre.

Cla-Zel and Lyric Theatres

Bowling Green, Ohio

3. The leasehold of the Cla-Zel and Lyric Threatres, Bowling Green, Ohio, was reacquired by the surrender of same to the former owners and operators, Clark and Hazel Young, on June 24, 1942. The five-year Booking Contract which was in effect at the time of the leasing of these theatres by the Consenting Defendants was reinstated for a period of two years, thereby depriving the Defendants of approximately 14 months of the benefit of the contract. This was the result of a hearing held before this Court, on June 15, 1942, in connection with the reacquisition of the above mentioned theatres, at which hearing the former

owners represented that they were acquiring the theatres for their own use and profit. These Defendants sent a representative to Bowling Green at the request of Mr. Clark Young to close this transaction and an agreement was prepared in which the said Clark Young and Hazel Young represented that they had not entered into or consum-ated any sale, lease or transfer of said theatres. That, upon information and belief, the said Clark Young and Hazel Young reacquired said theatres for the express purpose of releasing the same and that they did in fact re-lease the same to Carl H. Schwyn of Cygnet, Ohio, on or before July 1, 1942, at a substantial profit to themselves. The attention of the Court is further directed to the fact that the Department of Justice had previously advised John Stump, the former owner of the Strand Theatre, Cumberland, Maryland, in response to an inquiry by him, that the privilege of reacquisition was a personal one and non-transferable.

Palace Theatre

Clifton Springs, N. Y.

4. The leasehold of the Palace Theatre, Clifton Springs, New York, was reacquired by the prior owner, Mrs. Josephine Williamson, on July 15, 1942, who released it to some one else.

[fol. 349]

Scotia Theatre

Scotia, N. Y.

5. The leasehold of the Scotia Theatre, Scotia, New York, was acquired by the Edsol Corporation, a New York corporation, on December 15, 1942. The preference of the former operator, Ritz-Scotia Theatre Corporation, expired on June 9, 1942, and the said Corporation by its President, Samuel Milberg, of Albany, New York, had advised these Defendants, verbally, that he was not interested in acquiring the theatre.

B. The foregoing covers six of the sixteen theatre interests named in the decree. These defendants have been unable to dispose of any of the other ten theatre interests although they have attempted to do so with the greatest diligence. The facts with reference to each of the said ten interests are set forth as follows:

Liberty Theatre

Pikeville, Ky.

(1) Item 14 is as follows:

"The leasehold on the Liberty Theatre, Pikeville, Kentucky. The consenting defendants may retain the interest which they had in said theater immediately prior to the acquisition of said leasehold interests." These defendants state that the Liberty Theatre was included in the Temporary Order through error, that a check for $5000 was sent as a down payment to the Schines' attorney in Lexington, Kentucky, June 13, 1939, and the contract of sale was made and executed June 28, 1939. The interest was therefore not "acquired since the filing of this suit on August 7, 1939." *For the reason that the theater was therefore not properly within the order, no attempt to dispose of it should have been required and no further attempt to dispose of it should be required by the court.* However, the following efforts have been made to dispose of it.

On May 25, 1942, a registered letter was sent to G. C. Scott, the former operator. No answer was received from Scott within the time limit specified in the letter, or since.

In August, 1942, we were advised by our Kentucky representative, Mr. Lew Hensler, that he had been approached by W. J. Ward, the operator of the Weddington Theatre, Pikeville, Kentucky, in reference to the Liberty Theatre.

[fol. 350] On September 8, 1942, Mr. Lazar, who had been sent to Lexington for that purpose, among others, wired Ward that he would be glad to meet him in Lexington on that day or the next and our Gloversville office wired Ward to the same effect. On September 9th, at 4:30 P. M., Mr. Lazar, in the presence of Mr. Hensler, received a telephone call from Ward stating that he would be unable to see Mr. Lazar, but that he would try to see him at some future date.

On September 14, 1942, a letter was received from Ward purporting to be an offer to acquire the Liberty Theatre at the price specified in the schedules annexed to the Order, but subject to deductions for depreciation, depletion, etc., and on terms to be subject to negotiations. On September 25, 1942, we advised Mr. Ward that the purchase price specified in the Order was not subject to any deductions, and he was reminded of his previous dealings with this company in 1940, when he had agreed in writing to purchase the Liberty Theatre for a sum considerably in excess of the figure mentioned in the temporary Order, and he had refused to go through with the transaction, although we had sent two representatives to Pikeville to close the transaction and had drawn all of the necessary papers. Mr. Ward was further advised that an option had been granted for the purchase of this theatre.

On September 24, 1942, this theatre was included in the option granted to Sol Shafer, who made a personal inspection of the theatre with his attorney, but did not care to exercise the option which subsequently expired.

It should be noted that although our interest in the lease of this theatre was acquired through the purchase of stock of the Liberty Amusement Company, the letter of May 25th was addressed to G. C. Scott, who operated the theatre, and with whom we had a buying, supervisory and booking contract. The lease which Scott had on the Liberty Theatre became involved in litigation and the landlord made a new lease with Liberty Amusement Company in which Scott had no interest. Pending a final determination of the validity of the two leases, Scott continued to operate the theatre under a bond. In order to dispose of the matter, Scott agreed to relinquish his claims. We paid $15,000.00 for the stock of the Liberty Amusement Co., which carried with it the lease for the theatre.

It should also be noted that we had an option from Scott to purchase an interest in this theatre as far back as November, 1938.

[fol. 351] Majorie Grand Theatre

Harlan, Ky.

50 per cent interest in the leasehold of the Majorie Grand Theater, Harlan, Kentucky. Appears as Item 13. The Order says, "The conse[illegible]g defendants may retain the interests which they had [illegible] said theater immediately prior to the acquisition of said leasehold interest." This theater was operated under a buying, booking, and supervision contract dated November 30, 1938, which gave the consenting defendants an option to purchase a one-half interest. January 1, 1941, defendants exercised their option to purchase the one-half interest, but the management and operation of the theater was not thereby changed.

On May 25, 1942, a registered letter was sent to Leon Scott, the former owner and the present owner of one-half interest. Mr. Scott was and is unwilling that any other person should acquire the one-half interest owned by us, and he advised the Department of Justice that he did not care to reacquire the 50 per cent interest owned by us, nor did he care to have this interest acquired by anyone else but us. The Department of Justice replied to this letter advising Scott that it would be necessary for us to dispose of our one-half interest in this theater regardless of his wish in the matter.

It seemed and still seems to us unjustifiable to compel Mr. Scott to accept against his will a new partner and one he might have no confidence in, especially in view of the fact that a satisfactory and advantageous arrangement under which he operates the theater has been in effect for four and one-half years.

On September 24, 1942, this theatre was included in the option granted to Sol Shafer who made a personal inspection of the theater with his attorney but did not care to exercise the option which subsequently expired.

Strand Theatre

Cumberland, Md.

On May 25, 1942, sent registered letter to John Stump, former operator.

On June 1, 1942, Stump advised in writing that he was not interested in reacquiring the theatre.

On September 24, 1942, this theatre was included in the option granted to Shafer, who made a personal inspection of the theatre with his attorney, but did not care to exercise [fol. 352] the option, which subsequently expired.

It is believed that no one has evinced an interest in this theatre because of the high price, based on our investment.

Plaza Theatre

Malone, N. Y.

On May 25, 1942, we sent registered letter to Michael Boumansour, the owner and former operator. No answer received from Boumansour within the time limit specified in the letter, or since.

On September 24, 1942, this theatre was included in the option granted to Sol Shafer of Rochester, New York, who made a personal inspection with his attorney, prior to the expiration of the option. The optionee advised that he was not interested in acquiring this theatre.

On December 11, 1942, a contract was made giving Edsol Corp. an option for acquisition of the theatre.

The theatre was declared unsafe and closed by order of the State Labor Department on January 8, 1943, for extensive reconstruction repairs, and the optionee was advised to that effect. After these repairs were made the optionee notified us that it did not care to exercise its option.

Memorial Theatre

Mt. Vernon, Ohio

On May 25, 1942, sent registered letter to Emerson W. Long, the former operator.. No answer received from Long within the time limit provided in the letter, or since.

On September 24, 1942, this theatre was included in the option granted to Sol Shafer, who made a personal inspection of the theatre with his attorney, prior to the expiration of the option. He advised that he was not interested in acquiring the theatre.

The Memorial Theatre lease contained an express prohibition against any transfer of the lease, and we understand that when approached by Shafer, the Board of Trustees of the Memorial Building refused to permit any transfer by the present leasee, Belpik Theatre Corporation.

Opera House Theatre

Lexington, Ky.

On May 25, 1942, sent registered letter to Southland Amusement Company, and Harry Schwartz, the owner and former operator. No answer was received within the time [fol. 353] limit provided in the letter, or since.

On September 24, 1942, this theatre was included in the option granted Sol Shafer, who made a personal inspection of the theatre with his attorney, but did not care to exercise the option which subsequently expired.

On December 11, 1942, contract made with Edsol Corporation for acquisition of theatre sub[illegible] to obtaining consent of landlord to assignment of lease. We understand that such consent could not be obtained.

Ada Meade Theatre

Lexington, Ky.

On May 25, 1942, sent registered letter to M. Switow & Sons Enterprises, Inc., the former operators. No answer was received within the time limit provided in the letter, or since.

On September 24, 1942, this theatre was included in the option granted Sol Shafer, who made a personal inspection of the theatre with his attorney, but did not care to exercise the option, which subsequently expired.

On December 11, 1942, contract made with Edsol Corporation for acquisition of theatre subject to obtaining consent of landlord to assignment of lease. We understand that such consent could not be obtained.

Viv Theatre

Corbin, Ky.

On May 25, 1942, sent registered letter to M. K. Murphy, the former operator.

On May 29, 1942, received letter from Murphy questioning the figures set forth in the schedules annexed to the Order, and stating that he was ready to take over the theatre at the price paid him therefor. On June 2, 1942, we wrote Murphy calling his attention to the provisions of the order and the schedules. On June 5, 1942, received copy of a letter sent to Murphy by the Department of Justice, in response to a letter from him. Wrote Murphy on the same date, suggesting a meeting in Gloversville, New York, for the purpose of discussing the matter and possibly consummating a sale of the theatre. On June 11, 1942, received a reply from Murphy advising that he could not be in Gloversville on June 12th, but asking that a representative be sent to Corbin to turn the theatre over to him. We wired Murphy on the [fol. 354] same date that his letter was unsatisfactory, and not in compliance with the Order, and that no representative would be sent to Corbin, but that a hearing had been arranged before Judge Knight on June 15th to discuss this and other matters.

On June 15, 1942, Messrs. McKay and Schine appeared before Judge Knight. Murphy was represented by Stephen Doyle of the Department of Justice. The matter was fully presented to the Court, including the question of the amount of our investment as set forth in the schedules annexed to the order, and the Court granted Murphy an extension of time to Monday, June 22nd at 12:00 noon, provided he deposited $3,500.00 as evidence of good faith. On June 22, 1942, a cashier's check for $3,500.00 was received from Murphy at 11:00 A. M.

We understand that the money was supplied by Chas. Mitchell, of Barbourville, Ky., for whom Murphy was dealing for the theatre.

On June 26th, receipt of the check was acknowledged and Murphy was reminded of the fact that he would be expected to comply with all of the provisions of the order, and that we were prepared to send a representative to Corbin to close the transaction in accordance with such provisions. On July 3rd, letter dated June 30th received from Murphy refusing to pay the price stipulated in the schedules annexed to the Order. On July 8th, received a wire from Murphy requesting that we send a representative to Corbin to turn the theatre over to him. A reply wire was sent, stating that the matter would have to await the determination of the court as to the correct purchase price unless Murphy was willing to pay the amonut stipulated in the Order and schedules. On July 13, 1942, a further letter was received from Murphy with reference to this matter, and on the same date the Court made its ruling confirming the figures set forth in the schedules annexed to the Order. On July 15th, a copy of the Judge's order was sent to Murphy and he was advised by letter and telegram that we were prepared to send a representative to Corbin to meet him on the night of July 20th for the purpose of turning the theatre over to him, provided that he would advise us by Friday, July 17th that he was prepared to close the transaction in accordance with the directions of the court and with his agreement made in open court on June 15th. On July 17th we received a letter from Murphy advising that he was withdrawing from the deal, and asking that his check be returned. Subsequently received a wire and telephone call from Murphy renewing his request for return of his check. On July 20th Judge Knight was asked for instructions in the matter. On July 24th, pursuant to the instructions of the court, Murphy was advised that we were returning his check. On July 29th, [fol. 355] receipt acknowledging the return of the check was received from Murphy.

On September 24, 1942, this theatre was included in the option granted to Shafer, who made a personal inspection of the theatre with his attorney, but did not care to exercise the option which subsequently expired.

State and Appalachian Theatres

Appalachia, Virginia

On May 25, 1942, sent registered letter to M. K. Murphy, the former operator.

On May 29, 1942, received a reply from Murphy questioning the figures in the schedules annexed to the Order, and advising that he was ready to take over the theatres at the price paid him therefor. This letter was acknowledged and Murphy's attention called to the terms of the Order. After correspondence and discussion, the matter was submitted to Judge Knight, at a hearing on June 15, 1942, and Murphy was granted an extension of time to June 22nd at 12:00 noon, in which to consummate the transaction, provided he deposited the sum of $10,000.00 as evidence of good faith. The seven day extension expired, but no deposit was ever received, nor was any other effort made by Murphy to reacquire said theatres.

On September 24, 1942, this theatre was included in the option granted to Sol Shafer, who made a personal inspection of the theatre with his attorney, but did not care to exercise the option which subsequently expired.

Active negotiations were carried on with R. P. Bolling of Norton, Virginia, with reference to these theatres. Mr. Lazar was sent to Lexington, Kentucky, and a wire was sent to Mr. Bolling requesting that he meet Mr. Lazar in Lexington, Kentucky, on September 8th or 9th, to discuss the matter. On September 9th, Bolling wired Lazar that he was unable to see him in Lexington, but hoped to see him in Appalachia at some other time. Nothing further has been heard from Mr. Bolling since that time.

Other Efforts Made By These Defendants to Dispose of the Foregoing Interests

These defendants also carried on active negotiations with the independent exhibitor, above referred to, for the sale of the Memorial Theatre, Mt. Vernon; however, the lease of this theatre contained an express prohibition against any assignment or subletting and when the prospective pur- [fol. 356] chaser consulted with the owner with reference to a Consent to Assign, he was advised that such Consent would not be granted. These defendants were therefore advised that it would be impossible for the lease to be transferred.

In addition to the foregoing specific instances of active negotiations for the theatres in question, the fact that the theatres have been offered for sale has received widespread publicity, particularly in the various Motion Picture Trade Publications which circulate among those persons most likely to be interested in acquiring the theatres. The terms of the original Order of May 19, 1942, including the names of the theatres and the prices set forth in Schedules A and B, were reprinted in full in the Motion Picture Herald, The Exhibitor, The Film Daily, The Motion Picture Daily, The Hollywood Reporter, Box Office, Showmen's Trade Review, and other publications. Each month, as reports are rendered to the Department of Justice as to the progress being made in disposing of the theatres, the substance of these reports is published in the Trade Papers and mention is made of the theatres remaining undisposed of.

That the matter has come to the attention of a great many persons may be adduced from the fact that these defendants have in addition to numerous telephone calls and personal inquiries, engaged in a great deal of correspondence in connection therewith. That these defendants have exchanged an aggregate of 94 letters with Real Estate Brokers and an aggregate of 60 letters with various theatre operators, exclusive of the prior owners and operators of the theatres in question. That in each instance the person or persons addressing inquiry to these defendants was advised of the terms of the order and those expressing a further interest were furnished with additional information. That in the case of the Real Estate Brokers, particularly, these defendants insisted on a disclosure of the name of the principal before furnishing detailed information, in view of the prohibition in the Order against a sale to a Circuit. That a number of brokers indicated that they expected to be paid a commission and upon being advised that none was payable under the terms of the Order, they displayed no further interest. That in no case did any of the persons who addressed inquiries to these defendants evidence a real interest in acquiring theatres to the extent of making a definite offer in writing, accompanied by a deposit or other evidence of good faith.

[fol. 357] The operation of motion picture theatres is a highly competitive and unusually individual type of business which requires the constant, continuous and alert attention and services of every member of an organization to enable it to function efficiently and properly not only in the best public interests but for the protection of the property rights involved; the continuous disruption of the regular, necessary, normal course of the operation of the business of this company by its executives, officers and employees by the constant, continuous repetitious endeavors to find purchasers or to negotiate and properly handle inquiries for possible purchasers and from possible purchasers has seriously interfered with and disrupted the efficient operation of these defendants' business and adversely affected their standing in the industry.

These Defendants have had a considerable part of their organization, including their legal staff and most of their executive officers, engaged in negotiations and efforts to dispose of these theatres during a large part of the time from May 1942 to date. On account of shortage in help this has interfered with the executive officers, the legal staff and other employees in carrying on in an orderly manner the business of these Defendants. They have been obliged to expend much time and money, for which they are not recompensed, in traveling expenses, legal expenses, telephone, telegraph and the use of the services of their executive officers, legal staff and other employees in attempting to dispose of the theatres set forth in Section 4 of said temporary order of May 19, 1942. The activities of the officers and employees in attempting to dispose of the theatres hereinabove-mentioned, have been highly detrimental to these defendants because they have been unable properly to carry on and supervise the business of the consenting defendants and at the same time engage in prolonged efforts to dispose of the theatres mentioned.

These Defendants are of the opinion that there are many and valid reasons why the ten theatres in their possession have not been reacquired by the former owners or acquired by some other operator. It is self-evident that there is a real lack of interest on the part of any person, firm or corporation to acquire any of these theatres as the fact that they are for sale has been widely publicised by the various means hereinabove set forth. All of these theatres represent substantial original investments on the part of these Defendants, and in view of present conditions such as high taxes, gasoline rationing, shortage of help, etc., and the further fact that any person wishing to purchase a theatre will be obliged to make a large cash outlay upon which it [fol. 358] would not appear that under present conditions substantial profit commensurate with the cost could be made, the former owners or other theatre operators are apparently unwilling to take over any of these theatres. With each month that continues each of said theatres undisposed of under the provisions of said order is deteriorating and the majority of said theatres are in a rather deplorable condition. These Defendants have no incentive nor reason to invest money in repairs and in the installation of equipment, of which they have a limited amount which cannot be replaced, in these theatres because of the fact that the condition is one of day-to-day operation if under the provisions of said order a buyer should appear, and in addition these Defendants would not be further reimbursed for the installation of equipment or repairs to said theatres. A theatre is like any other building which is constantly used and will, due to wear, tear and depreciation, in a very short time if not repaired reach a rundown and decrepit condition. When these Defendants bought the ten theatres which are presently undisposed of under the temporary order of May 19, 1942, it was the intention of these Defendants to renovate and repair said theatres, put them in first class efficient operating condition, and, to the extent that they had equipment available, to install modern and efficient equipment so that these theatres would be a paying venture and in a modern, progressive and sanitary condition which would serve the public interest of the communities in which they are located. It is respectfully submitted that it is in the public interest that these Defendants be permitted to retain these theatres, and that the provisions of Section 4 of the Temporary Order of May 19, 1942, requiring divestiture of these theatres be eliminated so that these Defendants can make available, to the extent of their ability, to the public in the localities where these theatres are located, theatres which will at least be in as good operating condition as they can be put in under present conditions and times. The provisions of this order have resulted in depriving the public in these communities where these theatres are located, at least in so far as these theatres are concerned, of the benefit of theatres which are kept in first class condition and which have in them the best available equipment. If the provisions of Section 4 of the Temporary Order of May 19, 1942, are not modified so as to permit these Defendants to retain said theatres and to place them in first class operating condition, said theatres will continue to deteriorate until they reach a hopeless state of decay and the public in these communities will not be furnished with the type of theatre entertainment which could be furnished to them if these Defendants were not constantly under the threat of having to dispose of any one of said theatres from day-to-day. It is respectfully submitted that the result of [fol. 359] Section 4 of the temporary order of May 19, 1942, when analyzed shows that it was a grave injustice to these Defendants to place them in a position where they were obliged to dispose of said theatres at fixed prices, and because of this situation were and are now unable to maintain proper service and operate the theatres as they should be.

These defendants are of the opinion and belief that the lack of real interest evidenced is due in large part to the fact that the theatres in question represent substantial investments on the part of these defendants and in view of the present conditions with respect to high taxes, etc., there are few if any persons who would be willing to purchase a theatre or theatres knowing that such purchase, involving a large cash outlay, would not be likely to return a profit commensurate with the high cost. This would certainly be true of independent exhibitors and would be even more true of persons without experience in the theatre business.

As a result of the uncertainty of their position with respect to the theatres remaining undisposed of, these defendants have been reluctant to expend monies on maintenance, repairs and replacements, particularly in view of the virtual impossibility of obtaining parts and equipment at the present t-me. These defendants are, therefore, unwilling to use any of their limited stocks of such parts and equipment for replacement purposes in theatres which they may not keep, since such equipment cannot be obtained for need use in their other at present at any price. The result is that many of these theatres have now become run down and their grosses have suffered as a result. This condition will become more pronounced if another year is permitted to lapse without making repairs and replacements.

Request That This Report Be Accepted as a Compliance With the Temporary Order

These defendants respectfully ask the Court that this report be accepted as final compliance with Section 4 of the Temporary Order and that they be not required to go any further in attempting to dispose of any of the interests covered by that order and that defendants be permitted to acquire other theatre interests in the manner hereinafter set out.

In support of this request they relie upon the facts set out above and the fact that the disposition of the remaining interests and the limitation on the right of defendants to acquire other theatres are against the public interest and [fol. 360] curtail competition which that interest demands. On this point they respectfully submit the following:

On July 20, 1938, there was filed in the District Court of the United States for the Southern District of New York, a complaint entitled, "United States of America, Petitioner, vs. Paramount Pictures, Inc., et al., Equity Number 87-273," in which Paramount Pictures, Loew's Incorporated, Irving Trust Company, Inc., Trustee and banker for Radio Keith Orpheum, Warner Brothers, Incorporated, Twentieth Century Fox Films Corporation, Columbia Pictures Corporation, United Artists Corporation, and Universal Corporation, thereinafter called the parent companies and with them groups of defendants designated as Paramount defendants, Loew's defendants, R. K. O. defendants, Twentieth Century Fox defendants, Columbia defendants, Universal defendants, and United Artist defendants. After enumerating the defendants and charging that the first five groups were engaged in producing pictures for the screen, distributing them and exhibiting them in their theaters and that the remaining three groups were engaged in producing and distributing such pictures, it set out an alleged history of the industry.

The complaint then charged that the Paramount Group operated 40 Metropolitan De-Luxe Theaters in 14 metropolitan areas, 1093 theaters in other areas, that Loew's operated 20 Metropolitan De-Luxe Theaters in 15 metropolitan areas, that R. K. O. operated 19 Metropolitan De-Luxe Theaters and 105 other theaters, that Warner Brothers operated 20 Metropolitan De-Luxe Theaters and 507 other theaters, that the Twentieth Century Fox Film Group operated 19 Metropolitan De-Luxe Theaters and 499 other theaters.

It charged that the defendants violated the provisions of the Sherman Anti-Trust Act by entering into a combination for the monopoly of exhibition in first run metropolitan and other theaters and a monopoly of production and imposed on unaffiliated exhibitors harsh, onerous, and unfair trade practices, each of which tended to restrain and did restrain interstate commerce. It alleged numerous instances of the same. It alleged and asked that the defendants be restrained from building, buying, leasing, or otherwise acquiring any additional theaters or any further interests in theaters, directly or indirectly, and each of them be required to divest themselves of all interest or interests in theaters and theater holdings and they be enjoined from acquiring directly or indirectly any other interests in the exhibition of motion pictures, and to divest themselves of all interest direct or indirect.

[fol. 361] The complaint describes an affiliated theater as one owned, controlled, or managed by a major producer or distributor or one in which a producer or distributor has a financial interest. It charges that in 1937 the affiliated theaters numbered 2397, constituted 13 per cent of the whole number of theaters and furnished 25 per cent of the total seating capacity; that the unaffiliated theaters numbered 3910, constituted 21 per cent of the total number and furnished 26 per cent of the total seating capacity; that the independent theaters numbered 12,211, constituted 61 per cent of the whole number of theaters and furnished 49 per cent of the total seating capacity. On November 14, 1940, two years and four months after the filing of the original complaint, plaintiff filed an amended and supplemental complaint in the Paramount Case, in which it appeared that notwithstanding the prayer of the complaint that the defendants be enjoined from acquiring further theaters or theater interests, the number of the First Run Metropolitan Theaters then operated by Paramount was 63 in 18 cities, while the original complaint showed 40 theaters in 14 cities an increase of over 50 per cent. That the other theaters operated by Paramount were approximately 1210, while at the time the original complaint was filed the number was 1093, an increase of 107.

Also according to the allegations in the original and amended complaints it appears that at the time of the filing of the original complaint, Loew's had 20 Metropolitan First Run Theatres, but at the time of the filing of the amended complaint it had 24; that The Twentieth Century Fox Film Corporation had 19 Metropolitan De-Luxe Theatres at the time the original complaint was filed and 30 at the time the amended complaint was filed. It had 499 other theaters at the time the original complaint was filed and 508 when the amended complaint was filed. Warner Brothers had 20 Metropolitan De-Luxe Theaters when the original complaint was filed and 35 when the amended complaint was filed. It had 507 other theaters when the original complaint was filed and 522 when the amended complaint was filed. R. K. O. had 19 Metropolitan First Run Theaters when the original complaint was filed and 29 when the amended complaint was filed.

On the date of the filing of the amended and supplemental complaint in the Paramount Case, November 20, 1940, a consent decree was entered therein to which plaintiff and the five producer defendants were consenting parties and, notwithstanding the fact that the five consenting defendants had increased their theater holdings as above stated, none of them was required to dispose of any theater or of any [fol. 362] theater interest acquired since the filing of the original complaint although that complaint asked that the acquisition of such interests be enjoined and set forth the Government's reasons for contending that the acquisition and holding of theaters and theater interests by producer distributors created a monopoly and was against public interest. The decree not only permitted the five distributor producer exhibitor defendants to retain all the theater interests which they had acquired prior to the filing of the original complaint and subsequent thereto, but in addition, specifically provided:

> *"Nothing herein shall prevent any such defendant from acquiring theaters or theater interests to protect its investment or its competitive portion, or for ordinary purposes of its business."*

The attention of the Court is called to the fact that four of the five consenting Paramount defendants compete, as exhibitors, with the defendants on whose behalf this report is made.

It is respectfully suggested that in view of the circumstances outlined above, it was an outrageous act of oppression for the Government to require these defendants, having only 150 theatre interests, to attempt to sell the 15 theater interests which they had acquired since the filing of the complaint against them, while it permitted the producer-distributor-exhibitor defendants who were also defendants in this case to retain the 63 Metropolitan First Run Theaters and 141 other theaters acquired after the filing of the complaint.

Order Here Asked Is Within the Terms of the Temporary Order

In this regard, these defendants are not asking for a rescinding of the Temporary Order entered in this case May 19, 1942, but that in view of the facts hereinbefore set out, the Court under the provision of the order that it shall *"make such further order as may be just in the premises"*, shall as a matter of equity, right, and fairness, enter an order that the defendants be not required to make any further effort to dispose of the ten theater interests (one of which was acquired prior to the filing of the original complaint) and for the purpose of placing these defendants on a plane of equality with the five Paramount defendant-producer-distributor-exhibitors, four of whom are their competitors, the Court include in its order a provision that nothing in the order heretofore entered *"shall prevent any such defendant from acquiring theaters or interests therein to protect its investment or competitive position or for ordinary purposes of its business."*

[fol. 363] As further grounds for this request, it is respectfully pointed out as above indicated that so far as it concerns the matter of disposing of theater interests acquired since the filing of the original complaint herein, the order asked is not for a recision or modification of the provisions of the temporary order but is for an order in strict accord with the terms thereof. The temporary order, as noted, provided that the Court "make such further order as may be just in the premises" and thereby, the plaintiff *as a consenting party left the question of what order should be entered upon the making of the final report to the discretion of the court*—a discretion which must necessarily be exercised in view of the facts and circumstances of the case. That this was the effect of the order could not have been unknown to plaintiff's counsel since the court in denying the plaintiff's motion for an injunction definitely gave that meaning to the words such order "as may be just in the premises." The court in its opinion, with reference to these words, *"just in the premises" properly said that this presumes the right in the court to exercise some discretion.* Obviously, it is not only the right of the court but its duty so to do.

We respectfully point out that the plaintiff could not have permitted the Paramount producer-distributor-exhibitor-defendants to retain the theater interest which they had, contrary to the prayer of this complaint, acquired since this complaint was filed *if such retention were a factor in the suppression of competition. This is emphasized by the fact that at the same time the order consented to by the plaintiff permitted those defendants to acquire other theatres without asking leave of court.*

The Situation as Disclosed by the Plaintiff on the Presentation of the Consent Decree

The fact that by the terms of the Consent Decree all the matters of which the plaintiff complained both in the Paramount Case and in this eliminated case were remedied is shown by the statement made by plaintiff's counsel in presenting the Decree to the court, which was as follows:

Mr. Hayes: If your Honor please, at this point I desire to hand to your Honor the signed proposed consent decree, the exchange of letters relating thereto between Donovan, Leisure, Newton & Lumbard and the Department of ustice, the rules of the Arbitration and Appeals referred o in the decree, and the map of the Arbitration Tribunal eferred to in the rules, and, if your Honor is agreeable, he government would desire to be heard on the proposed decree at this point.

[fol. 364] The Court: Very well, Mr. Hayes.

Mr. Hayes: Thank you, your Honor.

As your Honor knows, the trial of this action began early in June. On the Thursday night of the first week of trial, immediately after the conclusion of the opening statements, conferences were initiated looking toward a possible settlement of the suit by consent decree.

The first meeting of the various conferees for the purpose of attempting to work out a consent decree solution was held on June 12th. That is just five months and two days ago. The whole intervening period has been spent by the various parties endeavoring to arrive at the document which is now before your Honor.

Originally all eight of the defendants participated in the conferences. After about a month or a month and a half, the three non-theatre ow-ing defendants who are not parties to the decree withdrew from the conferences, which however continued until the agreement finally was reduced to writing. The proposed consent decree affects the five defendants who own theaters. The approach on the part of all—on the part of the defendants filing the consent and on the part of the government, was an endeavor to meet through the terms of the decree a solution of the alleged evils and the alleged abuses in the motion picture industry, without resorting to the very drastic remedy of divorcement. That was arrived at rather early in the sessions.

These defendants own, among themselves, about 2400 theatres or have interests in about that many. If the govvernment were successful in its suit and if the Court should order divorcement of the exhibition from the production and distribution branches of the industry, there would necessarily ensue a very long period of time during which those 2400 theatres or the interests therein would be thrown upon the market. Obviously, it was not a desirable solution from the angle of the defendants and the government was willing to attempt to arrive at a solution of th[illegible]lleged evils without seeking that drastic remedy. That is the basic principle which guided all of our discussions. The decree, as presented to your Honor, contains a provision, Section 21, that during a period of three years, while the decree in all its provisions is in operation, the government will not seek divorcement by any means of exhibition from production and distribution, nor will it seek the dissolution of the existing theatre chains from the five consenting defendants. There is a three-year truce, as it were, which was arrived at between the defendants and the government.

Now as to the terms of the decree, I might say by way of preface that the *problems of the motion picture industry are not identical to the problems of all other industries.* They are peculiar, peculiar to the industry and its nature, and during the five months of negotiations every problem relating to the distribution of pictures was examined by the conferees in all its ramifications.

[fol. 365] Human work is never perfect, and I dare say this decree is not perfect. Only the next three years or more will prove how well it will work. But I can say this much: that an honest endeavor has been made by those participating in the conferences to work out a method of business through prohibitions and a system of arbitration which should work and which should relieve a great many if not all of the complaints that are made against the existing operations of the industry.

Section 3 of the decree provides for what its called trade showing. That is on page 3, your Honor.

The evil that that section was aimed to correct is an evil called blind selling. The complaint is made that presently under the existing method of distribution of pictures exhibitors do not know what they are buying. Distributor representatives circulate among the exhibitor customers beginning some time in the spring of the year and continuing until they are all under contract endeavoring to get all exhibitors to contract with them for their whole seasons's product. Actually, at the time those contracts are made very many of the pictures covered by them are not even in production, and the exhibitor claims that as a result he is buying sight unseen. He might contract for two Mickey Rooneys, but he doesn't know what the pictures are going to be like. He buys on the reputation of the distributors, based on their past production and on the names of the stars that are expected to appear in the particular pictures.

But not only have exhibitors complained about so-called blind selling; so have public groups, public groups who are interested in moral movies for their children. And the Department has received these complaints, both from the exhibitors and from the public groups.

The complaint of the public groups specifically is that a local exhibitor under the method of selling presently followed has no opportunity to decide what picture best fits the local needs of his community because he contracts for a picture before he knows what the picture is going to be like.

Section 3 which is effective September 1, 1941,—which means the beginning of the next motion picture season—the season running from September 1st of one year to August 31st of the next year, and the current season having been largely contracted for already,—Section 3 provides that before any picture can be sold—any feature—after September 1, 1941, it must be trade-shown. That means that there must be an exhibition of that picture in every one of the exchange districts maintained by each of the defendants at which the trade is free to attend. There is no obligation whatsoever placed on exhibitors to attend those trade showings, but merely the obligation is placed on the distributor not to sell the feature until it has been trade-shown. Thus an exhibitor if he desires to see the picture may do so and decide whether or not he wants to contract for the [fol. 366] licensing of that picture. It further provides that notice of trade showings shall appear in trade papers having general circulation in the industry so that exhibitors will know when the showings of the various features will take place.

As a matter of fact, I don't believe that every exhibitor in the country is going to spend his time doing nothing but attending trade showings. Exhibitors will also be free to attend and very likely many of the local exhibitors close to the exchange center will attend. But whether they attend or not they will have the benefit of the criticisms in the trade papers. They will have the benefit that they will now get and they do now get in so far as it can assist them from first-run exhibition and the criticism in the newspapers of those exhibitions. They will know what the picture is about. They will know the character of the picture. They will know its entertainment value. And they will thus be guided in their contracts subsequently on those pictures when those pictures are offered to them subsequently for license.

Section IV (a) of the decree is a very interesting provision. It was not arrived at except after long weeks of argument. It provides that the pictures shall be sold to groups of not more than five pictures, all of which, of course, must be trade-shown. It provides further that the sale of one group of features may not be conditioned by the distributor on the sale of another feature or group of features. That section is designed to meet the complaints leveled against the practice called block booking. As I mentioned to your Honor, at the present time an attempt is made by every distributor to book up an exhibitor for a season's contract. That system has been known in the industry for years as seasonal block booking. It has been condemned and fought against both by exhibitor groups and by public groups, and their criticisms have been brought to the attention of the Department of Justice. This proposed Section IV (a) is an attempt to meet those criticisms.

Now, with what were we faced? If we looked at the ideal of competition—free and open competition—I suppose we would have to conclude that the only way to accomplish the ideal would be if every theatre in the United States were individually owned, nobody owning more than one, and if every picture produced were individually sold. But I fear that this is an ideal which does not exist and cannot exist outside of economic story books. In practice it just does not work, does not work in the least. In practice people will own more than one theatre and people will sell more than two units of their product at the same time or more than one unit.

Accordingly, the ideal being impossible, the endeavor of the government in this section was to reduce the number of the pictures that could be sold at one time to the smallest number consistent with the ability of the distributors to distribute their pictures without outrageous expense being incurred by them. It was perfectly obvious that single selling would so increase the cost that the public would suffer rather than anybody else because of the tremendous cost of distribution. It is believed that, without very sub- [fol. 367] stantial increase of cost, the distributors will be able to sell in groups of five pictures. Now it is perfectly obvious that this section goes a long way toward attacking the practice of block booking—that is, the two sections taken together. I mean, first, the trade showing, and, second, sales of not more than five pictures at a time.

Now, on the other hand I want to point this out: there is no prohibition here against selling more than five pictures at a time. A distributor could sell 30 pictures at a time to an exhibitor, if they have them ready for sale. The only obligation, the only restriction, is that the distributors may not condition the sale of one group on the sale of another group. They are perfectly free to sell as many pictures to an exhibitor as he is willing to buy at the time they are engaged in their bargaining. Perfectly free.

Secondly, these groups are not frozen groups; that is, a distributor may be offering a group of five pictures in one territory, and in a different territory, a totally different group and so on and so forth. He may change the groups and rearrange them from time to time. The reason for that is twofold: it helps both the distributors and the exhibitors. It helps the exhibitors in that when a particular group is offered to an exhibitor and he does not like one, two or three of the pictures, he can exercise by his bargaining the right to attempt to get the distributor to agree with him to change that group. They are reduced then to their bargaining positions, the two of them, as to whether or not they can agree on the contents of the group. If the blocks were frozen an exhibitor could not so bargain with the distributor.

On the other hand that provision is also in the distributor's favor. If the blocks were frozen and a distributor offered a block which he found was a financial loss to him because it just was not selling, he would not be able to rearrange the block, to sweeten it up, to borrow an expression from the industry. This way he can. He can make his blocks as attractive or as unattractive as he in his best judgment decides. There is perfect freedom there on the contents of the blocks. There is perfect freedom on the number of pictures that can be sold at one time. The restrictions are merely that no group shall have more than five pictures and that the sale of one group shall not be conditioned upon the sale of another group.

The effect of the operation of this section we believe will be this: At the present time once an exhibitor has contracted for the season's product of three, four or five companies, depending upon the number of screenings he has a year, his screen time is closed. He is not in the market for the product of other companies. His screen time is closed not merely for a week or two weeks, but for the season—the whole motion picture year. Under the method of sales of blocks of five the exhibitor is always in the market. The distributor is always trying to sell. The exhibitor, not having filled up his screen time with blocks for the whole season, has open screen time some [fol. 368] time in the future which he can devote to the products of companies other than those from whom he used to buy his whole season's blocks. There are all told ten distributors in the industry. Ten national distributors. At the present time if he buys the product of four, let us assume, he is out of the market for all practical purposes as to the product of the other six. Under the method of sales in blocks of not more than five without conditioning he can, if he wants, contract with the same four companies and only those four. That is entirely up to him. But if a particular one of those companies puts out a series of groups of pictures that he does not like he is no longer under contract obligation with the other distributors for their product on whatever terms he by bargaining can arrive at.

We feel, therefore, that this provision will definitely open screen time of the exhibitors. Opening screen time will stimulate competition among the distributors. Now those distributors who are excluded from the screens of particular theatres by those theatres blocking on a season basis, can compete constantly throughout the years for sales to those exhibitors. Further it will open the market, we believe, for independent producers who are virtually precluded under the present system from obtaining screen time because of the method of season Block Booking. Lastly, it will afford the exhibitors greater opportunity of choice which now they lack because of the operation of season Block Booking.

Accordingly, we feel that Section 3 and 4A go a long ways forward, not only towards meeting these specific complaints that have been made, but also towards stimulating genuine competition in the industry.

In connection with those sections there should be mentioned Section 12 of the decree which appears on pages 20 to 24. Sections 3 and 4A set up a new method of distribution and licensing. The five consenting defendants, if the decree becomes effective, will be the only distributors in the motion picture industry that will be found to follow that method of selling. Their competitors will be free to continue to do business on a season block booking basis, since they will not be parties to the decree. Accordingly these defendants felt, and there is merit in their contention, that they should not be forever bound to this method of selling in the event their competitors would never be bound to sell in the same fashion; that they were perfectly willing to try it for one year, one whole motion picture season, but that in the event that, by the end of that year their competitors had not been obligated, or were not obligated, to sell in the same fashion, they would be free to go back to the method of selling followed by their competitors. We believe that is a perfectly seasonable provision.

Accordingly, Section 12 provides that if by June 1st of 1942, in the action which will still be pending against the three non-theatre owning companies, the government does not get a decree against those companies providing for this or a similar method of sale and trade showing, that they will be relieved of the operation of Sections 3 and 4A; that is, the consenting defendants will be relieved. If, how- [fol. 369] ever, the government by that time does get a decree against the three non-theatre owning companies, then these consenting defendants will have an election: They can either continue under the methods set forth in this decree or be bound by whatever provisions appear in the decree against the three non-theatre-owning defendants. In either event, the escape, as it has been called, is effective as of features to be licensed after August 31, 1942. So there will be the benefit of a full year's trial.

Section XII further provides that if at any time Congress should pass legislation covering the subjects covered by Sections III and IV (a), that those sections, of course, will be superseded by the congressional edict.

It further provides that if after September 1st, 1943, more than 12½ per cent of the revenue from distribution of pictures is enjoyed by companies not bound to this method of selling, then the parties consenting shall be relieved, and then there is a further general provision that if they can show to the satisfaction of the Court that they have been damaged and adversely affected as a result of following this method of sale in competition with companies who do not follow it, then, too, they may be relieved from the operations of those sections.

Section IV(b) on page 4 of the decree prohibits what has been called "forcing" in the industry. Forcing, according to the complaints, is the practice of a distributor when he contracts with an exhibitor for the license of features to insist that the exhibitor at the same time contract for newsreels, trailers, short subjects, westerns, foreigns and so on. Section IV(a) prohibits that practice. There could be no better way of doing away with the practice than an absolute prohibition, which is precisely what is present in Section IV(b).

Now, for remedies. Whenever any exhibitor claims that he has been forced to take more than five pictures in a group or forced to take more than one group conditioning one group on another, or has been forced to take newsreels, shorts, and so on, as a condition for getting features, the decree provides for arbitration of his claim before an impartial arbitrator, and if the arbitrator finds that the exhibitor's contention is true, then he can cancel the contract in so far as it relates to the product that was forced upon the exhibitor. There we have an effective remedy for any forcing that may take place. But it goes further than that. An exhibitor might claim, not that he has been forced to take, because he has not contracted; he might claim that distributor A came to him and attempted to force,—attempted conditioning the sale of one group of pictures on the sale of another picture, but no contract might have resulted from the attempt. The attempt might have been made. The exhibitor, in such a situation, may still go to arbitration, and since there is no contract there, the power of the arbitrator there is to impose a penalty on the offending distributor in the amount not to exceed $500.

As to the method of arbitration proposed, which is set up, I think it would be better to go through the other [fol. 370] terms of the decree before saying anything on that at this time, since that is covered toward the end of the decree.

Section V of the decree on page 6 provides for licensing all exchange districts and the purpose of that section is to cut down, in part at least, the great purchasing power of chains of theatres—large chains, chains which carry over beyond the geographical limits of a single exchange district. This section provides that features must be licensed by exchange districts. It is not claimed at all that this is the panacea for the exercise of purchasing power by chains. It is merely one approach to cutting down, in part, of that power, and the remedy for selling or licensing features to more than one exchange district is arbitration, and the arbitrator in such a case may impose a penalty on the offending distributor, in an amount not to exceed $500.

Section VI of the decree is aimed to meet the complaints of those exhibitors who say that they cannot get pictures at all on any run, no matter how far back they are willing to take the run. An illustration of that type of complaint would be this: In a particular town there might be two theatres. Exhibitor A owns one and Exhibitor B owns another. Exhibitor B claims that he can never get pictures that Exhibitor A gets, even if he is willing to wait a week or a month after Exhibitor A has exhibited them. The distributors' explanation is that it would be uneconomical for them to license both theatres to exhibit a particular picture. That they would lose money. The amount they would get from the two theatres in the event everybody in town knew that the picture was going to play at both theatres is unequal to the amount they would get at the one theatre, if one theatre had the exclusive run. It is not the easiest problem in the world to solve that situation by any means. There is danger of giving Exhibitor A there a bit of a monopoly in the particular territory. On the other hand, there is no reason why a distributor should, at his own expense and at a loss to himself, if both exhibitors can exhibit the same feature. It was to meet that problem, of an attempt to give the subsequent exhibitor or other exhibitor the right to exhibit without in any way injuring financially the distributor, that Section VI was devised. It provides that distributors shall license pictures on a run designated by them and on terms designated by them provided the terms are not calculated to defeat the purpose of the section itself, to every reputable and responsible exhibitor, unless the granting of such a run would reduce the distributor's total revenue in the area. The practical operation of the section would be this: The exhibitor who claims that he is not getting the run, but feels that he should, under this section, could go to an arbitrator and ask to get a run. The distributor would come in and say it would reduce our revenue and the burden is on him to show the arbitrator that it would reduce his revenue. The arbitrator has both sides of the story. If he believes that the distributor is right, he will deny the run,—that is, if he believes it will reduce his revenue. If he believes that it will not reduce his revenue, then he will grant the run. A further safeguard is provided for. After a run has been granted and a distributor [fol. 371] finds that his revenue has, in effect, been reduced, he may resort to arbitration, then the prior award is set aside and thus the original status quo would be restored.

Section VII of the decree on page 9 deals with offensive pictures, that is, pictures which are locally offensive in the locality, in which the exhibitor's theatre is located, on moral, racial or religious grounds. It provides that, after the exhibitor has engaged or has offered to license the pictures for his theatre, and within ten days after he has received notice—written notice of the approval of his application, he may reject a picture on the ground that it is offensive locally for religious, racial or moral reasons and state his reasons in his notice to this distributor. If the distributor does nothing, the contract is cancelled as to that picture immediately, but the distributor may arbitrate the question and then it is up to the arbitrator to state whether or not the picture is locally offensive. If the arbitrators find that it is, the contract is cancelled to the extent of the picture, and if they find it is not, then the contract stands.

Section VIII on pages 10 to 12 is addressed to a practice in the industry which has been the cause of tremendous controversy, to wit, clearance. Clearance is the amount of time, that, pursuant to contract, must elapse between subsequent showings of the same picture. For example, to reduce it to very simple terms, a picture is first shown in a particular town in one theatre, which is the first-run theatre.

The Court: Mr. Hayes, so far as the Court is concerned, you need not tell me what clearance is because I have carefully studied that situation.

Mr. Hayes: That is splendid. Then I can go right on and I am very glad your Honor advised me so to do, because I may have some little difficulty in explaining it myself.

All clearance claims are arbitrable under Section VIII, with one exception to which I shall refer later. The arbitrator shall consider certain factors set forth in the section. Without attempting to review them in detail, suffice it to say, the fact is the decree charges them with considering every business factor that could possibly be said to have relevancy to the question of what clearance should be allowed. Everything is in there. The arbitrator's duty is to determine whether or not the existing clearance is unreasonable. If he finds it is unreasonable—rather let me say if he finds it is not unreasonable first, he leaves the situation undisturbed. If he finds that is unreasonable—I don't think I am very reasonable myself at the moment—if he should find it unreasonable, his duty then is to fix the maximum clearance which can be allowed in that situation. His award does not affect existing contracts. It becomes effective as to contracts made by the distributor after the expiration of existing contracts in a particular situation. One of the difficulties that is necessarily met with here, and in every other section for that matter, is the existence of long-term franchises.

[fol. 372] A long-term franchise is one which has more than a particular motion picture season to run. These franchises presently existing between these defendants and third parties who are not parties to this action obviously cannot be made subject to the terms of any consent decree entered in this action. We cannot disturb the existing contractual rights of third persons. However, these defendants have agreed in the "clearance" section that so far as franchises between themselves are concerned, that is between one of them, say Fox, as a distributor, and R-K-O or K.A.O. as exhibitors such franchises are subjected to the terms of the clearance arbitration, and clearance provided for in those franchises may be adjusted by arbitration under the method set up in Section VIII.

After an arbitrator has fixed the maximum clearance, any person affected by his award may subsequently seek a redetermination on the ground that conditions have changed, and that the clearance should be different from that fixed in his award. In short, it is a very elastic system that has been set up here to take care of clearance complaints.

And I might say in that connection that it has long been felt, both by exhibitors and by distributors, that there is no fairer way to handle and dispose of complaints concerning clearance than to have the clearance fixed by some impartial arbitrator, and that is precisely what is accomplished by Section VIII.

Section IX on page 12 has to do with what we call "print discrimination." A complaint would be of this nature: Let us assume that in a town there are 20 theatres entitled to second-run. But in the exchange there are only six prints. Obviously, the 20 cannot get the six at the same time. There has got to be necessarily some discrimination. Now in many situations the exchange manager tries to keep everybody happy by rotating the preference. We do get complaints and have received numerous complaints, to the effect that in particular situations one exhibitor always gets the preference to the damage of the other fellow, the complainant, and Section IX is named to meet that complaint.

It provides that any exhibitor making such a claim may arbitrate his claim, and if the arbitrator finds that the distributor has pursued a policy of discrimination in favor of one exhibitor as against another, in order to give the former a prior playing date, he shall order the discontinuance of such policy by the distributor.

Section X, pages 13 to 18, is another attempt made by the decree to meet the purchasing power of large clains of theatres. A situation typical of what I have in mind would be one like this: Jones for years has had a theatre in a particular town; it is the only theatre he owns. He has competing against him a chain of 50 theatres, let us say. Jones for years has been getting the product of distributor A. The chain now goes to distributor A and says, "If you want us to take any of your product in any of our 50 theatres, you have to take the product away from Jones." The distributor is faced with a rather tough business decision. He either gets the revenue from Jones alone or the rev- [fol. 373] enue from 50 theatres. That is reduced to its irreducible simplicity almost.

The section is aimed to meet complaints of that character where a chain of theatres is favored as against a small independent exhibitor in the distribution of motion pictures on the same run.

We have defined in this section, and for the purposes of this section an independent as one who owns and buys for, or has a common agreement with, not more than five theatres; and as a circuit one which consists of or buys for more than 15 theatres.

The section is limited to existing theatres. An independent who comes along after this decree is signed and builds and operates a *a* theatre will not be entitled to the benefits of this section, and the reason for that is one that ordinary business prudence dictates. If that provision were not in it is feared by all that this section would be an open invitation to real estate speculators to go ahead and buy theatres and say then to the distributors, "We have the best and the newest theatres in town. We are entitled to a run under this section." Many sections are obviously overbuilt right now. However, it does apply to replacements of existing theatres. If an independent has a theatre today and replaces because of a growing community with another theatre, he does get the benefit of this section, provided his seating capacity is not more than 25 per cent than the existing theatre.

When an independent claims that he is being denied product on a run being given to a circuit theatre unfairly, that he should get the run; that the only reason the circuit theatre is getting it is that it is a circuit theatre, whereas he is just an independent competing against it, he may bring his claim to arbitration. The factors the arbitrators are to consider are set forth in the decree and here, as in the clearance section, it is not necessary to review those factors. Again it is sufficient to say that all relevant business factors are those which the arbitrator must consider. If the arbitrator finds that there has been such favoritism shown to the circuit theatre, that the circuit theatre has been given the run because it is a circuit theatre, then he may order that from that time, from the date of his award forward, after the expiration of existing contracts, all contracts with both the competing independent theatre and the circuit theatre shall be made with them alone without consideration being given to whatever other theatres might be owned by the two owners. What, in effect, is brought about is a pro tanto divorcement of the circuit theatre from the circuit to which it belongs, and the independent theatre from whatever other theatres, two or three or four, that the independent exhibitor might own, and it leaves the two theatres as competing entities in the particular locality.

It was felt that was the fairest award which could be made. It would restore competition between the theatres on their merits where the arbitrator has found, after considering all the business factors, the only reason the distributor sold the circuit theatre was that it was a circuit theatre and not for some other good and sufficient business reason.

[fol. 374] The section further carries a penalty provision, as it were. It provides that if after an award has been made by an arbitrator, a distributor continues to sell the circuit theatre or, in other words, declines or fails in good faith to comply with the award of the arbitrator, that the exhibitor thereby affected may seek, by arbitration and award, compensatory damages resulting from the distributor's failure to abide in good faith by the award.

Section XI on page 18 is what the conferees have come to call a "standstill" provision. It is an endeavor to preserve the status quo of those five companies in so far as their theatre holdings are concerned during the three-year period during which the government will not seek divorcement or dissolution of the chains.

Here again, the ideal would be that those companies would not take on or give up anything by way of theatre holdings. That is an ideal that is utterly impractical. They just cannot live that way. So Section XI provides that during the three-year period following the entry of this decree, these defendants will report to the department monthly all changes in their theatre positions; all new leases, cancellation of old leases, every change in their theatre position and the reasons for such change.

Further, they engage, each of them individually, that they will not enter upon a general program of theatre expansion, but that they may acquire theatres or interests in theatres, to protect their existing investments or their competitive position, or for ordinary purposes of business. And jurisdiction is reserved in the court to order a divestiture of any interest acquired by a defendant in violation of the section.

Now the section may never come into play. I think we all hope it will never have to come into play; but the purpose of the section is an attempt to preserve, in so far as can be done, consistent with the freedom to which these defendants are entitled in the operation of their business, the present existing theatre situation of each of them during the three-year period.

Section XV deals with the long-term franchises that I mentioned in connection with clearance. It provides that long-term franchises entered into by these defendants after June 5, 1940, are subject to the terms of the decree. That is the effect of the provision. June 5, 1940 was the day, or June 6th—I have forgotten which—the day on which the negotiations began, and the purpose of the section is to bring under the terms of the decree all franchises entered into after the negotiations between the defendants and the government were instituted.

There is one exception and that is covered by the exchange of letters to which I referred when I handed the papers to your Honor, and which letters are now with your Honor to be filed, and that has to do with a franchise covering Fox product for K. A. O. theatres in metropolitan New York. That franchise was not actually signed until after June 6, 1940, but the consideration therefor had been passed and [fol. 375] delivered prior to, and in fact some time in January or February, of this year, long before these negotiations were instituted. A full statement of facts concerning that franchise was submitted to the government and examined and the government believes that in all fairness that franchise was one which should be deemed to be entered into prior to June 6, 1940, and accordingly gets the protection to which other franchises so entered into are entitled.

Section XVI on page 26 is an interesting section in the consent decree. It provides that no officer, employee and so on of any consenting defendant or no defendant shall be held to have disobeyed the provisions of the decree in any situation where arbitration is provided for unless such person has failed to comply with the award in arbitration. The effect of it is that there can be no contempt proceeding except for a failure to abide by an award. The reason for it is rather obvious and that is that if a particular prohibition or restriction set up in the decree is not obeyed and arbitration is provided for it, there is no need of having arbitration proceedings going on against the distributor in one tribunal while there is a contempt proceeding going on against the distributor in another tribunal. It provides for the arbitration of disputes, and only when a distributor has failed to comply with the award where an arbitration is provided for can it or its employees be held in contempt.

Section XVII exempts from the operations of the decree all dealings by a distributor defendant with its own theatre or affiliates; that is, Paramount, for example, may make any agreement it chooses with its own theatres, and Loew's may make any agreement it chooses with its own theatres, and such agreements are exempted from the operations of the decree.

And now a word on the arbitration which is provided in Section XXII, pages 30 to 35 of the decree.

The decree provides that the arbitration system set up by its terms shall be for the arbitration of all disputes for which a provision of arbitration is made in the decree itself and also for the arbitration of any disputes provided in any decree which may be entered in Chicago as an amendment to the existing consent decree against Paramount Pictures, Balaban & Katz, and others, and the arbitration of any disputes that may be provided for in any supplemental decree entered in Los Angeles in the Fox West Coast case, and it provides further that the arbitration system may be used for the arbitration of other matters not covered specifically by the decree but which are voluntarily submitted by outsiders and a distributor defendant who is a party thereto. It provides further that the American Arbitration Association shall be appointed administrator of the arbitration system.

The arbitration system is to be nationwide. An arbitration tribunal shall be established in every city where three or more of the defendants presently maintain exchanges. [fol. 376] In each of those tribunals there will be a panel of impartial arbitrators. That panel shall be made up absolutely of people who have no reason—whose experience is such and whose prior connections are such as to lead to the belief that they will be impartial. All persons now or in the past connected with any branch of the motion picture industry are excluded from membership on such tribunals. All arbitrations shall be held in the first instance before such local tribunals, but appeals may be taken to an appeal board of three members. Those three members by the terms of the decree are to be appointed by your Honor. They are to be persons of know impartiality and distinction, and we have every confidence that your Honor will do precisely what the decree says there.

The expenses of the arbitration system are to be paid by the consenting distributors. Each will pay its pro rata share based on that proportion which its revenue from licenses bears to the total revenue from licenses of the five consenting defendants. Each year's budget is to be fixed by a budget committee. The budget committee is to be made up of one appointeee of the American Arbitration Association, one appointee of the distributor defendants, and the third is to be the chairman of the Appeal Board. The budget for the first year is fixed in the decree itself at a figure not to exceed $490,000. For each subsequent year the budget is not to exceed $465,000. The difference is the estimated cost of furniture which will fall only, of course, in the first year. Except, however, that in any one year the Court may order an increase of not more than $50,000 in the amount provided by the decree. The chairman of the Appeal Board is to be paid $20,000, and each of the other members is to be paid $17,500. It is expected that the American Arbitration Association, which as your Honor undoubtedly knows has nationwide facilities for the arbitration of commercial disputes, will be able to have all the arbitration tribunals, the local tribunals, operating by February 1st of next year, and further that the Appeal Board will be appointed and ready to operate by the same date.

The task of setting up this arbitration tribunal is indeed tremendous, and until the decree is signed, of course no actual work can be done toward setting it up. If the American Arbitration Tribunal can accomplish all that it is supposed to accomplish by February 1st I think it will have accomplished virtually a Herculean task; but it is confidently expected by all those involved that it will be ready to operate by not later than February 1st of next year.

Together with the decree there has been submitted to your Honor a map or rather rules of arbitration provided for in the decree, the rules to guide both the local arbitrators and the Appeal Board, and those rules refer to a map which has similarly been submitted to your Honor. That map is to be filed with the rules and shows where each local tribunal is to be located and the territory in which it will handle disputes or controversies.

I don't believe it necessary at this point to review the rules of arbitration in detail. Suffice it to say that they [fol. 377] provide for speed but not at the sacrifice of any substantial right. They provide that in any controversy that is brought either party thereto may have notice given to any third person not joined in the arbitration who that party believes should have an interest in the outcome of the arbitration. They provide further that all parties who believe they would be interested in the outcome or affected by it may intervene in the arbitration. In short, instead of attempting to limit free and open operation of this arbitration system there is virtually an open invitation to all who might be affected by an award to come in and present their grievances or their claim to the arbitrators. These rules insure a full and fair hearing. They provide for appeals in all cases. As a general rule appeals shall be had on written briefs, but they provide also that if the parties so stipulate they may have oral argument on the appeals or the Appeal Board itself may on its own motion order oral argument.

So much for the terms of the decree and the rules.

I almost forgot to emphasize what is really very important. That is that the arbitration for exhibitors is entirely voluntary. There is no legal duty on any exhibitor to arbitrate any of his claims. If he prefers to bring a treble damage suit against the distributor he is perfectly free to do so. There is no legal right taken away from him. On the other hand, the arbitration is compulsory so far as the consenting distributors are concerned. They must arbitrate every claim brought by a complaining exhibitor under any one of the sections of the decree.

I don't believe that anybody who has participated in the five months of worry and discussion and argument considers the decree a panacea or the dawn of utopia in the movie industry. At the same time I think it fair to say that both the defendants and the government honestly believe that it is infinitely to be preferred to years of litigation with the possibility at the end of the chaos that might result from divorcement. It is the hope and the desire of all that it will bring to the industry a degree of peace and good feeling. Every human safeguard that we could think of has been thrown about the operation of the arbitration system to keep it free, efficient and impartial. Events may prove the need for a modification, and jurisdiction is retained in the Court by Section XXIII of the decree for that purpose. Events may prove the failure, and if that happens it may be that there will be no alternative but for the government to press its suit. We cannot see the future. Those of us who have worked on this decree after reviewing, as I said at the very beginning, the numerous industry problems in all their ramifications with the government representatives keeping constantly before their eyes, as was their duty, the complaints of exhibitors and the complaints of public groups, are of the opinion that the decree is a desirable forward step. We believe it will work. We believe it will produce good. We trust that our belief is not ill-founded. We recommend the decree to your Honor. Thank you.

(N. B. The italics in the foregoing has been supplied by these defendants.)

[fol. 378] Again we call attention to the fact that the Paramount producer-distributor-defendants are, as exhibitors, competitors of these defendants and for the Plaintiff to ask the Court in Chancery sitting to compel these defendants who have made strenuous efforts to dispose of the nine interests, to continue those efforts, while their powerful exhibitor competitors are permitted by the Plaintiff to continue to hold the sixty Metropolitan First Run Theatres and 141 other theatres which they have acquired since the filing of the original complaint and contrary to the prayer therein, is to ask the Chancellor to commit an act of outrageous judicial oppression.

This is strongly emphasized by the statement of plaintiff's counsel in the Paramount case quoted above.

What the Court did in entering the Temporary Order was the result of consent, although coerced, but what it may do now under the express terms of that order is a matter within its own judicial responsibility and discretion.

Further Reasons Why the Retention of the Nine Theater Interests in Question (Only Eight of Which Properly Come Within the Order) Could in No Way Be a Factor in Restraining Competition.

The gravamen of the complaint in the instant case is the allegation that the eight distributor defendants distribute collectively approximately 90 per cent of the first class feature pictures and 75 per cent of all feature pictures. That the Schine defendants are uniformly granted first choice in the first run pictures, that the distributor defendants have refused to license motion pictures on a normal competitive basis, that they permitted the Schines to exhibit their feature pictures in advance of others, and that in other respects they have given them advantage over competitors.

In the consent decree entered in the Southern New York District, the five consenting defendants are restrained from licensing or offering to license a feature motion picture until it has been trade shown and notice of such trade showing published in the district trade publication having a general circulation among exhibitors. They are restrained from licensing more than five features in a group and from requiring an exhibitor to license short subjects, newsreels, trailers or serials often referred to as shorts or to license reissued, Westerns, and Foreigns as a condition of licensing other features. The licensing of features for exhibitors in one exchange district be conditioned upon the licensing of a feature or a group of features for exhibition in theaters located in another exchange district is also prohibited. [fol. 379] They are restrained also from refusing to license pictures for exhibition in an exhibitor's theatre upon terms and conditions not calculated to defeat the purpose of Section VI if the exhibitor can satisfy reasonable minimum standards of theater operations and is reputable and responsible unless the granting of a run on any terms to such exhibitor will have the effect of reducing the distributor's total film revenue in the competitive area. In IX, it is provided, "In booking prints for exhibition by exhibitors competing on the same run in the same exchange district, a distributor defendant shall not withhold delivery of prints available in its exchange from one exhibitor in order to give a competing exhibitor a prior playing date not provided for in his license.

These restraints are relied upon by the plaintiff as grounds justifying it in permitting the Paramount exhibitor-defendants to retain the theatres held and to acquire more and they are equally applicable to the defendants here.

Like provisions were included in the Temporary Order herein, viz., no consenting defendant should enter into any franchise for exhibition for a period of more than one year, that all franchises or licenses agreements for a period or more than one year are declared to be void, and each consenting defendants is enjoined from enforcing any of the provisions of such franchises or agreements. No consenting defendant is permitted to condition the license of motion pictures to any theater or theaters owned by the consenting defendants which is in direct competition with an independent exhibition in the same city, town or village upon the licensing of motion pictures to any theater or theatres owned by the consenting defendants in a city, town or village in which all of the motion picture theaters are owned by the consenting defendants. It provides for the assessment of damages in case any independent exhibitor is injured as a result of failure to comply with this provision. The Temporary Order and the decree therefore taken together effectively restrain them from doing any of the specific acts relied upon by the plaintiff as acts resulting in an unreasonable restraint of trade or a conspiracy to violate the provisions of the Anti-Trust law. There is therefore nothing in the situation as disclosed by the complaint, the Temporary Order and the Consent Decree which gives any basis for a claim that the retention of the ten theater interests in question and the acquisition of other theater interests by these defendants will result in any way in the restraint of trade or would be inimicable to the interests of the public.

[fol. 380] Also in view of the restraints that have been specifically imposed by the Court orders in these two districts, it is apparent as a matter of common sense *that the acquisition of additional theatres by these defendants and the retention of those that they have, implement rather than restrain competition and is in the public interest.*

Enough has been disclosed to show to the Court that the reason why the former owners of the interests in question were willing to sell and why they are unwilling to reacquire the theatres is because they could not operate them profitably and necessarily the proper operation of those theaters is to the advantage of the public. It should also be apparent on the face of the record that the public greatly profits by the acquisition of inadequately equipped theatres and their proper equipment and rehabilitation by those who are able through experience and the possession of the necessary means so to do and this has been a factor in giving to small communities amusement facilities comparable to those enjoyed by those which are larger.

The Court May Not Properly Proceed With This Matter On Account of the Absence of Indispensable Parties, and the Complaint Therefore Should Be Dismissed Forthwith.

In the original complaint, herein the five producer-distributors-exhibitors and the three producer-distributors who together produce the great bulk of the feature pictures were joined as parties together with these defendants. There were thus brought into the suit all of the parties necessary to a disposition of the entire controversy. As stated above, five distributors were and are exhibitors and thus in competition with these defendants in numerous places through the theaters which they operate. The question of whether the Court might in equity and good conscience restrain these defendants from acquiring additional theatre interests while permitting the five producer-distributor-exhibitors so to do immediately arises in view of the facts hereinbefore set out. There necessarily arises also the question of whether these defendants may be compelled to dispose of interests in the ten remaining theatres acquired since the filing of the suit against them while a consent decree in another court permits the five producer-distributor-exhibitors to retain 201 theatres acquired since the filing of the complaint against them which asked that they be restrained from acquiring any such interests. It therefore appears that complete equity cannot be done between the parties to the original complaint filed herein without the presence of all. Necessarily it would be unjust to these defendants to place them in an inequitable and discriminatory situation with respect to the defendant exhibitors in [fol. 381] the matter of acquiring and retaining possession of other theatre interests. The presence of all was therefore indispensable to complete relief and the attainment of equity among all the parties concerned.

Notwithstanding this fact, the plaintiff, after the entry of the consent decree in the *Paramount* case in the Southern District, filed the amended complaint in this case May 19, 1941, wherein it eliminated the five producer-distributor-exhibitors from the case but continued to charge them with conspiracy with the three remaining distributors and the Schine defendants. Moreover, at a hearing before his Honor, Judge John Knight, May 12 and 26, 1941, in this case, counsel for the plaintiff advised the court that *the elimination of these defendants was made in compliance with commitments entered into by the plaintiff in the Paramount case in the Southern District.* (See p. 99.) The plaintiff has therefore by its own action, created a situation where the matters alleged in the original and amended complaints cannot be adjudicated and full relief afforded for the want of indispensable parties. For this reason it is incumbent upon the Court in accordance with the principles of equity procedure and the Rules of Civil Procedure governing the District Courts to suspend all further proceedings in this matter and forthwith dismiss the case on account of the absence of parties necessary to a full and proper disposition of the matters in controversy.

Attention is called to Rule 19 which is as follows:

> Necessary Joinder of Parties
>
> (a) Necessary Joinder. Subject to the provisions of Rule 23 and of subdivision (b) of this rule, persons having a joint interest shall be made parties and be joined on the same side as plaintiffs or defendants. When a person — should join as a plaintiff refuses to do so, he may be made a defendant or, in proper cases an involuntary plaintiff.
>
> (b) Effect of Failure to Join. When persons who are not indispensable *but who ought to be parties if complete relief is to be accorded* between those already parties, have not been made parties and are subject to the jurisdiction of the court as to both service of process and venue and can be made parties without depriving the court of jurisdiction of the parties before it, the Court shall order them summoned to appear in the action. The court in its discretion may proceed in the action without making such persons parties, *if its jurisdiction over them as to either service of process or venue can be acquired only by their consent or voluntary appearance* or if; though they are subject to its jurisdiction, their joinder would deprive [fol. 382] the court of jurisdiction of the parties before; but the judgment rendered therein does not affect the rights or liabilities of absent persons.
>
> (c) Same: Names of Omitted Persons and Reasons for Non-Joinder To Be Pleaded. In any pleading in which relief is asked, the pleader shall set forth the names, if known to him, of persons who ought to be parties if complete relief is to be accorded between those already parties, but who are not joined, and shall state why they are omitted.

It is noted that this is not a case where essential parties are absent because of the impossibility of obtaining jurisdiction over them and where the Court may on that account proceed to the adjudication of such matters—may be properly adjudicable among the remaining parties, *for such permissive action is confined to the case where its jurisdiction* *over them is made impossible on account of inability to serve process or where jurisdiction can only be obtained by voluntary appearance.* As stated, the lack of authority under the rules of equity to proceed further in this case on account of the want of essential parties is due to the voluntary action of the Plaintiff in accordance with its commitment made to the producer-exhibitor defendants and for the very purpose of releasing them from the jurisdiction of this court. Obviously this suit should be dismissed forthwith.

Respectfully submitted, Goodwin, Rosenbaum and Meacham, 1139 Shoreham Building, Washington, D. C., and Edmund M. McCarthy, 70 Pine Street, New York, N. Y., Counsel for the above named Defendants.

[fol. 383] IN UNITED STATES DISTRICT COURT

[Title omitted]

AMENDMENT TO FINAL REPORT OF SCHINE CHAIN THEATRES, INC., ET AL, FILED JULY 3, 1943

At Page 11, strike out the next-to-the last sentence and substitute the following:

> "The Temporary Order provides, among other things, 'As to any theatre or interest therein not reacquired by the former owner or operator under the above provisions, the consenting defendants shall generally offer the same to independent exhibitors for the same purchase price and upon fair and reasonable terms and conditions, including the payment by the purchaser of a reasonable commission when the services of a broker are necessary to consummate the sale.' These defendants state that whenever and wherever brokers asked about commissions, they clearly stated that the Court Order provided for commissions to be paid by the purchaser. After learning that no commissions were to be paid by the seller, they displayed no further interest."

Respectfully submitted, Goodwin, Rosenbaum & Meacham, 1139 Shoreham Bldg., Washington, D. C., and Edmund M. McCarthy, 70 Pine St., New York, N. Y., Counsel for the above-named defendants.

[fol. 384] In the District Court of the United States

[Title omitted]

Motion to Dismiss—Filed February 24, 1944

Now come Schine Chain Theatres, Inc., defendant, and its associated defendants, by their counsel, and move the Court to dismiss the above entitled cause forthwith and for ground of said motion they rely upon all the matters and things set forth in their Final Report, filed July 3, 1943, (a copy of which accompanies this motion for convenient reference), and other documents and evidence to be presented on the hearing of this motion.

Goodwin, Rosenbaum and Meacham, 1139 Shoreham Building, Washington 5, D. C., and Edmund M. McCarthy, 70 Pine Street, New York 5, New York, Counsel for said Defendants.

[fol. 385] In the District Court of the United States

[Title omitted]

Motion—Filed February 24, 1944

Now come Schine Chain Theatres, Inc., defendant, and its associated defendants, by their counsel, and, agreeable to the terms of the Temporary Order entered herein May 19, 1942, in which it is provided that if at the end of one year from the date of the entry of the order the consenting defendants have been unable with due diligence to dispose of all the theatres and theatre interests described therein, they shall file with the Court a complete report and the Court shall thereupon make such further order as may be just in the premises,

They move the Court to order that the defendants be not required to proceed further under the order in attempting to dispose of any of the theatres or theatre interests listed therein and that the provisions of the Temporary Order entitled, "5. Acquiring Theatres" be made to harmonize with the provisions of the Consent Decree in United States of America v. Paramount Pictures, Inc., et al., Equity No. 87,273, in the United States District Court for the

Southern District of New York by restating it to read as follows:

> "None of these defendants shall, during the pendency of this proceeding or until the further order of the Court, enter upon a general program of expanding its theatre holdings but nothing in this order shall prevent any such defendant from acquiring theatres or interests therein to protect its investment or its competitive position or for ordinary purposes of its business. Proceedings based on a violation of this provision shall be only by application to the Court for injunctive relief against the defendant complained against, which shall be limited to restraining the acquisition or ordering the divestiture of the theatres or interests therein, if any, about to be acquired or acquired in violation hereof."

In support of this motion these defendants rely upon their Final Report, filed herein July 3, 1943, a copy of which accompanies this motion for convenient reference, and the matters and things therein set forth and all other pertinent facts and circumstances.

Goodwin, Rosenbaum and Meacham, 1139 Shoreham Building, Washington 5, D. C., and Edmund M. McCarthy, 70 Pine Street, New York 5, New York, Counsel for said Defendants.

[fol. 386] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

PETITION FOR APPOINTMENT OF TRUSTEE

The United States of America, plaintiff herein, in accordance with section 4 of the temporary order entered herein on May 19, 1942, pursuant to a stipulation of the parties,[1] hereby petitions the Court for the entry of an order appointing a trustee to take possession of and sell the theatre interests described as items (2), (3), (4), (6),

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[1] A copy of said stipulation and order is attached hereto and expressly made a part hereof as Exhibit A.

(7), (10), (11), (13) and (14) in said section of said order upon the following grounds:

1. The said section 4 of said order required the consenting defendants to dispose of all their interests in the theatres acquired by them since August 7, 1939, which are more particularly described as items (1) to (14), inclusive, in said section, within one year from May 19, 1942.

2. The consenting defendants have filed their final report pursuant to said section which discloses that they have been unable to dispose of the aforesaid theatre interests described as items (2), (3), (4), (6), (7), (10), (11), (13) and (14) in said section.

3. The consenting defendants by said report have asserted that they do not propose to make any further effort to dispose of said theatre interests.

[fol. 387] 4. The consenting defendants by said report have asserted that said undisposed of theatres are deteriorating and that the majority of them are "in a rather deplorable condition," because the defendants have not kept and do not propose to keep said theatres in repair.

Wherefore, plaintiff respectfully prays that a trustee may be appointed to take immediate possession of and operate the following theatres now operated by the consenting defendants:

Item (2)[1] The Strand Theatre, Cumberland, Maryland.
Item (3) The Plaza Theatre, Malone, New York.
Item (4) The Memorial Theatre, Mt. Vernon, Ohio.
Item (6) The Opera House, Lexington, Kentucky.
Item (7) The Ada Meade Theatre, Lexington, Kentucky.
Item (10) The Viv Theatre, Corbin, Kentucky.
Item (11) The State Theatre and the Appalachia Theatre, Appalachia, Virginia.
Item (14) The Liberty Theatre, Pikeville, Kentucky.

and to take possession of item (13), the 50 percent interest in the leasehold of the Margie Grand Theatre, Harlan, Kentucky, now owned by the consenting defendants, to the end that said theatres may be restored to the same condition as they were in when the said order was entered and that the consenting defendants' respective interests therein may be disposed of to independent exhibitors pursuant to the terms of section 4 of said order.

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[1] Number in parenthesis is number identifying theatre interest in section 4 of the order.

Respectfully submitted, United States of America, Plaintiff Herein, by Robert L. Wright, Special Assistant to the Attorney General.

[fol. 388] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

ANSWER TO PETITION FOR APPOINTMENT OF TRUSTEE—Filed April 10, 1944

Schine Chain Theatres, Inc., and its associated defendants in answer to the petition of the plaintiff herein heretofore filed submit the following:

(1) In reply to the first paragraph of the petition they say that Section 4 of the Temporary Order entered herein May 19, 1942 provided that the defendants should dispose of their interests in theatres acquired since August 7, 1939, more particularly described therein, within one year from May 19, 1942.

That if at the end of one year they were unable with due diligence to dispose of all of said theatre interests, they should file a complete report stating the theatre interests disposed of, the theatre interests they had been unable to dispose of and the efforts that had been made to dispose of them. That such report should be filed on notice to the plaintiff, and "the Court shall thereupon grant such extension of time or make such further order as may be just in the premises."

[fol. 389] (2) Defendants duly filed their Final Report in accordance with Section 4 of the order July 3, 1943, and therein showed to the Court that they had disposed of six of the theatres listed and had made all proper efforts to dispose of the remaining ten theatres in accordance with the terms of the order and without success.

(3) These defendants deny that by said report they had asserted that they did not purpose to make any further efforts to dispose of said theatre interests.

The defendants say that the fect is that in their Final Report they set forth in detail the efforts which they had made to comply with the report and pointed out that in view of the fact that Paramount and the other four producer-distributor-exhibitors who were originally made party defendants in this cause, were permitted by the terms of a consent decree to retain all the interests in all the theatres which they had acquired since the filling of the decree against them amounting in all to 63 metropolitan first run theatres and 141 other theatres and they had been further, by the terms of the decree, permitted to acquire additional theatres and that the decree specifically provided that nothing therein should prevent any such defendant from acquiring theatres or theatre interests to protect its investment or its competitive position or for ordinary purposes of its business and that said defendants were not required by the terms of the decree to apply to the Court for permission to acquire such theatres and it was specifically provided that the only consequence of acquiring theatres or theatre interests outside of the specific provision stated was to be a review of the matter on the application of the plaintiff and an order to dispossess itself [fol. 390] of the theatre interests acquired if it were found by the Court that it had been acquired in a manner outside the specific provisions of the consent decree.

In view of this situation and in the inequity in the manner of treating these defendants and the major defendants in the Paramount case and of the efforts that had been made by the defendants to dispose of the theatre interests in question and that fact that they had actually disposed of six of the theatres by reconveying them to former owners, these defendants asked that the Court enter an order that the defendants be not required to make any further effort to dispose of the ten theatre interests and that for the purpose of putting these defendants on a plain of equality with the five producer-distributor-exhibitor defendants in the Paramount case, four of whom are their competitors, that the Court enter its order that nothing in the order "shall prevent any such defendant from acquiring theatre interests or interests therein to protect its investment or competitive position or for ordinary purposes of its business."

In said Final Report these defendants asked that the amended complaint herein filed should be dismissed forthwith for want of necessary parties. That on or about July 20, 1943, the Honorable Tom Clark, Assistant Attorney General, called up counsel for these defendants stating that it was not the intention of the Government to take any discriminatory or oppressive action against them and suggested that the defendants' counsel make a motion that the hearing on the Schine report be postponed for six months in order to give the Government time and opportunity to determine what it was going to do with respect to the defendants in the Paramount case.

That on August 4, 1943, a letter was received by defendant's counsel over the signature of the Honorable Tom C. Clark, but in his absence in which was enclosed a copy of the petition for the appointment of a trustee which they purposed to file in the above case. That this petition was [fol. 391] identical with the present petition finally filed in this Court February 24, 1944. That upon the receipt of this letter, defendants' counsel prepared the motions later filed February 24, 1944 and which are before the Court at the present time. That when notice was served on said Assistant Attorney General that it was the defendants' intention to file said motions, he declined to accept service and asked that the defendants' counsel call him up.

Said Assistant Attorney General stated that he had not decided to file a petition and asked defendants' counsel to withhold the filing of the motions aforesaid. That on August 19, said Assistant Attorney General took up with defendants' counsel the matter of a letter which defendants were sending in response to inquiries in regard to the theatres in question in which these defendants said in substance: "We applied to the United States District Court at Buffalo for permission to retain the theatres unsold and until the Court acts on this, the matter of the unsold theatres is in abeyance." The Assistant Attorney General suggested as a substitution for this where anyone expressed a desire to purchase any of the ten theatres covered by the Temporary Order, it would be desirable for defendants to say very courteously that they would be glad to have them look at the theatre and that he would find the terms on which the theatres were offered for sale in the Court's Temporary Order, but the whole question of whether any of these theatres should be sold was before the Court on defendants' Report. That until the Court acted, the whole matter of the disposition of the theatres was in abeyance.

These defendants further say that they have scrupulously followed the suggestions of said Assistant Attorney General and that the matter of what disposition should be made of the remaining ten theatres was postponed until such time as it might be acted upon by the Court.

[fol. 392] The Assistant Attorney General has on several occasions advised the representatives of these defendants that he desired that there should be no discrimination in the manner in which they were treated, and that he desired further to work out a solution of the whole moving picture industry and that the matter of deciding the motion intended to be presented and which is now presented to the Court should be postponed until he had an opportunity to do so. No further action was taken by the Department of Justice until the service of the notice and the filing of this petition February 24, 1944.

(4) With respect to Section 4 of the petition in which it is said that defendants have asserted in their report that such undisposed of theatres are deteriorating and that the majority of them are in a rather deplorable condition, they deny that any such deterioration has occurred because of a failure on the part of the defendants to keep them in a proper condition. These defendants say that, on the contrary, they have at all times done what was possible to keep said theatres in good condition and repair except for replacements and improvements necessitating capital expenses *for replacements and improvements necessitating capital expenses* and that the situation with reference to this is as follows:

After these defendants acquired the ten theatres listed in the petition, they expended upwards of $135,000 for the purpose of putting them in satisfactory and proper condition. It is, however, the fact that in the case of all moving picture theatres like these in question which are in operation continuously during the day and evening during seven days of the week, there is constant movement of people which results in unusual wear, both on the carpeting and the seats. That to meet this situation, defendants, sometimes from week to week, sometimes from month to month, and sometimes at longer periods, replace the seats that [fol. 393] have been worn by this unusual use and patch and repair so far as possible the carpeting and also do such other repairs as the usual use of the theatres requires.

The defendants further say that there is also necessary and unavoidable deterioration in the screens on which the pictures are shown and the projection equipment, and that with reference to all these items the restrictions of the War Production Board prevent the obtaining the material for any extensive replacements and that is the case with the owners of these theatres, and would be the case with any trustee appointed by the Court. There are several of these theatres which are in some need of partial or complete redecorating. The defendants plan to do this redecorating as rapidly as the necessary priorities can be obtained and they are naturally in a position to do this work more effectively and economically than it could be done by a trustee. That the statement in their Final Report that a majority of the theatres were in a rather deplorable condition was made not by way of compairson with the standards maintained by theatres generally but those which these defendants attempt to maintain, even under present restrictions with respect to the acquiring of materials necessary for replacements and improvements.

(5) Further answering, these defendants say that on account of the nature of their organization and experience in the matter of operating theatres and, in particular, in connection with the operation of the theatres in question, they are in a far better position to operate these theatres without loss and to maintain them in a proper condition that would be the case with any trustee or trustees appointed by the Court. That such appointment would not only not serve any [fol. 394] useful purpose but would cause ruinous expense and a further deterioration in the theatres in question. These defendants further submit that the only power of a court in equity to appoint a trustee is for the purpose of preserving the property for the benefit of those who have a property interest therein and that in the instant case the only persons who have such a property interest are these defendants themselves.

That so far as the petition seeks the appointment of a trustee for the purpose of carrying out the orders of the Court, they respectfully show that, as above stated, they have not taken any recalcitrant position and that their withholding further efforts to dispose of the theatres and theatre interests in question as aforesaid was in strict accord with their understanding with the Department of Justice.

That the matter of a further order upon the Final Report is now brought to the Court for the first time and these defendants stand ready and willing to carry out such orders as the Court may, after due consideration, enter herein.

Wherefor, defendant respectfully pray that the petition of the plaintiff for the appointment of a trustee be in all respects denied.

Respectfully, (S.) Goodwin, Rosenbaum & Meacham, 1139 Shoreham Building, Washington 5, D. C., (S.) Edmund M. McCarthy, 70 Pine Street, New York 5, New York, Counsel for these defendants.

[fols. 395-397] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

CERTIFICATE OF CLERK

I, May C. Sickmon, Clerk of the United States District Court for the Western District of New York, do Hereby Certify that there is no record in the files of this Court of a Motion by the Defendants for leave to acquire the Liberty Theatre at Cumberland, Maryland, referred to as Item 7 in Plaintiff's counter praecipe herein.

In Witness Whereof I have hereunto set my hand and the seal of this Court this 2nd day of July, 1946.

May C. Sickmon.

Subscribed and sworn to before me this 2nd day of July, 1946. Margaret E. Baysor, Notary Public—Niagara County. Certificate filed in Erie Co., N. Y.

[fol. 398] IN UNITED STATES DISTRICT COURT

[Title omitted]

TRANSCRIPT OF HEARING

Proceedings before Honorable John Knight, United States District Judge for the Western District of New York, March 20, 1944, at 12 o'clock noon.

Appearances: Honorable George L. Grobe, United States Attorney for the Western District of New York, by Robert L. Wright, Esq., Special Assistant to the Attorney General.

Messrs. Goodwin, Rosenbaum & Meacham, Shoreham Building, Washington, D. C., by Clarence N. Goodwin, Esq., Attorneys for the Defendant.

[fol. 399] PROCEEDINGS

THOMAS H. BURKE, a witness called by and on behalf of the Defendants, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Goodwin:

Q. Where do you live?

A. Cumberland, Maryland.

Q. What is your address there?

A. My residence, 122 Green Street.

Q. I believe that you are the owner of the Liberty Theatre?

A. Yes, sir.

Q. When did you acquire that theater?

A. 1918, I think, or 1919.

Q. Was that your first venture in the theater business?

A. No, sir.

Q. When did you first become interested in moving pictures?

A. 1914.

Q. You have been continuously engaged as an exhibitor since that time?

A. Yes, sir.

Q. I believe that there was a mortgage or is a mortgage on [fol. 400] the property?

A. Yes, sir.

Q. When was that mortgage made?

A. 1936, I think it was.

Q. 1936?

A. That is one of them. There was one prior to that. I don't know just the date.

Q. Was that before or after the defendants in this case acquired the Strand Theater?

A. That was before.

Q. Before they acquired the Strand Theater?

A. Yes, sir.

Q. How much is that mortgage?

A. The mortgage now—one of them is $50,000.

Q. Yes.

A. And then there is a second mortgage. It was $48,000; it is now $32,000, something, I think.

Q. Are both of those mortgages referred to in this document, in the proposed bill of sale?

A. Oh, yes, there is a confessed judgment note of $12,150, I think, with some interest.

The Court: Is that on top of the mortgages, you mean?

The Witness: Yes, sir.

Q. Was there any pressure brought to bear on you for the payment of the bonds which represent the first mortgage?

[fol. 401] A. Not the first mortgage, no, sir.

Q. That is on the second mortgage?

A. That is on the second mortgage, on the confessed judgment note.

Q. Who owns that mortgage?

A. Confessed judgment note and the second mortgage, Second National Bank of Cumberland.

The Court: They own both of them?

The Witness: Both of them, that is, the confessed judgment note and the second mortgage.

Q. By the way, how old are you?

A. 76.

Q. When did the bank bring pressure to bear on you for the payment of that note secured by the second mortgage?

A. It was January, I think. I can't just recall the exact date.

Q. January what year?

A. 1943, I think. I am not sure. Yes, 1943.

Q. January, 1943. Did they continue to bring pressure or what?

A. Yes, sir, they did and I paid some money each month, and the interest each month, and up until September, 1943, and in September, 1943, they refused to renew my note and said they had to have the money.

Q. That was September, 1943?

[fol. 402] A. Yes, sir.

Q. Were you able to pay the money?

A. No, sir.

Q. What did you do then?

A. Well, I tried to dispose of my place. I gave it to real estate agents to dispose of it.

Q. Who are your real estate agents?

A. Mellison & Blaul.

Q. What efforts did they make to dispose of this theatre?

A. Well, I don't know the entire efforts which they made, but I do know they contacted the Schine people.

Q. Did they contact any one else?

A. That I don't know. I presume they did.

Mr. Wright: I don't see how Mr. Burke can testify to what the agents did, if the Court please.

Mr. Goodwin: Is there an objection?

Mr. Wright: I should suppose if you wanted to go into what the agents did, you would have a representative of the agents.

Mr. Goodwin: I suppose that is true. I suppose the agents would be the best evidence, but I would think any one employing them would know something about what the agent had done in the matter.

Mr. Wright: I haven't any objection to his testifying to what he knows. I understood the question as asking for [fol. 403] something that the agent had done.

The Court: That is true. It is objectionable. Did they advertise? Did you know about their advertising it?

The Witness: They did advertise it, sir.

Q. In a manner of speaking, did you bring any pressure to bear on your agents? Did you follow it up with your agents?

A. Why, yes, sir. The bank was pushing me, and I was pushing the agents.

Q. Do you know whether or not your agents contacted any of the Schine defendants through Mr. May?

A. I do know they did contact him, yes.

Q. When?

A. That I could not state just positively. It is, I think, along about September or October, 1943.

Q. Do you know what was the result of that contact?

A. The result of it is, so far, that they contracted a sale subject to the ruling of the Court.

Q. I mean at that time? Was there any answer made at that time in September or October?

A. No, they did not, with the Schine or anybody, no, sir. Not at that time; it was later on.

Q. I don't know whether you know this or not. Will you say whether in January or February of this year an ap- [fol. 404] proach was made on your behalf to the Schines to purchase this theater?

A. Well, I do know that they told me that they had contacted Schines, that they would not have anything to do with it on account of the consent decree, that they were working under, that they could not buy it. So, I finally then went to Washington by appointment to meet Mr. Clark.

Q. What date was it you went to Washington by appointment to meet Mr. Clark?

A. I could not give you that date exactly, sir.

Q. Was it February or January?

A. It must have been January. Mr. Clark was ill, anyhow, and I was talking to Mr. Wright.

Q. Did you state the situation to Mr. Wright?

A. Yes, sir.

Q. Did you tell him that you had contacted the Schines, and they refused to have anything to do with it unless the sale of them was approved?

A. Yes, sir, I told Mr. Wright that the Schines would not consider it or would not buy it unless I could get permission from the Department of Justice.

Q. Permission from the Department of Justice?

A. Yes, sir.

Q. What did Mr. Wright tell you at that time?

A. Mr. Wright told me that if the Court would permit [fol. 405] it, that they would not interfere.

Q. Now, did you take that word to the Schines?

A. I took it to my agents, and they took it to the Schines.

Q. Then, there were negotiations?

A. Yes, sir.

Q. I understand that on the 26th of February—was it the 26th of February you had a conversation, telephone conversation with Mr. Clark?

A. I think it was the 26th, yes, sir.

Q. What did Mr. Clark say? What did you tell Mr. Clark?

A. Well, I told Mr. Clark the same thing that I told Mr. Wright, that if I could sell to the Schines, I could get more money out of the Schines than anybody else. They had offered me more money, and if I could get permission from the Department of Justice that they would not interfere, I would enter into negotiations.

Q. What did Mr. Clark say at that time?

A. Well, he told me the same thing, that if the Court permitted it, they would not interfere.

Q. Did you give that information to Mr. May or to the Schines?

A. To Mr. May. First I gave it to my agents, and then Mr. May.

Q. With reference to that telephone conversation, which you think was February 26th—apparently the 25th—did you have any letter confirming that from Mr. Clark?

[fol. 406] A. Yes, sir.

Mr. Goodwin: Have you the letter, your Honor?

The Court: It is right here.

Q. Is this the letter (handing document to witness)?

A. Yes.

Mr. Goodwin: I would like to have it marked for identification.

(Thereupon letter from Mr. Clark to Mr. Burke, dated March 2nd, 1944, referred to, was marked as Defendants' Exhibit A for identification.)

Mr. Goodwin: May I read this into the record, your Honor? We won't take too much time.

The Court: Any objection?

Mr. Wright: No.

Mr. Goodwin: (Reading.) "Tom C. Clark," and the seal of the Department of Justice, "Assistant Attorney General, Washington, March 2nd, 1944.

"Dear Mr. Burke: Reference is had to our telephone conversation of February 25th and your letter of February 26th regarding the purchase of your theatre by the Schine Circuit.

"I shall, of course, be delighted to talk with the attorney for the Schine people, and as explained to you, we will have [fol. 407] no objection to the purchase of this theatre provided it is submitted to and approved by the court."

By Mr. Goodwin:

Q. I hand you what purports to be a copy of a letter addressed to Mr. Thomas Clark, Assistant Attorney General, February 26th, 1944. Is that the letter referred to?

A. Yes, sir.

Q. Is that a true copy of the letter?

A. Yes, sir.

Mr. Goodwin: Which I assume is in the files of the Department. May I read this in evidence, your Honor?

Mr. Wright: Do you mind if I see it?

Mr. Goodwin: If you have the original we might introduce that, but if you have no objection to the copy——

By Mr. Goodwin:

Q. It is understood, I take it, that this letter was written and received prior to the letter you just introduced?

Mr. Wright: No.

The Court: Yes.

A. Yes, sir.

Mr. Goodwin: The letter I just introduced was the letter of March 2nd.

The Court, Oh, March 2nd. You said February 26th.

[fol. 408] Mr. Goodwin: This letter is the letter written February 26th, and this is an answer. This refers to the telephone conversation of February 25th. It will speak for itself, if I may read it.

The Court: It is the letter referred to in Exhibit A.

Mr. Goodwin: No, the letter referred to in Exhibit A——

The Court: It says so.

Mr. Goodwin: Yes, this is the letter. I beg your pardon. Your Honor is correct. It is the letter referred to in Exhibit A.

> "Liberty Theater, Owned and Operated by Thomas H. Burke. February 26, 1944.
>
> "Mr. Thomas Clark, Assistant Attorney General, Department of Justice, Washington, D. C. Dear Mr. Clark: Referring to our telephone conversation yesterday at about 4:45 P. M. when you told me that the Department would allow the Schine Circuit to buy my theater, without any objection from you. I have instructed my agents to get in touch with the Schine people and to tell them to send their attorney to your office and you would personally assure them that it would be all right for them to buy my theatre.
>
> "If this sale goes through, it will be a big relief to [fol. 409] me as I will be able to pay all debts and have enough left over to live comfortably.
>
> "Please allow me to thank you for your interest in this matter.
>
> Very truly yours, Thos. H. Burke."

By Mr. Goodwin:

Q. Did you get in touch with the Schine Theatre and enter into a contract for the sale subject to the approval of the Court?

A. Yes, sir.

Q. It was presented to the Court this morning, and it appears to be the first of March. I understand you verify that as the correct date?

A. Yes, sir.

Q. That is the day before Mr. Clark's letter, but subsequent to your conversation with Mr. Clark?

A. Yes, sir.

Q. Did the Department at any time in any way suggest any objection to the acquisition of this theater by the Schines?

A. No, sir.

Q. Now, there is one disagreeable matter I wish to refer to. In addressing the Court this morning, counsel for the [fol. 410] Government suggested that he would like to have this matter disposed of before the defendants had an opportunity to buy off any other theatre or any other government witness, and he said that you are a government witness who had been subpoenaed when the case was about to be tried before. You were subpoenaed?

A. Yes, sir.

Q. And were here for that trial?

A. No, sir, I was not here.

Q. Did the defendants in any way intimate that their purchase of the theater had anything to do with the question of whether you were a witness or not?

A. No, sir, never talked with them one way or the other as to the——

Q. No reference was made to the fact that you had been subpoenaed as a witness?

A. No, sir.

Mr. Goodwin: You take the witness.

The Court: What is the purchase price in the contract? Are you offering the contract?

Mr. Goodwin: I will now. I offer it in evidence. I offer in evidence the letter that I read into the record. That is Exhibit B.

The Court: Exhibit B.

[fol. 411] (Thereupon letter from Mr. Burke to Mr. Clark, dated February 26, 1944, referred to, was received in evidence and marked as Defendants' Exhibit B.)

By Mr. Goodwin:

Q. Is this the document for the sale of the theater which you signed?

A. This is my testimony. That is my affidavit.

Q. Oh, I beg your pardon. Excuse me. (Handing document to witness.)

A. Yes, sir.

Q. This agreement was not made until after you had received the assurance you have testified to from Mr. Wright and Mr. Clark? It was not made until after you received those assurances?

A. That is right.

Mr. Goodwin: I offer that in evidence.

(Thereupon proposed agreement, referred to, was received in evidence and marked as Defendants' Exhibit C.)

Cross-examination.

By Mr. Wright:

Q. You just referred to an affidavit that counsel has there. Could you tell me what that was or what the purpose of it [fol. 412] was?

The Court: Testimony, he said.

Mr. Goodwin: This affidavit, your Honor, may——

The Court: He is asking the witness now.

Mr. Goodwin: Do you wish this to go in evidence?

Mr. Wright: We would like to know what it is.

By Mr. Wright:

Q. When was the affidavit given?

A. I don't know the dates.

Mr. Goodwin: Do you want to read it in evidence?

Mr. Wright: I would like to know what it is, that is all.

The Court: Let counsel see it, then.

Mr. Goodwin: It speaks for itself. May I ask one more question which, probably, I omitted, your Honor.

By Mr. Goodwin:

Q. Did the Schine defendants or their agents in any way bring pressure to bear upon you to sell this theater to them? Did they use any threats or any coercive methods to persuade you to sell it?

A. No, sir.

The Court: Cross-examine.

Cross-examination (Continued).

By Mr. Wright:

Q. What is the amount of your investment in the theater?

[fol. 413] A. Well, sir, that theater, purchase price and improvements, about $340,000.

Q. $340,00?

A. Yes, sir, that is counting loss by flood.

The Court: Loss by flood?

The Witness: Yes, sir.

The Court: Some damage done after you bought it, you mean?

The Witness: Yes, sir.

Q. How much was the damage?

A. Damage possibly was fourteen or sixteen thousand dollars. The original purchase price was $175,000.

Q. $175,000 was what you paid for it?

A. Yes, sir.

Q. Do you recall when it was that Schine first came into Cumberland?

A. It was about 1940, somewheres in there.

Q. When they bought the Strand Theater?

A. Yes, sir.

Q. And then you recall that shortly after that you had difficulty obtaining product for your theater?

A. Warner pictures, yes, sir.

Q. You had played the Warner pictures for how long?

A. About 15 or 16 years, something like that.

Q. Then, it is a fact, is it not, after Schine acquired the Strand Theater, some of the top Warner pictures were sold [fol. 414] away from your theater to the Strand without their giving you any opportunity whatsoever to bid for them?

A. That is true.

Q. That happened first with respect to the picture "Meet John Doe" of 1941, did it not?

A. Yes, sir.

Q. You got in touch with Warner Brothers about that?

A. Well, I don't know as—I did get in touch with them. They said the sales were made in New York. It had nothing to do with it in Washington.

Q. Their explanation to you was that the picture had been sold to the Schine Circuit, is that right?

A. Yes, sir.

Q. What was the date of that?

A. I could not give it to you offhanded.

Q. Well, you know about when it was?

The Court: He said in 1941.

The Witness: 1940—about 1941.

Q. You regarded that as unfair discrimination against your theater, did you not?

A. At the time I did.

Q. You wrote to Harry Warner of Warner Brothers about it?

A. Yes, sir.

Q. You also complained to the Department of Justice with respect to that sellaway, did you not?

[fol. 415] A. Yes, sir.

Q. Then the same thing happened later on in 1941, with respect to the picture "Sergeant York" did it not?

A. Yes, sir.

Q. That is, you negotiated for the picture or attempted to negotiate for it, as I recall your letter to us, and the picture then turned up at the Schine Strand Theater without your having been previously advised that it would not be sold to you?

A. Yes, sir.

Q. What was the Warner Brothers' explanation for that?

A. Same as the other, it was sold in New York. They had nothing to do with it.

Q. I did not get that.

A. It was sold in New York. Washington Branch did not have anything to do with it.

Q. They sold it in New York, you say?

A. Yes, sir, New York authorities of the Warner sold it to the Schine Circuit.

Q. In New York?

A. Yes, sir.

Q. And this was before—without giving you any opportunity to bid for the picture at all, is that right?

A. Yes, sir.

Q. Then, that same practice continued, did it not, [fol. 416] throughout the 1941-1942 motion picture season with respect to the top Warner pictures, is that right?

A. Yes, sir.

Q. That is, the best of the Warner product?

A. Yes, sir.

The Court: You mean up to the time of the trial in 1942, or the hearing in 1942?

Q. This continued throughout the spring of 1942, did it not?

A. Yes, sir.

Q. You recall you were summoned to appear as a witness for the trial commencing on May 19th?

A. Yes, sir.

Q. And then you were notified that you did not have to appear on that day, but you would be advised as to the particular day that you would be needed, is that right?

A. Yes, sir.

Q. After the temporary order was entered here on May 19, 1942, you were still unable to negotiate for the top Warner pictures?

A. Yes, sir.

Q. When was the first time that Schine made any attempts to buy your theater?

A. Well, we discussed it, Mr. May and I, several times, but we could never come on terms.

~~Q. When was the first time?~~

[fol. 417] A. I could not just say when it was, sir. It was about 1942, or possibly early 1943.

Q. They had tried to buy your theater before that, had they not?

A. It might have been——

Q. After you first began to lose the Warner pictures?

A. After they got the Warner pictures Mr. May and I talked, yes. They had—a man, I don't know his name, came around. I don't just recall his name, and then Mr. May called me.

Q. That was in 1941?

A. 1941.

Q. Can you recall what those conversations were that you had with Mr. May?

A. No, sir, I do not. I know he said the price was too much.

Q. What was the price, then?

A. I asked him $225,000 then.

Q. And was there any suggestion as to what would happen to you in the event, or your theater, in the event it was not sold to Schine?

A. No, sir.

Q. You know Mr. May did not make any express reference when he talked to you, as to what was happening with reference to the Warner product?

[fol. 418] A. No, sir.

Q. The pictures of Universal, half of the first run, you know is also sold away from you to Schine in the same way as these Warner pictures, were they not?

A. That was 1932, I think.

Q. It could not have been 1932?

A. 1942.

Q. Before the case came on for trial here in the spring of 1942?

A. No, I think it was after that.

Q. Can you tell us just about when it was and what happened?

A. Possibly the fall—along about July or August is when we buy the pictures, and I presume—I could not tell you exactly.

Mr. Goodwin: What year was that?

The Witness: I think it was 1942.

Mr. Goodwin: You mean before or after you came here to be a witness for the government? Was it before or after?

The Witness: After.

By Mr. Wright:

Q. That would be the pictures for the 1942-1943 season?

A. Yes, sir, I am pretty sure that is it.

Q. You had been playing Universal first run in Cumberland for how long?

[fol. 419] A. I had only been playing them a couple of years.

Q. You had, however, been the regular——

A. I had been buying some few pictures, but as to take the entire lot——

Q. You had been their only first run account in Cumberland?

A. No, Miss Fisher had some of them.

Q. Tell us just what happened when you attempted to negotiate for the Universal pictures for 1942-1943?

A. The salesman's explanation was that the Schine Circuit used so much of their picture product, that they would have to sell them in Cumberland. Then, when I told him about it, he said I should not have told him.

Q. Told him about what?

A. About selling away, when I told him I told the Department of Justice. <

Q. He said you should not have told the Department about that?

A. Yes, to get him in trouble.

Mr. Goodwin: Did you tell the Department?

The Witness: Yes, sir.

Q. Regardless of whether it got him in trouble or not, it is a fact Universal did sell half of the product away to the Schine Circuit without giving you any opportunity to bid for it at all?

A. They sold it to me with the privilege of selling one-half [fol. 420] in Cumberland. That is the way the contract read.

Q. Actually what you got was the Universal pictures that Schine did not want, is that right?

A. They aimed to split them 50-50. They give—that is, good and bad, A and B.

Q. You were able to purchase split?

A. Yes.

Q. But actually you needed all of the product?

A. Yes, I could have used it.

Q. And you were given no opportunity to negotiate for the half of the split that Schine got, is that correct?

A. That is right.

Q. And the reason for that as the salesman told you was that the other half had to be sold to Schine because the Schine Circuit as a whole used so much Universal product, is that right?

A. Yes.

Q. During this period of the Universal and Warner sell-aways, you were in more or less constant touch with the Department, were you not? You wrote us about those things?

A. Yes, sir.

Q. Do you recall when it was you first came to see me about selling your theater?

A. I don't recall the date.

Q. It was some time in the fall of last year, was it not?

[fol. 421] A. Yes, sir, I think it was.

Q. You remember we discussed the situation in Cumberland, both with respect to a possible sale of your theater and the product situation there, too, did we not?

A. I don't recall whether we said anything about the product or not, but I do know we discussed the sale of the theatre.

Mr. Goodwin: What theater?

The Witness: This.

Mr. Goodwin: This theater?

The Witness: Yes, sir.

Q. You recall, do you not, I told you in so far as the Department was concerned, the Schine was the last person we would like to see acquire that theater?

A. I don't recall that. You might have.

Q. Do you remember we did discuss whether or not it could be sold to an independent?

A. I just don't recall that. I know I told you I could get more money out of Schine than I could any place else, and the bank was forcing me, and if I could sell to Schine it would permit me to pay off my indebtedness and have some money left, rather than have the bank foreclose on me.

Q. You told me you could not find any other buyer than Schine who would pay you a sufficient amount to give you something over and above the indebtednes, is that right?

[fol. 422] A. Yes, sir.

Q. I made it clear to you at that time did I not, in so far as the Department was concerned, we felt that every effort should be made to find an independent buyer for that theater before it was allowed to go to the Schine Circuit, isn't that right?

A. Possibly it is. I just don't recall that, sir. You may have said that. I just don't recall it. I know we talked for quite a little bit there.

Q. You were always told, were you not, both by Mr. Clark and by myself that in no event could there be any sale of that theater by agreement with us, that you would have to have the Court's approval in any event?

A. Yes, sir.

Q. Isn't that correct?

A. Yes, sir.

Q. You, I take it, made the same representation to Mr. Clark that you made to me, that only by selling to Schine would you be able to salvage any part of your investment in the theater?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. It was on that basis that you obtained the letter that was introduced in evidence here, saying that if the Court [fol. 423] was willing to approve the sale, the Department would not stand in the way of it?

A. Yes, sir.

Q. As far as you were concerned, I take it, the inability to compete for products, for film products in that town, had some effect on your desire to sell, isn't that correct?

A. Well, it did affect my business.

Q. If it were not for the pressure exerted upon you by the bank and by Schine in the form of the sellaways of this product, you would be glad to continue in business, would you not?

Mr. Goodwin: I object.

The Court: Overruled.

Mr. Goodwin: Let him ask about each one, if he wants to.

The Court: No, I will let him answer the question.

The Witness: The bank was the one that brought the pressure. I would not be selling now or trying to sell.

Q. What other theaters are there in Cumberland?

A. There is about seven there, I think.

Q. There are three first-run theaters, are there not?

A. Yes, sir.

Q. Schine has the Strand?

A. Yes, sir.

Q. And they play first run products of all the companies?

A. Paramount, Fox, Warner.

[fol. 424] Q. And half of the Universal?

A. Not this year. They did not get the half this year.

Q. They omitted half of the Universal this year?

A. They could not get together.

Q. What do you have in the Liberty Theater?

A. I have RKO——

Q. Go ahead.

The Court: What do you have?

The Witness: I have RKO and Universal, and then I once in a while buy from an independent a single picture.

Q. You got Universal again this year after Schine had passed it up, is that right?

A. I don't know how about that.

Mr. Goodwin: I object to the question. What is the question?

The Witness: I got them. I don't know why, but they came around this year and sold me the entire lot.

Q. You got the lot?

A. But they have a clause in there, they could sell not only to Schine but anybody else, half of the product in Cumberland.

Q. You have it subject to a later determination as to whether Schine wants to use half or not?

A. Schine is not mentioned anyway in Cumberland.

[fol. 425] Q. What is the third first run theater there?

A. Mrs. Fisher, Maryland Theater.

Q. What does she have?

A. She has Metro, and I think she has some of the Columbia, possibly all. I don't know. United Artists. Then she has Monogram, and several other of the smaller companies.

Q. Those three are the only first run theaters, is that right?

A. Yes, sir.

Q. You say there are how many other theaters there?

A. Let's see. There is four others.

Q. Can you name them and tell us who owns them?

A. One is the Garden, a second run run.

Q. Who operates that?

A. Magruder, and the New Theater, South Cumberland, Trunant runs that.

Q. That is the name of the owner?

A. That is the name of the owner. I don't know what his first name is.

Q. That is a second run theater?

A. That is a second run, and then there is another one, I don't know the name of it, Spriggy Lloyd. I don't know the name of the theater, though.

Q. That is three. I thought you said there was one more.

A. There is three others—the Embassy.

[fol. 426] Q. That is a second run theater?

A. That is a second run theater that is owned by Mrs. Fisher. She owns both the Maryland and the Embassy.

Q. Had you discussed the sale of your theater to Schine with any of these other operators in town?

A. No, sir.

Q. Do you know what their feelings about the matter are?

A. I don't know.

Q. If it should appear that one of these other operators in town were willing to pay you as much or more for your theater as Schine has offered to pay, you would have no objection to selling to them, would you?

A. I would not, but there was none of them made any offer, and so far as I know now, there is none made any offer, and they would not do it while I wanted to sell, and Schine is the only people that offered to buy it.

Q. What was the name of these agents that you say represent you?

A. Mellison & Blaul.

The Court: You mean his real estate agents?

Mr. Wright: Yes, your real estate agents.

The Court: What does this offer amount to under this agreement?

Mr. Wright: A total of $130,000.

The Witness: $130,000 to the real estate men. What they [fol. 427] get over that is theirs.

The Court: You mean subject to the mortgages?

The Witness: Yes.

The Court: That would be practically $230,000?

Mr. Wright: No, I take it the payment—the mortgages, prior to indebtedness is to be paid off out of the $130,000.

The Court: $130,000?

The Witness: Yes.

By Mr. Wright:

Q. Is there any one else other than yourself and these agents who have an interest in the theater?

A. No, sir.

Q. You say you gave the agents an option by which they get anything over $130,000 that they receive for the theater?

A. Yes, sir.

Q. When did you give that option?

A. The option, I think, would be out May 1st, I think. I gave it to them for three months.

Q. I say, when did you give them the option first?

A. Must have been in December or January, I can't recall.

Q. In December or January. How did you happen to make the option arrangement with them?

A. Well, Mr. Mellison is in the loan business and, as I understood it, he had made a loan for a merchant there in [fol. 428] town, and he got some money from New York, and I went to see him, and he got in touch with some man from New York. He came down to see me to make a loan, to take up all these loans, but he would only put up $75,000, so it would not be sufficient to take care of all the loans. At that time I owed $52,500 on first mortgage, and I owed about $45,000 judgment note on the second mortgage, and then he asked me for an option to sell it, possibly he could sell it. I don't know who he was communicating with.

Q. You don't know what negotiations the owners of the option had had with other prospective purchasers?

A. No, sir, the only one they have ever come to me was the Schine.

Q. So, as far as you are concerned, you don't know how much Mrs. Fisher may have offered them for your theater, is that right?

Mr. Goodwin: I don't think he ought to speculate on what some one might have done.

Q. I am asking what he knows.

A. I don't know anything about it. She never made me an offer. If she made an offer, I don't know it, only what I have heard here today.

Mr. Wright: If the Court please, I don't think we can get satisfactory information on this point except through [fol. 429] the testimony of these agents, or from Mrs.

Fisher, but the Department on March 14th addressed a letter to these other theater owners in which we said that Schine had filed this application——

Mr. Goodwin: Are you reading from a letter to us?

The Court: It is not for the record.

Mr. Wright: Yes, I am referring to letters which were sent out to the other theater owners in town to find out what their attitude would be toward this acquisition. We have replies from two of them, one of them from the manager of Mrs. Fisher who was out of town at the time the letter was received, and the other from Magruder, the owner of one of the second run theaters that Mr. Burke referred to, both of which said they would desire to oppose——

Mr. Goodwin: Just a minute. Are you offering these in evidence?

Mr. Wright: No, I am merely stating the facts. I am laying the foundation for the necessity, I think, of hearing from these other people.

The Court: I don't know as it is sufficiently shown. If they are objecting, that is one thing. If they are making [fol. 430] an offer, that is another thing. This man would be the residuary legatee, that is all.

Mr. Wright: One of them says she is actually making an offer of $140,000 for the theater, and that $5,000 of an option has been deposited with the agents.

The Court: What difference does it make to you how much he gets for it?

Mr. Wright: It does not make any difference to the government, except, the only theory on which we ever told him, believing he could secure the Court's approval on Schine, was on the theory that that was the only way in which his investment could be salvaged. If it appears there is another buyer for that theater which will permit him to realize the same amount that he would from Schine, then, as far as we can see, there is no excuse whatsoever for approving the sale to Schine.

The Court: These other people have theaters there.

Mr. Wright: But they are not under a court order.

The Court: I know that, but the question here is if it is in violation of the order, or based on the theory that they would be apt to violate the law or the order.

[fol. 431] Mr. Wright: The theory of the order is simply this: It is intended to save independent competition.

The Court: How do you do it, when you let—Mrs. Fisher has two theaters and would have another one, which would be three, and yet Schine only has one?

Mr. Wright: That is the only way you can have independent competition. Where the circuit comes in, we know from what we just heard, as to what happens in the product situation. There is all the difference in the world between a Schine Theater in Cumberland and an independently owned theater.

The Court: You have a remedy under the present law. The theater companies have a remedy under the present law. The law itself provides for competitive bidding for pictures.

Mr. Wright: The point is, the law was violated in this instance. Schine proposes——

Mr. Goodwin: Wait a minute.

Mr. Wright: Proposes to benefit from the violation here by acquiring the theater.

Mr. Goodwin: Just a minute, now. What was the violation of the law?

Mr. Wright: The sellaways of both Warner and—that is [fol. 432] what this suit is about, is exerting circuit buying power to compel the major film companies to discriminate against independent theaters in exactly the way in which the discrimination occurred here.

Mr. Goodwin: There is nothing in his testimony to that effect.

Mr. Wright: That is what the suit is all about, and that is why we obtained the order that we did, which ordered Schine to get out of the situation that it had entered into since the suit was filed, and to prevent them from continuing to pick up theaters——

The Court: Why would your superior, Mr. Clark, tell them it was all right to go ahead?

Mr. Wright: The only basis on which he was told that was his representation that only by a sale to Schine——

The Court: He knew Schine was the one against whom the suit was, and the one you are claiming now is attempting to operate in violation of the law. You knew he was a party, did you not?

Mr. Wright: He did not give him any unqualified approval. He said if the Court would take the responsibility, and, as I say, the only reason that we ever did that was [fol. 433] because we did not feel that we could stand there and say to him, "You have got to lose what you have invested in this theater, merely to comply with our order." If it was a question of his realizing the money on his investment only by a sale to Schine, then we were prepared, at least, to go along with him and not actively oppose, but, if, as it now appears, he can salvage his investment without a sale to Schine, we certainly do not want to see the theater go to Schine in violation of that order.

The Court: This other woman, Mrs. Fisher, has two theaters in the same place, which would be three if she bought this.

Mr. Wright: That is right.

The Court: What better position would you be in if she bought it, except that Schine has the larger circuit?

Mr. Wright: That is precisely what our suit is about. It is only on the theory that Schine's possession of theaters in these competitive situations is a threat against competitive distribution of pictures that we filed the suit; to limit Schine Circuit's buying power. That is the purpose [fol. 434] of the suit. What we are trying to do is save independent competition, that is the local operaters.

The Court: Can you save it by the present law that provides for your consent decrees, and so on?

Mr. Wright: If the Sherman Act alone were sufficient, of course, there would be no necessity for the suit. The purpose of the suit was to implement the Act, and so say "By decree we do make it possible for the independent operator to survive." That is what is at stake here in Cumberland, and whether Cumberland is going to remain an independent town or become a Schine town. We already have an order that requires Schine to dispose of the Strand Theater in Cumberland, and that is up for disposition when we have a hearing on our petition to have a trustee appointed to sell that and the other eight or ten interests which are undisposed of in accordance with the order.

The Court: Suppose they can[illegible]ell them, what would you do then?

Mr. Wright: They were given a year's opportunity to sell them themselves. They could not do it. There have been [fol. 435] numerous offers since their report was filed, to try and buy those theaters from them, and they refused to negotiate because they said it was up to the Court. We say they can be sold if the Court will appoint a trustee to take possession and sell them. That is what ought to be done.

Mr. Goodwin: Coming back to this case, your Honor, there is nothing that counsel has elicited from the witness that he did not know all the time. There has been, according to the testimony of this witness, no possibility; they have been unable to find any purchaser for this theater——

The Court: There is a letter here.

Mr. Goodwin: Just a minute, your Honor. After this contract has been entered into subject to the approval of the Court, after they have said they would not make any objection if it is satisfactory to you, now they attempt to say "We have gone out and we have found somebody to operate the theater," he being advised and the Assistant Attorney General being advised of the situation, and having approved in advance, so far as that is concerned, with [fol. 436] full knowledge about the competitive situation.

The Court: What is this Fisher letter? What does it say about that? When was her offer made? You spoke about her having made an offer.

Mr. Wright: This is a letter from Richard L. Schuette, Manager of her theater.

"In the absence of Mrs. Grace M. Fisher from her theaters for a few days, I am taking the liberty of answering your letters to the Maryland and Embassy Theaters as of March 14th. Negotiations are now under way for Mrs. Fisher to purchase the Liberty Theater, and the owner already has her check for $5,000 covering the option. Knowing that the Liberty Theater was to be sold, this step was taken by her to protect her present businesses, as the purchase by some Schine house would definitely impair her booking facilities. The purchase of the Liberty Theater by the Schine Chain Theaters is the very action she is trying to protect herself against. Your letters, together with a copy of this letter, has been forwarded to her, and if there [fol. 437] is anything further she can do to clarify this matter, she will be only too glad to hear from you. Yours very truly, Richard L. Schuette, Manager."

The Court: She said she deposited $5,000?

Mr. Wright: That is what she said. I assume that is with the agent who had the option, although she does not give the name here. He also called me on the phone and wanted to know if they should come up here at this time, and I told them that our position would be that the matter should not be disposed of now, but should be continued until after our petition had been disposed of for the appointment of a trustee.

Of course, the whole purpose of giving notice of acquisition and having a hearing, that was set up by this order of procedure, was so that the Court could be fully informed by all the parties that had an interest in the matter as to the effect of the acquisition and hear any objections that might be made, and I think these people should have an opportunity to be present and give your Honor whatever the facts may be with respect to another offer or the effect, [fol. 438] the adverse effect they allege Schine's acquisition of the other theater would have on the town.

The Court: You say your agreement with the real estate man was they were to have all ofer $130,000?

The Witness: Yes, sir.

The Court: Anything further?

Mr. Wright: We have nothing further.

Mr. Goodwin: Are you finished?

Mr. Wright: Yes.

Redirect examination.

By Mr. Goodwin:

Q. Are negotiations under way between you and Mrs. Fisher for the sale of this theater?

A. No, sir.

Q. Has she ever made you an offer?

A. No, sir.

Q. Has she ever sent you a check for $5,000 or any sum of money?

A. No, sir.

Q. Was there anything in this situation that you concealed from the Department?

A. No, sir.

Q. You say you first took this up with the Department——

[fol. 439] The Court: We have been over that.

The Witness: I just don't recall the dates. It was prior to this contract.

Q. You mean it was in February or some such time when you saw them?

A. Yes.

Mr. Wright: If the Court please, the question can't be resolved by any amount of conversation that might have passed between Mr. Burke and myself and Mr. Clark. The Court has the duty in any event, as I see it, to determine what the facts are.

The Court: I think we have gone over this matter thoroughly. If there is anything new, you can develop it. If there is any new matter, go ahead.

Mr. Goodwin: Yes, your Honor.

The Court: You have inquired about these matters before.

By ~~Mr.~~ Goodwin:

Q. Just on redirect, was any specific objection ever made by ~~the~~ Department of Justice to the sale of this theater to the Schines until today?

A. No, sir.

Q. None at all?

A. Not to me.

Q. Did you keep the Department fully advised in regard [fol. 440] to all this matter that has been brought up on cross-examination with reference to the competitive situation, so-called, and the sale of pictures by Warner Brothers and others to the Schines? Were they familiar with all that?

A. I think so.

Mr. Goodwin: I just want to locate a document here, your Honor, and I will conclude with the witness.

The Court: Do you know how much your real estate agents get out of this sale?

The Witness: According to the sale, they would get about $10,000.

The Court: How do you figure that, that they would get about $10,000.

The Witness: My price was $130,000, and they sell it for $140,000.

The Court: Were you ever advised of any offer made by Mrs. Fisher?

The Witness: No, sir.

The Court: To them, I mean?

The Witness: Not until today. She had plenty of opportunities. She never made any offer until after I had contracted with Schine, subject to the Court.

Mr. Goodwin: May the witness step aside, and I will put [fol. 441] on another witness. I will recall him again.

Mr. Wright: I would like to examine him on that last statement about the absence of objections.

Recross-examination.

By Mr. Wright:

Q. Mr. Burke, is it not a fact that I told you that we would very definitely oppose any sale of your theater to Schine unless it appeared that a sale to Schine was the only way in which you could realize anything on your investment?

A. That was my statement to you, yes, sir, and you said that you did not want to stand in the way, and you would do anything you could for me and would not object if the Court granted the permission.

Q. I don't think you quite understood the question. Read the question back.

(Question read.)

The Witness: I don't recollect that. I know I recollect telling you that they were the only ones that made me an offer that would let me out and give me some money.

Q. Don't you recall my telling you that we would oppose a sale to them if it appeared that it could be sold to any one else and yield you the same amount?

[fol. 442] A. I would not say yes or not to that, I don't recollect.

Q. Don't you remember?

A. No, sir, I don't, Mr. Wright. You may have said it. I don't remember.

Mr. Wright: I might say, your Honor, if there is going to be any point made about this question of acquiescence, that Schine and his counsel have never obtained any agreement from us with respect to this acquisition. In fact, they tried to get it and it was denied last fall.

The Court: You have this letter.

Mr. Wright: That was a letter to Mr. Burke.

The Court: You knew they were attempting to sell to Schine.

Mr. Wright: But, I say, we have never given Schine any assurance whatsoever with respect to this particular transaction.

The Court: What difference does it make whether you gave it to Schine or to Burke. You gave Burke the right to sell.

Mr. Wright: Mr. Burke is not the one asking the approval. Schine is the one who will have to get approval of the Court and make the showing. Schine certainly is not relieved of the necessity of making proper showing by any effort we [fol. 443] have made to assist Mr. Burke.

The Court: Burke wanted to sell.

Mr. Wright: That is right, but I take it that Schine, in order to make a proper case for exception from the order has to show more than that. They have to show that acquisition will not have an adverse effect on competition. That is what the order contemplates, that they shall satisfy the Court in that respect before any approval is given.

The Court: Well, that is true.

Mr. Goodwin: You are telling what you will testify to in case——

Mr. Wright: I don't propose to testify at all.

Mr. Goodwin: You were testifying all afternoon.

The Court: No. Call your next witness, if you have one.

[fol. 444] JOSEPH M. NAUGHTON, a witness called by and on behalf of the Defendants, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Goodwin:

Q. Mr. Naughton, what is your name?

A. Joseph M. Naughton.

Q. What is your occupation?

A. Vice President of the Second National Bank of Cumberland.

Q. Does the Second National Bank of Cumberland own the second mortgage?

A. Yes, sir.

Q. What efforts did you make to secure the payment of that mortgage? In the first place, did the bank refuse to renew Mr. Burke's notes?

A. May I go back to the beginning?

Q. Yes, I think if you will, just tell the Court.

A. Loans to Mr. Burke had been on the bank books for a great many years, upwards of ten or fifteen years. The Comptroller of the currency in its regular examination of the bank had severely criticised the bank and demanded that steps be taken to improve its loan to Thomas H. Burke, and in its examination conducted in the late summer of [fol. 445] 1942, the Comptroller of currency through his Examiners demanded that there be no further delay, and that decisive action be taken either to improve the security and to bring it within the national bank statutes and the regulations of the Comptroller's office, or to collect the loan in full by liquidation of the collateral, if necessary, and it was as a result of those peremptory orders from the Comptroller of the currency that the bank, through me discussed with Mr. Burke what could be done, either to improve the collateral back of his loan or to pay the loan in full.

It was probably in December of 1942, or in January of 1943, that Mr. Burke agreed with the bank to a sale of the theater as the only way in which he could comply with these demands. As a consequence of that agreement, that he would sell the theater so as to clear up this debtor position of his to the bank, that the bank endeavored to arrange for a possible buyer to communicate with Mr. Burke. As a result of those efforts on the part of the bank, which extended over the first half of 1943, the bank brought to Mr. Burke, or I possibly should say to his attention, one specific offer that would have paid only the first mortgage bond issued against the theater, and the, at that time, accrued taxes and other charges that took priority over the lien of [fol. 446] the bank, but without advising one way or the other as to what the reaction might be to that particular offer. That offer was not in writing, nor was it accompanied by any proffer of cash. Some time later on as a result of the bank's efforts, the bank received an offer to sell either its collateral or the notes of Mr. Burke that it had, but the bank from the beginning has endeavored to obtain for Mr. Burke as much as it possibly could in the way of an equity over and above these various liens and charges, and although to my knowledge that particular proposal, that it sell by assignment either its collateral or its notes to this particular prospect is still open. It has never been either accepted or rejected by the bank.

The Court: That is just to sell the collateral?
The Witness: That is all.
The Court: Notes?
The Witness: Yes, sir.
The Court: No agreement to extend the notes?
The Witness: The notes were all on a monthly basis, your Honor, and all this time the notes were being renewed, and they were accompanied at each monthly renewal by a proffer of principal payments which would have liquidated the notes in approximately—I should say would [fol. 447] liquidate the total indebtedness of Mr. Burke to the bank in approximately 35 to 40 years, a rate of curtailment which we knew would not be acceptable to the Comptroller of the currency.

Q. You were in constant touch with Mr. Burke about this situation during this time?
A. All that time, yes, sir.
Q. You conversed with him from time to time?
A. Yes, sir.
Q. Will you tell the Court, whether, in your judgment, every possible effort was made by Mr. Burke and by the bank to obtain a satisfactory purchaser of this theater outside of the Schines?
A. I am convinced both Mr. Burke and the bank made such efforts.
Q. Constantly during the period of a year?
A. Yes, sir.
Q. Or more?
A. Yes, sir.
Q. Do you know a Mrs. Fisher?
A. I do.
Q. What is Mrs. Fisher's name, please, if you know?
A. Grace Fisher. Mrs. Grace Fisher.
Q. Is she the owner of a theater in Cumberland?
[fol. 448] A. She is the owner of the capital stock and of the outstanding bonds of a corporation which owns the property on which there is located the Maryland Theater.
Q. The Maryland Theater of Cumberland?
A. Yes, sir.

The Court: There is some testimony here that she also owns another theater.

The Witness: Your Honor, she is the tenant under lease of a theater known as the Embassy.

Q. That is only one. There is another that she owns the capital stock.

A. The Maryland and the Embassy, sir.

Q. The Embassy and the Maryland Theaters?

A. Yes, sir.

Q. One she owns under lease, and the other she owns—well, she is the stockholder of the corporation?

A. Yes.

Q. And owns the bonds of the corporation that owns the theater?

A. Yes.

Q. Have you had any conversation with her in regard to the Schine Theater?

A. No, sir.

Q. I mean the Liberty Theater?

A. One conversation.

[fol. 449] Q. When was that?

A. Either in late January or early February of this year.

Q. She was in Cumberland at that time?

A. Yes, sir.

Q. What was the purport of that conversation?

A. At that time Mrs. Fisher said to me that she had been approached by the two men to whom Mr. Burke had given an option to sell the Liberty Theater, that she had been approached by them for the purpose of interesting her in the acquisition of the Liberty Theater, and in her statement to them, she stated that she was not so interested because of her health and age and marital situation, and that although she wanted us to know about it—giving the impression she was asking the opinion of the bank—she merely stated to me that she was not interested in acquiring the Liberty Theater.

Q. That you say was in January or February of this year?

A. Early February of this year.

Mr. Goodwin: You may inquire.

Cross-examination.

By Mr. Wright:

Q. You say you and Mr. Burke did make an effort to find other purchasers than Schine for this theater?

A. Yes, sir.

[fol. 450] Q. Is that correct?

A. Yes, sir.

Q. Why did you do that?

A. To collect our loan.

Q. I mean, why did you feel it necessary to make a special effort to find other purchasers than Schine?

A. We did not start out to find other purchasers than Schine. We started out to find a purchaser for the theater who would by buying the theater liquidate our loan and give Mr. Burke as much as he possibly could acquire in the way of equity over and above all loans.

Q. One reason you made that effort, was it not, was because you had been told by me we would rather see that theater bought by any one else than Schine, was it not?

A. I recall no such statement made by you to me.

Q. Do you recall talking to me?

A. I do.

Q. What was the conversation you had with me?

A. The conversation was an outcome of my statement to you that apparently no other individual or group or corporation than the Schine Circuit was interested in paying a price for the theater which would enable us to pay our loan in full and give Mr. Burke something.

Q. How did you happen to say that? Did you just come in and say that out of a clear sky?

[fol. 451] A. No, sir.

Q. It was in response to my inquiries from you as to what had been done to find another purchaser for the theater, was it not?

A. No, sir, it was not.

Q. How did you happen to say it? What did I say?

A. I came to you, sir, because I had been told that no such transaction could be completed without the approval of the Department of Justice.

Q. Yes, that is right, and what did I tell you?

A. You told me to come back in 90 days, and that you hoped by that time analogous or parallel action to the consent decree that you had acquired in this court would have been terminated, as I recall it, and that at that time you would be in a position to talk to me.

Q. Did you ever come back?

A. I did not, sir.

Mr. Wright: That is all.

Mr. Goodwin: That is all.

[fol. 452] John A. May, a witness called by and on behalf of the Defendants, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Goodwin:

Q. Will you state your name?

A. John A. May.

Q. Your address?

A. Gloversville, New York.

Q. Your occupation?

A. Comptroller of the Schine Chain Theaters.

Q. When were you approached by any one representing the Liberty Theater with reference to this purchase or possible purchase by the Schine defendants here?

A. Something over a year ago.

Q. Will you tell the Court about those negotiations, if you recall, when they were?

A. There was first a conference with Mr. Naughton in New York. He explained to me the banking situation, and I told him that I sympathized with his problems at the bank, but we were not going to enter into any negotiations with him or Mr. Burke until they got permission from the Department of Justice for us to continue such negotiations. [fol. 453] I heard nothing further from Mr. Naughton until along in the fall, and then Mr. Mellison and Mr. Blaul called me up on various occasions, and I gave them the same answer. Things drifted along until somewhere about the middle of February, and I think it was Mr. Naughton called up and said that something has got to be done to bring the Burke indebtedness to the bank to a head, and he said "Mr. Mellison is going to call you." Mr. Mellison did call me and I told him I would not even discuss the proposition with him, that it was entirely Mr. Burke's problem. If Mr.

Burke could show me a letter from the Department of Justice permitting him to negotiate with us, I would be very glad to negotiate with him. On, I think it was, the 27th or 28th of February, Mr. Mellison called me and said they had such permission from the Department of Justice, when could I meet Mr. Burke in Washington. I met Mr. Burke and Mr. Naughton in Washington March 1st, at which time we drew up the contract, and Mr. Burke showed me the letters which he had written to Mr. Clark; then, in response—two or three days later, rather, Mr. Burke—I think it was Mr. Burke or Mr. Mellison—telephoned me that they had a letter from Mr. Clark, which Mr. Burke had told me—that he had the letter which he had previously told me was coming through, and I met Mr. Burke in Washington on, I think [fol. 454] it was, March 7th, the following Monday, and with Judge Goodwin went to see Mr. Clark.

Q. Did you ever bring any pressure to bear on Mr. Burke to compel him to sell this theater to the Schines?

A. No, sir.

Q. Contracts with different film producers were all in the regular course of business?

A. I had nothing to do with the purchasing of films.

Q. You have nothing to do with that?

A. No.

Q. You know Mrs. Fisher?

A. I do.

Q. Did Mrs. Fisher know anything in regard to these negotiations in regard to the sale of this theater?

A. I don't know. I understand that in the last few days she has shown some interest in it.

Q. What is that?

A. I say that I understand in the last few days she has shown some interest it it.

Q. Did she show any interest in selling her theater to you?

A. She did.

Q. You are familiar with the signature of Grace M. Fisher?

A. I am.

This is the letter addressed to you February 28th, 1944?

A. Yes, sir.

[fol. 455] Q. And do you know how she came to write you that letter?

A. No, I do not. We have not heard from her in some time.

Q. You had seen her from time to time?

A. Not for a year or more.

Q. Had she ever made any suggestion in regard to the sale of her theater to you?

A. Yes, for a matter of two or three years we negotiated off and on.

Q. In other words, this lady who now writes a letter, or whose manager now writes a letter saying that she would like to buy this theater has for a number of years attempted to sell her theater to you?

A. Yes.

Q. Is that correct?

A. Yes.

Mr. Goodwin: I would like to read this into evidence, your Honor, in view of the fact that he has made statements in regard to the desire of Mrs. Fisher to bid or buy this theater.

Mr. Wright: I don't have any objection to his reading the letter. I assume Mrs. Fisher will have an opportunity to testify about these matters herself.

Mr. Goodwin: Do you want to look at this?

Mr. Wright: No.

[fol. 456] The Court: Oh, yes, she will have an opportunity.

Mr. Goodwin: "Grace M. Fisher, Theaters, Cumberland, Maryland, General Manager, Grace M. Fisher. The date of the letter is February 25th, 1944.

"Dear Mr. May: A lot of water has gone over the dam since I last talked with you, and so I am wondering what Mr. Meyer Schine had in mind when he asked me to get in touch with him as soon as the trial of the Sussman was over. I did not write him or call him because of the fact that they entered a damage suit against me, then changed their mind, and took the case to the Court of Appeals, and since Judge Sloan, who decided the case in Cumberland, also sits on the Court of Appeals at Annapolis, I don't think they will get very far in reopening their case. However, this trouble has not discouraged me with the idea of leasing or selling. The help problem has been most difficult, and my hours are from 9 a. m. to 10 p. m., and every Sunday. After all, a woman who has put in as many years at this business deserves a vacation, and the only way I can get the kind of a vacation I want and need is to stop for a [fol. 457] while and take it easy. That is why I am still willing to put my theaters in good hands, and I consider your Company the people to have them, since you already have a theater in our town. I would like to hear from you, just what position you are in, in regard to leasing or buying, and I will very much appreciate hearing from you in the very near future. With kindest regards, I am."

As I have read it in the record, it is not necessary for me to introduce it in evidence.

By Mr. Goodwin:

Q. Did you at any time know of any attempt on the part of Mrs. Fisher to buy the Liberty Theater?

A. I did not.

Q. Had you any other communications from her recently?

A. Mr. Schine had, yes, in the office.

Q. Have you a copy of that?

A. I think I gave it to you, Judge.

Q. Will you read that to the Court?

A. Letter addressed to J. Meyer Schine, Gloversville, New York, dated Miami, Florida, March 15th, 1944.

"Dear Mr. Schine: You will no doubt be surprised to hear from me from Florida, but I had a chance to take a [fol. 458] few days' vacation and so arrived here yesterday. My office phoned me today, the letter from the Department of Justice had advised me that you were buying the Liberty Theater in Cumberland and had asked if sale of the same would affect my business in any way.

"I did not tell you when you phoned me last week that I had made an offer to Mr. Burke for the theater with a check for $5,000 attached. My reason for doing so was that the Warner Brothers had a relative in Cumberland trying to buy me out, and also making an effort to get the Liberty Theater. I made Mr. Burke the offer to protect myself as well as to protect you, in the event that we at some future time may be able to get together on a deal for my houses.

"I had fully intended to write you about this matter, as I could not talk freely with the office employee at present, but in the rush to get away I neglected to do so.

"If you have any trouble in making a deal for the Liberty Theater, I will go ahead with my deal, and at the proper time turn the three houses over to you, but I did not want to see another chain come in. If you want to get in touch with me quickly regarding this matter, my telephone number here is 3-1320 Miami. Address, 241 Southwest 22nd Avenue. [fol. 459] Will arrive back in Cumberland March 25th or 26th. With kindest regards, Grace N. Fisher."

Mr. Goodwin: We will put this in evidence, your Honor, so that you might have everything before you that relates to Mrs. Fisher and her supposed offer which she refers to here.

Q. The reference is to the Warner Brothers?

The Court: Yes, so he stated.

The Witness: Warner Brothers.

Q. That she did not want them to acquire the theater. Who are the Warner Brothers?

A. They operate theaters throughout the country and produce pictures.

Q. Are the Warner Brothers of the Big Five?

A. Yes.

Q. They are one of the privileged few who may go in and purchase——

Mr. Wright: I object to that, argument.

Mr. Goodwin: All right.

Q. They are one of those who answered the consent decree who may buy theaters without any court order, is that right?

Mr. Wright: If you are making a speech, I would suggest you make it, and not put it in the form of a question.

[fol. 460] The Court: We understand that.

Q. That is true, is it not? They are one of those who may purchase theaters under their consent decree without coming into court?

Mr. Wright: As far as we are concerned, we would oppose any acquisition of that theater by Warner far more strenuously than by Schine or any one else.

Mr. Goodwin: How would you have anything to do with it?

The Court: Just a moment. We are just cluttering up the record.

Mr. Wright: If there was to be any attempt to show Warner negotiations, I think it should have been done while these gentlemen were on the stand, so it would be clearly made to appear that there were none such.

The Court: You can recall him, if you want to.

Mr. Goodwin: Have you got a copy of your consent decree in that other case?

Mr. Wright: No, I have not.

The Court: I don't see what that has to do with this.

Mr. Goodwin: I believe I have one available here.

The Court: Whether they are preferred or whether they are not has no materiality here. The consent decree speaks [fol. 461] for itself. The question that you put to the witness is entirely immaterial.

Mr. Goodwin: Well, then I will withdraw it. Any cross-examination.

Cross-examination.

By Mr. Wright:

Q. Do you know what it was Mr. Meyer Schine had in mind the last time he talked to Mr. Burke, referred to in the first paragraph here?

A. Yes, that was the lawsuit with Sussman.

Q. It was over the acquisition of Mrs. Fisher's theater, is that right?

A. We have not negotiated with Mrs. Fisher in two years and a half.

Q. I take it you had negotiated——

A. Oh, yes.

Q. His interest in the Sussman lawsuit is only in relation to his interest in acquiring Mrs. Fisher's theaters, isn't that right?

A. No, two or three years ago we negotiated with Mrs. Fisher. Then we dropped negotiations, and she negotiated with Sussman, which culminated in this lawsuit.

Q. As far as you are concerned, the acquisition of this Liberty Theater will, I take it, shortly be followed, if you can arrange it, by the acquisition of Mrs. Fisher's Mary- [fol. 462] land Theater, isn't that right?

A. Not necessarily.

Q. Not necessarily, of course, but that is the kind of situation you would like to have in Cumberland, is it not?

A. No, not necessarily.

Q. You would not want to own all three first run theaters there, is that right?

A. Not at her price.

Q. At your price, of course?

A. No.

Q. Answer my question. Do you want all the three first run theaters in Cumberland?

A. No.

Q. You do not?

A. No.

Q. You would have no objection if in the order that was—if in any order that was entered in this case permitting you to acquire the Liberty, you were flatly prohibited from acquiring any further theater interests in Cumberland? You would have no objection to that privilege?

A. If there was any justice in such a stipulation.

Q. Just answer my question.

A. I don't know why any such stipulation should be put into it.

[fol. 463] Q. Can't you answer the question?

A. We might or we might not, depending on circumstances. Whether we have two theaters or three theaters——

Q. You are familiar with the policy in your company in acquiring theaters, are you not? You have something to do with that policy?

A. Yes, sir.

Q. And that policy is, is it not, wherever you go into any situation, to secure control of it by getting control of all of the first run theaters, isn't that correct?

A. That is sometimes advisable from a business standpoint. It is not necessary.

Q. You found advisable and have actually achieved that result in 75 per cent or 80 per cent of the situations in which you operate theaters, isn't that true?

A. Possibly, yes.

Q. Well, it is true, is it not?

A. Yes.

Q. If your acquisition and policy in Cumberland follows the course that your acquisition and policy has previously followed in other situations, you will wind up in possession of all of the first run theaters there, isn't that correct?

A. Barely possible.

Q. It is not only possible, it is quite probable, is it not?

[fol. 464] A. Well, it is not necessarily so.

Q. You regard that a desirable situation from Schine's standpoint, do you not, to control all the first run theaters in the town?

A. Yes.

Q. That acquisition and control over film rental and admission prices, you would not otherwise have?

A. It does not give us any control over film rentals at all.

Q. Just over admission prices?

A. The public control the admission prices.

Q. That is, you don't think it makes any difference whether there is any competition in the town or not, then, as far as the public is concerned, is that right?

A. The chief advantages are economy of operation and a-vertising.

Q. As far as you are concerned, there is no public advantage in competition in any situation, is that right?

A. I would not say so, no. Competition sometimes is desirable in some lines of business.

Q. As far as Schine is concerned, it is more desirable to have a monopoly, is it not?

A. Not necessarily.

Q. The fact that you have achieved those monopolies in 75 per cent of your situations you say you regard as purely accidental?

[fol. 465] A. It depends upon your definition of what "monopoly" is.

Q. I wish you would answer my question.

A. I don't like the word "monopoly".

Q. Well, whether you call it a monopoly or whether you call it a closed town or use any other name that you like for it, it has been a definite policy of Schine's has it not, to acquire all of the first run theaters in any particular community in which Schine enters?

A. Yes, sir.

Mr. Wright: That is all.

The Court: Next witness.

Mr. Wright: I would like to recall this gentleman for the purpose of seeing whether there is anything in the story about Warner negotiations. If there have been such negotiations we would very much like to know it, so I would like to call them each for that question.

[fol. 466] **Thomas H. Burke**, a witness recalled by and on behalf of the Defendants, having been previously sworn, was examined and testified further as follows:

Cross-examination (continued).

By Mr. Wright:

Q. Have you ever had any negotiations with Warner Brothers with reference to the purchase of your theater?

A. No, sir.

Q. Have you with any other film distributor?

A. No, sir.

Q. Or chain other than Schine?

A. No, sir.

Mr. Wright: That is all.

Mr. Goodwin: I just wish to summarize. Did you make every possible effort to dispose of this theater to an independent dealer or any one else prior to the first of March, 1944?

Mr. Wright: If the Court please, he has already testified that he gave this option to these other people in December.

The Court: Your question is improper in form. He should be asked to state what he has done. When you ask [fol. 467] him if he has done everything possible, that is really a conclusion of his own mind. We have been all over this, anyway.

Mr. Wright: It seems to me it is perfectly clear what he did. He did give this option to these people, and what they did is something only they can testify to.

The Court: If there is anything further that he has done that he has not stated, he may state it now.

Redirect examination.

By Mr. Goodwin:

Q. You have given the Court the benefit of all you know in regard to the negotiations that were carried on with reference to this theater?

A. Yes.

Q. You had not been able to dispose of it to any one except Schine?

A. Nobody has made me any offer except Schines.

Q. Mrs. Fisher said she had made you an offer and sent a check for $5,000?

A. Not to me. No knowledge of it.

Q. You have no knowledge of anything of that kind?

A. No, sir.

[fol. 468] The Court: He stated so before.

The Witness: She has never given me any—no check nor money. Never even talked to me about it.

The Court: Sent to the agents, evidently.

Q. She is now in Florida?

A. She may have done that, but they did not tell me she did.

Q. No one has ever informed you——

The Court: He said so several times. Do you want to call Mr. Naughton?

Joseph M. Naughton, a witness recalled by and on behalf of the Defendants, having been previously sworn, was examined and testified further as follows:

Cross-examination (continued).

By Mr. Wright:

Q. Mr. Naughton, did you ever have any negotiations with Warner Brothers with respect to the Liberty Theater at Cumberland?

A. I had written and telephone correspondence with Warner Brothers.

Q. What was the nature of that correspondence?

A. It was in line with my previous testimony, that Mr. [fol. 469] Burke agreed that the bank—that the best interest of the bank and himself could be furthered by a sale of the theater. Warner Brothers were one of the parties to whom I wrote a letter, exploratory letter.

Q. What response did you get from them?

A. That they were not interested at that time.

Q. Hear anything further from them?

A. That was approximately a year ago. No, sir.

The Court: Did you say you sent letters to others besides Warner?

The Witness: I wrote to between 15 and 20 possible buyers of theaters.

The Court: You got no offers at all?

The Witness: None other than what I testified to earlier, one of which was for approximately the amount of the first mortgage bond issue. The other was for the amount of our collateral, and the third was the Schine group.

Mr. Wright: That is all.

Mr. Goodwin: May it please the Court, so far as the evidence introduced here is concerned, it appears that Mr. Burke and Mr. Naughton had made every effort to find some purchaser outside of Schine. Now, the only evidence offered here is a letter to the Department of Justice saying that [fol. 470] Mrs. Fisher, from Mrs. Fisher or from her manager, saying that she had made an offer. Mr. Burke says he never has received such an offer and so far as he knows no such offer was ever made, and no check was ever submitted to him. It further appears from a letter that was received by Mr. Schine from Mrs. Fisher that she had no intention of acquiring this theater for herself.

The Court: Just wait a moment. Do you want to introduce some evidence?

Mr. Wright: If the Court please, I don't think any disposition of the matter should be made until these people who operate the theaters have an opportunity to testify here and be heard. That is my feeling. Your Honor should hear from Mrs. Fisher and from the other operator who has objected before any decision is made in the matter.

The Court: I think they ought to be permitted to put in what evidence they have, if any, on this question.

Mr. Goodwin: You think what?

The Court: I think they should be permitted to adduce whatever evidence they can. Counsel has some witnesses [fol. 471] he wants to call.

Mr. Goodwin: I would regard Judge Knight's opinion as more or less conclusive on that proposition. If your Honor says so, I must, of course, bow to that.

The Court: I think it is the only way to handle the matter.

Mr. Goodwin: They have had plenty of time to bring in their witness, to introduce their evidence. They had not only ten days' notice, but they had known about this for a long time. If they had any reason, they should have told me. I wrote to ask them whether they had objection, and if they had objections, what the grounds were, what evidence did they intend to offer, and I have received no reply to that letter whatever. We come here, we put Mr. Burke on the stand and we show that he has made every effort to dispose of it to some one else, and those efforts have not been successful. Mr. Naughton is interested on account of the interest of the bank, and he testifies to the same thing.

The Court: It may be there may not be any other witnesses. They may not call anybody, but they should have [fol. 472] an opportunity to do so, if they have any witnesses. When do you want to adjourn this to?

Mr. Wright: Counsel suggested April 10th, and I think if we could have the hearing in our petition set for April 10th at the same time, it would be a convenience to us, so that we could finish up this matter and also have the hearing on the petition to appoint the trustee.

The Court: He has not made a reply.

Mr. Wright: His reply will be in on the 3rd.

The Court: Oh.

Mr. Wright: It will be before the 10th.

The Court: I think the whole three motions should be brought on together.

Mr. Wright: That is my opinion.

Mr. Goodwin: Yes, your Honor. I believe whether we get through with the other matters or not on the 10th, when we come in on the 10th, we ought to dispose of this.

The Court: At least we can see what we can do on the 10th, go ahead and make some proof on the petition probably. Your reply is due on the 3rd.

Mr. Goodwin: Our reply to their petition is—our answer to their petition is due on the 5th.

[fol. 473-475] Mr. Wright: In either event, it is before the 10th. We will have it before the 10th in any event.

The Court: We will hold all matters until the 10th and go as far as we can at that time. You have a motion to——

Mr. Goodwin: We have a motion to dismiss.

The Court: That is an integral part of the other proceedings. They are moving to make the injunction permanent, and you are moving to dismiss.

Mr. Goodwin: In its regular order, that is the first thing to be disposed of.

Mr. Wright: We have no objection to this being heard on his motion on the 10th. As far as we are concerned, it will take 15 minutes to dispose of that.

The Court: Your motion and his motion are really entwined, you might say.

Mr. Wright: That is, of course, if the suit is to be dismissed, we can't enforce the order. There is no question about that.

The Court: We will hold everything until the 10th of April, then.

Mr. Goodwin: At 10 o'clock?

The Court: 11 o'clock.

(Whereupon, an adjournment was taken until April 10th, 1944, at 11 o'clock, a. m.)

[fol. 476] IN UNITED STATES DISTRICT COURT

[Title omitted]

Transcript of Hearing

Proceedings before Honorable John Knight, United States District Judge for the Western District of New York, April 10, 1944, at 12 o'clock noon.

APPEARANCES:

Honorable George L. Grobe, United States Attorney for the Western District of New York, by Robert L. Wright, Esq., Special Assistant to the Attorney General.

Messrs. Goodwin, Rosenbaum & Meacham, Shoreham Building, Washington, D. C., by Clarence N. Goodwin, Esq., and

A. E. Robert Friedman, Esq., 40 Wall Street, New York, N. Y., and

Edwin McCarthy, Esq., 70 Pine Street, New York, N. Y., appearing for the defendants.

[fol. 477]

Grace M. Fisher, a witness called by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Wright:

Q. Will you please state your address, Mrs. Fisher?
A. The business or my residence?
Q. Yes, where do you live?
A. 833 Gephart Drive, Cumberland, Maryland.
Q. What is your business?
A. I operate the Maryland and Embassy Theaters.
Q. At Cumberland?
A. Cumberland.
Q. What is the name of the Manager of your theaters there?
A: ~~I really~~ have no Manager. I have an advertising man, Richard Schuette.
Q. He works for you there in the capacity of advertising manager?
A. Yes.

Mr. Wright: I have a letter here dated March 15th, 1944, from Mr. Richard Schuette to the Attorney General, which [fol. 478] I ask to have marked as Plaintiff's Exhibit 1 for identification.

(Thereupon letter dated March 15, 1944, from Mr. Richard Schuette to the Attorney General, referred to, was marked as Plaintiff's Exhibit No. 1 for identification.)

By Mr. Wright:
Q. Would you examine that Plaintiff's Exhibit 1?
A. Yes, we have a copy of it. Mr. Schuette wrote this letter in my absence in Florida.
Q. That is Mr. Schuette's signature on the letter?.
A. Yes.
Q. He wrote that while you were in Florida?
A. That is right.
Mr. Wright: I offer this.
Mr. Friedman: Objected to, if your Honor please. First of all, there is no testimony that this man was authorized

by the lady who is testifying to write that letter or to bind her in any way whatsoever,

/The Court: She just testified.

Mr. Friedman: No, she merely identified his signature and stated she was absent in Florida when it was written.

The Court: Objection sustained.

Mr. Wright: If the Court please, perhaps I had better [fol. 479] read the letter, then I think the purpose for which——

Mr. Friedman: If your Honor please, I object to the reading of the letter.

Mr. Wright: The fact is apparent that the letter was written while she was absent from the theater. I do not dispute that at all.

The Court: There should be, at least, some proof of his authority to send the letter.

By Mr. Wright:

Q. I take it, Mr. Schuette was acting as manager of the theaters in your absence, is that right?

Mr. Friedman: If your Honor please, I object. The witness has testified Mr. Schuette was not her manager, but was employed in an advertising capacity. She said she had no manager.

Mr. Wright: Let the witness give the testimony on that point.

Mr. Friedman: You are trying to lead the witness.

Mr. Wright.-I just asked the question.

The Court: It seems to me, in order to have any legal effect, you must show this letter was written with her authority. If somebody wrote some letter referring to the purchase of the theater, if she did not authorize that, it [fol. 480] would not have any force here.

Mr. Wright: I think if Mr. Schuette was the man in charge of the theaters at the time the letter was written, it is perfectly competent.

The Court: Let me see it.

Mr. Friedman: There is no testimony that he was in charge. The lady denied that he was the manager.

Mr. Wright: The lady had not had an opportunity to answer the question.

The Court: I will exclude it at this time.

Mr. Wright: I take it your Honor is not excluding it until we have exhausted the testimony on this particular point. I have not gotten an answer to my last question.

The Court: It would be hearsay, as to what somebody else was going to do.

(Last question read.)

Mr. Friedman: She testified before he was not.

The Court: Suppose she did, she might contradict herself.

Mr. Wright: You have already suggested the answer you want.

The Court: What did she answer?

(The question had not been answered.)

The Court: Read the question so you can understand it [fol. 481] fully.

(Question re-read).

The Court: It is leading, anyway.

Mr. Friedman: I object to the leading question.

The Court: Ask her who, if anybody, was manager of the theaters while she was absent.

By Mr. Wright:

Q. Who, if anybody, was manager of the theaters while you were absent?

A. It was necessary for me to be away for a week. Mr. Schuette was with me five years, but I never left him in charge before. So, I paid all checks, everything in advance, prior to going away, and left instructions with him and his wife also that it would not be necessary for him to open any mail except National Screen people, and Highway Express people. I did not know what the checks would be for them, because they varied week to week. He took it upon himself to open the mail, even personal mail, and went ahead and acted on his own initiative. He thought——

The Court: You can't tell what he thought.

The Witness: The boy is heart broken about it, because he thought he was doing the right thing.

By Mr. Wright:

Q. In any event, there wasn't any one else, was there, who [fol. 482] was in charge of your theaters other than Mr. Schuette while you were gone, is that right?
A. That is right.

Mr. Friedman: I object to that question.
The Court: I will let that stand. She stated she told him not to open any of the mail except specific mail. He was not authorized.

By Mr. Wright:

Q. When was it you went to Florida?
A. 14th—I left on the 13th.
Q. 13th of March?
A. Yes.
Q. Had you had any discussion with Mr. Schuette before that time about the fact that Schine was seeking permission to acquire the Liberty Theater?
A. None whatsoever.
Q. At or abont the time this letter of March 15th was written, did he communicate with you in Florida?
A. Yes, after he had taken action.
Q. By "action" you are referring to the writing of this letter, Plaintiff's Exhibit 1 for identification?
A. Yes.
Q. He called you then at Florida?
A. Yes, and told me all he had done and said he was acting, what he thought was the best. He said he saw the [fol. 483] letter from the Department of Justice and opened it, and saw what it was.

The Court: You have to speak louder.

Q. Try and speak more slowly and more distinctly.

Mr. Friedman: May we have the last answer read back?

(Last answer read.)

The Court: Letter from the Department?
Mr. Wright: This letter written in response to any inquiry.

By Mr. Wright:

Q. Did he read you this letter that he had written to the Department over the telephone?

A. No, he mailed me copies air mail.

Q. He sent you an air mail copy?

A. Yes.

Q. And told you over the phone what the substance of it was?

A. Yes, he told me.

Q. Then what, if any, instructions did you give him?

Mr. Friedman: If your Honor please, I object to that, any conversation relative to that letter after it was written. There is nothing in evidence to show it was authorized.

The Court: He is not asking about that now. He is asking what instructions she gave to this so-called manager after this letter was received. Go on, what instructions did [fol. 484] you give him after receiving this letter.

The Witness: Not to do anything further and I would be home immediately, which I did.

By Mr. Wright:

Q. When did you arrive in Cumberland?

A. Just eight days from the day I left. That would have been the 23rd——

The Court: You were gone eight days?

The Witness: Two days in going and——

Q. That would be about the 21st?

A. I left Miami Tuesday morning, I think it was the 21st or 22nd.

Q. He says in the second paragraph of the letter here "Negotiations are now under way for Mrs. Fisher to purchase the Liberty Theater, and the owner already has her check for $5,000 covering the option." Was that statement correct at the time it was made?

Mr. Friedman: I move to strike out the reading of a portion of that letter.

The Court: Do you object to it?

Mr. Friedman: Yes, sir.

The Court: Objection sustained. Let her state what arrangements were made, if any. You are quoting from a [fol. 485] letter that purports to say something. She is here to testify.

By Mr. Wright:

Q. Tell us just what your negotiations were with reference to the Liberty Theater at Cumberland.

Mr. Friedman: I object to that. She did not say she had any negotiations.

Q. If any.

Mr. Friedman: All right.

The Witness: I did have. The Theater had been offered to me some time in January——.

The Court: Which theater?

The Witness: Liberty Theater, and I did not want it.

The Court: In January it was?

The Witness: February. Mr. Mellinson and Mr. Blaul of Cumberland had an option to sell it. Then, on March 1st Mr. Mosner, cashier of the Second National Bank, saw me and told me he was sorry I had not made an offer for the Liberty, because a chain was coming in that could definitely hurt me, and he left me under the impression it was the chain that had hurt me once or twice, Warner Brothers. They kept me out of——

Q. Just a minute, Mrs. Fisher. Just confine yourself to what he actually told you.

[fol. 486] A. He said "It is too late now, but I am sorry you did not protect yourself."

Q. Did he give the name of any chain?

A. No.

Mr. Friedman: Your Honor, the question was asked of this witness to tell all about her negotiations. She ought to be permitted to tell.

The Court: He did not mention the word "Warner"?

The Witness: He did not mention anybody. I asked him specifically if it was the Schine Circuit. He said "No", but he said that he was not at liberty and could not tell me who it was, and then the next morning I made an offer and Mr. Blaul and Mr. Mellinson said it was too late, my offer was too late, that the deal was made.

By Mr. Wright:

Q. When was that?
A. March 2nd, but, however, they accepted the offer.

The Court: They what?
The Witness: They accepted the offer March 2nd.

Q. You made an offer on March 2nd. What was the offer?
A. The offer was $140,000, $130,000 to go to Mr. Burke, and $10,000 to the brokers.
Q. Did you at the same time make a cash deposition of any kind?
[fol. 487] A. Yes, I did.
Q. How much did you deposit?
A. A check for $5,000.

The Court: With the real estate man?
The Witness: Yes, with the real estate man.

Q. You say at first they told you it was too late, that they had an offer from somebody else?
A. And the deal was too near closed, but——
Q. Did they tell you who that was?
A. No.
Q. Did you ask them?

The Court: Why did you make an offer if the deal was closed?
The Witness: Because my bank had urged me, if there was any possible way to make it, they advised me to do it.
The Court: Why did you make an offer when it was too late?
The Witness: They said it was too late, but, however, they accepted the offer.

By Mr. Wright:

Q. Didn't they tell you the offer they had was subject to Court approval?
A. No, not at the time.
Q. When did they first tell you that?
[fol. 488] A. Well, when—I came down to Washington, and then I went over and asked them to withdraw my offer, when I learned it was the Schine Circuit, and they said then it was subject to Court approval, that they would give me back my offer, they would return it.

Q. Have they returned your check?

A. No, they certified it and kept it.

Q. When was it you first learned that the Schine Theater was the chain that was going to acquire the Liberty?

A. In the trade papers. I get the Daily every day. I saw it in the trade paper.

Q. That was when?

A. I don't remember the exact date, but it was a week ago Friday, week ago this past Friday.

Q. Are you sure it was not before that? Didn't Mr. Schnette, when he called you on the telephone to tell you about the communication from the Department, tell you what that was?

A. I don't think he did. I have the letter.

Q. You have seen the letter from the Department?

A. Yes.

Q. And the Department's letter that was sent to you referred specifically to Schine's request to acquire the Liberty Theater, did it not?

A. Yes, but that was much after March 2nd.

[fol. 489] Q. Yes, that was after March 2nd, but you learned of it on March 15th, at the time Mr. Schuette wrote the Department in your absence, isn't that right?

A. Yes, but the offer had been in then 15 days.

Q. I understand that, but I say, you did know at the time you talked to Mr. Schuette, while you were in Florida, that Schine was the chain that was coming in?

A. Yes.

Q. As I understand you, you say you then came to Washington and you talked to the representatives of the film exchanges in Washington?

A. Yes.

Q. Can you tell us what conversation you had with the film exchanges?

Mr. Friedman: If your Honor please, I don't see what bearing that has on this theater of Burke's.

The Court: I don't see that it has.

Mr. Friedman: I object to it.

Mr. Wright: I think it will appear if the conversations are stated.

The Court: Are you cross-examining the witness?

Mr. Wright: I think, if the Court please, she is actually here as the Court's witness on the question of the facts.

Mr. Friedman: If your Honor please, the Government issued a subpoena for this lady.

[fol. 490] Mr. Wright: Let me ask her another question.

By Mr. Wright:

Q. Mrs. Fisher, did the conversations that you had with the film exchanges in Washington have anything to do with your decision to withdraw your offer?

Mr. Friedman: I object to that, if your Honor please, as to what conversation——

The Court: Overruled. Did your conversation with the film exchanges have anything to do with your decision to withdraw your offer?

The Witness: Well, it did. They assured me I would always have the product the same as I had the last fourteen years. The only other two opposition had not affected my operation, the Liberty, or the Strand.

Q. By the "product" you are referring to the feature films that you people first run in your Cumberland theaters, is that right?

Mr. Friedman: Again I object to leading the witness.

The Court: Yes, that is true.

Mr. Wright: I am just trying to shorten this up to some extent.

The Court: I know, but if objections are made, I have to pass on them.

Mr. Wright: If time is no object, I will be glad to phrase [fol. 491] each one of these questions——

The Court: Let her go ahead and testify without suggestion.

By Mr. Wright:

Q. Then, you say, as I understand you, after you had had this assurance that you have referred to from the film companies, that you would be allowed to retain your film product, you went back to Cumberland and talked to Mr. Blaul and told him you wanted to withdraw your offer?

A. That is right.

Q. However, you say he has not yet returned your deposit to you?

A. He has not.

Q. Has he told you that he expects to hold you to your offer in the event that Schine does not acquire the theater?

Mr. Friedman: I object to that.
The Court: The contract shows for itself, does it not?

Q. Was the offer accompanied by a written contract of any kind?
A. Yes.

The Court: In writing?
The Witness: Yes.

Q. Have you got a copy of that with you?
A. My attorney has.

Mr. Wright: I will ask to have this document marked [fol. 492] Plaintiff's Exhibit 2 for identification.

(Thereupon copy of offer made by Mrs. Fisher for the Liberty Theater, referred to, was marked as Plaintiff's Exhibit No. 2 for identification.)

Mr. Wright: It is dated March 2nd, 1944, addressed to Mellinson & Blaul, Brokers.
Mr. Friedman: Are you offering it?
Mr. Wright: I want to identify it.

By Mr. Wright:

Q. Mrs. Fisher, is this Plaintiff's Exhibit 2 a correct copy of the offer you made for the Liberty Theater?
A. Yes.

Mr. Friedman: If your Honor please, I object to the admission of that paper into evidence on the ground it is not signed by this lady and there is evidence here she never authorized Mr. Schuette, that man who works for her, to make the offer.
The Court: She made a deposit of $5,000.
Mr. Friedman: No, she said her man made a deposit of $5,000.
The Witness: No, no.
Mr. Friedman: I am sorry.
The Witness: Mr. Schuette's wife works in the office with [fol. 493] me. She wrote the paper up——
The Court: Never mind.
The Witness: Mr. Schuette signed it as a witness.

The Court: Never mind. Just a moment. Let us get this straightened out first.

Mr. Wright: If the Court please, this is a copy.

By Mr. Wright:

Q. You signed the original of that exhibit, too, is that correct?

A. Yes.

Mr. Friedman: I withdraw my objection, if your Honor please, if she signed the original.

The Court: Exhibit 2 in evidence.

(Plaintiff's Exhibit No. 2, previously marked for identification, was received in evidence.)

Mr. Wright: I think that is all.

The Court: Cross-examine.

Cross-examination.

By Mr. McCarthy:

Q. How long have you been in the theater business in Cumberland, Maryland?

A. Since 1924.

Q. Will you speak louder, so I can hear you and the Court [fol. 494] can hear you?

A. Since 1924.

Q. How many theaters have you there?

A. Two.

Q. What is the size of those two theaters?

A. One is 1350, and one is 669.

Q. The one that is 1350 is what is known as a first-run house, is that correct?

A. That is right.

Q. Whom do you buy pictures from for your first-run house in Cumberland?

A. Metro Goldwyn Mayer, United Artist, Columbia, some independents.

Q. The Schine Circuit came into Cumberland some time in 1941 or 1940, is that right?

A. Yes.

Q. They have the Strand Theater there, which seats about 1360 people?

A. Yes.

Q. During the period since the Schine people have been there have they ever interfered with the people you buy your product from?

A. No.

Q. They never have?

Mr. Wright: Just a moment. I don't think Mrs. Fisher is [fol. 495] in a position to testify as to what transpired between any of these distributors and the Schine.

Mr. Friedman: I think she is in a position to testify as to what her experience has been, whether they have attempted to interfere with her or not.

Mr. Wright: She can testify to her own experience in buying films, but she has no knowledge whatsoever as to what representation Schine may have made to any film company at any time.

The Court: She can testify to her own contact——

Mr. Friedman: With the film people she does business with.

The Court: Not what somebody else said to somebody else.

By Mr. McCarthy:

Q. Has Schine ever, since they have been in Cumberland, shown in the Strand Theater any pictures that came from the people that you do business with?

A. No.

Q. Has there ever been a time since Schine has been in Cumberland while you were there that they took away from one of the people that you do business with a feature play or first-run picture and showed it in their house?

A. No.

Q. There has not been?

A. No.

[fol. 496] Q. Mrs. Fisher, do you know who Burke does business with, the houses that he does business with?

The Court: Who?

Mr. McCarthy: Burke, the owner of the Liberty Theater.

The Witness: R. K. O., Universal and Warner.

Q. Hiw house is a 986 seat house, is that right?

A. Yes.

Q. Are you familiar with the house?

A. Not so very. It has been remodeled so many times. Fisher originally put in that theater, but I did not see it often.

Q. When was the last time you inspected it?

A. To be truthful, I have never inspected it. I have been in and out occasionally.

Q. Can you tell me the last time you were in it?

The Court: As nearly as you can tell.

The Witness: Probably last summer.

Q. At the time that you looked at it last summer, had it been offered to you for $100,000?

A. No, it was never offered to me for $100,000.

Q. Had there been any conversation with you about any offers of it for $100,000?

Mr. Wright: I don't see the relevancy of that.

Q. With you?

Mr. Wright: Hearsay, anyway.

[fol. 497] The Court: If it was not somebody in authority, that is true.

By Mr. McCarthy:

Q. Had you had any offer, any conversation with—who are these people, Mellinson & Blaul—about the price of it at that time?

A. No, they never approached me until 1944.

Q. Until 1944?

A. Yes.

Q. Before you made this offer, did you inspect the house to see what condition it was in?

A. No.

Q. The only reason you were so anxious to make this offer was, you thought Warner Brothers were the people who were going to get this theater?

Mr. Wright: Just a minute. I object to that. She has testified fully as to what her reasons were here.

Mr. McCarthy: This is proper cross-examination.

The Court: I will let her state the reasons for making the offer.

Mr. Wright: Yes.

The Court: State the reasons for making this offer that you made.

The Witness: Well, under pressure, and due to the fact [fol. 498] that this company might be powerful enough to hurt me and take my product, which Mr. Mosner assured me they would be. I had an unpleasant experience at one time, in Frederick, Maryland, and also Cumberland, with Warner Brothers. It was not anything drastic, but it could have been.

Q. Mrs. Fisher, have you any objection to the Schine Circuit buying this theater?

A. None whatever.

Q. Are you familiar with Mr. Schine's Strand Theater in Cumberland?

A. Well, yes, I am familiar with it. I don't go down often, but——

Q. As a matter of comparison, would you say Mr. Schine's Strand Theater in Cumberland is better kept up and maintained than the Burke Theater?

A. Well, I could not say, because I don't get in either one of these theaters often enough to say that with authority.

Mr. McCarthy: No further questions.

The Court: We will suspend now until 2 o'clock.

(Whereupon a recess was taken until 2 o'clock.)

[fol. 499] After Recess, 2 o'clock p. m.

Appearances: As before noted.

Mr. Wright: Are you through with Mrs. Fisher?

Mr. McCarthy: Yes.

Mr. Wright: I don't think we have any more questions to ask Mrs. Fisher, your Honor. We have here a copy of the option agreement that Mr. Burke referred to in his testimony the last time. That was the agreement that he gave the agents authorizing them to sell the property. I think it has been agreed, or it is agreed that this copy here, which I will ask to have marked as Government's Exhibit 3 for identification is a correct copy of the agreement with his agents to which he referred.

Mr. Friedman: We do not know whether or not it is correct, but we do concede, if they were here to testify and said that is the correct copy, it is.

Mr. Wright: Yes, that Mr. Blaul, as agent, would testify that this Government's Exhibit 3 for identification is a true copy of the opinion agreement by which Mr. Burke gave them authority to negotiate for the sale of the Liberty Theater.

[fol. 500] Mr. McCarthy: It speaks for itself, your Honor.

The Court: Received.

(Thereupon option agreement of Mr. Burke, to real estate agents, referred to, was received in evidence and marked as Plaintiff's Exhibit No. 3.)

Mr. Wright: The only further question, as far as we are concerned relates to Mr. Magruder. You will recall at the last hearing I stated that we had had a letter of protest from Mr. Magruder who operates a second-run theater at Cumberland, the Garden Theater. I also received a letter from Mr. Magruder on March 29th, when I spoke to him about being at the hearing, in which he said he is a diabetic and under the doctor's care for both diabetes and high blood pressure, and would be unable to be present on the 10th. I sent a copy of his letter to counsel with the suggestion, if they would stipulate that he would testify in accordance with the letter, it would be unnecessary to postpone the hearing or have him come at some other time or take his deposition.

Mr. Goodwin: I don't think that is a reason for postponing [fol. 501] the hearing.

Mr. Wright: Counsel stated they wanted to cross-examine him. I don't know what they want to bring out by cross-examination. Our only purpose in introducing the letter or having him here is simply to establish the fact that he does object, and I suppose there is no—as to the reasons of the objection, they are stated in the letter, and he sais in his subsequent letter he has nothing to add to what is stated there.

Mr. Friedman: Here is a man who runs a very small theater, by his very own admission, in comparison to the theaters owned by Mrs. Fisher and Mr. Burke and the Schines. Of course, we would want the opportunity to cross-examine him. We feel he has no real bona fide objection at all. The fact that he writes such a letter at the solicitation of the Department of Justice certainly is no objectionable reason. We would like to have the opportunity to cross-examine him, if he is presented.

Mr. Goodwin: The only testimony could be not as to whether he objected or not; the only relevancy of his testimony would be the question of public interest and the com-[fol. 502] petitive situation. If he could bring him in and have him testify with regard to that, we would have an opportunity to cross-examine him, seeing on what grounds he felt it was not for the public interest, if that is what he feels. I don't know that he would say that. The fact he objects is not material to any issue under this motion.

Mr. Wright: If the Court please, I would concede if called he would not testify that his objection was based on consideration of the public interest. He says very frankly in his letter that the reason he objects is purely because he thinks it might hurt his business. He says at the finish "as stated above, our viewpoint is admittedly a prejudiced one." There isn't any argument about that. It does not require any cross-examination to show that Mr. Magruder's objection is based merely on what he concedes to be his own self interest. I do think it is important for your Honor to know in a situation of this kind who does object and who does not, and the reasons for such objections. I do not suppose—it does not seem to me there is any dispute between us here as to the fact that this fellow does [fol. 503] object and that he objects for, let us say, purely selfish reasons.

Mr. McCarthy: With that concession by counsel, we have no objection to accepting this letter for what it is worth.

Mr. Wright: I ask to have that marked.

The Court: Exhibit 4.

(Thereupon letter from Mr. Magruder to the Attorney General, dated March 16, 1944, referred to, was received in evidence and marked as Plaintiff's Exhibit 4.)

Mr. Friedman: I would like to ask Mr. Wright in connection with this same man Magruder. I would like a concession that Mr. Magruder runs a theater, one theater called the Garden with 425 seats. The capacity of the other theaters in Cumberland is already in evidence. And that his house does not run any first-run pictures, merely second-run pictures.

Mr. Wright: That is correct.

Mr. Friedman: One other concession, that his admission prices are much lower than ours.

The Court: What?

Mr. Friedman: His admission prices are much lower than [fol. 504] those of either the Strand operated by Schine, or the theater operated by Mr. Burke, or the theater operated by Mrs. Fisher.

Mr. Wright: I haven't any idea what admission prices he charges, but I am sure if he operates a second-run theater, he must charge lower admission prices than the first-run houses. That is universal practice.

Mr. Friedman: I have Mr. Wright's consent, if your Honor please, to submit in the record of this motion in connection with the acquisition of the Burke theater a photostatic copy of the Consent Decree entered into by the Southern District of New York in the action entitled "United States of America, Plaintiff, against Paramount Pictures, Inc., et al, Defendants."

Mr. Wright: Of course, your Honor, we don't agree at all that this decree is relevant to this proceeding, but we concede your Honor may judicially notice its contents.

(Thereupon Consent Decree in the Southern District of New York, referred to, was received in evidence and marked as Defendant's Exhibit D.)

Mr. Friedman: Not in connection with this Burke application [fol. 505] but in connection with the motion for modification, Mr. Scott, who is a 50 per cent partner in Schine interests in Harlan, Kentucky, and who I think wrote your Honor a letter, is here. We do not wish to call him as a witness, but he wants to appear and state for the record, because of the fact that he is going into the army on the 25th of April, his statement with regard to the modification, if your Honor gets to that point. His 50 per cent interest is ordered sold under the order, and I think your Honor has a letter from him in which he explains why he possesses that, and why he wants to perpetuate his testimony before your Honor, if your Honor would like to hear him.

Mr. Wright: We don't have any objection.

Mr. Friedman: Actually what we are doing is avoiding it going on the military calendar, because he will not be here later.

The Court: All right.

Mr. Goodwin: Have you any objection to excluding this

50 per cent interest from the operation of the temporary order?

Mr. Wright: I think we do, yes.

[fol. 506] Leon Bernard Scott, a witness, having taken the stand in his own behalf, having been first duly sworn, testified as follows:

Direct examination.

The Witness: Your Honor, my only interest here, of course, is the Margie Grand Theater in Harlan. On January 1st, 1940, I purchased this theater from my father. I borrowed quite a sum of money in doing so. During 1940 I had it all by myself. However, the latter part of 1940, business was not good enough whereby I could meet a note that I knew was coming due on the first of 1941. Therefore, I approached the Schine interests and eventually made a deal selling them 50 per cent interest in my theater —leasehold. Then in 1942 I received this subpoena here, and a letter from Mr. Thurman Arnold, who was at the time Assistant Attorney General, advising me that Schines were being compelled to sell their half interest in my theater.

Well, as I considered their operation so far as advertis- [fol. 507] ing, exportation, much better than my judgment, I replied and objected on June 12th, 1942, and asked at that time that the order be modified whereby my theater would not be included. However, he did reply on June 19, 1942, and stated that he could not consider such a thing. He said the Department cannot consider any request for any modification of the order to permit Schine to retain its interest in the Margie Grand. If I am not mistaken I believe the order itself sets up that modifications can be considered.

Mr. Wright: Is he going to give testimony or are you going to make an argument?

The Witness: I am merely pleading.

The Court: What the effect of the order is, is for the Court to pass on. What else do you want to say?

The Witness: I heard no more relative to this case until a short time ago, a letter dated March 24th, from Honorable Tom C. Clark, now Assistant Attorney General, advising me that a hearing was being set today for appointment of a trustee to sell Mr. Schine's 50 per cent in the

Margie Grand Theater. During the first part of March, I [fol. 508] made a trip to Gloversville——

Mr. Wright: Have you got this last letter that you refer to?

(Witness hands document to Mr. Wright.)

Mr. Wright: Go ahead.

The Witness: During the first part of March I made a trip to Gloversville and saw Mr. Schine and left with satisfactory arrangements, whereby my family, which consists of my wife and three sons, would receive sufficient income while I am in service to carry out the program which we started about four or five years ago, that is, paying of my obligations, and insurance premiums—I mean—in 1940 I also bought a home, and to continue the payments on that. In other words, it is not—my letter to Mr. Arnold was for myself and my family. Right now it is merely for my ~~family,~~ because I will be going into the naval service April 25th.

The Court: Schine hasn't it for sale, you mean; just for a lease operation?

The Witness: I do not desire—if Mr. Schine was compelled to sell his 50 per cent interest, everything which I [fol. 509] have arranged would naturally be torn down.

The Court: My question was, as I understand your arrangement with Schine, it was not for sale, but for the operation, is that the point, under the conditions?

The Witness: I do not——

The Court: You have made some arrangement with Schine at Gloversville?

The Witness: Yes.

The Court: That was not for selling the 50 per cent?

The Witness: No, turned over the complete operation to them while——

The Court: During your war service. Anything further that you want to say about that?

The Witness: Nothing further. I might add, except, I have always found him to be very honest with me. I have no interest other than the 50 per cent in the Margie Grand Theater.

The Court: Maybe counsel has some questions?

Cross-examination.

By Mr. Wright:

Q. Have you got a copy of this last agreement you made with Mr. Schine?

A. A copy of what agreement?

[fol. 510] Q. The agreement you were just referring to whereby Schine would take over the operation of the theater while you were in the navy?

A. Not with me.

Q. Could you——

A. I can secure it.

Q. —procure one for us? I take it there is no objection to having that made a part of his testimony.

Mr. McCarthy: If there is a written agreement.

Mr. Friedman: Was that a written agreement or oral arrangement, Mr. Scott?

The Witness: It was papers which I signed by myself, whereby they would have complete operation of the theater. However, my wife who is also a stockholder, and my sister, will be able to vote the stock each year, the 50 per cent that I have.

By Mr. Wright:

Q. I take it, those papers, whatever they are, will make clear the precise nature of whatever the arrangement is?

The Court: Have you got a copy here?

Mr. Friedman: No, sir. We have no objection to that.

By Mr. Wright:

Q. In any event, whatever agreement you have with them is contained in these writings, that are going to be [fol. 511] produced?

A. Yes, sir.

Q. There is nothing outside of that?

A. Everything is written.

Q. This letter of March 24th, that you got from the Department with reference to the Schine investment in the Margie Grand Theater, did you ever answer that letter?

A. At the time, sir, I was in Lexington, Kentucky, having dental work done, and when I got back, I not only got that, but also got my draft notice, and so, as the time was rather short, I took the liberty of writing the Honorable Judge Knight and requesting a hearing.

Q. The questions in this letter, however, asked for information as to circumstances under which Schine acquired the theater and the investment that was made. Is that covered in this letter that you have written to Judge Knight?

A. No, except the $25,000 that was paid to me, ten by cash, and two notes for ten, and one for five, which I, in turn, turned over to my father, part of it, I think $22,000, which paid him up in full. The remainder I paid to the bank, on what I still owed them.

Q. Was there some question about the bank foreclosing there at this time on their indebtedness?

A. Not at the time.

Q. You made the sale, however, in order to prevent the [fol. 512] bank from taking possession of the theater, is that it?

A. No, sir, I made the sale, because I was, as I stated, business was not too good in the latter part of 1940. I can tell you why, sir.

Q. Why was it?

A. On July 1st, 1940, there was a Federal Defense Tax put on admissions. I think where I made my mistake, instead of absorbing that tax, I added it on.

Q. Was there any other theater operating in Harlan?

Mr. Friedman: Were you finished with your answer?

The Witness: Yes.

A. Yes, there was.

Q. Who operated the other theater?

A. Mr. Price Coomber of Lexington.

Q. Schine had not been operating in Harlan prior to the time you made this deal with them?

A. I first became associated with Mr. Schine when my father had the lease on the Margie Grand in 1938.

Q. What was your association then?

A. The association at that time was an operating agreement.

Q. You had an operating agreement with Schine?

A. My father.

Q. Even in 1938?

A. Yes, sir.

Q. Was Schine then operating another theater in the vicinity?

[fol. 513] A. No, sir.

Q. Do you recall how your father happened to enter into that operating agreement?

A. You mean how he happened to—he entered into it—I had a proposed lease from Mr. Hiram Owens on the theater to be built in Corbin, Kentucky.

Q. That is nearby?

A. That is about 17 miles from Barbersville, and this proposed lease, I was to—for securing same, I was to get 50 per cent of it and my father the other 50. However, Mr. Schine—Mr. Louis Hinsler of Schine approached us, and purchased this lease, which met with our satisfaction, and there was nothing in it to say we could not sell it, I don't think—in fact, I know there wasn't, and also at the same time was when we made the operating contract. That is how we met Mr. Schine.

Q. That operating contract you made with him was one whereby Schine bought the pictures for you?

A. He bought the pictures for us, he booked the pictures for us. We got the benefit of his suggestions as to exportation, advertising and operation, and everything about the operating of a theater.

Q. I take it, the main purpose of making the operating agreement, however, was so you would get the benefit of Schine's booking and licensing of films?

[fol. 514] Mr. Friedman: I object.

Q. What did you say?

A. I would not say that, no, sir, because that is not true.

Q. Schine never was in opposition to you in that town.

A. Never has been in opposition to me.

Q. There were no other circuits operating in opposition to your theater at Harlan?

A. No, sir.

Mr. Wright: That is all.

Mr. Goodwin: On the basis of the situation shown by the testimony and what is shown in our report, I move the Court to eliminate from the temporary order, item 13, on page 4, relating to the Margie Grand Theater in Harlan, Kentucky. It is within the jurisdiction of the Court to make such an elimination. Although it is a Consent Decree, or a Consent Order, we can submit authorities on that, but it must be obvious to your Honor that it is very unjust to force a partner upon this young man, a partner whom he does not know and may never know, and I will not go any further with the argument, but I want the motion to stand, and I can submit authorities or take it up.

The Court: How many theaters are there down there?

[fols. 515-517] The Witness: Two, sir. One other besides ours.

The Court: What class of pictures do you have, first-run?

The Witness: We both have first-run.

The Court: Who owns the other theater?

The Witness: Mr. Price Coomber, of Lexington, Kentucky.

The Court: Your town is—

The Witness: Harlan, Kentucky.

The Court: Harlan?

The Witness: Yes, sir.

Mr. Wright: If the Court please, there isn't any question, of course, to the Court's right to modify, but this is only one phase of the questions before you on our motion to appoint a trustee, and I don't suppose there is any point in trying to decide it without a full consideration of the whole matter.

The Court: I am just inquiring for my own information, that is all.

(Argument had with respect to motions.)

(Whereupon an adjournment was taken to April 11th, 1944, at 10 A.M.)

[fol. 518] IN UNITED STATES DISTRICT COURT

[Title omitted]

Proceedings before Honorable John Knight, United States District Judge for the Western District of New York, April 11, 1944, at 10 A.M.

APPEARANCES:

Honorable George L. Grobe, United States Attorney for the Western District of New York, by Robert L. Wright, Esq., Special Assistant to the Attorney General.

Messrs. Goodwin, Rosenbaum & Meacham, Shoreham Building, Washington, D. C., by Clarence N. Goodwin, Esq., and

A. E. Robert Friedman, Esq., 40 Wall Street, New York, N. Y., and

Edwin McCarthy Esq., 70 Pine Street, New York, N. Y., appearing for the defendants.

[fol. 519] PROCEEDINGS

(Argument had on motions)

Mr. Wright: Would you mark this request for admission of facts, with eight letters attached as Government's Exhibit 5?

(Thereupon request for admission of facts, with eight letters attached, referred to, were marked as Plaintiff's Exhibit No. 5 for identification.)

Mr. Wright: As I understand it, counsel concedes that the letters attached to Government's Exhibit 5 are true copies of those respectively written and received by the parties named therein on or about the dates they bear.

Mr. McCarthy: That is right.

The Court: Is there any concession made?

Mr. Wright: I read what I thought was the stipulation.

The Court: What is the answer to that?

Mr. McCarthy: We will admit these letters are true copies.

(Plaintiff's Exhibit No. 5, previously marked for identification was received in evidence.)

(Copies of Exhibits set forth in rear of record.)

(Further argument had on motions.)

[fol. 520] ROBERT H. BOLLING, a witness called by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Wright:

Q. Mr. Billing, will you state your address and occupation?

A. I live at Norton, Virginia, and I have been road contractor some several years, farmed some, too.

Q. Where is Norton, is it near Appalachia?

A. Ten miles, I think; ten or eleven miles from Appalachia.

Q. Are you familiar with the theaters in Appalachia that are described in the temporary order that was entered in this case?

A. Yes, I know about them. I pass there.

Q. Have you made any efforts to purchase them?

A. Yes, I have.

Q. Tell us what you have done.

A. Several different attempts—I made several different attempts to purchase those theaters when this order was first entered, requiring them to sell them back to the parties from whom they acquired them. Mr. Thomas, the owner, landlord of the Appalachian Theater called me and asked me if—he said he might have a theater to rent me, might have a deal to make with me on the Appalachian [fol. 521] Theater.

The Court: Thomas is the prior owner?

The Witness: He was the present owner as far as I know.

Q. He was the landlord?

A. Been the owner all the time.

The Court: Of the property?

The Witness: I did not pay any attention to it, did not really know what he was talking about, but he wanted to lease it to me, because I knew Mr. Murphy had made the sale to Schine, did not think I would have anything to do with it, and I told him that I did not know that I would be interested or could be interested. I did not know anything about the order except what I had just heard, that they had to sell them back without profit to the parties they had acquired them from, and I was on road work and busy and did not have any too much money and handled my own road jobs, so I did not pay any more attention to it for a good while. Then I decided, after finishing out a road job there, decided I would see if I could buy them, and wired Schines to have a conference with them. I don't remember [fol. 522] the wording of a wire. I don't have a copy of it, but I wired them that I wanted to talk with them about it. They wrote me back that my wire was indefinite and did not understand just what I wanted to talk about, if I would write them fully as to what I wanted to discuss, why, they would discuss—they would take it up, or they would do something about it. Then I wrote them a letter fully explaining, I thought what I wanted to talk to them about, so——

Mr. McCarthy: Will you let him please identify this as to date, your Honor?

The Court: You wrote them a letter?

The Witness: Yes, I wrote them a letter in reply to their letter telling them what I wanted to talk about, that I wanted to buy the theater, and I never heard from them since.

Mr. Friedman: I think he ought to give us the date.

Mr. McCarthy: At least some idea as to the date.

The Court: I suppose the papers themselves would probably be the best evidence.

Mr. McCarthy: We had a lot with him.

The Witness: I have the letters here in my pocket. This [fol. 523] was in August, I think, 1942. I haven't heard anything from that letter yet, anyway.

Q. Have you got a copy of that letter?

A. I have. Here is their letter and a copy of my letter.

(Handing documents to Mr. Wright.)

Mr. McCarthy: Let us see what he is talking about.

Mr. Goodwin: May I see the letters from the Department of Justice there?

The Witness: Yes, sir. (Handing documents to Mr. Goodwin).

Mr. McCarthy: No objection.

Mr. Wright: I ask to have the original letters which the witness has produced marked as Government's Exhibit 6, dated August 21st, to Schine Circuit.

(Thereupon letter dated August 21st, 1942, from R. H. Bolling, to Schine Circuit was received in evidence and marked as Plaintiff's Exhibit No. 6.)

(Copy of exhibit set forth in rear of record.)

By Mr. Wright:

Q. Have you had any negotiations with them since this letter of August 21st, 1942, was written?

A. I had. The next attempt I made to purchase it was through Mr. Rich, real estate agent in Norton, whom I have traded a lot with. He wrote them about——

[fol. 524] Mr. McCarthy: I object.

The Witness: About December, he was acting for me.

Mr. McCarthy: Just a minute. I object to what Mr. Rich wrote to Schine. He is attempting to say what somebody else wrote.

The Court: Sustained.

By Mr. Wright:

Q. Just confine yourself to any negotiations you had with the Schine people.

The Court: Did you correspond or talk with any of them again?

The Witness: Yes, the next thing I did, I got Mr. Murphy to call Mr. Schine and ask him if he would sell. Then last week I called Mr. Schine myself and asked him to meet him for the purpose of trading.

Q. Which Mr. Schine is this?

A. That was J. Meyer Schine. I reached him in New York, at a hotel in New York City. I first called Gloversville, and then got him over there.

Q. What was the conversation you had with him?

A. He stated that he would see me and Mr. Murphy. We were operating together in this deal right now. It is the fact Mr. Murphy is interested with me.

Mr. Friedman: We did not hear that last answer.

[fol. 525] (Last answer read.)

Mr. McCarthy: Mr. Murphy is interested with him.

The Witness: In this conversation in this hotel in New York, over the telephone, he said he could not see us now, he was going away to Baltimore and other trips, and that he would be in Lexington, Kentucky, on Wednesday this week, and he would see us in Lexington, and I said to him that would be after this hearing. He said "I don't know when the hearing will be. I don't know when the hearing will be." And I told him we probably would see him in Lexington.

Q. Do you desire to purchase the State and Appalachian Theaters at the prices specified in the temporary order?

A. That is right, I will, if given an opportunity.

Q. By the way, you were not subpoenaed by the Government to appear here?

A. No, I was not. I was interested in acquiring those theaters down there. If they had to be put on somebody, if they had to dispose of them, I was interested in getting them. I followed this myself and called the Department of Justice to ask if there would be a hearing on this, yesterday, and I came here, too.

The Court: Do you own any other theaters?
[fol. 526] The Witness: No, sir, not now. I had a theater in Norton in opposition there, so I succumbed and sold my theater to my opposition, and that is my main reason for wanting theaters in Appalachia. Another reason is I have a son-in-law who is quite a theater man, according to his ideas, anyway; he likes it and he has been interested in running theaters, so I was trying to get it partly for his benefit.

The Court: How large a place is this?

The Witness: Appalachia?

The Court: Yes.

The Witness: It is around four—3500 or 4000 people.

The Court: How many theaters are there?

The Witness: They have two there. The property I used to own was sold to Mr. Murphy, the State, a little theater, and then this larger theater owned by Mr. Thomas, the landlord, known as the Appalachian Theater.

Cross-examination:

By Mr. McCarthy:

Q. Did I understand you to say, Mr. Bolling, that you had not heard anything from Schine since you wrote the letter of August 21st?
[fol. 527] A. No reply to my letter, that is right.

Q. Did you get this telegram (handing to witness)?

A. No, sir, I did not receive it.

Q. Did you get that telegram (handing to witness)?

A. No, sir, I did not.

Q. Did you send this telegram (handing to witness)?

A. I did not.

Mr. McCarthy: I ask to have these marked for identification.

(Thereupon three telegrams were marked as Defendants' Exhibits E, F and G for identification.)

The Witness: One reason I know I did not send that is the word you got "regards" on the telegram.

Q. So, you state, Mr. Bolling, that you did not receive a telegram on September 8th, 1942, which reads as follows——

Mr. Wright: He has already stated he did not receive it. It seems to me as though you are encumbering the record.

The Court: That is true. He said he did not receive or send it.

Mr. McCarthy: And he did not send this one here.

The Court: And did not receive those two.

Mr. McCarthy: It will be necessary for us to subpoena the records of the Western Union people in Norton, the [fol. 528] operator there, to refute this man's testimony, because this telegram is signed by this man's name, "R. H. Bolling."

The Court: Who were the others directed to?

Mr. McCarthy: Directed to him. Both directed to "R. H. Bolling, Norton, Virginia."

The Court: All right. Is that all of this witness?

Mr. McCarthy: No, I am not through with this witness.

By Mr. McCarthy:

Q. In your letter of August 21st, 1942, you state "I would be interested in repurchasing the real estate I sold Murphy, provided you would dispose of the lease on the other house and your equipment in both houses." What was the real estate you sold Murphy?

A. State Theater, the building that contains the State Theater.

Q. Did you know the terms of this temporary order at the time you wrote this letter?

A. No, sir, I did not. I had never seen it.

Q. Did you talk to Murphy about this purchase?

A. I talked to Murphy in the first place, when Murphy was considering taking them back on this notice that I mentioned here, about a 20-day notice which is in the order. I know about the order now, because I have a copy of it.

Q. Is this the same Mr. Murphy that appeared here before [fol. 529] Judge Knight at a hearing on June 15th, 1942, and was granted an extension of time to June 22nd, 1942, to purchase these two theaters, provided he made a deposit of $10,000?

A. This is Mr. M. K. Murphy from Big Stone, Appalachia.

Q. Were you in with him on that deal?

A. No, sir, I was not.

Q. You were not a partner of his at that time?

A. No, sir.

The Court: What is the date of that?

Mr. McCarthy: On June 15th, 1942, Mr. M. K. Murphy appeared before your Honor and you provided that he had an extension of time to June 22nd, provided he paid the sum of $10,000 for these same two theaters, the State and Appalachian.

The Court: What became of the interest in the other theater?

Mr. McCarthy: He never went through with this deal.

The Court: Is that still owned by Schine?

Mr. McCarthy: Yes, both the State and the Appalachian are owned by Schine. The State property, the Schine people own the fee, and the other is a leasehold, your Honor.

By Mr. McCarthy:

Q. From the time of sending this letter of August 21st, [fol. 530] 1942, until you received a letter from the Department of Justice, in the early part of 1944, you did receive a letter, did you not? Haven't you got it there?

A. Yes, I received a letter from the Department recently.

Q. That is the one I want.

A. Is that the one you are talking about?

A. What is the other one?

A. The same thing which I spoke about a while ago. (Handing document to Mr. McCarthy.)

Mr. McCarthy: Do you want to read them?

Mr. Wright: Are you offering them?

Mr. McCarthy: Yes, I am going to offer these letters. They are your letters.

Mr. Wright: We have no objection.

The Court: Received.

(Thereupon two letters from the Department of Justice to Mr. R. H. Bolling, dated March 24th and April 5th, 1944, referred to, were received in evidence and marked as Defendant's Exhibits H and I, respectively.)

(Copies of exhibits set forth in rear of record.)

By Mr. McCarthy:

Q. Now Mr. Bolling, from the time in 1942, when you wrote this letter, this last letter to which you say you never [fol. 531] received any reply, did you write the Schine people or telegraph them yourself in regard to the State and Appalachian Theaters at any time up until after receiving this letter dated March 24th, 1944 from the Department?

A. Not myself. I stated a while ago I had a real estate agent to offer to buy it.

Mr. Wright: What is the difference whether he did or not?

Mr. McCarthy: There is a lot of difference. I will proceed to prove it in a minute.

The Court: He said he did not.

Q. You were in the theater business in this particular locality at different times, were you not, Mr. Bolling?

A. Yes, sir, in and out of it. I was—built a nice building.

Q. During what years were you in the theater business there?

A. Well, I was interested as a stockholders in an operating company. I owned the building and leased it to an operating company for some several years. The house was built, known as Bolling Theater.

Q. Where was this?

A. That was in Norton, and a Mr. Barrs was the president of the operating company and ran the theater for some five or six or seven years, starting back there about 1932 or 1933.

[fol. 532] Q. In 1941 were you in the theater business in this locality?

A. I would not state as to the time there, but I did buy out my associate's interest and run the theater there, using my son-in-law as manager of it.

Q. I would like you to confine yourself to the time.

A. But I don't recall the time. I would have to check on that. That is what time it was. I would say it probably was in 1940 or 1941.

Q. 1940 or 1941?

A. I would say so, yes, but I only ran it for a few months until I leased it out and traded it out to Li-coln Theaters. They had a house in the same town.

Q. Appalachia is located in a coal mining section of Virginia, is it not?

A. That is right.

Q. High priced coal mining section?

A. That is right, so is Norton.

Q. High priced coal mine, anthracite section?

A. How is that?

Q. The section produced a high priced coal, high cost coal?

A. Not necessarily. It is not anthracite. It is soft coal, and they sell some dirt and slate along with it.

Q. But it does not operate profitably except when the profits of soft coal are high?

Mr. Wright: If the Court please, the best evidence of [fol. 533] the profitability of these theaters are the records that we subpoenaed that they did not want to produce.

Mr. McCarthy: It is all right. We are entitled to show the reason for Mr. Bolling's coming here and being so anxious now to purchase these theaters.

Mr. Wright: I assume he wants to because he thinks he can make some money with it. I don't think there is any argument about that.

The Court: He wants to see how much he wants to pay for it.

Mr. Wright: He says he is willing to pay the price.

The Court: Maybe he would be willing to pay more.

Mr. McCarthy: Anybody would pay the price in 1941, but they would not carry it two years.

The Court: What did you say about the coal situation? Is there anything in the product there which affects the——

The Witness: Sure, wartime conditions have a direct effect on money in the people's pocket. When the coal operators are getting out all the coal that they can get, and the market is calling for more than they can produce, which is the condition all over the country, everybody knows [fol. 534] that that reads the paper, certainly the miners have more money than what they would have in normal times, but Appalachia is—I have lived in Norton for 25 years or more, raised in the county, not so far away, and Appalachia and Norton have never been but what they were mining some coal and employing some people. Business was going along in a small way.

Q. Not like today; today Appalachia is a boom town of the first degree, is it not?

A. I would not say it is a boom town as compared—strictly speaking of boom towns we have over the country today, no. It is getting out product there, but there is no industries other than that mining.

The Court: Put it this way: The value of property today is more than it was in 1941.

The Witness: I would not say that it was very much more, no, sir. If somebody could guarantee how long this way would continue, and we would not have a drop-back to normalcy, might be another value.

Q. Now, Mr. Bolling, you have been trading in and out of theaters in this territory for quite a long period of time, have you not?

A. Not so very long. When I built the Bolling Theater, [fol. 535] first experience I ever had.

Q. Is that the one you sold to Murphy?

A. Well, that was about eight or nine years later than I built the house. In other words, I had been playing with it that time.

Q. When did you sell to Murphy—is this what is called the State today?

A. Yes.

Q. When did you sell that to Murphy?

A. That was about three years ago now. I don't remember dates. I have got no dates in my mind. About. It was sold about three years ago.

Q. You had held it eight or nine years at that time?

A. The State Theater?

Q. Yes.

A. No, I didn't own the State Theater. I owned it around two years, maybe less than two years, something like that.

Mr. Wright: He was talking, I think, about the theater at Norton.

The Witness: That is when I built the theater, in 1931. I built it in 1931.

Q. You have been in the theater business as far as 1931?

A. Yes, i[illegible]way I have been connected with it. I have been a landlord there. I had a pass to attend the shows.

Q. Are you familiar with real estate, theater real estate, [fol. 536] particularly in this territory?

A. Well, I am not entirely ignorant of it and I would not say that I am well acquainted with the values of real estate.

Q. Do you know what the Appalachian and State Theaters cost in 1941 when they were purchased by Schine?

A. I have heard. I don't know. ~~Do you~~ want me to tell you what I heard?

Mr. Wright: It is in the order. He said he has a copy of the order.

Mr. McCarthy: I submit I am entitled to get an answer from the witness.

The Court: Let him answer. Do you know?

The Witness: Mr. Murphy told me he got $75,000 for them, leasehold and real estate. I still held notes on that real estate. It was paid off not so very long ago.

Q. How much did your notes amount to?

A. I can't tell you exactly that. I think Mr. Murphy paid me $3,000 down, started paying $500 a month, and he had paid some, several monthly—several of those notes had been paid off, maybe five or six thousand dollars' worth of them, or maybe a little more, and when Schine bought it, why, they started paying the notes as Mr. Murphy had been doing.

Q. What was the total amount you got from this sale?

[fol. 537] A. $45,000.

Q. You got $45,000 from Murphy?

A. I did.

Q. That was in 1939?

A. Well, or 1940.

Q. In 1940 you got $45,000 and Murphy sold the same property over in 1941 to Schine for $75,000?

A. Oh, no. He sold a lot of other stuff with it, and he sold some real stuff with it as compared with the value of that State Theater. The State Theater does not amount to much as a theater.

Q. How much did the other stuff amount to?

A. I understood it was $30,000.

Q. I thought you said some real stuff as compared to the value of the State?

A. I am talking about real business opportunity—show pictures.

Q. What did you really mean when you said that? Did you mean that the State was worth more money or the other was worth more money? You said he sold some real stuff as compared to the value of the State Theater.

The Court: Some what?

Mr. McCarthy: Real stuff, that is what I understood.

The Witness: I don't think I said it that way.

The Court: What did you sell for $45,000?

The Witness: I sold a building.

[fol. 538] The Court: With the equipment?

A. With the equipment, fully equipped. It was not only a theater, but it had a large drug store room in it, and had some apartment rooms.

The Court: $45,000?

The Witness: Upstairs.

The Court: What did Murphy sell to Schine?

The Witness: He sold what I sold Murphy, identical stuff I sold Murphy, and he also sold him a ten-year lease on this Appalachian Theater, which was fully equipped theater, leasing for $550 a month.

The Court: That is the other theater?

The Witness: That is the Appalachian, yes.

The Court: That is all included in the $75,000?

The Witness: That is right, sir. That is my understanding.

By Mr. McCarthy:

Q. Today, in 1944, you are willing to buy back what Murphy sold in 1941 at the same price?

A. Certainly I would be willing to.

The Court: What is that price?

The Witness: I can't say I would be willing to pay any more for it, though.

The Court: You would not pay any more?

[fol. 539] The Witness: I might pay slightly more if it was necessary, if your Honor thought that they should be given more, but I doubt if you will rule that way, if you think that, when you have investigated——

The Court: What is the price in the order?

The Witness: —some of their buildings.

Mr. McCarthy: I think it is $76,000.

The Court: Counsel, does that order include the lease on the other theater as well?

Mr. McCarthy: That is right, the lease on the Appalachian Theater.

The Court: How would you propose to pay for it, in cash, I suppose?

The Witness: Well, I would prefer to pay about 50 per cent of it cash and the others in one or two years, the same way like they bought the stuff from Mr. Murphy, if I could. However, I can pay cash, if that would be demanded.

The Court: This $75,000 included the obligations, I suppose?

Mr. McCarthy: There have been some improvements made since that time, but we will go into that later, on the testimony of the value of this property.

Q. Now, Mr. Bolling, would you purchase the State [fol. 540] Theater alone?

A. I would not.

Mr. Wright: The order provides they are to be had as one transaction.

Mr. McCarthy: Just a minute. This is your man.

The Court: Go ahead.

Q. That is the one you sold to Murphy for $45,000?

A. Yes.

Q. You don't want to purchase that one back?

A. No, sir; no, not alone.

Q. Are you familiar with the lease on the Appalachian?

A. I have discussed it with the landlord there about the lease. I know what he said his price was, and I know about the building and the number of seats in it and kind of seats. Yes, sir, I know about that theater.

Q. Do you know the improvements made since Schine bought it?

A. No, sir, I would not say that I do know the improvements they made.

Q. Do you know that they have made improvements since they purchased and since the time of this order?

A. I have heard there were some new seats put in there by somebody, in the balcony, maybe changed the stairway getting into the balcony a little different, or something. I have heard that.

[fol. 541] Q. Mr. Murphy is your partner in this venture?

A. Yes, sir.

Mr. McCarthy: No further questions.

The Witness: He has a theater in Big Stone Gap, and is an old theater man, and we are both too old to be taken into the army, and we might run the theater until the boys get back.

Mr. McCarthy: We are not asking any questions. Please be quiet.

The Court: Strike it out. Anything further?

The Witness: There is one think I want to state——

The Court: No, no. Just answer questions.

The Witness: This is important to me. This telegram——

The Court: Counsel will ask any questions.

Mr. Wright: Of course, I think he ought to be permitted to make a statement.

The Court: Why didn't you ask him?

Mr. Wright: I did not offer him as a witness.

Mr. McCarthy: Oh, yes, you did.

Mr. Wright: He came of his own accord.

Mr. McCarthy: He came in response to your letter.

Mr. Wright: I suggested that he come, but he came at his own expense.

The Witness: I would like to answer that.

The Court: You called him to the stand.

[fol. 542] The Witness: I can tell you how I got here.

The Court: Never mind about that.

Mr. Wright: If he has some statements he should be heard.

The Court: I will let him state what is competent with reference to these telegrams. It cannot be hearsay.

The Witness: The only thing I wanted to state was with reference to these telegrams, that since thinking over the thing——

Mr. McCarthy: Just a minute.

The Witness: I think my son-in-law——

The Court: No, no, not what you think.

Mr. McCarthy: Just a minute, your Honor. He has testified positively that he did not receive these telegrams.

The Witness: I did not myself.

The Court: Just a minute.

The Witness: That is the reason that I did not remember——

The Court: Just stop a minute, will you please?

The Witness: Yes, sir.

The Court: You are required to tell what you know, not what you think your son-in-law did about it. If you have any knowledge as to what was done on these telegrams, you may state.

The Witness: I now remember my son-in-law said he [fol. 543] received this telegram and answered it in my absence.

Mr. Wright: Who is your son-in-law?

The Witness: W. H. Wren.

The Court: You said you never sent them. You learned after he sent them?

The Witness: That is right.

The Court: Why didn't you say that?

The Witness: I didn't recall then.

The Court: You did not recall those two telegrams?

The Witness: No, sir. They are not in my office. I had no copies. I keep a file. I had my bookkeeper to get the file on the stuff pertaining to this deal here.

The Court: You knew about your son-in-law. Why didn't you remember it before?

The Witness: It did not occur to me, because of a word at the end of the telegram "regards," in the telegram to Mr. Lazar, which he received in Lexington, used the word "regards" as the last word, and then I began to think, that is not my word. I would never use that word.

The Court: Who sent the telegram?

The Witness: My son-in-law, Mr. W. H. Wren, Jr.

The Court: Now did you know he sent it?

The Witness: I think he told me afterward. That is my [fol. 544] recollection. My recollection now is, I was away from home and he received it and sent it and told me about it.

The Court: You admit, then, that you received or had information of the two telegrams and the one you sent?

The Witness: I will admit the telegrams were sent. They don't have to have trouble digging up the Western Union, or anything like that, but it was an error I just made.

The Court: Never mind that.

Mr. McCarthy: I will now offer them in evidence.

Mr. Wright: No objection.

(Three telegrams, previously marked as Defendant's Exhibits E, F and G for identification, were received in evidence.)

(Copies of exhibits set forth in rear of record.)

The Court: That is all, I understand.

(Further argument had.)

The Court: You submit what you have and I will dispose of the whole thing.

Mr. Wright: I think there should be a time limit set on the issuance of a memorandum.

Mr. Friedman: May we have until April 30th?

[fol. 545] The Court: That is a pretty long time.

Mr. Friedman: This is the 11th. Two weeks, that is 14 days, to April 25th?

The Court: I think the 24th, anyway.

Mr. Goodwin: I think in a matter of this importance and the fact that there are many things that require attenion, including one that I have in the Second Circuit, we ought to have not less than 30 days to prepare a memorandum. I think it would be advantageous to the Court if we had 30 days, because we can present the matter then fully, and we have four matters, as I understand it, to cover. Two weeks, I don't think that is time enough.

Mr. McCarthy: I think we can get ready in two weeks. I think we can, your Honor.

The Court: What is your desire, Mr. Wright?

Mr. Wright: It is wholly a matter of your Honor's convenience.

The Court: Of course, if you put it too late, it may delay the trial.

Mr. Wright: We, of course, would object to any delay on the trial.

The Court: Is that all right to you?

Mr. Wright: The 24th?

[fol. 546] The Court: All right, Monday the 24th.

Mr. Friedman: The only matter which requires an early decision is the Burke application, because that option expires on May 1st.

Mr. Wright: If the Court please, that has no bearing on the matter.

Mr. Friedman: Oh, yes, it has a very important bearing. Here is a man 78 years old who comes into court——

The Court: Is there any reason why you cannot extend that for a short time, Burke's option?

Mr. Friedman: We can inquire and inform the Court.

Mr. Wright: There is one more thing. I don't believe these exhibits offered were read into evidence. I think it should be understood that they may be treated as though they have been read in evidence.

The Court: They are marked.

Mr. Wright: Yes, but I want to be sure.

[fol. 547] PLAINTIFF'S EXHIBIT No. 2

The Grace M. Fisher Theatres

The Maryland, First Run Pictures and High Class Stage Shows.

The Embassy, Pictures Only. Popular Prices. Air Conditioned.

Cumberland, Maryland

March 2nd/44.

Mr. Irving Millenson & Frank Blaul, Cumberland, Maryland.

I hereby wish to make a bonda fide offer to purchase that parcel, or parcels of land, the buildings thereon, equipment contained therein, complete. Known as the Liberty Theater, and three store rooms, beginning at 18 N. Liberty St. and ending at 28 No. Liberty Street, inclusive Cumberland, Md. as more fully described in the land records of Allegany County, Md. Liber 134 Folio 564, for the sum of $140,000.00.

As a demonstration of my good faith, I herewith attach my check for $5,000.00 and agree to pay the balance upon delivery of a deed clear and free of all liens.

This bona fide offer is subject to your acceptance by June 10, 1944. If accepted, the $5000.00 is to be applied to the purchase price. If declined, the $5000.00 check is to be returned to me and the offer withdrawn.

— — ——, L.S.

Witness: (Signed) Richard L. Schuette.

[fol. 548] **PLAINTIFF'S EXHIBIT No. 3**

Copy

Cumberland, Maryland,
December 11th, 1943.

For the sum of $1.00, we the undersigned hereby give unto Irving Millenson and Frank Blaul, for a period of six months, beginning December 11th, 1943, and ending June 11th, 1944, an option to purchase that parcel or parcels of land, the buildings thereon, equipment contained therein complete. Known as the Liberty Theater and three adjoining store rooms, beginning at 18 N. Liberty St. and ending at 28 N. Liberty Street, inclusive, Cumberland, Md. as more fully described in the land records of Alleghany County, Md. Liber 134 Folio 564, for the sum of $130,000.00.

We agree to pay all indebtedness, including mortgages, judgments, taxes, water rents, interest and indebtedness of all description and to deliver a deed clear and free to whomsoever Irving Millenson and Frank Blaul may designate.

Witness our hand and seal.

(Signed) Thos. H. Burke, S.S., Rita V. Burke, S.S.

Witness. (Signed) Jack R. Linaburg, 624 Frederick St.

[fol. 549] **PLAINTIFF'S EXHIBIT No. 4**

Edward K. Magruder, Pres.
Richard J. Magruder, Mgr.

The Garden Theatre Co.
Cumberland, Md.

March 16, 1944.

The Attorney General, R. L. W., 60-6-30-33-10, Department of Justice, Washington 25, D. C.

GENTLEMEN:

We have your letter of March 14 and in reply to it can only speak from the viewpoint of self-interest. Speaking from that viewpoint, we very definitely are opposed to the

Schine Chain Theatres, Inc., acquiring the Liberty Theatre of this city.

We are opposed to it because a small, independent theatre like ours simply cannot compete with a large and powerful chain, which can buy the pick of the available film product and usually at more favorable terms. A chain also, when it acquires several theaters in a town this size, can generally very effectively throttle competition by reducing admission prices. We feel that if the Schine Chain were to take over the Liberty, it would only be a question of time before independent operation in Cumberland would be impossible. [fol. 550] As stated above, our viewpoint is admittedly a prejudiced one. We trust this is the information you require.

Very sincerely yours, (Signed) Edward K. Magruder. (Typed) Edward K. Magruder.

PLAINTIFF'S EXHIBIT No. 5

Request for Admission of Facts

Pursuant to Rule 36 of the Federal Rules of Civil Procedure plaintiff requests that the defendants admit that the letters listed below were respectively written and received by the parties named therein, on or about the dates they bear, and that the attached copies are true copies thereof:

1. Letter of Clark C. Rader to Schine Theatres Corp. dated July 30, 1943, attached hereto as Exhibit "A";

2. Letter of Schine Circuit, Inc. to Clark C. Rader dated August 3, 1943, attached hereto as Exhibit "B";

3. Letter of Department of Justice to Goodwin, Rosenbaum and Meacham dated August 12, 1943, attached hereto as Exhibit "C";

4. Letter of Walter R. Wells to Schine Circuit dated [fol. 551] August 4, 1943, attached hereto as Exhibit "D";

5. Letter of Schine Circuit, Inc., to Walter R. Wells dated August 17, 1943, attached hereto as Exhibit "E";

6. Letter of Dan Weinberg to Schine Theaters, Inc., dated August 25, 1943, attached hereto as Exhibit "F";

7. Letter of Schine Circuit, Inc., to Dan Weinberg dated September 4, 1943, attached hereto as Exhibit "G";

8. Letter of Dan Weinberg to Schine Circuit, Inc., dated September 20, 1943, attached hereto as Exhibit "H";

9. Letter of Schine Circuit, Inc., to Dan Weinberg dated September 23, 1943, attached hereto as Exhibit "I".

— — ——, Counsel for Plaintiff.

Dated this 24th day of March, 1944.

EXHIBIT "A"

(Attached to Plaintiff's Exhibit 5)

New Arcade Theatre, Newark, Ohio.

July 30th, 1943.

Schine Theatres Corp., Gloversville, New York.

Re Memorial Theatre, Mt. Vernon, O.

GENTLEMEN:

It is my understanding that you wish to dispose of your interest in the Memorial Theatre at Mt. Vernon, Ohio. [fol. 552] Will you immediately advise me as just what this interest consists of, and the price asked for same at your very earliest convenience inasmuch as I wish to purchase your interest provided the terms are right.

Sincerely yours, (S.) Clark C. Rader.

CC. Mr. Tom C. Clark, Dept. of Justice.

EXHIBIT "B"

(Attached to Plantiff's Exhibit 5)

Schine Circuit, Inc.,

Gloversville, N. Y.,
August 4, 1943.

Mr. Clark C. Rader, New Arcade Theatre, Newark, Ohio.

DEAR MR. RADER:

We wish to acknowledge receipt of your letter of July 30th, addressed to Schine Theatres, Corp., Gloversville, New York, a copy of which was sent to Mr. Tom C. Clark of the Department of Justice, with reference to the Memorial Theatre, Mr. Vernon, Ohio, which is one of the theatres referred to in the Court Order.

[fol. 553] These theatres, their names and the prices at which they were to be sold, and the terms as fixed by the Court, were nationally publicised, and for over a year were immediately available for sale.

We have applied to the United States District Court in Buffalo for permission to retain the theatres remaining unsold, and until the Court acts on our application all further negotiations on our part are in abeyance.

Very truly yours, (S.) Howard Antevil.
Howard M. Antevil.

HMA-bh.

EXHIBIT "C"

(Attached to Plaintiff's Exhibit 5)

RLWright/nlh.
August 12, 1943.

60-6-30-33-10.

Goodwin, Rosenbaum and Meacham, 1139 Shoreham Building, Washington, D. C.

Re: *United States* v. *Schine Chain Theatres, et al.*

GENTLEMEN:

We have been informed by exhibitors who are seeking to [fol. 554] negotiate with the Schine Circuit for the purchase of theatres listed in the Temporary order that Schine has refused to negotiate with them on the ground that you have applied to the District Court for permission to retain the theatres. We have also been advised by Mr. Rosenbaum that these refusals were in accordance with his instructions.

In our opinion, the mere pendency of your application does not justify these refusals to negotiate and we believe that your clients may be guilty of contempt in continuing such refusals until and unless you obtain an order from Judge Knight relieving the defendants who consented to the order of May 19, 1942, from complying with that order. We should appreciate hearing from you as to your position in this matter.

Very truly yours, Tom C. Clark, Assistant Attorney General.

EXHIBIT "D"

(Attached to Plaintiff's Exhibit 5)

August 4, 1943.

Mr. Louis Lazar, Schines Circuit, Gloversville, N. Y.

DEAR SIR:

I am writing you in regard to the Liberty Theatre, Pike- [fol. 555] ville, Ky. I talked to you when you were here about a year ago about purchasing the theatre. I see in the papers that it is advertised for sale for the sum of $18,943.92. I am prepared to offer this sum ($18,943.92) at this time for the purchase of this theatre, and all the stock in the theatre. This price is offered and Schine Theatres would have to clear all liabilities now against this theatre and surrender all stock.

If Schines are prepared to sell then I want the deal closed by Sept. 1, 1943. Awaiting your reply.

Sincerely yours, Walter R. Wells.

EXHIBIT "E"

(Attached to Plaintiff's Exhibit 5)

Schine Circuit, Inc.

Gloversville, N. Y.,
August 17, 1943.

Mr. Walter R. Wells, Home Furniture Company, Pikesville, Kentucky.

DEAR MR. WELLS:

There has been referred to me, for attention, your letter of August 4th, addressed to Mr. Louis Lazar, with reference to the Liberty Theatre, Pikeville, Kentucky, which is one [fol. 556] of the theatres referred to in the Court Order.

These theatres, their names and the prices at which they were to be sold, and the terms as fixed by the Court, were nationally publicized, and for over a year were immediately available for sale.

We have applied to the United States District Court in Buffalo for permission to retain the theatres remaining unsold, and until the Court acts on our application all further negotiations on our part are in abeyance.

Very truly yours, (S.) Howard Antevil.

Howard M. Antevil.

HMA:bh.

EXHIBIT "F"

(Attached to Plaintiff's Exhibit 5)

August 25, 1943.

Schine Theatres, Inc., Gloversville, New York.

GENTLEMEN:

Will you kindly send us information regarding the Appalachia Theatre properties which you have fo[illegible]le by reason [fol. 557] of a certain Consent Decree enter[illegible] into between your corporation and the Government. We particularly would like to know the terms and conditions of a leasehold, and also terms and conditions of the mortgage on one of the properties.

Very truly yours, Dan Weinberg.

DW-aw.

EXHIBIT "G"

(Attached to Plaintiff's Exhibit 5)

Schine Circuit, Inc.

Gloversville, N. Y.,
September 4, 1943.

Mr. Dan Weinberg, Bedford Theatres, Inc., Bedford, Virginia.

DEAR MR. WEINBERG:

I stopped in at the office for a few minutes this morning, and found your letter of August 25th, regarding the theatre properties in Appalachia.

For your information, the entire matter of the divestiture of theatres under the Circuit Order has been postponed to January 17, 1944.

[fol. 558] In the meantime, however, we would be very glad to have our representative meet with you, and if you care to look over the theatres, we would have no objection to your doing so.

Very truly yours, (S.) Howard Antevil.

Howard M. Antevil.

HMA:bh.

EXHIBIT "H"

(Attached to Plaintiff's Exhibit 5)

September 20, 1943.

Mr. Howard M. Antevil, Schine Circuit, Inc., Gloversville, N.Y.

DEAR MR. ANTEVIL:

With reference to your letter of Sept. 4 please refer to my letter of August 25. All we want is the information requested in that letter. If your theatres in Appalachia are not for sale any longer please say so.

Very truly yours, Dan Weinberg.

DW:aw.

[fol. 559] **EXHIBIT "I"**

(Attached to Plaintiff's Exhibit 5.)

SCHINE CIRCUIT, INC.

Gloversville, N. Y.,
September 23, 1943.

Mr. Dan Weinberg, Bedford Theatres, Inc., Bedford, Virginia.

DEAR MR. WEINBERG:

This will acknowledge receipt of your letter of September 20th.

Evidently you did not understand my letter of September 4th, in which I stated that the entire matter of the divestiture of theatres under the Court Order has been postponed to January 17, 1944. Naturally, therefore, all negotiations for any of the theatres are in abeyance.

Since you have inquired particularly regarding the theatres in Appalachia, we assume that you are familiar with them, and additional information may be found in the Court Order, a copy of which has, no doubt, been made available to you.

Very truly yours, (S.) Howard Antevil.

HMA-bh.

[fol. 560] **PLAINTIFF'S EXHIBIT No. 6**

Norton, Va.,
August 21, 1942.

Schine Circuit, Inc., Gloversville, N. Y.

GENTLEMEN:

Your letter dated Aug. 17 relative to my wire. I understood that you would be in this territory from time to time and that you had been considering disposing of your Appalachia houses. I would be interested in repurchasing the real estate I sold Murphy provided you would dispose of the lease on the other house and your equipment in both houses.

If you are interested in such a deal you can let me know when you will have a man in this territory that he could see me without the expense of a trip to Norton. I mean a man that can talk binding talk.

Hoping to see your man soon if you want to do some trading, I am,

Very truly yours, (Signed) R. H. Bolling.

[fol. 561] DEFENDANT'S EXHIBIT E

WESTERN UNION

JP134 18 DL XC—Norton Vir 9 133P.

1942 Sept. 9 P. M. 1 13.

Louis Lazar,
Ben Ali Theatre.

Sorry unable to see you in Lexington today hope to see you in Appalachia some other time regard—

R. H. Bolling.

DEFENDANT'S EXHIBIT F

WESTERN UNION

Copy

September 8, 1942.

Mr. R. H. Bolling,
Norton, Virginia.

Will be in Lexington Tuesday night the 8th and all day Wednesday the 9th and at your service. Will be happy to see you here at your convenience. Please wire or phone me care Ben Ali Theatre, Lexington. Answer Return Western Union. Regards.

Louis Lazar.

[fol. 562] **DEFENDANT'S EXHIBIT G**

Copy of

WESTERN UNION TELEGRAM

TWS 19.

September 9, 1942.

R. P. Bolling,
Norton, Virginia.

Mr. Louis Lazar is in Lexington today. You may contact him there in care of the Ben Ali Theatre.

Schine Virginia Corp.

DEFENDANT'S EXHIBIT H

DEPARTMENT OF JUSTICE

Washington, 25, D. C.,
March 24, 1944.

60-6-30-33-10.

Mr. R. H. Bolling,
Norton, Virginia.

Re: *United States v. Schine Chain Theatres, Inc.*

DEAR SIR:

The report filed by the defendants in the above suit in July, 1943, states that negotiations were carried on with you during September, 1942, with respect to a sale of the [fol. 563] State and Appalachia Theatres in Appalachia, Virginia.

We should appreciate your advising us as to what the present status of these negotiations is and whether or not you are still interested in acquiring these theatres. As a hearing on our petition for the appointment of a trustee to sell these theatres has been set for hearing on April 10, we should like to hear from you within the next few days.

Very truly yours, (Signed) Tom C. Clark, Assistant Attorney General.

DEFENDANT'S EXHIBIT I

DEPARTMNT OF JUSTICE

April 5, 1944.

RLW.
60-6-30-33-10.

Mr. R. H. Bolling,
Norton, Virginia.

Re: *United States* v. *Schine Chain Theatres, Inc., et al.*

DEAR SIR:

It is our understanding, in accordance with your telephone [fol. 564] conversation with Mr. Wright, that you will be present at the hearing in the above case at Buffalo, on April 10. We should appreciate your bringing with you all correspondence that you may have had with Schine in connection with your efforts to purchase theatres.

Very truly yours, (Signed) Tom C. Clerk, Assistant Attorney General.

[fol. 565] IN UNITED STATES DISTRICT COURT WESTERN DISTRICT OF NEW YORK

Civil 223

UNITED STATES OF AMERICA, Plaintiff,

v.

SCHINE CHAIN THEATRES, INC., et al., Defendants

APPEARANCES:

George L. Grobe, United States Attorney; Tom C. Clark, Assistant Attorney-General; Robert L. Wright and Philip Marcus, Special Assistants to the Attorney-General; for Plaintiff.

Goodwin, Rosenbaum and Meacham; Edmund M. McCarthy; for Schine Defendants; Clarence N. Goodwin and A. E. Robert Friedman, of Counsel.

Opinion—May 4, 1944

Knight, District Judge:

Several motions are here under consideration. (1) The Schine Chain Theatres, Inc., and its associated defendants (hereinafter called Schine) seek permission to acquire a theatre known as the Liberty Theatre, at Cumberland, Md., Paragraph 5 of the temporary order herein granted May 19, 1942, provides that these defendants shall not acquire any theatre unless the Court, after application and hearing, is satisfied that "such acquisition will not be against the [fol. 566] public interest after giving due consideration to the competitive situation, if any." The Liberty Theatre (hereinafter called "Liberty") is evidently in a position where it must be sold. The title is subject to a mortgage exceeding in amount any reasonable value of the property, and the holder of the mortgage is pressing for payment. Through its officials, the defendant Schine heretofore took up with the Attorney-General the question of whether the Department of Justice had objections to the purchase of "Liberty" by Schine. The Attorney-General by letter indicated his consent, upon submission of the proposal of purchase to and approval by the Court. The Department of Justice, now, however, opposes this application. Thereafter Schine made an offer of purchase, and that offer is here under consideration. So far as the record discloses no other offer for this theatre has been made, except one by Grace Fisher, the present owner of a theatre in Cumberland. This lady, as she testified, made an offer for the "Liberty" in the same amount as that made by Schine. This offer was made, as she testified, to prevent the purchase of the theatre by a company other than Schine. She testified in substance that on learning that Schine was a prospective purchaser she asked to withdraw her offer and the deposit made on it, and she now expresses her willingness that Schine make the purchase. She operates a theatre using the same class of motion pictures as that utilized by "Liberty".

[fol. 567] It seems that intervening this correspondence with the Attorney-General and the hearing upon this motion, the Department of Justice sent out numerous communications to possible prospective purchasers. The only reply which the record discloses is one by another theatre owner in Cumberland, whose pictures are not of a class competing with those used by "Liberty." It was admitted upon the hearing that this last-mentioned individual would not testify that his objection was based upon consideration of public interest but upon purely selfish reasons. It seems quite natural that objections might be found on this ground. The weight if any of this objection is overcome by the other testimony had upon the hearing.

Since there are no offers, other than hereinbefore stated, since the owner of this theatre is desirous of selling and presumably required to sell, since the Department of Justice, through the Attorney-General, did express a willingness that Schine purchase and since no substantial ground for objection to this purchase appears, giving consideration to the question of the competitive situation, the Court is satisfied that this proposed purchase by Schine is not against the public interest.

The motion to permit the Schine to purchase the Liberty Theatre at the offer made is granted.

[fol. 568] (2) The defendants move to dismiss the suit for want of necessary parties. On March 17, 1941, the Court granted a motion dismissing the complaint as against five of the named distributor company defendants. The order was entered without objection by the remaining defendants. The five distributor companies were proper but not indispensable parties. The rule of determination is clearly stated in United Shoe Mach. Co. v. United States, 258 U. S. 451, in which it was said: "The relation of indispensable parties to the suit must be such that no decree can be entered in the case which will do justice to the parties before the court without injuriously affecting the rights of absent parties." Applying this rule, no merit is seen in the contention of the defendant.

This motion, therefore, must be denied.

(3) As an alternative to the Schine motion to dismiss, it seeks an order directing that it be not required to dispose of any other theatres or theatre interests as required by the terms of the order of this Court of May 19, 1942. By the terms of that order Schine was directed to dispose of all its interests in sixteen theatres within one year from the date [fol. 569] of such order. Schine was also required to furnish the Department of Justice with monthly reports show-

ing the efforts to dispose of the theatres, and at the end of the year it was directed to make and file with the court a report stating the theatre interests disposed of, those undisposed of and the efforts made toward disposition. Schine made monthly reports as required, and also, on or about July 3, 1943, filed a final report. It appears from the reports that Schine has disposed of all interest in six of the theaters in question, and the various reports purport to set forth the efforts made in the disposition of these and the remaining theatres. In effect the final report asserts that it was not been and will not be able to dispose of the interests then undisposed of and it asks that it be not required to make further effort in that direction.

Subsequent to the filing of the final report, by consent of the parties, further proceedings upon the report were suspended until in or about the month of February, 1944. Intervening the time of the filing of the report and the date last mentioned no effort was made to dispose of the unsold theatres or theatre interests, but the want of any effort in [fol. 570] this direction was likewise by consent. This postponement was agreed upon because consideration was then being given by the government to the question of the settlement of all questions regarding the motion picture industry as a whole.

The government now moves for the appointment of a trustee as a means of enforcing the provisions of the order hereinbefore mentioned relative to the sale of the aforesaid theatres. This motion is properly considered in connection with the motion of Schine to be relieved from the provisions of the order for such sales. The court entertains no doubt of its authority to appoint a trustee for this purpose. The order of May 19, 1942, provides that either of the parties may apply for any further order "necessary or appropriate for the * * * carrying out of this order or the enforcement of compliance therewith, * * *." The authority is well within the equitable jurisdiction of the court. See: United States v. Swift & Co., S. C. D. C., Equity 37,623, same 276 U. S. 311; id. 296 U. S. 106; Rule 70 Federal Rules of Civil Procedure. There are many authorities to the same effect. The order of May, 1942, was entered by consent of the parties. The court also entertains no doubt of its equitable power to modify this order where changed [fol. 571] conditions justify relief from conditions imposed. American Press Ass'n. v. United States, 245 F. 91; United

States v. Swift & Co., supra, 286 U. S. 106. The government urges that a trustee should be oppointed at least for the purpose of making a survey of the unsold properties and report to the court the steps necessary to obtain compliance with its order. Schine does not seek an extension of time in which to sell the unsold theatres. Its position in this respect is consistent with its reports of its efforts to sell.

After careful consideration of all of the questions involved in this motion, it is concluded that an order should now be made extending time in which to dispose of these theatres for a period of six months from May 15, 1944, or in the alternative, if Schine, within fifteen days from the date of the entry of an order herein, does not notify the court in writing that it will accept such extension on the condition herein stated, then and in that event a trustee shall immediately thereafter be named for the purpose of making a survey of these theatre properties and advise the Court as to what action should be taken with regard to them. In the event of future proposals for sale and purchase of these theatres, it is believed that Schine should not be held strictly to the terms of sale provided in the order [fol. 572] of May, 1942, but that any offer to sell and purchase shall be presented to the court for its approval and after notice to the government. While the court may have some hesitation in the belief that Schine has used every reasonable effort to sell these theatres when considering the fact that they have probably benefited financially, it does appear that they have made very considerable efforts in this direction. In view of this fact and the further fact, as hereinbefore stated, that the action upon the final report was withheld by consent until February of this year, it is believed that Schine should be given additional time in which to dispose of these theatres. It is to be impressed upon Schine that it is the present intent of the Court to see that the order aforesaid directing the sale of these theatres be enforced and that this extra time is given as a leeway, if it chooses to make the sales rather than have them made through the agency of a trustee.

It follows that the motion of Schine that it be not required to proceed further in disposition of the theatres or theatre interests in question must be denied and that the motion of the plaintiff for the appointment of a trustee also be denied, save on the condition that Schine does not elect [fol. 573] to accept a continuation of time in which to sell such interests as hereinbefore set forth when a trustee shall be appointed.

The Court will confer with respective counsel in regard to the provisions of the order to follow this decision.

John Knight, United States District Judge.

May 4, 1944.

[fol. 574] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

ORDER EXTENDING TEMPORARY ORDER OF MAY 19, 1942

On the annexed stipulation, it is

Ordered, that the Temporary Order entered in the above entitled cause on May 19, 1942 be and is hereby continued in effect with respect to all of its provisions from May 19, 1944 to May 31, 1944, inclusive.

John Knight, United States District Judge.

May 22, 1944.

[fol. 575] IN THE DISTRICT COURT OF THE UNITED STATES

STIPULATION

Entered May 19, 1944

It is hereby stipulated and agreed between the plaintiff and the defendants Schine Chain Theatres, Inc., Schine Circuit, Inc., Schine Theatrical Co., Inc., Schine Enterprises Corporation, Schine Lexington Corporation, Chesapeake Theatres Corporation, J. Myer Schine, Louis W. Schine and John A. May, by their respective counsel, that the Temporary Order entered in the above-entitled cause on May 19, 1942, shall be continued in effect with respect to all of its provisions from May 19, 1944, to May 31, 1944, inclusive.

John F. Clagett, Attorney for the Plaintiff. Seth Richardson, Attorney for the Defendants.

[fol. 576] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

ORDER—May 31, 1944

The following motions having come on to be heard before me on April 10 and April 11, 1944:

(1) Motion of the Schine Chain Theatres, Inc., and its associated exhibitor defendants for permission to acquire the theatre known as the Liberty Theatre at Cumberland, Maryland, in accordance with paragraph 5 of the temporary order entered in this cause on May 19, 1942;

(2) Motion of the Schine Chain Theatres, Inc., and its associated exhibitor defendants for dismissal of the suit for lack of necessary and indispensable parties;

(3) Motion of the Schine Chain Theatres, Inc., and its associated exhibitor defendants, in the alternative, that they be not required to proceed further under section 4 of the temporary order of May 19, 1942, in attempting to dispose of any of the theatres or theatre interests listed therein;

[fol. 577] (4) Motion of [illegible] plaintiff for the appointment of a trustee; and Clarence N. Goodwin, Edmund M. McCarthy and A. E. Robert Friedman appearing in support of the motions of the Schine Chain Theatres, Inc., and its associated exhibitor defendants, and Robert L. Wright and Philip Marcus appearing for the plaintiff in support of the motion of the plaintiff for the appointment of a trustee; argument having been had on said motions and the Court having rendered an opinion on May 4, 1944;

It Is Hereby Ordered:

(1) That the motion of the Schine Chain Theatres, Inc., and its associated exhibitor defendants for dismissal of the suit for lack of necessary and indispensable parties be and is hereby denied;

(2) That the motion of the Schine Chain Theatres, Inc., and its associated exhibitor defendants for permission to acquire the Liberty Theatre at Cumberland, Maryland, pursuant to paragraph 5 of the temporary order of May 19, 1942, be and is hereby granted without prejudice to the dis-

position of said theatre which may be proper upon a final decree in this cause;

(3) That except as hereinafter provided, the time for the Schine Chain Theatres, Inc., and its associated exhibitor defendants to dispose of the theatres ordered disposed of under section 4 of the temporary order of May 19, 1942, be and is hereby extended for a period of six months from May 15, 1944, or, in the alternative, if the exhibitor defendants, within fifteen days from the date of the entry of this order do not notify the Court in writing that they will accept this extension of time for the purpose of disposing of said theatres within that time, then, without further notice, the Court shall name a trustee who shall make a survey of the undisposed theatre properties and shall advise the [fol. 578] Court as to what action should be taken with regard to said theatres. If the exhibitor defendants shall file such consent, they shall serve the plaintiff with a copy thereof.

The exhibitor defendants shall make all reasonable efforts to effect the sale of their interest in said undisposed theatres pursuant to this order and the temporary order of May 19, 1942. In the event of future proposals for sale and purchase of these theatres, the exhibitor defendants shall not be held strictly to the terms of sale provided in the order of May, 1942, but any offer to sell and purchase shall be presented to the court for its approval after notice to the government.

(4) That the Government's motion for the appointment of a trustee be and is hereby denied without prejudice to the renewal of said motion, in the event that after having filed their consent to the entry of an order extending their time to dispose of said theatres, the exhibitor defendants shall fail to have made reasonable efforts to comply with said order or shall have been unable at the expiration of six months from May 15, 1944, to dispose of said theatres.

Defendant exhibitors within 90 days after the date hereof, and also six months after May 15, 1944, shall furnish to the Department of Justice a detailed report showing the efforts which have been made to dispose of the above-described theatre interests and the names and addresses of persons to whom the above described theatre interests have been sold during each such period.

It is further ordered that the question of the disposition by the defendants of the Strand Theatre, Cumberland, Maryland, pursuant to Section 4 of the Temporary Order entered in this cause on May 19, 1942 be held in abeyance, and the provisions of such section of the Temporary Order be stayed in respect to said theatre until further order of this Court. The Government shall have the right at any [fol. 579] time to apply to this Court for an Order requiring the disposition of said theatre by the defendants, and either party shall have the right to apply at any time for such other or further relief as may be just and proper. 10 days' notice shall be given to the parties of any such application.

Any of the parties to this order may apply to the Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this order, or for the enforcement of compliance therewith.

(S.) John Knight, United States District Judge.

Dated at Buffalo, N. Y., May 31, 1944.

[fol. 580] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, Plaintiff,

against

SCHINE CHAIN THEATRES, INC., et al., Defendants

ACCEPTANCE

The undersigned, exhibitor defendants, hereby notify the Court in writing that they accept the extension granted by this Court for a period of six months from and after May 15, 1944, within which to dispose of the theatres ordered disposed of in Section 4 of the Temporary Order of May 19, 1942, subject of course to the provisions of the first above mentioned order with respect to the Strand Theatre, Cumberland, Maryland.

Dated: New York, June 15, 1944.

Edmund M. McCarthy, Willard S. McKay, (S.) Willard S. McKay, Attorneys for Schine Defendants.

[fol. 581] IN UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF NEW YORK

Civil Action No. 223

UNITED STATES OF AMERICA

vs.

SCHINE CHAIN THEATRES, INC., et al., Defendants

Transcript of Testimony and Proceedings

Proceedings before Honorable John Knight, United States District Judge, without a Jury, United States Court House, Buffalo, New York. Friday, May 19, 1944, 10 o'clock A.M.

[fol. 582] The Court: Who are the parties who appear?

(Appearances duly noted.)

STATEMENT

Mr. Clagett: May it please the Court, the Government would like to make the announcement, first of all, that we are ready to proceed with the trial as set down in the temporary motion, temporary order two years ago. In this connection I would like to say that Mr. Robert L. Wright, who has been and is in charge of this case will be here in the matter of a few days. He is temporarily detained in Pittsburgh in the trial of a criminal case there.

Of course, in announcing that we are ready to proceed with the trial, we are cognizant of your order for a pre-trial conference this morning, and assume, of course, that that is the primary concern this morning.

I would like to recall to your Honor that the Government filed a request for admission of facts in this case early in 1942. That request, of course, was based upon the desire to save time and to simplify the trial. The facts and the evi- [fol. 583] dence proposed to be stipulated to were to a considerable extent based upon the defendants' own answers to interrogatories, as was felt highly desirable, to organize that material into one document in an orderly fashion relating to the towns and situations to which the various pieces of fact and evidence applied.

It was also desired to stipulate to such matters as to corporate existence of distributor defendants, the number of pictures annually produced by them, and other matters of that kind. However, you will recall that the defendants made a motion to dismiss the Government's request for admission of facts, and that is the way the matter stood at the time the temporary order was entered.

Now, in anticipation of the trial of this case on May 19th, the Government has submitted to counsel for the defendants a proposed stipulation of facts which, to a very considerable extent embodied the same material which we had originally included in the request for admission of facts filed in [fol. 584] the spring of 1942.

In this regard, however, I think it is fair to say that the Government has had no definite answer with respect to whether we could stipulate, or whether we could—whether they desired to do so or would attempt to do so, except last night, I think I should say, I talked to Mr. Richardson on the telephone and he did indicate that he thought it was desirable to stipulate the facts and evidence as far as possible.

We feel, of course, your Honor, to proceed with this pre-trial conference at this time to endeavor to stipulate as far as we may to facts and evidence is highly desirable because of the broad scope of this case, the length of its pendency, and the past efforts of the Government in this regard.

We feel at this time that it would be particularly desirable to stipulate as to the authenticity and genuineness of a vast amount of material, contracts, and documents, which we have subpoenaed from the exhibitor defendants, and from the distributors, which would obviate the necessity of [fol. 585] calling a great many witnesses, particularly from the various distributor defendants, to identify various contracts and documents that we shall offer in evidence.

The Court: Have you submitted to counsel a proposed stipulation of facts?

Mr. Clagett: We have, sir.

The Court: It seems desirable to me, to have this pre-trial conference. There are probably numerous matters and details that could be stipulated to. That is why this was set down for today. What is the thought of counsel for the defendants?

Mr. Richardson: As soon as Mr. Clagett is through with his discussion, I do want to discuss at some length the position of the defendants, which includes that feature.

Mr. Clagett: Well, your Honor—reverting to another matter for just a moment—we assume that the defendants are ready to proceed with the trial as fast as we can and conclude whatever we are going to do about a pre-trial proceeding. Of course, they have had notice ever since the temporary order was entered that the trial date was May [fol. 586] 19th, 1942, and in addition Mr. Wright, in the hearings before your Honor at the end of March and in April on the various motions then pending, announced that the Government expected to proceed with the trial at that date. I don't know what your Honor's disposition toward these several motions will be, but there are several motions here, or rather, I believe there are only two, the Government's motion to dismiss the remaining three distributors as parties defendant, and there is the motion by the defendants, if the Court grants the Government's motion to dismiss these three distributors, to dismiss the suit, and then in addition to that we have, which I think we ought to have before us, the question of the settlement of the order, which your Honor in your opinion of May 4th, directed that counsel confer with you upon.

The Court: The form of the order you mean?

Mr. Clagett: Yes sir. We have formulated a proposed order ourselves, and in this connection we have contacted counsel for the defendants, but have had no affirmative answer as to a time when that could be done, or as to the form [fol. 587] of the order which we might fundamentally agree upon between ourselves.

That is all, your Honor, that I have to say at the moment.

STATEMENT

Mr. Richardson: If your Honor please, I am Mr. Seth Richardson of Washington. I want to discuss this case at some length, and I hope your Honor will bear with me, because I want to assure the Court it is one of the most embarrassing situations I have ever been in in my life. Wednesday afternoon in Washington we were approached by the defendants in this case, stating that their former counsel had been interested and acted in attempting to get a settlement of this case through a consent decree, had advised them that their efforts were unavailing and were withdrawing from the case. I came immediately from Washington via New York to Buffalo to be here this morning with reference to it, and during that interim of leaving Washington and coming here, I have endeavored as much as lay in my power, to go into the records and pleadings in this case to acquaint myself sufficiently with it to say the rather [fol. 588] scattering words that I want to say to you here this morning.

Before I left, in order to get information, I endeavored to get in touch with the only lawyer whom I knew in Buffalo, who is my old friend John O'Brian. He is with the W.P.B., and was out on some Government business, and I did not even have the solace of talking to him about it.

As soon as I got in I called Mr. Clagett last evening. The papers that were presented to me, and the papers that I have which, of course, was the only information that I had about this case, contained a notice of a pre-trial hearing. A pre-trial hearing, as your Honor may know, is one thing in one jurisdiction and another thing in another jurisdiction. Generally through the courts they are developing, and we do not want to do anything that would prevent the fullest kind of a pre-trial hearing when such a hearing can be properly taken up.

When I talked to Mr. Clagett last night, it was the first information that I had had that the Government was pro- [fol. 589] posing that this case be immediately tried. I noticed in the file a list of some 75 individual witnesses that were to be interrogated by the Government in this case, coming from a multitude of different cities in which cities, I assume, the defendant Schine Circuit had theaters.

I asked Mr. Clagett then—I am not dragging in any private conversations at all, but just this word of information —as to how long he thought the case would take him, and he said he thought the presentation of evidence would take five weeks.

In the file which was handed to me was this stipulation of facts with which in its general purpose I am a hundred per cent in favor, but this stipulation of facts will require, if I am to have anything to do with this case, my own examination of the various facts to be stipulated, or compared with our records for the purpose of ascertaining whether or not the facts are as stated, whether they are complete, whether there has been any mistake made, and then, Mr.

Justice, comes the question of our own stipulation, proposed [fol. 590] stipulation of facts, because it is perfectly apparent from this case that these defendants will find it necessary to prepare a lengthy stipulation of facts to present to the government with the idea that with the two stipulation of facts, united we can relieve this Court of possibly two-thirds of the time of sitting here on this bench to try this case, but I want your Honor to appreciate my embarrassment, because I don't know enough about this case to, in the first place, adequately consider Mr. Clagett's carefully drawn stipulation of facts. I have never seen the one presented two years ago, and I shall discuss that in a moment. However, beyond that, I have had no opportunity whatever to examine our records and our facts for the purpose of making up our stipulation of facts, and my experience with pre-trial conferences is that if it is possible, those stipulations of fact should be presented to the Court when the Court is supposed to carry on a pre-trial conference, so that the Court by his ruling in the pre-trial conference can make [fol. 591] the advances which have been made by reason of that stipulation. Let me review for a moment, in view of the fact that it is necessary in order to present my position to the Court, the history of this situation. The first attempt by the Department of Justice, speaking generally, to take care of what seemed to be a clash between the film industry and the Sherman Law, came with the proceeding brought in the District Court in New York City against the five big producers of pictures, which I do not need to say to your Honor are the five biggest producers, the five biggest distributors, and the five biggest exhibitors of moving pictures that there are in the United States, and it is no more possible to establish a rule for the moving picture industry in the United States without having that rule based upon the action of those big five, than it is to take care of an elephant by pulling his tail and leaving the rest of him alone.

That was the first suit brought. Following that suit, the parties got sufficiently together to have a consent decree [fol. 592] for a three-year period. It is important, I think, for me to say that it is perfectly evident that both sides were dealing with an unknown quantity, to-wit, "What is the proper legal relation between the Sherman Act and the film industry, divided as it is between production and distribution and exhibition?" So, the decree had the requirement that it was only good for three years. The next year, a year and a half, I think, later, a suit was brought against the Big Five, as we may call them, to which were added three more producing companies known for the purpose of our discussion here as the Little Three, and to those were added the Schine defendants in this case.

The Bill of complaint, I think I should say, as your Honor knows—and I am using your Honor's valuable time for things your Honor knows, but I must get it out of my mind in my own way—the bill of complaint took us all, the Big Five, the Little Three, and the Schine people, and charged us with a joint conspiracy in the distribution end of the [fol. 593] business, in the exhibition end of the business. We had nothing to do with the distribution. We were entirely exhibitors. The distribution activities and the distribution records were all in the hands of the people with whom we did business, and with whom in many instances our relations were not particularly friendly, because we were trying to get something and they did not want to give it to us.

Then we were met, if your Honor please, with a motion on the part of the Government, the first of these rather extraordinary motions, to take out of that case those five big defendants, five defendants that I say with all conservative feeling in my mind dominate the film situation in the United States so far as determining what is the relationship between the Sherman Anti-trust Law and the activities of the film business. They were taken out. Your Honor referred to the fact in a later opinion that you wrote with reference to them, that there was no objection to their being taken out. If so, there was some oversight in that [fol. 594] regard, but they were taken out, and that left the second case with the Big Five out, the Schine Circuits in, and the three distributors still remaining known as the Little Three in that case. Bear in mind again, if your Honor please, we are not only charged with wrong-doing in the operation of our theaters in the various towns in which we have theaters, but we are charged with conspiring with those distributors so that the acts of the distributors become the acts of a co-conspirator against us.

We have no power whatsoever of entering into the distributors' records. We have no right to go to them if they are not parties to this action, and walk in and take a look at their books and records and letters and correspondence for the purpose of ascertaining how has the distributing business been run so far as the exhibitors are concerned. The Government, on the other hand, has the fullest power to go into the distributors' business and get all the records possible.

As I say, while the suit retained us and the three lesser [fol. 595] distributors, there was what I call the "Two-year order", which was entered into in that situation. I ask your Honor to remember, first, the inclusion of the Big Five, the elimination of the Big Five, the entry of the consent decree for a three-year period, and then this two-year order which was put in effect two years ago which contained the provision not that the trial would be held on the 19th, but that on the 19th of May, 1944, the case would be on the Calendar for trial, which is a very different thing so far as notice to us is concerned.

After that two-year order was made and assented to by us, there was a later hearing before your Honor in which the question was taken up as to compliance. In connection with that your Honor made a further order requiring the Schine defendants, whom I am representing for the moment, to advise you whether they accepted the terms of your order, and which I may now say to your Honor, they do accept, in connection with the six months' extension which you granted, so that we had that two-year order, we came [fol. 596] before your Honor, and you made a ruling with reference to it. That order provides, among other things, your Honor, that this case should be at rest during that two-year period, in effect nothing should be done during that two-year period, and I am going to call your attention in a minute to the red line of connection that runs between the dismissal of the Big Five, entry of the consent decree, entry of the two-year order, and then we come to the fourth step that I am presenting to the Court, and that is the statement made by the authoritative head of Department of Justice in February, 1944, Assistant Attorney-General Clark, that it was the intention of the department to withhold all of these film cases until there had been a settlement of what was to be the dealing with the Big Five, because their consent decree had expired in the Fall of 1943, and the Government was negotiating with them and is negotiating with them still for the purpose of finding out the basis for the future consent decree that shall bind those Big Five. Bear in mind, as I call your attention again, [fol. 597] the position of the Big Five, either as producer or exhibitor or distributor is so infinitely greater than ours, so infinitely more wrought with danger to the welfare of the country under my friend's interpretation of the Anti-trust Law than ours, that there is no comparison. So, when Mr. Tom Clark said it, and you have the publication in our trade journal of the statement of Mr. Clark in February of 1944, that there would be no trial of this case while the other was pending, I suggest that was a very logical statement, because I said it is a futile thing from the standpoint of establishing the law with reference to moving picture elements, unless you have before you the main actors. It is not a case where the main actors could not be brought before you; it is not a case where they were at large and you could not get service. They were brought into the case by the Government. They were charged as conspirators by the Government and then released by the Government, and the Government took what? They took a three-year consent decree. Your Honor has had a great [fol. 598] deal of experience on the bench. Your Honor was appointed when I was in the Department of Justice in Washington under Mr. Mitchell, but you have had a great deal more than I have had. I never knew before a consent decree in an anti-trust case that was limited in point of time. The reason it was limited was because of the uncertainty which the Government and the industry had as to how far the decree should go, and would it be workable and practicable, and this was an acid test.

At the end of three years the argument is renewed, the Government wants this, the film people want that, and it is possible there will have to be a trial of the issues as against the Big Five in order to determine the relationship of the Anti-trust Law to the film people.

In the spring of 1942, it was naturally in your point of view to have this two-year order held in status quo, the status of the Schine Circuit, and hold it there for two years. Why? What merit is there in two years? Only, your [fol. 599] Honor, so that the course of dealing with the film industry as evidenced by the consent decree, as evidenced by the two-year plan and later testified to by Mr. Clark's announcement, so that the thing was to be worked out so that when a rule was finally adopted it apply to the little fellow and it apply to the big fellow. The holes in the net were not too little to stop the little fellow and too big to let the big fellow out. That was the purpose of it.

Now, if your Honor please, we come to the effect that this situation has on us. As long as the distributors were co-defendants in this conspiracy case, we did not have to worry about the proof of those companies from their records with reference to how the distribution has been carried on. If an alleged exhibitor who makes charges against us and who my friends desire to call as a witness comes and says "I could not get any films", we have seated at the table counsel who say "You got 114 films in such and such a time", and if they are in this case and have to [fol. 600] defend themselves, that burden falls off our shoulders, and only within the week we have been faced with the second motion to rid this case of the only help we had left, that is these three distributors.

I am not urging it here, your Honor—there may be a later motion to call it again to your Honor's attention—the question of the right to maintain this suit after a dismissal of the main conspirators, because your Honor can see—I just divert to it in passing—if you adopt a rule in this case with reference to whether the Schine Circuit erred in its relations with the distributi*ons*, you may have tomorrow a case in which the distributors are present with their lawyers and witnesses and we may find it necessary to have another ruling. That is one of the reasons we may address ourselves later to you as to whether this case can progress at all, except by dismissal, when you let the main defendants go. I am not urging that here. I am urging the increase in burden thrown on us in connection with the trial of this case.

I have before me a subpoena duces tecum which was [fol. 601] sent to us, if I recall correctly, on Tuesday of this week. This subpoena is only limited by the number of sheets of paper that could be put into a typewritten instrument. It calls for something like 40 or 50 pages of records here, and then there is clause after clause stating "All of the letters, all of the correspondence, all of the inter-company memoranda, all of our private files that exist that had any relation to these specific contracts." We got that on Tuesday. Our people were in Washington trying to find any lawyer. Unfortunately enough they found me. They were not at home. This was telephoned, that this was in. There are enough records to fill four or five trucks involved in this case. I cannot help what was done two years ago. My information is there was no examination made of them two years ago. There never was an examination made of them in detail for the purpose of ascertaining whether they complied with the subpoena, and what they are.

Don't you see, we must take each letter, your Honor— [fol. 602] I say so because I have done it in other cases— we must take each letter, read it, and ascertain whether it comes within the subpoena, and that is imposed on us within the week, a company that employs nearly three thousand people, with five hundred of our employees gone in the war, short-handed on every turn, and with a business that requires daily attention from one end of our circuit to the other, and we are told last night the Government is ready for trial and they propose to go on trial today if they can.

Leave out of it my own personal thoughts; you can readily see the burden placed on the Schine people. Contrary to the purpose of the original consent decree, contrary to the purpose of the two-year decree, contrary to the information given by an official of the Department of Justice that all of these cases were to await the determination in the main film industry, we are suddenly met with the demand "This must be tried immediately; the Judge must begin taking evidence of these 75 witnesses", and so forth.

[fol. 603] That brings me to my own personal situation. I want to discuss that and the pre-trial hearing, these subpoenas and stipulations of facts, not from my amateurish standpoint, but from having had a long and unfortunately not successful contact with my former brethren in the Department of Justice with reference to anti-trust cases. For four years I was the chief counsel for the defendants in the American Medical Association case. That was fought in every court that it could be taken to, and we went through pre-trial—everything with reference to it, even though that case was a criminal case. That was followed, if your Honor please, for the last four years and at the present time with the handling by Mr. George Wharton Pepper and myself of the Pullman case, which went through the preliminaries of examination of records, pre-trial hearing, stipulations of facts and the like, until when we finally went into court— that was an expediting court, three circuit judges sitting— we went in court and advised the Court that three-quarters [fol. 604] of the ground covered by the case had been agreed to between us. I may say to your Honor, that the Court in its final decision, which I also very much regret to say was unfavorable to my side, that the Court accepted every single one of our stipulations of facts, added some more, with only a few of which we disagreed, and instead of the case taking, as the Court thought it might, the length of time that the Aluminum case took, it was handled expeditiously, so that these three circuit judges could perform their own duties at the same time.

In discussing the procedure I want to discuss, I am doing it on the standpoint of having dried my teeth on the leather in this case. Here was the way the matter was handled there. Take the Pullman case as an illustration. The Government came to us and asked permission to let the Federal Bureau of Investigation go in and examine our records in Chicago. This case was pending in Philadelphia. That was consented to, and they moved into our offices and took our records. Our men accompanied them. As they selected [fol. 605] a record they wanted a copy of, our people took a copy, so that we kept in step with them all the way through, and they took out of our files six thousand documents. It took them, I should say, three or four months to make that investigation, as carefully as the government makes its investigations, and nobody knows how good they are better than I do. When that was completed, we then had their files, they had our files. We had interminable conversations which went on for two or three months, and were conducted sometimes three or four times a week, where we sat down across the table from counsel and wrestled over these statements of facts, and there was a corporation with records going back to 1870, and we had to check it all the way through, and when we got through we saved the Court four-fifths of the time to try the case. After we got our stipulations of facts, we advised the Court, and the Court set it down for pre-trial hearing about October 1st. We had our pre-trial hearing. The Court identified our stipulations. The Court got some additional [fol. 606] statements of fact that we could not agree on. With the aid of the Court, we got them. When we got through with the pre-trial conference, the Court said to the Government "I want to give both sides full opportunity to digest what has been done here," and there was a delay of a month or two months, and then the case came up for the Government's evidence. The Government put in its evidence, and then the Court adjourned the hearing for, I think from the first of December to the first of March. When we had done that, we put in our evidence. Then there was a week or ten days' delay, as long as the Government asked for it, for them to put in rebuttal.

If your Honor please, as a result of that, the celerity with which that case was disposed of up to the time we got fighting with the decree, which has now run for over a year, is remarkable. In approaching the question of the pre-trial conference this morning, I cannot help but have that idea in my mind. Counsel says he faces five weeks to examine [fol. 607] these 75 witnesses. I am not at all sure, if he has 75 witnesses and they testify as to controversial facts— I am not at all sure that he has not very much minimized the length of time it will take, but if we have an opportunity to take the names of the witnesses and the towns they come from and get our facts with reference to them, it is quite possible that a large number of these witnesses will meet with no cross-examination on our part. There will be no delay with reference to it.

That brings me to my own situation. You can see the situation I am in. The counsel who preceded me, an acquaintance of mine, Judge Goodwin, is inhibited by certain physical defects from even contemplating going into a trial of this kind. This case came to me on Wednesday. I have no desire to procrastinate it. I would dearly love to have my finger in it, to work out the future of this film industry. It is great litigation. The cases that finally come from it will be among the great cases in the United States in all probability, and my friend has the same laudible ambition, [fol. 608] but, if this case is to go to trial at the present time with my knowing nothing about it, I can do nothing but turn to my client and say "I had to withdraw from it." When I do that, he has no counsel. He is a layman, cannot try the case himself. I may have been not wise in not foreseeing this demand for trial. I did not understand from the motions in April that there was to be a trial on the 19th of May. I did not understand from what he told me or what I found in the records. Now, we are faced with a deadly situation of the Government—and I do not blame the Government. Your Honor must not get the idea that I am criticizing them—but we have a deadly situation. I have one thing more to add to my discomfiture. I have promised and made great preparation to go into an extensive Civil Aeronautics hearing commencing the 12th of June, which will probably last most of the month of June. There are 25 or 30 airlines involved. My people have asked me, and I have accepted their retainer, and I must participate in [fol. 609] this case. If this case starts, I cannot continue to represent the Schine Circuit, because I have to go back to Washington in June and take care of the other proceeding, and the Government does not gain anything particularly in those two weeks. It seems to me that I must say to my client "I can't go with you. It is going to be tried." He must go out and try to get a catch-as-catch-can lawyer, because you can't try this case by ear. He can't come in and try to get acquainted with this case and carry it on and try the case, as the Government wants to now.

Why shouldn't there *shouldn't there* be a material and substantial continuance of the date of trial of this case, your Honor? It was for that purpose that the Big Five were taken out of the first case. It was for that purpose that there was a limited consent decree entered into. It was for that purpose the two-year order was signed. It was for that purpose that Mr. Clark, Assistant Attorney General, made his statement to continue these matters until the Court would have them all before them.

[fol. 610] We have now, from what Mr. Clagett said to me last night, and with which I was familiar, a case in Tennessee known as the Crescent case. The first suit brought was one in Oklahoma against a chain of theaters, the Big Five included. The next suit was brought against us—no, I think the next suit was the Crescent case, and we come last, but the Crescent case was decided and the Court's decision did not satisfy either party. It is a case in which they have a right to appeal to the Supreme Court direct, and both sides are now appealing, and four-fifths of the questions in that case, Mr. Justice, are exactly the questions involved in this civil case before you here, and so our suggestion is in line with the policy of the Government, up until the recent announcement that this case was immediately to go to trial—in line with letting the Supreme Court tell us in the Crescent case what the law is with reference to these chains, and the duty of these courts in a case in general which my friend said is identical to this—why shouldn't [fol. 611] there be a substantial continuance here? Secondly, I see no damage done to the Government with reference to it. There may be three or four subpoenas for individuals, but that passes into insignificance when it comes to the greatest question of doing justice in this case.

I just made a notation what we must do. We must respond to the subpoena. Where we are going to get the time to do it, I don't know. We must try to resolve our help shortage. For instance, let me show you how keen that is. We have one man who deals for our circuit with the distributing companies. There was a time as alleged in my friend's complaint, we could go to the distributor and get 52 pictures, a whole year's supply, in one deal. We can only get not to exceed three now. That means that the man in charge of our distribution section, of our contracts with the distribution section, the producers, must every single day take his hat and shoes in his hand and get the grist from the mill of these pictures, just like our wives go down [fol. 612] and get the daily grist of rationed foods at the store.

He is vital to this case. He is the individual who must sit here and discuss these individual witnesses who claim in the distribution end that there was a conspiracy between us and the distributors which worked to the disadvantage of the witness who is here. He must help us. Just a word and I am through. We must prepare our own stipulation. We must examine the Government stipulation and then we have one more trouble, and that is your order in which in very specific terms you said "I want something done and I want the defendant to understand he has got to do it." That is we have to sell some ten or twelve moving picture houses while Mr. Schine must sit at the right hand of some lawyer trying to pinch hit in this case. Somebody must be at our head office to dig out the records. That must be Mr. Schine. Nobody else can do it. The whole burden that falls on us is insuperable.

Here is the suggestion I have. I make it without any disrespect to the Court, because the Court knows its own busi-[fol. 613] ness. Why may we not have a general postponement of the trial of this case until an indefinite time in the future upon our agreement, and, as definite as your Honor wants to make it, that we will immediately commence conferences with the Government to ascertain what can be put into this case by way of stipulation, and, your Honor, that is so much more important to us than the Government, because the Government does not know what the question of expenses means. With us every witness and every day that is saved is the saving of money. We are more interested in cutting expenses than the Government is. After we have worked together maybe a month and endeavored to cut this down with every stipulated fact, then why not have a pre-trial conference and crystallize what has been done and then, if your Honor please, when the evidence is there and we know the witnesses and know what is in this case, then set this case down for trial, with a proper length of time between the date of the pre-trial conference and the date [fol. 614] of trial so that both parties may look forward to it.

I am not here for the purpose of excusing what my friends say is inexcusable negligence on the part of the defendants for not doing something during these two years, but I am frank to say, your Honor, with fully as much experience as my brethren, if I had had before me this record of the attitude of the Department of Justice, I never would have believed, as I did not when I came up on the plane, that there was any idea this case could be tried like an automobile accident or a suit for divorce.

This is a most intricate case, and the man who tries it has to sweat, as Churchill said "Blood and sweat and tears," in order to get the case tried, and it must be from the standpoint of the defendant, because it is what he has, what he has made. It is his family property. He wants to save it.

I say again to your Honor, I have no standing before your Honor as to why you should temper the wind to the shorn lamb because of me, but if I am to be of any help to this [fol. 615] defendant, if I am to have counsel's right to come in and handle his case, I must have the time and so must any other lawyer. If I pass out of this case, and it would be a travesty simply because of a technical situation that the 19th of May was supposed to be the trial date with a case as important as this, whatever may be the shortcomings of Mr. Schine in not being prepared, it would be a travesty to force the case to trial unless the defendants were in possession and presented to your Honor which is the true story of what this is about.

Consequently, my suggestion is that that be so arranged that we might look forward in this case to the question of a trial of this case in the early fall. I say that because the summertime is coming, and you people who live up here in the Buffalo area have a little more fortunate summer than we do in Washington. As one gets older he looks forward toward having a few weeks off in the summer to regain your pep, by getting out of the hot climate and getting away for a few weeks. Have it set down after the procedure I have referred to in the early fall. Maybe by that time the [fol. 616] Big Five and the Government will have resolved their differences. Maybe early this fall the Supreme Court may decide the Crescent case when it comes to this, and maybe a large part of your Honor's duties would be eliminated. There has been an order entered. We will be perfectly willing to complete the record with one if your Honor wishes, and so far as your two-year order is concerned, under which we cannot buy any more theaters, and we are inhibited by the injunctionary effect of the order of doing certain things, and we would have no objection to a full continuance of the binding power of that order. We would be willing to subject ourselves to any other order that seems in your experienced discretion proper to protect the interests of the Government. The one thing we plead for here is, despite what my friends may say is our negligence, now being in the strong hand of the chancery side of this court, give us that which your Honor may not feel we deserve, but which we feel is necessary if justice is to be done in this case.

[fol. 617] Mr. Froelich: I represent the defendant Columbia Pictures Corporation, one of the so-called Little Three, and I speak on behalf of them and perhaps also on behalf of the United Artists, Universal, the other two. We are in this position: The Government has entered into a stipulation on May 4th, dismissing these Little Three from this case. We had originally been co-defendants in the New York action three years ago. We signed no consent decree, and had never been a party to any consent decree. We were defendants in the Tennessee suit. The suit was tried. Columbia was dismissed out of the suit, so was Universal. There was one finding against the United Artists. The appeal does not affect the United Artists. We have no interest in the appeal. We are out of that suit. We were defendants in the suit brought by the Government in Oklahoma, and four or five months ago we went down on a pre-trial hearing and the Government said it was willing to dismiss these Little Three out of the case. As a matter of [fol. 618] fact, these three defendants, and the small producers and distributors should not have been brought into these suits. They own no theaters. They are not in the exhibition field. They confine their business to the production and distribution of pictures. The Government realized, possibly too late, after we had been put to tremendous expense in preparing ourselves for trial in the various suits, that it was perhaps an injustice to these three small defendants that they should be dragged into these cases throughout the United States and made to defend themselves, and the Government concluded that these three defendants should be out of all these suits, and lately out of this suit. I see no reason, and I confine myself solely on this argument to the motion made by the Government to dismiss the United Artists, Columbia Pictures, Universal Pictures—I see no reason why either should remain in the case. No useful purpose will be served by keeping us in, but we will be put to great expense. It means spending money, having witnesses available, having lawyers—I don't have to tell your Honor these suits involve terrific expense [fol. 619] to every party in the suit, and I urgently request before your Honor makes any disposition of counsel's motion for an adjournment—before you do anything in the case, I earnestly request that your Honor grant the motion, in which I concur, to dismiss these three little defendants out of the case at this time so that we do not have to spend all kinds of money to prepare ourselves for a trial either at the present time or at a future date.

Our records have been available to the Government. They are up here in Buffalo. All of the records of the entire territory which is covered by this trial, and the Government has had access to them. I have no objection if Mr. Schine wants access to them, he can have them. It does not make any difference to us. The plea that we must remain in this case because Mr. Schine wants to examine our records, I think, should fall on deaf ears, because that is not made in good faith. There is no reason why we should be put to the expense of remaining in the case so that he may save, [fol. 620] as he says, part of the burden of defending himself. We owe him nothing, and I think it comes with ill grace from the defendant Schine to request that these defendants remain in this suit and incur this tremendous burden of expense because it suits his convenience. I think that we have the right, and the Government has the right—there is no counterclaim here, nothing involved by the controversy in which the Government alleges a conspiracy on the part of originally nine or ten defendants. The Government said "We are going to leave five of these defendants out," two years ago. No objection was made. Those five defendants were discharged. Now the Government says "We want to leave the three little defendants out," and I think, your Honor, we are entitled certainly to the same gracious consideration from the Court as the Big Five obtained when they were let out of this case, and these three little defendants who can ill afford it, should not be kept in this litigation when no useful purpose could be served to anybody in the case.

[fol. 621] The Court: What was there about this statement of the attorney in January with reference to this case?

Mr. Clagett: I have not seen any official letter or statement in any departmental file, and I don't recall seeing any. He is passing on what appeared in the trade journal. My own understanding is that while there have been continued discussions, progress has not been made, and it is contemplated that that suit will be tried.

The Court: What does he say? Does he purport to quote the Attorney-General?

Mr. Richardson: Suppose you read it.

Mr. Clagett: This is a Washington date line, it merely states: "The Government's suit against Schine Circuit will be suspended until a decision is reached with respect to the divorcement of the theaters owned by the five consent decree companies, it was learned here today." It says: "Recent conversation between representatives of the Company and the Department of Justice officials—it mentions—"It is the idea of the Assistant Attorney-General Tom C. Clark that [fol. 622] the whole question of the theater acquisitions should be wrapped up in one package with a delay applicable throughout the industry." That back in January, 1944.

The Court: This year?

Mr. Clagett: This year.

The Court: From what counsel states, this was ordered to be put on the calendar. What was the condition of the order? What was the language of the order at that time?

Mr. Clagett: Of the temporary order?

The Court: The order two years ago.

Mr. Clagett: "The trial of this case is postponed until May 19, 1944, and all proceedings herein are suspended until such date, except as hereinafter provided," which, of course, related to the——

The Court: I understood counsel to state that it was to go on the calendar. That seems to be not quite in accord with the order itself.

Mr. Clagett: I would not think so, sir.

The Court: Counsel calls attention to the subpoena duces tecum served on them only this last week.

Mr. Clagett: I was going to advert to that question, [fol. 623] your Honor.

The Court: Go ahead.

Mr. Clagett: Those subpoenas were the identical subpoenas which had—subpoena duces tecum which was served at the time of the original sitting back in March of 1942. There were very minute changes in about three respects only, I believe, so that when they were put on notice that the Government expected to try this case, when Mr. Wright argued the motions here, they had at least anticipated, or should have anticipated that the Government was going to rely upon the subpoenas that it had previously served. The material, we assumed, of course, was gathered together back in March of 1942, and in addition to that we had taken the deposition at Gloversville and identified all the contracts involved. The defendants have had, it seems to me, in this case, the best discovery that could be expected. We have filed numerous bills of particulars. We have answered certain interrogatories, and we have furnished the defendants with photostatic copies of all of this material which we [fol. 624] took from the files of the major distributors, so there is no ground to the plea that they do not know or cannot have access to the material that is covered by the subpoenas, with respect to the major distributors. They have all of that.

Of course—I see Mr. McCarthy here—he has been of counsel in this case since about May, 1943. I can certainly appreciate Mr. Richardson's position, his personal situation. It may be difficult, but we are trying the Schine defendant's, and this suit has been pending since 1939. I hesitate very much, your Honor, to go any further with respect to the discussions on the Paramount case, except to say that while one official may have made some announcement, it would not necessarily be binding on the Department, especially where changed circumstances have intervened, where these talks have not produced the results that they thought would be accomplished, and it is my understanding that that case will be tried. As I understand it, [fol. 625] those arguments were gone over on the motions here in March or April.

Mr. Richardson: You mean the Big Five companies?

Mr. Clagett: With reference to the Paramount case.

Mr. Richardson: That is the Big Five companies?

Mr. Clagett: Yes, sir. They were certainly gone over at the time of the Crescent trial, but if we are going to advert to any parallel situation in the motion picture industry or make any comparisons, let it be with the Crescent case. We have not halted from proceeding in this case on account of what was happening in the Paramount case. We have not halted our attempt to prepare and try the Griffith case in view of the relief that the Government obtained in the Crescent case. We might be charged with dereliction if we failed to prosecute this case. The independent exhibitors here are in the same situation they were there, and relief was obtained in that case.

The Court: That has not been argued.

Mr. Clagett: That has not yet been argued.

The Court: When will it be argued?

Mr. Clagett: It will be argued certainly not later than some time this fall, I believe. From the standpoint of [fol. 626] preparation this case has been pending all of this time. Mr. McCarthy is in the case, and the Government feels that the Schine defendants have a large staff of lawyers, I mean, in their own legal department. The material has all been organized. It was organized presumably in March, 1942, again in May, 1942, and this plea now —well, it may be embarrassing to Mr. Richardson—this plea for delay is one that the Government must oppose, and we will not agree to any such continuance, your Honor. We believe this case should go forward now. We have witnesses here before the Court. If it is desirable to continue for a short period for the pre-trial proceeding, that is one thing, but to go over to the fall is an entirely different thing. My thought is that we might start now and see what we could accomplish in the pre-trial proceeding and go right from that into at least the beginning of the trial. We have witnesses that we can put on Monday or Tuesday. Let us complete a segment of the case now. It seems to me, your [fol. 627] Honor, that that is the only proper thing to do under the circumstances of this case. We have issued all of these subpoenas for a number of witnesses. Some of them are here; others are on their way. The Government case is going to deteriorate by the passage of time. Certain witnesses have died since May, 1942, several others are ill, and if we get their testimony at all, it will have to be by deposition. Certain witnesses that we have available now are in the army. We know that we can get them. We may not be able to get them two weeks from now, a month from now or next fall.

With reference, your Honor, to Mr. Froelich's remarks about dismissal of Columbia with the other two remaining distributors, one of the objects of the Government at this time in dismissing the Little Three was to simplify the trial and save time, and I believe that the question of their dismissal is covered by your recent opinion with reference to the motion to dismiss the suit because the Big Five had previously been dismissed as parties defendant.

[fol. 628] So far as the documents and files of the Little Three are concerned, we would have, and have had, as far as I know, the same arrangement with the Schine defendants as we had with the Big Five, and that is, to furnish them photostatic copies of the material which we took from their files.

My thought is, your Honor, in conclusion, that we respectfully submit the order dismissing the three remaining distributors be granted. We believe that material ground can be covered right now if we can start into the question of stipulating facts in evidence, and the Government would like to immediately get into the trial of the case upon a determination of what we are going to accomplish now in the pre-trial proceeding.

STATEMENT

Mr. Schilz: May it please the Court, supplementing what my colleague, Major Clagett, has had to say, your Honor, I would like to be heard briefly, just a minute. I was very much interested in Mr. Richardson's remarks concerning the fact that no rule has been laid down for guidance of the [fol. 629] motion picture industry at any time during the long history of litigation with the Government through the Anti-trust Division, in the enforcement of the Sherman Anti-trust Act.

I can recall back in the days when I was an assistant secretary to Colonel Donovan, and when I was secretary to

John Lord O'Brian, that even then, 12 or 15 years ago, the Government was attempting to break up this competitive control in the industry of the retail outlets for the theaters by the wholesalers and producers. I can recall even at that time in the Benderop case, the first leading case that went to the Supreme Court of the United States, the rule had been laid down for the guidance of the industry. I can recall later in the First National case and Paramount case, which was argued in the Supreme Court very ably by Mr. O'Brian, a further rule was laid down, and the Supreme Court said in that case even though there were two economical concepts in this country, one which afforded a certain amount of collaboration and combination in industry and another one which afforded free enterprise, the Supreme Court must adopt and carry out the rule of free enterprise inunciated in The Sherman Act and that that should be the rule in the motion picture industry.

[fol. 630] In dealing with these affiliated circuits and chains, the larger chain organizations in the industry, later in the Interstate Circuit case, in the State of Texas, there was a situation on all fours with the Schine case in practically all respects. There a large controlled circuit of theaters have obtained certain favors and preferences from the eight distributors in the motion picture industry. That is to say, from Fox, from Loews, from Warner, from Columbia, from Universal, acknowledged in preceding cases as practically the sole supplier of product for use in this industry. In that case the Supreme Court laid down and adopted a rule which should stand as a guidance for this industry. The Government, in further explanation of efforts in carrying on a policy which was not confined to one political ad-[fol. 631] ministration, but a policy which has been the policy of the Sherman Act since 1890, brought these circuit suits, and brought the suit against the distributors in the Paramount case.

There has been a great deal said here about the Paramount decree, but I want to point out to your Honor that in that decree, the distributors gave up certain valuable rights which they had had prior to that time, or rights which they contended were valuable to them. They gave up the right or the practice that they had in the industry of selling a whole season's pictures in one block, and they entered into a decree that they would at a subsequent time during the period of that decree simply sell their pictures in blocks of five, and they would give the exhibitor the right to preview the picture. They also gave up another valuable right, or another practice, which they had maintained in the industry, or I should say they entered into an agreement to do something which had not been done prior to that time, and that is, to give the exhibitor the right to [fol. 632] arbitration of clearance or protection situations, wherever the exhibitors signified a desire for arbitration of that situation. Those were situations entirely apart from these circuit situations. In the circuit situation we have a case of a large circuit controlling 165 theaters in the Schine case, or theaters in 165 towns. Many of those towns are closed. There is no competition, and the Schine chain—it has been stated in the complaint in this suit and has been pointed out to the Court many times in many arguments before this Court, that the Schine chain by reason of its power in those closed situations is enabled to go to the distributors and obtain preferances and priorities. So that here we have a conspiracy, whether the distributors are defendants or co-conspirators, where the Schine chain is the hub of the conspirators, and the spokes of the conspiracy radiate out to the distributors.

Now, if your Honor please, this case was filed on August 7, 1939. I was amazed when I first started to study the [fol. 633] pleadings here at the ramifications of the pleadings, the fact that every means of discovery has been exhausted by the defendants. They have had far greater detail of discovery than is usual in any other civil case. By that I mean the Court in all fairness to them has given them every discovery which the Court felt they were entitled to under the circumstances. Having exhausted all the discovery the case came on for trial, first being set for January, 1942. On motion, or on some representation to the Court by the then counsel for the Schine chain the case was reset for March 3rd. The case at that time was again reset for April 28th. I was particularly interested in examining the transcript of April 6th, 1942. At that time Mr. McKay, general counsel of the Schine chain, who had very ably represented them in this court, and as I understand it is still the general counsel—is that true, Mr. Richardson?

Mr. Richardson: He is house counsel for the Schine Theaters.

Mr. Schilz: Appeared in this court with Mr. Wiseman and Mr. Byrne of New York City. He appeared on three occa-

[fol. 634] sions, first, to oppose interrogatories—rather to propose that the Court grant certain interrogatories against the Government; second, to oppose the Government's request for admission of facts, and third, to ask for a stay of sixty to ninety days on the ground that new counsel had been brought into the case on behalf of Schine just two weeks previously. Your Honor observed at that time, I believe, from reading the transcript, he did not feel the bringing in of new counsel or associate counsel into the case was a good ground for postponement, but that to suit the Court's convenience because of another trial or another term or other work of court, the suit would be set over until May 19, 1942. In the meantime counsel had also appeared in court previously and requested a stay of the case on the ground that the Crescent case was pending in Tennessee, but the position that the Government took at that time and has at all times taken in this case is that because of the public interest and the welfare of the independent exhibitors who [fol. 635] have constantly complained to the Department of Justice, this case was a matter of public import that ought to be tried, and that is the position the Government takes today.

Now, if your Honor please, the case came on for trial May 19th. At that time a stipulation had been entered into in which Schine, while reciting in the stipulation that it did not admit any guilt or any violation of the Sherman Antitrust Act, nevertheless undertook to give some of the relief which the Government had been pressing to get in this situation, that is, the order provided for the disposal of sixteen theaters. I think your Honor observed in his opinion of May 4th, while the order did provide for the disposal of sixteen theaters, only five have been disposed of to date, and that it does not appear that any unusual diligence has been exercised by the defendants to dispose of the balance.

The Court: Six have been disposed of, have they not?

Mr. Schilz: Six theaters in five situations—I beg your Honor's pardon. In the meantime, the complaining wit- [fol. 636] nesses have been contacted. They advise us their situation is not any better. It is growing progressively worse. Some of the same counsel are in this situation now, who have been in the case for more than a year. Mr. McCarthy sits here at counsel table. His appearance was noted in this case early in May, 1943. Mr. Friedman of New York had a telephone conversation with me about two weeks ago in Washington with reference to the proposed stipulation, and at that time he suggested that he may file certain motions. I pointed out to him because of the Court's opinion previously on the same subject matter, there wasn't good ground for the motions, and they have not been filed, but, at least, Mr. Friedman expressed interests as one of the counsel for the Schine chain. Mr. Goodwin appeared at the Department of Justice during the week of May 8th, Clarence N. Goodwin, who has been in the case so far as I know since May, 1943, and he made certain representations to the department, so that we have a situation here, [fol. 637] while one counsel is now being brought into the case, there are other associate counsel who are skilled and experienced men and who have been in the case longer than a year, who are thoroughly familiar with all the preparation of this case, and who have probably themselves examined the five hundred photostats that were taken from the major film distributors, and that if your Honor please, brings me to another subject. Referring to the Big Five and the Little Three, there is a tendency to underplay or place a minor connotation on the position of the so-called Little Three in the industry. None of these people are little in the ordinary sense from the standpoint of operations or financial control or financial ability. The smallest of them has assets running into millions, thirty or more millions, and the larger over a hundred million. I realize it has been said in anti-trust cases that size only is not a criterion to determine whether or not industries have been or are able to violate the Anti-trust Laws, but the Supreme Court has said that a size, when combined or when viewed from [fol. 638] the demonstrated abuse in the past as has been demonstrated in this industry indicates the potential danger in future.

We have in this situation a large theater circuit which is in a peculiar position to obtain priorities and preferences from these distributors and has obtained them. The Government has, as has been stated, two years ago made extensive preparation in this case. It has been at all times ready to go forward. We are met today with the same situation we were met with two years ago, and ~~that is~~ a request on the part of the defendants who themselves have been on notice—the defendants, if your Honor please, the clients in this case have at all times been on notice that this case was pending, but on the eve of trial they come in with new counsel without any formal or seasonable notice with this Court or with us.

Colloquy

Mr. Richardson: May I intrude on the Court just a moment? I want to refer to my friend's suggestion as to the release of one or more of the Little Three. I appreciate the statement made by my old friend that they are only [fol. 639] little in comparison, but will your Honor reflect upon the propriety of a prosecution that dismisses from the case the three biggest people in the case. My friend says the Government dismissed because it was too bad to put these big corporations to the trouble of defending the case, and my brother over here says that there was a conspiracy between the distributors and the Schine people to defraud the public, and yet the distributing end of it, the biggest end, walks out of here with the suggestion on the part of my friend that it is too bad to bring them in and make them go to the expense when they are charged in the same bill, and the Government still insists that they are co-conspirators. They are not innocent, and when the Government says, when my friend says he has his files here and we can see them, I appreciate if I can have time to see them, but most of the files represent the Big Five, and where are they? Are they going to hold their arms out to us?

The Court: They are out of the case now, let us not discuss that.

[fol. 640] Mr. Richardson: They are out of the case, Mr. Justice, in so far as you can render a judgment against them, but the complaint stands naming them as conspirators, and their admissions, if your Honor please——.

The Court: The point in mind is, they are out.

Mr. Richardson: The point is under the evidentiary rule, any admissions made by a co-conspirator are admissible against all persons in the conspiracy. Despite the fact they are out of the case, the Government at will can take out the files it has examined, which presumably they have culled, as to what helps the Government's case. You know and I know they have not taken anything out that will help our case. All of those, once a conspiracy is established, become admissions of ours.

We have four hundred people in our employ in the army. We are going to be hard set in an individual case, in Smithville, to bring the young man there who handled the moving picture situation to testify here, but the difficulty is not the ultimate proof. It is the time to get the proof together, so [fol. 641] that when Mr. Clagett says all they wanted to do here was to simplify, and they simplified by letting the main malefactors go, it is simplification in name only. I want to read one sentence from this innocent subpoena duces tecum (quoting from subpoena duces tecum).

It is an enormous job to intelligently answer that subpoena duces tecum, and we ought not to be hurried in answering it.

The Court: Counsel calls attention to the fact some subpoena was served a few years ago.

Mr. Richardson: I cannot argue with him on it. I was not here then. I have not seen that. My friends tell me there was a subpoena served, but because of the negotiations between the parties no particular attention was paid to it. I accept to a certain extent criticism for that, that during those two years they were not enough psychic to see this split in the Department of Justice, but I say it is a remarkable thing, if your Honor please——

The Court: I don't know about the authenticity of such a statement. There is nothing here to support the authen- [fol. 642] ticity of that excerpt from that magazine. Some reporter may have stated that to be a fact, which might not be so.

Mr. Richardson: I don't think anybody at counsel's table will deny that was Mr. Clark's statement.

The Court: I rather gather, perhaps, if some statement was made, the records of the office or something like that would show it.

Mr. Richardson: I will be prepared if you regard it as important to further identify——

The Court: I regard it as important to a certain point.

Mr. Richardson: I will be glad to furnish sworn testimony of people who talked to Mr. Clark about it.

The Court: Of course, the matter was set down for trial apparently at this time, rather than put on the calendar.

Mr. Richardson: Mr. Justice, let me apologize to you for my statement. I read this once, and the statement simply was that the trial of this case is postponed until May 19, 1944, and all proceedings herein are suspended until said date.

The Court: These other motions that were made here, when was that, a month ago, when Mr. Wright was here?

[fol. 643] Mr. Schilz: March 20th and April 10th.

The Court: He stated here in the presence of Court and counsel that this case would go on at this time. That is a month and a half ago, Mr. Richardson.

Mr. Schilz: The first hearing was March 20, and the second one was April 10.

Mr. Marcus: April 10th I was in court with Mr. Wright, and I recall your Honor asking that question, and Mr. Wright at that time turned to counsel and stated definitely that we were prepared to go on on this date.

The Court: Of course, there is something to be stated in favor of some agreement on a stipulation of facts which undoubtedly will save a great deal of expense and trouble and narrow the work of the trial a great deal. Now, the question is here how you can get at that. I had a thought in mind that perhaps in view of counsel's statement here, we could make more progress, at least in the next month, even though we had to discontinue for a little time. We have a term of court in July, anyway, so that would be out of the picture. You have engagements until June, so that [fol. 644] perhaps there may be some way to proceed in part.

Mr. Richardson: I feel certain, your Honor if we do it properly, if we can occupy our attention between now and the first of June on the preparation of a stipulation of facts, and not until those statements of facts are completed should your Honor be called in on a pre-trial situation. You cannot sit here day after day while we hash over these facts and say "Put it this way, put it that way."

The Court: I glanced over here at the proposed stipulation, and so much of this can be answered, and the answers to others—data can be easily procured.

Mr. Richardson: We have a stipulation of facts that we intend to produce.

The Court: You have depositions and interrogatories?

Mr. Clagett: Yes, sir.

The Court: I suppose those would throw some light on the stipulation.

Mr. Clagett: I cannot conceive that it would take so long to dispose of that document as far as this stipulation, as [fol. 645] to those facts and evidence are concerned. A great part of it is based upon information which is gathered here and there in the scattered answers in the interrogatories, and the defendant's legal department and other counsel is well prepared, and can advise with Mr. Goodwin as to the accuracy of the facts that we want to have stipulated.

The Court: A great many of these, apparently, would not take any time.

Mr. Richardson: You have to apply the stipulation to the individual statement there in order to get an accurate statement of the date and time for the different places, and it takes a considerable time. There are numerous statements.

The Court: As far as I have seen these, nine out of ten of them would not seem to be controversial at all.

Mr. Richardson: Has your Honor the subpoena there, also?

The Court: It seems most of these things that I have seen there could be answered within an hour.

Mr. Clagett: I believe most of them could, your Honor, if they want to simply say the facts there are true. They know.

[fol. 646] The Court: I can't force you to stipulate.

Mr. Richardson: Has your Honor examined the subpoena?

The Court: I am talking about this stipulation now. There is nothing in there as far as I have seen but what you could say whether you agree or do not agree in a very short time, and that could be taken care of.

Mr. Richardson: With reference to the Viv Theater, Mr. Justice, many of those statements in that stipulation which look so innocent—we want to add to that stipulation of facts, additional facts, that we can ascertain by looking at our files relative to that contract in that place, and we want the time to do it.

The Court: Would the contracts of purchase, or contracts of leases—would that have any materiality here?

Mr. Richardson: Your Honor, all these individual cases stand on their own feet. They are different people, different representations alleged to have been made. They are all part of this devious conspiracy that the Government asserts.

The Court: I assume that there would be a certain stipulation that you would ask them to make, I assume that is [fol. 647] true. As far as this standing alone, most of that seems to me to be matters that you can quickly answer or not. I cannot go any farther than that. I haven't the power to compel you to stipulate.

Mr. Richardson: We will answer them as quickly as we can.

The Court: Ma-y of them as I have glanced at them here now are merely formal proof.

Mr. Richardson: Suppose you add to that, Mr. Justice, the scope of the subpoena duces tecum as to the correspondence, and so forth, that also should be enveloped in these statements of facts preparatory to a pre-trial conference, we ought to have an opportunity to examine and get all of these papers and letters and correspondence and inter-office memorandum and find out just what we have, and then contact our friends and see whether we can get a stipulation that will avoid us the trouble of taking our time and the Court's time and the witness' time to identify them.

Mr. Clagett: If Mr. Richardson does not know what those papers are like, there are people, Mr. McCarthy and the legal department of Schine knows what they are. They must have set them aside long before the original trial date [fol. 648] in March, 1942. I do not see how that is really an excuse for taking any long period here to——

The Court: What was your deposition? What proceedings were taken? A deposition was taken of some of the Schine officials by the Government?

Mr. Clagett: Yes, that was simply to identify the documents.

The Court: Does that go into the question of these documents concerned with this subpoena?

Mr. Clagett: Yes, sir. The contracts that are covered by that subpoena were to a large extent identified in that deposition and picked out and looked at. They saw them at the same time we saw them and they were marked, and the papers, sir, generally speaking, relate—that is, other documents and letters, and so forth, relate to a considerable extent to the towns and situations in a parallel way with the contracts themselves.

The Court: Towns and situations, what do you mean by that?

Mr. Clagett: We have dealt in this case in furnishing the answers to the bills of particulars and to interrogatories [fol. 649] largely with towns, and with certain distributors with respect to that town——

The Court: You mean by Schine?

Mr. Clagett: Yes, sir.

The Court: Were there interrogatories answered as well as bill of particulars?

Mr. Clagett: Yes, sir.

The Court: On action of the Government a deposition was taken. Was there any bill of particulars sought by the Government at that time?

Mr. Clagett: No, sir, Columbia obtained a bill of particulars.

The Court: I am speaking about Schine. Was there any preliminary action taken aside from taking depositions?

Mr. Clagett: No, sir. They did file a motion. Altogether, I believe, there were six bills of particulars that were filed and with three different sets of interrogatories.

The Court: Did Schine interpose interrogatories?

Mr. Clagett: Yes, sir, those are the ones I am speaking of.

The Court: Whose deposition did you take?

Mr. Clagett: One of the Schine officials with reference to identification of all these contracts included in that subpoena.

[fol. 650] The Court: Was that taken at Gloversville?

Mr. Clagett: Yes, sir. I have this proposal to suggest, that to give Mr. Richardson ample leeway, we might attempt to proceed with the stipulations of facts for the period of one week, upon the condition that the trial of the case commence at the end of that week.

The Court: Why can't we proceed?

Mr. Richardson: Mr. Justice, I said a moment ago when I was discussing the matter, I am prepared, as soon as I can get home to get glasses and sit down with my brethren, to endeavor to get stipulations of facts in shape. I don't want to delay. I think it is going to take longer than he thinks. It always has in the other cases I have been in. I am perfectly willing to do it, but I have still one more difficulty. It is wholly personal, and I have used up all of my personal favor with the Court by this time, and that is that the month of June is taboo as far as I am concerned. If we should get our stipulations of facts, it will take most of the time until the first of June. If I might be left free for June, it is possible we can hurry up this trial, but I [fol. 651] still repeat what I said, if what my brethren say is correct, that the Crescent case is a model for this one, why should we have to try this case when the disputed law that is in the Crescent case is going to be before the Supreme Court to be decided probably before your Honor lecides this case. It does not seem sensible. It seems to be Mr. Clark was right when he said we will hold all these hings in abeyance until we get our ruling, and if my young friend is correct, that we have plenty of rules, then why is ustice at the present time bargaining and conferring and working with the Big Five, so-called, to settle the Big Five ase. If they are going to try that case, why not try it? It s the main case. A decision in that will decide practically all that is in our case. Why should we go to the expense and rouble of a trial that will take two or three months, when here is a framework, counsel says, already in the Crescent case, which is on its way to the Supreme Court, that will settle the precise issues in this case?

[fol. 652] Mr. Schilz: If your Honor will bear with me for a few remarks. My answer to Mr. Richardson, and for your Honor's information, is that in so far as a rule of guidance is laid down, that has been laid down by the Supreme Court n the Interstate Circuit case, and that the Crescent case, lthough it is now pending, and is a situation on all fours with this case, will probably be determined by the rules laid lown by the Supreme Court in the preceding cases in this ndustry, this is not the first time the Department of Justice as attempted to divorce theaters from either producer control or circuit control. I could take a syllabus of cases in the industry back 15 years which shows various actions of this sort.

Mr. Richardson: Why haven't you pressed the Big Five companies?

Mr. Schilz: In the Fox Theater situation for a time, the theaters were put in a trusteeship for divorcement. As to this trade paper article, that is not authentic. That is some reporter's statement of what his view is of what might be going on. That is not evidence.

[fol. 653] I want to advert a moment to this discussion about the breadth of this subpoena. My associate said that subpoena was filed, and with about three or four minor changes is the same subpoena filed previously in this case, and it is my understanding the defendants have gathered together all that material. The distributors have brought here themselves, some of them have brought here the material which was previously gathered together, and which I understand they kept separated. What we thought could be accomplished in a pre-trial conference, and I think counsel could tell us very soon, and it is something that they must tell us in the presence of the Court, whether or not they would stipulate the authenticity of documents subpoenaed.

The Court: What?

Mr. Schilz: The authenticity of documents subpoenaed from them, these documents that have been set aside, inter-office communications and contracts—if they will stipulate that the documents are the authentic documents of the Defendant Schine and of the major distributors, both as to [fol. 654] contracts between Schine and the distributors and contracts between the distributors and the few remaining competitors of Schine in this area, we can save a great deal of time, and when we have a witness on the stand and he said "Why, there was a contract such and such a date," do we have to put the Exchange manager on the stand, or the distribution head of the Company to prove the authenticity of that contract, or are they willing to say to us as to these documents named in this subpoena, "We will agree they are authentiic, and they are the documents we set aside before. They are now set aside and are there.

The Court: How were they brought into the deposition?

Mr. Schilz: I am not thoroughly familiar with that deposition, but as I understand it, a great many contracts were marked for identification at Gloversville, and I also understand that photostats of some five hundred pieces of correspondence and contracts were made, one copy furnished the Department of Justice, and Mr. McKay stated to this Court on April 6th, 1942, that he had seen a copy of each [fol. 655] of those and had personally read them.

Mr. Clagett: I would like to make one more statement in connection with the trade journal announcement about what Mr. Clark said. It seems to me that thing is right in the teeth of what the Department has shown its intention to be. We are not bound and we are not following what is in that trade journal, but we are trying to proceed with this case, and the action is proceeding in the Griffith case.

Mr. McCarthy: If you will remember, when Mr. Wright was here, I offered to put Judge Goodwin on the stand to testify in a conversation with Mr. Clark, Mr. Clark had told him the Schine case would be behind the Big Five case, and Mr. Wright did not dispute that that statement was made by Mr. Clark.

The Court: I do not recall the statement in that connection. I do recall the offer to produce Mr. Goodwin. That

I thought related to, as I recalled it, some agreement made earlier in July when the extension was granted.

Mr. McCarthy: No, your Honor, it related to the conversation at the time of this newspaper article that Judge [fol. 656] Goodwin had with Mr. Clark.

Mr. Marcus: I am not quite certain what that had reference to, but I do recall Judge Goodwin making certain statements as to what Mr. Clark had told him with respect to the acquisition of the Liberty Theater. That was an entirely different motion, and I believe, without being certain, that it was in that connection he was willing to testify.

The Court: There was correspondence on that.

Mr. Schilz: That case was outside and not part of this case, and the calendar sitting in New York may be entirely different from the calendar sitting in this court. We all know the calendar in New York sometimes runs months.

The Court: There ought to be some understanding in your Department about these matters one way or the other as to what is to be done.

Mr. Richardson: We do not contend our brethren are bound. We simply say we have been deceived by it.

The Court: Of course, that is overcome by a statement made by Mr. Wright that the case would be tried on the date fixed. You had notice. Of course, this subpoena duces tecum, it seems to me, ought to have been served earlier [fol. 657] unless it is all covered by previous research as pointed out here.

Mr. Clagett: That one that was served late, I don't know how that happened. It is one of several of the same identical subpoenas which were served upon various corporate Schine defendants and the personnel.

The Court: It was the same subpoena, but served on different named defendants, you mean?

Mr. Schilz: Yes, sir. There are, as I understand it in this case, seven Schine corporations.

The Court: When was the first of the identical seven subpoenas served?

Mr. Schilz: The first one we have a notation of or a return on was served on Schine Chain Theaters, Cleveland, Ohio, May 10th. The one as to Schine Enterprises was returned, because they apparently do not have a New York City address at the present time, and I am not able to advise your Honor as to the return on the others.

The Court: How were they served?

Mr. Schilz: Served by the marshal in that district.

The Court: You spoke about some return address. I thought perhaps you served them by mail.

[fol. 658] Mr. Schilz: No, sir.

The Court: I think we had better go along with the examination of these proposed stipulated facts this afternoon, and then take a short recess.

Mr. Clagett: If it please the Court, is there any reason why we could not have a disposition now of the Government's motion to dismiss?

The Court: I will take care of that when I come to it. You say your trial commences the 12th?

Mr. Richardson: Yes, it commences the 12th. Of course, I have to be there four or five days ahead to prepare it. June is a bad month.

The Court: I think we ought to make some progress in this matter from now on in some way. I don't know how much we can get into the matter. It does seem to me we could at least begin the trial without any handicaps, so far as the defendant is concerned, or handicapped by reason of your late appearance in the case—of course, that I appreciate—I think the defendants were advised in plenty of time in order to get competent counsel. They should not have left it for the last week, because this was set down [fol. 659] for a definite date. I do not think the Government expects to conclude this case this spring, but they feel they ought to get started, and I think we ought to do that.

Mr. Clagett: As I mentioned before, we have several witnesses in the room—there may be others. We know two of them are available now. We could put these witnesses on, and if we had a week or ten days—your date is the 12th?

Mr. Richardson: Yes.

Mr. Clagett: If we could proceed with this endeavor to stipulate these facts for a period of perhaps a week, and then get into the trial for ten days.

The Court: That would bring you into June. Ten days from today will bring us to the first of June.

Mr. Richardson: We have one holiday in there somewhere.

The Court: That is the 30th.

Mr. Clagett: Another thing is this: Our witnesses were all called here two years ago. I mean, they were subpoenaed and a number of them came, and now some of them are here and others are on their way. It is discouraging to these witnesses to have the Government keep writing to [fol. 660] them that the case has been postponed. If we get started to use some of these witnesses, the witnesses will be in a different frame of mind about that.

The Court: You cannot accomplish much in a few days as far as that is concerned. As I look at the stipulation, I think you can approve the Government's stipulation this afternoon. There is nothing that I can see there to worry about. Are you prepared to go along the first of next week with any witnesses?

Mr. Clagett: Yes, sir.

The Court: Why don't you want to run one week, and then adjourn? I don't think there will be any difficulty as far as counsel is concerned.

Mr. Richardson: Of course, I don't know who the Government witnesses are, Mr. Justice, and I don't know what they will testify to. I don't know whether the facts they testify to are those subject to a possible stipulation of facts. I don't know whether they can be eliminated. If we had an opportunity to know what is proposed that they would testify to, possibly we would admit it. I cannot say "Yes" or "No", because, as I say, it is the blind leading the blind [fol. 661] in reference to that.

The Court: I am going to hold the matter until next Tuesday, and we will go along at that time for a few days, and, in the meantime, you can take this stipulation and you can advise the Court what you want to do with it.

Mr. Richardson: What was the Court's remark?

The Court: I say, go along with some of the testimony next week. I don't see how we can run any longer than next week. We could start Monday afternoon.

Mr. Richardson: I want to be clear in my own mind. Does your Honor then feel that the trial would pause at the end of next week?

The Court: Would that be satisfactory? We can try it later in the summer after July or August some time.

Mr. Clagett: That is the unfortunate part of it. Pausing in June brings us to the middle of the summer, and the Government certainly would prefer, if it could, to go right through with the case. We are up against the proposition that Mr. Richardson has raised about his presence in this other case.

The Court: I think we can run two weeks commencing [fol. 662] next Monday and see how we get along anyway.

Mr. Richardson: This occurs to me. Could we have an adjournment over the week-end, over Decoration Day?

The Court: Yes, I think so. That would bring us to Tuesday.

Mr. Richardson: Because I would like to get home.

The Court: That would be two weeks, practically. You have this stipulation, have you not?

Mr. Richardson: I have glanced at it.

The Court: In the interim, whatever additions you want to make to it, or whatever proposals you have, do it as best you can now. You have most of this material all assembled.

Mr. Richardson: Does your Honor contemplate that we are to commence taking testimony on Tuesday?

The Court: Yes.

Mr. Richardson: Then there is utterly no chance whatever for us to prepare any statement of our own stipulated facts between now and Tuesday.

The Court: Can't that be submitted later?

Mr. Richardson: I don't know how. It just looks to me if we do not have our stipulation of facts at the time we start to trial, we will never get them.

[fol. 663] The Court: So much of this ground has already been covered—so much of the foundation has been laid by the interrogatories and deposition, and the preparation made before.

Mr. Richardson: If your Honor would let the question of the pre-trial hearing on which you are to crystallize the stipulations of facts, run until a week from Monday?

The Court: All right.

Mr. Richardson: Then let us take a full week, commencing with that Monday, for counsel's witnesses that he has on hand, and maybe we can get a couple of more days in May with reference to it.

The Court: I thought you were going to propose postponing action on the stipulation for a week, but in the meantime, go on with the testimony. The testimony would not be directed to matters in the stipulation.

Mr. Richardson: Of course, they will be. They will be producing a witness that comes from a certain town and predicate his own testimony——

The Court: I am speaking about the stipulated facts that will not have to be proved.

Mr. Richardson: That is true, but we have to make some [fol. 664] examination of those facts, and that is only the Government's stipulation. What are we to do about this subpoena duces tecum? What time are we to have to furnish all those papers and truck them over? It would take three or four truck loads to get them here.

The Court: I don't know how much we will get into that at the outset.

Mr. Richardson: If the furnishing of that material could go over to the June vacation, why, then the defendants probably could get hold of that stuff and bring it over during June and have it here.

Mr. Clagett: We want to accomplish all that we possibly can in the way of stipulating facts and evidence, and I don't know what they have in mind, but here is a proposal, that we devote as much as a week to determining what we can accomplish and then going into the trial the following week, which would give us a full week of trial, I think, would be satisfactory to the Government.

The Court: To what purpose are the witnesses directed to, that you propose to call next week?

Mr. Clagett: We would go into the Ohio situation, that is, [fol. 665] the competitive situations, and possibly Kentucky. They would be the first situations we would go into, but, of course——

The Court: You mean you would go into the situation through what witnesses? Would they be individuals?

Mr. Clagett: Yes, sir, primarily individual exhibitor witnesses, and we would make an extensive effort, of course, to get these two individuals that we have in mind who are in the army, to have them come in. One of them does not relate to any Ohio situation.

Mr. Schilz: May I ask the Court, that if it develops during the course of the hearing of that testimony we need certain foundation facts as to these particular exhibitor localities, the Government, I assume, would be permitted to read from defendant Schine's answers to interrogatories, statements as to these particular localities as foundation material?

The Court: I suppose so. It would be competent, would it not?

Mr. Richardson: We are not going to do a thing to delay this, definitely.

The Court: We will try to make what progress we can, that is all.

[fol. 666] Mr. Clagett: I would like to reiterate that the Government is willing to go along with Mr. Richardson on the idea of having this first week devoted to pre-trial, that the testimony be started the following week. I understand that is the proposition that he would like.

Mr. Richardson: It is not that I like it. I hate it intensely, but beggars cannot be choosers.

Mr. Clagett: We will go along with you on that.

The Court: The difficulty with that is that there will not be much time after that, if we have in mind counsel's commitment, that is all. However, if that were done, Mr. Richardson, could you proceed the following two weeks, commencing the 31st—that brings it to the day after Decoration Day?

Mr. Richardson: It makes it exceedingly dangerous for me, because I have to prepare that other case. Why can't we take this testimony up to Decoration Day, which will get my friend's witnesses out of the way?

The Court: That is what he proposed to do if he took testimony next week. He would have to take testimony next [fol. 667] week. You have one week before Decoration Day. Today is the 19th.

Mr. Richardson: Decoration Day is on a Tuesday. Why couldn't we do this? The practical way would be to make what progress we can next week. We cannot sit on Decoration Day, I assume, these days, because they might play the "Star Spangled Banner" and stop the trial. I would be very glad to start taking testimony the 31st and run four days into June. Does your Honor sit on Saturday?

The Court: Sometimes we do, more often not.

Mr. Richardson: The Federal Courts ordinarily do not. I don't think that the week of the 22nd is going to be wasted. I think we are going to save time.

The Court: If you will say you will go on the 31st to the 9th, we will fix it that way. I think you better go on that way and see how we get along. All right, I will hold this matter. This matter should be held until the 31st of May. In the meantime a stipulation will be agreed upon as far as you can, and that is all there is to do on this matter. I think this motion dismissing these three other defendants should [fol. 668] be allowed subject to a condition that you be permitted to have access to such documents of these defendants as are relevant to the issues claimed. I see no reason why I should not follow the same rule as was done so far as the other five are concerned. The situation is comparable in my judgment.

Mr. Froelich: There is no objection to that. I accept that condition.

The Court: They could be subpoenaed, anyway, could they not?

Mr. Froelich: I think they could get them as a matter of right, if they asked for them and applied for them.

Mr. Richardson: We don't want any more matters of right that will make us work in the next few weeks.

The Court: Make it subject to that condition, about the documents.

Mr. Richardson: Are similar documents in your possession from all the Big Five?

Mr. Clagett: We have photostats. We have furnished you with photostats.

The Court: Prepare your order in that way.

Mr. Schilz: I understand your Honor to suggest that the [fol. 669] representatives of the larger five distributors make the same arrangement——

The Court: Surely, if I have the authority to do that.

Mr. Richardson: It must be a voluntary thing on their part, because they are not in the case.

Mr. Schilz: I believe their representative is here. I don't know his attitude. I think they have no objection.

The Court: Of the three companies?

Mr. Schilz: No, the representative of the larger five distributors, Mr. Caskey.

The Court: Which one do you represent?

Mr. Caskey: I am here representing the 20th Century-Fox Film Corporation, Paramount Pictures, Loew's, Warner's, and R.K.O. We are not defendants in the case. The Government has subpoenaed substantially every document in our files and substantially every executive of our Company, and I am up here for the purpose of facilitating the production of the papers and the witnesses for the convenience of the Court and the convenience of counsel for both sides.

The Court: Well, we will leave the matter in that way, then. Get your order. It should be conditioned to producing [fol. 670] such documents relative to the issues.

Mr. Marcus: Could you set a time for counsel to confer with you for the order to be entered in your opinion on these motions which were argued?

The Court: What is the trouble with that?

Mr. Marcus: It is simply we have not been able to get in touch with counsel to enter into any agreement. I myself contacted Judge Goodwin last week, and at that time he said he did not think he was coming down at all to participate in the trial, and it is merely a matter of getting together with counsel.

Mr. Richardson: You can do that on Tuesday.

The Court: The Court does not require you to agree. The Court will make its order in accordance with the decision. Both parties can submit an order, but it is better to agree on it.

Mr. Richardson: We will look over his proposed order on Tuesday.

The Court: There is one difficulty I see in the order—difficulty for me as to the terms of the sale. I mean by that, this: The original order was specific and tied down to [fol. 671] certain things. I don't think we should tie them down to that now. I mean by that, while I have some hesitation, I expressed myself not believing the Schine people made every effort to sell all these theaters, I gave them the benefit of the doubt to a certain extent, and I think that the former order should be qualified so that any proposed purchase should be——

Mr. Clagett: We have drawn a proposed order which I will be glad to give Mr. Richardson.

The Court: All right. The Clerk calls my attention to some other motions here. What are those motions?

Mr. McCarthy: There are two motions, one which is made by Mr. Murphy as his counsel to have your Honor change the ruling which you made some time ago in regard to the prices of the theater. The other is the motion that we filed to dismiss the case. If your Honor granted the motion to let out the Little Three, I presume your Honor will deny that motion?

The Court: That follows. What about the Murphy motion?

Mr. McCarthy: If your Honor please, this whole matter [fol. 672] was before you. You made a ruling. Now he apparently is trying to get your Honor to change the ruling in reducing the price of the Viv Theater in Corbin.

The Court: How does his offer conform to the original direction?

Mr. McCarthy: It is not an offer. It is just a motion to set the price at a different figure.

The Court: Lower than that?

Mr. McCarthy: That is correct, and the motion has previously been argued before your Honor at length, and you denied it.

The Court: There was considerable negotiation with him, as I recall. You will appear Monday on that?

Mr. McCarthy: Yes, unless your Honor wants to adjourn it until a week from Tuesday and put it on, whenever we start the trial—a week from Wednesday?

Mr. Marcus: May I say something? We are not appearing for Mr. Murphy, but Mr. Murphy's attorney——

Mr. McCarthy: He is here.

Mr. Marcus: Is he here?

Mr. McCarthy: Mr. Murphy is here.

The Court: Who ise your attorney, Mr. Murphy?

[fol. 673] Mr. Murphy: Mr. Hoyt, Big Stone Gap. He intended to come here Monday.

The Court: The only question is whether it would be better to take care of it Monday.

Mr. Murphy: I will let him know. Would it be better if you waited until this trial started?

The Court: I don't want to spend time to interfere with this trial. It would either have to be taken up Monday or a week from tomorrow.

Mr. McCarthy: If we are going to attempt to work out a stipulation of facts here, I would not like to have to be here to urge this motion Monday morning.

Mr. Marcus: May I suggest that possibly Mr. Murphy can have his motion argued at the time we call Mr. Murphy as a witness in the case, if that is all right.

Mr. McCarthy: That will be perfectly satisfactory to us, your Honor. Is that all right with you, Mr. Murphy?

Mr. Murphy: Yes.

The Court: I don't like to mix the things together. We could hold the matter generally and agree on some date.

Mr. McCarthy: Can't we hold the motion generally until [fol. 674] some date Mr. Murphy is called as a witness?

The Court: I think you should agree with counsel on a date. I don't want to inject that question into the trial of this case—this motion. All right.

[fol. 1] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NEW YORK

Civil Action No. 223

UNITED STATES OF AMERICA,

against

SCHINE CHAIN THEATRES, INC., et al.

Trial before the Honorable John Knight, Justice, presiding, at the United States Court House, Buffalo, New York, commencing Wednesday, May 31, 1944, at 10 o'clock a. m.

Appearances:

Robert L. Wright, Esq., Special Assistant to the Attorney General; John F. Clagett, Esq., Special Assistant to the Attorney General; Harold L. Schilz, Esq., Special Assistant to the Attorney General; Albert Boggess, Esq., Special Assistant to the Attorney General; Philip Marcus, Esq., Milton Kalas, Esq., in Behalf of the United States.

Edmund McCarthy, Esq., Attorney of Record; Willard S. McKay, Esq., Saul E. Rogers, Esq., Arthur J. Homans, Esq., Howard M. Antevil, Esq., Of Counsel for Defendants.

[fol. 2] COLLOQUY

Mr. McKay: Your Honor, I want to present Mr. Richardson's apologies. He has been having transportation difficulties getting up from Washington. We expect him here some time this afternoon.

The Court: Are you ready to proceed?

Mr. McKay: We are not asking any adjournment on that score.

I would like to file a request for an admission of facts that were served upon the plaintiff on Friday. We are not pressing that at this time, but I want it as part of the record.

Your Honor has before you this morning as the first order of business a motion made by the Schine defendants for an order compelling the plaintiff to serve a second amended complaint so as to make the pleadings in this action conform to the state of facts arising out of the dismissal of the complaint as against Columbia Pictures Corporation, the

United Artists Pictures Corporation, and Universal Film Exchanges, Inc., commonly known as the Little Three. These parties were dismissed as a result of a motion argued before your Honor on May 19th, which was the day set for [fol. 3] the trial of this case.

Before I discuss this motion I would like, with your Honor's permission, to clear the air a little bit. Unfortunately it seems that during the past six months certain personalities have been introduced into this case, and there has been a certain amount of acrimony for which none of the gentlemen sitting with me at this counsel table are responsible, and I want to say to your Honor to Counsel for the plaintiff that as far as Mr. McCarthy, Mr. Rogers, Mr. Schine, Mr. Homans, Mr. Antevil and myself are concerned, we like these gentlemen as men and we respect them as adversaries, but when they come into court with a theory such as they are advancing here we regard them as the prophets of a vicious, pernicious, insidious ideology, the adoption of which by this Court would eventually have the effect of ruining private enterprise, and that is the basis upon which we are meeting them here.

Mr. Wright asked me yesterday if I was going to take the [fol. 4] onus of refusing to make certain stipulations which he wanted. I told him that I did not think there was any onus, that this case is going to be fought out to the limit on every point. This industry which we are here representing took thirty years of hard pains-taking labor on the part of Mr. Schine and his brother to build up, and if it is going to take six months to prevent it being torn down, why, unfortunately, we are going to have to spend the six months, but we are going to spend just as long as necessary. I told these gentlemen, and I will say to your Honor, to paraphrase the language of a very famous statesman, none of us here have come into this case to preside over the liquidation of the Schine Circuit.

Now, this motion was served on the plaintiff on Thursday and I stated to Counsel at that time that we were ready to argue it immediately. It was at their request that it was set for argument today. The reason that we are ready to argue it so promptly was because the question has already been passed on by your Honor.

[fol. 5] Your Honor will recall that about three years ago this complaint was dismissed as against the other five distributor defendants. That dismissal was the result of a consent decree entered in the Southern District of New York in an action entitled United States against Paraman. As one of the side arrangements between the Government and these Big Five, they dismissed the case in the Southern District, they dismissed the case in Nashville, United States against Kresan, they dismissed the case in Oklahoma, United States against Griffith, and they dismissed up here in this case only as against these five major distributors known as the Big Five.

The trial period provided for by that consent decree ran out last November and nothing has happened since that time except a lot of negotiation, and the Big Five are, in my opinion, openly flaunting the Government, refusing to make any concessions whatsoever. They were not forced to dispose of any theatres, such as we have been. They were not [fol. 6] even prevented from acquiring new theatres. As a matter of fact, there is a proceeding before Judge Goddard, where Mr. Wright came in and tried to get them to divest themselves of about eighty theatres that they had acquired after the entry of the decree and Judge Goddard refused to order them to do anything about it. Well and good. When your Honor dismissed in this case I made a motion before your Honor to require the plaintiff to file an amended complaint. Your Honor granted that motion, and for the purpose of refreshing your Honor's recollection I hand you here a copy of the order.

The Court: I remember it.

Mr. McKay: They did file an amended complaint. It was then necessary for us to move for a bill of particulars with respect to that amended complaint because the amended complaint was not clear. That motion was granted in some respects by your Honor, and the bill of particulars was filed, and we then pleaded to the amended complaint, and in that answer which we filed then we set forth a defense [fol. 7] which did not appear in the original answer, a defense of unclean hands, in which we set forth what we consider the unholy alliance between the Government and the Big Five as a result of it. They were eased out of this case, leaving Schine and the Little Three to defend against the allegations of illegality which the Government still insisted applied equally to all parties.

Now, on the verge of trial, on the very day set for the trial of this case, they came into court and having stipulated with the Little Three that they would dismiss them from the case, asked the Court to dismiss and the Court, over our objection, granted that motion. There was no explanation as to why this dismissal was granted. In the case of the Big Five, they at least had the excuse that they had gotten a consent decree from them. They never got a consent decree from the Little Three. These fellows consistently refused to negotiate even with the Government for a consent decree. They participated in the original negotiations for [fol. 8] about a month and then they walked out. There is no explanation on the part of the Government as to what, if any, change of circumstances has taken place since they dismissed as against the Big Five so as to require them or proceed then to dismiss the Little Three. They just came in and dismissed.

I think that possibly we might be entitled to draw the inference, in fact, I think we are certainly entitled to draw the inference that after five years of investigation the Government has found that it hasn't got any case against the Little Three, that they were not conspirators, that we never conspired with them and, therefore, it made up its mind that they would take them out of the case. If that is the fact we are entitled to know it. I might suggest that the reason this dismissal was granted was because Mr. Froehlich, counsel for Columbia had filed an application for ninety days' adjournment which, while I very respectfully suggest, I think there was a fair chance that your Honor would have [fol. 9] granted it. I might suggest that they dismissed the Little Three because after their experience in Nashville, when Mr. Forehlich and Mr. Rafferty, two of the ablest and best informed motion picture lawyers in the business, were sitting at the counsel table assisting the exhibitor defendant in the defense of the case. They thought it might be just as well not to have them here. In any event they are dismissed.

Now, what is the situation with which your Honor is faced? The pleadings in this case as we come into court this morning are incomplete. You have no issue to try here. You have got a situation which, in my knowledge, is unique. I don't know of any case—I won't say there isn't any,—but I don't know of any case involving the motion picture industry where charges of violation of the Sherman Act were brought where the only defendant in the case is the exhibitor. I cannot recall any case where at least one distributor was not made a party defendant and did appear [fol. 10] before the Court on the trial of the case.

The business of exhibition of motion pictures is purely a local matter. That has been held by the Court of Appeals here in this state in United Artists against Taylor and this plaintiff is coming into court here with the only defendant in the case, an exhibitor who does nothing but exhibit motion pictures.

Interstate Commerce has been introduced in these cases by reason of the fact that there has always been a distributor defendant. That is not the fact here. Therefore, before we proceed with the trial of this case we are entitled to have a pleading telling us what the theory of the plaintiff now is, wherein do they claim we have violated the Sherman Act.

Your Honor has already ruled on that point, and I do not think I need to press it any further.

Mr. Wright: If the Court please, I think your Honor already understands that the principal difference of opinion [fol. 11] between Mr. McKay and ourselves at this point relates to the question of whether or not we can actually get the case tried and heard and decided by your Honor.

In so far as Mr. McKay is concerned, he regards any move which we make in the direction of simplifying the issues or getting the case in such form that it may be heard and decided as virtual sabotage, as far as he is concerned. His interests lie in doing everything that he can to prevent a trial and decision of the case, and that is the sole purpose of this motion that has been made here.

I think your Honor can readily appreciate that simply by referring to what we went through before at the time that the other distributor defendants were dismissed. At that time he made a similar motion. The motion was granted. We filed an amendment complaint in which we set forth in detail our theory of the case to the effect that the principal defendants and the principal reliance was on the violation [fol. 12] of the Sherman Act by this group of exhibitor corporations that are collectively designated as the exhibitor defendants, that the case charged conspiracy among those corporations to violate Sections 1 and 2 of the Sherman Act by monopolizing theater operations in these various communities and preventing competitors from competing with them in licensing films. We also charged that these exhibitors had conspired with each of the so-called major distributors, five of them theater owning companies and the three that were just dismissed here, non-theater owning companies, for the purpose of discriminating against their independent competitors in the licensing of the films of those various distributors.

After that amendment complaint was filed a motion for a bill of particulars was made to further elaborate the theory of the case and your Honor granted that motion in some respects, and in response to your Honor's order, we filed a bill of particulars with respect to the amended complaint which set forth in detail precisely what our theory [fol. 13] was as to the relationship between these exhibitor defendants and the eight major distributors, and here is what he said in that regard: "For further and better particules of the allegations of conspiracies and combinations and contracts between the Schine defendants"—those are what I have referred to as the exhibitor defendants, the possessors of the theater operating monopoly that is under attack here,—"and the defendant distributors and the nondefendant distributors contained in paragraphs 45 and 46 of the amended complaint." That is the defendant distributors were the three and the non-operating defendant distributors were what I referred to as the Big Five, the theater owning companies. "Plaintiff states as to (a) as to each such conspiracy, combination or contract between each of the major distributors, whether defendants or nondefendants, acting separately, and the Schine defendants. (b) And it claims that each such conspiracy, combination or contract, still in existence, except in so far as the illegal con- [fol. 14] tracts alleged in paragraphs 45 and 46 consist of licensing agreements alone in which case, said contracts ceased upon their completion."

Now, that states the theory of the case — it affects these defendants, stated it then and states today. There has been no change whatsoever in any allegation of this complaint as to what the Schine defendants have or have not done. The only effect that the dismissal of the three distributor defendants who remained in the case, the only effect that the dismissal has had, is simply to prevent us from obtaining the release in this suit against those particular defendants. Our relief, of course, here will be entirely confined to relief against the theater operating monopoly possessed by the Schine defendants which is the subject matter, the principal subject matter of the suit.

As I understand it, although I was not here at the time, an explanation was made to your Honor for the reason of the dismissal and that was that it was to shorten and [fol. 15] simplify the trial of this suit, inasmuch as these other defendants were subsidiary defendants and I might further add that, of course, there the problem that we have with them is a nation-wide problem which has been cast in litigation form in the complaint that is on file in the suit at New York where all of the major distributors are defendants and, of course, that complaint embraces all of the issues that are involved here as to those distributors plus any others and, as far as we are concerned in dealing with what we have charged our abuses peculiar to the distribution of files as practiced by these major distributors on a nation-wide basis, obviously the best forum in which to obtain that relief is the New York suit where we are not restricted to what they have done in particular localities, as we are here, but they are nation-wide operations.

Mr. McKay said that he thought this was the only case in which we had proceeded solely against an exhibitor group possessing monopoly power. That does not happen to be [fol. 16] the fact. We did the same thing that we did here in the Griffith suit pending in the Western District of Oklahoma for precisely the same purpose. There we had similar issues, that is, a group of exhibitor corporations who had monopolized theater operations in Oklahoma and Texas and New Mexico, and we dismissed these same distributor defendants from that suit for the same reason so that the issues might be confined to the determination of the legality or illegality of that theater operating monopoly, and the only questions of relief which that Court, as well as this Court, would have to deal with is the question of what would have to be done with respect to the theater operating monopoly possessed by the distributor defendants.

I think it is clear under these circumstances that, of course, defendants may be dropped out of a lawsuit at any time during the trial, and there is no occasion, of course, for any repleading of the suit. The situation now is no different than what it had been had we kept these people [fol. 17] in the case, had we dismissed them in the course of the plaintiff's case or had they been dismissed at the end of the entire case. In any event there wouldn't have been any occasion for repleading the issues and there isn't now.

The Court: You amended before.

Mr. Wright: We amended in 1941, yes, to make the pleadings conform to the dismissal.

The Court: How about it now? What do you say as to any change in the pleadings by reason of the dismissal of the Little Three?

Mr. Wright: There isn't any occasion for any changes in the pleadings whatsoever, as far as I can see, except a change in nomenclature.

The Court: How is the situation any different than it was before?

Mr. Wright: It isn't any different as far as the issues are concerned.

The Court: You amended before.

Mr. Wright: I say our prior amendment did take care of the only change in issues that was affected by the dismissal by any distributors as defendants in the case. The only function any amendment could perform now would be [fol. 18] simply a correction as to nomenclature. That is, I suppose if we were to make any amendment we would simply amend the complaint on its face to more accurately described these distributors, whereas in the amended complaint you see the phrase repeatedly used, "the distributor defendant and non-defendant distributors." All that we would do now would simply substitute for that phrase the phrase, "major distributors", because there is no longer any distinction in description between the five distributors that were then dismissed and the three that then remained. Now, all you have been dismissed and all are charged in precisely the same terms as separately co-conspiring with the various Schine defendants.

The Court: Did the amended complaint do any more than change the designation, the major distributors and individuals, other than the defendants? Is that all the change made in the amended complaint?

Mr. Wright: You are referring to the one we filed in 1941?

[fol. 19] The Court: Yes.

Mr. Wright: No, in addition—that was substantially the only change in the complaint, yes, was one of description, but, in addition, as I say, counsel then moved for a bill of particulars to have us elaborate.

The Court: Why did you amend at that time? Why did you amend then?

Mr. Wright: We amended in response to your Honor's order asking us to amend.

The Court: I was wondering whether the same reason would apply now as applied then?

Mr. Wright: There isn't any occasion now for restatement of the issues by dismissal of these additional distributors, because the issues are precisely the same whether you have three distributors as defendants or one distributor as a defendant, or eight distributors as defendants.

[fol. 20] The Court: It was precisely the same before you dismissed as to the original trial. The issues were the same, except the reference to the major distributors, were they not?

Mr. Wright: That is right. As far as I am concerned, the present complaint may be properly amended simply to make these descriptive terms more accurate by now referring to what we have previously called both non-defendants and defendant distributors simply as major distributors. That will take care of any change which will be required by the dismissal. But my point is that that is a change which can be made on the face of the complaint. It is the kind of a change that is made frequently during the course of a trial and the kind of an amendment which does not require any repleading at all, because it does not affect any of the issues which are being tried. It has no bearing whatever on the scope of the evidence that is to be offered.

The Court: The only question I had in my mind was this, the situation is just the same as it was before with respect [fol. 21] to the major five distributors, but as far as the necessity of amendment is concerned, although an amendment was ordered at that time, the situation is the same as to these Three as it was for the Five.

Mr. Wright: Yes, the same as to all Eight. They were all treated alike at that time so far as the charges of the complaint are concerned. That is, they were all charged as co-conspirators.

The Court: Do you think it is necessary to make any amendment?

Mr. Wright: I do not think it is necessary at all. I think for the purposes of clarification the complaint probably should be amended on its face to do such things as literally strike out the names of Universal, United Artists and Columbia from the heading under "Defendants" and to make these descriptions more accurate by simply saying "Major distributors" instead of referring to them as defendants and non-defendant distributors.

I have prepared a copy of the amended complaint with alterations in red which I showed to Counsel the other day, [fol. 22] which I think is all that need properly be done by way of making the nomenclature used in the complaint correspond with the action that was taken in dismissing the so-called Little Three. It is an amendment which, as I see it, is purely formal and has no effect whatsoever on the issues.

The Court: Is your description right in the proposed amendment here? In Section 2 of the amended complaint there is a description of defendant and non-defendant distributors.

Mr. Wright: They are all described here, all Eight.

The Court: Why shouldn't they be described as distributors, major distributors?

Mr. Wright: The only purpose of using the term "Major" there is, if you will read further on in paragraph 22, we simply define that term as one which collectively describes the distributors which are described in the complaint. We simply say the distributors named and described above are sometimes collectively referred to as major distributors. That includes all Eight. It wouldn't matter whether you called them the X distributors or the Y distributors.

[fol. 23] The Court: But in using the word "Major" you seem to make a distinction. If you left out the word "Major" that would be a better way to put it, it seems to me.

Mr. Wright: That I would agree would be completely accurate, but the only reason of using the term "Major" was to use a collective term which would refer to these Eight which are described in the complaint and exclude others.

The Court: How would that be done to properly raise the issue here?

Mr. Wright: I would say that could be done on the face of the complaint in accordance with your Honor's suggestion in this manner. Simply strike out the names "Universal Pictures, Inc., Universal Film Exchange, Inc., United Artists Corporation and Columbia Pictures" from the part of the caption including defendants, and then the description of the defendant and non-defendant distributors which heads up Section 2 of the complaint would be changed to read simply "The description of the defendants and distributors", and then your paragraph 22, which now [fol. 24] reads: "The defendants named and described above in paragraphs 16 and 18 and 19 (those are the Little Three) are sometimes hereinafter referred to collectively as the distributor defendants, and the companies named in paragraphs 14, 15, 17, 20 and 21 (those are the so-called Big Five) as non-defendant distributors."

That paragraph should be changed to read in this manner: "The distributors named and described above are sometimes hereinafter collectively referred to as the distributors." And that takes care of that——

The Court: Yes, leaving out the word "major" you mean?

Mr. Wright: Yes, that is all. I am leaving that out all the way through and just referring to them as distributors.

The Court: You do designate them in paragraph 25, do you not?

Mr. Wright: In 25, that would simply read this way: "The distributors, viz: Universal Pictures, Universal Film, United Artists and Columbia Pictures." Just strike out the words "and the non-defendant distributors, viz", and just continue "Warner Bros., Vitagraph, Paramount Film, [fol. 25] Loew's, RKO and Fox", and so forth.

The Court: You would have to add those?

Mr. Wright: No, they are all on there. The only change you make in paragraph 25 is simply to strike out the word "defendants" after the word "distributors," so that it would simply be distributors, viz: Universal, Universal Film, United Artists and Columbia, Warner Bros., etc.

Then the only other change would be in the remaining paragraphs of the complaint, beginning 46, 47, 48, 49, 50 and 52, the phrase wherever reference to distributors appears is "Distributor defendants and the non-defendant distributors," all that needs to be done there is simply strike out "distributor defendants and the non-defendant distributors" and simply have a reference to distributors in each case.

The Court: Leave out the word "Major" in each case?

Mr. Wright: Yes, sir. Then your reference in each case where distributor defendants and non-defendant distributors now appears would simply be a reference to the distributors, and that completes any changes that are necessary to be made to conform the descriptions that are now in [fol. 26] the complaint to the dismissal of these three distributors as defendants.

Of course paragraph 5 of the relief prayed should also be stricken because that prays for relief against the distributor defendants and of course their absence from the suit precludes the granting of any relief as against them. That would follow as a matter of course. With those changes on the face of the complaint it is perfectly clear that the complaint accurately describes all of the distributors in the case, and there has been no change whatsoever in the issues made by the complaint and answer or in any of the matters that are here to be tried.

The Court: I suppose the defendants in their answer would be permitted to raise the same questions that they did prior?

Mr. Wright: They are free, of course, to raise any points of law or any objections to evidence. I assume that any further additional defenses that occur to them can be filed at any time, which are based upon this dismissal.

[fol. 27] The Court: What is your objection to that, Mr. McKay, if you were permitted to amend? I do not see any reason why we cannot go into the trial at this time, allowing you to amend to meet any issues, that is, as you amended before with respect to the Big Five.

Mr. McKay: Well, if your Honor please, I think that the discussion between Mr. Wright and your Honor proved the necessity for a further amended complaint much better than any argument that I can make. I am not clear now after listening to the discussion just what state the complaint will be in when it is amended. He says he showed it to me several days ago. The fact of the matter is that at 5 o'clock yesterday afternoon he held up that paper from across the room and says "Here is what I will do," and I could see some red lines on it and that is all I knew about it. It is not true that when he amended the complaint back in 1941 that all he did was to change some nomenclature. In the old complaint he had what amounted to a collective conspiracy between the distributor defendants and then be- [fol. 28] tween the defendant distributors and the exhibitors. In the amended complaint that issue still was not clear, and that is why we had to move for a bill of particulars.

That complaint that your Honor holds now cannot be properly interpreted without a bill of particulars.

The Court: That was cleared up, was it not?

Mr. McKay: That does not clear up anything as to the Little Three.

The Court: It would clear up the same question, would it not?

Mr. McKay: Your Honor, we do not know. Let me make this clear to your Honor: This is not our fault that this question comes up now. They could have done this at any time. Why did they wait until the verge of the trial?

The Court: I do not think that the mere dropping of these defendants and the amendment in the phraseology *it is* deprives you of a right.

Mr. McKay: We feel that we are very severely prejudiced. We had every right up until the 19th of this month to expect, No. 1, that Counsel for United Artists and Columbia Pictures and Universal Film Exchange would be seated at the table with us actively contesting this case. We had [fol. 29] every right up until the 19th of May to expect that the principal executives of these companies would be up here in court with us helping us in the defense of this case. That has been taken away. Now I am not here to argue with your Honor whether they had the right to do it or not, because your Honor has ruled on that point, but I am saying we are not in here for the purpose of delay. There will be some delay necessitated but not much. But I say whatever delay is occasioned is the fault of these plaintiffs. Why didn't they throw out the Little Three when they threw out the Big Five? Mr. Wright, in answer to my suggestion that this is the only case of the kind where you have got the exhibitor defendants, mentioned the Griffith case. The Griffith case is not on the verge of trial and there is no immediate prospect it will ever be tried, that it will ever be brought to trial, although it was started before this case was.

The Court: Having granted the motion to strike out the Little Three as parties defendant I see no logical reason [fol. 30] why the complaint should not be amended to properly describe them. Whether they are parties does not affect the question of conspiracy, of course.

Mr. McKay: The complaint could be amended properly to describe the defendants and they ought to answer the same questions that we answer in the bill of particulars as to the Big Five. They ought to answer that question as to the Little Three. In all fairness, in a case that is a serious as this, we should be given the opportunity to scrutinize the complaint and ascertain just how we should plead. I do not think your Honor will take that opportunity away from us. As I pointed out to your Honor, I have got a defense of unclean hands relating to the Big Five. I may want to plead the same thing, but I cannot plead that by discussion across the Bench with your Honor.

The Court: That will be admitted.

Mr. McKay: Then they should serve me with a complaint.

The Court: I do not think there is much use in spending much time on the question of the proposed amendment. The [fol. 31] only question is the change in designating the Little Three as conspirators instead of defendant conspirators. That leads to no confusion, leaving them out as defendants and calling them all distributors. That is a very simple, plain proposition, and I think the amendment should be allowed on the trial and you may be permitted to amend to raise the same issues which you did with respect to the trial when it was made.

Mr. McKay: The complaint having been amended, the rules provide for time to answer.

The Court: That does not always follow.

Mr. McKay: I think, your Honor, in this type of a case, in justice to us, we ought to be allowed a reasonable time to answer.

The Court: If there were different issues raised that would be another question, you would have that time, but it is just equivalent to striking out some parties to the action, that is all. There is no prejudice to your clients that I can see.

Mr. McKay: I should at least have an opportunity to look at the stenographic minutes and then to state to your Honor, after having studied those minutes, the respects [fol. 32] in which I desire to amend the answer.

The Court: Counsel has stated for the record the amendments, and I think he has clearly covered what they are. I wouldn't spend much time on that. I think you should be permitted to amend to raise the issues which you seek to raise.

Mr. McKay: Your Honor, the least that Mr. Wright could do, apparently—he knew what he was going to do and the least he could do would be to serve us with a copy of his amended complaint so that we can see in black and white what it looks like, and we ought to be given a reasonable chance to put in an answer. Under the circumstances I will do it much faster than the statutory time, but I should have some time. I do not think your Honor is going to force us to trial without really knowing what the pleadings are.

The Court: It is not necessary to argue that point. You know what the issues are. There is no change in the issues here. It is simply striking out the three parties defendant and making the pleadings conform to such action, that is all. [fol. 33] It is as simple as it can be. If you were to be prejudiced at all you would be entitled to delay, but there is no reason for it here that I can see with these propositions.

Mr. McKay: I do not apprehend that a matter of a couple of days would be considered as delay, and that would enable us to start the trial of this case knowing where we are at, when this situation has been created by the plaintiff. If we were responsible for it I would say "All right, we have to take the consequences."

The Court: I think you magnify the proposed amendments here. If there was any material change that would be an entirely different situation, but as I see it there is not.

Mr. McKay: Without seeing the complaint, your Honor, as Mr. Wright proposed to amend it, I am not prepared to say whether it is serious or not, and I think I am entitled to it.

The Court: Are you ready to proceed with your witnesses, Mr. Wright?

Mr. Wright: Yes, your Honor, we are. We have them here waiting. Of course Counsel has known here for ten [fol. 34] days that he was going to go ahead here without these other defendants. I do not see any excuse whatsoever for not proceeding at this time when he has been fully advised what to expect on this day. We had witnesses before, as I understand, and he got a ten-day continuance at that time. Now they are here again and we certainly should not be kept around waiting another occasion simply because he wants time to make another frivolous motion or file some pleading that will raise some defense the nature of which has not been suggested.

Mr. McKay: I do not think there has been any motion made in this entire case that can be characterized as frivolous, and I might say what excuse has Mr. Wright got for not filing his amended complaint ten days ago when he made up his mind to dismiss these people? He knew what your Honor's ruling was with respect to the Big Five. He knew that your Honor had held that under those circumstances it was necessary to file amended complaint. Why didn't he file it ten days ago?

[fol. 35] The Court: I think that should have been done, but at the same time the fact is they have not done it will not control my action.

Mr. McKay: Your Honor, I will ask you to do this: I will ask you to direct them to serve me with a copy of their amended complaint and I will undertake to file my answer within 24 hours after I get it. I think in all fairness I am entitled to that.

The Court: Is there any objection to proceeding——

Mr. Wright: If he wants a copy which has incorporated on its face the changes that have been read into the record we would be glad to give it to him right now, and if he wants to file an answer we do not object to his filing it in a reasonable time. He can have not 24 hours, he can have ten days, or any time, but we do object to a postponement of the trial of the lawsuit.

Mr. McKay: Your Honor, we are entitled to have the pleadings in this case in shape when we go to trial.

The Court: Of course Counsel stated for the record the amendments they proposed to make. He has stated that the [fol. 36] amendments conform to the statements he has made. That should be sufficient and we will proceed with the trial. Counsel has stated that it is satisfactory to him that you be given a reasonable time in which to answer, and the trial will continue.

Mr. McKay: I really think, your Honor, that once we get into the question of taking testimony we ought not to have to be troubled about what the pleadings are. We ought to have that matter settled first, and I don't like to press your Honor on this thing, but I am making this application very seriously. I think our interests will be very seriously prejudiced if we do not have an amended complaint with some opportunity to scrutinize it and to put in our amended answer.

The Court: No, I do not think so. I will dispose of the motion in that way. I will permit them to amend and serve the copy of the complaint. I do not think you will be prejudiced by this action. You may serve your answer in ten days.

Mr. McKay: They are first going to give me an amended complaint, are they not?

[fol. 37] The Court: Today.

Mr. McKay: That will not be a thing with a lot of red lines on it, will it?

The Court: No, it will all be in black. The amendments will be only just what Counsel has stated.

Mr. McKay: I assume, your Honor, that he will also clarify the record so that the same statements he made in his bill of particulars, with respect to the Big Five, will apply to the Little Three.

Mr. Wright: I expressly so stated.

Mr. McKay: That was in 1941, Mr. Wright, and we do not know whether you contend that this conspiracy is now continuing. There is nothing in the record to show that it is. I think that ought to be clarified. Your Honor so ruled in the other matter and I do not see that anything has happened here in Court to change the ruling.

Mr. Wright: We are, I assume, on the verge of an opening statement here, in which we will clarify, as far as we can, the entire theory of the case and how we propose to prove it. I think after we get through with that Mr. McKay cannot possibly be left in any doubt as to what we conceive [fol. 38] the issues to be and how we propose to prove them.

The Court: Just what did you seek in the bill of particulars?

Mr. McKay: In your Honor's opinion you say "The defendants ask the Government to state whether it claims a collective monopoly and conspiracy between the Eight major distributors and the Schine defendants, or whether it contends that there are eight separate and distinct conspiracies." And you ruled that we were entitled to that.

Then the plaintiff should state whether it claims that the five non-defendant distributors are still conspiring with the Schine defendants and, if not, when the alleged conspiracy ceased. It is important that the defendant be so advised in order to make the proper defense. Paragraph 45 states that the defendants have violated and are now violating the Anti-Trust Act, while paragraph 46 is susceptible of the construction that the conspiracy continued to exist to the commencement of the suit. The Court, however, has in mind, the connection between paragraphs 45 and 46, but [fol. 39] irrespective of such connection it seems to me that this inquiry should be answered to clear up any doubt.

That only related to the Big Five. We are entitled to the same thing with respect to the Little Three.

The Court: Will you state your contention for the record?

Mr. Wright: I will be glad to. I said it was already covered. As your Honor just heard Mr. McKay say, you asked us to state what our theory was as to the eight major distributors, and in response to your Honor's order we said this: "As to each such conspiracy, combination or contract, it claims the existence of a separate and distinct conspiracy, combination or contract between each of the eight major distributors acting separately and the Schine defendants."

It is charged that there is a conspiracy between the Schine defendants collectively and each distributor. That was stated then and that of course is still our position today. As to the continuation of the conspiracy we said this: "It claims (that is the plaintiff) that each such conspiracy (that is the separate conspiracies between the Schine defendants and each of the major distributors "the combination or contract is still in existence, except in so far as the illegal [fol. 40] contracts alleged in paragraphs 45 and 46 consist of licensing agreements alone, in which case said contracts ceased upon their completion."

Of course it is perfectly true that in so far as these franchise agreements are concerned, for example, you will recall that the temporary order that was entered in May, 1942, avoided those franchises, discontinued those contracts, so that in accordance with what is stated here there is no continuing conspiracy in so far as licensing contracts are concerned which have been terminated, and, we assume, of course, that during the period of our temporary order the order was obeyed. That is, that order prohibited, as you recall, the defendants from combining competitive situations and licensing film in dealing with any distributors. So that I should say it is clear from this statement and the entry of the order that the conspiracies that we rely upon between each of the distributors and Schine continued up to the date of the entry of that order on May 19, 1942.

[fol. 41] Mr. McKay: I am not sure whether I understood you, Mr. Wright. You mean they stopped with the entry of the order on May 19, 1942?

Mr. Wright: I presume so. The purpose of the order was, of course, to preserve the status quo pending the continuance of this suit, and I assume that the order was obeyed. As it was the continuance of the conspiracies was not permitted by the order, of course, and I assume it didn't occur. But the evidence which we will offer will not go beyond that date. As we understand it, the situation was effectively, let us say, frozen or suspended as of the entry of that order, and our evidence will, in any event, be confined to the prior period. And that is what I assume he is principally interested in knowing.

Mr. McKay: I would say not, your Honor. I think that statement illustrates the very necessity for this amended complaint. He cannot come in here and say he assumes a certain state of facts exists. I am entitled to a plain, direct statement from the Government either that that conspiracy [fol. 42] is still in existence and requires the injunctive power of this Court to stop it, or that it stopped when he says he assumes it stopped back two years ago. I am certainly entitled to a plain, definite statement on that point.

The Court: His statement was that his proof will be confined to that period of time.

Mr. Wright: We certainly take the position that an injunctive provision of the Court is necessary to stop it.

Mr. McKay: May we have a short recess before we start to open the case?

Mr. Wright: I would suggest that we submit this order on this motion which your Honor heard. We have an order which we have agreed to as to form, although, as I understand it, both sides except to the substance of the order.

The Court: Very well, we will suspend for ten minutes.

(Short recess.)

[fol. 43] Mr. Wright: If the Court please, at this time I would like to simply make a fairly brief statement which I think would be of some assistance in following the evidence. I think the theory of the case has been discussed here so often that it would probably be superfluous to go over that again, but I do want to give your Honor some idea of how we propose to prove it and where we think the facts that are really in dispute lie.

We had hoped to present your Honor at the beginning of the case with a stipulation of the facts about which we felt there could not be any dispute. We prepared a stipulation which I believe your Honor saw last week and submitted it which dealt largely with the mechanics of film distribution and matter taken from interrogatory answers which had been submitted by the various defendants and about which we thought there could be no argument.

Counsel for the defendants has been unwilling to make such a stipulation. He did indicate, however, that they would sign or agree to a less comprehensive stipulation. [fol. 44] So we prepared another stipulation which was more limited in coverage of facts and we have submitted that, but counsel has said that he wants additional time to study that, so we are not able to offer you at this time any completed stipulation.

As counsel pointed out he has served us with a request to admit facts and we have also given him a statement of the facts that he asked to have us admit, that we were willing to agree to, but that stipulation again has not yet been signed because counsel for the defendant wants an opportunity to study that. Nevertheless, even though these stipulations have not been executed, I think we owe your Honor the duty of telling you at this time what these facts are, the general nature of them, about which we do not think there can be any serious dispute.

Those relate to the general nature of the operations of these eight distributors who are involved here, the conduct and size and scope of the operations of the Schine defendants. These distributors as you know,—five of them,—Fox, [fol. 45] Loew, Warner, Paramount and RKO, those five all own theater chains in addition to being in the business of producing and distribtuing pictures, and they are perhaps what might be called the principal elements in the industry from the standpoint of size. The pictures which they made, up until the 41-42 season, at the time our consent decree in New York provided a new method of selling the pictures of those five companies, were sold in the same way as all other distributors, that is, at the beginning of those so-called motion picture seasons, which is a one-year period commencing about September first each year and concludes the succeeding August. At the beginning of each of these so-called seasons all of the features that the distributor planned to produce during the year period are generally offered for license to exhibitors and the customary license agreement was one which would include all of the features that were to be released during the annual period. These agreements were made, of course, before many of the pictures were even produced and as they were produced [fol. 46] they would then be released for exhibition throughout the yearly period. Each of these companies would produce forty to fifty, sixty, features a year and arranged to release them at the rate of about one a week throughout the year so there would be a continuous flow of product from each distributor.

As I say, at the time of our consent decree to which those distributors were parties in New York in 1941, their method of distribution was changed by providing they would trade show all features before licensing. That would mean that they then agreed not to license any features until after it had actually been completed, and distributed to the trade. That was to abolish the previous practice which was known as "blind selling."

Since that time the five distributors have followed a practice of selling the pictures only after they had been completed and selling them in small groups of two, three or five or ten features, instead of the entire season's product.

However, the evidence in this case will be largely con- [fol. 47] cerned with the practice as it existed during the prior season, when the entire product was sold blind and block booked in the sense of a season product, being disposed of under a single license agreement.

The other three distributors, Columbia, Universal and United Artists were not parties to the decree and still pursue the same method of business which was in effect with all distributors during the period to be covered by the evidence. That is, the sale of pictures to be produced during the entire year, usually at one time, with the exception of United Artists. The United Artists really falls into still a third category, because it is only a distributor of pictures. Columbia and Universal produce as well as distribute films, but United Artists acts merely as a distributing agent for so-called independent producers and consequently they have a more irregular system of release and release fewer films, where, as these other companies, will have 40 to 60 features as year.

[fol. 48] United Artists would release anywhere from 10 to 25 and each of those films that they did release would be products of a number of different producers, so that in many cases they would make separate contracts for the films of these various independent producers and you have then in the case of United Artists a system of distribution which involved normally and customarily the sale of only a few pictures. That is, those of single producers at the same time and without the same regularity of release throughout the year that the only companies maintain by virtue of their increased output.

Those I think are the most important distinctions between the eight producing companies to bear in mind in the course of the evidence as to how their product was distributed by the Schine and Schine's independent competitors.

All of these distributors have their principal offices in New York City. The production activities are carried on in [fol. 49] California. The distribution activities are all centered in New York and the actual mechanics of the distribution of prints occurs through the various branch offices of these distributors that are called film exchanges. Those that serve the area here involved are exchanges in Buffalo which serve the western half of New York. Those in Albany covering the eastern half. The Ohio towns are served out of Cleveland and Cincinnati and Columbus, and then the towns in Maryland and Virginia are served out of exchanges in Washington, D. C. The Kentucky towns that are involved here are also served out of Cincinnati.

The course of this business of distributing films is, of course, the thing that gives the entire business the interstate aspect and the basis upon which the Sherman Act has been so frequently revoked in the competitive products that arise in these industries. As I say, the films are produced in California. Generally, extra prints are made either there or in New Jersey. A certain number of prints of each film [fol. 50] are shipped out to the various exchanges and the manner in which the exchange makes the print available to the theater is somewhat as follows: Each exchange will be assigned, let us say, eight or ten prints of particular film and with those prints they may have to serve several hundred theaters. The result is that the print goes out of the exchange and is used by the exhibitor to run for the period of time specified in his contract, one or two days or a week; is then returned to the exchange for reconditioning or repair; sent out again to the next theater that uses it; and back to the exchange. Also in cases where some district may be short there may be a number of prints from one exchange to the other and the print is constantly in circulation between the exchanges and various theaters, as long as it is in use, and the physical movement of the film, of course, frequently crosses state lines, it inevitably does in the course of its travels from the time the print is made until it is retired as unfit for further use.

The solicitation of contracts, of course, is generally [fol. 51] handled by salesmen working out of these various exchanges who call on the exhibitors and tell them what the company proposes to produce and usually takes an application for a contract, which is executed on the contract form itself and, as most of them use a standard printed form of licensing agreement and when an application is taken, the exhibitor simply signs such an agreement which has on it terms which have been discussed or agreed upon between him and the salesman, and the contract is then forwarded to New York City for approval. In all of these cases those applications are made subject to approval at New York, and the exhibitor never has a contract until he actually receives notice that the New York office has approved the application that he has submitted.

In the case of the circuit operators, such as the Schine defendants where the buying or the licensing of films for theaters over a wide area, and in this case theaters in five states, is concentrated in the hands of one or two buyers. Of [fol. 52] course the deals are generally made not with salesmen in the field, but with the buyer executives of the distribution companies, generally at New York, or at the headquarters of the exhibitor defendants. But in any event these films are licensed in each case under what is purported to be license contracts rather than contracts of sale, although the trade customarily refers to selling films to this exhibitor and the actual title of the film never passes, and the only agreement that is made is a license agreement which permits the exhibitor to show the film for a particular number of days and also incorporates the certain provisions with respect to clearance and run, and generally, admission prices.

The facts about this method of selling films on a so-called run basis are some of those that we were asked to admit and in so far as those facts are concerned, there isn't any dispute, of course, that the customary method of licensing films for exhibition in the area that is involved here, for that matter throughout the country, has been to make an [fol. 53] agreement under which a particular exhibitor is entitled to show a particular film for so many days and he has an exclusive privilege in a certain area for that time. That is first-run, if he buys a first-run. That means in the area where the run is sold he has the exclusive privilege of showing the film during that time, and very generally coupled with these run provisions are what is called clearance or protection provisions which assures him there will be a certain lapse of time before anybody else has the privilege of showing this film after he gets through with it. That is an interval of thirty days may be provided for a second-run can occur in somebody else's theater in the same area.

I might say further that generally these run and clearance provisions are accomplished by minimum admission price provisions, again calculated to afford protection to the buyer-exhibitor. He may agree to show the first-run, let us say, at a 40-cent minimum admission price with the understanding that the man who buys the film thirty days [fol. 54] later will charge not less than 25 cents. His contract will specify that minimum admission price, and the third-run that gets it thirty or sixty days later will be required to charge, say, not less than ten or fifteen cents, so that the license structure of the industry is one that provides for these graduated series of runs of each film with varying clearances and varying admission prices and that is the way in which the distribut[illegible]s able to secure the maximum revenue from the distribution of a particular film or print is, of course, by serving as many theaters as he can with successive runs all of which will bring in additional revenue. I lay stress on this method of licensing because the method of licensing that is characteristic of the business and customary in it is one which in itself is obviously of such a nature that there is a constant restraint of trade because every time a distributor makes a film contract with any exhibitor trade is restrained in the sense that the contract he makes with one exhibitor to some extent deter- [fol. 55] mines the terms on which that same film can be made available to other competing exhibitors. That is it will fix a run and give a clearance protection and provide admission prices which will to a great extent directly determine the terms on which the film can be played by the competitor. And, as I say, each contract that is made, of course, does restrain competition in that sense.

Now, we do not here attack those restraints as such. Whatever may have been the position originally this method of licensing films through clearance and minimum admission prices has become established in the industry and it is the way in which the industry operates and so long as those restraints are reasonable, as far as we are concerned, there clearly is no conflict with the Sherman Act. But when they are unreasonable, and it is when these restraints on competition are incorporated in these license agreements are used not for the purpose of protecting the distributor's copyright or permitting him successfully to exploit his film by securing [fol. 56] a maximum number of runs in the widest possible distribution of his picture, but when these license restrictions are used instead for the purpose of preventing one theater from competing with another exhibitor who has attained a monopolistic or dominant position in the industry, then the restraint that occurs is clearly an unreasonable one and one which the Supreme Court had unequivocally condemned in the Interstate Circuit case.

So that the inquiry in each of these cases where we are dealing with particular license discriminations or particular license agreements is not as we see it, whether there is a restraint of trade, because there always is a restraint of trade simply by making the agreement, but whether or not the restraint accomplished is an unreasonable one and that test of unreasonableness is, as we understand the law, to be determined by whether or not restriction is imposed by the distributor for his purposes in the course of normal competitive distribution of his film, or whether the restraint is one that is imposed by a dominant exhibitor for the purpose [fol. 57] not of serving the distributor's interest in securing a wide competitive distribution, but simply in serving the exhibitor's interest in suppressing and preventing theaters that compete with him from showing the distributor's film on a basis which will let them attract patronage from him, or, in other words, furnish him with active competition in the exhibition of the distributor's product.

The Court: Doesn't that be done by increasing the prices of the second and third runs, do you mean?

Mr. Wright: As an example of what I mean by an unreasonable discrimination, let us take the situation in the Interstate Circuit case. What happened there was that the first-run theaters in these certain Texas cities charged 40 cents admission price. They were all owned by the Interstate Circuit which is an affiliated circuit, affiliated with the distributor, Paramount. The next runs were also for the most part owned by the Interstate Circuit, the neighborhood runs, that charge 25 cents admission that got the second run of the picture, and then following them were the small [fol. 58] independents who played third and subsequent runs, and who were charging a 15-cent admission price. That is the normal distribution pattern with runs in accordance with varying admission prices. What happened in that case, Interstate Circuit told the distributors at the beginning of one season that they would have to insist that any picture that played first run at 40 cents admission price could not be shown in those cities later at a price of less than 25 cents admission.

The Court: Either second or third run, you mean?

Mr. Wright: Or any other run. That is right, that they could not license at a lower price than 25 cents to any one else in the same city. These theaters which were competitive with those downtown first-runs and the distributors agreed to impose that restriction and so they did in licensing the succeeding product compel these independents who had been playing the late runs at 15-20 cents price, to increase their admission prices to 25 cents.

Now, of course, those contracts by which the 25-cent [fol. 59] admission price was established was perfectly normal contracts in themselves, the kind of a contract, license contract, that is made every day. But the Court said that in this case, in a case of this kind, where you impose an admission price, restriction of this kind, simply to protect these first-run theaters and Interstate's first-run and subsequent runs from competition, then you have not imposed and restrained changes reasonably calculated to protect your interests as a distributor, but you have simply abdicated your function as distributor and used your copyright as a means of suppressing the ability of these independents to compete in showing your films with theaters operated by Interstate because what was done when you say to these independents, "You have got to charge the same price, 25 cents, as Interstate subsequent runs are charging 25 cents for the privilege of showing later run of those pictures." Obviously, the only effect of that is to simply prevent the late run houses from successfully showing the films at all. [fol. 60] Of course, the same sort of discrimination may occur when you have houses charging the same admission price and you permit one to play well in advance of the other. Obviously the distributor in that case is not distributing his film on a basis where all of those who show it have an equal opportunity to compete. What he is doing there is simply saying to one exhibitor that he may have the extraordinary privilege of a prior run without at the same time charging an admission price that is commensurate with it.

I cite those examples only to show the complex nature of the problems that arise in a system such as the motion picture industry comprises where you do use contracts which, in themselves, restrain the trade every time they are made and the only way in which those restraints can be kept on a reasonable basis is to assure that the distributors themselves making the contracts are not dominated by a dominant theater group in any particular area, such as Interstate [fol. 61] was in this group or such as Schine is in the area here.

Of course, the fact as to the physical extent of Schine's theater operations of course, cannot be seriously disputed. What they have is a circuit which consists of about one hundred and seventy odd theaters operated in seventy-five or eighty different communities that are scattered throughout New York, Ohio, Kentucky, Virginia and Maryland.

The kind of monopoly power that Schine has in this case and what we propose to show it has, is of a somewhat different nature than that that Interstate had in the Interstate case. There you had concentration of first and subsequent run theaters in the four principal cities of Texas. The towns in which Schine operates are for the most part towns from ten to twenty-five thousand in population, and in the great majority of those towns, I believe the figures as of the present are that in some fifty odd out of a total of seventy Schine operates the only theaters, the only motion picture theaters, in those towns, that is, those situations are what [fol. 62] is known as closed towns, that is to say if a distributor wants to get his pictures distributed in those towns he has one customer. That customer is Schine. He either makes a deal with Schine or he does not get any revenue out of those communities.

Now, the particular aspect of circuit licensing of film with this case deals is, of course, the application of the circuit buying power that arises out of the total license phase that Schine has available for any distributor.

The application of that buying power to the situations which the Circuit finds itself confronted with a competitor. We expect to show that the Schine Circuit as a whole, in terms of fairness in the film realm means to a distributor up to $300,000 a year, That is what he may expect to get out of the circuit, if he sells the entire circuit. Of course, any particular individual competitor of which there are only a few will find in the Schine towns is only able to offer a distributor rental which is commensurate with what [fol. 63] can be gotten out of the particular towns, in his particular theater which may run $1,000, $1,500 or $2,000 a year.

Now, of course, it is perfectly obvious that no local theater operator, that is the man who has one or two theaters in a town can compete with any circuit operator, such as Schine unless he has an opportunity and the market offers what he can pay for films in his town against what Schine will pay for the exhibition of films in that territory.

The Court: How many are there, how many towns?

Mr. Wright: I should say as of today there are fourteen left where there are independent competitors. That would be about fifty odd which are closed or the ratio of closed towns to open or competitive towns——

The Court: You said there were how many altogether?

Mr. Wright: I said about seventy, I think, didn't I? About seventy towns altogether. Anyway, there are about four times as many closed towns now as there are towns in which there is competition. We have figures tabulated which we will offer you at a later time showing the extent [fol. 64] of this growth. Six years before the suit was filed when Schine was operating in thirty towns he had about eighteen closed and about twelve were open. There were only one and one-half closed towns as open ones, but the history of the mechanical progress of the circuit, what it acquired and when it acquired it, is not a matter in dispute. It shows the expansion which Schine enjoyed during the six years preceding the filing of the suit.

The Court: Of course, you are including the sixteen locations, that is, in your comparison?

Mr. Wright: That is right. I was using the date, as I recall it, prior to the entry of the temporary order, May 19th, which provided for the divestiture of sixteen situations of which six were divested.

In any event, the expansion which occurred simply meant a progressive elimination of the independent operators that were in the Schine towns. That is, this expansion was largely at the expense of what we call small, local, independent competition. That is, competition afforded by the [fol. 65] one, two or three theater operators. And, of course, as far as we are concerned, as far as the Sherman Act is concerned, the Sherman Act does not at all require that any particular kind of an operator should stay in business. We do not contend that at all.

[fol. 66] What we expect to show here, in the course of presenting this evidence, is that the small, independent operator was never given an opportunity to compete with the Schine Theatres in licensing film and of course that inability to complete in getting films for this theatres left him no choice but to either go out of business, sell out to Schine on the best terms he could, or else accept a subordinate position where he would play such runs and such films as Schine rejected. That is the situation that has gradually evolved today.

Now, the dispute here is not over what happened to these independents. That, of course, is perfectly clear. It largely concerns how and why these people were eliminated. Schine's acquisition of competitors of course is set forth in the answers to the interrogatories. There is no dispute about the fact that they were persistently and regularly acquired. The only real issue to determine here is one of the intent and purpose with which that was done. We of [fol. 67] course claim that the purpose and intent of Schine in acquiring these competitors was to achieve the kind of a theatre-operating monopoly that he has now got, and that it was done by means which were illegal.

Now, as to the illegality of those means, the principal device which was used to accomplish it was, as I have already pointed out, the application of the buying power of the entire circuit, bringing that to bear on the situations where competition appeared. That is to say that in the towns where Schine was confronted with an operator who was operating an opposition theatre, who only had one or two theatres, operation was confined to that town, Schine has been able to prevent operators of that character from competing with him in licensing films simply by making it clear to the distributor with whom the independent may have been dealing, or may seek to deal, that the revenue from the entire Schine circuit is not going to be available to him if he is so brash as to sell Schine's opposition on terms that are repugnant to Schine; in other words, on [fol. 68] terms which will permit the independent to offer Schine effective competition in the display or exhibition of the films of the particular distributor. That is the practice that is at the heart of this lawsuit.

The Court: What about these contracts being similar in form?

Mr. Wright: Well, the method of contracting with Schine is, roughly, this: They frequently use a so-called master agreement. You understand that the Schine circuit consists actually of about 100 corporations, only some of which are defendants here, but they are all owned and controlled by the defendants in this suit. Those corporations operate the theatres in the various communities or own the property, but the licensing is all done through one or two corporations or one or two individuals representing the Schine Company, say in Gloversville or New York City, and in the buying generally the needs of the circuit are bought from a particular distributor as a unit. That does not mean that there is just one contract made for the entire circuit. It frequently takes this form and a so-called master [fol. 69] agreement will be made, which is simply an agreement to use so many films in various parts of the circuit for so much money, and then that will be followed up by the execution of formal license agreements which will be made for each of the theatres where the films are to be exhibited, but those agreements will all bear approximately the same date; they will all be made at the same time.

The Court: Do they make provision for second and third runs?

Mr. Wright: Those agreements generally contain the provisions in which they will set up the run that the theatre is to have, first or second. Of course in the case of Schine it is the prior run in each instance or a second run where he also wants a second run, and will generally also specify the minimum admission prices that are charged on those runs, and will specify any clearance that is to be had over competing theatres.

The Court: Do you make the same claim in those instances, fixing the prices for the different runs?

Mr. Wright: No, the claim made here is not one based on admission price discriminations except in certain instances. [fol. 70] We will show that Schine is permitted to go below and violate his admission price agreements at a time when an independent may be competing with him, but for the most part the type of discrimination that is involved here is not an admission price discrimination, but it is the inability of the exhibitor to even deal at all. It is a much more serious form of discrimination. That is, that Schine in many cases, for example, has been able to take the product away. Let us say that an independent has been enjoying a regular run of Universal pictures, or the pictures of some other distributor, which he has been playing on first runs. Schine comes into his town and is able, by the use of the circuit buying power he possesses, to compel that distributor for the ensuing season to stop serving the independent films, not to make a contract with him but to simply take the films and transfer them to the Schine theatres without the independent being given any opportunity to even negotiate for a continuance of his run.

The Court: I assume you do not expect to prove any [fol. 71] writing to that effect?

Mr. Wright: As to the mechanics of proof, we expect to show it in this way: Of course the case is necessarily a circumstantial one. It is perfectly true after the Interstate Circuit case, which was tried in 1936 and 1937, we have not seen any more letters from a prominent exhibitor in which he says in so many words to the distributor "You have got to discriminate against my opposition in this or I won't do business with you." We don't expect to produce writings of that character. We do, however, expect to show conclusively that what happened was a response to the same kind of a demand by showing what happens in a wide variety of situations. That is, we will offer proof of what happens in the towns that Schine came into, that is, where there were independents who had been operating there.

The Court: They tried to buy it, you mean?

Mr. Wright: Yes, a typical situation would be one where the independent, or one or two independents, operating in a town, Schine comes in there and builds a new theatre or [fol. 72] he buys a theatre of one of the independents, and then the next thing that happens is that the surviving independent finds that the product of one of these major companies has been sold away from him to Schine, and by selling away I mean he finds he cannot even negotiate for a continuance of his run of the product, that the distributor simply tells him he has given the films to the Schine circuit, and that is that, without any attempt to even learn what the independent would offer, to continue to show them. Those circumstances are in themselves, we say, conclusive proof that the distributor's decision was not affected by competitive factors because he didn't even give them a chance to operate, that is, he does not even find out what one competitor will give, and the only way in which conduct of that kind can be explained is in terms of at least an implicit demand by Schine that he not do business with an independent if he wants to get the maximum revenue out of the Schine circuit. The contrasting situations, of course, will be where we will show that an independent [fol. 73] attempts to come into a Schine town and compete with Schine, and in those cases the independent is simply met again with a refusal to deal, and usually on the customary ground that it will be said, "We have a satisfactory account here and why should we negotiate with you?" That is a variation of what is called in the trade the old customer theory. That is, they have widely represented, of course, that where someone has been a satisfactory customer he won't be given an opportunity to continue to negotiate for his run as long as that condition continues. That theory is rigorously applied where the circuit happens to be an old customer. There is again no possibility of competitive negotiations, even if the independent comes in and buys or builds a theatre which is far superior to the ones that Schine has got. But in the other situations, where Schine comes in and the independent is the one who is established there before, we expect to show that he simply takes away the product from the independent again without any competitive negotiations, and the result of taking away one [fol. 74] or two products is generally enough to convince the independent that he cannot compete with Schine in licensing films in that town, and then of course the sell-out occurs. What form that takes depends, to a great extent, on the resistance or the business ability or the particular temperament of the independent. In some cases he sells out to Schine or he becomes a manager of Schine theatres. In other cases he may be able to make a deal where he retains a half interest in the business, or in other cases he may simply be forced out altogether. But in other cases, so far as the Sherman Act is concerned, regardless of how favorable *to* unfavorable the particular treatment of the exhibitor who sells out or joins up may be the effect on the public or the community in the town is the elimination of competition in each case, and we propose to show that of course what happens in those cases is exactly what you would anticipate would happen, that is, your admission prices will move up, generally one of your theatres will be [fol. 75] closed or operate on a part-time basis, because it is far more profitable to provide limited facilities at higher prices as long as you are not faced with the necessity of meeting competition from other theatres. So that in addition to this proof of how circuit buying operates, which will consist in the testimony of these independents who attempted to compete with Schine—and incidentally that testimony of course will be supplemented in each case by whatever correspondence did pass between Schine and the distributor with respect to that situation; that is, in some cases there will be documentary evidence of that character showing that there were at least some representations made and some discussion back and forth between the distributor and Schine as to what should be done or not be done about the independent opposition.

We will, of course, offer those documents along with the testimony. And the third type of proof that we will offer will be the inter-office memoranda and correspondence with the distributors themselves. That is, during the course [fol. 76] of these negotiations the branches will ordinarily submit certain contracts with recommendations or memoranda will go back and forth between the branch and New York setting forth why a particular act was done or what representations might have been made by Schine as to what should be done with respect to a particular competitive situation, and we will, of course, offer memoranda of that character. In some cases where there is memoranda in existence which does ter.' to show what actually moved the distributor to do what he did in, let us say, for example, cutting off an independent in favor of Schine.

Now, in addition to proof of that character of course we will offer a wide variety of proof to show an intent and purpose on Schine's part to monopolize theatre operations wherever he could. That is, to eliminate competition as such, so that he could have the maximum control over film licensing and admission prices. Of course, in any closed situation that is what you achieve when you eliminate all of [fol. 77] the theatre opposition in the town. You then set your own admission prices and you pretty much set your own film rental, because there is nobody to compete in offering entertainment to the public or nobody to compete with you for the films of a particular distributor as far as that town is concerned. And then the effect of that, of course, is heightened when, as in Schine's case, you are able to group together for your license negotiation purposes forty or fifty of these closed situations and group them with the situations where you have opposition, and then the distributor is faced with the problem of meeting Schine's demands in the competitive situations if he is able to get into these closed situations, in other words, if he is able to get a major portion of the revenue the Schine circuit has to give him he is in a position where he has to meet Schine's demands in the competitive spots.

As I say, the mere elimination of competition constantly strengthens the buying power of the circuit and the augmentation of the buying power of the circuit results in a [fol. 78] constant further elimination of independent competitors because it increases the weight of the weapon that Schine can employ against them, so that you get a progressive increase in buying power accompanied by a progressive elimination of independent competition.

The type of proof that we propose to offer — to show that this kind of development was just not accidental, but was the result of a deliberate and intentional plan as far as the Schine defendants are concerned, to bring about that result is evidence of what might be called predatory practices in these particular situations; that is, the making of threats to build a theatre simply for the purpose of scaring out competition, the continued retention of excess capacity; that is, we find theatres being purchased, closed, and kept under lease for substantial periods of time, not of course because they are serving the community or performing any legitimate functions, but they do remain there as a continuing threat to anybody who might get the idea that that town ought to have another theatre. Schine [fol. 79] keeps himself in position to reopen a closed theatre at any time an opposition appears, and that closed excess capacity is in itself an effective threat which prevents the appearance of competition in the town where he operates.

And we will, of course, also expect to show that where these deals are made, taking over an independent theatre, that customarily an agreement not to compete in the future is taken, and of course those agreements in themselves may be perfectly proper if used separately, but, as has been frequently held, the cumulative effect of the use of such agreements in a number of situations demonstrates very clearly the intent to be rid of competition and to operate on a monopolistic rather than a competitive basis in every case where the defendants have theatres.

Along with these practices of theatr-, such as I have described, we would expect to show that in the competitive situations that Schine also resorts to the admission price [fol. 80] cuts or the use of bank nights or other extraordinary attractions, not for the purpose of legitimate competition but simply for the sole purpose of running the competitor out of business, with the price, of course, going back up and the entertainment going back on a normal basis.

The Court: The competitor could do the same, couldn't he?

Mr. Wright: Within the limits of his resources, yes. We do not think the practice has any significance except where it can be shown that it was not done for profit but was done simply to eliminate a competitor. Your Honor is absolutely right about that. Any competitive device which brings more people into the theatre is perfectly legitimate in itself and not a ground for complaint, but we do expect to show that in certain instances Schine resorted to these devices, not for that purpose but to eliminate that competing theatre.

The most conclusive single bit of documentary evidence that I think we have in the case on the question of the intent to monopolize rests on these franchises which I [fol. 81] briefly touched on before, and which were avoided at the time that the temporary order was entered. Of course that prevented the future illegal consequences of the franchises, but it did not go back and take away from Schine the advantages he got as the result of making these agreements which we claim are illegal in and of themselves. The franchise is simply a license agreeemnt which covers more than a year. These involve periods of anywhere from two to three or four years, where the exhibitor simply says, "I will be the exclusive outlet for your films in all of my towns for a certain period of time." And there is usually, again, a general form of agreement covering the general terms and supplemented by the execution of individual license agreements, but the effect of the franchise, of course, is simply to give express sanction to the exercise of circuit buying power and simply freeze the competitive situation for this extraordinary period of time. That is, once a franchise has been made in the course of the period of time that it covers somebody [fol. 82] may build the finest theatre in the community and the franchise, by its very terms, will prevent the distributor from dealing with that new and better theatre at all.

These franchise—of course the effect of them in many cases were profit-sharing agreements. That is to say, the film rental that Schine was to pay these distributors was based upon an allowance to him of certain operating expenses, with a percentage of profit to the distributor, so that what you had in effect was simply an agreement by the distributor with Schine which would give the distributor a certain share of Schine's profits. What is the effect of that, of course, as far as competition is concerned? Those long-term profit-sharing agreements simply have the effect of making Schine a virtual partner of the distributors in general and thereby acquire almost the same kind of a stake in Schine's elimination of competitors that those distributors are selling that Schine itself has. So that the effect of these franchises and their percentage compen- [fol. 83] sation profit-sharing agreements, of course again with minimum admission prices, and the distributor of course benefits directly in those cases from the maintenance of the highest possible admission price by Schine. Under those circumstances if you permitted agreements of that kind to be made it is perfectly apparent that nobody can come in and deal with those distributors in opposition to Schine on any basis which would afford any real competition to Schine.

The Court: Does that apply to all theatres or only to these?

Mr. Wright: These franchises cover generally all the theatres in the circuit, with certain exceptions. For the most part they would cover the entire circuit, and they were gradually built up to the point where I believe in the 1939-1940 season, that is the motion picture season which immediately followed the filing of this suit, Schine had tied up under franchises seven of the eight major distributors, so that the only one left out, I believe, was the United Artists, which, because of the nature of its business, as I [fol. 84] said before, does not sell an entire season's product, but makes separate agreements for the various distributors. As of that season it finally reached the point where they had tied up by franchise agreements seven of the eight major companies. And those agreements prove conclusively Schine's purpose to completely dominate and monopolize the distribution of major films in the towns where he operates were in effect partnership agreements.

Of course, in addition to the franchises we propose to show that in the town of Syracuse Schine is actually a theatre-operating partner of R. K. O., and Paramount, that the first run theatres there are pooled, the Paramount theatre and the R. K. O. theatres and the Schine theatres, under an agreement which Schine and those two distributors split the profits from theatre operation there. So that before we finish with this case we expect to satisfy your Honor completely on the proposition that Schine has deliberately intended to accomplish exactly the type of monopolization that he did accomplish, and the only real [fol. 85] issue in the case, as we see it, is what is to be done about it.

Schine, of course, is perfectly willing to agree to the injunctive provisions of that order, and I do not suppose there is any question today but that these defendants, like any others who have repeatedly violated the Act, are always willing to say, "Well, we won't do it again and will submit to an injunctive decree," but the problem here is really what can be done about restoring the competition that Schine has illegally eliminated by these means that we propose to show were used in this case.

The Court: You mean by that relief which will permit a repurchase of theatres sold under the conditions?

Mr. Wright: That is one possible solution. Another that is stated in the complaint is dissolution, that is, a separation of the Chain into its component parts, so that you would have the numerous corporations that make up the Chain actually operating on a separate basis and competing both [fol. 86] with outside theatres and with each other, so that your towns in the area could have the benefit of competitive operation. That is the real problem in the case, as we see it, is the relief from that situation.

The Court: Putting them all back in the position that they would have been in if there had been no violation?

Mr. Wright: That, of course, is extremely difficult to do, but I take it that a court of equity does strive toward that end, and in so far as relief is concerned our principal aim is not only to make it possible for future competition against Schine to appear and operate, the opportunity to compete, that is all we can ever hope to do. In this suit there are only two things. One is to furnish freedom of opportunity to compete in the towns where Schine operates and to restore in so far as legal means can possibly do it competition which has been illegally eliminated from the towns where Schine operates.

The Court: They would have their remedy individually, wouldn't they?

[fol. 87] Mr. Wright: By way of treble damage suits?

The Court: By way of suits. If this Court found there had been violations——

Mr. Wright: It is perfectly true in so far as the individual operator is concerned he may have a treble-damage remedy. That is, of course, his problem, not ours. We are not interested in attempting to salvage any particular investment for any particular individual. What we are interested here in is principally the benefit to the public which the Sherman Act intended to give, and that is free and open competition in these towns.

The Court: You said the finding in specific cases is such-and-such. I thought you said you would go as far as possible to restore the status quo. If you did that——

Mr. Wright: I say as far as we are concerned we do not have any particular interest in restoring a particular operator to a competitive position. What we are interested in restoring is a competitive situation. Whether it represents the same competitors or other competitors I do not think is important.

[fol. 88] The Court: You presuppose that they would consent to an injunction not to violate the Act in the future?

Mr. Wright: I say injunctive relief which simply prevents the repetition in the future of offenses that have occurred in the past. I do not suppose they would consent to relief which goes so far as to attempt to affirmatively restore competition in any area where they have illegally eliminated it. That is what I meant by that kind of relief. It is not what I term ordinary injunctive relief. What I meant was simply relief which says you shall not commit in the future the sins which you have committed in the past. That, of course, does not do anything about situations where the community itself has lost the benefit that it was entitled to have from competitive operation by an illegal elimination of that competition, and that is the real problem in the case, as I see it, is to devise some means by which we can actually, not only permit competition to function in the future, but actually affirmatively restore it in the cases [fol. 89] where it has been illegally eliminated.

The Court: You say you are not interested in individual instances?

Mr. Wright: We are not interested in individual instances, but my point is that what we are primarily is the question of divestiture in those situations, that is, divesting the theatre which was acquired to eliminate competition and putting it back in the hands of those who would compete. It is not significant from the public standpoint whether the theatre goes back to the man who sold it. In many cases it is not possible. The public interest, I take it, is protected by simply seeing that the competitive situation is restored. That is, that the theatre does go back into the hands of people who will compete with Schine.

The Court: How do you do that? Supposing nobody wants to buy it, then what?

Mr. Wright: As your Honor has already seen, in the divestiture matter that has been heard here, the very situation of the Circuit and its buying power hangs as a threat [fol. 90] over anybody who goes into these towns, and I do not suppose you can find buyers until you have sufficient injunctive assurance that anybody who does go in and invest his money there is going to be able to compete for films. That, of course, is the other thing we hope to accomplish in this suit.

The Court: We will suspend now until 2:15.

(Whereupon a recess was taken until 2:15 o'clock P. M.).

[fol. 91] After recess. 2:30 o'clock P. M.

Appearances: As before noted.

Mr. McKay: If the Court please, Mr. Richardson had intended to open, and in view of his absence, I would like to reserve our opening for the opening of our case, but I would like to take a little time to point out to your Honor certain things that I think you ought to have in mind during the presentation of the plaintiff's evidence.

I am not going into our proof, but there are certain things that this Court should know while it is considering the plaintiff's evidence, and I would like to bring those to your attention, as briefly as possible, if I may.

The Court: Well, that is not the regular procedure.

Mr. McKay: It is unfortunate Mr. Richardson is not here. That is something I just could not help.

The Court: When will he be here? Is he going to be here today some time?

Mr. McKay: I am afraid now he can't get here until tomorrow.

[fol. 92] The Court: Will there be an objection to his opening tomorrow?

Mr. Wright: Not as far as we are concerned, if we can go ahead with the testimony now. We could take time out for his opening tomorrow.

The Court: We cannot get very far this afternoon anyhow.

Mr. McKay: What I was going to say would be covered in Mr. Richardson's opening, anyhow.

The Court: How long will that take?

Mr. McKay: Not over a half hour, your Honor.

The Court: It is out of order. I should think. The opening should be made at one time. There is no objection to your dividing the time with Mr. Richardson, but I am speaking of the order, that is all. Wouldn't it be orderly if you both desire to open tomorrow?

Mr. McKay: I think there are certain things that should be before your Honor before any evidence goes in and that is what I want to present to you at this time.

The Court: I don't want to go over the same matters twice in openings, that is all.

Mr. McKay: I will assure you there will be no repetition, and I think that if I am able to present these matters to you [fol. 93] today Mr. Richardson won't need to open until we come to the opening of our case, so in the long run, the plaintiff will have more time during this one-week period to present their evidence.

The Court: Well, I don't think it is necessary as far as hearing the evidence. If it involves some answer to your opening at this time by counsel—your statement now may involve or invite some reply by Mr. Wright. That is all. I think it will all develop on the trial.

I will rule tomorrow you and Mr. Richardson, if you want to at that time—we will take the proof now—and hold it until that time. We will see how far we can get along this afternoon.

Counsel representing some of the other groups of companies should sit at the table here (indicating a table being carried into the court-room) in order to keep track of the record and so on.

I think that would be an orderly way. Both of you won't [fol. 94] refer to it in that way.

Mr. McKay: In that event, your Honor, we may open tomorrow, or we may decide to reserve completely. But aside from *from* any opening there are a couple of things here I want to remind your Honor that at the time of the motion for preliminary injunction, we had a motion to dismiss the complaint, which was withdrawn with the understanding that it be preserved in our answer.

That appears in the first and second separate defenses in the present answer to the amended complaint. I do not propose to argue those defenses at this time. I want to reserve them at least until the close of the plaintiff's case and possibly until the close of the whole case, but I felt obliged to mention that so it is not considered we abandoned those defenses.

The Court: We are to understand that your answer to the first amended complaint stands as your answer to the second amended complaint.

Mr. McKay: Yes, that is right.

The Court: Doesn't that meet your particular requirement?

[fol. 95] Mr. McKay: That does, yes.

Now, I move to strike all that part of the second amended complaint which deals with any theaters located in the State of New York, or operated in the State of New York, and I make that motion on the authority of United Artists v. Taylor, 273 N. Y., where the Court of Appeals of this State distinguished the operation of motion pictures in New York State from the Binderup case, which is the leading case holding that this motion picture business involves interstate commerce.

I don't imagine that your Honor will want to rule on that motion at this time, but I want to have it on the record that we have moved to strike the allegations, in so far as they relate to New York State. There is a distinct difference between the business in New York and the business elsewhere in the country. The Binderup case held that interstate commerce was involved because the positive prints went into the State of Nebraska pursuant to contracts made in New York and that was the element of interstate com-[fol. 96] merce.

In the case of Theaters in New York, the prints go to theaters in New York, pursuant to contracts made in New York, so that interstate element is eliminated and the Court clearly pointed out that distinction, and that is the reason for making this motion at this time.

The Court: I will deny it at this time.

Mr. McKay: I assume, your Honor, we will have a general exception to all adverse rulings. It is not necessary to make any?

The Court: Yes.

Mr. McKay: May I ask your Honor what time you propose to suspend today?

The Court: I will meet the convenience of your gentlemen.

Mr. McKay: If we could stop at 4 o'clock today——

The Court: We will see how we get along. We will try to. First witness.

[fol. 97] Emerson W. Long, a witness called by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination:

By Mr. Boggess: May it please the Court, I believe I was introduced to the Court two years ago when the case started.

The Court: Yes.

By Mr. Boggess:

Q. Mr. Long, state your residence and occupation.

A. I have a movie theater in Cadiz at the present time.

Q. In what state?

A. Ohio.

Q. How long have you been engaged in the motion picture business there?

A. Since 1924.

Q. Mr. Long, in about 1934 or 1935, you went into the motion picture business in Mt. Vernon?

A. I did.

The Court: In this state, you mean, or Ohio?

Mr. Boggess: Mt. Vernon, Ohio.

The Witness: Ohio.

Q. When did you begin to operate the theater at Mt. [fol. 98] Vernon, Ohio?

A. December 31st, 1934.

Q. What was the name of that theater?

A. Memorial Theater.

Q. Were you in Mt. Vernon in the year preceding the time that you opened the theater, that is, in 1934?

A. I was, two or three times.

Q. When you were there with reference to motion picture theaters what was the condition, how many theaters were there?

A. The first time I was there there were three theaters, the Vine and the Lyric and the Memorial.

Q. Who was operating the Vine?

A, The Vine was being operated by the Schine outfit or company.

Q. You say the first time that you were there. Was that in 1934?

A. 1934.

Q. Who was operating the Lyric Theater?

A. The Lyric was closed. I think at that time.

Q. And the Memorial Theater. What was the status at that time?

A. It was closed.

Q. Mr. Long, will you describe the Memorial Theater as [fol. 99] to its location and as to what its condition was physically?

A. The Memorial Theater is located about a block and a half from the public square. It is opposite the Court House on High Street. Its seating capacity was 1100 seats, balcony and main floor, about 550 on each floor.

The Court: Is that the largest theater of the three?

The Witness: That was the largest theater in the town by 400 seats.

The Court: What is the size of the town?

The Witness: The town is approximately 10,000.

By Mr. Boggess:

Q. Who owned that theater?

A. It belonged to Knox County.

Q. From whom did you lease this theater?

A. From a Board of Trustees which was appointed by the Court in the county that had charge of the leasing of the building.

The Court: The county, you said?

The Witness: The county, yes sir.

Q. Mr. Long, did you make any improvements on the building when you leased it?

A. We put in a new sound system, Western Electric sound system and done some acoustical work, the acoustics were very poor, put some new carpetings in back of the lower seats and considerable work on the stage.

[fol. 100] The Court: You did not say when you leased it. What year? You said you were there first in 1934.

The Witness: Our lease took effect the first of January, 1935. We opened the night of December 31st.

Q. And for what length of time was the lease?

A. The lease was for three years with an option for two more, a five-year lease.

Q. What was the location of the Vine Theater?

A. The Vine Theater was located about a block or block and a half from the square on Vine Street.

The Court: Is that Vine, V-i-n-e?

The Witness: Vine, yes, your Honor, Vine Street.

Q. Can you describe that theater?

A. It had a seating capacity of about 600, I believe. It was built probably ten years before, all on one floor, the seating.

Q. Can you describe the Lyric Theater?

A. The Lyric Theater was a small theater of about 250 seats on the corner of the square. It had been a remodeled storeroom. It was the inferior of the two.

Q. Mr. Long, you mentioned when you were there in 1934 at that time the Lyric Theater was closed. After you opened the Memorial Theater was there any change in the status of the Lyric Theater?

[fol. 101] The Lyric was opened within a very few days after we opened the Memorial.

Q. Mr. Long, what steps did you take towards securing products when you opened the Lyric, when you opened the Memorial and before you opened the Memorial?

A. We had written and also contacted personally all the exchanges in Cleveland and Columbus that controlled that territory for products, for first-run products.

Q. You say you contacted personally. Did you make trips?

A. Made trips to Cleveland, two or three times, I think.

Q. When was your first trip to Cleveland, as you recollect?

A. It was in November or December, December, I think.

Q. Whom did you see at Cleveland?

A. Well, we contacted Mr. Drew, the manager for Metro and Mr. Schmiertz for Fox, Mr. Mooney for Warner Brothers and Mr. Bissell for Columbia, and the others, Universal and RKO, I don't remember the managers' names.

Q. You mentioned you contacted Mr. Drew. What was your conversation with him, briefly?

Mr. Rogers: May it please the Court, I respectfully object on the ground that no proper foundation has been laid for the admission, no evidence of authority on the part of the person, no evidence of connection with the company and on the ground it is not binding on the Schine defend-[fol. 102] ants.

Mr. Boggess: I will come to that, your Honor.

Mr. Rogers: I think we ought to cover that first, may it please the Court.

The Court: You will cover authority?

Mr. Boggess: I will attempt to cover it, yes, sir.

Mr. Rogers: May it please the Court, I object to the counsel saying he will attempt to cover it. I think we ought to get over the hump first, because later we will get a lot of evidence that is not connected, encumber the record and influence the Court.

The Court: I will strike it out if it is not connected. Sometimes you can't get all these things with one witness.

Mr. Rogers: I also object on the further ground before any evidence can be admitted in reference to any of these distributors, there must be evidence first established of conspiracy. Until that is done the evidence is not admissible.

The Court: No, I do not agree with that statement of the law. I do not think the order of the proof is material, necessarily. No.

Mr. Rogers: I believe that is the law as I found it, sir.
[fol. 103] The Court: I overrule the objection in the form it is put that you object to this testimony at this time. Objection overruled.

Mr. Boggess:

Q. Mr. Long, you mentioned that you had been in the motion picture business for a number of years at Cadiz, Ohio?

A. That is right.

Q. Where was the headquarters of the district and the motion picture world where the branch offices of the distributors were located? Where was that place with regard to Cadiz?

A. Both Cadiz and Mt. Vernon we bought our pictures through Cleveland Exchange with the exception of Paramount, which was released through Columbus at that time.

Q. Did you make frequent trips to Cleveland?

A. I did, both Cleveland and Columbus.

Q. With reference to the Mr. Drew that you mentioned, can you tell us Mr. Drew's position with Loew's Company?

A. He was District Manager.

Mr. Rogers: May it please the Court, I do object to that upon the ground this does not lie within the knowledge of this witness. It can only be hearsay and this should be direct proof.

The Court: The question is can he tell.

[fol. 104] Mr. Rogers: Can he tell.

The Court: Answer "Yes" or "No."

The Witness: Yes.

By Mr. Boggess:

Q. What was his position?

Mr. Rogers: One moment. I object to it on the ground the question calls for a conclusion, that he still hasn't qualified the witness.

The Court: Unless you have all of his duties.

By Mr. Boggess:

Q. Mr. Long, have you had occasion to buy products for your theater at Cadiz?

A. From Cleveland.

Q. From the Loew's office at Cleveland?

A. Yes, for several years.

Q. Have you negotiated for it through Mr. Drew?

A. I knew him personally for 8 or 10 years.

Q. Then state what was his position with Loews & Company in Cleveland?

A. He was District Manager, he was Manager of the district in which we were located.

Q. Is that called District Manager or Branch Manager?

A. Well, it can be called Branch Manager, I suppose, in Loews.

Q. Tell your conversation as near as you recollect when [fol. 105] you called on Mr. Drew. What was his response?

A. We asked for consideration in first-run pictures for Mt. Vernon, and he told us that the product was sold to the Schine Company, that he could do nothing for us.

Q. Was that the extent of the conversation?

A. That was about all there was to it as far as business was concerned.

Q. Was any other run mentioned?

A. No.

Q. I believe you mentioned the distributor's office that you called on. You mentioned Mr. Schmertz. Had you done business with Mr. Schmertz while you were operating at Cadiz?

A. We had.

Q. Had you negotiated for any product?

A. We had at Cadiz, both him and his salesman.

Q. With what distributor was Mr. Schmertz connected?

A. 20th-Century Fox at the time.

The Court: Which one was Drew with?

The Witness: Metro or Loews.

Q. Do you Mr. Schmertz? The second one was Fox. Do you know Mr. Schmertz' connection with Fox?

A. The same.

Mr. Rogers: One moment.

Mr. Boggess: I asked him "Do you know."

[fol. 106] Mr. Rogers: He can answer that.

The Witness: He was——

The Court: Do you know what his position was there.

The Witness: Why, he was general manager for the district.

The Court: The question is whether you know, "Yes" or "No." Answer "Yes" or "No."

The Witness: Yes.

The Court: State what his dealings, what the source of his knowledge is.

By Mr. Boggess:

Q. How do you know the connection that Schmertz had with Fox at Cleveland?

A. His name on the door was manager, District Manager, or I forget the other one.

Mr. Rogers: One moment. May it please the Court, we are entitled to know what.

The Court: He was the manager. Who did you say was the manager?

The Witness: Of Fox?

The Court: Of Fox.

The Witness: Schmertz, R. J. Schmertz.

The Court: What do you know about his duties there?

The Witness: I have known him for several years before, I had been in his office quite often and he was general manager. [fol. 107] He was the man you went to and everybody went to for orders in the office.

The Court: What connection did you have with him?

The Witness: I bought pictures from him for Cadiz.

The Court: How long a period of time?

The Witness: Possibly six or eight or ten years.

The Court: All right.

By Mr. Boggess:

Q. What was the conversation between you and Mr. Schmertz?

Mr. Rogers: Pardon me. You have given us a date yet.

Mr. Boggess: The first one was he said prior to the time.

Mr. Rogers: Let us get it fixed.

The Witness: December, 1924. I don't know the exact date.

By Mr. Boggess:

Q. Answer my question. Will you read the question?

(Last question read.)

A. I approached Mr. Schmertz the same way I did Mr. Drew, asking if there was any chance to get first-run products for Mt. Vernon of his pictures, and he said there wasn't, that the product was sold to Schine.

Q. Was anything else said?

A. Not very much that I can remember.

Q. You mentioned going to the office of Warner Brothers [fol. 108] and that you talked to Mr. Milton Mooney. Had you done business with Warner Brothers and with Mr. Mooney while you were at Cadiz?

A. The same length of time I had with Metro and Fox. We played the major products at Cadiz.

Q. Had you bought Warner products from Mr. Mooney while you were at Cadiz?

A. We had, yes.

[fol. 109] Q. This visit that you made to Warner Bros., in which you say you asked him for product, about when was that?

A. That was in December, at the same time, possibly the same day—well, it was the same day that I visited the other Exchange.

Q. And what was the conversation between you and Mr. Mooney?

A. Practically the same as with Fox and with Metro. They had no product to offer first run.

Q. Mr. Long, you mentioned going to the R.K.O. office. You didn't mention the name of the party to whom you talked. While you were in business at Cadiz had you done business with the R.K.O. office at Cleveland?

A. We had.

Q. Had you negotiated for product with the party who was branch manager for R.K.O. in December, 1934?

Mr. Rogers: Pardon me. I object to that on the ground that that calls for a conclusion. We have the right to have the testimony specify.

The Court: The question is perhaps a little leading. Ask him what his relations had been with this man prior to December, 1934.

Q. Do you recall his name, Mr. Long?

A. I can't recall the R.K.O. man. We did business mostly through the sales manager and representative on the road. I knew him but I can't recall him at this time.

[fol. 110] Q. Had you bought product at the R.K.O. office in Cleveland?

A. We had, yes, both at the office and at Cadiz from the salesman.

Q. When you walked in did you ask for the manager?

Mr. Rogers: One moment. Let us have the testimony of this man, not your testimony.

Q. What did you do when you walked into the R.K.O. office?

A. Well, I can remember one trip I asked for the manager and he was not in, and they contacted me with the sales manager, in an adjoining office. I think it was he that I talked to about product there and was turned down.

Q. I am talking about your trip. You said you visited there——

Mr. Rogers: I want to have that answer stricken, "I spoke to him and was turned down."

The Court: "Turned down" may be stricken out.

A. They wouldn't give me any pictures.

Mr. Rogers: I move to strike that as a conclusion.

The Court: Counsel was inquiring about your relations with the office prior to December, 1934.

Mr. Boggess: In December, 1934.

The Court: I thought you were seeking to show his knowledge of the position at the time. That would be shown by what transpired prior to December, 1934. You can ask [fol. 111] him about his contacts prior to 1934 and——

Mr. Boggess: I asked him that quesion and he said while in Cadiz he had done business wih R.K.O., he didn't remember the name of the man.

The Court: He was not in the office when he went there. You are speaking about December that you went there?

The Witness: Yes, in December.

Q. What occurred when you went there; who did you see?

A. I seen the sales manager and I asked for product——

The Court: Is this some man you had done business with who came to your place?

The Witness: No, a salesman from his office is the man I contacted at Cadiz, his boss you might call it, in the office at Cleveland; you would rarely see them unless you went to Cleveland.

The Court: You weren't able to see the manager but you saw the salesman?

The Witness: I saw the sales manager. There is a head man under him and then there is the salesman on the road.

Mr. Rogers: If the Court please, I move that testimony be stricken on the ground that this man is not qualified to testify as to the position of the man with whom he spoke.

[fol. 112] The Court: Had you known this man before 1934?

The Witness: Yes, I had known him.

Q. What contacts had you had with this individual, to show the relationship?

A. I had met him in Cleveland and the District Manager had been down to my office at Cadiz out of the R.K.O.

Q. This man you speak of as the Sales Manager?

A. Yes, the Sales Manager and the District Manager, both of them had been down at Cadiz.

The Court: Objection overruled. Just a moment. You bought pictures through them?

The Witness: Yes, we bought pictures through them for Cadiz.

By Mr. Boggess:

Q. What was your conversation with this party?

A. Well, we asked for a first run product and they said they had none to offer, that it was already sold in Mt. Vernon to the Schine Company.

Q. You mentioned that you also went to Columbus?

A. Yes, sir.

Q. When did you go to Columbus?

A. About the same time or possibly a little earlier in the year, in the fall.

Q. The office of what distributor is located at Columbus?

A. Paramount. The manager there was Duke Clark, whom I had known before.

[fol. 113] Q. Let me ask you a question there. During the operation of your theatre at Cadiz had you done business with Mr. Clark?

A. I had.

Q. And bought product from him?

A. I had.

Q. When you went to see him at Columbus state the conversation that you had with him?

A. Well, I told him we had acquired the Mt. Vernon Theatre, the Memorial, and I was looking for product, and asked him if he had any first run product to offer, and he told us right away that their first run product was already sold in Mt. Vernon.

Mr. McKay: Your Honor, we have the same objection to each of these separate corporate entities; that is, on the ground that they have not shown the authority of the individual with whom they were dealing, and also on the ground that the statement of any of these persons is not binding on the Schine defendants. It will save time if we do not have to object each specific time.

The Court: The charge here, of course, is conspiracy on your violation of the Anti-Trust Law.

Mr. McKay: The position we have taken, and that is [fol. 114] taken by Mr. Rogers is that until they have put in prima facie evidence of conspiracy the declarations of these persons, who are not defendants here, are not binding on us.

The Court: I do not understand that the order is necessarily material.

Mr. McKay: We want to preserve our rights with respect to that ruling and I simply want to have it understood that that applies to each of the separate distributors as to which he is now interrogating the witness.

The Court: The question with respect to the qualifications or the authority of the individuals, so-called managers, it would seem to me it is prima facie sufficient at least to show their dealings over a course of years and the same type of contacts sought to be carried out.

Mr. McKay: I think the question of what their authority actually was will have to be developed from their employer. He only knows that he went and talked to them about product. He does not know what the extent of their authority was.

The Court: Proceed.

Mr. McKay: Exception.

[fol. 115] By Mr. Boggess:

Q. You have mentioned that you made several trips to Cleveland. Did you make trips after you opened the Memorial Theatre?

A. I did. I think I made two trips in January; maybe two or three.

Q. Did you call on the branch exchanges?

A. I called on the exchanges again, yes.

Q. Did you ask for product?

A. I did.

Mr. Rogers: Which exchanges are these questions addressed to?

Q. Name the exchanges that you called on when you went there in January.

A. Loew's, 20th Century-Fox, R. K. O., Warner Bros., Universal, United Artists, and Columbia, of the major distributors.

Mr. Rogers: May it please the Court, if that be the case, I think we are entitled to evidence as to the persons he saw in those respective companies and just what the conversation was and the date of the conversation, so that we can meet it properly if necessary.

Mr. Boggess: Would that not be a question for their cross examination, your Honor?

The Court: No, I think it should affirmatively appear with whom these contacts were had in January.

[fol. 116] Mr. Rogers: Not only for cross examination, may it please the Court, but for our defense as well.

Q. Mr. Long, when you went to Cleveland in January, if you remember, what was the first Exchange on which you called?

A. Well, we already had a deal on with United Artists——

Mr. Rogers: Pardon me. I move to strike that out as not responsive.

The Court: On whom did you call first when you went there in January?

The Witness: That is very difficult to answer. Sometimes they were not in and I would run from one to the other.

Q. Tell who you called on.

A. Well, I will say I called on the United Artists first and met Mr. Goodwin, the Manager there, and asked for product, and he informed me specifically that their product was sold in Mt. Vernon.

Q. Who was the next one you called on?

A. I called on Columbia, I think I am ahead a little——

Mr. Rogers: I move to strike everything out after Columbia.

The Court: Very well, strike it out.

Q. Mr. Long, you mentioned that in December you called at the Columbia Exchange and talked to Mr. Bissell?

A. Yes, sir.

Q. While you were engaged in the operation of your [fol. 117] theatre at Cadiz——

Mr. Rogers: We do not have any such testimony. You developed R. K. O. and——

Mr. Boggess: I haven't developed it. On the start he mentioned the name and he mentioned Mr. Bissell, that he called at the Columbia Exchange, and mentioned Mr. Bissell.

Mr. Rogers: That is all he said. Nothing beyond that.

Mr. Boggess: That is all I am asking him now.

Q. My question is: While you were operating the theatre at Cadiz had you negotiated for Columbia product with Mr. Bissell?

A. I had. I had put in an application early in December for products for Mt. Vernon, first run products.

Q. My question is: While you were conducting your theatre at Cadiz, during your operations at Cadiz, had you bought Columbia product for your Cadiz theatre?

A. Yes, we played Columbia product there.

Q. Had you called on the Columbia Exchange at Cleveland before?

A. Before we opened Mt. Vernon, yes, in the month before I think we had an application in there for first run product for Mt. Vernon.

Q. Had you bought Columbia product before this time from Mr. Bissell?

A. We had, from Mr. Bissell.

[fol. 118] Q. Do you know Mr. Bissell's title with the Exchange at Columbia?

A. He was District Manager, I think, for Columbia.

Q. What was the conversation that you had with Mr. Bissell when you called at the Columbia Exchange?

Mr. Rogers: Which date is this now, Mr. Boggess?

Mr. Boggess: December.

Mr. Rogers: I was a bit confused. This is December you are talking about, not January.

Mr. Boggess: December.

A. We had an application in and I was anxious to open with Columbia pictures, and he said he had to take it up with New York, and the result was that we were held up nearly two months before we got any first run picture from Columbia, in January, the last of January, or the first of March. We finally had the contract approved.

Q. Did you finally secure your contract with Columbia?

A. We did, after between two and three months after the application was put in.

Q. I ask you, is that your signature, Mr. Long (showing paper to witness)?

A. That is. That is my signature on the approval of the contract.

Mr. Boggess: I offer it for identification.

[fol. 119] (The contract referred to was marked as Plaintiff's Exhibit 1 for identification.)

Mr. Rogers: It seems to me, before this is marked, there should be an offer made and I should be given an opportunity to object to exhibits. Will you please observe that and not have exhibits marked before I have an opportunity to object to them?

The Witness: That is the contract.

The Court: He wanted him to identify his signature. He may identify it.

Q. Mr. Long, I believe you stated that on your trip to Cleveland in January you called at the United office and talked to Mr. Goodman?

A. Mr. Goodman.

Q. Who had the United Artists' product for 1934-1935, the first year——

A. We had the first run for 1934-1935, United Artists, at Mt. Vernon.

Q. Then you were in error in saying that Mr. Goodman had said that that product had been sold?

A. That is right. I had forgotten about that. I was thinking of a later date. That was an error.

Q. When did you purchase the product of United Artists for 1934-1935, if you remember?

[fol. 120] A. The contract was signed in January some time, I think, January, 1935.

Q. Now, Mr. Long, with reference to the United Artists' product for 1935-1936, did you have that product?

A. We did not.

The Court: You said 1934-1935.

Mr. Boggess: First it was 1934-1935, which he said he had. Now we are asking about 1935-1936. 1934-1935 would be September to December.

The Court: That would be from September, 1933, to September, 1934, and September, 1934, to September, 1935?

Mr. Boggess: 1934-1935 is from September, 1934,——

The Court: First it ran from January to September and next it ran a full year and then two years. I understand it. Go ahead.

Q. The United Artists' product for 1935-1936, did you have that product?

A. We did not.

Q. Who had that product?

A. Schine.

Q. What efforts, Mr. Long, if any, did you make to secure the United Artis-' product for 1935-1936?

A. Well, we contacted Mr. Goodman in his office at Cleveland and he told us that the product had already been sold through New York.

[fol. 121] Mr. Rogers: May we have the date of that conversation?

Q. State the time and the place that you had that conversation, Mr. Long.

A. In Mr. Goodman's office, some time in January. I can't remember the date. At Mr. Goodman's office in Cleveland.

Mr. Rogers: January, which year?

The Witness: 1935—or 1936.

Mr. Rogers: Which it it?

The Witness: 1936.

Q. In January, 1936?

A. Yes, that is right.

Q. And what did Mr. Goodman tell you?

A. He told us the pictures had already been sold in New York to Schine; the main office, he called it.

Q. Mr. Long, did you make any trips outside of Mt. Vernon, other than to Cleveland and Columbus, in your efforts to get progress?

A. In the summer—on the 25th of July, 1935, I went to the Department of Justice at Washington and from there I went to New York, and in New York I contacted Mr. Eddie Granger of the Fox Company and Mr. Unger of Paramount and Mr. McAvoy of R. K. O., in their main offices. Mr. Unger told us they had no product.

Mr. Rogers: One moment, please.

Q. You mentioned that you went to the office of Fox [fol. 122] and saw Mr. Granger?

A. Yes, sir, Mr. Eddie Granger.

Q. Tell your conversation, as nearly as you can recollect it, with Mr. Granger.

Mr. Rogers: One moment. May it please the Court, there has been no evidence adduced here as to Mr. Granger's position with Fox or the authority of Mr. Granger to make any statements on behalf of Fox, nor is it admissible on the ground of proving conspiracy.

Mr. Boggess: I will cover that.

The Court: Is the question withdrawn?

Mr. Boggess: The question is withdrawn.

Q. When you entered the office of Fox for whom did you ask?

A. I asked for the sales manager, which was Mr. Eddie Granger, the general sales manager for Fox film.

Q. When you asked for the sales manager to whom were you introduced?

A. I was introduced—I had known Mr. Granger before that, I had met Eddie Granger before. I was sent in immediately into his office.

Q. His office was in the Fox Building?

A. Yes, in the Fox Building on 54th Street.

Q. Do you know his title?

A. He was the general sales manager.

[fol. 123] Mr. Rogers: One moment. Yes or no is the answer to that.

A. Yes.

Q. What was it?

Mr. Rogers: I object to that as calling for a conclusion. That testimony cannot be adduced out of the mouth of this witness. It must be introduced out of a properly recognized officer of the 20th Century-Fox film, or however it was known at that time. He cannot prove agency out of his own mouth, or he cannot prove it out of the mouth of this witness.

The Court: As I said before, his authority may be shown by his prior contacts with the man.

Mr. Rogers: My position, may it please the Court, is this: They must first establish by proper evidence what the position was that the man held with the company. They have not done that yet with reference to anybody they have testified about. After they have established what the position of that man was, what his official position was with that company, from that point they may state what contact they had with that man and what business dealings they had with him, but they cannot establish that out of the mouth of [fol. 124] this witness, nor can they establish it out of the mouth of the agent himself. They must establish that out of the proper corporate records of that particular corporation or by the competent testimony of an officer in authority in that corporation. They have not done that. That is the point I make.

The Court: You may be right in that argument, but we are concerned here with the question whether this individual in the other instances was a salesman or a manager. The question of what the authority of the manager was may involve some testimony.

Mr. Rogers: My point is that the first hurdle has not been jumped in any one of these instances. It is a matter of fact as to what the position of any one of these persons is and that fact has not been established yet as a fact by any competent evidence with reference to any of the persons with whom he said he had conversations.

The Court: I have stated my position with reference to competent questions several times before. The proof may be made by showing the relations of this witness to a particular [fol. 125] individual on prior similar occasions when he went to purchase films. If the man had bought for years from somebody who purported to be selling pictures of one of these companies over a period of years, I think standing alone that that proof should be some proof of the authority of that individual to deal.

Mr. Rogers: That would be some proof of some authority, possibly some authority. They have not got that with reference to Mr. Granger at all.

The Court: He said he knows. Let us see how he knows.

Mr. Rogers: Exactly.

Mr. Boggess: He went there and asked for the sales manager and he has been introduced to this gentleman.

The Court: He said he knew him before. Let us see what his relations with Mr. Granger were before.

A. I had met Mr. Granger at several movie independent theatre organizations conventions. I knew him. I met him in Cleveland once, I think, and I knew that he was the sales manager. I was buying pictures. I naturally would ask for the man who sold them.

The Court: Not what you naturally would do. What did you do?

The Witness: I did. I asked for the sales manager and he was the man I met over there. He talked with authority. [fol. 126] He had authority to say yes or no and to tell me whether the pictures could be sold or not.

The Court: That may be stricken out.

Mr. Rogers: I ask it all be stricken.

The Court: It may be stricken out what he said he was, and so forth.

Had you bought any pictures direct from Granger?

The Witness: Not from New York. Granger, I think, had been in Cleveland before he went to New York.

The Court: Had you there in Cleveland?

The Witness: Yes, I had bought pictures from Fox.

Mr. Rogers: He does not say in what capacity Mr. Granger was serving in Cleveland at that time. He may have been a salesman there. He is now trying to attribute some statement to Mr. Granger at a later date that he was supposed to be sales manager.

The Court: Objection overruled. I will receive it.

Q. Mr. Long, state your conversation with Mr. Granger.

Mr. Rogers: May it please the Court, I do object to that on the ground that the conversation would not be binding in any manner on these defendants to prove conspiracy.

[fol. 127] The Court: I will receive it at this time for what it is worth. Objection overruled.

A. When talking with Mr. Granger about product he said that the Fox Company could not afford to turn down $50,000 worth of business in order to get Five, and my business only amounted to Five and Schine's would amount to $50,000, and for that reason they could not give me any product, first run product. He said specifically those words.

Mr. Rogers: May it please the Court, I move to strike that on the ground that there is no proof that Mr. Granger had any authority to make any statements with reference to the policy of the corporation and that authority certainly should be proved.

The Court: I will receive it at this time subject to considering your motion later on. I think there should be something more to show the authority.

Mr. Boggess: We can later show his exact title.

The Court: I will receive it.

Mr. Rogers: I understand that you are reserving on that?

The Court: Yes. I think there should be additional proof to show the authority.

Q. Was there any conversation between you and Mr. Granger?

[fol. 128] A. Not as I remember.

Mr. Rogers: May we get the date of that conversation, please?

The Witness: July 25, 1935.

Q. Now, you mentioned calling on Mr. Unger, I believe?

A. Yes, Mr. Unger of the Paramount Company.

Q. When you called at the Paramount office for whom did you ask?

A. I called for the sales manager, the general sales manager, the man who sold the pictures.

Q. Were you taken to the office of Mr. Unger?

A. Yes, I was taken to the office.

Q. Did you know prior to that time Mr. Unger's position?

A. I knew his position, but I had never met him. I had seen his position on letter heads. I had had some correspondence with him. He signed his name as general sales manager.

Mr. Rogers: I move to strike that on the ground that that is hearsay and not in the knowledge of this witness.

The Court: Very well, strike it out. I will receive the conversation, but I think standing alone it would be hearsay.

Mr. Boggess: In other words, the last remarks that he made, is that what you want stricken? He said that he knew——

The Court: I say standing alone the fact that he was [fol. 129] introduced to somebody as salesman and that that salesman said something about disposal of pictures, I don't think that that would be sufficient to show the authority to make those statements. I don't think that that standing alone would be sufficient. If you state to the Court that you are going to connect it up to show the authority of the individual I will receive it.

Mr. Boggess: We will connect it up later. I think this is prima facie enough to admit the testimony.

The Court: I will accept your statement under those conditions.

Mr. Rogers: Except I understand this witness to say he never met Mr. Unger before and didn't know him.

The Court: He did inquire in reference to some conversation with somebody whom he was introduced to as salesman. That alone would not be sufficient to establish authority. If that is followed up——

Mr. Wright: If the Court please, there is not any dispute whatsoever between us and the defendants as to who these people are. Schine does business with them, was doing business with them at the same time, and we both know [fol. 130] exactly what positions they had, and we outlined the positions in detail, and included it in the stipulation and it was offered to them in order to save this time so that we could have those facts stipulated in advance. Notwithstanding the fact that there is not any dispute whatsoever about who these men were, what positions they occupied, they have not seen fit to sign this stipulation, so that it will have to be connected up later, but there is certainly no time in wasting time over these objections that are made here about nobody knowing who these men were, because they all know perfectly well and have known ever since this lawsuit was started exactly what the authority of each of these people that we are talking about is, and that will fully appear before the case is over.

Mr. Rogers: May it please the Court, I do not think Mr. Wright should be unkind in his characterization of my conduct in the defense of this case. I am not making needless objections and I am not making frivolous objections here. There is a very grave charge made against these defend- [fol. 131] ants, the surviving defendants. Mr. Wright would have had an easier row to hoe if he had kept them in, because if he had them in he would get his answers. He chose not to do that. Now we have a situation where he is attempting to take non-defendants and introduce declarations by them in a conspiracy to charge defendants in this case here. In a situation of that kind, which is a situation of his own choosing and not a situation of our choosing, I expect to observe diligence here in preserving the rights of the defendant. I don't like Mr. Wright to characterize my conduct. I have had experience in the trial of cases and I don't like it.

The Court: You have the right to object to it. If there are things that are not in dispute you would save the time of the Court and everybody a lot of needless work if you did agree on some of these things that are not in dispute. I am going to let him testify with reference to what took place with these men connected with these offices, but in all instances it may be subject to being stricken out unless [fol. 132] it is further connected up with the authority to make that statement.

Mr. Rogers: May I inquire, does the plaintiff expect to prove this authority before this witness is off the stand, so that we may have a proper opportunity to cross-examine?

The Court: You will have the opportunity to cross-examine when it comes your time.

Mr. Rogers: Except for this, may it please the Court, there is considerable testimony in here, subject to being connected, and on which your Honor is reserving decision, and it would be very difficult to conduct a cross examination because we will not know which testimony is in and which testimony is out. I do not want to take up a lot of the time of the Court cross-examining this witness on testimony that your Honor may strike out of the plaintiff's direct case.

The Court: I do not see the force of your argument. Your proposition would involve bringing all these men back here for a cross examination of every witness sworn here. We are not going to do that. We will be through with this man's testimony and then take up the other testimony in [fol. 133] an orderly way and cross-examine.

Mr. Rogers: Then, with reference to this witness, I think the situation is quite different than with the other. While there may be a mere scintilla of foundation so far as Mr. Edward Granger is concerned, there is not even a scintilla so far as Mr. Unger is concerned. He says, "I don't know the man. I never met him before, never had any dealings with him." There is not even a scintilla of authority. I do not think that testimony should be admitted.

The Court: Overruled. It is received subject to being stricken out unless it is connected up.

Q. State your conversation with Mr. Unger.

Mr. Rogers: May we have the date of it?

Mr. Boggess: July 25th.

A. July 25, 1935. Mr. Unger told me that their product was sold in Mt. Vernon, but he thought that maybe he could get me some, he would write me later, just as he and Mr. McAvoy did, which will confirm my statement as to their authority. We had correspondence afterwards from them relating to the call and what we talked about.

The Court: Just answer the question. Never mind that.

Q. Was there any other conversation, other than that he [fol. 134] might get you some product?

A. That was about all.

Q. You mentioned Mr. McAvoy. In whose office did you find Mr. McAvoy? Just answer the question.

A. R.K.O. office.

Q. When you went to R.K.O. for whom did you ask?

A. I asked for the sales manager.

Q. The sales manager?

A. Yes; in charge of the sales of product.

Q. On what date was that?

A. The same day.

Q. When you asked for the sales manager into whose office did they take you?

The Court: Who do you mean? The office might apply to his position. Who did you meet when you were there?

The Witness: I met Mr. McAvoy.

Q. What was the conversation between you and Mr. McAvoy?

Mr. Rogers: One moment, please. I make the same objection.

The Court: That brings up another question there. What did you know about Mr. McAvoy with reference to his position? What did you personally know?

The Witness: I don't think I ever met him before. I only knew him from correspondence, and his name was on the door, "General"—or "Sales Manager" for the Company, in the R.K.O. Building there.

[fol. 135] Q. What was your conversation with Mr. McAvoy?

Mr. Rogers: Now, may it please the Court, I raise the same objection there, the lack of proof of authority, on the ground it is not binding, on the ground it is no proof of conspiracy, no foundation laid for the admission of proof of conspiracy.

The Court: I will receive it at this time, subject to further action on the motion.

A. I asked him for product, the same as I had the others, and they said they had a few first run pictures that were available, and he gave me the names of two or three pictures, and he said that he would take it up and write me about how I should get them, that Schine's hadn't played them and wasn't going to play them, but there was nothing definite. I didn't get anything until after I went back home. I got a letter from him then stating——

The Court: Just a moment.

Q. Did you later get any product from R.K.O. on account of that visit to Mr. McAvoy?

A. No, we never got any product.

Q. Mr. Long, I ask you to read that letter and see if that is your signature (handing letter to witness).

[fol. 136] A. That is my signature. "Metro-Goldwyn-Mayer"——

Q. Don't read the letter.

A. Yes, that is my signature. That is my letter.

Mr. Boggess: I ask that it be marked for identification as a Government exhibit.

(The photostatic copy of letter of January 15, 1935, was marked as Plaintiff's Exhibit 2 for identification.)

Q. Mr. Long, did you get any second run product from any of the distributors?

A. Not for over a year.

Q. Did you get any product from Metro-Goldwyn-Mayer?

A. I got their second run product for 1934 and 1935.

Q. Did you have it for any other year?

A. I think we had it two years. We had it another year, 1935 and 1936.

Q. Did you have it for 1936-1937?

A. We did not. We called on Mr. Drew at Cleveland he informed us that the second run had been sold to Schine's for 1936 and 1937.

Q. Mr. Long, aren't you confusing that with 1937 and 1938?

A. Maybe I am——

Mr. Rogers: Just one moment, please. Let us get this witness's testimony. If this witness is not testifying accurately please don't furnish the gap with your testimony. [fol. 137] Please do it by question and answer.

Mr. Boggess: He was in obvious error.

Q. With reference to the second run product for 1936-1937, who had that product?

A. We didn't get that. Schine's had 1936 and 1937. We had it for one year and I think—the first year we didn't get it and then we had it for two years, the second run, and after that we didn't have it any more.

Q. You had it two years?

A. Yes.

The Court: You say the first year you didn't have it and then you had it for two years?

The Witness: The first year we ran the theatre we didn't have Metro's second run, and the second and third year run—that would be 1935 and 1936 and 1936 and 1937——

Q. Your testimony now is that you had it in 1935-1936 and 1936-1937?

A. Yes, sir.

Q. Did you make any effort to get Metro second run for 1937-1938?

A. Yes, I called on Mr. Drew in his office in Cleveland.

Q. What did Mr. Drew tell you?

A. He told me that New York had informed him that the second run had been sold to Schine's for that year.

[fol. 138] The Court: Metro?

The Witness: Metrol. Loew's.

Q. Did you hear anything at any later time in regard to the second run product of Metro for that season, 1937-1938?

A. I found out later in the spring that——

The Court: Just a moment. That would be hearsay what he found out.

A. I was in Mr. Drew's office and he told me.

Mr. Rogers: When was this?

The Witness: In the spring of 1936.

Q. This is the 1937-1938 product?

A. Yes, 1937-1938. It would be the spring of 1937 would be right. We inquired and asked for it and he said he had been informed by New York that it had been sold in Mt. Vernon. We didn't get it.

Q. You mentioned that before. My question is: After that conversation with Mr. Drew did you hear anything later in regard to this second run product of Metro?

A. Yes, on a later call Mr. Drew informed us that it had not been sold.

Mr. Rogers: Just one moment. May we have the date, please?

Q. State the date.

A. It would be the first of March.

Mr. Rogers: Which year?

[fol. 139] The Witness: Well, following my call. 1936 it would be, wouldn't it? We had it two years. 1937 it would be, I guess. 1937 would be right.

The Court: You said in 1937 Drew said it had been sold?

The Witness: Yes, in 1937. That would be for 1937-1938 product.

The Court: You said Drew later told you something.

The Witness: Well, he told me he had word it had been sold, that he didn't have it for us for 1937-1938.

Mr. Rogers: I am somewhat confused here.

The Court: So am I.

Q. Let me ask you a question again. The conversation that you had with Mr. Drew, in which you say that he told you that the product had been sold to Mr. Schine, when did that occur, for 1937-1938?

A. That would be in the spring of 1937 in March.

Q. In 1937 you had that conversation?

A. Yes.

Q. My next question is, this being in the spring of 1937, —my next question is what further did you hear in regard to this second run product?

Mr. Rogers: Pardon me. I object to that question. It is not a question of what he heard. It is a question of did he have a talk with somebody in authority.

[fol. 140] The Court: Sustained.

Q. Did Mr. Drew communicate with you at a later time in regard to the 1937-1938 product of Metro?

A. He did. He wrote me. He did, stating in his letter——

Mr. Rogers: One moment. I object to the contents of a written document unless it is produced.

The Court: Sustained.

Q. Did you have any verbal conversation with him?

A. I also talked with him in his office.

Q. What did he tell you at the time of that conversation? Where was the conversation?

Mr. Rogers: Where and when, please?

A. It was in Mr. Drew's office in March, in the spring, shortly after I had been there about the product.

Q. You mean the spring of 1938?

A. The spring of 1937, it would be, wouldn't it?

Q. Your first conversation with Mr. Drew you said was in the spring of 1937. Now you say at a later time Mr. Drew communicated with you or that you had this conversation with Mr. Drew. I want to know when the later conversation took place, where and when.

A. It was in his office. I couldn't give you the date exactly.

The Court: The same spring?

The Witness: Yes, it was the same spring. I can't tell [fol. 141] you the exact date.

Q. What was the conversation?

A. Well, he said he had been informed that the product was open, that Schines had not taken the second run, that we could get part of it, and we did get part of it, a split on it.

Q. You got a split?

A. We got a split.

Q. Who got the other part of the split?

A. Schine.

Q. I will ask you if this is your signature (showing letter to witness)?

A. It is.

Mr. Boggess: Mark it as Government's Exhibit No. 3 for identification.

(The photostat of letter referred to, January 15, 1935, was marked as Plaintiff's Exhibit 3 for identification.)

[fol. 142] Q. Mr. Long, you mentioned that Mr. Schine had two theaters in Mt. Vernon, the Vine and the Lyric, and that the Lyric opened shortly after you opened the Memorial. How long did the Lyric continue to operate on a daily basis?

A. Up to within a short time before they tore down to build the Vernon. Two or three years, from 1935, to 1937, two years.

Q. Ran it daily for two years?

A. Except towards the last they just ran on Saturdays.

Q. After these two years were up on what basis was it run?

A. Just shortly before they tore it down they only ran it on week-ends.

Q. Saturday and Sunday?

A. Saturday and Sunday.

Q. When was the Lyric torn down?

A. It was tore down, started to tear it down in October.

Q. In what year?

A. 1937.

Q. After it was torn down what construction, if any, did Mr. Schine make on the site on which the Lyric was located?

Mr. Rogers: I object to that on the ground this is not within the witness' knowledge.

Mr. Boggess: He was right there.

[fol. [illegible] Mr. Rogers: He might have been right there, but he wouldn't know when somebody else bought a piece of property.

The Court: He asked what he done with the site.

Mr. Boggess: With regard to construction, I said.

The Court: Let him say what was done with the site.

The Witness: I seen it every day.

The Court: What was done with it?

The Witness: The old building tore down and a new theater put in, a new foundation. I seen it every day going up.

The Court: All right.

Q. How long did that continue before the theater was completed?

A. They opened the theater on the 31st of April of the next year.

Q. What day in April?

A. The 29th. I was thinking of the 21st. The 29th is right.

The Court: What year?

The Witness: 1938.

Q. Mr. Long, you mentioned they began tearing down the Lyric in October, 1937?

A. Yes.

Q. And that the Vernon was completed and opened the [fol. 144] last of 1938?

A. That is right.

Q. During that interval how many theaters did Mr. Schine have in operation in Mt. Vernon?

A. He had one. He had the Vine Theater only.

Q. Did you still have the same trouble in getting products during that seven months as you had before?

Mr. Rogers: One moment. I object to that as calling for a conclusion. We are entitled to evidence.

The Court: Sustained.

Q. Mr. Long, what was the admission price of the Vine Theater prior to the opening of the Vernon Theater?

Mr. Rogers: If he knows.

The Witness: 35 cents it was, the Vine, when we started.

Q. At what time of day?

A. That was for night performances. We had some cheaper matinees, 15 cents matinees.

Q. For night performances it was 35 cents?

A. 35 cents.

Q. Do you mean adults?

A. Adults. 10 cents for kids at all times.

Q. After the Vernon opened was there any change made in the admission price policy of the Vine?

A. It was cut to 30 cents.

[fol. 145] Q. Were there any later cuts? If there were, state them.

A. Later cuts after they built the Vernon, cut the Vine to 20 cents and then to 15 cents.

Q. You mentioned that after the Vernon opened the admission price was 30 cents. At what time was the next cut?

A. Well, the next cut was made after, not very long afterwards, they cut it again to 25 cents. It was cut to 25 and then to 20.

Q. At the time it was cut to 20 cents can you say how long afterwards that was?

A. Well, that was the last two years that we were there, '39 and '40, I think. Run 20 cents and some for 15 cents.

Q. What was the price on week-ends, the adults' evening price?

A. Well, at that time 20 cents was the price week-ends and 15 cents the middle of the week for quite a while.

Q. Was there any further cuts made?

A. Well, they cut to 15 cents straight.

Q. What do you mean by "straight"?

A. Well, that was for any time in the week.

Q. All the time?

A. All the time, yes.

Q. Did that policy continue until you went out of business?

A. It did until I had thrown up the theater and the price was put back to 20 cents the same week I shut down my Memorial.

[fol. 146]. Q. It was put back to 20 cents?

A. Yes.

Q. Mr. Long, were there any efforts made by Schine to acquire your theater?

A. Yes.

Mr. Rogers: When, please?

Q. At any time during the six years in which you operated the theater?

A. The year before they started to build the new theater, in 1937, about the summer of '37, Mr. Custer came to me, the Assistant Manager, he was an employee of Schine's over there. He talked to me about it.

Q. What was his name?

A. Custer.

Q. Had you had occasion to meet Mr. Custer in your duties running the Memorial Theater?

A. Well, no, I had no—he only came there as a visitor. I bought pictures of him before for cash.

Q. Describe what connection he had with Schine?

A. He did and he told me.

Mr. Rogers: One moment. I move to strike it out.

The Court: What he told you is incompetent.

Q. What was his position with Schine?

Mr. Rogers: I object to that as calling for a conclusion. He said he never had any dealings with the man in a [fol. 147] business way.

The Court: Whether he claims he had or not, I don't know. If so, what is the source of his knowledge, of his employment, what the employment of this man was. How did you know what his position was?

The Witness: I had known him and he had a theater and sold us a theater in Ohio and advised me to do the same thing.

Mr. Rogers: I object to any statement of that kind made by Mr. Custer.

The Court: Strike out the last part, what this man advised him to do.

Q. You say that Schine had two theaters in Mt. Vernon?

A. Yes.

Q. According to your observation did Mr. Custer come to Mt. Vernon, make visits to Mt. Vernon in regard to those theaters?

A. Yes, he had been there in connection with theaters. I had seen him down at the other theater.

Q. You state you know he had some connection with Schine?

Mr. Rogers: One moment. Pardon me. There is no such testimony as yet. This witness has not testified that.

Mr. Boggess: I think he has.

[fol. 148] Mr. Rogers: He was not permitted to testify.

Mr. Wright: Is it your position Mr. Custer did not have any connection with Schine?

Mr. Rogers: It is my position, Mr. Wright, I am meeting a specific question with a specific objection, if you don't mind.

The Court: What do you know Mr. Custer did?

The Witness: I knew he was working for Schine. I had known the fellow for a long time from conversation and he was there at Schine's theater, and he had Schine's papers on him, and everything connected with the business of the other theater is all I knew.

Mr. Rogers: I move to strike the last part.

The Court: Everything connected with the business.

The Witness: Everything about him.

The Court: What did he do there?

The Witness: He was Assistant Manager. He came around to check up on the help and other things. I don't know what he did.

Mr. Rogers: I move to strike that, Assistant Manager.

The Court: Strike it out. I will let it stand that he was employed there at the time.

Mr. Boggess: Your ruling, your Honor?

The Court: I will let it stand he was employed by Schine [fol. 149] at the time.

Q. Mr. Long, you mentioned that you had a conversation with Mr. Custer. Go ahead and tell what the conversation was.

Mr. Rogers: May it please the Court, I object to that on the ground there is no evidence here whatever that Mr. Custer had any authority whatever to make any statement on behalf of Schine or to bind Schine in any manner or if he had any authority of any kind.

The Court: I think that is true. He was some employee. Unless it is shown what the nature of his employment was. Technically it is competent here, anybody working with Schine who went around and said what Schine was doing is competent. Other instances shown that these men were managers, in a competent capacity, it is competent to a certain extent. Unless you show something more that this man was an employee of Schine's, unless you connect it up in some other way, as far as authority is concerned.

Mr. Boggess: I believe he stated he knew that he was working for Schine.

The Court: All right.

[fol. 150] Mr. Boggess: I think that is prima facie enough to admit the conversation unless we prove it up later, subject to being stricken.

The Court: Objection sustained.

By Mr. Boggess:

Q. Did Mr. Custer have his headquarters in Mt. Vernon, or did he travel through there?

Mr. Rogers: I object to that as incompetent.

The Court: Overruled.

The Witness: He traveled through there. He had his headquarters, I think worked out of Circleville, some place down South, some of the western offices. I don't know where he worked out of.

Q. That is the extent of your information in regard to Mr. Custer's connection with Schine?

A. Yes.

Q. After you had talked to Mr. Custer, was there a call on you by any one else?

A. About two weeks after Mr. May called.

Q. What Mr. May?

A. Mr. May of the Schine Company.

Q. Do you know Mr. May's connection with the Schine Company?

A. I think he is a director of the Company.

Mr. Rogers: I move to strike it. The answer should be [fol. 151] "Yes" or "No."

Q. Answer "Yes" or "No." Do you know his connection?

A. I never seen anything with a seal on it stating what he was. All I know is he represented Schine's, and he was there and he handled the real estate and bought real estate for the new theater and handled all that stuff in Mt. Vernon for the Schine's. I knew that, seen the records.

Mr. Rogers: Pardon me. May it please the Court, if this witness bases his testimony that he seen some records, I move to strike. He does not know of his own knowledge. I move to strike his testimony, because it is based on records. The records are the best evidence.

The Court. Sustained.

Mr. Boggess: May it please the Court, I would like to read the response of Schine to interrogatory No. 3 in regard to Mr. May.

The Court: All right.

Mr. Boggess: The interrogatory is "Names and addresses of all persons who have been directors or officers of the defendant, or persons performing similar functions at any time since August 31st, 1931, indicating in each instance [fol. 152] the office held and the term thereof?" And the answer in regard to Mr. May is "John A. May, address, Gloversville, New York, office held, Comptroller and Director, Vice President. The date of Comptroller and Director is from August 31st, 1931, to date. Date of Vice President is January 17th, 1938," which is subsequent to the time we are talking about.

Mr. Rogers: My objection is not directed to that, may it please the Court. My objection is directed to the fact this witness said he never met Mr. May before, never saw the man, didn't know a thing about him. This Mr. May may be all Mr. Boggess said he is, but we haven't connected that man with the man he had his conversations with.
The Court: What was his full name?
The Witness: L. W. May.
The Court: Are those the same initials as this man's?
Mr. Boggess: No, sir.
Mr. Rogers: This is John A. May, your Honor.
The Court: Well, it was the only May he knew connected with Schine.

Q. Would you know Mr. May if you had seen him?
[fol. 153] A. I think so, seen him here today. He is right over there behind these two lawyers, between these two lawyers (indicating).

Mr. Rogers: Is that the Mr. May you mean?
The Witness: Yes.
Mr. Rogers: Is that the man? I wanted to be sure, that was all.
The Witness: That is the man.

Mr. Boggess:

Q. You say Mr. May called on you?
A. He did.
Q. Tell the conversation that occurred between you and Mr. May at that time.
A. Well, he asked, wanted to know, if we couldn't work out some kind of deal with the Schines. We could continue to manage the theater, could work out a deal with us; and, if we didn't, they were going ahead and build a new theater.

He showed me the sketches. I told him we weren't interested.

Mr. Rogers: Could we get the date of that, Mr. Boggess?
Mr. Boggess: What date?
The Witness: Week after Mr. Custer was there.

Q. When was Mr. Custer there, about when was that?
A. That was in 1937, summer of 1937, before they tore down the old building.
[fol. 154] Q. Was anything else said in the conversation with Mr. May?
A. Nothing more than what I have stated, I guess.
Q. Did Mr. May in his conversation with you refer to Mr. Custer?
A. I think he did. I think Mr. Custer had Mr. May call.

The Court: What?
The Witness: He had Mr. May call. I think Mr. Custer sent Mr. May there.
Mr. Rogers: I move to strike that.
The Court: Not what you think. What the fact was.
The Witness: That is the facts as I remember them.
The Court: That Mr. May said Mr. Custer sent him there?
The Witness: Yes, he referred to Mr. Custer's conversation, I think, when he came in.
Mr. Boggess: I believe under that, your Honor, that would entitle us to show what conversation he had with Mr. Custer.
The Court: Well, I will receive it subject to being stricken out.

By Mr. Boggess:

Q. State the conversation you had with Mr. Custer.
A. Well, he said that he came in and he said that he had sold out to Schines and they had given him a nice position, and he said he wanted to advise us if we had the chance to deal with them, they would treat us right, and Eddie and I [fol. 155] would go ahead and run the theater and he advised me to do this. He just talked in a friendly way.

Mr. Rogers: I move to strike it, may it please the Court.
The Court: I don't think it is very material. He did advise him, nothing wrong in that, except some reasons for it, some threats or something else.

Q. There were no threats? It was just an effort to take over the theater and offering a job. Who was Eddie?

A. Eddie was my son.

The Court: Did you mean to imply he was offered a job in Schine's, and he said himself Custer would get a job?

Q. What did you say in regard to a job for yourself?

A. Custer said he made a good deal with them and he thought Eddie and I could make a good deal with him on turning over the Memorial.

Mr. Rogers: I move to strike it. The witness testified this man spoke to him in a friendly way.

The Witness: I don't know whether you call it friendly or unfriendly.

Mr. Boggess:

Q. Where did that conversation occur?

[fol. 156] A. In my office at the Memorial Theater.

The Court: I don't think it has much substance as far as that is concerned.

Mr. Boggess: The idea, your Honor, as I look at it, is that this was followed by a visit two weeks later by Mr. May.

The Court: What did he say to May?

Mr. Rogers: That is another story.

Mr. Boggess: That there is an effort by Mr. Schine through two of his agents to dispose of the competition of the Memorial Theater in Mt. Vernon.

The Court: Mere advice and selling is not of itself anything, doesn't amount to anything, nothing wrong about that.

Mr. Boggess: Nothing wrong with that, but the broaching the matter of buying the theater, that is a step toward getting a monopoly in Mt. Vernon.

The Court: I don't think the mere advice to tell him he had better sell or asking him to sell, that standing alone would not amount to anything. I will receive the testimony.

Mr. Rogers: Subject to reservation, may it please the Court.

The Court: Yes.

[fol. 157-158] By Mr. Boggess:

Q. Anything else said on that occasion, Mr. Long?
A. I don't remember.

The Court: Well, we will suspend at this time until 10:30 tomorrow morning.

(Whereupon, at 4:15 o'clock p. m., a recess was taken until Thursday, June 1st, 1944, at 10:30 o'clock a. m.)

[fol. 159] UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF NEW YORK

Civil Action No. 223.

UNITED STATES OF AMERICA,

vs.

SCHINE CHAIN THEATRES, INC., et al., Defendants.

Trial continued before the Honorable John Knight, United States District Judge, without a Jury, United States Court House, Buffalo, New York, Thursday, June 1, 1944 at 10:30 o'clock a. m.

APPEARANCES:

Robert L. Wright, Esq., John F. Clagett, Esq., Harold L. Schilz, Esq., Albert Boggess, Esq., Special Assistants to the Attorney General. Philip Marcus, Esq., and Milton Kallis, Esq., in behalf of the United States of America.

Edmund McCarthy, Esq., Attorney of Record; Willard S. McKay, Esq., Saul E. Rogers, Esq., Arthur J. Homans, Esq., Howard M. Antevil, Esq., and Seth Richardson, Esq., of Counsel for Defendants.

[fol. 160] Proceedings of Thursday, June 1, 1944, 10:30 a. m.

Appearances: Same as previously noted, and Seth Richardson, Esq., of Counsel for Defendants.

Mr. McKay: If the Court please, defendants' Counsel have conferred and we have decided to reserve the opening of our case.

The Court: Very well.

Mr. Boggess: May it please the Court, on yesterday we had marked for identification as Exhibit No. 2 a letter which I want to offer in evidence. It is a letter dated January 15, 1935, signed by Mr. Long, to Metro.

Mr. Rogers: No objection.

(Thereupon the letter referred to, previously marked as Plaintiff's Exhibit No. 2 for identification, was received in evidence.)

Mr. Boggess: I will read the letter. It reads: "January 15, 1935. Cadiz, Ohio.
Metro-Goldwyn-Mayer Distributing Corporation,
Cleveland, Ohio.

Attention of Manager.

Dear Sir: Please advise as soon as possible if you can furnish us second run feature product for our Memorial Theatre at Mt. Vernon, Ohio. We will be in the market [fol. 161] for product commencing for dating after March 1st. Give release dates and all other information on available subjects.

Yours truly, E. W. Long, Manager,
Memorial Theatre,
Mt. Vernon, Ohio."

Mr. Boggess: May it please the Court, we wish to introduce a contract, which we have not with us. It is a contract which was subpoenaed in our subpoena duces tecum to Metro-Goldwyn-Mayer, a second run contract which that company made with Mr. Long, dated March 20, 1936. We are informed that that is on the way here, but we just want to have the privilege of introducing it when it arrives.

The Court: Is this a copy here that you have?

Mr. Boggess: No, I haven't it at all.

Mr. Rogers: That is subject to proper objection?

The Court: Yes. Are you going to retain the witness here or do you wish to obviate the necessity of that?

Mr. Boggess: We are hoping that it arrives today.

The Court: The order does not make any difference.

[fol. 162] EMERSON W. LONG resumed the stand in behalf of the Plaintiff, having been previously sworn, was examined and testified further as follows:

Direct examination.

By Mr. Boggess:

Q. Mr. Long, on yesterday you testified in regard to a second run from Metro-Goldwyn-Mayer for the season of 1937-1938, in which in the end you received a split contract. I will ask you to look at this contract and state the season.

A. This is for the season of 1938-1939.

Q. Look at the signature and see if that is your signature.

A. That is my signature.

Q. Look at the date.

A. May 31, 1938.

Mr. McKay: Is that the approved date or the application date, Mr. Boggess?

Mr. Boggess: That is the approved date. The application date is May 16th.

[fol. 163] Q. With reference to the contract in which you made a split, Mr. Long, did you get a split for one year's product with Metro's second run or for two years and two separate contracts?

Mr. Rogers: May it please the Court, the contracts are the best evidence. Let us have the contract.

Mr. Boggess: I am asking for the facts.

Mr. Rogers: He is asking for the contents of a contract to which I object.

Mr. Boggess: I omit the words "second run". I don't know of anything else.

Mr. Rogers: The term of the contract.

The Court: Have you got the contract?

Mr. Boggess: We have one of them, but not the other.

The Court: All right.

By Mr. Boggess:

Q. Looking at the date of the contract that I just showed you, I will ask you if that refreshes your memory in regard to your request for the 1937-1938 product of Metro?

A. We had parts of those two years, split contract for the two seasons.

Mr. Rogers: I move to strike it as not responsive. He merely asked for a date.

[fol. 164] The Court: Strike it out. Answer the question.

The Witness: I didn't understand it.

The Court: Read the question.

(Last question read.)

Mr. Boggess:

Q. I ask you first, do you remember the date?

A. I remember the date very well. I was there with Mr. Drew and that was signed and handed to me.

Mr. Rogers: I move to strike that as not responsive.

The Court: Overruled.

Q. Now, with this date in mind, I will ask you when you asked Mr. Drew for the second-run contract of Metro for the season 1937-1938?

A. I don't get it, exactly what you mean.

Q. You stated yesterday that you had had 1935-1936 and 1936-1937 second-run products of Metro?

A. Yes.

Q. In regard to the ensuing season, 1937-1938, you mentioned asking Mr. Drew for that product?

A. Yes, we asked him for it.

Q. When did you ask for that product?

A. Well, that was in the fall.

Q. What fall?

A. Of '38. What is the date of that, '38?

Q. The date of this is May 31st, 1938.

[fol. 165] The Court: He testified yesterday that—you said first '37-'38 contract was sold later. Mr. Drew said it was open. He got a part signed, that is referring to the spring of 1937.

Mr. Boggess: Yes, that is what he said yesterday.

The Witness: We asked for one block of pictures.

Mr. Rogers: Pardon me, that is not responsive to any question before this witness. I move to strike it out.

The Court: Strike it out. At the time when you had this talk with Drew—

Mr. Boggess: For the season 1937-1938.

The Court: September, 1937, the season 1937-1938. Does that refresh your recollection?

The Witness: Yes, that refreshes my recollection, being there and talking to him when I was making this contract. I asked him for the next block of pictures for the next season.

Q. What season was that, Mr. Long?

A. That would be the following year following that contract.

The Court: The date of the contract?

Mr. Boggess: The date of the contract is May 31st, 1938.

The Court: '38 or '37?

Mr. Boggess: My question was the '37-'38 contract.

[fol. 166] Q. I will ask you this, if I may, Mr. Long. Are you familiar with the motion picture seasons, the time which each season embraces?

A. The season starts in September and it is the first three or four months of the year and the next year through for eight months, generally figuring 12 months, three one year and eight in the following.

Q. In other words, it begins September 1st of one year and ends——

A. August 31st of the next.

Q. Now, Mr. Long, you have testified that you had second-run for the '35-'36, '36-'37 motion picture season, coming down to the motion picture season of '37-'38. I will ask what you did in regard to securing the second-run product from Metro for that season?

A. Well, that is when we asked Mr. Drew for it, and I think that is when he told us it was sold.

Q. I am trying to locate the time, about the time that you made that request of Mr. Drew?

A. Well, the expiration of the contract that we had, shortly after.

Q. The last contract that you had was it '36-'37 season?

A. Yes.

Q. What would be the expiration of the '36-'37 season?

A. That would be the first of September.

[fol. 167] Q. What year?

A. '37.

The Court: You went over this yesterday.

Mr. Boggess: I went over it yesterday but I made an obvious error as shown by this contract. We did go over it, but he stated it happened in the spring of 1937.

The Court: He does now.

Mr. Boggess: He hasn't yet stated where and when.

The Court: We can get at that more simply, can't we?

Mr. Rogers: I thought he answered it was the fall of 1938 a few moments ago.

The Court: You testified yesterday, Mr. Long, they told you in '37-'38, the second run was sold to Schine. The spring of 1937 Drew said '37-'38 run was sold. Later said it was open and "We got part with Schine". You claim that was '38 rather than '37 for the year commencing '38, is that right?

The Witness: I think so, yes.

The Court: All right. You are now referring to the second run?

Mr. Boggess: Let me get his answer on that.

Q. Your answer in regard to when you made the request to Mr. Drew was when?

[fol. 168] A. In '38 instead of '37.

Q. You say that he told you it was sold to Schine. What happened after that in regard to this product, in regard to your buying it?

A. Later on a trip to Mr. Drew's office, he informed us it hadn't been sold, it was still open.

Q. What followed then, in regard to that product?

The Court: We already covered that. He testified he later said it was open and got a part from Schine.

Mr. Boggess: The only addition I was going to show that in regard to two years, I believe he has testified '37-'38.

The Court: He testified now to '38, that fixes the time.

Mr. Boggess: All right, your Honor. Your Honor, on yesterday we had marked for identification as Government's Exhibit No. 3 a letter dated January 15th, 1935, signed by E. W. Long, addressed to Paramount Pictures Corporation, which we wish to offer in evidence.

Mr. Rogers: So far as this letter is concerned, I see nothing in here objectionable to the letter, but to preserve the position of the defendants I wish to enter an objection that it is not binding on these defendants.

[fol. 169] The Court: There is no question about it being received by the addressee?

Mr. Rogers: No.

The Court: It is received in evidence.

(Letter dated January 15, 1935, previously marked for identification as Government's Exhibit No. 3 was received in evidence.)

Mr. Boggess: The letter reads, as follows: "Cadiz, Ohio, January 15th, 1935." It is addressed to "Paramount Pictures, Corp., East—5th Street, Cleveland, Ohio. Attention of Manager.

Dear Sir: Please advise, as soon as possible, if you can furnish us second-run features for our Memorial Theater at Mt. Vernon, Ohio. We will be in the market for products commencing March 1st. Give release dates and all information available on all subjects. Yours truly, E. W. Long, Manager, Memorial Theater, Mt. Vernon, Ohio."

The Court: That is to whom?

Mr. Boggess: That is to Paramount.

The Court: I thought you said that the exhibit was Exhibit 2.

Mr. Boggess: This is 3 and the Exhibit 2 was the letter to Metro.

[fol. 170] The Court: All right.

By Mr. Boggess:

Q. Mr. Long, did you make any request at a later time to Paramount for their second-run product?

A. We was in their office quite frequently at Columbus, after that once every month or two, in conference with Mr. Duke Clark, the Branch Manager, but was never able to secure any product.

Q. Well, we will see with reference to the year 1936. Did you make any request of Mr. Clark or Paramount?

A. We did.

Q. For their second-run product?

A. We did.

Mr. Rogers: May I have the season specified, Mr. Boggess.

The Court: What is that?

Mr. Rogers: I wish to have the season specified in which he requested certain products.

The Court: Yes, and what he said.

Mr. Rogers: And what he said.

The Court: That is your conclusion.

By Mr. Boggess:

Q. What was the season?

A. '35-'36.

Q. '35-'36?

A. 1935-1836.

[fol. 171] The Court: Both years or for the year 1935?

Mr. Boggess: He means the season.

The Witness: The season. It takes part of each year.

Mr. Boggess: The season 1935-1936.

[fol. 172] Q. Now, Mr. Long, tell the conversation that occurred, as well as you remember.

Mr. Rogers: May we have the date of the conversation, please, and with whom?

Q. And about when that happened?

A. Well, it was in the fall of the year, with Mr. Duke Clark.

Mr. Rogers: The fall of which year?

The Witness: Of 1935.

The Court: Before the opening of the season, you mean, before the opening of the 1935-1936 season?

The Witness: No, it was after the opening.

By Mr. Boggess:

Q. My question was in the year 1936 did you make any request?

A. We were in the Paramount offices every year that we were in Mt. Vernon.

Mr. Rogers: Pardon me for interrupting. I move to strike that.

The Court: Did you make any request of Mr. Clark for the second run? That would be for 1937-1838, wouldn't it?

Mr. Rogers: That is what I wanted to get. For what year was that, for which season? That is what I would like to get, please.

A. We requested for 1936——

Q. Wait a minute. He has suggested that I include the year. That is for the season 1935-1936?

[fol. 173] A. Yes, sir, it was.

Q. You did?

A. I did.

Q. Tell the Court about the time and with whom you had that conversation, and the purport of it.

A. Well, it was late in the fall, and the talk was with Mr. Clark, Duke Clark? I was in the offices quite frequently. I can't remember any exact dates. We kept asking for their products.

Mr. Rogers: I don't like to interrupt, but he said "late in the fall". Late in the fall of which year?

Mr. Boggess: I asked him about 1936.

Mr. Rogers: Late in the fall of 1936 he was talking about product for 1935-1936; is that what you mean?

The Court: That could not be.

The Witness: It would be for 1937-1938.

Mr. Rogers: I am terribly confused.

The Court: You were talking about 1935, as I understood you. That would be after the commencement of the season of 1935-1936?

The Witness: Yes, sir.

By Mr. Boggess:

Q. When did you ask Paramount, regardless of the year, as far as my question is concerned, when did you ask Paramount or their branch manager, for the 1935-1936 [fol. 174] product?

Mr. Rogers: I object to that question. Your question is predicated on the assumption of regardless of the year. We are entitled to have it definitely fixed as to when it was.

Mr. Boggess: I am discarding the question of the year. Prior to that time I had said when in the year 1936. My question, as I am reframing it, is when did you make a request of Paramount, or one of its employees, for the 1935-1936 second run product.

A. Well, it would be at the time that it was released, the opening of 1935, September, 1935.

The Court: Do you mean at that time or before it was released?

The Witness: It might have been before.

The Court: You said that the season commences in September?

The Witness: Yes, sir.

The Court: Prior to September or subsequent to September?

The Witness: It was after September.

The Court: That is 1935?

The Witness: Yes, sir.

By Mr. Boggess:

Q. Then after September you had this conversation. What was the conversation that you had with Mr. Clark?

A. We asked him for product, second run product for Mt. [fol. 175] Vernon, and we were informed that it was not open, they couldn't sell it to us.

Mr. Rogers: May I ask that the witness specify product for which season he asked to contract?

Mr. Boggess: I think the question embraced that.

The Court: You said this was after the season commenced, but you are referring now to the request for second run pictures of Paramount after September, 1935?

The Witness: Yes, the second runs were six months' old before we bought them for second run. They would be old, you see.

The Court: All right.

The Witness: It was after the season was opened before they would be available.

By Mr. Boggess:

Q. You mentioned awhile ago going frequently to the Exchange. Where was this Paramount Exchange?

A. The branch office was on 5th Street in Columbus, Ohio.

Q. You mentioned going there frequently?

A. Up to 1938.

Q. Did you just make this request for the second year product on one occasion or more than one occasion?

A. Several occasions.

Q. With reference to the second run product of 1936——

[fol. 176] Mr. Rogers: Pardon me. May we have the dates of these several occasions on which he made this request, and of whom he made the request?

The Court: I think he said he could not tell just the dates.

The Witness: I am unable to give the exact dates.

The Court: Covering what period of time?

The Witness: Covering the period of time from 1935 to 1938, as long as the Exchange or the branch was in Columbus. They moved to Cleveland after 1938.

Mr. Rogers: I think if it extends over a period as extensive as that we ought to have some testimony with some degree of certainty and exactitude.

The Court: You started to tell us that they told you you could not have the second run product in some conversation you said after September, 1935. You testified you had on several occasions talked with the representative of Paramount later on. Fix the time as near as you can when these talks took place, the year. It would not do just to say over a period of time. That is very indefinite, over four or five years, 1935 to 1938.

Mr. Boggess: Do you wish me to ask another question?

The Court: Yes.

[fol. 177] The Witness: I was in the office quite frequently, nearly every month. Columbus was close to Mt. Vernon.

The Court: You mean every month after September, 1935, you requested a second run picture?

The Witness: Yes, three or four times a year at least. We were playing shorts from them and we had to go over there to make dates.

Q. Did you ever get any second run product from Paramount, any contracts?

A. We never did.

Mr. Boggess: Your Honor, we are in the same position with regard to two contracts which Paramount executed with Schine, second runs, for the seasons of 1938 and 1939 and 1939 and 1940. We requested those contracts and we expect them to be here today, and when they come we expect to introduce them.

The Court: This witness has not testified to anything subsequent to 1938. He said up to 1938.

Mr. Boggess: These are contracts with which he had nothing to do, contracts with Schine.

The Court: I understand that. But I mean they are not within the period as to which he just testified. All right.

Q. With reference to the product for 1938 and 1939, Mr. [fol. 178] Long, did you request second run product from Paramount for that year, and if you answer you did state approximately the time and the place and with whom.

A. Well, the Paramount Exchange or branch had been moved to Cleveland, I think, at the close of 1938, and we contacted Mr. Clark in Cleveland, the same manager they had, for the 1938 and 1939 product, and we were unable to secure any from them.

Mr. Rogers: I think we ought to have the date of that conversation fixed.

The Witness: I am unable to give the exact dates because we were in Cleveland quite as frequently as Columbus.

The Court: Approximately when?

The Witness: Well, it was in the fall of 1938, I would say. We were up there very frequently in the winter.

By Mr. Boggess:

Q. Mr. Long, did you make any effort to get second run product from the 20th Century-Fox Company for the 1935-1936 season?

A. We did every season we were in Mt. Vernon.

Mr. Rogers: I move to strike "every season".

The Court: Strike it out.

Q. Will you please state what you did, stating the time as near as you can and the place where any conversation [fol. 179] may have occurred and with whom they occurred, in which you asked for the 1935-1936 second run product of Fox?

A. It was in Mr. Schmertz's office, the Branch Manager. I contacted him in regard to product and was unable to get any.

Q. You mentioned in Mr. Schmertz's office. In what city was that?

A. Cleveland.

Q. Can you state the purport of the conversation?

Mr. Rogers: May we have the date set first, Mr. Boggess?

Q. Approximately when did you have this conversation?

A. Well, I am unable to give the exact date. We were in there just like Paramount. Every time we were in Cleveland we were in his office when he was there.

Q. How many distributors had their branch exchanges in Cleveland of the major distributors?

A. They were all there after 1938, all the Big Five and Little Three as they call them.

Q. About how many times a year would you say that you made visits to Cleveland in regard to product?

A. It would average once every two months at least.

Mr. Rogers: May we have those months specified, please?

Mr. Boggess: He says once in every two months during the year. I think it does not make any difference what two months.

[fol. 180] The Court: Can you specify any more particularly than that?

The Witness: I cannot give the dates because I have no way of checking up on them without I refer to contracts or any correspondence.

The Court: Proceed.

Q. Did you get the second run product for 1935-1936 from Fox?

A. We did not.

Q. With reference to the motion picture season of 1936 and 1937 did you make a request of Fox for their second run product, stating the time and place and with whom?

A. We did the same as with the previous season. We made the same request and contacted the same man.

Q. What was his answer?

Mr. Rogers: May we get the date, please?

A. The answer was the same, he was unable to get any.

Q. About the date. Mr. Rogers has asked about the date or approximate date on which you asked for the 1936-1937 product.

A. Well, it was in the fall, after the stuff was available, after it was six months old, after the first release, the first run. It was generally after the stuff was available that we made the application.

The Court: I thought that these applications were made prior to the commencement of the season. Does that refer only to first run pictures?

[fol. 181] A. That was for second.

The Court: I mean, you speak about the season. You say the practice is to make the application prior to the commencement of the season for first run pictures. Does that refer to second run?

The Witness: No, they never sold us second run until that had been run six months. That was generally the practice.

By Mr. Boggess:

Q. With reference to the seasons, the product that is shown at the beginning and from then on, at the beginning of the motion picture season, is that the first run product or the second run product?

A. Well, it could be either one. Sometimes the second run is contracted with the first run with some companies. sometimes.

The Court: These talks, you say, were after September?

The Witness: Yes, after September.

The Court: But for runs during the current year?

The Witness: Yes, some of the applications would be for older pictures. Maybe some of the second runs would be two or three years old. We asked for some of that stuff. It didn't apply exactly to any season for the second run.

Q. I don't recall if I got your answer in regard to the [fol. 182] 1936-1937 product or not.

A. Yes, it was the same as the year before, we did not get any product.

Q. With reference to the season of 1937-1938 did you ask for the second run product for that season?

A. We did.

Q. State the time, as near as you can, and the place and with whom?

A. Well, it was Mr. Schmertz and shortly after the opening of the season, after the pictures had been played awhile first run.

Q. Shortly after the 1937-1938 season?

A. Yes, sir.

Mr. Rogers: May we get an approximate date on it?

Mr. Boggess: He says that is as near as he can tell.

The Court: Ordinarily how long would the first run cover the period?

The Witness: We were playing second runs from 45 to 90 days after the first run. The contracts varied. There were no two exactly alike. It is too indefinite to make a statement.

Mr. Rogers: My question was directed to when the conversation was.

The Court: A month or two months after?

The Witness: Yes, a month or two months after.

[fol. 183] Mr. Rogers: That would be a month or two months after September 1st, I take it.

By Mr. Rogers:

Q. If I understand you, the contract can be made at any time, but the product is exhibited after the first run product?

A. Yes, that is right.

Q. Did you make a similar request for the 1938-1939 season?

A. I did.

Q. With the same party?

A. The same party.

Q. What was the answer?

A. We were unable to secure anything.

Q. About what date did you make it?

A. It would be in the fall after the season was open, after the stuff was available, after the first run had been played.

Q. The fall of what year?

A. The fall of 1938.

Q. I ask you to look at that (showing letter to witness). Is that your signature?

A. It is.

Mr. Boggess: I offer it in evidence.

Mr. Rogers: My objection to this is that it is not binding on the defendant Schine.

[fol. 184] The Court: Is it marked for identification?

Mr. Boggess: No, I was going to offer it in evidence.

The Court: Mark it first for identification.

(The photostatic copy of letter of August 23, 1926, referred to was marked as Government's Exhibit No. 4 for identification.)

Mr. Boggess: I offer it in evidence.

The Court: Received.

(Thereupon the photostatic copy of letter previously marked as Government's Exhibit No. 5 for identification was received in evidence.)

Q. Is the signature to that letter your signature, Mr. Long (showing letter to witness)?

A. It is.

Mr. Boggess: I offer it in evidence.

Mr. Rogers: I object to it on the same ground, not binding on the defendants.

The Court: Received.

(Thereupon the letter dated August 5, 1937, from E. W. Long, Mgr., to I. J. Schmertz, referred to was received in evidence and marked Government's Exhibit No. 5.)

Q. Mr. Long, with reference to the second run product of R. K. O. what efforts, if any, did you make toward securing that product from their distributor, telling the [fol. 185] time and the place and with whom you had any conversation?

A. Well, we met them in their offices. The manager there was Mr. Greenblat. We contacted him every season. He was in Mt. Vernon when the product was open. We were never able to secure any product.

Mr. Rogers: I move to strike that, and I ask for evidence as to time.

The Court: Strike it out. It is a conclusion of the witness. You will have to state what was said to you by the agent.

Q. Did [illegible] ask for the second run product of R. K. O.? Was your request made at Mt. Vernon or some other place?

A. At Cleveland.

Q. About what time?

A. In the fall of 1935.

Mr. Rogers: Which product are we speaking about?

Q. The product of what season?

A. 1935-1936.

Q. With whom did you have that conversation?

A. Mr. Greenblat was the branch manager.

Q. What was Mr. Greenblat's title?

A. Branch manager.

Q. Tell the result of that conversation.

The Court: What did he say, not the result of the conversation. Tell what he said.

[fol. 186] A. He said they were unable to sell us any.

Q. Now, with regard to the product——

Mr. Rogers: Mr. Long's voice dropped. Did I understand him to say he had that conversation in the fall of 1935?

The Court: Yes, that is what he said.

Q. With reference to the second run product of R. K. O. for 1936-1937, did you make any request—just answer that yes or no—for that product?

A. I did.

Q. When and where and with whom did you make that request?

A. With the same man, Mr. Greenblat, and also to their salesmen on the road for these companies who were soliciting. They would come in and solicit business from us.

Q. With reference to Mr. Greenblat, where did you have your conversation with him?

A. In the Cleveland office of the R. K. O.

Q. Can you give us any idea of the time when you had that conversation?

A. I can't give you any specified dates. It was generally when the stuff was available, late in the fall.

Q. Late in the fall of what year?

A. That would be the fall of 1936.

Q. What did Mr. Greenblat tell you in that conversation in regard to whether or not you could have it?

[fol. 187] A. Well, he promised once, I remember, that he would take it up with New York; but there was no result; we never got anything from them.

Q. You never got the product?

A. Never got the product, no.

Q. You mentioned also regarding the salesman. Do you mean the R. K. O. salesman?

A. The R. K. O. salesman came to our place in Mt. Vernon occasionally, but we never could make any contract with him.

Q. Where did you make those requests?

A. That would be in the office of the Mt. Vernon theatre, the Memorial.

The Court: Why would they come to your office if they wouldn't sell you any of the product?

The Witness: They did that quite frequently. The Paramount man was in there every month, and we never did any business with him. Nearly every month we were in business the Paramount man came in, but we never did any business. He said he would take it up with his Company, but that is as far as we got. We were buying short subjects.

The Court: From him?

The Witness: From all of them. It was to get dates. [fol. 188] That was the reason they came in more than anything else.

Mr. Boggess:

Q. By shorts you mean one reel pictures?

A. One or two reel products. We played them from nearly all the producers.

Q. With reference to the product of 1937-1938, second run, what effort did you make to secure that product from R. K. O., stating the time and the place?

A. It was in the fall of 1937 after the product was available that we called at their offices in Cleveland, Mr. Greenblat, but we were unable to get any contract. We never had a contract with them.

Q. With reference to the season of 1938-1939?

A. The same thing. We contacted Mr. Greenblat and were unable to get any of the product.

Mr. Rogers: May we have the date of that?

The Witness: In the fall of 1938, after the season opened.

The Court: You speak of "we". Who do you mean by that?

The Witness: My son sometimes. We worked together. He was my assistant. He would be in Cleveland and go with me sometimes.

Mr. Rogers: We cannot hear that.

Q. Repeat that.

A. I said my son sometimes went with me. That is the [fol. 189] reason I used the word "we". That covers what the Court requested, I think.

Q. Mr. Long, did you receive that letter (handing letter to witness)?

A. I did.

Q. Through the mail?

A. Through the mail, yes.

Mr. Rogers: My objection to this is two-fold. One is that there has been no sufficient identification of the signature of Mr. McEvoy, or that this letter emanated from Mr. McEvoy, and further on the ground that it is not binding on the defendants. It purports to be a letter written by Mr. McEvoy to Mr. Long.

The Court: Is there any question raised about the signature?

Mr. Rogers: Yes.

Mr. McKay: Your Honor, I know Mr. McEvoy. I won't say it is not his handwriting but it does not look like it to me.

Mr. Rogers: I do not think it is his signature.

Mr. Wright: It was produced, of course, from the files. In any event, I do not suppose it matters whether Mr. McEvoy himself wrote that signature on there. I suppose his secretary or somebody else may have written it. There [fol. 190] is not any contention that the letter is a forgery, is there?

Mr. Rogers: There is not a contention, but there must be proof that Mr. McEvoy was the man who caused this letter to be written. Somebody might have undertaken to write this letter in his behalf and sign his signature. I don't know. I object to it on the ground that its authenticity has not been established nor has the authenticity of Mr. McEvoy been established.

The Court: Objection overruled.

Mr. Rogers: Will that be subject to connection?

The Court: Yes.

(The copy of letter of September 13, 1935, E. L. McEvoy to E. W. Long, referred to, was received in evidence and marked Government's Exhibit No. 6.)

Q. Did you receive this letter from the mails, Mr. Long (showing letter to witness)?

A. I did.

Mr. Rogers: May it please the Court, I wish to note the same objection on the ground that there has been no authentication of the signature of Mr. McEvoy, and on the ground [fol. 191] that it is not binding on the defendant.

The Court: Is there proof that he was the manager of the office?

Mr. Boggess: We had some proof yesterday. He is one of the gentlemen that Mr. Long testified he called on in the general offices of R. K. O. in New York City.

The Court: I will receive it.

(Thereupon the copy of letter of May 21, 1936, E. L. McEvoy to E. W. Long, referred to, was received in evidence and marked Government's Exhibit No. 7.)

Q. Mr. Long, you stated yesterday that your lease was for five years on the Memorial?

A. The original lease was.

Q. At the conclusion of that lease did you retain possession of the Memorial? In other words, did you make another lease?

A. We made a new lease for one year with an option for two. We stayed the one year.

Q. How was that lease determined? Was it just awarded to you?

A. No, they asked for bids. There were bids taken. It was advertised and bids taken as it had been five years before when we opened the house.

Q. And you were successful in getting the lease?

A. We were successful in getting the lease that year.

Q. I ask you if that is your signature (showing letter to witness)?

A. It is.

[fol. 192] Mr. Rogers: My only objection is it is not binding on the defendants.

The Court: What is the materiality of it?

Mr. Boggess: The materiality is this: The part of the lease that we intended to introduce is one paragraph, giving Mr. Long an option of one year. He stated two years. But it is an option for one year. And we intend to follow this up by showing he gave notice of this option, but did not receive—was unable to obtain renewal of the lease for one year. The materiality is this: That he did not discontinue his operation of the theater of his own free will, that he lost his lease was the reason he discontinued and to show who did get the lease.

The Court: The first lease ran for five years. Have you got the lease for one year more?

Mr. Boggess: Yes, the first lease expired December 31, 1939, five years after its date. This is a lease for an additional year for the year 1940, and this lease is this option for one year which is given to him with certain conditions.

The Court: Do you mean he did not get it after the [fol. 193] expiration of five years?

Mr. Boggess: He got this lease, the one-year lease at the end of five years.

The Court: Six years. That gives him the option for another year, does it?

Mr. Boggess: Yes, sir. This is not the five-year lease.

The Court: I understand.

Mr. Boggess: This is the one-year lease which gives him an option of an additional year.

The Court: It gave him the option. Did he exercise it?

Mr. Boggess: I am going to offer evidence that he did notify them—take advantage of his option. I will read it, if this is admitted.

The Court: I will receive the lease, anyway. You will have to follow it up to show if there is any connection.

Mr. Boggess: This is a lease dated December 31, 1939, between the Board of Trustees of the Memorial Building of Knox County, Ohio, first parties, and E. W. Long, second party.

Mr. Rogers: May it please the Court, in order to save the record, instead of marking this voluminous document, inasmuch as Mr. Boggess only wants one paragraph in evidence, may we have that one paragraph read into the record?

[fol. 194] Mr. Boggess: That is agreeable.

The Court: All right.

(Thereupon the first paragraph on page 2 of the lease dated December 31, 1939, referred to, was received in evidence and marked as Government's Exhibit No. 8.)

Mr. Boggess: Page 2 of the lease: "Paragraph (d) First party grants to second party the right, the second party's option, but upon not less than three months prior written notice by second party to first party, to renew this lease for an additional and further term, providing terms that may be agreed upon, of one year from and after the expiration of the initial term thereof."

The Court: All right.

Mr. Boggess:

Q. Is that your signature, Mr. Long (showing letter to witness)?

A. It is.

Mr. Rogers: May it please the Court, I object to the admission of this letter on the following grounds: 1. That by the terms of paragraph "d" that has been read in evidence, this witness did not have an option as claimed, [fol. 195] because by the very language of that clause it says, "The first party grants to second party,"—the first party being the grantor and second party the witness,—"The right, the second party's option but upon not less than three months prior written notice by the second party to the first party, to renew this lease for an additional and further term, providing terms may be agreed upon of one year from and after the expiration of the initial term thereof."

Now, that is merely the right to negotiate for the right for a new lease for one year, but not the option for one year.

The second objection is that whatever may be the relationship between this witness and the landlords under that lease, whatever complaint he may have against them is surely not competent, is not material and certainly not binding on these defendants.

The Court: It wouldn't be unless they were connected in some way with the refusal to renew.

Mr. Rogers: Yes, sir.

The Court: Of course, on the question of this—is this letter supposed to be in?

[fol. 196] Mr. Rogers: Yes, sir.

The Court: It may be competent, it may be followed up by showing negotiations bearing on the terms of a new lease.

Mr. Rogers: If received at all, your Honor would receive it subject to proper connection.

The Court: Yes.

Mr. Boggess: It was not my purpose to go into the equities of either side of the lease. My purpose is to show that he gave Mr. Long——

The Court: That is the only part——

Mr. Boggess: I am going ahead and ask him to whom he delivered this.

The Court: All right. Is this a copy or is this the original?

Mr. Boggess: This is the original (handing letter referred to to the Court).

The Court: I will receive it. Of course, the question raised by counsel is that the renewal applies for just the term, and whether it is an option or not an option.

Mr. Boggess: My object is to show it was his purpose to continue in operation the Memorial Theater.

The Court: Of course, you have to show some connection with the construction of that intention.
[fol. 197] Received.

(Thereupon the letter dated September 30th, 1940, which was referred to, was marked as Government's Exhibit No. 9 in evidence.)

The Court: Is there any question about the delivery?

Mr. Boggess: I was just going to ask him to whom he delivered this option.

The Court: All right.

By the Court:

Q. To whom did you deliver that and when?

A. It was delivered to Mr. Sperry.

Q. Who is he?

A. A member of the Board, a trustee.

Q. When?

A. Approximately the date of the letter, at the time it was written.

The Court: Received. You say a member of the Board, you mean a member of the Board of Trustees?

The Witness: A member of the Board of Trustees who built the theater.

Mr. Rogers: There must be some little error, because this letter is marked "Copy."

Mr. Boggess: I told you this was the original. I didn't notice the word "Copy" up there. Mr. Sperry is in the [fol. 198] room. His testimony will follow Mr. Long's and we can make that connection.

The Court: You can't get the original from the Trustees' office?

Mr. Boggess: I presume so. I don't know whether he has it with him or not. He lives at Mt. Vernon.

The Court: Of course, there are other papers produced here. I don't want to have any question.

Mr. Boggess: You want me to go ahead and show delivery of the option?

The Court: Is there an objection?

Mr. Rogers: In view of this situation I must then press the objection that this is not the original, and this could not have been delivered to the trustees and has constantly been in the possession of this witness.

The Court: Sustained.

Mr. Boggess:

Q. Mr. Long, after the opening of the Vernon Theater, which I believe you stated yesterday opened in April, 1938, what was the admission price to that theater between then and the time you ceased operation of the Memorial?

A. Of the Vernon?

Q. Yes, sir.

A. 35 cents most of the time. They had 25 cents balcony.

[fol. 199] The Court: You told us about that yesterday. He has been over that yesterday. The Mt. Vernon opened and the price cut from 20 to 15.

Mr. Boggess: That was the Vine, your Honor, we discussed then, the Vine.

The Court: What are you asking now?

Mr. Boggess: Just asking the admission price of the Vernon.

The Court: All right.

By Mr. Boggess:

Q. Mr. Long, when did your last lease expire?

A. Prior to 1940.

Q. When did you cease operation of your theater?

A. We closed the theater with exception of a date we had for a local contract, not pictures, on December 10th.

The Court: 1940?

The Witness: 1940, December 10th.

By Mr. Boggess:

Q. What year?

A. 1940, it would be.

Q. Why didn't you continue operating your theater for the remaining 21 days of the year?

Mr. Rogers: That is immaterial, may it please the Court.

The Court: I will let him answer. The answer cannot be a conclusion. He will have to state what the facts were.

[fol. 200] Q. What was your reason, Mr. Long?

A. The reason was we were unable to secure product that was attractive enough that we could afford to keep open.

Mr. Boggess: That is all.

Cross-examination.

By Mr. Rogers:

Q. When did you start operating your theater at Cadiz, Ohio?

A. 1924.

Q. And you operated that theater continuously since then up to what date?

A. It is still operating up to the present time.

Q. You are still operating it?

A. My daughter is Assistant Manager. I give very little personal attention to it now.

Q. Up to what date did you continue to give personal attention to that theater?

A. I gave personal attention to that theater all the time. I am still manager but I delegate most of the time to my daughter.

Q. Up to what date did you make it your real job, your full-time job?

A. When I went to Mt. Vernon, we took over the management, that was in 1935.

[fol. 201] Q. So far as Cadiz is concerned, you have the only theater in that town, don't you?

A. We didn't have until we opened there.

Q. What other theater did you have in the town after you opened it?

A. There was a second-story building that had been condemned.

Q. Was that in competition with you?

A. It was for a while.

Mr. Wright: I assume, your Honor, he is going into this matter with Mr. Long as his witness. It is beyond the scope of the direct. We don't have any objection to him going into it providing it is understood that he is going into it with him as his witness.

Mr. Rogers: This witness was interrogated about Cadiz in the very early part of his testimony.

The Court: I will receive it.

Mr. Rogers:

Q. How long did that other house remain your competition?

A. I can't remember how long it was, not very long, a couple of years, I think.

Q. From what year to what year?

A. Dropped it in 1926, I would say, the winter of '26.

Q. That is from 1924 to 1926?

[fol. 202] A. Yes.

Q. During that period was your house the first-run house?

Mr. Boggess: Your Honor, I have an objection. The direct ~~testimony on that~~ was just the simple questioning in regard to his experience in the motion picture business and he said after Cadiz, and that was about the extent of the testimony in that regard.

The Court: I think it is proper cross-examination. Objection overruled.

Mr. Rogers: May I have the question, please?

(Last question read.)

The Witness: We had some first-run, and the other house had some first-run. We didn't have it exclusive.

Q. After that competitive house went out of business in 1926, your house in Cadiz was the only house in Cadiz, was it not?

A. No, we ran the other house for a while. We bought and ran the other house, the second-run house.

Q. In other words, in 1926, you bought out the competitive house, didn't you?

A. Yes, we made a deal with them.

Q. How long did you run that competitive house after you bought it?

[fol. 203] A. We ran it until it was closed on account of the building being condemned. We ran it less than a year.

Q. You continued to run it then until 1927, is that right?

A. About that. Still, it was late in 1926. We ran it less than a year.

Q. When did you acquire it?

A. Well, we acquired it, they ran about eighteen months, two years after we opened the other theater. I can't give any exact date.

Q. Don't you remember how long you ran that house?

A. We ran it less than a year.

Q. From about when until about when?

A. I can't tell you. I am unable to give you the date.

Q. In addition to acquisition of this other house, you had control of Cadiz, didn't you?

A. Yes, naturally.

Q. After you closed that house down that you acquired, then you again had control of Cadiz, didn't you?

A. Well, we had the only theater there.

Q. That is what I mean. You had the only theater in Cadiz?

A. Yes.

Q. So from 1927 down to the present time, you have operated the only theater in Cadiz, is that right?

A. That is right.

Q. You had the town all to yourselves?

[fol. 204] A. We have another theater, another location there, but we never opened it up.

Q. Whatever happened in that town, one or two theater, you have control of that town?

A. No, I can't say we have control of it.

Q. Is there any other theater?

A. No, but there are other people there and they can build theaters.

Q. I want to get the conditions as they are and not what they might be.

The Court: I think that is sufficient.

Q. Who did the booking for you out in Cadiz?

A. I did the booking mostly.

Q. When you booked your products for Cadiz, where did you go to book your pictures for each respective season?

A. We booked them generally at Cadiz, never went to Cleveland when——

Q. Wherever you booked them, at Cadiz for the season of 1926-1927, when did you book them?

A. Book them or buy them?

Q. Buy them?

A. Buy them as soon as they are offered. They were generally available the summer previous, the last of that year and the next eight months of the next year.

Q. In other words in the summer of 1927 you booked for [fol. 205] the season beginning September 1st, 1927 to August 31st, 1928, is that right?

A. That is right.

Q. Because that product was made available at that time?

A. Yes, first-run product.

Q. First-run product?

A. Yes.

Q. You did that every year continuously, did you not?

A. Yes.

Q. In the summer for the beginning of the succeeding season?

A. Yes, correct.

Q. What picture service do you book in Cadiz, which Companies?

A. We run mostly all the major companies and some independent Western companies. Some years we don't run all of them, but as a rule we run what we can take care of.

Q. As a rule how many of the major companies do you book in Cadiz?

A. We book really all the major companies with the exception of one or two, an occasional year we don't have——

Q. With the exception of one or two you wouldn't book in any particular year, if anybody in Cadiz wanted to see those pictures they would have to go to some other town to see them?

A. Yes, if we didn't run them.

[fol. 206] Q. If you didn't contract for them you didn't get them, is that right?

A. Yes, O. K.

Q. It was, as you say, the practice of these companies to contract and offer for sale their products for the coming year in the summer of the current year. When was it you actually started to really operate the Memorial Theater in Mt. Vernon?

A. Well, we opened there the 31st of December, 1934, yes, beginning of 1935.

Q. Before you took over the operation of that theater you say that you made a bid to the Trustees of Knox County and that the Trustees of Knox County held this property in trust for the county, is that right?

A. That is right.

Q. That was done on advertised bids by the Trustees of Knox County, was it not?

A. It was.

Q. And anybody could come in and bid for that theater, is that right?

A. That is right.

Q. Can you tell me when it was you appeared before the Board of Trustees to make the bid for the lease on that theater?

A. Well, it was prior to—it was a couple of months be- [fol. 207] fore it was to be let and opened in the fall of 1935.

Q. A couple of months before the end of December?

A. Yes.

Q. 1935?

A. 1934, it would be opened the first of '35.

Q. 1934 that would be?

A. Yes.

Q. How did you present your bid, in writing?

A. Yes, we presented our bid in writing.

Q. And at that time did you have any competition on the bid?

A. I think there were 60 or 70 bidders on it. There were quite a number.

Q. And you were the successful bidder?

Mr. Richardson: I didn't understand that. 60 or 70?

The Witness: Yes, quite a number of bidders.

Mr. Rogers:

Q. And you were the successful bidder, is that right?

A. That is right.

Q. As I recall your evidence you said when you were awarded the lease, it was awarded to you on three years fixed with an option for two, is that right?

A. That was the first contract, yes.

Q. You occupied those premises then under that lease from January 1st of 1935 to December of 1939, is that right?

[fol. 208] A. That is right.

Q. When you got your additional one year after that that was from January 1, 1940 to December 31, 1940. Was there another advertising for bids at that time?

A. There was. It was advertised at that time.

Q. Did you again present bids to the Trustees of Knox County?

A. We did.

Q. Did you obtain the theater by competitive bids?

A. Yes, we did.

Q. How many bidders were there at that time, if you remember?

A. There were only two or three, as I remember.

Q. And you succeeded in obtaining the theater on your bid again?

A. I did.

Q. When your term expired in 1940, or shortly prior thereto, was there another advertisement made by the Trustees of Knox County offering the theater again?

A. Yes, there was another advertisement put in.

Q. Did you submit a bid?

A. We didn't. We had exercised our option.

Q. Did you submit a bid?

A. No, we didn't submit a bid. We only exercised our option as we had before.

Q. One moment. You understand that provision in this [fol. 209] lease read into the record, the lease of December 31st, 1939, don't you?

A. Yes, sir.

Q. You understand under that provision you merely had the right to negotiate for the lease?

A. It was the same clause on the lease we had that we exercised two years on the first five-year lease.

Q. One moment. You mean you had the identical clause——

A. I don't know whether it was identical or not.

Q. Please let me finish, Mr. Long. You mean you had substantially or identically the same clause in the prior lease?

A. That is right.

Q. Under that clause you did submit a bid?

A. We——

Q. You did submit a bid, didn't you?

A. We merely called attention to the option and expected it to be continued.

Q. Didn't you tell us a few moments ago, Mr. Long, under that prior lease there was another hearing held by the Board of Trustees that you submitted a bid, and there were about three other competitive bidders and you won out on the bid?

A. That was after the five years expired.

Q. That was for the one year?

[fol. 210] A. For the one year.

Q. You said there was a clause in that prior contract the same as this?

A. Yes. No, we didn't submit any bid for the renewal of the five-year lease?

Q. But you did submit a bid for the renewal of the one year?

A. No, we did not submit a bid for the renewal of the two-year lease.

Q. Let us get back to the first year's lease.

A. We submitted a bid after the five years was up. We only submitted bids twice for the five and for the renewal of one.

Q. You never submitted a bid at the end of that one-year renewal?

A. No, we generally exercised the option as we had before.

Q. When you say you exercised the option as you had before you sent some sort of letter?

A. The letter was read here.

Q. That is what you mean?

A. Yes.

Q. You knew after you sent that letter the Trustees of Knox County advertised again for bids, didn't you?

A. Yes, we did afterwards.

Q. You knew it at the time, didn't you?

A. Yes, we knew it.

[fol. 211] Q. Did you submit any bid?

A. No, we didn't think it was necessary.

Q. Did you appear before the Trustees?

A. We tried to, but never could get a conference. We made several attempts and before we knew anything it was advertised, before we could talk to them.

Q. It was advertised for competitive bidding again?

A. Yes.

Q. And you did not submit a bid, is that right?

A. No, we asked for a conference based on our——

Q. Please.

Mr. Rogers: I move to strike the rest.

The Court: Yes, it is stricken out.

Q. You remember being interrogated by Mr. Boggess yesterday about the termination of your occupancy of this Memorial Theater, don't you?

A. I think so.

Q. Now, do you remember Mr. Boggess asking this question of you and you giving this answer—at page 145—after he questioned you about what you claim was cutting the price of admission on the Vine Theater, after opening of the Vernon, he said, "Did that policy continue until you went out of business?" And your answer was "It did until I had thrown up the theater and the price was put back to 20 cents the same week I shut down my Memorial." Do [fol. 212] you remember making that answer?

A. Yes.

Q. Do you remember saying you threw up the theater?

A. Well, that term——

Q. Do you remember saying that?

A. I don't remember. That is when we closed it.

Q. Please answer my question. Do you remember making that answer?

A. I don't remember anything about the throwing up.

Q. You don't remember having made such an answer?

A. If I made it, that is on the record.

Q. I am reading it to you out of the records. Do you remember making that answer?

A. I don't remember.

Q. You say you don't remember making that answer?

A. I don't remember what I said. That is when I closed the theater.

Q. Do you mean you don't remember what you said yesterday?

Mr. Boggess: He said he does not remember.

The Witness: Used several terms for the same thing there.

Q. I want to know if he remembers what he said. He says he doesn't remember what he said. Does that answer equally apply to other testimony you gave yesterday?

Mr. Boggess: We submit that is an argument, your Honor.

The Court: Let him answer.

[fol. 213] By the Court:

Q. Do you remember any parts of your testimony yesterday?

A. Yes, I think so, yes, but sometimes I might use a different term for the same thing. I think I remember very clearly what I *said* yesterday.

Q. You said yesterday that in December, 1934, you went to M.G.M.'s office and you spoke with Mr. Drew, is that right?

A. Yes, I was there quite frequently.

Q. And that you were seeking first-run product at that time?

A. That is after——

Q. Is that right?

A. Yes, that was in '35, was it?

Q. Wait a moment, will you please. Is that right? I am asking you.

A. What were you asking?

Q. Will you please be patient? Did you ask him for first-run product?

A. Yes, I did in '35 and '36.

Q. You say you asked him for first-run product for '35-'36?

A. Yes, we asked him for first-run every time.

Q. No, I want to know what you asked him for in '34?

A. I might have asked him for both first and second-run.

Q. I don't know what you might have done. Mr. Boggess [fol. 214] made it clear you were talking about first-run products and he was. In December, 1934, is it true that you went to the office of M.G.M. and spoke to Mr. Drew in reference to first-run products for the Memorial Theater?

A. I think that is right. We asked him for first-run the first time we were there.

Q. What year were you asking for that product for?

A. That is the year of the opening.

Q. I am asking you what year. You asked him you wanted first-run product for what season?

A. '35-'36.

Q. You asked him for that in December, 1934?

A. In December, '34, would be for '35 and '36.

Q. One moment now. I want to get this clear and please answer my question clearly and briefly. Do you mean in December, 1934, you went to Mr. Drew and asked him to sell you first-run products of Loew's for the season '35-'36?

A. Yes. We asked him for products. That was before we opened.

Q. I am not asking whether you asked him for products. I am asking you whether you asked him for first-run?

A. Yes.

Q. For the season '35-'36?

A. Yes.

[fol. 215] Q. And that he told you in December, 1934, that the product for the season '35-'36 was already sold to Schine?

A. I think that is right.

Q. Don't you know as a matter of fact, the product for the season '35-'36 was not even offered to exhibitors until the summer of 1935?

A. Well, you twist me up on that.

Q. No, I am not twisting you at all. I just want you to answer my question.

A. Yes, you did. That stuff wouldn't be offered until it was made.

Q. '35-'36 product wasn't offered until May or June of 1935, is that right?

A. That is right.

Q. And yet you claim in December, 1934, he told you that product had already been sold?

A. That should have been '35. '35. That would be an impossibility.

Q. Just a minute. Let us see if we can get this straightened out. Then you say you went to see him in December, '35, to talk about product for '35-'36, first-run?

A. Yes.

Q. First-run?

A. Well, we asked whatever he had that was available. Might have been first, might have been second.

[fol. 216] Mr. Rogers: Will your Honor please ask the witness to be responsive to my question?

The Court: Yes, just answer the question.

Q. What I want to get fixed here, Mr. Long, is which story of yours is correct. You have given us two now, Your first story as given to Mr. Boggess on direct-examination was you went to Loew's, you saw Mr. Drew in December of 1934?

A. Should have been 1935.

Q. Pardon me. Let me finish the question. I am taking your testimony as you gave it to Mr. Boggess. You testified you went to Loew's in December, 1934, spoke about first-run product for your Memorial Theater in Mt. Vernon, Ohio?

A. 1935.

Q. One moment. I will tell you what your testimony is, and you are talking, you were talking about '35-'36 product, is that correct? First run?

A. That would evidently be an error. I couldn't talk about '34—would have to be in '35.

Q. Then your answer is, if that was your testimony that was an error?

A. That was an error, yes, sir.

Q. Now, then, you say you must have gone to him in December, '35 to talk about products for '35-'36?

[fol. 217] A. That would be more reasonable, yes.

Q. Don't you know that the product was made available in May, as you just testified for the May, 1935, for the '35-'36 product?

A. If I didn't have the theater, I didn't get the theater until the fall.

Q. Regardless of when you got the theater, you know that product was made available, first-run, in May of 1935?

A. It might have been.

Q. Don't you know that?

A. I couldn't say. I wasn't after it.

Q. When you bought your product for Cadiz you bought it in the spring of '35, didn't you?

A. I can't tell you whether I did or not.

Q. Don't you remember that?

A. No, sometimes I didn't buy it until certain dates in September.

Q. Didn't you testify a short time ago in reference to Cadiz you always went in and made your contract in the summer of the current year?

A. No, I didn't say I ever went in from Cadiz.

Q. One moment. You said you went in in the summer of the current year in every instance to make your deals for the forthcoming year?

A. In Cadiz?

[fol. 218] Q. Yes.

A. No, made our deals in Cadiz. We never went in from Cadiz.

Q. I am talking about when you made your deals.

A. We made them any time in the summer, sometimes in the end, the first of the year.

Q. Made them in the summer?

A. Any time in the year, didn't buy the stuff until very late sometime in the next year.

The Court: Are you inquiring about Cadiz or Mt. Vernon?

Mr. Rogers: I want back to Cadiz for a moment. Now, I am going to come to Mt. Vernon.

Q. Then when you went to Mr. Drew, now you say in December, 1935, did you talk about first-run product for the year '35-'36, and he told you it was sold to Schine, that was not unusual, was it?

A. No, don't say anything unusual.

The Court: Normally in the spring of that year.

The Witness: Yes, they would buy it further ahead maybe than I did.

Q. Doesn't that equally apply, you say you saw Mr. Schmertz over at Fox, you said to Mr. Boggess in December, 1934. Do you wish to change that now to '35?

A. That should have been '35. It couldn't have been any other time.

[fol. 219] Q. When he told you the first-run product for '35-'36 had already been sold, that wasn't anything unusual?

A. No, nothing at all.

The Court: Where did you engage your product when you took possession of the Mt. Vernon Theater in January, 1935? Was it January, '35?

The Witness: Yes.

The Court: And where did you get your product when you opened up there?

The Witness: In '35? Well, that would still have to be '34. We opened in '35. That '34 had better stand then.

Mr. Rogers: Now, all right.

Q. Which do you want to stand? We have had three answers. Let us get one.

A. We opened the theater in '35, and we were trying to buy the product three or four months before. Now, that is all I can say now.

[fol. 220] Q. Well, now, let me see if——

The Court: You would buy first run products if they were sold in the spring before that? You say they were sold in the spring?

The Witness: I wouldn't know whether they were sold or not. I would ask. They might still be open yet in the fall. I wouldn't know.

Q. Do you seriously mean that in Mt. Vernon, Ohio, that the major companies wouldn't have their product sold for the 1935-1936 season in the summer of 1935, that they would wait until January to sell it in Mt. Vernon?

A. No, they would have it sold, naturally.

Q. Let us see where we stand. You have got me as much confused as you seem to be yourself and that is pretty bad [fol. 221] for the two of us. Let us see if we cannot straighten this out. Is it now your claim that you went to Mr. Drew in M.G.M. and spoke to him in December of 1934? Tell me, is that so?

A. That was before we opened the theatre.

Q. That would have been before you opened the theatre; is that right?

A. Yes, sir.

Q. It is definite in your mind that you went in and spoke to him?

A. That is before we went to Mt. Vernon. Their salesman had written from Cadiz several times.

Q. Never mind about that. I am just talking about one conversation you had with Mr. Drew about which you so readily testified to Mr. Boggess. Let us see if you cannot be as helpful to me as you were to Mr. Boggess. I don't know how helpful you were to him up to the present, but let us see if we cannot understand each other. Is it your testimony that before you opened the Memorial Theatre, and in the month of December, 1934, you went to Loew's and you had a talk with Mr. Drew about first run product? Is that right, as far as we have gone?

A. I think we were in his office at that time before we opened the theatre.

Q. And you had a talk with him about first run product; is [fol. 222] that true?

A. It might have been.

Q. Do you know? You testified to Mr. Boggess that all you spoke about was first run product.

A. That is all we had in mind. We didn't use any second product until two years after.

Q. I want to know what you said.

A. I don't remember any more than I said now.

Q. That is what you said now?

A. Yes, sir.

Q. So that when you testified under Mr. Boggess' examination yesterday that you went to Mr. Drew in December of 1934 and spoke about first run product, you are not sure whether or not that testimony is accurate; is that right?

A. Well, ten years is a long time.

Q. I don't care whether twenty years is a long time. All I want to know is whether that testimony was accurate.

A. I gave it as it came into my mind. I tried to state the facts.

Q. Yesterday?

A. Yes, sir.

Q. And now it comes into your mind differently today?

A. It might.

Q. I want to know what your frame of mind today is.

A. I can't tell.

[fol. 223] Q. Today your frame of mind is that you don't know; is that right?

A. You admitted awhile ago you were about in the same fix that I was.

Q. You put me there. What I want to know is what your frame of mind is today.

The Court: What do you mean by "frame of mind"? Do you mean do you want to change your testimony?

Q. Yes, do you want to change your testimony?

A. No, I don't think so.

Q. You don't want to change the testimony you gave yesterday or you don't want to change the testimony you gave this morning? Yesterday you said it was 1934 and this morning you said it was 1935.

The Court: What is your best judgment as to the date, whether it was 1934 or 1935?

The Witness: It was before the opening of the theatre, that is all.

The Court: You went to Mr. Drew and sought to engage the first run product?

The Witness: Yes, sir.

Q. What I want to know is, did you talk first run product in December of 1934 with Mr. Drew?

A. I did. I said that distinctly to him. We didn't expect to play anything but first run when we opened up.

[fol. 224] Q. A few moments ago you said you weren't sure whether you spoke about first run product or not. That is definite, is it?

The Court: He has answered it.

Q. For which season were you speaking in 1934 about first run product?

A. That would be after we opened there for product after 1935—January 1st.

Q. Do you mean for the season of 1934-1935?

A. Well, we didn't open until 1935.

Q. I am asking you for which season?

A. I don't remember whether I mentioned season. I asked for pictures that we could use in the opening.

Q. First run?

A. I answered that.

The Court: He said so. You mean for a period commencing January 1st. At that time you asked for first run pictures?

The Witness: Yes, sir.

Q. Did you specify the first run of any season?

A. I don't think I did. Why should I? It wasn't necessary.

Mr. Rogers: I ask to strike that.

The Court: Yes. Just answer the question.

Q. Please answer the question. Did you specify any season, any season's product?

[fol. 225] A. I don't remember if I did.

Q. You said, as I recall it, that Mr. Drew informed you at that talk that he had already sold the first run product; is that right?

A. He said that Schines were playing it.

Q. One moment. I am taking your testimony you gave yesterday. Your testimony was that he told you he had sold the product; is that right?

A. He said it was sold, yes.

Q. For which season?

A. Well, for the time I wanted the pictures. I don't remember the season.

Q. That would be the season 1934-1935, wouldn't it?

A. I wanted them after 1935. I didn't care what season it was. I wanted first run pictures after I opened.

Q. You told me that Mr. Drew told you the product was sold. Which product did he tell you was sold, which season?

A. I don't remember.

The Court: It would be sold ordinarily in the spring of 1934?

The Witness: Yes. Sometimes we bought it later.

The Court: Your claim is that you were trying to get first run pictures in December. Normally then they would have been sold?

The Witness: Yes, more than likely they would, yes, sure.

Q. You were asking for a product that you knew in the [fol. 226] ordinary course of business would have been sold by that time?

A. Yes, I would anticipate it would be sold. There was nothing to prevent me from asking.

Q. You testified, as I recall, that on July 25, 1935, you went to the Department of Justice?

A. In Washington, that is right.

Q. In Washington?

A. In Washington.

Q. And on the same day you came to New York?

A. No, I was in Washington the day before. I went up on the night of the 24th and was in New York on the 25th.

Q. As I recall your testimony, your testimony was in——

A. No, I stopped in Washington. I was in New York on the 25th.

Q. You came to New York, you say, definitely on July 25, 1935?

A. That is the day I was there.

Q. You went to the 20th Century-Fox office and had a talk with Mr. Eddie Granger, as you called him?

A. That is right.

Q. And that was without question on July 25, 1935?

A. It was on that same trip, yes. That is the only time I was over there.

Q. When you spoke to Mr. Granger, as you say, on July [fol. 227] 25, 1935, with reference to what product were you speaking to him?

A. 20th Century-Fox.

Q. For what season?

A. First run product.

Q. For what season?

A. I don't remember. I bought what was available first run for Mt. Vernon. I told him when we were going to open and when we needed the pictures.

Q. You mean you told him on July 25, 1935, you were going to open?

A. No, that was after we were opened. We had been running since the first of the year.

Q. So that you weren't telling him you were about to open?

A. No, that is wrong. You misled me on that.

Q. Please don't say I misled you.

A. Well, you did, in a way.

Q. Then I apologize.

A. I apologize to you too.

Q. I am trying to get facts. You are sure that was July 25, 1935?

A. I am pretty sure it was.

Q. You are absolutely sure, aren't you?

A. Yes, it was on my birthday.

Q. And you spoke to him about first run pictures?

[fol. 228] A. Yes, sir.

Q. For the Memorial Theatre?

A. Yes, on 54th Street in New York, in his office.

Q. I am asking an entirely different question. You spoke to him about first run product in connection with the Memorial Theatre in Mt. Vernon?

A. Yes.

Q. And you didn't tell him which season you were going to ask for the first run?

A. I told him we were running a theatre there and were in the market for pictures, we had been running since the first of the year.

Q. Didn't you tell him you wanted them for the coming year?

A. Naturally I would tell him I wanted them for the coming year.

Q. Did you tell him that?

A. No.

Q. Did you discuss terms with him?

A. No, he said there was nothing available, he couldn't sell any pictures.

Q. In July he told you that the 1935-1936 season product——

A. I don't remember whether he mentioned season or not. He said their product was sold and being played in Mt. Vernon.

Q. You didn't speak about season?

[fol. 229] A. I don't remember definitely whether I did or not.

Q. Do you remember whether he spoke about season?

A. I don't remember whether he did or not.

Q. You remember, Mr. Long, making an affidavit in this case at the time an application was made for an injunction, don't you?

A. I think I made an affidavit.

Q. Do you remember about when it was that you were called upon to make that affidavit?

A. I do not.

Q. Can you give it to me approximately?

A. No.

Q. Well, now, somebody in the United States Attorney's office spoke to you in preparation of the affidavit, didn't he?

A. I don't remember. More than likely somebody called and got it.

Q. Who drew the affidavit?

A. I didn't.

Q. Was it drawn by your lawyer?

A. No.

Q. Was it drawn by the Department of Justice?

A. I don't know.

Q. Did somebody just come in and hand it to you?

A. No. I think some F.B.I. man, or some fellow from the Department, came in and got it.

[fol. 230] Q. Did he have it all drawn and hand it to you?

A. No, he came in to talk to me and made notes and then had it written up.

Q. Did you tell him all of the facts contained in that affidavit?

A. I answered his questions and told him everything I could think of.

Q. Did you tell him all the facts contained in that affidavit?

A. I suppose I did.

Q. Did you read it over carefully before you signed it?

A. I read it over.

Q. Carefully?

A. I might have been interrupted.

Q. Whether or not you were interrupted, did you read it carefully?

A. I read it over.

Q. Did you sign it and swear to it?

A. I signed it.

Q. You testified yesterday that at the time you saw Mr.

Eddie Granger on July 25, 1935, he told you, in effect, that his company would not turn down $50,000 worth of business of the entire Schine Circuit for a possible $5,000 worth of business he might get out of you?

A. He told me that in his own office.

Q. On July 25, 1935?

[fol. 231] A. At the time I was in the office.

Q. You said it was at the time on July 25th?

A. It was at the time I was in New York.

Q. You said you knew it was July 25th because it was your birthday?

A. That is right.

Q. Let me read to you what you said in your affidavit that you gave the Government, which was sworn to on August 18, 1939. You said: "For example, in the fall of 1935 I called upon Mr. Eddie Granger in New York City, who was Sales Manager for Fox Film Corporation, in order to secure some product on first run. Mr. Granger indicated that it made no difference how large or fine my theatre was, and the fact that I may pay more than Schine in Mt. Vernon for Fox product was of no importance. He stated that his Company could not turn down $50,000 worth of business over the entire Schine Circuit for $5,000 worth in Mt. Vernon, and he refused to give me any consideration for Fox product on first run."

Did you remember reading that in that affidavit before you signed it?

A. I think that is substantially what I told the man.

Q. Do you recall stating in that affidavit that it was in the fall of 1935 that you had that talk with Mr. Granger and not July 25, 1935?

[fol. 232] A. That is the only time I was in New York, on July 25th.

Q. Then if that be so that statement in that affidavit is not accurate?

A. What is the date of that?

Q. Of the affidavit?

A. Of the affidavit.

Q. You signed and swore to this affidavit on the 18th of August, 1939.

A. Well, that is all right.

Q. So that it is still all right?

A. Yes, sir.

Q. How many talks *with* you have with Mr. Granger on the subject, one or two?

A. Just one. That refers to the only talk I ever had with him.

Q. In this affidavit you said it was in the fall of 1935?

A. Well, that is very indefinite. I didn't give him the exact date. The 25th of July is getting around towards fall, July or August.

Q. It is?

A. Yes, sir.

Q. I thought it was the height of the summer.

A. We call it early fall out among the sticks.

Q. In Cadiz or Mt. Vernon?

A. In Cadiz.

[fol. 233] Q. You call it the height of the fall in the middle of July?

A. Yes, the maple leaves are turning.

Q. In other words, when you made this affidavit you weren't impressed with the fact that this talk was on your birthday? You weren't impressed with the fact at the time?

A. No, it was at hot there then as it is here today.

Q. In other words, your memory is better today about that date than it was in August, 1939?

A. It might have been. It might be.

Q. You just testified there was nothing about terms discussed with Mr. Granger at that time, at the time of that talk you had with him?

A. I don't know what you mean by "terms".

Q. Price, any terms.

A. No, we didn't talk any price terms.

Q. He said nothing about price?

A. No, sir.

Q. Not a word?

A. No, not a word. I don't think we got that far.

Q. You say in this affidavit, don't you, that Mr. Granger indicated that "it made no difference how large or fine my theatre was and the fact that I might pay more than Schine in Mt. Vernon for Fox product was of no importance"? Was there any talk at that time about you paying [fol. 234] more for first run product than Schine did at Mt. Vernon?

A. There was never mentioned any price for pictures. Is that what you mean by terms?

Q. You are an old motion picture man. What do you understand by contract terms?

A. The terms can be several things.

Q. Price is one of the terms?

A. Yes, price is one of the terms.

Q. That is the most important term, isn't it?

A. Well, sometimes.

Q. Now, with reference to your picture service in Mt. Vernon from 1935 on, I assume from your testimony that you were constantly looking for pictures and couldn't get pictures, and that you were suffering from a lack of pictures; is that right?

A. Yes, the right kind of pictures.

Q. In dealing with these major companies and the Little Three companies, as we have called them, you were endeavoring to buy for Cadiz and Mt. Vernon at the same time, weren't you?

A. We were for awhile.

Q. And weren't you during that period using the treasury of your Cadiz theatre in order to try to get product for the Mt. Vernon Memorial Theatre?

A. We might have mentioned it. They knew we were connected.

[fol. 235] Q. Never mind about mentioning it. Didn't you in the course of your talks with some of these majors and the Little Three tell them that if they gave you product for Mt. Vernon you would give them a deal in Cadiz?

A. Naturally. That is your policy.

Q. You did that; is that right?

A. Yes.

Q. And you continued to do that, didn't you?

A. Yes, sir.

Q. And you did that in letters to them too, didn't you?

A. We bought them for both places.

Q. You did that, didn't you?

A. Yes, we did some.

Q. In or about the month of October or November, 1935, were you at that time suffering for the lack of product?

A. Which theatre? You have been talking about two theatres. Mt. Vernon?

Q. Mt. Vernon.

A. We always suffered for lack of product there.

Q. In October or November do you say you were suffering for lack of product? That is October or November, 1935.

A. I answered your question.

Q. Let me show you this letter. Is that your signature (showing letter to witness)? Just tell me if that is your signature.

[fol. 236] Mr. Rogers: I offer this letter in evidence.

Mr. Boggess: We have no objection.

(Thereupon the letter of November 8, 1935, referred to, was received in evidence and marked as Defendants' Exhibit D-1.)

Q. Do you remember saying in this letter, D-1, dated November 8, 1935, which you just identified, "We have all the product we can use until after the first of the year, when we will have some dates for outstanding products"?

Mr. Boggess: Your Honor, I suggest that he tell the witness the date of that letter.

Mr. Rogers: I just did. November 8, 1935.

Q. This is a letter you wrote to Mr. Schmertz of the 20th Century-Fox Corporation, Cleveland, Ohio. Do you remember saying that in that letter?

A. Yes, that is correct.

Q. And do you remember also saying in that letter: "We have been standing them up and have them coming especially with our stage shows we now put on once a week. We are reliably informed that at least two of the major producers are getting pretty sore on account of the double feature." When you used that expression, "We have been standing them up" what does that mean in the theatrical profession?

A. That means we have some people in the house.

[fol. 237] Q. Doesn't that mean that you are playing to capacity and having standees as well?

A. For stage shows.

Q. "Standing them up" means that you are playing to full capacity and having standees as well, doesn't it?

A. Yes, sir.

The Court: That letter is to whom?

Mr. Rogers: That letter is to 20th Century-Fox, Mr. Schmertz.

Q. I show you this letter, being a letter addressed to Mr. E. L. McEvoy, R. K. O. Building, New York, dated October 30, 1935, and I ask you if that is your signature?

A. That is right. That is my signature.

Mr. Rogers: I offer it in evidence.

(The letter referred to was received in evidence and marked as Defendants' Exhibit D-2.)

Q. I show you a letter bearing date April 14, 1935, addressed to Manager, R. K. O. Distributing Corporation, Cleveland, Ohio. Is that your signature?

A. Yes, that is ours.

Q. That is your signature?

A. Yes, sir.

Q. And I show you a letter bearing date April 14, 1935, to Mr. Schmertz, Fox Film Corporation, Cleveland, Ohio, and ask you if that is your signature?

[fol. 238] A. That looks like it. That is my signature, all right.

Mr. Rogers: I offer those two letters in evidence.

(The letter of April 14, 1935, referred to was received in evidence and marked Defendants' Exhibit D-3.)

(The letter of April 14, 1935, referred to was received in evidence and marked Defendants' Exhibit D-4.)

Q. I show you letter bearing date April 20, 1938, addressed to Mr. Drew, Loew's, Inc., Cleveland, Ohio, and I ask you is that your signature?

A. That is.

Mr. Rogers: I offer it in evidence.

(The letter of April 20, 1935, referred to was received in evidence and marked Defendants' Exhibit D-5.)

Q. And I show you a letter bearing date April 12, 1938, purporting to be sent to you by Loew's resident manager, addressed to you. Do you remember receiving that?

A. Yes, it is in the file.

Mr. Rogers: I wish to offer that in evidence.

(The letter of April 12, 1938, referred to, was received in evidence and marked Defendants' Exhibit D-6.)

Q. I show you letter bearing date April 14, 1935, ad-[fol. 239] dressed to Manager, Warner's First National Pictures Corporation, Cleveland, Ohio, and I ask you if that is your signature?

A. It is, sir. Yes, sir.

Mr. Rogers: I offer it in evidence.

(The letter of April 14, 1935, referred to, was received in evidence and marked Defendants' Exhibit D-7.)

Q. With reference to Defendants (Exhibit D-2, which is the letter bearing date October 30, 1935, which you wrote to Mr. E. L. McEvoy, you say, "Are also holding a place for your product at Cadiz providing we can get together here and as promised we are giving you first chance in taking care of us." You remember putting that in the letter, don't you?

A. Naturally.

Q. You remember saying that to somebody in R. K. O.?

A. Yes.

Q. If they would give you product in Memorial you would hold the product open in Cadiz and if they didn't hold it open in Memorial you wouldn't give them any product in Cadiz?

A. That was ordinary buying propaganda.

Q. You mean that that was part of your buying propaganda?

A. That was part of my buying propaganda. Of course I was the only one that practiced that.

Q. Well, that is refreshing on this warm day. And in that [fol. 240] same letter you of course remember saying, "We have more than doubled our attendance in the last month with our 1,100-seat house at 20 cents and 30 cents admission"; is that right?

A. That is right.

Q. And that was a fact, wasn't it?

A. Yes. We were attempting to buy product and we weren't making a poor showing.

Mr. Rogers: I move to strike that.

The Court: Yes. You have answered that and said it was correct.

A. Yes, that is correct.

Q. During that period that you are speaking of who was your opposition in Mt. Vernon on October 30 of 1935?

A. Why, the Schine people.

Q. What did they have there by way of theatres in the way of opposition?

A. In 1935?

Q. Yes.

A. They had the Lyric and the Vine.

Q. Now I wish to read you from a letter, Defendants' Exhibit 3, that you wrote to Mr. Schmertz of Fox Film Corporation, dated April 14, 1935, and do you recall saying in that letter: "This is now a home-owned and managed theatre and our patronage has been growing by leaps [fol. 241] and bounds since our opening the first of the year. We will contract for your entire product and show on a percentage basis all outstanding pictures, also buy contingent product for community theatre at Cadiz, Ohio."? You remember that, don't you?

A. Yes, sir.

Q. That statement in that letter there, to the effect that your patronage has been growing by leaps and bounds since the day you opened, was an accurate statement, wasn't it?

A. I was attempting to buy product——

Q. Answer my question. Was that statement in that letter an accurate statement?

A. Yes, sir.

Mr. Boggess: I think he ought to be allowed to explain his answer.

The Court: He should answer the questions. He only asked him about one statement.

Q. With reference to Defendants' Exhibit 4, which was a letter written by you on April 14, 1935, to R. K. O. Distributing Corporation, you have that same statement as you had in Defendants' Exhibit 3 I just read, about the patronage growing by leaps and bounds, that you would make a deal for Mt. Vernon contingent on your making a deal in Cadiz. You remember that?

[fol. 242] A. Yes, that was just a showman's——

Q. That was accurate, was it?

A. That was showman's accuracy.

Q. Was that accurate?

A. That was showman's accuracy.

Q. When you say that what do you mean? Was it or was it not accurate?

The Court: The question is whether you meant what you said or not.

A. I meant what I said, certainly.
Q. That is all I want to know.

The Court: We will suspend now until 2:15.

(Whereupon a recess was taken until 2:15 o'clock P. M.)

[fol. 243] After Recess, 2:25 o'clock P. M.

APPEARANCES:

As before noted.

EMERSON W. LONG resumed the stand on behalf of the Government and testified further as follows:

Cross-examination (continued).

By Mr. Rogers:

Q. I show you this letter bearing date October 7th, 1935, written by you to Mr. E. L. McEvoy, R. K. O. Building, New York, and ask you if that is your signature?
A. It is.

Q. I show you this letter bearing date October 30th, 1935, written by you to Mr. E. L. McEvoy, R. K. O. Building, New York, and ask you if that is your signature?
A. That is it.

Mr. Rogers: I offer these.
Mr. Wright: I might say, your Honor, we have submitted to counsel photostats of all of the material we have intended to offer. I understood this morning they had done the same with us, but I now learn they have not previously submitted photostats of the material they propose to offer [fol. 244] to us, and I assume we should have a reciprocal arrangement.
Mr. McKay: Up to the present time we have not taken any papers from the distributor's files. The only papers we have are papers taken by the Government from the distributor's file. I called Mr. Clagett at noon time if we

did take any papers from the distributor's file, we would furnish the Government with photostats.

Mr. Wright: These are ones you furnished us?

Mr. McKay: These are ones we furnished you about three years ago.

Mr. Wright: I didn't understand you. I understood these were photostats which you had made yourselves.

Mr. McKay: No, we haven't photostated a single document up to the present time.

Mr. Wright: You say they were furnished three years ago.

Mr. McKay: Yes, when you first examined the distributor's file.

Mr. Wright: In any event, I think it would speed it up if you would let us know in advance the ones you intend to offer and save a lot of time in court.

[fol. 245] Mr. McKay: The ones we want to use depend very largely on your direct-examination.

The Court: Proceed.

(Thereupon the two letters referred to were received in evidence, the latter dated October 7th, 1935, was marked Defendant's Exhibit D-8, and the letter dated October 30th, 1935, was marked as Defendant's Exhibit D-9 in Evidence.)

By Mr. Rogers:

Q. I show you Defendant's Exhibit 6, which is your letter of April 12th, written you by representative of Loew's, addressed to you in which he says as follows: "——

Mr. Wright: What is that, April 12th what year?

Mr. Rogers: 1938.

"I appreciate you told me in reference to having an abundance of pictures available for you at this time, and being booked up to July 1st, still having six of our pictures to play." Do you recall having made that statement?

The Witness: There is no signature on this.

Q. Regardless of whether there is a signature, you testified before the recess that you recalled receiving the original of that letter?

A. Yes.

[fol. 246] Q. Do you recall having made that statement?

A. Yes, the one about Will Rogers in there.

Q. You recall having made that statement, don't you?

A. Yes.

Q. Now, I refer you to a letter written by you on April 14th of 1935, to Warner First National Picture Corporation, in which you say——

Mr. Wright: Have you got the exhibit number?

Mr. Rogers: Exhibit No. Defendant's 7.

"This is now a home-owned and managed theater, and our patronage has been growing by leaps and bounds since our opening the first of the year".

Now, that statement was an accurate statement, was it not?

The Witness: You read that to me before and I answered.

Q. This is Warner?

A. The letters are identical.

Q. Wherever you wrote that in any of these letters, you say the letters are identical, and that statement is true, is that right?

A. That is right.

Q. In that letter you say, "We will contract for your entire product and show on a percentage basis all outstanding pictures also be contingent with product for the [fol. 247] community theater at Cadiz, Ohio."

You said that in the other letters as well, haven't you?

A. I don't remember. I think that is the same letter as read before.

Q. I believe I read you a letter to one of the other companies.

A. It is identical.

Q. In other words, you made the same proposal to Warner's?

A. Yes.

Q. If they would give you products at Cadiz, you would arrange for product at Mt. Vernon?

A. Yes.

Q. And you made one contingent upon the other?

A. That is right.

Q. I wish to read to you from Defendant's Exhibit 8, which is a letter of October 7th, 1935, written by you to Mr. E. L. McEvoy, R. K. O. Building, in which you say, "Just a tip to inform you that the Schines have lost their case here in both courts where they have been trying to renew their lease for the Lyric Theater, with a view of rebuilding". You remember that paragraph in that letter, don't you?

A. I think so. That was gossip there at that time.

[fol. 248] Q. What did you mean by the "Schines having lost their case here in both courts"? What case was it that you referred to?

A. I don't just remember. It was some case that was up there, some hearing they had. I don't recall exactly what it was now.

Q. Do you recall there was some litigation pending in connection with this Lyric Theater site and Schines were trying to do something to clear the title so they could make a deal?

A. It might have been.

Q. And they were doing that you knew with a view of rebuilding, weren't they?

A. Just what that states.

Q. That was so, wasn't it?

A. Yes.

Q. So you knew as early as October 7th, 1935, that the Schines were really contemplating the rebuilding of the Lyric Theater?

A. They talked about building a new theater from the first, from the first we went in there.

Q. And eventually they did build?

A. That is right.

Q. And that was the Vernon Theater?

A. Yes.

[fol. 249] Q. Until this litigation was out of the way they couldn't rebuild?

A. No, those things always come up.

Q. As a matter of fact, weren't you trying to get that Lyric location away from them?

A. Not at all.

Q. And to build there in that location yourself?

A. Not at all. ~~I never~~ had it in my mind.

Q. You are definite about that?

A. Sure.

Q. You had no such idea?

A. No, I had enough when I had the Memorial.

Q. Let me read this: "One of the parties interested has come to us with a proposition to build on a good location to take the place of the Lyric and, inasmuch as our present lease has a clause protecting us against such a contingency, we are considering same."

A. Might have been some other place. I don't say it was at the location, though.

Q. Let me repeat that, in that paragraph you say, "A proposition to build on a good location to take the place of the Lyric"?

A. That might be.

[fol. 250] Q. So that you were contemplating——

A. I don't say it was on that lease.

Q. I asked you if you were contemplating building another theatre in Mt. Vernon. You said you were.

Mr. Wright: Somebody asked him if he was trying to get the Lyric away from Schine and he said no.

Q. This witness said he had no idea of building any other theatre, that he had more than enough with the Memorial and was not considering building in Mt. Vernon.

A. That is right. I had people come to me and asked me if I would be interested, and I mentioned that.

Q. You said you wouldn't consider it?

A. Yes.

Q. Don't you say in this letter, "We are considering the same"?

A. We might have talked it over. That would be considering it, whether we were considering doing it or taking it under advisement and not doing it.

Q. Just what was it? Did you take that proposal under advisement?

A. I don't remember.

Q. Did these people speak to you?

A. There was some people spoke to us about it.

Q. When you say "one of the parties interested has come to us with a proposition to build in a good location to take [fol. 251] the place of the Lyric." Who did you mean as one of the parties interested?

A. I don't remember.

Q. Do you remember who that was?

A. No, I don't. I don't recall.

Q. Now I wish to read to you from Defendants' Exhibit 9, a letter dated October 30, 1935, written by you to Mr. E. L. McEvoy, R. K. O. Building, New York, in which you say: "We have more than doubled our attendance in the last month with our 1,100-seat house at 20 and 30 cents admissions." Was that an accurate statement?

A. That could have been because it wouldn't take much to have doubled it for awhile there.

Q. Was that an accurate statement?

A. Yes, an accurate statement, sure. We might have had three one night and six when we doubled it.

Q. Did you ever have three people in that theatre?

A. Yes, we had three. One show we only had two people.

Q. You had only two in the show?

A. Yes.

Q. You continued to run the theatre with only two people in the show?

A. Yes, we ran a matinee there one afternoon with only two people.

Q. You ran another time with only three people at a matinee?

[fol. 252] A. I wouldn't say. Two or three.

Q. Did that ever happen in the evening?

A. No it didn't happen in the evening.

Q. You also said in that letter, "We are holding a place for your product in Cadiz, providing we can get together here and as promised we are giving you first chance in taking care of us." Hadn't you told the R. K. O. people that you would consider making a deal with them for the Memorial if they made a deal with you for Cadiz?

A. Yes, that is right?

Q. You did?

A. Yes, that is all right.

Q. Do you know a Mr. Hathaway connected with Warner's?

A. Yes, I remember him.

Q. You knew him quite well, didn't you?

A. Yes, he was one of those windy boys selling pictures.

Q. He used to call on you quite often, didn't he?

A. Yes, he did.

Q. Do you remember him calling on you in September of 1936?

A. That is a long time ago. I can't recall anything in particular in connection with it.

Q. Do you remember him coming to you in about the middle of September, 1936, to try to get you to consider a proposition of buying second run Warner pictures?

A. I don't remember,

[fol. 253] Q. You don't remember that?

A. No.

Q. Do you remember him calling on you again on September 30, 1936?

A. Where at? Mt. Vernon or Cadiz?

Q. I am talking about the Memorial Theatre now all the time, remember.

A. I don't remember of ever seeing Hathaway in the Memorial Theatre at Mt. Vernon.

Q. Well, when he called on you where would he call on you—at Cadiz?

A. He might have.

Q. Do you remember whether it was at the Cadiz house or whether it was at the Memorial house? Do you recall having a talk with him on or about September 30, 1936, when he offered to sell you second run product?

A. I don't remember. Six or eight of those salesmen come in every day. I didn't try to remember it.

Q. I am talking about feature product now.

A. Yes, that is right.

Q. Did all of these salesmen come in trying to sell you the feature products?

A. They might have talked to me about it.

Q. I am talking about really selling it and offering to sell you.

[fol. 254] A. I was playing first run when I first started. I was not interested in second run then. When was that—1935?

Q. 1936.

A. I was not interested.

Q. In other words, you had so much first run that you weren't interested in buying second run?

A. We were trying to get first run.

Q. You had enough product at that time, you weren't talking about second run?

A. We had plenty of the kind. It was a poor kind.

Q. Whatever it was you had enough of it and you weren't going to talk about second run Warner product; is that it?

A. Not at that time.

Q. Do you remember this same Mr. Hathaway calling on you on December 1, 1936, with reference to your Memorial Theatre and offering to sell you Vitagraph-Warner Bros. pictures second run and you refusing to discuss any second run picture with him?

pay any attention to him. He was a fellow that I didn't talk to very much.

Q. All I want to know is a very simple situation. Do you remember him calling on you on December 1, 1936, and offering you second run Warner pictures?

A. Yes, sir.

[fol. 255] Q. And you said you refused to discuss it?

A. Yes, I remember him.

Q. Do you remember that?

A. Not that especially. No, I can't remember that especially.

Q. Do you remember on that occasion telling him that you were getting enough first run product to keep yourself going?

A. I might have told him that, yes. That was the time we were running some stage shows.

Q. Well, do you remember Hathaway calling on you on December 17, 1936, with reference to the Memorial Theatre and closing a deal with you selling your 16 doubles and 14 singles of the 1935-1936 product?

A. That was short subjects. That was not features.

Q. I am saying features now.

A. How could it be a single feature? What do you mean by that? That refers to short subjects entirely. That is not features at all.

Q. You say those were shorts?

A. Those were shorts.

Q. You remember buying them, do you?

A. Yes, I bought some shorts from him. I think that is very plain.

Q. Well, do you remember on January 22, 1937, Hathaway calling on you and trying to sell you second run Warner [fol. 256] Pictures at that time?

A. I don't remember.

Q. You don't remember?

A. No.

Q. Well, do you remember at that time telling Hathaway that he couldn't sell you any second run as you were getting plenty of clear product?

A. I might have told him that. I was the buyer and he was the seller.

Q. In other words, you might have told him that?

A. I might have told him that.

Q. Is it your best recollection that you did or that you didn't?

A. I might have told him that. That is all I can answer. With six or eight of those fellows around your neck you will tell them anything to get rid of them.

Q. In other words, you mean you didn't care whether or not you told them the truth? Is that it?

Mr. Boggess: He didn't say that.

A. I didn't say that.

Q. You said that you said a lot of things to these men to get rid of them?

A. I did. And they gave me a lot of hot air to get me to talk to them. It was dog eat dog. You know what a film salesman is.

[fol. 257] Q. Maybe I do and maybe I don't. But what I say is when you told them anything to get rid of them——

A. They worried the life out of you.

Q. All I am asking you is, did you tell them anything, whether it was true or not?

A. It was just the theatre parlance. It was just anything to get rid of them. That is what they handed to me and I gave them back the same thing.

Q. Was the theatre parlance that you passed out true or was it anything that came into your mind?

A. The show business is the show business.

Q. Please answer my question.

A. I did as the Romans did. When I got in the show business I did what the other fellow did. I don't think I went to extremes.

Q. Just tell me if what you told this man was truth or fable?

A. It was on the ragged edge.

Q. Neither truth nor fable?

A. It was on the border line. It just depended on the mood.

Q. What mood you were in?

A. What mood I was in.

Q. When you told them you had plenty of product was that truth or fable?

A. In part that was truth.

Q. How much of it was truth?

[fol. 258] A. I have never figured it out. I was never very good in percentage.

Q. Do you remember Hathaway calling on you in February, about the 17th of February, 1937?

A. Yes, shortly before Warners' let him out.

Q. I am talking about February 17, 1937.

A. Yes, sir.

Q. And discussing with you selling you second run for the current year. Do you remember that?

A. I don't remember.

Q. Do you remember at that time saying to him that you wouldn't consider that, that you were thinking of buying nothing but second run for the following year; that that is all you wanted?

A. I might have said that.

Q. Do you remember Hathaway calling on you on April 19, 1937, trying to make a deal with you, trying to have you buy Warners' second run for that season or for that year?

A. Where was he calling, at what place?

Q. Well, either Cadiz or at Mt. Vernon. Do you remember seeing him at that time?

A. I can't remember seeing him at Mt. Vernon.

Q. Can you remember seeing him at Cadiz?

A. He used to come in there, yes.

Q. Can you remember seeing him, as I stated, on April 19, [fol. 259] and he speaking to you about——

A. What year was that, 1938?

Q. 1937.

A. I was not in Cadiz at that time.

Q. Where were you at that time?

A. I expect I was in Mt. Vernon.

Q. Do you remember seeing him in Mt. Vernon at that time?

A. I don't recall talking to Hathaway, no.

Q. You don't recall?

A. No.

Q. He may have called and you don't recall it?

A. He may have called there. There are six or eight salesmen in in one day.

Q. Let us stick to Hathaway. Do you remember at that time, that is April 19, 1937, you telling him that you wouldn't consider buying any second run features at that time, that you were running first runs and 26 Metro second runs?

A. What year was that?

Q. That was 1937.

A. Yes, we had Metro at that time.

Q. Do you remember telling him that?

A. I think so.

Q. Do you remember telling him you wouldn't buy any second runs?

A. Yes, sir.

[fol. 260] Q. Now, do you remember Hathaway calling on you on July 15, 1937, at Mt. Vernon, and offering you second run Warner feature product?

A. He might have been there and offered me some stuff. I can't recall what it was, whether it was current stuff or old stuff, or anything I was interested in. I can't remember it.

Q. He spoke about second run, didn't he?

A. Well, it might have been two or three years old second run.

Q. Regardless of its age, he spoke to you about second run?

A. He might have.

Q. Do you remember your telling him that you weren't interested in buying anything except first run, that you had Columbia bought at the time and all you wanted was first run? Do you remember that?

A. I might have told him that.

Q. Now, do you remember Hathaway calling on you at Mt. Vernon on September 2, 1937, to discuss second run product with you? Do you?

A. I don't remember. I think that is the time I signed a report card for him. He never stopped. He went on through and sent a report card in from there. I think that is the time he did that.

Q. Don't you remember at that time you closed a deal with Hathaway under which he sold you Warner feature [fol. 261] products for the season 1937-1938, second run?

A. 1937-1938?

Q. Yes.

A. Possibly that is right. I think we did buy at that time.

Q. That was on September 2, 1937?

A. Where is the copy of the contract?

Q. You must have [illegible] Do you have it?

A. I don't recall having it.

Q. I was going to ask you if you had a copy of the contract.

A. No. I would like to see it.

Mr. Rogers: Does the plaintiff have a copy of that contract?

The Witness: I would like to see it.

Mr. Rogers: Do you, Mr. Boggess?

Mr. Boggess: Not that I know of. I haven't seen it.

Q. But you do remember making a contract for the entire season, second run, Warner?

A. I think that is the time we bought some from Warner. I don't remember when it was. I think it was the winter of 1938 we did that.

Q. You made your contract right at the beginning of that season, didn't you?

A. I wouldn't remember.

Q. You don't remember that?

A. No, I don't remember making a contract with Warners' with Hathaway at any time. I think what Warners [fol. 262] we bought we bought in Cleveland. Are those Hathaway reports?

Q. Yes.

A. Well, I wouldn't count much on those.

Q. When you say you wouldn't count much on them you do remember you made a deal, don't you?

A. He left the Company shortly after a lot of his reports went in.

Q. You did make the deal for the second run, didn't you?

A. If you show me the contract I can answer. I can't remember.

Q. Mr. Wright has been kind enough to hand me a letter bearing date September 18, 1937, written to you by Vitagraph, M. A. Mooney, Branch Manager. Do you recall receiving that letter?

A. It doesn't say whether it is features or shorts. It does not mean a thing. It does not mention features there. It might have been all short subjects. There isn't a thing to indicate that I bought a feature picture from that letter. I still think that was all for shorts. That is straight—honest.

Q. You don't recall closing any contract for 1937-1938 for features?

A. No, I do not at that time. I think it might have been later. It might have been later that year we bought some.

Q. Do you recall closing a deal for a season's product of [fol. 263] Warner's second run?

A. We bought a split—we bought, I think, 30 pictures. We bought from Warners for two years, I think. I don't know whether it started that year or the year after. I can't remember. I haven't got the contracts here. I haven't got the contracts or don't remember having them. I don't think they are in the files here. I never asked for them. I looked for them and I don't think I have any. I think that is shorts. And I never saved a contract on shorts.

Q. Is it your definite recollection that the contract that was forwarded to you under this letter of September 18, 1937, was a contract for shorts?

A. It might have been, from that letter there. I can't remember it being different. That letter doesn't say features. If it was features I would have mentioned it in the letter. It doesn't say features. There might have been some other letter connecting it up, but I can't recall it.

Mr. Wright: The contracts will settle the issue. They certainly can be produced by subpoena. The distributor will have copies of the contracts, even though he has not got his copies. I suppose the simplest way to settle that—

[fol. 264] Mr. Rogers: May I inquire if the distributors do have them? If they do, it will save time.

Q. Now, I show you contract memorandum commonly known as the deal sheet of Vitagraph and I ask you whether looking at this it will now refresh your recollection that that product that you bought for 1937-1938 season was features and not shorts?

A. This was not any contract. This is a memorandum.

Mr. Wright: That is a deal sheet.

The Witness: It says, "Did not sell".

By Mr. Rogers:

Q. That is the previous season?

A. I think that is correct. I think that is the first Warner's we played.

Q. That was really features, wasn't it?

A. That is right.

Mr. Rogers: I will mark this for identification.

(Thereupon the deal sheet memorandum referred to was marked as Defendants' Exhibit D-10 for identification.)

Mr. Rogers: I wish to offer for identification letter September 18, 1937, from Vitagraph to E. W. Long.

[fol. 265] (Thereupon the letter referred to dated September 18, 1937, addressed to E. W. Long, was marked as Defendants' Exhibit D-11 for identification.)

Mr. Rogers: I should like to offer both in evidence, Mr. Wright.

Mr. Wright: We have no objection.

(The deal sheet memorandum, previously marked as Defendants' Exhibit D-10 for identification, was received in evidence.)

(The letter dated September 18, 1937, to E. W. Long, previously marked as Defendants' Exhibit D-11, was received in evidence.)

By Mr. Rogers:

Q. Do you remember August 11th, 1939, a salesman by the name of Catlin calling on you on behalf of Warner's—Vitagraph to work out a deal for you for Warner's product for the reason 1939-1940?

A. I remember Mr. Catlin, yes.

Q. And working out a deal with him in August, 1939 for the 1939-1940 product?

A. I don't remember whether we made a deal or not.

The Court: The question was whether he called on you for the purpose of making the deal.

The Witness: He might have called. He called on me out [fol. 266] there quite frequently.

Q. Do you recall making a deal with him in August, 1939, and spending most of the day in working out the deal?

A. I don't remember anything about it.

Q. Do you remember in connection with making that deal you requested them and they consented to cancel most of the 1938-1939 short subjects that you were obligated to pay and play and pay? Remember that?

A. I can't remember any of the details of it, no, it is too far back, too long ago.

Q. Do you remember in 1939, going into double features at the Memorial Theater?

A. We played some double features in 1939.

Q. Don't you remember telling Catlin by reason of playing double features you did not have room any more to play short subjects and asked him to cancel out 1938-1939?

A. We might have substituted some short features in place of short subjects. That's all right, I suppose.

Q. Do you remember him canceling out the short subjects for you?

A. I don't remember. I think we did. I am not sure. I think we made a trade. They were always in and out trading and canceling stuff, putting in new stuff, and it was routine, couldn't keep details and dates in your head, it is too much.

[fol. 267] The Court: Did you continue any shorts after the fall of 1939?

The Witness: Yes, I think so. We continued some shorts, always ran shorts between features, double features required less shorts.

Q. You do recall this, don't you?

A. Yes.

Mr. Wright: We tried to limit our testimony to feature pictures. I don't see what significance of what is done with reference to short subjects has in any event; news reels and shorts and travelogues, serials, all the rest of it. I suppose we could spend a great deal of time here, but it wouldn't have much to do with the issues of the complaint. The complaint is limited to feature pictures.

The Court: This question is directed to the exchange of shorts for features.

Mr. Wright: Talking about cancellation of short subjects and the use of short subjects.

The Court: Assuming he got features, wouldn't that be important?

Mr. Wright: As to the features, I would assume that is significant, but I understood what he was asking him about was how many shorts he used and what he did with respect [fol. 268] to the cancellation of short subjects.

The Court: Suppose he cancelled shorts for features? Wouldn't that be material?

Mr. Wright: What would be the significance?

The Court: On the bearing it might have prevented him from obtaining the features.

Mr. Wright: How would that contradict it?

The Court: To show the way he gets features. Your claim is he couldn't get features.

Mr. Wright: I claim it is not significant whether he got features by cancelling shorts or some other way. I suppose the important thing is that he got features.

Mr. Rogers: I believe it is material.

The Court: Go ahead, Mr. Rogers.

Mr. Rogers: I want to make one point clear, your Honor, and that is this: If these distributors conspired with the Schines to drive this man out of business, or keep the product away from him, and they had him bound to a contract for these shorts, they would have held him to the contract. They wouldn't let him out and swap horses and get additional features.

[fol. 269] Mr. Wright: He didn't claim he could get Warner pictures at all. There was no such claim as to Warner's. He is simply setting up a straw man and knocking him down.

By Mr. Rogers:

Q. Now, do you recall as one of the conditions you made for getting the 1939-1940 Warner's product for the Memorial Theater you requested that you get the top twenty features, and that they were to be played on percentage and on preferred time? Do you remember that?

A. I think that is all right.

Q. You think that is right?

A. I think that is all right.

The Court: What company was that?

Mr. Rogers: Warner's.

The Witness: That was all for second-run stuff.

Mr. Rogers:

Q. I believe I said second-run, Mr. Long.

A. All second-run.

Q. Yes, I believe I said that.

A. Yes.

Q. Do you remember this man Catlin calling on you on January 10th, 1940, and discussing selling second-run feature product to you?

A. He might have.

[fol. 270] Q. Do you remember making a deal for 17 features at that time?

A. No, I don't remember distinctly anything of that kind, making any deal at that date. I might have. I had the contract. I could check up on that but I wouldn't be definite.

Q. Do you remember you and he discussing Westerns, these Western features?

A. Warner Brothers' Westerns?

Q. Yes.

A. Never heard of them.

Q. You never have?

A. Didn't know they made any.

Q. Do you remember telling him you had more Westerns than you knew what to do with?

A. I might have.

Q. You wouldn't buy any more?

A. I might have. I didn't know Warner's had Westerns. Who are the stars in them?

Mr. Rogers: Well, we will go into that some other time.

Q. Do you remember Catlin calling you August 7th, 1940, with reference to trying to sell you featured product for the Memorial Theater at Mt. Vernon?

A. I can't recall anything definite in regard to his call.

Q. Remember him at that time discussing the 1940-1941 [fol. 271] season product, the second-run for you?

A. He might have.

Q. Do you remember at that time your saying to him that you hadn't bought an inch of film and you didn't intend to buy for a long time yet?

The Court: Hadn't bought what?

Mr. Rogers: Hadn't bought an inch of film and didn't intend to buy any for a long time yet?

The Witness: That was just a few months before we closed down.

Q. I mean do you remember having said that to him?

A. I don't remember, no.

The Court:

Q. In September didn't you expect to continue the lease the next year?

A. I didn't, no. We weren't getting very much product except second-run.

The Court: You said your least expired in September, 1940. You expected at that time to get a lease for next year under your option agreement?

The Witness: Why, yes, we expected at that time, yes, that is right?

The Court: But what you actually done—your answer to counsel a minute ago was you did not want any more be- [fol. 272] cause your lease was about to expire?

The Witness: I think that was premature. I think that was a year later.

The Court: 1940 was the first year of the second lease?

The Witness: Yes, that is right. I was figuring a year later. That is all right.

Mr. Boggess: Just to keep the record straight, your Honor, it was the only year.

The Court: What?

Mr. Boggess: It was a one-year lease.

The Court: Yes. In September he told him, or he expected to close the deal some time back. I asked him whether in September, if in September, he expected to continue the lease on the second option.

Mr. Rogers: And I believe that letter which he calls the acceptance of the option was signed right about that same time.

The Court: We are speaking about the fall of 1940.

Mr. Rogers: 1940. You are quite right, your Honor, because he has the other year in 1941.

Q. Do you remember Mr. Catlin calling on you on October 14th, 1940 to work out a deal with you for second-run for the 1940-1941 product of Warner's?

A. I don't recall it.

[fol. 273] Q. Well, do you remember him at that time waiting around quite a long time and finally you and your son and he sat down? Do you recall that?

A. No, I don't recall it.

Q. Don't you recall it at all?

Mr. Rogers: Your witness, Mr. Boggess.

Redirect examination.

By Mr. Boggess:

Q. Mr. Long, what was the population of Cadiz in 1935?

A. About 2700 people.

Q. Mr. Rogers mentioned the Memorial double-feature. Can you tell us anything in regard to whether the Schine Theater double-feature began back about 1935?

A. They began double-featuring about that time, 1935 or 1936.

Q. Which Schine Theaters double-featured?

A. The Vine and also the Lyric.

Q. The Vine and the Lyric?

A. Yes, sir.

Q. Did they double-feature in 1936?

A. I think the Vine did once a week in 1936.

Q. How about the Lyric?

A. I don't remember. They might have on Saturday nights. I think they did some on Saturday nights, West- [fol. 274] erns and other short subjects.

Q. I believe you tesified the Lyric continued to run every day until the summer of 1936 and went on a two-day basis after that?

A. Yes.

Q. Was that on a double-featuring basis for those two days or not?

A. I think it was part of the time. Part of the time it was double-features.

Q. How about the year 1937 up to the time that the Lyric was torn down, the Vine and the Lyric, did they double-feature in that period?

A. Both of them ran double-features, yes.

Q. Mr. Long, with reference to the United Artists, after you lost their first-run products, did you secure some second-runs from them?

A. We did.

Q. Mr. Long, do you know who had charge of the Schine Theaters in Mt. Vernon in the period in which you were engaged in business there?

A. Well, Mr. Lazarus seemed to be the active field Manager there and Mr. May had charge of the real estate, and he was around there when they were building the theater.

Q. Who had charge of the Vine and the Lyric Theaters?

A. You mean the manager?

[fol. 275] Q. Yes, sir, in charge of those theaters?

A. Mr. James Platt.

Q. Was he the manager of both the Vine and the Lyric?

A. He was.

Q. Was he the manager of the Vernon?

A. Yes. He is still manager of the Vernon.

Mr. Boggess: That is all.

Mr. Rogers: That is all.

Mr. Wright: I was going to suggest while at this time we have Mr. Long still on the stand, we identify the inter-office material that we were going to inspect with reference to this particular situation, and I will ask to have this letter from Mr. Bissell, the Columbia manager at Cleveland, to Mr. Jackter, Columbia Sales Manager, dated February 26th, 1935, marked Plaintiff's Exhibit P-10 for identification.

(Thereupon the letter dated February 26, 1935, was marked as Plaintiff's Exhibit P-10 for identification.)

Mr. Wright: I will ask to have marked as Exhibit P-11 for identification, the preceding letter, February 21st, 1935, [fol. 276] from Mr. McConville to Mr. Bissell.

(Thereupon the letter dated February 21st, 1935, referred to, was marked as Plaintiff's Exhibit P-11 for identification.)

Mr. Wright: I also ask to have marked as Exhibit P-12 for identification a letter from A. M. Goodman, the United Artists Branch Manager, at Cleveland, to Paul M. Lazarus at the home office.

(Thereupon the letter from A. M. Goodman, United Artists Branch Manager at Cleveland, Ohio, to Paul M. Lazarus, referred to was marked as Plaintiff's Exhibit P-12 for identification.)

Mr. Wright: I also ask to have marked as Plaintiff's Exhibit P-13 for identification, a letter dated April 7th, 1938, from Mr. Tyree Dillard, Jr., at the Metro-Goldwyn-Mayer, to F. D. Drew, the Branch Manager at Cleveland.

(Thereupon letter dated April 7th, 1938, referred to, from Mr. Tyree Dillard, Jr. to the Metro-Goldwyn-Mayer to F. D. Drew, was marked as Plaintiff's Exhibit P-13 for identification.)

Mr. Wright: I understand these contracts that Para- [fol. 277] mount was to produce, that Mr. Boggess referred to, are now here and we will also ask to have those marked for identification as Plaintiff's Exhibit P-14. That will be the contract between Schine Enterprises Corporation and the Paramount Pictures for the exhibition of the group S-10 features in the Vernon or Vine Theaters at Mt. Vernon, Ohio, dated September 22nd, 1938, simply the second-run contract of that date.

(Thereupon the contract referred to was marked as Plaintiff's Exhibit P-14 for identification.)

Mr. Wright: And the second-run contract for the next season, between the same parties for the same theaters, I will ask to have marked as Plaintiff's Exhibit P-15.

(Thereupon the contract dated September 30th, 1940, referred to, was marked as Plaintiff's Exhibit P-15 for identification.)

Mr. Wright: This Plaintiff's Exhibit 1, which I believe was offered for identification we will now offer in evidence. That is the first-run contract with Columbia that [fol. 278] was dated February 28th, 1935.

Mr. McKay: The contract between Columbia and Long?

Mr. Wright: That is right.

Mr. McKay: I would like to call your Honor's attention to the statement appearing on the contract in relation to clearance, "First-run. The usual clearance as set up by Zoning Board."

The Court: What do you mean by the usual clearance set up by zoning?

Mr. McKay: I think that will have to be developed in the course of the trial.

Mr. Wright: We don't offer it for any purpose that has anything to do with the clearance notation there. All we offer it for is to show he did not get his first-run Columbia pictures until some two months after he applied for it. We also show this exchange of correspondence, letters identified as Plaintiff's Exhibits P-10 and P-11, as explaining the reason why he didn't get it for two months afterwards, and it appears from these letters——

Mr. McKay: Just a minute, Mr. Wright. We object to reading from any of these exhibits where they are offered only for identification. If they are offered in evidence, we [fol. 279] object to them.

Mr. Wright: I suppose the Court wants to know what the purpose of the offer is and where they fit into the case. We can't very well explain that without referring to the contents.

The Court: Are you offering them now?

Mr. Wright: Yes.

The Court: They are marked only for identification.

Mr. Wright: I offer this Exhibit P-10 and P-11. I gave you copies of them.

Mr. Rogers: May I look at them for a moment?

With reference to Exhibit P-11 for identification I very seriously object to the introduction of that letter into evidence on the ground that it is a letter written by one employee of Columbia Pictures to another employee of Columbia. Surely, anything that one of these officials writes to another cannot possibly be binding on these defendants. I can readily assume that if Columbia was still a party to this action, or a party defendant, it would be a different situation, possibly.

The Court: That makes no difference whether they are parties or not. The question is whether they are party [fol. 280] conspirators.

Mr. Rogers: But even then the declaration of one official of the corporation to another official of the corporation is not binding on the Defendants.

The Court: I don't think there is sufficient foundation laid for it yet. They are marked for identification.

Mr. Wright: If the Court please, I think it is a little hard to pass on that without knowing what the contents of the letters are. It relates to this particular contract which has been offered.

The Court: It reverts to the authority of these men. I don't know.

Mr. Wright: These documents were produced from the files of Columbia Pictures Corporation in response to a subpoena. They are business memorand*um* that were kept and preserved as part of the records of Columbia Pictures Corporation showing what was done with respect to this particular contract that was made with Mr. Long in Mt. Vernon. That exchange of letters is obviously the best possible evidence as to what the motivation was for holding [fol. 281] the making of this particular contract and that is what they are offered to prove. If there is any question of authenticity of these letters that, of course, I would assume that they are always free to make a motion to strike or have the letters removed from the record if it should appear at some later date that they are not what they purport to be, but on their face, they are communications passing between these executives of the Company in the ordinary course of performing the business that is represented by this contract that was made with Mr. Long and as such they are clearly admissible to show what the course of that business was and why it was done, the way it was done, and that is what they are being offered for.

The Court: I don't know where they come from, only your statement.

Mr. Wright: I take it there is no dispute as to the facts. We have Mr. Rolls, I think was their representative of Columbia. There isn't any dispute about the fact if these letters were taken from the Columbia files and represent [fol. 282] part of the Columbia records which were kept in the ordinary course of business, there is no argument about that.

Mr. Rogers: If these were taken from our files, sir, there might be some force to Mr. Wright's contention and if Columbia was party here, and they are taken from their files and records, he has to show authenticity, he has to show the source, he has to show authority.

The Court: It isn't offered to make it presumptive proof of authority. The fact that they are from the files.

Mr. Rogers: Non-defendant. Remember these are not from the files of a defendant. If they were found in the files of a defendant, it would be a different story.

The Court: I don't think it makes any difference in that respect whether they are parties or not. They are parties to a conspiracy. The same proof comes from one category would mean the other.

[fol. 283] Mr. Rogers: I believe there is a clear distinction, may it please the Court. I think the distinction is that where one is not a party then the resort must be had to subpoena if the party is available to subpoena. However, the corporation is a party to the litigation, and when it is found in the custody of one who is a party to the litigation then there is a presumption arises. That party on the direction of the Court can be compelled to bring it into court, but you could not compel an outsider merely on your direction to bring the files into the court. You would have to do it on subpoena. On the question of conspiracy may I direct your Honor's attention to the Circuit Court of Appeals, Second Circuit, in the case of the United States vs. Peoni, where that very contention that Mr. Wright is using here has been exploded (reading from opinion).

In that case for using testimony of that kind the conviction was reversed.

The Court: That is not parallel to what we have here. In a conspiracy you ordinarily do not establish it by a single [fol. 284] witness. It has to be developed. I think the Government would be in a position here to make better proof on a showing by a representative of the company here, the individuals who wrote these letters, their position with the company.

Mr. Rogers: But before letters of that kind are received it seems to me we ought to get some qualifying evidence here, some evidence making them competent, some evidence to show who these men are and what their authority is, particularly when we are dealing with intramural communications of this kind within the body of the corporation itself.

The Court: Why cannot that proof be made, Mr. Wright?

Mr. Wright: If the Court please, I do not see that it makes a great deal of difference whether or not your Honor actually admits these in evidence at this time or merely reserves a ruling on them. The important thing, as I see it, is to show while the witness is still here what we propose to establish with this inter-office correspondence. Before, as I say, we attempted to stipulate in advance who all of these men were. I do not think there is any question about [fol. 285] that being eventually proven. Of course if we do not prove it this can all be stricken out at any time.

The Court: I do not think it is the proper procedure at this time because you may want to examine somebody on the stand with reference to these matters.

Mr. Rogers: Actually as to motivation and the surrounding circumstances. Otherwise we do not get the benefit of the witness on the witness stand.

The Court: I will receive the exhibits subject to being stricken out.

Mr. Rogers: That is also subject to the same reservation that was made before?

The Court: Yes.

Mr. Wright: Exhibit P-10 is the letter from Mr. Bissell, the Columbia Branch Manager at Cleveland, to Mr. Rube Jackter, the Columbia Sales Manager at New York, and the date is February 26, 1935. That accompanied this contract that is identified here as Plaintiff's Exhibit 1, which was approved on February 28th, and the application is dated [fol. 286] February 25. This letter says: "My dear Rube" (reading letter).

Exhibit P-11 is a letter from McConville to Bissell that is referred to in Exhibit P-10. This is dated February 21, 1935, and reads (reading letter).

Mr. Rogers: May it please the Court, of course these letters cannot be accepted as establishing factually what is contained in these letters. That should be established by the plaintiff by competent evidence, and that is exactly why I objected to the admission of these letters.

Mr. Wright: Of course they are not offered for that purpose.

Mr. Rogers: If they are offered not for that purpose will you limit the purpose for which you claim they are offered?

Mr. Wright: They are clearly offered to show that Columbia could not and would not deal with this exhibitor until it had been unable to make the deal with the Schine Company and——

The Court: Your letters do not show that, do they?

Mr. Rogers: No.

Mr. Wright: The letter P-10 says very clearly "We can make more money by selling Long here, get more money out of Long than they would get out of Schine", but Bissell's [fol. 287] letter to Jackter says, "We had to hold the deal up on account of Schine", and what these letters very clearly establish is that they were not able to sell——

The Court: Standing alone they would not show that. I will receive the letters, anyway. If they are competent for any purpose they are competent to be received.

Mr. Rogers: May it please the Court, Mr. Wright has limited his proof and his offer of proof under these letters, yet the offer is not embraced at all in the language of the letters. He is offering the two letters P-10 and P-11 merely to show that Columbia endeavored to hold up Long pending a deal with Schine, waiting to see whether or not they could make a deal with Schine. On the contrary, these letters do not show anything of the kind.

The Court: I may be with you so far, but that does not prevent you showing further that they held up Schine. I will receive them.

Mr. Rogers: On the other hand, the letters do not show any reason for a hold-up. The contract is dated February [fol. 288] 25 and the approval is February 28, three days later. I say for any purpose these letters are not admissible and surely not for the factual matters there contained.

The Court: I will receive them at this time.

(Thereupon the letter dated February 26, 1935, was marked in evidence as Plaintiff's Exhibit P-10.)

(Thereupon the letter dated February 21, 1935, referred to, was received in evidence and marked as Plaintiff's Exhibit P-11.)

Mr. Wright: P-12 is a letter from the United Artists Branch Manager at Cleveland, A. M. Goodman, to Paul M. Lazarus at the home office in New York. This is dated February 8, 1937, and reads (reading letter).

I want to offer this in evidence, this letter of February 8, 1937, Exhibit P-12 for identification.

The Court: Purporting to be a letter from whom to whom?

Mr. Wright: This is from Mr. A. M. Goodman of the United Artists, Branch Manager at Cleveland, to Mr. Paul M. Lazarus at the home office in New York, and it relates to a deal made with Mr. Long, about which he testified.

[fol. 289] The Court: I take it from what you said before that you are going to introduce evidence here to show more about these letters? The ordinary way would be to prove them by somebody from the Company.

Mr. Wright: Mr. Goodman has already been identified as the Branch Manager and Mr. Paul M. Lazarus is the Branch Manager in New York, and that proof will appear.

The Court: I will receive it, subject to being stricken out later on.

Mr. Rogers: And subject to the same objection on the part of the defendants as was made to P-10 and P-11?

The Court: Yes.

Mr. Wright: In that connection we should also like to offer data as to the film rental which Mr. Long paid United Artists and those paid by Schine. This data showing play dates and rental paid is contained in an answer to an interrogatory that was submitted to the United Artists Corporation. Instead of offering or tearing apart the interrogatory I would like to read into the record the data we regard as significant, and then if there is any question [fol. 290] as to the correctness of the data it, of course, may be subject to whatever changes counsel for the defense thinks should be made.

Mr. Rogers: May it please the Court, I think Mr. Wright is just shifting the burden to the wrong shoulders here. It is up to Mr. Wright to prove his case and not up to us to concede his case for him, and to prove his case in a proper manner, and that is by proper, competent evidence. I have not heard in a long time a more flagrant abuse of the right of introduction of evidence than there was read to this Court now in the Exhibit P-12. There is the rankest kind of hearsay that permeates that letter. There is no difficulty at all on the part of Mr. Wright if he wants to prove his case properly and in accordance with the rules of evidence to get the proper evidence into this court. Whatever United Artists, or whatever any non-defendant, stipulated by reason of interrogatories when they were parties has no relationship whatever to us, has no binding force [fol. 291] and effect on us, and cannot be foisted on us in this manner by having Mr. Wright say he will introduce it first, and then the onus is going to be on us to disprove. The onus is just the other way. It is on him to prove and on us to disprove. I have never heard that propounded before, and I hope never to hear it propounded again.

Mr. Wright: On these film rental figures of course we could subpoena the cut-off record of the United Artists from which this tabulation is made, and which I understand will show the same thing. Certainly as to the rental that was paid here, this data has been open for examination by the defendants [illegible] well as ourselves. If any one wishes to challenge it we will of course subpoena those records. It does seem to me, however, that it is something of a waste of time, unless there is some dispute about the accuracy of what the United Artists has put in its sworn tabulation. I would regard this as just as satisfactory evidence as the cut-off card from which it was made.

The Court: Do you object to it?

[fol. 292] Mr. Rogers: Indeed, I do.

The Court: Sustained.

Mr. Wright: May I simply state what we wanted to show and what we will show then by production of the cut-off record? What we wanted to show——

Mr. Richardson: Supposing he puts it in evidence on the record and shows it to your Honor in that way instead of inserting it in this way?

Mr. Wright: The only reason for my stating it is to give them the opportunity, if they wish to do so, to examine Mr. Long about it. If they do not want that opportunity then that is immaterial to me.

The Court: Anything further?

Mr. Wright: Counsel offered in evidence this letter from the Cleveland Exchange Manager for Metro, dated April 12, 1938, in which he offers some of the 1937-1938 pictures. You will recall that Mr. Long had previously been advised by Metro that the 1937-1938 product had been sold to Schine. Then they came back and offered him a split deal and he got half of the 1937-1938 pictures. This letter of [fol. 293] April 12, 1938, I take it, was offered by the defendant to show that the 1937-1938 product had not actually been sold to Schine. That, as we understand it, was an untruth, and we offer this—

Mr. Rogers: That was not the purpose of offering D-6, and I do not want to be misquoted or misunderstood. The purpose of offering D-6 shows clearly on the face of it that it was offered for the purpose of showing that Long admitted that he had an abundance of pictures available at the time that letter was written, an abundance of pictures. Not as to whether any deal had been closed at any particular time at all. That was read to him. In other words, I read it to him and I said, "You remember receiving it?" And he said, "Yes." I directed his attention to this one paragraph which read, "I appreciate all you told me in conference of having an abundance of pictures available for you at this time and being booked up to July 1st, still having six of our pictures to play." That is all I directed his attention to and he admitted that.

Mr. Wright: As I understood it the entire letter was [fol. 294] offered in evidence. Am I mistaken about it?

Mr. Rogers: I think you are mistaken.

Mr. Wright: In any event, the statement is read there and I want to offer in evidence this Exhibit P-13, which is a letter dated April 7, 1938, five days before, from Mr. Dillard to Mr. Drew, and which explains, I think, why Mr. Drew then attempted to make it appear in this letter of April 12th that he had not sold the 1937-1938 product, second run, to Schine, but actually some of it was still available.

Mr. Caskey: These documents that are being produced here, the photostats, are in lieu of their production under a subpoena duces tecum?

Mr. Wright: They were subpoenaed.

Mr. Caskey: You are simply producing them rather than having a witness on the stand to identify them?

The Court: We are putting the cart before the horse. I have admitted these on the ground that they will be identified, and they will be stricken out unless it is shown from the record that they are what they claim they are.

Mr. Caskey: I want to call attention to the fact that Mr. Dillard is an attorney for the Company, and if we were [fol. 295] following the normal procedure and there was a witness on the stand called to produce this letter the privilege would be claimed.

The Court: You will have to show the fact that this is part of the letters of the Company.

Mr. Wright: Mr. Caskey has just so stated. There isn't and question about that. This came from the files of the Company.

The Court: If they consent to it that is another thing.

Mr. Wright: I mean that they don't dispute——

The Court: I do not know what they dispute. They dispute it when they raise an objection to it.

Mr. Rogers: Exactly. And I raise the same objection to this as I did to the others, and on the further ground that now the accredited representative of this defendant claims privilege.

The Court: As long as you have got the parties right here with the original documents who can testify to these things, that is the simplest way to do it.

Mr. Wright: The only party who is here is Mr. Caskey, who is the one who is in charge of the documents that were produced by this Company in response to the subpoena. If [fol. 296] there is any question about the fact that these came from the Company's records I would be glad to put Mr. Caskey on the stand and show it.

Mr. Caskey: We are claiming the privilege.

Mr. Richardson: Why don't you call the witnesses? Is there any reason why not?

Mr. Wright: We have, of course, a great many of these documents, or a substantial number, which relate to many different situations. In no event, it seems to me, would there be any purpose served in calling one or more of these people here, interrupting this examination with their testimony, sending them back, and putting on a witness in another situation, and then calling him again from the Company and identifying something else.

The Court: One individual from any one of these companies can identify the records of the Company, can they not?

Mr. Wright: That, I take it, Mr. Caskey can do. He is the designated representative. I will call him as a witness.

Mr. Rogers: May it be understood, your Honor, that Mr. Long has not been excused?

The Court: My point about it is that the orderly way [fol. 297] would be for one representative of the Company to identify the records that you have here that you propose to introduce as being a part of the records of the Company.

Mr. Wright: As a matter of convenience they delegated that task to Mr. Caskey. That I think I can show if he will take the witness stand.

John F. Caskey, a witness called by and on behalf of the Plaintiff and having been first duly sworn was examined and testified as follows:

Direct examination.

By Mr. Wright:

Q. Mr. Caskey, you are familiar, are you not, with the subpoenaes which have been served in this case for the production of documents on Loew's, Inc., R.K.O., Radio Pictures, Paramount Pictures, Inc., 20th Century-Fox Film Corporation and Warner Bros. Pictures; is that right?

A. I am as to the first four.

Q. In any event, the first four includes Loew's, Inc.?

A. Yes, sir.

Q. And this document that has been marked here for identification as Exhibit P-13 is one of the documents that was produced by Loew's, Inc., in response to the subpoena?

[fol. 298] A. That is correct.

Q. And that was taken from the files of the Loew Company?

A. The original from which this photograph was made was delivered to a representative of the Department of Justice, who caused this photostat to be made, and the original returned to the Company.

Q. You have been designated by Loew's, Inc., and the other four distributors, to produce here at the trial the documents which the Government has subpoenaed for the trial from the so-called Big Five?

A. I don't know anything about the so-called Big Five. My clients have authorized me to produce the papers which come within the subpoena.

Q. And your clients include Loew's, Inc.?

A. Yes, sir.

Mr. Wright: That is all.

The Witness: I would like to state on the record that Mr. Tyree Dillard is an attorney at law and was counsel for Loew's, Inc., at the date which this document bears.

Mr. McKay: Your Honor, if Mr. Wright is going to make an offer of this document I think he should make it while Mr. Caskey is on the stand so that he can assert his privilege. Obviously Mr. Wright is waiting until he gets [fol. 299] Mr. Caskey off the stand before he makes the offer.

The Court: We still do not know where he got these papers. They are not identified as coming from the records of the Company.

Mr. Wright: I asked him if this came from the files of Loew's, Inc., and he said it did.

The Court: Do you personally know that?

The Witness: I am entirely satisfied of that.

The Court: Do you know where they came from? You told how you got them awhile ago. Do you know where they came from?

The Witness: They were given to me by the General Counsel of Loew's, Inc., as the papers which complied with the subpoena duces tecum.

Mr. McKay: I understand this paper is not covered by the subpoena from Mr. Caskey's associate counsel. I raise the question

The Court: Anything further?

Mr. Wright: No.

Cross-examination.

By Mr. Rogers:

Q. May I ask, Mr. Caskey, after having made your statement of Mr. Dillard's position with Loew's and M.G.M., is [fol. 300] it your position that Loew's and M.G.M., your clients, claim privilege with reference to any communications as between Mr. Dillard and anybody in connection with the Company?

A. Loew's, Inc., claims this document is a confidential communication between its Counsel and itself and claims the privilege.

The Court: I think it would be very easy to prove without taking up the time here in discussions relative to the introduction of these papers, by producing here somebody that knew where these records came from and that they were part of the records of the Company. That is all you would have to do. This attorney gets them from another attorney. Whether they came from the records of the Company there is no proof of.

Mr. Wright: Mr. Caskey's function in coming was to save the necessity of calling these people from Loew's, Inc.

The Court: What do you offer now?

Mr. Wright: I am offering this letter which has been marked as Exhibit P-13 for identification.

The Court: I will receive it but I am going to strike it out unless it is further connected up.

[fol. 301] Mr. Rogers: And subject to my objection?

The Court: Yes. It is only a photographic copy, is it not?

Mr. Wright: Yes. I take it there is no objection from the fact that it is a photostat? Is that correct?

Mr. Rogers: That is correct.

The Court: What exhibit is that?

Mr. Wright: That is P-13. The date is April 7, 1938. It is a letter from Mr. Tyree Dillard, Jr., at the home office of the Loew Company, to the Cleveland Branch Manager, F. D. Drew. It reads (reading letter).

Mr. McKay: Is that letter offered to show that the second run licensee was in fact changed?

Mr. Wright: Yes, it is.

Mr. McKay: Then it is certainly objectionable on that ground, your Honor. It cannot be offered as proof of the facts stated in the letter, depriving us of our right of cross examination either of Mr. Drew or Mr. Dillard.

The Court: The theory on which it would be admitted without the production of the individual writer would be that it appears as part of the records of the company, that they were taken from the records of the company.

Mr. McKay: It is hearsay as it now appears.

[fol. 302] The Court: I said unless it is connected up as being part of the records of the company it will be excluded.

Mr. Rogers: Your Honor, may I make this suggestion? It seems to me that a certain amount of elasticity may be in order at times, but here we have gone through the testimony of an entire witness, we have got his oral testimony, we have got documentation here, and we haven't a single scintilla of evidence by the plaintiff as to who these people are that wrote these letters, who these people are that are supposed to have made these statements. It seems to me that the plaintiff owes to this Court a more careful degree of preparation than that in the trial of a case. I think they might have devoted a day or devoted two days before bringing the witnesses on to having some accredited representatives of these producers appear and place these documents before the Court, and have these persons identified and have their authority identified, so that we would know just how far these people are authorized to act and what they [fol. 303] are doing here. We have got a tremendous mass of unconnected documents, unconnected testimony, all hanging by a slender thread. When it comes to making motions to strike those motions are going to take a lot of the time of this Court.

The Court: I have already passed on those questions. I presume that perhaps they would have some knowledge of the relationship of some of these parties named in these letters. I do not think an objection should be made from a captious standpoint. My view of the matter is that when the company is charged as a conspirator the records are competent as proof when the records are properly identified as company records. As I pointed out, in my view, several times their relation is the same as though they were a party to the action. There is a charge here that there is a conspiracy and if they are conspirators their records relating to these transactions directed to show a conspiracy, if they are properly identified, are competent. I do not think Counsel should make captious objections if [fol. 304] there is no disagreement about the position that these gentlemen held. On the other hand, Counsel has the right to object and hold the plaintiff to its proof, and that is the proof by an officer of the company who knows that these are a part of the records of that company. It is the simplest thing in the world for an office man or a general manager to come here and testify that these are records taken from that office.

Mr. Rogers: But the graver part is this tremendous mass of factual matter contained in these letters which I think we are entitled to have evidence on.

The Court: The Court will direct him to be here at any time you want them to examine on these letters.

Mr. Rogers: It is more than merely directing him to be here to examine him on these letters. I think it is rather if the plaintiff is introducing these letters as evidence of the factual matter contained in these letters then we are entitled to have the evidence of witnesses as to these factual matters and not merely a declaration in a letter.

[fol. 305] The Court: I disagree with you on that. As I said before, if they are letters shown to have been kept in the regular course of business by one of these companies, and then they are identified as being part of that record, they are competent here. I mean by that you have not got to call one of these gentlemen here to testify that he wrote this letter and so-and-so received it. It is received because they are a part of the records.

Mr. Rogers: I will go as far as that, your Honor, but I do not go the rest of the way. That is where this writer of the letter attempts to set forth factually a state of facts which your Honor is going to take as testimony of the fact I think we ought to get evidence on those factual matters and we are entitled to evidence on those factual matters and to cross examination.

The Court: The question of connection, of course, is to be raised at the end of the trial.

Mr. Rogers: And that is their duty in spelling out their case. He must get the witness on the stand and prove his facts by the witness.

The Court: No, I do not agree with that statement.

[fol. 306] Mr. Wright: The last two documents that were identified were the contracts for second run between Paramount and Schine for Mt. Vernon, which are respectively marked P-14 and P-15 for identification, and we will offer those.

(Thereupon the contract previously marked as Plaintiff's Exhibit P-14 for identification was received in evidence.)

(Thereupon the contract previously marked as Plaintiff's Exhibit P-15 for identification was received in evidence.)

Mr. Rogers: There is no objection to the documents, but I do not think we will take the characterization of Mr. Wright as part of the document or his implications.

Frederick Lorey, a witness called by and on behalf of the Plaintiff and having been first duly sworn was examined and testified as follows:

Direct examination.

By Mr. Boggess:

Q. Mr. Lorey, where is your residence and what is your occupation?

[fol. 307] A. Mt. Vernon, Ohio, and I am City Editor of the Mt. Vernon News, a daily newspaper.

Q. How long have you been City Editor of the Mt. Vernon News?

A. About 15 years.

Q. Mr. Lorey, have you with you the edition of your paper of date July 13, 1939?

A. I have.

Q. Are you acquainted with Mr. James Platt of Mt. Vernon?

A. Yes.

Q. What is his connection with the Schine Company?

A. I understand he is the local manager of their theatres in Mt. Vernon.

Q. Will you turn to the issue of July 13, 1939, and find an article which is signed by Mr. Platt, relative to the lease on the Memorial Theatre?

A. Yes, it is on page 7 of that issue of the paper, under the heading of "People's Forum". It is a letter to the Editor of the News.

Mr. Boggess: Your Honor, this is an article signed by James C. Platt——

The Court: Are you offering it?

Mr. Boggess: I am offering it in evidence, yes.

Mr. Rogers: May it please the Court, I object to it on the ground that it is not the best or primary evidence, that it purports to be evidence of something that was sent to [fol. 308] the Editor. I object to it on the ground that there has no proper foundation been laid to show the authority of the one who purported to sign it.

The Court: Sustained.

(Thereupon the letter previously marked as Plaintiff's Exhibit P-13 for identification was received in evidence.)

[fol. 309] Mr. Boggess: The Witness, your Honor, has stated that Mr. Platt was the manager——

The Court: Newspaper articles are only hearsay, as far as that is concerned.

Mr. Boggess: That is an article signed by Mr. Platt.

The Court: He did not sign that paper?

Mr. Boggess: No, sir.

By Mr. Boggess:

Q. Mr. Lorey, did this article come up and reach you in the due course of the operation of your business?

Mr. Rogers: I object to that as immaterial.

The Court: Well, let me see. Were you connected with the paper at that time?

The Witness: Yes, sir.

The Court: Did you see the article that was written signed, as in the print?

The Witness: Yes, sir, I saw the letter.

The Court: Did you read it?

The Witness: I read it, yes.

The Court: What became of that letter?

The Witness: It was destroyed.

The Court: Are you able to state whether this print is an exact copy of the letter?

The Witness: Barring typographical errors, it is a true copy.

[fol. 310] The Court: Typographical errors——

The Witness: Might have been a misspelled word, or misplaced punctuation mark, something of that kind.

The Court: I think that makes it competent.

Mr. Rogers: May I interrogate?

The Court: Yes, surely.

By Mr. Rogers:

Q. You say you are the editor of the paper?

A. City Editor.

Q. City Editor. You say the original letter came to you?

A. It came into our office.

Q. Did it come to you personally?

A. I handled it and put it in the copy box.

Q. By that you mean you put it in your copy box to go down to the printing end of your paper?

A. Yes.

Q. And did you compare this article with the original letter?

A. After it was published?

Q. Yes.

A. No, that is not my capacity to do that.

Mr. Rogers: I contend, may it please the Court, that is not admissible.

[fol. 311] The Court: Do you know who wrote that letter?

The Witness: Yes.

The Court: How do you know?

The Witness: Perhaps I shouldn't have said "Yes" so positively. May I state my best recollection?

The Court: You saw it first in the office?

The Witness: Yes.

The Court: Objection sustained.

Mr. Boggess: May I ask him a question or two, your Honor?

The Court: Yes.

By Mr. Boggess:

Q. Was the letter signed by James C. Platt?

Mr. Rogers: I object to that.

The Court: Sustained. Signed with the name James C. Platt. Do you know who signed it?

The Witness: I didn't see it signed, no, sir. I saw the signature "James C. Platt" on the letter.

Mr. Boggess: Does your Honor require that he know his signature in a case of that sort?

Mr. Rogers: I should think so.

The Court: There is an objection to the question.

Mr. Boggess:

Q. You saw the signature, did you not, Mr. Platt's signature?

A. No, sir, I am not familiar with his signature.

[fol. 312] Q. Who brought the article to the paper?

A. I was going to say my recollection is that Mr. Platt gave it to Mr. Devalan and it eventually reached my desk and I sent it out to the composing room. Those letters are sometimes handled by Mr. Devalan himself, sometimes by me, sometimes he gives them to me.

Mr. Boggess: We offer the letter in evidence, your Honor.

Mr. Rogers: Same objection, may it please the Court.

The Court: You mean you saw it delivered to Mr. Devalan?

The Witness: That is my recollection.

The Court: What?

The Witness: That is my recollection. I could be mistaken. This is the first time I thought of it since 1939, and naturally, my mind is rather hazy. I could not state positively.

The Court: Statement to Mr. Devalan and to the City Editor by Mr. Platt are incompetent. Have you any recollection on the subject of Platt delivering this letter?

The Witness: I have been trying to recall the circumstances ever since Mr. Boggess asked me to come up here and I do have a recollection that Mr. Platt came in the office and gave the letter to Mr. Devalan. As I say, I would hesitate to state that as a fact. My best recollection [fol. 313] is that is as far as I can state.

The Court: What is your objection to it?

Mr. Rogers: The objection is that this witness is not able to state as a fact, first, that he did see the letter delivered by Mr. Platt to Mr. Devalan. Second, this witness testified he did not compare the letter with the published print of that letter.

The Court: He said it is the same except for typographical errors.

Mr. Rogers: Sir, that is just his opinion. When I asked him definitely whether he compared it, he said, no, he did not compare it.

The Court: He testified also it was identical except for typographical errors.

Mr. Rogers: That was his statement, but when he was pinned down——

The Court: What is your recollection as to that?

The Witness: Your Honor, as I say——

The Court: Have you any recollection of it at all?

The Witness: I have a recollection, yes.

The Court: What is your best recollection of it?

The Witness: My best recollection is that Mr. Platt came in the office and handed it to Mr. Devalan, and Mr. Devalan, [fol. 314] as I recall, it must have been around lunch time, he was busy, and he turned it over to me and I sent it on up to the composing room, to be set up in type.

The Court: I think that makes it competent.

Mr. Rogers: Wait a moment. May it please the Court, are you able to testify definitely as a fact that that occurred?

The Witness: No, I am not. I said it was my best recollection.

By Mr. Rogers:

Q. And you may be mistaken about that recollection, is that right?

A. I may be mistaken. As I said, it is the first time since 1939 I thought about it.

Mr. Rogers: It seems to me on proof of this kind that there must be definite proof.

The Court: Overruled.

Mr. Boggess: Your Honor, I would like to read this into the record. This is a large book.

The Court: I suppose the article under the date is sufficient?

Mr. Boggess: The article is on page 7 of the Mt. Vernon News of the date Thursday, July 13th, 1939, under [fol. 315] heading "People's Forum.—

Editor of the News:

The Memorial Building was built by the people of Knox County as a memorial to the soldiers, sailors and pioneers of the county. A fine theater was erected in connection with the building for the use of the community for public meetings. If our bid of $3,750 is accepted by the Memorial Building Commission, the theater will be turned back to the County Commissioners for its original use. The theater will earn $750 more for the taxpayers, and the savings in coal, wear and tear on the building and taxes will probably amount to another $500.

If the low bid of $3,000 is accepted it means that the County Commissioners will be paying more than $1,000 a year for the maintenance of a picture house in their county building..

If any one thinks the offer of $3,750 is made with any selfish motive, I call to their attention that the maker of the bid promoting the largest public building ever erected [fol. 316] in Knox County employs 18 people who spend their money in the county and has given $800 to bring new industries to Mt. Vernon.

If the leasing of the Memorial Theater had ever produced a quarter as much for the community, I would be the first one to say, 'Continue the theater'." Signed "James C. Platt, Manager of the Vernon Theater."

The Court: What do you claim as the significance of that?

Mr. Boggess: The significance of that is that they state where they are putting in a bid of $3,750 for the theater. They say that they will close the theater and they will not operate a show there, but when they get it, they will close it up. In other words, their object in doing that is to eliminate the competition of Mr. Long, close the show and it is not in order to operate another show.

The Court: All right. Is that all of this witness?

Mr. Boggess: That is all.

The Court: Cross-examine.

Mr. Rogers: That is all.

[fol. 317] **Lawrence Edmund Sperry** a witness called by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Boggess:

Q. Mr. Sperry, state your residence and occupation.

A. Mt. Vernon, Ohio, Manager for the United States Employment Service Office.

Q. Mr. Sperry, have you any connection with the Memorial Building, and did you have any connection between the period December 31st, 1934, to the present time?

A. Yes, for about ten years. I have been on the Board of Trustees appointed by the Common Pleas Court operating the building.

Q. When did that connection begin?

A. 1934.

Q. 1934?

A. To my best recollection.

Q. Have you any other official position with the Board of Trustees?

A. I can go by the title Secretary-Treasurer at the present time. Checks go through my hands for the rent.

Q. What is the function of the Board of Trustees with [fol. 318] reference to that building?

A. They prescribe the regulations under which the building will be operated, look after the maintenance and employ the custodian and the help around the building, in the front part of it. Of course, the rear, the theater part, is leased and is under the entire control of the lessee.

Q. Mr. Sperry, you mentioned that you have been connected officially with the building since 1934. At that time who held the lease of the building?

A. The Schine Theater interest had taken over a lease, as I understand, from Mr. Platt, and were paying the rental until the theater closed, up until that lease expired. I came on the picture right at that time when the theater was closed and the thought came before the Board whether they would continue that policy or whether the county, the people, wished it be used for the showing of pictures. That was the question that came up the first year.

Q. When did that lease expire, if you know?

A. The end of 1934, as I remember it.

Q. Who was your next tenant of the theater?

A. Mr. Long.

Q. Mr. Sperry, how long was Mr. Long's lease?

A. It was five years, one year renewal in addition to the five.

[fol. 319] Q. In the year 1939, did a representative for Schine appear before the Board in regard to a lease of the Memorial?

Mr. Rogers: One moment. May it please the Court, may we have that representative defined and named and mentioned, rather than a representative of Schine's which calls for a conclusion?

Mr. Boggess: I am trying to avoid leading my witness.

Mr. Rogers: Let us try to do it the other way, because you were leading your witness.

The Witness: What is the question now?

Mr. Boggess: Do you want me to name who it was?

Mr. Rogers: I want the witness to testify.

The Court: Who was it came before the Board, if anybody?

The Witness: I think there has been several. I think Mr. Platt talked to us and Mr. Devin talked to us, an attorney representing the Schine interests.

Q. When did Mr. Devin appear?

A. I don't know as I can tell you offhand the date.

Q. Was it in the year 1939?

A. Yes, that was my impression.

Q. What was his connection with the defendants' interest?

Mr. Rogers: May we get that date fixed? What time in [fol. 320] 1939?

The Court: Tell with reference to when the new contract was made?

The Witness: I would say probably late in the summer or early fall of 1939, as I remember.

Q. That was when Mr. Devin appeared?

A. Yes.

Q. What was Mr. Devin's connection with the Schine interest?

A. He represented the Schine interests as an attorney, according to his own statement.

Q. He appeared as attorney?

A. That is right.

Q. When he appeared before the Board?

A. That is right.

Q. With reference to the leasing of the theater what statements did Mr. Devin make as to what disposition the Schine interests would make of the theater?

Mr. Rogers. May it please the Court, I object to that on the ground there is no evidence here to show the authority of Mr. Devin, an attorney, to make any statements to bind the Schines, his client.

The Court: Overruled.

Mr. Boggess: Answer the question.
The Witness: Please state the question.

[fol. 321] (Question read.)

The Witness: He followed the line the same as this article that was just read.

The Court: No, no, that won't do.

Mr. Rogers: I move to strike it out.

The Court: What did he say?

The Witness: He was interested that the Schine interests were interested in renting the Memorial Theater and with the idea of the rent paid to the county would be clear, and the theater would be closed, as far as pictures were concerned and would be available for the county to use for any purposes they desired.

Q. You mention that Mr. Platt also appeared before you. What statements did he make?

A. Along the same line. I don't say he made an official appearance. Mr. Platt and I are acquaintances and we see each other quite often.

Q. You mean he did not appear?

A. I don't know. He may have appeared, perhaps he did come in with Mr. Devin at that time.

Q. In talking to you, did Mr. Platt make any statements in regard to the fact that if the Schines acquired the lease of the theater that they would close the theater?

A. That was the impression I obtained from the remarks [fol. 322] of both of these gentlemen who thought it was to the advantage of the county to save the wear and tear on the building, and have the rental to help carry the costs.

Q. What other statement did Mr. Platt make in conversation with you?

A. I don't remember anything in particular.

Q. Did he say anything in regard to the competition of——

Mr. Rogers: May it please the Court, I don't think counsel should be permitted to lead this witness.

The Court: Is that all you recall that was said on the subject of the lease?

The Witness: Yes.

The Court: You may interrogate, if you desire, or draw his attention to any particular.

Q. When Mr. Long's five-year lease expired in 1939, how many bids were put in for the lease for the next term?

A. Let's see, that is the first five-year lease. Mr. Long took advantage of an optional clause that was in the lease and met with us, and we agreed on terms for an additional year. It is my recollection there were no bids received other than his at that time.

Q. What was the object of this article Mr. Platt had in the paper in which he said they had a bid for $3,750?

Mr. Rogers: Pardon me. May it please the Court, that [fol. 323] is asking this witness to give the operation of somebody else's mind.

The Court: It is a conclusion. Sustained.

Q. Then there was no bidding for the lease at the end of Mr. Long's five-year lease?

A. That is my recollection on it now, yes.

Q. Mr. Long simply had an option?

A. He exercised the right, I think the way it is worded in that clause in the contract. We understood between the two of us that he had a right to talk to us first on renewal for another year of that contract, and that is what we did.

Q. To refresh your recollection, Mr. Sperry, didn't Mr. Long's lease of five years, his first lease, didn't it recite, wasn't it for three years with an option for an additional two years?

A. That is right.

Mr. Rogers: May I ask: Do we have the lease here? Instead of all this guesswork.

The Court: That is the testimony of Mr. Long; three years option, to hold it for two years longer.

Mr. Rogers: That is what Mr. Long testified, but we have different testimony from Mr. Sperry that it is five years.

The Witness: I was wrong on that.

[fol. 324] Mr. Rogers: You are.

The Witness: Yes.

Mr. Boggess:

Q. Going back to the end of the five-year lease, can you tell who put in the bids for a new lease after the expiration of the five-year lease?

Mr. Richardson: He already testified no bids were put in.
Mr. Boggess: He was under misapprehension.
Mr. Richardson: No, not on that he was not.

Mr. Boggess:

Q. How about it?

The Court: After the five years expired, then you advertised for new bids?

The Witness: The Schine interests put in a bid and Mr. Long gave us a notice as is required by the contract that he wished to exercise his option.

Mr. Boggess:

Q. This is the end of the five-year lease?

A. That is right. I am mixed up on that. There were several bids. I can't carry the names of the gentlemen who bid at the time.

Q. Did Mr. Long and Mr. Schine bid?

A. Mr. Schine did. He was one of the bidders, and Mr. Long made no definite bid, to my memory.

[fol. 325] Q. Mr. Long secured the lease for the extra year?

A. You said the end of the five years.

Q. At the end of five years there is a lease for an additional year?

A. No.

Q. At the end of 1939, which was the termination of Mr. Long's five-year lease, you said that bids were put in, that Mr. Schine put in a bid. Now, I am asking you if Mr. Long put in a bid, who got the lease for the following year?

A. Mr. Long.

Q. Then Mr. Long put in a bid, didn't he?

A. That is right.

Q. Why was Mr. Schine's bid rejected, Mr. Sperry?

A. We were of the opinion that the community wanted the theater kept open. From a financial figure Mr. Schine's bid was better but in order to do what we thought what the community wanted we accepted Long's bid.

Q. At the conclusion of the one-year lease, which Mr. Long had, there is some testimony in the record in regard to an option. Did Mr. Long give you notice that he would avail himself of the option of his lease and at what time did he give you the notice, if so, what time?

A. Yes, we received a notice from him. I can't give you [fol. 326] the exact date of it, but it was within the proper time, as I remember it.

Q. Was the notice that you received—is this a copy of the notice that you received?

A. That is my best recollection, yes, it is.

Mr. Rogers: May we have some evidence as to where the original was when that was served on him before we use copies?

Q. Have you the original with you, Mr. Sperry?

A. I may have it. I will see. (A pause.) Is this the one you refer to? (Handing paper to counsel.)

Mr. Boggess: Yes,

The Court: Proceed.

Mr. Boggess: We offer this in evidence.

The Court: Wasn't that received?

Mr. Rogers: It was first received, and then your Honor struck it out.

Mr. Boggess: This is the original.

The Court: All right, received.

(Thereupon, the original letter dated September 30, 1940, from Emerson W. Long to Mr. Sperry, referred to, was received in evidence and marked as Plaintiff's Exhibit P-9.)

Q. Did the Board and Mr. Long have some conferences [fol. 327] about getting together on a new lease?

A. We expected to hear more from him than we did. Finally, we even, I think, sent for him. At the time we put the ad in the paper and we didn't have any activity on his part, to see what he wanted to do about this option.

The Court: He did not appear or come to the Board?

The Witness: No.

Mr. Boggess:

Q. You did have a certain number of conferences, but not as many as you expected, is that what you mean?

A. No, I didn't think he had a definite interest, that we expected, and didn't put a definite bid in at the time.

Q. I am not talking about whether he placed a bid, but in regard to complying with the terms of the option. The option says there shall be negotiations and come to terms?

A. That is right.

Q. Did you all get together and endeavor to come to terms in regard to a new lease?

A. Rather indefinite I would say.

Q. I refresh your mind in regard to this (handing a paper to the witness).

A. Oh, yes, we had some conversations.

[fols. 328-329] The Court: We will suspend at this time.

(Whereupon at 5:05 o'clock P. M., a recess was taken until Friday morning, June 2nd, 1944, at 10 o'clock a. m.)

[fol. 330] UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF NEW YORK

Civil Action No. 223

UNITED STATES OF AMERICA

vs.

SCHINE CHAIN THEATRES, INC., et al., Defendants

Trial continued before the Honorable John Knight, United States District Judge, without a Jury, United States Court House, Buffalo, New York, Friday, June 2, 1944, at 10 o'clock A. M.

Appearances:

Robert L. Wright, Esq., John F. Clagett, Esq., Harold L. Schilz, Esq., Albert Boggess, Esq., Special Assistants to the Attorney General.

Philip Marcus, Esq., and Milton Kallis, Esq., In Behalf of the United States of America.

Edmund McCarthy, Esq., Attorney of Record.

Willard S. McKay, Esq., Saul E. Rogers, Esq., Arthur J. Homans, Esq., Howard M. Antevil, Esq., and Seth Richardson, Esq., of Counsel for Defendants.

Lawrence Edmund Sperry resumed the stand on behalf of the Plaintiff, having been first duly sworn, was examined and testified further as follows:

Direct examination (Continued).

By Mr. Boggess:

Q. Mr. Sperry, at the conclusion of the Long lease to whom or to what company did you lease the Memorial Theatre?

A. The Belpik Corporation, a subsidiary, as I understand, of Schine.

Q. Have you the contract of lease with you at this time?

A. I do.

Q. Mr. Sperry, will you look at that and see if that is your signature, as a member of the Board of Trustees (handing paper to witness)?

A. It is.

The Court: What is the materiality of this lease?

Mr. Boggess: We do not intend to introduce but a couple of paragraphs.

The Court: I was wondering what the lease for two years, what that has to do with this case.

Mr. Boggess: This is a five-year lease that followed Mr. Long's lease. It is simply that the Board of Trustees [fol. 332] deemed it advisable to put in the lease a clause requiring the Memorial Theatre to remain open. That was a covenant in the lease, to remain open. And another covenant requiring a certain grade of pictures, and a third covenant that the admission prices should be confined to 25 cents, with a proviso. The materiality is that they recognized that the Schine Circuit might close the theatre, which they did not want to occur; that they recognized that they might raise the admissions, which they did not want to occur.

The Court: Is this a contract of Schine?

Mr. Boggess: This is with Schine.

Mr. Wright: The Belpik is a defendant and a subsidiary of Schine.

Mr. McKay: Our only objection is that it relates to a purely local matter, and we will object to all evidence on that, but we are not going to argue the point at this time.

The Court: Overruled. I will receive it.

Mr. Boggess: I offer this in evidence, may it please the Court.

The Court: Certain paragraphs?

Mr. Boggess: Two paragraphs on page 3, the second and [fol. 333] third paragraphs of a lease dated December 18, 1940, executed by the Board of Trustees of the Knox County Memorial Building and the Belpik Theatre Corporation.

(Thereupon paragraphs two and three of lease dated December 18, 1940, referred to, received in evidence and marked Plaintiff's Exhibit P-16.)

Mr. Boggess: I will now read the two paragraphs (reading.)

[fol. 334] Mr. Boggess (reading from Exhibit 16): "Second Party hereby agrees to operate the leased theater daily and Sunday, giving at least one performance every night, unless Second Party is prohibited from so doing by violence, fire or any circumstance beyond the control of Second Party.

Second Party hereby agreed to operate the leased premises as a medium priced theater of the Class B grade of Theater, showing Grade A Second-run pictures. The maximum price, excluding tax, that may be charged by Second Party for admission to moving picture shows in the Memorial Theater, shall be twenty-five (25¢) cents, unless due to changing economic conditions and inflation and the admission charge for Class B theaters throughout the State be raised, then, and in that event, the admission price herein stipulated may be adjusted proportionately to such increase made in other Class B theaters in the state."

Mr. Rogers: I think there are some additional provisions that ought to be marked as well.

[fol. 335] Mr. Boggess: I also offer in evidence the annual consideration:

"To pay as rent for said leased premises the sum of Four Thousand, $4,000.00) Dollars per year, said rental to be paid in substantially equal monthly installments on or before the first day of each month, in advance. The rental for the last year of the within term, (the year 1945) to be paid to First Party at the time of the execution of the within lease, the payment of said last year's rental is acknowledged by First Party as having been received by its execution of the within lease."

Also, your Honor, that the term of the lease expires in 1945.

"To have and to hold the same unto the Second Party for the term of Five Years (5), beginning on the first day of January, 1941, and ending on the 31st day of December, 1945."

That is all.

Cross-examination.

By Mr. Rogers:

Q. Mr. Sperry, I believe you testified yesterday that at the expiration of the first term that was granted to Mr. Long on the Memorial Theater, there was an opportunity afforded him to come in and negotiate with the Trustees for further renewal?

[fol. 336] A. That is at the end of the five years.

Q. That is at the end of the five-year period, Mr. Sperry?

A. Yes, that is right.

Q. He did come in and present a definite proposal for the year, is that right?

A. Not definitely, I wouldn't say.

Q. You made the lease for the year, didn't you?

A. You mean this is the extended year?

Q. Yes, the extended, Mr. Sperry?

A. I thought you were referring to the end of the term entirely.

Q. No, I said the first lease. Isn't that right?

A. Yes.

Q. You came in and met the Trustees?

A. Yes.

Q. With the definite proposal?

A. Yes.

Q. You discussed the definite proposal?

A. That is right.

Q. Even though you had another proposal from Schine that was better since you gave it to Mr. Long?

A. That is right.

Q. On an open competitive basis?

A. That is right.

Q. And, as I understand that extending term of one [fol. 337] year, it had a provision in it giving Mr. Long another opportunity to come in at the end of that year?

A. And negotiate again.

Q. And again negotiate. Is that accurate, Mr. Sperry?

A. That is right.

Q. That extended year, as I understand it, expired December 31st, 1940, is that right? The original term was from 1935 to 1939, isn't that right?

A. Yes.

Q. And you gave him an additional year beginning January 1st, 1940, and ending December 31st, 1940?

A. Yes.

Q. And this one year option for renewal?

A. That is right.

Q. As I recall, under this option for renewal he again had the right to come in and again negotiate with you for a further lease?

A. Yes.

Q. On terms as to be agreed between himself and the Trustees?

A. Yes.

Q. And that he served a notice which you said was timely?

A. That is right.

Q. Did you give him that opportunity? And you received that notice?

[fol. 338] A. Yes.

Q. After you received that notice which I recall is dated September 30th, 1940, did Mr. Long come in to see the Trustees, to present any definite proposal for a renewal of that lease?

A. Not to my knowledge.

Q. Did he ever come in to discuss any proposition with you for renewal of the lease?

A. I don't think in a meeting, but I think a casual meeting with him in the street or in the theater some place, he might have suggested that he wanted to talk to us on how he could set up a new contract. There were no definite figures offered.

[fol. 339] Q. And was that just a casual talk with you personally?

A. Yes, sir.

Q. And was it by reason of the casualness of this talk and the indefiniteness of any proposal on his part that the Board of Trustees decided to advertise for bids?

A. That is right.

Q. Is that right?

A. Well, we advertised, I think, before that, if I am not mistaken. I can't give you the exact date of the advertising.

Q. I only want to get your best recollection of it.

A. I think the advertisement came out in the summer, in the early summer, if I am not mistaken. We wanted to get the thing cleared up.

Q. That is in the summer of 1940?

A. Yes, sir.

The Court: Why would you advertise then if he had this right to negotiate?

The Witness: Well, to be candid, we wanted to be in position, if he didn't make a proposal, to have somebody to fall back on. There was some doubt in our mind as to whether he would want to continue.

Q. Then I understand, Mr. Sperry, and correct me if I am [fol. 340] mistaken, that as early as the summer of 1940 there was grave doubt in the minds of the Trustees as to whether Mr. Long would make any proposal for an extension of that lease, was there?

A. He was having difficulty, I would say, in meeting his obligations and in operating the theatre at that time.

Q. At that time you say?

A. Yes, sir.

Q. And you felt that he was not going to come in?

A. That is right.

Q. After you advertised for your bids did that advertisement call for written bids?

A. I think it did. I haven't got a copy of it right here.

Q. Is it your best recollection that it called for written bids?

A. I think so.

Q. Did the Schine interests give you a written bid?

A. We had several communications from the Schine Company.

Q. Did Mr. Long give you any written bid?

A. No.

Q. None whatever?

A. No.

The Court: Were there other bids?

The Witness: Very few. I think one or two. It was a local advertisement, as far as that is concerned. The first [fol. 341] time that we advertised the theatre for lease we went into the theatre magazines and we got a lot of inquiries at that time.

Q. Might I suggest, Mr. Sperry, wasn't the time set for these bids limited to November of 1940?

A. That sounds about right. It sounds right. That is the way we would want it normally to be.

Q. Isn't it your better recollection that you did not insert the advertisement for bids until the month of October, 1940? I just want your best recollection.

A. I thought it was earlier than that.

Q. Pardon?

A. I thought it was earlier than that. I can't remember.

Q. But it might have been in October?

A. It might have been October.

Q. You gave Mr. Long every possible opportunity to come in and renew his lease, didn't you?

A. That is right.

Q. As a matter of fact, on one occasion you actually sent for him and asked him to come before the Board of Trustees?

A. Yes, sir.

Q. Did he show up?

A. No.

Q. He did not?

A. No.

[fol. 342] Q. You didn't grant any preference to the Schines on that bid, did you?

A. No.

Q. Just treated it as an open bid?

A. Yes.

Q. As among Schine and several others who sent in bids on the theatre?

A. Yes, sir.

Q. And you gave it to Schine on an open, competitive basis?

A. Yes, sir.

Q. And if Mr. Long at that time had sent a bid to you you would have considered that bid at the time, wouldn't you?

A. I would.

Q. And weighed his bid as against the Schine bid?

A. That is right.

Q. As you did before?

A. Yes.

Q. From the time that the Schines took over the operation of the Memorial Theatre, which was on January 1st of 1941, have they constantly kept that theatre open and operating?

A. Absolutely.

Q. And have they conducted the premises in a proper manner?

A. Excellent.

Q. Pardon?

[fol. 343] A. Excellent.

Q. Did they put money into refurbishing and redecorating and beautifying the premises at their expense?

A. Yes, sir.

Q. And have they maintained it in good condition?

A. Yes, sir.

Q. Met their obligations under their lease?

A. Absolutely.

Q. You recall that Mr. Boggess read a provision from that lease, as follows: "Second party (which means the Schines) hereby agrees to operate the leased theatre daily and Sunday, giving at least one performance every night unless second party is prohibited from so doing by violence, fire or any circumstances beyond the control of the second party."

As a matter of fact, Mr. Sperry, although this lease requires them to give one performance nightly, haven't they been giving regularly two performances every day, a matinee performance and an evening performance, since that theatre has been opened?

A. No. A matinee on Sunday, if I remember correct.

Q. You say they have been giving matinees Sundays?

A. Sundays.

Q. Haven't they been giving two performances at night?

A. That is probably true. That is, they repeat the pictures.

[fol. 344] Q. So that on week days they have given two performances every night although their obligation was to give only one?

A. Yes. The show is opened at night and I think it is true they run two shows.

Q. On Sunday they give three shows instead of only one show, as they were obligated to do; is that right?

A. That is right.

Q. With reference to the quality of entertainment they have been giving in the Memorial Theatre, had that been high-class, satisfactory entertainment to the public?

A. Absolutely.

Q. Has the public been satisfied with the manner in which that theatre has been operating and the kind of pictures that they have been getting?

A. To my best knowledge.

Q. In 1939-1940 generally what were the economic and business conditions of Mt. Vernon generally?

A. Well, I would say it was an average town. We haven't as yet had any great increase in employment, although there was no unemployment to amount to anything, as there was back in the '30s, but of course in the last four years, why, we have picked up like every other community. We have an employment that is probably 5,000, I would say, where it was 3,000 before; I mean in industry.

[fol. 345] Q. So that generally in the past four years and constructively from 1940 on conditions have got better in the town?

A. Absolutely.

Q. Employment far better?

A. Yes.

Q. And a definite increase in population in the town?

A. Yes, some, although it is not a boom town. There are no new factories.

The Court: What is the population?

The Witness: About 12,000, sir.

Q. Economically from 1940 on the chart would show an upward trend of better conditions from 1940 to the present?

A. That is right.

Q. With reference to the Vernon Theatre, you recall when that theatre was built, don't you?

A. Yes.

Q. And you have visited that theatre, haven't you?

A. Yes.

Q. Is that theatre a newly constructed theatre?

A. Yes, sir.

Q. And what, generally, would you say as to the physical appearance of that theatre and its physical equipment?

A. I think it is something the town can be proud of.

Q. It is a high class, beautiful, modern theatre, isn't it?

A. Yes.

[fol. 346] Q. Upholstered seats?

A. Yes, sir.

Q. Carpeted?

A. Yes, sir.

Q. A ventilated theatre?

A. Yes, sir.

Q. Beautifully decorated?

A. Yes, sir.

Q. That theatre has been a definite improvement to the town, hasn't it?

A. Yes.

Q. The town warranted that kind of a theatre in the heart of the town, did it not?

A. I think after they saw it they were glad they had it, but I don't know as it was a desire before. I think that there was a feeling that the Memorial was fairly well equipped to handle the demand that was there.

Q. That was before the Vernon was built, you mean?

A. Yes, sir.

Q. But after it was built the town was proud of the Vernon, was it not?

A. Yes, and I think there is a place for the two theatres in the town, as far as that is concerned.

Q. Did this Vernon Theatre help to improve business con-
[fol. 347] ditions in the town?

A. There is no doubt about that, through their employment.

Q. You say there is no doubt about that?

A. Yes.

The Court: You said there are two theatres?

The Witness: Yes, sir. The other theatre is not open all the time.

Q. When you say the other theatre, that is the Vine?

A. The Vine.

Q. That is a pretty old theatre, isn't it?

A. Yes.

Q. And that is open week ends, isn't it?

A. Yes, sir.

Mr. Rogers: Thank you, Mr. Sperry.

Mr. Wright: That is all, Mr. Sperry.

Clifford L. Dasher, a witness called by and on behalf of the Plaintiff and having been first duly sworn was examined and testified as follows:

Direct examination.

By Mr. Wright:

Q. Where do you live, Mr. Dasher?

A. At VanWirt, Ohio.

[fol. 348] Q. What is your occupation?

A. A small farmer.

Q. You were formerly in the theatre business at VanWirt?

A. That is right.

Q. In connection with what theatre?

A. The Strand Theatre.

Q. That was during what period?

A. About 1918 to 1935.

Q. What was your connection with the theatre?

A. I was Manager, with Mr. Tom Evans.

Q. He was also a resident of VanWirt?

A. That is right.

Q. Calling your attention to the 1934-1935 motion picture season, what product of the major film companies were you playing first run in the Strand Theatre there?

A. The five major companies, Paramount, Metro, 20th Century-Fox, R.K.O. and Warner Bros.

Q. Was another theatre opened in VanWirt in 1934?

A. There was, in October, I believe.

Q. What was the name of that theatre?

A. They called it the Ohio.

Q. And after that theatre opened do you know what they played there?

A. They played Columbia, Universal, Monogram, and some more of the smaller companies.

[fol. 349] Q. That theatre was operated by the Moores?

A. Yes, sir.

Q. Early in 1935 was construction started on another theatre in VanWirt?

A. Yes, sir.

Q. Do you remember when that was?

A. I think they started construction in May, if I remember correctly.

Mr. Rogers: What year?
The Witness: 1935.

Q. Had you heard about the construction of the new theatre before that?

A. Yes, in January it sounded pretty positive that somebody else was goin to erect a theatre there.

Q. After you heard there was going to be a third theatre there what, if anything, did you do about securing first run product for the 1935-1936 season?

A. Well, there was a salesman came in, for instance, from Fox, Sam Lichter was the salesman. He came in and I contacted him for the 1935-1936 pictures. This was a couple of months, you understand, before the selling season usually started.

[fol. 350] Q. And what was the talk you had with him?

Mr. Rogers: May we have the date of that talk fixed, please?
The Court: A couple of months before the selling season.
Mr. Rogers: Some start early, some start a little later.

Mr. Wright:

Q. In the spring of 1935?
A. That is right.

Mr. Rogers: May we get the name of the salesman? Mr. Lichter, I beg your pardon.

Q. Was a deal made for the Fox, 1935-1936 product?
A. Yes, sir.
Q. That was in the spring of '35?
A. Right.
Q. And then did you get the R.K.O. product for '35-'36?
A. That is right.
Q. That was a continuation of the first-run?
A. That is right.
Q. And then you had the Warner's product for '35-'36?
A. That is right.
Q. Did you try to get the first run of Paramount for '35-'36?
A. I did.
Q. What did you do in that connection?

[fol. 351] A. They didn't have their contract ready or know exactly what they were going to have.

Q. When was this they told you that?

A. That was in March, as I remember.

Q. Who told that to you?

A. I believe it was Mr. Robb, a salesman.

Q. And did you see the salesman or any one else in Paramount later on in the year about the '35-'36 product?

A. Yes, in June after I heard they were selling I went to Cleveland.

Q. You mean after the selling season opened at Paramount?

A. Yes.

Q. Who did you see?

A. Mr. Hemmline.

Q. Did you have a conversation with him there about getting 1935-1936 product first-run?

A. I did, but he said that Schine's bought their pictures.

Q. He said Schine's bought their pictures first-run?

A. Yes.

Q. Did you have any further discussion with him?

A. Not there.

Q. As to why he sold to Schine's instead of to you?

A. No.

Q. What, if any effort did you make to get the Loew or Metro product for the '35-'36 season?

[fol. 352] A. When the salesman—I can't recall his name.

Q. You first saw the salesman. When was that?

A. That was in March.

Q. '35?

A. That is right.

Q. What did he tell you?

A. He told me they didn't know what they were going to have. They were usually pretty far behind in their contracts what they were going to have.

Q. Did you later go in and see the Loew Branch Manager in Cleveland?

A. In June I went in to Cleveland.

Q. This was the same time you went in to talk to Paramount?

A. Yes.

Q. Who did you see there?

A. I talked to Mr. Drew, the Regional Manager.

Q. Of the Loew Office?

A. Yes.

Mr. Rogers: Can we get the date of that?

The Court: June.

Mr. Wright: This was in June.

Q. What was the conversation you had with Mr. Drew at that time?

A. I asked Mr. Drew for his '35-'36 product. He said he was sorry but they had to sell Schine.

[fol. 353] Q. Did he tell you why?

A. Well, when I asked him why, after me buying their pictures for about 12-15 years, that they would turn me down now. They said "Well, Schine has 60 theaters you have got one. What do you expect us to do?" And they said "He won't just stand for selling your town, he wouldn't take any of the other towns. You can see where I stand with you. I would like to give it to you, but I can't."

Q. Is that all of the conversation you had with him then?

A. That is right.

Q. Then did you see any of the other Exchange managers in Cleveland at that time?

A. That is right, from there I went over to Fox, as I had some bookings to make, dates set on the pictures.

Q. Bookings under the contract for '35-'36 that you then had?

A. '34.

Q. Of the existing contract?

A. Yes.

Q. Who did you see over there?

A. I went to the booker and while I was talking to the booker, Mr. Schmertz sent word out for me to come in his office before I left.

Q. Who was Mr. Schmertz?

[fol. 354] A. He was District Manager there.

Q. You went in to see Mr. Schmertz?

A. That is right.

Q. What was the conversation there?

A. When I stepped in there he said, "You've got me in a hell of a mess." I said "Now, what is the matter?" He said "I have a letter from Schine. You said they weren't coming in, not to save any pictures. It looks like I am going to have to take half of it away from you."

Q. What did you say about that?

A. I said "I don't think you are going to do that, because I don't think we will stand for it." He said, "Well, we are going to have an awful time."

Mr. Rogers: Pardon me just a minute, Mr. Dasher. I move to strike so much from the testimony as refers to the contents of a letter which is not before the Court as an exhibit.

Mr. Wright: He simply stated what Mr. Schmertz told him.

Mr. Rogers: That is just another way of Mr. Wright doing what he has been doing right along here, trying to get in through conversation, what he knows he can't get in otherwise. I think it is time this stopped and Mr. Wright should lay a foundation for a document and not have a [fol. 355] witness testify to the contents thereof.

The Court: Overruled.

Mr. Wright: Will you read the answer?

(Last answer read.)

Q. What was the rest of the conversation?

A. Then he said, "Why don't you get together with Schine, make a deal with him?" I said, "He isn't interested in my theater or he would have come and saw me. He had plenty of time." He said "If I sent him down, will you talk to him?" I said I would be willing to, but I would have to take it up with Mr. Evans, if he was willing to, it would be perfectly all right with me.

Q. Is that all the conversation?

A. That was practically all of the conversation.

Q. Did you receive a visit from any representative of Schine?

A. Yes, sir. About a short time later Mr. May and Mr. Lazarus called at Mr. Evans' office.

Q. Who was present then?

A. Mr. Evans and Mr. May and Mr. Lazarus, and myself.

Q. And what was said then?

A. Well, they asked us if we would be interested in selling or making a lease on our theater, and we told him we would be willing to make either.

[fol. 356] The Court: What?

Mr. Wright: He said we told him we would be willing to make either.

The Court: All right.

The Witness (Continuing): That we preferred to sell. They preferred a lease, so we talked terms as such and they took a tentative proposition and said they would be back.

Q. Then did you see them again later?

A. That is right. In August, I believe, or the early part of August we saw them again. We got together and ironed out a few things that weren't satisfactory and made the lease.

Q. That is you leased the theater to Schine then in August, 1935?

A. That is right.

Q. And they took over the operation when?

A. On September 1st, if I remember correctly.

Q. 1935?

A. That is right.

Q. And then what did you do after Schine took over the operation of the theater?

A. I worked for Schine a couple of weeks and then resigned.

Q. You have had no connection with the Schine Company, or the theater since?

[fol. 357] A. No, sir.

Mr. Wright: You may cross-examine.

Mr. Rogers: No cross-examination.

Mrs. Lottie Moore, a witness called by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Wright:

Q. Where do you live?

A. Vanwert, Ohio.

Q. You are connected with the Ohio Theater in Vanwert?

A. That is right.

Q. In what capacity?

A. I help Mr. Moore in the operating of the theater. Mr. Moore is my husband.

Q. When was that theater opened?

A. October, 1934.

Q. And at the time the theater was opened, what major film product were you able to get for the first-run?

A. United Artists, Columbia and Universal.

Q. You had those first-run for the 1934-1935 season?

A. That is right.

[fol. 358] Q. Then do you recall there was another theater built there in 1935?

A. That is right.

Q. What was the name of that theater?

A. Schine's Vanwert.

Q. Do you remember about when that opened?

A. It opened, I think, in August, 1935.

Q. Did you handle the correspondence with the distributors?

A. That is right.

Q. In connection with buying films for the theater.

Mr. Wright: I will ask to have this series of four letters marked with the next four plaintiff's exhibit numbers, the first one is letter dated July 23rd, 1935, to United Artists Corporation at Cleveland, from Carl B. Moore.

(Thereupon the letter dated July 23rd, 1935, to United Artists Corporation at Cleveland from Carl B. Moore, referred to, was marked as Plaintiff's Exhibit P-17 for identification.)

Mr. Wright: The next a reply from United Artists to Mr. Moore, dated July 24th, 1935.

(Thereupon letter dated July 24th, from United Artists to Mr. Moore, referred to, was marked as Plaintiff's Exhibit P-18 for identification.)

[fol. 359] Mr. Wright: I will not have the others marked.

Q. Mrs. Moore, I hand you these two exhibits, Plaintiff's Exhibit P-17 and P-18. Did you write Exhibit P-17 and sign the name Carl B. Moore on it?

A. I did.

Q. That is your husband's name?

A. Yes.

Q. Is this Exhibit P-18 a copy of the reply you got from United Artists?

A. That is right.

Q. You have attempted to locate the original, have you?

A. I have.

Q. You haven't been able to find it?
A. I have not.

Mr. Wright: I will offer these exhibits P-17 and P-18 in evidence.

Mr. Rogers: I object on the ground it is not binding on the defendants.

The Court: Overruled.

(Thereupon the letters previously marked as Plaintiff's Exhibit P-17 and P-18 for identification were received in evidence.)

(Mr. Wright read the exhibits P-17 and P-18.)

Q. Then after you got this letter of July 24th, that I just [fol. 360] read, Exhibit P-18, did Mr. Levin come to see you?
A. No, he didn't.
Q. Then you go in to see Mr. Goodman?
A. We did.
Q. When was that?
A. The latter part of August or first of September in 1935.
Q. When you say "we," who are you referring to?
A. My husband, Mr. Moore.
Q. What was the conversation you had with Mr. Goodman then?
A. We went in to see Mr. Goodman to find out why we were not going to get United Artists and why Mr. Levin didn't come down.

Mr. Rogers: I object to that. There is no evidence up to the present time that intimated any one would get the product.

The Court: State the conversation. What was said?

Mr. Rogers: May I have that stricken at present?

Mr. Wright:

Q. Just give us your best recollection, Mrs. Moore, as to what was actually said at this conversation, what was said by you?
A. We asked Mr. Goodman about having the product for [fol. 361] our Ohio Theater and he said, "Mrs. Moore, there is nothing I can do about it. It has been sold to the Schine Theater Enterprises at their New York office." And I asked him if he felt that was a nice way to treat us after all these years we have been a customer of his.

Q. When you say "all these years," you had been a customer of his in other locations?

A. Yes, that is right. We have been in the business for over 20 years.

Q. Go ahead with the conversation.

A. So he said there was nothing he could do about it.

Q. Was that all the conversation?

A. That's all.

Q. Were you able to keep the Columbia pictures, first-run, for the '35-'36 season?

A. We did.

Q. Then did you try to again secure them for the '36-'37 season?

A. We did.

Q. What did you do in that connection?

A. We contacted their salesman, George Becker, and could get nowhere with him.

Mr. Rogers: May we get the date of that and what the conversation was?

Q. When did you talk to George Becker?

[fol. 362] Mr. Rogers: Pardon me. And I move to strike the conclusion out of the record.

The Court: Yes. State the conversation. State the conversations you had with the agent, if any. You said you tried and couldn't get anywhere. That is your conclusion.

The Witness: In the summer of '35.

The Court: '34 and '35?

Mr. Wright:

Q. You also had it for '35-'36, as I understand it?

A. Yes.

Q. What I asked you about was '36-'37 season.

A. In the summer of '36.

Q. In the summer of '36 you talked to Mr. Becker, the Columbia salesman. Where was that at Vanwert?

A. At our home in Vanwert.

Q. What was said then about the '36-'37 product?

A. He advised us that he could do nothing about it and to come in to Cleveland and see their Branch Manager, Mr. Bissell.

Q. Did you go in to Cleveland to see Mr. Bissell?

A. We did.

Q. When was that?

A. In the fall of '36.

Q. When you say "we" that was you and Mr. Moore?

[fol. 363] A. That is right.

Mr. Rogers: Pardon me. May we have Mrs. Moore fix that a little more definitely.

Q. Can you fix it any more definitely than the fall of '36?

A. Latter part of August or the first of September.

Q. Did you see Mr. Bissell?

A. For a little while we did.

Q. What conversation did you have with him, if any?

A. We were unable to contact him in the office as he was very busy with some chain representatives of theaters.

Mr. Rogers: I move to strike it out, not responsive.

The Court: Let me ask you what conversation you had with Bissell? Did you have any talk with Bissell?

The Witness: We did.

The Court: Then you may state that talk.

Mr. Rogers: I ask to have that stricken out.

The Court: Strike it out.

Mr. Wright: I think she can state the circumstances of the conversation.

Q. You didn't have the opportunity to see him at his office, is that right?

A. We did not.

Q. You saw him as he was coming out of his office with these chain people?

[fol. 364] A. That is right.

Q. What was the conversation?

Mr. Rogers: May I suggest Mrs. Moore, who seems to be a very intelligent witness, to testify instead of leading her and putting her testimony into her mouth.

The Court: I think some of the answers are immaterial. He is asking her the question. State what talk you had with Mr. Bissell when he was coming out of his office.

The Witness: We asked him for first-run product for Ohio, for our theater for '36-'37. He said, "Mrs. Moore, the product has been sold to Schine Theater Enterprises", and I said, "Do you think that is a nice way to treat us? We have been a customer for all these years." He said, "There is nothing I can do about it. The deal was consummated in New York,—and with that he walked out.

[fol. 365] Q. Now, then, you had Universal first run during the 1934-1935 season?

A. We did.

Q. And also for the 1935-1936 season?

A. We did.

Q. Then did you get a first run contract with the Universal again for the 1936-1937 season?

A. We did not.

Q. You didn't play the pictures 1936-1937?

A. We didn't play them, but we had a contract.

The Court: You say you had a contract?

A. Yes, sir.

Q. You had it, as I understand it, when you went in in 1934-1935; is that right?

A. Yes, sir.

Q. And then you got a first run contract again for 1935-1936?

A. That is right.

Q. Then was it about that time that Mr. Silverman started to book some of your pictures for you?

A. That is right.

Q. That was when?

A. August of 1935.

Q. What was Mr. Silverman's full name?

A. Solomon Silverman.

[fol. 366] Q. What, if anything, did he do for the Ohio Theatre, in connection with Universal first run 1935-1936 pictures?

A. He said that the contract was bought too high.

Mr. Rogers: One moment. I move to strike that.

The Court: Yes. Silverman was Moore's representative, was he?

Mr. Wright: He acted as booker for them and he later went to work for the Schine Company.

The Court: She cannot testify to what he said.

Q. Well, do you know of your own knowledge——

The Court: Did he arrange the bookings for 1935 or 1936 for your theatre? You say he did?

The Witness: Yes, sir.

Q. In connection with the Universal Pictures; is that right?

A. Yes.

Q. He handled the negotiations?

A. Yes, sir.

Q. Well, now, do you know of your own knowledge, Mrs. Moore, what was done with reference to the playing of the 1935-1936 Universal films in your Ohio Theatre?

A. He said it would be better——

Q. Not what he said. Just what was actually done.

The Court: What was done about running these pictures?

The Witness: He exchanged the first run pictures for second run for VanWert, Ohio.

Q. Do you remember about when that was?

[fol. 367] A. It must have been in the fall of 1935.

Q. Then when was it that Mr. Silverman left your employ or stopped booking your pictures to go to work for Schine?

A. After the first of the year in 1936.

Q. Do you know about what month?

A. I would think it was in January or February.

Q. Now, then, did you play the Universal Pictures second run?

A. We did not.

The Court: You did not, you say?

The Witness: We did not.

Q. Did you have any further negotiations with the Universal people about the 1935-1936 pictures?

A. Through Mr. Silverman, yes.

Q. Other than through Mr. Silverman, and after he left to go with Schine, when was the next time that you had any contact with the Universal salesman or branch manager?

A. Several months after that they came back.

Mr. Rogers: After what? May we have that fixed? Several months after what, Mr. Wright?

Q. Several months after what? After——

A. After the second run deal, after we had bought the second run deal.

The Court: You changed the run from first to second run several months after that?

The Witness: Yes, sir.

[fol. 368] Q. That would be in the spring of 1936?

A. Right around that, yes.

Q. Who did you talk to then from Universal?

A. Their salesman.

Q. What was his name, do you remember?

A. I believe it was Jack Withers.

Q. Where was this conversation?

A. At our home.

Q. What was said then?

A. He wanted to cancel the second run and wanted us to take a first run again.

Q. What did you say to that?

A. We had been unable to get a second run——

Mr. Rogers: I move to strike that.

The Court: Strike it out.

Mr. Wright: Don't state your conclusions. Just say as nearly as you can what you said.

A. We were unable to get their second run pictures.

Q. Is that what you said to him at that time?

A. I told him if we are to buy back a first run deal we want it for this year and for the next.

Q. That is for 1935-1936 and 1936-1937?

A. That is right.

Q. What did he say to that?

A. He said he would be unable to do that.

[fol. 369] Q. Did he tell you why?

A. Yes, because he said the Schines would buy that.

The Court: Did he offer it to you for a year?, You say he came to you and tried to get you to take the first run?

The Witness: Yes, sir.

Q. That was for 1935-1936.

A. He wouldn't license us for 1937 and 1938 product.

The Court: You wanted two years, rather than one year?

The Witness: Yes, if we were to take back the first run.

Q. Then did you have any further conversation with anybody from Universal about getting first run Universal films?

A. Only their salesman, that is all.

Q. You didn't go into the branch office at Cleveland?

A. No.

Q. Then beginning with the 1936-1937 season you had no first run product; is that right?

A. That is right.

Mr. Rogers: Pardon me. I thought the witness testified they had a contract with Universal for 1936-1937 first run but that they didn't play them.

Mr. Wright: As I understood her testimony it was that they had one for 1935-1936, which was changed to a second [fol. 370] run, and then they wanted to reinstate it as a first run and they were unwilling to reinstate the first run unless they could have the next season; they wouldn't give them the next season, so that they didn't get either.

Mr. Rogers: That is not what the witness testified to.

The Court: That is the way I have it, that in the fall of 1937 she talked about exchanging second run, which she had, exchanging the first run for second run.

Mr. Rogers: In the first part of the witness's testimony she testified that the 1935-1936 contract was O.K. They made one for first run. They made a 1936-1937 contract for first run, but never played it. That was her testimony on the very opening part and Mr. Wright practically led her into it.

Mr. Wright: All we are interested in, of course, is getting the truth.

The Court: You are talking now about Universal?

Mr. Rogers: Yes. That is her testimony.

The Court: Go ahead.

Q. Let us clear it up, then, once and for all. As I understand your testimony, Mrs. Moore, it is that you did have a first run contract for Universal for the 1935-1936 season; [fol. 371] is that right?

A. Yes.

Q. And then that was exchanged for a second run contract for that season; is that right; some time in the fall of 1935?

A. I think we had it for 1936 and 1937.

Q. Now, let us get the sequence on this. As I understand it, then, you had a first run contract for 1934-1935 with Universal? That was the first year you were in there. And then you again got Universal for 1935-1936 first run; is that right?

A. Yes, sir.

Q. Is it a fact that in the fall of 1935 you then exchanged that first run for a second run 1935-1936 contract?

A. No, that is wrong.

Q. Well, what is right?

A. It is 1936 and 1937.

Q. Then you had it for 1934-1935 and 1935-1936; is that right? And then you got a first run contract for 1936-1937?

A. Yes, sir.

Q. I call your attention again, Mrs. Moore, to the dates that Mr. Silverman worked for you. As I understood it, you said he came in as a booker for you in the fall of 1935; is that right?

[fol. 372] A. That is right.

Q. And that he left you to go to work for Schine in the early part of 1936; is that right?

A. That is right.

Q. And I understood you to say that Mr. Silverman was the one who handled the negotiations for changing the 1935-1936 contract from the first to a second run; is that right?

A. That is right.

Mr. Rogers: No, this witness testified differently. If that is her testimony I move to strike it.

The Court: Let her state what the fact is.

Mr. Rogers: If Mr. Wright is correct I move to strike all her testimony.

The Court: My recollection is that she said they exchanged for second run in the fall of 1935 and that year that Silverman was their agent, and in 1936 Silverman went to Schine.

Q. Is that right, Mrs. Moore?

A. That is right. The other is wrong then. I was wrong.

Q. It is a fact, then, that it was the 1935-1936 contract where you first had first run that was changed to second run; is that right?

A. That is right.

Q. And that then you——

[fol. 373] Mr. Rogers: Pardon me for interrupting, but if Mr. Silverman is the man who conducted those negotiations then I move to strike Mrs. Moore's testimony.

The Court: You mean the negotiations with reference to exchange?

Mr. Rogers: Yes.

The Court: It depends on her knowledge of it, that is all. If she was there she can testify. If she was not she can't testify.

Mr. Wright: She had not testified as to what his negotiations were. She has testified simply as to what the results were.

The Court: He was their agent.

Mr. Rogers: But, may it please the Court, I think we are entitled to get evidence that is probative here. If Mr. Silverman did something and Mrs. Moore was not even present, or Mr. Moore had the conversations and negotiations, this witness is not qualified to testify.

The Court: The fact that they did change from first class to second class she can testify to.

Mr. Rogers: I am merely directing my motion to so much of her testimony as to the negotiations which apparently she was not present at.

The Court: I do not know whether she was or not.

[fol. 374] Mr. Rogers: Mr. Wright said so.

The Court: All right, we will strike out any statement of hers with reference to the negotiations between Silverman and the Universal.

Mr. Wright: All that she stated is that Silverman carried on the negotiations with Universal, which I think is perfectly proper. She knows that of her own knowledge.

The Court: She knows he was her agent. She knows they were changed in the fall.

Mr. Wright: That is right. That is all we are undertaking to show.

Q. I take it, then, Mrs. Moore, it is a fact that in the fall of 1935 the Universal 1935-1936 contract was changed from first to second run; is that right?

A. That is right.

Q. And then Mr. Silverman, as you say, went to work for Schine in the early part of 1936?

A. That is right.

Q. And the next dealings that you had with the Universal representatives were when you talked to this salesman at your home, and that was what—in the spring or summer of 1936?

A. In the summer.

Q. And that was when they wanted to change the second [fol. 375] run back to a first run?

A. Yes, sir.

Mr. Rogers: Pardon me, Mr. Wright. Don't you think we had better have some of the testimony from this witness?

And I want to get whether or not Mrs. Moore had this conversation.

The Court: Objection sustained. It is leading.

Mr. Wright: I just wanted to get it straightened out.

Q. In any event, then, did you have any further conversation, other than those you have testified to as having occurred in 1936 with the Universal salesman about getting first run pictures from Universal?

A. No.

The Court: Did you say no?

The Witness: No.

Q. And were the 1935-1936 Universal pictures exhibited by you on either first or second run?

A. No.

Q. Then as I understand it beginning with the 1936-1937 season you then had no first run product for your Ohio Theatre; is that right?

A. That is right.

Mr. Rogers: One moment. I object to that as immaterial what Mr. Wright's understanding is. Let us get some testimony.

[fol. 376] The Court: The question is leading.

Q. What, if any, first run product did you have at the Ohio Theatre for the 1936-1937 season?

A. None only independent companies.

Q. You mean by independent companies distributors other than the eight majors?

A. That is right.

Q. And those are what?

A. Republic Pictures and Monogram.

Q. Those are the independents you are referring to?

A. That is right.

Q. You were then operating on a second run policy; is that right?

A. That is right.

Q. Did you have the Metro pictures second run?

A. We did.

Q. Do you remember for what years?

A. 1935 and 1936.

Q. You were playing them second run after they played first run in what theatres?

A. Schines.

Mr. Rogers: One moment. May it please the Court, may we have some evidence of Mrs. Moore? Up to the present we have only had Mr. Wright's evidence. I insist that Mr. Wright ask questions and get testimony and [fol. 377] stop giving the testimony himself and stop the leading questions.

The Court: I think you should be cautioned about that. Let her state what runs they had from Metro at that time.

Q. What, if any, pictures that you played second run in the Ohio—what theatre did those pictures that you played second run in the Ohio play a first run in?

A. Schine's VanWirt.

Q. Did you have the Metro second run for the 1936-1937 season?

A. Do you mean 1937 and 1938? Will you state that again, please?

Q. Can you tell us what seasons you had the Metro pictures second run in your Ohio Theatre?

A. 1934 and 1935 and 1935 and 1936.

Q. Did you have it for 1936-1937?

A. No.

Q. Are you sure, Mrs. Moore, you didn't have it for 1935-1936 and 1936-1937 instead of 1934-1935 and 1935-1936?

A. That is right.

Q. What is right?

A. 1936 and 1936 and 1936 and 1937.

Q. Those were the years you had it second run?

A. That is right.

[fol. 378] Q. Then did you try to get them second run for the 1937-1938 season?

A. We did.

Q. What did you do in that connection?

A. We contacted their salesman.

Mr. Rogers: Let us get dates and times fixed.

Q. When was that?

A. In the summer of 1937.

Q. And who was the salesman that contacted you, do you remember?

A. Mr. Brauer.

Q. Where was that?

A. At our home in VanWirt.

Q. What was said then?

A. We wanted to buy their pictures second run, as we had been doing.

Q. You said that, and what did he say?

A. He said, "I can't offer them to you at his time. You will be forced to come into the office and see our Branch Manager, Mr. Drew."

Q. Then did you go in to see Mr. Drew?

A. We did.

Q. When was that?

A. In the fall of 1937.

Q. Can you fix the date any more accurately than that?

[fol. 379] A. It must have been early September.

Q. Who was present when you saw Mr. Drew?

A. Mr. Moore, my husband.

Q. What was said then?

A. We asked him about the product and he said it had been sold to Schine's VanWirt—not to Schine but to the Schine Theatres, to run in their Strand Theatre.

The Court: You said that was in September. That would be after the usual sale period, wouldn't it, the commencement of the sale period?

The Witness: In a town like ours we don't always buy the product in the spring.

Q. When did the first run begin playing?

A. It all depends on the national release of the pictures.

Q. I take it the first releases of the season occur in about September; isn't that right?

A. Sometimes earlier.

Q. August or September, and then the pictures play the first run theatres shortly after release?

A. That is right.

Q. And it is not until some time after that that they begin to run in the second run theatres; is that right?

A. 60 to 90 days after.

The Court: You mean the contract for the second run pictures is usually made subsequent to September?

[fol. 380] Q. Do you recall when you had made your prior Metro second run contracts, what time of the year?

A. I remember when we made the 1938 and 1939. It was in January. And 1940 and 1941 was in August.

Q. Do you remember the prior years before this 1937 and 1938?

A. No.

Q. As I understand it, you had this discussion with Mr. Brauer—that was in the summer of 1937?

A. That is right.

Q. You think this conversation with Mr. Drew was some time in September, in the Cleveland office?

A. That is right.

Q. Was there anything unusual about that timing in so far as your purchasing second run product was concerned?

Mr. Rogers: Pardon. The witness has testified she does not recall when she bought her product in prior years. Therefore she can't testify whether it was usual or unusual.

The Court: I do not know as there was anything usual about it. Was it customary for you to make leases in September in connection with second run pictures? The point about this, it seems to me, is they were usually let in the spring and if it was made in September she would be out as far as anything is concerned.

[fol. 381] Mr. Wright: She has already testified the salesman who called in the summer told her they were not available and for them to come into the office.

Mr. Rogers: No, that is not the witness's testimony. She said that he said he couldn't do anything about it, that she would have to go to the branch office. That is all she said.

The Court: The point was I wanted to know what the custom was with reference to the usual time of the sale of the second run pictures.

Q. In the course of your experience in buying pictures, Mrs. Moore, had you had product sold away from you under those conditions in the ordinary course of business?

Mr. Rogers: One moment. I object to that as calling for a conclusion, and I object on the ground that the witness has not even been qualified.

The Court: Sustained.

Q. In any event, may we have the conversation which you had with the Exchange Manager at Cleveland when you did go in to see him about the second run 1937-1938 product?

Mr. Rogers: May it please the Court, we have had the testimony.

The Court: She testified to that.

Q. Was that all the conversation?

A. At that time.

[fol. 382] Q. Did you talk to him again about it?

A. We did.

Q. When was that?

A. In the spring of 1938.

Q. Where was that conversation?

A. At Lima, Ohio.

Q. How did you happen to see him over at Lima?

A. He called us up from Lima and asked Mr. Moore and I to come over there and see him.

Q. When you say "he" you are talking about who?

A. Mr. Drew.

Q. You saw him over at Lima?

A. That is right.

Q. What was said then?

A. He wanted to know if we would be interested in a part of the 1937 and 1938 product second run for Van Wert.

Q. What did you say?

A. I said, "Mr. Drew, how could you sell them to us, Schine has them bought?"

The Court: What is that?

The Witness: I said, "Mr. Drew, how could you sell them to us, as Schine has them bought?" "You told us Schine had bought them."

The Court: That is the year before that Schine bought them, for 1935 and 1936.

[fol. 383] Mr. Wright: This is the 1937-1938 season. She went in in September and had this conversation in which Drew told her the 1937-1938 product had been sold second run to Schine.

The Court: A year ahead?

Mr. Wright: The 1937-1938 season begins in September, 1937, and when she went in at that time she was told by Mr. Drew that the 1937-1938 second run had been sold to Schine. In this conversation at Lima in the spring of 1938 he then told her that part of that product was open to her, 1937-1938 second run.

Mr. McKay: That was not her testimony. She said he asked her if she would be interested in it.

The Court: She testified before the 1936 and 1937 run had been sold to Schine. Nothing was said about the 1937-1938 run.

Mr. Wright: I think you are mistaken, your Honor. I think her testimony, if you will read it, was that the 1937-1938 had been sold to Schine.

The Court: That isn't right. In the spring of 1938 she saw Drew again and she said, "How can you expect to sell me this when it has already been sold to Schine?"

Mr. Wright: That is right.

[fol. 384] The Court: Schine's contract had run out in September, 1938.

He was talking about 1938-1939, wasn't he?

Mr. Wright: Let us find out.

Q. What season was Mr. Drew talking about when he discussed the Metro product with you at Lima?

A. 1937 and 1938.

Q. What did he tell you about that season's product?

A. He then told me that the product had not been sold to Schine, that Schine had asked him to hold it for them.

The Court: You testified that he said in the the fall of 1937 that it had been sold to Schine.

The Witness: That is what he told me.

Q. What was the rest of the conversation?

A. So that he wanted to know if we would care to have half of the product of 1937 and 1938.

Q. The season was then, I take it, how far along?

A. Nearly over.

Q. Had Schine been playing some of those pictures, or any of them, second run?

Mr. Rogers: One moment. You have not qualified this witness as to knowledge of the facts or the situation, and it is a conclusion.

The Court: Are you able to state——

The Witness: Yes, they played a few pictures second run at their Strand Theatre.

[fol. 385] The Court: Of the Metro?

The Witness: That is right.

Q. The Strand Theatre, that was the theatre they had taken over from Dasher and Mr. Evans?

A. That is right.

Q. Then can you give us the rest of the conversation?

A. He wanted to know then if we would be interested in taking half of the product for 1937 and 1938 and 1938 and 1939, and we told him no.

Q. Did you tell him why?

A. We felt that as we had been their account we were entitled——

The Court: What did you say to him?

Q. Just tell what you said.

A. We wanted all of them.

Q. You told him that you wanted all of the 1937-1938 and 1938-1939 second run?

A. That were available.

Q. What did he say to that?

A. He said he couldn't do that.

Q. Did he tell you why?

A. On account of his agreement with Schine.

Q. Then, Mrs. Moore, did you have any conversations with any representatives of the Schine Company about a sale of the Ohio Theatre?

A. I did.

[fol. 386] Q. Who talked to you about it?

Mr. Rogers: When, please?

Mr. Wright: One question at a time.

A. Mr. Lazarre.

Q. Where did he talk to you?

A. At our home one time.

Q. When was this time you are referring to, what year?

A. 1936.

Q. Do you remember what time in 1936?

A. I think it was in the winter.

Q. Do you remember who was present?

A. Mr. Moore and myself.

Q. This was Mr. Louis Lazarre, the Mr. Lazarre who was there was Mr. Louis Lazarre?

A. That is right.

Q. What was the conversation then?

A. He wanted to know about buying our theatre.

Q. What was said about buying it?

A. He said that they were interested in buying our theatre so that they could raise the admission prices in Van Wert and in this way they could make more money.

Q. Was anything else said?

A. He said it would be the smart thing for us to do to sell out to Schine.

Q. Did he tell you why?

[fol. 387] A. He cited different places where Schine had theatres where they had bought out the opposition.

Q. Can you remember any places where he cited?

A. He cited Mt. Vernon and Wooster and several others.

Q. Do you recall anything else that was said then?

A. He said that we would have difficulty in getting product.

Q. Did he say why?

A. That they would run all the first runs.

Q. What did you or Mr. Moore say?

A. We felt that——

The Court: Not how you felt. What was said?

The Witness: We didn't want to sell unless they could get us a theatre that was better than the one that we had or give Mr. Moore a position.

Q. Was anything further said?

A. He said they might be able to find us a location, as they were in contact with theatres all the time.

Q. Was that all?

A. I guess so.

Mr. Wright: You may cross-examine.

(Short recess taken.)

[fol. 388] Cross-examination.

By Mr. Rogers:

Q. Now, Mrs. Moore, it is my understanding you were very active in the management of the Ohio Theater in Van Wert, is that right?

A. I help with it. I do.

Q. Have you been active in its management from the inception of the operation of the theater?

A. I have.

Q. When you made your deal to take over the Ohio Theater, was it an operating theater or was it closed?

A. It was closed.

Q. And about how long prior to 1934 had it been closed?

A. I can't answer.

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Q. Do you know it had been closed for several years prior to that?

A. I don't know.

Q. How many seats did you have in that theater?

A. 347.

Q. Had this been a store that had been converted into a moving picture show?

A. Years ago.

Q. I mean years before you took it?

A. That is right.

[fol. 389] Q. It has been a store that had been converted to a little moving picture show?

A. That is right.

Q. About how wide was that building, the theater itself?

A. About 40 feet.

Q. And about how deep?

A. 120.

Q. At the time you went into the operation of this theater was there any other theater operating in Van Wert?

A. There was.

Q. What theater was that?

A. Strand.

Q. Was that the theater operated by Mr. Evans?

A. It was.

Q. And that theater, the Strand, was playing the first-run product in Van Wert, before you came in there, is that right?

A. Five major companies only.

Q. That was before you came in?

A. Yes.

Q. You say that in the latter part of August or first part of September of 1934, as I recall, you had some talk with some of the companies about product of this Ohio theater, is that right?

A. State that again.

[fol. 390] Mr. Rogers: Let the reporter read it.

(Last question read.)

The Witness: That is right.

Q. What season's product were you discussing with them at that time?

A. 1934 and 1935.

Q. Were those discussions had before you opened the Ohio Theater?

A. That is right.

Q. And with which companies did you have those discussions?

A. United Artists, Columbia, Universal. Shall I name the independents or not?

Q. No. I would just rather have the eight companies. Other than United Artists, Columbia and Universal, did you go to any other of the major companies in 1934 before opening the theater to see if you couldn't get some product for that theater from the other companies like Fox or Metro or R. K. O. or Warner's?

A. No.

Q. You did not?

A. No, we did not.

Q. With reference to Universal product for 1935-1936, first-run, when was it that you decided that you did not care to play those pictures first-run?

A. Mr. Silverman did the deciding for us.

[fol. 391] Q. No, I ask you when did you decide that or wasn't the decision made by you?

A. Mr. Silverman and Mr. Moore and I.

Q. You say decision was made by Mr. Silverman, Mr. Moore and yourself?

A. That is right.

Q. Will you tell me when you made that decision?

A. It must have been in the latter part of August and September of '35.

Q. At that time you had obligated yourself under a written contract with Universal to play those pictures during the season 1935-1936, is that right?

A. That is right.

Q. As a result of coming to that decision, did you then decide to ask Universal to relieve you from that contract, cancel it?

A. Universal asked us.

Q. You testified, Mrs. Moore, that you decided and Mr. Moore decided, Mr. Silverman did not decide you wanted a first-run contract?

A. Universal made this proposition to us, then we acted on it.

Q. Mrs. Moore, when you testified under direct-examination, your testimony was that you decided that you didn't want the first-run contract, you wanted the second-run [fol. 392] contract, wasn't that your testimony?

Mr. Wright: There isn't any conflict between that and what you said. She said that they made the proposition and she accepted it.

The Court: Let the witness be cross-examined. Did you so testify that in '35 you wanted to take the second-run in place of the first-run? Is that what you said before?

The Witness: Through Mr. Silverman's suggestion.

The Court: What?

The Witness: Through Mr. Silverman's influence we did.

The Court: Through Mr. Silverman's influence you did?

By Mr. Rogers:

Q. Mrs. Moore, that was not your testimony under examination by Mr. Wright, was it?

A. I don't know.

Q. Pardon?

A. I don't know.

Q. You mean you do not remember now what you testified to under direct-examination by Mr. Wright?

A. I think I do.

Q. Do you remember that, that you didn't say anything of the kind to Mr. Wright about Mr. Silverman inducing you to change your mind and change the contract from the first-run to second-run?

[fol. 393] Mr. Wright: Why don't you read the testimony back to her?

The Court: Mr. Silverman changed her mind. Do you recall testifying about that before? About Mr. Silverman caused you to change your mind?

The Witness: Yes.

By Mr. Rogers:

Q. Do you mean you recall you so testified to Mr. Wright that Mr. Silverman caused you to change your mind and change the contract from first-run contract to a second-run contract? Do you mean you recall having so testified?

A. Not in those words, maybe.

Q. Do you mean that you testified to that at all under direct-examination?

A. To that effect.

Q. You say you do remember testifying to that effect, do you?

A. Through his influence we took the second-run deal.

Q. I mean, did you mean you so testified under direct-examination that through Mr. Silverman's influence you changed the contract with Universal from first-run contract to second-run contract? Did you so testify?

A. Through his influences, yes.

Q. You say you so testified under direct-examination by [fol. 394] Mr. Wright, do you mean that?

A. State that again, please.

(Last question read.)

The Court: The question is, whether when Mr. Wright examined you first, you testified that Mr. Silverman caused you to change your mind. Did you so testify?

The Witness: That was right, that was through his influence.

The Court: Not what the fact was, but did you so testify before in answer to Mr. Wright's question? If you don't remember, say so.

The Witness: I did.

The Court: What?

The Witness: I did.

The Court: You did testify?

By Mr. Rogers:

Q. Mrs. Moore, may I ask you a question: You constantly keep looking down. Do you have any notes in your hands?

A. No, this is all I have. Do you want it?

Q. No. Well, no matter how it was brought about, was that contract changed from first-run contract to a second-run contract for the season '35 and '36 with Universal?

A. It was.

[fol. 395] Q. And did you enter into another written contract with Universal to play their product 1935-1936 second-run?

A. We did.

Q. You remember that distinctly, don't you?

A. Yes.

Q. You did not play the product second-run, either, did you?

A. I don't think so.

Q. And, in fact, you are pretty sure you didn't, aren't you?

A. I think so.

Q. In other words, you think you did not play it?

The Court: She has answered it.

Q. Now, you spoke about a talk that you had with Mr. Drew, I believe in Lima, Ohio, with reference to 1937-'38 product of Metro?

A. Yes.

Q. You remember that, don't you?

A. Yes.

Q. But don't you remember at that talk that Mr. Brower—during the course of that talk, is that the one you spoke about where Mr. Drew and Mr. Brower were present?

A. That is right.

Q. And you were discussing second-run 1937-1938?

A. That is right.

[fol. 396] Q. And were you and Mr. Moore both present at that talk?

A. We were.

Q. Do you remember that talk?

A. I do.

Q. Do you remember at that talk when the second-run product for 1937-1938 was offered to you at Loew's, that either you or Mr. Moore said that you had so much product, first-run and second-run at that time, that you couldn't even use it up?

A. I don't remember that.

Q. You don't remember that at all. Do you remember any talk being had at that time as to what the condition of your theater was with reference to products?

A. I do.

Q. Was there any mention made by you or by Mr. Moore about how much first-run product you had at that time unplayed?

A. I don't remember.

Q. You don't remember that. Well, will you say it did happen or it might have happened and you don't remember?

A. I think not.

Q. You think not. Was there anything said about the condition of your unplayed product second-run at that time?

A. I don't remember.

[fol. 397] Q. You don't remember that, either? Is it your recollection that it did not happen, or that it might have happened and you don't remember it?

The Court: Do you recall that?

The Witness: No, I don't.

By Mr. Rogers:

Q. Now, you had had Metro product second-run from the time you started operation of that theater, didn't you?

A. No, we didn't.

Q. Didn't you have 1934 and 1935 second-run?

A. I think we did.

Q. Didn't you have 1936-1937 second-run?

A. Which year now, please.

Q. 1936-1937. And then when it came 1937 and 1938 second-run offered to you, you didn't take it, isn't that right?

A. We didn't have it offered to us.

Q. But didn't you testify that it was offered to you by Mr. Drew?

A. Not 100 per cent contract like we had been buying, just part of the product.

Q. How much of it was offered to you second-run?

A. At that time none.

Q. Which time are you speaking of?

A. In the fall of '37.

[fol. 398] Q. Do you mean it was not offered you at all?

A. That is right.

Q. When was it offered to you?

A. In the winter of '37 or early spring.

Q. And what was definitely offered you at that time?

A. A split.

Q. That is 50 per cent of the product?

A. To be decided by them, Metro-Goldwyn.

Q. You were to split the product with whom, the second-run?

A. Schine.

Q. In other words, Schine was to get part of that product and you would get part of the product, second-run?

A. Yes.

Q. And you refused it, is that right?

A. That is right.

Q. Do you remember when it was that you actually made you- contract to buy the 1935-1936 product second-run from Loew's, that is Metro?

A. I do not.

Q. Did you make it in the latter part of the fall of 1935?

A. Must have been the first part of '36.

Q. As a matter of fact, wasn't it made in March of 1936?

A. It might have been.

Q. With reference to the 1936-1937 contract, do you remember when that contract was made with Loew's for [fol. 399] second-run.

A. No, I don't.

Q. Do you recall it was made after the first of the year of 1937?

A. I don't.

Q. You don't recall at all, do you?

A. No, I don't.

Q. Don't you know you made it in the month of January, 1937?

A. No, I don't.

Q. You don't recall. You knew Mr. Hemmline, didn't you?

A. Yes, sir.

Q. And with which company was he connected?

A. Paramount Pictures.

Q. During the year of 1935 and 1936, you were playing Paramount pictures at the Ohio Theater, weren't you?

A. We were.

Q. And how were you playing them?

A. Second-run.

Q. And in the month of January, 1936, you had a written contract pending for the playing of their pictures, did you not, second-run at the Ohio Theater?

A. We must have had.

Q. Mrs. Moore, will you please look at this paper, and will you tell me whether you recall having received the [fol. 400] original of that letter?

A. May I get my glasses?

Q. Surely. Do you remember receiving that letter, Mrs. Moore?

A. I don't remember it, but then I suppose we did.

Q. You suppose you did?

A. Yes.

Q. But you suppose you did receive that letter?

A. Yes.

Mr. Rogers: I offer it in evidence.

Mr. Wright: I don't understand what the materiality of it is. There is no objection to it as far as you offering the copy instead of the original.

Mr. Rogers: Shall I hand it up to your Honor?

(Thereupon the letter dated January 5th, 1936, addressed to Mrs. Moore, referred to, was received in evidence, and marked as Defendants' Exhibit D-12.)

Mr. Rogers: This is a letter bearing date January 5th, 1936, addressed to Mrs. Moore, Ohio Theater.

Mr. Wright: May I ask what the purpose of the offer is? What it is offered to prove or disprove?

Mr. Rogers: I will develop that with the examination of the witness.

[fol. 401] The Court: You said you had no objection to the offer.

Mr. Wright: I said I objected on the grounds of immateriality. I didn't object to him using a copy instead of the original. She has not given any testimony about Paramount at all. I take it this is some part of his case. If he wants to go into it with her as his witness that is a matter, I suppose, of convenience. Certainly it isn't proper cross-examination in any event.

The Court: Of course, whether it is treated in his own case when he cross-examines, it depends on what is developed later. I think I will receive it at this time. You may examine on it.

By Mr. Rogers:

Q. I wish to read the opening sentence, Mrs. Moore. Will you please listen to it? This is addressed "Dear Mrs. Moore: In checking over your account I find that there are approximately 20 pictures available for booking." Now, as of that date, that was a fact, wasn't it?

A. It must have been.

Q. And there is the statement in this letter: "I know that at the time the deal was made you were very anxious [fol. 402] to secure second-run, and I would appreciate booking immediately." Isn't it a fact, Mrs. Moore, that the reason why you didn't book in these 20 pictures at that time or hadn't up to that time, was that you had a sufficiency of product and you couldn't use those pictures at that time?

A. That was not the reason.

Q. You say that was not the reason?

A. That is right.

Q. Well, when you made the contract, you intended to live up to the contract, didn't you?

A. We did.

Q. And the date of this letter there were 20 pictures you were supposed to have taken up and hadn't taken up, is that right?

A. That is right.

Q. That was not because you just deliberately did not wish to live up to your contract, was it?

A. State that again, please.

Mr. Rogers: Let the reporter state it.

(Last question read.)

The Witness: No.

Q. These were Paramount pictures, weren't they?

A. Yes.

Q. Paramount pictures at that time were very desirable, [fol. 403] weren't they?

A. Some of them.

Q. Part?

A. Some of them.

Q. Among these 20 they were holding for you were a number of very desirable pictures, were they not?

A. Some of them.

Q. And you didn't take them up at that time, either, had you? (A pause.) Just answer whether you had or not.

A. No.

Q. Now, with reference to the Loew's Metro product, isn't it a fact that you bought and played every year from 1933-1934 through 1939-1940, Metro product at the Ohio Theater?

A. I don't think so.

Q. Which of those seasons is it your recollection you didn't play any Metro pictures?

A. I can't answer that question that way.

Q. What is your difficulty? If you tell me what your difficulty is, I will clarify my question.

A. We might have played some of the pictures during the year that were left over from another season, but it was the season of '37 and '38 that we didn't buy.

Q. Let me put the question to you this way, then: Of the season's product that was released by Metro for each of the [fol. 404] picture seasons 1933-1934 and 1939-1940, didn't you play each of these successive seasons the product at the Ohio Theater?

A. We played '38 and '39, and did you ask me about '40?

Q. I asked you about '38-'39. I asked you about '39-'40.

A. Yes.

Q. And you played 1933-1934, too, didn't you?

A. We might have gone back and picked up some. I don't remember whether we run them all.

Q. My question, Mrs. Moore,—I don't want to mislead you,—my question was not directed to your playing all, but some of every season's product, isn't that true, of Metro?

A. I am not sure about the one year.

Q. Which year is that?

A. '37 and '38.

Q. You are not sure of whether you played any part of the Metro product for the season '37-'38, is that right, other than that you did play the product of every season from the '33-'34 season right through and inclusive of '38 and '39, is that correct?

A. I don't remember.

Q. Which season is it you don't remember?

A. The earlier season.

Q. You mean you don't remember whether you played [fol. 405] any part '33-'34 product?

A. I expect we did, but I don't remember.

Q. How about '34-'35?

A. I expect we did.

Q. How about '35-'36?

A. I don't remember.

Q. You don't remember that at all, do you? And '36-'37?

A. Some pictures.

Q. And '37-'38.

Mr. Boggess: I submit she has answered that, your Honor. She has answered already.

Mr. Rogers: She said she was not sure. I am refreshing her recollection.

Mr. Boggess: She said positively she did not remember.

Mr. Rogers: Trying to jog up her memory a little bit.

The Court: I understood her to say she didn't remember '37-'38.

Q. What is your answer with reference to '37-'38?

A. If we played any, we played them later, not during the season.

Q. How about '38 and '39?

A. Yes.

Q. You did play the others I have covered?

A. (No answer.)

[fol. 406] Q. You testified that Mr. Lazarre called at your home some time in the winter of 1936 to discuss the possibility of purchasing the Ohio Theatre. Is that your recollection?

A. Yes, sir.

Q. And you are sure it was the winter of 1936?

A. Or 1937.

Q. Now, let us see: It was either the winter of 1936 or the winter of 1937, you say. Now, which is your better recollection? Was it in 1936 or was it in 1937?

A. 1937.

Q. 1937 is your best recollection?

A. Yes, sir.

The Court: You said November, 1936, before.

Mr. Rogers: That was her original testimony on direct.

Q. Now, I understand, Mrs. Moore, you would like to change that from the winter of 1936 to the winter of 1937; is that correct? Will you please answer, Mrs. Moore? Is that correct?

A. Yes, sir.

Q. And just where was that conversation had?

A. At our home.

Q. Where was your home at that time?

A. VanWert.

Q. You had your home in VanWert at that time?

[fol. 407] A. That is right.

Q. Was that the first time that there had ever been any talk about your selling the theatre or leasing the theatre to Schine?

A. No.

Q. Had there been a talk prior to that?

A. Yes.

Q. And when was it?

A. I think it was in the late summer of 1935.

Q. And was that meeting brought about through a request on the part of yourself or your husband that an arrangement be made for you to meet with Schines to discuss it?

A. Not at that time, I don't think.

Q. Well, did you have any talk at that time?

A. Small talk.

Q. With whom was the small talk had?

A. At that time Mr. Schine and Mr. Lazarre were both at our theatre in VanWert.

Q. Mr. Schine and Mr. Lazarre were at your theatre in VanWert?

A. That is right.

Q. You say you had a talk with them at that time?

A. Just a small talk.

Q. Did you know Mr. Schine at that time?

A. No, I didn't.

[fol. 408] Q. You never had met him before?

A. I don't think so.

Q. And who was present at that talk?

A. Mr. Moore was there and our manager, Mr. Cummings.

Q. And where was the talk had?

A. In the lobby of the theatre.

Q. It was just an informal, short talk, you say?

A. That is right.

Q. And was that about leasing the theatre or buying the theatre or just to talk about the theatre?

A. About the theatre and buying it and becoming affiliated with them.

Q. It was a talk about becoming affiliated with Schine, wasn't it?

A. Tha[illegible] right.

Q. But when did you really have a talk about that with reference to the possibility of Schine buying the theatre or leasing the theatre?

A. There were several talks.

Q. Well, do you remember when the talk took place after the summer of 1935?

A. In the summer of 1936 we had a talk.

Q. And where was that talk?

A. At our attorney's home in VanWert.

Q. And who was that attorney?

[fol. 409] A. Judge Conn.

Q. You say that was the summer of 1936?

A. I think so, or it might have been 1937; either 1937 or 1936.

Q. And do you recall prior to that talk in the summer of 1936 whether they had been any other talk?

A. There might have been.

Q. Well, do you recall any?

A. No.

Q. Well, do you actually remember having made a deal under which you agreed to sell the theatre to Schines?

A. I remember that we said we would.

Q. What?

A. I do.

Q. You remember you said you would?

A. That is right.

Q. Do you remember having put it in writing?

A. I think I wrote a letter.

Q. You think you wrote a letter?

A. That is right.

Q. Offering the theatre to the Schines?

A. Yes, sir.

Q. At a certain price?

A. I think so.

Q. And do you remember when that was done?

[fol. 410] A. No, I don't.

Q. Do you remember which year that was done?

A. No.

Q. Now I want to show you this paper, Mrs. Moore. Is that in your handwriting or is that in your husband's handwriting (showing letter to witness)?

A. That is mine.

Q. That is your handwriting?

A. Yes.

Q. That purports to be a letter bearing date April 13, 1936, addressed to Schine Enterprises, attention Mr. May, Gloversville, N. Y., signed "Carl B. Moore"?

A. It is.

Q. Is that signature "Carl B. Moore" also in your handwriting?

A. Yes, that is my writing.

Q. In other words, this two-page letter, bearing the date

I just spoke about, and the designation I spoke about, is entirely in your handwriting; isn't it?

A. That is right.

Q. Now I want to show you another paper, Mrs. Moore, and I ask you whether that one-page paper, written on both sides, is in your handwriting?

A. This is mine.

Q. And the writing on both sides in your handwriting?

[fol. 411] A. That is right.

Q. And it closes "Sincerely yours, The Moores"; that is all in your handwriting, all of it?

A. That is correct.

Q. That is a letter bearing date April 12, 1936, from Miami, Florida, and addressed to "Dear Bud." Now, who was "Dear Bud"?

A. Mr. Silverman.

Q. In other words, was that sort of a nickname?

A. Yes, sir.

Q. You called him Bud Silverman?

A. That is right.

Q. Now I show you a paper which purports to be a letter bearing date May 12, 1936, and I ask you is that entirely in your handwriting?

A. That is mine.

Q. Including the signature?

A. That is correct.

Q. That is a letter bearing date May 12, 1936, addressed to Mr. Louis Lazarre, Cleveland, Ohio, and signed by Carl B. Moore. Now, on April 13, 1936, the date of this letter addressed to Schine Enterprises, attention Mr. May, did you know Mr. May at that time?

A. I think I must have met him.

Q. Do you know whether or not you met him prior to that [fol. 412] date? When I say "prior to that date" I mean prior to the date of April 13, 1936.

A. I don't recall.

Q. You really don't remember, do you, whether you ever met him prior to that date?

A. What date?

Q. April 13, 1936.

A. Yes, sir, I had met him.

Q. You had met him prior to April, 1936?

A. Yes, sir.

Q. Do you remember where?

A. Yes.

Q. Where was it?

A. Lima.

Q. In Lima, Ohio?

A. That is right.

Q. Do you remember when that was?

A. It was in 1935.

Q. And do you know about when in 1935 that was?

A. In the late summer.

Mr. Rogers: Now I wish to offer that in evidence.

Mr. Wright: I think we ought to know which part of what has been shown to the witness is now being removed.

Mr. Rogers: That was not shown to the witness. The three [fol. 413] letters that were shown to the witness, one letter of April 13, 1936, a letter of April 12, 1936, and a letter of May 12, 1936, the three were in her handwriting. That was all I asked her about.

Mr. Wright: I understood you asked her if she had received another letter, of which you had a copy.

Mr. Rogers: No, indeed.

Mr. Wright: In any event, you don't want to show us the copy?

Mr. Rogers: I didn't show it to you. I didn't say I wouldn't. I just wanted to make it clear that I didn't show it to the witness.

Mr. Wright: You don't want to show it to us; is that right?

The Court: Proceed.

Mr. Rogers: Now I offer these three letters in evidence.

The Court: Why should they not be identified and reserved for your defense?

Mr. Rogers: Because under cross examination I have a right to introduce these letters to show a condition other than that claimed by this witness.

Mr. Wright: What is the condition they purport to show? That is beyond me. What relation this has to anything she testified to on direct examination I confess I can't understand.

The Court: I have not seen them. Received.

[fol. 414] (Thereupon the letter of April 12, 1936, referred to, was marked as Defendant's Exhibit D-13 in evidence.)

(Thereupon the letter of April 13, 1936, referred to, was marked as Defendants' Exhibit D-14 in evidence.)

(Thereupon the letter of May 12, 1936, referred to, was marked as Defendants' Exhibit D-15 in evidence.)

Q. Now I hand you Defendants' Exhibit 15, which is the letter from Mr. Moore to Louis Lazarre which you wrote, and I ask you, did you write that letter after consultation with Mr. Moore, your husband?

A. I did.

Q. And that was done with his knowledge and with his consent, wasn't it?

A. That is right.

Q. Now, after that letter was written was the deal closed?

A. It was not.

Q. And isn't it the fact that after that letter was written accepting the proposition that you went to the Schines and asked them to please let you out of the deal?

A. No, I didn't do that.

Q. You didn't do that?

A. No.

Q. Wasn't that deal cancelled by them on your request that you be relieved from the deal and have the deal go by [fol. 415] the board because you had changed your mind and you wanted to still continue to operate the theatre?

A. At the request of our attorney, Mr. Conn.

Q. Well, did you instruct your attorney, Mr. Conn, to go to the Schines and see if they wouldn't call the deal off because you had changed your mind?

A. They called on him.

Q. You mean the Schines called on Mr. Conn?

A. That is right.

Q. Were you present?

A. I was.

Q. In Mr. Conn's office?

A. At his home.

Q. Do you remember that the purpose of that meeting was to have them consent to call this deal off so that you could continue to operate the theatre?

A. I don't know how to answer that.

Q. You say you don't know how to answer that? Well, at the meeting in Mr. Conn's office, your attorney's office, didn't the Schines say that they came there prepared to close the deal in accordance with this letter, Defendants' Exhibit 15?

A. They did.

Q. In other words, they were there to close the deal, weren't they?

[fol. 416] A. Yes, sir.

Q. And they were there prepared to give you the money called for in that letter, weren't they?

A. I supposed they were.

Q. Wasn't the only reason that the deal didn't go through that you wanted to call the deal off?

A. No, that wasn't the only reason.

Q. You say that wasn't the only reason?

A. No.

Q. What do you claim was the reason the deal was called off when they were prepared to go through and had the money and wanted to close the deal? What was the reason the deal didn't go through, do you claim?

A. They were to give Mr. Moore a position.

Q. I can't hear what you are saying.

A. Mr. Moore was to have a position.

The Court: What?

The Witness: My husband was to work for them.

The Court: Schine, you mean?

The Witness: Yes, sir.

Q. Did that come up for the first time in Mr. Conn's office?

A. No.

Q. Is there anything contained in this letter of yours of May 12th in which you say a condition of the deal was that your husband was to get a position with Schine?

[fol. 417] A. There is nothing there.

Q. So far as this deal is concerned, as set forth in your letter, as contained in your letter, the Schines were prepared to go through with the deal; is that right?

A. With the money value.

Q. In other words, they were prepared to pay the amount of money which you set forth in that letter, weren't they?

A. The money, yes.

Q. And they were willing to turn back to you some of this talking equipment and the pop-corn machine, which you wanted reserved out of the deal; is that right?

A. Yes, sir.

Q. And that is all they were called upon to do under this deal, wasn't it?

A. In that letter.

Q. When was the question of this position raised?

A. At different times.

Q. Was it raised at the time this letter of May 12 was written?

A. In our talks.

Q. You mean in your personal talks among Mr. Moore and yourself?

A. And Mr. Lazarre.

Q. And you say there was some talk about a position that Mr. Moore was to get?

[fol. 418] A. Or to get us another theatre in another town.

Q. Or to get another theatre?

A. For us.

Q. Which do you claim was the reason for your refusing to go on with this deal, the fact that you didn't get another theatre or the fact that Mr. Moore didn't get a position?

A. We would have been satisfied with either of them, another theatre or a position.

Q. And neither one of those contingencies was put in your letter of May 12, the theatre or the position; is that right?

A. That is right.

Q. And you wrote that letter after carefully going over the situation with Mr. Moore, didn't you?

A. I went over it with him, but not our attorney.

Q. I am not talking about your attorney. You went over it with Mr. Moore, didn't you?

A. I did.

Q. Now I show you this letter of April 13, 1936, Defendants' Exhibit 14. Was that letter written by you after carefully talking over the matter with Mr. Moore?

The Court: She said it was written for Mr. Moore.

The Witness: That is right.

Q. And written to Mr. May of the Schine Enterprises?

[fol. 419] A. That is right.

Q. And you talk about his organization taking over the Ohio Theatre, don't you?

A. Yes.

Q. The Ohio Theatre was your theatre?

A. Yes, sir.

Q. Is there a single word mentioned in that letter about any position for Mr. Moore or about them getting you another theatre?

A. There is not.

Q. And that was written before Defendants' Exhibit 15 of May 12, 1936?

Mr. Wright: This is an argument he is perfectly free to make at any time.

The Court: That all appears in the record.

Q. As a matter of fact, prior to the making of that contract——

Mr. Wright: I object to his referring to this as a contract or a deal. It is obviously on its face a letter and Counsel cannot make it anything else.

Q. Prior to the letter of May 12, 1936, Defendant's Exhibit 15, you and Mr. Moore were very anxious to sell the theatre, weren't you?

A. No.

Q. You were not?

[fol. 420] A. No.

Q. You were very anxious to have Mr. Silverman intercede in your behalf to try to get the Schines to make a deal with you, weren't you?

A. No.

Q. You weren't? Well, you recall this language in your letter, don't you, "We have talked it over and we would like to make a deal with Schines some way or other. We feel you are the ones to approach. As you know, we really do business at one little stand. If you can arrange this for us we will deeply appreciate it and will do our part." Now, when you wrote that in that letter to Mr. Silverman did you mean it?

A. In one way I did.

Q. Was that an accurate statement of how you and Mr. Moore felt about disposing of that theatre?

A. With the facts in the case it was.

Q. So that you were anxious to dispose of the theatre, weren't you?

A. Due to the situation of pictures in the town.

Q. Regardless of what the situation was, you were anxious to sell the theatre, weren't you, or get rid of it on some basis?

A. No.

Q. In spite of what you say in this letter; is that right?

[fol. 421] A. It was the conditions that made me write that letter.

Q. Now, Mrs. Moore, this letter of May, 1936, that we have been talking about, covered one proposal to purchase and sell. Was there a subsequent deal made or discussed with Schines about them buying this theatre?

A. Will you read that to me?

Q. This is the letter (handing to witness).

A. You want to know if I wrote——

Q. Let me clarify it. What I mean was, wasn't there another deal discussed and made after the one set forth in that letter of May 12th, about you selling the Ohio Theatre to the Schines?

A. This is the only one I remember.

The Court: He didn't ask you about a letter. Was there any other later discussion about the sale of the theatre to Schines?

The Witness: Yes, we had a meeting, yes.

Q. And that was about how long after May 12, 1936?

A. It mustn't have been very long.

Q. Was it about a year later?

A. I don't think so.

Q. Well, about how much later would you say it was?

A. I said not very long.

Q. Well, now, what happened as a result of those second negotiations?

[fol. 422] A. You mean the meeting at our attorney's home?

Q. Wherever the meeting may have been, Mrs. Moore.

A. After the meeting at our attorney's home Mr. Silverman had contacted us relative to buying the theatre after that.

Q. You mean Mr. Silverman wanted to buy the theatre himself?

A. For the Schines.

Q. Was a deal made?

A. No.

Q. Wasn't the contract actually made and signed by Mr. Moore?

A. No.

Q. You don't remember that? Do you remember going over to Bellefontaine and seeing Mr. Lazarre?

A. I do. I remember being over there.

Q. Do you remember about when that was?

A. That was before this letter.

Q. You say that was before this letter of May 12, 1936?

A. That is right.

[fol. 423] Q. Do you remember going to Bellefontaine to Mr. Lazarre and telling him that you understood that your husband made a contract to sell this theater, and that you wanted him to tear the contract up?

A. I don't remember.

Q. You don't remember that at all?

A. No.

Q. Do you remember him tearing the contract up and saying "If that is the way you feel about it and don't want to make the deal I will tear the contract up?"

A. No.

Q. Is it your recollection that that did not occur, or it might have occurred and you have forgotten it?

A. I don't just remember.

Q. Don't remember it at all. Do you recall how many pictures you contracted for with the various distributor companies for the season 1934-1935 to be played at the Ohio Theater?

A. I know the companies, I believe, but not the number from each company.

Q. In the aggregate, all told, do you remember how many pictures you contracted for, feature pictures, I mean, for the season 1934-1935?

A. The different companies I do. I could look up and find the amount, but I couldn't tell you right now.

[fol. 424] Q. In other words, you won't trust your memory, but you can refer to records, and do you have the records with you?

A. Yes.

Q. Here?

A. Yes.

Q. In the period of 1934-'35, the motion picture season, can you tell me how many feature pictures you actually used in the Ohio Theater and showed there?

A. I cannot without looking it up.

Q. Was it your policy in 1934-'35 a double-feature policy?

A. It was not.

Q. Single-feature?

A. Yes.

Q. And you played shorts?

A. Yes.

Q. And news reels?

A. Yes.

Q. How often a week did you change?

A. Three times.

Q. So that on the average you used about 156 pictures, is that right, during that season?

A. We might have used more, because our policy was three changes, but sometimes we run a picture one day only, like on Saturday.

[fol. 425] Q. So some weeks you might use four pictures you mean?

A. That is right.

Q. And some weeks three pictures?

A. That is right.

Q. During the course of the season you would use up 140, 150 pictures, is that right, or more?

A. I would say 200 or more.

Q. What?

A. 200 or more.

Q. Would you say 200 or more. That would be over four pictures a week, is that right?

A. That is right.

Q. Four features would be 208 pictures, is that right?

A. Yes.

Q. That would be at the rate of playing four pictures every week of the year?

A. Our policy was to run single features, but in the latter part of '35, we did run some double bills and so did Schine's at their theaters.

Q. Those records you have here will show that, will they?

A. That is right.

Q. Will you be so good during the recess hour to look at those records, because I intend to ask you, and look at these various years, and ask you about the number of pictures?

[fol. 426] The Court: We had better give up the idea of four o'clock recess, then, if you are going into that.

Mr. Wright: There is no question about what those records show, and they could be offered at any time, and are the best evidence. If he wants to show what pictures they played, the cutoff records would show, and it would be, it seems to me, a more appropriate subject of documentary evidence.

The Court: We will recess until 2 o'clock.

(Whereupon, at 1:05 o'clock p. m., a recess was taken until 2 o'clock p. m.)

[fol. 427] After Recess, 2 o'clock p. m.

Appearances:

As before noted.

Lottie Moore resumed the stand on behalf of the Plaintiff, and testified further as follows:

Cross-examination (Continued).

By Mr. Rogers:

Q. Now, Mrs. Moore, during the recess, were you able to examine your records about the number of pictures you had contracted for and the number of pictures you had played for the 1933-1934 season product?

A. 1933 and '34, I didn't have that.

Q. With reference to the product for the season 1934-1935, did you have records on that?

A. I don't have that, either. I thought I did, but I haven't.

Q. With reference to the season 1935-1936, did you have records on that?

A. No.

Q. When did your records start, 1936-'37?

A. I have some records, but I have the 1937-'38 year is the first one.

[fol. 428] Q. You have nothing prior to 1937-'38?

A. I have not. I have the United Arti-ts contract, and that is all.

Q. With reference to the season 1937-'38, can you tell me how many feature pictures you contracted for the Ohio Theater?

A. Not the number, no.

Q. You can't give me the number?

A. I can give you the book, but I haven't counted them.

Q. Does the book contain the number?

A. The number of pictures, yes.

Q. Have you the book here?

A. It is out in the hall.

Q. By looking at the book would that serve to refresh your recollection as to the number?

A. No, but you could count them.

Q. Couldn't you do that from your own book?

A. Yes.

Mr. Wright: If the Court please, the witness is not bound to make a computation for counsel. He has the record and he is perfectly at liberty to show the book record. Certainly it isn't proper cross-examination under any view of the thing.

Mr. Rogers: Let us get the record in here and between [fol. 429] the witness and myself see if we can do that.

The Court: If you have the record, why spend time on it?

Mr. Rogers: I haven't the record here. I never have had the record.

Mr. Wright: He has the same thing we have, which is the answer of Columbia to the interrogatories which set forth the rentals in Van Wert during this period of time. All this witness has is a secondary record or date book which she kept for her convenience, which certainly is not the best record, in any event, of the pictures.

The Court: What is the materiality of this, Mr. Rogers?

Mr. Rogers: The materiality, may it please the Court, is to show if we can't show by her testimony the number of pictures they actually contracted for, and have available, and the number played that they did actually play in the theater, and you balance one as against the other, you readily arrive at the conclusion, whether she had plenty of product or had a scarcity of product, or sparsity of product, [fol. 430] as the Government claims. The Government claims they had sparsity of pictures, did not have enough pictures, and could not get enough pictures.

Mr. Wright: There isn't any question about not having enough pictures to play at the house. The only point of her testimony is the fact they were put down to subordinate pictures by having the first-run taken away and they were then a second-run house. We did not offer any testimony to show she could not get the second-run pictures, except in the case of the one season where Metro held them up for Schine. That is what the testimony is. I don't see what he is suggesting here is any rebuttal to what has been offered at all.

Mr. Rogers: May it please the Court, the complaint goes beyond that, far beyond that.

Mr. Wright: The direct-examination did not go beyond that. As part of your case you can make a showing of what was played there through the records.

Mr. Rogers: I don't know what further testimony you are going to adduce on that subject. You charge that in your complaint and you charge in your bill of particulars what [fol. 431] the situation was, that we drove them out of business and they couldn't get any products.

Mr. Wright: Didn't drive them out of business. They are in business.

The Court: The cross-examination seeks to show what material she had and was made available.

Mr. Rogers: The testimony here on the part of this witness, even as to second-run product, she was having difficulty getting second-run product. I am going into that second-run product.

The Court: You had better call another witness and let her step aside and get her records. If you want to get away from here today, you will have to make some haste.

Mr. Rogers: If Mrs. Moore will be so kind to step aside and get the records on that second-run situation.

The Court: She had better retire.

[fol. 432] Carl B. Moore, a witness called by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Wright:

Q. Where do you live?

A. Van Wert, Ohio.

Q. You are the husband of the Mrs. Moore who just finished testifying here?

A. That is right.

Q. You own the Ohio Theater at Van Wert?

A. That is right.

Q. Have been operating it since the fall of 1934?

A. That is right.

Q. Do you recall that another theater was started there in the spring of 1935?

A. Yes.

Q. What was the name of it?

A. Schine's Van Wert Theater.

Q. When was that theater opened?

A. I think that was some time in August of 1935.

Q. That was just prior to the time that Schine also took [fol. 433] over the operation of Mr. Dasher's Lyric Theater?

A. I think that is right, yes.

Q. Can you tell us what the admission prices charged by the various theaters there were?

The Court: At what time?

Q. At the time the three theaters were operating in 1935?

A. Well, I think our prices at the Ohio Theater were 10 and 15 cents.

Q. Your prices were 10 and 15 cents?

A. I think so.

[fol. 434] Q. Well, what do you mean, ten for what and fifteen for what?

A. Ten for children and fifteen for adults.

Q. What was the Lyric charging?

A. The Strand?

Q. Or the Strand. I beg your pardon.

A. Ten and twenty cents.

Q. And the Schine Van Wert theatre?

A. It had a sliding scale, as I remember. I think their top price for adults was 35 cents.

Q. And do you recall if there were any changes in admission prices during the next three or four years?

A. Yes, sir.

Q. What were the changes?

A. The price of Schine's Van Wert was dropped to 25 cents. That was the top price.

Q. How about the Lyric Theatre—was it, that they took over?

A. The Strand Theatre.

Q. The Strand.

A. They dropped the price there too later. I don't know just what it was.

Q. Do you remember what figure?

A. Ten and fifteen cents. Ten cents for children.

Mr. Rogers: May we get the date when it is claimed the drop occurred?

[fol. 435] Q. Will you give the approximate time, Mr. Moore?

A. Well, I remember these things happening but I don't know the exact dates that they were changed.

Q. Well, can you give the approximate year?

A. Yes, in the year of 1935.

Q. Some time in 1935?

A. Yes, sir.

The Court: You mean they both dropped during that year?

The Witness: It may have been as late as 1936. I might have been mistaken on that.

Q. 1935 or 1936?

A. 1935 or 1936.

Mr. Rogers: Is that with reference to one or both?

The Witness: Both.

Q. Then that was the first time that you saw Mr. Schine?

A. Well, I think it was some time before the Schines opened there in VanWert and Mr. Schine was in town. It was some time before Schine's Van WertTheatre was opened. Mr. Schine was in VanWert.

Mr. Rogers: Pardon me. Can't we get that fixed approximately by month and year?

The Witness: Yes, in the year of 1935, in the summer.

Q. He came to see you at your theatre?

A. Yes, he visited my theatre there one day and looked over my theatre and asked me about my investment, and so [fol. 436] forth. I told him, and he said well, if I ever wanted to sell, or anything of that sort, it hadn't ought to be hard for us to get together.

Q. You are acquainted with Mr. Bud Silverman, aren't you?

A. Yes, sir.

Q. After he went to work for the Schine Company did you continue to see him?

A. Yes, sir.

Q. About how often?

A. He was in VanWert, I would say, at least once a month.

Q. That is during what period?

A. 1936.

Q. Well, for how long after that?

A. I just don't remember how long Mr. Silverman worked for—it must have been up to about 1940.

Q. That he was in that area, you mean?

A. Yes, sir.

Q. There was about four years there when he was making regular trips to VanWert?

A. Yes, sir.

Q. You say about once a month?

A. I suppose—I would say once a month at least.

Q. When he saw you what conversation did you have with him? What did you talk about?

A. Well, most every time I would see him he would ask [fol. 437] me if I had made up my mind to sell the theatre or what I was going to do about the theatre, and I invariably would tell him that unless I could get something better or equally as good I would just as leave stay where I was at, and that is about the gist of our talk.

Q. Did he offer you any advice as to what you ought to do?

Mr. Rogers: May it please the Court, I object to that.

The Court: Let him state the conversation.

A. Well, yes, on numerous occasions I talked to Mr. Silverman. I remember one time in particular.

Q. What time was this?

A. That was over at my home in 1937 and——

Mr. Rogers: Can we get that fixed approximately by month?

Q. Can you give us the month or the season of the year?

A. That was in the spring, I think it was.

Q. What was the conversation then?

A. Well, Mr. Silverman came in as a friendly adviser and told me if I knew what was good for me——

Mr. Rogers: Pardon me. I object to the testimony of this witness that Mr. Silverman came in there as he says merely as a friendly adviser.

Q. Just confine yourself to what he said and what you said. That is, what the conversation was.

A. Well, Mr. Silverman told me that Schines would buy my theatre and that I knew that Schines were tough and [fol. 438] product would be hard to get, and that if I didn't sell I would probably find myself short of product, and the best thing I could do would be to sell out and salvage what I could out of my proposition.

Q. What did you say?

A. I told him that I wasn't interested at that time.

Q. That was in 1937?

A. I think it was, yes, sir.

Q. Then you say you continued to see him about once a month for the next two or three years?

A. Yes, sir.

Q. Did he again talk to you about selling the theatre to Schine?

A. Yes, when he would come into VanWert he would stop in to see me, maybe at my theatre or down home, and ask me if I had made up my mind to sell or not, and I would say, "Well, Bud, whenever we can get another theatre as good as the one I have or we can work something out satisfactory I would be willing to make a deal."

Q. Coming down to the time in 1940 can you tell us what the admission prices were at your theatre and the two Schine theatres?

A. Yes. In 1940 they were ten and fifteen——

Mr. Rogers: I assumed the question was directed to the year 1937, was it not?

[fol. 439] The Court: No, 1940.

Mr. Rogers: They both dropped their voice and I did not understand.

The Court: You said ten and fifteen. That was your price?

The Witness: Yes, sir.

Q. What were their prices?

A. At the VanWert it was 25 and 10, I think.

Q. And at the Strand?

A. They were 10 and 15 at the Strand.

Q. Mr. Moore, at the time your theatre had first run product do you recall what your admission prices were then?

A. Yes, we used to charge 10 and 25 cents.

Q. When you had first run Columbia, Universal, United Artists?

A. That is right.

Q. Then you dropped to 10 and 15 when you went on a second run policy?

A. That is right.

Q. Are you familiar, Mr. Moore, with what the prices charged by the Schine theatres in nearby towns were where there were no competing theatres?

Mr. Rogers: May it please the Court, I object to that.

The Court: Sustained.

Mr. Wright: We can prove that by other testimony.

Q. Mr. Moore, do you have any personal knowledge of the efforts, if any, made by the Schine Company to lease [fol. 440] your theatre or buy it?

A. Well, yes, as I have already said about Mr. Silverman.

Q. As I understand it, you don't own the Ohio Theatre in fee; is that right?

A. I don't own the building, no.

Q. You lease the building?

A. Yes, sir.

Q. What is the name of your landlord?

A. Mr. Harry Rumpf.

Q. What I was referring to was any efforts that may have been made by the Schines to make a lease for your theatre with Mr. Rumpf, or buy the building from him. Do you have any knowledge of what was or what was not done in that connection?

Mr. Rogers: May it please the Court, I object to that on the ground that that possibly could not be within the knowledge of this witness and would be hearsay unless he was present when the negotiations were had with Rumpf, or participated in them.

Mr. Wright: Mr. Rumpf has been subpoenaed but he happens to be ill and it is simply a question of either taking his deposition or having this witness's testimony.

Mr. Rogers: That is a new rule of evidence.

[fol. 441] The Court: He cannot testify to something he does not know anything about. If he participated in any such conversation he can testify to that. Were you present at any negotiation or conversation in that regard?

A. I was not present at any negotiations, no sir.

Q. All you know about it is what Mr. Rumpf told you?

A. What Mr. Rumpf, my landlord, told me.

Q. Is Mr. Rumpf ill at the present time?

A. He was the last time I saw him.

Mr. Rogers: May it please the Court, that is immaterial.

The Court: I will let it stand.

Mr. Wright: I think that is all.

Cross-examination.

By Mr. Rogers:

Q. Now, when you first opened the Ohio Theatre what scale of prices for admission were you charging on Sunday, Monday, Tuesday and Wednesday of the week?

A. 10 and 25 cents.

Q. And what prices were you charging at that time for Thursday, Friday—or Wednesday, Thursday, Friday and Saturday?

A. Well, 10 and 25, with the exception of a kiddies' matinee for 5 cents on Saturday.

[fol. 442] Q. Why, as a matter of fact, during that period weren't you charging 10 and 15 cents on the days I have mentioned?

A. When I first opened the Ohio Theatre?

Q. Yes. Now, then, I understand that from October, 1934, through to January 1, 1935, you were charging children ten cents, adults fifteen cents, matinee?

A. To my recollection—we were playing first run pictures there and I thought we were charging 10 and 25 all the time.

Q. Do you mean during the matinees too you charged 10 and 25? Didn't you charge 10 and 15 for the matinee and 10 and 25 cents in the evenings?

A. Yes, I think that is right.

Q. Then you changed your policy on January 2nd, 1935, didn't you?

A. We changed the policy somewhere along there. That is possibly right.

Q. And at Saturday matinees you were charging 5 cents for children and 10 cents for adults; isn't that right?

A. That is right.

Q. During that period you had first run product, didn't you?

A. Yes, sir.

[fol. 443] Q. And you were charging at the time Sunday matinees children under 12, 5 cents, children 12 to 16, 10 cents, adults 15 cents, isn't that right?

A. Yes, sir.

Q. And at that time, so far as your evenings were concerned, your scale of prices Sunday, Monday, Tuesday and Wednesday, when pictures were played, you were charging 15 and 25 cents, 15 for children and 25 cents for adults in the evenings?

A. Yes.

Q. And at that time didn't you also with reference to evening performances, when you played Thursday, Friday and Saturday or Wednesday, Thursday, Friday and Saturday, depending upon your policy, you were charging 10 cents for children and 15 cents for adults, isn't that right?

A. Well, there was a time when we changed our policy to that. I just don't recall what time that was.

Q. Was that shortly after the first of the year 1935?

A. I imagine it was.

Q. Do you remember that in April of 1935, you again changed your policy?

The Court: By change of policy you mean change of price?

Mr. Roggers: Yes.

[fol. 444] The Witness: Was that when I changed to 10 and 15 all the time?

Q. Well, at that time didn't you change your prices, matinee Saturday and Sunday, children 5 cents and adults 10 cents?

A. I don't recall it, no.

Q. Don't you recall that?

A. No.

Q. Don't you recall about April 3rd, 1935, you changed your straight evening policy to 10 cents for children and 15 cents for adults?

A. Yes, that sounds right.

Q. And at that time Schine had not opened his Van Wert theater yet, had he?

A. No.

Q. As a matter of fact, in April, 1935, Schine didn't have any theater in Van Wert, did he?

A. I don't think he did.

Q. You know he didn't?

A. No, he didn't have.

Q. There has been some testimony about Mr. Silverman, who was known as "Bud" Silverman and that he performed certain work for you in connection with your Ohio Theater in Van Wert. Now, was he employed full time or *or* did he just devote part of his time to that?

[fol. 445] A. Just part of his time.

Q. Was he on a salary basis with you?

A. Yes.

Q. You paid him so much a week?

A. Yes, sir.

Q. Where did Mr. Silverman reside when he was associated with you?

A. Tiffin, Ohio.

Q. During all the period he was working for you?

A. I think so.

Q. Now, I show you Defendants' Exhibit 15, which is letter May 12th, 1936, about which Mrs. Moore testified. Do you remember that letter having been prepared by Mrs. Moore?

A. Yes, I do.

Q. And did she discuss that with you when it was written?

A. Yes, she did.

Q. Did you see it after it was written?

A. I couldn't say as to that, but I know she discussed this letter and I remember it.

Q. You remember reading the letter before it was signed, don't you?

A. Yes, I think I do.

Q. After this letter of May 12th, Defendants' Exhibit 15, do you remember another letter or another writing being [fol. 446] made under which you offered to sell the theater to Schine or accepted a proposition of Schine?

A. I don't remember any, no.

Q. Do you mean you don't remember any proposal of sale, or lease of the Ohio Theater to Schine in your behalf other than this Defendants' Exhibit 15?

A. You mean in a letter?

Q. In any piece of paper, letter or otherwise?

A. Any piece of paper? No.

Q. Don't you remember that after Defendants' Exhibit 15 was entered into you made another deal with Mr. Lazarre to sell that Ohio leasehold to Schine?

A. No.

Q. Don't you remember that at all?

A. No, sir.

Q. Do you remember at any time after April 12th, 1936, which is the date of Defendants' Exhibit 13, or after May 12th, 1936, Defendants' Exhibit 15, having had a talk with Mrs. Moore, your wife, and she having objected to a deal you had made for the sale of the Ohio Theater to the time of this one, Defendants' Exhibit 15?

A. You say a deal that I made? I don't quite understand what you mean by that.

Q. You don't remember, do you?

A. No, sir.

[fol. 447] Q. Mr. Moore, do you recognize the handwriting on that letter?

A. Yes, I do.

Q. Whose handwriting is it?

A. Mrs. Moore's.

Q. Your wife's handwriting?

A. Yes.

Mr. Rogers: I offer this letter in evidence.

Mr. Wright: If the Court please, I don't know what the materiality of the letter is, otherwise we have no objection.

Mr. Rogers: Do you have any objection, Mr. Wright?

Mr. Wright: On the ground it is immaterial, yes.

The Court: Who is this Sam Lichter, who is he? He is with Fox Film?

Mr. Rogers: Yes, sir.

The Court: Received.

(Thereupon the letter referred to, dated June 1st, 1936, was received in evidence and marked as Defendants' Exhibit D-16.)

Q. After this letter of May 12th, 1936, Defendants' Exhibit D-15, do you remember a meeting being had at Mr. Conn's office, your lawyer, to close that deal?

A. Yes, I do.

[fol. 448] Q. And about how long was it after May 12th of 1936 that that meeting was had?

A. Shortly after, a week or two, I should say.

Q. Do you remember who was present at that meeting in Mr. Conn's office?

A. I think Mr. Lazarre and Mr. May.

Q. And Mrs. Moore and yourself?

A. Yes.

Q. And Mr. Conn?

A. And Mr. Conn.

Q. Now, I understand that deal broke up that day in Mr. Conn's office, is that right?

A. Yes.

Q. Was that deal broken up because you demanded a job and a salary with Schine's?

A. Yes.

Q. Was there any talk about what kind of job you wanted, did you say what kind of a job you wanted with Schine's?

A. Well, my lawyer did my talking there for me, and he told Mr. Lazarre and Mr. May that I was his client and that he was a big man there in this town, and so forth, and he wasn't going to see me be thrown out for $5,000 and a theater, and he said that I should have a job with the Company, or more money than what we offered to sell for.

[fol. 449] Q. Well, did Mr. Conn do all the talking or did you do some of the talking?

A. Mr. Conn did most of the talking.

Q. Did you do some of the talking too?

A. No, not very much.

Q. Well, you did some of the talking, although not very much?

A. Yes, sir.

Q. Did you tell anybody, or did Mr. Conn tell anybody, how much a year or how much a week or how much a month you demanded as your salary?

A. I have forgotten. There was something stipulated there, but I have forgotten just what it was.

Q. You mean there was some mention made of it?

A. I think there was, yes.

Q. Was that mention made by you or by Mr. Conn?

A. By Mr. Conn.

Q. Wasn't that figure approximately $5,000 a year to be paid to you?

A. I think that is right.

Q. And for how many years?

A. Five years, I believe.

Q. In other words, your position was that unless you got a contract that would give an aggregate of $25,000 over a period of five years you wouldn't make the deal; is [fol. 450] that right?

A. That is right.

Q. And your lawyer took that position too? You had instructed your lawyer prior to the meeting to take that position, hadn't you?

A. Well, I wouldn't say that exactly.

Q. You had spoken it over with Mr. Conn before Mr. May and Mr. Lazarre arrived, hadn't you?

A. Yes, I talked to Mr. Conn.

Q. And you had all agreed, hadn't you, that Mr. Conn was to make that demand, hadn't you?

A, Well, he advised me before they came in that $5,000 was not enough, and I didn't know exactly what price he was going to set on this.

Q. You mean that you were going to place a different price than the price you had agreed upon; is that it?

A. No, for the working interest or the salary.

Q. I am talking about the price of the $5,000 that you had set in this letter, Defendants' Exhibit 15. You wanted to change that; you wanted to get more money than that; is that right?

A. No.

Q. In other words, you wanted that to stay, but you wanted $25,000 on top of that in the way of salary; is that it?

A. That is right.

[fol. 451] Q. And you talked that over with Mr. Conn and you all decided that that was what he was going to demand; is that right? Now, is that right?

A. I don't remember whether we had that thoroughly threshed out before this meeting or not.

Q. But when you were present at this time and Mr. Conn made that demand you agreed with him that that demand should stand or there would be no deal; isn't that right?

A. That is right.

The Court: Why did you not say something about it in the letter you wrote? Why was not something said about that in this letter?

The Witness: Well, I don't know why that was not mentioned at that time.

Q. I show you this paper and ask you if you recall receiving the original of that letter? Do you?

A. No, sir, I don't. The reason for that is because my wife takes care of the correspondence and probably I never saw the letter. I don't remember the letter.

Q. Well, Mrs. Moore is still on the stand.

The Court: She can be called.

Q. You know nothing about this, is that so?
A. No, I don't know anything about it.

Mr. Rogers: Then I will present that to Mrs. Moore.

Q. Now, let me show you this letter and ask you whether [fol. 452] you ever recall receiving the original of that letter (handing letter to witness)?
A. I didn't have anything to do with that.
Q. In other words, your answer is the same, that Mrs. Moore handled all these details?
A. Yes, sir.
Q. When it came she would look at it and examine it and you wouldn't?
A. That is right.

Mr. Rogers: That is all.
Mr. Wright: That is all.

Lottie Moore resumed the stand on behalf of the Plaintiff, having been previously sworn, was examined and testified further as follows:

Cross-examination (resumed).

By Mr. Rogers:

Q. Mrs. Moore, I show you this paper purporting to be a copy of a letter bearing date April 21, 1939, 20th Century-Fox Film Corporation, I. J. Schmertz, Branch Manager, addressed to Mr. Carl B. Moore, Ohio Theatre, VanWert, Ohio. Do you recall having received the original of that?
[fol. 453] A. I don't just recall but I suppose I read it.

Mr. Rogers: I offer it in evidence.
Mr. Wright: It certainly is not proper cross-examination, your Honor, and I do not see that it is material or relevant to anything that has been offered by this witness in the way of proof. There are a number of other lawsuits we could try here. We could try out the question of whether or not there had been an agreement to purchase this theatre. I suppose we might try out the question of whether certain contracts made with distributors had been performed or

not, but I do not suppose that that is what we are here for. As I understand it the issues here are confined to what happened when Mrs. Moore and Mr. Moore attempted to get the first run pictures that they couldn't get because they were sold away from them.

The Court: Mark it for identification. I will exclude it at this time.

Mr. Rogers: My point is, may it please the Court——

The Court: I think that should be introduced in your own case in contradiction of the witness.

Mr. Rogers: Except that under D-16 the witness asked [fol. 454] this Company to give a product——

Mr. Wright: You cannot prove, of course, performance of a contract by a letter from Fox. If he wants to do that he can put somebody from the Fox Company on the stand.

Mr. Rogers: I am not attempting to prove non-performance of the contract. I am trying to prove that these people had plenty of product made available to them and when they did they would not play it. That is the purpose of this.

The Court: Let her testify to what product they had. I think it is part of your case. Mark it for identification.

(Thereupon the carbon copy of letter of April 21, 1939, referred to, was marked as Defendants' Exhibit D-17 for identification.)

Q. I ask you to please look at this, which purports to be the copy of a letter bearing the date of April 4, 1939, written by Mr. Schmertz, Branch Manager, 20th Century-Fox Film Corporation, addressed to Mr. Carl B. Moore, Ohio Theatre, VanWert, Ohio, and I ask you, do you remember having received that letter and having read it?

A. I expect I read that.

Mr. Rogers: I offer it in evidence.

[fol. 455] Mr. Wright: The same objection.

The Court: It may be marked for identification. I think that is more properly a part of your case, Mr. Rogers.

Mr. Rogers: Kindly mark it for identification.

(Thereupon the carbon copy of letter of April 4, 1939, referred to, was marked as Defendants' Exhibit D-18 for identification.)

The Court: You said you received that letter?

The Witness: I think so.

Q. Now, then, Defendants' Exhibit 16, this letter of June 1, 1936, which Mr. Moore when he was on the stand identified as being in your handwriting, there is a statement here saying: "I turn them away by the score." Now, was that an accurate statement when you put that in that letter?

A. I don't know what the letter is.

Q. Well, please take a look at it (handing letter to witness).

The Court: The question simply is whether that is a statement of fact about that you were turning them away by the score.

A. We did turn them away.

Q. You also said in that letter: "Metro and U. A."—and of course you meant United Artists by that, didn't you?

A. That is right.

[fol. 456] Q. —"have given me second runs on which I am doing nicely. Now, why can't you do the same?" Now, was it true that Metro, United Artists, had given you second runs and you were doing very nicely with them?

A. Nice for second run deals.

Q. You mean you were doing nicely for second run deals?

A. Yes, sir.

Q. You mean you weren't doing nicely with them?

A. Just as second run deals; not what we would have done on first run.

Q. You did as well with them as you would have done on second runs, but not as well as you would have done if you had had first runs; is that your distinction?

A. We were doing nicely as a second run deal, but that was not the policy of our house.

Q. Regardless of that I want to know whether you were doing nicely with those pictures, taking into consideration that they were second run pictures; is that right?

A. Is that what I said?

Q. Is that what you claim? You don't say it in the letter. You just say you were doing nicely; you don't qualify it at all.

A. Well, that is what we were doing.

Q. Doing nicely, is that it?

[fol. 457] A. As a second run.

Q. When you say now, "Why can't you do the same?", by that you meant couldn't he also give you second run 20th

Century-Fox, didn't you? This Mr. Sam Lichter was Fox, wasn't he?

A. That is right.

Q. And after that letter they did give you second run Fox, didn't they?

A. Some time after that, yes.

Q. And was it after they gave you that Fox second run that you received this letter, Defendants' Exhibit 17 for identification?

The Court: I would not spend much time on that. It shows, does it not?

Mr. Rogers: It does not necessarily. I want to know if she knows.

Q. With reference to this Defendants' Exhibit 17 for identification, did you write any answering letter to that?

A. I don't remember.

[fol. 458] Q. With reference to Defendants' Exhibit 18 for identification, did you write any answering letter to that?

A. I don't remember.

Q. Are you able to assist us on the question of the product, the number of pictures contracted for and the number of pictures played about which you were interrogated before?

A. Nothing other than the names of them and here is the book, 1937-'38 that I mentioned before, and that is the only book I have.

Q. I don't wish to pry into that book, but I would appreciate if you would show me in that book the pictures that were contracted for during that season and the pictures that were played.

The Court: The number.

Mr. Rogers:

Q. The number.

A. You can't do that from this book. It shows the pictures, your Honor, I would run from Republic or a Company with which I do not have a contract which tells me how many I bought, from which those pictures were run, so I can't give him the information he wants.

The Court: How many you bought?

A. I might have bought 40, but maybe in this book I would only run 30 of them. It might be carried over into [fol. 459] another year.

The Court: That is the ones contracted for.

Mr. Rogers: No, on the contrary, this is the number of pictures played but not the ones contracted for.

The Court: How many are there?

The Witness: I didn't count them.

Mr. Rogers: Can you look at it now and from that book give us an idea of the number of pictures you actually played during that year?

The Witness: No. I couldn't do that from 1937 to 1938, because the book doesn't start the first of the year.

The Court: Doesn't what?

The Witness: Doesn't start on the first of the year, this date book.

The Court: What time does it cover?

The Witness: The first picture in here is August 7th, 1937.

The Court: That run until September, 1938?

The Witness: This book runs until October 1st, 1938.

The Court: From August, '37, about a year and three months?

Mr. Rogers: Yes, about a year and three months.

Q. That period from August, 1937, to October, 1938, shows how many pictures you played?

[fol. 460] A. No, not exactly.

The Court: Approximately how many?

The Witness: I would have to have some help on that. Do you want to help me count them?

Q. Tell me when you start. August 7th.

The Court: It would save a lot of time if you would have somebody else make this computation and call another witness.

Mr. Rogers:

Q. Mrs. Moore, I think if you would be so good as to leave the stand and let either Mr. Homans or somebody else help you.

The Court: You can step down.

(Witness leaves the stand.)

The Court: Next witness.

Jerome G. Steel a witness called by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Wright:

Q. Where do you live, Mr. Steel?
A. Oberlin, Ohio.
[fol. 461] Q. What is your occupation?
A. Manager and owner of the Apollo Theater.
Q. Where you formerly engaged in the theatre business at Norwalk, Ohio?
A. I was.
Q. When was that?
A. 1934, December until July, 1935.
Q. With what theater were you connected?
A. The Forum Theater.
Q. With whom were you associated in that enterprise?
A. The two Selman Brothers.
Q. What were their names?
A. William K. and the other was Dr. Dave Selman.
Q. Was there another theater operating there when you came into the town?
A. There was.

Mr. Rogers: Pardon me, one moment. May it please the Court, I object on the ground it is not material, not competent and not even within the issues pleaded. There is no allegation in either the complaint or bill of particulars with reference to any conduct as against Mr. Steel or any restraint practiced on Mr. Steel or any product having been taken from Mr. Steel. On the contrary, the complaint and [fol. 462] the bill of particulars alleges specifically with reference to Norwalk, the only complaints are against the Moose Theater.

Mr. Wright: It is simply to lay the foundation for the testimony that will follow from Mr. Felder, the operator of the Moose.

The Court: Is counsel right in his statement that the Forum Theater is not mentioned in the bill of particulars?

Mr. Wright: I am not sure about the Forum Theater, but the town Norwalk, Ohio, is mentioned. I would be glad to outline the proof we propose to offer through this witness. The Town of Norwalk was the one where the Moose was the theater operating at the time Mr. Steel came in there, and the Moose was operated by Mr. Felder, who will be a witness here and whose product was taken away. Mr. Steel opened this theater in Norwalk at the time I believe in 1934, and then sold out to Schine in July, 1935. We will also offer testimony on his part that in attempting to secure R.K.O. product for the 1935-'36 season, that was the season [fol. 463] after going in there, he was told by the R.K.O. Manager that they had an old customer in Norwalk, the Moose, and they would not sell him the R.K.O. product for this theater which he opened.

Q. What was the name of it, Mr. Steel?

A. The Forum.

Mr. Wright: The Forum. The Schine bought the Forum and proceeded to buy the R.K.O. away from the Moose Theater without the Moose having been given any opportunity whatsoever to negotiate for a continuance of its R.K.O. first-run. I simply want to show by him that the——

Mr. Rogers: All that may be very interesting, may it please the Court, not a word of it in the complaint, not a word of it in the bill of particulars.

The Court: I will let him show the sale to Schine.

Mr. Rogers: May it please the Court, Schine was not even in the town at the time.

The Court: Schine bought the Forum.

Mr. Rogers: After all this happened. Schine was not even in the town when Steel had his interest in this Forum Theater. Schine did not even operate in the town.

[fol. 464] The Court: I will let him show when he sold it to Schine.

Mr. Rogers: If that is going to limit the proof, that is all right.

Mr. Wright: I want to show in addition to that when he tried to buy R.K.O. product away from the old customer, the Moose, they applied the old customer theory and refused to deal with it. However, the minute Schine acquired his, Steel's theater, then the product was sold away from the old customer without the old customer, the Moose, being given any opportunity to negotiate for it. His testimony is necessary to lay the foundation for that sell-away that occurred in respect to the Moose, and R.K.O. product.

Mr. Rogers: May it please the Court, Mr. Wright is persistent. I admire his persistence, but he may not go outside his pleadings, or his bill of particulars, however interesting it may be. There is no allegation of that kind. We are not put on notice of that which we are entitled to.

Mr. Wright: He was given notice Mr. Steel would appear as a witness a week ago.

Mr. Rogers: I am not a crystal gazer. I don't know what [fol. 465] Mr. Steel is going to testify to.

Mr. Wright: You know now.

Mr. Rogers: Or what you are going to proceed on outside of the pleadings.

The Court: This testimony is in reference to what transpired in reference to the pictures for some particular theater. I think it is competent.

Mr. Rogers: May it please the Court, this is a situation that occurred before Schine ever came into the town, and I wish to be a little bit persistent now as well, your Honor. I do persist along the line that Mr. Wright has no right without any notice of any kind to depart from his pleadings, and depart from his bill of particulars. We were very careful to have him state in his bill of particulars the issues we have to meet here. This issue was not presented to us. It is improper.

The Court: It is a question whether this issue is relevant to the issues themselves. I think it is.

Mr. Rogers: We asked him to define it in his bill of particulars, and he has not defined it in his bill of particulars.

[fol. 466] The Court: It does not make a separate issue. It is a matter of proof, that is all. It relates to issues that are alleged.

Mr. Rogers: It does raise a new issue, may it please the Court,—if I may say so, from my knowledge of the cases of this kind, my knowledge of the industry, if he is now creating as an issue the fact that when Mr. Steel was connected with this theater he was barred from getting certain product by these distributors and that as part of this conspiracy that he is speaking about that he hopes to prove some day, these distributors or one of them refused to deal with him, but at a later date, when Mr. Schine's outfit claimed an interest in this theater—he did not obtain the theater, he obtained an interest in the theater—that the same company did, as part of a combination or conspiracy, turn around and sell the product to Mr. Schine, that is a vital issue and that issue is not presented to us by either pleading or bill of particulars, so it is a real issue.

The Court: Standing alone there may not be much relevancy to it, but I think it is a substantial part of the case. [fol. 467] Objection overruled. Proceed.

Mr. Wright: Will you read the last question?

(Last question and answer read.)

By Mr. Wright:

Q. That was the Moose Theater operated by Mr. Felder?

A. Yes.

Q. Do you know if the Moose Theater was then playing R.K.O. pictures first-run?

A. Yes, sir.

Q. What if any efforts did you make after you opened your Forum Theater to secure R.K.O. product?

A. I made numerous trips in to see the R.K.O. Branch Manager, Mr. Greenblatt.

Q. Where, at Cleveland?

A. Cleveland, Ohio, and Mr. Greenblatt stated——

Mr. Rogers: Hold on. Let us get the time and place.

Q. When was the first time you went in to see him?

A. In April.

Mr. Rogers: What year?

Q. 1935?

A. 1935.

Q. And what was said then?

A. He advised me that the Moose Theater had been their customer for years, the past 12 years, and regardless of [fol. 468] how many theaters I had, they were going to stick with the Moose Theater.

Mr. Rogers: May it please the Court, I move to strike that on the ground that there has been no evidence introduced sufficient to qualify Mr. Greenblatt at all as our authority to make statements of policy binding the R.K.O. Company.

The Court: In connection with his other testimony it is to be connected up.

Mr. Rogers: Then it is subject to connection, is it, your Honor?

The Court: Yes, certainly. I don't think that the statements of an agent in the field somewheres, whatever the character shown, is binding on the principal unless the principal permitted it to be made. Go ahead.

Mr. Wright: Will you read the last answer?

(Last answer read.)

Q. Did you make any further efforts to get the R.K.O. product for the 1935-'36 season?

A. I made repeated efforts figuring that the film company——

Mr. Rogers: I move to strike that out.

The Court: Yes.

The Witness: I made repeated efforts.

[fol. 469] Q. That consisted of conversations with Mr. Greenblatt?

A. Yes, sir.

Mr. Rogers: May we get the dates?

Q. Do you remember approximately when the next time was you went there or how often you went in?

A. June and July.

Q. June and July, 1935?

A. First part of July, that is right, shortly before I sold it.

Q. When was it you and Mr. Selman, or the Selman Brothers sold out to Schine?

A. July 24th, 1935.

Q. The last time you went in was in July?

A. That is right.

Q. What did Mr. Greenblatt tell you then?

A. The same story.

Q. Then after Schine took over your Forum Theater in 1935, then did Mr. Selman go with the Schine Company?

Mr. Rogers: Pardon me. There is no evidence here that Mr. Schine took over the theater in 1935 or at any other time.

Mr. Wright: Perhaps I misunderstood his prior answer. Will you read it, please?

(Last question and answer referred to, was read as fol- [fol. 470] lows: "Q. When was it you and Mr. Selman, or the Selman Brothers sold out to Schine? A. July 24th, 1935.")

Mr. Rogers: You still haven't testimony of what they sold.

Q. What was it you sold to Schine?

A. I sold my part and Dr. Dave Selman sold his stock, his part, and William K. Selman remained with Schine.

[fol. 471] Q. When you referred to parts, you are referring to your interest in the Forum Theatre at Norwalk?

A. Right.

Q. And then you went back to Apollo?

A. Back to Oberlin.

Q. You have had no connection with the Schine Company since then?

A. That is right.

Mr. Wright: You may cross-examine.

The Court: As I understand it, when the Forum was opened he was then getting R.K.O.?

The Witness: The Moose contracted for R.K.O. while I still—about ten days before I sold out the Forum Theatre they did contract for R.K.O. pictures.

The Court: How was it before the Forum was started? Before 1935 did the Moose have it then—R.K.O.?

The Witness: Yes, sir.

Mr. Wright: We will offer Mr. Felder, who was operating the Moose, who will cover during the period he had R.K.O.

The Court: I take it these negotiations you had referred to the 1935-1936 season product; is that right?

The Witness: That is right.

[fol. 472] The Court: That is the season that commenced when; the pictures would commence to be released when?

The Witness: July—August.

The Court: Of 1935?

The Witness: Of 1935.

Cross-examination.

By Mr. Rogers:

Q. The Forum was a new theatre, wasn't it?

A. It was a remodeled store room into a theatre.

Q. How many seats?

A. Approximately 500.

Q. And it was high class construction, wasn't it?

A. Modern.

Q. Modern construction?

A. Yes, sir.

Q. You spent quite a bit of money reconstructing that theatre, didn't you?

A. A fairly good amount.

Q. About how much?

A. I would say about $16,000 or $17,000.

Q. New seating?

A. Everything new.

Q. New sound?

A. Everything new.

[fol. 473] Q. You mean with the equipment it cost $16,000 to $17,000?

A. Yes, sir.

The Court: Rebuilding it?

The Witness: The building alone—it cost around—a little better than $20,000.

Q. Including the building?

A. Yes, sir.

Q. After you opened the theatre, which as I understand was in December of 1934, you operated that theatre, did you not, so far as you were concerned, until July of 1935; is that right?

A. That is right.

Q. You were a stockholder in the corporation that had the lease on that theatre, were you not?

A. No, there was no stock issued of any kind.

Q. It was a corporation, wasn't it?

A. It was a corporation.

Q. You say the stock was never issued?

A. No.

Q. What interest did you have in the corporation?

A. I was a third owner.

Q. You had a one-third interest in the corporation?

A. That is right.

Q. And Dr. Selman had a one-third interest?

A. That is right.

[fol. 474] Q. When you came to dispose of your interest with whom did you originally make your deal?

A. An option to buy was given to Mr. William Selman. I didn't know who he was selling to.

Q. One moment. Let us take one thing at a time. You gave Mr. William Selman an option to purchase your one-third interest; is that right?

A. That is right.

Q. Dr. Selman did what?

A. I don't know what Dr. Selman did.

Q. You haven't any idea what he did?

A. I don't know what he did.

Q. When you gave William Selman an option to buy your one-third interest didn't you, at the same time, request William Selman to give you an option to purchase his interest?

A. After a certain length of time, yes.

Q. Both options had time limits specified?

A. That is right.

Q. In other words, he had a certain limited time in which to acquire your one-third?

A. That is right.

Q. And you had a certain limited time within which to acquire his; is that right?

A. That is right.

[fol. 475] Q. And if you exercised your option and gave him the purchase price you would have had his one-third interest; is that right?

A. That is right.

Q. As a matter of fact, don't you know that the same kind of a deal was made between William Selman and Dr. Selman?

A. I don't know what talkings or what went on between those two. It was not in my presence.

Q. But in any event you did not exercise your option to acquire William Selman's one-third interest?

A. I didn't have the chance.

Q. Did you have the money?

A. Yes.

Q. As a matter of fact, wasn't one of the disagreements between you and Mr. William Selman over money matters in the company?

A. Yes. He didn't have any money.

Q. You say he didn't have any?

A. Right.

Q. As a matter of fact didn't William Selman call on you to contribute additional capital toward the operation of this theatre, the Forum Theatre?

A. No, sir.

Q. Never did, you say?

A. No, sir. The company owed me a thousand dollars.

[fol. 476] The Court: What materiality has this? Are we not spending unnecessary time?

Mr. Rogers: No, sir, this is not unnecessary time.

Mr. Wright: What is it you are attempting to show? I must say I am in the dark.

The Court: I don't just see its relevancy. He had an interest in this theatre.

Mr. Rogers: Your Honor, there are b-y and sell options here. If this man claims he was forced out of this theatre——

Mr. Wright: He is not claiming he was forced out.

Mr. Rogers: I thought that was the purpose of it?

The Court: No, he claims they refused to let him have these pictures.

Mr. Rogers: And he voluntarily sold out his interest and stepped out of the theatre; is that the claim? If that is all there is to it, never mind.

Mr. Wright: That is all.

Lottie Moore resumed the stand on behalf of the Plaintiff, having been previously sworn, was examined and testified further as follows:

Cross-examination (Continued).

By Mr. Rogers:

Q. Mrs. Moore, were you able to make that compilation for us?

[fol. 477] A. Mr. Lynch and I.

Q. Mr. Lynch and you prepared that?

A. Yes, sir.

Mr. Wright: What Mr. Lynch is this?

Q. Mr. George Lynch you mean, don't you?
A. He said his name was Mr. Lynch.

The Court: What is the total?
The Witness: 271 features.
The Court: All features, you mean?
The Witness: Played that year.
The Court: That is 1937 and 1938?
The Witness: Yes. August 25th, 1937, it started, to August 14, 1938, 271 features.

By Mr. Rogers:

Q. And that is the period about which you testified to before? That was from August of 1937 to October of 1938; is that right?
A. What testimony are you referring to? This that I told you about this book?
Q. Yes. That is the period during which you played those pictures?
A. Yes, sir.

Mr. McKay: I thought you gave us August just now.
The Witness: From one year to the next.

Q. It is still about 15 months, isn't it?

[fol. 478] The Court: She has given you the dates.
The Witness: One year.

Q. In that tabulation, Mrs. Moore, how many major companies' product is included?
A. 166 major features. That includes Universal—all of the majors.
Q. The whole eight, you mean?
A. Yes, sir.

Mr. Rogers: I think that is all. Thank you very much.

Re-direct examination.

By Mr. Wright:

Q. Just one or two questions. Can we have that work sheet marked there?
A. Those are second run majors. They understand that, don't they?

Q. This sheet you handed me——

Mr. Rogers: Pardon me, Mr. Wright. Mr. McKay directed my attention to something. If he is right then I think there ought to be a correction.

By Mr. Rogers:

Q. On this tabulation that you have prepared, Mrs. Moore, you show pictures from August 15, 1937, to August 14, 1938, don't you?

A. That is right.

[fol. 479] Mr. Rogers: Just one year, your Honor; not from August to October.

The Court: That was the testimony heretofore.

Mr. Rogers: You are quite right. The testimony before was that.

The Court: It is just one year?

The Witness: The pictures that we tabulated.

The Court: That amounts to 271?

The Witness: 271 pictures.

Mr. Rogers: In other words, all the figures you have just testified to under my interrogation are all directed to the pictures from August, 1937, to August, 1938, that is one year?

The Witness: That is right.

Mr. Rogers: Thank you.

By Mr. Wright (Resuming):

Q. Mrs. Moore, there is just one thing I wanted to straighten out. I believe on the cross examination you testified that you were offered a split of the 1937-1938 Metro product some time in the winter of 1937-1938. Is that right?

A. That is right.

Q. And then on your direct examination you testified that a split had been offered you in the spring of 1938 in some conference that was held over in Lima with Mr. Drew and Mr. Brauer, the salesman?

[fol. 480] A. Will you state that again?

Q. I say, as I understood your direct testimony, it was that the split of the Metro 1937-1938 second run product had been offered to you by Mr. Drew and Mr. Brauer at a meeting over in Lima; is that correct?

A. That is right.

Q. Are those two different conversations you were talking about, or were you mistaken as to the date when you testified on cross examination?

A. It was in the early spring of 1938 when we met.

Q. You were mistaken when you said you were offered a split of the 1937-1938 Metro pictures in the winter of 1937-1938?

A. I was wrong.

Q. There was no offer made to you between September, 1937, when Drew told you they had been sold to Schine, and the spring of 1938; is that right?

A. That is right.

Mr. Rogers: Pardon me one moment. Strike the answer, please. I want to raise an objection to the question. I object to Mr. Wright's interrogation as leading.

The Court: Sustained. Just ask her if there was only one occasion when they talked about this.

Q. Was there any occasion between September, 1937, and [fol. 481] this conversation you had at Lima in the spring of 1938 when the 1937-1938 Metro product was offered to you second run?

A. We never had it offered to us only once. We talked with Mr. Drew in 1937 when we couldn't get it.

Q. The once you are referring to is the conversation you had in the spring of 1938 at Lima?

A. That is right.

Q. With Drew and Brauer?

A. Yes, sir.

Q. In this tabulation you made here did you check to see whether any 1937-1938 Metro pictures had been played during the season?

A. I didn't see any.

Q. There were none on this tabulation?

A. I didn't see any.

Re-cross-examination.

By Mr. Rogers:

Q. Are there any on the tabulation, please, Mrs. Moore? Let us put it that way.

A. No.

Mr. Wright: The tabulation you referred to is sheet here that we will have marked? Do you want it marked as a defendants' exhibit?

[fols. 482-483] Mr. Rogers: Let us have it marked for identification, in any event, so that we will know what we are talking about.

(Thereupon the tabulation sheets referred to were marked as Defendants' Exhibit D-19 for identification.)

The Court: We will now adjourn until Monday morning at 11 o'clock A. M.

(Whereupon an adjournment was taken to Monday, June 5th, 1944, at 11 o'clock A. M.)

[fol. 484] UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF NEW YORK

Civil Action No. 224

UNITED STATES OF AMERICA

vs.

SCHINE CHAIN THEATRES, INC., et al.

Trial continued before the Honorable John Knight, United States District Judge, without a Jury, United States Court House, Buffalo, New York, Monday, June 5, 1944, at 11 o'clock A.M.

Appearances: Robert L. Wright, Esq., John F. Clagett, Esq., Harold L. Schilz, Esq., Albert Boggess, Esq., Special Assistants to the Attorney General; Philip Marcus, Esq., and Milton Kallis, Esq., in behalf of the United States of America. Edmund McCarthy, Esq., Attorney of Record; Willard S. McKay, Esq., Saul E. Rogers, Esq., Arthur J. Homans, Esq., Howard M. Antevil, Esq., and Seth Richardson, Esq., of Counsel for Defendants.

[fol. 485] PROCEEDINGS

Mr. McKay: If the Court please, when I got in last night at 1 o'clock I was handed a copy of a rather lengthy typewritten brief, which I understand has been submitted by the plaintiff to your Honor, and Mr. Rogers and Mr. Richardson and I have been working on a revision of a brief, which we had prepared for the trial two years ago, which we had intended to hand up when the court adjourned on Thursday, but in view of the fact that the plaintiff has handed a brief to your Honor I would like at this time to hand you my copy of the brief prepared in 1942, and I have 'phoned Gloversville to send down two or three copies and I will exchange a clean copy for that with your Honor and also give Mr. Wright a copy tomorrow morning.

Before we proceed with the taking of any further testimony, in view of the fact that this record is going to be a very voluminous one, we would like to keep the record straight with regard to our objections and motions to strike, and I do not anticipate any decision by your Honor at this [fol. 486] time, but I would like to state that we renew our motion to strike all testimony of Mr. Long, Mr. Dasher, Mrs. Moore and Mr. Moore, which has to do with any conversations which they may have had with any representatives of the distributors, on the grounds already stated, and on the further ground that no connection has been made as promised by Counsel for the plaintiff.

We also move to strike all testimony of the same witnesses which has to do with negotiations for leases, with admission prices, with the operating policy of the theatre, or any theatres, mentioned by these witnesses, upon the ground that these are purely local matters, not connected in any way with Interstate Commerce.

With respect to the testimony of Mrs. Moore, we have a specific objection. It appears on page 361 of the record that after testifying to various conversations which she had with the salesman and branch manager of the United Artists she ended up by saying that the branch manager told her that there was nothing he could do about it, that the [fol. 487] matter was being handled in New York. There is a complete negation on the part of plaintiff's own witness that the two people with whom she was talking not only did not have any authority to bind Schine, they could not even bind their own employer. He said, "We hav[illegible] got nothing to do about it. It is being handled in New York."

We therefore move to strike all of the testimony of Mrs. Moore relating to conversations between her and either the salesman or the branch manager of United Artists.

[fol. 488] On page 364 of the record Mrs. Moore made exactly the same statement regarding the Columbia representatives. They said "There is nothing we can do about it. It is being handled in New York." And that clearly proves that neither the Columbia representatives or United

Artists representatives had any authority to bind their own company, much less Schine.

Mr. Rogers: As further supplementing what Mr. McKay just said, your Honor will recall that when evidence was attempted to be adduced by the Plaintiff with reference to declarations and letters among the executives of these so-called producer companies I objected on the ground that the proof could not be taken as evidence of combination or conspiracy and that we were entitled to have that and that it was mandatory upon the plaintiff to prove the factual matters by actual evidence of actual living witnesses, so we could have the benefit of cross-examination of such witnesses.

I knew that my law was sound on that, but I did not have the authority at hand, but that authority is well established [fol. 489] by the Supreme Court in Brown v. United States, 150 U. S. Reports, 37, Law Edition. And I also stated to your Honor that I understood the law to be that before any declarations of any alleged co-conspirators who are not parties to the suit that there would first have to be clear evidence adduced by probative witness evidence to the Court that there was a combination between these non-party distributors and the defendant Schine. I found that that was an accurate statement as well and that is supported by Hitchman Coal & Coke Co. vs. Mitchell, 245 U. S. 229, and the language in that clearly indicates, and I would like to submit that to your Honor, not necessarily at the present moment, and I would be happy indeed to give Mr. Wright a copy of it.

Mr. Marcus: If your Honor wishes us to furnish any authorities on that question, we would be glad to do so.

The Court: You have a memorandum there.

[fol. 490] Hiram H. Owens, a witness called by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Marcus:

Q. Where do you live, Mr. Owens?

A. Barberville, Kentucky.

Q. What is your profession?

A. Attorney-at-law.

Q. How far from Barberville is Corbin, Kentucky?

A. About 20 miles.

Q. Could you tell the Court how far the nearest town is from Corbin, which approaches Corbin in size in Kentucky?

A. Well, Harlan is about 75 miles.

Q. Could you tell the Court how far the nearest town to Corbin is which has a theater?

A. About 14 miles.

Q. Do you have business interests in Corbin?

A. I do.

Q. Do you mean the Viv Theater, Incorporated?

A. My wife and I jointly own the property.

Q. About when did you first acquire the building in which [fol. 491] that theater is located?

A. About 35.

Q. Do you recall in 1938 making a contract with Grover Scott in respect——

Mr. Rogers: May it please the Court, I object to that on the ground that it calls for a conclusion, and I respectfully suggest that we get the facts and documents, if necessary.

The Court: All right. He may state the contract that relates to certain matter. That does not prove the contents of the contract. Proceed.

(Last question read.)

The Witness: I made a contract with respect to the operation of the theater, construction and operation of the theater in the building at Corbin.

The Court: The Viv is that?

The Witness: The Viv Theater.

The Court: That is that?

The Witness: V-i-v, the Viv Theater.

The Court: That is 1938?

The Witness: Yes.

By Mr. Marcus:

Q. Mr. Owens, do you have a copy of your subpoena with you?

A. Yes, sir.

[fol. 492] Q. Does that subpoena call for that contract?

The Court: The only question is has he got the contract here?

Mr. Marcus: He hasn't got it, your Honor.

(Witness refers to papers.)

Q. That does call for the contract?

A. Not specifically calling for that contract.

Q. But it calls for all contracts relating to that theater, does it not?

A. Yes.

Q. Were you able to find that contract to bring to this court?

A. No, I think I surrendered that contract when I subsequently made a contract with Mr. Murphy.

Q. Could you tell the Court generally the terms of that contract?

Mr. Rogers: Couldn't we have the date on which this occurred? We haven't got that yet.

Mr. Marcus: All right.

Q. About when was that contract made?

The Court: You mean the 1938 contract?

Mr. Marcus: Yes.

The Witness: About October 24th, 1938, I think.

Q. Could you tell the Court in general what that contract provided?

[fol. 493] Mr. Rogers: One moment. Pardon me. The remedies of the plaintiff have not been exhausted as yet, if Mr. Owens was correct about having surrendered the contract to Mr. Scott, it seems to me Mr. Scott is the man who should have been subpoenaed duces tecum to bring the contract into court.

Mr. Marcus: I am glad Mr. Rogers made that comment. I think the witness said he surrendered it to Mr. Murphy. We will have Mr. Murphy on the stand.

The Court: But back of that he said he delivered the first contract to Mr. Scott.

Q. Did you say to Mr. Scott?

A. I either did that or destroyed it, because the contract was cancelled. What became of it, I don't know.

Mr. Marcus: Your Honor, we have subpoenaed Mr. Scott to bring that contract, but Mr. Scott stated he turned over his contracts to the Schines when they took over the theater. If any one has the contract it is the Schines.

The Court: Why don't you ask them to produce it, then?

Mr. Marcus: May I ask the Court to ask them to produce that document?

Mr. Rogers: If we have the document, may it please the [fol. 494] Court, we will produce it without a notice to produce it, but this is the first notice we have had that it followed this devious course, that it went somewheres and then went somewheres else.

Mr. McKay: A request was made this morning to find the contract and, at the short time at my disposal, I have not been able to do so. This is the first moment—but it was not until this morning that we were asked to look for it, and I was not able to find it in that time, and I do not know whether we have it or not.

The Court: Would the records that you have here ordinarily be the records among which you find a contract of this kind?

Mr. McKay: That should be here, but in the short time we have had to search these records, we have not located them.

The Court: You had better wait a little while then unless you want to examine him on another aspect. What is the first, the 1938 contract had to do with this matter, the contract with Murphy?

Mr. Marcus: The contract Mr. Owens made with Mr. Scott is the first instance.

The Court: I understand that. What significance has [fol. 495] that here?

Mr. Marcus: Just to show your Honor what the lessee was supposed to do, and then we will develop that the lessee did not go through with the contract because of what we claim to be——

The Court: He was the lessee?

Mr. Marcus: No, he was the lessor.

The Court: Oh, he released from Scott?

Mr. Marcus: They assigned their lease, Mr. Scott assigned his lease to the Schines, assigned the lease he had with Mr. Owens.

The Court: He said he had a substitute lease with Murphy.

Mr. Marcus: The Schines in turn did not go through with that contract. It is a bit devious, your Honor, that is why we have to proceed that way.

The Court: I was wondering why don't you proceed with the Murphy contract. I am just inquiring, I don't know.

Mr. Marcus: The reason we are starting to Mr. Owens, and I think Mr. McKay will agree we are trying to get Mr. Owens out.

Mr. Rogers: And I will agree we will try to expedite Mr. Owens, and I agree he should be the first witness in order to expedite his return to Kentucky. That, however, does not [fol. 496] alter the laws of evidence and Mr. Marcus should adhere to his laws of evidence, should get his evidence in properly.

Mr. Marcus: We have, your Honor. Of course we have subpoenaed both parties that we understood to have those documents, and asked them to produce those documents. They came up and it was Saturday that we found out from Mr. Owens that if any one still had that contract it was the Schines. Saturday, as I understand it, none of you gentlemen were in the city.

Mr. Rogers: That is true. I had to leave, as I explained, on Friday.

Mr. Marcus: This morning, as Mr. McKay has stated, we tried to find out if they had that contract.

Mr. McKay: I was in my office all day Saturday and available by telephone.

Mr. Rogers: I was available.

The Court: You say Mr. Scott destroyed it or turned it over to some company?

Mr. Marcus: That is right.

The Court: If it is presumably lost it may be testified to.

Mr. Marcus: That is our position. Mr. Owens has [fol. 497] testified that he has been unable to find that contract.

The Court: We can proceed with the testimony and then it can be stricken out if later the contract is found different.

Mr. McKay: If my recollection is right, your Honor, the construction of that contract was the matter of a very serious dispute between Mr. Owens and Mr. Scott, as a result of which Mr. Owens purported to cancel the contract, and I think it is quite important——

The Court: Cannot that be developed on cross-examination?

Mr. McKay: I am getting at this. I think under those circumstances it is quite important that the exact wording of the contract be before your Honor and not Mr. Owens' recollection of what he put in it six years ago.

The Court: You are trying to convenience the witness and at the same time you are holding him up. Can you get that this afternoon, do you think?

Mr. McKay: All I can do, your Honor, is in the hour and a quarter noon recess I can make as extensive a search as possible.

The Court: You had better put somebody else on the stand.

Mr. Rogers: On the question of compliance with that particular term, which was a condition—not merely a term [fol. 498] but a condition.

Mr. Marcus: Your Honor, may I make this suggestion, that this testimony as to the terms of the contract be taken subject to being stricken if the contract is not found by the Schines?

The Court: If the contract is found it will have an impression upon the testimony as to its contents. I think we had better hold it until 2 o'clock this afternoon.

Mr. Wright: The whole matter of the contract, your Honor, is a collateral issue anyway. All it is is simply background, as I understand it, to show what happened in these later dealings. I do not see that it is really worth the elaborate fuss that is being made over it. All I understand he is going to testify to is that he had a contract for the construction of the theatre with Mr. Scott, and that Mr. Scott was not able to get pictures and he didn't go through with the contract and he assigned it to Schine.

Mr. Rogers: May it please the Court, I do object to Mr. Wright trying to testify in this case.

The Court: Just a moment. Let Counsel finish. If that is all you contend for then your testimony is that he made [fol. 499] a contract for the least of the theatre and that is all there is to it.

Mr. Wright: Only to the extent of showing that money was to be advanced by the lessee to complete the theatre building. That is all, as I understand it, all that he wants to show, a perfectly simple fact.

The Court: He gave up the lease, did he not?

Mr. Wright: Yes, assigned the lease, and then neither Scott nor Schine would advance the necessary amount to complete, and as I understand Schine came in and offered to pay him so much money not to build. That is all we are trying to show.

The Court: That is all that is necessary, it seems to me, to show that. He testifies now that he leased the theatre to Scott.

By Mr. Marcus:

Q. Mr. Owens, after this contract was made did you make any demand on Mr. Scott to perform his part of the contract?

A. I did.

Q. Were those demands complied with?

A. No, sir.

Mr. Rogers; Now, may it please the Court, it seems to [fol. 500] me that these are conclusions. I move to strike them. Your Honor has ruled that the content of this instrument is not necessary. We proceed from that point on, and Mr. Marcus proceeds and insists on asking whether a compliance was made with this instrument, which is not before the Court, and I move to strike it.

The Court: Motion granted.

Q. Mr. Owens, do you recall being contacted by representatives of the Schines in regard to this theatre, and if you do will you state approximately at what time?

A. I was contacted by two gentlemen who represented themselves as being a Mr. Lazar and a Mr. Hensler, neither of whom I had previously seen.

Mr. Rogers: I move to strike it.

The Court: This was when?

The Witness: That was at the latter part of 1938.

Mr. Marcus: Your Honor, I should like to read into the record now from Schine's answers to interrogatories. This is answer to interrogatory No. 2, entitled "Addresses of principal executive offices and all branch offices of defendant, excluding officers of each theatre operated by defendant, and the nature and extent of the business which is [fol. 501] carried on at each office. Name and period of employment of each manager since August 1, 1931. Duties and authorities of each manager, and geographical territory covered by each office. Bellefontaine, Ohio, Division office, Louis Lazar, 5-10-35, to date. Division manager, such duties as are assigned by the executive office. Also booking office for Ohio and Kentucky theatre, 1937-1939. Geographical territory Ohio, Kentucky and Virginia. As to Schine's Lexington Corporation: Louis Lazar, Director, 11-10-36-12-22-36. Vice President 10-1-36—11-10-36. 1-9-39 to date. Assistant Secretary 11-10-36—12-22-36. Assistant Treasurer 11-21-38 to date.

As to Schine Lexington Corporation, Lou Hensler, Lexington, Kentucky, Assistant Secretary, 12-31-30—2-1-41."

The Court: Are all these interrogatories being put in?

Mr. Marcus: Yes, we are offering this part of the interrogatory now.

The Court: Is it necessary to read them all into the record? If you are going to go through all these theatres [fol. 502] in the same way it will make it rather lengthy.

Mr. Marcus: I just want to inquire as to these two gentlemen.

Mr. McKay: With respect to the last dates read by Mr. Marcus, they do appear in the interrogatory, but it is an obvious typographical error, because in 1930 we did not have that corporation. We did not acquire it until years later. I think in all probability it should be 1940. It is Lou Hensler of Lexington, Kentucky, the very last item Mr. Marcus read. I know it is wrong. I think the date should be 1940, but I will check and supply the correct date.

The Court: I thought if you were going to refer to many of these theatre-, we have the interrogatories in evidence, and when the question came up each time you could state to the Court what it shows.

Mr. Wright: I think we might later make an offer, but this was just to get Mr. Owens——

The Court: Do you mean a few of them or all of them?

Mr. Wright: I think they will all eventually be offered, but I do not like to interrupt Mr. Owens' testimony at this time.

[fols. 503-504] The Court: You are only offering what concerns these witnesses now?

Mr. Marcus: That is right.

The Court: Is that all?

Mr. Marcus: That is all.

By Mr. Marcus:

Q. Mr. Owens, did you have more than one discussion with these representatives of Schine's with respect to that theatre?

A. Two with Mr. Lazar, Mr. Hensler being present, but he did not enter into the discussion.

Q. On that first occasion will you tell the Court what was said?

Mr. Rogers: Can we get that fixed fairly accurately as to month?

The Court: He said in the fall of 1938.

Mr. Rogers: He does not say when. About when would you say?

The Witness: Between the 1st and 15th of December, to the best of my knowledge. Mr. Lazar, after having introduced himself, began discussing with me the discontinuance of the construction of the Viv Theatre building.

The Court: Then under construction, you mean?

The Witness: Yes. I had started the construction. The entire building had several business places in it, one of [fol. 505] which was being altered for a theatre and not new construction, and I told Mr. Lazar that I desired the theatre to be constructed and operated because of the enhancement of the additional property. The property itself covered about a half a block, the front to the theatre about 25 feet, and that left six or seven additional places for business on Main Street. The theatre room itself lies back of these small business places, fronting on Main Street, the entrance being from Main Street. Mr. Lazar indicated that he would be willing to pay a fair sum if I would not construct the building or convert this room into a theatre, and finally he suggested that possibly $5,000 would be paid, and I told him that that would not interest me, and he then—or either before that—requested that I make a proposition, and I told him that if through the ten-year lease contract which I had previously made with Scott & Scott he would pay $150 a month that I would discontinue and would not convert it into a theatre room.

[fol. 506] The Court: What period of time?

The Witness: A ten-year period. So that he indicated that he thought those terms would not be met, but stated that he would have an interview with Mr. Schine, as I recall, the following Friday, which was probably three days following the interview, and that after he had interviewed Mr. Schine he would at once let me know as to my proposition, and he suggested that I not spend any more money on it. I then stepped to the telephone and stopped the shipment of brick, and on the same day I contacted the foreman who was on the work and directed that he discontinue work. I waited the remainder of that week and some days later and I had no answer from Mr. Lazar, and I again began the construction of the building.

After I had again begun the construction of the building Mr. Scott, Sr., called me over the local telephone in Barbourville and stated that he would like to see me, and I told him it would be perfectly all right, so that he and Mr. Lazar and Mr. Hensler came to my office. We again [fol. 507] took up the discussion of not constructing this building, or the theatre part of it.

Mr. Rogers: Pardon me for interrupting. May we get the date of that next talk?

The Witness: That was around the middle of December, 1938, to the best of my knowledge. So Mr. Lazar then suggested that possibly $7,500 would be paid, and I told him that I would not be interested at that figure, that I would go ahead with the construction of the building, which I did.

Q. In other words, Mr. Owens, as you have just testified, on one occasion you were offered $5,000 and on the subsequent occasion $7,500 in order not to construct the building?

A. Not a specific offer, but it was suggested that that might be paid.

Q. Mr. Owens, did you cancel that contract you had with Scott?

A. Yes, sir.

Q. Did you thereafter, in May of 1939, enter into another contract with M. K. Murphy, in respect to leasing and operation of that theatre?

A. Yes, with Mr. Murphy, in the name of King Codd Theatres, Inc., but that lease, at the request of Mr. Murphy, was changed to Mr. M. K. Murphy.

[fol. 508] Q. Prior to the time you made this lease with Mr. Murphy had any one else contacted you with respect to the possibility of leasing your theatre?

A. Yes, other persons had seen me with reference to leasing it. A Mr. Scott of Vevay, Indiana, is one whom I specifically recall.

Q. But no lease was made, was it?

A. No lease was made.

Q. What was your understanding of the reason why no lease was made?

Mr. Rogers: Just a moment. I object to that as calling for a conclusion.

The Court: Sustained.

Q. Mr. Scott, to go back to those conversations you had with Mr. Lazar and Mr. Hensler, do you recall anything being said on those occasions in respect to your ability to obtain tenants for the theatre you were constructing?

A. On one of the conversations——

Mr. Rogers: May we get the date, please?

The Court: This is one of the two conversations.

Mr. Rogers: Which one was it?

The Witness: I think it was in the first conversation which I had with these two gentlemen, or with Mr. Lazar in the presence of Mr. Hensler. It was suggested by Mr. [fol. 509] Lazar, as I recall, that in view of the fact that Schine had two theatres in the town and had greater buying power than I would have as an individual, that I would have difficulty in operating the theatre myself or in securing a tenant to operate it.

Q. Mr. Owens, do you have with you the contract you made with Mr. Murphy?

A. No, sir. I looked for that contract before I left home in the places where I usually keep them, but I was unable to locate it.

Mr. Marcus: Your Honor, we are in the same position on that.

The Court: Is that contract in existence now with Murphy?

The Witness: Yes, it is, your Honor. Mr. Murphy had a duplicate contract.

Mr. Marcus: Your Honor, we are in the same position again with regard to that contract because Mr. Murphy has informed me that he turned over his documents to Schines when they took over the theatre from him, and I would like to ask Mr. McKay if he can look for that contract also.

Mr. McKay: We made the same search for that as we did with the Scott contract, with the same result. We will [fol. 510] continue the search at noon.

Q. Mr. Owens, after that theatre was built could you give the Court a brief description of that theatre?

A. The theatre has a foyer entering onto Main Street, which is near to and composing a part of the center portion of the business section of the city of Corbin, which city has a population within and adjacent to the corporation of approximately 10,000 population, sometimes more, but approximately 10,000. The entrance goes back 105 feet. That is, the lot is 105 feet deep. Then the room after the foyer is subtracted from the main theatre room is 110 feet, which opens on a street running at right angles to Main Street.

Q. Could you tell the Court something of the nature of the theatre itself, any interior decorations? How did it appear? Would you call it a nice-appearing building?

A. The exterior of the building for the entire front has a mural glass front, two story-s high, with the glass being not all of one color, but undertaking to be placed artistically with various designs throughout the 110 feet front. The inside of the foyer has a mural painting probably 40 to 50 feet. On the right there is one entrance. The interior is decorated as we thought with the most modern artistic designs, both in the foyer, the office, the rest rooms and the [fol. 511] theatre proper.

The Court: Any gallery in the theatre?

The Witness: No gallery. One floor, your Honor.

Q. Are you familiar with the other theatres in the town?

A. Yes, I have been in each of the other theatres.

Q. Can you state to the Court how they compare in appearance with the Viv Theatre?

A. At that time they were not as modernistic as the Viv building.

Q. Mr. Owens, who is your present tenant for the theatre?

A. Corbin Theatres, Inc., or Corbin Theatre Company, I believe it is.

Q. Do you know whether or not that is one of the Schine enterprises?

A. I have no specific knowledge.

Mr. McKay: Not to interrupt Mr. Marcus, but this is one of the theatres which we are ordered to dispose of under your Honor's temporary order of May 19, 1942.

Mr. Marcus: That is quite right. Your witness.

The Court: Cross-examine.

Cross-examination.

By Mr. Rogers:

Q. Mr. Owens, you have kept your interest in the town of [fol. 512] Corbin rather active, haven't you, right through?

A. Yes, sir.

Q. And you have observed conditions generally in the town?

A. Yes, sir.

Q. Before you undertook the construction of the Viv Theatre there were two other motion pictures in the town, were there not?

A. Yes, sir.

Q. And will you please tell me the name of those two theatres?

A. The Kentucky and the Hippodrome.

Q. And they are still operating in the town, are they not?

A. I am not sure that the Kentucky is operating.

Mr. Marcus: Your Honor, it is stated in Schine's answers to the interrogatories that the Kentucky was closed. I don't quite know the purpose of Mr. Rogers' question.

Mr. Rogers: If you will just pardon me, I am trying to explore Mr. Owens' memory. That is all I am trying to do.

A. I am not sure that the Kentucky is operating. I am not positive.

Q. You do know, don't you, that both the Kentucky and the Hippodrome were refurbished and redecorated since you started the building of the Viv Theatre?

A. I have so understood, yes.

[fol. 513] Mr. Marcus: Will you find out about when?

Mr. Rogers: If that is your request I have no objection to asking Mr. Owens the question.

Q. Will you give us an idea, to the best of your recollection, if you have any recollection on the subject, when this was done?

A. I have no definite recollection.

Mr. Rogers: That is all.

Redirect examination.

By Mr. Marcus:

Q. Just one question: Would you be able to recall whether this change in the Kentucky or the Hippodrome took place before or after 1942?

A. I am quite positive that the Kentucky was subsequent to that date.

Mr. Marcus: Your Honor may recall that we have agreed not to go beyond 1942.

Mr. McKay: You may have but we have not.

Mr. Marcus: That is all.

[fol. 514] Recross-examination.

By Mr. Rogers:

Q. Just one question: Before you started reconstruction of the theatre both the Kentucky and the Hippodrome were open and operating at that time as motion picture theaters, weren't they?

A. Yes, sir.

The Court: 1938?

Mr. Rogers: That is all, Mr. Owens. Thank you.

At the close of Mr. Owens' testimony, may it please the Court, I move to strike the testimony given by Mr. Owens on the ground that the testimony refers only to local matters and to local situations and in no manner tends to come within the scope of the complaint and the allegations in the complaint in reference to issues raised in the complaint and the answer.

The Court: Overruled.

[fol. 515] Grover C. Scott, a witness called by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Marcus:

Q. Mr. Scott, where do you reside?

A. Louisville, Kentucky.

Q. And what is your present occupation?

A. I own a motor court.

Q. In the beginning of 1938, were you operating any theaters in Kentucky?

A. Yes, sir.

Q. Will you state to the Court what theaters you were operating and where they were?

A. The Liberty Theater, Pikeville, the Margie-Grand, Harlen.

The Court: Any other?

Mr. Marcus: This is beginning 1938.

Mr. Rogers: You are fixing this at the beginning of 1938.

Mr. Marcus: 1938.

Q. In 1938 did you become interested in operating a theater in Corbin, Kentucky?

A. I secured with my son a lease.

Q. Do you recall about when that occurred?

[fol. 516] A. The fall of '38.

Q. Do you have a copy of your subpoena with you, Mr. Scott?

A. Yes, sir.

Q. Does that subpoena ask for the contracts relating to the Viv Theatre?

A. It asks for all letters, telegrams and other written communications.

Q. Does it mention agreements at the very beginning?

The Court: Between you and who?

Q. In respect to the theater?

A. This was between the major film distributors which relate to the negotiation of or request for an opportunity to negotiate for the leasing of pictures in Corbin, Kentucky.

Q. Look at Item 7.

Mr. Rogers: Does that just relate to letters, the part you read?

Mr. Marcus: We will straighten it out.

Q. Look at 7.

A. Yes, sir, that asks for a contract.

Q. That asks for that contract. Do you have that contract with you?

A. I do not.

Q. What happened to that contract?

A. Well, sir, the last I knew anything about it it was cancelled and all records I had—you see it was made to me and [fol. 517] my son and when I sold my interest in the Margie-Grand to my son, those records were left in the office, in the files, at the Margie-Grand Theatre.

Q. In other words, those records were turned over to your son?

A. I didn't get them, no, sir.

The Court: Does that mean records between you and the preceding witness, you mean?

Mr. Marcus: Owens, that is right.

Q. After entering into this contract with Mr. Owens did you attempt to get any film product for the theatre?

A. Yes, sir.

Q. How soon after entering into this contract did you attempt to get product?

A. A very short while.

Q. And where did you go?

A. Cincinnati, Ohio.

Q. Is that where the branches of the major film distributors are located covering product for Kentucky?

A. Yes, sir.

Q. Could you tell the Court briefly how the product which is bought in Cincinnati is brought to Kentucky and returned?

A. By Railway Express.

Q. The product is actually delivered—are those the prints [fol. 518] of the film?

A. Yes.

Q. And they are actually delivered to you in Kentucky?

A. Yes, sir.

Q. And then they are returned to you in the branch office in Cincinnati, Ohio?

A. Yes, except when we are instructed to ship them to some other theater.

Q. Mr. Scott, do you recall going to the Universal Exchange in Cincinnati, Ohio trying to get product for this theatre?

A. Yes, sir.

Q. And could you tell the Court what occurred on that occasion?

Mr. Rogers: Pardon me, may we get the date first.

Mr. Marcus: He said almost immediately after.

Mr. Rogers: That might mean almost anything in this witness' mind. Let us get a date.

Q. About how soon after making this contract with Mr. Owens in respect to weeks or months, did you go to Cincinnati?

Mr. Rogers: Well, Mr. Marcus, you haven't yet gotten any specific date.

Mr. Marcus: We did from the preceding witness who stated October 24th, 1938.

Mr. Rogers: We are enttiled to get it from this witness.

[fol. 519] The Court: He said the fall of '38.

Mr. Rogers: The fall of '38 is what he said.

The Court: That was about what time in reference to when you made this contract, Mr. Scott? You said in the fall. Can you say the date?

The Witness: I have no definite recollection.

The Court: Is that as near as you can specify?

The Witness: Well, I don't know nothing definite. I would say to the best of my knowledge it was within ten days after I signed the contract.

The Court: When did you sign the contract? You said the fall of '38. That covers several months.

The Witness: I can't state. I don't remember.

The Court: Well, August, September, October or November.

Mr. Marcus: Your Honor, I think we might be able to get at that date in another way.

The Court: All right.

Q. Mr. Scott, I show you this document, which purports to be an agreement between you and the Schines, and ask you to read the first paragraph, and state whether that refreshes your recollection as to the date when you entered into a contract with Mr. Owens?

A. Is this what you want me to read (referring to the document)?

Q. That is right.

[fol. 520] A. (Reading) "Whereas"——

Mr. Rogers: Please, Mr. Scott.

Mr. Marcus: Read it to yourself.

Mr. Rogers: His answer should be either "Yes" or

"No," may it please the Court. Does it refresh his recollection.

Mr. Wright: I don't see how it makes any difference whether this witness can fix the date inasmuch as it has already been fixed by the other witness and he said he had the conversation about ten days after he made the contract.

The Court: Counsel has asked a question.

Mr. Wright: It was in response to the objection that he wasn't able to fix the date. He said ten days after the making of the contract.

Mr. Rogers: As a matter of fact, Mr. Owens was no better at fixing dates than Mr. Scott is. He doesn't know where the contract is.

The Court: He said about ten days after the contract was made.

Mr. Rogers: And we don't know when the contract was made.

Mr. Marcus: That is in the transcript. Mr. Owens did testify to the exact date.

The Court: He didn't have the exact date here. All right.

[fol. 521] By Mr. Marcus:

Q. Mr. Scott, what occurred at the time you had your conversation with some one in the Universal Film Exchange in regard to product?

Mr. Rogers: One moment, please. I object to that on the ground we are entitled to know who this some one is and what he is, and what authorities this some one had to discuss it.

The Court: He can say who he talked with there.

Mr. Marcus: That is right.

Q. With whom did you speak?

A. I talked with ~~Paul~~ Reiger.

Q. What was his position?

A. Manager.

Mr. Rogers: One moment. I object to that. It calls for a conclusion.

The Court: Did you know him as Manager?

The Witness: Yes.

The Court:

Q. Had you had dealings with him before?

A. Certainly had.

Q. In what connection?

A. I bought pictures from him.

The Court: From the Universal, you mean?

The Witness: Yes, sir.

The Court: How frequently and how long?

[fol. 522] The Witness: Well, I have been in the show business from 1921 up to that time.

The Court: Overruled. Go ahead. What talk did you have with him?

The Witness: I asked him for product for Corbin, Kentucky, and we agreed on the prices, the application.

Mr. Rogers: I move to strike on the ground it calls for a conclusion. Let us get the conversation.

The Court: We have to take your best recollection of what was said. You said "We agreed" on something. That is your conclusion.

By Mr. Marcus:

Q. Mr. Scott, did you sign an application for product?

A. I signed an application.

Q. Mr. Scott, did you ever get a contract from Universal for that product?

A. Only a copy of the contract. I had a copy.

Q. You never got an approved contract?

A. The approved contract I never saw.

Q. Did you go back to Universal to find out why you had not gotten the contract?

Mr. Rogers: One moment. I object to the form of that question.

The Court: He testified he didn't get the product. Did [fol. 523] he testify to that?

Mr. Marcus: That is right.

The Court: Did you get the product?

The Witness: I made an application, but I never did get an approved contract.

The Court: All right.

Q. You never got any product from Universal then?

A. No, sir.

Q. Did you go back to inquire about product again to Universal?

A. Yes, sir.

Q. And what occurred on that occasion?

Mr. Rogers: And when was that, may we be informed?

Q. About how soon after the first occasion that you went there?

A. I can't say definitely.

The Court: Approximately the time.

The Witness: Two to three weeks.

The Court: Two or three weeks.

Q. What was said to you by Mr. Reiger on that occasion?

A. He advised me he didn't think he would be able to furnish me the Universal product.

Q. Mr. Scott, what was the name you intended to give to that theatre?

A. Well, on the application I made for pictures the "Roxy" Theatre.

[fol. 524] Mr. Marcus: Will you mark this for identification, please?

(Thereupon the contract, referred to, was marked as Plaintiff's Exhibit P-19 for identification.)

Q. Mr. Scott, I show you Plaintiff's Exhibit P-19 marked for identification, a document which purports to be a contract between you and Universal, and ask you whether this is your signature?

A. It is.

Mr. Marcus: Your Honor, at this time, we would like to offer in evidence this contract, or this document, which purports to be a contract.

Mr. Rogers: Which one do you propose to introduce, Mr. Marcus? You have three or four contracts here. Will you please look at them, Mr. Marcus and tell us which you wish to offer. I see three or four contracts here.

Mr. Marcus: As a matter of fact, we will offer this one here.

Mr. Rogers: This is the one Mr. Marcus, you wish to offer? Don't you think you ought to detach the rest?

Mr. Marcus:

Q. Mr. Scott. I would like to ask you one more question: [fol. 525] Is this the form of the application that you signed that you referred to?

Mr. Rogers: One moment. I object to the witness characterizing the document. The document speaks for itself, if it is going to be offered.

The Court: Is that the application?

Mr. Rogers: That is the contract, he says.

The Court: You have two things here. You have an application and the contract. Is this the application?

Mr. Marcus: That is as I understand it, your Honor. The exhibitor will sign what is called an application and then it is sent to the home office and when it is approved there it becomes a contract.

Mr. McKay: And that appears to be an approved contract.

Mr. Marcus: I was going to bring that out, your Honor. We offer this document purporting to be an approved contract with Universal at this time to show several things, one——

The Court: Is this the original?

Mr. Marcus: I will show it to you?

Mr. Rogers: That is the original.

The Court: All right. Go ahead.

[fol. 526] Mr. Marcus: Your Honor, may recall that Mr. Scott testified that he never got a copy of an approved contract from Universal. This document which we are offering has the stamp of approval from the home office, and nevertheless Universal never sent the copy to Mr. Scott.

The Court: Where did this come from?

Mr. Rogers: Where did this come from?

Mr. Marcus: This came from the files of Universal.

The Court: Is that signed by Mr. Scott?

Mr. Rogers: Yes, sir.

The Court: All right.

Mr. Marcus: We are interested in showing, your Honor, that despite the fact that this contract was actually approved in the home office Universal never gave any——

The Court: All right. He said he didn't get any product.

Mr. Rogers: May it please the Court, I do object and protest against these statements being made in the record about what they are going to prove and the reasons for introducing. Let them prove it by testimony.

The Court: Just prove the signature is all.

Mr. Rogers: Yes, certainly, and not make all these state-[fol. 527] ments about what he is going to prove and what it will prove. I believe your Honor will disregard those statements unless they are supported by evidence.

The Court: Yes. Go ahead.

Mr. Marcus: Your Honor, may I read the terms?

Mr. Rogers: Will you please put it in evidence first before you read anything?

Mr. Marcus: I offer this in evidence, Plaintiff's Exhibit P-19, marked for identification. With your Honor's permission, may we substitute photostats? I believe there is no objection.

Mr. Rogers: You wish to substitute a photostat for this. I have no objection to that.

Mr. McKay: No objection to the use of photostats, but I think when you come to read these things, you will have an awful job reading a photostatic copy. I think in cases of these printed forms I believe it is much better to leave the original in the record. There is no objection on the ground they are photostats.

Mr. Rogers: I also might make a suggestion to your Honor on the basis of mercy, and that is this, if they do give you photostats in heaven's name ask them to give you [fol. 528] a black print and white back and not black background and white print.

The Court: We will take that up. Any objection?

Mr. Rogers: No objection.

The Court: Proceed.

(The Contract previously marked for identification was received in evidence and marked as Plaintiff's Exhibit P-19.)

Mr. Marcus: I would just like to read the rental terms of the contract. This provides for eight features to be run two days to be exhibited on Sunday and Monday. The rental terms $75 as against 35 per cent of the gross receipts and eight pictures for two days at $50, eight for two days at $40, eight for two days at $20, and eight for two days at $15.

The Court: What is the date of that?

Mr. Rogers: There are two dates, your Honor. There is the application date and the approval date. The red stamp is the approval date, your Honor.

The Court: When was this theatre completed there?

The Witness: It was not completed before I had my lease cancelled. I was only trying to get the product, as [fol. 529] soon as I got the lease I was trying to get the product.

The Court: When was it completed?

The Witness: I couldn't say.

Mr. McKay: Mr. Owens tells me it was completed in June of 1938, your Honor.

(Mr. Marcus hands paper to Mr. McKay and Mr. Rogers.)

Mr. Rogers: What do you propose to do with that interesting photostat?

Mr. Marcus: I want to offer this in evidence. Do you have any objection to this?

Mr. Rogers: I most certainly do strenuously object to that on the ground it is not binding on these defendants. It contains gratuitous statements at the foot of it, most of which are not even borne out by facts.

Mr. Marcus: This purports to be a cancellation or alteration of the contract made with Mr. Scott by the Universal Film Exchanges, and that is the only purpose for which it is offered.

Mr. Rogers: You mean the one you just introduced as P-19?

Mr. Marcus: That is right.

Mr. Rogers: Would you please be so good as to delete [fol. 530] or cut off the bottom of it?

Mr. Marcus: Isn't this sufficient to have the record show?

Mr. Rogers: No, Mr. Marcus, it is not sufficient to do anything of that kind. I just don't like things of that kind done. If you have a good safety razor blade or a good scissors just take it off.

Mr. Marcus: Mr. Scott, do you recall going to the Cincinnati Film Exchange of United Artists at the time or around the time you went to Universal?

The Witness: Yes.

By Mr. Marcus:

Q. Whom did you see there, Mr. Scott?
A. Mr. Stahl.
Q. What — his position?
A. Manager.
Q. What did he say to you?

Mr. Rogers: You mean Branch Manager?
The Witness: Manager of that.
Mr. Rogers: Branch Manager?
The Witness: Yes, sir. Why, he took an application for his product.

[fol. 531] By Mr. Marcus:

Q. Did you obtain that product?
A. I did not.
Q. Did you call upon that Exchange after making that application to inquire about that product?
A. I did.

Mr. Rogers: May I get the date of that, please, the second talk?

Q. Approximately how long after the first occasion, Mr. Scott, did you go to United Artists again?
A. Approximately two to three weeks.
Q. Did you inquire for product for this theatre from any of the other Exchanges there?
A. Yes, sir.
Q. Did you obtain any product?
A. Yes, sir.
Q. What product did you get?

Mr. Rogers: Let us take the companies individually and not try to lump from them, if you please.

Q. Did you get products from Fox?
A. No, sir.
Q. Did you get a contract from United Artists, Mr. Scott?
A. The application, never received the approved contract.

The Court: You never received the approved contract?
The Witness: No, sir.

[fol. 532] Q. Did you get a contract for film from this theatre for 20th Century-Fox?
A. Not that I know of. I don't recall.

Q. Did you get a contract for film product for Loew's for this theatre?
A. No, sir.
Q. Is that true of Columbia?

Mr. Rogers: One moment, please, Mr. Marcus, let us first discover whether or not Mr. Scott ever tried to get any product from Loew's, instead of brushing it aside so lightly.
The Court: Let him show whether he got any contract.
Mr. Rogers: Yes.
The Court: If he didn't attempt to get any——
Mr. Marcus: He stated, your Honor, he had attempted to get a contract of product with these Exchanges.
The Court: He said from other companies.

By Mr. Marcus:

Q. Will you specify the particular corporation in which you attempted to get product for this theatre?
A. I bought Republic Pictures product.

The Court: And a defendant is that?
Mr. Rogers: Yes, sir.
The Witness: And Monogram Pictures Corporation.

Q. Did you go to the Film Exchange in Cincinnati of [fol. 533] Loew's in order to try to get product for that theatre?
A. Metro-Goldwyn-Mayer, I did.
Q. You did?
A. I asked for second-run product.
Q. Did you obtain a contract for that product?
A. No, sir.

Mr. Rogers: Can we get some idea of the date when he went and whom he spoke to at Loew's.
Mr. Marcus: Do you mean the date?
Mr. Rogers: Oh, yes.

Q. You stated, Mr. Scott, did you not, that you went to Cincinnati almost immediately after making the contract to get the product?
A. Yes, sir.
Q. Was it at that time you visited all of these Exchanges in making that attempt?
A. Yes, sir.

Q. In respect to Fox product did you go to the Film Exchange there?

A. I don't remember.

Q. Do you recall whether you went to any other Film Exchanges of the major film distributing companies?

A. I remember going to Metro-Goldwyn-Mayer.

Q. Mr. Scott, did any of the Schine representatives get in touch with you in respect to your lease with Mr. Owens, [fol. 534] if so, approximately when?

A. They did. I can't say the date.

Q. Could you place it as to seasons? Would that have been in the fall of 1938 after you had made your agreement with Mr. Owens prior to 1939?

A. Best of my recollection, it was either November or December.

The Court: Understand you got the Monogram and Republic. You got those?

The Witness: That is right.

Mr. Marcus: Will you mark these two papers for identification?

(Thereupon two papers purporting to be contracts, referred to, were marked as Plaintiff's Exhibits P-20 and P-21 for identification.)

Q. Mr. Scott, did you enter into an agreement with the Schines in respect to the theatre which was being built in Corbin?

A. Yes, sir.

Q. I show you Plaintiff's Exhibit P-20, marked for identification, and Exhibit P-21, marked for identification, and ask whether these are the contracts you made with Schines at that time? (A pause). That is the signature at the end of those contracts? I just want you to identify [fol. 535] them.

The Court: There is no question that is your signature?

The Witness: That is my signature. (Referring to Exhibit Plaintiff's P-20,) and this is my signature (referring to Plaintiff's Exhibit P-21.)

The Court: I suppose you gentlemen have copies of these, and don't have to spend much time with it.

Mr. Marcus: They should have.

Mr. McKay: We did at one time, I know.

Mr. Rogers: There is no objection to it excepting on the ground that the contents of the document *is* immaterial and also on the ground that the document relates to purely local transactions.

The Court: Overruled.

Mr. Marcus: I would like to offer Plaintiff's Exhibit P-20 in evidence.

(The contract dated Nov. 25th, 1938, previously marked for identification as Plaintiff's Exhibit P-20, was received in evidence.)

[fol. 536] Mr. Rogers: May it appear on the record, may it please the Court, that this exhibit now being offered, being P-21 for identification, in evidence, consisting of several documents, one contract purporting to bear date November 30, 1938, between G. C. Scott of Pikeville, and Schine Lexington Corporation, has the last page, to wit, page 5, missing. Is that right?

Mr. Marcus: That is right. At this time, your Honor, may I ask the Court to direct the Schines to furnish their copy, if they have it, so that we can substitute their copy for this, which has one page missing?

Mr. Rogers: If it is received there will be no objection to that.

The Court: Yes.

Mr. McKay: The page that is missing is the signature page.

Mr. Marcus: I now offer Plaintiff's Exhibit 21 for identification in evidence, consisting of a letter of December 2nd, 1938, from Lazar to G. C. Scott, and an agreement of December 2, 1938, between G. C. Scott, L. B. Scott and the Corbin Theatre Company.

Mr. Rogers: May it please the Court, I object on the ground that these documents are incompetent and im- [fol. 537] material, and on the further ground that they relate to purely local transactions.

The Court: Received.

(Thereupon the papers referred to previously marked as Plaintiff's Exhibit P-21 for identification were received in evidence.)

The Court: We will now take a recess until 2 o'clock.

(Whereupon a recess was taken until 2 o'clock p. m.)

[fol. 538] After recess, 2 o'clock p. m.
Appearances: As before noted.

Mr. McKay: Your Honor, during the noon recess we were able to locate the original lease between Hiram H. Owens and his wife Georgia B. Owens. We haven't yet been able to find the contract between Owens and Scott, but we are continuing our search and I am producing the lease, and I have a copy here. I would prefer to have, if the plaintiff is going to mark it, I would like to have the copy marked instead of the original, and subject to our objection as to materiality and that it is purely a local transaction.

The Court: Yes.

(Thereupon the contract dated May 19th, 1939, referred to, was marked as Plaintiff's Exhibit P-22 for identification.)

Mr. Marcus: I offer this contract of May 19th, 1939—this is between Owens and Murphy.

Mr. McKay: Yes, that is what I said.

Mr. Marcus: I will offer the contract of May 19th, 1939, between Owens and Murphy.

[fol. 539] (The contract dated May 19th, 1939, previously marked as Plaintiff's Exhibit P-22 for identification was received in evidence.)

Mr. Marcus: Your Honor, I would like to read into the record at this time some of the provisions of the contract of November 25th, 1938, between The Schine Corporation and Grover Scott, Plaintiff's Exhibit P-20.)

The Court: Why do you want to read that into the record if you have your exhibit in evidence?

Mr. Marcus: That is perfectly all right.

The Court: You can state to the Court, but it is not necessary to copy it in the record as an exhibit.

Mr. Marcus: This agreement states Grover Scott and Leon Scott are owners of a lease on a theatre in Corbin, between Grover Scott and Hiram Owens. Then this same agreement provides that an assignment will be made of Mr. Scott's interest in that agreement, and also provides——

The Court: Assignment will be made or can be made?

Mr. Marcus: Will be made. There is another agreement December 2nd, 1938, which carries into effect this other agreement.

Provision is made also for the Schines engaging in [fol. 540] booking for the Margie-Grand Theatre, which Mr. Scott testified he was operating in Harlan, and this contract of December 2nd, 1938, between Mr. Scott and the Schines consists in part of the assignment and in part of the agreement for the booking by Schines for the Margie-Grand Theatre in Harlen. It also includes certain provisions in respect to the Liberty Theatre in Pikeville, but we will take that up, your Honor, when we come to discussing the situation in Pikeville.

Grover A. Scott resumed the stand on behalf of the Plaintiff, and testified further as follows:

Direct examination (continued).

By Mr. Marcus:

Q. Mr. Scott, had you had any negotiations prior to the date of this contract with representatives of Schine in respect to the making of a contract for that theatre in Corbin?

A. That is the first contract?

[fol. 541] Q. Yes, this is the contract dated November 25th, 1938.

A. That was the first contract.

Q. Did you have any negotiations leading up to that contract?

A. I had talked about that deal, yes, sir.

[fol. 542] Q. And with what representatives of the Schines had you discussed this matter?

A. Mr. Lazar.

Q. And about when with reference to the date of this contract had you had that discussion?

A. The contract was entered into and finally signed in New York City. I think that is the one Mr. McKay spoke of. It was agreed on at Gloversville. Just before we went to Gloversville we had a meeting in Lexington.

Q. Was that meeting in Lexington with Mr. Lazar?

A. I am not sure if he was there. I talked to him about it. I am not sure when I started for Gloversville whether he was there nor not.

Q. Mr. Scott, you say you operated the Margie Grand Theatre in Harlan, Kentucky, in 1938?

A. Yes, sir.

Q. About how long had you been operating that theatre?

A. Since 1932, to the best of my recollection.

Q. What has been your experience in respect to film rentals during that period?

Mr. Rogers: One moment. I object to that as incompetent, vague and indefinite and not having any bearing.

Mr. Marcus: Will the Court rule on that? I am merely asking Mr. Scott what his experience has been during the [fol. 543] period of operation of his theatre.

The Court: Experience may be calling for his conclusion.

Q. Had the film rentals gone up during that period?

Mr. Rogers: Where, what theatre, what kind of theatres?

Mr. Marcus: The Margie Grand Theatre, Harlan, I am talking about now.

The Court: He said he started in there in 1932; is that right?

The Witness: I think that is when I leased it.

Q. Answer the question.

A. Yes.

Q. Were the film rentals lowered after Schine took over the booking of the theatre?

Mr. Rogers: May it please the Court, I object to that.

The Court: Does it appear what theatres Schine had at Harlan?

Mr. Marcus: This contract has a provision making the Schines the booking agent for Scott in the Margie Grand Theatre in Harlan.

The Court: That is dated in 1938?

Mr. Marcus: That is dated in 1938, and I am now inquiring as to what occurred as to film rentals after this time, to show the comparison.

Mr. Rogers: Except for this, may it please the Court: As I understand the allegations of the complaint and the bill of particulars with reference to this particular situation, [fol. 544] the complaint is about conditions in Corbin and not conditions in Harlan.

Mr. Marcus: Harlan is another situation.

Mr. Rogers: There is no complaint made about the situation in Harlan.

Mr. Marcus: I think the best way to find that out is by looking at the complaint and the bill of particulars.

Mr. Rogers: Surely. Look at your complaint and bill of particulars.

The Court: Do you know whether the Harlan situation is presented in the complaint?

Mr. Marcus: Yes, it is your Honor.

Mr. Rogers: Yes, it is presented in the complaint, may it please the Court.

The Court: Then proceed. You are inquiring about Harlan now.

Mr. Rogers: We have not finished Corbin yet.

The Court: That does not go to the competency of the question.

Mr. Rogers: There is no allegation in the complaint that the condition in Harlan in any manner affected the conditions in Corbin.

The Court: That may not be. It may be competent to show the transaction with reference to this theatre at Harlan. The order of proof does not affect the competency of [fol. 545] the question. Go ahead.

By Mr. Marcus:

Q. Mr. Scott, I just asked you as to whether the film rentals decreased after the Schines took over the booking for the Margie Grand?

A. They decreased in this manner: As I recall, he was able to have the film companies rebate us when we had a picture that didn't come up to standard and didn't do business, which I was unable to get before. I know that to be a fact.

The Court: Did I understand that Schine took over the Margie Grand from you?

The Witness: Not at that time.

The Court: You said he had the booking of it?

The Witness: For one year he booked pictures for me while I owned the theatre, for one year, 1939.

The Court: What year was that?

The Witness: One year, 1939.

Mr. Marcus: If your Honor please, I would like to read into the record from Schine's answers to the interrogatories, which will clear up the question you just asked Mr. Scott.

The Court: Just ask the question. It is not necessary to do that.

Q. Mr. Scott, until when did you operate the Margie [fol. 546] Grand in Harlan, Kentucky?
A. Until January 1, 1940.
Q. After that who took over its operation?
A. Leon B. Scott.
Q. Up to the time you gave over your theatre to Mr. Leon Scott had the Schines acquired any interest in the theatre, aside from the booking contract?
A. No, sir.

Mr. Marcus: I am reading now from Schine's answer to interrogatory No. 17-A (page 16): "Name of town, Harlan. Name of theatre, Margie Grand. Nature of interest: Lessee. Extent of interest: 50%. Date acquired: January, 1941." Which, as your Honor will notice, is after the date——
The Court: A year after?
Mr. Marcus: Yes. "Other interests, if any, and extent thereof: Leon Scott, 50%."

That is all.

The Court: I didn't understand what you said about the reduction of prices there. You spoke about Schine being able to get pictures at some different price, reduced price. That is the substance of it, as I remember it.
The Witness: Yes, he asked if Schine saved me any money [fol. 547] by buying pictures for me.
The Court: Who asked you that?
The Witness: He asked me that in substance. I said by getting rebates from the film company. They would sell you a picture for $100, and if it didn't do what was justifiable Mr. Schine could get some of that money back.
The Court: Schine got you a rebate?
The Witness: Yes, sir.
The Court: Had you been buying before that of these same companies?
The Witness: Yes, I had used the same pictures. I had used the same company's pictures.
The Court: You mean by your answer, then, that Schine bought them cheaper than you were able to buy them—the same product?
The Witness: Yes, by getting rebates for me, yes, sir. I never could get a rebate through.

Cross-examination.

By Mr. Rogers:

Q. Mr. Scott, you made your deal with Mr. Owens some time in the fall of 1938; is that right?

A. Yes, sir.

Q. And at that time what was there on the site, the loca- [fol. 548] tion, on which the Viv Theatre was ultimately built?

A. There was a building there that had different kinds of businesses in.

Q. You mean at that time it had different kinds of businesses?

A. Yes, sir.

Q. What businesses did it have?

A. I didn't even enter to see. Some of them even were vacant. The rooms were there—business buildings.

Q. Was part of it a garage?

A. The back of it, yes, sir.

Q. And it was the purpose of Mr. Owens to demolish the interior of that building, was it, and to build part of it into a theatre?

A. It was to be remodeled into a theatre, yes, sir.

Q. And the balance of it for stores?

A. I suppose that was his intention.

Q. Well, didn't you know?

A. I was only leasing the theatre, the theatre end of it.

Q. Weren't you interested in finding out how much space in that building the theatre would take up?

A. It was specified in the contract how many seats it was to have.

Q. Was it specified in the contract what kind of a building it was to be?

A. I can't say because I don't remember.

[fol. 549] Q. You just don't remember that, do you?

A. That is six years. After it was canceled I forgot it.

Q. Did you see a set of plans?

A. There was an architect in Barboursville. I think he had plans.

Q. Did you see the set of plans?

A. I wouldn't say.

Q. You can't remember, can you?

A. No, sir.

Q. Is that right?

A. I don't remember.

Q. Did you ever see a set of specifications?

A. For that building?

Q. Yes.

A. I couldn't be positive.

Q. In the fall of 1938 after you had made this contract with Mr. Owens had anything been done with reference to any work on that building that stood on the site of the present theatre towards demolition or anything else?

A. Personally I don't know.

[fol. 550] Q. When you went to Universal in the fall of 1938, you went there seeking product for a theatre that was not even in existence at that time, didn't you?

A. The building hadn't been built, no, sir.

Q. As a matter of fact, the theatre was not even in the course of construction at that time, isn't that right?

A. I had a lease and Mr. Owens was responsible.

Q. I know you had a lease. What I am trying to discover, Mr. Scott, is whether the theatre was actually, physically being built at that time?

Mr. Marcus: He already stated he didn't know.

The Witness: Well, personally I don't know.

Q. That's all I want to know. When was that theatre actually opened for operation, if you know?

A. I do not know.

Q. You don't know that, either, do you?

A. No, sir.

Q. It wasn't opened for operation during any of the time under which you had this so-called lease, was it?

A. It wasn't opened while I had the dealings.

Q. It wasn't open when you had the lease?

A. No.

Q. It was opened when your lease was cancelled?

A. Yes.

Q. When you went to Universal and had your talk there [fol. 551] with reference to product for this theatre, the theatre hadn't even been named yet, had it?

A. I named it.

Q. You had a name in mind for it?

A. I have to have a name to buy the pictures.

Q. You were going to call it the Roxy Theatre, is that right?

A. Yes, sir.

Q. And for what year's product were you talking to Universal, or what season's product were you talking about?

A. Current season's product.

Q. By that do you mean for the 1938-1939 season?

A. The contract will show.

Q. What I want, I want to get your recollection, Mr. Scott.

A. I don't remember all those things. I might have bought pictures two or three different seasons if they had them on hand.

Q. What I am trying to discover is what season's product were you discussing there?

A. First-run picture.

Q. For which season?

A. I don't know. I can't say positively. Of course, you have the contract in front of you.

Q. I would like to get your memory on what you said to this man.

[fol. 552] A. I can't remember that, six years ago, in detail.

Q. Do you mean to say you can't remember what product you were seeking for this theatre to be built in the fall of 1938, when you spoke to Mr. Paul Reiger?

Mr. Marcus: Your Honor, it is in evidence he made an application for that product and the season is mentioned in that application. I don't see what the purpose is.

Mr. Rogers: All very pretty, but I am trying to find out what the conversation was.

Q. Then you don't remember?

A. I don't remember whether I bought them.

Q. Pardon me, Mr. Scott, what I am trying to discover is when you spoke with Mr. Reiger of Universal, what season's product were you discussing with him?

A. I told you I might have been discussing more than one season's product if he had it open, possibly I bought more than one season.

Q. You mean you bought both 1938-1939 seasons?

A. I could have if it had been open.

Q. One moment now. How many years had you been in the motion picture exhibiting business before the fall of 1938?

A. 1921.

Q. Well, you knew, as an exhibitor experiences in buying [fol. 553] motion picture products first-run, that you had never discussed in the fall of 1938, the purchase of first-run products for the season 1939-1940, don't you?

A. I said 1939 and '40.

Q. You just said you might have been talking to him about products for the succeeding season.

A. No, prior.

Q. When you said succeeding, you were in error?

A. Preceding.

Q. I say when you said succeeding, you were in error. September first, 1938 to August 31st, 1939, was commonly known in the motion picture industry as the 1938-1939 season, wasn't it?

A. Yes sir.

Q. Was there any discussed as to when you would start playing this product?

A. Just as soon as the theatre was finished.

Q. Regardless of when it was finished, is that right?

A. Couldn't start until they had it finished.

Q. Don't you know as a matter of fact the theatre was not opened for operation in August of 1939?

A. I don't know just when it was opened, but it was opened in 1939. I also know that no doubt it was delayed on account of the trading leases and re-renting, you see, we cancelled our lease.

[fol. 554] Q. Regardless of what caused the delay, you know it was not opened until August of 1939, is that right?

A. Must have been.

Q. When you spoke to Mr. Reiger in the fall of 1938, didn't Mr. Reiger tell you that it was very difficult to talk about contracting product in a theatre that hadn't even been commenced to be built?

A. No, sir.

Q. He said nothing about that to you?

A. No, sir, he sold me his pictures.

Q. Did he ask you when the theatre would be opened?

A. I wouldn't doubt that he did. It was talked about.

Q. Do you recall?

A. We talked about it. I had to tell him like I told you, I didn't have anything definite just when we would get it through. We were hoping to get it through just as quick as possible.

Q. You gave him no date, did you, as to when the theatre would be completed?

A. The contract shows what I did.

Q. The contract doesn't say anything about when the theatre would be completed?

A. No, not about when the theatre would be completed. I thought you mean a date starting to play pictures.

Q. Look at Plaintiff's Exhibit P-19, and tell me if there is [fol. 555] anything in that contract as to when the theatre is to be completed?

A. No. I don't need to look.

Q. You say that in the fall of 1938, you went to Loew's, is that right, and talked about products for this theatre about to be built?

A. Talked to Mr. Booth at Metro-Goldwyn-Mayer's.

Q. You spoke with Mr. Booth?

A. Yes.

Q. Do you recall what that talk was with Mr. Booth at that time?

A. Mr. Booth said there was plenty of time to buy them later on.

Q. Mr. Booth said to you when you got your theatre finised that is the time to come in and talk about the product, didn't he?

A. That is what he said, yes.

Q. Then you went to Republic, didn't you?

A. Yes.

Q. And they sold you product?

A. Yes.

Q. For the 1938-1939 season?

A. My best recollection, yes, sir.

Q. And you went to Monogram, didn't you?

A. Yes.

[fol. 556] Q. And they also sold you product for the 1938-1939 season, right?

A. Yes, sir.

Q. And Republic sold you first-run and Monogram sold you first-run, didn't they?

A. Yes, sir.

Q. With reference to Republic first-run product, you considered that very good product for a theatre of the kind that was being contemplated in Corbin, didn't you?

A. All right for Saturday pictures.

Q. Pardon?

A. They had Westerns, action pictures.

Q. You considered that good product for that house, didn't you?

A. For Saturday, any house, almost.

Q. As a matter of fact, they had Gene Autry, didn't they?

A. Yes.

Q. Gene Autry was a very popular screen hero, wasn't he?

A. Yes.

Q. And in your other towns near there where you played Republic product, you found your audiences were really very pleased with that product, didn't you?

A. I didn't play Republic in any other towns.

Q. You mean you did not play Republic in your other towns?

A. Not at that time.

[fol. 557] Q. Did you ever play Republic in your other towns?

A. May have run second-run. They always sold to the opposition house.

Mr. Wright: If the Court please, there isn't any question in the suit whatsoever in respect to Republic or Monogram. The complaint is limited to the eight major companies. I don't see what the purpose of this is.

Mr. Rogers: May it please the Court, it seems to me the plaintiff can't blow hot and cold and on his direct examination interrogate ~~this witness about~~ Republic and get his testimony in.

Mr. Wright: He was asked what efforts he made to get products, and he volunteered, he went in and talked with Republic and Monogram.

The Court: Objection overruled.

Q. Monogram was good product for that theatre, too, was it not?

A. I didn't consider it so.

Q. You bought it?

A. Because I couldn't get anything else.

Q. You went to get it?

A. Couldn't get anything else.

Q. You went to get it?

A. Yes.

[fol. 558] Q. And you bought it, didn't you?

A. Yes.

Q. For that type house, didn't you regard Moongram as good product?

A. No, sir.

Q. But you did regard Republic as good product?

A. I did. Gene Autry.

Q. As a matter of fact, you did better with Republic—

Mr. Marcus: He never used Republic in Corbin.

Q. You never used Republic in Corbin at any time?

A. Except second-run in my house.

Q. Which house did you play it?

A. It has been played in the Monogram.

Q. What other house did you play it at?

A. Been played second-run in the Liberty.

Q. You did good business with it there?

A. I don't recall now.

Q. What?

A. Naturally do better if we had them first-run.

Q. But you did good business with them, too, second-run, didn't you?

A. Fair.

Q. You testified that when the Schine people took over the booking of the Margie-Grand Theatre that they were able to save money on pictures, because they got adjust- [fol. 559] ments, is that right?

A. Yes, sir.

Q. It wasn't unusual in the moving picture industry for a house after it played a picture and found it played very badly, to go to the distributors and ask for adjustments, isn't that right?

A. You asked, but never got it.

Q. It wasn't unusual to ask, was it?

A. No.

Q. And when Schine came in and helped you book your theatre, the Margie-Grand Theatre, you say they did get adjustments after pictures played that did not get good results?

A. Yes, sir.

Q. And you got the benefit of those adjustments, didn't you?

A. Yes, sir.

Q. By the end of the fall of 1938, can you give us an idea of how many pictures you had actually contracted for to be played in that Corbin Theatre which was about to be built?

A. No, sir, I couldn't tell you. I don't remember.

Q. Could you tell me approximately how many?

A. No, sir.

Q. Haven't any idea, have you?

[fol. 560] A. Republics and Monogram.

Q. About how many?

A. The only two I remember. I don't know.

Q. Was it more than one hundred?

A. I don't know.

Mr. Rogers: That is all.

[fol. 561] Redirect examination.

By Mr. Marcus:

Q. Mr. Scott, was it after your agreement with the Schines that your contract with Mr. Owens was cancelled? Did that occur after your agreement with Schine?

A. I don't recall. That all happened there so close I don't remember.

Mr. Marcus: At this time, your Honor, I would like to read into the record Schine's answer to No. 15 of the Government's interrogatories. I will just read part. This answer relates to that agreement, more particularly in respect to the Margie Grand Theatre, Harland, Kentucky. "The other 50% of the stock of the Phoenix-Harlan Theatre Company was owned by Leon Scott, the former operator of the theatre, and as further consideration Mr. Scott was given an employment contract."

Mr. Rogers: Do you mean Mr. Leon Scott?

Mr. Marcus: Yes. There is only one other thing I would like to call to your Honor's attention and that is that this contract provided that Schines would get 5% in return for their booking services.

The Court: You mean 5% of the gross of 5% of what?

[fol. 562] Mr. Marcus: I believe it was 5% of the gross, Was it not, Mr. Scott?

The Witness: Yes.

By Mr. Marcus:

Q. Mr. Scott, in that contract was there also a provision against your competing for a certain time?

Mr. Rogers: One moment, if the Court please. It is in the contract. Is the contract in evidence?

Mr. Marcus: The contract is in evidence, your Honor, but we are in the unfortunate position of having a page or two missing.

Mr. Rogers: I understood there was only one page missing. Isn't that right?

Mr. Marcus: I don't know. The page at which the contract stops, as we have it now, is page 4. Whether there is one or two pages I don't know. That is the contract of December 2, 1938. It apparently is the contract of November 30, 1938. At any rate, that is one of the contracts you are looking for?

Mr. McKay: Yes, I am looking for it.

Mr. Rogers: As far as you go with that contract is the clause contained in that contract——

Mr. Marcus: Your Honor, what I would like to prove from this witness is that in the event that the Schines do [fol. 563] not produce that contract that there was such a provision in the contract.

The Court: Does it appear in the pages that are in evidence?

Mr. Marcus: No, it does not, your Honor. There is a page or two of that contract missing.—

Mr. McKay: Your Honor, this morning he said it was one page. Now he says it is two pages.

Mr. Marcus: What difference does that make? I don't know how many pages. I know there are pages missing.

Mr. McKay: Where did that come from?

Mr. Marcus: That came from Mr. Leon Scott, who brought it to our office on Saturday.

The Court: You are referring to the contract of Scott with Schine?

Mr. Marcus: That is right. We have reason to believe that there was a provision providing that Mr. Scott was not to compete with the Schines in Corbin for a certain period of time.

Mr. McKay: I do not think that is a proper statement for Counsel to make. He says, "We have reason to believe." Where is the contract? Why do you say you have reason to believe? You have no basis for that statement.

Mr. Marcus: We have an affidavit from Mr. Scott in [fol. 564] which that is stated.

The Court: The Schines must be reasonably expected to have a copy of the contract.

Mr. McKay: We should have it, but I want to find out that the first request for this was made at 10 o'clock this morning. That certainly is not a very timely request, but we are not going on that; we are going to do the very best we can to find it.

The Court: I suppose one matter is the convenience of the witnesses?

Mr. Marcus: That is the main thing. Mr. Scott would like to leave for Kentucky tonight. Your Honor, can it not be taken and then see whether or not they are able to produce the document? If they are able to produce it then that, of course, will be the best evidence. If they are not——

The Court: It may have a bearing here and they are entitled to cross-examine him.

Mr. Marcus: Certainly, they can cross-examine him if he makes that statement. Your Honor, that is a document they are supposed to have.

Mr. Rogers: We are supposed to have it if you will give us reasonable notice to produce it.

[fol. 565] The Court: You should have served notice before.

Mr. Wright: We did not know, if your Honor please, that the witness was going to turn up with an incomplete agreement. He gave us an affidavit saying he had agreed not to compete for a certain period of time. We assumed that would be contained in the document we subpoen-ed from him. Then he brings in a document part of which is missing.

The Court: I supposed from your investigation you would find out what that document was.

Mr. Rogers: As a matter of fact, we were never served with a notice to produce.

The Court: Objection sustained.

Have you not got someone who can be looking up your records to see whether you have that copy? It seems to me you ought to be able to tell us promptly whether you have or have not.

Mr. Wright: Certainly, they can tell us right now whether they did or did not make an agreement with Mr. Scott for him to compete in that area. If they did there is not any point in wasting time; if they claim they did not and they can't produce the contract then we are entitled to [fol. 566] his testimony to the effect that he made such an agreement.

Mr. Rogers: We are not on the stand.

The Court: Objection sustained.

Mr. Marcus: Your Honor, will you direct the defendants to make their inquiries by tomorrow, so that we may be able to put Mr. ——

The Court: I do not see why it is very troublesome to report promptly on whether you have these agreements. Someone must be familiar with your papers and could tell us very quickly whether you have copies or haven't them.

Mr. McKay: We are doing it just as diligently as we can, your Honor, and I undertake just as soon as we get back this afternoon that that will be our first order of business, the minute we get back to the hotel this afternoon.

Mr. Wright: I mean so that we can release Mr. Scott today.

Mr. McKay: I can't do anything better than that, can I? I am going to go to work myself, and I will ask Mr. Antevil to work with me and try to find that paper.

Mr. Wright: An affidavit was made in 1939 to the effect that he had such an agreement. In five years I would have thought somebody in the Schine Company would have made [fol. 567] an investigation to determine whether there was——

The Court: The Government should have been able to determine that after this case had been running for six years.

Mr. Wright: We assumed when he gave us an affidavit to that effect that that was in the agreement.

The Court: I should think you would want to see what was in the agreement yourself.

Mr. Marcus: That is all, Mr. Scott.

Recross-examination.

By Mr. Rogers:

Q. This Plaintiff's Exhibit 20, the booking contract as between yourself and Schine, to book this theatre, provided for five per cent of the gross; isn't that right?

A. Yes, sir.

Q. Was it customary in the industry at that time that where you engaged the services of another exhibitor company to do the booking that that company got a percentage of the gross for booking services?

A. I don't know if it was customary or not. I only had one other arrangement.

By the Court:

Q. Do you know anything about it further than your own [fol. 568] cont-act?

A. Further than my own business I don't know whether it was customary or not, but I had an arrangement prior to Mr. Schine, but I didn't pay a percentage.

By Mr. Rogers:

Q. You didn't regard a five per cent booking fee as an excessive booking fee, did you, for booking that house for you and saving you money, as you say?

A. I said they got some rebates for me. I didn't say that the rebates exceeded what I paid them.

Q. Whether it exceeded them or not, those rebates saved you money, didn't they? They did, didn't they?

A. They never saved me any money in excess of what I paid them.

Q. Please answer my question. They did save you money, didn't they, those rebates, so-called? That calls for a yes or no answer. It did save you money or it didn't save you money. Now, which is it?

A. I didn't consider it saved me money.

Q. You didn't consider it saving money?

A. The deal was five per cent.

Q. I am not talking about five per cent, or any other per cent. I am merely asking whether the obtaining of those rebates for you did or did not save you money?

A. I didn't consider it so.

[fol. 569] Mr. Rogers: That is all.

Mr. Marcus: That is all. Will you remain here until tomorrow?

The Court: Call the next witness.

Mr. Rogers: Is Mr. Scott to be regarded as still on the witness stand, Mr. Marcus?

Mr. Marcus: Merely for the purpose of calling him back as to that provision of the contract, in case you do not produce your copy.

Mr. Rogers: Then he is still on the witness stand?

The Court: Yes.

Mr. Rogers: I want to be sure that that is so, because I have some motions to make and I do not wish to make them until we are finished with the testimony of Mr. Scott.

Mitchell K. Murphy, a witness called by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Marcus:

Q. Mr. Murphy, where do you reside?

A. I live at Big Stone Gap, Virginia.

Q. What is your occupation?

A. Well, I am in the theatre business and performing.

[fol. 570] Q. How long have you been in the theatre business?

A. Well, about 32 years.

Q. Can you name some of the theatres in some of the places in which you have operated?

A. Well, Welch, West Virginia; Bluefield, Keystone, War, West Virginia, Appallachia, Virginia, Big Stone Gap, Flintwood, Norton, and Gates City.

Q. Did you become interested in operating a theatre in Corbin, Kentucky, in 1939?

A. Yes, sir, I started in 1939.

Q. Did you enter into an agreement with Mr. Owens in respect to that theatre?

A. Yes, sir.

Q. Do you recall the date of that agreement?

A. I made the contract with Mr. Owens, I believe, on the 19th day of May, 1939.

Q. Did you attempt to get product for that theatre, film product?

A. Yes, sir.

Q. About how soon after making this agreement with Mr. Owens did you make your first attempt?

A. Well, I believe it was on my same trip down there.

Q. Where did you go?

A. I went to Cincinnati.

Q. Did you call on the various film exchanges in that city [fol. 571] for that purpose?

A. Yes, sir, all of them.

Q. You called on all of the film exchanges?

A. Yes, sir.

Q. Can you tell the Court what product you were seeking on this occasion? Was it first run or second run or any other run?

Mr. Rogers: Pardon me. May it please the Court, I maintain that that calls for a conclusion and I think we are entitled to the testimony of this witness as to the occurrences, the dates and the persons, and what he did, not what he had in his mind.

The Court: He can give the talks he had with individuals.

Q. Do you recall calling on the Fox Exchange in Cincinnati for product?

A. Yes, sir.

Q. Will you tell the Court with whom you spoke there in respect to film products?

A. I spoke to the General Manager, the General Branch Manager.

Q. Do you know his name?

A. No, I don't remember his name.

Q. What was the substance of your conversation with him at that time?

Mr. Rogers: One moment. May it please the Court, I do [fol. 571a] object to this conversation unless the witness can give us the name of the man or identify him in some manner.

The Court: Had you dealt with this man before?

The Witness: Well, I dealt with the Fox Film Company, not this particular man. It seemed to be a different man than what used to be there when I had theatres in West Virginia.

Mr. Rogers: Then, may it please the Court, I do object on the ground that the man whom he claims he spoke to is not identified at all. His authority is not even presumptively spelt out here.

By Mr. Marcus:

Q. Mr. Murphy, when you called on this Exchange for whom did you ask?

A. I asked for the general manager.

Q. Was there a designation on the door of the office of this person with whom you spoke, do you recall?

A. Well, I am not sure.. Some of them I went in their offices and some of them came out to see me and talk to me.

Q. The question I just asked you, Mr. Murphy, was whether there was anything to indicate the position of the individual with whom you talked on the outer office?

[fol. 572] A. The offices I went into, of course, had "Branch Manager" on it, and so forth.

Q. Could you relate the substance of that conversation you had?

Mr. Rogers: I object on the ground that the person has not been identified nor has his authority been established.

Mr. Marcus: Mr. Murphy has testified that he called on that Exchange, asked for the district manager and spoke to a person to whom he was directed as the district manager.

Mr. Rogers: He merely said he walked in there, and he said there was some name, the general sales manager or some such thing, on the door.

The Court: Were you directed to someone to see?

The Witness: Yes, sir.

The Court: Where were you directed?

The Witness: Directed into the office by the girl who was supposed to give you information, and so forth.

The Court: What did she do?

The Witness: Well, she was a bookkeeper or handled the 'phones, and at times she would call the manager and tell him that so-and-so was there to see him.

The Court: We are asking about this particular time.

[fol. 573] The Witness: I suppose that that is about the case there. The manager was called and I went in to see him.

The Court: Not what you suppose about it. Did she call somebody or direct you to somebody?

The Witness: She called somebody.

The Court: Called for whom?

The Witness: Whoever it was. I don't remember the name. I asked for the general manager.

The Court: Then what happened?

The Witness: Well, I went in to see him and asked him about the product, and he just simply told me——

Mr. Rogers: Pardon. Again I object on the ground that there has been no proper foundation laid.

The Court: I will let him answer. Overruled. You said you went into a girl. Did the District Manager come into that room or did you go to another room?

The Witness: I went to his room. She called him and he told her to send me in.

Mr. Rogers: May it please the Court, this objection is not merely a pro forma or technical objection. If we are going to meet this testimony we have the right to know who the man was he spoke to. Otherwise how are we going to rebut it? We couldn't possibly rebut it.

[fol. 574] The Court: I will receive it. Overruled.

By Mr. Marcus:

Q. Will you tell the Court what the substance of your conversation with this manager of Fox was, Mr. Murphy?

A. Well, he told me Mr. Schine had first runs bought in Corbin.

Q. Do you recall calling on the branch office of Metro in Cincinnati at this time, Mr. Murphy?

A. Yes, sir.

Mr. Rogers: May we have the date? We haven't had the date fixed as to when he saw this man at the Fox Company, as he claims.

Q. About how soon after entering into this contract with Mr. Owens did you look for product, go to Cincinnati for product?

The Court: He has answered that. He said immediately after we made the contract in May, 1939, he went to Cincinnati.

Mr. Rogers: He said the first trip he made to Cincinnati was after that.

The Court: How is that?

The Witness: I made the trip at the same time that I made the contract for the theatre, and I should judge that would be about the 20th or 21st day of May, 1939.

The Court: That is the time you saw these men, you claim?

[fol. 575] A. Yes, sir.

By Mr. Marcus:

Q. Who did you see at the branch office of Metro in Cincinati wth respect to product for this theatre, do you recall?

A. For first runs?

Q. Yes.

A. That was the same time, about the 20th or 21st of May.

Q. Do you recall whom you saw at the Exchange? This is Metro.

A. I saw Mr. Booth.

Q. What was Mr. Booth's position? I merely want to find out what office did he hold.

Mr. Rogers: Pardon me for a moment. Again I object.

The Court: Maybe you can show his contact with Mr. Booth before this.

The Witness: I knew Mr. Booth personally. I had known him for sometime—several years. I had dealt with him there.

By Mr. Marcus:

Q. Had you known him as the branch manager of Metro in Cincinnati?

A. Yes, I did know him.

Q. What was the substance of your conversation with Mr. Booth on this occasion, with respect to first run product?

A. He told me Mr. Schine had all the first runs bought and I asked him if he had even his shorts and things of that [fol. 576] kind bought, and he said he did. He said he didn't have anything open for me.

Q. Do you recall calling on the Paramount branch office in Cincinnati on this occasion?

A. Yes, sir.

Q. In respect to the product of this theatre?

A. Yes, sir.

Q. Do you recall the name of the person you saw there in respect to this product?

A. Well, I don't know the names there. I just went in and asked for the manager and I was directed to him and I talked with him.

Q. Had you had any dealings with this person you talked to prior to this time?

A. I had with the company for several years but not that particular manager. They had changed managers since I had been there.

Q. But you were directed to him as the manager?

A. Yes, sir.

Q. Now, Mr. Murphy, what was the substance of your conversation at the Paramount Exchange with this person to whom you were directed as Manager of the Exchange?

Mr. Rogers: May it please the Court, I object to it on the ground that no foundation has been laid. The person [fol. 577] he spoke to has not been even sufficiently identified, nor has the authority of that person been shown, or the identity of the person revealed.

By the Court:

Q. Had you dealt with Paramount for some time?

A. Yes, sir.

Q. Through this office in Cincinnati?

A. Yes, when I was in West Virginia I got my service out of Cincinnati. Since I went to Virginia I got it out of Washington. During the ten or eleven years I had been in Virginia I had forgotten those persons down there. In lots of places the managers had been changed. In fact, about all of them.

Q. How long prior to this time you went to Paramount had you been there?

A. Well, I would say ten or eleven years.

The Court: I will receive it.

By Mr. Marcus:

Q. What was the substance of your conversation with the manager of the Paramount Exchange in Cincinnati at this time?

Mr. Rogers: Pardon me. I object to the form of the question. I suggest the form be, what was the nature of the talk you had with the person you spoke to.

[fol. 578] The Court: Was the individual with whom you talked at Paramount?

Q. What was the substance of your conversation?

A. He just told me that the Schine Circuit had the first runs bought.

Q. Did you call on the branch office of Warner Bros. at Cincinnati on that occasion with respect to first run film product for this theatre at Corbin?

A. Yes, sir.

Q. Do you recall the name of the person with whom you spoke there?

A. That was Johnnie Iffert.

Q. Had you had dealings with this individual prior to that time?

A. Yes, I had had. He used to be salesman for Warner before he was manager, and I bought from him as salesman, and I talked to him at this time as manager.

Mr. Rogers: Pardon me. May it please the Court, if this is to be binding at all on the ground that the person he spoke to was manager, this witness said he never had any dealings with this man as manager before that.

The Court: He identifies him as the man with whom he dealt at this time.

Mr. Rogers: But that is not evidence of either the man's [fol. 579] position or of his authority.

The Court: What do you know about his position at that time, whether he was the manager?

The Witness: He told me he had been——

The Court: How did you contact him?

The Witness: I think I just walked in and his office was visible, there was no partition or anything there, and I knew him well enough to say something to him. He just invited me in.

The Court: I mean about his being branch manager.

The Witness: We talked awhile and he told me he had been made branch manager.

Mr. Rogers: I move to strike that.

The Court: Yes.

Mr. Rogers: They cannot prove his agency out of his own mouth.

The Court: Sustained.

Mr. Marcus: Your Honor will recall that we have told the Court we will connect up the positions of all these individuals. He has named the particular individual.

The Court: Well, objection overruled. Proceed.

Q. What was the substance of your conversation with Mr. Iffert?

A. Well, I told him I had the Corbin Theatre and he told me he was sorry that he couldn't do anything for me, [fol. 580] that the Schine Circuit had their product bought. I asked him if they had their short subjects bought too and he said they did.

Q. Now, Mr. Murphy, did you call at that time at the branch office in Cincinnati of R. K. O. in respect to product for this theatre in Corbin?

A. Yes, sir.

Q. Do you recall with whom you spoke there in respect to getting product?

A. I don't know his name. I only asked for the manager and I was directed to him.

Q. Had you had any dealings with this individual prior thereto?

A. Not that particular manager. I had with the office ten or twelve years prior to that.

Q. Now, Mr. Murphy, what was the substance of your conversation with this individual with R. K. O.?

Mr. Rogers: Now, may it please the Court, I do object to this on the ground that this cannot by any possibility connect this possibility with anybody in authority. Here is a man who says he hadn't had any contact for twelve years with the company. He walks in here, here is a man he had never seen before. Not only haven't they [fol. 581] connected it but it is patent they can't possibly connect it.

By Mr. Marcus:

Q. Did you have any other occasion to go to the office of R. K. O. in Cincinnati subsequent to this first occasion?

Mr. Rogers: Pardon me. May it please the Court, that certainly is incompetent. Subsequent events can't possibly prove the existence of a state of facts that exists prior to the happening of the subsequent event.

The Court: It may be part of the subsequent event. It is competent to show that he went there at another time. Did you go there to R. K. O. again?

The Witness: Yes, sir.

The Court: How long was that after this first time?

The Witness: In fact I went to all of them several different times.

The Court: This is R. K. O.?

The Witness: R. K. O.

The Court: Who did you see the second time?

The Witness: Well, I saw the same man that I was directed to be the manager when I was there the first time.

[fol. 582] Q. Mr. Murphy, will you relate the substance of your conversation on this first occasion with this man at R. K. O.?

Mr. Rogers: Again I object to it on the ground there is no certain fact what person, no evidence of authority, no proper foundation laid, and on the further ground it is impossible for the Plaintiff to ever connect an unknown party as a party in authority.

The Court: Well, of course, the defendant has to be connected with the individual to bind the defendant.

Mr. Marcus: Your Honor, this does follow in each occasion when he went to the R. K. O. branch office, he was directed to the same person as Branch Manager whom he saw on this first occasion. I do think that has probative value.

The Court: It is the same event. I am going to receive it anyway at this time.

Q. What was the substance of your conversation at that time in R. K. O.?

A. On the first-run?

Q. Yes.

A. Well, he just told me it was sold to the Schine Circuit, he couldn't do anything for me.

Q. Mr. Murphy, on that same occasion, did you call at [fol. 583] that Columbia Branch Office at Cincinnati in respect to getting product for this theatre in Corbin?

A. Yes, sir.

Q. Whom did you speak to there, do you recall his name?

A. No, I don't recall his name. I just asked for the Manager, and I was directed to him, and our conversation was very short. He just told me——

Mr. Rogers: One moment please. We haven't come to that yet.

Mr. Marcus:

Q. Did you have any further occasions after this first occasion to go to the Columbia Branch Office in Cincinnati, after this first occasion, did you go again to that office?

A. Yes, sir.

Q. And on these other occasions were you directed to that same individual as Branch Manager as the individual you saw on the first occasion?

A. Yes, sir.

Mr. Rogers: Can we get the date of the second occasion, please?

Mr. Marcus: I am coming to that, Mr. Rogers.

Q. Now, Mr. Murphy, you stated the substance, or did you state the substance of your conversation with that gentleman at that time, with respect to first-run product?

[fol. 584] Mr. Rogers: Columbia?

Mr. Marcus: Yes.

Mr. Rogers: No, he hasn't, either first or second visit.

Q. On this first occasion that you stopped at the Columbia Branch Office in Cincinnati looking for first-run product for Corbin——

Mr. Rogers: One moment. I object to the form of that question.

Mr. Marcus: He stated on the first occasion.

Mr. Rogers: Never mind what he stated. Please don't interpolate facts into the witness' mouth. Find out what they said and what he said.

Mr. Marcus: Make your objection.

Mr. Rogers: I have made an objection.

The Court: What was said between you and the man you talked with?

Mr. Rogers: I object to that on the ground no foundation has been laid, that the authority has not been established and that it is utterly immaterial and not binding on these defendants.

The Court: Overruled.

The Witness: He told me—that is the first-run you are talking about now?

Mr. Marcus: That is right.

[fol. 585] The Witness: He told me the Schine Circuit had the product bought.

By Mr. Marcus:

Q. Mr. Murphy, did you make another and subsequent trip to Cincinnati to try to obtain second-run product for your theatre in Corbin?

A. Well, I tried to obtain second-run from Metro-Goldwyn, Fox, Paramount, R. K. O., Columbia, Universal, United Artists, Republic, had got second-run from Republic, Warner Brothers.

Q. Let us take them up one by one, Mr. Murphy. On this second occasion when you came to Cincinnati, did you call at the branch office of 20th Century-Fox in respect to getting second-run product for Corbin?

A. Yes, sir.

Q. Did you speak to the branch manager there in respect to—

Mr. Rogers: Will you give us the date, please, Mr. Marcus, on this Fox visit.

Q. About how soon after the first time you went to Cincinnati did you go to Cincinnati to look for second-run product, do you recall, Mr. Murphy?

A. Well, I would say it was about ten days. I went back home, not back to Corbin, but home and in about ten days I went again with the intention of buying my equipment, like chairs and carpet and machinery, and so forth, if I [fol. 586] could buy second-run pictures.

Mr. Rogers: May we have stricken from the record what the mental operations of this witness were?

The Court: It was not responsive to the question, just "ten days after" you went back to Fox?

The Witness: Yes, sir.

Q. What was the substance of your conversation with the manager there in regard to getting second-run product?

A. Well, he told me that the Schine Circuit also had second run bought.

Q. What was the substance of the conversation you had in respect to getting second run products at the branch office of Metro with the Branch Manager at that time?

Mr. Rogers: May it be understood that this testimony is likewise taken to the same objection previously made.

The Court: He met Mr. Booth there.

The Witness: I saw Mr. Booth there. I saw Mr. Booth at the Metro Branch Office, and he came out in the lobby quite a little while, and kind of kidded me along. I used to play all of the product and played it up so close, he was kind of kidding; he told me he was going to bring a suit against me for a couple of shorts I failed to pick up. I said, [fol. 587] "Maybe I can pick them up now and save the suit." Also I went along to ask him if he could let me have some shorts there and he said he couldn't. He went on to say, Mr. Booth did, at the same time that Schines was their account and so far as Metro was concerned, that I wouldn't get first or second run in Corbin. I might as well make up my mind that way.

Q. What was the substance of your conversation at that time with the Branch Manager of Paramount Exchange in respect to gettting second-run product for your Corbin theatre?

A. Well, the Paramount Manager——

Mr. Rogers: One moment, now. Is this the same man he did not know?

Mr. Marcus: I suppose so.

Mr. Rogers:

Q. This is the same man you did not know?

A. Yes.

The Court: Is he the same man you saw the first time?

The Witness: Yes, sir, the same man I saw the first time.

The Court: All right.

Mr. Rogers: I assume then this is taken subject to my objection?

The Court: Yes. This must be the Paramount.

[fol. 588] Mr. Marcus: Yes, sir.

The Court: What did he say?

The Witness: He said he didn't have any second-runs for me at all, that they were sold to the Schine Circuit and in every instance where that firm had short subjects, I also asked about shorts. Paramount told me they didn't even have shorts.

Q. Mr. Murphy, do you recall the substance of your conversation with the Branch Manager at the Warner's Cincinnati Exchange on that occasion in respect to getting second-run product for the Corbin theatre?

A. He told me Mr. Shine had the second-run bought, but he had some real old ones like some stuff over five years old, or some stuff he might be able to pick up occasionally for me.

Mr. Rogers: May we have with whom he spoke at that time?

By Mr. Marcus:

Q. Did you——

Mr. Rogers: Just ask him with whom he spoke.

Q. Is Warner's Exchange one of those where you do not remember the name?

A. No, I remember that. I know the manager at Warner Brothers, Tiford.

Q. Mr. Murphy, do you recall the substance of your con- [fol. 589] versation with the Branch Manager at R. K. O.?

A. Yes, sir.

Mr. Rogers: We haven't got Warner's yet. We haven't got the conversation with Warner's yet.

Mr. Marcus: Yes, we have that.

Q. Mr. Murphy, do you recall the substance of your conversation with the Branch Manager at R. K. O. in Cincinnati on that occasion with respect to getting second-run product?

A. Yes, sir, he told me that the Schine Circuit had the second-run bought.

Mr. Rogers: Was this the same man whom he doesn't know?

Mr. Marcus: The same man, yes.

Q. Now, Mr. Murphy, did you call at the Columbia Exchange in Cincinnati on that occasion with respect to getting second-run product?

A. Yes, sir.

Q. For the Corbin theatre?

A. Yes, sir.

Q. Did you get second-run product from Columbia?

A. I got a few. I got a contract on '37 and '38, but that was with the understanding that I couldn't run any of that product until I had picked up a few older ones, and I am not sure but what I got a contract at that same time on '38-'39 product with the understanding that it must not [fol. 590] be run the same year that the Schine Circuit run. In other words, it must be a year or two years old.

Mr. Rogers: May it please the Court, I move to strike that on the ground they both relate to written contracts, and the contracts are the best evidence of what the conditions of those contracts were.

The Court: Yes.

Q. Mr. Murphy, you have just stated that these contracts of film were conditioned upon your not playing these pictures?

Mr. Rogers: Pardon me. May it please the Court, that evidence has been stricken out.

Mr. Marcus: I want to develop something.

Mr. Rogers: Please don't develop your question on evidence that is not in the record.

Q. Mr. Murphy, do you recall whether that was part of the written contract that you made?

Mr. Rogers: Again may I press my objection on the ground Mr. Marcus may not frame his question that way?

The Court: Sustained. The contract would show.

Q. Mr. Murphy, at the time you made your lease for the theatre in Corbin, what other theatres, if any, were being [fol. 591] operated in Corbin?

A. There were two in Corbin, the Hippodrome was the best one and a little house, the Kentucky.

The Court: In Corbin?

The Witness: Yes.

Q. Who was operating those theatres at that time?

A. The Schine Circuit.

Q. Do you know who was operating those theatres prior to the time that Schine began to operate them?

A. I don't know.

Q. Mr. Murphy, you have stated that you went to Cincinnati looking for first-run product and on another occasion you went to Cincinnati looking for second-run product? Did you attempt to get second-run products on any other occasion?

A. Yes, I tried several times before I ever got enough to open with. In fact, I paid $520 rent before I ever could get a picture to open with.

Mr. Rogers: May it please the Court, I move to strike the entire answer as not responsive.

The Court: Strike it out, it is not responsive to your question. You made several other attempts?

The Witness: I did. I made at least two more efforts after that before I ever bought my equipment.

[fol. 592] Q. Did you get any current second-run product for your theatre?

A. No, sir.

Q. Did you at any time while you were operating your theatre have first-run product from any of the major distributors?

Mr. Rogers: Pardon me. May it please the Court, none of these dates are fixed that Mr. Marcus is interrogating about.

Mr. Marcus: I asked him at the time he operated the theatre.

Mr. Rogers: You haven't stated the time he operated the theatre.

Mr. Marcus:

Q. You state you made a contract with Mr. Owens on May 19th, 1939, in respect to operating a theatre at Corbin. When did you seek to operate that theatre?

Mr. Rogers: When did he start to operate the theatre is more important.

Mr. Marcus: I am coming to that.

Mr. Rogers: Let us get the start before you get the end.

The Court: The contract was in May. When did you start to operate?

The Witness: I started paying rent on the 15th of June, and I opened the house on the 7th of August.

Q. You were paying rent during that time that the house [fol. 593] was opened?

A. Yes, sir. In my contract I was to start the rent when the house was ready. The house was not finished yet when I made the lease, and he notified me that the house would be ready for me on the 15th of June, 1939, and I started paying rent then, and I paid rent up to the 7th day of August, before I could ever get anything to open with.

The Court: Why did you have to pay rent? You said during a certain time you wouldn't have to pay rent until it was finished.

The Witness: He notified me he had it ready on the 15th of June.

The Court: But he did not have it ready?

The Witness: Yes, sir, it was ready.

The Court: It was ready on the 15th of June?

The Witness: Yes, sir.

By Mr. Marcus:

Q. Mr. Murphy, when you state that Mr. Owens had the building ready on June 15th, 1939, was that true with respect to the equipment in the theatre?

A. Didn't have the equipment in at that time. I didn't know yet whether I was going to get pictures or not.

Q. Just answer my question. The equipment was not in at that time?

[fol. 594] A. No, sir.

The Court: When did you put the equipment in?

The Witness: I put the equipment in just before I opened on the 7th of August, but I had—we gave the order for the equipment right away after I leased the building.

Q. Mr. Murphy, were you to put in the equipment in the theatre?

A. Yes, sir.

Q. Mr. Murphy, do you recall with what picture you opened up?

A. I think it was a little feature from big feature rights, a real old one, perhaps several years old. I believe, "Cover Girl" was the name of the picture.

Q. Mr. Murphy, do you recall the approximate date when you disposed of your theatre to the Schines?

A. Well, it was about March, somewheres around March, the last of March, 1940.

Q. During that period of operation by you, had you been able to obtain any current first-run or second-run product?

Mr. Rogers: One moment. I object to that as calling for a conclusion, and we are entitled to the evidence.

The Court: What did he do?

[fol. 595] Q. Had you played any current first or second-run?

Mr. Rogers: That is immaterial.

Q. Had you played any current first-run or second-run product in Corbin during the period of your operation?

Mr. Rogers: That is immaterial.

The Court: You asked if he did run any, you say?

Mr. Marcus: That is right.

The Court: Let him answer that. Did you play any current first or second-runs?

The Witness: I didn't run any current stuff, no, all old stuff.

Q. Do you recall discussing with Mr. Owens being released from your agreement with him in respect to that theatre?

A. Yes.

Mr. Rogers: I object to that as immaterial and not binding on the defendants.

The Court: Sustained.

Q. Mr. Murphy, do you recall the admission prices charged by the Viv while under your operation?

A. 15 cents, 15 cents adults and 10 cents children.

Q. Was that for matinee and evening?

A. Yes, sir.

Q. Do you recall whether or not there was an increase in the prices charged at the Viv Theatre after you disposed of your theater to Schines?

[fol. 596] Mr. Rogers: One moment. Let's see whether or not he knows anything about it, first.

Mr. Marcus: I asked him.

Mr. Rogers: Let us find out. That calls for a conclusion.

The Court: Do you know what the prices were?

The Witness: I know what they were one day when I was in there, that's all I know.

Q. You went into the theatre after the time you had sold it, is that right?

A. Yes, sir.

The Court: Didn't it appear you retained a part in it?

Mr. Marcus: No; that was Scott, your Honor.

The Court: All right. When was that?

The Witness: That was some time in 1940. I would say just a few months after I sold.

The Court: Did you ask what the prices they were charging then?

The Witness: 30 cents is what I paid.

Q. Mr. Murphy, do you know what prices were charged at the Hippodrome in Corbin at the time you took your lease from Mr. Owens on your theatre in Corbin?

A. I think it was 25 cents.

Q. Was that for matinee and evenings?

A. I don't remember for sure about that. I kind of think it was, though.

[fol. 597] Q. Do you know whether in the Hippodrome there was a balcony and an orchestra?

A. Yes, there was a balcony.

Q. Did that price pertain to both?

A. It did for a while, after I opened then they cut the balcony down to 15 cents, I believe, the balcony prices.

Q. Do you recall whether after you had disposed of your Corbin Treatre to the Schines, whether the prices, the admission prices, at the Hippodrome increased subsequent to the time they had been lowered prior to the time you disposed of your interest?

A. No, I don't, only what I saw on the window. I didn't go in the Hippodrome at all. It just happened to be a picture I wanted to see. I didn't have any particular reason for going in there.

Q. You saw the admission prices on the window of the Hippodrome?

A. Yes, sir.

Q. What were those prices?

A. I think they were 30 cents, the same as the other one.

Q. Mr. Murphy, were you familiar with the Hippodrome and Kentucky Theatres, in so far as their interior and exterior is concerned?

A. Well, not in particular. I have been in there several times.

[fol. 598] Q. Could you compare those theatres with the Viv as of the time it was completed?

Mr. Rogers: Which are those? You only spoke of the Hippodrome.

Mr. Marcus: Hippodrome and Kentucky, I asked Mr. Murphy.

The Witness: Well, neither of them compared with the Viv, so far as equipment is concerned, like seats and machinery, and so forth. The Viv had far better seats and more conveniences and seats further apart and more knee room.

Q. About how old a building would you say the Hippodrome was?

A. The Hippodrome was an old building, but it was a very good constructed building. It looked like one of the old type walls when they used brick walls 18 inches instead of 12. Most of them put them 12 now, getting them down to paper.

Q. How did the interior compare with the Viv in so far as decorations, paintings and the like?

A. Well, in time it has been more expensive than the decorating in the Viv, but at the time the Viv was more ahead, because it was old and scaled off.

Q. Talking about the Hippodrome now?

A. Yes, the Hippodrome.

Q. In respect to the Kentucky, what can you say about [fol. 599] that theater?

A. I can't say much for that. It was a pretty dirty rat hole.

Mr. Rogers: I move to strike that.

The Court: Strike it out. Describe it, if you can.

Q. Just state in general terms what was its condition?

A. It was one of the cheap houses, about as cheap as you can get anybody to go in, very old and small and bad seats and stuffy, and things like that.

Mr. Rogers: I move to strike it all, conclusion of the witness.

The Court: Strike it all. Let him answer it is an old building. Describe it.

The Witness: Had bad seats. It was small and the air bad, smelled stuffy.

The Court: How many seats, what was the seating capacity?

The Witness: Looked like it would seat about 350.

By the Court:

Q. How about the Hippodrome?

A. The Hippodrome I would judge from the looks of it seats about 700.

The Court: And the other one?

The Witness: 512, but the Hippodrome had a balcony, and the Viv didn't have a balcony. It is all on one floor.

[fol. 600] Q. Mr. Murphy, you stated that you have had considerable experience in operating theatres?

A. Yes, quite a bit.

Q. And in buying film product for theatres?

A. Yes, sir.

Q. Mr. Murphy, in your opinion, could the Kentucky and the Hippodrome use all current first and second-run product of the major companies during one season?

A. No, sir.

Mr. Rogers: I object to that as calling for a conclusion, on the ground that there are not sufficient facts on which this witness can predicate an answer to a hypothetical question of that kind.

Mr. Marcus: This witness has been in the business for 20 years.

The Court: What period are you speaking about?

Mr. Marcus: Speaking about the period of 1938-1939 and 1939-1940, taking each year separately.

The Court: Do you know the number of first-run pictures that were produced those years, approximately?

The Witness: Not exactly, pretty close to it.

The Court: Approximately each year.

The Witness: Those years it — more than 500 new pictures made.

[fol. 601] The Court: Each year, you mean?

The Witness: Yes, sir, each year.

Mr. Rogers: So far as Mr. Marcus' question is concerned, if that is a hypothetical question, I object to it on the ground the necessary elements have not been evolved in order to enable the witness to base an opinion on a hypothetical question, if this witness is testifying as an expert.

The Court: Well, the question is more of a mathematical tabulation, isn't it?

Mr. Rogers: Yes, and physical conditions, conditions of the town, population.

The Court: No, he was not speaking of the number.

Mr. Rogers: It depends on all those conditions. A poor theatre and a poor town may be compelled to use less, and couldn't possibly use as many as a good theatre in a good town, towns vary and conditions vary.

Mr. Marcus: Mr. Murphy has stated he is familiar with the Viv, Hippodrome and the Kentucky, and I have now asked him in respect to the Hippodrome and the Kentucky. He has stated he knows there were at least 500 pictures produced during each of those years. He has stated that he [fol. 602] has had long experience, not only in running a large number of theatres, but also in buying film products for those theatres.

The Court: It depends on whether they have matinees——

Mr. Rogers: And how many splits, whether they are playing double or single features. What they do on their week-ends. All those must be taken into consideration.

Mr. Marcus:

Q. Mr. Murphy, taking into consideration the elements that Mr. Rogers has just stated, in your opinion, could those two theatres have used all of the current first-run and second-run product?

A. No, sir, not the way they were running the pictures at that time.

Mr. Marcus: Your witness.

The Witness: Understand, I don't profess to be any professional theatre man.

Mr. Marcus: That is all.

The Witness: I have only been in the business——

The Court: We will suspend for ten minutes.

(Short recess.)

[fol. 603] Mr. Rogers: May it please the Court, I move to strike the testimony of this witness as to the ability of the Hippodrome and the Kentucky to absorb the product first run and second run in Corbin, on the ground that at the close of this witness's testimony he stated freely that he does not pretend to be any expert in moving picture theatres and that he just stated that for what it was worth. That being so I respectfully submit, may it please the Court, that the witness out of his own mouth proves his lack of qualification, and that the testimony should be stricken.

The Court: You did not object to that question.

Mr. Rogers: I did object to that question.

Mr. Marcus: No, your Honor, he did not.

Mr. Rogers: I did object to the question right along——

The Court: Not to his stating that.

Mr. Rogers: Yes, I raised my objection to the question as originally propounded and the question was not changed one bit. I claim if that is a question to qualify this witness it must be based on all the facts and all the circumstances involved. In spite of that your Honor permitted the ques- [fol. 604] tion to be put to the witness and the witness answered, and then the witness at the close of his answer stated, "I don't pretend to be any expert in this knowledge."

The Court: My recollection of it is that the last question put—I had it in mind specifically when the question was put—it was, "Could you use that number of pictures?" To that question no objection was raised.

Mr. Rogers: I took it for granted that my objection was broad enough to cover that, but in any event, the witness having testified that he was not competent, that he was not an expert, I can always make the objection to strike, because if I had adduced that from him on cross-examination I could move to strike. He having volunteered I could move to strike. The answer having revealed that the witness does not claim to be an expert and merely stating it for what he thinks it may be worth, that being the answer, it is subject to a motion to strike.

The Court: Proceed and we will see what the record discloses.

Cross-examination.

By Mr. Rogers:

Q. Prior to the time that you made your deal with Mr. [fol. 605] Owens to take the lease on the Viv Theatre you had come to Corbin to look the town over, hadn't you?

A. No, not in particular. I cam- to Barbourville and saw Mr. Owens about the time Mr. Scott leased the theatre. In fact,——

Q. When was that?

A. Well, that was some time before May of the same year.

Q. That was some considerable time before May of the same year, wasn't it?

A. It must have been.

Q. That was several months before that?

A. Yes.

Q. And you went to Barbourville to see Mr. Owens because you knew that some deal was being made with Mr. Scott, didn't you?

A. The man that was——

Q. No. Please tell me, isn't that why you went to Barbourville?

A. No.

Mr. Marcus: I object to the form of the question.

The Court: Overruled.

Q. At the time that you went to Barbourville to see Mr. Owens did you know that Mr. Scott had been making a deal with Mr. Owens for a theatre in Corbin?

A. No, sir. I would have to explain that, and——

Q. No. Just answer my question and we will get along [fol. 606] very much more expeditiously. When did you for the first time discover that Mr. Owens intended to build a theatre in Corbin?

A. Some time in 1939.

Q. Don't you remember when in 1939?

A. No, sir.

Q. When did you start your negotiations with Mr. Owens?

A. I didn't start any at all with Mr. Owens until after Mr. Owens told me that he had cancelled Mr. Scott's lease.

Q. And do you remember when that was?

A. Well, it was around May 19th, because my lease was made on May 19, 1939.

Q. I know your lease was made on May 19, 1939, as you testified.

A. I think it was the same day. I think I had been down that way, for some reason, and I didn't go to see Mr. Owens at that particular time. I happened to run into him on the street at Barbourville and he told me that Scott had sold his lease to the Schine Circuit and that he wouldn't let Schine have his house there and it was for lease.

Q. Was that on May 19th?

A. I think it was all May 19th. I think that is the day I made the deal with him.

Q. That was May 19th?

A. Yes, sir.

[fol. 607] The Court: The reporter is here now and we will look up the last question.

(The reporter read as follows:

"Mr. Marcus: Mr. Murphy, taking into consideration the elements Mr. Rogers has just stated, in your opinion could those two theatres have used all the current first run and second run products?

A. No, sir, not the way they were running the pictures at that time.

Mr. Marcus: Your witness.

The Witness: Understand, I don't profess to be any professional theatre man.

Mr. Marcus: That is all.

The Witness: I have only been in the business"——)

Mr. Rogers: Based on his statement "I do not profess to be a theatrical motion picture man" I based my motion to strike his testimony.

The Court: I will let it stand.

By Mr. Rogers:

Q. Then you mean that you met Mr. Owens on May 19th accidentally and on the same day made the deal and signed the lease with him on the same day?

A. Yes, sir, and gave him a check for a thousand dollars for advance rent.

[fol. 608] Q. And you mean you had never spoken to Mr. Owens prior to May 19th about possibly acquiring this theatre in Corbin, Kentucky?

A. No, sir, the only time I——

Q. "No, sir", do you mean to say no, sir; is that right?

A. I had spoken to him.

Q. When had you spoken to him prior to May 19th?

A. At the time that Mr. Scott made the lease. In other words, I went to Barbourville and stayed all night and Mr. Scott and me both stayed in Mr. Owens' hotel, and it was a question on the next morning whether Mr. Owens would talk to me or not. If Mr. Scott made the deal with him he didn't talk to me, so that he didn't talk to me, he just simply told me that Mr. Scott and him had made a deal.

Q. When was that?

A. That was in 1938. I don't know the time. Or, 1939, I believe. Or possibly it could have been in 1938.

Q. As a matter of fact, wasn't it in 1938?

A. Well, I don't know. That is what I say. It was either 1938 or 1939. I didn't keep no particular track of it.

Q. Do you remember when Scott made the deal with Owens?

A. I couldn't—— I know when but I don't know the date. I know that they claimed that they made it the day I came to Barbourville.

[fol. 609] Q. And you don't remember what date it was you came to Barbourville?

A. No.

Q. And you did know some time in 1938 at the time that Scott was making his deal with Owens that Owens was contemplating building a theatre in Corbin, didn't you?

A. Yes, sir.

Q. You had visited Corbin a number of times, hadn't you?

A. No, I never was in Corbin. Only through Corbin.

Q. When was the first time you had ever visited Corbin?

A. I believe the first time I ever stopped in Corbin was on the day that I leased the building.

Q. That is on September 19; is that what you mean?

The Court: May 19th.

Q. May 19th?

A. Well, perhaps May 20th.

Q. You mean that is the first time you had ever put your foot in Corbin?

A. I had been through there. I——

Q. One moment. Had you ever been in the town, stopped in the town of Corbin?

A. The way our trains comes out of where I live you get into Corbin, I would say, about 10 o'clock at night, and you stay there until 2 o'clock in order to get out to Cincinnati. Then you are drifting around. You are going [fol. 610] in the theatres and you are going in drink stands, and different things. And that is the only time I had ever stopped in Corbin.

Q. Coming into Corbin, or going through Corbin, as you say, coming in there at 10 o'clock at night and taking a train out at 2 o'clock at night, you had done that before you made the lease with Owens?

A. Yes, and I——

Q. Hold on a moment. One thing at a time. How many times had you gone through Corbin that way, getting off the train at 10 o'clock at night?

A. Oh, I don't know. The most of the time when I went to Cincinnati or out anywhere like that I would drive my car to Corbin and store it there and get on the train.

Q. Let me ask you: How many times did you drive your car to Corbin and stay in Corbin before the time you closed the lease with Owens?

A. I couldn't tell you how many times.

Q. You had done it several times, hadn't you?

A. Just a few times.

Q. When you were staying over, whether it was a train stayover or whether it was with your car there, you did go into the town and visit the moving picture theatres, didn't you?

A. Yes, sir.

[fol. 611] Q. And at that time when you went into the town and visited the moving picture theatres did you visit both the Hippodrome and the Kentucky?

A. No, sir, I don't think I ever was in the Kentucky until after I lease- the house. Then I was in the Kentucky.

Q. But you were in the Hippodrome before you leased the house, weren't you?

A. Yes, possibly a couple or three times.

Q. And at that time who was operating the Hippodrome?

A. I don't know. I didn't know anybody there then.

Q. That was before the time Schine started to operate the Hippodrome, wasn't it?

A. I don't know when Schine started to operate.

Q. Well, at that time the only two houses operating in the town were the Hippodrome and the Kentucky isn't that right?

A. That is right.

Q. And at that time those two houses were playing the first run product of all the major companies, weren't they?

A. I don't know about that.

Q. Well, do you know who was playing first run products in Corbin before you took over the operation of the Viv?

A. Do I know who was playing?

Q. Yes.

[fol. 612] A. Well, I had found out that the Schine Circuit had the two theatres in Corbin.

Q. And they were playing all the first run product; isn't that right?

A. Well, I don't know about that then. I know they claimed they were when I went to buy some of them.

Q. When you came into the town didn't you go over to look at the Hippodrome and look at the Kentucky to see what they were playing?

A. No, sir, that wasn't any of my business. I just simply went to the show to pass the time.

Q. Do you mean as a motion picture operator in the town of Corbin it wasn't your business to go out and discover was product was going to be played against your theatre?

A. No, sir, I didn't have any theatres close enough for that.

Q. You had the Viv Theatre in the same town, didn't you?

A. Yes, during the time of my operation there. Of course I watched that pretty close then.

Q. Let me ask you this: After the house was turned over to you by Mr. Owens—the Viv, I mean—it was your obligation to put all the equipment in, wasn't it?

A. Yes, sir.

Q. In equipment you put all the seats in?

A. Yes.

Q. And the sound equipment?

[fol. 613] A. Yes, sir.

Q. And the screen?

A. Yes, sir.

Q. And the box office equipment?

A. Yes, sir.

Q. And all the other necessary equipment in the theatre; isn't that right?

A. Yes, sir.

Q. When did you actually start putting the equipment into that theatre?

A. Well, my equipment was finished, ready to be shipped, I would say, along about the 1st of July, something like that, or possibly on the last of June, but I hadn't yet secured product——

Q. Never mind about that. I am asking you about your equipment now. When did you start putting that in?

A. I had the equipment——

Q. One moment. When did you actually start installing the equipment in the Viv Theatre?

A. Well, just before I was ready to open. As soon as I could see I got a picture to open with I had my equipment shipped in.

Q. You say you put it in just before you started to open; is that right?

A. Yes.

Q. Do you remember when you opened that theatre?

[fol. 614] A. Yes, sir.

Q. When?

A. Well, I think it was on August 7th.

Q. Are you sure you operated that theatre at all during the month of August? Are you?

1 A. Do you mean after I started?

Q. No, I mean are you sure you ever operated that theatre during the month of August, 1939?

A. Yes, sir, I started——

Q. You are sure of that, are you?

A. Yes, sir, I started on the 7th of August.

Q. You are sure of that, are you?

A. Yes, sir.

Q. And you are sure you operated all through the month of August after the 7th of August, 1939?

A. Yes, sir.

Q. And you are sure you operated all through the month of September, 1939?

A. Yes, sir.

Q. And I suppose you are equally sure that you operated all through the month of October, 1939; is that right?

A. Yes, October, yes, sir. I think I opened on the 7th of August and I operated straight through until April 1st.

Q. You are sure of that?

A. Yes, sir.

[fol. 615] Q. And you opened it in August of 1939 and operated it right through until April of 1940; is that right?

A. Yes.

Q. Well, now, do you recall having had give-aways distributed in the town of Corbin before you opened the Viv Theatre?

A. Well, I expect I did. My son was there and opened it.

Q. Let me show you this. Is that one of those give-aways that you distributed, or throw-aways (handing to witness)?

Mr. Marcus: There has been no testimony on direct in respect to give-aways. I think this is improper cross-examination.

The Court: Overruled.

Q. Will you please answer my question?

A. I think this is right. I think it was October 7th I opened instead of August.

Q. Well, now, let us see. Then you want to change your testimony now, do you, to the effect that you didn't open the theatre until October 8th of 1939, instead of August 7th of 1939, is that right?

A. October 7th instead of August 7th.

Q. But that is one of the throw-aways, isn't it, that you used at the time?

A. I expect it is. My son opened it.

Q. But you expect it is?

A. Yes, sir.

[fol. 616] Mr. Rogers: I offer it in evidence.

The Court: Is it material except as to the date?

Mr. Rogers: That is all.

The Court: He has already stated it was October 7th. I don't think we should encumber the record with a lot of unnecessary things.

Mr. Rogers: I think it is proper to show the picture. He said he opened the show with "Cover Girl".

The Witness: I said I thought I opened with "Cover Girl", but I remember the picture since I see this here, that it was Jean Parker in "Romance of the Limberlost."

Q. Do you remember whose picture that was?

A. That was Big Feature Rights. That was a little company.

Q. You said your price scale in the Viv, from the time you opened it until the time you made your deal to get rid of it, was at all times 15 cents for adults and ten cents for children; is that right?

A. With the exception of added attractions like vaudeville, and so forth. Then we charged a quarter.

Q. How often would you put on these added attractions?

A. I don't know just how often. Every time we could get one, but I don't know how often that was.

Q. Would that be week ends?

A. Well, sometimes. Sometimes it wouldn't.

[fol. 617] Q. Did you ever charge less than ten cents right through the house?

A. Nobody except children.

Q. Do you remember seeing this announcement which was inserted in the Corbin Times in the issue of October 8, 1939 (showing to witness)?

A. We have had one—

Q. You remember that being put in the paper, don't you?

A. No, sir, I don't know anything about this.

Q. Never saw it?

A. No, sir.

Q. Who arranged about the notices and the publicity?

A. My son. That is Mr. Owens there.

Q. Now, do you remember discussing with Mr. Owens inaugurating a policy in that theatre of letting everybody in at least once a week for ten cents?

A. No, sir; that has always been my policy, the whole 31 or 32 years I have been in the business I have always at any time, even during the last War when they had—when people didn't know what to do with so much money, I had one day, bargain day, at ten cents, and I have always continued to do that every place I have been.

Q. You have had a bargain day?

A. Yes, sir, I do yet, and I expect to as long as I am in business.

[fol. 618] Q. You put a bargain day into the theatre at ten cents?

A. Yes, ten cents.

Q. This was an accurate statement, was it, then, in this notice?

A. It might have been. I don't know what particular day that was on, but I believe that Tuesday was our bargain day in Corbin.

Q. That was a steady policy?

A. Yes; or perhaps Wednesday. Yes, it is a steady policy, yes, sir, wherever I am.

Q. I am talking about Corbin. During the period you operated at Corbin you had a bargain day, when you let everybody in for ten cents, whether they were adults or children?

A. Yes, sir.

Q. Didn't you also have a policy of letting children in at five cents?

A. There was a time or two that this boy might. I never had a policy of that kind myself, but there was a time that this boy would let the children in when he would be starting a serial, or something like that, he would let them in at five cents but right back at it Schine's would let the children in at five cents and give them a cone of cream with it.

Q. Will you please stop talking when I ask you to?

[fol. 619] A. Yes, sir.

Q. All right, I will thank you if you do.

Mr. Rogers: I move to strike this witness's testimony as to what Schine did.

The Court: Strike it out.

Q. I am asking you what you did. You did have a policy of allowing children in for five cents, didn't you?

A. There was once or twice, or perhaps two or three times, when he started a serial he told me he let them in that way in order to get them started.

Q. You did do it, didn't you?

A. He tells me he did. I didn't happen to be there any day——

Q. Don't you know?

A. You don't take hearsays; you have to have facts.

Q. I am glad to have you say that, so that we will forget what your son told you. What I want to know is this: Just how much time did you give to this Viv Theatre, I mean you personally, from the time you opened it on October 8, 1939, until the time you disposed of it in April or May of 1940?

A. Well, I usually give about one day a week.

Q. Do you remember which day that was?

A. No, sir, just any time I had a chance when I could spare the time at home.

Q. If during certain weeks you couldn't spare that time [fol. 620] you didn't come on?

A. Yes, there were lots of weeks I didn't.

Q. Do you remember about how many weeks you didn't come on?

A. No, sir.

Q. In other words, you left the running of this theatre to your son, didn't you?

A. Yes. To tell the truth——

Q. No. Tell me: Did you leave it to your son or didn't you?

A. I paid my son a salary, with a guaranty of a salary and gave him all the money if he could make any money out of the deal, give him all he could make and pay him a salary.

Q. In other words, you paid him a salary out of the receipts of the theatre and in addition to that whatever he made?

A. He never made receipts there.

Q. Just what do you mean?

A. I mean by that he never made expenses. He never did pay his own salary in Corbin.

Q. In other words, you mean that during the time you had that theatre you never even made the expenses of the theatre?

A. No, sir.

Q. He never made enough to pay his salary?

A. There were some weeks he made enough to pay his salary. He took his salary weekly, if he had money enough [fol. 621] to do it, when the end of the week came. If he didn't I paid it myself.

Q. What I want to know is: During the course of your operation of that theatre at Corbin, over that period, did that theatre make its expenses or didn't that theatre make its expenses?

A. It didn't make its expenses. In fact, I paid $260 a month installment on my equipment and I paid every dollar of that out of my own pocket. There were some weeks it made this boy enough money to pay him his salary and other weeks it didn't.

Q. On the whole, it didn't make enough to pay his salary every week?

A. No, sir.

Q. So that you lost money during the period you were operating?

A. Yes, sir.

Q. And didn't make expenses?

A. No, sir.

Q. There is no question about that, is there?

A. No, there is no question about that.

Q. In addition to having certain dates when you charged only ten cents admission and the days when you charged only five cents admission that you testified to, were there periods at any time during the operation of that theatre when you charged less than fifteen cents and ten cents [fol. 622] to people who came to see the show?

A. Less than fifteen and ten?

Q. Yes.

A. I don't think so.

Q. Well, did you ever have a policy in that theatre known as the two-for-one policy?

A. I think that is the way we handled the children on that five-cent day.

Q. You mean that was for children only?

A. I think that is where the five cents came in for the children. I don't think we ever charged five cents for one admission. I think there was two-for-one there.

Q. Well, did you ever have a two-for-one policy with reference to adults at that theatre?

A. I don't know about that. The boy might have had.

Q. You don't remember that, do you?

A. No, sir. I know I have had them in other towns that way, but I don't know about Corbin.

Q. Don't you know, as a matter of fact, you did the very same thing in Corbin?

A. It might have been.

Q. You don't remember, do you?

A. No, sir.

Q. In order that there may be no mistake about what we mean on a two-for-one ticket, that means that you admit [fol. 623] two people for one price of admission; isn't that right?

A. That is right.

Q. Now I show you this ticket called "Special guest ticket". Will you please read that ticket (handing to witness)?

A. I guess that is right. I say I don't know. He might have done it.

Q. You think, then, that it is right, that you did have that two-for-one policy at that Viv Theatre?

A. It looks like at least once there. I don't know that it was a policy.

Q. You don't know how much more often than once it was put in as a policy?

A. I don't know. It might have been put in every week. I don't know. That might have been the only time.

Q. But you don't know?

A. No, sir.

Q. When you picked and fixed the price of 15 cents for adults and ten cents for children you voluntarily fixed that price, did you?

A. Yes, I figured that was all I could get, for the type of pictures I had to run and second runs, and then I figured that was pretty high compared with 25 cents for first run double features at the other place.

Q. In other words, nobody forced you to put those prices in of 10 and 15 cents, did they?

[fol. 624] A. No, sir.

Q. That was your voluntary act?

A. Yes. I already had the house under contract and I had to take care of my lease contract and I couldn't let it stand there and I had to get something in.

Mr. Rogers: I should like to have this so-called throw-away marked for identification.

(Thereupon the throw-away referred to was marked as Defendants' Exhibit D-20 for identification.)

Mr. Rogers: Now I also wish to have marked for identification this special guest ticket on the two-for-one.

(Thereupon the special guest ticket referred to was marked as Defendants' Exhibit D-21 for identification.)

Q. Do you remember testifying in an action in the United States District Court for the Western District of Virginia in a suit entitled "Byers Theatres, Inc., against M. K. Murphy and others"?

A. Yes, sir.

Q. As Defendants?

A. Yes, sir.

Q. You remember you are the M. K. Murphy who was a defendant in that suit?

A. I am the M. K. Murphy, yes, sir.

[fol. 625] Q. And that suit related to a claim made against you that you bought up all the product in Appallachia against Byers; is that right?

A. Byers wasn't even in Appallachia.

Mr. Marcus: Just what has Appallachia got to do with Corbin?

Mr. Rogers: You will find out that Appallachia has a great deal to do with Corbin when I read this testimony.

The Court: I do not see its purpose unless it is for the purpose of contradiction.

Mr. Rogers: It is.

The Court: Let us get down to what the testimony is.

Q. Do you remember this question being propounded to you when you gave your testimony in that case, and you giving this answer: "Q. Did you operate that theatre at Corbin profitably? A. Yes, sir, we made a little money there. Q. You say 'we.' Who was 'we'? A. "——

Mr. Wright: If the Court please, he was not asked on direct examination about his profits at all. It is not proper for Counsel to take him into a collateral subject which has not been covered on direct and then try and impeach him. He was his own witness for the purpose of this cross examination about profits. We had asked him nothing about [fol. 626] profits. Having done that and gone into that field, and having brought out that testimony, he can't impeach him on that. That is highly improper.

Mr. Rogers: Under cross examination I am allowed the privilege even of impeachment under the rule.

The Court: What do you claim the materiality is of this testimony with reference to his operating the company at a loss? What materiality has that in this case?

Mr. Rogers: I think this witness wanted to impress upon this Court the fact that by reason of the opposition he met, and being unable to get product, that he was operating that theatre at a loss and couldn't even make expenses, and if that be so, in order to afford relief there must be not only damage but there must be injury to the person claiming here, and he is the complainant here.

Mr. Wright: He is not the complainant at all. The United States is the complainant.

Mr. Rogers: So far as this particular situation this man is the complainant. Now he tells us in one breath that he was not making any money and he couldn't even pay his [fol. 627] son's salary, but at another time under oath before the Federal Court, where he was a defendant also in a Sherman Anti-Trust lawsuit, he testifies there he made a nice profit in the Corbin theatre. If he made a nice profit he must have had plenty of product and enough product on which to operate and still make a profit. If that be so it seems to me that goes to the credibility of the witness and also goes to the right of the plaintiff, the Government, to ask for relief in a situation of this kind.

The Court: On the question of whether he had first or second run pictures it might be competent. He claims he couldn't get first and second run pictures.

Mr. Rogers: Your Honor, whether this man could get first or second run pictures is beside the question. The question is whether this man got a sufficiency of product to run his theatre and run his theatre properly. He has clearly indicated before he ever opened his theatre in the town the first run product was bought by people who operated the theatres in the town and that they were the prior customers.

[fol. 628] The Court: That would not go to the question of the profit.

Mr. Rogers: It breaks down one phase, that if the product was run first run to these prior operators before he came into the town, without giving some good substantial reason——

Mr. Wright: What has that got to do with the testimony?

Mr. Rogers: Just wait a moment. I happen to be addressing my remarks to the Court and not to you.

The Court: Proceed.

Mr. Rogers: Having established that the product was sold first run to predecessors who were in the town before this theatre was ever built, before the Viv was built, the onus is cast on the plaintiff to show that he could not get his product——

The Court: He made this contract in May. Now ordinarily they make their contract for pictures during the spring.

Mr. Rogers: If he had a theatre; but he had no theatre.

The Court: If a man contracted to take so many pictures he would be obligated to take them, would he not?

Mr. Rogers: He could not play them. He could not take them if he didn't play them. He had no theatre.

The Court: My point is this, that at these times when he went to the Fox and the different companies there, the [fol. 629] first runs were already let in that period expiring the first of August or September, 1939. They were released for that year. He mentioned 1940——

Mr. Rogers: There we have a hiatus in the proof. I contend I do have the right to show that this man—in the first place, I have the right to test the credibility of this witness, and based on this test of credibility your Honor may give as much or as little weight to the testimony of this witness as you choose. If I can show that this witness under oath has contradicted himself deliberately——

The Court: It might be material in so far as the proper examination is concerned.

Mr. Rogers: I think it is very material on the question as to whether or not he was operating this theatre successfully and profitably or, as he claimed before, that he was losing money on this theatre. After all, as equity is to be applied to this case, it may be applied on that theory, on one theory, but if a man was being driven out of business by ruinous competition that caused him to lose money en- [fol. 630] tirely different principles apply than where he is making money.

The Court: Is your answer to that that if he got first and second runs he would make more money?

Mr. Rogers: If he could pay the price. We have not any evidence here as to what price he offered these people. There is no evidence here as to what price the competitors paid and what price he was willing to pay.

Mr. Marcus: There is evidence here in each case he was told he couldn't get the product because Schine had it.

Mr. Rogers: Regardless of that, there must have been some offer made, and if he does not show he was able to pay the price in his theatre that Schine paid—had the ability to pay first run price, after all, it is not a question of a man walking in and saying, "I want first run product." It is the same if I walked into an automobile agency that sold the Ford and Chevrolet and Lincoln cars, and I say, "I want that Lincoln car"——

The Court: That applies to anybody and everybody, the price offered.

Mr. Rogers: Yes. After all, you take your big theatres [fol. 631] in the big cities and they pay as high as $25,000 and $30,000 and $40,000 to play a picture first run.

The Court: There must be some equality of price in some way. I do not mean it would be just the same as——

Mr. Rogers: No, it would not be just the same, but it is rated depending upon the ability of the town to pay the price and the admission price that you can charge in that town for the product.

The Court: He testified he was told he couldn't get the product. We don't know whether he was able to pay or not. I think it should be presumed he was, under those circumstances.

Mr. Rogers: I do not think there is any presumption whatever on the question of what he could afford to pay.

The Court: There is not any presumption the other way.

Mr. Rogers: The proof is affirmatively on him to show that he was in the position to pay those prices.

The Court: I do not think the question of his profit or non-profit is material.

Mr. Rogers: May it please the Court, when the questions were propounded to this witness, when he testified that he [fol. 632] was losing money, no objection was made to the question I propounded to him. Now, there having been no objection raised then and the plaintiff being willing to sort of rub his hands in glee over the fact the witness had testified he had a losing proposition, they cannot very well turn around now and say, now that the tables are turned on us we are not going to let the witness tell the truth.

Mr. Wright: This is a question of technique, and that is why I want to get it at length. Counsel has been allowed to roam all around on his cross examination and go into matters that appealed to him, and as far as we are concerned we were willing to have him do it, but when he does it he takes a certain hazard or risk, and that is if he gets an answer that he does not like he then is bound by those answers and he does not have the opportunity to impeach on those issues that he chooses to create himself on his cross examination.

Mr. Rogers: Not when I have an adverse witness.

Mr. Wright: All he may impeach on is the subject matter of the direct examination, and that is the matter that the [fol. 633] witness was offered to prove, otherwise we would simply be here an interminable length of time. If he wants to lead this witness off into channels he wants to explore then on getting the witness's answer he cannot impeach on the answer that he has created.

Mr. Rogers: I think it is a very simple matter. I mean the Government cannot rub its hands with glee because a detrimental answer is made and not object to the line of interrogation. If he wants to cut short my interrogation he can always object. Not having done so, when he gets an answer he really thinks he shouldn't get, and when it shows that answer is untrue he cannot get up and say, "I want to object." He cannot say, "I have an untrue answer and I want the benefit of an untrue answer."

Mr. Wright: There is not any showing that it was an untrue answer. If we are going to litigate that question of whether that theatre showed a profit, that is a question in itself. It would take a number of witnesses and several days' time. I presume we will not litigate that question merely because Counsel chooses to go into it on cross examination. It does not change the issues that are made by the pleadings and it does not change the issues that are made by our offer of the witness's testimony on direct examination.

[fol. 634] Mr. Rogers: Well, as a matter of fact, we might say that Mr. Wright is always worrying about what is going to happen in the future with future witnesses. Let's worry about this witness, what his testimony is, and my right to cross-examine—there is no question about that—and they didn't raise the question that I had no right to raise that on cross.

Mr. Wright: We are going to have some testimony, apparently, from some other lawsuit. Are we going to try out the issues raised in the other lawsuit?

Mr. Rogers: This man is still talking about Corbin in this lawsuit.

The Court: The question in my mind is simply this, whether the question of profit or non-profit is material here, as bearing on the claim of exclusion from showing pictures. That is all.

Mr. Rogers: Except one of the issues they raise in their bill of particulars that this witness was forced out of business by Schine's competition. Now, it must necessarily be assuming from that.

[fol. 635] The Court: Objection overruled.

Mr. Rogers:

Q. The question was, "Did you operate that theatre at Corbin profitably?" "A. Yes, sir, we made a little money there."

Do you remember that question being propounded to you and you making that answer?

A. When was that?

Q. How many times did you testify in that suit, do you remember?

A. Well, I don't think,—I think a couple of times.

Q. Let's see if I can't help you on that. According to this you appeared at the office of N. M. Heuser, First National Bank Building, Norton, Virginia, on July 11th, 12th and 13th of 1940. Do you remember that?

A. Yes, sir.

Q. Do you?

A. 11th and 12th of what?

Q. The 11th, 12th and 13th of July, 1940. Do you remember that?

A. Yes, sir. That was just a few days after I had opened the Corbin, wasn't it?

Q. After you had opened what?

A. After I had opened the Corbin.

Q. No, Mr. Murphy, you claim you didn't—you corrected [fol. 636] your testimony. You said you didn't open the Corbin until October, 1939.

A. This here was before I ever opened the Corbin, wasn't it?

Q. It was after you disposed of your theatre to Schines.

A. Was it?

Q. Get your mind straight.

The Court: You said you opened this theatre in October, 1939. It is asserted here this testimony was taken in July, 1940, that is, the following year.

By Mr. Rogers:

Q. You remember that, don't you?

A. Yes.

Q. Do you remember giving that testimony in the month of July, 1940?

A. I don't know. That never did come to trial.

The Court: Do you remember giving that testimony? The trial is not material.

The Witness: I remember being there.

By Mr. Rogers:

Q. Do you remember giving that testimony?

A. No, I don't. I don't remember.

Q. Do you remember that testimony at all?

A. I guess I did, if it is in there.

Q. The next question was: "You say 'We', who was 'We'?"

[fol. 637] A. That was my son and me.

Q. Let me read this to you. I am reading this out of this book, and I want you to follow me, please. "It says 'We,' who was 'we'?" And you said "I really didn't make any money out of it. I equipped the theatre and really just did it for that boy and let him have what he made out of it, my son." Do you remember saying that?

A. Yes.

Q. Remember this next question: "Is that C. L. Murphy?" And you answer was "Yes, sir." Remember that?

A. Yes.

Q. Let us take the next question.

Mr. Wright: May I interrupt just a minute? As far as the allegations in the complaint are concerned, on the check I have made, the statement is Mr. Murphy is among those who were driven out of business by not being permitted to have sufficient product. There is no allegation in the complaint with respect to his profits at all.

The Court: I think the latter part of the testimony developed by his statement in reference to its being profitable, he testified, that he just read, that he didn't make any.

[fol. 638] Mr. Rogers: Now, he didn't make it. He turned it over to his son and let his son make it.

Mr. Wright: I say on the basis of the pleadings, it is wholly immaterial.

Mr. Rogers:

Q. Do you remember this question: "Do you know how much he made out of it during the course of his operations?" And you said "He made more than a salary. I don't know how much he made, but it was operated as a reasonable profit"? Do you remember that?

A. No, sir.

Q. Do you?

A. No, sir.

Q. You say you don't remember that?

A. No, sir.

Q. All right. Do you remember this: "Why was it that you gave it up?" And your answer says "It was on a trade. A fellow comes along and wants a trade, and if it suits me, I will trade." The next question "You did trade it off to somebody?" Answer "I sold it." "Q. To whom? A. To the Schine Circuit." Do you remember that?

A. I guess I do. I know I sold it at a loss, and quite a [fol. 639] loss.

Q. Never mind that. Do you remember the testimony I read to you?

A. I don't remember very much about that testimony.

Q. Would you say that that was not so?

A. No, sir, I wouldn't say it was not so.

Q. Would you rather say those questions were put to you, and you did make those answers?

A. That must have been, or they wouldn't be in there.

Q. Right you are.

A. But I do know at a time——

Q. One moment, please. Please, Mr. Murphy, answer my questions. We will get along much more quickly, and you will be able to get home. Do you remember in the course of that hearing being questioned as to whether or not you could operate a theatre in a town comparable to Corbin without the major product and you taking the position you could and do it properly and profitably?

A. Yes. I still say if you have second-runs in Corbin you can make money. If somebody is not permitted to buy it up and leave it on the shelf to keep you from getting it.

Q. You also took the position you did not need the product of the major companies in order to run a house like Corbin.

[fol. 640] The Court: Which run are you referring to, first or second-run?

Mr. Rogers: Any run.

The Court: He told about the second-run.

Mr. Rogers:

Q. I am ~~saying~~, didn't you take the position you could run a house like Corbin without any of the major product and still do it profitably?

A. You don't have to have the major product to make money in Corbin.

Q. And you took that position when you testified about Corbin in that Appallachia suit?

A. Yes.

Mr. Rogers: That is all. That is all I want to know.

The Witness: If you have the first-run of the little companies.

Q. Now, you testified that after you got rid of the Viv Theatre to Schine that you visited the Hippodrome Theatre on only one occasion?

A. The Viv Theatre on one occasion.

Q. Didn't you also testify that after you got rid of the Viv you went to the Hippodrome?

A. No, I said I went by the Hippodrome. I said I visited, I saw a picture in the Viv, and I didn't go to the Hippodrome.

[fol. 641] Q. Do you remember when that was?

A. No. It was some time after April, 1940, though.

Q. In other words, you know you sold it on April, 1940?

A. Yes, sir.

Q. And you say it was some time after April?

A. And it was a few months later, I don't know just when.

Q. On the same day did you visit the Viv Theatre?

A. That is where I went.

Q. The same day?

A. I didn't go to the Hippodrome, but I did go to the Viv.

Q. That was on the same day, I mean? I mean the day you went to the Viv was the same day you looked at the box office of the Hippodrome, but did not go into the Hippodrome?

A. No, I didn't go into the Hippodrome.

Q. But both of those things happened on the same day, didn't they?

A. I am not sure whether they did or not.

Q. Don't you recall now when it was you saw this price of 30 cents at the Hippodrome?

A. No, but it was some time after I sold the Viv.

Q. You don't remember how long afterwards?

A. No.

Q. What were you doing in Corbin that day that caused you to go and see the Hippodrome Theatre?

[fol. 642] Mr. Marcus: Your Honor, what has that to do——

The Witness: Well, in the first place, I came to Corbin to see a horse, a stallion that they had up there that I was figuring breeding some mares to, to tell you the truth, and I came down to Corbin on the same trip.

Q. So you came down to Corbin on the same trip and you went over to the Hippodrome and saw a list of prices of admissions?

A. At the time.

Q. Please answer my question, Mr. Murphy.

A. I don't know as that is the particular time. It might be the particular time I came down to see the horse. I came down to the theatre, and it might have been the time I was by the Hippodrome.

Q. You don't know whether both occurred on the same day, or whether one occurred after the other, do you?

A. No, I don't know. I was in Corbin on several different occasions, three or four different times later.

Q. And where did you see these prices of admission at the Hippodrome Theatre?

A. I think that was on a price sheet in the window and hanging in the window.

Q. Which window?

A. The ticket window.

[fol. 643] Q. You say you noticed the price of admission was 30 cents at the Hippodrome?

A. I think it was. I know 30 cents is what I paid at the Viv at the time.

Q. Never mind about the Viv. Let's stick to the Hippodrome. You say you saw 30 cents in the box office window of the Hippodrome, at that time, is that right?

A. I think so.

Q. What was that for, adults?

A. Yes, for adults.

Q. Any price for the children?

A. Well, I don't remember about that. I had no particular reason for looking. I just happened to remember that I saw it.

Q. You didn't have any particular reason for looking to see what prices for adults was, either, did you?

A. No, sir, I did not.

Q. You did not?

A. No, sir. A fellow who operates a theatre going on by——

Q. Never mind, Mr. Murphy, just answer my questions. So far as the Hippodrome Theatre in Corbin was concerned, that was a well-built, expensively built theatre?

A. It had been a right good house. Not too expensive, but it was a good house, it was a substantial house.

[fol. 644] Q. You know something about buildings?

A. Yes, I do.

Q. Would you say the cost of a building and equipping the theatre would run close to $100,000?

A. No, sir, wouldn't cost that.

Q. What would you say it would cost?

A. Well, you couldn't build it now, but I would say that before the Government put these building restrictions on, it would cost about $60,000 to build it now.

Q. Building and equipment?

A. Wouldn't take very little to equip it, like it is equipped now.

Q. If it was equipped, I am saying. You say you could build that for less than $75,000 and equipped it?

A. If it is equipped like it is now or like it was the last time I was in it you can build it for less than that.

Q. Less than $75,000?

A. Yes.

Q. You say it would cost about $60,000?

A. I would say $60,000.

Q. You wouldn't say it would cost about $75,000?

The Court: That doesn't make much difference, does it? Don't spend time on that.

Q. How much did it cost to build the Viv, or, rather, to do the alteration job?

[fol. 645] A. Mr. Owens told me it cost about $20,000, and I spent $300.00 on it myself on little odds and ends I wanted changed.

Q. From your experience would you say it cost about $20,000 to build?

A. Well, no, I wouldn't let a job like that cost me $20,000.

Q. In other words, you could have built it for less?

A. I could have done the remodeling for less.

Q. And that was just a remodeling job?

A. Yes, sir, remodeling job.

Mr. Rogers: That is all, Mr. Murphy.

Redirect examination.

By Mr. Marcus:

Q. Mr. Murphy, during the time you operated the Viv in Corbin, what was the policy of the Schines in their theatres in respect to prices for children?

Mr. Rogers: I think this witness said he never visited the theatres, never was there.

Mr. Marcus: You asked him as to the period after he had disposed of his theatres.

Mr. Rogers: No, I asked him during the period when he operated the theatres, he said he came there very seldom, his son ran it.

The Court: I will let him state, if he knows about the [fol. 646] price.

The Witness: We visited the Hippodrome and the State very frequently.

Q. The Hippodrome and the what?

A. I mean the Kentucky. They were very friendly towards us and we were towards them, at least, the two boys who operated it, and I kind of made myself to home around there, and they done the same thing to me, and I never paid any admission, and I just don't know what they charged children. I know that the balcony was 15 cents and their main floor 25, and I believe their straight admission——

The Court: Is that the Hippodrome you mean?

The Witness: The Hippodrome, and I think their straight admission in the Kentucky was ten cents, I am not sure, I think that they cut it down to a straight ten cents to adults and children. I am not right sure about that.

Q. Do you know, Mr. Murphy, as to whether or not the Schines had a policy of give-aways, in respect to the period during the time you operated the Corbin?

Mr. Rogers: Is this based on this witness' knowledge?

Mr. Marcus: Yes, I am asking him does he know.

The Witness: Well, I have been there when they had what they call give-away nights or bank nights, whatever they [fol. 647] call it, give-away so much money, you know, to people. That is the only thing. We had the same thing there. We had different things.

Mr. Marcus:

Q. Mr. Murphy, Mr. Rogers asked a question in respect to the kind of product necessary to make money in Corbin. Is it your position that it is necessary to have second-run product of the major distributors in Corbin in order to make a profit?

A. Yes.

Mr. Rogers: I object to that as being incompetent and calling for the conclusion, and it is immaterial what this witness' position is. The question is what is the fact.

Mr. Marcus: That is just the type of question you asked.

Mr. Rogers: That is just unfortunate, then you should have objected.

The Court: State what the fact is.

Q. State the fact.

A. Shall I answer that?

Mr. Rogers: May I have the answer stricken?

The Court: Strike it out.

Q. Is it a fact, Mr. Murphy, that it is necessary to have second-run product of the major distributors in order to [fol. 648] make a profit in the theatre in Corbin?

Mr. Rogers: I object to that on the ground this witness has not been qualified, and on the ground this witness has voluntarily stated he is not a professional theatre man, nor is he an expert.

The Court: I don't know if he would have to be a professional theatre man. The question is whether he is experienced in the operation of theatres to testify.

Mr. Rogers: We haven't had this witness qualified yet as an operator of a theatre.

The Court: I don't know if it would be expected of him. Are you able to—is the question whether he was or is able to state that it is necessary at least to have second-run pictures to make a profit? Is that your question?

Mr. Marcus: In Corbin, yes.

Mr. Rogers: He hasn't been qualified. Surely he isn't qualified in Corbin, because he had his son operate it.

The Court: The question of profit and non-profit. I will let him answer, anyway.

The Witness: Yes, I think you can make money with sec- [fol. 649] ond-run in Corbin with the major companies.

Mr. Rogers: I move to strike it.

The Court: It is just the opposite to the question.

By Mr. Marcus:

Q. Is it necessary to have second-run?

A. Oh, yes.

The Court: You mean second-run of the best pictures?

The Witness: Major companies second-run of the best pictures or first-run of the little companies. You can take first-run of the little companies and get along all right.

The Court: The independents?

The Witness: The independents, or you could take first-run.

Mr. Rogers: Pardon me, Mr. Murphy, please. Don't continue talking unless his Honor directs a question to you.

Mr. Marcus: Will you mark this for identification?

(Thereupon a paper, referred to, was marked as Plaintiff's Exhibit P-23 for identification.)

Mr. Rogers: No objection, may it please the Court.

The Court: They will be received, then.

Mr. Marcus: And I also ask to have this marked for identification.

[fol. 650] (Thereupon the paper referred to was marked as Plaintiff's Exhibit P-24 for identification.)

Mr. Marcus: I offer them in evidence.

(The papers purporting to be contracts, previously marked as Plaintiff's Exhibits P-23 and P-24 for identification were received in evidence.)

The Court: What do they purpose to be?

Mr. Marcus: They purport to be contracts in respect to second-run product for Corbin for the years 1938-1939 and 1939-1940, and we would like your Honor to pay particular attention to the film prices in those contracts.

The Court: What do they purport to be, for what run?

Mr. Marcus: Second run.

Mr. Rogers: May we note upon the record that in the '38-'39 season contract it calls for——

The Court: The contract shows for itself.

Mr. Rogers: I thought for quick reference to your Honor, we might show the number.

Mr. Marcus: I should like to read into the record the answer of Schine to Plaintiff's interrogatory No. 17-A, and this is on page 16: "Town. Corbin, Kentucky. Name of [fol. 651] Theatre. Kentucky. Nature of interest? Lessee. Extent of interest. 100 per cent. Acquired, November, 1938. Seating capacity. 394."

I also would like to read into evidence the answer of Schine to interrogatory No. 18.

Seating capacity of the Kentucky. 394. Closed periods, if any. Part time until 4-4-41, closed 5th.

Mr. McKay: As of the date of this interrogatory.

Mr. Marcus: That is right, your Honor.

Mr. Rogers: What is the date of the interrogatory?

The Court: 1941, is that the date of the interrogatory, is that the date it was taken?

Mr. Rogers: I want to get the date of the interrogatory.

Mr. McKay: Part time until April 4th, 1941, and it was closed from that date until the date when this answer was filed. We want to get the date of the filing of the answer.

Mr. Marcus: October 6th, 1941.

Mr. McKay: The only period it shows it was closed was from April to October in 1941.

The Court: It says closed as of the date of the taking of that interrogatory.

Mr. McKay: That is right.

[fol. 652] The Court: It does not appear what happened to it afterwards.

Mr. McKay: No.

Mr. Marcus: "Town. Corbin, Name of theatre. Hippodrome. Nature of interest. Lessee. Extent of interest. 100 per cent. Date acquired. November, 1938. Seating capacity. 824."

The Court: Is that the Hippodrome was acquired December, [illegible]8?

Mr. Marcus: November of 1938.

Mr. McKay: They were both acquired at the same time as part of the same deal.

Mr. Rogers: The Hippodrome and Kentucky were both acquired at the same time.

Mr. McKay: May we also read in the answer to the period closed, if any, it is blank.

The Court: That is the Hippodrome?

Mr. McKay: The Hippodrome.

Mr. Marcus: That is all.

Mr. Rogers: I would like to offer in evidence the three contracts that Mr. Marcus did not offer in evidence, that is, contract for the Viv Theatre, Corbin, Kentucky, dated [fol. 653] 9-1-39 with M. K. Murphy for Frank Capra releases for 1938-39 season, second run.

Mr. Marcus: Just a minute, Mr. Rogers. Why don't you read as to what picture?

Mr. Rogers: I will be happy to. Thank you for reminding me. It was a very good picture "You Can't Take it With You." A very good picture.

The Court: What do you mean by that, "You Can't Take it With You"?

Mr. Rogers: That was the name of the picture, and it was made from a great Broadway success play. It was a tremendous hit on Broadway as a play, and Frank Capra, the famous director, made a picture of it for Columbia Pictures.

I should like to have that marked in evidence.

(Thereupon the contract referred to was received in evidence and marked as Defendants' Exhibit D-22.)

The Court: Do the contracts state the date, how long after the first-run?

Mr. Rogers: Let me see what clearance there is on this. There does not seem to be a clearance on this.

Mr. Marcus: Your Honor will notice that is for 1938-39 picture. It so states in the contract.

[fol. 654] Mr. Rogers: There is nothing about clearance on this, your Honor. It merely says "second run."

I also wish to offer in evidence application bearing date September 1, 1939, approved September 8, 1939, for the picture, "Cavalcade" for the Viv Theatre made with Mr. M. K. Murphy.

The Court: With what Company?

Mr. Rogers: Also Columbia Pictures, sir. That was the Martin Johnson picture in which his wife Osa Johnson collaborated, and the title of that picture as "I Married Adventure."

(Thereupon the contract referred to was received in evidence and marked as Defendants' Exhibit D-23.)

The Court: I suppose the Company will have all of the contracts?

Mr. Rogers: Yes, but I thought inasmuch as we have these here we might as well offer them.

I also wish to offer in evidence application contract, date September 1, 1939, and approved September 8th, 1939, with M. K. Murphy for the Viv Theatre in Corbin, Kentucky, second-run, for Frank Capra's picture, "Mr. Smith Goes to Washington."

[fols. 655-656] (Thereupon the contract referred to was received in evidence and marked as Defendants' Exhibit D-24.)

Mr. Marcus: That is all, Mr. Murphy.

Mr. Rogers: That is all, Mr. Murphy.

I would like to now formally move to strike from the testimony various conversations which this witness claims to have had with persons unknown, persons unidentified, and with reference to conversations generally upon which no foundation has been laid for admission or authority, and also on the ground that his testimony deals with purely local transactions.

The Court: I have already taken action on these questions, anyway. Denied.

We will adjourn now until tomorrow morning at 10 o'clock.

(Whereupon, at 5:25 o'clock P. M., an adjournment was taken until Tuesday, June 6th, 1944, at 10 o'clock.)

[fol. 657] UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF NEW YORK

Civil Action No. 224

UNITED STATES OF AMERICA,

vs.

SCHINE CHAIN THEATRES, INC., et al.

Trial continued before the Honorable John Knight, United States District Judge, without a Jury, United States Court House, Buffalo, New York, Tuesday, June 6, 1944, at 10 o'clock A. M.

APPEARANCES:

Robert L. Wright, Esq., John F. Clagett, Esq., Harold L. Schilz, Esq., Albert Boggess, Esq., Special Assistants to the Attorney General; Philip Marcus, Esq., and Milton Kallis, Esq., Special Assistants to the Attorney General, in behalf of the United States of America.

Edmund McCarthy, Esq., Attorney of Record; Willard S. McKay, Esq., Saul E. Rogers, Esq., Arthur J. Homans, Esq., Howard M. Antevil, Esq., and Seth Richardson, Esq., of Counsel for Defendants.

[fol. 658] PROCEEDINGS

Mr. Marcus: Have you been able to produce that agreement between Mr. Scott and the Schines?

Mr. Rogers: May it please the Court, in answer to that request I have a request to make, in view of the importance of the claims made. As your Honor will recall, they introduced in evidence yesterday what purported to be an agreement between Mr. Scott and the Schine Lexington Corporation and they claimed that possibly one or two—first he said one sheet was missing or possibly two sheets were missing. Theirs was the original document. They claimed they got those documents—there were three or four documents all fastened together—from Mr. Leon Scott, not from Mr. Grover Scott. Mr. Grover Scott testified that when he really made a gift of the theatre to his son he turned all the documents over to his son. Inasmuch as Leon Scott is the one who was subpoenaed I wish to find out from Leon Scott just what condition these papers were in when he turned these papers over to the plaintiff, before we proceed any further. That is the original document: I want to know [fol. 659] and I think we are entitled to know——

Mr. Marcus: I do not see the purpose of this.

Mr. Rogers: What I want to know is what Mr. Leon Scott turned over to you. I want to know what condition it was in when it was turned over.

The Court: You have got the copy. What difference does it make?

Mr. Rogers: Except for this, may it please the Court; I want to be sure that the copy I have got here——

The Court: The one you retained?

Mr. Rogers: No, this is not an executed copy.

The Court: You got it from your files?

Mr. Rogers: We were searching through our files. We were searching for the original. We did not find the original. We found a copy of that contract. I want to know whether or not the paper they produced yesterday was in the condition yesterday as it was when they received it, and if they have the full documents——

The Court: Where is Leon Scott?

Mr. Rogers: He is right here. He is in the court room.

Mr. Wright: Why don't you ask him?

The Court: Mr. Scott has testified he gave it to Leon Scott.

[fol. 660] Mr. Rogers: A long time ago. I don't know. I want to be sure of what Leon Scott gave them. He is here under subpoena.

The Court: All right.

[fol. 661] Leon Bernard Scott, a witness called by and on behalf of the Defendants, having been first duly sworn, was examined and testified as follows:

The Court: Proceed, Mr. Rogers. Your witness.

Direct examination.

By Mr. Rogers:

Q. Mr. Scott, do you recall having—may I have that exhibit that you have got there?

The Court: Isn't the copy here?

Mr. Marcus: I have the exhibit in a folder. Mr. Schilz went down to get them.

Mr. Wright: Show him the copy.

Mr. Rogers: I would rather operate with your documents for the moment.

(A pause.)

By Mr. Rogers:

Q. In the meantime I wish to put a few preliminary questions to Mr. Scott. Mr. Scott, you are here as a witness under subpoena by the plaintiff, are you not?

A. Yes.

Q. You have been subpoenaed by the defendants, have you?

A. No, sir.

Q. Do you recall turning over certain documents to [fol. 662] plaintiff's attorneys on Saturday?

A. Yes, sir.

Q. And to whom did you turn them over?

A. To Mr. Marcus.

Q. To Mr. Marcus?

A. That is right.

Q. With reference to the agreement dated November 30th, 1938, between G. C. Scott and Schine Lexington Corporation, were there any pages missing from that paper when you turned it over?

A. Not that I know of. I saw him go through them and he said, "These are what we want."

The Court: Not that you know of, is that your answer?

The Witness: Not that I know of, that there were any pages missing until Monday.

The Court: What is that?

The Witness: Monday he asked me where the missing page was. Saturday he said, "These are what I want."

The Court: Do you know whether all the pages were in there Saturday?

The Witness: Do I know? I turned them over to him.

The Court: Were they all in there?

The Witness: They were in there when I brought them up. He asked me to bring the papers to him and he picked out [fol. 663] a bunch—[illegible] gave me back all but three.

Mr. Marcus: (Handing Plaintiff's Exhibit P-21 to Mr. Rogers). Do you want this, too?

Mr. Rogers:

Q. I show you these papers, Mr. Scott, which are marked Plaintiff's Exhibit P-21, and I show you this contract of December 2nd, 1938, and I ask you were there any papers missing from that contract when you gave them to Mr. Marcus last Saturday?

A. I will say that there were not any papers missing.

The Court: Say what?

The Witness: There were not papers missing.

Mr. Rogers: Now, I call upon the plaintiff to produce the balance of that original contract.

Mr. Marcus: Let me take the witness first, Mr. Rogers. I gather that Mr. Rogers is now charging me with having taken one or more of the papers.

Mr. Rogers: I am not charging anybody with doing anything. You may have mislaid it or lost it. You had it.

Mr. Marcus:

Q. Mr. Scott, when you came into the office on Saturday, did you have a folder of papers with you?

A. I did.

[fol. 664] Q. Did you take out paper by paper and give those papers to me?

A. I took out contract by contract. I gave you the entire bunch which you went through.

Q. And I took three papers out of that file, did I not?

A. You took two or three. You said, "These are the documents I want."

Q. That is right. On Monday morning, that is yesterday, did you come into my office and did I ask you at that time where that missing page or pages might be?

A. Yes, sir.

Mr. Marcus: That is all, your Honor. I just don't see what Mr. Rogers has in mind. If he wants me to take the stand and testify that this is the document as I got it, I am willing to do so.

Mr. Rogers: Mr. Wright, don't you dare take papers off my desk.

The Court: Just a minute, now.

Mr. Rogers: I don't want Mr. Wright coming over to my table and take papers off my desk.

Mr. Wright: Your Honor, we are not trying Mr. Marcus. We are not trying Mr. Scott. We are trying to establish what the contents of the document was, and it seems to me [fol. 665] the quickest way is to have him identify the document and find out what the missing pages were. It seems to me that solves the problem.

The Court: We have another problem. The witness here states he gave it to counsel for the Government.

Mr. Rogers: Exactly.

The Court: That requires some explanation.

Mr. Wright: In any event we want to get at the ultimate issue, and that is what is on the missing pages.

The Court: First we have to show that the original is lost.

Mr. Rogers: Exactly.

The Court: Mr. Scott—is that your name?

The Witness: Yes, sir.

By the Court:

Q. Did you look at those papers, the separate sheets of the letters and agreement when you delivered it to Mr. Marcus?

A. When I brought them up there.

Q. Did you look at the paper itself, the different sheets?

A. He was looking at them then.

Q. Did you yourself know whether that was completed, all the sheets were in there, when you gave it to Mr. Marcus? [fol. 666] Do you know that?

A. He went through them page by page.

Q. I don't ask you that. What I want to know is do you know?

A. I was sitting like this (indicating). I couldn't tell whether the pages were absolutely there unless I was over his shoulder.

Q. Then you didn't see those pages you mean, yourself? Did you see it?

A. They were stapled together.

Q. I don't ask you that. Do you know whether those papers were there?

A. I didn't see them.

The Court: All right, that is all.

[fol. 667] Mr. Marcus: If your Honor will require any further proof I would like to go on the stand.

The Court: I think so. Swear Mr. Marcus.

Mr. Rogers: Mr. Marcus does not have to be sworn. I will take his statement without any oath.

The Court: Swear him.

Philip Marcus, a witness called by and on behalf of the Plaintiff and having been first duly sworn was examined and testified as follows:

The Witness: Your Honor, Saturday morning Mr. Leon Scott came into my office with a folder of documents, which we had subpoenaed, and at that time he handed to me, paper-by-paper, a number of documents, which I skimmed through and selected three documents. That document there in its present condition is the document which Mr. Leon Scott handed to me, and after going through those documents I noticed that the pages were missing, and on

Monday morning, that is yesterday morning, prior to the time the trial started, Mr. Leon Scott came into my office and at that time I asked him where those pages were and [fol. 668] he did not know.

The Court: You admit that Mr. Scott gave you the copy that you have retained?

The Witness: Mr. Scott gave me this copy here (indicating).

Mr. Rogers: This copy (indicating) came out of our files that I produced. Do you want that copy (handing to Mr. Marcus)?

The Court: Was there not a duplicate original of this document?

Mr. Rogers: Yes, sir. We have not been able to find the duplicate original.

The Court: That was in your possession?

Mr. Rogers: Yes. We haven't got it in Buffalo. It may be in Gloversville.

Mr. Wright: They were subpoenaed to produce here all of the agreements they had made with anybody not to compete.

Mr. Rogers: Not to compete?

Mr. Wright: That is what the subpoena says.

Mr. Rogers: Where do you find anything in that agreement not to compete?

Mr. Wright: I do not know whether it is in there or not. We wanted to get a look at it.

Mr. Rogers: There it is (indicating).

Mr. Marcus: I have no objection to having this substituted [fol. 669] for this agreement, subject to your substituting a duplicate original if you find it, Mr. Rogers.

The Court: Received.

(Thereupon the agreement between G. C. Scott and L. L.-G. C. S. and Schine Lexington Corporation, dated November 30, 1938, referred to was received in evidence and marked Plaintiff's Exhibit P-25.)

The Court: We will proceed with the former witness.

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795[illegible]31
Sup. Ct.

Vol. II

TRANSCRIPT OF RECORD

(Pages 831 to 1758)

Supreme Court of the United States

OCTOBER TERM, 1947

No. 10

SCHINE CHAIN THEATRES, INC., ET AL.,
APPELLANTS,

vs.

THE UNITED STATES OF AMERICA

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE WESTERN DISTRICT OF NEW YORK

FILED OCTOBER 4, 1946.

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Grover C. Scott resumed the stand on behalf of the Plaintiff, having been previously sworn, was examined and testified further as follows:

Direct examination (resumed).

By Mr. Marcus:

Q. Mr. Scott, would you recognize this document, Plaintiff's Exhibit 25, marked in evidence, as the agreement which you entered into with the Schines on November 30, 1938? Just glance through that (handing document to witness).

The Court: There is no question raised about the fact that this is the agreement, is there?

Mr. Marcus: Yes. That agreement does not contain any provision for Mr. Scott not to compete with the Schines in [fol. 670] Corbin, and I am going to ask him another question in a minute.

The Court: I say, the agreement itself is admitted as appears there?

Mr. Marcus: Yes.

Mr. Wright: Of course we do not know whether that is the true copy of the missing pages or not. Mr. Scott is the only one who can tell us. I suppose he can look at it and tell us. That is what he is doing now.

The Witness: What is your question, please?

By Mr. Marcus:

Q. Mr. Scott, do you recall making an affidavit in which you stated——

Mr. Rogers: We have not got the first question answered yet.

Q. Is that the agreement which you entered into with the Schines?

A. That is one of the agreements.

Q. Do you recall entering into other agreements at or around the same time with the Schines?

A. Yes, sir.

Q. In an affidavit made by you, Mr. Scott, do you recall having made the statement that you had entered into an agreement with the Schines not to compete with the Schines in Corbin for ten years?

Mr. Rogers: One moment, First I object to that on the [fol. 671] ground that it is impeaching his witness, and, second, on the ground that an affidavit should be read in the language of the affidavit and the affidavit itself should be used.

The Court: Objection sustained.

Mr. Rogers: And on the further ground that if the affidavit relates to any agreement the agreement itself should be produced.

Mr. Wright: The agreement has been subpoenaed from you. You have not produced it.

Mr. McKay: Because there is not any such agreement.

Mr. Wright: Why don't you say so then?

Mr. Rogers: What agreement are you talking about?

The Court: Just a moment. We are wasting time. Let us proceed with the witness.

By Mr. Marcus:

Q. Mr. Scott, do you recall making any agreement with the Schines where such provision for you not to compete with the Schines in Corbin was contained?

Mr. Rogers: I object to that on the ground that the agreement speaks for itself, if there was any such agreement.

The Court: Sustained.

Mr. Rogers: This witness has already testified those were the agreements he entered into. There is no testimony [fol. 672] that he entered into other agreements.

Mr. Marcus: Yes, he has testified he did.

The Court: I have already ruled. Proceed.

Q. Mr. Scott, do you recall turning over to your son, Leon Scott, any other agreements besides these two which you had made with the Schines (handing papers to witness)?

A. All papers—all agreements that were made I did not turn over to Leon Scott because he was a partner with me in it, and it was left in his possession because when I sold out to him I left all the files in his possession.

Q. The question now is whether you recall having turned over to Leon Scott any agreements besides or in addition to these two agreements which you had made with the Schines?

The Court: Were there any other agreements?

A. There was other agreements.

The Court: All right.

Mr. Marcus: I would like to have the witness step down and put Leon Scott on the stand, your Honor.

The Court: Can we not conclude with him?

Mr. Marcus: I want to develop from Leon Scott whether or not he had such agreement, and why it has not been produced.

The Court: Do you wish to prove the contents of the agreement?

[fol. 673] Mr. Marcus: I want to lay the foundation for asking this witness what was in that agreement by showing that the agreement is not available, your Honor.

The Court: Step forward, then, Mr. Scott.

Leon Bernard Scott, a witness recalled by and on behalf of the Plaintiff, having been previously sworn, was examined and testified further as follows:

Direct examination.

By Mr. Marcus:

Q. Mr. Scott, you have just heard your father testify that he had turned over to you agreements with the Schines other than these two agreements. Where are those agreements?

Mr. Rogers: Not agreements. He said "agreement." Look at your Exhibit 21. Aren't there three agreements?

Mr. Marcus: Yes, there are three agreements. Other than these three agreements.

Mr. Rogers: Four, I think, all told.

Mr. Marcus: No, there are just three.

Mr. Rogers: There are four agreements.

[fol. 674] Mr. Marcus: I do not see what difference that makes.

Mr. Rogers: If we are going to go into the testimony of Mr. Leon Scott we should find out whether he turned over——

Mr. Marcus: Read that question.

(Question read as follows: "Q. Mr. Scott, you have just heard your father testify that he had turned over to you agreements with the Schines other than these two agreements. Where are those agreements?")

Mr. Rogers: Mr. Marcus said, if you will notice, "two agreements." As a matter of fact there were four agreements.

The Court: By my own question I asked Mr. Scott if he referred to two, and I asked if there were any others and he said there was.

Mr. Marcus: May I withdraw that question, please?

The Court: Yes.

By Mr. Marcus:

Q. You have heard your father, Mr. Scott, testify that in addition to these four agreements that there were other agreements turned over to you by him. Now, Mr. Scott, where are those agreements?

A. I did not hear him testify to that. I heard him testify to two agreements.

[fol. 675] Q. Do you want me to put your father on the stand again?

Mr. Rogers: One moment. I object.

The Court: How many agreements did he turn over to you?

The Witness: I do not know, sir. That has been several years ago.

The Court: What did you do with those he did turn over?

The Witness: I don't know. I could possibly find them.

By Mr. Marcus:

Q. Now, Mr. Leon Scott, do these papers here represent all the agreements you could possibly find?

A. If I am not mistaken there were some agreements which you did not want. If I am not mistaken, on the papers he asked me to produce in this folder I brought up to him Saturday there were some papers he gave me back pertaining to this case that he said he did not need.

The Court: He is asking now about agreements.

The Witness: I said I think there is.

Q. Mr. Scott, do you still have that folder with you?

A. Not here. I can get it.

Mr. Marcus: Well, in that case, would the Court kindly direct Mr. Scott to get that folder and bring its contents to court?

The Court: You have those papers?

The Witness: Yes, sir.

Mr. Marcus: With the Court's permission we might allow Mr. Scott to leave and put on another witness.

The Court: All right.

[fol. 676] HUBERT B. WHITENACK, a witness called by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Marcus:

Q. Mr. Whitenack, where do you reside?

A. Appalachia, Virginia.

Q. What is your occupation?

A. Motion picture projectionist at present.

Q. In what theatre in Appalachia do you hold that position?

A. Appalachian.

Q. Mr. Whitenack, during the period that Mr. Murphy operated the Viv Theatre in Corbin, were you the manager of that theatre?

A. No, sir.

Q. What position did you hold?

A. I was motion picture projectionist and assistant manager.

Q. During that period, or during any part of that period, Mr. Whitenack, did you keep a daily record in the course of business of the receipts and expenses and pictures played in that theatre?

A. Yes, I did, from January first, 1940 through May 11th.

Mr. Marcus: Will you mark this for identification, please?

[fol. 677] (Thereupon the book referred to was marked as Plaintiff's Exhibit P-26 for identification.)

Q. Mr. Whitenack, I show you Plaintiff's Exhibit P-26 marked for identification which appears and which has on the cover "The At a Glance Bookkeeping and Contract

Record for the Corbin, Kentucky, Viv Theatre," and ask you whether this is the daily record which you kept in the usual and general course of business?

A. Yes, sir.

(Mr. Marcus hands Plaintiff's Exhibit P-26 for identification to Mr. Rogers).

Q. Mr. Whitenack, do you know who were the managers of the other theatres?

Mr. Rogers: Other theatres where?

Mr. Marcus: At Corbin, Kentucky, during the period of operation by Mr. Murphy of the Viv?

The Witness: A. F. C. Mays.

Q. Was there anyone else?

A. Louis Marenbloom. Mays was there. He left about a month before we sold out, before Schines took the theatre over. He was there about five months.

Mr. Marcus: I should like to offer Plaintiff's Exhibit P-26 marked for identification in evidence.

Mr. Rogers: I object to it on the ground it has no rele- [fol. 678] vancy, no materiality shown for the admission of this record.

Mr. Marcus: Your Honor, this record shows what pictures were played and what the expenses were, and what the receipts were. They certainly are relevant.

Mr. Rogers: How would that be relevant?

Mr. Marcus: Do you recall having brought out the matter of profit, Mr. Rogers, yesterday?

Mr. Rogers: I do.

Mr. Marcus: I think this is quite relevant.

Mr. Rogers: But this covers only a limited period from January to April, and they opened the theatre in October of 1939.

The Court: Whether this would supplement that, I don't know.

Mr. Rogers: If for that period of — alone, may it please the Court, there is no relevancy to it.

The Court: Paragraph 2, that is the one which you referred to yesterday, in the complaint. (The Court read paragraph 2 of the complaint.)

Mr. Rogers: But as of the present position of this record there is no evidence of that at all.

The Court: As I often say, all things can't come from one witness.

[fol. 679] Mr. Rogers: They certainly finished with Mr. Scott.

The Court: Objection overruled. Received.

(The book previously marked as Plaintiff's Exhibit P-26 for identification was received in evidence.)

Q. Do you know whether or not the Viv Theatre, during the time it was operated by Mr. Murphy, made a profit?

Mr. Rogers: May it please the Court, I object to that on the ground this witness has not been qualified.

Mr. Marcus: He stated he was assistant manager.

The Court: Was he there from October?

Q. Were you there from October?

A. Yes, sir.

Q. Until the time——

A. May 11th.

Q. 1940?

A. Yes, sir.

Mr. Rogers: On the further ground that the question calls for a conclusion.

Mr. Marcus: I asked him whether he knew.

Mr. Rogers: That still calls for a conclusion.

The Court: Were there records kept of the receipts and disbursements from October? Who kept those?

The Witness: They were kept in the box office. I don't know.

[fol. 680] The Court: What?

The Witness: They were kept in the box office.

The Court: In the box office?

The Witness: Yes.

The Court: But not by you?

The Witness: No, sir.

The Court: Until after January?

The Witness: Yes, sir.

The Court: What was your work there?

The Witness: My job was projectionist, motion picture projectionist.

The Court: How would you know what the receipts were?

The Witness: I was also the Assistant Manager.

Mr. Marcus:

Q. Are these entries in your handwriting?

A. Yes, sir.

The Court: Do you mean the entire period, Mr. Marcus?

Mr. Rogers: That is what he is talking about now.

Mr. Marcus: That is right.

The Witness: No.

Mr. Rogers: One moment, please. You were asked do you know.

By Mr. Marcus:

Q. Do you know?

A. Yes.

[fol. 681] Q. Did that theatre make a profit?

Mr. Rogers: May it please the Court, I object to that on the ground the figures properly presented will permit the Court to come to a conclusion of whether or not a profit was made.

Mr. Marcus: You asked Mr. Murphy that question.

Mr. Rogers: Never mind about that. We have this witness here.

The Court: We are speaking about your personal knowledge. Did you handle receipts?

The Witness: Yes, sir.

The Court: What?

The Witness: Yes, sir.

The Court: You did?

The Witness: Yes, sir, I handled it.

The Court: Who paid the bills?

The Witness: I did.

The Court: What?

The Witness: I paid most of them.

The Court: Who paid some of them?

The Witness: It was between myself and Mr. Murphy's boy. He was the manager.

The Court: Who?

The Witness: Mr. Murphy's son.

The Court: Who took the money in?

[fol. 682] The Witness: The cashier.

The Court. The cashier. Did you deposit the money in the bank?

The Witness: Some days I made the deposits, and some days he made the deposits.

The Court: Did you put the money in the bank every day?

The Witness: I said he put the money in the bank some days, and some days I put it in.

The Court: How did you know how much they took in each night?

The Witness: I was part of the theatre. I was assistant Manager.

The Court: I don't think this man is sufficient- qualified to testify as to that during that period.

Mr. Wright: If the Court please, he was permitted to go outside the scope of the direct, without any books or records whatever, and get expressions of opinion from Mr. Murphy as to what the profit or loss was, and what the operation was, whether or not it was profitable. Now,——

Mr. Rogers: Mr. Wright will not take a ruling of your Honor.

The Court: Sustained.

Mr. Rogers: I questioned the right of Mr. Murphy as the owner.

[fol. 683] By Mr. Marcus:

Q. In reference to Exhibit P-26, do you know whether or not a profit was made for that theatre?

Mr. Rogers: May it please the Court, I object to that, the records speak for themselves.

The Court: Sustained. The record is the best evidence.

Mr. Marcus: That is all.

Mr. Rogers: No cross-examination.

The Court: Next witness.

Price Coomer, a witness called by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Mr. Marcus: At this point, your Honor, I should like to have it noted in the record, that although we have subpoenaed from the files their contracts in respect to Corbin, Kentucky, the only contracts thus far produced by the Schines in respect to Corbin, Kentucky, have been those of Fox and Paramount.

We should also like to have it noted that although subpoenas issued to Fox, Metro, Warner Brothers, Paramount and R.K.O. call for the contracts of these companies for [fol. 684] theatres in Corbin, approximately 1935 until 1942, have, except for one or two contracts, not been produced. We understand, however, that an attempt is being made to produce them. When these contracts are produced, your Honor, the Government will introduce those deemed relevant. At this time we intend to introduce those contracts we have.

We should also like to put the defendants on notice that in the absence of the introduction of evidence of second-run contracts from the major distributors for theatres in Corbin, between 1936 and 1942, or rather, between 1936 and the date Schines took over the Kentucky and the Hippodrome in Corbin, Kentucky, we shall claim that not until then was there a policy of contracting for a season's second-run product for the Hippodrome or the Kentucky.

Mr. Rogers: Will you read that last please?

(Last paragraph was read.)

Mr. McKay: Your Honor, that is an obvious attempt to shift the burden of proof.

The Court: There is nothing to pass on.

Mr. Rogers: I was wondering why the statement was [fol. 685] made. There is nothing for your Honor to pass on. I don't see the purpose of the statement.

Mr. Marcus: Will you please mark this for identification, please.

(Thereupon, paper, referred to, was marked as Plaintiff's Exhibit P-27 for identification.)

[fol. 686] Mr. Rogers: No objection.

Mr. Marcus: I should like to offer into evidence Plaintiff's Exhibit 27 for identification, which purports to be a contract between Metro and the Schines for the season 1939-1940, second run product, for the Kentucky Theatre.

(Thereupon the contract previously marked as Plaintiff's Exhibit P-27 for identification was received in evidence.)

Mr. Marcus: I would like to have these documents marked for identification.

(Thereupon the exhibition contract referred to was marked Plaintiff's Exhibit P-28 for identification.)

(Thereupon another exhibition contract referred to was marked as Plaintiff's Exhibit P-29 for identification.)

(Thereupon another exhibition contract referred to was marked as Plaintiff's Exhibit P-30 for identification.)

(Thereupon another exhibition contract referred to was marked as Plaintiff's Exhibit P-31 for identification.)

[fol. 687] **Hubert B. Whitenack**, a witness recalled by and on behalf of the -laintiff, having been previously sworn, was examined and testified further as follows:

By the Court:

Q. Were there records kept of the expenses and receipts from the time you went there from October until January?

A. I think they were kept from the first of the year—from October to the first of the year.

Q. Did you have a bank account where your moneys were deposited and your checks paid out?

A. Yes, sir.

Q. Where was that?

A. At the Corbin Deposit Bank.

Q. The deposits were made each day, were they?

A. Yes, sir.

Q. And bills paid by check?

A. Yes, sir.

(Thereupon exhibition contracts referred to were marked as Plaintiff's Exhibits P-32 to P-43, inclusive, for identification.)

Mr. Rogers: I have no objection to P-28 for identification.

Mr. Marcus: I should like to offer in evidence Plaintiff's Exhibit P-28 marked for identification, an exhibition con- [fol. 688] tract between Schine and Paramount Pictures, for the Hippodrome Theatre in Corbin, Kentucky, for the season 1938-1939, first run.

(Thereupon the exhibition contract previously marked as Plaintiff's Exhibit P-28 for identification was received in evidence.)

Mr. Marcus: The date of this contract is 1-31-39.

Mr. Rogers: That service is for the season 1938-1939.

The Court: It would not be signed 1-31-39, would it?

Mr. Rogers: The application seems to have been December 1, 1938.

Mr. Marcus: There is a notation, "Accepted 1-31-39" and a stamp "February 17-39".

Mr. Rogers: In other words, the application was made December 1, 1938, but the approval was held up until February 17, 1939.

Mr. Marcus: Apparently, yes.

Mr. Rogers: There is no objection to P-29 for identification.

Mr. Marcus: I offer in evidence Plaintiff's Exhibit 29 for identification, a contract between Schine and 20th Century-Fox, dated June 6, 1939, for second run product in Corbin, Kentucky, for the season commencing August 1, 1939, and ending July 31, 1942.

[fol. 689] (Thereupon the exhibition contract previously marked as Plaintiff's Exhibit P-29 for identification was received in evidence.)

The Court: I assume that the various companies have all these contracts. Would we not save a lot of time if they were agreed to and stipulated? There is not any question about the authenticity of those contracts, is there? If not, it would save a lot of time by doing that.

Mr. Marcus: We could do it that way, your Honor. We thought we would try to get in as much as possible while we are dealing with Corbin, but if your Honor prefers, as long as these are marked, we could wait.

The Court: It is all one type of testimony and I assume these major companies have all these contracts and they could be put in at once, if there is no question about the authenticity of them.

Mr. Rogers: How would your Honor suggest, that we take them up in batches between us?

The Court: I do not know. I am just inquiring if we could not save a lot of time by putting those all in at one time.

Mr. Marcus: If it is your Honor's suggestion that we wait, we are quite willing to do it at that time.

[fol. 690] Mr. McKay: They took a deposition up in Gloversville prior to the last trial, at which time they marked in the deposition some six or seven hundred contracts. We might be able to use those markings.

The Court: I do not think we should have much disagreement. I assume there is no question about the authenticity of these contracts?

Mr. Rogers: No. It is just a question of expedition and I am all for that.

The Court: It seems to me they could just as well be stipulated and agreed on and it would save all this testimony.

Mr. Wright: I think that is a good suggestion, your Honor. We hoped to have the material assembled on each situation at the time the witness was put on so that exhibit numbers could be put on at the same time, but I think it can just as well be done the other way.

Price Coomer, a witness recalled by and on behalf of the Plaintiff, having been previously sworn, was examined and testified further as follows:

[fol. 691] Direct examination.

By Mr. Marcus:

Q. Mr. Coomer, where do you reside?

A. I reside in Martinsville, Ohio, at the present time.

Q. What is your occupation?

A. I am in the theatre business and also operate a farm.

Q. How long have you been in the theatre business, Mr. Coomer?

A. Nine and a half years.

Q. Were you ever associated with any one in Lexington, Kentucky, in the operation of a theatre?

A. Yes, with Harry Swartz.

Q. Mr. Coomer, do you operate a theatre in Harlan, Kentucky?

A. Yes, I do.

Q. What is the name of that theatre?

A. The New Harlan Theatre.

Q. How long have you been operating that theatre?

A. Nine and a half years.

Q. Mr. Coomer, do you recall becoming interested in operating a theatre in Corbin, Kentucky?

A. I had a slight interest in acquiring a theatre in Corbin, which I heard was being built.

Q. What did you do in respect to that theatre, Mr. Coomer?

A. I found that it was Mr. Hiram Owens who was building the theatre. I called on Mr. Owens and inquired if he had found a tenant for his building. He said at that time [fol. 692] he had no lease——

Mr. Rogers: May it please the Court, I move to strike any conversations had between Mr. Coomer and Mr. Owens at which we were not present, as not binding on us.

The Court: What he has already stated is not very material one way or the other. The question is what the conversation was, I suppose.

Q. Did you discuss with Mr. Owens the possibility of leasing and operating the theatre which he was building?

Mr. Rogers: May we get the date of this talk?

Q. About when was that discussion?

A. In the early part of 1939.

Mr. Marcus: Read the prior question.

(Question read as follows: "Q. Did you discuss with Mr. Owens the possibility of leasing and operating the theatre which he was building?")

A. Yes, I discussed with Mr. Owens as to whether or not he had already acquired a tenant and he said no, that he was open for a proposition, and I told him I would like to make him a proposition, and I would have to see what the situation in buying films would be before I could make him a proposition.

Q. Did you attempt to get product for that theatre, Mr. Coomer?

Mr. Rogers: One moment.

[fol. 693] Q. Just answer that question. Did you attempt to?

Mr. Rogers: Pardon me, Mr. Marcus, you cannot tell me what objections I am going to raise or when. I object to that question on the ground it is immaterial. The man had no theatre, had nothing to buy any product for, and it is immaterial.

The Court: The form of the question is objectionable.

Mr. Marcus: Your Honor, it is certainly relevant—

The Court: I say the question in form is objectionable. Let him state what the conversation was if he attempted to get pictures.

Q. Did you go to Cincinnati trying to get product for this theatre and, if so, will you tell the Court approximately when?

Mr. Rogers: Now, I object to the form of the question on the ground that it calls for the operation of this witness's mind.

Mr. Marcus: I asked him where he went.

Mr. Rogers: Ask him did he go to Cincinnati and when.

The Court: Let him tell what talk he had about getting films.

Q. Did you have any discussions with the branch managers of any of the film exchanges in Cincinnati in respect to product for this theatre?

A. Yes, I did.

[fol. 694] Q. Will you name those film exchanges and the branch managers, if you are able?

Mr. Rogers: Can we get the dates and the people and the companies?

The Court: He is coming to the companies, I suppose.

Mr. Rogers: We have not got the date.

The Court: About when was this?

The Witness: It was in the early fall of 1939 that I talked to Mr. Owens and I went to Cincinnati the next day.

The Court: Who did you see there?

The Witness: In Cincinnati I saw the branch manager of Columbia.

Q. Who was it you saw there?

A. Mr. Allen Martz. I also——

Mr. Rogers: One moment. All you were asked was who you saw.

The Court: Where did you see him?

The Witness: In his office.

The Court: What company?

The Witness: At the Columbia Picture Corporation.

By Mr. Marcus:

Q. Will you tell the Court the substance of your conversation with Mr. Martz?

Mr. Rogers: May it please the Court, I object to it on the ground that there has no foundation been laid for the [fol. 695] testimony. There is no foundation laid as to who Mr. Martz is, what his duties are, what his connections are, or what his power is.

The Court: Perhaps you had better inquire in regard to his position.

Q. Did you know Mr. Martz prior to the time you went to see him in respect to getting product for the Corbin Theatre?

A. Yes, I——

Mr. Rogers: One moment. I object to the form of Mr. Marcus's questions. He continues saying what he went there for. I object to it.

The Court: Sustained in that form. Did you know this man Martz before this time?

The Witness: Yes, sir.

Q. Had you bought film for the Margie Grand from Mr. Martz prior to this time?

A. I didn't operate the Margie Grand.

Q. I mean the New Harlan Theatre.

A. In the New Harlan Theatre I had be-n using product from Mr. Martz of Columbia.

Q. And you knew Mr. Martz to be the branch manager of Columbia?

Mr. Rogers: One moment, please. May we get the witness's testimony so that the Court can conclude who Mr. [fol. 696] Martz is, not this witness?

Q. When you went to the Cincinnati office of Columbia, Mr. Coomer, did you ask for the branch manager?

A. I asked to see Mr. Allen Martz, who I knew was the branch manager from previous dealings with him in the Harlan Theatre.

Q. Could you give the substance of your conversation with Mr. Martz in regard to product for the theatre in Corbin?

Mr. Rogers: I object to that on the ground that it is not binding on these defendants and it is immaterial.

The Court: Overruled. State the substance of what you said.

A. I told Mr. Martz that the theatre in Corbin, which he knew was being built, I would like to know what product was available for Corbin first run. Mr. Martz informed me that they had a first run in Corbin. I said, "What about the change to second run?" He says, well, he didn't know, he couldn't give me an answer on it because the Schines were in the town now and he would have to take it up with New York. Mr. Martz went further in advising me that he though it would be a bad business proposition in Corbin; that there were already two theatres there.

Mr. Rogers: Just a moment. I move to strike that as opinion evidence on the part of Mr. Martz and not competent.

[fol. 697] The Court: Strike it out. Was anything else said about your getting pictures?

The Witness: Not with Mr. Martz. I called on other exchanges the same day.

By Mr. Marcus:

Q. Mr. Coomer, did you get a contract for product for that theatre in Corbin from Columbia?

A. No, sir, I did not.

Mr. Rogers: One moment. May it please the Court, I object to that as immaterial. There is no proof that this man ever had the theatre. How could he get it?

The Court: He said you could get first run? Did you say that?

The Witness: No, sir, he said the first run was already sold.

Q. Mr. Coomer, you said you called on other exchanges?

A. I called on the United Artists Exchange.

Q. Whom did you see there?

A. The branch manager.

Mr. Rogers: May we have the name of the gentleman?

Q. What was his name?

A. Mr. Max Stahl.

Q. Had you dealt with him prior to this time in regard to getting product from United Artists?

A. Yes, I had.

Q. Will you state the substance of your conversation [fol. 698] with him in regard to getting product for Corbin?

Mr. Rogers: The same objection.

The Court: Same ruling.

A. The conversation was pretty much the same——

The Court: No, what he said.

A. I asked him about the possibility of film for Corbin, first or second run, and he advised me that they had no product to sell in Corbin at all.

Q. Did you call on another film exchange in Cincinnati at that time?

A. I called on the Warner Bros. film exchange.

Q. Whom did you see there?

A. I saw the branch manager there.

Mr. Rogers: I move to strike it.

The Court: Yes. Who did you see?

A. I call Mr. Al Smittkin.

Q. Had you bought product from Mr. Smittkin prior to this occasion?

A. Yes, I had.

Q. How long had you known Mr. Smittkin?

A. Possibly a year or a year and a half.

Q. Will you state the substance of your conversation with Mr. Smittkin in regard to getting product for the theatre in Corbin?

Mr. Rogers: The same objection.

[fol. 699] The Court: Had you bought Warner Bros. pictures of him prior to the time you went there?

The Witness: Yes, sir,

The Court: How did you buy them of him? Did he come to your place, your theatre, or did you go there?

The Witness: At times the salesman calls on you and at times you go into Cincinnati and buy them.

The Court: Had you seen him in Cincinnati before?

The Witness: Yes, sir.

The Court: At the same place?

The Witness: Yes, sir.

The Court: Now, what did he say?

The Witness: Mr. Smittkin said they had no product for sale in Corbin, that both of their runs had been sold.

By Mr. Marcus:

Q. Did you make any other attempts to get product at that time from any of the other film exchanges in Cincinnati?

A. I don't recall making any other attempts. I decided it was a pretty tough proposition.

Mr. Rogers: One moment. I move to strike that.

The Court: Strike that out. Just answer the question. Did you make any other calls?

The Witness: No, sir.

Q. You never did enter into an agreement with Mr. Owens [fol. 700] in regard to that theatre in Corbin, did you, Mr. Coomer?

A. No, sir.

Q. Now, you state that you have been operating the New Harlan Theatre in Harlan, Kentucky?

A. That is correct.

Q. Prior to the 1941-1943 season had you been using Warner Bros. product at that theatre?

A. Yes, I had.

Q. Will you state to the Court what occurred in respect to 1941-1942 Warner product for the New Harlan?

A. I mean 1941-1942 season the film companies were selling product in blocks of five pictures as they were released. I bought the first block of the first five as a special feature that they were distributing that year, and also shorts for the entire year of 1940-1941.

The Court: That was 1941-1942?

The Witness: 1941-1942.

Mr. Rogers: That is Warner, I assume? You are speaking of Warner?

The Court: Yes.

By Mr. Marcus:

Q. Did you obtain a second block of five Warner pictures for that season?

A. I did not.

Q. Will you tell the Court what occurred in respect to [fol. 701] that second block?

A. While I was running some of the first block of five I noticed my opposition at the Margie Grand was advertising a picture released by Warners. As I recall, it was the Maltese Falcon. I knew that was on their second block of five, so that I contacted their salesman, Mr. Ralph Seigers, in Lexington. Mr. Seigers informed me that Schines had bought for the Margie Grand a second group of five.

[fol. 702] Q. Was that second group ever offered to you by Warner's?

A. No, sir.

Q. Did you run any Warner's product for the 1941-'42 season at the New Harlan Theatre in Harlan, Kentucky?

A. Yes, I run six pictures.

Q. Did you ask Warner's for more than those six pictures for that season?

A. Yes.

Q. And what occurred in respect to the rest of those pictures?

A. I was refused the other pictures.

Mr. Rogers: I move to strike that out.

The Court: Strike it out.

Q. Did you get those other pictures you asked for?

A. No, sir.

Mr. Rogers: I move to strike. There is no evidence he ever asked.

Mr. Marcus: I beg to differ.

The Court: Let us hear what he said. He said he got six pictures. Did you get any more?

A. I didn't obtain any more pictures that year.

The Court:

Q. Was there talk *was* other pictures?

A. After I had this conversation with Mr. Sanders I ~~decided to go in to see——~~

The Court: No, you went in to see——

[fol. 703] The Witness: I went in to see the manager.

Mr. Rogers: What is his name?

The Witness: I believe at that time it was Mr.—I don't recall the manager, the managers had changed during that time.

Mr. Rogers: I then move to strike the testimony he went in to see the manager.

The Court: Let us hear what he says.

Mr. Rogers: May we get the date of that talk?

By Mr. Marcus:

Q. When did you go there?

A. January, 1941

Q. Had you dealt with this individual you met at that time before in regard to obtaining the product?

A. Yes, I dealt with him part of the previous year.

The Court: Would that be January, 1941, or January, 1942?

The Witness: '41.

Mr. Marcus: January, 1941, for the 1941-'42 product.

Mr. Rogers: I couldn't be. His Honor is right. It would have to be January, 1942.

Mr. Marcus: That is right.

Mr. Rogers: Which is it? May we have the witness' testimony.

Q. Could you state?

[fol. 704] A. I have those records. If I may be permitted to refer to the exact dates.

The Court: You may have the records if you cannot recall.

Mr. Marcus:

Q. To the best of your recollection about when?

A. In the first part of January.

Q. Was it 1941 or '42? This was in respect to the 1941-'42 product?

A. Well, the 1941-'42 product would naturally be sold in 1941. I still think it was January, 1941.

The Court: You said you got six already. You were operating on those.

Mr. Rogers: Your Honor, he also said he had the first block of five for 1941-'42. Then he got six more.

The Court: No.

By Mr. Marcus:

Q. Would that be 1942, do you think?

A. It possibly could be 1942, because the selling arrangement was changed that year.

Q. So now to the best of your recollection, you would fix the time as some time in January, 1942?

A. I believe that is correct.

Q. Would you state the substance of what was said at that time?

[fol. 705] Mr. Rogers: I object to that on the same grounds, not binding, and on the grounds it is immaterial, and on the grounds there is no evidence of authority on the part of the person he spoke to, nor is the person identified.

The Court: Unless it clearly appears *from* the man's relations with the Company were.

By Mr. Marcus:

Q. Mr. Coomer, when you went to this office, did you notice whether on the door leading to this office there was any name or title?

A. I went to Warner Brothers' office. I stopped at the information desk and asked if I could see——

Mr. Rogers: One moment please. I move to strike, not responsive. He merely asked if there was anything on the door.

The Court: I think you said you dealt with this man before.

The Witness: Yes, sir, that is correct.

The Court:

Q. How frequently, in what capacity, in what way?

A. In the capacity of dating pictures, being in the office. I had seen him several occasions, talked to him regarding dating pictures.

The Court: Your pictures?

[fol. 706] Mr. Rogers: Is that "dating pictures"?

The Witness: Yes.

Mr. Rogers: He said he only spoke to him about dating pictures.

The Court: You got pictures through this man before?

The Witness: Yes, sir, that is correct.

Mr. Marcus:

Q. Will you state what occurred on that occasion, Mr. Coomer?

A. Well, the Court brought up the subject I had been the accountant for the last couple of years on that product. I had obtained the first five years a special picture or special contract.

The Court: Your first sale?

The Witness: Yes, sir, and would I be able to obtain the third group of pictures.

Q. Mr. Coomer, you are now talking in reference to product for the New Harlan?

A. Yes, sir, the New Harlan Theatre. I attempted to get the third group of pictures after I had been told the second group had been sold to the Margie-Grand.

Mr. Rogers: One moment. I move to strike.

The Court. That is your conclusion. What talk did you have with this man about pictures, if any?

The Witness: I asked to buy the third group of pictures.

[fol. 707] Q. Did you get the third group of pictures?

Mr. Rogers: One moment. Let us see what was said.

Q. All right. What was said?

A. They informed me that the third group of pictures were already sold to the Margie-Grand.

Q. Was anything further said?

A. I immediately wanted to know the reason for selling away from me. I would be able to buy some of the pictures in the future. I thought inasmuch——

The Court: Not what you thought.

The Witness: Inasmuch as the ruling stated both theatres were supposed to have the offer of the pictures I had had them offered to me other than the first group. I certainly was entitled to half of the product.

Mr. McKay: Your Honor, we are getting dangerously close to the date of May 19, 1942, and your Honor will recall Mr. Wright stated no evidence would be offered relating to occurrences beyond that date, so from this point on I think the date should be fixed with considerable more certainty than has been done up to now. We have been dealing with prior time, but now he is talking about 1941-1942 product which runs into August, 1942, and I just want to caution [fol. 708] Mr. Marcus and the witness not to go beyond May 19th.

Mr. Marcus: We are duly cautioned, Mr. McKay.

The Court: What further was said about the pictures?

The Witness: I was informed as to buying future pictures that they might release, and they said they could only talk about pictures which were now made, and they were already sold to the Schine Circuit.

Q. Did you make any further attempts?

The Court: When did you say this conversation was?

The Witness: All of this conversation was in the early part of 1942.

Mr. Rogers: May we have those fixed, your Honor?

Q. Would you say it was in January?

A. I would say that this probably had taken place possibly February, first part of February, the conversation in the office.

Q. Did you make any further attempts to get product from Warner Brothers for that season?

A. Not after I had been definitely refused, no.

Mr. Rogers: I move to strike.

The Court: Strike it out. What they told him may stand, but the conclusion is stricken out, "definitely refused" is stricken out.

[fol. 709] Q. Mr. Coomer, prior to the time when Schines began to book pictures for the Margie-Grand Theatre in Harlan, Kentucky, had the Margie-Grand Theatre played second-run products which you had already played first-run in the New Harlan?

A. Not to my knowledge, no.

Q. After the time that Schines began to book pictures for the Margie-Grand, what occurred in that respect? Was there any change?

A. After Schine came into Harlan I saw the pictures which I had run in the New Harlan first-run being exhibited in the Margie-Grand second-run.

Q. Mr. Coomer, was there any change in the policy of the Margie-Grand in regard to "give-aways" after the time Schine began to book pictures for the Margie-Grand as contrasted to the prior period?

Mr. Rogers: One moment. I object to that on the ground no foundation has been laid, no evidence there was any policy in reference to give-aways prior to the time Schines took over. This is on give-aways, may it please the Court, and the witness is interrogated whether there is a change of policy when there has been no evidence at all.

The Court: I will let him tell what he did.

[fol. 710] Mr. Rogers: Do you withdraw the question, Mr. Marcus?

Mr. Marcus: Yes.

The Court: If there is an answer to that strike it out.

By Mr. Marcus:

Q. Will you state what occurred in respect to "give-aways" at the Margie-Grand Theatre after the time Schine began to book pictures for the Margie-Grand?

Mr. Rogers: May it please the Court, I object to that as immaterial.

Mr. Marcus: I think it is quite material. That is one of the things contained in our complaint.

Mr. Rogers: May it please the Court, there is no evidence, and I don't think there ever will be any evidence here that there was an unusual practice on the part of any theatre to have give-aways. They all have given-aways, and that being the case, I don't think Mr. Marcus will ever contend that this was unusual for just this one theatre, the Margie-Grand. I think he will have to concede that was general all over the country.

Mr. Marcus: There was one type of give-away and another type of give-away, and I think we are entitled to bring that out.

Mr. Rogers: Then, may it please the Court, I press my [fol. 711] objection on the further ground that that relates to a purely local matter, after all give-aways can be anything but a matter of local policy. It can't certainly be embraced within the Anti-trust Law violation.

The Court: Overruled. What did they do with reference to give-aways?

The Witness: After Schines acquired an interest in the Margie-Grand for operation there were automobiles given away, and then there was also a form of giving away money called "Sweep-stakes".

Mr. Rogers: May we get the date of this?

Mr. Marcus: He said at the time.

Mr. Rogers: At the time is a long time. It may mean even today. May we get the date, please?

The Witness: Around nine months after Schine became interested in Harlan.

Q. Do you recall about how regularly automobiles were given away?

Mr. Rogers: May we get the period?

Mr. Marcus: Starting with a period approximately nine months from the time Schine became booking agent for the Margie-Grand?

The Witness: They were giving away the automobiles at [fol. 712] the rate of one a month.

Mr. Rogers: Pardon me. Mr. Marcus, I must ask you to please direct your question—he was testifying after Schine took the theatre over, and you are talking now about the time Schine started to book the theatre. You have me confused.

The Court: He said about nine months after when?

Mr. Rogers: Nine months after when?

The Witness: Nine months after Schine became interested in the Margie-Grand.

Mr. Rogers: What year is that?

The Witness: It was in 1939, '38 and '39, both.

By Mr. Marcus:

Q. Mr. Coomer, had automobiles been given away by Schines' Margie-Grand prior to the time Schines became booker for the Margie-Grand?

Mr. Rogers: I object to that as immaterial.

The Court: What was the question?

Mr. Marcus: I asked Mr. Coomer whether he knew automobiles had been given away by the Margie-Grand prior to the time Schines became booking agents for the Margie-Grand.

The Court: I don't think that would be competent what somebody else may have done.

[fol. 713] Mr. Marcus: I merely wanted to show your Honor the contrast.

The Court: Sustained.

By Mr. Marcus:

Q. Mr. Coomer, ~~in 1938, were you the owner or the lessee~~ of the new Harlan Theatre?

A. Yes, I was.

Q. Which?

A. I was lessee and operator of the business.

Q. Do you recall any representatives of the Schines contacting you in respect to buying your theatre in Harlan, Kentucky, and if so, would you state about when?

A. I was contacted by Mr. Lazer December, 1938.

Q. Will you state the substance of your conversation with Mr. Lazer on that occasion?

A. Mr. Lazer told me that they had bought the Margie-Grand Theatre and delivered the theatre in Pikeville, lock, stock and barrel, and they would like to make a deal with me and asked me to make them a proposition.

Q. Did Mr. Lazer say anything else at that time in that conversation?

A. We had quite a lengthy conversation in regard to my former associate, Harry Schwartz, and what he was doing in the theatre business.

Q. What did he say about Mr. Schwartz?

[fol. 714] Mr. Rogers: One moment. I object to that as immaterial.

The Court: I don't see how it is material.

Mr. Marcus: Your Honor, this matter of what Mr. Lazer said in respect to Mr. Schwartz has considerable relevancy. We have alleged as part of our——

Mr. Rogers: Pardon me.

Mr. Marcus: I want to make an explanation.

Mr. Rogers: I don't want you to make an explanation of what you intend to prove or what you hope to prove by this witness.

Mr. Marcus: I don't intend to go that far.

Mr. Rogers: I hope you don't intend to go that far.

Mr. Marcus: One of the situations we shall develop, your Honor, is in Paris, Kentucky.

Mr. Rogers: Paris, Kentucky is not on the list?

The Court: You refer to some statement made by Mr. Lazer about Mr. Schwartz?

Mr. Marcus: In Paris, Kentucky.

The Court: With Schwartz, you mean?

Mr. Marcus: That is right.

The Court: Overruled. What did he say?

The Witness: I mentioned the fact that Mr. Schwartz had obtained a lease on property in Paris on which he in-

[fol. 715] tended building a theatre which would be in opposition to Schines in view of the fact they had just acquired the theatres in Paris, they were already built, and I also mentioned the hardship imposed on Schwartz in the Opera House in Lexington on product, just a general conversation, what had happened to Schwartz in regard to obtaining product in Lexington.

Mr. Rogers: I move to strike that part.

Mr. Marcus:

Q. What did Mr. Lazer say?

Mr. Rogers: Pardon me. I move to strike that part in which this witness said he spoke about hardship which had been imposed upon Schwartz in Paris.

The Court: Strike it out.

Q. What did Mr. Lazer say?

A. Lazer told me that if Schwartz went ahead with his building in Paris, Schines would build a 1200-seat theatre on the corner of Main and Broadway, and that they would buy up all the product and run their house.

Q. When you say Broadway, in what city are you referring to?

A. Lexington. They would run a house with ten cents policy at all times.

Mr. Rogers: May it please the Court, I move to strike [fol. 716] that as having no relevancy whatever on this witness' situation.

The Court: Strike it out. I don't think any authority is shown for making a statement of that kind.

Mr. Marcus: Your Honor may recall we read answers to the interrogatories concerning Mr. Lazer yesterday. From those answers it appears Mr. Lazer at that time was division manager covering Kentucky, Ohio and Virginia. He was the Vice President of the Schines Lexington Corporation. I certainly think that should be sufficient to show authority.

Mr. Rogers: May it please the Court, I directed my objection to the competency of this testimony.

Mr. Marcus: The authority.

Mr. Rogers: The competency, I said, and having no bearing on the situation of Mr. Coomer in Corbin, or anything pertaining to Mr. Coomer. There is no intimation here that they used any inducement or any threat to Mr. Coomer.

The Court: Objection overruled.

Q. Mr. Coomer, you state that you had a lease on your theatre in 1938?

[fol. 717] The Court: Which one, the New Harlan?

Mr. Marcus: The Margie-Grand.

Mr. Rogers: He didn't have the Margie-Grand.

Mr. Marcus: The New Harlan.

The Witness: Yes, I had a lease in 1938.

Q. Have you made any other leases with your landlord in respect to that theatre since that time?

Mr. Rogers: That is objected to as immaterial.

Mr. Marcus: We are going to develop something, your Honor. I should appreciate being allowed to continue.

Mr. Rogers: I press my objection.

The Court: When was your original lease?

The Witness: November, 1932, I believe, sir.

The Court: The question now is did he renew the lease, is the question for the New Harlan.

Mr. Marcus: That is right. I want to develop——

By Mr. Marcus:

Q. Did you have another lease subsequent to the one you had in 1938?

A. Yes, there was another lease made.

Mr. Rogers: That I object to as immaterial.

Mr. Marcus: We will show it was material.

The Court: Overruled.

Q. Do you recall the approximate date when you entered [fol. 718] into this second lease?

A. Possibly in 1933, I entered into a new lease which was my second lease.

The Court: He asked you after 1938.

Mr. Marcus:

Q. After 1938?

A. After '38 I have had a new lease.

Q. And when was that?

A. That was it became effective March 1st, 1944, the last lease.

Q. What was the occasion for you making this second lease, Mr. Coomer?

Mr. Rogers: May it please the Court, I object to that.
The Court: It became effective in 1944.
The Witness: I am speaking of the third lease and Mr. Marcus is speaking of the second lease.
The Court: What was the first lease you made after 1938?
Mr. Marcus: Did you make another lease in 1938?
The Witness: Probably in 1938, there was a second lease made.
Q. What was the occasion for you making that second lease?

Mr. Rogers: May it please the Court, I object to that as immaterial.
The Court: I don't know. I will let him answer.
[fol. 719] The Witness: The reason is for making the second lease was my first lease only provided for five years. The second lease was made at the expiration of three years —at three years, not the expiration—I felt that having opposition with Schine, no renewal clause in my lease, that I should have another lease.
Mr. Rogers: I move to strike that out.
The Court: Strike it out.
Mr. Rogers: That he felt he had the opposition of Schine.
The Court: Yes, that may be stricken out. You made a new lease?
The Witness: Yes, sir.

By Mr. Marcus:

Q. Who was your landload?
A. The Harlan Theatre Company.
Q. With whom in that company had you deal- with in respect to the rental of the New Harlan?
A. Mr. A. C. Jones, he was Secretary and Treasurer of the corporation.

Mr. Marcus: Will you mark these for identification, please?

[fol. 720] (Thereupon the photostat of a letter dated December 20th, 1940, was marked as Plaintiff's Exhibit P-44 for identification.)

(Thereupon the photostat of a letter dated December 13th, 1940, was marked as Plaintiff's Exhibit P-45 for identification.)

The Court: We will suspend for five minutes.

(Short recess.)

[fol. 721] Cross-examination.

By Mr. Rogers:

Q. When, for the first time, did you buy product for the New Harlan Theatre?

A. 1934.

Q. Is that the time when you originally took over the New Harlan?

A. That is correct.

Q. And at that time what was the other theatre in the town?

A. The Margie Grand Theatre.

Q. And they were the only two theatres in the town, weren't they?

A. That is correct; only two theatres.

Q. And who was operating the Margie Grand in 1934 when you took over the Harlan?

A. Mr. G. C. Scott.

Q. In 1934 what kind of a house was the New Harlan; was it a first run or a second run house?

A. In 1934 the New Harlan was closed.

Q. When you took it over, I mean. When you opened it what was the product you bought for the 1934-1935 season, first run or second run product?

A. Both first run and second run.

Q. Can you tell us which first run product you bought [fol. 722] for that season, 1934-1935?

A. I bought United Artists.

Q. That is first run?

A. That is first run. And I bought Columbia; Columbia for that present year, the United Artists for the year past, which had not been run in Harlan, which made it first run there. It was not for the 1934 season. It would have been for the 1933-1934 season.

Q. United Artists was 1933-1934 and for Columbia 1934-1935 first run; is that right?

A. That is correct.

Q. With reference to 1934-1935 did you buy United Artists for that season?

A. I did.

Q. What run?

A. First run.

Q. In 1934, besides buying United Artists first run for the preceding season and United Artists for 1934-1935 first run and Columbia first run, what other product did you buy for the house?

A. I bought all the second run that I was able to buy.

Q. Do you remember which companies?

A. I don't remember which companies second run.

Q. You don't recall?

A. No.

[fol. 723] Q. In 1934 do you recall what product the Margie Grand was running first run?

A. In 1934 the Margie Grand was runing Metro, Paramount, Fox, Universal and Warner Bros. I think that is all.

Q. How about R. K. O.?

A. They were also running R. K. O.

Q. Now, after the season of 1934-1935 did the situation of first run product in the Margie Grand change in any way?

Mr. Marcus: Your Honor, on direct examination we asked Mr. Coomer only as to Warner first run. If Mr. Rogers wants to ask Mr. Coomer as to the first runs of other companies he should make Mr. Coomer his witness.

The Court: I will pass on that when the question comes up.

(Last question read.)

A. Yes, it did change.

Q. And when did the change occur?

A. I don't recall the dates without referring to the records.

Q. Well, approximately when?

A. Approximately a year or a year and a half after my operations.

The Court: A year and a half after 1935 or a year and a half after——

The Witness: Possibly a year or a year and a half after I became operating the theatre.

[fol. 724] Q. Well, that would be, then, some time in 1935 or the early part of 1936; is that right?

A. I won't try to fix the date.

Q. When did you start your operations in the New Harlan?

A. I referred to the records during the recess. The exact date was November 24, 1934.

Q. Then it would be about a year or a year and a half after November 24, 1934, that this change occurred; is that right?

A. To the best of my knowledge that would be about the date.

Q. Well, had you had a lease on the New Harlan Theatre before you opened it and operated it?

A. I had a lease which was dating from January 1st, but I was allowed the privilege of opening the theatre with a couple of months free rent.

Q. In other words, you say you had a lease starting January 1, 1934, and you didn't open until November 24, 1934?

A. I am a little confused on the dates. The lease would be dating from January 1, 1935, really. That would be the effect of the lease. The lease was made, of course, in 1934.

Q. In other words, you had a lease that became effective January 1, 1935, but the owner allowed you to go in about a month and a half in advance and take possession of the theatre without paying rent; is that it?

[fol. 725] A. That is correct.

Q. Do you remember testifying to Mr. Marcus that your first lease was made in 1932?

A. Yes, I do.

Q. That was not accurate, was it?

A. No, sir, I was confused on dates, not having my records with me.

Q. The accurate date is the date you have just given now? The lease was made on January 1, 1935, went into effect on January 1, 1935, and you opened on November 24, 1934? Those are the accurate dates?

A. I wouldn't confirm those as being the accurate dates. I don't have the records with me.

Q. Is it accurate under the terms of your lease that your term started on January 1, 1935? Is that accurate?

A. I wouldn't even say that is accurate. I would say the first of the year was accurate. I don't know whether it was 1934 or 1935 now.

Q. Is it accurate that you opened this theatre on November 24, 1934? Is that accurate?

A. That could be a year sooner or a year later. I am not confirming those dates.

The Court: You said you had the records here. Have you the records?

The Witness: No, sir, I don't have the record of the lease. [fol. 726] I was not subpoenaed for that.

The Court: I thought you said you had them.

Mr. Rogers: I thought so too.

The Witness: Not the records.

Q. You say there was a change with reference to the product in the Margie Grand Theatre, that is first run product, that occurred about a year or a year and a half after you started your operations at the New Harlan. Now, what was that change?

A. I was offered first run product of Universal, which I bought.

Q. Well, at the time that Universal offered you this first run product it had prior to that been playing that first run product at the Margie Grand, hadn't it?

A. That is correct.

Q. So that you bought Universal away from the Margie Grand, didn't you?

Mr. Marcus: I would like to renew my objection, your Honor. We did not go into the question of any other company except Warner Bros., and this is improper cross examination.

The Court: Overruled. You said "bought away." What do you mean?

Mr. Rogers: The expression was used here about "bought away" on the part of the plaintiff. What applies [fol. 727] in the plaintiff's examination applies equally in the defendant's examination. May we have the question, please?

(Question read.)

A. I bought Universal from the Universal Film Corporation.

Q. During the period when the Margie Grand was the Universal's customer first run; is that right?

A. The Margie Grand had been the Universal's customer the year past.

Q. Now, was there any other change made with reference to first run product concerning the Margie Grand, other than you buying the Universal first run?

A. You asked me did I buy any other product?

Q. First run, yes.

A. Yes, some time after that, without fixing the dates. Possibly another year or maybe two years. I was offered the Warner Bros.-First National contract first run.

Q. You say you were offered it. Did you buy it?

A. I did.

Q. And you got Warner first run, is that right?

A. That is true.

Q. So that at that time you had United Artists first run, Columbia first run, Warner Bros. first run, and Universal first run; is that right?

A. That is correct.

[fol. 728] Q. When was it you had all those four first runs?

A. I had been operating the theatre possibly four to five years before I had secured all of those first runs.

Q. You mean it was not until about 1938 that you had all those four products?

A. In 1938 I did have those four products.

Q. Hadn't you had them prior to 1938?

A. There is a possibility I had, but I do know positive I had them in in 1938.

Q. When you opened the New Harlan in 1934 who was playing Republic first run?

A. The Republic was not in existence at that time, as a company.

Q. When did Republic come into existence?

Mr. Marcus: Your Honor, we object to any questions being asked in respect to Republic product. We have limited our complaint to the major distributors and the Republic is not one of the major distributors. Mr. Rogers has started to interrogate Mr. Coomer in regard to Republic product.

The Court: There has been some testimony relative to the independent distributors.

Mr. Marcus: We have not on direct and not in the complaint attempted in any way to develop any matter in re-

[fol. 728a] spect to film products save in the case of the major distributors.

The Court: I think it is competent to show what he had. Objection overruled.

Q. When did you for the first time get the product of Republic?

A. I won't fix the date, but I saw by an announcement that Republic was being formed as a corporation and I immediately applied myself for a contract with the Republic, which I made for the first year the product was in operation.

Q. And you have had it ever since, first run, haven't you?

A. That is correct.

Q. When did you get Monogram first run?

A. Monogram also has been existing—I think probably they were existing some years ago, but they haven't been existing so long. I have had Monogram, I think, approximately for the past five years, four or five years.

Q. And ever since the time you became a Monogram customer first run that product has been yours right along first run, hasn't it?

A. Yes, sir.

Q. And that took place after Schines got into the Margie Grand, didn't it?

A. I won't say. I don't remember.

[fol. 729] Q. Do you remember when Schine took over the Margie Grand?

A. There is no way of me knowing when Schine took over the Margie Grand. I think there was an announcement made, but I don't recall the date.

Q. You remember when the Schine outfit started to operate the theatre, don't you?

A. I wouldn't know that.

Q. Now, didn't you testify under direct examination that the Margie Grand had not run second run after Schine bought the Margie Grand?

A. No, sir, I did not.

Mr. Marcus: I don't think that was his testimony. There is no such testimony, your Honor.

Mr. Rogers: One moment, now. I beg your pardon. Here is what I think you testified to. You said the Margie Grand had not run second run, but after Schine bought the Margie Grand then the Margie Grand started running second run. Didn't you so testify?

Mr. Marcus: That is not Mr. Coomer's testimony either.

Mr. Rogers: He nodded his head and said yes. Didn't you so testify?

The Witness: That is right.

Mr. Marcus: That is in respect——

Mr. Rogers: Please don't argue. Mr. Coomer says that is right.

[fol. 730] The Court: What was the question?

Mr. Rogers: I asked him didn't he testify that originally the Margie Grand had not run second run, but after Schine bought the Margie Grand the Margie Grand did run second run.

Mr. Marcus: The best way to determine that is to refer to the reporter's minutes.

The Court: I will let it stand, but I don't recall the testimony.

Mr. Marcus: Your Honor, the witness probably is confused. He testified on direct that the Margie Grand started to play second run film of the first run film that he had played in the New Harlan, which is different.

Mr. Rogers: No, he said about Schine, not the Margie Grand. It was with reference to Schine. The witness says that is accurate. Let us stop arguing.

By Mr. Rogers:

Q. That is accurate, isn't it, Mr. Coomer?

The Court: What did you testify to about Seigers, what he said? Was Seigers the man you saw at Warners? Seigers was his name?

The Witness: Mr. Smittkin I saw at one time at Warners.

The Court: Was it Mr. Seigers?

The Witness: No, Mr. Al Smittkin at Warners.

[fol. 731] By Mr. Rogers:

Q. Seigers is the salesman?

A. Ralph Sailors.

The Court: You testified that Sailors said that Schine had bought the second run?

The Witness: Yes. No, that Schine had bought the first run.

The Court: I understood you testified that Schine bought the second run. All right, go ahead.

By Mr. Rogers:

Q. In any event, you recall having said——

The Court: I am in error about that. He was talking about the second group.

Q. You recall having said that after Schine came into the New Harlan and started operating that Schine started buying second run product at the Margie Grand? That is right, isn't it?

A. I didn't testify to a question like that, no, sir. It was put different.

Q. What did you testify to on that second run?

A. I testified to the fact that the Margie Grand had never run second run after the New Harlan before Schine came.

Q. Exactly what I am saying.

A. No, you are not saying that.

Q. After Schine came you say they did run second run?

A. There is a difference between second run behind the [fol. 732] Harlan Theatre and second run behind the Margie Grand, or Mr. Schine's own pictures.

Q. You testified they did run second run behind the New Harlan Theatre after Schine came in; is that right?

A. That is correct.

Q. How did you fix that date? You say you don't know when Schine came into the town?

A. I didn't attempt to fix that date. I didn't fix the date. I wouldn't know who was operating the theatre, what my opposition was doing.

Q. That is the question I asked you. I said you did know and you said you didn't know. If you know, tell us.

A. I don't know the exact date when Schine came into Harlan.

Q. Do you know the exact date when he came in to run the Margie Grand?

A. I know that Schine was running the Margie Grand in 1938-1939 and he has been there since.

Q. And he has been running it since, you say?

A. As far as I know, sir.

Q. Now, then, by the time you got to about 1938 and you had at the New Harlan first run Columbia, United Artists, Universal?

A. That is right.

Q. Warner?

A. Right.

[fol. 733] Q. Republic?

A. Right.

Q. Monogram?

A. Right.

Q. And did you have any other product first run?

A. Not to speak of. Perhaps maybe a picture or two from an independent company.

Q. And originally the Margie Grand, the opposition, had Universal and Warner, and you succeeded in getting Universal and Warner after you got into the town; is that right?

A. I got Universal and Warner after I operated the New Harlan.

Q. Then after you had bought Warner away from the Margie Grand then you say that in 1940-1941 that you got the first block of Warner, and then Warner sold its product to Margie Grand; is that right?

A. Block selling was not introduced——

Q. I am just asking you a very simple question.

A. You have got your dates wrong, then.

Q. 1941-1942; is that right?

A. That is right.

Q. That is what I said, 1941-1942.

A. I beg your pardon.

Q. That is correct, isn't it?

A. 1941-1942 product is correct.

[fol. 734] Q. Then in 1941-1942 season you got the first block of five from Warner, didn't you?

A. That is correct.

Q. And then you say you ran six during that season; is that right?

A. I had a special picture which made six.

Q. You had one additional special picture, which made six?

A. Yes, sir.

The Court: That was at the other theatre, wasn't it?

Mr. Rogers: The same theatre.

Mr. Marcus: There is only one theatre. Mr. Coomer, may it please the Court, first testified in respect to Corbin as to a theatre he intended to operate, but he never did.

The Court: You testified that you got six at the New Harlan?

The Witness: Six pictures on the 1941-1942 contract, yes, sir.

The Court: You got them when?

The Witness: They were bought some time in 1941 or 1942. I just don't recall when it was sold. It was that year's product.

Q. Then you spoke about your buying a group of five preceding that?

A. No, sir, I only bought one five. The group was grouped in five. I bought the first group and the one special at the same time. That is all I bought on that year's [fol. 735] contract.

Q. That is what you call the six, then?

A. Yes, sir.

By Mr. Rogers:

Q. Is it your testimony that the Margie Grand never had Republic product?

A. No, sir, I didn't make any testimony to that effect.

Q. Then it is not your testimony that Republic was never played at the Margie Grand; is that right?

A. Republic is playing at the Margie Grand at present, I think.

Q. I mean prior to the time you got Republic didn't Republic play at the Margie Grand before it played at the New Harlan?

A. No, sir.

Q. That is your testimony?

A. That is absolutely my testimony.

Q. You say they play Republic now, that is, the Margie Grand plays Republic now? You mean they play second run?

A. That is right.

Q. After you play it at the New Harlan; isn't that right?

A. Yes, sir.

Q. During the time that you have been operating the New Harlan haven't you had give-aways there?

A. For about three weeks, possibly five weeks, three to five weeks I run what was run as Bank Night.

[fol. 736] Q. In addition to running Bank Night didn't you have give-aways there?

A. In the first—in the early years of my owning the New Harlan Theatre and operating it there were occasions when we gave away, I believe, ice cream and possibly some form of pop at the starting of new serials, which would be just one time, once a week, which would stretch over a period of possibly fifteen weeks before it would be done again.

Q. Do you mean that was the only give-aways you ever gave away in that New Harlan Theatre from the time you operated it until May of 1942?

A. I wouldn't say that. It has not been my practice for give-aways.

Q. Haven't you given give-aways, other than ice cream and pop?

A. Since when, sir?

Q. I told you from the time you started to operate until May of 1942.

A. That has nothing to do with Schine that I can see.

Q. One moment, now. We will have the Court determine that.

The Court: Answer the question. When did you have give-aways?

The Witness: I don't recall any give-aways other than at very widely separated times. I can't recall any give-aways except on the starting of serials. Of course I had a manager [fol. 737] running the New Harlan Theatre. It is possible he had a give-away that I didn't know anything about.

Q. Do you mean you never gave away anything more valuable than an ice cream cone or a bottle of soda pop from the time you took it over until May of 1942?

A. I think possibly when I started operating the theatre that we gave away a couple of bicycles.

Q. You recall giving away a couple of bicycles. What else do you recall giving away?

A. I don't recall giving away anything else except the things that I mentioned.

Q. Other than some bicycles and some soda pop and ice cream you say you don't recall that theatre having given away any other give-aways from the time you opened it until May of 1942?

A. There is a possibility when I first opened it that I might have given away some two-for-ones, right when I first opened.

Q. Those two-for-ones are one admission ticket, you mean, where you allowed two people to come in on one price of admission?

A. Yes. I don't recall that. Possibly I did.

Q. On these Bank Nights that you had how much money [fol. 738] did you give away on a Bank Night?

A. A Bank Night started at $25. Of course, if no one claimed it it was added to the jack pot, and my jack pot went up to $200, which was given away.

Q. In other words, on one evening a $200 jack pot was given away to a lucky member of the audience who got a lucky number; is that right?

A. That is right.

Mr. Rogers: That is all, Mr. Coomer.

Mr. Marcus.

That is all.

The Court: We will recess now.

(Whereupon a recess was taken until 2 o'clock P.M.)

[fol. 739] After Recess, 2 o'clock, P. M.

Appearances: As before noted.

Mr. Rogers: I assume you are finished with the witness, Mr. Coomer?

Mr. Marcus: That is right.

Mr. Rogers: That being so, may it please the Court, I move to strike the testimony of Mr. Coomer on the ground that the testimony has not been properly connected, that we have not had evidence properly connecting the authority of any of the persons with whom the conversations were had, and also on the ground that the testimony related to purely local transactions.

The Court: Denied.

Leon Bernard Scott recalled, by and on behalf of the Plaintiff, having been previously sworn, was examined and testified further as follows:

Direct examination.

By Mr. Marcus:

Q. Mr. Scott, do you have the folder with you in which you [fol. 740] brought your documents?

A. I do.

Q. Does that folder contain any agreements other than the ones that were shown you this morning?

A. This paper right here (indicating).

Q. No contract?

A. No contract whatsoever.

Mr. Marcus: That is all, Mr. Scott.

Cross-examination.

By Mr. Rogers:

Q. Mr. Scott, may I ask you, the four contracts introduced in evidence here, which were shown to you this morning, they are the only contracts you recall having been turned over to you with reference to that transaction?

A. I couldn't answer that. I really don't know.

Q. Are they the only four that you saw?

A. They are the only four that I could find.

Mr. Rogers: That is all, Mr. Scott.

[fol. 741] Grover C. Scott recalled by and on behalf of the Plaintiff, having been previously sworn, was examined and testified as follows:

Direct Examination.

By Mr. Marcus:

Q. Mr. Scott, was there a provision in any of the contracts you turned over to Mr. Leon Scott, providing against your competing with the Schines in Corbin, Kentucky, in respect to the operation of a theatre?

Mr. Rogers: I object to that, may it please the Court, on the ground that the contract provision would be the best evidence and on the further ground that the question calls for a conclusion on the part of the witness.

The Court: Was there another contract besides the four contracts?

The Witness: It has always been my conviction, opinion and belief——

By Mr. Marcus:

Q. To the best of your recollection, was there another contract besides those four?

Mr. Rogers: May it please the Court, I object to that on the ground the contract itself is the best evidence.

[fol. 742] The Court: Overruled.

The Witness. The best of my recollection there is a contract covering the deal in Corbin, Kentucky.

Mr. Rogers: I didn't get that.

The Witness: The deal whereby the Schine interests gave us, Leon Scott and myself, $2500 for the lease in Corbin. I haven't seen that contract.

By Mr. Marcus:

Q. Was there a provision in that contract relating to you not competing with Schine in respect to operating a theatre in Corbin?

Mr. Rogers: I object to that on the ground the contract is the best evidence, may it please the Court.

The Court: As I recall his testimony he testified he left all these papers with his son.

Mr. Rogers: Leon, yes, sir.

The Court: And his son testified that these are all the contracts.

Mr. Rogers: He is speaking about an entirely different paper. That paper has not been produced, nor has it been requested, nor is there any evidence as to whatever became of that, and I think before they can introduce any evidence [fol. 743] they have got to show there was such a paper and they have got to show it was lost.

The Court: It appears it was lost. He said he delivered it to the son and the son said he couldn't find it. I assume that was the other part of the contract signed.

Mr. Marcus: That is right, they should have it.

The Court: Was notice served on them to produce?

Mr. Marcus: We have asked them to produce that contract, your Honor.

Mr. McKay: We state unequivocally, your Honor, that there is no such contract.

Mr. Marcus: Do you want to put some one on the stand to so testify?

Mr. McKay: We don't have to.

Mr. Rogers: Will you kindly put somebody on the stand?

The Court: When do you claim this was made, Mr. Scott?

The Witness: Contract for Corbin?

The Court: The contract referred to, the contract for Corbin.

The Witness: There *were* more than one contract.

The Court: No, I mean other than the four you have here.

The Witness: I would like to see those four contracts.

The Court: You have examined them once.

The Witness: I didn't think there were but three when [fol. 744] he gave them to me.

Mr. Rogers: Mr. Scott would like to see those four contracts.

(Mr. Marcus hands the contracts in question to the witness and witness examines same.)

Mr. Marcus: Do you have your copy, Mr. Rogers?

Mr. Rogers: That is the one, Exhibit P-25 (handing Exhibit P-25 to Mr. Marcus).

By Mr. Marcus:

Q. You might look at this, Mr. Scott. This is a copy, or a document, which purports to be a copy of that contract with all the papers in it.

The Court: You are referring to what exhibit now?

Mr. Marcus: That is Plaintiff's Exhibit P-25.

The Witness: What I can't understand was this a separate contract from this one?

Mr. Marcus: That is right.

The Witness: Where is the beginning of this?

Mr. Marcus: That is why you might look at this one, it appears to be complete. (Plaintiff's Exhibit P-25.)

By Mr. Marcus:

Q. After going through these exhibits, Mr. Scott, P-25, P-20 and P-21, are you still of the opinion that there was at least one other contract which you turned over to your son, Mr. Leon Scott, relating to——

Mr. Rogers: I object to the form of the question.

[fol. 745] The Court: The form of the question is bad.

Q. Now, Mr. Scott, after reading these exhibits, Nos. P-21, P-20 and P-25, do you recall whether you turned over to your son, Mr. Leon Scott, any contracts in addition to these exhibits relating to Corbin?

A. I wouldn't consider it turning it over to him inasmuch as he possibly got the contract in the beginning, if there was one. He was a partner right in the contract.

Mr. Rogers: Pardon me. I move to strike as not responsive.

The Court: The question is whether you remember turning over to him a contract other than these three.

The Witness: All the papers were left——

The Court: You have not any recollection of a contract made between you and your son and the Schines except these three?

The Witness: That has been six years ago. I haven't a definite recollection.

By Mr. Marcus:

Q. Do you recall having made any other contract with the Schines in relation to Corbin, other than these three contracts marked P-21, P-20 and P-25?

Mr. Rogers: Pardon me. The witness has testified he has no recollection on the subject.

Mr. Marcus: He has no recollection of turning over such contracts.

[fol. 746] Mr. Rogers: Certainly if he has not he can have no independent recollection of making it.

The Court: Have you any recollection of any other contracts besides these?

The Witness: Not definite.

Mr. Marcus: That is all.

Mr. Rogers: That is all.

ABNER C. JONES, a witness called by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Mr. Rogers: Now, before this witness is interrogated, and to preserve the record, I wish to move with reference to the witness Grover C. Scott to strike his testimony on the ground that it is not binding on the defendants, on the ground that there has been no proper connection of the parties spoken to, of their authority, and on the further ground that his testimony relates to purely local situations.

The Court: Overruled.

Direct examination.

By Mr. Marcus:

Q. Mr. Jones, where do you reside?
[fol. 747] A. Harlan, Kentucky.
Q. What is your occupation?
A. Banker.
Q. Mr. Jones, are you an officer of the corporation which owns the New Harlan Theatre in Harlan, Kentucky?
A. I am Secretary-Treasurer of the Harlan Theatre Company.

The Court: New Harlan, isn't that the name?
The Witness: New Harlan is the name of the theatre, but the Harlan Theatre Company is the owner.

Q. Is Mr. Price Commer the tenant of that theatre?
A. He is.
Q. And was he the tenant in 1938?
A. He was.
Q. Mr. Jones, do you recall representatives of the Schines contacting you in reference to leasing that theatre, and if so would you place the time as near as possible?
Mr. Rogers: I object to the form of the question.
The Court: The form of the question, "representatives of Schines" makes the question improper in form. He may answer as to whether he had some talk about the leasing of this theatre with somebody at some time.

Q. Mr. Jones, did you have any conversation with persons other than Mr. Coomer in respect to the leasing of the New Harlan Theatre, either in 1938 or 1939?
[fol. 748] A. I can't recall the year. Mr. Lazar was in to see me, but I wouldn't attempt to place the year.
Q. You say that Mr. Lazar was in to see you. Will you state to the Court the substance of that conversation?

Mr. Rogers: Pardon me, may we try to have Mr. Jones give us some indication about the time when this conversation took place?
The Witness: Well, I am sorry. I am afraid that would be difficult. I have no way of fixing it, no record of any kind to refer to.

Q. Would you say that it was prior to 1941, Mr. Jones?
A. Yes, sir.

Q. Will you state to the Court the substance of that conversation?

Mr. Rogers: May it please the Court, I don't wish to seem to be too unnecessarily persistent, but I think we are entitled to a more definite date than some time prior to 1941.

The Court: Can you state any more definitely, Mr. Jones?

The Witness: It would be pretty much of a guess, but I should say between 1937 and 1939. That is a guess, if that is a help.

Mr. Rogers: Just a guess?

By Mr. Marcus:

Q. You do know, do you not, that it was not prior to 1937?

[fol. 749] A. I believe it was since 1937. That would be my best recollection.

Q. Will you state to the Court the substance of that conversation?

A. Mr. Lazar wanted to know——

Mr. Rogers: No.

A. Well, Mr. Lazar said he represented the Schine interests and would like to talk to me about a lease on the theatre.

Q. That was with reference to the New Harlan Theatre, was it not?

A. That is right—the only one we have.

Q. Was Mr. Lazar on that occasion accompanied by any one?

A. I believe there was another gentleman with him, but I couldn't recall the name.

Q. At that time, at the time of that conversation, was Mr. Coomer your tenant?

A. Yes, sir.

Q. And his lease still had some time to run?

A. Yes, sir.

Q. Did this conversation relate to a lease to commence after the expiration——

Mr. Rogers: Now, Mr. Marcus, you are getting into your bad habits again. I object to it.

The Court: Let him tell when it refers to. State the conversation you had with Lazar.

[fol. 750] A. Well, that is about the content of the conversation with Mr. Lazar.

Mr. Rogers: One moment. I move to strike because the question has been stricken. Now let us have a question.

The Court: Yes, strike it out. Proceed, Mr. Marcus.

Q. Mr. Jones, on the occasion of your conversation with Mr. Lazar was there discussed at that time a lease——

Mr. Rogers: Pardon me. May it please the Court, I have three times asked Mr. Marcus to please frame the questions properly. Again he is trying to do the same old thing.

The Court: Finish the question.

Q. Was there discussed at that conversation the possibility of the Schines leasing that theatre at the expiration of the lease then existing?

Mr. Rogers: May it please the Court, I again object to the form of the question.

The Court: Objection sustained.

Mr. Rogers: I am going to ask your Honor to please request Mr. Marcus to frame his questions properly.

The Court: You will save a lot of time by letting the witness go ahead and state.

Mr. Marcus: Your Honor, he has already stated the conversation in respect to it covering a lease on that theatre. [fol. 751] Now I am trying to bring out what was said.

The Court: He said there was some talk about a lease. What was said?

The Witness: I think that is about all that Mr. Lazar— if the Court will permit me, I think Mr. Marcus is intending to ask me about Mr. Hensler. That is all as far as Mr. Lazar is concerned.

Mr. Rogers: Let Mr. Marcus handle that.

Q. Did you have any subsequent conversations with Mr. Lazar or Mr. Hensler in regard to the leasing of that theatre?

A. I did with Mr. Hensler.

Q. What was said at that conversation?

Mr. Rogers: Now let us — that conversation, as to when it was.

A. I think I can fix that more definitely. I would say the spring of 1942.

Mr. Rogers: Can we fix that date in the spring of 1942, may it please the Court, with more accuracy?

The Witness: I wouldn't attempt that because I have no records to which to refer to fix it.

Mr. Rogers: Can you give us the month?

The Court: Prior to May, was it, before May?

The Witness: I think it was in the spring of 1942. I think that is about as definite as I can try to make it.

[fol. 752] Mr. Rogers: May it please the Court, unless we can get these reasonably fixed with reference to the dead-line date in this case it would seem to me that it would be dangerous to allow this testimony in.

Mr. Wright: Mr. Rogers just got through asking Mr. Coomer what pictures he was playing today.

The Court: Proceed.

Q. What was the substance of that conversation, Mr. Jones?

A. Mr. Hensler asked me if we would be interested in making the Schine people a lease, and I told him that we had a tenant, a very satisfactory tenant, with some time to run; and then he wanted to know if we would be willing to consider making Schine a lease effective at the end of the lease held by Mr. Coomer.

Q. Was Mr. Hensler accompanied by any other person?

A. He came in with a local real estate man, Carl Noe.

Q. Did Mr. Noe make any statement to you in regard to leasing that theatre?

Mr. Rogers: Pardon. I object to that on the ground that there has no foundation been laid for that and no evidence as to the right of Mr. Noe to represent the defendant or make any statements.

The Court: Was it said when Hensler was there, do you mean?

[fol. 753] Mr. Marcus: Mr. Hensler was there.

A. That is right. I am not sure that I get your question.

By Mr. Marcus:

Q. Did Mr. Noe say anything at that time in the presence of Mr. Hensler in regard to the leasing of that theatre?

Mr. Rogers: I press the objection, may it please the Court.

The Court: I will receive it, subject to being stricken out.

A. I believe Mr. Hensler made the statement that plans were under way for enlarging the Margie Grand.

Q. And did Mr. Noe make any statement?

A. Not in the presence of Mr. Hensler. He did later, but I guess that would not be competent.

Q. Mr. Jones, who is your present tenant?

A. Price Coomer.

Mr. Marcus: Your witness.

Mr. Rogers: No questions. I move to strike the testimony of Mr. Jones on the ground, first, that it relates to a purely local situation, and on the ground that it is incompetent.

The Court: Denied.

[fol. 754] Richard DeToto, a witness called by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Kallis:

Q. Mr. DeToto, what is your present address?

A. Indian Town Gap, Military Reservation, Pennsylvania.

Q. What is your present occupation?

A. I am a Sergeant in the United States Army.

Q. Calling your attention, Sergeant DeToto, to the years 1931 and 1932, where were you residing?

A. I was residing in Geneva, New York.

Q. What were you doing?

A. I was attending the Geneva High School.

Q. Were you occupied with any kind of work in addition to attending high school, if that is work?

A. I was doing a little part time work for the Schine Theatres in Geneva, New York.

Q. You were working for the Schine Theatres in Geneva, New York; is that right?

A. Yes.

Q. During what period was that?

A. 1931 and 1932.

Q. Who was your immediate successor during the years [fol. 755] 1931 and 1932 while you were working for the Schine Theatres at Geneva, New York?

A. I don't follow you.

Q. Who was your employer or your superior?

A. I still don't know what you mean.

The Court: You asked him who his successor was. You did not mean that. You meant his superior.

Q. Who were you working for?

A. Clinton C. Young.

Q. What was his position with the Schines Theatres?

A. He was manager of the Geneva Theatre.

Q. Did he have at that time any additional duties with the Schine defendants?

A. I believe he was their District Manager.

Q. By District Manager what do you mean?

A. Well, he had supervision of the theatres in that immediate vicinity.

[fol. 756] Q. Now, Sergeant De Toto, calling your attention to the years 1934 and 1935, will you please tell the Court whether you had any connection with any theatre in Seneca Falls, New York?

A. In 1934, in July I was asked by Mrs.——

Mr. Rogers: One moment. A simple question calling for a simple answer. Did he or did he not?

The Witness: Yes, I took over the management of the Seneca Theatre in Seneca Falls, New York.

Q. And that was from July, 1934, until when?

A. June 30th, 1935.

Q. At the end of June in 1935, Sergeant De Toto, did you tell me your connection with the operation of the Seneca Theatre in Seneca Falls, New York, or did you continue?

A. I leased the theatre and continued operation.

Q. Who, at that time, was the owner of the building in which the Seneca Theatre at Seneca Falls, New York was located?

A. The Seneca Falls Savings Bank at Seneca Falls, New York.

Q. And were you given an oral or a written lease?

A. At the time the lease was consummated——

Mr. Rogers: One moment. I move to strike. The answer is simple.

Mr. Kallis: Will you read the question, Mr. Reporter?

(Last question read.)

The Witness: Yes, I was.

[fol. 757] The Court: Which was it?

The Witness: It was oral.

Q. Did you later receive a written lease from the Seneca Falls Savings Bank?
A. Later.
Q. For the Seneca Falls Theatre?
A. I received a lease.
Q. A written lease?
A. That is right.

Mr. Kallis: Mark this for identification, please.
(Thereupon paper, purporting to be a lease, was marked as Plaintiff's Exhibit P-46 for identification.)
Q. Sergeant De Toto, I show you Government's Exhibit marked P-46.
Mr. Rogers: No, Plaintiff's Exhibit, not Government's.
Mr. Kallis: I will stand corrected, Mr. Rogers. Thank you.
Mr. Rogers: This is a civil suit.

Mr. Kallis:

Q. I show you Plaintiff's Exhibit marked for identification No. P-46, and ask you if you have seen that before?
A. Yes, I have.
Q. From whom did you receive it?
A. Seneca Falls Savings Bank, Seneca Falls, New York.
[fol. 758] Q. Approximately what time?
A. Sometime in June, 1935.

Mr. Rogers: Objected to on the ground it is immaterial, not binding on the defendants, and also on the ground it relates to a purely local transaction.
Mr. Kallis: If the Court please, this a lease dated June of 1935, covering the leasing of this Seneca Falls Theatre at Seneca Falls, New York, for a period of a year beginning July 1st, 1935, and expiring June 30th, 1936, just a plain lease, with respect to the operation of the theatre.
The Court: Received. Renewal for the next year?
Mr. Kallis: No, sir, there isn't.

(Lease previously marked for identification as Plaintiff's Exhibit P-46 was received in evidence.)

Q. Sergeant De Tota, will you please tell the Court whether you operated the Seneca Theatre on your own account after July 1st, 1935?
A. Yes, I did.

Q. And for what period of time?

A. July 1st, 1935 to June 30th, 1936.

[fol. 759] Q. And you vacated the theatre on June 30th, 1936?

A. That is right.

Q. Are you acquainted with a man by the name of C. F. Marsh, in Seneca Falls, New York?

A. Yes.

Q. And what is his business?

A. He is the Treasurer of the Seneca Falls Savings Bank.

Q. After July 1st, 1935, when you began operating the Seneca Theatre on your own account, did you have any conversations with Mr. Marsh with reference to the purchase of the building in which the Seneca Theatre was located, or with reference to the renewal of the lease?

A. Yes, Mr. Marsh told me——

Mr. Rogers: Let us get the date of that, please.

Q. Please fix the date as clearly as you can.

A. It was at the time the lease was signed the first time. Is that what you have reference to?

Q. Yes, and who was present.

Mr. Rogers: May it please the Court, I object to that as incompetent, immaterial and not binding on the defendants.

Mr. Kallis: If the Court please, I think I can later show the connection between this testimony that I have in mind [fol. 760] and what Sergeant De Toto's testimony later will be.

The Court: You are referring now to a conversation between the witness and Marsh?

Mr. Kallis: That is right, who is Treasurer of the Seneca Falls Savings Bank.

Mr. Rogers: March of which year?

Mr. Kallis: 1935.

Mr. Rogers: When was the conversation?

Mr. Kallis: He said it was the time the lease was signed.

Mr. Rogers: If the conversation was had at the time the lease was signed, may it please the Court, then I object to it upon the ground all conversations and all transactions were merged in the lease.

The Court: It might be so, or it might not be so. Are you referring now to the second lease?

The Witness: No. When I signed the lease I objected on the grounds——

Mr. Rogers: One moment.

The Court: I just ask you, are you referring to the time you had this talk with Marsh, are you referring to the time of the second lease?

The Witness: No, I only had one lease. I had several conversations with Mr. Marsh. This is the original.

[fol. 761] The Court: That is what I am getting at. You said this was after you made the written lease.

The Witness: This was an oral agreement or conversation in addition to the lease.

The Court: When did you say this conversation was?

The Witness: It happened at the time this lease occurred, June 3rd, 1935.

Mr. Rogers: May it please the Court, the witness said that this was a conversation of some arrangement in addition to the lease. If done at that time, then that conversation would be merged in the lease, and I object to it.

The Court: I will see what he says. Of course, anything relating to the contract is merged in writing.

Mr. Kallis: That is right.

Mr. Rogers: And, of course, any conversation he had with Mr. Marsh would not be binding on us.

The Court: Again I accept counsel's statement it will be connected up. Standing by itself alone it cannot be competent. Go ahead.

Q. What was the substance of the first conversation you with Mr. Marsh relative to the Seneca Theatre in Seneca Falls, New York?

Mr. Rogers: Will you give us the date?

[fol. 762] The Court: He said in June.

The Witness: June 3rd, 1935.

Mr. Rogers: He said the first conversation. It does not necessarily mean when he made his lease, whenever he spoke to Mr. Marsh long before that.

Q. To save the time of everybody, I will waive the questions in respect to the first conversation. Pursuant to this lease, did you take possession of the Seneca Theatre?

A. I did.

Q. When was that?

A. July 1st, 1935.

Q. Did you continue operating the theatre through to June 30th, 1936?

A. I did.

Q. After you took possession of the theatre on your own account, did you have any conversations with Mr. Marsh concerning the theatre?

A. Yes, I did.

Q. Will you please tell the Court when the first conversation took place and where?

Mr. McKay: Wait a minute. That is objected to on the same grounds previously stated, no conversation between [fol. 763] the witness and Mr. Marsh can possibly be binding on this defendant.

The Court: It went in before. Unless Mr. Marsh's authority is shown it wouldn't be competent, but I will accept the statement of counsel that he will connect it up.

Mr. Kallis: If the Court please——

The Court: I am with you. I will rule on the objection with that understanding on your part; Marsh's connection will be shown with the defendant Schine. It will be perfectly competent.

Mr. Kallis: I have that in mind and will let your Honor pass on the competency of it now.

The Court: No, if you connect Marsh up with the authority to make the statement he made to connect the defendants, then I will receive it.

Mr. Kallis: I haven't that line of testimony in mind. What I have in mind with regard to this particular question that there was an oral understanding that Mr. De Toto——

Mr. Rogers: Pardon me, Mr. Kallis, for interrupting you. I don't want you to get in bad habits like Mr. Marcus and Mr. Wright. Don't tell us what you are hoping to do and not do it later on.

The Court: You propose to show what?

[fol. 764] Mr. Kallis: I propose to show that there was a continuous understanding and an oral agreement between Mr. De Toto and the Seneca Falls Savings Bank with reference to a first option, either for both the sale or the renewal of this lease when the lease expired on June 30th, 1936, and that without any prior notice of any kind, the Schine defendants went in there and bought this building away from this witness without giving him an opportunity of any kind to purchase. Then there are other incidents connected with that testimony that indicates that the conduct of the Schine defendants was not at all casual or accidental, but intentional.

Mr. Rogers: May it please the Court, if that is the purpose of the offer of proof, I certainly object to it, first on the ground, if there was any agreement of that kind, it is merged in the lease, it is not contained in the lease which is offered in evidence, and if anything was done thereafter, it cannot be used to contradict the terms of a written agreement.

Mr. Kallis: This is also, if the Court please, an oral [fol. 765] option in reference to the purchase of the building.

The Court: Of course, an option is not binding on anybody.

Mr. Rogers: No.

Mr. Kallis: The Schine defendants can't raise the Statute of fraud as a defense to this as far as the bank is concerned.

The Court: How are you going to show Schine knew anything about it?

Mr. Kallis: I am going to show that, if the Court please, by this witness.

The Court: That Schine knew of the transaction?

Mr. Kallis: Yes.

The Court: Go ahead.

Mr. Kallis: I am trying to, but Mr. Rogers continues making these objections.

The Court: I will let you show what talk there was between he and Schine in reference to the option.

Q. Calling your attention, Sergeant De Toto to the period during which you were in operation of the theatre, did you have occasion to see Clinton C. Young at the Seneca Theatre in Seneca Falls, New York?

A. Some time in August.

Q. Just answer "Yes" or "No."

[fol. 766] A. Yes.

Q. When was that?

A. Some time in August, 1935.

Q. And where was that with reference to the theatre?

A. I was operating that as I was running my own projection machines that evening, it was the projectionist's night off.

Mr. Rogers: I move to strike everything up to the present as not responsive.

The Court: Yes. When did you see him?

The Witness: Clinton C. Young came up to the projection room of the Seneca Theatre in Seneca Falls, New York.

Q. What month was that?

A. August, 1935.

Q. Will you please tell the Court what conversation you had with him exactly on that occasion?

A. Clinton Young came up in the booth and said, "Dick, I just heard you took this theatre over. I didn't know that. Whom do you have working for you, your family?" He asked me how long a lease I had, and, of course, I gave him all the information. He wanted to know how much I was paying for pictures. He said, "Don't pay more than $7.50 for pictures." He said "You have a pretty good light on your screen, and I wish you lots of luck," and I believe [fol. 767] that was about all.

Q. Did you tell him specifically when your lease expired?

A. That is right.

Q. What did you say?

A. I told him I had a year's lease, but the banker had assured me of——

Mr. Rogers: One moment. May it please the Court, I definitely say we have the right to rely on the Statute of fraud, because if they claim here the legal right of this man was invaded, they must show he had a legal right.

Mr. Kallis: If the Court please, I am trying to elicit from this witness the conversation he had with the division manager of the Schine Theatres, the defendants in this case, and he was in the process of telling your Honor the conversation he had with Clinton C. Young, the division manager of the Schine defendants, when Mr. Rogers interrupted.

Mr. Rogers: Because you have the peculiar habit in relating conversations of that kind to get in other matter that you know is not competent, and that is why I object to it.

The Court: I will let him state the conversation.

The Witness: Your Honor, Clinton C. Young came to the [fol. 768] projection room——

The Court: We got that far. What further was said? You told about numerous things, he spoke about—what did he say and what did you say to him?

The Witness: I told Clint I had taken the theatre over and I had a year's lease, but the banker had assured me an extension the first of July, and I was being cautious in my film contracts, and I thought I could make a go of it, and that was all. He said "Good luck, Dick." And he left.

Q. Was there anything said in this conversation, Mr. De Toto, as to how much was mentioned between yourself and the bank with regard to the purchase price of this option? You said it was discussed with Mr. Young?

A. No, I don't recall.

Mr. Rogers: One moment. I don't understand this witness testified to any such thing.

The Court: No.

Mr. Rogers: He said "No." Let it stand.

Q. Will you please describe the Seneca Theatre with respect to the location first?

A. It is located on the main street.

Q. What size house was it?

[fol. 769] A. 350 seats.

Q. Did it have all facilities that were necessary with the operation of the moving picture theatre?

Mr. Rogers: Let us find out what the facilities were.

Q. Please tell the Court what they were.

A. I don't quite follow you. We had seats, if that is what you mean.

Q. What else?

A. Projection equipment, screen, had rest rooms, heating plant.

Q. How often during the week did the theatre run?

A. All week, every night, matinees.

Q. Matine- and evening performances?

A. That is right.

Q. Every day during that year?

A. Every day.

Q. What admission prices were you charging at the Seneca Theatre?

A. 10 and 15.

Q. At that time, Mr. De Toto, were there any other theatres in town?

A. Yes.

Q. What was the name?

A. Strand Theatre.

Q. The Strand and the Seneca were the only two theatres [fol. 770] in Seneca Falls, New York, at that time?

A. That is right.

Q. And who was operating the Strand Theatre in July of 1934, when you came there to manage the theatre?

A. The Bernstein Brothers, of Ithaca, New York.

Q. Can you tell the Court whether there was any change in operation of the Strand Theatre during the two years you were there from July, 1934, through June, 1936?

A. Yes, there was.

Mr. McKay: Did he say it was being operated by the Bernsteins?

Mr. Rogers: Yes.

Mr. McKay: That is all immaterial.

Mr. Kallis:

Q. What, if any change in operation, occurred in the Strand Theatre during those two years?

A. Schine acquired it in September, 1935.

Q. At the time the Strand Theatre was being operated in 1934 and 1935 by Bernstein Brothers what was the admission price?

A. Ten cents for children and 25 cents for adults.

Q. Was there any change in the admission price of the Strand Theatre after the Schine defendants took over the Strand?

A. No, there wasn't, not during my operation.

Q. They continued charging 25 cents?

[fol. 771] A. That is right.

Q. With reference to the business that you did at the Seneca Theatre, can you tell the Court just in general terms, whether the audience occupied the full house, or how business was?

A. It was a fair business.

Q. Did you sell out at all on any evening?

A. Quite occasionally.

Q. What was the size of the Strand Theatre?

A. 900, about 900 seats.

Mr. Kallis: Please have that marked as Plaintiff's Exhibit P-47 for identification.

(Thereupon a letter dated April 28, 1936, referred to, was marked as Plaintiff's Exhibit P-47 for identification.)

Q. Calling your attention to the month of April, 1936, did you have a conversation with Mr. Marsh relative to a renewal of this lease?

A. Yes, I did.

Q. And what and when was that?

A. It was in the early part of April, 1936.

Q. Where?

A. In the Seneca Falls Savings Bank, Seneca Falls, New York.

Q. What was the substance of the conversation between [fol. 772] you and Mr. Marsh on that occasion?

Mr. Rogers: May it please the Court, I object to that on the ground it is immaterial, not binding on us, and no authority shown on behalf of Mr. Marsh to bind the defendants, and on the ground it relates to purely local transactions.

The Court: Overruled.

Q. Please answer the question.

A. Your Honor, I went in to see Mr. Marsh in the Seneca Falls Savings Bank, and I told him the lease had a few more months, and I would like a renewal, that I would buy the building if he insisted on it. He also quoted the price to me at the time of $9,000. He said all cash wasn't necessary, could carry a balance on mortgage, but I told him I would much prefer to spent the little money I had to remodel the theatre, and that if he would play along with me, on another year's lease, that I would buy the building the following year, and he agreed. He said, "Don't worry, Dick. We will play along with you. You promised to buy the building the next year." As a matter of fact, Mr. Marsh came down to the Seneca Theatre and I showed him what I had in mind. As a matter of fact, he even took me up to his church and showed me some rubber runners which [fol. 773] he thought would be cheaper and much better than carpet.

The Court: Of course, that is not responsive to the question. He asked about the talk you had with him at the Seneca Falls Savings Bank.

The Witness: Yes.

The Court: And talked renewal and talked about the purchase and talked about repairs.

Mr. Kallis:

Q. What is the next notice that came to your attention, Mr. De Toto, with reference to any change of ownership of the Seneca Theatre Building?

A. The Saturday preceding the date of that letter which is April 28th, I couldn't find a calendar.

Q. One moment. Showing you Plaintiff's Exhibit P-47 for identification, is that the letter you just referred to?

A. That is right.

Q. All right, proceed.

A. The Saturday preceding that letter which is dated April 28th, 1936, Mr. Gus Hughes, who is President of Businessmen's Association, who is located across the street from the Seneca Theatre, called me over and said——

Mr. Rogers: One moment. May it please the Court, I certainly object to that on the ground that — can't possibly be material.

Mr. Kallis: I think Mr. Rogers' objection is well taken there, and I am willing to stipulate that it goes out.

Mr. Rogers: My gracious, I am overcome.

[fol. 774] Q. You had a conversation with Mr. Hughes and then what did you do?

A. Well, I have got to tell you what he told me.

Mr. Rogers: No, that is what you don't tell.

Q. Tell us what happened after you had this conversation.

A. I immediately rushed up to the Seneca Falls Savings Bank and was instructed that Mr. Marsh was upstairs in the bank. I immediately rushed upstairs, knocked on the door. The door opened and I saw Clinton C. Young and several attorneys and Mr. Marsh came out, and I had to back up in front of them. I said to them, "What are you doing, selling me out without giving me a chance?" He blushed and twinkled with his fingers and he said "We are not exactly sure whether we are going to sell." He said, "We will let you know."

Q. Your attention has been directed to Plaintiff's Exhibit 47. Did you receive this exhibit?

A. Yes, I did.

Q. By what means?

A. By mail.

Q. On or about the date that it bears, April 28, 1936?

A. That is right.

Mr. Kallis: I will offer in evidence Plaintiff's Exhibit 47 for identification.

Mr. Rogers: I object to this. May it please the Court, on [fol. 775] the ground that it is not competent, on the ground that it is not binding on the defendant Schine, being a letter from Mr. Marsh to the witness DeToto.

The Court: With reference to what?

Mr. Kallis: The payment.

The Court: Overruled. Received.

(Thereupon the letter referred to previously marked Plaintiff's Exhibit P-47 was received in evidence.)

Q. Now, pursuant to this Exhibit, Plaintiff's Exhibit 47, a letter from the bank to you notifying you that the Schines had bought the Seneca building, did you pay your rent for the month of May and the month of June, of 1936, on the theatre?

A. Yes, I did.

Q. To whom did you pay the rent?

A. To Leon Schafer, the Manager of Schine's Strand Theatre, Seneca Falls, New York.

Q. Were you acquainted prior to April 28, 1936, with Leon Schafer?

A. Yes, I was.

Q. Had you seen him on many occasions?

A. Yes, I had.

Q. And had you visited him at the Strand Theatre?

A. I had.

[fol. 776] Q. When did he come to Seneca Falls, by the way?

A. I don't know the exact date, but it was shortly after Schine acquired the Strand in September, 1935.

Q. When was the first time that you paid rent to Leon Schafer on the Seneca Theatre?

A. I don't recall the first time exactly. It was some time in May.

Q. What year?

A. 1936.

Q. And did you have a conversation with Mr. Schafer concerning the Seneca at the time you paid him the rent?

A. I did have a conversation with Mr. Schafer after receiving that letter, after I had known that Schine had the Seneca Theatre.

Q. Was that on the first occasion of your paying rent to him for the Seneca?

A. I don't recall whether it was or not. It was shortly after I received that letter.

Q. What was the conversation?

Mr. Rogers: One moment. May it please the Court, I object to that on the ground that there is no foundation laid to show any authority on behalf of Mr. Schafer.

The Court: What was his business there—Schafer's business?

The Witness: He was the manager for Schine of the theatre.

[fol. 777] The Court: Objection sustained.

Mr. Kallis: If the Court please, this witness testified that he paid rent to Mr. Schafer, and that places him in apparent authority, at least with respect to this building, and I think that automatically shifts the burden as far as these defendants are concerned. If Leon Schafer was an employee of the Schine defendant, if he didn't have this authority they can come in——

The Court: The mere authority to collect rent or manage the theatre does not show his authority to bind the defendant by some act. It does appear he paid rent to him. You can ask him about paying the rent to Leon Schafer.

Mr. Kallis: Your Honor is contemplating the very question I have in mind.

Q. Did you see Clinton Young in Seneca Falls between April 28, 1936, and July 1, 1936?

A. Yes, I did.

Q. Will you tell the Court what was the occasion of your paying rent to Leon Schafer instead of Clinton Young?

A. That has no bearing on that.

Q. Just answer the question, if you can, Mr. DeToto. How did it happen that you paid the rent to Leon Schafer?

[fol. 778] A. It seems I received a letter from Clinton Young, or someone, that he would be unable to collect the rent.

Mr. Rogers: If there is a letter let us have the letter.

Q. Do you have that letter in your possession?

A. I destroyed it.

The Court: He had a letter from Mr. Young to pay the rent to Schafer.

Mr. Rogers: Is that all you want to prove by that?

Mr. Kallis: Yes.

Mr. Rogers: Well, that is all right.

Q. You stated that this letter said you should pay the rent to Leon Schafer?

A. I believe it did. Words to that effect, anyway.

Q. Did you have any conversation with Mr. Schafer relative to a renewal of this lease?

A. Yes, I did.

Mr. Rogers: One moment, may it please the Court. I object to that on the ground that Schafter has not as yet been identified as anybody having authority to discuss leases or the making of leases. By his own testimony up to the present Schafer is merely a chap to receive rent. He might just as well pay the cashier or the ticket chopper in the theatre.

Mr. Kallis: If the Court please, the testimony so far is [fol. 779] that the Schine defendants became the owner of this theatre building in April of 1936, that the only representatives of the Schine defendants in the city of Seneca Falls, N. Y., the only representative was Leon Schafer who was managing the Strand Theatre, and who received the rent.

Mr. Rogers: Now we have got Mr. Kallis testifying. Mr. Kallis says that he is going to show that Mr. Schafer was the only representative of the Schine Company at Seneca Falls. I want that stricken, may it please the Court.

The Court: Supposing he were the only representative, that would not show authority. All the evidence is that he was the manager of the theatre. There is no implication that there was any authority to bind Schine with relation to acts in the purchase of a theatre unless you can assure the Court that you are going to show the authority of Mr. Schafer to make certain statements or certain agreements with the witness. Standing alone it is not sufficient that he said something about what his employer was going to do.

Mr. Kallis: I don't want to be captious, if the Court [fol. 780] please. I am really trying to save time. Your Honor knows that. I think that his connection with the Strand Theatre and his connection with the Schine defendants in general with reference to collecting rents on the Seneca would clothe him with the apparent authority with regard to the charge of that building in Seneca Falls. Somebody would have to have charge of that building.

The Court: Supposing he did have charge of the building, then what?

Mr. Kallis: If he had charge of the building then certain statements that he made concerning the prospective use of it would be competent. That is all I am trying to elicit.

The Court: Objection sustained. I don't think it is sufficient to show authority.

Mr. Kallis: Furthermore, I think it would be part of the res gestae under the circumstances. This man goes to the authorized collecting agent of the Schine defendant, pays the rent on several occasions, and certain statements were made with reference to the future use of the building.

Mr. Wright: If the Court please, to save time, could it [fol. 781] not be taken subject to being stricken if there is not any proper showing of authority made? This man is going back to the Army camp and we wouldn't want to have to call him back for more testimony after we put on the Schine defendants.

The Court: If you can assure me that this connection will be made I will receive the testimony.

Mr. Rogers: I want a definate promise on that.

Mr. Wright: What we would be able to show is that Schafer was the representative of the Schine defendants in that particular town.

The Court: You do not claim the testimony at the present time, standing alone, is sufficient? The testimony that this man Schafer was manager of the other theatre and collected rent on the Seneca Falls would not imply the authority to bind Schine as to future actions.

Mr. Wright: I would say as far as that building goes, in the absence of any other representative in the town I presume that is at least prima facie authority to deal for Schine on those premises was in Schafer, on the basis of what is in the record. As I say, we may be able to develop additional [fol. 782] authority on a later date, but in any event I think this testimony should be received so that if we do not it can be stricken; if we do we can then take it.

Mr. Rogers: May it please the Court, Mr. Wright's statement again is that we may be able to gamble on this man's testimony. We are entitled to an absolute assurance by the plaintiff that they will connect.

Mr. Wright: What harm will be done?

Mr. Rogers: Because there has been too much of this stuff in the record now.

The Court: Objection overruled. I will receive it.

Mr. Kallis:

Q. Calling your attention to the first conversation you had with Leon Schafer after the Schine defendants bought the Seneca Theatre, please tell the Court what was said.

Mr. Rogers: And when was the conversation?

The Witness: It was shortly after this letter, some time in the early part of May, 1936, in the lobby of Schine's Strand Theatre. Mr. Leon Schafer was there. He was leaning up against the rail in the ticket office. I walked up to him and said, "Leon, how about renewing my lease?" He said—in more or less his own words—"Are you kid- [fol. 783] ding?" He said, "Schine don't buy theatres to rent them, he wants to close up the Seneca Theatre. He does not want any competition in Seneca Falls."

Mr. Rogers: May it please the Court, I move to strike that on the ground that there is no evidence at all to prove that this man is authorized to make any statement such as the statement testified to as to the policy of Schine with reference to their theatres, bearing in mind, your Honor, that this lease only had about a month and a half to go at that time on this theatre, and all this man Schafer did was to receive rent. I do maintain that this is going beyond anything that the Government hopes to connect, and I don't think you will get an honest assurance that they will connect it. Mr. Wright would not give it to us.

The Court: It is clearly incompetent, in my judgment, unless the authority is shown in Schafer to make such a statement. He states what he claims to be the policy of Schine.

Mr. Wright: Schine's policy in Seneca Falls is necessarily made by the man who manages Schine's property there.

[fol. 784] Mr. Rogers: Nonsense.

The Court: I will let it stand that he tried to rent again of Schafer and Schafer refused to rent it.

Mr. Rogers: Of course I have already objected to that, may it please the Court, and that was to be done subject to connecting Schafer's authority to even talk about granting.

The Court: I will receive it. I want it clearly understood that I do so with much hesitation. I have no doubt about it being incompetent unless it is further connected.

By Mr. Kallis:

Q. Mr. DeToto, when Mr. Schafer told you, in substance, that you could not renew this lease on the Seneca did you take any steps of any kind with reference to the building of another theatre in Seneca Falls, N. Y.?
A. Yes, I did.
Q. And whom did you see?
A. A Mr. Barney McDermott.
Q. When was that?
A. Shortly after my conversation with Leon Schafer.
Q. Can you give us the month and year?
A. It was in May.
Q. Of what year?
A. 1936.
Q. Pursuant to your discussions with Barney McDermott [fol. 785] can you tell the Court whether a site for——

Mr. Rogers: Please, let us find out what was done.
The Court: Let him say what he did.

Q. Please tell the Court everything that occurred with respect to that subject.
A. Mr. McDermott had an old laundry building on the main street in Seneca Falls, from which he was deriving no revenue, and he and I thought it would make a splendid theatre location, and we worked out an arrangement. He hired an architect, plans were drawn up and approved by the State at Albany.

Mr. Rogers: One moment. I object to this witness testifying as to plans or approval of plans unless we have the proper evidence——
The Court: I will let it stand. I think that is a statement of fact, that plans were drawn.
Mr. Rogers: And he said "and approved."
The Court: "Approved" may go out. Plans were prepared.
Mr. Kallis: Please mark that as Plaintiff's Exhibit 48 for identification.

(Thereupon the plans referred to were marked as Plaintiff's Exhibit P-48 for identification.)

(Thereupon the specifications referred to were marked as Plaintiff's Exhibit P-49 for identification.)

[fol. 786] (Thereupon the newspaper, Seneca County Press, June 17, 1936, referred to was marked as Plaintiff's Exhibit P-50 for identification.)

Q. Mr. DeToto, with reference to the proposed theatre concerning which you have just testified, can you tell us the name of the architect?
A. Lloyd B. Adams.
Q. Did you have any discussions with Mr. Adams concerning the proposed theatre?
A. Yes, sir.

The Court: Why is it necessary to go into this? It is not disputed here. He said plans were drawn, and he said by whom they were drawn. I don't think the question of the details of the plans is necessary at this time unless there is evidence later to contradict it. If that is material you may show the plans. He testified plans were drawn.

Q. Showing you Plaintiff's Exhibit 48 for identification, will you please tell the Court what that represents?
A. These are the plans for the new theatre that Barney McDermott was going to open in Seneca Falls.
Q. Showing you Exhibit 49 for identification, will you please tell the Court what that exhibit represents?
A. These are the specifications for the same theatre.

[fol. 787] Mr. Kallis: I offer them in evidence, if the Court please.

The Court: It seems to me unnecessary to cumber up the record with the plans. He has testified that the plans were prepared.

Mr. Rogers: I do object to it, may it please the Court, on the ground that it is immaterial. It is not binding on us. And on the ground it relates to an isolated local transaction.

The Court: I think they are competent, although I think they are cumulative, unless it is disputed that plans were drawn. I will receive them but I don't think it adds anything to the testimony.

Mr. Rogers: My objection is as to both of these proposed exhibits.

The Court: Very well.

Mr. Kallis: Your Honor has received 48 and 49?

The Court: Yes.

(Thereupon the plans referred to previously marked as Plaintiff's Exhibit P-48 for identification were received in evidence.)

(Thereupon the specifications referred to previously marked as Plaintiff's Exhibit P-49 for identification were received in evidence.)

[fol. 788] Q. Mr. DeToto, I show you what is marked as Plaintiff's Exhibit 50 for identification. After the Schine defendants purchased the Seneca Theatre can you testify as to whether or not there were any signs posted in the theatre or in front of the theatre, prior to the time you vacated on June 30, 1936?

A. No.

Q. Your answer is that there were no signs of any kind posted?

A. That is right. Not by Schine.

Q. Now I show you what has been marked as Plaintiff's Exhibit 50 for identification and ask you whether you have seen that exhibit before?

A. Yes, I have.

Q. And where did you obtain it?

A. From the office of Seneca County Press in Seneca Falls, New York.

Mr. Kallis: I offer that in evidence, if the Court please.

Mr. Rogers: May it please the Court, this is absolutely incompetent and irrelevant. This is a news item in a paper. It does not show who it emanates from, who wrote the article.

Mr. Kallis: It does. It shows an announcement was made by Clinton C. Young, the representative of the Schines.

Mr. Rogers: Will you please let his Honor see that [fol. 789] article, without you reading it into the record and describing it?

The Court: Why do you object to it?

Mr. Rogers: It is incompetent, not binding on us, no proof that it emanated from the defendants.

The Court: What do you claim its probative force is? What do you seek to show by it?

Mr. Kallis: That this announcement was made with respect to the future use of the Seneca Theatre and that as a direct result of this announcement Mr. DeToto's plans with reference to the construction of a third theatre in Seneca

Falls were dropped because of the fact that the town in his opinion would not support three theatres, and that when his plans were dropped the Schines never went through with the announced plan of remodeling and opening this theatre, and that it has been vacant ever since June 30, 1936, when Mr. DeToto left the theatre, and that there has been only one theatre operating in Seneca Falls ever since and that is the Strand.

Mr. Rogers: That is all very interesting testimony on behalf of Mr. Kallis. I congratulate him on being a good [fol. 790] witness, but there is not anything probative in it, and there is no such testimony in the record, and I would like to get the testimony of a witness.

Mr. Kallis: As an attorney at law, if the Court please, I say in seriousness and sincerity that I think I can make that connection. I think I ~~can~~ do it right now,—if Mr. Rogers is very uneasy about it.

Mr. Rogers: That still would not make a newspaper article probative.

The Court: It is purely hearsay. Objection sustained.

Q. After you vacated on June 30, 1936, did you see any sign of any kind on the Seneca Theatre that was not there during your occupancy of it?

A. Yes, I did.

Q. Please tell the Court what that sign was.

A. On the morning of July 1, 1936, on the Seneca Theatre two Schine employees hung up a great big sign over the top of the entrance which read, "Closed for alterations. Will reopen soon."

Mr. Rogers: One moment, Sergeant. I object to that testimony.

The Court: Sustained.

Mr. Kallis: If the Court please, here is a building——

Mr. Richardson: If the Court please, may I inject that we not put on this record over and over again speeches which [fol. 791] will go into the permanent record and may be read hereafter on something that will never be put in proof?

Mr. Kallis: Here is a situation where the Schine defendants are completely in control and possession of this building, and here a sign appears in front of the building. It has in mind the future operation and remodeling of it. If that is not sufficiently connected in point of control of the building I don't know what would be.

The Court: I will let him state. Were you occupying the premises still at that time?

The Witness: I had vacated the night before, the very night before.

The Court: I will let him state what the sign said.

Q. What did the sign say, Dr. DeSoto?

A. I was there when they were hanging it up.

The Court: What did it say?

A. It said "Closed for alterations. Will reopen soon as a Schine Theatre."

Q. Did you see any remodeling taking place?

A. Not at that particular time.

Q. Do you know whether the Seneca Theatre has ever been operated since you vacated it on June 30, 1936?

[fol. 792] A. It never has.

Q. It has been closed continuously?

A. That is right.

Q. What, if anything, did you and Mr. McDermott and the architect do with reference to this proposed theatre after you saw that sign posted in front of the Seneca Theatre?

A. Well, we had become discouraged when we first saw the paper——

Mr. Rogers: One moment. I move to strike that.

The Court: Yes.

Q. Did you go ahead with your plans about constructing a theatre as you have testified before?

A. No, we did not.

Q. What did you do?

A. We were discouraged——

Mr. Rogers: Just a moment.

Mr. Kallis: That is a conclusion and I will move to strike it also. It is unanimous.

A. We did nothing.

Q. Now, calling your attention to the month of June in 1938, did you renew your efforts or renew your plans with reference to the construction of a new theatre building in Seneca Falls, New York?

A. Yes, I did.

[fol. 793] Q. Whom did you discuss the matter with?

A. A Mr. Mervin Nearpass of Seneca Falls, New York.

Q. And did you have discussions with any architect at that time?

A. Yes.

Q. What was the name of the architect?

A. Lloyd B. Adams.

Q. The same architect whom you had before?

A. That is right.

Q. What, if anything, did you do with reference to the construction of a new theatre building in Seneca Falls, New York, in June of 1938?

A. We planned on converting a garage into a theatre that Mr. Nearpass owned.

Mr. Kallis: Now mark that as P-51 for identification.

(Thereupon the blueprint referred to was marked as Plaintiff's Exhibit P-51 for identification.)

Q. Now I show you Plaintiff's Exhibit P-51 for identification and ask you whether you have seen that before?

A. Yes, I have.

Q. And are these the plans which were drawn at that time in 1938 with reference to the theatre that you and Mr. Nearpass were contemplating?

A. They are.

[fol. 794] Mr. Kallis: I offer them in evidence, if the Court please.

(Short recess taken.)

Mr. Kallis: I make the offer with respect to the second set of plans.

Mr. Rogers: I object to them on the ground they are incompetent and not binding on the defendant, and on the ground it relates to a purely local transaction.

The Court: Received.

(Thereupon the blueprint referred to previously marked as Plaintiff's Exhibit P-51 for identification was received in evidence.)

Q. Now, Mr. DeToto, calling your attention to the first two weeks in July of 1938, was anything brought to your attention with respect to any announcement that had been made concerning the reopening of the Seneca Theatre in Seneca Falls?

Mr. Rogers: May it please the Court, I object to that on the ground that it calls for a conclusion, on the ground that it asks this witness to testify as to the contents of some writing or some announcement not before the Court.

Mr. Kallis: If the Court please, Mr. Rogers' objection [fol. 795] is not well founded, in my opinion, because the question calls for a simple answer yes or no, and if he gives the answer yes, as far as that answer is concerned, the defendants have not been harmed at all, and it is just a preliminary and a collateral matter to testimony which is to follow.

Mr. Rogers: Except that Mr. Kallis has characterized the nature of the writing in question as some sort of a notice purporting to do so-and-so.

The Court: Overruled.

Mr. Kallis: Will you read the question?

(Last question read.)

A. Yes.

Q. Will you please tell the Court what that was?

Mr. Rogers: Now, may it please the Court, I do press my objection on the ground that it is incompetent; on the ground it is not binding on us, and on the ground that it calls for the contents of some written instrument or paper not before the Court.

[fol. 796] Mr. Kallis: Perhaps I can expedite the hearing by asking this question:

Q. Was the notice that came to your attention oral or written?

A. Written.

Q. And in what form, Mr. De Toto?

A. Newspaper announcement.

Q. Did you have any conversation with Mr. Shafter in July, 1938, with reference to the Seneca Theatre?

A. Not until July, 1938.

Mr. Kallis: I have, if your Honor please, the same situation with respect to three other newspaper announcements. I presume your Honor is holding that they are incompetent unless I can make the connection later. I think I can, your Honor. I would like to have these newspaper announcements received, subject to being connected later, perfectly willing if I can't make the connection, that the evidence of these newspapers items go out.

Mr. Rogers: It can be marked for identification, and let it appear from the record that these so-called announcements are just news items, not announcements.

[fol. 797] The Court: It is hearsay up to the present, anyhow. You can mark them for identification.

(Thereupon the newspaper containing the announcement referred to, was marked as Plaintiff's Exhibit P-52 for identification.)

Q. Mr. De Toto, I show you what has been marked as Plaintiff's Exhibit P-52 for identification, purporting to be page 1 of the Seneca County Press, Seneca Falls, New York, for Wednesday, July 13th, 1938, and ask you whether that came to your attention?

A. Yes, it did.

Q. When?

A. On that date.

Mr. Kallis: I offer Plaintiff's Exhibit P-52 for identification, subject to being connected later, if the Court please.

Mr. Rogers: I object to it on the ground it is hearsay.

The Court: Sustained. It is marked for identification.

Mr. Kallis: You are sustaining the objection?

The Court: Yes, it is hearsay at this time.

Q. Did you hear any discussion at all, Mr. De Toto in Seneca Falls, in the first two weeks of July, 1938, relative to the Seneca Theatre being re-opened?

Mr. Rogers: One moment. I object to that as hearsay, [fol. 798] not binding on us in *no* manner, and incompetent.

The Court: Sustained.

Q. Did you go through with your plans for you and Mr. Nearpass to construct the theatre building, the plans of which have already been received in evidence?

A. No.

Q. Did you see any signs on the Seneca Theatre in the month of July, 1938, with reference to the re-opening and remodeling of the Seneca Theatre?

Mr. Rogers: I object to that as incompetent.

The Court: Didn't he testify to that before?

Mr. Kallis: That was in 1936, your Honor. This was two years later following the obtaining of plans.

The Court: Well, I will receive that. Did you post a notice?

The Witness: Yes, sir, I did.

Q. Will you please tell the Court what that announcement on the theatre stated?

Mr. Rogers: One moment. I object to that as hearsay.

The Court: Overruled.

Mr. Rogers: Not binding.

The Court: No, I think that is competent.

The Witness: The sign stated that the Seneca Theatre would be opened on August 20, 1938.

Q. Do you know whether the Seneca Theatre opened in [fol. 799] August, 1938?

A. No, it did not.

Q. Has the Seneca Theatre been operated at all since June 30th, 1936?

The Court: He has answered that before.

Q. When you vacated it?

Mr. Kallis: All right, I was not sure, your Honor, that I had the answer.

Q. Will you please state how many pictures you played a week during the time you operated the Seneca Theatre from July 1st, 1935, through to June 30th, 1936?

A. About five or six features a week.

Q. What is the size of Seneca Falls, New York, approximately?

A. Between six and seven thousand population.

Q. How long to the best of your knowledge, was the Seneca Theatre operated immediately prior to the time, to July 1st, 1936, how many years, if you know?

A. Two years that I am sure of.

Q. Do you have any knowledge as to its being operated prior to that time?

A. I do, but don't know the date.

Q. Give us an approximate idea in terms of years, or is your recollection——

A. I wouldn't commit myself on that.

Q. Mr. De Toto, after July 1st, 1936, did you continue [fol. 800] operating moving picture theatres?

A. Yes, I did.

Q. And where?

A. In Syracuse, New York, I managed a theatre.

Q. For how long?

A. Two years.

Q. Which Theatre was that?

A. The Avon Theatre.

Q. After that period of time, where, if any place, did you operate a theatre?

A. Clifton Spring, New York.

Q. During what period was that?

A. Part of 1938-'39 and '40.

Q. I call your attention to the time in which you operated the Seneca Theatre, will you please state whether the Strand Theatre, after the Schine defendants took it over, practiced any bank night or other practices or other give-aways?

A. They did.

Mr. Rogers: May it please the Court. I object to that as incompetent and immaterial.

The Court: Received.

Mr. Rogers: I also object to it on the ground it relates to purely local transactions.

The Court: I will receive it.

[fol. 801] Q. Do you know whether or not there was a change in the procedure at the Strand Theatre after Schines took it over with respect to bank nights?

Mr. Rogers: May it please the Court, there is no testimony before the Court that there was any procedure prior to that time as yet, and before he can testify to a change, there must be some evidence that there was some prior procedure or prior practice.

Q. Did the Bernsteins resort to any bank nights, or other give-away or prizes during the time that it operated the Strand, and while you were connected with the Seneca Theatre?

A. No, they did not.

Q. You say that the Schines did resort to such give-away practices, bank nights, prizes?

A. They did.

Q. Do you know whether that practice continued after your Seneca Theatre closed on June 30th, 1936?

A. That I don't know.

Q. Was this practice continued by the Strand Theatre, or did it cease?

Mr. Rogers: The witness testified he doesn't know.
The Witness: That I don't know.

Q. You don't know. Now, Mr. De Toto, calling your atten——

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[fol. 802] Canandaigua, New York, will you please state the population in 1938?
A. Between seven and eight thousand.
Q. Did you have any discussion in April, 1938, with anybody in Canandaigua with reference to the construction of a moving picture theatre?
A. Yes, I did.
Q. And when and with whom?
A. In the early part of April, 1938, a Mr. Marks.
Q. How many theatres were there in Canandaigua at that time?
A. One.
Q. Do you know who owned or operated that theatre?
A. It was operated by Schine Theatres.

Mr. Kallis: Will you mark that, please, for identification?

(Thereupon a paper referred to, was marked as Plaintiff's Exhibit P-53 for identification.)

Q. Showing you Plaintiff's Exhibit P-53 for identification, I ask you whether you have seen the contents of that in any printed newspaper?
A. Yes, I did.
Q. Do you have a copy of the newspaper?
A. No, I don't.

[fol. 803] Q. Did you try to obtain a copy?
A. I did.
Q. When? The last time?
A. Yesterday.
Q. Where?
A. Canandaigua, New York.
Q. What did you do with reference to the contents of that newspaper item?

A. I copied the heading and copied it in part.
Q. Is this the part that you copied?
A. It is.

Mr. Kallis: I am making the same offer in regards to this, your Honor.

Mr. Rogers: May it please the Court, I object to it on the ground this is now unique in that it is hearsay on hearsay, furthermore, it is incompetent and not binding on the defendants.

The Court: Sustained.

Mr. Kallis:

Q. At the time you were discussing the construction of the theatre with Mr. Marks in Canandaigua, New York, did you hear any discussion concerning the construction of a second theatre in Canandaigua by the Schine defendants?

Mr. Rogers: I object to that as hearsay, not binding on the defendants.

[fol. 804] The Court: It calls for a conclusion. It depends on whom the talk was with and the conversation is incompetent. Street talk between individuals wouldn't be competent.

Q. Did you go through with your plans to construct this theatre with Mr. Marks in Canandaigua?
A. No.
Q. Do you know whether the Schines ever built a second theatre in Canandaigua?
A. They did.
Q. When?
A. That I don't know the exact date.
Q. Was it in 1938?
A. No, it was later, much later than that.
Q. To the best of your recollection, when was it?
A. I couldn't commit myself. I don't know.
Q. Mr. DeToto, are you acquainted with a man by the name of Louis Di Pillo?
A. I am.
Q. And calling your attention to the year 1939, did you have any dealings with Mr. Di Pillo with reference to any theatre in Geneva, New York?
A. I did.
Q. What was your connection with Mr. Di Pillo?

A. Mr. Di Pillo came to me in the early spring, I would [fol. 805] say around in April. He said he planned on converting an apartment——

Mr. Rogers: One moment. I object to conversations between this witness and Mr. Di Pillo, on the ground that it is not binding on this defendant, and on the ground it is hearsay.

The Court: I will let him state what he did, if anything.

Mr. Kallis: That is right. I was just going to try to shorten it myself.

Q. Mr. Di Pillo did open and operate the Park Theatre in Geneva, New York?

A. He did.

Q. Did you have any connection with buying film product for him?

A. I did.

Q. Will you please state to the Court just what you did in connection with buying film product for Mr. Di Pillo's Park Theatre in Geneva, New York?

A. Mr. Di Pillo and I went to Buffalo some time in August.

Q. Of what year?

A. 1939.

Q. And at that time, as I understood your testimony, you were then managing the theatre at Clifton Springs, New York?

A. That is right.

[fol. 806] Q. And were you buying the film product for the theatre in Clifton Springs at that time?

A. I was.

Q. Now you say you came to Buffalo with Mr. Di Pillo and when was that?

A. Some time in August, 1939.

Q. And where did you go, Mr. De Toto?

A. The first office we stopped in was United Artists.

Q. And where was that in Buffalo?

A. 505 Pearl Street.

Q. Whom did you see there?

A. The manager, Mr. Sidney Lehman.

Q. Had you know- Mr. Lehman before?

A. I had.

Q. For how long?

A. Several years.

Q. How many years to the best of your judgment?

A. About two.

Q. What had been your dealings with Mr. Lehman?

A. I had brought pictures from him for Clifton Springs. I had luncheon with him at the "Old Spain."

Q. That is referring to a restaurant and not a country, is that right?

A. That is right.

Mr. Rogers: Or a theatre.

[fol. 807] Q. What had been your previous dealings with Mr. Lehman?

A. I had bought pictures from him.

Q. For what theatre?

A. For the Palace Theatre in Clifton Springs.

Q. Please tell us what the conversation was when you were in Mr. Lehman's office at United Artists, 505 Pearl Street, Buffalo, New York?

Mr. Rogers: I object to that on the ground it is not binding on the defendants, on the ground that no proper foundation has been laid, or proof of authority of Mr. Lehman.

The Court: Do you know of him selling to other theatre people?

The Witness: Yes, sir.

The Court: How frequently have you dealt with him?

The Witness: Your Honor, I used to see Sidney on the average of once a month. I used to come to Buffalo. I used to come to Buffalo and book pictures for the Palace Theatre.

By the Court:

Q. Through him, you mean?

A. Through his booker, but he was occasionally in the office, and I would stop and chat with him.

Q. Do you know what his position is?

A. He was office manager in charge of the United Artists [fol. 808] pictures for the Buffalo district.

The Court: Overruled.

Q. Please tell the conversation you had with Mr. Lehman on that occasion.

A. Mr. Di Pillo started the conversation.

Q. What did he say?

A. He asked Mr. Lehman for a contract for his Park Theatre in Geneva, New York for current second-run pictures.

Q. What, if anything, did Mr. Lehman say?

A. Mr. Lehman said that Schine had reserved second run for Geneva, current second run.

Q. Did you talk with anybody else connected with any distributor?

A. You mean other film companies?

Q. Yes.

A. I did.

The Court: You mean on that occasion at that time?

The Witness: Yes, sir.

Q. I might ask you if there was any other conversation?

A. There was, with Sidney Lehman?

Q. Yes. Please tell us what it was.

A. I said, "Sid, what do you mean Schine has second-run reserved for Geneva? Schine has no second-run policy in Geneva." There is one exception, Schine did run a few pictures he brought back some hit, but at that time there [fol. 809] was no current second-run policy in Geneva, but it was 30 or 60 days after the current pictures.

Mr. Rogers: I object to that on the ground it was not purported to be part of the conversation.

The Court: It may go out. Just state the conversation. You stated to Lehman about current second-run. What did he say in reply?

The Witness: I told him that there had been no second-run policy set in Geneva. Sid Lehman said that Schine had now saw fit to reopen the Temple and had reserved second-run for Geneva. There were no second-run available at that time.

Q. He told you that?

A. That is right.

Q. Did any other conversation take place on that occasion?

A. No, not with Sid Lehman.

Q. Will you please tell the Court, Mr. De Toto, what theatres Schine owned in Geneva at that time?

A. Three theatres, the Temple, Regent and Geneva.

Q. Were they all being operated every day?

A. No.

Q. Which, if any, were closed?

A. The Temple was closed permanently. The Regent did close occasionally in the summertime and operated week-ends.

[fol. 810] Q. And the Geneva?

A. Operated continuously.

Q. How long, to your knowledge had the Temple been continuously closed?

A. Since 1931.

Q. Do you know whether it has ever opened since 1931?

A. Yes, it has.

Q. When?

A. I believe it was some time in '32. I am not certain of that date.

Q. But since that time has it been opened?

A. Since what time?

Q. 1932.

A. I mean 1942.

Q. '42?

A. I meant '42.

Q. Closed continuously from 1931 to 1942, is that right?

A. That is right.

Q. Where else, if any place, did you go to on the same day that you stopped at the office of the United Artists?

A. Paramount Pictures.

Q. Where is that?

A. 464 Franklin Street, Buffalo, New York.

Q. Whom did you see there?

A. I saw the booker, Bill Rosenow.

[fol. 811] Q. How long have you known him?

A. I had known him for about 2 years.

Q. Had you had prior business with him?

A. I had.

Q. In what connection?

A. I used to book pictures with him.

Q. For what theatre?

A. Clifton Springs, Palace Theatre.

Q. What was the conversation?

Mr. Rogers: One moment. May it please the Court, I object on the ground it is not binding. I object on the ground that clearly there is no evidence as to what Mr. Rosenow's duties as a booker were, or what the duty as a booker is.

The Court: Let me ask you one question. Something was said yesterday about some interrogatories in reference to the managers in these various theatres. What was that? Interrogation in reference to employees of these theatres?

Mr. Kallis: You mean the distributors?

Mr. Wright: The distributors, we incorporated——

The Court: Did that refer to Schine?

Mr. Wright: Schine's interrogatories did not cover the positions of the distributors' representatives. Those were [fol. 812] covered in the answers of the distributors. We have again incorporated also the distributors represented about which there will be testimony. We just incorporated it in a stipulation which they have not yet signed and we again incorporated it in a notice to admit facts, which we served on them today. I am quite sure before the trial is over that there can't be any dispute——

The Court: I had in mind that you perhaps already in your interrogatories developed the matter of the employment of these individuals. We spent a lot of time unnecessarily in trying to qualify them.

Mr. Wright: We did qualify the distributors in a stipulation, but counsel has not agreed to admit those interrogatories, the answers, so, we have again been compelled to serve notice to admit for the same facts, and certainly that will be admitted before we finish. Certainly there can't be any dispute about what their jobs were at the time the distributors employed them.

The Court: I will receive the evidence. One question. [fol. 813] Might inquire further about his relations with Rosenow.

Mr. Wright: If the Court please, I can assure you we will show the position of those people at the time of the conversation, and I do think——

The Court: All right.

Mr. Rogers: On the other hand, I can assure your Honor, that they cannot truthfully claim, truthfully, I say, claim that a mere booker who books mere pictures and after the pictures are sold, all a booker is is one who books in sales and I venture to say they will never be able to prove any booker has any authority to make sales or discuss sales.

The Court: Objection overruled. What was the conversation with Mr. Rosenow?

The Witness: The office manager was out at the time.

By Mr. Kallis:

Q. What did you say to him?

A. I talked to him in regard to securing second-run for the Park Theatre in Geneva.

Q. What did he say to you?

A. He said he would send his salesman, Mr. Myers, who had that territory and I would talk to him, try to work out a deal with him; he would send him to the Palace Theatre [fol. 814] in Clifton Springs. That is all he said.

Mr. Rogers: That being the case, I move to strike it.

The Court: Overruled.

Q. Did you know Mr. Myers?

A. Yes, I did.

Q. What was his first name?

A. I believe it was Fred. I am not certain.

Q. Had he ever called upon you at the Theatre in Clifton Springs?

A. He had.

Q. How many times?

A. Several times, five or six.

Q. What was the subject of your discussions with him?

A. I bought pictures from him for the Palace Theatre in Clifton Springs.

Q. How many times did you talk with him?

A. Five or six times.

Q. Did you see Mr. Myers after you had this talk with Mr. Rosenow?

A. I did.

Q. What did Mr. Meyers tell you at the Palace Theatre in Clifton Springs?

Mr. Rogers: Same objection.

The Court: You saw Mr. Myers after you had been to Buffalo?

[fol. 815] The Witness: That is right.

By Mr. Kallis:

Q. When was that?

A. I don't recall. It was some time after that.

Q. What did he say?

Mr. Rogers: Same objection.

The Court: Objection overruled. What did he say?

The Witness: He said he could not sell me current second-run Paramount pictures, but that he had other old pictures and some first-run rejects, pictures that Schine had rejected, that I could have.

The Court: You are speaking now about Clifton Springs?

The Witness: Mr. Myers came to Clifton Springs, and I was managing the Theatre at that time.

The Court: That is the only theatre there?

The Witness: Yes. Clifton Springs is only about 12 miles from Geneva.

Mr. Kallis: I understand, your Honor, his testimony to be he was managing Clifton Springs, but buying for the Park in Geneva.

The Court: All right.

Mr. Rogers: By the way, Mr. Kallis, will you please fix the date of this talk with Mr. Myers?

The Court: He said this was in August.

[fol. 816] Mr. Rogers: That was United Artists talk, your Honor. He claims that was with United Artists and later Paramount. Then he said he saw the booker, and the booker told him to see Myers.

The Court: He saw this other man Myers at Clifton Springs?

The Witness: Either August or September, 1939.

Mr. Kallis: Will you mark this for identification?

(Thereupon a newspaper, referred to was marked as Plaintiff's Exhibit P-54 for identification.)

Q. Sergeant De Toto, I show you Plaintiff's Exhibit P-54, purporting to be page 9 of the Geneva Daily Times for Monday, May 15th, 1939, and ask you where you obtained that?

A. I obtained this copy from the office of the Geneva Daily Times in Geneva, New York.

Q. When was that, as nearly as you can recall?

A. It was some time in August, 1939.

Q. What was the admission price of Schine's Regent Theatre in Geneva, New York, prior to the time that Mr. Di Pillo opened this Park Theatre?

A. 10 cents for children and 25 cents for adults.

Q. And after Mr. Di Pillo opened the Park Theatre, do you know whether Schine's Regent changed its admission price?

A. It did. It changed the adult admission from 25 cents [fol. 817] to 20 cents.

Q. How long did Mr. De Pillo operate the Park Theatre?

A. About three or four months.

Q. And you know of what its physical condition was at the end of that time. I will withdraw that. He closed the Park after three or four months?

A. That is right.

Q. Do you know whether or not there was a change in admission price of Schine's Regent after Mr. Di Pillo closed his Park?

A. Yes, there was.

Q. What was the change?

A. From 20 cents it went to 30 cents.

Q. And did it remain at that price, or did it change?

A. Well, it is 40 cents today, that includes tax.

Q. Calling your attention, Mr. De Toto, to the time or period during which you were operating the theatre at Clifton Springs, did you have any difficulty at all in buying film product?

Mr. Rogers: One moment. I object to that. There is no evidence that Schines in any manner competed with him at Clifton Springs.

The Court: What did he say?

Mr. Kallis: It is a preliminary question.

Q. You made applications for films for your theatre at [fol. 818] Clifton Spring, New York?

A. That is right.

Q. Were all of your applications for film fulfilled?

Mr. Rogers: One moment. I object to that as immaterial. We are not dealing with Clifton Springs at all here.

Mr. Kallis: I am offering to show by this witness that in Clifton Springs, where Schine did not operate a theatre and was, therefore, of no competition or opposition to Mr. De Toto, Mr. De Toto had absolutely no difficulty in buying film, but during the same period with regard to Geneva—

Mr. Rogers: As a matter of fact, Mr. Kallis, you failed to state to his Honor that he had the only theatre in the town. They could either sell to him or not sell at all.

The Court: Sustained.

Q. Mr. De Toto, can you state whether or not there is a custom in the film industry with respect to distributors taking the initiative in offering films to exhibitors?

Mr. Rogers: One moment.

The Court: Read the question.

(Last question read.)

Mr. Rogers: This witness is incompetent to testify as to [fol. 819] a general custom of distributors nationwide. He has not shown he has had any experience nationwide, and has never been in the distribution business.

Mr. Kallis: I will withdraw the question, if the Court please.

The Court: It shows they sent their representatives from place to place.

Mr. Kallis: That is exactly what I had in mind.

The Court: To show what they do frequently, sending their representatives out to places, if that be the fact.

Q. The Court has ruled you can answer that.

The Court: As far as his knowledge is concerned.

Q. Confine your answer to Syracuse, Clifton Springs.

A. I didn't buy film in Syracuse.

Q. You did not buy any?

A. Did not.

Q. Confine your answer then to Seneca Falls, Clifton Springs, Geneva, Mt. Morris, New York.

Mr. Rogers: We have no testimony about him buying any film in Mt. Morris, New York.

Mr. Kallis: I will lay the foundation as soon as he answers.

Q. Did you have any experience in operating the theatre [fol. 820] in Mt. Morris, New York?

A. Yes, I did.

Q. When?

A. 1940 and '41.

[fol. 821] Q. What theatre?

A. The Genesee Theatre.

Q. That was up to the time that you joined the Army?

A. That is right.

Q. Now, what is the custom with reference to salesmen being sent out by the distributors to those towns which I have mentioned?

Mr. Rogers: I object to that, may it please the Court. This is asking for a custom of the distributors. This man has not testified that he has had any experience as a distributor.

Mr. Kallis: He does not have to have any experience.

The Court: I suppose the agents of the distributors came to him to sell pictures in these various places.

Mr. Kallis: Yes.

The Court: He can testify to that.

A. Yes, these companies had salesmen and they always came to see me in regard to the sale of their products.

Q. Were there any exceptions to that that you observed?

A. The only time they didn't come around was when there was competition and they didn't care to sell to me.

Mr. Rogers: I move to strike that out as a conclusion of the witness.

The Court: Strike it out.

Mr. Kallis: This may be repetition, if the Court please, [fol. 822] and if it is I respectfully request that you pardon me, because I am not sure that we got some of this testimony in the record.

By Mr, Kallis:

Q. Very briefly, Mr. DeToto, what was the admission price of the Seneca Theatre while you were operating the theatre?

A. Ten and twenty-five cents.

Q. What was the admission price of the Strand Theatre during that first period?

A. Was the first question yours?

Q. Yes, yours.

A. Mine was ten and fifteen cents.

Q. What was the Strand?

A. Ten and twenty-five cents.

Q. After the Seneca closed down what was the admission price of the Strand in Seneca Falls, N. Y.?

A. The admission price shortly thereafter was 10, 25 and 35 cents.

Q. I gather, then, that there was an increase in the admission price in the Strand shortly after you closed the Seneca; is that right?

A. Shortly after they closed the Seneca. There was.

Q. And the Seneca never was operated after you vacated the premises, was it?

A. No, but you said "I closed". They closed.

[fol. 823] Q. I mean after your lease expired.

A. That is right.

Q. You say there was an increase of the admission price of the Strand Theatre from what to what?

A. To 35.

The Court: 10, 25 and 35?

The Witness: That is right.

Q. The 25 cents as charged was not on the admission price at all?

A. It was in the balcony. Downstairs was 35.

Q. It was increased from 25 to 35 cents for the main floor?

A. That is right.

Q. Do you know whether it had ever been more than 25 cents during your familiarity with the theatre?

A. No, it was not.

Mr. Kallis: That is all.

(Witness excused temporarily.)

[fol. 824] Arthur J. Buck, a witness called by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Mr. Wright: Mark this for identification.

(Thereupon the distribution agreement covering Colonial Theatre, Fostoria, Ohio, was marked as Plaintiff's Exhibit P-55 for identification.)

Mr. McKay: Mr. Buck's deposition was taken in this case, and if Mr. Wright goes beyond the mere identification of documents we want to use the deposition.

Mr. Wright: Mr. Wright is not going to go beyond the mere identification of the documents.

Mr. McKay: Then you won't object to our reading from the deposition of Mr. Buck?

Mr. Wright: I may or may not object to your reading from the deposition at any time. Mr. Buck I regard as your witness.

Mr. McKay: Your Honor, we are very anxious to cooperate in getting Mr. Buck away from here. The deposition was taken by the plaintiff. All I say is that if we desire to read from this deposition after Mr. Buck has been excused [fol. 825] there should not be any objection raised on the ground that he was here in court.

The Court: Why are you not entitled to read it?

Mr. McKay: Mr. Wright may raise the objection that he was here in court and we did have the opportunity to examine him and didn't.

The Court: I do not think he is in position to raise that question. He is calling him now.

Mr. Wright: Mark these papers for identification.

(Thereupon the letter, July 23, 1936, referred to was marked as Plaintiff's Exhibit P56 for identification.)

(Thereupon the letter, July 28, 1937, referred to was marked as Plaintiff's Exhibit P-57 for identification.)

(Thereupon the letter, April 4, 1936, referred to was marked as People's Exhibit P-58 for identification.)

(Thereupon the letter, August 3, 1937, referred to was marked as Plaintiff's Exhibit P-59 for identification.)

Direct examination.

By Mr. Wright:

Q. Mr. Buck, I show you this exhibit here that is marked as P-55 for identification and ask you if you can identify the signatures on the last page?

[fol. 826] A. Yes, sir.

Q. A. J. Buck is your signature, is that right?

A. That is right.

Q. Ural Buck, is that the signature of your brother?

A. That is right.

Q. I show you this Exhibit P-56, a photostatic copy of a letter dated July 23rd, and ask you if you recognize that as a copy of a letter that you wrote with your signature on it?

A. Yes.

Q. And this Exhibit P-57, I ask you if you recognize the signature there as yours and whether you wrote that on or about the date it bears?

A. That is right.

Mr. Wright: That is all.

By Mr. McKay:

Q. Mr. Buck, this William Rogers to whom this letter P-58 is addressed is an officer and general salesmanager of Loew's, Inc., or sometimes designated as Metro-Goldwyn-Mayer?

A. That is right.

Q. He has nothing to do at all with Warner Bros.?

A. No, sir.

Q. Or Vitagraph?

A. No, sir.

[fol. 827] Q. Or 20th-Century-Fox?

A. No, sir.

Mr. Wright: There isn't any question about that.

Mr. McKay: I am trying to get rid of the man quickly and I don't want this question to come up in the future. If you will leave me alone I will expedite things for you.

Q. He had nothing to do with any company except Metro?

A. And he wrote me to that effect that he couldn't do anything about——

Mr. Wright: Just a moment. Your Honor, that is not responsive.

Q. That situation was so as of the date of this letter, which is April 4, 1936? I mean what you just testified to also applied at the time this letter was written?

A. That is right.

Q. And you knew that to be the situation when you wrote the letter?

A. That he had nothing to do with it?

Q. Yes.

A. Certainly I did.

Q. And you were only writing it to him as a personal friend?

A. That is right.

Mr. McKay: That is all.

[fol. 828] Ural H. Buck, a witness called by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Wright:

Q. You live in Fostoria, Mr. Buck?
A. That is right.

Q. You are the manager of the Civic Theatre there?
A. That is right.

Q. I show you this letter marked Exhibit P-59 for identification and ask you if that is your signature on it?
A. I wrote it and signed it.

Q. You wrote it on or about the date that it bears?
A. That is right.

Mr. Wright: That is all.

By Mr. McKay:

Q. I just want to ask Mr. Buck one question. Mr. Buck, your deposition was taken in this case in Cleveland some time ago, wasn't it?
A. That is correct.

Mr. Wright: That is objected to as not proper cross examination.

Mr. McKay: I am not cross-examining him. I am just laying the foundation for reading the deposition in case [fol. 829] I have to do it, and it was done at the request of the plaintiff.

The Court: All right.

Mr. McKay: Will you stipulate that Mr. Arthur Buck would make the same answer, so that I do not have to call him back on the stand?

Mr. Wright: Yes, I assume he would.

The Court: It already appears, I think.

Mr. Wright: Mark this for identification.

(Thereupon the option agreement referred to was marked as Plaintiff's Exhibit P-60 for identification.)

George K. Angelas, a witness called by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Wright:

Q. Mr. Angelas, what is your occupation?
A. I am a restauranteur.
Q. Whereabouts?
A. Mansfield, Ohio.
Q. That is where you live?
A. That is right.
[fol. 830] Q. How long have you been in that business?
A. Since 1931.
Q. In 1938 did you buy any property at Norwalk, Ohio?
A. I did.
Q. For what purpose?
A. For the purpose——

Mr. Rogers: One moment. I object to that on the ground that that is not binding and it calls for a conclusion.
The Court: What property did you buy?
The Witness: I bought the property at the corner of East Main and Prospect Streets in Norwalk, Ohio.

Q. I will show you this option agreement that has been marked as Plaintiff's Exhibit 60 for identification and ask you if that property you bought is the property that is described in that agreement?
A. Yes, sir.
Q. How much did you pay for it?
A. $19,000.
Q. And Exhibit 60 that I have shown you that is your signature on there?
A. Yes, sir.
Q. Is that a copy of the option that you delivered to anyone from the Schine Company on that date?
A. That is right, the Schine Circuit, Inc.
[fol. 831] Q. Who did you negotiate that agreement, Exhibit 60, with?
A. A man by the name of Mr. Bud Silverman.
Q. When did he first come to see you?
A. In the first week of January, 1939.
Q. Where was that?

A. At my office at Mansfield, Ohio.

Q. What did he say to you then?

Mr. Rogers: One moment. I raised the question previously and we still have not had Mr. Bud Silverman's authority to bind the defendants established, and I object to it on the ground that no proper foundation has been laid to show the authority of Mr. Silverman.

The Court: I will receive it subject to its being connected.

Mr. Rogers: I also object to it on the ground that it relates to a purely local transaction.

The Court: There is some testimony here with reference to Silverman's employment. Objection overruled, subject to its being connected up.

(Last question read.)

A. Mr. Silverman came in my office and asked me if I did buy the property at Norwalk and said that he saw it in the local paper. I told him yes, and he asked me what I intended to do with it. I told him I was intending to build a building [fol. 832] for a theatre and a restaurant. Then he asked me if I was intending to operate the theatre personally or lease it out. I told the gentleman at the time that I was undecided. Then he spoke very nicely about the Schine Circuit, Inc., and he said that a deal could be closed with the Schine Circuit, Inc., to the best of my benefit, and if I would not close the deal with the Schine Circuit, Inc., I would be broke in a year after I started.

The Court: What?

The Witness: That they will break me in a year after I start. And I asked the reason and he said that they controlled the first and second class pictures in that town and they had them tied up for two years in advance. I told Mr. Silverman that I was not the type to be scared right out of the deal, but I will think it over. Then I suggested that he should come with me up to my attorney's office to meet my attorney, Mr. C. H. Henkel of Mansfield.

The Court: What did you do then?

The Witness: We went up to the attorney's office and he did get acquainted. They talked the thing over and they set a meeting for the second or third day afterwards when Mr. Silverman came into his office, and Mr. Silverman and [fol. 833] Mr. Henkel and I were at the meeting. At that meeting Mr. Silverman suggested about George Angelas building the building and leasing it to the Schine Circuit, Inc., for a period of twenty years, based on a ten per cent income on my investment. At that particular meeting Mr. Silverman made a remark in front of my attorney of a certain deal that was in a neighborhood town, a town by the name of Medina, Ohio, where an individual operator was operating a theatre and he refused to cooperate with the Schine Circuit, Inc., and in a year's time he was broke and he went and begged the Schine Circuit, Inc., to take the theatre over.

Q. Then did you have any further conversations?

A. Later on Mr. Silverman called Mr. Lazar in. Mr. Lazar was supposed to be——

Mr. Rogers: One moment. Let us get the date.

Q. Was that before or after you gave this option agreement to Schine that has been identified as P-60? Look at the date on that.

The Court: Was it before or after that date Lazar came there?

The Witness: Mr. Lazar was in the picture before this date. As I recall, he was getting ready to go to Florida [fol. 834] on his vacation and that is when this option was taking place, in order to safeguard his vacation to Florida.

Q. What do you mean by that?

A. He was leaving and he wanted to finish this thing while he was on his vacation.

Q. The option agreement there was negotiated with Mr. Silverman and Mr. Lazar?

A. And Mr. Lazar.

Q. Then did Schine ever exercise the option?

A. No, sir.

Q. And you still have the property there?

A. Yes, sir.

Q. You have never built a theatre or restaurant on that?

A. Never built anything.

Q. Why not?

Mr. Rogers: One moment. I object to that as immaterial.

The Court: Overruled.

Q. You may answer.

A. Soon after the negotiations with the Schine Circuit, Inc., ended the Schine Circuit, Inc., purchased the property, two lots east of my property, and built their own new building.

Q. A theatre?

A. A theatre. And I, of course, was unable to compete [fol. 835] with them then or put up a new building.

Mr. Wright: That is all.

Mr. Rogers: I move to strike the last part of that answer out.

The Court: That he was unable to compete? Was that the answer?

Mr. Rogers: Yes. He had no theatre. He had nothing.

Mr. Wright: Nothing but a $19,000 investment.

The Court: That part may be stricken out. I will let it stand that he never built.

Cross-examination.

By Mr. Rogers:

Q. When did you actually take title to that piece of real estate?

A. The contract was signed on December 27, 1938, and the deed was given to me on March 1, 1939.

Q. Between the time the contract was given to you and the deed was signed did you ever draw any plans to build a theatre on that site?

A. Mr. Lazar was good enough to present me with a set of plans that he had obtained——

Q. Will you answer my question: Did you ever draw a set of plans to put a theatre on that site?

A. I did not.

Q. Did you ever employ an architect to draw a set of plans?

[fol. 836] A. Mr. Silverman stopped me from doing that.

Mr. Rogers: I move to strike that.

The Court: Strike it out.

Q. Did you ever employ an architect to draw any plans on that site?

A. How could I employ one?

Q. Please answer my question.

A. I didn't.

Q. You did not?

A. No, sir.

Q. Then all you had was an idea in your mind that you would like to build a theatre on that site if you could get somebody to build it for you?

A. I had the money to build it.

Q. Did you want to build it yourself and operate it yourself?

A. No, sir.

Q. But you never did build it for yourself, did you?

A. No.

Q. And you had plenty of money to build it with, didn't you?

A. That is right.

Q. As a matter of fact, when Mr. Silverman called on you wasn't he the one that suggested about a theatre being built on that site?

A. No, sir.

[fol. 837] Q. Is it your testimony that you told Mr. Silverman the first time he called on you that you proposed to build a theatre on that site?

A. He asked me the question, sir.

Q. He asked you the question?

A. That is right.

Q. As to whether or not you intended to build a theatre on that site?

A. That is right.

Q. And you said yes?

A. Yes.

Q. Wasn't it just the other way around, didn't you tell him you had that site and you proposed to build a restaurant on that property and a business building and he asked you wouldn't it be a good idea for you to put a theatre in there and if you did he would be happy to see if he could not make a deal with you?

A. No, sir.

Q. You say he did not say that?

A. He did not.

Q. Do you recall going to a Mr. Upham?

A. I do.

Q. An architect?

A. No, sir.

Q. Mr. Upham was a builder and a financier, wasn't he?

[fol. 838] A. That is right.

Q. Where was Mr. Upham?

A. At Mt. Vernon, Ohio.

Q. And you were suggested to go to see Mr. Upham by Mr. Silverman, weren't you?

A. That is right. Mr. Silverman—may I correct that?

Q. Or was it Mr. Lazar?

A. Mr. Silverman and Mr. Lazar both.

Q. They both suggested you go to see Mr. Upham?

A. Yes, sir.

Q. Did they suggest as to why you were to see him or what you were to see him for?

A. Yes, to see what kind of people the Schine Circuit, Inc., were and how good they were.

Q. Is that all?

A. Yes, sir.

Q. Didn't you go to Mr. Upham and discuss with Mr. Upham about obtaining finances to build this theatre in Norwalk?

A. No, sir.

Q. Did you have any talk with Mr. Upham about him assisting you to finance a theatre building in Norwalk on the site on which you had that option?

A. Not that I recall.

Q. Not that you recall?

A. Yes.

[fol. 839] Q. Will you say you didn't have any talk with Mr. Upham about Mr. Upham furnishing you financing or assisting you in obtaining financing to build that theatre in Norwalk?

A. Repeat the question.

Q. (Question read.)

A. I did not ask Mr. Upham for any finance help.

[fol. 840] Q. Did you ever discuss with Mr. Upham the question of financing in connection with the Norwalk Theatre?

A. No.

Q. Never had any talk with him on that subject before?

A. Never but once.

Q. I am asking you whether you ever had a talk with Mr. Upham with relation to financing in connection with this proposed theatre in Norwalk?

A. No, sir.

Q. Do you remember having a talk with Mr. Upham at that time?

Mr. Wright: What time is this?

Mr. Rogers: The time of the making of this option, or shortly thereafter, about Mr. Upham being willing to buy the land and building the theatre and restaurant for you?

The Witness: I don't recall, sir.

Q. Do you ever recall discussing with Mr. Upham a proposal under which he was to buy that land from you, and he was to build a theatre on that land and a restaurant on that land?

A. If I recall right, I think there was a suggestion Mr. Silverman that I should raise the question, but I wasn't interested in financial help.

Q. What I am asking you, not what Mr. Silverman told [fol. 841] you, but didn't you have a talk with Mr. Upham, under which you made the suggestion to him he buy the land and build the theatre and restaurant for you on that land?

A. I never made such a suggestion, sir.

Q. One moment.

A. I never made such a suggestion.

Q. There was never any discussion to Mr. Upham about him buying land and putting up a theatre and restaurant on that property?

A. I believe it was the suggestion of Mr. Silverman.

The Court: Did you ever talk to Mr. Upham about his doing that? That is the question.

The Witness: I never asked Mr. Upham about building a building, or any help.

Mr. Rogers:

Q. You said there was a suggestion about Mr. Upham building a theatre and restaurant for you?

A. I believe Mr. Silverman made the remark if I need any help, Mr. Upham would be very happy to help me, either Mr. Silverman or Mr. Lazar.

Q. Wasn't it after you had a talk with Mr. Silverman or Mr. Lazar suggested if you required any financial help that Mr. Upham would be a good man for you to see?

The Witness: What is that?

Mr. Rogers: Will you read the question?

[fol. 842] (Last question read.)

The Court: They suggested, you mean, Mr. Rogers?

Mr. Rogers: Yes.

The Court: Did they suggest that to you, that Mr. Upham would be a good man for you to see?

The Witness: They suggested to see Mr. Upham, and see how the Schine Circuit, Incorporated were dealing with independent operators and builders.

The Court: That does not answer the question.

Mr. Rogers: That does not answer the question.

Q. There was something said to you, wasn't there, either by Mr. Silverman, or Mr. Lazar, to the effect that Mr. Upham would be a good man for you to see if you required any financing, didn't they? Didn't they say that to you?

A. Not if I require any financial—they asked me to see Mr. Upham only to get acquainted and learn who the Schine Circuit, Incorporated are.

Q. Wasn't there some talk between you and Mr. Silverman, or you and Mr. Lazar under which the question of financing through Mr. Upham was discussed?

A. Seems to — Mr. Lazar or Mr. Silverman recommended Mr. Upham for any finance, I ever need, and also made the recommendation that if I want to sell the property to Mr. Upham, or if I did not, to borrow the money from Mr. [fol. 843] Upham and build the building there.

Q. That was the talk you had?

A. That is right. That was their suggestion.

Q. Wasn't it after that talk you went to see Mr. Upham?

A. It was.

Q. And where did you see Mr. Upham?

A. At his office at Mt. Vernon, Ohio.

Q. And in the course of your talk with Mr. Upham, in Mt. Vernon, Ohio, was the question of financing discussed at all?

A. No, sir, my attorney, Mr. Henkel and I——

Q. No, I just asked you was the question discussed?

A. All right.

Q. Was the question of financing discussed with Mr. Upham when you saw him in Mt. Vernon at that time?

The Court: He has already answered before the same question.

Mr. Rogers: But before that he said there never was any talk about it before. Now he admitted there was some talk about it.

Q. Will you kindly answer that question?

A. Will you repeat the question, please?

(Question read.)

A. Financing what?

The Court: Financing your project there, your theatre [fol. 844] project?

The Witness: No, sir.

Mr. Wright: I am just wondering what the purpose of the cross-examination is now.

The Court: He is finished now. He will go on to something else.

Mr. Wright: The whole thing is whether they did go through with it, or they didn't.

Mr. Rogers:

Q. After the option that you just looked at and Mr. Wright showed to you, didn't you try to sell this property to the Schines?

A. No, sir.

Q. I show you this paper and I ask you, did you ever see that paper before?

The Court: Did you ever see that before? That is the question?

The Witness: I have, yes. May I say something?

The Court: Just answer the question.

Q. And didn't you see this paper some time in the month of May, 1939?

A. I don't recall the dates, some time in May.

Q. That is right, isn't it, some time in May, 1939?

A. That is right.

Q. Do you remember by whom this paper was prepared? [fol. 845] A. By Mr. Henkel, I believe.

Q. Who is Mr. Henkel?

A. An attorney.

Q. Is he your attorney?

A. Yes, sir.

Q. So this was prepared by your attorney, wasn't it?

A. That is right.

Q. I show you this signature, George K. Angelas, is that your signature?

A. Yes, sir.

The Court: Do you want this young man (referring to the Witness, Sergeant De Toto) further, Mr. Wright?

Mr. Wright: Not tonight, no. You can be excused for the day. Be back at 10 o'clock tomorrow for your cross-examination. Is that the right time, your Honor, 10 o'clock?

The Court: Yes.

Mr. Rogers: I offer this in evidence.

Mr. Wright: I wish to examine him on it first.

Q. Could you tell us, Mr. Angelas, the circumstances under which that agreement was prepared?

Mr. Rogers: One moment. May it please the Court, I object to that, this merely is not qualification. This is [fol. 846] going into the merits. Mr. Wright may on re-direct bring anything forward, but he cannot obstruct the introduction of this document in evidence. He can't go into the circumstances surrounding the deal.

Mr. Wright: It might be from its execution it isn't competent to prove anything. What is it supposed to prove? May I ask that?

Mr. Rogers: I will bring that out.

The Court: The Court is entitled to know what bearing it has.

Mr. Rogers: The bearing that it has, may it please the Court, is that under that deal that he proposed to us, he was to take part of that and reserve it to himself, sell the balance and we, at our cost, were to put the theatre on there, not its cost there. We were going to build the theatre at our own cost.

The Court: That is in this exhibit, this paper to which you now refer.

Mr. Rogers: Yes, sir.

The Court: The option was prior to that?

Mr. Rogers: The option was prior to that, the option was before he acquired the property. This is after he acquired the property and yet, when he came to make the deal with [fol. 847] us, he wanted us to build the theatre at our expense.

The Court: The option is to buy or sell it at certain terms and conditions, wasn't it?

Mr. Rogers: No, sir. You see, there were two transactions.

The Court: I understand that.

Mr. Rogers: Under the option he was to build a theatre for us.

The Court: All right. That is just what I am getting at.

Mr. Rogers: And he tried to make another deal to have us build a theatre.

The Court: That is what I had in mind.

Mr. Rogers: It may be I am brain weary at this hour.

The Court: I was trying to accommodate the witness.

Mr. Rogers: Yes, thank you. I would like to, too.

The Court: I will receive *at* at this time.

(The agreement, previously marked as Defendants' Exhibit D-25 for identification, was received in evidence.)

Mr. Rogers:

Q. When this agreement was executed by you, that is, Defendants' Exhibit D-25——

Mr. Wright: Is this an agreement? I didn't notice there [fol. 848] was any signature other than his own there.

Mr. Rogers: There is a signature on it. That is right.

Mr. Wright: Are you going to establish it is an agreement? It certainly isn't one on its face.

Mr. Rogers:

Q. After you signed this paper, Defendants' Exhibit D-25, you offered this paper to the Schine people, didn't you for their signature, isn't that so?

The Court: Do you know what was done with that paper?

The Witness: I believe this paper was forwarded to the Schine Theatres.

Mr. Rogers: That is right.

Q. You forwarded it to Schines for them to approve and sign, if they were prepared to make this deal, isn't that right?

A. I believe so.

Q. And under this deal, Defendants' Exhibit D-25, this contract here, if they accepted this, they were then supposed to build the theatre at their own expense?

The Court: The contract shows for itself. The agreement shows for itself.

Mr. Rogers: This is a contract of sale.

The Court: You just said that.

Mr. Rogers: I said the deal called for it.

Mr. Wright: There wasn't any deal made, as I under-[fol. 849] stand it. I object to him calling it a deal. All he is referring to is a paper shown to Mr. Angelas.

Mr. Rogers: Exactly.

Q. If they accepted it, then Schine would be compelled to build a theatre at their own expense, isn't that right?

Mr. Wright: If the Court please, that is objectionable, and merely argumentative.

The Court: It shows what he offered to do. You don't make it any stronger by testifying to the fact as to what is in the paper, that appears in the paper.

Mr. Rogers: No, it does not. That is just the point.

The Court: The paper does not so state?

Mr. Rogers: No.

The Court: I thought you claimed this showed just that?

Mr. Rogers: No, this was just the first step. He offered to sell the property to Schine.

The Court: On condition that Schine build, you say?

Mr. Rogers: I wish to bring forth that under that deal Schine would have to build the theatre themselves.

The Court: Doesn't the paper say so?

Mr. Rogers: No, sir.

Q. But isn't that so?

[fol. 850] A. What is that?

Q. There was no agreement on your part to build a theatre if they took this property, to buy this land?

The Court: The paper shows for itself what was included and excluded, that is all.

The Witness: No agreement signed.

The Court: Let me see the paper.

(Mr. Rogers hands the exhibit D-25 to the Court.)

The Court: Is that all the cross-examination?

Mr. Rogers: Just a moment, sir. I just wish to know.

Q. After Defendants' Exhibit D-25 that contract was executed?

Mr. Wright: What is this one supposed to be, is that executed?

Mr. Rogers: It is a duplicate of it.
Mr. Wright: You mean executed by Mr. Angelas?
Mr. Rogers: Yes.
The Court: Simply a contract to sell the land, that is all this is.
Mr. Rogers: Yes.

Q. Didn't you have a talk with Mr. Lazar about this contract?
A. About selling the land, you mean?
Q. After this paper was signed by you and forwarded to Schine, didn't you have a talk with Mr. Lazar about this D-25?
[fol. 851] A. Yes, sir.
Q. And weren't you told by Mr. Lazar that in accordance with what you were reserving out for yourself, it would be impossible for them to build a theatre on this plot, with a decent lobby in it and that they wouldn't take it for that reason?
A. They never offered to buy the whole lot. This agreement only specifies part of the lot.
Q. You were to reserve part for your restaurant?
A. Yes, sir, that was his recommendation.
Q. And that was what you wanted, too, wasn't it?
A. Not exactly.
Q. Did you want that?
A. What?
Q. Didn't you want part of that reserved, the restaurant, yourself?
A. Yes, that is right.
Q. Annexed to this D-25 was this plan of the property?
A. Yes.
Q. You had that drawn yourself and prepared?
A. Yes.
Q. You attached it to this contract?
A. That is right.
Q. Didn't they tell you that by reason of the fact you were taking 30 feet out of the front on Main Street, and leaving [fol. 852] only 20 feet for a lobby to run 75 feet long, that that was the kind of a lobby they couldn't use for a theatre, and therefore, they wouldn't make the deal?
A. That is right.

Mr. Rogers: That is all.
The Court: Anything, Mr. Wright?

Redirect examination.

By Mr. Wright:

Q. Mr. Angelas, at whose suggestion did you have these agreements prepared?

A. Mr. Lazar.

Q. And then, as I understand, after they were sent to Mr. Lazar, they were never executed by the Schine Company, is that it?

A. Right.

Q. Is that where the negotiations broke off when they refused to execute those agreements that were submitted?

A. The negotiations at the beginning broke off when the Schine Circuit, Incorporated, refused to give us the security that would require on the building that they were supposed to build.

Q. When was that?

A. First come in and offered a 20-year lease and 10 per cent investment income.

[fol. 853] Mr. Rogers: Pardon me.

Mr. Wright:

Q. That was when Silverman——

Mr. Rogers: Pardon me. That had nothing to do with this contract D-25.

The Court: Ask your question. Do you object to it?

Mr. Rogers: He asked when it broke off in D-25. That has nothing to do with this D-25, Mr. Wright.

The Court: Will you read the question and answer?

(Last question and answer read, as follows: "Q. Is that where the negotiations broke off when they refused to execute those agreements that were submitted?

A. The negotiations at the beginning broke off when the Schine Circuit, Incorporated, refused—")

Mr. Rogers: I object to that.

The Court: Tell when the negotiations broke off.

The Witness: The last of the negotiations?

Mr. Rogers: Yes.

The Court: Is that what you want, Mr. Wright?

Mr. Wright: I want the complete — of that, all of the negotiations.

Mr. Rogers: Now, may it please the Court, Mr. Wright was going to expedite this. Now, he is going into this [fol. 854] whole story.

The Court: We have the option here.

Mr. Wright: As I understand it, there were prior negotiations in which he was to build a theatre himself, is that correct?

The Witness: Yes.

The Court: The option, he testified.

Mr. Rogers: It is in the option. You have the option in.

By Mr. Wright:

Q. Can you tell us why those negotiations based on your building the theatre ceased?

Mr. Rogers: I object to that as incompetent and immaterial.

The Court: Any conversations I will let him tell.

Mr. Wright: The last deal was the deal.

The Court: I know, but there may be some material matters intervening. Now, why wasn't the option executed?

Mr. Rogers: That is what he is talking about. I don't see there is any materiality to it.

The Court: Overruled.

The Witness: The option was not executed, because the Schine Circuit, Incorporated was supposed to pay 10 per cent on the cost of the investment on a 20-year lease.

Mr. Rogers: Is the witness testifying to what is in the [fol. 855] document or outside the document?

The Court: So far as he has gone, this is all in the paper.

The Witness: They offered to give the theatre building that they owned at that time as security against my lease to protect my lease, but they had a little clause on this agreement in the end of the six years they should have the right to withdraw the building from the security. Consequently at the end of the six years I would have no protection against my investment, other than the pictures they would have in the theatre. I refused it. From then on, Mr. Lazar and Mr. Silverman suggested part of the store and lot, as you see in the paper.

By Mr. Wright:

Q. That is that they build the theatre?

A. That is part of my land, so they can build their own theatre, then they came on and came in with a letter which you have in your files.

Mr. Rogers: One moment please.

The Witness: Whereby——

Mr. Rogers: Please, Mr. Angelas. I object to this witness testifying.

[fol. 856] Mr. Wright: Just one question I think will clear it up.

Q. Was there any time then in the negotiations that the suggestion that you suggested that they build the theatre instead of you, or was that suggestion made by Lazar and Silverman? That is all I wanted to get out.

A. That I was going to build the theatre, or that they were going to build the theatre?

Q. I say, who made the suggestion that they build the theatre after the negotiations for your building the theatre broke off?

A. They made the suggestion.

Mr. Wright: That is all.

The Court: Then you made this, you had this next paper drawn?

The Witness: And later on draw the papers which they wanted part of the land as I will not sell all the land.

Mr. Rogers:

Q. The first deal under option fell down because the two of you couldn't agree on the kind of security you could get, is that right?

A. That is right.

Mr. Rogers: That is all.

Mr. Wright: I just want to offer that option agreement. I think I merely identified it, and it should be marked as [fol. 857] in evidence.

Mr. Rogers: No objection.

(Thereupon the option agreement, previously marked for identification, was received in evidence and marked as Plaintiff's Exhibit P-60).

Mr. Rogers: I wish to move to strike the testimony of this witness on the ground that it is not binding, on the ground it merely is purely a local situation and that it is immaterial.

The Court: Denied. One other question I had in mind.

[fol. 858] The Court: It seems to me we would save a lot of time if we could get together on a lot of things that there does not seem to be any controversy over. I supposed the purpose of our first adjournment was to enable this to be done. I do not think we should spend any time on matters that are not in controversy or that cannot be controverted, you might say. I suppose we could save a lot of time and labor.

Mr. McKay: Your Honor, this was served on me today. I will say that last wek I did get together with some of these gentlemen and we were making a little progress, but the imminence of the trial and the fact that Mr. Rogers and Mr. Richardson were totally unprepared, and I had to refresh my memory over a period of two years, that sort of made it necessary to devote all our time to that phase of the work. We are suspending on Thursday, according to my understanding, and I told Mr. Wright, or one of the gentlemen, that after that, during the recess, we would try to accommodate them as much as possible and would admit everything that we could possibly admit. They have not [fol. 859] been prejudiced.

The Court: Do you intend to go on next week?

Mr. Rogers: In addition to that, when I came into the case I came in with that in view because I definitely have a case they are holding now from day-to-da*te* in New York County Supreme Court that I have got to go to trial on. It will probably take the greater part of next week to dispose of. My client there is in the Service, and if we do not try it now it will go over to October and I do not know if he will even be here then.

Mr. Wright: If your Honor please, I suppose he came into this case with full knowledge of prior commitments.

The Court: He came in with the knowledge that we had an understanding of when we would adjourn. We had a definite understanding at that time and my point is that if we can go along—this is done for the convenience of Mr. Richardson. He said he had to go into a matter on the 12th.

Mr. Richardson: Just as soon as we had an understanding, in which the Court was very kind to me, I immediately [fol. 860] took it up with Mr. McKay, who thereupon took it up with Mr. Rogers, and both of their appointments, particularly those of Mr. Rogers, were based upon my informing him what our arrangement was, so that to a certain extent my inability inconvenienced both the Court and Mr. Wright, because I based it on that, and Mr. Rogers is in much the same situation as I am. It was after that that I took it up with Counsel here because my own arrangements were such that I asked whether we might not pause on Thursday night, to which no objection was made. We have our reservations to leave here on Thursday night with the idea of thereafter reconvening when those obstacles are out of the way and the Court is free to go on with the case. When I obtruded my views on your Honor at the beginning of this situation I thought then, as I think now, that if we hadn't had this aborted hearing of a few witnesses before the long adjournment we would have saved the time of the Court and Counsel, because it is a most difficult thing to come in in this way. Until this afternoon, [fol. 861] when it was laid on the table in front of me, I never saw a very important document that there is in this case. We are to pause on Thursday and between the time we again resume it seems to me can get together with Counsel and have this thing presented in an orderly way where everything we can concede will be presented, and the ultimate result will be that your Honor's time on the Bench will be kept at a minimum.

The Court: I think when we began there was an effort made to do so. I think under the circumstances we will have to adjourn on Thursday night.

Mr. Wright: For how long, your Honor?

The Court: Any time after the middle of August.

Mr. Wright: There would not be any possibility of anything before the middle of August?

The Court: I have a term in July.

Mr. Wright: We are particularly interested in getting the evidence in the case heard and out of the way. I have Fall commitments myself. I would be very anxious to complete the taking of the testimony certainly by the middle of September, if it is at all possible, or before that. What [fol. 862] is the date in August that would best suit your Honor's convenience?

The Court: Any time after the middle of August.

Mr. Richardson: There is no need of us not being realistic in this matter. It will take Counsel more than a month to complete his case because we were told by Counsel when we came here that it would take five or six weeks to put in the Government's case. We are going to have in this case a necessary hiatus after the Government's case is in for us to get our feet under ourselves, and your Honor says we cannot start before the 15th of August, and if Mr. Wright has any hope of being free for his other commitments by the 15th of September——

The Court: I did not so understand it.

Mr. Richardson: That is what he just said.

Mr. Wright: I said we would hope to finish the conclusion of our testimony, and I think we could finish it in ten or twelve days of testimony, provided this promised cooperation were ever forthcoming. This case was on two years ago.

The Court: When do you want to put it down for?

[fols. 863-866] Mr. Wright: I would say the 15th of August.

Mr. McKay: Let us put it down for the 15th of August.

The Court: What day is that?

Mr. Rogers: That is Tuesday.

The Court: All right.

(Whereupon an adjournment was taken until Wednesday, June 7, 1944, at 10 o'clock A. M.)

[fol. 867] United States District Court, Western District of New York

Civil Action No. 223

United States of America,

vs.

Schine Chain Theatres, Inc., et al.

Trial continued before the Honorable John Knight, United States District Judge, without a Jury, United States Court House, Buffalo, New York, Wednesday, June 7, 1944, at 10 o'clock A. M.

Appearances:

Robert L. Wright, Esq., John F. Clagett, Esq., Harold L. Schilz, Esq., Albert Boggess, Esq., Philip Marcus, Esq., and Milton Kallis, Esq., Special Assistants to the Attorney General, in behalf of the United States of America.

Edmund McCarthy, Esq., Attorney of Record; Willard S. McKay, Esq., Saul E. Rogers, Esq., Arthur J. Homans, Esq., Howard M. Antevil, Esq., and Seth Richardson, Esq., of Counsel for Defendants.

[fol. 868] PROCEEDINGS

Mr. McKay: Your Honor will recall yesterday afternoon Mr. Arthur Buck identified a photostat of a letter from him to Mr. William Rogers. I believe the number is Plaintiff's Exhibit 58. The distributors have located the original of that letter and, as it is more legible, I would suggest that that be substituted for the photostat.

Mr. Wright: There is no objection from us.

Mr. McKay: There is no objection to the photostat, but this is easier to read. And the distributors have also located Mr. Rogers' reply to Mr. Buck, and I would like to have that marked for identification as well.

Mr. Wright: No objection. That reply, I suppose, should be marked with the next Defendants' number. Of course there is no change in number on the other one.

(Thereupon the original letter referred to was substituted for photostat and marked as Plaintiff's Exhibit P-58.)

(Thereupon the letter of April 8, 1936, referred to, was marked as Defendants' Exhibit D-26 for identification.)

[fol. 869] Mr. Kallis: If the Court please, I would like to ask Sergeant DeToto a few more questions. I notice that the transcript seems to be in error with respect to one or two answers that he gave yesterday.

RICHARD DETOTO resumed the stand on behalf of the Plaintiff, having been previously sworn, was examined and testified further as follows:

Direct examination (continued).

By Mr. Kallis:

Q. Calling your attention, Sergeant DeToto, to the two years, namely, from July 1, 1934, through June 30, 1936, during which you operated both on your own account and for Mrs. Ricordello the Seneca Theatre in Seneca Falls, New York, will you please state what the admission price for main floor seats of the Seneca Theatre was?

A. 10 and 15.

Q. Ten cents—

A. For children.

Q. And 15 cents for adults?

A. That is right.

Q. And that is for the evening performance?

A. That is right.

Q. You gave some testimony yesterday with reference to [fol. 870] having talked with representatives of the United Artists and Paramount concerning the buying of film for the Park Theatre in Geneva, New York. Were those the only companies with whom you discussed this subject?

A. No.

Q. Will you please state whom else, if any, you discussed this matter with?

A. Warner Bros.

Mr. Rogers: May we get the date?

Mr. Kallis: I will ask him when and where as soon as he says yes or no.

A. Warner Bros.

Q. You did discuss the subject matter with Warner Bros?

A. That is right.

Q. When was that?

A. It was on the same date, some time in the early part of August.

Q. Of what year?

A. 1939; on Franklin Street at Warner Bros. I don't remember the number.

Q. In Buffalo, New York?

A. That is right.

Q. Whom did you see there?

A. Miss Ruth Rappaport.

Q. Was she a stranger to you or had you known her before?

[fol. 871] A. She was no stranger. I had known her.

Q. How many times had you seen her before that occasion, approximately?

A. About a dozen times.

Q. And where?

A. In Warner Bros. office in Buffalo, New York.

Q. And in connection with what business, if any?

A. Booking pictures for the Palace Theatre at Clifton Springs, New York.

Q. What did you say to her on that occasion in August of 1939, when you had this discussion concerning buying film for the Park Theatre at Geneva?

Mr. Rogers: I object to that, may it please the Court, on the ground we have no testimony as to who Miss Rappaport is, what her connection is with the Warner Company, what her duties were.

The Court: Had you dealt in the purchase of pictures prior to this?

The Witness: Not in the purchase of pictures but with the booking of pictures.

The Court: Booking pictures?

The Witness: I merely asked her——

Mr. Rogers: One moment, please. His testimony is he never had any dealings——

[fol. 872] The Court: Was there anybody else there besides her?

Mr. Kallis:

Q. Did you ask for any one else?

A. I did.

Q. Whom did you ask for?

A. I asked her for Charlie Rich, the Warner Brothers' manager.

Q. What were you told?

Mr. Rogers: I object as not binding, hearsay.

The Court: Did you see him?

The Witness: No, I didn't see Rich. I saw Miss Rappaport. Rich was out.

Q. Mr. Rogers is becoming pretty technical, and if the Court please, I can enlighten the situation very easy. Will you tell the Court what you mean by a person at Warner Brothers who did the booking? What conversations had you previously had with Miss Rappaport with reference to booking pictures?

Mr. Rogers: Pardon me. This witness has testified he never spoke with Miss Rappaport about buying pictures.

The Court: That is right. You have two questions in one, I think.

Q. When you said you spoke with Miss Rappaport in reference to booking pictures, please give us the nature of the conversation?

[fol. 873] A. What Miss Rappaport said isn't material. She merely said the salesman would be sent around.

The Court: Explain first what you mean by booking?

The Witness: By booking pictures, as soon as the pictures are made available to a theatre, you can either book by mail or come to Buffalo and book them.

The Court: What do you mean by booking?

The Witness: You sit down with a booker and work out dates on which you desire to use the pictures.

Q. If the picture is not available to a theatre at any time, or if it is available at some times and other times does the booker advise you on that?

A. She does or he does.

Mr. Rogers: May I interrogate the witness, sir?

The Court: I don't think it is necessary. I think it is competent. Proceed.

Q. What did Miss Rappaport tell you on that occasion in August, 1939, when you went to Warner Brothers' office in reference to booking pictures?

Mr. Rogers: It was not booking. Buying pictures.

Q. Buying pictures for the Park Theatre in Geneva, New York.

Mr. Rogers: Then I press my objection, may it please the Court.

The Court: Overruled.

[fol. 874] The Witness: She told me that Mr. Rich was out and that Mr. Howard Minsky for that territory for the Warner Brothers would contact me at Clifton Springs in regard to the Park Theatre at Geneva, New York.

Q. Did you contact Mr. Howard Minsky?

A. I did.

Q. What had been your previous dealings with him?

A. I had purchased film from him for the Palace Theatre at Clifton Springs, New York.

Q. Did he call upon you at Clifton Springs, New York, after this conversation?

A. He did.

Q. When?

A. Some time thereafter, some time in August or early part of September. I am not sure.

Q. Within a month after this conversation with Miss Rappaport, is that right?

A. Yes.

Q. What was said?

A. He said that he could not give me any definite second-runs for the Park Theatre, but he could give me a contract which read either second or third-run, depending on whether Schine saw fit to run the pictures on second-run.

[fol. 875] Mr. Kallis: I think that is all.

By the Court:

Q. You dealt with Minsky, before, you say?

A. I had, sir.

Q. In booking?

A. Buying pictures.

Q. Through Warners, you mean?

A. That is right, sir.

Q. How long?

A. About a year I would say.

Q. At Clifton Springs?

A. That is right, sir.

The Court: All right, Mr. Rogers.

Mr. McKay: Of course, your Honor, we have the same objection to this conversation with the salesman that we have been pressing right along.

The Court: Yes.

Cross-examination.

By Mr. Rogers:

Q. When did you actually have your first connection with the Seneca Theatre?

A. Some time in July, 1935—1934

Q. July of 1934, you say?

A. That is right.

[fol. 876] Q. And in what capacity did you have your connection at that time?

A. I was manager.

Q. Manager for whom?

A. Mrs. Louis Ricordello of Syracuse, New York.

Q. Did she have a lease on that theatre?
A. She did.
Q. Do you know when that lease expired?
A. June 30th, 1935.
Q. When did you start your negotiations to obtain your lease which started in June, 1935?
A. What was the question?

(Last question read.)

The Witness: Some time in May, 1935.

Q. That was while Mrs. Ricordello's lease was still in existence?
A. That is right.
Q. With whom did you negotiate that lease?
A. Mr. Marsh.
Q. And is that the same Mr. Marsh connected with the Seneca Falls Savings Bank about whom you testified on direct examination?
A. It is.
[fol. 877] Q. And how long did you carry on your negotiations with him for that lease?
A. Several weeks, I believe.
Q. During any time prior to the making of your lease which starts in June of 1935 did you have any lease of any kind on that theatre, either oral or written?
A. Will you repeat that, please?
Q. (Question read.)

Mr. Kallis: If the Court please, I think that that is calling for a legal conclusion of the witness. If he wants to ask Mr. DeToto what his conversations were with anybody connected with the Seneca Bank I have no objection.
Mr. Rogers: This is cross-examination.
The Court: Overruled. Prior to July did you have any lease on this theatre?
The Witness: Prior to July?
The Court: Prior to the time you negotiated with Marsh.

By Mr. Rogers:

Q. In June; the written lease is from June, 1935, to the end of June, 1936.

The Court: You said you were working for some woman and managing the theatre.

The Witness: I still don't know what you mean by it?

Q. Did you ever have any lease on that Seneca Theatre [fol. 878] other than this written lease we have in evidence here that started in June of 1935 and ran to the end of June, 1936?

A. Prior to the time that this lease was signed, which was June 3rd?

Q. Yes.

A. No.

Q. I recall your testifying under direct examination that first you had an oral lease and then you had a written lease. Is that so?

A. That was for the year following, 1936; not 1935.

Q. You mean you had an oral lease in 1936?

A. I didn't have an oral lease.

Mr. Rogers: I can't hear you.

Mr. Kallis: I can't either, Mr. DeToto. I am sorry.

A. I know what Mr. Rogers is aiming at.

Q. I am not aiming at anything. I am just aiming at your testimony. You said you had an oral lease and then you had a written lease.

A. You have got your dates mixed.

Q. Did you ever have an oral lease before you made this written lease?

A. Yes, I did.

Q. An oral lease?

A. For what year?

Q. I asked you just now——

[fol. 879] The Court: You mentioned June, 1935. He wants to know before that.

Mr. Rogers: Exactly.

A. For this original lease or for a lease after that?

Q. I am asking you before this written lease did you ever have an oral lease?

Mr. Kallis: Before what date, Mr. Rogers?

Mr. Rogers: Before June of 1935. I have asked him that four or five times now.

Q. Didn't you?

A. An oral lease for what?

Q. Any time before June of 1935.

A. No.

Q. Then when you testified on direct examination that first you had an oral lease prior to June of 1935 and then you got your written lease, which started in June of 1935, that was not accurate, was it?

A. I still don't know what he is talking about.

Q. You understood what Mr. Kallis was talking about when he directed his questions to you on direct examination, didn't you? Well, did you or didn't you?

A. Will you be explicit?

Q. You just answer my question and stop arguing.

A. I can't answer a question like that.

Mr. Kallis: If the Court please, the witness is not [fol. 880] arguing. I submit he is very respectful to this thoroughly experienced cross-examiner and there is not any parity between the two of them.

The Court: This witness should be able to understand it.

Mr. Rogers: A thoroughly experienced cross-examiner has not received any direct answer as yet.

The Court: You testified something about an oral lease. When was that that you had any oral lease on this Seneca Theatre?

The Witness: The oral lease with the privilege to renew for the year ensuing, 1936-1937, was made at the time that lease was signed, on June 3, 1935. Whether he has reference to the original lease I don't know, sir.

The Court: That is a verbal lease, an oral lease.

The Witness: But he does not mention which lease.

The Court: You have only testified to one oral lease. Y[illegible] say now this oral lease was made at the time you made t[illegible] written lease.

The Witness: Your Honor, at the same time he asked me if I had been negotiating for the prior lease——

Mr. Rogers: The witness seems to be wishing to argue with the Court. I want answers to questions, not arguments now, Mr. DeToto.

[fol. 881] By Mr. Rogers:

Q. Then is it your testimony that you never had an oral lease under which you occupied these premises and operated these premises; is that right?

Mr. Kallis: Do you understand the question, Mr. DeToto?

The Witness: No, I don't.

Mr. Rogers: One moment, Mr. Kallis: It seems to me he understood, may it please the Court, all of Mr. Kallis's questions.

The Court: The witness can state if he does not understand.

Q. In other words, you don't understand my questions, do you? Is that right?

A. If you will be explicit——

Q. Just answer my question. Do you understand my question?

Mr. Kallis: Just a moment. If the Court please, the word "lease" is a word you find in Webster's Dictionary and you also find it in a great many law books.

Mr. Rogers: And also the Encyclopedia Brittanica.

Mr. Kallis: And the meaning of it may not be clear to this witness.

The Court: I think the meaning is clear. When you refer to an oral lease do you refer to what you claim was an option given you or an agreement made with you at the time this [fol. 882] written lease was made that you should have the right to renew that lease? Is that what you mean?

The Witness: Your Honor, he asked me——

The Court: What do you mean by an oral lease? I do not know what you mean by it.

Mr. Kallis. May the question be read, if the Court please?

The Witness: There are two dates——

The Court: Never mind. Just listen to the question.

Mr. Kallis: May the reporter read your question?

Mr. Rogers: May I read to the Court exactly what this witness testified?

Mr. Kallis: If the Court please, I would like to have Mr. DeToto answer your Honor's question.

The Court: I will withdraw my question for the present. We will see what the previous testimony was.

Mr. Kallis: What page is that on, Mr. Rogers?

Mr. Rogers: Page 756.

By Mr. Rogers:

Q. Do you remember these questions being asked of you yesterday and you giving these answers:

"Q. Who at that time (meaning June, 1935) was the owner of the building in which the Seneca Theatre at Seneca Falls, New York, was located?

A. The Seneca Falls Savings Bank at Seneca Falls, New York."

You remember that question and that answer, don't you? [fol. 883] A. I do.

Q. "Q. And were you given an oral or a written lease? A. At the time the lease was consummated"——

Then some motions were made and then the question was re-read to you:

"The Witness: Yes, I was.
The Court: Which was it?
The Witness: It was oral.
A. At the time the lease was consummated——
The Court: Which was it?
The Witness: It was oral.
Q. Did you later receive a written lease from the Seneca Falls Savings Bank?
A. Later."

Now, do you remember those questions being propounded to you and you giving those answers?

A. Yes, I do.

Q. Which oral lease were you talking about that was given to you and then a written lease given to you later?

A. The lease is self-explanatory. The oral privilege was given at the time the lease was consummated and then the lease was later mailed to me.

Q. Your testimony is that first you got an oral lease and then later you got the written lease?

A. No, the lease for the one year.

[fol. 884] The Court: We are talking about 1935, the year this written lease was made. You should understand this question. It is clear and definite. When did you make an oral lease he wants to know?

The Witness: An oral lease, a privilege to renew, was made at the time my one-year lease was consummated. That explains itself.

Mr. Rogers: May it please the Court, that is not the testimony.

The Court: That is his testimony now.

Mr. Rogers: That is his testimony now but it was not his testimony on direct.

The Court: How could there be an oral lease and a written lease consummated at the same time?

The Witness: Your Honor, the Bank gave me the one-year lease and——

The Court: You had a one-year lease in writing?

The Witness: Yes. At the time it was made I told them that was not very much of a lease, considering that I had to go in there and work and build up a business. They assured me I had nothing to worry about, that I would be given first opportunity.

The Court: That is what you mean by an oral provision not in the lease?

[fol. 885] The Witness: That is right.

By Mr. Rogers:

Q. How old are you, Sergeant?

A. Thirty.

Q. At the time you were carrying on these negotiations to make this lease you were 21 years old, weren't you?

A. About that, I believe.

Q. Now, did you have a bank account at that time?

Mr. Kallis: If the Court please, I object to that. It does not relate, even indirectly, to anything concerning which he gave testimony yesterday.

The Court: Overruled. This is cross-examination.

Mr. Kallis: If the Court please, I would like to know what his purpose is.

The Court: It is cross-examination. Overruled.

Q. Answer the question, please.

A. I believe I had. I don't recall.

Q. You don't recall whether or not you had a bank account?

A. No.

Q. Where do you believe you had a bank account at that time?

A. I did have a bank account in Geneva. I don't recall whether it was that year or not. It may have been previous. Years previous to that I did have.

Q. You mean previous to the time you were 21 years old you had a bank account in Geneva?

[fol. 886] A. That is right.

Q. In which bank did you have that bank account in Geneva?

A. The First National Bank.

Q. Is that what you believe or is that what you know?

A. I did have an account.

Q. You mean you did have an account in that particular bank in Geneva in 1934?

A. I believe it was 1934. I would rather not commit myself on the bank account. I did have a bank account in the city of Geneva in one of the banks some time in 1933 or 1934. I don't recall which bank. I would rather not commit myself.

Q. Are you sure you had a bank account in any bank in Geneva in 1933 or 1934?

The Court: He said he did have.

Mr. Rogers: He said he believed he did, but he won't commit himself.

The Witness: I mean it is a long time. It may have been in my dad's name. I was working at the Schine Optical Company. I did have a bank account. It may have been in my dad's name. I don't recall. It is a long time.

Q. Then you don't recall whether you had a bank account in Geneva?

A. Let me skip that.

[fol. 887] Q. You don't skip things. I am skipping them.

A. No, I don't.

Q. At any time during the year 1935 did you have a bank account anywhere?

A. 1935?

Q. Yes.

A. The same answer. No, I don't recall.

Q. You did not, did you?

A. I don't recall.

Q. As a matter of fact, don't you know you didn't have a bank account anywhere in 1935?

Mr. Kallis: Just a moment. I object to that type of cross examination.

The Court: Sustained. He says he does not recall.

Q. Let me ask you this: Did you have a bank account anywhere in the year 1936?

A. Did I have a bank account anywhere in the year 1936?

Q. Yes.

A. Yes, I did.

Q. Where?

A. The Seneca Falls Savings Bank, Seneca Falls, New York.

Q. That is a savings bank account, is that right?

A. That is right.

Q. Do you remember how much you had in that account of April of 1936?

[fol. 888] Mr. Kallis: I object, if the Court please, improper cross examination.

The Court: What is the materiality of this?

Mr. Rogers: In just a moment I will show you the materiality, your Honor. I promise to connect it.

The Court: Overruled.

A. I don't remember the amount.

Q. Do you remember approximately how much you had in that savings bank account?

A. No, I don't.

Q. Was it more than a hundred dollars or less than a hundred dollars?

A. It was more, I should say. It was a few hundred dollars.

Q. You possibly had $200 in that account, you mean?

A. Something like that.

Q. When you spoke with Mr. Marsh in April of 1936 you say at that time Mr. Marsh told you that he wanted to sell the property in which the Seneca Theatre was to you?

Mr. Kallis: I object to that, if the Court please. He did not say that on his direct examination.

Mr. Rogers: He most certainly did. He even said the price.

Mr. Kallis: I don't recall that he testified to that effect.

Mr. Rogers: He even mentioned the price, may it please the Court.

Mr. Kallis: A price of $9,000 was mentioned as the price [fol. 889] that was set for it in this option.

The Court: Ask him if he did testify to that.

Q. You did testify, did you not, that you spoke with Mr. Marsh in 1936 and he said he would like to sell you the property?

A. He said he would like to sell.

Q. And you said he mentioned a price of $9,000?

A. That is right.

Q. You also testified he said you didn't have to pay all cash?

A. That is right.

Q. You could pay part cash and part on mortgage?

A. That is right.

Q. Well, did he tell you how much cash and how much mortgage would be required to purchase the property?

A. He mentioned a few thousand would be sufficient; the rest on mortgage.

Q. In other words, he said a few thousand dollars would take it in cash and the rest would be in mortgage?

A. That is right.

Q. By a few thousand dollars what was your understanding, two or three thousand dollars or four thousand dollars, or what?

A. About three.

Q. About $3,000?

A. That is right.

[fol. 890] Q. Didn't you testify you told him you had plenty of money to buy it but you would rather use that money to improve the property; is that right?

A. I didn't say I had plenty of money.

Q. Did you say you had money sufficient to make the deal, but you told him you would rather use that money to improve the property?

A. I knew where to get it.

Q. No. Didn't you say you had it?

A. I said I had. I didn't say plenty of money.

Q. You said you had enough money to make that deal?

A. That is right.

Q. Did you at that time have $3,000 in any bank account?

A. No.

Q. As a matter of fact, didn't you tell Mr. Marsh at that time that you couldn't buy the property because you didn't have any money?

A. I did not.

Q. You mean you never told Mr. Marsh that you couldn't buy this property because you didn't have the money?

A. I did not.

Q. In 1935 or 1936 did you personally have any money invested in the Seneca Theatre? Personally, I mean, you personally.

A. I don't quite know what you mean.

[fol. 891] By the Court:

Q. Did you have any interest in the deal there?
A. I was paying the bills, operating the business.

Mr. Rogers:

Q. You were paying the bills out of the money that came in the box office, weren't you?
A. That is right.
Q. Outside of that you had no money in the theatre, did you?
A. Not in the equipment.

The Court: Were you part owner of the property, he wants to know? Did you have any investment in the business there?
The Witness: No, not in the property.
Mr. Wright: If the Court please, I suppose it is an investment in the enterprise.
The Court: Were you working for hire?
The Witness: I was operating the theatre myself, sir.
Mr. Rogers: That was during the period he was operating the theatre I am talking about, your Honor.
Mr. Kallis: That is the first year for '34 and '35.
The Court: You are talking about '34 and '35?
Mr. Rogers: No, 1935-'36 just now, when he was operating.
The Court: All right.
Mr. Rogers: His testimony was he had no investment in it.
Mr. Wright: The testimony is he had no investment in [fol. 892] the form of money. I repeat it is quite apparent he had an investment such as anybody does who tries to run a business.
Mr. Rogers: That is Mr. Wright's testimony. Now let us see if that is your testimony.
The Witness: I didn't hear what he said.
Mr. Rogers: You missed something. You missed something very interesting. He was testifying for you.
The Court: Never mind.

Mr. Rogers:

Q. Mr. De Toto what investment did you have in the Seneca Theatre of any kind, when you operated in 1935-'36?

A. I was operating the business. I had film contracts, rent and everything.

Q. I am asking you a simple question: Did you have any money invested in that theatre?

A. Pertaining to what?

Q. Pertaining to anything?

A. You mean the building, the equipment of it?

Q. Anything?

A. No, I didn't.

Q. You spoke about having some talk with Mr. McDermott about building a theatre? Who was to furnish the money if that theatre ever was built?

[fol. 893] A. Mr. McDermott would build the building and I would equip it.

Q. When you say you would equip it, what do you mean by that?

A. I would furnish the seats, projection equipment, screen, marquee, whatever else was need-.

Q. And you would buy that equipment you mean?

A. That is right.

Q. What would that equipment and seats and projection machine and marquee and box office equipment cost for a theatre of that kind?

A. Do I have to answer that question?

Mr. Kallis: Yes.

The Witness: The price varies.

Q. You said you had plans and specifications drawn?

A. I did have.

Q. Based on those plans and specifications, how much did you estimate those seats and equipment, box office equipment and other equipment for that theatre would cost?

A. About $7,000.

Q. How much?

A. $7,000.

Q. About $7,000, and to the best of your recollection you had about $200 in the Seneca Theatre Savings Bank, is that right?

A. That is right.

[fol. 894] Q. You also say you were trying to make a deal for Mr. Nearpass to build a theatre?

A. That is right.

Q. You had a set of plans on that?

A. That is right.

Q. Who was to put the money in that theatre, you or Mr. Nearpass?

A. Mr. Nearpass.

Q. He was — put it all in?

A. That is right.

Q. Not a dollar from you?

A. That is right.

Q. During the time when you were operating the Seneca Theatre under this lease made to you that lease was made to you and your brother and not you alone?

A. My dad was co-signer. I just became of age, something like that.

Q. That was your father?

A. Yes.

Q. During that period you said that the Strand Theatre had bank night, is that right?

A. What period is that?

Q. I said when you were operating the theatre under your lease?

A. Had bank night when the Schines had it.

[fol. 895] Q. The Schines had it during the period you were operating your lease at the Seneca?

A. Not all the period. They took it in September. Bernstein had it prior to that.

Q. Wasn't it during part of the time you were operating the Seneca Theatre that the Schines were operating the Strand Theatre?

A. That is right.

Q. Wasn't it during that period you said that the Schines had bank night?

A. That is right.

Q. And they have give-aways, too?

A. That is right.

Q. Did you have any give-aways at the Seneca Theatre?

A. I did.

Q. What kind of give-aways did you have?

A. Treasure night.

Q. Isn't treasure night the same as bank night?

A. It is.

Q. That is, you set up a pot of money and they draw for it and the lucky winner gets the pot?

A. That is right.

Q. How big a pot would you have in your bank night?

A. I don't recall. It wasn't very much.

Q. About how much?

[fol. 896] A. It was below $100.

Q. Below $100?

A. Yes.

Q. In other words, would it vary from $25 to $100?

A. That is right.

Q. As I recall you testified that you went to Canandaigua and you spoke to a Mr. Marks about building a theatre in Canandaigua, is that right?

A. That is right.

Q. And at that time the Schines actually had a theatre in Canandaigua, didn't they?

A. They did.

Q. And that theatre was not built by you or Mr. Marks, as you testified, is that right?

A. It was not.

Q. In that theatre who was to put the money into that theatre?

A. The discussion was very slight.

Q. You never discussed terms, or who was going to build?

A. No. Schines——

Q. One moment.

Mr. Kallis: Let him finish his question, Mr. Rogers. Just a moment. Have you finished your question, Mr. De Toto?

Mr. Rogers: I have finished the question.

Mr. Kallis: He was talking and Mr. Rogers interrupted him.

[fol. 897] Mr. Rogers: It was not responsive to the question.

The Witness: What was the question?

Mr. Rogers: I am asking you.

Mr. Kallis: He is giving the answers.

Mr. Rogers: He is giving the answers he should give legally.

Q. When you spoke to Mr. Marks, was there any discussions to what kind of a theatre you would build?

A. No, there was not.

Q. Was there a discussion as to how much the theatre would cost?

A. No.

Q. Was there any discussion as to who would pay for the building?

A. Not a thing.

Q. You said you went to Clifton Springs?

A. That is right.

Q. Did you operate a theatre there for somebody?

A. I managed the theatre.

Q. You managed it?

A. That is right.

Q. Did you have any investment in that theatre?

A. No.

Q. You went to Mt. Morris, didn't you?

A. Yes.

[fol. 898] Q. Did you operate a theatre there?

A. I did.

Q. Did you have any investment in it?

A. I did.

Q. You did or you didn't?

A. I did.

Q. What investment did you have in Mt. Morris?

A. Well, marquee, sound, R.C.A. sound, new screen, carpet, new frames, lighting fixtures, that is about all, I believe.

Q. And did you personally sign these contracts for this equipment you are talking about?

Mr. Kallis: If the Court please, I object to that.

The Court: The question is whether he bought them.

Mr. Kallis: There was nothing said about this on direct examination yesterday.

The Court: It all goes to the same point.

Mr. Rogers: It all goes to the same point.

Q. Did you?

A. I don't remember.

Q. Don't you remember whether you did or not?

A. Or the landlord did.

Q. You think maybe the landlord signed those contracts and not you?

A. I don't recall.

[fol. 899] Q. Did you ever pay for that equipment?

A. Did I ever pay for the equipment?

Q. Yes.

A. I paid for part of it until I was drafted.

Q. Please.

A. Your questions are one-sided, Mr. Rogers.
Q. Please answer the question.
A. I was drafted and then, naturally, the other people assumed the balance.

The Court: Just answer his question.

Q. Did you ever pay for it in full, I said?
A. No, I was drafted.

Mr. Kallis: He answered it.
The Court: You said you paid for it. Now the question is did you pay for it in full? Did you?
The Witness: No.

By Mr. Rogers:

Q. About how much did you pay for it? What part of it and what part did you leave unpaid?

The Court: You have two questions there. What was your investment in the Mt. Morris Theatre?
The Witness: I don't recall, sir. It was just prior to my being drafted.

Q. Don't you recall how much the total amount of the obligations you assumed on that equipment?
[fol. 900] A. What is it you want to know?

Mr. Rogers: Let the reporter read the question to you.
The Court: In other words, how much were you to pay for the equipment you say you purchased?
The Witness: I believe it amounted to several thousand dollars.

Q. When you say several thousand dollars, how many thousand dollars was it, do you know?

The Court: Several thousand or a thousand?
The Witness: Several, two thousand.

Q. Several thousand dollars. How long were you really operating the Mt. Morris or managing it?
A. Operating it.
Q. You were operating it?
A. For myself.
Q. How long did you operate that theatre?
A. I believe it was from October, 1940 until I was drafted in April, 1941, as near as I can recollect.

Q. You only ran for a few months, is that right?

The Court: October to April.

Mr. Rogers: Yes. I want to be sure these dates are right.

Q. Those dates are right, from October, 1940 to April, 1941?

A. That is right, about.

Q. Did you have any connection with a theatre in Syracuse?

[fol. 901] A. I did.

Q. Which theatre was that?

A. The Capitol Theatre.

Q. And when did you get your interest in that Syracuse Theatre?

Mr. Kallis: If the Court please, he didn't say he had an interest in it. He said managed.

The Court: I thought he did say he had an interest.

The Witness: No, he has reference to another theatre.

Mr. Rogers:

Q. Talking about Syracuse now.

A. Capitol Theatre in Syracuse, that is right.

Q. Didn't you testify yesterday it was the Avon Theatre in Syracuse?

A. That is the theatre I managed.

Q. Pardon?

A. I testified that is the theatre I managed.

The Court: Speak louder. That is the theatre you managed?

The Witness: I managed the Avon Theatre. I don't think Mr. Rogers has reference to that theatre. He has reference to the Capitol Theatre.

Q. When did you manage the Avon Theatre in Syracuse?

A. Shortly after I lost my theatre in Seneca Falls, possibly in the fall.

[fol. 902] Q. You mean after June, 1936?

A. No, I think it was more towards late fall.

Q. What was your interest in the Avon Theatre in Syracuse?

A. I was manager.

Q. Working for somebody else?

A. That is right.

Q. Did you ever have anything to do with any other theatre in Syracuse?

A. I did.

Q. Which theatre was that?

A. The Capitol Theatre.

Q. When did you start your interest in the Capitol Theatre in Syracuse?

Mr. Kallis: If the Court please, I object to this as being improper cross-examination. There was nothing elicited about this subject on direct examination.

The Court: Yes.

Mr. Kallis: He didn't say anything about the Capitol Theatre yesterday.

The Court: He told about his operations in Syracuse.

Mr. Rogers: Exactly.

The Witness: It was some time in early spring, 1936.

The Court:

Q. Was that directly after you were in the Avon? Did [fol. 903] you go from the Avon to the Capitol?

A. No, this was prior to that. I was still operating the theatre in Seneca Falls.

The Court: When you were interested in the Capitol?

The Witness: That is right.

Mr. Rogers:

Q. Then you mean in the spring of 1936, you became interested in the Capitol in Syracuse?

A. That is right.

Q. What interest did you have in the Capitol in Syracuse?

A. I leased it.

Q. You were the lessee?

A. Yes.

Q. Did you have any investment in that theatre?

A. I believe there was some rent in advance.

Q. Do you know how much rent you paid on the Capitol Theatre per month or year?

A. It was $125 per month.

Q. By that do you mean you may have put down a month's rent in advance as security on the lease?

A. That is right

Q. That was the extent of your investment?

A. Outside of some remodeling which I did, painting and frames, stuff like that.

Q. How much did that amount to?

[fol. 904] A. A couple of hundred dollars.

Q. What?

A. About $200, $150.

Q. How long did you operate that theatre in Syracuse?

A. About a week, I believe.

Q. Just one week?

A. That is right.

Q. And quit, is that right?

A. That is right.

Q. With reference to that equipment you spoke about that you put in the Mt. Morris Theatre that equipment was bought by you on time, wasn't it?

Mr. Kallis: If the Court please, I think this is highly improper.

The Court: Overruled.

The Witness: It was.

Mr. Rogers:

Q. And you paid installments out of the money you took in at the box office, is that right?

A. That is right.

Q. You say you operated the Seneca Theatre in Seneca Falls, right through to the end of your lease, is that right?

The Court: We have been all over this. He testified to that.

Mr. Rogers: I want to interrogate him.

[fol. 905] The Court: I don't want to go over these matters three or four times. He testified on your cross-examination.

Mr. Rogers: No sir. He said the lease had that duration. I want to know whether he operated it during the duration of the lease.

The Court: All right.

The Witness: I did except I don't quite recall, I may have dropped out——

The Court: Dropped out what?

The Witness: If I recall, it was either June 30th or June

29th I didn't operate. The last day or two of the lease because I had to get my equipment out.

The Court: That is '36?

A. That is right.

By Mr. Rogers:

Q. As a matter of fact, isn't it true you didn't operate that theatre at all for the last two weeks under your lease?

A. No.

Q. Did you cease operating that house in the middle of June, 1936?

A. No, sir.

Q. You are sure of that?

The Court: What is your best recollection of it?

[fol. 906] The Witness: It seems to me I ran it up until the second or last day of the lease.

The Court: That is your best recollection?

The Witness: It is, sir.

The Court: Best recollection is he operated up until the last day or two of the expiration of the lease.

Q. When you ceased operating Seneca Falls do you recall that you were playing R. K. O. product in that theatre first-run?

A. I was.

Q. Do you recall that when you left the theatre you left an unpaid bill of $845.74 for pictures you failed to play of R. K. O.?

Mr. Kallis: Just a moment. I object to that.

The Court: What is the materiality.

Mr. Rogers: The materiality of this is, may it please the Court, that this man who claims he had plenty of money to buy this theatre.

The Witness: I didn't claim I had plenty of money.

Mr. Rogers: Pardon me.

The Court: Objection sustained. He has already testified to this.

Mr. Rogers: He testified both ways. He testified he had plenty of money and he testified he only had $200 in the [fol. 907] bank.

The Witness: I did not testify I had plenty of money, Mr. Rogers.

The Court: Objection sustained.

Mr. Rogers: May it please the Court this is material on the basis of the desire or lack of desire of distributors to deal with the man who left unpaid bills for film hire.

The Court: Objection sustained.

The Witness: May I say something, your Honor?

The Court: No, just answer questions.

The Witness: He don't ask me the right questions.

Mr. Rogers: I know that.

Q. You testified that after you found that the Seneca Savings Bank had sold the Seneca Theatre property to Schines, that you spoke with Mr. Schafer who at that time was the manager of the Strand Theatre?

A. That is right.

Q. About a renewal of the lease. At that time in June, 1936, where were you living?

A. I believe I was living in Seneca Falls.

Q. During the time you ran this theatre from June, 1935 to June 1936, where were you living then?

A. At the time I ran it?

Q. Yes.

[fol. 908] A. For Mrs. Ricordello?

Q. No, for yourself, 1935-1936, that is when you were running it under your lease?

A. Part of the time I lived in Geneva, which is my home, part of the time I lived in Seneca Falls.

Q. Prior to May, 1936, where did you live?

A. I don't recall.

Q. Don't you recall you lived in Geneva in May and June, 1936?

A. I don't remember whether I did or not.

Q. In May and June of 1936 where did Mr. Clinton Young live?

A. I believe he lived in Geneva.

Q. Don't you know he lived in Geneva?

A. He is always on the road. You can't tell where he is.

Q. Don't you know where his home is?

A. I believe I do.

Q. You know his home was Geneva in the month of May and June, 1936, don't you?

A. I would say it was.

Q. You would say it was?

A. Yes.

Q. How far is Geneva from Seneca Falls?

A. About 10 miles.

Q. You testified that Mr. Young was very kind and very nice to you and wished you good luck and your relations [fol. 909] with him were always friendly, is that right? (A pause). Is that right?

A. I didn't say our relations were always friendly.

Q. Did you testify he came in and he visited you in a friendly way how to run your house and wished you luck when you had the house?

A. Yes, one month prior to Schines taking over the other theatre.

Q. After you spoke with Mr. Schafter did you attempt to speak with Mr. Young at Geneva, only 10 miles away from where you lived, in regard to getting a lease?

A. No.

Q. You knew at that time Schine's office was in Gloversville, New York?

A. We did.

Q. Did you write them any letter asking them would they give you a lease?

A. No. Your Honor, can I explain?

The Court: Just answer counsel's questions.

The Witness: They were as much as implying that they would lease the theatre which is ridiculous.

Mr. Rogers: I move to strike the voluntary statement.

The Court: Strike it out. Just answer the question.

Q. With reference to the Park Theatre in Geneva, do you remember whether that was a newly built theatre?

[fol. 910] A. What do you mean by newly built?

Q. I mean built from the ground up.

A. I believe it was partly.

Q. You say partly, what do you mean by that?

A. Well, by that I mean it was more or less converted, part of the old structure was allowed to remain, part of it wasn't.

The Court: Keep up your voice. You can speak so we can all hear you.

[fol. 911] Q. Now, as a matter of fact, the building that was there before the theatre was put into it was a hotel called the Park Hotel, wasn't it?

A. That is right.

Q. And that Park Hotel burned down; is that right?

A. Yes.

Q. And the four walls were practically about what was left?

A. That I don't know.

Q. You don't know.

A. No.

Q. At the time when this Park Theatre was built was there any other theatre in Geneva?

A. Any other theatres?

Q. Yes.

A. Yes, three.

Q. What were the names of those three theatres?

A. Schine's Geneva, Regent, and Temple Theatres.

Q. There were three of them, and they were all three operated by Schines at that time?

Mr. Kallis: Just a moment. He didn't say that all three were operated at that time.

Mr. Rogers: I asked him a question. This is cross-examination.

Mr. Kallis: Ask him instead of suggesting the answer.

Mr. Rogers: Wait a moment, Mr. Kallis. I think I know how to cross-examine.

[fol. 912] The Court: Go ahead.

A. What was the question, please?

The Court: Read the question.

(Question read.)

Q. Were they, I say? Is that right?

A. They were controlled by Schine. Two of them were being operated. Does that answer your question?

Q. In other words, Schine had all three; is that right?

A. That is right.

Q. And he was operating two; isn't that right?

A. That is right.

Q. And other than those three theatres there were no other theatres in Geneva at that time, at the time that DePillo decided to build this Park Theatre, or renovate the building into a theatre; is that right?

A. Yes, sir.

Q. And DePillo was not a theatre operator, was he?

A. That is right.

Q. Did you put any investment in that Park Theatre?

A. No.

Q. What product did you get eventually for Geneva?

A. Well, eventually I got what product I thought——

Q. Just tell us what product you got.

A. United Artists, Paramount, Monogram, Republic, Grand National.

[fol. 913] Mr. Kallis: What was that last one?

The Witness: Grand National. And I believe R. K. O.

Q. I show you these two letters, or, rather, photostatic copies, one letter bearing date January 11, 1940, and another bearing date February 3, 1940, directed to Mr. A. Felice, Park Theatre, Geneva, N. Y. And will you tell us, please, who was Mr. A. Felice, if I pronounce his name correctly? I don't know. Do I pronounce his name correctly?

A. You are still losing sight of one fact, that I don't know too much about the Park Theatre. I was only the buyer.

The Court: Who was this individual?

The Witness: I believe he was a co-owner with Mr. DePillo. That is my belief, my personal belief.

Q. But you attended to the booking of pictures in the theatre; is that right?

A. That is right.

Q. In the month of January, 1940, and in the month of February, 1940, you were attending to the booking at that time, weren't you?

A. That is right.

Q. Now I show you these two letters, which are subscribed by United Artists Corporation, J. A. Bykowski, Office Manager. You knew him, didn't you?

[fol. 914] A. Yes, I did.

Q. I ask you to look at those letters, and I ask you, do you remember seeing those letters?

A. I believe I did. I don't recall definitely.

Q. But you believe you did see those letters?

A. I believe I did.

Q. And you arranged the purchase and booking of United Artists' pictures with Mr. Bykowski, didn't you?

A. I did.

Q. During that period, I mean.

A. Yes, sir.

Mr. Rogers: I offer them in evidence.

Mr. Kallis: There is no objection.

Mr. Rogers: I would like to have the two of them marked as one exhibit to save time.

Mr. Kallis: There is no objection.

(Thereupon the photostatic copies of letters of January 18, 1940, and February 3, 1940, referred to, were marked Defendants' Exhibit D-27 in evidence.)

Q. After you received the approved copies of the contracts for all of these pictures set in Defendants' Exhibit 27, did you play off all those pictures?

A. No, they didn't.

Q. Well, about what part of them did you play off?

[fol. 915] A. I don't recall.

Q. What percentage of them?

A. I don't recall.

Q. You mean it was impossible during the short period in which you ran the theatre to play all these pictures off?

Mr. Kallis: If the Court please, there is no evidence that he ran the Park Theatre. The evidence is that he bought film. That, as I understand, was his only connection with it.

Mr. Rogers: This man was a theatre operator, he said, and he bought all this film.

Mr. Kallis: But your question was as to whether those pictures were run when he ran the Park Theatre, and I don't understand that he ran the Park Theatre.

Q. In addition to buying the film for this theatre did you also supervise the management of that theatre?

A. I did not.

Q. Who really ran the theatre?

A. Mr. DePillo.

Q. And all you did was buy the pictures; is that it?

A. Buy and book the pictures.

Q. Buy and book?

A. That is right.

Q. Do you remember who signed these contracts for film service?

[fol. 916] A. I believe Mr. Felice.

Q. In addition to buying these pictures you also were supposed to book these pictures too, weren't you?

A. That is right.

Q. I want you to explain to the Court when does the booking of a picture take place?

A. It takes place after a picture is available, after a picture becomes available.

Q. In other words, then, the process is, first, the contract is made for the picture to be played at a certain theatre; is that right?

A. That is right.

Q. Then after that contract is made when the picture becomes available to be played at the theatre, then the picture is booked into the theatre; isn't that right?

A. That is right.

Q. And in booking the theatre the booker then gets in contact with the booker of the distributor and arranges the dates when these pictures are to be played in the theatre after the contract is made; is that right?

A. That is right.

Q. And that is what you did in connection with the Park Theatre; is that right?

A. That is right.

Q. You spoke about the booker for the theatre and the [fol. 917] booker for the distributor getting together to arrange the date, book the date on which the picture is to play in the theatre after the picture becomes available. When you said, "After the pictures becomes available," doesn't that mean after the theatre receives notice from the distributor that the distributor is prepared to fix a date to put that picture in that theatre; is that right?

A. I believe it is.

Q. Hasn't that been what you discovered?

A. Yesterday you said I was incompetent to know the procedure of the distributors.

Q. I am asking if you did that as a booker.

A. I usually got a letter and then booked them by mail.

Q. You would usually get a letter informing you that the picture was ready to be booked into the theatre?

A. Yes.

Q. And then you would go in and arrange the date?

A. Or I would telephone.

Q. Or you would telephone and arrange a date?

A. That is right.

Q. Do you recall visiting the office of Vitagraph trying to get Warner feature products and speaking to the manager there and he offering you product for your theatre and you declined to take it?

Mr. Kallis: Just a moment. I would like to have him fix [fol. 918] the time.

The Court: For which theatre do you mean?

Mr. Rogers: For the Geneva Theatre. That is the only one he testified about buying the product for.

Mr. Kallis: At what particular time?

Mr. Rogers: Well, at any time after August of 1939.

A. No, I don't recall.

Q. You don't recall that, do you?

A. No.

Q. Do you recall that when you went into the United Artists in August of 1939 that they offered you 1937-1938 and 1938-1939 second runs, and that they asked you prices from $25 down to $15 a feature for two or three-day run for the Geneva Theatre? Do you remember that?

A. Yes, but we were not interested in those pictures.

Q. I am asking you, do you recall that?

A. Yes.

Q. And do you remember refusing it?

A. Yes, sir.

Q. And do you remember why you refused it?

A. Yes, sir.

Q. Did you tell them you refused it because the price was too high?

A. That was one of the reasons.

Q. Isn't that the only reason you gave?

[fol. 919] A. No.

Q. You say that is not the only reason?

A. No.

Q. Now, do you remember some time in or about August of 1939 when you went to Paramount they offered a number of pictures first run release during 1937 and 1938 and also 1938 and 1939, and also offered you a number of second run pictures of 1938 and 1939, and they offered you all the product of 1938-1939 third run, as well?

A. No.

Q. You don't remember that?

A. No.

Q. Let me break it down for you. Do you remember at that visit at Paramount, when you were trying to book pictures in the Geneva Theatre, they offered you first run a number of pictures released during 1937-1938 and 1938-1939 season?

A. Yes, sir.

Q. You remember that, don't you?

A. I remember the first runs.

Q. Do you remember at that time or thereafter they also offered you second run a number of pictures of the 1938 and 1939 product?

A. They offered me some——

[fol. 920] Q. No, do you remember that?

A. I don't remember the year of the product. They did offer some old second runs, not current second runs.

Q. I am talking to you now about second run of a number of pictures of the season of 1938-1939.

A. I don't remember what season it was. I was not interested in those pictures at the time.

Q. Please don't tell me what you were or were not interested in. Did they offer them to you?

A. They offered me some pictures but I don't recall how old they were, what the season's product was.

Q. In other words, you don't recall whether it was 1938 or 1939; is that it?

A. That is right.

Q. Do you remember at that visit in August, or shortly thereafter, that they offered you third run all of the pictures of their 1938-1939 season?

A. I don't remember.

Q. You don't remember that?

A. No. I still was not interested in third run.

Q. Well, do you remember Paramount releasing any pictures to you at all in the summer or fall of 1939?

A. Yes, they did.

Q. They did, didn't they?

A. That is right.

[fol. 921] Q. Do you remember on or about September 19, 1939, they made a deal with you and contracted to furnish you with eleven pictures?

A. I believe they did.

Q. Did you play those eleven pictures?

A. We played some of them. I don't recall whether they were all played or not.

Q. You don't recall whether you played all of them though, do you.

A. No, I don't.

Q. Were you acquainted with the Schine Theatres, generally, in Geneva?

A. I believe I am or was.

Q. Did you visit the Geneva Theatre in Geneva?

A. Yes, I did.

Q. About how many seats does that theatre have?

A. Close to 2,000.

Q. And the Regent Theatre, do you know that theatre? Have you visited that?

A. About a thousand.

Q. That has about a thousand seats?

A. Yes.

Q. And the Temple Theatre?

A. About 800.

Q. And those three theatres, as you testified; were in [fol. 922] existence before the Park Theatre was built; is that right?

A. They were.

Q. About what was the population of Geneva in 1936, 1937 and 1938, do you remember?

A. To my knowledge?

Q. Yes.

A. About 18,000.

Q. I show you a letter headed "Palace, Clifton Springs, July 6, 1940," addressed to Fox Film Corporation, 290 Franklin Street, Buffalo, N. Y., to Miss Genco, and I ask you whether the signature on that letter is yours?

(Handing letter to witness.)

The Court: He asked you whether that was your signature. Can you tell the signature?

A. Yes, it is, but how does that involve me?

Q. One moment. I merely asked you if that is your signature.

The Court: Not about the contents. Did you write that name?

The Witness: It is, sir.

Q. And I ask you whether the two statements attached to that refer to checks that were issued by you?

The Court: You can tell us very quickly whether those are your signatures on the checks.

A. I signed the checks, sir, on my account.

Mr. Rogers: I will offer them in evidence. First I will [fol. 923] have them marked for identification.

(Thereupon the check 628-1940 referred to was marked as Defendants' Exhibit D-28 for identification.)

(Thereupon the check 7-12-40 referred to was marked as Defendants' Exhibit D-29 for identification.)

The Court: We will suspend now for five minutes.

(Short recess taken)

[fol. 924] The Court: Is that exhibit marked?

Mr. Rogers: They have been marked for identification. I offer them in evidence.

Mr. Kallis: If the Court please, I object on the ground they have no bearing upon any of the issues in this case. I don't know what the purpose of Mr. Rogers is in offering them. I would like to have him state to the Court why he is offering them.

Mr. Rogers: I would like to have his Honor see it, then I think it would be quite clear to him what the purpose is that he is arguing about. (Handing the exhibit in question to the Court.)

The Court: Well, it is offered for the purpose of showing certain bills. That is competent.

Mr. Rogers: It was also offered for the purpose of showing the general standing and repute of this witness in the moving picture industry and the standing in which he was held in the industry when asking for product.

The Witness: That was not my theatre, sir.

The Court: Just a moment. There is an accumulation of facts.

Mr. Rogers: That is what I am doing, sir, I am accumulating the facts.

[fol. 925] The Court: No, I mean by that the obligations alone, that affects his credit.

Mr. Rogers: It also affects the right of a seller to choose his customer and to choose a customer in good repute as against a customer in bad credit standing, or who does not live up to his obligation.

The Court: It is marked for identification. We will see what develops.

Mr. Rogers:

Q. You say that you acted as a buyer and booker for the Park Theatre, isn't that right?

A. That is right.

Q. And you acted as buyer and booker during the period that Di Pillo ran it, is that right?

A. I did some buying when he first started, but afterwards did not continue to buy.

The Court: You will have to speak louder.

The Witness: I did some buying at the time that was started, but didn't continue buying.

Q. In other words, can you tell approximately when you started buying and when you ceased buying for the Park Theatre?

A. We started buying in August some time, and I don't remember when it terminated, maybe January, February.

[fol. 926] Q. You mean you started buying and booking in August of 1939, is that right?

A. We started trying to buy in August.

Q. Not talking about "we," when did you start booking and buying for the Park Theatre?

A. Some time prior to the day he opened. He opened Thanksgiving.

Q. He opened in October, 1939, is that right?

A. That is right.

Q. And he operated until——

A. About three or four months.

Q. During those three or four months that he operated the theatre, did you do buying and booking for the theatre?

A. I did.

Q. Did you charge a booking and buying fee?

A. I did. Do I have to answer that?

Mr. Kallis: I didn't object, Mr. De Toto, so you can answer the question.

The Court: What did you charge for booking?

The Witness: $10 a week.

Q. During that period did you buy and book for any other theatres?

A. Palace Theatre, Clifton Springs.

Q. The Palace Theatre in Syracuse?

A. Clifton Springs.

[fol. 927] Q. You bought and booked there?

A. Yes.

Q. And you managed there as well?

A. Yes.

Q. Did you charge a fee for buying and booking?

A. I was the manager.

Q. Did you charge any fee for buying and booking?

A. I was paid as manager.

Q. You were paid as manager and you did your buying and booking?

A. That is right.

Q. With reference to the Park Theatre, do you recall approximately how much that theatre grosed a week during the operation?

A. I don't. The figures were kept from me.

Q. You never saw any figures, did you?

A. Not to speak of.

Q. The figures were kept from you?

A. They were.

Mr. Rogers: That is all, Sergeant.

Redirect examination.

By Mr. Kallis:

Q. Sergeant De Toto, you testified that in August, 1939, you had some discussions and transactions with some of [fol. 928] film companies with regard to the leasing of films for the Park Theatre, Geneva, and will you please tell the Court when the release of pictures for the current season occurred?

A. After I had contacted the Department of Justice and called it to their attention.

Mr. Rogers: I move to strike. Is the motion to strike granted, may it please the Court?

The Court: Yes.

Q. When did the release occur by the film companies for the current 1939 and 1940 season?

A. I don't recall. It was some time later. Quite some time later. I believe it was August. The date of the contract with United Artists would bring that out.

Q. I am talking about the general release.

The Court: What time in the year?

Mr. Kallis: That is exactly what I have in mind.

Q. When did the 1939 and 1940 season begin?

Mr. Rogers: Begin for what purpose, Mr. Kallis? It begins for a lot of purposes.

Mr. Kallis: For exhibition purposes.

The Witness: It starts in September.

Q. September one year and ends August 31st of the following year. With regard to the 1939-1940 product when did the film companies release those pictures?

[fol. 929] A. It was several months later. I don't know the date of that letter.

Q. I am talking about release throughout the country.

Mr. Rogers: The National release date.

Mr. Kallis: The National release date. Do you know what I mean.

The ~~Witness:~~ The new product.

Mr. Rogers: Let's see if he knows what the National release date means.

Q. Do you know what the National release date is?

A. It is the date a picture is normally released throughout the country.

Q. When did that occur?

A. In September. I just told you that.

Q. In 1939?

A. That is right.

Q. Did you specify in August of 1939, when you talked with these film companies as to what season product you were interested in releasing?

Mr. Rogers: May it please the Court, this is not proper sur-direct examination. He has had three opportunities now to get his main case in.

The Court: What theatre?

Mr. Kallis: Park Theatre in Geneva.

Mr. Rogers: He didn't open until after Thanksgiving, [fol. 930] he said.

Q. You stated you were offered in August, 1939, some 1937-1938 picture and some 1938-1939 pictures, and that you refused to take them and one of the reasons was that the price was too high. Will you please tell the Court what other reasons there were, why you refused to take in August, 1939, pictures for the 1938-1939 season?

Mr. Rogers: As I recall, may it please the Court, he said he couldn't fix the season. He didn't know what season product.

The Court: He is asking him now.

Mr. Rogers: The question is predicated on testimony that is not in the record. It is hypothetical and it must be based on testimony in the record.

The Court: Negotiating for the season. What was it?

Mr. Rogers: May I have the company you have in mind, Mr. Kallis?

Mr. Kallis: All right. We will talk first about Paramount.

The Witness: I was offered older pictures, that is, one or two years old, other than current second-run. We wanted current second-run.

Q. Did you state or discuss which current second-run when you talked with the salesman or the representatives [fol. 931] of the companies?

A. I did.

Mr. Rogers: One moment. You said you were speaking to Paramount. Let's stick to Paramount.

Q. Did you tell the Paramount representative you wanted current second-run?

A. I did.

Q. And you had a talk with representatives of United Artists, did you?

A. I did.

Q. And what did you say with respect to the kind of pictures you wanted?

Mr. Rogers: May it please the Court, I do object to this. This should have been part of his direct-examination.

The Court: I don't know whether——

Mr. Rogers: He is rehashing his whole direct-examination.

The Court: No, it is directed——

Mr. Rogers: Yes, this is all direct. It has all been testified to, your Honor. He has had direct. He has had re-direct and now he is having re-re-direct.

The Court: He secured certain pictures and now he wants to find what pictures they were.

(Last question read.)

[fol. 932] The Witness: We wanted current second-run, thirty or sixty days after Schine Theatres in Geneva.

Mr. Kallis: That is all.

Recross-examination.

By Mr. Rogers:

Q. I understand you have been testifying about Paramount, is that right?

A. I have.

Q. And about your going in there to get product in 1939 of August, or around that time, August or September, 1939, is that right?

A. I have.

Q. And you said the only reason that you refused what they offered you was that it was not current second-run, isn't that right?

A. ~~I didn't refuse~~ all their products. I took the first runs.

Q. Just answer my question. Mr. Kallis just interrogated you, and you told him you wouldn't take that product. You told him you wouldn't because you wanted current second-run. You wanted 1939-1940 season?

A. Wanted current second-run, but I did accept some of the other pictures.

Q. Current second-run would be current second-run for [fol. 933] the season 1939-1940?

A. That is right.

Q. And you say you refused it because it was not current second-run, is that right?

A. I did at the time, but I did pick them up later.

Q. Talking about the time Mr. Kallis is talking about. You said you refused them because they were current second-run?

A. That is right.

Q. As a matter of fact, didn't you say you refused to take what they offered you because you wanted first-run, and didn't you *say* testify because you were looking for first run?

A. No.

Q. Didn't you testify on direct-examination that what you were looking for was first-run?

A. No, current second-run.

Q. Didn't you *say* testify on direct-examination?

A. First-run for Geneva?

Q. Yes.

A. No.

Q. You did not so testify, is that right? Did you tell the Branch Manager in Paramount in August of 1939, you wanted first-run pictures?

A. I didn't see the Branch Manager.

[fol. 934] Q. In Paramount you say you didn't see the Branch Manager in August, 1939?

A. No, I talked with the booker and later the salesman.

Q. You saw the booker and you saw the salesman?

A. That is right.

Q. But you never saw the Manager?

A. I may have later, I don't recall.

Q. Don't you recall telling either the booker and salesman or manager of the Paramount in August of 1939, that what you were looking for in the Park Theatre was first-run Paramount product?

A. No.

Q. You don't remember that, do you?

A. (No answer.)

Mr. Kallis: That is all.

Mr. Rogers: That is all.

[fol. 935] Joseph H. Felter, a witness called by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Wright:

Q. Where do you live?

A. Norwalk, Ohio.

Q. What is your occupation?

A. Steward boss at the Elk's Club Room at present.

Q. At Norwalk?

A. Yes, sir.

Q. Were you formerly connected with the operation of the Moose Theatre there?

A. Yes.

Q. When was that?

A. 1921 to 1924, my brother and I owned the place.

Q. What did you do in 1924?

A. Sold it to the Moose Club.

Q. The local Moose Lodge?

A. That is right.

Q. And then were you still connected with the theatre?

A. Yes, sir, they hired me to stay there with Mr. Frederick to do the buying and booking for Mr. Frederick.

[fol. 936] The Court: At what time?

By Mr. Wright:

Q. Try to speak more slowly and more loudly, Mr. Felter. That was in 1924?

A. When we sold out, until we sold out.

The Court: From 1924?

The Witness: For 13 years.

Mr. Wright:

Q. That is the period during which you were doing buying and booking after the Moose had bought the theatre?

A. That is right.

Q. Who is Mr. Frederick?

A. He was Secretary of the Moose Club.

Q. Coming down to 1934, was there another theatre opened there?

A. Yes, Mr. Jerry Steel and Bill Sullivan opened up a place there about the 28th day of December, I think, not going to say too definitely, but I think around that time.

Q. December, 1934?

A. That is right.

Q. Were there other theatres then operating besides the Moose and the Forum?

A. Just us two.

Q. Calling your attention to the summer of 1935, were you approached by any representatives of the Schine [fol. 937] Company about a deal for the Moose Theatre?

A. Yes, they tried to lease——

Mr. Rogers: One moment. "Yes" or "No" is the answer.

Mr. Wright:

Q. The answer is yes?

A. Yes.

Q. When was the first time?

A. I would say along in May or June, some time along in there.

Mr. Rogers: Which year?

Q. May or June of 1935?
A. Yes.
Q. Who was it came to see you?
A. Two had came, if my memory serves me right, came over to see Mr. Frederick and Mr. Frederick was over at the Post Office.

Mr. Rogers: One moment.
Q. Just say who came to see you.

Mr. Rogers: I move to strike.
Mr. Wright: It may go out.
Mr. Rogers: Thank you, your Honor.

Q. When did they come to see you?
A. The same day.
Q. Who came to see you?
A. Mr. May and Mr. Lazar.
[fol. 938] Q. Who else was there?
A. Mr. Frederick and myself.
Q. Where was this conversation?
A. In our office.
Q. That was the Moose Theatre Building?
A. That is right.
Q. What was said then?
A. They wanted to lease the theatre.
Q. What did you say?
A. Well, we said we didn't feel like we wanted to give up our theatre.
Q. Was anything more said at that time?
A. At the present time, no, they went away.
Q. Did any one come back to see you later?
A. Yes, Mr. Lazar came back.
Q. When was that?
A. Probably a week or ten days later.
Q. Talk to you?
A. Yes.
Q. Whereabouts?
A. He drove in the side there and he came over to the theatre, in the office.
Q. Was anybody else present?
A. The operator was there when he came in.
Q. Wno was that?

[fol. 939] A. His name was Haas.

Q. Was he there during the conversation?

A. No, I don't believe so. I don't think he stayed during the conversation.

Q. What was said by Mr. Lazar on that occasion?

A. Oh, he said that they felt like they would like to own the theatre, and I told him I didn't think we wanted to lease our theatre.

Q. Was anything else said?

A. No, not at that time.

Q. Did he come and see you again?

A. Yes, he came there maybe three or four times later.

Q. During what month was this?

A. Every ten days or two weeks, period of time he would come back.

Q. During what time?

A. From May on.

Q. June?

A. Yes.

Q. What was said on the next occasion?

A. He still wanted to know whether we wanted to lease our theatre or not, and I told him I didn't think we wanted to lease the theatre.

[fol. 940] Q. What did he say to that?

A. He said, "When you are ready let us know". He didn't say much more about it at the present time.

Q. Then did he come again?

A. Yes, later on.

Q. When was that?

A. Probably a week or ten days.

Mr. Rogers: A week or ten days after when?

The Witness: He made frequent visits there.

The Court: He said May or June several times.

Mr. Rogers: The first time he said was May or June, may it please the Court.

The Court: Shortly after that.

Mr. Rogers: Then he said he came about a week or ten days after that, and then he said thereafter a number of visits every ten days or so thereafter. Now we are lost in a maze. I would like to get some dates there.

The Court: He said several times in three or four months.

Mr. Wright: I didn't hear him state that.

By Mr. Wright:

Q. What period of time did these visits of Mr. Mazar cover?

A. Well, he was there probably, I would say, on frequent visits for a year or so. I wouldn't want to just say what date he came or how often. He would come once in awhile [fol. 941] to see me.

Q. Calling your attention to May and June, did you see him in June?

A. I think I did, yes.

Q. Do you recall the time that the Schines took over the Forum Theatre?

A. They took it over—I think they took it over some time in June.

The Court: Was that the other theatre that was there?

The Witness: Yes, sir.

The Court: The Forum?

The Witness: Yes, sir.

Q. Could it have been July?

A. Yes, he came before he bought the other theatre, he came to see us.

Q. Just give us the conversation the last time he came to see you before he bought the Forum Theatre?

Mr. Rogers: Again, can we get that fixed with some degree of accuracy?

Mr. Wright: June or July.

A. He took the other theatre over in June or July, is that right? I think that is about the date he took it over. I wouldn't want to swear to it. I know he took it over in the spring of the year. Before he bought the other theatre, is that what you want to know?

[fol. 942] Q. Yes, the conversation you had with him.

A. He came in to see me and we were standing in the back of the theatre. I think my operator, Paul Haas was there. We talked about the theatre. I said, "Well, Mr. Lazar, if you give me Fox and another company I think we would stay here the rest of our lives." He said, "I believe you could, but I don't think you are going to get it." That was between me and him. He went in the office. He said, "You had better get in with us. We are a big company.. You know what it means if you are not in with us." He said, "If you lease your theatre Mr. William Selman will walk out of town."

Q. Who is William Selman?

A. Mr. Selman was one of the owners of the other theatre.

Q. The Forum?

A. Yes.

Q. Was anything else said then?

A. No, not at present. He said, "You had better see your men about leasing the theatre." I said, "It is no use. I have taken it up with them and they won't consider leasing the theatre."

Q. Calling your attention to the 1934-1935 season, had you been using the R.K.O. product first run in your theatre?

A. 1934-1935?

Q. Yes.

[fol. 943] A. Yes, I had.

Q. For how long?

A. I was in business there for fifteen years.

Mr. Rogers: I move to strike that as not responsive.

The Court: How long had you had R.K.O.?

The Witness: I had R.K.O. when we were in business ourselves and up to the last two years we had R.K.O.

The Court: 1934 to——

The Witness: I ran R.K.O. in 1934.

Q. 1934-1935?

A. That would be under the 1933-1934 contract.

Q. And you also had it in 1934 and 1935?

A. Would that be on—what would the next contract be?

Q. 1935-1936 was the next one.

A. Yes, I played R.K.O. when the boys were in there.

Mr. Rogers: Let us get this clear. I am very much confused.

The Court: You had R.K.O. you said in the 1933-1934 season and 1934-1935 season, or was it the other way?

Mr. Rogers: Is that right?

The Witness: I don't think so. I don't think it worked that way.

The Court: 1934-1935 and 1935-1936?

The Witness: Schine took over in 1935 and 1936; is that right?

By Mr. Wright:

Q. Schine took over Selman's theatre in 1935 and 1936, as [fol. 944] I understand it.

A. That was a 1935-1936 binder.

Q. You had the R.K.O. product, as I understand it, in 1934-1935; is that right?

A. That is right.

Q. During the spring and summer of 1934-1935 what, if anything, did you do to get R.K.O. for the next season?

A. I went in to see R.K.O.

Mr. Rogers: One moment. You can't say R.K.O. That is a corporation.

Q. Tell us who you saw?

A. I saw Mr. Greenblat, the District Manager.

Mr. Rogers: Who is "we"?

The Witness: Myself and sometimes Mr. Frederick went along with me.

The Court: Greenblat?

The Witness: That is right; the District Manager for R.K.O., the District Manager in Cleveland.

By Mr. Wright:

Q. Whereabouts did you see him?

A. I saw him in his office and made a contract with him.

Q. Where was that?

A. In Cleveland, in the branch office.

Q. About when was it you went in on the 1935-1936 season?

A. I went in very early, trying to get the contract through.

[fol. 945] Q. What did he tell you?

Mr. Rogers: I object to it on the ground that it is not binding. There is no evidence of authority. And on the ground it is a purely local transaction.

The Court: Perhaps you should first show who Mr. Greenblat was, from his experience and knowledge of him.

By Mr. Wright:

Q. Did you know Mr. Greenblat?

A. Yes.

Q. How long had you known him?

A. For four or five years.
Q. During that time you had bought film from him?
A. Yes.
Q. For the Moose Theatre at Norwalk?
A. The Moose Theatre.
Q. From R.K.O., you mean?
A. Yes.
Q. Did you know what position he held there with R.K.O.?
A. He was Branch Manager.
Q. At Cleveland?
A. Yes.
Q. Can you tell us what this conversation you had with him was when you first went in about the 1935-1936 product?

Mr. Rogers: I press the same objection, may it please [fol. 946] the Court.
The Court: Overruled.

Q. Can you fix the date any better than the spring?
A. I should say around July—between July and August 1st I went in to see Mr. Greenblat.
Q. Had you seen him prior to that time?
A. Every time I went in the office booking I asked him if he would sell me a contract.

Mr. Rogers: I move to strike that out as not responsive.
The Court: Strike it out.

Q. When was this you went in there?
A. I went in about every week or ten days.
Q. About what period?
A. I went in in May, June and July.
Q. What did he tell you when you first went in about the 1935-1936 product?

Mr. Rogers: When was that first time?

Q. Can you fix that any more definitely?
A. I will say the first of June I went in to see him.
Q. About the first of June?
A. I will say that.

Mr. Rogers: It is not a question of whether you will say that. Is that it?
The Court: Is that your best recollection of the time?
The Witness: Yes. I didn't pay much attention to it.

[fol. 947] Q. What did he tell you then?

A. He said "We will take a contract and we will send it in" and we sent in a contract. I went in the office later, I will say 15 or 21 days, and he said, "Joe, I am sorry, I don't believe your contract is coming back." He said, "I am sending them a telegram." He sent them a telegram and he came to me——

The Court: What did he say?

The Witness: He said, "Joe, if you insist any more I am going to lose my job." He says, "You cannot get R.K.O."

Q. Did he tell you why you couldn't?

A. He said, yes, Mr. Schine is going to use the product.

Q. Then what product were you able to get for the 1935-1936 season?

A. Well, I got half of Fox. I got Columbia and I got United Artists.

Q.. Anything else?

A. That is the small——

Q. On the major companies?

A. No, nothing on the major.

Q. How about Warner?

A. I don't think Warner sold us that year. I think we lost Warner the first year after Schine came in.

Q. Do you remember whether you had the Warner for the [fol. 948] 1935-1936 season?

A. I did not have Warner.

Q. You don't think you did?

A. No, sir.

Q. What is your recollection of what the product was that you had in the 1935-1936 season?

A. We had half of Fox and I had all of Columbia and I had all the United Artists, and I think I had Warner second run.

Q. You are not sure whether you had Warner second run or half of it first run?

A. No, I am not so sure of that.

Q. These other companies you are talking about you had first run; is that right?

A. Yes.

Q. And as to Warner you either had second run or half of first run; is that right?

A. That is right.

[fol. 949] Q. What if anything did you do about getting film product for the 1936-1937 season?

Mr. Rogers: With which company do you mean?

Mr. Wright: I am just asking him generally.

The Witness: Well, I went in to my regular companies and asked them for——

Mr. Rogers: I object to that and move to strike.

Q. What do you mean by your regular companies?

A. I went in to Warners and asked them for a contract.

Mr. Rogers: One moment. Let us get that.

Q. When was that?

A. I played half the first year——.

Mr. Rogers: I move to strike as not responsive. We are asking for a date.

The Court: State the time as near as you can that you went in to Warner.

The Witness: 1935 or 1936 I went in to see Warners about their product.

Mr. Rogers: I move to strike. The question is directed to 1936-1937.

Q. The question is what you did about getting Warner pictures for 1936-1937 season.

A. I went in to see Milt Mooney——

Q. When was it you went in to see Milt Mooney?

A. If you want to go back to your 1935-1936, I went in to [fol. 950] Milt Mooney——

Mr. Rogers: That is not responsive to the question.

The Court: Who is that?

The Witness: Milt Mooney.

Q. Who was he?

A. He was the Branch Manager for the Warner Brothers.

Q. Where?

A. In Cleveland.

Q. What was it you wanted to tell me about 1935-1936?

Mr. Rogers: One moment. I object to the form of the question. He might want to tell him a lot of things. Let us have direct questions and answers.

Mr. Wright: We are here to find out what the truth is.

Mr. Rogers: We are here to have you conduct a direct-examination properly.

The Court: You are inquiring about Warner. Was there anything further said in 1935 or 1936 about Warner?

The Witness: I went in to see him about buying the product, and Mr. Milt Mooney told me——

By Mr. Wright:

Q. When was this?

A. I think that was in 1935. It is the 1935 and 1936 product we are talking about; isn't that right?

[fol. 951] Q. When was this you first went in to see him about the 1935 and the 1936 product?

A. I went in to see him after Schine had taken over the theatre.

Q. That was after July of 1935?

A. That is right.

Q. You saw him in Cleveland?

A. Yes.

Q. What was the conversation you had with him then?

A. He said "Joe, I'm afraid you can't get it. I had some trouble with my own houses up in Bellefontaine and I don't think I better make too many deals with you, I don't think you have a chance to buy the product".

Q. Do you remember whether that was the 1935-1936 or 1936-1937 product?

A. That was 1935 and 1936.

Q. Are you sure about that?

A. As close as I can remember now. I wouldn't want to swear to everything.

[fol. 952] Q. May it have been 1936 and 1937?

Mr. Rogers: I think Mr. Wright should stop leading his witness and stop impeaching his witness. If he gets one answer and he doesn't like it he suggests——

Mr. Wright: I want to know what the truth is.

Mr. Rogers: Let us get testimony, but not through you.

The Court: He should testify from his own recollection.

Mr. Wright: I think he is confused about it.

The Court: He said he is sure it was in 1935. Is there anything further you want to say as to the time?

The Witness: What do you want to know, Judge?

The Court: As to the time you went in and saw him.

A. That was for the 1935 and 1936 product.

Q. You went in in 1935?

A. That is right.

Q. What I am getting at is whether or not you are sure that you had any Warner product or not for the 1935-1936 season?

A. The first season I played after Schine came in it is my recollection I played half of Fox, all of Warners—half of Warners—and all of Columbia and all United Artists. That is your first run.

Q. The season you are referring to is 1935 and 1936?

A. 1935 and 1936.

[fol. 953] Q. As I understand it, your best recollection now is that you did have half of Warners for 1935-1936; is that right?

A. I think that is right.

Q. And then I will ask you again what you did about getting Warner for the 1936-1937 season.

A. I went in to see Mr. Mooney, the same man, the District Manager.

Q. When was that?

A. 1936 and 1937. I went in about the middle of July or first of August.

Q. For what year?

A. For 1936 and 1937 product.

Q. What was said then?

A. Mr. Mooney said——

Mr. Rogers: I press the same objection.

The Court: He said he was the Branch Manager. I think we should have more than his conclusion.

Mr. Wright: Mr. Mooney is here in the court room. He will be on the stand.

The Court: We are dealing with this witness now.

By Mr. Wright:

Q. How long had you known Mr. Mooney?

A. Ten years—fifteen.

Q. You had bought films from him for the theatre at Norwalk?

A. That is right.

[fol. 954] Q. You knew what position he held?

A. Yes, sir.

Q. Will you tell us what your conversation with Mr. Mooney was there?

A. I asked him for my half of the product and he said, "You haven't got a chance, Joe." He said, "The Schines have got the house and they are going to use it."

Q. That was with respect to 1936-1937?

A. That is right.

Q. Then did you go to see any one at Columbia about their product for 1936-1937?

A. I went to see Mr. Bissell.

Q. Who is he?

A. He was the branch manager for the Cleveland office.

Q. Columbia?

A. Yes, that is right.

Q. Had you dealt with him before?

Mr. Rogers: What was that date?

Q. Do you remember approximately when you went in to see Mr. Bissell about the 1936-1937 product?

A. Along between the middle of July and the first of August.

Q. How long had you dealt with him?

A. We used Columbia for probably off and on ten or twelve years, I should say. We used it all the time we were in there, all but one year. The other house used it for the [fol. 955] first year, 1934.

Q. You had had them in 1935 and 1936?

A. Yes, and they came to me and volunteered—wanted me to buy them from them.

Q. You bought them for 1935 and 1936?

A. Yes, sir.

Q. This conversation you had in 1936 was about 1936-1937?

A. Yes.

Q. What was said then?

Mr. Rogers: The same objection, may it please the Court.

The Court: Overruled.

A. He said that Schine has taken the house over and you haven't got a chance to get the pictures. He said, "You had better hurry if you want second runs." I said I wasn't interested.

Q. Did you get any of the Columbia pictures then for 1936 and 1937?

A. Not a picture.

Q. With respect to United Artists, did you try to buy that for 1936 and 1937?

A. I went over to see their branch manager. I think his name was Mr. Goodman, if I am not mistaken.

Q. Whereabouts?

A. At the branch office in Cleveland.

Q. When?

[fol. 956] A. About the same time, July to August 1st.

Q. You had dealt with him before, had you?

A. Yes, I had used their product right along.

Q. You had had it for the 1935-1936 season?

A. Yes.

Q. What did he tell you about using the product for the 1936-1937 season?

A. He said, "We will see you later on. Come in in a couple of weeks and I will talk to you." I said, "All right, Mr. Goodman." I went in in a couple of weeks. He said, "I have got kind of a deal on with Mr. Schine and I will let you know later." I went back in about two weeks to see him about booking pictures and he said, "Joe, I am sorry, but you can't have a picture."

Q. Then what did you do about Fox, if anything, for the 1936-1937 season?

A. I went in to see Mr. Fox——

Mr. Rogers: Who?

A. Mr. Schmertz, the branch manager of the office.

Q. He was the branch manager where?

A. Cleveland, the Cleveland office.

Q. You had dealt with him before, had you?

A. Yes, we had always used his product for 12 or 14 years, 12 years, 15 years, I guess.

Q. What was the conversation you had with Mr. Schmertz?

[fol. 957] A. Mr. Schmertz said, "Joe"——

Mr. Rogers: One moment. I object to it on the ground that there is no proper evidence of authority. I object on the ground that it is a purely local transaction, and on the ground that it is not binding on the defendants.

The Court: Had you contracted before through Schmertz for Fox?

The Witness: Yes, sir.

The Court: How many years?

The Witness: Well, I played him all the time.

The Court: A number of years?

The Witness: Yes, 10 or 12 years, as long as we were there we always played his product.

The Court: Dealt with him directly?

The Witness: Yes, right in the office. They would send their salesman out and——

By Mr. Wright:

Q. What was the conversation you had with Mr. Schmertz in the summer of 1936 about the 1936-1937 product?

Mr. Rogers: I press the same objection.

The Court: He asked you about your dealings with Schmertz directly and you replied something about a salesman. I want to know what direct contact you had had with Schmertz in securing Fox. 1

[fol. 958] A. We always went into the office, as a rule, and bought our pictures. They send a salesman out.

The Court: You had dealt with Schmertz in the office in the prior years?

The Witness: Yes, sir.

The Court: Objection overruled.

By Mr. Wright:

Q. Can you tell us what Schmertz said to you on that occasion?

A. Yes, he said, "I never turn down any of my customers. You can have half of my product."

Q. You were playing half of the 1935-1936 product; is that right?

A. Yes.

[fol. 959] Q. Then what else was said?

A. Well, it went along and I went over and couldn't buy any other pictures then.

Mr. Rogers: I move to strike that.

The Court: Strike it out.

Q. Just finish the conversation you had with Schmertz.

A. He said "You can have half and here is the price." He said "Here is your price for your pictures."

The Court: Just tell what you said.

The Witness: That is what I am saying. He said "Here is your contract," and he said "I will give you 15 days to make up your mind whether you want the contract or not."

Q. What did you say?

A. I said I would let him know.

Q. Is that all the conversation then?

A. That is all the conversation we had.

Q. Did you see him or talk to him again?

A. Yes, a few days later I called him up and I says, are they still open for me, Mr. Schmertz?" He said "Yes." He said "I will give you three days to make up your mind whether you want them or not."

Q. What did you say?

A. After the third day I called him up. He said "Well, Joe, I couldn't wait any longer, they are sold to Schine."

[fol. 960] Q. Is that all the conversation you had?

A. That is all the conversation we had.

Q. Were you able to get any product at all first-run for the Moose Theatre for the 1936-1937 season?

A. No.

Q. Then what, if any, efforts did you make to get second-run?

A. I went over and bought Warner second-run.

Q. Whom did you make that deal with?

A. Mr. Mooney, the Branch Manager in Cleveland.

Q. Then what did you do?

A. Then I went over to Metro-Goldwyn-Mayer.

Q. When was this?

A. Along about the first of July or the first of August—the 15th of July or 1st of August.

Q. 1936?

A. 1936. For 1936 and 1937.

Q. Whom did you see at Metro-Goldwyn?

A. I seen Mr. Frank Drew, the Branch Manager at the Cleveland office.

Q. Had you dealt with him before?

A. Yes, always used their product except one year.

Q. You knew he was the Branch Manager?

A. That is right.

Q. What was the conversation you had with him?

[fol. 961] A. He said "We will pick you out a bunch of second-run pictures, take the contract and send it in."

Q. And you signed an application?

A. I did.

Q. And sent it in?

A. And sent it in. And it went along so long——

Q. Just a minute. When was the next time you saw him or talked to him?

A. I was in there probably we will say in 10 or 12 days. He said "I haven't heard nothing from the contract yet."

Q. Who said that?

A. Mr. Drew.

Q. What did you say?

A. I said "I am anxious to get the contract." And he said "I will do everything I can in my power to get it for you if I can."

Q. Well, did you see him again?

A. Yes, I went in, we will say ten days or two weeks later.

Q. Then what did he say?

A. He said "Joe, I am afraid you are not going to get it." He said "It is too long, I don't think you are going to get the second-run, I don't think they are going to sell second-run at all."

Q. Did he say why?

A. He just said "Well, they don't want to establish a [fol. 962] second-run policy.

Q. Then what did you do?

A. Then I made up my mind the best thing we could do as we couldn't get any product was to sell to Schine.

Mr. Rogers: I move to strike all that.

The Court: Yes, strike it out.

Q. What if anything did you do with reference to then getting in touch with any representative of Schine?

A. Well, I took it up first with the Lodge and told them I couldn't——

Mr. Rogers: I move to strike.

The Court: Yes.

The Witness: I got in touch with Mr. Lazar and told him I guess they had made up their mind to sell the house.

Q. Do you remember when that was?

A. I couldn't say offhanded. It would be pretty hard to remember all these dates.

Q. Can you pick the approximate month?

A. I would say along in August some time.

Q. Of what year?

A. 1936.

Q. And then was the deal made?

A. No, the deal was not made in a few weeks. He came down—Mr. Lazar came down there and asked what we [fol. 963] wanted for the theatre, and I told him we wanted $17,500.

Q. Was the theatre sold?

A. The theatre was sold afterwards then for $15,000.

[fol. 964] Q. When was that?

A. Well, that was along in October, wasn't it, we sold the theatre, Mr. Schine? I wouldn't want to say off-handed.

Q. What is your best recollection?

A. Along in October.

Q. October, 1936?

A. Yes.

Q. Then what did you do?

The Court: You said you sold it to whom?

The Witness: To the Schine Theatre Corporation. I continued to work for him.

Q. In what capacity?

A. Well, I was manager at the time when they took the theatre over and he told me I could stay right there.

Q. As manager of the Forum?

A. The Moose Theatre.

Mr. Rogers: Do you mean the Forum or the Moose?

The Witness: The Moose.

Mr. Wright: That is my mistake.

Q. How long did you continue working for them?

A. I worked for them until they took it over. I think they took it over in October some time. I worked with them until the first of the year.

Q. Then you left?

A. I quit working there. They closed it down.

[fol. 965] Q. Just tell what happened, in the Moose Theatre, after they took it over.

A. I worked with them until after the first of the year and they closed it down then, shortly afterwards, to two days a week. Then they had the manager from the other office come down and he would have me scrubbing the walls down to the cellar to knock out cobwebs that I couldn't see any use for.

Mr. Rogers: I move to strike that.

The Court: Strike that out.

Q. In any event, you resigned?

A. I resigned, yes.

Q. Do you know whether or not the Moose Theatre was later closed?

A. It was closed to two days a week.

Q. I say, do you know whether or not later on it was closed entirely?

A. Yes, it is closed now.

Q. Do you remember when it was closed?

A. No, I wouldn't want to say off-handed.

Q. What happened with respect to admission prices at the Moose Theatre after it was turned over to Schine?

A. Instead of charging—it went from 15 to 20 cents.

Q. You had been charging what?

A. 15 cents.

[fol. 966] Q. For what? That is the evening adult admission price?

A. That is right.

Q. Then what was the change that was made when Schine took over?

A. It went to 20 cents at the Moose.

Q. What, if any, change occurred at the Forum with respect to admission prices?

A. They charged 15 and 30 cents—15 cents in the afternoon and 30 cents in the evening. After they took the Moose over they went then to 25 and 35 in the evening, except Saturdays, Sundays and holidays they charged 35 cents straight through.

Q. That last answer referred to prices at the Forum?

A. That is right.

Q. Then do you recall what admission prices were being charged there during the year 1940 in Norwalk?

A. Well, I think they charged 44 cents. They did charge 44 cents.

Q. At which house?

A. At their new house.

Q. Had they then built another theatre?

A. Yes, they have got another theatre there now.

Q. That was built in 1940?

A. No, I don't believe it was that long. I believe they built it about two years ago, two or three years ago. I won't [fol. 967] swear to it.

Q. What I wanted to cover was the year 1940. At that time the Moose was closed, was it?

A. In 1940 they closed the Moose? No, I believe they ran it Saturdays and Sundays, two days a week.

Q. They were running the Moose Saturdays and Sundays?

A. I think they were, yes.

Q. And operating the Forum full time?

A. Yes, that is right.

Q. Do you remember what the admission prices were then?

A. I don't recall.

Mr. Rogers: Is this for the year 1940, Mr. Wright?

The Court: Do you mean——

The Witness: They raised the admission price then to 25 cents at the Moose.

The Court: It was 40 cents in 1940, he said.

The Witness: That was the Forum Theatre.

Q. 40 cents at the Forum?

A. And 25 cents at the Moose.

Mr. Rogers: Is this 1940 you are talking about?

Mr. Wright: 1940. You may cross-examine.

The Court: We will suspend now until 2 o'clock.

(Whereupon a recess was taken until 2 o'clock P. M.)

[fol. 968] After Recess, 2 P. M.

Appearances: Same as before noted.

Joseph H. Felter resumed the stand on behalf of the Plaintiff, having been previously sworn, was examined and testified further as follows:

Cross-examination.

By Mr. Rogers:

Q. Mr. Felter, my understanding was that you operated the Moose Theatre yourself from 1921 to 1924?

A. Me and my brother.

Q. That is, you and your brother?

A. That is right.

Q. The testimony was you operated it yourself. At that time and during that period did you have that theatre under lease?

A. No, we owned the building.

Q. That is, you and your brother actually owned the property?

A. That is right.

Q. How many seats did the Moose Theatre have?

A. Approximately 850.

Q. Do you remember when that house was originally built?

A. 1904.

Q. In 1921 was there any other theatre, motion picture [fol. 969] theatre, in Norwalk?

A. Yes, the Linwood.

Q. Other than the Moose Theatre and the Linwood Theatre were there any other moving picture theatres in Norwalk from 1921 to 1924?

A. No.

Q. In 1921 who was operating the Linwood Theatre?

A. Wesley Price.

Q. Did he continue operating that theatre from 1921 to 1924?

A. I don't believe he did. I think he sold out to a fellow by the name of Stall about two years after we came there.

Q. You mean in about 1923?

A. I would judge so.

Q. He sold that theatre out to a man by the name of Stall?

A. That is right.

Q. Did Stall then operate the theatre?

A. He operated the theatre for—I wouldn't want to say —I would say three or four years, I should judge.

Q. In other words, he operated it until 1925 or 1926?

A. I presume along there somewhere.

Q. What happened after Stall ceased operating the theatre?

A. He sold out to the Moose Club and went over and bought out Bellevue and died over in Bellevue. His name was—I can't just recall the name. He went over and bought the two Bellevue houses.

[fol. 970] Q. Was that bought out after you started working or had been working as buyer and booker by the Moose?

A. Yes, sir.

Q. Prior to the time you became buyer and booker for the Moose did you sell that Moose property to the Moose Lodge?

A. Yes, sir.

Q. So that about 1926 or, rather, after Moose bought this property in 1926, who then operated the Linwood Theatre?

A. We did.

Q. You did—you mean you and Mr. Frederick?

A. Yes.

Q. You were then operating both the Moose Theatre and the Linwood?

A. That is correct.

Q. At the time that the Moose was operating the Moose and the Linwood Theatres with you and Mr. Frederick carrying on the operations, was there any other theatre in Norwalk?

A. No, sir.

Q. When for the first time was there any theatre built in Norwalk after the Moose had the operating of both the Moose and the Linwood?

A. We closed the Linwood, I should judge, around—about 1931 I think we closed the Linwood out.

Q. Your best recollection is that you bought the Linwood around about 1926?

[fol. 971] A. Around there somewhere, yes.

Q. How long did you actually continue operating that house?

A. Probably four or five years; somewhere around there. Six years.

Q. After you got the Linwood were you operating the Linwood every day or only part of the week?

A. We operated it for a while every day and then we cut it down to two days and three days a week.

Q. Which were the two days or three days a week?

A. Well, we probably run like Thursday, Friday, and then we would run Saturday and Sunday together.

Q. Then what is your best recollection as to when you closed the Linwood down entirely?

A. I would say around 1931, maybe 1932. After business got pretty tough there we closed it up.

Q. In either 1931 or 1932 you then shut down the Linwood; is that right?

A. Yes, sir.

Q. And at that time the Moose was the only theatre operating in Norwalk?

A. That is correct.

Q. And that condition continued up to the time that the Forum Theatre was built?

A. That is correct.

Q. As I recall, you claimed that you had R. K. O. product [fol. 972] for the season 1934-1935; is that right?

A. We didn't play R. K. O. in 1935. We bought it for 1934 and 1935.

Q. I mean the season of 1934, you bought the season's product of 1934-1935?

A. That is correct.

Q. I want to go back to the Linwood for a moment. When you made the deal to acquire the Linwood Theatre who actually carried on the negotiations to acquire that theatre?

A. Do you mean who bought it?

Q. No, who carried on the negotiations, I mean.

A. I made the deal myself.

Q. You carried on the negotiations?

A. Yes, the first deal was with Mr. Stall, and then we had to go to Moose Haven to get permission from the Lodge to take it over.

Q. You first made the deal with Mr. Stall?

A. That is right.

Q. Then you had to go back to the Lodge and get authority from the Lodge to consummate the deal for the property?

A. We went to Angora, Illinois. That is where they had their home.

Q. When, to the best of your recollection, was it that the Forum Theatre opened?

A. Around and about the 28th day of December, 1934.

[fol. 973] Q. By that time the first run product had already been sold by the major companies for the 1934-1935 season, hadn't it?

A. No, they were about, I would say, three months getting it ready.

Q. Three months getting what ready?

A. The theatre.

Q. I am not talking about the theatre now. I am talking about the major producers.

A. They were not sold yet, the first run.

Q. They were not sold yet? Which companies of the major companies were not sold by December of 1934?

A. They bought——

Q. No, I say, which ones were not sold for the 1934-1935 season?

A. I don't think there was any sold when they came in there. We just started to buy them.

Q. You mean you first started buying the 1934-1935 product in December of 1934?

A. No, they were——

Q. I knew you didn't mean that. I wanted to get that straightened out.

A. They were about three months getting the theatre ready.

Mr. Rogers: I move to strike that. I assume that is stricken, may it please the Court? It is not responsive to my question.

[fol. 974] The Court: I think it is clear what he means by it.

Mr. Rogers: My question was whether or not the first run product had been sold by the major companies and he said these people took three or four months to get the Forum Theatre ready. That is not responsive to my question.

The Court: Very well, strike it out.

Q. What I want to get is: When did you start buying the 1934-1935 season product from the major companies?

A. I didn't buy them very early when we were in the town alone because we always waited until they had them pretty well played up.

Q. That is very interesting, but I want to get the date.

A. It would be pretty hard to tell the correct date. I will give you a little illustration.

Q. No, don't give an illustration. Just answer questions and we will get along quicker. Did you go in in the spring of 1934?

A. No, we went in the fall, around September.

Q. What product did you buy at that time for the 1934-1935 season?

A. I bought half of Warners', half of Fox, all R.K.O., and Universal and United Artists.

Q. Well, did you try to buy Paramount?

A. No, we weren't playing Paramount.

[fol. 975] Q. You weren't playing Paramount?

A. No, sir, we were not.

Q. Did you try to buy it?

A. No, sir, I did not.

Q. Did you try to buy M. G. M.?

A. Yes.

Q. When did you try to buy M. G. M.?

A. Along about probably the latter part of September.

Q. Is that the first time you tried to buy M. G. M.?

A. I talked to them before and they said when they were ready they would let me know. Their salesman came and called on us.

Q. You tried to buy M. G. M.?

A. Yes, I did.

Q. Prior to the 1934-1935 season had you played the M. G. M. product in the Moose Theatre?

A. I did.

Q. When?

A. Up to 1934 and 1935.

Q. You mean you had played M. G. M.?

A. Yes.

Q. Full product?

A. Yes.

Q. At the Moose Theatre?

A. Yes.

[fol. 976] Q. Up to and including the season of 1934-1935?

A. That is right.

Q. When did you, for the first time, get word of the fact that the Forum Theatre was going to be built?

A. Well, the day I went in to buy Metro Bill Sullivan was sitting in the office and——

Q. When was that? Do you remember the date?

A. He probably could tell you the date better than I could. Along some time the latter part of September or the last of August. Bill Sullivan was sitting in the office, because I remember he came in and shook hands.

Q. Did you know at that time——

A. No, I didn't know it at that time.

Q. Do you mean to tell me you didn't know at the end of September that the Forum Theatre was to be built?

A. No, I am telling you the day I went in—I wouldn't say what day it was. It was along in the fall of the year. Bill Sullivan was in the office, and their salesman, Mr. Brauer, called on me and he said, "Joe, do your want to buy M. G. M.?" And I said "Yes.", and he had the price.

[fol. 977] Q. All I want to know is a simple answer whether it is your testimony that you did not know by the end of September of 1934 that the Forum Theatre——

A. I wouldn't say what date it was, along in September some time, wouldn't say what date it was because I don't remember.

Q. One moment. Hold on now. And at that time when you went in there to buy this product 1934-'35 product, the Schine people were not in the town yet, were they?

A. No, they weren't.

Q. When, to your knowledge, did you notice work being done to build the Forum Theatre?

A. First knowledge I got I called up——

Q. No, no, I am asking when, to your knowledge, did you know that actual work was being done in building the Forum Theatre?

A. I say three months previous to the day they opened up. Thanksgiving Day, I think, they came out with their——

Q. You mean Thanksgiving Day is when they started to build the Theatre?

A. That is when they made the big splurge around there. I don't remember.

Q. How long was the construction work——

A. I would say——

Q. No, no. How long was the construction work carried [fol. 978] on in the building of the Forum Theatre?

A. A little better than three months.

Q. When did it start, do you know?

A. Figure back three months from the 28th day of December, make it——

Q. That would make it September, wouldn't it?

A. That is right.

Q. Did I understand you to say that at Thanksgiving Day they started to open the theatre?

A. No, they started to remodel it.

Q. You mean they didn't start to remodel it until Thanksgiving Day?

A. They were delayed or something about their lease.

Q. After the Forum Theatre was built, didn't you go to Mr. Selman and tell Mr. Selman that you wished to buy the Forum Theatre?

A. Yes, sir.

Q. About when was that?

A. Oh, I would say maybe three or four months, after it was opened?

Q. Was it earlier than that? Was it about two or three weeks after the theatre was opened?

A. No, about three or four months.

Q. Do you remember what Mr. Selman told you at that time?

A. Yes, sir. I can tell you what he said.

[fol. 979] Q. What did he say?

A. That they would sell the theatre to us.

Q. In other words, Selman said he was prepared to sell the theatre to you?

A. That is correct.

Q. What price?

A. $4,000 cash, and the balance to be assumed on the obligation.

Q. What price?

A. $28,000.

Q. Did you buy the theatre?

A. We did not.

Q. Did you tell him why you didn't buy the theatre?

A. No, didn't tell him why.

Q. You just didn't buy?

A. I can tell you why.

Q. You didn't tell him why you didn't buy the theatre?

A. No.

Q. Later did you go to Mr. Selman and offer to sell the Moose Theatre?

A. No, sir.

Mr. Wright: This is all improper cross-examination. If he wants to go into it with Mr. Felter as his own witness, all right, but certainly it is beyond the scope of the direct.

[fol. 980] Mr. Rogers: I think your Honor will rule upon that when that becomes necessary. It isn't necessary at this time.

Mr. Wright: Well, the objection is made that it is improper cross.

The Court: Overruled.

Q. Is that so, Mr. Felter?

A. That is right.

Q. Did you ever have any talk with Mr. Selman or Mr. Steel in which there was a discussion about selling the Moose Theatre to them?

A. No, we didn't. They came and tried to buy the theatre from us. They didn't want to buy it. They wanted a lease.

Q. They came to you, you say?

A. Mr. Steel came. I don't know whether Bill Selman came or not. I knew Steel came to my house.

Q. There was some talk with Steel, Selman or both about a deal on the Moose Theatre?

A. If I understand it right Mr. Steel wanted to buy Selman's interest, and he wanted to go with me and keep those theatres.

Q. Wasn't it the other way around that Selman wanted to buy Steel's interest?

A. No, I don't remember that, no.

Q. Don't you remember Selman did buy Steel's interest?

[fol. 981] A. No, I didn't know anything about that. I thought he sold his interest to Schine.

Q. Didn't you know he made a deal with Selman to sell his interest to Selman?

A. No, I did not.

Q. You knew nothing about that?

A. No.

Q. I understand it to be your testimony that with reference to the 1936-1937 product you went to Warner's and asked for that product and you saw Mr. Mooney and he said, "You haven't got a chance", is that right?

A. That is correct.

Q. Was that his language, "You haven't got a chance?".

A. Well, he just said——

Q. Was that his language?

A. I wouldn't say he just put it that way. He said, "There is no chance for you to buy them, Joe. You can't get them."

Q. When you were asked on your direct-examination, you said, "You haven't got a chance."

A. If I said that that must be true.

Q. That must be true?

A. Yes, sir.

Q. Then you said you went to Columbia and you saw Mr. Bissell?

[fol. 982] A. Bissell.

Q. And you asked him about 1936-'37 product and you said he also said, "You haven't got a chance." He said that, too?

A. Yes.

Q. He used the identical words Mr. Mooney used. Is that right?

A. That is what they said to me.

Q. You are sure of that now?

A. Yes, sir.

Q. Who else told you that, "You haven't got a chance"?

A. I don't remember anybody else.

Q. Nobody else?

A. Outside of I went over to United Artists and they said "We tried to make a deal with Schine. If they don't, come back in a week or two and we will see."

Q. Did he say "You haven't got a chance"?

A. No, he said, "Come back and we will let you know."

Q. I wanted to ask you if anybody else said that in that same language, "You haven't got a chance"?

A. No.

Q. All right?

A. Correct.

Q. You said that when you finally made your deal with Mr. Lazar in August, 1936, to sell the Moose Theatre to [fol. 983] Schines, that the purchase price was $15,000?

A. That is correct.

Q. Is that right?

A. That is right.

Q. As a matter of fact, wasn't the purchase price $17,500?

A. I don't know. That is what we were supposed to get, but we didn't get it. We got $15,000.

Q. As a matter of fact, when the deal was made, didn't you provide that the price was to be $17,500, and that you were to get a commission?

A. Yes, sir.

Q. One moment. Let me finish the question. And you were to get a commission of $2,500 to be paid by the purchaser?

A. No, sir, I did.

Q. Did you get a commission?

A. Yes.

Q. Of $2,500?

A. Mr. May told me——

Q. Did you get a commission of $2,500?

A. No, I did not.

Q. One moment. You just said you did.

Mr. Wright: You characterized it as a commission. Just ask him what he got.

The Court: I didn't understand him to say he got a com- [fol. 984] mission of $2,500. He said he got a commission.

Q. You did say you got a commission?

A. No. I didn't say I got a commission, no, sir. I said I didn't get any commission. When you ask the question let me answer it in the proper way.

Q. Maybe you don't like the way I put the question either.

The Court: Don't argue with the witness.

Q. I directed a question to you and his Honor and I both understood you to say, "Yes," you did get a commission on that.

The Court: What is the fact?

The Witness: The Moose gave me an option of $17,500, and they told me I was entitled to get a vacation and if I get $2,500, I was to give the girl half. We worked for thirteen years without a vacation, and after I went up and got $1250 a piece. I did not get any commission. They said I was to get it for my vacation.

Q. Who gave it to you?

A. Mr. Lazar. And the Moose said I was entitled to a vacation, and they said to take the option for $17,500, and I asked Mr. Lazar for $17,500.

Q. When was it you were supposed to take this vacation?

A. I was to get the—any time I wanted to take it.

Q. As soon as the deal was closed?

[fol. 985] A. No, any time I wanted to take it after the deal was made, and the girl got half and I got half.

Q. You said you were to get $1250 to take a vacation?

A. Yes. No, but the Moose——

Q. One moment, and you said you were going to take a vacation before you started to work for Schine, and they were going to give you $1250 for a vacation?

A. The deal——

Q. Just answer the question, is that right?

A. No. I worked for 13 years——

Q. You don't think that is right now?

A. No.

Q. Wasn't part of the deal that you made that you were to get a job with Schine?

A. Yes, sir.

Q. And how much a week were you to get for that job?

A. Well, I was getting $50 a week, and they said if I stayed there, they would give me more money and the girl, both.

Q. Which girl are you talking about?

A. The ticket girl. The ticket girl, she was there ahead of me. She was there 18 years.

Q. Where is the ticket girl you say you gave $1250?

A. —— give it to her. She got it out of the office —— never touched her money.

[fol. 986] Q. You made a deal under which $1250 was to go to you and $1250 to go to the ticket girl. Is that your testimony?

A. No, the testimony is I called him up afterwards. I said "Is our money up there for a vacation?" And he said, "Yes", and I went up and took it.

Q. You called him up when?

A. After the deal was made.

Q. You said the deal was made and the deal was completed?

A. Yes, sir.

The Court: For how much? Completed for $15,000, you mean?

The Witness: Yes.

Q. When had you spoken about the $2500?

A. I had the option.

Q. When had you spoken about $2500 to anybody in the Schine organization?

A. Nothing was ever spoken. He just said, "If we sell the theatre, Joe, we will give you and the girl money for your vacation," but there was nothing mentioned in the deal.

Q. One moment. Don't argue. In other words, you had a talk with Mr. Lazar, is that it, before the deal was made?

A. No, I don't think he ever mentioned much about it.

Q. Whom did you have that talk with before the deal was made?

[fol. 987] A. Mr. May told me first and Mr. Lazar, and I called him up after it was done and he said, "Yes."

Q. I am asking you a simple question. You said you spoke to May and spoke with Mr. Lazar before the deal was made?

A. Yes.

Q. At that time you were told they would give you $2500 to be split half to you and half to the girl to take a vacation?

A. Yes, but the deal was made.

Q. Is that right?

A. I wouldn't say it was right or wouldn't say it was wrong. I don't remember all of the conversation we went through there.

Q. You actually got $1250?

A. Yes.

Q. And the girl actually got $1250, is that right?

A. Yes. Can I ask you one question?

Q. When this session is over, I will let you ask a few out in the hall. Who gave you that $1250?

A. Up in Cleveland, some attorney.

Q. You traveled then up to Cleveland, did you?

A. That is right.

Q. Did you take the young lady along with you?

A. Yes, sir.

[fol. 988] Q. And you went to this attorney?

A. That is right, sir.

Q. And this attorney gave you $1250?

A. Gave me a check.

Q. Gave you a check for how much?

A. Yes.

[fol. 989] Q. He issued a check to you?

A. Yes.

Q. Are you sure about that now?

A. I think he did. I wouldn't swear to it, but I know he gave me $1250 on a Cleveland bank.

Q. Your best recollection is that he gave you a check?

A. That is what is in my mind. I wouldn't swear to it.

Q. Were you present when the young lady got her $1250?

A. She was right ahead of me. She got it before I did.

Q. In the same room?

A. I think so.

Q. From the same attorney?

A. Yes, sir.

Q. Did she get a check too?

A. She must have if I got a check.

Q. Do you remember whether she got a check?

A. I think she got a check.

Q. To your best recollection, she got a check and you got a check for $1250?

A. Yes, sir.

Q. That was Schine's money; it was not Moose money?

A. Not Moose money.

Q. Schine's money?

A. I don't know if it was.

Q. Prior to the time the deal was made between Schine [fol. 990] and the Moose to buy this property, which deal you testified was consummated just now, weren't they negotiating with you and Mr. Frederick to try and get a lease on that property instead of buying the property?

A. They had been trying to lease it for quite awhile, yes.

Q. And you carried on those negotiations with them, didn't you?

A. We talked to them, certainly.

Q. When you say "we" who do you mean, you and Mr. Frederick or you alone?

A. Me and Mr. Frederick.

Q. Both of you?

A. That is right.

Q. Didn't you tell them that if the lease deal went through you would expect a commission of $4,000?

A. No, I did not.

Q. You mean there was no such talk at all?

A. Not with me they didn't, No, sir.

Q. There was never such a talk, you say?

A. No, sir.

Q. Well, regardless of whether the commission was to be $4,000 or more or less than $4,000, when you negotiated with the Schine people on the basis of them getting a lease on that Moose property didn't you say to them that if the lease went through you wanted a commission paid to you?

[fol. 991] A. No, sir.

Q. Didn't you state to them that if the deal went through you would expect a payment of some kind?

A. No, sir, I did not.

Q. And that you say was never discussed?

A. Never discussed.

Q. No payment of any kind to you?

A. I was just to have a job. That is all that ever was asked.

Q. You mean all you asked for was a job if the lease deal went through?

A. That is right.

Q. But never any compensation of any kind?

A. No.

Q. And no payment of any kind?

A. Not that I remember; no payment of any kind.

Q. Is that the best you remember, I mean?

A. That is right.

Q. As I understand your testimony, you said that prior to the time that the Forum Theatre was built the prices of admission in the Moose were ten cents and fifteen cents; is that right?

A. Yes.

Q. And that price of ten cents was for children; is that [fol. 992] right?

A. Yes, that is right.

Q. And fifteen cents for adults?

A. Yes, sir.

Q. Did that apply to every day in the week?

A. I think so.

Q. No difference at all on Saturdays and Sundays?

A. Not as I remember, no.

Q. Don't you remember when you got a really good picture in the theatre you would raise that price to 25 cents?

A. I don't believe we did.

Q. You don't think you ever did?

A. Not at that time. No, I don't believe so. I wouldn't want to say off-handed because that is quite awhile ago.

Q. You wouldn't want to say that off-hand, would you?

A. No, I wouldn't want to commit myself to anything I don't know.

Q. Well, let me take you back only to the year 1934 and see if you can remember about that year. Isn't it a fact that when you played a good picture at the Moose during that year your admission prices were higher than ten and fifteen cents?

A. We had some good pictures.

Q. You had very good pictures. My question is when you had those very good pictures didn't you increase your [fol. 993] price of admission?

A. I don't think we increased. We had one established price. I think it was 15 cents for Friday and the rest of the week it was 15 and 25 probably.

Q. Let us get that straightened out. What were your prices in 1934?

A. That is what I say, I wouldn't want to say off-handed any more.

Q. You testified very definitely when you were interrogated by Mr. Wright that all through your operation there at the Moose it was ten cents and fifteen cents. Now do you want to change that?

Mr. Wright: All he testified to was the admission prices during the period that he was in competition with Schine.

Mr. Rogers: No, indeed, that is not my understanding.

Q. I will just stick to 1934, that one year.

A. Schine wasn't in that year.

Q. I know Schine wasn't there. What were your prices in 1934?

A. I wouldn't want to say off-handed. I am just telling you when Schine was in in 1935.

Q. Weren't you charging as high as 25 and 35 cents in 1934 when you got good pictures?

A. I think we were charging 25. I wouldn't want to say.

[fol. 994] Q. Were you charging as much as 30 cents?

A. I wouldn't want to commit myself.

Q. Do you remember after Schine came into the town what your prices were in the month of September, 1935?

A. I couldn't say off-handed.

Q. As a matter of fact, weren't you charging 20 cents for the balcony and 25 cents for the main floor before 7 o'clock at night?

A. That may be true. If it is there it must be true.

Q. And weren't you charging 30 cents after 7 o'clock at night and 20 cents for the balcony?

A. That is in 1935?

Q. That is in September of 1935. Is that right?

A. It must be true if it is there.

Q. And didn't you also have so-called bargain nights?

A. No, sir.

Q. Never had them?

A. Not a bargain night, no.

Q. Never had them?

A. No.

Q. When you charged ten cents to all, as a bargain night?

A. I thought you meant bank night.

Q. I said bargain night.

A. Yes, we had some, yes.

Q. And on those bargain nights you charged only ten cents [fol. 995] to everybody; is that right?

A. Correct.

Q. And that was after Schine came into the town; is that right?

A. I wouldn't say that, no.

Q. Well, I just asked you if that took place in September of 1935 and you said yes.

A. Well, if it is there it must be true.

Q. Now, you said that you never ran—you just volunteered a statement that you never ran a bank night at the Moose Theatre; is that right?

A. I didn't call it bank. I called it prosperity.

Q. You called it Prosperity Night, is that it?

A. That is it.

Q. It was run the same as bank night, wasn't it?

A. I suppose it is the same money-getter.

Q. In other words, the house would put up a pot and you would draw a lucky number and the winner of the lucky number would get the pot?

A. Got a new suit of clothes.

Q. Oh, a new suit of clothes? Then instead of giving money away——

A. No, we gave money.

Q. You also gave prizes away on those nights?

A. No, we didn't give any prizes.

[fol. 996] Q. What did you mean by saying a suit of clothes?

A. I was just kidding.

Q. Let us forget that. How big would the pot be?

A. We never let it go much over $100. If it went over $100 we would split it up.

Q. How much would it run, from $25 to $100?

A. That is right.

Q. So that the lucky winner in any one night would get $25, $50, $75 or $100; is that right?

A. That is right.

Q. After the Forum opened and you had made some efforts to try and buy the Forum didn't you and Mr. Frederick openly declare that you would drive that crowd in the Forum out of town and out of business?

A. No.

Q. Did you ever declare to people in the town of Norwalk after the Forum was opened that you would drive those people out of town?

A. Not that I ever remember nobody ever said anything like that.

Q. I am talking about you.

A. Not me, no.

Q. Do you remember Frederick saying it?

A. No, I don't.

Q. Well, do you remember after the Forum Theatre [fol. 997] opened Mr. Frederick, whom you testified was Secretary of the Moose Lodge——

A. That is correct.

Q. Do you remember him sending a circular letter to the members of the Moose Lodge requesting them not to patronize the Forum Theatre?

A. No, I do not.

Q. You never saw a letter of that kind?

A. No, sir, I did not.

Q. Didn't you and Mr. Frederick plan a letter of that kind to be sent to the members of the Moose Lodge?

A. We did not.

Mr. Wright: If the Court please, I think there ought to be some limits of relevancy here. We are now in a field that it seems to me has no possible connection with the issues that we are trying.

Mr. Rogers: The shoe is now on the other foot. You are trying to show that one fellow is a bad fellow and when we show the other fellow is a bad fellow you don't like it.

Mr. Wright: The other people are not on trial.

Mr. McKay: Mark this for identification.

(Thereupon the newspaper advertisement of Wednesday, September 25, referred to, was marked as Defendants' Exhibit D-30 for identification.)

[fol. 998] Q. Do you remember in the month of June, 1935, speaking to Mr. Brant, a salesman of Warners, about product?

A. Brant?

Q. Brant. Did you know Brant?

A. Surely I k[illegible] him.

Q. You knew [illegible] to be a saleman of Warners, didn't you?

A. That is correct.

Q. He was a salesman in the month of June, 1935, for Warner, wasn't he?

A. I suppose if you have it there. I wouldn't want to say. It is pretty hard to keep track of all of them.

Q. You do remember that Mr. Brant was a salesman for Warner, don't you?

A. Surely.

Q. Do you remember him calling on you in June of 1935 to talk product with you? Do you remember him talking to you about making a new deal with you for Warners' product and you saying to him that you didn't want to talk to him about any deal with Warner for that year?

A. No, I don't remember that?

Q. You don't remember that?

A. No, sir.

Q. Do you remember in the month of June in 1935, the early part of June, this same Mr. Brant calling on you to speak to you about product for Warner?

[fol. 999] A. No, sir.

Q. You don't?

A. No, sir.

Q. Don't you remember at that time him suggesting to you giving you a split of the Warner product in July of 1935?

A. I do not.

Q. What?

A. No, sir.

Q. You don't remember that?

A. No, sir.

Q. Do you remember you saying to him that you were going to tell him confidentially, but not to be repeated, that the Moose Lodge were considering at that time taking over the Forum Treatre?

A. No, I do not.

Q. And do you remember telling him that until the Board meeting was held of the Moose you couldn't make up your mind as to whether you would buy or not?

A. I do not.

Q. You don't remember that, do you?

A. No, sir.

The Court: As I had his testimony he testified he had half the Warner for 1935 and 1936. Is that right?

Mr. Rogers: Yes.

Q. Do you remember Mr. Brant having a further talk [fol. 1000] with you on July 12, 1935, about Warner product?

A. No, I do not.

Q. You don't remember?

A. No.

Q. And do you remember telling Mr. Brant at that time that there were no developments on the Moose Lodge taking over the Forum Theatre?

A. I do not.

Q. Do you remember at any time around that period discussing with Mr. Brant the fact that the Moose Lodge proposed to take over the Forum Theatre?

A. I do not remember.

Q. You don't remember saying that to him?

A. No, sir.

Q. Or discussing that with him?

A. No, sir, I do not.

Q. Is it your testimony that you don't remember or that it didn't happen?

A. No, I don't remember. I wouldn't want to say it didn't happen because I don't remember.

Q. In other words, you might have said that to him, but you don't remember it now?

A. I don't remember it now is right.

Q. Well, do you remember July 15, 1935, finally making a deal with Mr. Brant under which it was agreed that you [fol. 1001] were to get one-half of the Warner product?

A. I suppose if it is there I must have made the deal. I played half the product.

Q. Don't you remember having made the deal with Brant?

A. It would be hard to say. Most generally when we made the deal we had to go in the office anyway and sign up with the branch manager.

Q. Don't you know that you made the deal in Norwalk with Brant?

A. They always came in my office. If I made the deal it certainly must have been made in Norwalk.

Q. You say if you did make the deal. Don't you remember you did make the deal and you did get half the product?

A. Surely I made the deal.

Q. Do you know a man by the name of Mr. Lichter?

A. Yes, a salesman for Fox.

Q. Do you remember Mr. Lichter seeing you and Mr. Frederick in Norwalk on or about July 3, 1935?

A. Well, he called upon us quite frequently, yes.

Q. About that time, didn't he? Well, do you remember Mr. Frederick being present at a talk with you?

A. No, sir, I couldn't remember.

Q. You don't remember that? I mean it is possible that you and Frederick and Lichter had a talk?

A. It is possible. It is pretty hard to remember. He was [fol. 1002] in and out so much that it is pretty hard to say.

Q. Didn't you tell Lichter at that time that you couldn't do anything about talking about getting service at that time?

A. I don't remember that.

Q. Because it looked as though you were going to take over the Forum Theatre?

A. No, sir, I don't remember that. No, sir, I do not.

Q. Do you remember discussing with Mr. Lichter the fact that you were planning to take over the Forum Theatre at that time in July of 1935?

A. I do not. He probably talked about it. I don't remember it though. I won't say he didn't.

Q. I am not asking you whether he talked about it. I am asking you whether you talked about it.

A. No, not as I remember, not as I can recall.

Q. You don't recall that at all?

A. No.

Q. Don't you remember yourself telling him or Frederick telling him that the deal was practically closed on the Forum and that the only thing that stood in the way of the deal closing on the Forum was the rent?

The Court: Dealing with this witness, you mean?

Mr. Rogers: Yes.

A. I don't remember.

[fol. 1003] Q. Who is Charlie?

A. Charlie Frederick, the Postmaster.

Q. Frederick's name is Charlie?

A. That is right.

Q. If Mr. Lichter says that you and Charlie told him that the deal was about to be closed on the Forum and that the only thing that remained in the way was the question of rent would you say that Lichter was mistaken?

A. No, I wouldn't say that because he might have went over to the post office and talked to Mr. Frederick over there.

Q. You mean he might have talked to Frederick and Frederick might have told it to him, might have talked about taking over the Forum?

A. That may be true.

Q. And you wouldn't do anything about product until you had the Forum deal closed?

A. I wouldn't say that because he sometimes stopped in to see Frederick at the time, because Frederick was Postmaster at the time, United States Postmaster there.

Q. Who is Jerry?

A. Jerry Steel.

Q. Do you remember you saying to Lichter that he was not to tell Jerry (meaning Jerry Steel) anything about——

A. No.

[fol. 1004] Q. One moment. Let me finish. —anything about the impending deal on the Forum because Jerry Steel wanted it to be kept quiet?

A. No, sir, I do not.

Q. Do you remember you telling him not to tell Jerry Steel anything about it?

A. I do not remember that.

Q. Would you say that wasn't so?

A. No, I wouldn't say it wasn't so, but I don't remember saying it.

Q. Do you remember having a talk with the same Mr. Lichter we have been speaking of about the 20th Century-Fox at the latter part of June of 1935?

A. He stopped in there pretty nearly every Friday night.

Q. I mean you probably had a talk with him at that time?

A. I probably had a talk. I wouldn't say I didn't.

Q. And the Forum Theatre was operating at that time, wasn't it?

A. Yes.

Q. Do you remember telling Lichter that you objected to 20th Century-Fox selling any repeat pictures to the Forum Theatre?

A. No, I did not.

Q. Do you mean that isn't so or you don't remember?

A. I don't think that is so. I bought some second run——

[fol. 1005] Q. No, all I am asking is whether you told that to Lichter?

A. No, I didn't tell him that.

Q. You are definite about that?

A. I am certain I wouldn't say nothing about that.

Q. You are sure of that?

A. Yes.

Mr. Rogers: Now I should like to introduce in evidence as Defendants' Exhibit——

Mr. Wright: Don't you think you had better have somebody beside Mr. McKay identify it first before you introduce it? I do not know what it is yet, other than that you have marked it as an exhibit.

Mr. Rogers: It is an advertisement of the Moose Theatre.

Mr. Wright: Ask him about it. If it is his ad, let it appear.

The Court: Counsel objected to similar offers on the ground that it was not proved.

By Mr. Rogers:

Q. Do you recognize that as an ad of the Moose Theatre when you were operating it (showing to witness)?

A. Surely.

Mr. Rogers: Then I offer it in evidence.

By Mr. Wright:

Q. When was this run? Do you know the date?

A. No, I can[illegible]ell the date. There is no date on here.

[fol. 1006] Mr. Rogers: Yes, you have the date on there.

The Witness: What year was it?

By Mr. Rogers:

Q. Don't you know by the product that is on it?

A. No, there are a lot of Joe E. Brown's. That is "Bright Lights". What year was it? It might be second run.

Q. Here is "Dynamite".

A. This is a second run picture.

Q. Do you know the date?

A. It is September 25. That is a second run picture.

Q. Assuming it is a second or a third run picture, what year did you run those pictures?

A. Probably in 1934 and 1935.

Mr. Wright: Do you know when the ad was run?

The Witness: No, I couldn't tell you.

By Mr. Rogers:

Q. You say it is either 1934 or 1935?

A. It might be 1936. I wouldn't say off-handed.

Q. It is either 1934, 1935 or 1936?

A. It wouldn't be 1934.

Q. It may be in 1935?

A. No, I don't want to say.

Q. Which year would you say it would be?

A. I wouldn't want to say.

Q. You wouldn't want to say?

[fol. 1007] A. No, that is one thing I won't do.

Q. In other words, you don't remember dates, do you?

A. It is pretty hard to remember dates on all these pictures.

Q. You don't remember them at all, do you?

A. Just as good as the rest of it.

Q. I show you this picture and I ask you is that signature at the bottom of that the signature of Mr. Frederick (showing to witness)?

A. That is Mr. C. O. Frederick, Secretary.

Q. He is the same Mr. Frederick who is Secretary of the Moose Lodge?

A. That is correct.

Q. And who co-jointly with you operated the Moose Theatre?

A. Correct.

Mr. Rogers: I offer it in evidence.

Mr. Wright: I have no objection. My reading of it is that this is the 1935-1936 season. Does that agree with the other gentlemen?

Mr. Rogers: Yes.

Mr. Wright: We have no objection.

(Thereupon the Warner Bros. and First National production schedules referred to were received in evidence and marked as Defendants' Exhibit D-31.)

Mr. Rogers: That is all.

[fol. 1008] Redirect examination.

By Mr. Wright:

Q. With reference to these admission prices, Mr. Felter, as I understand, on cross-examination you testified that in September, 1934, there you had an admission price of about 25 cents; is that right?

A. We had a scaling price. On the first of the week—on Friday and Saturday we had a bargain bill for a bargain price.

Q. At that time you were running first run major product; is that right?

A. The first five days, and after that we had to run second run.

Q. In 1934—I am talking about the year 1934.

A. We run what we call slough pictures.

Q. In the fall of 1934?

A. Yes.

Q. You were running first-run pictures?

A. Surely, we had first run, but the pictures were not a drawing power.

Q. What pictures do you mean didn't have drawing power?

A. Like we had some Universal, and so on, we would pick out the best ones for the first of the week and Westerns, and so on, on Friday and Saturday.

The Court: You mean there was a different price during [fol. 1009] the week?

The Witness: Yes.

Q. 25 cents was the maximum?

A. Yes, sir.

By Mr. Wright:

Q. You charged 25 cents for the best pictures and less for the slough?

~~A. That is right.~~

Q. As I understood your testimony on direct examination just before Schine took over the Moose, and that was in——

A. 1935.

Q. —October, 1936, wasn't it, the Moose?

A. Yes, they took the Moose over in 1936.

[fol. 1010] Q. Prior to that time the Moose was then charging 15 cents for adults' admission prices, is that right?

A. Yes.

Q. Just before Schine took over this Moose Theatre, as I understand it, your testimony on direct examination was that you had then been charging admission prices of 10 cents and 15 cents, is that right?

A. I think that is right.

Q. How long had you been charging 15 cent prices before that?

A. Before that? Well, in 1934 we got 25 for the first five days and 15.

Q. How about 1935?

A. I think we charged for the first five days in 1935——

Q. When was it you dropped to 15 cents straight price?

A. When we couldn't get any more products.

Q. When was that?

Mr. Rogers: Pardon me. There is no evidence at any time he could not get any product.

The Court: Yes, strike it out. When was it you dropped to 10 and 15 cents?

The Witness: Fall of 1936.

Mr. Wright:

Q. What was the reason for that?

A. Well, I wasn't able to get any first-run pictures. I [fol. 1011] had to play second-run pictures.

Q. With reference to this sale that was made of your theatre to Schine, as I understand it, $15,000 was paid to the Moose Lodge, is that right?

A. That is right.

Q. And $1250 was paid to you?

A. That is right.

Q. And $1250 was paid to the ticket girl?

A. Yes.

Q. What was her name?

A. Clara Cook.

Q. Those payments were made by whom?

Mr. Rogers: He has testified to that.

Mr. Wright: He said some attorney in Cleveland. I just wanted to get it straight.

The Witness: Yes, it was through Mr. Lazar. He told me to go down and get—the man said the deal was made.

Q. Mr. Lazar was the one who sent you to the attorney to get the money so the total amount then paid by Schine was $17,500, is that right?

A. That is right. That is what the Moose wanted to get in the first place.

Q. Going back to the time you sold the theatre to the Moose, do you remember what the price was then in 1924?

[fol. 1012] A. $21,500.

Q. That is what the Moose paid you and your brother?

A. That is right.

Q. Do you know what investments they had made in the theatre between that time and the time it was sold to Schine?

A. The Moose put in $40,000.

Mr. Rogers: I object to that as immaterial.

The Court: Overruled. How much?

The Witness: The Moose put in $40,000 after they took it over. Approximately $40,000 after they bought it.

Q. A total investment of the Moose was somewhat better than $60,000?

A. Better than $60,000.

The Court: Did the Moose know of your arrangement to get $1250?

The Witness: Mr. Frederick told me to go and get it.

By Mr. Wright:

Q. I think on your cross-examination you were asked first what you had for 1934-1935, and I think you mentioned R.K.O. or Universal, United Artists, Warner and Fox, and then the next question was asked you about M.G.M., and Mr. Rogers asked you if you had M.G.M. including 1934-'35, and I think you said "Yes", is that correct.

A. 1934 and '35?

[fol. 1013] Q. Yes.

A. No, I did not have them.

Q. You did not have them for that year?

A. I did not have them for that year. I don't think Mr. Rogers asked that question.

Mr. Rogers: I did, Mr. Wright. You are correct.

The Witness: But I did not have them.

By Mr. Wright:

Q. The fact is what you did have for 1934-'35 was Warner, Fox, R.K.O., Universal, United Artists, is that correct?

A. That is right. They had Columbia, Paramount and Metro. Those three companies they did.

Q. When you say "they" you are referring to the Forum Theatre under the operation of Steel and Selman, is that right?

A. That is correct.

Mr. Wright: I think that is all.

Recross-examination.

By Mr. Rogers:

Q. Mr. Felter, you said the Moose put $40,000 into this theatre?

A. Approximately, around $40,000.

Q. What did they put it in?

A. Well, they put in new seats.

[fol. 1014] Q. When was that done?

A. Well, after they bought the house.

Q. How long after they bought the house?

A. I would say five years.

Q. They operated five years?

A. Maybe six years, I wouldn't state.

Q. Five or six years?

A. Yes.

Q. And then put new seats in, is that it?

A. Yes, sir.

Q. Do you remember what year that was the seats were put in?

A. No, I couldn't tell you.

Q. About what year?

A. I couldn't say. They put them in after they took it over. They ran the theatre 13 years. Maybe seven years after they had the house. You can date it back and you will have it pretty close.

Q. They reseated the house?

A. Downstairs and took them from downstairs and put them upstairs.

Q. You mean all they did was they took the seats from downstairs and put them upstairs?

A. And bought new seats for downstairs.

Q. How many seats?

[fol. 1015] A. 484 seats.

Q. Do you know who they bought them from?

A. Yes, from the American Seat Company.

Q. Do you know what they cost?

A. Yes, sir, they cost $7.40 a seat, I think. I wouldn't swear to that, around $7.40 a seat.

Q. And about 400 seats?

A. 484 seats.

Q. What else did they do?

A. All right, they redecorated the whole house.

Q. Painted it?

A. Redecorated, all hand-painted work.

Q. Do you know what that cost?

A. I don't know. They had it done by the Radcliff people.

Q. I am asking you what it cost?

A. No, but they had it done by the Radcliff people.

Q. You said offhand to Mr. Wright that it cost them $40,000.

A. I don't know. Mr. Frederick paid for some of them bills.

Q. You don't know much about it?

A. Yes, I do.

Q. Do you know about the whole $40,000?

A. Pretty close, when we get all summed up.

Q. You don't know anything about the redecorations?

A. I told you it was hand-painted and they put in the lights.

[fol. 1016] Q. How much did it cost?

A. Well, I would say $4,000, offhand.

Q. Did you let that contract for the painting and decorating and changing the lights?

A. N[illegible] was there.

Q. Did you let the contract?

A. No.

Q. Did you pay the bills?

A. No.

Q. Did you let the contract for the seats?

A. I was right there.

Q. Did you let the contract for the seats?

A. No.

Q. Did you pay the bill for the seats?

A. No, I did not.

Q. You say you were present when Mr. Frederick made the deal for the redecoration?

A. That is right.

Q. You participated in making the contract with him for the redecoration, is that right?

A. That is correct.

Q. And what did you say was the price in that contract for that?

A. I would say around $4,000 for that.

Q. A few minutes ago you said you did not know.

[fol. 1017] A. I said around approximately $4,000. I wouldn't say right to the dollar.

Q. Under four or over four?

A. I couldn't say.

Q. Would it be just as accurate to say it was approximately $3,000?

A. No, it was better than $3,000, because they had three or four bidding on it.

Q. Do you remember the bids?

A. One of them bid $9,000, I know, and Mr. Frederick just laughed. I knew it was around three or four thousand dollars, I would say four thousand dollars would catch it pretty close.

Q. Three thousand dollars?

A. I said four thousand dollars.

Q. Which is right, three or four?

A. About four thousand dollars.

Q. When did they do the painting and decorating?

A. They done that around—they took it over in 1924. I would say in 1929 or '30.

Q. What did they do next?

A. They put in three new furnaces.

Q. What did those three new furnaces cost?

A. I would say around $1,000.

Q. A thousand dollars for the three?

[fol. 1018] A. I would say approximately three.

Q. Did you make that contract?

A. No, sir.

Q. Did you pay for it?

A. No, sir. The secretary pays all bills in any lodge.

Q. I am asking, did you?

A. I am just telling you, so you will understand.

Q. You did not make the contract?

A. No.

Q. Where did you get the one thousand dollar figure from?

A. Mr. Frederick said it cost about $1,000.

Q. Mr. Frederick said it cost about $1,000, and that is all you know about it?

A. No, I was sitting there when they made the deal. I sometimes made the deal and Frederick paid the bill.

Q. Which is an accurate statement, what Frederick told you he paid, $1,000, or were you there when the deal was made?

A. I was there when the deal was made.

Q. He did not tell you anything about it?

A. We always talked it over.

Q. You said a few moments ago Frederick told you it was $1,000?

A. You know——

Q. I don't know anything. You know.

[fol. 1019] A. I might see it.

Q. I don't know anything. I am asking you, were you there and did you see that $1,000 figure put in a contract?

A. No, I did not.

Q. That is all I want to know. Coming on to the next piece of work done on the building. These furnaces, when were they put in?

A. Around 1930 or '31.

Q. What was the next thing they done?

A. The next thing they done, they painted, fixed up the marquees. They hollered about the marquees out in front.

Q. You mean that canopy in front of the theatre?

A. Yes.

Q. They wanted the marquees. Do you know how much they paid for that? Do you know?

A. No, I don't.

Q. Let us go on to the next item.

A. The marquees was pulling. They had to have them all changed.

Q. You repaired the marquees?

A. Yes.

Q. How much did they cost, do you know?

A. I wouldn't want to say.

Q. Then do you know?

[fol. 1020] A. No.

Q. You don't know about that. What is the next item?

A. The next item. Let's see what they did do next. An organ.

Q. They bought an organ. Did you make that contract?

A. Yes, sir. I went along and helped make it.

Q. How much did that cost?

A. $5,750, besides having it installed.

Q. When did they put that organ in, do you say?

A. I would say around about 1927 or '28.

Q. Either 1927 or 1928. What else did they do?

A. They had to pay for installing the organ.

Q. Do you know what that cost?

A. No.

Q. You don't know?

A. No.

Q. What is the next item?

A. The next item is they concreted all the dressing rooms downstairs.

Q. Did you make a contract for that?

A. No, I did not.

Q. Do you know what it cost?

A. No.

Q. You don't know. Go to the next item. The next item was that they put in a cooling system.

[fol. 1021] Q. What kind of a cooling system was it?

A. It cost——

Q. Whose cooling system?

A. Right here bought in Cleveland, it was bought from the Theatre National Supply House.

Q. The National Theatre Equipment Company?

A. That is correct.

Q. Was that just a cooling system, or an air-conditioning plant?

A. That is right, the kind what you call an air-conditioning plant.

Q. What?

A. It cost approximately around $1,000, because I was there and helped to make the deal.

Q. Cost about $1,000?

A. Yes.

Q. What next?

A. Let's see what they did have next. Well, they done a lot of other little things.

Q. Loose odds and ends?

A. Sound machine, sound equipment, put in a talking machine.

Q. What do you mean they put in sound equipment?

A. When sound came in.

Q. 1928?

A. I paid $5,750 for it.

[fol. 1022] Q. You mean 1928 you put in sound equipment?

A. Is that when talkies first came out?

A. That is about it.

Q. We had one the year before and took it out. I put in R.C.A. and paid $5,750 for it.

Q. Did you make the deal?

A. Yes.

Q. Was that paid on the installment plan?

A. Yes.

Q. Paid out of the box office?

A. I don't know if it was paid out of the box office, paid as he went along, paid down $1,000, if I am not mistaken.

Q. Paid the balance from the box office receipts?

A. Paid from the theatre.

Q. Did you do the same thing with the organ?

A. No, we did not. We paid that cash. I bought a high condenser arc.

Q. A high condenser arc.

A. Yes. I think I paid $1,000 for that, if I am not mistaken.

Q. About when was that?

A. 1929 or '30.

Q. Did you make the deal for that?

A. Yes, I did.

Q. You paid $1,000 for a high condenser arc in 1929 or '30?

[fol. 1023] A. Yes, and bought that from Oliver Theatre Supply.

Q. Bought that from Oliver?

A. Yes.

Q. That is about all, is it?

A. Well, we changed our machines, traded out machines.

Q. You traded some machines in. Did you make the deal, trading the machines in?

A. I was there. We made them together.

Q. With whom did you make the deal?

A. I think we made it with the National Theatre Supply.

Q. The National Theatre Supply. Do you remember what——

A. No, I don't remember what the price was.

Q. And that's all, is it?

A. Well, there's one thousand other things.

Q. You mean repair jobs as you went along?

A. No, spent a lot of money in that theatre.

Q. Does this sum up what you put in the theatre?

A. That is some of it, but there's a lot of other things. We put in the drapes.

Q. Which drapes?

A. When we redecorated the theatre, cost me $900.

Q. Where are the drapes?

A. In the theatre.

Q. Where?

A. At the back end and over the boxes, cost about $900.

[fol. 1024] Q. Whom did you get the drapes from?

A. Radcliff people, Toledo.

Q. Did you make that deal yourself for the drapes?

A. No, I didn't.

Q. Who made that deal?

A. Frederick and I both made the deal.

Q. You know $900 was the price?

A. Approximately $900, maybe they took off 2 per cent.

Q. In other words, might been been six or seven hundred dollars, is that right?

A. No. Frederick said it was going to run around $1,000.

Q. Frederick told you that?

A. No, I was sitting there.

Q. You were sitting there and he had to tell you what the price was?

A. No, some one would come in or go out.

Q. Was that organ still in the house when you sold the theatre?

A. Yes, it was.

Q. Was the sound equipment in the house as you put in in 1928 when you sold the theatre?

A. Yes, sir, in good shape, too.

Q. And you hadn't done any redecoration of that house since 1929-'30, had you?

A. Oh, yes, we done some.

[fol. 1025] Q. You did a little paint work here and there, is that it?

A. No, we spent a lots of money.

Q. You didn't redecorate the house, did you?

A. No, not the whole house.

Q. Here and there you did a little paint work?

A. Re-curtained it.

Q. Decorations?

A. Yes, a little paint.

Q. Did you ever put a set of drapes in after the first set of drapes you are talking about?

A. No.

The Court: That is all.

Mr. Rogers: That is all.

Milton H. Breyer, a witness called by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Clagett:

Q. Will you state your name and residence?

A. Milton H. Breyer, Bucyrus, Ohio.

Q. Mr. Breyer, how long have you been identified with the motion picture industry?

[fol. 1026] A. 29 years.

Q. Did you take over and commence to operate the State Theatre in Bucyrus, Ohio, about June, 1934?

A. I did.

Q. Will you state what the theatre situation was at that time at Bucyrus?

A. There were two small theatres there and one uncompleted theatre building.

Q. The theatre you acquired was the State?

A. Yes, sir.

Q. What was the other theatre?

A. The Southern Theater.

Q. Who was operating the Southern?

A. The Corporation name I think was Bucyrus Theatres, and Phil Charnas was manager.

Q. You said it was an uncompleted theatre building?

A. Yes, sir.

Q. Mr. Breyer, can you tell the Court what product, what major first-run product, you used for the 1934-'35 season?

A. Yes, sir, Metro-Goldwyn, Warner Brothers, R.K.O., and Universal.

Q. Will you state, if you know, what major product was used in the Southern Theatre?

A. Fox.

[fol. 1027] Mr. Rogers: Do you mean for the same season, Mr. Clagett?

Mr. Clagett: For the 1934-1935 season.

The Witness: Fox and Paramount and Columbia, United Artists. He had four products and we had four products.

Q. Calling your attention to the 1935-1936 season, will you state whether you attempted to negotiate a contract with Loew's for its product for that season?

A. I did.

Q. Will you state with whom you had any negotiations or conversations concerning the product of that company for that season?

A. With both the salesmen and Frank Drew, the Cleveland Branch Manager.

Q. Had you known Mr. Drew as the Branch Manager of Loew at Cleveland?

A. I did.

Q. Had you had previous contact and dealings with him?

A. Yes, sir.

Q. Will you please state what was said in your conversation with Mr. Drew and will you state the date of that conversation?

Mr. Rogers: I object to the question on the ground there is no proper foundation laid for the admission of this testimony, [fol. 1028] no testimony to what kind of dealings this witness had with Mr. Drew, and on the ground it is purely a local situation, on the ground it is not binding on us.

The Court: I think it should be shown what his connection with Drew had been preceding this time.

Q. Your previous dealings with Mr. Drew had been in connection with the purchase of film?

Mr. Rogers: Mr. Clagett, please don't get into bad habits.

The Court: The question is leading.

Mr. Rogers: Ask him a question, will you please?

Q. What previous dealings had you had with Mr. Drew, Mr. Breyer?

The Court: During what period of time?

The Witness: When I bought the theater in 1934 they were running Metro products, and I took over the current contract which was for 1933-'34 product, and naturally I had dealings with him, being a customer of M.G.M.

Mr. Rogers: I move to strike out all that follows "naturally".

The Court: Yes. He is asking now about your dealings with Drew.

Q. You were stating you had dealing with Mr. Drew.

[fol. 1029] Mr. Rogers: When?

The Witness: State your question again. I just don't understand what you mean. What are you driving at?

The Court: What business had you done with Drew personally? That is what he is trying to get at, prior to this time?

The Witness: Prior to what year?

Q. Prior to the 1935-1936 season.

A. Well, in 1934, I naturally was a customer of Loew's, so I had dealings with him, and prior to that, I dealt with him a number of years when I was an exhibitor in Akron, Ohio.

The Court: Mr. Drew himself, you got pictures through him. We are trying to show here what Drew's business is, the connection with the company. Something must be shown.

Mr. Wright: Drew has already been identified as Branch Manager of Metro in Cleveland by other witnesses.

The Court: What were your dealings with him?

The Witness: The usual procedure.

The Court: Just answer my question. What had you done with Drew about getting pictures in person?

The Witness: Why, I buy through the salesman and the [fol. 1030] manager, and that would be my dealings with him on any pictures I wished to purchase.

The Court: Applied through whom?

The Witness: Through the salesman and Drew.

The Court: In prior years?

The Witness: Yes.

The Court: How many years?

The Witness: I was in Akron in 1920, and I think Drew was in Cleveland at that time. I am not sure, but all the years he was with M.G.M. I did business with him.

The Court: As a representative of this company?

The Witness: Of the M.G.M.

The Court: Go ahead.

Mr. Rogers: I press the objection on all grounds stated.

The Court: Overruled.

Q. Mr. Breyer, what conversation did you have with Mr. Drew with respect to purchasing that product, the product of the Loew Company for the 1935-'36 season, and when did you have a conversation with him?

A. As I recall I talked to him some time during the summer with respect to making a deal for the 1935-'36 product.

Mr. Rogers: Summer of which year?

The Witness: 1935 is when I talked to him, in the summer of 1935.

[fol. 1031] Q. What was stated in that conversation?

A. He told me——

Mr. Rogers: What did you ask him for, isn't that better?

The Court: Go ahead. The question is perfectly proper. What was said?

The Witness: He said he didn't think he could give me a deal for all of the pictures for that season, but he thought that such a split deal could be worked out, that means 50 per cent of the pictures.

Mr. Wright: Did you make a deal for any pictures at that time?

The Witness: No, sir.

Q. Did you have any further negotiations with any representative of Loew's in connection with the purchase of pictures for the 1935-'36 season?

A. I did.

Q. Who was that?

A. Mr. Rogers, General Sales Manager of M. G. M.

Q. Where?

A. In New York City.

Mr. Rogers: When was that?

Q. Can you fix the date?

A. I believe it was the middle of August in 1935.

Q. Will you state your conversation with Mr. Rogers?

[fol. 1032] A. I told him that I was interested in continuing as an account of M. G. M., and I wanted to buy the pictures for the coming season. He told me in view of the fact that the new theatre was bought and was going to be completed that he thought the fairest deal for that town would be to make up a split deal with the following terms: I was to receive all of the current releases up to the first of the year, and then after that I would get my proportionate share of the pictures, until I had received 50 per cent of the product released during that particular season.

Q. Did you later negotiate such a deal?

A. I did.

Q. Where did that happen?

A. That deal was made with Frank Drew in Cleveland.

Q. I show you a contract with Metro-Goldyn-Mayer, dated September 4, 1935, and ask you if that is your signature?

A. That is my signature.

Q. And was the deal, which was made at that time?

A. That is the deal.

Q. And I also show you a rider between yourself and Metro-Goldwyn-Mayer dated September 4th, and ask you if that was attached to that deal?

A. It was. It is part of the deal.

[fol. 1033] Mr. Clagett: Will you mark that for identification?

(Thereupon the two papers referred to were marked as Plaintiff's Exhibit P-61 for identification.)

Mr. Clagett: I am going to offer it.

Mr. Rogers: My objection, may it please the Court, is it is not binding on us and relates to a purely local transaction.

The Court: Overruled.

Mr. Clagett: We offer Plaintiff's Exhibit P-61, consisting of two papers that are marked for identification as the next Plaintiff's exhibit.

(The two papers, previously marked as Plaintiff's Exhibit P-61 for identification, were received in evidence.)

Mr. Rogers: Will you note my objection and the Court's ruling, please?

Mr. Clagett:

Q. Mr. Breyer, with respect to the 1935-'36 season, did you attempt to negotiate a contract for first-run Warner's product?

A. I did.

Q. Will you please state with whom you had any negotia-[fol. 1034] tions or conversations concerning that product?

A. With both the salesman and Mr. Mooney, the Branch Manager.

Q. You had known Mr. Mooney as Branch Manager for Warner's?

A. Yes, sir.

Q. Will you please state your conversation with Mr. Mooney and when?

Mr. Rogers: Objected to on the ground that there has no proper foundation been laid, no evidence as to the authority of Mr. Mooney, on the ground it is not binding on the defendants.

The Court: I think it appears from the prior testimony Mr. Mooney represented Warner's.

Mr. Rogers: I am reserving my objection, if the Court please.

The Court: Objection overruled. What did he say? You talked to Mr. Mooney, what did he say?

Mr. McKay: Can we have the date fixed?

The Witness: When I talked to Mr. Mooney?

Mr. Rogers: Yes.

The Witness: I can't say exactly. It was during the buying season, and I think it was some time during the middle of the summer, it may have been July or August.

By Mr. Clagett:

Q. What was said?

[fol. 1035] A. I told him I wanted to make a deal, and we sat down and worked out figures and I signed an application. It was sent to the home office.

Q. Did you ever hear anything from that application?

A. It never was returned approved.

Q. Did you ever get Warner's product for the 1935-'36 season?

A. I did not.

Q. Will you state please, whether you had any contact with a representative of the Schine Company relative to buying?

Mr. Rogers: One moment. Let us get his conversation, and no leading questions, please. I object to the question as being leading.

The Court: Will you read the question?

(Last question read.)

The Court: Buying what?

Mr. Clagett:

Q. Your theatre.

Mr. Rogers: That was my objection.

The Court: State who you had the conversation with, state the individual. Did you have a talk with somebody about buying your theatre?

The Witness: I did.

The Court: And when was that?

[fol. 1036] The Witness: Some time during the summer of 1935.

The Court: With whom?

The Witness: With Mr. Lazar, a representative of the Schine Company.

The Court: Lazar. All right.

[fol. 1037] Q. When did Mr. Lazar meet you?

A. I can't recall the exact date. He came out to the house. I know it was in the summer. I happened to be in the back yard.

Q. What was said?

A. Well, he approached me——

Mr. Rogers: One moment. I move to strike "he approached me."

The Court: That is a conclusion. Let him state what was said.

A. He asked me if I would be interested in selling the theatre to the Schine Company. He also stated that they had bought the property of the unfinished theatre and they were going to complete it and make a beautiful theatre out of it, and then he proceeded to tell me that the Schine Company was expanding very rapidly and needed manpower and he thought a man like me, with the experience I had had, would go a long ways if I would join the company, and he invited me if we made the deal to join the company.

Q. Did you make a deal with Schine?

A. Eventually, yes.

Q. And did you also accept a contract of employment for Schine?

A. I did.

Q. Did you continue to manage the State Theatre?

A. For Schines, yes, sir.

[fol. 1038] Q. When the new theatre was opened did you manage that theatre?

A. I did.

Q. What was the name of the new theatre?

A. The Bucyrus Theatre.

The Court: There were three theatres there then?

The Witness: Yes, sir.

The Court: I don't know whether you stated—perhaps you did—did you sell the State to Schine?

The Witness: I sold the State to Schine.

Mr. Rogers: He says then he took a job at the State and when they finished the Bucyrus he took the job of managing the Bucyrus.

By Mr. Clagett:

Q. What was the date of the sale of the State Theatre to Schine?

A. The Schines took over the operation on approximately the 29th of September, 1935.

The Court: You sold in September, you say?
The Witness: Yes, the deal was made in September.
The Court: 1935?
The Witness: 1935.
The Court: We will take a short recess.

(Short recess taken.)

[fol. 1039] By Mr. Clagett: We are offering a Warner contract with the Belpik Corporation, approved July 25, 1935, for the 1935-1936 season, as Plaintiff's Exhibit P-62.

(Thereupon the Warner contract with Belpik Corporation, for 1935-1936 season, referred to, was received in evidence and marked Plaintiff's Exhibit P-62.)

Mr. Clagett: And the next Government Exhibit P-63, being a letter bearing the initials of J. E. F. to J. Meyer Schine, bearing date of August 23, 1935.

(Thereupon the letter, bearing initials J. E. F., August 23, 1935, to J. Meyer Schine, referred to, was received in evidence and marked as Plaintiff's Exhibit P-63.)

Mr. Clagett: And Plaintiff's Exhibit P-64, being a letter dated August 26, 1935, from Schine Theatrical Company, signed Lynch, to J. E. Flynn, Metro-Goldwyn-Mayer.

(Thereupon the letter dated August 26, 1935, from Schine Theatrical Company to J. E. Flynn, referred to, was received in evidence and marked as Plaintiff's Exhibit P-64.)

Mr. Clagett: Mark this as Government's Exhibit for identification P-65.

[fol. 1040] (Thereupon the contract recommendation referred to was marked as Plaintiff's Exhibit P-65 for identification.)

Mr. Clagett: If your Honor please, we have marked here Plaintiff's Exhibit for identification P-65. It is a Warner contract recommendation with respect to a Schine contract for Bucyrus, dated November 29, 1935, and we should like to introduce this under the same ruling that applies to various contracts, correspondence and papers taken from the files of the major distributors, subject to any further connection that may be required.

Mr. Rogers: I object to that, your Honor, on any ground. It does not even come within the very liberal leeway your Honor has given the plaintiff in this action. This does not purport to be a communication. These are some observations that somebody in the Warner organization seems to make to himself, and there are annexed to it two sheets that are absolutely indecipherable. It is a mystery to me what this thing is all about.

The Court: Is it not sufficient for you to mark them for identification?

[fol. 1041] Mr. Clagett: This relates to the Warner contract which has been introduced in evidence and I cannot conceive of anything that is more in the ordinary course of business, a record kept in the ordinary course of business, than this.

The Court: What proof have you that it was kept in the ordinary course of business?

Mr. Rogers: There is not any. That is just my point.

The Court: Mark it for identification. It should appear where it came from.

Mr. Clagett: That is all.

Cross-examination.

By Mr. Rogers:

Q. Mr. Breyer, how long had you been operating the State Theatre in the town of Bucyrus all told up to the time you sold it?

A. I bought the theatre in June, 1934, and the deal with Schine was consummated in the last of September, 1935, a little over a year.

Q. When you first came into the town in 1934 you said there were two theatres, your theatre, the State Theatre, and the Southern Theatre that the Charnas Bros. operated; is that right?

[fol. 1042] A. Yes.

Q. Or was it just Phil Charnas?

A. It was a corporation. All I know was that Phil was the manager.

Q. What was the seating of the State Theatre?

A. 450.

Q. And what was the seating of the Southern Theatre, the Charnas house?

A. Approximately 525.

Q. About when was the State Theatre built, if you know?

A. I wouldn't know. That dates back pretty far.

Q. I mean it was a pretty old house, wasn't it?

A. Yes.

Q. Was the Southern a new house or a pretty old house too?

A. The Southern was an old house also.

Q. You say at that time when you came into the town there was a partially completed theatre. By that do you mean that it was a theatre that somebody started to build and then abandoned in the middle of building it?

A. Correct.

Q. Did you know much about the town of Bucyrus before you came in and took the State Theatre over?

A. Not too much.

Q. Had you been there on occasions?

A. Once or twice.

[fol. 1043] Q. Well, you know that a couple of syndicates tried to finish that unfinished theatre, didn't you, and they both fell down because they didn't have the financial resources?

A. My understanding on that building is that it was originally started by the Moose Lodge. I think they got as far as the foundation and the steel work and they didn't have enough money to complete it and it stood there, and then I understand that the contractor promoted some money to complete the building and he went broke on it.

Q. So that two successive groups tried to build it and both went broke and abandoned the job; is that correct?

A. Correct.

Q. So that when you came into the town Schine was not in the town, was he?

A. No, sir.

Q. Where was this uncompleted building?

A. On the same street, South Sandusky Avenue, but in the next block from our two theatres.

Q. That is sort of a main down town highway in the town, is it?

A. Yes, sir.

Q. And it was a rather unattractive looking thing with that unfinished building right in the heart of the town, [fol. 1044] wasn't it?

A. Yes, sir.

Q. After the Schines completed that building of course you had occasion to visit it and you also saw the building when you were the manager of it; is that right?

A. Yes.

Q. Will you describe generally how many seats were in that house?

A. 1097 to be exact.

Q. Was that a modern theatre?

A. Yes, sir.

Q. Air-cooled?

A. It was air-cooled but not air conditioned.

Q. I say it was air-cooled?

A. Air-cooled, yes.

Q. Upholstered seats?

A. Yes, sir.

Q. Carpeted.

A. Yes, sir.

Q. The latest improved sound equipment?

A. Yes.

Q. And it cost quite a bit of money to finish and equip that house, didn't it?

A. Yes.

Q. In your opinion, about how much?

[fol. 1045] A. To finish the building and equip it alone, I don't know the exact figures, but I would surmise——

Q. I mean from your experience as a moving picture operator?

A. Approximately $75,000.

Q. Well, comparing that theatre with your State Theatre what would the comparison be?

The Court: As to cost do you mean or appearance?

Mr. Rogers: Cost and appearance both.

A. Well, one was a big, beautiful modern theatre and the other one was an old-fashioned small theatre.

Q. Comparing the new Bucyrus Theatre with the Southern Theatre what would the comparison be?

A. We would have the same comparison there.

Q. You stated that when you attempted to buy product for that theatre for the 1934-1935 season that you made your application out and the application was sent on to New York; is that right?

Mr. Clagett: Mr. Rogers, I think the date is wrong.

Mr. Rogers: I know what I am doing. I want to get 1934-1935 first.

Mr. Clagett: That is not his testimony though. His testimony is that the application he filled out was for the 1935-1936 product.

Q. When you went to make your application to Fox for your 1934-1935 product you signed an application in [fol. 1046] Cleveland, didn't you?

A. Not for Fox. I didn't have Fox product.

Q. You didn't have Fox at that time? You had Warner at that time, didn't you, in 1934-1935?

A. Yes, sir.

Q. When you signed your application that application was sent on to New York, wasn't it?

A. That is right.

The Court: That is the year you bought the theatre?

The Witness: That is the year I bought the theatre.

Q. Was it your experience in buying product for any theatre that you operated that you would go to the branch office, make your application there, and the application would go on to the New York office?

A. Well, deals generally were started with the salesmen.

Q. They were started with the salesmen?

A. That is right.

Q. Then you would go to the branch manager; is that right?

A. If I could not get a deal satisfactorily with the salesman then I worked with the branch manager.

Q. Whether you made the application with the salesman or with the branch manager that application was shipped on to New York; is that right?

A. For approval, yes.

Q. Or disapproval?

[fol. 1047] A. That is right.

Q. And that was the invariable practice, wasn't it?

A. That was the practice at the time.

Q. After you sold your State Theatre to Schine you did get the job that was promised you and you did go to work for Schine, didn't you?

A. Yes.

Q. And when did you start working for Schine?

A. The day the deal was closed for the theater. I started immediately.

Q. You started immediately in the State Theatre?

A. In the State Theatre, yes.

Q. Then you went into the new theatre and became the manager of the new theatre?

A. Of both theatres.

Q. Both theatres?

A. That is correct.

Q. When did you cease working for Schine?

A. On April 27th, this year.

Q. And you are not working for them now?

A. I am not working for them now.

Q. And you are in no manner connected with them?

A. In no manner connected with them.

Q. You have gone in business for yourself?

A. That is right.

[fol. 1048] The Court: How large a place is Bucyrus?

The Witness: Bucyrus is a town of 10,000 population.

The Court: Did the State continue to operate after Schine took it over?

The Witness: For a period.

The Court: Then it was discontinued?

The Witness: Then it was discontinued.

The Court: When was that?

The Witness: That was some time in the following year.

The Court: That would be 1936?

The Witness: In 1936.

The Court: Has it operated since?

The Witness: No, it is out of commission entirely. It is a store room. It has been remodeled for a store room.

Mr. Rogers: That State Theatre was reconverted to commercial use, wasn't it?

The Witness: That is right.

Q. And ceased to be a theatre?

A. Yes, sir.

Q. Rebuilt for commercial use, wasn't it?

A. That is right. Remodeled.

Mr. Clagett: That is all.

Mr. Rogers: That is all.

[fol. 1049] PHILIP CHARNAS, a witness called by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Clagett:

Q. Will you please state your place of residence?

A. Toledo, Ohio.

Q. Did you start to operate theatres in Bucyrus, Ohio, about 1925?

A. Yes, sir.

Q. And you operated theatres there until about what period?

A. April, 1937, I believe it was, when I left there.

Q. Did you sell your theatre on the date mentioned to Schine?

A. Yes, sir.

Q. What theatre was that?

A. The Southern Theatre, known as the Crawford Theatre Company.

Q. Calling your attention to the 1933-1934 motion picture season, will you state——

The Court: Did you state when you sold the Schine?

The Witness: April, 1937.

Q. Will you state what the theatre situation was in Bucyrus in 1934?

A. In 1934 the town then consisted of the State and the Southern and the unfinished theatre there that had been [fol. 1050] started and the contractor quit on it.

Q. Who was operating the State Theatre in the 1934-1935 season?

A. Mr. Milt Breyer.

Q. Will you state what major product first run you used for the 1934-1935 season?

A. Fox, Paramount, United Artists and Columbia.

Q. Will you state, if you know, what major product first run was used at the State?

A. Warners, R.K.O., Metro-Goldwyn-Mayer. I believe he also run some Universal. I am not certain about that.

Q. You mentioned an uncompleted building. Was that building sold at public sale?

A. Yes, on the Court House steps.

Q. When was that?

A. I believe that was in the summer of 1935. What month I just don't recall. It might have been in June or July.

Q. Who bought the uncompleted building?

A. Schine's Enterprises.

Q. Did they start to construct a theatre or to complete the building into a theatre?

A. Very shortly after that, yes, sir.

Q. Was there any change in the ownership of the State Theatre?

A. Yes, there was.

Q. Do you know who acquired the State?

[fol. 1051] A. The Schines Theatres Enterprises.

The Court: You went all over that with Mr. Breyer.

Mr. Clagett: That is true.

Q. I believe you testified that in the 1934-1935 season you had the product of Paramount, Fox, United Artists and Columbia?

A. Yes, sir.

Q. Will you state whether you attempted to negotiate a contract for the first run of Fox product for the 1935-1936 season?

A. I did.

Q. Will you state with whom you had negotiations or conversations?

A. With Mr. Izzy Schmertz.

Q. What was his capacity with Fox?

A. Branch manager in Cleveland.

Q. Can you fix the date of your conversation with him?

A. Well, the exact date I couldn't tell you but I know it was some time in—I would say in July or probably the first part of August.

Mr. Rogers: What year?

The Witness: 1935.

Q. Will you state what was said with reference to the Fox product?

Mr. Rogers: May it please the Court, I object to that on [fol. 1052] the ground that there is no proper foundation laid, no proof of authority, of Mr. Schmertz. On the ground it is not binding on the defendants and on the ground that it relates to a purely local situation.

Mr. Clagett: Your Honor, the witness has already testified that he was operating the theatre in Bucyrus from 1925, and there is so much testimony in the record already about the capacity of these various exchange managers that I am just trying to save time.

Mr. Rogers: In order to save time I am willing to assume for the purpose of the record that Mr. Schmertz was the branch manager, but I still press my objection, your Honor, along the lines indicated.

The Court: If that is your objection, and not an objection that there is no proof that he was branch manager——

Mr. Rogers: I still press my objection as to the authority of Mr. Schmertz. I do concede for the purpose of the record that he was the branch manager at that time, that is all.

The Court: You concede he was branch manager?

Mr. Rogers: Yes, but I press my objection.

[fol. 1053] The Court: Objection overruled.

Q. Will you state your conversation with Mr. Schmertz in July or August, 1935?

A. I went in to buy the product for 1935 and 1936, which was after the purchase of the unfinished building in Bucyrus by the Schine Enterprises. I was unable to obtain——

Mr. Rogers: One moment.

The Court: That is your conclusion.

The Witness: Not my conclusion. I am getting to the point of buying my film.

The Court: Just state what was said.

The Witness: What Mr. Schmertz said?

The Court: Yes, what talk you had with him.

A. Mr. Schmertz told me that he was very sorry that he couldn't sell me the product.

Mr. Rogers: May it please the Court, I am a bit confused here. This witness, I understood, was testifying to a conversation he had with Mr. Schmertz in July or August. Then he said he had this talk after the New Bucyrus Theatre was finished.

The Witness: No, I beg your pardon. I didn't say after it was finished. I said after it was bought.

The Court: He said he could not sell. All right.

[fol. 1054] By Mr. Clagett:

Q. Did you get any Fox first run product for the 1935-1936 season?

A. No, I didn't.

Q. Will you state whether you attempted to negotiate a Paramount contract first run for the 1935-1936 season?

A. Either the same day or the day after I had been to the Fox Film Company.

Q. Who did you meet at Paramount, please?

A. Mr. Hemmline.

Q. He was the branch manager?

A. No, he was the office manager.

Q. Is the branch manager and the office manager the same?

A. No, the branch manager is the manager of the Exchange for the territory. The office manager is his assistant.

Q. You had bought film from Mr. Hemmline?

A. On many occasions previous to that.

Q. What was your conversation with Mr. Hemmline?

Mr. Rogers: I object to that on the ground that there has been no evidence sufficient to establish the authority of Mr. Hemmline, on the ground that it is immaterial and not binding on the defendants, and relates to a purely local transaction.

The Court: Overruled.

[fol. 1055] Q. State the conversation.

A. When trying to make the contract for the 1935——

Mr. Rogers: One moment. I move to strike as not responsive.

The Court: Just give the talk on the subject.

A. I wanted to make a deal for the product for 1935 and 1936.

Mr. Rogers: I move to strike it.

The Court: Yes. What did he say and what did you say? You told him you wanted to make a deal? Did you tell him that?

The Witness: Yes, I was ready to buy.

The Court: What did he say?

The Witness: He stated that he had had instructions that the product was not available for Bucyrus at that time.

By Mr. Clagett:

Q. Did you ever succeed in getting any Paramount product first run for the 1935-1936 season?

A. No, sir.

Q. Did you attempt to negotiate a United Artists contract first run for the 1935-1936 season?

A. I did.

Q. With whom did you have any conversation or negotiation?

A. The branch manager, Mr. Goodman.

Q. You had formerly dealt with Mr. Goodman as branch manager?

[fol. 1056] A. Yes, sir.

Q. Can you fix the date of this conversation?

A. It was also in the same week or at the same time, within one day or another. It was either that day or the day following. I wouldn't be certain.

Q. Of your conversations with Mr. Schmertz and Mr. Hemmline?

A. That is right.

Q. Will you please state the conversation you had with Mr. Goodman?

A. I wanted to make a deal for the product.

Mr. Rogers: I move to strike.

The Court: That is what you told him?

The Witness: Yes.

The Court: All right.

A. He stated at the time that there was a deal pending with Schine and until he heard from it he wouldn't know what he was able to do for Bucyrus.

Q. Did you ever succeed in licensing any United Artists first product in the 1935-1936 season?

A. No, sir.

Q. Did you attempt to negotiate a contract with Columbia for first run product for the 1935-1936 season?

Mr. Rogers: One moment. I object to that as calling for a conclusion and not the best evidence.

The Court: The conversation will disclose what the effect [fol. 1057] of it was. Did you have a conversation with someone connected with the Columbia Company?

The Witness: Yes, sir.

The Court: With reference to securing pictures?

The Witness: Yes, sir.

By Mr. Clagett:

Q. Who did you have this conversation with?

A. Mr. Bissell.

Q. What was his position?

A. Branch manager.

Q. And you had formerly dealt with Mr. Bissell, as branch manager, on the purchase of film?

A. Yes.

Q. Will you state what was said in that conversation?

Mr. Rogers: One moment. Objected to on the same grounds as previously stated with reference to Mr. Goodman.

The Court: Overruled.

A. Mr. Bissell informed me that there was a deal pending also with Schine, that he was unable to let me know at that time what he could do for Bucyrus.

Q. Did you subsequently get a deal of any kind for any first run pictures with Columbia for the 1935-1936 season?

A. I did.

Q. What was the nature of the deal?

[fol. 1058] A. The deal with Columbia was—

Mr. Rogers: One moment. The contract is the best evidence.

The Court: I presume that is true. Do you have the contract?

Mr. Clagett: No, sir, I don't think the contract would disclose it.

Mr. Rogers: Mr. Clagett should not characterize what a paper not in evidence will or will not disclose. Let us have the paper and we will see what it discloses.

The Court: Was the contract in writing?

The Witness: The contract that was made on the pictures, your Honor, was in writing.

By Mr. Clagett:

Q. What kind of Columbia pictures did you exhibit or play at the Southern Theatre in the 1935-1936 season?

A. What you would call Class B pictures.

Q. Other than what you call Class B pictures of Columbia did you have any first run major product for the Southern Theatre in the 1935-1936 season?

A. No, sir.

Q. Did you have any independent product?

A. Yes, sir.

Q. Did you subsequently negotiate second run deals with any of the major companies?

A. I did.

[fol. 1059] Q. What companies did you have second run deals with?

A. The United Artists, Metro, Fox.

Q. Second run?

A. Second runs.

Q. I believe you testified that you sold the Southern Theatre to Schine in April, 1937?

A. That is right.

Q. Would you state the first time you had any contact with a Schine representative concerning the sale of your theatre?

A. I believe it was probably about three months after they acquired the unfinished building.

Q. And who was that conversation with?

A. Mr. Lazar.

Q. What did he say on that occasion?

A. He wanted to know if there couldn't be a deal worked out whereby he could take over the Southern Theatre for the Schine people.

Q. And subsequently, in 1937, a deal was arranged?

A. That is right.

Mr. Clagett: Your Honor, I have a few contracts to offer.

Mr. Rogers: You had better mark them for identification.

Mr. Clagett: The next Government's exhibit for identification is P-66, a film contract with Fox.

[fol. 1060] (Thereupon the Fox film contract referred to was marked as Plaintiff's Exhibit P-66 for identification.)

Mr. Rogers: With reference to Plaintiff's Exhibit P-66 for identification, I object to this on the ground that it is not binding on the defendants, that it relates to a purely local transaction and that no proper foundation has been laid for its admission or proof of its authenticity.

The Court: No foundation has yet been laid. I do not know what it is.

Mr. Rogers: That is why I am objecting to it. There is no foundation laid for it at all.

Mr. Clagett: Your Honor, this contract with these several others——

The Court: Can he identify it?
Mr. Clagett: He can identify this one.
The Court: All right.

By Mr. Clagett:

Q. Mr. Charnas, I show you Plaintiff's Exhibit 66 for identification, being a film contract with Fox, dated August 20, 1934, and ask you if that is your signature?
A. Yes, it is.

Mr. Rogers: I press the same objection. There is no [fol. 1061] authenticity with reference to Fox film on this at all.
The Court: Where did you receive this, Mr. Charnas? Where did you get this paper?
The Witness: This is the return copy of an approved contract from the Fox Film Company,
The Court: Where did you receive it?
The Witness: I received it at Bucyrus. After your application is made and the approved copy comes back to you they always mail it back to you from the Exchange. That is the only way an exhibitor can get a copy of it.
The Court: I will receive it.
Mr. Rogers: I will press my objection.
The Court: I will receive it.
Mr. Clagett: We offer Plaintiff's Exhibit 66 for identification in evidence
Mr. Rogers: I have made my objection and your Honor has ruled.
The Court: Received.

(Thereupon the Fox film contract previously marked as Plaintiff's Exhibit P-66 for identification was received in evidence.)

Mr. Clagett: Mark this contract for identification.

[fol. 1062] (Thereupon the film contract with Fox referred to was marked as Plaintiff's Exhibit P-67 for identification.)

Mr. Clagett: And mark this for identification.

(Thereupon the film contract with Fox referred to was marked as Plaintiff's Exhibit P-68 for identification.)

Mr. Rogers: These that are marked P-67 for identification, P-68 for identification, you are not offering in evidence; is that right?

Mr. Wright: We presumed you were going to say they were not authentic.

Mr. Rogers: With reference to those two I told Mr. Clagett there was no objection to them.

The Court: Received.

Mr. Clagett: I think the record should show that Government's Exhibit 67 is a Fox contract with Schine, dated August 5, 1935, and Plaintiff's Exhibit 68 is a Fox contract with Schine dated August 5, 1935.

(Thereupon the Fox film contract, dated August 5, 1935, previously marked as Plaintiff's Exhibit P-67 was received in evidence.)

(Thereupon the Fox film contract, dated August 5, 1935, previously marked as Plaintiff's Exhibit P-68 was received in evidence.)

[fol. 1063] Q. Mr. Charnas, I show you what purports to be a contract between yourself and Paramount for pictures for the 1934-'35 season, dated September 11, 1934, and ask you if that is your signature?

A. Yes, that is my signature.

Mr. Clagett: I will offer this.

Mr. Rogers: You are offering that in evidence?

Mr. Clagett: Yes.

Mr. Rogers: I certainly object to that on the ground that this piece of paper, whatever it may be, does not even bear signature of anybody from the Paramount Company. There is no approval stamped on it. It bears no signature of the Paramount Company, and I certainly object to that. It must first be authenticated as a contract between the parties to be binding on anybody.

Mr. Clagett:

Q. Is this the contract that you received from the Paramount Exchange?

Mr. Rogers: One moment, now. I object to the form of the question as leading.

The Court: The objection is it is not admissible as binding against the company because it must be signed.

[fol. 1064] Mr. Clagett: I want to know if this is the contract that they did produce.

The Court: It is not signed, as far as I understand it now. It has no binding force.

Mr. Clagett: We will have this marked for identification.

(Thereupon the paper referred to was marked as Plaintiff's Exhibit P-69 for identification.)

Mr. Wright: That is apparently a distributor's copy. I think it is produced by Paramount. The distributor has a signed copy, and he approves one and sends that back to the distributor. They are identical.

Mr. Clagett: Mark this for identification.

(Thereupon the paper referred to was marked as Plaintiff's Exhibit P-70 for identification.)

Mr. Clagett: I would like to offer this in evidence (referring to a photostat not yet marked).

Mr. Rogers: I shall certainly object to it on the ground it is not binding on us in any manner.

Mr. Clagett: Mark this for identification.

Mr. Rogers: It has no relevancy whatever to any of the issues raised on this situation.

[fol. 1065] (Thereupon, photostat of a communication dated December 16, 1936, referred to, was marked as Plaintiff's Exhibit P-71 for identification.)

Mr. Clagett: I would like to offer the Plaintiff's Exhibit P-71 for identification.

Mr. Rogers: I have already made my objection, may it please the Court, and I am quite sure if your Honor reads that, your Honor will agree to the objection.

Mr. Clagett: It is a communication.

Mr. Rogers: Let his Honor see it.

(Mr. Clagett hands Plaintiff's Exhibit P-71 for identification to the Court.)

Mr. Rogers: There is no objection to these two, except that the two men signing are local managers.

Mr. McKay: No, they were bookers. It is written on manager's stationery, but they were bookers.

The Court: They are received without objection.

Mr. McKay: Except with that qualification as stated.

(Thereupon photostat of letter dated April 14, 1937, referred to, was received in evidence and marked as Plaintiff's Exhibit P-72.)

(Thereupon photostat of letter dated June 3rd, 1937, referred to, was received in evidence and marked as Plaintiff's Exhibit P-73.)

[fols. 1066-1068] Mr. Clagett: Plaintiff's Exhibit P-72, your Honor, is a letter on the stationery of the Belpik Theatre Corporation, signed by Ray G. Frisz, dated April 14th, 1937, to United Artists Corporation.

Plaintiff's Exhibit P-73 is a letter dated June 3rd, 1937, on Belpik Theatre Corporation stationery, signed by Joel Golden, addressed to Paramount Pictures Corporation.

The Court: We will recess until tomorrow morning at 10 o'clock.

(Whereupon, at 5:05 o'clock p. m., a recess was taken until Thursday, June 8th, 1944, at 10 o'clock a. m.)

[fol. 1069] UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF NEW YORK

Civil Action No. 223

UNITED STATES OF AMERICA,

vs.

SCHINE CHAIN THEATRES, INC., et al.

Trial continued before the Honorable John Knight, United States District Judge, without a Jury, United States Court House, Buffalo, New York, Thursday, June 8, 1944, at 10 o'clock A. M.

APPEARANCES:

Robert L. Wright, Esq., John F. Clagett, Esq., Harold L. Schilz, Esq., Albert Boggess, Esq., Philip Marcus, Esq., Milton Kallis, Esq., Special Assistants to the Attorney General, in behalf of the United States of America.

Edmund McCarthy, Esq., Attorney of Record; Willard S. McKay, Esq., Saul E. Rogers, Esq., Arthur J. Homans, Esq., Howard M. Antevil, Esq., and Seth Richardson, Esq., of Counsel for Defendants.

[fol. 1070] **Proceedings**

Philip Charnas resumed the stand in behalf of the Plaintiff, having been previously sworn, was examined and testified further as follows:

Cross-examination.

By Mr. Rogers:

Q. With reference to the 1935-1936 product of Fox first run, I understand you to have testified that you went to the Fox office, branch office, in July or August, 1935, and spoke with Mr. Schmertz there, the branch manager, about getting the product for 1935-1936 first run; is that right?

A. Yes, sir.

Q. Was that the first talk you had with Mr. Schmertz about 1935-1936 product for that year?

A. Yes, sir.

Q. Had you spoken with Mr. Schmertz after that date about 1935-1936 product?

A. Not the first run.

Q. That is definite, is it?

A. Yes, sir.

Q. That is the only talk you had with him?

A. Yes, sir.

Q. Do you recall about that time in July or August, 1935, [fol. 1071] Mr. Schmertz coming to Bucyrus to call on you to discuss 1935-1936 product with you?

A. No, sir.

Q. You mean you never discussed it with him in Bucyrus?

A. Not to my recollection I don't. I don't recall that he ever came to Bucyrus to discuss product with me.

Q. You have no recollection on that subject?

A. No, sir, I have not.

Q. How many times did you discuss 1935-1936 product with Fox salesmen in Bucyrus?

A. I would say I probably discussed it with the salesmen two or three different times.

Q. Can you give us approximately the dates when you discussed it with them?

A. It would probably be just prior to that. It could possibly be that it might be as early as June.

Q. You mean it might be as early as June, 1935,—

A. That is right—with the salesmen.

Q. That you were discussing getting 1935-1936 first run of Fox?

A. That is right.

[fol. 1072] Q. Do you recall in the summer and early fall of 1935 Mr. Schmertz and Mr. Litchter,—by the way Mr. Lichter was a salesman who spoke with you about that product, wasn't he?

A. That is right.

Q. Do you remember them speaking with you repeatedly about trying to make a deal with you to take first-run product for 1935-'36?

A. Not Mr. Schmartz and Mr. Lichter together.

Q. Severally. Did either one of them at any time tell you that they were willing to give you the 1935-'36 product first-run during the summer or early fall of 1935?

A. I don't recall of Mr. Schmertz ever coming to Bucyrus.

Q. Answer my question.

A. That is what you are asking me.,

Q. No, I asked you if you remember.

A. Of them coming to Bucyrus?

Q. Whether it was Bucyrus or whether the talk that took place in the Cleveland office. Don't you remember Mr. Schmertz offering the 1935-'36 first-run to you?

A. At about what time?

Q. June, July, August or September, 1935, before the product was sold to Schine?

A. No, sir.

Q. You say it was never offered to you?

[fol. 1073] A. It was offered to me in the beginning of the season.

Q. Who offered the product to you in the beginning of the season?

A. Mr. Lichter, the salesman.

Q. And that is first-run product, is that right?

A. That is right.

Q. And about when was that?

A. Well, generally they offered it to you about the time——

Q. No, when was it offered to you?

A. That is what I am trying to get to.

Q. Tell us when it was.

A. You know when they start selling products for the season.

Q. Yes.

A. The salesmen will make their rounds of the territory.

Q. And he came in and offered it to you?

A. That is right.

Q. First run for 1935-'36?

A. That is right.

Q. That was before it was ever sold to Schine?

A. That is right.

Q. Do you remember later Mr. Schmertz speaking with you?

A. No, I don't.

Q. One moment now, and he also offer*ing* you the product for 1936-'36 first-run?

A. No, I don't. I don't recall that.

[fol. 1074] Q. Do you mean you don't recall it, or he did not talk to you?

A. I don't recall of Mr. Schmertz offering me or trying to make a deal with me for the product of 1936-36.

Q. Would you say he didn't talk to you and did not offer you the product?

A. I wouldn't state that, not being certain.

Q. Do you remember when this product was offered to you for 1936-'36 that you stated that unless you could get that product for less than you paid for the 1934-'35, you would not buy it?

A. I don't believe I made that assertion.

Q. You said nothing of the kind?

A. I might have stated I wanted to make a deal for the product but not at advance in prices over '35.

Q. Didn't you say unless you could get the product for 1935-'36 at a price less than you got the 1934-'35, you wouldn't buy it?

A. I wouldn't say as a whole I said that.

Q. As a whole?

A. As a whole.

Q. Did you partly say it?

A. Might have been some discussion on part of the product at a lesser price.

Q. Who discussed that at a lesser price? Did you?

[fol. 1075] A. Mr. Lichter ~~and I~~.

Q. Who talked of the lesser price?

A. I did.

Q. In other words, you suggested you wanted to get the 1935-'36 for a lesser price than you had the 1934-'35?

A. Not for all, the whole.

Q. Not the whole?

A. On part of the products.

Q. Mr. Charnas, I show you this letter and I ask you is that your signature? (A pause) Is that your signature?

A. Yes, sir.

Q. You remember writing that letter, don't you?

A. After reading it I do, yes.

Q. I show you this carbon copy. Do you remember receiving this letter in answer to that letter I just showed you? (A pause). You remember receiving that letter?

A. Yes, I do.

Mr. Clagett: Mr. Rogers, can I have the dates of those letters?

Mr. Rogers: In just a moment I am going to offer them as an exhibit, and I will be glad to show them to you.

Q. In answer to that letter do you also remember receiving this letter?

[fol. 1076] A. Yes, sir.

Mr. Rogers: I would like to offer these three letters, one being a letter on the stationery of Bucyrus Theatre Company, signed Bucyrus Theatre Company by Phil Charnas, Manager, bearing date September 21, 1935, addressed to Mr. I. J. Schmertz, Branch Manager, Fox Film Corporation, 2219 Payne Avenue, Cleveland, Ohio. Then letter bearing date September 25, 1935, signed 20th Century-Fox Film Corporation, signed I. J. Schmertz, Branch Manager, addressed to Mr. Phil Charnas, Southern Theatre, Bucyrus, Ohio, and the third is letter bearing date September 30, 1935, signed John D. Clark and addressed to Mr. Phil Charnas, the Bucyrus Theatre Company, Bucyrus, Ohio.

I offer all three as one exhibit.

Mr. Wright: Is the purpose of the offer to prove any of the statements made in the letter by Mr. Clark and Mr. Schmertz, or is it just to show that Mr. Charnas received the letters?

Mr. Rogers: I expect by cross-examination to endeavor to reveal the situation here.

The Court: If it is for the purpose of contradiction [fol. 1077] it is competent: Is that the purpose?

Mr. Rogers: Yes, sir, flatly contradicts.

Mr. Wright: It can't contradict the statements that are made by these other gentlemen, in letters. I suppose if they want to contradict conversations, Clark and Schmertz would be called as witnesses to do it. I am talking about the letters written by Clark and Schmertz.

Mr. Rogers: In response to the letter—I will hand it up.

The Court: It would be competent as it relates to the same matter.

Mr. Rogers: It relates to the same matter, flatly contradicts the testimony. (Handing the three letters, referred to, to the Court.)

The Court: You don't claim that this letter contradicts it? This letter?

Mr. Rogers: No, sir, but the others.

Mr. Wright: That is the letter that Mr. Charnas wrote.

The Court: I don't think these two letters are competent. The first one is written by him. The others are part of your affirmative case.

Mr. Rogers: He admits receiving those two letters.

The Court: Yes, I know.

[fol. 1078] Mr. Rogers: And I intend to interrogate him about those two letters from Mr. Schmertz and Mr. Clark.

The Court: Of course, the letters from the two representatives of the Company, unless there is an answer to it, it is not binding at all.

Mr. Rogers: May it please the Court, these two letters are in answer to Charnas' letter.

The Court: They are.

Mr. Rogers: Yes, sir.

The Court: I will not receive them at this time. He has answered those letters and they answered him.

Mr. Rogers: Exactly, sir.

The Court: The two are excluded. The first is received.

Mr. Rogers: I will not offer the first unless the other two are received. I would like these letters——.

The Court: Marked separately?

Mr. Rogers: I will have them marked separately now for identification.

(Thereupon the letter dated September 21st, 1935, referred to was marked as Defendants' Exhibit D-32 for identification.)

(Thereupon the letter dated September 30th, 1935, referred to, was marked as Defendants' Exhibit D-33 for identification.)

[fol. 1079] (Thereupon the letter dated September 25th, 1935, referred to, was marked as Defendants' Exhibit D-34 for identification.)

[fol. 1080] Q. I believe you testified that when you had your talk about Fox product for 1935-1936 and you spoke to Mr. Schmertz you said, "I have been a good customer and I am entitled to get this product"; isn't that right?

A. I believe so.

Q. As a matter of fact, at the time you spoke about this 1935-1936 product—which was when? When do you claim that was?

A. I would say, to be emphatic about it, it would be the summer of 1935.

Q. By the summer what do you mean, July, August, September?

A. Along in there. After all, to come down to a specified date, I don't know.

Q. July, August or September?

A. That is right.

Q. Could it have been as late as September?

A. It could be.

Q. Could it have been as late as the latter part of September of 1935?

A. I wouldn't know. I couldn't recall at this time.

Q. Could it have been as late as the middle of September?

A. It might be.

Q. As a matter of fact, in the middle of September in 1935 weren't you actually delinquent in the payment of your bills for product to Fox?

[fol. 1081] A. Not that I recall.

Q. Do you remember playing a picture called "Curly Top" in the month of September, Shirley Temple?

A. That is right.

Q. And do you recall playing "Curly Top" from September 8th to September 11th, first run?

A. I believe so.

Q. Do you remember whether you played that picture on a flat rental or whether it was a percentage?

A. A percentage.

Q. Do you remember that in the month of September, after you played that picture, you hadn't paid your film rental on that picture?

A. What do you mean by "film rental"—the proportion of the percentage or the film rental?

Q. That is all film rental, isn't it?

A. Percentage of what they earn and film rental is flat.

Q. Isn't the percentage what you pay for your film rental?

A. If the film is rented, yes.

Q. Isn't that right?

A. Yes.

Q. Isn't it a fact that you had not paid for the film rental on that Shirley Temple picture, "Curley Top", by the middle of September?

A. It might have been. I wouldn't recall at this time.

1 [fol. 1082] Q. Isn't it true that you hadn't paid for it by the end of September, 1935?

A. I wouldn't be certain of that. It is possible.

Q. Isn't it possible you hadn't paid for it by the end of December, 1935?

A. I wouldn't say. I don't recall.

Q. What is your best recollection?

A. I wouldn't have any recollection on that at this time.

Q. Do you remember that as late as January, 1936, you still hadn't paid for it?

A. I don't remember that.

Q. In playing your percentage pictures you were supposed to pay for your percentage when you get finished playing the picture, aren't you?

A. I believe that is what I always did. The record will show it.

Q. Did you do it on that Shirley Temple picture?

A. There may have been some reason for holding it up.

Q. No. Did you?

A. I don't know. I am only giving you a statement that there may have been a reason for holding up the payments. I am not going to commit myself on something I don't recall right off.

Q. I want to show you this and ask you if you recall having received that letter from Mr. Schmertz? Do you [fol. 1083] remember receiving that letter (handing to witness)?

A. I believe so.

Mr. Rogers: I offer it in evidence.

Mr. Clagett: Your Honor, we object to this as not being material in any way. It does not have any bearing upon the probity of this witness, these little details of some financial transactions or dispute.

Mr. Wright: For what purpose is it offered, Mr. Rogers?

Mr. Rogers: The witness testified he was a good customer. A good customer does not fail to pay his obligations.

Mr. Wright: That letter does not prove that he failed to pay any obligations.

Mr. Rogers: The witness out of his own mouth testified he played it in September and was supposed to pay it immediately, and here is a letter as late as January that he had not paid it at that time.

Mr. Wright: He has also testified there was a good reason for holding up the payment.

Mr. Rogers: Let us first get the fact that he didn't pay.

Mr. Wright: Ask him about whether he didn't pay. This letter does not prove it.

Mr. Rogers: I am going to prove a sequence. This is one [fol. 1084] of a steps in a sequence.

The Court: Objection sustained.

Mr. Rogers: Mark that for identification, please.

(Thereupon the letter of January 20, 1935, referred to, was marked as Defendants' Exhibit D-35 for identification.)

The Court: I will let you ask him whether he was delinquent. Of course a delinquency in January for a particular picture produced subsequent to the time that Schine took the contract would not be of any materiality anyway. If there was a financial delinquency prior to that time——

Mr. Rogers: This is what it is. The picture was played in September. The picture was actually played in September of 1935.

The Court: This does not refer to that picture anyway, does it?

Mr. Rogers: It does, sir. And he didn't pay it until January.

The Court: It says nothing about the picture.

Mr. Rogers: I particularly asked him did he play this picture, "Curly Top", a Shirley Temple picture.

The Court: Is that mentioned in the letter, "Curly Top"?

Mr. Rogers: I asked him and he said he did.

The Court: I understand that, but this letter does not [fol. 1085] refer to that picture at all.

Mr. Rogers: If your Honor will just give me an opportunity—I said that is one step. Now I want to give him the next step.

Mr. Clagett: In that connection I would like to call attention to the fact that the Fox-Schine contract is signed and approved the 5th of August, 1935.

Mr. Rogers: This witness testified he was talking about that product as late as the middle and the end of September, 1935.

Mr. Clagett: He might not have known about this contract.

By Mr. Rogers:

Q. Now, with reference to this Defendants' Exhibit 35 for identification, did you ever send an answer to that?

A. I don't recall at this time.

Q. I show you this letter, bearing date January 22, 1936, addressed to you, and ask you do you recall receiving that letter (handing to witness)?

A. I may have received it. I don't just recall right now.

Q. You may have received it?

A. Yes, sir.

Mr. Rogers: I wish to have this marked for identification. This is a letter bearing date January 26, 1936, ad- [fol. 1086] dressed to Mr. Phil Charnas, Southern Theatre, Bucyrus, Ohio.

(Thereupon the letter of January 26, 1936, referred to, was marked as Defendants' Exhibit No. D-36 for identification.)

Q. Now I ask you whether Defendants' Exhibit 35 for identification and Defendants' Exhibit 36 for identification both relate to the same subject matter?

A. That I wouldn't know or recall right now. It possibly would because I don't recall of ever owing them any other moneys.

Q. You know at that time when both of those letters were received you were delinquent on the picture "Curley Top", don't you?

A. I don't say it would be "Curly Top". It was probably on a percentage picture.

Q. I ask you to look at the statement attached to Defendants' Exhibit 36. That statement was attached to the letter when you received it, wasn't it?

A. I wouldn't recall right now whether it was or whether it was not. It may have been.

Q. It may have been?

A. That is right.

Q. The balance on that statement is how much?

A. The balance on this here is $51.01.

Q. Wouldn't that indicate to you that the letter of Mr. [fol. 1087] Schmertz to you of January 20, 1936, Exhibit D-35, and Heiliger's letter of January 22, 1936, both relate to the same delinquency?

A. Possibly.

Q. Now I show you letter bearing date January 25, 1936, on the heading of Bucyrus Theatres Company, signed "Southern Theatres, by Phil Charnas, Manager", addressed to 20th Century-Fox Film Corporation, Cleveland, Ohio. Is that signature on there in your handwriting?

A. That is right.

Q. Does that letter refresh your recollection as to whether or not that was the first time you paid that bill?

A. It probably was.

Q. Doesn't the amount set forth in that exactly tally with the $51.01?

A. It does, yes.

Q. Does it also refresh your recollection that you made that payment by sending two checks in post-dated?

A. That is right.

Q. That is right, isn't it?

A. That is right.

Q. In other words, you sent one check in that letter bearing date January 25, 1936, and one dated January 30th?

Mr. Wright: If the Court please, we will concede after Schine took his product away he had a hard time meeting [fol. 1088] his obligations.

Mr. Rogers: I don't want you to concede anything.

The Court: It does not appear what this delinquency was for, what particular picture. If it was subsequent to the time that Schine made the contract I do not see that it has any bearing. Delinquency before might be urged as a reason why they would not contract with him.

Mr. Rogers: I am going to carry him back, may it please the Court. I am going to establish it from the first.

The Court: Does it appear that this picture, out of which you claim this delinquency arose, was shown?

Mr. Rogers: According to the statement which he says he presumes was attached to the letter when he received it it shows the picture was played from September 8 to September 11, 1935.

Mr. Clagett: I again point out that that was after the contract was entered into.

The Court: The contract with Schine was made prior to that date. I do not see what bearing a default subsequent to the Schine contract has here. If you can point it out I would like to hear it.

Mr. Rogers: I am going to carry this witness back to a [fol. 1089] prior date.

The Court: It is not material if the delinquency occurred subsequent to the Schine contract.

Mr. Rogers: I ask to have this marked for identification, a letter of January 25, 1936, of Southern Theatre.

(Thereupon the letter of January 25, 1936, referred to, was marked as Defendants' Exhibit D-37 for identification.)

Mr. Rogers: I now offer D-35, D-36 and D-37 in evidence.

Mr. Clagett: We object to all of these documents on the ground that, as your Honor has already indicated, they bear upon a financial transaction that occurred after the Schine-Fox contract was entered into.

The Court: Let me see Exhibit 37. I did not see that.

(Letter handed to the Court.)

The Court: If it appeared that it is for pictures shown by this witness subsequent to the Schine contract it will be excluded.

Mr. Wright: He has already testified that picture was played in September, as I recall, the Shirley Temple picture they are talking about.

Q. Is it your testimony——

[fol. 1090] Mr. Clagett: May we have a ruling?

The Court: Excluded. It has been marked for identification.

Mr. Rogers: It has been marked for identification, but excluded from evidence by your Honor. That is my understanding.

The Court: Yes. Not received at this time. It is marked for identification.

By Mr. Rogers:

Q. I understood you to say a few moments ago that with reference to the picture I just spoke to you about involving a delinquency of $51.01, that that is the only time that you were ever delinquent in payments to 20th Century-Fox film or Fox Film Corporation, prior to August of 1935; is that right?

A. No, sir.

Q. You mean that is not so?

A. No, sir.

Q. You mean you were delinquent?

A. Right.

Q. On a number of occasions?

A. That is right—during the depression.

Q. I say, you were delinquent——

A. During the depression.

Q. Which years were those?

A. That was back in 1930 and 1931.

[fol. 1091] Q. You mean from 1931?

A. After the Market crash, yes, I was delinquent with probably a number of concerns I was doing business with at that time.

Q. I am asking you did that hold good only up to the year 1931?

A. No, I wouldn't say that.

Q. You mean you were delinquent after the year 1931 too, weren't you?

A. That is right.

Q. With Fox film?

A. And with the other concerns.

Q. And with all the other firms you dealt with?

A. Yes.

Q. On frequent occasions?

A. Yes. And I don't believe I was alone in that condition either.

Mr. Rogers: I move to strike.

The Court: Yes. Just answer his questions.

Q. I show you a letter on the letter-head of the Bucyrus Theatres Company, signed "Southern Theatres, by Phil Charnas, Manager", addressed to Paramount Pictures Distributing Corporation, 1735 East 21st Street, Cleveland, Ohio, dated August 24, 1935, and I ask you is that your signature (handing letter to witness)?

[fol. 1092] A. That is right.

Mr. Rogers: I offer it in evidence.

The Court: Was Mr. Goodman the agent of Paramount?

The Witness: The United Artists.

The Court: Who was the agent of Paramount?

The Witness: Hemmline.

Mr. Rogers: It is not agent. It is branch manager.

[fol. 1093] Mr. Rogers: There is no objection to this, is there, Mr. Clagett?

Mr. Clagett: Yes, there is objection to this. Here is another letter where Mr. Charnas seems to be delinquent in a matter of $53.50. There is no showing at all that the refusal of Paramount to deal with Mr. Charnas for the 1935-36 season had anything whatsoever to do with this transaction.

Mr. Rogers: One step at a time. Mr. Charnas is here at the present time and we won't have him here in the future.

The Court: Received.

(Thereupon the letter dated August 24, 1935, was received in evidence and marked as Defendants' Exhibit D-38.)

The Court: Is there anything to show when the contract was signed?

Mr. Rogers: Yes, after that. This letter is dated August 24, 1935, and the contract was not made until September 18th, 1935.

Mr. Wright: We are opening up quite a field if we are going into situations where there were disputes; Schine [fol. 1094] was involved in some cases in altercations with distributors.

Mr. Rogers: Mr. Wright, now, never mind.

Mr. Wright: Will you please not interrupt? If the trial is going to be a question on the issue of who was involved in the most altercations with distributors, these complainants or Schine, that is another issue. It certainly is not one made by the pleadings. We can meet them on that issue, but it seems to me that gets pretty far afield from the issues we are trying.

Mr. Rogers: The distributors always has customer choice and it is laying a foundation for that as well as testing the credibility of this witness; both.

Mr. Wright: The distributor is always engaged in various transactions with his customers, both Schine and the independents. There are a constant series of disputes arising on contracts and film rental. That is one of the incidents of the business. If it is regarded as material how many times a complaining witness had such a dispute, then I suppose we would have to go in on the defense as to the question of the number of times Schine had such disputes [fol. 1095] and the trial of that issue would not contribute to the issues raised by the lawsuit.

Mr. Rogers: I beg your pardon, Mr. Wright. You know that that is not good law. The distributors have the right of customer choice, if that right is exercised in good faith, and if we can show that these people who did not get paid were not good customers, customers whose records were bad and I am showing this out of the mouth of this witness, the question of customer choice certainly comes into the case.

Mr. Wright: But if the distributor says: "We won't sell you because of such and such a delinquency," but he is not offering to show that at all. All he is offering to show is there were delinquencies.

Mr. Rogers: That takes into consideration the credit standing of the two people.

The Court: If it is claimed they refused to do business with the witness here, what the status of the delinquent is, why, I think if that is supported by something in the correspondence, ordinarily——

[fol. 1096] Mr. Rogers: This is testimony right out of the witness' own mouth.

The Court: The exhibit does not refer to it at all.

Mr. Rogers: Yes, sir.

The Court: The one that you marked?

Mr. Rogers: I am referring to this one, may it please the Court.

Mr. Wright: The witness testified that Paramount simply refused to deal with them, nothing said about delinquencies. The only thing that was said was they were dealing with Schine. If he wants to show Paramount refused to deal with him because he was a bad account with them than it is relevant, but certainly he does not show that by merely showing these disputes.

Mr. Rogers: One moment. I showed it by this witness testifying he was repeatedly delinquent with all of these distributors.

The Court: He said in 1931 or a certain period of time?

Mr. Rogers: No, even beyond that.

The Court: These companies refused to deal with him right along?

Mr. Rogers: Your Honor may discover as we go along here there was very little choice here, and if you will let me [fol. 1097] alone, as they endeavor to prove their conspiracy step by step, I have to prove my defense step by step.

The Court: Mark it for identification.

Mr. Rogers: The last one was received in evidence. I understand. That was the one where the delinquency occurred before, and your Honor received it in evidence.

By Mr. Rogers:

Q. Do you remember in your talk for the 1935-36 product with Mr. Schmertz of Fox Film Corporation, you said to him that if they didn't make a deal with you, the other theatre in the town wouldn't purchase the product and they would have to stay out of the town?

A. No, sir.

Q. Let me ask you this: Didn't you tell Mr. Schmertz that he couldn't sell the Fox product to anybody but you at the Southern Theatre in that town?

A. I don't believe I ever said anything of the kind.

Q. Didn't you have a working arrangement at that time with the State Theatre—the competitive theatre—that you divide the product of major companies between you, that whatever the State Theatre was allocated between the two of you, they wouldn't bid against you and whatever was allocated to you the State wouldn't bid against. Is that [fol. 1098] so?

A. Can I answer that in my own way?

Q. No.

A. You can crucify me here by "Yes" or "No".

Mr. Wright: Just a minute. There is an objection to the question. What possible bearing has such an agreement on what Schine did, assuming it was made or not?

Mr. Rogers: It has the bearing—Mr. Wright always forgets his pleadings, unfortunately, it bears on the issue he has raised in his complaint, and which he has raised in his bill of particulars, that there were eight separate conspiracies between these distributors and the exhibitors to restrain trade. If these two distributors in the town divide product between them and decide they would not compete, in other words, if Mr. Charnas got Fox, State would not bid for the product, and if State got United Artists, Charnas would not bid for United Artists. Instead of the distributors being the awful conspirators, these very people were the conspirators, and didn't permit an open market, didn't permit open bids, didn't allow open competition.

[fol. 1099] Mr. Wright: If he can show there was prior conspiracy in the town, then it was all right for him to enter into a conspiracy with Schine. I don't see how that could be a justification.

Mr. Rogers: That, further, brings up customer choice again. If they were operating against them until all this time Schine came into the town and having been subjected to that kind of treatment and having a responsible customer come into the town, they certainly have the right to take a responsible customer against the two distributors who had the town sewed up or were at the mercy of them.

Mr. Clagett: There wasn't any validity in that proposition at that time because here was a new theatre being built under their eyes in the town by Schine.

The Court: I will receive it.

By the Court:

Q. What do you say about that, the arrangements?

A. Your Honor, how could there be an arrangement made between two distributors?

The Court: Don't ask me any questions.

[fol. 1100] The Witness: I am only trying to explain to you.

The Court: I couldn't answer you.

The Witness: I am trying to explain.

Mr. Rogers: I move to strike what the witness has said up to the present.

The Court: Strike it out.

Mr. Rogers: May we have the question read to the witness?

(Last question, read, as follows:

"Q. Didn't you have a working arrangement at that time with the State Theatre—the competitive theatre—that you divide the product of major companies between you, that whatever the State Theatre was allocated between the two of you, they wouldn't bid against you and whatever was allocated to you the State wouldn't bid against. Is that so?")

Mr. Wright: If the Court please, I submit that is a double-barreled unintelligent question. Nobody can understand it.

Mr. Richardson: I can understand it.

Mr. Rogers: Except Mr. Wright. I will reframe the question.

The Court: Maybe the witness can answer the question.

The Witness: If you will let me answer my own way, I can [fol. 1101] answer it.

The Court: It calls for "Yes" or "No".

The Witness: Then I can't answer it because you crucify yourself by the answer.

Mr. Rogers: I move to strike that "you crucify yourself by the answer".

The Witness: It can be misinterpreted.

The Court: Just a moment. We will have to have a little order out of the chaos. The witness will answer the questions without volunteering answers.

The Witness: There was no arrangement made.

The Court: Just a moment. I have to caution you repeatedly. Counsel has the right to ask the questions and you answer. If you can't answer it, you can say so without going into your reasons or discussing it.

The Witness: Can I have that question again, please?

The Court: If you can't answer it, say so.

(The question was again read.)

The Witness: Emphatically not.

Mr. Rogers:

Q. Did you ever have any agreement or understanding, whether in writing or oral, with your competitor, the State Theatre, that neither one of you would bid against the [fol. 1102] other for product with the major companies?

A. No, sir.

The Court: I believe he answered that question.

Mr. Rogers: The question of allocation. I thought maybe on account of the way I framed the question.

The Court: He said "No". All right.

By Mr. Rogers:

Q. Well, during the season 1933-34, did you go to the major companies, or any one of the eight companies, to ask for product that was playing at the State Theatre?

A. Not to my recollection.

Q. During the season 1934-35, did you go to the major companies trying to bid for any of the product shown at the State Theatre?

A. Absolutely not.

Q. To your knowledge did the State Theatre go to the major companies to bid for any of the major products you were playing at the Southern Theatre?

A. That I wouldn't know.

Q. You wouldn't know that, would you?

A. No, sir.

Q. I believe you testified that when you were operating the Southern Theatre that there was an uncompleted theatre in the town on which the builders had fallen down because they couldn't go through with the necessary financing, is that [fol. 1103] right?

A. I believe so.

Q. And that that theatre was sold at public auction?

A. That is right.

Q. And that public auction was advertised, was it not?

A. I believe it was.

Q. And you knew it was going to be sold, didn't you?

A. No, I don't recall whether I did or not until the day of the sale.

Q. You mean the first knowledge you had was the date of the sale?

A. That is right, the date of the sale.

Q. Did you attend the sale?

A. Yes, sir.

Q. Did you bid?

A. No, sir.

Q. At that sale anybody could have bid?

A. That is right.

Q. Conducted openly and publicly?

Mr. Rogers: That is all.

Redirect examination.

By Mr. Clagett:

Q. Mr. Charnas, just one question: When you had the conversation that you have testified, with Mr. Hemmline, of [fol. 1104] Paramount, when you were attempting to negotiate for 1935-36 product, did Mr. Hemmline say anything to you about the fact that Paramount was not willing to deal with you because you had any unpaid bills, or were delinquent on any pictures?

A. Emphatically not.

Mr. Clagett: That is all.

Recross-examination.

By Mr. Rogers:

Q. One moment. Didn't Mr. Hemmline tell you at that time when you were dealing for this 1935-36 product, that the company was displeased with the dictatorial way in which you acted when you bought product in prior seasons? Didn't he tell you that?

A. No, sir.

Q. Didn't he tell you at that time that you had dictated your terms in the past and on two successive years, refused to take the product of Paramount, didn't he?

A. I don't recall of ever having the company tell you that you dictated terms to them.

Q. Didn't he tell you you had refused their products for two successive seasons?

A. I don't remember that, no, sir.

Q. You don't remember you did refuse their products for [fol. 1105] two successive seasons?

A. Might have been we couldn't get together.

Q. You refused it, did you?

A. Not being refused, just being the case you couldn't get together on the price.

Q. Those two seasons you didn't take the product, did it play the State Theatre—Paramount?

A. No, sir, I don't believe so.

Q. You mean it didn't play the town at all?

A. I don't believe so. I don't think the State was open at the time.

The Court: All right. Next witness.

Halmer D. Shreffler, a witness called by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Schilz:

Q. Mr. Shreffler, please state your residence address.
A. Shelby, Ohio.
Q. Have you a street number there?
A. 15 Whitney.
Q. What is your occupation?
[fol. 1106] A. Theatre Manager.
Q. With what theatre are you connected in Shelby?
A. The Castamba.
Q. Are you associated with any one in the operation of that theatre?
A. Yes, sir.
Q. With whom are you associated?
A. Schine Shelby Corporation.
Q. And in what capacity, Mr. Shreffler?
A. Well, I own 50 per cent of the stock and I am the resident manager.

Mr. Schilz: If the Court please, we are calling this witness under Rule 43-B of the Rules of Civil Procedure, and will examine and interrogate as an adverse party.

Mr. Rogers: May it please the Court, no foundation has been laid to interrogate this witness as an adverse party, not a defendant in the suit. He is not a party to the suit.

Mr. Schilz: If the Court please, the witness just testified——

The Court: It does not only apply to adverse party but adverse witness, as well. Let us proceed with the examination and see what develops. Maybe it is a wrong presumption.

[fol. 1107] Mr. Schilz: I would like to read to the Court the answer of the Schine defendants to interrogatory No. 17-A, which states the name of the town as Shelby, name of the theatre is Castamba, the nature of their interest is lessee, extent of interest 50 per cent; the date acquired September, 1937; other interests, if any, and extent thereof, H. Shreffler, 50 per cent, seating capacity 749; owned or leased, leased. If leased, name of lessor, Castambe Realty

Company, Shelby, Ohio. Name of present opposition theatre, Opera House up to about October, 1937, and the State since October, 1937.

Mr. McKay: Your Honor, the interrogatory itself only calls for a statement of the theatres in which the Schine defendants have a direct or indirect interest. The corporation that owns or leases this Castamba Theatre is not a defendant in the case. It is only a corporation in which one of the Schine defendants has a 50 per cent interest. This witness is not an officer, stockholder, director or manager of any defendant in this case. He is a half owner.

[fol. 1108] The Court: The rule is a little broader than that. You can interrogate any unwilling or hostile witness on any question.

Mr. McKay: He has been associating with the Plaintiff's counsel for the last three days, and if they place their position on that, that is another matter, but I think the facts speak for themselves.

The Court: I think you should proceed with your examination to determine the question of his hostility. There may be no occasion for that question at all.

Mr. Schilz: In answer to the objection or the statement that the Schine defendants have only an indirect interest in this theatre corporation, I would like to call the Court's attention to their answer to interrogatory No. 15, which is headed "List of owned corporations in which defendant has at any time since August 31st, 1931, owned any financial interest," and under that heading is listed: "Schine Shelby Corporation. Nature of business. Operating. Extent of interest: Stockholder 50 per cent. Date acquired: September 21st, 1937. From whom: Original issue."

[fol. 1109] Mr. McKay: That is exactly what I stated to your Honor. I said one of the Schine defendants had a 50 per cent interest in the corporation which leased this theatre.

Mr. Wright: As I understand it, your Honor, under the rule, he is managing agent for this corporation in which the defendant owns a half interest in Shelby. As a rule, I believe it covers agents as well as——

Mr. Rogers: Of a party. And the Shelby Corporation is not a party to this litigation.

Mr. Schilz: In further supplement of this evidence on the Schine defendants' corporate interest in the Castamba Theatre, I want to bring the Court's attention to answer to interrogatory No. 19-C, on page 7 of paragraph 14 is listed "Shelby, Ohio; Castamba Theatre, Schine Chain Theatres, Inc., purchased 50 per cent of the stock of Schine Shelby Corporation for the sum of $15,000. Schine Shelby Corporation was the lessee of the Castamba Theatre for a term of 20 years, commencing September 27th, 1937, and expiring September 27th, 1957, at a rental of $3,000 per annum, [fol. 1110] the remaining 50 per cent of the stock of Schine Shelby Corporation is owned by H. D. Shreffler, who is a part owner of the fee and the former operator. As further consideration, Mr. Shreffler was given a contract of employment by Schine Shelby Corporation for two years at a salary of $50 per week, and Schine Shelby Corporation assumed an unpaid balance of $1400, due on sound equipment installed in the theatre by Shreffler."

[fol. 1111] Mr. McKay: That is exactly what I told you before.

Mr. Schilz: Under the heading "Interrogatory 15: List all corporations in which defendant has at any time since August 31, 1931, owned any financial interest", is also found "Schine Theatrical Company, Inc." "Nature of interest: Operating. Extent of interest: Stockholder 100%. Date acquired"——

The Court: Schine was a one hundred per cent stockholder in the theatre?

Mr. Schilz: I don't maintain that at the moment. I want to put that in the record, your Honor, because it will develop in a moment. In the Schine-Shelby Corporation, which i Interrogatory 19-C in the answer it is stated is owned by Schine Chain Theatres, Inc., one of the defendants in this action.

Mr. Rogers: But there is nothing that indicates that Mr. Shreffler has any interest in any company that is a defendant in this action. It is a company that is not a defendant in this action, and therefore the rule of adverse witness cannot apply to one who is neither an officer, director or agent of a corporation that is not a defendant in this action. It [fol. 1112] must be a defendant in this action.

The Court: Proceed with the examination and let us see.

By Mr. Schilz:

Q. Mr. Shreffler, how long have you been operating the Castamba Theatre at Shelby?

A. Since 1922. That is when Mr. Allwein and I leased the theatre.

Q. Directing your attention to the year 1936, did you receive any offers from any one for the purchase or acquisition of an interest in the Castamba Theatre?

A. I received many offers for the theatre, starting in 1930, from different people all over the country, Chicago, Pittsburgh.

Q. Directing your attention now to the year 1936, your answer was not responsive.

A. I didn't own any part of it. Caster & Stambaugh did. I was only the lessee of the theatre at that time.

The Court: In 1936?

The Witness: Yes, sir.

Q. In 1936 did the lessor call to your attention offers received for the purchase of the Castamba Theatre?

Mr. Rogers: Pardon me, may it please the Court, that is hearsay.

The Court: That is hearsay. State what you know about any offers.

[fol. 1113] A. They had got a letter——

Mr. Rogers: That is all hearsay and I want it stricken, please.

The Court: Strike it out.

Q. Mr. Shreffler, in 1936 did you communicate with any one concerning the leasing or ownership of the Castamba Theatre?

A. Yes, sir.

Q. With whom did you communicate?

A. Mr. Lazar of Bellefontaine.

Q. What Mr. Lazar?

A. Mr. Louis Lazar.

Q. With what company is he connected?

A. The Belpik Picture Corporation.

Q. When did you first communicate with him?

A. I wrote him a letter, I believe, in January, 1936.

Q. Will you state to the Court the reason that you wrote to Mr. Lazar?

Mr. Rogers: One moment. May it please the Court, if it calls for the contents of a written communication then I object to it on the ground that the written communication is the best evidence. If it calls for the operation or the speculation in the mind of the witness then I also object to it.

The Court: Sustained.

[fol. 1114] Q. Was a subpoena duces tecum served on you to produce correspondence and documents relative to the operations of the Castamba Theatre?

A. Yes, sir.

Q. Have you some of that correspondence with you?

A. Yes, sir.

Q. Will you produce it?

A. (Witness hands to Counsel.)

Q. Have you with you the letter which you wrote to Mr. Lazar in January of 1936?

A. It is either in there or here (indicating). Here it is (indicating).

Mr. Schilz: Will you mark this letter for identification?

(Thereupon the letter of January 23, 1936, referred to, was marked as Plaintiff's Exhibit P-74 for identification.)

Q. Is this letter marked for identification Plaintiff's Exhibit 74 a letter in your own handwriting?

A. Yes. It is a copy. This is a copy of the letter I sent Mr. Lazar.

Q. What is the date of this letter?

A. January 23, 1936.

Mr. Schilz: I offer this letter in evidence.

Mr. Rogers: I object to it on the ground that the witness has testified that this purports to be a copy of a letter that [fol. 1115] he wrote on that date. The original is the best evidence and there is no proof that this letter had ever been received.

Mr. Schilz: Have you the original, Mr. Rogers?

Mr. Rogers: I do not know. Did you ever ask us to produce it?

Mr. Schilz: There was a subpoena duces tecum served on you which would cover the original of this letter.

Mr. Rogers: May we know the provision of any subpoena duces tecum that you claim you served that would cover that?

Mr. Schilz: If your Honor please, Mr. Shreffler has identified this as being a copy of a letter that he sent.

The Court: You should have served a notice to produce on the defendant.

Mr. Rogers: No notice to produce was served.

The Court: That yet can be done. You marked it for identification?

Mr. Schilz: Yes.

By Mr. Schilz:

Q. Mr. Shreffler, during the spring of 1936 did you have any further communication with Mr. Lazar concerning the sale of the Castamba Theatre?

A. I believe there was one other time a little later on that year, 1936.

[fol. 1116] Q. Were you during the spring of 1936 in touch with Mr. Lazar at any time concerning the sale of the Castamba Theatre?

A. Not sale. Lease. They wanted to lease the theatre.

Q. How often did you talk to him?

A. Two or more times, I believe. That is quite a long time ago.

Q. What did Mr. Lazar say to you and what did you say to him?

A. Well, he went to Caster & Stambaugh first, the owners of the theatre.

Mr. Rogers: I move to strike.

The Court: That is not responsive. He asked what Lazar said to you.

Q. What Mr. Lazar said to you and what you said to Mr. Lazar.

A. He was trying—he wanted to make a partnership deal with me in my theatre.

Q. And what else?

A. That is 1936 now. I think I told him at that time—I believe I told him that I was not interested, that is, I didn't want to sell; that it was my theatre and I wanted to run it.

Mr. Rogers: May I get that clarified? I understood the witness to testify he came to speak to him about a partner-[fol. 1117] ship deal and not to sell. Is that right?

Mr. Schilz: Read back the witness's answer.

The Court: He said he wanted to lease it.

Mr. Rogers: His testimony was that he came to him about making a partnership deal.

The Court: He was the lessee himself.

Mr. Rogers: There might be a partnership in the lease, may it please the Court, because he did use the word "partnership" I believe.

The Witness: Yes, sir.

By Mr. Schilz:

Q. During the 1936-1937 motion picture season what product did you have for display at the Castamba Theatre?

A. Well, 20th Century-Fox, Metro, Warners and Republic, a split deal with Republic Pictures, and I believe I had some R. K. O. at that time.

Q. Did you have Paramount?

A. Not in 1936. I anticipated enlarging my theatre and I cut down on my product deals. I anticipated enlarging the theatre in 1936 and I didn't do it.

Q. When did you first contact the branch managers of the various motion picture companies with respect to obtaining product for the 1937-1938 motion picture season for display in the Castamba Theatre?

Mr. Schilz: I direct your attention that I simply asked [fol. 1118] when he first contacted the branch managers.

Mr. Rogers: May it please the Court, I object to that, primarily, on the ground that there is no issue——

The Court: Objection sustained. Let us find out.

Mr. Rogers: There is no issue of that kind raised in the pleadings, may it please the Court. There is no such issue in the pleadings.

Mr. Schilz: I am simply laying the foundation to show that he did contact various branch managers at the beginning of 1937, for the purpose of acquiring the product for the following season.

The Court: 1937-1938?

Mr. Schilz: Yes, sir.

Mr. Rogers: There is no such issue in the pleadings.

The Court: He does not claim that there is. He claims this is laying the foundation for something.

Mr. Schilz: These are simply preliminary matters leading up——

Mr. Rogers: There is no allegation in the complaint and there is no item in the bill of particulars under which they claim that there was any interference with him in getting product for the theatre, or that there was any restraint on [fol. 1119] him, or that he was relegated to second run.

The Court: He does not seek to establish that. The point is whether he did contact them for 1937-1938. That is the question now.

Mr. Rogers: My objection goes to the very root of it.

The Court: I will let it stand. Did you contact various of these companies here?

The Witness: Yes.

The Court: For 1937-1938?

The Witness: Yes, sir.

By Mr. Schilz:

Q. Whom did you contact?

Mr. Rogers: Then I do press my objection because there is no issue of that kind in the case.

The Court: He has testified he contacted various companies.

Mr. Schilz: Yes, and I want to establish whom he contacted and for what period he asked for product. I would like to make an offer of proof in that. We will show that he went to Fox and asked for a two or three-year contract; that he went to Paramount and asked for a two or three-year contract, and that he went to R. K. O. and asked for a two or three-year contract, knowing that if he could obtain the product for at least two or three years he would be safe [fol. 1120] in his operation of the Castamba Theatre; but that he subsequently only obtained the Fox product for three years; that the other companies confined him solely to one year; as preliminary to showing that certain threats were made to this witness by Mr. Lazar preliminary to taking over his theatre or taking over a 50% interest.

Mr. Rogers: That might be very interesting, may it please the Court, but that is not alleged in their complaint, nor is it set forth as an item in the bill of particulars.

The Court: It would depend on what he testified as to what was said.

Mr. Rogers: After all, they can only offer their proof within the issues in the complaint and the bill of particulars.

The Court: Their proof may cover things that are not directly plead.

Mr. Rogers: Except for the fact that in the request for particulars we asked them to specify what their issues were and there is no such thing set forth in their bill of particulars as that being one of the issues in this case at all.

[fol. 1121] The Court: Is there not an issue with reference to the sale of this theatre?

Mr. Rogers: No, sir, there is not. No such issue.

Mr. Schilz: We submit that there is, your Honor. In the first place, the complaint alleges that one of the means by which the Schine defendants have acquired their monopoly and exercised the unreasonably restraint of trade in this industry has been by monopolization of product in various situations.

The Court: Do you state the various situations?

Mr. Schilz: Yes, they are set forth in the supplemental ——

The Court: Is this situation set forth?

Mr. Schilz: Yes, sir.

Mr. Rogers: Let us see where you have got it.

Mr. Wright: You are raising the point that it is not in there.

Mr. Rogers: I beg your pardon, that is some new kind of somersault practice.

Mr. Schilz: In the situations named in the complaint in which there have been unreasonable restraints of trade Shelby, Ohio, is listed as one of those towns, under paragraph 3 of the supplemental bill of particulars.

[fol. 1122] Mr. Rogers: What do you allege as to the restraints in Shelby? Do you allege anything as to the Castamba Theatre in your bill of particulars? I find nothing. When we ask them to allege what restraints they claim and they do not allege a restraint of this kind the proof must be excluded.

Mr. Schilz: In paragraph 5 of the supplemental bill of particulars it is alleged that the plaintiff states that the theatres acquired by the Schine defendants, which after such acquisition had been granted priority or preference over competing theatres by the distributor defendants, and the distributor defendants granting such priority and preference are respectively as follows—and under this is listed the Castamba Theatre, Shelby, Ohio, preference and protection granted by all major distributors.

Mr. Rogers: Over whom?

Mr. Schilz: As charged in the bill of complaint over——

Mr. Rogers: That is after acquisition by Schine. I wish to indicate that my observation was an accurate one. The testimony Mr. Schilz is trying to elicit now is as to opera- [fol. 1123] tions and situations as to the acquisition by Schine of the 50% interest in this theatre. There is no testimony yet about Schine having even acquired the theatre up to this time. When we ask him for particulars—and Mr. Schilz just referred to 4, 5 and 6 of the bill of particulars—what he says there——

Mr. Schilz: Are you reading from the bill of particulars?

Mr. Rogers: I am reading from my condensation of it. If you will follow me I think you will find what I am reading here is accurate. They asked for the——

Mr. Schilz: That is not a pleading in the case you are reading from.

Mr. Rogers: Do you want me to read it from that?

Mr. Schilz: Yes.

Mr. Rogers: All right.

Mr. Schilz: I would like you to read every situation in which Shelby is named in there. I think if your Honor reads 4, 5 and 6 of that bill of particulars you will find that that refers to the activities after Schine—by the specific language of it—after the acquisition by Schine of his interest in the Castamba Theatre. And also 7.

[fol. 1124] The Court: It says the names and locations of Schine theatres to which preference or protection is granted by the distributors.

Mr. Rogers: It can only be after Schine had the theatre. It could not be before.

The Court: That is probably clear.

Mr. Rogers: And 5 and 6 specifically state after acquisition by Schine. What provision do you claim, Mr. Schilz?

Mr. Wright: If the Court please, in order to show a preference in the theatre in Schine's hands you would have to show, as I understand it, what happened before when it was in independent hands. That is the purpose of this. He is laying the foundation to show the fact that this witness could not make two or three-year deals for that theatre, and Schine could and did get those same companies.

Mr. Homans: He does not claim in his bill of particulars that the preference was granted to Schine which this man could have before Schine acquired it. He claims that the preference was granted to Schine after acquisition over his [fol. 1125] competing theatres, which then became Schine's competing theatres after acquisition. And in 6 he specifically states the other theatres in Shelby, namely, the Opera House and the State, neither of which were owned by this witness and neither of which were acquired by Schine. In 6 the plaintiff states that the names and locations of competing theatres, over which Schine Theatres have been granted priority and preference are, namely, Opera House and State, Shelby, Ohio.

Mr. Wright: There is not any question about that. Schine obviously could not have a preference over him before Schine came into the town.

Mr. Rogers: That is not the statement that Mr. Wright made before, may it please the Court, or Mr. Schilz. They both claimed that these questions he is propounding about these negotiations prior to Schine's acquisition are directly set in issue in his complaint and the bill of particulars.

Mr. Wright: That is not so.

The Court: I think it is competent to show it as a step in what followed. It can be shown as a part of the conspir- [fol. 1126] acy leading up to the acquisition.

Mr. Rogers: May it please the Court, they do not claim in their pleadings or bill of particulars that any steps of this kind were taken leading up to the conspiracy, or even as any part of the conspiracy.

The Court: They claim after this particular theatre was acquired by Schine that certain things were done in violation of the statute.

Mr. Rogers: Not with this theatre. Schine only got a 50% interest in this theatre.

The Court: It is alleged here in 4. It states the names of the theatres in which preference was granted by the distributor defendants.

Mr. Rogers: To whom, may it please the Court? To Schine it says there. It could not be to Schine until after he acquired his interest.

The Court: That is true.

Mr. Rogers: Therefore there is nothing in the bill of particulars setting forth that this was any step in the conspiracy.

The Court: I will receive the testimony.

By Mr. Schilz:

Q. Mr. Shreffler, have you stated the film companies that you contacted for the purpose of obtaining product for [fol. 1127] the 1937-1938 season?

A. Yes; I went——
Q. That is all. What companies did you contact?
A. Warners, Metro.
Q. Who else?
A. And R.K.O.
Q. And who else?
A. Well, in fact, all of them.
Q. Didn't you talk to the branch manager of Paramount?
A. Yes, sir.
Q. Who was that, Mr. Shreffler?

Mr. Rogers: May we get the date, please? Mr. Shreffler can give it to us.

A. That would cover a period—that is, I can't give you a specific date. I went in every Monday into Cleveland and I anticipated adding to my theatre, and naturally, from time to time, I was looking after product to make the theatre larger.

Q. What year was that?

Mr. Rogers: The season of 1937-1938, he said.

A. I had a contract with Fox for three years. I can't tell you how that run. I believe it was a year run.

Mr. Rogers: This question was directed to Paramount.

A. I made an application with Mr. Robb of Paramount in January, 1937, that never went through. That is, it was [fol. 1128] never O.K.d by New York.

Mr. Rogers: Let us have the facts leading up to that.

Q. You made an application to Mr. Robb of Paramount, you said?
A. Yes, sir.
Q. In January of 1937?
A. I was in the carriage works at that time.

Mr. Rogers: I object to it, may it please the Court. I would like to get the date fixed. I am entitled to that. I want to know which season it was.

The Court: When did you make this application through Robb?

The Witness: In January, 1937.

Mr. Rogers: Which season was it?

The Witness: It was for a two-year deal. I think that was 1937-1938 and 1938-1939.

By Mr. Schilz:

Q. To whom else did you make application, to what other companies?

A. Well, I went to Metro.

Q. Who did you see at Metro?

A. The salesman came to Shelby every two or three weeks in his rounds.

Q. What was his name?

A. Gene Vogel.

Q. Who did you see connected with the Warner Company?

[fol. 1129] Mr. Rogers: He has not said anything about the Warner Company yet. He said Metro, R.K.O. and Paramount.

The Court: Did you have any contact with Warners' representative?

The Witness: Yes, sir.

The Court: When was it?

The Witness: 1937.

By the Court:

Q. January; at the same time?

A. Well, in the spring of 1937. I can't give any exact date.

Q. What was the talk?

A. I just wanted their product next year. That is, for two or three years, if I could get it.

By Mr. Schilz:

Q. Did you make the same application to R.K.O.?

A. Well, Mr. Greenblat was manager and I dropped in and talked to Mr. Greenblat and Mr. Goldsmith.

Q. What product did you obtain and show at the Castamba Theatre during the 1937-1938 season?

A. That was after Schine took it over. My theatre was dark in August and September.

Q. Just answer my question. What product was obtained and shown at your theatre during the 1937-1938 season?

The Court: That would be when you and Schine were [fol. 1130] operating together.

A. Yes, 20th Century, Fox, Metro, Warners', R.K.O., Republic, and one other one; Paramount.

Q. What was the term of the contracts with each of those companies?

Mr. Rogers: May it please the Court, the contracts speak for themselves. They are the best evidence.

The Court: Sustained.

Q. Directing your attention to the summer of 1937, did you have any communication with or from Mr. Lazar at that time concerning a purchase or leasing of the Castamba Theatre?

A. Yes, sir.

Q. And have you produced a letter written you by Mr. Lazar in that regard?

A. Yes. I think it is in that file. I attended an Izzy Schmertz——

Q. What was the approximate date of your communication from Mr. Lazar?

The Court: If you have the letter there that will show.

Q. Is this the letter (showing to witness)?

A. I will have to get my other glasses. There was a letter previous to this. This is one of them.

Q. This is one of the letters?

A. Yes, sir.

[fol. 1131] Mr. Schilz: This letter is dated July 3, 1937. Mark it for identification, please.

(Thereupon the letter of July 3, 1937, referred to, was marked as Plaintiff's Exhibit P-75 for identification.)

Mr. Schilz: If the Court please, I offer this letter in evidence.

Mr. Rogers: No objection.

The Court: Received.

(Thereupon the letter referred to, previously marked as Plaintiff's Exhibit P-75, was received in evidence.)

By Mr. Schilz:

Q. Mr. Shreffler, did you subsequently see Mr. Lazar in Shelby?

A. Do you mean before?

Q. After the date of this letter.

A. I believe I replied to that letter.

Q. Just listen to my question. Did you see Mr. Lazar in Shelby after July, 1937?

A. I believe not until the latter part of August or the first of September.

Q. In what connection *with* Mr. Lazar meet you and talk to you?

A. Well, he came to my carriage works' office.

[fol. 1132] Q. State what Mr. Lazar said to you and what you said to him.

A. At that time?

Q. Yes.

A. That is the latter part of August or the first of September. It was on a Tuesday. I remember that distinctly. I have the date, I believe, in one of my memorandums. He came in and he told me that Nick Dipson was coming to Shelby—or Nicholas Dipson—to put in a theatre, and that he would like to work out a partnership deal with me.

The Court: You say he said that Nick Dipson was coming to Shelby to put in a theatre?

The Witness: A new theatre, which was in a film dating I have on file there.

Q. Mr. Shreffler, who would like to work out a partnership with you?

A. He would.

Q. Who?

A. The Belkip Corporation or Schines.

Q. You mean Mr. Lazar?

A. Yes, Mr. Lazar was there trying to hook me up with his organization.

Q. What was the next conversation that you had with Mr. Lazar?

A. Naturally we talked——

[fol. 1133] Q. Just answer my question. What was the next conversation that you had with Mr. Mazar and when did that occur?

A. That same day. That is on that Tuesday. We had quite a lengthy conversation that day.

Q. What was the substance of the conversation?

A. The substance of the conversation was that I needed his organization to stay in business. That is, he said that Nick Dipson was coming to Shelby and he was very ruthless and I would be powerless, that Dipson would simply smother me.

Q. What else was said during the conversation by Mr. Lazar?

A. Well, we talked quite a long time and finally he said that they had been here several times trying to negotiate a deal with me on the theatre, and also that they were coming into Shelby.

Q. Who?

A. Schine.

Q. And what else?

A. And if this theatre went ahead that they could not make a success of it because the town was too small for two theatres.

The Court: Does that mean if your theatre went ahead?

The Witness: No, if the other theatre came to town, if Dipson came to Shelby.

The Court: Who was Dipson?

[fol. 1134] The Witness: Well, I don't know him. I never met him.

The Court: Was he connected with Schine?

The Witness: No, sir. He is another circuit operator, I believe.

The Court: All right.

By Mr. Schilz:

Q. What else was said?

A. Finally the whole thing came down that he told me, he says, "Hal, listen, we have been here several times trying to lease your theatre, and in the event that you don't sign up with us the State Theatre cannot exist with you in Shelby because the town is not large enough and to get in here we are going to buy the State Theatre and we will pay you a thousand dollars more than you can afford to pay to get it, and then we will take the product out of your theatre and you will be sitting there with a nice theatre when it is completed, and no pictures."

Q. Tell the Court what the State Theatre was that you referred to.

A. The latter part of September the store room was used as an automobile sales room. Ten minutes after that lease was signed I——

The Court: Just a moment. He asked you what the State Theatre was.

[fol. 1135] A. It was an automobile sales room.

The Court: Converted into a theatre?

The Witness: It was a store room. Then converted into a theatre.

The Court: That was running at this time in 1936?

The Witness: No, sir, it wasn't even started.

The Court: Is that the one that Dipson was coming into?

The Witness: Yes, that is the one the Film Daily said he was coming in to build a de luxe theatre.

By Mr. Schilz:

Q. Mr. Lazar also said that during this conversation?

A. Yes, sir.

The Court: You said something about Schine was coming in there?

The Witness: Schine since the theatre was going to be there and the State could not exist against the Castamba, after I got the new theatre, that the theatre was in pikers' hands, it was not opened until around October——

The Court: Your theatre?

The Witness: Yes, that was down. I remodeled the theatre from 476 to 749 seats. Then he says that would give them a right to come into Shelby.

Q. Give who a right?

[fol. 1136] A. Schine, if I didn't join up with them.

Q. Did he say in what manner they would come into Shelby

A. Well, if I didn't join up with them that they would buy the State Theatre and pay a thousand dollars more for it.

Q. Did you have a subsequent conversation with Mr. Lazar after that?

A. Yes.

Q. And where did that occur?

A. At the same place. He came back on Friday that week.

Q. What was said at that time by Mr. Lazar and by yourself?

A. He came back for my answer.

Q. Your answer as to what?

A. When he left on Tuesday I was to leave him know on Friday, and he came back on Friday.

Q. You were to advise him on Friday as to whether or not you would do what?

A. Whether I would go into their organization or not.

Q. What organization?

A. The Schine organization, as a partnership.

Q. What did you tell him on Friday?

A. Well, I decided to go in with them.

Q. Then what was done, Mr. Shreffler?

A. Well, we signed the contract. That is, the thing was all done on word of honor. I told him on Friday I would, [fol. 1137] and the contracts were not signed until September 19, I believe.

Q. Did you go to an attorney's office for the purpose of drawing contracts?

A. Yes.

Q. Who was that?

A. Long, Anderson & Green.

Q. Who was your attorney?

A. Mr. Green.

Q. Was Mr. Lazar present there?

A. Mr. Lazar took the contracts to Cleveland. Mr. Lazar had the contract. Pete Klein made them out in Cleveland and he brought them down to my attorneys to look over. That took time. Mr. Lazar was very busy.

Q. How long after the conversation you have just related?

A. I think the contract was signed on the 19th of September, if I remember right. I think that was the date. I think it was repeated here just a moment ago.

Q. Did you have any conversation with Mr. Lazar in your attorney's office concerning the terms of that contract or concerning the future Schine operation in Shelby?

A. Well, the attorneys went over the contract and they made Mr. Lazar take out one paragraph.

Q. To what did that paragraph relate?

Mr. Rogers: One moment. May it please the Court, the contract is the best evidence.

[fol. 1138] Q. Do you have the contract with you?

A. I do not.

Q. What conversation occurred between you and Mr. Lazar at that time?

A. Well, very little. I was down, to tell you the truth, and the attorneys did all the arguing. I didn't.

Q. Did Mr. Lazar make any statements to Mr. Green in your presence concerning what Schine would do in Shelby? Just answer yes or no.

Mr. Rogers: I object to that as leading.

The Court: It is leading. That is true. He may state what was said.

Q. What was said by Mr. Lazar to Mr. Green, in your presence?

A. Well, that is beyond my recollection. That is, they were arguing——

Q. Give the substance of the conversation.

A. They were arguing about the contract, that one paragraph in there.

Q. What else?

A. I couldn't say positively there was anything else said at that time, only the contract. The conversation I had was down at the carriage works with Mr. Lazar. We did go over the whole deal. I know Mr. Green was astounded when I sold——

[fol. 1139] Mr. Rogers: One moment.

The Court: Yes, strike it out.

Q. During that conference was anything said about the possible acquisition of the State Theatre by Schine?

Mr. Rogers: I object to that question on the ground that it is leading.

The Court: Have you stated all you recall of the conversation at that time?

The Witness: Yes, I believe I have.

The Court: All right. You may inquire. Was anything said about the acquisition of the State Theatre?

A. Mr. Lazar made those accusations to me at the carriage works, and they possibly may have been stated——

The Court: Then there was no talk about that at the time when the contract was signed?

The Witness: Up at the attorney's office?

The Court: Yes.

The Witness: Not to my recollection.

By Mr. Schilz:

Q. Did you ever have a conference with Mr. Lazar and your attorney in which statements were made about the acquisition of the State Theatre?

A. Yes, sir.

Q. Tell us that conversation and when that occurred.

A. It was just a repetition of what I told you Mr. Lazar [fol. 1140] said to me.

Q. I want the time and the substance of the conversation that occurred in your presence—in the presence of your attorney.

Mr. Rogers: And where? Where was this? May I have the place where this conversation took place?

The Witness: That was after we got started in the theatre.

Mr. Wright: That was after the deal was made?

The Witness: Yes, that was after the deal was made.

By Mr. Schilz:

Q. All right. What was said by Mr. Lazar in your presence?

Mr. Rogers: May it please the Court, I object to that on the ground that that surely cannot be evidence tending to show what induced Mr. Shreffler to sell his interest in this theatre.

The Court: Objection overruled. What did he say at that time? What did Lazar say at that time?

The Witness: Why, he told me that if I didn't come into the organization——

The Court: You had already come in, hadn't you?

The Witness: No, this was previous to that.

Mr. Rogers: I understood the witness to say it was after the deal was closed.

The Court: He did so state. You are talking about some [fol. 1141] talk at some time other than the time when the contract was made, when you were in the office of your attorney? You said you had another talk with Lazar about the State Theatre. When was that?

The Witness: It possibly was at that time. That is, that we talked it over with my attorney. I tried to tell Bob—I had to convince him what I was up against.

Mr. Rogers: May it please the Court, I move to strike it.

The Court: Strike it out.

Q. Just pay attention to the question, if you will, and to the questions of the Court. Did you have a conversation with Mr. Lazar in the presence of your attorney after the first conversation with Mazar in September that you have related, but before the signing of the contract?

A. I had two talks with Mr. Lazar, on Tuesday and Friday, and Mr. Lazar submitted—had Mr. Klein draw up the contract and he told me, he says, "Hal, I want you to go over this contract, if there is anything in here that is not right we will correct it."

Q. During those negotiations on the contract did Lazar and yourself have any conversation in your attorney's office?

[fol. 1142] A. Yes, sir.

Q. Give us the substance of that conversation.

Mr. Rogers: Will you give us the date of it, too?

The Witness: That I can't do. I can't give the date.

The Court: Perhaps you can fix the date with reference to the time of the contract.

Q. Will you give us the substance of the conversation now?

Mr. Rogers: I think we ought to have the time fixed.

The Court: Fix the time as near as you can.

The Witness: It was previous to September 19th. That, I believe, is the actual date the contract was signed.

The Court: What was the substance of the conversation? What did Mr. Lazar say to you, or your attorney in your presence?

Mr. Rogers: Is this the same conversation we have been over?

The Court: I understand it is not. Your inquiry now is about some statement about the State Theatre. You testified to some conversation about that prior to the making of the contract. Now the question is whether there was another conversation you had with him on this same subject.

The Witness: Yes, there were conversations, but I can't just recall them.

[fol. 1143] By Mr. Schilz:

Q. Can you recall during the negotiations on the contract the substance of the conversation that took place in your attorney's office between Mr. Lazar and your attorney?

Mr. Rogers: This witness has twice or three times stated that he cannot recall.

Mr. Schilz: He stated there was a conversation. I am asking him if he can recall the substance of it.

The Witness: Yes.

Q. What was that conversation? What was the substance of it?

A. It was in regard to a paragraph that was in the contract.

Q. What else? Wasn't anything else said there about the operation of the theatres in Shelby?

Mr. Rogers: One moment. I object. This witness has been exhausted, I think, on that subject, and more than exhausted.

The Court: Sustained.

Mr. Richardson: May I inject this, that the conversation he is now testifying to is the same conversation where the attorneys were working over the contract with reference to this clause.

Mr. Schilz: I think Mr. Richardson is in error with respect to that.

[fol. 1144] Mr. Richardson: No, I am not.

The Court: I do not know whether he is referring to the time when the contract was actually agreed on and signed or some other time when his Counsel and Mr. Lazar were present. You spoke about one occasion when he said something about this other theatre there.

Mr. Rogers: The State Theatre.

The Witness: Since the State Theatre was going to be built, and he also stated that time, it comes to my memory, that if I would join their organization the chances were when they found out Schine was coming into Shelby they wouldn't even start it.

By Mr. Schilz:

Q. Anything else?

Mr. Rogers: When was that conversation? We haven't got that.

The Witness: That was on Friday.

Q. In September of 1937?

The Court: Before the contract was signed?

The Witness: Yes.

Q. That was in September, 1937, was it?
A. Yes, sir.

Mr. Rogers: May we get where that conversation was had?

The Witness: At the carriage works' office.

[fol. 1145] Q. When was the contract signed by which you entered into partnership with Schine?

A. September 19, I believe.

Mr. Rogers: That has been testified to two or three times now.

Q. Were you continued in any capacity in the operation of the Castamba Theatre?
A. Yes, sir.
Q. And in what capacity?
A. Manager.
Q. Now, going to another subject for a minute: Did you make any further improvements on the Castamba Theatre during the year 1937?
A. Yes, I spent over $30,000 on the theatre.
Q. When did you begin remodeling it?
A. In June.
Q. And when was that completed?
A. I believe the 28th day—well, it never has been completed. You can always add to it. We opened it on September 28th or 29th.
Q. What consideration was paid to you by Schine for participation in that theatre?
A. Mr. Lazar gave me $15,000 for half of the building cost.
Q. What was your initial investment on the theatre?

Mr. Rogers: May it please the Court, I object to that as incompetent.

[fol. 1146] Q. What was the theatre worth to you when you first took it over?

Mr. Rogers: I object to that as incompetent. The only evidence we have here now is that we got an interest in a lease; that is all.

Q. What value did you place on the theatre aside from the improvements that you had made?

Mr. Rogers: May it please the Court, that is immaterial.

The Court: Value placed when?

Mr. Schilz: In 1937.

The Witness: Before Schine bought it?

By Mr. Schilz:

Q. Before Schine bought it.

A. There was no value on it. That was mine. It was worth a million dollars to me. That is, it was not worth that, but it was all I had on earth.

Mr. Rogers: May it please the Court, I move to strike it.

The Court: Yes. Can you state the reasonable value of this property in September, 1937?

The Witness: Yes, your Honor. I didn't own the building—any part of it?

By the Court:

Q. You just had the lease?

A. Up until June 1st. Then I put $30,000 in, or more.

Q. How long a lease did you have?

A. I never had a lease.

[fol. 1147] Q. You said you didn't own the building. You didn't have a lease?

A. No, sir.

The Court: I cannot understand that.

By Mr. Schilz:

Q. On what ~~basis~~ did you rent the theatre?

A. I rented it from Caster & Stambaugh.

Q. Under what terms?

A. I paid them $145 a month for it up until——

Q. If you didn't have a lease was it on a month-to-month basis or a week-to-week, or what?

A. Just one of those things that went along and did business. I had confidence enough in them that they wouldn't lease to anybody.

[fol. 1148] Q. Were you renting it on a month-to-month basis then?

A. I suppose I was.

The Court: He did sign and make a lease after Schine came in.

The Witness: You see, the Schines at different times tried to get the lease away from me.

Mr. Rogers: I move to strike that.
The Court: Strike it out.

Mr. Schilz:

Q. Was Mr. Carl Stambaugh a friend of yours?
A. Yes.
Q. Was he the owner of the theatre?
A. Half owner up until I made this improvement.
Q. Do you know whether or not Mr. Lazar approached Mr. Stambaugh in 1936 and attempted to lease the theatre?

Mr. Rogers: I object to that on the ground it is hearsay and not within the witness' knowledge.
The Court: Unless he was present, sustained.

Q. Mr. Shreffler, why did you send this letter January 23, 1936 to Mr. Lazar?

Mr. Rogers: I object to that, may it please the Court, this letter that is not even in evidence, it is only marked for identification.
The Court: I don't see the materiality. This is a copy of the letter?
[fol. 1149] Mr. Rogers: Exactly, sir.

Q. It is a fact, is it not, Mr. Shreffler, that you wrote to Mr. Lazar, in January, 1936?
A. Yes, sir.
Q. What was the occasion of your writing to him?

Mr. Rogers: I object to that as immaterial.
The Court: He may answer.

Q. What was the occasion of you writing?
A. Mr. Caster gave me a letter from Mr. Lazar.

The Court: Who was that?
The Witness: Mr. Caster. He was co-owner.
The Court: From Mr. Lazar?
The Witness: From Mr. Lazar.

Q. What were the contents of the letter given you by Mr. Caster?

Mr. Rogers: Wait a moment. May it please the Court, I object to that.
The Court: Sustained.

Q. Mr. Shreffler, is this a copy of the letter handed you by Mr. Caster?
A. Yes, sir.

Mr. Schilz: Will you mark this for identification?

(Thereupon letter dated January 14, 1936, referred to, was marked as Plaintiff's Exhibit P-76 for identification.)

[fol. 1150] Q. Did Mr. Caster tell you to answer this letter?

Mr. Rogers: I object to that as immaterial.
The Court: You can show whether he did answer it.
The Witness: Yes, I answered it.
Mr. Rogers: One moment, please, Mr. Shreffler. I ask to have that stricken out.
The Court: Strike it out.

Q. When Mr. Caster handed you the letter which you have identified——

Mr. Rogers: You mean the purported copy?

Q. The copy which you have identified as coming from Mr. Lazar, did you answer Mr. Lazar directly?

Mr. Rogers: One moment. I object to the question on the ground the question is not based on the evidence.
The Court: Sustained. He has testified. I can't see it has any materiality anyway.

Q. Is this letter, January 23rd, 1936 (referring to Plaintiff's Exhibit P-76 for identification), a copy of the answer you wrote when Mr. Caster handed you the original of this letter?
A. Yes, sir.

The Court: Is that marked for identification?
Mr. Schilz: Yes, your Honor, Plaintiff's Exhibit P-76 for identification.

[fol. 1151] Q. Why did you communicate directly with Mr. Lazar?

Mr. Rogers: I object to that as immaterial, calling for mental operations of this witness, and not competent.
The Court: Oh, I don't know, it may be competent.

Mr. Rogers: It gives his mental operation about a letter that is not even in evidence. There is no evidence he ever wrote to Lazar at all.

Mr. Schilz: Oh, yes, there is.

The Court: I think you had better wait until we get the originals.

Mr. Rogers: Exactly. There are statements by Mr. Schilz, and the letters are not in. This witness cannot testify to mental operations about some exhibit not before the Court.

The Court: Just a moment. I think it will save a lot of time if we try to get the original papers instead of doing it in this way. They are the best evidence instead of spending a lot of time on copies.

Mr. Wright: I thought we had subpoenaed them, your Honor, but they were not included in the subpoena that was served, and we, of course, will subpoena those originals.

Mr. McKay: I will state to your Honor now from such [fol. 1152] search Mr. Antevil has been able to make, he has not found any such letter that is being made the subject of this controversy.

Mr. Schilz: In that case then, I believe these are competent evidence.

The Court: I did not know that. If the defendants concede these are copies of such letters, the copies would be competent.

Mr. Rogers: I cannot so concede, because my information is they never served notice to produce this particular letter.

The Court: Mr. McKay said you could not find them.

Mr. Rogers: From what we gleaned of our files. We did not make a specific search for this letter.

Mr. McKay: We have nothing to show any such letter was received up to this moment.

The Court: I sustain the objection to it.

Mr. Schilz: Mr. Shreffler, at the time of your conversation with Mr. Lazar, in September, 1937, was a newspaper article called to your attention appearing in the local paper, relative to a proposed deal with the Schine Company?

The Witness: Yes, sir.

Mr. Rogers: One moment. I object to that, on the ground [fol. 1153] that that is hearsay.

The Court: Sustained.

Q. Mr. Shreffler, did you see a newspaper article in the local paper?

A. Yes, sir.

Mr. Rogers: I object to that as immaterial.
The Court: I will let him say that he saw it, that he saw an article in the local paper.
Mr. Richardson: It might have been a baseball game.

Q. Is this the article headed "Schine Theatres——"

Mr. Rogers: Please don't read something that is not in evidence.
The Court: Ask him if that is the paper he saw.
The Witness: Yes, and I read it.
Mr. Schilz: I offer it in evidence.
Mr. Rogers: I object on the ground it is hearsay.
Mr. Schilz: Mark this for identification, rather.

(Thereupon the newspaper article, dated September 11, 1937, referred to, was marked as Plaintiff's Exhibit P-77 for identification.)

Q. Did you see the newspaper article I have shown you, marked Plaintiff's Exhibit P-77 for identification, at approximately the same time Mr. Lazar was having the conversation with you?

[fol. 1154] Mr. Rogers: Which conversation? He has talked about a number of conversations.
Mr. Schilz: The first September conversations.
The Witness: No, that came out the next day after I gave my word to——
The Court: You have answered it.
Mr. Schilz: I offer this in evidence.
Mr. Rogers: I object to that again on the ground it is hearsay and not binding on the defendants.
The Court: Sustained.
Mr. Wright: Wasn't the owner subpoenaed?
Mr. Schilz: Yes, the owner was subpoenaed.
Mr. Wright: As I understand it, if the Court please, the owner of the newspaper who is also the owner or part owner of the theatre building was subpoenaed to appear, but was ill, and unable to be present, and we will have——
Mr. Rogers: Even if he were he couldn't make incompetent evidence competent.
Mr. Schilz: If the Court please, I was offering this newspaper article to show——
The Court: Well, that is incompetent now.

Q. Was a corporation formed to take over the Castamba Theatre when you made your contract with the Schine group?

A. Yes.

[fol. 1155] Q. What is the name of that corporation?

A. Schine Shelby Corporation.

A. Do you have an interest in it?

A. It was represented to me to be a partnership. I own 50 per cent of the stock.

Q. Did that corporation make a contract with you to manage the theatre?

A. Yes, sir.

Q. Under that contract, what salary do you receive?

A. Well——

Mr. Rogers: That is immaterial, may it please the Court.

Mr. McKay: Where is the contract?

The Court: I don't see how it is material.

Q. Do you receive a salary under that contract?

A. Yes, sir. $50.

Q. $50 what?

A. A week.

Q. Did that corporation make a contract to book the pictures for the theatre?

A. Yes, sir.

Q. And what is the nature of that arrangement?

Mr. Rogers: May it please the Court, that is immaterial. Might I also state that Mr. Schilz has now gone far beyond any of the issues as far as this town is concerned, both [fol. 1156] under his complaint and his bill of particulars. None of this has been made an issue.

The Court: State what he does, what was done and by whom, about it.

Q. Who books the pictures for the theatre, Mr. Shreffler?

The Court: After you became manager?

The Witness: After I became manager?

The Court: Yes.

The Witness: It was booked out of Cleveland. I don't know the man's name, but it was the Belpik Theatre Corporation.

Q. Mr. Shreffler, before the Schine group took over operation of the Castamba Theatre, on what policy did you play pictures?

Mr. Rogers: I object to that as immaterial.

The Court: I don't know what you mean by what policies?

Mr. Schilz: If the Court please, as I understand it, in this industry they characterize playing single features or double features as policy of playing pictures.

Mr. Rogers: May it please the Court, this examination has proceeded along lines that are not presented as issues in this case.

Mr. Schilz: I withdraw the question and will restate it in this way:

[fol. 1157] Q. Did you — double feature pictures in the Castamba Theatre before the Schine group took over?

Mr. Rogers: May it please the Court, that is not pleaded in the complaint or the bill of particulars or in the cause of the action in the bill of particulars.

Mr. Schilz: It will become pertinent.

The Court: Overruled. Answer, Mr. Shreffler.

The Witness: Very seldom. State the question again.

Q. Did you play pictures in the Castamba Theatre on a double-feature policy prior to the Schine operation?

A. Very seldom.

Q. What occurred in that regard after Schine took control?

Mr. Rogers: I object to that, may it please the Court, not within the complaint or bill of particulars, not within the issues.

The Court: Overruled.

Mr. Rogers: And also object to the question on the ground it presumes to state facts not proved, the question is framed along lines, "After the Schines took control". The witness' testimony is they were each 50 per cent owners of the theatre.

Mr. Schilz: I would like to state to the Court this will become——

[fol. 1158] The Court: Go on.

Q. Just answer the question, Mr. Shreffler. What occurred in that regard after the Schine Corporation took control of the theatre?

Mr. Rogers: I object to the form of the question.

The Court: After the Schine Shelby Corporation took possession.

Mr. Rogers: Exactly, sir, but he says "After Schine took control".

The Court: What was the policy in reference to double features after Schine Shelby Corporation took control?

The Witness: My theatre being down two months, we accumulated a lot of product they had to play, so we had to double-feature to get caught up on the product. We never in the history of the Castamba even before or after Schine took it over ran a double feature on Sunday. During the week we did it to get the product up to date. We wanted to get current with the rest of the towns around Shelby.

Q. During the year 1939, did you confer with Mr. Kemper relative to the purchase of the State Theatre?

A. No, sir.

Q. During the year 1939, did Mr. Lazar ask you to make [fol. 1159] inquiry as to the purchase of the State Theatre?

Mr. Rogers: I object to that on the ground the question has been answered, and second, on the ground the question is leading.

Mr. Schilz: This is a different question, Mr. Rogers.

Mr. Rogers: I object to this one on the ground it is a leading question.

Q. During the year 1939, were you requested by Mr. Lazar——

Mr. Rogers: I object.

The Court: You object on the ground the question calls for a conclusion?

Mr. Rogers: Exactly.

Mr. Schilz: Withdraw the question.

Q. Mr. Shreffler, do you have the agreement with you that you made for the operation of the theatre?

The Court: As manager, you mean?

The Witness: As Manager?

Q. As manager, yes.

A. No, my attorney has that.

Q. But you were subpoenaed to produce that, were you not?

A. If I did, I didn't bring it.

Mr. Schilz: Do you have it, Mr. McKay?

Mr. McKay: I don't think you subpoenaed us to produce it, did you?

Mr. Schilz: Yes.

[fol. 1160] The Witness: If they be in the file, I don't know. Mr. Green was called to California on a very pathetic case. He would like to have been here, but——

Mr. Rogers: I move to strike.

The Court: Counsel, you have the file right in front of you.

Mr. Rogers: Why don't you hand him his file and see if he has got it?

Mr. Wright: It was also subpoenaed, if the Court please, from the defendants.

(Mr. Schilz hands papers to the witness.)

Mr. Wright: It does not make any difference which copy goes in.

Mr. McKay: What is it you want? The employment contract with Mr. Shreffler? Is that what you want?

Mr. Wright: Yes. The subpoena, I believe, calls for all contracts.

The Court: He is trying to find it, Mr. Wright.

The Witness: I didn't even see it since I signed it.

Mr. Schilz:

Q. Do you have any other papers with you in which you would have that employment contract?

A. No, sir.

[fol. 1161] Mr. Schilz: Your witness, Mr. Rogers.

Mr. Rogers: While looking for that contract—I believe this is the one.

Mr. McKay: The date of the month is left out, but it bears his signature.

The Witness: May I see that, please, when you are through.

(Mr. Schilz hands papers to the witness.)

The Witness: Yes, that was for two people, that was for my son and I. We got $50 for running the theatre.

The Court: $50 together?

The Witness: Yes.

The Court: That is the contract you spoke about that you made with the Schine Shelby Corporation?

The Witness: Yes.
Mr. Rogers: In which he was half owner?
The Witness: Yes.
Mr. Schilz: I would like to offer the contract in evidence.

(Thereupon the contract referred to, was received in evidence and marked was Plaintiff's Exhibit P-78.)

Mr. McKay: May I call your Honor's attention to one thing? In view of the fact capital seems to have been [fol. 1162] made over the fact it is with Mr. Shreffler and his son, the contract agrees the son does not have to render any services. He may withdraw and does not affect the compensation.
The Court: I don't know what significance the contract has.
Mr. Rogers: Neither do I, but it is in.
The Court: I don't know just what significance it has, but the contract shows for itself.
Mr. Schilz: I would like to make this statement to the Court: In view of the objection that has been made here this morning as to Schine indirectly having an interest in the local theatre corporation, I assume that the Court some time during these proceedings will have the deed to the property, that the Court may pierce the corporate veil in a situation of this character.
Mr. Rogers: That is very curious. We are having res gestae and piercing veil in a situation where they do not apply.
The Court: We will recess until 2 o'clock.

(Whereupon, at 12:35 o'clock p.m., a recess was taken until 2 o'clock p.m.)

[fol. 1163] After recess, 2 o'clock, p.m.

Appearances: As before noted.

Mr. Rogers: Before proceeding with the cross-examination of this witness, I respectfully request that I am entitled to a ruling by this Court that the witness on the stand has evidenced neither hostility nor is the witness an adverse witness, but on the contrary, has showed every evidence of co-operating with the plaintiff in the adducing of evidence, and that the claim of this witness being an adverse witness is entirely unfounded and that they are not entitled to the benefit of any such ruling.

The Court: The testimony shows for itself. The only question I can see now is whether he is an adverse witness or not.

Mr. Rogers: The plaintiff claims he was entitled to a ruling by your Honor.

The Court: I did not pass on it. I told him to proceed with his examination, that would develop the question of whether he was or was not an adverse witness. The question was not raised.

[fol. 1164] Mr. Rogers: I am raising the question now, may it please the Court, after the direct testimony is in.

The Court: I refuse to rule one way or the other, because I don't know. In the first place, the Government claims he is an adverse witness.

Mr. Wright: We are charging within the language of the rule.

The Court: That is for the purpose of cross-examination.

Mr. Rogers: No, sir, for the purpose of direct examination, sir.

The Court: Well, if it was developed he was an adverse witness for the purpose of examination by either party on either examination.

Mr. Rogers: They raised that under Rule 43, and I think it proper, your Honor could not rule properly at that time.

The Court: The questions and the answers will show for themselves.

[fol. 1165] **Halmer D. Shreffler** resumed the stand on behalf of the Plaintiff and testified further as follows:

Cross-examination.

By Mr. Rogers:

Q. It is my understanding, Mr. Shreffler, that you testified that some time around January of 1937, you went to the distributor companies among them being Metro, Warner, R.K.O., Republic, Fox and Paramount trying to get franchise agreement, is that right?

A. Yes, contracts, to have in my theatre when I expected to remodel in that summer, because I wanted to be secure with product.

Q. Have I correctly named all the companies you went to trying to get franchise agreements at that time?

A. Well, in fact, I think so. I will put it this way, that I went to all except United Artists, Universal, and Columbia. The other concerns I used. If there are any I missed there——.

Q. No, I don't think you have missed any, Mr. Shreffler; but you did go to Metro at that time in 1937?

A. Yes, a salesman came through Shelby and I talked to him about it.

[fol. 1166] Q. I mean about getting franchise agreements; is that right?

A. I wouldn't say all franchise agreements. Just contracts.

Q. Which companies did you go to? I understood that Mr. Schilz was examining you about the companies you went to to get franchises.

A. Yes, the ones I was most interested in was 20th Century-Fox and Metro. I had one from 20th Century-Fox.

Q. Do you mean in 1937 you went to 20th Century-Fox trying to get a franchise agreement for your theatre?

A. Well, I had one in existence at that time.

Q. Now, it is your recollection that you actually did have a franchise contract with Fox in existence in 1937?

A. Yes, that expired, I think—I think that run one year, if I am right, into the Schine deal.

Q. You mean that franchise agreement with Fox ran only one year?

A. It ran three years, but I had practically used a year and a half of it.

Q. Then let me get this thing straight. I want to know if this is a fact, that in 1937, the spring of 1937, you already had a three-year franchise agreement with Fox; is that right?

A. Yes. It expired——

Q. One moment.

The Court: How do you distinguish a franchise agreement?

[fol. 1167] Mr. Rogers: I am going to give you that in a moment, your Honor. I just want to develop one little line and then I will come back to that, your Honor.

Q. What seasons did that franchise agreement cover, if you recall?

A. It started from the first of August or the first of September——

Q. I am asking you which three seasons did the franchise agreement cover, that one you had with Fox I mean.

A. Well, if it run one year starting in October——

Q. Don't say "if." If you don't remember, tell me you don't remember.

A. Yes, I do remember. When the first of September came around in 1937 I had two years of that franchise.

Q. Will you please tell me which seasons it covered? That is a simple question.

A. It will be possibly—correct me if I am wrong—it would be 1935-1936, 1936-1937 and 1937-1938.

Q. Now I want to ask a very interesting question. Will you please explain to his Honor what in the motion picture industry a franchise agreement is commonly known as and commonly described as being?

A. Well, it is a contract that I will be assured the pictures for two or three years of time in my theatre. I know I [fol. 1168] have got the pictures.

Q. As a matter of fact, isn't a franchise agreement an agreement between a distributor and an exhibitor under which the distributor agrees to give the exhibitor product for a period of more than one year?

A. Yes, that is right.

Q. Isn't that right?

A. Yes.

Q. Now let me show you this photostat, and I ask you whether that is a photostat of the franchise agreement between you and 20th Century-Fox Film Corporation, about which you have just been testifying?

A. I never read one clean through in my life.

Q. Pardon?

A. Yes, this is. This is my signature.

Q. That is the one, isn't it?

A. Yes.

Q. And after looking at that paper will you tell us what seasons are covered by that agreement?

A. It is so long since I have looked at one of these.

Q. See if I can't help you (indicating).

A. Commencing with 1936-1937.

Q. That is right, isn't it?

A. That is right. I was just a year off. I couldn't remember that.

[fol. 1169] Q. I know. I just asked you if you couldn't remember it, that is all. So that this franchise agreement that I just showed you is the franchise agreement about which you have testified, isn't it?

A. Yes.

Q. And this one provides for three years for the seasons 1936-1937, 1937-1938 and 1938-1939, doesn't it?

A. That is right.

Q. Looking at that paper, will you tell us when you made that agreement?

A. On the 27th day of April, 1936.

Q. So that when you testified that in 1937 you went to Fox trying to get a franchise agreement that testimony was not accurate, was it?

Mr. Schilz: I don't believe that was his testimony, Mr. Rogers.

Mr. Rogers: That is what my notes show.

Mr. Schilz: The testimony was that he went to Paramount and others.

Mr. Rogers: I beg your pardon. That is not my notes.

The Court: I think he said he went to Fox.

Mr. Rogers: He said he went to all companies. He said he went to Fox, Metro, Warners, R.K.O., Republic and Paramount.

Q. Then, if you so testified about going to Fox in 1937 [fol. 1170] to get a franchise agreement, that was not accurate, was it?

A. I was mistaken. That is, in a way—that is, I might have talked to Mr. Schmertz.

Q. You mean you were talking to him about a franchise and you had a franchise that still had two years to go?

A. It could have been.

Q. You say that could have been?

A. Yes.

Mr. Rogers: In order that there may be no question about the document I was interrogating him about, will you kindly mark it for identification?

(Thereupon the distribution agreement covering Castamba Theatre, between 20th Century-Fox and H. D. Sheffler, Shelby, Ohio, referred to, was marked as Defendants' Exhibit D-39 for identification.)

By Mr. Rogers:

Q. In order to clarify a few points: You took over the Castamba Theatre originally when?

A. In 1922.

Q. And at that time was there any other house in Shelby?

A. Yes.

Q. Which house was that?

A. The Opera House.

[fol. 1171] Q. And was that being operated as a motion picture theatre?

A. Yes, sir.

Q. Who operated it?

A. Allwein & Shreffler.

[fol. 1172] Q. Did you ever take it over?

A. The partnership did.

Q. You did?

The Court: He said the partnership. What partnership?

The Witness: Allwein & Shreffler.

The Court: What?

The Witness: This is back in 1922.

The Court: You said the partnership took it over.

The Witness: Allwein & Schreffler. I had a partner and he died in 1929.

Mr. Rogers:

Q. Then when you took over the Castamba, how many seats were in the house?

A. 476.

Q. And how long did those 476 seats remain in the house, from what year to what year, approximately?

A. That is you mean—those 476 seats stayed there until 1937.

Q. And that was until the summer of 1937, is that right?

A. After the first of June.

Q. And it was in the summer of 1937 you started to alter the house to make a seating of approximately 800 seats out of it?

A. 749.

Q. 749 seats?

[fol. 1173] A. Yes, sir.

Q. Due to that you had extended back and widened it as well?

A. Just one way.

Q. One way, extended it back?

A. No, to the right.

Q. You widened it?

A. Widened it from 28 feet to approximately 46.

Q. And while that operation was going on the house was not operating, was it?

A. No, sir—well, it operated. I think the last day I operated was a little after August first.

Q. And then from August first, when you started to remodel the house, it remained dark. That is, there were no shows being given in it?

A. No shows.

Q. Until what date?

A. I think we opened September 28th or 29th. I can't just——

Q. That is of the same year?

A. Yes, sir.

Q. During that period when the house was closed and you were doing your alterations, you were under contract to play a number of feature pictures with all of the companies, weren't you?

[fol. 1174] A. Yes, sir.

Q. And it was only by reason of the fact that the house was not operating that you could not play the pictures?

A. That is right.

Q. So that when you opened the house you found yourself with an accumulation of pictures on hand that you had not played as yet and you were anxious to play those pictures?

A. That is right.

Q. And you were anxious to play those pictures in order to catch up?

A. That is right.

Q. With your season's product?

A. That is right.

Q. And to play the next season's product in a timely, current manner?

A. Yes, sir. That is what we were trying to do.

Q. In order to do that you then played double features in order to catch up on the product with which you were behind, is that it?

A. Yes, sir. Can I ask a question? That is the way I stated it this morning?

Q. I believe you did. It was a little obscure.

The Court: That is your testimony?

Q. That is the fact, though, isn't it, Mr. Shreffler?

[fol. 1175] A. Yes, sir.

Q. That is what I wanted to adduce as the fact, and that was the fact?

A. Yes, sir.

Q. Didn't you, as a matter of fact, you knew who the Dipson Circuit was, didn't you?

A. No, I didn't. That is, I heard of them. I read it in the film daily, that's all.

Q. From trade sources you knew the Dipson Circuit was a rather important circuit of theatres, didn't you?

Mr. Schilz: ~~He said he does~~n't know, Mr. Rogers.

The Witness: Well, I just saw Mr. Dipson's name in the paper. That was all. I didn't know anything but Cleveland and Shelby. That is the only place I went.

Q. You say that is all you knew about the Dipson Circuit, is that right?

A. Well, up until that time. Then I found out afterwards who Dipson was.

Q. When did you find out who Dipson was?

A. I asked different film salesmen.

Q. When?

A. After. I believe I wrote a letter to a man to find out who Dipson was.

Q. Do you remember when that was?

[fol. 1176] A. It was shortly after Mr. Lazar was there.

Q. That was in 1937?

A. Yes.

Q. Was that before you put the improvement in your house?

A. It was in the process.

Q. While that house was in process your house, the Castamba, was in process of improvement and being enlarged?

A. That is right.

Q. That you made inquiry and discovered who Dipson was?

A. After September 1st of that year.

Q. After those inquiries and discussions of who the Dipson Circuit was and who they were?

A. That don't worry me much.

Q. No, but I asked you if you discovered they were a rather important circuit of theatres operating in the Middle West, did you?

A. I can't recall that.

Q. Don't you remember?

A. Yes, I did. I heard they were pretty powerful.

Q. Yes. You also knew at that time that the Schine people had nothing whatever to do with Dipson, didn't you?

A. No, I didn't. I didn't have anything to do as far as—

Q. You knew they were not in any manner connected with Dipson, didn't you?

A. As far as I knew.

[fol. 1177] Q. Mr. Lazar never told you that the Schine people had any connection with Dipson, did he?

A. He had trouble with Dipson.

Q. Yes. He told you that they were keen competitors, didn't he?

A. Yes, sir.

Q. After you formed this Schine Shelby Corporation and, as you testified, you had 50 per cent of the stock in the company and the Schine people had 50 per cent of the stock in the Company, you went on together under that copartnership?

A. Yes.

Q. From the time you made it down to the present time, is that right?

A. Yes, sir.

Q. Do you remember after that relationship had been established between you and Schine that you and Meyer Schine had some differences, talks, about some dissatisfaction on your part, and Mr. Schine said to you, "Well, if you are not satisfied, all you have to do is to give me back what I actually paid for the stock and you can have this stock back, and I will get out of town," is that right?

A. It meant—wait a minute. On July 8th, 1938.

Q. Didn't that occur on July 8th, 1938?

[fol. 1178] *Q.* That was when Mr. Lazar and Mr. Silverman came to my theatre.

Q. Please answer my question.

Mr. Schilz: Let him explain, Mr. Rogers, you opened it up.

Mr. Rogers: I don't want any explanation. I want an answer to a question.

Q. Didn't you have a talk with Mr. Meyer Schine about July?

The Court: Reframe the question.

Mr. Rogers: I will reframe the question. About July 8th, 1938, in which Mr. Meyer Schine told you, in substance or effect, that if you were in any manner dissatisfied with your 50-50 relationship with the Schine people, he was perfectly willing for you to give him back just what he invested, and he would give you the stock back, and he would get out of the town, and the theatre would be yours entirely, isn't that what happened?

The Witness: Not exactly. I will tell you what exactly happened. That was in Columbus.

Q. You say that didn't happen?

A. Not exactly like that. I will tell you.

Q. One moment. In substance didn't Mr. Schine tell you [fol. 1179] at that time that if you were dissatisfied, so matter what reason there was for dissatisfaction, that all you had to do is give him back what he invested, and he would give you the stock back and he would step out of the theatre. Isn't that what happened, in substance?

A. Yes, he offered the theatre back to me.

The Court: He said he offered the theatre back. The question was did he offer to give it back, and get out of town?

The Witness: That is, I don't remember that. This was at Columbus, at a managers' meeting, and if you will allow me, I will explain that.

The Court: I didn't know whether it was covered.

Mr. Rogers: Yes.

Q. You stated that up to the time the Schine Shelby Corporation was organized you had no written lease of any kind, you were in there practically from month to month, is that right?

A. That is right.

Q. And after the Schine Shelby Corporation was formed, then a written lease was obtained, wasn't it?

A. Yes, the Castamba Realty Company.

Q. And all of the Schine Shelby Corporation had was a lease on that theatre, isn't that right?

A. Yes.

[fol. 1180-1181] Q. It did not own the real estate?

A. No.

Q. Did not own the building?

A. No, sir.

Q. Just had the lease?

A. Yes, sir.

The Court: And equipment?

Mr. Rogers: I mean as far as real estate is concerned. I am talking about so far as real estate is concerned, it had a lease.

Q. The Schine Shelby Corporation,—by the way, did the Schine Shelby Corporation own the equipment in the theatre, or did the landlord own the equipment?

A. Well, it was fixed up. I owned part of it and they owned part of it.

Q. In other words, part of the equipment was owned by the landlord and part of the equipment was owned by the Schine Shelby Corporation?

A. No, that is previous to the Schine Shelby Corporation. After that——

Q. I am talking now, Mr. Shreffler, about when the Schine Shelby Corporation was organized and took over the lease. At that time I mean.

A. O. K.

Q. Was the equipment owned by the landlord or was the equipment owned by the Schine Shelby Corporation.

A. If you will allow me to explain it.

[fol. 1182] Mr. Rogers: Go ahead.

A. When Mr. Lazar—he gave me $15,000 for half of the building. He made that price himself.

Q. When you say "half of the building" just what do you mean by that? You said they didn't own the building.

A. Well, that is half of the building cost that I put into the theatre.

Q. In other words, when you made this improvement the improvement cost about $30,000; is that right?

A. Yes.

Q. And when you made the deal the deal was that inasmuch as it would cost you $30,000 if you would put in $15,000 Schine would put in $15,000?

A. No, I wouldn't just say that was right. He gave me ——that is the way we arrived at the deal.

Q. You arrived at a deal and you based the improvement cost on $30,000?

A. That is right.

Q. And you asked him to give you $15,000 toward that price?

A. He gave that.

Q. I am saying, you agreed on that as being the price?

A. Yes.

Q. And they gave you the $15,000?

A. That is right.

Q. Prior to the improvement of that theatre what rent [fol. 1183] were you paying for the smaller theatre, the 454-seat theatre?

A. $145.

Q. A month?

A. Yes, sir.

Q. When the improvement was made was the rent increased under the lease?

A. I agreed before they ever started to build the building to give Caster & Stambaugh $250 a month rent.

Q. There is no question about that, that that was the rent you agreed to pay them? That was the rent you put in the lease and that was the rent you paid?

A. Yes.

Q. It is my recollection that you testified that this theatre was all you had in the world and that you depended entirely on this theatre for you livelihood; is that right?

A. Oh, no. No, that is——

Q. Don't you remember so testifying? That is what I want to know.

A. If I did it was unintentional because I had another business at that time.

Q. That was unintentional?

A. Yes.

Q. And you didn't mean it when you said it; is that right?

[fol. 1184] A. Oh, no, no.

Q. You didn't mean it, you say?

A. I liked the show business better than I did the carriage business.

Q. That is not what I am asking you?

A. I will apologize if I made a misstatement. I didn't mean it that way.

Q. You didn't mean it that way and that was not what you intended?

A. No, sir.

Q. As a matter of fact, is it your position that you depended for a large part of your income on this theatre, the Castamba Theatre?

A. Yes; it was a much better, more profitable business. I run that carriage business for my mother, who was quite old.

Q. I am talking at this time about the Castamba Theatre, not about the carriage business.

A. Yes, I made money in the show business.

Q. And you depended upon the Castamba Theatre to give you a substantial part of your ~~income; isn't~~ that right?

A. That is right.

Q. Let me ask you something: Is this letter in your handwriting? Just your handwriting, and that is all I want to find out.

[fol. 1185] A. Yes, it is.

Q. Is that your signature?

A. Yes, sir.

Mr. Rogers: I offer it in evidence.

(Thereupon the letter from H. B. Shreffle to Louis Lazar, dated January 27, 1936, referred to, was received in evidence and marked Defendants' Exhibit D-40.)

Q. Now I wish to read to you from Defendants' Exhibit D-40 just one sentence: "If you remember I do not depend on the show business"——

Mr. Schilz: Mr. Rogers, can't we have the whole letter?

The Court: It is all in evidence.

Mr. Rogers: It is all in evidence.

Q. "If you remember, I do not depend on the show business as livelihood, but simply a nut," with the word "nut" quoted.

A. That is right.

Q. You remember that being in the letter, don't you?

A. Yes, sir.

Q. When you said "nut" just what did you mean by this word "nut"?

A. Well, I was just a crazy nut for the show business all my life, ever since I have been a boy eight years old. I loved it. I have been whipped to stay away from the wicked show [fol. 1186] people by my father.

Q. Did you mean that you referred to yourself as a nut?

A. Well, that- a show man's expression. In other words, I was crazy about this business.

Q. Let me ask you this: Wasn't there another showman's expression about the word "nut"?

A. I don't recall it.

Q. Don't you ever recall——

A. Oh the nut, the expenses, the nut on the house.

Q. That is right. And didn't the "nut" in showman's parlance mean just making the bare expenses of the running of the house? Isn't that right?

A. I didn't mean it that way.

Q. No, I am asking you if that is not what it meant in the showman's parlance.

A. Yes, that is what it may mean in the show business, but not the way I mean it.

Q. In other words, you didn't mean you were running the house just to make the bare expenses, but you meant it to describe yourself as a nut?

A. Well, I——

Q. Is that what you mean?

A. Certainly.

Mr. Rogers: That is all.

[fol. 1187] Re-direct examination.

By Mr. Schilz:

Q. During the various conversations you had with Mr. Lazar what profit did he guarantee you from your association with the Schine Corporation?

Mr. Rogers: May it please the Court, we are not trying out a breach of contract case between Mr. Shreffler and Mr. Lazar and I object to it as incompetent.

The Court: What was said may be competent.

Mr. Rogers: Even then I doubt if it would be competent, your Honor.

The Court: Find out when it was said.

By Mr. Schilz:

Q. Did Mr. Lazar at any time during 1937 tell you that association with the Schine Corporation would give you a certain profit?

A. Yes, sir.

Mr. Rogers: One moment, now.

Q. What time during 1937?

Mr. Rogers: That is another story.

A. On September——

Mr. Rogers: Pardon me just a moment.

Mr. Schilz: You went into the matter of income, Mr. Rogers.

Mr. Rogers: Excuse me, I didn't go into income at all. [fol. 1188] I merely asked him what he meant by the word "nut". That is all I asked him. And he said it didn't mean income, so that I didn't go into income.

The Court: Whether it did or whether it didn't, I will permit him to answer as part of the conversation prior to the contract, the conversation with Mr. Lazar. Let the witness state what was said.

Mr. Rogers: My point is that if this is a conversation between Mr. Lazar and Mr. Shreffler before the making of the contract under which they formed this corporation, then it surely is merged into the written agreement and in the document.

The Court: If it was a statement that he would make a profit by doing this——

Mr. Rogers: If it was merely a statement that he would make a profit it surely is incompetent.

The Court: It is not competent in so far as it relates to your cross-examination. It is on the re-direct.

Mr. Rogers: Furthermore, your Honor, may I respectfully suggest that it is not even competent on the issues raised under the issues pleaded. There is no such thing claimed, [fol. 1189] either in the complaint or in the bill of particulars or even remotely suggested. Ordinarily, your Honor, I should have claimed surprise and asked that this witness's cross-examination be deferred because there has not been a single question propounded here of any importance that went to the conduct after Schine entered into this situation.

Mr. Schilz: If it will save time I will withdraw the question.

By Mr. Schilz:

Q. Mr. Shreffler, will you tell the Court, give the explanation of your conversation with Mr. Schine at the

Managers' Convention in Cleveland, that you wanted to give?

Mr. Rogers: I object to this witness giving any explanations.

The Court: He can give a conversation. Explanation is a conclusion.

Q. You have testified that Mr. Schine offered to buy back your theatre. What else did he say at that time and what did you say, if anything?

Mr. Rogers: I object to that question on the ground it is leading and it calls for a conclusion.

[fol. 1190] The Court: He has not concluded his question.

Mr. Rogers: I thought he had.

Q. What else did Mr. Schine say at that time, if anything, and what did you say?

A. Mr. Schine asked me if I would like to buy the theatre back and I said no. That was at the Managers' Convention in Columbus. I referred him back to when Mr. Lazar and Mr. Silverman were in Shelby. I know Mr. Lazar felt very badly and so did I.

Mr. Rogers: I move to strike that.

The Court: Strike it out.

Q. What else did you say to Mr. Schine at that time?

A. I merely told him that we were going to try and put the theatre over, that Mr. Lazar and Mr. Silverman and I thought I could get $3,000 by the first of January, 1939.

Mr. Rogers: Now, I move to strike that.

The Court: Read that answer.

(Last answer read.)

Mr. Rogers: I move to strike that as not competent.

The Court: What do you mean profit—$3,000?

The Witness: Yes, profit. That is, in other words, there was a lot of water that had went over the dam, and I said, "Well, let's all get together now and we will go to town."

[fol. 1191] I tried my best——

The Court: Strike it out.

Q. At that time did Mr. Schine offer you any definite terms of purchase?

A. No, sir, there was no price mentioned.

Mr. Rogers: There was no testimony about purchase. It was sell.

Mr. Schilz: Well, Mr. Schine would be purchasing, would he not?

Mr. Rogers: No, Schine would be selling, not purchasing.

Mr. Schilz: That is all.

Re-cross-examination.

By Mr. Rogers:

Q. Did I understand you to say that Mr. Schine made you the same offer later, in Gloversville?

A. No.

Mr. Rogers: That is all. May it please the Court, I wish to make a motion to be effective as of the close of Mr. Charnas' testimony and also the close of Mr. Shreffler's testimony, to strike all of the testimony on the ground that there has been no connection whatever, that there has been no proof of authority, that the testimony [fol. 1192] refers entirely to local transactions, and on the ground that the testimony is not binding.

The Court: Denied.

Sergeant Richard T. Kemper, a witness called by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Schilz:

Q. What is your present address, Sergeant?

A. Well, I am assigned to Mitchell Field, First Air Force.

Q. What was your occupation before you went in the Army?

A. I was operating a theatre.

Q. Where were you operating a theatre?

A. In Buffalo.

Q. Did you ever operate theatres any place else at any time?

A. Yes, sir.

Q. Directing your attention to the year 1937, where were you operating theatres at that time?

A. In the latter part of 1937 I opened a theatre in Shelby, Ohio.

Q. What was the name of that theatre?

A. The State Theatre.

Q. What other theatres were operating there at that time?

[fol. 1193] A. When I first went to Shelby the Opera House was the only one operating. The Castamba was closed.

Q. How many seats and what was the capacity of the State Theatre?

A. 454.

Q. When did you actually open the theatre?

A. I believe it was the day before Thanksgiving, 1937.

Q. What efforts, if any, did you make to obtain motion picture product prior to the opening of the State Theatre for use in that theatre?

A. Well, I contacted the exchange managers in Cleveland of Universal, United Artists, Columbia, 20th Century-Fox, Paramount, R. K. O. and Metro.

Q. What product was sold to you for the 1937-1938 season?

A. Universal, United Artists and Columbia.

Q. Were you assured of any other product?

Mr. Rogers: One moment. I object to that as calling for a conclusion.

The Court: Sustained.

Q. What efforts did you make, if any, to obtain the R. K. O. product?

A. Well, at the time I opened the State Theatre the Opera House was running several days a week, running R. K. O. product, and I understood they weren't doing so well.

Mr. Rogers: One moment. I move to strike "I under-[fol. 1194] stood they weren't doing so well", as calling for a conclusion and not responsive.

The Court: Strike it out.

The Witness: I was informed——

Mr. Rogers: Strike it out.

The Court: He is asking you for a conversation.

Q. My question is: What efforts, if any, did you make to obtain the R. K. O. product?

A. I contacted Mr. Greenblat, who was the R. K. O. exchange manager in Cleveland, regarding the R. K. O. product.

Q. At what time did you contact him?

A. I contacted him prior to opening the State Theatre, and at that time he had a customer,——

Mr. Rogers: May we get a date? I move to strike out the answer.

Q. When was it?

A. The latter part of August, 1937.

Q. What did Mr. Greenblat tell you?

A. That he had a customer at that time at the Opera House.

Mr. Rogers: I object to this on the ground that no proper foundation has been laid; that there is no evidence of the authority, and not binding on the defendant.

The Court: There has been testimony of Mr. Greenblat's connection with the producer.

[fol. 1195] Mr. Rogers: That is right, but I am still raising my objection.

Mr. Schilz: There has been some considerable testimony that Mr. Greenblat is the branch manager of R.K.O., or was at that time, in Cleveland.

The Court: Had you dealt with this man Greenblat before in the motion picture business?

The Witness: Yes.

The Court: Over how long a period of time?

The Witness: I had known him through my association with Dipson, with the Dipson Theatre, where I was formerly employed, in Wheeling, West Virginia, and at East Liverpool, Ohio.

The Court: For what period of time, how many years anyway—several years?

The Witness: Directly about 1934.

The Court: Overruled.

By Mr. Schilz:

Q. What did Mr. Greenblat tell you as to the possibility of obtaining the R.K.O. product for use in the State Theatre during the 1937-1938 motion picture season?

A. He told me that the product was sold to the Opera House, that the customer was unsatisfactory, they had been having a bit of difficulty with the operators of the Opera House, and that if I could make an arrangement to take [fol. 1196] over the Opera House that he would let me have the R.K.O. product.

Q. Did he tell you at that time how many feature pictures would be involved in that?

A. I don't recall him saying the exact number. We talked about it—which I wanted for the State Theatre.

Q. After you opened the State Theatre did you make efforts to make the suggestive arrangement with the operator of the Opera House?

A. Yes, I contacted the lady who was operating the Opera House and had several conversations with her, and she was not too pleased with her own operation——

Mr. Rogers: One moment. I move to strike.

The Court: Strike it out. You contacted the lady that operated the Opera House?

The Witness: Yes, and she was willing to consider an arrangement.

Mr. Rogers: One moment. I object to that.

The Court: Sustained.

Q. Was the operator of the Opera House willing to release the R.K.O. pictures to you for use in the State Theatre?

Mr. Rogers: I object to that as calling for a conclusion.

The Court: Sustained.

Q. Did you take over the operation of the Opera House?

A. Yes.

[fol. 1197] Q. When did you take it over?

A. I don't recall the exact date. I believe it was in the spring of 1938.

Q. Did you receive the R.K.O. product for use in either of the theatres then?

A. No, sir, I did not.

Q. Did you have any conversation with Mr. Greenblat concerning obtaining the R.K.O. product for use in the two theatres after you took over the Opera House?

A. Yes.

Q. When d[illegible] that conversation occur?

A. Before I took over the Opera House, and at the time I took over the Opera House.

Q. What did Mr. Greenblat tell you then?

Mr. Rogers: One moment. The question is directed to the time after.

The Court: You gave your talk before with Mr. Greenblat about taking product. Is this another occasion?

The Witness: Yes, sir.

The Court: After you had taken over the Opera House?

The Witness: Yes, sir.

Mr. Rogers: May I get the date of that, please?

The Court: When was this second talk?

The Witness: I was just trying to recall. It was shortly [fol. 1198] after I took it over and I contacted Mr. Greenblat.

Mr. Rogers: May we get that date?

The Court: I do not know as it appears yet when you did take it over.

The Witness: I took it over in the spring of 1938.

By Mr. Schilz:

Q. Can you give us any closer date than that?

A. It has been about seven years and I haven't had any connection with it since 1939.

Q. What did Mr. Greenblat tell you about the R.K.O. product when you contacted him about taking over the operation of the State Theatre?

Mr. Rogers: I respectfully suggest we ought to get some approximate date of this talk, so that I can intelligently meet it.

The Court: Can you tell us any closer when you took over the Opera House than the spring? Approximately the time.

The Witness: I couldn't tell you definitely, sir. It was in the spring.

The Court: Can you tell within two or three months.

The Witness: I should say around the latter part of May or June.

The Court: And after that you had another talk with Mr. [fol. 1199] Greenblat?

The Witness: Yes.

The Court: All right.

By Mr. Schilz:

Q. What did Mr. Greenblat tell you?

A. He told me he couldn't deliver the product to me as he had promised because Schine had entered the picture and that New York had made a commitment to Schine, and I said, "Well, Herb, what about your promise to me in the event I made arrangements with Mrs. Stahl?" "Well," he said "I put myself out on a limb and there is nothing I can do about it; it is out of my hands." I said, "You know I can't exist with the product I have. I am depending on the R.K.O. product; I don't have enough for the State Theatre and now I have the Opera House." He said, "Well, why don't you contact Lou Lazar. Maybe he will release some of the pictures to you," and I did contact Mr. Lazar.

Q. What did Mr. Lazar say to you?

A. Well, Mr. Lazar told me that Schine——

Mr. Rogers: Get the date of this, please.

Q. When was it you contacted Mr. Lazar?

A. I should say it was within a day or so after I had talked to Mr. Greenblat.

Q. Do you recall it any closer than that? Can you give us [fol. 1200] the month?

A. I am afraid I can't.

Q. Sergeant Kemper, what was it you said to Mr. Lazar and what did he tell you with respect to the R.K.O. product?

A. Well, I told Mr. Lazar that I had talked to Herb Greenblat and I told him of the arrangement I had discussed with Mr. Greenblat for the product and how Greenblat told me that Schine had the product, and he suggested that I contact Mr. Lazar and see if he wouldn't release some of the pictures to me, and if my memory serves me right Mr. Lazar told me that they were not in the habit of releasing film.

Mr. Rogers: One moment. I move to strike on the ground that the witness says "if his memory serves him right."

The Court: Yes.

Q. What was the substance of what Mr. Lazar told you?

Mr. Rogers: Does he remember, first? I object unless——

The Court: State what was said, to the best of your recollection.

A. To the best of my recollection, he said that they would not release any of the product.

Q. During the 1937-1938 motion picture season what product did you obtain and use in the State Theatre?

A. United Artists, Universal, Columbia, and a few Monogram.

[fol. 1201] Q. Did you continue the operation of the Opera House during that season?

A. Yes, sir.

Q. Did you continue it in operation every day of the week?

A. No, sir, we were only open week ends, Saturdays and Sundays, and occasionally on a Friday.

Q. How large a theatre was the Opera House?

A. A little over 300 seats, about 325.

[fol. 1202] Q. What was the physical condition?

A. Well, it is an upstairs opera house, not too good.

Q. Directing your attention to the year 1939, what, if any, efforts were made to purchase the State Theatre?

Mr. Rogers: He had the State Theatre, as I understand.

The Court: He owned both of them.

Mr. Rogers: Yes, he owned both the State and the Opera.

Mr. Schilz: Withdraw that.

Q. Directing your attention to the year 1939, what, if any, efforts were made by the Schine defendants to purchase the State Theatre from you?

A. I was approached by Mr. Bud Silverman.

Mr. Rogers: May we get the date, please in 1939.

The Witness: I was approached prior to 1939.

Q. When were you first approached by Mr. Silverman with reference to purchasing the theatre?

A. Around December, 1937.

Q. December, 1937?

A. Yes, sir.

Q. What statement did Mr. Silverman make to you at that time?

Mr. Rogers: One moment. I object to that on the ground there has been no evidence adduced up to the present that Mr. Silverman had any authority to make any statements, [fol. 1203] or to make any representations or to in any manner bind the defendant, or that he had any authority whatever to bind the defendants.

The Court: There is some testimony here in reference to—is it Silverman?

Mr. Rogers: Silverman, sir. They have not connected him yet.

The Court: There is testimony, some testimony.

Mr. Rogers: Without connection, sir.

The Court: What?

Mr. Rogers: Without connection. They brought testimony in and your Honor admitted it subject to connection, and they haven't connected it yet.

The Court: Let us see, what did Mr. Silverman do?

The Witness: He was the district manager for Schine Theatres in Ohio.

By the Court: How did you contact him? How did you know who he was?

The Witness: He stopped by the State Theatre when we were under construction, made himself known.

Q. Did he say anything to you at that time?

Mr. Rogers: One moment. Up to the present I move to strike the testimony. Surely Mr. Silverman could not prove any agency out of his own mouth.

Mr. Wright: If the Court please, he has been identified [fol. 1204] Lazar on other negotiations.

Mr. Rogers: That may be so on other negotiations the presence of Mr. Lazar, but there — testimony here Mr. Lazar was present Mr. Silverman, and Mr. Silverman has — properly identified yet nor has his — been established.

The Court: There is testimony he was district manager.

Mr. Rogers: No, sir.

Mr. Wright: I beg your pardon. I think there is.

Mr. Rogers: Not by any competent source.

The Court: I received evidence that was presumed to be competent.

Mr. Rogers: All subject to connection, as I understood it.

The Court: Objection overruled.

Q. When Mr. Silverman saw you while the State Theatre was under construction, did he also offer to purchase the State Theatre?

A. Well, he stopped by the theatre and we had a general conversation. One of his first question- I believe he wanted to know if Nick Dipson was interested with me in the theatre, and I told him "No." Then he said, "Of course, [fol. 1205] you know Schine is in the city now, and are you going to complete the theatre?" And I said, "Yes. I was committed on the site, had money invested, a contract all signed" and we were going to complete the theatre, and he said, "Well, why don't you contact the Major, maybe you can work something out." I said "No, I am going ahead and try and complete the theatre and operate it." Several months later he stopped by again after we were opened and came in and looked the theatre over and again suggested that I get in contact with the major, as he called him, referring to Mr. Lazar, and naturally, he asked how we were doing at that time. "Fair." I told him, "We could use more product, were unable to get it." I think we even discussed even the R.K.O. proposition. In fact, I had called Mr. Lazar requesting some pictures at the suggestion of Mr. Greenblatt.

Q. When did Mr. Silverman see you next?

A. I believe the next time I saw Mr. Silverman was in Cleveland, at a testimonial dinner for one of the Exchange managers.

Q. Can you give us the year and the approximate month?

A. I can't give you the month.

Q. What year was it?

A. It was in 1938.

[fol. 1206] Q. Was there any discussion at that meeting between you and Mr. Silverman as to the purchase of the State Theatre?

Mr. Rogers: Can't we get some approximate date fixed when this testimonial dinner took place and whose testimonial dinner it was?

The Witness: As I recall, it was Dave Miller's testimonial dinner.

Q. Who was Dave Miller?

A. He was the Universal Exchange manager.

The Court: Where was this?

The Witness: What hotel?

The Court: Where? What city?

The Witness: In Cleveland, Ohio.

The Court: Tell as close as you can the date. It was in 1938.

Q. At that dinner——

Mr. Rogers: I think his Honor suggested he fix the time in 1938.

The Court: About when was it, have you any recollection?

The Witness: No, sir. I have been out of that situation so long it is pretty difficult to give dates.

The Court: Spring, summer, fall or winter?

The Witness: I believe it was in the spring.

Q. And at that dinner, what, if anything, was said to you [fol. 1207] by Mr. Silverman as to the purchase of the State Theatre?

Mr. Rogers: One moment. I object to the form of the question as leading. Let us get what the conversation was.

The Court: That is true. Your question was leading. State what talk you had with Silverman.

The Witness: We had no talk regarding the purchase of a theatre at that time. However, he did bring Mr. Lazar over.

Mr. Rogers: One moment, I move to strike all after the testimony that there was no talk about the purchase of the theatre.

The Court: State the conversation.

Mr. Rogers: The conversation only.

Q. At the testimonial dinner did you meet any other official of the Schine organization?

A. Yes, sir, I met Mr. Lazar.

Q. By whom were you introduced?

A. Bud Silverman.

Q. What was said by Mr. Lazar and by yourself?

A. Mr. Lazar suggested that we have a conversation and see if we couldn't work something out in Shelby, and I promised to contact him, I believe, the following week in Bellefontaine. We had no definite conversation as to whether they were going to purchase or not at that time.

[fol. 1208] Q. Did you meet Mr. Lazar in Bellefontaine?

A. Yes, sir.

Q. What was said at that time by Mr. Lazar and yourself?

Mr. Rogers: May we get that date?

The Court: He said the following week. You said the following week?

The Witness: I believe it was, sir. Before I went to Bellefontaine I believe we had some conversation——

Mr. Rogers: One moment. That is not responsive. I move to strike. The question was "What was said."

The Court: All right. What was said in this conversation with Mr. Lazar?

The Witness: In Bellefontaine?

Q. Yes.

A. Mr. Lazar told me that the situation in Shelby was not too healthy, it wasn't too profitable for them, it wasn't their expectations, he knew it wasn't too profitable for me, I didn't haven't any more hopes of getting any more product and the thing to do is see if we couldn't get together and work out a deal. He asked me I believe at that time what my investment was in the theatre and what I would be willing to take for it. I told him I had an associate at [fol. 1209] that time and I would have to discuss it with him. So he told me to come back and give it some thought and contact him again, or he would contact me, and see what we could work out.

Q. Did you tell him what your investment in the theatre was in response to his question?

A. I believe I told him, yes.

Q. What did you tell him?

A. Around $15,000 at that time.

Q. When did you next see Mr. Lazar?

A. I believe it was in July.

Q. Of what year?

A. July, 1938.

Q. And where?

A. Well, I saw him one time at Bellefontaine.

Q. Did you see Mr. Lazar a number of other times?

A. Yes, I saw him quite a number of times.

Q. In this same connection?

A. Yes.

Q. Where did you see him? At what point?

A. I saw him in Cleveland. I saw him in Bellefontaine. I met him one day in Mansfield, Ohio. He called me from Cleveland and asked me to meet him over there and have lunch with him. I did.

Q. How long did this series of meetings continue?

[fol. 1210] A. Six or seven months.

Q. What, if anything, was said during your meetings with Mr. Lazar as to closing the State or Opera House Theatres in Shelby.

The Rogers: I object to that as leading.

The Court: State the particular time and state what your conversation was.

Q. Can you give us a closer approximation, Sergeant, as to when these various meetings with Mr. Lazar occurred?
A. No, I can't. We corresponded in regards to them.

The Court: You said you had a talk in July, 1938. What was said at that time? What talk did you have with him about that time and you had some talks prior to that?
The Witness: He still wanted to work out a deal for the situation.
The Court: What did you say?
The Witness: Well, he told me as on every occasion that the town was not profitable, was not big enough.
Mr. Rogers: I move to strike.
The Court: Strike it out. In July you said he wanted to make out a deal. That was your own conclusion. Give what he said. Did he say he wanted to make a deal with you?

[fol. 1211] A. Yes, sir.

The Court: What did you say?
The Witness: Well, I told him I would be willing to make a deal if I could get the right price for it.
The Court: What happened after that conversation?
The Witness: He again said Schine couldn't pay the amount of money I had offered it to them for in the situation, it wasn't worth that to them and they had a partner there who they would have to sell on the idea before they could make any deal, and again he wanted me to get down to rock bottom prices that I would take for the situation, telling me that I knew it would never be profitable, that the town was not big enough for the two operations, and I couldn't better my product, and he suggested I make a deal with him and try somewhere else, or make a connection with a theatre organization as manager.

Q. Did he name the theatre organization?
A. No. As a matter of fact, he did say he thought maybe Schine could use me, if I was interested.
Q. When was the last conversation you had with Mr. Lazar on this subject?
[fol. 1212] A. The last conversation was in 1939.
Q. Can you fix the month?
A. I believe it was July.

Q. What was the nature of that conversation?

A. I had talked to Mr. Lazar, and he said his partner wasn't very willing to make a deal, neither was Mr. Meyer Schine, because they felt that I was waging a losing fight, I was going to lose out and that, however, he would take it up with Mr. Meyer Schine at the convention in Gloversville, I believe it was to take place a week or so later.

Q. Was anything else said?

A. I don't recall.

Q. During all your conversations over this period of time with Mr. Lazar was anything said as to the manner in which Schine would operate theatres in Shelby?

Mr. Rogers: May it please the Court, I object to that on the ground it is leading, and I wish Mr. Schilz would stop asking leading questions.

The Court: He always repeats the testimony. He asked the conversation at various times. Unless you exhaust his recollection of the conversations. When you exhaust his recollection, then you may call his attention more particularly.

[fol. 1213] Q. Have you given the Court your best recollection of these conversations with Mr. Lazar?

A. Yes, sir.

Q. The substance of them. During this period of conversations, what if anything was said about closing the State Theatre and the Opera House, if operated by Schine?

Mr. Rogers: I beg your pardon. May it please the Court, I must insist that the questions are all leading. Will the Court kindly instruct Mr. Schilz to stop asking leading questions. He ought to know how to ask a proper question. I am tired of objecting to them and up to this point, I think it is unfair practice. He has been warned several times.

Mr. Schilz: I may have mistakenly attempted to follow the Court's suggestion as to the manner in which to develop this evidence.

The Court: The date or occasion when the transactions took place is, of course, material to the defendants, and they are entitled to know. Read the last question.

(Last question read.)

The Court: Have you related all the conversations that [fol. 1214] you recall you had with these men?

The Witness: What?

The Court: Related all the conversations that you had with these men? You spoke about, Lazar, either one or both.

Q. With Mr. Lazar.

The Court: Have you stated all of your conversations that you recollect with Lazar?

The Witness: Well, during the conversations, of course, he asked me the terms of the leases I held on two theatres, also if there was anything in the lease stating that they must be kept open any number of days per week.

Q. What else did he say in that regard?

A. I told him that the Opera House must be kept open two days a week, but there was nothing in the State lease, stating it must be kept open any stated number of times.

Q. Did he say anything else?

A. Yes.

Q. What?

A. In the event that we concluded the deal that in all probab-ly they would close the State and operate the Opera House.

Q. What, if any, disposition did you make of the State Theatre after the summer of 1939?

[fol. 1215] A. Well, the summer of 1939, Mr. Lazar's prediction came true——

Mr. Rogers: I move to strike.

The Court: Strike it out.

Q. Just answer my question, Sergeant. What disposition did you make of the State Theatre?

A. I turned the theatre over to the associates I had in Shelby.

Q. Have you had any connection with the operation of the theatre since the summer of 1939?

A. No, sir. I had no connection, and, as a matter of fact, I haven't been there since.

Q. What was the last time you talked to Mr. Lazar, Sergeant?

The Court: When was the last time?

Q. When was the last conversation you had with Mr. Lazar? Can you fix the time of your last conversation?

A. I believe I stated it was in July.

Q. Can you fix it any closer than that?

A. No, sir.

Q. July of what year?

A. 1939.

Mr. Schilz: That is all.

The Court: And when did you discontinue your connection with it? What time?

The Witness: Latter part of August, 1939.

[fol. 1216] The Court: 1939?

The Witness: Yes, sir.

The Court: Cross-examine.

Cross-examination.

By Mr. Rogers:

Q. When you started converting the building that was on the site of the State Theatre, the Castamba Theatre was already in the town, was it not?

A. Yes, sir.

Q. And operating?

A. Closed, sir.

Q. You mean closed for repairs?

A. Yes, sir.

Q. And that is the only reason it was closed, isn't that right?

A. I couldn't state as to that.

Q. It had been in operation as a motion picture theatre before you started any work on the State, had it not?

A. Yes, sir.

Q. And when you were in the course of remodeling the building on the site of the State Theatre into a moving picture theatre, you then during the course of that operation made the deal to take over the Opera House, didn't you?

[fol. 1217] A. During the course of the construction?

Q. Yes, while you were doing the construction work on the State you made the deal to take over the Opera House. didn't you?

A. No, sir. I believe that was made later. The State was already opened.

Q. You mean the State was open and operating?

A. Yes, sir.

Q. When you made your deal to take over the Opera House?

A. Yes, sir.

Q. With reference to this so-called Opera House, where was this Opera House located?

A. It was located on South Main Street in Shelby.

Q. And it occupied part of a building, did it?

A. Yes, sir, second floor.

Q. What kind of a building was that?

A. I believe it was stone and brick construction.

Q. And this had the upper floor, this so-called Opera House, had the upper floor of that building, is that right?

A. Yes, sir.

Q. Had to walk up a flight of stairs to get up there?

A. That is right.

Q. You made your deal to take over the Opera House in order to get the R. K. O. product, didn't you?

A. That was one of the reasons, yes, sir.

[fol. 1218] Q. Wasn't that the main reason?

A. Yes, it was.

Q. Wasn't it your idea if you could get the Opera House and get the R. K. O. product that way, that you would then close the Opera House and operate only the State?

A. No, sir, my deal with the Opera House——

Q. I ask you what you intended to do?

A. I intended to operate according to the contract I made with the landlord.

Q. Pardon me. You hadn't made any contract. I ask you when you proposed to take it over, when you proposed to take it over, you proposed to take a lease on it and close it and only operate the State, didn't you?

A. No, sir; I did not.

Q. Didn't you operate the Opera House for two weeks only because there was a clause in that lease obligating you to operate it two days a week?

A. No, sir, it was a matter of choice of product. I figured if I could make the deal——

Q. One moment. You say you kept the Opera House opened two nights a week, because of shortage of product?

A. No, sir, I did not say that.

Q. That is what I understood you to say. Did you have enough product purchased to operate the State Theatre and operate the Opera House both continuously every day [fol. 1219] in the week?

A. No, sir.

Q. In other words, you say you did not have enough product then for the Opera House, is that right, to operate that every day in the week?

A. No, sir, I did not.

Q. You did not you mean?

A. I did not have sufficient product to operate.

Q. Were it not for the fact that your lease obligated you to operate two days a week in the Opera House, you would have shut the Opera House, wouldn't you?

A. Well, that is a hard question to answer.

Q. Don't you know whether you would or not?

A. That depends on a lot of conditions at the time.

Q. The Opera House was not making any money, was it?

A. It was getting buy. It didn't need a lot to get by.

Q. Did it make any money?

A. Yes, sir.

Q. About how much did it make?

A. We were only operating two days a week, probably $25-$30.

Q. You mean after all rental, film rental and overhead expense, it still made money?

A. As far as all, all the overhead, it was practically nil, because we used the same staff for both theatres.

[fol. 1220] Q. Whatever that was?

A. Yes, we made some.

Q. You didn't use the same film you used in both theatres?

A. No, sir.

Q. You had a contract for film separately?

A. Yes.

Q. After paying for rent at the Opera House and paying for film hire and whatever help you had, you say you still made a profit on the Opera House?

A. Yes, sir.

Q. Operating two days a week, is that right?

A. Yes, sir.

Q. In the month of September, 1937, were you in the process of doing this reconstruction job on the State Theatre?

A. Yes, sir.

Q. Were you at that time interested in any other theatres?

A. You mean financially?

Q. Yes.

A. No.

Q. You had no interest in any theatres?

A. No, sir.

Q. What was the Kemper Theatres, Inc.?

A. That was a corporation formed at that time to operate the State when it opened, and the construction of the theatre.

[fol. 1221] Q. And is that all the Kemper Theatres was doing?

A. At that time, that is the only deal.

Q. Is that the only thing it had?

A. Yes, sir.

Q. I show you this letter, and I ask you if that is your signature? (A pause). Is that your signature?

A. Yes, sir.

Mr. Rogers: I offer it in evidence.

Mr. Schilz: All right.

(Thereupon photostat of a letter dated September 16, 1937, was received in evidence and marked as Defendants' Exhibit D-41.)

Q. In the opening paragraph of that letter you say, "As the stationery will indicate, we are moving into the Ohio territory from our Wheeling, West Virginia Headquarters."

A. That is right.

Q. Whom did you mean by "we"?

A. My brother and my wife, who was also a stockholder in the corporation.

Q. You mean that you were all moving into the Ohio territory?

A. And we did.

Q. Into the territory?

[fol. 1222] A. Into Ohio, yes.

Q. You mean you moved into Ohio, is that what you mean?

A. To open the State Theatre.

Q. You said you were moving into the Ohio territory, and this letter was addressed to Mr. William Sussman, 20th Century-Fox Film Corporation. Was it your idea that you wanted to give him the impression that you were going into the Ohio territory to open theatres?

A. Naturally I was going in to open theatres.

Q. And that is the impression you wanted to give him?

A. Yes, sir.

Q. And not that you and your family were moving into the Ohio territory?

A. Kemper Theatres were moving in.

Q. And not your wife?

A. She was part of the corporation.

Q. She was part of the corporation?

A. That is right.

Q. "We find that your product has been sold this year to an independent operating the Castamba Theatre"?

A. That is right.

Q. You yourself were an independent, too, weren't you, if you got your theatre?

A. That is right.

Q. And then you say, "If it could be arranged this year, [fol. 1223] we would be very much interested. If not, would like to arrange a franchise starting with next year along the lines of the Wheeling deal." Which deal did you have in Virginia?

A. I am referring to the West Virginia Theatrical Enterprises that I made with Mr. Sussman, as I recall.

Q. That Wheeling deal was not your deal at all?

A. I represented Dipson on the deal.

Q. Never mind about Dipson. We are talking about Kemper Theatres, Inc.

A. It was a deal between Mr. Sussman and myself.

Q. Mr. Kemper, please, you were writing this letter in behalf of Kemper Theatres, Inc., weren't you?

A. That is right.

Q. Kemper Theatres, Inc., never had a deal in Wheeling, did it?

A. No, sir.

Q. It never operated a house in Wheeling, did it?

A. Not Kemper Theatres, Inc.

Q. That is what I am talking about, and you were seeking a franchise agreement, is that right?

A. First I was asking for——

Q. That is what you were seeking in this letter?

A. Naturally.

Q. In other words, you wanted an agreement for more [fol. 1224] than a year, and you wanted to get it away from the independent who was operating the Castamba Theatre, is that right?

A. I requested it, if they were willing to sell me at that time, it was the practice, if possible, to make more than a one-year deal.

Q. In other words, you knew that the Castamba Theatre had the product of 20th Century-Fox, didn't you, at that time, at the time you wrote this letter?

A. Yes.

Q. And you were seeking to get Fox to sell that product away from the Castamba Theatre in your new theatre, weren't you?

A. Perhaps they would have.

Q. That is what you were seeking to do, weren't you?

A. Yes, naturally.

Q. And you were seeking to get a contract for more than a year?

A. If I could.

Q. That is what you were seeking to do, weren't you?

A. Yes.

Q. When you opened the State Theatre you had the product, as I understand it, of Columbia, Universal, United Artists, Monogram and some others?

A. No, I had part of Monogram. I didn't have all of it.

[fol. 1225] Q. Had part of Monogram, and what else did you have?

A. Columbia, Universal and United Artists.

Q. Up to the time that you sold your interest in the State Theatre you still had Columbia, Universal, and United Artists, part of Monogram, didn't you, first run?

Mr. Schilz: I object to the question. Sergeant Kemper did not testify that he sold his interest in the State Theatre.

Mr. Rogers: He said he disposed of it to two friends of his in Shelby. Let us see. I will cover it. I will cover it with one question, your Honor.

Q. When you ceased your operations at Shelby at the Theatre in 1939, is it accurate that you disposed of your interest to some friends of yours?

A. Yes.

Q. That is accurate, isn't it?

A. Yes, sir.

Q. And who were those friends?

A. Tom and James Gregory.

Q. They were old friends of yours, weren't they?

A. Not particularly old friends. Tom Gregory worked for me in Wheeling. He left there for another job, and then he came on to Ohio.

Q. They are in no manner connected with Schine, are they?

A. Not so far as I know.

[fol. 1226] Q. Schine has never had anything to do with the operation of the State Theatre since you got it?

A. Do you mean during the period I operated it?

Q. Yes.

A. No, sir.

Q. And you never made any deal with Schine, did you?

A. No, sir.

Q. Having established that my statement was accurate that you disposed of your interest in 1937, I wish to know whether from the time you started the operation of the State Theatre until the time you disposed of your interest in 1939 you always had Columbia, Universal, United Artists and Monogram first run; is that right?

A. I was able to hold onto it.

Q. I say, you had it?

A. Yes, sir.

Q. It was not taken away from you at any time during that period?

A. I attempted——

Q. I asked you was it taken away from you?

A. No, sir.

Q. Just answer my question and we will get along beautifully.

A. That is fine.

Q. Did you ever play R. K. O. product in the State Theatre?

A. No, sir.

[fol. 1227] Q. You are sure of that?

A. I don't recall. I was pretty desperate for product at one time. I might have picked up a second or a third run.

Q. Your answer is that you didn't play it?

A. Not as I recall.

Q. I show you this contract. Is that your signature? Are you puzzled as to whether or not it is your signature?

A. No, sir.

Q. You are sure that is your signature, aren't you?

A. Yes, sir.

Mr. Rogers: I offer it in evidence.
Mr. Schilz: No objection.

(Thereupon the contract with R. K. O. Radio Pictures, Inc., dated March 28, 1939, referred to, was received in evidence and marked Defendants' Exhibit D-42.)

Q. Now I show you Defendants' Exhibit D-42 in evidence and I ask you whether this contract is not one with R. K. O. for product at either the State or Opera House in Shelby, Ohio?

A. That is a contract for first run.

Q. It is a contract for first run, isn't it?

A. Yes.

Q. For the Opera House or the State?

Mr. Schilz: For what date?

[fol. 1228] A. That is what I wanted to see. It is dated March 23, 1939.

Mr. Schilz: What type of picture?
Mr. Rogers: Features.
Mr. Schilz: What kind of features?
Mr. Rogers: Four reissues.
The Court: First run, you say?
Mr. Rogers: Yes, sir.
The Court: R.K.O.?
Mr. Rogers: Yes, sir. Will you see if you can find the season on that? His Honor's question was about the season, as I recall.

By Mr. Rogers:

Q. Can you fix with some reasonable accuracy the date you took over the Opera House?

A. No, I can't tell you the exact date.

Q. Do you remember the year?

A. 1938.

Q. Wasn't it about the late summer or early fall of 1938?

A. No, I think it was before that.

Q. Wasn't it the summer of 1938?

A. I can't recall the exact date. I have been out of that situation since then and I haven't any correspondence.

Q. It wasn't any earlier than the summer of 1938 that you [fol. 1229] took over the Opera House, was it?

A. I don't believe so.

Q. It couldn't have been any earlier than the summer of 1938, could it?

A. Well, my recollection of the date is very hazy.

The Court: You opened up the State in 1937?

The Witness: Yes, sir.

The Court: Can you tell approximately when it was you acquired the Opera House?

The Witness: It was either in the late spring or early summer.

The Court: Of 1938?

The Witness: Yes, sir.

By Mr. Rogers:

Q. Do you know when you took up your negotiations to take over the Opera House, that is, when you started your negotiations?

A. I don't recall a definite date, no.

Q. Was it in 1938?

A. I believe we had conversations regarding it prior to that.

Q. Prior to what?

A. 1938.

Q. You believe you had conversations how long prior to 1938 when you first started your negotiations?

[fol. 1230] A. I would say December.

Q. You would say about December of 1937; is that right?

A. Yes, sir.

Q. When you first started your negotiations?

A. We were discussing the general condition and would visit one another.

Q. That was between yourself and the people who were operating the Opera House?

A. Yes, sir.

Q. You started your discussions about December, 1937; is that right?

A. With no definite program. Just possibilities.

Q. You were only discussing possibilities in December of 1937; is that right?

A. Yes, sir.

Q. And you didn't really get into the discussion of terms or money until 1938, did you?

A. There might have been a figure mentioned on the house.

Q. When?

A. During the discussions in December, 1937.

Q. There might have been a figure mentioned?

A. Yes, sir.

Q. But you don't recall whether or not there was?

A. No, it was not a case of sitting down and trying to make a definite deal.

[fol. 1231] Q. It was just conversation at that time, is that right?

A. Possibilities.

Q. Conversation and possibilities?

A. Yes, sir.

Q. You really got into the negotiating of the deal in 1938, didn't you; is that right?

A. As far as I can remember, yes.

Q. Then when you testified under direct examination that you went to R.K.O. in August of 1937 to talk about R.K.O. product for the Opera House with Mr. Greenblat——

Mr. Schilz: I don't recall his testimony being to that effect at all.

Q. Didn't you testify that you tried to get 1937-1938 product?

A. I approached them, yes, for their product, but it was sold to the Opera House at that time.

Q. You say it was actually sold to the Opera House at that time?

A. That was the impression they gave me, yes. The Opera House was playing R.K.O. product.

Q. Did they tell you that it was sold to Schine at that time?

A. In 1937?

Q. Yes.

A. No, sir.

Q. When was it you claim you spoke with Greenblat about [fol. 1232] getting the product away from the Opera House, R.K.O. product away from the Opera House?

A. Just what do you mean by getting it?

Q. The Opera House was running R.K.O. at that time in 1937-1938?

A. Yes, sir.

Q. And they had the season's product of 1937-1938, didn't they?

A. As far as I know.

Q. Was it at that time that you were talking to Mr. Greenblat, that is, in July or August of 1937, in the hope of buying the R.K.O. product away from the Opera House; is that right?

A. Yes, buying the R.K.O. product.

Q. You knew it was playing at the Opera House, didn't you?

A. Yes, I saw the pictures there.

Q. You saw the pictures there?

A. That is right.

Q. And you went to Mr. Greenblat with the idea of buying the product away from the Opera House, didn't you?

A. I asked him about the possibilities of getting R.K.O. product.

Q. When Mr. Lazar—or was it Mr. Silverman who was speaking to you in July of 1938? Was it Mr. Lazar or Mr. Silverman who was speaking to you in July of 1938 about [fol. 1233] trying to make a deal with you to buy the State?

A. I think I talked to both of them at different times during that period.

Q. Didn't Mr. Lazar tell you at that time that he wasn't even sure that he could make any deal with you to buy the State Theatre from you, that he would have to consult Mr. Schine and he would also have to consult a partner they had there?

A. Yes, she told me any deal we might negotiate was subject to confirmation by the Schines.

Q. He told you he was not prepared and didn't have authority to make a deal without first consulting with them, didn't he?

A. He said he would have to have their consent before he could conclude it, yes.

Q. Didn't he tell you at that time he didn't have their consent to make a deal of any kind?

A. I don't think he committed himself definitely.

Q. When you had a talk in 1939, in July I believe it was, with whom did you have that talk?

A. Mr. Lazar.

Q. And did Mr. Lazar again tell you in 1939 that he wasn't really prepared to make a deal with you, that he would have to get the consent of Mr. Schine and their partner?

A. As a matter of fact, he said he would take it up with [fol. 1234] Mr. Schine at a meeting in Gloversville.

Q. He said he didn't even have their consent?

A. No, I don't think he used that phrase.

Q. Didn't he tell you he didn't know whether they would be willing to make a deal? Didn't he tell you he didn't even know whether they would be willing to make a deal?

A. That is right. He said he would take it up with them.

Mr. Rogers: That is all.

Re-direct examination.

By Mr. Schilz:

Q. Sergeant Kemper, I show you this R.K.O. contract, dated March 28, 1939, Defendants' Exhibit 42, and ask you if the motion picture season in which these pictures were to be played is indicated on this contract?

A. The season they were to be played?

Mr. Rogers: The season to be played, do you mean?

Mr. Schilz: The season in which the pictures were issued.

A. Released?

Q. Released.

Mr. Rogers: Well, may it please the Court, to save time, I think the contract speaks for itself and it may take this witness some time to wade through all this fine print.

Mr. Schilz: I would like to have the witness define one or [fol. 1235] two of these terms for the Court's benefit.

By Mr. Schilz:

Q. Does it state the period in there?

A. No, it doesn't. I looked for it before.

Q. Does it state the season in which the pictures are to be played?

A. Subjects are to be played at the rate of one per week, starting April 15, 1939.

Q. I call your attention to the fact that the first four pictures are designated "Re-issue." A re-issue is what?

A. It is a picture that has had a prior playing in the town. A re-issue is a picture that has been brought back, re-released. It may have played two or three seasons before or one of the prior seasons.

The Court: Would that still be a first run, except that it would be a reissue?

Mr. Rogers: That would still be a first run though, wouldn't it?

The Witness: Possibly first run for that season.

By Mr. Schilz:

Q. I call your attention to this picture entitled "Mother Carey's Chickens." Was that a feature picture?

A. Yes, sir.

Q. Do you recall the release date of that pciture, when [fol. 1236] that picture was released?

A. No, I don't.

Q. I call your attention to "Breaking the Ice." Do you recall the year that picture was released?

A. No, I do not.

Q. I call your attention to one entitled "Annapolis Salute." Do you recall the year that picture was released by the distributors?

A. No.

Q. Just run down the list and see if you see any there as to which you recall the particular motion picture season in which it was released for issue to exhibitors?

A. Well, I can give you an approximation, but not exact. I would say "Little Women" and "King Kong" were probably released in 1936-1937.

Q. This contract was made when?

A. March 28, 1939, the re-issue.

Q. Is there anything on the contract that indicates that those pictures were released during the 1938-1939 season by the distributors?

A. No, sir.

Q. Is this what is known as a spot booking contract (showing to witness)?

A. Well, not exactly a spot booking contract. In fact I have never seen a spot booking contract. Spot booking [fol. 1237] arrangements, but never a contract.

Q. Was that a spot booking arrangement?

A. No, sir, that was a contract for the re-issues for the Opera House or the State Theatre.

The Court: What would be the difference between an arrangement and a contract?

The Witness: On a spot booking arrangement you get together with the exchange manager and he has a number of pictures, a number of slough pictures, available, and you will use them if and when you can. There is no definite commitment to use a certain number of them or play them a certain length of time.

The Court:

Q. That is all stated on a contract?

A. On a contract it is, but on a spot booking arrangement not necessarily.

By Mr. Schilz:

Q. Do you recall the negotiations for these pictures set forth in this contract, what the negotiations were and who you had them with?

A. No, I don't. I don't recall who I discussed it with.

Q. Is there anything else about that contract you want to tell the Court?

Mr. Rogers: I object to that.

[fol. 1238] The Court: That is pretty general.

Mr. Schilz: Just to save time, Mr. Rogers.

Mr. Rogers: I don't like time being saved that way.

Mr. Schilz: That is all.

Recross-examination.

By Mr. Rogers:

Q. By the way, Sergeant Kemper, is there anything on this contract, Defendants' Exhibit D-42, that would indicate that any but the first four subjects on that contract are reissues?

A. Nothing indicated on the contract.

Q. And this was a definite contract to definitely play these pictures at definite times; is that right?

The Court: The paper shows for itself.

Mr. Rogers: I mean there was some confusion about this spot booking business. This is not a spot booking business.

The Court: He said there was nothing to indicate whether it was the first season's run or not.

Mr. Wright: I take it there is no attempt being made here to give the Court the impression that this was a contract for current features, because it clearly is not.

Mr. Rogers: There is no attempt to give the Court any [fol. 1239] impression except that from which the Court can draw a reasonable inference from the testimony.

The Court: It may appear later on.

Mr. Wright: We will, of course, put in the R.K.O. release sheets, which will show the precise age of each of these titles.

The Court: That will clear it up then.

By Mr. Rogers:

Q. Now, Sergeant Kemper, you said that re-issues are pictures that have played the town before; is that right?

A. They have been released in a prior season or played the town before.

Q. But it does not necessarily follow that because a picture is a re-issue that it has played that town before, does it?

A. Not necessarily, no.

Q. And any number of these re-issues are very valuable, aren't they?

A. I wouldn't hazard a guess as to the valuation of these re-issues.

Q. You are stationed near New York City now, aren't you?

A. Mitchell Field.

Q. Mitchell Field is not very far from New York City; it is right on Long Island?

[fol. 1240] A. Sometimes it seems very far away.

Q. When you can't get a pass it seems a long way off?

A. Sometimes it does.

Q. You know that "Snow White" is being re-issued now on Broadway for the first time, don't you?

A. Yes.

Q. And doing a good business?

A. That I can't say.

Q. It has been there for a long time, hasn't it, been running a long time in the same theatre on Broadway as a reissue, hasn't it?

A. I can't verify that. I can recall seeing the advertisement of "Snow White". What theatre it is playing at I don't recall.

Q. You have seen those advertisements for a long time of "Snow White" playing at the same theatre on Broadway?

A. No, I don't remember that. I remember seeing the advertisement but whether it is at the same theatre I don't know.

Q. And "Snow White" was originally released several years ago, wasn't it?

A. Yes, sir.

Mr. Rogers: That is all.

Mr. Wright: That is all. One of the matters that I wanted to bring up at this time, your Honor, was the question [fol. 1241] of identifying the documents that are supposed to have been produced by the defendants pursuant to a subpoena duces tecum that was returnable, I think, at the beginning of the trial. A large part of these documents are contracts which were previously identified at depositions that were taken at Gloversville. Other sections of the subpoena call for memorandum and correspondence and other documents which, as far as I know, have never been produced, and I think we should know now what the defendants have been able to produce in response to these various paragraphs, and if there is more to come when it will be available, so that we can have all the material that we are going to use properly identified before we come back in August and know exactly what is available and what is not.

Mr. McKay: Your Honor, Mr. Wright says there has been a vast number of contracts identified on depositions. This volume (indicating) consists of nothing but the identification of contracts. I think there are about 2000 of them [fol. 1242] here. Those have all been marked in the deposition. I haven't seen this new subpoena. I suppose it is like the one that was served two years ago. Mr. Antevil has been charged with the collection of the papers called for by the subpoena. I believe we have produced during this part of the trial everything they have called for except Mr. Marcus tells me in the case of Corbin there are one or two contracts missing. That was because we could not locate them. We brought down here as much as we could pack covering the thirteen situations which they told us they were going to cover during this ten-day period. Those have all been repacked in anticipation of our departure. I will be very glad to make any reasonable arrangement with Mr. Wright for his representative and Mr. Antevil and myself to get together during this two months' period and mark for identification whatever other material they want. The stuff that was here is being sent down to New York. That will be [fol. 1243] available in my office. The rest of it will either be available in my office or in Gloversville.

Mr. Wright: I think we ought to have a definite arrangement. As I understand it, as to inter-office correspondence with the distributors and the correspondence of the defendants that was subpoenaed, they have produced nothing, and their position is that they have no such correspondence because it was destroyed. I should think we should have whatever statement there is to be made on that on the record now, so that we know what to expect in reference to the correspondence.

Mr. McKay: I can't make that statement because I haven't been doing the searching for the documents. I know they did have two fires before we were supposed to meet for trial two years ago, and they have had another one since then, and Mr. Antevil tells me a considerable amount of the material has been destroyed.

Mr. Wright: Can we have a statement from them as to what there is and when and how it will be made available? Mr. Antevil can enlighten us on that.

[fol. 1244] Mr. Antevil: As soon as I complete my search and I definitely know what the status of the correspondence is I will be glad to make a statement for the record.

Mr. Wright: When will you do that?

Mr. Antevil: When I get back.

Mr. Wright: About what time will we be advised?

Mr. Antevil: I will be in touch with Mr. McKay and Mr. McKay will let you know.

Mr. McKay: This is the 8th. Can we undertake to advise them by July 1st? We will undertake to give him definite advice on that by July 1st.

Mr. Wright: As I understand it, will the documents be made available for identification at that time?

Mr. McKay: At that time we will make the documents available for identification. I hope you will suit our mutual convenience.

Mr. Wright: Yes.

The Court: I think if these things can be agreed upon it will save a lot of time.

Mr. Wright: As I understand it, Mr. McKay has now said he will give us a definite answer on our request for admission of facts by July 15th. We have agreed to extend [fol. 1245] the time to that date on that. In addition, of course, to what is stated there I would suggest that that admission—that request does not cover specific documents, but if we can have this material identified in the meantime, both that produced by the distributors and the defendants, I mean, we will then serve a specific request as to those particular documents, copies or photostats of which will be in the defendants' hands, and we should also like to get that out of the way by July 15th, if that is agreeable.

Mr. McKay: I am not sure I understand what you mean, but I do want to make this observation: This recess was supposed to give me, as well as Mr. Richardson and Mr. Rogers, some time to take care of my other commitments, and I don't want to spend all my time on this. I will have to handle the requests to admit and they are very voluminous.

Mr. Wright: I simply wanted to outline the procedure we propose to adopt now.

The Court: What you want first is the exhibits, those that are subpoenaed, the documents that have been sub- [fol. 1246] poenaed here so that you may supplement your request to admit; is that it?

Mr. Wright: We will supplement the requests to admit with a request to admit the authenticity of specific documents that we draw from the distributors' files in the meantime.

Mr. McKay: If they exhibit the documents to me and I am able to identify the signature I will be glad to admit the authenticity of the signature, but not the authority of the signer. I should have to see those documents.

Mr. Wright: We will make available, of course, copies of any documents with respect to which we make specific requests, and then, as I understand it, the documents that you are to produce in response to the subpoena duces tecum will be made available for identification at your office or at Gloversville some time prior to July 1?

Mr. McKay: No, commencing July 1.

Mr. Wright: We should be able to do it all in a day or so.

Mr. McKay: I hope so. I should like your Honor's thought on this: This deposition here, as I told you, all it amounts to is identification of contracts. If you will just [fols. 1247-1249] look at this one page it will give you an idea (indicating). It runs that way all the way through.

The Court: I do not see that we need to re-identify those contracts.

Mr. McKay: Those contracts have been assigned a number in the deposition. The Universal exhibits start with U-1 and run along and Fox starts with F-1 and go along, so that they are all numbered, and I do not see why we cannot just use those as the record.

Mr. Wright: As to those we can. I was referring to the other matters——

Mr. McKay: This will save us a couple of weeks of testimony.

The Court: Yes, it would be foolish to go over that again.

Mr. Wright: There is no question about that.

The Court: All right, we will adjourn this trial now until August 15, 1944, at 10 A.M.

(Whereupon an adjournment was taken until Tuesday, August 15, 1944, at 10 o'clock A.M.)

[fol. 1250] UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF NEW YORK

Civil 223

UNITED STATES OF AMERICA

vs.

SCHINE CHAIN THEATRES, INC., Defendants

Continuation of trial before Honorable John Knight, United States District Judge for the Western District of New York, September 26th, 1944, at 1:30 P. M.

APPEARANCES:

Robert L. Wright, Esq., Special Assistant to the Attorney General.

John F. Clagett, Esq., Special Assistant to the Attorney General.

Harold L. Schilz, Esq., Special Assistant to the Attorney General, and

Milton Kallis, Esq., Special Attorney, Washington, D. C.

Edward F. McClennen, Esq., and Arthur E. Whittemore, Esq., Boston, Mass., and

Willard S. McKay, Esq., Saul E. Rogers, Esq., Arthur J. Homans, Esq., Howard M. Antevil, Esq., appearing for Defendants.

OFFERS IN EVIDENCE

Mr. Wright: If the Court please, at this time we are going to offer in evidence certain license agreements which were previously subpoenaed from Schine and identified by exhibit numbers which we have agreed to retain in offering them here. The agreements we are now going to offer are the franchise agreements and master agreements referred to in the trial brief which were executed by certain of the Schine defendants with each of the major distributors.

The term "franchise," as we use it is an agreement covering more than one motion picture season, and the term "master agreement" is a similar agreement limited to one season which covers the distribution of films of a particular distributor in all or substantially all of the Schine towns.

The first series that we will offer will be the Warner agreements. Those have been identified as W-3 through W-8, W-34, W-35-A and 35-B.

The Court: Agreement or agreements?

Mr. Wright: This is a series of agreements. Some are [fol. 1252] master agreements covering one season, and there is one agreement which covered a three-year period, a franchise.

Mr. McKay: What are your numbers?

Mr. Wright: W-3 through 8 and 34, 35-A and 35-B.

Mr. McClennen: Instead of dealing with these one by one as they are offered, may we save the objection to the admissibility of all these agreements by this one objection to save interruption?

The Court: Yes, I should think so. One objection is sufficient, I think.

Mr. Wright: If there is an objection I suppose we will be entitled to know the ground of it?

The Court: Yes, we should be informed of the grounds of the objection.

Mr. McClennen: The objection is that there is nothing monopolistic or in restraint of trade in a franchise agreement. That is intrinsically there is no difference between an agreement for more than one year and an agreement for one year. It indicates no monopolistic intent and no intent to restrain trade, and has no effect to restrain trade.

The Court: Perhaps, it would be assumed standing alone [fol. 1253] it would not be sufficient.

Mr. Wright: Of course, I might say, if the Court please, as to these agreements we will later make the argument that they are illegal per se, although acceptance of that argument is not a condition precedent to their admission in evidence, but I simply want to note that we do take the position each one of these agreements is in and of itself an illegal agreement.

The Court: That is not the sole purpose of the offer?

Mr. Wright: No, indeed. They are offered to lay the foundation.

The Court: Objection overruled at this time. If they are not illegal per se, why, then, we will have to wait to take testimony and see the connection.

Mr. McClennen: I made the objection so that the situation would be before your Honor when it was offered, and I have not made any argument in support of the objection. I should not have said anything more had I not been asked for the fundamental reasons for the objection.

The Court: Objection overruled. Received. Are you marking those?

[fol. 1254] Mr. Wright: They have already been marked for identification.

The Court: They should be marked in evidence.

Mr. McKay: I would like to advise you that Mr. Wright requested me to have in court all of the documents that had been previously identified, and I spent about four hours last night arranging these in order, in order to be able to present them in the order in which they were subpoenaed and identified. I have about seven or eight hundred documents here, five hundred of which precede these. Apparently he is going to proceed out of order, and I may have to ask your indulgence in locating them. I have here 3 through 7, and I will proceed to find the 8th.

The Court: Do you have copies, Mr. Wright?

Mr. Wright: We do not have.

Mr. McKay: Each of these documents has been identified and inspected by the plaintiff.

The Court: I suppose you will have to have 8 in order to mark them?

Mr. McKay: The 8th I believe I can find, although in my list it looks as though it consisted of 17 contracts.

[fol. 1255] Mr. Wright: I think all that needs to be done by way of marking is simply to strike the "For identification" off.

The Court: We have to have 8 here.

Mr. Wright: Each one should be here. I think there should be a statement for the record as to what each one of these is, so that it will be clear just what they are.

The Court: Let us get No. 8 first.

Mr. McKay: Does this agree with you? W-8 consists of license agreements 1 through 17?

Mr. Wright: I have in my notes W-7 is the master agreement and W-8 contains the contracts made pursuant to the agreement. Is that correct?

Mr. McKay: This is the stenographer's note and initialed by Mr. Kallis. It says "License agreement 1 through 17, inclusive."

Mr. Wright: Yes, I take it those are license agreements which are subject to the terms of W-7. That is my understanding and, therefore, are properly part of the master agreement W-7.

Mr. McKay: The contracts will speak for themselves on that. Your understanding what they are does not mean anything.

Mr. Wright: If you produce them, maybe we can see what [fol. 1256] they are.

The Court: You distinguish these agreements, you say, as "Master agreement," and the other is what?

Mr. Wright: Master agreement or one-year agreement; franchise covers periods of two or more seasons.

The Court: Are you designating each as franchise and master?

Mr. Wright: That is what I was going to do when those are marked in evidence.

Mr. McKay: Your offer includes W-6 and the contracts that are marked W-6, 1, 2, 3, and so forth?

Mr. Wright: 1 to 41, as I understand it, those are contracts which are part of W-5.

Mr. McKay: These are marked W-6, and they run—

Mr. Wright: I think while Mr. McKay is looking—

Mr. McKay: I am giving a batch of these to start with. I have W-1 to W-16. You can start marking those to save time. If your Honor please you will note these contracts are included in a folder which includes some other contracts which are not offered here, and may it be understood only such contracts as are actually marked are received?

[fol. 1257] The Court: Certainly. You say 1 to 16. He is referring to 3 to 8.

Mr. McKay: I will get to 8 in a minute. What I mean by that is, you will notice this contract is not marked. This is the one that is marked. They have been kept in a folder for convenience, because they relate to the same theatre and town.

The Court: We only have to consider those which are marked in evidence.

Mr. McKay: I simply wanted to call that to your Honor's attention. I will get the rest of them just as fast as I can pick them out of the box. This concludes the W-6 series. It runs up to 41. (Handing documents to Mr. Wright.)

The Court: You better find No. 8 first. You offered 3 to 8 and 34-A and 35-A and B. Let us have those picked out.

Mr. McKay: That is W-8 (1 to 17), which is—that is what it says on there, is it not?

Mr. Whittemore: 1 to 17, yes.

Mr. Wright: I would like to state for the record, if the Court please, what these various numbered documents are. [fol. 1258] The Court: Have you got No. 8 now?

Mr. Wright: I take it the only marking that needs to be done is simply to strike out the "For identification."

The Court: Have you got them here physically?

Mr. Wright: Yes, they are all here physically now.

The Court: All right. I suppose each would show for itself. You are going to show which one is master agreement and which one franchise agreements?

Mr. Wright: That is what I wanted to state here, to cover exactly what each one was.

Mr. McClennen: If your Honor please, to avoid any misunderstanding later, we do not concede the distinction between franchise and master agreement or annual contract which has been stated, and to avoid interrupting at each time, may it be understood that we reserve a challenge of that description so that it can be dealt with?

The Court: It is not a question of what the name is. It is a question of what it contains.

Mr. McClennen: Precisely, but we do not want by our silence to concede that the character of the instrument is as [fol. 1259] stated, but merely a contract of that date.

Mr. Wright: I will describe these in chronological order. Exhibit W-7 is——

The Court: Why do you say "W-7"?

Mr. Wright: That was the identification which the document was given in the course of its prior identification.

The Court: What does the "W" mean?

Mr. Wright: That is Warner Brothers contract, the scheme of identification used.

The Court: It stands for "Warner"?

Mr. Wright: Yes.

The Court: 7 is one of the 3 to 8?

Mr. Wright: W-7 is a letter agreement between Schine Theatrical Company, Inc., and Warner Brothers pictures, dated April 24, 1935, as modified by a supplementary letter dated April 29th, 1935, which is also a part of this same exhibit, which covers the exhibition of Warner films in the Schine Circuit for 1935-1936 season. It contains a general description of the terms which are to be applicable in pictures over the circuit.

(Thereupon letter agreement between Schine Theatrical Company and Warner Brother Pictures, dated April 24, 1935 and letter dated April 29, received in evidence as Plaintiff's Exhibit W-7.)

[fol. 1260] Mr. Wright: Exhibit W-8 (1 to 17) are individual license agreements between Vitagraph, Inc., a Warner distribution subsidiary, and Schine Theatrical Company, Inc., which bear the reference "Subject to all terms and conditions of master agreement and"——

Mr. McKay: "If any."

Mr. Wright: "if any," yes; and cover the same season that the master agreement just identified covers, that is, the '35-'36 season. Each of these "W"-8 agreements covers, I believe, a different town. There are eighteen of them.

Mr. McKay: Seventeen of them.

Mr. Wright: 1 to 17, inclusive, your Honor.

Mr. McLennen: Are they of a common date or is each a separate date?

Mr. Wright: We may as well put the dates in. The dates speak for themselves. I believe they are all—the applications are all dated as applied for in August, 1935, and approved the same month.

The Court: The 17?

Mr. Wright: Yes, sir.

Mr. McKay: Yes. If it should be necessary to correct [fol. 1261] that, it can be done. I think that is probably a correct statement.

The Court: The papers will show for themselves.

Mr. McKay: Has the stenographer marked these?

The Court: I think we can expedite this part of the case greatly by you saying they all involve these agreements, which you are seeking to establish, relate to agreements made between the various producing companies and the defendant Schine, and subject to the objection of the defendant. I don't see why we can't just mark them all the way through and ascertain ourselves what they are.

Mr. Wright: Yes, I think the marking can be done outside the precinct of the court. I think the only thing that is important to do here is to make the statement for the record, so the record will show what the various exhibits are, and he can mark these after the session is over.

The Court: Cover it as quickly as you can.

(Thereupon the individual license agreements between Vitagraph, Inc., Exhibit W-8 (1 to 17) referred to were received in evidence.)

[fol. 1262] Mr. McKay: These papers have already been marked, and such of them as the plaintiff has desired to inspect have been inspected. Just as an example, this is a record made by a court stenographer in New York on an inspection of these documents and it does seem to me that the thing could be facilitated by adopting this proceeding or let the stenographer adopt this as part of his court record. I recognize the fact we are going to take an awful long time.

The Court: Either do that or do it here when you offer it as an exhibit here, just briefly state what it is supposed to be.

Mr. Wright: That is all I want to do. I think the marking can be done outside the precinct of the court. That is the quickest way to put in the record what these things are.

The Court: Unless you are satisfied with the accuracy of this list.

Mr. Wright: That list, I don't think, is sufficiently explanatory to do the job. I don't think it is complete enough.

Mr. McKay: If you are going to characterize the document you will have to do it individually. These markings [fol. 1263] identify the document.

The Court: Does it identify whether they are for one year or more than one year?

Mr. McKay: That would appear in the document itself.

The Court: That is very true. I think you can have an agreement on all that. I don't think it is necessary to go to that extent.

Mr. Wright: If your Honor please, I think it is necessary, in order to understand what we have here, to make a brief statement of what each document is at this time.

The Court: You can tell it is purported to be an agreement of a certain date and covering a certain period. Its contents, of course, the Court passes on.

Mr. Wright: That is right. That is all I propose to do.

The Court: You can do that wholesale rather than retail, I thought. We will see how we get along.

Mr. Wright: Exhibit W-5 is a letter agreement dated March 24, 1936, between Warner Bros. and Schine, or, rather, between Vitagraph, Inc., and Schine Theatrical Co., Inc., which covers the general terms for the exhibition of pictures in the circuit for the '36-'37 season.

[fol. 1264] (The letter agreement, Exhibit W-5, dated March 24, 1936, referred to was received in evidence.)

Mr. Wright: The Exhibit W-6, sub-numbers 1 to 41, inclusive, are individual license agreements for the same season, which bear the notation "As per master agreement."

The Court: You mean 41 separate——

Mr. McKay: Read the whole thing, if you are going to read part of it.

Mr. Wright: The phrase I refer to reads "In full trailer rental and split figure to be determined on same basis as on other '36-'37 releases as per master agreement."

(The individual license agreements, W-6 (1-41, inclusive) received in evidence as Plaintiff's Exhibit W-6 (1-41, inc.)

Mr. Wright: And Plaintiff's Exhibit W-31, a three-year agreement, dated August 27, 1938, between Vitagraph, Inc., and Schine Enterprises Corporation and Schine Circuit, Inc., covering the distribution of films in the circuit for the seasons '37-'38, '38-'39 and '39-'40.

Mr. McKay: I would like to have all that stricken except it is an agreement dated a certain date, between certain [fol. 1265] parties. It is a long agreement and I think the Court will have to read it.

The Court: If it covers all the Schine——

Mr. McKay: It doesn't.

Mr. Wright: Whatever it covers.

Mr. McKay: Whatever it covers is stated in the agreement.

Mr. Wright: Is stated in the agreement, and it does cover a very long list of towns, which is set forth in the schedule attached.

(The three-year agreement, dated August 27, 1938, was received in evidence as Plaintiff's Exhibit W-31.)

Mr. Wright: W-35-A and W-35-B are agreements relating to the '40-'41 seasons' product, which are both dated September 11, 1940.

(The agreements relating to the '40-'41 seasons' product referred to received in evidence as Plaintiff's Exhibit W-35-A and W-35-B.)

Mr. Wright: I beg your pardon, there is one group of exhibits I overlooked there that relates to the three-year agreement W-3; that is W-4, 1 through 99. Different towns.

Mr. McKay: W-4, 1 through 99?

Mr. Wright: Yes, those, I think, are the deal sheets for the three-year agreement.

[fol. 1266] Mr. McKay: That is W-4, 1 through 99.

(Deal sheets for three-year agreement referred to received in evidence as Plaintiff's Exhibit W-4, 1 through 99.)

Mr. Wright: W-4, 1 through 99, are so-called deal sheets executed on behalf of Warner and Schine, which are dated, I believe, for the most part, September 28, 1937, each relating to a different town, and which cover the pictures for the same season as that three-year agreement, '37-'38, '38-'39 and '39-'40.

The Court: You mean by a deal sheet agreement, you mean——

Mr. Wright: Yes, these are individual town agreements which supplement the over-all agreement.

The Court: They are agreements, then?

Mr. McKay: I think we will probably have some expert testimony on exactly what a deal sheet is. In the meantime, if you will reserve the expression——

Mr. Wright: Your Honor can see the terms.

The Court: I did not know what you meant by "deal sheet."

Mr. Wright: It is a sheet which sets forth the terms governing the picture, signed by each party.

[fol. 1267] Then the last of the Warner agreements are the two I referred to, both dated September 11, 1940, and marked W-35-A and W-35-B, respectively, which cover the '40-'41 product in towns which are specified on W-35-A, and that agreement—these agreements of September 11, 1940, are supplemented by Exhibit deal sheets marked Exhibits W-34, 1 to 80, inclusive.

(The deal sheets referred to were received in evidence as Plaintiff's Exhibit W-34, 1 to 80, inclusive.)

The Court: I note on these so-called deal sheets that at the bottom, at least on all of these, numbered 1 to 99, it is written "Subject to master agreement which prevails for season 1936-'37." Well, does that mean there was a master agreement covering these same theatres?

Mr. Wright: That master agreement, if your Honor please, is in evidence as W-5.

The Court: What I am getting at is the meaning when it says "subject to master agreement which prevails."

[fol. 1268] Mr. Wright: It means the terms on the deal sheet are not complete in themselves. They are only a partial statement. For the rest of the terms you have to look to the basic agreement.

Mr. McKay: If your Honor please, I don't think we ought to have the testimony of Mr. Wright. I think it is very essential that it should be established.

The Court: It isn't testimony anyway. I thought it would probably clear things up. Go ahead.

Mr. Wright: Did we have W-34, 1 through 80?

The Court: Yes. Let us see what we had before.

Mr. Wright: I think not. W-4, 1 through 99, and W-34, 1 through 80, are deal sheets, which relate to the 1940-'41 season, each for a separate town or theatre, and I think that takes care of the Warner documents produced by Schine, which we will offer. We will probably supplement this offer later with a further agreement produced by the distributor, which is the master agreement for the prior seasons, but that won't be identified until the distributor [fol. 1269] representatives are here on Thursday and Friday

The Court: All right

Mr. Wright: We will next offer the Loew 4-year deal L-1.

Mr. McKay: Just a minute. Your Honor, in order to avoid hopeless confusion in the keeping of these exhibits in an orderly fashion, I would like first to get my Warner exhibits back so I can put them back in order where I will be able to find them again, if they are ever called for, before I start producing documents from another company, otherwise some time during a stage of the trial there will be an exhibit called for and I won't be able to find it.

The Court: Of course, they hand the exhibits to the Court.

Mr. Wright: We have no objection to Mr. McKay retaining custody of the exhibits, providing they are available.

Mr. McKay: They will be available at all times. I understood the rule here was that each party was charged with the custody of exhibits assigned to him.

The Court: I don't know that there are any rules on the subject.

Mr. McKay: The point is the availability of the papers.

[fol. 1270] The Court: There are a good many here that are numbered here.

Mr. Wright: I wanted to point out that they will have to be marked by the reporter.

The Court: Yes.

Mr. Wright: Could we have L-1?

The Court: That is the Loew agreement, you mean?

Mr. Wright: Yes, that is the Loew franchise covering four seasons.

Mr. McKay: You are finished with Warner now?

Mr. Wright: Yes.

Mr. McKay: Your Honor, I have here the paper marked L-1 which seems to have been inspected by the plaintiff, but I note that it hasn't been signed by either party and it contains numerous pencil notations, so while I am producing it as L-1, I am not prepared to concede its authenticity. No question was raised at the time it was inspected by the plaintiff.

Mr. Wright: We certainly don't question. It isn't our position to question the authenticity of anything that the defendants themselves produce. We assumed that when our subpoena called for this four-year agreement, dated [fol. 1271] October 1, 1936, and this agreement that was produced was marked L-1, that that was what was asked for. Now, if it isn't the agreement, we ought to have a document that is the agreement.

Mr. McClennen: Where a paper is produced in this way, bearing no signatures, no question is made about the authenticity of what it is, namely, that it is a document signed by nobody, that came from our files.

The Court: Where is the one you were notified to produce as the agreement?

Mr. McKay: Your Honor, I am just as much surprised as Mr. Wright was in this. I wasn't present at the inspection. I would have assumed some question would have been raised at that time. If I had been there I would have raised it myself.

The Court: Where is the agreement?

Mr. McKay: That I do not know and I cannot tell until I am able to get in touch with Mr. Antevil. In going over this thing last night I saw this marked L-1 and I put it in its proper place, but it is not signed.

The Court: Is it signed by any party?

[fol. 1272] Mr. McKay: It isn't signed by either party and has pencil notations on it that indicate it might be followed by a corrected document. I will undertake to make a search for a signed copy and obviously a signed copy can be produced from Metro if we haven't got a signed copy, but the point I am making at this time is this document, which I had assumed to be an original document, turns out not to be one.

The Court: All right.

[fol. 1273] Mr. Wright: I have subpoenaed, of course, the signed document from Loew, but it won't be identified until Thursday or Friday.

The Court: That is the agreement?

Mr. Wright: Yes. Could we have Exhibits P-168 to P-238 which embodied the 2-year deal with Paramount, 1939-1940 and 1940-1941 seasons.

Mr. McKay: You don't need any more of these papers?

Mr. Wright: Of Loew, not at this time, no.

Mr. McKay: What are the numbers?

Mr. Wright: P-168 to P-239, inclusive, and also PP-1 to PP——

Mr. McKay: You better let me get one at a time. 168?

Mr. Wright: Yes.

The Court: 168?

Mr. Wright: P-168 to P-238.

Mr. McKay: The defendant produces the documents called for.

Mr. Wright: These exhibits P-168 to P-238, if the Court please, are all individual license agreements which cover individual towns. They are dated, I believe, in the month of February, 1940, and they cover the Paramount features for the 1939-1940 and 1940-1941 season in each case.

[fol. 1274] The Court: I thought you said 1939-1940 and 1941-1942?

Mr. Wright: No, it is a two-year deal, 1939-1940 and 1940-1941.

The Court: That is what I meant, yes.

Mr. McKay: That is a series of the groups S-11 and S-12.

Mr. Wright: S-11 and S-12, I take it is just another designation for the 1939-1940 and 1940-1941 seasons, respectively?

Mr. McKay: I take it that that is correct.

Mr. Wright: I would like to have Exhibits PP-1 through PP-10, inclusive.

Mr. McKay: Defendant produces the documents called for.

Mr. Wright: These exhibits PP-1 to 10, inclusive, are also individual agreements for the same two seasons, 1939-1940 and 1940-1941, which were executed in September, 1940.

Mr. McKay: There are three different dates on these agreements. There is a date in typewriting, 2/8/40; there is a date in pen and ink, 9/30/40, and there is a stamped date October 5, 1940, so I think that will probably require some explanation by oral testimony. I frankly do not know which is the right date. You can simply say they were executed.

Mr. Wright: At the moment we are not concerned with [fol. 1275] that. We would like to offer the Fox franchises.

The Court: Is that all of Paramount?

Mr. Wright: Yes, that is all at this time.

(Thereupon Government's Exhibits P-168 to P-238, individual license agreements received in evidence.)

(Thereupon Government's Exhibits PP-1 through PP-10, inclusive, individual license agreements were received in evidence.)

Mr. McKay: I have no Fox papers here, your Honor. I spent most of last night going over these three companies in the anticipation that all of the documents were going to be offered, and it took me most of the night to do it.

The Court: What do you mean by "all"?

Mr. McKay: In addition to the documents Mr. Wright has offered, there are about five or six hundred more documents in those files which he has not seen fit to offer. I have the documents at the hotel, but I have not had a chance to——

The Court: Perhaps we can do something else.

Mr. Wright: If the Court please, I wrote Mr. McKay a letter ten days ago in which we told him we were agreeable [fol. 1276] to this procedure of not calling the witnesses, and we said the documents we proposed to offer at this time would be franchises and master agreements for each company. We also told him in the letter and suggested that we identify at this time the other material subpoenaed from Schine which had not yet been identified, and I am agreeable to proceeding with that if he is not ready to proceed with the franchise and master agreements.

The Court: Where are the others?

Mr. McKay: The other folders are in the hotel, and I had planned this evening to do the same with the other company.

The Court: Why not adopt the suggestion made by Mr. Wright?

Mr. McKay: I have only here the instruments for these three companies which have been identified, and I have in addition to that some other documents, not contracts, which also have been identified.

The Court: What contracts?

Mr. McKay: I have some documents, not exhibition contracts, which have been identified. I have this folder which [fol. 1277] also consists of papers called for by the subpoena which have been identified. Mr. Wright's letter to me started out by saying that he wanted all of the identified documents in court, and I thought I was keeping faith with him, and I spent the entire last evening getting these documents in shape.

The Court: Let us see what we have here, if we can save a little time now.

Mr. Wright: We also stated that the other previously identified documents we wanted to offer at this time were the agreements not to compete which had been executed at various times between Schine and certain other operators in connection with the theatre purchases.

Mr. McKay: I believe I have those here.

Mr. Wright: If those are here, we will offer those.

Mr. McKay: All right, start calling for them. I have those here.

Mr. Wright: These documents have been identified with "S" prefixes standing for "Schine." I think we may as well keep the same numbers on them, too. S-68.

The Court: Are they marked "S-68"?

[fol. 1278] Mr. Wright: S-68.

Mr. McClennen: If your Honor please, this is a different class of exhibits, and may we do as in the other case, make a general objection rather than deal with each paper specifically?

The Court: I think so. They are all of the same type, are they?

Mr. McClennen: These are not the same type.

The Court: I mean these particular ones?

Mr. McClennen: This group is of one type, as I understand it. That is, agreements made with reference to doing business by sellers of a theatre, for instance. That is an illustration, and our objection——

The Court: "Sellers of a theatre," what do you mean by that?

Mr. McClennen: A man in a theatre—I don't know that this would exactly characterize any of these papers, but it will give you a conception of the general type. A man sells a theatre, sells the goodwill of the theatre and agrees that he will not go into the theatre business in that town. The ground of the objection is that historically and by innumerable decisions an agreement of that kind, reason- [fol. 1279] able in time, reasonable in area is just the kind of thing that is not in restraint of trade, but is essential to the sale of the goodwill of a business, and we object to those as not being material to this case.

Mr. Wright: If the Court please, the purpose of offering these agreements is simply to show an intention upon the part of the defendants to control and monopolize theatre operations wherever they acquired these theatres.

The Court: I shall receive them. S-68 to what? Objection overruled.

Mr. Wright: S-68 is an agreement——

The Court: 68 to what?

Mr. Wright: The ones identified, I think, go from S-68 through S-77.

Mr. McKay: They cannot be offered as a group, because they deal with different parties in each case.

Mr. Wright: I am just reading now what each one is.

Mr. McClennen: If your Honor please, I have had difficulty in outgrowing the conception that when a ruling is made against you, you ought to except, and I want to be sure [fol. 1280] it is understood that I do not have to.

The Court: Very well. That comes through practice more than anything else.

Mr. Wright: Exhibit S-68 is an agreement dated August 16, 1935, between J. Myer Schine, Louis Schine and Schine Chain Theatres, Inc., on the one hand and Maurice A. Shea on the other which relates to the City of Amsterdam, New York, and paragraph 13 of which is an agreement or undertaking on Mr. Shea's behalf not to compete——

Mr. McKay: If he is going to refer to the agreement at all, I suggest that he read it, otherwise let your Honor ~~read~~ it.

Mr. Wright: I will be glad to take the time if your Honor wants to hear each of these provisions at the present time. I merely wanted to point out for convenience where, in each of these agreements, the particular covenant we were interested in appears.

The Court: What he wants you to do is to read the covenant. If it appears in all of them, it is useless to read it.

Mr. Wright: Paragraph 13 "If Shea becomes the purchaser of the Schine stock, then, in that event, J. Myer [fol. 1281] Schine, Louis Schine and Schine Chain Theatres, Inc., jointly and severally covenant that they will not, directly or indirectly, or through affiliated corporations or subsidiary corporations, or partnership arrangements, own, lease or operate any motion picture theatre or other theatre in the City of Amsterdam, New York, for a period of ten years from the date of this instrument, individually or through agents, representatives or employees, nor will they buy or book pictures for exhibition in said city or in any other way enter into the theatrical or motion picture business in said city during said term. If on the other hand, Schine becomes the purchaser of the Shea stock, then, in that event, M. A. Shea agrees that he will not directly or indirectly, or through affiliated corporations or subsidiary corporations, or partnership arrangements, own, lease or operate any motion picture theatre, or other theatre in the City of Amsterdam, New York for a period of ten years from the date of this instrument, individually or through agents, representatives or employees, nor will he buy or [fol. 1282] book pictures for exhibition in said city or in any other way enter into the theatrical or motion picture business in said city during said term."

(Thereupon agreement of August 16, 1935, between J. Myer Schine, et al., and Maurice A. Shea, was received in evidence and marked Government's Exhibit S-68.)

Mr. Wright: S-69 is an agreement between Henry Bieberson, Jr., and Belpik Theatre Corporation, one of the defendants, dated January 17, 1936, and relates to the Town of Athens, Ohio. The agreement in question is contained in the third paragraph which states—

The Court: It is not necessary to read it.

Mr. Wright: It may be understood it is read, but the third paragraph contains the provision we are interested in.

The Court: It refers to the same subject matter as the other?

Mr. Wright: That is right.

(Thereupon agreement dated January 17, 1936, between Bieberson and Belpik Theatre Corporation was received in evidence and marked Government's Exhibit S-69.)

[fol. 1283] Mr. Wright: S-70 is an agreement between Henry Bieberson, Jr., and Schine Delaware Corporation, which is dated January 17, 1936, which relates to the Town of Delaware, Ohio, and the covenant in question is contained in the middle paragraph on Page 2.

(Thereupon agreement between Henry Bieberson, Jr., and Schine Delaware Corporation, dated January 17, 1936, received in evidence and marked as Government's Exhibit S-70.)

Mr. Wright: Agreement S-71 is one dated August 16, 1937, between J. Myer Schine, Louis Schine, Schine Chain Theatres, Inc., on the one hand, and Maurice A. Shea, on the other which relates to Auburn, New York, and the particular paragraph in it is 7, I believe.

Mr. McKay: Yes, paragraph 7.

(Thereupon agreement between J. Myer Schine, et al., and Maurice A. Shea, dated August 16, 1937, was received in evidence and marked Government's Exhibit S-71.)

Mr. Wright: Then S-72. Isn't that 71?

Mr. McKay: That was 71, and the next one I see here is 73. Skip 72 for the time being.

[fol. 1284] Mr. Wright: All right. S-73 is an agreement between Seneca Theatres, Inc., Palace Lockport Corporation and Schine Realty Corporation, on the one hand, and Nikitas Dipson, John R. Osborne and Peter Grafiadas, on the other, dated October 10, 1936, which relates to the town of Lockport, New York.

(Thereupon agreement between Palace Lockport Corporation, et al., and Nikitas Dipson, et al., received in evidence and marked Government's Exhibit S-73.)

Mr. Wright: And S-74 is an agreement, dated January 11, 1939, between Jack Frisch and Sam Kaplan, on the one hand, J. Myer Schine and Louis Lazar on the other, which relates to theatre operation in the city of Maysville, Kentucky.

(Thereupon agreement, dated January 11, 1939, between Jack Frisch, et al., and J. Myer Schine, et al., received in evidence and marked Government's Exhibit S-74.)

Mr. Wright: S-75 is an agreement, dated January 4, 1939, between Charles Brown, Bessie O. Brown and Charles O. Brown, Jr., on the one hand, and Phoenix Amusement Company on the other, which relates to the town of Middlesboro, [fol. 1285] Kentucky.

(Thereupon agreement, dated January 4, 1939, between Charles Brown, et al., and Phoenix Amusement Company, was received in evidence and marked Government's Exhibit S-75.)

Mr. Wright: S-76 is an agreement dated July 16, 1940, between L. Edwin Hoppes, on the one hand, and Chesapeake Theatres Corporation and Wicomico Theatre Corporation, on the other, which relates to the town of Salisbury, Maryland, and the particular paragraph containing the covenant in question is found in the middle paragraph on the last page, next to the last page of the agreement.

(Thereupon agreement, dated July 16, 1940, between L. Edwin Hoppes and Chesapeake Theatres Corporation, et al., was received in evidence and marked Government's Exhibit S-76.)

Mr. Wright: Next is S-77. That is a bill of sale for the James Theatre at Syracuse, New York, and is made by James Constantino to Schine Theatrical Co., Inc., and the covenant in question is on the second page of the agreement.

[fol. 1286] (Thereupon bill of sale by James Constantino to Schine Theatrical Co., Inc., was received in evidence and marked Government's Exhibit S-77.)

Mr. Whittemore: What is the date of that?

Mr. McKay: It is dated the 19th of June.

Mr. Wright: We haven't S-72?

Mr. McKay: What parties?

Mr. Wright: That is Buckman's agreement with respect to Delaware, Buckman's bill of sale. It may have been identified again in the course of the deposition.

Mr. McKay: The chances are it is in the deposition file. I have that file at the hotel and I will check on that. That is probably what has happened in that.

Mr. Wright: As I understand it, there are a substantial number of similar agreements which were submitted by us which have not yet been produced or identified, and, of course, we want to identify them.

The Court: Have you covered all those?

Mr. Wright: We covered all those produced and identified except for this S-72, but my understanding is we were told then this was not complete, that there were other agreements, and we would like to have those identified [fol. 1287] and offer them.

Mr. McKay: Mr. Antevil told me before he went to Gloversville these were all he had been able to find so far. I have to accept his assurance on that.

Mr. Wright: Some statement should be made because there are other agreements with respect to which we will offer secondary evidence. If this is all you have, that statement should appear.

Mr. McKay: I would prefer that Mr. Antevil make the statement to the Court on Thursday. I have no personal knowledge. I simply instructed him to get these papers and that was the report.

The Court: You have none here?

Mr. McKay: I have none here. I understand he has not got any. I would prefer that statement be made by him, because he is the man that made the search.

Mr. Wright: At this time, if the Court please, there is nothing more I can say or do unless we can identify some of the material which has been subpoenaed or unless we can offer the identified R. K. O., Fox and Universal and [fol. 1288] Columbia franchises and master agreements, which apparently are not in court now. Maybe we can have a recess and get them over.

Mr. McKay: I have here a considerable number of other Schine exhibits that are marked with "S" that were identified and inspected. I don't know whether Mr. Wright wants these introduced or not. If he doesn't——

Mr. Wright: Not at this point.

Mr. McKay: All I can say is that I am taken by surprise by the fact that the rest of these documents I spent so much time on last night are not going to be offered. I knew I had more documents than possibly could be offered today, and I had anticipated that they were going to be offered in order. I am not saying this by way of criticism. I am just explaining the reason why there are not any more papers here right now.

The Court: Is there anything you have here, any other documents that you want to offer here now?

Mr. Wright: No, if the Court please. There is various interrogatory material that we would want to read into [fols. 1289-1291] the record, but I would rather not do that until we have the answer to our——

The Court: Grouped together. In the morning you will have the rest?

Mr. McKay: I will bring the rest.

The Court: Then we will take a recess until tomorrow morning. Will you have them all straightened out?

Mr. McKay: Yes, that is all I did last night.

The Court: That will give you part of this afternoon and evening as well to do that. You better talk to Mr. Wright and see just what he wants here.

Mr. Wright: I will be glad to give him a list of the exhibit numbers right now.

The Court: Give him all the information you can. Here are some papers here. You may want to keep them together.

Mr. McKay: Yes. May we have some procedure adopted as to how these exhibits are to be marked? I am perfectly willing to leave them with the stenographer.

The Court: We will recess until tomorrow morning.

(Whereupon an adjournment was taken to Wednesday, September 27, 1944, at 10 A. M.)

[fol. 1292] UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF NEW YORK

Civil 223

UNITED STATES OF AMERICA

vs.

SCHINE CHAIN THEATRES, INC., et al, Defendants

Continuation of trial before Honorable John Knight, United States District Judge for the Western District of New York, September 27th, 1944, at 10 A. M.

APPEARANCES:

Robert L. Wright, Esq., John F. Clagett, Esq., Harold L. Schilz, Esq., Special Assistants to the Attorney General, and Milton Kallis, Esq., Special Attorney, in behalf of the United States.

Edward F. McClennen, Esq., Willard S. McKay, Esq., Saul E. Rogers, Esq., Arthur E. Whittemore, Esq., Arthur J. Homans, Esq., and Howard M. Antevil, Esq., appearing for Defendants.

[fol. 1293] PROCEEDINGS

Mr. Wright: On page 1264 of yesterday's record, Exhibit W-31, should read W-3. We will proceed in the order we gave you those yesterday. I think the first one is——

Mr. McKay: The first document you called for was F-1.

Mr. Wright: Yes, Fox.

Mr. McKay: I produce F-1, which is an agreement between Schine Enterprises, and subsidiaries and affiliated companies, dated August 5, 1936, and I might say there that the type written is 1937. It has been changed in pencil to 1936, and relates to the 1936-'37, '37-'38, and '38-'39 product.

The Court: We had yesterday the Fox agreements, didn't we?

Mr. McKay: I don't think we had any Fox agreement yesterday.

Mr. Wright: I don't think we had any Fox yesterday.

The Court: What was S-68 and 67?

Mr. Wright: Those were agreements made by one or the other Schine defendants with other exhibitors containing covenants not to compete.

The Court: By Schine with other pictures?

Mr. Wright: No, by Schine with other exhibitors.

[fol. 1294] Mr. McKay: This agreement is signed by William Sussman, on behalf of Fox and George Lynch on behalf of Schine. Attached to the agreement is a letter dated February 24, 1937. That letter relates to the change in the date which I just called to your Honor's attention.

(Document handed to Mr. Wright.)

Mr. Wright: We offer it as F-1 in evidence.

The Court: What is that number?

Mr. Wright: F-1.

(The agreement and letter referred to were marked in evidence as Plaintiff's Exhibit F-1.)

The Court: What do you say that is, that Roman is just 1?

Mr. McKay: Yes, that is right. Your next is F-193.

The Court: Was that with Fox?

Mr. Wright: Yes. I think it would be more orderly if we followed F-1 with the deal sheets that relate to it.

Mr. McKay: I am just producing this because it was the next one you gave me.

Mr. Wright: On the contracts, yes. I think those are F-2 to F-123, according to my notes.

Mr. McKay: You did not ask for that. You asked for 124 to 214.

[fol. 1295] Mr. Wright: Those relate to the second franchise. The first are F-2 to 123.

Mr. McKay: I am awfully sorry, but here is the list you gave Mr. McClennen last night.

Mr. Wright: Well, we can pick those up later, but we do want F-2 to 123.

Mr. McKay: That is the reason they aren't here, because they weren't on the list.

Mr. Wright: Then I think we might as well proceed to put in F-193, if you have got that.

Mr. McKay: Yes, I produce a letter, dated June 8, 1939, addressed to Schine Enterprises Corporation and its subsidiaries and affiliates, signed by "Twentieth-Century Fox Film Corporation, by William Sussman", and accepted by Schine Enterprises by George Lynch, which relates to the 1940-'41 and 1941-'42 seasons.

Mr. Wright: I think you omitted 1939-'40.

Mr. McKay: Oh, yes, 1939-'40. Of course, in so far as this relates to any dealings after May 19, 1942, it is inadmissible on that ground.

Mr. Wright: We offer it in evidence.

(The letter, dated June 8, 1939, to Schine Enterprises, signed by Twentieth-Century Fox, referred to, was received in evidence and marked Plaintiff's Exhibit F-193.)

[fol. 1296] The Court: You call this an individual license agreement?

Mr. Wright: No, this is a so-called master agreement, covering three seasons on the franchise.

Mr. McClennen: If your Honor please, as I said yesterday, we are not in agreement as to the characterization and I take it I needn't interrupt for that purpose.

The Court: When you referred to a master agreement I assumed it related to an agreement over a period of years.

Mr. McClellen: The master agreement, as he described it, was one relating to more than one theatre and a franchise for more than one year. I don't think we are in discord as to the common use of the term "Master agreement" but the franchise is the one.

The Court: Whatever they are called, it does not make any difference, it is a question of what was done.

Mr. McClellen: I want to say this, once and for all, so it will apply whenever Mr. Wright says "franchise" it will be understood that we are not in accord on that description.

Mr. McKay: I produce——

The Court: There is just one question, Mr. Wright. [fol. 1297] When you speak about a date, you mean by master agreement one made with an individual company for several years or would it have to be an agreement with several companies?

Mr. Wright: No, as we use the term, the master agreement would be with one company for the exhibition of its films during one season, in numerous towns and theatres owned and controlled by the defendants. The franchise, as we use the term, would be a similar agreement, but cover more than one motion picture season.

Mr. McKay: I produce a series of individual contracts marked F-124 to F-214, inclusive. These contracts are dated January 23, 1939, and are all between Twentieth-Century-Fox Film Corporation and some Schine companies and they are not all the same date. I will correct that statement, your Honor. They relate to the seasons of 1939-'40, '40-'41 and '41-'42. I have to inform your Honor that in the folder marked 123 and 124 there is a notation "Out" and the relevant contracts are not there, and there is no explanation why they are not there. I am endeavoring to [fol. 1298] locate them and will supply them if I am able to find them.

The Court: It is 123?

Mr. McKay: It is 123 to 214, but 123 and '4 are missing, but that is what the request calls for. For the convenience of the stenographers.

The Court: You are offering now 125?

Mr. McKay: 125, yes, but for the convenience of the stenographer I might point out here, he will note that 193 is not in this pile. That is because 193 has already been introduced as this so-called master agreement.

Mr. Wright: Then we offer F-125 to F-214, in evidence, and I understand they are so marked. It should be noted, I think, for your Honor's information, that F-125 is an agreement which relates to the master agreement, or to the three-year deal of 1936 which has been identified as F-1. The rest of these agreements, 126 through 214, refer to the three-year agreement dated June 8, 1939, which is in evidence as F-193.

The Court: I thought you said these were dated January 29, 1939?

Mr. McKay: That was the first agreement. The others [fol. 1299] are dated June 6th, or some time in June. I note there is one June 22nd.

The Court: January 29, 1939, relates to 123 and 124, is that the point?

Mr. McKay: No, January 23, 1939, relates to F-125, and that in turn relates to F-1.

The Court: Yes, I understand.

Mr. McKay: The others are dated in June, not all on the same day, June of 1939, and relate to F-193.

(The series of individual contracts referred to were received in evidence and marked Plaintiff's Exhibits F-193 to F-214, inclusive, with the exception of F-193.)

Mr. Wright: We might as well put them in in chronological order. The next would be R-42 and R-43.

The Court: Is that No. 193 or 1-93?

Mr. McKay: 193.

Mr. Wright: F-193 is the designation.

The Court: Go ahead.

Mr. McKay: I produce R-42, which is an agreement signed by R. K. O. Distributing Corporation by some C. H. Halligan, and R. K. O. Distributing Corporation by Henry T. Dixon, and apparently was intended to be signed by George Lynch for Schine Theatrical Co., Inc., but he didn't [fol. 1300] sign it. It is dated October 29, 1934, and relates to the 1934-'35 pictures of R. K. O. Attached to that is R-33, which is a letter from R. K. O. Distributing Corporation.

Mr. Wright: R-43.

Mr. McKay: R-43, a letter from R. K. O. Distributing Corporation to George Lynch, Schine Theatrical Co., Inc., dated November 1, 1944.

Mr. Wright: We offer R-42 and R-43.

(The agreement dated October 29, 1934, referred to was received in evidence and marked Plaintiff's Exhibit R-42.)

(The letter from R. K. O., dated November 1, 1944, referred to was received in evidence and marked Plaintiff's Exhibit R-43.)

Mr. Wright: If there is going to be any point made about the fact that Lynch's signature does not apear here, I suppose we will have to go out for the copy in the distributors' files, which has that on.

Mr. McKay: I don't really question the fact. He probably signed it. But I do not see his signature there. It was his copy and I suppose he may have felt he didn't need to sign it.

[fol. 1301] What is the next?

Mr. Wright: Then have you R-3 through R-34? I think those are the contracts which relate to this agreement R-42 and 43.

Mr. McKay: My first one is R-4, it runs to R-34.

Mr. Wright: Haven't you R-3?

Mr. McKay: No, I wasn't able to find R-3, and also R-19 is missing, and I put in a yellow sheet there.

The Court: Is this 34 or 44?

Mr. McKay: 34. These are individual contracts.

The Court: Which one is next?

Mr. McKay: R-3 is next, which is missing, and R-19 is missing.

The Court: All right.

Mr. McKay: These are individual contracts between one or more of the Schine Companies and R. K. O., dated in October, 1934, and relating to the 1934-1935 product.

The Court: They all relate to the two years?

Mr. McKay: That is ~~only~~ one year.

The Court: I mean one year, but I mean 1934-'35?

Mr. McKay: Yes.

Mr. Wright: We offer those in evidence.

[fol. 1302] (The individual contracts relating to 1934-1935 product referred to were received in evidence and marked plaintiff's Exhibits R-4 to R-34, inclusive, with the exception of R-19, which is missing.)

Mr. Wright: The next, I think, is R-20.

Mr. McKay: R-20 is a letter, dated October 18, 1935, to Mr. Myer Schine, Schine Enterprises, and signed by E. L. McAvoy, Eastern Sales Manager. It is written on the stationery of R. K. O. Distributing Corporation.

The Court: That is R, what?

Mr. McKay: R-20.

Mr. Wright: And that relates to the pictures released for the 1935-'36 season?

Mr. McKay: Just a minute. Well, this doesn't say to what season it relates. It says "The balance of the deal is to be the same as the '34-'35 deal." It doesn't specifically designate the season to which it relates.

Mr. Wright: We offer R-20 in evidence.

(The letter, dated October 18, 1935, to Myer Schine, referred to, was received in evidence and marked Plaintiff's Exhibit R-20.)

[fol. 1303] Mr. Wright: The next is R-1.

Mr. McKay: This is an agreement dated November 20, 1936, and it is apparently intended to be signed by four different people representing RKO. None of those people signed it. Instead, the signature E. L. McEvoy appears across the page without any designation of his position. Signed by George Lynch, Schine Theatrical Company, Inc., and apparently related to a deal signed for the year 1936-1937 pictures, adding certain clauses to the agreement.

Mr. Wright: We offer R-1.

The Court: November 20, 1936?

Mr. Wright: Right.

The Court: How could that refer to 1936-1937 pictures?

Mr. Wright: That season began September 1st, 1936 and ended the following August. It was made during the season.

The Court: Oh, I was thinking it was made in the spring.

(Thereupon agreement dated November 20, 1936, between RKO and Schine Theatrical Company, Inc., received in evidence and marked Plaintiff's Exhibit R-1.)

Mr. McKay: I found R-3 which apparently had been withdrawn [fol. 1304] for use in an arbitration proceeding. It was in a separate place.

The Court: R what?

Mr. McKay: R-3, the contract I said I had not been able to find. It was in a separate folder, withdrawn for an arbitration proceeding, apparently. A contract for 1934-1935 products for the Palace or Jefferson Theatres in Auburn, between RKO——

The Court: Where?

Mr. McKay: Palace or Jefferson Theatres, Auburn, and it is signed by RKO and by the Mamyer Corporation.

Mr. Wright: We offer R-3.

(Thereupon contract between RKO and Mamyer Corporation, received in evidence as Plaintiff's Exhibit R-3.)

Mr. McKay: That finishes RKO?

Mr. Wright: No, I don't think you have produced—was R-1 offered?

Mr. McKay: Yes.

Mr. Wright: The next I think would be the deal sheets relating to R-1. That is R-2 (1 through 51).

Mr. McKay: R-2 (1 through 51) consists of a series of [fol. 1305] so-called deal sheets. They are dated 11/20—here is one 11/19/36. A number of them are dated November 30, 1936, but they were all dated in November. They are signed by E. L. McEvoy and George Lynch. They did not make any specific reference to the season's product to which they refer.

Mr. Wright: Don't they refer to the other agreement?

Mr. McKay: They do not refer to anything.

Mr. Wright: I take it these are produced, are they not, in response to our subpoena which called for the agreements which were a part of those season's deal?

Mr. McKay: They are produced in accordance with your subpoena which called on us to produce all deal sheets——

Mr. Wright: Which related to the——

Mr. McKay: You did not limit it to any special season.

Mr. Wright: Let us take a look at it and see if we can straighten it out here.

Mr. McClennen: If your Honor please, while this is being looked up, could I ask your Honor to glance at this as indicating what it is? (Handing document to the Court.)

Mr. Wright: Paragraph 23 of our subpoena calls for the [fol. 1306] license agreement, contract or master agreement dated November 20, 1936, relating to the exhibition in certain towns in the States of New York and Ohio of feature pictures distributed by R. K. O. Radio Pictures, Inc., and all modifications, alterations and amendments thereof, and it is my understanding that the document that is in evidence as R-1 was produced in response to that paragraph 23, isn't that correct?

The Court: It is apparently the same date.

Mr. Wright: Yes, R-1 is the deal which covered the 1936-1937 season and is dated November 20, 1936.

The Court: These sheets are dated the same date?

Mr. McClennen: Some of them are. Anyway a number of them are dated.

Mr. Wright: Our paragraph 24 calls for all deal sheets to which the license agreement, contract or master agreement described in paragraph 23 refers or relates or which refer or relate to the aforesaid license agreement, contract or master agreement. I take it these deal sheets that have been identified here as R-2 (1 through 51) are the sheets that were produced in response to our paragraph 24, are [fol. 1307] they not?

Mr. McKay: I haven't any actual doubt that they do relate to the 1936-1937 product, but I felt I ought to call your Honor's attention to the fact on their face they make no reference to any product.

Mr. Wright: I take it their production in response to this subpoena establishes these deal sheets represent the deals that were made.

The Court: Counsel states those are all that he has. Are they?

Mr. McKay: If we have any relating to that season, those are the ones.

Mr. Wright: We offer those in evidence.

(Series of deal sheets thereupon received in evidence and marked as Plaintiff's Exhibit R-2 (1 through 51).

Mr. McKay: May I state there is one sheet missing there; sheet No. 49 is missing.

The Court: Except R-49.

Mr. McKay: It would be R-2 (49).

Mr. Wright: Next I think is R-37 (1 through 83).

Mr. McKay: These are a series of so-called deal sheets signed by E. L. McEvoy and George Lynch and they do contain [fol. 1308] a reference to the product they refer to, seasons 1938-1939, 1939-1940 and 1940-1941.

The Court: What is that number, R-what?

Mr. McKay: R-37 (1 to 82).

The Court: They purport to be what?

Mr. McKay: They are the so-called deal sheets. That is what they are designated on the top.

The Court: Between R. K. O.—

Mr. McKay: Between R. K. O. and Schine, and they refer to the seasons' product 1938-1939, 1939-1940 and 1940-1941.

Mr. Wright: And they also refer to the master agreement dated 11/20/36 which is in evidence as R-1.

Mr. McKay: Some of them don't have that reference, but a great number of them do. Up to No. 60, refer to the master agreement of 11/2-/36.

Mr. Wright: We are not particularly interested at this point which ones do and which ones do not. Whatever the fact is appears on their face.

Mr. McKay: Some of them do not refer to all three seasons. I want to pick those out and mention them specially. 81 is only for the 1940-1941 season; 82 is only for the 1940- [fol. 1309] 1941 season; 83 was not called for—83 is only for the 1940-1941 season.

Mr. Wright: Yes, I called for 83. He originally described in producing it as 1 to 82. We had asked for 1 to 83. Anyway, we are offering one through 83.

Mr. McKay: 78 is for the 1939-1940 and 1940-1941 season. 37 is for the 1939-1940 and 1940-1941 season. 80 is for the 1939-1940 and 1940-1941 season.

The Court: Your point in this connection is they do not all refer to the same period of time?

Mr. McKay: Except for the exceptions I am stating, they refer to 1938-1939, 1939-1940 and 1940-1941.

Mr. Wright: What he is referring to are sheets which cover additions to the deal during the three-year period. Towns that came in later, of course, the deal was only for the later years.

Mr. McKay: They are all included in the three seasons, but these particular sheets do not cover all three seasons. They cover one or two of them.

The Court: That is what I was referring to.

[fol. 1310] Mr. McKay: 76-A is 1939-1940 and 1940-1941. 76-B is 1938-1939. 71 is 1940-1941. 66 is 1939-1940 and 1940-1941. 67 is 1940-1941 and 61 is 1940-1941. The others all cover the three seasons.

Mr. Wright: They are all offered.

(Series of so-called deal sheets between R. K. O. and Schine were received in evidence and marked Plaintiff's Exhibit R-37 (1 through 83.)

Mr. Wright: Columbia, I think, is next on the list, C-100 and C-101.

Mr. McKay: C-100 is dated at Gloversville October 17, 1938. It is signed by Louis Weinberg, Columbia Picture Corporation and George Lynch for Schine Enterprises Corporation. I think it is not designated as anything. I think I better read the opening sentence. It says "It is understood and agreed that the following clauses are to become part and parcel of Columbia Contract for the 1938-1939 and 1939-1940 seasons. Then it proceeds to list eight clauses. Apparently there is a modification or supplement to the Columbia contract.

[fol. 1311] The Court: C-100?

Mr. McKay: That is C-100.
Mr. Wright: We offer that.

(Thereupon document entered into between Columbia Pictures Corporation and Schine Enterprise Corporation, dated October 17, 1938, was received in evidence and marked as Plaintiff's Exhibit C-100.)

Mr. Wright: C-101, I think is a modification of C-100. This is the next document, C-101.

Mr. McKay: C-101 is a letter dated November 28, 1938. It is addressed to Schine Enterprises Corporation at Gloversville, attention of George Lynch, signed by Columbia Pictures Corporation by Louis Weinberg, Schine Enterprises Corporation by George Lynch, and it has attached to it a specimen form of the Columbia standard exhibition contract.

The Court: As part of the exhibit?

Mr. McKay: Yes, it refers to that. I don't know but what it might be well to read the entire letter. It is short.

Mr. Wright: It is all right with me if you want to read it.

Mr. McKay: It says: "In order to eliminate the neces- [fol. 1312] sity of drawing up and executing individual contracts for each situation and theatre in your circuit for our 1938-1939 and 1939-1940 product, it is agreed as follows: The complete deal shall consist of (a) the deal sheets dated October 17, 1938 and signed by myself for Columbia and by your Mr. George Lynch for Schine. (b) All the terms, provisions and conditions of the Columbia form of exhibition contract, copy of which is attached hereto. (c) Eight clauses contained in the two-page type-written agreement between you and us dated October 17, 1938."

That is C-100. "In the event that Columbia form of exhibition contract is inconsistent with the provisions specified in the typewritten agreement dated October 17, 1938, then it is agreed that the provisions of the typewritten agreement shall prevail and apply," and it provides for the possibility of selling to other theatres.

Mr. Wright: We offer C-101.

(Thereupon letter dated November 28, 1938, addressed to Schine Enterprises Corporation, signed by Columbia Pictures Corporation received in evidence and marked Plaintiff's Exhibit C-101.)

[fol. 1313] Mr. Wright: C-102 (1 through 81) are the deal sheets referred to in C-101.

Mr. McKay: What is the next one?

Mr. Wright: C-102 (1 through 81).

Mr. McKay: This presents the same situation as appeared in the R.K.O. deal sheets. The exhibits consist of so-called deal sheets signed by, apparently, two people, neither of whose signatures are legible to me. In some cases only one person signed. In that case it is Weinberg, but they are Columbia deal sheets and for the most part refer to the 1938-1939 and 1939-1940 product. Some of them, however, only refer to the 1939-1940 product.

Mr. Wright: We offer those in evidence.

(Thereupon deal sheets of Columbia received in evidence and marked Plaintiff's Exhibit C-102 (1 through 81).

Mr. Wright: The next is a three-year deal for the 1940-1941, 1941-1942 and 1942-1943 seasons, marked C-180 for identification.

Mr. McKay: Now, with respect to that, of course, the 1941-1942 and 1942-1943, that is not admissible or relevant [fol. 1314] here. You recall these franchises were affected by the temporary order after May 19, 1942.

Mr. Wright: We take it the entire contents are relevant and we are offering it all.

Mr. McKay: We note our objection on that ground, if your Honor please. It is an agreement dated November 19, 1940, which is signed by Columbia Pictures Corporation, Louis Weinberg, Schine Enterprises Corporation, George Lynch. The agreement itself does not specify the season's product, but schedule A annexed to it specifies 1940-1941, 1941-1942 and 1942-1943, and as in the other instance there is a sample copy of the Columbia exhibition contract annexed.

Mr. Wright: We offer C-180 in evidence.

(Thereupon agreement dated November 19, 1940, between Columbia and Schine Enterprises Corporation received in evidence and marked as Plaintiff's Exhibit C-180.)

The Court: What does the letter itself purport to be? There is attached a form?

Mr. Wright: Yes, it consists of special terms which are granted throughout the circuit. That is what the letter [fol. 1315] covers principally, special provisions which supersede those in the standard form.

Mr. McKay: I object to the use of the word "granted". I say they are imposed.

Mr. Wright: C-181 (1 through 79) the deal sheets which relate to C-180.

The Court: C-181, you say?

Mr. Wright: Yes, these deal sheets are marked C-181, each sheet being individually marked, or numbered, 1 through 79 for identification.

The Court: They are carried as one exhibit?

Mr. Wright: Yes, it is all carried under C-181.

The Court: You claim those relate to other years, other than 102?

Mr. Wright: These are the deal sheets for the same season, three years, 1940-1941, 1941-1942 and 1942-1943 as are covered by the agreement that is marked in evidence as C-180. These are the three-year deal beginning in 1940.

The Court: After 1938?

Mr. Wright: That follows the two-year deal which was made for 1938-1939 and 1939-1940.

[fol. 1316] Mr. McKay: Your Honor, all those deal sheets, that is 181, 1 to 79, cover the 1940-'41, '41-'42 and '42-'43 products, except No. 181-52, which is a deal sheet for a single picture, "Mr. Smith Goes to Washington, second-run Lexington". That is a '39-'40 picture.

The Court: Of what significance is that?

Mr. Wright: It is made at the same time and it has the same date. It is apparently part of the same deal.

Mr. McKay: It was made at the same time but it wasn't part of those deals. Those terms refer to first run and this was a second run contract.

The Court: The point you are making is it refers to the second run instead of a first run?

Mr. McKay: Yes. It says right on the paper "Second run".

Mr. Wright: We offer 181, 1 through 79.

(The deal sheets referred to were received in evidence and marked Plaintiff's Exhibit C-181, 1 through 79, incl sive.)

Mr. Wright: And then we come to Universal. Do y u have U-137?

Mr. McKay: U-137 is an agreement, dated September 7th, I think it is 1938, signed by Dave Miller, Universal Pictures, [fol. 1317] Inc., and George Lynch, Schine Enterprises Corporation, and refers to certain deal sheets, signed August 26, 1938, to which it adds four clauses.

Mr. Wright: We offer that in evidence.

(The agreement, dated September 7, 1938, was received in evidence and marked Plaintiff's Exhibit U-137.)

Mr. Wright: The deal sheets referred to I believe are U-137, 1 to 75, inclusive.

Mr. McKay: That is 137, that number really should have been 138, 1 to 75.

Mr. Wright: It is already marked 137. It doesn't make any difference.

Mr. McKay: These sheets relate to the 1938-'39 season and are dated—up to 137-69 they are dated August 26, 1938. 70, 71 and 72 are dated 11-10-38 and 73 and 74 are dated April 17, 1939.

The Court: What is that?

Mr. McKay: 73 and 74 are dated April 17, 1939. 75 is dated 10-21-38.

Mr. Wright: We offer those in evidence.

(The deal sheets referred to were received in evidence and marked Plaintiff's Exhibit U-137, 1 to 75 inclusive.)

[fol. 1318] Mr. Wright: The next document is U-207, a three-year deal, for 1939-'40, 1940-'41 and '41-'42.

Mr. McKay: 207 is an agreement dated June 27, 1939, signed by Dave Miller, Universal Pictures, Inc., and George Lynch, for Schine Enterprises. It refers to certain deal sheets signed on June 27, 1939, to which it adds seven clauses, but it doesn't make any reference whatsoever to the year's product which it covers. It may appear in the deal sheets but it doesn't appear in this.

Mr. Wright: We offer U-207 and also U-207, 1 through 89, which I understand to be the deal sheets referred to there.

(The document, three-year *year*, dated June 27, 1939, referred to was received in evidence and marked Plaintiff's Exhibit U-207.)

(The deal sheets referred to were received in evidence and marked Plaintiff's Exhibits U-207, 1 through 89.)

Mr. McKay: All of those deal sheets are dated 6-27-39, except as follows: No. 85 is dated December 15, 1939; No. 61 is dated March 4, 1940, No. 62 is dated January 22, 1941; No. 53 is dated December 15, 1939; No. 52 is dated December [fol. 1319] 18, 1941; No. 50 is dated December 15, 1939; No. 51 is dated December 5, 1940; No. 49 is dated December 15, 1939; No. 34 is dated October 3, 1939; and No. 89 is dated December 15, 1939. All of the sheets cover the 1939-'40, '41-'42 and '42 product, except No. 51, which covers only 1940-'41; No. 52, which covers only '41-'42 and No. 62 which covers only 1940-'41.

Now, I renew my observation that as to any——

The Court: What do you claim is the significance in the different dates?

Mr. McKay: Well, I simply want to have the—you see, this letter refers to deal sheets signed on a certain date and a great many, a majority of them, were signed on that date.

The Court: I mean, is there any significance in the fact they are signed on different dates?

Mr. McKay: There may be. I think that will require some explanation.

Mr. Wright: We are offering U-207, 1 through 89.

The Court: They have been received.

Mr. Wright: That, I think, finishes up the offering at [fol. 1320] this time of the previously identified material. I think we should next identify the United Artists' master agreements that were subpoenaed and haven't yet been produced or identified. This subpoena that I am referring to was returnable August 15th and paragraph 1 reads as follows: "All franchise and master agreements between you and United Artists Corporation for the exhibition of feature motion picture films released to said defendant exhibitor and distributed by United Artists Corporation during the motion picture season 1931-'32 to 1940-'41, inclusive."

Then it has a foot-note saying "as used herein the term franchise includes any license agreement for the exhibition of film for a period of more than one year. As used herein the term master agreement includes any agreement covering the exhibition of a feature motion picture film in a group of ten or more towns."

Mr. McKay: Your Honor, all the United Artists agreements are here in court. I point out that Mr. Wright's [fol. 1321] definition, arbitrary definition, of a master agreement has made it necessary for me to take each separate folder and search through it to see whether it applies to ten or more towns. United Artists doesn't sell pictures the way the other companies do. They sell a single picture at a time and on a separate contract. On occasion they will annex to the contract a rider like that, giving one or more towns, and it is quite a task to do that. Now, I have started on it and I have got some of them here, and they are all in court, but it will take a matter of three or four or maybe five more hours to complete pulling those contracts out.

The Court: Well, irrespective of the language of the subpoena there, first, do I understand the subpoena is directed only to master agreements?

Mr. Wright: And franchise, both.

The Court: Why not just proceed?

Mr. Wright: We can at least identify what he has.

Mr. McKay: You can identify the ones I pulled out and [fol. 1322] I will continue to pull out the others. The point I make is that they take a separate picture and make a complete folder out of it.

The Court: What I was asking, is there any difference in what we call it? The agreements show what they are, whether they relate to several theatres, one theatre, a single year or a period of years.

Mr. McKay: I have no objection to doing the work. I am just pointing out it will take four or five more hours to finish it.

Mr. Wright: As long as these are only going to be marked for identification I think that the marking could probably be done outside of the presence of the Court. Perhaps we could have a recess and then mark them, and it would save a considerable amount of time.

The Court: You speak about taking four or five hours. What do you mean by that?

Mr. McKay: You see what I have left here is a few papers out of a great batch that were in this contract that he did not want me to bring in, and I have to go through each [fol. 1323] one of these folders and sort them out and see whether they do cover ten or more towns, and if they do then I have got to take the other contracts out. In many cases it has been a very close proposition. Some of them cover nine towns. I would be very happy to have him take the whole batch of contracts and put them in. They are all here.

Mr. Wright: I would suggest that during the recess perhaps we could simplify your task for you.

The Court: That is what I had in mind.

Mr. McClellen: If your Honor please, there is a considerable quantity that Mr. McKay has been able to get out that exactly comply.

The Court: I see your point.

Mr. McClellen: Then I take it that there is no occasion for marking them for identification. They can now be either put in or rejected, as Mr. Wright may determine, and if they are put in they have got one marking as an exhibit in this case now.

Mr. Wright: These that we have not seen we, of course, would like to look at them before we offer them. I would [fol. 1324] suggest we identify them first outside of the court and then those that we decide to offer we can come in and offer them.

Mr. McClennen: If you are going to identify them would it not be better to relieve Mr. McKay of this great work of picking out and identifying everything?

Mr. Wright: I say, we may be able to do that during the recess.

The Court: I think we could, if you have got the papers here.

Mr. Wright: We can go over them with Mr. McKay.

The Court: Either offer them all or pick out those that the subpoena is directed to.

Mr. McClennen: They are all here.

The Court: When do you want to do that—now?

Mr. McClennen: Those that have been picked out, we can go right forward before your Honor on. Then as to the rest it can be done outside.

Mr. McKay: I have some more papers that are called for by the subpoena.

Mr. Wright: I think we had better proceed with those.

Mr. McKay: I went through those last night. We might finish them up this morning and devote the afternoon, in the Court's absence, to getting rid of United Artists.

[fol. 1325] The Court: Just as you agree.

Mr. Wright: The second paragraph of the subpoena calls for all inter-office correspondence and all written communications between the aforesaid parties relative to the agreement described in paragraph 1 hereof which were written during the period from August 1, 1931, to September 1, 1941.

Mr. McKay: If there are any of those they will be attached to the contract. Other than that there are not any.

Mr. Wright: You mean other than those files that we are going to examine?

Mr. McKay: Yes.

Mr. Wright: The third paragraph calls for all written agreements made with one or more of the parties named below in connection with the acquisition of the respective theatres listed below. Then there is a list of individuals, a list of theatres, and a list of locations. The first one is John Bahas, Ohio Theatre, at Ashland, Ohio.

Mr. McKay: Mr. Wright, do you have any objection, as long as these are all on our list, if I take them in the order that I find them here?

[fol. 1326] Mr. Wright: Not at all.

Mr. McKay: The Strand Theatre, Seneca Falls.

Mr. Wright: These refer to agreements made between Schine and parties from whom they acquired theatres, other exhibitors. I think we had better go back now to the regular exhibit numbers in the case.

Mr. McKay: Your Honor, with respect to this series of exhibits, we note the objection that they are inadmissible because they relate to a local transaction, to wit, the acquisition of a particular theatre in a particular town, and therefore have nothing to do with interstate commerce.

Mr. Wright: Inasmuch as we have not seen these exhibits either, I think that these might well be identified during the recess and then those that we decide to offer we will offer.

Mr. McKay: Then you do not want to go forward with it?

Mr. Wright: We want to go forward with it and I suggest we mark them, examine them during the recess, then we will offer them.

The Court: For identification, you mean?

Mr. Wright: Yes.

Mr. McKay: There is one other point, your Honor. That [fol. 1327] is, practically they are all originals and part of our permanent records in each town, and they are necessary to our recording system. I would like, with the Court's permission, after they have been marked, to withdraw them one at a time or two or three at a time and have them photostated and substitute the photostat for the original.

Mr. Wright: That is entirely agreeable to us. We have no objection to that.

Mr. McKay: I produce an agreement, dated September 16th, between Harry L. Berenstein, Benjamin M. Berenstein, Julius Berenstein and Louis Henry, as sellers, and Schine Theatrical Co. as buyer. This relates to the acquisition of the capital stock of Berenstein Theatres, Inc.

The Court: What has become of the other one, the Strand Theatre, Seneca Falls?

Mr. McKay: Berenstein Theatres owned the Strand Theatre.

Mr. Wright: I will ask to have this marked for identification.

The Court: Mark it Exhibit 80 for identification.

(The agreement, dated September 16th, between Berenstein and Schine Theatrical Co., referred to, was marked as Plaintiff's Exhibit 80 for identification.)

[fol. 1328] Mr. McClennen: This is not yet in evidence, as I understand. It is merely for identification?

Mr. Wright: No, it is merely identified.

Mr. McKay: Malone, New York.

The Court: What is the name of the theatre?

Mr. McKay: The Plaza Theatre. We produce an indenture of lease, dated February 14, 1941, between Michael Boumansour and Schine Theatrical Co., Inc., which covers the Plaza Theatre, Malone, N. Y.

The Court: Leased to Schine?

Mr. McKay: Yes, sir. Boumansour is the landlord.

Mr. Wright: I will ask to have that marked Exhibit 81 for identification.

(The indenture of lease, dated February 14, 1941, between Boumansour and Schine Theatrical Co., Inc., referred to was marked as Plaintiff's Exhibit 81 for identification.)

Mr. McKay: I have here what seems to be a copy of an agreement between Boumansour and Schine Theatrical Co., Inc., dated January 21, 1941, also relating to the Plaza Theatre, but this agreement is signed only by Schine. I have no way of telling whether Boumansour signed it or not.

[fol. 1329] The Court: Is it something different from Exhibit 81 you mean?

Mr. McKay: It would apparently cover the making of that lease, but I do not think it is a proper exhibit at this time until we ascertain whether Boumansour signed it.

Mr. Wright: We will have it marked for identification anyway as Exhibit 82.

(Memorandum of agreement, dated January 21, 1941, between Boumansour and Schine Theatrical Co., Inc., referred to was marked as Plaintiff's Exhibit 82 for identification.)

Mr. McKay: William G. Croucher, Crescent Theatre, Newark, Ohio. I produce an agreement dated August 23, 1940, between William G. Croucher and Aldis P. Croucher, as parties of the first part, and Dominion Operating Co., Ltd., as parties of the second part, which provides for a leasing to Dominion of a building known as the Newark Theatre. That is now known as the Crescent Theatre.

The Court: Dominion is a subsidiary?

Mr. McKay: Dominion is a Schine subsidiary.

Mr. Wright: I will ask to have that marked Exhibit 83 for identification.

[fol. 1330] (The agreement, dated August 23, 1940, between Courcher and Dominion Operating Co., Ltd., referred to was marked as Plaintiff's Exhibit 83 for identification.)

Mr. McKay: In reference to H. C. Moss of Penn Yan, N. Y., the Elmwood Theatre, I have here the file on that theatre and I am unable to find any agreement with Mr. Moss.

Mr. Wright: If Counsel is referring to some agreement with a Trustee or Bank, as nominee for Mrs. Moss, we will expect that to be produced under the subpoena.

Mr. McKay: I will look through the file again. I am not familiar with the situation. If there is a possibility that she may have been represented by someone else maybe there is an agreement there, but I was looking for the name Moss. I do see his name on some mortgages but not on any agreement to which we are a party. I do not mean by saying that I have not been able to find it that I am going to stop looking for it.

The Court: Is there some other name like Mr. Moss?

Mr. Wright: That is a possibility.

Mr. McKay: Now that that possibility has been called to [fol. 1331] my attention I will look for it that way. Marion

D. Wood, Hippodrome Theatre, Little Falls, N. Y.; I produce a bill of sale from Marion D. Wood and Elizabeth Wood of the city of Little Falls to Schine Theatre Co., Inc., covering the equipment and personal property in the Hippodrome Theatre, Little Falls, N. Y.

The Court: For sale or lease?

Mr. McKay: A bill of sale simply of the equipment and personal property in the theatre. It is dated June 23, 1926.

Mr. Wright: I will ask to have that marked Exhibit 84 for identification.

(The bill of sale, dated June 23, 1936, between Wood and Schine Theatre Co., Inc., for Hippodrome Theatre, Little Falls, N. Y., referred to was marked as Plaintiff's Exhibit 84 for identification.)

Mr. McKay: Young & Whitney Real Estate Company, Capital Theatre, Ilion, N. Y. The subpoena calls for Young & Whitney Real Estate Co. This agreement I have is Young & Whitney, Inc. I assume they must be the same company.

Mr. Wright: We will ask to have that marked Exhibit [fol. 1332] 85 for identification.

The Court: Is this a sale or a lease?

Mr. McKay: It is the sale of a lease. I have an idea, your Honor,—I have not read the agreement very carefully, but I have some idea that there is some real estate leasing involved in it. It is an agreement dated May 27, 1937, between Young & Whitney, Inc., a New York corporation, as seller, and Perry Theatre Corporation, a New York corporation, as purchaser.

The Court: To whom?

Mr. McKay: Perry Theatre Corporation.

The Court: Is that a subsidiary?

Mr. McKay: That is a subsidiary.

The Court: That is of the Capitol Theatre where, Ilion?

Mr. McKay: Capitol Theatre, Ilion.

Mr. Wright: Mark that Exhibit 85 for identification.

(The agreement, dated May 24, 1937, between Young & Whitney and Perry Theatre Corporation, referred to, was marked as Plaintiff's Exhibit 85 for identification.)

[fol. 1333] Mr. McKay: While I think of it, your Honor, I located the exhibit that was missing yesterday, S-72, the Bieberson agreement. I was right in the assumption that had been used in the Bieberson deposition.

Mr. Wright: We will offer S-72 in evidence with the provision against competing which we are interested in which appears on the second page of the agreement. The date of S-72 is March 21, 1938.

(Thereupon the Bieberson agreement dated March 21, 1938 was marked as Plaintiff's Exhibit S-72 in evidence.)

Mr. McKay: John Buckman, Star Theatre, Delaware, Ohio. I produce an agreement dated January 15, 1938, signed by John Buckman and relating to the Star Theatre, Delaware, Ohio, with an addenda dated January 20th, 1938, also signed by John Buckman. This paper was Defendant's Exhibit 3 in the Buckman deposition. I think in this connection the Court ought to be informed that on the Buckman deposition Mr. Buckman first admitted that he signed the first part of the agreement. He then denied [fol. 1334] that he signed the second part and then denied that he signed any part of it.

Mr. Wright: It has already been identified. It doesn't need to be remarked at all.

Mr. McKay: It is called for under your subpoena.

Mr. Wright: That is right. I suppose you are producing this paper marked Defendant's Exhibit D-3.

Mr. McKay: D-3, that is D-3 on the deposition, that isn't D-3 in this case.

Mr. Wright: There is no need to remark it. We may not offer it. We probably won't.

The Court: D, did you say?

Mr. McKay: D-3. John Bahas, Ohio Theatre, Ashland. I produce a bill of sale from John Bahas to the Bell Theatre Corporation, dated July 10th, 1938, covering personal property and equipment located in the Ohio Theatre, Ashland, Ohio. I have a copy of it here so we can mark that. Then we won't have to have this one photostated.

Mr. Wright: I will ask to have that marked as No. 86 for identification.

[fol. 1335] (Thereupon the Bill of Sale from John Bahas to the Bell Theatre Corporation, dated July 10, 1938 was marked as Plaintiff's Exhibit No. 86 for identification.)

Mr. McKay: I have here the customary affidavit the seller makes under the Bulk Sales Act of Ohio. I don't presume you want that, do you?

Mr. Wright: No.

Mr. McKay: I may state to your Honor I am fairly certain there must be, in addition to that bill of sale, an assignment of lease, but I haven't as yet been able to find it. I will continue my search for it.

The Court: Was he the owner or lessee of the theatre?

Mr. McKay: He held a lease on the theatre. May we have about a five-minute recess?

The Court: We will stand in recess for five minutes.

(Short recess.)

(During the recess undescribed papers were numbered for identification by the reporter as Plaintiff's Exhibits 87 to 121, inclusive, for identification.)

(Whereupon a recess was taken until 2 P.M.)

[fol. 1336] After Recess, 2 P.M.

Appearances: Same as before noted.

Mr. McClennen: If your Honor please, during the recess the Court Reporter has marked for identification as exhibits 87 to 121 certain papers produced by us under the subpoena to plaintiff's Counsel, which I will describe as follows:

Exhibit 87, January 17, 1936, Henry Bieberson, Jr., and Belpik Theatre Corporation, as to theatres in Athens, Ohio.

Exhibit 88, January 25, 1936, Schine Chain Theatres, Inc., and Beulah M. Custer and E. R. Custer, as to theatres in Athens.

Exhibit 89, May 29, 1937, Belpik Theatre Corporation and Arthur J. Buck, Ural Buck, Eulalia Hawkins and Charles H. Morgenthaler, as to theatres in Fostoria, Ohio.

Exhibit 90, January 18, 1936, Delaware Realty Company, to Schine Delaware Corporation, assignment of lease as to Delaware, Ohio.

Exhibit 91, February 10, 1941, Henry Bieberson to Schine [fol. 1337] Delaware Corporation, a bill of sale as to Delaware, Ohio.

Exhibit 92, January 10, 1936, Henry Bieberson, Jr., and Belpik Theatre Corporation, agreement concerning Athens, Ohio.

Exhibit 93, January 18, 1936, Schine Chain Theatres, Inc., and Henry Bieberson, Jr., concerning theatre in Delaware, Ohio.

Exhibit 94, January 17, 1936, Henry Bieberson, Jr., to Schine Chain Theatres, Inc., an option for purchase concerning Delaware, Ohio.

The Court: That option related to the bill of sale, Exhibit 91, did it?

Mr. McClennen: All these Bieberson ones, I take it, did.

The Court: Exhibit 91 is a bill of sale from Bieberson and this is an option, you say. I don't know whether it relates back.

Mr. McClennen: I think that is probably a reverse of the dates, that the option was ahead of the bill of sale.

Mr. McKay: If I may explain to you, your Honor, when we made the original agreement with Mr. Bieberson we formed the corporation in which we each had 50% of the stock, and he turned over his theatre and equipment to that corpora- [fol. 1338] tion. Then he granted us an option to buy his 50% of the stock after a period of, I think it was, two years, and that is the option that has just been offered.

The Court: You spoke of Exhibit 91 as a bill of sale?

Mr. McKay: Yes. When the corporation was formed in which he owned 50% and we owned 50% Mr. Bieberson turned over his property to that corporation and issued a bill of sale pursuant to that transaction.

The Court: I see.

Mr. McClellen: Exhibit 95, January 17, 1936, Henry Bieberson, Jr., to Schine Delaware Corporation, concerning the Strand Theatre Building in Delaware.

Exhibit 96, September 21, 1937, Hahnar D. Shreffler and Belpik Theatre Corporation as to Shelby, Ohio.

Exhibit 97, July 23, 1935, Belpik Theatre Corporation and William K. Selman, concerning Norwalk Theatre Corporation, Norwalk, Ohio.

Exhibit 98, September 29, 1938, a letter confirming agree- [fol. 1339] ment between Chesapeake Theatres Corporation and Marsh Gollner.

Mr. Wright: May I ask whether that is produced in response to paragraph 3 or some other paragraph?

Mr. McClennen: I do not know.

Mr. McKay: It is produced in response to paragraph 4. That relates to Hurlock.

Mr. Wright: That is produced in response to paragraph 4 of our subpoena and relates to Hurlock, Maryland?

Mr. McKay: Yes.

Mr. Wright: That is what I want.

Mr. McClennen: 99, June 30th, 1939, a lease by Chester A. Lee and Ada M. Lee to Hurlock Theatre Corporation of building known as the Marada Theatre Building in the Town of Saint Michaels, Maryland.

The Court: That is number what?

Mr. McClennen: That is No. 99.

The Court: I thought you said 99 was a lease from Lee.

Mr. McClennen: That is this lease.

The Court: I thought you said that was also Hurlock, Maryland?

Mr. McClennen: It was to the Hurlock Theatre Corporation, but relates to the Marada Theatre Building in Saint [fol. 1340] Michaels, Maryland.

The Court: Maryland?

Mr. McClennen: Maryland. 100, November 17th, 1938, a letter from Chesapeake Theatre Corporation to Mary E. Waller, Roland H. Weller, Everett L. Waller, Charles Lynn Waller and Thomas J. Waller, relating to a lease of the same date which will be Exhibit No. 101.

Mr. Wright: It isn't clear to me which town 100 relates to; which part of the subpoena.

Mr. McKay: Laurel, Delaware.

Mr. McClennen: No. 101, a lease from the same named Wallers to Chesapeake Theatres Corporation, concerning Laurel, Delaware.

102, May 26th, 1938, between J. B. Russell and L. A. Russell, a lease to the Phoenix Amusement Company of property situated in Maysville, Kentucky.

103, October 26th, 1938, Milford Playhouse, Inc., an agreement to sell to Chesapeake Theatres Corporation land in Milford, Delaware.

Exhibit 104, January 12th, 1939, Milford Playhouse, Inc., to Milford Theatre Corporation, a letter concerning Plaza [fol. 1341] Theatre, Milford.

Mr. McKay: That is the same property referred to in the previous agreement.

The Court: That is the Milford, Delaware?

Mr. McKay: Yes.

Mr. McClennen: Milford, Delaware.

105, March 30th, 1938, Corning Opera House Company to Fred Gerber, a letter concerning the Palace Theatre, Corning, New York.

106, April 1st, 1938, a lease from Fred Gerber to Corning Opera House Company, property in Corning, New York.

107, January 13th, 1938, Charles O. Brown and Bessie O. Brown, a lease to Phoenix Amusement Company.

The Court: Phoenix, did you say?

Mr. McClennen: Phoenix Amusement Company, property in Middleboro, Kentucky.

108, January 13th, 1939, Charles O. Brown and Bessie O. Brown, a lease to Phoenix Amusement Company, property in Middleboro, Kentucky.

109, January 21st, 1938, copy of an agreement, Mt. Lyric [fol. 1342] Real Estate Corporation and James A. Upham, Mabelle G. Upham, Stephen P. Upham and Harriett E. Upham, property in Mt. Vernon, Ohio.

The Court: An agreement you said, or a letter?

Mr. McClennen: That was an agreement.

Mr. McKay: It is an agreement to build and lease, your Honor.

The Court: All right.

Mr. McClennen: We now come to a different class of exhibits, these are employment contracts.

Mr. Wright: If the Court please, before we proceed to those, we would like to know what the position of the defendants is as to these other items that have been specified for which nothing has been produced.

Mr. McClennen: They are still under search.

Mr. Wright: When will we know whether they are available or not?

Mr. McClennen: When we complete our search.

Mr. Wright: When do you expect to complete the search?

Mr. McClennen: As rapidly as we can.

Mr. Wright: It seems to me, if the Court please, there are some of these that haven't been produced, relating to a subpoena returnable on Monday. We asked for them on [fol. 1343] August 15th, and we ought to know whether they will be produced or are in the possession of the defendants.

Mr. McClennen: Mr. Wright, these papers came by truck loads from New York and Gloversville, and this is a holiday in which the parties are not available. Mr. McKay has gathered these as rapidly as he could. It may be we can get them tomorrow, I don't know, so that I can report to you at this particular moment.

The Court: You mean these from 110 to 121, are agreements between individuals?

Mr. McClennen: That is, these that I am coming to are agreements of employment of individuals.

Mr. Wright: I just want to make a note now of those which you say you are still searching for, as I understand it.

Mr. McClennen: We are searching for all of those in paragraph 3 of your subpoena returnable August 15th, 1944, as far as they are in existence and have not already been produced.

Mr. McKay: I will make a statement about Federalsburg; That is one of the situations in 4. I have found the folder, [fol. 1344] and the folder has the deeds of the property. That was a transaction I handled personally, and I am very strongly of the impression that there was a preliminary agreement. That agreement was not in the folder; I may have a copy of it in my office. If I have, I will bring it up on Monday. It is a transaction that I know of personally. If I am not able to bring up the agreement, I will give them the deed, but if we have the agreement, it will be a much simpler proposition, simply a transaction where three local businessmen sold us a theatre in Federalsburg, a purely real estate transaction. I can't understand why the agreement isn't in the folder, but it is not there.

Mr. McClennen: Continuing with the description of the exhibits identified——

Mr. Wright: These exhibits you are now referring to, I take it, are those produced in response to paragraph 43 of the original trial subpoena which calls for all contracts, agreements or memoranda, and other writing to which any defendant exhibitor is now a party, or to which any defendant [fol. 1345] ant exhibitor has been a party at any time since January 21st, 1931, which provides for employment by the defendant exhibitor in the capacity of manager or superintendent of said theatres or made a partnership with the former owner or principal operator of theatres acquired or which were then added to defendants' exhibitor circuit.

Mr. McClennen: I haven't examined which particular paragraph we are presenting these in respect to. We have them here. They are within some of your subpoenas.

Mr. Wright: I take it your description was they were contracts of employment.

Mr. McClennen: That is what I said.

Mr. Wright: Then I take it they are being produced in response to paragraph 43.

[fol. 1346] Mr. McClennen: Continuing with the description of the exhibits identified: Exhibit 110, September 23, 1935, between Belpik Theatre Corporation and M. H. Breyer, for employment as Resident Manager of theatres in Bucyrus, Ohio, for two years.

Mr. McKay: Your Honor may recall that Mr. Breyer testified here in the early stages of the trial.

Mr. McClennen: Exhibit 111, August 12, 1938, Chesapeake Theatre Corporation and Lee Insley, employment as Division Manager in the States of Delaware, Maryland and Virginia.

Exhibit 112, January 20, 1936, Belpik Theatre Corporation and J. C. Platt, as Manager of theatres in Mt. Vernon, Ohio.

Exhibit 113, January 11, 1939, Phoenix Maysville Theatre Company and Jack Frisch as manager of the Washington, Hollywood and Russell theatres, Maysville, Kentucky.

Exhibit 114, January 7, 1941, Schine Lexington Corporation and Leon B. Scott as manager of the Margie. Grand Theatre in Harlan, Kentucky.

Exhibit 115, November 15, 1935, Schine Ashland Corporation and B. W. Bickert, employment as theatre manager at Ashland, Ohio.

[fol. 1347] Exhibit 116, February 22, 1936, Seneca Theatres in Tiffin, Ohio.

Exhibit 117, July 24, 1931, Kinney-Mott Corporation and Ed. P. Mott as resident manager of theatres in the city of Wooster, Ohio.

Exhibit 118, September 29, 1938, Chesapeake Theatres Corporation and Marsh Gollner as district manager for the Eastern shore of Maryland, the employer to have the right to change the territory.

Exhibit 119, March 30, 1938, Corning Opera House Company and Robert K. Gerbert, manager of the Palace Theatre, Corning, New York.

Exhibit 120, February 14, 1941, Schine Theatrical Company, Inc., and Michael Boumansour as manager of the Malone and Plaza Theatres, Malone, N. Y.

Exhibit 121, July 24, 1935, Norwalk Theatre Corporation and William Selman, resident manager of theatres in Norwalk, Ohio.

(The above described exhibits were marked Plaintiff's Exhibits for identification 87 to 121, inclusive.)

[fol. 1348] Mr. McClennen: That completes the exhibits that we have been able thus far to number.

Mr. Wright: If the Court please, I assumed that we were going to get today a final statement as to what the defendants did or did not have that answered the description of the subpoenaes, one of which has been served nearly two years ago, and the other returnable on the 15th. We want to know at some point when this search that apparently still continues is going to terminate, and there should be someone who could tell us the point at which they have exhausted whatever they have in their files as to each of these paragraphs. We thought that would be done in this two-day interval which was set aside for this purpose. I think we ought to know now when that will be done.

Mr. McClennen: It will be done just as fast as we can complete it. Some of these are specific descriptions and search has been made in the files where those would be, and that search is still going on for such as have not yet [fol. 1349] been located, and we will continue just as rapidly as possible.

The Court: What is your program for tomorrow? Will you have witnesses tomorrow?

Mr. Wright: Tomorrow we have scheduled the distributor representatives for the authentication of documents and contracts produced from their files, and that is to continue for the next few days.

The Court: There will not be any duplication of these already in?

Mr. Wright: No. This material we have been identifying here has all been produced from the defendants' files.

The Court: I understand that, but of course it relates to contracts with distributors, some of that material?

Mr. Wright: Yes, and much of it is inter-office memoranda which these defendants would not have in their files.

Mr. McClennen: When I said this was all that we had numbered, we have right here in the court room a lot more papers that come within these descriptions, and I had thought that the understanding was that those were going [fol. 1350] to be numbered in your Honor's absence and then could be described, and they are all ready to go forward with that now.

Mr. Wright: That is agreeable to us. Of course it is understood all these numbers here are for identification only. I don't think you stated that at the time you read it.

Mr. McClennen: I stated at the time before I began and in the course of it that it was only for identification, so that none of these papers are now in evidence.

The Court: It seems to me if you have a good many of these documents and papers to which the subpoena is directed you could go over these together and save time by doing that.

Mr. McClennen: That was the plan, if your Honor please, to go right on as we have been doing.

The Court: Can you continue that this afternoon among yourselves?

Mr. McClennen: Yes, sir. We cannot possibly get through all of them this afternoon. There are, I suppose, hundreds within this subpoena.

The Court: I thought you wanted to spend your time this [fol. 1351] afternoon seeing what you could do about it.

Mr. McClennen: They are all here produced.

The Court: We will suspend until tomorrow at 10 o'clock and in the mean time use your best efforts to get this matter together so that we can proceed rapidly tomorrow.

(Whereupon an adjournment was taken to tomorrow, Thursday, September 28, 1944, at 10 o'clock A. M.)

[fol. 1352] Mr. McClennen: After the adjournment of court, by agreement of Counsel, the following license contracts by United Artists Corporation were marked for identification:

No. 122, August 22, 1933, picture "I Knew Her When", covering 25 towns.

No. 123, August 22, 1933, "Alexander Korda Production", covering 25 towns.

No. 124, August 22, 1933, "Trouble-Shooter", covering 25 towns.

No. 125, August 22, 1933, "Missed Lonely Hearts", crossed out in pencil and over-written "Advice to Lovelorn", covering 25 towns.

No. 126, November 18, 1935, "Call of the Wild", covering 15 towns.

No. 127, November 18, 1935, "Cardinal Richelieu", covering 14 towns.

No. 128, November 18, 1935, "Dark Angel", covering 21 towns.

No. 129, "Barbary Coast", October 2, 1935, covering one town, and November 11, 1935, same picture, covering 20 towns, and attached thereto riders adding other towns.

[fol. 1353] No. 130, undated rider for attachment to contract of December 23, 1936, covering 43 towns for "Come And Get It" and "Beloved Enemy."

No. 131, undated rider for attachment to contract of December 23, 1936, "Garden of Allah", "A Star is Born", and untitled Ronald, 43 towns.

No. 132, undated rider for attachment to contract of December 23, 1936, "History Is Made At Night", and "Wuthering Heights", 43 towns.

No. 133, undated rider for attachment to contract of December 23, 1936, 43 towns, "Rembrandt, I Claudius", and "Knight Without Armor".

No. 134, undated rider for attachment to contract of December 23, 1936, "Shake Hands With Murder", and "The Woman's Touch", 43 towns.

No. 135, undated rider for attachment to contract of November 4, 1937, "Vogues of 1938", 48 towns.

No. 136, undated rider for attachment to contract of December 23, 1936, [fol. 1354] "Personal History", "Desert Intrigue", and "You Only Live Once", 43 towns.

No. 137, undated rider for attachment to contract of December 23, 1936, "Men Are Not Gods", and "Elephant Boy", 18 towns.

No. 138, undated rider for attachment to contract of March 14, 1938, "Goldwyn Follies", "The Hurricane" and "Marco Polo", 21 towns.

No. 139, undated rider for attachment to contract of March 28, 1938, "Nothing Sacred", 21 towns.

No. 140, undated rider for attachment to contract of November 4, 1937, "Stella Dallas", and "Dead End", 48 towns.

No. 141, undated rider for attachment to contract of December 1, 1938, "Cowboy and the Lady", "Last Frontier", and "Daring Age", 43 towns.

No. 142, undated rider for attachment to contract of December 1, 1938, "Drums", 44 towns.

No. 143, undated rider for attachment to contract of [fol. 1355] December 1, 1938, "Algiers", "Stage Coach", "Trade Winds", "Winter Carnival" and "Man And His Women", 21 towns.

No. 144, rider for attachment to contract of December 1, 1938, "Man in the Iron Mask", "Kit Carson, Avenger", "Duke of West Point", "South of Pago Pago", and "King of the Turf", 21 towns.

No. 145, undated rider for attachment to contract of December 1, 1938, "Cowboy and the Lady", "Last Frontier", "The Daring Age" and "Wuthering Heights", 22 towns.

No. 146, undated rider for attachment to contract of November 20, 1939, "My Son, My Son", "Two Years Before the Mast", "House of Monte Cristo" and "Valentino", 24 towns.

No. 147, undated rider for attachment to contract of September 22, 1939, "Four Feathers", 21 towns.

No. 148, undated rider for attachment to contract of November 29, 1939, "My Son, My Son", "Two Years Before the Mast", "House of Monte Cristo", and "Valen-
[fol. 1356] tino", 18 towns.

No. 149, undated rider for attachment to contract of November 29, 1939, "Our Town", 24 towns.

No. 150, undated rider for attachment to contract of November 29, 1939, "Our Town", and untitled Lubitsch, 18 towns.

No. 151, rider for attachment to contract of November 29, 1939, "Our Town" and untitled Lubitsch, 10 towns.

No. 152, undated rider for attachment to contract of November 29, 1939, "Our Town" and untitled Lubitsch, 13 towns.

No. 153, undated rider for attachment to contract of November 29, 1939, "My Son, My Son", "Two Years Before the Mast", "House of Monte Cristo" and "Valentino", 13 towns.

No. 154, undated rider for attachment to contract of November 29, 1939, "My Son, My Son", "Two Years Before the Mast", "House of Monte Cristo" and "Valentino", ten towns.

[fols. 1357-1360] No. 155, undated rider for attachment to contract of February 19, 1941, "The Great Dictator", seven towns.

No. 156, undated rider for attachment to contract of February 19, 1941, "The Great Dictator", six towns.

No. 157, undated rider for attachment to contract of February 19, 1941, "The Great Dictator", five towns.

No. 158, undated rider for attachment to contract of February 19, 1941, "The Great Dictator", three towns.

No. 159, several undated riders for attachment to contract of December 16, 1940, "The Westerner", four towns in the aggregate for the several riders, 69 towns.

No. 160, several riders for attachment to contract of February 19, 1941, "Cheers for Miss Bishop", towns in the aggregate of the various riders, 71

No. 161, two riders dated December 7, 1934, one for "Kid Millions" in 12 towns and one for "We Live Again" in 12 towns.

[fol. 1361] UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF NEW YORK

Civil 223

UNITED STATES OF AMERICA

vs.

SCHINE CHAIN THEATRES, INC., et al., Defendants

Continuation of trial before Honorable John Knight, United States District Judge for the Western District of New York, September 28th, 1944, at 10 A. M.

Appearances:

Robert L. Wright, Esq., John F. Clagett, Esq., Harold L. Schilz, Esq., Special Assistants to the Attorney General, and Milton Kallis, Esq., Special Attorney, in behalf of the United States.

Edward F. McClennen, Esq., Willard S. McKay, Esq., Saul E. Rogers, Esq., Arthur E. Whittemore, Esq., Arthur J. Homans, Esq., and Howard M. Antevil, Esq., appearing for Defendants.

[fol. 1362] PROCEEDINGS

(Reporter's Note: In marking exhibits previously the No. 79 was skipped through inadvertence of counsel, so that there is no Plaintiff's Exhibit No. 79.)

Mr. Wright: Shall I proceed, your Honor?

The Court: All right.

Mr. Wright: Today and tomorrow are the days we have set aside for identifying the documents which had previously been produced from the files of the distributors, and photostatic copies of which had been furnished to counsel for the other side, but the authenticity of which they have been unwilling to admit or stipulate. Our first witness will be Mr. Felix A. Jenkins. Would you please take the stand.

[fol. 1363] **Felix A. Jenkins** a witness called by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Wright:

Q. Where do you live, Mr. Jenkins?

A. I live in Montclair, New Jersey.

Q. What is your occupation?

A. I am secretary of the 20th-Century-Fox Film Corporation.

Q. How long have you held that position?

A. Since 1934.

Q. Have you brought with you today the documents which were subpoenaed from the 20th-Century-Fox Film Corporation for production at the trial of this case which were specified in the list sent you by the Government with the letter of July 31st?

A. Yes, sir.

Q. And those documents are the group you have in your hand and they are marked for identification as Exhibits 163 through 242, inclusive?

A. Yes, sir.

Q. I believe that No. 236 is missing, is that right?

[fol. 1364] A. I am not sure of the number. One missing which you have there photostated.

Q. I will hand you this photostat of an inter-office memo dated February 13th, 1940, from Mr. William Sussman to Mr. Jack Blum and ask you if you recognize that as a photostatic copy of a document which was in the files of 20th-Century-Fox Film Corporation?

A. Well, a search of our files was made pursuant to the subpoena, and the original of this could not be found. Where this photostatic copy came from I don't know.

Q. You recall, do you not——

A. I recognize the name of William Sussman as one who did work for us and the name of Jack Blum as one who worked for us at the date of this document and still works for us.

Q. You recall, do you not, Mr. Jenkins, that at the time the subpoena was served you received a photostatic copy of everything that was furnished to the Government, all photostats that were furnished to us?

A. I believe we did.

Q. And were you able to locate your photostatic copy of that document?

A. Well, I personally did not make the search. It was made under my direction. This is what we recovered, this group of documents I hold.

[fol. 1365] Q. You were unable to locate either the original document or your photostat of the document which is marked 236 for identification?

A. That is correct.

Q. And I will hand you this memorandum from I. J.—a photostatic copy of a memorandum from I. J. Schmerz to J. Sichelman, dated September 6th, 1932, marked 162 for identification.

The Court: 162 to 242; is this mentioned?

Mr. Wright: This is——

Q. With reference to this document I have just handed you, marked 162 for identification, would your testimony be the same as with reference to the document——

A. Yes, except that I can add that the photostat includes a signature of I. J. Schmerz, which appears to be his signature with which I am familiar.

[fol. 1366] Q. Mr. Jenkins, could you tell us what position, if any, Mr. Tom H. Bailey held with the Fox Company from July, 1934, through November, 1940?

A. He was District Manager of our so-called Northeast District. He supervised the Albany, Boston and New Haven exchanges.

Q. Throughout that entire period?

A. Yes, sir.

Q. What were his duties as such Supervisor?

A. His immediate superior would be the Eastern Division Manager at the Home Office and he generally supervised the operation and the sale of pictures, licensing of pictures, through those three exchanges.

The Court: What do you mean by "supervised"?

The Witness: He supervised the licensing of them, the sale of them.

Q. Could you tell us what position Mr. John D. Clark held with your company in May, 1934?

A. He was the General Sales Manager of the Company.

Q. Can you tell us the period during which he was the General Sales Manager?

A. I cannot give you the exact date when he entered upon his duties as such. I believe it was the early winter of 1934, and he continued in that position until his death on June 1, 1938.

[fol. 1367] Q. Can you tell us what positions, if any, Mr. J. J. Grady held with your company during the period from September, 1938, through March, 1941?

A. He was our Cincinnati Exchange Manager at that time.

Q. Throughout that period?

A. Yes, sir.

Q. Can you tell us when he became your Cincinnati Exchange Manager?

A. In the season of 1933-1934.

The Court: I thought you said 1938 through 1941.

Mr. Wright: 1938 to 1941 is the particular period that is involved in these memorandums that were identified, but I thought we might as well have the full span of his term in that particular position.

Q. You say he started there in the 1933-1934 season?

A. That is right.

Q. Is he still there or when did he terminate there?

A. In September, 1942, he became a District Manager.

Q. For the Fox Company?

A. Yes, sir.

By the Court:

Q. What does an Exchange Manager do?

A. He supervises the operation and the sale of pictures from a given exchange. What we call an exchange is [fol. 1368] a local sales office, and he is the head of that particular office.

By Mr. Wright.

Q. I believe I neglected to ask you what Mr. Clark's duties were as General Sales Manager.

A. He was the executive head in charge of the sales of our pictures in the United States and Canada.

Q. Can you tell us what position Mr. E. C. Granger held with your company from July, 1934, through November, 1935?

A. He was Eastern Division Sales Manager, directly under Mr. Clark.

Q. How long did he hold that position?

A. He left the employ of the company in April, 1936, and he assumed that position some time in 1934.

Q. And what were his duties as Eastern Division Sales Manager?

A. At that time the Sales Manager had divided the country into two divisions, roughly, East and West. The Eastern Division Manager was the Supervisor of his half of the country answering to the General Manager.

By the Court:

Q. What about the Northeastern Division?

A. Well, that is a district. This I spoke of as a division.

Q. That is the Eastern District?

A. At the bottom is the exchange. Then there is a little [fol. 1369] district, three or four exchanges, and above that comes a division, and above that the sales manager.

By Mr. Wright.

Q. Can you tell us what position Mr. M. Grassgreen held with your company from July, 1934, through December, 1941?

A. He was manager of our Albany, New York, exchange.

Q. When did he first become manager there?

A. I think I have that here (referring to paper). The season of 1934-1935.

Q. And when did he terminate in that capacity?

A. He was transferred to the managership of the Boston exchange the season of 1942-1943.

Q. What were his duties as manager of the Albany exchange?

A. Well, similar to Mr. Grady's, who managed the Cincinnati exchange. He was the local resident operating head of that exchange, supervising its operation and the sale within his territory.

Q. Can you tell us what position Mr. F. B. Klein occupied in April, 1939?

A. He was a salesman in our Washington, D. C., exchange.

Q. Can you tell us what period of time he was a salesman in that exchange?

A. He has been and still holds that position ever since December 2, 1929.

Q. What were his duties as salesman?

[fol. 1370] A. A salesman has definite accounts, definite exhibitors, theatres, assigned to him. He goes out on the road and solicits the licensing of our pictures to the theatres directly.

Q. What position did Mr. George A. Roberts hold with your company in July, 1934?

A. He was the District Manager of what we call the Central District, which included Cleveland, Buffalo, and Cincinnati exchanges.

Q. How long did he hold that position?

A. Well, from March 6, 1933, to August 7, 1942.

Q. And what were his duties as such District Manager?

A. To generally supervise the three exchanges, the operations and sales of those three exchanges which I named.

The Court: Would he be under Grady?

The Witness: No, he would be under a Division Manager.

Q. Over Grady?

A. He would be over Grady. Grady was under him at that time.

By the Court:

Q. Grady was the Exchange Manager?

A. Yes.

Q. Then he would be over Grady?

A. Yes, sir.

[fol. 1371] By Mr. Wright:

Q. What position did Mr. Sidney Sampson hold with your company from December, 1932, through June, 1939?

A. Manager of our Buffalo exchange.

Q. Can you give us the total period of his employment in that capacity?

A. The season of 1932-1933, and he left to supervise our Canadian District some time in 1943.

[fol. 1372] Q. What were his duties as manager of the Buffalo Exchange?

A. To supervise the operations of the Buffalo Exchange, direct its sales, supervise the salesmen, the same as every other sales manager whom you have mentioned.

Q. What position did Mr. I. J. Schmerz have with your company from September, 1932 through September, 1939?

A. Manager of our Cleveland, Ohio, exchange.

Q. When did he begin and end that position?

A. He is still manager of the Cleveland Exchange. He became manager some time before 1932.

Q. His duties were the same as the other exchange managers you referred to?

A. Yes, sir.

Q. What position did Mr. J. Sichelman have with your company during the period from September, 1932——

The Court. How do you spell his name?

The Witness: (Spelling) S-i-c-h-e-l-m-a-n.

The Court: All right.

Q. During the year 1932?

A. During the year?

Q. Yes.

A. Mr. Sichelman was the administrative assistant to the General Sales Manager.

Q. And——

A. Generally supervises the mechanics of the others, [fol. 1373] exchange office operations.

Q. How long did he hold that position?

A. He has held it over 20 years, except for a brief period in 1934-5 when he was assistant administrative assistant to the manager in charge of foreign distribution.

Q. What position did Mr. Sussman hold?

A. Mr. Sussman?

Q. What position did Mr. Sussman hold with your company during the period from September, 1936 through March, 1941?

A. Eastern Division Sales Manager.

Q. When did he begin on that job and when did he leave?

A. From late 1933 to the spring of 1936 he was administrative assistant to Mr. Clark, the Sales Manager. In 1936 he became Eastern Division Sales Manager.

Q. How long did he continue in that position?

A. Until August of 1942.

Q. And what were his duties as Eastern Division Manager?

A. He succeeded Mr. E. C. Grainger and had the same duties that I have outlined for Mr. E. C. Grainger.

Q. What position did Mr. S. M. Wheeler hold with your company during April, 1939?

A. Manager of our Washington Exchange.

Q. How long did he hold that position?

A. From the season of 1932-33 through the season of 1941-42.

[fol. 1374] Q. And his duties were the same as the other exchange managers you have referred to?

A. Yes, sir.

Q. Mr. C. A. Hill held what position in February, 1941?

A. He was assistant to the Eastern Sales Manager.

The Court: Assistant to whom?

The Witness: The Eastern Division Sales Manager.

Q. During what period did he hold that position?

A. Since the winter of 1934, I believe I am correct in that, and he still holds it.

Q. What position did Mr. Jack Blum hold during the period from October, 1938 through January, 1941?

A. He was the head clerk in the New York home office in charge of what we called the Contract Department. It is a clerical and administrative position.

Q. He held that position during what period?

A. I can't give you that exactly, Mr. Wright, but he had been second in charge of that for some years and then was promoted four or five years ago.

Q. And he still holds——

A. No, he holds another position now. He was recently apponited assistant to the Central Division Sales Manager.

Q. Can you tell us what Mr. Blum's duties were as administrative assistant to the Sales Manager?

The Court: What is that?

[fol. 1375] Mr. McClennen: I thought he said head clerk.

Mr. Wright: Will you read what the record says?

(Preceding answer read, as follows: "A. He was the head clerk at the New York Home office in charge of what we called the Contract Department. It is a clerical and administrative position.")

By Mr. Wright.

Q. The last question should read, can you tell us what his duties were as head clerk?

A. He was responsible for the proper filing of all contracts. He made or caused to be made from those records such sales charts as the sales manager might require. It is a valuable department for the purpose of information to those in charge of sales, historical information.

Q. Mr. Herman Wobber was General Sales Manager, was he not, from June 6th, 1938 to January 1, 1942?

The Court: What is that name?

Mr. Wright: Herman Wobber.

Mr. Rogers: What was that last date, Mr. Wright?

Mr. Wright: June 6th, 1938 to January 1, 1942.

The Witness: To be more accurate, say until March, 1942, I think.

Q. And Mr. Thomas J. Connors.

[fol. 1376] The Court: He was what?

The Witness: He was General Sales Manager.

Q. And I believe you have already described the duties of the General Sales Manager?

A. Yes, sir, he succeeded Mr. John G. Clark.

Q. And had the same duties?

A. Same duties and authority.

Q. Mr. Thomas J. Connors was Assistant to the President and Vice President in charge of sales from December 8th, 1941—or, I beg your pardon—strike that out. Mr. Thomas J. Connors was Assistant to the President from the period December 8th, 1941, to April 9th, 1942?

A. I would say December 15th is your starting date, and I can't give you the exact date when he ceased.

Q. Approximately April, 1942?

A. March or April.

Q. What were his duties as Assistant to the President?

A. Actually Mr. Wobber had given up active supervision of general sales and while Mr. Connors, for those months, held the title of "Assistant to the President", he was performing the duties of General Sales Manager.

Q. Since April, 1942, he has been Vice-President in charge of sales?

A. Yes, sir.

Q. And his duties as such were what?

[fol. 1377] A. He supervised and then he acted as General Sales Manager in charge of all sales in the United States and Canada and in addition generally supervised foreign sales.

Q. And Mr. William J. Krupper was executive assistant to Mr. Connors from May 25th, 1942, to August 2nd, 1943, was he not?

A. Yes, sir.

Q. What were his duties as such executive assistant?

A. Prior to that he had been Western Division Sales Manager and while he was Executive Assistant to Mr. Connors, well, he generally just took as much of the burden off Mr. Connors as he could. That is about the way I can say it.

Q. Since August 2nd, 1943, he has been the General Sales Manager?

A. Yes, sir.

Q. With the same duties that you have already described for the other sales managers?

A. Yes, sir.

Mr. Wright: That is all the testimony we will offer from Mr. Jenkins with respect to these documents that have been marked for identification. We may recall him for the identification of some license contracts.

[fol. 1378] Cross-examination.

By Mr. McClennen:

Q. Mr. Jenkins, what is the body or person in the Fox organization that determines the general sales policy for the year?

A. The General Sales Manager under our present setup, it would be a combination of Mr. Connors and Mr. Krupper.

[fol. 1379] Q. And has that situation been true for, say, the last dozen years?

A. Yes, sir. Of course you understand that the General Sales Manager confers with the President of the company on things as important as that.

Q. Who determines when the season's sales efforts shall begin?

A. The General Sales Manager.

Q. Does he have the final say-so if he chooses to take it, without submission to those above him?

A. Well, I know of no written constitution in our company that lays down those duties exactly. I know that the Sales Manager is generally left alone to lay down policies, but of course he confers with the President, whoever is his immediate boss. They are in constant touch with each other.

Q. Is he provided by someone else with features that are in contemplation to be sold during that season?

A. Do you mean is he provided with information about them?

Q. In framing his sales policy is he told by someone else what he has to sell?

A. Yes. The Sales Manager and the President are in constant touch with the studio and are aware at all times of the studio plans, what pictures are projected to be made, what are in actual work, and generally know pretty ac- [fol. 1380] curately what the pictures will be some six months ahead. Not as long as that nowadays, but two or three months ahead.

Q. Who then determines the general plan of placing for those pictures?

A. Generally it would be by the Sales Manager, but any extraordinary picture or pictures that we consider very extraordinary and very valuable, and perhaps very expensive, the sales policy generally would be fixed in consultation between the Sales Manager, the President, the head of the studio, and perhaps it would not be*en* fixed until a picture had been tried out in certain spots and certain types of handling.

Q. The price of a picture to a given theatre that you seek to get varies very generally among the theatres, does it not?

A. Yes, sir, widespread.

Mr. Wright: If the Court please, I think this is considerably beyond the scope of the direct examination. It has nothing to do with the authentication of these documents. That is all that we put Mr. Jenkins on the sand for. I think if he has some facts that he wants to develop as part of his [fol. 1381] case the proper time to develop them would be when he puts on his case.

The Court: He testified on the question of the authority of these officers.

Mr. Wright: We have not attempted to make any showing as to any authority. We have merely pointed out who these men were and what they did. Here he is not talking about authority. He is discussing the general proposition of how pictures are priced. That, it seems to me, is not related to the direct examination.

The Court: You inquired specifically as to the duties of certain of these officers.

(Last question and answer read.)

Mr. Wright: I do not see what that has to do with authority or duty.

The Court: Overruled.

By Mr. McClennen:

Q. What is the body or individual or individuals that determine the price that should be sought for that picture from the different theatres?

A. The sales manager.

Q. Does he furnish to the division manager a program of those prices to be sought or is it determined by him from time to time with respect to the particular theatres?

[fol. 1382] A. They are determined from time to time for each picture, or possibly a group of pictures, and it would be more accurate to say that terms are the policy of the terms to be sought, rather than pricing; because of the many pictures that are sold on a percentage basis there is no fixed dollar price.

Q. As to the percentage pitcures, does the company in its policy seek to get the same percentage for a specific picture from all theatres?

Mr. Wright: If the Court please, I do not think that this witness is competent to testify as to that fact. He does not make the sales policy. I do not see what relevance it has, in any event.

The Court: I think he would be competent to testify, but it is a question whether we should limit these things now at this time. As I pointed out, if he intends to call this witness later, as I understood——

Mr. Wright: Only for the purpose of identifying licensing contracts.

The Court: What is your theory of its competency, Mr. McClennen? Is it not more properly a part of your case?

Mr. McClennen: No, I am seeking to show what is in- [fol. 1383] herent in the description which the witness has given of the men in these different positions, to show what is the scope of their duties in determining what shall be done in the sale of pictures. That is the very thing that the witness was called to testify to, the scope of these duties.

Mr. Wright: Read the last question.

(Last question read.)

Mr. Wright: In other words, he is asking the Secretary of the Company now to tell what the Company's sales policy is, without any preliminary foundation at all that he knows or is in a position to know what the sales policy was at any particular time.

The Court: He can inquire, if he knows. He has stated here about the policies in certain respects and he may inquire whether he knew what the policy was in regard to the fixation of price.

By Mr. McClennen:

Q. Do you know the policy of the company, in answer to the unanswered question which I just put to you?

A. In my work there it is necessary for me to be generally familiar with our sales operations.

[fol. 1384] Q. Who determines the percentage that is to be charged for picture X to the different theatres in the country?

A. That would usually be determined——

The Court: What?

The Witness: It would be usually determined after a conference between the Sales Manager and his three immediate assistants, the division managers. When I say Sales Manager I would say the Vice President, Mr. Conners and Mr. Kupper, and the three division managers, they would thresh out their policy and it would come as a directive from the Sales Manager.

Q. Then is the Company's effort to get that percentage according to the general layout of policy the same with respect to all theatres?

Mr. Wright: If the Court please, that is a question that I do not think even the Sales Manager himself could answer.

What the Company does it apparent, and actually what all of these men who make up the sales organization have done. No witness here can undertake to say what was done, how these pictures were actually sold. That only appears from the testimony of these people—or could only be made to [fol. 1385] appear from the testimony of the people who carried on the negotiations.

The Court: He, in his position as Secretary, knowing, as he says, what the policy is, would know what the contract generally provided.

Mr. Wright: That, as I understand it, is not the question that was asked him.

(Question read.)

By Mr. McClennen:

Q. Perhaps, to put that more specifically, picture A you have determined should be a 30% picture. Is that determination, in so far as your effort is concerned, uniform for theatres, large, small, city, country, and what not?

Mr. Wright: I submit, your Honor, that that question could only be determined by an examination of the contracts that are taken for large theatres and small theatres. That will show whether they are uniform percentages.

The Court: I think he may state generally what the policy is. He is not inquiring about a specific contract. Can you state that that was the policy to vary the percentage according to location of theatres? That is the point of the question as I understand it.

[fol. 1386] Mr. Wright: The question suggested, as I understood it, that there was no variation.

The Court: State what the fact is.

Mr. Wright: Read the question again.

(Question read.)

A. Generally, no.

By Mr. McClennen:

Q. That is, the percentage that you shall seek from different theatres varies?

A. That 30% picture is usually for first run, perhaps a second run, determined according to the size of the theatre, the size of the town. That picture finally gets down into small towns, small theatres, where we may never have a picture on percentage.

The Court: That does not quite clear it up. Are you speaking now about specifically as to first run pictures that the percentage is different or do you mean by your answer that first run pictures always carry the same percentage?

The Witness: I mean if we have fixed on a period at 30% we would seek that 30% from every first run. We would not get it at all times.

The Court: That is your asking price?

The Witness: Yes, sir, that is the policy that we are going [fol. 1387] to endeavor to sell that picture on.

By Mr. McClennen:

Q. When you come to the flat rental pictures what body or individual or number of individuals determine what rental you shall seek to get from the different theatres in the country to which you hope to sell that picture?

Mr. Wright: If the Court please, I submit that is a question Mr. Jenkins clearly is not competent to answer.

The Court: What they seek to get——

Mr. Wright: I must say that I do not understand the relevancy of it, in any event. If Counsel has something that he wants to develop as part of his own case I do not think this is the place to develop it because we have got a situation here where we have seven of these witnesses who are attempting to authenticate this material in two days' time here. I do not see how it can be done if Counsel is to be permitted to go off into his own theory of the case with each of these witnesses at this point, just as a matter of convenience. The only purpose these people were brought here for, and we set aside these two days, was in order to [fol. 1388] authenticate documents. This other material that Mr. McClennen is developing is very interesting, but I do not really see the occasion for developing it at this time.

Mr. McClennen: This witness has been put on to show to some extent the scope of the duties of different individuals. I am now endeavoring to show the scope of those duties and nothing else.

Mr. Wright: To what purpose? What possible difference does it make in the case whether Mr. Jenkins says, "We tried to get a particular percentage from everybody," or

"We tried to get different percentages"? I do not see what possible relevance it has to any issue we are trying.

Mr. McClennen: It makes a great deal of difference in the case who determines the price that shall be attempted to be gotten.

Mr. Wright: As to who determines it, that has already been fully covered.

Mr. McClennen: I think not. Will you read the question?

(Last question read.)

A. Flat rentals are usually—the majority of flat rental contracts would be in respect to small theatres, and the [fol. 1389] local exchange manager, along with his district manager and his salesmen, confer together and determine if they should endeavor to get so many dollars for such-and-such a picture from such-and-such a house. When they finally agree with the exhibitor on what the exhibitor is willing to pay, that contract is sent up for approval. It may not be approved when it reaches the home office.

[fol. 1390] Q. In the determination by the local manager of what he shall seek to get from a particular theatre, does he submit that in advance to headquarters as the proposed price?

A. Headquarters or sales managers or division managers or district managers are in constant touch with the local offices; they travel around; they are conferring about the sales situation in each district in certain theatres from week to week, day to day, and month to month.

Q. And is the plan of operation that the branch manager tells the salesmen what to try to get from theatres, after he has taken the matter up with the district manager or the division manager?

A. He may or may not have taken it up in advance.

Q. That is, he may have decided what he thinks would be a proper figure to ask?

A. Yes.

Q. And he tells the salesman what he ought to get?

A. Yes, sir.

Q. You spoke about the salesmen being sent to designated theatres to solicit their business; who determines what theatres salesman X shall call upon?

A. The exchange territory is divided into salesmen's territories. As to who determines what salesman is going to take a certain sales territory I think I will have to say [fol. 1391] I don't know. I can give you a good guess.

Q. According to the setup plan somebody tells the salesmen that he ought to drum on theatre X and others, by name, and he — sent out for that purpose?

A. Yes, sir.

Q. The contract—the first step in an actual contract is an application for a contract which is signed by the exhibitor?

A. Yes, sir.

Q. And that is transmitted to the branch office?

A. Yes, sir.

Q. And transmitted by the branch office to the home office?

A. If the exchange manager approves the terms offered, he forwards it to his district manager and the district manager approves it, it goes to the home office for the division manager's final approval. If the division manager has any doubt, he goes to his sales manager.

The Court: You say it finally goes to the district manager?

The Witness: No, it goes from the exchange to the district manager; from the district manager to the division manager.

The Court: That is the line?

The Witness: Yes, sir.

By Mr. McClennen:

[fol. 1392] Q. And the contract, no one has the right to approve the contract except the home office?

A. That is correct.

Q. In the case of the large buyers, and let me interrupt, we both understand the same, that when I speak of buying and selling, I am referring only to efforts to get contracts for licenses and the making of those contracts?

A. Yes, we license our pictures under copyright, but in speaking of those transactions we refer to them as buying and selling.

Q. Now, in the case of the large prospective buyers, particularly the circuit buyers, that have to buy for a large number of different theatres, are the transactions mainly conducted by the superior people, such as the sales manager or division manager?

A. The division and district manager, we work very closely together on the large transactions.

Q. And in that case the branch officers are from time to time advised of what circuit or large contracts for theatres in their area have been consummated or are in negotiation at the home office?

A. They would have full knowledge of negotiations going on. Their practical knowledge of the situation necessitates the district and division manager to consult with the exchange manager. They are all working together.

[fol. 1393] Q. Now, is there any one who is authorized in the field, either salesman, branch manager, or otherwise, to make any transactions which would conflict with the negotiations going on for these larger contracts?

Mr. Wright: If the Court please, that is objected, not only on the ground Mr. Jenkins is not competent to answer it, but it calls for a pure conclusion of this witness that isn't based on any ascertainable facts, whether or not conflicts occurred is something that would have to be developed by evidence.

The Court: Sustained.

Q. Are the branch managers given instructions from time to time as to not proceeding with negotiations that might conflict with large contracts that are under way at the home office?

The Court: He said they all went together, they are all informed of what is being done, the branch manager as well as others.

The Witness: I don't understand the question.

The Court: I thought you had already in fact answered it. Repeat the question.

(Last question read.)

The Witness: I don't think I can answer that, Mr. McClennen, other than to say that our branch managers are [fol. 1394] consulted with constantly, and repeat what I said before, our district managers and our division managers travel and the whole sales force for each territory knows what is going on.

Q. Who has the duty of determining finally whether a given theatre shall not be solicited at all for contract in a given season?

A. Any determination not to sell a given theatre so far as I know would come from the home office.

Q. Who determines whether or not to sell second run or other deferred run in a locality, who makes the final determination on that?

A. The division manager.

Q. The branch officers have to do, not merely with sales but also with booking arrangements with the particular theatres in their respective branch and the furnishing of films under the contracts that have been made to those theatres?

A. Yes, they——

The Court: Now, you have got the furnishing of the film.

The Witness: The delivery at a proper date of prints of a picture and the dates they have agreed on, the exchange operation naturally includes all the acts that have to be done on the distributor's part to carry out the contract [fol. 1395] he had previously made.

By Mr. McClennen:

Q. Now, that is under the general supervision of the branch manager, is it?

A. Yes, sir.

Q. And that is what you refer to when you say he has general supervision?

A. Of exchange operations, yes, sir.

The Court: Mr. Wright.

Redirect examination.

By Mr. Wright:

Q. You didn't mean to suggest by your last aswer, did you, Mr. Jenkins, that the branch manager didn't have supervision over the sales operations in his territory?

Mr. McClennen: That form I object to, if your Honor please.

Mr. Wright: I simply want the situation clarified.

The Court: He can state whatever duties he had.

Mr. Wright: I thought that Mr. McClennen sought by the last question to imply all a branch manager did was to supervise furnishing prints. Maybe I misunderstood the question and answer.

The Court: Did you mean to say those were all the duties [fol. 1396] of the branch manager?

The Witness: No, sir.

By Mr. Wright:

Q. And when you said that nobody could approve a contract except the home office, you didn't mean, did you, that the contract might not be signed by some other representative?

A. No.

Q. That is the——

A. The exchange manager recommends the contract to the district manager; the district manager recommends the signing or entering into the contract to the division manager, and the division manager then decides finally "We will accept that application".

Q. I understand the decision is made, but I say, you are aware of the fact, are you not, that in such instances the home office people may have delegated the authority to sign to some other representative, isn't that correct?

A. Why, it could happen.

Q. The mere fact that a contract was signed, let us say, on behalf of the Company, by a branch manager, would not necessarily indicate at all it wasn't authorized, isn't that a fact?

A. It wouldn't necessarily indicate that, that is right.

Q. And you, yourself, I take it, have nothing to do with [fol. 1397] the licensing of pictures as such, or determination of sales policies, is that right?

A. That is right, I have nothing to do with it.

Q. Except in so far as law violations might be involved?

A. Well, in my work as home office lawyer I necessarily have to familiarize myself with the operations of the sales department.

Recross-examination.

By Mr. McClennen:

Q. I thought that you had fully described the branch office work with reference to sales; when you speak of supervision, apart from this office supervision that you have described, and the contact with the sales effort which you have described, is there anything else that you know of that comes within the supervisory duties of the branch manager?

A. Well, he keeps careful watch on whether the salesmen are selling their pictures to all their possible accounts and various—we have what we call possibilities, a number of theatres that we should sell to, for which the salesmen are immediately responsible and the exchange manager is watching him and watching his whole exchange operation, whether they are keeping up; also, when the application comes in he has to determine whether he will recommend [fol. 1398] that to his district manager, or whether he will send his salesman back and try to get better terms.

Q. Have you now stated all the features of supervision that there are within your knowledge?

A. Well, exchange operations include the solicitation of exhibitors, the license agreements for our pictures, which include when a contract has been made the carrying out of that contract which involves booking, dating, the delivery of the print at the proper time, the collection of the film rental, and all those involve various operations and accounting, and so forth, of which he is — general charge.

Q. At times the final signature on the exhibitor's copy of the contract is affixed by the branch manager, is it?

A. Not that I have ever seen, Mr. McClennen.

Q. That is, the signing is all done at headquarters?

A. We take the signed contract, which is an application from the exhibitor; the signing on our part is done at the home office.

Q. So that no contract goes into effect until there has been affixed some signature at the home office?

A. It could happen; I don't know what has happened; it could happen that somebody signed on our behalf, but he would not have authority to do so unless he did receive it as an exceptional case, such as was suggested by Mr. [fol. 1399] Wright.

Redirect examination.

By Mr. Wright:

Q. What I had in mind specifically, Mr. Jenkins, were some agreements offered in evidence where, or on which the signature of the branch manager appears on behalf of the company, you do not have any knowledge as to whether or not those men were authorized to sign those agreements?

Mr. Rogers: Pardon me, Mr. Wright, I don't think there are any contracts offered in evidence which bore the branch manager's signature.

Mr. Wright: I am quite sure there are.

Mr. Rogers: Not in Fox. I would like you to produce one so we can see it, and until it is produced I don't think the witness should be called upon to answer a question. My position is there are no such contracts and Mr. Wright's position is that he has been shown or has contracts showing the signature of the branch manager of 20th-Century-Fox.

The Court: If there are none, what harm is there?

The Witness: I have the general knowledge——

The Court: Read the question.

[fol. 1400] (Last question read.)

The Court: Do you know of any such contracts that were signed?

The Witness: I know of no such contracts.

By Mr. Wright:

Q. As far as you know, however, there is nothing in the Company's policy which would prevent the division manager or general sales manager from designating a branch manager or any other representative of the company to sign a contract on behalf of the company, isn't that right?

Mr. McClennen: That is objected to as not proper redirect examination and not proper in form to his own witness.

The Court: It will let him state what the policy was in that respect.

The Witness: I can't undertake to tell you what some division manager has done in the past or will do in the future.

The Court: I don't think the question was that.

Mr. Wright: That is what I wanted to establish.

The Court: Whether it is the policy of the Company?

Mr. Wright: Repeat the question, please.

(Question read.)

[fol. 1401] The Witness: Our general fixed policy is that no one has the right to sign licensed agreements on our behalf except the division manager or general manager.

[fol. 1402] Q. You do not know whether there have been exceptions to that with respect to policy or not?

A. If the general manager has made exceptions to it I wouldn't know.

Mr. Wright: We have a list of the documents, with numbers. I think the description with the numbers should appear on the record at this time for your Honor's convenience, although we are not offering any of them in evidence. I suppose we might as well simply have the reporter copy the descriptions of the documents and then your Honor can read the transcript, unless you would prefer to have the descriptions read off here in your Honor's presence. I think the other system would take up time.

The Court: Take the most expeditious way. We will take a five-minute recess.

(Short recess.)

Mr. Wright: If the Court please, with reference to the matter of having the transcript show a description of each of these documents that were identified, Mr. McClennen said [fol. 1403] he did not desire any such description in the transcript, and we supplied him with a copy of our list, so unless your Honor desires to have individual descriptions of them incorporated in the transcript we will omit that.

The Court: Very well.

(Various papers and documents were marked as Plaintiff's Exhibits 162 to 242 for identification, inclusive.)

Richard P. Morgan, a witness called by and on behalf of the Plaintiff and having been first duly sworn was examined and testified as follows:

Direct examination.

By Mr. Wright:

Q. Where do you live, Mr. Morgan?

A. Deal, New Jersey.

Q. What is your occupation?

A. I am Counsel for Paramount Pictures, Inc.

Q. How long have you held that position?

[fol. 1404] A. Four and a half years.

Q. You are the representative who has been designated by Paramount to appear here and identify the documents listed in our letter of July 31st to you?

A. That is correct.

Q. Have you produced, in response to the subpoena served upon Paramount Pictures, Inc., the documents that have been marked for identification as 243 to 279, inclusive?

A. I have.

Q. And those are the documents you have in your hand there?

A. That is right.

Q. Can you tell us what position Mr. Neil Agnew held with the Paramount Company in the year 1939?

A. He was Vice President and General Sales Manager.

Q. Do you know the approximate period he held that position?

A. He became General Sales Manager in 1934 and held the position until the early spring of 1944.

Q. And what were his duties in that connection?

Mr. McClennen: Just a moment. In view of the remarks made on the cross-examination of the last witness, I make the objection that it does not appear that this witness is qualified to state the duties. I make it so that it may be determined whether or not he is, so that my cross-examina- [fol. 1405] tion may proceed accordingly.

The Court: Perhaps you had better inquire as to his knowledge of the conduct of the business.

By Mr. Wright:

Q. Mr. Morgan, in response to an inquiry from the Government, did you undertake to determine the employment of Mr. Agnew and his duties during that employment with Paramount, for the purpose of supplying that information here?

A. I did.

Q. And you have been able to determine that information?

A. Yes, sir.

Q. Will you tell us what Mr. Agnew's duties were?

Mr. McClennen: That is apparently having an investigation made in order that the witness should draw a conclusion as to what those duties were, a long period before he was with the Company. I have no objection to this as an easy means of this question being determined, provided I am not going to be met with an objection on cross examination when I seek to make clear the scope of those duties, and that is as far as my objection goes.

The Court: I have already held with you on your position [fol. 1406] in that respect.

Mr. McClennen: Yes, but this new question.

The Court: I doubt, as far as appears now, whether the witness would be competent to testify to this inquiry. It would probably be hearsay, but it would necessitate bringing other officials of the Company here.

Mr. McClennen: All I had in mind is that your Honor make a ruling admitting this testimony that is broad enough so that I may cross-examine to the same extent the direct examination presents.

The Court: I am not going to advise Counsel for the Government.

Mr. Wright: As I understand it, Mr. Agnew's duties as Sales Manager are not something which is in controversy between us at all. This is purely formal proof and I don't have any objection to Mr. McClennen developing, through this witness, what the scope of those duties were, but if his objection is that this witness is not competent to testify at all as to what Mr. Agnew's duties were, then I suppose the Company would have to furnish someone else, in so [fol. 1407] far as the prior period is concerned.

The Court: I think your statement meets Mr. McClennen's purpose.

Mr. McClennen: I think it does. It is a convenient way of proving these things, if we could have the same scope that we would have if the witnesses themselves were called.

The Court: Go ahead, Mr. Wright.

By Mr. Wright:

Q. You may tell us now what Mr. Agnew's duties were.

A. The General Sales Manager is in charge of the distribution of the pictures produced by Paramount throughout the United States and Canada.

The Court: Let me ask you one question. In your duties as Counsel are you engaged in the office all the time?

The Witness: Yes, sir, I am employed by Paramount.

The Court: Your sole duties are in the Home Office of Paramount?

The Witness: Yes, sir.

The Court: And you are in contact with all work of the office?

The Witness: Yes, sir.

The Court: I did not know whether you were acting just as Special Counsel or whether you were there all the time.

[fol. 1408] The Witness: No, sir, I am employed there full time.

The Court: That clarifies it.

A. He has general supervision over the sales force, composed of the divisional sales manager, the district manager, the branch managers, and the salesmen. He is the final word in the approval or rejection of any contracts. However, from time to time, by action of the Board of Directors, such authority is delegated to the divisional sales managers.

[fol. 1409] By Mr. Wright:

Q. Can you tell us what position G. S. Beattie occupied with Paramount in May, 1937?

A. In May of 1937, G. S. Beattie was the booking manager of the Buffalo Exchange.

Q. Do you know approximately how long he held that position?

A. I do not.

Q. And what duties did he perform as booking manager?

A. The booking manager of an exchange has general supervision over the liquidation of the license agreements entered into between Paramount and the exhibitors in the Buffalo territory. He accepts and his assistants the date for the exhibition of the pictures, sends out to the exhibitor a confirmation of the play date, sees that the picture is shipped and returned to the exchange on time.

Q. Do you know whether Mr. Beattie also held that position in March, 1938? Those are the two dates involved in the documents here?

A. Yes, sir he did.

Q. And what position did Mr. Duke Clark hold?

The Court: What period?

By Mr. Wright:

Q. Clark, during the years 1938-39?

A. He was Branch Manager of the Paramount Exchange [fol. 1410] in Cleveland.

Q. Do you know what his term of office there was?

A. No, I don't, Mr. Wright. Have you that list there (referring to document)?

Q. Maybe this will help you refresh your recollection.

A. Mr. Clark was Branch Manager of the Cleveland Exchange from May 9, 1938 to June 29th, 1940, when he was transferred to California.

Q. What were his duties?

A. The branch manager has——

Mr. McClennen: Now, if your Honor please, I make the same formal objection and, if I may have the same assurance from Mr. Wright as to all these others, as in the case of Mr. Agnew, that takes care of the objection.

The Court: I don't think there should be an additional objection under the statement of counsel here that later on he will strike out unless that testimony is received.

Mr. McClennen: I think I didn't make clear my statement. I wanted to put the witness' testimony with respect to all of these subordinates on the same basis as the Agnew.

The Court: My point is I did not see the necessity of raising [fol. 1411] an objection in view of the statement of counsel.

Mr. McClennen: If it is understood that Mr. Wright's statement extends to these others as well as Mr. Agnew, it is covered.

By Mr. Wright:

Q. Have you answered the question?

Mr. Rogers: We haven't a statement from Mr. Wright as to whether or not it does.

Mr. McClennen: I understand the Court to say Mr. Wright's statement does cover it.

Mr. Rogers: Very good. I did not so understand.

The Witness: The duties of a branch manager are as follows: He has general supervision over the personnel employed in the particular exchange of which he is branch manager. He further has the supervision over the liquidation of contracts in that territory, general supervision of the salesmen who negotiate the license agreements with the exhibitors in that territory, and he sometimes negotiates contracts with the more important accounts in the territory itself; I should say, solicits license applications from the more important exhibitors within the territory.

[fol. 1412] By Mr. Wright:

Q. What position did P. E. DeGrau occupy with the Paramount Company in the years 1938-39?

A. Miss DeGrau, for at least 15 years prior to this fall, has been the head clerk in charge of the contract approval department in the home office.

Q. What were her duties as such?

A. She had under her supervision a staff of clerks whose duty it was, when a contract was received in the home office from one of the exchanges, to analyze the terms of the contract, that is, the rental terms, and to prepare for the use of the division sales manager, in determining whether to approve or reject the contract, a chart showing the past performance, that is, the rentals received in the past from a particular account which was attached then to the license application and forwarded to the division sales manager's office.

Q. What position did Mr. C. G. Eastman hold with Paramount for the period from May, 1934 through February, 1940?

A. He is Branch Manager of Paramount's Albany Exchange.

Q. Do you know what the total period of his tenure there is?

A. He became Branch Manager on March 28th, 1932, and he still holds that position.

Q. His duties were the same with reference to that exchange as Mr. Clark's with respect to Cleveland?

[fol. 1413] A. That is right.

Q. What position did Mr. Harry Goldstein hold with Paramount in August, 1938?

A. Mr. Goldstein was the District Manager in Cleveland, having supervision over the Cleveland, Cincinnati and Detroit Exchanges.

Q. Do you know during what period he held that position?

A. I don't have those dates here, Mr. Wright.

Q. Now, can you tell us what his duties were as District Manager?

A. The District Sales Manager is in charge of the several exchanges located within his territory, and he confers with the branch managers in those exchanges as to the liquidation of contracts and the solicitation of license applications. He transmits to the branch managers the sales policies as devolved by the officials of the company and generally supervises the personnel in the exchanges in accordance with the recommendation of the branch managers.

Q. What position did Mr. M. S. Kusell hold with Paramount during the period from or during the year 1934?

A. Mr. Kusell, for a great many years past, has been the district manager of the territory embraced by the Buffalo, Albany and New York Exchanges. At the present time neither Albany nor Buffalo are included in that dis- [fol. 1414] trict. He is now district manager of the New York Exchange only.

Q. They were included in the territory during 1934?

A. That is correct.

Q. And what were his duties as District Manager, were they the same with respect to that district as those of Mr. Goldstein with respect to his district?

A. That is correct.

Q. And what position did J. Oulhan hold with Paramount in 1937?

The Court: How do you spell it?

Mr. Wright: Oulhan.

The Witness: Mr. Oulhan is and has been since December 3rd, 1934, the Branch Manager of the Cincinnati Exchange.

Q. And his duties were the same with respect to that exchange as Mr. Clark's with respect to Cleveland?

A. That is correct.

Q. What position did Mr. Kenneth Robinson hold with Paramount during the year 1934?

The Court: The name again?

Mr. Wright: Kenneth Robinson.

The Witness: Mr. Robinson was the branch manager for the Buffalo Exchange at that time.

Q. And do you know what the period of his tenure was?

[fol. 1415] A. He became Branch Manager of the Buffalo Exchange on May 2nd, 1932 and held that position until August 15th, 1942, when he was transferred to Boston.

Q. And his duties as manager of that exchange were the same as those of Mr. Clark with respect to Cleveland Exchange?

A. Yes, sir.

Q. What position did Mr. George J. Shaeffer hold with Paramount in the year 1934?

A. He was General Sales Manager of Paramount, Mr. Agnew's predecessor.

Q. He was Sales Manager, was he not, from January, 1932 through December, 1935?

A. That is approximately the period of time, yes, sir.

Q. And his duties as Sales Manager, during that period, were the same as described for Mr. Agnew?

A. Yes, except Mr. Shaeffer never had the title of Vice President.

Q. His title was only General Sales Manager?

A. That is right.

Q. What position did Mr. J. J. Unger hold with Paramount from June 1st, 1933 through November, 1936?

A. He was Eastern Division Sales Manager.

Q. Do you know how long he held that position? I believe it was from approximately January, 1932 until August, 1942, was it not?

[fol. 1416]

A. That is approximately correct.

Q. What were his duties as Eastern Division Sales Manager?

A. The Divisional Sales Manager works directly under the General Sales Manager and has supervision over the districts and the branch offices located within his division. He has delegated to him, by the General Sales Manager, the power to reject or approve license applications. He confers with the General Sales Manager on matters of policy and communicates the decisions made thereon to the District and Branch Managers and he generally supervises the so-called selling and liquidation of contracts throughout his division.

Q. Can you tell us what branches were included within the Eastern Division Sales Manager's jurisdiction?

A. Well, again, without enumerating them, I can say that at that time we had only two divisions, the Western Division and the Eastern Division, and roughly speaking all of the exchanges from Detroit east were located within the Eastern Division, and on the other side of Detroit those exchanges were located in the so-called Western Division.

Q. Mr. C. M. Reagan was Assistant General Sales Manager from March 3rd, 1941 to April 14th, 1944, was he not?

A. That is correct.

[fol. 1417] Q. And what were his duties?

A. Well, he was Executive Assistant of the General Sales Manager, and his duties were similar to those of the General Sales Manager, and the Divisional Sales Managers. He in general supervised the more important negotiations throughout the country, taking the detail load off the General Sales Manager's shoulders, so to speak.

Q. And Mr. Unger was succeeded as Eastern Division Sales Manager by Mr. Hugh Owens, was he not?

A. That is correct.

Q. And held that position until June, 1944?

A. That is correct.

Q. His duties were the same as those of Mr. Unger?

A. Yes.

Mr. Wright: I think that is all.

Cross-examination.

By Mr. McClennen:

Q. Mr. Morgan, you have not only been counsel in the headquarters of Paramount, for Paramount, for some four years, but also have had a good deal of familiarity with the affairs of Paramount besides that matter of being counsel?

A. Yes, I have been employed by Paramount for approxi- [fol. 1418] mately 12 years.

Q. And had a certain inheritance; your father was what?

A. He was formerly Divisional Sales Manager.

Q. And what you have described here is as accurate a description as you are able to make from both that contact and the investigation that you have made?

A. Yes, sir.

The Court: That is all. I think we will suspend now. I have an appointment and we will adjourn until 2 o'clock.

(Whereupon certain documents and papers relating to Paramount were marked as Plaintiff's Exhibits for identification No. 243, and from 245 to 279, inclusive, for identification.)

(Whereupon, a recess was taken until 2 o'clock P. M.)

[fol. 1419] After Recess, 2 P. M.

Appearances: Same as before noted.

Stephen W. McGrath, a witness called by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Wright:

Q. Where do you live, Mr. McGrath?
A. 11453 175th Place, St. Albans, New York.
Q. What is your occupation?
A. I am Assistant Contract Manager of the United Artists Corporation.
Q. How long have you held that position?
A. About eleven years.
Q. What are your duties as Assistant Contract Manager?
A. To assist in the physical handling of contracts, exhibition contracts, that are sent to the Home Office by our various exchanges throughout the country and, in addition, to supervise the contract department.
Q. You have been designated by the United Artists Corporation to produce the documents here which were subpoenaed from the corporation for the trial of this case?
A. I have.
[fol. 1420] Q. And did you bring with you the documents which have been marked as Exhibits 280 to 323 for identification, inclusively?
A. I did.
Q. And will you hand those to the reporter, please?
A. Yes, sir (handing to reporter).

(The various papers and documents referred to were marked as Plaintiff's Exhibits 280 to 323, inclusive, for identification.)

Q. In the course of your employment by United Artists have you had occasion to become familiar with the positions held by the Home Office executives and the branch managers?
A. Yes, sir, I have.
Q. Can you tell us what position Nat Beirr held in 1936 with the United Artists Corporation?
A. Well, at that time he was operating out of the New York office as a salesman—I should say the New York exchange—and also acted in the capacity of Assistant Sales Manager.

Q. Assistant to whom? Who was then the Sales Manager?

A. Assistant to Clarence Eiseman, I believe it was, or I believe at that time Moe Streimer.

Q. What were his duties during that period?

A. Of course, as a salesman he solicited theatres that [fol. 1421] were considered in his block and as assistant branch manager he assisted in the duties at the exchange in connection with local New York deals.

Q. What position did J. A. Bykowski hold with United Artists Corporation during the period from April, 1937, to March, 1939?

A. Office Manager of the Buffalo exchange.

Q. Do you know the limits of the period during which he held that office?

A. Yes, I believe from about 1931 to date.

Q. And what are his duties as Office Manager?

A. As Office Manager he supervises the operation of the exchange in connection with the various people that are employed and also acts in the capacity as a booker.

Q. Could you tell the Court what a booker does?

A. Yes, a booker—well, to use the expression, "books pictures", with the various theatres that we do business with. In other words, get together with the exhibitors for arrangement of play dates for the play-off of pictures.

Q. What position did C. Eiseman hold with your company during the period from 1932 to 1940?

A. Well, during that period he was employed by the Company in other exchanges than New York. I don't know the period that he acted in the capacity as our Atlanta branch [fol. 1422] manager, but I know that he came from Atlanta to New York and then acted in the capacity as the branch manager at New York during the period October, 1938, to August of 1942, and as of that date he resigned from the company.

Q. What were his duties as branch manager?

A. As branch manager, supervision of the exchange and responsible for the sale of the pictures in the territory controlled by the New York exchange.

Q. Wasn't he at one period connected with the Washington exchange, calling your attention to 1940?

A. I don't recall him being affiliated with the Washington exchange.

Q. What area was served out of the New York United Artists exchange?

A. The lower part of the State of New York and the northern part of the State of New Jersey.

Q. Did you have an exchange at Albany during this period?

A. No, sir.

Q. The area that was covered from Albany by other companies was covered from New York City by your company?

A. Yes, sir.

Q. What position did Harry L. Gold hold with the United Artists from August, 1933, through June, 1937?

A. He has held the position of Eastern Division Manager.

[fol. 1423] Q. Do you know the limits of the period that he held that office?

A. Well, I would say some time prior to 1931, or further back than there. I think he has been with the company almost since its inception, although I am not sure of that, but he is still employed in the same capacity at the present time.

Q. What are his duties as Eastern Division Sales Manager?

A. As Eastern Division Sales Manager he is responsible for the various exchanges referred to as the Eastern Division. In other words, he is responsible for the sale of the product in these various exchanges that he controls.

Q. Can you, roughly, bound the area over which he has jurisdiction?

A. At one time it was east and west of the Mississippi, the Eastern Division east of the Mississippi, but they have made changes from time to time and what the dates of these changes are, or the additional exchanges that might be added I don't remember.

Q. It has always included, has it not, the exchanges at Cleveland and Cincinnati and east of those points?

A. That is correct.

[fol. 1424] Q. What position did Mr. A. A. Goodman hold with your company during the period for the years 1936 and 1937?

A. At that time he was manager of the Cleveland Exchange.

Q. That was for what total period?

A. He acted in the capacity as Manager from January of 1932 to September, 1941.

Q. And what were his duties as such manager during that period?

A. As manager of the Exchange, supervision of the operation of the Exchange and the sale of the pictures in the territory controlled by that branch.

Q. What position did Mr. J. H. Kaplan hold with United Artists during the year 1933 through 1935?

The Court: Kaplan, did you say?

Mr. Wright: (Spelling) K-a-p-l-a-n.

The Witness: Branch Manager of the Buffalo Exchange.

Q. He became Branch Manager there in 1929?

A. That is correct.

Q. And continued in that capacity until 1936?

A. Correct.

Q. His duties as Branch Manager were the same with reference to the Buffalo Exchange as those of Mr. Goodman with respect to Cleveland?

A. That is correct.

Q. And what position did Mr. S. B. Kramer have with United Artists?

[fol. 1425] A. He was the Manager of the Cincinnati Exchange.

Q. During what period?

A. During the period of February, 1933 through December of 1933.

Q. What position did he hold in 1934?

A. I think that he went back as a salesman. It seems that in the operation of that Cincinnati office that at one time Mr. Stahl was manager, and I don't know whether it was due to illness or not that Mr. Kramer more or less acted as substitute, so to speak, during the time that he was the Branch Manager of the Cincinnati Exchange.

Q. During the time that Mr. Kramer was Branch Manager there, his duties were the same with respect to that Exchange, his duties were the same as Mr. Goodman's at Cleveland?

A. That is correct.

Q. What position does Mr. P. M. Lazarus hold with the Company?

A. Mr. P. M. Lazarus is contract manager.

Q. How long has he held that position?

A. If I am correct in the inception of the company, I think it was about 1919, or thereabouts.

Q. What are his duties as contract manager?

A. He is in charge of handling, physical handling of contracts that are submitted to the home office by our various exchanges for disposition.

[fol. 1426] Q. What position did Mr. Sid Lehman hold with the United Artists during the years 1939 and '40?

A. He was Branch Manager of the Buffalo office.

Q. Do you know the total period of his managership?

A. From January of 1937 to April of 1943.

Q. And during that period his duties were the same with respect to the Buffalo Exchange as Mr. Goodman's in respect to Cleveland?

A. Correct.

Q. What position did Mr. Edward Mullins hold with your company during the years 1939 and '40?

A. Office Manager of the New York Exchange.

Q. Do you know of the total period he held that office?

A. Well, he is employed with the Company today in the New York Exchange and has been with them since some time prior to 1931.

Q. What were his duties as office manager?

A. His duties as office manager was the supervision of the employees of the exchange and in addition would lend a hand at times to booking.

Q. Mr. Paul D. O'Brien, I believe is not an employee of your corporation?

A. That is correct.

Q. He is a lawyer who represented the corporation as counsel?

[fol. 1427] A. That is correct.

Q. Can you give us the general overall period during which he has been acting as counsel?

Mr. McClennen: Do you mean by that from time to time as employed, or in a general employment? Will you make it clear which?

The Witness: Will you repeat the question, please?

By Mr. Wright:

Q. Maybe you can answer both.

(Preceding question and statements by Mr. McClennen read.)

A. Well, I don't recall the dates as to the period of time. I know it was a number of years.

Q. Calling your attention specifically to the year 1935?

A. At that time he was.

Q. What position does Mr. Samuel Resnick hold with the United Artists Corporation during the year 1936?

A. He acted in the capacity of the Manager of the Buffalo office.

Q. Do you know what period?

A. During the period June, 1936 through January of 1937.

Q. And during that time he had the same duties as the other exchange managers you have referred to?

A. That is correct.

Q. What position did Mr. L. J. Schlaifer hold in 1936?

[fol. 1428] A. During that period he acted as Division Manager for the Buffalo, Boston and New York Exchanges.

Q. Where were his headquarters?

A. His headquarters were in New York.

Q. And what were his duties?

A. Well, he had the supervision of those three exchanges and was responsible for the sale of our pictures in the territory covered by those exchanges.

Q. Do you know the total period of time during which he held that position?

A. I don't know exactly, but it was during 1936 and '37.

Q. What position did Mr. A. W. Smith, Jr., hold with your corporation during the period or during the years 1937 and '38?

A. General Sales Manager.

Q. How long did he hold that position?

A. Well, between 1935 and December, 1938.

Q. What were his duties as such General Sales Manager?

A. As General Sales Manager he was responsible for the sale of our pictures throughout the entire country.

Q. What position did Mr. Max Stahl hold with your company during the years 1937 and 1938?

A. He was Manager of the Cincinnati Exchange.

Q. Can you give us the exact period of his managership there?

[fol. 1429] A. August, 1932 through January of 1939.

Q. And his duties during that period were the same as those of other exchange managers you have described?

A. That is correct.

Q. What position did Mr. Bert M. Stearn have with your company during the years 1937, '38 and '39?

A. At that time he was our Division Manager for Cincinnati, Cleveland, Indianapolis and Pittsburgh Exchanges.

[fol. 1430] Q. And where was his headquarters?

A. Well, he had headquarters in a few places, I remember, but generally his headquarters was in Cleveland. I mean he may come to New York.

Q. Can you give us the total period that he held that position as Division Manager?

A. I have not definite dates, but I would say for five or six years prior to 1942.

Q. What were his duties as such Division Manager?

A. He was responsible for the sale of our pictures in the territories covered by those exchanges.

Q. What position did Mr. Charles Stern hold during the period from July, 1934, to December, 1939?

A. I am not sure of the dates of Mr. Charles Stern. He held two or three positions with the Company. At one time he was Supervisor for Buffalo, Boston, New Haven and the New York exchanges.

Q. Can you give us the approximate dates when he did that?

A. I don't know the approximate dates. I would be in a position to get the information.

Q. You can supply that? You will probably be recalled here to identify some contracts. Perhaps you can give it to us then. I would like to have the periods during which he held that position you have just described. What were [fol. 1431] his duties in that position?

A. Well, in the capacity of being Supervisor for the Buffalo, Boston, New Haven and New York exchanges he was responsible for the sale of our pictures in the territories covered by those exchanges.

Q. What position did Frances Turner hold with your company during 1939?

A. She acted in the capacity of secretary to Mr. Bert M. Stearn.

Q. Did she have any special duties in that connection, other than the ordinary secretarial duties?

A. Her duties were the ordinary secretarial duties.

Q. Is Mr. Matt V. Sullivan now in your employ?

A. Yes, he is.

Q. In what capacity?

A. He is now Manager for the Buffalo exchange.

Q. How long has he held that position?

A. From April of 1943 to date.

Q. What was his position prior to April, 1943?

A. Salesman for the Buffalo exchange.

Q. And his duties during the period he was Manager are those of the other exchange managers you have described?

A. That is correct.

Q. What were his duties as a salesman in that exchange?

A. He was responsible for the sale of pictures at one [fol. 1432] time in the Syracuse area and later on he got what was known as the Buffalo territory.

Q. When was it that he first became a salesman for that exchange?

A. He was appointed a salesman in September of 1932.

Q. Was that Buffalo?

A. That is correct.

Mr. Wright: That is all.

Cross-examination.

By Mr. McClennen:

Q. When you use the term "responsible for the sale" you mean, do you not, that it was his duty to get, through subordinates, the procurement of contracts in the territory as fully as it was felt was possible for submission to the home office?

A. You are referring to branch managers?

Q. Well, I was referring to the man who was responsible for the sale as you used it. Is that correct?

A. That is correct.

Q. You have used the term "Division Manager" of several territories and I think have not used the term "District Manager." Do you have a term "District Manager" in your set-up?

A. District Manager is the proper term.

[fol. 1433] Q. But in your records you call it Division, do you, rather than District?

A. Well, not necessarily. I mean the proper term is "District Manager".

Q. You used the term for the New York exchange as for the lower New York and northern New Jersey territory. Could you tell us what the upper division line of the New York territory was? How much do you take into the New York exchange?

A. I wouldn't know off-hand the division, no, sir.

Q. Did the Albany exchange range under the New York exchange or the Boston exchange?

A. New York.

Q. Could you carry the line at all to the west to tell us how far the New York exchange went?

A. I don't believe I could.

Q. Outside of New York City and, say, Westchester County, and the line up the Hudson there, can you fix any boundary to the New York exchange territory?

A. I would say Hudson, New York.

Q. You spoke of Mr. Bykowski as Office Manager of the Buffalo exchange. Is that, as the term is used, a clerical control term? Let me distinguish. What did he have, if anything, to do with the salesmen working out of that exchange?

[fol. 1434] A. I don't believe he has had anything direct to do with the salesmen.

Q. By that token he has nothing to do with the selling policy or the carrying out of that policy?

A. No, sir.

Q. Did he have anything to do with supervising the booking of the pictures after they had been sold?

A. Yes, sir, he did.

Q. And a responsibility, directly or through subordinates, to see that the prints went to the theatres to which they had been sold?

A. That is right.

Q. Did he have to do with the supervision of seeing that the prints were inspected when they came back before they went out to the next theatre?

A. That I couldn't answer.

Q. When you come to the Eastern Division Manager, saying that he was responsible for the exchanges in the Eastern Division, that was to see that they got busy on trying to promote the sales of the pictures and to seeing that the proper prices were being obtained and the proper theatres sold?

A. That is correct.

Q. The selling of the United Artists pictures is of pictures which they do not produce; is that correct?

[fol. 1435] A. That is correct.

Q. That is, they sell pictures that are produced by a goodly number of independent producers from time to time?

A. That is correct.

Q. And under the sales set-up the contracts or the applications for contract after they are obtained in the field and have passed a recommendation of the local branch office come in to the New York office and, before final approval, the approval of the producer is obtained?

A. That is correct.

Q. You spoke of, for example, Mr. Goodman as having supervision of the operation of the exchange in Cleveland; that included the sending out of salesmen to designated theatres to solicit business?

A. That is correct.

Q. And it included the receiving of the applications brought in by those salesmen or any that came directly into the office and if they were recommended, forwarding them to the home office for approval?

A. That is correct.

Q. It included the mechanical operation of the office in the supervision of the employment of stenographers and sales force and others in the office?

A. That is correct.

[fol. 1436] Q. And have I now included all that the supervision covered? If I haven't, why, add any specific thing.

A. I believe you have covered it.

Q. The law firm of O'Brien, Driscoll & Raftery have been, at least, from time to time for a good many years, the counsel for United Artists?

A. That is correct.

Q. And Paul D. O'Brien has been either an employee or otherwise connected with that law firm?

A. That is correct.

Q. Did he ever practice law before he went into that firm?

A. That question I could not answer.

Q. Do you bear in mind approximately when he went into the employ of that firm?

A. Oh, I think some 15 years ago.

Q. Say 1929?

A. About that time.

Q. From the law school, do you know, directly there?

A. I believe so.

Q. And he was the son of what O'Brien?

A. Dennis O'Brien.

Q. Who was the senior member of that firm?

A. That is correct.

Q. When you used the term that Paul O'Brien was counsel, you meant nothing more than this, that he, as a partner [fol. 1437] of that office, acted for United Artists?

A. From time to time.

Q. From time to time. I directed your attention to the term, the use of the term "Supervisor", particularly to the one branch office; the same would apply to all other branch offices, would it?

A. That is correct.

Mr. McClennen: That is all.

Mr. Wright: If the Court please, if we could have a short recess now, to line up some additional material.

The Court: All right, if you can get it in condition.

Mr. Wright: Yes.

The Court: Call me when you are ready.

Mr. McClennen: If your Honor please, while there is an interruption, there is a thing that concerns some of my associates, and that is as to Mondays. That is, when they should get their reservations back to get here on Monday, and we express no preference, but do desire to have your Honor's determination of what your convenience is about Mondays, whether to sit at all, or to sit half a day or what the story will be.

The Court: Well, it is not material to me, we can go on [fol. 1438] in the afternoon, if you can get here in time for that and get ready for trial.

Mr. Wright: We have notified witnesses to be here Monday. I don't suppose it makes any difference. Your Honor has motion call in the morning, do you not?

The Court: Yes. 2 o'clock.

Mr. Wright: Two o'clock would be the earliest for Monday?

The Court: Yes, and we will see about it, at least for this Monday, we will understand we are going on at 2 o'clock on Monday.

We will stand in recess, and you will notify me when you are ready.

(Short recess.)

(During the recess folders containing various contracts and other documents were marked as Plaintiff's Exhibits 324 to 337, inclusive, for identification.)

[fol. 1439] Felix A. Jenkins, recalled by and on behalf of the plaintiff, having been previously sworn, was examined and testified as follows:

By Mr. Wright: If the Court please, we have recalled Mr. Jenkins for the purpose of having him identify the license agreements which were produced by the 20th-Fox Film Company pursuant to subpoena served upon it.

Direct examination.

By Mr. Wright:

Q. Mr. Jenkins, can you produce there the document which you have furnished in response to paragraph 2 of the subpoena returnable May 19th, 1944, which calls for all license agreements for the exhibition in the following towns of feature pictures released during the period indicated: Norwich, New York, motion picture seasons 1931-1932 to 1937-1938, inclusive; Amsterdam, New York, 1931-1932 to 1936-1937, inclusive; Massena, New York, 1931-1932 to 1934-1935, inclusive; Little Falls, New York, 1931-1932 to 1935-1936, inclusive; Norwalk, Ohio, January 1st, 1934 to May 1st, 1937; Tiffin, Ohio, January 1st, 1936 to March 1st, 1938; Mount Vernon, Ohio, August 1st, 1934 to January 1st, 1941; [fol. 1440] Corbin, Kentucky, August 1st, 1938 to May 1st, 1940; Paris, Kentucky, June 1st, 1937 to June 1st, 1940; Van Wert, Ohio, January 1st, 1934 to December 1st, 1935; and Bucyrus, Ohio, January 1st, 1934 to January 1st, 1937?

A. Yes, sir pursuant to paragraph 2 of the subpoena, we have produced the contracts in this folder marked Exhibit No. 324 for identification.

Mr. McClennen: Now, you are simply identifying these?

Mr. Wright: That is right, merely for identification.

Q. And have you there the agreement produced in response to paragraph 3 of the same subpoena which calls for all license agreements entered into between January 1st, 1932 and September 5th, 1937, which provides for the exhibition of feature pictures in the Strand Theatre, Seneca Falls, New York?

A. Yes, sir, pursuant to paragraph 3 of the subpoena we have produced contracts contained in the folder marked Exhibit No. 325 for identification.

Q. And have ~~you there the~~ folder containing the agreements produced in response to paragraph 4 of that subpoena which calls for all license agreements entered into between June 1st, 1931 and May 1st, 1939, which provide for the exhibition of feature pictures in the Fox, State, Plaza, or Palace Theatre, Corning, New York?

[fol. 1441] A. Yes, sir, pursuant to paragraph 4 of the subpoena, we produced the contracts contained in folder marked as Exhibit No. 386 for identification.

Q. And have you there the contract produced pursuant to paragraph 5, calling for all license agreements entered into between January 1, 1932 and January 1, 1940, which provide for the second-run exhibition of feature pictures in Auburn, New York?

A. Yes, sir, pursuant to paragraph five of the subpoena we produce documents contained in folder marked Exhibit No. 327 for identification.

Q. And do you have there the documents described in paragraph six, "All license agreements entered into between January 1, 1932 and January 1, 1939, which provide for second-run exhibition of feature pictures in the Olympic, Strand, Liberty, Victoria or Palace Theatres, Watertown, New York?"

A. Yes, sir, we produce pursuant to paragraph six of the subpoena the agreements contained in the folder marked Exhibit No. 328 for identification.

Q. And do you have all license agreements entered into between June 1st, 1934 and July 1st, 1938, which provide for the second-run or subsequent run exhibition of feature pictures in Ashland, Ohio?

A. Yes, pursuant to paragraph 7 of the subpoena we [fol. 1442] produce the contracts contained in folder marked Exhibit No. 329 for identification.

Q. Have you there all license agreements entered into between January 1, 1936 and January 1, 1939, which provide for the second-run or subsequent exhibition of feature pictures in Van Went, Ohio?

A. Yes, sir, pursuant to paragraph 8 of the subpoena we produce contracts contained in folder marked Exhibit No. 330 for identification.

Q. And do you have there all license agreements entered into between January 1st, 1935 and March 1st, 1938, which provide for the exhibition of feature pictures in the Star Theatre, Delaware, Ohio?

A. No, we have no such contracts in our file.

Q. And do you have there all license agreements entered into between June 1st, 1936 and October 1st, 1939, which provide for the exhibition of feature pictures in the Opera House, Lexington, Kentucky?

A. Yes, sir, pursuant to paragraph 10, we produce these contracts contained in folder marked Exhibit No. 331 for identification.

Q. And do you have all license agreements entered into between August 1, 1937 and August 1, 1938, which provide for the second-run or subsequent run exhibition of feature pictures in Corbin, Kentucky?

[fol. 1443] A. No, we have no such contracts.

Q. And do you have all license agreements entered into between June 1st, 1938 and January 1st, 1942, which provide for the second-run or subsequent run exhibition of feature pictures in Harlan, Kentucky?

A. No, sir, we found no such contracts.

Q. Do you have with you the following documents described in paragraph 19 of this subpoena, all license agreements entered into between January 1, 1931, and June 1, 1936, which provide for the second-run exhibition of feature pictures in Lockport, New York?

A. Yes, sir, pursuant to paragraph 19 of the subpoena I produce contracts contained in folder marked Exhibit No. 332 for identification.

Q. And do you have all license agreements for the exhibition of motion pictures in the following towns entered into during the period indicated with respect to each town: Cumberland, Maryland, 1935-1936 through 1943-44; St. Michaels, Maryland, 1935-36 through 1940-41; Easton, Maryland, 1934-35 through 1940-41; Federalsburg, Maryland, 1934-35 through 1940-41; Hurlock, Maryland, 1934-35 through 1940-41; Salisbury, Maryland, 1934-35 through 1940-41; Paris, Kentucky, 1935-36 through 1938-39; Pikeville, Kentucky, 1935-36 through 1943-44; Lexington, Kentucky, 1935-36 through 1943-44; Corbin, Kentucky, 1935-36 [fol. 1444] through 1943-44; Middlesboro, Kentucky, 1935-36 through 1940-41; Harlan, Kentucky, 1935-36 through 1940-41; and Maysville, Kentucky, 1933-34 through 1940-41?

A. Yes, sir, pursuant to paragraph 20 of the subpoena we produce the contracts contained in folder marked Exhibit No. 333 for identification.

Q. And do you have with you agreements produced in response to paragraph 1 of the subpoena of June 3rd, 1944, which calls for all license agreements for motion pictures entered into between January 1, 1935 and December 1, 1940, with Ralph T. Kemper, Halmer B. Schniffler, Tom Gregory, Louise Stoll (Mrs. Francis D. Reeh), Belpik Theatre Corporation, Schine Shelby Corporation, Schine Chain Theatres, Inc., Schine Enterprises Corporation, Schine Circuit and Schine Theatrical Co., Inc., which provide for the exhibition of motion pictures in the Castamba, State and Opera House Theatres in Shelby, Ohio?

A. Yes, sir, pursuant to paragraph 1 of the subpoena dated June 3rd, 1944, we produce contracts contained in folder marked Exhibit 334 for identification.

The Court: Those all refer to Shelby?

Mr. Wright: All refer to Shelby, Ohio.

Q. Have you there all license agreements for motion [fol. 1445] pictures entered into between January 1, 1933 and September 1, 1938, with Arthur J. Buck, Ural Buck, C. Kahn, Ted Vermos, Belpik Theatre Corporation, Civic Theatres, Inc., Fostoria Theatres Corporation, Schine Chain Theatres, Inc., Schine Enterprises Corporation, Schine Circuit and Schine Theatrical Co., Inc., which provide for the exhibition of motion pictures in the Civic, Roxy, State and Colonial Theatres in Fostoria, Ohio?

A. Yes, sir, pursuant to paragraph 2 of the subpoena dated June 3rd, 1944, we produce the contracts contained in a folder marked Exhibit No. 335 for identification.

Q. Do you have there all license agreements for motion pictures entered into between January 1, 1936 and September 1, 1940, with P. E. Essick, Myer Fine, Medina Temple Theatre Company, Medina-Princess Corporation, Medina Amusement Co., Schine-Medina Corporation, Schine Chain

Theatres, Inc., Schine Enterprises Corporation, Schine Circuit and Schine Theatrical Co., Inc., which provide for the exhibition of motion pictures in the Medina Temple and Princess Theatres at Medina, Ohio?

A. Off the record, the exhibitor in these contracts is not the same as you name there, but they are all for Medina, Ohio.

Q. The contracts that you have there you say include some name you know you dealt with?

[fol. 1446] A. Yes, sir.

Q. Those are all contained in this folder?

A. Pursuant to your subpoena we have produced—pursuant to paragraph 3 of the subpoena of June 3rd, 1944, we have produced the contracts in folder marked Exhibit No. 336 for identification.

Q. Now, have you produced anything in response to paragraph 1 of the subpoena returnable August 15th, 1944, which calls for all franchises and master agreements made between you and the Schine Chain Theatres, Inc., Schine Circuit, Inc., Schine Theatrical Company, Inc., Schine Enterprises, Schine Lexington Corporation, Belpik Theatres, Inc., or Chesapeake Theatres Corporation, for the exhibition of feature films released by you during one or more of the motion picture seasons, 1931-32 to 1940-41, inclusive?

A. Those are all the contracts I have produced.

Q. I understand you have no other contracts answering that description other than those already produced and identified?

A. That is correct, yes. We have heretofore produced all the documents we have, called for by paragraph 1 of that subpoena.

Q. And calling your attention to paragraph 3 of the same subpoena, have you there the printed schedules of feature [fol. 1447] motion picture films released by you during the period from August 1, 1931 to September 1, 1941?

A. Yes, sir, for the three seasons, 1933-1934, 1934-35, and 1935-36, I produce an office form which we call E-46, which lists all the pictures released by 20th-Fox Film Corporation, then known as Fox Film Corporation during those respective years and those pictures were released approximately in the order in which they are listed thereon.

The Court: You mean released to exhibition?

The Witness: Put out for general sale and exhibition.

The Court: To all of them?

The Witness: Yes, through all the seasons, it is a list of all pictures.

The Court: That is numbered what?

The Witness: Contained in folder marked Exhibit No. 337 for identification.

In addition, for the succeeding seasons named by you we produce a printed schedule of all pictures released by us during those respective seasons; there are release dates in the order in which they were released.

Q. I think you haven't produced there a schedule for the 1931-32 season, have you?

[fol. 1448] A. No, it is not here.

Q. Do you have one available?

A. If there is, I will look again. If it isn't here, I imagine we haven't got it.

Q. In paragraph 4 of this same subpoena, it calls for original letter from Myer Schine to J. Sichelman, 20th-Century-Fox Film Corporation, New York, New York, dated between October 21 and October 25, 1932, outlining the rental situation at Bellefontaine, Ohio, and referred to in a letter signed by the said J. Sichelman, dated October 25th, 1932, addressed to I. J. Schmertz, Cleveland, Ohio, Branch Manager of the said 20th-Century-Fox Film Corporation, Cleveland, Ohio, and transmitting a copy of said letter from Myer Schine?

A. We found no letter answering exactly to that description, but we did find and produce a copy of a letter dated—I want to correct myself—a document which purports to be a copy of a letter on the letterhead of Schine Enterprises, Inc., Gloversville, New York, dated October 24th, 1932, addressed to Mr. Jack Sichelman, Fox Film Corporation, signed by Schine Enterprises, Inc., by G. V. Lynch and mentioning Bellefontaine.

Mr. Wright: I will ask to have this letter marked as Exhibit No. 338 for identification.

[fol. 1449] (Thereupon letter dated October 24th, 1932, addressed to Mr. Jack Sichelman, Fox Film Corporation, signed by Schine Enterprises, Inc., by G. V. Lynch, referred to was marked as Plaintiff's Exhibit No. 338 for identification.)

Q. You were unable to locate in your files the original of this Exhibit No. 338 for identification?

A. We were unable to locate the original of this paper.
Q. All your search revealed was this copy?
A. That is correct.

Mr. Wright: I think that is all from Mr. Jenkins.

[fol. 1450] Cross-examination.

By Mr. McClennen:

Q. Do these folders, Mr. Jenkins, that you have produced include any contracts for shorts?
A. I believe they do.
Q. And, by that token, the effort has been to have them include all the contracts for shorts?
A. Yes, all contracts.
Q. And the same is true with respect to News, they include all the contracts for News?
A. Yes. I would like to look at those again and check, but I am quite sure they do.

Mr. Wright: We had only subpoenaed the feature contracts. If the others were included they apparently were included inadvertently.

The Witness: Yes, here is short subjects (referring to folder). Off-hand, I am not sure whether there are News in here or not, whether we included the News, but I believe we did. There are contracts for shorts included here—short subjects.

Mr. Rogers: Does that hold in every instance that wherever you had a contract for shorts it is included, or is it that there are just some shorts that happened to be stapled to a feature contract, and that where we find that to be so [fol. 1451] that merely happened inadvertently?

The Witness: I am informed we included the shorts or the News only in those cases where in our files they were stapled together. I myself did not pull them out.

By Mr. Wright.

Q. The occasion, then, for including such shorts and news reel contracts that you have in there was not in an effort to comply with the subpoena, but merely that they happened to be attached to the feature contracts?
A. So I am informed and believe.

By Mr. McClennen:

Q. These folders do not include all the contracts for shorts within the descriptions given?

Mr. Wright: The descriptions in the subpoena only call for feature pictures.

Mr. McClennen: I want to find out from the witness what they do include and what they don't. It does not make very much difference to me which, but I want him to answer.

Mr. Wright: As I understand his testimony he says he does not know. All he knows is that where the shorts are stapled in feature contracts they are there.

The Court: Are the contracts for shorts other than those [fol. 1452] shown in this exhibit——

The Witness: They were on it.

By Mr. McClennen:

Q. Were there other news contracts that are not included here?

A. Yes, sir.

Q. So these folders include the pictures that were spot booked without formal contract?

A. I can't answer that of my own knowledge. I would say probably not. Many times you do not have contracts for spot booking.

Q. Do these folders contain anything indicative of how many of these contracts remained in force, how many were modified and how many were cancelled?

A. No, sir.

Q. Do these folders contain anything indicative of the number of pictures actually taken up by the exhibitor under these contracts?

A. Do you mean the record of performance under the contract?

Q. Any way in which from these folders you could tell whether the exhibitor did play the pictures covered by the contracts?

A. No, sir.

Q. Do these folders contain anything from which we can tell whether the picture by name described in the contract [fol. 1453] was actually produced and released in that season, or the time when it was released?

A. As to those contracts which do mention a specific picture, the contract alone would not tell you that.

Mr. Wright: I take it, if I may interrupt, that that information would appear from the release schedules which you produced, would it not?

The Witness: Yes.

Mr. McClennen: Would it not be better if I completed this part of the examination?

Mr. Wright: Go ahead.

By Mr. McClennen:

Q. The release schedules that you have produced, are they the schedules of the prospective releases coming out at the beginning of the year, or are they the final schedules of the pictures that were actually released in that season?

A. The release schedules which we have produced here today are the schedules of the pictures actually released during those respective seasons.

Q. I notice that this release schedule, final No. 1, a printed schedule with red ink 1936-'37 on it, dated February 5th, saying, "Please destroy previous issues", and in parenthesis the words "Subject to change", that was not a schedule of actual releases, was it?

[fol. 1454] A. No, because it is dated February 5th, which is in mid-season. We frequently get out schedules showing what has actually been released and what we expect to release or what has actually been released only to that date. What I have given you, what I have produced here, were schedules of releases at the end of the season.

Q. Isn't this schedule one that you have produced—wasn't this right in the folder?

A. Well, then, I will pick out your final schedules, if they have got a mid-way schedule in there.

Q. This schedule called Final No. 1 of February 5th, which would mean February 5, 1937, has something cut off from the top. What was on the schedule before the excision?

A. Off-hand I don't know. It does not appear to me that anything was cut off. They have mended that tear there.

Q. You don't think that that had a heading on it that has been cut off?

A. It appears that it might have been.

Q. In this same group is one that is marked "Release Schedule, Final No.—", with the red ink on it 1936-'37, saying "Subject to change July 7, 1937", in which the small "r" of Release and the "S" of schedule are not complete. Didn't that have some kind of a heading on it?

[fol. 1455] A. I would suppose so. It appears so.

Q. You could readily get hold, couldn't you, or have your office get hold, of what those tops were, so that we could know whether the document in other respects purported to be actual releases or only proposed releases so far as the future after the date was concerned?

A. Yes, I am sure we have in our files the copies of these schedules without anything cut off.

Q. Here is one that has no heading whatever and an obvious excision at the top (indicating), and with the red ink 1938-1939. There would be no way in which you could tell whether that was a final schedule or a proposed one, just like this Final No. 1 that we have just been speaking of, is there?

A. I can tell by the names of the pictures. May I say something off the record?

Q. Well, say it right on the record. We just want to get this question right.

A. These printed release schedules unfortunately were not brought here and we wanted to meet the subpoena and we have gotten these today from our local Buffalo exchange. That is probably where these excisions come from, for some convenient reason of his own. They have not come from our home office, because of an unfortunate omission.

[fol. 1456] Q. In this whole handful that I show you, with no tops and the dates, it is pretty obvious that none of those is a final schedule which we could surely count on as showing the pictures that were actually released?

A. This one dated April 5, 1940, shows release from August 4, 1939, through January 26th. That would be a schedule of actual releases.

Q. To that date?

A. Yes, sir.

Q. And does not contain even prospective releases on April 5, 1940?

A. No.

Q. In this same schedule of pictures released there are these sheets (indicating). This was a recapitulation of a national contract with somebody and you picked it out simply as a convenient list of the pictures of that season?

A. Yes, sir, this morning.

Q. And as the print was originally made out—this, by the way, is for which season, can you tell?

A. Yes, sir, that is for the season of 1933-1934.

Q. By the way, this will be a convenient time—this has printed on it "Group K-1, 1933-'34". We can always tell by reference to that what season a "K" series is, can we?

[fol. 1457] A. Yes, sir. It would be a shorter way of saying the season years.

Q. As a matter of fact, it was taken—the "K" season was the first full season after Mr. Kent came to the Fox Company?

A. No, sir, it was the first season that we started to sell our pictures the way Mr. Kent thought they ought to be sold.

Q. Didn't he get to thinking that right away?

A. He came there in the spring of 1932 and that was, you see, for the 1933-1934 season.

Q. He came in in the spring of 1932?

A. Yes, his first season was the 1932-1933. Starting with 1933-1934 a K-1 will identify your seasons right through a K-10.

Q. By that token K-10 would be 1943-1944?

A. It would be 1942-1943.

Q. And the 11th had it existed would be adding the No. 10?

A. Yes, sir.

Q. That print for the 1933-1934 season, this particular edition came out on April 6, 1934?

A. Yes, sir.

Q. And the print was intended to be what you then expected by picture name to release in that season?

[fol. 1458] A. What we had in hand that we knew we were going to release.

Q. Then for some reason a number 439, you didn't release that one, and put in a typewritten name in its place?

A. Yes, it might even have been a change of name on the same picture.

Q. After this schedule had been printed you put on some more names in typewriting, of later numbers of which you didn't actually have the names at the time this one was printed?

A. That is correct.

Q. And that same sort of a description that you have just been giving in these questions would apply correspondingly to the K-2 series and the K-3 series?

A. Yes, sir.

Mr. Wright: If the Court please, I was just going to remark that there is not any occasion, as far as we are concerned, for any prolonged examination on these release schedules. If there are more accurate schedules than these he has produced, we of course want them, and I suppose he is willing to supply them and send them to Counsel for the defendant and a copy to us, and we can then substitute [fol. 1459] those schedules for these if they are more accurate.

The Witness: I will get them out on Monday and mail them.

Mr. McClennen: I have to make the record clear as far as it has gone, and there is obviously no intention here to have anything but the exact facts stated by this witness. I just want to make it clear just what these are in case it becomes important to know anything about any of these numbers and what the actual releases were in any particular year. We have already, if your Honor will recall, admitted the approximate correctness of the asserted releases of each year as they were put in the notice to admit.

By Mr. McClennen:

Q. This identification 338 of October 24, 1932, a purported copy of a letter, somebody was set to digging for the letter described in the subpoena?

A. Yes, sir.

Q. And it was reported to you that that letter could not be found?

A. Yes, sir.

Q. And this Exhibit 338 for identification was brought to you and that is all you know about that?

[fol. 1460] A. Yes, sir.

Mr. McClennen: That is all.

Redirect examination.

By Mr. Wright:

Q. As I understand it, Mr. Jenkins, you are going to produce for us any release schedules you have—any records that you have that will supply a more accurate record of the titles and dates of the feature pictures released by you than those you have here today?

A. Yes. We thought we had them here today. When we found we did not we tried to make up the deficiency from our local exchange.

Q. How soon do you think we can have those?

A. I will put them in the mail Monday. I will mail them to Mr. Caskey.

Mr. Wright: I understand when those arrive we may substitute those for the schedules that have been identified, without recalling Mr. Jenkins?

Mr. McClennen: We have had so much record we had just put them in as a separate exhibit. If we have the list of names at all—I am abstaining from any comment as to whether it is of the slightest consequence to have those [fol. 1461] names, but if it is of consequence to have them all we want is to be assured that we have the right ones.

Mr. Wright: The only question now is whether we have to recall Mr. Jenkins to the stand to give you that assurance. Will you be satisfied by his mailing to you and us the documents that he says are accurate?

Mr. McClennen: If Mr. Jenkins will send a statement on his own investigation that the list that he is furnishing is the final list of the season, of those that were actually released, and the date of the actual release, why, we shall be entirely content to treat that as correct.

The Witness: 1931-1932?

Mr. Wright: Through 1943-1944. That is the last one you have here.

Mr. McClennen: It is quite likely that you already have in some printed form some compilation of all those in one document on which you could put the date of actual releases, and if it has your certificate to accuracy that is all we are interested in. Mr. Rogers suggests that when the question [fol. 1462] of admissibility comes up they ought not to go beyond the understood date of the 1941-1942 season.

Mr. Wright: Let me say with respect to that date, the only limitation on our proof is that we said we did not expect to show violations of the Act during the period that the consent decree was in effect. However, it may be necessary from time to time to introduce evidence of events which occurred at a later period in so far as they may reflect on law violations occurring during the prior period.

Mr. McClennen: I don't concede in any way that that would call for the introduction of a schedule of releases.

Mr. Wright: No, I do not know whether it would or not. I am not offering such a schedule. All I am doing is identifying material.

Mr. McClennen: I just said to the Court that when the question of admissibility came up that could be dealt with.

The Court: It has only been marked for identification thus far. So whatever Mr. Jenkins sends here, it will be [fol. 1463] marked for identification and of course you can object to it.

Mr. McClennen: My only reason for speaking with reference to this is that Mr. Rogers, with his experience at the earlier time, wanted to make sure that we were not departing from that understanding.

Mr. Rogers: That was the deal line of May, 1942, if your Honor will recall that.

Mr. Wright: We have another witness here who wanted to get away this evening. I do not know if your Honor is willing to sit. I think it will be a convenience to him and to us. We will probably need another recess to mark the documents, for a few minutes.

The Court: How long will it take?

Mr. Wright: I think the direct examination will take about the same length of time as Mr. Jenkins.

The Court: We will take a five-minute recess.

(Short recess.)

(Folders containing schedules, etc., marked as Plaintiff's Exhibits 339 to 349, inclusive, for identification.)

[fol. 1464] Richard P. Morgan, recalled in behalf of the Plaintiff, having been previously sworn, was examined and testified further as follows:

Direct examination.

By Mr. Wright:

Q. Mr. Morgan, I will hand you this letter, a copy of a letter from J. J. Unger to Mr. Grafiades, dated June 1, 1933, marked Exhibit 244 for identification, and ask you if that is the document that was missing from the group identified this morning?

A. It is.

Q. And that is produced by you pursuant to the Paramount subpoena?

A. That is correct. We were unable to locate the original copy, but this copy was in our file.

Q. Have you brought with you the document produced in response to paragraph 2 of the subpoena served upon Paramount, returnable May 19, 1944?

A. I have.

Q. That calls for all license agreements for the exhibition in the following towns of feature pictures released during the period indicated:

Auburn, New York, 1932-1933, 1935-36 inclusive; Norwich, New York, 1931-32 to 1937-38 inclusive. Amsterdam, New [fol. 1465] York, 1931-1932 to 1936-37 inclusive. Little Falls, New York, 1931-32 to 1935-36 inclusive. Tiffin, Ohio, January 1, 1936, to March 1, 1938. Corbin, Kentucky, August 1, 1938 to May 1, 1940. Paris, Kentucky, June 1, 1937 to June 1, 1940. Van Wert, Ohio, January 1, 1934 to December 1, 1935. Bucyrus, Ohio, January 1, 1934 to January 1, 1937. Delaware, Ohio, January 1, 1934 to January 1, 1938. Salisbury, Maryland, January 1, 1937 to January 1, 1942.

A. Pursuant to the subpoena I produce herewith a folder, marked Exhibit 339 for identification, containing the documents referred to in paragraph 2 of that subpoena.

Q. And have you there all license agreements entered into between January 1, 1932, and September 1, 1937, which provide for the exhibition of feature pictures in the Strand Theatre, Seneca Falls, New York?

A. I have.

Q. Those are in the folder marked for identification as Exhibit 340?

A. That is correct.

Q. And have you all license agreements entered into between January 1, 1931, and May 1, 1939, which provided for the exhibition of feature pictures in the Fox, State, Plaza or [fol. 1466] Palace Theatres, Corning, New York.

A. I have, and I produce them herewith in the folder marked Exhibit 341 for identification.

Q. You have all license agreements entered into between January 1, 1931, and September 1, 1936, which provide for the second-run exhibition of feature pictures in Lockport, New York?

A. I have, and produce them herewith in the folder marked Exhibit 342 for identification.

Q. And have you all license agreements entered into between January 1, 1932, and January 1, 1939, which provide for the second run exhibition of feature pictures in the Olympic, Strand, Liberty, Victoria or Palace theatres, Watertown, New York.

A. I have, and produce them herewith in folder No. 343 for identification.

Q. Have you all license agreements entered into between June 1, 1934, and July 1, 1938, which provide for the second-run or subsequent run exhibition of feature pictures in Ashland, Ohio?

A. We were unable to locate any such contracts.

Q. Do you have all license agreements entered into between January 1, 1936, and January 1, 1939, which provide for the second-run or subsequent-run exhibition of feature pictures in Van Wert, Ohio?

[fol. 1467] A. I have and produce them herewith in the folder marked Exhibit No. 344 for identification.

Q. Do you have all applications made between August 1, 1936 and October 1, 1937, by Harold Shreffler for license agreements providing for the exhibition in the Castamba Theatre, Shelby, Ohio, of feature pictures released during the 1937-1938 and 1938-1939 motion picture seasons?

A. We were unable to locate any such contracts.

Q. Do you have all license agreements entered into between August 1, 1934, and January 1, 1941, which provide for the second-run or subsequent-run exhibition of feature pictures in Mt. Vernon, Ohio?

A. I have and produce them herewith in folder marked Exhibit 345 for identification.

Q. Do you have all license agreements entered into between June 1, 1936, and October 1, 1939, which provide for the exhibition of feature pictures in the Opera House, Lexington, Kentucky?

A. I have and produce them herewith in the folder marked Exhibit 346 for identification.

Q. Do you have all license agreements entered into between August 1, 1937, and August 1, 1938, which provide for the second-run or subsequent-run exhibition of feature pictures in Corbin, Kentucky?

[fol, 1468] A. Other than those heretofore produced I have none.

Q. Do you have all license agreements entered into between June 1, 1938, and January 1, 1942, which provide for the second-run or subsequent-run exhibition of feature pictures in Harlan, Kentucky?

A. We were unable to locate any such contracts.

Q. Do you have all license agreements for the exhibition of motion pictures in the following towns entered into during the periods indicated with respect to each town:

Cumberland, Maryland, 1935-1936 through 1943-1944, St. Michaels, Maryland, 1935-36 through 1940-41; Easton, Maryland, 1934-35 through 1940-41; Federalsburg, Maryland, 1934-35 through 1940-41; Hurlock, Maryland, 1934-35 through 1940-41; Salisbury, Maryland, 1934-35, 1935-36 and 1943-44; Pikeville, Kentucky, 1933-34, 1935-36, 1937-38 and 1943-44; Lexington, Kentucky, 1934-35, 1940-41 through 1943-44; Corbin, Kentucky, 1934-35 through 1937-38, 1941-42 and 1943-44; Middlesboro, Kentucky, 1935-36 through 1940-41; Harlan, Kentucky, 1935-36 through 1941-42; Maysville, Kentucky, 1933-34 through 1937-38 and 1940-41 through 1943-44.

[fol. 1469] A. I have and produce them herewith in the folder marked 347 for identification.

Q. Have you produced anything in response to the subpoena returnable June 3, 1944, which calls for all license agreements for motion pictures entered into between January 1, 1935, and September 1, 1940, with Ralph T. Kemper, Halmer D. Schreffler, Tom Gregory, Louise Stoll (Mrs. Francis D. Reeh), Belpik Theatre Corporation, Schine Shelby Corporation, Schine Chain Theatres, Inc., Schine Enterprises Corporation, Schine Circuit, and Schine Theatrical Co., Inc., which provide for the exhibition of motion pictures in the Castamba, State and Opera House theatres in Shelby, Ohio?

A. We were unable to locate any such contracts.

Q. And have you all license agreements for motion pictures entered into between January 1, 1933, and September 1, 1938, with Arthur J. Buck, Ural Buck, C. Kahn, Ted Vermos, Belpik Theatre Corporation, Civic Theatres, Inc., Fostoria Theatres Corporation, Schine Chain Theatres, Inc., Schine Enterprises Corporation, Schine Circuit, and Schine Theatrical Co., Inc., which provide for the exhibition of motion pictures in the Civic, Roxy, State and Colonial theatres in Fostoria, Ohio?

A. I have and produce them herewith in the folder marked Exhibit 348 for identification.

[fol. 1470] Q. Have you all license agreements for motion pictures entered into between January 1, 1936, and September 1, 1940, with P. E. Essick, Myer Fine, Medina Temple Theatre Co., Medina-Princess Corporation, Medina Amusement Co., Schine Medina Corporation, Schine Chain Theatres, Inc., Schine Enterprises Corporation, Schine Circuit, and Schine Theatrical Co., Inc., which provide for the exhibition of motion pictures in the Medina Temple and Princess theatres at Medina, Ohio?

A. I have and produce them herewith in the folder marked Exhibit 349 for identification.

Q. Have you produced anything in response to the first paragraph of the subpoena returnable on August 15, 1944, which calls for all Paramount franchises and master agreements made between you and Schine Chain Theatres, Inc., Schine Circuit, Inc., Schine Theatrical Company, Inc., Schine Enterprises, Schine Lexington Corporation, Pelpik Theatres, Inc., or Chesapeake Theatres Corporation, for the exhibition of feature films released by you during one or more of the motion picture seasons 1931-32 to 1940-41, inclusive?

A. Those have been heretofore produced in response to the subpoena returnable May 19, 1944.

Q. You have none other than those heretofore produced?

[fol. 1471] A. I have nothing further; that is correct.

Q. As I understand, with respect to the third item of that subpoena, "All printed schedules of feature motion picture films released by you during the period from August 1, 1931, to September 1, 1941", you will supply a complete list of the features released by your company during that period by titles and release dates for each; is that correct?

A. That is correct. I will do my best to have it in the mail Monday.

Mr. Wright: And, as I understand it, if Mr. Morgan states in the letter to Counsel for the defendant and us that those schedules are correct they may be accepted as such without recalling Mr. Morgan to the stand?

Mr. McClennen: Yes, reserving still, of course, the question of whether they should go in evidence, but so far as the formal proof if Mr. Morgan will in any form give us his certificate that these were the names of the pictures released at each of those seasons, and the date of the release, we shall be content to take it as if he made the statement on the stand.

[fol. 1472] Q. Now, there are two license agreements that I hand you here which were previously marked for identification as P-69 and P-70, respectively. I believe those were produced pursuant to subpoena served upon your corporation. If so, we would like to have you so state.

A. That is correct.

The Court: They have been marked heretofore?

Mr. Wright: They have been marked for identification, but I think some question was raised about whether they came from Paramount files, and I offer this testimony to resolve that question.

The Witness: These are home office copies.

The Court: Any cross-examination?

Cross-examination.

By Mr. McClennen:

Q. Mr. Morgan, these contracts which you have produced, do they include any and all contracts for shorts? If they do, please so state.

A. If they do it is through inadvertence. I looked through them here and I did not see any short subjects in the contracts.

Q. That is, it was not your intention to collect short subject contracts?

[fol. 1473] A. No, sir.

Q. Do they contain any contracts for news?

A. No, sir.

Q. Do they contain any contracts for the spot bookings?

A. Yes, there are some spot booking contracts in there.

Q. What do you know as to whether all the spot bookings are included?

A. I understand that all of the spot booking contracts are not in there.

Q. You have spoken of some cases where you found no contracts. What do you know with respect to whether those contracts in this or other litigation have been dislocated from the files or have gotten out in any other way; what knowledge have you on that?

A. Approximately two years ago I personally gathered together the contracts covered by the original subpoena in this case and at the time any of the contracts that were apparently missing I made a further search to determine whether or not we had served any pictures in that particular town during that season and my search and collection of the documents revealed to me the fact that we were able to produce contracts in every instance where we actually served pictures.

Q. That, you say, was your personal work of two years ago?

A. Yes, sir.

[fols. 1474-1475] Q. What check have you as to whether all that you had at that time in the way of contracts have gotten into this collection that you present here?

A. I can only tell you what I did with those contracts. After they were gathered two years or so ago they were put in our filing department in the home office and were kept intact there until they were turned over to Mr. Caskey for production in Buffalo.

Q. And as you produce them now they are as they have come back from Mr. Caskey to you?

A. Yes.

The Court: Well, have you any other witnesses here?

Mr. Wright: No.

The Court: Are you through with this witness?

Mr. Wright: Yes.

The Court: We will adjourn until 10 o'clock tomorrow morning.

(Whereupon, an adjournment was taken until Friday, September 29th, 1944, at 10 o'clock *P.* M.)

[fol. 1476] UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF NEW YORK

Civil 223

UNITED STATES OF AMERICA

vs.

SCHINE CHAIN THEATRES, INC., et al., Defendants

Continuation of trial before Honorable John Knight, United States District Judge for the Western District of New York, September 29th, 1944, at 10 A. M.

Appearances:

Robert L. Wright, Esq., John F. Clagett, Esq., Harold L. Schilz, Esq., Special Assistants to the Attorney General, and Milton Kallis, Esq., Special Attorney, in behalf of the United States.

Edward F. McClennen, Esq., Willard S. McKay, Esq., Saul E. Rogers, Esq., Arthur E. Whittemore, Esq., Arthur J. Homans, Esq., and Howard M. Antevil, Esq., appearing for Defendants.

[fol. 1477] PROCEEDINGS

THOMAS F. MURRAY a witness called by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Wright:

Q. Where do you live, Mr. Murray?

A. 7617 Ditmars Boulevard, Jackson Heights, New York.

Q. What is your occupation?

A. I am manager of branch operations, Universal Film Exchanges, Inc.

Q. How long have you held that position?

A. Six years.

Q. You have been designated by Universal to appear here with the documents that were subpoenaed by the Government from Universal Film Exchanges, Inc.?

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A. I have.

Q. Do you have with you the series of documents marked for identification with numbers 350 through 409, inclusive?

A. I have.

[fol. 1478] (Thereupon various document- were marked as Plaintiff's Exhibits Nos. 350 through 409, inclusive, for identification.)

Q. Those are produced pursuant to subpoena duces tecum that was served on Universal Film Exchanges, Inc.?

A. That is right.

Q. I will also hand you six documents which have been previously marked for identification here as Plaintiff's Exhibits 34, 35, 36, 37, 39 and 40 for identification, and ask you if those documents were also produced by you pursuant to subpoena duces tecum served on Universal Film Exchanges, Inc.?

A. Yes, sir, they were.

(Thereupon, six documents were marked as Plaintiff's Exhibits Nos. 34, 35, 36, 37, 39 and 40 for identification.)

Q. And in the course of your work at Universal have you had occasion to become familiar with the titles and duties and periods of employment of various sales representatives of that company?

A. I have.

Q. Can you tell us what position Paul Baron occupied during the year——

The Court: Spell that name.

Mr. Wright: (Spelling) B-a-r-o-n.

[fol. 1479] Q. During the year 1938?

A. He was Acting Branch Manager of the Washington Branch.

Q. Do you know what period he held that position?

A. I think for a period of about a year.

Q. Throughout the year 1938?

A. Throughout the year 1938.

Q. What position did Mr. W. F. Bork hold during the period from April, 1935 to November or to December, 1937?

A. He was Assistant Branch Manager of the Buffalo Branch.

Q. Do you know the total length of time he held that position?

A. He is presently engaged as a salesman in the branch.

Q. When did he cease being Branch Manager?

A. Assistant Branch Manager.

Q. Assistant Branch Manager?

A. Why, I could not tell definitely, but he has been continuously in the employ of Universal.

Q. I don't believe I asked you what Mr. Baron's duties were as Manager of the Washington Exchange, can you tell us that?

A. He supervises——

Mr. McClennen: Just one moment. I raise the same question as before. I don't want to be met on cross-examination with the suggestion that the witness is not [fol. 1480] qualified to speak on this subject. Therefore I raise the objection in the direct. If I am to be permitted cross on the assumption that he is qualified to speak, I have no further interest in the objection.

The Court: We have to deal with the cross when we come to it, haven't we? I mean by that this: You object to the admission——

Mr. McClennen: I am objecting so that we may reach an understanding that I am to be permitted to cross-examine as freely as if this witness was qualified to speak on these subjects. The question came up.

The Court: It is obvious if he is allowed to testify as to what his duties are, of course, you can cross-examine.

Mr. McClennen: I have in mind the objection that was made.

The Court: How about it, Mr. Wright?

Mr. Wright: I don't suppose there is any question about Mr. McClennen's right to cross-examine any of these witnesses as to their testimony about what the duties of these people were. The only objection I made to Mr. McClennen's examination before was when he attempted to examine them on what was actually done or how these particular [fol. 1481] men performed these functions. That, of course, is something else.

The Court: Probably the Court would rule as it has before, as far as your cross-examination is concerned. It will rule as it has before on any of these examinations.

Mr. McClennen: I don't want to be met with an objection such as was pressed, even if it was overruled, as it was before, in the case of the first witness yesterday. I asked no question that did not relate to a definition of the scope of those duties. I want to be in position to do the same with this witness. That is all.

[fol. 1482] The Court: Let me ask a question. You managed the New York branch?

The Witness: Manager of branch operation, in charge of the supervision of personnel in all 31 branches throughout the United States, excluding the sales force.

The Court: Does that include Washington?

The Witness: Yes, sir.

The Court: Objection overruled. Tell what his duties are, is that your question—the duties of the branch manager in Washington?

Mr. Wright: Yes.

Mr. Rogers: May I suggest that the witness testified that he was only acting branch manager, not branch manager?

The Witness: He had charge of the branch for the supervision of——

The Court: Did you say he was acting manager?

The Witness: He was acting branch manager.

The Court: Baron?

The Witness: Yes, sir.

The Court: Proceed.

The Witness: He had charge of the supervision of the personnel of the branch sales, directing the sales force [fol. 1483] in the local branch, covering the situations and possibilities in the territory for the purpose of negotiating sales of service of Universal's motion pictures.

Q. What were Mr. Bork's duties as assistant manager of the Buffalo branch?

A. Mr. Bork was in charge of the office personnel and the service department for the conduct of the business, the officer operation and the liquidation of the contracts in existence for delivery to the exhibitors.

Q. What position did Mr. P. T. Dana hold during the period from September, 1935, to February, 1938?

A. He was branch manager of the Albany branch.

Q. Do you know the total period of time he held that position?

A. No, I do not. He was transferred from there to Buffalo.

Q. His duties as manager of the Albany branch were the same with respect to Albany as Mr. Baron's were with respect to Washington?

A. Yes, sir.

Q. What position did Mr. J. R. Granger hold with Universal?

A. He was General Sales Manager.

Q. During what period?

A. I think a period of ten or twelve years prior to 1937.

Q. What were his duties as General Sales Manager? [fol. 1484] A. He was in charge of establishing the policy for the sale and distribution of Universal's product throughout the 31 branches in the country.

Q. What position did Mr. A. J. Herman hold with Universal during the year 1938?

A. Mr. Herman was the branch manager of the Buffalo branch.

Q. Do you know how long he held that position?

A. I couldn't say definitely. It was only for a short duration of time.

Q. You know it was throughout the year 1938?

A. Yes, sir.

Q. And his duties were the same as those of the other branch managers you have described?

A. Yes, sir.

Q. What position did Mr. W. V. Kraemer hold with Universal during 1938?

A. He was manager of the contract department in the home office in New York.

Q. Do you know what period of time his position covered?

A. I couldn't say definitely. I think it was up until some time in 1937.

A. It began in 1937?

A. No, it preceded that, some seven or eight years preceding that.

Q. The question I asked you was what position he held in [fol. 1485] February, 1938.

A. In February, 1938, he did; he was manager of the contract department.

Q. What were his duties as manager of the contract department?

A. Contracts submitted by the branch and approved by the General Sales Manager were, in turn, turned over to him for the maintenance of the records and for the play-off of the respective accounts that had been sold.

The Court: What do you mean by the play-off?

The Witness: The dating of the subjects as they were reported by the branch, he would compile, or under his direction would be compiled, that play-off in the home office.

Q. A matter of keeping records?

A. Yes, keeping the records to show the progress of the liquidation.

Q. What position did Mr. B. R. Kreisler hold with Universal in June, 1939?

A. He was branch manager of the Washington branch.

Q. How long did he hold that position?

A. About a year and a half.

Q. Do you know what the beginning and the ending dates were?

A. He succeeded Mr. Baron in 1938.

Q. His duties were the same as those you described for Mr. Baron?

[fol. 1486] A. Yes, sir.

Q. What position did Mr. Paul Kreiger hold with Universal during the years 1936 and 1937?

A. He was branch manager of the Cincinnati branch.

Q. Do you know when he became branch manager there?

A. He was there some 15 years preceding that.

Q. When did he terminate as Cincinnati branch manager?

A. In the early part of 1939.

Q. His duties were the same with respect to that branch as those of the other branch managers you have referred to?

A. Yes, sir.

Q. What position did Mr. A. Marchetti hold in February, 1939?

A. He was the booker of the Albany branch.

Q. Do you know how long he held that job?

A. Some 15 years.. He is the present booker in Albany.

Q. What are his duties as booker?

A. When a contract has been accepted and approved by the General Sales Manager it is returned to the branch and a cut-off card made and it is his duty to contact the accounts to effect the liquidation of the subjects that have been designated on that contract for service to the accounts.

Q. What position does Mr. Frank J. A. McCarthy hold with Universal?

[fol. 1487] A. Mr. McCarthy is the Eastern Division Manager.

Q. How long has he held that position?

A. I want to correct that. He was the Eastern Division Manager at that time. He is now the Southern Division Manager.

Q. When was he Eastern Division Manager?

A. Eastern Division Manager up until 1941.

Q. When did he become Eastern Division Manager?

A. Some ten years preceding that.

Q. And he held the position continuously for ten years prior to 1941?

A. That is right.

Q. What were his duties as Eastern Division Manager?

A. Of the offices designated for a division territory he had direct supervision over the District Manager and the branch managers for the sale of service of Universal product.

Q. What was the Eastern territory?

A. The Eastern territory at that time included Boston, New Haven, Buffalo, Albany, Cincinnati, Cleveland, Pittsburgh, Memphis, Atlanta, Charlotte, New Orleans and Dallas.

Q. The cities you have mentioned there were where Universal maintains exchanges?

A. Yes, sir.

[fol. 1488] Q. And he supervised the entire territory served by those exchanges?

A. Yes, sir.

Q. What position did Mr. Dave Miller hold with Universal during the period from April, 1934, through January, 1938?

A. He was District Manager of the offices covered by branches in Cincinnati, Pittsburgh, Buffalo and Albany.

Q. His headquarters were in New York?

A. His headquarters were in Cleveland.

Q. Do you know the total length of time he held that position?

A. For a period of about five or six years.

Q. What were his duties?

A. His duties were to supervise the branches within his district, the four branches, for the sale of service of Universal product.

Q. What position did Mr. Nate Sauver hold with Universal during the period from June, 1933, through February, 1938?

A. He was branch manager of the Buffalo branch.

Q. And his duties were the same as those of the other branch managers you have referred to?

A. Yes, sir.

Q. What position did Mr. J. J. Spandau hold with Uni-[fol. 1489] versal during the month of November, 1940?

A. He was branch manager of the Albany branch.

Q. Do you know during what period he held that position?

A. For a period of about three and a half or four years.

Q. Do you know when it began and ended?

A. I couldn't say definitely, but I know it was within that period.

Q. His duties were the same as those of the other branch managers?

A. Yes, sir.

Q. What position did Mr. John J. Scully hold during the period from April, 1939, through April, 1941?

A. He was branch manager of the Buffalo branch.

Q. His duties as manager were the same as those of the other branch managers?

A. Yes, sir.

Q. What position does Mr. Adolph Schimel hold with Universal?

A. Mr. Schimel is Counsel and an attorney in our home office.

Q. He is employed full time at the home office?

A. Yes, sir.

Q. Do you know how long he has held that position?

A. About 15 years.

Q. Do you know what his duties are as home office counsel?

A. All matters pertaining to distribution arising out of controversies from contracts or developing of new legal [fol. 1490] matter- are handled by Mr. Schimel.

The Court: Advisory, you mean, advising in the law?

The Witness: Yes, sir, in an advisory capacity.

The Court: His duties are only those of an attorney?

The Witness: As General Counsel.

[fol. 1491] Q. What position did Mr. W. A. Scully hold during the year 1939?

A. He was General Sales Manager.

Q. He succeeded Mr. Grainger?

A. Yes, sir.

Q. How long did he continue as General Sales Manager?

A. He is General Sales Manager.

Q. And his duties during the time he has been General Sales Manager are the same as those described for Mr. Grainger?

A. Yes, sir.

Q. What position did Mr. S. Whittman hold with Universal during May, 1937?

A. He was District Manager at the time covering the offices of Boston, New Haven, Albany and Philadelphia and Washington.

Q. Do you know how long he held that position?

A. He resigned some time in the early part of 1938. Preceding that he had been there for a period in excess of ten years.

Q. What were his duties as District Manager?

A. The duties were similar to that of Mr. Miller for those offices.

Q. He succeeded Mr. Miller in that position?

A. Mr. Miller, I think, succeeded him.

Q. Well, I thought according to your previous testimony [fol. 1492] Mr. Miller was District Manager from April, 1934 through January, 1938?

A. That is right. Mr. Whittman didn't have the Albany office. He just had the offices that Mr. Herman succeeded him in, of Boston, Philadelphia, New Haven and Washington.

Q. Then his duties were the same with respect to that territory as you previously described for Mr. Herman?

A. That is right.

Q. Well, I think your previous testimony has Mr. Herman in that position in November, 1938, is that right?

A. That is right.

Q. Well, then, Mr. Whittman didn't become District Manager until after that time?

A. Yes, sir.

Q. Now, what was Mr. Whittman's position in the month of May, 1937?

A. There was a change in his status in about that time. I would have to check it, Mr. Wright, to give the exact dates that he changed from his division status to district status to branch status.

Q. Could you check and do that for us when you are recalled to identify the contracts?

A. I will.

Q. Mr. Murray, do you know the period of time during [fol. 1493] which Mr. J. Myer Schine was Director of Universal?

A. I could not definitely say. I think he was Director up to—I have no definite knowledge of it except I think it was some time up to 1938.

The Court: 19—what?

The Witness: 1938.

Q. Do you know about how long before that?

A. I do not.

Mr. Wright: That is all for now.

Cross-examination.

By Mr. McClennen:

Q. Mr. Schine was a director elected by the preferred stockholders, was he?

A. I have no knowledge whatsoever of Mr. Schine's status except knowing by hearsay that he was a director of Universal.

Q. That you don't know ~~the~~ beginning day of?

A. No, sir, I do not.

Q. And you say the ending date was 1938?

A. To the best of my recollection.

Q. Mr. Schimel came in to the Law Department of Universal as an assistant?

A. I don't really know what the status was when he was originally engaged in Universal.

[fol. 1494] Q. Were you there then?

A. No, I was not.

Q. At some time he became what might be called the inside office advisor on law matters?

A. Yes, sir.

Q. For Universal?

A. Yes, sir.

Q. Now, have you the date when Mr. James R. Grainger first came to Universal?

A. I have not.

Q. Would it accord with your recollection that it was in the vicinity of 1935?

A. I was not identified with Universal at that time, and I would not want to harbor a guess.

Q. That is, when you came with Universal was when?

A. I came in 1938, March of 1938.

Q. 1938, and Mr. Grainger had already left Universal at that time?

A. Yes, sir.

The Court: Further questions?

Mr. Wright: We will recall Mr. Murray for the identification of other material. That is all for now.

The Witness: Do you want these documents?

Mr. Wright: Yes, leave those with the reporter with the [fol. 1495] other documents.

Edward M. Saunders, a witness called by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Wright:

Q. Where do you live, Mr. Saunders?

A. At 1033 Cornfield Road, West Bronxville, New York.

Q. What is your occupation?

A. Assistant General Sales Manager, Loew's, Inc.

Q. How long have you held that position?

A. Since February, 1943.

Q. And prior to that?

A. I was Western Sales Manager for the same company.

Q. For how long?

A. Since 1924.

Q. What are your duties in your present position?

A. Well, general development of the thoughts and ideas and consultation with the General Sales Manager, Sales Managers, Branch Managers, District Managers.

Q. You were designated by Lowe's, Inc., to produce the documents which were subpoenaed from them by the Gov-[fol. 1496] ernment for the trial of this case, were you?

A. Yes, sir, I was.

Q. And you have brought with you pursuant to the subpoena served on Loew's, Inc., documents which have been marked for identification as 410 through 515, inclusive?

A. I think there is one missing, as I understand.

The Court: 410 to 5 what?

Mr. Wright: 515.

The Witness: 504 is missing.

Q. That is, with the exception of 504?

A. With the exception of 504 they are here.

Q. That is the letter of August 31st, 1937, from E. K. O'Shea to F. D. Drew, of Cleveland?

A. What number is that?

Q. This 504?

A. I don't know which one that is.

Q. The remaining documents bearing those numbers are those that you have here?

A. That is right.

(Thereupon various documents were marked as Plaintiff's Exhibits Nos. 410 through 515, inclusive, for identification.)

The Witness: I think you took my papers there also.

(Document handed back to witness.)

[fol. 1497] Q. I believe you were requested to produce a letter of August 31, 1937 from E. K. O'Shea to F. D. Drew, Cleveland, regarding deal sheets covering houses taken over by the Schine interests at Fostoria, Medina, Ashland, Mount Vernon and Van Wert, Ohio; have you made a search for such a letter?

A. A search has been made for everything requested.

Q. You haven't been able to locate it?

A. Unable to locate it at this time. You see, there has been during a period of time, four of our men in the Legal Department, who are now in the service and they were handling this and making these searches, and it is very difficult, although very diligent search has been made.

Q. In the event you are able to locate it, may it be understood it may be produced without the necessity of recalling Mr. Saunders to the stand to authenticate it?

Mr. McClennen: If Mr. Saunders will write that this is the paper that has been found, it will be as acceptable as his saying it on the stand.

By Mr. Wright:

Q. In the course of your duties with Loew's, Inc.——

Mr. McClennen: Just a moment. I take it it is understood I am simply speaking of the production without any ques- [fol. 1498] tion about its admissibility, which we wish to reserve.

Mr. Wright: Yes.

By Mr. Wright:

Q. Have you had occasion to become familiar with the titles and duties of the other sales officers of the company?

A. Yes, sir, I have.

Q. Can you tell us what position Mr. E. W. Aaron holds with Loew's?

A. Mr. Aaron at the present time is Circuit Sales Manager.

Q. How long has he held that position?

A. From February 1943 to date.

Q. What was his position prior to that?

A. From December, 1941 to February, 1943, he served as assistant general sales manager.

Q. Prior to that what position did he hold?

A. May, 1936 to September, 1937, he was assistant to Mr. T. J. Connors.

Q. I believe there is a gap between that time and the time he was assistant general sales manager. Can you tell us what his position was then?

A. There is a gap here between 1937 and 1941, that I don't have a record of.

Q. Could you specifically——

A. I beg your pardon. From 1936 to 1941,—prior to 1932 to May, 1936 and from September, 1937, to December, 1941, [fol. 1499] he was assistant to Mr. W. F. Rodgers.

Q. Mr. W. F. Rodgers was the General Sales Manager?

A. Mr. Rodgers at that time, yes, that is right.

Q. What were Mr. Aaron's duties as assistant to Mr. Rodgers?

A. Well, he took care of a lot of detail and matters of that kind for Mr. Rodgers, sending out letters of instruction that he might issue, and so on.

Q. And that was his position throughout the year 1938?

A. Yes, sir.

Q. What position did Mr. R. Berger have with Loew's, Inc., during the year 1938?

A. From 1935 to January, 1941, Mr. Berger was Branch Manager in charge of the Washington Exchange territory.

[fol. 1500] Q. And what were his duties as such exchange manager?

A. His duties and authority as such branch manager consisted in general of the direction of the activities carried on at the exchange. His activities consisted of solicitation of applications for license agreements from exhibitors in the Washington exchange territory and the transmittal of such applications to the principal executive office of Loew's Inc., in New York City, for approval or rejection; the performance of license agreements made by Loew's, Inc., as distributors of such pictures. As such exchange manager he had no authority, without the specific approval of the principal executive officers of Loew's, Inc., or the sales manager in New York, in each instance, to enter into any license agreement or consent to any modification thereof. He had no authority to formulate any of the policies of Loew's, Inc., or bind it by any action or statement inconsistent with said policy.

Mr. Wright: I object to that last statement there as a pure conclusion. I take it that it is not responsive to the quesion as to what his duties were.

The Court: Strike it out. You have stated all the duties, have you?

[fol. 1501] The Witness: I have stated the duties of Mr. Berger as branch manager.

By Mr. Wright:

Q. As branch manager he, of course, had the right to reject contracts, although he had no right to approve them; is that correct?

A. Well, not exactly. Possibly if he didn't make a satisfactory deal he would not write a contract.

Q. He had the decision——

A. The rejection would not remain with him.

Mr. McClennen: There is an objection to the question as a leading question.

The Court: Strike it out. State what his duties were.

By Mr. Wright:

Q. When somebody came in and wanted to make a license agreement would he have to submit a contract with that person?

A. No, he would not. If he cannot make what he considers a satisfactory license agreement then he would, in the course of events, so advise his district or sales manager.

Q. He did have discretion to determine in the first instance whether or not to forward a deal; is that right?

Mr. McClennen: That is objected to as leading.

The Court: Yes.

[fol. 1502] Mr. Wright: All right, I will not pursue it.

Q. What position did Mr. E. M. Booth have with Loew's during the period from May, 1931, through November, 1937?

A. Mr. Booth is my branch manager of the Cincinnati exchange territory.

Q. And he had the same duties with respect to Cincinnati as Mr. Berger had for Washington?

A. Exactly.

Q. What position did Mr. T. J. Conners hold with Loew's during the period from January, 1937, to June, 1939?

A. He was Eastern and Southern Sales Manager.

Q. Do you know how long he held that position?

A. From May, 1936, to December, 1941.

Q. What were his duties as Eastern and Southern sales manager?

A. Well, his duties were subject to the direction of the General Sales Manager, supervision of the activities of the branches located in his division.

Q. What did his division comprise?

A. We have made a number of changes in different periods and I don't happen to have the records so that I would hesitate to say exactly. I would be glad to——

Q. Throughout the period the territory included, did it not, the exchanges at Cincinnati, Cleveland, Albany, Buffalo, New York and Washington?

[fol. 1503] A. New York and Washington, I am positive they were. As to Buffalo, I am not sure.

Q. Do you think there might have been a time when Buffalo was not in the Eastern territory?

A. There was a time when Buffalo was in what we call our Central Division.

Q. Do you know whether that was prior to 1937?

A. I am not positive of that.

Q. You are sure that the other exchanges that I mentioned were included in the territory at all times?

A. Those that I mentioned, yes.

Q. What position did Mr. F. D. Drew hold with Loew's in the years 1937 and 1938?

A. I didn't have anything on that. Was information requested about Mr. Drew? I don't think I have anything on Mr. Drew.

Q. We were informed, I think by letter from your company, that Mr. Drew was the branch manager at Cleveland.

Mr. McClennen: I don't think that ought to be put in the record.

The Court: Strike it out.

Q. To refresh your recollection, I will show you this letter addressed to Wendell Birge from Loew's, Inc., dated May 22, 1944, and ask you if that will enable you to state the fact [fol. 1504] about Mr. Drew's employment (handing letter to witness)? Can you tell us now what position Mr. Drew held during 1937?

A. I am not positive of that. I think that Drew was the branch manager in Cleveland but I am not positive of the date. I just don't like to answer you without being sure of it. I think that he was the branch manager in Cleveland. What is the year again?

Q. 1937.

A. I don't think he was. I am pretty positive he wasn't. I don't have any record of that here and that is why I hesitate to make a definite statement on it.

Q. I thought the letter might help you. If you will read the second page of the letter you will note that a statement appears as to Mr. Drew.

A. That is correct. Mr. Drew was branch manager from 9-25-1927 to January 31, 1942.

Q. That is at Cleveland?

A. That is at Cleveland; that is correct.

Q. His duties with respect to Cleveland were the same as those you previously described for Mr. Berger with respect to Washington?

A. That is right.

Q. Will you tell us what position Mr. Tyree Diller, Jr., held during 1938?

A. He was an attorney with the company.

[fol. 1505] Q. That is, he was employed full time at the home office?

A. That is correct.

Q. Do you know what his period of service in that job was?

A. 1935 until February of 1943.

Q. What were his duties?

A. His duties were limited to legal advice.

Q. What position did Mr. Jack E. Flynn hold during the period from May, 1931, to November, 1935?

A. Well, prior to 1932 to March, 1938, Mr. Flynn was District Manager, with supervision over Albany, Buffalo, Cincinnati, Cleveland, Detroit and Pittsburgh exchange territories.

Q. Where were his headquarters?

A. In Detroit.

Q. What were his duties as District Manager?

A. General supervision of the activities of the exchanges in his territory.

Q. And what position did Mr. J. Leonard Hirsch hold with the company during the year 1938?

A. Assistant to Mr. Conners and from January, 1941, to date, assistant to Mr. O'Shea.

Q. When did he first become assistant to Mr. Conners?

A. September, 1937.

Q. What were his duties as assistant to Mr. Conners?

A. His duties were to analyze applications received in [fol. 1506] the office and take care of the records of the office.

Q. What position did Mr. Ralph Maw hold with Loew's during the period from November, 1935, through the month of August, 1939?

A. Well, from 1926 to December 1, 1937, he was a salesman in the Buffalo office, and from December 3, 1937, to date, he has been branch manager of the Buffalo exchange.

Q. His duties as branch manager are the same as the other branch managers you have referred to?

A. That is right.

Q. What position did Mr. E. K. O'Shea hold with the company from June, 1934, through June, 1939?

A. Prior to 1932 to December, 1937, Mr. O'Shea was the branch manager in charge of the Buffalo exchange, and from December, 1937, to January, 1941, he was District Manager in charge of Albany, Buffalo, Charlotte, New York and Washington offices.

Q. What were his duties as District Manager?

A. General supervision of the activities of the exchanges in his territory.

Q. His duties as branch manager were the same as the other branch managers you have referred to?

A. That is correct.

Q. What position did Mr. Ralph Pielow hold with Loew's during the period from November, 1932, through December, [fol. 1507] 1935?

A. Branch manager in charge of the Albany exchange.

Q. Do you know the total period of his employment in that capacity?

A. He was branch manager there from 1928 to 1941.

Q. His duties were the same as those of the other branch managers?

A. That is correct.

Q. What position does Mr. W. F. Rodgers hold with Loew's?

A. He is General Sales Manager.

Q. How long did he hold that position?

A. From 1936 to date.

Q. And prior to 1936 what was his position with Loew's?

A. He was Eastern Sales Manager.

Q. How long dd he hold that position?

A. Well, from prior to 1932 up to 1936.

Q. Do you have the month in 1936 in which he became General Sales Manager?

A. May.

Q. What are his duties as General Sales Manager?

A. They include not only the supervision of the activities of all sales managers, branch and district managers throughout the entire country, but he also has the power to accept or reject contracts, authority to formulate policies for the company, and they are accepted, unless disapproved [fol. 1508] by the President.

Q. What were Mr. Rodgers' duties as Eastern Sales Manager?

A. General supervision of the offices in his particular district.

Q. Were they any more than that?

A. Yes, he also was authorized, as the Sales Manager, to accept or reject applications for service.

[fol. 1509] Q. And what was the territory included under his jurisdiction when he was Eastern Manager, Eastern Sales Manager, approximately?

A. Approximately, if I remember rightly, Boston, New York, Albany, New Haven, Philadelphia, Buffalo, Cleveland, Pittsburgh, and I believe Cincinnati and Detroit.

Q. And Washington?

A. Washington, yes, sir.

Q. What position did M. M. Ryan hold with Loew's during the—strike that out. Could you give me the exact date when Mr. Rodgers became Eastern Sales Manager?

A. I think the month, but I don't have the exact date. I gave you the month before, but I don't have the exact date. Oh,—Eastern Sales Manager?

Q. Yes, when be became Eastern Sales Manager.

A. Well, from prior to 1932.

Q. I understand you first, prior to 1932. I wonder if you could give me the month?

A. No.

Q. He was with the company prior to that time?

A. Yes, sir.

Q. Do you know in what capacity he was prior to the time he became Eastern Sales Manager?

A. To the best of my recollection,—it goes back a long way—he was kind of assistant to Mr. Grainger at one time.

[fol. 1510] Q. He was General Sales Manager?

A. He was the Eastern Sales [illegible]ager at that time.

Q. He was with the company th[illegible]ughout the period that you were with it, is that right?

A. Yes, he has been there since the merger of Metro Goldwyn.

Q. What position did Mr. M. M. Ryan hold in the year 1938?

A. That is Miss Ryan.

Q. Miss Ryan.

A. She is Office Manager in the Buffalo Exchange.

Q. During what period?

A. Well, she is there now and she was there prior to 1932.

Q. Been there continuously during that time?

A. Been there a long while.

Q. What are her duties as office manager?

A. Kind of in charge of the routine work, clerical help, bookkeepers, etc., bookers.

Q. What position does Mr. W. Williams hold with the Company?

A. He is salesman in the Albany office.

Q. How long with respect to the year 1938 did he hold that position then?

A. In 1938 he was office manager in Albany.

Q. Throughout the year?

A. Yes, throughout the year 1938.

Q. And what were his duties as office manager at Albany?

[fol. 1511] A. The same as Miss Ryan.

Mr. Wright: You may cross-examine.

Mr. McClennen: No cross-examination.

Mr. Wright: That is all for now, Mr. Saunders. We will recall you later.

William Zimmerman, a witness called by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Wright:

Q. Where do you live, Mr. Zimmerman?

A. I beg your pardon?

Q. Where do you live?

A. 120 East 73rd Street, New York City.

Q. What is your occupation?

A. I am a member of the R. K. O. Legal Department and Assistant Secretary of R. K. O. Radio Pictures, Inc.

Q. How long have you held that position?

A. I have been a member of the R. K. O. Legal Department for approximately 10 years, but have been made an assistant secretary within the last few months.

Q. You have been designated by R. K. O. Radio Pictures [fol. 1512] to produce the documents which were subpoenaed from that company by the Government for production at the trial of this case?

A. I have been so designated.

Q. Have you brought with you the series of documents marked exhibits 516 to 537, inclusive for identification?

Mr. Wright: I thought these had been marked. Maybe we better have a recess and mark them.

The Court: All right, we will stand in recess for five minutes.

(Short recess.)

(During the recess various documents, referred to above, were then marked as Plaintiff's Exhibits Nos. 516 to 537, inclusive for identification.)

Q. Pursuant to that subpoena, have you brought with you the series of documents marked Exhibits 516 to 537, inclusive for identification?

A. I have.

Q. And those are the documents you have here in this folder?

A. They are.

Q. In the course of your employment by R. K. O., have you had occasion to become familiar with the duties and titles of the various sales personnel?

A. I have.

[fol. 1513] Q. What position did Charles Boasberg hold with R. K. O. Radio Pictures during the month of January 1938?

A. During the month of January, 1938, Charles Boasberg held the position of Buffalo Branch Manager.

Q. Do you know how long he held that position?

A. He held that position from March 22nd, 1937 to June 3rd, 1940.

Q. What were his duties as Buffalo Branch Manager?

A. As Buffalo Branch Manager, his duties were the supervision of the personnel of the branch. The personnel consisted of salesmen, whose duties were to solicit license applications and to assist in the liquidation of contracts; the bookers who arranged for the exhibition dates of the pictures licensed for the various exhibitors of the Buffalo territory; the back force—the back room force who arranged for the delivery of the prints to the theatres licensed to exhibit the pictures, and who also inspected and repaired the prints to see that they were in condition to be used when delivered; the members of the collection department who, as may be assumed, arranged for the collection of the moneys due resulting from the exhibition of pictures; also there were a general stenographic and clerical force. In addition, the Buffalo Branch Manager personally negotiated the more important license applications in his territory and would [fol. 1514] assist, upon request, the various salesmen in the more difficult negotiations for license applications. Further all license applications obtained by the salesmen would be submitted to the branch manager for his approval before being sent to the home office for final approval.

Q. What position did Mr. Jack Chinnel hold with R. K. O. during the year 1938?

A. Mr. Jack Chinnel was then employed, and my records indicate, is still employed as salesman in the Buffalo Branch.

Q. What were his duties as such salesman?

A. His duties, as I have indicated before, the solicitation of license applications from the exhibitors assigned to him by the branch manager and assisting in the liquidation of the license applications obtained by him, which had ripened into contracts by reason of home office approval.

Q. What position did Mr. Harry T. Dixon hold during the period August, 1932 through March, 1936?

A. He was our Buffalo Branch Manager.

Q. He was Mr. Boasberg's predecessor?

A. He was not Mr. Boasberg's immediate predecessor.

Q. When did he cease being Branch Manager, then?

A. July 25th, 1936.

[fol. 1515] Q. And then who became Branch Manager?

A. Mr. T. J. Walsh who was Branch Manager from July 27th, 1936 to April 3rd, 1937.

Q. That was when Mr. Boasberg took over?

A. He took over a few weeks later.

Q. And the duties of Mr. Dixon and Mr. Walsh were the same as those of Mr. Boasberg?

A. They were.

Q. What position did Mr. C. R. Halligan hold during the period from September, 1932 through January, 1937?

A. He was the Albany Branch Manager.

Q. Do you know the total period of time he held that job?

A. He held that job from January 2nd, 1932 to May 29th, 1937.

[fol. 1516] A. And during that period his duties were the same with respect to that exchange as those of the other managers you have mentioned?

A. They were.

Q. What position did Mr. Bernard G. Kranze hold during the period from May, 1935, through November, 1938?

A. He was Albany branch manager.

Q. When did he become Albany branch manager?

A. He became Albany branch manager May 31, 1937, and continued as branch manager until April 7, 1941.

Q. And his duties were the same as those of Mr. Halligan?

A. They were.

Q. What position did Mr. E. L. McAvoy hold during the period from August, 1932, through November, 1938?

A. Mr. E. L. McAvoy was Eastern Division Sales Manager during that period.

Q. And do you know when he first assumed that position?

A. He first became Eastern Division Sales Manager in June of 1932 and continued in that capacity through October, 1939.

Q. What were his duties as Eastern Sales Manager?

A. As Eastern Division Sales Manager he was in charge of the Eastern and Southern portion of the United States, having under him the various branches located in that territory, and the district managers operating within that [fol. 1517] territory. He first had, in a general way, supervision over the activities of the branches, the branch managers and the district managers, in obtaining license applications and liquidation of contracts. In addition, with respect to the more important license applications in his territory, he would participate in the negotiations for such licenses. He would assist in difficult negotiations when requested to do so by the district manager. Further, he was delegated by the executive in charge of his Division with authority to finally approve the great majority of the license applications obtained from theatres located in his territory.

Q. Could you give us, roughly, the boundaries of his territory?

A. That changed from time to time and I do not know the geographical limits, but I do know that it included at all times Albany, Buffalo, Cincinnati, Cleveland, Washington, and, of course, New York.

Q. What position did Mr. H. J. Michalson hold with R. K. O. during the year 1936?

A. I think at that time he had already been designated as Short Subjects Sales Manager, but I don't have any record and it would be merely a conjecture on my part.

[fol. 1518] Q. You don't know what position he held on March 12, 1936?

A. I have just answered that, Mr. Wright.

Q. Could you find out for us and let us know?

A. I should be able to.

Mr. Wright: I take it that a letter from Mr. Zimmerman would be sufficient?

Mr. McClennen: A letter from Mr. Zimmerman would be deemed the same as his testimony.

Q. What position did Mr. William Dahler hold with R. K. O. during 1938?

A. I haven't the record before me and this would be in the nature of a conjecture. I would rather get the record on that.

Q. Could you tell us specifically what his position and duties were—could you find out for us and incorporate in a letter what his position and duties were—as of May 24, 1938?

A. I certainly will.

Mr. Wright: I take it that will also be acceptable in lieu of Mr. Zimmerman's testimony?

Mr. McClennen: The statement of what he was in what period would be all right. I think the letter had better not state anything about the duties because that might involve our wanting to ask some further questions.

[fol. 1519] By Mr. Wright:

Q. Do you know what duties Mr. Dahler had while employed by R.K.O.?

A. Mr. Dahler is still employed by R.K.O. I know the nature of the duties he now has.

Q. What capacity is he employed in now?

A. He is employed in the Contract Approval Department of the home office, with respect to the Eastern Division territory.

Q. And you don't know whether he held the same position in 1938?

A. I am not sure. I believe he did, but I am not positive.

Q. That will appear from your letter, I take it?

A. Yes.

Q. What are his duties as contract manager?

A. His duties are to examine the license applications as they come in from the branches, to compare their terms with the terms received from the same exhibitor with respect to that theatre in previous license applications and to advise after making such analysis, the Eastern Division Sales Manager concerning the approval or disapproval of the license applications.

Q. Do you have any knowledge as to what Mr. Michalson's duties are, or were?

A. During 1936?

[fol. 1520] Q. At any time.

A. Well, yes, I have a knowledge of what his duties were.

Q. At that time during that year?

A. Not during that year but prior to 1936.

Q. What was he doing then?

A. Prior to 1936 he was district manager in charge of a district, which included the Cincinnati and Cleveland branches, and later included the Buffalo branch.

Q. You don't know whether he continued in that capacity through March 1, 1936, or not?

A. My records indicate that he continued as district manager to July, 1935.

Q. Do your records show what he did after that date?

A. My records do show.

Mr. Wright: Well, as I understand it, you are unwilling to accept a letter from Mr. Zimmerman as to what Mr. Michalson's duties were on that day, but you are willing to accept a letter as to what his position was?

Mr. McClennen: Yes. I take it in the course of Mr. Zimmerman's testimony he will have stated the duties connected with the different positions, and if the letter is merely confined to the time when the men in question held [fol. 1521] those positions the whole field will be covered, and I suppose if anything was said in the letter about what his duties were that it could probably be acceptable, but it occurs to me that there might be something come in on which I would want to know more.

The Court: These positions run the same, don't they? I mean practically the same?

Mr. McClennen: Yes.

The Court: If he was district manager we have already the evidence as to what the duties of a district manager are.

Mr. McClennen: If his letter merely says that he was district manager during such a period it would cover the whole field.

The Court: Well, he can submit the letter.

By Mr. Wright:

Q. Mr. Jules Levy was the General Sales Manager, was he not, for the period from March, 1932, during October, 1939?

A. Yes.

Q. And what were his duties as General Sales Manager?

A. His duties as General Sales Manager were to assist the executive in charge of distribution in the formulation of [fol. 1522] a general sales policy, to personally participate with the executive in charge of distribution or alone in negotiations for the more important license applications.

Q. To whom are you referring as the executive in charge of distribution?

A. The executive in charge of distribution was Ned E. Depinet.

Q. That is, he held the position of Vice President in charge of distribution during the same period?

A. He did.

Q. And Mr. A. W. Smith, Jr., was General Sales Manager from June, 1940, to July, 1942, was he not?

A. He was.

Q. And his duties during that period were the same as Mr. Levy's?

A. They were.

Q. Then from July, 1942, to date, Mr. Robert Mochrie has been General Sales Manager?

A. He has.

Q. And his duties are the same as the others?

A. They are.

Q. Then Mr. A. W. Smith, Jr., became Eastern Division Sales Manager in October, 1939, and continued in that position to June, 1940, did he not?

A. He did.

[fol. 1523] Q. And his duties in that capacity were the same as those of Mr. McAvoy?

A. They were.

Q. And Mr. Robert Mochrie held the position of Eastern Division Sales Manager from June, 1940, to July, 1942, did he not?

A. He did.

Q. And his duties as such were the same as those of Mr. Smith and Mr. McAvoy?

A. They were.

Q. Since July, 1942, the position of the Eastern Division Sales Manager has been held by Mr. Nat Levy?

A. That is correct.

Q. His duties were the same as those of his predecessors?

A. They are.

Q. During the period from January, 1932, through December, 1943, the Cincinnati branch manager has been Mr. S. C. Jacques?

A. Mr. S. C. Jacques, he is still employed as branch manager.

Q. January, 1932, to date?

A. Yes.

Q. Mr. H. H. Greenblat was manager of the Cleveland exchange, was he not, from August, 1933, until May 8, 1939?

[fol. 1524] A. That is correct.

Q. And the duties of Mr. Greenblat and Mr. Jacques were the same as those of the other exchange managers?

A. They were.

Q. And the manager of the Washington exchange was Mr. R. J. Folliard, from May 2, 1932, to August 1, 1942?

A. That is correct.

Q. And from that time to date that position has been held by Mr. J. D. Brecheen?

A. It has.

Q. And his and Mr. Folliard's duties were the same as the other exchange managers you have described?

A. They were.

Mr. Wright: You may cross-examine.

Mr. McClennen: Nothing.

[fol. 1525] Mr. Wright: Mr. Zimmerman says he can identify the two employees I asked him about. I will ask him to resume the stand and do that, and then we will recall Mr. Saunders.

William Zimmerman resumed the stand in behalf of the Plaintiff, testified further as follows:

Further direct examination.

By Mr. Wright:

Q. Can you now tell us what Mr. H. J. Michaelson's position was, Mr. Zimmerman, on March 12th, 1936?

A. Yes, he was "R.K.O. Short Subject Sales Manager" located at the home office.

Q. What period did he hold that position?

A. I don't know the period he held that position, except I know he is still holding it.

Q. What were his duties?

A. His duties were to generally supervise the solicitation for license applications, solicitation of license applications for short subjects by the R.K.O. branches, Branch Managers and District Managers throughout the United States, to formulate policy, sale policy with respect to the licensing [fol. 1526] of short subjects and to personally negotiate some of the more important license applications.

Q. Now, can you tell us what Mr. William Dahler's position was on May 24th, 1938?

A. His position was the same as the one he now holds, namely, in the Contract Approval Department at the home office.

Q. And I believe you already described his duties?

A. Yes, sir, I did.

Mr. Wright: Thank you, that is all.

Edward M. Saunders recalled for the Plaintiff, having been previously sworn, was examined and testified as follows:

Direct examination.

By Mr. Wright:

Q. Mr. Saunders, you have produced here, have you not, the license contracts subpoenaed from Loew's, Inc., by the Government for production at the trial of this case?

A. Yes, sir, I have.

Q. And I will ask you for the agreements which have been produced in response to paragraph 2 of the subpoena returnable May 19th, which calls for all license agreements for the exhibition of feature pictures in the following towns [fol. 1527] entered into during the periods indicated with respect to each town: Bucyrus, Ohio, January 1st, 1934 to January 1, 1936; Van Wert, Ohio, January 1, 1934 to December 1, 1935; Tiffin, Ohio, January 1, 1936 to March 1, 1938; Medina, Ohio, January 1, 1937 to January 1, 1939; Mount Vernon, Ohio, June 1, 1934 to January 1, 1941; Corbin, Kentucky, August 1, 1938 to May 1, 1940; Paris, Kentucky, June 1, 1937 to June 1, 1940.

A. They are here.

Q. Those are the documents placed in this folder which we will ask to have marked as exhibit——

The Court: Is it already marked?

Mr. Wright: 604.

The Court: What?

Mr. Wright: This will be marked 604 for identification, because there is an intervening group of Warner documents that have already been marked, but which have not yet been produced here.

The Court: You referred to these before as 410 to 515.

Mr. Wright: 515 is the last exhibit number, but inasmuch as these Warner documents have already been marked by him, 515 to 603, inclusive——

[fol. 1528] The Court: Warner documents?

Mr. Wright: Yes, there are documents which will be identified by the Warner representative. He wasn't here at the moment, so in order to proceed and not throw those out of order we will give the Loew numbers beginning with 604 and the intervening numbers will be filled in with Warner documents.

The Court: They are marked already, 410 to 515?

Mr. Wright: Those are the R.K.O. documents.

The Court: Yes, that is what you are inquiring about now.

Mr. Wright: No, what we are inquiring about now are license agreements produced by Loew's, Inc., and we are asking to have the first exhibit marked with No. 604, because we have already marked some intervening Warner documents with the numbers 516 to 603.

The Court: These have not been marked before at all?

Mr. Wright: No.

The Court: I thought you were going back to the other documents.

Mr. Wright: These are new exhibits.

The Court: What number is it?

Mr. Wright: This folder produced in response to para-[fol. 1529] graph 2 of the subpoena of May 19, 1944, which I just read, will be marked Exhibit No. 604 for identification.

(Thereupon folder containing documents above referred to was marked as Plaintiff's Exhibit No. 604 for identification.)

Mr. Wright: I have been reading paragraph 2 of the subpoena, and my attention has been called to the fact that I omitted the latter part of it which reads as follows:

"Lockport, New York, motion picture seasons 1931-32 to 1935-1936, inclusive; Norwich, New York, 1931-1932 to 1937-1938, inclusive; Amsterdam, New York, 1931-1932 to 1936-1937, inclusive; Massena, New York, 1931-1932 to 1934-1935, inclusive; Little Falls, New York, 1931-32 to 1935-1936, inclusive."

Q. Mr. Saunders, have you the documents, or what documents have you produced in response to paragraph 3 of the subpoena which calls for all license agreements entered into between June 1, 1934 and July 1, 1938, which provide for the second-run or subsequent-run exhibition of feature pictures in Ashland, Ohio?

[fol. 1530] A. They are here.

Q. In this folder, which we will have marked as Plaintiff's Exhibit No. 605 for identification?

A. Yes, sir.

(Thereupon folder containing documents above referred to was marked as Plaintiff's Exhibit No. 605 for identification.)

Q. Have you produced all license agreements entered into between May 1, 1935 and March 1, 1938, which provide for the exhibition of feature pictures in the Star Theatre, Delaware, Ohio?

A. I understand it cannot be found.

Q. You have no such agreements in your file?

A. It cannot be located.

Q. Do you have any record which shows they were entered into, that you did have such agreements?

A. There is no contract, I understand. A search has been made for them so far and they are not able to locate them.

Q. They are not in your file?

A. No.

By the Court:

Q. Would there be any book records?

A. Could be, I don't know.

[fol. 1531] Q. What?

A. Could be, it is possible.

Q. I mean, with reference to the agreements?

A. Possible.

By Mr. Wright:

Q. Do you have all license agreements entered into between January 1, 1935 and January 1, 1941, which provide for the second-run or subsequent-run exhibition of feature pictures in Van Wert, Ohio?

A. Yes, sir.

Q. They are here?

A. Yes, sir.

Q. Those are the documents in this folder marked as Exhibit No. 606 for identification?

A. Yes, sir.

(Thereupon folder containing documents above referred to was marked as Plaintiff's Exhibit No. 606 for identification.)

Q. Have you produced all license agreements entered into between June 1, 1936 and October 1, 1939, which provide for the exhibition of feature pictures in the Opera House, Lexington, Kentucky?

A. That is paragraph 6?

Q. That is contained in paragraph 6 of the subpoena?

[fol. 1532] A. We have.

Q. Those are in this folder marked Plaintiff's Exhibit No. 607 for identification?

A. Yes, sir.

(Thereupon folder containing documents above referred to was marked as Plaintiff's Exhibit No. 607 for identification.)

By Mr. Wright:

Q. Have you all license agreements entered into between August 1, 1937 and August 1, 1938, which provide for the second-run or subsequent-run exhibition of feature pictures in Corbin, Kentucky?

A. Paragraph 7.

Q. Those are in this folder marked paragraph 7 which we will have marked as Plaintiff's Exhibit No. 608 for identification?

A. Yes, sir.

(Thereupon folder containing documents above referred to was marked as Plaintiff's Exhibit No. 608 for identification.)

Q. Have you all license agreements entered into between June 1, 1938 and January 1, 1-42, which provide for the second-run or subsequent-run exhibition of feature pictures in Harlan, Kentucky?

[fol. 1533] A. In this folder.

Q. In the folder marked paragraph 8 which we will have marked as Exhibit No. 609 for identification?

A. Yes, sir.

(Thereupon folder containing documents above referred to was marked as Plaintiff's Exhibit No. 609 for identification.)

Q. Do you have all license agreements entered into between January 1, 1932 and September 1, 1937, which provides for the exhibition of feature pictures in the Strand Theatre, Seneca Falls, New York?

A. Yes, those are marked paragraph 9.

Mr. Wright: Which we will have marked as 610 for identification.

(Thereupon folder containing documents above referred to was marked as Plaintiff's Exhibit No. 610 for identification.)

Q. Do you have all license agreements entered into between June 1, 1931 and May 1, 1939, which provide for the exhibition of feature pictures in the Fox, State, Plaza or Palace Theatres, Corning, New York?

A. In this folder marked paragraph 10.

Mr. Wright: Which we will ask to have marked for identification as Exhibit No. 611.

[fol. 1534] (Thereupon folder containing documents above referred to was marked as Plaintiff's Exhibit No. 611 for identification.)

Q. Do you have all license agreements entered into between January 1, 1932 and January 1, 1940, which provide for the second-run exhibition of feature pictures in Auburn, New York?

A. In this folder marked paragraph 11.

Mr. Wright: Which we will ask to have marked as Exhibit No. 612 for identification.

(Thereupon folder containing documents above referred to was marked as Plaintiff's Exhibit No. 612 for identification.)

Q. Do you have all license agreements entered into between January 1, 1932 and January 1, 1939, which provide for the second-run exhibition of feature pictures in the Olymbic, Strand, Liberty, Victoria or Palace Theatres, Watertown, New York?

A. Here it is, folder marked paragraph 12.

Mr. Wright: Which we ask to have marked as Exhibit No. 613 for identification.

(Thereupon folder containing documents above referred to was marked as Plaintiff's Exhibit No. 613 for identification.)

[fol. 1535] Q. Do you have there the documents produced in response to paragraph 20 of the subpoena described as all license agreements for the exhibition of motion pictures in the following towns entered into during the periods indicated with respect to each town: Pikeville, Kentucky, motion picture seasons 1933 through 1936 and 1943-44, inclusive; Lexington, Kentucky, 1934-35 and 1940-1942?

A. We have been unable to locate anything in Lexington for 1934-35 season. The others are here.

Q. And Salisbury, Maryland, 1934-35 through 1943-44?

A. Yes, sir.

Q. You have there Harlan, Kentucky, 1936-37 and 1943-44?

A. Yes, sir.

Q. Maysville, Kentucky, 1933-34 through 1941-42?

A. Yes, sir.

Q. Corbin, Kentucky, 1943-44?

A. Yes, sir; Corbin is here.

Q. Middlesboro, Kentucky, 1935-36 through 1940-41?

A. Yes, sir.

Q. Richmond, Kentucky, 1933-34 through 1937-38?

A. Yes, sir.

Q. Cumberland, Maryland, 1935-36 and 1943-44?

A. Yes, sir.

Q. Easton, Maryland, 1934-35 and 1940-41?

A. That is right.

[fol. 1536] *A.* St. Michaels, Maryland, 1935-36 through 1940-41?

A. I don't see any St. Michaels here. I find that St. Michaels apparently hasn't been located.

Q. You produce no such agreement for St. Michaels?

A. No, I see none here.

Q. Federalsburg, Maryland, 1934-35 through 1940-41?

A. Yes, sir.

Q. Hurlock, Maryland, 1934-35 through 1940-41?

A. Yes, sir.

Q. Those you produce in response to this paragraph 20 are in this folder marked paragraph 20?

A. That is correct.

Mr. Wright: I will ask to have that marked as Exhibit No. 614 for identification.

(Thereupon folder containing documents above referred to was marked as Plaintiff's Exhibit No. 614 for identification.)

Q. Have you produced the documents called for in paragraph 1 of the subpoena returnable June 3rd, 1944, paragraph 1 of which calls for all license agreements for motion pictures entered into between January 1, 1935 and September 1, 1940 with Ralph T. Kemper, Halmer D. Schreffler, Tom Gregory, Louise Stoll (Mrs. Francis D. Reeh), Belpik Theatre Corporation, Schine-Shelby corporation, Schine [fol. 1537] Chain Theatres, Inc., Schine Enterprise Corporation, Schine Circuit, and Schine Theatrical Co., Inc., which provide for the exhibition of motion pictures in the Castamba, State and Opera House Theatres in Shelby, Ohio?

A. In this folder marked paragraph 1.

Mr. Wright: Which we will ask to have marked as Plaintiff's Exhibit No. 615 for identification.

(Thereupon folder containing documents above referred to was marked as Plaintiff's Exhibit No. 615 for identification.)

Q. Have you all license agreements for motion pictures entered into between January 1, 1933 and September 1, 1938, with Arthur J. Buck, Ural Buck, C. Kahn, Ted Vermos, Belpik Theatre Corporation, Civic Theatres, Inc., Fostoria Theatres Corporation, Schine Chain Theatres, Inc., Schine Enterprises Corporation, Schine Circuit and Schine Theatrical Co., Inc., which provide for the exhibition of motion pictures in the Civic, Roxy, State and Colonial Theatres in Fostoria, Ohio?

A. In this folder marked paragraph 2.

Mr. Wright: Which we will ask to have marked as Exhibit 616 for identification.

[fol. 1538] (Thereupon folder containing documents above referred to was marked as Plaintiff's Exhibit No. 616 for identification.)

Q. Have you there all license agreements for motion pictures entered into between January 1, 1936 and September 1, 1940, with P. E. Essick, Myer Fine, Medina Temple Theatre Company, Medina-Princess Corporation, Medina Amusement Company, Schine-Medina Corporation, Schine Chain Theatres, Inc., Schine Circuit and Schine Theatrical Co., Inc., which provide for the exhibition of motion pictures in the Medina Temple and Princess Theatres at Medina, Ohio?

A. Those are paragraph 3.

Mr. Wright: Which we will ask to have marked as Plaintiff's Exhibit No. 617 for identification.

(Thereupon the folder containing documents referred to was marked as Plaintiff's Exhibit No. 617 for identification.)

Q. Have you produced in response to paragraph 1 of the subpoena served on Loew's, Inc., returnable August 15, 1944, the documents called for in the first paragraph, which asks for all franchises and master agreements made between you and Schine Chain Theatres, Inc., Schine Circuit, Inc., Schine Theatrical Company, Inc., Schine Enterprises, Schine-Lexington Corporation, Helpik Theatres, Inc., or [fol. 1539] Chesapeake Theatres Corporation, for the exhibition of feature films released by you during one or more of the motion picture seasons, 1931-32 to 1940-41, inclusive?

A. They are here in this folder marked paragraph 1, the one being apparently a photostatic copy.

Q. You have in this folder marked paragraph 1, a document entitled "Loew's, Inc., with Schine Enterprises Corporation," covering the seasons 1936-37 and through 1939-40, of which there is also a photostat in the folder?

A. A photostat in the folder, yes. It is the same thing, yes.

Mr. Wright: We will ask to have this folder containing those documents marked as Exhibit No. 618 for identification, and as I understand it, Loew's wishes to withdraw the original, and if that is agreeable to the counsel for defendants, and use the photostat?

Mr. McClennen: There is in the folder now an original and a photostat?

Mr. Wright: Yes.

Mr. McClennen: We have no objection to the original being withdrawn.

Mr. McKay: I would like to know if that is the same as L-1?

Mr. McClennen: Is that the same as L-1 that was asked for [fol. 1540] from us?

Mr. Wright: I understand that it is, with the difference that I recall your document marked L-1 was unsigned and, of course, may have had pencil notations which are not on here.

The Court: Mark it.

Mr. Wright: That is marked as Exhibit 618 for identification.

(Thereupon the folder containing documents above referred to was marked as Plaintiff's Exhibit No. 618 for identification.)

Q. Paragraph 3 calls for all printed schedules of feature motion picture films released by you during the period from August 1, 1931 to September 1, 1941. Do you have those schedules?

A. I have that in this folder marked paragraph 3.

Mr. Wright: We will ask to have that marked as exhibit 619 for identification.

(Thereupon the folder containing documents above referred to was marked as Plaintiff's Exhibit No. 619 for identification.)

Q. Paragraph 4 calls for contract or license agreement dated January 21, 1933, with Breckenridge Theatre Circuit and signed by Ed. Breckenridge for that Company, for [fol. 1541] feature pictures for exhibition at New Court Theatre, Bellefontaine, Ohio.

A. We have been unable to find it.

Q. You have made a search for it?

A. We have made a search for it and have been unable to find it.

Q. Paragraph 5 calls for contract or license agreement dated April 13, 1933, signed by M. A. Lebensburger for Opera Theatre Company, dated April 13th, 1933, for feature pictures for use at New Court Theatre, Bellefontaine, Ohio?

A. In this folder marked No. 5.

Mr. Wright: We will ask to have that marked as Exhibit No. 620 for identification.

(Thereupon the folder containing documents above referred to was marked as Plaintiff's Exhibit No. 620 for identification.)

Q. Paragraph 6 calls for contract or license agreement dated May 23rd, 1933 with Schine Theatrical Company, signed for it by George Lynch, for feature motion pictures for use in the Holland Theatre, Bellefontaine, Ohio?

A. In this folder marked paragraph 6.

Mr. Wright: Which we will ask to have marked as Exhibit No. 621, for identification.

[fol. 1542] (Thereupon the folder containing documents above referred to was marked as Plaintiff's Exhibit No. 621 for identification.)

[fol. 1543] Mr. Wright: That is all. There may be one thing that we will wish to recall Mr. Saunders for. I was under the impression that there was an inter-office memorandum or two, which was previously identified, which we would like to have him identify before he leaves today. We haven't had here now. We will check that during the recess.

I do not think we have another witness ready here at this time.

The Court: How many more will we have?

Mr. Wright: There will be Mr. Doherty to identify the Warner documents and Mr. Zimmerman will identify the R.K.O. license agreements, and then we will have possibly either Mr. Murray or Mr. McGrath to identify the Universal and United Artists license agreements, and I believe that will complete the distributor representatives. The Columbia representative was not able to get here at this time, so that his documents will be handled next week. When we conclude with that we would like to finish the identification of the documents produced in response to the Schine [fol. 1544] subpoena.

The Court: At this time, you mean?

Mr. Wright: Yes, after we get through with the distributor representatives.

Mr. McClennen: We will ask your Honor not to sit after 4 o'clock because the trains going out with the various Counsel are leaving then.

The Court: I thought perhaps we would conclude the testimony by that time.

Mr. Wright: We will do the best we can.

The Court: We will stand recessed until 2 o'clock.

(Whereupon a recess was taken until 2 o'clock P. M.)

[fol. 1545] After Recess, 2 P. M.

Appearances: Same as before noted.

Edward M. Saunders, a witness recalled by and on behalf of the Plaintiff, having been previously sworn, was examined and testified further as follows:

Direct examination.

By Mr. Wright:

Q. Mr. Saunders, I show you this letter of August 31, 1937. It appears to be a copy of a letter from Mr. O'Shea to Mr. Drew, which has been marked Exhibit 504 for identification, and ask you if that is the document you said you had been unable to find this morning?

A. I don't recall the document you refer to, but I would say this is a copy of a letter from Mr. O'Shea to Mr. Drew.

Q. This is a document which was produced by you pursuant to the subpoena that was served on Loew's, Inc.?

A. This is the one we did not have, isn't it?

Q. Yes.

A. I would say this is a copy, as I said before, from Mr. O'Shea to Mr. Drew, and if you requested such a letter, I would say it is a copy of it.

[fol. 1546] Q. It came from Loew's file?

A. Yes, sir.

Q. I show you these documents that have been respectively marked for identification as Plaintiff's Exhibits 2, 13 and 58, ~~and ask you if those are~~ also documents which were produced by you pursuant to the subpoena served on Loew's, Inc.?

A. Well, I would say that this is a photostat copy of a letter written to our Cleveland office by the Memorial Theatre, Mount Vernon, Ohio, written from Cadiz, Ohio.

Q. You are referring by "this" to the document marked Exhibit 2 for identification?

A. Yes, sir.

Q. And this Exhibit 2 you believe came from your files, Loew's files?

A. I would imagine so, yes. I would think so.

Mr. McClennen: If your Honor please, may that answer be stricken out?

The Court: Yes.

Q. If you have any doubt about the matter, is there any one who could give us more information than you? As I understand it, these documents that you have in your hands, which were previously identified, were all furnished to us by your company pursuant to the subpoena. If that is the fact I want to know it now.

[fol. 1547] A. These were supplied by our company.

Mr. McClennen: Just a minute. That recital, I think, should go out.

The Court: Strike it out.

Mr. McClennen: If this witness knows anything about these things there is no objection to his stating it, but we do not want his inferences.

The Court: Strike it out. He may state what knowledge he has of the existence of them and the source of his information. Where did you get that information?

The Witness: I got these letters from this gentleman here (indicating Mr. Wright).

Mr. Wright: These letters had been previously marked for identification in the suit back in June.

The Witness: May I ask, as you show them to me, were they submitted by our company?

Mr. Wright: That is correct.

The Witness: I do not think there is any question about them then. If they are submitted by our company they are photostatic copies taken from our file.

Mr. McClennen: May that go out, if your Honor please?

The Court: It may go out.

[fol. 1548] By Mr. Wright:

Q. If you don't know who with your company do you think could give us that information? As I understand it, you are the one who is designated to respond here to the subpoena.

A. I say again, if these, as you give them to me, were submitted by our company, I would say definitely they are from our files.

[fol. 1549] Mr. Wright: If the Court please, we specified the documents that we wanted to have identified in the letter to Loew's, Inc., asking them to send a representative who would be able to make the identification.

Mr. Caskey: These are not in that letter, Mr. Wright, you can't say that to the Court.

Mr. Wright: These are not?

Mr. Caskey: No, sir, they are not in that letter. You ought to withdraw that statement.

Mr. Wright: If they are not in there, they are not. I assumed we included them in the list.

The Court: By letter, you mean by that the letter of request?

Mr. Wright: Yes, there was a letter written August 31st.

Mr. Caskey: That letter refers to 410 to 508.

Mr. Wright: These documents here that had been previously identified were not included in the list of specified documents. I thought they had been, they should have been so included and were omitted by error. As I understand it, there is no question about the fact that they did come from the files of Loew's, Inc. The documents were produced here last June by the representatives of that company at the [fol. 1550] time we had them marked.

The Court: The custodian of the records will have to be brought here, somebody in the office in charge of the files that will know whether it was there or it wasn't there, if Mr. Saunders doesn't know.

Mr. Wright: I would assume so. That is why I asked Mr. Saunders if he could not give us the information on that, who could.

Mr. McClennen: I take it it isn't anything this witness can testify about. Doubtless these can be traced to see whether —

Mr. Wright: Yes, I suppose we can call the secretary of the company and put him on the stand and ask him about them and, if he didn't know, call somebody else and on ad infinitum. We would like, for the convenience of all, to shorten it up as much as we can. I understand there isn't any question they did come from the files.

The Court: Apparently Mr. Saunders hasn't sufficient knowledge to testify.

By Mr. Wright:

Q. Mr. Saunders, will you undertake to find out and let us know who, in your company can supply us with information [fol. 1551] as to whether or not those documents did or did not come from the files of Loew's, Inc.?

A. Yes, I will be glad to. Will you just let me see them until I make a memorandum of what they are. I will be glad to do it.

Q. They are a letter dated January 15th, 1935 from E. Long, Memorial Theatre, Mount Vernon, Ohio, addressed to Metro-Goldwyn-Mayer Distributing Corporation at Cleveland, Ohio, dated January 15th, 1935?

A. January 15th to Metro-Goldwyn-Mayer, Cleveland.

Q. That was the document which was identified here as Exhibit 2. The document identified here as Exhibit 13 is a copy of a memorandum or letter from T. Dillard to F. D. Drew, dated April 7th, 1938, and relating to the subject matter, "Memorial Theatre, Mount Vernon."

The Court: The one mentioned here is the employee of the company.

Mr. Wright: Yes.

The Court: Is he still in the employ of the company?

The Witness: He is in the service at the present time.

Mr. Wright: Exhibit No. 58, which I believe was previously identified here by Mr. A. J. Buck is a letter from Mr. Buck to Mr. W. Rodgers; A. J. Buck, it is signed, addressed to Mr. W. Rodgers, Metro-Goldwyn Corporation, New York [fol. 1552] City, and is dated April 4th, 1936.

The Witness: I will be glad to look into this for you.

Mr. Wright: Are you willing to accept a letter from Mr. Saunders setting forth the result of his investigation, or will it be necessary for us to call some one else to state the facts in the event Mr. Saunders satisfies himself that they did come from their files?

Mr. McClennen: That will depend on whether on investigation we find that they did come from those files. If we find that they did, we shan't insist on formal proof. If there is doubt about it, we don't want it proved by a letter from a witness who manifestly knows nothing about it.

The Court: The question now is whether you are going to be satisfied they did come from the files by what proof is submitted.

Mr. Wright: He, as I understand it, is going to undertake to find out and advise us by letter. What I wanted to find out was whether his letter would satisfy you, or whether you would want testimony from him or somebody else.

Mr. McClennen: It will depend on what the letter says and what we find out.

[fol. 1553] The Court: You haven't seen the letter.

Mr. McClennen: I mean the proposed letter.

By Mr. Wright:

Q. After you have made your investigation to determine whether or not they did come from your files, will you write us a letter as to what is the result of the investigation and send a copy to Mr. McClennen?

A. I will be glad to.

Mr. Wright: Thank you very much.

The Witness: Are you through with me? Can I leave town now? Are you through with me?

Mr. Wright: Yes, sir.

The Witness: Thank you.

William Zimmerman was recalled as a witness in behalf of the Plaintiff, having been previously sworn, was examined and testified further as follows:

Direct examination.

By Mr. Wright:

Q. Mr. Zimmerman, did you bring with you the license agreements which were subpoenaed from R.K.O. Radio Pictures, Inc., by the Government for production at the trial here?

[fol. 1554] A. I brought over such documents as we had in our possession.

Q. Can you point out the documents produced in response to paragraph 2 of the subpoena returnable May 19, 1944, which calls for all license agreements for the exhibition of feature pictures in the following towns entered into between the periods indicated by respect to each town:

Norwalk, Ohio, January 1, 1934 to May 1, 1937;
Van Wert, Ohio, January 1, 1934 to December 1, 1935;
Tiffin, Ohio, January 1, 1936 to March 1, 1938;
Corbin, Kentucky, August 1, 1938 to May 1, 1940;
Paris, Kentucky, June 1, 1937 to June 1, 1940;
Shelby, Ohio, January 1, 1937 to January 1, 1939;
Mt. Vernon, Ohio, June 1, 1934 to January 1, 1941;
Delaware, Ohio, January 1, 1934 to April 1, 1938;
Bucyrus, Ohio, January 1, 1934 to November 1, 1935;
Auburn, New York, for the Motion Picture Seasons, 1932-33 to 1935-36 inclusive;
Norwich, New York, for the seasons, 1931-32 to 1937-38 inclusive;
Amsterdam, New York, for the seasons, 1931-32 to 1936-37 inclusive;
Little Falls, New York, for the seasons 1931-32 to 1935-36 inclusive?

[fol. 1555] A. In this folder I produce all of the documents which we have in response to paragraph 2 of that subpoena.

Mr. Wright: This folder is the one which is marked paragraph 2, which we ask to have marked as Exhibit 622 for identification.

(The folder referred to was marked as Plaintiff's Exhibit 622 for identification.)

Q. Have you there all license agreements entered into between June 1, 1934, and July 1, 1938, which provide for the second-run or subsequent-run exhibition of feature pictures in Ashland, Ohio?

A. I have in this folder all of the documents called for by paragraph 3 of the subpoena of May 19, 1944, which we have in our possession.

Q. By "this folder" you are referring to this folder which is marked Exhibit 623 for identification?

A. I am.

(The folder containing documents called for by paragraph 3 of the subpoena of May 19, 1944, was marked as Plaintiff's Exhibit 623 for identification.)

Q. You have a folder there marked paragraph 4, which contains the documents produced in response to paragraph 4 of this subponea calling for all license agreements [fol. 1556] entered into between June 1, 1936, and October 1, 1939, which provide for the exhibition of feature pictures in the Opera House, Lexington, Kentucky?

A. I have in this folder marked paragraph 4 those documents which we have in our possession called for by that paragraph.

Mr. Wright: I ask to have that marked as 624 for identification.

(The folder containing documents called for in paragraph 4 was marked as Plaintiff's Exhibit 624 for identification.)

Q. You have there all license agreements entered into between August 1, 1937 and August 1, 1938, which provide for the second-run or subsequent-run exhibition of feature pictures in Corbin, Kentucky?

A. I have such as are called for by paragraph 5 of the subpoena as we have in our possession.

Q. I understand that you are producing no documents in response to paragraph 5? That calls for license agreements entered into between August 1, 1937, and August 1, 1938, which provide for the second-run or subsequent-run exhibition of feature pictures in Corbin, Kentucky?

A. We haven't been able to locate any such documents.

Mr. Wright: The prior answer should be stricken out.

[fol. 1557] Q. You have there in a folder marked paragraph 6 the documents you have produced in response to request for all license agreements entered into between June 1, 1938, and January 1, 1942, which provide for the second-run or subsequent-run exhibition of feature pictures in Harlan, Kentucky?

A. Yes, such as we have in our possession.

Mr. Wright: I will ask to have that folder marked 625 for identification.

(The folder containing documents produced in connection with paragraph 6 was marked as Plaintiff's Exhibit 625 for identification.)

Q. Do you have any applications made by Ralph T. Kemper between January 1, 1937, and January 1, 1939, for license agreements providing for the exhibition in the State Theatre, Shelby, Ohio, of feature pictures released by RKO Radio Pictures, Inc.?

A. We have been unable to find any such applications.

Q. Have you produced all applications made by Joseph Felter, C. O. Frederick or Loyal Order of Moose No. 1248 between January 1, 1934, and January 1, 1937, for license agreements providing for the exhibition in the Moose Theatre, Norwalk, Ohio, of feature pictures released by RKO Radio Pictures, Inc.?

[fol. 1558] A. Yes, such as we have in our possession.

Q. Those are in this folder marked paragraph 9?

A. Yes, sir.

Mr. Wright: Which I will ask to have marked as Exhibit 626 for identification.

(The folder containing documents produced in connection with Paragraph 9 was marked as Plaintiff's Exhibit 626 for identification.)

Q. You have all license agreements entered into between January 1, 1932, and September 1, 1937, which provide for the exhibition of feature pictures in the Strand Theatre, Seneca Falls, New York, in this folder which is designated Paragraph 11?

A. Yes, such as we have in our possession.

Mr. Wright: I will ask to have that folder marked as Exhibit 627 for identification.

(The folder containing documents produced in connection with Paragraph 11 was marked as Plaintiff's Exhibit 627 for identification.)

Q. You have all license agreements entered into between June 1, 1931, and May 1, 1939, which provide for the exhibition of feature pictures in the Fox, State, Plaza, or Palace Theatres, Corning, New York, in this folder marked Paragraph 12?
[fol. 1559] A. Yes, such as we have in our possession.

Mr. Wright: I will ask to have that folder marked as Exhibit 628 for identification.

(The folder containing documents produced in connection with Paragraph 12 was marked as Plaintiff's Exhibit 628 for identification.)

Q. You have all license agreements entered into between January 1, 1931, and September 1, 1936, which provide for the second-run exhibition of feature pictures in Lockport, New York, in this folder marked Paragraph 13?
A. Yes, such as we have in our possession.

Mr. Wright: I will ask to have that marked as Exhibit 629 for identification.

(The folder containing documents produced in connection with Paragraph 13 was marked as Plaintiff's Exhibit 629 for identification.)

Q. You have there all license agreements entered into between January 1, 1932, and January 1, 1939, which provide for the second-run exhibition of feature pictures in the Olympic, Strand, Liberty, Victoria or Palace Theatres, Watertown, New York, in the folder marked Paragraph 14?
A. Yes, such as we have in our possession.

Mr. Wright: I will ask to have that folder marked as [fol. 1560] Exhibit 630 for identification.

(The folder containing documents produced in connection with Paragraph 14 was marked as Plaintiff's Exhibit 630 for identification.)

Q. You have all license agreements for the exhibition of motion pictures in the following towns entered into during the periods indicated with respect to each town:

Cumberland, Maryland, Motion Picture Seasons, 1935-36 through 1943-44;
St. Michaels, Maryland, 1935-36 through 1940-41;
Easton, Maryland, 1-34-35, through 1939-41;
Federalsburg, Maryland, 1934-35 through 1940-41;
Hurlock, Maryland, 1934-35 through 1940-41;
Richmond, Kentucky, 1933-34 through 1937-38;
Paris, Kentucky, 1937-38 through 1938-39;
Pikeville, Kentucky, 1933-34 through 1943-44;
Lexington, Kentucky, 1934-35 through 1943-44;
Middlesboro, Kentucky, 1935-36 through 1940-41;
Harlan, Kentucky, 1935-36 through 1941-42;
Maysville, Kentucky, 1936-37 through 1940-41?

A. Yes, such as we have in our posession.

Q. Those that are contained in this folder marked Paragraph 17?

A. Yes, sir.

Mr. Wright: I will ask to have that marked as Exhibit 631 for identification.

[fol. 1561] (The folder containing documents produced in connection with Paragraph 17 was marked as Plaintiff's Exhibit 631 for identification.)

Q. Those documents you have just referred to are contained in two folders, both marked paragraph 17; is that right?

A. Yes, sir.

Mr. Wright: I will ask to have this second one marked as Exhibit 631-A for identification.

(The second folder containing documents in connection with Paragraph 17 was marked as Plaintiff's Exhibit 631-A for identification.)

Q. Have you produced, in response to subpoena served on RKO Radio Pictures, Inc., returnable June 3, 1944, all license agreements for motion pictures entered into between January 1, 1935, and September 1, 1940, with Ralph T. Kemper, Halmer D. Schreffler, Tom Gregory, Louise Stoll (Mrs. Francis D. Reeh), Pelpik Theatre Corporation, Schine Shelby Corporation, Schine Chain Theatres, Inc., Schine Enterprises Corporation, Schine Circuit, and Schine Theatrical Co., Inc., which provide for the exhibition of motion pictures in the Castamba, State and Opera House theatres in Shelby, Ohio?

[fol. 1562] A. Yes, sir, such as we have in our possession.

Q. And those are contained in this folder marked Paragraph 1 in the June 3, 1944, subpoena?

A. They are.

Mr. Wright: I will ask to have that marked Exhibit 632 for identification.

(The folder containing documents in connection with Paragraph 1, subpoena dated June 3, 1944, was marked as Plaintiff's Exhibit 632 for identification.)

Q. Have you there all license agreements for motion pictures entered into between January 1, 1933, and September 1, 1938, with Arthur J. Buck, Ural Buck, C. Kahn, Ted Vernes, Belpik Theatre Corporation, Civil Theatres, Inc., Fostoria Theatres Corporation, Schine Chain Theatres, Inc., Schine Enterprises Corporation, Schine Circuit, and Schine Theatrical Co., Inc., which provide for the exhibition of motion pictures in the Civic, Roxy, State and Colonial theatres in Fostoria, Ohio?

A. We were unable to find any such documents.

Q. Do you have there all license agreements for motion pictures entered into between January 1, 1936, and September 1, 1940, with P. E. Essick, Myer Pine, Medina Temple Theatre Co., Medina-Princess Corporation, Medina [fol. 1563] Amusement Co., Schine Medina Corporation, Schine Chain Theatres, Inc., Schine Enterprises Corporation, Schine Circuit, and Schine Theatrical Co., Inc., which provide for the exhibition of motion pictures in the Medina Temple and Princess theatres at Medina, Ohio?

A. Yes, such as we have in our possession.

Q. Those are contained in this folder marked Paragraph 3?

A. Yes, sir.

Mr. Wright: We will ask to have that marked Exhibit 633 for identification.

(The folder containing documents in connection with paragraph 3 was marked as Plaintiff's Exhibit 633 for identification.)

Q. Have you produced in response to this subpoena, directed to RKO Radio Pictures, Inc., returnable August 15, 1944, all franchises and master agreements made between you and Schine Chain Theatres, Inc., Schine Circuit, Inc., Schine Theatrical Company, Inc., Schine Enterprises, Schine Lexington Corporation, Pelpik Theatres, Inc., or Chesapeake Theatres Corporation, for the exhibition of feature films released by you during one or more of the motion picture seasons 1931-32 to 1940-41 inclusive?

A. We have been unable to find any such documents.

[fol. 1564] Q. Have you the printed schedules of feature motion picture films released by your company during the period from August 1, 1931, to September 1, 1941?

A. I have here printed schedules of releases from 1933-34——

Mr. Wright: This calls for August 1, 1931, to September 1, 1941.

A. 1933-34 through to 1942-43 motion picture season. Unfortunately I do not have a complete schedule for the 1931-32 season and the 1932-33 season, but I shall undertake to have one prepared as soon as I return to the home office.

Mr. Wright: Will it be agreeable to you, Mr. McClennen, if we accept such a schedule as Mr. Zimmerman proposes to prepare?

Mr. McClennen: If Mr. Zimmerman will send us a certificate that these were the release schedules we will be glad to take that as if he had testified to it on the stand, of course saving all our objections to its admissibility.

Mr. Wright: This folder containing the schedules that were produced will be marked 634 for identification.

(The printed schedules from 1933-34 to 1942-43 were marked as Plaintiff's Exhibit 634 for identification.)

Mr. Wright: That is all.

[fol. 1565] **Herman M. Doherty**, a witness called by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Wright:

Q. Where do you live, Mr. Doherty?

A. 43 Blossom Heath Avenue, Lynbrook, Long Island.

Q. What is your occupation?
A. Auditor of exchanges.

The Court: What exchanges?
The Witness: All exchanges in the United States.

Q. You are an employee of Warner Pictures, Inc., or Vitagraph, Inc.?
A. Vitagraph.
Q. And how long have you held your present position?
A. 1925.
Q. What are your duties?
A. My position requires the supervision of all matters pertaining to auditing and accounting in the exchanges.
Q. Throughout the country?
A. That is right.
Q. You were designated by your company to produce the [fol. 1566] documents which were subpoenaed by the Governemtn for production at the trial here?
A. That is correct.

Mr. McClennen: Mr. Witness, we all want to hear you.
The Witness: That is correct.
Mr. McClennen: Shout to this man at the far end of the table and the rest will hear you.

By Mr. Wright:

Q. The documents so produced by you include these that have been marked here for identification with the numbers 538 through 603?
A. Yes, sir.
Q. In the course of your employment have you become familiar with the titles of the sales representatives of Vitagraph?
A. Yes, sir.

(Thereupon documents above referred to were marked as Plaintiff's Exhibits Nos. 538 through 603 for identification.)

Q. Can you tell us what position Norman J. Ayres held with the Company during the year 1937?

The Court: Ayres?
Mr. Wright: (Spelling) A-y-r-e-s.
The Witness: He was Branch Manager in Albany.

Q. Albany, New York?

A. Yes, sir.

[fol. 1567] Q. Do you know the total period of time he held that position?

A. I didn't hear that.

Q. Do you know when he began and ended in that position?

A. Well, in that particular year he was the Branch Manager, is that what you mean?

Q. You don't have his beginning date and ending date?

A. November 7th, 1936 to September 24th, 1938.

Q. And, as I understand it, you, yourself, are not familiar with the duties of a branch manager?

A. That is correct.

Q. What position did Mr. F. W. Beiersdorf hold with the company during the year 1940?

A. He was the branch manager in Washington, D. C.

Q. The Washington Exchange?

A. Yes, sir.

Q. Do you know the period of time he held that office?

A. From May 8th, 1937 to July 19th, 1941.

Q. What position did Mr. R. H. Dunbar hold with the Company during the years 1940-41?

A. He was a salesman in Pittsburgh and also branch manager in Cincinnati.

Q. Can you give us the period when he was each?

A. Yes, sir, the period as salesman in Pittsburgh, November 8th, 1930 to November 23rd, 1940; branch manager, [fol. 1568] Cincinnati, November 25th, 1940 to April 18th, 1942.

Q. What position did Mr. R. H. Haines hold with the Company during the period from October, 1937 through July, 1940?

A. He was the Sales Manager in the East.

Q. Eastern Sales Manager?

A. Eastern Sales Manager.

Q. Do you know the length of time he held that position?

A. February 21, 1937 to February 13th, 1943.

Q. Do you know what territory was included in the Eastern Division?

A. Not exactly, but I could probably recite the branches from memory.

Q. Did it include the branches of Cincinnati, Cleveland, Buffalo, Albany, Washington and New York City?

A. That is correct.

Q. Do you know what his duties were in that connection?

A. No, sir.

Q. And Mr. S. W. Hatch held what position with the company?

A. During what period?

Q. During 1941?

A. He was the contract department manager, from March 27th, 1939 up to the present.

Q. You don't know what his duties were, either?

A. No, sir.

Q. Mr. P. S. Krumenacker held what position during the [fol. 1569] years 1939-1940?

A. He was the Branch Manager in Albany.

Q. That is during when, when did he begin that?

A. September 26th, 1938 to April 16th, 1944.

Q. And what position did Mr. Robert Mochrie hold with the company during the period from August, 1934 to October, 1936?

The Court: What was that name?

Mr. Wright: (Spelling) M-o-c-h-r-i-e.

The Witness: He was Eastern Sales Manager.

Q. Do you know when he began and ended in that position?

A. July 16th, 1934 to February 20th, 1937.

Q. And during that period the Eastern Division included the exchanges that were already mentioned?

A. That is correct.

Q. And Mr. Milton A. Mooney occupied what position with the company during the period from March, 1935 to October, 1936?

A. As Branch Manager at Cleveland.

Q. Do you know how long he held that position?

A. From September 25th, 1932 to January 1st, 1938.

Q. What position did Mr. Arthur Sachson—is that right?

A. That is correct.

Q. —hold with the company during the period from May, 1936 through 1941?

[fol. 1570] A. He had the position as contract department manager from August 7th, 1932 to March 26th, 1939, and the position of assistant to the Divisional Sales Managers from March 27th, 1939 to February 13th, 1943.

Q. Do you know what his duties were in either of those positions?

A. No, sir.

Q. What job did Mr. Gratwell Sears have with the Company while he was in its employ?

A. For all the period of time he was there, or any particular years?

Q. The period during which he was General Sales Manager, or Vice-President in charge of sales?

A. He was Western Sales Manager from November 9th, 1930 to February 28th, 1931; the General Sales Manager for the West, February 29th, 1931 to October 31st, 1931. He was again the Sales Manager in the West, November 1st, 1931 to January 23rd, 1932.

Q. The period I meant to cover was simply that during which he was General Sales Manager of the Company; can you tell us what?

A. In between the two General Sales Manager positions, he was a Sales Manager. A Sales Manager is more like a Divisional Sales Manager, not like the General Sales Manager; that is why I was listing it.

[fol. 1571] Q. Specifically, what was his position during 1939?

A. 1939 he was the General Sales Manager.

Q. How long was he General Sales Manager?

A. August 9th, 1936 to October 25th, 1941.

Q. And that is the——

A. That is when he was, I would say, the overall General Sales Manager. There were some periods when he was just General Sales Manager in the West.

Q. And during this last period you have mentioned, he covered the entire United States operations?

A. That is correct.

Q. What position did Mr. H. A. Seed have with the Company in the year 1934?

The Court: What is the name?

Mr. Wright: (Spelling) S-e-e-d.

The Witness: Branch Manager of Buffalo.

Q. How long did he hold that position?

A. June 8th, 1929 to November 7th, 1936.

Q. And what position did Mr. Al. Schmitkin hold during the year 1938?

A. Branch Manager, Cincinnati.

Q. What was the period?

A. July 30th, 1934 to March 11th, 1939.

Q. What position did Mr. A. W. Smith, Jr., hold with the Company during the period from September, 1932 through [fol. 1572] March, 1936?

A. General Sales Manager in the East from January 24, 1932 to August 8th, 1936.

Q. And his territory as General Sales Manager of the East included the exchanges at Cincinnati, Cleveland, Albany, Buffalo and New York and Washington, did it?

A. Yes, sir.

Q. What position did Mr. R. S. Smith hold with the Company?

The Court: R. S.?

Mr. Wright: Yes.

The Court: Another one?

Mr. Wright: Yes, another Smith, R. S. Smith.

Q. What position did he hold with the Company during the period from August, 1933 through February, 1935?

A. Branch Manager, Albany, November 23rd, 1931 to November 12th, 1936.

Q. What position did Mr. H. G. Minsky hold with the company during the year 1939?

A. H. Minsky?

Q. Yes.

A. He is listed as a salesman in the Washington Branch June 7th, 1937 to September 3rd, 1938.

Q. The period I asked for was 1939, specifically March 1, 1939.

A. He was a salesman here in Buffalo September 6th, [fol. 1573] 1938 to August 2nd, 1941.

Q. And Mr. R. Struwe, what position did he hold on July 11, 1939 and in April, 1939?

A. A salesman, December 7th, 1936 to May 16th, 1942, in Albany, salesman in Albany, Albany Branch.

Q. Mr. H. M. Warner is the President of Warner Brothers Company?

A. That is correct.

Q. Do you know how long he has held that position?

A. As far back as I can remember.

Q. That would be more than 10 years?

A. Oh, yes, that is Warner Brothers Pictures, Inc.

Q. Did he hold any office in Vitagraph, Inc.?

A. I could not answer that correctly.

Q. Could you tell us what position Benjamin Kalmenson held with the company?

The Court: Spell the name.

Mr. Wright: (Spelling) K-a-l-m-e-n-s-o-n.

The Witness: He has here a number of positions; I don't know what particular periods.

Q. The time when he was General Sales Manager is what period?

A. October 27th, 1941 to date.

Q. And prior to October 27th, 1941, what was—what position did he have?

[fol. 1574] A. Western Sales Manager, December 19th, 1937 to October 25th, 1941.

Q. What was his position prior to October, 1937?

A. He also occupied another position in 1937; Eastern District Manager.

Q. During what period?

A. May 9th, 1937 to December 18th, 1937.

Q. What area was included in his district?

A. Buffalo, Albany, New York, New Haven, Boston. I think those are the branches.

Q. Would Cleveland be included?

A. I think that was called the Central District, and Mr. Kalmenson occupied that position in part of 1937, also.

Q. During what period was that?

A. He was the Central District Manager August 23rd, 1936 to May 8th, 1937, and those branches like Cincinnati and Cleveland would come under his supervision.

Q. Mr. Carl Lasserman was Assistant General Sales Manager from November 7th, 1936 to October 27th, 1941, was he?

A. That is correct.

Q. Now, as I understand it, you are not in a position, yourself, Mr. Doherty, to cover the duties of these gentlemen?

A. No, because I am in the accounting end of it, the auditing [fol. 1575] end of it, and that is controlled by the Sales Department.

Mr. Wright: Would counsel be willing to stipulate that the duties of these men are in general the same as those of the men from other companies holding comparable positions?

The Court: Is that all for this witness?

Mr. Wright: No, we wish also to have him identify the license agreements produced pursuant to the subpoena.

Mr. McClennen: Well, if you will go ahead and finish up with this witness, we will consider what we can agree to.

Mr. Wright: All right.

The Court: Proceed.

Mr. Wright: Your Honor, counsel, or, Mr. Caskey, informs me the contracts are not ready so we can have a five-minutes —, perhaps, so that we can have them here?

The Court: All right. The court will stand in recess for five minutes.

(Short recess.)

[fol. 1576] By Mr. Wright:

Q. Have you there the license agreements that have been produced pursuant to the subpoena served upon Vitagraph, Inc., which was returnable on May 19, 1944, specifically those described in paragraph 2 of that subpoena, which calls for all license agreements for the exhibition in the following towns of feature pictures released during the periods indicated: Auburn, New York, Motion Picture Seasons, 1932-33 to 1935-36 inclusive, Norwich, New York, 1931-32 to 1937-38 inclusive; Amsterdam, New York, 1931-32 to 1936-37 inclusive; Little Falls, New York, 1931-32 to 1935-36 inclusive; Norwalk, Ohio, Period, January 1, 1934 to May 1, 1937; Van Wert, Ohio, January 1, 1934 to December 1, 1935; Fostoria, Ohio, January 1, 1934 to January 1, 1937; Medina, Ohio, January 1, 1937 to June 1, 1939; Tiffin, Ohio, January 1, 1936 to March 1, 1938; Corbin, Kentucky, August 1, 1938 to May 1, 1940; Paris, Kentucky, June 1, 1937 to June 1, 1940?

Do you have those in that folder marked Paragraph 2?

A. Yes, sir.

Mr. Wright: I will ask to have that marked for identification 635.

[fol. 1577] (The documents furnished in connection with Paragraph 2, subpoena returnable May 19, 1944, *was* marked as Plaintiff's Exhibit 635 for identification.)

Q. Do you have there all license agreements entered into between January 1, 1932, and September 1, 1937, which provide for the exhibition of feature pictures in the Strand

Theatre, Seneca Falls, New York? In this folder marked Paragraph 3?

A. Yes, sir.

Mr. Wright: I will ask to have that folder marked Exhibit 636 for identification.

(The folder containing documents furnished in connection with Paragraph 3 was marked as Plaintiff's Exhibit 636 for identification.)

Q. Have you there all license agreements entered into between June 1, 1931, and May 1, 1939, which provide for the exhibition of feature pictures in the Fox, State, Plaza, or Palace Theatres, Corning, New York, in folder marked Paragraph 4?

A. Yes, sir.

Mr. Wright: I will ask to have that marked Exhibit 637 for identification.

(The folder containing documents furnished in connection [fol. 1578] with Paragraph 4 was marked as Plaintiff's Exhibit 637 for identification.)

Q. Have you there all license agreements entered into between January 1, 1931, and September 1, 1936, which provide for the second-run exhibition of feature pictures in Lockport, New York, in the folder marked paragraph 5?

A. Yes, sir.

Mr. Wright: I will ask to have that marked for identification 638.

(The folder containing documents furnished in connection with paragraph 5 was marked as Plaintiff's Exhibit 638 for identification.)

Q. Have you all license agreements entered into between January 1, 1932, and January 1, 1939, which provide for the second-run exhibition of feature pictures in the Olympic, Strand, Liberty, Victoria or Palace Theatres, Watertown, New York, in this folder marked Paragraph 6?

A. Yes, sir.

Mr. Wright: I will ask to have that marked Exhibit 639 for identification.

[fol. 1579] (The folder containing documents furnished in connection with Paragraph 6 was marked as Plaintiff's Exhibit 639 for identification.)

Q. Do you have there all license agreements entered into between June 1, 1934, and July 1, 1938, which provide for the second-run or subsequent-run exhibition of feature pictures in Ashland, Ohio, in the folder marked Paragraph 7?

A. Yes, sir.

Mr. Wright: I will ask to have that marked for identification 640.

(The folder containing documents furnished in connection with Paragraph 7 was marked as Plaintiff's Exhibit 640 for identification.)

Q. Do you have all license agreements entered into between May 1, 1935, and March 1, 1938, which provide for the exhibition of feature pictures in the Star Theatre, Delaware, Ohio?

A. We have been unable to lodate such documents.

Q. Do you have all applications made between June 1, 1935, and June 1, 1936, for license agreements providing for the exhibition in the Colonial or State theatres, Fostoria, Ohio, of feature pictures released by Vitagraph, Inc., during [fol. 1580] the 1936-37 and 1937-38 motion picture seasons? and

A. We have been unable to locate such documents.

Q. Do you have all license agreements entered into between June 1, 1936, and October 1, 1939, which provide for the exhibition of feature pictures in the Opera House, Lexington, Kentucky, in the folder marked Paragraph 10?

A. Yes, sir.

Mr. Wright: I will ask to have that marked Exhibit 641 for identification.

(The folder containing documents furnished in connection with paragraph 10 was marked as Plaintiff's Exhibit 641 for identification.)

Q. Do you have all license agreements entered into between August 1, 1937, and August 1, 1938, which provide for the second-run or subsequent-run exhibition of feature pictures in Corbin, Kentucky?

A. We have been unable to locate such documents.

Q. Do you have all license agreements entered into between June 1, 1938, and January 1, 1942, which provide for the second-run or subsequent-run exhibition of feature pictures in Harlan, Kentucky?

A. We have been unable to locate such documents.

Q. Do you have all license agreements for the exhibition [fol. 1581] of motion pictures in the following towns, entered into during the period indicated with respect to each town: Cumberland, Maryland, Motion Picture Seasons, 1935-36 through 1943-44; St. Michaels, Maryland, 1935-36 through 1940-41; Easton, Maryland, 1934-35 through 1940-41; Maysville, Kentucky, 1933-34 through 1940-41; Federalsburg, Maryland, 1934-35 through 1940-41; Hurlock, Maryland, 1934-35 through 1940-41; Harlan, Kentucky, 1935-36 through 1943-44; Salisbury, Maryland, 1934-35 through 1943-44; Richmond, Kentucky, 1934-35 through 1943-44; Paris, Kentucky, 1935-36 through 1939-40; Corbin, Kentucky, 1935-36 through 1943-44; Pikeville, Kentucky, 1933-34 through 1943-44; Lexington, Kentucky, 1936-37 through 1940-41; Middlesboro, Kentucky, 1935-36 through 1940-41?

A. Yes, sir.

Q. Those are contained in this folder marked Paragraph 19?

A. Yes, sir.

Mr. Wright: I will ask to have that folder marked as Exhibit 642 for identification.

[fol. 1582] (The folder containing documents furnished in connection with Paragraph 19 was marked as Plaintiff's Exhibit 642 for identification.)

Q. Do you have there the documents produced in response to the subpoena served on Warner Bros., Inc., returnable June 3, 1944, which calls for all license agreements for motion pictures entered into between January 1, 1935, to September 1, 1940, with Ralph T. Kemper, Halmer D. Schreffler, Tom Gregory, Louise Stoll (Mrs. Francis D. Reeh), Belpik Theatre Corporation, Schine Shelby Corporation, Schine Chain Theatres, Inc., Schine Enterprises Corporation, Schine Circuit, and Schine Theatrical Co., Inc., which provide for the exhibition of motion pictures in the Castamba, State and Opera House theatres in Shelby, Ohio?

A. Yes, sir.

Q. Those are in this folder you just handed me?

A. Yes, sir.

Mr. Wright: I will ask to have that marked Exhibit 643 for identification.

(The folder containing documents furnished in connection with subpoena served on Warner Bros., Inc., returnable June 3, 1944, was marked as Plaintiff's Exhibit 643.)

[fol. 1583] Q. Do you have all license agreements for motion pictures entered into between January 1, 1933, and September 1, 1938, with Arthur J. Buck, Ural Buck, C. Kahn, Ted Vermos, Belpik Theatre Corporation, Civic Theatres, Inc., Fostoria Theatres Corporation, Schine Chain Theatres, Inc., Schine Enterprises Corporation, Schine Circuit, and Schine Theatrical Co., Inc., which provide for the exhibition of motion pictures in the Civic, Roxy, State and Colonial theatres in Fostoria, Ohio?

A. We are unable to locate such documents.

Q. Your answer is the same with respect to all license agreements for motion pictures entered into between January 1, 1936, and September 1, 1940, with P. E. Essick, Myer Fine, Medina Temple Theatre Co., Medina-Princess Corporation, Medina Amusement Co., Schine Medina Corporation, Schine Chain Theatres, Inc., Schine Enterprises Corporation, Schine Circuit, and Schine Theatrical Co., Inc., which provide for the exhibition of motion pictures in the Medina Temple and Princess theatres at Medina, Ohio? I take the answer to that is yes?

A. I will make the same answer, that we are unable to locate any such documents.

Q. Have you there the documents produced in response to subpoena served on Warner Bros., Inc., returnable [fol. 1584] August 15, 1944, calling for all franchises and master agreements made between you and Schine Chain Theatres, Inc., Schine Circuit, Inc., Schine Theatrical Company, Inc., Schine Enterprises, Schine Lexington Corporation, Belpik Theatres, Inc., or Chesapeake Theatres Corporation, for the exhibition of feature films released by you during one or more of the motion picture seasons 1931-32 to 1940-41, inclusive?

A. Yes, sir.

Q. Those are contained in this folder marked Paragraph 1?

A. That is right.

Mr. Wright: I will ask to have that marked Exhibit 644 for identification.

(The folder containing documents furnished in connection with Paragraph 1, subpoena of August 15, 1944, was marked as Plaintiff's Exhibit 644 for identification.)

Q. Do you have there all printed schedules of feature motion picture films released by you during the period from August 1, 1931, to September 1, 1941?

A. Yes, sir.

Q. And those are contained in this folder marked Paragraph 3?

A. Yes, sir.

[fol. 1585] Mr. Wright: I will have that marked Exhibit 645 for identification.

(The folder containing documents furnished in connection with Paragraph 3 was marked as Plaintiff's Exhibit 645 for identification.)

Mr. Wright: That is all.

Mr. McClennen: If your Honor please, Mr. Wright has asked us to agree—and we do—that if a competent witness from Warner's were called he would testify that the respective duties of the different employees were substantially as stated by Mr. Zimmerman and Mr. Saunders with respect to their company corresponding positions.

The Court: You say if he were called?

Mr. McClennen: Well, I will put it that such a witness may be taken to have so testified.

Mr. Wright: That is agreeable to us, if your Honor please. It has been called to my attention that these documents that I handed Mr. Saunders while he was on the stand this afternoon, the three which had previously been identified, the one which has been identified as Exhibit 58, a reply had [fol. 1586] been identified at the same time by the defendants, so that I take it there is no dispute that this letter identified as Exhibit 58 was received by Mr. Rodgers. That is all I wanted to establish. If that is agreed Mr. Saunders need not concern himself with that any further.

Mr. McClennen: It is conceded that the original of Exhibit 58 was received by Mr. Rodgers. We cannot concede that it came from Loew's files, in view of the testimony, as distinct from Mr. Rodgers' personal file.

The Court: What was Mr. Rodgers' position?

Mr. Wright: He was the general sales manager at that time.

Mr. McClennen: Mr. Rodgers was the general sales manager at that time. And of course we persist in the objection to its admissibility.

Mr. Wright: It has not yet been offered.

Mr. Rogers: We wish to preserve it though.

Mr. Wright: My attention has also been called to the fact that the letters which I questioned Mr. Saunders about, which were previously identified as Plaintiff's Exhibits 2 and 13, respectively, had been received in evidence subject [fol. 1587] to connection. The only connection I sought to make here was, of course, in addition to establishing who the people were who were mentioned here, the fact that they came from the files of the Loew Company, and as I understand it there is no dispute about that either.

Mr. McClennen: It is conceded that the original of Exhibits 2 and 13 came from the files of the Loew Company, we persisting in our contention that that is not adequate connection to render them admissible and we still persist in the objection to their admission.

Before we close this afternoon I would recall to your Honor's recollection a conference we had on Monday, at which you spoke of the desirability of our making certain further stipulations of admissions. Pursuant to that I now hand to Mr. Wright a stipulation showing the theatres which are operated by the several operating companies set forth in answer 15 to the interrogatories. That is handed [fol. 1588] him in duplicate. Also a stipulation as to the way in which the prints were served for Virginia, Delaware, Maryland and Kentucky, those for Ohio and New York having already been covered by the answer to the notice to admit. That also I hand Mr. Wright in duplicate. Also I hand him in duplicate a stipulation as to the operation of certain theatres in the period prior to their acquisition by the defendants or at the time when the defendants began to operate in the towns.

Mr. Wright: I should not think there should be any difficulty about the form of the stipulation on the towns in the service of prints. As to the operating companies of the theatres, of course we do not have any knowledge as to which they operated, except as supplied by the defendants, and we might perhaps change the form of the stipulation simply to change the testimony of someone who would so furnish that information.

Mr. McClennen: You don't mean change the form of the stipulation but you may want to show something otherwise? [fol. 1589] But that is the form that the stipulation will be.

Mr. Wright: We, of course, will want to look them over. There may be some changes in form.

Mr. McClennen: I didn't mean to insist that you should put them in now. I am handing them to you so that I have fully performed my obligations to the Court, undertaken last Monday, as soon as I had an opportunity to check the facts.

Mr. Wright: I did hope that we would be able to complete today the identification of the material produced in response to the Schine subpoena.

Mr. McClennen: That could not be done in seven minutes.

Mr. Wright: Specifically can we complete the one calling for the agreements made with the various operating companies with persons whose theatres have been taken over, particularly Medina, Ohio? We are going to present that situation on Monday and that is why we would like to have that data.

Mr. McClellen: We cannot complete that. Mr. McKay thought that he had a copy in his office and he will investigate on his return to New York.

[fol. 1590] Mr. Wright: What would be the earliest the copy could be made available to us?

Mr. McKay: Monday morning.

Mr. Wright: I will be available Monday morning, then?

Mr. McClennen: Yes.

Mr. Wright: Now, if the Court please, the Universal and United Artists representatives have not yet identified their license agreements and the Columbia representative was not able to get here until next week. However, rather than interrupt the witnesses we have already arranged to have in the early part of the week, I would prefer to let that identification go over until the end of the week, if that is agreeable.

The Court: Can't you stipulate to any of those exhibits here? Now that you have got them here, perhaps we can have a stipulation.

Mr. McClennen: If we could have those files handed over to us I dare say we would be willing to stipulate that these witnesses here are to be taken to have testified to them.

The Court: You want to see what they are?

Mr. McClennen: I want to see what they are, without giving any assurance.

[fols. 1591-1596] The Court: I thought it could be covered in that way. They are file papers and if there isn't any dispute about that, we might be able to have on Monday morning a stipulation.

Mr. Wright: As soon as we can get it typed up, we can supply a list of documents contained in the folders that will be identified, and maybe we can stipulate it.

Mr. McClennen: If you will just let me have the list, as soon as you have it, and the documents in the folders, I can check and see if we can agree to it.

The Court: This case is adjourned until 2 o'clock next Monday, but the Court is adjourned until 10 o'clock.

(Whereupon, an adjournment was taken until Monday October 2nd, 1944, at 2 o'clock P. M.)

[fol. 1597] UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF NEW YORK

Civil 223

UNITED STATES OF AMERICA

vs.

SCHINE CHAINS THEATRES, INC., et al., Defendants

Continuation of trial before Honorable John Knight, United States District Judge for the Western District of New York, October 2nd, 1944, at 2 o'clock P.M.

Appearances: Robert L. Wright, Esq., John F. Clagett, Esq., Harold L. Schilz, Esq., Special Assistants to the Attorney General, and Milton Kallis, Esq., Special Attorney, in behalf of the United States. Edward F. McClennen, Esq., Willard S. McKay, Esq., Saul E. Rogers, Esq., Arthur E. Whittemore, Esq., Arthur J. Homans, Esq., and Howard M. Antevil, Esq., appearing for Defendants.

Mr. Wright: I will call Mr. Gutilla.

DANIEL GUTILLA, a witness called by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination:

By Mr. Wright:

Q. Where do you live, Mr. Gutilla?
A. Bellefontaine, Ohio.
Q. You own the Strand Theatre there?
A. Yes, sir.
Q. How long have you owned it?
A. Since 1916.
Q. You operate it as a theatre, yourself, then?
A. Yes, sir.
Q. Until what time?
A. Until 1924.
Q. Then it was sold?
A. I sold that to Mooney.
Q. Mr. Milton Mooney?
A. Milton Mooney.
Q. That is, you sold the lease on the theatre?
A. I sold the equipment and I gave him a lease on the theatre.

[fol. 1599] The Court: 1934 did you say?
The Witness: 1924.

By Mr. Wright:

Q. That was a 10-year lease, was it?
A. Yes, sir.
Q. Then do you recall when Mr. Mooney sold out to the Schine interests?
A. I recall it was in July, June—June 1st, 1931.
Q. June of 1931?
A. 1931.
Q. The lease on the Strand was then assigned to Schine?
A. To Schine, yes.
Q. Then did you make another lease on the Strand with Schine when it expired in 1934?
A. I have not leased it, the Grand Opera House.

Q. I don't think you understood my question. I am still talking about the Strand. I said when the strand lease expired in 1934, did you make another lease on the Strand to the Schine people?

A. To Schine, yes.

The Court: Did you have the right of renewal? You sold your lease to Mooney, did you say?

Mr. Wright: He was the owner of the building. He sold his equipment and gave Mooney a ten-year lease and [fol. 1600] Mooney assigned to Schine in 1931. (To reporter) Would you read the last question and answer?

(Preceding question and answer read.)

The Witness: 1934.

Q. How long was that lease for?
A. For two years.
Q. That expired?
A. In 1936.
Q. In the summer of 1936?
A. Yes, sir.
Q. Then did you make another lease on it?
A. 1936 to '38.
Q. During that four-year period, from 1934 to 1938, did Schine operate the theatre?
A. The Strand?
Q. Yes.
A. He operated the Theatre for a while some time.
Q. Do you know how much of the year it was open and how much of the year it was closed during those four years?
A. I don't recall. I don't remember exactly, but some time they opened and some time not.
Q. Was it closed most of the time, or was it open most of the time?
A. It was closed on the lease and it was not closed on the lease, it was open and closed.

[fol. 1601] Q. Can you tell us whether, during the period from 1934 to 1938, it was open most of the time or was it closed most of that time?
A. Most of the time closed.
Q. You can't say about how many weeks during the year it was open or whether it was open at all during some of those years?
A. I can't say.

Q. You don't remember?
A. I don't remember.
Q. Did you bring with you—you were served with a subpoena duces tecum, were you not, in this case, or a subpoena asking you to bring certain documents?

The Court: Papers.
The Witness: I ain't got no papers.

Q. You have leases?
A. I have the lease.
Q. You have a lease you made in——
A. 1938.
Q. 1938?
A. And 1940. This is 1938 (document handed to Mr. Wright by the witness).

Mr. Wright: We will ask to have this lease that the witness has produced, dated April 30th, 1938, signed by Mr. [fol. 1602] Gutilla and by Mr. May, on behalf of Schine Theatrical Co., Inc., as the next plaintiff's exhibit for identification.

(Thereupon lease from Gutilla to Schine, dated April 30th, 1938, referred to, marked Plaintiff's Exhibit No. 646 for identification.)

By Mr. Wright:

Q. This lease marked as Exhibit No. 646 for identification, that you just handed me, that covers the Strand Theatre?
A. Yes, sir.

Mr. McClennen: If your Honor please, we just note the objection as to others, that this is a purely local transaction.
The Court: Yes, I understand.
Mr. Wright: We will offer the lease in evidence.
The Court: What period does it cover?
Mr. Wright: This covers a two-year period from 1938 to 1940.
Mr. McClennen: Our objection is as stated; only on that ground.
The Court: Yes.

(Thereupon the document previously marked as Plaintiff's Exhibit No. 646 for identification received in evidence and marked as Plaintiff's Exhibit No. 646.)

[fol. 1603] By Mr. Wright:

Q. I call your attention to a paragraph on Page 2 "It is further agreed by and between the parties that lessee will operate said theatre at least once a week for 14 weeks during each year of the operation of this lease".

Can you tell us what the occasion for having that provision in the lease was?

Mr. McClennen: That is objected to, that calls purely for a conclusion and also it is wholly immaterial. This is the contract that was made.

Mr. Wright: Will your Honor rule?

The Court: Well, you seek to vary the terms of the document?

Mr. Wright: I simply want to show the circumstances leading up to it. Perhaps we can get at it this way:

Q. Whom did you negotiate that lease with, who represented Schine?

A. It was Mr. May.

Q. Mr. May?

A. Mr. May or Mr. Lazar, one of them two, I don't remember sure. It was 1938. I don't remember whether it was Mr. May or Mr. Lazar. It was 1936 when Mr. May was there.

Q. I am talking now about that lease signed in 1938; that [fol. 1604] is what I mean?

A. Yes.

Q. This one?

A. Yes.

Q. Do you remember whom you negotiated that with?

A. I think in 1938——

Q. Maybe the signatures on it will help you.

A. Well, here it is signed by Mr. May, too, but I don't remember whether it was Mr. Lazar at the time.

Q. You might have negotiated it with Mr. Lazar, then, or with Mr. May?

A. One of the two. I don't remember for sure which one it was at that time.

Q. Before the lease was executed did you have any conversation with them with respect to the operation of the theatre?

Mr. McClennen: This is objected to as immaterial. This is the lease that was made. This is the contract that was made, and if there was anything that was restrictive in any way in this contract the contract speaks for itself as to what that was. The conversations that led up to it we submit are not material, relate purely to a local and per- [fol. 1605] sonal transaction, and have no bearing on any matter of interstate commerce. The lease tells the story.

The Court: Of course if the defendants contradict the instrument it may not be competent. If they do not it seems to me it would be competent under the complaint made here. I overrule your objection on the other ground, on the question of it not being an interstate transaction, also. Objection overruled.

(Last question read.)

The Court: That calls for a yes or no answer.

By Mr. Wright:

Q. That is with Mr. May or Mr. Lazar.

A. I think it was Mr. Lazar. I think I remember it was him.

Q. Did you have any conversation with him about the operation of the theatre before you made the lease?

A. Yes, the conversation I have with Mr. Lazar is about the price, the rent, how much it will be.

Mr. McClennen: Just a moment. All he was asked was whether he had a conversation on the subject.

The Court: Yes or no would answer that question. Did you have a conversation?

A. Yes, a conversation about the rent, how much they pay [fol. 1606] for the rent.

Q. The question I asked you was whether you had any conversation with them with reference to the operation of the theatre, whether to keep it closed or to open it?

A. On the lease they have got to open it 14 weeks in the year, not less than once a week.

Q. Can you tell us what the conversation you had was which led up to that provision?

Mr. McClennen: That is objected to.

Q. What was said about opening the theatre or keeping it closed?

The Court: What did you say to him and what did he say to you, to the best of your recollection?

A. Well, he says, "They are going to keep it open for 14 weeks".

By Mr. Wright:

Q. What did you say?

A. I can't say "No", because it is in the lease. I says for him to open it 14 weeks. I don't know whether he opened it or not. It was opened in September for 14 weeks. I remember that.

Q. That was after you made the lease?

A. After we made the lease.

Q. Do you remember whether it had been open for 14 weeks during the year 1937?

[fol. 1607] A. 1937?

Q. Yes.

A. No. Well, before 1938 they didn't open it yet. They keep it closed, before 1938.

Q. It had been closed?

A. It had been closed most of the time.

Q. Had it been open as much as 14 weeks during the year 1937?

A. No.

Mr. McClennen: Just a moment——

The Court: Let the witness state.

Q. What is the best estimate you can give us to the number of weeks the theatre was open during the year 1937?

Mr. McClennen: Just a moment. That is not the subject for estimate. If the witness can tell when it was open and when it was closed, subject to the general objection, all right.

The Court: He may not be able to state specifically.

Mr. McClennen: The estimate is a specific objection in addition to the others.

By the Court:

Q. What is your recollection of the amount of time the theatre was closed during the year 1937? How much was it closed during 1937?

A. It was closed—open probably 14 weeks in the year, two times a week.

[fol. 1608] The Court: I am talking about 1937 before you made the 1938 lease.

Mr. Wright: We are talking about the year before you made the lease.

The Witness: I didn't open it.

By the Court:

Q. It was not open at all?

A. It was not open. From 1936 to 1937 you mean to 1938?

Mr. Wright: Yes, 1936-1938.

The Witness: It was not open. It was closed.

By the Court:

Q. Do you mean all during 1936 and 1937?

A. Yes, during 1936 and 1937.

Q. Closed all the time?

A. Yes.

By Mr. Wright:

Q. Did you also bring with you the lease that you made in 1940?

A. Yes, sir.

Q. That is this lease dated July 1, 1940, which is signed by you and Schine Theatrical Company by Mr. Selisner?

A. Yes, sir.

Mr. Wright: I will ask to have that marked with the next number for identification.

Mr. McClennen: We make the same objection as we made [fol. 1609] to the other lease.

(The lease dated July 1, 1940, was marked Plaintiff's Exhibit 647 for identification.)

Q. I call your attention to the fact that the 1938 lease expired on June 1, 1940, and the 1940 lease, Exhibit 647 for identification, began on July 1, 1940. Did you have negotiations with reference to that 1940 lease during that intervening time there?

A. Yes, sir.

Q. Who did you have those negotiations with?

A. With Mr. Lazar.

Q. Whereabouts?

A. We tried to get together on the rent.

Q. I don't think you understood the question. I said, where.

A. In Bellefontaine, Ohio, at the Holland Theatre.

Q. That was the Schine Theatre there?

A. The Schine Theatre.

Q. In those conversations you had with Mr. Lazar what, if anything, was said about the operation of the theatre?

Mr. McClennen: We make the same objection as to the similar conversation as to the other lease.

The Court: Overruled.

A. We had a conversation to open the theatre for 14 weeks. I wanted it for 26 weeks but they don't want to [fol. 1610] agree and we make it 14, the same as the one in 1938 and 1940.

Q. You said you wanted them to keep it open for 25 weeks?

A. For 26 weeks, but they don't want to open it for 26 weeks.

Q. Was anything said in the course of those conversations about the operation of the theatre by anybody else, anyone other than Schine?

A. Some other theatre? Operation of the theatre, you mean?

Q. Was anything said about anybody besides Schine operating the Strand Theatre?

A. Besides Schine? I don't understand.

The Court: About any other person operating the Strand Theatre except Schine.

A. No, nobody else.

By Mr. Wright:

Q. Was anything said about your operating the theatre?

A. When we were talking before signing the lease?

Q. Yes. I am talking about the conversation you had with Mr. Lazar.

A. We tried to get together and tried to operate—my son Jack, he wants the theatre.

Q. What did you say about your son operating it?

A. I told him if we can get together in some way about letting my boy open the theatre, my son and I.

Q. What is your boy's name?

A. Jack.

[fol. 1611] Mr. McClennen: Perhaps I should have noted ahead the general objection that we have already made to this question.

Mr. Wright: I think it can be understood that you have that objection to all of this.

The Court: Let the witness go ahead and state the conversation. What was the last answer there?

A. My boy's name is Jack.

By Mr. Wright:

Q. Was he operating another theatre then?

A. A small theatre about eleven miles from Bellefontaine.

Q. Where?

A. DeGraff, Ohio.

Q. Go ahead and tell us what was said in the conversation?

Mr. McClennen: This is a conversation with Mr. Lazar?

Mr. Wright: Yes.

Mr. McClennen: At the time for the negotiation of this lease?

Mr. Wright: Yes, before the 1940 lease was made.

Mr. McClennen: We have these objections and the further objection that it is not within any complaint specified here.

The Court: About this particular theatre——

Mr. Wright: I am sure Bellefontaine was mentioned in the complaint. Of course we have not undertaken to set forth in the complaint the particular testimony that would [fol. 1612] come from the witness.

The Court: Was he listed as a witness in the answer to the interrogatories?

Mr. Wright: As I recall, Mr. Gutilla was listed as a possible witness, in the answer to the interrogatories. I do not think there is any objection on that ground.

Mr. McClennen: The witness listed to us was Theodore Gutilla, and not this witness.

By Mr. Wright:

Q. What is your first name?

A. Daniel.

Mr. Rogers: Theodore is listed to us.

By Mr. Wright:

Q. Who is Theodore Gutilla?

A. I don't know.

Mr. Wright: Apparently that was a mistake made in the first name. If there is any claim of surprise he can be recalled for further cross-examination. If Counsel is not prepared to cross-examine him let him so state.

Mr. McClennen: There is not any claim of surprise. It was stated that this witness had been listed as a witness for us and I merely call attention to the fact that he had [fol. 1613] not been listed as a witness, in the interest of accuracy.

Mr. Rogers: Theodore Gutilla, Bellefontaine, Ohio, is the one who is listed with us.

The Court: My question was whether in your interrogatories you refer to that situation?

Mr. Wright: I recall that we covered the Bellefontaine situation. We referred to Bellefontaine. Whether we referred to the Strand Theatre or not I am not sure. If it is a question of amending the pleadings, we can do that, I suppose, at the end of the case. Will you read the last question?

(Last question read.)

By Mr. Wright:

Q. This was the conversation you had with Mr. Lazar?

A. The conversation was before we signed the lease, or tried to sign the lease, and I told Mr. Lazar that if we can't get together I am going to open my theatre.

Q. You said if you can't get together you were going to open your theatre?

A. I was going to open my theatre with my son, that my son wants very badly to open the theatre.

Q. What did he say?

[fol. 1614] A. Mr. Lazar says, "How can we get good films, good pictures?" I told him, I says, "We can get some pictures on the second-run. After they run at the Schine Theatre we are going to run them at the Strand."

[fol. 1615] Q. Run pictures at the Strand second-run after first-run at the Schine Theatre in Bellefontaine?

A. Yes, sir.

Q. What did he say?

A. Mr. Lazar says Mr. Schine says he going to open a second-run theatre to make good for second-run.

Q. What did you say to that?

A. I says "Well, all right, you got plenty of pictures, if you going to have a second-run, you got to play second-run." He said "We going to play at the Opera House second-run."

Q. What was the Opera House?

A. Opera House was, Mr. Schine had a lease on it.

Q. That is another theatre in Bellefontaine?

A. That is another theatre in Bellefontaine.

Q. Was that closed then?

A. It was closed, yes, sir.

Q. Do you know how long that had been closed?

A. Oh, that had been closed after Mr. Mooney's lease, sold the lease to Schine, the Strand Theatre lease, the Opera House was included in the lease.

Q. Do you know how many years before 1940 the Opera House been closed?

A. It had been closed all the time except 1934 to '36—let's see—yes, it was 1932 to '34.

[fol. 1616] Q. You mean it had been closed from 1934 to 1940?

A. From 1932 to 1934 it had been open about six or seven months with different people.

Q. That is during——

A. With four managers.

Q. From 1934 to 1940——

A. From 1934 to 1940.

Q. —continuing) it was then closed during that period?

A. Yes, sir.

Q. Do you know whether it is still closed?

A. Still closed, yes, sir.

Q. Hasn't been open since then?

A. No, hasn't been opened since.

Q. Then after the conversation with Mr. Lazar did you sign the lease then or make it later or sign it later; how much time elapsed there before you signed this?

A. Take a month.

Q. Lease marked 647 for identification?

A. Yes.

Q. Did you sign that in Bellefontaine?

A. No, I signed this in Gloversville.

Q. You went down to Gloversville?

A. Yes, sir.

Q. How long after this conversation with Lazar was that?

A. It was before we went to Gloversville, about four [fol. 1617] weeks. We was talking all the time about this lease.

Q. And you went to Gloversville?

A. And we decided to go to Gloversville to see Mr. Schine.

Q. Then you had the final negotiations with Mr. Schine?

A. Yes, sir.

Q. The lease was signed there on what date?

A. Well, it is July 1st, I guess it is signed, yes, July 1st.

Mr. Wright: We will offer this.

The Court: What is the date?

The Witness: The lease was made on July 1st, and then I took the lease, before I signed, Mr. Schine and all signed except me. I take it back to Bellefontaine to show to my lawyer.

Q. Then you took it back and signed it after July 1st?

A. Yes, then I signed in Bellefontaine and gave it to Mr. Lazar after I signed in Bellefontaine.

Mr. Wright: We will offer this.

Mr. McClennen: The same objection as to the prior lease.

The Court: Same ruling.

(Thereupon the document previously marked as Plaintiff's Exhibit No. 647 for identification was received in evidence.)

By Mr. Wright:

Q. Mr. Gutilla, you lived—how long have you lived in Bellefontaine?

[fol. 1618] A. How long what?

Q. How long have you lived in Bellefontaine?

A. How long I live in Bellefontaine?

Q. Yes.

A. Since 1913.

Q. You were there during the period from 1932 to '34, when you say the Opera House was operating?

A. Yes, sir.

Q. Do you know what admission prices that the Schines were charging at their Holland Theatre there at that time?

A. Well, I don't remember exactly. I know there was a change, 25 and 35, 25 matinee and 35 night, and sometime dropped. I don't remember. I don't know what it was. I see price of matinee 15 cents and 25 cents at night.

Q. Do you remember when that drop occurred there in that period?

A. I don't remember just exactly the months.

Q. Was it during the period that the Opera House was open?

A. It must be.

Q. Then do you recall what the prices were there after the Opera House closed?

A. 25 cents matinee and 35 cents nights.

Mr. Wright: You may cross-examine.

Mr. Rogers: Your Honor, in view of the circumstances, may I ask your Honor to please permit us to take this posi- [fol. 1619] tion, that for the time being, we have no cross-examination of Mr. Gutilla, but that he stand by pending the examination of Mr. Mooney?

Mr. Wright: I don't see any reason why he shouldn't be cross-examined now.

Mr. Rogers: Well, in a measure there was a surprise here because he was not listed as a witness. Theodore was listed as a witness. There are two Gutillas. There is the father and the son. Apparently there is no Theodore, and we were utterly confused, we didn't know whether the father was going to be produced or the son was going to be produced. We find that Theodore is just a myth.

The Court: Were you surprised?

Mr. Rogers: Yes, I was, frankly, very much so. I don't see that any harm can be done. My position is that I am not prepared to cross-examine Mr. Gutilla at this time.

Mr. Wright: If the Court please—have you got that letter we wrote ten days ago?

Mr. Rogers: I have your letter right here.

Mr. Wright: There is only one Mr. Gutilla with whom these people have done business.

[fol. 1620] The Court: I am not concerned with that.

Mr. Rogers: Here is your letter, Mr. Wright, and your letter says "Theodore Gutilla." I was under the impression he meant the son all the time.

The Court: If you were taken by surprise that does not enter into the question of withdrawing the witness from the stand. If you are taken by surprise, it is a different thing. No, go on and cross-examine, and if you want Mr. Mooney to step out of the room, he may.

Mr. Rogers: My position then is, if the Court please, that I prefer not to proceed with the cross-examination of this witness.

The Court: No cross-examination? That is all, Mr. Gutilla.

Milton A. Mooney called as a witness on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Wright:

Q. Where do you live, Mr. Mooney?

[fol. 1621] A. Cleveland, Ohio.

Q. What is your occupation?

A. I am President and General Manager of Co-operative Theatres of Ohio, Inc.

Q. How long have you held that position?

A. Going on my 7th year.

Q. What was your occupation before that?

A. I was Branch Manager of Warner Brothers Pictures.

Q. Where?

A. Cleveland, Ohio. I would like to correct that. It was Vitagraph, Inc., at that time.

Q. That is the wholly owned subsidiary?

A. That is right.

Q. And then before you were Manager of Vitagraph at Cleveland, what did you do?

A. I was a salesman for the same company.

Q. In what territory?

A. I covered all the different territories in northern Ohio at different intervals.

Q. That is, that were served out of Cleveland?

A. Yes, sir.

Q. For how long?

A. For a period of 19 years.

Q. You were formerly engaged in the operation of theatres at Bellefontaine, Ohio?

[fol. 1622] A. Yes, sir.

Q. That was during what period?

A. From 1924 to 1931.

Q. And calling your attention—strike that out. What were the names of the theatres you operated there?

A. The Strand, Opera House and Majestic.

Q. Those were the theatres you bought from Mr. Gutilla?

A. Yes, sir.

Q. Calling your attention to the year 1930, were there any other theatres in operation in Bellefontaine other than yours?

A. No, sir.

Q. Do you recall whether construction was started on any then?

A. Yes, they started construction of the Holland Theatre.

Q. Who did?

A. Mr. Schine.

Q. And when was that?

A. In the fall of 1936. I mean, of—the fall of 1930, rather.

Q. Do you recall when that theatre was opened?

A. Some time in February, 1931.

Q. And do you recall what major product you were exhibiting at your theatres in Bellefontaine for the 1930-31 season?

A. We had Fox, First National, Paramount and F.B.O.

[fol. 1623] The Court: What is that?

The Witness: F.B.O.

The Court: What does that mean?

The Witness: It is the name of a film company at that time. It is now R.K.O. and Metro. For 1930-31 we didn't have Metro. We had Metro up to that time.

Q. How long had you been using Metro?

A. For a period of years we had the theatre, six years.

Q. What if any efforts did you make to license Metro features for the 1930-31 season?

A. I talked with Mr. Eddie Booth, who was branch manager of Metro at that time, in an endeavor to buy the pictures.

Q. Whereabouts?

A. At a convention in Columbus and also over the telephone.

Q. Eddie Booth was Branch Manager where?

A. Metro-Goldwyn-Mayer, Cincinnati, Ohio.

Q. And Bellefontaine was served out of Cincinnati?

A. Yes, sir.

Q. What was the conversation you had with Mr. Booth?

Mr. McClennen: That is objected to, if your Honor please. This raises a question that is new in the case since the hearings before your Honor and the trial before your Honor in June, in this respect: At that time assurances [fol. 1624] were given of the connection that was going to be made by showing the authority of a Branch Manager to speak for the corporation. That has passed by now, because there has been put in the evidence that shows with precision the authority which the Branch Manager did not have with respect to his company and there has also been brought to the attention of the Court the matter in the grey covered brief handed your Honor, the grey covered memorandum with respect to the precise statement of the Supreme Court of the United States on that subject, a matter which was not before your Honor at that time; also the ruling of other courts recently made on this subject. That presents here the three grounds on which this type of testimony is not admissible: (1) is that it is distinctly stated by the Supreme Court that where the conversation is with the alleged conspirator that the testimony should not be admitted until there is evidence in other ways of the existence of the conspiracy. I have just paraphrased it and it [fol. 1625] is important enough so that I read it instead. This is at the foot of page 8 of the grey covered memorandum. The Supreme Court of the United States there said:

> "Declarations are admissible over the objection of an alleged co-conspirator who was not present when they were made only if there is proof alia unde that he is connected with the conspiracy, otherwise, hearsay would lift itself by its own boot straps to the level of competent evidence."

There are the three things required that must be met in order that a conversation of this kind may be shown in evidence. Before stating those three things, let me interject that in many of these cases this matter is not presented as a ground for total exclusion because the alleged co-conspirator is made a party defendant. In that case within the discretion of the Court a situation may arise where the particular piece of testimony may be shown for the limited purpose of its bearing on that particular defendant. Here we are not met with any such situation because the alleged [fol. 1626] co-conspirator is not a party. The sole question is whether this testimony is admissible in a case in which the only defendant is what I will call, for shortness, the Schine defendants.

Now, in such a case as that, these preliminaries must be met, these preliminary requirements must be met before the evidence is admissible at all. First, evidence to establish the existence of the conspiracy; second, the scope of that conspiracy sufficiently to show that this conversation that is offered is a step within the scope of that conspiracy, that is in the course of carrying out that conspiracy during the continued existence of that conspiracy. Those two must be met before the declaration of the corporation could be admitted, the conversation of the corporation could be admitted in evidence against the Schine defendants, in this particular case, the Vitagraph Corporation.

The next requirement is that the conversation shall be the conversation of Vitagraph, the corporation, in the sense [fol. 1627] that it is a conversation, that the declaration made is a declaration made for that corporation by an official authorized to make such a declaration that is now offered. The declaration that is now offered is a declaration of a branch manager. It has appeared that the branch manager of Warner's,—I am sorry, I have said Warner's, because I had overlooked that this is Metro, and Mr. Rogers has corrected me. The testimony of Mr. Saunders is precise, unequivocal that the branch managers of Metro have no authority to make a declaration of this kind. They are not empowered to tell an applicant who has the pictures. They are not empowered to describe the policy, the selling policy of the company. They are empowered only to receive the applications and, in so far as the Company is concerned, make their recommendations and forward the application to headquarters. Of course, I am not speaking about their authority to engage stenographers and tend to the booking of pictures and those things, but so far as the selling of pictures is concerned, there is no authority to go beyond that.

[fol. 1628] Therefore I submit that this testimony should not be received because there is no evidence here that Metro had conspired with the Schine defendants at the time in question, or, indeed, at any time; that there is no evidence that the scope of that conspiracy, had it existed, was broad enough to make the action of a branch manager of Metro, in respect to the sale of pictures and the policy of Metro with respect thereto, an act in pursuance of the conspiracy or within the confines of the scope of that conspiracy; and, third, that it has been clearly established that even if Metro could do this as a part of the conspiracy that it has been clearly established that the branch manager could not speak for Metro in that respect. The conspiracy, if it had existed, was not a conspiracy in Cleveland, or contemplating action in Cleveland—I hope I have got the right city here that the witness was going to speak about.

Mr. Rogers: Cincinnati.

Mr. McClennen: It is suggested that it was Cincinnati, [fol. 1629] and if that is the fact it is equally true of Cincinnati.

Therefore, for these three reasons, the testimony should not be received.

We are now at the outset of what, struggle as best we may, is going to be a long trial. Conversations of this kind, if admitted, involve an extensive cross-examination into the conversation that is testified to. It involves the calling of other witnesses to that conversation, to meet it in the respects in which it is not conceded to be accurate, full, complete, or existent at all. Therefore, as a matter of the administration of the case we strongly urge upon your Honor that such testimony should not be received.

If it were a discretionary matter we appeal for the exercise of that discretion for the exclusion of the testimony, but we urge that it is not within the discretionary powers of the Court, because of the rules of law which I urge exist by the determination of the Supreme Court, namely, there is no evidence now before the Court that there was a con- [fol. 1630] spiracy. On that ground a conversation with a stranger to the Schine defendants should not be admitted. There is no evidence that if there were a conspiracy the scope of it was such that this conversation would be a step in the carrying out of any such conspiracy which did not contemplate any action of the kind in either Cincinnati or in Cleveland, and, thirdly, that it has now been positively shown that the branch manager had no authority to make such a declaration for Metro. Therefore, I urge that this question should not be admitted and that, interchangeably with what I have just said, the same ruling be made hereafter with respect to conversations of other branch managers of concerns that are not parties to this suit.

I thank your Honor for hearing me so patiently and so long, but it is a very important step in the case.

Mr. Wright: If the Court please, I think all of these questions were ruled upon back in May. We proceeded then [fol. 1631] on the assumption that we had a course of business to prove here and the only way that we can prove it is by showing what was done in the course of the business between the independent exhibitors and these major distributors, and what was done between the major distributors and Schine. We have proceeded on that theory. The only connecting up, the only reason we offer the testimony as to who these people were, was to shorten up and avoid the objection that was frequently made before, that there was no proof that the parties with whom these conversations were held did have an official position such as the witness described. That has been cleared out of the way and there is no occasion here to stop and consider before the witness even answers whether or not what he is testifying, the conversation, or what Booth told him, was within or outside of some special or general knowledge that Booth might have had from Metro. Nobody contends that Mr. Booth did not have authority to talk to the exhibitors in his territory, of which Mr. Mooney is one, and all that he [fol. 1632] has been asked to do is give his conversation with Mr. Booth. I submit that nothing that has been said by Mr. McClennen is any basis for refusing the witness permission to answer this question.

Mr. McClennen: The matter before the Court before was more than just the question of whether the branch manager, or the person spoken of was a branch manager. The question before the Court before, to which the assurance of connection later was made, was the question of whether this was an authorized representative in this respect of the particular distributor.

Mr. Wright: Do you contend that Mr. Booth was not authorized——

Mr. McClennen: Just a moment. I can best make my contention clear by stating it to the Court. As I was saying, I contend that Mr. Booth, if that be the man we are speaking about, I contend that no branch manager with any of these companies was authorized by his company to inform a prospective customer that it was the policy of the company to sell to Schine instead of to him. That branch manager [fol. 1633] does not make the policy and could have only hearsay evidence of what the policy was. If the statement of the branch manager was that the picture had been sold to Schine, then if it had been sold to Schine it will be shown by the evidence of the contracts that have been made, and the fact that a branch manager of Metro made an admission that it was sold to Schine is no evidence whatever that it had been sold to Schine, and therefore not material on that account. Of course if it is a case where in fact the other evidence shows that the picture had been sold to Schine, no harm has been done, but no good has been done, because the direct evidence is the simplest and best way of showing that, and to the extent that the sales are contended for they are in process of being shown by the actual contracts made.

Now, I urge that this is an entirely different situation from the one that was presented to your Honor before because of the limitations upon the authority which have been [fol. 1634] introduced in evidence, uncontradictable evidence, the actual fact of the matter that the branch manager did not have authority to tell what his company elsewhere had done, not through him, by somebody else, of which he could only have information which had been transmitted to him, if it had been transmitted to him; that he had no authority to indicate what the policy of the company was. His authority was to take an application, if it was made, make his recommendations on it, and if they were favorable, transmit it to the company. And that was the whole of the authority. He was not authorized to make any such declarations as a general conversation would, if there was any, bring out.

Mr. Wright: If the Court please, Mr. McClennen's argument simply has not any relevance to what we are trying to prove here. As a part of our case we expect to show that in certain instances, of which this is one, where there was a regular customer of a major distributor in the town [fol. 1635] who had been playing the product and using it regularly, that when Schine came in, the season when Schine came in, he was not given the opportunity even to negotiate for a continuance of his relations with the major distributors. The only way in which the facts may be brought out in those situations, as to what happened between the independent exhibitor and the distributor is to do what we are doing here and ask for the conversations that occurred between the exhibitor and the representative of the distributor who dealt with him, as to whether or not the product was offered to him or whether it was not. That is the principal thing that we are trying to establish here. You cannot establish that simply by introducing contracts. They do not show anything with respect to negotiations. What we have to do is to show that in these situations I have described the product was not offered to the independent, and the only way that can be shown is by evidence such as we are proposing to offer here.

[fol. 1636] Mr. McClennen: The suggestion that this is not relevant to the case we are trying I think must be treated as a matter of alluring and delightful humor. The relevancy of my discussion, whether it is sound or not, I think is apparent to your Honor. There has been no objection to this witness stating what product he had up to the time that the Schine interests came into the town. Now, what the Schine interests got of the product is to be shown by the contracts that they made, and if they made contracts that absorbed the product then the whole story has been told. Of course this witness could not get pictures that had been sold to Schine. The important thing, after showing that the Schine interests had come into the town, is to show what contracts had been made by Schine, and when those have been shown that ends the Schine connection with this feature. If it was a violation of the anti-trust laws for Schine to buy those pictures—which of course we urge that it was not—that ends the story. If it was not a violation [fol.1637] of the anti-trust laws for Schine to buy those pictures, then that ends this department of the story. But the effect upon this witness is made up of the fact that this witness had bought certain distributors before this time, and that after that Schine bought those distributors, and the effect upon this witness is just the same from that purchased by Schine, whether the branch manager said something to him or not. It is self-evident that the pictures could not be sold to him if they had been bought by Schine, and the rest of this would be merely, if it served any purpose, a means of having a branch manager tell what had been done, and that is just as much hearsay when that statement is made by a branch manager of a concern that is not a party to the case and not within the authority of the branch manager to make as the purest instance of hearsay testimony.

The Court: Well, evidently you presume what the answer will be. You presume that his answer will refer to the fact [fol. 1638] that the contract had been made by Metro with Schine. That is one thing. And then there is the question of whether the answer may go farther than that, from the nature of the question.

This is an important matter to decide at this time because, as Counsel for the defendants have pointed out, it is a question that will arise here, I assume, very frequently with reference to the testimony of conversations had with branch managers. It is very important that I decide it correctly. It is going to take some time to discuss here the question of his discretion and the question of the order of proof, that a conspiracy must first have been shown before such acts may be shown.

I call your attention to the Supreme Court decision that declarations may be shown of a direct co-conspirator, over objection, who was not present when they were made, only if there is proof that he is connected with the conspiracy. I would take it that goes to the discretion of the Court; [fol. 1639] that does not go to the question of the order of the proof. I take it that it means there must be a connection shown. I think the order of the proof is for the Court, do you not? Do you not think that is the meaning of that?

Mr. McClennen: I think, if your Honor please, of no more precise and definite statement that could be made than that statement of the Supreme Court that this evidence is not admissible at all until there is evidence aliaunde of the existence of the conspiracy. That must come. And I feel fortified in my interpretation of that language by the action of the other trial courts that have acted since that language was used, and that is set out extensively in the same memorandum, on pages 1 to 7 of the gray memorandum.

The Court: There are two cases referred to in those pages. One is the Aluminum case and the other is the later case of the United States Gypsum Company.

Mr. McClennen: Those are, I submit, actions by co- [fol. 1640] ordinate Judges exactly in accordance with what I am contending for and an interpretation exactly as I urge it of the language of the Supreme Court.

Now, in addition to that, may I ask your Honor's consideration of page 12 of the same memorandum where the Court of Appeals says, "The declarations of another, not covered by the principles of agency, and which depend for their ultimate rightful presence in the case upon the finding by the jury that a conspiracy did exist should not be received preliminarily or retained in the case except with great care and caution. This will not be overlooked on retrial." And that was the ground on which that case was sent back.

The Court: That is declarations that are not covered by the principles of agency.

Mr. McClennen: Yes, there is involved here the question of the agent's authority to make it and the existence of the conspiracy.

The Court: That does not relate to a case where the question [fol. 1641] of agency is involved. It says "Not covered by the principles of agency." It says "The declarations of another not covered by the principles of agency and which depend for their ultimate rightful presence in the case upon the finding by the jury that a conspiracy did exist should not be received preliminarily or retained in the case except with great care and caution." Perhaps they may claim it is involved here.

Mr. McClennen: The princi*pal* of agency here spoken of is the agency of, I will say, the President of Fox to speak for Schine. If in some way the President of Fox had been given authority to speak for Schine, then the principles of agency would make his statement the statement of Schine. The Court says, "Except for that," the statement of the President of Fox, we will say, for illustration, is not to be received against Schine. Here we have the double thing, that there is no evidence of the conspiracy which would render Fox's own statement admissible against Schine and there is no evidence that this branch manager [fol. 1642] had autho[illegible] to speak in this way for, in this case, Metro.

The Court: That goes to the order of the proof, I think. As pointed out here, it must be received with great caution.

The matter that troubles me is the question that arises very often where the charge is conspiracy. It is often asserted that you have got to prove the conspiracy before you do something else. These something-elses may relate to the question of conspiracy itself and the conspiracy often is not shown by a single act, but it is a combination of acts which are gathered together to make a total. It seems to me that in a conspiracy charge the order of the proof should rest with the trial court.

Mr. McClennen: If it was other facts that by accumulation would show a conspiracy—

The Court: That itself is a question that may involve other facts.

Mr. McClennen: For that reason conversations taking place by the Schine defendants, although entirely innocuous [fol. 1643] in themselves, may conceivably be admissible in the court's discretion to build up the structure, but here this man has no authority.

The Court: Just take your statement there: Assuming the proof later on shows that in this specific case he was authorized to say that they would not let him have these pictures, or authorized to say something with relation to their relation to Schine, Metro's relations to Schine, on those things, irrespective of the question of general agency to make or deny a contract it may still be competent.

Mr. McClennen: If an entire stranger were the party to the conversation and the conversation was offered—let me put a simple illustration. The question is, "What are the instructions given to the motorman as to the way in which he should operate the car," in the simple accident case, and a witness comes along to say that the motorman told him that he had been told to operate in this way. There is the clearest case of pure hearsay and the admission of some- [fol. 1644] thing that is not admissible against the defendant company. If there had been some evidence suggestive of authority to make this particular statement, the authority of Mr. Booth to make this particular statement on behalf of Metro, only one step would have been covered, that of showing that this conversation rose to the dignity of a coversation by Metro.

[fol. 1645] The Court: With—

Mr. McClennen: With an outsider. Now, even that, if it was a conversation by Metro, in its proper person, would not be admissible against Schine to show the existence of a conspiracy or to show something done in the course of that conspiracy but here we have the afformative evidence offered that shows that Booth did not have authority to speak for Metro in these respects and, therefore, that it isn't a declaration on the part of Metro, even to say nothing of its being a declaration in pursuance of a conspiracy with Schine.

The Court: Well, it seems to me that the question is the weight of the combination. I am inclined to agree with you that the statement made by the branch manager to the witness, standing alone, may have little probative force and amount to nothing, but I am viewing it from the standpoint, the broader standpoint of its connection with the establishment of the conspiracy. Standing alone I must say I am inclined to agree with you.

Mr. McClennen: If your Honor please, of course, the rule [fol. 1646] of admissibility is the same in the trial before a judge of the court as in the case of trial before a jury.

The Court: Well, that is not quite accurate. I think the order is of less significance in a trial before a Court than before a jury, don't you?

Mr. McClennen: Well, I think it is not legally less significant. Of course, we do have this, that we know of the much greater danger of a jury's giving effect to inadmissible evidence than of a learned judge giving effect to inadmissible evidence, but the rule of admissibility is the same in the two situations, and I submit that it would neither be a wise exercise of judicial discretion, nor within the proper powers of the Court, under the rules of evidence, as the Supreme Court has thus laid it down, to let a jury hear this conversation in the absence of proof alia unde that there was a conspiracy. The scope of that conspiracy sufficiently to show that this conversation was a part of the carrying out of that conspiracy, and that this [fol. 1647] witness had authority from the principal, Metro to make such a declaration.

The Court: Mr. Wright, how do you distinguish this Glassar case as to the declarations being admissible over objection of the conspirator, when it says that they are not admissible?

Mr. Wright: I would say, if the Court please, that language you just read and counsel's whole argument is directed to an entirely different point than the precise one involved here. We are not attempting to prove by the witness any statement by Booth, which is an admission that he or Metro are attempting to conspire with Schine. We are not attempting that here. All we are attempting to do here is show one circumstance which, together with many others, we think will make our case. The precise question here is that nothwithstanding the fact that Mr. Mooney was the regular Metro account in the town and in the normal course of business would have been given an opportunity to at least negotiate for the continuance of his [fol. 1648] run, that when Schine came in he did not even have the opportunity to negotiate for the continuance of the run; they simply took it away without giving him any opportunity to discuss terms or anything else. Now, when we show that that occurs in a substantial number of situations where Schine comes in, that Metro takes the product away from the independent account in that manner, that those circumstances taken together with others indicate that there is a combination and an unlawful conspiracy between Schine and Metro to deprive the independent of an opportunity to compete with Schine in licensing Metro films in the towns where Schine operates. Now, we can save a lot of time if counsel wishes to stipulate that in every case where Schine came in and took over a theatre and bought product away from an independent, that the distributor didn't even give the independent an opportunity to negotiate for that run. We think that is a significant circumstance to be proven and taken with many others.

The Court: You are asking here for a conversation.

[fol. 1649] Mr. Wright: Yes.

The Court: Would it meet your purpose to show what was done, what actually was done in connection with getting the run for 1938?

Mr. Wright: I say we think it is significant, not merely that Schine bought the pictures in situations of this kind; we say it is also significant that the independent, who was running them, was not even given the opportunity to negotiate for them before Schine bought.

The Court: Is proof of that required, the statement of some conversation between them?

Mr. Wright: I suppose that if we asked Mr. Mooney if he was given an opportunity to negotiate for the continuance of the run, that there would be an immediate objection that that was a conclusion and what we would have to show would be what his conversations or negotiations were.

The Court: You would have to show what was done from year to year on many of these pictures with reference to the agent coming to him, and how the pictures were procured.

Mr. Wright: That is what I wanted to show.

[fol. 1650] The Court: I suggest that the question of the particular statement by the branch manager—let me ask you, first, is this Bellefontaine Theatre, is the contract between Schine and Metro for that year in evidence here?

Mr. Wright: I don't think that has been produced. I don't think they had the contracts that far back, but in any event, the contract itself only tells part of the story. It is always essential to show, as I say, unless counsel is willing to stipulate with us, that when these occurred they occurred without the existing account being given an opportunity to negotiate for the continuance of the run.

The Court: If that is the case, it might be required that you have other proof before the declarations are admissible, or the conversations, over the objection.

Mr. Wright: That was a criminal trial.

The Court: I don't know.

Mr. Wright: As your Honor pointed out, the order of proof in an equity case is completely discretionary. We don't say that we are going to prove by this witness or any [fol. 1651] other witness a conspiracy or any evidence which would establish a conspiracy. The only way we can prove our case is by showing what happened in these numerous instances where the independent came in against Schine, or Schine came in against the independent. The only proof I know that can be made there is to show what happened by the negotiations that occurred.

The Court: The question is that the language is susceptible to the interpretation, and before you can show the statements made——

Mr. Wright: Where there is a possibility of prejudicial error occurring that may be so.

The Court: As I pointed out before, I don't know whether you can prove a conspiracy except by circumstances and facts. I think the proof should be received at this time, but it has to be connected up. I will say that standing alone it has little or no probative force.

Mr. McClennen: There was no objection to the part of the examination that went to what is being talked about. The testimony was not objected to that Mr. Mooney had [fol. 1652] these pictures up to this time. There was no objection made to the testimony that he went to Mr. Booth to get pictures and there would be no objection to the testimony that he did not get the pictures, but to the conversation which could have no bearing on that the objection is made, because we believe that both in the criminal case, in the Glassar case the Court said what it did, but also in the

Aluminum case and in the Gypsum case, neither of which was a criminal case, the same rule was applied.

The Court: I doubt that the Aluminum case was the same as this, but in the other case, it is pretty difficult to determine from the transcript of the evidence just what was admitted.

Mr. Wright: Well, if we are going into the Aluminum case——

The Court: The objection is overruled.

Mr. McClennen: Respectfully we persist in the objection.

The Witness: May I hear the question again?

Mr. Wright: Yes, I will have it read. I am sorry, the stenographer who took the question has left the court room. I will repeat.

[fol. 1653] By Mr. Wright:

Q. Now, who was the person, who was the representative of Metro that you dealt with when you had bought the films for your theatre there for prior years?

A. They usually had a salesman.

Mr. McClennen: That I object to because it assumes he was the representative, and that is the thing we are debating. If he wants to know who was the branch manager with whom he dealt——

Mr. Wright: I asked him whom he dealt with.

Mr. McClennen: No, you asked who the representative of Metro was.

Q. Whom did you buy Metro films from?

A. A salesman.

Q. What was his name?

A. There were different salesmen during those six years; I wouldn't recall any particular individual.

Q. Did any salesman call on you with reference to the 1930-1931 product?

A. No, sir.

Q. Although he had called the prior years?

A. Yes, sir.

Q. With reference to each season's product?

A. That is right.

[fol. 1654] Q. And you had made a deal each year?

A. Yes, sir.

Q. Then, after the salesman, failed to call on you with reference to the 1930-1931 product, what did you do?

A. I contacted Eddie Booth, Branch Manager at Cincinnati.

Q. Where did you contact him?

A. I called him at Cincinnati.

Q. Do you remember when that was?

A. It was during a period of May or June to December.

Q. 1930?

A. 1930.

Mr. McClennen: I did not catch whether he said he called on him or called him.

The Witness: Called him on the telephone.

The Court: You mean different times?

The Witness: Numerous times.

By Mr. Wright:

Q. What did he tell you when you talked to him?——

Mr. McClennen: This is the objectionable question.

The Court: Overruled.

The Witness: He told me he didn't have any pictures for the Strand Theatre for the coming season.

Q. Tell you why?

A. No, he didn't tell me definitely why at that time.

Q. Did he tell you later?

[fol. 1655] A. I met him at a convention in Columbus, a motion picture exhibitors convention, and at that time he told me the product had been sold.

Mr. McClennen: That is objectionable.

Q. When was this?

A. They usually held them in October or November.

Q. It was either in October or November of 1930?

A. 1930.

Q. You say you had a conversation with him there?

A. That is right.

Q. What was the conversation?

A. He told me the product——

Mr. McClennen: This is objected to for the further reason——

The Court: Yes, go ahead.

The Witness: He told me the product was sold for the New Holland Theatre which was owned by Schine.

By Mr. Wright:

Q. Did he tell you why they had sold it to Schine?

A. No.

Q. What if anything did you say?

Mr. McClennen: That I object to.

The Court: I will receive the whole conversation.

The Witness: He told me the deal was consummated in New York, and he didn't have any jurisdiction over selling the pictures.

[fol. 1656] Q. Then when was it that the Holland Theatre opened?

A. In February, 1931.

Q. Did it play Metro pictures there?

A. They picked up the older releases that were released from September until the time they opened, and they played those along with the new pictures.

Q. That is, none of the pictures released in Bellefontaine had been played, none of the Metro pictures released in the 1930-31 season had been played in Bellefontaine at all until the Holland opened in January?

Mr. McClennen: This is objected to as leading.

The Court: State the facts.

The Witness: The pictures released in September, October, November, December and January had never played Bellefontaine.

Q. That is prior to the opening of the Holland?

A. Of the new theatre.

Q. What admission prices were you charging at the Strand Theatre?

A. Either 30 or 35 cents, I don't know which.

Q. What prices did the Holland open at?

A. I believe they opened at 25, 15 and 25 cents. I believe it was 15 cents for the balcony and 25 downstairs.

Q. That is the evening admission price?

A. Evening admission.

[fol. 1657] Q. Do you know how many seats they had in the balcony?

A. No, I don't, but I imagine about four or five hundred seats.

Q. Then what was your evening admission price?

The Court: 30 and 35 cents.

Q. Did you maintain that price after they opened?

A. For a short time, and then we dropped to 25, I believe.

Q. 25 cents at night?

A. Yes, sir, we dropped to the same admission prices they were getting on the lower floor.

Q. They continued to charge 15 cents in the balcony?

A. I believe I am correct in that statement.

Q. Now, before the theatre opened there, did any one from Schine come to see you about buying or leasing your theatre?

A. No, sir.

Q. Did they afterwards?

A. Shortly after they opened they contacted me.

Q. Who contacted you?

A. I believe it was Mr. May.

Q. Whereabouts?

A. In Cleveland.

Q. Do you remember when that was?

A. No, I believe it was in March, the last of February or the first of March of 1931.

[fol. 1658] Q. What was the conversation you had with him?

A. They offered me $5,000 for the leases of the three theatres.

Q. That was which three?

A. The Majestic, Opera House and Strand.

Q. How much had you paid for those leases when you bought them from Mr. Gutilla?

Mr. McClennen: That is objected to.

The Court: Overruled.

Q. You may answer.

A. $15,000.

Q. Did you accept or reject the offer?

A. I rejected the offer.

Q. Then you continued to operate the theatre then?

A. Yes, sir.

Q. Were you making or losing money?

A. We were losing money.

Q. Why was that?

Mr. McClennen: Just a moment. I object to that.

The Court: Well, I——

Mr. McClennen: Statement of a conclusion.

The Court: The objection on the ground of a conclusion is sustained.

By Mr. Wright:

Q. When was the next time that you saw a representative [fol. 1659] of Schine about selling your theatre?

A. It was about five or six months later.

Q. Later than what?

A. After they opened their theatre; it was around May or June of 1931.

Q. Whom did you see then?

A. Mr. May.

Q. Where did you see him?

A. In Bellefontaine, Ohio.

Q. What was the conversation you had then?

A. He offered me $2500 for the theatre, and I took it.

The Court: For one or three?

The Witness: Three.

The Court: $2500?

The Witness: Yes, sir.

By Mr. Wright:

Q. That was in about June, you think, you sold out?

A. At the end of May or the first of June.

Q. And now had anybody called on you from any of the major film companies with reference to selling you 1931-32 product?

A. No, sir.

Q. In prior years when had they come to see you about the season's product?

The Court: Do you mean anybody of Metro or all [fol. 1660] companies?

Mr. Wright: I asked him with respect to all major companies.

The Court: When did they come in prior years?

The Witness: Usually right after the convention which was held some time in May. A number of exchanges used to sell their product before the convention, sometimes in January or February for the preceding years.

By Mr. Wright:

Q. You mean for the succeeding year?

A. Succeeding year, I meant to say.

Q. What were the circumstances which led you to accept $2500 for your $15,000 investment?

Mr. McClennen: That is objected to.

The Court: Well, he may state the facts. There must be no conclusion about it, whether he lost money——

The Witness: At first, because we were losing money; second, because I was afraid I wouldn't get any product for the coming season.

Mr. McClennen: I move to strike that latter part out.

The Court: No, I will let it stand.

By Mr. Wright:

Q. Calling your attention to the year 1935, do you know [fol. 1661] what theatres were then operating at Fostoria, Ohio?

A. 1935, there was the Colonial, Roxy and I believe the Civic was opened that year.

Q. Fostoria, was that in your Cleveland Exchange territory?

A. That was out of Cleveland, yes, sir.

Q. You were the manager of Warner Brothers Exchange there?

A. Yes, sir.

Q. Vitagraph?

A. Yes, sir.

Mr. McClennen: Branch Manager there.

The Witness: Yes, sir.

By Mr. Wright:

Q. Do you know who was operating those theatres?

A. Buck Brothers were operating the Colonial. I believe Mr. Kahn was operating the Roxy and Civic.

Q. Do you know whether the name of the Colonial was later changed?

A. I believe it is now called the State Theatre.

Q. So the State and Colonial are the same theatre in Fostoria.

A. Same theatre.

Q. I call your attention to this inter-office communication dated December 27th, 1935, that has been identified as Plaintiff's Exhibit 559, and ask you if that is your signature on there?

A. Yes, sir.

[fol. 1662] Mr. Wright: I will offer this.

The Court: What is the number?

Mr. Wright: This is 559. I offer it in evidence.

Mr. McClennen: Well——

Mr. Wright: If there is any argument about it, I will just use it to refresh his recollection and save you the trouble.

Q. This exhibit, I will ask you to read that——

Mr. McClennen: That is, you are not offering it at the present?

Mr. Wright: No.

Q. An[illegible]sk you if that recalls to your mind negotiations you had with the exhibitor at Fostoria for a two-year deal?

A. Yes, sir.

Q. And who was that exhibitor?

A. Mr. Arthur Buck.

Q. That was the operator of the Colonial Theatre?

A. Yes, sir.

Q. And what negotiations had you had with him?

Mr. McClennen: That I object to.

The Court: Of course, the contract shows that.

Mr. McClennen. The contract, yes.

Mr. Wright: The contract wouldn't show the negotiations. What this memorandum refers to is a two-year deal [fol. 1663] which was forwarded and was not approved. It was rejected. I am asking him now for the negotiations that preceded the making of the deal that was forwarded.

The Court: The negotiations are shown by the instrument itself, even though it wasn't approved.

Mr. Wright: No, I don't think so, if the Court please, in any event, we don't have the deal itself, anyway.

The Court: All right.

Mr. McClennen: This is asking this witness about a negotiation with another exhibitor which it seems resulted in an application which was sent forward. Now, we were not parties in any way to that negotiation. It wasn't conducted on our behalf anyway. It wasn't any part of any conspiracy in any way. It is totally immaterial, I submit, in this case, what the negotiation was. The fact that a two-year deal was sent forward and was approved or disapproved by the home office, is the whole of the story, so far as this case that we are trying is concerned, and what negotiations he had had with this outsider, which was put into this [fol. 1664] proposed agreement for two years, is wholly immaterial to anything that we are trying here, I submit.

The Court: How is it, Mr. Wright? I don't see how negotiations between him and these people are connected with Schine.

Mr. Wright: What we expect to show is, this exhibitor attempted to make a two-year deal with Warner Brothers to give himself protection because he had heard Schine was coming into town. The deal was forwarded. We expect to show it was disapproved because Schine then made a deal for Fostoria for taking over the proposition, took the opposition theatres and made a deal which included their product and then this exhibitor was given only half of the Warner Brothers' run; in other words, his product was taken away from him by a circuit deal without his having been given any opportunity to negotiate for the continuance of his full, regular run.

The Court: I suppose the negotiations between him and the other theatre operator were included in this memorandum?

[fol. 1665] Mr. Wright: This refers to negotiations between him and Mr. Mooney as Exchange Manager for Warner's.

The Court: Why wouldn't the papers cover it and show what the negotiations were?

Mr. Wright: If it shows what the negotiations were, I think it would. It so happens all the paper on its face is "Enclosing two-year deal for the Colonial Theatre, Fostoria. This is a very good deal and suggest you let us have your approval". I simply want to show the circumstances which led up to the making of the deal.

Mr. McClennen: I will ask that Mr. Wright's statement of the contents of this letter, not yet in evidence, be excluded, and ought not to be stated as the contents of a document not in evidence, and not at the moment even under offer. May that be excluded?

Mr. Wright: I don't see how the court can determine its relevancy without knowing what is in it.

Mr. McClennen: I think it is quite obvious that the Court could determine the relevancy of the question under discussion, which wasn't the contents of the letter at all, and we [fol. 1666] ought not to have spread into the record a statement of the contents of this letter until this letter is admitted in evidence. I ask that be excluded at present.

The Court: Strike it out. Proceed with the questions, Mr. Wright. What was the question?

(Preceding question read.)

The Court: I think the use of the word *of* "negotiations" is improper.

By Mr. Wright:

Q. What conversations had you had with Mr. Buck prior to the time you wrote this letter marked Exhibit No. 559 for identification?

Mr. McClennen: Same objection.

The Court: Overruled.

The Witness: We worked out a two-year deal and I submitted it to New York.

The Court: That is not the conversation.

Q. Prior to the time you worked out the deal, or in the course of working out the deal, did Mr. Buck, in any conversation with you, tell you why he wanted that deal?

The Court: That is leading. Let the witness state the conversation.

The Witness: Mr. Buck understood Schine was taking over the opposition house.

[fol. 1667] Q. State what was said.

Mr. McClennen: May that go out.

The Court: Strike it out.

The Witness: The conversation was Schine was taking over the other house and he would like to get a two-year deal to protect the product for his theatre.

Q. And you say a deal was made?

A. Yes, sir.

Q. Then the deal you made was the one that was forwarded with this Exhibit 559?

A. Yes, sir.

Mr. Wright: I will offer this in evidence.

Mr. McClennen: I raise the objection that it is wholly immaterial. It has appeared from the witness' testimony——

The Court: The deal was made, you mean what the result of the negotiations between him and the other party were, which were consummated in the paper?

Mr. Wright: Yes, which was forwarded.

The Court: The deal, of course, involves and means the contract and the contract shows the agreement between the parties.

Q. What form was the deal in?

[fols. 1668-1669] A. The application for a contract was drawn up and signed by Mr. Buck and forwarded to the New York office.

The Court: Application?

Mr. Wright: Application.

The Witness: Yes, sir.

The Court: I understood it was the contract.

Mr. Wright: Well, an application.

The Court: I think we will have to suspend at this time until 10 o'clock tomorrow morning.

(Whereupon, a recess was taken until Tuesday, October 3rd, 1944, at 10 o'clock a. m.)

[fol. 1670] UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF NEW YORK

Civil 223

UNITED STATES OF AMERICA

vs.

SCHINE CHAIN THEATRES, INC., et al., Defendants

Continuation of trial before Honorable John Knight, United States District Judge for the Western District of New York, October 3rd, 1944, at 10 o'clock a. m.

APPEARANCES:

Robert L. Wright, Esq., John F. Clagett, Esq., Harold L. Schilz, Esq., Special Assistants to the Attorney General, and Milton Kallis, Esq., Special Attorney, in behalf of the United States.

Edward F. McClennen, Esq., Willard S. McKay, Esq., Saul E. Rogers, Esq., Arthur E. Whittemore, Esq., Arthur J. Homans, Esq., and Howard M. Antevil, Esq., appearing for Defendants.

[fol. 1671] PROCEEDINGS

(Reporters' note: Corrections: Page 1613, line 20, change the word "can" to read "can't."

Page 1613, line 21, change the word "can" to read "can't."

Page 1615, line 5, change the word "sell" to read "open.")

Mr. McClennen: If your Honor please, I want to speak to a matter of personal privilege. Your Honor knows the difficulties in getting transportation these days, therefore, would your Honor tell us whether you are going to sit on the 12th of October. Personally I should like to sit on the 12th. If we are not going to sit on the 12th, which is Thursday, I should like to get your Honor not to sit on the 13th, because I can get a gap big enough then to go home.

The Court: Why do you inquire about the 12th?

Mr. McClennen: It is a holiday.

The Court: There is no holiday.

Mr. McClennen: You are going to sit on the 12th?

The Court: Yes.

Mr. McClennen: That answers my question.

The Court: Unless you do not want to.

[fol. 1672] Mr. Wright: I think we want to sit, your Honor.

The Court: Oh, yes.

Mr. Wright: Mr. Mooney, will you resume the stand?

Milton A. Mooney resumed the stand by and on behalf of the Plaintiff, and testified further as follows:

Direct examination (continued).

By Mr. Wright:

I will ask to have this photostatic copy of the contract between Vitagraph, Inc., and A. J. Buck, for the exhibition of pictures in the Colonial Theatre for the 1935-36 season,—I believe the contract is dated July 10th, 1935,—which is in the folder which has been previously identified as Exhibit 635 to be marked 635-A for identification.

Mr. McClennen: Is this for identification, or are you offering it?

Mr. Wright: This is for identification.

The Court: 635, I have that referring to Auburn.

Mr. Wright: 635, if this is correctly marked, included Auburn, Norwich, Amsterdam. Auburn is the first town. [fol. 1673] It also includes Fostoria. This contract came from the Fostoria group.

The Court: All right.

(Thereupon photostatic copy of contract between Vitagraph, Inc., and A. J. Buck for the exhibition of pictures in the Colonial Theatre for the 1935-36 season, dated July 10, 1935, referred to, marked as Plaintiff's Exhibit No. 635-A for identification.)

Mr. Wright: We will ask to have the contract for the Civic and Roxy Theatres dated March 18th, 1937, between Vitagraph and Schine Enterprises Corporation, which comes from this same folder, marked as Exhibit No. 635-B for identification.

(Thereupon contract for the Civic and Roxy Theatres, dated March 18th 1937, between Vitagraph and Schine Enterprises Corporation, Inc., referred to, was marked as Plaintiff's Exhibit No. 635-B for identification.)

Q. Mr. Mooney, I hand you this contract that has been identified as 635-A, and ask you if you recognize that as the contract under which you were serving Mr. Buck with first-run pictures at the Colonial Theatre during the 1935-36 season?

A. Yes, sir.

[fol. 1674] Q. Now, in your testimony yesterday when you referred to this two-year deal that was submitted with the letter marked for identification as Exhibit No. 559, was that deal on a form of contract similar to the one you have in front of you there?

A. Yes, sir.

Mr. McClennen: Just pause momentarily. May that answer go out for a moment? Has an attempt been made to get the document?

Mr. Wright: Well, we subpoenaed all of the contracts which they had, and applications.

Mr. McClennen: Did you subpoena the applications?

Mr. Wright: I am not sure, but I think they were included.

Mr. McClennen: Obviously it is much better to have the application itself, if it is obtainable, than to attempt to have the witness state it.

Mr. Wright: For our purpose it is purely explanatory.

The Court: The form will not prove its contents.

Mr. Wright: I am not undertaking to prove its contents.

Mr. McClennen: If it is merely asked if it is on that form——

Mr. Wright: The question was raised yesterday as to what was meant by a deal, and I am just trying to explain it.

The Court: I think that was explained yesterday.

[fol. 1675] By Mr. Wright:

Q. Well, in any event, what was forwarded was a signed application?

A. Yes, sir.

Q. Then do you recall receiving this day letter addressed to you dated March 25th, 1936, from A. W. Smith, Jr., which has been marked for identification as Exhibit No. 560?

A. Yes, sir.

[fol. 1676] Q. Do you recall what the occasion was for that telegram?

Mr. McClennen: That is objected to as to form. It presents the opportunity to the witness to state his conclusion.

The Court: He may state what occurred prior to that.

Mr. McClennen: That is the very purpose of my objection. It remains to be seen if what occurred is going to be of such a nature that it would be admissible.

The Court: You would first have to find out what occurred.

Mr. McClennen: And that is different from asking a conclusion. That is my objection.

The Court: He may state what occurred prior to that in connection with the letter.

Mr. McClennen: This is subject to our general objection, if your Honor please, as to conversations.

Mr. Wright: We are merely attempting to show what happened with reference to this particular deal.

The Court: He said he wired. I will let him state what it related to, without stating the contents.

A. This answer is a reply to my wire requesting approval of the application for Fostoria.

Q. What occurred that caused you to send that wire?

[fol. 1677] Mr. McClennen: That is objected to.

The Court: Overruled. State the facts about it. What happened?

A. Mr. Buck wanted to know whether his application had been approved or not.

Q. What is the interval that normally elapsed between the time that you forwarded an exhibitor's contract application and the time that you received notice of approval or rejection?

Mr. McClennen: That is objected to. It is perfectly obvious from the papers that we have seen that there is an almost infinite variety of lapses of time and there is not any such thing as the question assumes, a normal length of time.

The Court: I think the objection is well taken. I will let him state the time and the Court can determine under all the facts whether it was a normal time or not; that is, a reasonable time.

Mr. Wright: The time here, of course, is apparent on the face of these exhibits.

The Court: He may state it in connection with the other facts, whether it was a reasonable prompt response. The [fol. 1678] objection to it is whether it was a normal time. That objection is sustained.

By Mr. Wright:

Q. You recall receiving this telegram addressed to you from Mr. Mochrie, dated April 1, 1936, which has been marked for identification as Exhibit 561?

A. Yes, sir.

Mr. McClennen: This is not a telegram that has been handed the witness.

Mr. Wright: Whatever it is, it speaks for itself.

Mr. McClennen: You called it a telegram.

Mr. Wright: It says at the top "Telegram." That is why I called it that.

Mr. McClennen: It is obviously not a telegram.

The Court: Call his attention to this paper? Do you recollect receiving this paper marked Exhibit 561 for identification?

The Witness: Yes, sir.

By Mr. Wright:

Q. What did you do after you got that?

A. I sold Mr. Buck half the product, the First National group only, for one year.

The Court: One-half of the National product group. What one is that?

The Witness: We were selling—the first half was First [fol. 1679] National and the other half was Warner's, and Mr. Buck got the First National group.

The Court: What do you mean by the First National group?

The Witness: There is a group of pictures under the title of First National Pictures.

By Mr. Wright:

Q. You recognize this contract, dated May 18, 1936, signed by Mr. Buck, marked for identification as Exhibit 563, as the deal you are referring to?

A. Yes, sir.

Q. As I understood your explanation to the Court the designations Warner Productions and First National Productions are merely trade names?

A. That is right.

Q. All of that product was sold by Vitagraph?

A. That is right.

Q. I will hand you this contract for the exhibition of the Vitagraph films in the Civic or Roxy Theatre at Fostoria, dated October 21, 1936, with some sheets attached, all marked as Exhibit 568 for identification, and ask you if you can tell us when you first saw that?

A. This deal sheet was mailed to me from the New York office and I, in turn, made up the contract for Warner Bros. Productions and forwarded it to Mr. Schine for signature.

[fol. 1680] Q. I call your attention to this document entitled "Contract recommendation", which has been marked as Plaintiff's Exhibit 567, and is dated October 21, 1936. Is that your recommendation that appears at the bottom there?

A. Yes, sir.

Q. And what was done with that recommendation?

A. It was forwarded to New York with the contract.

Q. With the Home Office copy of the contract?

A. With all the copies of the contract.

Q. And by the contract you are referring to this contract marked Exhibit 568 for identification?

A. Yes, sir.

The Court: Does it appear who signed Exhibit 568?

Mr. Wright: I believe that is signed by George Lynch on behalf of Belpik Theatre Corporation.

The Court: There is another signature also. What is the other signature?

Mr. Wright: On behalf of Vitagraph by G. L. Sears.

The Court: That is what I wanted to know.

By Mr. Wright:

Q. I will show you this contract marked as Exhibit 635-B for identification, which is dated March 18, 1937, signed by Mr. Lynch and Mr. Sears, covering a repeat run of First National Productions in the Civic or Roxy Theatres in [fol. 1681] Fostoria, and ask you what, if anything, you had to do with that contract?

A. I had the application and I believe this deal here also covered the second-run.

Q. When you refer to this deal you are talking about this deal sheet marked as Plaintiff's Exhibit 568, pages 2 and 3?

A. Yes, sir.

The Court: He asked you what you did.

A. I submitted it to Mr. Lynch for signature and then, in turn, forwarded it on to New York for approval.

The Court: It appears who Lynch was. That is sufficient, isn't it?

Mr. Wright: I think it appears from the answers to the interrogatories. I thought we had read it into the record that he was the film buyer for the defendants.

Mr. McClennen: That is correct, if your Honor please.

The Court: You said this was signed by Lynch and who?

The Witness: By Mr. George Lynch, and Mr. Sears approved it for Warner Bros.

By Mr. Wright:

Q. Did you have anything to do with negotiating these deals that Mr. Lynch signed, which are identified here as Exhibits 568-A and B, respectively?

A. No, ~~sir.~~

[fol. 1682] Q. Mr. Mooney, during the period that you were Branch Manager for Warner at the Cleveland Exchange, what was the practice, if any, with respect to negotiating product deals with exhibitors who were regular customers?

Mr. McClennen: That is objected to as assuming that there was a general practice there.

Mr. Wright: I will insert "if any" in the question.

Mr. McClennen: And that does not remove its leading character and the suggestiveness, and it is not for this witness to state a practice as with respect to us. It wasn't our practice; it was not the practice of any defendant in this case that he is asking, and we submit it is not admissible to show a practice of that office and that this witness is not one who should be permitted to state it. The scope of the duties of the office have been stated and, if anything more is wanted, it should come from those who control the making of practices for the Company. We submit that even that is not admissible as against us, but certainly should not come from this witness.

Mr. Wright: If the Court please, what we are asking the witness to do is to state what the facts were as to [fol. 1683] how the business that he was delegated to conduct was carried on in his territory. He is certainly competent to give that testimony, and the most competent person who could be brought here to do it.

The Court: Well, you inquire in reference to the practice in making contracts.

Mr. Wright: As to what was done.

The Court: If he, as Branch Manager, signed these contracts and they were not signed by superior officials, you better show that fact.

Mr. Wright: All I am referring to is the practice with respect to solicitation, which is the function he performed. There isn't any dispute about the fact he didn't sign the contracts. It has already appeared that he solicited applications in his territory. He would take applications setting forth terms on which they agreed, and they would be forwarded to the home office for approval. I am merely asking what his practice was with respect to solicitation of regular accounts.

[fol. 1684] The Court: In what respect?

Mr. Wright: With respect, specifically, as to whether or not the product they had been using for one season was again offered for the next season; whether they were solicited for that product.

Mr. McClennen: It has already appeared that the solicitation was by designating the salesman to call upon those that it was deemed desirable by the company that they should call upon them. That is not a practice. The policy of the company with respect to selling, we say, so far as we are concerned, again is not admissible, but if there is anything of this kind admissible it is the policy that was the policy of the company, not the policy of a particular office. It can't be reduced to terms of practice, anyway. Obviously, when there was one available theatre in a town the thing to be expected was that a solicitor would be sent to try to get the product into that town. If there came in another and better theatre it was a matter of judgment of the company which they should seek to have become the customer, and that was not a matter of practice, it [fol. 1685] was a matter of particular situations as they arose, and to speak of it as a practice assumes in the question a fact, or a claimed fact that we assert is not a fact, and has not been proved. It is clear enough that when a town had but one theatre, or when it had a customer that had been satisfactory for a long time, it would be the natural desire to get that man's business. When a theatre more desirable to the distributor came in, it would be the natural thing to want to get that business, and it is not a matter that can be characterized in a question or in an answer as a practice, and that I submit for your Honor's consideration.

The Court: Your objection made was the reference to the practice of the agent rather than the practice of the company, thus intimating the practice of the company itself might be competent.

Mr. McClennen: I said, when speaking of the practice of the company, we deem that is not admissible against us, but still farther removed from admissibility is this prac- [fol. 1686] tice of a particular office, but the major objection is that it is all based on the assumption that there was a general practice, when it is obvious from what has already gone into the case that it was a matter of individual occasions and situations, as the interests of the distributor dictated their method of placing the product for the particular year in the effort which they would always be making to get it into the theatre that, from their standpoint, was the one likely to produce the best results to the distributor. It isn't a practice at all.

The Court: Mr. Wright, wouldn't it serve your purpose to seek to show just what he did in such cases from year to year without referring to it as a practice?

Mr. Wright: Yes, I think I can make it more specific and perhaps that will obviate the objection.

By Mr. Wright:

Q. This situation that you had in Fostoria, where there three theatres, two of which were owned by one party and one by another, that is, where you had a choice of accounts [fol. 1687] in the town, was not an unusual or unique one, was it?

A. No, sir.

Q. There were other towns in your area where you found there were two theatres or more theatres, and one of them was the outlet you sold regularly for your pictures, is that right?

A. That is right.

Q. Now, with respect to those situations where there were competitors, did you customarily offer or solicit your regular accounts for the film before you negotiated with or made a deal with the opposition, or did you simply take the films away without giving the old account an opportunity to negotiate?

Mr. McClennen: That question is objected to as leading and misleading.

The Court: Of course, customarily, you might say the same habit obtained. It is a question of what the fact is. Did you, as a question of custom, did you go back to the old licensee?

The Witness: We always solicited our regular accounts, the accounts we had been doing business with the previous year.

By Mr. Wright:

[fol. 1688] Q. And in the course of solicitation would terms be discussed with them?

A. Yes, sir.

Q. And, if terms were satisfactory, what would you do then?

A. If the terms were satisfactory, we would draw up an application of a contract and forward it to our New York office for approval.

Q. What if New York rejected it?

A. We would resolicit the account and try to improve the deal.

The Court: You mean by improving the deal——

The Witness: To get better terms.

Q. Now, was that practice followed in this case?

Mr. McClennen: That is objected to.

The Court: Sustained. Did you do that in this case?

The Witness: No, sir.

Q. Did you receive any information from the New York office as to why that shouldn't be done other than the information that is contained in this exhibit No. 561, the wire to you of April 1, 1936?

Mr. McClennen: Just a moment. That is objected to.

The Court: I think that is objectionable information. What was the fact? Whether it amounted to a letter, of course, a communication is a communication.

[fol. 1689] Mr. Wright: I asked him if he had any other communications with respect to that other than the one I called his attention to.

The Court: I will let him answer that, whether he had any other communication from the company other than the one to which you referred.

The Witness: Yes, I had another wire or letter stating that——

Mr. McClennen: Just a moment, not what the wire or letter stated.

The Court: You had a wire?

By Mr. Wright:

Q. When was that?

A. There was a number of them between December and April first.

[fol. 1690] Mr. Wright: I will offer this Exhibit 561 for identification in evidence.

The Court: That is the contract with Buck?

Mr. Wright: That is the document marked "Telegram," from Mr. Mochrie to Mr. Mooney, dated April 1, 1936. It is marked Exhibit 561 for identification.

Mr. McClennen: Without waiving our objection that this is a purely local transaction and to this type of evidence, we understand that this one will be Exhibit 561.

Mr. Wright: That is right.

The Court: Received.

(The document, from Mr. Mochrie to Mr. Mooney, dated April 1, 1936, previously marked as Plaintiff's Exhibit 561 for identification was received in evidence.)

Mr. Wright: This is a telegram dated April 1, 1936, addressed to Mr. M. A. Mooney, Cleveland office. "Reject definitely Fostoria deal Stop You may offer Buck half of the product for one season only, namely First National group season 36-37 STOP For your personal information will sell Schine Warner half. R. Mochrie."

[fol. 1691] Now I would like to read in evidence the Schine answer to interrogatory No. 17-A, page 33, from which it appeared that the defendant's interests in the Civic and

Roxy Theatres at Fostoria, Ohio, was acquired in May, 1936.

Mr. McClennen: That is correct, if it is meant that a 50% interest was acquired at that time. That date is correct.

The Court: 50% in each one or just one, do you mean?

Mr. Wright: 50% in each, or, I believe, 100% was acquired in each.

Mr. McClennen: That was a 100% interest acquired at that time in May, 1936.

Mr. Wright: In the Civic and Roxy Theatres?

Mr. McClennen: In the Civic and Roxy Theatres.

Mr. Wright: Have you here Exhibit 68 for identification? I believe that is the agreement that was made with the Bucks in July, 1937, which will complete the transaction.

Mr. McKay: It is Exhibit 89, as I recall (handing to Mr. Wright).

The Court: Is it marked for identification?

Mr. McKay: Exhibit 89 for identification.

The Court: That would be in 1937?

[fol. 1692] Mr. Wright: This is dated May 29, 1937. I will offer this Exhibit 89 for identification in evidence.

Mr. McClennen: To avoid confusion in the record, this does not refer to the Civic and Roxy Theatres, does it?

Mr. Wright: I believe it covers the pooling arrangement under which the Roxy, Civic and State were all taken together.

Mr. McClennen: This agreement of May 29, 1937, was the agreement with the Messrs. Buck and others, by which the operation of the three theatres was to go into a new organization in which the Bucks and others would have 50% and Belpik Theatre Corporation, a Schine subsidiary, would have 50%. This, of course, goes in subject to our general objection that this is a purely local transaction and in character not one having any tendency to restrain interstate commerce.

The Court: How many theatres were there in Fostoria which were involved?

Mr. Rogers: Three theatres, the Civic, the Roxy and the State.

[fol. 1693] The Court: Those were Buck or Schine?

Mr. Rogers: Buck had one. We had two and he had one.

The Court: Received.

(The agreement, dated July, 1937, previously marked as Plaintiff's Exhibit 89 for identification was received in evidence.)

Mr. McClennen: And a photostat will be substituted for that.

The Court: He can mark it and then the photostat will show it in that form.

What do you claim for that, Mr. Wright? It seems to be a separate sort of an agreement.

Mr. Wright: It is simply a part of the whole story here as to what happened in Fostoria. The Bucks were softened up, you might say, for the pooling agreement by this demonstration that Schine could take half the Warner product away from them, as was done in this series of negotiations that have just been described.

Mr. McClennen: There has been no evidence thus far that Mr. Buck was softened up at all. Mr. Buck was put on the stand and was not interrogated on that subject at all.

[fol. 1694] By Mr. Wright:

Q. Had Mr. Buck been a satisfactory account?

A. Yes, sir.

Mr. McClennen: Just a moment. That I object to. What was satisfactory was a matter of the determination of the headquarters. It made no difference whether the branch manager was satisfied or not. It was for the headquarters to determine to whom they would sell, whether a man was sufficiently satisfactory or another one was more satisfactory. We object to the question.

The Court: Objection sustained. I think the Court may presume that he was a satisfactory client unless the contrary is shown.

Mr. McClennen: The presumptions, of course,—whatever presumption is appropriate on the evidence when the evidence is closed is not now up for consideration. We are urging that it makes no difference whether this man was satisfactory to this particular branch manager, because it was not within his province.

The Court: I think the Court, as the record stands, could find from the fact that he dealt with this company from year- [fol. 1695] to-year, that his dealings were satisfactory up to that time, until the contrary is shown.

Mr. McClennen: We have no objection, if your Honor please, to his showing what had been done.

The Court: I sustained your objection.

By Mr. Wright:

Q. Mr. Mooney, was any fact brought to your attention at any time which in your opinion would have justified taking the product away from Mr. Buck?

Mr. McClennen: That is objected to as leading and argumentative and calling for an opinion which this witness is not qualified to express, and not the one who should determine how it should be treated.

The Court: I think the form of your question is bad. He may state whether anything else occurred. If anything occurred in reference to the non-continuance of the contract he may state it. Was there anything else that occurred between your Company and Buck other than you stated that related to the non-continuance of the prior arrangement?

The Witness: Mr. Buck was always considered a very [fol. 1696] good account.

The Court: Strike it out.

Mr. McClennen: That is objected to.

The Court: It is not responsive, anyway.

Mr. Wright: I do not think you understood the Court's question. Will you repeat the question?

(Question read.)

A. No, sir.

Mr. Wright: I also want to offer in evidence this recommendation, Exhibit 567 for identification.

Mr. McClennen: This is objected to on the general ground that the inter-communication between the branch manager and the home office and the statements therein contained are not admissible in this case, and on the further ground that it is a palpable statement of what somebody else did and not what this witness did, and stating a conclusion that is not supported by evidence and cannot be supported by evidence.

The Court: Who do you mean by somebody else's statement? It was signed by the witness, was it not?

Mr. McClennen: It is signed by the witness, but it states what somebody else did, not what he did.

[fol. 1697] The Court: I think it is a part of a chain. You have not attempted to show what followed that.

Objection overruled.

Mr. Wright: This, if the Court please, is a summary —

The Court: Have it marked in evidence.

(The document referred to, previously marked as Plaintiff's Exhibit 567 for identification, was received in evidence.)

Mr. Wright: It is a summary comparison of the terms of the deal for half of the product sold to Schine, with the notation that they had not been sold the year before, and under the heading "Recommendation" appears the statement, "This deal was sold by Mr. Kalmenson and involves considerably less money than we are getting from the opposition house with whom we have been doing business for a number of years."

Mr. McClennen: Now that the language has been read to your Honor we move that that be stricken out because it is now evident that this is a hearsay statement of what somebody else had done and not the statement of the witness's own doing; and also the general objection that this is not a transaction that is admissible by hearsay in this way in the [fol. 1698] absence of any evidence that there had been a conspiracy formed at this time, the scope of which was such as to call for this declaration by the branch manager. We urge that that language be stricken from the record.

The Court: I will see what the testimony is. Objection overruled at this time.

[fol. 1699] Mr. Wright: I now offer the contracts that have been identified as 568 with Pages attached to that exhibit, 563 and 635-A and 635-B.

The Court: Are those marked separately?

Mr. Wright: Those are all separately marked; that is four contracts.

The Court: Oh, I see.

Mr. Wright: One of them has attached a couple of pencil sheets.

Mr. McClennen: There is clipped to this contract, Exhibit 568 for identification, a number of memoranda, no part of the contract, not proved in any way, and should not be a part of the contract. They do not bear the same date as the contract or anything anywhere near that date. I think that the simplest thing would be to take the contract by itself. We have nothing to indicate that the papers have any relation to the contract. Of course, we make our general objections that this is a local transaction, not between us and Warner Brothers, not admissible, but assuming that your Honor will be ruling on the general objection as you have done, we urge that these papers be not marked. [fol. 1700] They do not belong to the contract.

Mr. Wright: If the Court please, this Exhibit 568, the contract and the sheets attached were all marked and were attached together as they came from the files of the company. The witness has already testified that the attached sheets are the work sheets from which the contract was made up.

The Court: Does it appear that these 568 came back to this witness with that attached from the company?

The Witness: Those deal sheets were submitted to me to make up the contract from the deal sheets. These are the deal sheets that came to me from New York. I in turn made up this application and sent it to Mr. Schine for signature.

The Court: Then after it was signed by Schine's representative it came back to you?

The Witness: Yes, sir.

The Court: Did the deal sheet come back attached to it?

The Witness: No, I retained the deal sheet in my office.

The Court: You retained it and you attached it?

The Witness: This is a photostatic copy of the deal sheet.

Mr. McClennen: Those deal sheets, if your Honor please, [fol. 1701] are an entirely different date from the contract, a year away.

The Court: They would be a prior date ordinarily, according to the witness they are a prior date.

Mr. McClennen: But they are dated eight months in one instance before and eight months in another instance before the contract and in the nature of things could not be merely a statement of this deal. They do not purport to be. They purport to——

Mr. Wright: You are contradicting the witness. The witness has said they are. I suppose that controls until some one else testifies.

Mr. McClennen: As I was saying before the interruption, there is on here matter which is not the deal sheet itself, but bears a different date, and I am not contradicting the witness.

The Court: Bearing a different date, you mean by that two dates on it? You are speaking about the deal sheet?

Mr. McClennen: The sheet, each sheet has on it at the bottom a date and year which are eight months before this contract.

The Court: All right.

[fol. 1702] Mr. McClennen: And it is on that that I base my assertion that the papers show what I have stated.

The Court: What I am wanting to know is, and perhaps the witness can state it, these attached papers referred to as deal sheets, were they made up by you?

The Witness: No, sir, they were made up by Mr. Kalmenson. I believe it was Mr. Kalmenson made the deal in Gloversville, and they were forwarded to me.

The Court: What did you do with the deal sheets?

The Witness: ~~We make~~ an application in the form the gentleman is holding there and I sent it to Mr. Schine for signature. Mr. George Lynch signed it and forwarded it in to me, and I forwarded it to New York for approval.

The Court: Did you receive these deal sheets from Schine?

The Witness: From my New York representative.

The Court: From your company?

The Witness: Yes, sir.

The Court: Of course, and then were they sent by you later—who negotiated with you?

The Witness: To Mr. Schine.

Mr. Wright: He was referring to these.

[fol. 1703] The Court: The deal sheets?

The Witness: The deal sheets, I retained the deal sheets in my office.

The Court: You retained the deal sheets here in your office?

The Witness: Yes, sir.

The Court: Then they were returned to Warner?

The Witness: No, not unless Warner took the correspondence out of the office. Warner at New York would have a copy.

The Court: How can you say this contract, made in 1937 was based on the deal sheets dated eight months before?

The Witness: Because it was the policy of the Company to make their deals with Mr. Schine and forward the deal into the local office handling the theatres in that territory for the contract to be made up.

The Court: I am speaking about the disparity of the date.

The Witness: It is barely possible they could have held the contract for some time before they forwarded deal sheets to me.

The Court: You identify these as deal sheets on which the contracts were made?

[fol. 1704] The Witness: Yes, sir.

The Court: The objection is overruled.

Mr. McClennen: If your Honor please, might I say this much more before that becomes final. These sheets have notations upon them with reference to another theatre, not the theatre involved in the contract and bearing a date—

Mr. Wright: What theatre are you referring to there that you say isn't involved in the contract?

Mr. McClennen: The Colonial Theatre, which is not involved in the contract.

Mr. Wright: I think you are mistaken.

The Court: Look at the first contract.

Mr. McClennen: This deal sheet is attached to identification No. 568, which is for the Civic and Roxy only and, as I say, this is a contract the application being dated October 21, 1936, and this sheet dated December 31, 1935.

Mr. Wright: I think the witness can explain the reference to the Colonial if you will permit him to do so.

Mr. McClennen: This contract is being offered with this identification of it, as a contract. There was no interroga-[fol. 1705] tion of the witness through whom the papers were offered as to any papers that might be in the files with the contract. There was nothing to draw attention to the fact that in this mass of papers, apparently presented as contracts, there were any other papers. Now, if these sheets should go in at all, and I submit that they should not, they should not go in as a part of this exhibit, because there has been no evidence indicating a physical connection with this contract. It has appeared that this contract, identification exhibit 568, came out of the New York office, and that the deal sheets to which the witness has testified were deal sheets that he had in the Cleveland office and did not himself send to the New York office and these are not original deal sheets, not the papers that he had, do not purport to be, and I submit that they should not be attached to this exhibit when no physical attachment has been proven by anybody. The questions put to the witness who identified the papers related to contracts and there was evidence referred to supposing that the folders-contracts" and [fol. 1706] only contracts. Had this been presented while the witness was on the stand an inquiry could have been made to show that in fact these papers were not attached to this contract which we signed and which——

Mr. Wright: If the Court please, that is a complete misstatement.

Mr. McClennen: Just a moment, that is not a mis-statement. And we signed——

The Court: You mean Buck wasn't interrogated, you mean?

Mr. McClennen: No, and the person who produced this file of papers wasn't interrogated on the subject of these deal sheets.

The Court: The witness just testified here they used the deal sheets for this contract, and this contract was made up on the basis of these deal sheets.

Mr. McClennen: But this is a contract, if your Honor please, put in as being a contract made by Belpik Theatre Corporation, signed by them, put in as the contract which we signed. We did not sign a paper with these deal sheets attached to it.

The Court: What the witness testified is that these were the deal sheets which were the basis on which the con- [fol. 1707] tract was made.

Mr. McClennen: I am urging your Honor——

The Court: By one of the alleged co-conspirators.

Mr. McClennen: I am urging your Honor that this paper goes into this record, when the exhibit goes in, as a contract signed by us. It has something attached to it physically now that wasn't there when we signed the paper, and I urge it should not go in with those things. The only attachment is a clip without the slightest evidence of who put that clip on, and a record——

The Court: Assuming it wasn't accepted——

Mr. McClennen: It will overcome one of the objection because it won't then appear that we signed these deal sheets. The record will indicate, if that isn't done, that we signed these deal sheets. The clip is a loose clip, and there is nothing whatever to indicate that on the files of Warner, when these were picked out, that these papers were attached and the difference or discrepancy in date of nearly a year suggests the improbability that they were attached.

The Court: The witness has given some explanation of [fol. 1708] that.

Mr. McClennen: But nothing that would indicate that this contract, which we signed and put on the Warner files, had those deal sheets attached.

The Court: Well——

Mr. McClennen: He does not testify that he attached deal sheets to contracts when he sent them forward.

The Court: There might be some merit in your claim it was not a part of the contract.

Mr. McClennen: I urge that that be not left attached to the contract when it is marked as an exhibit.

Mr. Wright: If the Court please, the manner in which these were identified has not been stated correctly. These deal sheets were plainly marked at the time this contract and the time the witness who identified it, Mr. Doherty, was on the stand, this contract is marked Plaintiff's Exhibit for identification No. 568. These two sheets were then physically attached and are marked Plaintiff's Exhibit No. 568 (2) and Plaintiff's Exhibit for identification 568 (3). They were all attached together as one. They are three [fol. 1709] pages, one three-page exhibit. The first page consists of this contract. The second and third pages consist of these deal sheets. Now, the deal sheets, of course, don't purport to be signed by any representative of Schine. We don't make any such claim. The witness has testified, and it appears from their face that they are the work sheets from which the contract was made up and that the sheets came to his office and after the contract was returned approved in New York and returned to him, it also came to his office. Now, there is no reason whatsoever for separating the exhibit at this time.

The Court: Whether they are attached or not doesn't make any difference as long as they are referred to as separate exhibits, 568-A, B and C, whatever they are.

Mr. Wright: They are all part of records which were kept there.

The Court: It seems to me it is immaterial one way or the other, whether they are attached, or they are not attached. The testimony in the case does attach them, and [fol. 1710] the testimony of this witness.

Mr. Wright: Exactly.

Mr. McClennen: If your Honor please——

The Court: The mere fact they are attached together here is of no significance here if they are marked as separate exhibits. I presume that is a matter of convenience that these are in court for interrogation. He says these are deal sheets which originated in the execution of this contract and they are said to be properly grouped. They are marked separate exhibits. It isn't claimed anything in the contract itself said anything about these deal sheets. That is true. [fol. 1711] If those are left physically attached they will be left in a physical attachment which Mr. Doherty did not make, which no witness has made, and there is no testimony that anybody did make that physical attachment.

The Court: I do not think it makes any difference because the contract itself does not refer to them. They are marked separate exhibits and they will be considered in connection with the testimony of this witness. They have got to be considered together; I mean as something originating in this contract. I see no harm or no benefit except convenience in their attachment. They are not one exhibit. That is the answer.

Mr. McClennen: What I am fearful of is that this sort of an exhibit will be picked up at a later time bearing our signature and have physically attached to it something that was not there when we signed it.

Mr. Wright: There is no claim that these were there when you signed it.

The Court: I do not think there is any merit to your [fol. 1712] objection. I do not think it makes a particle of difference whether they are attached or whether they are not.

Mr. McClennen: There are very distinct and separate objections to those exhibits that do not apply to the contract itself.

The Court: Relate your objections to these separate proposed exhibits.

Mr. Wright: Perhaps we can solve the problem by taking the clip off (removing clip). They are marked as separate pages of the one exhibit.

Mr. McClennen: The contract then will become Exhibit 568 alone?

The Court: Whatever the mark is there.

Mr. McClennen: That is the way that it is marked for identification. As to the deal sheets, I urge upon your Honor that these deal sheets are not admissible in this case. They contain various narratives and computations concerning other theatres, not the one to which this contract relates, and they bear a date ten months away from the contract. They are not in any respects, I submit, admissible against these defendants, apart from these general objec- [fol. 1713] tions that have been urged already.

The Court: What do you say about the reference to separate theatres?

Mr. Wright: I think the witness can clear that up.

By Mr. Wright:

Q. I see under the heading "Remarks" at the bottom of the first sheet here, 568 (2), the statement appears: "1935-36 Colonial Theatre" and then terms below it. What does that refer to?

A. It was a comparison between the Civic and Roxy deal and the Colonial deal.

Q. That reference under "Remarks" is to this contract Exhibit 635-A, is it?

A. Yes, sir.

Mr. Wright: I think if your Honor can see the sheets, the deal is at the top, and under "Remarks" is simply a reference to the prior deal for comparison.

Mr. McClennen: Your Honor will observe that there is a lot of material on there not a statement of this deal, but a statement of prior transactions which are only, so far as we are concerned, hearsay, and if those sheets go in we get into the record things by hearsay evidence that [fol. 1714] serve no other purpose. There is no question but what the contract itself was the one which we made and stated the terms of the contract which was made, and what led this witness to forward the contract to us for execution I submit has nothing to do with this case.

Mr. Rogers: I think your Honor should have Exhibit 568 before you. That is the contract (handing to Court). At the top your Honor will see Civic and Roxy on Exhibit 568.

The Court: It was only for the purpose of comparison. How would this be material—the contract?

Mr. Wright: That was the existing first-run account of Buck. Always, I suppose, when a deal is made for the next season a distributor in working it out makes a comparison with the deal he has then got in effect.

The Court: My point was whether this was material, the contract made with reference to Colonial. What significance has that here?

Mr. Wright: Again, for purposes of comparison, to show that the deal they actually had with Colonial was a better deal than the one they made with Schine for the next season. [fol. 1715] The Court: The deal sheet purports to show the terms for the purpose of comparison.

Mr. Wright: Yes, that is right.

The Court: Let me understand about this again. Did you make up these deal sheets in the first instance?

The Witness: No, sir.

The Court: They were made up by the Warner Company?

The Witness: Yes, sir, they were forwarded to me, a copy of that deal sheet.

The Court: I mean these deal sheets in the form in which they have been referred to as exhibits marked for identification here are in the form that you received them from the Warner Company?

The Witness: Yes, that is right.

The Court: And preceding that the application had been made?

The Witness: No, sir, the deal is made by our New York executives in Gloversville or in New York and it is worked out on the deal sheet and the deal sheet was forwarded to me to make up the application. I had nothing whatever to do with making the deal. I was not in on the negotiation at all.

The Court: Did the application follow the terms of the [fol. 1716] deal sheet?

The Witness: Yes, sir. I drew the application from that deal sheet.

The Court: And the contract recorded also the figures on the deal sheet?

The Witness: Yes, sir.

Mr. Wright: If the Court please, I think it should be clear that the application is simply a contract signed by the applicant. They are not different documents.

The Court: The application is based on the deal sheet that is submitted to you?

The Witness: That is right.

The Court: You got the application made out by the theatre operator or owner?

The Witness: Yes, sir.

The Court: And then it is forwarded for signature to Schine?

The Witness: Yes, sir.

Mr. McClennen: If your Honor please, I should call this further to your attention to avoid any chance of misunderstanding. We have had in the case at least identified deal sheets which were the contracts themselves. That is, signed deal sheets. The witness here is using these only in the [fol. 1717] sense of work sheets for the make-up from which the contract would be drawn. This shows that these are memoranda, according to his latest testimony, in the New York office. We have no evidence whatever of who made them or whether he knew the facts that he put down on the sheets. This witness did not have to do, according to this testimony, with the make-up of the deal sheets in any way. I submit, for that additional reason, that they are not admissible at all.

The Court: If it is not a sheet procured from one of the alleged co-conspirators it clearly would be incompetent. The witness has definitely stated that the deal sheets identified here are the basis for the application, that the application is based on these figures.

Mr. McClennen: It does not even appear in this case, if your Honor please, that there was any application. There was some transaction in New York City between the negotiator for the Schines and the general headquarters man of [fol. 1718] Warner's, whoever he was, in New York. It does not even appear that there was before them any application.

The Court: You said an application was made some eight months subsequent to the date of these deal sheets, didn't you?

Mr. McClennen: I am sorry that I gave such an impression because I certainly did not intend to say anything of the kind.

The Court: You spoke of one being eight months preceding.

Mr. Wright: Here is the contract, which, of course, is the same. The application is on the contract form.

Mr. McClennen: The sheets are dated December 31, 1935, and the contract is dated October, 1936.

The Court: The application develops into a contract, does it not?

Mr. McClennen: In the sense that at some time this witness sent to the Schine office——

The Court: A paper signed by the applicant, this contract here?

Mr. McClennen: To be signed by them and to be signed by the company. Whether it was signed by the company in this instance before it was signed by Schine does not appear.

The Court: That would not be material, would it?

[fol. 1719] Mr. McClennen: I think not, but it would bear on this matter of whether there was an application precedent to the contract which was based on these deal sheets of which we never knew anything.

The Court: I do not get the distinction you make. You say it was a contract first signed by the company and later signed by the purchaser. He claims that these deal sheets relate to this particular instrument, Exhibit 568.

Mr. McClennen: But they have nothing to do with us. This is the contract.

The Court: They do in this sense, as I have pointed out: They come from the Company, the alleged co-conspirator, and it is a part of the process, of the procedure by which the contracts in question here evolve.

Mr. McClennen: That, of course, brings up a far deeper question. There is no evidence that there was any co-conspirator.

The Court: Overruled. They are all marked separately, are they not, A, B and C?

Mr. McClennen: The deal sheets, so-called, one of them bears at present Plaintiff's Exhibit 568 (2) and the other [fol. 1720] Plaintiff's identification 568 (3).

(The contract referred to, previously marked as Plaintiff's Exhibit 568 for identification was received in evidence.)

(The deal sheets referred to, previously marked as Plaintiff's Exhibits 568 (2) for identification was received in evidence.)

(The deal sheets referred to, previously marked as Plaintiff's Exhibit 568 (3) for identification were received in evidence.)

Mr. Wright: I think Plaintiff's Exhibit 563 for identification and 635-B for identification should also be marked in evidence.

Mr. McClennen: To those, if your Honor please, there is the general objection.

The Court: What do these purport to be?

Mr. Wright: Exhibit 635-B is a contract about which I was now going to question Mr. Mooney, between Schine and Vitagraph, for a repeat run at the Civic or Roxy Theatres, about which I was going to question Mr. Mooney. I had offered it and I understand it had been received, and I just asked the reporter to mark it, along with Exhibit 563.

[fol. 1721] Mr. McClennen: Exhibit 635-B then goes in evidence, over our objection, if your Honor please.

The Court: Yes.

Mr. McClennen: The same objection to Exhibit 563.

(The paper referred to, previously marked as Plaintiff's Exhibit 563 for identification was received in evidence.)

(The contract referred to, previously marked as Plaintiff's Exhibit 635-B for identification was received in evidence.)

By Mr. Wright:

Q. Now, I call your attention, Mr. Mooney, to this contract marked as Exhibit 635-B, between Schine and Vitagraph for the Civic or Roxy, which has the language after the printed word "run", the statement "Repeat". Can you tell the Court what that means?

A. The picture is to become available 60 days after first-run. It means 60 days after the Colonial Theatre had completed their run of their pictures.

Q. I asked specifically for the term "Repeat".

A. "Repeat" means a second-run or a subsequent run in a town.

Q. That is, those pictures covered the same half that had been sold to the Colonial for first-run?

A. Yes, sir.

[fol. 1722] Q. As I understood you, that contract then gave Schine the privilege of repeating those pictures at the Civic or Roxy?

A. Yes, sir.

Q. In other situations in your territory where Schine played your pictures first-run during that season did you extend to independent exhibitors the privilege of playing the features Schine played first-run on a repeat or second-run?

Mr. McClennen: That is objected to. If this were admitted it would involve, to test its accuracy, the trial of every theatre in his territory and the investigation of the contracts of each one of those theatres and the reasons why there was not a repeat run sold in those places, and the question whether in the other places there was a request for a repeat run, and as many separate trials, really, as there are separate theatres in this man's territory.

The Court: Read the question.

(Question read.)

The Court: I will let him answer. State the fact. You mean by independents any companies other than Schine?

[fol. 1723] Mr. Wright: I mean by that small theatre operators who were operating theatres in competition with Schine in Schine towns.

The Court: What do you mean by small theatres?

Mr. Wright: I would say by independent I mean theatres which were not affiliated either with Schine or with one of the major distributors. I think that will clarify it.

Mr. McClennen: I submit that that amendment makes the question still more objectionable.

By Mr. Wright:

Q. How is the term "independent exhibitor" used in the trade?

A. Just "independent exhibitor".

Q. Independent in what sense?

A. An exhibitor is the theatre owner. He is called the exhibitor.

The Court: Independent, what does that mean?

The Witness: That is not connected with this large circuit of theatres.

The Court: Does he show ~~the pictures?~~

The Witness: An independent exhibitor is a man who owns one, or possibly four or five, theatres, not more than five theatres, who exhibits pictures the same as any other theatre.

[fol. 1724] The Court: All right.

By Mr. Wright:

Q. Now, will you answer the question?

The Court: Did you offer these to independent companies in your district?

The Witness: During the year 1937 I could not state, but there was a period of time that we were not permitted to offer our product second-run in any Schine situation.

Mr. McClennen: That is objected to as not responsive to the question.

The Court: Strike it out.

[fol. 1725] By Mr. Wright:

Q. I asked the question specifically with reference to the 1935-36 or 1936-37 season, which I believe was the season, was it not, which was covered by this repeat run contract that then applied, as Exhibit 635-B?

A. I could not definitely state that we did or did not that year.

Q. Well, can you recall any situations now where you did during that season?

A. No, sir.

Q. Calling your attention—strike that out. Were you familiar with those, the general characteristics of those three theatres in Fostoria, the Civic, Roxy and the one that was first called the Colonial and then the State?

A. I believe so.

Q. Which of those was the largest theatre?

A. The Colonial.

Q. That is the same as the State?

A. The State Theatre now.

Q. Do you know which one was the newest?

A. The Civic.

Q. Do you know about how many years those theatres had been in the town there?

A. No, I couldn't say.

[fol. 1726] Q. They had been there all the time that you were managing the Cleveland Exchange?

A. No, the Civic was built during the time I was managing the Warner Brothers.

Q. Do you know what the relative sizes of the Civic and State were?

A. No, I wouldn't say.

The Court: Relative sizes?

Q. I mean, do you know the sizes other than the fact that the State was the larger?

A. I believe the Colonial was the largest of the three houses, or the State Theatre.

Q. Calling your attention to the Cities of Kent and Ravenna, Ohio, do you know what theatres were operating there during the year 1936?

Mr. McClennen: In which?

The Court: In which?

Q. Well, let us take Kent, Ohio.

The Court: Kent, Ohio, or Canton?

Mr. Wright: (Spelling) K e n t.

The Witness: The Kent Theatre and Opera House.

Q. That was served out of your territory?

A. Yes, sir.

Q. And who operated the Kent?

A. Mr. Flannigan and Earl Steele.

[fol. 1727] Q. And the Opera House?

A. John Palfi.

Q. And in Ravenna what were the theatres?

A. The Ravenna and, I believe, the Ohio.

The Court: That is the only one?

The Witness: The Ravenna Theatre, Ravenna, and Ohio Theatre.

Q. Who operated those theatres?

A. Mr. Flannigan and Steele.

Q. Now, calling your attention to the—strike that out. Those towns were within your Cleveland territory?

A. Yes, sir.

Q. And you had been serving them with pictures?

A. Yes, sir.

Q. Do you remember for how long?

A. A good many years.

Q. That is prior to the 1937-38 season?

A. Yes, sir.

Q. Now, did your pictures—did any of your feature pictures play in those two towns during the months of September, October and November of 1937?

A. No, sir.
Q. Why not?
Mr. McClennen: That is objected to.

The Court: Do I understand your answer to be that none [fol. 1728] of them were operated in that period of time?
Mr. Wright: They were all in operation.
The Court: What was the question, then?
Mr. McClennen: It doesn't appear they were.
Mr. Wright: All right.

Q. During the period of the fall of 1937, what theatres were being operated in Kent?
A. The Kent Theatre.
Q. The Opera House was closed?
A. I believe it closed around September, 1937.
Q. Do you know who owned it then?
Mr. McClennen: That is objected to.

The Court: Well, if he knows.
The Witness: Schine.
Mr. McClennen: If your Honor please, he could not know ownership, couldn't possibly.
The Court: Well, I don't know.
Mr. Wright: Well, I will read into the record the answer to interrogatory No. 17-A.
Mr. McClennen: May this be stricken out?
The Court: Yes.
Mr. Wright: Page 13, which states that the 100 per cent interest was acquired in the Opera House at Kent in the month of June, 1936.
[fol. 1729] Mr. McClennen: Not ownership.
Mr. Wright: Well, they acquired the lease on the theatre.
Mr. McClennen: But the witness was asked about ownership.

By Mr. Wright:

Q. Now, during the 1936-37 season, where did your pictures play in Kent?
A. They did not play.
Q. I said during the 1936-37 season?
A. 1936-37 they played the Kent Theatre.
Q. That is first-run?
A. Yes, sir.
Q. And did any of them—when did the 1937-38 season begin, approximately?

A. September.
Q. Of 1937?
A. Yes, sir.
Q. And after the commencement of that season, did you serve the Kent Theatre with any 1937-38 season releases during the months of September, October and November?
A. Yes, sir.
Q. 1937?

The Court: Either in the Kent, you didn't?
The Witness: We didn't serve, there wasn't any of Warner First National Pictures played in September, October or November, and I believe December.
[fol. 1730] Q. Why was that?
Mr. McClennen: That is objected to.
The Court: Sustained. State the facts about it, not the conclusions.
The Witness: During the selling season, which usually started in the end of May, I tried to negotiate a deal with Mr. Steele, who was doing the buying for the Theatre, and we were not able to get together on terms. A little later on I had instructions from our New York office not to sell the account at Ravenna or Kent.
Mr. McClennen: May that be stricken out, it could not have been oral instructions for one thing.
~~The Court: Were the instructions in writing?~~
The Witness: That I couldn't say. I believe it was over the telephone.
The Court: What?
The Witness: Long distance telephone.
The Court: These talks are important.

By Mr. Wright:

Q. Do you remember who gave you the instructions?
A. It was either Mr. Mochrie or Mr. Smith.

Mr. McClennen: Just a moment, your Honor is admitting this telephone conversation?
[fol. 1731] The Court: No, who is Mr. Smith or Mr. who——
The Witness: Mr. Robert Mochrie.
The Court: Who are they?
The Witness: Mr. Smith was Eastern Sales Manager and Robert Mochrie was his assistant.

The Court: Do you remember the talk with him about this situation here?

The Witness: I don't remember the conversation except that he just told me not to negotiate any deal for those two towns.

By Mr. Wright:

Q. Can you fix the approximate date of that conversation?

A. I believe it was around September, the last of August or the first of September.

Q. You believe that was over the long distance telephone from New York?

A. Yes, sir.

Q. After you received those instructions did you have any conversation with Mr. Steele about the product for the Kent Theatre? 1

A. Yes, I talked to him on several occasions and he complained that——

Mr. McClennen: Just a moment.

Q. Where were those conversations?

A. In my office.

[fol. 1732] Q. At Cleveland?

A. Yes, sir.

Q. What was said there?

Mr. McClennen: Our general objection, if your Honor please.

The Court: Received.

The Witness: He said he was unable to get any product for the theatres.

Mr. McClennen: In view of the answer I move to strike it out.

The Court: Strike it out.

Q. What was said in reference to the—what, if anything, was said with reference to obtaining the product of your company for the theatres?

Mr. McClennen: Same objection.

The Court: Let him state that.

The Witness: He was ready to negotiate a deal, and I had to advise him—I stalled him off for some time, and later advised him I wasn't permitted to make a deal.

Mr. McClennen: I ask that that be stricken out.

The Witness: Strike it out in that form.

Q. Just tell us what you did. Don't characterize it or tell us the reasons for it. Tell us what was said, as near as you can recall, the substance and what these conversations were.

[fol. 1733] Mr. McClennen: Objected to.

The Court: Overruled.

The Witness: I finally had to admit to him that I wasn't in a position to negotiate a deal for the two towns.

Mr. McClennen: I move to strike it out.

The Court: Finally admitted to him, you stated to him you could not make a deal, is that what you mean?

The Witness: Yes, sir.

By Mr. Wright:

Q. What had you been telling him in the prior conversations?

Mr. McClennen: That is objected to.

The Court: Overruled.

The Witness: I just don't recall the conversations excepting during the May, June and July period.

Q. I am referring to the period after you got instructions not to sell.

A. I am trying to lead up to it. To the best of my recollection, we were not able to get together on the deals. I continued to ask for the same terms for quite some time, and then when he was ready to negotiate I was unable to sell him.

Q. Those instructions you got, did they relate to the theatre in Ravenna, as well as Kent?

[fol. 1734] A. Yes, sir.

Mr. McClennen: That is objected to.

The Court: Sustained. It is a conclusion. State the fact.

Q. During the 1936-37 season, had you been serving the theatres that Mr. Steele bought for in Ravenna with Vitagraph product first-run?

A. Yes, sir.

Q. And did you, when you negotiated with him, or had these conversations about product, did they relate to one town, or both?

A. Both towns.

Mr. McClennen: That is objected to.

The Court: What was said, what was said in this conversation? Then we can tell what it related to. A little while ago you said it was not to make any negotiations with Kent. Let us have the whole conversation.

The Witness: Well, the conversation was regarding Kent and Ravenna, not only the one town. Mr. Steele bought for both towns.

Q. I think the Judge was inquiring as to the conversation you had over the telephone with Mr. Smith, or who was it, Mochrie, you said?

The Court: The question before related to your question [fol. 1735] when you inquired as to the conversation directed to Kent.

The Witness: Pardon me. The same conversation related to Kent and Ravenna.

Q. And then did you serve any of your 1937-38 releases to the theatres in Ravenna during the months of September, October and November, 1937?

A. No, sir.

Mr. Wright: Now, I want to read the answers to the interrogatory Question 17-A, at page 13, from which it appears that the defendants acquired the Kent Theatre at Kent in December of 1937, and also acquired the Ravenna and Ohio Theatres at Ravenna in December, 1937.

The Court: It doesn't include the Opera House?

Mr. Wright: They already had the Opera House, that I read in, was acquired in June, 1936.

The Court: It would be December, 1937, December, 1937 is your interrogatory?

Mr. Wright: That was the last three acquisitions. The Opera House had been acquired in June, 1936.

The Court: The other two were acquired in December, 1937?

[fol. 1736] By Mr. Wright:

Q. Were any facts brought to your attention by any one indicating that it would not be desirable for the company to serve the pictures of the 1937-38 season in those towns during the period mentioned?

Mr. McClennen: Objected to.

The Court: Sustained in that form.

Q. Calling your attention to Town of Medina, Ohio, were you familiar with the theatres that were operating there in the year 1936?

A. Yes, sir.

Q. What theatre was operating there then?

A. The Princess Theatre.

Q. Do you know who was operating it?

A. Mr. Yulowitz and Mr. Willis.

Q. Do you know how long—was that the only theatre there?

A. Yes, sir.

Q. Do you know how long they had been operating that theatre?

A. At least 15 years or more.

Q. Were you then selling them your Vitagraph product?

A. No, sir.

Q. Had you tried to?

A. Yes, sir.

The Court: You mean then; you mean in 1936 or any time [fol. 1737] during the 15 years?

Mr. Wright: No, I am talking about 1936.

Q. Had you been soliciting them each season?

A. Yes, sir.

Q. And how long had you been out of the town?

A. Six or seven years.

Q. That is, during that period there had been no other theatre there?

A. Yes, sir.

Q. And you hadn't been able to make a deal with the Princess?

A. That is right.

Q. What kind of a theatre was that.

A. It was a small house, I would say around 350 seats.

Q. Do you know how old it was?

A. Must have been at least 20 years old.

Q. Then do you know whether there was any other theatres there in the year 1937?

A. In 1937 I believe they started building a new theatre in the town.

Q. Construction was started, do you remember about when?

A. I believe it was the early part of 1937.

Q. And can you recall who was building it?
A. Mr. Fine and Mr. Essick.

The Court: What are those names?
The Witness: Fine and Mr. Essick.

[fol. 1738] Q. Prior to the time they began construction of that theatre did you have any conversation with those gentlemen about Warner Brothers for Medina?
A. Yes, sir.
Q. About when was that?
A. I believe it was around December, 1936.
Q. And where did it occur?
A. In my office, Cleveland.
Q. Who else was present?
A. Mr. Kalmenson.
Q. Were both Mr. Fine and Mr. Essick and who——
A. No, just Mr. Essick.
Q. And what was said then?

Mr. McClennen: This is objected to on the ground that this conversation has no relation to this case in any way, there was no authority in the witness to have any conversation with these men in the course of the business of the Warner Company. They were not engaged in the operation of any theatre in Medina at the time, and it will appear, I think, indisputably they were not engaged in a theatre in Medina for more than a year after December, 1936. Therefore, this could not be a conversation affecting the Warner [fol. 1739] Company, and obviously not one affecting us in any way.
The Court: Who was this man Kalmenson you refer to?
The Witness: Mr. Kalmenson at that time was Central District Manager for Warner Brothers.
The Court: Overruled.

By Mr. Wright:

Q. State what the conversation was as near as you can recall.
A. Mr. Essick came into my office. Mr. Kalmenson was sitting there. Mr. Essick inquired whether or not we had sold our pictures in the Town of Medina. I told him we hadn't sold Medina in six or seven years, and he advised us he and Mr. Fine were planning on building a theatre in Medina and wanted to know whether or not he could count

on Vitagraph products for that city. Mr. Kalmenson spoke up and said definitely they could count on that product for the City of Medina. Mr. Essick advised me he would let us know in a week or ten days whether or not they were definitely going through with their plans.

The Court: I thought you said they started to build in 1937.

The Witness: That is true. This was around December, 1936, when he stopped in the office.

[fol. 1740] Mr. Wright: Before they began to build.

Mr. McClennen: Now that the contents of the conversation has been heard, I move that it be stricken out.

The Court: No, I will see what follows:

The Witness: Mr. Essick left the office and in about a week or ten days later he advised me he was definitely going through with this plan to build a theatre. I notified Mr. Kalmenson that Mr. Fine and Essick were going to build this theatre in Medina and reminded him of his promise.

Mr. McClennen: That is objected to.

The Court: I don't think it is very material. Strike it out. I will strike it all out.

Mr. Wright: We will have Mr. Fine and Mr. Essick on the witness stand.

The Court: Strike it out.

[fol. 1741] By Mr. Wright:

Q. Do you recall the next time you talked to Mr. Essick about the Vitagraph product for his theatre there at Medina?

A. Yes, I talked to him, I believe, in the fall of 1937.

Q. Where was that conversation?

A. In my office.

Q. Who else was present?

A. I don't recall any one being present,

Q. Except you and Mr. Essick?

A. Yes, sir.

Q. What was said then?

Mr. McClennen: This is under our objection.

The Court: Overruled.

A. I believe it was just a discussion during the process of the building of this theatre. We did not sit down and work out any terms for the deal.

Q. As the theatre was still under construction then?

A. That is right.

Q. Then after that did you have any further conversation with him about your product for the theatre at Medina?

A. Yes, I heard from New York that they had sold the Product to Mr. Schine for the Princess Theatre.

Q. Then after that you talked to Mr. Essick?

A. Yes, sir.

[fol. 1742] Q. And what did you tell him?

A. I told him——

Mr. McClennen: The same objection.

The Court: I will let it stand.

A. I told him that it was impossible for me to negotiate a deal for their house.

Mr. McClennen: These conversations apparently having been concluded now, I make the specific objection that it was not within the authority of Mr. Kalmenson to give any assurance *with* Mr. Essick could have the product, as that was wholly in the control of the company itself, and therefore that that statement should be stricken out, in addition to the various other reasons that we have already assigned.

The Court: Does it appear that the division managers had the authority to make contracts?

Mr. McClennen: It appears that they did not. The authority to make the contract was in the headquarters men. I think it was Mr. Seras in this case, but I am not sure at the moment of the name. But it clearly appeared that it was only the general sales manager that could obligate the [fol. 1743] company in any way for the product.

Mr. Wright: If the Court please, we are not concerned here with whether or not there was authority to make the contract. For our purposes it is immaterial whether or not a binding contract was actually made or not. This is not a suit by any of these parties to recover on a contract. All we are showing here is what the course of the dealings here were between these exhibitors and the Warner Company. This conversation, of course, is necessary to show what these were.

The Court: I assume that the district managers would have authority to make such statements.

Mr. Wright: I submit, if the Court please, there is nothing in the record at all which would indicate that he didn't have authority to make such a statement. The most that can be said for the record is that he did not have the authority to approve a license agreement; that is his duty and it is Mr. Mooney's duty, of course, to talk to prospective customers at all times.

The Court: The authority to say "I won't make a con- [fol. 1744] tract" or "I will make a contract" rests somewhere. Did the division manager have authority——

Mr. Wright: If we were trying to prove, if the Court please, that a contract was made, that would be a different matter. All we are proving is what happened, in fact that this assurance was given.

The Court: Somebody in the company gave that assurance?

Mr. Wright: Yes, that is all that we offer the testimony for.

The Court: Unless it is connected up further it may not be competent.

Mr. McClennen: The situation, if your Honor please, at the time of this alleged conversation was that Warner had no outlet in Medina and obviously product was available as long as that situation continued, but that did not give the man an authority to commit his company, and when he made a statement, if he made such a statement, which purported to commit the company, it was just the same as if a street car conductor on the sidewalk had given the assurance that it was not the company's act in any way, and it [fol. 1745] was not in any way binding on the company or indicative of what the company ought to do. And manifestly it was not an act in any way related to this alleged conspiracy of which there has as yet been no evidence. As a matter of fact, it is perfectly clear that the Schine interests were not in the town at all at the time of this conversation. Mr. Yulowitz and Mr. Willis were the other operators there and it appears that they would not buy the Warner product although they had been solicited to do so, so that this statement has no bearing whatever on the case that we are trying, I submit.

The Court: Of course that goes to the effect of the statements.

Mr. Wright: Precisely, your Honor.

The Court: I will receive it. I am not sure whether these things should not be connected more than they thus far have been.

Mr. Wright: I will ask to have this folder which is within the folder which is marked Exhibit 635 for identification and contains four contracts relating to Medina, Ohio, [fol. 1746] marked as Plaintiff's Exhibit 635-C for identification.

(The folder within folder Exhibit 635 for identification was marked as Plaintiff's Exhibit 635-C for identification.)

By Mr. Wright:

Q. I will hand you the contract between the Belpik Theatre Corporation and Vitagraph, dated October 13, 1937, for the exhibition of features at the Princess Theatre, and ask you if you have seen that before?

A. No, sir. I don't recall ever seeing that contract before.

The Court: You claim that Schine acquired the Princess Theatre when?

Mr. Wright: I will read into the record the answer to interrogatory No. 17, which shows that a 25% interest in the Princess Theatre was acquired by Schine in September, 1937.

The Court: He says he does not remember seeing that.

By Mr. Wright:

Q. As I understood your previous testimony, you were advised that the pictures had been sold in Medina to Schine some time in the fall of 1937; is that right?

A. Yes, sir.

Q. At the time——

Mr. Rogers: No, that is not his testimony. He merely [fol. 1747] says that some time later he talked to New York and they said they sold the product to Schine for the Princess, but he did not fix any date.

Q. When was it that you learned that it was sold to Schine, as nearly as you can recall?

A. I believe it was September, 1937.

Q. At that time, or after that time, was a contract received by your office which embodied the terms of the deal?

A. I don't recall ever receiving that contract.

Q. You left the company when?

A. The first week in January, 1938.

Mr. Wright: You may cross-examine.

The Court: We will suspend now until 2 o'clock.

(Whereupon a recess was taken until 2 o'clock P. M.)

[fol. 1748] After Recess, 2 P.M.

Appearances: Same as before noted.

MILTON A. MOONEY resumed the stand on behalf of the Plaintiff, having been previously sworn, was examined and testified further as follows:

Cross-examination.

By Mr. Rogers:

Q. Mr. Mooney, you testified that in 1924 to 1931 you operated the Strand, the Opera House and the Majestic theatres; is that accurate?

A. I operated them, yes, sir.

Q. By that do you mean that in that period from 1924 to 1931 those three houses were actually open and in operation during that period?

A. Not for the full time, no, sir.

Q. During that period did you open or operate the Majestic Theatre at all?

A. Yes, during Fair week.

Q. When you say "during Fair week" just what do you mean by that?

A. During the County Fair of Logan County we would open the three houses full time.

Mr. Wright: If your Honor please, I think this is beyond [fol. 1749] the scope of the direct. I do not know what the purpose is. We did not go into any period from 1924 to 1931. This was before Schine came into the town. There was nothing that relates to any issue in the case that was covered during that period that I know of.

The Court: Objection overruled.

Q. I am just directing my interrogation to the Majestic Theatre.

A. That was opened during Fair week on a number of the Fairs. It was not open during the entire seven years.

Q. Was it open at any time during an entire year from 1924 to 1931?

A. No, sir, not for the entire year.

Q. Was it open for any portion of each of those consecutive years of 1924 to 1931 at any time?

A. Yes, sir.

Q. Every one of those years?

A. Not every year, no, sir.

Q. What years was it closed entirely?

A. I believe it was closed the last two or three years that we had the lease.

Q. That is, by that you mean——

A. The Majestic Theatre.

[fol. 1750] Q. That is, by that you mean that in 1928, 1929, 1930 and 1931 it was closed?

A. Somewhere along in through there, yes.

Q. It was not in operation at all?

A. No, sir.

Q. When you talk about that being open for Fair week, does Fair week mean a week or does it mean a few days?

A. Seven days. Six days, rather. The house was closed on Sunday at that time.

Q. This Majestic Theatre, just what kind of a house was that?

A. Very small. I believe it was around 250 seats.

Q. Was that a converted store show?

A. I would call it that, yes.

Q. About when was that theatre converted?

A. That was before I ever hit the town of Bellefontaine. I don't know. It was an old house.

Q. It was a little store show even when you got it; is that right?

A. Yes, sir.

[fol. 1751] Q. Now, with reference to the Opera House—May I ask you with reference to the Majestic Theatre, was sound equipment ever put in that theatre?

A. No, sir.

Q. It was not?

A. No, sir.

Q. Now, with reference to the Opera House, what kind of a house was that?

A. It was an old upstairs Opera House.

Q. And it was a very old upstairs Opera House when you got it, is that right?

A. Yes, sir.

Q. And it was about 75 years old, wasn't it, when you got it?

A. Approximately.

Q. And about how many seats did it have?

A. I believe it had around 680 seats.

Q. That is wooden seats?

A. Yes, sir.

Q. Was any sound equipment ever put in that house?

A. No, there wasn't.

Q. Now——

Mr. Wright: What was the answer?

Mr. Rogers: "No".

Mr. Wright: I take it he is answering with respect to the [fol. 1752] time he had it. He doesn't know, I suppose, what happened after 1931.

Mr. Rogers: I am talking about his operation now.

The Court: 1931, was it put in prior to 1931?

The Witness: No, sir.

Q. And when did sound equipment come in?

A. I would say—I don't know, possibly 1928, '27 or '28.

Q. Now, as a matter of fact——

The Court: I thought you said it wasn't put in prior to 1931?

The Witness: It was never put in the Opera House. The question I think he meant, when did sound become effective for the other theatres, when could I have put it in the Opera House Theatre.

The Court: When you could have.

The Witness: It was available, but I never installed it.

By Mr. Rogers:

Q. That applies also to the Majestic, it was available, but you never installed it?

A. Yes, sir.

Q. As far as the Opera House was concerned, you closed down the Opera House, too, didn't you?

A. Except fair weeks.

Q. You say fair weeks, how many fair weeks were there?

[fol. 1753] A. One week a year.

Q. It wasn't fair weeks, it was just one week?

A. Yes, sir.

Q. Do you mean every year during the time you operated that theatre you opened that theatre for fair week up to the time you disposed of it?

A. I believe it was one or two years when we could get some kind of a stage show, vaudeville show. When sound came in we opened it for one week.

Q. Other than putting a stage show in for one week or a picture for fair week, is it fair to say the Opera House was closed?

A. The Opera House was opened on Saturday nights up until the time sound came in. After sound came in we closed the house permanently.

Q. Is it accurate to say from 1924 to about '27 you opened the Opera House only on Saturday nights?

A. With very few exceptions, with special pictures, such as the "Ten Commandments", or pictures of that caliber we have played at the Opera House a full week during any period.

Q. Take the years 1924 to '27, on an average per year, how many weeks per year did you operate the Opera House?

A. For the entire week, I would say possibly not more than five or six times, five or six weeks.

[fol. 1754] Q. Through that entire period?

A. That is right, per year.

Q. Later on, as you say, you operated only one week a year, is that right?

A. That is right.

Q. From 1927 to '31?

A. That is right.

Q. Now, let us come to the Strand, and what kind of a house was the Strand?

A. The Strand was built for a picture theatre on one floor, and I believe had about 480 seats. Just an ordinary—it was an ordinary theatre.

Q. And about how old was the Strand when you took the lease on it from Gutilla?

A. I believe it was about eight years old at that time.

Mr. Wright: I think Mr. Gutilla testified to the date he built it.

Mr. Rogers: I am interrogating Mr. Mooney, if you don't mind, Mr. Wright, and I want Mr. Mooney's cross-examination.

Q. An ordinary theatre seating about 400 seats on one floor, is that right?

A. 480, I believe.

Q. I beg your pardon, 480. Now, at the time you got all these three houses from Mr. Gutilla, you say you paid [fol. 1755] $15,000?

A. Yes, sir.

Q. Now, just exactly——

The Court: What did you say about the Strand, how long was that operated?

The Witness: The Strand was a strictly picture theatre. It was built for a theatre.

The Court: Was that run right along?

The Witness: Yes, that was open all the time.

Mr. Rogers: It was open all the time, he said.

Q. Now, I believe I asked you that when you acquired those three houses in 1924 from Mr. Gutilla, you testified that you paid $15,000?

A. Yes, sir.

Q. Now, will you tell me just what you paid that $15,000 for?

A. For the lease and equipment.

Q. For the leases?

A. Yes, sir.

Q. On the three houses?

A. Three houses.

Q. And for the equipment in the three houses?

A. No, the equipment for the Strand and Majestic and booth equipment for the Opera House. The seats belonged to the Opera House Company.

[fol. 1756] Q. Now, so far as the Opera House is concerned, you say all you bought was the booth equipment?

A. Yes, sir.

Q. And that was silent equipment?

A. Yes, sir.

Q. Now, with reference to the equipment that you bought in the Opera House, just what equipment did you buy in the Opera House?

A. Well, there would be the two projecting machines, screen, besides the booth equipment, the screen. Then I don't know whether they had a generator in there at the time, it was either a generator or a Mercury arc rectifier. I believe it was a Mercury arc rectifier; then, the rewinding machines and vaults for the film, the cans.

The Court: Was there a bill of sale enumerating the articles?

The Witness: Yes, sir.

[fol. 1757] Q. Now, with reference to the Majestic and with reference to the Strand, was that sale evidenced by documents?

A. Sir?

Q. Was that sale of this equipment and the sale of the lease to you, as you say, was that evidenced by documents?

A. Yes, sir.

Q. Bills of sale?

A. Yes, sir.

Q. Are you possessed of those documents?

A. No, I don't have them. Pardon me; I believe the court record down in Bellefontaine would have them. They were recorded at the time.

Q. Now, let me see: With reference to the Opera House, you did not pay for the seats?

A. No, sir.

Q. They belonged to the owner?

A. Yes, sir.

Q. And you did not get the box-office equipment, that belonged to the house too, didn't it?

A. There was nothing more or less than the box-office. There was no equipment in the box-office.

Q. Wasn't there a vending machine?

A. No, sir.

Q. No ticket-choppers?

A. No, sir. There might have been a ticket-chopper. [fol. 1758] That would have gone along with the theatre, with the equipment, but there was no ticket machine.

Q. Display sign?

A. That also went along with the equipment which I bought.

Q. You bought that too?

A. The portable one. It was not like the ones that are built into the walls.

Q. Electric sign?

A. There was no electric sign.

Q. Marquees?

A. No, I don't believe there was any marquee either. It belonged to the building, if there was.

Q. Then it gets down to the booth equipment and probably a ticket-chopper or two?

A. Yes, sir.

Q. And display signs and the screen; is that right?

A. That is all.

Q. When we come to the Strand Theatre: What equipment did you purchase from the Strand Theatre?

A. We purchased the booth equipment, the screen, seats, box-office equipment, and so forth, electric fans, and whatever happened to be in the theatre at the time. It is all enumerated in our bill of sale.

Q. So that in that sale the seats were included; is that right?

[fol. 1759] A. Yes, sir.

Q. At the time you made your sale in 1931 to Schine you had had the benefit of seven years of use, hadn't you, of this equipment?

A. Yes, sir.

Q. And at that time how much of an unexpired lease did you have on the Opera House?

A. I believe there was about three and a half years left on the lease.

Q. On the Opera House?

A. On the Opera House I can't say.

Q. As a matter of fact, weren't there only a few months left on the Opera House?

A. That I can't tell you.

Q. Let me see if I can refresh your recollection. You say that you made the sale about June of 1931. That is right, isn't it?

A. Yes.

Q. As a matter of fact, at that time didn't the Opera House only have until December 31st to run, of that same year?

A. That is very possible.

Q. At the time you made that sale what was the situation with reference to the Majestic Theatre?

A. It was closed.

Q. Did you have a lease on that house at all?

[fol. 1760] A. Yes, sir.

Q. How long did that lease have to run?

A. The same period as the Strand, which I believe had about three and a half years to run.

Q. You say as part of that deal the Schines took over the Strand and you assigned the Majestic to them as well?

A. Yes, sir.

Q. Are you sure of that?

A. Pretty sure.

Q. When you say you are pretty sure, are you absolutely sure you ever turned the Majestic over to them at all?

A. I know when I took the lease from Mr. Gutilla for ten years it included the Majestic and the Strand theatres. Now, whether during that last period he released me on that lease I couldn't be sure. I think we still had it under lease. I turned everything over I had in Bellefontaine to Mr. Schine.

Q. Regardless of whether you turned everything over or not, did you turn the Majestic Theatre over or hadn't you been released from the Majestic Theatre before that?

A. That I couldn't tell you. I thought we turned it over.

Q. Now, in that transaction what equipment was in the Strand Theatre?

A. The equipment I sold to Mr. Schine?

Q. Yes.

[fol. 1761] A. It was everything that I had obtained from Mr. Gutilla, plus the blower fan and sound equipment, and whatever replacements we had made in the theatre.

Q. Now, with reference to the Opera House, was there any equipment in the Opera House at the time you made the sale to Schine?

A. I believe there were machines. I believe the booth equipment was still in there. Whether they were taken out or not I don't remember.

Q. Now, as a matter of fact, hadn't you taken out the booth equipment out of the Opera House before you made the deal in 1931 with Schine, and hadn't you sold it?

A. Not to my knowledge, no, sir. I don't recall ever taking it out of there or I don't remember ever taking it out of the Majestic.

The Court: Was there a written bill of sale?

The Witness: Yes, the written bill of sale would show what we sold.

The Court: Does that enumerate the property sold?

The Witness: Yes, sir, it would be right in the bill of sale with Mr. Schine.

By Mr. Rogers:

Q. You mean that you did not sell the equipment in the Opera House before you made your deal with Mr. Schine?

A. I don't ever recall selling any equipment out of the [fol. 1762] Opera House Theatre.

Mr. Wright: Mr. Schine has the bill of sale. I do not see what the purpose of all this is.

The Court: I will receive it. It is cross examination.

Q. At any time were any one of these three theatres known as the Rialto Theatre?

A. I believe the old Majestic was known as the Rialto Theatre at that time.

The Court: At what time? Do you mean 1927 to 1931?

The Witness: No, before we took over the house.

By Mr. Rogers:

Q. That was before you took over the house?

A. That is right.

Q. Was it known as the Rialto after you took it over too for a short period?

A. No, sir, it was not.

Q. Was it ever known as the Rialto?

A. I believe it was, before we went in there.

Q. Do you recall having sold the electric sign on the Rialto Theatre?

A. Yes, to Belleview, Ohio.

Q. You personally?

A. Yes, sir. It was equipment that was not being used, to my knowledge.

Q. You sold that after you took over the Majestic [fol. 1763] Theatre, didn't you?

A. Yes, after we took over the leases for Bellefontaine.

Q. You sold that yourself, didn't you?

A. Yes, sir.

The Court: You changed the name, did you?

The Witness: No, the Rialto, I believe, was the name of the Majestic Theatre before we took it over. The sign was there. I don't know where it came from, but it was on the property.

Q. You were in court when Mr. Gutilla testified, weren't you?

A. Yes, sir.

Q. You heard his testimony, didn't you?

A. Yes, sir.

Q. Do you remember this testimony of Mr. Gutilla under direct testimony by Mr. Wright: he said: "You own the

Strand Theatre there?"—talking about Bellefontaine. "A. Yes, sir." "Q. How long have you owned it? Since 1916. You operated it as a theatre yourself, then? A. Yes, sir. Q. Until what time? A. Until 1924. Q. Then it was sold? A. I sold that to Mooney. Q. Mr. Milton Mooney? A. Milton Mooney. Q. That is, you sold the lease on the theatre? A. I sold the equipment and I gave him a lease on the theatre."

[fol. 1764] Now, is that testimony of Mr. Gutilla's accurate?

A. I think he meant that he sold me the lease on the equipment.

Q. I am asking you: Is that answer accurate, that he didn't sell you a lease, he merely sold you the equipment and gave you a lease on the theatre?

A. He sold me a ten-year lease including the equipment.

Q. Then that answer is not accurate; is that it?

A. I don't know. The bill of sale and the lease speaks for itself.

Q. Then his testimony is not accurate on that; is that right?

Mr. Wright: He owned the building. It is obvious that what he gave him was the lease. That is all he could give him.

The Court: He stated what the facts are.

Q. When you made your sale, as you say, to the Schines, you said you sold him the three theatres and you got $2,500 for the three theatres; is that right?

A. I got $2,500 for what I sold him, yes, sir.

Q. One moment. Didn't you testify that that was for the three theatres?

A. The leases; the leases and equipment.

Q. On three theatres?

[fol. 1765] A. Yes, sir.

Q. Is that accurate?

A. I believe so.

Q. Wasn't that transaction under which the sale occurred as between yourself and the Schines evidenced by a written document?

A. Yes, sir.

Q. Now, when you stated that you sold these theatres to Schine that was not really accurate, was it?

A. It is correct so far as my knowledge.

Q. As a matter of fact, those three theatres were operated by corporations, weren't they?

A. The Bellefontaine Amusement Company.

Q. And the corporations owned the property and not you; is that right?

A. That is right.

Q. Will you tell me if you recognize the handwriting on that piece of paper (handing paper to witness)?

A. Yes, sir.

Q. Whose handwriting is it?

A. Mrs. Mooney.

Q. That is your wife?

A. That is right.

Q. And she was the Secretary of the Bellefontaine Amusement Company at that time?

[fol. 1766] A. Yes, sir.

Q. At the time of the sale?

A. Yes, sir.

Q. And I show you these papers and these papers represent the documents that were used in connection with that sale, don't they?

A. No, sir, I never saw this document, I don't believe (indicating).

Q. Which one?

A. This one right here (indicating).

Q. That is the lease, you mean, this lease on top?

A. Yes, sir.

Q. It purports to be from Daniel Gutilla, lessor, to the Schine Enterprises. You never saw that document before?

A. No, sir.

Q. I show you this paper on the letterhead of the Bellefontaine Amusement Company. Have you seen that paper before?

A. Yes, sir.

Mr. Rogers: That paper that I am talking to you about I wish for a moment to have that marked for identification so that I can refer to it by identification number.

(Copy of resolutions of stockholders referred to marked Defendants' Exhibit D-43 for identification.)

[fol. 1767] Q. I show you this paper, bearing date July 28, 1931, between Daniel Gutilla, as lessor, and Bellefontaine

Amusement Company as lessee, and I ask you if you have seen that paper before?

A. Yes, sir.

[fol. 1768]. Q. And the signature here of M. A. Mooney, President, is your signature, is it?

A. Yes, sir.

Mr. Rogers: I wish to have that for the moment marked for identification.

(Thereupon the document above referred to was marked as Defendants' Exhibit No. 44 for identification.)

Q. I show you this paper bearing date May 1st, 1933, and ask you whether you saw that paper before?

A. No, sir, I don't recall ever seeing that paper.

Q. But the two papers Defendant's Exhibit 43 for identification and Defendant's Exhibit 44 for identification were the documents that were signed by your company, the Bellefontaine Amusement Company, at the time of the sale to Schine of the three theatres, is that right?

A. Yes, sir.

Mr. Rogers: I now offer in evidence D-43 for identification.

(Document shown to and inspected by Mr. Rogers.)

Mr. Rogers: I don't understand the relevancy of it. I don't see that there is anything objectionable about it other than it doesn't appear to be material to any of the issues.

[fol. 1769] The Court: What is it, is it a bill of sale?

Mr. Rogers: This is the actual resolution on the transfer of the property.

The Court: It bears on the value.

Mr. Wright: What does it prove? It is already in evidence that he was paid $2500.

The Court: What was sold may have some bearing on what he paid for it.

(Document previously marked as Defendants' Exhibit No. 43 for identification is now received in evidence and marked as Defendants' Exhibit No. 43).

Mr. Rogers: I wish to read this Defendants' Exhibit No. 43.

The Court: Read the important part of it.

Mr. Rogers: That is all I am going to do.

"Copy of resolution of stockholders: We, the undersigned stockholders of Bellefontaine Amusement Company, Bellefontaine, Ohio, hereby consent to the sale of the furniture and fixtures in the Strand Theatre and the assignment of the lease therefor to the Schine Enterprises, Inc., for the sum of $2500 and waive the notice as provided in Section 8623-72 of the General Code of Ohio," signed by all the [fol. 1770] stockholders, "E. Mooney, Secretary."

Q. Now, I show you this Defendants' Exhibit 44 for identification and ask you whether that document refers to the Strand Theatre in Bellefontaine?

A. I don't believe it mentions the theatre, does it?

Q. It doesn't mention the theatre. That is why I am asking you, does it refer to the Strand Theatre?

A. It refers to our holdings in Bellefontaine, Ohio, which was leased to us by Mr. Gutilla.

Q. It talks about a definite holding there, that the lease expires on a certain date, doesn't it?

A. I don't see it here. I will read it.

Q. Go ahead, help yourself.

A. I don't see any theatre mentioned in here whatsoever. It is the termination of a lease the 30th day of June, 1931. I don't see any theatre mentioned there. Is there?

Q. You agreed to cancel a certain lease as of the 30th day of June, 1931. Wasn't that the lease of the Strand Theatre?

A. The lease of the Strand Theatre, I don't know, the lease of the Strand Theatre was turned over to Mr. Schine.

Q. Now, as a matter of fact, didn't Gutilla make a new lease on the Strand Theatre with Mr. Schine for the unexpired term of the Strand Theatre, and isn't that the trans-[fol. 1771] action instead of having made an assignment of that lease to Mr. Schine?

Mr. Wright: If the Court please, he isn't competent to testify to what Mr. Gutilla did.

The Court: He can state whether he knows. He can state his knowledge of what was done, if that lease was signed for the balance of the time by the owner of the property.

The Witness: According to that document I would say that Mr. Gutilla made a lease with Mr. Schine. I didn't recall it at the time, but I believe that must be correct.

Q. Didn't you agree to cancel the lease on the Strand Theatre so Mr. Gutilla could make a lease with Mr. Schine?

A. That is true.

Q. That is true?

A. I didn't recall that, but that is true.

Q. Isn't that what this Exhibit No. 44 established?

A. That would be, I think, the Majestic and Strand. I believe we had the both houses under lease for the same period of time.

Q. That is your belief about the Majestic?

A. Yes, sir.

Q. But you are not sure about that?

[fol. 1772] A. I wouldn't swear to it.

Mr. Rogers: I ask to have Defendants' Exhibit No. 44 for identification now made Defendants' Exhibit No. 44..

Mr. Wright: It isn't clear yet what it is, if the Court please.

The Court: According to his statement here it indicates that the lease was given directly by the owner to the Schines.

Mr. Wright: What significance does that have.

The Court: It bears, as I said before, on the adequacy of the consideration. If he pays $2500 for several leases, and some others it might seem entirely inadequate. For a few articles, it might seem perfectly adequate.

Mr. Wright: I was talking about the first document. It appears from the first document the stockholders agree to assign the lease on the Strand for $2500. What difference does it make whether there was an actual assignment or a new lease, is beyond me.

The Court: The question is, the first question on the $2500 comprehended all three. With the proposition the way it is this agreement in evidence states the consideration [fol. 1773] for a single house. It is part of the cross-examination. Proceed.

[illegible]cument previously marked as Defendants' Exhibit N[illegible]4 for identification is received in evidence.)

The Court: Let me see what it says.

Mr. Rogers: It reads. (Whereupon Mr. Rogers then read Defendants' Exhibit No. 44 for identification to the Court.)

The Court: Between whom, you say between Gutilla and Bellefontaine Amusement Company?

Mr. Rogers: That is his company.

The Court: What is the date of Exhibit No. 43?

Mr. Rogers: This Exhibit No. 43 doesn't seem to have any date, your Honor, but Mr. Mooney has testified that was a resolution passed in connection with this sale and transfer. The point I make, therefore, is the $2500 gets down to just the sale of equipment in one theatre, because they were released from the obligation under the lease.

Mr. Wright: Released, he just read from the first release. It is leases, plural, apparently referring to more than one lease.

[fol. 1774] Mr. Rogers: That is not the point. Mr. Mooney testified that the document, Exhibit No. 44, embraced the Strand Theatre. The point is all he paid is $2500 for *was* this equipment left in the Strand Theatre at that time and only for that.

Q. Now, with reference to the equipment in the Strand Theatre, when you made your sale in 1931, you say the seats were included in that sale?

A. Yes, sir.

Q. Now, they were the same seats that were in the house when you bought it in 1924, weren't they?

A. I believe they were, only I may be mistaken, but I believe we put in cushion bottoms, but I am not positive about that, cushion seats.

Q. In other words, they were the same seats, but you might have changed the upholstery in some of the bottoms of the seats, is that it?

A. I believe that is correct.

Q. You are not sure of that, either, are you?

A. It is a long time ago.

Q. That is just a guess?

A. No. I had changed seats in other theatres, and I believe that is one we changed.

Q. Do you have any evidence of that change having been [fol. 1775] made in the seats of the Strand Theatre?

A. No, sir, unless the seats are there today.

Q. So that is the best guess you can make on the subject, is it?

A. Yes, sir.

Q. And the equipment in booth you sold, except for the sound you put in, was the same equipment you had in the booth when you acquired it, is that right?

A. With the exception, I believe, we put in a generator they didn't have before, and the machines were overhauled to take care of the wear and tear.

Q. You mean you paid the usual maintenance charges to take care of your equipment while you were operating the theatre, is that right?

A. Besides that we put in a blower fan.

Q. A blower fan where?

A. A blower fan in the Strand Theatre in the lower floor.

Q. That was an exhaust fan?

A. They call it a blower fan, not an exhaust. We bought it new, if I remember right.

Q. Now, in the interval between your acquisition of those seats in the Strand Theatre in 1924 and your sale to the Schine interests in 1931, hadn't you turned the seats in that theatre back to Mr. Gutilla?

A. No, sir.

[fol. 1776] Q. You say you had not turned them over to him?

A. No, sir.

Q. Now, in connection with this litigation between you, you made a certain settlement, didn't you?

A. No, sir.

Q. Never did?

A. No, sir.

Q. Still owned those seats in 1931, you say?

A. Yes, sir.

Q. All of them?

A. In the Strand Theatre?

Q. In the Strand Theatre.

A. Yes, sir.

Mr. Wright: May I see that last exhibit?

Mr. Rogers: Surely. I have them both. You may see them both.

(Documents handed to and inspected by Mr. Wright.)

By Mr. Rogers:

Q. Do you know what equipment was in the Majestic Theatre in 1931, when you turned it—as you say, you turned it over to Schine?

A. I don't recall the Majestic, the Majestic and Opera House had been closed for a period of time and we didn't consider either one of them of much value.

[fol. 1777] Q. Was there any equipment in the Majestic when you turned it over?

A. To my knowledge the booth equipment and seats were there, but I don't know that as a fact.

Q. You don't know it as a fact, do you?

A. No, sir.

Q. What equipment was in the Opera House when you turned it over to Schine?

A. I don't know. We had taken the machines out of one house and were using them for spares in the Strand. What was at the Opera House I don't know for sure. I think the booth was there.

Q. You mean the full booth was there when you made this deal in 1931?

A. Yes, there is a bill of sale, Mr. Rogers.

Q. The bill of sale is there, was it enumerated?

A. The bill of sale enumerated the articles we sold to Schine.

Q. Have you got a copy of any such list?

A. No, I don't.

Q. By whom was it prepared?

A. I don't know just what attorney was there, whether Mr. Maloney was handling it or not. It don't seem to me he was.

Q. Do you think an attorney would prepare a list of [fol. 1778] equipment in the theatre, or you people would prepare the list?

A. To my knowledge we took the bill of sale we received from Mr. Gutilla and added a few articles on we had purchased to that and turned it over.

Q. Turned it over to whom?

A. With the sale to Mr. Schine.

Q. To whom did you turn it over?

A. Mr. May was the one I believe we closed the deal with in Bellefontaine.

Q. Who prepared this list?

The Court: He is referring to the attorney and you are referring to who did the actual, physical work.

Q. Exactly, sir. Who did prepare it, did you personally prepare it?

A. No, sir.

Q. Who did, who went into that theatre and actually prepared a list?

A. I believe it was still the same list we had from Mr. Gutilla from the time Mr. Gutilla turned it over to us.

Q. That is what you believe, but you don't know?

A. No.

Q. Hadn't you moved some of the booth equipment out of the Opera House to the Strand booth?

[fol. 1779] A. I said we had moved one or two machines to the Strand; whether they was still in the Strand Theatre or the Opera House, I don't recollect; I have a faint recollection of some machines, but what happened, whether they were assigned back to me, or given back to me, or something, but I just don't recall what that was.

Q. When you acquired the three theatres, the Majestic, Strand and Opera House in Bellefontaine, you then had a closed town, didn't you?

A. Yes, sir.

Q. And you acquired all three so you would have a closed town, didn't you?

A. That is right.

Q. You gave us some figures on the admission prices that were charged at the time you operated, before Schine came into the town, and the prices that Schine charged when he came into the town?

A. Yes, sir.

Q. Now, when you were testifying as to those admission prices, were you relying entirely on your memory, or had you had recourse to any source to get those figures?

A. Strictly on my memory.

Q. Well, do you recall as a matter of memory what your own prices were at the Strand Theatre before Schine came in?

[fol. 1780] A. Either 30 or 35 cents, I wouldn't be sure which it was. I think it was 35.

Q. You mean you don't recall what you charged in your own theatre as your admission prices?

A. No, sir, it has been a long time.

Q. As a matter of fact, did you ever charge 35 cents before Schine came into the town?

A. I thought we had.

Q. Did you?

A. Yes, we charged 50 cents.

[fol. 1781] Q. I am talking as a steady policy.

A. No, sir, I think we charged 35 cents.

Q. In what year did you charge 35 cents?

A. When sound came in.

Q. In about 1927 or 1928?

A. At the time we installed sound.

Q. When was that?

A. I would say possibly 1928 or 1929.

Q. Then it is your recollection that as a steady policy in 1928 and 1929 and 1930 and 1931 you charged 35 cents in that house?

A. To the best of my recollection. I have operated other houses and I can't just definitely say what I charged in Bellefontaine.

Q. You knew that the question of these box-office admission prices is very important in this case, didn't you?

A. It was either 30 or 35 cents.

Q. Just simply answer my question. You knew that was important in this case, didn't you?

A. I had no way to look up——

Q. No. Answer my question.

A. Yes, it is important.

Q. What did you tell Mr. Wright as to what the box-office admission price was when he interrogated you before you became a witness here?

[fol. 1782] A. I said 30 or 35 cents.

Q. You didn't go beyond that?

A. No, sir.

Q. Made no effort to verify it?

A. I had no way to verify it.

Q. Let me ask you something: In the operation of that Bellefontaine Strand Theatre you advertised in the newspaper during those years, giving the attractions at the Strand Theatre, didn't you?

A. That is right.

Q. You gave them the price of admission too; is that right?

A. That I don't know.

Q. Don't you remember that?

A. It might have been in and it might not. I didn't manage the house. I was not down in Bellefontaine.

Q. In other words, you were not in Bellefontaine at all; were you?

A. Just occasionally.

Q. So that the best your memory serves, this was just an occasional visit you paid to Bellefontaine and you don't know what the general policies were; is that right?

A. At the time I knew definitely what the policy was. I laid the policy down.

Q. During which time?

A. During the seven years we operated the theatres.

[fol. 1783] Q. You laid down the policy but you don't know whether that policy was carried out, do you?

A. Yes, I know it was carried out.

Q. Do you know that the 35-cent policy was ever carried out from 1927 to 1931?

A. I said yesterday that it was 30 or 35.

Q. No, I am talking about 35 cents all the time.

A. I am not positive that it was 35 cents at any time.

Q. That is what I want to get. Let me ask you this: As a matter of fact, in February of 1931, which was the same month when the Holland, the Schine house, opened, isn't it true that your prices of admission at the Strand Theatre matinee was, children, 10 cents, and adults, 25 cents?

A. I believe that is right.

Q. And weren't your evening prices: Children, 10 cents, and adults, 30 cents?

A. I don't know. I thought it was 35. 30 or 35. I would have swore it was——

Q. I am merely asking you the simple question. Isn't that right, as to the evening prices?

A. I don't know.

Q. You don't know?

A. It was either 30 or 35.

Q. Will you kindly answer my question? Is that right or [fol. 1784] is that wrong?

A. It may be right.

Q. That the evening prices were: Children, 10 cents, and adults, 30 cents?

A. I am only trusting to my memory.

The Court: The substance of his answer is that he cannot say.

Q. In other words, you can't say; is that it?

A. Not definitely.

Q. Now, you testified, as I recall—and if I am mistaken please correct me—that when the Holland Theatre opened they opened with a price of 10 cents and 25 cents?

A. No, sir, I didn't make that statement. I said 15 and 25.

Q. You are right. 15 cents and 25 cents. Was that the matinee price or was that the evening price?

A. I believe that was the evening price.

Q. When the Holland House was opened in February, 1931, did you make a practice of going to Bellefontaine?

A. Yes, sir, occasionally.

Q. Where did you get that 15 cents and 25 cents price from?

A. From the manager of the house, our house.

Q. You mean the manager of the house told you that——

A. And I believe I saw it in the box office, if I remember correctly, in the Holland Theatre.

Q. Which is the accurate statement, that you got it from the manager of the house or you went over and saw it [fol. 1785] yourself?

A. Both.

Q. And you say that you saw a price of 25 cents on that box office?

A. I believe so.

Q. And when was that?

A. Some time between February and June.

Q. Let us see: You say that was some time between February and June?

A. Yes, sir.

Q. Now, as I recall your testimony, you said that shortly after——

A. I believe the house opened at that price.

Mr. Rogers: I move to strike the answer out.

The Court: Strike it out.

Q. My recollection is that you testified that right shortly after the Holland opened they opened with a 25-cent price?

A. That is right.

Q. Now, which is right, shortly after they opened or some time between March and June?

A. You misunderstood my answer. I thought you meant when was I there in Bellefontaine between the time it opened. I understood—to the best of my recollection the house opened at 15 cents and 25 cents the opening night.

Q. I want to hold you there for a moment. You say on [fol. 1786] the opening night?

A. Yes.

Q. It was 15 cents and 25 cents; is that right?

A. That is my recollection, yes.

Q. And you were there on the opening night?

A. No, sir.

Q. You weren't there?

A. No, sir.

Q. Where did you get that from?

A. From the manager of the Strand Theatre.

Q. In other words, somebody told you that: is that right?

A. He wrote to me.

Q. But you don't know that of your own knowledge?

A. No, sir.

Q. And you took a say-so?

A. Definitely.

Q. When did you, for the first time, visit Bellefontaine and go to the Holland House to see what the price of admission was?

A. Some time between that period. I wouldn't know what month. I would say possibly March or April.

Q. And that was the first time you went there?

A. Yes, sir.

Q. And you say that you saw a 25-cent evening price?

A. To the best of my knowledge, yes.

[fol. 1787] Q. When you say to the best of your knowledge what do you mean? Did you see it or didn't you see it?

A. I think I did.

Q. But you are not sure?

A. I think I am quite sure.

Q. This 25-cent price you are talking about, was that for seats upstairs or seats downstairs in the evening?

A. If I remember correctly it was for seats downstairs and 15 cents in the balcony.

Q. And you say that was true in the evenings?

A. Yes, sir.

Q. You are sure you are not confusing that with the matinee?

A. I don't believe so.

Q. As a matter of fact, don't you know that the price in the matinees was 15 cents balcony and adults 25 cents and that that didn't go into effect until March, 1931?

A. That was not the opening price?

Q. No, sir. Don't you know the opening price was matinee, children, 10 cents, and adults, 30 cents, and the evening price was, children, 15 cents, and adults, 40 cents?

A. No, sir, I don't recall that.

Q. You wouldn't say that wasn't so, would you?

A. I believe it is not so.

Q. You believe it is not so?

A. Yes, sir.

[fol. 1788] Q. Based on what, on what your manager told you?

A. On the fact that the manager said they opened at a lesser admission than we were getting.

Q. That is what the manager told you?

A. Yes, sir.

Q. And you took his word for it?

A. And I believe I verified it.

Q. Did it ever occur to you if you wanted to be accurate in your testimony that you could look at the newspapers current at that time and see what was advertised in those papers and see what the prices were that were advertised by your house and the Holland price?

A. Yes, sir.

Q. Did that occur to you?

A. No, sir.

Q. Did you try to look at a newspaper with your advertisements in to see what you were charging?

A. No, sir. I have never been in Bellefontaine a day since I left there.

Q. When was that?

A. 1931.

Q. When you were talking to Mr. Wright and his assistants you never went to these newspapers to see whether you were giving them accurate information; is that right?

A. I gave them information to the best of my memory, as [fol. 1789] accurately as possible.

Q. And your memory ran back to 1931; is that right?

A. That is right.

Q. When was it that you lowered your prices of admission in the Strand Theatre in 1931?

A. That I couldn't tell you.

Q. You don't know?

A. No, sir.

Q. Well, what did you lower it from and what did you lower it to the first time you lowered it?

A. I imagine we lowered it to meet the price of the other house.

Q. You give me prices. Don't tell me anything about the other house. I want you to give me prices on your own.

A. I couldn't tell you whether we lowered it 25 or 20 or 15. I couldn't tell you.

Q. You don't remember?

A. No, sir.

Q. As a matter of fact, February 19, 1931, the same month when the Holland was opened, didn't you carry an ad in the Daily Examiner, Bellefontaine, showing that your matinee prices were: Children, 10 cents, adults, 25 cents; evenings, children, 10 cents; adults, 30 cents?

A. Possibly.

Q. Is that right?

[fol. 1790] A. I imagine.

Q. So that you were charging 30 cents top in the evening; is that right?

A. If that statement is correct, which I imagine it is.

Q. And do you recall a few days thereafter advertising in the same paper—of course there was only one paper in the town, I understand, that is the Daily Examiner; that is right, isn't it?

A. Yes, sir.

Q. Children, 10 cents; adults, 25 cents, all day, and a bargain hour of 15 cents to everybody from 5:30 to 6:30?

A. That I don't remember because I believe the house was closed during the supper hour. We used to keep the house closed between matinee and evening, to the best of my recollection.

Q. If that ad appears in the Daily Examiner of that date would you say that the house was not operating during that hour?

A. Was that the supper hour?

Q. I am giving you a date, and you are the man that made the policies of the house.

A. That is right.

Q. And did you inaugurate the policy of the bargain hour of 15 cents for everybody from 5:30 to 6:30?

A. I might have. That I don't remember.

[fol. 1791] Q. As a matter of fact, didn't you lower your prices at the Strand Theatre before any change was made in the schedule of the Holland?

A. I think the Holland opened at a lesser admission than we were getting.

Q. And if you are wrong about that and the ads which I have recited to you are right about that, then what is your answer?

A. I can't dispute the ads, if they are right.

Q. I am asking you if the ads are right who lowered the prices first?

A. If the ads are right and what you say is right, the Strand did.

Q. And you did?

A. That is to be proven.

Q. As branch manager of Warner's, you were generally acquainted with theatre conditions in the State of Ohio, weren't you?

A. Yes, sir.

Q. At that time did the Schine interests—and when I say at that time I mean the time prior to your sale of the Bellefontaine interest to Schine, have any theatres in the State of Ohio?

A. Yes, sir.

Q. Where were they?

[fol. 1792] A. They had one in Sidney. I believe they had one in Canton.

Mr. Wright: If the Court please, if only knowledge is to be given after he became branch manager, I want to point out that he did not become branch manager until after he sold out the theatres in Bellefontaine.

Mr. Rogers: He was a salesman for 19 years before that and then he was branch manager. I think this man knew the State of Ohio.

The Witness: I would like to correct that statement. I was with Warner's 19 years including the time I was branch manager.

Q. You became branch manager when?

A. In October, 1932, I believe.

Q. And prior to that you had been salesman for quite a number of years, hadn't you?

A. That is right.

Q. Now will you answer my question about the theatres he had in the State of Ohio?

A. I knew he had two.

Q. Two where?

A. He had it in Sidney, Canton, and I believe Sandusky at the time.

Q. As a matter of fact, don't you know, Mr. Mooney, that those three houses were sold by Schine to Warner's in [fol. 1793] 1930?

A. Yes, sir. I don't know what year. I knew they had them. What year they were sold I didn't know.

Q. It is a fact they were sold in 1930 and sold to your company, the Warner Company?

A. I had nothing to do with that. I am in the distribution end and that is the theatre branch. They are two different units.

Q. Out of which city were they served?

A. Sidney was served out of Cincinnati and Canton and Sandusky out of Cleveland.

Q. Which exchange were you connected with at that time?

A. Cleveland.

Q. You knew that Cleveland was serving those theatres for Warner, didn't you?

A. I don't remember the date. I knew that Schine sold out to Warner's, which included Alliance and some other towns, but I didn't know the year it was sold out.

Q. You knew it was sold before——

Mr. Wright: If the Court please, before we go into this long bickering over dates as to acquisitions, there ought to be some showing as to how it is material. I can't, for the life of me, see what difference it makes whether Warner's [fol. 1794] sold these theatres out in 1929 or 1930 or 1931, or what possible connection it has to do with the direct examination, or any issue in the case.

Mr. Rogers: I shall now have the pleasure of enlightening Mr. Wright. I hope you will listen carefully, Mr. Wright. You have been making a great point of the tremendous buying-power of Schine and the exertion of that tremendous buying-power against these other exhibitors, that by reason of that buying-power he was forcing them out of business. If Mr. Schine did not have a single theatre in the State of Ohio at the time how in Heaven's name could he force them out by that tremendous buying-power? I hope that enlightens you, Mr. Wright. It shows the competency of it.

Mr. Wright: If the Court please, the evidence as to what theatres Schine had is not in dispute. It is a matter of record. As to examining this witness on it, it is a complete waste of time.

The Court: Is it in the record when Schine sold to Warner's

Mr. Wright: The date of his acquisitions are all in there.

[fol. 1795] The Court: The date of his sale to Warner may be important. I will let him answer. Give, as nearly as you can tell, the date.

Mr. Rogers: As a matter of fact, your Honor, that sale is not in the record.

Mr. Wright: There are certainly more witnesses more competent than Mr. Mooney on that point, that can put it in.

The Court: Let us not take up time with unnecessary discussion.

By Mr. Rogers:

Q. With reference to the Strand Theatre in Bellefontaine, during the period when you were operating that theatre you were also in the employ of Warner's, weren't you?

A. Yes, sir.

Q. How much did the Strand Theatre pay, on an average, for pictures played at the Strand Theatre?

A. That I hesitate to say.

Q. You don't know?

A. I don't recall, no. I have bought pictures for hundreds of houses since then.

Q. You weren't buying pictures for hundreds of houses at that time, were you?

A. No, sir.

Q. Were you buying pictures for any other houses—

[fol. 1796] A. Yes, sir.

Q. —except those seven you were personally interested in at that time?

A. No, sir, definitely not.

Q. How many houses were there?

A. I had one in Bellevue and in Bellefontaine.

Q. There were just two houses; is that right?

A. Right.

Q. While you were buying for just those two houses can't you tell me how much you were paying for features at the Strand Theatre in Bellefontaine?

Mr. Wright: The best evidence of that would be the records of the company. Those are certainly available. If it is going to be material to show what those rentals are I suppose they can be gotten from the records of the distributors in question.

Mr. Rogers: I know of no better source than the man who was in charge of sales for Warner's.

The Court: I suppose there are company records to show what was paid.

Mr. Rogers: He knows what he paid. He sold them to himself and he bought them himself.

The Witness: I beg your pardon. I bought them out of the Cincinnati office.

[fol. 1797] The Court: Would they vary with different pictures?

Mr. Rogers: No, there is an average. Every practical theatre-owner knows what is an average. He knows what the house can bear and what it can't bear.

The Witness: That is a misstatement. Bellefontaine was served out of the Cincinnati office at that time and I bought my product——

Q. Whether it was served out of Cincinnati or whether it was served out of Kalamazoo, all I want to know is: What did you pay on an average for a picture?

A. I can't remember.

Q. Don't remember at all?

A. No, sir.

Q. Whether you paid on flat rentals or whether you paid on percentage?

A. Some of them were flat. The majority flat, and some on percentage.

Q. Those on percentage were a few big features a year; is that right?

A. Yes, sir.

Q. And the rest of the product was paid on a rental basis?

A. Yes, sir.

Q. And you can't tell us what you paid?

A. No, I don't know exactly what we paid.

[fol. 1798] Q. After the Holland was completed in Bellefontaine do you know what the Holland paid for features?

A. Yes, later on after I became manager I have some idea, but I couldn't swear what their deal was.

Q. Don't you know what their deal was?

A. Some was percentage and some flat.

Q. Wasn't their deal primarily a percentage deal at the Holland?

A. As I recall, they had a percentage deal and I believe that there was a clause in there that they had the right to play percentage pictures flat if they saw fit in some of their contracts. Whether that was in the Bellefontaine contract

I don't know. I know definitely it was in the Wooster contract and——

Mr. Wright: The master deals with Warner through 1935-36 or 1938-1939 are all in evidence. They show what the terms were. It seems to me it is a waste of time to examine this witness about them.

Mr. Rogers: 1931-1932 I am asking about.

Mr. Wright: The Holland I think is included in the deals that are in evidence here for the later years.

The Court: 1930-1931?

Mr. Wright: No, not 1930-1931. Is that the year you are [fol. 1799] talking about?

Mr. Rogers: Yes.

A. I was not manager in 1931. I didn't see their deals.

Q. When did you become manager?

A. In 1932.

Q. Did you see their deals in 1932?

A. Yes, sir.

Q. Wasn't there a percentage deal in 1932 on the Holland?

A. Some percentage and some flat.

Q. Are you sure of that?

A. Yes, sir.

[fol. 1800] Q. I thought you first testified that the deal was primarily a percentage deal, but they had the right to play some pictures flat, which was it?

A. Both. They had some percentage and some flat. If I recall correctly they had the privilege of converting some of the percentage to a flat buy.

Q. Do you know how the prices paid in 1931-32 at the Holland compared to the prices you paid at the Strand for features? Warner I am talking about.

Mr. Wright: He has already testified he doesn't know what the Holland paid in 1931-32.

The Court: The question is: Does he know how they compared?

The Witness: No, I don't.

Q. Haven't any idea?

A. No, sir.

Q. You know by comparison that the Holland paid more?

A. Yes, should have.

Q. And considerably more?

A. They should have.

Q. As far as the Holland was concerned, did you ever visit the Holland?

A. No, sir.

Q. Never been inside the house?

A. No.

[fol. 1801] Q. You saw the exterior?

A. Yes, sir.

Q. A fine, modern house?

A. Very nice.

Q. Do you remember how many seats it had?

A. About 1400.

Q. Air conditioned?

A. That I could not tell you.

Q. Modern equipment?

A. Definitely.

Q. The last word in modern construction, wasn't it?

A. I would say so.

Q. You testified that in the season of 1930-31 that you had at the Strand Theatre in Bellefontaine, Fox, First National, Paramount and F.B.O.?

A. Yes, sir.

Q. Now, when you said First National, was that in distinction as between First National and Warner?

A. At that time First National and Warner were two separate organizations.

Q. So you didn't have Warner, is that right?

A. I don't believe so, I don't know whether we did or not.

Q. And you said you didn't have Metro?

A. For the season starting September 30th, we did not have Metro.

[fol. 1802] Q. That is the 1930-31 season, is that right?

A. That is right.

Q. Well, it wasn't because Metro wouldn't serve you, was it?

The Court: What was the question?

Q. It wasn't because Metro wouldn't serve you, was it?

A. Yes, sir, it was.

Q. You say they didn't even solicit you?

A. That is right.

Q. Well, now, let us see. As a matter of fact in the month of October, 1930, didn't you and Metro discuss a deal for 50 pictures at $30 flat, and didn't you sign an application?

A. No, sir, the year 1930, no, sir.

Q. You say that isn't so?

A. Not to my knowledge

Q. Don't you remember Brower, the salesman of Metro, coming in to you in October and discussing with you the 1930-31 product?

A. You see, the Holland opened in 1931; I would like to refresh my memory; from the year the Holland opened in September, from the year the Holland opened, they never solicited me.

Q. You mean from September, 1930 you were not solicited?

A. Definitely not.

[fol. 1803] Q. You say you didn't sign an application for 50 pictures at an average price of $30?

A. No, sir.

The Court: You mean during that period?

Mr. Rogers: No, sir, I mean in the month of October, 1930 for the year 1930-31.

The Witness: No, sir, we never got the pictures.

Q. I am asking you, did you sign an application?

A. No, sir.

Q. Do you remember Brower coming to see you about it?

A. No, sir.

Q. Do you remember Brower soliciting you for the year 1930-31?

A. Brower solicited me for different years, but not the year 1930-31.

Q. Your testimony is you definitely were not solicited?

A. That is right.

Q. And you definitely did not sign an application?

A. That is right.

Q. Now, did you play the Loew's product in the season 1929-30?

A. Yes, sir.

Q. You are sure of that, aren't you?

A. I believe we did.

Q. You are sure of that, aren't you?

[fol. 1804] A. Pretty sure, yes, sir.

Q. As a matter of fact, isn't it true you didn't buy any Metro for the year 1929-30 and didn't play any Metro in 1929-30?

A. No, I don't think that is correct. I believe we run them every year I was there.

Q. Isn't it true the only deal you made in 192--30 for Metro product were nine color-tone shorts?

A. No. I don't believe that is correct, I — believe they would sell me nine shorts without anything else.

Q. You say that isn't correct?

A. I don't think it is.

Q. You say you didn't sign a contract for those nine, and didn't play them and didn't pay for them, is that right?

A. No, sir.

Q. You say that isn't so?

A. Not to my knowledge it isn't.

Q. Now, did you have Paramount in 1929-30?

A. There was one year we didn't have Paramount; what year that was, I don't know.

Q. Wasn't that the year 1929-30?

A. That I couldn't tell you.

Q. You don't remember, do you?

A. No, sir.

Q. Now, with reference to the Medina situation—now, [fol. 1805] this talk that you say took place between Mr. Essick and yourself and Mr. Kalmenson at the Cleveland office, now, as I understand it that talk that you claim was had at that time that Mr. Essick said "I intend to build a theatre. If I build a theatre, can I have the product," and Kalmenson says "It is yours definitely," is that right?

A. Correct.

Q. That was the substance of the conversation?

A. Definitely.

Q. Now, did Essick show Mr. Kalmenson any plan of the proposed theatre?

A. No, sir.

Q. How many seats the house was going to have?

A. No, sir.

Q. Or what kind of a house it was going to be?

A. No, sir.

Q. Was there anything mentioned about price?

A. No, sir.

Q. Nor whether the pictures were to be on a flat rental or percentage basis?

A. No, sir.

Q. Or what the clearance of the house was to be?

A. No, sir.

Q. In other words, no terms, no conditions were mentioned was that right? [fol. 1806]

A. Yes, sir.

Q. And without the mentioning of any price, terms, conditions, or knowing anything about the kind of house that was going to be built, Kalmenson said "The product is yours; is that right?

A. Definitely.

Q. Did he tell him what period the product was his?

A. He didn't say for any period.

Q. Forever and a day, or one year?

A. It wasn't discussed.

Q. No season discussed?

A. No.

Q. And you didn't know when the house was going to be completed?

A. No, sir.

Q. Now, in Bellefontaine you were playing four major products, weren't you?

A. I believe so.

Q. They were four good, major companies, weren't they, and you were losing money, is that right?

A. During the period; I wasn't losing money until after the new house opened.

Q. Prior to that you were making plenty of money?

A. Made money.

[fol. 1807] Q. A lot of money?

A. I made money.

Q. You just made money, you just barely got by?

A. I didn't say that.

Q. When you say you made money——

A. Made good money.

Q. And when you say "Good money," about how much money did you make?

A. I am not free to say.

Q. You don't know, do you?

A. I have a fair idea.

Q. What is your fair idea about what you made, by way of clear profit?

Mr. Wright: I don't see how it is material what the precise amount he made there was. He has testified it was profitable before the new theatre opened, and then he list money. What difference does it make how much it was?

The Court: The comparison before and after is the point, whether he dropped from $10,000 to $2,000, approximately.

The Witness: Are you speaking about a year?

Mr. Rogers: The year.

The Court: Which year?

[fol. 1808] Mr. Rogers: The prior year.

The Court: The prior year, '29 and '30?

The Witness: Oh, I would say possibly $10,000.

Q. You made clear profit?

A. Something like that.

Q. And paid income tax on it?

A. Yes, sir.

Q. Now, in 1931, with these four products, you say that up to the day that the doors of the Holland House were opened, you were making money?

A. That is right.

Q. The day they opened their doors you started losing money?

A. Yes, sir.

Q. How much were you losing?

A. I believe in the period of time we lost close to $8,000.

Q. In the period of which time?

A. From February until we sold the house, somewhere around in there.

Q. In other words, January was a very profitable month?

A. I don't know how profitable it was that year.

Q. Well, were you making about the same average profit in January as you made the year before in January?

A. No, I don't believe in January we made as much as we made the previous years. I believe business was on the [fol. 1809] decline at that time.

Q. As a matter of fact, business was on the decline beginning in the middle of 1930, wasn't it?

A. Possibly was.

Q. And it kept on getting worse and worse?

A. We still made——

Q. I am asking you, didn't business keep on getting worse and worse from the middle of 1930 to the end of 1930?

A. That I wouldn't say.

Q. Wasn't business very bad in Bellefontaine in 1931?

A. Very bad.

Q. In that particular year and territory?

A. In Bellefontaine.

Q. It was a depression year and people weren't going to the theatre?

A. They weren't going to ours.

Q. They had no money to go to the theatre, did they?

Mr. Wright: If the Court please, that is pure speculation at this point.

The Court: Yes.

Q. As I recall, you testified that when Schine got his first-run situation established that you don't recall of any situation where competitors got repeat or subsequent-run, or second-run, is that right?

A. Let me understand that, give me it again; please.

[fol. 1810] (Question read.)

Mr. Wright: He didn't testify that way at all.

Mr. Rogers: It is my understanding.

Mr. Wright: You are mistaken.

Mr. Rogers: I think that was pressed by Mr. Wright this morning. Mr. Wright indicated that as far as others were concerned, second-runs, or repeats could be had and that prevailed particularly in 1936-37, as I recall.

The Court: Repeats could be had by Schine in six days.

Mr. Rogers: Yes, but he said when Schine established his first-run purchasing in a town competitors could not get any subsequent-run or second-run against him.

The Court: There was some question in that regard. Ask him. Was that your testimony?

The Witness: No, sir.

By Mr. Rogers:

Q. Is it your testimony that so far as Schine is concerned competitors were sold second-run and subsequent-run to be played after the Schine Theatre played their first-run?

A. At one time we were not allowed to sell in opposition to a Schine house, but later on we were selling in opposition to Schine; not in opposition, but a second-run in a Schine [fol. 1811] situation.

Mr. Rogers: I move that it be stricken out. I am asking for a fact.

The Court: Strike it out.

Mr. Wright: He asked for it.

By Mr. Rogers:

Q. I am asking you as a fact, didn't you sell——

A. In what year?

The Court: Listen to the question. Go ahead.

Q. Didn't you sell opposition houses to Schine second or subsequent-runs where Schine had the first-run?

A. During what year?

Q. Let us take 1936-37.

A. I believe I am correct in 1936 and '37 was the first year we did sell a second-run in any Schine town.

Q. I am asking you, you did, didn't you?

A. One year we did, beginning in one, what year we started, I don't know. I believe it was the 1936-37 product.

Q. And thereafter you also did didn't you?

A. That is right.

The Court: We will suspend for five minutes.

(Short recess.)

Mr. Rogers: I believe that concludes my cross-examination for the present, sir.

Mr. Wright: What do you mean by "for the present"?

[fol. 1812] Mr. Rogers: Well, you may have some questions to ask.

The Court: That concludes the cross-examination.

Redirect examination.

By Mr. Wright:

Q. Mr. Mooney, calling your attention to this Defendants' Exhibit No. 44, I note that that refers to leases, what do you know, what other lease besides the Strand Theatre lease that included?

A. I believe it included the Opera House and the Majestic leases.

The Court: Was there more than one bill of sale?

The Witness: One bill of sale, the Majestic and Opera House had been closed for a period of years and we didn't consider them of any value. The Strand was the only asset we had to sell.

By Mr. Wright:

Q. Did you receive anything more than the $2500 that is mentioned in this Defendants' Exhibit 43?

A. No, sir.

Q. That is, you didn't. Was this cancellation of leases that is marked Defendants' Exhibit 44 executed as part of the deal you made with Schine when you got the $2500?

A. I believe it was, yes, sir.

Q. That is, you didn't get anything from Gutilla for this?

[fol. 813] A. No, sir.

Q. And was there any theatre interest that you had in Bellefontaine at the time that wasn't included in the deal you made with Schine for $2500?

A. No, sir.

Mr. Wright: That is all.

The Court: Next witness.

Mr. Rogers: That is all.

Mr. Wright: Mr. Essick.

Perce E. Essick a witness called by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Wright:

Q. Where do you live, Mr. Essick?

A. Cleveland, Ohio.

Q. What is your occupation?

A. Theatre owner.

Q. You are interested in a theatre in Medina, Ohio?

A. That is right.

Q. Or theatres, and you hold a position in the Medina-Princess Corporation?

[fol. 1814] A. I do.

Q. What is your title there?

A. Secretary.

Q. Do you know who the President is?

A. The President is Mr. Myer Schine.

Q. And when did you enter the theatre business in Medina?

A. The question again, please?

The Court: When did you enter the theatre business in Medina?

The Witness: Well, we opened up on January 1st, 1938, that is, the theatre opened.

By Mr. Wright:

Q. When you say "we," whom do you refer to?

A. Refer to my associates of the Medina Temple Theatre Company.

Q. Who were they?

A. Myself and Mr. Fine and other associates.

Q. The Medina Temple Theatre Company is a company which owns a half interest in the Medina-Princess Corporation?

A. That is correct.

Q. Have you the agreement? You were asked to bring your copy of the agreement, Mr. Essick, but, as I understand, you didn't bring it with you?

A. That is right.

[fol. 1815] The Court: Who owned the other half interest at that time?

Mr. Wright: You mean when they first built the Medina? They now own a half interest in the Medina-Princess Corporation. This agreement I am about to offer and set forth shows, I think, the nature and extent of the interest. I will ask to have this marked with the next Plaintiff's exhibit number for identification.

(The agreement, Medina-Temple Theatre Company and Medina Masonic-Temple Company, was marked as Plaintiff's Exhibit 648 for identification.)

Q. I will show you this copy of an agreement, Mr. Essick, marked 648 for identification, and ask you if you recognize that as the copy of the agreement made between your Medina-Temple Corporation—and what is the other party there?

A. The Medina-Temple Company and the Medina—the Medina-Temple Theatre Company and the Medina-Masonic Temple Company. One is a building company and the other is a theatre company.

Q. Is this the agreement under which the Princess and Medina theatres are now being operated there?

A. That looks like it. That is the Medina Theatre Com-[fol. 1816] pany and the Princess Theatre Company. I didn't read through it to verify it, but I presume that is it.

Q. When did you first make an investigation of the theatre possbilities in Medina?

A. Well, I didn't make a survey immediately in Medina. I was approached by the Masonic organization, a committee for the Masonic organization down there, and they came into my office.

Q. When was that?

A. That was in the early part—I imagine around September of 1936. And I asked them how they had come to get ahold of me and they said that they had heard of me through——

Mr. McClennen: I take it that this conversation——

The Court: It is not responsive. You asked him when and he said in September.

Mr. Wright: I do not think the conversation is of any significance.

Q. At the time you were approached by Medina there in September, and the people from the Temple company?

A. Around September; that is right.

Q. And after they came to see you did you look into the theatre situation there?

A. I went down to look over the situation.

Q. And what did you observe?

[fol. 1817] A. Well, I observed—I had to look over the property that they referred to and also the theatre that was in the city.

Q. The property, was it a vacant lot or was it a building?

A. No, it was a Masonic building.

Q. And the theatre that was there was what?

A. The Princess Theatre was there.

Q. Did you note what the Princess Theatre was playing, what product it was using?

A. No, not at that time I didn't.

Q. Then after you saw this building what, if any, plans did you make toward putting up a theatre there?

A. We first had a number of discussions with the committee relative to what they could do and what could be done with the building, and things of that type.

Q. Then did you finally reach a decision to go ahead there?

A. We finally reached a decision to go through after various meetings.

Q. And at that time did you make any investigation of the product situation, the film product situation, in Medina?

A. I did.

Q. And what did you find?

A. I found Warner's and First National and Columbia and Universal and United Artists were not being played in the town.

[fol. 1818] Q. Then did you have any conversation with the Warner people about using their pictures in Medina?

A. I had talked to Mr. Mooney a number of times. It was common knowledge that we were talking about Medina. So that I told him that if we closed the deal that I would let him know.

Q. Do you recall any specific conversation with Mr. Mooney in his office when Mr. Kalmenson was present?

A. Well, I was booking in there one day, I imagine around the latter part of December or some time in December——

Q. The latter part of December or what?

A. The latter part of December of 1936, some time around in December. It was either the latter part of December—— I think it was around December, some time in December, and I was booking for the other theatres.

Q. For other theatres you were interested in?

A. That is right. And I told his secretary that I wanted to see Mr. Mooney and he stepped out and I said hello to him. I said, "We are just about at the finish of a deal, in fact I think we will close in the next few days." He said——

Mr. McClennen: If your Honor please, we note the objection to this conversation for all the reasons that have been stated heretofore to your Honor.

[fol. 1819] The Court: Overruled. Go on.

A. He said, "Come on in." He said, "I want you to meet somebody." And I went in and he introduced me to Mr. Kalmenson, whom I had never met before. So I met Mr. Kalmenson and Milt was very, very much elated. He said, "We are tickled to death. We have been out of there for several years," and Mr. Kalmenson says, "What is this?" So Milton explained the thing to him, that the town of Medina was 35 miles from Cleveland; that they had been out of there for quite a number of years and that we were going to build there. He said, "If Milt says so, it is O.K." He said, "The pictures will be yours. Don't worry."

And at that time I discussed—we were building another theatre in Akron, Ohio, at the same time, and I said under the circumstances we were able to book up the two theatres building, and so forth. He said, "Don't worry, the pictures are yours, and we haven't been there for years. You can rest assured of that."

Q. Then did you go ahead with the theatre building at Medina?

A. We went ahead with the theatre building.

Q. When did you start the construction?

A. We started construction either the last of February or the first of March.

[fol. 1820] Q. And then when did you finally get it open?

A. We didn't open up until January of 1938.

Q. What was the reason for the delay?

Mr. McClennen: That is objected to.

Mr. Wright: If he knows.

The Court: I will let him state. What was the reason for the delay?

The Witness: We got into that steel strike.

Q. What kind of a theatre did you finally have there, how large was it?

A. I think it seats around 900, maybe a little under or a little over. It is modern.

Q. How did it compare, generally, with the Princess Theatre there?

A. There would't be any comparison. We had a modern, up-to-date theatre.

The Court: What was the comparison with respect to size?

The Witness: In respect to the other theatre there wouldn't be any comparison at all because we had a modern, up-to-date theatre.

By Mr. Wright:

Q. Do you know how old the Princess was?

A. No. I imagine it was quite old. I don't know the exact——

Q. Did you have any further conversation with Mr. Mooney about pictures for Medina in the fall of 1937?

[fol. 1821] A. Well, I had quite a few conversations at different times when I would meet Mooney during the course of the entire year. He would ask me how we were coming along, and according to his word that everything was all right, when we got ready the pictures were ours, so that I happened to go into his office——

Mr. McClennen: We have our objection to that that it is not within the question, and also the general objection.

The Court: He asked you if you had a talk with him before the opening of——

Mr. Wright: I take it what he is leading up to is the conversation I asked him about. In the fall of 1937 he said this was. I asked him if he talked to him in the fall of 1937.

The Court: Did you have a talk with him in the fall of 1937?

The Witness: I did.

The Court: All right.

By Mr. Wright:

Q. Where was that talk?

A. In Mr. Mooney's office.

Q. At Cleveland?

A. That is right.

Q. Who else was present there then?

A. I don't think anybody was present at that time except [fol. 1922] myself and Mr. Mooney and perhaps the salesman. I don't even know who the salesman was.

Q. What was said then?

Mr. McClennen: The same objection.

The Court: Yes.

A. We had started to work on the deals for all the theatres, and I imagine this was around the first part of November, I would say between the 1st and the 15th of November, and we had gotten through all the other theatres, and after we had practically completed all those I says, "Well, now, Milt, what about the Medina?" He says, "Perce, I am very sorry to tell you that Mr. Kalmenson has gone to Gloversville and sold Schine a deal in Medina for all the product." I says, "Well, Milt, I can't believe that." He says, "Well, it is a fact, Perce." I says, "What do you expect us to do down there?" I said, "We had your definite promise and also backed up by Mr. Kalmenson, it was only a question of, when we got ready, to sit down and make the deal, that is all there would be to it." He says, "I know that, Perce, but I have nothing to say. I can't go forward with the deal in Medina." I says, "If that is the case are the rest of the deals set?" He says, "My advice to you is to get in touch with New York because I can't do you any good."

[fol. 1823] Q. Then what did you do?

A. Well, I called Mr. Fine as soon as I found out the situation. I said, "Myer"——

Mr. McClennen: This is objected to.

The Court: Yes.

Q. Don't give us any conversation you had with Mr. Fine. Just tell us what you did after you called him.

A. We made arrangements to go to New York.

The Court: Fine was your partner?

The Witness: That is right. We went into the Warner office.

By Mr. Wright:

Q. Who did you see there?

A. I saw Mr. Kalmenson and Mr. Lesserman and Mr. Oakes was there at that time and Roy Haynes.

Q. What was the conversation then?

A. The conversation was quite heated and we went to bat with Mr.——

The Court: Just tell what was said.

Q. Give us the substance of it, as nearly as you can recall.

A. We went to Mr. Lesserman immediately and he called Mr. Kalmenson and Haynes and Mr. Oakes was just in there from the Coast, and we told Mr. Kalmenson that we understood that he had sold the pictures to Schines and he had made a prior arrangement with us and had given his word of honor, and I had also received word from Mr. Mooney [fol. 1824] that the product was our pictures, and he denied emphatically, up and down, that he hadn't done anything of the kind.

The Court: Anything of what kind? That he hadn't had a talk?

The Witness: That is right. He denied the conversation entirely, that he had never said anything about it to us, and I recalled the instance of when I met him in the office and the fact that they were elated that they were going to get into a theatre that they hadn't been in for a number of years. We weren't making much headway with him.

By Mr. Wright:

Q. When you said "get into a theatre"——

A. It was the Medina Theatre in the town of Medina.

Q. Medina was the name of your new theatre?

A. Yes.

Q. Did you say your theatre was called the Medina?

A. Yes, that is right, the Medina Theatre.

Q. Go ahead.

A. And so Mr. Lesserman, who was the Eastern Sales Manager there at that time, he got into the picture, and we told him it was one thing or the other, we were either going to get Warner Bros. product or we were going to go to the Department of Justice. So that the length of of the [fol. 1825] conversation was that Mr. Lesserman promised to go to Gloversville some time in the near future, within a couple of weeks, and he told us emphatically that he wouldn't be able to get all the product but he would at least try to get us half. But he didn't even promise that to us, but he said he would see what he could do. And I said, "We are going to open that theatre down there; we haven't any product; we are going to open that theatre and your product was promised to us."

So that that was the condition that we left New York under, as far as the Warners are concerned.

Q. Did he say who he was going to see in Gloversville?

A. Well, I imagine—I wouldn't know. I think he said he was going to see Mr. Schine or Mr. Lynch. I forget who he said he was going to see.

Q. Then did you hear from him again?

A. I heard from him again; that is right.

Q. When?

A. I think I heard from him after we were opened the first part of January.

Mr. Wright: I will ask to have this contract between the Medina-Temple Theatre Company and Vitagraph, which is in this folder 635-C for identification, marked as Exhibit 635-C-1.

[fol. 1826] (The contract between the Medina-Temple Theatre Company and Vitagraph referred to was marked as Plaintiff's Exhibit 635-C-1 for identification.)

Q. I call your attention to this contract that is marked here Exhibit 635-C-1 for identification and ask you to note the date on that.

A. January 28, 1938.

Q. Do you recognize that as the contract you made with Vitagraph for the 1937-1938 product, for half of it?

A. That is right.

Mr. Wright: I will offer this contract in evidence.

(The contract previously marked as Plaintiff's Exhibit 635-C-1 for identification was received in evidence.)

Q. I call your attention to the fact that there are several gaps opposite the numbers which describe the feature pictures that were sold to you, where there were no terms stated on the half called First National Productions.

A. I see that.

Q. Do you know what happened to those pictures?

A. I presume they were played in the other theatre prior to our opening.

Q. Do you know that?

[fol. 1827] A. I remember seeing some of the Warner's and First National pictures being played down there prior to our opening, but I wouldn't be able to tell definitely that those were the ones, but I imagine they were.

Q. It appears from the contract, does it not, that you got half the production, less those in the Warner half which had already been played?

A. I think they told us they were already played and I think I saw one or two of those down there. That is, I saw them when I passed by the theatre when I happened to be in the town.

Q. What, if any, efforts did you make to get all of the Warner features for the next season, 1938-1939?

A. Mr. Oakes came to Cleveland. He had been in New York at our last conference. And he said, "Perce, believe me, you are lucky you got half of it, and that is all I am in position to offer you today. Either you can take it or leave it." So that we took it.

Q. Now, you are referring to a conversation that occurred just before this contract was signed?

A. No, the next season. You asked me about the next season.

Q. 1938-1939?

A. That is right.

Q. When was that conversation, approximately?

A. That was in the fall of the next year. That was in [fol. 1828] 1938 for the season 1938-1939.

Q. When you opened the season in January, what product did you open it with?

A. We had Columbia and half of Warner's, which we didn't get until later on, and I don't think I had Universal at that time. I am just thinking from memory. We were very short of product.

Q. Do you recall what product was played at the Princess?

A. The Princess was playing Metro, Paramount, Fox, RKO and Republic.

Q. Plus the half of Warner?

A. Plus the half of Warner.

Q. Or half of Vitagraph, rather?

A. That is right.

Q. How about United Artists?

A. United Artists, I think we had a split of United Artists at that time when we opened up. I think we had a split of United Artists.

Q. By that you mean you had half and the Princess had half?

A. Yes, but there were so few pictures it didn't mean anything.

Q. As I understand the testimony, what you had to play there some time after you opened was half of Vitagraph, and Columbia and Universal and half of United Artists; is that right?

[fol. 1829] A. That is correct.

Q. Were you able to operate profitably with that product?

Mr. McClennen: That is objected to.

The Court: I will let him state whether he did operate the theatre profitably. You mean after——

Mr. Wright: When it opened.

The Court: After he opened it? I will let him state that.

A. Our first two or three months, being a new theatre, we did, I would say, fair.

Q. You made some money during the first two or three months?

A. No, we just broke about even.

Q. You broke about even for the first two or three months?

A. That is right.

Q. Then what happened with reference to making or losing money?

Mr. McClennen: We urge that this has no bearing on the issues.

The Court: I will receive it. Unless it is connected up it is not very important.

A. We lost money from then on.

Q. Then in the summer of 1938 what, if any, efforts did you make to get additional product from the theatre, additional major product?

A. We made other efforts prior to that before we had opened up the theatre. While we were in New York I [fol. 1830] discussed with—is this outside of the question or not?

Q. I was calling your attention particularly to what you did in the summer of 1938, that is after you had been operating for several months.

A. Well, I went into Metro——

Q. Do you remember who you saw there?

A. I saw Mr. Rodgers.

Q. Did you talk to him about it?

A. We talked with him, but he had nothing to do with it, but he referred us to Mr. Tom Connors.

Q. When you say "us" who are you referring to?

A. Mr. Fine and myself.

Q. Your conversation was with Mr. Connors?

A. That is right.

Q. What was his position, in your talk?

A. His position was that they had always done business with the smaller theatre and they felt they should stick by their prior customers and he didn't see why he should sell us. And I said, "Well, now, after all, Mr. Schine has just came into this picture after we were in the town and you saw fit to do business with him. Why not with us?" And he said, "We still look at the other people as our customer and not Mr. Schine." So that I didn't get very far.

Q. There were no negotiations other than what you mentioned?

[fol. 1831] A. That is as far as I could get with him.

Q. Then did you see Mr. Connors again in the fall of 1938?

A. Yes, when we were buying for the other theatres the Medina situation kept coming up all the time and Mr. Connors said we were foolish down there, that we should try to get together and make some arrangement that would be satisfactory to everybody.

Q. Who should get together with who?

A. That we should get together with Mr. Schine and he should get together with us.

Q. What did you say?

A. I said, "We haven't been able to do anything." He wanted to know if he could make arrangements—we could use his offices to talk over a deal where we would both go in together, as this was a situation he would like to see cured, it was not healthy for anybody concerned.

[fol. 1832] Q. Well, that is, who go in together, when you say "we", who are you referring to?

A. Schine and Schine Enterprises and ourselves go in together and pool the town.

Q. I will show you this letter addressed to yourself and Mr. Fine, dated December 7th, 1938, and ask you if you recognize that as a copy of a letter that you received?

A. That is right.

Mr. Wright: We will offer this Exhibit No. 511 in evidence.

The Court: Is it marked?

Mr. Wright: It has been marked as Exhibit No. 511 for identification.

Mr. McClennen: We urge the general objection to these communications, not with us.

The Court: Purported to be from one of the alleged co-conspirators.

Mr. McClennen: This appears to be a letter—this is a letter from Mr. Connors, of Metro, to Mrs. Perce Essick and Mr. Myer Fine. This copy has no signature. We are objecting on the general ground that such communications are not admissible against us.

The Court: Well, it has no signature?

Mr. Wright: This is an unsigned copy because it is a [fol. 1833] copy that came from Loew's files. This is one of the documents that was identified.

The Court: I suppose you should first show that the original was destroyed.

Mr. Wright: I did not understand there was any objection on that ground.

The Court: Maybe not. If the objection is simply based on the general objection heretofore made.

Mr. Wright: That was my understanding, that there was no objection on the ground that the original hadn't been produced.

Mr. McClennen: The original has not been asked for, as far as I know, of Mrs. Essick or Mr. Fine.

By Mr. Wright:

Q. I believe, were you asked to produce—you were served with a subpoena, were you not, Mr. Essick, which asked you to produce your correspondence with Metro?

A. That is right, but I——

Q. Did you look for the original of this letter?

A. I explained it to the girl that we had in the office. Her husband went to war, and when he went she went with him, and we never could locate any correspondence like that.

Q. You could not find that correspondence?

[fol. 1834] A. We could not.

Mr. Wright: We offer it.

The Court: What search did you make for it?

The Witness: We had a girl in the office. Her husband was at one of our theatres. He was called into the army. She was very much upset because I did not go to the Board to intervene for him, and he was healthy, and I had two boys myself. I figured I shouldn't go to bat for him when I wouldn't go to bat for my own son. He was called, and she was very much upset about it.

Mr. McClennen: May this all be stricken out?

The Court: Strike it out.

The Witness: I am describing how the files were mislaid. I have never been able to locate them.

The Court: Did you look diligently for your files?

The Witness: I have looked diligently and have never been able to find them, and we think that is the cause.

The Court: Objection overruled.

Mr. Wright: This letter is dated December 7th, 1938. I take it this Mrs. Perce Essick and Mr. Myer Fine, do you think that "Mrs." was a typographical error?

[fol. 1835] Mr. McClennen: Just a moment, he didn't write the letter. All I asked you to do is to come right out and call attention to the fact that it was addressed to Mrs. Perce Essick.

The Court: Did you receive the original of which this was a copy?

Mr. Wright: He already testified he did, I believe.

The Witness: I received that letter.

The Court: Is there a Mrs. Essick, is there?

The Witness: There is a Mrs. Essick.

The Court: Connected with the business in any way?

The Witness: No.

The Court. Mr. Fine, your partner's name is Fine?

The Witness: Yes, that is right.

The Court: And address?

The Witness: Film Building.

The Court: Has your wife an interest in the business?

The Witness: No, she has not.

Mr. Wright: The letter reads "Mrs. Perce Essick and Mr. Myer Fine:

Dear Friends: Saw Myer Schine when in Buffalo on Monday. He informed me that he was having considerable trouble in the Medina situation, that it was necessary to [fol. 1836] arrange to buy out one of the partners. Details of the purchase have been about concluded and he is now in a position to go forward, and suggest that another meeting be arranged in New York for confirmation of final details. Would appreciate your advising me when it will be convenient for you to come to New York, so that I can confirm the appointment with Myer. Hope this will find your family well and happy. Kindest personal regards. Sincerely."

Q. Who was it signed the letter, the original you got? A. Must have been from Tom Connors.

(Thereupon letter previously referred to and marked as Plaintiff's Exhibit No. 511 for identification was received in evidence.)

Q. Then was an appointment finally made for you by Mr. Connors, an appointment with Mr. Schine? A. That is right.

Q. And do you recall when that was?

A. Well, I feel positive we saw Mr. Schine and his brother the night—the morning following the night they had their dinner in Albany. When that was, what date that was, I attribute the meeting at that time, because we took the trip there for that purpose.

[fol. 1837] Q. Well, look at these exhibits 512, 513 and 514 for identification and see if they won't enable you to fix the date a little more accurately.

A. Well, this must be, that must be the time, around December there.

Q. And in the month of December there?

A. That is right.

The Court: Your answer is 1938?

The Witness: Yes, sir.

Q. And I show you this exhibit 515 for identification, which is the letter dated December 22nd, 1938, addressed to Mr. Tom Connors, which came from the Loew's files, and ask you if you recognize that as a letter that you signed and sent?

A. I wrote this letter.

Mr. Wright: I will offer this Exhibit 515 for identification in evidence.

(Thereupon letter previously marked as Plaintiff's Exhibit No. 515 for identification, was received in evidence.)

Mr. McClennen: To this we make the general objection as to such communications. It is obviously a friendly letter from Mr. Essick to Mr. Connors, not related in any respect to the business of Metro.

[fol. 1838] The Court: Let me see it.

(Document inspected by the Court.)

The Court: Proceed.

Mr. McClennen: In this connection I perhaps should have called to your Honor's attention one thing that has not been mentioned, and that is that there is no allegation, as I recall it, in these voluminous papers, of a conspiracy between the Schine defendants and Mr. Essick and Mr. Fine, and this is not a letter from any even alleged co-conspirator. It is a letter from Mr. Essick, who is not alleged to be a conspirator.

The Court: Well, of course, it does relate to acts of an alleged co-conspirator.

Mr. McClennen: But it is not from a co-conspirator.

The Court: I know. It is part of a transaction with a producing company.

Mr. McClennen: I simply want to make clear our position in persisting in our objection.

The Court: I didn't see that the letter was very harmful to you.

Mr. McClennen: I quite agree, your Honor.

By Mr. Wright:

Q. Calling your attention, Mr. Essick, to the phrase in [fol. 1839] the second paragraph "The deal was far from being satisfactory. We closed for $1500 instead of the $2,000 we asked. In doing this we acted solely on your advice and Joe Vogel's." What do the two $1,500 and $2,000 figures there refer to?

Mr. McClennen: This is subject to the same objection.

The Court: Very well.

The Witness: I think it refers to—you have on record the deal that was transacted. I think it speaks for itself what the $1500 was.

Mr. Wright: Well, have you got that?

(Document handed to Mr. Wright.)

By Mr. Wright:

Q. Does that refer to the provisions of paragraph 10 of the agreement which you have in your hand there?

A. No, it doesn't refer to that at all.

Q. Can you tell us what it does refer to?

Mr. McClennen: To that we object, too.

The Court: What refers to what? You mean the document you are showing him now or the exhibit before?

Mr. Wright: I am asking him what these figures $1500 and $2,000 that appear in Exhibit 515 refer to; what those figures are?

The Witness: The $1500 referred to, if I am correct, the [fol. 1840] $1500 refers to that the Schines were to receive $40 per week as a booking fee. After all this was included in the expense of the theatre, and after all expenses were paid, the first $3,000 was supposed to be split 50-50 between their corporation and our corporation. The next $1500 was to be given to us in view of the fact of our tremendous investment.

Q. What was the amount of your investment in the theatre, the Medina Theatre?

The Court: Was this incorporated in the agreement, written agreement?
The Witness: You mean $1500?
The Court: What you just said about the provision of splitting the first $3,000 and $1500.
The Witness: That is right, it is in the agreement here.
The Court: This paper does refer to the $1500.
The Witness: It does.
Mr. Wright: The question I asked was referring to a specific paragraph. This is another part of the agreement.

Q. Now, will you answer the question? Would you read the question?

Mr. McClennen: I have objected to the question.
[fol. 1841] Mr. Wright: I suggest that it be read.
The Court. All right.

(Preceding question read as follows:

> "Q. What was the amount of your investment in the theatre, the Medina Theatre?")

The Court: Objection overruled.
The Witness: Between fifty and fifty-five thousand dollars, the books will show whatever it is. I think that is it.

By Mr. Wright:

Q. That was the total investment of yourself and your associates who built the building?
A. That is right.
Q. Now, I notice this letter, Exhibit No. 515, is dated December 22nd, 1938, and the agreement you have in your hand which is Exhibit 648 for identification is dated February 28th, 1939. Is the latter date the date on which the deal was finally closed?
A. I presume that was it.

Mr. Wright: I will offer this Exhibit 648 in evidence.
Mr. McKay: Your Honor, so that the record is clear, I want to point out that in this copy for some reason or

another there is no copy of Exhibit A, which is a copy of the [fols. 1842-1844] Princess Theatre. There is a copy of Exhibit B, which is of the other theatre.

The Court: It provides for a consolidation of the leases.

Mr. McKay: It puts the two leases in one corporation.

(Thereupon the document previously marked as Plaintiff's Exhibit No. 648 for identification was received in evidence.)

The Court: I think we will have to suspend at this time.

(Whereupon a recess was taken until Wednesday, October 4th, 1944, at 10 o'clock A. M.)

[fol.1845] UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF NEW YORK

Civil 223

UNITED STATES OF AMERICA

vs.

SCHINE CHAIN THEATRES, INC., et al, Defendants

Continuation of trial before Honorable John Knight, United States District Judge for the Western District of New York, October 4th, 1944, at 10 o'clock a.m.

APPEARANCES:

Robert L. Wright, Esq., John F. Clagett, Esq., Harold L. Schilz, Esq., Special Assistants to the Attorney General, and Milton Kallis, Esq., Special Attorney, in behalf of the United States.

Edward F. McClennen, Esq., Willard S. McKay, Esq., Saul E. Rogers, Esq., Arthur E. Whittemore, Esq., Arthur J. Homan, Esq., and Howard M. Antevil, Esq., appearing for Defendants.

(Reporter's Note: Corrections: Page 1841, line 25, add at end of line "lease of the."

Page 1842, line 2, add word so that it reads "which is the lease of the other theatre.)

PERCE E. ESSICK resumed the stand on behalf of the Plaintiff, having been previously sworn, was examined and testified as follows:

Mr. Wright: I note that yesterday at page 1746 of the transcript I referred to the defendants' answer to interrogatory 17-A as showing that a 25 per cent interest in the Princess Theatre was acquired by Schine in September, 1937. I would now like to correct that. As I read the interrogatory it shows that a 50 per cent interest in the Princess lease was acquired at that time and 25 represents the percentage now held.

Mr. McClennen: That is true. The acquisition from Yulowitz interests was a half, and those two halves became quarters of the whole when the arrangement was made with Messrs. Fine and Essick.

[fol. 1847] The Court: To whom did the other quarter go?

Mr. McClennen: The other quarter remained with Yulowitz.

Direct examination (Continued).

By Mr. Wright:

Q. Mr. Essick, the Medina lease isn't attached to this agreement. I wonder, do you remember what the term of the lease that was referred to there was, when it expired?

A. You mean our lease with the——

Q. No, the Princess lease. I beg your pardon, what the expiration date of the Princess lease was?

Mr. McClennen: Mr. Wright, I find that I have right here a separate copy of that lease.

Mr. Wright: Perhaps we could incorporate that in the exhibit.

Mr. McClennen: I don't quite want to do that, but it can be by reference. That is, if you will just put that in as a separate exhibit with a notation that Exhibit A of your present exhibit is another copy of that.

Mr. Wright: Well, let us have this document marked as 648-Exhibit A. It is Exhibit A which is supposed to be [fol. 1848] attached to this agreement marked Exhibit 648.

(Thereupon the document above referred to was marked as being Exhibit A of Plaintiff's Exhibit No. 648 in evidence.)

Mr. McClennen: You are marking that in evidence now?

Mr. Wright: Well, I assume you want to withdraw it.

Mr. McClennen: I simply want to be sure whether this was just identification or in evidence.

Mr. Wright: The whole agreement, as I understand it, is in evidence, yes.

By Mr. Wright:

Q. Do you recall, Mr. Essick, about the date when the arrangements that are provided in this Exhibit 648 were completed and Schine took over the management of the theatre?

A. I imagine sometime in April.

Q. Of 1939?

A. Of 1939.

The Court: You are speaking now of the new theatre?

The Witness: Of the pooling arrangement referred to, that is right.

Q. Then when the pooling arrangment was completed, what was done with the Princess Theatre?

A. I am just trying to think. I think that the theatre [fol. 1849] was operated for, oh, I think maybe quite a little space, maybe a period of six weeks or two months, if my memory serves me correctly. I really could not tell you definitely.

Q. You think it was about six weeks or two months?

A. I think along those lines.

Q. Then what happened?

A. I think the theatre was closed. Then I think they reopened again for a period, I can't tell you how long, I can't just recollect.

Q. It is closed now?

A. It is closed now, that is right.

Q. Do you know how long it has been closed?

A. Oh, I would say that the theatre, perhaps, would be opened off and on for the last—I would say, perhaps, closed definitely the last three years, I imagine. I want you to understand I am just merely guessing at it. I really don't know definitely, but I think about the last three years it has been closed.

Q. Prior to that time was it closed most of the time?

A. You mean prior to our——

Q. Well, the last three years would be the period beginning in 1941; I am talking about the years 1939-40.

A. You mean when we first operated? I think the theatre was opened quite sometime and closed up and reopened and [fol. 1850] closed up. It has been operated off and on. I could not tell you.

Q. Now, was anything other than the lease on the Princess Theatre contributed to the pool by Schine and Yudelowitch?

A. Yes, sir, whatever their assets were in the Princess Theatre.

Q. You mean the lease, plus whatever equipment was in it?

A. That is right.

Q. Anything else?

A. I don't know of anything else.

Q. I think you referred, when I examined you yesterday afternoon to the $1500 figure referred to in your letter to Mr. Connors as being a booking fee, and I call your attention to the fact that the agreement provides a fee of $40 a week, which would be something around $2000 a year?

A. No, pardon me——

Mr. McClennen: Just a moment. He did not refer to it as a booking fee.

Mr. Wright: I understood him to do it.

Q. If you did refer to it as a booking fee you were mistaken?

Mr. McClennen: Just a minute. He didn't.

[fol. 1851] The Court: Let him ask what it was now. Was it a booking fee, the $1500?

The Witness: No, it was not.

By Mr. Wright:

Q. The $1500 referred to what?

A. The $1500 is referred to as a part that had been received after certain things had been met with, like the expenses, which included the expenses of the booking fee for the Schine Enterprises, and then we had a splitting arrangement on the next certain amount. I can't just remember the figures. I think $3000. And then the next $1500 went to us, too, I think, to off-set our investment. I think that is correct. I don't know.

Q. To off-set your investment, that was the figure that you referred to in the letter when you said that you wanted $2000 and you only got $1500?

A. That is right.

The Court: You mean as part of the consideration?

The Witness: That is right.

By Mr. Wright:

Q. Do you recall whether there was any change in the admission prices after the Princess Theatre was closed?

A. I couldn't tell you because they had the operation and I did not pay any attention to the admission price. [fol. 1852] Whatever was being done they handled.

Q. That is, by the agreement, the management was turned over to Schine?

A. That is correct.

Q. I believe you testified yesterday that after the first few months of your operation of the Medina it began to lose money; is that right?

A. That is correct.

Q. Did those losses continue up to the time that you made the pooling agreement and Schine took over?

A. That is correct.

Q. During that period did you have any conversation with any of the major distributors with reference to getting second-run films for the Medina Theatre?

A. I did with Mr. Connors in New York.

Q. When was that?

A. I would say that would be sometime in June or July of 1938.

Q. Who was present at that conversation?

A. Well, I recollect that it was Mr. Connors and myself. I don't know whether Mr. Fine was along with me at that time in his office or not.

Q. What was said then?

A. Well, I came in again to see him in reference to getting a split on the Metro product and he told me it was [fol. 1853] just utterly impossible, so that I said, "If this thing continues the way it is continuing I am going to go to a second-run at 15 cents and you are going to sell us."

Q. What did he say?

A. He said to me, "Now, Perce," he said——

Mr. McClennen: This is subject to our general objection.

The Court: Yes.

A. He said, "Now, Perce, let us not get into any arguments down there." He said, "Why don't you fellows get together and get into some pooling arrangement, some satisfactory arrangement? This seems to be a headache to us. It must be a headache to you." I said, There is one thing we are not going to do; we are not going to be kicked around down there", and that was the end of the conversation.

The Court: You went into this yesterday, Mr. Wright.

Mr. Wright: I asked him specifically with reference to the second-run today.

Q. Is this the same conversation you testified to yesterday that you had with Connors in the summer of 1938 or is this a different one?

A. No, I think I testified yesterday to a conversation with Mr. Connors with reference to the time we were in New York in 1936, in November of 1936, or December of 1936.

[fol. 1854] The Court: You said in the summer of 1938.

Mr. Wright: You gave testimony yesterday with reference to a conversation with Mr. Connors in the summer of 1938.

The Witness: That was later on in November or December that I talked to Mr. Connors again. A definite arrangement was made to have a meeting with Mr. Schine. This was in the summer time.

Q. This conversation with reference to the second-run preceded those conversations?

A. That is right.

Q. You have had experience, have you, in operating other theatres?

A. That is correct.

Q. You have been able to operate them successfully, have you?

A. I would say so.

Q. How many other theatres were you interested in at the time you were operating the Medina at Medina?

A. I think about the same amount we have today.

Q. How many is that?

A. Eight other theatres besides the Medina.

Q. What was the cause of your losing money there in the Medina Theatre while you were operating it?

Mr. McClennen: That is objected to.

The Court: I will let him state the facts, whether the [fol. 1855] attendance decreased.

Mr. Wright: If the Court please, of course it is a conclusion as to why the theatre lost money, but I submit that there is not anybody more competent than he is to draw that conclusion. He knows. He was operating the theatre. He knows what the fact is and the circumstances which were causing him to lose money. That is all I have asked him to state.

Mr. McClennen: If your Honor please, there is a more fundamental question than that involved here. This is not a civil suit by a private individual for damages, where the consequent loss may become a material thing. If what we did violated the Act it makes no difference whether or not the money damage was sustained by a private individual. If what we did did not violate the Act it makes no difference how much was the loss resulting from our conduct, and therefore the connection of the damages to this theatre with the things done by the defendants is not in any respect material in this case. That is, whether the financial loss [fol. 1856] of this theatre resulted from something that we did that we ought not to do, or whether it resulted from having too much theatre space in too small a town, is of no consequence in this case by the Government for dissolution of the circuit.

Mr. Wright: If the Court please, I agree that the precise amount of damage is of no significance in this case. Apparently Mr. McClennen and Mr. Rogers entertain different theories as to the significance of testimony regarding losses. Mr. Mooney was cross-examined at some length on what his profits had been before Schine came into the town and what caused these losses afterwards. If no claim is going to be made that the unsuccessful operation of the theatre— that is, if the defendants are not going to claim that the unsuccessful operation of the theatre was due to causes other than the product shortage then there is no occasion for the testimony. If they are willing to stipulate that we do not need to ask it.

[fol. 1857] Mr. McClennen: There is no occasion for saying to the Court that there is any difference of views between Mr. Rogers and myself. There has been no such apparent difference of views in any respect, and it has nothing to do with this case if there were any. I am addressing the Court on the substance of the merits of this case and I am not making any concession or saying anything with respect to this except what I did say, namely, that whether this unsuccessful operation of this theatre was due to the fact that there were two theatres in town at this time, or was due to the fact that we did something wrong, is not material in this case. If we did something wrong we ought to be stopped. If we didn't do anything wrong we ought not to be stopped, regardless of the consequences to any other private individual, thus radically distinguishing this case from the many cases of suits for private injury resulting from the public wrong. It makes no difference whether this concern was injured or not. The question is [fol. 1858] whether what we did was right or wrong under the statute.

The Court: I do not just follow you. I think his reasons are directed to the question of the shortage, the fact that they could not get certain films or pictures through some understanding or agreement with the Schine defendants, and that, it seems to me, is material. It goes to the very fundamentals of this suit, does it not?

[fol. 1859] Mr. McClennen: I should respectfully submit that it wasn't, for this reason; if we had the right to buy in the market the run of these distributors and the fact that we did so had an injurious effect upon this particular other distributor, makes no difference in this case.

The Court: Standing alone that is quite true.

Mr. McClennen: Now, on the other hand, if we didn't have the right to buy those pictures under the statute, then it makes no difference whether it hurts this particular distributor or not in a financial way; we ought to be stopped from doing such a thing if it is wrong.

The Court: Well, I don't follow your argument there. The very question of your right to buy involves the very question here, the very charge here, the question of your right to buy to the exclusion of somebody else. Of course, standing alone, you may well say, or you might say that this man had a right to buy the pictures he could buy. The question here goes farther than that. The question would be what is back of the buying.

[fol. 1860] Mr. McClennen: I think I have so poorly expressed what I had in mind that I haven't made it clear. What our submission to your Honor is, we say whether it is dealt with alone or in conjunction with other facts, if we had the right to buy, if we bought in a way that did not violate the statute in any way, it makes no difference whether this particular concern was injured. On the other hand, if we did buy in a way which violated the statute, so far as this suit for an injunction by the United States is concerned, it makes no difference whether in fact that hurts this particular distributor. It is the right or wrong of our total conduct.

The Court: Your argument is right at the other end. You might say the question of the right to buy depends on the circumstances. Under some circumstances it might be strictly legal to buy and you have the right to buy and under other circumstances you might not. The legal chain of circumstances is shown by your violation of the Section.

Mr. McClennen: We make no contention to the contrary of that, if your Honor please. I am dealing with an entirely [fol. 1861] independent question.

The Court: I think the testimony is competent. When the question was first asked I thought it was directed to some other answer. I will let him answer and see what it is. He may answer.

The Witness: Would you please state the question again?

By Mr. Wright:

Q. What was the cause of your continued losses during the period of your operation of the Medina Theatre?

Mr. McClennen: That is the question objected to.

The Court: Yes.

The Witness: The amount of pictures which we had and the quality.

The Court: The amount of pictures and the quality?

The Witness: That is right.

Mr. Wright: You may cross-examine.

Cross-examination.

By Mr. McClennen:

Q. Mr. Essick, the lease to your organization, which is attached as Exhibit B to your final agreement with the Schine and Yulowitch interests, and others, is dated January 18th, 1938; is that the date on which the—what I will call your theatre opened?

[fol. 1862] A. Our theatre opened up on January 1st, 1938.

Q. You have made some investigation so that we may rely on that as the precise date?

A. That is right.

Q. At the time that theatre opened there had elapsed four months of the releasing season, had there not, of 1937-38, in which there was no theatre in Medina, except the Princess in which pictures could be shown?

A. I would say three months of the year 1937-38.

Q. Wasn't it September, October, November and December?

A. That is right, but sometimes pictures aren't always released in September.

Q. The releasing season begins September 1st, doesn't it?

A. That is right, but some companies don't always release in September.

Q. The releasing, is my question.

A. I would say about that time.

Q. Four months of the releasing season had elapsed, that is correct, isn't it?

A. No, I would differ with you, I would say three months of the time.

Q. Were there no pictures of any of the major distributors of the season 1937-38 released in early September, 1937?

A. Could you state that question again?

Mr. McClennen: Would you read the question?

[fol. 1863] (Last question read.)

The Witness: If I get your question correctly, there was pictures released by the producers.

Q. And substantially all the pictures released for the first time by the major distributors, after September 1, 1937, were of the 1937-38 season, were they not?

A. That is correct.

Q. And, of course, we are not in disagreement that September, October, November and December make four months or a third of a year?

A. That is right.

Q. Now, in addition to that in some seasons some of the releases of, for illustration, the 1937-38 season, are released as early as August of 1937, are they not?

A. I would say occasionally.

Q. When was your attention first directed to the business possibility of going into Medina, what date, approximately?

A. I would say some time in the early fall of 1936. I had passed through the town prior to that a number of times because we had a theatre in Gallion, Ohio, and I stopped there to purchase some refreshments, some kind of a drink or so, and I had always gone through the town on an average of at least once a month for years.

Q. Had you gone into the town or had concerning the [fol. 1864] town any even casual consideration of going in there as a business operation before, we will say, September of 1936?

A. No, because business had been too bad for me to contemplate anything for 1936.

The Court: What is the answer?

Mr. McClennen: "No, because business has been too bad for me to contemplate anything before that."

Q. Who was the person who first presented to you the idea of undertaking any business relation with that town?

A. I can't just recall, I think two or three people called me from the Masonic group, and I can't just remember the name of one of them.

Q. That is as between you and Mr. Fine, the information came to you first from the Masonic group?

A. I think that is correct.

Q. And up to that time you had not considered the place as a business possibility for you?

A. No, because I stated I wasn't—business was too bad for me to——

Q. Don't understand me as criticising in any way. I am just trying to find out and get the dates fixed. At some —did you have some conversation with Mr. Yulowitch or Mr. Willis relative to the theatre business situation in Medina?

A. Stenographer, repeat that question again, please?

[fol. 1865] (Question read.)

The Witness: You refer to prior to September, 1936?

Q. If it was such.

A. Oh, I saw him every month or so that I run into him in the exchanges.

Q. And discussed with him in any way the situation in Medina?

A. That is right.

Q. Have any talk with him about the possibility of buying him out or going in with him?

A. No, we only discussed it because we built a theatre and completed it in 1936 in Ray, Ohio, which is 9 miles away, and he came down to see our new theatre and liked it very much. I did not discuss with him any business in his town, but outside of he said business was fair, that was all there was to it.

Q. In any of those conversations, did Mr. Yulowitch tell you what pictures he was showing in his theatre?

A. No, prior to 1936 I didn't know what he was showing, because I wasn't that much——

Q. Well, in 1936 did he tell you?

A. No, I found out for myself in the latter part of 1936 what he was running.

Q. And that was before you had had any talk with Mr. Yulowitch with reference to any possibility of buying him out or going in with him?

[fol. 1866] A. I never discussed buying him out prior to September, 1936.

Q. Discussed?

A. I had never discussed buying him out or anything else prior to September, 1936.

Q. Did you at some time after September, 1936?

A. Never discussed buying him out.

Q. Discussed going in with him?

A. I discussed going in with him.

Q. When did you discuss going in with him?

A. After I began to look into the situation.

Q. Try and fix the date as best you can.

A. I would say I met with him from the time I met him, I must have met with him on half a dozen different occasions.

Q. The first time on this subject of going in with him?

A. I wouldn't want to place the date, but it was some time after September when I became acquainted with the situation in Medina.

Q. Was it in October, possibly, of 1936?

A. I wouldn't just want to say, because I met him so many times from September on, I met him so many times I don't want to say.

Q. I want you to have it in mind; it may become of importance to the Court to know as near as possible when it was; tell us as best you can when it was.

[fol. 1867] A. I can't put my finger on it, I couldn't say.

Q. We don't want you to put your finger on it, we want to give your best recollection within what period it was.

A. I could not say. I would say I met him at least six or seven times after I went down and talked with the Masons because he was a member of the Masonic Lodge and knew what was going on.

Q. And you talked with him about the subject of going in with him?

A. No, I talked with him in reference to he going in with us.

Q. I beg your pardon?

A. That is, after we completed the deal.

Q. You don't want to create any impression of the tail wagging the dog in this matter, do you?

A. I don't think that is necessary.

Q. When did you discuss Mr. Yulowitch going in with you?

A. During these times that I was talking with the Masonic committee.

Q. That is before you had come to a trade with them?

A. That is correct.

Q. Well, now, you came to a trade with them in a substantial sense about March of 1937?

A. No, we were—we had made a deal with the committee. [fol. 1868] I was dealing with the committee entirely. It was ahead of that.

Q. When did you commit yourself to the committee so that you would be welching if you didn't go into an arrangement with them?

A. I would say the latter part of December or the first of January. We were building another theatre in Akron, Ohio, and I was going back and forth.

Q. Well, then, as you have said that you talked with Mr. Yulowitch about the possibility of his going in with you before you came to a trade, it means that some time in the fall of 1936, you had had such a discussion with Mr. Yulowitch?

A. I had.

Q. At that time when you talked with him on that subject, had you already learned what product was being played in the Princess Theatre in general?

A. I had.

Q. Now, at that time you and Mr. Fine, or concerns in which you were both interested, were independent exhibitors in this industry, were you not?

A. I would say that we were.

[fol. 1869] Q. And as it is understood in the industry an independent is an exhibitor operating a theatre in which no producing company has an interest; is that correct?

A. I think that is correct.

Q. You and Mr. Fine at this time were financially interested as exhibitors in how many different theatres—and by "this time" I mean the fall of 1936?

A. I imagine about the same amount I am today.

Q. That is how many?

A. Nine theatres.

Q. You were interested in nine and Mr. Fine was interested in how many financially?

A. I wouldn't want to state. Do you want me to guess?

Q. I want you to indicate your state of knowledge.

Mr. Wright: Mr. Fine will follow Mr. Essick to the stand.

The Court: State as nearly as you can tell.

A. I imagine between 15 and 20 theatres. I just don't know what his partnerships are.

Q. Of those 15 or 20 are any of them part of the nine that you speak or does it mean as between you 29 theatres in the aggregate?

A. I would say that the nine I referred to, he's interested in some of those theatres in the nine that I have.

Q. And also interested in 15 or 20 others?

A. That is correct.

[fol. 1870] Q. Those theatres are located in, or in the vicinity of, Cleveland, Ohio, mainly?

A. In a radius.

Q. Within a radius of how many miles from Cleveland?

A. Our farthest theatre away is at Gallion, Ohio, which is around 94 or 100 miles away from Cleveland.

Q. What number of the 29 or so would you say were in what you would call the metropolitan radius of Cleveland, regardless of any political divisions?

A. I would say the majority.

Q. Perhaps 20 or the 29?

A. I would say so.

Q. The committee of the Masons had approached you solely on the subject of taking up the operation of a theatre which might be constructed into the Masonic Temple, which was then under consideration for alterations?

A. I would say that was correct.

Q. By the way, when that theatre finally did come into being, it was sometimes called the Temple Theatre and sometimes the New Medina; is that right?

A. No, our nearby theatre was the Medina Theatre. The name of our company was the Medina Temple Theatre Company.

Q. Wasn't there more or less frequent, whether accurate or inaccurate in use, reference to the Temple Theatre?

[fol. 1871] A. No, I don't know what the people called it. The name of our theatre was the Medina Theatre.

Q. When we find it in some of the contracts that have been referred to the New Medina that means your theatre?

A. That is right.

Q. Having under consideration this possibility of going into Medina this way, you talked with Mr. Yudelowitch on the subject of his coming in with you?

A. That is correct.

Q. And what did you say to him?

A. Well, that would be pretty hard to say because we talked quite at length. I tried to influence him to go along with us, that it would make a good set-up for the town and various arguments that I could possibly use to influence him to be along with us.

Q. In the course of those discussions did you tell him that if he didn't come along with you you were going to put a new theatre into the town?

A. That is that we were going to?

Q. Or that there was going to be a new theatre put into the town, which you were going to operate?

A. No, I didn't say that. I said, "There is going to be a new theatre in town, regardless of who has it, and I would like to get together with you so that we can take it. If we don't take it somebody else will."

[fol. 1872] Q. You talked with him about the fact that if he didn't go in with you you were going to be interested in another theatre to be built in the town?

A. No, I was only interested in the one theatre, the one the Masons were going to construct.

Q. And you told that to Mr. Yudelowitch, didn't you?

A. I was going to try to make a deal with the Masons; that is correct.

Q. You told that to Mr. Yudelowitch?

A. Yes, that is right.

Q. And you told him that in the fall of 1936?

A. That is right, when I was down there.

Q. In what way did you suggest to him that he come in with you?

A. In what way?

Q. Yes.

A. Well, I told him that to be absolutely fair and aboveboard with him, that we would go to the bank or to the Masonic Order and whatever deal is set up I would ask their approval, because he would be the first consideration of anything that we would do, because he was already in the town and I wanted to cooperate with him in the fullest way. I even had him meet a partner of mine, my partner in Berea, Ohio, which he and Ben were very, very friendly.

[fol. 1873] Q. Ben being Mr. Yudelowitch?

A. Yes.

Q. By the way, he has died, in 1943?

A. That is correct. And they were very friendly, and he wanted to know what the operation was, how we got along.

Q. In that conversation in the fall of 1936, when you proposed that Mr. Yudelowitch come in with you, was it to be for the operation of the Princess Theatre, for the operation of the prospective theatre and the Princess Theatre, or for the operation of the prospective theatre only?

A. It was for the operation of both theatres, because he told me that he had owned the property of the Princess Theatre and that he would want a certain stipulated rent, regardless of what the success was of the new theatre, or whether it was going to be a success or not. I said, "Well, Ben, we will draw a contract", and that is where we had met in the bank on a couple of occasions to discuss those things, what would be fair as a rental."

Q. Did you discuss with him whether if you took this property from him under lease at what you might arrive at as a fair rental you would then operate the Princess Theatre, or that you would operate only the new theatre? [fol. 1874] A. No, we would operate both theatres, or see what would be the best policy after we had got into the town, what would be the best policy.

Q. You had in contemplation in the discussions with the Masonic committee how large a theatre in seating capacity?

A. We knew approximately the area of what was going to be the capacity of the proposed theatre.

Q. That is just what I am asking you, what it was.

A. It was between 900 and a thousand seats.

Q. And according to the rough working conceptions of theatre exhibitors that alone is enough seating capacity for a town of Medina's size?

A. I would say that was a good-sized theatre for that town.

Q. Well, it was enough seating capacity alone for a town of that size, wasn't it?

Mr. Wright: If the Court please, the question as to what seating capacity is enough it seems to me is getting into a pretty abstract field. I suppose the more seating capacity a town has the better off it is. I don't know what he means by enough or not enough.

The Court: You said he is an expert.

Mr. Wright: He is an expert operator. I do not know [fol. 1875] whether he means enough from the standpoint of making enough money for the operator or enough from the standpoint of service to the public.

The Court: I assume he refers to service to the public. He may answer.

(Question read.)

A. We didn't exactly know that. We knew that was a big enough theatre that we contemplated building.

Q. You thought that it would provide enough seating capacity alone for that town, did you not?

A. For that particular theatre.

Q. For that particular town?

A. For that particular theatre that would be a——

Q. I am speaking of the town.

A. We didn't know that, because we didn't know what the possibilities were.

Q. You were experienced exhibitors, acquiring theatres from time to time in different places, or constructing theatres?

A. That is right.

Q. Accustomed to getting an idea of whether a town was over-seated or not?

A. The building laws——

Q. Just a moment.

[fol. 1876] A. We didn't know that. I will state again, we didn't know. That was large enough for that theatre.

Q. You haven't observed the question. Will you read the question again?

(Question read.)

A. Well, I have got a lot of ideas but they don't always prove out.

Q. One of the ideas that has sometimes proved out in your experience has been that a town was over-seated, hasn't it?

A. I wouldn't say that because in the town adjacent to ours we operated the new theatre and the other theatre for quite sometime. That was one of the things that Ben and I discussed, whether we would keep the little theatre open with the big theatre or run it on the week ends with action pictures. We didn't know that, but we knew the size of the theatres of a thousand seats, or close to that, was a big enough theatre at that particular time.

Q. And the reason that you discussed with him the question of whether you would keep the theatre open or not was because you thought there was a good prospect that this new theatre would be all that the town would fairly support?

A. I would say ample for the town.

Q. The Princess theatre was not ample in size for the [fol. 1877] town, was it?

A. Well, I didn't think so.

Q. Well, now, when you were talking with Mr. Yudelowitch in the fall of 1936 about the question of the amount of rent that you should pay him did you discuss anything about the question of whether the lease should require that the theatre, the Princess, must be operated or not?

A. We discussed mostly the rental on the new theatre. Of course whatever was fair, as far as his theatre was concerned, we arrived at that with the bank.

The Court: What?

A. It would be arrived at—in other words, we were meeting with the bank down there, and, in other words, I would rather have somebody else in the deal so that we could set a fair valuation and a rent for his investment, so that he would be protected as far as his theatre is concerned whether it was opened or closed.

By Mr. McClennen:

Q. So that he would come out not the loser, even if he leased the Princess to your group and the Princess was closed, he would get his rent anyway?

A. That is correct.

Q. What you wanted the Princess for was so that you [fol. 1878] would not be hampered in your proper operation of the new theatre?

A. That is correct.

The Court: What do you mean by "hampered in the operation"?

The Witness: Obstructed in any way, because a theatre of that size can be varied, because they can cut admission prices and they can do a lot of things that can harm the other theatre, and the best operation would be for the theatres to be together so that you can control the situation.

By Mr. McClennen:

Q. This Princess Theatre, Yudelowitch and Willis, and their associates or some of them, were not merely the lessees of that theatre, they were also the owners of that theatre?

A. That is what they told me and I took that for granted.

Q. That is, you conducted your discussions on that basis?

A. That is right.

Q. In the fall of 1936 did you also discuss with Mr. Yudelowitch the question of who should be the managing operator of the new theatre if the Princess was closed?

A. He would manage the theatres.

Q. What?

A. He and his partners would manage the theatres.

[fol. 1879] Q. He and his partners would manage the theatres?

A. That is correct. That was part of the understanding, because, after all, the job was in the town and that was the primary reason.

Q. In the course of those discussions did Mr. Yudelowitch tell you that he and Mr. Willis were thinking of building another theatre themselves in the town?

A. He told me that he had a lot there and that they were contemplating at some future date building a theatre.

Q. Did he tell you anything about how soon that was to be?

A. No, he said he thought the town was not ripe enough to have a theatre.

Q. That is, he thought that the town was not ripe enough for any theatre except the Princess?

A. That is right.

Q. And by "ripe enough", hadn't grown in size and prosperity sufficiently to call for the building of another theatre at that time?

A. That is right. That is where I showed him the situation in the town adjacent, that we opened up in September of 1936, and the size and the whole competitive situation.

Q. In your discussions in the fall of 1936 with Mr. Yudelowitch, in which it was a part of the thing under discussion that he and Mr. Willis would be the local managers, it was also discussed that your circuit would be the buyers and [fol. 1880] bookers of the product for the theatre?

A. That is right.

Q. Mr. Yudelowitch said that he did not want to go in the new project, did he?

A. Well, I never got that information from him at all.

Q. Well, when you closed at the end of December with the Masonic group—I don't mean the actual execution, but when, in the common sense, you were at a trade, you had learned that Mr. Yudelowitch was not coming along with you?

A. No, I never got that information from him.

Q. You never got that information?

A. No.

Q. And in the conversations with him you did make clear that whether he came along or not that you were going ahead with this Masonic group idea of the building of a new theatre to be operated by you?

A. I told him that we were going to go ahead with the deal and that any time that he saw fit, prior to the opening of the theatre, that we would welcome him in joining with us.

Q. You say you go so far as to go to the bank with him and discuss the rents that were going to be paid?

A. On the new theatre.

Q. And what part did he take in those discussions? What [fol. 1881] did he have to say on that subject?

A. Well, he knew the whole entire transaction because he was a member of the Lodge and knew the whole thing, and he figured that the rent we were agreeing to pay was entirely out of keeping with what we could afford to pay.

Q. That you were going to go into a project where you had to pay too much rent?

A. He thought it was too much rent, but I explained to him that being a new theatre in that community and that size town that he would be surprised at the receipts that that theatre would do.

Q. That figure that he thought too much, was that the figure that you did agree to with the Lodge?

A. If I remember correctly, it was. I even went so far as to show the receipts from the town adjacent, that we had done as much in one day as the little theatre had done in a week.

Q. So that he had told you that the rent which you were proposing to pay was too much for a town like that at that time?

A. That is what he kept dwelling on constantly, that it was too much to pay, and he didn't see how we would be able to make ends meet, and I did everything that I could to show him that we could.

[fol. 1882] Q. Of course if you pay too much rent for a theatre you lose just that much more money in the operation?

A. That is correct.

Q. I didn't quite hear your answer.

A. I say that is correct.

[fol. 1883] Q. So that by the beginning of January, 1937, Mr. Yulowitch, by reason of his relation to the Masonic body and by reason of his conversations with you, knew that he had got to do business pretty soon thereafter against a new up-to-date large theatre?

A. No, he had all the time in the world because I told him——

Q. What?

A. He had all the time in the world to do business with me, because I told him we would always hold open for him to come in and we would sit down and discuss everything with the bank so he would know he had an opportunity up to the day we opened to make up his mind to come in.

Q. Don't misunderstand me as saying you were not perfectly fair with Mr. Yulowitch, but listen to the question and answer it, please.

(Question read.)

Mr. Wright: If the Court please, it is nothing but an argumentative summary of what is already in evidence.

The Court: Those facts already appear. He said he knew the date he was opening the theatre and he said he knew he was opening the theatre.

Mr. McClennen: I expected the answer to be directly "Yes, sir", and if it has reached your Honor in that form, [fol. 1884] it serves the same purpose.

Q. Mr. Yulowitch, in his conversation with you, expressed a desire to go on and operate his own old Princess Theatre, did he not?

A. No, I never got that word from him.

Q. What?

A. I never got any word from him. All I was talking about was him going in and what he was going to do I didn't know.

Q. And he didn't say anything to you to the effect that he wanted to go on operating the Princess Theatre there with the thought that was enough for the town?

A. No, I never got that from him.

Q. But he did tell you that he thought the Princess Theatre was enough for the town, as far as the town had been developed?

A. He may have said that, I suppose, talking about—he said business——

Q. He may have said that in substance, didn't he?

A. No, he realized the town needed something, but he was very much afraid a new theatre would be too much, too much rental, too much overhead and higher prices.

Q. In the course of that answer, you said that you imagine that he did; the reason that you imagined he did was that he did, wasn't it?

[fol. 1885] A. I can't tell you definitely what was in his mind because he was more or less wishy-washy, so I told you I took him over to the town nine miles away and showed him the new theatre and what was happening, what the box office of the theatre was doing, to convince him the town needed a new theatre and he should go on with us.

Q. Was there any reason that he expressed to you why he was cool on your proposition except that you were going to have to pay too high a rent for a theatre that wasn't needed in the town?

A. I just can't say he was cool, because he knew what was going on. I explained to him there was going to be a theatre regardless of whether we took it or somebody else would take it there, and told him to make up his mind and we would give him all the opportunity in the world. I don't know what his thoughts would be.

Q. Now, you had learned at the time of this too large rent conversation that Mr. Yulowitch had and had had for a length of time, for his theatre, the first-run of the Metro product?

A. I knew what film he was playing.

Q. And of the Paramount product?

Mr. Wright: He has already testified to that on direct. I should think we don't need to go over it again on [fol. 1886] cross.

Mr. McClennen: My views of necessity are different from yours.

(Question read.)

The Court: He said he knew what products he had.

Mr. Wright: He named them, also, if the Court please.

The Witness: Of necessity——

By Mr. McClennen:

Q. I don't quite get from your answer whether you did know that he had had the first-run of the Paramount product.

A. I knew all the film he had there.

Q. Including the Paramount product?

A. Yes, sir, I knew what the films were.

Q. And Fox product?

A. That is correct.

Q. And R. K. O. product?

A. Correct.

Q. And the Republic product?

A. He only had, he only played a few pictures with Republic.

Q. You knew that he had the Republic product? I don't mean that he had every picture, but he was playing the Republic product?

A. That is right.

Q. How about the United Artists?

A. He didn't have United Artists.

[fol. 1887] Q. He didn't have any United Artists?

A. From my talk with him he may have had a picture occasionally, but not as——

Q. Did he tell you that he hadn't had any United Artists?

A. He said he didn't play United Artists.

Q. He said he didn't play United Artists and you knew that he had none of the Columbia, Universal, Warner or United Artists?

A. That is correct.

Q. You knew that those pictures were uncommitted in the town?

A. That is right.

Q. And you knew that notwithstanding that fact he was playing some Republic ~~pictures, is~~ that correct?

A. That is right.

Q. Did you discuss with him why he played Republic Pictures?

Mr. Wright: If the Court please, what possible relevancy could this have? We have expressly limited the issues in the complaint to the major product by the complaint itself. We haven't gone into any of these other minor companies or attempted to show what has happened in that connection. I submit it is not properly part of the case at all.

The Court: I don't know whether it is relevant, but on cross-examination——

[fol. 1888] Mr. Wright: ~~We certainly asked nothing~~ about Republic on direct.

The Court: No, you went into the question of the product.

Mr. Wright: This calls for a conversation between him and Mr. Yulowitch as to what they said about the Republic product which seems definitely outside of the issues of the trial.

The Court: You asked him——

Mr. McClennen: I asked him if he discussed with Mr. Yulowitch why he played Republic product when all of these majors were open.

The Court: Go ahead.

The Witness: Republic had a western star, I think Ken Maynard and Gene Autry, that he played, I think they released six——

Mr. Wright: I suppose it is fairly obvious whatever he played he played because he wanted to play it. It is a complete waste of time.

By Mr. McClennen:

Q. That is, that he played those Republic pictures because he thought they were, to that extent, the best thing for the town requirements in that theatre, is that it?

A. He played Gene Autry, I think that was possibly one of a series he played. I don't know whether there was anything else or not. That was always a good western [fol. 1889] star for Friday and Saturday. I know he got western pictures.

Q. You got nothing from him to indicate that his purchase of Republic pictures was because he was forced to it, because of the lack of other product?

A. I don't get your question.

Mr. Wright: If the Court please, this is a pure argument, not in the case at all.

The Court: It appears already what product he did have, that he wasn't forced to take United Artists because of the lack of product.

Mr. McClennen: If it so rests in your Honor's mind, that covers all we had in mind in asking the question.

Q. When you completed your arrangement, I don't mean the execution of the papers, but when you came to an agreement in the common sense with the Masonic group, to go forward with this project, there was then no understanding that Mr. Yulowitch would be in that project, was there?

The Court: He has already said that. I think he has already answered that question.

Mr. McClennen: I so understood, but I wanted to make it perfectly clear.

The Court: Yes, he had nothing.

[fol. 1890] Q. When did you firmly agree on paper with the Masonic people, that is, when was your agreement executed?

A. I really couldn't say.

Q. You haven't the agreement here?

A. No, I haven't.

Q. Have you seen it?

A. You mean the definite lease?

Q. The definite, well, I will answer that by asking you, was there any definite agreement made until the lease of January 18th, 1938?

A. I can't tell you positively.

Mr. Wright: May I ask you, are you referring to some exhibit in evidence?

Mr. McClennen: I am referring to the Exhibit B of No. 648.

Mr. Wright: Thank you.

The Court: He said he opened on the first of January.

Mr. McClennen: Yes, your Honor. I am trying to find out when the paper transaction took place. That is the very thing I am leading to, and I am asking him if there was any definite agreement on paper prior to the lease of January 18th, 1938.

The Witness: Well, I know we started building in the latter part of February or the first of March, and during [fol. 1891] the course of the building we had—there was two or three things that were going along because they were supposed to have built the building themselves and for some reason, somebody took sick, and they had another meeting of the lodge, and things were all changed around, and finally they agreed to advance $30,000, I think that is the amount, and we would finish the building for them. Now, there was all different kinds of things that cropped up, and I could not tell you the exact date, but I know we started the building in the latter part of February or the first of March, 1937.

Q. And when that building started, had there been any agreement signed as far as you can now recall?

The Court: Up to February, 1937?

The Witness: Must have been some sort of paper. We didn't just go ahead and build on their property without something, I don't know what it would be, what agreement, because I really cannot tell you now.

Q. As far as your recollection serves you, you can't assure us that there had been a written agreement with them signed, is that correct?

[fol. 1892] A. I wouldn't swear to it, I wouldn't say.

Q. Now, the idea on which the building operation started was modified in the matter of who should really do the building in the substantial sense, whether it should be the lodge or you?

A. No, they started——

The Court: I don't see what relevancy this has. The question is what was done after. We are not concerned with the building, are we?

Mr. McClennen: I was leading up to asking another thing that has been made relevant, but I will jump without more ad*ieu*.

Q. You have stated the amount that you expended in the building of that theatre and equipping it, or altering the building and equipping the theatre and the total of what you and Mr. Fine and your group were out of pocket for that?

A. That is correct.

Q. And that is the amount which is recited in Exhibit No. 648, as $53,253.56?

A. If that states it, it is correct.

Q. Now, going out of order of dates and jumping to that, the rough of the arrangement as expressed in this agreement was that the Schine and the Yudelowitch interests contributed the lease and equipment of the Princess Theatre [fol. 1893] without any separate item of money on that account, and you contributed the lease of the new theatre and its equipment and the stock interest was to be divided one-half to you and Mr. Fine's group and one-half to the Schine-Yudelowitch group. After the payment of operating expenses the first $3,000 of profit was to be divided $1500 to your group and $1500 to the Schine-Yudelowitch group?

A. That is correct.

The Court: I thought he said in the first, the $1500 payment was to be $1500 to him and the second $3,000 was to be divided?

Mr. McClennen: In final incidence it was, but not in the order of payment. That is, the first $3,000 was to be preferred before we come to the next item.

Mr. Wright: If the Court please, it is all set forth in the agreement. I don't see what is to be served by covering it again orally.

Mr. McClennen: I think the same sort of things that were served by you asking the same questions.

Q. After that $3,000 was divided half and half, then the profits up to the next $1500 were to be to you annually to go to the retirement of this $53,000 that you had put into it?

[fol. 1894] A. I can't tell you it was retirement, I know we were to save $1500, whatever the contract states, I suppose that is so.

Q. Then the profits, whatever they were after that, were to be divided equally between the two groups?

A. I presume that is correct.

Q. And the thing that you regretted in your letter that has been put in evidence to Mr. Connors was that that retirement payment, instead of $1500 you wanted to be $2,000, that is correct, isn't it?

A. That is what I contemplated settling for, but I didn't get it.

Q. That is so. Now, when did you first get the rumor that the Schine interests were going in with Mr. Yudelowitch?

A. Oh, I would just not want to place my mind on it. I know it was after we had started to build. I don't know how long afterwards. I imagine it run for six weeks or something like that, I don't know offhand.

Q. Did you hear that rumor in March of 1937?

A. I said I could not place the time, but I know it was some time after we started to build.

Q. Did you learn of the fact from Mr. Yudelowitch?

A. No, I never did.

Q. Did you learn of the fact from the Masonic group?

A. No.

~~[fol. 1895]~~ Q. Just, was it just common gossip of the trade?

A. Hearsay.

Q. As you heard it, was it that Yudelowitch, with this Schine trade, was going ahead with the project of building a theatre?

A. No, sir, I didn't hear that.

Q. Did you never hear that he was going to build a theatre?

A. Did I hear that he was going to build a theatre?

Q. Yes.

A. You refer to whom?

Q. The Yudelowitch-Schine group?

A. I heard that.

Q. When did you hear that?

A. I think it was in around June of 1937.

Q. When you heard of it did you communicate, yourself, in any way with Schine group?

A. I heard that after I had met with the Schine group in Gloversville.

Q. When was it that you met with the Schine group in Gloversville at which you heard of this?

A. It was very hot, so I put the time as around June sometime, or in July, but I know it was a very, very hot day.

Q. And hadn't you heard from Mr. Fine or from the Masonic group that they, that is, Yudelowitch in connection with the Schine trade, were going to build a theatre?

[fol. 1896] A. How would Mr. Fine know?

Q. No, without my answering your question, I will ask the stenographer to read mine.

(Question read.)

The Court: Hadn't you heard from either one of these?

The Witness: Mr. Fine is my partner. He didn't know anything more about it than I knew about it until we went to Gloversville.

The Court: Then you didn't hear from him?

The Witness: I didn't hear from him, no.

By Mr. McClennen:

Q. Did you hear from the Masonic group?

A. No.

Q. Did you have any talk with the Masonic group or any of them on that subject?

A. Not that I recollect.

Mr. McClennen: Will you mark this paper for identification?

(Thereupon the document referred to was marked as Defendants' Exhibit No. 45 for identification.)

Q. Had you had any talk with the Masonic group on the subject of another proposed theatre to be constructed by the Yudelowitch-Schine interests? Had you heard of that before March 25th, 1937?

A. They didn't discuss it; that is what we discussed, that [fol. 1897] they had that lot there and contemplated building some time.

Q. But had you heard they contemplated building right away?

A. I don't remember that, you mean that Yudelowitch was going to build right away?

Q. Yes.

A. I know we discussed the fact that he had the lot there and had his property there for that purpose.

The Court: What is the date of the Schine purchase in the Princess?

Mr. McClennen: The date of the concluded agreement is March 18th, 1937.

Mr. Wright: If the Court please, now we subpoenaed that agreement. It wasn't produced. We read into the record the answer in the interrogatory which shows Schine acquired its interest in the Princess in September, 1937. I don't know what is the purpose of offering testimony here. The date in the record now is September, 1937.

Mr. McClennen: Mr. Wright, let us proceed with the graciousness that we should receive from a representative of the United States. I am offering no testimony in the record. The Court asked me the date of the agreement, [fol. 1898] and I thought it was courteous to answer it.

The Court: I want to know what the record is, if it is in the record, the question would naturally be directed to the record, if we have a record.

Mr. Wright: The record appears, September, 1937.

The Court: That is the record as shown by the interrogatory.

[fol. 1899] Mr. McClennen: That is not the record of the date of the agreement pursuant to which the interest was obtained.

The Court: The agreement to purchase at the time of taking possession; is that what you mean?

Mr. McClennen: No——

The Court: Read the interrogatory.

Mr. Wright: I read it into the record. It is on page 13 of the answer to interrogatory No. 17-A, which under the heading "Town," is "Medina." "Name of theatre: Princess." "Nature of interest: Lessee." "Extent of interest: 25%," which was cleared up as the present interest. The one that was acquired was actually ~~50%. "Date acquired~~: September, 1937."

The Court: Go ahead.

Mr. McClennen: In view of your Honor's question, I will offer the agreement to which I referred in my answer.

Mr. Wright: This is an agreement that we subpoenaed and we were told yesterday when we were asked for it that it was not available.

Mr. McClennen: No, you did not ask for that yesterday. [fol. 1900] It was not available last week, and you haven't asked for it since.

Mr. Wright: This agreement, in any event, is one which I take it is now being produced in response to our subpoena of August 15th, in which we asked for the agreement that had been made with Mr. Yudelowitch.

Mr. McClennen: No, it is not——

Mr. Wright: Does this purport to be such an agreement?

Mr. McClennen: The purport, you can see by reading it, it is in your hands. It is now produced in order for me to make clear the proper answer to his Honor's question.

The Court: Proceed.

Mr. Wright: We have no objection to its going in evidence. We do object to the manner in which it was produced.

The Court: Am I to understand now that you claim the answer to the interrogatory was erroneous?

Mr. McClennen: No, your Honor. This is a preliminary agreement which answers your Honor's question.

The Court: You mean the consummation of the agreement was in September?

Mr. McClennen: At the time when the stock was issued in the new company, so that we for the first time had tit[illegible], was [fol. 1901] in September, 1937. There is ~~no inconsistency~~ whatever.

(The letter, dated March 18, 1937, referred to was received in evidence and marked Defendants' Exhibit D-46.)

By Mr. McClennen:

Q. Now, with Exhibit for identification No. 45 before you, will you tell me whether you learned of the imminent prospect of a building of what I will call the Yudelowitch-Schine new theatre, and learned of it before March 25, 1937? You are at liberty to look at the letter and read it before answering, or to refrain from so doing, as you may desire.

A. Mr. Yudelowitch discussed with me in all our meetings about building on his project, and I did my best to talk him out of it. I said to him, I said, "Why should you go ahead and build a theatre and spend $100,000 when the Masons are going to build?" I said, "That would be awfully foolish," I said, that was always in our conversation about the building, whether he went to the Masons or not. I don't remember all the conversation that happened at that particular time. I said all I knew about the proposition that comes to my recollection is when I was in Gloversville meeting with the Schine interests.

[fol. 1902] Q. And you had learned from Mr. Yudelowitch of this imminence of another theatre constructed by him, you had learned of that in the winter of early 1937, had you not?

A. We had talked about it a lot of times.

Q. The time.

A. A lot of times we talked about it.

Q. And some of that lot of times was in January or February of 1937?

A. Yudelowitch?

Q. Yes.

A. I talked with him all the time. I don't know what date it would be that he talked about building.

Q. During all the time that you have described was there included December, January and February, or some parts of those months, December of 1936, and January and February of 1937?

A. Well, I know we started to build in the last of February or the first of March, and I knew of no definite—there had been a lot of rumors as far as Ben going ahead with the set-up.

Q. ~~You had~~ heard, before you started to build, that Yudelowitch was bent on his project of building a new theatre?

A. I didn't know what he was going to do because I never [fol. 1903] got any answer from him.

Q. But you knew that he had that project up, didn't you?

A. He had always contemplated building it. I suppose that is the reason why he bought the lot.

Q. What?

A. I suppose he always contemplated building it because he mentioned it in our conversations a number of times.

Q. You had learned by the 1st of March, 1937, that he was contemplating doing it right away, as soon as he could get it financed, didn't you?

A. I don't recall that.

Q. You have no recollection on that?

A. I have no recollection.

Q. When the building of your theatre was begun—the actual physical work of building the new theatre or altering over to create the new theatre—when that was begun you had already heard that Ben was going to build another theatre if he could swing it? When you shrugged your shoulders then was it yes or no?

A. I don't know.

Q. You did not know, you had not heard before the shovel was put into the ground, that Ben was going ahead with his project or threatening to do so?

The Court: He has already answered your question. The question of actually starting the building or putting in [fol. 1904] the first shovel is not important, as far as I can see. You have been all over this several times.

Mr. McClennen: I understand from the witness so far, with the various answers, that he did understand before the building was started that Ben was considering immediately putting up another theatre, if he could swing it.

The Court: He did not say immediately, as I understand. He said he had talked at different times about building a new building, that he had bought a lot, and in substance he assumed he did have that idea. Go ahead.

Mr. McClennen: I want to bring out the fact that he then knew it as an imminent project.

The Court: Ask him the question specifically.

By Mr. McClennen:

Q. You knew it as an imminent project before you actually started your new theatre, did you not?

A. No, I did not.

Q. And you had no talk on that subject with Mr. Fine before the 25th of March, 1937?

A. I had a talk with Mr. Fine?

Q. Yes. About Ben's being bent on going ahead and [fol. 1905] building now if he could swing it.

A. He knew the conversation I had with Mr. Yudelowitch, that he was always contemplating building a new theatre. When or at what time, I don't recollect that.

Q. Was one of the reasons for starting the building of your theatre at the particular day when it was started so as to be sure to be ahead of Ben's project, if he went ahead with it?

A. Well, we had plans and specifications, plans made up, and stuff like that. We submitted to the Lodge exactly what we were going to do.

The Court: You did not answer the question.

Mr. McClennen: I will ask that the question be answered.

Read the question.

(Question read.)

A. The only thing I can say is that we were building in Akron at the same time and we were combining the two theatres together, and that was the reason that we were getting together, because we had the men available to go from one job to the other.

The Court: You do not answer his question. The question was whether your reason for starting on the date you did was to get ahead of the so-called porject of Ben.

A. No.

[fol. 1906] By Mr. McClennen:

Q. Did you discuss with Mr. Fine the advisability of taking up with the Masonic group their seeing if they could not prevent this catastrophe of having two new theatres put up in the town?

A. Oh, gee, I wouldn't remember anything like that.

Q. You just wouldn't remember? You may have done so and you may not?

A. I don't think I did.

Q. Did you ever hear anything about this letter of March 25, 1937, Defendants' identification Exhibit 45?

A. I wouldn't remember any letter.

Q. Do you think it would help you at all to remember it if you looked to see what it was about? I have laid it before you several times and you have not. Would it help you to remember if you looked at it?

A. I see it is from the Masonic company. I wouldn't know what they were writing about.

Q. The letter tells you what they were writing about, if you will look at it, and then you can tell me whether that was a subject of discussion with you, whether they should do anything of the kind.

Mr. Wright: If the Court please, what the relevance of all this is is still beyond me, as to who started first or why or [fol. 1907] how. What does it prove or disprove that is in issue in this case?

Mr. McClennen: It depends on the answer what it proves or disproves.

Mr. Wright: Assuming any answer, if he did or if he didn't——

The Court: Whether his effort was to get ahead of somebody else or not.

Mr. Wright: Assuming that he did.

The Court: Unless you seek to show that he was doing things which the Act prohibits, you mean?

The Witness: I never saw this letter. I don't know anything about it.

Mr. Wright: Even if he were I submit that would not be relevant.

The Court: I just put the question. I do not see just the relevance myself.

Mr. McClennen: I show Mr. Wright identification Exhibit No. 45, at his request.

Mr. Wright: Did Mr. McClennen answer your Honor's question? If he did I did not hear it.

The Court: What question?

Mr. Wright: The question you asked, what the relevance of this was.

Mr. McClennen: I was not aware that I had neglected any question of your Honor's.

[fol. 1908] The Court: Counsel raised the question of relevance of this testimony and I asked you whether you wanted to show this for the purpose of showing that this individual was doing the same type of acts which it is claimed were illegal and in violation of the statute.

Mr. McClennen: No, your Honor. The relevancy is this, that I am coming later to the question of when the attempts to get product took place, and that the witness has testified at another time that they took place after he learned of this project. I was trying to fix that date, this project of Schine coming in, and I was merely trying to fix that date in this way.

Mr. Wright: It seems to me that that was fixed an hour ago.

Mr. McClennen: If your Honor please, if you think I should not fix that date——

The Court: I will let him state when he first learned that. You said when Schine was coming in. You have confused that with the question of construction by Yudelowitch and Schine, have you not?

Mr. McClennen: For this reason, if your Honor please: [fol.1909] I some time ago asked the witness when he learned that Schine and Yudelowitch were on this project, and he answered as to the Yudelowitch part, and has not yet answered as to the Schine part.

Mr. Wright: He answered several times that the first time he learned of that was when he went to Gloversville.

Mr. McClennen: And I am seeking to show that he knew of it in March of 1937. He is not my witness and I do not accept that as the date. If by any means I can persuade him to recall that it was in March, 1937, I urge that I am entitled to do so.

The Court: I think you have already searched the subject to a considerable extent. I think his answers already given cover it but I will let him answer specifically. He has testified, as Counsel said, that he first learned of it when he was up at Gloversville in June or July. I will let you inquire as to when he first learned that Schine and Yudelowitch contemplated the purpose of building.

Mr. McClennen: Then I will put that again.

[fol. 1910] —My Mr. McClennen:

Q. When did you first hear the rumor that Schine and Yudelowitch were going in together on this project?

A. I said it was some time after we had started building. I said six weeks or seven weeks after we had started to build.

Q. So that at least two months, if not three, before you met Schine, or went to Gloversville and saw Mr. Schine, you had heard of this fact that Schine and Yudelowitch were in together on this project?

A. That is right.

Q. That is, you knew it at least by April of 1937?

A. Oh, I would say four to six or seven weeks. I wouldn't put any specific date in when I learned it. It was only a rumor, so far as I knew.

Q. You heard the rumors as early as April, 1937, did you not?

A. I wouldn't want to put the exact date. I know it was some time after we had started to build.

Q. You have no recollection that it was as early as April, 1937?

The Court: He has already answered that.

Mr. Wright: Even on Counsel's stated purpose, this has no relevancy. He did not testify to product negotiations [fol. 1911] between April and June, 1937. It does not make the slightest difference whether he knew in April or whether he knew in June.

The Court: Objection sustained.

Q. How definitely can you fix the time by date when you began the actual building?

A. The only thing I can say is the last of February or the first of March. I would not be able to fix the exact date.

Q. And the rumor as to Schine coming in was within six weeks of that?

The Court: He has answered that question. He has made a definite statement, or as definite as he can fix it as to the time. He said it was some weeks after they commenced building, that he couldn't state it more definitely.

Q. It was after you learned of this prospect that Schine was coming in that you made your efforts to get product for your new theatre?

A. I don't understand that question.

The Court: Read it.

(Question read.)

The Court: Going in with Yudelowitch, you mean?

Mr. McClennen: Yes.

[fol. 1912] A. No, everybody knew we were contemplating building. There was talk in the street that we were building in Medina, and we hadn't completed the deal.

Mr. McClennen: Read the question again.

(Question read.)

A. No, I talked to the film companies prior to that. I talked to them during the negotiations I was carrying on, I talked to the companies that were not sold in the town.

Q. I am asking now about the time when you began your efforts to make contracts for product. That was after you had learned that Schine was coming in with Yudelowitch, wasn't it?

A. The only one that I made a definite contract with was with Warner Bros. and First National.

Q. By Warner Bros. and First National, making a definite contract, you are merely stating the conversation to which you testified that you had in December, 1936, with Mr. Kalmenson? That is what you are referring to, isn't it?

A. Yes, and with Mr. Mooney.

Mr. McClennen: If your Honor please, it is hardly worth while asking to have it stricken out. I call your attention to the fact that it is a mischaracterization in the answer that [fol. 1913] it was a contract; that that was the first effort with respect to Warner.

Q. You made no other attempt to get a contract with any major distributor until after you learned that Schine and Yudelowitch were coming in; is that correct?

A. No, I differ with you. I had already talked to the companies that weren't sold in the town, and they told me that as far as the pictures were concerned that weren't sold in the town that they were certainly there for our disposal, but I made no definite contract with them.

Q. And you made no application for a definite contract with them?

A. I did not.

Q. Subsequently you made an effort to get Metro, Paramount, Fox and RKO, did you not?

A. I did not.

Q. You never made any?

A. I did not.

Q. You have some definite way of fixing the date of the Kalmenson conversation as being in December, have you?

A. It was around the latter part of December, in there some place. I can't just lay the exact date upon it.

Q. What is the best you can do for fixing the confines of the period within which that conversation took place?

[fol. 1914] A. My conversation with Mr. Kalmenson?

Q. Yes.

A. I would say it would be a period of a couple of weeks, the latter part of December or maybe the first of January. I just couldn't place the exact date.

Q. Would you be sure that it was within two weeks before or after Christmas of 1936?

A. I wouldn't be able to say.

Q. What?

A. I really wouldn't want to say because I don't just exactly remember.

Q. You have no other event, have you, that definitely fixes the time of the conversation?

A. No, I can't just exactly because we were in that contemplated stage down there of building and the plans of the other theatre we were constructing, and back and forth, and I was talking to Yudelowitch and with the different film companies. I really couldn't place——

The Court: He wants to know if you have anything by which you can fix the date.

A. I can't fix the date. I would say maybe the middle of December to the 10th of January. I couldn't say.

Q. But it is surely within that period?

A. Approximately.

Q. You went to the Cleveland office of Warner at that time [fol. 1915] to book some pictures on some existing contracts that you had?

A. That is right.

Q. And those were spot booked pictures, were they not?

A. Those pictures were under contracts for other theatres.

Q. What?

A. Those were pictures that I was booking for other theatres and were under contract.

Q. Do you recall that your theatres did not have the Warner 1936-1937 product?

A. We did not have the 1936-1937?

Q. Yes.

A. I was booking pictures from the prior year.

Q. With that in mind, that that booking may have been from the prior year, do you now recall that you did not have for your theatres a contract for the Warner product for 1936-1937?

A. In any of the theatres that I have?

Q. Yes.

A. I wouldn't know.

Q. Do you remember that about that time there was a year when Warner was out of your theatres, as the expression is used in the trade?

A. Would I remember——

Q. Do you remember?

[fol. 1916] A. No, I don't.

Q. You don't remember?

A. No.

Q. And you are unable to recall that your theatres had a single picture contracted for of the 1936-1937 season at the time of this conversation with Mr. Kalmenson, which you have placed as around about the end of 1936, or early 1937?

A. I don't remember.

Q. In saying that you went there to arrange for booking the pictures, you meant arranging dates for your theatres in which certain pictures already under contract were to be played in those theatres?

A. That is what I was there for.

Q. And your business there was with the booking department in that?

A. Yes, that is right.

Q. You had never met Mr. Kalmenson before, had you?

A. I had not.

Q. And did you ever meet him again until you met him in the Warner office in New York when he emphatically denied that he had made a promise of the product to you? Did you ever see him between those dates?

A. I suppose I saw him and said hello to him, but I never discussed anything with him.

[fol. 1917] Q. Anything that could be called a negotiation conversation, there was none between those dates? That is correct, isn't it, between something like——

A. I talked with Mr. Mooney about it.

Q. I am asking you about Mr. Kalmenson.

A. No, I hadn't discussed it with Mr. Kalmenson.

Q. You didn't go there that day for the purpose of buying pictures, did you?

A. Oh, I can't recall exactly, because I know that Mr. Mooney called me in his office and I asked for Mr. Mooney and he came out.

Q. All I have asked you is what you went there for was this booking job?

A. Talking about a contract. I don't know what all I had to do with him.

Q. You went there to get these pictures that were already booked under contract?

A. Maybe negotiating new contracts. I don't know.

Q. You have no recollection that that was your object, have you?

A. I haven't any recollection what specific reason I was there for.

Mr. McClennen: Now, if your Honor please, in any examination I make as to this conversation, which your Honor has admitted over our objection, in cross-examining [fol. 1918] on it I do not waive the objection.

The Court: I assume that to be so.

Q. The first time, then, that the matter of this commitment was again up between you and Mr. Kalmenson in conversation he emphatically denied that he had made any such commitment? That is true, isn't it?

A. You are referring to the New York——

Q. The New York, yes.

A. That is correct.

Q. Do you remember whether your attention was called at the time of that to the fact that you did not have a contract for any of your features for that year for that product?

A. I don't remember that.

Q. Was your attention called to the fact of the improbability that you would be promised, for an unbuilt theatre, product which you hadn't even contracted for for any of your theatres, was anything of that kind called to your attention?

A. It was not.

Q. Now, so far as your dealings with Mr. Schine were concerned, or with any Schine representative, no threats were made to you in any way, were they?

Mr. Wright: If the Court please,——

[fol. 1919] A. I don't get the question.

Mr. Wright: That calls for a conclusion. Let him state whatever conversations he had with them.

Mr. McClennen: I am cross-examining.

Mr. Wright: I suppose that is one of the things your Honor is going to decide, whether this whole course of dealing there amounted to a threat or whether it did not amount to a threat. I do not suppose the witness is the party to say whether he was threatened or not.

The Court: Put your question in another way.

Mr. Wright: He certainly can testify as to what was said to him by representatives of the Schine organization.

By Mr. McClennen:

Q. Mr. Connor told you in substance that it was a shame to have this situation going on in Medina and that you and Schine ought to get together?

A. That is correct.

Q. And that was the initial step in the negotiation that finally led up to the agreement that was made?

A. That is correct.

Q. And you were on friendly terms with Mr. Connor?

A. That is right.

[fol. 1920] Q. And you took it for granted that he was seeking to act as a personal friend of both parties?

A. That is correct.

Q. You told him, in substance, that you would like to deal with the subject if he could arrange an interview with Mr. Schine?

A. He suggested that we get together and he would do his best to get us together.

Q. And it was left that you would be glad to have him get in touch with Mr. Schine to bring about such a result?

A. That is right; such a meeting, I should say.

[fol. 1921] Q. Now, in the subsequent meetings did Mr. Schine threaten to do anything if you didn't come to terms with him?

Mr. Wright: If the Court please, the same objection applies. Let him say what Mr. Schine said or whatever the conversation was.

The Court: The question should be what was said. Was there anything said about forcing you out of business, or something like that?

By Mr. McClennen:

Q. Was there anything of that kind said?

A. No.

Q. You knew when the Princess operations were suspended, after the making of the agreement, Exhibit 648 of February 28th, 1939?

A. No, I do not know when they were suspended.

Q. I mean, when they were being suspended, didn't you know?

A. No, I did not.

Q. You thought that it was a desirable thing to have that town served by one adequate theatre, did you not?

A. I never discussed the policy of the operation in Medina from the day that they took over.

Q. Well, from long before that it was your opinion that one adequate theatre was the best service for that town, was it not?

A. I didn't know that.

[fol. 1922] Q. Did you think it?

A. Because I have theatres in other towns where we operate as small.

Q. Did you think it?

A. No, I wasn't sure because we have theatres in other towns; we have two theatres and operate the one theatre on the week-end and keep it closed up the other days, so I don't know what that town needed. We would have found out if we had tried to operate it.

Q. In the operation of the one theatre, the town has been well served, in your judgment?

A. Very well.

Q. The worthwhile pictures of all the distributors from time to time have been exhibited there?

A. As far as to my knowledge.

Q. The theatre operating conditions in that town are far better than they were before the spring of 1939, are they not?

Mr. Wright: If the Court please, I think he ought to say what he means by "better", better for whom?

The Court: In what respect?

Mr. McClennen: I mean in all respects.

Mr. Wright: If all of this is designed to prove you can make more money under this kind of an arrangement than [fol. 1923] you can under competition, that is stipulated. We don't need any testimony on that.

The Court: Your question is very broad; I mean, in what respect? The Court ought to know in what particulars.

Q. Better for the town, isn't it, the operation that has been conducted since the spring of 1939, than the operations before?

Mr. Wright: If the Court please, that isn't the question on which this witness is competent.

The Court: Sustained. The objection is sustained.

Q. Has there been, as far as you know, any overcharging of admissions in that town since the spring of 1939?

Mr. Wright: If the Court please, that is also objected to. He doesn't know even what the admission prices were.

Mr. McClennen: I did not hear, your Honor.

The Court: I will let him state.

Mr. Wright: He has already testified he did not know what the admission prices were.

The Court: Do you know what the admission prices are?

The Witness: No, I don't know. We get the weekly report in, but I didn't see the admission prices, and don't know what the admission prices are.

[fol. 1924] Q. There hasn't been brought to your attention any overcharging of admissions, has there been?

Mr. Wright: If the Court please, what he thinks is overcharging hasn't any relevancy in this suit.

The Court: Sustained.

Mr. McClennen: Then I understand the Plaintiff's position to be that overcharging in admission prices has no relevancy to this suit.

Mr. Wright: We don't know what overcharging is. I assume that when a man controls a town he charges the admission prices that will allow him the highest profits.

The Court: I suppose the admission prices depend on the product, what the pictures are, what company produces them, and so on. If he is in a position to say or knows what the products were and knows from experience elsewhere what is a reasonable charge.

Mr. McClennen: All I ask him is whether there had come to his knowledge anything of that kind.

Mr. Wright: What is the kind of thing that is to come to his knowledge?

The Court: Objection sustained.

By Mr. McClennen:

[fol. 1925] Q. The admission prices which may be charged in a theatre are materially affected by the cost of the product as bought from the distributing companies, are they not?

A. No, I wouldn't say that that would be the basis of the admission prices.

Q. It is not necessary in your experience to charge admission prices sufficiently to pay the cost of the product, is that the fact?

A. The cost of the product isn't the only thing.

Q. I am not asking about other things.

The Court: I will let him answer that, whether the cost affects, is relevant, or is taken into consideration in connection with the charge made.

Mr. Wright: It obviously is. We don't need testimony on that.

The Court: That is true.

Mr. McClennen: If it is obvious, that is as good as the witness' answer.

The Court: It is part of the cost of the company or the exhibitor which he would take into consideration in determining the price of admission.

Mr. McClennen: Of course, I cannot know what concessions the plaintiff will make until the questions are put [fol. 1926] that elicit them.

Q. In the negotiations for the agreement, Exhibit 648 for identification, were you advised of the fact that the other party to the agreement, that is, the Yudelowitch-Schine group, had expended in the spring of 1937 some $15,000 upon the improvement of the Princess Theatre?

A. I knew there was some improvement that was made, or being made, from my conversation. I met Yudelowitch some time or other, I don't know when, whether after we were in partnership together, and he said we had wasted a certain amount of money, whether it was $15,000 or not, I don't know, but it was my observation and my thought that he had advanced the money.

Q. And in the vicinity of $15,000?

A. Around that, I would imagine.

Q. And in the coming together of the agreement of February 28th——

Mr. Wright: If this is designed to prove what Yudelowitch advanced, we object to it. It is obviously hearsay, what he told this witness as to what was put into the theatre.

The Court: The question is the adequacy of the consideration.

Mr. Wright: It certainly isn't competent proof as to what Yudelowitch put into the theatre, the statement as to what [fol. 1927] he told this witness that he put into it doesn't prove what was put in. If that is the purpose of the examination, it is objected to. The way to show that, I suppose, is by first-hand evidence of what, if anything, Yudelowitch put into the theatre, and what, if anything, Schine put into the theatre during that period. It can't be proved by this witness or statements made to this witness.

The Court: He can state, I think, what Yudelowitch put into the theatre was taken into consideration in making this agreement.

Mr. Wright: As to his knowledge; if his knowledge is material that is one thing, it is competent for that purpose, but knowledge of what Yudelowitch told him about what he put into the theatre or Yudelowitch put into the theatre, doesn't prove what was put in.

By Mr. McClennen:

Q. And in that conversation and in the negotiations none of that sum was to be paid either by you or by the joint enterprise back to Yudelowitch, that is true, isn't it?

A. The contract——

[fol. 1928] The Court: The contract shows it itself.

Mr. McClennen: It does if there was no separate agreement, and I am merely clearing that there was no agreement of that kind.

Mr. Wright: Yudelowitch is not a defendant here. I don't see what relevancy it has.

The Court: I will let him answer about a subsequent agreement on the $15,000.

By Mr. McClennen:

Q. There was no agreement or undertaking by you that you or the combined enterprise was to pay back to Yudelowitch the amount spent in the improvement?

A. I don't know the amount that was spent, who spent it, or how much, I don't know.

Q. You don't know, so you do know there was no agreement?

A. That is correct.

Q. There was no agreement apart from what is in the contract?

A. That is correct.

Q. That is all I asked you. Were you in Medina enough to know the sort of things that were done to the Princess Theatre in the way of improvement in the spring of 1937?

A. I didn't pay any attention to it.

Q. You have no knowledge whatever about that?

A. I saw them fixing up the front. What they did to the [fol. 1929] interior I didn't know.

Q. So that you are not in a position to tell us what sort of a theatre that was after those improvements were made? That is, you simply haven't seen it since the improvements were made except as you have seen the front?

The Court: The interior.

Q. The interior?

A. No matter what amount is spent——

Q. I am not asking you any matter.

A. I have seen it from the outside and it was just a 300-seat theatre.

Q. You have not seen the inside?

A. I have not seen the inside.

Q. And you ~~do not~~ know in any way the extent of the improvements that were made inside?

A. That is right.

Mr. McClennen: That is all the cross-examination.

The Court: Is there any redirect examination?

Mr. Wright: Yes, I have some redirect examination. I think I can conclude it in perhaps ten minutes.

[fol. 1930] Redirect examination.

By Mr. Wright:

Q. You were asked on cross-examination, Mr. Essick, the question of whether or not you had ever negotiated for Paramount, Fox, R.K.O. and Metro in Medina, and I think you answered "No". Did you understand that question when you answered it?

A. Well, everything outside of Metro. I didn't hear him say Metro, but I did talk with Metro in the fall of 1936.

Q. Well, you had——

A. I never talked with the other companies.

Q. Then your answer that you never negotiated for the other product was limited to Paramount, R.K.O. and Fox?

A. That is correct.

Q. And the negotiations with Metro that you testified to on the direct examination were those that were held before or after you went to Gloversville in June or July of 1937?

A. After I went to Gloversville.

Q. And did Mr. Schine or Yudelowitch ever actually start construction on a theatre at Medina?

A. Not as I know of.

Q. There was no signs of any building?

A. No, sir.

[fol. 1931] Q. What, if anything, did Mr. Schine say to you when you went to Gloversville in July of 1937 as to whether or not they were going to put a third theatre in the town?

A. Well, I think while we were there, during the course of our conversation, I think he had a sketch of a theatre and he said "This is the theatre we are going to build in Medina." I think Mr. Fine said "You wouldn't be so foolish."

Mr. Wright: I want to offer in evidence this agreement for the 1938-39 season for Vitagraph product that has been previously identified in this folder, Exhibit No. 635-C, and I will ask to have that marked as 635-C (2), and offer it in evidence.

The Court: You are marking that 635-C (2)?

Mr. Wright: Yes.

(Thereupon agreement for the 1938-39 season for Vitagraph product referred to was marked as Plaintiff's Exhibit No. 635-C (2) in evidence.)

Q. You recognize that as a contract you made with Vitagraph for the 1938-39 season in Medina; it is your signature at the bottom?

A. That is right.

Mr. Wright: I have offered it in evidence.

[fol. 1932] Mr. McClennen: It is subject to the general objection.

Recross-examination.

By Mr. McClennen:

Q. You did not ask for Loew's product until after you learned that Mr. Schine had entered the picture, did you?

A. I didn't ask for the Metro product even after he entered.

Q. You didn't ask for it before, did you?

A. Before?

Q. Yes.
A. Before he entered the picture?
Q. Before Schine entered the picture?
A. No, we did not.

The Court: That is all, is it?
Mr. Wright: That is all.
The Court: We will suspend until 2 o'clock.

(Whereupon a recess was taken until 2 o'clock P. M.)

[fol. 1933] After Recess, 2 P. M.
Appearances: Same as before noted:

Myer S. Fine a witness called by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Wright:

Q. Where do you live, Mr. Fine?
A. Cleveland, Ohio.
Q. What is your occupation?
A. Motion picture business.
Q. What part of the motion picture business?
A. The exhibiting end of it.
Q. Operating theatres?
A. Operating theatres.
Q. How many theatres are you interested in?
A. About 25.
Q. You are the Mr. Fine that Mr. Essick referred to in his testimony?
A. Yes, sir.
Q. How many theatres were you interested in at the time you and Mr. Essick decided to build a theatre in Medina?
A. About the same number.
Q. What, if anything, did you have to do with the negotia-
[fol. 1934] tions for United Artists product for the Medina Theatre at Medina?
A. Mr. Stern and Mr. Goodman——
Q. Which Mr. Stern are you talking about?
A. Mr. Bert Stern, who was the district manager for United Artists.

Q. And Mr. Goodman, who was he?

A. He was the branch manager.

Q. At Cleveland?

A. At Cleveland, Ohio.

Q. When was it that you saw them about product for the Medina Theatre?

A. I couldn't say just when. It was some time during the process of our building the theatre.

Q. Do you think it was after you began construction?

A. I really couldn't say that.

Q. Was it about that time?

A. About that time; either before or right after. I don't know the exact time.

Q. What was this conversation? Was anybody else present besides you and Mr. Goodman and Mr. Bert Stern?

A. No.

Q. What was the conversation?

Mr. McClennen: If your Honor please, our general objection.

The Court: Yes.

[fol. 1935] A. I asked for the product for Medina. I told him we were either going to build or are building a theatre there, and they told me that the product was open for Medina and the product is mine—that is, ours, I should say.

Q. There was nothing said at that time about terms?

A. No.

Q. Then when did you get down to discussing the terms of a contract with them?

A. That was late—some time late in the summer of the year before we opened up, prior to opening up.

Q. That was the summer of 1937; is that it?

A. Yes, that would be the summer of 1937.

Q. At that time when did you expect to open?

A. We thought we would open around October, at that time.

Q. This was at the same place?

A. At my office.

Q. Who was present then?

A. Mr. Goodman and Mr. Stern.

Q. Anybody else?

A. No.

Q. What was said then?

Mr. McClennen: The same objection.

A. We consummated the deal at the time.

Q. You agreed on the terms, did you?

[fol. 1936] A. Yes, sir.

Q. Did you sign an application?

A. No, we did not.

Q. What form did the agreement take?

A. We just outlined the pictures that they thought they were going to have and we have agreed on the prices.

Q. That was pictures for what season?

A. For 1937-1938.

Q. What was the next time that you had a discussion with them about the contract for that season?

A. That was a little later. I don't remember just what time it was.

Q. Where was that?

A. In my office also.

Q. What was said then? Were the same people present?

A. That is right.

Mr. McClennen: The same objection.

Q. What was said then?

A. I can't remember just what was said, but I know we made a deal at the time.

Q. I understood you to say that you had made a deal at this conversation you just described.

A. I thought that is what you were asking me. Pardon me. No, after that we didn't have no meetings.

Q. After this conversation in which you said you made [fol. 1937] the deal, you said you didn't see them again?

A. Yes, I saw Mr. Goodman after that.

Q. When was that?

A. I really can't say what time it was, but it was after the time we made the deal.

Q. Some time in the fall of 1937?

A. I would imagine so.

Q. Was it before or after you opened the theatre?

A. No, quite awhile before we opened.

Q. Was anybody else present then?

A. Not to my recollection.

Q. This was in your office or Goodman's?

A. My office.

Q. What was said then?

Mr. McClennen: The same objection.

The Court: Same ruling.

A. I don't quite get the question.

Q. What was said then? What was the conversation between you and Mr. Goodman?

A. We talked in a general way and he wanted to know what time the theatre would be opened and how soon we could figure on it, and so forth.

Q. And you told him?

A. We told him we thought it would be open approximately November or December.

[fol. 1938] Q. Then you didn't open, though, until 1938; is that right?

A. That is right.

Q. Then did you have a further conversation at about the time you opened?

A. I really couldn't say just what conversation we had after that. I know I seen the man quite often.

Q. Did you sign an application at any time?

A. Yes, I did.

Q. For the 1937-1938 pictures. When was that?

A. Well, it was prior to opening. I really don't know when it could have been.

Q. Do you know how long before opening it was?

A. That would be a guess if I do say it. It must have been three or four months before.

Q. That was in the fall of 1937?

A. Right.

Q. When you signed the application was that for all the pictures or half?

A. For all of them.

Q. Then do you know what happened to the application?

A. No, I don't.

Q. You left it with Mr. Goodman?

A. That is right.

Q. Then did you hear any further word from him with respect to the application?

[fol. 1939] A. No, I didn't get anything from him.

Q. Did you hear anything from anybody with United Artists about it? Did you hear anything from any representative of United Artists about your application?

A. No, not until I received a telegram.

Q. When was that?

A. That was some time later. I don't remember just the exact time.

Q. Was this before the theatre opened?

A. Yes, sir.

Q. Have you searched for that telegram?

A. Yes, I turned it over to Mr. Essick and he said he searched for it everywhere and couldn't find it.

Q. You haven't been able to find it?

A. No, sir.

Q. Can you recall what the contents of the telegram were?

Mr. McClennen: The same objection.

The Court: Overruled.

A. If I remember correctly, the telegram approved the pictures in all of our theatres that I made a deal for; including a split for Medina, just half of the product for Medina.

Q. This application that you had signed, that you were referring to, was for a large number of theatres besides the one in Medina?

[fol. 1940] A. Yes, sir.

Q. But it included Medina; is that right?

A. That is right.

Q. And the application was for all the product in Medina?

A. Yes, sir.

[fol. 1941] Q. Now, what was the substance of the telegram?

A. The telegram was just mentioning that we have a split in Medina.

Q. And to approve the contract for the rest of the towns in full?

A. Yes, sir.

Q. Then do you remember who signed the telegram?

A. I really don't.

Q. What did you do then?

The Court: What difference does it make?

Mr. Wright: I don't think it makes any difference.

The Court: All right.

Q. What did you do then?

Mr. McClennen: That I object to.

Q. With ~~reference to the United~~ Artist product.

The Court: I will let him state what was done.

The Witness: Mr. Essick and I went to New York and saw Andy Smith.

Q. That is A. W. Smith, Jr.?

A. A. W. Smith, Jr., at United Artists.

Q. In New York City?

A. In New York City.

Q. Who else was present?

A. I don't recall who was present at the time, there was some other man come in and out of town, but I didn't even [fol. 1942] know who he was, some one from the United Artists.

Q. What was said then?

A. I told him we had bought the product 100 per cent for Medina, and I can't understand why——

Mr. McClennen: This is subject to the same objection.

The Court: Yes.

The Witness (Continuing): I can't understand why we got only half of it. He told us somebody in the office sold a split of the product to Mr. Schine and all they could give us would be just a half.

Q. Was that all he said?

A. That is all he said. He would try and see if he could get the rest of it for us, but we shouldn't depend on it too much.

Q. Then did you hear from him again?

A. I was in New York again a little later by myself and called him on the phone. He said he could not do anything for me, that is all we could get; if we didn't want that, they can't give us the rest of it, the other half.

Q. What, if any, efforts did you make to get all the United Artists product for Medina after that, after the season opened?

A. I didn't do much of the buying for Medina after that. [fol. 1943] Mr. Essick did that.

Q. For the year 1938-39?

A. For the year 1938-39.

Q. Do you recall whether you made any effort to get all of United Artists product for 1938-39?

A. I really don't remember whether I was in the picture or not.

Q. Did you have anything to do with negotiations for the Warner product prior to the time you went down to New York with Mr. Essick in the fall of 1937?

A. Yes, Mr. Kalmenson and Mr. Mooney were in my office.

Q. At what time?

A. I don't remember the time, quite some time before we opened the theatre.

Q. This was before you opened the theatre?

A. Yes, sir.

Q. Was there anybody else present then?

A. I don't remember whether any one else was present or not.

Q. What was said then?

Mr. McClennen: The same objection.

The Court: Overruled. Go ahead.

The Witness: We told them we were either building or going to build a theatre in Medina, and we knew that the product was not sold in the town.

[fol. 1944] Q. When you say "we," was there somebody else besides you there?

A. I mean by "we," we were building the theatre and we wanted to know how we stand on the product. He repeated to me he had made a promise to Mr. Essick and he said "That goes double. The product is yours for Medina whenever you open up."

Q. Did you see or have any negotiations or conversations about Medina with Mr. Kalmenson from that time until the time you went down to New York with Mr. Essick?

A. No, I did not.

Mr. Wright: You may cross-examine.

Cross-examination.

By Mr. McClennen:

Q. What was the approximate date of this conversation at your office with Mr. Mooney and Mr. Kalmenson?

A. I could not say what date it was.

Q. It was during the progress of the building of the theatre?

A. I could not even say that, it was either before or maybe after.

Q. You have no impression one way or the other about it?
A. What?
Q. You have no impression one way or the other about it?
A. No, I have not.

[fol. 1945] Mr. Wright: Is that all?
Mr. McClennen: That is all.
Mr. Wright: I would like to recall Mr. Essick for a few questions about United Artists.

Perce E. Essick recalled by and on behalf of the Plaintiff, having been previously sworn, was examined and testified as follows:

Direct examination.

By Mr. Wright:

Q. Mr. Essick, did you handle the negotiations for your theatre in Medina for the 1938-39 United Artists product?
A. I did.
Q. Who did you——
A. I beg your pardon, what did you say, what company?
Q. United Artists.
A. I am pretty sure that I did.
Q. Do you remember whom you talked to at the United Artists about that season's product?
A. Mr. Goodman.
Q. That was where?
A. In my office in the Film Building.
Q. When was that, do you recall?
[fol. 1946] A. Oh, I can't recall about when it would be, some time in—maybe in the summer or maybe in the fall or some time prior to the releases for the 1938-39 season.
Q. That would be the summer and fall of 1938?
A. Yes, sir.
Q. And what, if anything, was said at your conversation with him with respect to getting all of the pictures for 1938-39?

Mr. McClennan: Same objection.
The Court: Overruled.
The Witness: I naturally asked him for all the pictures. He said that he could not sell them, I would have to be satisfied with half of them.

Q. Did he tell you why?

Mr. McClennen: Same objection.
The Court: Same ruling.
The Witness: I don't remember that.

Q. Was there any discussion as to terms on the pictures except the half?
A. That is right, the half is all we were going to have. The conversation was for the half.

Mr. Wright: That is all.
The Court: Did he say who had the other half?
The Witness: He said the Schines had the other half. He could not only talk with me on the half.
[fol. 1947] Mr. McClennen: I think I will ask him.

Cross-examination.

By Mr. McClennen:

Q. The United Artists sell their pictures singly, do they not make separate contracts for each picture?
A. They commence, sometimes with a group of pictures of four or five, but there are different producers.
Q. They have different producers in their company, and if there is any negotiations for contracts on they take a separate application for each picture?
A. Take a separate application on each picture.

Redirect examination.

By Mr. Wright:

Q. A separate application, you mean for each picture, or a separate application for the pictures of each producer?
A. Could I give an answer that would cover it?
Q. Yes.
A. Edward Small would be a producer for United Artists. He would maybe release three pictures, and I would do business with Edward Small. They would have Selznick, or whoever they would have, would make two or three pictures, and that is when the contract would come up, and that would be the——
[fol. 1948] Q. As I understand it, the applications are taken by producer rather than picture, is that right?
A. That is right.

By the Court:

Q. Then the application would be, in the case of an application for products by Selznick, an application for Selznick?

A. That is right.

Q. The group?

A. If he released two in that year or one.

Q. You would make an application for the product of somebody else separately, is that the point?

A. Yes, sir, whatever producers there was would be separate.

Charles E. Dickinson, Jr., a witness called by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Wright:

Q. Where do you live, Mr. Dickinson?

A. Shepardstown, West Virginia.

Q. What is your occupation?

A. I am Sales Manager for the Boiler Equipment Trust [fol. 1949] of North Amstertown, Massachusetts.

Q. How long have you held that position?

A. Seven years.

Q. Prior to that, what did you do?

A. Between 1936, when I left Lockport, New York and made the connection I now have I was not employed.

Mr. McClennen: What?

The Witness: Not employed.

Q. What was the period that you were in Lockport?

A. Well, I was born and raised there originally. Have you reference to some particular time? I didn't live there all my life.

Q. When were you connected with the Palace Theatre there?

A. From approximately July, 1932 to the spring of 1936.

Q. Was that a theatre in which your father had an interest?

A. That is correct.

Q. And when you came there, do you recall who the tenant of the theatre was?

A. The Schine organization.

Q. And what, if anything, did you do with reference to the theatre when you first come there?

A. I came to Lockport to assist father in his various businesses. The first thing I did was to take over for him the matter of collecting overdue rents from the Schine organization on that theatre.

[fol. 1950] Q. You mean, was the rent in default at the time you got there?

A. That is right.

Mr. McClennen: That is objected to.

Mr. Wright: I thought he said something about overdue rents.

Mr. McClennen: Yes, but he didn't say it was in default and he could not say it if he tried to, properly.

The Court: Do I understand the rent was in default?

The Witness: It was, yes, sir.

By Mr. Wright:

Q. Then what did you do with reference to the rent?

A. I co-operated with the attorney in various lawsuits that took place from that time on until the final eviction by due process of law in December of that year, evicting the Schine organization from that theatre.

Q. In December, 1932?

A. That is correct.

Q. Then——

Mr. McClennen: I think I should have amplified the objection.

The Court: Well——

Mr. McClennen: By pointing out to the Court that defaulting in the payment of rent is not a violation of the [fol. 1951] Sherman Anti-Trust Act.

The Court: I think it is immaterial. I think it can be stricken out. I think the answer is immaterial.

Q. In any event, Schine ceased to be the tenant in December of 1932?

A. That is correct.

Q. Then was a corporation organized to operate the theatre?

A. It was.

Q. What was the name of that corporation?

A. Reliance Theatres, Inc.

Q. What position did you hold in the corporation?

A. I was Vice President and Managing Director.

Q. Who was the President?

A. Nicodus Dipson.

Q. Then how long did he continue as President?

A. From then until about April of 1933.

Q. Then who became President?

A. Peter Grafiadas.

Q. Was he related to Mr. Dipson?

A. I always understood he was his nephew.

Q. When did the operation of the theatre under the Reliance Theatre Corporation commence?

A. We started the first day of January, 1933.

[fol. 1952] Q. Can you describe that theatre generally and the other theatres in Lockport at that time?

A. Our theatre, which was the largest and newest, was a house of approximately 1800 seats. The Rialto Theatre, which had been converted from a skating rink to a theatre, had approximately 1500 seats.

Q. Was that operated by Schine?

A. Yes, sir.

The Court: What was the name of that theatre?

The Witness: Rialto. The third theatre, which was not operating, but under lease to the Schine organization, is the High Art, which was an old theatre, I believe, made from an old business block. That had, I believe, about 1100 seats.

Q. Was that operating then?

A. It was not.

Q. Do you know how long it had been closed?

A. Approximately seven years.

Q. What major film product did you have for the Palace Theatre when you opened it?

A. We had one major product, the Metro-Goldwyn-Mayer.

Q. You were playing that first-run?

A. That is right.

Q. When did you contract for that?

[fol. 1953] A. I can't give you the exact month. It was prior to the opening.

Q. That was the pictures for the 1932-1933 season?

A. That is right, that had not been purchased by any one else.

Q. Then what, if anything else, did you have to do with efforts that were made to get other pictures for the theatre?

A. In conjunction with other members of our company I took part in personal calls on the managers of the various exchanges in Buffalo, helping in the composition of letters which we wrote to those same exchanges, requesting pictures or permission to buy pictures.

Mr. McClennen: What the letters said should be stricken out.

The Court: Yes, the letters are the best evidence.

Q. You received, did you not, replies from various of the companies that you contacted?

A. I did.

Mr. Wright: I will ask to have these five letters here marked with the next five plaintiff's numbers for identification.

(The letter, May 5, 1933, referred to was marked as Plaintiff's Exhibit 649 for identification.)

(The letter, May 8, 1933, referred to was marked as Plaintiff's Exhibit 650 for identification.)

[fol. 1954] (The letter, May 16, 1933, referred to was marked as Plaintiff's Exhibit 651 for identification.)

(The letter, June 1, 1933, referred to was marked as Plaintiff's Exhibit 652 for identification.)

(The letter, July 28, 1933, referred to was marked as Plaintiff's Exhibit 653 for identification.)

Q. I will hand you these letters marked for identification as 649 to 653, inclusive, and ask you to look at those and say whether you recognize them as letters received by the Reliance Theatre Corporation, on or about the dates that they bear?

A. I do.

Mr. Wright: I will offer these five letters in evidence.

Q. One more preliminary question. By the way, do you recognize those as all the replies you received or are those simply all you were able to locate?

A. They are not all that we received but they are all that I have been able to locate.

Q. For that year, 1933?

A. That is right.

Mr. McClennen: The general objection, if your Honor please, to communications between these companies not shown to be co-conspirators and this witness.

[fol. 1955] The Court: I understand your objection does not go to the proof of the signatures?

Mr. McClennen: No.

The Court: Objection overruled.

(The letters referred to, previously marked as Exhibits 649 to 653, inclusive, for identification were received in evidence and read by Mr. Wright as follows):

[fol. 1956] Exhibit 649:

"Metro-Goldwyn-Mayer Pictures
Metro-Goldwyn-Mayer Distributing Corporation
509 Pearl Street
Buffalo, N. Y.

May 5, 1933.

Mr. P. Grafiades, Palace Theatre, Lockport, N. Y.

Dear Mr. Grafiades:

In acknowledgment of your letter received, requesting information as to our 1933-34 product, please be advised that our new season's policy on product has not been set up as yet for the forthcoming season, and we are not now in a position to make any definite commitment regarding the new year's pictures.

However, we appreciate your inquiry and will certainly keep your situation in mind, as you request.

Kindest regards,

Sincerely, E. K. O'Shea, Resident Manager.

EKO's:MF"

[fol. 1957] **Exhibit 650**

"Universal Film Exchanges Inc.
505 Pearl Street
Buffalo, N. Y.

May Eighth 1-9-3-3.

Mr. Peter Gradiades, President, Reliance Theatres, Inc.,
Palace Theatre, Lockport, N. Y.

Dear Sir:

This will acknowledge your letter of April 29th.

In view of the fact that we already have, in existence, a long-term franchise with the Schine Theatres in Lockport, we are unable to comply with your request to commit ourselves to play any of our pictures in your theatre.

We shall be glad to negotiate with you, as we have in the past, on any of the pictures that Schine eliminates in this situation.

Very truly yours, Universal Film Exchanges, Inc.,
Dave Miller, Resident Manager."

DM-RA.

[fol. 1958] **Exhibit 651**

"Paramount Pictures Distributing Corporation
Distributor of
Paramount Pictures
464 Franklin St. Buffalo, N. Y.

May 16, 1933.

Mr. Peter Grafiades, Palace Theatre, Lockport, N. Y.

Dear Mr. Grafiades:

We have your recent letter regarding our next season's product for Lockport, N. Y.

It is too early as yet to make plans for next season. We will, however, keep your request at hand until such time as we are ready to sell our new season's product. We will at that time give it consideration.

Very truly yours, K. G. Robinson, Branch Manager."

KGR:EB

[fol. 1959] **Exhibit 652**

"Paramount Pictures Distributing Corporation
Distributors of
Paramount Pictures
Times Square New York
Chickering 4-7040 * Cable address FAMFILM
Office of J. J. Unger

June 1st, 1933.

Mr. Peter Grafiades, President, Reliance Theatres, Inc.,
Palace Theatre, Lockport, N. Y.

Dear Sir:

Your letter of May 26th to the Motion Picture Producers and Distributors has been referred to us for attention.

We regret very much that it will be impossible for us to offer you our product for the coming season, because of our partnership with Mr. Schine in the Rialto Theatre.

Naturally, we have to reserve our pictures for our own theatre.

Very truly yours, J. J. Unger."

JJU:NRC

[fol. 1960] **Exhibit 653**

"Metro-Goldwyn-Mayer Pictures
Loew Building—1540 Broadway
New York

Office of W. F. Rodgers

July 28, 1933.

Mr. Peter Grafiades, Palace Theatre, Lockport, New York

My Dear Mr. Grafiades:

The delay in acknowledging your letter to me of the 18th has been occasioned by my frequent absences from the city.

In our negotiations with the Schine interests it will very likely be that we will have to give them consideration for our product at Lockport, as well as other situations, and as we are hardly in a position to forego or jeopardize the business from their other situations, and for the further reason that they have for a number of years been a very representative account, we feel that our interests would be best served by giving them such consideration.

Under the circumstances, we are not in a position to offer you our 1933-34 product.

The assurance you speak of as made to you by Messrs. Dipson and Osborne was certainly not with our sanction, as no arrangements were made with them for the delivery of product to the Palace Theatre, Lockport, beyond those pictures covered in the existing agreements and representing those subjects under contract to the above theatre for what is known as our 1932-33 product.

We appreciate your letter of inquiry and also the consideration you have seen fit to give us in the past and feel sure that after due deliberation you will fully understand our position in the matter.

With kindest regards, Sincerely, W. F. Rodgers."

WFR:MTL

[fol. 1961] Q. Who were the Messrs. Dipson and Osborn referred to in that letter I just read?

A. Nikitas Dipson was the President of the Reliance Corporation when it was formed back in December, 1932. John Osborn was an associate of his and I believe a Director in the corporation at that time.

Q. By the corporation you mean Reliance Theatres?

A. Reliance Theatres, yes.

Q. After this letter of Mr. Rodgers, Exhibit 653, was received, did you go to see Mr. Rodgers?

A. I went to New York and made a call on him personally.

Q. Do you recall when that was?

A. Some time during the summer of that year. I don't know the exact date or even the exact month, but it was during the summer.

Q. Where did you see him?

A. In his office.

Q. Do you remember who else was present?

A. There was no one present at that time.

Q. Other than yourself and Mr. Rodgers?

A. That is right.

Q. What was the conversation you had with him then?

Mr. McClennen: The same objection.

The Court: Overruled.

A. My purpose in seeing Mr. Rodgers was——

[fol. 1962] The Court: What was said, he asked you.

A. I told Mr. Rodgers that we had played his pictures since the opening of the theatre under the contract we had for his product; that we had done very well with them, from the angle of the theatre being of the type and the pictures being of the type that we liked to show; that we had given them long runs, single feature, and that I was hopeful that he would be able to change the reply of his letter and give us consideration, on the basis that we had been his customer and a satisfactory one, for the coming season's product.

Q. What did he say?

A. He told me that he would like to have his pictures played in the Palace Theatre, that Metro-Goldwyn-Mayer always liked to have their pictures played in the best house in any town, the most outstanding house, but that a contract with the Palace Theatre for the 1933-1934 season, in contrast with a contract for the Schine Chain, would amount to peanuts, and he was sorry but he could not do anything for us.

Q. Then did you call on any other film distributors in New York at that time?

A. I don't believe I did. I don't recall on that trip, no.

Q. Had you been able at that time to contract for any first-run major films for the 1933-1934 season?

[fol. 1963] A. Not at that time, we had not.

Q. When you got back did you receive any communication from any one connected with the Schine organization?

A. I received no written communications.

Q. Did anybody come to see you?

A. I had a meeting with Mr. May.

Q. When was that?

A. In Mr. Geer's office. Mr. Geer was manager of the Rialto at that time. My best recollection in placing a date would be—I can't swear to this—probably September of that year.

Q. September of 1933?

A. Yes, sir.

Q. What was the conversation you had with Mr. May?

A. Mr. May made me an offer, or asked me to take his offer to my father, who was critically ill at that time, of purchasing the lease of the Reliance Theatre at a figure, I believe, of around $15,000 plus percentage per year.

Q. You say purchasing the lease. Were they to pay you anything in addition to the rent or were they just making an offer for the theatre on the basis of—what was it you said—$16,000 a year?

A. I believe that is the figure, roughly.

Mr. McClennen: That is objected to, if your Honor please, [fol. 1964] as leading.

The Court: Yes, let him state what the talk was.

Q. Can you tell us exactly what the offer was?

A. As I recall, it was an offer made to take over the lease that Reliance Theatres had with the landlord company that owned the theatre.

Q. The landlord company was what?

A. Lock City Theatres, Inc.

Q. That is the company in which you and your father were also interested?

A. Yes, sir.

Q. And to pay what sum as rent?

A. My best recollection is $16,000, plus a percentage of the net for a year.

Q. What was the amount of the rental before the Schine Company was evicted from the premises?

Mr. McClennen: That is objected to.

The Court: What materiality has that, Mr. Wright?

Mr. Wright: The materiality is that after they had demonstrated that they could keep pictures away from this theatre they tried to come in and lease it for about half of what had been formerly paid.

Mr. McClennen: That is not the occasion for getting into the record what your Honor had indicated was immaterial, [fol. 1965] this matter of any eviction. If what is wanted is what was the rental price under the earlier lease we had better have the lease as the means of telling that.

Mr. Wright: If he knows I think he can state what the rental is.

The Court: The lease is the best evidence, no doubt.

Mr. Wright: I did not ask him for the terms. I merely asked him the amount of the yearly payment.

The Court: You are asking what the lease said. That is the effect of it.

Mr. Wright: We can, of course, prove that by the lease. I do not understand that there is any dispute as to what the amount of the rental is that the former lease called for.

The Court: Counsel has objected to it.

Mr. McClennen: If he will just let us see the lease we can tell whether there is any dispute or not. We don't know.

[fol. 1966] Mr. Wright: You certainly have a copy of it.

Q. Do you have a copy of the release with you, Mr. Dickinson?

A. I don't have it with me, no.

Mr. Wright: Would you produce your copy?

Mr. McKay: It hasn't been subpoenaed.

Mr. Wright: Do you want a subpoena to produce it?

Mr. McKay: We have it somewhere, but we haven't been called upon to produce it.

Mr. Wright: Well, do you want a subpoena?

Mr. McKay: We don't want a subpoena and, if we have it, we will produce it.

By Mr. Wright:

Q. What was the rest of this conversation?

A. Well, I would say that was the sum of it because I wasn't interested, and that ended it.

Q. You rejected the offer?

A. Yes, sir.

Q. And then——

A. There was,—it comes to mind, there was another subject that was mentioned at the time.

Q. What was that?

A. That was concerning the fact that the High Art Theatre, which had been closed for all the preceding seven years, would be re-opened by the Schine organization to use up the large volume of product they had bought, that it [fol. 1967] would be necessary.

The Court: May told you that?

The Witness: Yes, Mr. May said it would be necessary to do that in order to play the large quantity of pictures that had been purchased.

Q. Was that all the conversation?

A. Yes, sir.

Q. And then did any one else approach you with an offer after that?

A. There was a man by the name of Kronick, I don't know how you spell, it sounds like K-r-o-n-i-c-k, who stated he represented the Paramount Theatre people.

Mr. McClennen: Just one moment. He hasn't been asked to state the conversation.

Q. Can you give us the conversation you had with Mr. Kronick?

Mr. McClennen: That is objected to.

The Court: Who is he?

Mr. Wright: A representative of Paramount-Publix.

Mr. McClennen: There is no representative by that name of Paramount that has appeared here.

Mr. Wright: Paramount-Publix, I said.

Mr. McClennen: And it should not be stated that he was a representative on the present state of the record.

[fol. 1968] The Court: Do you know who the gentleman was?

By Mr. Wright:

Q. Do you know Mr. Kronick was?

A. Only that he told me he represented the Paramount Pictures Corporation.

Mr. McClennen: May that be stricken out?

The Court: I will let it stand, only that he told me, and strike out the Paramount Pictures Corporation.

Mr. McClennen: I would urge that it is not admissible.

The Court: Strike out the latter part, who he represented I will strike out.

Q. What was the conversation you had with him?

Mr. McClennen: That is objected to.

The Court: Well, unless he is a representative of one of these alleged conspirators, it is incompetent.

Mr. McClennen: We urge, at least on the present state of the record, and I believe in fact, that he was not the representative of any even alleged co-conspirator.

The Court: Sustained at this time.

Q. Did you receive any further visits from anyone from the Schine organization?

A. Yes, about the early part, no, about—a little after the [fol. 1969] middle of the month of October, and I place that date in mind with reference to the opening date of the High Art Theatre, just two or three days prior to that date, which was October 21st, 1933, I met a Mr. Carroll, who said he——

Mr. McLennen: Just a moment.

The Witness: —(continuing) was connected with the Schine organization as a representative.

Mr. McClennen: Just a moment, Mr. Witness, did you observe that I was addressing to the Court an objection?

The Witness: I am very sorry.

The Court: You met a Mr. Carroll. The rest may go out.

The Witness: I met a Mr. Carroll.

Q. And what was the conversation you had with him?

Mr. McClennen: That is objected to.

The Court: Are we informed who this man was, who Mr. Carroll represents?

Mr. Wright: I don't think Mr. Carroll's name is mentioned in the interrogatories. I understand he was, however, at this time District Manager of the Schine Theatre.

Mr. McClennen: I regret that counsel states his understanding into the record. There is no such record and we [fol. 1970] do not have any knowledge of any such relationship.

The Court: Objection sustained.

Q. Had you ever seen this Mr. Carroll before, that talked to you?

A. Yes, sir.

Q. Where had you seen him?

A. Rialto Theatre.

Q. What was he doing there?

A. At the time I saw him he was talking to me.

Q. I say before this last conversation that I asked you about?

A. I had met this Mr. Carroll in town on various occasions.

Q. Well, who had introduced you to him?

A. That I can't say, I don't remember the individual, but it was in one of Mr. Schine's theatres where I first met him.

Mr. McClennen: May that last be stricken out.

The Court: I will let it stand, that it was in one of Mr. Schine's theatres.

Q. Was he introduced to you by another employee of Schine?

Mr. McClennen: I object to that.

The Court: Sustained.

Q. Do you remember who introduced him to you?

The Court: "Yes" or "No".

[fol. 1971] The Witness: No.

Q. Do you remember anything about the circumstances of the introduction other than it occurred in one of the Schine Theatres?

A. No, that was prior to his meeting with me in October, 1933.

Q. Yes, I think you misunderstood the question. Repeat the question.

(Question read.)

A. There was nothing that would tie previous meetings into mind with Carroll now.

Q. Then did the High Art Theatre re-open?

A. It did.

Q. And it stayed open, did it?

A. It stayed open as long as I had any connection with the Reliance Theatres.

Q. Can you recall what sort of policy the High Art and Rialto were operating under?

Mr. Rogers: May we not get some dates?

The Court: What do you mean by policy, price or product?

Mr. Wright: Both.

The Court: When did it open?

The Witness: October 21st, 1933.

The Court: He has asked you with reference to the [fol. 1972] policy with reference to charges or product.

The Witness: The announced policy in the paper, which was followed on the opening, was that first and second-run pictures would be shown with several changes a week.

By Mr. Wright:

Q. Then what policy were you operating the Palace on at the same time?

A. We opened and continued for many months on a single feature basis with probably—I couldn't say as to that, because our policy changed about every two or three weeks.

Q. After the High Art opened, what, if any, major product did you have at the Palace first or second-run?

A. We had the balance of Metro-Goldwyn-Mayer from the 1932-33 season that we had stretched out, but not played yet.

Q. Anything else?

A. Not at the time the High Art opened, except independent pictures, which we occasionally get, not any of the major ones.

Q. Then in the spring of 1934, what, if any, efforts did you make to secure a major film product for the theatre?

A. We again wrote letters to distributors of all of the eight major distributors in Buffalo, making a similar request for permission.

Mr. McClennen: Just a moment, you can't answer that.

[fol. 1973] The Court: Sustained.

Mr. Wright: The answer that they wrote letters, I take it is admitted.

The Court: I will receive that they wrote letters to the different producing companies in Buffalo. The balance is stricken out.

Q. And did any of the major companies solicit an application from you for first or second-run of their pictures for the 1934-35 season?

A. They did not.

Q. Then in the summer of 1934, did you again go to New York?

A. I did.

Q. And who did you see then?

A. I called Mr. Rogers' office again.

Q. Mr. Rogers at——

A. Metro-Goldwyn-Mayer. I first called and he was not there. I talked with his assistant whose name I don't remember. The assistant told me——

Mr. McLennen: Just a moment.

Mr. Wright: If the Court please, if this is someone that he was referred to in Mr. Rogers' office, I think it is competent to state what he was told.

The Court: If we can assume authority from the mere fact he was in the office, without showing what his position [fol. 1974] was.

Mr. Wright: He at least had authority prima facie to talk to people who came to see Mr. Rogers. He was referred to him.

The Court: How do you know?

Mr. Wright: His statement is to the effect he went in to see Mr. Rogers and he was told to see this gentleman, that Mr. Rogers was out.

Mr. McClennen: It hasn't been even stated that much.

Mr. Wright: He has been permitted yet to state what did happen.

Mr. McClennen: Of course, because you have put an objectionable question and the Court has ruled it out.

By Mr. Wright:

Q. Did you go into Mr. Rogers' office when you went there?

A. I went to the office and asked for Mr. Rogers and was told that he was not in, but that I could see his assistant.

Q. Who told you that, do you know?

A. The Information girl.

Q. The Information girl at the Loew's office?

A. Yes, sir.

Q. And then did she or anybody else take you to this person that she described as his assistant?

[fol. 1975] A. She did.

Q. And then did you have a conversation with that person?

A. I did. He advised me that——

Mr. McClennen: Just a moment.

Mr. Wright: Just a minute. Would you state what the conversation was?—

Mr. McClennen: We object to that.

By the Court:

Q. Had you ever seen this man before or since?

A. No, sir.

Q. You don't know his name?

A. No, sir, I don't remember because I called again the next day and saw Mr. Rogers himself.

The Court: Objection sustained.

By Mr. Wright:

Q. You say you saw Mr. Rogers himself the next day?

A. That is right.

Q. What was the conversation you had then?

Mr. McClennen: Same objection.

The Court: Overruled.

The Witness: I inquired from Mr. Rogers whether we were going to be given an opportunity of buying his 1934-35 season's pictures.

The Court: That is Metro?

The Witness: Metro. He advised that they were nego-[fol. 1976] tiating with the Schine organization at that time and until they definitely knew the result of that negotiation, they could not talk to us.

Q. Did you hear anything further from him?

A. No, sir.

The Court: Did you say when that was?

The Witness: That was in the summer of 1934.

Q. Then did you see any other distributor representatives on that trip?

A. I saw Mr. McEvoy, of R.K.O. organization.

Q. Whereabouts?

A. In his office.

Q. Who else was present?

A. No one.

Q. What was that conversation?

Mr. McClennen: Same objection.

The Court: Is that the same time, same trip?

The Witness: It was on the same trip to New York, yes.

The Court: Objection overruled. McEvoy?

Mr. Wright: Yes, McEvoy, M-c E-v-o-y.

The Court: All right.

Q. You may state the conversation.

A. The conversation as I recall it would be similar; I can't remember the exact words.

[fol. 1977] Mr. McClennen: May that be stricken out.

The Court: "Similar" is stricken out.

Q. Give us the substance.

A. I asked Mr. McEvoy if we would get a chance to purchase their product for that season, and he gave me no assurance that we would, that they were negotiating with the Schine organization and had little hopes to hold out to me that they would do anything.

Q. Is that all?

A. That was the end of that conversation, and I didn't hear anything more from them.

Q. Did you see any one else?

A. I met a Mr. Unger.

Q. Where?

A. In his office, and he was connected with Paramount Pictures. I don't know the correct title for Paramount, so when I say "Paramount" that is the best I can do.

Q. Who else was present then?

A. No one.

Q. Was there anybody else present, do you recall?

A. No, sir.

Q. What was the conversation you had with Mr. Unger?

Mr. McClennen: Same objection.

The Court: I don't know. Is there anything in the record to show who Mr. Unger was?

[fol. 1978] Mr. McClennen: Yes, your Honor, Mr. Unger has been shown to be, I think, Eastern Sales Manager.

The Court: For Paramount?

Mr. McClennen: For Paramount.

The Court: Overruled.

The Witness: I asked Mr. Unger the same question, would we be able to buy or get a contract for his pictures for that season.

The Court: His answer?

The Witness: The answer was that they had nothing to offer us.

Q. I didn't hear that answer.

A. They had no pictures to offer us, or words to that effect. I can't quote the actual conversation. It took place ten years ago.

[fol. 1979] Q. Did you see any one else then about major product?

A. I saw a man by the name of Jackter of Columbia Pictures.

Q. Jackter?

A. Jackter is the way I recall it.

Mr. Wright: If your Honor please, we haven't had the Columbia representative here to testify, but I don't believe there is any doubt as to who this man was at that time.

Mr. McClennen: I do not find Mr. Jackter's name on my lists in any way.

The Witness: That is my best guess. I don't know how he spelt it.

Mr. Wright: If the Court please, we expect to connect this up.

The Court: All right, the Counsel states he will connect this individual up. I will receive it subject to its being stricken out if it is not connected up with the company.

Mr. McClennen: The best information we can get at the moment is that Mr. Jackter, if it is this one, was the assistant to the General Sales Manager of Columbia at some period. I don't know whether at this time or not. We cannot go beyond that at this time.

The Court: What talk did you have with him?

Mr. McClennen: The same objection.

[fol. 1980] A. I asked the gentlemen if we were going to be given permission to buy or get a contract for their product for this season, that is, the same season that we have been talking about, and he said that he was not in a position to do any negotiating at that time with us.

By Mr. Wright:

Q. Was there any further conversation?

A. No.

Q. Did you hear from him later?

A. No.

Q. Who else did you see about major product on this trip?

A. I saw Mr. Smith of Warner Bros. What his title was I don't know.

Q. What was the conversation you had with him?

Mr. McClennen: Was this Andy Smith?

Mr. Wright: Andy Smith is right.

Mr. McClennen: The same objection.

The Court: Overruled.

A. And asked him the same question, if we would be permitted to buy or could expect to get consideration for that season's product of Warner Bros. He advised me that they were negotiating with Schine at that time, that there might be a possibility of splitting the product, that we would hear about it later, and we heard nothing further. [fol. 1981] That was the end of the conversation.

Q. Was there any one else you saw about major product on that trip?

A. There was a man named Hill. I am trying to remember which company he was connected with.

The Court: Where did you see him? Do you know where it was?

The Witness: In the New York office, in his office.

The Court: What particular place was it?

The Witness: I wouldn't remember. I made all these calls in a short period of a few days, so that running back and forth I wouldn't remember. I can't remember at the moment. I contacted all of those eight distributors.

Q. If you name the eight distributors maybe that will help you remember it.

A. Metro-Goldwyn-Mayer, RKO, Columbia, Warner Bros., Paramount. That would leave Universal and——

The Court: Columbia?

The Witness: No, we covered Columbia with Mr. Jackter.

Mr. Wright: He named all but two, I believe.

The Witness: I named all but two, Universal, and I am trying to think of the other one. Perhaps if I took a piece of paper and pencil and wrote these things down that would help. (Writing on sheet of paper.) I have got the names [fol. 1982] of the two companies I called on that I haven't reported on before. Fox and Universal. I saw Mr. Hill, but I can't remember which company it was that——

Q. You don't remember whether he was with Fox or with Universal?

A. I would have to guess. I also saw a man in the same position at the Fox Company, but I can't place these men in their respective companies.

Q. When you went to the Fox Company who did you ask to see, do you recall that?

A. May I refresh my memory from my own personal notes that I have in my pocket on these calls?

Mr. Wright: Surely.

Mr. McClennen These are notes that you made at the time in 1934, are they?

The Witness: No, these are my own personal notes that I have jotted down since I came to Buffalo.

Mr. McClennen: In 1944?

The Witness: Yes. Mr. Clarence Hill was in the Fox organization.

By Mr. Wright:

Q. What was the conversation you had with him?

Mr. McClellen: This I object to. There is nothing to indicate that at this time Mr. Hill was in any position of [fol. 1983] authority in Fox. In the ensuing winter, that is the winter of 1934 to date, it has appeared that Mr. C. A. Hill was assistant to the Eastern Division Sales Manager, but nothing as to what his position was in the summer of 1934.

Mr. Wright: I take it his position on this date, whatever it may have been, can subsequently be developed. That, it seems to me, would save time to hear the conversation at this time, subject to being stricken.

Mr. McClennen: I submit that that should not be done. This course was pursued so that we might know who was claimed to be what in what period. The periods were selected by the Government and we had the check to see whether there was any inaccuracy or not. In the case of Columbia unfortunately it has not been done yet. We have done the best we could under the circumstances. But here Fox has been covered and I submit they should not be taken at all.

Mr. Wright: If the Court please, I submit that the purpose of covering those names was, of course, to spe- [fol. 1984] cifically identify those who were mentioned in the memorandum. It may appear at any time that some witness had a conversation with somebody we didn't have on our list and we would certainly expect to be able to show who he was if, in fact, he was the representative of one of these companies. I do not see that there is any finality about what was done by way of identifying these officials.

Mr. McClennen: We are not suggesting that there was any finality. We are suggesting that we had urged the importance of having this information in definite form before the Court so that we could know about it in advance. This conversation was before the time that it appears that Mr. C. A. Hill became assistant to the Eastern Division Sales Manager. We submit that in the description of the duties that was given there was no authority in Mr. Hill, even at his highest position, to speak in this way.

The Court: What do you say your information is as to what position he did hold?

[fol. 1985] Mr. McClennen: The testimony of Mr. Jenkins was that from the winter of 1934 to the present time he was assistant to the Eastern Division Sales Manager, and that is all that we have except the inference that we may draw that prior to that time that he was in no greater position.

The Court: I think, as a matter of convenience, we ought to receive the testimony, but, as you pointed out, the authority to make such a commitment has got to be shown.

Mr. Wright: It may appear, if the witness is permitted to answer, that the statement is not one which requires any authority anyway.

The Court: You say a man by the name of Hill. What conversation did you have with him?

Mr. McClennen: Same objection.

The Court: Overruled.

The Witness: I thought I had given that testimany, your Honor, but the conversation was that I asked whether or not we would have an opportunity of buying that season's products, and I believe Mr. Hill held out little opportunity for it. At least he gave me no definite assurance on that call [fol. 1986] that we could get consideration.

By Mr. Wright:

Q. Do you recall who you saw at Universal?

A. I didn't call at Universal.

The Court: You didn't call there?

The Witness: No, sir.

Q. And did you say you had called on anybody at United Artists?

A. I saw Mr. Gold at the United Artists.

Q. What was the conversation with him?

Mr. McClennen: The same objection.

The Court: Who is he?

Mr. Wright: Mr. Harry Gold I think was Eastern Sales Manager.

The Court: Objection overruled.

A. Mr. Gold advised me, when I asked him if we could negotiate for that season's pictures, that they were negotiating with the Schine organization and that they had not signed yet, but I would have to wait the decision of their negotiations with the Schine organization. That was the end of the conversation with Mr. Gold and I never heard from him after that.

The Court: What was that?

The Witness: That was the end of my conversation with Mr. Gold and I heard nothing later from him.

Q. In these conversations that you have just referred to, [fol. 1987] what, if anything, was said with respect to a particular run, whether it was first or second run of the product?

A. At the time I was talking with these various gentlemen I was endeavoring to secure first-run for that season.

Q. There was no discussion of a second-run possibility?

A. Not with them.

Q. Then what, if any, major product did you have for the Palace during the 1934-1935 season?

A. Will you clear up your question? You are referring now to the pictures we played in 1934 or the 1934-1935 contract?

Q. I mean current releases of the 1934-5 season, regardless of when you may have played them.

A. As I recall, we didn't have any during 1934.

Q. Any 1934-1935?

A. Until, I believe, in the winter of that year, or late fall or winter——

The Court: Which year, 1934 or 1935?

The Witness: 1934.

By Mr. Wright:

Q. It would be the winter of 1934-1935?

A. Yes, the winter of 1934-1935. We succeeded in getting a Columbia contract.

Q. For a first-run?

A. First-run. We started playing pictures under that [fol. 1988] contract, if I recall correctly, in the winter of 1934-5.

Q. And did you have any other 1934-1935 major product?

A. We had a small number of United Artists pictures, under first-run contract with them. That is the best of my recollection.

Q. Those were 1934-1935 releases?

A. Yes, sir.

Q. In the spring and summer of 1935 were you solicited by any of the major companies that you have mentioned for 1935-1936 contracts?

A. No, sir.

Q. How about specifically with reference to Columbia and United Artists?

A. We solicited Columbia. Columbia didn't solicit us.

Q. Who did you see?

A. Are you speaking of the year we got the contract or the following year?

Q. I am referring now to any efforts that you may have made to get pictures for the 1935-1936 season. As I understood your former testimony you had the 1934-1935 Columbia pictures, which you began to play in the winter of 1934-1935?

A. That is right. We had no 1935-1936 contract with any of the majors.

Q. What, if anything, did you do to secure a continuance [fol. 1989] of your Columbia run?

A. We again wrote all the Eight Majors, requesting permission——

Q. No. I asked you with specific reference to Columbia.

A. I don't recall any specific effort we put forth in Columbia's case, other than any of the others.

Q. But in any event you got none of the eight companies for the 1935-1936 season?

A. No.

Q. Does that statement apply to second as well as first-run?

Mr. McClennen: That is objected to.

The Court: He may state. Did you get any second-run for 1935-1936?

The Witness: We got some second-run pictures from RKO.

By Mr. Wright:

Q. Any of the others?

A. If you limit me to specific dates on there it is difficult for me to answer, but if you allow me to say this, and stop me if I go too far, during the period or periods——

Mr. Rogers: One moment. We do not want any volunteer testimony.

The Court: No. Just answer the question.

Q. Just state what, if any, product that you had second-run there at the Palace during any seasons?

Mr. McClennen: That is objected to as too general. We [fol. 1990] have got down to the season of 1935-1936 and I submit that the question should not be so general as that.

The Court: I assume you are inquiring as to 1935-6?

Mr. Wright: The last question I asked him was broader. I asked him what if any second-run product he got from the major companies during any of the three seasons that he was connected with the Palace-Theatre operation.

The Court: 1932 to 1936?

Mr. Wright: Yes.

Mr. McClennen: That is objected to as too general. It is not often, as your Honor knows, that we know season-by-season.

The Court: I will let him state first what second-run pictures he had during that period from these companies, and it can later be shown what they were.

The Witness: We obtained some second-run pictures during that time.

[fol. 1991] Q. From what company?

A. I believe we got some from R.K.O., Columbia—I can't remember the exact exchanges, but we got some others.

Q. Well, did you have from any of them during that period a regular season's second-run——

A. No.

Q. Contract?

A. No.

Mr. McClennen: That is objected to, if your Honor please.

The Court: Just a moment. Do you mean for an entire season, do you mean?

Mr. Wright: Yes, a second-run contract for an entire season's releases, current releases from any of them.

The Court: I will let him answer; objection is overruled.

The Witness: No, sir.

Q. Then when was it that you terminated your connection with the Palace Theatre?

A. I believe it was April, 1936.

Q. That was when the theatre was sold?

A. That is when the estate of my father sold its interest in the theatre company.

Q. When did your father die?

A. December, 1933.

[fol. 1992] The Court: You say it was sold when?

The Witness: April, 1936, as near as I can remember the exact date.

Mr. Wright: You may cross-examine.

Mr. McClennen: If your Honor please, before cross-examination begins might we have a few minutes' recess?

The Court: Yes, surely.

(Short recess.)

Mr. Wright: If the Court please, I would like to interrupt a moment to have a witness, who has been sitting here from the Lockport paper, identify this book. Then we have agreed with counsel that either side may tomorrow, or whenever it is convenient, read into the record such excerpts as may be offered in evidence.

Mr. McClennen: Assuming, if the Court please, when they are referred to, they are admissible in character. As a matter of fact, I don't know as it is necessary to put this lady on the stand if this can be marked for identification.

Mr. Wright: She wants the book back, of course.

The Court: I thought you wanted to use it to look over [fol. 1993] tomorrow.

Mr. Wright: Yes, we do want to use it, but we don't want to put it into the record. All we want to put into the record is such parts as we may offer.

Mr. McClennen: Well, we stipulate that this volume is a volume of the Union Sun and Journal, publications, of Lockport, New York, from August 1, 1933, to November 29th, 1933. That may be marked.

Mr. Wright: I thought it was December.

Mr. McClennen: Well, it is understood that Mr. Wright assumes control of the book and that we may both look at it as we please.

The Court: All right.

(Volume of newspaper, referred to, was marked as Plaintiff's Exhibit No. 654 for identification.)

Cross-examination.

By Mr. Rogers:

Q. Now, Mr. Dickinson, do you recall when the Palace Theatre was built?

A. I wasn't there at the time it was built.

Q. You don't know?

A. I only know when it was opened.

[fol. 1994] Q. Do you know when it was opened?

A. 1925.

Q. And do you know when the Rialto Theatre was built, or weren't you in Lockport at that time?

A. No, I wasn't there at the time it was changed from the rink to the theatre.

Q. Don't you know it was entirely rebuilt and wasn't just changed from a rink to a theatre? Now, answer that question. Isn't that so?

A. I still say it was changed from a rink to a theatre.

Q. You do say that?

A. Yes, sir.

Q. You weren't there when it was built?

A. I was there various times after it was opened, but not the——

Q. You weren't there when it was built?

A. No.

Q. As a rink it had no projection booth?

A. No.

Q. And had no screen?

A. I don't see why it should.

Q. Tell me what was in it.

A. I couldn't; I wasn't there.

Q. Did you ever visit it?

A. Yes, I skated in it.

[fol. 1995] Q. And visited the theatre after it was built?

A. Yes, sir.

Q. Answer my question as to the physical properties that were in it; when it was a skating rink it had no projection booth or any projection equipment, did it?

Mr. Wright: For heaven's sake——

The Court: We can almost take judicial knowledge or notice that a skating rink wouldn't have it.

Mr. Rogers: Your Honor may take judicial notice of that, but——

The Court: That might be going too far.

Mr. Rogers: Well, skating rinks have had projection equipment in them and have had screens and they have given them a combination skating and motion picture program. It had no seats in it, did it?

The Witness: I would say I can't answer those questions, because a skating rink might have had a screen in it, I don't know.

Q. You don't know, then?

A. No.

Q. Now, prior to the date the Palace Theatre was opened, the Rialto had been operating, hadn't it?

A. I believe so.

Q. And the Rialto had been showing the pictures of all [fol. 1996] these eight major companies, hadn't it?

A. I don't know, I wasn't in town.

Q. Did you visit the town at any time prior to the time the Palace was finished and the Rialto Theatre was in operation?

A. I believe so.

Q. Did you go to the Rialto Theatre during those periods?

A. The best I can answer, the best answer I can give you to that is that I went to the Rialto Theatre after it was changed from a skating rink. I could not even give you the year I went to it, because during all that time I only visited Lockport then only a day or so at a time during all those years.

Q. Now, when you came to Lockport to take over the operation of the Palace Theatre, when was that?

A. I didn't come to Lockport to take over the operation of the Palace Theatre.

Q. You said you did operate the Palace Theatre from 1932 to 1936.

A. I believe I said I came to Lockport in about July, 1932 to go into business with my father. I knew of nothing connected with the theatre until I got there.

Q. You got to Lockport in 1932, did you?

A. That is correct.

Q. At that time you took over the operation of the Palace [fol. 1997] Theatre in conjunction with Mr. Dipson, didn't you?

A. In December.

Q. Whether it was December or any other time it was in 1932, wasn't it?

A. That is right.

Q. At that time was the Palace Theatre, in December, 1932, was it in operation, or was it closed?

A. I believe it was in operation for perhaps a few days in December.

Q. By whom was it operated that time?

A. The Schine people.

Q. Then they left the premises and the house was dark for how long?

A. I would say a couple of weeks.

Q. Now, when you opened the Palace Theatre, the Rialto Theatre was an operating theatre, wasn't it?

A. That is right.

Q. And it was showing the pictures of all major companies, wasn't it?

A. I don't know anything about that. I didn't pay any attention to what they were showing at the time we opened.

Q. You mean you didn't even inquire what product the Rialto Theatre was showing even though you were about to open the Palace and operate that theatre, and you needed [fol. 1998] product?

A. You asked what product they were showing.

Q. Yes.

A. You didn't ask me what product they had. I know what they were showing.

Q. I am asking you what product they were showing.

A. Major product, I don't know which one, during that small period of time in December.

Q. Don't you know during that period of time they were showing the eight major products?

A. They weren't showing Metro when we got the theatre in December.

Q. Other than Metro were they showing all the others?

A. I assume they had them. I don't know whether they were showing at that particular time—you are shortening it to a couple of weeks in December.

Q. When did you come to Lockport in 1932?

A. July or June.

Q. When you got there in June——

A. I never went to the theatre.

Q. You mean from June to December you didn't go to the Rialto Theatre?

A. No.

Q. And you didn't know what they were showing?

A. No.

[fol. 1999] Q. Haven't any idea what they were showing?

A. No.

Q. When you decided to form the Reliance Theatres, Inc., to take a lease on the Palace Theatre, you did invite Mr. Dipson to become your partner, didn't you?

A. Are you putting that on a personal basis?

Q. Well, I put it on——

A. As a connection of mine?

Q. I put it on any basis; did you invite him?

The Court: Did you invite him?

The Witness: The arrangement was made between my father and Mr. Dipson. I had no authority to invite anybody.

[fol. 2000] Q. Well, in other words, did your father form this Reliance Company or did you form it?

A. No, sir, my father and Mr. Dipson formed the Reliance Company.

Q. And Mr. Dipson at that time in 1932 was a big circuit operator of motion picture theatres, wasn't he?

A. I don't know.

Q. You know nothing about that either, do you?

A. No.

Q. You know nothing about his activities at that time?

A. No, sir.

Q. Or in 1933 or 1934?

A. When you say a big circuit operator I say no, sir. If you ask me whether he had any other theatre interests I say yes.

Q. Do you know what other theatre interests he had at that time?

A. Outside of perhaps a theatre in Medina and one in Batavia, something like that, I don't know any of the details of what Mr. Dipson owned or controlled or operated.

Q. You had dealings with Mr. Dipson from 1932 to 1936, didn't you?

A. Mr. Dipson was not President of Reliance Theatres after April of 1933.

[fol. 2001] Q. I am not asking you whether he was President. I merely asked you, didn't you have numerous dealings with Mr. Dipson from 1932 to 1936?

A. No, I didn't have any dealings with Mr. Dipson. I saw him quite often but I had no dealings with him.

Q. Didn't you have any dealings in connection with the Palace Theatre with him when you saw him during these periods?

A. Not after April, 1933. My dealings were entirely with his nephew from that time.

Q. When?

A. April, 1933.

Q. You say you had no dealings at all with Mr. Dipson after April of 1933?

A. If you could define the word "dealings" I could answer you.

Q. Used in its broad sense. You know what the word "dealings" means. You are American-speaking, English-speaking. Now, take it in its broad sense.

The Court: Doing business with him I suppose he means?

Mr. Rogers: Yes, certainly.

A. Only in an advisory sense.

Q. When you say in an advisory sense, just what do you mean by that?

A. In a broad sense, asking questions concerning the theatre business that I didn't know the answers to, and [fol. 2002] consulting with him as I might with any man who had experience in the theatre business which I might not of had yet.

Q. You went to him on frequent occasions for advice and guidance, didn't you?

A. Yes, sir.

Q. Prior to 1932 did you ever operate a motion picture theatre?

A. No, sir.

Q. Wasn't it for that reason that you called Dipson in to associate himself in the operation of that Palace Theatre?

A. I didn't call Dipson.

Q. Or that he was called in? Isn't that so?

A. I would assume so, yes.

Q. Wasn't it for that reason that Grafiades was called in?

A. That I can't answer.

Q. You mean you did not call Grafiades in?

A. No, sir.

Q. Your father called him in?

A. No, sir.

Q. Who called him in?

A. I assume Mr. Dipson.

Q. And Mr. Dipson put him in?

A. Yes, sir.

Q. What was Mr. Dipson's interest in the theatre?

A. An equal share with my father.

[fol. 2003] Q. That is, they each had 50% of the stock of the Reliance Company?

A. I assume so.

Q. What interest did Mr. Grafiades have?

A. I can't tell you that exactly. I was always under the assumption that he took over his uncle's interest.

Q. Was that as much as you knew about it?

A. The actual details, yes.

Q. You were Vice President of the Company?

A. That is correct.

Q. You didn't know who the stockholders of the company were?

A. Yes.

Q. You did know or you didn't know?

A. I did know.

Q. If you did know, will you tell me what interest Mr. Grafiades had in the company?

A. I just answered that by saying I believe it was Mr. Dipson's interests. What the details of his interest were, outside of the original arrangement, I don't know or don't remember.

Q. Isn't it a fact that Mr. Dipson had 50% of the company?

A. I believe so.

Q. Mr. Grafiades had 16⅔ interest of the company?

A. I wouldn't remember that.

Q. You wouldn't contradict that, would you?

[fol. 2004] A. No, I wouldn't remember.

Q. Before you opened the Palace Theatre the Schines were the regular customers before that of the various eight companies, weren't they?

A. I believe so.

Q. Do you recall who was the tenant of the Palace Theatre prior to the time Schine operated the theatre?

A. Operated that theatre?

Q. Yes, the Palace.

A. I believe it was the Paramount-Publix Corporation.

Q. Or one of its subsidiaries?

A. Yes, sir.

Q. Do you recall during that same period when the Palace was operated by this Paramount Company, or a subsidiary, who had the High Art Theatre?

A. No, I don't.

Q. Well, don't you know that Paramount also had the High Art Theatre?

A. I don't know that. I wasn't there at that time.

Q. Do you know who originally closed the High Art Theatre?

A. No, I don't know that.

Q. Didn't you know that Paramount originally closed the High Art?

A. No, I didn't know that.

Q. Don't you know that when Schine and the Paramount [fol. 2005] together took over the operation of the Palace Theatre that the High Art was closed and was kept closed?

A. All I know is that the High Art was closed for seven years prior to our opening the theatre. Who shut it, or why it was shut, I have no idea, nor was I interested.

Q. Prior to the time of your taking over the Palace Theatre the two theatres operating in that town, actually operating, I mean, were the Palace and the Rialto; is that correct?

A. Yes, sir.

Q. And they were operated as a Paramount-Schine operation; is that right?

A. I believe so.

Q. When you called on these various exchange managers or district managers that you testified to, and they told you that they were negotiating with Schine, you knew that they were negotiating with a company that was their present customer at that time, didn't you?

A. With the exception of Metro.

Q. Let us say with the exception of Metro. With reference to all the others you called on you knew that they were dealing with their present customer?

A. They told me so.

Q. They told you that, didn't they?

A. Yes, sir.

[fol. 2006] Q. They told you that Schine had been their customer for a number of years prior thereto in Lockport; is that right?

A. I don't know as they told me how many years.

Q. You knew that, didn't you?

A. I merely could assume it, because I wasn't there.

Q. Do I understand you to testify—if not please correct me—that you got none by way of first-run product for the 1935-1936 season; is that right? You so testified, didn't you?

A. I believe so.

Mr. Rogers: Mr. Wright, do you have the United Artists contracts?

Mr. Wright: I think they are being prepared for identification by Mr. McGrath. The ones that we have subpoenaed, do you mean?

Mr. Rogers: Yes.

Mr. Wright: Those, I think, have been collected in a drawer, which is downstairs.

Mr. Rogers: Could we have them, please?

Mr. Wright: Why, yes, certainly.

Mr. Rogers: While I am interrogating Mr. Dickinson?

Mr. Wright: They have not been identified, of course.

Mr. Schilz: I am not certain that Mr. McGrath has produced any United Artists contracts for Lockport.

[fol. 2007] The Court: Look it up and see.

By Mr. Rogers:

Q. Now I show you this paper, and at the foot of that paper there is "Reliance Theatres, Inc., by Peter Grafiades, President." Do you recognize that signature?

A. Yes, sir.

Q. That is Mr. Grafiades' signature?

A. Yes.

Q. And he was President at that time?

A. Yes.

Q. Do you remember anything about that contract, or did you not negotiate it?

Mr. Wright: Has it been marked?

Mr. Rogers: I just wanted to know whether he negotiated that.

Mr. Wright: I just wanted to be sure whether we knew what we were talking about.

The Court: Which one do you refer to?

Mr. Rogers: I just showed him this paper. I will identify it in a moment.

By Mr. Rogers:

Q. You say you did not negotiate that contract?

A. No.

Q. And that Mr. Grafiades negotiated that; is that right?

A. Apparently. What is the date of that contract?

Q. There are two dates. The application date is February [fol. 2008] 27, 1935. The contract date is March 1, 1935.

A. Is that the full contract for that season or just certain pictures?

Q. It says 1935-1936 season.

A. How many pictures does it cover?

Mr. Rogers: Now I wish to offer this contract in evidence.

Mr. Wright: You are referring to this one sheet. Is that what you had marked?

Mr. Rogers: I am referring to that one contract.

Mr. Wright: We have no objection.

The Witness: Your Honor, is it permissible for me——

The Court: No.

(The contract, Columbia Pictures, for 1935-1936 season, referred to was received in evidence and marked as Defendants' Exhibit D-47.)

Q. Now I also show you contract for special production, Abdul, The Damned, Palace Theatre, Lockport, application date, May 26, 1936, and approval date, June 4, 1936, and I ask you, does that likewise bear the signature of Mr. Grafiades?

Mr. Wright: If the Court please, this is after he left the company and after the period he covered in his testimony. I do not see that it is proper cross-examination.

Mr. Rogers: This is the 1935-1936 year. This is Mr. [fol. 2009] Grafiades' signature.

Mr. Wright: The date you read was after the date when Mr. Dickinson was associated with the Company. The only thing we examined him about was what happened during that period. He does not know what Mr. Grafiades may have done after that time.

By Mr. Rogers:

Q. Let us see——

The Court: He left in the spring of 1936?
Mr. Rogers: The spring of 1936.

Q. Weren't you still connected with the Company?
A. Not on the date you read.
Q. I read two dates.
A. Neither one.
Q. In May or June of 1936?
A. No, sir.
Q. You weren't connected with the Company?
A. No, sir.
Q. I show you a contract with Columbia Pictures for the season 1934-1935, dated February 27, 1935, application date, and approved date, March—it looks like March 15, 1935. I ask you if that is the signature of Mr. Grafiades?
A. That is right.
[fol. 2010] Q. And he was the President of Reliance at that time?
A. That is right.
Q. Do you know anything about that contract?
A. I testified that we had the contract at that time.
Q. I say, do you know anything about the contract?
A. Well, I knew about it.
Q. Did you negotiate it?
A. Well, only that I sat in on hearings on it.
Q. I say, did you negotiate it?
A. Did I sign it?
Q. No. Did you negotiate the terms of the contract or did Mr. Grafiades do that?
A. I was with him on several occasions when it was discussed but I would say that he did most of the negotiating.

Mr. Rogers: I offer that in evidence.
Mr. Wright: No objection.

(The contract, Columbia Pictures, 1934-1935 season, referred to was received in evidence and marked Defendants' Exhibit D-48.)

The Witness: When would that *that* date was, Mr. Rogers?
Mr. Rogers: It looks something like March 15, 1935, I said.

The Witness: Not 1934?

Mr. Rogers: 1935.

The Witness: That is when it was approved, 1935.

[fol. 2011] By Mr. Rogers:

Q. I show you contract with Columbia Productions, bearing date March 12, 1934, and approved March 14, 1934, and ask you did you have anything to do with the negotiating of that contract?

A. In the same capacity, yes.

Q. I mean you sat in on some of the conferences, but Mr. Grafiades really negotiated the contract?

A. And signed it. And it covers how many pictures?

Q. It speaks for itself. Do you remember that contract?

A. Nine pictures.

Q. That was first-run, wasn't it?

A. Yes, I assume so. I haven't checked it to find out.

Q. Well, check it.

A. That is right.

Q. First-run is right?

A. Yes, first-run.

Mr. Wright: Do the release dates of the pictures appear there? I just wanted to be sure that an attempt was not being made to represent this product as current product if it does not happen to be current product.

Mr. Rogers: I am not making any representations. I am just offering contracts in evidence with the product he got. Any objection?

[fol. 2012] Mr. Wright: None at all.

(The contract, Columbia Productions, dated March 12, 1934, referred to, was received in evidence and marked Defendants' Exhibit D-49.)

[fol. 2013] Mr. Rogers: Mr. Wright, were you able to get those Universal contracts for me?

Mr. Wright: What was that?

Mr. Rogers: Do you have the Universal contracts?

Mr. Wright: They are down in the office. We will bring up whatever we have got.

Mr. Rogers: And were those United Artists sent up, do you know, Mr. Wright?

Mr. Wright: Yes, they are all here.

Mr. Schilz: We called for second-run contracts only under our subpoena and that is all that were produced under paragraph 5 of the subpoena.

Mr. Rogers: You have no first runs?

Mr. Schilz: I have here all they produced under the subpoena.

Mr. Wright: That would include the first-run Schine contracts; they should be there.

By Mr. Rogers:

Q. Do you recall receiving the original of this paper I show you?

A. Who signed it?

Q. Who signed it?

A. Who signed it?

The Court: What is your answer?

[fol. 2014] Q. What is the answer?

A. You asked me if I received this?

Q. Yes, if you recall receiving it?

A. I believe I have.

Mr. Rogers: I offer it.

The Witness: What was the date of that letter again?

Mr. Rogers: January 16th, 1934.

Mr. Wright: May I ask the purpose of the offer?

Mr. Rogers: Why, certainly, the purpose of the offer is to show that there was an offer made to them of product, contrary to the testimony of this witness. They are offering a first, second and third-run product there.

Mr. Wright: This letter doesn't show anything of the sort. It merely contains an assertion. I have no objection to it being shown to the witness to refresh his recollection, but it isn't evidence of what happened.

The Court: It is evidence of notice of any letter on the offer of first, second and third-run.

Mr. Wright: This is a recital of what he says they have done. This isn't an offer as I read it, at all.

Mr. Rogers: It is definitely an offer.

The Court: "I have something to offer you on first-run."

[fol. 2015] Mr. Rogers: Exactly. He asked him to step in and make a deal.

Mr. Wright: I beg your pardon.

Mr. Rogers: I grant your pardon, Mr. Wright. That one will be Exhibit 50. Now, it is a letter bearing date January 16th, 1934, addressed to Pete Grafiadas, signed United Artists by J. H. K., Sales Manager.

(Letter bearing date of January 16th, 1934, addressed to Pete Grafiadas, signed United Artists by J. H. K., Sales Manager, referred to was marked as Defendants' Exhibit No. 50 in evidence.)

By Mr. Rogers:

Q. I show you this telegram and ask you do you recall having seen that and receiving it?

A. I believe so, because I recall playing the last one of the pictures referred to in this copy of telegram.

Mr. Rogers: I offer it in evidence.

Mr. Wright: No objection.

(Thereupon telegram referred to was marked as Defendants' Exhibit 51 in evidence.)

Mr. Rogers: This is a telegram bearing date January 30th, 1934 from Al. Lichtman, United Artists Corporation, [fol. 2016] to Reliance Theatres, reading as follows: "Your application for following contract is hereby approved. 'Bitter Sweet', 'Tonight or Never', 'Scar Face', 'Cock-O-Air'."

Q. I show you this copy of a wire and ask you if you recall having received that?

A. I can assume so, because we played the picture "Arrow Smith."

Q. And that was played first-run, wasn't it?

A. I wouldn't state right now.

Mr. Rogers: I offer it.

Mr. Wright: No objection.

(Thereupon wire referred to was marked as Defendants' Exhibit No. 52 in evidence.)

By Mr. Rogers:

Q. Now, Defendants' Exhibit 52 is a telegram bearing date January 31, 1934, Al. Lichtman, United Artists Corporation to Reliance Theatres, Inc., "Your application for contracts 'Arrow Smith' and 'Unholy Garden' is hereby approved." Mr. Dickinson, with reference to Defendants' Exhibit 51, covering approval of "Bitter Sweet", "Tonight or Never", "Scar Face" and "Cock-O-Air", those pictures were played by you first-run, weren't they?

[fol. 2017] A. I remember the first, "Bitter Sweet." I don't remember whether we played it first-run or not. The others I am not familiar with.

Q. I show you a copy of a telegram and ask you if you recall having received that?

A. Same answer.

Q. You do?

A. Yes, sir.

Mr. Rogers: I offer it.
Mr. Wright: No objection.

(Thereupon telegram referred to was marked as Defendants' Exhibit No. 53 in evidence.)

Mr. Rogers: Defendants' Exhibit 53 is a telegram bearing date February 26th, 1934, from Al. Lichtman, United Artists Corporation, to Reliance Theatres, Inc., "Your application for contracts 'Emperor Jones' 'Henry the VIII,' and 'Secrets' is hereby accepted."

Q. I show you this telegram and ask you if you recall having received that?

A. Same answer.

Mr. Rogers: I offer it.
Mr. Wright: No objection.

[fol. 2018] (Thereupon telegram referred to was marked as Defendants' Exhibit No. 54 in evidence.)

Mr. Rogers: Defendants' Exhibit 54 is a telegram dated May 10th, 1934, from Al. Lichtman, United Artists Corporation, to Reliance Theatres, Inc., "Your application for contract 'Catherine the Great' is hereby approved."

Q. I show you this telegram and I ask you do you recall having received that?

A. Yes, but I am not certain that we played that.

Mr. Rogers: I offer it.
Mr. Wright: No objection.

(Thereupon telegram referred to was marked as Defendants' Exhibit No. 55.)

The Court: Can we save time by combining our inquiries instead of going over several documents, so we can get them in the record?

Mr. Rogers: I have no objection to doing it that way if we can do it that way.

Mr. Wright: If the Court please, if the purpose of this is to show what pictures the Palace played, we have in answer to interrogatories prepared by United Artists, which we intended to have Mr. McGrath identify, which [fol. 2019] shows exactly what pictures were played at the Palace, High Art and Rialto during the seasons in question and when and what rentals were. I submit that document will do this all at once.

Mr. Rogers: Not having had access to those documents and not being able to bring this witness back here, I am afraid I will have to take advantage of what I have at the moment.

Mr. Wright: I give you my assurance we will ask Mr. McGrath to identify the document I have just described.

The Court: That is Mr. McGrath representing United Artists?

Mr. Wright: Yes, he hasn't identified the United Artists exhibits.

The Court: My thought was he has identified several of those, and the others can be identified.

Mr. Wright: I think we will ask Mr. Rose to identify similar exhibits for Columbia, and also Mr. Murray to identify a similar compilation for Universal, although Universal will not go back beyond 1934-35 season.

Mr. Rogers: Will the others go back?

Mr. Wright: They may not, but I will check.

[fols. 2020-2022] Mr. Rogers: That is what I feared. There is a cut-off and I may not be able to get over on their document.

Mr. Wright: Why don't you proceed?

Mr. Rogers: Exhibit 55 is a telegram dated June 12th, 1934, from Al. Lichtman, United Artists Corporation to Reliance Theatres, Inc., "Your application for contract 'Sorrow and Son' is hereby approved."

Mr. Wright: Columbia begins with the——

The Court: We will save time if you get together on it.

Mr. Rogers: If your Honor took a recess until 10 o'clock tomorrow morning, that would afford us an opportunity to get together and save a lot of your Honor's time.

The Court: Very well, we will suspend now.

(Whereupon a recess was taken until Thursday, October 5th, 1944, at 10 o'clock, a. m.)

[fol. 2023] UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF NEW YORK

Civil 223

UNITED STATES OF AMERICA,

vs.

SCHINE CHAIN THEATRES, INC., et al., Defendants

Continuation of trial before Honorable John Knight, United States District Judge for the Western District of New York, October 5th, 1944, at 10 o'clock a. m.

APPEARANCES:

Robert L. Wright, Esq., John F. Clagett, Esq., Harold L. Schilz, Esq., Special Assistants to the Attorney General, and Milton Kallis, Esq., Special Attorney, in behalf of the United States.

Edward F. McClennen, Esq., Willard S. McKay, Esq., Saul E. Rogers, Esq., Arthur E. Whittemore, Esq., Arthur J. Homan, Esq., and Howard M. Antevil, Esq., appearing for Defendants.

[fol. 2024] PROCEEDINGS

Mr. Wright: I assume you are going to put those back in the folders in the order in which they were, when you get through?

Mr. Rogers: We are going to offer them in evidence.

Mr. Wright: They were handed to you in folders, marked by seasons, and for convenience we would like to have them kept that way.

Charles E. Dickinson, Jr., resumed the stand on behalf of the Plaintiff, having been previously sworn, was examined and testified further as follows:

Cross-examination (continued).

By Mr. Rogers:

Q. I show you a copy of a letter bearing date June 14, 1934, from Bykowski, United Artists Corporation, addressed to Pete Grafiades. Do you recall having received that letter?

The Court: I think we have spent a needless amount of time in inquiries as to those letters. Unless there is some special reason for it, as I said last night, I think you should [fol. 2025] go over these exhibits, have the witness identify them, and offer them, unless there is some supplementary inquiry to be made.

Mr. Rogers: These letters do not come within what Mr. Wright suggested yesterday. All Mr. Wright suggested was a stipulation on the actual play-offs of pictures.

Mr. Wright: If the Court please, I said——

The Court: I was not speaking about a stipulation. I was speaking about the question of the saving of time, that is all.

Mr. Rogers: This shows a continuous course of conduct.

The Court: The witness had better go through them and select those of which he has knowledge.

Q. I want you to take these letters, and will you look at these letters and telegrams, and tell us whether you recall having received them?

A. This top one I already testified to yesterday that the telegram——

The Court: Look through them and select those of which you have knowledge.

Mr. Rogers: Is it your Honor's idea that I should offer these as one lump exhibit then?

The Court: I do not care. I did not want you to examine [fol. 2026] him specially as to each one. If there is a group of them that he can identify you can handle it that way and save time.

Q. What about this one (showing copy of letter to witness)?

A. I don't recall seeing that. There seems to be a repetition in some of these.

The Court: Lay those aside as to which there is any question and you can take those up later.

Q. With reference to the following, letter June 14, 1934, from Bykowski, United Artists, addressed to Pete Grafiades, you do recall that, and the telegram dated June 23, 1934, from Al Lickman, United Artists, to Reliance, and letter November 7, 1934, United Artists Corporation, Secretary to Mr. Kaplan, to Mr. Peter Grafiades, and letter January 18, 1935, Bykowski, United Artists, to Peter Grafiades; letter September 21, 1935, United Artists Sales Manager to C. E. Dickinson, and letter November 13, 1935, A. W. Kelly, Vice President, United Artists Corporation, to Reliance Theatres; those I recited are letters and a telegram which you recall having received?

A. I believe so, yes, sir.

Mr. Rogers: Will you mark those in the order in which I called them?

[fol. 2027] (Letter, June 14, 1934, referred to was marked Defendants' Exhibit D-56 in evidence.)

(Telegram, June 23, 1934, referred to was received in evidence and marked Defendants' Exhibit D-57.)

(Letter, November 7, 1934, referred to was received in evidence and marked Defendants' Exhibit D-58.)

(Letter January 18, 1935, referred to was received in evidence and marked Defendants' Exhibit D-59.)

(Letter September 21, 1935, referred to was received in evidence and marked Defendants' Exhibit D-60.)

(Letter November 13, 1935, referred to was received in evidence and marked Defendants' Exhibit D-61.)

[fol. 2028] Mr. Wright: We do not have any objection to these on the ground of relevancy or materiality, except for the fact a number of them apparently just duplicate material which will otherwise go in the record in the form of contracts. A number of them are simply letters confirming contracts. It seems to me it is cluttering up the record to put in both the confirmation and contracts.

The Court: Overruled. Received.

Mr. Rogers: Letter of June 14th, 1934, your Honor, is Defendants' Exhibit 56; telegram of June 23rd, 1934, is

Defendants' Exhibit 57; letter of November 7th, 1934 is Defendants' Exhibit 58; letter of January 18th, 1935 is Defendants' Exhibit No. 59; letter of September 21st, 1935 is Defendants' 60 and letter of November 13th, 1935 is Defendants' Exhibit 61.

Q. Now, with reference to the letters I hold in my hand in a group, and which you have handed to me, it is my understanding that you do not have any recollection of having received these letters, is that right?

A. My memory isn't clear enough to give you a definite answer that I did receive them.

[fol. 2029] Q. In other words, you are uncertain as to whether you did or did not?

A. Because the only thing I can judge from is the name of the picture mentioned in it and that I don't recall.

Mr. Rogers: I shall mark these for identification, may it please the Court, and one is a letter of May 17th, 1935 from A. Lichtman to Reliance Theatres, Inc.

(Thereupon letter of May 17th, 1935, from A. Lichtman to Reliance Theatres, Inc., referred to was marked as Defendants' Nos. D-62 for identification.)

Mr. Rogers: Letter from J. A. Bykowski to Palace Theatre, dated May 28th, 1935 is Defendants' Exhibit 63 for identification.

(Thereupon letter from J. A. Bykowski to Palace Theatre, dated May 28th, 1935, referred to was marked as Defendants' Exhibit D-63 for identification.)

Mr. Rogers: Letter, Bykowski to Grafiades, May 2nd, 1935 is Defendants' Exhibit 64 for identification.

(Thereupon letter from Bykowski to Grafiades, May 2nd, 1935, referred to, was marked as Defendants' Exhibit D-64 for identification.)

Mr. Rogers: Letter, Sales Manager, United Artists to [fol. 2030] Reliance Theatres, Inc., dated November 19th, 1934, is Defendants' Exhibit 65 for identification.

(Thereupon letter, Sales Manager, United Artists to Reliance Theatres, Inc., dated November 19, 1934, referred to was marked as Defendants' Exhibit D-65 for identification.)

Mr. Rogers: Letter dated July 25th, 1936, G. J. Shafer, to Grafiades is Defendants' Exhibit 66 for identification.

(Thereupon letter dated July 25th, 1936, G. J. Shafer to Grafiades, referred to, was marked as Defendants' Exhibit D-66 for identification.)

Mr. Rogers: Letter, September 28th, 1936, Bykowski to Grafiades——

The Witness: Just a moment, September, 1936, I wasn't there.

Q. That is right.
A. That is correct.
Q. I am correct about that, am I not?
A. Yes, sir.

The Court: That appears to be after the time the witness was connected with it.

Mr. Rogers: Exactly.

[fol. 2031] (Thereupon letter dated September 28th, 1936, Bykowski to Grafiades, referred to was marked as Defendants' Exhibit No. D-67 for identification.)

Mr. Rogers: Letter October 6th, 1936, Bykowski to Grafiades.

(Thereupon letter dated October 6th, 1936, Bykowski to Grafiades, referred to was marked as Defendants' Exhibit No. D-68 for identification.)

Q. I ask you to kindly look through this group of United Artists contracts and ask you to recognize those as contracts made for product to be played at the Palace Theatre, Lockport.

The Court: Made by Reliance?

Mr. Rogers: Made by Reliance.

The Witness: You will have to interpret, the carbon is poor on this first one.

The Court: Look at the signatures.

Q. Surely.
A. Is that all you want?
Q. Yes.

The Court: They may be signed by somebody else, and if so state if they are.

Q. Keep them in that order because Mr. Wright wants them kept in that order.

Mr. Wright: We are satisfied those contracts came from [fol. 2032] the files of the United Artists. I should think that is all that is necessary.

Mr. Rogers: And also that they are contracts for service to Reliance Theatres, Inc., for the Palace Theatre.

Mr. Wright: Yes.

Mr. Rogers: That is sufficient.

Mr. Wright: That is, I assume you have the group we handed you.

Mr. Rogers: This is the group we took from your files, Mr. Wright, yes.

Mr. Wright: Yes.

Mr. Rogers: Now, I ask that these be marked D-69 in evidence.

The Court: Do these purport to be with different companies?

Mr. Rogers: No, this is United Artists. I want to group them by companies to save time. This is a contract with United Artists for the picture "Arrow Smith."

The Court: Exhibit 69 in evidence?

Mr. Rogers: Dated January 27th, 1934.

(Thereupon contract with United Artists, dated January 27th, 1934, for picture "Arrow Smith," referred to was marked as Defendants' Exhibit D-69 in evidence.)

[fol. 2033] Mr. Rogers: That is Defendants' Exhibit 69 I just read from, first-run. D-70, also first-run, dated January 27th, 1934, picture "Scar Face."

(Thereupon contract dated January 27th, 1934, first-run, picture "Scar Face," referred to, was marked as Defendants' Exhibit D-70 in evidence.)

Mr. Rogers: Contract dated January 27th, 1934, first-run, "Tonight or Never." That is Defendants' Exhibit No. 71 in evidence.

(Thereupon contract dated January 27th, 1934, first run, "Tonight or Never," referred to, was marked as Defendants' Exhibit D-71 in evidence.)

Mr. Wright: I don't see any run mentioned on these last that you have been reading here, 69, 70 and 71. Apparently the run is blank.

By Mr. Rogers:

Q. I show you Defendants' Exhibit 69, was that for a first-run exhibition?

Mr. Wright: If the Court please, the contract speaks for itself.

Mr. Rogers: If the contract is blank, I think I can show through this witness just what run he did play the picture.

[fol. 2034] The Court: How do you mean it is blank, in what respect, with respect to the picture shown?

Mr. Rogers: No, sir, with respect to the run.

Mr. Wright: These pictures appear to be pictures of a former season. This may have been the first time that they had played in that town. However, we would deny that these contracts that do not specify first-run are actually contracts for the first-run as the term of "first-run contract" is ordinarily understood.

The Court: Then I think you must rely on the contract and show the circumstances by the witness, if you can.

Mr. Rogers: The point I made, your Honor, is——

The Court: If it is first-run and he can so state, and if counsel says the picture was put on the screen first——

By Mr. Rogers:

Q. Is there any question that these exhibits, 69, 70 and 71, were played first-run at the theatre?

Mr. Wright: We propose to identify and offer later the tabulation prepared by United Artists in response to our interrogatories which will show the play dates of all these [fol. 2035] pictures and where they were played, and what dates.

The Court: Let's limit that to the first-run in this theatre.

Mr. Rogers: That is right.

Q. Is there any question about that, Mr. Wright?

Mr. Wright: I can't tell you that in the absence of the tabulation that will show the pictures from the 1931-32 season on. If they had played in the town during that season they should show in that tabulation.

Mr. Rogers: Then I shall resort to his Honor's suggestion which I think is very constructive.

Q. Mr. Dickinson, I show you Exhibits 69, 70 and 71, and ask you if the pictures set forth in the contracts played first-run at the Palace Theatre, Lockport?

Mr. Wright: I think you ought to define what you mean by first-run.

The Court: At that theatre.

Mr. Wright: I think he ought to ask him whether he knows the picture was previously exhibited in the town.

Mr. Rogers: That would exclude it being first-run.

The Court: In Lockport?

Mr. Rogers: Certainly.

[fol. 2036] A. Will you read the name of that picture?

Q. I will read the name of that picture. It is "Scar Face" and "Tonight or Never."

A. I believe they were first-runs.

The Court: First-run in Lockport?

The Witness: I believe that those were shown at our theatre the first time in Lockport. Perhaps not first-run of that season.

The Court: That was not the inquiry.

(Contract with United Artists 1-27-34 received in evidence and marked Defendants' Exhibit D-72.)

By Mr. Rogers:

Q. Exhibit D-72, contract with United Artists, January 27, 1934, "Cock of Air"?

A. The same answer.

Q. This was run first-run in Lockport?

A. To the best of my recollection.

(Contract with United Artists 1-27-34 received in evidence and marked Defendants' Exhibit D-73.)

Q. Defendants' Exhibit D-73, contract with United Artists 1-27-34 for picture "Bitter Sweet," the same answer to that, first-run?

A. Yes, sir.

[fol. 2037] (Contract with United Artists 1-27-34 referred to received in evidence and marked Defendants' Exhibit D-74.)

Q. Defendants' Exhibit D-74 is contract January 27, 1934, picture "Unholy Garden," the same answer to that?

A. Yes, sir.

(Contract with United Artists 2-16-34 referred to received in evidence and marked Defendants' Exhibit D-75.)

Q. Defendants' Exhibit D-75, contract dated February 16, 1934, picture "Secrets," the same answer to that?
A. I believe so.

(Contract with United Artists 2-16-34 referred to received in evidence and marked Defendants' Exhibit D-76.)

Q. Contract, Defendants' Exhibit D-76, dated February 16, 1934, picture "Emperor Jones," the same answer?
A. Yes, sir.

(Contract with United Artists 2-16-34 referred to received in evidence and marked Defendants' Exhibit D-77.)

Q. Defendants' Exhibit D-77, contract dated February 16, 1934, picture "Private Life of Henry VIII"?
A. The same answer.

(Contract, dated May 7, 1934, referred to received in evidence and marked Defendants' Exhibit D-78.)

[fol. 2038] Q. Defendants' Exhibit D-78, May 7, 1934, picture "Catherine, the Great"?
A. The same answer.

(Contract with United Artists dated February 26, 1934, referred to received in evidence and marked Defendants' Exhibit D-79.)

Q. Defendants' Exhibit D-79, contract February 26, 1934, "The Greeks Had a Word for It," the same answer?
A. Yes, I believe so.

(Contract with United Artists dated June 9, 1934, referred to received in evidence and marked Defendants' Exhibit D-80.)

Q. D-80, contract June 9, 1934, picture "Sorrell & Son"?
A. The same answer.

(Contract with United Artists dated July 28, 1934, referred to received in evidence and marked Defendants' Exhibit D-81.)

Q. Defendants' Exhibit D-81, contract July 28, 1934, picture "Born to be Bad," the same answer?
A. The same answer.

(Contract with United Artists dated 12-15-34 referred to received in evidence and marked Defendants' Exhibit D-82.)

Mr. Rogers: I might note that Defendants' Exhibit D-81 bears on the face of it the fact that it is first-run.

[fol. 2039] (Contract, United Artists, December 15, 1934, referred to received in evidence and marked Defendants' Exhibit D-82.)

Mr. Rogers: Defendants' Exhibit D-82, contract, December 15, 1934, four pictures, "Men of Tomorrow," "Blue Danube," "That's a Good Girl," "Knight of the Garter," on the face of it indicates first-run.

Mr. Wright: I think it should be noted that this says Mundoz Distributing Corporation on the agreement, and these, I believe, are four short subjects and not feature pictures.

Mr. Rogers: It says first-run. At this price they could not be shorts.

Mr. Wright: Ask the witness.

Q. Will you please look at this Defendants' Exhibit 82 and tell me whether those pictures were features or short subjects? In that connection will you please note that it says, "To be run first-run"?

A. I don't remember those.

Q. You don't remember getting any first-run clearance on any shorts you played in the theatre, do you?

Mr. Wright: There is not any evidence that he has had any first-run clearance on anything.

[fol. 2040] Mr. Rogers: This is first-run right on the contract.

The Court: The contract shows for itself.

Mr. Wright: The space opposite "Clearance" is blank.

The Court: Did you say whether they were features or shorts?

The Witness: I don't recall.

(The contract, United Artists, 3-20-35, referred to was received in evidence and marked Defendants' Exhibit D-83.)

Q. Defendants' Exhibit D-83 is a contract, dated March 20, 1935, for two pictures, "Cash" and "Knight of the Garter." Do you recall anything about that?

A. Same answer on that as the preceding.

Mr. Wright: This is also a Mundoz?

Mr. Rogers: Yes, that is a Mundoz.

(The contract, United Artists, April 22, 1935, referred to was received in evidence and marked Defendants' Exhibit D-84.)

Mr. Rogers: Defendants' Exhibit D-84, contract dated April 22, 1935, picture "Congo Raid," and on the face of it shows first-run.

(The contract, United Artists, April 22, 1935, referred to was received in evidence and marked Defendants' Exhibit D-85.)

Mr. Rogers: Defendants' Exhibit D-85, contract, April [fol. 2041] 22, 1935, picture "Private Life of Don Juan" and first-run on the face of it.

(The contract, United Artists, April 22, 1935, referred to was received in evidence and marked Defendants' Exhibit D-86.)

Mr. Rogers: Defendants' Exhibit D-86, contract, April 22, 1935, "Runaway Queen," and first-run on the face of it.

(The contract, United Artists, April 22, 1935, referred to was received in evidence and marked Defendants' Exhibit D-87.)

Mr. Rogers: Defendants' Exhibit D-87, contract April 22, 1935, "Our Daily Bread," first-run on the face of it.

(The contract, United Artists, April, blank, 1935, referred to was received in evidence and marked Defendants' Exhibit D-88.)

Mr. Rogers: Defendants' Exhibit D-88, contract April blank, 1935, "Transatlantic Merry-Go-Round," first-run.

(The contract, United Artists, April 22, 1935, referred to was received in evidence and marked Defendants' Exhibit D-89.)

[fol. 2042] Mr. Rogers: Defendants' Exhibit D-89, contract, April 22, 1935, "Clive of India," first-run.

(The contract, United Artists, April 22, 1935, referred to was received in evidence and marked Defendants' Exhibit D-90.)

Mr. Rogers: Defendants' Exhibit D-90, contract, April 22, 1935, "Follies Bergere," first-run.

(The contract, United Artists, April 22, 1935, referred to was received in evidence and marked Defendants' Exhibit D-91.)

Mr. Rogers: Defendants Exhibit D-91, contract, April 22, 1935, "Bulldog Drummond Strikes Back," first-run.

(The contract, United Artists, April 22, 1935, referred to was received in evidence and marked Defendants' Exhibit D-92.)

Mr. Rogers: Defendants' Exhibit D-92, contract April 22, 1935, "Affairs of Cellini," first-run.

(The contract, United Artists, May 11, 1935, referred to was received in evidence and marked Defendants' Exhibit D-93.)

Q. Defendants Exhibit D-93, contract, May 11, 1935, "Brewster's Millions," I ask you with reference to that, did that play first-run in Lockport?
[fol. 2043] A. Did you ask me on the other nine ahead of this?

Q. They were all marked first-run. That is why I didn't ask you. This is not marked.

A. I don't remember.

Q. Is it your best recollection that it did play first-run?

A. I don't remember. I probably was in Florida on that date.

Q. You may have been in Florida on that date; is that it?

A. Yes, sir.

[fol. 2044] Mr. Rogers: Exhibit D-94, May 4th, 1935, "Cardinal Richelieu."

Q. Do you recall whether that picture was played first-run?

A. I believe it was.

(Thereupon contract dated May 4th, 1935, "Cardinal Richelieu," referred to, was marked as Defendants' Exhibit No. D-94 in evidence.)

Mr. Rogers: Exhibit D-95, May 14th, 1935, "Les Miserables."

(Thereupon contract dated May 14th, 1935, "Les Miserables," referred to, was marked as Defendants' Exhibit No. D-95 in evidence.)

Q. Do you recall whether that was played first-run?
A. I believe it was.

Mr. Rogers: Defendants' Exhibit D-96, April 22nd, 1935, "Scarlet Pimpernel," first-run.

(Thereupon contract dated April 22nd, 1935, "Scarlet Pimpernel," referred to, was marked as Defendants' Exhibit No. D-96 in evidence.)

Mr. Rogers: Defendants' Exhibit D-97, April 5, 1934, "Rain."

Q. Do you recall whether that was played first-run?
A. It was.
Q. Same answer, you believe it was?
[fol. 2045] A. Yes, sir.

(Thereupon contract dated April 5, 1934, "Rain," referred to, was marked as Defendants' Exhibit D-97 in evidence.)

Mr. Rogers: Defendants' Exhibit 98, May 11th, 1934, "Thunder in East."
The Witness: You are going back to 1934 now?
Q. Yes, that was taken out of order and I am getting them back in order. Now, do you recall whether this was played first-run? I beg your pardon, that was 1935, not 1934.
A. Same answer.

(Thereupon contract dated May 11th, 1935, "Thunder in East," referred to was marked as Defendants' Exhibit No. D-98 in evidence.)

Mr. Rogers: Defendants' Exhibit No. 99, May 11th, 1935, "Let's Have It."

Q. Was that played first-run?
A. I assume so, I don't recall the picture.
Q. You assume it was first-run?
A. Yes, sir.

(Thereupon contract dated May 11th, 1935, "Let's Have it," referred to, was marked as Defendants' Exhibit No. D-99 in evidence.)

[fol. 2046] Mr. Rogers: Defendants' Exhibit 100, October 23rd, 1936, "Escape Me Never," first-run.

The Witness: October, 1936?

Q. Yes. No, it is 1935, I beg your pardon. That is first-run.

(Thereupon contract dated October 23rd, 1935, "Escape Me Never," referred to, was marked as Defendants' Exhibit No. D-100 in evidence.)

Mr. Rogers: Defendants' Exhibit 101, October 23rd, 1935, "Nell Gwynne."

(Thereupon contract dated October 23rd, 1935, "Nell Gwynne," referred to, was marked as Defendants' Exhibit D-101 in evidence.)

Mr. Rogers: Defendants' Exhibit 102, May 11th, 1935, "Uncertain Lady."

Q. Do you recall whether that was played first-run?

A. I don't remember.

Q. It is "Amateur Lady," isn't it?

Mr. Wright: "Amateur Gentleman"?

Mr. Rogers: I don't know, it is some kind of a lady, the handwriting on these contracts is very difficult to decipher.

Mr. Wright: It looks like "Amateur Lady." I don't have any such list. What is the date of it.

[fol. 2047] Mr. Rogers: May 11th, 1935. It looks like "Amateur Lady" to me.

Q. What is your answer?

A. I don't remember.

(Thereupon contract dated May 11th, 1935, referred to, was marked as Defendants' Exhibit No. D-102 in evidence.)

Mr. Rogers: 103, December 27th, 1935, "Red Salute," first run.

(Thereupon contract dated December 27th, 1935, "Red Salute," referred to, was marked as Defendants' Exhibit D-103 in evidence.)

Mr. Rogers: Defendants' Exhibit 104, May 11th, 1935, "Melody Lingers On."

Q. Do you remember that picture?

A. I don't remember.

(Thereupon contract dated May 11th, 1935, "Melody Lingers On," referred to was marked as Defendants' Exhibit D-104 in evidence.)

Mr. Rogers: Defendants' Exhibit 105, two pictures, "Things To Come" and "Stand Condemned," first-run.

(Thereupon contract "Things To Come" and "Stand Condemned," referred to, were marked as Defendants' Exhibit D-105 in evidence.)

[fol. 2048] Mr. Rogers: That contract is dated 9-21-36. Defendants' Exhibit 106 is dated 9-28-36, "Amateur Gentleman," first-run.

(Thereupon contract dated 9-28-30, "Amateur Gentleman," first run, referred to was marked as Defendants' Exhibit No. D-106 in evidence.)

Mr. Rogers: Defendants' Exhibit 107, April 5, 1934, "Street Scene."

Q. Do you recall whether that was played first-run?

A. I am a bit confused, weren't you talking about September, 1936?

Q. You have nothing to do with that, I haven't interrogated you about that at all.

A. This was 1934?

Q. Yes, "Street Scene"?

A. No, I don't remember.

(Thereupon contract dated April 5, 1934, "Street Scene," referred to, was marked as Defendants' Exhibit No. D-107 in evidence.)

The Court: What is the last number?

Mr. Rogers: The last number on that exhibit is 107.

Q. I show you these two copies of letters and ask you whether you recall having received those?

A. These refer to second-run?

[fol. 2049] Q. It says "Second-run"?

A. Yes. I don't remember whether I saw them or not.

Mr. Rogers: I ask to have them marked for identification.

(Thereupon two copies of letters, above referred to, were marked as Defendants' Exhibits Nos. D-108 and D-109 for identification.)

Mr. Rogers: Defendants' Exhibit No. 108 for identification is a letter dated March 28th, 1935, from Robinson to Grafiades.

Defendants' Exhibit No. 109 is a letter dated December 27th, 1934, Robinson to Grafiades.

Q. You do know that Mr. Robinson, K. G. Robinson, Branch Manager, was connected with Paramount during that period, don't you?

A. I assume he was. I knew a Robinson at that time. I don't recall what his initials were.

Q. You knew a Robinson at Paramount?

A. Yes, a manager at Paramount.

Q. Did you know a salesman by the name of Speir connected with Paramount?

A. I don't recall the name.

Q. Well, do you recall being present at a discussion on February 26th, 1936, in the Palace Theatre in Lockport [fol. 2050] and a salesman of Paramount being present, and the playing of features, first-run, was discussed?

A. This is 1936, February?

Q. February, 1936.

A. I believe I was not in town on that date. If I was, I don't remember attending that meeting.

Q. Here are two contracts which I understand were taken out of your file (referring to United States files). No, they were taken out of the distributor's files.

I ask you to look at these two and do you recognize the signature of Mr. Grafiades on those?

A. I recognize the signature. I was looking to see what the company was.

Q. Paramount.

A. This is second-run.

The Court: He is asking you whether you recognize the signature?

The Witness: Yes, I recognize the signature.

Mr. Rogers: I offer them.

(Document shown to and inspected by Mr. Wright.)

Mr. Wright: No objection.

(Thereupon two contracts with Paramount, second-run, above referred to, were marked as Defendants' Exhibits Nos. D-110 and D-111 in evidence.)

[fol. 2051] Mr. Rogers: Defendants' Exhibit No. 110 is a contract dated July 27th, 1934 for three pictures, "Wharf Angel", "Witching Hour" and "Notorious Sophie Lang".

The Court: With whom?

Mr. Rogers: With Paramount.

Defendants' Exhibit No. 111 is a contract dated 4/23/34, also with Paramount, for the pictures "She Done Him Wrong", "Night After Night", "Big Broadcast", "Farewell to Arms" and "Sign of the Cross".

The Witness: Does that show second-run on that? You just read it. Does it say "First-run"?

Mr. Rogers: Contract, Exhibit No. D-110 is first-run and 111 has no run specified on it.

The Witness: I believe that was third-run.

Q. Do you know?

A. My best recollection is the one with "She Done Him Wrong" on would be third-run.

The Court: What do you mean by "third-run"?

The Witness: Having played the town twice before.

Q. You don't know that as a fact, do you?

A. No.

Q. That is just your guess?

A. That is right.

[fol. 2052] Q. Do you remember in August, 1935, or in or about August, 1935, having had some talks with Sydney Sampson of the Buffalo Exchange of Fox, with regard to second-run?

A. We had many talks. I couldn't say just exactly at that time.

Q. Do you remember him definitely speaking to you about giving the Palace Theatre a second-run at that time?

A. Of one picture?

Q. No, second-run, I say.

A. I don't just understand your question.

Q. I mean a seasonal second-run.

A. No, I don't remember that.

Q. You don't remember that at all?

A. No.

Q. Do you remember him offering you any second-run at about that time?

A. It is quite possible.

Q. And do you recall the reason the deal didn't go through was that you could not meet the price?

A. I don't recall that.

Q. Do you recall having a talk or discussion with him at that time about a price second-run?

A. Undoubtedly.

Q. You don't recall that it broke up on account of price?

A. It is quite possible.

[fol. 2053] Q. It is quite possible it did break up on account of price, you mean?

A. Yes, sir.

Mr. Rogers: That is all.

Redirect examination.

By Mr. Wright:

Q. This contract of March 12, 1934, that is marked Defendants' Exhibit 49, can you tell by looking at those pictures and the prices whether or not that was current season's product or old product?

A. My best recollection is that it is old product.

Q. These contracts that were introduced in evidence as Defendants' Exhibits 48 and 47 both appear to bear approximately the same date, do they not?

Mr. Rogers: Do they not bear exactly the same date?

Mr. Wright: That is the way it looks to me. It is a little bit smudged.

A. What is your question?

Q. Do you recall having made those on about the same date?

A. Yes, sir.

Q. And the deal represented by those contracts you have in your hand there, is that the deal you referred to on your direct examination has having been made with Columbia in the winter of 1934-1935?

[fol. 2054] A. That is right.

Q. On your direct examination you testified that that deal was for the 1934-1935 season, did you not?

A. That is right.

Q. If you will look at those I think you will see it is a fact, is it not, that the deal was for two seasons, 1934-1935 and 1936-1936?

Mr. McClennen: What is the date of that franchise?

Mr. Wright: The date of these exhibits is March 19, 1935. It is smudged so that it is not clear whether it is March 1. It looks like March 1, 1935.

Mr. Rogers: It covers two years, does it not, Mr. Wright?

Mr. Wright: It appears that Exhibit 48 covers the 1934-1935 season and that Exhibit 47 covers 1935-1936 season.

Mr. McClennen: How many pictures are included in that franchise?

Mr. Wright: It is apparent on the face of the contract how many were included. I can't add them up for you now.

The Court: Each of the contracts that were made at approximately the same date cover one season?

Mr. Wright: That is right. One was for 1934-1935 and the other for 1935-1936.

[fol. 2055] The Court: Together they cover two seasons.

A. The number of pictures would indicate two seasons, but I do not see any reference to it.

By Mr. Wright:

Q. I call your attention to the printed part at the top there, which says "Schedule for 1935-1935 and schedule for 1934-1935", respectively.

The Court: I take it there is no question about that.

Mr. Rogers: There is no question about that. It is the entire product for both seasons.

Mr. Wright: Except we wanted to give him an opportunity to correct his testimony that he only had one season.

A. I am very familiar with this one, but I don't recall——

Q. You didn't recall at the time that you answered that you had made the contract for both seasons?

A. No, I didn't remember, because these (indicating) played while I was there and these (indicating) played after I left, so that I didn't remember the second contract.

Q. By those played after you left you are referring to 1935-1936 season?

A. Yes, sir.

Q. Those United Artists' contracts, the group dated in April, 1935, is that the group that you referred to in your direct testimony when you said that you had a first-run deal [fol. 2056] with United Artists for some 1934-1935 product?

A. Yes, sir. My best recollection is that it was 1934-1935 product, which we secured on those later dates.

Q. That is in April, 1935?

A. Yes, sir.

Q. Do you know why you didn't get it before?

Mr. Rogers: I object to that.

The Court: He may state what efforts he made.

Mr. Rogers: I object to the form of the question.

Q. Had you made any efforts to license it before that?

A. Yes, sir.

Q. When was the date when you were first told that you could have it?

A. I can't remember the date. Presumably at the time we signed the contracts for them.

Q. About the date of the contract?

A. Yes, sir.

Q. Do you recall these other pictures that were shown you on these exhibits, 62 to 79, as to how old they were?

A. Can you tell me which company those pictures were? I don't remember the numbers.

Q. Do you remember such pictures as "Unholy Garden"?

A. I can't tell you how old those were.

Q. Do you know, generally, whether those were good [fol. 2057] box-office attractions or bad?

Mr. Rogers: One moment. I object to that.

The Court: Sustained.

Q. Do you recall what you did with those pictures, in the way of receipts?

Mr. Rogers: I object to that as immaterial.

A. Very poor.

The Court: If he can state the amounts, I will let him state. "Poor" is a conclusion.

Mr. Rogers: It would be immaterial anyway. Bad exploitation or bad weather, or anything, might cause it.

Mr. Wright: Or the fact that they were two years old might cause it.

Mr. Rogers: That is conjectural. That is why I object to your question, Mr. Wright.

Mr. Wright: What was the Court's ruling?

The Court: I will strike out the word "poor."

Q. Do you know what ~~you~~ did at the box-office with any of those pictures?

Mr. Rogers: May it please the Court, I press the same objection. Mr. Wright himself says it may have been caused by any number of conditions. It is a pure conjecture, a suppositious question.

[fol. 2058] The Court: I suppose you mean by what he did at the box office the amount he received?

Mr. Wright: Yes, from the public, if he knows.

The Court: I will let him state what he received.

Mr. Wright: Well, if the Court please, the release schedules will speak for themselves. I will not pursue it.

By Mr. Wright:

Q. Other than the group of contracts that was put in evidence with the United Artists, dated in April, 1935, for the 1934-1935 season, did you have any season deal with United Artists?

A. No, sir.

Mr. Rogers: May it please the Court, the testimony up to the present from the witnesses, undisputed, is that United Artists does not sell a season's deal, but sells picture-by-picture, and I therefore move that the answer be stricken.

The Court: I will let it stand. If it is a fact that is true it does not harm you.

Mr. Rogers: I merely wished to note that so that it would register properly with your Honor.

Mr. Wright: That is all for now.

Mr. Rogers: What do you mean "for now"?

[fol. 2059] Mr. Wright: I may recall him.

The Court: Anything further, Mr. Rogers?

Mr. Rogers: If Mr. Wright may recall him I will have to have the same reservation.

The Court: Yes.

Mr. Rogers: That is all.

John A. May was called as a witness and duly sworn, was examined and testified as follows:

Mr. Wright: Mr. May is being called for cross-examaination under Rule 43-B.

The Court: Proceed.

Cross-examination.

By Mr. Wright:

Q. You are the Mr. May who is a defendant in this suit?

A. Yes, sir.

Q. Do you know Howard G. Carroll?

A. I do.

Q. How long have you known him?

A. Possibly 15 years.

Q. He was formerly in the employ of the Schine organization?

A. He was.

[fol. 2060] Q. And during what period?

A. I don't recall.

Q. Do you recall what his position was with the company?

A. I do not. I have nothing to do with the operating department.

Q. Who does?

A. Mr. Schine and Mr. Louis Schine.

Mr. Wright: Will you step down, then, please? Mr. Schine, will you take the stand?

J. Myer Schine was called as a witness and duly sworn, was examined and testified as follows:

Mr. Wright: Mr. Schine is also being called under Rule 43-B.

Cross-examination.

By Mr. Wright:

Q. You are a defendant in the suit?

A. Yes, sir.

Q. Do you know Howard G. Carroll?

A. Yes, sir.

Q. How long have you known him?

A. I think I knew him—I haven't seen him in the past few years. He is not connected with us any more.

[fol. 2061] Q. He operates the Strand Theatre at Rochester?

A. So I am told.

Q. When did you first meet him?

A. Well, he came for a job and I think it was in the early '30s.

Q. Did you hire him?

A. Yes, sir.

Q. What job did you give him?

A. He was manager of a theatre. I don't recall what theatre, but he was manager of one of our theatres at the time.

Q. When you first hired him?

A. Yes, sir.

[fol. 2062] Q. And then he later became manager of a number of your theatres?

A. Later I believe he had charge of several theatres in Rochester.

Q. He was your manager in the Rochester District, was he not?

A. Yes, sir.

Q. And what period was that?

A. Well, I am not quite positive of it, but I think it was sometime during 1936, '37 or 1935.

Q. What was he doing in October, 1932?

A. I couldn't say, I don't remember.

Q. What is that?

A. I couldn't remember what he did in 1932.

Q. Have you records which show that?

A. I have no records here.

Q. Have you them at Gloversville?

A. I assume we have, yes, sir.

Q. Can you produce those for us?

A. Here.

Q. In court?

A. I haven't got them here.

Q. How long will it take you to produce them?

A. It will take several days, I imagine.

Q. Is there anybody here that will know what Mr. [fol. 2063] Carroll was doing in October, 1932?

A. Here in court?

Q. Yes.

A. I don't think there is anybody here now.

Q. Have you anybody available who can supply that information?

A. In court?

Q. In town?

A. No.

Mr. Wright: You can step down. If the Court please, we will recall Mr. Dickinson for the purpose of offering the testimony with respect to that conversation and we expect to connect it up.

The Court: Conversation with Carroll, you mean?

Mr. Wright: Yes, Mr. McClennen stated at the time, I believe, that Mr. Carroll was unknown to them. I suggested that he held the position as District Manager and on the objection the testimony was excluded. I again renew the offer to connect him up. We can procure the records from the Schine Company to show it.

The Court: Why not produce the record first?

Mr. Wright: If the Court please, this witness lives in West Virginia.

[fol. 2064] The Court: I thought it was in Lockport.

Mr. Wright: No, it is West Virginia.

The Court: You want to show some conversations between the witness and Carroll?

Mr. Wright: Yes.

The Court: I will receive it. Step forward, Mr. Dickinson. It is subject to it being connected up and showing Carroll's connection with the defendant.

Mr. Wright: I take it Mr. Schine will produce within a few days the records which show what position he held in October, 1933.

Mr. McClennen: You said 1932, Mr. Wright, didn't you?

Mr. Wright: October, 1933 is the date.

Mr. McClennen: Before we get away from this I want to note that Mr. Wright's paraphrasing of what I said about Mr. Carroll is not accurate. The record will show what I said.

Mr. Wright: That is right. Whatever was said is clearly on the record.

[fol. 2065] CHARLES E. LICKINSON, JR., recalled by and on behalf of the Plaintiff, testified as follows:

Further direct examination.

By Mr. Wright:

Q. I call your attention, Mr. Dickinson, to the month of October, 1933. Did you, during that month, have a conversation with Mr. Howard Carroll?

A. I did.

Q. And where did it occur?

A. At the Rialto Theatre.

Q. At Lockport?

A. In Lockport.

Q. Who else was present?

A. I don't recall that any one was.

Q. Can you fix the date of that conversation with a little more accuracy than the month of October?

A. It was two or three days prior to October 21, 1933, the opening date of the Hi-Art Theatre, the re-opening date.

Q. What was the conversation?

Mr. McClennen: To that we object, your Honor. The situation is the same as when you excluded it before.

[fol. 2066] The Court: Well, under the circumstances of this witness, I think I should receive it subject to its being stricken out.

The Witness: Mr. Carroll told me that he was calling to see me to talk with me about accepting the offer that had been previously made to me by Mr. May, namely, about $16,000 and a percentage of the net per year for the lease, which Reliance Theatres held and that the Schine organization was withholding opening the Hi-Art Theatre, giving us that additional few days to decide whether or not we would accept their proposal.

Q. What did you say?

Mr. McClennen: That is the same objection.

The Court: Same ruling.

The Witness: And I said we weren't interested.

The Court: Is that "Hi-Art" spelled H-i-A-r-t?

The Witness: Yes, sir.

Q. Was there anything further said?

A. No, sir.

Q. Was there any conversation with reference to the policy the Hi-Art would be operated on?

A. No, sir., not that I recall.

[fol. 2067] Mr. Wright: You may cross-examine. What was that question and answer by the Court?

(Proceeding question by the Court read.)

The Court: Is there any cross-examination?

Mr. Rogers: Are you finished, Mr. Wright?

Mr. Wright: Yes.

Mr. Rogers: No further examination.

The Court: We will suspend for five minutes.

(Short recess.)

[fol. 2068] **Max H. Rose**, a witness called by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Wright:

Q. Where do you live, Mr. Rose?

A. Brooklyn, New York.

Q. What is your occupation?

A. I am an attorney in the employ of Schwartz & Frohlich, Counsel to Columbia Pictures.

Q. Were you designated by Columbia to assemble the material that was subpoenaed for production at the trial of this case by the Government?

A. I was.

Q. Have you brought with you, pursuant to the subpoena served upon Columbia, this envelope of correspondence?

A. This contains some of the documents that were called for by those subpoenaes.

Q. I was referring specifically to inter-office memorandum and contract recommendations which were set forth in that list which was previously supplied to you.

A. Yes, those were in response to that list.

Q. Those are the ones that are contained in the envelope?

A. Yes. May I have that for a moment to see that there [fol. 2069] is nothing in there that was not on the list (examining). That is correct.

Q. Those documents are in here in chronological order, are they?

A. Well, they are in numerical order. Yes, sir, in chronological order also.

Q. They are marked for identification by numbers 655 through 670, inclusive?

A. I don't know. If you will check you can see.

Q. Will you look at them and see?

A. They are marked beginning No. 655, and the last number is 670.

Q. And those were all produced from the files of Columbia?

A. They were.

(The documents produced by Columbia referred to were marked as Plaintiff's Exhibits 655 to 670, inclusive, for identification.)

Q. Q. Have you with you the subpoenaes that were served upon Columbia for production of certain contracts?

A. Yes, sir.

Mr. Wright: I will ask to have this one that you have produced, returnable May 19, 1944, marked with the next Plaintiff's exhibit number for identification.

[fol. 2070] (The subpoena, May 19, 1944, referred to was marked as Plaintiff's Exhibit 671 for identification.)

Q. I hand you this folder, which is marked paragraph 2, subpoena, May 19, 1944, and ask you if those are all of the documents that were produced in response to paragraph 2 of this subpoena identified as Exhibit 671?

A. That is correct.

Q. And I hand you this folder marked paragraph 4, the same subpoena, and ask you if those are all of the documents produced in response to paragraph 4 of Exhibit 671 for identification?

A. That is correct.

Q. Were any documents produced by you in response to paragraph 3 of this subpoena?

A. No. I was not able to find any of those amongst the papers that I brought to Buffalo.

Q. You made a search for them?

A. Amongst those papers, yes. There are license agreements in existence somewhere that would response to that paragraph, but I don't appear to have those with me in Buffalo at this time.

Q. Are you still searching for them?

A. I will make a search when I get back to New York.

Mr. Wright: May it be understood that when and if Mr. Rose produced those they can be authenticated without his [fol. 2071] coming back here, if he writes you a letter saying what they are?

Mr. McClennen: Unless there is some occasion when it arrives for us to want to ask him something. If such a list is prepared, with a statement signed by Mr. Rose as to what it is, very likely we shall not ask to have him come back, but we do not want to be bound in advance to that position.

By ~~Mr.~~ Wright:

Q. Did you produce any documents in response to paragraph 5 of this subpoena?

A. Yes, I did. Those documents are included within the documents that were produced by me in response to paragraph 2.

Q. The only documents you have in response to that paragraph are included in the folder marked paragraph 2 of the same subpoena?

A. That is right.

Q. Does this folder marked paragraph 6 of the same subpoena contain all of the documents you have produced in response to paragraph 6 of that subpoena?

A. That is correct.

Q. What, if any, documents have you produced in response to paragraph 7 of that subpoena?

[fol. 2072] A. The documents in response to paragraph 7 are included within the documents produced in answer to paragraph 2.

Q. The documents produced in response to paragraph 13 of that subpoena are in this folder that has been so marked?

A. That is correct.

Q. And the documents you have produced in response to paragraph 14 are contained in the folder that is marked paragraph 14?

A. That is correct.

Q. And have you produced any in response to paragraph 15?

A. The documents which I have produced in response to paragraph 15 were delivered by me yesterday to the Government and part of those have been marked in evidence.

Q. Those are the ones that were produced in court here during the examination of Mr. Dickinson?

A. That is correct.

Q. The ones that are not in evidence are those contained in this folder I just handed you?

A. That is correct.

Mr. Wright: This folder is marked 15.

[fol. 2073] Q. The documents produced in response to paragraph 16 of that subpoena are those contained in this folder marked "Paragraph 16"?

A. That is correct.

Q. And those produced in response to paragraph 19 of this subpoena are those contained in these two folders, both marked paragraph 19?

A. That is correct, except that part of the documents called for by paragraph 19 are included in the documents in the previous folders.

Q. Well, which are those?

A. Well, the documents for Harlan, Kentucky, were produced under paragraph 6. The documents for Paris, Kentucky, were produced under paragraph 2. The documents for Lexington, Kentucky, under paragraph 4. The documents for Corbin, Kentucky, under paragraph 2.

Q. With those exceptions, the documents called for by paragraph 19 of this subpoena are contained in these two folders that are marked paragraph 19?

A. The documents which I produced are so contained.

Mr. Wright: We will ask to have these folders that have been marked paragraph 2, 4, 6, 13, 14, 15 and 16, marked consecutively as Plaintiff's Exhibits 672 through 678, inclusive for identification.

[fol. 2074] (Thereupon folders marked paragraphs 2, 4, 6, 13, 14, 15 and 16, referred to, were marked as Plaintiff's Exhibits Nos. 672 through 678, inclusive, for identification.)

Mr. McClennen: Is there within the folder a list of the documents?

Mr. Wright: The lists I believe have not yet been put in there. They will be listed, and you will be supplied with copies of the lists as you were with respect to the other folders.

Also mark these two folders, which are numbered paragraph 19 as Plaintiff's Exhibit, 679 and 679-A, respectively, for identification.

(Thereupon two folders numbered paragraph 19, above referred to, were marked as Plaintiff's Exhibits 679 and 679-A, respectively, for identification.)

The Court: The folders are marked showing the paragraph?

Mr. Wright: That is right, your Honor.

The Court: The paragraphs in the subpoena?

Mr. Wright: Correct.

Q. I will show you this subpoena to Columbia Pictures Corporation, returnable August 15, 1944, and ask you if that was served on Columbia?

[fol. 2075] A. Yes, sir.

Mr. Wright: And we will ask to have that marked the next exhibit number.

(Thereupon subpoena to Columbia Pictures Corporation, returnable August 15, 1944, referred to, was marked as Plaintiff's Exhibit No. 680 for identification.)

Q. Are the documents you produced under paragraph 1 of this subpoena marked 680 for identification, contained in this folder marked paragraph 1 of the subpoena?

A. That is right.

Mr. Wright: I will ask to have that marked as Plaintiff's Exhibit 681 for identification.

(Thereupon documents produced under paragraph 1 of subpoena, marked as Plaintiff's Exhibit 681 for identification.)

Q. And the documents produced in response to paragraph 3 of this subpoena are contained in the folder marked paragraph 3 that you have there?

A. That is right.

Mr. Wright: I will ask to have that marked as Plaintiff's Exhibit No. 682 for identification.

(Thereupon documents produced in response to paragraph 3 of subpoena, contained in folder, referred to, was marked as Plaintiff's Exhibit No. 682 for identification.)

[fol. 2076] Q. Was Columbia Pictures also served with this subpoena returnable October 2nd, 1944?

A. That is correct.

Mr. Wright: I will ask to have that marked as Plaintiff's Exhibit 683 for identification.

(Thereupon subpoena returnable October 2nd, 1944, referred to, was marked as Plaintiff's Exhibit No. 683 for identification.)

The Court: Are you marking the subpoena?

Mr. Wright: Yes, the subpoena contains a description of documents in each paragraph.

The Court: All right.

Q. Do you have there the documents that have been produced in response to paragraph 3 of this subpoena of October 2nd?

A. I have produced some documents called for by that paragraph, the documents relating to the Capitol Theatre at Ilion, New York, and those are contained—I don't know for the moment where they are contained.

Q. Those you have referred to as having been produced are contained in this folder marked paragraph 3, October 2nd, 1944?

A. That is correct.

Mr. Wright: I ask to have that marked as Plaintiff's [fol. 2077] Exhibit No. 684 for identification.

(Thereupon folder, containing documents, marked paragraph 3, October 2nd, 1944, above referred to, was marked as Plaintiff's Exhibit No. 684 for identification.)

The Witness: The remaining documents called for by that paragraph I have been unable to find among the papers I have brought to Buffalo with me, but I propose continuing the search, and I shall be glad to send them here as and when I find them. I know there are such contracts in existence or have been.

Q. You are referring to contracts for the Capitol Theatre, Ilion, New York, through the season 1936-1937?

A. No, I am referring to the Madison, Rochester and Monroe Theatres, Rochester.

Q. The papers you produce here for Ilion?

A. Yes, sir.

Q. When you locate those contracts will you also send a letter to counsel setting forth what the facts are as to them coming from your files?

A. Surely, and you want them transmitted to you, I suppose?

Mr. Wright: If that is agreeable to Mr. McClennen.

Mr. McClennen: As far as the transmitter is concerned, yes.

The Witness: No, I was referring to the contracts them-[fol. 2078] selves.

Mr. Wright: He wants to know if it is agreeable if he forwards them to us with a letter describing them to you?

Mr. McClennen: Certainly. Of course, they will be equally available to us when they arrive, I take it?

Mr. Wright: Yes.

Q. I show you this contract previously marked for identification as Exhibit No. 43, and ask you if that also came from the Columbia files?

A. Yes, sir, it did.

Mr. Wright: Would you mark this document for identification as Plaintiff's Exhibit No. 685 for identification.

(Thereupon a thick volume of answers to interrogatories was then marked as Plaintiff's Exhibit No. 685 for identification.)

Q. I hand you this document, marked as Exhibit No. 685 for identification, and ask you if you can say what that is?

A. Those are answers to interrogatories, answers by Columbia Pictures Corporation.

Q. Interrogatories propounded by the Government at the [fol. 2079] time Columbia was still a defendant in the suit?

A. That is right.

Q. Would you describe briefly the—or—I call your attention to the part of the answer beginning at page 20, referred to as a schedule and ask you to state if you know how this schedule was prepared?

Mr. McClennen: Was it prepared by this witness?

Mr. Wright: I should have asked him that first.

Q. I was referring simply to schedule "A"; first, was this schedule prepared under your supervision?

A. It was.

~~The Court: You ought to describe it.~~

Mr. Wright: It is marked Schedule "A" in answer to interrogatory No. 14.

Mr. McClennen: Is the document you have there the one filed in court?

Mr. Wright: I believe this is a copy of the one filed in the court, is it?

The Witness: This, I believe, has never been filed, because this comprises part or all of what we deemed confidential answers to interrogatories, and they were delivered to the Government subject to the following conditions, I quote:

"This information is furnished with the understanding [fol. 2080] that it will remain in the confidential files of the Department of Justice, and that no part thereof will be disclosed to the other parties to this suit, or to any third parties".

[fol. 2081] Q. The figures that are set forth there represent, do they not, in this schedule the titles of the features released by Columbia during the seasons 1931-1932 through 1939-1940, together with the dates on which they played the Schine towns and theatres in those towns?

A. They contain that information with respect to the towns which are listed in the interrogatories.

Q. I take it the name of the town is listed at the top of the schedule?

A. That is right.

Q. And the theatre is underneath the town?

A. Yes, sir.

Q. And they also contain opposite the play dates the film rentals paid?

A. That is correct.

Q. Have you satisfied yourself as to the accuracy of those figures?

A. They are about as accurate as they can be had.

Q. Do you have any records at Columbia that are any more accurate, with respect to the facts that are set forth there?

A. I would say not. The reason I answer that way, qualifying it, is that I would say that these compilations are probably more accurate than the original records, because these compilations have been carefully examined [fol. 2082] after they were prepared, and in certain instances where they appeared to be error we checked back of the records.

The Court: Is that schedule the same as the one that was offered in answer to the interrogatories?

The Witness: That is the schedule that was offered.

The Court: Was there a copy of those offered?

The Witness: This is the copy that was given to the Government.

By Mr. Wright:

Q. I suppose Columbia has an original of its own and they supplied us with this; is that right?

A. That I think is true.

Mr. McClennen: I understood from the witness's earlier answer that no answers have ever been filed.

Mr. Wright: The ones which were not filed in court were those that he regarded as confidential.

By Mr. Wright:

Q. Were there answers filed in court?

A. Yes, those that were not marked confidential were filed.

Mr. McClennen: These schedules from which the witness is now speaking have never been filed in court.

The Witness: That is correct, not to my knowledge.

By Mr. Wright:

Q. With reference to the confidential nature of the [fol. 2083] information furnished, if it appears that the Court regards any of the information there as relevant to the lawsuit, do you have any objection to producing it in this form or would you then prefer to be subpoenaed for the other records?

A. Frankly, I didn't anticipate this question arising. It didn't occur to me. I had forgotten that part of these interrogatories were confidential and therefore I am not authorized to answer that question. I can speculate as to what the answer will be, and if I can make a telephone call I can get you an answer in a very few minutes.

Mr. Wright: We do not care to reveal any of them now except in so far as we may wish to offer some of the facts which have become pertinent to a certain situation.

The Court: You will probably have to subpoena them now.

Mr. Wright: He has testified these are the best records they have of these facts. The only question, I take it, is whether they wanted to reserve the particular privilege that was attached to these at the time of filing or whether they would insist that subpoenas be served.

Mr. McClennen: If your Honor please, we are not [fol. 2084] concerned with this matter, but if any portion of any schedule is to be used we want access to the entire schedule so that we can see whether what is produced is consistent with the rest and whether there is in the schedule that which we want to put in.

The Court: The Court might have to examine those to determine that.

Mr. Wright: We would certainly have no objection to Counsel examining any of the schedule at any time.

Mr. McClennen: It has never been possible for us to examine and is not now, as I understand it.

Mr. Wright: There is no objection to it, in so far as the Government is concerned.

By Mr. Wright:

Q. Will you check on that, Mr. Rose, as to whether or not there would be an objection now on the part of Columbia?

A. I will.

Mr. Wright: That is all.

Cross-examination.

By Mr. McClennen:

Q. Are you familiar yourself with the filing systems of your company?

A. Yes, I am.

[fol. 2085] Q. These voluminous papers that you have produced, do they come from the New York office?

A. In part and in part from the branch offices.

Q. Collected to supplement what you had in the New York office or as the easier way of getting the papers?

A. No, what we did, we assembled all of the contracts in the New York office and then found that there were, obviously, certain contracts not there, so that we asked the branch offices to send us the contents of their files.

Q. Who has done the checking to see that these contracts were the active contracts under which the supply of pictures took place?

A. I don't know that I understand you, but each of those contracts have at one time or another been examined by me.

Q. What I have particularly in mind, contracts after they are made sometimes get cancelled or releases or ignored in some way. Is there any way in which we can be assured whether these were live and performed contracts?

A. Not from an examination of the contracts themselves.

Q. Is there any way in which we can be assured that in fact the searches have resulted in the production of all the contracts that did come into existence?

[fol. 2086] A. Well, I will say this, that we made an exhaustive search at the outset at the time that Columbia was a defendant in this lawsuit, and when this case originally came on for trial I would say that we had about as complete a file of contracts as it was humanly possible to assemble at that time. Since that time these files have been subject to examination by the Government on various occasions, and on at least one occasion by the defendant Schine, and except to the extent that contracts have gone astray by reason of those examinations they are in the same condition that they were at the time that we were a defendant in this case.

Q. Are there in the folders incidental papers other than the contracts?

A. Not in these folders, no, sir.

Q. In the original keeping of the contracts, I mean the physical handling of the contracts, are the contracts to be found in separate folders for each theatre to which they relate?

A. You mean by the Company or after the preparation began?

Q. I mean as the files were before there was any litigation at all.

A. It would depend on whether or not the theatre were a member of a circuit, whether it was operated as a single unit or part of a larger unit. Where the theatre is operated [fol. 2087] as a single unit all of the papers in connection with that theatre are kept in a single file, or a series of files, depending on the lapse of time.

Q. Is that a loose file?

A. It is open on three sides, if that is responsive to your question.

Q. Are the documents therein spiked together or laid loose?

A. Most frequently the contracts and certain parenthetical material, certain descriptive material in the documents, are spiked together.

Q. Who handled the unspiking in the process of collecting these for the purposes of Columbia's preparation originally of the material for the case?

A. That was done in part by me and in most part by persons working under my supervision.

Q. Among these papers identified was there a folder that contained your release schedules?

Mr. McClennen: Mr. Wright has handed me Exhibit 682 for identification.

Q. Are the schedules in there schedules of the pictures that have actually been released on the particular dates set out in the margin or pictures which it was in contemplation would be released at those dates?

A. I think both of those statements are true, sir.

The Court: What was your answer?

[fol. 2088] A. I said I think both of those statements are true. In part they reflect releases that had been made previously and in part they reflect anticipated releases. I think you will notice, if you will look at the bottom of those particular schedules, that in certain instances the release date is left blank. Those pictures had not been released at the time those schedules were prepared.

Q. I notice that the earliest schedule is as of August 1, 1939. Is that because you did not locate any earlier or that you were not asked for one any earlier?

A. We did not locate any earlier.

Mr. McClennen: That is all.

Mr. Wright: There was one supplemental schedule of the same class as this one which was marked 685 that I meant to have marked but didn't. I will ask to have this document entitled "Further answers to interrogatories" marked as Plaintiff's Exhibit 685-A for identification.

(The document entitled "Further answers to interrogatories" referred to was marked as Plaintiff's Exhibit 685-A for identification.)

[fol. 2089] Redirect examination.

By Mr. Wright:

Q. Mr. Rose, would the same testimony that you gave with respect to Schedule A in this Plaintiff's Exhibit 685 apply to Schedule B in Exhibit 685 for identification?

A. It would.

Mr. ~~McClennen: Do~~ I understand that we may now examine those schedules?

Mr. Wright: It is entirely agreeable to the Government. As I understand it, Mr. Rose would like to make a check with his Company.

Mr. McClennen: That is just what I wanted to be definite about. As far as those interested are concerned we may look at them. I want to look at them. I don't want to be derelict in respect to the desires of the Company if the Government has not yet been permitted to release those for our inspection. I just want to be sure what the situation is.

The Court: We have not quite come to that. They have not been offered in evidence as yet. They are marked simply for indentification.

[fol. 2090] Mr. McClennen: Yes, but the Government says we may look at them, as far as the Government is concerned with that permission. I want to look at them now providing I am doing no disrespect to the desires of anybody interested.

The Court: Well, there is no disrespect to the Court. The witness says he wants to take the matter up with somebody before the examination is made.

Mr. McClennen: So that, as a matter of fact, I am not permitted to see them yet?

Mr. Wright: Could I ask just one more question to complete the examination?

The Court: Surely.

By Mr. Wright:

Q. I have here the original of the answers filed by Columbia with the Clerk of the Court, and I call your attention to these pages which are headed "Season 1931-32 through season 1939-40", and ask you if that is the most accurate compilation you have of the titles of the features released, together with their dates of release?

A. Yes, sir.

Mr. Wright: Could we have those pages then copied into the record as what the witness has just stated them to be?

[fol. 2091] Mr. McClennen: Yes. Why don't you mark it as an exhibit to save copying it?

Mr. Wright: The only difficulty in marking it as an exhibit is that I wasn't offering all of it. There was other material in it.

Mr. McClennen: Haven't you got a copy of those answers to interrogatories that you can take that schedule out of and mark it as an exhibit?

Mr. Wright: May it be understood that the next exhibit will be this list of the release dates and features of Columbia during those seasons I have mentioned as set forth in this answer to the interrogatories?

The Court: 686, then. That is a better way.

(Thereupon Exhibit No. 686 was reserved for a list of release dates and feature titles to be later supplied by Mr. Wright, counsel for the Plaintiff.)

The Court: We will adjourn until 2 o'clock.

(Whereupon, a recess was taken until 2 o'clock P. M.)

[fol. 2092] After recess, 2 o'clock P. M.

Appearances: As before noted.

Seth Raisler, a witness called by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Mr. Wright: Before examining Mr. Raisler, if the Court please, I would like to note that the list of Paramount releases, supplied by the Witness Morgan, together with his letter to Mr. McClennen and myself, has been marked as Plaintiff's Exhibit No. 687 for identification.

(Thereupon list of Paramount releases, together with letter to Mr. McClennen and Mr. Wright, referred to, was marked as Plaintiff's Exhibit No. 687 for identification.)

Direct examination.

By Mr. Wright:

Q. Mr. Raisler, where do you live?
A. 102-206th Street, Laurellton, Ohio.
Q. What is your occupation?
A. I am assistant to the Assistant General Sales Mana- [fol. 2093] ger of Columbia Pictures.
Q. How long have you held that position?
A. The past seven years.
Q. Are you familiar with the sales personnel and their duties in the Columbia organization?
A. Yes, sir.
Q. Can you tell us what Mr. Phil. Fox' position with the company is?
A. Mr. Phil. Fox, at the present time, is the Branch Manager of the Buffalo Exchange.
Q. How long has he held that position?
A. If you don't mind, I have checked the records before I came here, and I have the exact date.
Q. You can refer to your notes.
A. Mr. Fox has been in Buffalo from May 18th, 1935 to——I am sorry—he has been in Buffalo since May 22nd, 1939.
Q. What was his position before that?
A. Before that he was Branch Manager at Albany.
Q. For what period?
A. The period from May 18th, 1935 through May 22nd, 1939.
Q. Do you know what position Mr. Rube Jackter holds?

A. He is the Assistant General Sales Manager of Columbia Pictures.

A. How long has he held that position?

A. Since approximately 1932.

[fol. 2094] Q. That is, he assumed it some time in the year 1932?

A. I believe so, to the best of my recollection.

Q. The General Sales Manager is who?

A. The General Sales Manager is Mr. Montague.

Q. Mr. A. Montague?

A. Mr. A. Montague.

Q. Do you know how long he has held that position?

A. He has been there since 1933 in that position.

Q. What are Mr. Montague's duties as Sales Manager?

A. Mr. Montague's duties in general are to establish the policy of sales, and at the same time as representative between the home office sales department and the executives, the administrative offices of the company and studio.

Q. What are Mr. Jackter's duties?

A. Mr. Jackter's duties are confined to the approval or rejection of contracts and hiring of sales personnel including branch managers and divisional managers.

Q. And what were Mr. Fox' duties as Branch Manager during the period you mentioned?

A. He was in charge of the sales force whose main purpose was to solicit applications for motion picture contracts from local exhibitors.

Q. Mr. C. N., or is it C. W. Johnson?

A. C. N. Johnson.

[fol. 2095] Q. Held what position with your company?

A. He was from the period August 7th, 1931, through May 18, 1935, Branch Manager of Albany.

Q. There is no C. W. Johnson employed by the Company?

A. Our records don't reveal that.

Q. Mr. Louis Weinberg, what position does he hold with the company?

A. That position we designate as circuit sales manager.

Q. He holds that position now?

A. He does.

Q. How long has he held that position?

A. I would say for at least 12 years.

Q. What are his duties?

A. His duties are confined to major circuits, to solicit their applications for the Columbia product.

[fol. 2096] Q. Does that term "Major Circuit" as you used it include the Schine circuit?

A. Yes, it does.

Q. Mr. Joe Miller holds what position with Columbia?

A. At the present time Mr. Joe Miller is the branch manager of the Albany office.

Q. How long has he held that position?

A. Since May 22, 1939.

Q. What was his position prior to that?

A. Prior to that he was branch manager of the Buffalo office.

Q. For how long?

A. From August 7, 1931.

Q. To——

A. Up to the time he went to Albany, which was May 22, 1939.

Q. Who is the manager at your Cleveland office?

A. At the present time, Mr. Lester Zucker.

Q. How long has he held that position?

A. Since February 15, 1937.

Q. Who was the manager at Cleveland before that?

A. Mr. H. C. Bissell.

Q. How long did he hold that position?

A. He was there from August 7, 1931, through February 13, 1937.

Q. Mr. Bissell and Mr. Zucker and Mr. Miller all had the same duties as the other branch managers you described?

[fol. 2097] A. Yes, sir.

Q. Who is your branch manager at Cincinnati?

A. Mr. Allen S. Moritz.

Q. How long has he held that position?

A. Since September 1, 1931, up to the present time.

Q. Who is the manager of the Washington, D. C., exchange?

A. At the present time?

Q. Yes.

A. Mr. Ben Caplon.

Q. How long has he held that position?

A. For the past year, approximately.

Q. Who was manager there before that?

A. Mr. Sam Galanty.

Q. For how long?

A. Since August, 1931.

Q. And the duties of Mr. Galanty and Mr. Caplon and Mr. Moritz are the same as those of the other branch managers you have described?

A. In general they are, with one qualification.

Q. What is that?

A. That Mr. Galanty, in addition to being Washington branch manager during that period was also the division manager in charge of several other branches.

Q. What were the other branches?

A. Pittsburgh, Cleveland, Cincinnati and Washington.

[fol. 2098] Mr. Wright: That is all.

Mr. McClennen: No questions.

James A. White, a witness called by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Wright:

Q. Where do you live, Mr. White?

A. Lockport, New York.

Q. What is your occupation?

A. Mechanical engineer.

Q. Employed by whom?

A. The General Motors Corporation, Harrison Division.

Q. Were you formerly an executor of the Estate of Charles Dickinson?

A. Yes, sir.

Q. Of Lockport?

A. Yes, sir.

Q. During what period was that?

A. May I refer to notes?

Q. Yes.

A. Mr. Dickinson died on December 7, 1933, and we became executors in 1934, in the early part of 1934.

[fol. 2099] Q. When you say "we" who are you referring to? Who were the other executors?

A. Mrs. Dickinson and Mr. LeGrand O. Robson of Lockport.

Q. And you served as such until when?

A. Some time during 1936 I believe we were discharged.

Q. And among the assets of Mr. Dickinson's estate was the Palace Theatre at Lockport?

A. Yes, sir.

Q. Were you approached at any time—did you have any conversation with any representatives of the Schine interests with reference to a purchase of that theatre or lease of the theatre from the Estate?

A. We met with Mr. Schine in 1935, May 21, 1935, in Rochester.

Q. What led up to that meeting?

A. I believe—I am not just certain on this point, but I believe there were several conversations with Mr. Fogle, our attorney, before that meeting.

Q. Well, do you know who initiated the conversations?

Mr. McClennen: Just a moment. That is objected to.

Mr. Wright: I am asking if he knows.

The Court: He may state what was said. What was first said about it? What talk did you have about it and with whom?

Q. What was the first conversation you had with any one [fol. 2100] with reference to this meeting with Mr. Schine?

A. I can't recollect just the things that led up to this conversation in Detroit—in Rochester, I mean.

Q. This was Rochester where the conversation you had was?

A. We met in Rochester.

Q. What was that date, again?

The Court: May 21, 1935.

Q. Where did the conversation occur in Rochester?

A. In the Seneca Hotel.

Q. Who else was present?

A. Mr. Robson and, I believe, Mrs. Shannon was with us, and possibly Mr. Fogle, but I am not sure of that.

Q. Mrs. Shannon?

A. Mrs. Dickinson. She later became Mrs. Shannon.

Q. And Mr. Fogle was the attorney for the executors?

A. Yes, sir.

Q. What is his first name?

A. Carl.

Q. Who else was present there?

A. I believe Mr. Schine and Mr. May.

Q. Which Mr. Schine, do you recall?

A. I don't know his initials; I am sorry.

Q. The gentleman sitting here (indicating)?

A. Yes.

Q. Mr. Myer Schine?

[fol. 2101] A. That is right.

Q. And Mr. May?

A. Mr. May.

Q. What was the conversation then?

A. I can't tell you the conversation. The general drift of it was that we wanted to sell the theatre and he was a possible customer.

Q. Will you just tell us the substance of what was said on each side?

A. I can't tell you the conversation. I don't remember.

Q. Don't you have any notes from which you can refresh your recollection?

A. May I look at my papers? I think possibly I have.

[fol. 2102] Q. Surely.

A. I have this note dated May 21, 1935, 2:45 P. M. "Mr. May phoned from Hamilton, Ohio, that he and Mr. Schine would be at Hotel Rochester tomorrow, and could see us after lunch; would like us to phone him in morning to make definite arrangements. If we cannot see him in Rochester he will be in Lockport Thursday."

After that note he sent a telegram to Mr. Myer Schine, Gloversville, New York. This is May 21. "Wire earliest date and place convenient to meet you on strictly confidential matter."

That was previous to our conversation in Rochester so you can see there was some preliminary contact there. Just what that was, I could not say.

Q. What I asked you for was whether you had a memorandum or note there of the conversation itself?

A. No, I haven't. I just looked here to see that.

Q. You have no——

A. The general discussion was the theatre.

Q. Just a minute. You say you have no memorandum of that conversation?

A. No, sir.

Q. Can you recall discussing that conversation with me in the office down here a day or two ago?

A. I showed you an agreement.

[fol. 2103] Mr. Rogers: One moment, please. Answer the question, Mr. White.

The Court: The question is, can you recall a conversation with him?

The Witness: With you?

Q. Yes.

A. Yes.

Q. Didn't you at that time have a memorandum of the conversation with you?

A. I don't believe so, and I haven't it here in my papers. I don't think I had that.

Q. What was the agreement you referred to there?

A. There was an agreement submitted to us, or an offer in the form of an agreement on the 17th day of June, 1935, making us an offer for the theatre.

Q. That is this document you have in your hand?

A. Yes, sir.

Mr. Wright: I will ask to have that marked for identification as Exhibit No. 688.

(Thereupon form of an agreement, dated June 17th, 1935, referred to, marked as Plaintiff's Exhibit No. 688 for identification.)

Mr. Rogers: That is the date of that?

Mr. Wright: The date—it is unsigned but it is June 17th, 1935.

[fol. 2104] Mr. Rogers: Thank you.

Q. Was the draft, or was this offer that has been marked Exhibit 688 discussed at that meeting in May?

A. I can't hardly think so, because this agreement was written after that meeting.

Q. Well, it is dated after that meeting; you think it was, but I am asking you——

A. This is the result of it.

Q. What is that?

A. This is the result of the meeting. I presume at that meeting we asked for an offer in writing and this was submitted to us.

Q. That was the offer that came out of the meeting?

A. Yes, sir.

Q. And you don't have any recollection of what the conversation was other than the fact that an offer was made which was later put in the form of this Exhibit 688?

A. I doubt if this offer was made at that meeting.

Q. Well, what was said at the meeting as near as you can recall?

A. I regret that my memory isn't of that type. I can't tell.

Q. You are unable to locate a memorandum of that conversation now?

A. Unfortunately not, no, I can't find it.

[fol. 2105] Q. Then what if any action was taken by you and your fellow executors with reference to that offer that is marked as Exhibit 688 for identification?

A. We decided the price was insufficient and it was not practical for us to accept the terms.

Q. You rejected it?

A. We rejected it.

Q. Do you know what the assessed valuation of the property that is covered by that offer was?

Mr. McClennen: Just a moment, that is objected to.

The Court: Assessed value? Is that evidence of value?

Mr. Wright: I would think it would be evidence of the minimum value.

The Court: Of what value?

Mr. Wright: I said that would be evidence, I should suppose, of the minimum value of the theatre property, its assessed valuation.

The Court: Property is sometimes assessed far more than they are worth.

Mr. Wright: I submit that the matter—I think it might be one element that would be relevant to the terms.

The Court: The better evidence would be the testimony of the witness.

[fol. 2106] By Mr. Wright:

Q. Did you make any effort to determine what you thought was the fair value or price for that property at that time?

Mr. McClennen: That is objected to, if your Honor please, immaterial what they did.

The Court: What?

Mr. McClennen: Immaterial what they did to determine what they thought was the value.

The Court: This calls for a "Yes" or "No" answer. Did he make any inquiry? What is your answer, Mr. White?

The Witness: I would say we did, yes, determine that.

Q. What was the fair value of that property in your opinion at that time?

Mr. McClennen: That is objected to.

The Court: Well, I think there should be some preliminary questions, perhaps, to show his competency to testify to value.

Mr. Wright: He said he made an investigation to determine the value, which, of course, was part of his duties as executor.

The Court: Ask what if any investigation he made.

Q. What if any investigation did you make to determine what the property was worth?

[fol. 2107] A. We took into consideration the assessed value for one thing, and took into consideration the cost, as we understood it to be and amount of mortgages that were on it. Those are various measures we used.

Q. What did you understand the cost to be?

Mr. McClennen: That is objected to.

The Court: Depending on when it was purchased. This was back in 1925.

Mr. Wright: That was when it was built, I believe.

The Court: The same condition—you mean its original cost?

The Witness: That is what I had in mind, yes.

The Court: That is some 15 years or some 9 years before this. You know something of the values of property in that locality?

The Witness: I wouldn't consider myself a judge, no, sir, but I would consider Mr. Robson, who was also an executor quite competent to determine the value of the property.

The Court: Is he here?

The Witness: No, he was a real estate man.

The Court: You and he made inquiries at that time of this rejected offer?

The Witness: We tried to put a valuation on all of the estate property. We thought that was our duty as ex-[fol. 2108] ecutors, to have some idea of the value of this property.

The Court: Was it appraised?

The Witness: Yes, sir.

The Court: By whom?

The Witness: Mr. Remick, Lockport, and Mr. Howard Moyer, Lockport.

The Court: Appraised as of this time?

The Witness: Yes, sir.

By Mr. Wright:

Q. Do you know what that appraised value was?

Mr. McClennen: Just a moment, that I object to, if your Honor please.

The Court: Sustained.

Q. What was the value that you and Mr. Robson placed upon the property at that time?

Mr. McClennen: That is objected to, if your Honor please. This objection is more extensive than just this witness' qualification, which he does not profess. It appears that these executors wanted to sell this property and that this interview took place and that an offer was made and that they rejected it, and that thus far has ended that episode. It makes no difference what the property was [fol. 2109] on that showing, I submit.

The Court: The competency may depend on something they did. The proof may show they were compelled or forced in the circumstances to act and set a price much less than its value, and that might be material.

Mr. McClennen: What these executors put on it as a value is of no consequence.

The Court: That is another objection. I don't know that that is material, if he is not competent to judge value. The objection is sustained unless he is shown qualified to appraise it.

By Mr. Wright:

Q. After this offer, marked Exhibit 688 for identification, was rejected, did you hear anything further from Mr. Schine or Mr. May?

A. Mr. Schine had a conversation with Mr. Robson on June 14th, 1935 of which I have a memorandum.

Q. Were you present then?

A. No, sir.

Q. When was that memorandum of yours prepared?

A. June 14th.

Q. By you?

A. No, by Mr. Robson.

Q. Mr. Robson gave the memorandum to you?

A. He put it in our records.

[fol. 2110] Q. Could I see it, please?

A. Yes (handing paper to Counsel).

Mr. Wright: I will ask to have that given the next exhibit number for identification, 689.

(The pencil memorandum referred to was marked as Plaintiff's Exhibit 689 for identification.)

Q. You think, now that you have looked at the memorandum, Exhibit 689 for identification, that this offer, Exhibit 688, was submitted after June 14th?

A. Yes, sir.

Q. That is on or about the date that is on the offer there?

A. I believe so.

Q. The offer was then rejected?

A. Yes, sir.

Q. And subsequent to the rejection of the offer did you hear anything further from Mr. Schine or Mr. May?

A. I believe not.

Q. Not at any time?

A. Not until the time of the sale later.

Q. What time do you refer to as the time of sale?

A. The sale was held on April 20, 1936.

Q. That was an auction sale, was it?

A. A public auction sale.

Q. You had publicly advertised it?

A. Yes, sir.

[fol. 2111] Q. Immediately prior to the sale did you receive any communications from Mr. Schine or Mr. May?

A. I have no memorandum of them. There may have been conversations with our attorney, which I wouldn't know about.

Q. You don't know what was said?

A. No.

Q. This sale was held where?

A. In Mr. Fogle's office in Lockport.

Q. That was on what date?

A. On April 20, 1936.

Q. Do you recall who else was present there besides yourself?

A. Mr. Warner Thompson, Mr. Robson, Mr. Fogle, Mr. Schine, Mr. Osborne, and Mr. May, I think.

Q. Was Mr. Dipson there?

A. I believe he was, but I haven't a list of the names.

Q. The interest of the Estate in the Palace Theatre was sold on that day, wasn't it, at auction?

A. Yes, sir.

Q. To whom?

A. To Mr. Osborne.

Q. What was the price?

A. The final price was, cash, $37,600, the buyer assumed the first mortgage of $90,000, he assumed operating losses [fol. 2112] of $8,902.37, and he assumed advances for interest and taxes of $13,700.20, and interest on various items of $1,225.22, making a total of $151,427.79.

Q. The actual consideration, I take it, was that amount which you have mentioned, less the amount of the mortgage?

Mr. McClennen: Just a moment. He has stated what the consideration was.

Mr. Wright: I mean what was received net, the net receipts of the estate——

A. Was $37,600.

Mr. McClennen: The objection I make, your Honor, is that I understand the whole was the consideration. If he wanted to know how much cash was paid there would have been no objection to the question.

The Court: His testimony, as I understand it, was $37,600 was paid in cash and these debts were assumed as part of the purchase price.

The Witness: That is right.

By Mr. Wright:

Q. What was sold was the same property or interest that is described in this offer marked Exhibit 688?

Mr. McClennen: Just a minute. The sale papers would show that more accurately, [illegible] was a sale. It must have [fol. 2113] been committed to writing, and he is really being asked for the contents of that writing.

The Court: I think he can state what was sold.

Mr. McClennen: The question asked was whether what was sold was the same thing included in this offer.

The Court: Objection sustained to the question in that form. He may state what was sold.

By Mr. Wright:

Q. Just state what was sold, if you can.

A. I think I have the advertisement of the sale here, which would tell that (handing newspaper clipping to witness).

Q. This notice of public sale you have produced, where was that published?

A. That was published in the local papers in Lockport.

Mr. Wright: I will ask to have this notice of sale marked as Exhibit 690 for identification.

(The newspaper notice of sale referred to was marked as Plaintiff's Exhibit 690 for identification.)

Q. And is the property that was sold on April 20th the property that was described in this notice marked Exhibit 690 for identification?

A. Yes, sir.

Q. Who were the bidders at the sale?

A. Mr. Osborne and Mr. Schine.

[fol. 2114] Q. Were there any other bidders?

A. No, sir.

Mr. Wright: I want to offer in evidence Exhibits 688 and 690 for identification. I offer both of those in evidence.

Mr. Rogers: Subject to the general objection that we have had to all, that it is purely a local transaction, no interstate commerce involved, and no violation of the Sherman Act involved.

The Court: Overruled.

(The agreement of June 17, 1935, previously marked as Plaintiff's for iden. Exhibit 688 was received in evidence.)

(The newspaper notice of sale, previously marked as Plaintiff's Exhibit 690 for identification was received in evidence.)

The Witness: The sale was finally concluded and we were given a release.

The Court: What do you mean that you were given a release? You said you were given a release.

The Witness: Memorandum of agreement. On the 20th day of April, 1936, and it follows here with many pages, and this was signed by all of us.

[fol. 2115] The Court: The sale was in April?

The Witness: This is dated—finally signed on the 7th of May.

By Mr. Wright:

Q. Is that the date the sale was completed?

A. I think that is the day when all the papers were finally passed. Perhaps you could tell quicker than I can.

Q. This, I believe, relates to another matter, does it not? This document you have just handed me is a release that was obtained from the Reliance Theatres Corporation in connection with the liquidation of their lease; is that right?

A. I haven't read it.

Mr. Wright: I will have it marked for identification.

The Court: The sale included the lease, then?

The Witness: Yes, sir.

The Court: The sale includes the rights under the lease which you had?

The Witness: Including all rights which we had, all stock that we had, all interest that we had in the theatre.

(The release, dated April 20, 1936, referred to was marked as Plaintiff's Exhibit 691 for identification.)

[fol. 2116] Q. This release, marked 691 for identification, then was executed on the date it bears there, May 7th?

A. Yes, sir.

Q. What is this attachment here described as "Final Report"?

Mr. McClennen: Just a moment. I submit that there should not be any interrogation as to the contents of this exhibit until it is in evidence.

The Court: He has corrected that now. He asks now what is the subject matter of the paper, I suppose.

Mr. McClennen: If your Honor please, all it means, perhaps——

Mr. Wright: I am trying to find out everything that is in it.

The Court: The proof of signature, I suppose, would be sufficient to make the document competent.

[fol. 2117] Q. I asked what this paper is that is attached to Exhibit No. 691 for identification that is entitled "Final Report"?

A. It is a report of the sale transaction made by Mr. Robson.

Q. That states——

A. That states the sale price.

Mr. McClennen: Just a moment.

The Court: No.

Mr. McClennen: If that paper is important it should be in. If it isn't, its contents should not be stated.

The Court: You can't give the contents.

Mr. Wright: I offer it.

The Court: Who was Mr. Osborne?

The Witness: Mr. Osborne was Mr. Dipson's right-hand man, as I understand it, Vice President of one of his companies.

The Court: I don't recall that he was referred to here; Mr. Dipson.

Mr. Wright: He was referred to yesterday by Mr. Dickinson.

The Court: He is the same man, the same individual?

Mr. Wright: Yes.

The Court: I do not see the materiality of this, Mr. [fol. 2118] Wright.

Mr. Wright: It merely fixes the date the transaction was completed. That is all I offered it for.

Mr. Rogers: Let's get the date if that is all.

Mr. McClennen: No objection.

Mr. Wright:

Q. As I understood your testimony, Mr. White, this May 20th, 1936 date was the date on which the sale of the theatre property was completed?

A. On the 20th.

The Court: Of May?

The Witness: Pardon me, I believe that is the final paper of the sale. The papers were all passed.

Q. The date on which that occurred was May 20th, 1936?

A. Yes, sir.

(Thereupon the document previously marked for identification as Plaintiff's Exhibit No. 691, is received in evidence.)

Mr. Rogers: There will be no cross-examination.
Mr. Wright: That is all.

[fol. 2119] **Warner F. Thompson**, a witness called by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Wright:

Q. Where do you live, Mr. Thompson?
A. What is that?
Q. Where do you live?
A. Lockport, New York.
Q. What is your occupation?
A. I am an attorney.
Q. How long have you been so engaged?
A. 15 years.
Q. Did you represent Mr. Dipson and Mr. Osborne in connection with the acquisition of the Palace Theatre in May, 1936?
A. I did.
Q. Do you recall the—did you also represent them in connection with the transfer of the theatre to the Schine interests?
A. I did.
Q. Can you recall when the latter transfer occurred?
A. Well, the work in connection with the transaction oc- [fol. 2120] curred in the summer of 1936. The exact dates are referred to in my memorandum here, but I can't recollect them off-hand.
Q. Well, do you recall when Schine took over the operation of the theatre?
A. I do not have the exact date, except there is a memorandum here as to when I turned over the minute books of Reliance Theatres, and the stock book of Reliance Theatres. That was on October 9th. The operation took place before that. That was the day I delivered the final papers, I mean, the final documents connected with it. The operation had taken place before that.
Q. Do you know how long before that it was that Schine took over the management of the theatre?

A. According to my memorandum, the last memorandum I have of the transaction, it was the latter part of July, so that the actual transfer of possession and operation took place between the first of August and 9th of October, whether it was August or September, I can't recollect.

Q. I will show you this document entitled "Referee's Deed," and ask you if you can tell us what that is?

A. Well, it is a referee's deed of a mortgage foreclosure proceeding.

Q. The property that it relates to, do you know from looking at it whether or not it refers to the Palace Theatre, [fol. 2121] Lockport?

Mr. McClennen: Wouldn't the deed say in its terms?

Mr. Wright: It merely describes, I think, the property in terms of lot numbers and street address.

The Witness: This refers to the Palace Theatre.

Mr. Wright: I will have this one you have just identified as the Referee's Deed, marked for identification as Exhibit No. 692.

(Thereupon Referee's Deed, referred to, was marked as Plaintiff's Exhibit No. 692 for identification.)

Q. This indenture of October 10th, 1937—

A. 1936.

Q. From Mr. Osborne to Lock City Theatres, Inc., refers to the same property?

A. This is 1936. I believe you said 1937.

Q. 1936, yes, my error.

A. Yes, this is the same property.

Mr. Wright: I will ask to have that marked for identification as Exhibit No. 693.

(Thereupon Indenture dated October 10th, 1936, from Mr. Osborne to Lock City Theatres, Inc., referred to was marked as Plaintiff's Exhibit No. 693 for identification.)

Q. Mr. Thompson, had you also been representing the [fol. 2122] Reliance Theatre Corporation during the period it was operating the Palace Theatre?

A. Yes, sir.

Q. And in that connection did you have any conversations with any representatives of the Schines?

A. Yes, sir.

Q. With whom?

A. With Mr. Willard McKay, Mr. Schine's attorney.

Q. And when was that?

A. It was on June 16th, 1936.

Q. Where did it occur?

A. Occurred in the City of New York in Mr. McKay's office.

Q. What was said there? was there any one else present, I ask you first, if there was any one else present besides you and Mr. McKay?

A. There was myself and Mr. McKay and possibly my father, Mr. George F. Thompson; I am not sure whether he was present or not, he might have been.

Q. What was said then?

Mr. McClennen: That we object to, if your Honor please. I take it, of course, that the Mr. McKay referred to is one of counsel in this case, but it doesn't at all follow that this conversation should be admissible. Of course, I don't know [fol. 2123] what is in it. I raise the objection and press it.

Mr. Wright: The answer to Plaintiff's interrogatory 3 discloses Willard S. McKay, New York City, as a director and Vice President. It isn't clear that the periods that refers to as being which——

Mr. McClennen: Well, it appears to me that he was a director from August 31, 1931 to January 19th, 1932, and that he was Vice President from January 17th, 1938, intermittently to the date of the answer.

Mr. Wright: Well, is the objection based on the fact that it is asserted that Mr. McKay was not representing Schine at this time?

Mr. McClennen: It is based upon the fact that it appears by your evidence that he was not an officer or director at the time in question.

Mr. Wright: I submit the mere fact he was not an officer or director wouldn't prevent the conversation being competent, if, as Mr. Thompson stated, he was representing him as attorney.

Mr. McClennen: You asked me to state what the objection was and I am telling you what the objection is.

Mr. Wright: And I say it isn't well taken.

Mr. McClennen: I assume so, and press it.

[fol. 2124] The Court: You will have to show his authority.

By Mr. Wright:

Q. Had you had any dealings with Mr. McKay?

A. I don't believe I had, but I called him on the telephone as a result of a telephone call I had from Mr. Dipson, asking me to, as a result of a conversation he had with Mr. Schine, as he told me.

Mr. McClennen: May this go out?

The Court: Strike it out. The question is whether you had any prior dealings.

Mr. Wright: I will ask him now what the circumstances were which brought you to Mr. McKay's office on that day, we can take that.

The Court: He said it was based on a conversation with Mr. Dipson.

The Witness: I called Mr. McKay on the telephone and told him I had been requested by my client, Mr. Dipson, to ask for a conference with Mr. McKay. He replied he would be willing to see me and fixed the hour at 2:30 in the afternoon at his office on Sixth Avenue. I then went to his office, and had a conversation.

Mr. McClennen: Just a moment, that is the conversation [fol. 2125] that is now under consideration by the Court on my objection. Please don't state it until the Court has ruled.

The Court: Do you think a sufficient foundation has been laid for the admission of Mr. Thompson's conversation?

Mr. Wright: I think so, your Honor. I don't see that there is any——

The Court: There is nothing here so far to show Mr. McKay's relations to the company. I say "so far," I mean at that time.

Mr. Wright: Well, Mr. McKay's name appears in several of these companies, but as to the particular—the answer says as to Schine-Lexington Corporation, one of the defendants here, Mr. Willard McKay was Vice President from October 1, 1936 to November 4th, 1937. He appears here as——

The Court: It shows he was a director?

Mr. Wright: As to Schine-Lexington Corporation, he appears as Vice President only from October 1, 1936 to November 4th, 1937, and from November 21, 1938 to November 7th, 1940. He also appears here as Director and Vice

President of Chesapeake Theatres Corporation from April [fol. 2126] 26th, 1938, to December 30th, or, a director from April 26th, 1938, to December 30th, 1938, and Vice President from April 26th, 1938 to date. He also appears here, I believe, as Vice President of Schine Circuit, Inc., from August 27th, 1938 at intermittent periods to date. I believe those are the only defendant corporations in connection with which his name appears in the interrogatories.

The Court: This conversation was in June, 1936?

The Witness: June 16th, 1936.

The Court: Well, if it is proposed to connect this with his position with the company, I will receive it.

Mr. Wright: I will have Mr. Thompson step down and call Mr. McKay as an adverse witness now.

The Court: I will receive it subject to showing his authority.

Mr. McClennen: I submit that such a conversation as this is not admissible.

The Court: It depends on the extent of the individual's authority in the conversation.

Mr. McClennen: Yes, but——

The Court: I know, but until that authority is shown, it [fol. 2127] has no probative force.

Mr. Wright: Well, if the Court please, I will ask Mr. Thompson to step down and I will call Mr. McKay:

Willard S. McKay, a witness called by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Wright:

Q. Now, Mr. McKay, you are an attorney in New York?

A. Yes.

Q. And you also hold office in these various defendant corporations here?

A. I have held office at some time.

Q. Do you now?

A. My recollection is at the present time I hold no office.

Q. With any of the defendant corporations?

A. That is my best recollection.

Q. Now, calling your attention to the year 1936, what, if any, connection did you have with Mr. Myer Schine or Schine Circuit, then?

A. I performed legal services for them from time to time.

[fol. 2128] Q. Throughout that year?

A. I believe so. I don't recall any specific services I performed during 1936, but I presume I performed services during the year.

[fol. 2129] Q. And do you recall performing any with reference to the Palace Theatre at Lockport?

A. Not at this moment. I keep a diary, and if I did perform any legal services that would appear in the diary.

Q. You couldn't say whether you did or did not now?

A. No.

Q. But you know you were representing Mr. Schine during that period?

A. I know that I was performing legal services for him during that period.

The Court: You have not inquired about this particular occasion.

Mr. Wright: I will recall him, then.

The Court: He said he performed services at different times that year.

By Mr. Wright:

Q. Can you refer to your memorandum, Mr. McKay, and then supply us with that information?

A. It is in New York.

The Court: Why do you not ask him if he recalls his conversation with Mr. Thompson?

Mr. McKay: Not without reference to my diary. If there was a conversation there will be a note of it in my diary and that will refresh my recollection, but presently I do not [fol. 2130] recall the conversation.

The Court: You are going to undertake to produce your diary for us?

Mr. McKay: I will refer to it anyway.

Mr. Wright: I submit that is as far as we can go at the present time, your Honor.

The Court: Yes.

Mr. Wright: I think we ought to have the conversation, subject to it being stricken if it should appear that Mr.

McKay was not at that time representing the Schine interests.

The Court: I will let him state, subject to it being stricken if the proper connection is not made.

Warner F. Thompson resumed the stand in behalf of the Plaintiff, having been previously sworn, was examined and testified further as follows:

Direct examination (Continued).

By Mr. Wright:

Q. Will you state what the conversation was?

Mr. McClennen: We have our objection.

The Court: Yes.

A. I told Mr. McKay that we had had a telephone conver- [fol. 2131] sation with Mr. Dipson, that he had notified us that he had had discussions with Mr. Schine in reference to making an arrangement between them for the theatres in Lockport, that we understood—we had been told that Schine had offered $200,000 for the theatre, which had been rejected; that they had thereafter discussed a pooling arrangement whereby all theatres in Lockport would be combined; the Hi-Art would be closed; rent would be paid to Dipson for the Palace Theatre and to Schine for the Rialto, in an amount to be agreed upon; that thereafter the profits each year, up to a sum of approximately $50,000, should be divided 65% to Schine, 35% to Dipson, and above that 50-50. That Schine should have the management of all theatres and Dipson and Schine each to have 50% of the stock of the new corporation. Mr. McKay stated first that of course they were not at all afraid of this action which the Reliance Theatres had previously brought, that in their opinion our chances of success were nil. McKay stated that Schine had two theatres in Lockport, and that he absolutely required the number of pictures that he bought; that he actually used, played them, and paid for them; that he did not believe any court would interfere with that arrangement. He said, however, that it would be very [fol. 2132] expensive to defend the suit; that also, under the present conditions in Lockport, neither Schine nor

Dipson were able to make as much money as the situation warranted. That if they got together both would make increased profits in the future. That for the purpose of settling the suit and increasing the profits in Lockport they were willing to enter into a pooling arrangement, whereby the Hi-Art would be closed, the Rialto and Palace Theatres operated, management thereof to be exclusively in Schine's hands, because of his superior buying position; that rental was to be paid for both the Palace and Rialto Theatres, respectively.

No definite basis of rental was discussed, except that it was suggested that rental should be based upon a fixed return upon the investment in each theatre.

Mr. McKay further said that he understood from Schine that Dipson had agreed that Schine should have 65% of the profits and Dipson 35% after payment of expenses and rental, and the rental of the Hi-Art Theatre, which was to be closed.

He further stated that Dipson insisted upon 50% of the stock in the new corporation, but they did not trust Dipson [fol. 2133] to any extent whatsoever. Therefore they felt it inadvisable to allow a 50-50 stock division, for the reason that any time Dipson might cause a dissolution of the new corporation, which if it occurred after the better pictures were placed and played in the Palace by Schine's management, might be used by Dipson against Schine in a subsequent anti-trust suit, in the event pictures were withdrawn from the Palace. That they could not allow this to happen; that if they went into the arrangement they wanted it permanent for at least twenty years. That he did not believe that an agreement on our part not to dissolve would be binding. That therefore, inasmuch as Schine was to have the management and 65% of the profits, it would necessarily follow that he should have at least a majority of the stock.

That if Dipson actually physically desired 50% of the stock that could be handled by a voting trust arrangement for all the stock, whereby Schine had the appointment of two of three voting trustees; that if these conditions were satisfactory the deal could be closed in short order.

I told him that we would consider the matter, advise with Mr. Dipson, and notify him of our reply. On the 18th——

[fol. 2134] Mr. McClennen: Just a moment, before you get to another date. Now that your Honor has heard the conversation I move that it be stricken out.

The Court: Motion denied for the present.

Q. Was that all the conversation on that day?

A. According to my recollection.

Q. Then you saw him again?

A. I talked to him on the telephone subsequently.

Q. When was that?

A. June 18th.

Q. 1936?

A. 1936.

Q. What was the conversation then?

Mr. McClennen: That conversation is objected to.

The Court: Same ruling.

A. I talked to Mr. McKay in New York on the telephone and advised him Schine's offer was rejected for the reason that Dipson, under the arrangement, would be only a minority stockholder. Mr. McKay replied that he did not believe any other arrangement would be satisfactory, but that he would inform Mr. Schine of our decision, who was then in New York.

Q. Was anything else said?

A. No, that is all, according to my recollection.

Q. Did you have any further conversation with him?

[fol. 2135] A. I did not.

Q. What was this suit that you referred to in the conversation?

A. This was a civil——

Mr. McClennen: That is objected to, if your Honor please. A description by the witness of a suit.

The Court: How is it material?

Mr. Wright: Just for explanatory purposes, to know what they were talking about.

Q. In the suit you referred to in the conversation were you representing the plaintiff, or who was the plaintiff?

A. I was representing the plaintiff and the plaintiff was Reliance Theatres, Inc.

Q. That was a treble damage action under the Clayton Act?

Mr. McClennen: Just a moment. I object.

The Court: Sustained.

Q. Who were the defendants?

A. There were numerous defendants. I mean there were the various Schine corporations——

Mr. McClennen: Just a moment. That is objected to. The record should be shown.

The Court: Sustained. I think it is sufficiently answered by the evidence given in regard to the conversation with Mr. McKay in New York.

Q. Was that suit pending in this court?

[fol. 2136] A. Yes, sir.

Q. Who was representing the defendants?

Mr. McClennen: That I object to.

The Court: Sustained.

Mr. Wright: If the Court please, I think that is material on the question of connecting the conversation with Mr. McKay.

The Court: Unless you show that Mr. McKay was acting on a retainer it would not be competent. The fact that he appeared in one action would not be proof of his authority to appear in another action.

Mr. Wright: I take it it was in reference to this particular suit.

The Court: He has already said that. You are asking now for the name of the attorney, for the purpose, I assume of connecting up the authority of Mr. McKay to hold that conversation.

Mr. Wright: I should think that would be additional evidence of authority.

The Court: I do not think so. Objection sustained.

Q. Then did you have anything to do with the final transfer that occurred of the Dipson interest to Schine?

A. Yes, sir.

[fol. 2137] Mr. Rogers: One moment. Well, go ahead.

Q. You haven't been able to fix the date of that more accurately than you have already stated, during the summer?

A. I have had some memorandum there of the various days that I spent in July in connection with that transaction. Apparently it is not the final date.

The Court: You said he went into operation some time between August and October?

The Witness: That is right.

The Court: You don't know just the final date that the deal was closed?

The Witness: No, I don't seem to have my memorandum on that particular phase of the transaction. There were transfers that took place here. I mean the whole thing was done, but I don't happen to have a memorandum in my files to show when that was.

By Mr. Wright:

Q. Do you know whether or not any pooling arrangement, such as was discussed, was ultimately made?

A. I do not.

Mr. Wright: That is all.

Mr. Rogers: No cross-examination.

(Short recess taken.)

[fol. 2138] Mr. Wright: If the Court please, at this time we would like to offer in evidence excerpts from the exhibit that has been identified as 654, that is, the file of the Lockport newspapers. What I wanted to read were the admission prices wherever they appear of the three theatres. The first——

Mr. McClennen: I suggest that the page be put in, because on the very same pages are some that we are interested in also.

Mr. Wright: We will be glad to read in at the same time any prices that you are interested in. We have to give the book back to the paper, and we can't tear any pages out of it.

The Court: Read the part you want and let the other side read it also.

Mr. McClennen: It occurred to me if we just had a photostat made of the ones that are wanted, it might be quicker. If your Honor thinks it is better to read from the book, all right.

The Court: It isn't a matter of the pictures.

Mr. Wright: Most of the material on the page wouldn't be relevant. All I want to do is read the admission price figures.

[fol. 2139] Mr. McClennen: Then as you read from your page may I also read from the page the things that we want?

The Court: Surely.

Mr. Wright: The issue of October 9th, 1933, carries the announcement of the proposed opening of the Hi-Art.

The Court: October when?

Mr. Wright: October 19th, 1933, states, the ad for the Hi-Art states "Gala Opening, Saturday, Double-feature program, redecorated, reseated, remodeled, recarpeted, latest sound equipment installed, matinee 15 cents, nights and Sundays 20 cents, kiddies 10 cents always." There are, I believe, no admission prices stated for the Rialto, although an ad appears on the same page. The Palace admission prices stated on the same page are stated as 10 cents, 20 cents and 25 cents.

The Court: You mean—ten cents for matinee?

Mr. Wright: I mean, as it says here, it simply says "Our prices 10, 20 and 25 cents". It doesn't appear——

The Court: All right.

Mr. McClennen: That advertisement also says "On the [fol. 2140] stage five big-time vaudeville acts, featuring Touche and his Victor Recording Orchestra, and on the screen 'Easy Millions' and also 'Country Store Nights', twenty-five baskets IMCO groceries will be awarded."

Mr. Wright: I wanted to add the Rialto ad also shows two features, but doesn't state admission prices. The ads of Friday evening, October 20th contains ads for the Rialto and Hi-Art and the Hi-Art admission prices are stated, Kiddies 10 cents always, matinee 15 cents, nights 20 cents, two features are advertised and two are also advertised for the Rialto with no admission prices stated. There doesn't appear to be a Palace ad on that page. The issue of Monday evening, October 23rd, contains an ad for the Rialto showing two features with no admission prices stated and two pictures at the Hi-Art with matinee 15 cents, children 10 cents, nights 20 cents. The prices stated for the Palace ad are matinee 20 cents, evening 20 and 25 cents.

Mr. McClennen: The features are "Hello Harlem".

Mr. Wright: That is a stage show, I believe.

[fol. 2141] Mr. McClennen: The stage show is "Hello Harlem". There is a stage show advertised, and there is a description of it.

The Court: At the Palace or Rialto?

Mr. McClennen: This is at the Palace, and this Palace ad on October 23rd, has a MGM announcement.

Mr. Wright: I think it appears as a comedy. The feature was Lionel Atwell and the Sphinx. The reference to MGM was a comedy.

Mr. McClennen: This October 20th has——

The Court: The 20th, you were talking about the 23rd.

Mr. Rogers: We are going back to the 20th for a moment.

Mr. McClennen: October 20th, 1933, there is this in large print "The Merchants of West Main Street Welcome the Opening of the Newly Decorated and Thoroughly Remodeled Hi-Art Theatre, Saturday, October 21st, Under Schine Management, Assuring Lockport another High-class Program for Theatre-goers. Come Down. The Latest Releases from the Greatest Motion Picture Studios."

Mr. Wright. The issue of Tuesday Evening, October 24th, shows two features at the Hi-Art; matinee 15 cents and nights 20 cents. Two features at the Rialto with ad- [fol. 2142] mission prices unstated. The Palace, matinee 10 cents and 20 cents; evening 10, 20 and 25.

Mr. McClennen: This has for the Palace also a stage show "Hello Harlem" and the picture is "Night World". Here is a slip, may we put that in, in the order of that——

Mr. Wright: Yes, what date is it supposed to be?

Mr. McClennen: October, 1933.

Mr. Wright: Here is September Evening, October 28th, Saturday Evening, October 28th, the Hi-Art shows "Gold Diggers of 1933", matinee 15 cents, nights 20 cents. The Rialto shows "Too Much Harmony", matinee 2 P.M. The only price is, continuous show Sunday, 2 to 11 P.M. The only price listed is 25 cents. The Palace shows prices of 10 cents, 20 cents and 25 cents.

Mr. McClennen: That Palace advertisement also has "Hello Harlem Review", on the screen "Traveling Husbands" and "Our Gang in Mush and Milk" and tonight, midnight, "Scandals of ——

Mr. Wright: You are reading the concluding program, and the first thing you read is the show. Now, you are reading the next show.

Mr. McClennen: "Tonight, 11:30 P.M., midnight, 'Scan- [fol. 2143] dals of 1933' ". Then there is the announcement of what starts tomorrow. On October 27th, 1933, there is the announcement "For all kiddies, charge at the Palace. At the Palace all kiddies are 5 cents".

Mr. Wright: That is from 1 to 3 P.M.

Mr. McClennen: That is from 1 to 3 P.M. At the head "Special Tonight Only, Beau Night. Ladies will be admitted absolutely free if accompanied by their beaus. Come One, Come All."

Mr. Wright: The other prices stated there are 10, 20 and 25 cents, and in the same issue the Rialto is playing "Saturday's Millions" with the statement "Saturday Matinee Only Free Footballs", and also a second feature "Flaming Gold". The Hi-Art is playing "Gold Diggers of 1933" at 15 cents matinees, nights 20 cents.

In the issue of Friday Evening, November 3rd, 1933, the Hi-Art shows two features; matinee 15 cents, kids a dime, evenings and Sundays 20 cents and kids a dime. Rialto has two features, and is also advertising, starting at midnight, 11:30, two features. For the succeeding program [fol. 2144] no admission price, and has a notice "Watch the Air for Free Passes to 'Night Flight', Saturday noon".

Mr. McClennen: The Palace has a display "Attention Kiddies, Saturday Only, from 1:30 to 2:30, special matinee 5 cents". Then down below it gives a "Katherine Hepburn picture and a stage show and prices 10, 20 and 25 cents."

Mr. Wright: The name of the picture is "Christopher Straw".

Mr. McClennen: On November 7th, there is for the Palace, matinee 20 cents, evenings 20 cents and 25 cents, children 10 cents, and on the stage "March Musical Vanities" and "Girls Will Be Girls". Then on the screen "Katherine Hepburn" in the R.K.O. Picture "Christopher Straw', and a gift night, valuable gifts will be awarded."

Mr. Wright: At the Hi-Art the two features are being shown, 15 cents matinee, 20 cents evenings. At the Rialto showing two features with no admission prices stated.

Mr. McClennen: I see I have run by one of October 13th, The Palace reads then at the top "Palace Theatre tonight [fol. 2145] from 7:30 to 8:30 P.M., Bargain Hour, Adults 15 cents all seats," and then below the picture, "The Big Brain" and a stage show and a big-time vaudeville road show, "Varieties of 1933", and a double feature.

Mr. Wright: The two features, the second feature is called "The Savage Girl" and the other one you named, "The Big Brain".

At the Rialto there were two features and admission prices unstated, and that was before the Hi-Art opened, I think. There is an ad for the Hi-Art which simply says, "Starting Saturday Night, 11:30, Two Big Features."

Mr. McClennen: October 21st.

Mr. Wright: Yes.

Mr. McClennen: On November 10th, 1933, under the Palace, "Tonight, Friday and Saturday, prices 10 cents, 20 cents; 10 cents, 25 cents".

Mr. Wright: The first you had is for matinee and the second for evenings.

Mr. McClennen: 10 and 20 for matinee and 10 and 25 for evenings, and on the stage "The Complete Version of the Rosary", and on the screen, "Preston Foster, Peggy [fol. 2146] Shannon, in a fine picture, also Harry Langdon, comedy cartoons", and under "Hey, Kiddies, Special Matinee, Saturday only, from 1:30 to 2:30, 5 cents only."

Mr. Wright: And at the Hi-Art in the same issue, matinee, except Sunday, prices 15 cents; evenings 20 cents for two features. The Rialto is showing two features with no admission prices listed.

[fol. 2147] On November 18, 1933, "RKO hit on the screen, "Junior Durkin," and all-star cast in RKO hit "Manhunt."

Mr. Wright: In the same issue the Hi-Art advertises two pictures, matinee, 15 cents, evenings and Sundays, 20 cents, bargain-day, Saturday and Sunday, six kids for 25 cents.

The Rialto advertises "Footlights Parade," without any statement of admission prices.

In the Tuesday evening issue, November 28, 1933, the Rialto was showing a picture called "The Bowery," with free chickens, ducks and turkeys Wednesday night. Two features for Thanksgiving. The Hi-Art is showing two features, at matinee 15 cents, evening 20 cents, offering six free turkey dinners to be given away from the stage Wednesday night at 9 P. M.

Mr. McClennen: Going back to November 25, 1933, the Palace has an extensive advertisement, and a bargain hour tonight from 6 to 7 P. M., adults 15 cents, children 5 cents.

Mr. Wright: The remaining Palace prices are 10 cents, 20 [fol. 2148] cents, 30 cents. The Hi-Art lists two features, matinees, except Sunday, 15 cents, evenings 20 cents.

The Rialto shows "The Bowery," with no admission prices stated.

Now I will recall Mr. Rose, or I think you can just make the statement for the record. All he wanted to do was to state the results of his telephone call for permission to release those exhibits for inspection.

Mr. Rose: I am authorized to state for the record that the limitation imposed on those answers to interrogatories which were served by Columbia is withdrawn and they may be used in any way that answers to interrogatories may be used.

Thomas F. Murray, recalled on behalf of the Plaintiff, having been previously sworn, was examined and testified further as follows:

Direct examination.

By Mr. Wright:

Q. You are the same Mr. Murray who testified here the other day?

[fol. 2149] A. Yes, sir.

Q. And have you brought with you the subpoenaes duces tecum that were served on Universal Film Exchanges, Inc.?

A. Yes, sir.

Q. This paper here that you have in your hand is the description of documents contained in the subpoena that was returnable on May 19, 1944?

A. Yes, sir.

Mr. Wright: I will ask to have that list marked with the next exhibit number for identification.

(Description of documents in subpoena returnable May 19, 1944, referred to was marked as Plaintiff's Exhibit 694 for identification.)

Mr. Wright: The exhibit that has been marked as Exhibit 694 for identification is simply the part of the subpoena that describes the documents that are called for for production.

By Mr. Wright:

Q. You have the documents here that have been produced in response to paragraph 2 of this Exhibit 694 for identification?

A. Yes, sir.

Q. And they are in this folder that has been marked paragraph 2, May 19th subpoena?

A. Yes, sir.

[fol. 2150] Q. And you have the documents produced in response to paragraph 3 of this subpoena in this folder marked paragraph 3?

A. Yes, sir.

Q. You have the documents produced in reference to paragraph 4 of that subpoena in this folder marked paragraph 4?

A. Yes, sir.

Q. Do you have the documents produced in reference to paragraph 5 of the subpoena in this folder marked paragraph 5?

A. Yes, sir.

Q. Do you have the documents produced in response to paragraph 6 of that subpoena in this folder marked paragraph 6?

A. Yes, sir.

Q. Do you have the documents produced in response to paragraph 7 of that subpoena in this folder marked paragraph 7?

A. Yes, sir.

Q. Do you have the documents produced in response to paragraph 8 of that subpoena in the folder marked paragraph 8?

A. Yes, sir.

Q. And those produced in response to paragraph 10 of the [fol. 2151] subpoena are in this folder marked paragraph 10?

A. Yes, sir.

Q. Then you have the documents produced in response to paragraph 16 of that subpoena in this folder marked paragraph 16?

A. Yes, sir.

Mr. Wright: I will ask to have these nine folders that I just described marked as the next exhibits for identification in the order that I have just referred to them.

(The documents produced in response to paragraph 2 of Exhibit 694 for iden. in folder *was* marked as Plaintiff's Exhibit 695 for identification.)

(The folder containing documents produced in response to paragraph 3 was marked as Plaintiff's Exhibit 696 for identification.)

(The folder containing documents produced in response to paragraph 4 was marked as Plaintiff's Exhibit 697 for identification.)

(The folder containing documents produced in response to paragraph 5 was marked as Plaintiff's Exhibit 698 for identification.)

(The folder containing documents produced in response to paragraph 6 was marked as Plaintiff's Exhibit 699 for identification.)

[fol. 2152] (The folder containing documents produced in response to paragraph 7 was marked as Plaintiff's Exhibit 700 for identification.)

(The folder containing documents produced in response to paragraph 8 was marked as Plaintiff's Exhibit 701 for identification.)

(The folder containing documents produced in response to paragraph 10 was marked as Plaintiff's Exhibit 702 for identification.)

(The folder containing documents produced in response to paragraph 16 was marked as Plaintiff's Exhibit 703 for identification.)

Q. Calling your attention to paragraph 9 of this exhibit 694 for identification, where are the documents produced in response to that paragraph?

A. They are produced under paragraph 2.

Q. They are in the folder that was marked paragraph 2?

A. That is right.

Q. And where are the documents that were produced in response to paragraph 11 of this subpoena?

A. They are also in paragraph 2.

Q. The Universal Film Exchanges was served, was it not, with a subpoena returnable August 15, calling in paragraph 1 for all franchises and master agreements made between you and Schine Chain Theatres, Inc., the Schine Circuit, Inc., Schine Theatrical Company, Inc., Schine Enterprises, [fol. 2153] Schine Lexington Corporation, Belpik Theatres, Inc., or Chesapeake Theatres Corporation, for the exhibition of feature films released by you during one or more of the motion picture seasons of 1931-32 to 1940-41, inclusive?

A. Yes, sir.

Q. What have you produced in response to that paragraph?

A. We have made an exhaustive search of the films of the contract department and the legal department and were unable to find any such existing franchises.

Q. Did you note the period there, through 1940-41?

A. Yes, sir.

Q. As I recall, a franchise for the years 1938-1939 and 1940-1941 was produced here and identified by Schine.

A. Schine may have a copy of such a franchise but I was unable to locate it.

Q. You were unable to locate it in your files?

A. That is right.

Q. What have you produced in response to paragraph 3 of this same subpoena which calls for all printed schedules or feature motion picture films released by you during the period from August 31, 1931 to September 1, 1941?

A. That information was developed on an interrogatory that was served upon us, which we assembled the data and compiled it in this volume here in court (indicating).

[fol. 2154] Mr. Wright: Mark this with the next exhibit number for identification.

(The bound volume referred to was marked as Plaintiff's Exhibit 704 for identification.)

Q. Mr. Murray, can you tell us what that bound volume, marked 704 for identification, is, how and when it was prepared?

A. It was prepared in the early part of 1941, covering the years identified in the subpoena per situation per year.

Q. You mean in the interrogatories that were then served on Universal?

A. Per individual situation per year, accumulation at the final year in the interrogatory.

Q. The document was prepared under your supervision, was it?

A. Yes, sir.

Q. By "situation" you refer to each of the sections that has a tab headed with the town name?

A. Yes, sir.

Q. And for each of those towns which have a tab there are then different colored sheets, each representing a motion picture season?

A. Yes, sir.

Q. The yellow is for the features released during the 1935-36 season?

[fol. 2155] A. Yes, sir.

The Court: Does that show to whom it was released on that page or some other page?

Mr. Wright: I am getting to that.

The Court: Go ahead.

Q. And the green is the features released for the 1936-37 season?

A. Yes, sir.

Q. And the light blue for 1937-1938?

A. Yes, sir.

Q. The pink for 1938-39?

A. Yes, sir.

Q. The white for 1939-1940?

A. Yes, sir.

Q. Then the first column down the left, that contains the titles of the features released during the season in question?

A. Yes, sir.

Q. And the next column is the cast of characters?

A. Yes, sir.

Q. And the next column is the national release date for each of them?

A. Yes, sir.

Q. Then the name which appears in the upper left-hand corner, the first name is that of the exchange out of which [fol. 2156] the town was served?

A. Yes, sir.

Q. And the next is the town?

A. Yes, sir.

Q. And then the theatres at which the pictures for that season played in the town are listed at the top of the page, are they?

A. Yes, sir.

Q. Are the dates at which the features appearing on the sheets played at those theatres also listed?

A. Yes, sir.

Q. They are in which column?

A. They are in this column here (indicating).

Q. The column headed "Dated"——.

A. 10-I and 14-A, which was that portion of the interrogatory.

Q. Which you were responding to?

A. Yes, sir.

Q. Then the next column shows the contracted rental?

A. Yes, sir.

Q. What does that mean?

A. That means the terms at which the contract was drawn and delivery was to be under.

Q. The next column shows increase or decrease in rental?

A. Yes, sir.

[fol. 2157] Q. And the next column headed "Actual rental received" shows exactly that; it is self-explanatory?

A. That is right.

The Court: You have not covered the last two columns?

Mr. Wright: This has other data, but the only data we were interested in was what I asked him about.

A. This is a column that pertains to each situation (indicating). This first column applies to the Strand and Rialto of Schine. This is the opposition, the Orpheum Theatre in Amsterdam, operated by Kranik, which information was called for under the interrogatory.

Q. First the name of the theatre appears and then the name of the operator and then the dates over here at the left are the dates of the contracts under which the pictures were played?

A. Yes, sir.

Q. And the names for "Distributor" and "Exhibitor" are the persons that signed for each party?

A. Negotiated. For the distributor——

Q. One for whoever negotiated them and the second list is who signed them; isn't that right?

A. Yes, sir.

Mr. Rogers: This shows the date it played in this town (indicating)?

The Witness: That is the date it played in this situation.

[fol. 2158] By Mr. Wright:

Q. The second column there, which is dated "Delivery of Prints," is that the date on which the first print was delivered to the exchange in that area?

A. Yes, sir.

Q. And the column headed "Branch Print Allotment," shows the number of prints allotted to that exchange at that time?

A. Yes, sir.

Mr. Wright: This was produced and filed under the same restriction as the Columbia material was furnished, that it would be held confidential, but as I understand it Universal is also willing to waive that restriction and it will be subject to your examination. Isn't that right, Mr. Murray?

A. Yes.

Mr. McClennen: If any one had enthusiasm enough to look at it where would he find it?

Mr. Wright: We will be glad to keep it down in our office on the fifth floor there. Any time we are there and we are not working on it you can certainly work on it.

By Mr. Wright:

Q. I was going to call your attention to certain abbrevia- [fol. 2159] tions which appear in some of the columns, such as "Canc," that means cancelled, does it?

A. Yes, sir.

Q. I think there is an abbreviation that appears there, "Elim." That means eliminated?

A. It means that the subject was eliminated. Selective contract was sold in this situation. It did not include the entire year's product which granted the exhibitor the privilege of elimination, and these are the eliminated subjects.

Q. You mean an elimination means simply a picture was rejected, which the exhibitor had the privilege of playing but was not obligated to play; is that right?

A. Yes.

Q. And the cancellation is the cancellation of a picture he was obligated to play?

A. Yes, sir.

Q. The figures at the bottom are simply totals of the columns?

A. Each year has been cumulated and then the final year the total cumulation, 1934-5 to 1939-40.

Q. You have cumulated totals in each situation?

A. Yes, sir.

The Court: You spoke about the exhibitor being obligated [fol. 2160] to show. Was he obligated to show, where he paid so much a picture, or is that at his option?

The Witness: We had a year's output of 50 pictures, of which he bought 26, and he would have the opportunity of eliminating 14 of the pictures.

The Court: I thought he was paying on a basis of so much per picture?

The Witness: He could, unless there was a qualification otherwise that it was to be eliminated from a certain bracket.

The Court: If he bought it he could do anything he wanted with it, if he paid so much a picture he could do anything he wanted with it?

[fol. 2161] Mr. Wright: If the Court please, when he just buys 26 pictures, it doesn't appear which ones he plays, and he eliminates, maybe, at the end of the season.

The Court: Yes, that might be.

Mr. Wright: All right.

Q. Take so far as the information you just described, appearing on here is concerned, is this tabulation that you had prepared the best record you have got of the facts that are set forth there?

A. It is the best and most accurate record that we have.

Mr. Rogers: Do you mind if I see that first page you showed, Mr. Murray? I was so far away.

Mr. Wright: It is at the back end.

(Page shown to Mr. Rogers.)

Mr. Rogers: That is all I wanted to see, thank you.

Mr. Wright: That is all, I think.

Q. Oh, Mr. Murray, I noticed there are only five seasons' releases covered and the subpoena called for 1931-32 to 1941-42; the releases for those other periods are contained in another answer to our interrogatories that you filed with the Court, are they?

A. I believe so, yes.

Mr. Wright: If it is agreeable with counsel, we will follow the same procedure as to those that we did with Columbia [fol. 2162] and have a copy of the list, as it appears in the court record, marked for identification as an exhibit.

The Court: It appears in the answer to interrogatories?

Mr. Wright: Yes.

Mr. McClennen: Just the title and release dates.

Mr. Wright: Just the title and release dates. I think they also have the cast on.

Mr. Rogers: The same as we did with Mr. Morgan.

Mr. Wright: The same as you did with Mr. Rose, who was the one that identified the Columbia answer.

Mr. Rogers: Are you reserving any number now or any part of it?

Mr. Wright: We can reserve one now, but it would be less confusing if we just marked it when we bring it in.

Mr. Rogers: All right.

Mr. Wright: That is all; we have Mr. McGrath who will give the same testimony for United Artists documents and interrogatory answers.

The Court: Will it be short?

Mr. Wright: I think so.

[fol. 2163] Stephen W. McGrath a witness recalled by and on behalf of the Plaintiff, having been previously sworn, was examined and testified as follows:

Direct examination.

By Mr. Wright:

Q. You are the same Mr. McGrath who testified here the othe[illegible]ay?

A. Yes, sir.

Q. And the United Artists Corporation was served with this subpoena you have there in your hand, and does this document you just handed me contain a description of the license agreement called for by the subpoena on the United Artists Corporation, returnable May 19th?

A. Yes, sir.

Mr. Wright: I will ask to have that marked the next exhibit number for identification.

(Thereupon the document containing description of license agreement called for by subpoena on the United Artists Corporation, returnable May 19th, referred to, was marked as Plaintiff's Exhibit No. 705 for identification.)

Q. Have the documents respectively produced in response to Paragraphs 2, 4, 5, 6, 7, 8 and 10 of this subpoena been respectfully placed in this case after these folders that [fol. 2164] have been respectively marked as "Paragraphs 2, 3, 4, 5, 6, 7, 8 and 10" of that subpoena?

A. Yes, sir.

Mr. Wright: I will ask to have those folders just referred to marked with the next numbers.

The Court: They can all be marked later.

Mr. Wright: Eight exhibit numbers.

(Thereupon folders respectively marked as "Paragraphs 2, 3, 4, 5, 6, 7, 8 and 10 of subpoena, referred to, were marked as Plaintiff's Exhibits Nos. 706 to 713, inclusive.)

Q. Have you produced any documents in response to paragraph 9 of that subpoena, Exhibit 705?

A. No, sir.

Q. You are unable to locate such documents?

A. That is correct.

Q. Where are the documents that are produced in response to paragraph 11 of this subpoena, Exhibit 705?

A. They are produced under paragraph 2.

Q. They are contained in the folder marked "Paragraph 2" that you just referred to?

A. That is correct.

Q. Now, you were also served, were you not, with a further subpoena, and this copy of subpoena you just handed me is a copy of the subpoena served on United [fol. 2165] Artists August 15th, 1944?

A. That is correct.

Mr. Wright: I will ask to have that marked for identification.

(Thereupon copy of subpoena of August 15th, 1944, was marked as Plaintiff's Exhibit No. 714 for identification.)

Q. The documents produced in response to paragraphs 1 and 4 of that subpoena just marked for identification as number 714 are those in this file cabinet which have been placed behind the folder marked "Paragraph 1, subpoena August 15th" and "Paragraph 4, subpoena August 15th" respectively?

A. Yes, sir.

Mr. Wright: I will ask to have those given the next two plaintiff numbers, that would be 715 and 716.

(Thereupon two folders marked "Paragraph 1 and Paragraph 4, respectively, referred to, were marked as Plaintiff's Exhibits Nos. 715 and 716 for identification.)

Q. And then these you have produced in response to paragraph 3 of that same subpoena?

A. Yes.

Mr. Wright: I will ask to have that marked as Exhibit 717.

[fol. 2166] (Thereupon folder marked "Paragraph 3", referred to, was marked as Plaintiff's Exhibit No. 717 for identification.)

Mr. McClennen: For identification.

Mr. Wright: For identification, all of it. Now, will you mark this bound volume here as Plaintiff's Exhibit 718.

(Thereupon bound volume, referred to, was marked as Plaintiff's Exhibit No. 718 for identification.)

Q. I will hand you this bound volume marked Exhibit 718 for identification, and ask you if that was prepared under your supervision?

A. Yes, sir, it was prepared under my supervision.

Q. And what does that contain?

A. That is the play off record of the United Artists pictures as requested in interrogatories.

Q. In the interrogatories served on your by the Government and answered by you while you were still a defendant in the case?

A. That is right.

Q. Or your company. Now, these sheets contain at the top in the middle the name of each town where the picture is played?

A. That is correct.

[fol. 2167] Q. And the run is stated at the right of the top?

A. Correct.

Q. And on the sheet appears the dates on which the various pictures played at the theatre specified?

A. Correct.

Q. And the list of pictures in the left-hand column is the list released during the particular seasons noted at the top of the page?

A. That is correct.

Q. And the next column after the picture title shows the number of the contract under which it was played?

A. Correct.

Q. And the next column shows the date of the contract?

A. Correct.

Q. The next column the theatre in which it was played?

A. Correct.

Q. The next column is the film rental?

A. Correct.

Q. That was the film rental actually paid?

A. Correct.

Q. The next column is the date played?

A. Correct.

Q. That shows the period of actual exhibition at the theatre?

A. Correct.

[fol. 2168] Q. Then the last column, you have two headings, "Schine" and "Independent"?

A. That is correct.

Q. Where the rentals appear in the independent column, it was played in the theatre that was independent according to your records?

A. Yes, sir.

Q. And in the Schine column, the one that belonged to Schine?

A. Yes, sir.

Q. That is, these tabs subdivide the data for the various exchange areas?

A. Correct.

Q. Those under Buffalo are all served out of Buffalo?

A. Correct.

Q. Those out of Cincinnati, out of Cincinnati?

A. Yes, sir.

Q. And the same is true of Cleveland and Washington?

A. Yes, sir.

Q. Is this the most accurate record you have of the data set forth there?

A. This is an accurate record.

Q. Do you have any that are any more accurate?

A. No, sir.

Mr. Wright: That is all.

[fol. 2169] The Court: Any cross-examination?

Mr. Wright: Oh, yes.

Q. As I understand it, this was originally furnished to the Government with the understanding that it would be kept confidential and not filed in court, is that correct?

A. That was the intent.

Q. You are now agreeable, however, to having that book examined freely by counsel for the defendants?

A. Yes, sir.

Q. There is occasionally a notation under "Rental", I think appears the term "B. C.", or the initials "B. C.", what does that mean where that appears?

A. Blanket contract.

Q. That means there was no particular rental specified for that particular theatre?

A. That is correct.

Q. But there was merely a rental specified for a group of theatres of which the one after which "B. C." appears was a part?

A. That is correct.

Cross-examination.

By Mr. McClennen:

Q. The make-up of this last exhibit for identification that you have been describing, is it the fact that for con- [fol. 2170] venience in this particular case, you group the various Schine contracts under the one heading of "Schine" irrespective of the particular Schine Companies that were the actual contracting parties and group all other theatres under the title "Independent"?

A. The way we prepared the schedule was by season and by picture release, if it happened to be a Schine or an Independent.

Q. If it wasn't a Schine, you called it an Independent?

A. That is correct.

Q. Irrespective of whether that other one was an Independent in the true sense of the term, that is, a theatre not affiliated with a producer or not?

A. I don't quite understand your question.

Q. If it wasn't a Schine contract, in some of its subsidiaries, you called it an Independent?

A. That is right.

Q. Irrespective of whether it was an actual Independent in the common sense of the trade or not?

A. That is right.

Q. That is in the trade you distinguish between Independent theatres as those that do not have an association or affiliation with a producer or distributor?

A. That is right.

Mr. Wright: I might say the tabulation shows in each [fols. 2171-2179] case the theatre in which it plays and the "Independent" or "Schine" is merely a secondary classification.

The Court: We will adjourn now until tomorrow morning at 10 o'clock.

(Whereupon a recess was taken until tomorrow, Friday, October 6th, 1944, at 10 o'clock a. m.)

[fol. 2180] UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF NEW YORK

Civil 223

UNITED STATES OF AMERICA,

vs.

SCHINE CHAIN THEATRES, INC., et al., Defendants.

Continuation of trial before Honorable John Knight, United States District Judge for the Western District of New York, October 6th, 1944, at 10 o'clock a. m.

APPEARANCES:

Robert L. Wright, Esq., John F. Clagett, Esq., Harold L. Schilz, Esq., Special Assistants to the Attorney General, and Milton Kallis, Esq., Special Attorney, in behalf of the United States.

Edward F. McClennen, Esq., Willard S. McKay, Esq., Saul E. Rogers, Esq., Arthur E. Whittemore, Esq., Arthur J. Homans, Esq., and Howard M. Antevil, Esq., appearing for the Defendants.

STEPHEN W. MCGRATH, resumed the stand on behalf of the Plaintiff, having been previously sworn, was examined and testified as follows:

Further direct examination.

By Mr. Wright:

Q. Mr. McGrath, I hand you this folder containing certain tabulations, marked for identification as Plaintiff's Exhibit 719, and ask you if the tabulations therein contained were prepared under your supervision?

A. Yes, sir.

(Thereupon folder containing certain tabulations, referred to, was marked as Plaintiff's Exhibit No. 719 for identification.)

Q. And the first tabulation that appears there headed "Blanket Contracts"; are the contracts there listed those that are referred to where the notation "B.C." appears in this Exhibit 718?

A. That is correct.

The Court: That is supposed to be what?

Mr. Wright: This Exhibit 718 is the tabulation of the play off of United Artists pictures in the various Schine [fol. 2182] towns with a statement of rentals and where there is no individual rental, but a blanket contract, the statement "B.C." appears with a contract number. This tabulation here shows the blanket contracts by contract numbers, one is keyed to the other.

Q. Now, would you tell the Court what the other tabulation is in the book?

A. It is a tabulation of the film rental received by United Artists from various situations, whether operated independently or operated by the Schine Circuit, for a period from 1934, by season, through 1939-40.

Q. Those are totals received from each town for each season, are recorded there?

A. That is correct.

Q. And then there is a recapitulation, is there not, at the end?

A. That is right.

Q. By exchanges?

A. Well, no, it is not by exchanges, by total for all exchanges.

Q. The recapitulation there, the total for all exchanges is on the last page numbered 16?

A. Well, there are really two schedules in here. On page 15, it shows a recapitulation of the total film rental [fol. 2183] derived from both Schine and Independent operations. That is these figures down in here (indicating).

Q. And page 16 is a recap. of the Schine rentals?

A. Film rental received from the Schine Circuit.

Q. Are these tabulations that you have prepared, that are in this folder marked Exhibit No. 719 for identification, the most accurate record you have of the facts recorded there?

A. Yes, sir, as a matter of fact, they are a recapitulation of the various totals that are shown in that book.

Q. By that book you are referring to Exhibit 718 for identification?

A. Correct.

Mr. Wright: Have you those defense exhibits 82 and 83?

Mr. McKay: What are they?

Mr. Wright: They are the Mundus Distributing Corporation contracts which you introduced yesterday. (Defendants' Exhibits 82 and 83 produced and handed to Mr. Wright.)

Q. I hand you these exhibits marked in evidence as Exhibits 82 and 83——

Mr. McKay: D-82 and D-83.

Q. (Continuing:) D-82 and D-83, which bear the name "Mundus Distributing Corporation" at the top, and ask you if you can tell us what that corporation is?

[fol. 2184] A. Well, Mundus was an English producing corporation and they made an agreement with United Artists for the distribution of their product in the United States.

Q. I call your attention to the titles of the pictures that are listed on those two contracts, and to the fact that none of them appear in the schedule of your United Artists releases, which was marked as Exhibit No. 717 for identification. Can you tell us why they were omitted from the schedule?

A. Well, after referring to the titles, when I heard the mention made of Mundus pictures, I didn't even remember the titles of the pictures, and I am referring to the titles of the pictures set forth in the contracts, to my recollection I am not sure if any of them were ever released.

Q. By "released," you mean actually made available to the exhibitors?

A. Correct.

[fol. 2185] Q. And if they were released do you know whether they were ever sold in more than a few situations?

Mr. McClennen: That is objected to.

The Court: If he knows in how many situations they have been sold he may tell. I do not know how he would.

Mr. McClennen: If your Honor please, well, even if he did I submit it has nothing to do here. Contracts were made with this exhibitor for them. If they were not made available that ends it. If they were made available it makes no difference who else played them in other situations. I submit it is immaterial.

The Court: What is the materiality of it?

Mr. Wright: What these were were pictures which were simply unsalable, for the most part. There were only a handful of exhibitors in the whole country who ever bought these pictures. They were not generally released pictures.

Mr. McClennen: There is no evidence whatever of any such situation and it ought not to be stated when we are arguing whether this is admissible or not.

Mr. Wright: The Court asked me what I expected to show [fol. 2186] and how this is material, and that is what I do expect to show by this witness.

The Court: I do not know how he can tell.

Mr. Wright: I asked him, if the Court please, whether he knew.

The Court: I do not see its materiality. I will let him answer. Go ahead

A. I don't know.

Q. There was another title on, I believe, Defendants' Exhibit 84, "Congo Raid," and that also does not appear on the schedule of releases marked Exhibit 717. Can you tell us why that is?

A. Our "Congo Raid" was released under the title "Sanders of the River."

The Court: Under another name?

The Witness: That is right.

Mr. Wright: That is all.

Mr. McClennen: No cross examination.

Mr. Clagett: Before calling the next witness, your Honor, I should like to read from the interrogatory answers 17-A and 18, with respect to Schine Theatres in Rochester, the Schine defendant interrogatories.

Mr. McClennen: May I inquire whether the answers to [fol. 2187] interrogatories as a whole are to be deemed in evidence?

Mr. Clagett: We have not offered them as a whole as yet.

Mr. McClennen: Then if they are not offered I submit they should not be read from.

Mr. Clagett: We are offering this portion now.

Mr. McClennen: I submit a portion of an answer should not be offered. The whole answer should be offered or none at all.

Mr. Clagett: Your Honor has accepted portions of interrogatories as we have come to specific situations from time to time.

The Court: For the purpose of elucidation, I suppose?

Mr. Clagett: Yes, sir.

The Court: You have the right, I suppose, to likewise read from them, Mr. McClennen.

Mr. McClennen: There is the difficulty, if your Honor please. I do not understand that we do have the right to do that. I am desirous that the matter should not be left in confusion. I do think that if any portion of any answer is read we have the right to introduce the whole of that answer but if these are just references to pieces that are in evidence, all well and good. I submit that the plaintiff should not be [fol. 2188] permitted to introduce a part of an answer to one interrogatory, that it should all be introduced or none of it, and that until such introduction it is not before the Court. This is the first time that I have had occasion to deal with this matter. I make the objection that nothing should be read from this answer unless it is understood that the whole answer is in evidence, so that it is available to both parties as a piece of evidence.

Mr. Wright: If the Court please, that is contrary to my understanding of the procedure that we have been following.

In each case when we have read an answer to the interrogatory in evidence we have assumed that that was being treated as an offer of that material which was read in evidence and received as such. There may be many statements on these interrogatories which are self-serving and which the defendants may wish to establish as part of their case, but I see no obligation on our part as a part of our case to [fol. 2189] offer in evidence any part of these interrogatories except those as to which we are satisfied are true and those which we deem relevant and material in the presentation of our case.

The Court: Counsel does not object to your producing it, providing he is permitted to also introduce the answer on the same subject matter.

Mr. Clagett: His objection has been to introducing part of it.

The Court: His statement was that unless you were permitted to read the whole answer—I suppose that part that relates to the part read by the plaintiff——

Mr. Wright: We have no objection to the entire answer being called to your Honor's attention at the time we offer such parts as we deem relevant, but we do object to such statements being received in evidence there as may appear to be self-serving. The theory on which these are evidence against the defendants on our behalf, I take it, is that they are admissions.

The Court: The rule provides, does it not, that it may be [fol. 2190] read by the defendant?

Mr. Wright: I do not think, if the Court please,——

The Court: I mean such a part of the answer as relates to the subject matter concerning which you read.

Mr. Wright: I do not think, if the Court please, that by merely inserting in an answer to an interrogatory material which the defendant might wish to develop as part of its case that that would relieve it from the necessity of establishing that fact by competent evidence if it were a fact, which we did not concede. Now, that apparently is what Counsel proposes to do. I do not understand that interrogatories are available for that purpose. That is, while they may be used by us as a substitute for testimony, that is on the theory that they were admissions made for this purpose. I do not believe that they may be used by the defendants in place of testimony, in so far as they are self-serving or tend to establish facts which we think might otherwise be disputed.

[fol. 2191] Mr. McClennen: My purpose is not as stated by Mr. Wright. My contention is that an answer which is responsive to the question should be read as a whole or not at all. If it contains matter not germane to the interrogatory that is a reason for a motion to strike it out from the answer, but what happens here is that we have been asked to state all these various things, namely, the town, the theatre, the nature of our interest in it, the percentage, the dates of the leases, the statement of any other interest, date of disposal and name of purchaser, where such was the case, and to that we have answered as to each one of those places. Nothing self-serving in any way. It is an answer to the interrogatory. In common fairness, if this schedule is to be used in one town, it should be usable in all towns, as the shortest way of getting this matter in. There is not anything that is contrary to the contentions of the United States in this answer. It is simply the brief, easy way of [fol. 2192] showing those facts. I urge that when the objection is taken that an answer is not to be split up. It is to be put in as a whole or not at all.

The Court: Why should the rule be any different as to interrogatories than as to depositions?

Mr. Wright: I take it that they are for somewhat different purposes. A deposition is the means of developing evidence under oath where each party has an opportunity to cross-examine, and that of course is the result we come out with, just the same as testimony. However, when you are dealing with an interrogatory it seems to me that stands on a somewhat different footing. The theory on which we can use the interrogatories without offering the witness who supplied the information is that certain facts have been admitted. To the extent that a particular admission is qualified then of course the qualification, I suppose, should appear at the same time. But here you have a whole series of answers, that is, in the first column the name of the theatre is stated; the second column calls for "Nature [fol. 2193] of the interest." The next column calls for "Extent of the interest." The next column calls for "Date acquired.". The next column calls for "Other interest, if any, and extent thereof," and the next column says, "Date disposed of, if no longer owned." The next column says "Name of Purchaser, if sold, and remarks."

[fol. 2194] The Court: What—remarks?

Mr. Wright: All remarks, yes. The next column——

Mr. Clagett: That is the way they set it up themselves.

Mr. Wright: The all remarks, we did not ask for their remarks, but that was set up in the answer.

Mr. McClennen: Could I interrupt at that point? Under "Remarks" on the page, that is also—, I don't know how far it runs,—is blank.

Mr. Wright: This question as far as Rochester is concerned, I think is academic. I do not think there is anything in this answer that is in dispute, but there is in others, and as long as the question is raised we might as well discuss our views.

The next column is "Closed Period, If Any"; the next column is "Remarks Re Closed," which is something we did not call for, but which they added in their tabulation.

The Court: Does it show what the closed period is?

Mr. Wright: From time to time, yes, and in some cases we agree those closed periods are correct. In other cases where we think they are inaccurate, we don't see that there is any reason why we should be bound by what they state [fol. 2195] in the interrogatory as to the closed period.

The Court: You mean it is not responsive to your question?

Mr. Wright: There are two questions involved. There are some remarks in the interrogatories that are not responsive.

The Court: Are they responsive to the questions at all, under the subject of "Remarks"?

Mr. Wright: No, those, I say, are not responsive.

Mr. McClennen: Could I interrupt again? The interrogatory asks for the reasons for closing.

Mr. Wright: That is not the heading. You have nothing here, you have simply used the heading "Remarks."

The Court: Does it state under "Remarks" the reasons for closing and the period?

Mr. McClennen: Yes, and that is what is stated under "Remarks."

Mr. Wright: One column calls for the closed periods, if any. There may be, if there is no dispute between us as to the closed periods, the situation that the interrogatory is perfectly satisfactory evidence. Where, however, we have information or evidence——

The Court: The column is "Closed Period"?

[fol. 2196] Mr. Wright: Yes, that is the column.

The Court: Mr. McClennen says you asked the reasons for closing.

Mr. Wright: Yes. Apparently in response to that he has "Remarks Re Closed Period"; that is another column.

The Court: He has answered your question, then.

Mr. Wright: That is right. I say if we are in agreement as to the answer as to reasons, for example, that we are perfectly free to offer that statement of reasons as an admission, but if the reasons are self-serving reasons, the validity of which we don't concede, we say that putting them into the interrogatory does not relieve them from the necessity of introducing such evidence as might be necessary to establish the correctness of the reason asserted.

The Court: In other words, you can split up the answer, you mean?

Mr. Wright: Yes, we say if any fact here, which is separately listed, we are entitled to show those facts.

The Court: As admissions?

Mr. Wright: Yes, as admissions.

[fol. 2197] The Court: Ordinarily the question does not arise. Ordinarily the answer as a whole is an answer to a specific question.

Mr. Wright: Well, the question is subdivided into these various requests, with the name of the theatre, and nature, according to the columns I have listed.

The Court: Suppose the witness is not available?

Mr. Wright: Well, if the witness were not available that would perhaps present a different problem, but, in any event, it seems to me the fundamental effect in permitting statements supplied in this manner to be used by the defendants, rather than by the plaintiff, is that there is no opportunity on our part to cross-examine the maker of the statement. That is the respect in which the interrogatory answers differ from data which is obtained through depositions, and it may be an important difference in some cases. In so far as Rochester is concerned, I don't believe we would have any objection to reading the whole thing, although much of it is probably immaterial for our purposes, but we don't concede at all that the defendants can [fol. 2198] just throw in evidence all of the material that they have seen fit to put in the answers to interrogatories for their proof, and as part of our case.

Mr. McClennen: If your Honor please, for at least 100 years it has been the well settled, clear rule, that when a responsive answer to an interrogatory is made, that the whole of that answer must be read by the party presenting any part of that answer. Now, of course, we are not asking that this all be read now, but we are asking that it be deemed in evidence, if any part of it is referred to, that either none of the answer to the interrogatory 17-A is to be deemed in evidence, or else the whole of it is to be deemed in evidence.

The Court: I understand from counsel that they do not object to this specific case dealing with Rochester, so I will examine the question further and pass on this without prejudice, I think.

Mr. McClennen: Well, I state our position to be that we assert that, if any part of that answer is read, we have the [fol. 2199] right to read the whole of the answer, not merely as to Rochester, but the whole of 17-A.

The Court: I am dealing now only with Rochester.

Mr. McClennen: And I am making the assertion so that when we wish to read some parts of it, we shall be in a position to do so.

The Court: In view of the statement made by Mr. Wright, I am going to receive this and permit you likewise to read any of the answer in the case of Rochester.

Mr. Wright: We have no objection to his reading it, but we may object to such parts of his reading as appear to be self-serving, from being received in evidence as evidence.

The Court: I thought there wasn't any question raised——

Mr. Wright: As to Rochester there is no question.

The Court: Your inquiry here is only as to Rochester?

Mr. Wright: As to Rochester we have no objection to the whole answer being read.

The Court: I mean by that, do you gentlemen state you can read that part of the interrogatory because of his inquiry as to one?

Mr. McClennen: I claim we have a right to go into any part of answer 17-A.

The Court: No question has been raised on that.

[fol. 2200] Mr. McClennen: 17-A refers to all places, and this is just one line of a voluminous answer. The importance is this: It would take, well, I don't want to be excessive in my remarks, but I should say weeks to prove the dates of acquisition of these things, the nature of the interest and so forth. There isn't going to be the slightest dispute about it, and we ought to be able, when this information has all been got together in this tabular form, and is a proper answer,—we ought to be able to use it from that source without having to take up a great quantity of time and collection of documents which will be wholly wasted, so far as the triumph of justice in this case is concerned.

The Court: Well, the force of the objection and merit to the position of the Government is that they will not have the opportunity to cross-examine the one interrogated with respect to certain matters that are set forth in the answer with respect to its admission.

Mr. McClennen: They have the privilege of not reading any part of the answer.

The Court: Yes.

[fol. 2201] Mr. McClennen: To 17-A, but they don't have the privilege of carving up our answer so far as it is responsive to the interrogatory.

The Court: What position would they be in to cross-examine the one interrogated with respect to the specific answer?

Mr. McClennen: There is no right of cross-examination of an answerer to interrogatories.

The Court: I am speaking on the trial.

Mr. McClennen: I mean at the trial. If they want to call the copiler of this answer and interrogate him as to Rochester, as a witness, they have that privilege, and they can cross-examine him.

The Court: Call him as their witness or call him for cross-examination?

Mr. McClennen: If they call one of our people, I suppose they call him for cross-examination.

The Court: I am speaking about the one who gave the answers to the interrogatories. It might be somebody else. The Government, of course, should have the opportunity to cross-examine in some way with reference to matters which they do not admit.

Mr. McClennen: Undoubtedly if they put it in by evi-[fol. 2202] dence, but that does not give them a right to stop at a comma in the course of our answer to one interrogatory, that is exactly responsive to the answer. The rule, I submit, has never been departed from, that, if the answer is responsive to the interrogatory, the whole of it must go in or none of it; that there is no election to carve it up and in that way distort the position of the defendant in making the answer.

The Court: Well, I will receive this with respect to Rochester and deal with the other situation as it arises.

Mr. McClennen: I have not asked any ruling at this time beyond giving notice that we contend that we have a legal right to read any part of that answer, if any part of it is read.

Mr. Clagett: I would like to emphasize once again, your Honor, that the portion of this answer under "Remarks Re Closed Periods" is something that we may not want to concede.

Mr. Wright: That is not as to Rochester.

Mr. Clagett: That is true. In his answer 17-A and 18 with respect to Rochester, Schine Theatres: Dixie, Lessee; [fol. 2203] date acquired, August, 1932.

Mr. McKay: You left out "Extent of Interest."

Mr. Clagett: Seating capacity 834.

The Grand, owner; leased June, 1924; fee, August, 1925.

Mr. McClennen: Are you sure that you are reading the right numbers, against our copy it did not read as you read.

Mr. McKay: The Dixie capacity is 892 and you read 834 and left out this column (indicating).

Mr. Clagett: I did not intend to read all of those, I am not reading completely all columns as listed.

Mr. McClennen: I understood this offer was to be all of Rochester and if any of it is read, I urge, for additional reasons, all of Rochester should be read.

Mr. Clagett: May I ask the reporter to strike that, so we won't have repetition, and I will read this, and read all answers.

Mr. McClennen: If you will read the heading of the column against which the specific answer comes.

Mr. Clagett: Dixie, nature of interest, lessee; extent of interest, 100 per cent; date acquired, August, 1932; other [fol. 2204] interests, if any, none; there are certain blanks in here, and I will indicate that; date disposed of, if no longer owned, blank; name of purchaser, if sold, blank; seating capacity, 892; closed periods, if any, blank; remarks re closed periods, blank; owner or leased, leased; if leased, name of lessor, Dixie Theatre Corporation, Rochester, New York.

Grand, nature of interest, owner; extent of interest, 100 per cent; Date acquired, leased, June, 1924; fee, August, 1925; other interests, if any, none; date disposed of, if no longer owned, blank; name of purchaser, if sold, blank; seating capacity, 834; closed periods, if any, blank; remarks re closed periods, blank; owned or leased, leased, June, 1924; fee, August, 1925; if leased, name of lessor, first leased, then acquired fee from owner committee, owner incompetent.

Liberty, owner, extent of interest, 100 per cent; date acquired, leased October, 1926; fee, February, 1939; other interests, if any, none, except Paramount interests, 1928, 1933; date disposed of, if no longer owned, blank; name of [fol. 2205] purchaser if sold, blank; seating capacity, 1256; closed periods, if any, blank; remarks re closed periods, blank; owned or leased, leased October, 1926; fee, February, 1939; if leased, name of lessor, leased originally from Levy, then purchased from Fennybessy.

The Court: There was something about Paramount interests.

Mr. Clagett: They don't indicate the extent.

The Court: What does it say, what interest was there, 100 per cent? They say they bought it?

Mr. Clagett: Leased, October, 1926, and fee, February, 1939.

The Court: What about Paramount?

Mr. Clagett: The extent of the interest there is not indicated, simply states "No interest except Paramount, 1928, 1933."

The next is the Riviera; nature of interest, owner; extent of interest, 100 per cent; date acquired, leased October, 1926; fee, April, 1927; other interests, if any, none except Paramount interest, 1928, 1933; date disposed of, if no longer owned, blank; name of purchaser, if sold, blank; [fol. 2206] seating capacity 1508, closed periods, if any, blank; remarks re closed periods, blank; leased, October, 1926; fee, April, 1927; if leased, name of lessor, owner Joseph Jorosolow, Rochester.

The State, nature of interest, owner; extent of interest, 100 per cent; date acquired, leased, January, 1926; fee, January, 1928; other interests, if any and extent thereof, none except Paramount, 1928, 1933; date disposed of if no longer owned, blank; name of purchaser, if sold, or remarks, blank; seating capacity, 1026.

Mr. McKay: 1062.

Mr. Clagett: 1062. Closed periods, if any, blank.

The Court: What did you say just before that?

Mr. Clagett: I read 1026; it is 1062.

The Court: What?

Mr. Clagett: Seating capacity. Closed periods, if any, blank; remarks re closed periods, blank; owned or leased, leased, January, 1928; if leased, name of lessor, Thomas Demeco, builder and owner, Rochester, New York.

The next is the Cameo, owner; that is the nature of the [fol. 2207] interest, owner; extent of interest, 100 per cent; date acquired, May, 1936; other interests, if any, none; date disposed of, if no longer owner, blank; name of purchaser, if sold, blank; seating capacity, 1258; closed periods, if any, blank; remarks re closed periods, blank; owned or leased, owned.

[fol. 2208] The next is "Lake"; "Nature of Interest: Lessee"; "Extent of Interest: 100%." "Date acquired: January, 1936." "Other interests, if any, and extent thereof: None." "Date disposed of, if no longer owned." Blank. "Name of purchaser, if sold, or remarks: None." Seating capacity: 840." "Closed periods if any." Blank. "Remarks re closed periods." Blank. "Owned or leased: Leased." "If leased, name of lessor: Name of owner not presently available."

Mr. McKay: Mr. Antevil informs me that it probably was in process of foreclosure, so that it was not possible for us at the time to distinguish who the real owner was.

Mr. Clagett: The next is: "Name of theatre: Madison." "Nature of interest: Owner." "Extent of interest: 100%." "Date acquired; February 1, 1939." "Other interests, if any, and extent thereof: None." "Date disposed of, if no longer owned," blank. "Name of purchaser, if sold, or [fol. 2209] remarks," blank. "Seating capacity: 1381." "Closed periods, if any," blank. "Remarks re closed periods," blank. "Owned or leased: Owned." "If leased, name of lessor," blank.

The next is the Monroe. "Nature of interest: Owner." "Extent of interest: 100%." "Date acquired: February, 1939." "Other interests, if any, and extent thereof: None." "Date disposed of, if no longer owned," blank. "Name of purchaser if sold, or remarks," blank. "Seating capacity: 1186." "Closed periods if any," blank. "Remarks re closed periods," blank. "Owned or leased: Owned."

West End: "Nature of interest: Owner." "Extent of interest: 100%." "Date acquired: February, 1939." "Other interests, if any, and extent thereof," blank. "Date [fol. 2210] disposed of, if no longer owned," blank. "Name of purchaser, if sold," blank. "Seating capacity: 832." "Closed periods, if any," blank. "Remarks re closed periods," blank. "Owned or leased: Owned."

Webster: "Nature of interest: Owner." "Extent of interest: 100%." "Date acquired: September, 1940." "Other interests, if any, and extent thereof," "none." "Date disposed of if no longer owned: Previously operated with Fogel & Tishkoff up to December, 1933, when Schine withdrew." "Name of purchaser if sold or remarks: Disposed of interest in previous operation to Fogle & Tishkoff in December, 1933." "Seating capacity: 1099." "Closed periods, if any," blank. "Remarks re closed periods," blank. "Owned or leased: Owned."

I think I should add, outside of the interrogatory, for the record that this theatre was reacquired by Fogle under [fol. 2211] your Honor's temporary order of May 19, 1942, being one of the theatres, as indicated by the date acquired here, September, 1940, after the suit was filed.

The next theatre, Plaza. "Nature of interest: Owner." "Extent of interest: 100%" "Date acquired: 1940." "Other interests, if any, and extent thereof: None." "Date disposed of if no longer owned: September 11, 1941." "Name of purchaser if sold or remarks: Sharpe & Huurmann, d.b.a. Old Fashioned Cracker Co., Rochester, N. Y." "Seating capacity," blank. "Closed periods, if any: Closed since acquisition." "Remarks re closed periods: Never operated as theatre." "Owned or leased: "Owned."

The Court: Never operated as a theatre?

Mr. Clagett: Yes, never operated as a theatre. The title of the column was "Remarks re closed periods." Under [fol. 2212] that "Never operated as theatre."

The Court: Is that likewise one of those included in the temporary order?

Mr. Clagett: This was not. It was disposed of under column "Date disposed of: September 11, 1941," which was prior to the entry of the temporary order.

The Court: You say it was never operated as a theatre?

Mr. Clagett: That is right.

Mr. McClennen: The answer as to Rochester having been read, I bring to your Honor's attention that the answer as read was not only to interrogatory 17-A but also to interrogatory 18, and we claim that we have the right to treat as in evidence, so that it can be referred to by us, the entire answer to interrogatory 17-A and interrogatory 18. I think it very likely that there will never be occasion to test this claim. I mean it will, as we want to refer to other parts of the answers as the trial progresses, but we make that claim that the entire answer to 17-A and 18 is now in evidence by virtue of the reading of a part of those answers.

[fol. 2213] Mr. Clagett: We renew our contention for the record——

The Court: You have already stated that.

Mr. Clagett: I think so.

The Court: Anything further?

Mr. Clagett: Nothing. We have a problem with certain contracts that were not identified, certain contracts with major distributors that were not identified when the representatives of the ~~major~~ distributors were here in the last few days. These contracts were called for in a subpoena dated October 2, 1944, and as far as I know at least part of them were not here when the representatives of the major distributors were on the stand. I would like to——

The Court: Have you submitted them to Counsel?

Mr. Clagett: I have not yet, no, sir. I would like to suggest that Counsel stipulate that if the representatives of the respective majors were here they would identify these as produced from their files in response to the subpoena of October 2, 1944.

The Court: You had better submit them to them.

[fol. 2214] Mr. McClennen: If we may take the papers and look them over we shall very likely be willing to stipulate, not before. We will take them and look them over.

Mr. Clagett: I will call the next witness, Mr. Chester Fenyvessy.

Chester Fenyvessy, a witness called by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Clagett:

Q. Mr. Fenyvessy, will you state your name and place of residence?

A. Chester Fenyvessy, 22 Ramsey Park, Rochester, New York.

Q. Did you operate the Madison, the Monroe and West End Theatres and own the fee of the Liberty Theatre until February, 1939?

A. Yes, sir.

Q. Did you on that date make a deal and sell those theatres to Schine?

A. Yes, sir.

Q. Will you state the nature of your connection with these theatres, that is, with reference to ownership and [fol. 2215] operation?

A. It was a family enterprise in which the father and sons were engaged, were interested.

Q. How long have you been engaged in the motion picture business?

A. 30-odd years.

Q. The better part of that time in Rochester?

A. Yes, since 1918 in Rochester, and I was in Rochester prior to that, in 1910.

Q. How long did your father's connection with the motion picture industry in Rochester go back?

A. 1909 or 1910.

Q. Have some members of your family been engaged in the motion picture industry in Rochester continuously since that time?

Mr. McClennen: One moment. I submit perhaps the answer is not material in this case.

The Court: Has it any materiality?

Mr. Clagett: Merely showing the length of his experience.

The Court: You are asking now about members of his family. He may state his own knowledge.

Mr. Clagett: He has done that.

By Mr. Clagett:

Q. Now can you state the date that the Madison was acquired?

A. In the spring of 1929. By us, you mean?

[fol. 2216] A. That is right.

Q. What was the nature of the interest?

A. It was owned in fee.

Q. Can you state the date the Monroe was acquired?

A. About 1933.

Q. What was the nature of that interest?

A. Fee.

Q. When was the Liberty acquired?

A. About 1932.

Q. What was the nature of that interest?

A. Fee.

Q. Was the theatre leased at the time it was acquired?

A. Yes, it was leased.

Q. Who was the lessee at that time?

A. Schine Theatres.

Q. When was the West End acquired?

A. At the same time.

Q. As the Liberty?

A. As the Liberty, yes.

Q. What was the nature of that interest?

A. Fee.

Q. Now, Mr. Fenyvessy, will you state the names of the first-run or the move-over run or second-run theatres in the down-town section? I mean the principal high admission priced theatres.

[fol. 2217] Q. First-runs?

Mr. Clagett: First-runs, including move-overs or second-runs.

A. First-run, Loew's, Rochester, the Century Theatre, the Palace Theatre, the Regent Theatre, the Temple Theatre, and subsequent runs, the Strand and Capitol.

Q. What is the run that the Capitol Theatre has had?

A. On most product they have had a third-run downtown; sometimes second.

Q. Sometimes second?

A. Yes.

Q. What was the run the Strand had?

A. At what time?

Q. Well, 1939.

A. Subsequent run.

Q. Will you state what major motion picture product the Loew's Theatre uses first-run?

A. Metro.

Mr. McClennen: When you say "uses" you mean these past times; you don't mean now?

Mr. Clagett: I am thinking about the period 1931 to 1939.

A. United Artists, Columbia and Metro.

Q. And the other theatres that you have named used the product of Fox, Warner, Paramount, RKO and Universal?

A. Yes, and some independent product.

[fol. 2218] Mr. McClennen: I object to putting all the theatres together and being led that way. If you will separate them, all right.

Q. Will you state what theatres are controlled by RKO, RKO-Paramount-Comerford in Rochester?

Mr. McClennen: That also calls for a conclusion. I object to it.

The Court: Yes. I do not know where he would know where the control was.

Q. What theatres are operated by RKO, Paramount-Comerford?

A. The Regent——

Mr. McClennen: I urge that the question be separated so that we can tell what the answer means.

The Court: What was the question, operated by whom?

(Question read.)

The Court: I think you should separate them. What theatres are operated by RKO?

Mr. Clagett: I think I can clarify that.

Q. Is there a Paramount-RKO-Comerford partnership?

Mr. McClennen: That I object to.

The Court: I do not know how he would know about that.

Mr. Clagett: He probably knows, your Honor, as well as he knows that certain theatres belong to Schine.

The Court: If they were conveyed to Schine at a certain [fol. 2219] time, but he wouldn't know if Schine owned them today.

Q. Who operated in this period of 1931 to 1939 the Palace Theatre, if you know?
A. The RKO organization.
Q. The whole period?
A. I think so, yes.
Q. Who operated the Century Theatre in the same period?
A. It was operated by Comerford and Paramount, and there was a management arrangement with RKO.

Mr. McClennen: I ask that that last be stricken out.
The Court: Strike it out, unless he has personal knowledge of it. Do you have personal knowledge of any management arrangement between Comerford and RKO?
The Witness: Well, hearsay. I know it to be so but I can't offer any proof.
Mr. McClennen: May the statement be stricken out?
The Court: Strike it out.

By Mr. Clagett:

Q. Can you state who operated the Regent?
A. Comerford and Paramount.
Q. Can you state who operated the Temple?
A. RKO.
Q. Can you state who operated the Capitol?
[fol. 2220] A. Comerford and Paramount.
Q. Did you lease the Capitol to Comerford and Paramount?
A. Originally we leased it to Comerford & Fay, a corporation in which they were interested.
Q. Was there any change in that lease?
A. Subsequently it was leased to a corporation known as the Monroe Amusements.
Q. Do you know who controlled the Monroe Amusements?

Mr. McClennen: That is objected to unless there is to be some evidence that it was Schine, and then we object that it should not be put in this form.
The Court: Yes, I do not know how he would know.

Q. You have continued to control the fee, the ownership of the Capitol?

A. Yes, sir.

Q. Who owns the Strand Theatre?

A. An Estate by the name of Curtis.

Q. Did you have anything to do with the Strand originally?

A. As tenants, as lessees.

Q. Up until what period?

A. About 1938.

Q. Do you know who operates the Strand now?

A. Howard Carroll, I believe.

Mr. McClennen: May I interrupt, if your Honor please? [fol. 2221] We were to look up about Carroll, and I am prepared to state now that Howard Carroll was in the employ of some of the defendants from about May, 1931, to June, 1938, in charge of the exploitation of special pictures intermittently as directed from the Schine office, and that in a portion of that period, the latter part, as City Manager of the defendant's Rochester theatres.

Mr. Wright: That seems to differ somewhat from the testimony that Mr. Schine gave. Are we to understand that he was mistaken when he said he managed theatres for him in the early period?

Mr. McClennen: I do not understand that it differs from Mr. Schine's testimony and I have given you the best I could get, on investigation. If you do not want it, strike it out.

Mr. Wright: I do not see that it adds anything to what Mr. Schine said.

Mr. McClennen: I felt that we were under obligation to the Court to investigate, and shall we understand that it is stricken out?

The Court: There is nothing in the record so far only [fol. 2222] the statement of Counsel. There is no proof of your statement. You offer to admit that now?

Mr. McClennen: I wanted to perform my obligation to the Court to find out. I have told the Court. If Mr. Wright does not want it in the record let us deem that it is excluded from the record. I have performed my obligations.

The Court: I will let your statement stand, if you want, as the statement of Counsel, but of course standing alone it would have no probative force unless it were admitted or accepted by Counsel for the Government.

Mr. McClennen: I don't want it at all. I was asked to find out.

The Court: We will strike it all out, then.

By Mr. Clagett:

Q. Mr. Fenyvessy, can you state what major product the Loew's State Theatre used in the period 1931 to 1939?

A. Loew's Rochester, you mean?

Q. Yes, Loew's Rochester Theatre.

A. Metro, Columbia, United Artists.

Q. Did the product have any additional runs in a downtown theatre before it was shown in neighborhood houses?

[fol. 2223] A. At the Strand at one time we had second-run on Columbia.

Q. Can you fix the period of that?

A. Around 1936 and maybe 1937.

Q. Other than that, the product that you have named, that is Loew's or Metro, United Artists and Columbia, did not have a second-run outlet for runs down-town?

A. No.

Q. Was the other major product, other than companies that you have just testified about, given either a hold-over or a second-run down-town in either the Regent, the Temple or the Capitol Theatres?

A. Yes, sir.

Q. Will you state the location of the Schine's Riviera Theatre?

A. On Lake Avenue near the Memorial Bridge, which is the north side of the city.

The Court: What is meant by the Memorial Bridge?

The Witness: It is an important bridge that crosses the Genesee River. It connects two sides of the town.

Q. I would like to have you spot these theatres, as we ask the questions, so that Counsel and the Court can see. If you will stand just a little bit back the other way. I will ask you, first, about the location of the Riviera Theatre. [fol. 2224] I notice that on this map, which has been handed me by Mr. McClennen the theatres are spotted by round white dots. Now will you locate the Riviera Theatre and will you state——

The Court: Does it designate the streets at all? Are the streets shown on the map?

The Witness: Yes, Lake Avenue, Ridgeway on a corner.

The Court: I think that is sufficient. When he points to some place it does not show on the record. If you want to designate on the map and if you spot designate the theatres owned by Schine that would answer the whole inquiry, would it not?

By Mr. Clagett:

Q. Will you state the principal intersecting streets or the main streets which would definitely fix the point of the theatre in each instance?

A. In the case of the Riviera it is Lake Avenue and Ridgeway and very close to the point where the Memorial Bridge comes across the Genesee River.

Q. That is in the northern section of the city?

A. Yes, sir.

Q. Will you state the location of the Schine's Liberty Theatre?

A. On Driving Park Avenue near Dewey.

The Court: That is also near Lake Avenue?

[fol. 2225] A. Yes, about a mile and a half away.

Q. Will you state the location of Schine's Dixie Theatre?

A. Portland Avenue.

Q. That is what section of the city?

A. It is in the east—I would say east section.

Q. Will you state the location of the Schine's State Theatre?

A On Main Street east, south of the Dixie.

The Court: Beyond East Avenue?

The Witness: Yes. Main Street runs in one direction and East Avenue in the other. It is beyond what you might call East Avenue, yes.

The Court: Beyond the intersection of East Avenue and Main?

The Witness: Yes, very much beyond; a couple of miles.

By Mr. Clagett:

Q. Now will you state the location of the Fenyvessy, or what was the Fenyvessy Theatre, the Monroe, until 1939?

A. On Monroe Avenue near Goodman, and that is in the southeast section.

Q. And will you locate the former Fenyvessy theatre, the Madison?

A. On Genesee Street near Frost Avenue. That is on the west side.

The Court: Is that on the west side?

The Witness: That is on the west and south—southwest.

Q. Will you state the type of construction of the Monroe [fol. 2226] Theatre and its principal features from the standpoint of being a motion picture theatre?

A: It was a modern house, built about 15 years ago, steel and brick construction, with fine equipment and very good toilet facilities, and it had the only air-conditioning system in any local neighborhood house, a Carrier system. It was a one-floor house.

Q. Will you state what was the nature of its sound and projection?

A. R. C. A. sound and good projection, very good equipment all the way through.

Q. Appointments, can you state whether its appointments with reference to seats, carpets and floors, were high quality?

Mr. McClennen: Just a moment. The witness should state in his own language those things.

The Court: Describe the equipment further than you have.

A. Well, in 1938, approximately at that time, it had been recarpeted. The seats were the original seats, but they were fine seats and in good condition. It was an attractive house, a one-floor house.

Q. Will you state the type of construction and the principal features of the Madison Theatre, with reference to its use as a motion picture house?

A. It was a modern house, built about the same time as [fol. 2227] the Monroe, about 15 years old, I should say. It was steel and brick construction and had very ample toilet facilities in the basement and on the mezzanine. It had a balcony as well as an orchestra floor. It had a complete stage, with a fly loft, which was unusual for a house of that sort.

Q. Can you state anything further about the equipment and appointments?

A. The carpeting was also new in about 1938. It was in good condition. The seats were the original seats, spring seats with veneer backs, and the house was padded for sound. It had acoustical panels.

[fol. 2228] Q. What was the nature of the residential section in which the Monroe was situated?

A. Very good, much better than average, rather a high-class section.

Q. Are you familiar with the Schine Dixie Theatre?

A. Yes, sir.

Q. Well, with reference to——

The Court: Where did you say that was?

The Witness: On Cortland Avenue.

The Court: What?

The Witness: On Cortland.

The Court: That is the southwest part?

The Witness: That is in the east and north, slightly.

By Mr. Clagett:

Q. With respect to the standpoint of construction and appointments was that theatre as fine a house as either the Madison or Monroe?

Mr. McClennen: That is objected to.

The Court: Read the question.

(Question read.)

The Court: Sustained.

Q. Have you a knowledge of the size of the Dixie Theatre?

A. Not a positive knowledge, no.

Q. Have you an approximate knowledge of the number of seats?

A. I believe it was around 900, I am not absolutely sure.

[fol. 2229] Q. Well, can you state what was the type of construction of the Dixie Theatre?

A. Well, I don't think it was equal to the Madison or Monroe.

Mr. McClennen: May that be stricken out?

The Court: Yes. State the type of construction.

The Witness: It was a modern house of smaller capacity than those other houses, the Madison and Monroe.

The Court: Brick or frame?

The Witness: Brick, brick and stucco, I suppose, or brick and concrete.

Q. Are you familiar with the appointments of the theatre, such as seats, toilet facilities, rest-rooms and carpet?

A. No, not especially familiar, but it was——

Mr. McClennen: Just a moment, that is the answer.

The Court: When you were there, how long ago was it?

The Witness: Oh, shortly after it was acquired by Schines.

The Court: When was it?

The Witness: In 1932 or 3, I am not positive.

The Court: Do you know the condition as of that time?

Mr. Clagett: I wasn't interested in its theatre appointments especially as of that time. Well, I withdraw that, strike that remark out.

Q. I would ask you, Mr. Fenybessy, to state to the best of your recollection what was the character and condition [fol. 2230] of the appointments and conveniences at about 1932?

A. They were satisfactory for a house of that size in that locality, adequate.

Q. Was that a fine residential area or section?

A. No, it was not a fine residential section.

Q. Was the State located in a fine residential section?

A. No.

Q. Will you state whether the admission prices—will you state the admission prices of the Schine Riviera, Dixie and State, and also the Madison and Monroe?

Mr. McClennen: That is objected to.

The Court: What is that?

Mr. McClennen: That is objected to unless a time is fixed, and something indicative of the witness' knowing the fact accurately.

The Court: The time can be fixed, I suppose, and also show his knowledge, if any.

Mr. Clagett: I was trying to cut down the record as far as possible.

Q. Were you familiar with the admission prices charged at the Schine Riviera, Liberty and Dixie and State in about 1933 or 4?

A. I think it was 25 cents for adults.

The Court: He just asked, were you?

Q. Were you?
[fol. 2231] A. Yes, 25 cents adults and 10 cents for children.

The Court: Just answer the question.

Q. What were they?
A. 25 cents for adults, 10 cents for children, to the best of my recollection.

The Court: For each of those theatres?
The Witness: Yes, all of the theatres, that is, the Riviera, State and Dixie.

Q. And Liberty?
A. And Liberty, yes, 25 cents.
Q. That period I refer to, 1933 or 4, were the prices the same in 1939 in those houses?
A. Yes, sir.
Q. What were the admission prices at the Madison and Monroe in the period from 1932 or 3 to 1939?
A. 25 cents for adults and 10 cents for children.
Q. Then the admission prices in all of these houses in the period from about 1932 or 3 to 1939 were the same?
A. Yes, sir.

Mr. McClennen: Just a moment. That I object to. May that answer be stricken out?
Mr. Clagett: I withdraw the question. It is already in the record.

Q. Now, Mr. Fenybessy, calling your attention to the 1931-32 motion picture season, can you state what run of [fol. 2232] pictures the Madison Theatre had of the Warner product?
A. Second-run.

The Court: What is that?
The Witness: Second run.

Q. In the City of Rochester?
A. Yes, sir.
Q. Calling your attention to the same season of 1931-32 season, can you state what was the run of R. K. O. product which the Madison Theatre had?
A. Second-run, I think.

Q. Did you have the second-run of the Warner product in 1932-33 season?

A. No.

Q. Did you have the second-run of R. K. O. product in the 1932-33 season?

A. No.

Q. With reference to the part of those two companies, can you state what change in run or clearance took place?

Mr. McClennen: That is objected to. If this is of any consequence the contracts with this house would show and it ought to appear definitely from the contracts. This will be a mere statement of the contents of the contracts. I am not aware how it is of any consequence, but, if it is thought [fol. 2233] to be, I submit it should be shown by the papers which determine it.

Mr. Clagett: I want to show from the witness that the run changed, that there was a different run.

Mr. McClennen: That, I submit, should be shown by putting in the contracts for each of those seasons, and they would show whether there was the same or a different run.

Mr. Clagett: I am trying to develop from the witness——

The Court: Your inquiry is as to the Madison. Were you the owner of the Madison at that time?

The Witness: In 1932, prior to 1939, yes, we were.

The Court: You inquired with respect to what year?

Mr. Clagett: It covered the 1931-32 season with reference to Warner and R. K. O.. He testified he had second-run and I asked him whether there was a change of run for the 1931-32 season with reference to those two products.

The Court: During the season?

Mr. Clagett: For the next season.

The Court: I will let him show what they did run the next year.

Mr. Clagett: I merely want to develop from this witness——

The Court: The contracts are not here, but I will let him show what was shown the next year.

[fol. 2234] Mr. McClennen: The contracts are right here.

The Court: He can testify what the picture is; he at least would know, irrespective of any contracts, whether the second-run was run the next year. I am not speaking about the terms of the contract, whether that provides for the run, but we are inquiring about the fact of what was done.

Mr. Clagett: These cover the fact of the change.

The Court: Did you run the second run of R.K.O. and Warner the following year, is the question, as I take it.

The Witness: We did not.

By Mr. Clagett:

Q. You had a subsequent run for that season?

A. Yes, sir.

Q. Behind what houses?

A. Behind four Schine houses.

Q. Can you state the length of the period of clearance?

The Court: Well, I think the contract ought to show that, that is an answer to the question, as I understood, he answered what they ran, whether they did run second-run pictures. If he is to answer further than that, the second-run with Warner, the contract is the best evidence of the [fol. 2235] pictures.

Mr. Clagett: I would like to offer those contracts now for identification. I do have certain of the contracts here, not Mr. Fenybessy's contracts, other contracts which we want to offer from the major distributors.

Mr. McClennen: Well, if there is a contract here that looks all right, you can put it in evidence now without any identification, if you will tell us which ones you want. We have been looking through to check them.

Mr. Clagett: I am going to offer all of those contracts that I gave you. Let me have the Warner ones first. Could I have the whole series of Warner contracts?

Mr. McClennen: Well, as fast as we check them.

The Court: We will suspend for five minutes and you can get them together.

(Short Recess.)

(During the recess, by agreement between counsel, the reporter marked a series of contracts as Plaintiff's Exhibits Nos. 720 to 749, inclusive, in evidence.)

Mr. McClennen: These exhibits, 720 to 749, if your Honor please, are ones that were handed to us by Mr. Clagett this [fol. 2236] morning as those that hadn't got into the distributors' groups, that they brought here that have been the subject of testimony before and to save the double operation we have conceded that they are distributors' copies and all appear to be executed copies.

Mr. Clagett: We still have got some others to mark. We have some of the exhibitors' copies that haven't been marked nor previously identified. We might let that pass until the noon recess and have them marked then.

Mr. McClennen: Well, Mr. Clagett, as to those, those are already marked for identification.

Mr. Clagett: That is true. He has to mark the identification off.

Mr. McClennen: That can be done at any time. Can't you read them into the record so we will know what they are?

The Court: Are you consenting to that?

Mr. McClennen: We could do that in the recess, also.

The Court: It will save time.

Mr. Clagett: I would prefer to offer these just after lunch, because they seem to be a little bit out of order at the moment.

[fol. 2237] By Mr. Clagett:

Q. Mr. Fenybessy, calling your attention again to the 1932-33 motion picture season, and with respect to the Madison Theatre, can you state the number of days that you played pictures at the Madison Theatre behind the Schine theatre that you have referred to?

A. R.K.O.?

Q. R.K.O. and Warner, let me ask you for Warner first.

A. They played Sunday, Monday and Tuesday at two Schine houses; then the following Sunday, Monday and Tuesday at two more Schine houses.

Q. And then were available for the Madison?

A. And then there was a Sunday in between, and they were available for Madison.

The Court: You mean the third week?

The Witness: The fourth Sunday they could be played; one Sunday intervened.

Q. Was that true, Mr. Fenybessy in 1932-33 season?

A. I think so.

By the Court:

Q. Did that apply to all Warner pictures, do you mean?

A. Yes, all Warner pictures, feature pictures.

Q. How about the Warner, the first half of the week, is that the way it worked out, Schine, I mean?

A. They played Sunday to Tuesday on one picture; that [fol. 2238] same picture was played in two other houses by them on the following Sunday to Tuesday, and then there was a Sunday to Tuesday skip, and the following Sunday to Tuesday they were available to us.

Q. I am inquiring about the balance of the week, that is all.

A. The balance of the week, something else was used, but not necessarily Warner.

Q. Was there always two days elapsed between the first-run and second-run at the different theatres?

A. There was in many cases and in this case there was. It all depends on the clearance.

By Mr. Clagett:

Q. I want to call your attention, Mr. Fenybessy, to two Warner contracts, that is, a Warner Brothers contract and a First National product contract which has been marked as Plaintiff's Exhibits 724 and 725, dated approved November 20th, 1933, and ask you if the provision relating to clearance would refresh your recollection as to what the clearance was, in the 1932-33 or 1933-34 seasons?

Mr. McClennen: The contract is for the 1933-34 season, isn't it?

Mr. Clagett: The next one, I am missing that contract, but this contract would, I think, refresh his recollection on [fol. 2239] both those years, the preceding year as well as this.

The Court: You said "or," you mean "and," don't you? You said "or" in the question.

Mr. Clagett: "And," yes.

The Witness: Do you want me to read the clearance?

The Court: You can state what it is from the contract.

The Witness: After the Schine protection had cleared the Webster, a seven days' clearance on subsequent runs, and to follow Schine's Liberty, State and Dixie, and the pictures were to be available for the Strand, Madison and our Monroe 14 days after the first booking in any of these other houses.

Q. With that refreshing your recollection, indicating that the period of clearance in the 1932-33 and 1933-34 seasons, on the Warner product at the Madison Theatre, was 14 days after the first booking in the Schine house rather than 21 days——

The Court: Isn't the 1932-33 contract here?

Mr. Clagett: I don't have that, but I am asking the question whether the reference to this contract for 1933-34 would refresh his recollection as to the clearance for both seasons, the number of days he played behind the first [fol. 2240] Schine house.

The Court: Where is the 1932-33 contract?

Mr. Clagett: I don't have it.

Mr. McClennen: What is this right here?

Mr. Clagett: With reference to the 1932-33 contract, which has been marked—contracts for the First National product and Warner Brothers product, which have been marked as Plaintiff's Exhibits 722 and 723, I would like to read the provisions with reference to clearance, "To follow Riviera, Liberty, State and Webster Theatres' protection."

The Court: What is that word?

Mr. Clagett: "Protection." The same provision appears on both contracts.

[fol. 2241] The Court: Does it state the time?

Mr. Clagett: It does not state the number of days or any time.

The Court: What does that mean in connection with the industry, "protection"? What does it mean as to time?

The Witness: In this case it meant whatever the customary clearance or protection was that was awarded to the Schine houses. If they had fourteen days then these people would give us fourteen days.

The Court: That is what I wanted to find out. It relates to the custom there.

The Witness: The custom that season, whatever they had on other major product.

By Mr. Clagett:

Q. Did you play pictures at the Madison Theatre, 1932-1933, for the 1932-1933 season, a lesser number of days after the Schine houses than you played in the 1933-1934 season?

A. I think so.

Mr. Clagett: Strike that out.

Q. Did you play pictures in the Madison Theatre, Warner pictures, for the 1932-1933 season a greater number of days after the Schine houses than you did in 1933-1934?

[fol. 2242] Mr. McClennen: That is objected to. Let the witness state, I submit, how long after the Schine houses he played in the one year, as a matter of fact. Of course, when he played is determined by when he books them in, among other things.

The Court: How long he plays and how many he plays. He may state the number he played.

Mr. Clagett: No, your Honor, the number of days after.

The Court: All right.

By Mr. Clagett:

Q. Did he play the pictures a greater number of days after the Schine houses in 1932-1933 than you did in 1933-1934?

Mr. McClennen: That is what I am objecting to. If he will state what it was in the one year——

The Court: Yes. You may state that. What was the protection period? I think that already appears.

A. Well, whatever appeared on the contract. I can't remember off-hand, but I didn't get any better delivery, availability, than the contract specified, and I could play the pictures when they were available, and they were available after Schine played them in four theatres and the number of days as indicated in the contract. If it was 14 days, then I got them 14 days, excepting if it was a percentage picture, in which the distributor demanded a Sun- [fol. 2243] day, because of his participations, then I had to play it on a Sunday, and in that case it was a longer period.

Q. Sometimes clearance was specified and the number of days in the contract and sometimes it was not; is that right?

A. That is right.

Mr. McClennen: In the reading this 14 days just spoken of is not 14 days of clearance. It is 14 days from first booking, which might have no clearance.

By Mr. Clagett:

Q. You testified, I believe, that you acquired the Monroe Theatre in 1933?

A. Yes, sir.

Q. Will you state now with respect to both the Madison and the Monroe theatres, whether from the 1933-1934 season until you sold these theatres to Schine in 1939, whether you played the pictures at those theatres a greater number of days after the Schine houses in 1938 and 1939 than you did in 1933 and 1934?

Mr. McClennen: That is objected to.

The Court: You mean by the greater number of days the greater length of clearance?

Mr. Clagett: That is what I am trying to get at.

[fol. 2244] The Court: The contracts are here, are they not?

Mr. Clagett: I simply want to indicate from this witness in a general way what the clearance on the picture was, calling his attention to the days after or the increase in the days after the Schine houses when his houses played the pictures.

Mr. McClennen: There was not a general picture. The contracts show a specific picture in respect to this matter, and it is important, if the subject be gone into at all, that it be gone into by the contracts.

The Court: Are the contracts for those years in evidence here?

Mr. Clagett: Not all of the contracts. I haven't been able to get all of them, but there are a number of contracts and I think undoubtedly they show very clearly what the clearance provisions and run situation was.

Mr. McClennen: They are in the group which I think has heretofore been identified. This is just a supplementary one that we were handed this morning, but they can be readily taken from that group of identified contracts. In the case of some of the distributors, those just marked this [fol. 2245] morning give later dates as well as these years from 1932 to 1935.

By Mr. Clagett:

Q. I call your attention to a contract for the Monroe Theatre for the 1935-1936 season, with RKO, which has been marked as Plaintiff's Exhibit No. 731, and ask you whether this refreshes your recollection as to the number of days after the Schine houses that you played the RKO pictures in that season?

Mr. McClennen: Can't you read it right in yourself?

Mr. Clagett: I will. I will adopt that suggestion. The clearance provision in the contract in question which I have just referred to is as follows: "Pictures to be played 21 days after Riviera. Pictures to be dated within 14 days of availability, open booking with the Webster Theatre, 7 days clearance on subsequent runs."

Mr. McClennen: If your Honor please, what I had reference to is that this picks one theatre, the Riviera. This 21 days was based on the one theatre, the Riviera, and not the four theatres. The 21 days might be less than the 14, or it might be more.

[fol. 2246] The Court: The contract shows for itself, doesn't it?

Mr. McClennen: The contract speaks for itself.

By Mr. Clagett:

Q. In the period 1932-1933 did Schine operate the Webster Theatre?

A. I don't think so.

Q. Did they operate it in the year preceding that?

A. I think so. I am not sure.

Q. Did the Webster Theatre take clearance over the Madison Theatre?

A. No.

Q. It never did?

A. Under Schine it did.

Q. That was my question. You say under Schine it did?

A. When Schine operated it it did.

Q. After Schine relinquished the theatre did it take clearance over your theatre, the Monroe?

A. No.

Q. Or did you take clearance over the Webster?

A. We took clearance over the Webster.

Q. Did the Dixie Theatre, prior to the time it was acquired by Schine?

The Court: You knew about it before Schine took it over?

The Witness: Yes.

Q. What was the run of the Dixie at that time with [fol. 2247] reference to the Madison? Was it ahead of the Madison or did you play ahead of the Dixie?

A. We played ahead of the Dixie.

Q. After Schine acquired the Dixie did the Dixie play ahead of the Madison and Monroe or did you play after the Dixie?

A. We played after the Dixie.

Q. Can you state whether you succeeded in licensing a second-run of Columbia pictures about 1936 and 1937?

A. Yes, sir.

Q. And did you license the same part on the second-run also for the following season?

A. Yes, sir.

The Court: Are there a number of these that are not already in evidence?

Mr. Clagett: Will you give this the next exhibit number?

The Court: Are there a number of them?

Mr. Clagett: Just two right now.

(The license agreement with Columbia Pictures Corporation, 6-14-37, referred to, was marked as Plaintiff's Exhibit 750 for identification.)

(The license agreement with Columbia Pictures Corporation, 10-27-36, referred to, was marked as Plaintiff's Exhibit 751 for identification.)

[fol. 2248] The Court: We will take a recess now.

(Reporters' Note: Change page 2130, line 21, "The Court" to "Mr. Wright".)

(Whereupon a recess was taken until 2 o'clock P. M.)

[fol. 2249] After Recess, 2 o'clock P. M.

Appearances: As before noted.

Chester Fenybessy resumed the stand by and on behalf of the Plaintiff and testified further as follows:

Mr. McClennen: Three contracts from the Witness Fenybessy's file are now marked as Plaintiff's Exhibits 752, 753 and 754 in evidence.

(Thereupon three contracts from Witness Fenybessy's file referred to were marked as Plaintiff's Exhibits Nos. 752, 753, 754.)

Mr. McClennen: Two contracts from the Witness Fenybessy's file are now marked in evidence as Plaintiff's Exhibits 755 and 756.

(Thereupon two contracts from the Witness Fenybessy's file referred to were marked as Plaintiff's Exhibits Nos. 755 and 756.)

Mr. McClennen: Contracts identified by numbers out of court at Gloversville are now marked in evidence as follows: Contract formerly marked L-27 is now marked as Plaintiff's Exhibit No. 757 in evidence; contract formerly [fol. 2250] marked as L-28 is now marked as Plaintiff's Exhibit No. 758 in evidence; contract formerly marked L-29 is now marked as Plaintiff's Exhibit No. 759 in evidence; contract formerly marked L-26 is now marked as Plaintiff's Exhibit 760 in evidence; contract formerly marked L-60 is now marked as Plaintiff's Exhibit 761 in evidence; contract formerly marked L-59 is now marked as Plaintiff's Exhibit No. 762 in evidence; contract formerly marked L-58 is now marked as Plaintiff's Exhibit No. 763 in evidence; contract formerly marked L-57 is now marked as Plaintiff's Exhibit No. 764 in evidence.

(Thereupon contracts above referred to were marked as Plaintiff's Exhibits Nos. 757 to 764, inclusive, in evidence.)

(Thereupon a group of letters was then marked as Plaintiff's Exhibits Nos. 765 to 778, inclusive, for identification.)

Mr. McClennen: That correspondence, if your Honor please, as distinguished from the other group, has been marked for identification only. The others are in evidence. They are letters passing between Mr. Fenybessy and [fol. 2251] R. K. O., one way or the other, and between Mr. Fenybessy and some representatives of Loew's. We make the general objection that we have made heretofore to communications of that kind.

The Court: Are they offering them now?

Mr. Clagett: Yes.

The Court: You are offering the letters now?

Mr. Clagett: I will offer those letters now so as to have the exhibits in evidence.

The Court: Those are 765 to 778?

Mr. Clagett: The letters, your Honor, are a series of letters which Mr. Fenybessy has written to the highest officials of the Sales Department of Loew's, Mr. William F. Rogers, General Sales Manager, Mr. J. F. Connors, Division Manager, and Mr. E. K. O'Shea, who was District

Manager, and replies from the same officials at different times, and we offer these in evidence.

The Court: Received. The objection is overruled.

(Thereupon a group of letters previously marked as Plaintiff's Exhibits Nos. 765 to 778, inclusive for identification were received in evidence.)

Mr. Clagett: Your Honor, I want to read, and I don't [fol. 2252] think I will take too much time, I will do it as rapidly as I can, the clearance provisions in these various contracts, referring to the contract, and also identifying the exhibit at the same time; that is, referring to the Company and season, and I want at the same time to ask certain questions of the witness with respect to certain contracts, but I will limit that to as great an extent as possible.

Mr. McClennen: Before you get to that, there was one thing, in having these marked, they have not been described into the record, and we thought if it met with your Honor's approval, that we would, after 4 o'clock this afternoon, read to the stenographer the description, that is, the date and the contract.

Mr. Clagett: That will be simpler, and I will simply refer to the exhibit number here and year.

Mr. Wright: If you are going to read it after 4 o'clock, just read the name of the company and the season, and the rest may not be necessary.

Mr. McClennen: Yes, there is a whole lot he may not refer to.

The Court: You will have an opportunity to identify them on the record.

[fol. 2253] Mr. Clagett: If anything is needed, I think they will be sufficiently identified.

Mr. McClennen: There is one thing further, if your Honor please, a messenger from Bellefontaine is here with the volume of newspapers referred to in the cross-examination of Mr. Mooney, and we have agreed among ourselves, subject to your Honor's approval, that after 4 o'clock, in the same way, we will read in such of those as are wanted into the records, so that the book may go back.

Mr. Wright: We have no objection to making the record in that way at this time, but it should be understood that it doesn't properly go in as part of our case. If it is a matter of convenience, as long as the man is here, all right.

Mr. McClennen: I think there is this to be said with respect to this. Mr. Mooney testified that whatever figures were in those publications, they were right. Therefore, we think they should go in as part of Mr. Mooney's testimony in cross-examination. That question can be dealt with by your Honor on Monday after we have got the identification of the papers.

[fol. 2254] Mr. Wright: We will object to that. If that was the intention I think it should have been produced during the cross-examination; but of course we have no objection to making a record now of whatever it shows.

Mr. McClennen: We will make the record after your Honor adjourns and take the matter up with your Honor at another time.

Mr. Clagett: Plaintiff's Exhibit 720, contract between Warner Bros. and Mr. Fenybessy for the Madison Theatre, the approval date is July 29, 1931, the clearance provisions read as follows: "Second-run, City of Rochester, N. Y., 30 days after first-run, if any; 7 days protection, day and date with Strand."

The Court: 30 days after the termination of the first-run?

Mr. Clagett: It says 30 days after first-run, if any. 7 days protection.

Mr. McClennen: I think it was so read, but it is apparent, your Honor, that the ten days was the protection which Mr. Fenybessy gets over subsequent runs.

The Court: Seven days protection over subsequent runs?

Mr. McClennen: Over subsequent runs.

[fol. 2255] The Court: Then the clearance period from the first run is thirty days, thirty days after the first-run they run the second-run?

Mr. McClennen: The first run has thirty days protection. Then it goes to him and then nobody else can have it for whatever the number of days says. I thought it was ten.

Mr. Clagett: Exhibit 721, a First National contract for Madison Theatre, approved July 20, 1931, the provisions with respect to protection are the same as the Exhibit 720. I call your Honor's attention to the fact that in certain early seasons Warner Bros. and First National were selling separate contracts for the same theatre, with identical provisions. Subsequently the Company made one contract for all pictures.

The Court: What was the relation between the two companies?

Mr. Wright: Those were merely trade names for the production. They were all sold by Vitagraph, Inc.

By Mr. Clagett:

Q. Mr. Fenyvessy, can you state the provisions, day and date, with the Strand?

[fol. 2256] A. A simultaneous showing with the other house.

Mr. Clagett: Exhibits 722 and 723 are contracts, Warner Bros. productions and First National productions, respectively, for the Madison Theatre. They bear approval date November 14, 1932. The clearance provision is as follows in both exhibits, to follow Riviera, Liberty, State, Webster Theatres protection.

Exhibits 724 and 725, contracts Warner Bros and First National productions, respectively, for exhibition at the Madison Theatre; bear approval date November 20, 1933, provision for clearance is as follows: After Schine protection clear of Webster, seven days clearance on subsequent runs, to follow Schine's Liberty, Riviera, State and Dixie, pictures to be made available for dating at the Strand, Madison or Monroe fourteen days after the first booking in any of the above enumerated houses.

The Court: Just what does that mean, Mr. Witness, as applied to your theatre?

The Witness: Will you read that again? I didn't hear it.

[fol. 2257] Mr. Clagett: "After Schine protection clear of Webster".

By Mr. Clagett:

Q. What does "clear of Webster" mean?

A. "Clear of Webster" means that we played ahead of Webster, but we played after four Schine houses, assuming that at that time there were four houses.

Q. To follow Schine's Riviera, Liberty, State or Dixie, pictures to be made available for dating at the Strand, Madison or Monroe fourteen days after the first booking in any of the above enumerated houses?

A. That meant fourteen days after the first booking in any of those four houses.

Q. Will you state the manner in which Schine operated its four theatres with reference to the theatres that played first and then the ones that played second and the period between the two?

A. They usually played the Riviera and the other house together and then they followed the next Sunday with two more houses.

Q. And would be available for the Madison Theatre, according to these provisions, fourteen days after the first booking in the Schine house?

A. Providing it was not a percentage picture where the distributor had the right to designate a Sunday.

Q. You mean for your house—for the Madison?

[fol. 2258] A. Yes.

Q. In that event your clearance might be extended to more than the 14 days?

A. Yes, we had to give them a Sunday. We could not play it any other time than a Sunday.

Mr. Clagett: Exhibit 752, combined contract Warner Bros. and First National for exhibition at the Madison Theatre, bearing approval date October 11, 1935, clearance provision as follows: Clear of Webster Theatre after Schine's protection, to be available for dating 14 days after first booking at any of the following theatres: Schine's Liberty, Riviera, State or Dixie.

Exhibits 753 and 754, Warner Bros. and First National Productions for the 1937-1938 season at the Monroe and Madison Theatres respectively, bearing approval date in each case December 10, 1937, with the following provision with respect to clearance: After Schine clearance clear of Webster Theatre, seven days and subsequent runs of Rochester.

The Court: Subsequent runs anywhere else?

[fol. 2259] The Witness: Yes.

Mr. Clagett: This exhibit that I have is for the 1937-1938 season.

By Mr. Clagett:

Q. Mr. Fenyvessy, do you recall whether you played the Warner Pictures for the 1938-1939 season, which was, I believe, the last season before you sold out?

A. Yes, I think we did.

Q. With reference to the 1938-1939 season, was your run the same as it was for the 1937 and 1938 season?

Mr. McClennen: That I object to. We ought to have the contract stating the terms, as we have had it for the others.

The Court: Have you got the contract here?

Mr. Clagett: There are numerous contracts and I cannot recall now specifically in a given case—there are gaps here—whether we did not select those contracts or whether they were not furnished either by Schine in response to the subpoenas served upon them or by the distributors in response to the subpoenas served upon them.

The Court: Just read that question.

Mr. Clagett: It is my impression that most of these gaps [fol. 2260] are the result of contracts which were not furnished in response to the subpoena which we served upon the distributors.

The Court: Just read that question.

(Last question read.)

The Court: You mean your run which is under the same contract or agreement? Is that what you mean?

By Mr. Clagett:

Q. Were the terms with respect to clearance the same in the contract which you had for the 1937-1938 season?

Mr. McClennen: Now, if your Honor please, these latter contracts have been produced by Mr. Fenyvessy from his files and we ought to have them.

The Court: Objection sustained to the question in the form in which it is put. You have not shown that the contract is lost.

By Mr. Clagett:

Q. Did you follow the Schine houses?

A. Yes, sir.

Q. Did you follow the Schine houses by the same number of days as in the preceding season?

Mr. McClennen: That is objected to. That again is asking for the contents of a contract. It is perfectly simple [fol. 2261] to have the contract tell the story.

The Court: Ask him whether it has the same terms. If the contract is lost and cannot be found after making a search you can make proof of its contents. Objection sustained.

Mr. Wright: If the Court please, we would like, of course, to have all of these contracts. These gaps are not of our choosing. We asked for the entire period. This is all they were able to find. We asked Mr. Fenyvessy to bring all his contracts and he was not able to supply the interval there. Quite apart from the clearance provisions I take it it is always competent for him to state the position in which he played the product of a particular company.

The Court: He has already stated that.

Mr. Wright: Yes, that he followed the Schine houses. I understood that stayed in.

The Court: This is the question of clearance dates in two years.

Mr. McClennen: Of course the Schine files would not have the Fenyvessy contracts. There is nothing to indicate that this contract that is spoken of is not among the papers produced.

The Court: I will sustain the objection.

[fol. 2262] Mr. Clagett: That completes the Warner First National contracts.

These are R.K.O. contracts, Plaintiff's Exhibits 726 and 727, with R.K.O. Distributing Corporation for the exhibition of feature pictures at the Madison Theatre, and both exhibits bearing approval date January 15th, 1931. The clearance provision is as follows: "Day and date with Strand."

Mr. McClennen: If your Honor please, in this matter of contracts for the season 1938-39, this morning we furnished to Plaintiff's counsel from our files certain contracts which were turned back to us. One of those is Plaintiff's Exhibit C-160 for identification, which shows the terms of the contract for the 1938-1939, placing the Riviera, Liberty, State, Dixie, Grand, Cameo and Lake behind the Fenybessy theatres, Strand, Madison and Monroe.

Mr. Clagett: Those are some Columbia contracts he refers to. I was talking about Warner. We will come to Columbia. In addition, those are contracts for special [fol. 2263] features and duplicated by the contract for the main season's product.

Mr. McClennen: The question put to the witness was a general one, not confined to Warner.

The Court: He is talking about Warner. He has stated that was the subject matter of this period of the examination.

Mr. Clagett: With reference to these Plaintiff's Exhibits 726 and 727, Mr. Fennessy, what is the provision for run "Day and date with Strand", what does that indicate or mean?

The Witness: R.K.O.

Q. This is R.K.O. "Day and date with Strand"?

A. It meant that we had second-run.

The Court: What is that?

The Witness: It meant that we had second-run.

Q. It meant second-run, and provided you had second-run after the Strand?

A. Yes, we had second-run at the Strand.

Mr. McClennen: Not after Strand, it meant second-run at the Strand.

The Court: That meant both?

The Witness: Yes, a simultaneous showing.

Mr. Clagett: Exhibit 728 is a contract with R.K.O. Distributing Corporation for exhibition of feature pictures [fol. 2264] at the strand and Madison, bearing approval date September 28th, 1932, with clearance provision as follows: "To follow Riviera and State and Webster where they are to play within ten days of each other. In event they are not played within ten days, Strand and Madison are to have immediate availability; seven days protection to be granted the Strand and Madison. Any pictures played second-run at the Temple Theatre are to be delivered at $50 less than the contract price. Total contract price for the 16 features, $9600, which includes score."

The Court: Was the Temple owned by you?

The Witness: No, it wasn't owned by us. It was an opposition house. It was then owned, as always, by R.K.O.

By Mr. Clagett:

Q. Does that mean that if a picture played at the Temple Theatre you had a reduction in the film rental because of the additional prior run?

A. Yes, downtown.

Mr. Clagett: "Riviera, State and Webster to have ten days protection after which period pictures shall be available to Strand and Madison".

[fol. 2265] Exhibits 729 and 730, contracts with R.K.O. Distributing Corporation for exhibition of feature pictures at the Madison and Monroe Theatres, respectively, both bearing approval date December 8th, 1933, with the clearance provision as follows: "Pictures to play after the State, Riviera, Liberty and Dixie Theatres, to be available 14 days after the Riviera date and to be played within 14 days of availability. The exhibitor shall be entitled only to such feature pictures released by the distributor during the 1933-34 season as shall be identified by production numbers running from 4102 to 4152, ahead of second-run theatres seven days.

Exhibits 731 and 732, contracts with R.K.O. Distributing Corporation for the exhibition of feature pictures at the Madison and Monroe Theatres respectively, and Exhibit 731 bearing approval date January 25th, 1935, and exhibit 732 does not appear to have an approval stamp, but the application dated January 16th, 1935, which is the same application date as the contract on the Monroe, Exhibit 731, [fol. 2266] and clearance provision as follows: "Pictures to be played 21 days after Riviera. Pictures to be dated within 14 days of availability, open booking with the Webster Theatre, 7 days clearance on subsequent runs."

Q. With reference to the provision "Picture to be played within 21 days ~~after Riviera," Mr. Fenybessy, can you~~ state in what period of time the Liberty, State and Dixie Theatres would be played after the Riviera?

A. If they were Sunday pictures, the next Sunday.

Q. All three theatres that I mentioned?

A. At two theatres at a time. I didn't understand you to say three.

Q. No, my question was with reference to the provision "Pictures to be played 21 days after Riviera," what would be the period in which the pictures were to be played by the Liberty and by the State and Dixie?

A. They would play the next Sunday at the other two Schine houses.

The Court: How would that make any difference, 21 days after the Riviera, the dates would be fixed from the Riviera alone?

Mr. Clagett: That is the point I want to clarify, this only mentions the Riviera and does not mention the Liberty, [fol. 2267] State or Dixie.

The witness: Well, I believe they were played at another house or a pair of houses each Sunday.

Q. Would the Madison and Monroe for the 1934-35 season, follow the Riviera, the Liberty, Dixie and State?

A. They would.

Q. The next exhibit is P-55 and P-56, contracts with R.K.O. Distributing Corporation for the exhibition of feature pictures at the Madison and Monroe Theatres, respectively, each exhibit bearing the approval date December 7th, 1936, with the clearance provision as follows: "After Schine clearance as granted by all major companies, clear on Webster Theatre 7 days ahead of all subsequent-runs in City of Rochester."

Mr. McClennen: What are the number of those, Mr. Clagett, please?

Mr. Clagett: These are exhibits 755 and 756.

Q. Can you recall, Mr. Fenybessy, whether you used the R.K.O. pictures in the Madison and Monroe Theatres following the Schine houses for seasons following 1936-37?

A. Yes, sir.

Q. Can you state whether you played after the Schine houses?

A. Yes, we played after them.

Mr. Clagett: The next exhibit numbers relate to Loew's, Inc., Exhibit 737 and 738, license contracts for the 1934-35 [fol. 2268] season, for the exhibition at Monroe and Madison Theatres, respectively, each exhibit bearing approval date November 28th, 1934 and clearance provision as follows: "Open booking with Webster Theatre, Rochester, New York, available after Capitol Theatre, Rochester, New York; available immediately after Capitol Theatre, Rochester, New York; if and as available seven days clearance on all subsequent-runs. If played within 14 days all availability or clearance waived."

The Court: ~~What~~ was the clearance given Schine, what does that mean? The Capitol was owned by Schine, wasn't it, is that the one you are speaking about?

Mr. Clagett: No, your Honor, the Capitol was one of the downtown theatres which was described this morning as a second-run or continued-run house.

The Court: You just read from the exhibit. It doesn't state the clearance given Schine or when it could play with reference to the Schine house.

Q. It does, except, Mr. Fenybessy, what does the provision [fol. 2269] "Open booking with Webster" mean?

A. Day and date, simultaneous with Webster.

Q. Do you recall at that time whether the Webster Theatre was second-run following the Schine houses?

Mr. McClennen: What is the date?

Mr. Clagett: In the 1934-35 season.

The Witness: No, I can't recall.

Q. You don't recall that?

A. No.

By the Court:

Q. In other words, was your run subsequent to Schine?

A. Well, I think it was, although I really can't tell from that contract, on the clearance. The Schine contract will show what ours was.

Q. I know, but there should be something in your contract to show the relation to the Schine Circuit.

A. Well, it only shows——

Q. Open date with Webster, that means the two simultaneous?

A. Yes, we could play it at the same time Webster was playing. We could follow the Capitol, but where Schine was playing, I don't know, but Schine's contract would show whether he was playing ahead of the Capitol.

Q. You have to find out what the Webster clearance was against Schine?

A. Yes, but I think you should find out what Schine's [fol. 2270] clearance was.

Q. The contract don't tell us, it says "Open date," with another theatre, Webster.

A. They anticipated selling the Capitol Theatre at that time, and never did. Having that in mind they made their contract that way.

Mr. Clagett: I am going to read from the Schine 1934-35 contract at this point, a little out of sequence as to exhibit numbers, but I think that will clarify the matter. Exhibit No. 760, an exhibition contract between Loew's, Inc., between Metro-Goldwyn-Mayer Distributing Corporation and Schine Theatrical Co., Inc., for the exhibition of feature pictures at the Riviera or Liberty, bearing approval date October 12th, 1934, clearance provision as follows: "Second-run thirty days on Lake, fourteen days on all subsequent-run, Rochester, New York; 45 days after Loew's, Rochester; New York."

[fol. 2271] The Court: I do not know what it means. I do not know whether the two read together mean that the two theatres to which you referred would have first-runs or second-runs or something else.

Mr. Clagett: I think the matter will be clear when I read these other contracts covering the other Schine houses.

The Court: It is pretty hard to follow. I want to call your attention to the fact that the exhibit which I have just read, that is Exhibit 760, was for the Riviera or Liberty second-run.

Do you mean the Riviera and Liberty, both of them, second-run?

Mr. Clagett: I assume both or either second-run.

The Court: Who had the first-run?

Mr. Clagett: On Loew's product the testimony was this morning that Loew's Rochester Theatre had the first-run down-town. This is the first neighborhood run or the second-run, strictly speaking.

Exhibit 757, contract between Metro-Goldwyn-Mayer Distributing Corporation and Schine Theatrical Co., Inc., for [fol. 2272] the 1933-1934 season, bearing approval date October 11, 1934, for the Liberty Theatre, clearance provision as follows: Third-run after Riviera, second-run to be played within 21 days clearance or run waived.

The next contract is Plaintiff's Exhibit 758, between Metro-Goldwyn-Mayer Distributing Corporation and Schine Theatrical Co., Inc., for exhibition of feature pictures at the Dixie or State Theatres; approval date October 11, 1934. Clearance provisions as follows: Run second, 14 days ahead of Hudson, Astor, Hub-Sea Breeze, may be played day and date second-run or within ten days of Riviera or Liberty second-run. Must be played within 21 days Riviera or Liberty clearance.

The Court: Does that mean the first-run was obtained by Metro for its theatre and this applies only to second or third runs?

Mr. Clagett: The testimony already in the record is that the Metro-Goldwyn-Mayer Pictures were played first-run [fol. 2273] in their own theatre down town in Rochester.

The Court: Which one is that?

Mr. Clagett: Loew's Rochester. The next exhibit, 759, contract, 1934-35 season, between Metro-Goldwyn-Mayer Distributing Corporation and Schine Theatrical Co., Inc., for the exhibition of feature pictures at the State or Dixie, bearing approval date October 11, 1934; clearance provisions as follows: Third-run to be played within the 21 days clearance or run waived, immediately after State or Dixie, Riviera or Liberty second-run, 14 days on Webster Theatre.

The next exhibit numbers are Plaintiff's Exhibits 739 and 740, contracts 1935-1936 season, Loew's for the exhibition of feature pictures at the Madison and Monroe Theatres, respectively, both exhibits bearing approval date October 11, 1935, with the clearance provisions as follows: 14 days after State or Dixie third-run if and as available, State or Dixie must play within 14 days of second-run or their clearance waived, four days ahead of Webster, seven [fol. 2274] days clearance of all subsequent runs if played within fourteen days of availability or clearance waived.

The next exhibit numbers are Plaintiff's Exhibits 741 and 742, Metro-Goldwyn-Mayer contracts for the exhibition of feature pictures at the Madison and Monroe Theatres, respectively, each exhibit bearing approval date June 23, 1938, season 1937-1938; clearance provisions as follows: Run subsequent 14 days after State or Dixie, third-run if and as available, State and Dixie must play within 14 days of second-run or their clearance waived, four days ahead of Webster, seven days clearance on all other subsequent runs if played within fourteen days of availability or clearance waived.

By Mr. Clagett:

Q. Mr. Fenyvessy, with reference to the contracts that I have just read from, Exhibits 741 and 742, for the 1937 and 1938 seasons, and referring to the previous exhibits, 739 and 740, for the 1935-1936 season, can you state whether [fol. 2275] the Madison and Monroe theatres used the product of Metro-Goldwyn-Mayer in the 1936-1937 season?

A. Yes.

Q. Did the Madison and Monroe theatres in that season play behind the Schine theatres?

A. Yes, sir.

Mr. Clagett: The next exhibits are Nos. 743 and 744, contracts, Metro-Goldwyn-Mayer pictures, for the exhibition of feature pictures at the Madison and Monroe theatres, respectively, both exhibits bearing approval date June 23, 1938. Clearance provisions as follows: 14 days after State or Dixie, third-run if and as available, State or Dixie must play within 14 days of second-run or their clearance waived; four days ahead of Webster, seven days clearance on all other subsequent runs if played within 14 days of availability or clearance waived.

By Mr. Clagett:

Q. Mr. Fenyvessy, the 1938-1939 season was the last season for which you bought any product for the Madison [fol. 2276] and Monroe Theatres?

A. That is right.

Mr. Clagett: I now read the clearance provisions in certain Schine contracts for the 1935-1936 season, beginning with Exhibit 764, contract between Metro-Goldwyn-Mayer Distributing Corporation and Schine Theatrical Co., Inc., for the exhibition of feature pictures at the Riviera or Liberty, bearing approval date July 26, 1935. Clearance provisions as follows: Runs, second. thirty days on Lake, 14 days on all subsequent in Rochester, New York; 45 days after Loew's, Eochester, N. Y.

The next number is Exhibit 763, contract between Metro-Goldwyn-Mayer Distributing Corporation and Schine Theatrical Co., Inc., for the exhibition of feature pictures at the Liberty Theatre, bearing approval date July 26, 1935. The clearance provisions as follows: Run, third, after Riviera second-run, to be played within 21 days clearance or run waived.

The next exhibit is No. 762, contract 1935-1936 season, [fol. 2277] Metro-Goldwyn-Mayer Distributing Corporation and Schine Theatrical Co., Inc., for exhibition of features at the State or Dixie, bearing approval date July 26, 1935. Clearance provisions as follows: Run, second, 14 days ahead of Hudson, Astor, Hub-Seabreeze, may be played day and date second-run or within ten days of Riviera or Liberty second-run. Must be played within 21 days Riviera or Liberty or clearance waived.

The next exhibit is Plaintiff's Exhibit 761, contract for the 1935-1936 season between Metro-Goldwyn-Mayer Distributing Corporation and Schine Theatrical Co., Inc., for exhibition of feature pictures at the State or Dixie theatres, bearing approval date July 25, 1936. Provisions with reference to clearance: Run, third, immediately after State or Dixie, Riviera or Liberty second-run, 14 days on Webster Theatre, to be played within 21 days clearance or run waived.

[fol. 2278] I think I should call your Honor's attention to the fact that this last season for the Metro-Goldwyn-Mayer product for the Schine theatres was 1935-1936, and Plaintiff's Exhibit—I think it is only marked now for identification—covers the Metro-Goldwyn-Mayer or Loew's—Schine franchise beginning with the 1936-1937 season for four years, which will be in evidence, if it is not already in evidence, and will complete the Government's evidence with reference to the clearance provisions on the Metro-Goldwyn-Mayer-Schine contracts.

The next exhibits relate to Paramount contracts. Exhibit 733, contract between Paramount-Publix Corporation and Mr. Chester Fenyvessy for the exhibition of feature pictures at the Madison Theatre. This exhibit does not seem to bear an approved date, but the application is dated December 11, 1931.

The Court: You said that was between whom?

Mr. Clagett: For exhibition of feature pictures at the Madison Theatre between Paramount and Fenyvessy. [fol. 2279] Clearance provisions as follows: Run, fifth-run, day and date with Strand Theatre, to follow Riviera or Liberty and State or Webster Theatres.

The next exhibit is 734, contract between Paramount Pictures Distributing Corporation and Chester Fenyvessy for the exhibition of features at the Madison Theatre, bearing application date March 2, 1933. Clearance provisions as follows: Day and date with Strand Theatre, after Temple Theatre, to follow Riviera or Liberty and State or Webster Theatres.

The next number is Exhibit 735, contract Paramount Pictures Distributing Corporation, for exhibition of feature pictures at the Monroe Theatre, bearing application date October 29, 1934. Clearance provisions as follows: Fourteen days following Schine's Rochester run, seven days ahead of Webster Theatre.

Exhibit 736, contract Paramount Pictures Distributing Corporation for exhibition of feature pictures at the Madison Theatre, bearing application date October 29, 1934. [fol. 2280] Clearance provisions as follows: Fourteen days following Schine's Rochester run, seven days ahead of Webster Theatre.

By Mr. Clagett:

Q. Mr. Fenyvessy, can you state whether you used the Paramount-Publix pictures for the Madison and Monroe Theatres following the 1934-1935 seasons up until you sold out?

A. Yes, sir.

Q. Did the Madison and Monroe theatres follow the Schine theatres?

Mr. McClennen: Are not the contracts here?

A. Yes, they followed.

Mr. Clagett: I just want to show that he did have this and the Madison and Monroe theatres did follow the Schine's Riviera, Liberty, State and Dixie.

The Court: Do you have the contracts here?

Mr. Clagett: I do not have them.

Mr. Wright: If the Court please, the witness is certainly competent to state when his theatre played the pictures with reference to the other theatres. The provisions would be only found in the contract but he can state that his [fol. 2281] theatre did follow the other theatres in playing the pictures.

The Court: I will let him state whether as a matter of fact it did follow.

Mr. McClennen: Is there anything to show that the Paramount contracts such as were made are not right here?

Mr. Wright: That is about what I was going to say. I misunderstood the situation. I thought that these that Mr. Clagett had selected here were all of those that had been produced in response to the subpoena. There were, however, contracts produced in response to the subpoena which have just now been made available, and which I think have been shown to him and from which he made the selection, and I am now attempting to go through them and pick up all of the seasons that we have, so that we will have as complete a picture as the contracts produced will offer what the provisions were and what was played during these seasons. However, as I understand it, there are still some seasons for which he had contracts which neither the dis- [fol. 2282] tributors nor he have been able to locate, and as to those we cannot put a contract in evidence.

Mr. McClennen: While that investigation is being made could we have a check to see that Mr. Fenyvessy did, in fact, have any Loew contract for the 1936-1937 product? On this list furnished us there are contracts all the way from 1934 to 1939 and on this list none for the 1936-1937 product, which makes me wonder whether he did in fact have such a contract.

Mr. Clagett: I asked him what question and he said he did have it.

Mr. McClennen: I thought he might have made an error.

The Court: Is that not included in those which Mr. Wright is searching for now?

Mr. Clagett: It might be, and if the contracts furnished by the distributor were complete the contract would be there.

The Court: Your question related to a question of whether he did or did not play certain pictures in that year; is that not it?

Mr. Clagett: That last question. I just simply wanted to determine whether he continued to play the Paramount [fol. 2283] Pictures for succeeding seasons and he said yes. Then I asked him if he played behind the Schine houses and there was an objection.

[fol. 2284] Mr. McClennen: The objection is, we ought to make sure that the contracts are not available to show what the terms were.

The Court: Well, I say he may have played behind of his own volition. The contracts will show what the terms were, but he may state what the fact was. Did you play after the Schine theatre?

The Witness: Yes, sir.

Mr. Clagett: The next exhibit is No. 745, Fox Film Corporation, for the exhibition of feature pictures at the Madison Theatre, bearing application date October 2nd, 1932.

The Court: 1932?

Mr. Clagett: 1932, clearance provisions as follows: "After first-runs and Riviera, Liberty, State, Webster, and ahead of other subsequent-run houses in Rochester; if played when available, with Strand."

The next number is 746, a contract with Fox Film Corporation for the exhibition of feature pictures at the Madison Theatre, bearing application date August 18th, 1933; clearance provision as follows: "After Riviera, Liberty, [fol. 2285] State, Webster, Dixie, seven days clearance, balance Rochester neighborhood theatres, if played when available. Play arrangement November, 1933, four and one-half per month as available."

The next is Exhibit No. 747, contract with Fox Film Corporation for the exhibition of feature pictures at the Monroe, bearing application date August 18th, 1933; clearance provisions "After Riviera, Liberty, State, Webster, Dixie; seven days clear balance Rochester neighborhood theatres if played when available. Playing arrangement November, 1933, four and one-half per month as available."

The next is Exhibit 748, and 749, exhibition contracts, Fox Film Corporation, for the exhibition of features at the Madison and Monroe, respectively, each bearing approval date March 20th, 1935; clearance provisions as follows: "As available after Riviera, Liberty, State, Dixie, Capitol; open booking with Webster, ahead remaining subsequent-run houses, Rochester, if played when available, commenc- [fol. 2286] ing March 10th, 1935, to be played one per week as available."

The Court: Fox has no theatres of its own in Rochester?

Mr. Clagett: None that I know of.

Q. Mr. Fenybessy, I show you Plaintiff's Exhibits 750 and 751 and ask you,—contracts with Columbia Corporation,—and ask you what run of pictures you had for the 1936-37 and 1937-38 seasons?

Mr. McClennen: Isn't that stated right in the contract? Well, then, I object. Read the contract as you have been doing with the others.

The Court: If it is specified, it is unnecessary to read them, unless there is some purpose to be served.

Mr. Clagett: Exhibit 750 and 751 are contracts with Columbia Pictures Corporation for the exhibition of feature pictures. Exhibit 750 is for the Monroe Theatre. Exhibit 751 is for exhibition at the Madison Theatre. Exhibit 750 bears an approved date June 18th, 1937, and Exhibit No. 751 an approved date November 6th, 1936. With reference to Exhibit 751, clearance as follows: "Second-run, City of Rochester, New York." Clearance provisions of Exhibit 750, "Second-run City of New York, fourteen days [fol. 2287] clearance over all sub-runs."

Q. And I ask you, Mr. Fenybessy, whether you had the second-run of Columbia pictures for the 1936-37 and 1937-38 seasons?

A. Yes, sir.

Q. Did you attempt to negotiate a contract with Columbia for those pictures second-run for the 1938-39 season?

A. Yes, sir.

Q. With whom did you have any negotiations or conversation with respect to the Columbia part for 1938-39 season?

A. A salesman by the name of Bullwinkel.

The Court: Who?

The Witness: A salesman named Bullwinkel.

The Court: Rochester?

The Witness: Yes, he represented them at Rochester.

By Mr. Clagett:

Q. From what office did he work?

A. Buffalo.

Q. Had you had previous dealings with him?

A. Yes, sir, many years.

Q. What did Mr. Bullwinkel say with reference to licensing to you the Columbia product second-run for the 1938-39 season?

Mr. McClennen: That is objected to, if your Honor please.

The Court: I will receive it at this time.

[fol. 2288] The Witness: Well, that we could not have it. I don't remember verbatim what he said, but he refused to give it to us.

Q. You did attempt to license that product?

A. Yes sir.

Mr. McClennen: That is objected to.

The Court: That is leading, strike it out. What is that name?

The Witness: Bullwinkel.

By Mr. Clagett:

Q. Did you succeed in licensing any Columbia product second-run for the 1938-39 season?

A. No.

The Court: He was local for Fox?

The Witness: No, he was local for Columbia.

Q. Mr. Fenybessy, you have testified, and I believe the various exhibits referred to indicate that you had a run of the Metro-Goldwyn-Mayer product after the Schine houses from about 1933 or 4 to about 1935 and 6?

A. That is right.

Q. Did you make efforts with reference to licensing a better availability or an earlier run of product from Loew's, Inc., or Metro-Goldwyn-Mayer?

A. Every season.

The Court: What?

[fol. 2289] The Witness: Every season we made efforts.

Q. I call your attention to a series of letters between yourself and Metro-Goldwyn-Mayer, letters which you received from Metro-Goldwyn-Mayer, various dates, from April 9th, 1937, to October 26th, 1938, and bearing exhibit numbers as Plaintiff's Exhibits for identification——

The Court: No, they were afterwards received in evidence.

Mr. McClennen: Those were received in evidence.

The Court: Yes, they were received in evidence.

We agreed to stop at 4 o'clock. I suppose this will take some little time. Those are in evidence.

We will adjourn until 2 o'clock on Monday afternoon.

(Whereupon a recess was taken until Monday, October 9th, 1944, at 2 o'clock.)

[fol. 2290] (After recess in the absence of the Court; the following proceedings took place):

Mr. McClennen: The Daily Examiner, of Bellefontaine, Ohio, in bound volume, for the period December 15th, 1930, to May 29th, 1931, it is stipulated may be used as far as its contents prove ~~admissible without any further formal~~ proof.

The first date from which I shall read is February 11th, 1931. On that date on Page 4, is a large display advertisement of the opening on Thursday, February 12th, at 6 P. M., of Schine's Holland Theatre, showing prices, matinee, children 10 cents and adults 30 cents; nights, children 15 cents, adults 40 cents, show starting daily at 2, 7 and 9 P. M.; matinee every day.

Mr. Wright: I think it should be noted that this refers to a future opening date. These are announced prices for the opening Thursday, February 12th, at 6 P. M.

Mr. McClennen: In the edition of February 11th?

Mr. Wright: Yes.

Mr. McClennen: In the edition of February 17th, 1931, is an advertisement of the Holland; matinee 10 cents and 30 cents; nights 15 cents and 40 cents.

[fol. 2291] In the edition of February 20th, 1931, the Strand Theatre "Tonight and Saturday, new price scale, afternoons 25 cents, evenings and Sunday 30 cents; children any time 10 cents."

There is an advertisement also on the same page of the Holland, but it does not give the admission prices.

Mr. Wright: With the exception of the statement "Potato Matinee Tomorrow Morning at 9:30", which says "Admission for each child five potatoes".

Mr. McClennen: February 21, 1931, Saturday, the Strand advertisement "Prices continuous from 2 o'clock 10 and 30 cents". The advertisement of the Holland does not state the prices.

The edition of February 24th, 1931, the Holland prices are matinee 10 cents and 30 cents, evening 15 cents and 40 cents; the Strand, 10 cents and 30 cents.

On page 3 of the edition of February 25th, 1931, the Strand regular prices, adults 30 cents, kids a dime. The Holland, matinee 10 cents and 30 cents, night 15 cents and 40 cents.

[fol. 2292] February 26th, 1931, the Holland advertises "Today and Tomorrow no advances in prices", setting forth a Gary Cooper and Zane Grey's "Fighting Caravans", a Paramount picture.

The Strand advertisment with a heading "Food for Needy Show, Saturday, 9:30.

The edition of March 2nd, 1931, the Holland, matinee 10 cents and 30 cents, night 15 cents and 40 cents. The Strand advertisement has no statement of prices. At the top it says "Prices, grown-ups 35 cents, kids a dime", with a Joe Brown picture.

Mr. Wright: The title of the picture is "Sit Tight".

Mr. McClennen: March 3, 1931, edition, the Strand, with the same picture, prices 10 cents and 30 cents; the Holland "Usual prices".

The edition of March 5th, 1931, page 6, the Strand with no statement of prices; the Holland with a statement "No advance in prices", with an Eddie Cantor picture.

March 6th, 1931, the Holland, with Eddie Cantor in "Whoopee", and the statement "No Advance in Prices." The Strand prices 10 cents and 30 cents.

[fol. 2293] The edition of March 9, 1931, the Strand prices ten cents and 30 cents. The Holland, with no statement of prices.

The edition of March 10, 1931, the Strand prices ten cents to 30 cents. The Holland, matinee ten cents and 30 cents; nights 15 cents and 40 cents.

The edition of March 11, 1931, the Strand, with no statement of prices. The Holland, matinee ten cents and 30 cents; nights 15 cents and 40 cents.

On March 12, 1931, the Holland has the Paramount picture "Morocco" with the statement "Usual prices". The Strand, early bird matinee Friday, 15 cents, 1.30 to 2 o'clock. Prices otherwise not stated.

On the same page, under the Strand, another small box ad for the Strand, "Early Bird Matinee tomorrow at the Strand, 15 cents from 1:30 to 2 o'clock."

The edition of March 13, 1931, a Holland advertisement, new price policy for Schine's Holland starting Sunday, March 15. Prices: Matinee all seats in balcony 15 cents; [fol. 2294] all seats main floor, 25 cents. Nights, all seats in balcony 25 cents. All seats main floor 40 cents, children all the time 10 cents.

The Strand advertisement of March 13, does not state prices.

The edition of March 14, 1931, the Strand prices, 5:30 to 6:30, 15 cents today; beginning tomorrow continuous from 2 o'clock, prices 10 and 25 cents, bargain matinees starting Monday and until further notice, adults 15 cents, night prices 25 cents. And on the same page the Holland, new price policy for Schine's Holland: All seats in balcony 15 cents. All seats main floor 25 cents. Nights, all seats in balcony 25 cents, all seats main floor 40 cents. Children all the time ten cents.

And referring back to the edition of February 11, 1931, on the same page, with the opening of the Holland is a display article with pictures of J. Myer Schine and Louis W. Schine under the heading "Schine Bros. have won prominent place in theatre world in fifteen years of accom-[fol. 2295] plishment", and a leading article entitled "Business to be benefited by new theatre.".

In the same edition is a large box advertisement in display type, "The Strand Theatre of Bellefontaine extends greetings to the new Holland Theatre, the picture-going public of Bellefontaine having been given and being accustomed to the best of screen fare will manifest by liberal patronage its approval and appreciation of the same-class entertainment and this assuredly will be afforded them. The Strand Theatre, always a good show, often a great one. Edward A. McAuliffe, Manager."

In the edition of December 27, 1930, is a Strand advertisement, $2.50 worth of tickets, $2.00, an advertising of a two-feature program; no statement of admission prices. The two features are "Oklahoma Cyclone" and "Madonna of the Streets".

[fol. 2296] Mr. McClennen: The advertisement of the Strand in this volume, prior to February 11th, 1931, contain no statement of prices. There are several repetitions of the advertisement of $2.50 books for $2.00. The Strand advertisement of February 11th, 1931, contains no statement of prices. There is attached to that edition of February 11th, 1931, a display supplement of Schine's Holland Bellefontaine Theatre Beautiful opens Thursday Night, February 12th, 1931, at 6 P.M.

Mr. Wright: The Strand advertised no admission prices on February 12th, and on the 13th there were none advertised, and no admission prices advertised for either the Strand or Holland on the 14th of February; none advertised for the Holland on the 16th, and the strand on that date advertises "For tomorrow and through Thursday afternoon, 10 cents and 30 cents, evenings 10 cents and 35 cents.

Mr. McClennen: That is February 16th, 1931.

Mr. Wright: The 18th shows no admission prices for the Strand and none for the Holland. The 19th shows, at the Strand, afternoon 10 and 25 cents, evenings 10 and 30 [fol. 2297] cents, and the Holland shows no admission prices.

On the 23rd there is no admission price advertised for the Holland and none for the Strand.

On February 28th, there are no prices for the Holland and the Strand shows the statement "Sunday prices, Adults 30 cents, children 10 cents", which is the only statement as to prices.

On March 4th, 1931, the Strand price is 10 and 30 cents, and for the Holland there is no price stated.

On the 7th no price is stated for the Holland.

Strand prices, Sunday, 10 and 30, otherwise no prices.

On the 16th, Holland, reduced prices, matinee, balcony 15 cents, main floor 25 cents. Nights, balcony 25 cents, main floor 40 cents. Children any time 10 cents.

The Strand advertises prices 25 cents and 10 cents.

May 29, 1931, the Holland shows no prices. The Strand [fol. 2298] has bargain hours, 15 cents Friday, 6:30 to 7:30, Saturday 1:30 to 2:30, 5:30 to 6:30. Special price for children Memorial Day, 5 cents 2 to 6 P.M.

May 14, 1931, the Strand ad says "This complete ad and 25 cents admits two tonight."

And the Holland shows matinee 15 and 25 cents, nights 25 and 40 cents. The kiddies 10 cents.

April 15, 1931, Holland, no prices, Strand, "This ad and 25 cents will admit two adults tonight."

April 1, 1931, the Holland simply states "No advance in prices." The Strand has prices, 10-25 cents.

April 8, 1931, shows the Holland no prices, the Strand prices 10 and 25. "This ad and 25 cents will admit two adults tonight, April 8th."

April 6, 1931, the Holland, no advance in prices. Otherwise no statement. The Strand states no prices.

April 4, 1931, Strand Theatre, for the ladies Vanity [fols. 2299-2301] Ware and watch for announcement. The Strand also advertises a bargain hour from 5:30 to 6:30, 15 cents. The Holland advertises matinee 15 and 25, nights 25 and 40 cents, children always 10 cents.

[fol. 2302] UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF NEW YORK

Civil 223

UNITED STATES OF AMERICA

vs.

SCHINE CHAIN THEATRES, INC., et al., Defendants

Continuation of trial before Honorable John Knight, United States District Judge for the Western District of New York, October 9th, 1944, 4 o'clock P.M.

Appearances: Robert L. Wright, Esq., John F. Clagett, Esq., Harold L. Schilz, Esq., Special Assistants to the Attorney General, and Milton Kallis, Esq., Special Attorney, in behalf of the United States. Edward F. McClennen, Esq., Willard S. McKay, Esq., Saul E. Rogers, Esq., Arthur E. Whittemore, Esq., Arthur J. Homans, Esq., and Howard M. Antevile, Esq., appearing for the Defendants.

[fol. 2303] Proceedings

The Court: Can we accomplish something this afternoon?

Mr. Wright: We have a witness here from the Naval Supply Depot. We promised his commander he would be able to leave this afternoon. I do not think his testimony will take more than 20 or 30 minutes, but he is very anxious to get away and we gave his employer that assurance.

The Court: Very well.

MORRIS KRONICK, a witness called by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Wright:

Q. Where do you live, Mr. Kronick?

A. I live at 122 Brookside Avenue, Amsterdam, New York.

Q. What is your occupation?

A. At present I am employed at the Naval Supply Depot, Scotia, New York.

Q. Were you formerly connected with the operation of a [fol. 2304] theatre at Amsterdam?

A. I was.

Q. What theatre?

A. The Orpheum Theatre.

Q. During what period?

A. From July 1st, 1931, until, I believe, in May of 1941.

Q. Now, your theatre was sold at that time to the Schine interests, was it?

A. That is right.

Q. When was the first time that you talked to any one from the Schine Company about the sale of your theatre?

Mr. Rogers: One moment. Might we have the witness' testimony rather than Mr. Wright's conclusion? I would like to get exactly what this witness sold.

The Court: Yes, let the witness testify.

Q. In 1941 what was it you sold to the Schine Company?

A. The good-will of the business of all the equipment, furniture and fixtures.

By the Court:

Q. Did you own the building or lease it?

A. No.

Q. Just sold the lease?

A. I was a tenant.

By Mr. Wright:

[fol. 2305] Q. At that time you had no regular lease?

A. I was a tenant at will.

Q. How much did you receive?

A. The total amount was $7,000.

Q. At that time did you make any agreement with respect to future operation of a theatre in Amsterdam?

A. Yes, I believe there was a clause to the effect that I would not engage——

Mr. Rogers: One moment, may it please the Court, I object to the witness testifying to the contents of a document not in evidence.

The Court: Was there a written agreement?

The Witness: There was.

The Court: The objection is sustained.

Mr. Wright: The agreement was subpoenaed from the Schine Company and they have not produced it.

Q. Did you try to locate a copy of the agreement, yourself, Mr. Kronick?

A. I did, sir, and I haven't got it.

Q. You were unable to find it?

A. All the contracts—it may not be germane to your question, but all my contracts over a period of approximately 10 years, that is to say, contracts, papers, receipts, and so forth, after I sold, were either destroyed or burnt by my wife. When I came back from a trip they were all [fol. 2306] gone.

The Court: Did that include the 1941 contract with Schine?

The Witness: Everything. There was an accumulation of a lot of papers lying around.

Mr. Wright: If Schine will produce the agreement we will be glad to put it in evidence, otherwise I think we will be entitled to have the witness' testimony.

Mr. McClennen: The subpoena has been sent for.

Mr. Wright: The subpoena was returnable in May.

Mr. Rogers: It is my understanding Mr. Kronick's name was never mentioned in that subpoena.

Mr. Wright: That is right, the subpoena called for all agreements you made with any one operating theatres.

Mr. Rogers: That is just the difficulty, if Mr. Kronick had been specifically referred to, we would have made a search.

The Court: Is there any question about the term being in it about his not engaging in business?

Mr. Rogers: I don't know, your Honor. I never saw it.

The Court: This man is here, and strictly the correct way is to await the production of the paper.

Mr. Wright: The response to the subpoena was made that [fol. 2307] it was among the papers produced in New York, but it wasn't produced then. Now, they say they can produce it. We certainly are not prepared for their continuing to say they can produce the documents which they have not produced.

The Court: What is the reason it is not produced?

Mr. McClennen: There was nothing whatever to indicate that this contract was wanted; there was nothing to point it out and we got notice today or yesterday, I think it was, that they wanted this contract.

The Court: How did you get notice today?

Mr. McClennen: From Mr. Wright.

Mr. Wright: If the Court please, we don't know all the parties they made agreements with not to compete, and we probably never will when we get through with the case. Accordingly we subpoenaed a number of documents of that description. A number of them were produced and offered in evidence.

The Court: Are you satisfied to receive this testimony subject to its later being stricken out?

Mr. McClennen: If it is understood that what the witness is stating is the text of the agreement, then if we pro- [fol. 2308] duce the agreement it will be substituted for the witness' testimony, and, if we cannot find it, the witness' testimony will be here.

The Court: Yes.

By Mr. Wright:

Q. Will you state the substance of the agreement then, Mr. Kronick, as near as you can recall it?

A. Well, it was a[illegible]rdinary contract of purchase and sale.

Mr. Rogers: A little louder, please.

The Court: Speak a little louder.

The Witness: It was an ordinary contract for purchase and sale of all equipment designated in the contract, consisting of two projectors, sound equipment and all appurtenances in the booth, plus all the seats, screen and any other pieces of furniture existent upon the premises.

Q. What, if anything, was said with reference to your future operation of a theatre in Amsterdam?

Mr. McClennen: You mean, said in the contract?

Mr. Wright: Yes.

The Witness: Of course, in the contract was, as was stated to me, the usual clause; that is, purchase and sale [fol. 2309] was made of the usual ordinary business, and the seller agrees not to engage.

Q. I am not asking you about the usual clause. I want to know what your agreement was.

A. That was the clause of the agreement, not to engage in the same line of business in the City of Amsterdam for a period of either five or six years, I do not recall which.

Q. When was the first time you had any conversation with any representative of a Schine Company about selling or disposing of your theatre interests there to them?

A. That would be the year 1937, I believe.

Q. That was when, with reference to the time that they opened the Regent Theatre there?

A. Well, it was some time after the Regent was opened.

Q. And operated by them?

A. And operated by them.

Q. Who did you see on that occasion?

A. I saw Mr. Myer Schine.

Q. Where did you see him?

A. Gloversville, at his office.

Mr. Rogers: Was that at Gloversville?

The Witness: Yes, sir.

By Mr. Wright:

Q. What was the conversation you had then?

[fol. 2310] A. I took up the subject of the operation of my theatre and competition from the Regent.

The Court: The Regent operated by Schine?

The Witness: That is right, and said to him as a practical matter, as business people, we could talk plainly; I felt that the city wasn't large enough to maintain two second-run theatres.

By Mr. Wright:

Q. The policy of——

A. The policy of the Regent was a second-run theatre, and that, under the circumstances "I think something should be done about it". As far as I was concerned, I would be ready to talk a deal.

Q. What did he say?

A. He said he would consider it, but first he asked me what price, if any, I had in mind, and I named a price.

Q. What was the price?

A. $10,000.

The Court: How much?

The Witness: $10,000.

Q. How much had you paid for the theatre?

A. $10,000.

Q. Had you improved it since then?

A. Yes, I improved it several years before that.

[fol. 2311] Q. And what, if anything, did he say to that?

A. He said that it sounded like a considerable amount of money and would like to get a statement from me as to the various equipment that I had in the theatre. I, in turn, said that all we had was the usual two projectors, sound equipment, chairs, screen, and there was nothing special mentioned. He asked me to think it over if I could not consider a lower price, and in the meantime he might see me on occasion if he would be in Amsterdam, and if I would see how the feeling would be among the people that I was tenant of, if they had any ideas about perhaps converting the theatre, or whether they would want to continue it as a going theatre.

Q. Converting it to what?

A. A store.

The Court: Who would want to do that, the owners of the property?

The Witness: No, Mr. Schine and I.

The Court: Talked about the question of converting, you mean?

The Witness: Yes, I had explained to Mr. Schine that originally the premises had been a store, and it had been converted a great many years before into a theatre and the thought was that perhaps they would care to reconvert it [fol. 2312] into a store as it was some years back.

The Court: At that time you had a lease?

The Witness: At that time I was only a tenant at will.

By Mr. Wright:

Q. Do you know whether or not it was converted back to a store after you sold the equipment to Schine?

A. Yes, sir, it was.

Q. When you first began operating it as a theatre in 1931, what other theatres were in operation there?

A. The Rialto and Strand.

Q. Were they both operating then?

A. Yes, sir.

Q. On what kind of a policy?

A. First-run policy.

Q. And you were operating on what policy?

A. First-run policy.

Q. Calling your attention to the year 1935,—oh, by the way, at that time was the Regent Theatre opened?

A. No.

Q. The Regent Theatre was closed during that period?

A. That is right.

Q. Calling your attention to the year 1935, what policy were the Strand and Rialto being operated on then?

A. First-run policy.

Q. What policy was your theatre being operated on?

[fol. 2313] A. The year 1935?

Q. Yes.

A. I believe I was second-run that year.

Q. You were operating on a second-run policy?

A. Yes, sir.

Q. You had then no major product on first-run?

A. With the exception of a few independents.

Q. My question was with respect to major products?

A. Major product, no major product, first-run.

Q. The major product was being played at the Rialto and Strand?

A. That is right.

Q. During the year 1935 what, if any, efforts did you make to get Warner pictures second-run for your theatre?

A. Well, I contacted the salesmen and the manager.

Q. The manager where?

A. At Albany, and after many interviews I was told that——

Mr. Rogers: May it please the Court, that is objected to. The objection is this is a Branch Manager and salesman he is speaking of.

The Court: First place, he hasn't told who told him.

Q. Do you remember the name of the Branch Manager?

A. I was talking to the representative of the Branch Manager, Mr. Ray Smith.

Q. What was it Mr. Smith told you about second-run products?

[fol. 2314] Mr. Rogers: That is objected to, if it please the Court.

The Court: Overruled.

The Witness: The number of trips I made down there and spoke to him where I asked to buy the second-run product, he told me he would send the salesman up on different occasions, but that a salesman didn't show up. I finally got to a point where I wanted a direct answer whether I was to purchase the second-run products, and Mr. Smith told me he had an oral commitment for the Schine interests, and if it was a selective contract for any pictures they didn't play, he would be glad to sell me. I said I didn't think I would be interested because I would either——

The Court: Interested in what?

The Witness: In buying the pictures left over after the selective contract was in effect, and I told him that I would want to buy 100 per cent, that is all their product, all their major features.

By Mr. Wright:

Q. On second-run?

A. That is right.

Q. What did he say to that?

[fol. 2315] A. He could not do business.

Q. During that same year did you—what, if any, efforts did you make to get Fox pictures second-run for your theatre?

A. Yes, I tried to buy Fox pictures and had a number of conversations with the branch manager, Mr. Grassgreen.

Q. The branch manager at Albany?

A. That is right, and after many trips to Albany to see him about it he finally told me——

Mr. Rogers: I object to that.

The Court: I will receive it. Did you give the name?

The Witness: Mr. Grassgreen.

The Court: He was an individual or what?

The Witness: Branch Manager in Albany.

The Court: Objection overruled.

The Witness: Finally he told me they could not sell me because he had word from the New York office to that effect.

Mr. Wright: That is all. You may cross-examine.

The Court: Is there any cross-examination? Are you preparing the order, Mr. McKay?

Mr. McKay: Yes, your Honor. I have spoken to Mr. Koehler and expect it down here in a few minutes.

Mr. Wright: Excuse me, there are a few more questions.

[fol. 2316] By Mr. Wright:

Q. On the Regent Theatre, do you remember when the Regent was opened, Mr. Kronick?

A. I don't remember. My recollection is it was some time in the fall of 1936.

Q. Some time in the fall of 1936?

A. I am not sure.

The Court: Was it opened or closed?

The Witness: No, it had been closed. It was opened in the fall of 1936, as I recall it.

By Mr. Wright:

Q. That was, when it was first opened, it had been closed from the fall of 1931 to 1936?

A. Yes, sir.

Q. When the Regent opened, as I understood your testimony, it operated on a second-run policy?

A. Yes, sir.

Q. Prior to the time the Regent opened, your theatre was the only second-run theatre there?

A. That is right, as a general policy.

Q. Then was the Regent operating at the time you closed out in 1941?

A. Yes, sir.

Q. And it operated continuously on second-run from 1936 to 1941?

[fol. 2317] A. With the exception that they run some few first-run pictures known to the trade as sloughs.

Q. That is, first-runs that didn't play the Strand or Rialto, otherwise, second-run?

A. That is all.

Mr. Wright: That is all.

Cross-examination.

By Mr. Rogers:

Q. Mr. Kronick, will you describe the Orpheum Theatre, please?

A. Would I describe it?

Q. Yes.

A. Well, it originally was a store, as I have already stated, rather low ceiling for use as a theatre in modern times, not what we know as a class-A house by any means.

Q. Did it have any men's and women's retiring rooms?

A. Not directly, no.

Q. When you say "not directly," what do you mean?

A. Well, there was a place right adjoining at the rear for the toilet.

Q. In other words, you mean if a man or woman wanted to go to a retiring room there was none in this theatre and they had to go to some adjoining premises in order to use [fol. 2318] those facilities?

A. That is right.

Q. How many seats did the Orpheum have?

A. Originally?

Q. Yes.

A. Originally, when I took over, it had 360, I believe. I remodeled and I put in 299. I think we got in 299 and rearranged the seating so we had 299 seats.

Q. When you remodeled you had less seats than you had originally?

A. Yes. I wanted more space between each aisle, between each row.

Q. How long had that store space been in operation before you took it over?

A. How long had it been operated as a theatre?

Q. As a moving picture theatre?

A. I could not tell you that, because I did not live in the town.

Q. As a matter of fact, after you took the operation over, the first six rows could not be used, could they?

A. They could be used only by two classes of people, the near-sighted and some children who desired to sit up there, but generally speaking for adults they were not suitable.

Q. At that time when you took it over, the Rialto Theatre [fol. 2319] was operating, wasn't it?

A. Yes, sir.

Q. At that time what kind of a house was the Rialto?

A. At that time the Rialto was a "B" house, and the Strand was an "A" house.

Q. At that time what kind of a house was it?

A. It was a theatre.

Q. A large moving picture theatre?

A. Yes, as far as I know. I was never in the theatre.

Q. Were you ever in it?

A. No.

Q. Were you ever in the Strand?

A. No.

Q. Were you ever in the Strand?

A. The first time I was ever in the Strand, I think, was two or three years ago.

Q. It was no different then than when you were operating your theatre before?

A. I could not tell you.

Q. In any event the Rialto and Strand were motion picture houses built for motion picture theatres?

A. That is as I understood.

Q. And both had a seating capacity of over 1,000 seats?

A. Yes, sir.

Q. And modern theatres?

[fol. 2320] A. It is a broad term "modern."

Q. They weren't the old opera house type of theatre?

A. My impression, when I was in there three years ago, it was a nice house. What it was in 1931 or 2, I don't know.

Q. During the time you operated the Orpheum Theatre, you had second-run major product, didn't you?

A. Yes, sir.

Q. And of which of the major companies did you have second-run major product?

A. I had—the year I went to second-run, I had Paramount, Warner, Fox and Columbia, considering them major product.

Q. And you had sufficiently of these second-run pictures to run your house that year?

A. I did.

Q. Now, didn't you, after that, get Metro second-run?

A. That was much later.

Q. When was that?

A. I believe Metro, I first bought Metro in either late 1936 or early 1937.

Q. And you continued?

A. I continued with Metro, second-run Metro.

Q. Until you disposed of the business?

A. That is right.

Q. Just to clarify the situation when you sold this theatre, [fol. 2321] as you say, you had no lease on the property, did you?

A. No.

The Court: No what?

The Witness: No lease.

Q. Therefore you had no lease to sell, did you?

A. That is right.

Q. All you had was equipment?

A. That is right.

Q. And all you sold was equipment; isn't that right?

A. And the clause of good-will.

Q. No good-will can go with equipment, can it?

A. No.

Q. And the price that was paid was for that equipment and was about $7,000?

A. Yes, sir.

Mr. Rogers: That is all.

By the Court:

Q. Did you go to Schine in the first place or did he come to you?

A. I went to Schine.

Q. Well, you had first-run pictures up to 1935 or '36?

A. No, had for a time when I first bought the theatre in 1931 and 2, and then I had one year of Paramount.

Q. And others second-run?

A. Then I ran along with second-run.

[fol. 2322] Q. Except Paramount up to 1935 you had second-run?

A. That is right, outside of—aren't you speaking of majors? The only majors I had was Paramount, with the exception I might have had a few United Artists during those years, a few, not many.

By Mr. Rogers:

Q. I might ask you this, Mr. Kronick, when you went to Mr. Schine, it was your desire at that time to go out of business, wasn't it?

A. If I could make a good deal it was my desire to sell.

Q. And when you sold in 1940 when you had by that time made up your mind to get out of the business?

A. By that time I had made up my mind to get out.

By the Court:

Q. You put in six rows of seats when you first bought the theatre?

A. When I first bought the theatre, the seats were right close to the screen. When I remodeled I took out those seats and shoved them back so I had less seating capacity.

By Mr. Rogers:

Q. When you had Metro you were a second-run customer of other companies at that time, too, weren't you?
A. Yes, sir.
Q. And which were the companies?
A. Paramount, Universal and Columbia.
[fol. 2323] Q. That continued until you sold out in 1941, didn't it?
A. Yes, sir.

Redirect examination.

By Mr. Wright:

Q. On cross-examination, Mr. Kronick, I believe you said that at the time you first went into a second-run policy, you had Warner and Fox pictures second-run?
A. That is right.
Q. That I take it was prior to 1935?
A. That is right.
Q. That business of yours was profitable or unprofitable prior to 1935?

Mr. Rogers: I object to that, may it please the Court, calling for a conclusion.
The Court: Objection overruled.
Mr. Rogers: Exception.
The Court: You may answer.
The Witness: When we ran first-run it was certainly profitable.
Q. I covered the whole period prior to 1935.
A. Taking it altogether?
Q. Taking 1931, 2, 3, and 4.
A. I would say "Yes".
Q. How about the period after the Regent was opened?
[fol. 2324] A. The revenue necessarily became reduced.
Q. Did you lose money?
A. Yes, began to lose money.

Mr. McClennen: That is objected to.
The Witness: Lost money at times.

The Court: What, made money?

The Witness: I lost money at times.

The Court: And made money at times?

The Witness: No, I said I lost money at times.

By Mr. Wright:

Q. With reference to the year 1937, did you make or lose money that year?

Mr. McClennen: Same objection.

The Witness: I don't believe I made much money.

Q. Or lost?

A. Or lost.

Q. How about the years 1940-41, down to the time you sold?

A. Business was falling off. I was then losing money.

Recross-examination.

By Mr. Rogers:

Q. The Orpheum was not a continuous orperation, was it, that is you closed it?

A. No, we had one matinee in the afternoon and then closed it until 7 o'clock.

[fol. 2325] Q. In other words, then at several times you did close the theatre?

A. Several summers I did close for a few weeks or a month, but business in the summertime was very poor in the city, and I would take a vacation for those weeks and close.

The Court: Did the other theatres operate?

The Witness: Yes, they did.

By Mr. Rogers:

Q. Now, that town was a one-industry town, wasn't it, primarily?

A. Primarily.

Q. When the carpet industry was in operation, people went to the theatre and when it wasn't, they didn't go to the theatre?

A. When they had the price.

Q. When the carpet industry was slack, nobody made any money?

A. It is a paradox, Mr. Rogers, when business is bad generally, sometimes a second-run house will do pretty well.

Q. Did you do fairly well when business was bad?

A. Yes, at times.

The Court: That is all?

Mr. Wright: That is all.

[fol. 2326] Mr. McKay: The order will have to — rewritten. He ought to be down here in two or three minutes with it.

Mr. McClennen: If your Honor please, may I refer to Mr. Warner Thompson's testimony with reference to an interview with Mr. McKay? Mr. McKay's diary, as of June 16th, has an entry "Conference with Warner Thompson re Schine". That is the only entry of the day on the subject. Its placement indicates afternoon; that is, in the order of the doings of the day. It might have been in the morning. The diary also shows that on June 18th, 1936, Warner Thompson called by telephone to Mr. McKay.

The Court: Are those the dates to which Mr. Thompson testified?

Mr. McClellen: Those are the dates to which Mr. Thompson testified.

The Court: Have you anything further?

Mr. Wright: We have another witness here, but I am not sure that we could finish in less than half an hour.

The Court: I think we better suspend at this time.

Mr. Wright: Perhaps we had better hold him over until [fols. 2327-2328] tomorrow.

Mr. McClennen: If your Honor please, after the court adjourned on October 6th, 1944, pursuant to the arrangement made in court, we put into the record, to be available, the contents of the Bellefontaine newspaper as far as either party wanted to read it. That we should like to call to your attention early, but it need not be now; that is, as to which should be read to your Honor as part of the examination.

The Court: You can do it any time you wish.

(Whereupon a recess was taken until Tuesday, October 10, 1944, at 10 o'clock a.m.)

[fol. 2329] UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF NEW YORK

Civil 223

UNITED STATES OF AMERICA,

vs.

SCHINE CHAIN THEATRES, INC., et al., Defendants.

Continuation of trial before Honorable John Knight, United States District Judge for the Western District of New York, October 10, 1944, 10 o'clock a.m.

APPEARANCES:

Robert L. Wright, Esq., John F. Clagett, Esq., Harold L. Schilz, Esq., Special Assistants to the Attorney General, and Milton Kallis, Esq., Special Attorney, in behalf of the United States.

Edward F. McClennen, Esq., Willard S. McKay, Esq., Saul E. Rogers, Esq., Arthur E. Whittemore, Esq., Arthur J. Homans, Esq., and Howard M. Antevil, Esq., appearing for the Defendants.

[fol. 2330] PROCEEDINGS

Mr. Wright: Mr. Warne, will you take the stand, please?

THOMAS EDWARD WARNE a witness called by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Wright:

Q. Where do you live, Mr. Warne?
A. Utica, New York.
Q. What is your occupation?
A. I am a payroll clerk for the Savage Arms Corporation.
Q. How long have you held that position?
A. 28 months.
Q. Were you formerly engaged in the theatre business at Little Falls, New York?
A. Yes, sir.

Q. During what period was that?

A. Well, I was engaged in the theatre business fully or in partnership at the Hippodrome Theatre from the fall of 1934 until the spring or early summer of 1936.

Q. Prior to that had you had any theatre experience in Glens Falls or in Little Falls, I mean?

A. Yes, sir.

[fol. 2331] Q. What was that?

A. I worked for the Schine Enterprises at Little Falls for a period of years at the Rialto Theatre.

Q. In what capacity?

A. As manager.

Q. Now, at the time you began to operate the Hippodrome, was there any other theatre operating there besides the Hippodrome and Schines' Rialto?

A. No, sir.

Q. And with whom were you associated in the operation of the Hippodrome?

A. Mrs. Marion D. Wood.

Q. Before you became associated with her who had the theatre been managed by, the Hippodrome, I mean?

A. Mr. Wood, Mr. William—I think his initial was J. William J. Wood.

Q. Then you came in after he died?

A. That is right.

Q. When you began to manage the Hippodrome Theatre what policy was it operating on?

A. It was operating on a second-run policy with Mr. Wood previous to his death, and it started operating the same way after I took it over.

Q. Playing what product?

A. Well, I can't explain what product Mr. Wood had.

[fol 2332] Q. I mean at the time you took it over, what were you playing?

A. That is right, I was running it on—I had second-run product,—Paramount, Columbia and Universal. I also had second-run product with First Division, Standard and Pyramid, which was another very small independent.

Q. Those last three names you mentioned are all independent companies?

A. They are all independent companies, Standard, Pyramid, and First Division. Incidentally I also that first year had some United Artists pictures which I ran first-run.

Q. You had some first-run United Artists?

A. Yes, as I recall I contracted for not less than 18 and I may have played 18 or may have played 20 or 21.

Q. What policy was the Rialto Theatre operating on then?

A. During that same period the Rialto Theatre was operating first-run major products.

Q. All major products except United Artists?

A. I would say so, yes, sir.

Q. What, with respect to admission price policies at the Rialto and Hippodrome?

A. My prices were 10 and 20 cents, 10 cents for children and 20 cents for adults any time, any place in the house.

Q. Matinee and evening?

[fol. 2333] A. Matinee and evening.

Q. When you say "any place in the house," did your house have some balcony seats?

A. Yes, sir, such as they were. There was a very small balcony seating between 80 and 100 people. It wasn't a very good balcony. If they chose to sit there when the house was crowded, O. K., it was still 20 cents.

Q. What was the total seating capacity of the house?

A. 550.

Q. What were the prices at the Rialto?

A. 10, 20 and 30 cents, as I recall it, at that time.

Q. Those were what, respectively?

A. I would say 10 cents for children, 20 cents balcony and 30 cents orchestra.

Q. How much of a balcony did the Rialto have?

A. A very fine, modern balcony.

Q. Approximately how many seats?

A. The balcony had about 500 seats.

Q. What was the total capacity of that theatre?

A. The Rialto Theatre, about 1200, I would say.

Q. Now——

The Court: This theatre you spoke about it being a modern balcony, was it new or built over?

The Witness: No, the Rialto wasn't built over, the Rialto Theatre was a modern theatre.

[fol. 2334] The Court: Modern building?

The Witness: Yes.

The Court: I didn't know whether the balcony applied to the whole theatre or not.

The Witness: Yes.

By Mr. Wright:

Q. The second-run product that you used, can you state about how long after the first-run that was played at the Hippodrome?

A. Yes, I would say quite definitely——

The Court: How long after what?

Mr. Wright: After the pictures were played first-run.

Q. How long?

A. The difference or the running time between first-run Rialto and second-run which I had at the Hippodrome Theatre, my contract called for 90 to 120 days clearance.

Q. Now, did you make any efforts to get any other major products second-run for the Hippodrome after you took over the management?

A. Yes, sir.

Q. What did you do?

A. Well, I went to Albany and saw the Exchange Manager of——

Mr. McClennen: Just a moment, I submit that ought not to be so general.

The Court: In what period do you mean?

[fol. 2335] Q. When was it that you took over the management?

A. I took over the management of the Hippodrome Theatre in September, 1934.

Q. September, 1934, then when was it with reference to that date you made this trip to Albany to see the Exchange Manager?

A. Well, it was about the first of September, or the first part of September, 1934, before we opened, or the middle of September.

[fol. 2336] Q. Whom did you see in Albany?

A. I saw Mr. Halligan at the RKO Exchange; I also saw Ray Smith at Warner Bros. I saw Moe Grassgreen at the 20th-Century-Fox and I saw Ralph Pielow at Metro-Goldwyn-Mayer.

Q. Can you tell us, first, what the conversation was that you had with Mr. Halligan?

A. I can give you——

Mr. McClennen: The usual objection, sir.

The Court: Overruled.

Q. You may answer.

A. I can give you a general idea of what the conversation was.

Q. The substance of it.

A. The substance of it was, I went in there merely for one purpose, to buy pictures, and I asked Mr. Halligan if I could buy RKO pictures. I told him I wanted to buy RKO pictures for the Hippodrome Theatre in Little Falls.

The Court: You mean first-run?

The Witness: No, sir, second-run. It was understood I could not buy them first-run, so I did not stipulate to Mr. Halligan to get first-run.

The Court: You did not have second-run?

The Witness: Yes, sir. Mr. Wood had them previous to [fol. 2337] my operation of the theatre.

Mr. McClennen: I ask that that be stricken out, not responsive to the question.

Mr. Rogers: That part of the answer in which the witness said it was understood he could not have first-run.

The Court: Strike it out. He was speaking about the run, and I did not know whether he attempted to get first-run.

By Mr. Wright:

Q. What, if anything, did Mr. Halligan say with reference to your getting or not getting second-run?

A. Mr. Halligan told me he had not closed the first-run deal with Schine's theatre in Little Falls, and was not ready to sell second-run for the Hippodrome Theatre at that time.

Q. Do you recall what was said in your conversation—was that all the conversation you had with Mr. Halligan?

A. Except that I asked Mr. Halligan to notify me when his first-run deal was closed with the Schine Enterprises, so that I might be able to do business with him on second-run RKO product, and he told me he would notify me later on. I just left the exchange then and thanked him and went along to the next one.

Q. What was the next one?

[fol. 2338] A. I would say it was Metro-Goldwyn-Mayer. I don't recall just in what order I called on these different exchanges.

Q. You called on them all about the same time?

A. All about the same time. Our conversation was practically the same in each case.

Mr. McClennen: May that be stricken out?

The Court: Yes.

Mr. McClennen: The Metro man was Ralph——

The Witness: Ralph Pielow.

By Mr. Wright:

Q. Can you give us the substance of the conversation you had with Mr. Pielow?

A. The substance was, I was running the Hippodrome Theatre in Little Falls. We were ready to open and that I wanted to buy product for the theatre, Metro-Goldwyn-Mayer product, and asked him to make a deal with me. Mr. Pielow told me that he had not closed with Schine, and at the present time he could not make a deal for second-run product, so I asked him to do the same as I had asked Mr. Halligan to notify me when he was ready to sell. That was about all the conversation I had with Mr. Pielow.

Q. What was the conversation you had with Mr. Grassgreen?

A. Mr. Grassgreen at Fox—do you want me to repeat that, sir?

[fol. 2339] Q. Whatever the substance was.

A. The substance was, I wanted to buy 20th Century-Fox pictures for the Hippodrome Theatre. I understood from Mr. Grassgreen he was not just ready to sell second-run yet, and that later on in the season he might be able to sell me some second-run pictures. So I told him I would come back and call on him later on, which I did.

Q. Who was it you saw at Warner?

A. Ray Smith.

Mr. McClennen: I have not mentioned the objection each time, your Honor. I take it it applies.

The Court: I understand your position about it. Objection overruled.

By Mr. Wright:

Q. What was the conversation you had with Mr. Smith, as nearly as you can recall?

A. As nearly as I recall, the conversation was similar, that I wanted to buy second-run pictures for the Hippodrome Theatre in Little Falls, which we were expecting to open immediately, or as soon as we could make definite arrangements for product, and that I was in the market for second-run Warner pictures.

The Court: In September, when you took the theatre over, did you have contract with these various companies?

[fol. 2340] The Witness: Yes, sir.

The Court: Which would have continued until when?

The Witness: Until the next buying season, which would be the following summer.

By Mr. Wright:

Q. I don't think you understood the Court's question. As I understood it, you formerly testified the product you were using there at the time was Paramount, Universal and Columbia?

A. That is right, sir. That was the only product.

Q. He asked you with reference to these particular RKO, Metro-Goldwyn-Mayer, Fox and Warner. Is that right?

The Court: I thought his prior answer referred to more of them. What were you running in September with the major companies?

The Witness: Up to this time——

The Court: In September when you went in there.

The Witness: My predecessor was running pictures that I believe were purchased—I am not sure just what product he was running, because I was not in a position to watch the operation of his house.

The Court: When you took over what did you continue with?

The Witness: Columbia, Universal and Paramount, and [fol. 2341] three independent companies.

The Court: All right.

By Mr. Wright:

Q. Did you hear anything further from any of those gentlemen you talked to at the exchanges?

A. No, sir.

Q. Did you go in to see them again about making a second-run deal?

A. I made repeated trips to Albany, but I cannot say definitely just who I saw on those repeated trips, because of the fact at times I would go into an exchange and the man I wanted to see was not there.

Q. These repeated trips you are referring to were made during what period?

A. Made during the period of, I would say, between October of 1934, which was after the time we opened the theatre, and the following spring, or—I will correct that, if you don't mind. I will say the fall of the next year. That was from October, 1934, until, I will say, October, 1935.

Q. Do you recall what, if any, reason was given to you by the exchanges as to why they would not or did not sell you a second-run?

Mr. McClennen: That is objected to. The witness's testimony is he could not recall that he saw them; that he went [fol. 2342] and that the men sought were not in.

The Court: He said he did not recall who he saw.

Mr. McClennen: I object to this question.

The Court: Sustained.

By Mr. Wright:

Q. In the course of these repeated trips you made during that year did you at any time see any of these exchange managers again?

A. I can say that I saw some of them, but the ones that I saw I cannot recall, because I would go into all of the exchanges, and one exchange I might see——

Mr. McClennen: May that last be stricken out, "because," and so forth?

The Court: No, I will let it stand. He said he went to the various exchanges and called on different individuals. Is that your answer?

The Witness: Yes, sir.

Q. Do you recall whether any of them ever took an application from you for second-run product?

Mr. McClennen: That is objected to.

The Court: I will let him state whether he recalls that he presented an application to any one.

The Witness: I do recall I called at the respective exchanges. I also recall none of them ever made a contract [fol. 2343] with me, none of the four major exchanges that I have mentioned.

Q. Did they ever offer the product to you in the form of an application?

Mr. McClennen: That is objected to. "They" means group. It should be man-by-man.

The Court: It should be confined to the salesmen or managers, Mr. Wright. Did the salesmen or the managers of these companies ever offer him any application?

The Witness: I beg your pardon, I did not quite hear.

The Court: Did any of the salesmen or the managers of these companies which you have mentioned ever present an application to you for the purchase of second-run?

The Witness: No exchange manager or salesman of RKO or Metro-Goldwyn-Mayer or 20th Century-Fox or of Warner Bros., ever offered me an application for pictures, either first or second run.

Q. Now then, in the fall of 1935 did you again make any efforts to secure second-run from these exchanges that you have just mentioned, for the 1935-1936 season?

A. I would say that after October, which I have already [fol. 2344] mentioned——

Q. After October, 1935?

A. Of 1935, I do not recall that I ever made trips to exchanges after that asking for product.

Q. During the 1934-1935 season what was the policy of your theatre and the Rialto Theatre with respect to showing double features?

Mr. McClennen: That is objected to, including two in the one question.

The Court: Yes.

Mr. Wright: I thought we might save a little time.

The Court: I will let him state the policies of each.

By Mr. Wright:

Q. State, first, what the policy of the Rialto was.

The Court: 1934-1935.

The Witness: During the 1934-1935 season?

By Mr. Wright:

Q. Yes.

A. Double-feature policy.

The Court: Both yourself and the Rialto, you mean?

Mr. Wright: He was just asked about the Rialto separately.

The Court: All right.

The Witness: The Rialto Theatre was a double-feature policy.

Q. What policy were you playing at the Hippodrome?

A. At that time I was playing double-feature policy, with [fol. 2345] the second-run product, but when I played one of the United Artists' pictures, which I was playing, we will say, one every three weeks, I single-featured that picture and played short subjects with it.

[fol. 2346] Q. Those were the pictures you had bought of first-run?

A. That is right, the 18 to 20 United Artists pictures.

Q. Then did those double feature policies you have just described — into the 1935-36 season?

A. Well, those double feature policies, you are referring to my house now, the Hippodrome, sir?

Q. Let us take your house first. Did you continue to double feature into the 1935-36 season?

A. I continued to double feature as long as I had a sufficient number of pictures to double feature.

Mr. McClennen: That is objected to.

The Court: Strike it out. State the time.

Q. When was it?

The Court: How long did you continue that?

The Witness: Towards, up until—this is more or less now of a guess now on this question because I have no data; I destroyed all of my records. I am going to answer this to the best of my ability. I continued to double feature, I would say, up to about December, 1935 or January, 1936, and I can continue that if you wish.

Q. Then what happened?

Mr. McClennen: That is objected to.

The Court: Well, I will let him say what was done, what [fol. 2347] happened. What was done in December, 1935, or January, 1936?

The Witness: Well, I had to go into a single feature policy and play the short subjects.

The Court: You went into a single feature policy?

The Witness: That is right, sir.

By Mr. Wright:

Q. And after you went into that single feature policy, do you recall what the policy was during that period at the Rialto?

A. Yes, sir.

Q. What was it?

A. Double feature.

Q. Then those policies continued for how long?

A. Well, my single feature policy was intermittent in this way: There were times when I could only get one feature; there were other times when I could get two, so it continued like that until the spring or June of 1936.

Q. And then what did you do?

A. Then I closed the theatre for the summer.

The Court: Closed for the summer?

The Witness: I closed the theatre for the summer. I put signs in front that I was closing the theatre for the summer season.

Q. What were the facts which caused you to close the theatre?

[fol. 2348] Mr. McClennen: That is objected to.

The Court: Well, state the facts, not your conclusions. Did you close before in summer?

The Witness: No, sir, I closed in about the middle of June or along toward the 20th of June, I believe in 1936. It was getting warm.

The Court: What was done at that time? Don't state your conclusions about it. State the facts.

The Witness: You mean, your Honor, the reason why I closed the theatre in June?

The Court: If your reasons are statements of facts, yes.

The Witness: The reasons are statements of facts, sir.

The Court: What happened?

The Witness: In June I closed the theatre for two reasons, primarily. One was that I was not getting sufficient salable product to make money, and the second reason was that we were running short of funds as well as product to continue.

By Mr. Wright:

Q. Now, was there any period during the time you operated the Hippodrome there when you reduced the admission prices you have described, or resorted to any practices which would amount to a reduction?

[fol. 2349] A. Yes, sir, there was.

Q. What was that?

A. Well, I can't recall exactly what it was, but I can tell you what it was.

Q. Well, do you know the approximate year that it occurred in?

A. I would say that it occurred in the spring of 1935. That again is a guess.

Q. Is that your best recollection?

A. That is the best recollection.

Q. What was it that you did then?

A. Well, I had a ticket printed which I termed a "Family Ticket." Those tickets were given to our patrons as they would come into the theatre and purchase an adult ticket over the first part of the week, say, what we termed Saturday, Sunday or Monday. Those tickets could be used on the following two days, Tuesday and Wednesday, or Wednesday and Thursday, for what we termed a two-in-one admission. In other words, that ticket and the purchase of one adult ticket entitled two people to enter the theatre.

Q. How long did you continue that policy?

A. I would say a couple or a few weeks.

Q. Then did you have any conversation with any of the exchange managers about that policy?

[fol. 2350] A. Well, yes, about the second or third week that I had that policy in existence, as I recall, I had either a telephone conversation or correspondence with some of the exchange managers.

Q. Do you remember who they were?

A. No, actually I don't recall.

Q. Well, do you remember having any discussion with any of them at any time with reference to those two-for-one admissions?

A. Yes, I was called in to Albany. May I continue to answer?

Q. Yes.

Mr. McClennen: Just a moment, that is all the question so far.

The Court: Called to Albany?

Mr. McClennen: He was asked if he had any conversation. He said "Yes, I was called in to Albany," and he was about to state the conversation. I suggested he hadn't been asked that yet.

By Mr. Wright:

Q. By whom were you called in to Albany?

A. I got the letter signed by the Film Board of Trade. I don't know whose signature was on it.

Q. Who did you see in Albany?

A. The only one I recall was Mr. Halligan.

Q. That was the R.K.O. Branch Manager?

[fol. 2351] A. Yes, sir.

Q. Where was it you saw Mr. Halligan?

A. In the offices of the Film Board of Trade.

Q. What was the conversation with Mr. Halligan?

Mr. McClennen: Same objection.

The Court: Overruled.

The Witness: The conversation with Mr. Halligan was to the effect that I had to discontinue the "Two-for-one" policy and live up to the letter of my contract, charging the 20 cents top price.

Q. Was that all the conversation then?

A. I objected to that, of course, and told him it was helping my business and drawing a few extra dollars in that I would not have received otherwise. He said regardless of that I had to discontinue the policy in order to fulfill the contract; in other words, the exchanges would be obliged to discontinue the film service.

Q. Did you have any contracts with R.K.O. at that time?

A. No, sir.

Q. Then did you discontinue the policy?

A. I certainly did.

Q. After you closed the theatre in—what was that—May or June of 1936, did you say?

A. Well, I don't recall, I don't know what you are refer-[fol. 2352] ring to.

Q. After you closed the Hippodrome for the summer?

A. That was in June of 1936.

Q. Did you receive a call from anybody connected with the Schine organization?

A. I received a call from Judge Blumberg in Little Falls, whom I understand is——

Mr. McClennen: May that be stricken out, the understanding of the witness?

The Court: Yes, strike it out.

Q. Well, just tell what happened after you got this call from Blumberg.

Mr. McClennen: That is objected to.

The Court: Well, he is not asking for the conversation.

Q. I did not ask him for the conversation here; I asked him what he did after he got the call from Blumberg.

The Court: What did you do?

The Witness: I went over to Mr. Blumberg's office as he requested.

Q. Whom did you see there?

A. I saw Mr. Selmsner. That is right, Selmsner, I think is the way it is spelled.

Q. What was the conversation that occurred there?

Mr. McClennen: That is objected to.

Mr. Wright: Is there any question about Mr. Selmsner? [fol. 2353] At this point I would like to read into the evidence the answer to interrogatory No. 3, which states that J. G. Selmsner, Gloversville, New York, was Assistant Treasurer and Director of Schine Theatres, Inc., for August 31, 1931 to date, and Assistant Secretary of that company from February 14th, 1933 to date.

The Court: Objection overruled. What did Selmsner say?

The Witness: Mr. Selmsner asked me why I closed the theatre. I explained to Mr. Selmsner I closed it because of the fact that we were going to do a little remodeling during the summer months. He said he was in a position to make me an offer if I wasn't going to be too tough to do business with. I told Mr. Selmsner I would have to take the matter up with Mrs. Marion Wood, before I could get him a definite answer to that. Mr. Selmsner told me to take the matter up and he would see me in a few days or some time later.

Q. Is that all the conversation you had then at that particular time?

A. Yes, sir.

[fol. 2354] Q. Then did you take the matter up with Mrs. Wood?

A. I did.

Q. Then did you see Selmsner again?

A. Yes, sir.

Q. Whereabouts?

A. Same place, Judge Blumberg's office.

Q. What was said there?

Mr. McClennen: Same objection.

The Court: Overruled.

The Witness: May I continue?

The Court: Go ahead.

The Witness: That second meeting, after I had ~~seen~~ Mrs. Wood, I told Mr. Selmsner that we had decided that we wouldn't be tough to do business with, and invited an offer from him. He asked me some of the details pertaining to the theatre, how it stood financially, and so forth, and I gave him the facts in the case, at that time, because in the meantime I had made an inventory of the equipment and a few outstanding debts and I closed the deal there and then with Mr. Selmsner.

The Court: What?

The Witness: I closed a deal for him to take over the theatre.

[fol. 2355] Q. That consisted of what?

A. That consisted of the equipment in the theatre.

The Court: You did not own the building?

The Witness: We did not own the building, no, sir.

Q. And how much did you and Mrs. Wood receive?

A. Well, in actual cash, as I recall, we received about $400.

Q. For both of you, that is?

A. Between the two of us.

Q. The rest was in payment of what?

A. The rest was in payment of some outstanding debts we had rent, for some newspaper advertisements, I believe, and a few bills to a few local merchants for maybe electrical work we had done by Coffy & Turner, I am quite sure was one bill.

Q. Do you know about what the total amount of that was?

A. The total amount was about, I would say $1300.

The Court: In addition to the $400?

The Witness: In addition to the cash, yes, sir.

Q. $1300 was the amount of the assumed obligations?

A. That is approximate.

Q. Then did you remain in Little Falls?

A. Yes, sir, I remained living in Little Falls.

Q. Did you notice what was done, if anything, with the Hippodrome Theatre?

[fol. 2356] A. Well, I noticed it was closed a great deal of the time, if that is what you mean.

Q. How much of the time, what was the period you lived there?

A. I continued to live there from the time I made my deal with Mr. Selmsner until the fall of 1937.

Q. And during that period do you know how much of that time the Hippodrome was open?

A. Well, I don't know exactly how much time the Hippodrome was open, it wasn't open continually as we had kept it open when I was operating it.

The Court: You said you closed for the summer because you were running short of funds and product?

The Witness: That is right.

Q. Since 1937, have you been in Little Falls frequently?

A. Occasionally.

Q. How often?

A. Three times a year.

Q. Well, have you noticed whether the Hippodrome was opened or closed on those occasions?

A. Usually closed.

The Court: The opportunity of his observation should be stated. There may be some way of fixing the time. He has been there several years, three times a year.

Q. Now, during the time that you were operating the [fol. 2357] Hippodrome, did you notice whether the Rialto played any R.K.O., Metro, Fox or Warner product second-run?

A. During the time I was operating the Hippodrome?

Q. Yes.

A. They did not play any of those products second-run.

Mr. Wright: That is all.

Cross-examination.

By Mr. McClennen:

Q. When did you sever your connection with the Schine organization?

The Court: When did you what?

Q. When did he sever his connection with the Schine organization?

A. Well, I would say it was in the fall of 1933, I believe.

Q. Were you in the moving picture business between that time and the time when you went to work for Mrs. Wood?

A. No, sir.

Q. You had no occasion to observe anything about the moving picture business in that period?

A. Only my interest in the theatre business for years.

Q. You spoke of your visits to the exchange managers in Albany; you mentioned all the companies whose managers you visited?

A. Yes, sir.

[fol. 2358] Q. You did not visit Paramount's manager?

A. I did.

Q. When did you visit Paramount's manager?

A. During the time I was in Albany in September of 1934.

Q. And you procured from him of the second-run product of 1934-35, 64 pictures?

A. No, sir, not from him.

Q. You secured in some way 64 of the Paramount second-run product of 1934-35?

A. Yes, sir.

Q. Did you secure them in Albany?

A. No, sir.

Q. Did you secure them on solicitation?

A. Yes, sir.

Q. Made to you?

A. I would say so.

Q. Do you recall that?

A. Yes, sir.

Q. And you had the entire Paramount-second-run product of the 1935-36 season, also?

A. To the best of my knowledge, yes, sir.

Q. And on solicitation by Paramount?

A. Mr. Dick Hayes was salesman for Paramount.

Q. You operated from the time that you were engaged in this operation in the beginning of September, 1934 with [fol. 2359] Paramount, Columbia, Universal and what other second-run product?

A. With those three second-run products and what pictures I could buy from the independents. The First Division, of course, was independent, and I run it first-run, I believe, or most of it, unless my opposition bought maybe a selective contract, which I don't know. The same would apply to Standard and Pyramid.

Mr. McClennen: May that be stricken out?

The Court: It wasn't responsive. Strike it out. Read the question.

(Question read.)

The Court: During the period from 1934.

The Witness: I would say no other second-run products.

[fol. 2360] Q. No other second-run products?

A. Yes, sir.

Q. Did you have First Division?

A. Yes, sir.

Q. Standard?

A. Yes, sir.

Q. And Pyramid?

A. That is right, sir.

The Court: What is the name of the first one, First Division?

Mr. McClennen: First Division is the name of an independent distributor.

The Court: What are the others?

Mr. McClennen: Standard and Pyramid.

By Mr. McClennen:

Q. When you entered on this operation of the Hippodrome was it then in active operation?

A. No, sir.

Q. Was it a closed theatre when you entered on the operation?

A. Yes, sir.

Q. For how long had it been closed?

A. It had been closed about six weeks.

Q. When did you make your arrangement to enter Mrs. Wood's employ in the operation?

A. I started to make the arrangements to go into business with Mrs. Wood during the time Mr. Wood's mother [fol. 2361] was in Little Falls attending the funeral. That was—I can't recall the exact date Mr. Wood died, but his mother was there and I met her and talked with her.

Q. How long before September 1, 1934, do you recall, that Mr. Wood had died?

A. About six weeks. That is why I said, sir, that the theatre had been closed about six weeks.

Q. Did you play any product of any distributor off the old contracts, if any, that had been made?

A. Yes, sir, I did.

Q. What distributors' product did you play off the old contracts?

A. Two, I remember distinctly, Paramount and Columbia.

Q. You made the United Artists' contracts as fresh contracts after you took up the operation?

A. Yes, sir.

Q. Do you remember whether you played any RKO pictures at all?

A. No features. I did play some short subjects.

Q. You did play short subjects?

A. That is right, sir.

Q. During what period did you play RKO short subjects?

A. I believe it was in the 1935-1936 season.

Q. When do you say that you had your talk with Mr. Halligan of RKO about your cut-rate admissions?

[fol. 2362] A. That was when I was called into the Film Board of Trade.

Q. When?

A. The date, you mean?

Q. Yes, approximately.

A. I would say that was approximately—well, the fall of 1934—the winter, rather, I would say. We opened up in September. Some months after that. Just how many months after that I cannot recall, but I will say approximately in December or January of next year.

Q. In December of 1934 or January of 1935?

A. The winter or January of 1935, yes, sir. I think that is along about when it was.

Q. That was during the period of the operation under the N.R.A., was it not?

A. I believe you are correct, sir.

Q. You knew that the President had approved the Motion Picture Code under the N.R.A. in November, 1933?

A. I should have known it.

Q. Don't you remember that you did know it?

A. I cannot say that I do remember now.

Q. I don't mean the date, but you remember that at that time the industry was operating under a Code which the President of the United States had approved?

A. Yes, sir.

Q. And you remember that one of the provisions of that [fol. 2363] Code was against the cutting of rates of admission?

A. Yes, sir.

Q. And when you cut your rates you knew that you were violating the Code which the President had approved?

A. No, sir, I didn't consider I was cutting my rates.

Q. That is, you did not consider that when you sold two tickets for the price of one admission that you were cutting your rates?

A. I did not exactly sell tickets two-for-one, sir. We gave one ticket, a good-will ticket. The other ticket I sold for 20 cents, which was the full price.

Q. I see. That is, one of the persons got in for the regular admission price?

A. That is right.

Q. And the other one got in for nothing?

A. Well, that is it.

Q. You did not think that admitting patrons to your theatre for nothing was cutting your rates?

A. I really didn't consider it. That is, I didn't consider it in just that light.

Q. It was brought to your consideration, was it not?

A. By the Film Board of Trade in Albany, yes, sir.

Q. When it was brought to your consideration you then realized that you were violating the Code which the President had approved?

[fol. 2364] A. That is quite right, sir.

Q. You don't know after that of any effort of the distributors to sell you product, do you?

A. No, sir.

Q. Now, you say that when you had your conversation which developed into the purchase of your equipment, you said that you had closed for the purpose of making alterations in your theatre?

A. Yes, sir.

Q. Was that the truth?

A. We had talked, Mrs. Wood and I, about——

Q. That is very simple. Was that the truth?

A. Yes, it was the truth at that time.

Q. That is, you had closed at that time for the purpose of making alterations?

A. That was one of the reasons we closed, and that was our intention, to make alterations.

Q. At the time that you closed, with this intention to make alterations, you were behind on the payment of your current bills?

A. Yes, sir.

Q. You had no cash?

A. Yes, I did have cash.

Q. Well, not adequate cash to run your theatre, your operating expenses, did you?

[fol. 2365] A. I can answer the question if I may answer it in my own way, sir.

Q. If your own way is to tell me whether you had adequate cash to run the theatre, then do so.

A. I had a thousand dollars, or approximately a thousand dollars, of my own that I had received from the United States Government, Soldiers' bonus, in 1936.

Q. Had you put it into the theatre?

A. Not yet.

Q. Had you devoted any of it to the payment of your current bills of the theatre?

A. No, sir.

Q. And the reason why you did not pay your current bills was not that you wanted to avoid the payment of your debts but that the theatre did not have the money to pay them?

A. The theatre did not have the money to pay them, that is right, sir.

Q. And the conditions had got so bad that you had actually given a check to one of the distributors when you had no funds in the bank to meet it?

A. Did I hear you correctly, that I gave a check to the distributor when I had no funds to meet it?

Q. Yes.

A. I don't recall that, sir.

[fol. 2366] Q. What?

A. I do not recall that.

Q. Don't you remember a check coming back for lack of funds, from one of the distributors?

A. No, sir, I do not.

Q. This is something that has not been called to your attention for a great many years?

A. That is quite true.

Q. Won't you reflect on it a little and see if you can't recall that you had given a check when you had insufficient funds to meet it?

A. I don't recall any check coming back marked "Insufficient funds."

Q. You don't recall any check coming back marked "Insufficient funds"?

A. No, sir.

Q. Well, the check would come back to the distributor, would it not, if you had issued one for insufficient funds?

A. I mean by that I don't recall any distributor speaking to me about such a matter.

Q. Do you remember a check for $43 being drawn when there were insufficient funds in the bank to meet it?

A. No, sir, I don't recall it.

Q. You have no positive recollection that you did not do [fol. 2367] such a thing, do you?

A. I have the positive recollection that I would not do such a thing knowingly.

Q. Well, do you remember that in May of 1936 the bank account of the theatre did not have as much as $43 in it?

A. Well, I would believe that.

Q. Now, was the product situation with which you were dealing such that you thought it was a prudent thing to advise Mrs. Wood to go to the extent of remodeling the theatre?

A. No, sir, it was not.

Q. And the product situation, then, was not such that you thought yourself that it was a prudent thing to remodel the theatre, is that true?

A. That is true.

Q. When was it that you had considered the matter of remodeling the theatre first?

A. When things got so bad in the spring, we will say——

Mr. McClennen: May that be stricken out? The time is what I asked.

The Witness: I beg your pardon. I will say in May or June.

Q. May or June of 1936?

A. 1936. I would prefer to say May, some time before closing.

Q. Was it at about the time when you had, perhaps, less than $43 in the theatre's bank account?

[fol. 2368] A. I could not say as to that. I think there were a number of times when we had less than $43 in the theatre's bank account.

Q. Running all the way along through the operation?

A. Not necessarily the first year. The first year I thought we were doing quite well, and so did Mrs. Wood. The second year we operated, the second season——

Mr. McClennen: I ask that it be stricken out.

The Court: That is not responsive. Answer the questions he asks.

Q. The price of the admission with which you gave a ticket for a free admission was ten cents?

A. Twenty cents, sir.

Q. Is this one of your tickets that I show you (handing to witness)?

A. Yes.

Q. The price of admission, with which you gave a free admission, was ten cents, was it?

A. With which we gave a free admission? This was our free admission ticket, our family admission ticket. When they purchased a 20-cent ticket we gave them one of these.

The Court: Louder.

The Witness: When they purchased a 20-cent ticket on Sunday or Monday, we would give them one of these family [fol. 2369] theatre tickets; this ticket and ten cents would admit someone to the theatre.

The Court: Adults, you mean, ten-cent tickets?

The Witness: On this ticket and a ten-cent ticket, yes.

Q. That was the transaction which you did not realize was cutting your admission rates, is that it?

A. Well, no, I did not really realize it. I did not consider it that way.

Q. During the period when you were operating the Hippodrome the Rialto operated on a single-feature policy on Sundays, Mondays and Tuesdays of each week, did it not?

A. I did not know it, if they did.

Q. You knew nothing to the contrary of that, did you?

A. No.

Q. After you left Little Falls in 1937, how often were you back there during the next three or four years?

A. I would say about a dozen times, maybe a little more.

Q. In the whole period?

A. That is right, sir.

Q. On each of those occasions did you go down to the Hippodrome Theatre?

A. No, sir.

Q. Did you go down to the immediate vicinity of the Hippodrome Theatre?

A. How far would that be, the immediate vicinity? The [fol. 2370] town is so small that I would say when you are in town you are in the vicinity.

Q. Within eye-sight of it?

A. Oh, no, sir.

Q. In that period of three or four years how many times do you remember seeing the Hippodrome closed?

A. I remember seeing it closed, definitely seeing it closed, once, when I was at the City Hall, which is just across the street.

Q. That is the only time in those four or five years that you recall seeing it closed?

A. Yes, sir.

The Court: Was that in the evening, do you mean?

The Witness: Yes, sir.

Q. At the time of your negotiations that you have described, which resulted in the sale of the equipment in the theatre, did you have any lease of the theatre?

A. No, sir.

Q. Did you at any time during your operation have any lease of the theatre?

A. No, sir.

Q. Who owned the theatre?

A. The theatre building is owned by the Odd Fellows Temple Association.

Q. At the time of considering the renovation or improve- [fol. 2371] ment of the theatre did you intend to improve the theatre under the occupancy that you were then enjoying?

A. Yes, sir.

Q. How pressing were these unpaid bills that were paid off by the Schine organization when they bought the equipment?

A. How pressing were they?

Q. Were they all then immediately due?

A. Well, I would say that the rent had been over-due. That also would apply to the two others that I mentioned, that was the newspaper, the Evening Times, which was a rather small one, and, as I recall, a Coffey & McTurner, the el-ctrical bill.

Q. How long had the rent been over-due?

A. Why, maybe three months, maybe we owed back three months.

Q. How long past due were your advertising bills?

A. Well, we always paid each week some small amount on them, but they had been carrying us along for some little time, as I recall. I can't say just how long.

Q. How long had the electrical bills been over-due?

A. That was, I will say, a few months.

Q. Had you been warned that the electric service would be turned off?

A. I don't recall. I may have been but I don't recall. I don't recall that I owed the electric service any money. I may have owed the electric service some money, but I did [fol. 2372] not include that. When I say "Coffey & McTurner," I mean electrical equipment bill. I am not referring to the electric service in town.

Q. That is, this equipment which you sold to the Schine organization was one that you had acquired on some deferred payment plan?

A. Mrs. Wood's husband, William Wood, had bought this equipment when he started in operation, and it was still in the theatre when Mrs. Wood and I started to operate the theatre after his death.

Q. Had it been bought on some deferred payment plan?

A. I don't know, sir.

Q. What did you owe for electrical equipment?

A. We had an accident, a small fire, in the projection booth some time previous to the spring of 1936, and that equipment in the booth had been taken care of and gone over and repaired by Coffey & McTurner, an electrical store —company—there in the city of Little Falls.

Q. You owed for that?

A. That repair work.

Q. That repair work?

A. Yes, sir.

Q. Had there been any attempt on their part to put any lien on?

[fol. 2373] A. No, sir.

Q. And that repair work, you say, was done when?

A. It was done, I said, some time previous to the spring of 1936, because that is when Mrs. Wood and I made our deal with Schine, so the fire, of course, was previous to that.

[fol. 2374] Q. That is some time previous to the spring of 1936?

A. Yes, sir.

Q. For how long previous?

A. Well, that fire occurred during the season.

Q. That is the 1935-36 season?

A. 1935-36 season, that is right.

Q. Before or after, we will say, Christmas time?

A. Yes, sir.

Q. Which?

A. I would say maybe after Christmas time.

Q. Much after?

A. I could not say, sir; I really don't recall just when the fire was.

Q. Well, would it be within your recollection that you were about six months overdue on the payment of that bill?

A. I doubt it that it was that long.

Q. May have?

A. It may have, yes, sir.

Mr. McClennen: That is all.

Redirect examination.

By Mr. Wright:

Q. Mr. Warne, on cross-examination you were asked the question whether you knew of any efforts of distributors [fol. 2375] to sell products to you after this hearing with reference to admission price violations occurring, and I believe you answered that you did not, is that right?

A. That is right.

Q. Which distributors were you referring to?

A. I was referring to the same four distributors that made no efforts previous to that, R.K.O., Fox, Warner and Metro.

Q. Those distributors whose product you were using at the time of the alleged fire were what?

A. Paramount, Columbia, Universal, and the three independents.

Q. And those, Paramount, Universal and Columbia, did or did not continue to solicit your business?

A. They continued to solicit my business.

Q. And they got it, did they not?

A. They continued to service me with pictures that were under contract, and I continued playing them.

Q. Did any of these representatives of Fox, R.K.O., Warners or Loew's ever give you, as a reason for not serving you, the fact that you had cut admission prices?

Mr. McClennen: That is objected to, it appeared that——

The Court: Sustained.

Q. What, if any, reason, or were any reasons ever given to you by the representatives of those companies as to why [fol. 2376] they would not serve you other than what you have already stated?

A. No, sir, no other reasons other than what I have already mentioned.

Q. That is, by reasons, you have already stated, I am referring to your statement on direct-examination that they were negotiating deals with Schine?

A. That is right.

Mr. McClennen: That is objected to.

The Court: What difference ~~does it make?~~ Strike it out.

Mr. Wright: I wanted to make it perfectly clear, if the Court please.

The Court: He has already answered that before on direct-examination.

Mr. Wright: As I understood counsel's cross-examination, he attempted to imply that the reason Mr. Warner wasn't sold was because of this price cutting incident.

The Court: He testified before he had no talk with the representatives prior to the time he went to Albany. If he didn't have any talk with him, they could not give him any reason.

Mr. Wright: As I understood his testimony he said he [fol. 2377] made repeated visits to the exchanges from the fall of 1934 to October, 1935.

The Court: I know, but the fire was later than that, not the fire, but——

Mr. Wright: This conversation occurred in 1934 and '35.

The Court: Read the question.

(Preceding question read.)

Mr. McClennen: That was objected to for other reasons. That is not what he had stated.

The Court: Anyway, he didn't say they negotiated deals, there were contemplated deals.

Mr. McClennen: That answer may be stricken then?

The Court: Yes.

By Mr. Wright:

Q. Mr. Warne, was there any other reason given to you by any of the representatives of R.K.O., Loew's, Warner and Fox at any time for not selling you a second-run, other than the fact that they were contemplating a deal with Schine?

Mr. McClennen: That is objected to.

The Court: Overruled.

The Witness: Shall I answer that?

The Court: "Yes," or "No."

The Witness: No other reasons given.

Q. I believe you testified on cross-examination Mr. Hal- [fol. 2378] ligan sold you some R.K.O. short subjects?

A. Yes, sir.

Q. Do you remember when that was?

A. I would say that was the 1935-36 season, but just what part of that season it was, I am not sure, although I would say it was the first part of that season.

Q. When was it with reference to the time you had this conversation with Mr. Halligan about admission prices?

A. Long after.

Q. Was there anything said at the time he made that deal with you for the short subjects about feature product?

A. Yes, I asked him about feature products.

Q. What did he say?

Mr. McClennen: Just a minute.

The Court: Why don't you ask him what was said?

Mr. Wright: That is what I asked him.

The Court: No, you asked him about the short subjects.

Q. What was it you said to him about feature products?

A. I asked Mr. Halligan again about feature product; this was an additional time. When I asked him about feature product Mr. Halligan said he wasn't quite ready to sell me that feature product but he had some short subjects.

The Court: When was this?

The Witness: This was, I would say, in the fall of 1935, but he told me while he did not have feature product to sell [fol. 2379] me just at that time he would like to sell me short subjects. I talked with him and we jollied along.

Mr. McClennen: May that go out?

The Court: Yes.

The Witness: About——

The Court: No, just give the conversation.

The Witness: It was along the same line. I wanted to buy features, and he wanted to sell me short subjects. He eventually sold me short subjects, and I never did get the features.

Mr. Wright: That is all.

Mr. McClennen: That is all.

Mr. Clagett: Your Honor, before we go on with the next witness I would like a five-minute recess. I have a few contracts here I believe we could mark and identify on the record and dispose of that.

The Court: You could do that during intermission.

Mr. Wright: That is right, with regard to the next witness, Mr. Fenybessy, whose examination was interrupted.

The Court: I didn't know if there was some question by the defendants about the authenticity.

Mr. Wright: These were some additional contracts when [fol. 2380] he was on the stand before.

The Court: Do you want to examine him?

Mr. Clagett: No, sir, I wanted to get these marked. I believe we can agree on the basis of the method on which we handled these before.

Mr. McClennen: These are all from the distributors' files?

Mr. Clagett: That is right.

Mr. McClennen: This is now not for identification, but it is offered in evidence.

Mr. Clagett: In evidence.

Mr. McClennen: If your Honor please, we can arrange during your Honor's intermission to have these marked and described into the record.

The Court: Do you want to look them over, do you?

Mr. McClennen: I think they look all right.

The Court: What are they marked? What numbers, do they follow consecutive?

Mr. McClennen: These will be consecutive numbers.

Mr. Clagett: These will be consecutive numbers following the last Plaintiff's number.

The Court: They are marked in evidence the same as for identification.

Mr. McClennen: These are not identified.

The Court: He said they were.

Mr. McClennen: There is no identification mark on them.

[fol. 2381] Mr. Clagett: I will ask the reporter then if he will mark those in evidence with the next Plaintiff's Exhibit numbers.

The Court: Well, we will suspend for five minutes.

(Short recess.)

(During the short recess 11 film contracts were then marked as Plaintiff's Exhibits 779 to 789, inclusive, in evidence, and during the recess the following proceedings took place):

Mr. Clagett: By agreement with counsel I will now read the description of Plaintiff's Exhibits 779 through 789 in evidence, for the record.

Exhibit 779 is a contract, R.K.O. Distributing Corporation, for feature pictures, Madison Theatre, approved November 30th, 1932.

Exhibit 780 is a contract, R.K.O. Radio Pictures, for the exhibition of feature pictures, Monroe Theatre, 1937-38 season.

Exhibit No. 781 is a contract, R.K.O. Radio Pictures, Inc., for exhibition of feature motion pictures, Madison Theatre, 1937-38 season.

Exhibit No. 782 is a contract, R.K.O. Radio Pictures, [fol. 2382] Inc., for the exhibition of feature motion pictures, Monroe Theatre, 1938-39 season.

Exhibit No. 783 is a contract, R.K.O. Radio Pictures, Inc., for the exhibition of feature motion pictures at Madison Theatre, for the 1938-39 season.

Exhibit No. 784 is a Fox Film Corporation contract for the exhibition of motion pictures at the Madison Theatre dated November 11th, 1931.

Exhibit No. 785 is a contract, Loew's, Inc., for the exhibition of feature pictures, Monroe Theatre, 1936-37 season.

Exhibit No. 786 is a contract, Warner Brothers and First National pictures, for the exhibition of feature motion pictures, Madison Theatre, approved November 7th, 1936.

Exhibit No. 787 is a contract, Warner Brothers and First

National productions, for the exhibition of feature motion pictures, Monroe Theatre, dated November 5, 1936.

Exhibit No. 788 is a contract, Warner Brothers product, for the exhibition of feature motion pictures, Monroe [fol. 2383] Theatre, dated January 30th, 1935.

Exhibit No. 789 is a contract, First National production for the exhibition of feature motion pictures, Monroe Theatre, dated January 30th, 1935.

[fol. 2384] Chester Fenyvessy, recalled as a witness in behalf of the Government, having been previously sworn, was examined and testified further as follows:

Mr. Clagett: The next Plaintiff's exhibits, your Honor, offered in evidence are a series of eleven additional contracts, which were obtained from the five major producers and they have been marked from 779——

The Court: I thought you said 799.

Mr. Clagett: That was misread. From 779 through 789.

(The series of eleven contracts referred to were received in evidence and marked Plaintiff's Exhibits 779 to 789, inclusive.)

Mr. Clagett: I want to refer to the clearance provisions of only two sets of these contracts, Plaintiff's Exhibits 788 and 789, being Warner Bros. and First National Productions' contracts, both of them approved January 30, 1935. The clearance provision is as follows: "After Schine's protection to be made available for dating fourteen days after first booking at any one of the following theatres, Schine's [fol. 2385] Riviera, Liberty, State or Dixie."

The Court: Fourteen days after?

Mr. Clagett: Fourteen days. The next exhibits, Plaintiff's Exhibits 786 and 787 being Warner and First National Productions, both of them approved November 5, 1936, clearance provision as follows: "After Schine protection clear of Webster Theatre."

Direct examination.

By Mr. Clagett:

Q. Can you state, Mr. Fenyvessy, whether the provision after Schine protection would include the four Schine houses, Riviera, Liberty, Dixie and State?

A. Yes.

The Court: How much was the Schine protection?

The Witness: Fourteen days after those houses.

Q. You think the clearance on this contract, approved November 5, 1936, was 14 days, the same as the first contracts I read from?

A. I think so, yes.

Mr. McClennen: The witness stated earlier fourteen days after the first booking, which would be the booking at the Riviera.

[fol. 2386] By Mr. Clagett:

Q. Mr. Fenyvessy, will you say whether you attempted to buy an earlier availibility of pictures of Metro-Goldwyn-Mayer for the Madison and Monroe Theatres?

A. Yes.

Mr. Clagett: Your Honor, I wish to read from the plaintiff's Exhibits which are a series of letters passing between Mr. Fenyvessy and certain sales executives of Loew's.

The Court: Aren't they marked in evidence?

Mr. Clagett: These have been marked in evidence.

Mr. McClennen: Your Honor admitted them over our objection and of course the reading is over our objection.

The Court: Yes.

Mr. Clagett: Plaintiff's Exhibit 765, a letter, dated April 9, 1937, signed by Chester Fenyvessy, to Mr. William F. Rodgers, Loew's, Inc., New York City. "Dear Mr. Rogers: We are operating two theatres, the Madison and Monroe, which are equal in class to the other neighborhood theatres where your pictures are shown second-run, and only after 21 days are the pictures made available to us. [fol. 2387] The Madison and Monroe Theatres are each more than two miles away from the nearest of these second-run houses and are in entirely different neighborhoods. We should like your consideration of open booking with these houses and will pay the same price. We have been endeavoring to secure this without any definite satisfaction through your Buffalo office. Yesterday we discussed our situation with Mr. O'Shea, and he agrees that we should be entitled to open booking. Will you be kind enough to investigate this situation and advise us on the subject at your earliest convenience."

Mr. McClennen: The recital by the witness of a conversation with Mr. O'Shea we ask be so limited that this statement does not constitute any evidence of the fact stated.

The Court: See what follows. I don't know. There may be something to show the authority here.

Mr. McClennen: To make perfectly clear the basis of our objection, at times, of course, a communication may be admissible as a communication, and we understand that [fol. 2388] if hearsay comes in without objection that it may constitute evidence of the facts stated, and we make the objection so that even if it is received as a communication it shall be received as no evidence of the fact that is stated in the discussion or letter.

By Mr. Clagett:

Q. Mr. Fenyvessy, can you state whether you had the conversation referred to in Plaintiff's Exhibit 765 with Mr. O'Shea?

A. Yes.

Q. Who was Mr. O'Shea?

A. At that time I think he was the district manager for Metro.

Q. What did you say to Mr. O'Shea?

Mr. McClennen: Same objection.

A. In substance, that we would like to secure second-run and open booking with those Schine houses.

Q. What did Mr. O'Shea say?

A. That they had a contract with Schine and they would—after it terminated they would give it consideration.

Q. Did he make any reference to the question of open booking?

A. Well, it was discussed, because that was what we were [fol. 2389] anxious to have.

Mr. Clagett: The next exhibit that I shall read is Plaintiff's Exhibit 766.

Mr. McClennen: Same objection.

Mr. Clagett: It is a letter signed by T. J. Connors on the stationery of Metro-Goldwyn-Mayer pictures, to Mr. Chester Fenyvessy, Fenyvessy Enterprises, Rochester, N. Y., dated May 14, 1937. "Dear Mr. Fenyvessy: Mr. Rodgers has referred your letter of April 9th to the writer. I withheld replying until I could have an opportunity of discussing the matter of your letter with our Buffalo manager, Mr. O'Shea, and our district manager, Mr. Flynn. We are giving your problem consideration and in the near future Mr. O'Shea will again contact you as it relates to our new season's product."

By Mr. Clagett:

Q. Does that letter, Mr. Fenyvessy, refresh your recollection as to whether Mr. O'Shea was the district manager at that time or the Buffalo branch manager?

A. Well, obviously, he was the branch manager at that time. At one time he was branch manager and another [fol. 2390] time he was district manager.

Q. He did become district manager later on?

A. Yes.

Mr. Clagett: The next letter is Plaintiff's Exhibit 767, on the stationery of Metro-Goldwyn-Mayer, signed by William F. Rodgers, General Sales Manager, dated June 27, 1938, to Mr. C. A. Fenyvessy. "My dear Mr. Fenyvessy: We gratefully acknowledge receipt of your application for our 1938-1939 product and are pleased to inform you of its acceptance, and at the same time express our appreciation for your consideration. It is our sincere hope that you will enjoy a profitable season, that you may have a full measure of good health, and that your patrons will continue to be pleased with our efforts.

"Again thanking you for your patronage, we are."

The next letter is Plaintiff's Exhibit 768, dated June 28, 1938, signed by Chester Fenyvessy, to Mr. William F. Rodgers, Metro-Goldwyn-Mayer, New York City.

Mr. McClennen: Same objection.

[fol. 2391] Mr. Clagett: "Dear Mr. Rodgers: On January 31st., at the O'Shea-Maw dinner, I renewed your acquaintance of twenty-odd years ago in Albany. Your letter of June 27th, acknowledging our contract for Metro-Goldwyn product for 1938-1939 is indeed very cordial. So much so that I should like to know whether you will not give the proposition of improving our availability at the Madison and Monroe theatres, which we took up with you a couple of years ago, further consideration. We have two fine houses, in sections definitely isolated from the Schine situation, but, through custom that has been in operation for several years, it has become a tradition that we must follow Schine. Mr. O'Shea is familiar with our condition in this situation and if you really wish us to "enjoy a profitable season and full measure of good health" (your quotation) and to increase your participation in percentage pictures, an improvement in our availability will go further to accomplish this than anything else."

[fol. 2392] The next letter is Plaintiff's Exhibit 769, on the stationery of Metro-Goldwyn-Mayer Pictures, dated July 5, 1938. It appears to be signed by Mr. Rodgers, at least it has the initials "W.F.R." "Mr. Chester Fenyvessy. Dear Mr. Fenyvessy: Thank you for your letter of June 28th. The subject is one which is under the jurisdiction of Mr. Connors, and he will take it up with Mr. O'Shea, and you will hear direct from either one of those gentlemen regarding the matter. With best wishes."

The next letter is Plaintiff's Exhibit 770, on the stationery of Metro-Goldwyn-Mayer, signed by T. J. Connors, dated July 15, 1938, to Mr. Chester Fenyvessy. "Dear Mr. Fenyvessy: This will acknowledge receipt of your letter of June 28th, addressed to Mr. Rodgers. We have a term deal with the Schine Theatres which grants clearance over your Madison and Monroe theatres and therefore are not in a position to grant earlier availability. We, however, shall [fol. 2393] use our good offices to make an endeavor to secure earlier availability for you."

The next exhibit is Plaintiff's Exhibit 771, a letter signed by Chester Fenyvessy, dated July 30, 1938, to Metro-Goldwyn-Mayer pictures, New York City, attention T. J. Connors. "Dear Mr. Connors: Your letter of July 15th is acknowledged. I do not understand what you mean by 'term deal' with Schine Theatres. I would appreciate your explaining this expression. I have been told at various times that deals with the Schine Theatres precluded discussion of our problem at the Madison and Monroe theatres, and when they expired a year hence our problem would be given consideration, but our situation is still as acute as ever. In fact, slightly worse, because the clearance granted Schine has gradually been extended. We have a situation which might interest you in Rochester, between the Arnett [fol. 2394] operated by others, and the West End, operated by ourselves. Metro will not give us any protection over the Arnett, nor the Arnett over us. In other words, these houses are obliged to play day and date, although they are on the same street, less than a mile apart. We should like to know why these houses, which are undeniably competitive, are treated in this manner when the four Schine theatres, located in entirely different sections of Rochester, so remote from the Madison and Monroe theatres that there would be no competition if the pictures were shown simultaneously in the Schine theatres and the Madison and Monroe, are given protection over the Madison and Monroe. It appears to us that this is an unfair practice and decidedly discriminatory. We should very much appreciate hearing from you on the subject."

The next letter is Plaintiff's Exhibit 772, a letter on the stationery of Metro-Goldwyn-Mayer Pictures, signed by [fol. 2395] T. J. Connors, dated August 4, 1938. "Mr. Chester Fenyvessy, Fenyvessy Enterprises. Dear Mr. Fenyvessy: This will acknowledge receipt of your letter of July 30th, in which you stated that you would appreciate an explanation of the meaning of 'term deal.' I use that expression when I refer to a deal that covers a period of two seasons or more, in order to distinguish it from the regular type of one-year deal. That part of your letter which refers to the Arnett and West End situation in Rochester I have referred to Mr. O'Shea, District Manager in charge of that territory, as he is intimately familiar with the situation, having been branch manager of the Buffalo territory for many years. You will hear from Mr. O'Shea further regarding the above."

The next exhibit is Plaintiff's Exhibit 774, a letter on the stationery of Metro-Goldwyn-Mayer, signed by Ted O'Shea, dated August 11, 1938, to Mr. Chester Fenyvessy. "Dear [fol. 2396] Chester: Mr. Connors has requested me to investigate and write you concerning your inquiry as to clearance on the West End Theatre, Rochester, to the Arnett Theatre, Rochester. As you know, clearance has never been granted in this situation from one house to the other and these two houses have always been sold on open availability which apparently has always been satisfactory to all concerned. In fact, our product has been sold to both of these theatres for the season 1938-1939 on the same basis."

[fol. 2397] Mr. Clagett: The next letter is Plaintiff's Exhibit 755, signed by Chester Fenyvessy, dated August

16, 1938, to Mr. E. K. O'Shea, Metro-Goldwyn-Mayer Pictures, New York City.

"Dear M[illegible] O'Shea:

Your communication of August 11th is at hand, and I thank you for your early reply; however, I do not seem to have made my problem clear.

There is no complaint now, nor has there ever been, regarding the clearance at the West End vs. the Arnett Theatre as far as we are concerned. I only cited that situation as an instance where the distributor is entirely fair with both exhibitors, allowing neither one nor the other an advantage in any way. This is in contrast to the Schine situation vs. Monroe and Madison where the distributor is showing preference by supplying the pictures to the four Schine houses ahead of the Madison and Monroe, with what appears to us to be unreasonable protection after their run.

Originally Schine Theatres were obliged to play Metro [fol. 23[illegible]8] pictures within a period of 14 days, and if not so played, there was no further protection, and they became available to the Madison and Monroe. Now it is usually 21 to 28 days after the last Schine showing before the pictures can be shown at our theatres.

I do not want to annoy you or Messrs. Connors and Rodgers with our problems unnecessarily. I feel that our situation is one that requires more than casual observation, as it has been consistently growing worse through the advantages given Schine. When you consider the West End-Arnett as an example of fair impartial treatment, certainly the Schine-Madison-Monroe protection and clearance is a direct indication that the producer is playing with the big exhibitor and imposing a hardship on the little operator.

I hope you have a remedy, and I shall await your reply.

Very truly yours, Chester Fenyvessy."

The next letter if Plaintiff's Exhibit 777, which is a letter [fol. 2399] signed "Chester Fenyvessy," dated October 25th, 1938, to Mr. T. J. Connors, Metro-Goldwyn-Mayer Pictures, New York City.

"Dear Mr. Connors: During July we had some correspondence with you regarding your protection at the Madison and Monroe Theatres.

As nothing has developed, and our position is the same as before, we would appreciate hearing from you on the subject. We do not want this matter to dry up if there is any possible way of being assisted by you.

Very truly yours, Chester Fenyvessy."

The next letter is Plaintiff's Exhibit 778, a letter on Metro-Goldwyn-Mayer stationery, signed T. J. Connors, dated October 26th, 1938, to Mr. Chester Fenyvessy.

"My dear Mr. Fenyvessy: This will acknowledge receipt of your letter of October 25th.

Under date of July 15th, and again under date of August 4th, we advised you that the existing clearance was part of [fol. 2400] a term deal and that we were not in a position to make any change at this time.

We also advised you that we had requested our District Manager, Mr. E. K. O'Shea, who is intimately familiar with Rochester, to see you at his earliest convenience and discuss the matter. It is my understanding that Mr. O'Shea called upon you and discussed the matter.

You may be sure that we are keeping the matter in mind.

Sincerely, (Signed) T. J. Connors."

The next letter is Plaintiff's Exhibit 773, a letter from Mr. Chester Fenyvessy, dated August 3, 1938; to Mr. Ralph Maw, Metro-Goldwyn-Mayer, Buffalo, New York:

"DEAR MR. MAW:

Re—Clearance Schine vs. Madison-Monroe Theatres

Here is a hypothetical case——

A Metro pictures opens August 7th at the Riviera Theatre, and opens August 14th at the Liberty Theatre, the last day of this engagement being August 16th. Under the [fol. 2401] Madison-Monroe contract, Schine has 14 days clearance, which would make the picture available on August 31st. However, as certain pictures are designated by the distributors as Sunday attractions, in this case the picture would not be available for the Madison and Monroe Theatres until September 14th, which is 28 days from the opening date at Schine's Riviera Theatre.

We should like to know whether this was your intention in drawing up the contract.

Very truly yours, Chester Fenyvessy."

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Vol. III

TRANSCRIPT OF RECORD

(Pages 1759 to 2606)

Supreme Court of the United States

OCTOBER TERM, 1947

No. 10

SCHINE CHAIN THEATRES, INC., ET AL.,
APPELLANTS,

vs.

THE UNITED STATES OF AMERICA

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE WESTERN DISTRICT OF NEW YORK

FILED OCTOBER 4, 1946.

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The next letter is Plaintiff's Exhibit 776, on the stationery of Metro-Goldwyn-Mayer Pictures, signed "R. W. Maw, Resident Manager," dated August 16th, 1938, to Mr. Chester Fenyvessy.

"Dear Chester: On my nest visit to Rochester, I will discuss the contents of your letter dated August 3rd personally with you, relative to the Schine clearance over the Madison and Monroe Theatres.

Kindest personal regards.

[fol. 2402] Sincerely, (Signed) R. W. Maw, Resident Manager."

Mr. McClennen: If your Honor please, that ends the letters and ends this group of letters. Now, then, you have heard the contents of them, we move that Mr. Fenyvessy's letters that have been read in this group be excluded as merely self-serving arguments, not at all admissible against the defendants. He is not an alleged co-conspirator and what he says we submit is not admissible in this way at all against us.

The Court: Denied.

By Mr. Clagett:

Q. Mr. Fenyvessy, also, do you recall, or did you have any conversation with Mr. R. W. Maw, some time after August 16th, 1938?

A. Yes, sir.

Q. Was Mr. Maw then—what was Mr. Maw's position at that time?

A. He was very cordial, but he could not give me anything.

The Court: What was his position?

Q. What was his position with the company?

[fol. 2403] A. Oh, his position with the Company, he was the Exchange Manager, I believe, at the time.

Q. Well, can you state the substance of the conversation with him?

Mr. McClennen: The same objection, if your Honor please.

The Court: Overruled.

Q. You may answer.

The Court: In Buffalo, you mean, or New York?

The Witness: He came to Rochester. He was very cordial, but could not do anything. I don't remember the details.

Q. Can you state what you said to Mr. Maw?

A. I objected to the clearance. I wanted to improve the clearance.

Q. Now, can you state the substance of what Mr. Maw said to you with reference to clearance.

The Court: What did you say to him on the subject of clearance and what did he say to you?

The Witness: I don't remember the exact details, but it was a conversation with respect to improvement of the run and the clearance.

Q. Well, can you state what the substance of what Mr. Maw said to you on that subject was?

A. That he could not do any better, he gave us the best he had to offer; that is the substance.

[fol. 2404] Q. Mr. Fenyvessy, did you have any written correspondence with any of the other major companies relative to obtaining an earlier availability of pictures?

A. Not that I remember.

Q. Did you ask personally of the various—of the representatives of the other companies if they would sell you an earlier availability of pictures?

Mr. McClennen: That is objected to.

The Court: Oh, no. He can state what he did.

~~Q. Did you say you did?~~

The Court: Strike that out. Read the question. I think the question is too broad. Does it purport to have occurred in several conversations with individuals unknown?

Mr. Clagett: I will rephrase the question.

Q. Did you have any conversation with any representative or representatives of Warner Brothers with respect to obtaining an earlier availability of pictures?

Mr. McClennen: That is objected to.

The Court: I will let him state; did you have any talk with any representatives of Warner Brothers?

The Witness: Yes, sir.

Q. Could you fix the approximate date?

The Court: Who was it?

Q. Will you state first with whom you had such a conver-[fol. 2405] sation?

A. The salesman in the territory, and I believe the manager was a man by the name of Ray Smith. I spoke with him about a better run.

Q. Did you have a conversation with the salesman also?

A. Yes, sir.

Q. Could you fix the date—strike it out. Who was the salesman?

A. I don't remember at that time.

Q. Well, can you state what conversation you had with the Branch Manager?

Mr. McClennen: That is Mr. Ray Smith? The same objection.

The Court: Overruled.

The Witness: Well, in substance, I tried to secure a better run.

The Court: What?

The Witness: In substance, my main conversation was that I tried to get a better run.

Q. What did Mr. Smith say to you?

A. That he could not do any better and that he would have to give us what other major companies were giving us.

Q. Was there anything further said along that line?

A. No, it was the subject of the conversation, but I don't remember.

[fol. 2406] Q. Was there any particular company mentioned, or companies, with reference to giving you the same clearance?

A. Metro.

Q. Any others?

A. I don't know, possibly Paramount.

Q. Did you have a conversation with any representative of R.K.O. with respect to buying an earlier availability of pictures?

A. Yes, sir.

Q. With whom did you have such a conversation?

A. A salesman by the name of Schimel.

Q. Can you fix the approximate date or dates, I will say fix the date of your conversation?

A. No, it probably was in 1937, but I don't remember, in the fall of 1937. I don't remember the date.

Q. What did you say to Mr. Schimel?

Mr. McClennen: Same objection.

The Court: Overruled.

The Witness: I wanted to buy second-run.

Q. What did Mr. Schimel say to you?

A. That Schine had the second-run.

By the Court:

Q. This was with reference to the two theatres?

A. The Madison and Monroe.

Q. I thought you did have the—didn't you have the [fol. 2407] second-run?

A. At one time we had it.

Q. This was after 1938?

A. Yes, sir.

Q. Do you mean at the time you lost the second-run of these major companies entirely, or just subject to the Schine second-run?

A. Yes, we had the second-run on R.K.O. Pictures at one time, and I know of one season, I think 1936, although I am not actually sure about the date, we did have second-run, we also had second-run on Warner Brothers on at least one occasion.

By Mr. Claggett:

Q. Mr. Fenyvessy——

The Court: Get the dates straight. Am I to understand you that you had second-run during all these years subject to the second-run by Schine at certain of the theatres? In other words, were you trying to get the equality of second-run or trying to get new products? Of course, you were not trying to get first-run?

The Witness: Trying to have equality of run in these two houses with similar Schine houses.

The Court: That is what I am trying to find out.

[fol. 2408] By Mr. Clagett:

Q. Mr. Fenyvessy, I show you Plaintiff's Exhibits 755 and 756, and ask you if you recall making those contracts for R.K.O. Pictures for the 1936-37 season?

A. I recall a contract. I didn't sign it.

The Court: Is that your contract? That is your contract?

The Witness: Yes, signed by my brother Paul.

By the Court:

Q. What does that say about the service?

Mr. McClennen: It reads, if your Honor please "After Schine clearance as granted by all major companies. Clearance on Webster Theatre 7 days ahead of all subsequent-runs in the City of Rochester."

The Court: After all Schine, that would be first and second-runs of Schine's.

Mr. McClennen: Well, Schine had no first-run.

The Court: In some theatres?

Mr. McClennen: No, the first-runs were in the downtown theatres.

The Court: I understand that, but he had some downtown theatres.

Mr. McClennen: No downtown first-run theatres.

The Court: Then he had only second-run?

[fol. 2409] Mr. McClennen: He had himself only a second-run. This your Honor will observe, gave Mr. Fenyvessy clearance over all the Schine later-run theatres, gave him 7 days clearance over all the Schine theatres, except the Riviera and that group.

The Court: Yes.

By Mr. Clagett:

Q. Mr. Fenyvessy, you negotiated these subsequent contracts, Plaintiff's Exhibits 782 and 783 for the 1938-39 season, yourself, did you not, and sign the contracts?

A. Yes, sir.

Q. Were you attempting to improve the run of the Madison and Monroe Theatres at the time you made those contracts?

A. Yes, sir.

Mr. McClennen: That is objected to.

The Court: He was what?

Mr. Clagett: Will you read the question?

The Court: Attempting to improve what?

Mr. Clagett: The run.

The Court: State the facts.

Mr. McClennen: May this answer go out?

The Court: Do not state conclusions, state what was said.

Mr. McClennen: This answer may go out?

[fol. 2410] The Court: Yes.

By Mr. Clagett:

Q. At the time the contracts, Plaintiff's Exhibit 782 and 783, with R.K.O. were drawn, did you ask Mr. Schimel for *for* an earlier run?

A. Yes, sir.

Q. And what did Mr. Schimel say to you?

Mr. McClennen: The same objection.

The Witness: Well, in substance, that I could have the run that was available, and that whatever Metro gave, they would give us. We would have to follow the houses that we followed with Metro.

Q. Did you have any conversation with a representative of Paramount with respect to endeavoring to buy an earlier availability of pictures for the Madison and Monroe?

A. Yes, sir.

Q. Can you state whom you had such a conversation with?

A. Mike Simons.

Q. Could you fix the date of a conversation you had with Mr. Simons?

A. No, not definitely, some time in 1937-38.

Q. What did you say to Mr. Simons?

Mr. McClennen: Same objection.

The Court: Who is Simons?

[fol. 2411] The Witness: He was the salesman in this territory. His name was Mike Simons, for Paramount.

The Court: Overruled. What did you say to him?

The Witness: I asked him for second-run.

The Court: You mean by second-run, on a parity with certain Schine Theatres?

The Witness: Yes, with two Schine Theatres.

Q. What did Mr. Simons say?

A. That he could not give it to me.

Q. Did he say what they might do or would attempt to do?

A. Not that I recall, except that he refused to sell me any better run.

Q. Now, Mr. Fenyvessy, I believe you have testified already that you sold out the Madison, Monroe, West-End and Liberty Theatres, to the Schine Company in February, 1939?

A. Yes, sir.

Q. Can you state what was the approximate date of the first contact you had with any representative of the Schine Company?

A. Oh, with respect to selling?

Q. With respect to a deal or the sale of the four theatres to Schine?

A. Possibly in 1936 or 7.

Q. Can you recall who you had your first conversation on that subject with?

[fol. 2412] A. Well, these conversations were often——

Q. Can you say whom your first conversation was with?

A. Saul Shafer, I think.

Q. Who was Saul Shafer?

A. He was a local house manager for Schine in Rochester.

Q. Well, did you have or carry on negotiations with representatives of Schine over a period of time?

A. There were negotiations but they were often conducted by my father as well as my brother and myself.

Q. And whom were those negotiations with?

Mr. McClennen: You mean the ones he personally conducted?

Q. And the ones you had personally, or were present at when such negotiations were had?

A. Well, Mr. Schine and Howard Carroll and Mr. May and possibly Mr. Shafer.

Q. And eventually a deal was arrived at?

A. Yes, sir.

Q. What was the price at which the theatres were sold?

Mr. McClennen: Just a moment. This was a large transaction and papers better show what it was.

The Court: The contents will show what it was.

Q. Do you have a copy of the agreement that was made, Mr. Fenyvessy?

A. I think so.

Q. Do you have it with you?

A. No.

[fol. 2413] Q. Will you endeavor to obtain a copy of that agreement?

Mr. Wright: Perhaps I misunderstood your Honor's ruling. I thought you said he could state what the amount of the transaction was.

The Court: The contract is the best evidence.

Mr. Wright: That may be. We are not attempting to prove the terms of the contract. All he is being asked is how much he received. I suppose if he knows he should be able to state that independently of any contract.

The Court: You mean how much he received as indicating how much the purchase price was, or possibly something different?

Mr. Wright: I submit he is competent to state what that was, even without the contract in front of him, if he knows; if he would have knowledge of what the total price was.

Mr. Clagett: That is all I want to elicit from him at this time is the total purchase price.

The Court: The defendants have the contract here, have they not?

Mr. Clagett: You have the contract, Mr. McKay?

Mr. McKay: We have not been subpoenaed to produce the contract and have made no search for it. I assume [fol. 2414] we have it and will make a search for it if desired.

The Court: Is there any question raised as to the amount?

Mr. McClennen: We don't know whether—there is no question that the documents which show the consideration and the terms——

The Court: Your objection is that it is not the best evidence?

Mr. McClennen: Not the best evidence and not the most expeditious way of proving the actual transaction. The papers have got to speak for themselves. It is almost impossible for a witness to state all the terms of a written document, and the consideration is meaningless unless all the terms are there and the document itself will tell the story.

The Court: Objection sustained.

By Mr. Clagett:

Q. Can you state, Mr. Fenyvessy, how the purchase price which you received at this sale compared with the original investment in the theatres?

Mr. McClennen: That is objected to.

The Court: You mean whether it was more or less?

Mr. Clagett: Yes.

[fol. 2415] The Court: I will let him state whether it was more or less.

Mr. McClennen: I would urge, your Honor, that this would involve a very needless, expensive operation. This investment is over a period of years, running way back.

The Court: I don't think, standing alone, the fact that he paid $100,000 and sold it for $50,000, years after, would have much probative effect, because there might be times and circumstances enter into it, aside from the—if he did not make a profit it might indicate, of course, that there was a motive other than the profit involved.

Mr. McClennen: The objection is not, at this stage, to anything such as is suggested here that this witness could not answer this question without involving in his answer all the expenditures that were properly capital expenditures through a long period of time, many of which he had nothing to do with.

The Court: This question does not go so far as that. He just asks for the price received as compared with the price paid, to show a comparison, that is all. You have [fol. 2416] pointed out, as I have, there are a good many elements that enter into the question, by way of explanation of the difference.

Mr. McClennen: The Witness has not appeared yet to be the one who paid the original price.

The Court: That is another question that I think he got this from his father. As I understood it, he acquired this from his father, this property, but I will let him state whether it was more or less, if he knows—whether the price that they received for it was more or less than what they paid for it. That calls for personal knowledge, of course. If you don't personally know of the purchase transaction you can't testify. You can tell what you sold it for.

By Mr. Clagett:

Q. Do you know, Mr. Fenyvessy?

The Court: Do you know what price you paid for these theatres?

The Witness: Yes, approximately, yes.

The Court: I will let you ask the question.

Mr. McClennen: I will press the objection.

The Court: Whether you received more than you paid for them or less.

[fol. 2417] The Witness: No, approximately what they cost was received.

Q. Did you make, at the time of the lease, a non-competitive agreement?

A. Yes.

Mr. McClennen: May that be excluded for the moment? We have the agreement right here.

The Court: Of course, that is the best evidence.

Mr. Clagett: I have requested it this morning and I did not know it was here.

(The agreement between Paul Fenyvessy and Munmad Theatre Corporation was marked as Plaintiff's Exhibit 790 for identification.)

Mr. Clagett: We are offering this agreement, which has been handed to me by Mr. McKay, in evidence as Plaintiff's Exhibit 790. I simply want to refer to the period of time involved and the parties. It is an agreement made the 10th day of Febrauary, 1939, by and between Paul Fenyvessy and Chester Fenyvessy of the city of Rochester, with Munmad Theatre Corporation in Gloversville, New York—

Mr. McClennen: Your Honor, the general objection that has been made heretofore applies to this, that is, that this [fol. 2418] is not an agreement that has any effect upon interstate commerce. It was a purely local transaction. Your Honor has already ruled on that, and we simply preserve it here.

The Court: I don't know what Counsel indicated by one statement here, as to what the document purports to be.

Mr. Clagett: I merely want to call your attention at this time to the provision in the document as to the number of years involved, as part of the general picture, which the Government is offering these noncompetitive agreements, to show that a number of people——

The Court: What you term as a noncompetitive agreement, that is what you mean?

Mr. Clagett: Yes.

The Court: Received.

Mr. Clagett; For the period of time 20 years from February 10, 1939.

Mr. McClennen: I thought you were going to read the agreement.

The Court: Have it marked in evidence first.

(The agreement previously marked Plaintiff's Exhibit 790 for identification was received in evidence.)

[fol. 2419] Mr. McClennen: I ask that the narration of what the agreement said be stricken out.

The Court: Strike it out.

Mr. McClennen: If the whole agreement on this subject is to be read it should be that and not just a phrase of it.

The Court: I invited the answer, I guess.

Mr. Clagett: I would like to read it in full.

"Agreement, made this 10th day of February, 1939, by and between Paul Fenyvessy and Chester Fenyvessy, of the City of Rochester, County of Monroe, State of New York, with Munmad Theatre Corporation, of Gloversville, New York,

Witnesseth, in consideration of one dollar in hand paid, and other good and valuable consideration, the receipt whereof is hereby acknowledged by each of us severally, we, Paul Fenyvessy and Chester Fenyvessy, and each of us, agree that we will not, indirectly or directly, personally or through any stock interest, (except ownership of stock in any amusement enterprise listed upon any recognized Exchange) partnership with Albert A. Fenyvessy or any [fol. 2420] other person or association by us, or any of us, or otherwise, engage in the business of the exhibition of motion pictures or in the operation, management or control of motion picture theatres in the City of Rochester, except in the so-called down-town area which is hereby agreed as follows:

Bounded on the west by Plymouth Avenue, North, and Plymouth Avenue, South; on the east by Union Street, North, and Union Street, South; on the north by Andrews Street, and on the south by Court Street, for a period of twenty years from February 10, 1939, and

Except as to road shows at advanced prices to be presented at the Auditorium Theatre in the Masonic Temple at 875 East Main Street, Rochester, New York.

In Witness whereof, each of us has hereunto set our hand and seal the date and year first above written."

By Mr. Clagett:

Q. Mr. Fenyvessy, has complaint ever been made by any representative of Schine that you have breached this [fol. 2421] agreement?

Mr. McClennen: That is objected to. Now that your Honor has heard the agreement read and seen the extremely confined area to which it relates, we move that it be stricken out as having no effect whatever upon interstate commerce.

The Court: Oh, no. Motion denied. On your last question, why is it essential to prove that he has not violated this agreement?

Mr. Clagett: I want to show, your Honor, that the Schine organization are regarding this agreement as preventing them from operating any theatre or being connected with any theatre in the city of Rochester, or having anything to do with any theatre in the city of Rochester, except those excluded.

The Court: That is for the Court to say what the contract is, is it not?

Mr. Clagett: I don't think it would be a question of interpretation, because the statement of facts would clearly indicate that it did not fall within this agreement.

The Court: It limits his engagement in the theatrical [fol. 2422] business within a certain section of the city. Your question here is directed to the inquiry as to whether Schine ever claimed that he ever violated this agreement.

Mr. Clagett: Yes, but I think I shall withdraw this inquiry, and that is all.

The Court: We will suspend until 2 o'clock.

(Whereupon a recess was taken until 2 o'clock P.M.)

[fol. 2423] After Recess, 2 o'clock P.M.

Appearances: As before noted.

Mr. McClennen: With the approval of the plaintiff's counsel, we offer a map of the City of Rochester.

The Court: Are you through with your examination of this witness?

Mr. Clagett: Oh, yes.

The Court: Received.

(Thereupon map of the City of Rochester, referred to, was marked as Defendants' Exhibit D-112 in evidence.)

Chester Fenyvessy resumed the stand by and on behalf of the Plaintiff, and testified further as follows:

Cross-examination.

By Mr. McClennen:

Q. Mr. Fenyvessy, I call your attention to Defendants' Exhibit 112 on which the theatres in Rochester have been marked. Now, first, what is the approximate center of downtown Rochester? I don't mean in the survey sense, but in the business sense?

[fol. 2424] A. Clinton and Main.

The Court: What is that?

The Witness: Clinton and Main.

The Court: The Four Corners, about that.

The Witness: You mean where the business radiates, what is the business section?

Q. Yes, I should say so.

A. Clinton and Main.

Q. Would you indicate it for me? You needn't mark it, but just point to it.

A. Clinton and Main, right there (witness indicating on map, Exhibit 112.)

Q. You have indicated a point approximately where the R. K. O. Temple Theatre is?

A. Yes, half a block away from there.

Q. The R. K. O. Palace Theatre is right close, perhaps an eighth of a mile away?

A. Well, it is about a block and a half, maybe.

Q. A city block and a half?

A. Yes, short blocks there.

Q. Then the Paramount Regent is about the same distance away?

A. Oh, no, it is a greater distance.

Q. It is a greater distance?

A. From Main, yes.

[fol. 2425] Q. How far is it from the center?

A. Well, it is about,—from Clinton and Main it is about two and a half or three blocks.

The Court: It is on——

The Witness: On East Avenue and Chestnut.

Q. Now, where is Loew's Rochester?

A. It is on Clinton Avenue, South, at the corner of Court, here (indicating).

The Court: It has changed since I went to college there, I mean, there was a shift of business.

The Witness: It used to be the Four Corners.

The Court: Yes, I went to the university there, I know the place pretty well.

The Witness: The University has changed, too.

The Court: Oh, yes.

Q. Where is Paramount's Century?

A. It is there, right there, Clinton Avenue, North.

Q. Again within a block or so of the same region?

A. Oh, yes. It is a very short block closer to Clinton and Main than is the Palace Theatre.

Mr. Clagett: Which theatre was that?

The Court: The Palace.

The Witness: The Century is closer to Clinton and Main than the Palace is.

The Court: Both on Clinton near Main?

[fol. 2426] The Witness: Yes, both on North Clinton.

Q. Have I now named all the regular first-run downtown houses?

A. Yes, sir.

Q. Now, the Capitol, the R.K.O. Capitol?

A. Is on West Main Street.

Q. That is about how far from the center?

A. Well, it is about a half a mile. It is across the river on this side (witness indicates on map, Exhibit D-112.) It is on the other side of the Genesee River, on West Main Street, and it is west of the Four Corners.

The Court: It is west of the river?

The Witness: It is on Main near Plymouth.

By Mr. McClennen:

Q. Now, as you radiate out, where is the Grand?

A. It is around the corner from the Capitol, it is on Plymouth Avenue, North.

The Court: Where?

The Witness: It is around the corner from the Capitol on Plymouth Avenue, North, about a third of a block from the corner, less than a third of a block.

Q. Is there any nearer to the center, among the later run houses than the Grand?

A. Yes, the Strand.

[fol. 2427] Q. The Strand is where?

A. It is on St. Paul Street.

The Court: North or South St. Paul?

The Witness: Well, it would be North St. Paul. St. Paul changes and becomes St. Paul at Main Street. It used to be North and South St. Paul. Now St. Paul Street is north of Main Street.

Q. And the Strand is about how far from the center?

A. From Clinton and Main?

Q. From Clinton and Main?

A. Well, it is about four blocks and in a side street location.

Q. And the Grand is about how many blocks from the center, from the crossing of Clinton and Main?

A. Oh, it appears to be about five blocks of varying sizes.

Q. Now, what is the location of the Eastman Theatre?

A. It is on East Main Street.

Q. And about how far from the center?

A. Four blocks of various sizes.

Q. The Madison Theatre is by straight about two miles southwest of the center?

A. Yes, a little more than two miles.

Q. And while we are down in that direction, the West-End is about three or four miles by straight from the center, Clinton and Main, to the southwest?

[fol. 2428] A. Not over three miles, because it is a mile from the Madison to the West-End.

Q. Not over three miles, but approximately three miles?

A. Yes, sir.

Q. The Arnett is how close to the West-End in that same southwesterly area?

A. Approximately a mile.

Q. The Monroe is—I am afraid I misled you. I said southwest for the Madison and West-End; it is actually southeast.

A. Southwest. There is west and south. This is west, this is east, this is south and this is north (indicating on Map, Exhibit D-112.)

Q. Oh, this map is laid out not in the usual top to the north?

A. Yes, the top is, this is the north, this is the south. That is the west and this is the east.

Q. The Madison then is, as I first stated, in the southwesterly section?

A. Yes, sir.

[fol. 2429] Q. Now, go to the Monroe. That is in the southeasterly section, and how far from the center?

A. It is about a mile and a half from the center.

Mr. Clagett: Excuse me, Mr. McClennen. I think it ought to be pointed out to the witness, this map has these rings, that I believe are each one mile apart. I think that little scheme on the map shows that. It should not be a matter of guesswork.

Mr. McClennen: You notice that I am asking him from the practical sense by the streets, not as the crow flies.

The Court: You asked him the distance between certain of those theatres.

Mr. McClennen: By streets.

The Court: He said one is a mile from the other. That was not by streets.

Mr. McClennen: The Arnett and the West End are substantially on the same street, a mile apart, so that air-line and street-line distances in that case were the same.

The Court: The Arnett and the other theatre, would they be on the continuation of the same street?

The Witness: Oh, yes, they are actually on the same street.

Mr. Clagett: If you were fixing the distance from down- [fol. 2430] town center, the best method would be with relation to these radius lines, would it not?

Mr. McClennen: Not by street. I was trying to ask him about a time before airplanes were in use, to find out how far, as a walking or travel matter, it was from one to the other.

The Court: I suppose the airplane has nothing to do with it. I suppose those are actual distances, are they not?

Mr. McClennen: Yes. If your Honor please, I apparently have not made myself clear. These circles that were referred to are on a straight radius from the center. The distances I am trying to bring before the Court are the distances of travel between the two theatres which would involve sometimes a diagonal street.

The Court: I think an approximation is sufficient here. I don't think we are concerned with a mile and an eighth or a mile and a quarter. You can go ahead.

Mr. McClennen: I made my comment only because of the reference to the circumferential lines, the circles drawn on the mile radii.

[fol. 2431] By Mr. McClennen:

Q. The Dixie Theatre is in the northeast neighborhood?

A. Yes.

Q. And about how far from the Madison as you would travel?

A. About five miles, approximately; maybe a little more or less.

Q. The Webster is in the northeasterly section, something like five miles from the Madison?

A. Not over five miles.

Q. And the State is in the easterly section, four or five miles from the Madison?

A. Yes, I think so, approximately the same distance.

Q. And the Webster is how far from the State?

A. About a mile, approximately.

Q. And the Dixie is how far from the State?

A. Around two miles, less than two miles, but approximately that.

Q. Of those three theatres, the Dixie, the Webster and the State, the Dixie is the farthest from the Madison, is it not?

A. No, they appear to be approximately the same distance on the map.

Q. As you recall the locations on the ground, about the same distance?

A. Well, I think of the Dixie as being farther away than [fol. 2432] I do the State, but they appear to be the same distance.

Q. The Cameo is located where?

A. It is located on Clinton Avenue, North.

Q. In the northerly part of the city?

A. Yes.

Q. And about how far from the West End Theatre?

A. About four miles.

Q. The Riviera is on the westerly side of the River, in the northerly part of the city?

A. Yes, north I would call it.

Q. On what streets?

A. Lake Avenue at Flower—Flower City, I guess it is, yes.

Q. And the Riviera is about how far from the Madison?

A. Oh, approximately four miles.

Q. The Liberty is south of the Riviera, about how far?

A. Approximately a mile—from the Riviera or from——

Q. From the Riviera.

A. Yes, approximately a mile.

Q. It is on Driving Park Avenue?

A. Yes, near Dewey.

Q. Near Dewey. And how far is the Liberty from the Madison?

A. About three miles.

Q. How far is the Liberty from the Monroe?

A. A little over three miles.

Q. When did your father first become interested in the [fol. 2433] exhibition business in Rochester?

A. Oh, about 1909.

Q. And, in the substantial sense, were the so-called Fenyvessy theatre interests his interests up to 1939 or 1940?

A. Yes.

Q. In 1909 he was the very active head of the Fenyvessy theatre operations, was he not?

A. Yes, he was younger and more active at that time than he was later, but he remained the head.

Q. Remained the head to the end?

A. He made the deal with Mr. Schine.

Q. That is, he personally conducted——

A. The negotiations.

Q. The negotiations. Had he, just before that, been active in the Fenyvessy theatres management?

A. In an advisory way, yes.

Q. He was how old at the time of the transaction with Mr. Schine?

A. 84—83—83 or 84.

Q. He was desirous of disposing of his theatre interests, was he not?

A. He disposed of them.

Q. You caught the question, did you?

A. My answer is he disposed of them. I don't know whether I can answer it otherwise. Does that answer it? [fol. 2434] Is that a satisfactory answer?

Q. I am interrogating.

Mr. Wright: If the Court please, this witness isn't competent to testify to what his father desired, in any event.

Q. Did your father tell you he wanted to dispose of the theatres?

A. No, I don't recall his having told me that.

Q. You had no information yourself as to whether he was desirous of disposing of these theatres?

A. Well, I spoke to him often. I lived with him and I know that he disposed of them.

Q. All that talking with him and living with him and his final disposition of them conveyed to you that he desired to dispose of the theatres?

A. Well, in my conversations with my father I became aware of the fact that he was annoyed with some of the difficulties of the operations. It was difficult to buy films and there were certain difficulties.

Q. Did you become aware of the fact that he desired to dispose of the theatres?

A. I supposed that he sold them because it was his desire.

Q. And how long had he aroused the supposition in your mind that it was his desire to dispose of the theatres?

A. Well, he had frequent contacts with Mr. Schine and his representatives and that led to the disposal of the theatres.

[fol. 2435] Q. Over what period of time?

A. Over several years.

Q. That is, for several years you had entertained the supposition that he desired to dispose of the theatres?

A. Oh, I don't think that he did for several years because the deal would not have taken so long if he had desired it.

Q. When would you reach as the time when you became aware that he did desire to dispose of the theatres?

A. Well, I can't exactly state. There were negotiations off and on over a period of several years.

Q. Now, during those several years he was not participating in the active management of the operations of the theatres, was he?

A. Yes, in an advisory way, yes, always.

Q. Did he advise you on the matter of the product to be bought?

A. Yes, sir.

Q. Did he advise you on the prices to be paid?

A. Yes, sir.

Q. Did he advise you on the clearances that you should seek?

A. Oh, yes.

Q. In this period of several years that you have described, the latter several years, the Schine interests were operating —I will read them down and you say "No" at any point [fol. 2436] where you think that I haven't got it correctly: The Grand, the Riviera, the Liberty, the State, the Dixie.

A. At what time? They were not continuous operations.

Q. Well, the Dixie from 1932 on.

A. Yes, 1932, I am not positive about the date, but they acquired it later.

Q. The Lake was not operated by the Schine interests?

A. Later it was, but not in its inception, later it was.

Q. Was that in the—that was not in the Fenyvessy-Schine deal?

A. The Lake?

Q. Yes.

A. Oh, no, we had no connection with the Lake.

Q. The Cameo?

A. Later acquired by Schine.

Q. They acquired the Cameo by 1936?

A. I think it was later, although I am not positive.

Q. And in general throughout the period, the Riviera——.

Mr. Wright: During what period?

Q. Well, the Riviera from 1926, the Liberty from 1926, the State from 1926, and the Dixie from 1932 had in general the next run to the downtown theatres.

Mr. Wright: If the Court please, I suppose the contracts show what runs they had; the same objection that was [fol. 2437] made on direct here.

The Court: If he knows, he can state what was actually shown.

Mr. McClennen: That was what I desired.

The Witness: No, not in 1926.

Q. Do you remember when the Riviera began to show pictures next after the downtown theatres?

A. Oh, some time after Schine acquired it, but not immediately.

Q. Well, 1928?

A. Some pictures, yes, sir.

Q. And the Liberty operated in the Schine group next after the downtown first-run from some such early date as that?

A. Around 1929 or '30, possibly, 1931, I am not positive of the exact date.

Q. The State operated in the group that had the next showings to the downtown theatres from some such early date, 1926, 7 or 8?

A. In some instance-, not always.

Q. You have described in your direct examination the—what I will call the "2 and 2" operation; the first of the Schine showings would be in the Riviera and day and date there at the State or Dixie and then the next showing would be in the Liberty and Dixie or State, is that correct?

[fol. 2438] A. Or Webster, I think, yes, that is right, two houses, one Sunday, for example, and two houses the next Sunday.

Q. The day and date showings being distributed — the separate localities so that the two theatres that were showing on the same night were not the immediate competitive ones with each other?

A. The Riviera would play the Dixie and the Liberty and State would play, as an example.

Q. In round terms, there were four suburban areas, namely, the northwest, the southeast and the northeast areas?

A. Yes, sir.

Q. Were those to a considerable extent dwelling areas?

A. Yes, sir.

Q. What was the general character of the four neighborhoods with respect to class of dwellings?

A. The first quality neighborhood?

Q. Anyway, that will describe it.

A. Well, the Riviera was in a very first-class residential district and the State was in a lesser district, and the Dixie was still less in quality and the Liberty was in a good middle-class section with the Riviera.

Q. Now, the Madison area and the Monroe area?

A. The Monroe catered to a very nice clientele, people, I should say, in the Riviera class, and the Madison also had [fol. 2439] a nice clientele, not as good as the Monroe or Riviera, but good.

Q. It has appeared in the contracts that have been put in, that in some instances, at least, you had seven days clearance over all subsequent runs thereby including all the Schine theatres, except the Riviera, Liberty, Dixie and State; you recall that fact?

A. I think it happened at times; I am not sure that it was always that way.

Q. That clearance you sought, did you?

A. We paid more money than other houses; yes, we sought the best clearance always we could get.

Q. What?

A. We always sought the best we could get.

Q. Both in area and length of time?

A. I don't understand that. You mean to say getting pictures as early as we could?

Q. No, clearance, I was speaking of all subsequent houses, you sought all the clearance that you could get?

A. Yes, we got what was the custom in that section, that the film exchanges gave us.

Q. And you sought it because you believed that it would help the prosperity of your theatres to have it?

A. We thought that we were buying at a higher price and that we were entitled to certain protection as was a house or houses before us.

[fol. 2440] Q. But you wanted it because you thought it would help your theatres' prosperity, did you not?

A. We believed that we were paying for——

Q. That is a rather easy question. Couldn't you tell us that? Will you read the question?

A. Repeat the question, please.

(Last question read.)

A. Certainly.

Q. You wanted it all over the city, did you not?

A. It was the custom to have it. Whatever clearance you got had reference to the city, yes.

Q. That is what you were seeking to get was over the whole city, was it not?

A. Subsequent runs we wanted to stay away from as long as we could.

Q. That is, you did not want any pictures which showed in your theatres to show again in any place in Rochester for as long a time as you could secure clearance for. That is it, is it not?

A. We expected that they would be played the next week, which they were.

Q. I will ask to have the question read. You will see how plain and direct it is. (Question read.) Are you nodding your head "Yes"?

A. Yes.

[fol. 2441] Q. Remember, the stenographer has no periscope.

A. I said yes. Perhaps not loud enough.

Q. Can you describe to me the Cameo Theatre?

A. Structurally?

Q. For theatre purposes in every respect that you can describe.

A. It is a modern house, with orchestra and balcony floor, and I am not positive of the capacity, but I imagine that it is approximately 1200, maybe a little more, on the two floors. It is steel and brick and concrete.

Q. Would you call it practically a first-class suburban theatre?

A. I would call it a very good suburban theatre, yes.

Q. Will you describe to me your West End Theatre?

A. The West End Theatre was in a better neighborhood, but it was not as large a house as the Cameo. It was a one-floor house, wide house, with approximately 800 seats, and it had the usual appurtenances, not a better—it was a less expensive house than the Cameo, I should judge, because it was less house.

Q. Do you remember for how long a period of time the West End had clearance and showed ahead of the Cameo?

A. No, I don't know that it did. I don't know that it showed ahead of the Cameo. I don't think it did.

Q. You don't think that the West End showed ahead of [fol. 2442] the Cameo? Now, consider, and tell us.

Mr. Clagett: May I ask Mr. McClennen what date he has in mind?

Mr. McClennen: If he did not do it at all there would be no date. I want to get the fact.

Mr. Wright: The contracts would show, your Honor.

The Court: This is cross-examination. I will let him state.

The Witness: There were different times the conditions changed. It may have been ahead at times and at times after. I don't remember.

Q. Do you remember seeking clearance for the West End over all other houses in Rochester except the first-run houses and the Schine group of four?

A. At the West End?

Q. Yes.

A. Oh, no. We did not ever seek clearance over—at the West End over these Schine houses, these four Schine houses.

Q. No, I said other than the four Schine houses.

A. Oh, other than the four Schine houses?

Q. Yes.

A. Oh, well, we had talked at times about securing a better run at the West End with respect to the Arnett, because we were of the impression we were paying more money and therefore entitled to it, but we were not interested in getting [fol. 2443] a better run at the West End with respect to other theatres.

Q. Don't you remember that you sought and obtained clearance for the West End over subsequent run houses which would include the Cameo?

A. No, I do not.

Q. You remember nothing of that. You sought clearance for the Monroe, Madison and West End over the Webster, did you not?

A. When it was not operated by Schine, yes.

Q. And in a number of years you obtained that clearance, did you not?

A. When we paid more money than Webster, yes, we did.

Q. And there you sought it because you thought it would improve the business of the Madison, Monroe and West End if you had that clearance, did you not?

A. We were willing to pay more money, which we did, for that particular run, for that protection, because we thought it would be advantageous to the houses, and justified.

Q. That is, it would help the houses if they had——

A. Yes.

Q. —that clearance over the Webster; which houses particularly of the Madison, Monroe and West End did you think it would help if you had clearance over the Webster?

[fol. 2444] A. Well, the Monroe was closer to the Webster than was the Madison, and so I believe that the Monroe was the one we were interested in.

Q. In your judgment as a theatre operator, would it be advantageous to the State to have clearance over the Monroe?

A. Yes, definitely.

Q. Definitely. That is, if you were operating the State and somebody else was operating the Monroe, Madison and West End, you would seek to get clearance in favor of the State over those three?

A. Yes, if I could pay for it—yes, I would want it.

Mr. Wright: I might be able to shorten this by stipulating that any operator wants to get the best clearance he can all the time for any house that he operates.

Mr. McClennen: I am seeking more than just this fact which the plaintiff has just suggested willingness to stipulate to. I have in mind the argumentative letters that were put in from this witness to the point that there was no reason why the Liberty, Riviera, State and Dixie should have clearance over the Madison and Monroe. If the stipulation [fol. 2445] would go so far as to say that that argument in those letters was unsound and not in accordance with the facts——

Mr. Wright: The argument in the letter is perfectly sound. The mere fact, with two exhibitors, each one wants to have clearance over the other, and it is, of course, a decision the distributor has to make as to which one is entitled to it, and he ordinarily makes that decision, I suppose, upon the basis of rentals and what he considers relative conditions. But the mere fact that each one desires clearance over the other I do not see has anything to do with—any relevance to the question Counsel just discussed here, as to whether the distributor should or should not allow them to play day and date or give one clearance over the other. It is always assumed each one desires the best break it can get, but I do not see that it has anything to do with the choice the distributor should make.

Mr. McClennen: I evidently have not made clear to Mr. Wright what I was aiming to say, and I hope I have to your [fol. 2446] Honor, that I was endeavoring to show that the arguments in those letters were not sincere arguments when they said that there was no reason why the State and others should have a clearance, and I am asking——

The Court: That might depend on the type and basis of theatres, and the question of their location. The owner of those theatres might think he is entitled to an equal break with someone who has a second-run. Of course, all of them want to get as much clearance as they can. That is true.

Mr. McClennen: They want to get as much clearance as they can where the areas are competitive, and it was stated in those letters that those areas were not competitive, and I have brought this out from the witness to show they were competitive.

The Court: I don't think we can get a stipulation that would help us very much. There are different facts to be considered.

By Mr. McClennen:

Q. For the Madison and Monroe you wanted and sought not merely a better run but also a period of clearance over [fol. 2447] all subsequent run houses, did you not?

A. No, I don't believe that there was any question about the clearance as much as the question of early run.

Q. Protection, you understand and use to describe the period of time to elapse after the prior run before the next run begins, do you not?

A. And the clearance, too.

Q. And clearance, too. For the Madison and the Monroe you were seeking from the distributors not merely an earlier run than other theatres had, but also a period of time of clearance after the close of your run before they should run in the other houses. That is so, is it not?

A. I was seeking always a run equal to the Riviera run and the theatre that ran with the Riviera, and nothing better. Just that. Just that same quality of a run.

Q. You were seeking clearance, in addition, over other theatres, were you not? I am not speaking of the Riviera.

A. I was not asking for any clearance that was not regularly given to such a run.

Q. And you were seeking that period of clearance because you thought it would help your theatres if the other theatres were postponed that length of time before they began their showings?

[fol. 2448] The Court: I think that has already been answered.

A. Shall I answer that?

The Court: It seems to me that is already covered.

Q. That included the Schine deferred run houses as well, did it not?

A. I never made any demand with respect to the Schine subsequent run houses. I was not interested in anything excepting an equal run of the Madison and Monroe with two comparable Schine houses, one of which was the Riviera.

Q. You have already this afternoon said that you were seeking a period of protection, that is, clearance over the other subsequent run houses in the city. Now, that is so, is it not?

A. I don't remember that. I expected the same clearance that was ordinarily given to a run of that sort. I was especially interested in getting the run, and not especially interested in a clearance, but I expected to get the normal clearance, which was always about seven days.

Q. Over all the other Schine houses, leaving out the four we have been speaking of; that is true, is it not?

A. Yes, seven days, but I never made any point about that.

Q. Beginning with the fall of 1933 you sought and obtained clearance for the Madison, Monroe and West End [fol. 2449] over the Webster, did you not?

A. I don't remember the date, but after the Webster ceased to be operated by Mr. Schine then I sought, because I paid a price justifying such a run, and usually got it. Principally because I paid for it.

Q. The result was that when the Schine interests were running the Riviera, the Liberty, the State and the Webster, you had those four houses ahead of the Madison and the Monroe; that is correct, is it not?

A. Yes.

Q. And after you had secured clearance over the Webster the result was that you still had four houses ahead of you, namely, the Riviera, the Liberty, the State and the Dixie?

A. Yes.

[fol. 2450] Q. The obtaining of clearance over the Webster harmed the Webster as much as it helped the Monroe and the Madison, did it not?

Mr. Wright: If the Court please, that calls for a conclusion.

The Court: He said it wasn't in operation.

Mr. Wright: He certainly is not competent to give that; he doesn't know what happened at the Webster.

The Court: He said it wasn't in operation.

Mr. McClennen: No, it wasn't operated by the Schines, but was in operation.

Mr. Wright: Nor was it operated by the witness; how can he say?

Mr. McClennen: Well, he has had some experience in the theatre business from 1933 on for several years and the Webster was operated by Mr. Fogel and Mr. Tishkorf, or concerns in which they were interested, was it?

The Witness: I think that Mr. Schine was interested in it. I am not positive of the dates.

Q. From 1933 on for several years?

A. Well, I don't know the dates, but at one time Mr. Schine was associated with those gentlemen in the operation. That is hearsay. I am not positive, but that is my [fol. 2451] recollection.

Q. Well, do you remember that you just said that you didn't get clearance over the Webster when the Schine interests were operating it?

A. That is true.

Q. When you said that, you were speaking of a period when you thought that the Schine interests were operating it, were you not?

A. Yes, sir.

Q. What was the period that you thought that was?

A. Well, I don't remember the dates, but whenever the Webster had protection as indicated in our contracts that would indicate the time. I can't remember the years. I would like to, but I can't.

Q. Well, the contracts show that you began to get protection over the Webster in the fall of 1933. Possessed of that fact, would that enable you to say that that was the time when the Schine interests in the Webster ceased?

A. I should imagine so. That would be the time if that was the case.

Q. And Mr. Fogel and Tishkorf, or one of them, or concerns with which they were interested, operated the Webster for several years after that fall of 1933, did they not?

[fol. 2452] A. I think so.

Q. Now, in that period, getting protection for the Madison and the Monroe over the Webster would tend to hurt the Webster as much as it helped the Madison and Monroe, would it not?

A. The Webster could have played with us.

Q. I haven't asked you anything but just this, and would you listen to the question? Read it please, Mr. Reporter?

(Question read.)

A. Yes, sir.

Q. And you were, in Madison and Monroe, in competition with the Webster, were you not?

A. At the Monroe I should say.

Q. At the Monroe, you were?

A. Yes, the competition was more acute because of the proximity of those houses.

Q. And you realized that it was perfectly fair in that competition for you to get protection over your competitor if you could?

A. Because I paid for it. I bought that run.

Q. And you realized that it was just as fair in that competition for Messrs. Fogel and Tishkorf to get protection over the Monroe and Madison if they could, did you not?

[fol. 2453] A. Yes, sir, if they paid.

Q. And you realized in the same way, when the Schine interests were operating the Webster, that it was perfectly fair competition for them to get a protection over the Monroe and Madison, did you not?

A. No, I did not.

Q. That never has occurred to you, has it? Up to now, I mean.

A. Well, — realize that if I pay a price equal to some one else that I am entitled to the same run, and if I pay a greater price I am more so entitled to it; is that what you ask?

Q. What I asked,—I apparently did not quite get it—was you realized that it was perfectly normal competition for Mr. Fogel and Mr. Tishkorf to seek to get protection over the Madison and Monroe if they could negotiate for it, did you not?

A. They could not negotiate for it. If they would pay for it, they could have it.

Q. You realized the contest was a perfectly fair piece of competition and tried to get it, you realized that, didn't you?

A. Yes, every exhibitor wants the best run they can get.

Q. And wants protection if he can get it for that run or subsequent-runs?

[fol. 2454] A. Protection is set up and established, yes, sir.

Q. What?

A. The clearances were established and there wasn't much to be done in respect to that.

Q. They wanted it and sought to get it, didn't they?

A. Every exhibitor wants the earliest run and wants as good clearance as he can get, yes.

Q. And that applied to the operator of the Webster Theater just as much as it applied to the operator of the Madison or Monro Theatres, did it not?

A. Yes, sir, depending on who the operator was.

Q. The Liberty Theatre, during the period from the early thirties, to the time of the sale to the Schine interests, to which you have referred, was a source of revenue to your father, was it not?

A. Yes, he bought it and continued to rent it to Mr. Schine, yes, under a lease that was previously in existence.

Q. So that at the time that Mr. Schine or the Schine interests were getting the run, which they got for the Liberty, they were paying rent to your father for that Liberty, were they not?

A. That is right.

The Court: Was it rented on an annual basis or on a personal participation basis?

The Witness: It was on an annual basis, and it was once [fol. 2455] reduced when circumstances seemed to warrant it.

The Court: It was always on an annual basis?

The Witness: Yes. It was never on a participation; it was always a fixed amount.

By Mr. McClennen:

Q. It appears in Exhibit No. 733, the Paramount contract for 1931-32 product, the run is stated as a 5th run. Can you tell me what theatres had the preceding four runs? Of course, we can take it for granted that the downtown first-run had the first-run. Can you tell me who had the second-run then?

A. Well, the Schine Theatres, the four Schine Theatres constituted the four runs after the first run.

Q. That is, it was called fifth run, because there was a downtown run and then four Schine runs? Well, it sounds to me as if that would mean that you were to have the 6th run, isn't that so?

A. Well, I don't know, it would sound that way, yes, sir.

Q. You don't—did you ever hear those four Schine runs reckoned as separate consecutive four different runs?

A. Does the contract indicate that there were four Schine houses to run ahead of us?

Q. The contract reads "5th run" and reads "After Riviera, Liberty, State and Webster and day and date with Strand."

[fol. 2456] A. Well, then it meant that it was to follow those four Schine houses irrespective of any reference to run, to 5th run. That is what we got, a run after those four Schine houses and at the Strand Theatre.

Q. And running after the four Schine houses at that time you were to run day and date with the Strand, is that correct?

A. Yes, if that is what the contract says; that has been done in some cases.

Q. You will see that that is what the contract does say. I show you Exhibit No. 733, the "Protection Period."

A. Yes, that is right.

Q. Now, when the contract spoke of 14 days after, that had reference not to 14 days of clearance after the last run of the four, but to 14 days after the first booking in any one of the four, did it not?

A. No.

Mr. Wright: If the Court please, I think the contracts speak for themselves in each case.

The Court: He says it didn't mean that.

Q. Dealing——

Mr. Clagett: If the Court please, I think the contracts do vary. He is asking a general question, and covering a great deal of territory, when the provision in some of [fol. 2457] these contracts may vary. I don't believe he can ask a question of that character that this witness could possibly answer.

The Court: He is speaking about the four runs, what it means, whether it means consecutive runs or whether it means the run of the four theatres, all at one time.

Mr. Clagett: He was speaking about a period of 14 days, and assuming, I think, that that was the same in all contracts.

The Court: He is speaking of the contract here on the so-called 5th run.

Mr. Clagett: I did not so understand his question to be related to this one Paramount Contract.

Mr. McClennen: I have no question now.

The Court: His answer was "No," and I will let it stand.

By Mr. McClennen:

Q. The regular course of running the pictures by the Schine organization was to run them, first, of course, after first-run downtown, to run them first in the Riviera and at the same time either in the Dixie or the State; that is correct, is it not?

A. Yes, the Riviera with one of the other houses.

Q. And next to repeat the run in the Liberty and the State or the Dixie, whichever one hadn't yet played it; that is [fol. 2458] correct, is it?

A. Yes, sir.

Q. Now, as a practical matter of booking it, you could play 14 days after the Riviera if there were no matter of preferential playing time, is that correct?

A. I could play after the Schine protection with respect to the second week, the second group of houses; the first group of houses comprising the Riviera and another house were followed the next Sunday by two other Schine houses, and at the end of the clearance period, following that second engagement, then I could play and the protection or clearance varied in different contracts.

Q. And in some of these contracts, do you recall it was provided that it should be 14 days after the first theatre of the four in which the pictures were booked?

A. No, I don't. I am of the impression that the clearance clause was respecting the last playing of the picture in the second group of houses.

Q. I will leave that for the moment. I call your attention to Exhibit 788, which reads as to clearance "After Schine's protection, to be made available for dating 14 days after first booking in any one of the following theatre-, Schine's Riviera, Liberty, State or Dixie," didn't you recall that you had contracts with that provision in them?

[fol. 2459] A. The contracts—this contract obviously was so. We used to have second-run with Warner Brothers.

Q. This was not a contract in which you had second-run with Warner Brothers, was it?

A. No, no, no, because it indicates that we followed four houses.

Q. Don't you recall running through the contracts this sort of a protection by which the 14 days was to be reckoned from the first booking at any one of the four houses?

A. No, I don't. The contracts——

Q. What?

A. No, I don't. The contracts were usually changed each year. The clearance and protection was not static.

Q. Well, I show you Exhibit 752, a Warner contract, of September 30th, 1935, with the provision "Clear over Webster Theatre after Schine's protection, to be made available for dating 14 days after first booking at any one of the following theatres, Schine's Riviera, Liberty, State and Dixie." Now, had you forgotten that there were provisions of that kind?

A. What date is that?

Q. 1935.

A. I had forgotten. 1935 is a long time ago and my brother Paul made the contract. I had forgotten. I didn't sign the contract. It was signed by my brother Paul, but [fol. 2460] the conditions changed.

Q. But you knew about it at the time, didn't you?

A. Well, it is possible, but I had forgotten.

Q. I show you Exhibit 788, from which I just before the last had read the protection; by whom is that signed?

A. Brother Paul.

Q. That is Paul, is it?

A. Yes, P. A. is the initial.

Q. P.; his middle initial is "A"?

A. Yes, sir.

Q. Paul is the first name and "A" is the initial?

A. It is his signature, not mine.

Q. Now, you have testified to some extent as to negotiating with Warner in 1935. Did you negotiate the contracts that were made in 1935 with Warner?

A. Oh, I believe so, but it appears that my brother had something to do with it, because he signed the contract.

Q. What?

A. My brother appears to have signed the contract.

Q. Didn't it sometimes happen your brother signed the contract when you had negotiated it?

A. Yes, I think so.

Q. Now, I show you Exhibit 724; is that your signature?

A. Yes, sir.

Q. And the provision there is "Pictures to play after the [fol. 2461] State, Riviera, Liberty and Dixie Theatres, to be available 14 days after the Riviera date and to be played within 14 days of availability." Now, had you forgotten that you had secured such a provision as that in your contract?

A. I can't remember all the contracts each year, but the——

[fol. 2462] Q. I have not asked you that.

A. Yes—I have forgotten the contracts, without referring to them.

Q. Well, now, it appears that that contract, Exhibit 729, is dated December 8, 1933, and is an RKO contract. Now that your mind has been refreshed by seeing the several contracts, does it not come back to you that you were securing that provision by which the pictures were available to your theatres fourteen days after the Riviera date?

A. No.

Q. You don't remember it now?

A. That year and those several years that you showed me contracts, but the contracts were not the same every year. The protection changed.

Q. Do you now recall that in the year 1933 and in the year 1935 you had that?

A. You show me those contracts for those particular years, and I do agree that those are the conditions.

Mr. Clagett: You mean for certain companies, Mr. McClennen, not all companies?

Mr. McClennen: I mean exactly what I said in my question. I was asking him and he has answered it, and the question was clear and contained nothing but what it said.

[fol. 2463] Mr. Clagett: You asked him a question which distinctly referred to the product of any or all of the companies.

The Court: No, I think he referred to the two dates, that is all, to a particular company.

Mr. Clagett: I did not so understand.

The Court: His answer is responsive to the question in that form.

By Mr. McClennen:

Q. And that was at a period when, from time to time, you were getting seven days protection over the Webster and over all subsequent run theatres, including the Schine subsequent run theatres?

A. Yes, and we were paying for it.

Q. Now, what was the first season that you had the Monroe?

A. 1933, I think. I am not quite sure.

Q. Who had operated the Monroe before that?

A. Oh, a film man had operated, I believe, just before we acquired it, a man by the name of Fater, and prior to that it was operated by the man who built it, a man by the name of Kircher.

Q. The first year that you got the Monroe you obtained a clearance of seven days over the other theatres that had been operating for some time in the city of Rochester, did you not?

[fol. 2464] A. We made new contracts for the Monroe when we acquired it, and paid a price that entitled us to a run equal to the Madison, and that is how we secured whatever run we had.

Q. You did secure it, did you not? What I asked you was whether you secured it.

A. Oh, if we had it, yes, we were given the run.

Q. You did have it, did you not?

A. Yes, we had it.

Q. Now, do you remember, and I am referring to Exhibits 741, 742, 743 and 744, that on June 16, 1938, you secured a franchise from Metro?

A. I don't remember the dates. If I saw the contract I would be refreshed, but I am sure I don't remember the dates. We played Metro pictures, but I can't say that I know the date.

Q. You remember in one year that you did have a franchise from Metro?

A. We played Metro pictures always during our operation of the Monroe.

Q. You remember that in one year you had a franchise from Metro, do you not?

A. We had no franchise. We had a contract.

Q. You had no franchise?

A. No, unless you call a contract a franchise. We made [fol. 2465] a contract to play a certain group of pictures, but we had nothing else.

Q. You know the use of the term "franchise" in the trade, do you not?

A. Why, I have not used it in connection with contracts for a single group of pictures or a single release. What I consider a franchise is something for a period of years.

Q. How many years?

A. More than one year.

Q. More than one year?

A. That is my understanding of it.

Q. It appears here that you had in Exhibits 741, 742, 743 and 744 contracts for full product from Metro for two years?

A. No, I never had and I don't remember that. I never made a contract for two years. I made a contract for a year's product, and if it refers to 1937-1938 product that means one year, but in my whole experience I don't remember ever having made a contract for two years for films.

Mr. Wright: If the Court please, all of these contracts are in evidence here. When the witness was examined on direct examination the objection was made to his covering [fol. 2466] this ground on the grounds the contracts were the best evidence. They were then identified, all put in evidence. Now we are going back over the ground, not on the basis of what the contract shows, but what the witness recollects about them. I do not see what purpose this serves or how it helps to establish the truth of any issue we are trying.

Mr. McClennen: The purpose is to show that Mr. Fenyvessy or his theatres had a Metro franchise in this year, if franchise means a contract for two seasons' product.

Mr. Wright: If he did, won't the contracts themselves show it? You have them there, haven't you? They are stamped with the exhibit numbers.

The Court: Couldn't we agree on the definition of what a franchise means?

Mr. Wright: Whatever he had is what is in the contract, in any event.

The Court: What does it mean as distinguished from a contract?

Mr. Wright: I understand it to mean what the witness said.

The Court: Two years?

Mr. Wright: A deal for two or more years.

The Court: Don't spend needless time, Counsel. Of [fol. 2467] course, the question whether it was one year or two years may be material, but the contracts show for themselves.

Mr. McClennen: I am interrogating the witness as to any assertion as to a trade term, to find out whether it was a franchise or not, and also to test his candor, at the same time.

The Court: Let him state, if he knows, what the distinction is between a contract and a franchise in the trade.

By Mr. McClennen:

Q. What does the term "franchise" mean in the trade? A. My understanding of a franchise is something for more than a year, but contract for the product which is sold and described as 1937-1938—season 1937-1938, that comprises the product for a year, for a 12-months' period, and that is a year's contract for Metro pictures.

Q. If, on the same date, you negotiate for two years' product, that each year is put into a separate paper of that date as the product of that negotiation, according to the trade understanding, does that constitute a franchise?

The Court: Let me understand your question. You mean two separate contracts, one covering one year and one covering another year?

[fol. 2468] Mr. McClennen: Both negotiated on the same date.

The Court: Whether he understands that to be a franchise.

The Witness: I don't know. I never had the pleasure of making a two-year contract. I never could buy pictures except for one year, and the terms were always different the second year.

Q. On the 16th of June, 1938, you bought, did you not, the product for two years, and I show you Exhibits 741, 742, 743 and 744, all bearing the application date June 16, 1938, and the approval date June 23, 1938? According to your understanding of the phrase "in the trade" did you get a franchise on that date?

Mr. Wright: Assuming he did or did not, where are we? What have we established as to what is in issue here?

The Court: I don't know. I will let him state the fact. I suppose the contracts themselves would show the periods they cover.

Mr. Wright: Yes.

Mr. McClennen: One of the things it establishes, your Honor, he said he never got contracts for two years' product, and I am asking about those.

The Witness: I never did. I did not sign the contract. It is signed by Paul Fenyvessy. I don't remember it at [fol. 2469] all. I did not sign it, never heard of buying two years.

Q. Oh, I see. And you did not know that your brother Paul had done this?

A. I don't remember. I don't remember the contract. I can't remember the contracts for many years.

Q. Look at them again and tell me whether you negotiated them?

The Court: What is the materiality if the contracts were two years or one? What bearing has it whether they made a two-year contract or a one-year contract?

Mr. McClennen: Because the witness just said he never made a contract——

The Court: If you are attempting to impeach him on an immaterial matter, it is of no importance. The purpose, I suppose, is to impeach his testimony. But if it is on an immaterial matter——

Mr. McClennen: If your Honor, please,——

The Court: I wonder what bearing it has, whether the contract was made for one year or two, on the issues.

Mr. McClennen: One of the issues in this case is attempted to be by pointing out that the defendants obtained franchises when others could not obtain franchises, and this [fol. 2470] is just one little piece of testimony to show that others could obtain franchises. That is where I feel it would have a bearing on the issue projected into this case, what we believe is an unfounded claim of the plaintiffs.

The Court: He said he has no knowledge. You have the contracts.

Mr. McClennen: Now I am asking him to look at them and tell me whether he negotiated those contracts.

The Witness: No, I don't remember having negotiated the contracts and I don't remember having—I see one contract, for 1937-1938—no dates here, as you say, but I don't remember and I did not sign the contracts.

Q. When you say you don't remember, do you remember definitely that you did not negotiate these contracts?

A. I don't remember having negotiated them. I had no purpose in saying that I never bought two years in succession if I actually did.

Q. Did you negotiate with Metro for product of the years 1937-1938 and 1938-1939 at all?

A. I don't remember.

Q. You don't remember of doing so?

[fol. 2471] A. No.

Q. Do you remember of having any communications yourself with Metro or any representative of Metro concerning product for those seasons?

A. No, I don't remember. It is possible that I had some talk with them, but I don't recall.

Q. Did you receive this letter, June 27, 1938, Exhibit 767, addressed to Mr. C. A. Fenyvessy by Mr. Rodgers, General Sales Manager of Metro (handing document to witness)?

A. Yes.

Q. And that letter related to the very product set out in these Exhibits 741, 742, 743 and 744, did it not?

A. It refers to one year's contract.

Q. Look at those numbers of the exhibits and tell me whether it did not refer to them?

A. Well, it refers, as I understand it, to one year's contract. It does not say two years, does it, in the letter? May I see the letter again?

Q. Certainly (handing to witness). It does not say one year's contract in the letter, either?

A. It says, "Your application for our 1938-1939 product," and as I understand your 1938-1939 product is a year's product.

Q. Now, what I asked you was whether the contents there referred to is Exhibit 743 and 744?

[fol. 2472] A. It does not refer to these, because it refers to the West End Theatre, and these refer to the Madison and Monroe Theatres, so it does not, as I understand the letter

—it refers to one year's contract, and this is the West End Theatre, but these contracts cover the Madison and Monroe.

Q. Oh, I see. Then in Exhibit 768 you were seeking to get for the West End Theatre open booking, were you, with the Schine theatres, the Riviera, State, Liberty and Dixie?

A. For the West End?

Q. Yes.

A. No, because in this letter we say we have two fine houses, and the two fine houses that we had were the Madison and the Monroe, not the West End, so it refers to the Madison and Monroe.

Q. This letter of June 28th, Exhibit 768, has no reference to yours of June 27th, Exhibit 767, then?

A. I don't think so, because this letter is an acknowledgment of a contract given by the West End, as I read it, and my letter of the 28th has reference to my effort to secure a better run for the Madison and Monroe. I don't think they refer to each other. I don't see any reference.

Q. Read me the part of the letter which you say, as you [fol. 2473] read it, refers to a contract for the West End Theatre. Just read the language that you refer to as the language which you read that in.

A. Oh, it says, "Mr. C. A. Fenyvessy, West End Theatre, Rochester, N. Y. My dear Mr. Fenyvessy: We gratefully acknowledge receipt of your application for our 1938-1939 product and are pleased to inform you of its acceptance, and at the same time express our appreciation for your consideration."

Q. That is what you read in that letter as referring exclusively to a contract for the West End Theatre, is it?

A. Yes, that is as I read it. I do not see any reference to three houses. I see only an address at the West End Theatre and it does not indicate that it is more than a year's product, or that it is concerning three houses.

Q. Well, now, let me call your attention to Exhibit 768, the letter of June 28, 1938, in which you say, "Your letter of June 27th, acknowledging our contract for Metro product 1938-1939 is indeed very cordial, so much so that I should like to know whether you will not give the proposition of improving our availability at the Madison and Monroe theatres which we took up with you a couple of years ago further consideration."

Now, do you mean that he was so cordial about a con- [fol. 2474] tract for the West End Theatre that you wanted to take up another matter, a separate matter, of the Madison and Monroe theatres?

A. I think, Mr. McClennen, that this is a form letter sent out by the sales manager, in acknowledgment of a contract for the West End Theatre, and that is all I can think.

Q. You think that this letter of June 27th is not signed by Mr. Rodgers?

A. I don't think it is signed by Mr. Rodgers—I don't know whether it is his signature, but I don't think this is his signature. I think this is his signature, which is a different signature.

Q. On Exhibit 769, and that is the letter which he wrote in reply to yours of June 28, 1938, and what I was asking you was not what Mr. Rodgers' letter, not signed by him, referred to, but what your letter referred to, and asked you if having brought carefully to your attention the correspondence of the time you say that the contract that you were writing about in the letter of June 28, 1938, was a contract for the West End Theatre?

A. In this letter I am writing about the Arnett—pardon me, not the Arnett—Madison and Monroe theatres.

Q. In reply to this letter of June 27th, in which a contract [fol. 2475] was sent to you, contract application—I mean an acknowledgment of a contract application was sent you. With the two things before you, don't you know that the contract that you were referring to in that first letter was for the Madison or Monroe theatres or both of them?

A. No, the letter that is dated the 27th of June, addressed to the West End Theatre, and acknowledging the contract of the West End Theatre, was not received by me on June 28th, apparently, because I do not refer to it. I do not acknowledge it.

Q. What letter do you refer to in yours of June 28th where you say, "Your letter of June 27th, acknowledging our contract for Metro product 1938-1939 is indeed very cordial, so much so"——

A. I beg your pardon. You are right.

Q. By begging my pardon, do you mean to say you did refer in that letter of June 28th——

A. It is obvious——

Q. Wait a moment. If it was obvious why did you say just the reverse a moment ago?

A. Because I thought that was the situation, but——

Q. At this time where was your business office, where you conducted your correspondence?

A. At the Capital Theatre Building.

[fol. 2476] Q. At the Capital Theatre Building?

A. Yes.

Q. Did you conduct all your correspondence for all your theatres from the Capital Theatre Building?

A. Yes.

Q. Do you remember anything about the terms of your contract for the West End Theatre for the 1938-1939 product?

A. No, not without looking at the contract, I can't remember.

Q. And in writing about the contract for the West End Theatre were you writing about a transaction that you had had anything to do with?

Mr. Wright: If the Court please, he has not testified that he was writing about the West End Theatre in the second letter. He said at least five times, and according to the language of the letter it shows he was writing about the Madison and the Monroe.

The Court: He has referred to the letter, apparently.

Mr. Wright: It refers to the letter of prior date about the West End, but it is also equally clear from the letter he wrote referring to the earlier letter, that the second letter was about the Monroe and the Madison, and he has already said that five times.

[fol. 2477] The Court: The inquiry now is what the contract was at the West End.

Mr. Wright: His last question suggested that he had testified he had written a letter about the West End when there has not been any such testimony at all.

The Court: He said he must have been referring to that letter in the letter of the 28th.

Mr. Wright: He said he acknowledged that letter when he wrote his letter of the 28th——

The Court: The question is whether he knows what contract was made for the West End for the year 1937-1938.

Mr. Wright: That was not the last question, if the Court please.

Mr. McClennen: Could the question be read?

(Question read as follows: "Q. And in writing about the contract for the West End Theatre were you writing about a transaction that you had had anything to do with?")

[fol. 2478] The Court: Were you?

Mr. Wright: There isn't any letter——

The Court: Were you writing about the West-End contract? There is nothing here to show that he was writing about the West-End contract, except the letter which he had written——

By Mr. McClennen:

Q. Did you have anything to do with negotiating the West-End contract with Metro there for the 1938-39 product?

A. I don't remember.

Q. Have you any recollection of having to do with that transaction?

A. No, I can't remember. The only way I can remember is if I see the contract. I can't remember the date.

Q. Now, in your letter, Exhibit 772, you say "That part of your letter which refers to the Arnett and West-End situation"—, Mr. Connors says "That part of your letter which refers to the Arnett and West-End situation in Rochester, I have referred to Mr. O'Shea," and in the letter to which that is obviously a reply, Exhibit 771, you say "We have a situation which might interest you in Rochester between the Arnett operated by others, and the West-End operated by ourselves." You referred to your operation of the West-End in that letter for the purpose of bringing [fol. 2479] out a case where there was no clearance as between those two theatres, but they ran open booking?

A. Yes, sir.

Q. That is true, isn't it?

A. Yes, sir.

Q. And using it for an argument. Now, that letter was written from your office where?

A. At 85 Main Street, West, which is where all the letters are written.

Q. Is that in the Capitol Theatre Building?

A. Yes, sir.

Q. That is neither in the West-End, the Monroe, nor the Madison?

A. No.

Q. You had no office in any one of those three theatres?

A. No office for corresponding, no.

Q. And when you see that the letter from Mr. Rodgers is addressed to Mr. C. A. Fenyvessy, do you not recall to your mind that you were the one that had to do with the negotiation there referred to?

A. It is my impression that this is a form letter that was sent out as a courteous gesture by the sales manager in acknowledgment of a contract made for the West-End Theatre, and I think that is not Mr. Rodger's signature. I think this is simply a formal acknowledgment.

[fol. 2480] Q. And if it was a formal acknowledgment of a contract signed by P. A. Fenyvessy, do you know why it was addressed to Mr. C. A. Fenyvessy?

A. Why, I don't know, but I would guess that the stenographer called P. A. C. A. I have no middle initial. I am just possessed of two names. P. A. and C. A. sound alike.

Q. So that you think that this letter, June 27th, 1938, Exhibit No. 769, was not designed for you?

A. I think that it was a form letter acknowledging a contract.

Q. And you think it was not designed for you?

A. That is my impression, because I don't remember having signed that contract. If the contract was signed P. A. Fenyvessy, and the letter of acknowledgment was signed C. A. Fenyvessy, it might have been intended for P. A. Fenyvessy.

Q. Do you recall why it was that Chester Fenyvessy was the one who acknowledged it and said "Your letter of June 27th is indeed very cordial"?

A. Chester Fenyvessy was always trying to improve the run and using every opportunity he could to correspond or make contact with the Film Companies for the purpose of improving the run.

Q. And, therefore, answering the letter which was not for him, is that it?

[fol. 2481] A. I took the liberty of answering any mail; I thought it might be all right.

Q. Whether it was concerning a contract for the Madison and Monroe Theatres, or a contract for the West-End Theatre?

A. I answered the mail that I felt inclined to answer, because it was sort of a family affair.

Q. And the West-End Theatre and Monroe and Madison were all in that same family affair?

A. They were all owned by the family, yes, sir.

Q. Have you any means of investigating among your papers to see whether there is a contract for the West-End Theatre of this date, June 19th, 1938?

A. Well, I will try. I don't know whether I have any. I imagine that the Metro pictures were played at the West-End Theatre. The Metro pictures were always played.

Q. I was interested in seeing if you could find any contract amongst your papers that so nearly fits this letter as these exhibits 741, 742, 743 and 744.

Mr. Wright: If the Court please, what possible difference could it make?

The Court: The statement does not call for any answer. It is simply the statement of counsel.

Q. Now, Mr. Fenyvessy, what was the first theatre of the group of Madison, Monroe and West-End that your father obtained?

[fol. 2482] The Court: I do not see the necessity for that. It seems to me we are going unnecessarily afield.

Mr. McClennen: Why, over my objection, the witness was permitted to make the comparison of the price received with the cost. I wish to show that the price received was a great deal more than the cost, and I am proceeding from the beginning with this witness to see what light he can shed on the cost.

The Court: All right.

Q. Which was the first theatre that your father——

The Court: Which was the first?

The Witness: The Madison.

Q. And you say he got that in about 1909—I mean 1929?

A. 1929.

Q. Was that the first of his business in Rochester in the theatre exhibition?

A. No.

Q. Did you have anything to do with the purchase of the Madison?

A. Yes, sir.

Q. It was the whole fee that was purchased, was it?

A. Yes, sir.

Q. And was it purchased for cash?

[fol. 2483] A. Was the consideration cash?

Q. Yes.

A. It was the assumption of a mortgage of $150,000, some cash and equities in real property, in real estate.

Q. And was that real estate some that your father had had for a long time?

A. No.

Q. Was it real estate that he had purchased for cash?

A. Yes, sir.

Q. And was the amount of the cash which was paid for the Madison Theatre, personally known to you?

A. I don't remember the amount.

Q. You don't remember the amount?

A. No, I don't remember the amount. There was cash and equities and the assumption of a mortgage. I do remember that the mortgage was $150,000, and I remember that one piece of property in which he had an equity of over $25,000, he paid $12,000 off on the mortgage at the time of the Madison Theatre deal.

Q. And you don't remember how much cash was paid in the Madison transaction?

A. No, I don't.

Q. What was the next theatre that he obtained?

A. I think the Liberty and the West-End.

Q. And did you participate in the acquisition of the Liberty?

[fol. 2484] A. I had some connection with it. I knew something of the transaction, yes, sir.

Q. Do you know how much cash was paid for the Liberty?

A. I don't remember exactly, but I think about $70,000.

Q. In cash?

A. $70,000 in cash, and I think that included the cash required for the purchase of both the Thurston, which we later named the West-End and the Liberty. I think the amount of the purchase was $70,000 cash.

Q. The West-End, you say was acquired as part of the same transaction as the Liberty?

A. Yes, sir.

Q. Now, when the Monroe was acquired, did you participate in the acquisition?

A. Yes, sir.

Q. How much cash was paid for the Monroe?

A. I think $20,000; I am not absolutely sure, but I think it was $20,000.

Q. Now, when the Madison was obtained by your father, the Schine interests were already operating the Riviera?

A. Yes, sir.

Q. And the Liberty?

The Court: What?

Mr. McClennen: And the State and the Webster?

The Court: The Liberty?

[fol. 2485] Mr. McClennen: Yes, if your Honor please.

The Court: When what was acquired?

Mr. McClennen: When the Madison was acquired by Mr. Fenyvessy.

The Witness: I think so.

Q. So that their operation on all four of these preceded any Fenyvessy operation of any of these Madison, Monroe or West-End Theatres?

A. Yes, sir.

Q. In your Madison and Monroe—in your Madison Theatre, did you cut your admission prices as early as 1931?

A. I don't think so; I don't remember.

Q. Do you remember ever cutting the admission prices in those theatres?

A. No, I don't. I think we charged more than before in the Madison Theatre.

Q. That is, you increased the price in the Madison Theatre over what your predecessors had charged, do you mean?

A. Yes, sir, I think so.

Q. And you have no recollection of ever reducing the admission prices at the Madison Theatre?

A. No.

Q. Now, in 1937, you were charging a Saturday afternoon admission price of 10 cents at the Madison, were you not?

A. For children.

[fol. 2486] Q. For children only?

A. 1937, did you say.

Q. 1937; children only?

A. That is my recollection. I am not positive.

Q. I show you a letter of November 16th, 1937, signed by you and ask you whether at that time your Madison Theatre's minimum admission price was 10 cents on Saturday afternoons?

A. Yes, sir, for children.

Q. And at that time the Rivoli Theatre on Saturdays was charging five cents admission?

A. Yes, it appears that way.

Q. You were writing this letter as an argument why you should be relieved from that 5 cent competition, were you not?

A. We didn't like 5 cents in back of us.

Q. And that was the reason you were writing that letter?

A. Yes, sir.

Q. And do you remember why you didn't say that your minimum admission price for adults was 15 cents or 20 cents or 25 cents, whatever it was?

A. Well, I say the minimum admission was 10 cents, and that is what it was.

Q. Yes; you didn't say—you did not refer to children in your argument, did you?

[fol. 2487] A. Well, I do, in referring to the Rivoli, I say 5 cents for children, don't I?

Q. No.

A. What do I say?

Q. Nothing about children anywhere, I will show it to you.

(Document shown to witness.)

A. Well, it probably was so, but I see it doesn't say anything about that.

Q. Do you remember how long your Saturday afternoon minimum admission price at the Madision had been 10 cents on November 16th, 1937?

Mr. Wright: If the Court please, it is hardly on the scope of the direct-examination. If he is putting it in as part of what he conceives to be his case, it bears on nothing I had the witness testify to on direct-examination.

Mr. McClennen: On the contrary, if your Honor please, this witness has testified at length as to reasons why he should have a run as good as the Rivoli and, of course, this bears on whether he should have a run as good as the Rivoli if his minimum admission price was 10 cents.

Mr. Wright: This refers to a five-cent price at another [fols. 2488-2489] house not operated by any of them.

Mr. Clagett: I don't think the Rivoli has been mentioned before.

Mr. Wright: The theatre the witness testified to on direct was the Riviera. This apparently refers to the Rivoli, which was not mentioned in the direct-examination.

Mr. McClennen: I am told I said he was asking for a run as good as the Rivoli. That was not my intention. I meant the "Riviera", and I was interrogating him on the question of how long he had a 10-cent admission price on Saturday afternoons at the Madison as bearing on the question of whether in the ordinary course it would be expected he would be accorded as good a run as the Riviera.

The Court: Will your examination take sometime more?

Mr. McClennen: I should hope not very much more.

The Court: We will adjourn until tomorrow morning at 10 o'clock.

(Whereupon, a recess was taken until Wednesday, October 11th, 1944, at 10 o'clock a.m.)

[fol. 2490] UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF NEW YORK

Civil 223

UNITED STATES OF AMERICA,

vs.

SCHINE CHAIN THEATRES, INC., Et Al, Defendants

Continuation of trial before Honorable John Knight, United States District Judge for the Western District of New York, October 11th, 1944, 10 o'clock a.m.

APPEARANCES:

Robert L. Wright, Esq., John F. Clagett, Esq., Harold L. Schilz, Esq., Special Assistants to the Attorney General, and Milton Kallis, Esq., Special Attorney, in behalf of the United States.

Edward F. McClennen, Esq., Willard S. McKay, Esq., Saul E. Rogers, Esq., Arthur E. Whittemore, Esq., Arthur J. Homans, Esq., and Howard M. Antovil, Esq., appearing for the Defendants.

CHESTER FENYVESSY resumed by and on behalf of the Plaintiff, testified further as follows:

Cross-examination (Continued).
By Mr. McClennen:

Q. Mr. Fenyvessy, in April, 1937, was the Madison Theatre charging 5 cents admission for children on Saturdays?

A. No.

Q. You know that of your own positive knowledge, do you, that they were not?

A. I am refreshed from that letter which says the minimum was 10 cents.

Q. That was in 1937?

A. Yes, sir.

Q. Now, in April, 1935 was the Madison charging 5 cents admission for children?

Mr. Clagett: What was the last date, 1935?

Mr. McClennen: 1935.

Mr. Clagett: Thank you.

The Witness: Not to my knowledge.

Q. Have you any positive knowledge that the Majestic was not charging 5 cents for children's admission for [fol. 2492] Saturday afternoons in April, 1935?

Mr. Rogers: Did you say "Majestic"?

Mr. McClennen: Madison, I misspoke.

The Witness: I don't recall that it ever charged 5 cents.

Q. Do you have any knowledge of a complaint made at that time that the Madison was charging 5 cents admission on Saturdays in April, 1935?

A. Not that I recall.

Q. At page 2288 of the testimony you were asked the fact that you did not contract for Columbia for the 1938-39 season. Did you in September or October 1938 make an offer for Columbia pictures for that season?

A. I don't remember. We bought Columbia each year, but I don't remember that particular——

Q. Did you buy Columbia for the 1938-39 season?

A. I think so.

Q. I call your attention to Exhibit 750, contract dated

June 14th, 1937, approved June 28th, 1937. That is signed by you?

A. Yes, sir.

Q. And the clearance provision, "Second-run, City of Rochester, 14 days clearance over all subsequent-runs", that gave you 14 days over the Rivoli, Liberty, State and Dixie, did it not?

A. Yes, sir.

[fol. 2493] Mr. Clagett: The first would be the Riviera.

Mr. McClennen: Riviera, I am sorry.

Q. And, of course, you understood me to mean the Riviera in your answer?

A. Yes, sir.

Q. Did you seek that clearance?

A. In making the contract, you mean?

Q. Yes.

A. Asked?

Q. Yes.

A. It was offered to us second-run with that clearance, and we paid for that and, of course, we wanted that.

Mr. McClennen: That is all, your Honor.

Redirect examination.

By Mr. Clagett:

Q. Mr. Fenyvessy, I call your attention to Plaintiff's Exhibits Nos. 741 and 742 for the Metro-Goldwyn-Mayer product for the 1937-38 season, date of application June 16th, 1938, approved June 23rd, 1938, and ask you whether that contract was for the old or previous season's Metro-Goldwyn-Mayer product for the Madison and Monroe Theatres?

The Court: The old, what do you mean by that, the present season?

[fol. 2494] Mr. Clagett: You notice, your Honor, that contract is dated in June, 1938. It was for the 1937-38 product and it was also at the same time they bought the 1938-39 product, which was the current product.

Mr. McClennen: Strictly speaking this was a contract for the current season.

Mr. Clagett: I am asking the witness whether the product for the 1937-38 season was current or was for current product.

Q. Let me ask you a question, Mr. Fenyvessy——

A. It appears to be. Of course, I didn't make this contract.

The Court: How do you account for the same dates?

By Mr. Clagett:

Q. Not necessarily, your Honor, and Mr. Fenyvessy, what is the date of the application for that product, the date of the application date for that product?

A. June 16th, 1938.

Q. What season's product is covered by that application and that contract?

Mr. McClennen: Just a moment, the contract shows right on its face that it is for the 1937-38 product.

Mr. Clagett: That is right.

Q. Is that correct, Mr. Witness?

[fol. 2495] A. Yes.

Q. Was that product the——

The Court: It is dated when, did you say?

Mr. Clagett: June, 1938.

The Court: For the 1937-38 product?

Mr. Clagett: Yes, your Honor.

Q. In any event, Mr. Fenyvessy, the 1937-38 season had about two and a half months to run at the time that application was made?

Mr. McClennen: Oh, just a moment, that is not only leading but it is obvious that for a third-run it had considerably more time to run than that. That is, it could run perhaps into November of 1938.

The Court: You mean for the balance of the season subsequent to that date?

Mr. McClennen: That is right.

The Court: That is your inquiry?

Mr. Clagett: My inquiry was as to the season, as we speak of seasons.

The Court: Yes.

Mr. McClennen: My objection was that the question is leading and does not take into consideration that the season for the showing of the later runs extends beyond the release [fol. 2496] season by some considerable length of time.

The Court: I will let him state if he can. I don't know that there is anything on the paper that will show that unless you draw the conclusion from the date itself.

Mr. Clagett: There are two things on the paper which go to show it. I was trying to elicit that from the witness. It is the date of the season and date of the contract.

The Witness: This contract seemed to have been made late, and there are a number of eliminations. Attached to the contract is a list of pictures that are to be eliminated. Therefore, this is only part of the season's output.

Mr. Clagett:

Q. Mr. Fenyvessy, I call your attention to the provision on this contract relating to pictures that have been eliminated and ask you if those pictures had not already been played at the time the contract was—the application was made?

A. Yes, sir, it says so.

Q. How many pictures were eliminated, can you state by referring to the contract?

A. 24, it appears.

[fol. 2497] Q. Are you making the total for the two contracts? My question is addressed to the number of pictures eliminated, we will say from the Madison contract.

A. Well, both houses had the same number of pictures, and the eliminations would be the same because both houses played day and date.

[fol. 2498] Q. Does it have a list of pictures attached to the contract?

A. Yes.

Mr. Clagett: That is all. I would like to read to your Honor this provision in Plaintiff's Exhibits 741 and 742 appearing on the face of the contract for the 1937-1938 season, made in June, 1938. "Pictures on the 1937-1938 contract that have been released to subsequent run theatres that follow this theatre are to be eliminated from this contract based on national designation."

The Court: Why would they make a second contract for these pictures which were eliminated? Normally they would have been released pursuant to a contract prior to this date?

The Witness: The pictures had not been played in this theatre, apparently, and they were eliminated because they had been lost, they had been run in other theatres. The run had been lost.

The Court: Eliminated from what? That is the point.

The Witness: Eliminated from the contract.

The Court: Eliminated from the contract, but there must have been a prior contract which provided for your exhibi-[fol. 2499] tion of those in order for you to eliminate them from a subsequent contract.

The Witness: There was a contract made for this 1937-1938 product, and attached to the contract was an elimination of pictures.

The Court: There must have been another contract bearing the date of the preceding year.

Mr. Clagett: I think I can clear that up, your Honor.

By Mr. Clagett:

Q. Mr. Fenyvessy, the pictures that were eliminated had been played in other theatres other than your own?

A. That is right.

The Court: Did he have a contract for the year before that?

Mr. Clagett: This contract was made at the end of the season, late.

The Court: I understand.

Mr. Clagett: Certain pictures had been played by other exhibitors, and when he made the late contract he picked up the remainder of the pictures that had not been played.

The Court: Metro Pictures?

Mr. Clagett: Metro-Goldwyn pictures.

Mr. Wright: I don't think your Honor understood this elimination provision.

The Court: I see now what you mean.

[fol. 2500] Mr. Wright: I just want to show you.

The Court: The ordinary contract would be for all the pictures of Metro-Goldwyn?

Mr. Wright: This contract, the elimination provision appears on the contract for that season, and the elimination refers right to that contract of which it is a part.

The Court: All it would cover would be Metro-Goldwyn product subsequent to June for the balance of the season?

Mr. Wright: On its face I think it covers such of the Metro-Goldwyn product as had not been then played in subsequent run theatres.

The Court: There is another contract of the same date that might possibly seem to over-lap, because of the overlapping of the season.

Mr. Wright: Then there is a separate contract which is also in evidence here. These contracts made on the same date cover the 1938-1939 season.

The Court: The other only covered from June until the end of the 1938 season—beginning of the 1938 season?

Mr. Wright: Well, plus whatever pictures that had been [fol. 2501] previously released during the season which had not been played in the subsequent run theatres which followed him, and the ones which were eliminated pursuant to the clause are stated in the attached memo.

Mr. McClennen: The contract as a whole shows that this contract of June 16, 1938, was for the entire Metro 1937-1938 product, except those which had already been played in subsequent run houses.

Mr. Wright: That is right.

Mr. Clagett: That is absolutely right.

By Mr. Clagett:

Q. Mr. Fenyvessy, I show you two contracts with Columbia Pictures Corporation for the 1938-1939 season, for the Monroe and Madison theatres, respectively, bearing approval date January 6, 1933, and ask you if you made those contracts for the third run of Columbia Pictures for that season?

Mr. McClennen: Is this an exhibit?

Mr. Clagett: This is not. This is a new contract.

Mr. McClennen: Not yet in evidence. Well, then, I object to the statement of the contract until it is put in evidence.

The Court: Isn't that in evidence?

[fol. 2502] Mr. McClennen: It is not in evidence.

By Mr. Clagett:

Q. Is that your signature on these papers?

A. Yes, 1939.

Q. January 6, 1939.

Mr. Clagett: I would like to offer those in evidence.

Mr. McClennen: You read in the question "1933." You meant 1939?

Mr. Clagett: If I said anything about 1933, I meant 1939. Mark these as the next Government exhibits.

(Two contracts between Fenyvessy and Columbia Pictures Corporation for 1938-1939 season were received in evidence and marked Plaintiff's Exhibits 791 and 792.)

By Mr. Clagett:

Q. I now ask you, Mr. Fenyvessy, whether these exhibits 791 and 792 provide for a third-run of Columbia Pictures for the 1938-1939 season?

A. Yes, third-run.

Mr. Clagett: I believe that is all.

Mr. McClennen: No further questions.

The Court: Next witness.

Mr. Clagett: The next witness I will call is Mrs. Ben Belinson.

[fol. 2503] Mrs. Florence F. Belinson, a witness called by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Clagett:

Q. Will you state your name and place of residence?

A. Florence F. Belinson, 21 Arnold Park, Rochester, New York.

Q. Mrs. Belinson, you and your husband, Mr. Ben Belinson, operate the Little Theatre in Rochester?

A. Yes.

Q. How long have you operated that theatre?

A. Since April 16, 1931.

Q. Are you the sister of Mr. Chester Fenyvessy, who has testified in this case?

A. Yes.

Q. Were you in the court room yesterday when Mr. Fenyvessy located various down-town and subsequent-run theatres on a map of Mr. McClennen's?

A. Yes.

Q. What is the location of the Little Theatre?

A. 240 East Avenue, Rochester.

Q. Is that down-town?

A. Yes.

Q. Is it near the heart of the main business section or not?

[fol. 2504] A. No, it is on the fringe, on the border of the down-town section.

Q. Calling your attention to the years 1931 to 1937, will you state the kind of pictures, the type of pictures, you used at the Little Theatre?

Mr. McClennen: That is objected to as calling for a characterization and altogether too general.

The Court: You don't mean class pictures, you mean type?

Mr. Clagett: That is what I mean.

The Court: The run you don't mean?

Mr. Clagett: I am not thinking of run at the moment, but perhaps I can ask a few direct questions, since Mr. McClennen is objecting.

Mr. McClennen: I suppose you have the contracts right here?

Mr. Clagett: Not for these early years. I don't have any of them, but I think I can develop this without any contracts.

By Mr. Clagett:

Q. Did you play any first-run of the eight major companies in the Little Theatre?

A. Yes, we played occasional pictures that had been eliminated or discarded by the big down-town houses, and seemed appropriate for our type of operation.

Q. Did you play foreign-made pictures?

[fol. 2505] A. Yes, we played foreign language pictures during that period, German, French, Polish, Russian, Jewish, Swedish and British.

Q. Were those pictures released by the British Gaumont?

A. Yes, and others.

Q. Did you play any so-called reissues of the major companies?

A. Yes.

Q. Now, with reference to the same period, that is, from about 1931 to 1937, what was the policy of operation with respect to the number of pictures played and admission prices?

A. We maintained then, as always, a single-feature policy. The program was supplemented with short subjects, and our admission was always within a very small amount of the large down-town houses, our evening admission. Matinees, they had a lower admission than we did.

[fol. 2506] Q. Well, what were the admissions that you charged for matinee and evening?

A. We got 25 cents in the afternoon, 35 cents at night, against Loew's 40 cents at night and they had a balcony 15 cents early bird admission in the afternoon.

Q. The prices you quoted for Loew's applied to the other first-run downtown theatres?

A. I think Loew's and the Palace maintained a competitive price.

Q. Did you ever have any policy of give-aways or bank night?

A. No, the theatre was conducted with very—the policy was appropriate for the clientele that we were reaching, which was a discriminating audience. We never had any added attractions of any type, no give-aways, no dishes, no groceries.

Q. Did you ever put on any programs to stimulate patronage which would appeal to a particular type of patronage?

A. We at all times strive to reach the discriminating audience and gauged our programs as far as possible with that in view. We had cont-acts with institutions, churches and clubs with the idea of securing their co-operation in reaching this type of audience.

Q. What were the admission prices of the neighborhood houses, that is, the first neighborhood run?

[fol. 2507] A. I think the neighborhood houses charged 25 cents at night.

Q. Evening adult admission prices?

A. Yes, sir.

Q. With reference to the period about 1936 or 1937, did you, or were you able to license a sufficient amount of the kind of product that you have described?

Mr. McClennen: That is objected to.

The Court: I will let her state the facts, that is in comparison to what they had had.

The Witness: All right?

Q. Yes.

The Court: The question is not quite correct in form. State whether there were sufficient of what you had before and could get again.

By Mr. Clagett:

Q. Did you have difficulties in licensing an adequate number of the type of pictures that you have described?

Mr. McClennen: That is objected to as leading. It is competent to state what they did.

The Court: It really calls for a conclusion. That was the difficulty before. State what was done, what efforts were made to secure pictures.

Q. Was there any change in about 1936 or 1937 with [fol. 2508] respect to the availability to you, that is, your opportunity to purchase or license the pictures of the type that you have described?

Mr. McClennen: That is objected to as leading.

The Court: The same objection as before. State what was done with reference to that and what the results of those efforts were, what happened, I mean.

Q. Mrs. Belinson, calling your attention to the period of about 1936 to 1937, would you describe the efforts that you made to license the type of pictures that you have described?

A. The unrest in Europe had affected our ability to secure the foreign language product that we had been supplied with up to that time and Gaumont—British people who had been supplying us with first-run with their output about that time went out of exhibition business in this country, and that left us with nothing except reissues or old pictures which meant after a picture had played in every house in town, including the 10-cent houses and theatres that gave away groceries, bingo and everything else, we were forced to use that product as our only source of product and still maintain the house as a high-class downtown theatre charging 35 cents. Naturally we could not expect to [fol. 2509] maintain the house as a high-class house with a low-class product in the business. It is old to the public and it was practically worthless, so we looked around to see what else we could get.

Q. Mrs. Belinson, will you state what product the Loew's Rochester Theatre used first-run, downtown first-run?

A. Metro, Columbia and United Artists practically.

Q. Did that product have a second-run or a continued or hold-over run in any theatre downtown?

A. No.

Q. Did the Paramount product have a continued or second-run downtown?

A. Yes, sir.

Q. Did the R.K.O.?

A. Yes, whatever pictures they wished to hold over, they had a house to hold them over in.

Q. Did the Warner?

A. Yes, sir.

Q. Did the Fox?

A. Yes, sir.

Q. Did the Universal?

A. Yes, sir.

Q. I believe that you testified that Mr. Chester Fenyvessy, who has testified in this case, was your brother?

A. Yes, sir.

[fol. 2510] Q. Were you aware of the fact that for the 1936-37 and 1937-38 season, he had a second-run of Columbia product for the Madison and Monroe Theatres?

A. Yes, sir.

Q. For the period indicated did you obtain a concession from your brother to enable you to play selected pictures from the Columbia day and date with the Madison and Monroe Theatres?

A. Yes, sir.

Mr. McClennen: That is objected to as nothing to do with this case and leading and calling, I would think, for the contents of some writing.

The Court: In the first place, was there any writing?

The Witness: Are you asking me?

The Court: Yes.

The Witness: Yes, there were contracts covering the question Mr. Clagett asked.

The Court: Why, what you seek to inquire is whether he gave her part of his run, you say?

Mr. Clagett: She naturally bought and paid for a run, but she was able to buy them on a run day and date. I think I can——

The Court: Is that what she bought, bought it from whom?

Mr. Clagett: Bought it from Columbia pictures.

[fol. 2511] The Court: All right, show what she got and what she ran.

Q. Mrs. Belinson, did you license certain Columbia pictures on a run which was day and date with the Madison and Monroe?

Mr. McClennen: That is objected to. Mrs. Belinson has said there were contracts and if this is at all important we ought to have the contracts. Furthermore, it has nothing to do, I submit, with this case.

The Court: Just what bearing has it?

Mr. Clagett: Your Honor, I would like to show that Mrs. Belinson played eight or ten Columbia pictures in the 1937-38 season day and date with the Madison Theatre, which was at the time the Madison and Monroe had the second-run of Columbia pictures. I think I have the contracts for each of those individual pictures, but I was trying to avoid cluttering up the record with these individual contracts, seven or eight contracts.

The Court: What is the materiality of the inquiry?

Mr. Clagett: I want to show that she was able at one period, when the Columbia pictures had been licensed second-[fol. 2512] run to Mr. Chester Fenyvessy, for exhibition on Rochester, she could obtain the privilege or right to play those pictures day and date with the first neighborhood runs, but that starting in 1938-39 season, when Schine licensed the Columbia product second-run, that she could not license those pictures day and date with the Schine houses. That privilege was denied to her.

The Court: Well, you mean by your statement that in order to get the second-run she had to get a release or consent from the brother who had the second-run for the pictures?

Mr. Clagett: I do not, I cannot say she necessarily had to have the consent, but she did in any event in that period obtain the privilege or the right to license certain selected Columbia pictures. That right was subsequently——

The Court: Let us have the contracts.

Mr. McClennen: Mr. Clagett, if you are going to put those in, couldn't they be marked as exhibits without the preliminary of identification?

Mr. Clagett: They could be.

Mr. McClennen: Before you refer to them.

[fol. 2513] Mr. Clagett: If you concede that, after looking at them—if you want to look at them we will just mark them.

Mr. McClennen: These all appear to be genuine and our only objection we preserve is as to any materiality in this case.

The Court: Mark them.

(Thereupon Columbia contracts referred to were marked as Plaintiff's Exhibits 793 to 799, inclusive, in evidence.)

The Court: Do they all relate to Columbia or different companies?

Mr. Clagett: They are all Columbia.

Q. I call your attention to Plaintiff's Exhibit 793, and ask you whether that is a contract for three pictures which you made with the Columbia Pictures Corporation for second-run exhibition at the Little Theatre in Rochester?

A. Yes, sir.

Q. And you played those pictures second-run or day and date with the Madison and Monroe?

A. Some of the pictures we had straight second-run ahead of the Madison and Monroe. I think these three were straight second-run.

Q. Will you read the names of those pictures off the [fol. 2514] contract?

A. "Craig's Wife", "Theodore Goes Wild" and "Pennies From Heaven".

Q. Does that contract have any provision on its face with reference to run?

A. No.

Q. But you did play those pictures?

A. Yes, sir.

Q. The way you state?

A. Yes, second-run.

The Court: First-run?

The Witness: No; second-run.

Q. I show you Plaintiff's Exhibit 794, and ask you whether you played the pictures indicated on that contract second-run or day and date?

A. Yes, sir.

Q. What does the contract provide?

A. It provides for second-run.

Q. What is the name of that picture?

The Court: If you want parts of the exhibit, you can save time.

Mr. Clagett: I would be glad to do that. I was trying to bring out from the witness herself that these pictures had been played in this manner.

[fol. 2515] The Court: I don't want to destroy your purpose, but I am anxious to save time.

Mr. Clagett: Plaintiff's Exhibit 794 is a Columbia contract for the picture "When You Are in Love" with the provision, clearance provision "Second-run, Rochester, New York."

Exhibit 795 is a Columbia contract for the exhibition in the Little Theatre of the picture "Holiday," and run provision as follows: "Second in Rochester." If held over for a second week—strike that out, please, we have difficulty reading this to make the meaning clear. "Second-run Rochester. If held over for a second week percentage terms to be 25 per cent of the gross."

The next exhibit is 796, a contract with Columbia Pictures Corporation for the exhibition of the picture "The Awful Truth" at the Little Theatre. Provision with reference to clearance, "Second in Rochester starting January 1, 1938 and day and date with Strand, Madison and Monroe. If held over for a second week percentage terms to be 25 per cent of the gross. Above to include four single [fol. 2516] reels."

The Court: How long did the contract provide those two theatres should have the second-run? They could not give the same right to two, the picture rights or the same right, it would be the only contract providing for the appearance.

Mr. Clagett: If the distributor is selling his picture, I believe he can sell simultaneous runs, that is, day and date runs, if he is so minded.

The Court: I was referring to the contract by virtue of the clearance provision, that is all. Go ahead. What made my inquiry pertinent is your statement or part of the question relating to some concession of the brother's. You said something about that earlier, that it was with the consent of her brother.

Mr. Clagett: I did ask that question. I would be very happy to have the witness state just what that was. It was objected to.

The Court: I know that the company has the right to give the same runs to different companies, and now you indicate that the second-run was to be given to the Madison, Monroe [fol. 2517] and Strand and also given to the witness' company, which was done with the consent of the management of the Strand, Monroe and Madison.

Mr. Clagett: Your Honor, I thought your question was about an abstract one, as to whether a distributor could sell simultaneous runs.

The Court: Well, you could, unless something limits the purchaser, whether there was a limit here. The question here is whether it was a straight out and out second-run to two different companies.

Mr. Clagett: The contracts already in evidence state that the Madison and Monroe did have the second-runs for this season. I simply want to bring out she did obtain the right to play these pictures with the consent of Mr. Feryvessy.

The Court: That is the point, whether there had to be that consent or not. You say in one breath that he consented to the contract to two different companies for second-run. On the other hand, you say in this case she had to have the consent. Go ahead.

[fol. 2518] Mr. Clagett: The next exhibit is Plaintiff's Exhibit No. 797 for the exhibition of the picture "Lost Horizon" at the Little Theatre, with the provision with reference to clearance, "Second-run in Rochester for the 19th and 20th of November, and a day and date with Strand, Madison and Monroe, beginning November 21, 1937."

By Mr. Clagett:

Q. Can you recall, Mrs. Belinson, whether you played any additional pictures, Columbia pictures, on the same run than the ones I have indicated from these contracts?

A. Yes.

Q. Can you name those pictures?

A. I don't believe you mentioned, "Mr. Deeds Goes to Town"—"You Can't Take It With You"—"Mr. Smith Goes to Washington."

Q. Did you play a picture entitled "The Awful Truth" from Columbia?

A. Yes, you mentioned that one.

Q. The next exhibit is Plaintiff's Exhibit 798 for the exhibition of the picture, "You Can't Take It With You," clearance as follows, "Picture to open up and play day and date with Schine's Riviera, State, Dixie and Liberty on November 24, 1938."

[fol. 2519] The next is Plaintiff's Exhibit 799, for the exhibition of the Columbia picture, "Mr. Smith Goes to Washington," clearance provision, "Second day and date with Riviera, State, Dixie and Liberty."

With reference to those last two pictures, "You Can't Take It With You" and "Mr. Smith goes to Washington," you played those after the Schine houses?

Mr. McClennen: Just a moment.

A. Played them second-run with the Schine houses.

Q. Second-run with the Schine houses. Were you aware of the fact, Mrs. Belinson, that your brother's second-run contract with Columbia Pictures terminated?

A. Yes, sir.

Q. And that subsequently the Monroe, Madison and West End and Liberty theatres were sold to Schine?

A. Yes.

Q. Can you state whether the exhibition of these pictures indicated in these contracts at the Little Theatre was successful?

Mr. McClennen: That I object to.

The Court: Read the question.

(Question read.)

The Court: What is the purpose of that?

Mr. Clagett: I merely want to show this product was desirable, this run and type of product was highly desirable [fol. 2520] for the Little Theatre, if it could have continued to obtain certain pictures. That it was highly desirable to continue to show such pictures.

The Court: There must be some way of comparison with the pictures.

Mr. Clagett: I don't want to make a general comparison. I will ask the witness this question.

By Mr. Clagett:

Q. Did these pictures make money for the Little Theatre?

A. Yes, some of them did.

Q. Not all of them?

A. Some of them were sensational and some were average.

Q. All of them were played on percentage terms?

A. Yes.

Q. Can you recall what the percentage terms were?

Mr. McClennen: Isn't it right in the contract?

The Court: They are all on the same percentage?

The Witness: They were not all 25.

The Court: These particular ones were?

The Witness: No.

Mr. Clagett: Let us see what the contracts say. Exhibit 793 shows pictures thereon, 25% of the gross. Exhibit 794 shows pictures thereon, 25% of the gross. Exhibit 795 shows [fol. 2521] pictures thereon, 30% of the gross. Exhibit 796 shows pictures thereon, 30% of the gross. Exhibit 797 shows pictures thereon, 40% of the gross.

The Court: It appears there is some difference.

Mr. Clagett: There is some difference as to the amount of percentage. Exhibit 798 shows pictures thereon—no, flat rental $300.

The Witness: No, guaranteed $300. Never had a flat rental.

Mr. Clagett: $300 against a guarantee of 40% of the gross. Exhibit 799 shows a rental of $300 against 40% of the gross.

By Mr. Clagett:

Q. The contract indicates that "Mr. Smith Goes to Washington" was the last of the Columbia Pictures that you had played in this series?

A. Yes.

Q. Did you make efforts to license any additional Columbia Pictures second-run or day and date with the Schine houses?

A. Yes.

Q. Can you tell with whom you had any conversation on on the question of licensing further Columbia Pictures?

A. The salesman in the territory. His name was Bullwinkel.

Q. You had previous dealings with him over a period of years?

[fol. 2522] A. Yes.

Q. Can you state any particular picture you had in mind?

A. The next big picture that we were interested in—we were selecting only particular pictures that we could use—the next big picture was one called "His Girl Friday."

Q. Did Mr. Bullwinkel take an application from you for that picture?

A. No.

Q. Did he state why he would not?

Mr. McClennen: That is objected to.

The Court: Overruled. State what you said to him and what he said to you.

Mr. McClennen: The usual objection.

The Court: State what the talk was.

The Witness: He told us that he was unable to serve us any further with this second-run day and date with the Schine houses.

By Mr. Clagett:

Q. I believe you have testified that the M.G.M. product was played at the Loew's Rochester Theatre and did not receive a second-run in any down-town theatre?

A. Yes.

Q. Did you attempt to license the M.G.M. pictures on a second-run or day and date with the Schine houses?

[fol. 2523] A. Yes.

Q. Can you state whether you had any conversation with any representative of Loew's with reference to licensing the M.G.M. pictures, second run?

A. Yes, many conversations.

Q. Over what period was that?

A. During the time we were playing second run Columbia.

Q. Well, can you state with whom you had such conversations?

A. With the branch manager and the salesmen, Mr. Maw and Mr. Weisman.

Q. Who was the branch manager?

A. Mr. Maw.

Q. Who was salesman?

A. Mr. Weisman.

Q. Did Mr. Maw come to Rochester or would you see him in Buffalo?

A. No, he was the salesman in the Rochester territory and he called on us frequently at our office.

Q. You say Mr. Maw was the salesman?

A. Mr. Weisman was the salesman.

Q. He called on you?

A. He called on us frequently.

Q. Did Mr. Maw call on you?

A. Rarely. He has been in the office, but not often.

Q. Did your husband, Mr. Belinson, ever go to see either—[fol. 2524] did he go to Buffalo and see Mr. Maw at any time?

A. Yes, occasionally.

Q. You have stated Mr. Weisman called on you at the Little Theatre in Rochester?

A. Yes.

Q. Will you state what you said to him with reference to obtaining M.G.M. pictures second run?

Mr. McClennen: Objected to in general and because there is no date or approximate date.

The Court: Overruled.

Mr. McClennen: The date?

The Court: Can you specify the date?

Q. Mrs. Belinson, can you fix, to the best of your recollection, the date or dates that you talked to Mr. Weisman?

A. During the period we were playing second run day and date with the four Schine houses we had frequent conversations. I presume that was 1938-1939.

Q. Can you tell, in substance, then what you said to him, we will say, on the first occasion that you tried to license Metro pictures second-run?

Mr. McClennen: Objection.

Q. And when that would be, as near as you can recollect?

A. I would say 1938. What I said on any particular date I don't know. What I said over the course of years was we presented our problem to him, that we needed product, [fol. 2525] and we had established the precedent of playing second-run Columbia product day and date with four Schine houses, and if Columbia could do it we thought maybe Metro co[illegible] do it, too, and the fact that we were a downtown ho[illegible], charging high admissions, single-feature policy, and in no way competitive with any neighborhood house, and that the thing—the policy had been welcome to everybody when we were playing Columbia. We tried to establish the same thing with Metro.

Mr. McClennen: Now that your Honor has heard that, I move that it be stricken out.

The Court: I think it is not responsive to the question.

The Witness: He asked me the conversation.

The Court: Strike it out. You can state the substance of what you said to him.

The Witness: We asked for second-run product to be played at the Little Theatre day and date with the four Schine houses.

The Court: What did he say?

The Witness: He said he would take it up with his superiors and we in turn should present our problem to the New York office, that he was not the last word, but that he would act as the go-between and present the problem, and [fol. 2526] we, in turn, should also present it in detail to the New York office.

Mr. Clagett: Are you satisfied to have these marked in evidence?

Mr. McClennen: Mr. Clagett has just shown me several letters. We object to their admissibility, but concede that they are what they appear to be.

The Court: Purported to be between——

Mr. McClennen: Between the witness and Metro.

The Court: The head office, you mean?

Mr. McClennen: Head office, yes. Mr. Rodgers, to be more specific.

Mr. Clagett: Mark these as the next Government's exhibits.

(Three letters, from Mrs. Ben Belinson to Mr. William F. Rodgers, dated October 4, 1938; letter from Mr. Rodgers to Mrs. F. F. Belinson, dated October 9-39, and letter addressed to Mr. Belinson, from E. K. O'Shea, dated September 12, 1940, received in evidence and marked Plaintiff's Exhibits 800, 801 and 802, respectively.)

Mr. Clagett: I would like to read this letter, your Honor. Starting with the first one: Letter from Mrs. Ben Belinson to Mr. William F. Rodgers, Loew's, Inc., New York City, dated October 4, 1939: "Dear Mr. Rodgers: We have spoken to your Mr. Maw regarding our desire to show [fol. 2527] some of your product second-run day and date with your second-run Rochester account. That you may more clearly understand the local situation, we present herewith certain facts for your consideration. The Little Theatre operates daily from 1 to 11 P. M. Admission is 25 cents for matinees and 35 cents evenings for adults; 15 cents at matinees and 25 cents evenings for children. Our policy is single features exclusively. Each program plays a minimum of seven days. Occasionally features are held over indefinitely. We have no premium nor gambling nights. Since our opening in 1931 we have never deviated from this policy. Due to our down-town location, single feature policy and high admission, 35 cents for one feature as against 40 cents, the highest admission in Rochester for double features, we in no way interfere with second-run theatres located in neighborhoods five miles from the Little Theatre, not connected with our locality by bus or street [fol. 2528] car. The second-run houses are open evenings only, excepting on Saturday and Sunday, charging 25 cents for adults and 10 cents for children, present double bills entirely, have various gambling and premium nights. Furthermore, we would select mainly the type features which usually attract little patronage in neighborhood theatres. We cater to an entirely different clientele, an exclusive and discriminating patronage. Columbia Pictures Corporation served us with several of their outstanding releases. Among them were 'The Awful Truth,' 'Theodora Goes Wild,' 'Lost Horizon,' 'Pennies From Heaven,' the Grace Moore features, and 'You Can't Take it With You.' Some were played second-run day and date with Fenyvessy houses, others second-run day and date with Schine houses. That the results were highly satisfactory to Columbia you can no doubt readily verify. May I suggest, therefore, that you give this matter serious thought? This account unquestionably would develop considerable [fol. 2529] additional revenue for Metro. In fact, having had no experience of any importance with the house, you would be agreeably surprised at the results, with suitable second-run product. This revenue could be produced without interfering in any way with any of your other Rochester accounts, as this theatre is in a class by itself.

Trusting we may hear from you regarding this matter at your convenience, I am," signed.

Exhibit 801 is a letter which appears to be signed by Mr. W. F. Rodgers, on the stationery of Metro-Goldwyn-Mayer home office. It says "Office of W. F. Rodgers, October 9, 1939. Mrs. F. F. Belinson, Little Theatre, Rochester. Dear Madam: We acknowledge your letter of October 4th, and the matter of availability of your pictures is a subject with which our Mr. Ralph Maw, at our Buffalo office, is familiar, and we have referred your letter to him. You will hear from him in regard thereto, and when our [fol. 2530] representative is next in Rochester he will communicate with you direct. Thanking you for your communication, we are."

By Mr. Clagett:

Q. Mrs. Belinson, can you state whether after October 9, 1939, you had any further contacts with Mr. Maw or Mr. Weisman with reference to obtaining the second-run pictures of Metro?

A. I don't remember any particular conversations. We talked on the subject whenever we got a chance.

Mr. McClennen: I judge that the reading of this group of exhibits is completed?

Mr. Clagett: It is not. I will complete it in just a moment. I want to ask the witness one other question.

Mr. McClennen: If we are going from the letters, now that you have heard these letters, we move that they be stricken out and the contents of them be stricken out.

The Court: Denied.

By Mr. Clagett:

Q. Mrs. Belinson, I show you a copy of a letter signed "Ben Belinson," addressed to Mr. E. J. O'Shea, Metro-Goldwyn-Mayer Pictures, New York City, dated Septem- [fol. 2531] ber 12, 1940, and ask you if that is a letter—if you recognize that copy of a letter?

Mr. McClennen: Is this in evidence?

Mr. Clagett: No.

A. Yes.

Q. You state that various contacts with salesmen and representatives of Loew's were made by your husband, Mr. Belinson, as well as by yourself?

A. Yes.

Mr. McClennen: That is objected to.

The Court: Of course, unless she has personal knowledge she could not testify to that.

Mr. McClennen: May that go out?

The Court: Yes. She can state what she personally knows about it.

By Mr. Clagett:

Q. Did Mr. Belinson ever go to Buffalo or New York to see any representatives of Metro-Goldwyn-Mayer?

A. Yes, he went to Buffalo and New York offices regarding this matter.

Mr. McClennen: That is objected to.

The Court: I don't know how she could tell unless she was with him.

The Witness: I was in town with him.

The Court: In New York and Buffalo?

[fol. 2532] The Witness: Yes, and I saw him start and saw him come back.

The Court: I will let it stand.

Mr. McClennen: This letter I have not seen.

Mr. Clagett: It is almost a duplication of one she wrote.

Mr. McClennen: I still like to see it before you mark it.

The Court: You say your husband is still active in the business?

The Witness: Yes.

The Court: In operation?

The Witness: Yes.

Mr. Clagett: I don't think I will offer that last letter. I will just show it to Mr. McClennen, but I am going to read Plaintiff's Exhibit 802, addressed to Mr. Ben Belinson, Little Theatre, Rochester, New York, dated September 12, 1940, on the stationery of Metro-Goldwyn-Mayer, office of E. K. O'Shea. "Sorry that I missed you when you were in New York, but I received your wire at Gloversville, N. Y.

You know for a number of years we have sold our second-run account in Rochester to the Schine interests. In fact, we have just negotiated another contract with the Schine [fol. 2533] interests for their subsequent run theatres in the city of Rochester, and therefore we will be unable to offer you the run of our pictures in Rochester which you would like to have. It is the policy of our Company, as you know, to continue to solicit our present accounts in all situations.

With kindest regards to Mrs. Belinson and yourself."

The Court: Do I understand that Schine did have the first-run in part of its theatres in Rochester?

Mr. Clagett: At this time they had first neighborhood run, that is the second run.

The Court: That is what what I mean.

By Mr. Clagett:

Q. Mrs. Belinson, will you state whether you had any conversation with any representative of United Artists with reference to licensing their pictures second-run for the Little Theatre?

A. Yes.

Q. With whom did you have such conversation or conversations?

A. Mr. Lehman, the branch manager.

Q. From Buffalo?

[fol. 2534] A. Buffalo Branch.

Q. Can you fix the time of your conversation with him?

A. 1938 or 1939, while we were playing Columbia Pictures. Maybe 1940. While we were playing Columbia second-run. 1939, I guess it was.

Q. Will you state the substance of your conversation with Mr. Lehman? What did you say to him?

A. We asked him for second-run product——

Mr. McClennen: The usual objection.

The Court: Overruled.

A. We asked him for second-run product, second-run day and date with four Schine houses.

Q. What did he say to you?

A. He said he would like our business, he would like the additional revenue, that he knows our account would produce, and he would—he suggested that we present the matter to his home office clearly, so that they could understand it. They never had seen the theatre, did not realize that it was a down-town house of high standing, and he also suggested that we contact Mr. Schine on the matter because he said without such a contact that he did not think they could accomplish anything—without our getting some concession from Mr. Schine he did not think they could serve us.

Q. Do you recall whether you and Mr. Belinson made a [fol. 2535] trip to Gloversville to see Mr. Schine?

A. Yes, we did.

Q. Can you fix the date of that trip?

A. It was in the summer, because we drove. I think it was about July, 1939, at the time we were playing Columbia Pictures.

Q. I hand you a copy of a letter signed by Mr. Ben Belinson, dated July 5, 1939, addressed to Mr. J. M[illegible]r

Schine, and ask you if that refreshes your recollection as to the date that you made that trip?

A. Yes, that was the time.

Q. Did you meet Mr. Schine at Gloversville?

A. Yes, in reply to that letter Mr. Schine made an appointment with us and we went to Gloversville and had a conference with Mr. Schine at his office.

Q. What did you say to him?

A. We told him we would like second-run product on Metro and United Artists, to play day and date with four Schine houses, same as we played Columbia.

Q. Did you explain anything to him about the type of pictures you wanted?

Mr. McClennen: Just a moment. What she said, I submit.

The Court: Yes, state the conversation.

A. We asked for second-run product to be played day and date with four Schine houses, and we explained to him [fol. 2536] we did not want to play the entire output of either company, but wanted only certain selected pictures that were appropriate for our type of clientele.

Q. What did Mr. Schine say to you?

A. He said that means we pick out only the best pictures.

Q. What did you say to that?

A. I said that is—what is best for one is not necessarily best for the other. What is best for the Little Theatre is usually pictures called "Poison" in box offices in the neighborhood houses. Pictures like "Romeo and Juliet," appropriate for our clientele, is the type of picture the neighborhood clientele does not go for in a big way, and that would be the pictures we would pick out.

Q. What did Mr. Schine say further?

A. He said no. The answer to everything was no. The end of it was no.

Mr. McClennen: That, if your Honor please, I ask to have stricken out.

The Court: That he said no may stand.

Mr. McClennen: We don't know what the "no" is applied to.

The Witness: No, we could not have second-run product day and date with four Schine houses.

Mr. McClennen: If that is all it is, why, then, no objection.

The Court: I will let it stand.

[fol. 2537] Q. I believe you testified a moment ago Mr. Sid Lehman also suggested you take it up with the home office of United Artists?

A. Yes.

Q. Did you subsequently have any written communications with United Artists?

A. Yes, we wrote to the home office on the same general——

Q. Do you have copies of any letters which would indicate the dates upon which you wrote to the United Artists?

A. Have I letters? I will have to look. 1939.

Q. What is the month?

A. September and October, 1939.

Q. Whom did you write to?

A. To whom?

Q. To whom.

A. We wrote to Sid. Lehman in the Buffalo office and to Harry Gold in the New York office.

Q. Did you ever succeed in obtaining any of the United Artists pictures, second-run?

A. No.

Mr. McClennen: That is objected to.

The Court: The question now is whether they got any.

Mr. McClennen: There would be no objection to that. "Succeeding in getting" we submit calls for a conclusion. [fol. 2538] If all that is meant is that they did not get any United Artists pictures there is no objection to that statement, but I object to the particular question.

The Court: Let the answer stand, that they did not get any United Artists pictures.

Q. Mrs. Belinson, did you have any contact or negotiations with 20th Century-Fox for any pictures in the summer of 1944?

A. Yes.

The Court: 1944?

Mr. Clagett: Yes, your Honor.

Mr. McClennen: 1944?

Mr. Clagett: 1944.

Q. What picture did you have such negotiations with reference to?

Mr. McClennen: This, if your Honor please, would violate the assurance given that we were not going beyond May, 1942, and we object to it.

Mr. Wright: There wasn't any assurance given except we would not in this case undertake to prove violations of the Act during the period that the temporary order was in effect. That order, as I understand it, ceased to be in effect [fol. 2539] when we started this trial. The period that he is covering is subsequent to the time we started the trial here, and we certainly would expect to show at any time in this suit anything that comes to our attention during the progress of the trial which we regard as supporting our case. We would not hesitate to offer evidence on it and there has never been any assurance given that we would not do so.

[fol. 2540] Mr. McClennen: The record speaks for itself. We had confidence in the language used in the record, and we urge that in view of it, an effort made after the trial of this case started on May 31, 1944, is not consistent with a fair, liberal carrying out of the statement made in the record, and we object to this on that ground and on the ground that it is not material to any issues made in this case. The pleadings set forth no conduct after May 31, 1944, and there ought to be no evidence, we submit, on that account, also.

Mr. Wright: Well, as to the second objection, I suppose a supplemental complaint may always be filed to cover such incidents as have occurred since the filing of the prior pleadings.

Mr. McClennen: There is no supplemental pleading.

Mr. Wright: It is a purely formal objection.

Mr. McClennen: It is a very substantial objection. The reason for pleadings are to give the adversary notice.

~~The Court: There have been no supplemental pleadings.~~

Mr. McClennen: There have been no supplemental plead- [fol. 2541] ings. We never heard until this morning that there was any possibility of any such claim at this time.

Please do not interrupt me, even by a start, until I have got through with what I am going to say.

The Court: Proceed.

Mr. McClennen: We have not been advised by any pleadings or in any other way of any purpose which would give us any occasion for preparation or anything such as this. It is not a formal objection that no supplemental pleading has not been filed. If one is to be filed, we can then address your Honor on whether it should be permitted to be filed in this case at this time.

Now, what was said on page 41 of the opening, counsel for the Plaintiff said that no evidence of conspiracy would be offered after May 19th, 1942. We believed that that was the situation, and we proceeded on that assumption.

Mr. Wright: If the Court please, that statement was amplified at length, and it was made perfectly clear that [fol. 2542] what we were referring to, and the basis for not offering in evidence subsequent to that period that was mentioned, was that there was a temporary order in effect that we presumed prevented violations during the period that it was in effect. The pleadings now on file just contain a violation of the act by the defendants. That is the theory, I suppose, on which we are seeking the injunction here, is that unless enjoined the illegal practices that are being shown would continue. Now, if counsel concedes that our position with respect to the continuance of the violation would not be prejudiced by not offering any proof as to what has happened since the restrictions of the order expired, then I don't suppose that there would be any occasion for going into these incidents that occurred since the trial was in progress but I want to be understood at this time.

The Court: I don't know why counsel for the defense would not make that concession.

Mr. McClennen: We concede only that we were assured by counsel for the plaintiff——

The Court: Counsel, just a moment. You are not speak- [fol. 2543] ing on the subject of this offer to concede the fact that the production of this testimony and the fact that no proof has been made subsequent to May, 1942, does not prejudice the Government.

Mr. McClennen: I was about to address myself on that.

The Court: Is there any reason why the defendants cannot do that?

Mr. McClennen: There is no reason why the defendants should not make this concession which I am about to make, which is that it will not be claimed that the plaintiff's case is prejudiced by its carrying out its statement that it would offer no evidence on conspiracy after May 19th, 1942.

The Court: Why put in that clause in that way, why not say "By the introduction of any evidence prior to May, 1942. The language of the last clause would give rise to thought. What do you say about that, Mr. Wright?

Mr. Wright: The statement is highly objectionable, of course, in reference to an agreement or an alleged agreement that we say was made, we are simply willing to state that it may be understood there may be no prejudice to the [fol. 2544] Government resulting from failure to offer any evidence of violations after May, 1942, then we are agreeable to not submitting or offering such evidence.

Mr. McClennen: We concede that under the circumstances the case of the Plaintiff is not to be prejudiced by the failure to offer evidence of any transactions after May 19th, 1942.

The Court: Under the circumstances, will that meet your purpose?

Mr. Wright: I don't know quite what he has in mind, by "under the circumstances." If there is some catch that isn't apparent to me——

The Court: The words do not make much difference.

Mr. Wright: If he includes under all the circumstances of the case, I don't see any objection. It might be he has something in mind that wasn't apparent to me. What did you have in mind by the reference to circumstances?

Mr. McClennen: The circumstances of the case.

Mr. Wright: That is all.

The Court: Well, I don't know that it would have hurt to have let that clause out, but I don't think it would make any difference, as to what the pleading has to be under the cir-[fol. 2545] cumstances.

Mr. Wright: I suppose that is true. I don't know that it makes any difference as to any stipulation here.

The Court: Very well, we understand each other.

Mr. Clagett: In view of that stipualtion we won't proceed to offer this additional testimony relating to 1944, and that is all of the direct examination.

Cross-examination.

By Mr. McClennen:

Q. Mrs. Belinson, in your experience, in the light of your experience, if the picture "Mr. Deeds Comes to Town"— I hope I have the title,

A. "Mr. Deeds Goes to Town."

Q. "Mr. Deeds Goes to Town" were played at the Little Theatre in Rochester, do you think that it would have any effect upon the attendance coming to the Little Theatre in Rochester that might otherwise go to other theatres in Rochester?

A. I don't understand your question.

Mr. McLennen: Well, will you read the question?

(Question read.)

The Witness: I still don't quite understand it. If it [fol. 2546] played at our theatre does it affect other theatres?

The Court: That particular picture, would it affect other theatres?

The Witness: In the light of our experience, what we play doesn't make any difference to anybody else, because we are in a class by ourselves, charging a high admission, and giving a short show.

Q. Was your clientele such that if you did not play the picture "Mr. D[illegible]s Goes to Town", your clientele wouldn't go to see it at all?

A. I can't tell you that, I don't know.

Q. What?

A. I don't know if I didn't play it whether they would go some place else to see it.

Q. Yes.

A. Some of them would and some wouldn't, some of them would wait and see it probably, and some of them would go and see it where they could see it.

Q. You would expect quite a number to see it somewhere else, wouldn't you?

A. I can't say.

Q. I wasn't asking your knowledge, I was asking your expectation.

[fol. 2547] A. I say lots of people would go elsewhere.

Q. To see the picture?

A. Yes, sir.

Q. And that would apply in the same way to many outstanding pictures of any producer, wouldn't it?

A. We have only 299 seats, and we could not take everybody if they would come. They would go elsewhere, yes, sir.

Q. Now, my question was, you having answered about "Mr. Deeds Goes to Town", that would apply to any other outstanding picture?

A. Yes, sir.

The Court: What is the closest theatre to your theatre?

The Witness: Regent.

The Court: That is where?

The Witness: The Regent is at 65 East Avenue, and we are at 240 East Avenue, but the Regent is a chainhouse, belonging to Paramount, and plays first-run.

By Mr. McClennen:

Q. Your policy, if you could put it into effect, was to select the outstanding pictures for your Little Theatre?

A. Yes, sir.

The Court: Is there anything further? Next witness.

Mr. Clagett: Were you through with Mrs. Belinson?

[fol. 2548] Just a moment, please.

By Mr. McClennen:

Q. As you were experienced in the motion picture business, was a picture like "Mr. Smith Goes to Washington" one that would be apt to attract people in the neighborhood of Rochester?

A. Yes, sir.

Q. And that would be true of many of the pictures, which you desired to select and play?

A. Yes, some of the pictures would be so big that they would be big enough for everybody to get their share of revenue from.

Q. That perhaps answers it, but it seems to amplify it quite a little. To put it very specifically, many of the pictures which you wished to select for the Little Theatre would be pictures which would attract large patronages in the neighborhood houses, is that correct?

A. I would say some rather than many, and I would say the pictures that would attract—that I would select would be pictures that would attract business, yes, both in the neighborhood and out.

Q. And do you bear in mind any picture that you wished to select for the Little Theatre that would not be apt to attract attendance in the neighborhood houses?

[fol. 2549] A. In name from any company?

Q. Any picture, any particular picture?

A. Yes, sir.

Q. Which one?

A. "Romeo and Juliet," "Marie Antoinette" I understand were not box office attraction in neighborhood theatres, but were made to order for our clientele.

Q. Can you think of any others?

A. I think "Mid-Summer Night's Dream" was a picture made to order for our clientele, and I don't think any picture——

Q. I am asking you for names.

A. There are three names.

Q. Can you think of any others?

A. Offhand, no.

The Court: What pictures did you show in 1938-39 down to May, 1942.

The Witness: We had been forced to play the last run in town, pictures that had been played in every theatre in Rochester, and sometimes twice in every theatre in Rochester, and we are today maintaining the house on that run.

The Court: I mean, down to 1942?

The Witness: During all that period, since that Columbia [fol. 2550] contract was finished, we run that way.

Mr. McClennen: May that be stricken out in so far as it relates to anything after May, 1942?

The Court: Yes, strike out the reference to anything after May, 1942.

[fol. 2551] **Paul Paulvin** a witness called by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Mr. McClennen: If your Honor please, in order that we might prepare for the days to come, we were furnished with a list of witnesses to prepare for that was given us on Monday in a written memorandum. It was revived by a telephone call last night and we have no indication that this witness was to be called today, and we have some half a dozen *to* more than that named of witnesses to be called before this witness is called.

Mr. Kallis: If the Court please, the attorneys for the defendants were furnished with the name of Mr. Paulvin, I should think, at least a week ago. He has been in court on several occasions in the last week, and I am sure the defendants understood that he had been subpoenaed as a witness. I know that Mr. Paulvin has talked with Mr. Schine and told Mr. Schine and explained his presence in Buffalo at this time, and I didn't know that Mr. Paulvin [fol. 2552] was going to be in the court room this morning, but in view of the schedule involving several witnesses, and in view of the fact that he is present now, I would like to put him on primarily to identify some letters.

Mr. McClennen: If he is to do nothing but identify letters and his cross-examination may be postponed to a later time, there is, of course, no objection to that identification taking place now.

Mr. Kallis: That is agreeable to the government, if the Court please.

Direct examination.

By Mr. Kallis:

Q. Your name is Paul Paulvin?

A. Yes, sir.

Q. You lived in Auburn, New York?

A. Yes, sir.

Q. You are acquainted with the Capitol Theatre built in Auburn, New York?

A. Yes, sir.

Q. What, if any, connection have you had with the Capitol Theatre Building since 1927?

[fol. 2553] A. I just own the building.

Mr. Kallis: Mark these for identification.

(Thereupon 34 sheets of paper containing 32 letters were then marked as Plaintiff's Exhibits Nos. 803 for identification.)

Mr. McClennen: This is for identification?

Mr. Kallis: Yes, that is right.

Q. I show you what has been marked as Plaintiff's Exhibit 803 for identification, consisting of 34 sheets of paper, all on the letterhead of Berg & Krumgold, Paramount Building, 1501 Broadway, New York City, and these 34 sheets, constituting 32 letters purporting to bear the signatures of Dave Berg and R. J. Krumgold, the first letter dated June 28th, 1939, the last letter dated October 20th, 1943; take a look at them, Mr. Paulvin, will you?

A. These are the ones I have looked at, I have looked them over carefully and marked each one of them. I personally O.K.'d every one of these letters.

Q. Did you receive each and every one of these letters?

A. Yes, sir.

Q. And every one of these 34 sheets in the mail?

A. Yes, sir.

Q. And within a few days of the date which each letter [fol. 2554] bears?

A. That is right.

Mr. Kallis: That is all.

The Court: You did not offer them.

Q. Some of these letters were addressed, pardon me, to Mr. Paulvin at different places?

A. They were sent to my addresses.

Q. At Florida and perhaps other places, and you received those letters at the places indicated as your address in the respective letters, is that right?

A. Yes, sir.

The Court: All received by you?

The Witness: Yes, sir.

Q. At my request you turned many of these papers over to me at Auburn within the last couple of months?

A. That is right.

Q. And gave some additional ones to me in the last week in Buffalo?

A. That is right, you had some photos taken of some of them.

Mr. Kallis: That is right. Now, I understand, if the Court please, that Mr. Paulvin will be around here for at least a week more, and counsel has indicated an expectation of calling him and, if that is the case, why——

[fol. 2555] The Court: I suppose they want to examine about these letters?

Mr. Kallis: If that is the case, your Honor, I would like to say in all fairness to counsel I might have further questions to put to Mr. Paulvin.

Mr. McClennen: In accordance with what was stated earlier, we will defer cross-examination of Mr. Paulvin at present.

The Court: Do you object to the reception of the letters?

Mr. McClennen: They are not offered yet.

The Court: I know they are not.

Mr. Kallis: I am not offering the letters.

The Court: I know that, but I want to know if they were not objecting to the letters.

Mr. McClennen: We do not at this time, before reading them, have any reason to doubt their authenticity.

Mr. Kallis: And their reception?

Mr. McClennen: Please wait. But if we find any doubt, we want to preserve it.

The Court: Withdraw the witness. They are merely marked for identification.

That is all, Mr. Paulvin.

[fol. 2556] Anthony J. Lauer, a witness called by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Kallis:

Q. Mr. Lauer, where do you live?

A. Auburn, New York.

Q. How long have you resided in Auburn, New York?

A. Since 1904.

Q. What is your business or profession?

A. Real estate, investments and insurance.

Q. Are you acquainted with Hubert P. Wallace, who operates the Capitol Theatre in Auburn, New York?

A. I am.

Q. How long have you known him?

A. About 12 years.

Q. Have you had any business dealings with him?

A. Yes, sir.

Q. Calling your attention to the years 1938, did you have any dealings with him concerning a contemplated theatre in Canandaigua, New York?

A. I did.

Q. Did you have occasion to make any trips to Canan-[fol. 2557] daigua with Mr. Wallace in connection with that transaction?

A. I did.

Q. Now, calling your attention to the Jenkins property on the main street of Canandaigua, did you have occasion to meet Mr. J. W. William Jenkins?

A. I did.

Q. Will you please tell the Court what, if any connection he had with the property in question?

A. Mr. Wallace and myself, I called upon Mr. Jenkins at his place of business for the purpose of negotiating a rental of his store property on the main street of Canandaigua, New York.

Q. How many theatres, if you know, were there in Canandaigua at the time?

A. I believe there were two.

Q. At that time?

A. Yes, sir.

Q. What were they?

A. As far as—I don't know the name of the theatres—I think there was one larger and one smaller one.

A. At that time?

A. Yes, 1938.

Q. Who operated those theatres?

A. I understood it to be the Schine Theatre Circuit.

Mr. McClennen: That I object to, if the Court please.
[fol. 2558] The Court: Of course, that is hearsay.

Mr. Kallis: From the interrogatories, I think the witness is obviously mistaken. The interrogatories show there was only one theatre operated by Schine at the time. The one concerning which his testimony is based was constructed about two years and nine months later.

The Court: The interrogatories will take care of themselves.

Q. Did you discuss with Mr. Jenkins what his relation to the property was, was he the owner?

A. He was the owner, yes, he and his sister were the owners.

Q. You had a discussion with Mr. Jenkins, did you?

A. Yes, sir.

Q. And can you tell the Court whether or not a deal was discussed?

Mr. McClennen: That is objected to.

The Court: I will let him answer that far.

The Witness: The question is whether a deal was discussed?

The Court: Yes, and just answer "Yes" or "No".

A. Yes, sir.

Mr. Kallis: Will you please give this the next exhibit number, 804?

[fol. 2559] (Thereupon blue-print was marked as Plaintiff's Exhibit No. 804 for identification.)

Q. I show you what has been marked as Plaintiff's Exhibit for identification No. 804, will you please tell the Court what that is?

A. This is the proposed plan of the moving picture theatre which was to be placed in the building known as the Jenkins Block, I think the name was.

Q. In Canandaigua, New York?

A. In Canandaigua, New York.

Q. After your discussion with Mr. Jenkins, Mr. Lauer, can you tell the Court whether a deal was definitely agreed upon?

Mr. McClennen: That is objected to.

The Court: Sustained.

Q. Do you have in your possession any figures which were the subject of discussion?

A. I have a memorandum which I have with me which was rather a—on which we discussed with Mr. Jenkins the arrangements for a lease of the property.

Mr. McClennen: Just a moment, that fully answers the question.

Mr. Kallis: All right.

Q. Did you and Mr. Wallace make a proposition to Mr. Jenkins?

[fol. 2560] A. We did.

Mr. McClennen: That is objected to.

Mr. Kallis: The question can be answered "Yes" or "No". if the Court please, and doesn't do these defendants any harm, "Yes" or "No".

Mr. McClennen: I quite agree that the answer will not do the defendants any harm, but I object to the question.

Mr. Kallis: It is a preliminary to something that follows, whether they made a proposition to Mr. Jenkins. I did not ask him what the terms of the proposition were.

The Court: I will let him state whether they made a proposition.

The Witness: We did.

Mr. Kallis: Will you please mark this for identification, Mr. Reporter?

(Thereupon telegram referred to was marked as Plaintiff's Exhibit No. 805 for identification.)

Q. I show you Plaintiff's Exhibit for identification No. 805, and ask you whether you have seen that before?

A. Yes, I have received this telegram from Mr. Jenkins.

Q. The telegram is dated May 10th, 1938, purportedly coming from Canandaigua, New York.

[fol. 2561] Mr. McClennen: Just a moment, what its purport is, we object to.

Mr. Kallis: All right, it may go out by agreement. I will offer the telegram in evidence. It speaks for itself.

Mr. McClennen: We object to the telegram being received in evidence.

Mr. Kallis: I haven't offered it, if the Court please.

Mr. McClennen: I thought you said you did.

Mr. Kallis: I said we will offer it.

The Court: Proceed.

Q. Now, you say that you proposed terms to Mr. Jenkins. Now, with reference to the date, when—strike that out, please. Did you receive this telegram which has been identified as Plaintiff's Exhibit 805 after you made the proposition to Mr. Jenkins?

A. Yes, sir.

Mr. Kallis: I offer it, if the Court please.

The Court: Let us see what it is. Have you seen the telegram?

Mr. McClennen: Yes, your Honor, and we take the general objection.

(Thereupon a newspaper page was marked as Plaintiff's Exhibit No. 806 for identification.)

[fol. 2562] The Court: Do you make any question of proof of authentication? There is nothing to show who sent it.

Mr. McClennen: Precisely we make no objection that this paper was received by this witness, but we object to its admissibility.

By Mr. Kallis:

Q. Mr. Lauer, I now show you Plaintiff's Exhibit for identification No. 806, and ask you to examine it, please.

A. I received the copy of this "Daily Message" of Canandaigua, New York, dated May 10th, 1938.

Q. That is the same date as the telegram?

Mr. McClennen: That is objected to. The telegram is not in evidence.

Mr. Kallis: All right.

The Witness: It is dated May 10th, 1938, calling attention——

Mr. McClennen: Just one moment.

The Court: That is enough.

The Witness: I received that paper.

Q. You read that item designated on page 3 of the "Daily Message", Canandaigua, New York, Tuesday, May 10th, 1938, and read the item in the two left columns with reference to the construction of a theatre in the Flannagan Block?

[fol. 2563] Mr. McClennen: Just a moment.

The Court: Leave that reference to the construction of a theatre out. I will let it stand that he read that certain column.

Q. The details with reference to the proposed construction of a theatre——

Mr. McClennen: That is objected to.

The Court: Sustained.

Q. Did you read the left-hand column on page 3?

A. Yes, sir.

Q. And the column immediately to the right of that?

A. Yes, at the time I received it.

The Court: Can you give the date?

The Witness: I received it within a day or two after May 10th.

Mr. Lauer:

Q. What, if anything did you do with reference to this telegram identified as Exhibit No. 805 for identification and newspaper item designated as Plaintiff's Exhibit 806 for identification?

Mr. McClennen: That is objected to.

The Court: The form of the question is wrong.

Mr. Kallis: What, if anything, did he do, is the question I asked.

Mr. McClennen: That, of course, is objected to.

The Court: Overruled. He received the paper on a [fol. 2564] certain date. Now, with respect to what that notice was and what the paper states, I will let him state what he did after that date in connection with the theatre.

By Mr. Kallis:

Q. All right, Mr. Lauer, what did you do?

A. After receiving the telegram and reading it, I dropped the matter entirely.

Q. Did you talk with anybody?

A. We talked with Mr. Jenkins.

Q. Did you talk with Mr. Wallace?

A. I talked with Mr. Wallace.

Q. When did you do that with respect to the receipt of these exhibits?

Mr. McClennen: For identification.

Q. For identification?

A. Within a day or two, I assume.

Q. Did you have occasion, after you received this newspaper and telegram and talked with Mr. Wallace, to go to Canandaigua and talk with Mr. Jenkins?

A. I did.

Q. And did you have a discussion concerning the telegram?

Mr. McClennen: That is objected to.

The Court: I will let him state if he had a talk about [fol. 2565] the purchase of the building. That is as far as he can go.

Mr. Kallis: Your Honor said there wasn't anything in the record to show Mr. Jenkins sent the telegram. I am offering by this witness to show he talked with Mr. Jenkins, said he received the telegram and asked him if he sent it, and Mr. Jenkins' statement was that he had sent it.

Mr. McClennen: Purely hearsay.

The Court: The question is whether he made a deal or did not make a deal. The question is whether he did or did not at that time after the receipt of this newspaper of a certain date. I don't think you can state what Mr. Jenkins stated or somebody else said.

Mr. Kallis: With regard to a telegram that bears Mr. Jenkins' signature?

The Court: That question would be obviated by the answer whether he made a deal or did not make a deal.

Mr. Kallis: Your Honor's point is well taken. The reason for the question is that the telegram and newspaper are dated the same day, and I wanted to show a causal connection.

Mr. McClennen: That is objected to on the ground that [fol. 2566] the date of the newspaper and the date of the telegram are not in evidence.

Mr. Kallis: What was the last question?

(Preceding question read.)

The Court: Objection sustained.

Mr. Kallis: I have made my offer, if the Court please. I now offer in evidence Plaintiff's Exhibit for identification No. 806, the newspaper.

Mr. McClennen: That is objected to.

The Court: Overruled at this time.

Mr. Kallis: All right. I will take care of that later. I offer Plaintiff's Exhibit No. 804, which are the plans.

Mr. McClennen: That is objected to.

The Court: Does it appear who drew these plans? There is nothing to show here where they come from so far.

Mr. Kallis: He said these were a set of plans that were drawn for this proposed theatre.

The Court: Prepared by whom?

By Mr. Kallis:

Q. Mr. Lauer, do you know who prepared these plans?

A. Yes, Mr. Wallace, not Mr. Wallace, but Mr. Wallace P. Beardsley.

[fol. 2567] Q. Where does he reside?

A. In Auburn, New York.

Q. What is his business?

A. Architect.

Q. From whom did you receive these plans?

A. At that time from Mr. Wallace.

Mr. Kallis: I offer the plans in evidence, if the Court please.

Mr. McClennen: We object, if the Court please.

The Court: I think they should be received.

Mr. McClennen: Before that ruling is made final, might I call your attention to the fact that if these plans were at all material in this case it would be appropriate that they be presented by a witness whom we could cross-examine with reference to the feasibility of the plans for the place, and whether they amount to anything more than just a piece of paper.

The Court: The question is simply whether plans were drawn, that is all. Not a question of the desirability of the location. Just the fact that plans were drawn. I presume the purpose is to show it is connected with the purpose to purchase.

[fol. 2568] Mr. McClennen: This, if your Honor please, could not possibly be described as a plan. It shows on its face that it is nothing to be dignified by that description. We object to its being received.

Mr. Kallis: I offer it, if the Court please, for what it shows on its face, and in order to please Mr. McClennen I will withdraw my characterization of the document as a plan.

The Court: This paper, you say, you had prepared by Mr. Wallace?

The Witness: No, I did not have it prepared.

The Court: At whose instance did he prepare it?

The Witness: My understanding, of course, was it was prepared for Mr. Wallace by Mr. Beardsley, the architect.

The Court: I thought you said Mr. Wallace. I will receive it. I don't think it is for the purpose of showing—I think it better be marked for identification, and pass on it later.

[fol. 2569] John C. Herzberger a witness called by and on behalf of the Plaintiff and having been first duly sworn was examined and testified as follows:

Direct examination.

By Mr. Wright:

Q. Where do you live, Mr. Herzberger?

A. I am living in Selma, North Carolina.

Q. How long have you resided there?
A. About four years.
Q. What is your occupation?
A. I have a tourist court.
Q. You were formerly engaged in the theatre business?
A. I was.
Q. Where?
A. At Perry, New York.
Q. For how long?
A. 22 or 23 years.
Q. What was the name of your theatre?
A. The Auditorium.
Q. That was during what period?
A. 1913 to 1934 or 1935.
Q. Calling your attention to the year of 1935, did you receive a visit from any one connected with the Schine organization?
[fol. 2570] A. I did.

Mr. McClennen: That is objected to unless he mentions the name.
The Court: Let him state from whom.

Q. Who, if any one, called at your theatre there, say, in the month of July, 1935?
A. Mr. May.
Q. Where was it that he saw you?
A. In front of the theatre.
Q. Anybody else present?
A. Oh, the operator, I believe, and I think my son was there also.
Q. What is your son's first name?
A. Parker.
Q. What was said at that conversation?
A. With Mr. May you mean?
Q. Yes.
A. Mr. May introduced himself and said that he had just closed a deal with Porter Davis, buying a lot for Mr. Schine; they were to build a theatre there seating a thousand persons and costing about $100,000.

The Court: In Perry, you mean?
The Witness: In Perry, yes.

Q. Was that all the conversation?
A. No. He said he hoped Mr. Schine—let's see—Mr.

[fol. 2571] Schine says for him to tell me he hoped we would be friends, or something of that sort.

Q. What did you say?

A. I don't remember my answer. I didn't feel much like talking about anything.

Mr. Wright: I would like to read into the record at this point the answer to interrogatory No. 31, which is headed "List all real estate in which the defendant has had any interest, either by ownership or option to purchase, lease, or option to lease, or otherwise, at any time since August 1, 1931, with the exception of real estate on which a theatre has been located continuously during the entire period of defendant's interest therein, indicating location, nature of interest, date of acquisition, from whom acquired, date on which interest terminated, nature of any improvement during the period of defendant's interest."

Mr. McClennen: We take the same position as before, contending that if a part of the answer to this interrogatory is read, that any other part of it may be read by us at the [fol. 2572] appropriate time.

The Court: We will cross that bridge when we come to it. I am going to let him read what parts he wants to, and I will decide on the question of your right to read it when that question arises.

Mr. Wright: The answer is in the form of a tabulation. Under "Location" appears the statement "Main Street, Perry, New York." Then "Nature of interest: Fee." Then "Date of acquisition: July, 1935." "From whom acquired: Davis." "Date on which interest terminated" is blank. "Nature of improvement now existing": "Vacant land."

By Mr. Wright:

Q. Were you a reader of the weekly paper there at Perry?

A. I was. I still have it.

Q. "The Perry Record" that is?

A. "Perry Record."

Q. After Mr. May's conversation with you did you see any announcement in the paper with reference to that Davis property?

A. I did.

[fol. 2573] Mr. McClennen: That is objected to. That would call for the contents.

The Court: Sustained.

Mr. Wright: It did not call for the contents. I asked if he saw it.

The Court: Yes, it does. It calls for some announcement with reference to the theatre property.

Mr. Wright: Mark these as the next exhibits for identification.

(Four newspapers, "Perry Record," were marked as Plaintiff's Exhibits 807, 808, 809 and 810 for identification.)

By Mr. Wright:

Q. Now, Mr. Herzberger, do you recognize this document that has been marked for identification as Plaintiff's Exhibit 807 as a copy of the Perry Record for Thursday, July 11, 1935?

A. I do.

Q. Did you read it when it came out?

A. Yes.

Q. Did you note at that time the item on the first page there that is outlined in red pencil and headed "Exercise Option of Theatre Site"?

Mr. McClennen: That is objected to.

The Court: Sustained.

Mr. McClennen: Why can we not have——

[fol. 2574] The Court: Sustained. All I think you can do at this time is to fix some date, as of that date, but the contents of the paper, of course, would be hearsay.

Mr. Wright: I think we are entitled to show what knowledge this witness had, whether by hearsay or otherwise. We went into extensive cross examination of Mr. Essick, in which he was asked what rumors, what he had heard about Schine coming into the town. I submit this witness can always testify as to what he saw in the paper.

The Court: If it was received without objection, as these questions were, that is one situation. On cross examination, that is another situation. There is no basis for this.

Mr. McClennen: The question was stating the contents of the paper.

The Court: I will let you show that he read that on the date it bears, such-and-such a date.

Mr. McClennen: That is not the objection that we make.

The Court: I know that.

Mr. McClennen: I am charging that Counsel for the plaintiff attempts to get in the contents of papers not yet admitted [fol. 2575] in evidence, and that is the ground of my objection.

The Court: I am agreeing with you, but I have suggested to him—permitting him to show the date, in order to fix the date that something happened.

By Mr. Wright:

Q. I call your attention to this document, which has been marked as Plaintiff's Exhibit 808 for identification, and ask you if you recognize that as a copy of the Perry Record for August 1, 1935?

A. I do.

Q. Did you read that at the time it came out?

A. I did.

Q. Did you read the article on the front page, that is, with the red line around it?

A. I did.

Q. What was the next time after Mr. May called on you that you saw any representative of the Schine Company?

Mr. McClennen: That is objected to, because it calls on him to determine whether he was a representative.

The Court: He can state who he saw.

Mr. Wright: He might have seen 50 people after that date, but I suppose, to shorten it up, I wanted to identify in some [fol. 2576] way the particular person.

The Court: Whom did you next see?

The Witness: I met Mr. Schine at the Seneca Hotel in Rochester.

Q. What were the circumstances which led up to your meeting with Mr. Schine?

Mr. McClennen: That is objected to.

The Court: Overruled.

A. Mr. Seed, the manager of the—I don't remember the first name.

Q. Was it Harry Seed?

A. Harry Seed, yes, manager of the Warner Bros. exchange in Buffalo, he asked me to meet Mr. Schine in Rochester.

Mr. McClennen: I object to what Mr. Seed said, if your Honor please, and also, no date is fixed.

The Court: Unless there is some connection between Seed and Mr. Schine it is not material—I will let him state the transaction that took place between Mr. Schine.

Mr. Wright: Mr. Seed was manager of Warner Bros. exchange at Buffalo.

The Court: I will receive it. All right. Mr. Seed wanted you——

The Witness: Mr. Seed wanted me to meet Mr. Schine at the Seneca Hotel.

[fol. 2577] Q. You met Mr. Schine at the Seneca Hotel?

A. I did.

Q. Who was present there?

A. Mr. May, Mr. Seed, Mr. Schine and myself.

Q. Any one else?

A. Nobody else.

Q. What was said then?

A. I don't just remember what all was said but Mr. Schine offered me $5,000 for my lease on the theatre.

Q. You were leasing the theatre from whom?

A. From the Town of Perry. I accepted the offer and——

The Court: You, what?

The Witness: I accepted the offer. He drew up a paper—Mr. May drew up a little agreement. We both signed it. The agreement expired on September 1st, but the Town Board objected to having Mr. Schine——

Q. Confine yourself to the conversation there. Was anything said at this conversation about assigning the lease that you had?

A. Oh, yes. I would have to assign the lease. I told him it would be—that the Town Board would not let me sell the lease unless they agreed to it.

Q. You could not assign without the Board's consent?

A. No, I could not assign the lease without they agreed to it.

[fol. 2578] Q. Then, was that all the conversation you had there?

A. I think so.

Q. Then you returned to Perry?

A. I did.

Q. Did you go to the Town Board about assigning the lease?

A. I did. I was at their next meeting, but they refused to have Mr. Schine in there. Wanted me to stay.

Q. Then did you communicate those facts to Mr. May or Mr. Schine?

A. I wrote to Mr. Schine or Mr. May. I don't remember which. I told him the Town Board disagreed, they would not have—would not let me sell the lease.

The Court: Would not have, what?

The Witness: Would not let me sell the lease.

By Mr. Wright:

Q. That was prior to September 1st that that happened?

A. Yes.

Q. Then I will show you this document, marked Plaintiff's Exhibit 809 for identification, and ask you if you recognize that as a copy of the Perry Record for September 26, 1935?

A. I do.

Q. Did you read that on the day it came out?

A. I did, sir.

Q. Did you read the second item from the bottom, in the [fol. 2579] second column from the left, that has the red pencil circle around it?

A. I did, sir.

Q. Do you recognize this document marked Plaintiff's Exhibit 810 for identification as the issue of the Perry Record for Thursday, October 31, 1935?

A. I do.

Q. Did you read that at the time it came out?

A. I did, sir.

Q. Did you read the article at the bottom of the second column from the right, which has the red pencil circle around it?

A. I did, sir.

Q. During September or October of 1935 what, if any, negotiations did you have with any one else for the sale of the theatre?

A. Mr. Osborne of Dipson & Osborne came to see me several times about taking over my lease.

Q. Did you make a deal with them?

A. I made a deal with them, yes.

Q. Did you then continue to have any connection with the theatre?

A. You mean after I sold to them?

Q. After you made the deal with Osborne and Dipson.

A. Yes, I stayed there and managed the theatre for a year.

[fol. 2580] Q. And then you left?

A. They sold—Dipson & Osborne had sold it to Schine, and so I was through.

The Court: What was the last?

The Witness: Dipson & Osborne sold to Mr. Schine, so I was through.

Q. You left at the time the lease was taken over by Mr. Schine?

A. Yes.

Q. Did you leave Perry then?

A. I did.

Q. Now, during the time you were there did you notice whether there was any theatre constructed on the Davis property?

A. There has nothing been done to the property.

Q. Any other theatre constructed there besides the Auditorium?

A. No.

Q. Have you had occasion to return to Perry since you lived there?

A. I am back there once a year.

Q. You have not observed any other theatre there?

A. There is none there, no.

Q. During the time, prior to your sale to Mr. Dipson, were you making money at the theatre?

A. Oh, yes.

[fol. 2581] Mr. McClennen: That is objected to.

The Court: Overruled.

Q. What were the circumstances which led you to sell to Mr. Dipson?

Mr. McClennen: That is objected to, if your Honor please.

The Court: How is that material here? He said he was making money. The reason for his sale would not be losing money, so I don't see how it would be material.

Mr. Wright: Apparently there would be some other reason he was trying to get out. What the reasons or circumstances were for selling out, I think he is competent to state.

The Court: He can state the facts, what happened, what he did.

Mr. Wright: I think we already have the essential facts.

The Court: Not with reference to the Dipson transaction. What occurred, what happened in the interim subsequent to the Schine negotiations and the purchase by Dipson? What transpired during that period?

The Witness: After I sold it to Dipson?

The Court: No, after you negotiated with Schine before you sold it to Dipson.

The Witness: A representative of Mr. Schine called on the [fol. 2582] Town Board and had another meeting before September 1st, and the Town Board left it up to me— they must have had a talk with the Town Board first—and the Town Board left it up to me to decide whether I would sell to Dipson or would I keep the theatre, so I decided I would keep the theatre at that time.

Mr. Wright: You said "Dipson." Did you mean Schine?

The Court: Left it up to you to say whether you would sell to Schine or not?

The Witness: Yes, that was it. I told them I would keep the theatre myself.

By Mr. Wright:

Q. What were the facts which caused you to change your mind about keeping the theatre and selling to Dipson?

Mr. McClennen: That is objected to. It calls for a conclusion.

The Court: State what transpired after these negotiations with Schine. What happened after that before you decided to sell to Dipson?

The Witness: Dipson offered me more money than Schine did.

By Mr. Wright:

Q. Any other?

A. That is the reason I sold to them, yes.

[fol. 2583] Q. Is there any other reason for the sale?

Mr. McClennen: That is objected to, if your Honor please.

The Court: I will let him state, if he can, state the facts.

The Witness: Other reason for the sale?

Q. At the time you sold to Mr. Dipson did you want to go out of the theatre business entirely?

A. Well, I was anxious to get out on account of Mr. Schine buying that lot in there. If he built a theatre in there I would be losing money right along, wouldn't I?

Mr. McClennen: I ask that it be stricken out.
The Court: Yes. I will let him state, though, what the facts were about Schine having other property in there.
Mr. McClennen: May this answer as given go out?
The Court: Yes, as it stands now.

By Mr. Wright:

Q. How large is Perry, Mr. Herzberger?
A. Perry is about 4200.
Q. Do you think it was large enought to support a thousand-seat house in addition to the one you had?
A. I don't think so.

The Court: 4200 in the village, you mean. That would not include the town?
The Witness: No, just the village of Perry.

Q. Was that your opinion at the time, that it would not?
[fol. 2584] A. It was, yes.
Q. Did that opinion have anything to do with your selling the theatre to Mr. Dipson?

Mr. McClennen: That is objected to.

A. It did.

The Court: Overruled.
Mr. Wright: That is all.

Cross-examination.

By Mr. McClennen:

Q. Mr. Dipson improved the theatre at a substantial expense, did he?
A. Yes, sir.
Q. Put in something like $15,000 or $20,000?
A. I don't think it was that much.
Q. Not that much?
A. I think it was about $13,000.
Q. About $13,000?
A. Yes.
Q. That made the theatre a satisfactory theatre?
A. Yes.

Q. And removed any occasion for having another theatre built in the place?

A. Yes, sir.

Q. Before that improvement the theatre was not at all a [fol. 2585] modern theatre?

A. No.

Q. Been there a long time?

A. Oh, it was built in 1898.

Q. Was it built then as a theatre?

A. Yes, it was.

Q. Had at that time the kind of equipment for stage performances?

A. Yes.

Q. Of course, nothing in it done by way of providing for moving pictures at that time?

A. When it was first built, you mean?

Q. Yes.

A. No.

Q. No attention in its building was given to having its construction of a kind that would be adapted to showing motion pictures?

A. No.

The Court: How long after you sold to Dipson did Schine buy it?

The Witness: About a year later.

The Court: How many seats were in the Auditorium?

The Witness: About 700 after they rebuilt it. They reseated the theatre.

The Court: You mean after Dipson——

[fol. 2586] The Witness: After Dipson & Osborne got it.

The Court: How many did you have in there?

The Witness: Around 600.

The Court: The town still retains title to the building? It is on lease?

The Witness: I think the place is still leased. I saw something in the paper about them having a new post office, last week or the week before last.

The Court: A post office in one part?

The Witness: Post office in the front part, yes, downstairs.

The Court: I have known the building a great many years.

Mr. McClennen: No further questions.

Re-direct examination.

By Mr. Wright:

Q. One further thing that I wanted to clear up. The Davis property there, was that also known as White's Opera House?

A. Yes, it was.

Q. They referred to the same property?

A. Yes.

Mr. Wright: That is all.

Mr. McClennen: That is all.

The Court: We will suspend now until 2 o'clock.

(Whereupon a recess was taken until 2 o'clock p. m.)

[fol. 2587] After Recess, 2 o'clock p. m.

Appearances: As before noted.

Walter A. Smith called as a witness in behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Wright:

Q. Where do you live, Mr. Smith?

A. Elmira.

Q. Elmira, New York?

A. Elmira, New York.

Q. What is your occupation?

A. Hotel keeper now.

Q. How long have you been in the hotel business?

A. About four years.

Q. You were formerly in the theatre business?

A. About 25 years.

Q. You were at one time employed by the Schine Company?

A. I was.

Q. Where was that?

A. That was in Corning, Lockport and Medina.

[fol. 2588] Q. Did you manage theatres for them in those locations?

A. Yes, sir.

Q. What was the period that you were in Corning?

A. Well, I was in Corning I think three or four different times. The first time I think was 1924.

Q. Calling your attention to 1930, were you then managing a theatre in Corning for Schine?

A. 1930, I was there when they took the houses back.

Q. When they took them back from the Fox Company?

A. From the Fox Company.

Q. That would be what date?

A. That would be 1929 or '30.

Q. You are referring now to the date that the houses were leased to the Fox Company or the date they were taken back?

A. The date they were taken back.

Q. That would be somewhat later, would it not?

A. I just don't remember the date.

Q. 1933, would you say?

A. It was around 1932 or 3.

Q. Then, now, what theatres were there then?

A. In 1933?

Q. Yes.

A. The Fox, the State, the Palace and Plaza.

Q. The Fox, State, Palace and Plaza?

[fol. 2589] A. Yes, sir.

Q. The Fox and State were operated by whom?

A. The Schine people took them back from Fox.

Q. How about the Palace?

A. The Palace at that time was operated by Gerber.

Q. Mr. Frederick Gerber?

A. Yes, sir.

Q. Who was operating the Plaza?

A. Davy & Cohen.

Q. Did you later become associated with the operation of the Palace with Mr. Gerber?

A. I became a partner.

Q. Then how long were you connected with Mr. Gerber, that was, as partner in the operation of the Palace?

A. The Palace Theatre about 14 months.

Mr. Rogers: May we get the dates on that, please?

Q. Was that after or before Schine resumed the operation of the State and Fox Theatres?

A. Fox had the theatres at the time Gerber and I were in partnership.

Q. That was before the period you were in partnership with Gerber, just before?

A. The other two houses were run by Fox.

Q. Then after dissolving your partnership with Mr. Gerber did you continue to operate theatres then?

[fol. 2590] Mr. McClennen: Has he stated when that was?

Mr. Rogers: No, he has not stated.

Q. When was that, as near as you can recall?

A. I could not tell you the dates.

Q. Well, with reference to the time that Schine resumed the operation of the theatres that Fox had been operating?

A. I would say in 1933.

Q. About 1933; then after that did you have anything to do with theatre operations?

A. Yes, I stayed in business.

Q. Where?

A. I was up with Mr. Smalley in Cooperstown, I was in business for myself.

Q. Where were you in business for yourself?

A. Addison and Hammondsport.

Q. The period you were in business at Addison?

A. I was there about six years, 1934 to 1940.

Q. Can you tell us where Addison is with reference to Corning?

A. Well, it is just about 12 miles west of Corning.

Q. And during this period that you operated in Addison, were you familiar with the theatre operations generally in Corning?

A. Kept posted on them, naturally.

[fol. 2591] Q. Do you recall when it was that Schine then took over the operation of the Palace at Corning?

A. That I could not tell the exact date, I don't remember.

Q. Approximate year, do you remember?

A. I would say 1934.

Q. No, when Mr. Schine acquired it?

A. From Gerber?

Q. Yes.

A. That I could not tell you because I wasn't interested when Gerber sold it to Schine.

Q. Yes, that was after you were out of the Palace, I understand?

A. I was out then.

Q. Then you were operating the theatre at Addison?

A. Yes, sir.

Q. How big was Addison?

A. Oh, I would say about 1400.

Q. You had the only theatre there?

A. Yes, sir.

Q. Now, calling your attention to the year 1937, what admission prices were you charging in Addison?

A. Addison, 10 and 25.

Q. 10 for what?

A. 10 for children under 12 and all over 25.

Q. Matinee and evening?

[fol. 2592] A. I only run two matinees, Saturdays and Sunday.

Q. Do you know what prices were being charged during the same period in the Corning first-run houses that were operated by Schine?

A. Well, at that time I think the Palace was 10 and 25; the State was 10 and 20. I think the Fox had two prices, balcony price 25 and 40, 10 for children.

Q. 25 in the balcony and 40 for adults?

A. And 10 cents for children.

Q. 10 cents for children. During that year of 1937, you played a selection of major product, at your theatre?

A. A selective contract with all the companies.

Q. And approximately when did you play pictures there with reference to the time the major features played first-run in Corning?

Mr. Rogers: To that I object on the ground the contracts are the best evidence.

The Court: No, if he knows what the major products were, he may state.

Mr. Rogers: But the question was directed to clearance, may it please the Court.

Mr. Wright: I did not ask him about clearance, I asked him when he played the major products with reference to when it was played first-run in Corning.

[fol. 2593] Mr. Rogers: That is clearance, isn't it?

The Court: He can state whether, when being played in two different towns, they were played at the same time.

Mr. Rogers: That is clearance and the contract will show what contract he had and what clearance was played against him.

The Court: The question is whether you had the major products at the same time they had them at Corning.

The Witness: They had 30 days protection ahead of me.

Mr. Rogers: That is why I raise the objection.

Mr. Wright: At this point we are not interested in the details. I merely want to establish where his playing position was with reference to the first-run in Corning. Will you read the answer?

(Answer read.)

The Court: I will let it stand.

Q. That is, you played the major product, did you, 30 or more days after it played first-run in Corning?

A. Yes, sir.

Q. And calling your attention again to the year 1937, do you recall whether or not there were any so-called student tickets issued in your town for the Schine theatres in [fol. 2594] Corning?

A. You mean Schine had them for Addison students?

Q. I am asking you generally with reference to so-called student tickets issued by Schine.

A. They had a student ticket for 15 cents.

Q. That was the ticket and 15 cents admitted——

A. —any school person, regardless of the age.

The Court: Who had that?

The Witness: The Corning theatres.

The Court: All the Corning theatres?

The Witness: Yes.

By Mr. Wright:

Q. Including Schine?

A. Yes.

Q. Were these tickets issued by the Schine theatres or all the theatres in Corning?

A. First issued by Schine and then Gerber went into it, too. He had it.

Q. With specific reference to these tickets that were issued by Schine, they were good for admission to either of the Schine houses, with 15 cents?

A. Yes.

Q. Do you know how long that practice continued?

A. Oh, I would say probably a year and a half or two years.

Q. Those admissions were good for any time, day or night?

[fol. 2595] A. No, I think they wasn't good on Saturdays or Sundays.

Q. Other than Saturdays or Sundays, any other evening?

A. Yes.

Q. Were tickets of that character distributed by Schine in your town of Addison?

A. They wasn't distributed by Schine, but they was by one of his managers.

Q. Do you know what, if any, qualifications were necessary to receive them, who was a student?

A. I don't think they had any ruling on it, as long as they got a ticket.

Q. Did you ever make any complaint with respect to that practice to any of the film exchanges?

A. I did to all of them.

Mr. Rogers: That is objected to as immaterial.

The Court: State what was said and by whom.

Q. Did you ever discuss that practice with any of the representatives of the major film companies with whom you were doing business?

Mr. Rogers: I press my objection to that, that is immaterial, may it please the Court.

The Court: I will let him state whether he discussed the subject, without stating what the discussion was.

Q. Answer yes or no.

[fol. 2596] A. Yes.

Q. With whom?

A. With Harry Seed, Warner Bros., Sid. Sampson with Fox, Ted O'Shea with Metro-Goldwyn.

Q. Anybody else?

A. No, that is practically the three.

Q. During what time were these discussions?

A. I would talk it over with them every time I would go to Buffalo. I was in Buffalo every two weeks booking pictures.

Q. During the time these tickets were being distributed?

A. Yes.

Q. First let us take it company-by-company. What conversation did you have with Mr. Seed about it?

Mr. McClennen: That is objected to.

Q. The substance of what you said and what he said?

Mr. Rogers: That is objected to, may it please the Court, immaterial and incompetent.

The Court: If Schine and those other theatres had a 30-day clearance how would the question of the sales of so-called student tickets affect your theatre?

The Witness: Well, it took my Addison high school crowd down there, because they played the picture before I did.

[fol. 2597] The Court: Objection overruled.

By Mr. Wright:

Q. Can you say what was said, as nearly as you can recall, in your conversations with Mr. Seed?

A. I never got any place——

The Court: Strike it out.

Q. You can't give any conclusions. Just the substance of what you said to him and what he said to you, as nearly as you can recollect.

A. I would ask what they could do about it. He said "Nothing. You can do the same." I said, "I don't want to do the same, because I haven't got enough seats."

The Court: You haven't got enough seats?

The Witness: No, I did not have very big seating capacity.

Q. What did he say to that?

A. Said that is all could be done about it. I asked him if I could go into a 10-cent price on the pictures. He said, "Not with my product, you can't."

Mr. Rogers: I move to strike it on the ground that it is incompetent.

The Court: Overruled. Motion denied.

By Mr. Wright:

Q. What was the conversation you had with—was it Mr. O'Shea of Metro?

A. Yes, Mr. Ted O'Shea.

[fol. 2598] Q. Tell us as nearly as you can recall what was said by you and what was said by him when you discussed this question.

A. The same questions to him, that I would like to kill the 15-cent ticket.

Mr. Rogers: That, of course, is subject to the same objection.

The Court: Yes. Say what was said.

The Witness: He just said there was nothing he could do about it, or the Buffalo office.

Q. Did he say why?

A. No. They all had the same answer, I could do the same.

Q. Who was the other gentleman you say you talked to?

A. Sid. Sampson, Harry Seed——

Q. Sid. Sampson, he was with——

A. Fox.

Q. What did you say to Sampson and what did he say to you about that subject?

Mr. Rogers: Same objection, may it please the Court.

The Court: Overruled.

The Witness: It was the same conversation. I never got what I wanted and they still used the student tickets.

Mr. Rogers: I move to strike it out.

The Court: Strike it out, not responsive.

[fol. 2599] Q. You cannot say it was the same conversation. Say what the conversation was, as nearly as you can recall.

A. I asked if there was anything I could do to kill the student price. He told me there wasn't, that they could do.

Q. After you had these conversations did the student tickets continue to be distributed in your town?

A. They never distributed the tickets only the once in Addison.

The Court: What?

The Witness: Just the one time, but they were good indefinitely.

Q. They were distributed once, but they continued to honor the tickets after these conversations?

A. Yes.

Q. You say, as I understood your former answer, this practice continued for about a year and a half?

A. I would say approximately a year and a half.

The Court: He said they were distributed only once.

The Witness: But I mean the tickets were good for that length of time.

The Court: Oh, I see.

By Mr. Wright:

Q. Then it was discontinued some time in 1938?

A. I would say yes.

[fol. 2600] Q. Can you fix that time in 1938 any better than that, just some time during the year? Do you know whether it was summer, spring or fall?

A. I think it was in the fall.

Q. The fall of 1938. Did you have any conversations with these exchange managers you have referred to during this same period, with respect to reducing the amount of clearance held by the first-run Corning theatres over you at Addison?

A. Well, no, I never did, because I was always—I was 30 days behind them. When they played one product I played another. I tried to keep away from it.

Q. You tried not to play the same picture——

A. If they were playing a Metro picture I would put in a Fox.

Q. Whatever you did play was played at least 30 days——

A. They played a lot of pictures I did not play at all. I had a selective contract.

Q. You did not play all their pictures?

A. I did not play all their product.

Q. The pictures you did play, as I understand it, were played at least 30 days prior thereto, first-run, Corning?

A. Yes, sir.

Mr. Wright: That is all.

Mr. Rogers: No cross examination.

[fol. 2601] **Charles V. Martina** a witness called by and on behalf of the Plaintiff and having been first duly sworn was examined and testified as follows:

Direct examination.

By Mr. Kallјs:

Q. Mr. Martina, where do you live?
A. Albion, New York.
Q. What is your business or profession?
A. Operating theatres.
Q. Where?
A. At Albion.
Q. How long have you operated a theatre at Albion?
A. Twelve years.
Q. Were you in the motion picture exhibiting business before you went to Albion?
A. Yes.
Q. How many years prior to the time you went to Albion were you engaged in the business of exhibiting?
A. Fourteen years.
Q. Calling your attention to the Empire Theatre in the City of Syracuse, New York, Mr. Martina, did you at any time have any connection with that theatre?
A. Yes.
[fol. 2602] Q. And with reference to the year 1939, was the Empire Theatre being operated?
A. Yes.
Q. When did you become interested in the operation of the Empire?
A. In the fall of 1939.
Q. Did you during the fall of 1939 have a lease on the Empire Theatre?
A. No——
Q. That is all; you did not?
A. No.
Q. Did you later obtain a lease on the Empire Theatre?
A. Yes.
Q. When was that lease executed?
A. In January of 1940.
Q. When did you take possession of the Empire Theatre?
A. March 10, 1940.
Q. Now, Mr. Martina, calling your attention to the fall

of 1939, did you make any effort to obtain products for the Empire Theatre—for the period beginning when you were to have possession?

A. Yes.

Q. What was the nature of those efforts?

A. When I first negotiated with the landlords, I wrote all the film exchanges about October, and I saw them in [fol. 2603] person in Buffalo.

Q. Briefly, what did you say in those letters?

Mr. Rogers: One moment. May it please the Court, that is objected to.

The Court: Sustained.

The Witness: Well,——

The Court: You need not answer.

Q. Did you have any oral conversation with any representatives of the film companies in the fall of 1939?

A. Yes.

Q. When was that?

A. The first time was in October, and in December of 1939 I signed the application for lease, and then I went to Buffalo in the latter part of December, 1939, and spoke to all of them.

Q. Now, you said something about October. Did you have any conversations in October, 1939, relative to buying product?

A. Yes, but I did not make a special——

Q. Just a moment. The answer is yes, you say?

A. Yes.

Q. Whom did you see?

A. I saw Charles Rich of Warner's, the exchange manager.

Q. You say you saw Charles Rich of Warner Bros.?

A. Yes.

[fol. 2604] Q. In October, 1939?

A. Yes.

Q. Where?

A. Buffalo.

Q. What did you tell him?

Mr. Rogers: One moment.

Mr. McClennen: The general objection.

The Court: Does it appear what Rich's position was?

Mr. Kallis: Yes, he was the branch manager of the Buffalo office, and I understood Mr. Martina said something to that effect.

By Mr. Kallis:

Q. Had you known Mr. Rich before?
A. Yes.
Q. How long had you done business with him prior to this conference?
A. I can't recall——
Q. Approximately how many years?
A. —how long he was in Buffalo before that. It was several years.
Q. Several years?
A. Yes.
Q. What had been the nature of your dealings with him?
A. Why, we bought pictures.
Q. He was with what company?
[fol. 2605] A. Warner Bros.
Q. What was his position?
A. Exchange sales manager.
Q. What was said at that conversation?

Mr. McClennen: Just a moment. I don't see that name as being in that position in the list furnished by Warner.

Mr. Kallis: I think the defendants will stipulate that Charles Rich was then working in the Buffalo office of Warner Bros. Are you willing to stipulate that way?

Mr. McClennen: No.

Mr. Kallis: You are not?

Mr. McClennen: No.

Mr. Kallis: All right. Read the last answer.

(Last answer read.)

Mr. Kallis: Read the question.

(Question read.)

Mr. McClennen: That is objected to.

The Court: It is incompetent at this time, unless you show some position—it does not appear what position this man held with the Company.

Mr. Kallis: He testified, if the Court please, that he was branch manager of the Buffalo office.

The Court: Did you say that? Did you?

[fol. 2606] The Witness: Yes, he was sales manager, exchange manager.

Mr. Rogers: That is what the witness said, but the record does not bear it out, may it please the Court.

The Court: We have salesmen and then we have general branch managers. You say sales manager. Does that mean branch manager or does it mean salesman?

The Witness: It really means both branch manager and sales manager.

The Court: Acting in both capacities?

The Witness: He is really the top man.

The Court: Your point is this man is not named as one occupying that position?

Mr. Rogers: Yes, sir, that is the point that is made.

The Court: When was this, did you say?

The Witness: Fall of 1939.

The Court: His office was in Buffalo, you say?

The Witness: Yes.

By Mr. Kallis:

Q. Mr. Martina, prior to this particular conference in question, had you had occasion to see Mr. Rich in Buffalo?

A. Yes.

Q. To the best of your recollection, how often?

A. Well, I would say a dozen times anyway.

[fol. 2607] Q. During what period, how many months?

The Court: Covering what time, he means.

The Witness: It seemed that I knew him for several years before this deal in Syracuse, as I can recall. I must have known him a couple of years.

Q. You met him at the office of Warner Bros?

A. Yes.

Q. In Buffalo?

A. Yes.

Q. Now, Mr. Martina, will you please tell the Court what the conversation was in October?

Mr. Rogers: I still press the objection.

The Court: Did you purchase pictures of this man before?

The Witness: Yes, Judge.

The Court: Over what period of time preceding the time in question, two years, do you mean?

The Witness: As near as I can recall, I believe he must have been in Buffalo for several years before that time.

The Court: How long had you been buying pictures of him prior to this Syracuse matter?

The Witness: Well, with the exchange we bought ever since they have been in business——

The Court: I mean with this individual.

[fol. 2608] The Witness: Well, I presume it must be as long as I knew him, for several years prior to that.

The Court: In the Buffalo office?

The Witness: Yes.

By Mr. Kallis:

Q. You bought them for what theatre?

A. For Albion.

The Court: You claim there is no such person designated?

Mr. Rogers: No, sir, the record is absolutely barren of any mention of Charles Rich, so far as our record shows, and I would like Mr. Kallis to show us any record here that is competent that shows who Mr. Rich was.

The Court: The answer to the interrogatory did not specify anybody by that name?

Mr. Rogers: In the record up to the present there is nothing about this man Rich.

The Court: Your answer to the interrogatory did not specify anybody by that name?

Mr. Rogers: Not our interrogatory, sir. That is Warner's.

Mr. Wright: There were no Warner answers to the interrogatories.

The Court: I am speaking of Warner.

Mr. Rogers: He is speaking of this man Charles Rich being branch manager of Warner.

[fol. 2609] The Court: I understand that clearly. The question is whether there was any mention of him in any way as being a branch manager of Warner.

Mr. Rogers: No, sir.

The Court: In the answers or the stipulation?

Mr. Rogers: That is what I mean, sir.

Mr. Wright: In the Schine answers to the interrogatories there is no information given as to employees of exchanges. We did have interrogatory answers as to exchange employees from Universal, United Artists and Columbia, but not from Warner. We did put in from Warner when Mr. Doherty was on the stand, we covered all the people mentioned in various correspondence, and I thought we covered at the same time all of those who were branch managers during the period in question, but it is possible that we overlooked Mr. Rich. If he did have the position as this witness seems to recall, I believe the conversation would be competent.

The Court: I think this testimony is competent.

Mr. Rogers: On the other hand, it does not lie with this [fol. 2610] witness to state what the powers are of Mr. Rich.

The Court: The statement that he was branch manager will be stricken out but I will let stand what negotiations he had with him in those various years.

Mr. Rogers: I still press my objection.

Mr. McClennen: Could I call your Honor's attention that in the testimony of the Warner——

The Court: Who?

Mr. McClennen: The testimony of the Warner representative, fixing these, Mr. H. A. Seed is given as the branch manager at Buffalo, and within the period that the witness has just described.

Mr. Kallis: Does he give the name of Rich as any kind of employee of Warner Bros. in Buffalo?

The Court: Not any employee. His relation to that would not be competent unless it is something which makes him closer with the authority to negotiate.

Mr. Wright: It appears Rich was the man, whatever his title may have been, with whom he had been negotiating deals for several years. I suppose he could say what negotiations he had with him about this deal.

[fol. 2611] The Court: I will strike out the answer that he is branch manager. I will let the statement stand of his connection with him, or his relation to him.

By Mr. Kallis:

Q. Mr. Martina, what was the conversation that occurred—give us the substance—in October, 1939. What did you say to him and what did he say to you?

A. That I was contemplating taking over the Empire Theatre in Syracuse, and that I wanted his pictures.

Q. If you recall, did you specify the quality of pictures and character of the run?

A. Yes, I was asking for first-run, second-runs, or carry-overs.

Q. What did Mr. Rich say?

A. He said that Schine had the product all tied up, and that he could not help me out. That Schine had it all.

Q. Did you see any one else connected with any of the film companies in October of 1939?

A. Yes, I saw Kenneth Robinson, exchange manager of Paramount Pictures.

Q. Where was that?

A. 464 Franklin Street, Buffalo.

Q. Give us the substance of the conversation.

The Court: Does it appear who Robinson is from the answers?

[fol. 2612] Mr. Kallis: You say, Mr. McKay, that the testimony is that Kenneth Robinson was branch manager in Buffalo in 1939?

Mr. McKay: That is right.

Mr. McClennen: Mr. Robinson was Paramount branch manager from May 2, 1932, to August 15, 1942, according to the testimony.

The Court: Proceed.

Mr. McClennen: The general objection.

The Court: Overruled.

[fol. 2613] Q. What was the substance of that conversation?

A. I told him what I was planning and at that time, in October, he said that I had better wait until I actually had an approved lease of the theatre before we could talk much further on the subject.

Q. And in that conversation did you specify the name of the theatre and location?

A. Yes, sir.

Q. What did you say?

A. The Empire at Syracuse.

Q. Whom else, if any one, did you see in October of 1939?

A. I saw Sid Sampson of 20th-Century-Fox.

The Court: What is the name?

The Witness: Sid Sampson, Sidney Sampson.

Q. What was his position at that time?
A. Exchange Sales Manager.
Q. Where did you see him?
A. At his office at 290 Franklin Street, Buffalo.
Q. Did you have substantially the same conversation with him that you did——

Mr. McClennen: That is objected to, one moment.
The Court: Sustained.
Mr. Kallis: My only purpose, if the Court please, was to save some time.
The Court: There is an objection.
[fol. 2614] Mr. Kallis: Your Honor's ruling is well taken. I did not think they would object. That is the reason I put the question in the form I did.

Mr. Kallis:

Q. Mr. Martina, will you please tell the Court what the subject of the conversation was?

Mr. McClennen: Same objection.
The Court: Sustained. What did Mr. Sampson say, in another form? Overruled.

Q. You may answer, Mr. Martina.

Mr. McClennen: I should say to your Honor while Mr. Sampson had been Branch Manager, he was not at this time.
The Court: What was his position?
Mr. Kallis: I understand he did not leave Buffalo, if the Court please, until 1943. I may be mistaken on that.
Mr. McClennen: The testimony is that Mr. Sampson was Manager, that he was there from December, 1932 to June, 1939. I am not sure that I am not in error, because there is a later statement that he was at Buffalo from 1932 to 1943.
The Court: Objection overruled.

[fol. 2615] By Mr. Kallis:

Q. And will you please give us the substance of the conversation?
A. Do you mean in October or December?
Q. October, with Mr. Sidney Sampson.
A. Well, in October he said that I had better wait until

I got the theatre until we could talk any further on the matter of pictures for the Empire, Syracuse.

Q. Did you see anybody connected with R.K.O. in October?

A. Yes, I saw Charles Boasberg.

Q. What was his position, if you know, at R.K.O.?

A. In the October conversation it was—

Mr. Kallis: Just a moment, an objection has been made.

Mr. McClennen: Who was this man?

Mr. Kallis: Boasberg.

Mr. McClennen: Boasberg was the Branch Manager at Buffalo from January, 1938 to 1940.

The Court: Proceed.

The Witness: In the conversation in October, he stated about the same thing, that I should have a lease for the Empire before I can really talk pictures for that theatre.

Q. Now, what, if any, conversation did you have with anybody connected with Universal?

A. I told John Scully, the Branch Manager of Universal, [fol. 2616] that I expected to acquire the Empire Theatre at Syracuse and I needed pictures.

Mr. Rogers: Subject to the same objection, may it please the Court.

Q. Was that in October, 1939?

A. Yes, sir.

Q. And where?

A. At 505 Pearl Street, Buffalo, at his exchange.

Q. All right, what did he say?

A. He said: "Charlie, why worry about it? Maybe you won't even get the theatre." This was in October, of course, of 1939, so I didn't talk much further with him.

Q. Did you talk with anybody connected with Metro?

A. Yes, sir.

Q. When and where?

A. During October, some time, of 1939, to Ralph Maw, the Exchange Sales Manager.

Q. What conversation did you have with him?

Mr. Rogers: Same objection, may it please the Court.

The Court: Overruled.

The Witness: That I expected to acquire the Empire Theatre from the Massachusetts Mutual Life Insurance

Company, and that I would need product, first-runs or [fol. 2617] second-runs or carry-overs.

Q. By the way, Mr. Martina, with reference to these other men with whom you talked, the other companies, will you please tell us what product and runs you requested?

A. I requested the first-run Syracuse.

Mr. McClennen: Not as to all at once. I object on that ground.

Q. All right, I will lay the foundation. Did you make the same request of all of these companies for the same quality of product and same runs?

Mr. McClennen: That is objected to.

The Court: You are making a comparison. Let him state what was said, naming them.

Q. Did I understand you, Mr. Martina, to say you talked with Ralph Maw?

A. Yes, sir.

Q. He was connected with what company?

A. Metro-Goldwyn-Mayer.

Q. What did you say?

Mr. Rogers: That is subject to the same objection.

The Court: You are speaking now of describing the type of pictures he was seeking?

Mr. Kallis: Yes.

The Court: Objection overruled.

The Witness: That I expected to get the Empire Theatre [fol. 2618] at Syracuse, and I was looking for pictures, either first-run, second-run or carry-overs.

Q. What did Mr. Maw say?

A. Well, in form and substance, he said that I should have the lease, the approved lease before you go into all the trouble of, you know, talking about runs and pictures.

Q. And what conversation, if any, did you have with anybody connected with Columbia in October?

A. About the same thing.

Mr. Rogers: I move to strike.

The Court: I don't see that it is necessary to go over that. I think you are leading up to the subject of the conversation.

Mr. Kallis: If the Court please, I asked Mr. Martina whether he had substantially the same conversation.

The Court: The question is objected to in that form. My question is, is it necessary for you to spend the time on any further statement of what took place in October?

Mr. Kallis: I will bring that to a close in one sentence.

Q. Mr. Martina, you did see somebody at Columbia?

A. Yes, sir.

[fol. 2619] Q. And somebody connected with United Artists?

A. Yes, sir.

Q. Whom did you see connected with the Columbia?

A. Yes, Phil Fox.

Q. Do you know what his position was?

A. Sales Manager.

Q. Whom with the United Artists?

A. Sidney Lehman.

Q. What was his position?

A. Branch Manager, Sales Manager.

Q. You had a conversation concerning the prospective opening of the Empire Theatre in Syracuse?

A. Yes, sir.

Q. Will you please tell the Court whether the Empire Theatre was being operated in the fall of 1939?

A. Yes, sir.

Q. And do you know whether it was being operated daily?

A. Yes, sir.

Q. All right, now, coming down to December of 1939, what, if any, effort did you make to obtain product for the Empire?

The Court: Did he take a lease in the meantime? He said "operating." Who was operating it in the fall of 1939?

The Witness: Who was operating it in the fall of 1939?

[fol. 2620] Q. Can you answer that question?

A. Yes, I believe it was the Fitzers.

The Court: Did he obtain the lease?

Mr. Kallis: No, not at that time, your Honor. I understood him to say he obtained the lease in January.

The Court: All right.

Q. When was it you testified that you obtained the lease?

A. When? The approved lease was the latter part of January, 1940.

Q. Did you write any letters to the major film companies with reference to product?

A. Yes, sir.

Q. How many companies did you write to of the majors?

A. I wrote to all of them, the eight.

Q. Did you have any conversations in December of 1939 relative to product with any of the major companies?

A. I went to see them all all over again.

Q. By the way, during the fall of 1939, how often did you have occasion to come to Buffalo to the film exchanges?

A. About every two or three weeks.

Q. Did you renew the conversations with these film men?

A. Not from October to December, I didn't renew the conversation about the Empire, but in the latter part of [fol. 2621] December I signed an application for a lease with the Massachusetts Mutual. At that time I wrote letters to all exchanges and I also made the trip to Buffalo.

Q. Now, coming to the month of January, 1940, did you renew the discussions with the film exchanges with reference to product for the Empire Theatre?

Mr. McClennen: That is objected to.

The Court: I will let him state whether he talked with representatives of major distributors with reference to acquiring product, without going into the conversation, I mean.

Mr. McClennen: Well, the generality of this statement, if it is material at all, it ought to appear to whom he went.

The Court: I think it should be followed up with that. It is competent for him to state he did talk with them on the subject of securing picture- in January, 1940.

Mr. McClennen: This is a statement in the form of a talk with all of them, now.

The Court: All right. Let us see what he will testify to, whom he talked to and what was said.

Q. Will you please start with Metro; whom did you talk to in January of 1940?

A. It was about February when I talked to them the third [fol. 2622] time.

The Court: He asked you about January.

Q. Did you have any conversations in January? If the Court please, I will probably save some time by shortening the examination.

The Court: All right.

Q. Now, calling your attention now, Mr. Martina, to the date that the lease was executed, will you please tell the Court whether you made any efforts, after the execution of the lease, with reference to obtaining product?

A. Yes, sir.

Q. When was that, the first time you made any effort?

A. About February 1st again.

Q. Of 1940?

A. Of 1940.

Q. And directing your attention to Metro, did you see any one?

A. Yes, sir.

Q. Who?

A. Ralph Maw,

Q. When and where?

A. About February 1st. I used to go on Monday to catch all film managers in, on a Monday.

Q. What did you say to him?

[fol. 2623] Mr. Rogers: That is objected to.

A. I told him that I now finally had got the approved lease, and that I would want to get a run in Syracuse for the Empire Theatre.

Q. Did you specify what run?

A. Yes, sir.

Q. What did you say?

A. That I had to have either first-run, second-run or carry-overs in order for the theatre to pay.

Q. What, if anything, did Mr. Maw say to you?

A. He said that he was in no position to make any commitment on their pictures.

Q. Give any explanation?

A. Well, that Loew's had their pictures.

Q. Loew's were running their own pictures?

A. Yes, sir.

Q. Now, calling your attention to Paramount, whom did you see?

A. Kenneth Robinson.

Q. And when did you see him and where?

A. About February 1st.

Q. What did you say and what did he say?

Mr. Rogers: That is objected to.

The Court: Overruled.

The Witness: I told him what he already knew, that now [fol. 2624] I finally had an approved lease and that I wanted to get pictures for the Empire, either first-run or carry-overs, or second-run, or some good reissue.

Q. What did he say?

A. Well, he said that——

Mr. McClennen: If your Honor please, the statement of the witness what he already knew, I submit, should go out.

Mr. Kallis: By agreement, if the Court please, by stipulation, the phrase "What he already knew" may go out.

Will you read the last thing he said?

(Preceding partial answer read as follows: "A. Well, he said that——".)

A. (Continuing:) He said that Schine had the pictures 100 per cent, and that the best he might try to see if he can give me a cow-boy picture.

Q. What, if any conversations, did you have with anybody connected with R.K.O. in February after you obtained the lease?

A. I went to Mr. Boasberg and he said that Schine had all the product, and that the best he could do was to give me some news reels, if I wanted them.

Q. Did you talk with anybody connected with Fox?

[fol. 2625] A. Yes, sir, with Sidney Sampson.

Q. And approximately the same time?

A. Yes, the same date.

Q. What was said?

A. He said I didn't have a chance in the world, because Schine played 20th-Century-Fox 100 per cent, and I didn't have a chance in the world to get any pictures from them.

Mr. Kallis: Just a moment. I understood you were making an objection, Mr. McClennen?

Mr. McClennen: The general objection.

The Court: Same ruling.

Q. And did you talk with anybody connected with Universal?

A. Yes, with John Scully.

Q. And what was the conversation?

Mr. McClennen: Same objection.

The Witness: Well, he said that Schine is pretty well tied up with them and he didn't see how he could let me have any product.

Q. Did you talk with Warner Brothers?
A. Yes, sir.
Q. Whom at Warner Brothers?
A. Charles Rich again.
Q. And about the same time?
A. Yes, sir.
[fol. 2626] Q. What was said?

Mr. McClennen: Same objection.
The Court: Same ruling.
The Witness: He said that Schine had all their product there, but before I opened up he might see if Schine will reject some poor picture, and maybe he can let me have that.

Q. Now, calling your attention to Columbia, did you see anybody connected with the Company, about the first of February, after your lease was executed?
A. Yes, sir.
Q. Whom?
A. Bill Fox.
Q. What was the substance of the conversation?

Mr. McClennen: Same objection.
The Witness: He said that their product is pretty well ties up in Syracuse and that he would let me know if any rejects later on, and that he might—
The Court: What was the Empire running when it closed?
The Witness: When the theatre closed?
The Court: Yes, before you took over.
The Witness: Before I operated?
The Court: Yes.
The Witness: Well, it was running bingo and all kinds of [fol. 2627] policies and pictures.
The Court: Shorts?
The Witness: No, they were regular pictures, but I believe they were some sort of a run, but not first-run.

By Mr. Kallis:

Q. And did you talk with anybody connected with United Artists?
A. Yes, sir, Sidney Lehman.

Q. At the same time?

A. Yes, sir.

Q. What was the substance of the conversation?

Mr. Rogers: Same objection.

The Court: Same ruling.

The Witness: He stated that he would look into the matter and let me know later.

Q. Now, Mr. Martina, when did you open your theatre?

A. On March 23rd, 1940.

Q. Will you please tell the Court what product was offered, say, starting with Paramount?

A. Well, Paramount gave me a cow-boy picture by the name "Lano Kid".

Q. Anything else?

A. No.

Q. What product was offered to you by R.K.O.?

[fol. 2628] A. Nothing but news reels.

Q. And Fox?

A. Nothing.

Q. Universal?

A. Nothing.

Q. Warner's?

A. Charles Rich came to me when I was at the Syracuse Hotel, just before we opened, and he said "I have got a picture for you, Charlie, that Schine can't play, and maybe you want it, and I will sell it to you for a bargain price of $600". Well, in my condition I grabbed it.

Mr. Rogers: I move to strike out "in my condition I grabbed it".

The Court: Yes, he is asking for the conversation now. He offered you a picture for $600 and you accepted it.

The Witness: Yes, a foreign-made picture, and I did sign a contract for that.

Q. Do you know whether that picture, Mr. Martina, played anywhere in Syracuse at any time?

A. I don't think that anybody would play it.

Mr. McClennen: I move to strike that out.

The Court: Strike it out.

Mr. McClennen: Let's get the title.

[fol. 2629] Mr. Kallis: If the Court please, I thought he mentioned the name of the picture.

The Witness: The "Mad Empress" was the name.

The Court: He made the statement he didn't think anybody else would play it. Did, is the question, did anybody else play it?

Q. Did the picture, to the best of your recollection, ever play in Syracuse any place else except at the Empire Theatre, while you were operating it?

A. No.

Q. That was, you say, whose product?

A. Well, Warner Brothers, Vitagraph distributed it, I don't know whose product it was.

Q. What product was offered you by Metro?

A. None.

Q. What product was offered you by Columbia?

A. None at that time.

Q. What product was offered you by United Artists?

A. United Artists gave me two pictures.

Q. Were those the only pictures that were offered you by the eight majors?

A. Yes, sir.

Mr. McClennen: That is objected to.

The Court: Well, it is leading.

Mr. Kallis: I can reframe the question if Mr. McClennen [fol. 2630] pleases.

The Court: I will let it stand.

Q. Now, Mr. Martina, I understood you to say that you have been in the motion picture business continuously for 26 years?

A. Yes, sir.

Q. In the State of New York?

A. Yes, sir.

Q. Will you please tell the Court what character or quality of pictures these four were with reference to their being native, domestic or foreign pictures, whether they were A, B, C or D features, as commonly understood in the trade?

Mr. Rogers: I object to that.

The Court: You mean those which he got and to which he referred?

Mr. Rogers: I object to that on the ground he is not qualified, and it is immaterial.

Mr. Kallis: It isn't immaterial. I think he has been very well qualified in the exhibiting business 26 years continuously in the State of New York.

The Court: We haven't any proof there is any gradation, A, B, C and D.

Mr. McClennen: Your Honor is quite right, there is no [fol. 2631] competent proof on that subject as far as we have proceeded.

Mr. Kallis: May I have one of your contracts, Mr. Rogers? I think I can demonstrate what I have in mind.

Mr. Rogers: One of my contracts?

Q. Will you enumerate the names of them again?

A. "Chump at Oxford".

Q. What Company's product was that?

A. United Artists.

Q. Next?

Mr. Rogers: One moment, who are the stars in that?

The Witness: Laurel and Hardy.

Q. What is the next one?

A. "Lion Has Wings".

Q. Whose product was that?

A. It was a British propaganda; it was United Artists.

Q. Was that a domestic picture or foreign picture?

A. Foreign.

Q. Do you know whether that played in any of the Syracuse houses to your knowledge before?

Mr. McClennen: Do you mean before he played or after he played, or when?

The Witness: Before or after?

Q. Either before or after.

[fol. 2632] A. That was sold first-run. Therefore, it didn't play before.

The Court: Sold to you first-run?

The Witness: Yes, sir.

Q. And had not played in any of the Schine houses?

A. No, not in Syracuse.

Q. What is the next one?

A. Republic gave us some cow-boy pictures, too.

Q. You mentioned four altogether, what majors were the other two?

A. The Paramount picture, cow-boy, "Lano Kid", and this Warner Brothers "The Mad Empress", a Mexican picture.

Q. Was "The Mad Empress" a domestic or foreign?

A. Foreign.

Q. Had that played at any of the Schine houses prior to your playing it?

A. I don't think that did.

Mr. McClennen: A motion to strike.

Mr. Kallis: By agreement.

The Court: The question is whether that did.

The Witness: No, I don't believe so.

Q. "Lano Kid" had that played at any of the Schine houses before you played it?

A. No.

Q What about "Chump at Oxford"?

[fol. 2633] A. You mean before?

Q. Before.

A. No, I don't think so.

Q. All right. After you opened the Empire Theatre on March 23rd, 1940, did you renew your request for product?

A. Yes, sir.

Q. Whom did you see?

A. I saw all the film exchange managers on Mondays.

The Court: You mean the second time. He told about one time he sought product.

Mr. Kallis: That is right. Now, I am asking him—that was prior to the time he opened, and now I am asking what request he made for product after he opened the theatre?

Mr. McClennen: May we get the date?

The Court: Tell us what time, with reference to whom you opened it.

The Witness: What time I opened?

The Court: With reference to when you opened, when did you have the talk about the pictures?

Q. After you opened the theatre?

A. I came to Buffalo again about February 15th.

The Court: I thought you said you opened in March.

Q. The efforts you made after you opened the theatre to buy product?

A. Oh, I came to Buffalo after the grand opening of the Empire, yes.

[fol. 2634] Q. When was the first time you made any effort in Buffalo to obtain product?

A. It was so many times I can't——

Q. How many times?

A. After I opened?

Q. Yes.

A. Well, I only lasted three weeks. I didn't come very much, I think only once.

Q. You say you lasted three weeks. Please tell the Court how many weeks and how many days you operated the Empire Theatre.

A. Three weeks and six days.

The Court: Three weeks, he said.

Mr. Kallis: Three weeks and six days.

Q. Is that your testimony?

A. Yes.

Q. Then you closed on what date?

A. April 18, 1940.

Q. You say you made one more trip after you opened?

A. Yes.

Q. Or more than one trip?

A. Well, once I am sure, but I would not say for any more, because——

Q. With reference to the trip about which you are sure, please tell us whether you saw anybody at Paramount?

[fol. 2635] Mr. Rogers: May we get the date, please?

Mr. Kallis: Let us get a yes or no answer.

The Court: It must have been within the three weeks and six days.

Mr. Rogers: He does not pin him down.

Mr. Kallis: I will pin him down as soon as I get a yes or no answer, whether he saw him. If he says "no" I can't ask him when and where.

By Mr. Kallis:

Q. Did you see anybody——

A. Yes.

Q. —connected with Paramount, after you opened your theatre?

A. Yes; after March 23rd you mean?

Q. Yes.

A. Yes.

Q. Now, please tell us when. That is the question Mr. Rogers put to you.

A. Well, it was some time between, I imagine, about one week after the opening, that I was able to get away.

Q. I understood you to say that was in Buffalo?

A. Yes.

Q. Whom did you see at Paramount?

A. Mr. Robinson.

Q. What did you say and what did he say?

Mr. Rogers: Same objection.

[fol. 2636] The Court: Overruled.

A. At that time he gave me the "Llama Kid", cowboy picture.

Q. Is that L-i-o-n-e-l Kid?

A. I think L-h-a-m-a or something, "Llama Kid".

Q. What did he say?

A. That he could sell me that for $250.

Q. Did he offer you any more products?

A. No.

Q. What about RKO, did you see anybody after you opened?

A. Yes.

Q. Whom?

A. Mr. Boasberg.

Q. When and where?

A. At Buffalo.

Q. What did you say to him and what did he say?

A. That he could let me have the news reels, and that is all.

Q. Any further conversations that you recall?

A. No, excepting that he told me that I should know that Schine has got it tied up, the product, and "that is the best we can do for you."

Q. Did you talk with anybody during the same period connected with Fox?

A. Yes.

Q. Whom?

A. Mr. Sampson.

[fol. 2637] Q. When and where?

A. At that time, about a week after March 23rd.

Q. What did you say and what did he say?

Mr. Rogers: Same objection.

The Court: Same ruling.

A. He said there was nothing for me.
Q. Any other conversation that you recall now?
A. With any other exchange?
Q. No, with Mr. Sampson.
A. No, there wasn't much said, only that he could not take product away from Schine and give me anything.
Q. What about Universal?
A. John Scully said the same thing.

Mr. Rogers: Same objection.
The Court: Same ruling.

Q. Warner Bros.?
A. Why, Warner's, I don't believe I seen them, because Charlie Rich came to see me at the Syracuse Hotel and gave me this "Mad Empress" thing.
Q. That was during the time you were operating the Empire?
A. Yes.
Q. Did you see anybody connected with Metro?
A. Yes, Mr. Maw.
Q. During the same period?
A. Yes.
[fol. 2638] Q. What was the substance of the conversation?
A. That there was nothing available.

Mr. Rogers: Same objection.
The Court: Same ruling.

Q. Anything else you recall about that conversation?
A. No, except that he could not commit himself to any future pictures or anything.
Q. Could not—I did not hear you.
A. Commit himself to giving me any of the Metro-Goldwyn pictures.
Q. Did you say "in future"?
A. Yes.
Q. What about Columbia?
A. Well, it was the same thing.

Mr. McClennen: Same objection.
Mr. Kallis: By agreement that answer may go out, "the same thing."

Q. Whom did you see?

A. Mr. Fox, Phil Fox.

Q. Was that in Buffalo?

A. Yes.

Q. During the period you operated the Empire?

A. Yes.

Q. Give us the substance of the conversation, what you said and what he said, relative to your buying product [fol. 2639] for the Empire Theatre in Syracuse?

A. Now, I can't recall if he offered me one of those mediocre rotten pictures at that time or not.

Q. That is the best of your recollection now?

A. Yes.

Q. Did he offer you any other product besides—did he offer you any good product?

A. No.

Mr. Rogers: I object to that, may it please the Court.

The Court: Sustained. Let him state what he was offered.

Q. Did he offer you anything else?

A. No.

Q. Whom, if anyone, did you talk with at United Artists?

A. Well, Sidney Sampson—I mean Sidney Lehman—had already given me everything that he could, those two pictures, "Chump at Oxford" and "Lion Has Wings."

Q. Did you have any conversation with him during the period you operated the theatre?

A. Yes.

Q. In Buffalo?

A. Yes.

Q. What was the substance of the conversation?

A. Well, that he could not help me out any more than he did.

Q. Now, Mr. Martina, with reference to these conversations that you had with these film men in Buffalo during [fol. 2640] the period you operated a theatre, do you recall whether anything was said concerning runs or revivals, holdovers, or any other particular kind of pictures?

A. Well, excepting what I have said, that I was willing to take carry-overs, second-runs, or even some old reissues.

Q. Will you please explain what you mean by "carry-overs"?

A. Carry-over is after a picture gets through one week, it moves over to another theatre. For instance, it plays in this theatre one week, and then the following day, without any lapse of time or anything, it moves right to another theatre for the following week.

Q. Is that considered a second-run play?

A. No, that is a hold-over or carry-over.

Q. Those are the expressions that are commonly used in the trade?

A. Yes, carry-over or hold-over.

Q. How many pictures did you play during the three weeks and six days?

A. Five pictures.

Q. During that period did you run any stage shows at all?

A. The first three weeks, the first week was six days, and two weeks—approximately three weeks of stage shows and pictures.

Q. You mean the first three weeks of your operations— [fol. 2641] A. Yes.

Q. —you played stage shows, and the last six days you played only pictures?

A. Yes, the last week.

Q. Calling your attention now to the first week of your operation, what stage show did you have?

A. Gene Krupa was the first attraction, for six days, and then— and "Chump at Oxford".

Q. What was the size of the Empire Theatre at that time, with reference to seating capacity?

A. It was about 1500 seats.

Q. Can you tell the Court how many people attended the Empire Theatre the first week when you say you had "Chump at Oxford" and Gene Krupa and his band?

A. About—well, that was about 18,000 that first six days.

Q. 18,000?

A. Approximately, yes.

Q. Will you please tell the Court, if you know, what your gross receipts were during this six-day period?

A. The first three weeks period it averaged about $7000 a week.

Q. What was the attendance for the second and third weeks?

The Court: He said the first three weeks he averaged $7000.

Mr. Kallis: No, he said that there were 18,000 persons attended his theatre the first six days. I am asking him [fol. 2642] the same question with reference to the second week.

A. The average—the three weeks' period averaged 20,000 people, about. One week was a little more than 20,000.

The Court: Almost the capacity of the house?

The Witness: Well, your Honor, this was a week, and there was continuous showing, four performances a day.

Q. Now, Mr. Martina, will you tell the Court what your gross receipts were for the last six days of your operation?

A. Mid-week days averaged $35 a day and Saturday $76, and on a Sunday, $98.

Mr. Kallis: Just a moment. Repeat that, Mr. Reporter. I did not get it.

(Last answer read.)

Q. What was the attendance in terms of people going to your theatre during the last six days?

A. You mean without the band?

Q. The last six days you operated without the band, yes.

A. About a thousand people.

Q. Mr. Martina, you closed your theatre April 18, 1940?

A. Yes.

Q. Did you keep informed as to what the theatre situation was in Syracuse for the remainder of the year?

[fol. 2643] The Court: In what respect do you mean?

Q. With respect to what was the character of the operation of the Empire? Do you understand my question?

A. No, I don't.

Mr. Rogers: I don't.

Mr. Kallis: I do, but I am not surprised that nobody else does. I sometimes talk in riddles, I presume.

Q. Who was the first person or organization to operate the Empire Theatre in 1940 after you closed down?

A. Schine took it over.

Q. Now, when was that, as nearly as you can recall?

A. Well, it was the latter part of the year or the first of the following year, after six or eight months, I believe it was.

Q. After Schine took over the Empire Theatre do you know what was playing at the Empire Theatre in the way of product?

Mr. Rogers: One moment. Answer yes or no to that.
The Court: Do you know what played there after Schine took it over?
The Witness: Yes.

Q. And with reference to the pictures that Schine played at the Empire during the first six months—let us say the first three months of Schine's operation, please tell the [fol. 2644] Court what it was.

Mr. Rogers: One moment. I object to that on the ground that the tenure of Schine's operation has not been fixed by this witness.
Mr. Kallis: But it has been fixed by the interrogatories.
Mr. Rogers: Let us get it, and see if he knows.
The Court: What period of time are you inquiring about? How long a time, in this question?
Mr. Kallis: In this question, I thought I narrowed it to three months. First three months of Schine's operation.
Mr. Rogers: Let us find out what period he is talking about and see how remote it is.
The Court: He said Schine took over about the first of the next year. That is what he testified to.
Mr. Rogers: I wonder if that is accurate.
The Court: Six or eight months, he said, to the first of the next year. It would be from May.

By Mr. Kallis:

Q. Well, can you tell us, Mr. Martina, what product Schine played at the Empire for the first three months after it opened, the Empire Theatre?

Mr. Rogers: May it please the Court, there is no evidence that this witness lived in Syracuse during that period.
[fol. 2645] Mr. Kallis: I know that, but he did say he was informed.
Mr. Rogers: Oh, well, then, I certainly do object to it.
The Court: Sustained. Did you see pictures there playing at the Empire after?
The Witness: I will tell you, your Honor, I just merely used to get a Syracuse Sunday paper, just to see what was going on.

The Court: Personally you don't know?

The Witness: No, only by the news ads.

The Court: Objection sustained.

Mr. Kallis: I can prove it, your Honor, if you think that is objectionable.

By Mr. Kallis:

Q. Well, your answer would be the same with reference to the Strand Theatre?

A. Yes.

Q. All right. Do you know who was operating the Strand in Syracuse in the fall of 1939?

A. Yes.

Q. Who?

A. Schine.

Q. Do you know with reference to the playing policy how Schine operated the Strand in the fall of 1939?

A. As near as I can recall they operated—they used up two pictures a week.

[fol. 2646] Q. Now, was that a double feature or single feature?

A. Double feature.

Q. How many changes a week?

A. One.

Q. Was any change made in Schine's playing policy in that regard between October 1, 1939, and the time you opened your theatre, March 23, 1940?

A. Well, I was only interested during the period that I signed the application, was in December, they played two or three pictures in the Strand, as nearly as I can recall, and then when they—evidently—well, I don't know—in January then they started consuming three or four pictures a week, January, 1940.

Q. Do I understand you to say there was a change in Schine's playing policy at the Strand and it began January, 1940?

A. Yes, they started using more pictures.

Q. Please tell the Court in what respect the situation was different?

A. Well, in December——

Mr. McClennen: Just a moment. That is objected to.

The Court: You are asking now what they played that they had not played——

Mr. Kallis: I understood, your Honor, he said Schine's were playing a double-feature, one change a week.

[fol. 2647] By Mr. Kallis:

Q. On that subject, prior to January 1, 1940, Mr. Martina, was Schine's playing a stage show in addition to this double-feature, one change a week, if you remember?

A. I don't believe they played the stage show. They did make one change a week.

Q. What is that?

A. They made one change, but in December, I don't believe they even operated on only maybe two or three pictures they used up, some time or other, and then in January they started consuming three or four pictures a week, and a big stage show.

Q. What do you mean by two or three pictures a week, how many changes?

A. They would have two changes.

Q. Two changes, and they were both changes, double features?

A. Not always. If they would have a big band or big stage show they would have one feature, and the other change would be double fature.

Q. How long did that policy continue at the Strand beginning with January?

A. Well, until they got me out of commission.

Mr. Rogers: I move to strike it out.

Mr. Kallis: By agreement it may go out. Try to give us, as nearly as you can recollect, the best date. Was it [fol. 2648] before or after April 23, 1940?

A. They closed within a few weeks after I quit.

Q. Schine's closed the theatre?

A. Yes.

Q. The Strand, you mean?

A. Yes.

Q. All right. Now, coming down to the specific period during which you operated for three weeks and six days, please tell us what Schine played at the Strand the first week?

A. On the opening, when I opened, they opened up with a big movie star in person, and I believe it was a big Fox picture.

Q. Do you recall the name of it?

A. Jane Withers in "Shooting High." Anyway, I think it was something like that. John Boles in person.

Q. John Boles. And you are not sure, I gather, as to the name of the picture they played the first week?

A. I believe it was 20th Century-Fox, but I am not positive.

Q. What about the second week?

A. They had big stage shows——

Q. Who was——

A. They had big bands, like Paul Whiteman—well, I wasn't there too long.

[fol. 2649] Q. I am talking about the second week of your operation of the Empire.

A. It was big stage bands and personal appearances of movie stars, while I was there.

Q. Did Paul Whiteman and his band actually play at Schine's Strand while you were operating the Empire?

A. Yes.

Q. For how long?

A. For a week.

Q. Was any motion picture exhibited at the Strand during that time?

A. Yes, they had the stage and pictures too.

Q. What about the third week?

A. Well, I don't know if this was the second week of my operation, with Paul Whiteman, but they had stage and sometimes they would use up four pictures, and three pictures and three pictures with a stage show on week ends, and then double-feature.

Q. Mr. Martina, if you recall, will you tell us whether Paul Whiteman and his band played at the Strand Theatre in Syracuse during the three weeks and six days that you operated the Empire?

A. Yes.

Q. For how long?

A. For one week.

[fol. 2650] Q. You are not sure which week it was that he played?

A. I am not sure of the week.

The Court: Had the Strand been operated right along before, some time before you opened up?

The Witness: Yes, your Honor, only on a lesser scale.

They didn't use up the pictures until January 1st, then they started consuming pictures.

The Court: It was in operation when the Empire was closed the preceding fall?

The Witness: It was not operating quite as much.

The Court: Operated every day or at intervals?

The Witness: Before?

The Court: Yes.

The Witness: January—they operated week ends, I believe.

By Mr. Kallis:

Q. Mr. Martina, just one question I want to ask you, and then I am through, I guess. I am not sure that this was made entirely clear, and I beg your Honor's indulgence if I do repeat: During the month of December, 1939, Mr. Martina, was Schine's playing any stage shows at the Strand?

A. I don't believe so.

Q. They were operating on how many changes a week?

A. Well, I doubt if they even operated very many days [fol. 2651] during—before January 1st.

Q. All right. Then confining your attention to January and February, how many changes a week did they make, as nearly as you recall?

A. They made two changes, excepting with movie stars and personal appearances, Paul Whiteman and big bands, they would hold the thing a full week and make one change then.

Q. Prior to playing stage shows, I understood you to say that for a period there they played double features with one change a week, is that right?

A. Yes.

Mr. Kallis: That is all, Mr. Martina.

Cross-examination.

By Mr. Rogers:

Q. Mr. Martina, before you actually made your deal on the Empire Theatre in Syracuse did you make a survey of the theatre condition in Syracuse at that time?

A. Yes——

Mr. Kallis: If the Court please, just a moment. I did not go into this on direct examination, and I think it is time-consuming, but I do not object to it.

The Court: Overruled. Proceed.

[fol. 2652] Q. You may answer the question.

A. What did you say again?

Mr. Rogers: Mr. Reporter, please read it?

The Court: Did you make a survey of the theatre situation in Syracuse?

The Witness: I knew that the theatre was——

Q. Just answer my question, Mr. Martina. Did you make a survey of the theatre condition in Syracuse before you made your deal on the Empire Theatre?

The Court: Explain what you mean by "survey."

Q. Well, don't you understand what I mean by the word "survey"?

A. Well, my interpretation is what the layout is.

Q. That is it exactly.

A. I thought the Empire was a darn good location.

Q. I am not talking about the Empire now. I am asking you, did you inquire into what the general theatre situation was in Syracuse before you made your deal on the Empire?

A. Why, I was under the impression that Schine could not take over any more theatres.

Q. Will you please answer my question? It is a very simple question. All I am asking you is: Did you inquire into the general theatre situation in Syracuse before you made your deal on the Empire Theatre? You should be [fol. 2653] able to answer that. That is very simple.

A. Yes, I did.

Mr. Kallis: Just a moment, Mr. Rogers. I just happened to think of a question or two which I should have put to Mr. Martina on direct, and not related to this question, and I just wanted to state that I would like that privilege later.

The Court: All right.

By Mr. Rogers:

Q. Then you did. Did you examine into how many first-run theatres there were in Syracuse at that time?

A. Yes.

Q. How many first-run theatres did you find were in Syracuse at that time?

A. There is Loew's and Keith's, Paramount, Echo, the Strand and the Empire.

Q. Are those all the theatres, first-run theatres, you found in Syracuse at that time?

A. First-run?

Q. Yes.

A. Yes.

Q. Well, in other words, you found that the Loew Company had their own theatre in Syracuse, did you not?

A. Yes.

[fol. 2654] Q. You found Warner Bros. had their own theatre in Syracuse at that time, did you not?

A. No, they didn't have no theatre.

Q. Warner had no theatre?

A. No.

Q. Didn't the Warner have the Strand Theatre in Syracuse?

A. No, Schine had the Warner's—I mean the Strand.

Q. What?

A. No, just Loew and Schine controlled the situation of the city, down-town theatres.

Q. You knew that RKO had their theatre in town, did you not the Keith Theatre?

A. Well, I understood that that was a Schine management and everything.

Q. That was your understanding?

A. Yes.

Q. Didn't you know, as a fact, that the Keith Theatre is an RKO Theatre?

A. Well, for all practical purposes, I considered it a Schine theatre, because they buy and they manage it, and they—they are the ones that drive other people out of business.

Q. Do you know of your own knowledge that Schine did buy for the Keith Theatre in Syracuse, or is it not a fact that RKO bought for the Keith themselves?

[fol. 2655] A. Well, I am not in a position to state facts, because I don't know that part. I know they managed it.

Q. You mean you don't know, isn't that right?

A. I know they managed it, and that's all. Schine managed it.

Q. I am asking you, do you know who bought the product for the Keith Theatre in Syracuse during the time you are talking about, in the fall and winter of 1939 and the spring of 1940?

Mr. Kallis: If the Court please, I object to this, because their answers to the Government's interrogatories show with respect to the Paramount, Strand, the Echo, the Keith; four of them that I can think of, that the operation was an RKO-Schine operation.

Mr. Rogers: Exactly.

Mr. Kallis: And they stated that under oath in the answer to our interrogatories.

Mr. Rogers: That is just the point I am making. Thank you.

The Court: Proceed.

Mr. Kallis: So, when Mr. Rogers asks Mr. Martina, "Isn't it a fact that it was an RKO operation", I submit to your Honor that is not giving in his question all of the essential ingredients. It was an RKO-Schine operation.

[fol. 2656] Mr. Rogers: That does not happen to be my question. My question is, "Did RKO buy for these theatres?"

The Court: Proceed.

By Mr. Rogers:

Q. Will you please answer my question?

A. I am in no position to know what is being done.

Q. You don't know, do you?

A. All other people's business, no.

Q. I say, you don't know, do you?

A. No, I don't know who bought.

Mr. Rogers: Now, in that connection, may it please the Court, I move to strike out the testimony of this witness, given under direct examination, that Schine operated and bought the product for these theatres. He now testifies he does not know.

The Court: I will let it stand. The question of contradictions can be taken care of by your own testimony.

Q. For many years before February of 1940 these first-run theatres had been playing the product of the major companies as first-run product, had they not?

A. Well, I wasn't familiar with Syracuse too long, excepting the insurance company told me that the Empire [fol. 2657] was the best theatre in the city a few years ago, until Schine came in.

Mr. Rogers: I move to strike all that out.

The Court: Strike it out. Just answer his questions.

Q. Mr. Martina, if you will please be so good as to answer my questions we will get through so much quicker.

The Court: If you don't know anything about the situation prior to 1939, you can so state.

Q. Did you know anything about conditions with reference to first-runs or subsequent runs in Syracuse prior to the fall of 1939?

A. No, not too much.

Q. Didn't know too much about it. All right. Now, you stated, as I understand it, that in the month of December, 1939, you wrote a series of letters to the different exchanges?

A. Yes.

Q. Asking them for product at the Empire Theatre?

A. Yes.

Q. And that, in substance, you stated you wanted either first-runs or second-runs or carry-overs, is that right?

A. Yes.

Q. And that was contained in all of these letters that you wrote in December?

A. Yes.

[fol. 2658] Q. And that all the letters that you wrote to the eight companies were the same, were they not?

A. I believe so.

Q. You said you also, at the same time, spoke to various branch managers of the eight companies and spoke to them about getting pictures either first-run or second-run or carry-overs, is that right?

A. Yes.

Q. As a matter of fact, didn't you merely ask for first-run from these various branch managers with whom you spoke?

A. No, I asked for second-run and carry-overs.

Q. You are sure——

A. If I could not get first-run, naturally, I wanted first-run if I could get it.

Q. You say so far as the managers were concerned, so far your letters were concerned, they all spoke about first-run, second-run and carry-overs, is that right?

A. I would not say—I don't know about the letters, but in my personal conversations, where they would tell me they can't give me first-run, why, then I would ask for second-run. They would tell me about that, that that was not possible, and then I would tell them about the carry-over policy, would be a good policy.

[fol. 2659] Q. You recall that you just testified under cross-examination that in those letters that you wrote you spoke about the same subject you spoke with the managers about, first-run, second-run or carry-overs?

A. No——

Q. One moment. You recall you said that, do you not?

A. Yes.

Q. Let me show you this letter and ask if this is your signature?

A. Yes.

Q. That is your signature?

A. Yes.

Q. That letter bears date December 23, 1939, does it not?

A. Yes.

Q. That is the letter you are talking about that you sent to the exchanges?

A. Yes.

Mr. Rogers: I wish to offer in evidence only the third paragraph of that letter, may it please the Court.

Mr. Wright: I don't see any objection.

Mr. Rogers: There being no objection, it is just the third paragraph.

(Third paragraph of letter purported sent by witness Martina to branch managers received in evidence and marked Defendants' Exhibit D-113.)

[fol. 2660] Mr. Rogers: Now, this letter bears date December 23rd, 1939. It is addressed to Paramount Pictures, Inc., 464 Franklin Street, Buffalo, New York, on the stationery of Martina Circuit and is signed by C. V. Martina and reads:

"With your co-operation and that of the producer-exhibitors in that city, we should have no trouble to obtain only 52 pictures first-run to take care of our requirements. This, of course, if every distributor releases to us five or six pictures each during the course of any one year."

Q. Now, when you said in that letter "With your cooperation and that of the producer-exhibitors," did you mean that you knew that a number of these producers were likewise exhibitors in Syracuse and had their own theatres?

A. What I possibly had in mind was Loew's and Metro-Goldwyn-Mayer productions.

Q. You said producer-exhibitors; therefore, you meant more than one company, didn't you, and you have got a hyphen between producer and the word exhibitors.

A. Well, when I write a letter——

[fol. 2661] Q. No, answer my question, isn't that exactly what you meant, that you knew that some of the producing companies also had theatres?

what you meant, that you knew that some of the producing companies also had theatres?

A. Well,——

Q. Let me finish my question.

Mr. Kallis: Just a moment. I am sorry. I thought you were through.

The Court: Did you know that other producer companies in Syracuse——

The Witness: You see, your Honor, unless I say what I got to say I can't answer his question.

Mr. Rogers: It seems to me that your Honor's question is very clear and a simple question.

The Court: What did you have in mind?

The Witness: You see, when I write a letter I write one way for everybody. The only thing different would be the address. Therefore, the letter had to be good and understandable to the Loew's Company as it would be to the Paramount manager.

The Court: That does not quite meet the case. You are referring to a number of exhibitors in Syracuse. If there were one, you would write it the same way?

The Witness: The same letter went to Ralph Maw of Loew's.

[fol. 2662] The Court: Did you know of more than one producer-exhibitor in Syracuse?

The Witness: I knew that R. K. O. is a producer, too.

The Court: And exhibitor?

The Witness: They are both.

By Mr. Rogers:

Q. You knew that R. K. O. was both a producer and exhibitor?

A. Yes, sir.

Q. You knew that Loew's was both a producer and exhibitor?

A. Yes, sir.

Q. You knew that Paramount was both an exhibitor and producer, didn't you?

A. In Syracuse?

Q. Yes.

A. No, I didn't know.

Q. Didn't you know there was a theatre in Syracuse called the Paramount Theatre?

A. I didn't think Paramount had anything to do with it.

Q. But you knew nothing about it, you merely thought so, is that it?

A. All I knew was, I thought Loew's operated the Loew's and Schine operates the rest of them.

Q. Didn't you know the Keith Theatre was an R. K. O. theatre?

A. No, from my understanding Schine operates them and runs them, and that is just the name of the theatre.

[fol. 2663] Q. That is what you thought, isn't that right, that is what you thought?

A. For the Keith's, yes, sir.

Q. But you didn't know?

A. No.

Q. Didn't know it was an R.K.O. house, did you?

A. No.

Q. Didn't know that. Now, before you made your deal on the Empire Theatre, you had several talks with Mr. Fred Gardiner, who was the local agent for the Massachusetts Mutual Life Insurance Company, didn't you?

A. Yes, sir.

Q. And he was the gentleman with whom you negotiated the lease for the Massachusetts Mutual Life Insurance Company, isn't that right?

A. Yes, sir.

Q. And do you remember at the time that you negotiated that lease with him and prior thereto, you told him that you had $30,000 in cash that you were going to put into that house by way of renovation?

Mr. Kallis: If the Court please, I object to that, because it doesn't relate to any question on direct-examination. Well, I will withdraw the objection.

Q. Answer the question, please.
[fol. 2664] A. I don't remember what went on all during that period, I can't remember.

The Court: No, he is asking what you told the representative of the Massachusetts Insurance Company, whether you had $30,000 to put in?

The Witness: The original deal——

Q. No, please answer that question.

A. Well, I can't remember.

Q. You don't remember whether or not you told him that you had $30,000 in cash to put into the renovation of that house?

A. No.

Q. Do you remember whether you told him you had a substantial sum of money in cash ready to put in to renovate that house?

A. Yes, sir, I told him that.

Q. Did you tell him how much?

A. No, I don't remember the amount.

Q. Don't remember whether—did you tell him you had at least $20,000 in cash to put into the renovation of the house?

A. I know what I put in, but I don't know——

Q. I am asking you, do you remember what you told him you had to put in?

A. No, I don't remember it.

[fol. 2665] Q. Don't remember. Do you remember after you made your lease, or shortly prior to the making of the lease that you took up with Michael D'Angelos, an architect, about him preparing plans and specifications for the alteration of the house and getting bids from contractors to do the job, remember that?

A. Yes, I remember that.

Q. Do you remember Mr. D'Angelos telling you that in an operation of that kind, which would involve quite a substantial sum of money, he wanted to know what your resources were, how much you had on hand before he would go ahead and draw any plans or let out bids for contractors?

A. Well——

Q. No. Don't you remember that happening, I am asking you?

A. He may have. I don't rely on D'Angelos, because he is not honest himself.

Q. Regardless of Mr. D'Angelos, I am asking you, didn't that actually happen, didn't Mr. D'Angelos tell you before he proceeded with plans and before he proceeded with letting out bids to contractors, to bid on the job, that he wanted to know what you had by way of cash to put into the job, isn't that so?

A. Well, I didn't tell him.

[fol. 2666] Q. Didn't he ask you that?

A. No, he led me——

Q. Just one moment, did he ask you that?

A. No.

Q. Didn't he ask you anything about what your financial resources were, you mean?

A. No.

Q. Didn't you tell Mr. D'Angelos you had $30,000 in cash?

The Court: You mentioned that before.

Mr. Rogers: No, it was Mr. Gardiner I spoke of before.

Q. Didn't you tell Mr. D'Angelos you had $30,000 in cash?

A. No, I didn't tell him that because he owed me money.

Q. I am asking you, didn't you tell him that? During the first week that the theatre, the Empire, I am talking about now, was in operation, were you in Syracuse?

A. During the first week?

Q. That the Empire was in operation in the month of March, were you in Syracuse?

A. Yes, sir.

Q. How much of that week?

A. I believe I went to Albion a couple of days.

Q. I am talking about Syracuse now, not Albion.

A. Yes, but you are asking if I was in Syracuse.

The Court: He was in Syracuse and Albion a couple of times, you mean you went back to Albion a couple of [fol. 2667] days?

Q. I want to know how long you were in Syracuse, not how long you were in Albion.

A. If I was in Albion two days, that makes five days in Syracuse, don't it?

Q. I don't know. I want to get how many days you were in Syracuse during the first week of the operation?

A. To the best of my recollection I can't tell you how many minutes and days, I believe I went to Albion two days.

Q. You mean you were in Syracuse five days during the first week of operation?

A. Yes, sir.

Q. How many days were you in Syracuse the second week of the operation?

A. About the same.

Q. Five days?

A. Yes, sir.

Q. As a matter of fact, were you in Syracuse at all during the second week of the operation?

A. Yes, must have been, my Lord, I don't see——

Q. Don't tell me what you must have been; tell me, were you in Syracuse during the second week of the operation?

A. Gosh, I don't know, why I shouldn't have been.

Q. Don't tell me why you shouldn't have been, tell me if [fol. 2668] you were or were not in Syracuse at all.

A. Must have been.

Q. It is your best recollection that you were?

A. Yes, sir.

Q. Do you know how many days you were in Syracuse the second week?

The Court: He told you about the same.

Mr. Rogers: He changed it several times, and I would like to get something definite.

The Witness: To the best of my recollection I would go a couple of days to Albion to catch up with my work and get home with the family and get back, I don't remember anything else.

Q. Do you remember the attraction you played in the Empire Theatre the second week?

A. I believe it was "Happy Felton", and a cow-boy picture.

Q. Right. Don't you recall that during that second week you didn't have enough money to pay "Happy Felton", and

Mr. Gardiner had to send you a wire to send money on to take care of the "Happy Felton" band's money; don't you remember that?

A. It is possible.

Q. Well, based on that, wouldn't that refresh your recollection that you weren't in Syracuse?

Mr. Kallis: If the Court please, I object to the form of [fol. 2669] the question. He has already definitely stated he was in Syracuse.

The Court: Well, in view of the subsequent inquiry I will let him state now whether he wants to change his testimony in that respect, whether you were in Syracuse the second week or not.

The Witness: When we paid the excise——

Q. No, no, just answer that question.

The Court: You said some time ago you were in Syracuse about the same time you were in the first week of your activities. Counsel is calling your attention to a telegram and wants to know if that refreshes your recollection.

The Witness: It may be. I was in Albion, maybe at the same time it was pay night and they wired me for the money.

Q. Won't that refresh your recollection you weren't at Syracuse at all during the second week?

A. Oh, I was there.

Mr. Kallis: If the Court please, I submit the question has been answered.

The Court: He said he was there.

Q. With reference to the third week, were you there at all?

A. Yes, sir.

Q. What was the attraction the third week?

[fol. 2670] A. Bob Crosby and band, and this "Lion Had Wings".

Q. You are sure you were in Syracuse that third week, eh?

A. Yes, sir.

Q. Did you speak to Bob Crosby?

A. Yes, sir, I see him.

Q. In the theatre?

A. Yes, sir.

Q. During that third week?

A. Yes, sir.

Q. What was the conversation about?

Mr. Kallis: I object.
The Court: Sustained.
Mr. Rogers: I only——
Mr. Kallis: Just a moment. The Court has sustained the objection.

Q. As a matter of fact, in that third week, didn't Mr. Gardiner have to make a deal with Bob Crosby allowing Bob Crosby to put somebody in the box office of the theatre to collect his money in the box office because you weren't there to make any deal?

Mr. Kallis: I object to that, if your Honor please.
The Court: Overruled. Did that happen?
The Witness: Yes, that happened in the latter part of the week, just about the time they were ready to get paid.

[fol. 2671] Q. Now, when you left Syracuse after playing the three weeks and six days, you have testified to, had you paid for the alteration that was done to the theatre?
A. Yes, quite a bit of it.
Q. How much of it?
A. About $30,000 or so.

By Mr. Kallis:

Q. How much was that, Mr. Martina?
A. About $30,000.
Q. You had paid, you say?
A. Well, of course, that includes legal fees and things like that.

By Mr. Rogers:

Q. Never mind about legal fees, I am asking you, did you pay the contractors and sub-contractors who did the work on the Empire Theatre?
A. Not in full, no.
Q. How much did you pay them?
A. Well, I owed the contractor about $5800, if I recall right, out of—I don't know how much, it was a cost plus job, so I don't know whether the remodeling cost $30,000 or $40,000, or what, I don't know.
Q. Do you know how much you paid to the contractors?
A. I paid him what I owed him except $5800.

Q. Will you please tell me how much you paid him?
[fol. 2672] A. I couldn't say.

The Court: Do you know how much, substantially, you paid for the repairs?

The Witness: I can't remember, your Honor, what the repairs as a whole were. I might in round figures what the equipment and things cost.

The Court: What do you mean?

The Witness: I can't remember what I paid the contractor. I happened to remember the balance due him, $5800.

Q. You said that the alterations amounted to about $50,000?

A. About $55,000.

The Court: Did that include equipment, or just alterations?

The Witness: No, the equipment, seats and alterations.

By Mr. Rogers:

Q. Then you mean you paid over $40,000 for the alterations and equipment, actually paid it, I mean?

A. No, my loss up to date is about $35,000. Therefore, I could not have paid any more than that.

Q. You claim you actually paid $35,000 to these people for alterations and renovation and equipment?

A. Yes, sir.

Q. To whom did you pay it?

[fol. 2673] A. Well, to—I got a list a mile long.

Q. Have you got that list with you?

A. No.

Q. Didn't you bring it with you?

A. I may have.

Mr. Kallis: Ask him if he has it, Mr. Rogers.

Mr. Rogers: I am asking did he bring it here.

Q. Did you bring it with you?

A. No, not the list of creditors.

Q. When did you pay this money, before you left Syracuse, or after you left Syracuse?

A. A lot of it was paid before the opening and quite a bit during the opening. You see, during the three weeks we took in $21,000 in those three weeks. Of course, paying for the act and all, and what was left over I paid some of the bills.

Q. You just testified that in the second week of the operation you didn't have enough money to pay, and you got a wire from Gardiner, didn't you?

Mr. Kallis: If the Court please, I don't understand he testified he did not have enough money.

Mr. Rogers: He did.

Mr. Kallis: I understood he might not have been in Syracuse at the time and a wire was sent.

The Court: That was the second week.

[fol. 2674] Q. The second week that was. As a matter of fact, you didn't take in enough money at the box office to pay Felton, and you got a wire for money to pay Felton?

A. You see——

Q. Isn't that so?

A. What?

Q. You didn't have enough money in the box office to pay Felton at the end of the week, and you got a wire and sent money on to pay Felton, isn't that so?

A. That is possible.

Q. Now, then, how much money of the first week's box office receipts do you claim that you paid to contractors?

A. Well, now contractors, I paid that out of my money, not out of the box office, but little bills and different things the manager paid right out, like small items or like a contractor had a $300 or $400 contract for the lobby floor, or something, the manager would pay that.

Q. But, Mr. Martina, didn't you just testify that out of the money you took in at the box office, you paid these contractors?

A. Not any substantial amount, small amounts to small contractors, like a lobby floor man, something like that.

Q. You mean a couple of hundred dollars here and a couple of hundred dollars there, is that what you are talking about?

[fol. 2675] A. Yes, that all added up, of course.

Q. What I am asking about is this amount of $50,000 that was due those contractors; what part of that did you pay before you opened at Syracuse, if any?

A. About $25,000, maybe.

Q. And out of what funds did you pay that?

A. That is equipment and everything.

Q. That is what I am talking about. Out of what funds did you pay that?

A. That was my funds.

Q. Where were those funds?

A. What do you mean?

Q. Where did you have that $25,000?

A. I didn't have it under the mattress.

Q. I am just asking you a simple question; where did you have that $25,000? Did you have it in the bank?

A. Well, in various banks. Maybe there was some interest account that we took out and put in a checking account.

Q. Please tell me in which bank account you had an aggregate of $25,000 in the fall of 1939?

A. I can't remember, because it was different amounts, like maybe $1,000 or $2,000 in Mount Morris, some in Batavia, some in Rochester, I don't know.

Q. You really don't know, do you, in which bank did you have at least $10,000 at that time?

[fol. 2676] A. Well, in a checking account——

Q. No, no. Just answer my question.

The Court: State the bank in which you had at least $10,000?

The Witness: I don't believe I had any $10,000 in a checking account unless there was a bill due and then I would deposit and make out a check.

Q. Please answer my question. Did you have $10,000 in any bank at that time?

A. In any one?

Q. Yes.

A. No, not in any one, no.

Q. Did you have $5,000 in any one bank at that time?

A. Yes, because the contractor, I believe——

Q. Don't tell me "because," tell me, did you have $5,000 in any bank account at that time?

A. Well, to the best of my recollection I must have.

Q. Well, will you tell me the name of the bank?

A. Well, the Marine Midland Bank of Albion, or the—— I don't even remember the Syracuse capacity, I mean, the bank, I don't know what the name was.

Q. Well, give me the name of a group of banks in which you had $25,000 at that time?

A. Well, we had some money in the Union Trust Com- [fol. 2677] pany, Rochester; First National Bank, Batavia, Genesee River National Bank, Mount Morris and Marine Midland, Albion. Of course, my wife had some of it.

Q. One moment now——

The Court: When you say "we," you mean yourself and wife?

The Witness: Yes, your Honor, you know some money was in her account.

Q. In which banks?

A. In the various banks I have mentioned.

Q. Was this all your wife's money, you mean, in these various banks that you have mentioned?

A. No, some of it was in a combination of names. Some was hers and some was mine alone, and different.

Q. When you say "combination of names," what do you mean by combination of names?

A. Like "Charles Martina and Sarah Martina," and some were just "Charles Martina."

Q. Take these five banks you mentioned just now, is it your testimony that in the winter of 1939 or January or February of 1940, that there was at least $25,000 in those banks in the aggregate?

A. Well, I don't—I can't say how many thousands, I know how much we paid out.

Q. No, no. Please answer my question. Was there at [fol. 2678] least $25,000 in the aggregate in those five banks you have mentioned?

A. I don't know, if you mean all at one time——

The Court: At this time.

Q. At that time I am talking about.

~~The Court: In the few months there, September to Jan~~uary.

The Witness: I don't remember now.

Q. Now, with reference to the payment of that $25,000 prior to the opening, was that paid by check?

A. Yes, most of it unless there were like I said, a lot of bills the Manager paid, like the lobby floor man, or the fellow that scraped the stage, you know several hundred bills, and bills of that kind he paid cash.

Q. I am not referring to those little bills of a couple of hundred dollars apiece. I am talking about the $25,000 worth of payments you testified to. Were those made by checks?

A. Yes, mostly.

Q. And who signed those checks?

A. Well, when they forced me into bankruptcy——

Q. No, no. Who signed the checks is all I am asking you.

A. Well, I signed them.

Q. You signed them all?

A. Yes, sir.

[fol. 2679] Q. Have you those returned check vouchers showing payment of $25,000 before you opened the house?

A. To be frank with you, my records are all over creation, all different lawyers, courts, bankruptcy, I can't find everything I want to find. I could not find all my statements of the theatre box office. I have it for maybe two and a half weeks, and I don't know where the others are.

Q. Mr. Martina, I am only asking you about those checks you paid to these contractors and sub-contractors on the Empire Theatre.

A. As I said, I can't get them together.

Mr. Kallis: If the Court please, he has answered the question.

The Court: I believe he said "I don't know where they are." Do you keep books of account?

The Witness: Yes, your Honor, but I have had so many bankruptcy meetings, every lawyer seemed to grab some of the stuff. Everybody has got them except me.

The Court: You kept account of your receipts and disbursements?

The Witness: Yes, sir.

The Court: They were the subject of bankruptcy proceedings?

[fols. 2680-2682] The Witness: Yes, sir.

The Court: And everything was turned over on the bankruptcy?

The Witness: Yes, some were turned over to the auditor, some to the referee in bankruptcy and some are lawyers who would pretend there was a mistake and would take some of the books and some of the canceled checks and everybody has got them but me.

By Mr. Rogers:

Q. Is it accurate to say that these payments of $25,000, that you say were made to the contractor prior to the opening of the Empire at Syracuse, were drawn out of the five banks you testified to, is that right?

A. Yes, sir.

The Court: I think we will have to suspend at this time.

Mr. Rogers: Very good.

(Whereupon a recess was taken until Thursday, October 12th, 1944, at 10 o'clock a. m.)

[fol. 2683] UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF NEW YORK

Civil 223

UNITED STATES OF AMERICA

vs.

SCHINE CHAIN THEATRES, INC., et al., Defendants

Continuation of trial before Honorable John Knight, United States District Judge for the Western District of New York, October 12th, 1944, 10 o'clock A. M.

APPEARANCES:

Robert L. Wright, Esq., John F. Clagett, Esq., Harold L. Schilz, Esq., Special Assistants to the Attorney General, and Milton Kallis, Esq., Special Attorney, in behalf of the United States.

Edward F. McClennen, Esq., Willard S. McKay, Esq., Saul E. Rogers, Esq., Arthur E. Whittemore, Esq., Arthur J. Homans, Esq., and Howard M. Antevil, Esq., appearing for the Defendants.

[fol. 2684] **Proceedings**

(Reporter's Note—Corrections:

The following corrections are to be made in the record:

Page	In record	Correct spelling.
1503	Birge	Berge
1504	Diller	Dillard
1505	Conners	Connors
1516	McAvoy	McEvoy
1523	McAvoy	McEvoy
1570	Gratwell	Gradwell
1574	Lasserman	Lesserman
2553-11	Berg	Berk
2613	Sampson	Samson
2614	Sampson	Samson
2615	Sampson	Samson
2626	Bill Fox	Phil Fox)

Mr. McClennen: If your Honor please, on reading the record, I observe on page 2654 this question to Mr. Martina: "Didn't you know as a fact that the Keith Theatre was an RKO Theatre?" "A. Well, for all practical purposes I considered it a Schine theatre, because they buy and they [fol. 2685] manage it, and they are the ones that drive other people out of business."

I move that that answer be stricken from the record.

Mr. Kallis: There was no objection made at the time.

The Court: I do not think it is properly a part of the record. That is the thing we are trying to find out.

Mr. Kallis: That is the issue in the case.

The Court: I think it should be stricken. I thought at the time you did move to strike it.

Mr. Kallis: Several objections were made, and I stipulated that the answers go out, because they were improper and not responsive.

The Court: Yes, I recall that.

Charles V. Martina resumed the stand on behalf of the Plaintiff, having been previously sworn, was examined and testified further as follows:

Cross-examination (continued).

By Mr. Rogers:

Q. Mr. Martina, you testified at page 2653 of the record yesterday, when interrogated as to which were the first-run theatres in Syracuse at the time you made your deal on [fol. 2686] the Empire, that they were Loew's, Keith's, Paramount, the record said "Echo"—you meant Eckel, did you not?

A. Yes.

Q. The Strand and the Empire?

A. Yes.

Q. Was the Empire Theatre at that time a first-run theatre?

Mr. Kallis: Just a moment. Mr. Rogers, what particular time. It is not clear.

Mr. Rogers: I fixed the time in my question, if you listen to my question. At the time he was negotiating for this Empire Theatre.

A. What I probably meant was down-town theatre.

Q. You did not mean the Empire, did you?

A. For down-town, yes.

Q. You meant the Empire Theatre was a first-run theatre?

A. No, a down-town theatre.

Q. Please answer me.

The Court: The question is directed to the Empire. Was that a first-run house?

The Witness: Not before I got it, your Honor.

Q. As a matter of fact, right before you got that theatre, when it was being run as you testified as a house playing Bingo and a miscellaneous run of pictures, its admission prices were only 10 and 15 cents, were they not?

[fol. 2687] A. I believe they were 25—20 and 25.

Q. That is what you believe, is that right?

A. Yes, to the best of my recollection, that is what I think.

Q. Do you know definitely what the price of admission was that was being charged at that house right before you took over the Empire?

A. For Bingo they charged a dollar, on Bingo nights.

Q. When they had Bingo and only Bingo, and the public came in just to play Bingo, they charged a dollar to play Bingo, is that what you mean?

A. They played pictures with Bingo.

Q. But the Bingo admission price was a dollar, because the public played Bingo and won big prizes, isn't that it?

A. Yes.

Q. With straight pictures that house only charged 10 and 15 cents, did it not?

A. I believe it was 25. Maybe the matinees, but the evenings, I believe, were 25.

Q. That is your belief, but you don't know, do you?

A. I don't know for sure.

Q. When you were making your investigation of the layout of the town of Syracuse, before you had your first talk with the branch managers of these various companies in October of 1939, you knew that the Loew Company was operating the State Theatre in Syracuse, did you not?

[fol. 2688] A. Yes.

Mr. Kallis: If the Court please, I object to that, because my direct examination was directed, as I recall, solely to the question of the difficulty of obtaining product, and what he understood Loew's were playing before that I don't think has any relationship to his direct examination.

The Court: I think be testified yesterday the fact that Loew's was operating that theatre.

Mr. Rogers: But I want to get at the product.

The Court: The purposes of the inquiry is proper. It is competent, if he is able to answer it.

Mr. Rogers: Exactly, sir. May we have the question?

(Question and answer read.)

By Mr. Rogers:

Q. You knew that they were playing first-run major product in that house, did you not?

A. Yes.

Q. Did you inquire as to what major product the Loew's State Theatre was playing at that time?

A. Yes, I knew.

Q. You knew what product they were playing, did you not?

A. Yes.

Q. What products were they playing first-run?

[fol. 2689] A. Metro-Goldwyn-Mayer, United Artists and Columbia.

Q. And then you say the so-called Schine theatres were playing all the products——

A. Yes, they played all the rest of them.

Q. That is, Warner?

A. Warner.

Q. Fox?

A. Paramount, 20th Century-Fox, RKO, Universal, Republic, Monogram and other independents.

Q. I was talking about the eight majors.

A. Oh.

Q. Of the major product, they played Warner, Fox, Universal, RKO and Paramount, did they not?

A. Yes.

Q. The so-called Schine theatres consisted of four theatres, did they not?

A. Yes.

Q. That was the Eckel, Keith, the Strand and the Paramount?

A. Yes.

Q. And they played those products first-run, that you just mentioned?

A. Yes.

Q. So that at that time, as the first-run product was divided, Loew's had three and the so-called Schine theatres had five major products of the eight; is that right?

A. Yes.

[fol. 2690] Q. Now, you have been engaged in the theatre business for, as I understand it, about 26 years, is that right?

A. Yes, sir.

Q. And you have been accustomed to buying product for theatres during that period, haven't you?

A. Yes, sir.

Q. Now, with reference to first-run product, what was the custom in 1939, with reference to the offering of first-run product to the exhibitor, when did the sales season begin?

A. Usually in September.

Q. As a matter of fact, the sales were concluded by September, weren't they?

A. Well, not necessarily.

Q. On first-run product?

A. No, not necessarily.

Q. Wasn't first-run product usually offered about July or August?

A. It was offered, but that didn't mean it was bought then.

Q. Weren't the transactions practically closed by September?

A. Well, the majority, probably.

Q. That is so, isn't it?

A. Yes, sir.

[fol. 2691] Q. Now, when you went to the Loew's Branch Manager, in October of 1939, and you asked for first-run product, didn't he tell you that they had already closed their deal for first-run product for that season with the Loew's Theatre, the State Theatre?

A. His statement wasn't—he didn't commit himself too clearly because he said to me "Charlie, I can't——

Q. No, I am asking you a simple question. Didn't he tell you that product was closed to be played at the Loew's State Theatre?

Mr. Kallis: If the Court please, I submit he has answered the question. He said he didn't commit himself too clearly.

The Court: Overruled. Did he tell you that?

The Witness: Because——

Q. No, just tell me, didn't he tell you that?

A. Yes, he told me that Metro was running at Loew's.

Q. Now, with reference to Columbia, weren't you told in October, by the Branch Manager, that Columbia had Loew's as its regular first-run customer at the State Theatre?

A. Not all pictures, Schine had some Columbia.

Q. You say you were told in October, 1939, at Columbia that Schine had some of Columbia's pictures first-run?

A. Yes, sir, at times they would.

[fol. 2692] Q. Is that what you were told, I am asking you?

A. I can't recall, but I know the Columbia pictures——

Q. No, no. I am asking what you were told? Did anybody tell you that?

A. I wouldn't remember clearly at this time.

Q. You wouldn't, eh? You knew at that time Columbia was serving the State Theatre as its first-run account in October, 1939, didn't you?

A. Yes, mostly the A pictures, though.

Q. Now, with reference to United Artists, when you went there in October, 1939, weren't you informed by them that Loew's was their first-run customer and had been right along?

A. Yes, I believe they did.

Q. Now, by the time you arrived at October of 1939, and had spoken to these various managers, you knew at that time that the probabilities were that the first-run product of all eight companies had already been committed for that season, didn't you?

A. Yes, but I——

Q. One moment, "Yes" is the answer. All right. And surely by December of 1939, when you went to see these branch managers, you knew that the first-run product for the season 1939-40 had been sold, didn't you?

A. Yes, sir.

[fol. 2693] Q. Now, knowing in December of 1939 that the first-run product had been sold, did you make any inquiry either in October or in December with reference to who was the second-run customer in Syracuse?

A. I was told by the same exchange managers that Kallett was the second-run.

Q. And Kallett was operating a theatre in Syracuse known as the Regent Theatre, wasn't he?

A. Yes, sir, in the College district.

Q. Regardless of where it was, he was operating the Regent Theatre, wasn't he?

A. Yes, sir.

Q. And you were told by all eight companies that he was the second-run account, weren't you?

A. Yes, sir.

Q. By the time you had reached the month of December, 1939, had you spoken to these branch managers, or, rather, strike that out, please. In October of 1939, did you ask these branch managers what their situation was with Kallett with reference to the second-run product for 1939-40?

A. Well, it wasn't stressed by either party because of the fact that I didn't have a lease.

Q. Did you ask them whether the second-run had been sold by that time, in October of 1939?

[fol. 2694] A. I was interested in first-run.

Q. Just simply answer my question. Did you ask them whether or not the second-run product had been sold in October of 1939?

A. I don't think I asked that at that time.

Q. Well, when you saw them in December of 1939, did you ask them whether or not they had sold their second-run produce to Kallett?

A. I perhaps did at that time.

Q. And you were told they had sold Kallett the second-run for that season, weren't you?

A. Perhaps.

Q. Isn't that so?

A. I am not positive.

Q. But you think so, don't you?

A. I think so.

Q. Now, you were talking about move-overs or carry-overs; the term "move-over" and "carry-over" is used interchangeably in the industry, isn't it?

A. Yes, sir.

Q. And by a "move-over" is meant taking a picture that plays at an exhibitor's first-run theatre and the night it finishes the first-run it is moved over to another theatre owned by that same exhibitor and opens the next day, isn't that right?

[fol. 2695] A. Yes, sir.

Q. Now, you had no first-run theatre in Syracuse, did you?

A. Yes, I did for four weeks, but it was first-run.

Q. I mean, at the time you spoke in October or December; you had no first-run theatre in Syracuse, did you?

A. As a matter of fact, I didn't have any theatre at all.

Q. That is what I mean; you had no theatre at all?

A. Yes, sir.

Q. So discussing "move-overs" by you was just an idle ceremony, wasn't it, because you had no move-over theatre in which to move-over pictures after the first-run?

Mr. Kallis: Just a moment, I object to "Idle ceremony" as a characterization.

The Court: State whether you had a first-run theatre.

The Witness: Your Honor, I didn't have a lease until January, so in the latter part of December I didn't.

The Court: So, according to the definition, you could not carry over or move over from one to the other?

The Witness: I didn't have no theatre at that time.

The Court: I think that is clear.

By Mr. Rogers:

Q. Well, now, you knew in December that first-run was [fol. 2696] out of the question as you testified and now you testified you knew second-run was out of the question because Kallett had it, and you made your lease in January after knowing that. Now, what kind of pictures did you propose to play in the Empire Theatre when you opened it?

A. All companies release about 50 pictures during that time.

Q. I asked you what kind of pictures you expected to play?

A. I expected to play about five or six pictures from each and every company, and that would be giving me my 50 pictures a year.

Q. In other words, you knew that the companies were obligated for first-run, and you knew that the only first-run that you could get, after you opened the Empire Theatre, were pictures that weren't played either at Loew's theatre or the so-called Schine, is that right?

A. Yes, sir.

Q. And those were exactly the pictures you got when you opened, weren't they, is that right?

A. Yes, because——

Q. That is all I want to know.

Mr. Kallis: Now, do you have to explain your answer?

Mr. Rogers: One moment, please, Mr. Kallis.

The Court: The point of counsel is that your redirect [fol. 2697] examination can take care of the situation.

Mr. Kallis: My point, your Honor, is that sometimes an answer cannot be unqualifiedly given and if an explanation is made, I think your Honor is interested in knowing it.

The Court: That is the purpose of redirect examination.

By Mr. Rogers:

Q. And the various pictures you did get, when you ran for the three weeks and six days were all first-run pictures, weren't they?

A. Yes, sir.

Q. And they were just that kind of picture, weren't they, that they could release from their first-run accounts?

A. They were rotten pictures.

Mr. Rogers: I move to strike that out.

The Court: Yes. Were they first-run pictures?

The Witness: The first time shown in the city, yes.

The Court: All right.

Mr. Rogers: That is all.

Redirect examination.

By Mr. Kallis:

Q. Mr. Martina, since court adjourned yesterday afternoon, have you had an opportunity of checking any records [fol. 2698] at home or anywhere since you left the courtroom?

A. Yes, sir. I have a partial list of some bills that I paid before March 23rd, before I opened the theatre.

Q. Will you please tell us what they were?

A. I paid—am I allowed to use the list, your Honor?

The Court: Yes, what you paid you can state; you mean in connection with your purchase or repair of this theatre?

The Witness: Before the opening date I paid—this is a partial list that I added up, and I have the canceled checks on all of those in my pocket except——

The Court: Is that what you paid?

The Witness: I paid $18,983.27.

Q. $18,983.27?

A. Yes, sir.

Q. Can you specify what those bills were for?

A. The checks are in my pocket. That is the only way I could tell you what they were.

Mr. Kallis: I haven't talked with this witness, your Honor, since he was on the stand, and I don't know just exactly what he has in mind. May I see them, Mr. Martina? Let me see the checks.

The Witness: They are in my coat pocket on the hook.

[fol. 2699] Mr. Kallis: You may step down and get them.

(Whereupon the witness left the stand and returned with a bundle of checks which he handed to Mr. Kallis.)

Q. Mr. Martina, will you please tell the Court what those items—strike that out. You say you paid $18,983.27 before the theatre opened?

A. Yes, sir. That is only partial. I could not find everything, because they are in the Bankruptcy Court.

Q. All right. These expenditures without exception were all made in connection with the Empire Theatre in Syracuse?

A. Yes, sir.

[fol. 2700] Q. You have those expenditures enumerated, do you?

A. Yes.

Q. Will you look at your memorandum and tell the Court what they were, if you know?

The Court: The items, you mean?

Mr. Kallis: Yes, in order that your Honor may understand when these checks are introduced in evidence just what they covered. It is not apparent to me in some instances.

The Court: They show themselves, by the check, if the checks are introduced.

Mr. Kallis: Some of the payees are unknown to me, but I am perfectly willing——

The Court: Does it state on the check what it was for, or just the payee?

The Witness: It gives the payee only.

By Mr. Kallis:

Q. You say every one of these was made in payment of something connected with the Empire Theatre?

A. Yes.

The Court: Does that mean operation or for equipment—I mean, capital expenditures?

The Witness: It means equipment and remodeling and advance rent to the Massachusetts Mutual, and everything [fol. 2701] pertaining to get the theatre in readiness.

The Court: Just to get it in readiness?

The Witness: Yes.

By Mr. Kallis:

Q. Mr. Martina, can you tell the Court whether any or this $18,983.27 covered architects' fees that you actually paid?

A. Yes.

Q. You say that all of those eighteen-thousand-some-odd-dollars is represented by checks or are there items of expenditure not represented by these checks?

A. There is one check I could not find. That was to the Massachusetts Mutual for one month's rent of $1250. I could not find that. And there was another check to the architect of $1000 that I could not find. Those two items were kind of large, and I remember them, but I could not find the checks.

Q. As near as you can recall, and from an examination which you made last evening since court adjourned, are there any other items of expenditure concerning which you were not able to find any checks?

A. Yes, there is others.

Q. Are they included in the eighteen thousand?

A. No, they are not included in the eighteen thousand.

The Court: He stated two. What others do you mean [fol. 2702] besides the two?

The Witness: Those two were included in the $18,000, the architect and rent of $1250.

The Court: All right. Were there any additional expenditures that are not represented by these checks?

The Witness: Yes, there were.

The Court: Other than the two you have named?

The Witness: Yes, there were, but they are not accounted for in the addition.

By Mr. Kallis:

Q. Can you tell us what they are, Mr. Martina?

A. Well, there is different things that were paid in cash, and things that——

Q. According to your best present estimate how much would they amount to?

A. Before the theatre opened, a couple of thousand, more than that, perhaps.

Q. Your statement is that you can definitely state now that there was about $21,000 in cash advanced by you——

A. Yes, before the opening.

Q. Before the theatre opened?

A. Yes.

Mr. Kallis: Do you want to see these checks, Mr. Rogers?

Mr. Rogers: Yes, very much.

Mr. Kallis: Keep them intact.

[fol. 2703] By Mr. Kallis:

Q. Mr. Martina, relative to your operation of the Rialto Theatre in Albion, New York, I understood you to say you had operated that for twelve years?

A. Yes.

Q. Did you ever have any difficulty obtaining product for that theatre?

Mr. Rogers: I object to that.

The Court: Sustained.

Q. Please tell the Court what product you played at the Rialto Theatre in Albion.

Mr. Rogers: I object to that.

The Court: I do not see its materiality.

Mr. Kallis: I am offering by this question, your Honor, to show that where he did not have Schine competition he had no difficulty in getting any of the eight major——

The Court: It would be the whole circumstances. No, I don't think it is competent to show it in connection with some other place not involved here, unless there is some circumstance related to the circumstances claimed here.

By Mr. Kallis:

Q. There was some discussion in cross examination with [fol. 2704] regard to your hoping for a hold-over run in your Empire Theatre. When did you hope to have that hold-over run, before or after you opened your theatre?

Mr. Rogers: May it please the Court, that is objected to. That is speculative and remote.

The Court: The definition of "carry-over" or "hold-over," as I understood it to be stated here, it applies only to the instance or case of somebody who has a run and continues that run in another of his theatres.

Mr. Kallis: That is right.

The Court: That would not be applicable. How could that be applicable here where one has only one theatre?

Mr. Kallis: No, now, this is my understanding, your Honor,——

The Court: I am just giving the definition of "carry-over" and "hold-over" as made here before, that is all.

Mr. Kallis: My understanding is, and I think Counsel will stipulate on this point, that Loew's State was playing—in

Syracuse was playing three products, Columbia, Metro, United Artists. Mr. Martina, as I understand it, was requesting that that same product be transferred immediately, [fol. 2705] without any gap of time, to his Empire Theatre after he started operating.

The Court: That would not be the definition of "carry-over" or "hold-over" as heretofore mentioned. The use of the term has been applied here as relating only to the——

Mr. Kallis: One ownership?

The Court: Where a man owns two theatres and carries over from one to the other. Maybe I am in error.

Mr. Wright: I do not so understand the witness. If he did say so, I don't think it is in accordance with the fact. It is my understanding many hold-overs, where the hold-overs run, may occur in a theatre which is not owned by the owner or operator of the first theatre.

The Court: Ordinarily the term "hold-over" would be applied to somebody holding something over for himself.

Mr. Kallis: I understand there does not have to be any unity of ownership or operation between the two theatres involved. I think Counsel will stipulate. Are you willing to stipulate to that effect, Mr. McClennen?

Mr. McClennen: We are willing to stipulate that it is not [fol. 2706] so. "Hold-over" is used only with reference to playing in two theatres in the same ownership, one immediately after the other, and has no other meaning in the trade.

The Court: I will let you show what he had in mind by "carry-over."

Mr. Kallis: That is all I wanted to elicit.

The Court: I think construing the phrase in a normal way "carry-over" means somebody—applies to somebody carrying something over for himself, and "hold-over," the same. In other words, an independent party, a third party, could not hold over something somebody else had, or carry over something that somebody else had.

Mr. Wright: If your Honor please, I don't think the terms are important here. What I think should be understood is what the witness wanted to do. Whether you call it "carry-over" or "hold-over" I don't suppose is of much significance.

The Court: The witness himself has used the term "carry-over," and that is why—I will let him state.

[fol. 2707] Mr. Wright: I suppose we ought to know how he used it.

Mr. McClennen: The witness already testified this morning that that was the meaning.

The Witness: I did not.

The Court: I so understood.

Mr. Rogers: He did so testify.

The Witness: Your Honor, I did not mean carry-over, it has to be the same owner to carry a picture over into another theatre. That is their own definition. They make their own rules here.

The Court: He asked you the question about the Empire. You can state.

Mr. Rogers: Your Honor has the understanding of the situation.

By Mr. Kallis:

Q. Tell the Court what you had in mind.

The Court: What you mean by "carry-over" or "hold-over."

Mr. Rogers: Pardon me, your Honor. Might it not better be what the general understanding in the industry was as to the purport of that term?

The Court: I will let him state.

The Witness: A "carry-over" means that it is not necessarily a run, like second-run, which there is a lapse of time [fol. 2708] between the first-run of either seven days or fourteen days or thirty days, as the case may be. That is a second-run, if there is a space of time in between the first theatre that runs the picture and the second. But a "carry-over" means that that same night the picture moves over to the other—to another theatre—the following day, without any lapse of time.

The Court: To another theatre owned by another owner?

The Witness: Yes, that has been done.

Mr. Kallis: All right.

Q. Now, Mr. Martina, Mr. Rogers asked you about a custom to the effect that all product is bought usually during the month of September for the following season. Can you tell us whether——

Mr. Rogers: May I interrupt by saying I directed it only to first-run?

Q. First-run. Can you tell us whether there is a custom in the trade, Mr. Martina, as to not playing all of the product which is covered by a first-run contract?

Mr. Rogers: That is objected to as immaterial, may it please the Court.

Mr. Kallis: It is not immaterial, if any of these pictures [fol. 2709] were available, even though they had been contracted for.

The Court: Wouldn't you have to have the consent of the first person who had the first right?

Mr. Kallis: Yes, and I am asking whether any of those pictures which are covered by a contract are released by the exhibitor.

The Court: I will let him state.

Q. Can you tell us?

A. There are many instances where an exhibitor, in order to monopolize, will pay for pictures and not run them, and therefore the company can't sell them.

Mr. McClennen: May that be stricken out?

The Court: The answer is many pictures are bought and not played.

The Witness: Not played.

The Court: That answers it.

Q. Do you know whether there is a custom in the trade if a notice of availability for the playing of the picture is given by the distributor and not played by the exhibitor within the availability period, that that picture is released by the exhibitor?

Mr. McClennen: That is objected to as leading.

The Court: It would be for a year, wouldn't it?

Mr. Kallis: No, as I understand it, your Honor, let us take a picture like "The Song of Bernadette," the distributor [fol. 2710] will notify the exhibitor who has it under contract that it is available for a certain period. It must be played within that period, otherwise the exhibitor loses the right to play it.

The Court: I will let him show whether it is the custom in the trade. That simply means, as you say, that it is made available for a certain period and might not be used, if it applies to a certain picture.

Q. Please tell the Court the custom.

A. The custom is usually, when a distributor makes a picture available, they must book it within a reasonable period of 60 days, because if they don't it holds up all the other theatres in the city or neighboring towns, and so forth.

Q. Did you have in mind playing any of those pictures at the Empire?

Mr. McClennen: That is objected to as leading and immaterial.

The Court: I will let him answer.

Mr. Kallis: Read the question.

The Court: Is that what you mean by procuring first-runs?

The Witness: I was in hopes that they would not play a lot of pictures, which they don't. They never see the screen, [fol. 2711] but they monopolize them.

Mr. McClennen: May that be stricken out, if your Honor please?

The Court: What is that?

Mr. McClennen: May that last be stricken out?

The Court: Yes, the "hope" may be stricken out. The answer was not responsive. I asked the question what class of runs you had in mind when you referred to "hold-over" runs.

Q. As I recall, you testified yesterday that you played five pictures?

A. Yes.

Q. Were they all first-runs?

A. Yes.

Q. Were any of those pictures rejects, using the term in the sense that it is used in the industry?

Mr. McClennen: That is objected to, because the witness could not possibly know whether it was rejected or not.

The Court: That is true, unless he has some personal knowledge from a person who had the right. In other words, if he was told by one of the purchasing exhibitors, he may state.

Q. Do you know whether any of these pictures—well, that [fol. 2712] is all.

Re-cross-examination.

By Mr. Rogers:

Q. Among these checks that Mr. Kallis was kind enough to allow me to scan, is it not true that the greater part of these checks were on the bank account of the Rialto Theatre of Albion, New York?

A. Yes, that is true.

Q. And those checks were issued in February and March of 1940, isn't that true?

A. I believe so.

Q. Look at them.

A. The rent check was December 11th of 1939.

Q. Is the rent check in there?

A. No, but I caught the stub. That is why I know the date.

Q. You mean the check missing there was issued in December for rent, was the only check issued in December, isn't that right?

A. Of this bunch?

Q. Yes.

A. I believe that was the only December check, yes.

Q. And all the rest on the Rialto Theatre bank account are dated February and March, 1940, is that right?

A. Yes, prior to March 23rd. March 6th and February [fol. 2713] 29th, and so forth.

Q. Now, with reference to that Rialto Theatre in Albion, New York, was that a theatre that you originally had under lease from Wilfred H. Robson?

A. Yes.

Q. When those checks were issued in December, February and March, you did not have any interest in that Rialto Theatre, did you?

A. Not as of January 1st, no. My wife was the owner.

Q. In other words, you transferred that theatre to your wife on September 1, 1939; did you not?

A. Yes, sir, that is when the agreements were made.

Q. When which agreements were made?

A. Of the transfer, but for income tax purposes, and so forth, we made it so that she would take over on the first of the year, because that is the fiscal year.

Q. You also transferred to her all the equipment in the house at the time, did you not?

A. The equipment don't belong to us. It belongs to Mr. Robson automatically.

Q. Didn't the instrument that you gave your wife also assign all your rights to the fixtures on the property?

A. Yes, but Robson's lease automatically, when you install a chair——

Q. No, I am asking you whether or not you did not transfer [fol. 2714] your rights in the fixtures to your wife at the same time, under the same instrument?

A. Naturally.

Q. Yet Robson owned it, you say?

A. Yes.

Q. At the same time didn't you transfer that bank account of the Rialto Theatre in the Marine Midland Trust Company to your wife?

A. No, I did not get around to it.

Q. One moment. Let me ask you this: ~~Isn't it so~~ that on June 19, 1939, you opened that checking account in the Marine Midland Bank in Albion, New York?

A. When?

Q. June 19, 1939.

A. Yes, we were dealing in Holley for awhile.

Q. You did open that account then, did you not?

A. Yes.

Q. Wasn't that account titled "Rialto Theatre," Mr. C. V. Martina, Sarah C. Martina, Power of Attorney"?

A. Well, I imagine that was right.

Q. Who is Sarah Martina?

A. My wife.

Q. Now, isn't it so that thereafter that account was changed, so that the account was "Rialto Theatre, by Sarah C. Martina, Charles V. Martina, Power of Attorney"?

[fol. 2715] A. It should have been changed January 1, 1940, with the rest of the other things, but I was so busy with Syracuse and other matters that we just did not bother to go to the bank and transfer the account.

Q. In other words, that was your wife's bank account after January 1, 1940, was it not?

A. Well, technically it was.

Q. I want to know, was it actually her bank account, not technically.

A. It was technically and actually, both.

Q. When you signed those checks you were merely signing them as power of attorney, were you not?

A. Yes, but nothing stopped me from borrowing the money from my wife.

Q. I am merely asking you, were you signing as power of attorney?

A. I suppose, if that is what the bank records show, you are right.

[fol. 2716] Q. Well, as a matter of fact, during the summer and fall of 1939 and part of the spring of 1940, weren't you transferring your property generally to your wife? Weren't you?

A. That is when, it was 1940?

Q. I say, weren't you transferring your property generally, other property in addition to this Rialto Theatre at Albion to your wife?

A. No, the real estate always belonged to my wife.

Q. Which real estate?

A. The homes and things like that.

Q. Regardless of what belonged to your wife or belonged to you, weren't you generally transferring your property to your wife?

Mr. Kallis: If the Court please, I object to this.

The Court: He may state.

Q. What other property did you transfer to your wife in the fall of 1939 and the winter of 1939?

Mr. Kallis: I object to this.

The Court: Overruled.

The Witness: I can't remember.

Q. You don't remember?

A. No.

Q. Do you remember that you transferred the Mount Morris property in Livingston County to your wife?

[fol. 2717] A. Listen, is this a Bankruptcy Court?

Q. You just listen and answer the questions as his Honor has directed you.

The Court: Just answer the question.

The Witness: What did you say again?

Mr. Rogers: The reporter will give it to you.

(Last question read.)

The Witness: Yes, that was all done as of January 1st.

Mr. Wright: Just a minute, if the Court please, it isn't clear to me what issue we are trying here that is involved in this case.

The Court: I think it is competent as bearing on the question of the purchase of this theatre and his right to it and how the debts were paid.

Mr. Wright: How is it significant, whether the ability was in his wife or in him.

The Court: Apparently the property,—he had a responsibility to purchase and pay these expenses and pay for the Empire Theatre.

Mr. Wright: There isn't any question about the fact that he didn't have enough money to keep the theatre going after he got in there, and the question is whether he had enough to get in there.

[fol. 2718] The Court: Objection overruled. Did you transfer the Mount Morris property to your wife?

The Witness: Yes, sir.

The Court: As of January 1st?

The Witness: 1940.

By Mr. Rogers:

Q. Now, didn't you on September 1st, 1939 transfer to your wife all your interest in the Family Theatre and the Genesee Theatre?

A. The Genesee Theatre isn't ours, but it is all right.

Q. Didn't you transfer it, I am asking you?

Mr. Kallis: If the Court please, I think he ought to ask him whether he had an interest in it.

Mr. Rogers: I don't care whether he had an interest or not.

The Court: If he didn't have, he can say. He wouldn't have transferred it if he didn't have it, in other words.

Mr. Rogers: Exactly, sir.

The Court: Did you transfer your interest in those theatres to your wife?

The Witness: Yes, it all took place September 1st, 1939, but the agreement didn't go into effect until January 1st, 1940.

By Mr. Rogers:

[fol. 2719] Q. That was also transferred in September with the understanding it would go into effect January 1st, 1940 for tax purposes, is that right?

A. On account of the income tax, we have always paid it, the fiscal year would end December 31st.

Q. And the calendar year would end December 31st, wouldn't it?

A. And so did our income tax year.

Q. By the time January first arrived you were practically insolvent, weren't you?

A. Well, I paid $21,000 before the opening.

Q. I am just asking you, weren't you insolvent on January 1st, 1940? Didn't your debts exceed your assets?

A. Well, that is why I am in bankruptcy, of course.

Q. Isn't that so?

The Court: As of that time, January 1st, 1940, were you insolvent?

The Witness: I don't see why I was insolvent. I paid $5,000 on the opening day of the theatre besides this $21,000.

The Court: The question is whether you paid your own funds or not.

Mr. Rogers: May I get an answer to that question or not?

The Court: He has answered the question.

[fol. 2720] By Mr. Rogers:

Q. Isn't it so that on January 1st, 1940, you were insolvent?

A. No, if I was insolvent I don't think I would——

Q. You say "No"?

A. No.

Q. Is it so that you were insolvent on February 1st, 1940?

The Court: I think that is going too far.

Mr. Rogers: No, your Honor, he made his lease, this lease in January, and he took possession of these premises in March. Now, surely if he was insolvent he knew insolvency was pending.

The Court: Supposing we assume he was insolvent at that time.

Mr. Rogers: Then the answer to that, your Honor, would be if he took this theatre, knowing he was insolvent, he wasn't speculating his own money, he was speculating as to how badly the creditors would be done in.

The Court: He wasn't speculating by no means. If I take a lease I expect to derive a profit from it.

Mr. Rogers: Then it is just as I stated, if this man takes a lease and runs into large expenses for alterations, there [fol. 2721] is only one group to be hurt, and that is the creditors and not him if he is insolvent.

The Court: The only question is about those checks and the testimony is now these were paid out of funds in the name of his wife over which he had a power of attorney. That is the answer to that.

Mr. Rogers: Yes, but it was my understanding that your Honor ruled, as in my opinion rightly, that I had a right to inquire as to his financial condition at the time he made this and was undertaking this larger responsibility, as to whether or not he had any financial responsibility at that time. That is what we contend, that this was not a bona fide transaction at this time at all. Here was a man transferring his property to his wife, during this very period, making himself judgment proof, and becomes insolvent here, what would he have to lose here?

Mr. Kallis: There isn't any proof of that, and he had plenty to lose. Here are these checks he took out of his funds or his wife's funds, or his banker's funds. He didn't get it for nothing.

[fol. 2722] Mr. Rogers: On Mr. Kallis' statement, this man was paying debts with obligations he incurred, swapping one obligation for another.

The Court: I don't think we need to go further into it.

Mr. Rogers: I think your Honor has the situation. That is all.

Mr. Kallis: That is all.

The Court: Next witness.

Stanley G. Falk, a witness called by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Wright:

Q. Where do you live, Mr. Falk?

A. 61 Chatham Avenue, Buffalo, New York.

Q. What is your occupation?

A. I am an attorney.

Q. You also hold an office in the Syracuse-Strand Corporation?

A. Yes, sir.

The Court: What?

Q. You also hold an office in the Syracuse-Strand Corpora-

[fol. 2723] A. Syracuse-Strand Theatre Corporation.

Q. What is the full name of it?

A. Syracuse-Strand Theatre Corporation.

Q. What is the position you hold with that corporation?

A. I am President of that corporation.

Q. How long have you been President?

A. I can't tell you exactly, some time in the early 30s I was elected President.

Q. More than 10 years ago?

A. I think so.

Q. What is the business of that corporation?

A. Well, it was formed as an operating company and became more or less of a holding company.

Q. What does it hold?

A. It holds a ground lease on the premises known as the Syracuse-Strand Theatre, Syracuse, New York.

Q. And is the owner of the theatre building?

A. Yes, sir.

Q. Did you bring with you the lease you made of those premises to the S.K.E Operating Company in 1939?

A. I have a copy of it.

Q. This lease is the document you have just handed me, or the copy referred to?

A. Yes, sir.

Mr. Wright: I will ask to have that marked.

[fol. 2724] The Court: Is the inquiry as to the lease of the ground, the ground lease, you mean?

The Witness: No, this is not the ground lease, the lease with the S.K.E. Operating Company from the Syracuse-Strand Theatre Corporation.

The Court: I didn't understand you. You said you had the ground lease.

Mr. Wright: The Strand Theatre has a ground lease.

By the Court:

Q. The corporation has a ground lease?

A. Yes, sir.

Q. You also own the building?

A. We built the building on the ground.

Q. This is a lease to the operating company?

A. This is a lease from the Syracuse-Strand Theatre Corporation to the S.K.E. Operating Company, Ltd.

(Thereupon lease from the Syracuse-Strand Theatre Corporation to the S.K.E. Operating Company, Ltd., referred to was marked as Plaintiff's Exhibit No. 811 for identification.)

By Mr. Wright:

Q. Prior to the time you made this lease which has been marked for identification as Plaintiff's Exhibit No. 811, whom did you lease the Strand Theatre to?
A. Warner Brothers.
[fol. 2725] Q. And——

The Court: What is the date of that lease?

Q. The date, what date is it?
A. The 24th day of August, 1939.
Q. Do you know approximately how long before that lease was made Warner was the tenant?
A. The lease with Warner was made in 1929.
Q. That is for 10 years, is that right?
A. Ten years.
Q. And then was the theatre operated by Warner when you first became President of the Strand Company?
A. I am not—I don't know whether it was operated by Warner or R.K.O.
Q. Either one or the other?
A. Yes, sir.
Q. Then do you recall when the Schine interests took over the operation?

Mr. McClennen: Just a moment. It hasn't appeared from this witness that they took over the operation.
Mr. Wright: I think it appears in the answer to the interrogatories. I will show the date. I don't think there is any doubt about it.

The Court: Is there a question about a lease to Schine?
Mr. Wright: The time when they took it over——
[fol. 2726] Mr. McClennen: It appears, I think, that a minority interest was acquired by Schine and that—I don't know whether it appears just what the operation was at that time and——

The Court: You refer to the operation, Mr. Wright?
Mr. Wright: Yes, have you got the date of the acquisition of interest?

Mr. McClennen: I have August, 1935, as the date when the Schine interests acquired a 30 per cent interest.

By Mr. Wright:

Q. Does that refresh your recollection as to when the Schines took over the operation?
A. All I could say on that score is that some time, several years prior to 1939, it was our understanding that Schine was operating the theatre. I don't know the date.
Q. Then during the last few years there, do you know how the theatre was being operated with reference to the time it was kept open or time it was kept closed?
A. Well, it was open part of the time and kept closed part of the time; closed part of the time during the summer, and, as I recall, it was closed and was not run continuously during the winter.
Q. Now, when you negotiated the lease here that is marked for identification as Exhibit No. 811, whom did you [fol. 2727] carry on negotiations with?
A. Mr. Schine.
Q. Which Mr. Schine?
A. Myer, as I recall it, and a representative of R.K.O. is my recollection, it was Mr. Meyers; but I am not positive of that.

Mr. McClennenn: Of R.K.O.?
The Witness: Yes, sir.
Mr. Wright: I am going to offer in evidence this Exhibit 811. Is there any objection?

(Thereupon lease previously marked as Plaintiff's Exhibit No. 811 for identification was received in evidence.)

The Court: Is there any question raised that Schine has not operated the theatre since 1935?
Mr. McClennen: It should be called to your attention that there is no specification in the bill of particulars or in the complaint or in any form that presents this as an issue. There is no objection made to the authenticity of this document. We merely made the objection that it is not material to this case.

The Court: My point was to avoid an extension of the [fol. 2728] record, that is all. The point of inquiry, I suppose, is the operation of the theatre by Schine, whether he operated it, and what period of time.

Mr. McClennen: There is no question that in this period the buying of product was conducted by R.K.O. and the operating of the theatre was conducted under the Schine administration.

The Court: Up to what time was the buying done by R.K.O., up to 1942?

Mr. McClennen: It was operated—the buying was done by R.K.O.—the property—the interest ended August 31, 1941.

The Court: The R.K.O. interest, you mean?

Mr. McClennen: The Schine interest.

The Court: Does that satisfy your purpose, Mr. Wright?

Mr. Wright: Well, that is all the preliminary data I wanted to establish here, yes.

Mr. McClennen: I ought also to say that R.K.O. participated in the physical operation as well, during the period of the operation.

The Court: Well, they did the buying.

Mr. Wright: As I understand it, it was a pooled operation by the parties.

The Court: What does that purport to be, Exhibit 811?

[fol. 2729] Mr. Wright: That is a lease dated August 24th, 1939, between the Syracuse-Strand Theatre Company, Inc., of which the witness is President and S.K.E. Operating Company, Ltd., a New York corporation, which I believe, according to these interrogatories is the corporation through which Schine and R.K.O. held their interest in the property.

Mr. McClennen: Do I understand your Honor was going to admit the lease?

The Court: What I was trying to do, I thought perhaps some of these things there might be no disagreement about and there might be no object in cluttering up the record.

Mr. McClennen: Apparently there is no disagreement. I haven't heard any.

The Court: There might be some question about what was done under the lease, whether R.K.O. did purchase, and there is your statement that R.K.O. also participated in the operation.

Mr. McClennen: I recall to your Honor's attention the fact there is no specification in any way with respect to this lease or this Strand Theatre.

The Court: Well, I think we better admit it.

[fol. 2730] By Mr. Wright:

Q. I call your attention to this Article IV, of the lease marked as Plaintiff's Exhibit No. 811, the provision which reads as follows: "The lessee covenants and agrees to keep the theatre open for business and in operation at all times during the term of this lease, except that the theatre may be kept closed from May 15th to Labor Day in each year and the theatre may be kept closed for not more than four days of each week during all or any part of the remainder of each year, except that the theatre may be kept closed during an emergency, or pursuant to any law or regulation of governmental authority or any period required to make necessary repairs".

Can you tell us what, if any, discussion you had with Mr. Schine at the time you were negotiating the lease with reference to the operation of the theatre?

Mr. McClennen: This is objected to as not within any specification in the case.

The Court: You mean operation as to time?

Mr. Wright: Yes.

The Court: Objection sustained.

Mr. Wright: No, I am not talking about—when I said "operation" I was referring to what, if any, discussion [fol. 2731] there had been as to when the theatre would be operated and when it shouldn't.

The Court: That is shown in the lease.

Mr. Wright: It does say so in the lease. All I am asking for now is the negotiations that led up to that.

The Court: I do not think you can contradict an instrument in writing.

Mr. Wright: I am not attempting to contradict it. All I want to show is what the negotiations were which resulted in that being in the lease.

The Court: Of course, if your question is directed to who was to physically operate it, that is one thing, but I don't think you can show that other terms were made as to the time when it should be closed.

Mr. Wright: I will reframe the question.

Q. Was the theatre open at the time you made this lease here, dated August 24th, 1939?

A. I don't believe so, I don't think it was at the moment.

Q. And had it been closed during the preceding winter?

Mr. McClennen: This is objected to as not bearing on this case.

The Court: He may answer. Was it closed?

[fol. 2732] The Witness: Well, it had been operating. It may have been closed a short period of time.

~~Q. you don't know how low the periods were?~~

A. Well, it was closed, as I recall at that time, they would run it for a week or part of a week and close it for a few days and open it again and carried that program on.

Q. The rental that is specified in this lease, Exhibit No. 811, was that more or less than you had been receiving under the prior lease?

Mr. McClennen: That is objected to, if your Honor please.

~~The Court: Sustained.~~

Q. Were you able to find the prior lease or a copy of it?

A. No, I have not been able to find it in my files.

Mr. Wright: We can, of course, subpoena and produce the other lease.

The Court: What relevancy has it?

Mr. Wright: We simply want to show that the rental value of the Strand was gradually depreciated by these people as a result of their control of the product. It originally was rented at a figure substantially in excess of this renewal here, and when this expired substantially less than [fol. 2733] that was offered, and then the theatre was turned loose, and we propose to show what happened to it during that period.

Mr. McClennen: The amount paid under an earlier lease would have no tendency to show any of the things stated in Mr. Wright's offer. It would only show the amount of the rent and that would be shown by the lease, and would be immaterial in this case, if it were shown.

The Court: It is sustained at this time. The present amount of the lease may depend on different circumstances, the circumstances under which it was operated and conditions of operation.

Mr. Wright: Our contention is the principal circumstance which enabled these people to successfully reduce the rental is simply the control of pictures for the theatres, and I think it is relevant to show the effects of that control on theatre real estate.

Mr. McClennen: That would not be shown by the amount of the——

The Court: Well, we haven't the lease here, anyway.

Mr. McClennen: We haven't the lease here, and it was not a lease to us, so there would be no occasion for us to [fol. 2734] have it.

The Court: In the first place, you would have to have the lease, and show whether conditions modified the rental valuation and depreciated values.

By Mr. Wright:

Q. How long was the theatre operated under this lease, Exhibit No. 811? How long was it kept open?

Mr. McClennen: We make the same formal objection, if your Honor please. It has no bearing in this case, no specification——

The Court: Wasn't this answered?

Mr. Wright: No, he answered with respect to the prior period. I am now asking him with respect to the period commencing with this lease, Exhibit No. 811, how long it was open.

The Witness: It was operated for two years; just what part of the two years it was open, I wouldn't say.

Q. Would you say for the entire two years?

A. It was closed part of the summer. Whether it was closed for both summers, I wouldn't say.

Q. Do you recall the last time it was closed?

A. It was closed the summer of 1941.

Q. That was the summer before it expired, and about [fol. 2735] how long had it been closed before the expiration date of August 31, 1941?

A. I am not prepared to say the exact closing date. It was closed at the end of the spring, but I don't know.

Q. Some time in June or July?

A. Yes, perhaps in May.

Q. Then, after it was closed, did you carry on negotiations for a renewal of the lease?

A. Yes, sir.

Q. With whom?

A. With Mr. Schine and R.K.O.

Q. Do you recall who represented R.K.O.?

A. I don't believe that—I had a conference with Mr. Schine. I don't recall that any representative of R.K.O. was present, to my recollection. There maybe have been some one present. I subsequently talked to Mr. Kingsberg or Kingsbury.

Q. Malcolm Kingsbury?

A. Yes, in New York, myself, and he said he would look into the matter. I also had our representative take it up, one of our other officers took it up with some of the officers or managers of R.K.O. They told us to continue our negotiations with Mr. Schine.

[fol. 2736] Q. Well, now, where did you have your negotiations with Mr. Schine?

A. In Syracuse.

Q. What time was this, do you recall?

A. I believe it was the end—during the month of August, or it may have been in July, but I think it was in August.

Q. A month or two before the expiration of the lease?

A. Quite near the expiration of the lease.

Q. Where in Syracuse were these conversations held?

A. I am quite sure in the Hotel Onondaga.

Q. Was there any one else present besides you and Mr. Myer Schine?

A. I am quite sure that Mr. Clinton Carr of our company was there, and I believe Mr. Charles Carr. Whether Mr. John May was there I am not sure. Sometimes Mr. May was and sometimes he was not. I don't recall whether he was there at that time or not.

Q. What was said at those conversations?

Mr. McClennen: That is objected to, if your Honor please. Here is a case of great detail. Specifications were ordered so that we might know what we were expected to meet. There is no specification that brings this in. I submit that we ought not to be called upon to go into it. Otherwise, all the attempts of the Court to have us apprised of [fol. 2737] what we were to try are futile. That is the reason for specifications, and I urge that this conversation should not be received, because it has no bearing upon the issues made in this case.

Mr. Wright: If the Court please, the reason for the absence of specifications in the original pleadings is that this matter, of course, did not arise until after the suit was filed. Counsel, however, were notified, I believe, by letter that we were going into the Syracuse situation. They were also notified that this gentleman would appear as a witness. I don't think there is any surprise involved in what we are doing now.

Mr. McClennen: I assume that the letter referred to is the one that I have seen that informed us that Mr. Falk was to be a witness, but no suggestion in the letter in any respect whatever of this matter that we are now discussing.

Mr. Wright: I do not understand at any time we are bound to supply these people with a statement of what a [fol. 2738] witness's testimony will be, before we put him on the stand.

Mr. McClennen: No, but when you state what is in the contents of a letter addressed to us you are bound to state it accurately, so that we do not have to call attention to the fact that it was not in that letter.

Mr. Wright: I will be glad to show the Court the letter.

Mr. McClennen: What?

Mr. Wright: I will be glad to have you show the Court the letter.

Mr. McClennen: I dare say you would, but you would not be glad to concede, without showing the Court the letter, the fact that it did not state this transaction.

Mr. Wright: What it stated I don't recall at the moment, and I would be very glad to show the Court the letter.

The Court: You said something about going into the Syracuse situation?

Mr. Wright: As I understand it, at least some letter has been written to that effect. If you have not received such a letter, I have no objection to your showing the Court whatever you did receive. Will you get our copies of the letters [fol. 2739] that have to do with Syracuse? (Addressing Mr. Kallis.)

The Court: I will permit the inquiry. Proceed, Mr. Wright. I think the Court has discretion. Proceed.

Mr. Wright: Counsel was apparently referring to a letter handed him recently. I was under the impression we had written a letter, last summer dealing with Syracuse, to Counsel, during the summer adjournment.

Mr. McClennen: I have no knowledge of any such letter.

The Court: Irrespective of that, I will let him answer.

It may be subject to a motion to strike. What took place on that occasion in Syracuse; what was said?

The Witness: I discussed with Mr. Schine the question of whether they would continue to lease the Syracuse Strand Theatre. We had considerable discussion on the subject, and finally Mr. Schine made an offer of eighteen thousand, plus, as I recall it, a percentage of the profits. I told him that that was out of the question. I told him I did not think he was being fair. I told him that he had the situation in Syracuse well in hand, if this lease was not made we would [fol. 2740] go into competition with him, that the theatre was not going to be kept closed, and that I felt he should make a reasonable and fair offer for the theatre. He insisted that the theatre was not worth more than what he was offering, in fact it was not worth that much, and I urged him to reconsider the matter, and it is my recollection that he told me that his associates would not pay more than that. I urged him to take it up with them and advise me promptly whether they would not pay a more reasonable rent, and that ended the conference.

The Court: Reasonable rent?

The Witness: Rent.

The Court: Rental and percentage, you mean?

The Witness: I was not interested in the percentage. I asked for a rental.

The Court: You say $18,000?

The Witness: And a percentage; but I asked for more reasonable rent, that is, higher rent.

The Court: That is what I was getting at, as distinguished from purchase.

[fol. 2741] The Witness: Oh, yes, there was no discussion of purchase, as I recall.

By Mr. Wright:

Q. Percentage was a percentage of gross or net profits?
A. Net.

Mr. McClennen: That is objected to.

The Court: Overruled.

Q. Was anything said in the course of this conversation with reference to the effect of the lease of that theatre on the Syracuse situation?

Mr. McClennen: Same objection.

The Court: Let him state the whole conversation.

Q. State it all, as nearly as you can recall it.

A. I called to Mr. Schine's attention the fact that while he had the Syracuse Strand Theatre, and except for Loew's, he had—he and RKO had control of all the important theatres in down-town Syracuse, and that if he did not renew this lease there was going to be an attempt, at least, for major competition, that we were going into competition, that we were not going to let this theatre stay closed. We would either rent it to someone else or endeavor to operate it.

Q. What did he say about that?

A. He simply said it was not worth more than he was offering.

[fol. 2742] Q. How did that offer of $18,000 compare with what it actually cost to maintain the theatre?

Mr. McClennen: That is objected to, if your Honor please, not only on the general ground, but calling upon the witness to make a comparison of figures not in evidence in any way.

The Court: This question is directed to the cost of the operation of the theatre at that time.

Mr. McClennen: And this witness was not operating the theatre at the time.

Mr. Wright: I think perhaps I can clarify that, if I rephrase it.

By Mr. Wright:

Q. What was the cost to your corporation, the annual cost to your corporation, of maintaining the theatre? That is, with reference to ground rent, maintenance, insurance, taxes, et cetera?

Mr. McClennen: That is objected to, if your Honor please.

The Court: Overruled.

A. In the neighborhood of $22,000.

Q. When was it that Mr. Schine gave you a final "No" on the renewal?

A. Some time during August of that year, 1941, August, 1941.

Q. Then what, if anything, did you do with reference to leasing the theatre to any one else?

[fol. 2743] Mr. McClennen: That is objected to, if your Honor please.

The Court: Overruled.

A. We got in touch with all the major operating companies. We got in touch with a couple of agents. We got in touch with some people we knew were interested in the theatrical field, and endeavored to rent the theatre to someone else.

Q. Did you receive any offers?

Mr. McClennen: That is objected to, if your Honor please.

The Court: Overruled.

A. Eventually we received an offer from Mr. Wallace, among others.

Q. That was when?

A. That, as I recall, was in September of that year.

Q. Did you receive at any time any offer to lease the theatre from Loew's?

A. Well, subsequently, much later, but not at that time.

Q. Not until after 1941?

A. Oh, no, not until 1943, as I recall it.

Q. At this time did you receive any offer from Warner?

A. No.

Q. Did you receive any offer from Paramount?

A. No.

Q. Did you receive any offer from 20th Century-Fox Film Corporation, or any of its theatre-operating subsidiaries?

[fol. 2744] A. No.

Q. That period would include the entire year 1941?

A. Yes, we started in the summer of 1941, or the spring of 1941, to endeavor to get a tenant.

The Court: What?

The Witness: We started in the spring of 1941 to endeavor to find a tenant. I wrote to Mr. Schine, I believe, early in the spring of 1941, and I don't think we got together until the middle of the summer, but we started the same time to look around for a tenant.

Q. During the years 1941 and 1942 you received no offers to lease from any of those companies?

A. No, none.

The Court: You said it cost about $22,000 to operate?

The Witness: Carrying charges.

The Court: Yes, carrying charges. Part of that $22,000 was paid to your holding company?

The Witness: No, no. An Estate, known as the Anderson Estate, owns the fee of the property. We paid them a ground rent of $12,000 a year. My recollection is that the taxes were running around $10,000 that year, and we had insurance and minor repairs, and my recollection is that [fol. 2745] it was around $22,000. Those figures would make it a little more, but it was approximately in the neighborhood of $21,000 to $24,000.

The Court: All right.

By Mr. Wright:

Q. You say you made a lease with Mr. Wallace?

A. Yes.

Q. Have you got a copy of that lease with you?

A. I don't know. I don't think so.

The Court: Mr. Wallace, have you got a copy of it there?

(Document is produced.)

Mr. Wright: Mark this for identification as Plaintiff's Exhibit 812.

(Lease to Mr. Wallace referred to marked as Plaintiff's Exhibit 812 for identification.)

Q. Do you recognize this document marked for identification as Plaintiff's Exhibit 812 as a copy of the lease you made with Mr. Wallace?

A. Yes.

Q. Reference appears here to the Syracuse Community Theatre Corporation. Can you tell us what that corporation was and how it was organized, who was interested in it?

A. That was a corporation formed, or caused to be formed, by Mr. Wallace, and the Syracuse Strand Theatre [fol. 2746] Corporation in which each of those two interests had a half interest.

Q. Your corporation and Mr. Wallace each held half?

A. That is right.

Q. Then that Syracuse Community Corporation operated the Strand under that lease for about how long?

A. About four months or five months.

Q. Four or five months?

A. Yes.

Q. Were losses sustained by the Syracuse Community Corporation during that period?

Mr. McClennen: That is objected to, if your Honor please.

The Court: Of course, the loss may be attributed to many circumstances.

Mr. Wright: That is quite right. We expect to show by further testimony, of course, that it was attributable to the inability of the theatre to get product.

The Court: I will let him answer. Overruled.

A. Yes.

By Mr. Wright:

Q. Those losses were shared equally, were they, by your corporation and Mr. Wallace?

Mr. McClennen: That is objected to, if your Honor please.

The Court: I don't think that is material.

[fol. 2747] Q. Do you know about how much they were?

Mr. McClennen: That is objected to.

The Court: Objection sustained. What is the last question?

Mr. Wright: I asked him how much the loss was.

The Court: Overruled.

Q. Approximately.

The Court: In four months, you mean?

Mr. Wright: Yes.

A. I think the corporation, that is, the Syracuse Community Theatre Corporation, lost between fifteen and twenty thousand dollars, maybe more.

Q. During the period of its operation?

A. Perhaps a little more, yes.

Q. Then when they ceased operating what, if anything, did you do with theatre?

A. Syracuse Strand Theatre started operating.

Q. You started to operate it yourself?

A. Yes.

Q. How long did you operate it?

The Court: Whom did you say?

The Witness: Syracuse Strand Theatre. I think we operated it for three or four months, maybe longer. I am not sure.

Q. That would be in the spring or the winter of 1942?

A. No, that was in the spring of 1942.

[fol. 2748] Q. Then you ceased operating the theatre?

A. Yes.

Q. Closed it?

A. Yes.

Q. During the period of your operation do you know what kind of a policy it operated on?

Mr. McClennen: That is objected to again, your Honor, on the ground it is one of the things that should have been specified.

The Court: Overruled.

A. Why, we ran stage shows and pictures. I think perhaps a little—I don't know—I was going to say perhaps some Bingo, but I am not sure that we had any Bingo at that time.

Q. What kind of pictures?

Mr. McClennen: May it be understood the objection goes to all of this?

The Court: Yes. It refers to what kind of a run?

The Witness: Well, I don't know the technical language of the moving picture industry well enough. We had some——

Mr. McClennen: Could I interpose this further objection? I suppose these things were under some form of contract.

The Court: I will let him state the type of pictures they [fol. 2749] played, irrespective of what the contract was for. It is a question of what they did.

Mr. McClennen: I was led to make the objection because the witness, with lawyer-like accuracy was confessing lack of his familiarity with these terms, and the contracts would tell what they got precisely, and I make that further objection, therefore, that it should be shown by the contracts that were made, if at all.

The Court: I will let him state what they did run.

The Witness: We got some product from the independent companies, such as Republic and Monogram. We had some old pictures, and we may have had some so-called Class B or poorer grade pictures that major companies produced, and we had some—I think I said subsequent run pictures.

Q. Did you make or lost money during that period?

Mr. McClennen: Same objection.
The Court: Overruled.

A. We lost a considerable sum of money.

Q. Did you have anything to do with negotiating or attempting to negotiate for product for the theatre during that period?

[fol. 2750] A. I talked to representatives of——

Mr. McClennen: Please don't state until I——
The Court: The question is yes or no.
The Witness: Oh, yes.

Q. What were they, with whom and where?

Mr. McClennen: That we object to.
The Court: Overruled.

A. I talked to Mr. Ralph Maw of Metro-Goldwyn-Mayer.

Q. When was that?

A. Well, it was some time during the year of 1942, or perhaps in the fall of 1941. I cannot place the date. I haven't a record of it.

Q. It was while the theatre was in operation?

A. That is right. I talked to Mr. Maw, and I have known him for a long time. I told him I wish he would try and get us some decent product. He said he would do the best he could. I also talked to Mr. Sidney Samson——

Q. Just a moment. Did you hear anything further from him?

A. Well, we got some product, not very good, but some.

Q. From Metro?

A. From Metro.

Q. Whom else did you talk to?

A. I talked to Sidney Samson of 20th Century-Fox. I met him over at the Athletic Club one day. I had known him for a great many years.

[fol. 2751] Q. When was this?

A. This was during that same period. I can't tell you exactly.

Q. What did he tell you?

A. I told him we were running in Syracuse, having trouble getting product. I wished—that he ought to give us some. He said he did not have any available. "You haven't any available of any kind?" He said, "No, none of any kind." I said, "God, Sid, I can't understand that."

Q. Anything else?

A. That was that. Yes, I asked him what was the matter with the situation in Syracuse. He said we were foolish to run. That about ended that conversation.

Q. Did he tell you why you were foolish to run?

A. Well, he said we could not operate it successfully.

Q. Did he say why?

A. No.

Mr. Wright: That is all.

Mr. McClennen: Now that these conversations are ended with Mr. Maw and Mr. Samson, we move as to each that they be stricken out.

The Court: I will let them stand.

Mr. Rogers: No cross-examination.

Mr. Wright: If the Court please, for the record I would [fol. 2752] like to state at this time what the situation is as to this correspondence, as we understand it, and the pleadings at Syracuse. I find Syracuse is mentioned in the supplemental bill of particulars that was furnished, as a situation where the defendant had a local monopoly, and I believe that charge occurs in paragraph 18, listing the towns in which they are alleged to have monopolized product.

On August 19, 1944, a letter was written to Willard McKay, over Mr. Berge's signature, which states as follows:

"Several responses to interogatories and requests for bills of particulars filed by the plaintiff in the above case have included specifications with reference to Rochester and Syracuse, New York. The following information as to plaintiff's proof is furnished to you with respect to the Rochester and Syracuse situations, supplementing information already supplied.

1. With respect to Rochester, the plaintiff will undertake [fol. 2753] to show", and it cites A, B and C.

Item 2 is with respect to Syracuse: "A. That the exhibitor defendants, in conjunction with their theatre-operating partner in Syracuse, have demanded and received from all distributors preference and priority over the Strand Theatre during the period of its operation by Charles V. Martina and subsqent operation by Hubert P. Wallace and associates."

Then a subsequent letter was written on September 20th to Mr. McKay, which states: "Reference is made to the letter from this office, dated August 19, 1944, in which you were advised that the plaintiff's proof with respect to Rochester and Syracuse would embrace the matters indicated in paragraphs 1 and 2.

"It has been noted that paragraph 2, with respect to Syracuse, did not specify correctly the names of the theatres connected with the testimony of Charles V. Martina and Hubert P. Wallace. It is therefore desired to correct [fol. 2754] paragraph 2 to read as follows: A. That the exhibitor defendants, in connection with their theatre-operating partner in Syracuse, have demanded and received from all distributors preference and priority over the Empire Theatre during the period of its operation by Charles V. Martina, and over the Strand Theatre during the period of its operation by Hubert P. Wallace and associates."

The correction was, the first letter had erroneously referred to the Strand as Mr. Martina's operation.

The last letter I believe Counsel referred to in his statement to the Court is dated October 2nd, addressed to Mr. McKay, signed by Milton Kallis, "Supplementing our letter of September 16, 1944, with reference to the names of witnesses who may be called during the week of October 2, 1944, we hereby notify you that in addition to those specified we may call as witnesses, Paul Paulvin, George Smith, Stanley Falk."

The Court: I suppose there is no question raised regard- [fol. 2755] ing the receipt of these letters?

Mr. McClennen: I think not, your Honor. We called attention to the fact that they give us no information of any claim of any misconduct with respect to the operation by Mr. Falk at all.

The Court: He does specify the theatres.

Mr. McClennen: He specifies Mr. Wallace.

The Court: And the theatres?

Mr. McClennen: Mr. Wallace's operation of the Strand.

Hubert P. Wallace a witness called by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Wright:

Q. Where do you live, Mr. Wallace?
A. Auburn, New York.
Q. What is your occupation?
A. Theatre business and real estate.
Q. What theatre do you operate there?
A. The Capitol Theatre.
Q. How long have you operated it?
A. Approximately fourteen years.
[fol. 2756] Q. The theatre is operated in the name of the corporation?
A. Yes, sir, the Auburn Capitol Theatre Corporation.
Q. You began the operation, you say, in 1930?
A. April 29, 1931.
Q. 1931?
A. Yes, sir.
Q. What were the other theatres in the town then?
A. The Jefferson Theatre, Palace Theatre, and the Strand Theatre.

The Court: Where do you mean?
Mr. Wright: At Auburn.
The Court: Where?
Mr. Wright: This is at Auburn, New York.
The Court: I thought you said Armour.
The Witness: No, at Auburn.
The Court: I misunderstood you. I tried to find out where Armour was. I heard that name some place.
Mr. Wright: Read that last.

(Last question and answer read.)

Q. Were these theatres then being operated?
A. Two of the theatres were.
Q. Which two?
A. The Jefferson and the Strand.
Q. And the third was closed?
A. It was running part-time, as I recollect.
[fol. 2757] Q. What was the name of that theatre?

A. Palace Theatre.

Q. Your theatre was the Capitol?

A. Capitol.

Q. Who was operating the other three theatres?

A. Fox people.

The Court: You mean three besides yours or four all together?

The Witness: There were four all together.

Q. How long did Fox operate the theatres?

A. To the best of my recollection it was until the latter part of 1932 or the early part of 1933.

Q. During that period what policy were you operating the Capitol on?

A. On a first-run policy.

The Court; 1933, you mean?

Mr. Wright: Yes, that is 1931 to 1933.

Q. With what major product, if any?

A. We had RKO-Pathe, United Artists and Columbia.

Q. Then what was the last season that you had the RKO first-run, regular first-run product?

A. The 1932-1933 season.

Q. I will hand you this document and ask you if that is the contract you refer to?

A. Yes, sir.

Mr. Wright: I will ask to have that marked the next [fol. 2758] Plaintiffs exhibit number for identification.

(Contract between Mr. Wallace and RKO 1932-1933 season referred to was marked as Plaintiff's Exhibit 813 for identification.)

The Court: You mean the last contract with RKO?

Mr. Wright: Yes, for regular season's first-run.

Q. Who took over the operation of the other theatres there after Fox stopped running them?

A. Schine-Shea interest, a pooling arrangement.

Q. During the 1933-1934 season what, if any, major product did you have first-run on?

A. I had—the principal product was Paramount.

Q. What were the others, if any, major first-run?

A. We had some United Artists first-run and we had, I believe, three RKO pictures first-run, and some few Columbia pictures.

Q. The Paramount—contract for the Paramount first-run you referred to, is this the document I hand you now?

A. Yes.

Mr. Wright: I would like to have that marked the next exhibit for identification.

(Contract between Mr. Wallace and Paramount referred to was marked as Plaintiff's Exhibit 814 for identification.)

[fol. 2759] Q. After the 1933-1934 season did you have any regular first-run contract with any of the major distributors?

A. I had United Artists, about 30 pictures.

Q. What season was that?

A. That was the 1934-1935 season, and I had about—oh, 14 to 16 pictures from RKO, and I had, roughly, a few pictures from Columbia.

[fol. 2760] Q. Were those R.K.O. pictures those you got under regular contract, or were they spot booked?

A. They were spot booked.

Mr. McClennen: I would be obliged if you would pause when I rise to object to the Court.

The Witness: I am sorry.

Mr. McClennen: The contracts would be the best way of showing this, I submit.

The Court: Sustained.

Mr. Wright: As I understand it, the term "spot booking" means licensing the picture without entering into a formal contract.

The Court: Well, then, it might depend on the form of the contract for the picture. I did not understand the meaning of "spot booking."

Q. Would you tell the Court what you mean by the term "spot booking" of a picture?

A. In the neology of the picture business "spot booking" means you can pick up a picture that has been rejected by somebody else without going through the formality of a contract.

The Court: The contract, I suppose, is a contract to buy——

The Witness: The contract is usually oral.

Q. Do you customarily sign an application like this for [fol. 2761] it?

A. Sometimes you do and sometimes not.

Q. Now, with reference to the season subsequent to 1934-35, what, if any, major first-run product has been regularly exhibited in your theatre under a season first-run contract?

A. Columbia pictures.

Q. Any others?

A. Well, we had a few rejected pictures from R.K.O. We had a few foreign and reissued pictures from the United Artists and I believe we had five or six rejected pictures from Warner First National.

Q. What do you mean when you say a rejected picture?

A. Pictures that had been generally released in the film area over a period of months and rejected by the opposition, that is, the Schine interests.

Mr. McClennen: I move to strike, if your Honor please.

The Court: By the exhibitors. Strike out the word "Schine"; by the exhibitors.

Mr. Wright: I will offer in evidence these last two contracts that were identified.

(Thereupon the contracts previously marked for identification as Plaintiff's Exhibits Nos. 813 and 814 were received in evidence.)

[fol. 2762] Q. I call your attention to Exhibit 813, and ask you what theatres are referred to by the statement that appears there, "The following 15 products were sold to Skouris Theatres for a first-run"?

A. Well, that would refer to the Jefferson Theatre, the Strand Theatre and possibly the Palace Theatre.

Q. Those were the theatres you previously referred to as having been operated by Fox when Mr. Skouris was associated with Fox?

A. Yes, sir.

Q. As I understand it from that contract, you had the R.K.O. first-run during the 1932-33 season, and it was played between you and the other three theatres there that Fox and Skouris was operating?

A. We did.

Q. As I understand it, the Fox referred to was "Fox Metropolitan Play Houses"?

A. I could not answer that. I think it was some Fox-Skouris connection, but I don't know the connection. We only referred to it as Fox.

Mr. McClennen: I call your attention to the fact that this was referred to in the question just now as the 1932-33 product which had been described before as being for the full line. It is in fact to Fox Metropolitan.

[fol. 2763] Mr. Wright: That is just what I got through calling the Court's attention to, that it was not for the full line.

Mr. McClennen: For eight pictures to the Fox Metropolitan, and one-half of the balance to Fox Metropolitan and one-half to the Auburn Capitol Theatre, there being at present in the record, therefore, no contract for any full line of product.

The Court: That is not claimed.

Mr. Wright: Obviously not.

Mr. McClennen: It had been stated earlier, and I am speaking of the correction.

By Mr. Wright:

Q. Then with reference to the R. K. O. product for the next season, 1933-34, were you solicited by any one from R. K. O. for a first-run of the product during that season?

A. No, sir.

Q. The season contract, and did you have any conversation with any one from R. K. O. about first-run pictures for the 1933-34 season?

A. I did.

Q. Whom did you talk to?

A. I believe it was Charles Boasberg.

[fol. 2764] Q. Who was he?

A. The salesman in the Buffalo territory.

Q. He was the salesman who covered Auburn?

A. Yes, sir.

Q. Where did you see him?

A. At the office of the Capitol Theatre in Auburn, New York.

Q. What was the conversation you had with him about it?

Mr. McClennen: The usual objection.

The Court: Overruled.

The Witness: I asked Mr. Boasberg for some product, and he told me that he had sold a contract for the full line of R. K. O. pictures to the Schine-Shea outfit, and, however, he would keep a close check on the situation, and if there were any rejected pictures during the season he would be glad to give them to me from time to time, as they became available.

Q. Was there anything said by him as to why they had sold to the Schine-Shea instead of offering the product to you?

A. Well, he said "Of course, you understand, we made a circuit deal and that was included in the circuit deal", and he could not help it.

[fol. 2765] Q. Did you discuss the matter with any one else at R. K. O.?

A. I believe I talked with—no, I referred the matter to my attorney in Syracuse.

Q. You had no further conversation?

A. No, sir.

Q. Then, calling your attention to this contract with Paramount for 1933-34 pictures, which has been marked Exhibit 814, were you offered the Paramount product first-run for the following season?

A. No, sir.

Q. Did you have any conversation with any one from Paramount about that?

A. I did.

Q. Whom did you talk to?

A. I talked with Mr. Caskey.

Q. Several times? Who was he?

A. He was the Syracuse salesman, and I talked with Mr. Robinson, the Buffalo Branch Manager.

Q. When did you talk to them?

A. Well, they used to stop in to the theatre. Caskey would, almost every week.

Q. When was the first time either of them told you you weren't going to get the 1934-35 product?

A. That was about the 10th of October, 1934.

Q. Who was that that told you, was that Caskey or Robin- [fol. 2766] son, or both?

A. That was Mr. Caskey.

Q. Whereabouts?

At the office of the theatre in Auburn, New York.

Q. What was said then?

Mr. McClennen: Same objection.

The Court: Overruled.

The Witness: Mr. Caskey came into the theatre and he said "It is my unfortunate duty to come in and tell you that Paramount has sold away to Schine. Both Robinson and I objected very strenuously to this procedure, but there was nothing we could do about it."

Q. Then——

Mr. McClennen: I move that that answer be stricken, if your Honor please.

The Court: Overruled.

Q. Then did you see Robinson?

A. After that I saw Robinson about either a week or a few days later.

Q. Whereabouts?

A. In the office of Willis Sargent, in Syracuse, in the Willard Building.

Q. Who is Willis Sargent?

A. Willis Sargent is my attorney.

[fol. 2767] Q. What was the conversation then?

A. Mr. Caskey and——

Q. Mr. Caskey,—who was present?

A. Mr. Caskey was present, Mr. Robinson was present, Sargent and I.

Mr. McClennen: Same objection.

The Witness: I said to Caskey and to Robinson, "I think you are kidding about the selling away to Schine, because when you originally sold me the pictures, you said I would be your customer and would continue to be your customer," and Robinson went on to tell me he had discussed the matter at great length with Mr. Unger. He had made several trips to New York. He felt very much embarrassed, and, as he explained it to Sargeant, we were a good account, he had received more money than he expected to get; that he had explained these things to Unger, all to no avail. The point was he simply could not prevail against——

Q. Just state the conversation.

A. Mr. Robinson told Sargent and I there was nothing he could do to prevail against Mr. Unger making a certain deal. There was nothing he could do about it. Mr. Caskey [fol. 2768] said frankly "I feel like resigning from my position."

Q. Was that all the conversation then?

A. Mr. Sargent stated he was going to see Mr. Unger himself in New York.

Mr. McClennen: May that be stricken out?

The Court: Well, the statement of how Caskey felt, that may go out.

Mr. McClennen: That may go out?

The Court: Yes.

Mr. Wright: What is the part stricken out?

The Court: He said how he felt about it, how he and Caskey felt about it or how he personally felt about it.

Mr. Wright: I submit it is competent as showing what he said.

The Court: Strike it out.

Q. Then did you hear anything from Mr. Unger or any other representative of Paramount with respect to that matter?

A. I did not.

Q. Was the season first-run deal of Paramount Pictures ever offered to you after that?

A. No, sir.

The Court: We will have to suspend at this time, as I have an appointment.

(Whereupon a recess was taken until 2 P. M.)

[fol. 2769] After Recess, 2 o'clock P. M.

Appearances: As before noted.

(Reporter's note: Correction: Page 2553, line 1 change to read "I just own the building.")

Hubert P. Wallace resumed the stand by and on behalf of the Plaintiff, having been previously sworn, was examined and testified as follows:

Direct examination (continued).

By Mr. Wright:

Q. During the period from 1935 to 1938, did Schine operate the other three theatres in Auburn the full time?

A. They did.

Q. Then, in the year 1938 there was another theatre constructed there?

A. There was.

Q. What was the name of that theatre?

A. The Auburn Theatre.

Q. That was built by Schine?

A. Yes, sir.

Q. When did that open?

A. Approximately September 15th, 1938.

Q. Then, after the Auburn was built, did the Schines con- [fol. 2770] tinue to operate all four theatres full time?

A. Yes, sir.

Q. During the period from 1935 prior to the opening of the Auburn, what, if any, efforts did you make to secure first-run major product for your theatre?

A. Well, I made continuous efforts with the various film companies.

Q. Did you ever discuss terms with any of them for a season deal?

A. We never approached that point where we discussed terms.

Q. Well, who did you have your talks with?

A. Well, I had a talk with Mr. Kemper.

Q. Who was he?

A. He was a salesman for Fox.

Q. Who were the others?

A. Mr. Caskey and Mr. Robinson.

Q. Just say who they were in each case.

A. The Branch Manager and Salesman for Paramount; Mr. Zurich, Salesman for Warner First National, and Mr. Boasberg, the Salesman for R. K. O., and I believe I talked with—I know I talked with the salesman for M. G. M., but I just can't recall his name.

Q. Did you talk to the M. G. M. Branch Manager at all?
A. No, I didn't.

Q. These conversations you have referred to were had [fol. 2771] when, with reference to the selling season each year?

A. Well, about the fall, at the beginning of the selling season, around August or September.

Q. Can you recall what, if any, reasons were given to you for not discussing the deal?

The Court: That is too general.

Q. Well, let us take it company by company; first as to the R. K. O.

Mr. McClennen: Who, of R. K. O.?

Mr. Wright: I think he testified he talked to Mr. Boasberg.

Q. Is that right?
A. Mr. Boasberg.

Mr. McClennen: He means Mr. Boasberg on this occasion?

The Witness: I talked with Mr. Boasberg and asked for first-run.

Mr. McClennen: The usual objection.

The Court: Proceed.

The Witness: I talked with Mr. Boasberg and asked for first-run pictures and he said he had sold the pictures, the complete product to the Schine-Shea people.

Q. Now, how often did you see him throughout this period 1935 to 1938?

A. Mr. Boasberg would call until he was made Branch [fol. 2772] Manager and then Divisional Manager, he would call probably once a week or once every two weeks.

Q. Throughout the year?
A. Throughout the year.

The Court: Why would he call if you were not getting the product?

The Witness: They were mostly social calls.

Q. There was none of these calls that any first-run terms were discussed?
A. Not on a season product.

Q. What was the product you had the discussion with him about?

A. Some rejected pictures occasionally.

Q. Then with reference to your conversations with the Fox representative, who was that?

A. Mr. Kemper.

Q. How often did you see him?

A. Oh, probably once a month or once in six weeks.

Q. Did you have any talk with him during this period about a first-run deal?

A. I did.

Q. About how often, do you remember?

A. Well, at least three or four times.

Q. And what did he say about it?

Mr. McClennen: Same objection.

[fol. 2773] The Court: Proceed.

The Witness: Mr. Kemper stated to me that both the Fox and the Schine people were customers of theirs and that he would not even attempt to discuss a first-run deal with me, but if an occasion ever came up to give me a rejected picture he would be very happy to call on me and sell it to me.

Q. Did he offer you any rejected pictures?

A. I believe he did offer me three at one time. Those pictures were offered to me, or, I should say, six months after they were released.

Q. Now, with reference to the representative of M.G.M., how often did you see him during that three-year period?

A. I believe I only saw him twice.

Q. What were those occasions?

A. One time the M.G.M. representative called with Boasberg and in the course of the conversation, in requesting pictures from Boasberg, I asked for any rejected pictures that M.G.M. might have.

Q. Were you offered any of those?

A. No.

Mr. McClennen: That is objected to. What was said?

The Court: Strike it out. Objection sustained.

The Witness: The M.G.M. representative said that to the [fol. 2774] best of his recollection they had had an account in Auburn for the past 15 years, and they were still serving that same account today and there wasn't any likelihood or any prospect that there would be any pictures available from their office.

Q. Then did you have any conversation during this period about a first-run for your theatre with the Warner representative?

A. Yes, sir, I did.

Q. Who?

A. With the Syracuse salesman by the name of Jack Zurich.

Q. How often did you see him?

A. He used to call quite frequently, or every other week.

Q. What was the conversation you had with him when he called?

A. I asked Mr. Zurich——

Mr. McClennen: Same objection.

The Court: Same ruling.

The Witness: I said "Mr. Zurich, have you any pictures available first-run in Auburn?" He stated to me that at the present time there was an accumulation, and that at the present time—I mean the period 1936-1937, he said there was an accumulation of seven or eight pictures and he would [fol. 2775] take it up with the Branch Manager, whose name I believe was Harry Seed and——

Q. What do you mean by accumulated pictures?

A. Pictures that had not been played by the other theatres in the town, and had through a period of time, that is, over a period of four or five months, the inference I had drawn was that——

Q. Never mind about the inference you had drawn: confine yourself to what you knew about the theatres.

A. Pictures that had accumulated over four or five months.

Q. You mean that had been released?

A. That had been released but had not been played.

[fol. 2776] Q. Well, then, did you hear anything further from Warner with reference to these accumulated pictures?

A. I did.

Q. When was that?

A. Sometime in 1937.

Q. Whom did you talk to?

A. Mr. Zurich.

Q. What did he tell you then?

Mr. McClennen: Same objection.

A. He said he was successful in getting some pictures and we signed the contract, I believe, for seven pictures and played the pictures.

Q. Then did you have any conversation with him about a first-run season's products?

A. I did.

Q. When was that?

A. For the two years prior—each selling season I would ask them what the conditions were, whether there was any possibility of getting a first-run deal, and if I could put in an offer for first-run product on the season's deal. Zurich said that Schine was the customer and that there wasn't any likelihood that a season's deal would even seriously be considered.

Q. During this period from 1933 through 1938, prior to the opening—1935 through 1938, prior to the opening of [fol. 2777] the Auburn, did any of the Schine theatres play a regular second-run of major product?

A. No, sir.

Q. What, if any, efforts did you make to secure a second-run of the major pictures for your theatre?

A. Well, I——

Q. Take it company-by-company, if you will?

A. I wrote Sidney Kent of Fox, and wanted to know if there was any justification——

Mr. McClennen: Just a moment.

Q. Just——

A. I asked him for a second-run.

Q. When you say you asked him for a second-run, did you have a conversation with any representative of the exchange?

A. I had at that time.

~~Mr. McClennen:~~ Just a minute. This appears to be a statement of what was in a letter, and I ask that it be stricken.

The Court: He stated he wrote to the Company and then partially stated what the contents were.

Mr. Wright: I take it that was stricken.

The Court: Strike it all out?

Mr. Wright: I think the fact that he wrote stays in.

The Court: The statement that he wrote, that may stand. The contents may be stricken out.

[fol. 2778] Mr. Wright: That is my understanding.

Q. Before writing to Mr. Kent had you had any conversation with the representative of the Fox exchange about second-run for Auburn?

A. I did.

Q. Who did you talk to?

A. I talked with Mr. Samson.

Q. Who was he?

A. Branch manager in Buffalo.

Q. When was that?

A. In the fall of 1937.

Q. What was the conversation you had with him?

Mr. McClennen: Same objection.

A. I asked Mr. Samson if there was a possibility of getting a second-run in Auburn, and I said to him, "At the present time you don't have any pictures running on a second-run basis. Could we make a deal?"

Q. What did he say?

A. He replied that Fox was selling an exclusive run to the—to their old customer.

The Court: You mean by "exclusive run", eliminating any second-run?

The Witness: There would be no further run after the one exclusive run.

Mr. Wright: Mark this letter with the next exhibit [fol. 2779] number for identification.

(Letter from 20th Century-Fox to Mr. Wallace, dated April 15, 1938, marked Plaintiff's Exhibit 815 for identification.)

Q. I will hand you this letter, marked for identification as Plaintiff's Exhibit 815, and ask if you received it on or about the date it bears?

A. Several days later.

Mr. Wright: I will offer the letter.

Mr. McClennen: The general objection.

The Court: There is no question about the signature, is there?

Mr. McClennen: Oh, no, your Honor.

The Court: Objection overruled.

(The letter, previously marked as Plaintiff's Exhibit 815 for identification was received in evidence.)

Mr. Wright: The letter is dated April 15, 1938, and reads as follows, on the stationery of 20th Century-Fox Film Corporation, and is addressed to Mr. H. P. Wallace, Manager, Capitol Theatre, 20 North Street, Auburn, New York.

"My dear Mr. Wallace: Thank you very much for your courteous reply to my recent letter. Of course, I am sorry not to agree with you. I do not see any relief for [fol. 2780] your situation as you outline it in the Neely-Pettengill Bill. There is still no law on the statute books that makes any one sell to anyone they do not wish to sell to. I think with copyrighted product we have the right to make an exclusive sale"—by the way, I notice there is a red line under the "exclusive sale."

Was that the mark you put on there?

The Witness: I put that on there.

Q. It was not on there when you received it?

A. No, sir.

Mr. Wright: "You understand I am not defending the exclusive sale. As a matter of fact, as a general thing I do not believe in it and I am not commenting on your situation, because I don't know the facts except as you give them to us. I am, however, asking for an investigation of your matter, which will be on my desk when I return from Europe the latter part of May."

By Mr. Wright:

Q. After you received that letter did you hear anything further from Fox with reference to that matter?

[fol. 2781] A. I did not.

Q. Can you tell us what, if any, effort you made to secure a second-run from Warner?

A. At the time that I had got the seven rejected pictures from Zurich, who represented Warner's, I asked him if it was a possibility——

Q. What time was that, again?

A. Well, that was sometime in the fall of 1937, but at that same time, the same—the same time I purchased those pictures, we discussed the possibility of a second-run. I asked him if——

Mr. McClennen: Same objection.

A. I asked Mr. Zurich if we could sign a deal for the complete product second-run.

Q. What did he say?

A. Mr. Zurich said that they have no second-run in Auburn, and it was his understanding that they were only selling one run in the town.

Q. Did he tell you why?

A. I don't recall that he—I can't recall that he did tell me why. I can't recall any further conversation.

Q. Then what efforts or whom did you see about the second-run of Paramount product?

A. I saw Mr. Myers, Fred Myers, who was the salesman in that territory, and Mr. Robinson, the Buffalo branch [fol. 2782] manager.

Q. When was that?

A. That was in 1936.

Q. Did you see them together or separately?

A. I saw them together and I saw them separately.

Q. You saw the salesmen first?

A. I saw Mr. Myers first.

Q. That was where, at Auburn?

A. At Auburn.

Q. What was the conversation you had with Myers in Auburn?

A. I first asked for some rejected pictures.

Mr. McClennen: Same objection.

A. Or some reissued pictures, and we did make a deal for a few reissued pictures, and the subject came up, I asked him, "Why can't we make a deal for second-run, and what protection would the Schine theatres get if we did make a deal for second-run in Auburn?"

Q. What did he say?

A. He told me did not see any reason why a second-run deal could not be worked out, and that the usual protection from first-run, which is thirty days, would naturally apply in Auburn, the same as in any other town.

Q. Was it after that you saw him and the branch manager?

A. I saw Mr. Myers and the branch manager together.

Q. When was that?

[fol. 2783] A. About six weeks later.

Q. Whereabouts?

A. At the office of the Capitol Theatre.

Q. What was said then?

Mr. McClennen: Same objection.

The Court: Same ruling. Proceed.

A. I asked Mr. Robinson, that if he had made up his mind about a second-run deal, what were the terms to be, and if he had decided on the time between the ~~first~~ and second-run; and I also asked him if they had any rejected pictures from Schine. He told me that he had a few old reissued pictures, which he sold me at that time. I can't remember the names of them. I have the contract there on them. But as far as the second run was concerned he had taken the matter up with Unger, and had received the information they were not to sell the second-run in Auburn.

Q. Did you have any conversation with any one from RKO about a second-run?

A. Well, RKO had been giving me a few pictures, either reissues or rejected pictures, and I cannot place the time exactly, but it was some time in 1937 that I talked with either Boasberg or Elmer Lux.

Q. Do you remember where you had the conversation?

A. At the office of the Capitol Theatre.

[fol. 2784] Q. What was said there?

Mr. McClennen: Same objection.

A. Mr. Lux pointed out to me that he did not think it would be a practical thing for me to run second-run and first-run on the same—that is, at the same theatre at the same time, and he discouraged me. He said, "I think it is not a good plan."

[fol. 2785] Q. What did you say?

A. I said that it might be worth trying, out and I asked him if we could have part of their product second-run.

Q. What did he say to that?

A. He said he would take it up with the New York office and see if there was any possibility of selling me either part or all, and I said I would prefer to have part of it, and he said that he would take it up with the New York office and then let me know.

Q. Did you hear anything further from him in that connection?

A. No, sir.

Q. Now, who did you see at Metro or Loew's with reference to second-run?

A. I didn't talk to—I can't recall whom I talked to with Loew's. I talked with two or three salesmen during that period, there were two or three different salesmen in that territory. One fellow that called on me, he was the Rochester representative, and I can't recall his name.

Q. Well, did you have any discussion with him with reference to second-run?

A. I did.

Q. Whereabouts?

A. At the office of the Capitol Theatre.

[fol. 2786] Q. What was said?

Mr. McClennen: This is objected to further because of the lack of identification of the person, as well as the general objection.

The Court: Does the answer disclose who the representative was?

Mr. Wright: I don't think there was in the record all of the salesmen who represented Metro.

Q. Did you say you talked to a Metro salesman?

A. Yes; sir.

Q. Was it a salesman you knew?

A. It was a salesman I knew, and I knew his name, but I just can't recall it now.

Q. How long had you known him at the time?

A. Three or four years. His name is Weisman.

Q. And what was the conversation you had with Weisman?

Mr. McClennen: Same objection.

The Court: Overruled.

The Witness: I asked him for second-run pictures.

Q. What did he say?

A. He told me they had a first-run account in Auburn, and he understood that they were dealing on an exclusive-run basis, at that time.

Q. What time was that?

A. That was some time in 1936.

[fol. 2787]. Q. Then did you make any further efforts to get a second-run from Metro?

A. Well, I discussed it with Mr. Harris in 1938.

Q. What time in 1938?

A. Early in 1938.

Q. What Mr. Harris was this, who was he?

A. I think his name was Abe Harris.

Q. And——

A. He was a salesman in the Buffalo or the Syracuse territory.

Q. Where did you talk to him about it?

A. In the Capitol Theatre, Auburn.

Q. What was the conversation then?

Mr. McClennen: Same objection.

The Witness: I said to Mr. Harris that I thought there was a lot of earning power still left in the M. G. M. pictures due to the short first-run playing time; by that I mean that the first-runs were shortened up so that there was a value left in the pictures, and Mr. Weisman said he would talk it over with the Branch Manager and see me again.

Q. Did he see you again about it?

A. No, sir.

Q. Whom did you talk to at the Universal about second-[fol. 2788] run, if any?

A. I think the fellow's name was Leiser.

Q. Was he a salesman?

A. I may be wrong in that, but I believe it was Leiser; he was a salesman.

Q. Well, did you talk to the Branch Manager about it at any time?

A. I talked to the Branch Manager about first-runs.

Q. About second-runs?

A. Not about second-runs.

Q. Well, when was the talk you had with Leiser?

Mr. McClennen: Same objection.

The Witness: I believe it was early in 1938.

Q. Where did you see him?

A. At the office of the Capitol Theatre.

Q. What was said then?

Mr. McClennen: Same objection.

The Court: Same ruling.

The Witness: He stated to me that they hadn't sold any second-run pictures for a period of years in Auburn, but he would see, he would ask the Branch Manager and at the same time he would find out if there were any old pictures or any rejected pictures available.

Q. Was that for second-run or first-run?

[fol. 2789] A. Well, a reissued picture would be a play back, and the rejected pictures would be first-run.

Q. Did you hear anything further from him about second-run?

A. No, sir.

Q. Had you had occasion to notice whether or not the second-run had been played in the town prior to 1935?

A. Prior to 1935, well, second-run had played in Auburn in 1932.

Q. And then after the Auburn was completed in December, 1938, did you notice whether second-run pictures began to be played in the town?

A. All the companies?

Q. A major second-run?

A. All the major second-runs played either at the Palace or Jefferson Theatre, with the exception of Fox.

Q. How about Columbia?

A. Or Columbia.

Q. With the exception of Fox and Columbia, you mean?

A. Fox and Columbia.

Q. Had you had any conversations with any representatives of United Artists about playing second-run there prior to that time?

A. The conversations I had with the United Artists always related to either first-run pictures, or old revivals of pic-[fol. 2790]tures I had played in previous years.

Q. Now, calling your attention to the year of 1938, did you at that time make a visit to the Town of Canandaigua?

A. I did.

Q. For what purpose?

A. For the purpose of negotiating a deal with the Jenkins Estate to erect a theatre.

Q. And about when was that?

A. That was in the early part of April.

Q. And when you went over there did you have conversations with the Jenkins estate?

A. I did.

Q. Where was the property you were talking about?

A. The property was located on the west side of the main street, and it abutted the theatre, the Schine Theatre on the side street, the rear line of the Jenkins property was right adjacent to the——

Q. How many theatres were there in the town then?

A. One.

Q. That is the Schine Theatre you refer to?

A. Schine Theatre on a side street.

Q. Do you know about how large that town is?

A. Oh, I did have the exact figures on it, but I am guessing now when I say it was about 8,000.

Q. After you had this conversation, the first conversa- [fol. 2791] tion about the Jenkins property, did you go back there?

A. We went back several times later.

Q. When you went back what, if anything, did you notice with reference to the lot across the street?

A. Some time later there was a sign posted on the property called the Flannagan property occupied by Montgomery-Ward.

Q. Where was that with reference to the Jenkins property?

A. That was on the east side of the street and somewhat down from it.

Q. What did you see there on the Flannagan property?

A. Well, there was something about a new theatre will be erected by Schine or the Schine organization, or some such thing like that.

The Court: Near Flannagan's restaurant, was it that place you mean?

The Witness: Yes, sir.

Q. Did you go any further with the plans to erect a theatre in the Jenkins property?

A. We did.

Q. What did you do then?

A. Why, some time later I went back and I discussed with Mr. Hymes, the attorney for the Jenkins Estate, and with Mr. Jenkins, the possibility of completing a deal.

Q. Just limit yourself to whether or not you had a further discussion.

[fol. 2792] A. Yes, we did have a further discussion.

Q. The answer to that, I take it, "Yes"?

A. Yes, sir.

Q. After the further discussion did you go ahead with any plans for a theatre there?

A. Yes, we had tentative plans drawn, that is, a ground plan, and we discussed the general terms of the lease, and we arrived at a satisfactory conclusion on the general terms of a lease.

Mr. McClennen: May that be stricken out?

The Court: Strike it out.

Q. Limit yourself to an answer to the question.

Mr. Wright: What was the last question?

(Question read.)

Mr. Wright: Strike out beginning with "and we discussed".

Q. Then did you build a theatre there?

A. No, sir.

Q. Have you been back there since?

A. You mean after the date of this discussion?

Q. After you abandoned your theatre project?

A. No, sir.

Q. Do you know whether or not the theatre was ever erected on the Flannagan property?

A. I do.

Q. Was it or wasn't it?

[fol. 2793] A. There wasn't.

The Court: How do you know if you never went back there?

The Witness: Well, not with reference to the Jenkins property, but I have been back a great many times.

The Court: I understood counsel——

Q. You mean you have been through the town?

A. In the town, yes, sir.

Q. How far is that from Auburn?

A. Why, I should say 65 miles or 70 miles.

Q. Do you recognize this Exhibit 812 for identification as a copy of a lease that you made for the Strand Theatre in Syracuse?

A. I do, yes, sir.

Mr. Wright: I will offer this lease, Exhibit 812 in evidence.

(Lease previously marked as Plaintiff's Exhibit 812 for identification was received in evidence.)

Q. When was it, after you made this lease, Exhibit 812, you opened the Strand Theatre?

A. September 20th, 1941.

Q. And how long did you operate it?

A. Until, I believe, January 28th or February 1st, 1942.

Q. Between what dates?

[fol. 2794] A. Somewhere between January 28th and February 2nd, I don't know which of those two dates.

Q. Did you prepare a list of the feature products you played there during that period?

A. I didn't hear you.

Q. Have you got a list of the pictures you played there during the period of operation?

A. I have.

Q. Could I see it?

(List produced.)

Mr. Wright: I will ask to have this list that has just been handed to me marked the next exhibit number for identification.

(Thereupon list of pictures played at Strand Theatre, Syracuse, referred to, was marked as Plaintiff's Exhibit No. 816 for identification.)

Q. Can you tell the Court what is tabulated there on Exhibit 816 for identification?

A. That is a list of the play off of pictures from September 20th, 1941 through January 26th, 1942. These are the pictures we played at the Strand Theatre during that period of time.

Q. What are the dates there in the column, your play dates are from September 20th, 1941 to September 24th, 1941, [fol. 2795] and September 27th, 1941; the date is opposite the picture that played, that began to play on that date?

A. On that date.

Q. And the next date is when the picture listed opposite began to play?

A. That is right.

Q. Then the next column gives the titles of the pictures?

A. Yes, sir.

Q. And under the third column you have the name of the producer or distributor?

A. Producer or distributor.

Q. Then you have some figures written in the last column, are those the rentals paid?

A. I added some notations later of the rentals paid for these various pictures.

Q. Then what are these figures down at the bottom?

A. That is an analysis of all of the pictures that were played from September 20th, 1941 through January 26th.

Q. You mean an analysis of those features that are listed there?

A. Of all of these features.

Q. What kind of an analysis?

A. Well, it segregates the various pictures into first-run pictures, second-run pictures, third-run pictures, the pictures reissued, foreign pictures, independent pictures, and one short subject show.

[fol. 2796] Q. I don't see any statement there in the summary with respect to independent pictures.

A. Independent and Western——

Q. I beg your pardon. Over to the right-hand side.

A. That refers to P. R. C., Producers Releasing Corporation, and Film Classics, and other independent pictures, and this one short subject show, that is a designation for a number of short reels that were used in place of a feature.

Q. Do you know whether the Empire Theatre was operating in Syracuse during the time that you operated the Strand?

A. It was.

Q. By whom?

A. By Schine.

Q. Have you got a list there of the pictures that played the Empire during the same period?

A. I have.

Q. Could I see it?

Mr. Wright: I will ask to have that marked with the next exhibit number, 817 for identification.

(List of pictures playing the Empire Theatre was marked as Plaintiff's Exhibit 817 for identification.)

The Court: Does it appear when Schine took over the Empire?

Mr. Wright: I think it probably appears in the inter- [fol. 2797] rogatories. We may as well read that into the record.

Under the answers to interrogatory No. 17, A, on page 10 of the answer, it appears that the town "In Syracuse"; "Name of theatre—Empire."

Under the column, "Nature of interest—Lessee." "Extent of interest—30%." "Date acquired—January 1, 1941." "Other interests, if any, and extent thereof—B. F. Keith Corporation, RKO-Schine operation".

The Court: How did they acquire title?

Mr. Wright: This is a lessee. They leased it.

The Court: How did they acquire title?

Mr. Wright: It does not specify here. It says, under the column, "If leased, name of lessor", and the name appears "Massachusetts Mutual Life, Springfield, Massachusetts", so I assume it was leased from the same lessor that Mr. Martina had.

The Court: I did not know whether there was anything in between that.

By Mr. Wright:

Q. Do you know when the Empire was opened, Mr. Wallace, by Schine?

[fol. 2798] A. To the best of my knowledge it was opened on September 12, 1941.

Q. That was about a week before you opened the Strand?

A. Just a week before.

Q. Had it been closed prior to that?

A. It had been closed.

Q. For how long, if you know?

A. To my knowledge it had been closed all that summer, I think, from March through September.

Q. By "that summer" you are referring to 1941?

A. Summer of 1941.

The Court: Had it been operated after January, 1941, up to the summer of 1941?

The Witness: It is only a recollection with me, that there were some road shows in there. That is, some shows that were sold on the basis of $1.65 per seat, regular road show attractions, but I would not vouch for the authenticity of that statement.

Q. In any event, it reopened on September 12th?

A. Yes, sir.

Q. And this tabulation here which you prepared, marked for identification as Plaintiff's Exhibit 817, shows what in the first column?

A. That shows the play date of the picture or the show at [fol. 2799] the Empire Theatre, starting September 12, 1941.

Q. Is the date in each case the starting date of the product listed opposite?

A. Yes, sir.

Q. Where you have two feature titles there, they were double features?

A. They were double features.

Q. The figures opposite the title, the dates on these in the third column, what are they?

A. That is the year the picture was released, the season, rather.

The Court: How would you know when it was released?

The Witness: From the various exhibitor trade papers, trade journals, that were put out by various companies and that had been reliable and reasonably accurate over a period of fifteen years to my knowledge.

Mr. Wright: Of course, we have the release schedules themselves in evidence here.

The Court: He has testified to their being released a certain period.

Mr. Wright: I just asked him what the figure indicated on the tabulation. I suppose the best evidence of when the picture was actually released, of course, would not [fol. 2800] necessarily be this tabulation but the actual release schedules which were identified here.

By Mr. Wright:

Q. The next column shows the name of the distributor or producer of the picture?

A. Yes, sir.

Q. Then you also show the admission prices that were charged?

A. I do.

Q. I notice in some cases no admission prices appear. You did not have data as to the admission prices in those cases?

A. No, I did not.

Q. Where you have the statement "On stage" that refers to, not a film, but a stage show?

A. Stage attraction.

Q. Then I notice you have the statement "Move-over" noted here after pictures listed opposite December 3rd. What does that mean?

A. That was moved over from one of the other Schine operations, first-run.

Q. One of the first-run?

A. That is a first-run.

Q. Continued first-run?

A. Continuation of the first-run, move-over or continuation of the first-run.

[fol. 2801] Q. Then I note that the last date you have here is February 10, 1942?

A. Yes, sir.

Q. Was it closed then?

A. At that time.

Q. Will you tell us, Mr. Wallace, what efforts you made to get product for that theatre during the time you operated it, or before?

A. On September 9th I sent a wire to Metro-Goldwyn-Mayer in Buffalo and asked the representative——

Q. Now, first limit yourself to what you did, without attempting to state any of the contents of these communications.

A. I sent a wire to Metro-Goldwyn-Mayer.

Q. To any one else?

A. To Paramount, RKO, Universal, United Artists, Fox and Columbia.

Q. Did you have any discussions or conversations with any of the sales representatives of those companies?

A. I did.

Q. With whom?

A. With Metro-Goldwyn-Mayer. Do you want me to——

Q. Whom did you talk to there?

A. I talked with Mr. Harris and Mr. Maw.

Q. Mr. Harris was what?

]fol. 2802[A. Mr. Harris was the Syracuse salesman and Mr. Maw was the Buffalo branch manager.

Q. Where did you see them?

A. At the office of the Strand Theatre in Syracuse.

Q. When was that?

A. That was on—it was several days later. I think it was two days later, September 11th—three days later.

Q. Several days after you sent the wire?

A. Some time after I had sent the wire to Buffalo.

Q. What was the conversation you had with them?

Mr. McClennen: Same objection.

A. I asked Mr. Maw for any first-run pictures which they were not using in their own house, that is, the Loew house. I asked him if there was a possibility of buying second-runs. I asked him for third-runs and I asked him for subsequent runs.

Q. What did you mean by the term "subsequent runs"?

A. That means a run that is enjoyed by a number of the smaller neighborhood theatres on a day and date basis, practically at the same time.

Q. That is following the first three runs?

A. First three runs.

Q. What was said by—who was it, Mr. Maw?

A. Mr. Maw.

Q. What did he say?

[fol. 2803] A. He stated that I knew very well that Loew's was their own theatre and that they had no first-run pictures which Loew's did not play, that they had a second-run which had been established for years; that they had a third-run choice of the Cameo, Riviera and Palace theatres. I don't know whether the third-run was sold, but that was the established idea, to sell one of those three theatres the third-run, and that I posed a very peculiar problem by asking for subsequent run in a big downtown house, but he would give it some consideration and would let me know. He stated——

Q. Just a minute. In that conversation did you have any discussion with reference to the admission prices you were going to charge at the Strand?

A. We did.

Q. What was said about that?

Mr. McClennen: Same objection.

The Court: Overruled.

A. Well, we were—if we purchased any pictures we would be obliged to charge 28 to 35 cents, due to the fact that it was a very well appointed theatre, and that it was a downtown theatre.

Q. Did you see him again?

A. I talked with him on the 'phone—

Q. That calls for a yes or no.

[fol. 2804] A. No, I did see him again, yes. Pardon me.

Q. Before you saw him again you talked to him on the 'phone?

A. I talked to him on the 'phone.

Q. When was that?

A. That was two days after the conversation we had at the office of the Strand Theatre in Syracuse.

Q. What was said over the 'phone?

A. I discussed with Maw the possibility of some old pictures, proven pictures.

Q. What do you mean by "proven pictures"?

A. Pictures that had been made over a period of ten years, prior to 1941, that had definite box-office value in some instances, and when they played back at times they earned a certain amount of revenue.

Q. Those which had been outstanding box-office successes when they were first played?

A. Yes, for years back.

Q. Go ahead.

Mr. McClennen: Same objection.

The Court: Same ruling. Go on.

A. Mr. Maw told me that Schine had asked for those pictures in July of that year for the Empire Theatre.

Q. Was anything else said?

A. However—he said, however, that he would not see me stuck and he would send Mr. Harris down to Syracuse [fol. 2805] to see if we could not work out a deal on 1940-1941 product.

Q. Then did Mr. Harris come down to see you?

A. He did.

Q. Where did you see him?

A. At the office of the Strand Theatre in Syracuse.

Q. What was the conversation with him?

Mr. McClennen: Same objection.

A. I asked him for a proposal on the 1940-1941 product and he made a proposal to me, which was reduced to writing.

Q. Have you got a copy of it?

A. I don't know. There is a copy somewhere.

Q. You say "reduced to writing". Was there any application taken?

A. No, sir.

Q. Nothing of that sort. You mean some notes were made?

A. Notes.

Mr. McClennen: That is objected to. If it is on paper, the paper would show. The contents ought not to be stated.

The Court: All he said was that there were some notes taken. No testimony has been stated to show the contents.

By Mr. Wright:

[fol. 2806] Q. Just tell us as nearly as you can recall what conversation you had with Harris at that time, what you said to him and what he said to you.

A. Well,——

Mr. McClennen: Same objection.

A. Mr. Harris said to me, "I have a deal that I have been instructed to sell you. It is a split deal, half to go to you and half to go to Schine at the Empire Theatre. The provisions of this deal are as follows: That these pictures are to be run after other theatres in Syracuse complete their play-off. By that I mean all the small neighborhood houses, after all subsequent runs."

That there was a split of 52 pictures. We were to get 26 and the Empire was to get 26. I said to Mr. Harris, "Who will make the split?" He says, "Well, it is my understanding that Mr. Maw will make that arrangement himself. He will select the pictures himself, give you what he feels you should have and the Empire Theatre what they should have, and that split will be arranged in Buffalo by Mr. Maw." I objected to that as being an offer that was not fairly valid. He also imposed the added burden on us——

Mr. McClennen: May that be stricken?

The Court: Yes.

Q. Confine yourself to what he said.

[fol. 2807] A. He also said, "Your admission prices naturally will be 28 and 35 cents, and these pictures are to be run after all other runs."

I stated to him that the pictures were running in 15 and 20-cent houses and asked him how he justified that position. He stated that was his instructions and he could not deviate from it, and I rejected the offer.

Q. Then did you have any further conversation with any one from Metro about pictures for the Strand?

A. No, I did not.

Q. Then what, if any, conversations did you have with the Fox people?

A. I sent a wire to Mr. Samson——

Q. I think you already said you sent the wire. Was this after that?

A. On September 11 Mr. Samson and Bill Rowell, Syracuse salesman, called at the office of the Strand Theatre.

Q. When was it that he called?

A. September 11.

Q. This was before the theatre opened?

A. Yes, sir.

Q. What was the conversation you had with Mr. Rowell?

Mr. McClennen: Same objection.

A. I asked Mr. Samson for first-run——

[fol. 2808] Q. Mr. Samson called on you there?

A. Mr. Samson called on me and Mr. Rowell.

Q. Mr. Samson and Mr. Rowell both?

A. Mr. Samson was the one I had the conversation with. Mr. Rowell just sat back and observed it.

Q. What was said?

A. I asked Mr. Samson for first-run pictures, if there were any available, and any second-run pictures or third-run pictures, or sub-run pictures.

Q. What did he say?

A. He replied that I knew very well that Schine had been the established account of Fox in Syracuse for a great many years, and I asked him if Schine rejected any pictures could he sell me any. He said, "Schine isn't rejecting any pictures." I asked him if he had a second-run available and he stated that he had an established second-run at the Regent Theatre, and in response to my request for third-run pictures he told me that he had not sold third-run pictures but that over a period of years there was an established third-run in the town, and I knew very well that the Strand was not entitled to fit into the scheme of things in the theatre situation in Syracuse as a third-run. He told me that at the present time he could not offer me any sub-run pictures for [fol. 2809] the reason that I would upset the—his sales possibility or would upset something with regard to the subsequent run theatres in Syracuse, and he could not give me a subsequent run.

[fol. 2810] Q. Then did you have any further conversation with him or Mr. Rowell before he left?

A. He said he would consider the matter and see if there was a possibility of giving us some old pictures, some old revival pictures or some pictures after the theatres of Syracuse had finished playing them.

Q. Did you hear from him again?

A. Mr. Rowell called on, I believe, October 3rd, or some time early in October.

Q. Called where?

A. The theatre, at the Strand Theatre in Syracuse.

Q. That was after the theatre was opened?

A. Yes, sir.

Q. What was said then?

Mr. McClennen: Same objection.

The Court: Same ruling.

The Witness: Mr. Rowell said to me "I have brought down a deal that Mr. Samson has decided he wanted to offer you." The deal was reduced to writing and——

Q. Have you got a copy of that?

A. I have.

Q. Got it with you?

A. No, I think it is over there in those papers.

Mr. Wright: I will ask to have this marked with the [fol. 2811] next plaintiff's exhibit number.

Mr. McClennen: For identification?

Mr. Wright: Yes.

(Thereupon document referred to, was marked as Plaintiff's Exhibit No. 818 for identification.)

Q. Will you look at this document marked 818 for identification, and tell me whether that is the deal you referred to?

A. That is the deal I refer to, yes, sir.

Q. Whose handwriting is that?

A. That is in Mr. Rowell's handwriting.

Q. Is that true of the part that is in pencil as well as the blue writing on there?

A. That was put on in my office, this pencil. This is a carbon copy. One copy was left in Buffalo. This copy was brought with him, he told me, and this he added on in Syracuse, this part here (indicating).

Q. The part that was in blue was on the deal as he brought it to you?

A. Yes, sir.

Q. How about this notation in pencil "650 bingo programs"?

A. I wrote that.

Q. And this "50-50 over $1200"?

A. I wrote that.

[fol. 2812] Q. Other than those pencil notations are all of the writings on these three pages that comprise Exhibit 818 for identification in Rowell's handwriting?

A. Yes, sir.

Q. And do you recognize this document that is clipped to Exhibit 818 for identification?

A. That is a release schedule.

Q. Was that clipped to it at the time it was handed to you?

A. Yes, sir.

Q. These names in the left-hand column of the first page are picture titles?

A. They are.

Q. The figures in the next column are proposed rentals?

A. Yes, sir.

Q. Was the notation that appears over on the right-hand part of the first page explained to you at the time that the deal was handed to you?

A. It was.

Q. What did that mean, what did he say that meant?

A. That meant that when we booked one of these old pictures for $75 we were to book a companion picture for $40.

Q. By old pictures you are referring to the titles on the left and opposite the $75 figures?

[fol. 2813] A. I am referring to both columns. They are both old pictures. These were old outstanding pictures and these were old pictures that had no relative box-office value.

Q. Now, this second page, can you tell us what that refers to?

A. That refers to a block of five pictures, the first block of five under the new selling arrangement.

Q. That was current product which was then released or about to be released?

A. It was current product that was released, but it was not current product as it was offered to me.

Q. What was said to you with reference to when that would be made available to you?

A. It was to be made available to me after all Syracuse runs and with the further stipulation that the dates on which we could play the picture was to be made a part of the contract.

Q. The third page, what are the pictures that appear on the left-hand column there?

A. Those are pictures, a group of 25 pictures, this part, selected group of pictures from the 1940-41 season.

Q. The left-hand column?

A. They were priced at $100 each.

Q. That is ten at $100?

[fol. 2814] A. I think so, ten at $100.

Q. And the other 15 were to be at $50?

A. $50.

Q. Were these pictures that are listed on these three sheets offered to you all together or alternatively?

A. They were offered to me all together.

Q. What was the conversation you had with Mr. Rowell with respect to that offer?

Mr. McClennen: Same objection.

The Court: Well, the statement about an offer isn't of much value unless you know what the offer was, the offer itself.

Mr. Wright: I will offer the exhibit in evidence.

Mr. McClennen: That is objected to.

The Court: Sustained.

Mr. Wright: I beg your pardon, that is the paper written by Mr. Rowell.

The Court: All right, I will receive it. That is a memorandum made at the time and presented to you at the time you had this conversation?

The Witness: Yes, sir.

The Court: Overruled.

(Thereupon document previously marked as Plaintiff's Exhibit 818 for identification was received in evidence.)

[fol. 2815] Q. Now, tell us, as near as you can recall, what the conversation was that you had with Rowell with reference to that Exhibit 818?

A. I told Mr. Rowell that I didn't want any pictures that were from three to six years old; that I didn't want to play the pictures after the very small theatres in Syracuse, which charge 10 and 15 cents admission, and that the percentage that had been outlined on this first block here was not in accordance with my plan of running the theatre, and using bingo, and that I did not believe that he should restrict our use of these pictures at a 28-cent admission, when he had previously allowed them to be sold at the small theatres for 10 and 15 cents.

Q. What did he say?

A. He said these were the instructions that he received from Mr. Samson at Buffalo; they had gone over the thing thoroughly, and "That is the best we can do for you; you know we must protect the Schine account in Syracuse, and if you don't want them, it is all right with me, we will still be friends."

Mr. McClennen: I move that that answer be stricken out, if your Honor please, particularly this latter part. I apprehend the same ruling on the motion.

The Court: Well, I will let it stand. It is part of the [fol. 2816] transaction, I suppose.

Q. Did you reject that offer?

A. I told Mr. Rowell that it didn't constitute a valid offer, and I rejected it.

Q. Did you hear anything further from the Fox Company?

A. No, sir.

Q. What conversation, if any, did you have with a representative of Paramount with respect to pictures for the Strand?

A. Well, on September 9th I sent a wire to Paramount and about September 15th, Mr. Rosineau, the Syracuse Salesman, called at the office of the Strand Theatre, and he offered me several pictures. After I had requested some first-runs, some second-runs, third-runs or subsequent-runs, he told me there were several——

Mr. McClennen: Same objection.

The Court: Overruled.

The Witness: Mr. Rosineau said "I have several pictures for you; they are from 3 to 8 years old, and I have one particular picture called "The World in Flames", which has not had a run in Syracuse, and he offered it to me first-run.

Q. What kind of a picture was that?

A. That was highly controversial picture. It was made [fol. 2817] up of old news reel clippings, and I rejected it.

Q. Anything else offered?

A. He told me that he had a second-run in Syracuse, and that he had a third run and as far as subsequent-run was concerned, he would discuss that with, I think, Robinson, he said, and he would call on me later.

Q. Did he?

A. He did.

Q. When was that?

A. Around the first of October.

Q. Where?

A. At the office of the Strand Theatre in Syracuse.

Q. What was said then?

Mr. McClennen: Same objection.

The Witness: Well, he did, and Rosineau said that Mr. Robinson had instructed him to offer me a block of five pictures, and with the stipulation that we could use that block of five pictures after all the subsequent runs in Syracuse had finished playing the pictures; that he saw little use of offering the pictures, but he was going through the mechanics of offering them, because the pictures would [fol. 2818] not become available to me until January, and he said that "From your conversation I understand you need pictures desparately now." He said "I have been instructed to offer these pictures, and I am offering them." I turned his offer down.

Q. Why wouldn't the pictures become available until January?

A. Some of those pictures had just started to play first-runs and when they would work through their periods of protection from second and third-run and subsequent-run there would be an intervening period of time that would preclude the possibility of the Strand Theatre getting the pictures any time prior to January 1st.

Q. Was there anything said in that conversation with reference to the admission prices you were supposed to play them at?

A. He stipulated——

Q. Say what he said.

A. Mr. Rosineau said "I realize you have a beautiful theatre here with large seating capacity. There is one restriction I must call to your attention. These pictures must be played at 28 cents minimum."

Q. Now, then, did you have any further conversation with him?

A. I had a further conversation several days later.

Q. Where was that?

A. At the office of the Strand Theatre, Syracuse.

[fol. 2819] Mr. McClennen: Are we still in October?

Q. Are we still in October?

A. Several days after October first or third, I just can't recall what day it was, but it was within a few days.

Mr. McClennen: Same objection.

The Court: Same ruling.

Q. What was said then?

A. Mr. Rosineau said "I have some pictures for you." I said "Thank you, what are they?" He said "I have arranged with Robinson to get you a split of three Western pictures, but these pictures will not be available to you until some time in January, the latter part of January, due to the fact that this split will work this way, 1, 3 and 5 will go to your opposition"—and he didn't mention who the opposition was—"2, 4 and 6 will go to you", so that "Hop Along Cassidy", a Western picture, would be available about February 1st.

Q. Is that the title of this picture?

A. The "Hop Along Cassidy" series, six Western pictures.

Q. Three of them were offered to you?

A. Three of them were offered to me.

Q. Did you accept that offer?

A. No, sir.

Q. Did you have any further conversation with the Paramount representative? Were there any further offers made [fol. 2820] to you?

A. No.

Q. Now, who at R. K. O. did you see with reference to product for the Strand?

A. Mr. Ed. Smith.

Q. Who was he?

A. He was the Syracuse salesman.

Q. Where did you see him?

A. At the office of the Strand Theatre.

Q. When was that?

A. On September 11th.

Q. That was before you opened?

A. Yes, sir.

Q. What was the conversation you had with him?

A. I asked Mr. Smith for some first-run pictures or some second-run pictures, and I said "There are about six or eight pictures unplayed by Schine, which have aged considerably, they are considerably beyond the average playing time; can I get them?" He said "I think you can." We negotiated a deal and signed contracts for five pictures.

Q. Have you got those contracts?

A. Well, they are over there (indicating papers on desk).

Mr. Wright: I will ask to have this group of documents [fol. 2821] stapled together marked with the next Plaintiff's Exhibit number for identification.

(Thereupon five documents were then marked as Plaintiff's Exhibit No. 819 for identification.)

Q. I will hand you this Plaintiff's Exhibit 819 for identification, and ask you if those are the documents that you signed at that time that you refer to as contracts or copies of them?

A. These are copies of the contracts that were signed in my presence.

Q. They are signed by Charles—do you recognize that as the signature of "Charles Carr"?

A. I do.

Q. Who was he?

A. The President of the Syracuse Community Theatre Corporation.

Q. That was the lessee corporation of the Strand?

A. Yes, sir.

Q. Then after these documents here were signed, did you hear anything, or what further conversation did you have with respect to them?

A. What further conversation did I have with whom?

Q. With whoever the salesman was.

A. Mr. Smith?

[fol. 2822] Q. Mr. Smith.

A. Mr. Smith, after the contracts were signed by "Carr", called up Elmer Lux.

Q. Who was Elmer Lux?

A. Branch Manager of R. K. O. Radio Pictures Corporation.

Q. What exchange or branch?

A. At the R. K. O. Exchange.

Q. Was this call made in your presence?

A. It was made in my presence.

Q. And where was Lux reached, do you know?

A. Reached at the office of Warner's Theatre in Albany.

Q. Did you hear what Smith said at the time?

A. I did.

Q. What did he say?

Mr. McClennen: Same objection.

The Court: Overruled. You may answer.

The Witness: He told Mr. Lux that he had negotiated for some pictures, and it was urgent that they get play dates. Mr. Lux said "Give me"—Mr. Lux then talked to me on the phone; Mr. Smith then turned the phone over to me, and I talked to Mr. Lux.

Q. What did you and Mr. Lux say?

Mr. McClennen: Same objection.

The Witness: I said to Mr. Lux "You know we are open-[fol. 2823] ing on the 20th. It is imperative that we have immediate play dates on the features." Lux said "You have the pictures, put Ed. Smith back on the phone and I will tell him to call Buffalo and get you prints on the pictures you want".

Q. Did Mr. Smith then call Buffalo?

A. Mr. Smith called Lux, the Buffalo Branch Manager, and confirmed the conversation I had with him and he then called Buffalo for dates on these various pictures.

Q. What dates did he report back to you for the pictures?

Mr. McClennen: By whom?

Q. Smith, what was said with reference to specific dates?
A. I said to Mr. Smith "I want September 24th to 26th on a picture called "They Meet Again", and I want September 27th-30th on a picture called "Hurry, Charlie, Hurry", and he talked with the booker in Buffalo, and confirmed those dates.
Q. Then did you do anything with reference to advertising the pictures that you bought?
A. I did.
Q. What did you do?

Mr. McClennen: That is objected to.
The Court: I will let him state. What did you do in the way of advertising, printing in the papers or posters?
[fol. 2824]
A. We had a front erected.

The Court: What?
The Witness: We had a painted front erected, like theatres usually have, a false front erected for the theatre. We had posters on the various sides, three-sheet posters on the sides of the theatre, and had programs scattered throughout the town and other mediums of advertising usually used.
The Court: That is sufficient. I don't know what is usually used.
Mr. Wright: Will you mark this telegram with the next exhibit number?

(Thereupon telegram referred to was marked as Plaintiff's Exhibit No. 820 for identification.)

Q. Do you recall receiving this Exhibit 820 on or about the date it bears?
A. I do.

Mr. Wright: I offer this in evidence. This is a telegram, if the Court please, R. K. O. Radio Pictures, Inc., addressed to the Strand Theatre.
The Court: What does it say?

[fol. 2825] Mr. Wright: "Impossible to supply".
Mr. McClennen: Just a moment.
The Court: Let me see it.
Mr. Wright: Is it received?

The Court: Yes.

Mr. McClennen: We objected to it.

The Court: Is it authenticated?

Mr. Wright: We could not authenticate it except as a paper received by the witness, but not beyond that.

The Court: Do you take it as a paper sent by R. K. O.?

Mr. McClennen: No, we do not.

Mr. Wright: I think, that will appear. The third and fourth words are marked The "Hurry, Charlie"; do you know what they refer to?

Mr. McClennen: I understood his Honor to say it was not admitted in evidence, and, therefore, there should be no reference to its contents.

The Court: It already appears it was one of the pictures he had requested a date for, and the date he had requested.

[fol. 2826] Mr. Wright: I will offer this Exhibit 819 in evidence.

Mr. McClennen: Those are objected to.

Mr. Wright: Exhibit 819 consists of the five contracts signed at the meeting with salesman Smith.

Mr. McClennen: When Mr. Wright says "signed" he means signed——

Mr. Wright: By Mr. Carr.

Mr. McClennen: Not ever signed by RKO or any representative of RKO.

Mr. Wright: That is quite right.

The Court: Any representative in authority?

Mr. McClennen: No, no representative. They are not signed at all.

Mr. Wright: These are his copies, which are signed only by Mr. Carr.

The Court: Mr. Carr was an employee of the Company?

Mr. McClennen: Was the employee of Mr. Wallace's company. These papers are not signed and do not purport to be signed by anybody for RKO.

Mr. Wright: Mr. Smith brought them over. An original and a copy were signed by Mr. Carr on behalf of the Strand Theatre and, as I understand it, the originals were taken by Mr. Smith. Is that right?

The Witness: That is correct.

[fol. 2827] Mr. Wright: These that have been identified as Plaintiff's Exhibit 819 are the copies that were retained in the files of the Strand Theatre?

The Witness: Yes, sir.

The Court: Signed by Carr? The mere retention of the copy is no proof of the execution of the original. Ordinarily the copy you retain would be signed by the other party.

Mr. Wright: As to two of these, your Honor, I am not attempting to prove they were ever signed by RKO. I merely want to show what happened with reference to this contract application that Mr. Smith took with him after his conversation with the witness.

The Witness: May I see the contracts, please? Here is the signature of the man that signed them, E. J. Smith.

Mr. Wright: The witness calls my attention to the fact Mr. Smith's name appears up at the top of each of these, and he apparently signed them in the place marked for the salesman. There is, as I see it, no dispute that these are true copies of the documents that Mr. Smith took from the witness at that time.

[fol. 2828] The Court: If some one of the parties made a memorandum of what took place would that be of any materiality or competent? The witness testified to what took place.

Mr. McClennen: If your Honor please, before it goes further, may I call your attention that this "E. J. Smith" does not purport to be a signature. It is written in the block describing who the salesman is. It is not the signature, but the place for signature is at the bottom, and there is no signature thereon of anybody.

By Mr. Wright:

Q. Is this document, Plaintiff's Exhibit 819, in the handwriting of Mr. Smith, or do you know, down to the signature of Mr. Carr?

A. I do know, and it is.

Q. That was written by him at the time you talked to him?

A. Yes, sir, that is Mr. Smith's signature.

Mr. McClennen: I ask that that be stricken out. It is not his signature. It shows on its face that it is not. It is Mr. Smith's name in the salesman's block, as being the salesman. I ask that that characterization be stricken out.

[fol. 2829] The Court: I think the characterization should be stricken out. You may show where it appears and the Court will say what the effect of it is. As far as that is concerned, I will receive the papers. They were written, you say, by——

The Witness: Mr. Smith, E. J. Smith.

The Court: He left the copy with you?

The Witness: Yes, sir.

The Court: And took one?

The Witness: He took three copies with him.

The Court: Why didn't he sign this one?

The Witness: I have no answer for that.

The Court: Overruled. Received.

(The document referred to, previously marked as Plaintiff's Exhibit 819 for identification, was received in evidence.)

Mr. McClennen: I should recall to your Honor's attention the early undisputed testimony that these contracts are not binding until they have been signed at headquarters and until they are such, I respectfully submit, they ought not to be received in evidence.

The Court: I have received them, considering that additional testimony must be offered with reference to them. [fol. 2830] There has been offered here a telegram. It has not been received in evidence, and there are certain dates that relate to the picture mentioned in this contract. I think the memorandum made by the agent of one of the major distributors here is competent only as a memorandum of what took place there, not to show that the contract was made. I don't think it is claimed that the contract was made.

Mr. McClennen: If it is clear that no contract has been made, we still persist that it should not go in evidence.

The Court: Assuming that be true, I think it would be competent. Objection overruled.

By Mr. Wright:

Q. I call your attention, Mr. Wallace, to the word "Cancel" that is written across the contract in this Exhibit 819. That refers to "They Meet Again", and the same word written across the one reading "Hurry, Charlie, Hurry", and ask if that was written on there by you?

Mr. McClennen: That is objected to, your Honor, as characterizing that as a contract.

The Court: Of course, if it is written on there by him [fol. 2831] it is self-serving and incompetent.

Mr. Wright: It is referred to in the printed form as "Special license agreement". I do not wish to characterize it in any other way.

Mr. McClennen: It is characterized in the question. I submit that the characterization should go out.

The Court: You are referring to something that was not in the contract when it was made, apparently, and the answer already given and the inquiry is incompetent, in my judgment. Strike out any reference to the work "Cancel". I take it that that was written in there after the contract was made, was it not?

Mr. Wright: Yes, I was going to ask him when he wrote that in there with reference to the receipt of the telegram that is marked Plaintiff's Exhibit 820 for identification.

Mr. McClennen: If your Honor please, we must urge that no contract was made.

The Court: I am assuming that.

Mr. Wright: We all agree on that.

The Court: I assume that is a memorandum made, I take it, of certain discussions that were submitted to [fol. 2832] somebody for authorization.

By Mr. Wright:

Q. After you received this telegram that is marked Plaintiff's Exhibit 820 for identification did you actually receive an approved copy of the contract or the document here which has on it the title "They Meet Again" and the document with the title "Hurry, Charlie, Hurry"?

A. We did.

Mr. McClennen: That is objected to as stating the contents of a document.

The Court: Let him state what was done.

By Mr. Wright:

Q. Did you play those pictures, either of them, at the Strand Theatre?

A. No.

Q. Then after you received this telegram marked Exhibit 820 for identification did you have any conversation with any representative of RKO?

A. I did.

Q. Who?

A. Mr. Smith.

Q. Where?

A. At the Strand Theatre.

Q. How long after that was it?

A. It was the same day I received this telegram.

[fol. 2833] Q. What was said then?

Mr. McClennen: Same objection.

The Court: Overruled.

A. Mr. Smith says, "Did you get any wire from the RKO office withdrawing the two pictures we had sold you?" I said, "Yes, here is a telegram." He said, "I suppose that will throw your opening date back." I said, "Under no consideration would I change the opening date of the picture, but why, with a picture sold to us, why were they confirmed on the telephone and then withdrawn from us?" He said to me that Schine made very strenuous efforts to get those pictures and to book them within a week or so of the time that we wanted them, after the pictures had been confirmed to me, and that Elmer Lux had nothing to do with it, that the New York office through a fellow by the name of Meyers, who has charge of the booking or buying or something, the pooling arrangement, in Syracuse, called Elmer Lux and said that these pictures will have to go to Schine. I did not get the pictures.

Mr. McClennen: Just a moment. If your Honor please, I move that that answer be stricken out. I submit respectfully to your Honor that that sort of thing, to come in and drag in by the heels a charge against the defendants [fol. 2834] here, who had nothing whatever to do with it in any way, would violate the most fundamental principles of justice. I urge that that be excluded.

The Court: How would this agent know what took place in New York and what somebody in New York said to somebody else about it? How would that be within his knowledge?

Mr. Wright: I assume, having taken the application there, it was certainly up to him to follow it through and find out what happened to it.

The Court: One man said to another man, and another man said to another man.

Mr. Wright: I supposed he certainly was competent to explain to the witness what happened in the RKO exchange with reference to these application that he had solicited.

The Court: It seems to me it is going far afield. Objection sustained.

By Mr. Wright:

Q. After you talked to Smith did you have any conversation with the exchange manager?

A. No, sir.

Q. You did nothing further with reference to getting those pictures?

[fol. 2835] A. I talked with Mr. Smith again.

Q. When was that?

A. The following day.

Q. Where did you talk to him?

A. In the Strand Theatre.

Q. What was said then?

Mr. McClennen: Same objection.

The Court: It may be competent.

A. I said to Mr. Smith, "You will put us to a great deal of expense. I am afraid we will have to postpone the opening of the theatre if I don't get a picture to open the theatre with", and he said that he tried all he could, that he had called Buffalo and talked with Elmer Lux four times that night, but he could not get any satisfaction, and that the pictures were withdrawn.

Q. You did not receive any prints of the pictures?

A. No, sir.

Q. That is, the two you are referring to?

A. These two pictures.

Q. Which two?

A. These two pictures, "Hurry, Charlie, Hurry", and "They Meet Again".

Q. Did you receive prints of and play the other three pictures that are named in this Exhibit 819?

A. Played "They Met in Argentina," "Reluctant [fol. 2836] Dragon", "Tom, Dick and Harry".

The Court: Is that all except the two, is it?

The Witness: All except the two.

Q. On the dates that appear on this tabulation marked as Exhibit 816 for identification?

A. Yes, sir.

Q. With reference to your tabulation marked Exhibit 816 for identification, you have in your summary there one major first-run picture. Which one was that?

A. That was "Blonde from Singapore", from Columbia.

Q. You have noted one second-run picture. Which one was that?

A. That was "Reluctant Dragon."

Q. You have one third-run picture. Which was that?

A. That was, "They Met in Argentina."

Q. Those were all RKO pictures?

A. Those were all the RKO pictures on that particular group of contracts.

Q. Yes. Then you have one travel picture listed. Which was that?

A. "Jungle Cavalcade."

Q. And the two reissues. What were their titles?

A. "Flying Down to Rio" was one. I can't seem to find the other one there. I think it was, "They Met in Argentina." I am not positive.

[fol. 2837] Q. And the foreign picture?

A. The foreign picture was "Housemaster."

Q. Did the theatre earn a profit during any of the period that is covered there?

A. No, sir.

Q. Do you know what the reason for that was?

Mr. McClennen: That is objected to.

The Court: I will let him state. You may answer.

A. Failure to get pictures commensurate with the desirability of the theatre.

Mr. McClennen: I ask to have that stricken out.

The Court: Strike out the latter part of the answer. Failure to make a profit you claim was due to the type of pictures you played, is that the answer?

The Witness: Failure to get major product.

The Court: You played what you got. It was a question of the product itself, you claim, was responsible for the loss?

The Witness: Inferior.

Q. What admission prices did you charge at the Empire during the period of your operation there—I mean at the Strand?

A. Our price range was from 28 to 35, and when the stage shows were there we charged 55 cents.

[fol. 2838] Mr. McClennen: Mr. Wright, you are wandering back and forth, and I want to see the witness and the Judge.

Q. That is, 28 cents was your lowest evening adult admission price?

A. Yes, sir.

Mr. Wright: I will offer in evidence these exhibits 817 and 816.

Mr. McClennen: Those are objected to, if your Honor please. They are not original papers and they are not summaries of anything that is in evidence, and they are not such that we could possibly check their accuracy. I urge that they be not received.

The Court: I am quite sure they are not competent, a memorandum made by the witness. The witness testified to the facts, but it seems to me you better go over them and save inquiry, which Counsel can do as to each of these set forth in these proposed exhibits. I think you ought to go over them with Counsel and see if they can be agreed upon.

Mr. McClennen: If your Honor please, we have nothing to go over. There is nothing we can check them [fol. 2839] by.

The Court: It will necessitate Counsel inquiring into it, that is all.

Mr. Wright: If the Court please, of course, in so far as what played the Empire is concerned, I assume that the defendants have a record of the pictures they showed and the admission prices at which they played them, and the dates they were played, which is all this purports to set forth, and if they haven't it is easily subject to check in newspaper ads, which carried the attractions and such prices as are here listed. In so far as the tabulation prepared by Mr. Wallace with reference to what was played in the Strand is concerned, the play dates and time are also subject to a very simple verification in the newspapers.

The Court: The memorandum itself is not the best evidence.

Mr. Wright: I would suppose that if we were put to the best evidence rule we would subpoena, first, all the records of the Schine Company with reference to these facts and all of the——

[fol. 2840] The Court: The witness made this memorandum. I suppose he has knowledge of the fact.

Mr. Wright: Yes, and I could take him down over each picture and ask him did such-and-such a picture play on such-and-such a date. If you want to do that, we can do it.

Mr. McClennen: What I don't want to do is to have a paper go in that I have no means of checking. That refers to the plays of the witness. There is nothing by which we could check, and I do not deem that it is the province of plaintiff's counsel to direct us to search the newspapers of Syracuse to see whether that is the state of facts.

As to the other list, as to what was played at the Schine Theatre or the RKO Theatre, it is absolutely hearsay as it comes from this witness. He has not testified that he was at the Empire Theatre on these various dates. Of course, we can find out by looking back at our records, but not here in Buffalo, anything we played on the different dates in the Empire Theatre, but that would not make this admissible.

[fol. 2841] The Court: I was trying to obviate extensive examination. Objection sustained as to both of them.

By Mr. Wright:

Q. Mr. Wallace, do you know what picture you played at the Strand Theatre in Syracuse from September 20, 1941, to September 24th—through September 23rd?

A. "Jungle Cavalcade" and "Flying Down to Rio."

Q. What did you play for the next period?

A. From September 24th to September 27th we played "Bowery Blitzkrieg" and "Caught In The Act."

Q. What did you play then?

A. "Father Steps Out" and "Gentleman from Dixie."

Q. Name the periods each time.

A. That was from September 27th to October 1st.

Q. Then what did you play?

A. October 1st to October 4th we played "King of the Zombies" and "Invisible Guest."

Q. Then what?

A. October 4th to October 8th we played "Let's Go Collegiate" and "Gangs, Incorporated."

Q. Then what did you play?

A. October 8th to 11th we played "City of Missing Girls" and "George Takes The Air."

Q. Then what did you play?

A. From October 11th to October 15th we played "Con-[fol. 2842] voy" and "Regular Fellows."

Q. Then what did you play?

A. October 15th through 18th we played "Tom, Dick and Harry" and "They Met In Argentina."

Q. Then what?

A. From October 18th to October 22nd we played "Reluctant Dragon" and "Down Mexico Way."

Q. Then what did you play?

A. October 22nd to October 25th we played "Palooka" and "Army Girl."

Q. Then what?

A. October 25th to October 29th, "Housemaster" and "Little Miss Molly."

Q. Then what?

A. November 1st—let me check this—from October 29th to November 1st we played "Man of Conquest" and "Secrets of a Model."

Q. Then what did you play?

A. Then "Secrets of a Model" was held over from November 1st through November 7th.

Q. Was anything played with it during that period?

A. No. On November 8th the theatre was closed. On November 20th through the 24th we played "Spooks Run Wild," and a stage show.

Q. Was the theatre closed from the 8th to the 20th?

[fol. 2843] A. Yes, sir.

Q. Why?

Mr. McClennen: That is objected to.

The Court: Overruled.

A. Failure to obtain suitable pictures to run in the theatre.

Q. Then what did you play beginning on the 20th?

A. November 20th we played a stage show. I think it was the McFarland show, and a picture called "Spooks Run Wild."

Q. That was for one day or how long?

A. That was from November 20th through November 24th, four days.

Q. Then what did you play?

A. From November 24th to November 28th we played "Sierra Sue" and "Doctors Don't Tell."

Q. You mean beginning on the 25th, or was there an overlap?

A. No, November 20th, 21st, 22nd, 23rd—beginning on the 24th.

Q. Then the prior picture you read you had on the 23rd?

A. 20th, 21st, 22nd and 23rd, four days.

Q. What did you play beginning on the 24th?

A. "Sierra Sue" and "Doctors Don't Tell", we played the 24th, 25th, 26th and 27th.

Q. Then what did you play?

A. On November 28th through November 30th we played [fol. 2844] "Sergeant Mulligan" and "Hurricane Smith."

Q. Then what?

A. December 1st through December 4th we played "Citadel of Crime."

Q. Then what?

A. December 5th through——

Q. December 25th or 5th?

A. December 5th through 7th we played "Mountain Moonlight."

Q. Then what?

A. December 8th, 9th, 10th and 11th the theatre was closed.

Q. Why?

Mr. McClennen: Same objection.

The Court: There is nothing to show what effort he made to obtain pictures. Failure does not mean much unless he shows what he did to cause the failure. Objection overruled. I will let him answer.

Q. You may answer.

A. For the reason we did not have pictures of sufficient box-office value to justify keeping the theatre open.

Q. When did you reopen?

A. On December 12th, and December 12th, 13th and 14th we played "Poison Pen" and the theatre was then closed December 15th, 16th, 17th and 18th. On December 19th——

Q. Why was it closed during that period?

[fol. 2845] Mr. McClennen: Same objection.

The Court: Overruled.

A. For the reason we did not have sufficient product.

Q. Then what did you play?

A. On December 19th, 20th and 21st we had two or three single reels from Columbia.

Q. No feature there?

A. No feature.

Q. They were what, short subjects?

A. Short subjects.

Q. Then what did you play?

A. Then December 22nd, 23rd and 24th the theatre was closed.

Q. Why?

Mr. McClennen: Same objection.

The Court: Overruled.

A. Did not have sufficient product, feature product.

Q. Then what did you play?

A. December 25th to the 28th we played "Tuxedo Junction" and December 29t-, 30th and 31st, those three days, the theatre was closed.

Q. Why was that?

Mr. McClennen: Same objection.

The Court: Same ruling.

A. Failure to get sufficient feature product. On January 1st through January 6th we played "Blonde from Singa- [fol. 2846] pore."

Q. Then what?

A. January 7th and 8th the theatre was closed.

Q. Why?

Mr. McClennen: Same objection.

The Court: Overruled.

A. Failure to have sufficient feature product.

Q. Then what did you play?

A. On January 9th, 10th and 11th we played "Dangerous Lady."

Q. Then what?

A. Then on January 16th, 17th and 18th we played "Riot Squad", and on January 22nd, 23rd, 24th and 25th we played "Borrowed Hero."

All the intervening dates between those periods of January 1st and 6th that I did not mention are periods when the theatre was closed, and on January 26th the theatre finally closed.

Mr. McClennen: I shall ask to have a short recess.

The Court: Yes.

(Short recess.)

[fol. 2847] Mr. Wright: If the Court please, we have witnesses here, one from Lexington and we have another from below New York and two more from Salisbury, Maryland. We dislike very much to hold any of them over the week-end, and they are anxious to get back. I suggested to Mr. McClennen that perhaps we could withdraw Mr. Wallace at the end of his direct examination and have him come back later on for cross when we get through with these other witnesses. However, that was not agreeable to him, and I submit it to your Honor.

The Court: You say it was not agreeable to him?

Mr. Wright: That is what I understood.

Mr. McClennen: For this reason, if your Honor please, with these very many places we have been getting information as to which one to expect, and I prepared until a late hour last night on this place for this witness, I had in mind unconfused by other places this testimony. I have not prepared at all for these other witnesses, because beyond the preliminary preparation on all the case, but with particular [fol. 2848] regard to these other witnesses, it is not possible to prepare properly to cross-examine three of these witnesses from other places, while this evidence is the matter that is now held in mind. I think in other cases where we could deal with the matter there has been no objection made by me, but here I have purposely refrained from going into the details of this case until the others before were out. I have now gone into it, and I shall have no time properly to prepare for three other places and at the same time carry all of this material over until Monday for the cross-examination of this witness.

The Court: We cannot accomplish very much today, it is very true. Can you prepare on these cases sufficiently tonight so that you can go on with them tomorrow?

Mr. McClennen: I do not believe that it is going to be possible to conclude with Mr. Wallace on cross.

The Court: I meant, to conclude as far as we can go today and then go on with them tomorrow when you will have time this evening.

Mr. McClennen: I have felt it my duty to the Court to [fol. 2849] prepare in such a way as to put in expeditiously what I find ought to be put in. I cannot do that if these other witnesses are put on, and if I may prepare as I go along, why, I can do it, but I cannot prepare properly to abbreviate the cross-examination in this way.

The Court: I would think we ought to be able to conclude with the witnesses tomorrow, besides Mr. Wallace.

Mr. Wright: I would hope so. These witnesses were all included in the list furnished to Mr. McClennen earlier in the week.

Mr. McClennen: Of course, they were, but I have just explained.

The Court: I think we ought to proceed, and shorten the examination as much as we can.

Mr. McClennen: I have made inquiry, and I think we shall be able to determine what we played at the Empire Theatre from September 1, to February 1, 1941, to February, 1942, by consulting our records, so that it will not be necessary to go into detail as to that place.

Mr. Wright: It also covers admission prices.

[fol. 2850] Mr. McClennen: I think we can cover admission prices also.

The Court: It will save much time if we can do that.

Mr. Wright: In that case, you may cross-examine.

The Court: Proceed with the cross-examination.

Cross-examination.

By Mr. McClennen:

Q. Mr. Wallace, when were you in Canandaigua, New York last?

A. In August, 1944.

Q. When prior to May 19th, 1942, were you there?

A. Well, a number of times prior to May, 1942.

Q. What did you observe the last time before May, 1942, as to the number of theatres in Canandaigua?

A. Prior to May, 1942?

Q. Prior to May, 1942, the last time.

A. There was one theatre.

Q. When prior to May 19th, 1942, were you last there?

A. Several times in 1942, but specifically June 19th, 1941.

Q. And did you at that time see the Lake Theatre in Canandaigua?

A. In 1941? No, sir.

Q. Do you know now where the Lake Theatre in Canandaigua is?

A. I do.

[fol. 2851] Q. And did you see that spot in June, 1941?

A. I did.

Q. And was the Lake Theatre upon it at that time?

A. I couldn't say.

Q. Well, why did you say that you didn't see the Lake Theatre in June, 1941?

A. I didn't see the Lake Theatre in 1941.

Q. Did you see the spot where the Lake Theatre is?

A. I saw the spot where it is, a number of times.

Q. In 1941, after April?

A. I couldn't say to that, but I saw it many times previous and a number of times after 1943.

Q. And do you not know whether the Lake Theatre was fully built and opened before June, 1941, when you spoke of being there, is that the fact?

A. I do not know if it was fully built and opened in June, 1941, no, sir.

Q. That is so far as your recollection helps. It may have been built and opened before that?

A. It may have been.

Q. Did you see the Lake Theatre in the process of construction at all?

A. No, sir.

Q. Was your observation of the spot where the Lake Theatre was constructed such that you say from your recollec- [fol. 2852] tion that it was not begun its construction in the latter part of 1940?

A. Will you repeat the hypothesis of that remark?

The Court: Read it.

The Witness: From my recollection I don't know when the construction of that theatre begun.

(Preceding question read.)

Q. Did you mean to leave your testimony in direct-examination so as to convey the impression that the Schine interests had not built a theatre in Canandaigua?

A. Oh, no, sir.

The Court: You testified to one as being near the property concerning which he was talking of purchasing; now, is this other Lake Theatre a separate theatre from that?

Q. How far away is the Lake Theatre from the Flannigan lot which you mentioned?

A. It is on a different side of the street. It is on the west side of the street, and I should say it is a half a block down.

Q. I don't know just what the length of the blocks in Canandaigua may be; is it within 100 feet or 200 feet of the Flannigan lot?

A. I couldn't say, I wouldn't guess at that.

Q. Is your recollection of the locality such that you can [fol. 2853] give us no better than a guess on the length?

A. I said I wouldn't guess at that.

Q. Yes, and I ask you whether your recollection of the locality is such that you can't do any better than guess on it?

A. No, I am not guessing.

Q. You can't say whether, in your recollection, it is within 100 feet or 200 feet of where the Flannigan lot is?

A. I can place the location of the Lake Theatre. I can place the location of the Flannigan Block.

The Court: The Flannigan Block is on the east side of the street.

The Witness: The Flannigan Block is on the east side of the Street, and the Lake Theatre is on the west side of the street up near where the Schine theatre is.

The Court: You were talking about buying a location near the Schine Theatre.

The Witness: Almost abutting it.

Q. The Lake Theatre was not constructed on the Jenkins lot, was it?

A. No, sir.

Q. And still can you give us no estimate whatever of the distance of the Lake Theatre from the Flannigan lot?

[fol. 2854] A. From the Flannigan lot?

Q. Yes.

A. I wouldn't want to guess at it.

Q. Had you informed counsel for the plaintiff that you were aware that Mr. Schine had built a second theatre in Canandaigua?

A. At what time?

Q. At any time?

A. I don't think I did.

Mr. Wright: If the Court please, there is no dispute about the fact that a second theatre was built. The interrogatories so inform us.

The Court: He is asking him for his knowledge about it. Proceed.

Q. I am seeking to show whether or not there was the intention to convey the idea that there had been an abandonment by the Schines of the idea of building a theatre in Canandaigua.

Mr. Wright: There was no more——

The Court: There is nothing from which such an intention can be drawn, that it was abandoned at that time. I will withdraw that remark.

Mr. Wright: The only intention as far as we are concerned, the only claim made, the only testimony that was [fol. 2855] offered was simply to show that Schine did not build a theatre on that particular property where the sign was at that time. They did build another theatre two or three years later in this other location which I take to be the Lake.

Mr. McClennen: Two or three years later than what?

Mr. Wright: I beg your pardon?

Mr. McClennen: Two or three years later than what?

The Court: Subsequent to May, 1942?

Mr. Kallis: May, 1938.

The Court: Not the second theatre. There was no second theatre there in 1938.

Mr. Kallis: The second theatre was constructed two years and nine months after the Flannigan——

Mr. McClennen: You mean the completion of the theatre was two years and nine months after May, 1938?

Mr. Kallis: That is right. That is my estimate of it, and I think that is correct.

Mr. Wright: Let us see what the interrogatory says on that. It ought to be easy enough to settle right now.

The Court: Don't waste much time. Proceed on another line.

[fol. 2856] Mr. Wright: The answer to the interrogatory 17-A, as I recall, says under the Lake Theatre, Canandaigua, under the column "Remarks," a new construction, completed April, 1941. I take it to be that is the date on which the theatre was completed. The lot was acquired—I will read the whole answer under the Town of Canandaigua "Name of Theatre, Lake; any interest, owner; nature of interest, 100 per cent; leased November, 1939, fee, August, 1940; other interest, none; date disposed of, none; seating capacity, 374; closed period, blank; remarks re closed period, new construction completed April, 1941; owned or leased, leased, November, 1939; fee acquired, 1940."

The Court: There certainly was one theatre besides the Lake in 1939-40 in that town.

Mr. McClennen: Yes, I am simply submitting this testimony——

The Court: Who owns the other one?

Mr. McClennen: The Schines.

The Court: That is right.

Mr. McClennen: I am meeting any suggestion that there was any abandonment at any time of the project.

The Court: Pick up the date and go ahead.

[fol. 2857] Mr. McClennen: —of putting up a theatre there.

Mr. Wright: No such suggestion has been made.

Mr. McClennen: Well, there wasn't anything said about it in the course of examination of what had happened in Canandaigua. Now, to answer your Honor's question, the Play House was acquired in Canandaigua by the Schine interests in October, 1924 and was still there throughout the period that we have been discussing, and this was a second theatre.

The Court: Where was the first theatre located?

By Mr. McClennen:

Q. Where was the first theatre located, the Play House?

A. On a westerly direction on a side street.

The Court: You testified to that once before in reference to the lands, you were seeking to purchase.

The Witness: Yes, sir.

By Mr. McClennen:

Q. Now, did the sign that you saw on the Flannigan lot contain any signature?

A. No, sir.

Q. Or any, I mean, even in print?

A. Not even in print.

[fol. 2858] Q. Do you know how many seats the Lake Theatre contained?

A. I do not.

Q. Do you know anything about its interior?

A. I do not.

Q. As to type of construction or equipment?

A. No, sir.

Q. Syracuse, New York, from a theatre operating standpoint, has been known to you for 15 or more years?

A. I should say so, yes, sir.

Q. In 1940 and in 1939 there were some 3[illegible] theatres in Syracuse, moving picture theatres, were there?

A. I don't think there were that many.

Q. How many do you think there were?

A. I think there were about 25.

Q. About 25, and how many of those were downtown?

A. Do you wish me to enumerate the theatres that were downtown?

Q. How many, I said?

A. Six.

Q. Six downtown. How many suburban theatres were there in Syracuse, in 1939?

A. About 20.

Q. Were those collected in one suburb or more, or were they distributed through what could be called a number of separate suburbs?

[fol. 2859] A. Well, I don't think that there is any geographical distribution other than that they were scattered around in certain places in a heterogeneous manner so that if a fellow thought that business could be done at a certain spot, that is where the theatre was located. I don't think you could set a certain geographical plan or scheme out to say they were set in certain suburbs.

Q. The day and date playing, when conducted by theatres, owned by different individuals is usually confined to suburban areas, is it not?

A. The day and date?

Q. Yes.

A. You must make a distinction there. A suburban theatre has a second-run, and a suburban theatre has a third-run, and then there is a subsequent-run. If you mean on a subsequent-run, they confine them to day and date playing, I say "Yes." Where you ask me a theatre like the Riviera, which had a well established run, and the Cameo, which had an established run, they are neighborhood theatres, and have always been considered neighborhood theatres, they didn't have a contiguous time and date run with other subsequent-runs.

Q. It isn't usual with theatre operations to have a day and date play among theatres that are inter-competitive in [fol. 2860] their particular areas, is it?

A. That I am not—I can answer that. I know of situations where they do, and I know of situations where they don't.

Q. You do not know of a regular effort of exhibitors not to play day and date with other exhibitors' theatres that are directly competitive with them; you do not know of that?

A. Well, as I said before sometimes they do and sometimes not. I could cite you instances where a day and date booking is used and they are competitive situations to each other, in a sub-run in a neighborhood section.

Q. Among theatres that are in different ownerships?

A. Yes, there is no unity of ownership between these two particular——

Q. Well, would you cite me where these are that you speak of?

A. For example, the Acme Theatre in Syracuse and the Turnball Theatre in Syracuse, they both cater to trade on the north side, and they both strive to play pictures day and date.

Q. How far apart are they from each other?

A. Well, there are in the same neighborhood, and probably 15 or 18 blocks apart, but they are in a neighborhood called the North Side.

Q. 15 or 18 blocks apart?

[fol. 2861] A. Yes, sir.

Q. And that is a matter of nearly a mile?

A. Well, I should judge so, yes.

Q. Now, you are aware of the fact, are you not, that in theatre operation it is recognized that suburban runs; suburban houses and downtown houses are competitive?

A. I am aware that——

Q. No, would you just answer whether you are aware of that?

A. I can't answer that "Yes" or "No."

Q. That is, you are not aware of that?

A. I didn't say that.

Q. Well, then——

A. I said I am aware in view of certain distinctions and under certain conditions downtown houses are competitive to neighborhood houses, but as a general rule downtown houses are not considered competitive situations with neighborhood houses.

Q. One of the regular conceptions of exhibitors is in the interest of the downtown houses that there shall be sufficient clearance over the neighborhood houses, so that the workers downtown, the shoppers downtown, and so forth, will not postpone going to the downtown houses because they can go to the neighborhood house, isn't that so?

[fol. 2862] Mr. Wright: If the Court please, I submit that is meaningless argument, which, even if it could be answered by some competent witness, has no relevancy to anything this witness testified on direct.

The Court: Overruled.

(Preceding question read.)

The Court: Of course, if there was a clearance, there wouldn't be an opportunity of going at the same time.

Mr. McClennen: I believe the answer to this to be "Yes," and as your Honor has indicated——

The Court: That they are competitive.

Mr. McClennen: That they are competitive in that sense.

The Court: I thought that the neighborhood theatres had second-run and the downtown theatres first-run.

Mr. McClennen: And with a clearance between them and for the reason I have inserted in the question.

The Court: I thought your argument was they were competitive in the sense they were showing at the same time.

Mr. McClennen: No, I spoke of clearance in the question.

[fol. 2863] The Court: You spoke of competition, too. Well, can you answer the question?

The Witness: Why, your Honor, I have always considered clearance and protection as being two things that are coupled together. If he would form the question so that clearance and protection could be put in that causal clause he speaks of, then I believe I would be competent to answer that question.

[fol. 2864] Q. With that amendment to my question is your answer yes?

A. My answer would be that the clearance protection granted the first-runs is for the specific purpose of diverting the bulk of the business to the first-runs, that only first-runs in any given situation are competitive to each other, and it is a recognized fact in this industry that neighborhood houses take the leavings. I hope that answers your question.

Q. When you operate a first-run house that is the reason that you seek protection?

A. That is right. Of course, protection against who or what kind of protection? It is a theory of protection. It seems to work protection against the small theatre, but my philosophy in the matter is that it should be protection the other way around.

Q. Protection in your favor?

A. I say my philosophy in the matter is that the large first-runs, as a rule, don't need the fiction of protection written into their contract. They are sufficiently powerful to have and use their own methods of protection, that the average film contract, in contra-distinction to the way you suggested the question, the protection should be written for the little fellow, the sub-runs that you speak about, that you state are so-called competitors. And in actuality they [fol. 2865] are not.

Q. That is, that the protection should be given to the neighborhood house over the first-run house downtown?

A. There should be a certain amount of protection against undue long runs or extreme length of availability from one run to the other.

Q. That is, that the neighborhood house should have protection against the down-town houses?

A. No.

Mr. Wright: This is a discussion that I don't see has anything to do with the issues.

The Court: I think you better proceed to something else, Mr. McClennen.

Mr. McClennen: If I may state my purpose, it is to show that with 25 theatres in Syracuse the prospect of a new theatre coming in and having anything except a very much deferred run was practically nil.

The Court: It seems to me you have covered this line of inquiry for that purpose.

Mr. McClennen: That is all I desire to do, if I brought that to your Honor's attention.

The Witness: May I——

The Court: Just answer the questions and we will save a lot of time.

[fol. 2866] By Mr. McClennen:

Q. The Eckel, the Keith, the Paramount and the Palace were naturally first-run houses, were they not?

A. No, sir.

Q. Had they ever been operated in any other way?

A. Palace Theatre had always been operated as a sub-run theatre.

Q. Had any of the other three been operated in any other way than as a first-run?

A. No, sir.

Q. The Loew's was always a first-run?

A. Yes, sir.

Q. And therefore there were four first-run houses and some subsequent down-town?

A. No, there were five first-run houses and some subsequents.

Q. Which were the five first-run houses?

A. You neglected to include the Strand Theatre in Syracuse, which was a well-established and long-established first-run house.

Q. So that there were five?

A. Five.

Q. First-run houses, before you got to the Empire Theatre?

A. The history behind the Empire was——

Q. I did not ask you the history.

A. I beg your pardon. I did not get your question.

[fol. 2867] Q. There were five first-run houses before the Empire Theatre?

A. Yes, sir.

The Court: You mean before the Empire, as a run, or before it was started?

Mr. McClennen: I mean that there were five theatres to be served as first-run theatres before there could be any service to the Empire Theatre.

The Court: Before there could be any service to the Empire Theatre?

Mr. Wright: During what period?

The Court: What do you mean by that "before there could be any service"?

Mr. McClennen: Before there could be any service of pictures to the Empire.

The Court: Five first-runs—yes—you say before the Empire. Of course, the Empire was not a first-run then. You mean subsequently it became a first-run. Was the Empire ever a first-run?

Mr. McClennen: The Empire, we say, was never a first-run.

By Mr. McClennen:

Q. Now, when you got your lease of the Strand in September, 1941, it was 12 days after the RKO-Schine operation [fol. 2868] had ended, was it not?

A. Twelve days after the Schine operation had ended we got the lease on the Strand? Is that what you said?

Q. Yes.

A. No, sir.

Q. When did the Schine-RKO operation of the Strand end?

A. To the best of my recollection it ended in June 22, 1941, and we negotiated and signed a lease on September 5, 1941. That would be longer than a twelve-day period.

Q. You were aware that the Strand lease to the RKO-Schine operation ended August 31, 1941?

A. I was not aware of that.

Q. So that in the course of your negotiations you did not discover that the lease was expiring at about that time?

A. I never saw any lease of the Schine people.

Q. And you never saw anything to indicate that RKO-Schine had lost their control of the Strand until you got your own lease?

A. I did not see anything that would indicate that Schine had lost control at any time. I assume that they lost control of the lease June 22, 1941. We negotiated a lease and signed it on September 5, 1941. That is as much as I know about that transaction.

[fol. 2869] Q. Why did you assume that their lease had ended in June, 1941?

A. From the physical condition of the theatre, the marquee.

Q. Did the marquee indicate that the lease had expired?

A. It said "This theatre is closed." It did not indicate that the lease had expired, but inferentially I could see the theatre was in a neglected condition. I assumed it was abandoned.

Q. And from that you assumed that the lease had expired, did you?

A. I did not assume that the lease had expired. I felt that the lease had expired. I had nothing definite. I did not have any paper that would indicate to me that this certain lease had expired as of a certain date. I thought all along Schine's lease had expired as of June 22, 1941.

Q. You never inquired?

A. I had——

Q. You never inquired?

A. I had no reason to inquire about the back history——.

Q. I did not ask you the reason. I say, you never inquired?

A. No, I never inquired.

Q. How soon after August 31, 1941, did the "Empress" reopen after the summer closing?

A. There is no such theatre as the Empress.

[fols. 2870-2872] Q. The Empire. I beg your pardon.

A. The Empire Theatre opened, to the best of my recollection, September 12, 1941.

Q. That is, the Empire opened twelve days after what now appears as the actual end of the Schine-RKO lease?

A. I could not state that.

Q. It did open on September 12th?

A. It opened on September 12th.

Q. 1941?

A. That lease may have expired six months prior.

Q. Up to that time, the summer of 1941, the four RKO-Schine theatres were operating right along for years?

A. What do you mean by the period of "for years"?

Q. I mean the period you referred to when you said that the four theatres continued to operate full time. What period did you mean?

A. The Keith Theatre, to the best of my knowledge, operated for fifteen years continuously. The Eckel Theatre, with the exception of the time there was a fire, operated continuously. The Paramount Theatre operated continuously. The Strand Theatre operated continuously up to a certain period, and then operated intermittently.

The Court: I think we will have to suspend at this time.

(Whereupon a recess was taken to tomorrow, Friday, October 13, 1944, at 10 A. M.)

[fol. 2873] UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF NEW YORK

Civil 223

UNITED STATES OF AMERICA

vs.

SCHINE CHAIN THEATRES, INC., et al., Defendants

Continuation of trial before Honorable John Knight, United States District Judge for the Western District of New York, October 12th, 1944, 10 o'clock A. M.

Appearances:

Robert L. Wright, Esq., John F. Clagett, Esq., Harold L. Schilz, Esq., Special Assistants to the Attorney General, and Milton Kallis, Esq., Special Attorney, in behalf of the United States.

Edward F. McClennen, Esq., Willard S. McKay, Esq., Saul E. Rogers, Esq., Arthur E. Whittemore, Esq., Arthur J. Homans, Esq., and Howard M. Antevil, Esq., appearing for the Defendants.

[fol. 2874] Proceedings

Mr. Wright: If the Court please, I understand Mr. McClennen has withdrawn his objection to our withdrawing Mr. Wallace and proceeding with Mr. Schwartz, of Lexington, and witnesses who are here from Maryland and Delaware, but I understand he is not prepared to proceed with the witness Boumansour, who is here from Malone, New York. The witness Schwartz hasn't yet reached the court-room. I suggest that we proceed with the cross-examination of Mr. Wallace until Mr. Schwartz arrives, and I understand that is agreeable to counsel.

The Court: All right.

Mr. McClennen: My New York friends desire your Honor's confirmation that we stop at 4 o'clock.

The Court: That is up to you. It has nothing to do with me.

[fol. 2875] **Hubert P. Wallace** resumed the stand by and on behalf of the Plaintiff, and testified further as follows:

Cross-examination (continued).

By Mr. McClennen:

Q. I was asking you to fix as nearly as you could the times when the Strand operated continuously under the R. K. O.-Schine operation.

The Court: When it began to operate continuously, from what time?

Mr. McClennen: No, it has appeared clearly enough in the older days it was a continuous operation, and the witness had carried that to an indefinite time when he said it became an intermittent operation.

Q. Would you fix that time between the continuous and intermittent?

A. Some time in 1939.

Q. 1939?

A. Yes, sir.

Q. And what was your personal observation of the operation of that theatre from 1939 to 1941? I don't mean your conclusion from it, but how much did you see of the operation [fol. 2876] between 1939 and 1941?

A. What operation do you refer to, do you mean the physical operation?

Q. The Strand.

A. Do you mean the physical operation of the theatre?

Q. I mean so you knew by eyesight whether the operation was continous or intermittent.

A. I knew by eyesight.

Q. That is, you were in Syracuse frequently at that period?

A. Yes, sir.

Q. And at times when you were there in the period from 1939 to 1941, you saw that the Strand was open for business?

A. Yes, sir.

Q. And at times you saw that it was not open for business?

A. Yes, sir.

Q. How many times did you see when it was not open for business? Did you see it in that period from 1939 to 1941?

A. Well, I know definitely one time I had occasion to go down and look for a sign painter that worked for the Strand that also worked for me. I know one time particularly the theatre was closed.

Q. When was that?

A. That was in the spring of 1940, I believe.

[fol. 2877] Q. A week day, of course, not a Sunday?

A. Not a Sunday, no, sir.

Q. And time of day?

A. It was late in the afternoon.

Q. And now apart from that one incident, do you know from personal observation of any other time when the Strand wasn't open in the two years from 1939 to 1941?

A. Well, I do know that.

Q. I say, you observed it?

A. I do know.

Q. How many times did you observe it closed?

A. I should say four or five times.

Q. Four or five times in the two years?

A. Yes, sir.

Q. And were some of those in the summertime?

A. Yes, sir.

Q. Were all of them in the daytime as distinguished from evening?

A. Several were in the daytime and several were in the evening.

Q. The two severals amounting to about five in all?

A. Approximately.

Q. Now, apart from that, or, have you now stated your personal observation of the times when the Strand was closed during the two years from 1939 to 1941?

[fol. 2878] A. I have.

Q. You talked about its rundown condition as you observed it in June of 1941. Had you noticed that before at any time?

A. No, sir.

Q. And describe that rundown condition that you noticed in June of 1941.

A. I said the front of the theatre was in a rundown condition. By that I mean it looked to me and gave me the impression that the theatre was abandoned because there had been an attraction which was advertised that had played some days previously, and that is something that doesn't occur in the theatre business.

Q. What other indications of a rundown condition did you see?

A. The brass doors had not been polished for some length of time. The windows were very dirty, electric light bulbs were,—a great many of them were broken and out. The one glass in the box office, I believe, was broken, and the general appearance gave me that impression.

Q. That is, it had become an uninviting looking theatre?

A. From the outside.

Q. From the outside?

A. Yes, sir.

Q. Did you go inside?

[fol. 2879] A. Not at that time.

Mr. McClennen: I am advised, if your Honor please, that Mr. Schwartz has arrived. I will suspend if agreeable to your Honor.

The Court: All right.

Harry Schwartz a witness called by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Wright:

Q. Where do you live, Mr. Schwartz?

A. Lexington, Kentucky.

Q. What is your occupation?

A. At present I am a road show operator. I have a hygiene picture that I book around the country.

Q. How long have you been so employed?

A. A year and a half.

Q. You were formerly the owner and operator of the Opera House Theatre at Lexington, Kentucky?

A. Yes, sir.

[fol. 2880] The Court: That is the name, Opera House Theatre.

Q. Opera House. That was during what period?

A. Between 1931 and 1939.

Q. And then during part of that period you also managed the theatre?

A. Yes, sir, from 1935 until 1939.

Q. Calling your attention to the year of 1935 what other theatres were operating there at Lexington?

A. The Kentucky, Ben Ali, the Strand and the State.

Q. Who operated those?

A. And the Ada Mead.

Q. Who operated the first four theatres you named?

A. The Phoenix Amusement Company of Lexington, Kentucky.

The Court: When you speak of the first four, among them was the Schine?

The Witness: No, at that time it was the Phoenix Amusement Company of Lexington who operated it.

Q. Do you know who the people were who managed them for that Company, or were associated with them?

A. Yes, the names were Miss Hannabelle Ward and John B. Ward.

[fol. 2881] Q. Then who was operating the Ada Meade?

A. Mr. Switow.

Q. Which of those that you named were first-run theatres?

A. The Kentucky and Ben Ali.

Q. Do you recall about what the admission prices were that were charged there?

A. 40-cent admission at night and 25 matinee.

Q. The Strand, what policy was that playing?

A. Strand was running second-run policy at a 15-cent matinee and 25 at night.

Q. And the State?

A. State was running at 10 cents all the time, the Ada Meade was ten cents.

Q. Ada Meade also?

A. Yes, sir.

Q. Your theatre, what were you charging?

A. 1935 I charged 10 matinee and 15 at night.

Q. During that year did you have any first-run pictures at your Opera House?

The Court: Are you speaking of 1935?

Mr. Wright: Yes.

A. I had the opportunity of acquiring United Artists first-run for their 1934-1935 group.

Q. 1934-1935 product?

A. Yes.

[fol. 2882] Q. You got it and played it in 1935?

A. That is right, early part of 1935.

Q. Were your prices the same when you played United Artists?

A. No, I raised my admission price to 25 cents at night.

Q. When you played those pictures?

A. When I played first-run United Artists pictures.

Q. As to the other major product you played, which theatres did you follow?

A. I followed the Ben Ali, Kentucky, Strand—just those three at that time.

Q. And the 10-cent theatres followed you?

A. Yes, they did.

Q. Then, calling your attention to the year 1936, do you recall when the Phoenix Amusement Theatres were taken over by the Schine interests?

A. They were taken over about November, 1936.

The Court: The Phoenix Amusement Company controlled how many theatres?

The Witness: Four.

Q. Then, just prior to the time that take-over occurred were you then playing any first-run pictures?

A. I played United Artists first-run.

Q. You still had some of those 1934-1935 season?

A. That is right.

Q. Your admission price policy was the same as you [fol. 2883] described for 1935?

A. That is right.

The Court: Did you have a contract for the season?

The Witness: I had one season's contract of United Artists.

The Court: 1936-1937?

The Witness: Just the 1934-1935, but they were late in delivering some of the pictures, so I ran some of them in 1936.

The Court: That was run on your old contract, you mean?

The Witness: That is right.

Q. Calling your attention specifically to Metro products in the fall of 1936, do you recall what run you were playing their pictures on?

A. I played a second-run Metro contract in 1935-1936.

Q. Do you know whether it was second or third?

A. It was a second-run, 1934-1935 product.

Q. Of the prior season's product?

A. That is right, of the prior season's product.

Q. Did you also have a run of the 1935-1936 season's product?

A. I had a third run of the 1935-1936 season.

Q. What, if any, negotiations did you have with Metro with respect to the 1936-1937 season's product?

A. I was told by their manager,—

Q. Just say who you talked to, and where.

A. I talked to Mr. Booth, the Metro manager, in the Cin-[fol. 2884] cinnati territory.

Q. Where did you talk to him?

A. In my office at the Opera House.

Q. What was said with reference to the 1936-1937 season's product?

Mr. McClennen: Same objection.

The Court: Overruled.

A. He said that the first three runs had been sold to the Schine theatre interests, and that I could have fourth run.

Q. Do you remember when it was that he told you that?

A. It was in November of nineteen—I don't just remember—the later part of 1936 or early in 1937.

Q. I will call your attention to this letter which has already been identified as Exhibit 447 for identification. Does that apear to be your signature on that?

A. Yes, it is.

Q. Do you recall writing that letter on or about the date it bears?

A. Yes, I do.

Mr. Wright: I will offer this in evidence.

Mr. McClennen: The general objection.

The Court: What is that?

Mr. Wright: One of those previously identified as having come from the files of the Loew Company.

[fol. 2885] (The letter dated January 10, 1937, to M.G.M. from Mr. Schwartz was received in evidence and marked Plaintiff's Exhibit 447.)

Mr. Wright: This letter is dated January 10, 1937, addressed to M.G.M. Distributing Corporation, 1636 Central Parkway, Cincinnati, attention of Mr. E. A. Booth, Manager. "Gentlemen: As I have been an account of yours for the past four years, either as a third-run and once as a second-run, I wish to go on record as saying that I still wish to be your third-run account in Lexington. You have told me on several occasions that the Schine Amusement Company, who purchased the Phoenix Amusement Company some time in November, had all of your product, first, second and third-run. It is necessary that I have third-run product at the Opera House as my customers have been accustomed to seeing Metro product, and I intend to take steps immediately to protect my business. Therefore, I ask that you send me definite information regarding the Opera [fol. 2886] House situation with you for this season's product."

By Mr. Wright:

Q. Do you recall when the first time was that you were told by Mr. Booth that you were not going to get the third-run of Metro pictures for the 1936-1937 season?

The Court: He did not quite say that. He said he told him the first three runs had been sold to Schine. State the conversation.

Mr. Wright: I just wanted to fix the date of that, as near as I could.

The Court: You mean by the date of that letter?

Mr. Wright: Yes.

Q. Do you remember how long before you wrote that letter that was?

A. It was either in the latter part of November, 1936, or early in December that he visited Lexington and stopped in my office and told me that.

Q. I will show you this document and ask you if that appears to be your signature on there?

A. Yes, it is my signature.

Mr. Wright: I will ask to have this marked as the next Plaintiff's exhibit number. It comes from one of the files which were previously identified by the Metro representa- [fol. 2887] tive. Have you got the number of that? That was identified in the folder marked for identification as Exhibit 607. Perhaps we better mark it was 607-A.

Mr. McClennen: Don't you think that will bother us more? Why not give it the next number?

Mr. Wright: As long as there is no question about it having been previously identified as having come from the files of the company.

Mr. McClennen: We accept your statement that that came from the files of the company.

Mr. Wright: Then give it the next Plaintiff's exhibit number, and we offer it in evidence.

(The contract between Mr. Schwartz and Metro for fourth-run 1936-1937 product received in evidence and marked Plaintiff's Exhibit 821.)

By Mr. Wright:

Q. Do you recognize this Exhibit 821 as the contract you finally made with Metro for the fourth-run for their 1936-1937 product?

A. Yes, sir.

Mr. McClennen: You stated the date, did you?

Q. Was that application signed by you on or about the date it bears there?

A. February 13, 1937, yes, sir.

Q. Then you played that product, did you, on the fourth-[fol. 2888] run, in accordance with the contract?

A. Yes, I did.

Q. What theatres played the first three runs ahead of you, do you recall?

A. Either the Kentucky or Ben Ali first-run, and the Strand second-run, and the State third-run.

Q. In the f[illegible] of 1936 what admission prices were these theatres charging?

A. The two first-run theatres were charging 40 cents at night and 25 for the matinee, and the second-run theatre, the Strand, was charging 25 cents at night, 15 cents matinee, and the State was charging 10 cents matinee and 15 cents at night.

Q. You say you were then following the State as well as the other three theatres?

A. Yes, sir.

Q. Do you recall about how long those prices continued?
A. Until about June, 1937.

Mr. Wright: I will ask to have this marked with the next Plaintiff's exhibit number for identification.

(Photostatic copy of ads appearing in Lexington Herald July 9, 1937, marked as Plaintiff's Exhibit 822 for identification.)

Q. Do you recognize Exhibit 822 for identification as a [fol. 2889] photostatic copy of ads that appeared in the Lexington Herald, July 9, 1937?
A. Yes, I recall it.
Q. Does that refresh your recollection as to when there was a change in those admission prices you had previously referred to?

Mr. McClennen: That is objected to, as to when there was a change. There is no objection to the question what they were at that time.
The Court: Does it refresh your recollection as to what the charges were at that time?
The Witness Yes, sir.

Q. Are the charges there stated in the ads that appear on this Exhibit 822 for identification the ones that Schine began to charge in June, 1937?

Mr. McClennen: That is objected to. There is nothing to indicate that he began in June.
Mr. Wright: He just testified that the previous prices were in effect until June. I merely wanted to find out what the prices from June on were. I use this as a convenient point of reference.
The Court: If that refreshes his recollection, he can testify to the facts.

Q. When the change occurred in June that you have al- [fol. 2890] ready referred to, what was that change?
A. It was a lowering of the matinee price in the balcony of the first-run theatre, in the Ben Ali.
Q. Lowered from what to what?
A. 25 to 15 or 16 cents with the tax.
Q. What else?
A. Night admission price in the balcony was lowered from 40 cents to 27 cents with the tax.

Q. That was in the Ben Ali?

A. That was in the Ben Ali.

Q. How about the Strand and State?

A. The State had only one admission price always, because it only has one floor, but the Strand is a two-floor theatre, that is, lower floor and balcony. They lowered their balcony admission price in the Strand from 27 to 17 at night.

Q. How about——

A. Matinee was 16 cents all over.

[fol. 2891] Q. And the main floor of the Strand at night was——

A. 27—22 cents.

Q. Then do you know about how long those prices continued?

A. They continued all during the entire summer.

Q. Of——

A. 1937. It was the summer policy, in other words.

Q. You mean 1937 or 1938?

A. 1937.

Q. 1937, and then did they continue after that?

A. The following years?

Q. In the fall, yes, and winter.

A. No, in the fall they raised their admission prices to normal.

Q. By normal you mean what?

A. 40 cents admission in the first-run houses and 25 cents admission in the second-run houses.

Q. Then how about the State?

A. The State was 10 and 15 cents; 10 cents matinee and 15 at night.

Q. That was the third-run house?

A. Yes.

Q. Then, was there any reduction again in the year of 1937 after they were put back again in the fall?

The Court: The same year, 1937?

Q. Yes.

[fol. 2892] A. No.

Q. Was there in 1938?

A. During the summer months there was.

Q. Now, I call your attention to these three exhibits which have been previously marked,—I beg your pardon, two exhibits which have been previously marked for identification as exhibits 209 and 259, and ask you if you wrote those letters on or about the dates they bear?

A. Yes, I wrote them.

Mr. Wright: We offer these two exhibits in evidence.

(Documents shown to Mr. McClennen.)

Mr. McClennen: This identification 209, I submit is open to further objection than the ordinary conversations which your Honor has admitted over our objection, or the letters which you have admitted over our objections.

The Court: Let me see it.

Mr. McClennen: It seems to me that its contents, which I show your Honor, indicates that it has nothing whatever to do with the case, nothing that affects us in any way and contains recitals which are mere hearsay, and do not assist in any way in this case or resolving it correctly.

The Court: Well, am I to understand you were receiving [fol. 2893] the Fox pictures at this time, the time of this communication?

The Witness: Yes.

The Court: I think it is competent along the lines of the showing here. I mean, this coupled up with some act by the Fox Company in that regard, I mean that Fox had refused to take any production——

Mr. McClennen: I speak with complete deference, if your Honor please. I urge that it would have no effect upon Schine in any way whether Fox let a customer off his contracts.

The Court: I will receive it and see what follows.

Mr. Wright: If the Court please, it isn't offered for the purpose of showing the production, it was offered for the purpose of showing that direct attention was brought home, knowledge was brought home to the Fox Company of what the admission price policy they were permitting Schine to pursue in Lexington was doing to this man's business. That is the principal purpose of the offer.

The Court: What the policy of Schine was doing?

Mr. Wright: With respect to admission prices playing a run ahead of him. I mean in their theatres, at the same [fol. 2894] price he had to charge for the later runs.

Mr. McClennen: The joker, if I may be so flippant to use that remark, in Mr. Wright's statement was that Fox was permitting Schine to pursue this policy. Fox had nothing to do with the policy whatever, nothing to indicate that it was Schine's policy.

The Court: It shows a co-conspirator had knowledge of what another co-conspirator was doing.

Mr. McClennen: The statement, if your Honor please, was not that. The statement was that Fox was permitting this. There was no basis for such an assertion.

Mr. Wright: The minimum prices the exhibitors could charge were inserted in the contract. Mr. Schwartz' contract had a minimum price of 16 cents. Fox permitted Schine to play ahead of him at the same price, a procedure which could only have been calculated to ultimately achieve what was accomplished, and that is put an end to Mr. Schwartz' competition at the Opera House.

Mr. McClennen: The Fox Company did not permit it. There was never any contract by which Fox could require [fol. 2895] Schine to charge any more admissions than were charged. It was their province to determine what their admissions should be, so long as they did not violate the contract, and there is no contract that is in evidence, that can be put in evidence, that they violated that provision of any contract, so that this remark about Fox permitting this is just picked out of the blue by my brother, because he likes that form, but there is no evidence of it.

Mr. Wright: I would prefer, if the Court please, to argue the case after we have put in the evidence rather than now. As long as counsel has made the point, I feel at liberty to state what the position is.

Mr. McClennen: Our position is whether the argument be interlocutory or final, they ought to be based on evidence.

The Court: This goes to the request for a reduction of price on the Fox pictures to this witness.

Mr. McClennen: This is a request for reduction in prices this witness addressed to Fox. He wants relief from his contract as to prices.

The Court: Yes, in order to attain the end——

[fol. 2896] Mr. McClennen: That has nothing to do with Schine.

The Court: It appears to me it is competent not only as a notice to an alleged co-conspirator of the act of another alleged co-conspirator, but if it may appear Fox refused to make any reduction then it might have a bearing on the action in concurring with Schine.

Mr. McClennen: That is not the stated purpose of the offer. The stated purpose——

The Court: It may be one of the purposes.

Mr. Wright: That is quite right, as I understand a reduction, I think, was probably obtained. For our purpose it is immaterial whether they reduced the film rentals, or whether they didn't. We do not offer the letter for the purpose of showing what was done there. We offer the letter for the purpose of showing knowledge was brought home to Fox of the effect on his business of permitting the Schine houses to play the pictures ahead of him, at the same admission prices he was charging for the later run.

Mr. McClennen: I stated what the purpose of Mr. Wright was in confident reliance on what he said, and what he said was that it was to show Fox was permitting these lower [fol. 2897] prices. The letter contains nothing——

Mr. Wright: The letter will not show that.

Mr. McClennen: Just a moment, just a moment; I have tried not to interrupt you.

As I was saying, before the unwarranted interruption, the offer was to show that Fox was permitting these lower admission prices. That was the stated purpose. We urge that there is nothing in the letter, nothing in evidence in any way to indicate that Fox did permit the lower admission prices or that they had any control over the admission prices so long as they did not violate the contract of Fox and Schine, and there is no evidence that they did, and it is now stated, meeting your Honor's suggestion of a possible purpose, that there is no claim that they did not get these reductions in contract prices which Mr. Schwartz asked.

The Court: That is what he claims now. He claims they were entitled to it because they were charging the same price for a fourth-run, third or fourth-run, that was charged for a second-run.

[fol. 2898] Mr. McClennen: There is nothing in this letter that bears on that in any way. I have made no objection to his stating what they were charging in admissions. I have made no objection to his stating what he was charging in admissions.

Mr. Wright: If the Court please, as to what transpired between Fox and Schine, we are not attempting to make any proof at this time, because we don't want to take up that time while this witness is on the stand. All we are attempting to show now is what transpired between the witness and Fox and the witness and Schine. We will later offer the Schine contracts with Fox and certain communications which passed between Schine and Fox, which we think relate to this situation, but I don't see the occasion for going into that now. It is perfectly clear that that letter is competent evidence to show that whatever facts were stated there, were brought to Fox'. attention at that time.

Mr. McClennen: If your Honor please——

The Court: I think it better remain identified until we [fol. 2899] get the further connection in that respect, I mean, to show the relation between Fox and Schine.

Mr. Wright: That is agreeable to us. It doesn't make any difference particularly whether it goes in now except I was going to ask the witness some questions based on what was in there.

The Court: State what was done. Those were identified before, were they?

Mr. McClennen: They were identified before.

Mr. Wright: Have you the other one?

Mr. McClennen: The other one, Exhibit 259, what has just been said has equal applicability to that. We object to it.

Mr. Wright:

Q. Now, calling your attention to this letter dated January 17th, which is marked Exhibit No. 209 for identification, I will ask you how long prior to the time you wrote that letter the admission prices referred to therein had, or that Schine had stopped charging the admission prices you are referring to therein?

Mr. McClennen: What is the date or year of the letter?

The Witness: January 17th, 1938. This referred to the summer and fall previous to January, 1938.

Q. The pictures that you played then, and it referred to [fol. 2900] Fox pictures that were played when with reference to the time they were played in the Schine theatres?

A. I didn't get that.

Q. It referred to Fox pictures that were played at what time in your theatre with reference to the time they were played in the Schine houses?

A. It was about six months after the first-run in the Schine houses. They were played during the summer of 1937 and I was getting them available in January, 1938.

Q. You were playing them after they had been run in Schine houses?

A. In all three houses of Schine. I was playing them fourth-run.

Q. Was the same thing true with reference to this letter I have shown you marked Exhibit 259, dated September 30th, 1937?

A. That refers to Paramount pictures, yes, sir.

Q. And those were pictures that you had played after they had played in the Schine houses at the same admission prices you were charging?

A. Yes, sir.

Mr. McClennen: What is the date?

Mr. Wright: September 30th, 1937.

Q. Now, then, during the winter of 1937-38, as I understand it, both the State and Strand continued to charge 16 [fol. 2901] cents at night for the pictures they played?

A. The State charged 16 cents, but the Strand charged 22 at night.

Q. That was on the main floor?

A. On the main floor and 16 in the balcony.

Q. In the balcony?

A. Yes, sir.

The Court: Was that just during the summer months?

The Witness: It was during the summer and fall.

Q. I was calling your attention now to the price charged during the winter and ~~specifically with reference to the balcony~~ and main floor Strand prices.

A. I honestly don't remember that winter price of 1937 and '38.

Q. You don't remember whether the price at the Strand balcony was the same that you were charging at the Opera House?

A. Not in the winter, Mr. Wright, I don't remember that. I remember the summer and fall prices, but I don't remember that.

Q. Was there a change made again, beginning the spring and fall?

A. In the summer and fall a change went into effect again, the summer price.

Q. That continued for what period?

[fol. 2902] A. July through September, I believe.

Q. What were those prices?

A. The matinee price at the Strand of the lower floor was 16 cents and at the Ben Ali the lower floor price was 27, first-run, and 16 cents balcony, matinee price.

Q. At the State?

A. The State, the price was always 10 cents matinee and 16 cents at night.

Q. Did you give the evening admission price for the Strand?

A. The evening admission price was 22 cents on the lower floor at the Strand and 16 cents in the balcony.

Q. How big was that balcony, do you know?

A. The balcony at the Strand was about 400 seats.

Q. Now, did you make any changes in your admission price during this same period?

A. No, I didn't.

Q. You maintained what price?

A. 10 cents matinee and 16 cents at night.

The Court: How much at night?

The Witness: 16 cents.

[fol. 2903] Q. After November, 1937, did you then have any first-run product at all?

A. Yes, I had some, what is known as independent product. I had Republic first-run.

Q. Did you have any major product?

A. No major product.

Q. All the major product you played you followed the Schine houses?

A. Yes, I did.

Q. Calling your attention to the year 1937, did you at any time that year go to Paris, Kentucky?

A. Yes, I drove through Paris on my way to Cincinnati.

Q. About when was that?

A. This was in the early summer, 1937.

Q. Did you observe anything there with respect to theatres and proposed theatres?

A. Yes, I noticed the Bourbon Theatre of Paris.

Q. Is that a Schine Theatre?

A. It was operated by the Schine Theatre Company.

Q. Did you observe anything else with respect to theatres?

A. Yes, I observed a sign on a building that Schines' were going to build a new theatre in Paris.

Q. Then did you later return to Paris in 1938?

A. Yes, I did.

Q. When was that?

[fol. 2904] A. In the summer of 1938.

Q. What did you observe then with reference to the sign you had previously seen?

A. I noticed that it was in a broken-down condition and the reading matter practically obliterated?

Mr. Wright: I will ask to have this document marked with the next Plaintiff's exhibit number for identification.

(Lease made by Mr. Schwartz in Paris, Kentucky, marked Plaintiff's Exhibit 823 for identification.)

Q. I call your attention to this Exhibit B, attached to Exhibit 823 for identification, and ask you if that is a copy of a lease you made for property in Bourbon, on or about November 2, 1938?

The Witness: Bourbon County, Paris, Kentucky.

Mr. Rogers: You mean Paris.

Q. Paris, Kentucky, I beg your pardon.

A. Paris, Kentucky.

The Court: I thought you said something about Bourbon.

The Witness: Bourbon County.

Q. I meant Paris instead of Bourbon.

A. Yes.

Q. When was this lease you just referred to made with reference to that trip?

[fol. 2905] A. November 2, 1938.

Q. I say, that was how long after you made this trip you have just referred to?

A. About four months after.

Q. What was the purpose in making the lease?

Mr. McClennen: That is objected to.

The Court: Sustained. The lease, I suppose, shows.

Mr. Wright: The lease discloses the premises that are leased.

The Court: I will let him state what he did.

Mr. Wright: I beg your pardon. I believe it does.

Q. After or at the time you made this lease what, if any, efforts did you make to find out what pictures you could get for exhibition in a theatre in Paris?

A. I wrote all the film companies in the Cincinnati office asking for pictures for Paris.

Mr. McClennen: Just a moment. Don't state the contents of the letter, please.

The Witness: O. K.

Mr. McClennen: May that go out?

Mr. Wright: Surely. You wrote all film companies?

The Witness: Yes, sir.

Mr. Wright: I will ask to have these four letters marked with the next plaintiff's exhibit numbers.

[fol. 2906] (Four letters written by Mr. Schwartz to film companies in Cincinnati office were marked Plaintiff's Exhibits 824, 825, 826 and 827 for identification.)

Q. I will show you these Exhibits 824, through 827, and ask you if these are all of the replies you have been able to locate?

A. Yes, sir.

Mr. Wright: I offer those in evidence.

Mr. McClennen: The general objection. They appear to be authentic letters.

The Court: You raise no question about the authenticity of them?

Mr. McClennen: We assume they were signed by the persons who appear to have signed them.

The Court: Overruled.

(The four letters, previously marked as Plaintiff's Exhibits 824, 825, 826 and 827 for identification, were received in evidence.)

Mr. Wright: Exhibit 824 is a letter from J. J. Grady, branch manager, on the Fox Corporation stationery, to Harry Schwartz, dated November 7, 1938. It says: "Thank you for your letter of November 4th. We regret that our product apparently will not be available for you in Paris, [fol. 2907] inasmuch as we have a contract with Schine there and, of course, inasmuch as they are our old account in the town we shall continue to offer our product to them in accordance with the policy of our company."

Exhibit 825, also dated November 7, 1938, from RKO Radio Pictures, Inc., S. C. Jacques, branch manager, to Mr. Schwartz.

"Dear Harry, replying to your letter of November 4th, all of our services are under contract to play first-run at Paris, Kentucky, but by the time you begin operation in that situation, which according to your letter will be March 1, 1938, we may have some service available for you."

The next letter is Exhibit 826, from Universal Film Exchanges, Paul E. Kreiger, branch manager, to Mr. Schwartz, dated November 10th.

"Note from your letter of November 4th that you anticipate building a new theatre in Paris and expect to be in operation by March 1st. For your information, our product [fol. 2908] has already been sold in Paris but, however, there is a possibility of serving you with various pictures that have not been played in Paris during the past year. It is my suggestion that you let this matter rest until you are ready to open this new house."

By Mr. W[illegible]ght:

Q. After you received these three letters I just read did you have conversations with these branch managers?

A. Yes, I did.

Q. Where did you see Mr. Grady?

A. Saw Mr. Grady in his office in Cincinnati.

Q. That was how long after you got the letter?

A. Within thirty days after I got the letter.

Q. What was the conversation you had with him there?

Mr. McClennen: Same objection.

The Court: Same ruling. Go ahead.

A. I told him that I was going to build this theatre and needed some first-run product, and received his letter that he had——

Q. I am referring to what happened after you got the letter. Oh, you referred to the letter?

A. Yes, I referred to the letter, and told him I realized [fol. 2909] by his letter he was tied up with Schine's first-run and asked him for second-run product.

Q. What did he say to that?

A. He said that he was sorry but he could not say at that time whether I could have second-run for the town or not.

He had heard Schine's were going to build a theatre in Paris and they were their first-run account and they would have to protect them as far as the second-run is concerned, if they were going to build.

Q. Is that all the conversation you had with him?

A. That is all.

Q. After you got this letter of November 7, Exhibit 825, from Mr. Jacques, did you go to see him?

A. I had about the same conversation with him.

Q. Just give us the substance of it, as nearly as you can recall.

A. I told him that I had received his letter——

Mr. McClennen: Just a moment. Same objection, please.
The Court: State what was said.

A. I told him I had received his letter in which he informed me that the first-run was sold to Schine Theatre interests, and asked him for second-run. He also told me that Schines had anticipated building another theatre in Paris; as long as they were their first-run account he would have to wait to see whether they wanted the second-run or [fol. 2910] not.

Q. What was the conversation you had with Mr. Kreiger after you got the letter of November 10th, marked Plaintiff's Exhibit 826?

Mr. McClennen: Same objection.
The Court: Same ruling.

A. He told me that the Schine interests had their first-run account in Paris and that he had heard they were going to build another theatre, and would not be able to give me any information about the second-run until later.

Mr. Wright: Then this letter of November 28, 1938, which has been marked as Plaintiff's Exhibit 827 is from Mr. A. L. Schmitkin of Warner, to Mr. Schwartz, in which he states: "Inasmuch as we have heard nothing from you regarding our offer for second-run product in Paris, Kentucky, we have taken it for granted that it is not your desire to use our service in this situation and have therefore opened negotiations with another outfit for this product. If we are unable to make a satisfactory deal we will again contact you in an effort to reopen negotiations."

[fol. 2911] By Mr. Wright:

Q. Prior to the time you got this letter of November 28th had you had any discussions with Mr. Schmitkin with reference to second-run of his pictures?

A. Yes.

Q. When was that?

Mr. McClennen: Same objection.

The Court: Same ruling.

A. It was about the 10th of November.

Q. About the same time you talked with the other people about the second-run?

A. Yes, sir.

Q. What was said then?

Mr. McClennen: Same objection.

The Court: Same ruling.

A. I asked him for a second-run in Paris and he told me that he would let me know later on, that he was not definitely sure second-run was available—open—and I told him as soon as he found out to write to me. He did.

Q. Did you say anything to him about notifying him?

A. I told him that I would come to Cincinnati a little later to make a deal, if it were possible to get second-run pictures from the other companies also.

Q. Did you go to Cincinnati to make a deal with him?

[fol. 2912] A. No, I did not go to Cincinnati.

Q. Why not?

A. I had found out from the other companies that they could not sell me second-run.

Q. After or in 1939 did you enter into this lease that is marked "A" of Plaintiff's Exhibit 823 for identification?

A. Yes, I did.

Q. When was that?

A. 22nd of April, 1939.

Q. That was the date you made the lease?

A. Yes, sir.

Q. What were those premises described in Exhibit A, with reference to those described in Exhibit B of Plaintiff's Exhibit 823?

A. They joined.

The Court: Is 823 split, A and B?

Mr. Wright: 823 has an Exhibit A and B.

The Court: One is the lease of 1938 and the other 1939?

Mr. Wright: Yes.

Q. Those were for adjacent premises?

A. Yes, sir.

Q. When was it that you started to construct a theatre there in Paris?

The Court: Where?

Q. In Paris, Kentucky.

[fol. 2913] A. When was it?

Q. Yes.

A. I started construction in July, 1939, or 1938—July, 1938.

The Court: July, 1938?

The Witness: Yes, sir.

Q. Was it before or after this second lease that you described as having been made in April, 1939?

A. Pardon me. It was 1939. I made a mistake. It was after I acquired this lease.

Q. It was July you began the construction of the theatre?

A. 1939.

Q. Then did you notice whether there was any other theatre construction in the town at or about that time?

A. Yes.

Q. Where was that?

A. That was on the lot that I had seen the sign on which it said Schine's would build a theatre.

Q. Do you remember when that construction was started with reference to the time you started yours?

A. It was about the same time, within a few days of each other.

Q. Do you recall which was first?

A. I believe mine was first.

Q. Did you ever have any conversations with Mr. Lazar [fol. 2914] of the Schine Company with reference to Paris?

A. Yes, I did.

Q. When was the first time?

A. Two days after I acquired the lease.

Q. That is, the lease of November 2, 1938?

A. Yes, sir.

Q. How did that conversation come about?

Mr. McClennen: Just a moment. That I object to. I might, in anticipation of the conversation that is coming, ask that our objection be saved, that this is a purely local transaction, having no relation in any way to interstate commerce.

The Court: This question, of course, you do not object to, how this conversation came about?

Mr. McClennen: Yes, I object to that, and of course the conversation.

The Court: Overruled. How did this conversation come about?

The Witness: I walked into the First National Bank in Lexington, Kentucky, and in conversation with the banker, had told him that I had just signed a lease——

The Court: You cannot state what you told him.

The Witness: I am just telling how it came about. I met the banker and the banker told Lazar about it.

[fol. 2915] The Court: You don't know whether that is so or not.

The Witness: He told me so.

Q. When you had this conversation with Mr. Lazar did you call him or did he call you?

A. Oh, no, I never called Mr. Lazar.

Q. Did he call you?

A. Yes.

Q. In person or by telephone?

A. Telephone.

Q. What did he tell you when you had the telephone conversation?

Mr. McClennen: This is the objection.

The Court: Overruled.

A. He told me — had heard from my banker that I had signed a lease.

Q. What else did he say?

A. He asked me if I had not seen the sign on the lot he had purchased some time ago in Paris, that they were going to build a new theatre on it. I told him that I had and then he said that they had every intention of building a theatre in Paris and were not decided on just what type or what size, and that is why they had not begun earlier. He felt that I was——

Q. Did he say all this over the telephone?

[fol. 2916] A. Yes, sir.

Q. Go ahead.

A. He felt that I was making a mistake in building in competition with them, and I told him that I did not think so or I would not have signed a twenty-year lease on the main corner of the town. I told him that I felt that I had the best location in Paris and that the theatre would be self-supporting, and then he asked if I would not come to meet him at the Lafayette Hotel and I said I would be glad to, and we met later on that day.

Q. At the Lafayette Hotel?

A. At the Lafayette Hotel.

Q. Who else was present?

A. No one. Mr. Lazar and myself.

Q. What was said then?

Mr. McClennen: Same objection.

The Court: Same ruling.

A. He said he did not feel that Paris could support three theatres and that—he said that as long as they had been in Paris operating a theatre and had anticipated building a new larger theatre that he could not quite understand what would prompt me to go into the town as competition. I still repeated that my location was better than his two [fol. 2917] and that I was not afraid of competition. He then asked me to think things over and he said that he felt that I was making a grave mistake and would lose plenty of money, and he said, "If you care to, I will take this lease off your hands," and I said, "For how much?" And he said, "You don't"—let's see—he said, "Are you trying to hold me up?" I said, "No, I am not trying to hold you up. You called me up. I did not come to see you or call you up." He said, "Well, I believe that Mr. Schine would be willing to take this lease off your hands, relieve you of that obligation." I said that I was not intending to give up that lease, that I was going ahead with the theatre and that ended the conversation.

Q. Then did you see Mr. Lazar again?

A. Yes.

Q. When was that?

A. Oh, probably it was three or four months after that first conversation.

Q. Whereabouts?

A. In the office of the Ben Ali Theatre in Lexington.

Q. Was that before or after you had begun construction on your theatre at Paris?

A. That was before.

Q. What was said then?

A. It was purely a social call.

[fol. 2918] Q. Then did you see him after you started construction on your theatre?

A. He called me on the telephone.

Q. That was where?

A. At Lexington, Kentucky.

Q. What was said then?

A. He asked me whether I was still determined to build that theatre or whether I was just starting operations to stop within a week or so.

Q. What did you tell him?

A. I told him no, I had all intentions of going ahead, had the plans drawn by a theatre architect in Columbus, Ohio, the Y. & S. Construction Company, and that the contract had been signed to build the theatre, and I had full intention of building it.

Q. That was before or after you started construction?

A. That was after I started construction.

Q. After the construction began?

A. Yes.

Q. Was anything else said?

A. He told me that this offer was still good, to take the lease off my hands, and I said I did not believe I would care to sell the theatre or assign the lease.

Q. When was the next time you saw him or talked to him?

A. Next time was about three weeks later, after my theatre [fol. 2919] had the side walls already constructed.

Q. Where was that that you saw him?

A. He called me on the telephone.

Q. Where?

A. In Lexington, Kentucky.

Q. What was said then?

A. Asked me to stop construction and come to see him about a deal.

Q. Did you do that?

A. Yes, I did.

Q. Where did you see him then?

A. Lafayette Hotel.

Q. Anybody else present?

A. No, sir.

Q. What was said then?

Mr. McClennen: Same objection.
The Court: Overruled.

A. We went over the same discussion, about the operation in Paris, and what losses could be incurred, and he then told me that he was willing to enter into a deal with the Opera House property in Lexington and my Paris theatre, and also a theatre that I was operating in Frankfort, Kentucky.

The Court: Was he building at that time in Paris?
The Witness: Yes, sir, he was building also.
[fol. 2920] Q. Did you make a deal then?
A. Yes, sir, we entered into a deal after about fourteen hours.
Q. Did you then stop construction of your theatre?
A. Yes, I stopped construction after that day.
Q. That was about when?
A. That was about September 15, 1939.
Q. The deal that you finally made is the one incorporated in this Exhibit 823 for identification?
A. Yes, sir. I would like to change that date there. That was about August 30th.
Q. This agreement, marked Exhibit 823 for identification, was made on or about September 15, 1939?
A. Yes.
Q. This conversation you referred to was about a month before?
A. That is right.

Mr. Wright: We offer this Exhibit 823 in evidence.
Mr. McClennen: We make the objection that this has no reference in any way to interstate commerce or calculated or likely to have any effect on interstate commerce and it is purely a local transaction.
The Court: I take it this exhibit purports to construe the contract signed, and also the leases.
Mr. Wright: Copies of the leases are attached.
[fol. 2921] The Court: Is the contract marked "C" or how?
Mr. Wright: The contract is marked 823 for identification.
The Court: Received.

(The contract, previously marked as Plaintiff's Exhibit 823 for identification, was received in evidence.)

[fol. 2922] Q. This is an agreement——

The Court: The agreement is also with the other theatres?

Mr. Wright: I will read it, it will appear what it covers. The contract is between "Harry Schwartz, Charles J. Schwartz, and Vernon K. Schwartz, on the one hand, and Schine Lexington Corporation and Southland Amusement Company, Inc.

Q. By the way, Southland Amusement Company, Inc., was the name of the corporation under which you operated the Opera House?

A. The Opera House, Lexington.

Q. Charles J. Schwartz was your brother?

A. Yes, sir.

Q. And Vernon K. Schwartz was your wife?

A. Yes, sir.

Q. I won't read all of the agreement at this time. I just want to call your attention to this paragraph 3 on page 4:

> "In order to induce the assignee to purchase the two leases above-mentioned, and to pay the consideration hereinafter set forth therefor, the assignor and the associates hereby jointly and severally covenant and agree to and with the assignor, its successors and assigns, that they will not, nor will any one or more of [fol. 2923] them, for and during a period of 15 years from and after the date hereof, be or become engaged in or participate or have any interest of any nature whatsoever in, the motion picture, theatrical or amusement business in the capacity of owner, employee, partner, stockholder or in any other manner whatsoever, either directly or indirectly, in any town or city in the State of Kentucky, in which the assignee or any of its affiliated or associated companies are now engaged in business, provided, however, that this covenant shall not prevent the assignor or the associates from investing in stocks or securities listed upon any recognized Stock Exchange."

Paragraph 6 states: "In full payment and compensation of and for the grant and assignment of the two said leases and all rights granted unto the assignee hereunder, and all warranties, covenants, promises and agreements of the assignor, the associates and the

> guarantors herein, the assignee has agreed to pay and upon the execution and delivery of these presents has paid unto the assignor the sum of $5,000, the receipt whereof by the assignor is hereby acknowledged."

The Court: This doesn't have anything to do with the other theatre.

Mr. McClennen: Is that the whole of the consideration [fol. 2924] stated in the agreement?

The Court: Does that have anything to do with the other theatre?

Mr. Wright: I take it this agreement has nothing to do with the agreement in Frankfort.

The Witness: Yes, at Lexington, but that isn't the right consideration, it is a different paragraph.

Q. That is right, this agreement that is marked 823 merely refers to the Paris properties, is that right?

A. That is right.

Q. Then the one which refers to the Opera House is this one I hand you now?

A. Yes, sir.

Mr. Wright: I will ask to have that marked with the next plaintiff's number for identification.

(Thereupon the document referred to was marked as Plaintiff's Exhibit No. 828 for identification.)

Mr. McClennen: Before departing from the partial statement of the consideration in the Paris agreement it also has an assumption of liabilities.

The Court: I assume so.

Mr. McClennen: As well.

The Court: I supposed that.

By Mr. Wright:

[fol. 2925] Q. This agreement marked Exhibit 828 for identification is the one you just referred to as relating to the Lexington property?

A. Yes, sir.

Q. The Opera House?

A. Yes, sir.

Q. That agreement was made at the same time as Exhibit 823?

A. Yes, sir.

Mr. Wright: I also offer that in evidence.

Mr. McClennen: This is subject to the same objection as the other.

The Court: Same ruling.

Mr. McClennen: That applies only to the Opera House in Lexington.

Mr. Wright: I believe it does. I will read it, just a moment.

(Thereupon document previously marked as Plaintiff's Exhibit 828 for identification was received in evidence.)

Mr. Wright: This is between the Southland Amusement Company, Inc., and Schine Lexington Corporation, and Harry Schwartz, Vernon K. Schwartz, his wife, and Charles J. Schwartz.

Mr. McClennen: What is the date?

Mr. Wright: The date of this is the same as the other, [fol. 2926] the 15th of September, 1939. This is an assignment, paragraph one of which says:

The lessor hereby grants, sells, assigns and transfers unto the lessee absolutely and forever the entire and complete business and good-will of the motion picture, theatrical, amusement and exhibition business, heretofore conducted by the lessor in the City of Lexington, Kentucky, and specifically in the theatre known as the Opera House, Lexington, Kentucky."

Then the lease also contains a similar convenent in paragraph 3, not to engage in the theatrical business for the same period of time similar to the one I just read.

The Court: Is there any consideration?

Mr. Wright: Well, the consideration is stated the same way, "In order to induce the lessee"——

The Court: I mean in dollars and cents.

Mr. Wright: The consideration of the agreement, paragraph 4 states: "In full consideration of and payment for the sale of the said business and good-will and the making of the lease herein provided for, and all of the other covenants and agreements of the lessor and the stockholders [fol. 2927] herein set forth, the lessee agrees to pay unto the lessor the sum of $22,500 payable as follows: $10,000 to be deposited in escrow, and $5,000 six months after the date and $7,500 twelve months after the date."

By Mr. Wright:

Q. Calling your attention to Lexington again, what was the admission price policy of the Schine theatres there, during the summer, spring and summer of 1939, before you made that agreement?

A. 40 cents at the first-run houses in the evening and 25 cents matinee; that is the Ben Ali and Kentucky Theatres.

The Court: Was that changed from what it had been?

The Witness: No, sir. And the Strand second-run house charging 25 cents at night 15 cents in the afternoon.

By Mr. Wright:

Q. How about the balcony price?

A. That was the same at that time.

Q. At what time are you referring to now?

A. In 1939.

Q. You mean the prices were not cut again in that summer?

A. No, they weren't cut then.

[fol. 2928] Q. The price cut occurred only in the summer of 1937 and 1938?

A. Yes, sir.

Q. What were the other prices?

A. The State Theatre, 10 and 15, 10 cents matinee and 15 cents at night.

Q. Then were you still playing the major product that you played at the Opera House behind the Schine Theatres?

A. Yes, sir.

Q. The Ada Mead Theatre was still open then, was it?

A. Yes, 10 cents.

Q. Operating at the 10-cent price?

A. Yes, sir.

Q. Then after you leased the Opera House to Schine, do you know what, if anything, occurred with reference to the admission prices there?

A. About six months afterwards admission prices were raised at the Opera House.

Q. To what, do you know?

A. 16 cents matinee and 22 at night.

Q. And the other Schine houses were also raised?

A. No, sir.

Q. Do you remember whether they were subsequently raised to higher prices?

A. Well, with the increase in the taxes, state taxes, the [fol. 2929] prices were raised a few cents, not very much.

Q. Do you remember when that occurred?

A. No, I don't.

Q. Do you remember when the Ada Mead was closed?

A. I didn't get the last word.

Q. Do you remember when the Asa Mead Theatre was closed?

A. It was closed about a year ago.

Q. And——

Mr. McClennen: I ask to have that last stricken out as coming after May, 1942.

Mr. Wright: Well, if the Court please, I take it that it is competent to show what the conditions of the various properties involved here are even up to the present time. I would see no reason for excluding that.

The Court: Well, it is quite remote, isn't it, two years after?

Mr. Wright: Well, from the standpoint of relevancy, I take that to be a different objection. I understood the objection was it was not proper to show anything that had occurred with reference to the status of closed or open theatres after May, 1942. I would assume evidence of that character would be pertinent and applicable today.

[fol. 2930] Mr. McClennen: The objection was based on our reliance on the statement made in the opening which we believed was going to be performed and, if this is in no way connected with an improper act of any kind on the part of the defendants, it has no purpose in this case; if it is offered as anything that was improper, the offer is in violation of the undertaking of plaintiff's counsel.

The Court: I think it is remote as far as the evidence now shows. Sustained. Strike it out. Was there an answer?

Mr. McClennen: He had answered, yes.

The Court: Strike the answer out.

By Mr. Wright:

Q. Do you know, Mr. Schwartz, when the Ada Mead was acquired by the Schine interests?

A. No, I don't know definitely, some time after I sold the Opera House.

Q. And have you, yourself, had any connection with the Opera House after it was taken over by Schine other than as lessor or other than your connection with the, I believe, the Southland Amusement Company, which is the lessor?

A. No, sir.

Mr. Wright: I think that is all.

[fol. 2931] Cross-examination.

By Mr. McClennen:

Q. Plaintiff's counsel referred, in one of the questions, to your playing after the four Schine houses; is it a fact that the first-run houses played on different first-run pictures so that you never played at after more than three of the first-run houses?

A. Yes, sir.

The Court: Speak up.

The Witness: Yes, sir.

Q. The Metro pictures that you were playing, were part of them old pictures that were from a year to a year and a half old when you made the contract with Metro, am I right?

A. Part of them, yes, sir.

Q. Your Fox contract, to which reference has been made in the testimony, was for third-run in Lexington?

A. Yes, sir.

Mr. Wright: Was that contract identified?

Mr. McClennen: Our copy doesn't bear any identification nor I don't know whether it is one that is in your group or not.

Mr. Wright: Will you give us a description of it?

Mr. McClennen: It is a Fox contract, August 6th, 1937, [fol. 2932] for the entire line of K-5 product.

The Court: You mean that is for the year?

Mr. McClennen: That is for the 1937-38 product, that is, it was?

The Court: The entire line of Fox?

Mr. McClennen: The entire line of Fox of the K-5 product of 1937-38.

The Court: What run?

Mr. McClennen: Third-run.

Mr. Wright: Are you going to identify it and offer it? This is apparently a photostat. I don't suppose it makes any difference.

Mr. McClennen: I have no objection to its going in. I have put in all that I am concerned about. If you want to put it in now——

Mr. Wright: No, if you are not through with your cross-examination, go ahead.

Mr. McClennen: I have no objection to your putting it in right now if you want to.

Mr. Wright: We might as well have it marked then so we will know what he is talking about.

(Thereupon photostatic copy of Fox contract, dated August 6, 1937, referred to was marked as Plaintiff's Exhibit No. 829 in evidence.)

[fol. 2933] By Mr. Wright:

Q. This Exhibit 829 is a photostatic copy of the contract counsel just asked you about?

A. Yes, sir.

Mr. Wright: We offer it.

The Court: Received.

By Mr. McClennen:

Q. Prior to the Schine acquisition in November, 1936, of the great majority of the stock of the Phoenix Amusement Company, the active persons operating had been Hannabelle Ward and John Elliott?

A. Yes, sir.

Q. The 10 and 15 cent admission prices at the Opera House were first started by you when?

A. In about 1934, I believe.

Q. And prior to that time what had the admission prices at the State been?

A. I don't remember that, I wasn't in Lexington until November, 1934. I had a resident manager there.

Q. And you installed these prices in 1934 at the beginning of your personal operations there?

A. Yes, the prices changed according to the policy that I had.

Q. The prices at the Opera House had been greater before that?

[fol. 2934] A. No, sir, had been less, 10 cents, any seat, any time, afternoon or evening.

Q. That had been the Opera House policy?

A. That was the policy from the beginning in 1931 until about 1934.

Q. And during that period when you had the 10-cent policy, straight 10-cent policy, the admissions at the State had been higher than they were at the Opera House?

A. Yes, sir.

Q. You had had a given number of years experience in the exhibition motion picture business?

A. Yes, sir.

Q. In the common business sense, Paris was not big enough for more than two theatres, was it?

A. That is right.

Q. And when you started on your plan of constructing in Paris, you knew that the Schine interests were already operating the Morgan Theatre?

A. Yes, sir.

Q. You, in your subsequent dealings with the Schine interests were met only with courtesy and fair discussion of negotiations?

A. Yes, sir.

Mr. Wright: If the Court please, that calls for a conclusion as to what he thought about whether it was courteous [fol. 2935] and fair; I don't know how that is relevant here. He can state what the facts were.

The Court: It is cross-examination. There is nothing in the record to show that it was otherwise.

Mr. Wright: He hasn't testified that Mr. Lazar punched him in the nose or was discourteous in any way.

Mr. McClennen: No, but Mr. Lazar might have interrupted him right in the middle of the conversation or otherwise, and I am asking him whether——

The Court: He has answered it.

Q. You were not intimidated in any way?

Mr. Wright: If the Court Please, that calls for a conclusion that certainly I suppose is to some extent for the Court.

The Court: There is no evidence to show intimidation at this time. I suppose it is meant intimidation by some threats.

Q. Of any kind, threats or anything else?

Mr. Wright: I think that is much too broad to permit the witness to answer. If he has some specific threat in mind he can inquire about it.

Mr. McClennen: No, I have the absence of any specific [fol. 2936] threat in mind, that is what I am inquiring about.

The Court: You mean by that, threat, that is your conclusion?

Mr. McClennen: Yes, I will take it.

Q. Were any threats made to you?
A. Threats?
Q. Yes.
A. No, sir.

Q. The transaction which you entered into that resulted in the two agreements, Exhibits 823 and 828, was entered into by you because you thought it was a good business deal for you to make?
A. Exactly.

Q. In connection with the acquisition of the Lexington property you got not only the money consideration but a new lease running to you as lessor?
A. Yes, sir.
Q. At a rental which you thought fair and satisfactory?
A. Yes, sir.

The Court: Speak up, witness.
The Witness: Yes, sir.
The Court: The stenographer has to take it down.
The Witness: All right, yes.

Q. Reference has been made to your engaging not to go [fol. 2937] into business, in this exhibition business in Kentucky in towns where Schine interests were then operating. Before you entered into that agreement had you been told what those towns were?
A. No, I knew what they were at the time.

Q. Will you follow this list and see if I have stated all of those that you refer to, namely, Middlesboro, Corbin, Pikesville, Paris, Richmond, Lexington and Maysville?
A. Yes, sir.

Q. You spoke about starting the construction of the theatre, by that, did you mean starting the demolition or the alteration of the existing building?

A. The demolition, of course, started first, but the construction started immediately after.

Q. Do you bear in mind the date when you started on new construction?

A. No, I don't.

Q. What sort of a building was on the premises?

A. It was a store building with living rooms above.

Q. And——

The Court: Frame construction?

The Witness: Brick construction.

Q. Is that building still on the premises?

A. No, sir.

[fol. 2938] Q. Is there anything on the premises, or was there on May 18, 1942, anything?

A. I don't remember. I have not been in Paris for some time.

Q. You have seen the theatre that the Schine interests built, called the "Paris"?

A. Yes, sir, I have.

Q. It is a very fine theatre?

A. Very fine.

Q. It would have been suicidal for somebody to have two new theatres put into that town, on top of those that were already there?

The Court: He has already said the town was not big enough for more than two theatres.

Mr. McClennen: That is all.

Redirect examination.

By Mr. Wright:

Q. Just one question. Is that the answer you gave on cross examination, that you did not think the town was big enough for more than two theatres?

A. There was only one at the time.

Q. I say, your answer was it was not big enough for more than two?

A. More than two, yes, that is right.

Q. Your testimony with respect to United Artists was, I believe, that you had the first-run 1934-1935?

[fol. 2939] A. Yes, sir.

Q. And then the 1935-1936 product, do you recall what you played, when you played that?

Mr. McClennen: Just a moment. This was not touched in cross.

The Court: I know that is true, but I will permit it.

Mr. Wright: That is right. I just want to find out what finally happened.

The Court: Proceed.

The Witness: Fourth-run.

By Mr. Wright:

Q. 1935-1936?

A. Fourth-run.

Q. You are sure you had it in 1935-1936 or 1936-1937?

A. I had first-run 1934-1935, and fourth-run—I am not sure—I don't know just what that was.

Q. Whatever runs you did have would appear on the——

A. —contracts.

Q. —contracts that were made. I believe those have already been identified. You dont' remember. It appears from the contracts that you had some pictures third-run and some fourth. You don't remember when that change occurred?

A. No, I don't remember.

Q. Don't have any recollection about negotiations in con- [fol. 2940] nection with those runs?

A. No, sir, I don't.

Mr. Wright: That is all.

Raymond C. Todd a witness called by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Marcus:

Q. Mr. Todd, where do you reside?

A. Salisbury, Maryland.

Q. What is your occupation?

A. I am one of the managers of the Ulman Theatre Corporation.

Q. Is that the only theatre you manage?

A. No, we have two theatres, the Ulman Theatre and the New Theatre.

Q. What other theatres are there in Salisbury?

A. There is the Arcade Theatre, Wicomico Theatre, and the Ritz Theatre, which is a colored house.

The Court: How many all together?

The Witness: Five.

Q. Which of those theatres are the first-run theatres in town?

A. The Arcade Theatre and the Ulman Theatre and the New Theatre.

[fol. 2941] Q. Do you recall when Schine took over the operation of the other theatres in the town?

The Court: Other than the first-run?

Mr. Marcus: No, other than the theatres operated by the Ulman Corporation.

A. The Arcade Theatre, I think it was in September, 1938, and I think the Wicomico was taken over shortly after. I don't remember.

Q. Who were operating those theatres prior to that time?

A. Mr. Lee Insley of Salisbury operated the Arcade Theatre and Mr. Marsh Golner operated the Wicomico.

Q. What product of the major companies were you playing at that time at the Ulman Theatres?

Mr. McClennen: This was when?

Q. This was September——

A. 1938. All of the product or just the majors?

Q. Just the majors.

A. We had Paramount, Fox and United Artists.

Q. For the 1938-1939 film season did you have all of the Paramount product?

A. No, we only had half of it.

Q. For the 1939-1940 season did you have all of the Paramount product?

A. No, only half.

Q. Going back to the 1938-1939 season, did you just state [fol. 2942] that you had half of the Paramount product?

A. The first season we had all the product, in 1938. I presume that was 1937-1938 or 1938-1939, I don't know which. I can't remember.

The Court: You said 1938-1939 you had half and 1939-1940 you had half, but 1938 you had full products.

The Witness: I might be mixed on the starting date. The first year we had all product.

Q. You say the first year. Are you referring to the time when Schines came in?

A. Yes.

Q. That would be for 1938-1939?

A. 1938-1939 product, yes.

The Court: You had the whole product that year?

The Witness: Entire product, first year, 1938-1939 product, and 1939-1940 is when we only had half.

Q. We will get to that. In reference to the Paramount product for the 1939-1940 season, did you negotiate with a representative of Paramount Company in respect to that product?

A. Before this time?

Q. In respect to the 1939-1940?

A. Yes, we did.

Q. With whom?

[fol. 2943] A. With a saleman named Daugherty.

Q. Did you sign an application for all the product?

A. Yes, we did.

Q. Did you get a contract for all the product?

Mr. McClennen: That is objected to.

The Court: The contract is the best evidence. He said he got a contract for half the product.

Q. Did you have any further discussions with any representative of the Paramount Company in reference to this season's product prior to the time you entered into a contract?

A. In reference to the entire product?

Q. Yes.

A. Prior to the time I talked to Daugherty?

Q. Prior to the time you got a contract, 1939-1940.

A. I talked to someone in Washington, with the manager in Washington, before we applied for the entire product. Was that before then or afterward you wanted?

Q. Prior to the time you obtained a contract for half.

A. Oh, yes, we talked to someone in between.

Q. What was the substance of that discussion?

A. We were told, I think, they had changed salesmen in the meantime——

Mr. McClennen: That is objected to.
The Court: You can't say what you were told.
[fol. 2944] The Witness: We were told we could buy——
Mr. McClennen: Just a moment.

Q. What did he say to you?

Mr. McClennen: Who?
Mr. Marcus: This representative.
Mr. McClennen: That is objected to until we know who he is.

Q. Do you recall the name?
A. Mr. Jack Bryan.
Q. What did he say and what did you say?

Mr. McClennen: This is objected to until we know something of the date.
The Court: Do you know what his work was?
The Witness: He was salesman for Paramount.
The Court: This is about the 1939-1940 product?
The Witness: That is right.
The Court: Received. Objection overruled. What did he say, what did you say?
Mr. McClennen: Could we have the date approximated?
The Witness: I think it was about February.
Mr. McClennen: Of 1940?
The Witness: 1940.
The Court: That would be 1939.
The Witness: What year would it be?
The Court: 1939-1940 product.
Mr. Marcus: The season starts September 1st.
[fol. 2945] The Court: I understand that. 1939-1940 product, it must be before. It could not be 1940.
Mr. McClennen: Frequently not, if your Honor please. It comes long after it.

Q. What is your best recollection as to the year?
A. If it was for 1939-1940 product it would have been in 1939, because we were buying for the following year, following season.
The Court: 1940-1941, you mean?

The Witness: No, in 1939 we were buying for the 193--1940 product. In January we would be buying it, to start in September.

The Court: That is what I say.

Q. Going back to this conversation with Mr. Bryan, what was said by him and by you on this occasion?

Mr. McClennen: That is objected to.
The Court: Overruled.

A. I asked him about buying all the product. In fact we asked him, I should say, because there were two of us at the time.

Q. Who was this other gentleman?
A. Mr. Newell Howard.
Q. Is he the other joint manager?
A. Yes.
Q. Of the Ulman Theatres?
[fol. 2946] A. That is right.

The Court: State what was said.

A. We asked Mr. Bryan——

Mr. McClennen: Just a moment. Is this intended to be a conversation in which both Mr. Howard and the witness were present?
Mr. Marcus: Yes.
The Court: With Mr. Bryan?
Mr. McClennen: Then the general objection.

A. We asked Mr. Bryan if we could buy the entire Paramount product and he told us no, that we could not buy it all, that we could only buy half; that the other half would be sold to Schines, and so then we agreed to sign a contract for the—just one-half of the product.

The Court: I guess we will have to suspend at this time.

(Whereupon a recess was taken until 2 o'clock P.M.)

[fol. 2947] After Recess, 2 P.M.

Appearances: Same as before noted.

The Court: Counsel, come up here. Mr. Rose has been subpoenaed to produce certain documents and records and he has been advised—he is willing to leave them with the

Court to be used by either party, and he wants them back. What shall we do about that?

Mr. Wright: I do not see why he should have to stay around, if he says these documents came from the file of Columbia.

The Court: I suppose he is looking towards the future of them.

Mr. Rose: My instructions are, we want to retain control of these papers, and even though they are marked in evidence we want them to be in the possession either of the Clerk or returned to us.

Mr. Wright: Why don't we have them returned to you for photostating and you can send photostats and keep the originals, or have the Clerk send them.

Mr. Rose: That will be all right.

Mr. McClennen: There may not be enough time before we want to use them.

[fol. 2948] The Court: Leave them with the Clerk.

Mr. McClennen: If they are left with the Clerk, that is entirely satisfactory to us.

The Court: All right.

Raymond C. Todd resumed the stand on behalf of the Plaintiff, having been previously sworn, was examined and testified further as follows:

Direct examination (continued).

By Mr. Marcus:

Q. Mr. Todd, I show you Plaintiff's Exhibit 268 for identification and ask you whether this is the contract of Paramount for the 1939-1940 season, signed for the Ulman Theatres in Salisbury?

A. Yes, it is.

Mr. Marcus: I will offer this in evidence.

Mr. McClennen: This is one already marked for identification.

(The contract between Paramount and Ulman Theatre for 1939-1940 season, previously marked as Plaintiff's Exhibit 268 for identification, was received in evidence.)

Mr. Marcus: This is a contract for a split of the Paramount film product for the season 1939-1940, for the Ulman and New Theatres in Salisbury.

[fol. 2949] By Mr. Marcus:

Q. Have you had a split of the Paramount product in Salisbury since that time?
A. Yes, each year.

Q. Could you state what product of the major companies the Schines had in their theatres in Salisbury?
A. At this time?
Q. No, 1938-1939.
A. Warner's, Metro, I think that is all. The Wicomico was bought later, I believe, in 1938. They just had the Arcade.

Q. What did they have for 1939-1940?
A. As I recall it, Metro, Columbia, Republic and Universal.

Q. Have they retained that product, as far as you know?
A. Up to what time?
Q. Up to May of 1942.
A. Yes.

Mr. Marcus: Your witness.
The Court: Is that all on direct?
Mr. Marcus: That is all.

Cross-examination.

By Mr. McClennen:

Q. You had some Paramount pictures in some years before 1938-1939 product, did you not?
[fol. 2950] A. Yes, sir.

Q. Except for that one year of 1938-1939 the most that you had had was a split of the Paramount product?
A. That is right.

Q. Do you remember whether it was an even split or whether Mr. Insley had a larger proportion than you did?
A. I think it was an even split. I am not sure.

Mr. McClennen: That is all.

Redirect examination.

By Mr. Marcus:

Q. One question. Did the Schine theatres play the Paramount film product for 1939-1940 at Salisbury?

A. The balance of the product, any of the product?

Q. Yes.

A. They played part of it, I think. They did not play all.

Mr. Marcus: That is all.

Recross-examination.

By Mr. McClennen:

Q. I should have asked you. Didn't Mr. Insley also have RKO?

A. I don't think so. I think the Wicomico had RKO. I am not positive.

Q. The Wicomico had RKO?

A. Wicomico had RKO. I am not positive.

Q. Before Schines got that that was Mr. Golner?

[fol. 2951] A. That is right, yes.

Q. He had RKO?

A. He had RKO.

Mr. McClennen: Thank you.

Bernard Ulman, a witness called by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Marcus:

Q. Will you state your residence, Mr. Ulman, Please?

A. 2613 Springdale, Baltimore.

Q. What is your occupation?

A. I am manufacturing pharmacist.

Q. Do you operate the Ulman and New Theatres in Salisbury, Maryland?

A. I am president of the corporation.

Q. Which operates those theatres?

A. Those two theatres.

Q. For how long a time have they been operated under your corporation?

A. Since 1931.

Q. Mr. Ulman, have the Schines ever discussed with you [fol. 2952] the purchase of your theatres in Salisbury, Maryland and, if so, will you state approximately the first time such discussions were had and with whom?

A. In June, 1940, I think is the date, my sister, Miss Helen Ulman received a letter from Mr. ——

Mr. McClennen: Just a moment.

Q. Just state what you know personally.

The Court: Your personal knowledge.

Mr. McClennen: This, if your Honor please, is subject to the same objection. It does not affect and cannot affect interstate commerce in any way and is merely local.

The Court: Is that the only ground of objection? He stated his sister received a letter.

Mr. McClennen: That was his error, not the questioner.

The Court: You asked whom he had a talk with.

Q. Yes.

A. Mr. John May.

Q. Where was this?

A. In Baltimore, in my office.

Q. Approximately when?

A. That was in 1941, May or June, 1941.

Q. What was the substance of that conversation?

Mr. McClennen: Well, that is objected to, and first, we [fol. 2953] would rather have the words of it, if he can give it.

The Court: Yes, state what was said.

Q. State what was said to the best of your recollection.

A. Mr. May came to see me and wanted to lease our two theatres for the Schine theatres, and he wanted to know what our sales were in order to base his offer. I asked him for an offer and he wanted the figures of the amount of business we were doing, and I did not give him the figures, and the understanding was that he was to come back later, and he did come back. I think he had Mr. Lee Insley with him. I don't know whether it was on the first or second visit, and nothing was done further because I didn't give him any figures.

Q. Was there a further conversation with representatives of the Schines in respect to the purchase of your theatres, and place it?

A. Well, we had fire at the Ulman Theatre, it burned in June of 1941, and shortly after the fire Mr. May came to see me and wanted to buy the property.

Q. Was he alone?

A. Mr. Insley was with him on one of the trips, I don't know if it was that one or not; I think it was that trip, so I told him I thought we were going to rebuild. He said he didn't think it would be very advisable, because we were going to have difficulty in getting pictures after we rebuilt [fol. 2954] on account of the war situation, and he didn't think the theatre was needed in the town.

Q. Was there anything more said?

A. He said that they would give us a guarantee that they would not rebuild it as a theatre, but we didn't come to any terms on the sale of it.

Q. Did you have any further conversations with representatives of the Schines prior to May of 1942 in respect to the purchase of those theatres, or, is that the last conversation?

A. Mr. Lee Insley came to see me a couple of times and wanted to lease the two theatres.

The Court: Who was he?

The Witness: He was a representative or an employee of Schine.

Mr. McClennen: I ask to have that last stricken out.

Mr. Marcus: Your Honor, we have the Schine answers to the interrogatories.

The Court: Insley?

The Witness: Insley.

Mr. Marcus: I am now reading from Schine's answer to interrogatory No. 2, Salisbury, Maryland, booking office, booking pictures for theatres from Washington Exchange, Maryland and Delaware, Lee Insley, Divisional Manager, [fol. 2955] 9-12-38 to date. Under "Duties and authority", Mr. Insley and Mr. Gollner, such duties as are assigned by the executive office."

The Court: Proceed.

Q. Did you have any further conversation prior to May, 1942, with representatives of the Schines?

Mr. McClennen: That is objected to.
The Court: He has answered it.

Q. Just Mr. Insley?
A. Yes, sir.

Q. Will you state what was said by Mr. Insley on those occasions?

Mr. McClennen: Same objection.
The Court: Overruled. Take the first one first.

Q. Yes. Do you recall what Mr. Insley said on the first of those occasions?
A. Why, he said that they were in a better position to run the theatre than we, because they were in a better position to buy pictures.

Q. And what was said on the second occasion, do you recall?
A. No, not exactly.

Mr. Marcus: That is all.
The Court: Any cross?
Mr. McClennen: No cross-examination, if your Honor [fol. 2956] please, and it having now been heard by your Honor we move to strike it out.
The Court: We will let it stand.

Thomas E. Ayres, a witness called by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Schilz:

Q. Where is your residence, Mr. Ayres?
A. Seaford, Delaware.
Q. Are you connected with the operation of a motion picture theatre or theatres there?
A. Yes, sir.
Q. How long have you been——

The Court: What is that place?
The Witness: Seaford, S-e-a-f-o-r-d, Delaware.

Q. How long have you been operating the theatres in that locality?

A. Since July, 1933.

Q. Will you state their names?

A. The Palace, Seaford, and the Layton I have been operating since 1941, and Georgetown since 1933.

[fol. 2957] Q. What is the name of the theatre at Georgetown, Mr. Ayres?

A. Sussex Theatre.

Q. How far distant is Georgetown from Seaford?

A. 15 miles.

Q. Is there a theatre located at Milford, Delaware?

A. Yes, sir.

Q. What is the name of that theatre?

A. Plaza.

Q. How far distant is that town from Seaford?

A. 20 miles.

Q. Is there a theatre located at Laurel, Delaware?

A. Yes, sir.

Q. And the name of that theatre, Mr. Ayres?

A. Waller, Schine's Waller.

Q. How far is Laurel from Seaford?

A. Six miles.

Q. Will you state whether or not representatives of the defendant Schine organization have attempted to negotiate with you for the purchase of your theatres at Seaford and at Georgetown?

Mr. McClennen: That is objected to.

The Court: Sustained.

Q. Have the Schines, has any official of the Schine organization attempted to buy your theatres?

[fol. 2958] A. Yes, sir.

Mr. McClennen: That is objected to.

The Court: Sustained.

Q. Have you had any conversations with representatives of the defendant Schine organization, Mr. Ayres?

A. Yes, sir.

Q. When was the first conversation?

A. 1938.

Q. Who was present?

A. Mr. May and Mr. Insley.

Q. And who is Mr. Insley, Mr. Ayres?
A. He is a representative of the Schines.

Mr. McClennen: I ask to have that stricken out.
The Court: Is that the same man?
Mr. McClennen: That is Mr. Insley, who has been described.
Mr. Wright: While you were not here, the answer to the interrogatories was read.
The Court: Strike it out.

Q. Where did the conversation occur?
A. At Seaford.

The Court: With Mr. May and Mr. Insley?
The Witness: Mr. May and Mr. Insley.

Q. Will you state what they said to you and you said?

Mr. McClennen: General objection, if your Honor please.
The Court: Overruled.
[fol. 2959] Q. Go ahead and answer.

A. Well, Mr. May and Mr. Insley approached me on buying the theatre, and I told them I wasn't interested, I didn't want to sell. On several occasions they were there.
Q. Now, in this first conversation was there anything else said?
A. No, nothing in particular, only relative to buying the theatres.
Q. Will you name the theatres that were under consideration at that time?

Mr. McClennen: Just a moment.
The Court: What theatres were they talking about buying?
The Witness: The Palace Theatre, Seaford, and Sussex Theatre, Georgetown.

Q. Were there any terms stated during the conversation?
A. No, sir, not with them at that time.
Q. When did the next conversation occur relative to the purchase of those theatres?
A. Well, during that year Mr. May was there several times in 1938 and 1939, and at different times Mr. Insley would approach me and, of course, the conversation always went on, as it was at first, that I just wasn't interested in selling.

[fol. 2960] Q. When, if you know, did the Schine organization acquire the Waller Theatre at Laurel?

A. 1938, I believe. 1938 or 1939. I am not positive. I most believe it is 1938.

Q. Did representatives of the Schine organization have conversations with you after the acquisition of the Waller Theatre?

A. Yes, sir.

Q. Relative to the purchase of your theatres?

A. Yes, sir.

Q. When did the first conversation occur after they had acquired the Waller Theatre at Laurel?

A. In 1939.

Q. Who was present?

A. Mr. Schine.

Q. J.——

A. J. Myer Schine and Mr. McKay and Mr. May.

Q. State to the Court, Mr. Ayers, what they said at that conversation and what you said.

Mr. McClennen: The same objection.

The Court: Same ruling.

A. Why, of course, it was usually the same conversation, if I was interested in selling they would like to make a deal, and I told them I was not interested, and they wanted to [fol. 2961] know if I would go in partners with them in the theatre——

The Court: What?

The Witness: Take it as a partner with them in the theatre. I told them no, I was not interested. They said they thought it would be more to my profit if I would go in partners with them because they could secure pictures much cheaper than I could, and at the end I would probably make as much money as if I was by myself. I told them I still was not interested.

Q. Did you have any conversation with representatives of the Schine organization following the one you have just related?

A. Well, Mr. McKay was there after that time, and Mr. May was there after that time.

Q. How long afterward?

A. I would not say just how long after, but I would say within two months after that.

Q. Was any one else there to see you after the conversation you have related?

A. Mr. Insley. He has been to see me several times, most every two or three weeks I would see him, because he lived close by, and he would approach the subject.

Q. On the occasion of Mr. Insley's next call on you will [fol. 2962] you relate to the Court what was said by him and what was said by yourself?

Mr. McClennen: That is objected to.

The Court: What time?

Mr. Schilz: Following the conversation the witness has testified to with Mr. Schine.

The Court: He said he talked several times in 1939 about making a deal and buying cheaper. You are talking about a talk with Mr. Insley subsequent to that time. State the substance of the talk.

Mr. McClennen: Same objection.

The Court: Same ruling. Go on.

A. Mr. Insley wanted to know if there was any way it would be possible to make a deal with me. He said it was very foolish not to make a deal, because he says they have Laurel now and very likely, with the buying power they had, they would get the product away from me, and I would finally wind up playing probably independent companies rather than playing the type of pictures that I was already playing. I told them I still would have to take that chance, I still was not interested.

Q. Tell the Court what was said on the occasion Mr. May called on you.

A. Mr. May, the last time he was there, was in—he asked [fol. 2963] me if I would not reconsider my thought of making a deal, and sell to him, and I told him no, at that time I had started to build a second theatre, Layton.

The Court: At Seaford?

The Witness: I told him no, I had started to build the second house and I was going through with it. He said, well, they would take that house over in connection with the Palace, and if I would make a deal with them. I told him no, I would not consider it.

Q. Was anything else said?

A. I don't recall of anything at that time with Mr. May. That was the substance of the conversation.

Q. Did you play the picture "Gone With The Wind" in your theatre in Seaford?

A. Yes, sir.

Q. By what company was that picture released and supplied to you?

A. Metro.

Q. Do you recall the season?

A. 1940.

Q. Will you relate to the Court your experience with that picture?

Mr. McClennen: That is objected to.

The Court: He may state the facts. It must be confined [fol. 2964] to acts in connection with the defendants. What happened to him in connection with the theatre is very broad. I will let him state. Go ahead.

Q. Go ahead.

A. The experience we had with "Gone With The Wind," I understood it was going to be released. I went to Washington to see Mr. Berger.

Q. Who is Mr. Berger?

A. District Manager of Metro.

Mr. McClennen: I renew my objection, if your Honor please. There is nothing in the specifications that this could possibly bear on.

The Court: I don't know what the specifications are or the interrogatories.

Mr. Schilz: Do you desire an offer of proof?

The Court: Counsel stated it is not covered by your stipulation. Also nothing in the answers to the interrogatories.

Mr. McClennen: Either the answers to the interrogatories or the stipulation. This which is now proposed, I think, is not within any provision of the specification or answers to interrogatories.

Mr. Schilz: If I may make an offer of proof—

[fol. 2965] The Court: What are the answers that relate to the Seaford situation?

Mr. Wright: As I recall, the town of Seaford is named as one of those with respect to which proof would be offered, and Mr. Ayres was also named as a witness. I don't suppose anything further than that is necessary, by way of specification.

The Court: Seaford?

Mr. Wright: As I recall it, Seaford is mentioned in the first or supplemental bill of particulars.

Mr. Schilz: It is also mentioned in the answer to interrogatories furnished to the defendants.

Mr. McClennen: There is no question that Seaford is mentioned, but nothing of this sort. The allegations are that Schine attempted to acquire the Palace Theatre by the methods described in the complaint.

The Court: Which is the Palace?

Mr. McClennen: That is the witness's theatre, but has nothing to do with the question now put to the witness. We have not objected on the specification ground to his stating.

Mr. Schilz: If your Honor please, what we propose to show is the difficulty this witness had in procuring this pic- [fol. 2966] ture because of the opposition of the competing Schine houses.

The Court: Showing at the Palace, you mean?

Mr. Schilz: The Schine house at Milford was in a competitive position with the theatres operated by Mr. Ayres at Seaford.

The Court: The Palace Theatre, is that the name——

The Witness: Palace is the name.

The Court: Objection overruled.

By Mr. Schilz:

Q. After you called on Mr. Berger what happened?

Mr. McClennen: That is objected to.

The Court: Overruled. With respect to this picture, you are asking now?

Mr. Schilz: In connection with the picture "Gone With The Wind."

A. I talked with Mr. Berger and he says that——

Mr. McClennen: Just a moment. This was after the talk with Mr. Berger?

The Court: This is the talk with Mr. Berger.

Mr. McClennen: The question was after the talk with Mr. Berger.

Mr. Schilz: Mr. McClennen, I will withdraw my question and ask what was said to Mr. Berger and what he said to you?

[fol. 2967] Mr. McClennen: This is objected to.

The Court: Overruled.

Q. Go ahead and state.

A. I asked Mr. Berger if we could book the picture, after I found Wilmington was playing the picture, knowing we played ten days after Wilmington. He said, "No, we are not going to release the picture to the smaller towns, other than Wilmington and Salisbury." So I took it for granted that is what was going to be done with the picture and would not play the picture.

I came back home, and it came out in our weekly newspaper that the Plaza Theatre at Milford was advertising the picture to play. I immediately called Mr. Berger back on the telephone and asked him how it was Milford was playing, being all the other towns had always played pictures together down there, like Harrington, Dover, Milford, Georgetown and Seaford. He said "They have it booked and we don't feel your town can play the picture." So I could not get anything from Mr. Berger. So I immediately went to New York to see Mr. Rodgers. Mr. Rodgers was not in.

Q. Who is Mr. Rodgers?

A. W. F. Rodgers. He is the——

Q. Connected with what company?

A. Metro. I don't know just what his office is. He is [fol. 2968] more than district manager.

Q. Then what did you do?

A. He was not in his office and they told me to go to see Mr. Tom O'Connors. I went and took the matter up with him. He said there was nothing he could do about it, and I had quite a conversation with him, asking him why we could not get the picture. He said it was due to print shortage.

Mr. McClennen: Is this within your Honor's ruling? This is going on into a great many conversations. I want to be sure our objection is understood to apply to all of it.

The Court: It is not in connection with my ruling—is it Connors?

The Witness: O'Connors.

Q. Is it O'Connors or Connors?

The Court: He may answer.

Q. What happened?

A. He said there was nothing he could do because of the print shortage.

The Court: What?

The Witness: He said there was nothing he could do, due to the print shortage, did not have prints. Still I was not satisfied, so I went to Ted O'Shea, and I stated my problem [fol. 2969] to him, and so he said, "Well"—

Mr. McClennen: Same objection.

Q. Continue.

A. He said he would see what he could do. I told him Milford had it dated and explained the situation to him down in that part of the country, how the roads were so close by the towns, that it would be quite a loss to us to let Milford play the picture without us playing it. Immediately he called Mr. Lynch, Schine booker, and asked him about the picture, and asked him if they would take the picture out. He said no, it was impossible to do, because they had tickets sold on the picture. Then he tried to get a print for us, if there was a print available anywhere. He could not get one. So I came back home with the intentions of not playing the picture. About a week later Mr. Berger called me from Metro and told me he had a print I could have for Seaford. This was starting a week later than Milford. Of course, in small towns, we like to give our people what they want, so I agreed to play the picture, and which I did, and took a bad loss by playing the picture.

Mr. McClennen: May this be stricken?

The Court: The last part may go out as not responsive [fol. 2970] to the question.

By Mr. Schilz:

Q. Mr. Ayres, how long after the picture, "Gone With The Wind," was played at Milford did you play it?

A. I played it a week later.

Q. Directing your attention to the fall of 1939 and your conversations with Mr. Insley and Mr. May, do you recall what, if anything, was said relative to the construction of a theatre in Seaford?

A. Yes. At one conversation I had with Mr. Insley he said that they had bought a lot in Seaford, with the intention to build a theatre, and so I said, "If they have, I can't help it." He said, "Well, if I were you I would sell the theatres to Schine because they are going to build a theatre there and, naturally, they are going to get the product."

He said, "Where are you going to be?" I said, "I will still be here, as far as I know."

Mr. Schilz: That is all.

Cross-examination.

By Mr. McClennen:

Q. That was before you built the Layton Theatre?
A. Yes, sir.

The Court: What did you call that last theatre?
The Witness: L-a-y-t-o-n.
Mr. McClennen: That is all.

[fol. 2971] **Hubert P. Wallace** resumed the stand in behalf of the Plaintiff, having been previously sworn, was examined and testified further as follows:

Cross-examination (continued).

By Mr. McClennen:

Q. When your cross-examination was suspended this morning you had described the outside looks of the Strand in June, 1941. Did you go into the strand at that time?
A. No, sir.
Q. When, before that, had you been inside the Strand?
A. When it was operating in 1940.
Q. And when next were you inside the Strand?
A. I might have been there a little later in 1940.
Q. When next were you inside the Strand?
A. Possibly in 1941.
Q. What time in 1941?
A. Oh, some time in February.
Q. What was the condition of the inside of the Strand at that time?
A. Why, I would describe the condition of the Strand Theatre as fair.
Q. Did you attend a show there at that time?
A. Yes, sir.
[fol. 2972] Q. At that time did you know that the RKO-Schine interests had acquired a lease of the Empire?
A. No, I did not.
Q. When did you first learn of that acquisition?
A. Why, I think I read an article in the newspaper.

Q. When?

A. Some time in either January, February or March. I can't place the time definitely. It may have been in the summer time, but it was some time prior to September in 1941 that I read an article in the Syracuse Herald.

Q. At that time when you learned of that acquisition had you already had any negotiations with Mr. Falk about acquiring a lease of the Strand?

A. No.

Q. When first did you have any negotiations with Mr. Falk?

A. I think the first serious negotiations—first meeting we had was some time in September.

Q. Of 1941?

A. Fore part of September of 1941.

Q. Where did that meeting take place?

A. In the office of Charles Carr, in the Empire Theatre Building. It had a different name, but the Empire Theatre was located in the same building where Carr's office was located.

Q. The Empire Theatre?

[fol. 2973] A. Located in the same building where Charles and Clinton Carr's office, the law office of Charles and Clinton Carr is located. It is a theatre and an office building, combination.

Q. That was an accidental relation; you were not at the Empire Theatre?

A. No, I just described it as the Empire Theatre Building, for want of a better description of it.

Q. That, you say, was some time in September, 1941?

A. Early part of September, to the best of my recollection.

Q. Up to that time had you taken any steps toward getting any product, moving picture product, or other material for exhibition at the Strand?

A. I very specifically stated that I——

Q. Not what you have stated. I have asked you a question.

A. I did not get it.

Mr. McClennen: Read the question.

(Question read.)

Q. That is up to the time——

A. What time?

Q. —of your talk with Mr. Falk in September, 1941.

A. No.

Q. You have described a conversation that you had with Mr. Smith, a salesman for RKO. Was that conversation after you had negotiated with Mr. Falk?

A. That conversation was on September 11th.

[fol. 2974] Q. What I asked you was whether that was after you had negotiated with Mr. Falk?

A. September 11th would be after I had negotiated with Mr. Falk, yes, sir.

Q. That is, your negotiation with Mr. Falk was somewhere between the 1st and 11th of September?

A. That is correct, sir.

Q. You fix the date of that conversation by some definite fact, do you?

A. Which conversation?

Q. The one with Mr. Smith?

A. Yes, sir.

Q. Did you make a memorandum of it at the time?

A. I did.

Q. And was that memorandum made out on the 11th day of September, 1941?

A. Yes, sir, it was.

Q. And while that conversation was going on, did Mr. Smith call Mr. Lux at the Warner Theatre office in Albany?

A. Yes, sir.

Q. Was the call made in your presence?

A. In my presence and in our office.

Q. And about what time of day of September 11th, 1941?

A. Well, that is pinning me down pretty closely, but the recollection is fairly closely, I would say some time between [fol. 2975] and 3 and 3:30 in the afternoon.

Q. Of September 11th, 1941?

A. Yes, sir.

Q. And you remember that the call was to the Warner Theatre office in Albany?

A. In Albany.

Q. And on September 11th, 1941, you talked with Mr. Lux over the line to the Warner Theatre office in Albany?

A. Yes, sir.

Q. Did you ever have any other telephone conversation with Mr. Lux at near or about this time?

A. Yes, I had quite a number.

Q. You had no other on the Strand subject with Mr. Lux before September 11th, 1941, had you?

A. I could not answer to that.

Q. Do you remember any?

A. I don't remember.

Q. Did you make any memoranda of any?

A. I did not.

Q. How soon after this conversation did you have your next telephone conversation with Mr. Lux?

A. I think the next conversation with Mr. Lux, I may have talked to him on the 18th of September.

Q. Do you remember any conversation by telephone with Mr. Lux other than this one before the 18th of September, [fol. 2976] 1941?

A. I remember there were at least 25 or 30 phone calls that afternoon, and to state specifically that I talked to a certain individual at a certain time it is impossible for me to do so.

Q. That is, those phone calls were on the 11th of September, 1941?

A. Yes, sir.

Q. Well, didn't you make a memorandum of your talk with Mr. Lux?

A. Not of all the phone calls, I made a memorandum of the result of the phone calls.

Q. You didn't make any memorandum of your phone call with Mr. Lux?

A. No, but I believe I can——

Q. Just a moment, all I wanted to know was just that. And then the large number of phone calls that you had with other people on the 11th of February, 1941, does not stand in the way of your telling me whether you had another telephone conversation with Mr. Lux before September 18th, 1941, does it?

A. I don't quite understand that question.

Q. Well, then, I won't press you with it, but I will ask you again whether you had any telephone conversation with Mr. Lux between the 11th of September, 1941 and [fol. 2977] the 18th of September, 1941?

A. It is possible that I may have had.

Q. Do you remember any?

A. I don't remember definitely.

Q. Do you remember indefinitely any?

A. Not indefinitely.

Q. Where did you telephone Mr. Lux on the 18th of September, 1941?

A. I didn't telephone Mr. Lex on September 18th, 1941.

Q. Did he telephone you?

A. He telephoned me.

Q. Where did he telephone you from?

A. I presume it was from Buffalo. That is only a presumption on my part.

Q. Did you ever have, as far as you can recall, any telephone conversation other than the one which you have described with Mr. Lux when he was at the Warner Theatre office in Albany?

A. I may have had.

Q. Do you remember any?

A. I can't place them definitely.

Q. Can you place them indefinitely?

A. I cannot.

Q. You haven't the slightest recollection of ever having any other than one telephone conversation with Mr. Lux [fol. 2978] at the Warners Theatre office in Albany?

A. What is that?

The Court: Is that the only talk you had with Mr. Lux in Albany?

A. I may have had a number of talks. That is the only one I can definitely place, because the time element was important there in booking the pictures.

Mr. Wright: I don't know, if the Court please, what significance counsel attaches to where Mr. Lux was at the time. It is entirely immaterial, so far as our case is concerned.

Mr. McClennen: I think it may be immaterial so far as your case is concerned. It is quite material for ours.

The Court: Proceed.

Q. Then so far as your memory serves you, you cannot state you at any time, other than the one you have described, had a telephone call or conversation with Mr. Lux at the Warner Theatre office at Albany?

A. I said I can't remember with certainty of any phone calls.

Q. And you can't remember even with uncertainty, can you?

A. I don't understand the implication.

The Court: Have you any recollection of any?

The Witness: I don't have any definite recollection. I [fol. 2979] won't testify to the fact unless I have a definite recollection of some incident that sets it out particularly in my mind.

Q. The question is whether you have any recollection; that is the only recollection you have?

A. That is the only one I recall among the 30 phone calls that day, because of its particular importance.

The Court: That is quite definite then.

By Mr. McClennen:

Q. This conversation with Mr. Smith was the first conversation that you had had with any of the major film company salesmen with reference to product for the Strand, was it not?

A. Well, I couldn't say it was the first, there were a number of concurrent conversations that same day.

Q. Do you remember any others before the one with Mr. Smith?

A. I don't know whether they were before or after. I place the day and not the order of conversations.

Q. Now, with what other major film company salesmen did you have any conversation on the same day that you had this conversation with Mr. Smith that you have described?

A. I talked with Mr. Phil. Fox, the Branch Manager of Columbia.

Q. On that same day?

A. On that same day.

[fol. 2980] Q. What other?

A. I talked with Mr. Samson, of Fox Film Pictures, on the same day.

Q. What other?

A. Now, it may have been a day after or——

Q. I don't want any day after, I want to know on that day.

A. Well, reliance on my memory will end there, that on that particular day those people I talked to.

Q. Now, do you remember whether on that day you saw Mr. Fox before your conversation with Mr. Smith?

A. No, I don't.

Q. Do you remember whether you had your conversation with Mr. Fox before that conversation with Mr. Smith?

A. No, I don't.

Q. Was the conversation that you had with Mr. Smith, in the course of which you talked with Mr. Lux at the Warner Theatre office in Albany, on the same day that Mr. Carr signed these five sheets marked Exhibit 819?

A. No.

The Court: Is "No" your answer?

The Witness: No.

Q. Was the conversation before the day on which you signed Exhibit 819 or Mr. Carr signed Exhibit 819?

A. Yes, sir.

Mr. Wright: I didn't hear the answer.

[fol. 2981] The Court: Yes.

Q. How many days after the conversation was it before Mr. Carr signed Exhibit 819?

A. I couldn't say definitely.

Q. Well, how many days is the best recollection that you have?

A. Oh, several.

Q. Several days?

A. Yes, sir.

Q. Was this Exhibit 819 signed by Mr. Carr before you got the telegram that was shown to you in your direct-examination?

A. What telegram is that?

Q. Exhibit 820 for identification, which I show you?

A. Certainly there would be no point in signing it after that.

Q. I am not asking you for a discussion, I am asking you whether it was before you got this telegram that this was signed?

A. Yes, sir.

Q. That is, 819 was signed before you received the telegram 820 for identification?

A. Yes, sir.

Q. How long before?

A. Four or five days probably.

[fol. 2982] Q. This telegram, Exhibit 820 for identification, was received by you on September 18th, 1941, was it not?

A. Yes, sir.

Q. So that according to the best recollection this Exhibit 819 was signed on September 13th or 14th, 1941, was it?

A. Or 15th.

Q. Or 15th?

A. Yes, sir.

Q. Or possibly the 16th?

A. Possibly.

Q. Do you remember the day of the week on which Exhibit 819 was signed by Mr. Carr?

A. Which is Exhibit 819?

Q. It is this group of papers that I have just shown you.

A. No, I don't know the day of the week.

Q. Were you present when Mr. Carr signed it?

A. I did,—I was there at the time he signed it.

Q. Now, you are positive, are you, that Exhibit 819 was not signed on the same day as the conversation with Mr. Smith that you described?

A. I am positive of that.

Q. I call your attention to this testimony of yours on page 2820, starting here:

> "Q. When was that?
>
> A. On September 11th.
>
> [fol. 2983] Q. That was before you opened?
>
> A. Yes, sir.
>
> Q. What was the conversation you had with him?
>
> A. I asked Mr. Smith for some first-run pictures, or some second-run pictures, and I said 'There are about six or eight pictures unplayed by Schine, which have aged considerably, they are considerably beyond the average playing time; can I get them?' He said, 'I think you can.' We negotiated a deal and signed contracts for five pictures.
>
> Q. Have you got those contracts?
>
> A. Well, they are over there (indicating papers on desk).
>
> Mr. Wright: I will ask to have this group of documents stapled together marked with the next plaintiff's Exhibit number for identification."

And they are identified as Plaintiff's Exhibit No. 819, and Mr. Wright questioned you:

"Q. I will hand you this Plaintiff's Exhibit 819 for identification, and ask you if those are the documents that you signed at that time that you refer to as contracts or copies of them?

A. These are copies of the contracts that were signed in my presence."

[fol. 2984] A. You understand the implication of these—I said these are copies of contracts.

Q. I wasn't asking you, I was just calling your attention to that testimony to see whether you recall having given that testimony?

A. I do.

Q. Now, I call your attention to the same page, 2821:

> "Q. Then after these documents here were signed, did you hear anything, or what further conversation did you have with respect to them?
>
> A. What further conversation did I have with whom?
>
> Q. With whoever the salesman was.
>
> A. Mr. Smith?
>
> Q. Mr. Smith.
>
> A. Mr. Smith, after the contracts were signed by 'Carr', called up Elmer Lux.
>
> Q. Who was Elmer Lux?
>
> A. Branch Manager of R. K. O. Radio Pictures Corporation.
>
> Q. What Exchange or Branch?
>
> A. At the R. K. O. Exchange.
>
> Q. Was this call made in your presence?
>
> A. It was made in my presence.
>
> Q. And where was Lux reached, do you know?
>
> A. Reached at the office of Warner's Theatre in Albany."

[fol. 2985] Now, isn't it the fact that the conversation with Mr. Lux at Albany was after Exhibit 819 had been signed in your presence by Mr. Carr?

A. The conversation with Mr. ——

Q. No, no, just that.

A. Will you repeat the question, please?

Mr. McClennen: Read it, please.

(Question read.)

The Witness: I think the application was signed several days later.

Q. That is you now think that the applications had not been signed?

A. There are two separate pieces of paper, one is a deal sheet that was signed and the other is an application under a formal contract.

Q. Now, you think that the contract, Exhibit 819, had not been signed until after you talked by telephone with Mr. Lux at the Warner Theatre office in Albany?

A. That is correct.

Q. So that the conversation with Mr. Lux did not occur until after the 14th of September, 1941, is that correct?

A. No, that is not correct.

Q. On what date did it occur?

A. That conversation occurred with Mr. Lux on September 11th.

Q. And the contracts were signed by Mr. Carr in your [fol. 2986] presence four or five days before September 18th?

A. Yes, sir.

Q. So that the conversation with Mr. Lux occurred when he was at the Warner Theatre office in Albany before the contracts, the Exhibit 819, was signed?

A. Yes, we worked from a deal sheet. I was confused.

Q. When were you confused?

A. As to the contracts and the deal sheet.

Q. Well, at what time were you confused about that?

A. Just now.

Q. When did that confusion come over you?

A. When did the confusion come over me?

Q. That was the question?

A. Just suddenly.

Q. Just suddenly, this afternoon?

A. Just this afternoon, yes, sir.

Q. Now, the pictures were not dated in by you with Mr. Smith until after Exhibit 819 had been signed, were they?

A. Pictures were dated in on September 11th.

Q. That is, the pictures were dated in before Exhibit 819 was signed?

A. Correct.

Q. That is, Mr. Smith dated up pictures with you before he even got a signed application, is that it?

A. No, we had a deal sheet, and it was confirmed over the [fol. 2987] telephone.

Q. Never mind about the deal sheet, and the confirmation, just the simple questions. Mr. Smith,—you dated up the pictures with Mr. Smith before you signed, or there was any contract signed?

A. There was an oral——

Q. No, no, don't mind about the oral.

A. I can't answer that question.

The Court: Did you date them up before this contract was signed?

The Witness: This particular contract, yes, your Honor, I dated the pictures prior to this contract signing.

Q. Now, there was nothing in writing, signed by you, before this dating of the pictures that you have described took place, is that correct?

A. I could answer that if I could see that deal sheet over there.

Q. That is, you are pointing to something on counsel's table?

A. Yes, sir.

Q. And are these papers which counsel had handed you the ones to which you refer?

A. Yes, on the back is——

Q. Just a moment, I haven't asked you about the back [fol. 2988] of them yet; I haven't even got to the front of them yet.

A. What was the question, please?

The Court: You have answered the question.

Q. You have answered the question. Now, when by the calendar do you say that Mr. Smith and you dated up the pictures?

A. September 11th.

Q. And what were the dates that you made at that time with Mr. Smith on September 11th, 1941, the name of the picture and the date?

A. On September—the name of the picture—dated for September 20th and 23rd are "Jungle Cavalcade" and "Flying down to Rio." The name of the pictures dated for September 24th and 26th is "They Met in Argentine" and "Hurry, Charlie Hurry." The name of the pictures for the 27th and 30th is "They Meet Again" and "Reluctant Dragon."

Q. Those datings are on September 11th?

A. Yes, sir.

Q. 1941?

A. Yes, sir.

Q. Are the papers that you have before you in your handwriting?

A. This is a piece of paper on R. K. O. stationery, and this is Mr. Smith's handwriting.

Q. Then the simple answer is that they are not in your [fol. 2989] handwriting?

A. Here is a notation, if you will look here——

Q. I just want to have you tell me whether anything on there is in your handwriting?

A. Some notations here are in my handwriting, but the bulk of the writing is Mr. Smith's. This is Mr. Smith's, and you can compare it.

Q. No, I wasn't asking you about instructing me as to how to find out about it.

A. I beg your pardon.

Q. Now, you know that both of these papers were written by Mr. Smith on September 11th, 1941, do you?

A. Pardon me, this piece of paper was written by Mr. Smith on September 11th, 1941, specifying prices, titles, and so forth.

Mr. Wright: Why not have those marked?

Mr. McClennen: Just before you go on, I will ask to have that marked for identification.

(Thereupon document referred to was marked as Defendants' Exhibit D-114 for identification.)

The Witness: This piece of paper on R. K. O. stationery, most of it was written by me, but the date was put in by Mr. Smith, and there were several other dates added by [fol. 2990] Mr. Smith in conformity with the titles set out there after he talked on the phone that day.

Mr. McClennen: I will ask to have the second sheet marked for identification as Defendants' Exhibit 115.

(Thereupon document referred to was marked as Defendants' Exhibit D-115 for identification.)

Q. Now, on Exhibit for identification D-114, the first words on the sheet are "First-run"; in whose handwriting is that?

A. Mr. Smith's.

Q. The next is "Saint's Vacation 6/6-200."

A. That is Mr. Smith's.

Q. That is all in Mr. Smith's handwriting, and the figure of 6/6 was what?

A. That indicates that on June 6th that picture was passed up by the Schine Keith, so on and so on corporation, and this is the price, $200, at which it was offered to me.

Q. You mean passed up before it was released, do you?

A. Oh, I didn't say that.

Q. I know you didn't.

A. I said this was the date the picture was passed up.

Q. And this does not indicate the date of release, does it, [fol. 2991] 6/6?

A. It might be passed up the date it was released.

Q. The fact is that 6/6 is not the release date, is it?

A. No.

Q. And the next item "They Meet Again, 7/11-200," that is in Mr. Smith's handwriting?

A. Yes, sir.

Q. And the 7/11 indicates the release date, does it not?

A. No, sir.

Q. On what date was it released?

A. If you will hand me those records I can give you the exact date.

Q. I haven't the records, but if any one who has them will give them to me I will give them to the witness.

Mr. Wright: Do you want the R. K. O. Release Schedule?

The Witness: No, I would like to have a general release schedule. I can find them.

Mr. Wright: You mean a schedule of pictures you played at your theatre?

The Witness: No, a general release schedule of 1939-40 and 1940-41 of the exhibitors.

Q. There is an R. K. O. Release Schedule in evidence, is there not?

Mr. McClennen: I want the thing that the witness wants.

The Witness: May I get it, your Honor, to save time?

[fol. 2992] The Court: You may step down there.

The Witness: Thank you.

The Court: Is there anything you can proceed with pending the production of this paper, it is half-past three now.

[fol. 2993] Q. The next item is "Hurry, Charlie, Hurry," 7/25-200. Is that all in Mr. Smith's handwriting?

A. Yes, sir.

Q. Was "Hurry, Charlie, Hurry" released on July 25, 1941?

A. I could not say.

Q. The next is "Flying Down to Rio—200." Was that in Mr. Smith's handwriting?

A. Yes, sir.

Q. There is no date on the paper against that?

A. No, sir.

Q. The first three items have a line drawn below them. Does that mean that those above that line were the first-run pictures?

A. First-run pictures, yes, sir.

Q. And those below were subsequent run or second-run, or something other than first-run?

A. They were something other than first-run.

Q. The next is "Six"——

A. "Six-Gun Gold."

Q. "Six-Gun Gold." Nothing is carried out against that. Then comes a line and a word "Second-run." The next under that is "They Met In Argentina," and against that the word "Now," or do you read it something else?

A. I don't know what that is.

Q. Against that $100?

[fol. 2994] A. $100.

Q. The next is "Reluctant Dragon," clearly with the word "Now"?

A. "Now."

Q. And against that $200?

A. $200, yes, sir.

Q. That "Now" means that that picture was immediately available?

A. That is correct. This indicates when those pictures were available, and that indicates "Now," because it is past the first-run, and it is a current second-run, meaning it is available immediately or now.

Q. Now, the next is the item "Reluctant Dragon" and against that "Now" and $200?

A. That is right.

Q. In Mr. Smith's handwriting?

A. Yes, sir.

Q. And the "Now" indicated that that was then available?

A. That is correct.

Q. And "Jungle Cavalcade" has against it a cross and an "O.K." and then "9/28-$150"?

A. Yes; sir.

Q. That "9/28" after the "x-O.K." meant that it would became available on September 28?

A. That is correct.

[fol. 2995] Q. The next was "Snowwhite" and against that "25%" and over in the margin a thousand. Is that all in Mr. Smith's handwriting?

A. Yes.

Q. Is the circle around the "thousand" in his hand?

A. It is.

Q. And the circle was put there to indicate that that was dropped out of the deal?

A. No. That is 25% against a split over $1,000, with a minimum admission charge of 25 cents. Those were the stipulations of playing this particular picture.

Q. What was the circle for?

A. That indicated the split over $1,000. That is the way——

Q. The circle indicated that?

A. Yes, sir. Just the same as some people write "Split one-half," and other people write it some other way.

Q. Did you take up that picture?

A. We did not.

Q. The next is "4 Academy" and then a line. Is there anything against that——

A. Nothing.

Q. —by way of price? You opened on what date?

A. 20th of September, 1941.

Q. What did you open with for pictures?

A. Could I see that schedule of our bookings, please? [fol. 2996] We opened with "Jungle Cavalcade" and "Flying Down to Rio."

Q. Those two pictures were booked by you with Mr. Smith on September 11th?

A. Yes, sir.

Q. 1941?

A. That is correct.

Q. And those were the pictures that on September 11, 1941, you wanted to open with?

A. No, sir.

Q. You did not want to open with them?

A. No.

Q. When did you first decide to open with them?

A. We decided to open with them when we found that prints on these other first-run pictures were not immediately available, and we could not get an answer on the 11th.

Q. That is, on the 11th you could get no answer as to whether "Hurry, Charley, Hurry" and "They Meet Again" would be available for your opening?

A. Not for the opening. They were available, but we could not get a print. There is a distinction.

Q. How old were those pictures?

The Court: Which two do you mean, the ones he did not get?

Mr. McClennen: No, the two that he booked on the 11th of September.

A. May I see that, please, and I can tell you? "Flying [fol. 2997] Down to Rio" is a reissue. That is one that you referred to, and "Jungle Cavalcade" is a travel picture, and it was not available, "Jungle Cavalcade," until 9/28. You see those dates on both sheets of paper. Now, here is where a 'phone conversation came in and I can place it (referring to document).

Q. Just a moment. What were the pictures that on September 11, 1941, you booked with Mr. Smith?

A. I booked——

The Court: For the opening date, you mean?

Q. For the opening date.

A. I booked "Jungle Cavalcade" and "Flying Down to Rio."

Q. On the 11th of September, 1941?

A. Yes, sir.

The Court: For the opening date?

The Witness: Yes, sir.

The Court: That is what you got?

The Witness: That is what we got. I attempted to book other pictures, but that is what I eventually got.

The Court: That is what you booked for that date and that is what you got for that date?

The Witness: Yes, your Honor.

Q. You say that is what you eventually got, and that eventual-ity occurred the 11th of September, 1941, did [fol. 2998] it not?

A. Yes, sir.

Q. Did you ever change the bookings of any of the pictures which you booked on September 11, 1941?

A. Yes, sir.

Q. Which, by name, did you change the bookings of?

A. "Hurry, Charlie, Hurry" and "They Met in Argentina" was booked for September 24-26. Instead I played "Bowery Blitzkrieg" and "Caught in the Act." On September 27-30 I booked "They Meet Again" and "Reluctant Dragon" and I played "Father Steps Out" and "Gentleman from Dixie."

Q. You booked "Hurry, Charlie, Hurry" and "They Meet Again" for a definite date before you found out whether the prints were available, did you?

A. The prints were available for those dates, but not for the opening date.

Q. When did you learn that they were available for those days?

A. On September 11.

Q. Well, then, just what was it that you did not know about on September 11th, about whether prints would be available?

A. Just what was it that I did not know about on September 11?

Q. You have told us just now that you did not book those [fol. 2999] others, "Hurry, Charlie, Hurry" and "They Meet Again" because——

A. The prints were not——

The Court: Just a moment. Listen to his question.

Q. Because it was not known on that day, September 11, 1941, whether they were available?

A. The physical properties, the films, were not available for those particular days. The bookings of the picture—the picture was accessible itself but the physical property, that is, the film; they did not have a print of the picture for September 20-23.

Q. That is, Mr. Smith, on September 11, 1941, told you that the prints of those pictures would not be available to you on the opening date which you proposed, isn't that correct?

A. They were available—I am trying to get this distinction with the minimum disturbance. The pictures were available; the prints were not available. The physical properties themselves were not available.

The Court: By "physical properties"——

The Witness: I mean the actual film itself. The picture, the license itself was available. The picture was available, but the print itself was not available. They had no print.

[fol. 3000] The Court: What is the picture in distinction from the film?

The Witness: The copyrighted product they sell under contract.

The Court: If you got the film that is all you would need?

The Witness: Yes, but that is the trouble. The point was there that he raised, the pictures were not available. I say the pictures were available but the prints were not available.

The Court: I still don't—why would you book them? You booked them for another date than the opening date. The prints were not available but the films were available?

The Witness: No, the prints of a picture, a certain picture, like "Gone With The Wind"——

The Court: You mean the advertisement?

The Witness: The playing restriction. We come within the playing restriction time. In other words, he sold me the picture and it was available, for example, as of September 20th. The picture itself was available but the physical property of the film, they did not have a print in the house to serve me.

By Mr. McClennen:

Q. Well, now, would you tell me, with a minimum of dis-[fol. 3001] turbance, whether when you got to the end of that conversation you were aware that for some reason, those two pictures, "Hurry, Charlie, Hurry," and "They Meet Again" were not going to be available for showing at the Strand Theatre at your opening on September 20, 1941?

A. They had no prints for the pictures.

The Court: If you knew that?

The Witness: I knew that, due to a 'phone conversation.

Q. That is, you knew before the end of September 11, 1941, that you were not going to get those pictures on your opening night?

A. That is correct.

Q. And you learned that fact after a telephone conversation which you had with Mr. Lux at the Warner Theatre office in Albany, is that true?

A. No, sir.

Q. You learned that fact before that conversation?

A. We learned that fact——

Q. No, no, just——

A. —after that conversation.

Q. How soon after that conversation with Mr. Lux which you had, when he was at the Warner Theatre office in Albany, on September 11, 1941, how soon after did you learn that the prints would not be available for your opening night?

[fol. 3002] A. About two hours afterward.

Q. About two hours after the conversation?

A. About two hours after the conversation with Mr. Lux in Albany.

Q. That is, when you talked with Mr. Lux in Albany he did not tell you that those pictures would be available for that opening night?

A. Yes, sir, he did say so. He, in fact, told me to call Buffalo to get a print.

Q. Did you call Buffalo on September 11, 1941?

A. Mr. Smith called Buffalo.

Q. What?

A. Mr. Smith called Buffalo.

Q. On September 11, 1941?

A. Yes, sir.

Q. Mr. Smith told you, after calling Buffalo, that the picture would not be available for you on September 20, 1941?

Mr. Wright: Which picture is being referred to?

Mr. McClennen: "Hurry, Charlie, Hurry" and "They Meet Again.

A. No, he did not tell me. I talked to the booker on the 'phone himself, got that information direct.

Q. After you had got the information from the booker by the end of September 11, 1941, you knew that you were [fol. 3003] not going to get those two pictures for your opening performance?

A. Which two pictures?

Q. "Hurry, Charlie, Hurry" and "They Meet Again"?

A. I knew on September 11th we were not going to get the pictures for the opening performance—on September 11th.

Q. On September 11th?

A. After talking with Buffalo.

Q. And after you had talked with Mr. Lux at the Warner office in Albany on September 11, 1941?

A. No, that is not so.

Q. You called the booker before you called Mr. Lux?

A. I called the booker after I talked with Mr. Lux.

Q. After you had talked with Mr. Lux and after you had talked with the booker it was that you learned definitely that you were not going to get the pictures for the opening night?

A. That is correct.

Q. Now, then, this difficulty here, this failure to get "They Meet Again" and "Hurry, Charlie, Hurry" did not postpone your opening plan at all, did it?

A. No, sir.

Q. It had no effect in that direction?

A. It had the effect of causing us to spend more money [fol. 3004] for a new front, new advertising, and a general disruption of the routine of trying to open the theatre.

Q. The new front was one of those temporary kinds that you put on?

A. Yes, sir.

Q. When did you erect that front?

A. They started to build that front—oh, I should say September 5th, the rough framework for it.

Q. When did they get it done?

A. I imagine the background and all the rough work was finished about September 10th.

Q. Was anything more done to that front after September 10, 1941?

A. There was.

Q. What was next done to it?

A. Well, in anticipation of getting those two pictures, we had the sign painter put the titles of the pictures on them.

Q. Which two pictures?

A. "Hurry, Charlie, Hurry" and "They Meet Again."

Q. Did he also put on the dates?

A. No.

Q. When did he put on "Hurry, Charlie, Hurry" and "They Meet Again"?

A. I think after I had the first conversation with Mr. [fol. 3005] Smith I telephoned the sign painter and had him start to work on it.

Q. Was that one of your numerous conversations on the 11th of September?

A. Pardon?

Q. Was that one of your numerous conversations on the 11th of September, 1941?

A. That was.

Q. So that on the 11th of September, 1941, you told the sign painter to put "Hurry, Charlie, Hurry" and "They Meet Again" on the front, did you?

A. Yes, sir.

Q. How soon did he get it on?

A. I don't know.

Q. Approximately?

A. Oh, it was probably finished in two or three days.

Q. So that by the 14th or 15th of September you had "Hurry, Charlie, Hurry" and "They Meet Again" all advertised on your front, is that it?

A. We had those five—we had five pictures advertised on the front and the sides.

Q. That will help me putting a later question later, but among those five you had "Hurry, Charlie, Hurry" and "They Meet Again"?

A. Yes, sir.

[fol. 3006] Q. On that front?

A. Yes, sir.

Q. It was on that front by the 15th of September, 1941?

A. Yes, sir.

Q. That is, you had put it on your front before you signed any application for the pictures, is that correct?

A. Do you mean these documents?

Q. No, I mean any application.

A. I did not sign anything.

Q. Well, then, it was put on there before you signed any application or anybody else signed any application?

A. That is correct.

Q. All five pictures were put up on your front by the 15th of September, 1941?

A. Not on the front. On the front and the sides.

Q. Were they all five put on the same front or side or some of them on the front and some on the side?

A. Some were put on the front and some were put on the sides. They are large three-sheet boards, and the front is a built-up front.

Mr. Wright: It seems to me an awful lot of time is being spent on something that has no conceivable relation to the issues we are trying here.

The Court: Oh, no, I think it is very pertinent.

Mr. Wright: As to the details of when the sign—what [fol. 3007] difference does it make?

The Court: I suppose the contention of the Government is that he had those pictures for a certain date and did not get them.

Mr. Wright: There isn't any question about the fact he had them for a certain date and did not get them. What was done with the side or what was done with the front, as far as I can see, would not have the slightest bearing on that fact. The fundamental fact that he booked them and did not get them. What he did with the sign is purely incidental.

The Court: No.

Q. Which of the pictures were put on the front before or by September 15, 1941?

A. I think there was a picture, a three-sheet of "They Meet Again" and I believe there was a picture of "Hurry, Charlie, Hurry."

Q. They were put on the front?

A. Yes.

Q. Where were "Flying Down to Rio" and your other opening pictures put?

A. They were on three-sheet boards on the Salina Street side.

[fol. 3008] Q. That is, you did not give front position to the pictures that you were going to open with when you set this up?

A. It was necessary, after we found we could not get the pictures to repaint the boards and put the other titles on.

The Court: You said you knew on the 11th of September that you could not get these pictures for the opening date?

The Witness: But I had already ordered the sign painter to build a false front on those other two pictures, on the expectation I would get them, when I learned that——

The Court: You did not have that expectation before the 11th, did you?

The Witness: I did.

The Court: Proceed.

By Mr. McClennen:

Q. Does it lie in your mind on what that expectation was based?

A. Pardon?

Q. You said before the 11th you had an expectation of getting those pictures and I asked you if it lay in your mind on what that expectation was based?

A. On a conversation with Mr. Smith.

Q. What was the date of that conversation?

[fol. 3009] A. I think it was on the 10th or possibly on the 9th.

Q. The 10th or the 9th. This testimony so far that your first conversation about these pictures was on September 11th is all wrong, is it?

A. No.

Q. You think it was the 9th of September that you got the expectation that you were going to have "Hurry, Charlie, Hurry" and "They Meet Again"?

A. I just had an informal 'phone call and a talk with Mr. Smith, and he told me what pictures were—had been available for some time, and he thought that we could buy them, but there was never any definite conversation about the price or anything else until September 11.

Q. On the strength of that 'phone conversation you arranged to have these pictures put on your sign?

A. I did.

Q. Was that 'phone conversation with Mr. Smith before or after you sent your telegram of September 9, 1941, desiring to see him?

A. I think it was on the 9th.

Q. Well, now, what pictures, over the telephone, did Mr.

Smith tell you on the 10th that you could have, what pictures did he name on the telephone?

A. He said: There is a number of rejected pictures, [fol. 3010] including "They Meet Again" and "Hurry, Charlie, Hurry."

Q. Did he mention any others?

A. I don't believe he did.

Q. So that it was on the strength of that telephone conversation that you ordered the sign man to put those names on your sign?

A. Yes, sir.

Mr. McClennen: Your Honor, I shall get in trouble with my associates if I talk any longer. Can we adjourn now? It is 4 o'clock.

The Court: We have been a long time with this witness. I don't know.

Mr. Wright: We would like to finish with him today.

Mr. McClennen: It is not possible.

Mr. Wright: We have been holding Mr. Boumansour from Malone, New York. He was the one I wanted to put on today and Counsel was not agreeable to going ahead with him and we have told him we would be through with him on Monday.

Mr. McClennen: We cannot possibly finish.

The Court: 11 o'clock Monday, then. We will have to finish with both of these witnesses Monday.

Mr. McClennen: Until 11 o'clock on Monday?

The Court: We will start 11 o'clock Monday morning. [fols. 3011-3013] I think we can finish with your other man Monday as well.

Mr. Wright: I sincerely hope so. I have given him that assurance.

The Court: We will suspend until 11 o'clock Monday.

(Whereupon a recess was taken until Monday, October 16, 1944, at 11 A. M.)

[fol. 3014] UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

vs.

SCHINE CHAIN THEATRES, INC., et al., Defendants

Continuation of trial before Honorable JOHN KNIGHT, United States District Judge for the Western District of New York, October 16, 1944, 11:30 a. m.

Appearances:

Robert L. Wright, Esq., John F. Clagett, Esq., Harold L. Schilz, Esq., Special Assistants to the Attorney General, and Milton Kallis, Esq., Special Attorney, in behalf of the United States.

Edward F. McClennen, Esq., Willard S. McKay, Esq., Saul E. Rogers, Esq., Arthur E. Whittemore, Esq., Arthur J. Homans, Esq., and Edward M. Antevil, Esq., appearing for the Defendants.

[fol. 3015] HUBERT P. WALLACE resumed the stand by and on behalf of the Plaintiff, having been previously sworn, was examined and testified as follows:

Cross-examination (Continued).

By Mr. McClennen:

Q. Mr. Wallace, at page 2991 you stated that there were among your papers your release schedule. Will you refer to that and tell me the release date of R.K.O.'s "They Meet Again"?

A. On July 11th, 1941.

Q. And R.K.O.'s "Hurry, Charlie, Hurry"?

A. July 25th, 1941.

Q. And R.K.O.'s "Saint's Vacation"?

A. June 6th, 1941.

Q. And that was the significance of those three dates on this Defendant's Exhibit D-114, was it not?

A. It appears to be.

Q. Did you do any newspaper advertising in Syracuse before you opened the Strand on September 20th, 1941?

A. Yes, sir.

Q. In that newspaper advertising you did not mention "They Meet Again" or "Hurry, Charlie, Hurry", did you?

A. No, sir.

[fol. 3016] Mr. McClennen: Will you mark this photostat of a Syracuse newspaper for identification?

(Thereupon photostat of Syracuse newspaper referred to was marked as Defendants' Exhibit D-116 for identification.)

Q. Can you tell me whether this advertisement occurring in the Post Standard, Syracuse, New York, Thursday, September 18th, 1941, is your first newspaper advertisement?

A. I could not definitely say that it was the first, but I know that is our newspaper advertisement.

Q, The picture there advertised, or the pictures there advertised were the first ones that you played on opening, were they not?

A. Those are the two pictures we played to open the theatre, yes, sir.

Mr. McClennen: I offer the document, Exhibit D-116 for identification in evidence.

Mr. Wright: No objection.

(Thereupon Defendants' Exhibit D-116 for identification was received in evidence.)

The Court: What is the date of the opening in September?

Mr. McClennen: The 20th, I think it was.

Mr. Wright: The 20th.

[fol. 3017] Q. What were your admission prices for that opening night?

A. I am not sure, but to the best of my knowledge they were either 20 or 25 cents.

Q. Would you give me the Empire's admission prices at that time?

A. No, I couldn't.

Q. And to refresh your recollection, I show you Exhibit No. 116.

A. The admission prices at the Empire were 55 cents, $1.10, $1.65, $2.20 and $2.75.

The Court: Is that for the opening date only?

Mr. McClennen: That is the admission price at the Empire at that time that ad appeared in the newspaper.

Mr. Wright: I think it should be pointed out that the attraction there was not a picture; that, I believe, was a legitimate production.

Mr. McClennen: That is correct.

Q. At page 2832 you were asked this question: "After you received this telegram that is marked Plaintiff's Exhibit 820 for identification, did you actually receive an approved copy or the document here which has on it the title 'They Meet Again,' and a document with the title 'Hurry, Charlie, Hurry'? A. We did."

Mr. Wright: As I recall, there was an objection to that [fol. 3018] question and the answer was stricken out, wasn't it *not*? I do not think he was permitted to answer that question.

Mr. McClennen: Well, he did answer it, and the objection came after that, and I believe that——

Mr. Wright: It was stricken out.

Mr. McClennen: I am telling you what I believe. That the Court struck it out. The stenographer's page does not show that strike out. We will understand, shall we, that it was stricken out, as my understanding at the time the objection was made?

Mr. Wright: I did not hear the answer. I understood that whatever the answer was, it has been stricken out.

Mr. McClennen: Then we understand that was stricken.

Q. Will you produce the contract referred to in that question, which I just read you?

A. You mean the——

Q. An approved contract for "They Meet Again" and "Hurry, Charlie, Hurry."

A. I can't produce an approved contract.

Q. There never was received by you an approved contract for those two pictures, was there?

A. I think there was.

[fol. 3019] Q. Have you looked for it?

A. I have.

Q. And you can't find it?

A. All the papers of the Strand Theatre were taken by Mr. Carr, and I called it to the Government's attention to get a subpoena so that I could get those papers. I didn't get them, and I don't think they got them.

Q. That contract, to which did that refer?

Mr. Wright: If the Court please, he is now examining on testimony, as I understand it, that actually wasn't part of the direct examination.

The Court: He states he has no contract, but he believes there was a contract.

Mr. Wright: Yes, but I don't see how this is proper cross-examination, if he wants to go into another issue as his direct-examination stands; there is no claim made that he had approved contracts.

The Court: No what?

Mr. Wright: No claim, as his direct-examination stands, that he had approved contracts in his possession, as I understand it.

The Court: I understood the question to inquire into the proceeding as to what was done during those days. He [fol. 3020] now states he believes he did have a written contract.

Q. The written contract which you have not been able to find, as you will recall it, was a contract which included "Hurry, Charlie, Hurry," "They Meet Again" and several other pictures that you had discussed with Mr. Smith?

A. Those pictures you refer to, and the ones I refer to, were on that yellow sheet we had here, an exhibit that we had here, not the deal sheet, the application.

Q. You are referring in your last answer to the five documents which are Plaintiff's Exhibit 819 in evidence?

A. Yes, sir.

Q. And when do you recall receiving that approved contract for "They Meet Again" and "Hurry, Charlie, Hurry".

A. To the best of my recollection, the contracts came in some time after the pictures were taken out, and that would be after September 18th.

Q. So that when the approved contract came in, you had already been advised that those pictures were not to be included?

A. Those two pictures, "Hurry, Charlie, Hurry" and "They Meet Again."

Q. And on Exhibit 819 you wrote the word "Canceled" on the sheet for "Hurry, Charlie, Hurry," and on the sheet for "They Meet Again"?

[fol. 3021] A. Yes, sir, I wrote that.

Q. When did you write that?

A. I can't recall just when I wrote that. I know I wrote that.

Q. Did you write it in September, 1941?

A. I don't know. I can't give you a truthful answer to that. It could have been some time when we took the files apart in December, and it may have been some time prior to that. It may have been in September, but I knew the pictures were canceled. When we checked the contracts over to file the contracts away, I wrote "Canceled" on those two, because we were checking off what we had paid for pictures.

Q. Where did you file away those contracts?

A. Those contracts——

Q. That is, for the whole five pictures?

A. Those contracts were filed in a file at the office of the Strand Theatre.

Q. What was done with this Exhibit 819?

A. That Exhibit 819, I think, was either on the desk or in my drawer, because—I don't know, it got mixed up. That exhibit and that deal sheet were together among the few papers that I had at the Strand Theatre.

Q. You don't remember when you found those sheets in the drawer of your desk?

[fol. 3022] A. I do remember that.

Q. What was the date on which you found them in the drawer of your desk?

A. When I made preparations to leave the theatre, I was going through my desk, and I picked up that deal sheet and that document there and a few other things, and took them with me.

Q. That would be in the early part of——

A. January.

Q. January?

A. Probably the middle of January.

Q. Middle of January, 1942?

A. Yes, sir.

Q. When you took them away at that time, did those two sheets of Exhibit 819 have the word "Canceled" on them in your handwriting?

A. Yes, sir.

Q. With those facts, would it not accord with your recollection that you put "Canceled" on there about September 18, 1941?

A. I did not hear the last part.

(Last question read.)

A. No, that would not improve my recollection any.

Q. Do you recall whether, when you picked them out of the drawer in January, 1942, you wrote "Canceled" on [fol. 3023] those two?

A. I did not write it on at that time.

Q. Have you ever written it on since that time?

A. Since January?

Q. Yes.

A. 1942? No, sir.

Q. Had you had these sheets in use—I am referring to Exhibit 819—at any time between somewhere around the middle of September, 1941, and January, 1942?

A. I did.

Q. These particular sheets?

A. Those particular sheets.

Q. Do you remember whose name was signed in approval on those contracts?

A. No, sir.

Q. Now, on October 7, 1941, you signed an application for other R.K.O. pictures, which I show you, did you not?

A. Yes, sir.

Mr. McClennen: I will offer that in evidence.

Mr. Wright: No objection.

(Thereupon application for R.K.O. pictures, dated October 7, 1941, referred to received in evidence and marked as Defendants' Exhibit D-117.)

Q. On that same day you signed an application for [fol. 3024] another R. K. O. picture, which I show you?

A. Yes, sir.

Mr. McClennen: I will offer that in evidence.

Mr. Wright: No objection.

(Thereupon application for R.K.O. picture, dated October 7, 1941, referred to, was received in evidence and marked as Defendants' Exhibit D-118.)

Q. Both exhibits D-117 and D-118 bear the approval signature of Ned E. Depinet. Apparently a stamped signature. That was the usual form of approval that you received on approved contracts for R.K.O. pictures?

A. Where there was an approved contract sent in, as a rule, there was a stamp on there for signature.

Q. The signature of Ned E. Depinet?

A. Pardon?

Q. And the signature of Ned E. Depinet, stamped signature of Ned E. Depinet?

A. On most contracts they just stamped the signature on it, and occasionally, I guess, they wrote them in.

Q. The signature they stamped on was that of Ned E. Depinet?

A. On those contracts, yes, sir.

Q. And on the contracts of R.K.O. which you received generally?

A. Well, I don't know, generally. Of course, sometimes when there is a change of officers in the corporation, there is [fol. 3025] a change of signature.

Q. You know R.K.O. well enough to know that Mr. Depinet has occupied that position for years, do you not?

A. Well, I couldn't swear to that.

Q. You don't remember any contracts signed by R.K.O. in approval by anybody except Ned E. Depinet, do you?

A. I have three news reel contracts here, and they are all signed by Ned E. Depinet the same way.

Q. You did not play at the Strand all the R.K.O. pictures for which you received approved contracts, did you?

A. No, sir.

Q. And subsequently R.K.O. brought a suit against you for non-performance of those contracts, namely, against the Syracuse Community Theatre Corporation?

A. I don't know anything about that.

Q. You never heard of it?

A. Never heard of it.

Mr. McClennen: Mark this for identficaton, please.

(Thereupon document with reference to suit of R.K.O. against Syracuse Community Theatre Corporation, referred to, was marked as Defendants' Exhibit D-119 for identification.)

Q. Did you not hear, referring to Exhibit D-119 for identification, that judgment had been entered in favor of R.K.O. for over $1600 for the non-performance of those [fol. 3026] contracts?

A. This is the first I have heard of it.

Mr. McClennen: Mark this, please.

(Thereupon, copy of letter dated October 16, 1941 from R.K.O. to Mr. Wallace, referred to, was marked as Defendant's Exhibit D-120 for identification.)

Q. Did you receive the original of a letter from Elmer Lux; dated October 16, 1941, in the substance of defendants' identification Exhibit D-120?
A. I did.

Mr. McClennen: I offer that in evidence.
The Court: What is the date of that?
Mr. McClennen: October 16, 1941.

(Thereupon Defendants' Exhibit No. D-120 previously marked for identification was received in evidence.)

Mr. McClennen: Exhibit D-120 reads "October 16th, 1941. Special Delivery.
Mr. Harry Wallace, Strand Theatre, Syracuse, New York.

Dear Harry:

Will appreciate immediate word from you as to certain passes you are handing out. In fact, several local Syracuse [fol. 3027] exhibitors advise the city is flooded with 5-cent passes on which [illegible] are allegedly absorbing the tax which results in an actual 2-cent admission. Will appreciate details by return mail as most Syracuse accounts have already pulled my play dates on 'Tom, Dick & Harry.'

Sincerely, R.K.O. Radio Pictures, Inc., Branch Manager."

Q. Did you write any reply to that letter?
A. I may have.
Q. Had you issued 5-cent passes at that time?
A. Not with my authorization.
Q. Had it been done by the theatre?
A. Done by the manager of the theatre.
Q. With the provision that they would absorb the tax?
A. I wouldn't say as to the provision, I would assume the substance of that letter is correct.
Q. Now, do you remember whether after that date any distributor's salesmen solicited you for the sale of pictures at the Strand?
A. Yes, sir, I do.
Q. After October 16th, 1941, which salesman for what distributor solicited you to buy pictures for the Strand?

[fol. 3028] A. Mr. Marcus, of Columbia, and Mr. Hartman of the United Artists, and I think it was about that time that Mr. Rosineau of Paramount called on me.

Q. Well, after October 16th, 1941?

A. I think it was about that time; it may have been a day or so before, or might have been a little after, I am not positive, but I know definitely Mr. Hartman called on me in November, and I can place the date of the Columbia solicitation because we did get our picture in January, 1942, and I think that was sold to me in December.

Q. After October 16th, 1941, did any other salesman for any distributor call upon you and solicit your purchase of pictures for the Strand?

A. No, I don't think so. I don't think they did, other than the three I mentioned. I may be wrong on that, but I don't think so.

Mr. McClennen: I offer in evidence the judgment memoranda now Defendants' Exhibit 119 for identification.

Mr. Wright: Well, this is objected to, if the Court please. I don't see what issue that is admissible on. It appeared long after any of the events we are dealing with here.

Mr. McClennen: The judgment did, but the non-performance of the contract was in the period with which we [fol. 3029] are dealing.

Mr. Wright: It hasn't been shown that there was any non-performance during this period or that non-performance of a contract was given by any distributor's representative as a reason for not dealing with this theatre, or not offering pictures.

The Court: I suppose the proof could be made otherwise of the judgment.

Mr. Wright: It has to be tied up.

The Court: The contract would be on file.

Mr. Wright: Assuming there was later a judgment taken, and the contract was not performed, I don't see how that is at all relevant to the refusal of the distributor to deal prior to the time there was non-performance. There hasn't been any showing of that at all. This is after the theatre was closed.

The Court: How is it competent?

Mr. McClennen: The judgment is against the corporation which was the contracting party. It establishes that there had been a breach of contract. The distributor R. K. O. was aware of the breach of contract currently. That was sub- [fol. 3030] sequently established. Now, the non-dealing——

Mr. Wright: May I see that? I did not mean to interrupt, I just want to look at the paper.

The Court: You did not finish your presentment.

Mr. McClennen: We have a case where this company, this Community Theatre by Mr. Wallace is pointing out something about the dealing or nondealing with R.K.O. R.K.O., of course, was currently aware of the non-performance of the contract. The actual non-performance is shown by the judgment, and it is one of the facts of the situation that would naturally lead to not providing any more pictures.

Mr. Wright: If the Court please, the date of this judgment is October 8th, 1942. Now, this paper does not establish any non-performance of any contract whatsoever, prior to the time that that theatre closed in January, 1942.

The Court: When does it state the contract was made for the pictures which it is claimed was in default?

Mr. McClennen: October 7th, 1941.

Mr. Wright: Does not appear from this paper.

[fol. 3031] The Court: Those pictures it is claimed he did not take up.

Mr. McClennen: The pictures he did not take up.

The Court: That was in October?

Mr. McClennen: October 7th, 1941.

The Court: The witness can state; does it appear now whether those pictures were played or not?

Mr. Wright: Let him call the witness' attention to the contract he says was in default.

The Court: Does it appear?

Mr. McClennen: He has testified, I think, already, that there were some that were not played.

The Court: Well, that is as far as you need go, isn't it? He has testified some were not played.

Mr. Wright: There is nothing to connect any that were not played with this judgment here.

The Court: I have sustained the objection on that.

By Mr. McClennen:

Q. From page 2841 to 2846 you have given the pictures which you did play, and I haven't checked it, but I am told that it does not include the names appearing on Exhibits D-117 and 118.

Mr. Wright: If the Court please, these contracts say these pictures were bought as available. It hasn't been shown yet that those pictures were ever available to him [fol. 3032] during the period the theatre was open.

The Court: There is no question before the Court that I know of now.

Q. In the course of the fall of 1941, was "Virgin Bride" and "School For Husbands" played at the Strand?

A. Yes, sir.

Q. Was "Headleys At Home" played at the Strand?

A. Yes, sir.

Q. Those are not dated in your testimony giving what was played at Page 2841 to 46; it was an error omitting those, was it not?

A. No, I could not state unless I saw the list that was made up. Mr. Wright, I have the original play-off sheet there, right over in that file on that table. I could give him that information.

Mr. Wright: Here is your list of bookings.

The Witness: I have the original play-off that this is copied from.

Mr. McClennen: Mr. Wright has shown the witness Plaintiff's Exhibit 816 for identification.

By Mr. McClennen:

Q. In your testimony at page 2841 to 2846, it was in error, your omitting "Virgin Bride" and "School for Husbands" and "Headleys at Home", was it not?

[fol. 3033] A. I have a notation here "Headleys at Home".

Q. On what dates?

A. For November 5th, 6th and 7th, and as to those other two pictures, you mentioned——

Q. "Virgin Bride" and "School for Husbands".

A. The theatre was leased to a firm in New York for a flat rental of $1500 for one week, and those were the pictures they played, and that is why it does not appear in my schedule here. It was leased to a firm—I don't recall the name, but it was leased to a firm—I have the record of it downstairs—it was leased to a New York firm. It was some kind of an exploitation picture, but frankly, it was an objectionable picture from the viewpoint of the public, and we did not want to have anything to do with it. We leased the theatre for that week.

The Court: You did not want to have anything to do with it, but you leased it to somebody else to do it, is that the idea?

The Witness: It was a controversial picture, and we had nothing else to play, and rather than have it closed and take a loss of $2,000, we did lease it for $1500 for that week, and as a result there was a great deal of criticism doing it. I think we did wrong in leasing it.

[fol. 3034] Q. That picture or those pictures "Virgin Bride" and "School for Husbands" played there from November 1st to November 11, 1941, did they not?

A. That may be true, I don't know. I would not say. I know it played a full week. I know we received—I took a check to Governor Schoenick for $1500 for deposit, and it was held in escrow. That is why I recollect——

Q. That was $1500 income that came in to you from the theatre?

A. From the people—the sub-lessee for that one week.

Q. You knew of the advertisements at the time of the playing of those pictures?

A. Yes, I was very much aware of the advertisements.

Q. And I show you a photostat of a newspaper, which I will ask to have marked for identification.

(Thereupon photostat of newspaper containing advertisements, referred to, was marked as Defendants' Exhibit D-121 for identification.)

Q. Do you recognize this as the advertisement of that picture?

A. I do.

Q. You did not make any arrangement to have the advertisements show that you were not playing the picture, did you?

A. Well, sir, I don't understand that. The advertise- [fol. 3035] ments and the whole thing was run by this fellow when he leased the theatre for that period, and he paid the bill to the Post Standard and Syracuse Herald, and everything was separate. There was nothing charged to our account on any advertising of any nature. It was his obligation to pay it. I did not make any arrangement with him about advertising.

Q. It made an impression on your mind at the time, the running of this picture at the Strand, did it not?

A. Yes, sir.

Q. Now, on page 2842, you say "From October 29th, to November 1st, we played "Man of Conquest" and "Secrets of a Model". "Then what did you play"?

> "A. Then 'Secrets of a Model' was held over from November 1st, through November 7th."
>
> You meant by that expression that it did not play in that period, November 1st to November 7th?

A. No, "Secrets of a Model"—they were both so-called sex pictures. This is the picture I had reference to, right here.

Q. The next question is: "Q. Was anything played with it during that period?"

> "A. No, on November 8th, the Theatre was closed."
>
> That period, from November 1st to November 7th was part of the period during which "Virgin Bride" [fol. 3036] and "School for Husbands" was played in that theatre?

A. Yes, sir.

Q. It was not closed in that period?

A. From November 1st to November 7th, this New York firm operated not "Secrets of a Model", but these two so-called sex pictures "Virgin Bride" and "School for Husbands".

Q. Did you play at the Strand in the fall of 1941 Abe Lyman and his Californians, plus other acts on the screen, "Top Sergeant Mulligan"?

Mr. Wright: What was the date?

Q. Look at November 28th to 30th.

A. Yes, sir, we played Abe Lyman's Band on November 28th, 29th and 30th, and on the screen that same time we played "Top Sergeant Mulligan", that is correct.

Q. The omission of that in your testimony at pages 2841 to 2846 was an error, was it not?

Mr. Wright: If the Court please, on page 2843 he testified on November 28th through November 30th, he played "Sergeant Mulligan" and "Hurricane Smith".

Mr. McClennen: I see that I have made an error. I was led into it by looking at Plaintiff's Exhibit 816 for identification. It was an error in putting in those pictures on [fol. 3037] that page other than "Top Sergeant Mulligan".

The Witness: Yes, sir. Here is the original booking sheet. That is where this is copied from. It was copied in a hurry, of course. There is "Abe Lyman", and it is a stage show, and here is "Top Sergeant Mulligan", and those are the dates.

The Court: We can't hear what you say. I don't know whether the stenographer got it in the record or not.

Mr. McClennen: I will repeat——

The Court: That is his answer. I could not hear what he said. Strike it out. There was no question put to him. You are reciting the reason for your statement.

By Mr. McClennen:

Q. Your card which you have just shown me shows that from the 28th of November, 1941, to the 30th of November, 1941, you played "Top Sergeant Mulligan" and "An Ache In Every"——

A. I think that is "An Ache In Every Steak".

Q. "College Songs C. S. No. 3-6-6" and "City Within a City" and "Whose Zoo in Hollywood" in color?

A. That is correct.

The Court: You played those between those dates, between October 28th and November——

[fol. 3038] The Witness: No, your Honor. Those were all played on November 28th, 29th and 30th. Isn't that the question?

Mr. McClennen: Yes.

By Mr. McClennen:

Q. Now, on your identification, Exhibit 816, except for "Sergeant Mulligan" none of those are mentioned, are they?

A. This is a list of feature pictures and all of these are short subjects, single reels.

Q. None of them are mentioned?

A. This is a list of feature pictures, and "An Ache in Every Steak", "College Songs", "Community Sing", "A City Within a City" and "Whose Zoo in Hollywood" are all short subjects, not features.

Q. None of them are mentioned on your list Exhibit 816 for identification?

A. No, sir.

Q. You did not intend in your answers at pages 2841 to 2846 to state the other attractions which you showed at the Strand, did you?

A. You mean the stage attractions?

Q. Stage attractions, or anything except the feature picture?

A. I presumed that is all you wanted.

[fol. 3039] Q. I wasn't the one who asked the questions.

A. I beg your pardon?

Q. I asked, you did not intend to give anything in your list except feature pictures; that is a true statement?

A. I may have given the stage shows in that list. I think I did. I am not sure. If I can see that testimony I could tell you which was a stage show and which was a feature picture.

(A document was handed to witness by Mr. Wright.)

The Witness: Those are all the feature pictures.

Q. Except the "Virgin Bride" and——

A. With the exception of "Virgin Bride" and something about husbands.

Q. "School for Husbands" and "Headleys at Home"?

A. Yes, sir. I have it wrong. I have "Secrets of Model" there.

Q. Now, I show you pages 2841 to 46.

A. I made a mark on there (referring to another document).

Q. (Continuing)) Just run down and see whether in there there is anything except the features and, if you find anything on those pages just mention it, otherwise say there was nothing but the features.

The Court: I understood him to say he only stated the features with the possible exception of some stage show.

[fol. 3040] Mr. McClennen: I want to see whether he did mention any stage show or any other attraction than features or feature pictures.

The Witness: Well, on here it say—on November 8th the theatre was closed and on November 20th through the 24th, we played "Spooks Run Wild" and a stage show. That stage show would be "McFarr and Van." I didn't specify what the stage show was, I just generalized and said it was a stage show, but I can give you the names of the stage shows on those dates.

Q. On September 29th do you have—or on September 30th, did you have Bingo as one of the attractions?

A. I could not state specifically, but I know we started Bingo there. You see, we——

Q. Well, all I am asking you, you did start Bingo when?

A. Some time around the latter part of September or around October, but I could place it with the communication I had with the police department concerning Bingo games.

Q. Do you remember how many Bingo nights you had in the fall of 1941?

A. Either one or two.

Q. At some time did you have Louis Primer and other acts, that is, in the fall of 1941?

[fol. 3041] The Court: Have what did you say?

Q. Louis Pri*nter* plus other acts?

The Court: A picture, you mean?

Mr. McClennen: No, this was, I imagine, a stage show. I was going to develop that.

The Witness: We had this band, Louis Primer and four other acts on December 5, 6 and 7.

Q. Then on December 10th, 1941, did you have "Blonde from Singapore," and "I Killed That Man"?

A. December 10th?

Q. December 10th?

A. I can tell the date on that. We had "Blonde From Singapore" on January 1 through January 6th.

Q. Then you didn't have them on December 10th?

A. No, sir.

Q. Is that a picture?

A. "Blonde From Singapore"?

Q. Yes.

A. Yes.

Q. And did you on December 10th have "I Killed That Man"?

A. No, sir.

Q. Did you at any time in the fall of 1941, or in January, 1941, show "I Killed That Man"?

A. Can I look at that list?

(List handed to witness.)

[fol. 3042] The Witness: (Continuing) No, I believe that picture played at the Paramount Theatre as a single feature or at the Empire Theatre, I am not sure.

Q. On December 12th, 1941, and the following two days, did you have Tommy Tucker's Band and other acts?

A. December 12th, 13th and 14th, we had Tommy Tucker and his Band and three other acts.

Q. On December 18th to 21st, did you have an Earl Carroll show?

A. "Earl Carroll's Vanities" played—no,—I have Earl Carroll's Vanities here, and I think I am almost certain on it, I am sure this is correct, it was December, 19th, 20th and 21st.

Q. 19th, 20th and 21st?

A. Yes, sir.

Q. Did you at some time show "Glen Gray" and the Loma Orchestra plus "Three Sailors" and other acts?

A. Glen Gray played at the Strand Theatre from December 25th, 26th, 27th and 28th. There is no record of any act, it is just Glen Gray and his orchestra, and I assume that he had some other acts with him, but there are no acts that we paid.

Q. From December 31st to January 6th, did you have "Powder and Lipstick Review" featuring the "Three Stooges"?

[fol. 3043] A. December 31st to January 6th we had "The Powder and Lipstick Review," which was a separate unit, and as an additional attraction there was the "Three Stooges." They were booked separately and did not appear in the same act. They were an entirely separate act.

The Court: We will suspend at this time until 2 o'clock.

(Whereupon a recess was taken until 2 o'clock P. M.)

[fol. 3044] After recess, 2 o'clock P. M.

Appearances: As before noted.

Hubert P. Wallace resumed by and on behalf of the Plaintiff, testified further as follows:

Cross-examination (continued).

By Mr. McClennen:

Q. During January, 1942, on ten or eleven days in the aggregate, in addition to the exhibitions which I have already mentioned to you, did you have Dick Rogers and Orchestra, with Del Rios and other acts, Carl Hoff and Band, with other acts, and on the screen "Riot Squad," and a stage show "Hawaiian Nights" featuring Princess Luna, Don Feats Orchestra and other acts?

Mr. Wright: What was the date?

Mr. McClennen: About ten days in the aggregate in January, 1942?

The Witness: From December 31st to January 6th we played "Powder and Lipstick Revue," and "The Three Stooges," and we played the pictures "Blonde From Singapore."

On January 8th, 9th and 10th, we played "Dangerous [fol. 3045] Lady," that is, the picture attraction, and Dick Rogers and Orchestra besides several acts that he had with him.

Q. Will you proceed to deal with Carl Hoff and Band?

A. After——

Q. After January 11th, possibly, specifically, January 17th.

A. On January 16th, 17th and 18th, we played Carl Hoff and his Orchestra and some acts that went with the orchestra, and the screen attraction—could I see that list, please? I got these cards mixed up so here that I just can't place it.

Q. I suggest for the stage Show "Hawaiian Nights," you look at January 22nd to 25th.

A. That was January 16th to 18th, Carl Hoff and Orchestra, and on the screen we had "Riot Squad," as a screen attraction feature, and then—what is that other date?

Q. Stage show "Hawaiian Nights" and other attractions, January 22nd to January 25th.

A. January 22nd, 23rd and 24th and 25th we had the stage attraction Hawaiian Nights and a screen attraction for those same days "Borrowed Hero," a Monogram Picture.

Q. Referring to Exhibit 819, the five applications, I ask you considerately whether it is not the fact that you received contracts—approved contracts for three of those; [fol. 3046] that is, "Tom, Dick and Harry"—"They Met in Argentina"—and "Reluctant Dragon," and did not receive approved contracts for "They Meet Again" and "Hurry, Charlie, Hurry"?

A. Well, there is a possibility that we did not have approved contracts, but to the best of my recollection I think we received approved contracts on this whole group of pictures. I think that "They Meet Again"—"Hurry, Charlie, Hurry"—there was seven pictures involved. There was the two that we opened with. I think we received—can I have that list again, please? (Referring to document.) There were contracts on "Jungle Cavalcade" and "Flying Down to Rio" in addition to these. I do not see the contracts on "Jungle Cavalcade"——

Q. Isn't that just the fact, that you have now mentioned seven pictures, and that what you received contracts for were three of the five that are in the Exhibit 819 for identification and two others, and no contract for "Hurry, Charlie, Hurry" and "They Meet Again"? Isn't that the fact?

A. I can't say that is a fact, no, sir.

Q. And you cannot say from your recollection that it is not the fact?

A. No, sir.

Q. Did you observe whether "Hurry, Charlie, Hurry" [fol. 3047] and "They Meet Again" played in Syracuse that fall?

A. Why I think they played. I can't give you the exact date, but I know they played there.

Q. They played at the Eckel Theatre?

A. I would not say for sure. They played at one of the Schine-Keith operations. They played at one of those theatres.

Q. It was not at the Empire?

A. I don't think it was at the Empire.

Q. And "Hurry, Charlie, Hurry" may have played October 30th to November 5th, 1941?

A. It may have been played. You mean at the Empire——

Q. Eckel?

A. It may have, yes, sir.

Q. "They Meet Again" on October 1st, or thereabouts, 1941?

The Court: Where do you mean?

Mr. McClennen: At the Eckel.

The Witness: It may have been, yes, sir.

The Court: You claim that your contracts, if any, for those two pictures you are discussing here were for second-run or later run?

The Witness: First-run.

Q. And the Eckel Theatre was a first-run theatre at that time?

A. Yes, sir, it was either first-run or hold-over first-run.

[fol. 3048] Q. Hold-over as you use the expression in the trade is when an operator controlling two theatres plays a picture in one theatre and immediately thereafter moves it to over his other theatre, is that correct?

The Court: Both being first-run houses, you mean?

Mr. McClennen: Both being first-run.

The Witness: With the one distinction, I don't believe that it is necessary to control both theatres with hold-over runs. A hold-over can be run at one theatre owned by one person and can be moved to another first-run in another theatre, but the same conditions, like admission price and so forth, other conditions that prevail, I think, are the same.

Q. Well, now, isn't that the very distinction, that if the picture goes to a theatre in another control, when it gets into that theatre it is a second-run?

A. No. A second-run—distinction as to a second-run is that the protection and clearance is written into a first-run contract usually specifying an interval of thirty days. I don't know of any other instance. I could not say of any other instance, other than thirty days from a first-run to [fol. 3049] a second. A second-run would be an interval of time lapse where the first-run gets that protection so as to divert the greatest amount of money to that first-run situation where they feel the production gets the best revenue.

Q. Well, then, that we may understand, when you speak, if one exhibitor plays a picture after another exhibitor has played it first-run, the second exhibitor is playing it first-run, if there is no interval of time between the two?

A. That is correct. A hold-over is one continuous run, but it would be in a different theatre, but under the same admission scale and under the same general condition such as advertising, desirability of the theatre, and so forth.

By the Court:

Q. At the same time, do you mean?

A. Not concurrently, but there would be no interval. That is where the theory of protection and clearance comes in, that a hold-over is a continuation of a first-run, but at a different locality.

Q. They maintain the same prices?

A. The same prices, that is, the same admission prices would be charged. I think that is one of the conditions, as I understand it, in all hold-overs.

Q. It would be a first-run at the second theatre, but it [fol. 3050] wouldn't be a second-run by another owner?

A. No, a second-run is when the interval of time elapses because time is of the essence in all picture contracts. That is what gives the value, is the time element.

Q. No matter where it continues, if it is a continued first-run, it would make a first-run of it?

A. Yes, but it is designated as a hold-over.

By Mr. McClennen:

Q. Why do you say that the interval of time between the runs is the essence of the contract situation in the moving-picture trade?

A. Because I believe that, and I think every one will agree, that time is essential. For example, a news weekly, if it is current, that is, released as of today, it has a definite value at the box office, and it has a definite value to the exchange. If it is six months old, it has little of any value, but time is of the essence of every picture contract, so that a picture that is made in 1930 doesn't have relatively the value of a picture made currently.

Q. So that in order to get the real best results at the first-run, that the theatre is capable of getting, there must be a sufficient interval of time between the second-run, so that possible patrons won't be dissuaded from going to the [fol. 3051] first-run by the expectation of a run soon in another theatre?

A. I agree with you on that.

Mr. Wright: If the Court please, it is pure argument.

The Court: Well, I think I understand it.

Q. Did you ever happen to know of a picture playing first-run at Loew's Theatre in Syracuse and then playing a hold-over run at the Eckel Theatre in Syracuse?

A. No, sir.

Q. When you used hold-over as a possibility in the Eckel just now, you had reference to a picture that had played first-run in one of the other R.K.O. Schine houses and then moved over immediately to the Eckel?

A. Well, when I had reference to a hold-over at the Eckel, if I had reference to it, if there would be a hold-over at the Eckel Theatre, there would be a unity of ownership between the Eckel Theatre and the Keith or Paramount, or some other of the Schine theatres. I have never——

Q. And——

A. Pardon me. I never can remember of a hold-over between Loew's and any Schine theatre. I can't recall—I can't say that is true, but I can't recall of any.

Q. On October 3rd, 1931——

The Court: '41.

Q. '41, I beg your Honor's pardon, and I refer you to [fol. 3052] Plaintiff's Exhibit 818, you had a conference with Mr. Rowell, the representative of Fox, is that correct?

A. Yes, sir.

Q. And there was before you at that time this Exhibit 818?

A. He handed me——

Mr. Wright: Has the exhibit been taken apart? As I recall, we numbered the three-page exhibit as one exhibit; was it not?

Mr. McClennen: No, there was no——

Mr. Wright: I beg your pardon, I think 818 was one three-page exhibit.

The Witness: No, it wasn't. It was a five-page exhibit, pardon me.

Mr. Wright: Yes, it consisted of these three pages and also had a release schedule attached to it. Apparently it has been taken apart.

Mr. McClennen: Is this the release schedule then? When it came to me this first page was separate.

Mr. Wright: As it was put in evidence they were all attached together.

Mr. McClennen: Then do we understand that Exhibit 818 is this one that has the mark on it, and this one also dated October 3, 1941, signed by Rowell and having on it in black pencil "Ahead of Empire Theatre," and this one [fol. 3053] also signed by Rowell, dated October 3rd, 1941, having on it in black pencil" No run," and this release schedule for 1940-41; that is your understanding?

Mr. Wright: It is clear from the examination that at the time it was introduced the document consisted of three pages and that the release schedule was attached. I took him over each page of the document as to whose handwriting was on each one.

Mr. McClennen: Are we in accord that these three——

The Court: Those were offered by Rowell?

Mr. Wright: Yes, that is right, and the form in which they went in, evidently after they were put in evidence the clip which held the three pages and release schedule together, was torn off. They should be kept together.

Mr. McClennen: Then we now understand these three I have just described, and the release schedule, are part of that exhibit?

Mr. Wright: That is right.

By Mr. McClennen:

Q. Are these exhibits the very papers that Mr. Rowell handed you, or copies of the ones that he handed you?

A. No, sir, those are the very papers he handed me.

[fol. 3054] Q. And was the release schedule hitched to it at that time?

A. Just like they are now.

Q. In whose handwriting, on the second sheet of these, is the black pencil "Ahead of Empire Theatre"?

A. That is in Mr. Rowell's handwriting.

Q. Did he put it on in the course of the interview, or was it on before he arrived?

A. Well, I don't think it was on when he arrived, because when he arrived he had copies. He had left the copy in Buffalo, so he told me, and he brought these copies and gave them to me.

Q. These, by the way, are apparently carbon copies of something?

A. Yes, sir.

Q. Then when he handed them to you first at that interview was the black pencil "650 Bingo from gross" on it?

A. No, sir.

Q. Was the black pencil "50-50 over $1200" on it?

A. No, that was put on later.

Q. This paper on which are the words "Ahead of Empire Theatre" has on it five pictures and those were of the 1941-42 Fox season, were they not?

A. Well, let me see that. This group of pictures, I think, was the first block of five under the consent decree.

Q. And he handed you that with his signature attached to [fol. 3055] that sheet?

A. They were all together and he had his signature on, I think, on all of them. That is his signature there (indicating).

Q. He had his signature on each one of the three separately?

A. I don't know.

Q. Did he not?

A. Let's see, yes, his signature is on all three copies of these.

Q. And that signature was on there at the time he handed them to you?

A. Yes, sir.

Q. Now, in that first interview, October 3, 1941, did you have any talk with Mr. Rowell about Bingo?

A. I did.

Q. And what did you say to him about Bingo?

A. I told him that we were running Bingo and that I—that it would be a necessary part of the contract to put a stipulation in about Bingo.

Q. Was that because some of these pictures were percentage pictures?

A. Yes, sir.

Q. And you were in substance telling him that if you ran percentage pictures on nights when you were having Bingo, that there must be some allowance against the gross for [fol. 3056] the cost of the Bingo operation?

A. That is correct.

Q. And was the $650 which you suggested——

A. Well, can I see that, please?

(Document shown to witness.)

A. (Continuing): I think the $650 is the actual amount of cash we gave away.

Q. You mean you had given away on the preceding Bingo night?

A. Yes, sir.

Q. And did that result in some talk with Mr. Rowell as to a method of meeting your suggestion about the Bingo expense?

A. It did.

Q. And was that conversation that the receipts on the Bingo nights at the box office, in excess of the ordinary admission prices, for that number of admissions, should be excluded from the count when reckoning the percentage?

A. We had a discussion about that, yes, sir.

Q. And was that in the rough the substance of the discussion?

A. Yes, sir.

Q. The other sheet of that date, signed by Mr. Rowell, and on which the exhibit number 818, itself, is written, were for pictures of earlier season's releases, brought back for return plays, because they were special pictures that it was [fol. 3057] thought worth while to exhibit in another season?

A. They were old pictures.

Q. Well, now, it wasn't just because they were old pictures that he had on there "Return engagement specials," was it?

A. That was the designation he placed on it, and we laughed about it at the time.

Q. That is, then, he did designate these as "Return engagement specials" in his conversation with you?

A. Yes, sir.

Q. And he used it in the conversation to point out that he was offering them as distinguishable from an ordinary, old picture?

A. Well, he offered all old pictures. Some of them he designated as "Return engagement specials," with two columns of pictures. Some had no box-office value—right on that page—some had no box-office value, and some I could not even tell you the names of.

Q. You thoroughly understood why he designated these as "Return engagement specials," did you not?

A. That is the title he put on the pictures.

Q. He put it on there, you believed, at the time as a selling feature to distinguish them from the ordinary run of old pictures?

A. Well, the mere fact——

[fol. 3058] Q. Not the mere fact, but did you not so understand?

A. I had a discussion with Mr. Rowell about that.

Q. Now, I asked you if you did not understand that.

The Court: Did the word "special" have any significance?

The Witness: It did not have any significance to me.

Q. You understood that it was used by Mr. Rowell in order to present something significant as a part of his selling discussion?

A. He tried to give me the impression that it was—in other words, he made that special term there as a sales possibility. I did not agree with him, that those return engagement specials were so-called return engagement specials. They were all old pictures.

Q. I was asking you what he presented them to you as. He presented them to you as special pictures, did he not?

The Court: He has answered that. He said he did present them to him.

The Witness: Yes, sir, that is what he presented and that is what he titled them, as "Return engagement specials," and we laughed about it, and I said "Well, every day I hear a new one," or some such words like that, that did not mean anything. These were a group of pictures, your Honor, that were possibly seven or eight or ten years old, five years [fol. 3059] old. They may have had some box-office value, but sometimes an independent exchange will pick up an old picture and advertise it super colossal. That does not—by the very fact that they put that title on it that does not mean that it is what it says it is.

Q. Look at your list of pictures and name me the ones by name that were not in their day conspicuous attractions?

Mr. Wright: If the Court please, there hasn't been any testimony to the effect that those pictures were not conspicuous attractions.

The Court: I don't know the significance of this line of inquiry, except as it is—it would have some bearing, of course, on the type of product he had, that is true.

Mr. McClennen: The purpose which I have in mind, if the testimony bears it out, is that this was an offer legitimate in its character, at proper prices, for conspicuous old pictures that were to come back on return engagement. That is the purpose.

The Court: You mean more value than others as attractions?

Mr. McClennen: Yes.

Mr. Wright: I don't think there is any question about [fol. 3060] that. As I recall his direct testimony, he said over in the left-hand column were pictures he had referred to as proven box-office value, and in the right-hand column it referred to other old pictures at a lower price.

The Court: The point of inquiry is because he says he does not attach any significance to the use of the word "Special."

Mr. Wright: What possible difference could that make, what significance he attached to it? It is perfectly clear what was offered there, certain named pictures in the left-hand column which were evidently thought to have proven box-office value, and at the right-hand column were unnamed old pictures at a lower price.

The Court: Those that have a proven value may have a difference among themselves.

Mr. Wright: That is possible.

Mr. McClennen: In view of Mr. Wright's statement, I don't know that I need press that extensive inquiry any further.

The Court: Very well.

By Mr. McClennen:

[fol. 3061] Q. These pictures on this first page entitled "Return engagement specials" had played in Syracuse long enough ago so that the earlier runs were out of the way, and these would be available for your immediate use?

A. They played many years ago, most of them.

Q. So that they were then available?

A. They could be available immediately.

Q. Then we go to the third page, which has on it in black pencil "No run." Was that on when it was given to you?

A. That is Mr. Rowell's writing, but it was put on before he took it back. He gave it to me first, it was not on there, and after we had a discussion and he clarified it further by putting "No run" on there. That "No run" meant the run after the theatres in Syracuse had finished playing them. It was not a first-run, not a second-run or third-run or subsequent-run. It was no run, but the point is that the pictures were of 1940-1941 season, and they had practically all played in Syracuse already at the time he offered them to me. There was no restriction as to——

Q. At that time, toward the end of the calendar year 1941 there would hardly be any of the 1941-1942 product available for play if you were to play after the first-run houses or the second-houses and the neighborhood run houses, is that correct?

[fol. 3062] A. That is not correct, sir. I am sorry to disagree with you, but here is dates that are put on there, and these are after the subsequent-run houses, and that is the way he sold me these pictures, and there is where I strenuously objected, that he made a distinction to sell me pictures after the smallest theatres got through with them. There is December 10th. These pictures, most of them, played in August and September, as I recall, and they had worked through their protection and clearance period and had been through the second, and, if they had a third, a third-run, and became available to the little neighborhood houses, and then he put on here the date we could play them.

Mr. Wright: Which page was the witness talking about?

Mr. McClennen: He was talking about the second page of the exhibit.

Mr. Wright: That is the block of five?

Mr. McClennen: That is the block of five of the current season's product.

The Witness: That was the current season's product.

By Mr. McClennen:

Q. That is, he told you that "Charlie's Aunt" would be available for you on October 29th, 1941?

A. Yes, sir.

Q. And "Private Nurse" November 20, 1941?

[fol. 3063] A. Yes, sir.

Q. And "Wild Geese Calling" on December 10, 1941?

A. Yes, sir.

Q. And "Sun Valley Serenade" on December 10, 1941?

A. Yes, sir.

Q. And "Dressed to Kill"—did he you give any availability date on that?

A. Well, he made this restriction.

Q. Did that apply to both of them?

A. That applied to both. They were to be played on the same bill. These two pictures, they had to be played on the same bill.

Q. On that sheet, the second sheet, Exhibit 818, there is written in Mr. Rowell's handwriting "Saturday, Sunday, Monday and Tuesday"?

A. Yes, sir.

Q. Were those the days of the week that those pictures were to play if you took them?

A. If we were allowed to play the pictures at all, it was necessary to play them on Saturday, Sunday, Monday and Tuesday.

Q. What was your plan at that time for your change of feature in the week? How long were you going to play the first section of the week and what days, and how long the second section of the week?

]fol. 3064] A. Well, our playing arrangement was, Saturday, Sunday, Monday and Tuesday, and I would call that the week-end playing time, and the forepart of the week, the playing arrangement was Wednesday, Thursday and Friday. We may have deviated from that, but——

Q. Did you say anything to him as to the nights on which you proposed to play Bingo?

A. Yes, sir.

Q. What nights?

A. I think at that time we were playing Bingo on Thursday nights.

Q. Directing your attention to another matter, was the lease of the Strand, Exhibit 812, referred to at pages 2745 and 2793, signed on the date that it bears? (Handing document to witness.)

A. I don't think I would be competent to swear—say that it was signed on the date it bears. I did not sign it.

Q. Was it signed in your presence?

A. It may have been.

Q. Have you any recollection one way or the other?

A. My recollection is faint, that it was, but there were so many conversations that went on that day. We had a Board of Directors' meeting, and I think this was signed in the presence of Mr. Hornbeck, and I had to go somewhere else, and I called Governor Schoenick and talked with him [fol. 3065] and asked him to have Mr. Hornbeck come over to execute this agreement, because I was not an officer of the corporation, and I did not think it was necessary for me to be there, anyhow, but it may have been signed in my presence.

Q. That is, the directors' meeting was the directors' meeting of the Syracuse Community Theatre Corporation?

A. Pardon?

Q. The directors' meeting was of the directors of the Syracuse Community Theatre Corporation?

A. The directors' meeting, yes, sir.

Q: And that meeting was held on September 11th, 1941?

A. I assume so.

Q. You spoke of a directors' meeting on September 11th, 1941, and I want to find out whether it was a directors' meeting of that corporation?

A. I think I have the—that is right. Here are the minutes of the corporation on September 11th, 1941.

Q. That was a directors' meeting at which it was voted to make the lease?

A. Well, I think the formal negotiations were completed after that directors' meeting or possibly before, but we certainly had agreed upon the terms—we had a complete meeting of the mind on the various terms as to the lease prior to this directors' meeting. I know we had a number [fol. 3066] of discussions about it.

Q. At the moment, regardless of the meeting of the minds, the directors' meeting of the corporation authorizing this lease was held on the 11th of September, 1941, was it not?

A. Yes, sir, here is a copy of the minutes.

Q. All I have asked you is that.

A. That is right, yes, sir.

Q. I want to direct your attention to Canandaigua. The Jenkins lot which you have mentioned was a lot of a deceased Jenkins, his estate?

A. Yes, sir.

Q. And the persons which you assumed to be the ones interested in the estate were William Jenkins, the son?

A. Yes, sir.

Q. And Mrs. Himes, the daughter?

A. Mrs. Himes.

Q. How is that spelled?

A. H-i-m-e-s.

Q. Mrs. Himes' husband was a lawyer?

A. Yes, sir.

Q. Such negotiations as you had, if any, were with the son Jenkins and the lawyer Himes?

A. Yes, sir.

[fol. 3067] Q. Were they had with the two together?

A. They were had, well, I talked with Mr. Jenkins down at that chemical plant; then I later talked to Mr. Jenkins and Mr. Himes in the chemical plant and I talked to Mr. Himes in his office on the main street, just a little up from the Jenkins' Department Store. I talked to him alone one time.

Q. This Mr. Jenkins was a man of apparently what age, would you say?

A. I would judge he was 35 years old.

Q. And Mr. Himes was how old a man, apparently?

A. Probably 40 years old.

Q. Did you have any dealings with Mrs. Himes?

A. On one occasion Mr. Lauer and I went to Mr. Himes' home and Mrs. Himes sat down and Lauer and I and Mr. Himes and Mrs. Himes had a discussion in his home for about two hours.

Q. Was Mr. Jenkins, the son, present at that time?

A. No, sir, he was not.

Q. I direct your attention to Auburn; on January 1st, 1939, the best theatre in town was the Auburn?

A. Yes, sir.

Q. The second best was the Jefferson?

A. Well, I don't want you to put me in a position to argue about it. My feeling was that the Capitol was equally [fol. 3068] as good as the Jefferson.

Q. Well, with the exception of the Capitol, the next best to the Auburn was the Jefferson?

A. Yes, sir.

Q. And with the same exception, the next best was the Palace?

A. Yes, sir.

Q. And the next best was the Strand?

A. No, sir, the Strand was—in 1939?

Q. January 1, 1949.

A. The Strand, I think, was dismantled in 1939.

Q. By January 1, 1939, it had been dismantled?

A. Well, the building hadn't been torn down, but I understand that it was used for a furniture store-house, and it certainly could not be used as a theatre.

Q. Now, tell me just the respects in which in your judgment as a theatre operator, the Capitol was superior to the Jefferson?

A. I never suggested that the Capitol was superior to the Jefferson, but I believe that in comforts and appointments and general desirability that the theatre certainly — equal standing with the Jefferson Theatre.

Q. Was the Jefferson Theatre on the street floor or above?

A. The Jefferson Theatre was on the street floor.

Q. Did it have a gallery?

[fol. 3069] A. It had a gallery, yes, sir.

Q. And about how many seats did it have?

A. To the best of my recollection it had about 1,000 seats.

Q. And was the Capitol on the street floor?

A. No, sir.

Q. What floor was it on?

A. It was an upstairs—it was on the second floor.

Q. How was it reached?

A. Well you walk up some steps.

Q. And was there a full store area under the theatre?

A. No, not a full store area.

Q. There were stores under the main body of the auditorium of the theatre?

A. Yes, sir.

Q. And the stores completed the street front except for the entrance to the theatre?

A. Yes, sir.

Q. Is this photograph, which I show you, fairly representative of the Capitol on, say, January 1, 1939? I don't mean that it was taken that day, but does it fairly represent the condition then?

A. Well, it might be, but I don't know when we put the glass front on there definitely, but that might be that was fairly representative, I would say, in 1939. I think we put the glass front on the stores, and theatre entrance [fol. 3070] later..

Mr. McClennen: I offer this photograph.

(Photograph handed to and inspected by Mr. Wright.)

Mr. Wright: No objection.

(Thereupon photograph referred to was marked as Defendants' Exhibit D-122 in evidence.)

Q. At page 2759, I read you the transcript of your testimony, as follows:

> "Q. After the 1933-34 season, did you have any regular first-run contract with any of the major distributors?
> A. I had United Artists, about 30 pictures.
> Q. What season was that?
> A. That was the 1934-35 season, and I had about, oh, 14 to 16 pictures from R.K.O., and I had roughly a few pictures from Columbia."

Is that correct?

A. I think so.

Q. When you say "a few pictures from Columbia", you are referring to the 1934-35 season?

A. Yes, sir.

Q. And how many did you mean as a few pictures?

A. Two or three or possibly four.

[fol. 3071] Q. That is, for the season 1934-35 you think you had in all four pictures of Columbia?

A. That is the way I figures it, yes, sir.

(Thereupon film contract with Columbia, referred to, was marked as Defendants' Exhibit D-123 for identification.)

Q. I show you Exhibit D-123 for identification; is that your signature?

A. That is my signature, yes, sir.

Mr. McClennen: I offer this in evidence.

Mr. Wright: Is that one of those Mr. Rose submitted?

Mr. McClennen: That one Mr. Rose submitted.

Mr. Wright: No objection.

(Thereupon Defendants' Exhibit D-123 for identification was received in evidence.)

Q. Defendants' Exhibit 123 in evidence is signed by Mr. Wallance, dated February 28th, 1935, approved March 4, 1935, with Columbia Pictures Corporation for, if we can judge by the numbers in the margin, 47 pictures.

The Court: How many?

Mr. McClennen: 47.

The Court: Is that supposed to be for what period of time?

Mr. McClennen: That is of the 1934-35 season.

[fol. 3072] The Court: When was it signed?

Mr. McClennen: Signed February 28th, 1935.

The Court: The 1934-35 season would be half over, then? The season would be half over.

Mr. McClennen: The season would be, yes, nearly half over. Well, actually, half over, that is, the 1934-35 season ran from September 1, 1934, to August 31, 1935.

Q. Do you remember how many of these something like 47 pictures, Columbia pictures of the season of 1934-35 you played?

A. I have this tabulated in my records as 1935-36, because my tabulation starts as of January 1st, and I didn't play all the pictures on this contract. This was a contract that arose after a hearing before the N.R.A.

Mr. McClennen: I ask to have that stricken out, if your Honor please.

The Court: Yes.

Q. My question was how many of the pictures on that contract you played?

A. I think out of this contract we played in the neighborhood of 35 pictures.

(Thereupon Columbia contract, referred to was marked as Defendants' D-124 for identification.)

[fol. 3073] Q. I show you D-124 for identification. Is that signed by you?

A. Yes, sir.

Mr. McClennen: I offer it.

Mr. Wright: We have no objection. Why not put all of the Columbia contracts in if you want to?

Mr. McClennen: I have grown old in the idea that I like to put in my evidence in the way I want to, and not in the way my adversary wants.

The Court: I know, but we might as well put in some of these things to save time. We should have regard for the time on the same subject.

Mr. McClennen: If your Honor please, I have no means of knowing what my adversary wants me to put in. I am putting these in just as rapidly as I can, and these are the only ones as of this date.

The Court: I am speaking of the time spent on the examination.

(Thereupon Defendants' Exhibit D-124 for identification was received in evidence.)

Q. Exhibit D-124 in evidence is dated February 28th, 1935, approved March 4, 1935, for Columbia Pictures of the 1935-36 season and covering, am I right, the entire 1935-36 [fol. 3074] season's product?

Mr. Wright: I assume it speaks for itself. He has already testified on examination that he had first run on Columbia for several seasons including 1934-35 and 1935-36.

Mr. McClennen: If it is conceded this covers the whole season, I need not disturb you with answering the question.

Q. How many were there of the 1935-36, were there of the Columbia season's product, how many?

A. There were about 40, I don't know just how many that balance includes, but, according to my records, it was just 40 pictures.

The Court: That was——

The Witness: That was the year following this.

Mr. McClennen: The product of the season following.

The Court: That was 1935, including March 4, 1935 where the other contract was made in January, 1935 and had 47 on it. It seems to be an overlapping there.

The Witness: That is right, one contract was forced away back to the end of the season and then we picked the other contract up for this other season.

The Court: The first exhibit here shows a contract made [fol. 3075] in 1935. This contract is approved March 4. One is for 47 pictures and the other for a larger number, within three months of one another.

Mr. Wright: One is the 1934-35 season and the other is the 1935-36.

Mr. McClennen: If your Honor please, not infrequently——

The Court: The season started in September.

Mr. McClennen: The pictures were those released from September 1, 1934 and between the two contracts the pictures released from September 1, 1934 to August 31, 1936——

The Court: There was no release in September, 1934, the first release was in January, 1935, according to the contract.

Mr. McClennen: If your Honor please, would you permit me to refer to testimony that has appeared at other times. The distributors release for a season, release, let us say, for a season, a group of pictures for the period from January 1, 1934—from September 1, 1934, if you please, to August 31, 1935, and in this case 40 or 50 or whatever may be the number of pictures, so released. The release season has no [fol. 3076] relation whatever to the time when the particular distributor get the pictures of that season. He gets them in the aggregate. He may get them at any time in the release season, but they are the group of pictures of that——

The Court: I understand all that, but apparently on this record you have a release of 47 pictures in January, 1935 and another release, you say, for the season commencing the following September for 1935-36, some eighty odd pictures in the year past.

Mr. McClennen: No, put in this way in which I have stated it, it has evidently misled your Honor. This Exhibit D-124, dated February 28th, 1935—I mean Exhibit 123, dated February 28th, 1935, is for some 47 pictures, the release of which by this distributor began on September 1, 1934.

The Court: Where does it show that?

Mr. McClennen: It shows that it is the schedule for the 1934-1935 season. That is printed on the contract.

The Court: A contract made in February, not made until January or February?

Mr. McClennen: Yes, your Honor, frequently the contract [fol. 3077] is made long after the beginning of the release season to cover the releases of that season.

The Court: I supposed they would date it ahead, not back. I supposed the contract would be dated some time in September for the following year. You are probably right about that, only it is not established.

Mr. McClennen: Well, it is the fact that the release season, as that is used, has reference to the time when that distributor releases those pictures for that season, not sending them to the particular contractor who may have made his contract before or after.

The Court: Where is the contract of 1934-35?

Mr. McClennen: This one, Exhibit 123.

The Court: They were releasing pictures of that year long before the contract was signed.

Mr. McClennen: Yes, and that is a very common thing with many exhibitors.

The Court: I didn't so understand. I understand that the release date may be a good ways from the contract ordinarily, but the contract, according to them precedes any release.

Mr. McClennen: I will urge your Honor that the evidence will show that frequently the contracts do not come,—some [fol. 3078] are made, some are negotiated until well along in the release season and after the beginning of the season.

The Court: That might answer the problem.

By Mr. McClennen:

Q. By these two contracts, Exhibits 123 and 124, you covered some 90 pictures of the release seasons 1934-35 and 1935-36, did you not?

Mr. Wright: If the Court please, the contracts speak for themselves as to how many pictures they cover. It is stated there.

The Court: I think that is all clear, if your statement of procedure is correct; that appears in the contract, does it not, the number released anyway, although you said some were released and not played or shown.

Mr. McClennen: I had supposed the answer would be right away "Yes," because there is no question about this.

The Witness: There is a question. I don't want to always disagree with you, but I know a lot of these pictures where it says "Photo Play to be designated" were never made. Some of these pictures listed under this contract were played by Schine.

[fol. 3079] By the Court:

Q. You had the right to those?

A. No, some of those pictures, there was a dispute at the N.R.A.,—pardon me for bringing that up again, but there was a dispute at the N.R.A.

Q. Tell how many were released.

A. I know in this year we had them all and in this year, they didn't make the full quota of their pictures, and out of this I doubt if there was over 35 pictures made that one year.

By Mr. McClennen:

Q. That one year being 1934-35?

A. From March 4th, 1935.

Q. No, no. For the release season.

A. No, for 1934; this was the release season 1934-35 and this was the release season 1935-36.

Q. Referring to Exhibits 123 and 124, respectively.

A. Yes, sir.

[fol. 3080] Mr. McClennen: I ask to have these marked for identification, three contracts.

(Three contracts dated June 17, 1937, signed by witness Wallace with Columbia Pictures Corporation for seasons 1937-1938, 1938-1939, 1939-1940, marked Defendants' Exhibits D-125, D-126 and D-127 for identification.)

By Mr. McClennen:

Q. I show you Defendants' Exhibits for identification Nos. D-125, D-126 and D-127 all bearing date June 17, 1937. Are they signed by you?

A. That is my signature; that is mine; those are all three signed by me, that is right.

Mr. McClennen: I offer those in evidence.

Mr. Wright: No objection.

(Three contracts dated June 17, 1937, signed by witness Wallace with Columbia Pictures Corporation for seasons 1937-1938, 1938-1939, 1939-1940, previously marked as Defendants' Exhibits D-125, D-126 and D-127 for identification, were received in evidence.)

Mr. McClennen: Exhibits D-125, D-126 and D-127 are dated June 17, 1937, approved by Columbia Pictures Corporation June 24, 1937. D-125 covers the product of the release season 1937-1938. D-126 covers the product of the [fol. 3081] release season 1938-1939. D-127 covers the product for the season 1939-1940.

The Court: How about 1936-1937?

Mr. McClennen: They are not in this group. If you will get those?

By Mr. McClennen:

Q. When did you negotiate that franchise?

Mr. McClennen: I will offer in evidence the one about which your Honor inquired, namely, the contract of the Auburn Capitol Theatre Corporation by Mr. Wallace, dated

April 15, 1936, approved April 21, 1936, for the product of the Columbia release season 1936-1937.

Mr. Wright: No objection.

(Contract between Capitol Theatre Corporation and Columbia dated April 15, 1936, for 1936-1937 season received in evidence and marked Defendants' Exhibit D-128.)

By Mr. McClennen:

Q. I show you papers not yet marked——

A. Pardon me. What was the question you were asking me?

Mr. McClennen: I have not asked any yet.

(Question read.)

By Mr. McClennen:

Q. I beg your pardon. The question was when you negotiated that franchise, Exhibits D-125, D-126 and D-127?

[fol. 3082] A. Sometime prior to June 24th, or around the spring of 1937.

The Court: That covered the four years?

The Witness: No, sir; that covered three years. That was a three-year franchise.

Mr. McClennen: The other contract, your Honor, spoke of was on a separate date.

The Court: Oh, all right. You had the Columbia from 1934 through to 1940 or 1941?

The Witness: I had the Columbia product continuously from February, 1935, right up to the present time.

By Mr. McClennen:

Q. To abbreviate it, the contract for the 1940-1941 and 1941-1942 franchise was made on December 17, 1940, approved December 23, 1940. Will you look at the papers and see if that is correct?

A. Well, sir, these two contracts were made on the date you specified. One was for the season 1940-1941 and the other is for season 1942, but during that intervening time there was a reformation of the contract, and that is this page here.

Mr. McClennen: I will ask to have these papers marked as one exhibit, one being for 1940-1941 season, the other for [fol. 3083] the 1941-1942 season, and two others being what has been described by the witness as "reformation" and is recited as an amendment to the contracts, both amendments being dated the second of July, 1941.

Mr. Wright: No objection. I just want to see them.

(Contract for 1940-1941 and 1941-1942 with reformation between Capitol Theatre Corporation and Columbia received in evidence and marked Defendants' Exhibit No. D-129.)

By Mr. McClennen:

Q. Referring to these exhibits of February 28, 1935, and April 15, 1936, was the salesman Murray Briskin of Columbia there named the salesman for the Auburn District at that time?

A. Well, I could not say whether he was or was not, but he called on me. It may have been the Rochester District or the Buffalo District, but he called on me. At the time most of my business, although, was done with Mr. Miller.

Q. In December, 1940, was Mr. Marcus Columbia salesman for the Auburn District?

A. Yes, sir.

Q. In 1936 who was the RKO salesman for the Auburn District?

[fol. 3084] A. I think it was Charles Boasberg. It may have been Jimmie Sper. My recollection is that it was Mr. Boasberg.

Q. Do you remember from then on any salesmen for the Auburn District from RKO except those you have mentioned?

A. No, I don't.

Q. Can you produce any letter to RKO asking for second run?

A. I don't know. I can look for it.

Q. Do you know of having any copy of any such?

A. Well, I could not definitely state. There is a mass of almost ten thousand letters down there. They were all eliminated.

Q. What I asked you is whether you have any recollection of a copy of any letter to RKO asking second run?

A. I believe if——

Q. Memory is what I have asked you, present memory. Have you any present memory?

A. No, no, no present memory.

Q. Is the same true of the other distributors?

A. No, sir. My memory is very clear that I asked Fox for second run. I wrote them.

Q. You have a memory of seeing any copy of such a letter?

A. Yes, sir.

Q. When you began the operation of the Capital in Auburn, which I think you said was in 1931—

A. 1931, yes, sir.

[fol. 3085] Q. The other theatres, that is, the Jefferson, Palace and Strand were being operated by Fox-Metropolitan-Skouras?

A. By Fox as I knew it.

Q. By what?

A. Fox.

Q. Fox-Metropolitan was it known as?

A. No, I don't think so. I always had the impression that it was the Central New York Theatre Operating Company.

Q. Wasn't that Central New York Theatre Operating Company Fox-Metropolitan?

A. Fox-Metropolitan would not be the Central New York Theatre Operating Company.

Q. You mean that the name of the operating company was the Central Theatre Operating Company?

A. Central New York Theatre Operating Company, but I just knew them as the name of Fox.

Q. Well then, when you began, the Central Theatre Operating company with Skouras, the human being, was operating those theatres, that is, the Jefferson, the Palace and the Strand?

A. I can't be certain as to that.

Q. Those theatres had a product of Paramount, Fox, Metro, RKO, Warner, and Universal?

A. In 1931? You mean when I started in 1931?

Q. Yes.

[fol. 3086] A. They had what product?

Q. Paramount, Fox, Metro, RKO Warner and Universal.

A. I don't believe they were running Warner in the town at the time. They may have been, but I don't think at the time I came to town they had Warner product. In fact, as I recollect, there was an interval of possibly five or six months when there were no Warner pictures shown in the town.

Q. In 1932 those theatres had Paramount, Fox, Metro, RKO-Warner and Universal?

A. May I go back to the other question again, please?

Q. While we are at this one, won't you tell me the answer to this?

A. Yes, sir, what pictures did they have?

Q. I am asking you if the company run by Mr. Skouras there had in 1932 the Paramount, Fox, Metro, RKO, Warner and Universal product?

A. No, we had RKO. May I ask you to——

Q. In 1932 you had RKO?

A. Yes, sir.

Q. Have you got any contract indicative of that?

A. I think there is a contract here.

Q. Have you any contract earlier in date than 1.

Mr. Wright: I think, Mr. McClennen, you have the RKO [fol. 3087] contract that was offered in evidence on the direct examination.

Mr. McClennen: But there wasn't any RKO contract with the witness earlier in date than 1933, as I recall it, and I am asking him if there was an earlier one.

Mr. Wright: Yes, but I think in order to understand what you are talking about, we might have that contract here, the one that was offered in evidence, which as I understand it was given to you.

Mr. McClennen: No, it was not given to me.

The Court: Let the witness state first whether you recall any contract prior to 1933 for RKO.

The Witness: I had a contract with RKO-Pathe, 1931 and 1932. I had a contract with RKO after the dissolution of RKO-Pathe arrangement, with the RKO, 1932-1933 season's product. In 1931-1932 I had the full line and in 1932-1933 I had, your Honor—I should say roughly most of the line, but not all of it, but I had most of the top pictures and a split on the cheaper pictures.

Q. I call your attention to Exhibit 813 and ask you if that is the first substantial contract that you had for RKO product at the Capitol?

[fol. 3088] A. I had the contract for the year previous for the full line, including shorts and all.

Q. And then did Mr. Skouras have the contract in the first instance for the 1932-1933 product?

A. I don't understand what you mean by "in the first instance." I had the contract for the 1932-1933 product with the exception of this split, and some of the pictures here, but part of this split I played. All of these pictures I played and I got most of these pictures (referring to document).

Q. You are referring to these words in Exhibit 815 which say "The following fifteen productions were sold to Skouras theatres for first run." That is what I am referring to.

A. Yes, sir.

Q. He had those fifteen pictures sold to him before you made your contract of November 5, 1932, did he not?

A. No, I think as far as I can remember, it was a simultaneous or concurrent arrangement, because we arranged this split, and I think there was some question—pardon me—there was some question of how we were going to arrange the split, and somebody there, I think possibly it was Harry Dixon—it may have been somebody from the Fox office—suggested 1, 3, 5 and 2, 4, 6 arrangement, and whoever split them up was to take the pick, but we were to get a fairly [fol. 3089] equal share. I mean, as a proportionate share, a fair share of a split both ways.

Q. Is there anything in your recollection that is not in accord with this, that Skouras was to have fifteen pictures and you were to have half of the remainder?

A. I was to have all of these. You see, I was sold all of these.

Q. By "all of these" you are pointing to the——

A. These various pictures, and I was sold half after these fifteen. Am I making myself—I mean, I was sold all these, and I was sold half of the remainder on that year's releases after Skouras had the fifteen. These were mine. These were Skouras' and we were both to split half after these fifteen.

Q. Let me read you this language and see if there is anything to the contrary in your recollection of what actually happened. It reads "The following fifteen productions were sold to Skouras theatre for first run." That is followed by fifteen titles by name?

A. Yes, sir.

Q. Then it continues: "The Auburn Capitol Theatre Corporation also agrees to use one-half of the remaining 1932-1933 features released by the distributor at an average rental of $167.30 each, excluding Tom Keene Western." Wasn't that the final arrangement that was made?

[fol. 3090] A. That is the final arrangement. First I got these and got half of what was left, after Skouras got these.

The Court: That reads he has first run of the first fifteen pictures?

The Witness: We both had a first run.

The Court: Not by that language.

The Witness: We had a split of the product.

The Court: We have to look at the contract and see what it says.

The Witness: That is why I contend those contracts were made concurrently.

The Court: The language read seems to indicate just the contrary, that the other company was to have the first run of fifteen named pictures.

The Witness: And we had the first run of those on the other side of the page.

The Court: The following fifteen productions were sold to Skouras as first run. That is plain, isn't it, and the names of those pictures?

Mr. Wright: The first run pictures that are named here in the left-hand column——

The Court: It says "following"—I am speaking of these fifteen. That is all I am speaking of.

[fol. 3091] Mr. Wright: That is right, fifteen were sold first run to Skouras; these that are listed were sold first run to him. The balance were to be split.

The Court: I am speaking of the fifteen, that is all.

Mr. Wright: If the Court please, a split deal does not mean that the others are played ahead. It means these pictures RKO played first run. They are the fifteen.

The Court: Exactly.

Mr. Wright: If there were fifteen other—there were thirteen named pictures that he played first run.

The Court: I am not thinking about those.

Mr. Wright: That is an approximate equal split. Then beyond those pictures there were more than twenty-eight pictures released, and those other releases, those were split equally between him and Skouras, so it was a split first run deal.

The Court: I am thinking about the first that was read.

By Mr. McClennen:

Q. Do you remember how many RKO pictures there were of that release season in the aggregate?

[fol. 3092] A. I think there were somewhere around 40 or 42, perhaps.

Q. Something like 42?

A. 40 or 42. I did not get as many pictures at $167.50 as I expected.

Q. Of the 42 or thereabouts or 43, Skouras got 15 plus half the balance of 14 and you got 14. That is the fact, is it not?

A. Oh, no, no.

Q. How many pictures of the 42—that season how many pictures of the 42 or so pictures did you get?

The Court: First run?

Q. Of first run, that you actually got?

A. Can I see the contract, please? I got roughly between 28—between 25 and 28 pictures. There is 14 in that column.

Q. The 14 in that column that you have pointed at on the left are the 14 referred to by number as the half of the balance that you were to get?

A. I beg to differ with you, sir. Look, the distinction is here and it is very plain. The price here is $167.50 for this group and the price here is $503.50. Here is the price of these 14, and I was to get half of the remainder at $157.50. I don't want to argue about this thing.

The Court: Don't argue with him. Just answer the question and we will save time.

The Witness: I am just trying to make myself clear.

[fol. 3093] Q. And the contract approved November 5th, 1932, Exhibit 813, is the last contract that you had with R. K. O. for a large first-run lot of pictures for the Capitol Theatre, Auburn?

A. This contract of November 1932, which was——

The Court: Was that the last contract for a large number?

The Witness: Is the last contract that I had for a regular run of pictures. I had a contract for a large number of pictures——

The Court: Just answer the question and we will get along better. State whether this was a last large contract you had with R.K.O. for pictures?

The Witness: Yes, sir.

Mr. Wright: He so stated on his direct-examination.

Mr. McClennen: There are a number of things he stated on his direct-examination I desire to test without being interrupted by comments from Mr. Wright.

The Court: Let us proceed.

Q. Now, those pictures covered by that contract, Exhibit 813, were what season, 1932-33, were they not?

A. Yes, sir.

Q. And you did not play all of those pictures, did you?

[fol. 3094] A. I think we did.

Q. You did not play them in the season, did you?

A. Well, we may have played a few; do you mean by "in the season" or after, if they happened to be released in the summer I certainly did not play them, I postponed them until the fall again.

Q. Now, on October 11th, 1933, were there 14 of the pictures which you had bought under the contract of November, 1932, approved that date, which had not been played?

A. There may have been.

Q. Now, for the next season, the Jefferson and Palace had the R. K. O. product, did they not?

A. Yes, sir.

Q. When I was asking you about the product which Skouris had in the earlier period, you spoke of, R. K. O. and this contract that has just been referred to, Skouris did have Paramount, Fox, Metro and Universal, did he not?

A. Yes, sir.

Q. Now, when this negotiation was going on, November, 1932, had not Skouris already played 15 pictures of the 1932-33 R. K. O. release season under a prior contract?

A. I didn't quite understand that, I didn't get the grasp of that. I will ask you to read that again.

The Court: You don't know whether he had or hadn't,

[fol. 3095] whether he had played 15 of these pictures.

The Witness: Skouris.

The Court: Under a prior contract?

The Witness: He might have, but in 1931-32 we had the R. K. O.-Pathe contract.

Q. This is the 1932-33 season this contract relates to, isn't it?

A. This was the following year.

Q. And the 15 referred to were all 1932-33?

A. Do you mean these pictures, I played this "Hold in Jail", that particular picture, that was supposed to go to Skouris and he never picked it up.

Q. I am not speaking of the playing; you knew when this Exhibit 813 was made by you that Skouris had theretofore been sold 15 of that season's product, whether they had been played or not?

A. Yes, that was the purpose of putting that on the contract. I knew that.

Q. Now, except this R. K. O. transaction which you have described, the only other full-line product that you had had at the Capitol, Auburn, up to the beginning of 1933 was Columbia and United Artists, was it not?

A. Up to the beginning of 1933?

Q. Yes.

A. I had R. K. O.-Pathe; then I had R.K.O. in 1932, [fol. 3096] Columbia 1932,—that is 1932-33. Then in——

Q. Now, if you would observe the question, I said with the exception of the R.K.O. transactions which have just been described, the only full-line product that you had up to the beginning of 1933 was Columbia and the United Artists, wasn't it?

A. Columbia and United Artists and R. K. O.,—Columbia, United Artists and R. K. O.-Pathe.

Q. At the time when you made your first United Artists contract one of the employees of the United Artists had a financial interest in the Capitol Theatre at Auburn?

A. That is correct, yes.

Q. And one of the employees of Columbia had a financial interest in that theatre?

A. Yes, sir.

Q. And by 1933 they no longer had a financial interest in that theatre, is that correct?

A. That is correct.

Q. You were aware, were you not, in the fall of 1933, that Paramount had not been able to negotiate a contract for the 1933-34 product with the Shea-Schine operation?

A. That is correct.

Q. And that because they could not make such a sale, the Paramount product for that season 1933-34, was not in the way of being exhibited in Auburn unless it was sold [fol. 3097] to the Capitol, that is true, is it not?

A. Will you repeat that, please? What do you mean by "Was not in the way"?

Q. I mean there was no other outlet except the Capitol in Auburn that year for it?

A. That is correct.

Q. And it appears by Exhibit 814 that your contract for the Paramount product of that season for the Capitol in Auburn is dated February 8th, 1934, and that is a very late date for Paramount to be placing its season's product first-run, is it not?

A. Well, if I answer that question I will disagree with something you just said a moment ago. You said it is the custom, when it was brought up about Columbia contracts in March——

Q. Now, I don't want to disagree with you.

The Court: Just answer the question.

The Witness: I will tell you frankly I think it is a late date, and there is no implication whatsoever in that.

Q. And you were aware of the fact at that time that the lateness of date was due to the fact of the effort of Paramount to sell to Schine-Shea that season?

A. I don't know what effort Paramount made to sell Schine-Shea.

[fol. 3098] The Court: The question is were you aware of any effort that was made?

The Witness: No, I was not aware of any effort that Paramount made to sell Schine-Shea.

Q. Were you aware of the fact that Paramount did not sell its 1933-34 product to any of the Shea theatres?

A. To any of the Shea theatres?

Q. Yes.

A. You mean the Schine-Shea theatres?

Q. I mean the Shea theatres, whether Schine-Shea or Shea alone.

The Court: Did they sell that year to Shea?

The Witness: To Shea?

The Court: Shea-Schine or Shea alone?

The Witness: I don't know, I am not competent to answer that question, your Honor.

The Court: Then you cannot answer it.

By Mr. McClennen:

Q. Now, you recognized, did you not, from away back as early as 1932, that the Jefferson and the Palace were the normal outlet for the Paramount product in Auburn?

Mr. Wright: If the Court please, that is pure argument. It has already been testified as to where the pictures played.

The Court: I don't think that is a proper question.

[fol. 3099] By Mr. McClennen:

Q. Is this letter of July 4th, 1932 to Paramount-Publix Corporation signed by you?

A. That is signed by me, yes, sir.

Mr. McClennen: I offer that.

(Document shown to and inspected by Mr. Wright.)

(Thereupon letter dated July 4th, 1932, Wallace to Paramount-Publix Corporation, referred to, was received in evidence and marked as Defendants' Exhibit D-130.)

Q. This D-130 in evidence is dated July 4th, 1932, addressed to Paramount-Publix Corporation, attention Mr. Kenneth Robinson. "Dear Mr. Robinson", and it is signed "Very truly yours, H. P. Wallace, Capitol Theatre", and reads in the body:

"We are interested in ascertaining whether or not you have unplayed first-run pictures available for our use at this theatre to include features and short subjects. In looking over the Paramount proposition for this year it appears to me that the program contains all the ear-marks of the best money making proposition of any of the producers. On the fact of what I know of the coming year's picture I could safely say we could offer you between eighteen and twenty thousand dollars for the product, pro- [fol. 3100] viding you cannot get an equitable deal from our opposition. I appreciate the fact that they have first call on the product due to using your pictures this past year current. Best wishes". And the opposition to which you referred there was the Skouris operation?

A. The Fox.

Q. Fox operated by Skouris?

A. Yes, sir.

Q. Did you ever see a letter of March 23rd, 1935 from United Artists Corporation to Willis Sargent, of which I show you what purports to be a carbon copy?

A. This is the first time I ever saw that.

Q. And you never saw any reply to it from Mr. Sargent?

A. No.

Q. Was Mr. Sargent engaged at this time in any way for you?

A. He was my counsel. I don't know about that time, because I just can't place the time he went to California.

Q. Did you inform Mr. Zurich in the early part of 1935 that you had an ample supply of pictures to last you for a year?

A. No.

Q. Did you tell him anything of that kind?

A. No.

Q. Have you any recollection of the number of pictures [fol. 3101] you had under contract, including United Artists, Columbia and Republic and Monogram?

A. Republic and Monogram?

Q. Including Republic and Monogram, was my question?

The Court: Yes, what year are you speaking of?

Mr. McClennen: In the early part of 1935.

The Witness: Why, I think I had thirty United Artists pictures; all that were released, I think I purchased all of them. I had some rejected pictures from R. K. O. I had 44 Columbia pictures and I had roughly 100 pictures, that is, independents and Westerns from the various little independent exchanges.

Q. And in the early part of 1935, after February 28th, 1935, you had these contracts, which have already gone in evidence for this large number of Columbia pictures?

A. I just mentioned that I had 44 Columbia pictures, I think.

Q. And 44 Columbia pictures had reference to the 1934-35 season, did it not?

A. That is correct.

Q. And you already had a contract for something like an equal number of Columbia pictures for the 1935-36 season?

The Court: You have gone all over this.

The Witness: No, I am referring to the first Columbia [fol. 3102] contract we had, that is the contract we had at first.

The Court: By the contract it already appears what he had.

Mr. McClennen: If your Honor please, on the same day, February 28th, 1935, that he got these 40 odd pictures of the 1934-35 season, he got something like the same number by a contract of the same day, of the 1935-36 season. I am asking him that.

The Court: That already appears. What you said was the first contract dates back to 1934, the 1934-35 and 1935-36, —it covers the two seasons.

Mr. McClennen: Yes. I am speaking of the contract dated February 28th, 1935.

The Court: The contracts cover two seasons.

Q. Now, the 40 or so pictures of the 1934-35 season were not played by you until after February 28th, 1935, were they?

A. What contract are you referring to?

Q. I refer to the contract for the 1934-35 season; you had not up to February 28th, 1935, played any of those 40 odd pictures set out in Defendants' Exhibit 123?

A. Up to what date?

[fol. 3103] Q. Up to February 28th, 1935.

The Court: You are spending a lot of time, it seems to me. According to the statement you made sometime ago, while the contract was made February 28th, you suggested part of the contract was made long before it was signed so the pictures would be available.

Mr. McClennen: No, if your Honor please, I did not intend that. What I said was that on February 28th, 1935, he contracted for something like 40 odd pictures of the season of releases from September 1, 1934 to August 31, 1935. I am now saying that of that 40 odd pictures, he had not actually played any until February 28th, 1935.

The Court: Nothing was released.

Mr. McClennen: They were released to the world.

The Court: I was thinking what the position would be for four or five months without playing any pictures.

Mr. McClennen: Because he hadn't bought any of that release season.

The Court: He hadn't paid for them according to the contract.

Mr. McClennen: And he didn't contract for them until [fol. 3104] February 28th, 1935.

Mr. Wright: If the Court please, if the dates on which the pictures were played is going to be material, we have already identified a schedule which shows exactly when each one of these Columbia pictures were played at Auburn and where.

Mr. McClennen: Where is the schedule?

Mr. Wright: That was identified.

The Court: I will let him state if any of those pictures were played prior to February 28th, 1935.

Mr. McClennen: That is my question.

The Witness: Any of these?

The Court: Any of those in that list.

The Witness: No, we didn't play any of these prior to February 28th, 1935.

Mr. McClennen: 1935.

The Court: All right.

Q. Now, with the figures that you have just given, if you include the pictures, some 40 odd, not yet played, under Exhibit 123, of February 28th, 1935, and a similar number under Exhibit 124, for the 1935-36 season, on February 28th, 1935, you had been in the aggregate under contract ahead how many pictures in addition to those that you [fol. 3105] have mentioned from other companies?

Mr. Wright: Don't the contracts show on their face?

The Court: It seems to me it would be 80, wouldn't it, 75 or 80, unless there was some that were left out, I don't know.

The Witness: And some might not have been made.

The Court: According to the face of these contracts there were about 75 pictures you were entitled to on the contract price?

The Witness: Yes.

Q. That covered about a year and a half?

A. Yes, sir.

Q. And apart from the Columbia pictures would you state again the total of the pictures you had?

A. For 1935?

Q. Yes.

A. I had, as I say, for that—including that first contract of Columbia——.

Q. I say without Columbia, all the other ones, just the total?

A. I had roughly 99 independent and Western pictures, that is, you know, from different little independent companies, and I had some pictures from R.K.O., and I think there was 30 from United Artists. It may not be 30, it may be a few less, and it may be a few more.

[fol. 3106] Q. And at that time you were running double feature how many changes a week?

A. Well, I ran usually two changes a week double features. Sometimes I ran three changes a week. Sometimes we used the Westerns up on a Saturday morning show for the children.

Q. Now, do you remember discussing with Mr. Zurich in March of 1935, your situation in this respect, that is, your figures indicated that in the aggregate there were well upwards of 200 pictures under contract ahead of you; now, did you have any talk with Mr. Zurich about that?

A. No, I never had any talk with Mr. Zurich about that.

Q. When did you introduce Bingo at the Capitol Theatre?

A. Some time after the Palace Theatre started.

Q. About when in matter of date?

A. Oh, about some time in 1938.

Q. In 1935, did you install give-away of dishes and so forth at the Capitol?

A. Yes, it may have been 1935; it may have been 1936, but I did have give-away dishes.

Q. Did you make cuts of your admission prices?

A. I don't think so. It may have been the summer policy once in a while, I would not swear to that positively, but as a rule, we always tried to uphold the admission price. [fol. 3107] Oftentimes we gave 5-cent inducement to kids, when we started off with a serial.

Q. Do you recall that the distributors complained that you were cutting admission prices?

A. It may have been.

Q. Don't you remember that they did?

A. I don't remember exactly. It may have been that at some time we may have used a cut rate ticket for a short while, but as a general thing, we never did.

Q. Do you remember in the N.R.A. period those complaints were presented to the Board, the N.R.A. Board, the grievance board?

A. The only complaint that I remember that was presented to the grievance board is, we were trying to get some pictures——

Q. You don't remember of that complaint?

A. There may have been some discussion about a cut rate proposition. I would not say definitely that there wasn't. If you have anything to refresh my memory, I will be certainly——

Q. Didn't you attend a hearing before the Board——

A. I did attend a hearing.

Q. —on that subject?

The Court: On that subject.

The Witness: Not on that subject, no, sir.

[fol. 3108] Q. You did attend a hearing?

The Witness: In an attempt to get pictures.

The Court: He said in the question "On that subject."

The Witness: Not on that subject, no sir.

The Court: The answer is "No," then?

By Mr. McClennen:

Q. Did you not know of a complaint made to the grievance board in the early part of 1935 about your cut rates at that theatre, and I show you the papers in relation thereto? Don't you know about that?

The Court: Can't you tell us by reference to those papers?

The Witness: I can recollect now, but I know it was taken care of by Mr. Sarachen.

The Court: That is not the question.

The Witness: I can recollect now that there was a complaint, and as I see those tickets—I never appeared at that hearing. I was in the hospital then.

Q. You remember being advised of a decision of the Board that you had cut rates?

A. I don't remember being advised of any decision, because shortly after it I went to the hospital with coronary thrombosis, and for a year after I did not do too much about working in the theatre, but I recognize these tickets, and I [fol. 3109] know they are ours, as soon as I see them.

Q. That is, in December, 1934, you issued tickets which should be good—that is, free tickets which should be good as ten cents toward an admission at the Capitol?

A. May I see them, please? I remember. This——

The Court: That answers it.

The Witness: I remember that.

Q. That meant that in the afternoons at that time, a patron with one of these tickets, an adult patron with one of these tickets and five cents could get into the Capitol Theatre?

The Court: I think it is sufficient. He stated that they did have this kind of ticket. It seems to me that is going far enough.

Q. In June of 1933, under date of June 22nd, 1933, did you write this letter to the United Artists Corporation?

A. I did.

Mr. McClennen: I offer that.

Mr. Wright: I don't understand the purpose of the offer. As far as I can see it has nothing to do with the case; other than that we have no objection to it.

The Court: Do you object to it? I don't know what the letter is.

(Document handed to the Court.)

[fol. 3110] The Court: I do not see as it is very material.

Mr. McClennen: I am seeking, if your Honor please, to accumulate reasons why these distributors should naturally sell to the other theatres rather than the Capitol, because of the character of operation there, and I offer the letter for the purpose of showing that.

Mr. Wright: If the Court please, there has not been the slightest suggestion in the way of testimony that any distributor refused to, or declined to sell the pictures, because of any admission price policy, or anything else.

The Court: Objection sustained at this time.

Mr. McClennen: I would like to have it marked for identification, and the objection saved as to its exclusion.

(Thereupon letter from Mr. Wallace to United Artists Corporation, dated June 22nd, 1933, referred to, was marked as Defendants' Exhibit D-131 for identification.)

Mr. McClennen: I cannot quite restrain myself from commenting on the happy suggestion that no distributor has testified on this subject, when no distributor has testified at all.

[fol. 3111] Mr. Wright: I said there was no evidence to the effect that a distributor had refused product for that reason.

The Court: We have been a long time with this witness. We don't want to waste any further time with discussion after I passed on it. Proceed to something else.

Mr. Wright: If that were a reason——

The Court: Never mind, never mind.

Mr. Wright: —there would have been no picture sold to Schine anywhere.

The Court: Just a minute. We can't spend time on this.

By Mr. McClennen:

Q. Did you show R.K.O. "Snowwhite" first-run at the Capitol?

A. No, sir.

Q. Did you have "Snowwhite Festival" at the Capitol?

A. First-run?

Q. Yes.

A. No, sir.

Q. Where did "Snowwhite" show first-run in Auburn?

A. Jefferson Theatre.

Q. Where did "Snowwhite Festival" show?

A. I couldn't tell, unless I looked at records.

Q. You have no recollection of having shown Snowwhite Festival at the Capitol Theatre in Auburn?

[fol. 3112] A. At all? I showed "Snowwhite Festival", but I showed it, I think, several years, I believe after the other theatres had finished with it.

Q. When did you show it?

A. I couldn't tell you that without looking at records. I could give you the exact date and show you the booking book.

Q. Did you show it in the season 1939-1940?

A. I couldn't answer that. I would be glad to get you the booking book and let you inspect it, and that is the date I will stand on.

Q. On or about January 27th, 1939, did you receive a letter from 20th Century-Fox dated January 27th, 1939, of which I show you what purports to be a carbon copy?

A. I think I did.

Mr. McClennen: I offer that.

Mr. Wright: If the Court please, I don't see what possible issue that bears on. (Handing document to Court).

Mr. McClennen: My thought in offering it was that it bore on the issue of whether the failure to get that product was not because the prices which had been offered for it were not acceptable to the distributor.

Mr. Wright: I don't recall that he testified to any negotia- [fol. 3113] tions with United Artists Corporation at that time. He testified that he got some United Artists pictures that Schine rejected.

The Witness: Pardon me, Mr. Wright——

The Court: Just a moment. We can't have any discussion by the witness with counsel.

Mr. McClennen: Before pressing the offer I will ask the witness, had you made an offer for Gaumont British pictures?

The Witness: I just wanted to correct him, and say that was not United Artists. That was Fox I was talking about, and that related to an old picture. I have the contract on the picture. I did purchase Gaumont British pictures.

Mr. Wright: There isn't any question, if the Court please, he could buy all the foreign pictures that Schine did not want any time from anybody. This is no dispute about that.

The Court: It is competent as bearing on the pictures he did receive or did not receive. I will accept it in that connection.

Mr. Wright: If there is any more foreign picture correspondence, we will stipulate that the foreign pictures which [fol. 3114] Mr. Schine rejected were always available to him. That is understood.

(Thereupon letter from 20th Century-Fox to Mr. Wallace, dated January 27, 1939, referred to, was received in evidence and marked as Defendants' Exhibit D-132.)

By Mr. McClennen:

Q. The stipulation is accepted as far as it goes. Defendants' Exhibit D-132 is dated January 27th, 1939, from 20th Century-Fox Film Corporation to H. P. Wallace, stating—I think your Honor has read the letter, so that I need not reread it—stating the reasons why they cannot accept the contract which he proffered on account of the price.

The Court: Is that all?

Mr. McClennen: That is all, if your Honor please.

Mr. Wright: I think I can finish up in 10 or 15 minutes, if your Honor wishes to sit.

The Court: If we don't have any further redirect, we might get through.

Mr. Wright: There is some redirect.

The Court: I mean recross. I think we better suspend until tomorrow morning. Just a moment. You spoke about adjourning tomorrow night?

[fol. 3115] Mr. Wright: Yes, I understand that the Crescent case will be ready in the Supreme Court, either the 18th or the 19th, so I will have to be down there on Wednesday. I wanted to get down there the day before, before the argument.

The Court: I thought you meant to be there that day.

Mr. Wright: No, I would have to be there the day before, and I thought we may as well, as long as there is still an uncertainty whether it would carry over into the 19th—I supposed we would probably adjourn until a week from Monday.

The Court: I thought you meant to adjourn for a single day, Wednesday.

Mr. Wright: No, I would expect to be in Washington Wednesday, and the case would be reached the next day, and perhaps continue to the next day.

The Court: You lose three days, the rest of this week?

Mr. Wright: We will lose three days, yes.

The Court: How long will it take you to put your proof in?

Mr. Wright: I had hoped we would be able to finish up [fol. 3116] the first part by the middle of the following week.

The Court: Next week?

Mr. Wright: Yes, but, of course, it is dependent on the length of time spent on cross-examination. I had assumed we would be finished with Mr. Wallace long before this.

The Court: What are your wishes in the matter?

Mr. McClennen: My first wish is not to discommode Mr. Wright when he has a case to argue before the Supreme Court of the United States, and the next is that when we adjourn, in view of the prospect that he will take the 18th and 19th, that we adjourn to the 23rd of October.

The Court: Will you engage in the argument yourself?

Mr. Wright: Part of the argument. Mr. Berge and I.

The Court: I think that will be better. Proceed for a few minutes.

Redirect examination.

By Mr. Wright:

Q. Did you observe whether, during the period Schine operated the other theatres in Auburn, that there were any give-aways or admission price reductions, Bingo, Bank Night, anything of that sort?

[fol. 3117] A. There were.

Q. During what period?

A. From the period of 1937 up to the present time.

Q. I will hand you these folders entitled "Schine's Jefferson" and "Schine's Palace," and ask if you recognize those as having been distributed in the Town of Auburn?

A. They were.

Q. During what period of time?

A. They were distributed weekly during 1937-38 season.

Mr. Wright: I will ask to have them marked the next exhibit number.

Mr. McClennen: Is this an offer or for identification?

Mr. Wright: As soon as it is marked, I will offer it.

(Thereupon two circulars headed "Schine's Jefferson" and "Schine's Palace," referred to, were marked as Plaintiff's Exhibit No. 830 for identification.)

Mr. McClennen: This, I take it, is for identification now?

By Mr. Wright:

Q. Do you recall any cut price tickets being given away for any of the Schine Theatres?

A. I did.

Q. When was that?

A. During this same period.

Q. Do you know what the value of those tickets were that [fol. 3118] were given away?

A. No, I don't.

Q. All you know is they were price reductions?

A. Yes, sir.

Q. After this 1937-38 season when these give-aways and Bingo, and so forth occurred, did you notice whether they played the same pictures of the same companies the next season?

A. They did.

Q. First-run?

A. Yes, sir.

Q. Did any distributor that you have referred to tell you that you could not play their pictures because you had cut prices, or had run Bingo games, or had given away free tickets?

Mr. McClennen: That is objected to. It has appeared here in the excluded letter——

Mr. Wright: Well, I simply——

Mr. McClennen: Now, just don't be so impatient as all that,—the complainant, that they were objecting, that their pictures could not be played at the reduced price, and the letter was excluded on my adversary's objection.

The Court: The reception of this testimony might make the letter receivable.

[fol. 3119] Mr. Wright: It might open it up for you.

Mr. McClennen: That is awfully nice of you to think of that, but if it was not admissible when I offered it, I submit this question is not admissible.

The Court: I will let him answer.

The Witness: What is the question, please?

Mr. Wright: Read the question.

(Question read.)

The Witness: No, sir. Pardon me——

The Court: That answers the question.

Mr. Wright: I will ask to have this telegram marked with the next Plaintiff's Exhibit number for identification.

(Thereupon telegram referred to was marked as Plaintiff's Exhibit 831 for identification.)

The Court: That is the one that was referred to some time ago?

Mr. Wright: This is a copy, as I understand it, that came from the R.K.O. Exchange files. There was some question raised before as to whether R.K.O. really sent the telegram. I am merely offering the copy that came from their files.

[fol. 3120] (Thereupon Plaintiff's Exhibit 831 for identification was received in evidence.)

Mr. Wright: As I understand it, this was shown to Mr. McClennen before, and I take it there is no dispute about the fact that that is a copy of the telegram that came from the R. K. O. Exchange in Buffalo.

The Court: That is the telegram to which reference has been made, and its contents have been discussed before.

Mr. Wright: Mr. Wallace identified the one he received. Objection was made to its going into evidence on the ground there was nothing to show R. K. O. had sent it. In order to cure that objection, I am offering the copy from the files of the R. K. O.

Mr. McClennen: Objection was to its admissibility. I have no objection to this.

The Court: That telegram was referred to several times in your examination.

Mr. McClennen: I have no objection whatever to this exhibit, if your Honor please.

Mr. Wright: Then I offer it in evidence.

The Court: Let me see the telegram.

Mr. Wright: This is a copy that came from the Exchange. [fol. 3121] As I say, when the other was not admitted in evidence—the objection was sustained on the ground that it did not appear that R. K. O. had actually sent the wire.

The Court: How does it now apear that R. K. O. sent the wire?

Mr. Wright: As I understand it, this is the copy that came from the R. K. O. Files In their Buffalo Exchange, and this is an exact duplicate.

Mr. McClennen: I have now been assured that this was found in the files of the R. K. O., and, therefore, I am making no objection to the authenticity of the telegram originally offered, but merely object to such a telegram being receivable.

The Court: Received.

Mr. Wright: I thought that was out in the papers earlier in this examination. Have you got it?

The Court: It has another number?

Mr. Wright: The other one had a number. I don't have it at the moment.

The Court: You can look it up.

Mr. Wright: I think we can use this one just as well. I would like to read the telegram to your Honor. I don't think [fol. 3122] you heard the contents. This is dated September 18th, and is addressed to the Strand Theatre, Syracuse, New York, and states: "Impossible supply Hurry Charlie September 24-26 or they Meet Again 27-30. Suggest Saint's Vacation, also first-run September 24-26. Will advise later regarding 27-30. Please wire."

The Court: The date of that is what?

Mr. Wright: September 18th.

By Mr. Wright:

Q. Now, you were asked on cross-examination about when you wrote the words "Canceled" on the "Hurry, Charlie, Hurry" contract, and the "They Meet Again" contract, that are part of this Exhibit 819, and as I recall, you testified you were not sure when that was placed on there, except that it was some time during the time you were operating the Strand Theatre, is that right?

A. Yes, sir.

Q. Can you tell us when it was put on there with reference to the receipt of this telegram, Exhibit 831?

A. After I received that telegram.

Mr. Wright: By the way, I believe you were going to check the list of product that played at the Empire. We had offered that tabulation.

[fol. 3123] By Mr. Wright:

Q. The original of the telegram is Exhibit 820. It was originally marked in evidence, then for identification, and I believe it should now be marked in evidence.

(Thereupon original telegram previously marked as Plaintiff's Exhibit 820 for identification was received in evidence.)

By Mr. Wright:

Q. On cross-examination, I believe you were asked with reference to this Exhibit 818, regarding the meaning of the words "Available" and the dates following them that appear on the second page, there, and you testified that those were the dates on which the pictures would become available to the Strand Theatre?

A. Yes.

Q. Do you recall that?

A. Yes, sir.

Q. Are those the dates on which the pictures would become available to the Strand, or were those the dates on which the pictures would become available in Syracuse for first-run exhibition?

A. I could tell you that better if I just looked at this release sheet, but I am pretty sure——

Q. That is the first 1941-1942 block, isn't that right?

A. I think those are the dates they would become available [fol. 3124] able to the Strand Theatre, December 10, 1941.

Q. Perhaps I misunderstood your direct testimony, then. As I understood your direct testimony, it was that this block of five was not to become available to you until after those pictures had played all of the other runs in Syracuse. Is that right or wrong?

A. I think those dates would indicate that.

Q. Please answer the question about your direct testimony. Is that your understanding, that the pictures were not to be available to you until after they had completed their runs in the other Syracuse theatres?

A. Yes, sir.

Mr. McClennen: That is objected to as immaterial, what his understanding was. What he said.

The Court: Sustained. Strike it out.

Q. I call your attention to the first date there available, October 29th, 1941. As I understand it, the group of pictures that are named there are pictures which were to be released during September and October of 1941. That is, they were the current product?

Mr. McClennen: That is objected to.

The Court: The paper would show for itself, would it not?

The Witness: That is right. That is the first block of five pictures——

The Court: Just a moment. Sustained.

[fol. 3125] Q. Do you have the release dates of those pictures?

A. I think so, yes, sir.

Q. What were the release date on "Charlie's Aunt"?

A. August 1st, 1941.

Q. And "Private Nurse"?

A. August 22nd, 1941.

Q. And "Wild Geese Calling"?

A. August 15th, 1941.

Q. "Sun Valley Serenade"?

A. August 29th, 1941.

Q. Then, as I understand it, the dates which are written on there as available are the dates when Rowell said the pictures would have completed their runs in the other Syracuse——

A. Yes, sir.

Q. All the other Syracuse theatres?

A. Yes, except, I suppose, they weren't going to play at the Empire Theatre, because afterward he wrote "Ahead of Empire Theatre".

Q. Did he say whether or not those pictures had been sold to the Empire Theatre?

A. He didn't say.

Q. Did you know whether the Empire was at that time playing any pictures after they had played all of the other runs in Syracuse?

[fol. 3126] A. Well, they had played some old pictures, yes, sir.

Q. Had played some old pictures?

A. Yes, sir.

Q. But did he talk about the 1940 current releases?

A. If I had that list I could tell you whether they played any current releases.

Q. You are now referring to——

A. That list of play-offs at the Empire Theatre.

Mr. Wright: Has anybody located it?

Mr. McClennen: That does not check exactly with the list we made up.

(Document handed by Mr. McClennen to Mr. Wright.)

Mr. Wright: I will ask to have the next exhibit number for identification given to the list which Mr. McClennen has just furnished as stating what their records show as to the features played at the Empire and admission prices.

(Thereupon document above referred to was marked as Plaintiff's Exhibit No. 832 for identification.)

Q. Then is it possible to tell from looking at the features listed, or looking at exhibits 817 and 832 for identification what runs the features listed there were played?

[fol. 3127] A. Well, reasonably possible.

Q. Well, wouldn't you have to compare the matter to know the play dates of the same films in the other Syracuse theatres?

A. That is right.

Q. Now, rather than take the time on the witness-stand, I wonder if it would be agreeable to have him make his check of your list against his, and then advise us whether he thinks it is correct at a later date, so we can come out with the correct fact? I don't want to take the time when he is on the stand.

Mr. McClennen: I have no objection to that being checked to see if there is any error in the list furnished by us.

Mr. Wright: Then I will ask you to do that after you leave the stand, Mr. Wallace, and advise us of the result on the list of your pictures, which I believe was marked for identification as Exhibit No. 816, the name of the distributor or producer appears, but I don't believe you gave that testimony when you supplied the playing dates and names on your direct examination.

Q. Now, can you tell me which of those pictures were major products and give the name of the major distributor of those which you previously named, which were major [fol. 3128] releases?

A. "Jungle Cavalcade" was released in 1932 and was released by R. K. O.; "Flying Down to Rio", R. K. O.; "Bowery Blitzkrieg", Monogram; "Caught in the Act", Producers Releasing Corporation; "Father Steps Out", Monogram; "Gentleman from Dixie", Monogram.

Q. No, I just want the major ones. You can lump all the independent ones, just the major distributors; there are about six or seven there, I believe, if you can tell which they are.

A. Well, "Convoy" is a foreign made picture distributed by R. K. O.; "Tom, Dick and Harry" was R. K. O.; "They Met in Argentina", R. K. O.; "Reluctant Dragon" was R. K. O.—Disney; there was a special contract on that. "Blonde From Singapore" was Columbia. I think that covers them all.

Q. Other than those R.K.O. pictures you have named and the one Columbia picture, all the others were independent?

A. Yes, sir.

Q. As I understood you on cross-examination, you say that you have no contracts for these R. K. O. pictures in your possession other than these that are identified here as Exhibit 819; you mean these other two show all the R. K. O. pictures you played?

A. Yes, sir.

[fol. 3129] Q. I understand the only contracts you have in your possession are those marked Exhibit 819?

A. Yes, sir.

Q. I notice among the group in Exhibit 819, you don't have any for "Jungle Cavalcade" and "Flying Down to Rio"; do you know whether there were contracts for that?

A. Yes, sir.

Q. It is your understanding Mr. Carr has the other contracts?

A. Yes, he has approved contracts and he has the applications. I asked you to have a subpoena for those.

Q. You did not attempt to go through the records of the corporation? All you brought here was what you had yourself?

A. When I left there September 26th, I didn't go back. That is how it happens I didn't know about this judgment.

The Court: Just answer the question.

Q. Am I correct then in my understanding that what you have produced here are what you showed to the Government was all the contracts that you, yourself, had?

A. That is all I had aside from the deal sheet. I had a deal sheet where we entered into the contract.

Q. But the other——

The Court: He says that is all he had.

Q. Now, had you ever—you don't know then, at this time, whether there actually were executed contracts for any [fol. 3130] of these seven R. K. O. pictures, is that right?

A. I don't know that there were any executed——

Q. I said, you don't know whether there were actually approved contracts for any of them, or not, is that right?

A. No, I think we received approved contracts, and Mr. Carr has them.

Q. You think he has the approved contracts?

A. Yes, sir.

Q. Had you ever in the course of your experience booked pictures into theatres without a contract?

A. That is a regular custom with any theatre.

Q. Had you done that with R. K. O. previously?

A. I had.

Q. Where?

A. I had done it a number of times. I have booked at the Novelty; it is a regular custom; at the Novelty; and I booked them at the Roxy, the Harvey Theatre, and I booked them at the Strand Theatre.

Q. When you booked a picture without a contract, what is the procedure with reference to making one up?

A. Well, sometimes as a rule after you book a picture without a contract, you get a deal sheet like I got there, that is the agreement, it is an agreement that is oral, but it is an agreement, nevertheless, and sometime that [fol. 3131] day or some time later the contracts are prepared and signed and sent in to the Company. Sometimes they are spot booked without contracts, but as a rule contracts are made up on something that we agree to on a deal sheet.

Q. And in this case you think there were contracts subsequently made up on all of those seven pictures?

A. I know there were, there were and these are the copies that were left where they were left at the office of the Strand Theatre.

Q. And you, yourself, haven't been able to locate the other two?

The Court: You have gone over the question many times, and he says "Carr has them".

Q. On your cross-examination, I believe you said that during one period where you had stated that the picture "Secrets of a Model" played, there were two other pictures that played instead; do you know are there any other corrections that you think should be made in that testimony?

A. I think there is one picture there; I think there is a confusion in that one where a picture called "Headleys at Home" or something like that; may I look at that?

(List shown to witness.)

The Witness: It wasn't "Secrets of a Model". "Secrets [fol. 3132] of a Model" didn't play there. There were two so-called sex pictures that played there, but we rented the theatre.

Q. Yes. You covered that on your cross-examination. All I am asking you is whether there are any more, whether there are any other changes that should be made so we will have a correct list of the product that played there?

A. There may be one other picture, there was another picture purchased for these people to go with this, because there was some trouble about this so-called sex show. I think they took one picture off and substituted another picture. There may be another picture in there about that time, but aside from that, these are all correct. I can get that information for you because there must be correspondence on it.

Q. Would you take Exhibit 816 for identification then and make a further check of your play off records so you can then notify us if there is any other change which has to be made in the list that you gave us to conform it to your booking record; would you do that?

A. I will.

Mr. Wright: I take it if we submit that list you may not, or if you desire to cross-examine on it, we can recall him for that purpose.

[fol. 3133] Mr. McClennen: I don't see why I should do anything about that list.

The Court: When you get the list you may not want to cross-examine on it, but you will be entitled to have the witness come back.

Mr. Wright: We are as interested as counsel is in having in the record an absolutely correct list of features that played at both the Empire and Strand.

Mr. McClennen: I have brought out what I believe to be a complete and correct list. If the witness finds that to be so, that ends the story. If he does not agree with it, then I should want to find out by cross-examination why he doesn't want to agree with it.

The Witness: I think that was covered in cross-examination. I mentioned about these changes.

The Court: Do not discuss it with counsel.

Recross examination.

By Mr. McClennen:

Q. Mr. Wallace, you said you left September 26th, and did not go back, left where?

A. Left September 26th?

[fol. 3134] The Court: You said something about going to the hospital.

Q. Within the last ten minutes you said. "I left there September 26th and did not go back."

A. Where do you refer to?

Q. That is what I was going to ask you, what did you refer to?

A. You mean when I was speaking with Mr. Wright here?

Q. When you were testifying within the last ten minutes.

A. I didn't say "September". I think January 26th is when I left the Strand Theatre and didn't go back.

Q. You said September 26th; you meant January 26th, 1942?

A. I meant January 26th, 1942, and that is why I was not aware of this judgment you spoke about today.

Redirect examination.

By Mr. Wright:

Q. These R.K.O. pictures on Exhibits 117 and 118, I notice the statement after run is "sub", and under "clearance" it just says "as available". Do you recall when, if at all, those pictures became available to the Strand?

A. Well, they were old pictures and I think they were available as soon as we could get an availability list. I imagine they would be available whenever there were prints there. We never played these pictures.

[fol. 3135] Q. The pictures were not played, but you don't remember when the prints were made available, do you?

A. Well "Convoy" was made available to us a year after the release date. I think it was a year after the release date, and these pictures are anywhere from three to eight years after the release date.

Q. At any time you were negotiating with R. K. O. for pictures did any one from R. K. O. decline to service you with pictures because you had bought pictures which you hadn't paid for? Was that ever given as a reason?

A. No.

Mr. Wright: That is all.

Mr. McClennen: I now offer in view of your examination as to complaints as to cutting rates the Defendants' Exhibit for identification No. 131, the letter of Mr. Wallace to the United Artists Corporation, dated June 22nd, 1933, as to the Capitol Theatre in Auburn.

Mr. Wright: That letter, if the Court please, is just as immaterial as it ever was. All it shows is there was a discussion of a United Artists complaint to him about certain admission prices. There is nothing in that letter to show [fol. 3136] United Artists ever refused to service him with pictures.

The Court: Overruled. Received.

(Thereupon letter dated June 22nd, 1933, Wallace to United Artists Corporation, previously marked for identification as Defendants' Exhibit No. D-131, received in evidence.)

The Witness: Can I see that letter, Mr. Wright?

(Defendants' Exhibit D-131 handed to the witness by Mr. Wright.)

Recross examination.

By Mr. McClennen:

Q. In Defendants' Exhibit 118, you signed the contract for R. K. O. Radio Picture "Convoy". That was a picture that was released and became available in the season of 1940-41, was it not?

A. That is a picture that was made a year previous. It was a foreign picture.

Q. And released a year before this time?

A. Before what time?

Q. October 7th, 1941?

The Court: That is the testimony, you said that was a year-old picture.

The Witness: Yes, the picture was a year old, a year [fols. 3137-3140] after it was made.

Mr. McClennen: That is all.

The Court: We will adjourn until tomorrow morning at 10 o'clock.

(Whereupon a recess was taken until Tuesday, October 17th, 1944, at 10 A. M.)

[fol. 3141] UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF NEW YORK

Civil 223

UNITED STATES OF AMERICA

vs.

SCHINE CHAIN THEATRES, INC., et al., Defendants

Continuation of trial before Honorable John Knight, United States District Judge for the Western District of New York, October 17th, 1944, 10 o'clock A. M.

Appearances:

Robert L. Wright, Esq., John F. Clagett, Esq., Harold L. Schilz, Esq., Special Assistants to the Attorney General, and Milton Kallis, Esq., Special Attorney, in behalf of the United States.

Edward F. McClennen, Esq., Willard S. McKay, Esq., Saul E. Rogers, Esq., Arthur E. Whittemore, Esq., Arthur J. Homans, Esq., and Edward M. Antevil, Esq., appearing for the Defendants.

[fol. 3142] PROCEEDINGS

PETER C. VOURNAKIS a witness called by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Wright:

Q. Where do you live, Mr. Vournakis?

A. Watertown, New York.

Q. What is your occupation?

A. Theatre owner.

Q. What theatres do you own there?

A. The Strand and Liberty.

Q. How long have you owned them?

A. The Strand I operated from 1924 to 1926; I bought the property in 1926. The Liberty, I bought the property in April, 1933.

Q. About what is the seating capacity of those theatres?

A. The Strand is about 400 seats and Liberty is about 700.

The Court: Where did you say those were?

Mr. Wright: Watertown.

Q. Calling your attention to the year 1932, what other theatres were then operating in Watertown?

A. The Avon, Olympic and Victoria.

[fol. 3143] Q. Avon is A-v-o-n?

A. Yes, sir.

Q. The Olympic and Victoria?

A. And the Strand.

Q. Who operated the Avon and Olympic?

A. The Skouris Brothers for the Fox theatres.

Q. The Victoria?

A. Graham and Ludlow.

Q. You were then operating the Strand?

A. The Strand.

Q. On what policy?

A. Second-run and first-run.

The Court: What is that?

The Witness: Second-run and first-run.

Q. Then for the 1932-33 season ~~can~~ you tell ~~us~~ what major product you exhibited at the Strand second-run?

A. I had Paramount, Warner and Fox and first-run an Independent product.

Q. Then during the year 1933 who took over the operation of the Avon and Olympic?

A. The Schine Enterprises.

Q. Graham and Ludlow continued to operate the Victoria?

A. The Victoria.

Q. And that was the year in which you bought the Liberty?

A. That is the year I bought the Liberty.

[fol. 3144] Q. Then——

The Court: 1933?

The Witness: In 1933.

Q. Did you play those major companies that you have just mentioned second-run in either of your theatres during the 1933-34 season?

A. No, third-run.

Q. And did any of those companies offer the product to you for second-run for that season?

A. No.

Mr. Wright: Now, I will ask to have these two letters marked as one exhibit, one is the reply to the other, for identification.

By the Court:

Q. Do I understand you, you didn't have any of the first-run after 1933?

A. No, until this year.

(Thereupon two letters, referred to, were marked as Plaintiff's Exhibit 833 for identification.)

Q. In any of your three theatres?

A. I only had two theatres.

Q. You had the Olympic and Victoria, you said?

A. No, I had the Strand and Liberty.

Q. Oh, yes, I understand, in either of the theatres, you [fol. 3145] mean?

A. Not any of the theatres.

The Court: You spoke about having bought the Liberty back in '33.

Mr. Wright: Yes, he had the Strand since 1926.

Mr. Rogers: Pardon me, Mr. Wright. I think your Honor inadvertently said "First-run". His testimony was he had Paramount, Warner and Fox second-run.

The Court: In 1932.

Mr. Rogers: In 1932-33 he had Paramount, Warner and Fox second-run, not first-run.

The Court: I asked if he had first-run after 1932, you see the point I had in mind.

By Mr. Wright:

Q. I show you these two letters clipped together and marked for identification as Exhibit 833, and ask you if you wrote the carbon copy letter and received the original letter there as a reply to the original, the respective dates that they bear?

A. Yes, sir.

Mr. Wright: I offer this in evidence.

Mr. Rogers: These came from the exhibitor's files?

Mr. Wright: No, these are Mr. Vournakis' documents.

Mr. McClennen: We make the usual objection to these, on [fol. 3146] the general grounds that there is no relation to this case or to Schine. There is no question about the authenticity of the letters.

The Court: Let me see them.

(Documents previously marked as Exhibit 833 were then inspected by the Court.)

The Court: All right. Overruled.

(Thereupon Plaintiff's Exhibit No. 833 for identification was received in evidence.)

Mr. Wright: Mr. Vournakis' letter to Fox is dated June 26, 1934, and states:

"Gentlemen: This letter is to advise you that I am interested in buying the 1934-35 product from your company second-run in Watertown for my theatres. No doubt you are aware of the fact that during the season 1932-33 I only bought second-run in Watertown. Last year I made an attempt to buy second-run, but was unable to secure the same for the reason your company sold the second-runs away. Kindly advise me when I may expect your representative to call on me with reference to negotiating a [fol. 3147] deal on your product second-run in Watertown."

The reply is dated June 27th, 1934, and states:

"Replying to your letter of June 26th, beg to advise that we already disposed of our 1934-35 product second-run in Watertown. We are arranging to have our representative visit you in an endeavor to work out a deal for third and fourth-run showing."

(Thereupon the documents referred were then marked as Plaintiff's Exhibits Nos. 834 to 838, inclusive, for identification.)

By Mr. Wright:

Q. I show you these two letters marked as Plaintiff's Exhibit 834 for identification, one to Warner and their reply, and ask if you received those on or about the dates they bear?

A. Yes, sir.

Mr. McClennen: Same objection to these letters.

The Court: They relate to the situation concerning the purchase of films?

Mr. Wright: Yes.

The Court: Overruled.

[fol. 3148] (Thereupon Plaintiff's Exhibit No. 834 for identification was received in evidence.)

Mr. Wright: Exhibit 834 consists of a letter dated June 25th, from Mr. Vournakis to Warner Brothers at Albany which says:

"This letter is to advise you that I am interested in buying the 1934-35 product from your company second-run at Watertown for my theatres. No doubt you are aware of the fact that during the seasons 1929-33 I only bought second-run at Watertown. Last year I made an attempt to buy second-run but was unable to secure the same for the reason your company sold the second-runs away. Kindly advise me when I may expect your representative to call on me for the purpose of negotiating a deal for second-run at Watertown."

The reply is dated July 16th, 1934, from Mr. R. Mochrie, on the home office stationery:

"Dear Mr. Vournakis: Referring to your several letters addressed to our Albany Branch, please be advised at the [fol. 3149] present time we have a satisfactory account of second-run in Watertown. Should an occasion arise at a later date we will ask Mr. Ray Smith to get in touch with you."

Q. After you got that letter did Mr. Smith get in touch with you about second-run?

A. No.

Q. Or anybody else from Warner?

A. No.

The Court: You said you had the first-run in 1932?

Mr. Wright: He said he had first-run of the independent product.

The Witness: First-run of independent.

The Court: And second-run of others in 1932?

The Witness: Yes, sir.

Mr. McClennen: To exhibits for identification, 835 to 838, respectively, we make the same objection as to the last.

The Court: Do they purport to be communications arranging for the purchasing of films?

Mr. Wright: Yes. I don't believe I have actually asked the witness to identify them, although I have them marked.

By Mr. Wright:

Q. 835 is a letter from you to Paramount and a reply, [fol. 3150] which were written on or about the dates they bear?

A. Yes.

Mr. Wright: That is offered.

The Court: Overruled.

(Thereupon letter from Mr. Vournakis to Paramount and reply, previously marked for identification as Plaintiff's Exhibit No. 835 was received in evidence.)

Mr. Wright: 835 is a letter from Mr. Vournakis to Paramount at Albany, dated June 25th, 1934.

"This letter is to advise that I am interested in buying 1934-1935 product from your Company second-run in Watertown for my theatres. No doubt you are aware of the fact that during the season 1928 to 1933 I only bought second-run in Watertown. Last year I made an attempt to buy second-run, but I was unable to secure same for the reason your company sold the second-runs away. Kindly advise me by return mail when I may expect your representative to call on me with reference to negotiating a deal on your conduct second-run in Watertown."

This reply is from C. G. Eastman, Branch Manager, [fol. 3151] Albany, dated June 27, 1934:

"I have your letter of June 25th, regarding the sale of our product in Watertown on second-run basis for the coming year. Please be advised that we will be in no position to talk on the matter until we have secured a satisfactory first-run deal."

The Court: Until what?

Mr. Wright: "Until we have secured a satisfactory first-run deal."

By Mr. Wright:

Q. After you got that letter from Mr. Eastman did anybody, he or anybody else from Paramount, come and talk to you about a second-run deal?

A. No.

Q. I show you this letter from Universal and reply, which has been marked as Exhibit 836 for identification, and ask you if you wrote and received those letters respectively on or about the dates they bear?

A. Yes.

Mr. Wright: We offer 8 in evidence.

The Court: Same ruling.

[fol. 3152] (Thereupon letter from Mr. Vournakis to Universal and reply previously marked as Plaintiff's Exhibit 836 for identification was received in evidence.)

Mr. Wright: This is Mr. Vournakis' letter to the Universal, addressed to Albany, dated June 25th, 1934. It states:

"This letter is to advise you that I am interested in buying 1934-1935 product from your Company second-run in Watertown, for my theatres. Kindly advise me by return mail when I may expect your representative to call on me with reference to negotiating a deal on your product second-run in Watertown."

The reply is dated July 7, 1934. It states:

"We have your letter of June 25th. We regret that we will be unable to offer you our product second-run in Watertown for the reason that it is under franchise to the Olympic Theatre. Kind regards." Signed by "Nate Sauber, Branch Manager."

By Mr. Wright:

Q. You were not using the second-run of Universal at the time you wrote the letter?

[fol. 3153] A. No, that is right.

Q. I will show you this letter from you to Metro-Goldwyn-Mayer and their reply, marked Exhibit 837 for identification, and ask if you wrote and received those letters on or about the dates they bear?

A. Yes, I did.

Mr. Wright: That is offered in evidence.

(Letter from Mr. Vournakis to Metro-Goldwyn-Mayer and their reply, previously marked as Plaintiff's Exhibit 837 for identification, was received in evidence.)

Mr. Wright: The letter of June 25th from Mr. Vournakis to Metro is addressed to Albany. It says:

"This letter is to advise you that I am interested in buying 1934-1935 product from your company second-run in Watertown for my theatres. Kindly advise me by return mail when I can expect your representative to call on me with reference to negotiating a deal on your product second-run in Watertown."

The reply is dated June 27, 1934, signed by Mr. Pielow, Albany Manager.

"Wish to acknowledge receipt of your letter of the 25th [fol. 3154] inst., relative to second-run product in Watertown. Please be advised that we are not in a position at this time to offer our second-run product to Watertown."

By Mr. Wright:

Q. After you got that letter did any representative from Metro offer second-run on that product?

A. No, I was not using Metro second-run, anyway, at that time. The Victoria had the second-run.

Q. I will show you these letters marked Plaintiff's Exhibit 838 for identification, and ask you if you wrote and received those letters respectively on or about the dates they bear?

A. Yes.

Mr. Wright: I will offer those in evidence.

(Thereupon letter from Mr. Vournakis to Columbia and reply thereto, previously marked as Plaintiff's Exhibit 838 for identification was received in evidence.)

Mr. Wright: The letter of June 25th, 1934, from Mr. Vournakis to Columbia is addressed to Albany.

"This letter is to advise you that I am interested in buying the 1934-1935 product from your Company second-run in Watertown for my theatres. Kindly advise my by return [fol. 3155] mail when I can expect your representative to call on me with reference to negotiating a deal on your product second-run in Watertown".

The reply is dated July 14, 1934, signed Branch Manager, by—I guess it is C. N. Johnston.

"Wish yo acknowledge yours of the 25th, stating you are interested in buying our 1934-1935 product second-run in Watertown for your theatres. The definite runs have not as yet been determined in your town inasmuch as we have not negotiated up to this time a deal with the Schine Circuit. Just as soon as we have anything definite I will advise you."

By Mr. Wright:

Q. After you got this letter from Columbia, did you receive any further advice or offers?

A. No, because I was not using Columbia second-run.

Q. You had not been using that at that time?

A. No, Victoria was using Columbia second-run.

Q. Then, during the 1934-1935 season did you have any major product second-run in either of your theatres?

A. I had at the Strand, part second and part third.

[fol. 3156] Q. What were the pictures, the part that you played second?

A. It was the smaller pictures.

Q. That is, those were not played at the Avon or Olympic second-run?

A. Pictures was playing Olympic first-run. I was using second-run at the Strand.

Q. Those that played Olympic second-run?

A. I was using them third-run.

Q. You played third-run?

A. That is right.

The Court: Are there five theatres in Watertown?

The Witness: Six.

The Court: What is the population?

The Witness: 33,000.

The Court: What is that?

The Witness: Thirty-three.

Mr. Wright: I will ask to have this document marked as the next exhibit number for identification.

(Thereupon carbon copy of letter from Mr. Vournakis to Mr. Myer Schine, was marked as Plaintiff's Exhibit 839 for identification.)

By Mr. Wright:

Q. I will hand you this carbon copy of a letter marked [fol. 3157] Exhibit No. 839 for identification, and ask you if that is a copy of a letter you wrote to Mr. Myer Schine on or about that date?
A. That is right.
Q. Can you tell me what the conversation was that you had with Mr. Schine which is referred to in the first paragraph of that letter?
A. Well, I went into the office——
Q. Just a minute. Where was this conversation?
A. In Gloversville, his office. This is dated September 3rd, 1934.
Q. What was the date of the conversation?
A. It was about August 29th.
Q. That was at Gloversville?
A. Yes.
Q. Who else was present?
A. Just Myer and I.
Q. What was said then?
A. He was trying to make a deal, buy my places out of there, or we tried to make some kind — booking arrangement, so he can buy my pictures.
Q. What was said by him or by you about his buying pictures for you?
A. He said if I give him—first, was try to buy me out. He offered me *for* $15,000 for the theatres, and I said "No," [fol. 3158] and then the other talk was if I pay him $25 a week, he would buy my pictures up there, and after five or six months, if he can acquire the Palace, it would give me good rent for the Strand, and I said "No."

The Court: The Palace?
Mr. Wright: The Palace was the theatre that was being operated by Graham and Ludlow, according to the witness' prior testimony.
Mr. Rogers: He has not so testified.

The Court: What was the last statement about the Palace?

(Last portion of last answer read.)

A. (Continuing:) Then after that, after I left, he told me "When you go back, think it over, and think whatever you decide to do and write me a letter," and this is the letter I write him.

Q. After you wrote the letter, did you hear anything in reply to it?

A. No, no more.

Q. Calling your attention to the 1935-1936 season, is this contract—I hand you copy of the contract you made with Fox that year?

A. That is right.

Mr. Wright: I will ask to have that marked the next exhibit number for identification.

[fol. 3159] (Thereupon contract between Vournakis and Fox for 1935-1936 season, was marked as Plaintiff's Exhibit 840 for identification.)

Q. I will show you this contract dated June 22nd, 1936, between you and Fox and ask you if that is your copy of the contract you made with Fox for the—the first contract you made with Fox for the 1936-1937 season?

A. Yes, and this one is the second.

Q. And I show you this contract dated November 2nd, 1936, and ask you if that is your copy of the superseding contract made with Fox for the same season?

A. This same season, yes, this is the fourth-run deal, and that is the third and fourth.

The Court: 1936-1937, you mean?

The Witness: Yes, sir.

Mr. Wright: I will ask to have these two 1936-1937 season contracts marked the next two exhibit numbers for identification.

The Court: Separately numbered?

Mr. Wright: Separately.

(Thereupon two 1936-1937 season contracts for Watertown were marked as Plaintiff's Exhibits 841 and 842, respectively for identification.)

Mr. Wright: I offer in evidence these three contracts [fol. 3160] marked 840 to 842, inclusive.

(Two letters were then marked as Plaintiff's Exhibits 843 and 844 for identification.)

Mr. Wright: These are offered.
Mr. McClennen: That is the three contracts?
Mr. Wright: Yes, sir.

(Thereupon contracts previously marked as Plaintiff's Exhibits 840, 841 and 842 for identification were received in evidence.)

By Mr. Wright:

Q. I hand you a carbon copy of a letter marked Exhibit 843 for identification, and ask you if that is a copy of a letter you wrote to Mr. Grassgreen of Fox on or about the date it bears there?
A. Yes, sir.
Q. October 31, 1936?
A. Yes, sir.
Q. And this paper marked Exhibit 844 for identification dated November 2nd, 1936, is that a copy of——
A. Yes, that is a copy of——
Q. (Continuing:) —a communication from you to 20th-Century-Fox, the same day?
A. Yes, sir.
[fol. 3161] Q. Now, this contract that has been marked as Exhibit 841, can you look at that and tell me the date on which you signed that application?
A. This one is the 22nd day of June, 1936.
Q. And that contract calls for third-run.
A. Third-run, that is right.
Q. After you made that contract with Fox, did Mr. Grassgreen, or any one else from Fox come to see you about it?
A. The salesman came up and see me.
Q. Who was the salesman?
A. I can't remember now, Goldsmith, the salesman must be on the other contract. I can't remember the name of the salesman.
Q. What did you do after the salesman came?
A. He told me to go down and see Moe on account of Schine Enterprises bought the Palace.

Mr. McClennen: May that be excluded? What he did was all that was asked.

The Court: Strike it out.

Q. After the salesman came did you go to see Mr. Grassgreen at Albany?

A. Yes, sir.

Q. Was there anybody else present?

A. Just Moe Grassgreen.

Q. What did he tell you about that contract?

[fol. 3162] A. We have to change contracts from third-run to fourth-run on account of he bought the third-run for the Palace.

Mr. Rogers: We can't understand you.

Q. Just tell us what Mr. Grassgreen said about the contract.

A. He told me to release him from the third-run contract on the Strand on account they want to sell it to the Palace Theatre, Watertown, on account Schine bought the Palace, and they had all other products bought third-run for that house. They wanted me to release them from the contract, and they give me a better deal for the Strand fourth-run.

Q. Is that when you gave them this letter that is Exhibit No. 843?

A. Yes, sir.

The Court: Did the superseding contract follow that?

Q. Was it about the same time you gave him this Exhibit 844?

A. Yes, sir.

Q. That refers to the Liberty?

A. Going fifth-run.

Mr. Rogers: You mean 844 for identification?

Mr. Wright: Yes.

Q. You had bought third-run for the Strand and fourth-run for the Liberty?

A. Yes, sir.

[fol. 3163] Q. And you released both runs?

A. I released both runs and made the Strand fourth-run and Liberty fifth-run.

Q. This contract, Exhibit 842, is the one you made for the Strand fourth-run?

A. Yes, sir.

Q. And that was made on what date?

A. The second day of November, 1936.

Q. Then during that 1936-1937 season, Schine was operating what theatres?

A. Was the Avon, the Olympic and Palace.

Q. And you still had the Strand and Liberty?

A. Strand and Liberty.

Q. And Victoria——

A. Was Graham and Ludlow.

Mr. Rogers: What was that year, you said, Mr. Wright?

Mr. Wright: The 1936-1937 season.

Q. The Fox product that played that year then played the first three runs in the Schine theatres?

A. That is right, first, second and third.

Q. And was that also true with respect to the other major pictures you had for that year?

A. Paramount and Warner.

Q. Then during the year 1937 did you have any further conversation with Mr. Schine about your theatres there?

[fol. 3164] A. No, I don't believe it was in 1937, but I think it was around 1938.

Q. In 1938?

A. Yes, sir.

Q. What was the conversation and where was the conversation you had in 1938?

A. Well, it was in my office.

Q. At Watertown?

A. Yes, sir.

Q. Who else was present?

A. Mr. Bill Tupper. He is District Manager.

Q. Which Mr. Schine?

A. Myer.

Q. Mr. Myer Schine?

A. Yes, sir.

Q. What was said then?

A. We sat there and was talking house business. We said we — trying hard to make a living up here. He asked me if I was interested to sell out. I said I never thought of it, and we sat there for a little while, and after they went he told me that in case——

The Court: Who told you?

The Witness: Myer, he told me in case——

Q. What do you mean by "after they went out," who went?

A. I mean Bill Tupper and Mr. Myer Schine, after they [fol. 3165] went from the office.

Q. After they left the office?

A. They left there.

The Court: Then what happened?

The Witness: They told me in case——

Q. Was this another meeting?

A. No, the same meeting.

Q. Did you leave the office with them?

A. Yes, I left there in my office there.

Q. Go ahead.

Mr. McClennen: This is Mr. Myer Schine he is going to say said this?

The Court: You talked with Myer Schine?

The Witness: Yes. He told me in case I want to do anything to tell Bill Tupper and Bill Tupper would take the proposition over with Myer. About three or four weeks later I decided to go home to Greece.

Mr. McClennen: This isn't a conversation now. May it be excluded?

The Court: Strike it out. What was done about the sale?

The Witness: It was about three or four weeks I decided to say I was planning to go to Greece, and that is the time Bill Tupper told me if I want to sell out that Myer called [fol. 3166] him up and they offer me $35,000 for the Liberty. I said to Bill Tupper I would sell out both houses for $85,000 if they want to buy them out, they can let me know right away before I leave, and I haven't heard anything more except the offer for the Liberty.

Q. Then calling your attention to the——

The Court: Did you have the title to both places? Did you own the land?

The Witness: Yes, both, and buildings.

Q. Calling your attention to the 1937-38 season, did you then go back to third-run?

A. I went back to the third-run at the Strand and fourth-run at the Liberty.

Q. And the Schine houses played the first two runs?

A. First two runs, yes.

Q. On the major product you played at the Strand and Liberty?

A. Yes, sir.

Q. Did that continue the same way through 1938-39?

A. Yes, that continued right along after that.

Q. Do you recall approximately what admission prices were being charged in the town there when Mr. Schine took over the operation of the Avon and Olympic in 1933?

A. Before, the best I can remember, the Olympic was charging 25 and 35 and the Avon was 35 and 40. I can't tell [fol. 3167] exactly, because it is so far back.

Q. What were you charging?

A. 25 cents and Victoria was 25.

Q. Then in that year 1933, do you recall any changes that were made?

A. Well, the Olympic went to 25 all over the house and I went to 20 cents at the Strand, and the Liberty was still 20 cents.

Q. How about the Avon, any change there?

A. The Avon, I think was 35 and 40, I can't remember.

Q. Then you say the Olympic went to 25 cents all over the house; was it a house with a balcony?

A. Yes, sir.

Q. About how many seats in the balcony?

A. I believe it was between six and seven hundred.

Q. Were there any further changes in 1933?

A. No, not until the year 1935.

Q. 1935, what happened in 1935?

A. That is when the admissions went down in the houses in Watertown. The Olympic was charging, I think, balcony 15 cents.

Q. At night?

A. At night, and I went down to 15 and 20 at the Strand, and at the Liberty 15 cents.

Q. What do you mean by "15 and 20"?

[fol. 3168] A. 15 upstairs and 20 down.

Q. You had a balcony, too?

A. Yes, sir.

Q. How many seats in your balcony?

A. 132, and at the same time I was giving tickets myself, two for 20 cents, that is, one ticket and 20 cents admits two adults.

Q. That went on through 1935, the prices you mentioned?

A. Yes, sir.

Q. Was there any change in 1936?

A. No, not until late in 1936.

Q. What happened late in 1936?

A. The Olympic came back to 25 cents.

Q. That is after the Palace was taken over?

A. Yes, sir.

Q. What prices were charged there?

A. 15 and 20.

Q. Did they have a balcony, too?

A. Yes, sir.

Q. How many seats?

A. I don't know how many seats.

Q. Approximately?

A. I think around 700, I can't tell because I never checked.

Q. Then the Palace charged the 15 cents in the balcony and what on the main floor?

[fol. 3169] A. 20 cents.

Q. You were charging?

A. 15 and 20 at the Strand.

Q. 15 is your balcony and 20 main floor at the Strand?

A. Yes, sir.

Q. And the Liberty was what?

A. 15 cents.

Q. The Liberty all this time was playing behind the Strand?

A. Behind, yes, sir.

Q. Then how long did those prices continue?

A. Well, that continued for, I think, around 1937-1938, I think.

Q. Then what happened?

A. I can't remember, and then a little later we got together because we had too many houses, to close up two houses up there and just open them Saturday, Sunday and Monday.

Q. I am talking about admission prices.

A. Admission prices, they stayed about the same right along there until the tax come on, and when the Pine Camp came on, we all went up.

Q. That was in 1940?

A. 1940, yes, sir.

The Court: When what came up?

The Witness: Pine Camp.

Q. That was the Army camp?

[fol. 3170] A. The Army camp.

Q. During the time from 1933 on there, did the Schine Theatres have any give-aways of any kind?

A. Yes, they gave money away and they gave cars away, and I gave dishes away, and I gave money away.

Q. Did they give any tickets away?

A. I think they gave the first year for a month, I believe, at the Avon.

Q. In 1933, that was?

A. Yes, 1933, but didn't give any more.

Q. Didn't give tickets after that?

A. No.

Q. The only give-aways after that were money give-aways and automobiles?

A. Money and automobiles.

Mr. Wright: I will ask to have these marked the next two numbers for identification.

(Thereupon the documents referred to were marked as Plaintiff's Exhibits Nos. 845 and 846, respectively, for identification.)

Q. I show you this Plaintiff's Exhibit No. 845 for identification, and ask you if you recognize the signature on there and know who signed it?

A. That is right.

[fol. 3171] Q. Who?

A. Mr. George Lynch.

Q. And that was given to you on what date?

A. September 20th, 1939.

Q. And this Plaintiff's Exhibit 846 bears your signature?

A. That is right.

Q. It was signed on the same day?

A. The same day.

Q. You had a conversation with Mr. Lynch on September 20th, 1939, did you?

A. Yes, sir.

Q. Whereabouts?

A. I was in his office.

Q. How did that conversation come about?

A. Well, it was about three or four days ahead of Myer called me up over the telephone.

The Court: Who called you up?

The Witness: Mr. Myer Schine. He told me if I went down to Gloversville they had something for me, that it would be a benefit up there, so we can straighten up the Watertown situation. I have told him, I remember, I wasn't feeling good, but I will go down and see him, so I did.

Q. Who did you see when you got to Gloversville?

[fol. 3172] A. When I went there they was pretty busy and I went and sat with George and was talking about film rentals, and was talking about protection. I asked him the protection was a little too high in Watertown, 60 days after the second-run.

Q. What did you say?

A. I asked him if they would reduce it a little. He said "I think we are going to do something up there, Pete, for you," and that is the paper he gave me.

Q. This Exhibit 845 for identification?

A. Yes, that is right.

Q. Did he dictate that then?

A. No, he had it already made out, I think.

Q. He gave it to you?

A. Yes.

Q. Did you see Mr. Schine?

A. Yes, I see him a little later.

Q. How much later?

A. About an hour later or so.

Q. What was the talk you had with Mr. Schine?

A. We started talking about the Watertown situation up there, and I told him it would be better if we closed up two houses up there. He said "Maybe have to do something like that, because they got too many houses." Afterwards, he told me to do something for him, if I want to do it or not. [fol. 3173] I said "What is it?" He said "Sit down and dictate something." I said "No, I can't dictate anything." He dictated that letter and ask me if I want to sign it, all right, and if I don't want to sign it, all right.

Q. This letter he dictated that you are referring to is this Exhibit 846?

A. Yes.

Q. Then it was written up by his girl?

A. Yes, he dictate- it, yes.

Q. You signed it?

A. Yes, I signed it.

Q. After these documents 845 and 846 were signed on the 20th, did you get major pictures earlier after their runs——

A. Yes, a little. They got the protection down to 30 days.

Q. Which companies?

A. I believe it was Warner's, Paramount—Metro was always—and United Artists, but Fox never reduce it to 60 days—never reduce it below 60 days.

Q. You say Paramount, Warner's and United Artists reduced to 30. How about R. K. O.?

A. R. K. O. was 30, too.

Q. Did you have any negotiations or conversations about these reductions with representatives of the film companies?

[fol. 3174] A. I ask the salesmen to give me 30 days protection instead 60.

Q. I mean, after these documents were signed on the 20th?

A. After I got the reduction, after.

Q. But I say, after that date did you have any conversation or talk about those reductions with the representatives of the film companies?

A. No, I never had.

Mr. Wright: We offer Plaintiff's Exhibits 845 and 846 in evidence.

(Thereupon Plaintiff's Exhibits 845 and 846, previously marked for identification, were received in evidence.)

Mr. Wright: Exhibit 845 is dated September 20, 1939. It states:

"Mr. Peter Vournakis of the Strand and Liberty Theatre, Watertown, has requested and I have agreed to reduce the clearance of 60 days, second-run over third-run, to 30 days on the following companies: Paramount, Fox, Warner's, R. K. O. and United Artists." Signed "George W. Lynch."

By Mr. Wright:

Q. It also has a place for your signature?

A. Yes.

[fol. 3175] Q. Did you sign a copy and give it to him?

A. I can't remember.

Mr. Wright: Exhibit 846 bears the caption of this case, and is headed "Affidavit." It states:

"Peter Vournakis, being duly sworn, deposes and says: I am a citizen of the United States and reside in the City of Watertown, New York. I have been in the theatre business in the City of Watertown for the past 20 years. A great portion of that time I have been operating and still operate two theatres in opposition to the Schine Theatres in that city, and during the entire period I have never experienced any unpleasantness, and at no time have I had any difficulty in obtaining the pictures I wanted to buy. I have always found that their theatres were conducted in a business-like manner on a fair competitive basis. Subscribed and sworn to before me this 20th day of September, 1939."

I will ask to have these contracts marked with the next seven plaintiff's exhibit numbers for identification.

[fol. 3176] (Thereupon seven contracts between Mr. Vournakis and film companies, were marked as Plaintiff's Exhibits 847 to 853, inclusive, for identification.)

The Court: These are contracts that have been identified?

Mr. Wright: No, these have not been previously identified. These are contracts Mr. Vournakis produced, and that is why I want to identify them now.

The Court: Any objection to those?

Mr. McClennen: No, your Honor.

The Court: All right, received.

Mr. Wright: I have not asked him to identify them. Of course, if there is no objection, I will offer them.

(Thereupon Plaintiff's Exhibits Nos. 847 to 853, inclusive, previously marked for identification were received in evidence.)

Mr. Wright: You may cross-examine.

Mr. Rogers: I don't think there is any cross-examination, may it please the Court.

The Court: I want to ask a question or two.

By the Court:

Q. You spoke of a time when an offer of $15,000 was made to you?

A. Yes, that is when I had just the Strand at that time.

[fol. 3177] Q. That is the first one?

A. That is the first one.

Q. You had just the Strand at that time?

A. Yes, the Liberty I had given it back, because I was sick at that time. I turned the Liberty back, and just operated on a profit saving basis.

Q. $15,000 related solely to the Strand?

A. Just the Strand, yes.

Q. That took place where?

A. That was in Gloversville.

Q. How did it hapen that you went there?

A. That is the time, I believe, he called me up, or I went there, I can't remember. I have been paying him a visit quite often, because we was trying to get together so we can straighten out the Watertown situation.

Q. You don't recall whether you were asked to go down, or whether you went of your own accord?

A. I can't remember, your Honor. I can't tell.

Q. The second time you said you had a talk with Mr. Schine and Mr. Lynch at Watertown?

A. It was not Mr.——

Q. Later you went down to Gloversville?

A. It was not Mr. Lynch. It was Mr. Tupper.

Q. Oh, yes, you said Mr. Lynch called you up. How did you happen to go to Gloversville the second time? You [fol. 3178] spoke about your going back to Greece?

A. That is Mr. Bill Tupper called me up, District Manager, and if I would be interested to sell out before I go.

Q. Was that at——

A. Watertown.

Q. Watertown?

A. Yes. Mr. Myer Schine call up Mr. Tupper and ask him if I would be——

The Court: You don't know about that, only what Tupper told you?

The Witness: That is all.

Q. You went to Gloversville after that and saw Mr. Lynch and Mr. Schine?

A. That was later. Yes, it was later.

Q. About two weeks later you said?

A. No, that was longer than that.

Q. Had you come back?

A. Yes, it must be a year later, I believe.

Q. How did it happen that you went to Gloversville at that time?

A. That is when Mr.——

Q. When they made this offer of $35,000?

A. That was in Watertown.

Q. That was in Watertown?

A. That is right.

[fol. 3179] Q. How did you happen to contact Mr. Schine at that time, when he made that offer?

A. I didn't—through his District Manager.

Q. Did you call the District Manager?

A. No, the District Manager called me up. He came down to see me. It was, I believe, just a few weeks apart. That is when Mr. Myer Schine came up there and tried to make a deal with me.

Q. That is the time when he offered you $35,000 and you told him you wanted $80,000?

A. $85,000 for both places or nothing.

Q. You then had?

A. The Strand and the Liberty, both properties.

Q. You made this affidavit down there at Gloversville?

A. Yes.

Q. Was that true?

A. Well, as far as the thing is there, that the affidavit says, I always be able to buy pictures, I always be able to buy pictures after him, but not before him. That means, I have to wait after they get through, and then buy them.

Q. There are other things in the affidavit.

A. Sure.

Q. There are other things in the affidavit, also?

A. As far as the competitive business, we always com-[fol. 3180] peted there.

Q. You said something about the company being fair?

A. Well, we compete. We compete up there.

Mr. Wright: If the Court please, I don't think it is material how the witness or any witness here might characterize any competition that occurred. I suppose it is for the Court to judge ultimately.

The Court: It is important to know how the witness expressed himself, what he said. It has a bearing, of course, upon the proof of the facts.

Mr. Wright: But I would suppose his conclusions in any event as to such ultimate questions as to whether or not a particular practice was fair, would be immaterial.

The Court: To some extent that might be true. At the same time, it has a bearing otherwise. All right.

Mr. Rogers: May I straighten one matter out.

Cross-examination.

By Mr. Rogers:

Q. With reference to the Strand, when that offer was made——

A. Yes.

[fol. 3181] Q. That offer was $15,000 above the mortgages that were on the property?

A. That is one thing I can't tell you, and I can't remember, because the only thing I would dispute was the $15,000. I want to be honest. I can't remember if it was above the mortgage or including the mortgage.

Q. Do you remember what that mortgage was?

A. The mortgage was $10,000, yes.

The Court: You owned the building and equipment?

The Witness: Yes. That is something I can't remember.

The Court: That is all.

Mr. Wright: I have another witness who was supposed to be here, but he is not here. If we could have a short recess, I think we have some documents to offer.

The Court: All right. Let me know when you are ready.

(Short recess.)

[fol. 3182] Irving Cohen a witness called by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Wright:

Q. Where do you live, Mr. Cohen?

A. I now live at 32 Oakdale Drive, Rochester, New York.

Q. What is your occupation?

A. Well, I have a theatre in Corning, New York.

Q. How long have you had the theatre at Corning?

A. Since about 1926, or thereabouts.

Q. You own the theatre, yourself, now?

A. Yes, sir, I do.

Q. For how long?

A. Well, since July 1st of 1943, I have it by myself. Previously to that I had a partner.

Q. You were in partnership with whom?

A. Mr. Morris Gaby.

The Court: From 1925?

The Witness: From 1926 to 1943.

Q. That is the Plaza Theatre there?

A. The Plaza Theatre.

Q. How large a theatre is that?

[fol. 3183] A. Oh, about 450 seats.

Q. Calling your attention to the year 1932, what other theatres were operated there?

A. In 1932 they had the State and the Fox, the Fox Theatre, and I think it is 1932, I believe, he just had the State; I don't think the Fox was built.

The Court: The State?

The Witness: The State; I believe the Schine State was in active operation.

Q. Who was operating it then?

A. The Schine Enterprises.

Q. In 1932?

A. Yes, that wasn't 1932, that was before the Schines made a deal with Fox.

Q. If it appeared Schine made a deal with Fox in 1930, would you still say Schine was operating the State during 1932?

A. No, it was then the Fox, they ran the State and Fox. Then the Fox Theatre was up at that time, yes.

Q. In 1932?

The Court: You don't mean there were four theatres in Corning?

The Witness: There was three; there was the old Liberty Theatre, which was rebuilt and called the Fox; Schine never ran that, until it was built by Fox, and he took it [fol. 3184] over from Fox and ran it. He also had the State.

The Court: That made the third theatre?

The Witness: The Fox made the third theatre.

Q. As I understand, in 1932, prior to the time Schine took over the State and Fox, those two theatres were being operated by the Fox interests?

A. By the Fox interests.

Q. And you were operating the Plaza?

A. Yes, sir.

Q. Were those the only three theatres operating at that time?

A. Yes, just about that time the Palace was built; also, when the Schine leased or sold to Fox, there was an old Regent Theatre there which was sold to a man by the name of Gerber, and he built the Palace on the site of the old Regent, just also about that time.

Q. And opened it about 1932?

A. Yes, sir.

Q. Then there were——

A. That made four theatres.

Mr. McClennen: Could I interrupt you a minute? May we understand when these witnesses speak of Fox, they are speaking of that Fox Metropolitan Organization?

[fol. 3185] Mr. Wright: I assume so.

The Court: Yes.

Q. Now, at that time can you tell us approximately what policy each of the theatres was operating on?

A. Well, when the Fox Theatre—shall I start when we first went in in 1926?

Q. No, start with 1932.

Mr. Rogers: All you are interested in is 1932, isn't it, Mr. Wright?

Q. 1932.

A. 1932, when the Fox Theatre was operating, they had made a deal with Gerber and for a time the Palace Theatre was closed, and we were able to get some picture first-run in Corning, and others second-run.

Q. Are you talking about major product?

A. Well, we had one major company which was Warner.

Q. First-run?

A. Yes, sir.

Q. That was the only major company you had first-run?

A. Yes, sir, at that time.

Q. Then you had major second-run?

A. Yes, sir, we had some major second-runs, that is all we had, was first-run and second-run. We had some independent first-run, too, at that time.

Q. Then calling your attention to the 1933-34 season, [fol. 3186] after Schine took over the operation of the—what were those two theatres?

A. Well, the deal—the Palace situation changed again, and to this Gerber about the time Schine went back into Corning, the Palace reverted back to Gerber, and Mr. Gerber had some first—he ran his theatre with some first-run pictures. He had one company called "Columbia" and another "United Artists," so we were able to buy those pictures second-run.

Q. This was 1933-34?

A. At the time the theatres reverted back to Schine, after the Fox——

The Court: You mean the State and Fox?

The Witness: Yes, and all major product at that time, why, the best we could get was third-run.

Q. That is as to the major product which Schine was playing?

A. Yes, he played first-run at the Fox. Then he took the better pictures and played them again at the State and then they were made available to us.

Q. That is, what he didn't play second-run at the State, you would get second-run at your house?

A. Yes, sir.

Q. What he would play second-run you got third-run?

A. Third-run.

The Court: Did that apply to all majors?

[fol. 3187] The Witness: Yes, the only pictures of the majors we were able to buy at that time, you could not consider Columbia or United Artists a major company,—we were able to get Columbia and United Artists because the only prior run they had in Corning was the Palace.

Q. You were able to get them after the Palace?

A. Yes, we followed Schine and the major product came to us third-run.

The Court: At the Palace——

The Witness: The Palace tried to run with what product they could get on the basis of first-run. They had Columbia and had United Artists and what independent product they could pick up. They did later also buy some second-run, but very little, they couldn't get it.

Q. Now, then, did the same general policies continue into the 1934-1935 season, or were there any changes in the product situation then?

A. The next change was when the Palace—when the Schine Enterprises made a deal with the Palace and took that over. Then the best we could get was third-run in all major products.

Q. When was it, if you recall, that Schine took over the Palace?

[fol. 3188] A. I don't exactly recall the year. It was about that time, around 1935 or 1936. It was just about that time. You see, Mr. Gaby was running the Plaza at that time. I was at Hornell, but while I was in general touch with the situation, these years sort of slipped by, and it was about that time that that——

Mr. McClennen: Just a moment. As the witness is evidently speaking second-hand, we ask that that be stricken out, about the date.

The Court: If he knows approximately the date.

The Witness: Yes.

Mr. McClennen: It is so far off it simply encumbers the record.

Mr. Wright: We will read into the record the date that appears in the interrogatories, the answer to interrogatory 17-A. It states with reference to the Town of Corning under the "Palace Theatre, formerly Regent."

"Nature of interest—lessee."

"Extent of interest—100 per cent."

"Date acquired—April, 1938."

"Other interests, if any in excess thereof—none."

"Seating capacity—398."

"Owned or leased—leased."

[fol. 3189] "If leased, name of lessor—Fred Gerber, Corning, New York."

By Mr. Wright:

Q. As I understand it, there wasn't any important change in the product situation in so far as your theatre, the Plaza, was concerned after 1933-1934, until Schine acquired the Palace?

A. The Palace.

Q. Then what happened?

A. Well, it sort of worsened for us to the degree, whereas before we were able to acquire second-run, whatever the Palace played, from then on, the best we could get was third-run, excepting Columbia. Columbia did sell us second-run. That was the only company that sold us second-run.

Q. On some product did you have fourth-run?

A. Unless you could classify reissues. Sometimes we would run a reissue, but third-run was our general—you see; they would make the picture "As available." If Fox came to sell us a contract, they would sell us pictures as available after Schine. Schine had the privilege of running at the Fox, at the State, and then it was made available for us—or at the Palace.

Q. Fox, State or Palace?

A. Yes, but we didn't run more than third-run, except if it [fol. 3190] was a reissue.

Q. What was the situation with respect to admission prices in the year 1932 or before Schine took over—took back the operation of the State and the Fox?

A. Our general price—well—was, while the Fox theatres —that is, when Schine made his deal with Fox, our admission price was 35 cents.

Mr. Rogers: That is not the question, may it please the Court, and we move to strike the answer. It was before Schine took over.

The Court: 1932.

Mr. Wright: That is right.

Mr. Rogers: May that be stricken?

The Court: Strike it out.

The Witness: That was before Schine took over from Fox?

The Court: What was your policy then?

The Witness: Before Schine took over from Fox, our policy was—yes, 35 cents. We were charging 35 cents at that time, because we had first-run on Warner's.

The Court: 35 and what in matinees?

The Witness: No, that was our evening price, and we had matinees Saturdays and Sundays.

Q. What were the State and Fox charging?

A. Well, the Fox price was, I think, 40 cents at that time.

[fol. 3191] Q. And the State?

A. The State was, I think—well, I don't think the Fox—

at one particular time there, I don't think they ran the State. It was the Fox and the Plaza.

Q. Then after, in the 1933-1934 what were the prices charged by various theatres?

A. We went down—the best we could get at that time was either third-run or some seconds, and we went down to 25 cents, and the State price was 25, and I believe the Fox price was 35. The Palace price was 35, too, at that time, 25 or 35.

Q. Those were all evening adult admission prices you are talking about?

A. Yes, I am talking about evening prices. I believe they were a little less during matinees, except Saturdays and Sundays.

Q. About how long did those prices continue?

A. Well, we had pretty tough sledding on those third-run pictures.

Mr. McClennen: May that be stricken out?

The Court: Yes, strike it out.

The Witness: Well, we just couldn't make—I don't know how to answer that. We could not make a go of it.

~~Mr. Wright: Read the question.~~

[fol. 3192] (Question read.)

The Court: Just answer the question.

The Witness: Was that after——

The Court: After 1933-1934.

Q. The prices you have just described?

A. I would say for six months. I mean, not very long. After Schine took back, and the best we could get was third-run pictures.

Q. As I understand it, you just described the prices that prevailed after Schine took the theatres back in the 1933-1934 season. Then I asked you how long those prices continued, if you know?

A. I don't remember. You can tell by the contracts, of course. I don't remember offhand.

Q. You don't remember——

A. I mean, I can't honestly answer that question unless—you see—of course, we went—we immediately went down to 25 cents, and the best we could get was third-run, and the State, they slashed their price, and we had to run after the State, so we went down to 20 cents. At one period the State went down to 15, and we had to go down to 15.

Q. In general——

A. I mean, that took a process of time, around 1934 to 1938 or 1939. It was about that time Mr. Gaby and I took a [fol. 3193] trip to Gloversville to see Mr. Schine——

Q. Let's just confine ourselves to the price situation first here. During this period was there any time when your prices at the Plaza were lower than the prices at which Schine was playing major product ahead of you at the State?

A. They weren't lower than the State. I don't believe they were lower than the State. When we dropped to 15 cents, it was really to meet the price that existed at the State.

Q. In general the prices at the State, then, were the same as yours?

A. As our price. We had to come down to meet their price.

Q. Do you recall whether there were any give-aways?

Mr. McClennen: Just a moment. I ask to have that answer stricken out, "We had to come down to meet their price," not responsive.

The Court: Let him state the facts. "Had to come down" is a conclusion.

Q. State whether or not you did come down.

The Court. Did you come down to the price of the State?

The Witness: Yes. I think at one time we were charging more than the State. We had to.

The Court: Strike out the words "Had to."

Q. Do you recall whether at any time after 1933 there were [fol. 3194] any tickets given away for the Schine theatres there?

A. Yes, I recall that very much. They started a student ticket. Any student would be admitted into the theatre with 15 cents.

Q. What theatre was that?

A. That was to all Schine theatres that were running in town.

Q. Including the first-run theatre?

A. Fox,—yes, admitted in the Fox or the State.

Q. In those the regular first-run price was what?

A. I think at the Fox the price was 35 cents, and they possibly had a lower balcony price. I think it was a quarter in the balcony at that time.

Q. Did you ever have any conversations with Mr. Schine about the situation there in Corning? Just answer "Yes" or "No."

A. Yes, we did.

Q. When was the first time?

A. This was after Schine took over the Palace. We thought perhaps we could work something out, and Mr. Gaby and myself, we took a trip to Gloversville and asked——

Q. When was this, as nearly as you can place it?

A. 1939, I believe.

Q. Some time in 1939?

A. 1939. It was in July of 1939.

[fol. 3195] Q. Who was present? Who did you see at Gloversville?

A. We saw Mr. Myer Schine.

Q. Any one else?

A. Not that I recall. I think his brother—I think we saw him there. I don't remember any conversation with him.

Q. What was said then?

A. We asked, now that the situation at Mr. Gerber's Palace, was simply that Schine and we had—we were in town, and if we couldn't work something out, that we could get some product, so that we could live, if we couldn't get some second-run pictures, and then we could go to a quarter, and I recall Mr. Schine—we said at that time to him "You have so many theatres. We have this one," and there was something—you know, he could do for us there. Mr. Schine, I remember answering that every situation had to take care of itself, and they didn't have enough product themselves.

The Court: That is what he said, you say?

The witness: That was one of his answers to us, to the question, when we requested that the company give us some products. He said he did not have enough for himself. We told him he would have enough if he did not double-feature so much. He answered us, he considered the opposition [fol. 3196] in Elmira, they double-featured, therefore, he had to double-feature.

~~Q. Was anything~~ else said then?

A. We asked him—he asked us if we would sell him the theatre, and we told him that we had to make a living, and we did not know what we could do. We asked him—

we would trade him the theatre if he could give us some situation that perhaps was too small for him, and Mr. Schine did not know of any at that particular time. He said he would get in touch with us if he did know of a situation like that.

Q. With reference to second-run product, had you attempted to negotiate with the major film companies for major product?

A. Well, we did that. Practically every time they sold us a contract, we would say "Here is a town of 16,000 people. We have to run third-run."

Mr. Rogers: I move to strike it out, may it please the Court. It is not responsive. The question is whether he negotiated for the product.

The Court: Yes, it is too general.

Q. Can you recall any particular conversation with any particular major distributor where you discussed the possibility of getting the second-run?

A. The only way I could answer that, every time I bought [fol. 3197] a product, I yelled murder with all the distributors.

Mr. McClennen: May that be stricken out?

The Court: Yes, that is not responsive.

Q. Listen carefully to the question and see if you can answer it.

(Question read.)

A. Yes, I can.

Q. With whom?

A. Well, with Ted O'Shea of Metro-Goldwyn-Mayer.

Q. When?

A. I would say during the time that he was manager, and that this situation existed. I mean, various managers would change from time to time.

Q. During that time what was said by him and by you with reference to a second-run for Corning?

Mr. McClennen: The usual objection.

The Witness: He told us that they did not sell Schine, that Schine bought in New York, and when they came down to sell me, that is what he had to sell me, and it was to follow Schine theatres, that is the only way he could sell me.

Q. Any other major representatives that you can remember of having a conversation with?

A. Sidney Samson of Fox.

[fol. 3198] Q. When was it you talked to him?

A. About that same time.

Mr. Rogers: Can't we get a date here?

The Witness: You see, I am not a lawyer. Practically every contract——

Q. Just give us the best——

A. Every contract I made——

The Court: The Schines took over the Palace in 1938; now, when was this?

Q. When you talked to Samson of Fox, was this before or after or before and after? We are trying to fix the time when you had these talks with him about second-run for the Plaza?

A. When this condition existed that the best we could get was third-run——

Q. That would be the period of 1933-34 right through 1940-41?

Mr. McClennen: That is objected to, right through, leading question.

The Court: State when it was.

The Witness: When the Schine Enterprises took the theatres back from Fox and we immediately had to run third-run, and we had to follow the State Theatre, especially since we were charging either the same or over what the [fol. 3199] State was charging. It seems there was a conflict going on between the Schine and the Palace.

Mr. Rogers: That is not responsive, may we have it stricken out?

The Court: Yes.

Q. I am just trying to fix the time of the conversation you had with Mr. Samson. Did you talk to him after you went to third-run or at the time you went to third-run?

A. Yes, the only way we could buy them was third-run.

By the Court:

Q. What did Samson tell you?

A. Samson told us the same thing. He said "We don't make the deal with Schine Enterprises; that is made in

New York. We have this to sell and it is to follow Schine as available. If it is third-run, it is third-run; if it is fourth-run, it is fourth-run; and if it is second-run, it is second-run; the pictures he doesn't play second-run, you can have the second-run."

Mr. Rogers: We don't have the date of the talk with Ted O'Shea and the talk with Samson. If we are to meet the situation, we must have the date.

The Court: Did you talk with him at the time you played third-run?

[fol. 3200] The Witness: Yes.

The Court: About 1935 or '36?

The Witness: 1935 or '36.

The Court: You had second-run except Columbia?

The Witness: Yes.

Q. Anybody else besides Mr. O'Shea and Mr. Samson?

A. Mr. Miller, Universal.

Q. Where did you see him?

A. At that same period of time.

Q. What was said by him?

A. Always the same answer, that they don't sell Schine Enterprises, that those pictures are sold out of New York.

Q. What do you mean by that, Universal films at the Buffalo office or what exchange?

A. That the deal is made either in Gloversville or in New York.

The Court: What did they mean, they didn't sell?

The Witness: I mean by that, the salesman didn't sell, this particular salesman or representative of Universal, who in this case was Otto Siegel, that he didn't sell Schine; he only received permission from Universal to sell any pictures that were available, and it was in this case third-run. If [fol. 3201] Schine didn't play them second-run, they would be second-run, and if Schine didn't play them first-run, they would be first-run.

By Mr. Wright:

Q. Did you have any other conversation with any major representative?

A. There was Harry Seed of Warner Brothers.

Q. Where did you see him?

A. That same period of time.
Q. What was said by him?

Mr. McClennen: Same objection.
The Witness: Same answer.
The Court: He hasn't got the periods very well.
The Witness: Say between 1935, 1936, 1937, after the Schine Enterprises took the theatres back from Fox.

Q. What did he tell you?
A. He told me——

Mr. McClennen: Same objection.
The Witness: As a matter of fact, he told me I was lucky to get pictures altogether. He said "Schine will pay me $25 a picture more if they don't sell you."

Q. Was there anybody else, any other major company——

Mr. Rogers: May that be stricken out as to his opinion [fol. 3202] of what Schine would do if he did not sell this witness?
The Witness: It wasn't my opinion, it was told to me.
Mr. Rogers: One moment, Mr. Witness; it is only opinion evidence.
The Court: I don't know that he may state that Schine paid $25.
Mr. Wright: He didn't say that, he said that is what Seed told him.
The Court: I know that, but I don't know that he can make a statement of that kind.
Mr. Wright: I suppose it is clear enough that Seed had authority to tell him why he could not have pictures.
The Court: Read that answer.

(Preceding answer read as follows:

> "A. As a matter of fact, he told me I was lucky to get pictures altogether. He said 'Schine will pay me $25 a picture more if they don't sell you'.")

The Court: I will let it stand.

By Mr. Wright:

Q. Did you talk to anybody from Paramount or R.K.O. about second-run?

A. Yes, I think Kenneth Robinson was Manager of [fol. 3203] Paramount office about that time.

Q. What did Robinson tell you?

Mr. McClennen: Same objection.

The Court: Overruled.

The Witness: Robinson told me that their deals are made in New York. He said "We can only sell you what New York tells us to sell, and it is after Schine".

Q. Did you talk with R.K.O.?

Mr. Rogers: Who?

The Witness: What was that?

Q. R.K.O.?

A. Yes, I talked to the manager there. You see, they changed managers of the office and this condition came up every time they sold me a contract. I just recall there was either Mr. Dixon was manager or I think at that particular time Mr. Boasberg.

The Court: That would be what period?

The Witness: Between 1934, '35, '36 and '37; they changed managers very often at that time.

The Court: Do you remember talking with Boasberg?

The Witness: Yes, I talked with Boasberg. I talked with Walsh and I talked with Lux.

The Court: Did they all represent R.K.O.?

The Witness: Yes, one succeeded the other.

[fol. 3204] Q. What did they tell you?

Mr. Rogers: That is objected to.

The Court: Sustained.

Q. Can you recall what any particular one of those representatives told you?

Mr. Rogers: That is objected to.

The Court: Overruled.

The Witness: We would go into conversations, you see——

The Court: No, no. Answer the question. Do you recall what any one of these said?

The Witness: They told me they can only sell me——

The Court: That is not the question. Do you recall any conversation with any one of these agents? You started to tell about Boasberg.

The Witness: Yes. I took this up with Mr. Boasberg, and I took it up with their salesman.

By Mr. Wright:

Q. What did Boasberg tell you?
A. He told me "This is what I can sell you, and it is as available after Schine".

Mr. Rogers: May that be stricken out, if your Honor please?
The Court: I don't know.

Q. Are you familiar with the Town of Salamanca?
A. Yes, sir, I am.
[fol. 3205] Q. Did you visit that town in 1937 or '38?
A. I have a sister living in Salamanca and I always made it a point to visit her.

The Court: That doesn't answer it. It is not necessary for us to go into that.
The Witness: Yes, I did visit Salamanca.
The Court: When?
The Witness: 1937. I made visits there two or three times every year.
The Court: You were there in 1937?
The Witness: Yes, I was.
Mr. Wright: I will ask to have this newspaper marked with the next exhibit number for identification.

(Thereupon newspaper referred to was marked as Plaintiff's Exhibit No. 854 for identification.)

Q. I will show you this newspaper dated December 24, 1938, marked for identification as Exhibit 854.

The Court: What number is that?
Mr. Wright: There were a group of contracts preceding, seven contracts that Mr. Vournakis identified.
The Court: That is 847 to 852.
Mr. Wright: The last contract number was 853, inclusive. Will you read the last question?

[fol. 3206] (Last question read.)

Q. When was the first time you saw that?
A. Well, I would say it was about four or five days after this paper was printed, that it was sent to me.

Q. Now, how long before December—how recently before December 24th, 1938, had you been in Salamanca?

A. Well, I was there in 1937. I was there in 1938. I made it a point of going there every year at some particular time.

Q. Well, in December, 1938, had you had any negotiations with reference to the possible operation of a theatre there?

A. Yes, sir, I had.

Q. Those were with whom?

A. With my partner and in conjunction with—that is Mr. Morris Gaby—with my brother-in-law, who was residing in Salamanca.

Q. What is the name of your brother-in-law?

A. Mr. Zafron.

Q. How do you spell it?

A. Z-a-f-r-o-n, Jack Zafron.

Q. Do you know whether you or your brother-in-law had taken any steps to acquire a property for theatre purposes there?

A. Yes, we had.

[fol. 3207] The Court: I don't know what knowledge he has about what his brother-in-law did. He can say what was done by him.

Q. If he knows.

A. My brother-in-law took those steps. He acquired a building.

The Court: Are you speaking of your personal knowledge?

The Witness: Yes.

The Court: Were you there?

The Witness: I knew of the building being bought for that purpose.

Mr. McClennen: May that be stricken out, if your Honor please? It is obvious he is speaking of something not that he was present at.

The Court: Were you present when it was bought?

The Witness: I wasn't present when it was bought, but I was told it was bought.

The Court: Strike it out. You can't tell what your brother-in-law told you.

By Mr. Wright:

Q. Just tell us what, if anything, you, yourself, did in Salamanca with reference to the possible operation of a theatre?

A. Well, I had a conversation with my brother-in-law, and told him that——

[fol. 3208] The Court: No, no.

Q. Just tell us what you did, don't tell the conversation. Just what you did. You talked to your brother-in-law. Did you do anything else?

A. My partner and I, Mr. Gaby, were interested in putting up a theatre in Salamanca.

Mr. McClennen: May that be stricken out?

The Court: No, I will let it stand.

Mr. McClennen: It is not responsive to the question.

The Court: Strike it out.

The Witness: We made an agreement with my brother-in-law.

Mr. McClennen: If it was written, it ought to appear that way. If it was oral, it ought not be stated in conclusion form. I object to it.

The Court: Was there any writing?

The Witness: No, except the building was bought for that purpose.

Mr. McClennen: And may that last be stricken out?

The Court: Strike it out.

Q. Did you look at any property there yourself?

A. Yes, sir, we did.

Q. Did you make any investigation of theatre sites?

A. Yes, we did.

Q. When you say "we", whom are you talking about?

A. My partner, Mr. Gaby and my brother-in-law, Mr. Zafron.

[fol. 3209] Q. When did you do that?

A. About 1938, specifically.

Q. When was it with reference to December 24th, 1938?

A. I would say around October of 1938.

Q. Around October?

A. Yes, I can't name a specific day.

Q. What was it that you and Mr. Gaby did in Corning in that connection, in October?

The Court: You are talking about Salamanca.

Q. Oh, in Salamanca, yes.

A. Well, we went down, we had a conference with my brother-in-law, and we asked him to make a deal.

The Court: Not what you asked him. You started to say you went down.

The Witness: Yes, we looked over a piece of property, and we then decided that that particular piece of property was not——

Q. Not what you decided, just what you did. You looked at one piece of property. Did you look at any others?

A. Yes, we looked at another piece of property, and it was this second piece of property my brother-in-law bought.

Mr. McClennen: May that last be stricken out?

The Court: That the brother-in-law bought it may go out.

Q. Did you have any talks with any owners of any of [fol. 3210] those properties?

A. My brother-in-law had a talk.

Q. Just what you did.

A. I did not.

The Court: All right.

Q. Then after December 24th, 1938, did you or your partner or your brother-in-law build or buy a theatre in Salamanca?

Mr. McClennen: That is objected to, what he did, I think it should be limited to.

The Court: He can state what he has knowledge of. He can state whether he or others in conjunction with him purchased property there.

The Witness: I called up my brother-in-law on the telephone and asked him——

Q. You cannot state the conversation.

The Court: Did you purchase any property there?

The Witness: My brother-in-law purchased this property.

Q. The question was——

A. I did not, no.

The Court: All right.

Q. The question I asked still has not been answered. Would you read the question?

(Question read, as follows: "Q. Then after December 24th, 1938, did you or your partner or your brother-in-law [fol. 3211] build or buy a theatre in Salamanca?")

The Witness: No, we did not.

Q. Have you been back there since then?
A. Yes, I have.
Q. You were back there in 1941, 1940?
A. I was back there in 1939, '40, '41 and '42.
Q. Did you notice whether there was any other—what, if any, theatres were there in 1939 or '40?
A. Just the Andrews.
Q. That was the theatre operated by Schine?
A. Operated at the time, yes.
Q. That was the one that was there in October, 1938?
A. Yes, that was there in 1938.
Q. There were no other theatres then or in 1939 or '40, is that right?
A. No.

Mr. Wright: That is all.
The Court: Was there any other theatre, when you speak of 1939 or '40?
The Witness: No, there was just the Andrews. I thought there was going to be.
The Court: All right. All right. Cross-examine. Is there any cross-examination?
Mr. Rogers: I beg your pardon. I did not know Mr. [fol. 3212] Wright was finished.

Mr. Wright: Yes.

Cross-examination.

By Mr. Rogers:

Q. I believe that you testified that you had Warner product first-run for the season 1932-33, is that right?

Mr. Wright: I thought he said 1931-32.
The Court: What do you say now?
The Witness: I would say it was after Fox took over from Schine.

Q. No, please answer my question.

The Court: Did you say 1931-32 or 1932-33?

The Witness: I could not just say the exact time, I know that situation existed about that time, but I could not say the exact time.

Q. One moment, you can't state definitely whether or not you had Warner?

A. After Fox——

Q. Please listen to me for a moment.

The Court: Did you have the Warner product in 1932, did you say, was that the question?

Mr. Rogers: Yes.

The Witness: We had the Warner product after the Fox took over from Schine. I can't say the exact time there, [fol. 3213] but at that time we had it. Now, that is the only answer I can give you truthfully.

Q. Let me ask you something. How much time did you devote to the Plaza Theatre in Corning in 1932?

A. Well, I lived in Hornell which was 40 miles away, and my partner and I——

Q. I am asking you a simple question; how much time did you devote to the Plaza Theatre in Corning in 1932? Just answer that question.

A. I devoted some time.

Q. About how much time, how often were you there in the theatre?

A. Two or three times a week.

Q. Every week?

A. Practically every week, yes, there was some exceptions.

Q. Who did the buying for that theatre in 1932, you or your partner Gaby?

A. Both Mr. Gaby and myself. Sometimes I would buy contracts for Corning and Hornell, and sometimes he would buy for Corning and Hornell, all depends where the salesman happened to be.

Q. Primarily, didn't Gaby *doing* the buying for the Plaza at Corning?

A. Yes, sir.

[fol. 3214] Q. Didn't he, primarily, speaking?

A. Depended who saw the agent and salesman, we both did.

Q. Didn't he primarily do it for the Plaza?

A. We both did. I would rather answer that way.

Q. In 1932, who was the man who really ran the Plaza?

A. Mr. Gaby.

Q. In 1933, who was the man who really ran the Plaza?

A. Mr. Gaby. When we made our deals——

Q. Just answer the question, don't babble on. Of course, when you testified to the prices of admission at the Plaza Theatre, did you testify of your own knowledge or just what you thought?

A. Why, prices changed during the course of that time.

Q. No, answer my question. I am asking a very simple question. Now, you gave us a lot of testimony that the prices of admission at the Plaza Theatre were certain figures.

A. I would say as I thought.

Q. Merely as you thought?

A. Yes.

Q. Not of your own knowledge, is that right?

A. It is 13 odd years; I knew what they were at the time they existed.

Q. Will you please stop and answer the question?

The Court: Did you know about the price yourself?

The Witness: I knew about the price, yes.

[fol. 3215] By Mr. Rogers:

Q. Those prices you testified to are accurate prices, is that right?

A. To the best of my knowledge right now.

Q. What prices of admission were you charging at the Plaza Theatre in 1933?

A. 1933, I would say, 25 cents.

Q. What prices of admission were you charging at the Plaza Theatre in 1934?

A. Well, either 25 or 20, after Schine came back and we had to run third-run——

Q. Please answer my question.

The Court: Twenty-five or thirty?

The Witness: Twenty-five or twenty.

Q. Either 20 or 25 cents, is that right?

A. Yes.

Q. Now, let me show you an advertisement in the "Evening Leader" or Corning, New York, under date of March 6, 1934. Is that the ad of your Plaza Theatre?

A. Yes, it is.

Q. What price does that show?

A. That is a family night. That says ten cents.

Q. What prices does that show?

A. That was ten cents.

Q. It says, "Ten cents, all seats"?

[fol. 3216] A. Yes, on that particular night.

Q. On that night?

A. Yes.

Q. Only that night?

A. It wasn't our general price.

Q. What price of admission were you charging in 1935?

A. That general condition existed in 1935, too.

The Court: Just answer the question.

A. I would say our general price at that time was 20 cents. On Thursday we had a Bargain Night, which we charged ten cents.

Q. Let me show you the Evening Leader or Corning of February 27, 1935. Is that your ad for the Plaza Theatre?

A. Yes, it is.

Q. What is the price of admission?

A. That is ten cents. That is a Bargain Night we had at ten cents.

Q. Where is there anything there about a Bargain Night in the ad?

A. Well, that is what it was.

Q. There is nothing in there about a Bargain Night, is there, in that ad?

A. I don't see where he had "Bargain Night." He said, "Tonight all seats ten cents." Just tonight.

[fol. 3217] Q. You say that was usual on Thursday nights, is that right?

A. Yes, as a rule, unless perhaps at that time——

Q. This is Wednesday night, isn't it?

A. Yes, that is Wednesday night.

Q. So the rule did not prevail, did it, that night?

A. Why he changed that particular time, it may have been Wednesdays.

Q. You testified before your price was 25 cents and 20 cents in 1934. I show you the Evening Leader, Corning, Tuesday, May 8, 1934. Is that your Plaza ad?

A. Yes, it is.

Q. What is the price of admission?

A. That is ten cents.

Q. You notice in that ad, it says, "Tonight, Wednesday and Thursday, ten cents," do you?

A. Yes.

Q. There was nothing special about that, was there?

A. (No answer.)

Q. I show you ad of the Plaza Theatre in the Evening Leader, Corning, Wednesday May 16, 1934. Is that your ad of the Plaza Theatre?

A. Yes, it is.

Q. What is the price of admission?

A. Ten cents.

Q. Nothing special about that, was there?

[fol. 3218] A. I can recall now why that was. There was a reason for that.

Mr Rogers: That is all

Redirect examination.

By Mr. Wright:

Q. Just one question. You said there was a reason for this ten cent price. Can you tell us what that was?

Mr. McClennen: That is objected to.

The Witness: When Schine went to fifteen cents at the State——

The Court: Just a moment.

Mr. Wright: On the cross-examination, the last ten-cent admission in May, 1934, Mr. Rogers, asked him if there was anything special about it, and he said there was a reason for it.

The Witness: When Schine went to fifteen cents at the State and we had to run after him, in desperation, my partner went ahead with ten cents for a limited amount of time.

Mr. Rogers: I move to strike that out, may it please the Court.

The Court: What the partner did is not responsive. What was done by the company.

Mr. Rogers: May that be stricken?

[fol. 3219] The Witness: There was only certain product we could run at that price. Major products, they wouldn't let us run at that price.

The Court: The statement about the partner is stricken.

Mr. Rogers: May I have these contracts marked for identification?

Mr. Wright: Are those contracts which were previously identified? If they are identified, they are identified. They don't need to be marked again. It will just confuse it. There is no use of re-marking them.

Mr. Rogers: I beg your pardon. They have been identified.

The Court: What time do you want to get away?

Mr. Wright: As far as we are concerned, we will go as late as your Honor wants to go. I don't know about these other gentlemen.

Mr. McClennen: I think some will have to leave at four, if your Honor please.

The Court: All right. We will recess until two o'clock.

(Thereupon a recess was taken until 2 p. m.)

[fol. 3220] After recess, 2 o'clock P. M.

Appearances: As before noted.

Mr. Wright: If the Court please, I just got a telephone call from Mr. Berge, at Washington, to the effect that the Clerk of the Supreme Court has taken the Crescent case off the call, and put it over until November 6th and 7th. We had arranged an adjournment here with all counsel and excused witnesses until next Monday. I don't know what we can do about it.

The Court: Well, I hate to waste the time. Can you not get some witnesses here tomorrow?

Mr. Wright: I do not think we could go ahead tomorrow. We might be able to go ahead on Friday.

The Court: Today is only Tuesday.

Mr. Wright: That is right, but we had a schedule made up for next Monday and Tuesday, and I don't know whether we could get those people in here again before that or not. I had an appointment in Washington in any event for tomorrow myself, and I want to take a trip down there. I understood all other counsel in the case had made prepara- [fol. 3221] tions to leave then. I did not understand they were being held here. It is a situation over which I had no control.

The Court: What are your wishes about the matter?

Mr. McClennen: Well, if Mr. Wright could arrange to go ahead, why, we could cancel and stay. If we are not to go ahead tomorrow, then we would not want to sit around and wait for Thursday and Friday. Either go ahead tomorrow or next Monday.

The Court: He says he has to be in Washington tomorrow.

Mr. Wright: That is right, your Honor.

The Court: Well, I think under the circumstances when we adjourn today, we will adjourn until next Monday.

Mr. Wright: Mr. Tishkoff, take the stand.

Mr. McClennen: Before Mr. Tishkoff takes the stand, we should like to offer these contracts as a part of Mr. Cohen's cross-examination. They are taken from identification number 637, which was a large group of Warner contracts, and they are the contracts for the Plaza, as follows: The First National Productions of the 1931-32 season to the Plaze second-run.

[fol. 3222] The Court: What year is that?

Mr. McClennen: 1931-32 second-run, and the Warner productions for the same year, 1931-32 to the Plaza second-run; the First National 1932-3 productions to the Plaza second-run, and the fourth one, the Warner productions contract for 1932-33 productions to the Plaza second-run.

The Court: What run?

Mr. McClennen: All second-runs.

Mr. Wright: If the Court please, we have no objection to the contracts going into evidence. I don't quite understand what counsel means by having them go into evidence as part of Mr. Cohen's cross-examination. If they are offered for the purpose of impeachment, they should have been drawn to his attention at the time he was testifying, as evidence of what was played there, we have no objection to that.

Mr. McClennen: If there is no objection to their going in, we need not insist that it be part of the cross-examination. It will be convenient to have them in the record at this point, that is in the order that I have noted.

[fol. 3223] The Court: I thought they were identified.

Mr. McClennen: They were from identification 637, and they become exhibits in that order.

The Court: You say they are from 637?

Mr. McClennen: 637 was a great bulk of First National contracts. It doesn't identify any particular paper at all.

(Thereupon the four contracts referred to, were received in evidence and marked as Plaintiff's Exhibits 637-A, B, C and D, inclusive.)

William Tishkoff, a witness called by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Mr. McClennen: I did not realize Mr. Tishkoff was coming forward. If your Honor please, for convenience, in juxtaposition to these there should be the four contracts also from Exhibit No. 637 for identification, which are the First National 1931 production first-run to the *to the* Fox or Palace Theatre; the next, the Warner productions for the 1931-32 season, first-run, to the Fox or Palace Theatres; [fol. 3224] the third one, the First National Productions, 1932-33 to the Fox or Palace, first-run; and the fourth one, the Warner productions, 1932-33 to the Fox or Palace first-run.

The Court: They may be marked E. F, G and H.

Mr. McClennen: That is right, sir.

(Thereupon the four contracts referred to were then received in evidence and marked as Plaintiff's Exhibits 637-E, F, G and H.)

Direct examination.

By Mr. Wright:

Q. Mr. Tishkoff, have you been sworn?

The Court: Yes, he has.

Q. Where do you live?
A. Rochester, New York.
Q. What is your occupation?
A. Theatre manager and owner.
Q. What theatre?
A. Not at the present.

The Court: What?
The Witness: I am not at present occupied in the theatre.

Q. You were a theatre manager and owner up to when?
A. Up to last January 26th.
[fol. 3225] Q. What theatre?

A. The Murray Theatre.

Q. That is at Rochester?

A. Rochester, New York.

Q. How long did you own and manage the Murray Theatre?

A. 24 years.

Q. Where is that theatre in Rochester?

A. At 218 Murray Street, near Lyle Avenue.

Q. Do you know where the State Theatre is in Rochester?

A. Yes, sir.

Q. Where is that?

A. That is across the city from the Murray Theatre.

Q. Can you give us any more accurate location than that?

A. *Between* three miles east of the Murray Theatre.

Q. About three miles east?

A. Yes, sir.

Q. I call your attention to the year 1927, were you then interested in or engaged in the construction of a theatre in Rochester near the State?

A. Yes, sir.

Q. What theatre was that?

A. The Webster Theatre.

Q. How far away from the State was it?

A. Between three-quarters of a mile to a mile.

The Court: What year?

[fol. 3226] Mr. Wright: 1927.

Q. Who was associated with you in the construction of that theatre?

A. Four partners besides myself.

Q. Who were they?

A. Mr. Robfogel, Jacob Robfogel, and Joseph, a son of the same name.

Q. Did you name all of the four?

A. Mr. Frederick Bieger, Max Fogel and myself.

Q. Who was going to operate the new theatre when it was built?

A. The five of us under the organization of a corporation.

Q. What is the name of the corporation?

A. Bemat Amusement Corporation.

A. After construction of the Webster Theatre was started, did you have any conversation with Mr. Myer Schine about it?

A. Yes, sir.

Q. How long after construction was started was that?

A. Just a few weeks.

Q. Where did you see him?

A. Mr. J. Myer Schine, John A. and Schafer called at the office of the Murray Theatre.

Q. The office of the Murray Theatre?

A. Office of the Murray Theatre.

[fol. 3227] Q. Who else was present besides yourself?

A. Mr. Fogel.

Q. What was said then?

A. Mr. Schine inquired if we are building a theatre at that location on 314 Webster Avenue. We told him that we are doing so at that time.

Q. What else was said?

A. What did you say?

Q. What else was said?

A. Well, Mr. Schine expressed himself that the location is not appropriate for a theatre. It is too near the State Theatre, and it is not justified to be built there.

Q. What did you say?

A. We told him that according to the time and investigation that was put in prior to the decision of building, we thought that the theatre is justified to be built there.

Q. Was anything else said?

A. Well, the visit lasted approximately an hour, and many things were said at the time, but as I can recollect, Mr. Schine expressed himself that it is unjustified, and they, therefore, will build a theatre near the Murray Theatre as a matter of penalty of some kind or other.

Q. What did you say about that?

A. Personally I expressed myself that as far as—speaking strictly for myself, it was not so important to me, that [fol. 3228] I would divorce myself from my investment and offer to transfer my personal investment to Mr. Schine at the cost at the time to me.

Q. Personal investment of what?

A. Approximately $40,000.

Q. In what?

A. In the new Webster Theatre.

Q. In the Webster construction. Was that offer accepted?

A. He refused.

Q. Was there anything else said at that time with reference to your theatre, the Webster or the Murray or the State?

A. At that time we expressed ourselves to him, if another theatre would be built on Lyell Avenue, nearby ours, it naturally would hurt our business, and probably put us out of business. That was made in the form of an appeal, and naturally we did not get no answer to that.

Q. When was the next time you saw Mr. Schine in connection with that Webster Theatre?

A. Mr. Fogel, about two weeks later came to me and expressed himself——

Q. Don't give the conversation between you and Mr. Fogel. What I asked you was——

A. About two weeks later.

Q. The next time you saw Mr. Schine. That was about——

A. Two or three weeks later.

[fol. 3229] Q. Where was that?

A. That was in the Seneca Hotel, I believe, the first meeting.

Q. At Rochester?

A. Rochester, New York.

Q. Who else was present then?

A. Mr. Schafer was present. Mr. Fogel was present, and one of the Robfogels was present. I believe it was the son.

Q. What was said at that meeting?

A. What is that?

Q. What was said there?

A. A proposition was made to us that we enter into a partnership of operation on the Webster Theatre with Schine.

Q. Did you do that?

A. Yes, sir.

Q. Was the corporation then formed to operate it?

A. Yes, sir.

Q. What was the name of that corporation?

A. The Webster Theatre Corporation.

Q. That was owned half by you and Mr. Fogel and your associates——

The Court: Had it been organized at this time or hadn't it?

The Witness: It was organized at that time, sir.

The Court: Before you had this talk with Mr. Schine or [fol. 3230] after that?

The Witness: The theatre?

The Court: After this talk with Mr. Schine or before was the corporation organized?

The Witness: After the talk with Mr. Schine.

By Mr. Wright:

Q. You say the Webster Theatre Corporation was the operating corporation?

A. That was the operating corporation for the theatre.

Q. And the Bemat Amusement Company you have described before was the owning corporation?

A. That was the owning corporation for the building.

Q. The theatre building on completion was leased to the Webster Theatre Corporation?

A. Yes, sir.

Q. That corporation was one in which you and your associates who built the theatre had a half interest?

A. Yes, sir.

Q. And Mr. Schine, his companies, had the other half interest?

A. Yes, sir. It is only Mr. Fogel and myself and Mr. Schine had the interest in the operating of the theatre.

Q. You and Mr. Fogel owned half?

A. Yes, and Mr. Schine and his company owned half.

Q. The theatre was managed by whom?

A. By Mr. Fogel.

[fol. 3231] Q. Who bought the films for it?

A. Schines Company in Gloversville bought and booked the film—bought the film, rather.

Q. How long did that arrangement continue, if you know?

A. Until 1932, five years.

Q. Then Mr. Schine's interests were turned back to you and Mr. Fogel?

A. Well, I have to explain. It wasn't really turned over. It was—we had another meeting at that time, and Mr. Schine pointed out to our Bemat Amusement Corporation partnership that the rent was too high, and in 1932, I believe it was minimized.

Q. It was reduced?

A. Reduced to about $14,000 if I correctly remember. I have no records of that.

Q. How long did you continue to operate under the reduced rental?

A. Well, we needed money to put in the operating of the theatre, and naturally it was refused by Mr. Schine, and his company——

Mr. McClennen: Just a moment. May that be stricken out?

The Court: The "naturally" may go out. You needed money for what?

The Witness: For the operation, future operation of the theatre company, and the money was refused and the partship——

[fol. 3232]

Mr. McClennen: May that be stricken out? There isn't a question that calls for that.

The Court: That is true. The latter part is not responsive. You needed money, you said for the operation?

The Witness: Operation. We were short of money.

The Court: Operation by the Schine company?

The Witness: By the Schine and ourselves.

The Court: You had the rent?

The Witness: Rent.

The Court: The rent was not enough?

The Witness: It was not enough to meet the rent.

Q. Was the lease defaulted?

A. The lease was defaulted and measures taken to collect it, for the rent.

Q. What happened to the operation of the theatre?

A. Then the Company that built the theatre operated the theatre with us.

Q. That is the Bemat Amusement Company?

A. The Bemat Amusement Company.

The Court: You say "with us"?

The Witness: With us, Mr. Fogel.

Q. By "us," whom were you referring to?

A. Mr. Fogel and myself.

[fol. 3233] Q. Mr. Schine then had no further interest in the theatre?

A. No.

Mr. Wright: That is all.

Cross-examination.

By Mr. McClennen:

Q. This $20,000 rent was paid by the operating company to the Bemat Company as the owner of the property, is that right?

A. It was paid, the $20,000, in the form of future rent to be deductible each and every year on an equal basis.

Q. That is, the $20,000 that was paid went to your Mr. Fogel and your associates' interest in the Bemat Company?

A. Yes, sir.

Q. They were tenants at that rate of rent, is that correct?

A. Please repeat the question?

(Question read.)

Q. That is, the Webster Theatre Corporation was the tenant at that rate of rent?

A. That is right.

Q. So that that $20,000 did not go to the Schine interests in any way?

A. No, sir.

Q. Then, in figuring out the profits or losses of the Webster Theatre Corporation, of course, that rent was one of the [fol. 3234] items of expense, is that correct?

A. Yes.

Q. Then that and all the other operating expenses being taken out, if there was any profit, that went half to you and Mr. Fogel and half to the Schine interests?

A. That is right.

Q. And in the operation the Webster Theatre Corporation sustained a loss of about $15,000?

A. I couldn't commit myself to the figures. I was not in charge of the operation.

Q. You were apprised at the time of the fact of what the losses were, were you not?

A. I was not.

Q. You did not know at all?

A. I knew approximately at that time.

Q. At that time?

A. At that time.

Q. But you have now forgotten what the amount was?

A. I have forgotten. The books are in existence somewheres.

Q. In connection with the operation of the theatre, to make up the needs of the Webster Theatre Corporation for a time you and Mr. Fogel made some contributions, did you?

A. Yes, sir.

Q. How much did you make?

[fol. 3235] A. On the Schine's operation, from 1927 to 1932, on my part about $5,000 to $6,000, I believe.

Q. For the original starting, the Schine interests furnished some $10,000?

A. Yes, sir.

Q. And when the Schine interests were given up in 1932 or 1933, or whenever it was, nothing was paid on account of that $10,000, is that right?

A. You mean returned to Schine interests?

Q. Yes.

A. No, correct.

Q. So that they were out in that operation $10,000, and they were out such losses as had taken place in the interval?

A. Yes.

Q. The actual operation of the theatre in this period from 1927 to 1932 was in charge of Mr. Fogel?

A. Yes, sir.

Q. And all that the Schine organization had to do with it was the buying of the pictures?

A. Yes, sir.

Q. Now, the conversation that you had with Mr. Schine and his associates was upwards of seventeen years ago?

A. The spring of 1927.

Q. In the spring of 1927?

A. Yes.

[fol. 3236] Q. And you made no memorandum at that time of that conversation?

A. I remembered every word of it.

Q. I say, you made no memorandum?

A. No written memorandum.

Q. You wrote no letter in which you recited what that conversation was at that time?

A. At that time I didn't.

Q. So that your statement of the conversation is purely an act of memory of seventeen years ago?

A. Yes, sir.

Q. And you say the conversation lasted how long?

A. Approximately one hour.

Q. And the conversation at that time was to a considerable extent on the folly or wisdom of the building of a theatre so near an existing theatre?

A. Yes, sir.

Q. And Mr. Schine's main conversation was in pointing out to you that from a business standpoint it was an unwise move?

A. Yes, sir.

Q. Now, in five years do you bear in mind in the aggregate how much in all was lost in that undertaking?

A. I couldn't say.

Q. Were there any other theatres at that time in that [fol. 3237] immediate locality?

A. Between the State and the Webster there was a Plaza Theatre.

Q. Was it in operation?

A. I cannot recollect, I believe it was.

Q. Do you know who were the people interested in the operation?

A. I can't recollect.

Q. Was the matter of the Plaza Theatre mentioned in the conversation?

A. I do not recollect it, sir.

Q. You mean your mind is barren as to whether it was or wasn't?

A. That is right.

Q. You don't know?

A. No.

Q. How large a theatre was that Plaza?

A. A few seats over 500, I should say between five and six hundred seats.

Q. Did the building of the Webster have the effect of putting the Plaza out of business?

Mr. Wright: If the Court please, I suppose that is a conclusion he isn't competent to draw.

Q. Did the Plaza Theatre close up soon after 1927 or in 1927?

[fol. 3238] A. I can't recollect the operation of the Plaza at the time, how it was, and I know as a building there was a theatre, but whether operating or not, I do not recollect, sir.

Q. And you do not recall when it ceased operating?

A. I do not.

Q. You do not recall whether it was in a year after the completion of the Plaza,—or the Webster Theatre?

The Court: Do you know whether it was closed within a year after the Webster? Do you know whether the Plaza was closed within a year after the Webster was started?

The Witness: I could not commit myself to time. If I could recollect I could say when it was open or closed. I know it was open and closed several times.

Q. Do you remember that the Plaza had been completely remodeled just before you started the construction of the Webster?

A. I do.

Q. Had it?

A. Yes, sir.

By the Court:

Q. How far was the Plaza from the Webster?

A. Exactly in the center between the State and the Webster, dividing three-quarters to a mile in half.

[fol. 3239] Q. Three-quarters of a mile from each then?

A. No, it would be less, it would be in the center between the two. The State is there (indicating) the Webster is here (indicating) and the Plaza is here.

Q. What is the difference?

A. Less than half a mile from each.

By Mr. McClennen:

Q. That is, the Plaza was between the Webster site and the State?

A. Yes, sir.

The Court: Did you say, do you know who owned the Plaza at that time?

The Witness: No.

The Court: Some independent company?

The Witness: Some independent man that moved to California. That is all I recollect about that man.

By Mr. McClennen:

Q. Now that you have spoken of this remodeling so recently completed, before you started the Webster, doesn't that recall to your mind that the Plaza was also mentioned in this conversation as a reason why it was not prudent to build the Webster?

A. I do not recollect, sir.

Q. You say that Mr. Schine expressed a willingness to [fol. 3240] relieve you of the expense that you had been put to and the obligations on the Webster?

A. Mr. Schine did not enter into any conversation on the offer. I personally offered to Mr. Schine to dispose my interests to him, which he refused.

Q. When was this?

A. At the end of the visit at the Murray Theatre office.

Q. In the spring of——

A. 1927.

Q. 1927?

A. Yes, sir.

Q. Your interest to him in what?

A. In the new venture of the Webster Theatre.

Q. And how much did you offer to dispose of that interest for?

A. My part, the same amount as what I invested shortly a few weeks before.

Q. That amount was how much?

A. Approximately $4,000.

Q. Approximately $4,000, and did Mr. Schine make any proposal to you as to what he would pay for your interest?

A. He refused to buy it. He wasn't interested, he said.

Q. He wasn't interested?

A. At all.

Q. To buy at all?

[fol. 3241] A. No.

Q. Was there any discussion in your presence about the buying of Mr. Fogel's interest in the venture in 1927?

A. No, sir.

Q. Now, did you conclude that it was a good business venture to build a new theatre so near to the newly remodeled Plaza?

A. I wasn't well acquainted with the choice of location.

Q. You observed as the matter went forward that it was not a prudent piece of business with the Plaza newly remodeled right there, did you not?

A. I did not.

Q. Did you give any conisderation to that question of whether it was a good business venture to do that under those circumstances?

A. Yes, sir, I did.

Q. And did you reach any conclusion?

A. Yes, sir, I did.

Q. Did you reach the conclusion that it would be apt to hurt the business of the newly remodeled Plaza?

A. I think I did.

Q. Now, the reference which Mr. Schine made to the Murray Theatre was in this form, was it not, that it would be no wiser to go ahead with the building of this Webster Theatre than it would be to build a theatre near the Murray [fol. 3242] Theatre?

A. By comparison, yes, sir.

Q. And that is substantially all that he said on that subject?

A. And many other things.

Q. That is substantially all he said on that particular subject?

A. Yes, sir.

Mr. McClennen: That is all.

By the Court:

Q. What street was the Webster on? I have forgotten about the Webster. What street is the Webster on?

A. The Webster is at 314 Webster Avenue. The numbers begin on Main Street. It is not far from Main Street.

Q. Is that on the west side?

A. It is on the north side off Main Street. The State is on the east of Main Street.

Q. East of East Main Street?

A. East of East Main Street, and the Webster is north of the same Main Street, this way (indicating).

Q. What street is the Schine Theatre on?

A. Schine State?

Q. What street is that on?

A. The Dixie?

Q. The Schine theatre?

A. The State?

[fol. 3243] Q. Yes.

A. It is on Main Street, East.

Q. The Murray and Plaza are where?

A. The Plaza is in between the State and Webster on Webster Avenue, nearby Main Street, I should say in numbers up to 120.

Q. The Schine was on Main Street, and your theatre was——

A. Off Main.

Q. About 300?

A. The Webster is 314 Webster Avenue.

Q. Is that a residential section out there?

A. Strictly residential, not many stores. Main Street is a better avenue.

The Court: All right.

Redirect examination.

By Mr. Wright:

Q. This $10,000 that Schine put up when he got the half interest in the Webster Corporation, do you know what form that contribution took, or what that was for?

A. It was for advance rent, $20,000 to be applied at the rate of $4,000 per year for a five-year period.

Q. That $20,000 advance rent, half was advanced by Schine and the other half by you and Fogel?

A. $10,00 was advanced by his company and the other [fol. 3244] half by us.

Q. And that was applied on advance rental?

A. It was given to the Bemat Corporation as advance rent.

Q. In this one-hour conversation you had, was there anything said about buying product for these theatres?

A. At the Murray office?

Q. Yes, in that conversation?

A. The conversation was, it was pointed out to Mr. Schine if he builds a theatre so near the Murray, it would probably put us out of business because of his buying power and better conditions, he can command from the film companies.

Mr. Wright: I think that it all.

The Court: That is all.

Mr. Wright: If the Court please, we have no more witnesses today. We have a considerable amount of documentary material, though. I think I can spend the time offering that. These are all documents which have been previously identified. I believe they have photostats of all of these previously identified material.

The Court: Is there any question raised about any of these?

Mr. Wright: Well, I suppose the only way to find out is [fol. 3245] to offer them.

The Court: I didn't know whether they had gone over them.

Mr. Wright: They are familiar with the material. I suppose they may have objections to admitting some of them.

The Court: Proceed.

Mr. Wright: The first document I want to offer is Exhibit 192 for identification, which is the contract between the Schine Enterprises Corporation and Fox Company for the exhibition of pictures in their Kentucky, Ben Ali, Strand and State Theatres, at Lexington, for the 1936-37 season. I take it there is no objection to that.

Then I want to offer in evidence the contracts that were previously,—or,—rather the letters which were previously offered while Mr. Schwartz was on the stand with respect to Lexington; particularly the letter to Mr. Grady, the Fox Branch Manager, which was marked as Exhibit 209, and with that, I want to offer Exhibits 200, 201 and 202 for identification, which is correspondence between Grady and Sussman. 200 is relating to the admis- [fol. 3246] sion price situation in Lexington, and 201 is a letter from Sussman to Mr. Myer Schine regarding it, and 202, which is Mr. Schine's reply.

Mr. McClennen: These are objected to, if your Honor please. These letters I haven't read at all, but they might well call for explanation and amplification from the witness.

The Court: Why weren't they offered when Mr. Schwartz was here?

Mr. Wright: We did offer this letter from Mr. Schwartz, pointing out that this gave notice to Fox as to what the admission prices that were being charged in the theatres there were doing to his business. We also said we were going to show at that time that Fox was permitting the Schine Company to play the pictures at those low prices. Objection was made on the ground we hadn't put that evidence in. We said we would then reserve until later putting in the evidence of what transpired between Fox and Schine, which, of course, was something the witness on the stand could not be examined about, and that is the evidence that [fol. 3247] is being offered now as to what happened in that situation.

Mr. McClennen: I don't recall. I want to look at the record to be sure, but I don't recall that Exhibit 209 for identification was offered in evidence while Mr. Schwartz was on the stand.

Mr. Wright: I think you are mistaken.

Mr. McClennen: You probably have your record right here and can point to it. I have no recollection of its being offered.

The Court: What is the number of that?

Mr. McClennen: That is identification 209, dated January 17, 1938, Mr. Harry Schwartz to J. Grady, Fox Film Corporation, Cincinnati.

The Court: Have you got the record there?

Mr. Wright: I have sent for it.

The Court: You have the index to the testimony.

Mr. Wright: I have sent for the transcript.

The Court: Oh, I see.

Mr. McClennen: A rough note, if your Honor please, of one of my associates is that it was offered in evidence and excluded by your Honor.

The Court: Is the reason stated by counsel there?

Mr. Wright: That is my understanding.

[fol. 3248] Mr. McClennen: And there has been no change in the situation since?

Mr. Wright: I am now offering the documents which I think do change the situation, and those are these exhibits 200, 201 and 202 for identification.

Mr. McClennen: We have no objection to identification Exhibit 202, a letter from Mr. J. Meyer Schine to Mr. William Sussman, or rather a carbon copy of such a letter. It does not appear to be even an original carbon copy, but some copy made.

The Court: The grounds on which the objection was sustained appears, does it not?

Mr. Wright: Here is what the record says. This is page 2892.

"Q. Now, I call your attention to these three exhibits which have been previously marked,—I beg your pardon, two exhibits which have been previously marked for identification as Exhibits 209 and 259, and ask you if you wrote those letters on or about the dates they bear?

A. Yes, I wrote them.

Mr. Wright: We offer these two exhibits in *in* evi-
[fol. 3249] dence.

(Documents shown to Mr. McClennen.)

Mr. McClennen: This identification 209, I submit is open to further objection than the ordinary conversations which your Honor has admitted over our objection, or the letters which you have admitted over our objections.

The Court: Let me see it.

Mr. McClennen: It seems to me that its contents, which I show your Honor, indicates that it has nothing whatever to do with this case, nothing that affects us in any way and contains recitals which are mere hearsay, and do not assist in any way in this case or resolving it correctly.

The Court: Well, I am to understand you were receiving the Fox pictures at this time, the time of this communication?

The Witness: Yes.

The Court: I think it is competent along the lines of the showing here. I mean, this coupled up with some act by the Fox Company in that regard, I mean that Fox had refused
[fol. 3250] to take any production"— I think that should be "reduction"——

Mr. McClennen: I speak with complete deference, if your Honor please. I urge that it would have no effect upon Schine in any way whether Fox let a customer off his contracts.

The Court: I will receive it and see what follows.

Mr. Wright: If the Court please, it isn't offered for the purpose of showing the production"—that should be "reduction"—"it was offered for the purpose of showing that direct attention was brought home, knowledge was brought home to the Fox Company of what the admission price policy they were permitting Schine to pursue in Lexington was doing to this man's business. That is the principal purpose of the offer.

The Court: What the policy of Schine was doing?

Mr. Wright: With respect to admission prices playing a run ahead of him. I mean in their theatres, at the same price he had to charge for the later runs.

[fol. 3251] Mr. McClennen: The joker, if I may be so flippant to use that remark, in Mr. Wright's statement was that Fox was permitting Schine to pursue this policy. Fox had nothing to do with the policy whatever, nothing to indicate that it was Schine's policy.

The Court: It shows a co-conspirator had knowledge of what another co-conspirator was doing.

Mr. McClennen: The statement, if your Honor please, was not that. The statement was that Fox was permitting this. There was no basis for such an assertion.

Mr. Wright: The minimum prices the exhibitors could charge were inserted in the contract. Mr. Schwartz' contract had a minimum price of 16 cents. Fox permitted Schine to play ahead of him at the same price, a procedure which could only have been calculated to ultimately achieve what was accomplished, and that is put an end to Mr. Schwartz' competition at the Opera House.

Mr. McClennen: The Fox Company did not permit it. There was never any contract by which Fox could require [fol. 3252] Schine to charge any more admissions that were charged. It was their province to determine what their admissions should be, so long as they did not violate the contract, and there is no contract that is in evidence, that can be put in evidence, that they violated that provision of any contract, so that this remark about Fox permitting this is just picked out of the blue by my brother, because he likes that form, but there is no evidence of it.

Mr. Wright: I would prefer, if the Court please, to argue the case after we have put in the evidence rather than now. As long as counsel has made the point, I feel at liberty to state what the position is.

Mr. McClennen: Our position is whether the argument be interlocutory or final, they ought to be based on evidence.

The Court: This goes to the request for a reduction of price on the Fox pictures to this witness.

Mr. McClennen: This is a request for reduction in prices this witness addressed to Fox. He wants relief from his contract as to prices.

The Court: Yes, in order to attain the end——

[fol. 3253] Mr. McClennen: That has nothing to do with Schine.

The Court: It appears to me it is competent not only as a notice to an alleged co-conspirator, but if it may appear Fox refused to make any reduction then it might have a bearing on the action in concurring with Schine.

Mr. McClennen: That is not the stated purpose of the offer. The stated purpose——

The Court: It may be one of the purposes.

Mr. Wright: That is quite right, as I understand a reduction, I think, was probably obtained. For our purpose it is immaterial whether they reduced the film rentals, or whether they didn't. We do not offer the letter for the purpose of showing what was done there. We offer the letter for the purpose of showing knowledge was brought home to Fox of the effect on his business of permitting the Schine houses to play the pictures ahead of him, at the same admission price he was charging for the later run.

Mr. McClennen: I stated what the purpose of Mr. Wright was in confident reliance on what he said, and what he said [fol. 3254] was that it was to show Fox was permitting these lower prices. The letter contains nothing——

Mr. Wright: The letter will not show that.

Mr. McClennen: Just a moment, just a moment; I have tried not to interrupt you.

As I was saying, before the unwarranted interruption, the offer was to show that Fox was permitting these lower admission prices. That was the stated purpose. We urge that there is nothing in the letter, nothing in evidence in any way to indicate that Fox did permit the lower admission prices or that they had any control over the admission prices so long as they did not violate the contract of Fox and Schine, and there is no evidence that they did, and it is now stated, meeting your Honor's suggestion of a possible purpose, that there is no claim that they did not get these reductions in contract prices which Mr. Schwartz asked.

The Court: That is what he claims now. He claims they were entitled to it because they were charging the same price for a fourth-run, third or fourth-run, that was charged for a second-run.

[fol. 3255] Mr. McClennen: There is nothing in this letter that bears on that in any way. I have made no objection to his stating what they were charging in admissions. I have made no objection to his stating what he was charging in admissions.

Mr. Wright: If the Court please, as to what transpired between Fox and Schine, we are not attempting to make any proof at this time, because we don't want to take up that time while this witness is on the stand. All we are attempting to show now is what transpired between the witness and Fox and the witness and Schine. We will later offer the Schine contracts with Fox and certain communications which passed between Schine and Fox, which we think relate to this situation, but I don't see the occasion for going into that now. It is perfectly clear that that letter is competent evidence to show that whatever facts were stated there, were brought to Fox's attention at that time.

Mr. McClennen: If your Honor please——

The Court: I think it better remain identified until we get the further connection in that respect, I mean, to show [fol. 3256] the relation between Fox and Schine.

Mr. Wright: That is agreeable to us. It doesn't make any difference particularly whether it goes in now except I was going to ask the witness some questions based on what was in there.

The Court: State what was done. Those were identified before, were they?

Mr. McClennen: There were identified before."

[fol. 3257] The Court: You started in by saying it referred to 812.

Mr. Wright: 812?

The Court: Your opening statement, you read 812.

Mr. Wright: The page number is 2892.

The Court: Are those the two you are offering now?

Mr. Wright: Yes, 209 is the number of one and 259.

The Court: What?

Mr. Wright: 209 and 259 were the letters that were offered then, and I am now re-offering 209 and 259, and I am also offering 200, 201 and 202, which were the letters I said would connect up.

The Court: I did not know whether you were making two offers separately.

Mr. McClennen: Now, if your Honor please, so far as any attempt to deal with all these letters at once, 259 for identification is dated September 30, 1937. 209 for identification is dated January 17, 1938. 202 for identification has on this copy no date, but has a receiving stamp of July 20th, with a fair indication, therefore, that it relates to 201, which is dated July 13th, 1937, which was a letter from Mr. [fol. 3258] Sussman to Mr. Schine, 202, being a letter from Mr. Schine to Mr. Sussman. They have no relation whatever to the letter that we are now discussing which is marked 259, and is two months after Exhibits 200, 201 and 202 for identification.

The Court: I do not understand that he claims there is any connection between the one and the other. Let me see all the letters. (Court examines documents).

Mr. McClennen: I stated it, if your Honor please, because Mr. Wright stated that this showed the connection which he had said he was going to show, and I submit that it does not.

The Court: I thought when he made that statement he was referring to two of the exhibits, not these others. Mr. Sussman, who was he?

Mr. Wright: He was, as I recall, the Eastern Sales Manager of Fox, the home office sales assistant.

The Court: Well, doesn't it appear from the testimony of Mr. Schwartz the prices Schine Amusement Company was operating under? Is that in his testimony?

Mr. Wright: Yes, he testified.

[fol. 3259] Mr. McClennen: I think he testified as to the prices.

The Court: As far as the letter of Mr. Schwartz, it is competent. It is a little different question concerning these communications, Sussman and Schine. The Schine letter does no more—well, it amounts to an admission of some modification of prices, that is true.

Mr. Wright: The point is, your Honor, nothing was done about this contract violation as far as Schine was concerned.

Mr. McClennen: There was no contract violation.

Mr. Wright: Well, in any event, the low admission price that Schine was charging was called to his attention by the Fox Company, and he continued to charge it, and nothing was done by the Fox Company to keep him from charging it. He again reduced the prices the following year and the Fox Company knew of it, exactly what the effect of permitting that price policy to be followed was on Schwartz' business.

The Court: Where is the contract that indicates that the procedure was a violation?

Mr. Wright: I believe I just offered the contract that [fol. 3260] they were then operating under.

Mr. McClennen: Which number is that?

Mr. Wright: Aren't these marked in evidence? Didn't I offer 192? Yes, here is the contract.

Mr. McClennen: 192 you are referring to?

Mr. Wright: Specifically the minimum prices are stated. The admission prices of orchestra-balcony 35-25. 35-25 is written after orchestra and before balcony, but I take it that refers to the prices.

The Court: The letters from Sussman, of course, as pointed out by counsel does point attention to the claim that the contract was being violated, and there is testimony here with reference to the prices being charged.

Mr. Wright: They dropped the balcony price to 15 cents. The contract calls for a minimum of 25.

Mr. McClennen: So far as the correspondence showing any permission by the Fox Company, it shows just the reverse.

The Court: I think the notice by Sussman is clearly hearsay.

Mr. Wright: If the Court please, that is part of the business records of that corporation, which shows exactly what [fol. 3261] was done with reference to that subject matter. I think that letter is clearly competent to show how the matter came to Mr. Sussman's attention, and how Mr. Sussman happened to write the letter to Mr. Schine that he did.

Mr. McClennen: In fact, in Mr. Sussman's letter, there is nothing to indicate that the information came from Mr. Schwartz' letter, which was of a different period.

Mr. Wright: I did not say that there was.

Mr. McClennen: We are discussing the admissibility of it.

The Court: It appears that Sussman notified Schine of the alleged violation of the contract.

Mr. Wright: It further appears that Schine did nothing about it.

The Court: You don't claim do you—this letter of July 10th preceded the letter from Sussman to Schine?

Mr. Wright: That is right, and it explains how that letter came to be written.

The Court: I don't see how it is material, what Grady wrote to Sussman. Schine was notified of the claim made by Sussman, representing the producer.

Mr. Wright: Grady Statement I think is significant in [fol. 3262] calling the attention of what the effect of that policy was, not only in Lexington, but outside, and I think it is especially significant in view of the fact that Schine was permitted to continue that policy not only throughout the rest of that season, but to repeat it again the following summer.

Mr. McClennen: There is no evidence whatever that he was permitted to do this. The protest was made by Fox.

Mr. Wright: He did it.

Mr. McClennen: I wish you would not interrupt me. I think you ought to be courteous.

It appears that if the letters were received in evidence, that on receipt of information Fox wrote to Schine and did all that Fox ought to do under the circumstances and that Schine replied. There isn't an iota of evidence that Fox permitted anything of the kind.

The Court: Well, of course, that is really beside the point. As far as this third letter is concerned my thought about that is that was material and competent here, because it is notice from an agent to the company, and anyway the [fol. 3263] Company had notice and the Company notified Schine.

Mr. Wright: That is right, but this letter goes further and states what the effect of the practice is in the area there.

The Court: I will receive them all, anyway.

Mr. Wright: I will hand them to the stenographer.

(Thereupon Plaintiff's Exhibits Nos. 192, 209, 200, 201 and 202, previously marked for identification, were received in evidence.)

Mr. Wright: We offer in evidence the contract for the next season, which I believe was——

The Court: Any number? They are not marked in evidence.

Mr. Wright: No, I will hand them to the reporter, the contract for the 1937-38 season between Schine and Fox for the Strand or State or Ben Ali Theatres, a contract which is dated October 20th, 1937, and——

Mr. McClennen: What is the exhibit number of this?

Mr. Wright: This was identified in the folder marked for identification as Exhibit 333, and I think should now be marked as 333-A.

The Court: The film contract?

Mr. Wright: Yes, this is a film contract previously [fol. 3264] identified. We offer that in evidence, as 333-A. This contract contains no minimum price restrictions whatever.

(Thereupon the film contract referred to was received in evidence as Plaintiff's Exhibit No. 333-A.)

The Court: Submit those others to Mr. McClennen.

Mr. McClennen: We object, if your Honor please, to identification exhibits 455, 456, 457 and 459. They are mostly just inter-office communications of the distributor company.

Mr. Wright: If the Court please, these deal with the admission price situation as to Metro, similarly.

The Court: The first one doesn't seem to be signed by anybody.

Mr. Wright: I think from the next letter it is apparent that is from Mr. O'Shea. You see the initials are on the bottom there.

The Court: I don't think they are competent.

Mr. Wright: I beg your Honor's pardon?

The Court: I don't think they are competent.

Mr. Wright: If the Court please, they show exactly what was done with reference to admission prices there in Lex- [fol. 3265] ington; that Mr. Lynch attempted to misinform the company to the effect that Schwartz was charging a 10-cent price in an effort to get Metro to apparently withhold product from him.

Mr. McClennen: I submit, if your Honor please, that is a highly improper statement. They don't show that.

The Court: Why are they competent?

Mr. Wright: What business has Mr. Lynch in going to Metro and telling them his competitor is charging a ten-cent price, when obviously that isn't the fact? That is obviously one method intended to prevent Mr. Schwartz from succeeding in his operation. If Mr. Lynch could persuade Metro not to serve Schwartz with product on the theory he was a ten-cent house, that certainly would serve the purposes of Schine.

The Court: I know, but here is an agent of a company reports a situation to be so and so. The company finds it isn't so and so. Another thing about these letters, they complain as to Schine's operations.

Mr. Wright: It shows further what position Mr. Schwartz [fol. 3266] was in. He could not reduce his price to 10 cents so that he would have a differential between the price he was charging for his run and the price at which Schine was playing the runs ahead of him, 15 cents. That in itself is an arrangement under which Schwartz could not compete. That shows that that arrangement existed, that is, that Metro would not sell a 10-cent operation, and that Schwartz had to maintain a 15-cent price and that Lynch attempted to persuade Metro that Schwartz was not maintaining the 15-cent price so he wouldn't be served with the product.

The Court: But Schwartz wasn't reducing the price at all.

Mr. Wright: That is right.

The Court: I cannot see any connection. It is true, if shown that Metro acted upon Lynch's letter, and had done something, I mean as against Schwartz, on the basis of that claim, it would be a different thing.

Mr. Wright: I say that it shows in itself an effort on Lynch's part to get or to injure Schwartz by misrepresenting his admission prices.

[fol. 3267] The Court: Suppose he did, he wasn't doing that with the approval of his company, suppose, as a matter of fact it didn't exist.

Mr. Wright: If the Court please, I suppose there is nothing to show he wasn't doing that with the approval of his company. He held a responsible position. He was the film buyer for his company and what he said to Metro carried a great deal of weight. He was the man who bought films for the Schine Circuit and negotiated these circuit deals put in evidence here.

The Court: You certainly can't charge this act to the company by reason of this act by Lynch, because the company ascertained it wasn't so.

Mr. Wright: We are talking about different companies. Mr. Lynch is not an employee of Metro. Mr. Lynch referred to in the correspondence is the film buyer for the Schine Circuit. He is with Schine and works for Schine.

The Court: Oh, I misunderstood you all the time. I thought he was the representative of Metro.

Mr. Wright: I am sorry.

The Court: I did not remember the name. Of course, [fol. 3268] that puts another slant on the whole thing because that brings it to Schine itself. If Schine represented to the Company that these pictures were being shown at a price lower than a price at which he would sell, I was thinking all the time that Lynch was the Branch Manager and one who was acting for Metro.

Mr. Wright: No, the Branch Manager there is Booth, the Metro Branch Manager.

Mr. McClennen: If your Honor please, whether these letters were admitted in evidence or not, the outstanding thing is this reprehensible statement that an attempt was made by this man to misinform. There isn't the slightest evidence he made any attempt to misinform, and there is no chance of anything of the kind. He told, it appears, what he had learned, and the company corrected as they found it to be, but there is nothing to indicate that there was an attempt to misrepresent, and it is a part of the effort to establish a case by unfounded insinuation and not by fair construction put upon evidence.

[fol. 3269] The Court: The letter to Mr. Booth says Lynch made that direct statement.

Mr. McClennen: This is a pure hearsay statement that Lynch made the statement, but whether he made it or not is not evidence he was consciously misrepresenting a fact and no evidence to warrant it by a responsible officer.

The Court: That isn't carried out by his letter to Lynch in which he says "Evidently, George, the information you had concerning 10 cents at night for the Opera House was erroneous."

Mr. McClennen: That is exactly what I am saying, if George had made a mistake, it doesn't indicate he was attempting to misrepresent. That is not only the insinuation, but a wholly unfounded statement that ought not to be made in a court of justice.

Mr. Wright: If the Court please, I assume that Mr. Lynch's intentions are to be judged by the entire record of evidence made in this case, not by what I may say about him, or what Mr. McClennen may say about him, and we are asking you to draw the inference on the basis of all the [fol. 3270] evidence that Mr. Lynch's purpose was not a proper one.

Mr. McClennen: It was stated as a fact, as if there was something of the kind in evidence and there is nothing of the kind in evidence, such a statement ought not to be made.

The Court: What do you say about this letter?

— Well, I think these exhibits, some of them, stand on a different basis. I think they should be received; statements made by the different companies as to what Schine was doing and what Schwartz was doing, merely repetitious in part of what is in the earlier letters and show error in the figures given. I will exclude these two and I will receive the others. The two I refer to as excluded are the letters relating to the question of charges being made by Schwartz, the two short letters there.

Mr. Wright: These are excluded?

The Court: No, let me see them. Those two are included.

Mr. Wright: As I understand it, you have admitted 455, a letter from O'Shea to Booth, dated August 28th, 1937, and 457, letter from O'Shea to Booth, dated September 1, 1937, and is it my understanding you are excluding the [fol. 3271] letter from O'Shea to George Lynch, dated November 1st?

The Court: Yes.

Mr. Wright: And what was the basis for the exclusion of that?

The Court: Well, I don't see that this letter has any significance. That is simply repetitious of what appears in the other two letters. As far as rates charged by these theatres, it already appears in evidence.

Mr. Wright: This is excluded on the ground it is merely cumulative?

The Court: Yes.

Mr. McClennen: The ones excluded are 458, 456 and 459?

Mr. Wright: And that was the same basis for the exclusion of this Exhibit 456 and 459, cumulative. The evidence there is cumulative?

The Court: Not only that. I think it goes further than that, because this is a letter between Mr. O'Shea and Mr. Booth, both of whom are connected with Metro.

Mr. Wright: That is correct.

The Court: About the conditions in Lexington, and so on. I do not see that it has any competency.

Mr. Wright: Well, I suppose to the extent what condi- [fol. 3272] tions in Lexington were is relevant, it is proper to have this statement of them, at least so far as it affects this distributor's product. I suppose the Branch Manager is the most competent man to make the statement. I take it, we put on direct proof of the conditions, and this merely reflects Metro's appraisal of them, and I suppose it would be the best evidence of that appraisal made contemporaneously and filed as part of the records of the company.

The Court: What do you think about that, Mr. McClennen, on the theory they concern the co-conspirator here? There are several matters in that letter credited to the Schine company, also to Schwartz as well. It speaks about the bad condition at Lexington.

M McClennen: I think your Honor in excluding the three exhibits has ruled rightly. This is not the way to prove facts. These are merely hearsay statements and are of no service in the case, except if they were received as hearsay evidence of the facts stated in them. They ought not to be received at all under those circumstances. I think [fol. 3273] your Honor's ruling should be maintained.

The Court: Both these exhibits are of considerable materiality if admitted, because both of these letters refer to conduct as regards Schine. One of those, as I have said before, refers to operation by Schwartz. It seems to me that the evidence ought to come from somebody from the company itself, as to just what was done.

Mr. Wright: If the Court please, this question of whether or not it would be necessary to bring to the witness stand the man who wrote these memoranda was settled at the session last summer when it was ruled that the only connection we would require to make was to show who these people were and that the material was kept as a part of the files of the company.

The Court: This letter starts out "The reason for this letter is to explain in more detail the conditions in Lexington." The Metro Company, through its representative, is explaining what it claims to be the condition in Lexington. Shouldn't that be made by direct proof, a manager, rather than some communication made by him?

[fol. 3274] Mr. Wright: That would be an alternative way to make it. I would assume as far as the evidence is concerned, even if the manager were brought here and said he did not know anything about conditions in Lexington at the time, it would be competent to offer in evidence what he recorded with respect to those conditions in the files of the company, and that is what we are offering to show here, what the company's own records showed with reference to these conditions.

The Court: They have a right to cross-examine him concerning this letter. He has written a letter stating the conditions are bad in Lexington.

Mr. Wright: As part of their case, they are free to call him or anyone else, but as I understood it, the same question was raised last spring with reference to certain memoranda, and your Honor ruled that it would not be necessary to call the maker of the memorandum in order to establish its competency.

The Court: Because it came from the files of the company, you mean?

Mr. Wright: What we needed to do was to show it was [fol. 3275] made in the course of the company's business and kept as part of the company's records. I take it that was the purpose, of course, in having all these distributor representatives over here and identify the material as having come from the files of the company, and identified the positions of these people mentioned in the memoranda, so that it would appear from an examination of the memoranda on their face whether or not they were made in the course of performing the company's business.

The Court: Does that apply to a communication from outside, from the business manager to the company? From what you said the ruling has been, it would apply only to the files of the company showing the action of the company itself.

Mr. Wright: Well, I think it applies to whatever the particular memoranda purports to cover. As I recall it, this question came up originally in connection with some United Artists or a United Artists memorandum, which was introduced, and I believe received in evidence in connection [fol. 3276] with the Town of Mount Vernon, Ohio.

The Court: What was that?

Mr. Wright: An inter-office memoranda, as I recall it, and it was from a Branch Manager from the United Artists. I think the exhibit number is 12. See if you can find the early exhibits there——

The Court: There is a difference between whether it relates to something that was done in pursuance of some contract or some activity of the company, or whether somebody said conditions were bad.

Mr. Wright: I don't suppose there is any question about that, if it appears that the memorandum has nothing to do with the business of the company, or outside of the—some personal affairs of the writer. That would be another matter, but I take it all of these memoranda that have been offered do, of course, expressly deal with the business that the writers and receivers were then engaged in, which is the distribution and exhibition of their company's pictures in these particular situations.

The Court: I will dispose of that. Give me these last [fol. 3277] two. I want to look up the record a little bit. At least, I want to try to be consistent. I won't dispose of it today. This one, I don't think, adds anything to the other two letters. It shows what the prices are. It simply refers to the further fact that George had made an error.

Mr. Wright: From the standpoint of materiality, I don't see that it makes much difference whether that goes in or not.

The Court: The question is whether a statement of that kind of conditions in Lexington, by a representative of the company—of course, if Mr. Lynch representing the defendant said conditions were bad, that would be a different thing, but your answer to that would be that the Metro is a co-conspirator.

Mr. Wright: That is one answer which is complete in itself, but even if they were not, if an issue in the case is what Metro thought of those conditions, then this memoranda would be the very best evidence available on that point. Of course, our case is built upon the proposition that here was a condition which was plainly not desirable [fol. 3278] from the standpoint of the distributor, and was only permitted to continue because of the power that Schine was able to exert over the distributor in that case.

The Court: Can you draw that conclusion from these letters?

Mr. Wright: Not in themselves. Of course, the question, I suppose, is never whether these questions in themselves prove anything, but whether or not they have a tendency to establish any facts upon which we would rely in proving our case, and it seems to me clearly that they do.

The Court: The only theory on which it would be competent at all is as an admission of a co-conspirator, that is all.

Mr. Wright: In addition to that, I might say our case consists of proving the course of business, or we are proving a course of business between certain independent companies and these distributors, and we also prove a parallel course of business between the same major distributors and Schine. The basis on which we expect to show that Schine used and applied its buying power to compel discriminations [fols. 3279-3282] by these distributors against its independent competitors is a comparison of the two courses of dealing, so that the facts that we are bound to prove and on which we rely are all the facts which show what the course of business was between Schine and these distributors and between the independents and these distributors.

The Court: I understand that, but isn't your position inconsistent in this respect? You assert that the Metro is a co-conspirator, and yet it appears from these letters that this co-conspirator was complaining about acts which go to constitute a conspiracy.

Mr. Wright: Our position is, that Metro and the other distributors were reluctant co-conspirators.

The Court: Oh.

Mr. Wright: That the moving force in the conspiracy was, of course, the Schine company, that they were the chief beneficiaries.

The Court: I will take this up when we come to it again.

(Whereupon Plaintiff's Exhibits previously marked for identification 455 and 457 were received in evidence.)

(Whereupon a recess was taken until Monday, October 23rd, 1944, at 11 o'clock A. M.)

[fol. 3283] UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF NEW YORK

Civil 223

UNITED STATES OF AMERICA

vs.

SCHINE CHAIN THEATRES, INC., et al., Defendants

Continuation of trial before Honorable John Knight, United States District Judge for the Western District of New York, October 23rd, 1944, 11 o'clock a. m.

APPEARANCES:

Robert L. Wright, Esq., John F. Clagett, Esq., Harold L. Schilz, Esq., Special Assistants to the Attorney General, and Philip Marcus, Esq., Milton Kallis, Esq., Special Attorney, in behalf of the United States.

Edward F. McClennen, Esq., Willard S. McKay, Esq., Saul E. Rogers, Esq., Arthur E. Whittemore, Esq., Arthur J. Homans, Esq., and Edward M. Antevil, Esq., appearing for the Defendants.

[fol. 3284]

Mr. Wright: If the Court please, a couple of witnesses will be here to identify some newspapers, and they will be very short. I would like to have the privilege of interrupting the testimony to put them on, if that is agreeable to counsel.

The Court: All right.

Mr. McClennen: Pursuant to your Honor's suggestion, Mr. Wright sent me a list of some 90 papers that have been identified as coming from the distributors' files, which he proposes to offer in evidence. We have extensive objections to those, and instead of waiting until they are offered, and instead of reading those objections, I have handed the stenographer a copy of them, asking that they be copied into the record. I will hand Mr. Wright a copy and your Honor a copy so that they will be available for your consideration.

The Court: Where are the offers?

Mr. McClennen: Those, I take it, will come after this oral testimony.

[fol. 3285] The Court: Oh, after that.

Mr. McClennen: Yes, I simply thought I would have this available for your consideration and copied into the record at this time.

The Court: I thought if I had those I would have a chance to look them over.

Mr. Wright: We can supply your Honor with those. We had not intended to make the physical offer of the material until after we finished with the testimony.

The Court: I would like to have them.

Mr. Wright: Suppose we give them to your Honor some time today.

The Court: All right, as soon as you can.

(Document copied into the record referred to above, as follows):

"Defendant's Objections To Introduction Of Certain Papers From Distributors' Files October 23, 1944.

On October 20, Defendant's attorneys were notified by Plaintiff's attorneys, by letter dated October 19, 1944, of their intention to offer in evidence about ninety (90) papers [fol. 3286] already identified by numbers. The only proof of these which has been offered is that they came from the respective distributors' files. It does not appear whether they came from the Branch Office files or from the Home Office files, or partly from one and partly from the other.

The defendants object that these are not admissible for the following reasons:

1. They do not come from the Defendant's files.

2. No witness is on the stand knowing anything about the creation and treatment of these papers, or subject to cross examination with respect thereto. (Court at pp. 285, 289, 298 of testimony.)

3. There is no evidence that they are true copies of originals. (This does not relate to the use of photostats. Of course, a photostat of a copy is no better than the copy).

4. ?

5. There is no evidence that they were made by the man whose name appears thereon.

6. There is no evidence that the maker signed them.

7. There is no evidence that the maker saw them in type [fol. 3287] or otherwise.

8. There is no evidence that they were sent to the addressee.

9. There is no evodence that they were seen by the addressee.

10. There is no evidence that the maker himself knew the truth of the statements contained in them.

11. There is no evidence that the statements contained in them are true.

12. The papers cannot be received as any evidence of the truth of the statements contained in them. (Wright at p. 286 of testimony).

13. There is no evidence that they were an actual part of any contract or transaction.

14. There is no evidence that the maker was authorized by the Distributor to make the statements in them. (Cases cited in defendant's Law Memorandum, Page No. 14, require their exclusion).

15. There is no evidence that they came to the knowledge of the defendants.

[fol. 3288] 16. There is no evidence that they were acted upon in any way, by defendants or the distributors.

17. There is no evidence that the Distributor in whose files they were found, was at the time, conspiring with the defendants. (Glasser *v.* United States, 315 U. S. 60. Defendant's Law Memorandum, Page 8, requires the exclusion.

18. There is no evidence that they were acts in the course of any such conspiracy.

19. They are no more than hearsay, sometimes twice, and sometimes, three times removed, and, sometimes, no more than conclusions or opinions.

These objections are confined to those applicable generally to the approximately ninety (90) papers. Other special objections to particular papers can be made only as the particular paper is offered.

E. S. McClennen, Esq., Willard S. McKay, esq., Attorney for Defendants."

[fol. 3289] MICHAEL BOUMANSOUR, a witness called by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Wright:

Q. Where do you live, Mr. Boumansour?
A. In Malone, New York.
Q. What is your occupation?
A. At the present time I am in the real estate business.
Q. You were formerly engaged in the theatre business at Malone?
A. Yes, sir.
Q. During what period?
A. Oh, probably between 1922 up till 1940.
Q. What was the theatre you were connected with in 1922?
A. In 1942?
Q. In 1922?
A. The Plaza Theatre of Malone.

The Court: The what?
The Witness: Plaza Theatre.

Q. You were operating it yourself, were you?

A. Yes, sir.

Q. How long did you operate it?

[fol. 3290] A. Just about the first year, about one year.

Q. Then what did you do with it?

A. I have leased it.

Q. To whom?

A. To Mr. Meehan.

Q. During what period was that?

A. Oh, that was during the period of 1923 to 1928, if I recall, not surely.

Q. Then who took over the operation of the theatre?

A. Well, I don't recall exactly what time that Mr. Meehan sold the interest of their own theatre, to the Schine Circuit, but at that time both theatres were taken by the Schine Circuit, my house and the Malone Theatre, the Grand.

Q. Those were the only two theatres in Malone?

A. Yes.

Q. You are not sure of the date, but you think it was some time around 1929?

A. About.

Mr. McClennen: 1928, he said.

The Witness: I don't recall.

Q. Schine continued to operate the Plaza for how long?

A. Well, they didn't operate it very much, except, I think, in the year 1931, if I recall, I am not sure, Schine has decided to remodel the Grand Theatre. That was approxi- [fol. 3291] mately at that time between eight to nine hundred seats, and extend it, the theatre, to between twelve to fourteen hundred seats. At that time they opened up the Plaza Theatre——

The Court: What about the Grand? Is that the third?

The Witness: No, Grand was the original name of the——

The Court: Of which, of the Malone Theatre?

The Witness: Of the Malone, yes.

The Court: All right.

The Witness: Then, during the time that the Schine Corporation remodeled the Grand Theatre to Malone Theatre, that is formerly, increased its capacity between the—seating capacity used to be eight to nine hundred seats, and extend it to thirteen or fourteen hundred seats today, and after it was completed, then they close up the Plaza Theatre for good at that time.

Q. It was kept close then until—that is, throughout what years?

A. Throughout the year 1936.

Q. From about 1932, or whatever time this Malone remodeling was, until the summer of 1936?

A. No, I think the remodeling just took about one season, I recall. I wasn't there myself when they remodeled it, [fol. 3292] but I think during the year 1931-1932.

Q. In 1936 it had been closed for several years, is that right?

A. Oh, yes, the Plaza was closed for several years.

Q. During all this time you continued to be the owner of the *the* Plaza?

A. Yes.

Q. Schine was operating under a lease with you?

A. Yes.

Q. That lease expired when in 1936?

A. In 1936 I recall.

Q. In the fall of 1936?

A. I am not sure of it, but it is—I think it was in September, 1936, the lease was over.

The Court: You say the lease expired?

The Witness: About that time, I think, in September, 1936.

Q. Did you have any negotiations then in the summer of 1936 with reference to renewal of the lease?

A. I think about three or four months before my lease expired, I was abroad, in Europe, and I had a letter sent to me that my theatre——

Mr. McClennen: Just a moment.

The Court: You cannot state the contents of the letter. You received the letter when you were abroad and then [fol. 3293] what happened?

Q. You came back——

A. I came back.

Q. To Malone?

A. The letter stated to me that my theatre——

The Court: No, they object to your telling what the letter said, unless you have the letter here.

Q. Just tell what you did after you got the letter, what did you do?

A. I came back to Malone and I went over and saw Mr. May.

Q. Where did you see him?

A. I saw him in Gloversville.

The Court: That was in '36, you say, when the lease expired?

The Witness: Yes.

The Court: All right.

The Witness: (Continuing:) And I think it was in '35. This wasn't '36 because Schine had another year yet to go on the lease.

By Mr. Wright:

Q. You think this was about a year before the lease expired?

A. Yes, Schine had another year to go, and they told me that my theatre——

Mr. McClennen: Just a moment.

[fol. 3294] By Mr. Wright:

Q. Confine yourself to the conversation you had with Mr. May at Gloversville. When he came back you saw him there?

A. Mr. May told me that the theatre was condemned and they were to discontinue the payment of the theatre.

Q. Of rent, you mean?

A. Of rent.

Q. What did you say?

A. I said if my theatre is condemned, then, will you please give me the release of it, and finally I couldn't get the release.

Mr. McClennen; I ask to have that stricken out.

The Court: Yes.

Q. Say what the conversation was at that time. Did he tell you "Yes" or "No"? Just give us what was said as best as you can recall it.

A. At that time the conversation was that he wouldn't give me no release and he wouldn't pay the rent for the year 1935-36.

Q. Then what did you do?

A. Well, I went back to Malone and I saw my lawyer there, and he thought——

Mr. McClennen: Just a moment.

Q. Confine yourself to what you did, and after you saw [fol. 3295] your lawyer.

A. I got a check from Schine for the year.

Q. And then did the theatre stay*ed* closed, or was it open?

A. Closed.

Q. Then when was the next time that you talked to any one from the Schine Company about the theatre?

A. It was in 1939, if I recall.

Q. After '35. I previously asked you whether you had any—after you got the rent for the last year of the lease there, did you have any conversation with anybody from Schine about a renewal of the lease, or of further lease on the premises?

A. I think I did, but I am not sure now.

Q. You don't remember whether you talked to him or not, but what did you yourself do then with reference to the theatre premises prior to the time the lease expired?

A. I remodeled the theatre.

Q. When was that?

A. In 1936.

Q. Was that during the summer or when with reference to the expiration of the lease?

A. I think I started on the repair of the theatre before the Schine lease expired, a few months ahead of the time from the outside of it. All the necessary, like the boilers, the heating plant of the building, and all the necessary [fol. 3296] repairs from the outside that wouldn't harm the attendance, you see. I think it was about two or three months before the lease expired I started to remodel.

Q. How much did you spend on the remodeling, approximately?

A. All told I spent about $20,000.

Q. When was your remodeling completed so it was ready to open as a theatre?

A. About November, 1936, about that time.

Q. While you were remodeling the theatre did you make any efforts with respect to finding out what, if any, major film product you could get for it?

A. Yes.

Q. What did you do in that connection?

A. I went to Albany, and I went to see all the film exhibitors.

Q. You mean exhibitors or distributors?

A. Distributors. I found that——

Mr. McClennen: Just a minute.

The Court: They object to what you found. You have to state your conversation or the substance of the conversation.

Q. Just state what you said there and who you saw, as near as you can recall it.

Mr. McClennen: This, your Honor, is subject to a general objection.

[fol. 3297] The Court: Yes. Overruled. You saw who?

The Witness: I saw Mr. Eastman.

The Court: Who was he?

The Witness: He is Branch Manager of the Albany Paramount.

Q. Just tell us first, as nearly as you can recall it, what Mr. Eastman told you, or what conversation you had with him?

A. I told him I was pretty near ready to operate my theatre again, what kind of chance would I have to get product? Well, he said "There is always—you will get enough product because Schine is only running just so much percentage of our pictures." At that time he told me Schine has used 65 per cent of Paramount pictures of the past few years and I might have the left-over that I could operate with and I went and seen Mr. Halligan. I think his name was Halligan, the Branch Manager of R.K.O., and he told me about the same thing, along the same line.

Mr. McClennen: May the last be stricken out?

The Court: Just tell what Mr. Halligan said. Strike it out.

The Witness: Mr. Halligan told me Schine has used pretty near three-quarters of our product, there will be one-quarter of the product a couple of years back he can sell me when I will be ready to open.

[fol. 3298] The Court: Mr. Halligan was in Albany?

The Witness: Mr. Halligan was in Albany, the R.K.O. Branch Manager.

By Mr. Wright:

Q. At that time the Schine Malone Theatre was the only theatre operating in the town?

A. Yes.

Q. Go ahead. Who else did you see?

A. Then I went and seen Mr.—the Branch Manager of Warner Brothers. At that time his name was—I don't recall the name, your Honor, of this Branch Manager now.

Q. You did know him at that time. Had you done business with him before?

A. Yes. He was the old Branch Manager in the old days he was there, and he was—I can't recall his name. Anyway,——

Mr. McClennen: Just a moment.

By Mr. Wright:

Q. What did he say?

Mr. McClennen: I think this ought not to be stated.

The Court: Go ahead.

Mr. Wright: I asked him what the conversation was.

The Court: Have you a record here who the Branch Manager was?

Mr. Wright: I think we have it in the record. As I [fol. 3299] recall the record shows it was Ray Smith.

The Witness: That is it.

The Court: Is that the man?

The Witness: That is it, Ray Smith.

Q. What did he tell you?

Mr. McClennen: Just a moment. The record is that Mr. Smith ceased to be Branch Manager at Albany in February, 1935.

The Court: That is before the time stated here?

Mr. Wright: I think he said it was the fellow he talked to was the one he thought he bought pictures from before.

The Witness: It was Mr. Ray Smith, and then there was Mr. Ayres, as I recall, he was Branch Manager at Albany. That is why I say now Ray Smith was the Manager. When he told me it was Ray Smith, it was either Ray Smith or Ayres, was Branch Manager there at the time. There were two Branch Managers in that time. When I said it was Ray Smith, he was the Branch Manager at some time there. Mr. Ayres was there.

The Court: You don't recall whether it was Smith or Ayres?

The Witness: Yes, one or the other.

[fol. 3300] Mr. McClennen: The question now before the witness is what Mr. Ray Smith said and he raised the objection that he should not state that.

Mr. Wright: I withdraw the question.

Q. Just state what the Warner Branch Manager, whoever he was, said to you.

Mr. McClennen: That is objected to.

Mr. Wright:

Q. In the summer of 1936 or at the time this conversation occurred?

Mr. McClennen: This witness ought to remember the man that he talked with and state the man that this conversation took place with, not a characterized individual. I object to the question.

The Court: Overruled. He stated it was one of these two. In all these negotiations some confusion might arise in his mind. It was seven or eight years ago.

Mr. Wright: You can state what was said.

Mr. McClennen: This is, I understand, an unnamed person.

The Court: No, no, that is not an unnamed person. He said Mr. Smith or Mr. Ayres. He doesn't know which one it was.

Mr. McClennen: If your Honor please, we make a special objection to any conversation with Mr. Smith, because the [fol. 3301] record shows he was not the Branch Manager at this time.

The Court: We have to take that into consideration in connection with his answering using the word "Or."

Mr. McClennen: If he is going to answer something Mr. Smith said, we object to it on that ground.

The Witness: I wouldn't say definitely it was either one of the two.

The Court: Objection overruled. What did he say?

The Witness: He said to me as a friend of yours I will not reopen that theatre, but he says "If you insist, I might have a few rejected pictures for you."

Q. Is that all that was said?

A. That's all I recall.

Mr. McClennen: I move that the answer be stricken out on the ground that Mr. Smith was not the Branch Manager at that time and that the contents of the witness' statement further shows that it is not admissible in this case.

The Court: What do you say, Mr. Wright? Of course, the answer, the words in the answer itself, there is some confusion, we should know who it was.

Mr. Wright: I think it is reasonably clear, if the Court [fol. 3302] please, that he had this conversation with the man who was Branch Manager at the time for Warners at Albany on the grounds of identification. I think that is sufficient as far as the conversation itself being admissible, the nature of it was about the available pictures at Malone. I don't see that it differs in that respect.

The Court: The answer perhaps might be proper. Objection overruled. I will receive it.

By Mr. Wright:

Q. What other major exchanges did you visit there?

A. I went over to Fox.

Q. Who did you see there?

A. Mr. Grassgreen.

Q. What was that conversation, as nearly as you can recall?

Mr. McClennen: The same objection.

The Court: Objection overruled.

The Witness: Mr. Grassgreen says, "Very sorry, but we have one account in Malone, and we feel that we are getting pretty good revenue from that account and we are not interested in opening another account."

[fol. 3303] Q. Is that all that was said then?

A. He says "I might have a few pictures of Gaumont British."

The Court: What?

The Witness: Gaumont British pictures, "That we might let you have if you open the theatre."

By Mr. Wright:

Q. Was that all of that conversation?

A. That is all that was said.

Q. Did you see any other major exchange?

A. I saw the Branch Manager of Universal.

Q. Do you recall his name?

A. No, I can't say it for sure. There was a change there several times in a very short time between—I think it was Mr. Dina.

Q. Dana?

A. Yes, something like that. This is—I am not yet sure if Mr. Dina was the Branch Manager—I am just telling you——

The Court: That is your best recollection?

The Witness: Yes. They change managers very often in those exchanges, and I don't exactly recall if Mr. Dina was in there that time, or somebody else.

Q. You think the name might have been Dana instead of Dina?

A. No—I mean, it might have been another Branch Manager.

[fol. 3304] The Court: Is it spelled Da-n-e-r?

The Witness: No, I think D-i-a-n-n-a, is that right? I don't know.

By Mr. Wright:

Q. Was this a fellow you had dealt with before? Was it some one who was new there at the time?

A. No, he was there before, and he told me that——

Mr. McClennen: The same objection, if your Honor please.

The Court: Overruled.

The Witness: —they had pretty near half of the picture open.

The Court: He said what?

The Witness: Half of the picture available for me in Malone, and when I have my theatre all fixed up, we try to made a deal, "But we have several pictures of the year before, too, that never ran in town," and they will be first-run for me, that they could dispose of.

Q. Did you see anybody from Columbia at that time?

A. Yes.

Q. Whom did you see there?

A. At Columbia, I don't recall the name, your Honor.

Q. Do you remember whether it was a salesman or a Branch Manager?

[fol. 3305] A. No, I saw the Branch Manager.

The Court: What?

The Witness: I saw the Branch Manager.

Q. What was the conversation you had with him?

Mr. McClennen: Same objection.

The Court: Is there anything in the record here to indicate the name of the Branch Manager at that time?

Mr. Wright: I think it is Phil Fox was the Manager, according to our interrogatory.

The Witness: That is right.

The Court: Is that the man?

The Witness: That is right, Phil Fox.

Q. What was the conversation you had with Fox?

A. He said "There will be a lot of picture- for you available when time comes for you to open." He says, "We have sold Schine practically only 60 per cent of our product for the past two or three years, and we might have about twenty picture- available for you of this season, and about the same amount of the two seasons before.

Q. Then did you go back to see the exchanges again when you opened the theatre?

A. Yes, sir.

Q. When was it that you opened the theatre?

A. What is your question?

[fol. 3306] Q. What was the date when you opened the Plaza?

A. I think it was the second week of November.

Q. 1936?

A. Yes.

Q. Then with reference to that time when was it that you saw these exchange people again?

A. Oh, about a couple of weeks before I opened up.

Q. Whom did you see then?

A. I saw Mr. Halligan. That is the first one I see.

Q. Whereabouts?

A. Branch Manager in Albany—I mean Branch Manager of the R.K.O. in Albany.

Q. You saw him in Albany?

A. At Albany.

Q. What was said then?

A. Well, I said——

Mr. McClennen: Same objection.

The Court: Overruled.

The Witness: I said "I am ready to open up in a couple of weeks, and I would like to have some picture that you told me about, that you have open," and he answer, he says "I am sorry, but it is impossible *to* me to do any kind of business with you." He says "My hands are tied up. I can't do anything now."

[fol. 3307] Q. Is that all what was said?

A. Well, at the time that is all.

Q. Did you see the other exchange managers at the same time?

A. Yes, I did.

Q. Who else?

A. I see either—if it was Ayres or Mr. Smith, it is the Branch Manager of Albany, Warner Brothers.

Q. What did he tell you?

A. He said "It is impossible now to give you anything, unless a little later if we have any kind of rejection on picture, I might let you know.

Q. Whom else did you see?

A. I went to Paramount and I saw Mr. Eastman. He says "I am not going to be——"

Mr. McClennen: Same objection.

The Court: Overruled. Go on.

The Witness: Mr. Eastman told me, he says "I am not going to be the goat. After somebody sells you of the majors, I will do the same."

The Court: What is that?

The Witness: He said "I am not going to be the goat to be the first one to sell, but if any one of the major companies sells you any picture, then you come back and see me and I will sell you some pictures."

[fol. 3308] Q. Whom else did you see?

A. I saw Mr. Pielow.

Q. Who is he?

A. Branch Manager of the Metro-Goldwyn-Mayer.

Q. What did he tell you?

Mr. McClennen: Same objection.

The Witness: Mr. Pielow says "At the present time Schine is using pretty near everything we have, but there might be some rejection of a few picture- that we might dispose to you a little later on."

Q. By the way, had you seen Pielow on your prior trip to Albany when you saw the other exchange managers?

A. Yes, I did.

Q. What was the conversation you had with him then?

Mr. McClennen: Same objection.

The Court: Overruled.

The Witness: Mr. Pielow, the first trip, told me, he says "We pretty near sell all our product to Schine, except they have the right of rejecting a few picture- a year that might be available for you by the time you open up."

Q. Was there anything else said in this second conversation you just described?

A. In the second conversation, that at the present time [fol. 3309] there was nothing available, but a little later on "We might have something for you."

Q. Whom else did you see at the time of the second conversation?

A. At the second time, I recall, I went over to see the Branch Manager of Grand National Picture.

Q. Just confining yourself to the major companies that you had seen before. The second time you said you saw somebody at R.K.O., you saw somebody at Warner, you saw somebody at Paramount and somebody at Loew's. Did you see any one at Fox or Columbia or Universal on the second trip?

A. Not the second trip. That is all I have made. No, I didn't go back to see Fox at that time, because he wasn't—I went over, but he wasn't in the office.

Q. When you refer to "Fox," you are referring now to the Branch Manager at Columbia?

A. Yes.

Q. How about the Fox Company, Mr. Grassgreen, did you see him?

A. Mr. Grassgreen says to me again that it was impossible, that they had one account in Malone and they weren't going to take another one.

Q. Did you see the Universal people again?

A. I don't remember that I did on the next trip. I must [fol. 3310] have, but I couldn't say for sure. I don't recall now.

Q. Then, when you opened the Plaza Theatre, what policy did you operate it on in the fall of 1936?

A. My policy was 25 admission, double feature.

Q. What kind of pictures?

A. The picture?

Q. What pictures did you play?

A. I had Republic as one company, and I had Grand National of another company, and I have used a product that they made several years ahead, in order to operate the theatre.

Q. You mean several years back, don't you?

A. Back.

Q. Then you had no major pictures for your theatre——

A. No.

Q. —during the fall of 1936?

A. No.

Q. What policy was Schine operating the Malone on at the same time?

Mr. McClennen: For convenience when the Malone is used, we mean the same theatre that has been described as the Grand?

The Witness: Yes.

Mr. Wright: I take it the Grand and Malone are the same theatre.

The Court: The name was changed when they did the [fol. 3311] remodeling, is that it?

Q. When did the name change occur, do you recall?

A. I think the name changed right after—I don't remember exactly—1931 or 1932, the name was changed, the Malone Theatre, Malone Schine Theatre.

The Court: At the time, you said, they remodeled?

The Witness: Yes.

Mr. Wright: Would you read the last question?

(Question read.)

The Witness: If I remember, they were operating a policy of Sunday and Monday was their big attraction, as single program, and during the week they used to have a double feature of two changes.

The Court: Two changes?

The Witness: During the rest of the week, yes.

Q. There were three changes altogether?

A. One single feature.

Q. Two double features?

A. There never were any policies alike. Some week they used to have three changes, some weeks they used to have four changes, but it never ran the one solid base policy.

Q. What were the admission prices, as nearly as you recall?

A. If I recall, the admission price was 40 cents—I think it was 40 cents downstairs and 30 cents upstairs.

[fol. 3312] Q. How much of a balcony did they have in the theatre?

A. A little over 400.

Q. Then in 1937 did you get any major pictures?

A. In 1937, I think it is around February of 1937, I have had three or four pictures from Mr. Pielow of the Metro-Goldwyn-Mayer. That is, were rejected picture-, and after I went back to Paramount, and at the same time, about, and I had five or six picture- there, and three or four reissue.

The Court: Besides the five or six?

The Witness: Yes.

The Court: Paramount?

The Witness: Paramount. I am telling you this is about. It is nothing—it might be a picture less, it might be picture more. I don't recall exactly, but approximately that is pretty near what I had.

Q. This was about what time in 1937 that you were talking about?

A. About in February.

Q. Then was there any change in the policy at the Schine Malone Theatre at that time?

Mr. McClennen: This is February, 1937?

Mr. Wright: Yes.

The Witness: I don't recall any kind of a change at that [fol. 3313] time.

By Mr. Wright:

Q. When was the first time, then, that there was any change in the policy after the opening of your theatre?

Mr. McClennen: You mean in his policy?

Q. Change in the policy of the Malone Theatre after you opened your theatre?

A. I think it was exactly the time after I had the second-run product in the theatre.

The Court: When was that?

The Witness: That was, I think, around the summer of 1938, if I recall. Now, these dates, your Honor, and these times, as far as I am concerned, I give you just roughly about it. The date I am not sure of any of them.

The Court: You are giving your best recollection?

The Witness: Yes.

Q. We want to get your best recollection on all these dates.

A. Yes.

Q. You recall, according to your best recollection, then, you don't remember any particular changes in policy before —through 1937 until 1938, is that right?

A. Yes.

Q. What happened then?

[fol. 3314] A. Well, the change was that Schine put on some money night.

Q. Do you remember about when that began?

A. I don't recall exactly, but it is in the summer of 1938, maybe before. My memory is kind of lost now on this.

Mr. Wright: I will ask to have these marked the next Plaintiff's exhibit numbers for identification.

(Thereupon two newspaper clippings, referred to, were marked as Plaintiff's Exhibits 855 and 856, respectively, for identification.)

Q. I will show you these clippings marked Plaintiff's Exhibits 855 and 856 for identification, and ask you if you recognize those as ads for the Malone Theatre clipped from the Malone Evening Telegram for Tuesday, May 2nd, 1939, and Tuesday, May 9th, 1939, respectively?

A. Yes, sir, these were when the competition was in full swing.

Mr. McClennen: Just a moment. The question has been answered, and I submit the rest should go out.

The Court: Yes, he said these were.

Q. Do you recall how long prior to May, 1939, the money nights that are advertised there had been in effect?

A. Will you say that again?

[fol. 3315] Mr. Wright: Would you read it?

(Question read.)

The Witness: Oh, certainly before this—about a year before this.

The Court: About a year before?

The Witness: Yes, sir, your Honor.

The Court: Before that date, you mean?

The Witness: Pardon?

Q. A year before May, 1939?

A. Just about. I couldn't tell you for exact, but quite long before this.

Q. Then, was it about the same time that the money nights started that there was a change in the admission prices at the Malone?

Mr. McClennen: Objected to as leading.

The Court: It is leading. Let him state what the facts are.

Q. What, if anything, was done regarding the admission prices at the Malone Theatre?

The Witness: At the Malone? What I have done myself?

Q. No, what if any change was there in the admission prices at the Malone Theatre at or about the time the money nights started?

Mr. McClennen: That is objected to as leading.

The Court: Counsel objects to it as leading. The implication is that some change was made. What, if anything, [fol. 3316] was done with reference to the prices in May, 1938 or 1939—did you say 1939?

Mr. Wright: I was just trying to narrow the time field somewhat. I will let him take them all, then.

Q. Answer the Court's question, as to what, if any, changes in admission prices there were at the Malone Theatre while you were operating the Plaza?

A. I couldn't understand that question.

Q. Were there any changes in the admission prices that the Malone Theatre charged while you were operating the Plaza Theatre?

A. Yes, there was.

Q. When did the first change occur?

A. I couldn't give you the exact date, but at the time I started to have second-run pictures at my house the price was reduced.

Q. And that was about when, as nearly as you can recall?

A. Oh, about I think I had second-run product about in June, 1938, something around there, the summer of 1938.

Q. The summer of 1938?

A. Yes, I don't recall the exact date.

Q. When was it that you first attempted to get or first had any conversations with the exchange managers about [fol. 3317] getting major product second-run for your Plaza Theatre?

A. After I was exhausted of all——

Mr. McClennen: May this be stricken out, if your Honor please?

The Court: State when it was.

The Witness: After I was exhausted——

Mr. McClennen: This is stricken out.

The Witness: It is stricken out?

By Mr. Wright:

Q. Try and give the time as nearly as you can without reference to whether or not you had exhausted your supply of independent pictures.

A. Well, about, I say six months after I opened up.

Q. Six months after you opened up that would be the spring of 1937?

A. Spring of '37.

Q. Whom did you see about second-run product?

A. In the spring of 1937 I made a trip to Albany and I contacted all major companies except United Artists that did not have a branch in Albany.

Q. Well, whom did you see there?

A. I saw first Mr. Pielow.

Q. What did he tell you?

A. I said, "Mr. Pielow, I am ready to do business with you, if you want to sell me second-run."

[fol. 3318] Mr. McClennen: Same objection.

The Court: Overruled.

The Witness: He said "I will take that into consideration with the New York office, and I will let you know a little later."

Q. Did you hear from him a little later?

A. No. I went over—next I saw Mr. Eastman. I asked him for second-run product, and the answer was that——

Mr. McClennen: Same objection.

The Court: Overruled.

The Witness: "After you secure any from any other major companies-second-run, I will be in the market to sell you second-run myself." Then I went over and saw Mr. Grassgreen at Fox, and I told him I was in the market——

Mr. McClennen: Same objection.

The Court: Same ruling.

The Witness (Continuing): —to buy second-run product, and his answer was "We have enough revenue coming out of our first-run product in Malone, and we are not interested to sell second-run in the Town of Malone." Then I went over to Columbia and at that time I told them I was in the market——

Mr. McClennen: Just a moment.

[fol. 3319] The Court: Whom did you tell?

Q. Whom did you talk to?

A. I talked with I think it was Mr. Fox, Phil Fox, if I recall. Phil Fox, the Branch Manager.

Q. What did he tell you?

Mr. McClennen: Same objection.

The Court: Overruled.

The Witness: Mr. Phil Fox said that at the present time he couldn't give me anything definite, and he will let me know a little later.

Q. Did you hear from him?

A. No.

Q. Did you see anybody else?

A. I saw Halligan, R. K. O.

Q. What did he tell you?

Mr. McClennen: Same objection.

The Court: Same ruling.

The Witness: "I am sorry, but I can't talk any business at the present time for second-run."

Q. Is that all that was said?

A. That I remember.

Q. Did you see anybody else?

The Court: Who?

The Witness: That was Mr. Halligan.

The Court: All right, go ahead. What did he say?

[fol. 3320] The Witness: You have what I said?

The Court: Whom did you see after Halligan?

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The Witness: After Halligan I saw either Mr. Ayres or Mr. Smith at Warner Brothers. I told them that I was ready to buy second-run to run my theatre, and "I am ready to make a deal. right away", and he says "We couldn't do it now. We have submitted it to New York."

Mr. McClennen: Same objection.

The Court: Overruled.

The Witness (Continuing): And no answer from him.

Q. Did you see any one else?

A. Not that I recall.

The Court: Did he say anything about—you said it would have to be submitted. Did he say he would submit it?

The Witness: It would be submitted.

Q. What was he going to submit? Was there any talk about terms or anything?

A. Mr. Smith, if the Company wants to sell me the pictures or not.

Q. Second-run?

A. Yes.

Q. I will show you this copy of a letter dated May 21st, 1937 from Mr. Grassgreen to you, which has been previously [fol. 3321] identified as Exhibit 195 for identification, and ask if you recognize that as a copy of a- original received by you at or about that time?

A. Yes, sir, this is the exact letter that I received.

Mr. Wright: I will offer his Exhibit 195 in evidence.

(Thereupon letter previously marked as Plaintiff's Exhibit No. 195 for identification was received in evidence.)

Mr. Wright: The letter dated May 21st, 1937, addressed to Mr. Boumansour at the Plaza Theatre, Malone, New York, states:

"Following up your recent letter, I regret to inform you that we will not be interested in serving second-run in the City of Malone, first, because of the size of the town and secondly, because of the possibility of dissipating our first-run revenue. We have a franchise in the City of Malone, which runs for a number of years, and with the maximum number of pictures playing on percentage, we do not believe it is good business to play them at a later date second-run, for there is no question but what it will cut in on our first-run revenue. In the meantime with kindest regards. [fol. 3322] Yours very truly."

Q. This letter, Exhibit 195, was that received by you before or after this trip to Albany where you had the conversation with Mr. Grassgreen about second-run?
A. Just about the week after I came back.
Q. Then you say you finally did start to play pictures second-run there in the summer of 1937, is that right?
A. About—would you repeat that?

(Last question read.)

A. The exact date I couldn't tell you for sure.
Q. When were you first told by any of these exchanges that you could have some second-run pictures?
A. Well, I wrote to the Department of Justice.

Mr. McClennen: May that be stricken out, if your Honor please?
The Court: He asked you about the time.
The Witness: The time. It is after June. It must have been, yes, in the summer, late in the summer of '37.

Q. When did you write to the Department of Justice?

Mr. McClennen: That is objected to. It does not appear he has written to the Department of Justice.
The Court: That is very true.

[fol. 3323] Q. Did you write to the Department of Justice?
A. Yes, I did.

Mr. McClennen: That is objected to.
The Court: Let the fact stand. What was done is not competent. Overruled.

Q. And when was that, approximately?

Mr. McClennen: That is objected to, the letter would show.
The Court: Let him state about when.
The Witness: Early in June. I don't recall exactly, but I know it is in the summer, early.

Q. Did I ask you—I asked you for the date as nearly as you could fix it. It is the actual date when you were notified by any of the major companies that you could have second-run.

Mr. McClennen: Just a moment. It is obvious that my brother must have the letter, and I am wondering if he is going to leave this answer of the witness uncorrected as to the time.

The Court: That is true.

Mr. Wright: I would be very glad to have the letter identified, too. I assumed it would be objected to if I attempted to offer the letter itself.

Mr. McClennen: The graver objection is to letting stand [fol. 3324] this witness' testimony as to the time.

The Court: That is true. Yes, I think the answer as to the time should be stricken out. With reference to a letter to refresh his recollection as to time if it does, if he can state without such reference, but it will be stricken out as it now stands that he wrote to the Department on this specific date.

Mr. Wright: I will ask to have this marked with the next exhibit number for identification.

(Thereupon the original letter, dated June 30, 1937, referred to, was marked as Plaintiff's Exhibit No. 857 for identification).

Q. I will show you this letter dated June 30th, 1937, marked Exhibit 857 for identification, and ask you if that is a copy of the letter to the Department of Justice that you just referred to in your testimony?

The Court: Is that the copy?

The Witness: That is the copy of that.

By Mr. Wright:

Q. That is the original letter, is it not? That is the original letter you wrote? That is your signature on there?

A. It is not my signature.

[fol. 3325] Q. Well, is it the letter you wrote and sent?

A. Yes, but it isn't my signature there.

The Court: Was it signed at your request by somebody for you?

The Witness: Yes, but isn't my signature, but it is the letter.

Mr. Wright: It is the letter you wrote?

The Witness: It is the letter I wrote to the Department of Justice.

Q. And it is the one you are just referring to?

A. Yes, I think my assistant must have signed it.

Q. There is no letter you wrote prior to this?

A. No.

Q. This exhibit 857 was the one you first wrote and it was written on or about the date that appears there?

A. Yes, 1937.

Q. June 30th, 1937, is that right?

A. Yes, it must be.

Q. Does that letter refresh your recollection as to when it was that you were offered a second-run deal?

The Court: That calls for a conclusion.

Mr. Wright: Well, as to when you actually——

The Witness: If I recall that after the letter was sent I was approached by a telephone call.

Q. Who called you?

[fol. 3326] A. From Warner Brothers of Albany.

Q. Who was it, do you know?

A. Albany.

Q. Do you know who the individual was who called you?

A. Mr. Ayres of Albany called me up on the telephone and stated——

Mr. McClennen: Just a moment. That's all you were asked.

Q. Tell us what the conversation was you had with him.

Mr. McClennen: Same objection.

The Court: You knew Mr. Ayres' voice, did you? You knew who it was talking?

The Witness: Yes.

The Court: Overruled. What did he say?

The Witness: He said he had a contract ready for me in his office in Albany.

The Court: A what?

The Witness: A contract in his office ready for me.

Q. What did you do then?

A. So I took the first train to Albany, and I went into his office and he had a contract already written, ready to sign, so I looked at the contract and I said to Mr. Ayres, "I like the contract, but I don't like the prices", because the prices were really pretty near on the feature part.

Mr. McClennen: That is objected to.

[fol. 3327] The Court: Tell what they were.

Q. Just say what you said. Limit yourself to what you said to him and what he said to you.

A. I am telling you exactly what the conversation was. That is what you want to know?

Q. Yes.

A. I told him the prices were pretty near double what they should be. Well, he said, "I have nothing to say. Either take it or leave it. You have the preference of taking it or leaving it". I said "Give me your pen", so I took the pen. I said "I am going to give Warner Brothers a present of five hundred or six hundred dollars on this contract, but I would rather do that than close my theatre."

Q. Was it before or after that you got any second-run pictures from any major company?

A. After that.

Q. How long afterward?

A. Oh, gosh, on the same trip I went over and showed the contract to the major companies and get that so the contract of Warner Brothers they did some business with me.

Q. And you bought second-run from the other company?

A. Yes, I bought a few second-run at that time from another company.

[fol. 3328] The Court: Warner and who else?

The Witness: I recall at that time the next deal that I made was with Paramount. Then the third deal was with Metro-Goldwyn-Mayer.

The Court: At the same time, you mean?

The Witness: About. I can't recall, your Honor, for sure now, because it has been so long.

By Mr. Wright:

Q. Then, after you began to play these second-run pictures was there any change in the admission price of your theatre?

A. Yes, sir, that is where the cut in the prices started, right after I started to play second-run picture, the prices were cut slightly. Not very much at that time.

The Court: You mean cut by whom?

The Witness: At the Schine.

Q. What prices are you talking about?

A. I think the admission was cut from 40 to 30 and from——

Q. You are talking about the admission where?

A. At the Schine Theatre.

Q. The evening adults?

A. Evening adults.

Q. From 40 to 30?

A. From 40 to 30, and from 30 to 20 in the balcony at that time, that I recall.

[fol. 3329] Q. What were you charging then when you first started to play the second-run pictures?

A. 25 cents admission.

Q. Then after Schine went to 30 and 20, what, if any, changes did you make in your house?

A. I did not make any change at all.

Q. For how long?

A. Oh, I don't recall. The only change that I made in my house, when Schine started these money-give-aways at night, then, to compete on the money-give-away, I used to charge during the rush hour, during 6:30 to 7 o'clock at night, 15 cents.

Q. When was it those money-give-aways began?

A. Began, I can't tell exactly when, but just about a few months after I started to run second-run pictures.

The Court: We will have to suspend at this time. I have an appointment.

(Whereupon a recess was taken until 2 o'clock P. M.)

[fol. 3330] After recess, 2 o'clock P. M.

Appearances: As before noted.

Mr. Kallis: I have two witnesses here, newspaper publishers. Their testimony will be very brief, and if your Honor has no objection, we would like to put them on.

The Court: I have no objection.

Read Clarke, a witness called by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Kallis:

Q. Mr. Clarke, where do you live?

A. Perry, New York.

Q. What is your business?

A. Newspaper publishing.

Q. Are you connected with any newspaper?

A. Perry Record.

Q. Where is that published?

A. Perry, New York.

Q. How long have you been connected with the Perry Record?

[fol. 3331] A. About 30 years.

Q. Are you acquainted with Mr. John A. May, one of the defendants in this suit?

A. I have met him.

Q. Calling your attention to 1935, did you have occasion to meet Mr. May?

A. I did.

Q. When and where?

A. It was during the summer of 1935, as I remember it, various places in Perry,

Q. Will you please state—did you have a conversation with him?

A. Yes.

Q. Will you please state the substance of the first conversation you had with him?

Mr. McClennen: Just a moment. This we interpose an objection to. Of course, I cannot tell until I hear the conversation, whether it is right or not, but I object to the question on the ground of its materiality.

The Court: Overruled.

Q. Please state the conversation.

A. I had heard about the plans for building a new theatre in Perry, and I inquired of him what they were, the details, from a news angle.

[fol. 3332] Q. What did he say?

A. He said they planned to build a theatre.

Q. Did he mention the name of the enterprise that was planning to build the theatre, the name of the company?

A. He was an official of the Schine organization.

Q. And he said that the Schines were planning on building a theatre?

A. He did.

Q. What, if anything else, did he say concerning the project?

A. Nothing in particular, as I remember.

Q. Did you see him again?

A. I saw him probably two, three or four times during the summer.

Q. Where, in what city?

A. In Perry.

Q. Perry, New York. What did he say the second time you saw him?

Mr. McClennen: What is the date of this, this second time?

Q. As nearly as you can recall, Mr. Clarke, please give us the date of that second conversation?

A. It was all along near together, within a reasonable short time. I don't remember the exact dates or months. It was during this one summer.

Q. Well, I show you plaintiff's Exhibit 807, 808 and 809 [fol. 3333] for identification——

The Court: That is 807 or 808?

Mr. Kallis: 807, 808 and 809, all for identification.

Q. I call your attention to the articles that are circled in red on the first page of each of those exhibits, and ask you to look at them, please.

(Witness examines documents.)

Q. Do you know who was the author of the articles in those three exhibits?

A. I wrote them.

Q. Will you look at them, Mr. Clarke, and see whether they refresh your recollection as to when you had those conversations with Mr. John A. May?

A. Well, they would be right adjacent to this publication time, probably.

Q. With respect to July 11th, 1935, which is the date of Exhibit 807 for identification, when would you say that your conversation with Mr. May occurred?

A. Well, I would assume the week of July 11th.

Q. Calling your attention to August 1st, 1935, which is the date of Plaintiff's Exhibit 808, for identification, did you have a conversation with Mr. May on or about the date of August 1st, 1938?

A. Yes, I did.

Q. Will you please state the substance——

[fol. 3334] The Court: 1938? The first conversation was 1935.

Mr. Kallis: I meant 1935. I am sorry, your Honor. August 1st, 1935. I mis-stated that.

Q. What was the substance of this conversation with Mr. May on or about August 1st, 1935?

A. As I recall it, in connection with this story, I remember the conversation in which he said that they would employ as much Perry labor as possible. In the latter part of the story it says "Perry contractors", and so forth, "Were given an opportunity to quote"——

Mr. McClennen: Not reading it.

The Court: Yes. It is only for identification.

Q. Did he say anything about the size of the theatre that was contemplated?

A. Yes, he said it would seat about a thousand people, as I remember it.

Q. And was there any statement made by him as to the contemplated cost of the theatre?

A. Around $100,000.

Q. Did you have any other conversations with Mr. May, either in July, August, September or October, 1935, other than the two you have just mentioned?

A. I couldn't say as to that.

Mr. Kallis: I offer, if the Court please, Plaintiff's Ex-[fol. 3335]hibits 807 for identification and 808 and 809.

By Mr. Clennen: I object to them at this time.

The Court: Sustained. They are hearsay.

Mr. Kallis: If the Court please, I understood him to say he talked with John A. May, one of the defendants.

The Court: Sure.

Mr. Kallis: And the information, the substance of his conversation with Mr. May is published in these newspapers.

The Court: Yes, I know, but what he published certainly is hearsay. He has told what he talked about with Mr. May, and this paper refreshes his recollection, and that is all there is to it.

Mr. Wright: If the Court please, I think it goes a little further than that. There is already in evidence the contents of the newspaper were communicated to——

The Court: Mr. May.

Mr. Wright. Mr. Herzberger testified on the stand that he read these articles as they appeared. Now, we have shown that the articles were the results of visits or conversations of Mr. May with the witness, and I think it [fol. 3336] makes the articles competent to show what occurred. Mr. May was not talking to this witness then for any other purpose than to have the information published in the paper. Certainly Schine is responsible for whatever is published in the paper, as a result of their going to the editor and supplying him with this information.

The Court: Mr. Herzberger testified he saw this article in the paper. That is very true.

Mr. Wright: We have shown, if the Court please, the whole purpose of having the conversation with the editor, of Mr. May going to the editor is, of course, to give publicity to the fact.

The Court: He went to the editor. The editor went to him.

Mr. Wright: In either event, whether he went to the editor or whether the editor went to him, Schine is certainly responsible for the publication of material that they gave to the editor of the paper, whether it is in the form of an ad or anything else.

The Court: It doesn't make it any stronger if he testified what Mr. May told him. Mr. Herzberger testified that he [fol. 3337] read the substance of what Mr. Clarke told him.

Mr. Wright: The paper is still not in evidence. We are now offering the paper in evidence to show what was communicated in this manner to Mr. Herzberger, and we have shown that what was communicated was communicated to him as a result of a conversation between Mr. May and the editor of the paper. If the Court please, we are entitled to show what that communication was by having the newspaper itself in evidence, just as much as though——

The Court: What is your answer to that, Mr. McClennen?

Mr. McClennen: The vice in the argument is that it is asserted that this rendered the Schines responsible for what the editor said in the paper. The witness has testified to what was said and that is all that we are responsible for. We are not responsible for anything beyond that that the editor may have chosen to say in the paper, and this is wholly apart from anything connected with us. What is connected with us has been told by the witness, and that is all that is material in this case.

[fol. 3338] Mr. Wright: On the basis of Mr. McClennen's own statement it is clearly competent to show that the information supplied by Mr. May, which appeared in the article was communicated by means of the article to Mr. Herzberger, and for that purpose we offer it in evidence.

The Court: Let me see the document there. I assume from the length of it, it seems much longer than the statement made by the witness.

(Mr. Wright hands the paper to the Court.)

The Court: Well, of course, these documents in the first place all include more than he says here. Objection sustained.

Mr. Kallis: Maybe I can clarify that by one question.

By Mr. Kallis:

Q. Mr. Clarke, can you state whether all of the statements in these three exhibits, 807, 808 and 809 for identification were furnished—strike that. Whether the information contained in these three exhibits was furnished to you by Mr. May when you had these talks with him?

Mr. McClennen: That is objected to as——

The Court: Sustained.

Mr. Wright: If the Court please, we have in the complaint the allegation that as a means of intimidating theatre [fol. 3339] owners to making sales of their property Schine did take options and cause information to be circulated about the taking of options and proposed construction of theatres, as a means of inducing sales.

Now, clearly, we are entitled to show, I take it, that they did that, and when we show that they go into the town and take an option that they communicate the fact with respect to the proposed activity to the newspaper in the town, that the newspaper then publishes the fact and that those facts are brought to the attention of the theatre operator in the town, or any one else who is interested in operating the theatre, that we have then established a perfectly competent chain of proof to establish those allegations of the complaint. That is what we have done here.

Now, in so far as the newspaper containing other material, or in so far as the article may contain additional comments of the editor; all of that material may, of course, be disregarded as far as we are concerned. We are not interested in it, but we still are interested in showing, and [fol. 3340] our proof has shown that certain facts about the proposed project were published in the paper, and that is the purpose of this proof. I don't understand on what theory those facts may be excluded.

[fol. 3341] The Court: In the first place, the articles contain—vaguely contain matters to which no reference has been made in the testimony of this witness. In the second place, he has testified that statements made by May, which he published in the paper, and which Mr. Herzberger testified he read, that is all there is to it. You have got the proof all there.

Mr. Wright: If that is conceded, then I say there is no purpose in having the article, but I assume the only way you can tell which are the statements which Mr. May had communicated to the editor of the paper or brought to Mr. Herzberger's attention, is by looking at the article itself. That is the only purpose.

The Court: There is no reference in any one of the three articles to Mr. May.

Mr. Wright: That is quite right, but the articles do contain, as I understand it, facts which were given by Mr. May and to the extent to which they contain it——

The Court: Is it your idea that you can accept one statement in these published articles and eliminate the balance, [fol. 3342] when they are all offered?

Mr. Wright: I assume there is no way I know of physically cutting up the article, but I assume under your Honor's ruling, you would not attribute to the defendants anything that appears in the article other than such information as appears from the witness was furnished to the witness by Mr. May, but they are competent, it seems to me, for the purpose of showing publication of any information, and that is all they are offered for.

Mr. Kallis: In other words, we only offer that part of the newspaper items which are the results of Mr. May's information to the editor of this newspaper.

The Court: It would be entirely hearsay, that is the point about it. As I pointed out once before, Mr. Clarke has testified to the conversation with the public stenographer at the time these conversations were had. The other witness, Mr. Herzberger, testified that he read articles in the Record, and he told what he read, and that is all there is to it.

Mr. Wright: Without knowing what is in any article——

The Court: He has told what is in the articles. Mr. [fol. 3343] Herzberger has told what was in the articles.

Mr. Wright: I did not so understand the record, I didn't think he was permitted to state what he had seen other than the fact he saw the articles indicated here outlined in red pencil on the paper.

The Court: He went farther than that, because he told about obtaining all the information from articles in the paper and that information was the statement he made; that seems to me that accomplishes your point, and there is nothing added by the introduction of that part of the publication of the papers to which you refer.

Mr. Wright: Let us get Mr. Herzberger's testimony, and we will get that. As I understand it, all he was permitted to testify to was that he had seen these articles, without disclosing what the contents of them were.

The Court: What articles?

Mr. Wright: The articles referred to here, the newspaper articles that have been identified. He identified those as having appeared in the paper of that date and he saw them [fol. 3344] and he read them, but as to what they were, the only way I know of, to make that apparent, is to offer the article itself.

The Court: I will refer to the testimony.

Mr. McClennen: Mr. Herzberger's testimony was that he read at the time the article in Exhibit 808 for identification, and I can't say from my brief notes whether he also said he read the others or not.

The Court: I do not think any distinction was made between them.

Mr. Wright: That is my recollection of the testimony.

The Court: The testimony is on my desk, right inside the door.

Mr. Wright: It is just a question of getting the volume of the transcript up here.

The Court: What page is the written testimony on?

Mr. McClennen: 2576 and 2577.

Mr. Wright: That is the volume, I presume, they are bringing up.

(Volume of testimony produced into Court.)

Mr. Wright: Does your Honor want to read it?

The Court: Yes. (Volume of testimony handed to the Court.)

Mr. Wright: That is 2573, at the end.

(Testimony referred to examined by the Court.)

[fol. 3345] The Court: What part of this are you offering, Mr. Wright?

Mr. Wright: Well, we are offering——

The Court: You spoke of separating some part of it.

Mr. Wright: I do not think——

The Court: There are many statements there of things which are not included in the statement made by Mr. Clarke as to his conversation with Mr. May.

Mr. Wright: Well, I think it may be understood that as to any information which may appear in the article which was not furnished to him by Mr. May, it may be disregarded, and we can cover it that way.

The Court: You agree with me that there is a good deal in there.

Mr. Wright: Well, I don't know just what your Honor refers to. He refers to the option, and the theatre site and construction on the property.

The Court: We have heard nothing about the Davis garage property. We have heard nothing that the garage property which was recently taken by the Schine company was taken up on Tuesday for the purpose of the theatre. There has been no testimony about that at all.

[fol. 3346] Mr. Wright: The only way I know to separate it out is to take the witness down the article item by item and see which he got from Mr. May.

The Court: The articles are largely filled with matters to which the attention of the witness has not been called. I think in view of the testimony of Mr. Herzberger that part of the paper is competent in view of that testimony.

By Mr. Kallis:

Q. Mr. Clarke, I ask you to look at Plaintiff's Exhibit 807 for identification, to the part that is circled in red, and please tell us, starting at the beginning and going through there, sentence by sentence, tell us which parts of that article which you say you wrote were based on information furnished to you by Mr. May?

Mr. McClennen: That is objected to, if your Honor please.
The Court: Sustained.

Q. Well, will you look at that item again, Mr. Clarke, read it over, will you please, to refresh your recollection? (Witness examines article.)
A. All right.
Q. Will you please state as fully as you can everything that Mr. May said to you on or about July 11th, 1935?

Mr. McClennen: There is no reason why the witness should not have the paper right before him.
[fol. 3347] The Court: No, it is not necessary to read from it. Let him state the substance.

Q. You can use that to refresh your recollection, if you want to.
A. Mr. May, in the beginning, was my source of authentic information regarding the plans of the Schine organization. Just what he said or what times he said it, I don't recall back that far, but I do know that he gave me the primary facts in connection with this enterprise, such as definite plans to build, cost of the theatre, seating capacity, and so on. When those conversations took place, or what was said at different times, I don't recall.
The Court: Let me ask one question of counsel here. Reference is made in this to the interrogatories here, listing certain real property; does that list include the so-called Davis property?
Mr. Wright: I thought we read into evidence the answer relating to that acquisition.
The Court: It is interrogatory 31.
Mr. Wright: It is my recollection that we read the following data: "Location, Main Street, Perry, New York," Under the heading of "Location" there is "Main Street"; [fol. 3348] "Nature of interest, fee,"—"Date of acquisition, July, 1935." Under the heading "From whom acquired", "Davis." Under the heading of "Nature of Improvement now existing; vacant land."
The Court: It says "From whom acquired, Davis"?
Mr. Wright: Yes.
The Court: That is what I asked you about, the Davis property.

Mr. Wright: Yes, sir, under the heading "From whom acquired" appears the word "Davis." I think there was also reference to it as the Davis property by the witness.

The Court: Well, the testimony of Mr. Herzberger was: "Q. After Mr. May's conversation with you did you see any announcement in the paper with reference to that Davis property?

A. I did.

Mr. McClennen: That is objected to. That would call for the contents.

The Court: Sustained.

Mr. Wright: It did not call for the contents. I asked if he saw it.

The Court: Yes, it does. It calls for some announcement with reference to the theatre property.

[fol. 3349] Mr. Wright: Mark these as the next exhibits for Identification.

"(Four newspapers, "Perry Record" were marked as Plaintiff's Exhibits 807, 808, 809 and 810 for identification")

By Mr. Wright:

Q. Now, Mr. Herzberger, do you recognize this document that has been marked for identification as Plaintiff's Exhibit 807 as a copy of the Perry Record for Thursday, July 11, 1935?

A. I do.

Q. Did you read it when it came out?

A. Yes.

Q. Did you note at that time the item on the first page there that is outlined in red pencil and headed "Exercise Option of Theatre Site"?

Mr. McClennen: That is objected to.

The Court: Sustained.

Mr. McClennen: Why can we not have——

The Court: Sustained. All I think you can do at this time is to fix some date, as of that date, but the contents of the paper, of course, would be hearsay.

Mr. Wright: I think we are entitled to show what knowledge this witness had, whether by hearsay or otherwise. [fol. 3350] We went into extensive cross-examination of Mr. Essick, in which he was asked what rumors, what he had heard about Schine coming into the town. I submit this witness can always testify as to what he saw in the paper.

The Court: If it was received without objection, as these questions were, that is one situation. On cross-examination, that is another situation. There is no basis for this.

Mr. McClennen: The question was stating the contents of the paper.

The Court: I will let you show that he read that on the date it bears, such-and-such a date.

Mr. McClennen: That is not the objection that we make.

The Court: I know that.

Mr. McClennen: I am charging that Counsel for the plaintiff attempts to get in the contents of papers not yet admitted in evidence, and that is the ground of my objection.

The Court: Well, I think I am going to receive it in view of Mr. Herzberger's testimony. I did not have that in mind when I sustained the objection in the first place, the testimony of Mr. Herzberger was not in mind at all.

[fol. 3351] Mr. McClennen: I call your Honor's attention, that the witness was asked if he read this outlined—what was outlined in red in this newspaper.

The Court: Yes.

Mr. McClennen: As if that was the thing that was offered of importance in this case.

The Court: Yes.

Mr. McClennen: And outlined in red are these words: "Madam Ethel Snider of Cleveland, Ohio, nationally known astrologist and physiologist is spending the week in Perry. Madam Snider, a graduate of several universities——"

Mr. Wright: If the Court please, there is obviously a mistake. The red line at the bottom should have cut before "astrologist."

Mr. McClennen: There was an obvious mistake in what is offered then and what I was objecting to.

Mr. Wright: Clearly your red outline included an item which hasn't any relation to the case. It certainly isn't an item which could do the defendants any harm.

The Court: The red line also includes reference to the theatre. The objection is overruled. I will receive it under the construction stated by Counsel. The reception [fol. 3352] will be confined to that portion to which the witness has testified.

[fol. 3353] Mr. McClennen: Could we have outlined in an unmistakable way what is admitted?

The Court: I don't know that we should spend any time on that.

Mr. Wright: I think that is the only error in outlining.

Mr. McClennen: I had not seen the articles when I made the objection and Mr. Wright told how we went into town and got options, and I find that the article is that we went into town and bought the property, and that is the statement in the article. It is a very different one than outlined in the articles.

The Court: You were not finding fault that there is disagreement. Your criticism——

Mr. McClennen: My criticism is that I was relying on the argument made as to the contents of the papers, not on what was in the paper. I haven't had any reason to question it.

The Court: With reference to a lease and now the reference is to a purchase, and the point you make is there is a difference between a lease and a purchase.

Mr. McClennen: No, the argument presented for the plaintiff was that we went into town and got an option. [fol. 3354] The thing that is really offered to which we have no objection is the fact that we had made a purchase at this time.

The Court: An option rather than a lease. What I meant by my statement, I used the word "lease" rather than "option", but my inquiry was you do not criticize from your standpoint the fact there is testimony with reference to an option, and there is also testimony with reference to purchase of the property.

Mr. McClennen: There is no testimony with reference to an option, if the Court please; there is testimony as to a purchase and the witness' testimony was, so far as it showed a purchase by us of land, and there wasn't anything that we are in this court with in any way.

The Court: What is the testimony as to an option, then?

Mr. McClennen: There wasn't any.

The Court: Who was testifying to an option?

Mr. McClennen: Mr. Wright.

The Court: He hasn't testified at all.

Mr. McClennen: In arguing a paper was handed to your Honor, which I have not seen, and he told that, and I was basing my objection on that fact, assuming that it was a correct statement of the contents of the paper.

[fol. 3355] The Court: It wasn't meant there was testimony of an option. Now, the testimony shows it is a purchase. All right. Is that all of this witness? Cross-examine.

Mr. McClennen: I have no questions.

Mr. Kallis: That is all, Mr. Clarke.

If the Court please, Mr. Clarke was kind enough——

The Court: They are not marked.

Mr. Kallis: Yes, they are marked. I was going to say Mr. Clarke was kind enough to let us take these out of his files. I would like leave to substitute photostatic copies.

Mr. McClennen: I still object on the photostatic copies as well. There is included this lining of something that has nothing whatever to do, and so there be no misunderstanding we understand nothing else in the paper is received in evidence, except the date of the paper and the article that refers to this acquisition and plan.

Mr. Wright: That is understood.

The Court: As far as we can go the testimony given by Mr. Clarke.

[fol. 3356] (Thereupon the three newspaper articles previously marked as Plaintiff's Exhibits Nos. 807, 808 and 809, were received in evidence.)

Matthew Weber, a witness called by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Kallis:

Q. Mr. Weber, where do you live?

A. Salamanca, New York.

Q. What is your occupation?

A. Newspaper publisher.

Q. What, if any, newspapers are you connected with?

A. The Salamanca Republican Press, Daily, and the Cattaraugus County Republican, Weekly.

Q. How long have you been connected with the Salamanca Republican Press?

A. Since we established it in 1904.

Q. I show you what has been marked as Plaintiff's Exhibit 854 for identification, and I direct your attention to the article in the column of the extreme right on the first [fol. 3357] page of that exhibit. Have you seen that article before?

A. I have.

Q. Will you please tell the Court who is the author of that article?

A. I wrote it.

Q. Were you acquainted with Mr. C. R. Dickerson on December 24, 1938?

A. I was.

Q. Did you have occasion to talk with Mr. Dickerson on that day?

A. My recollection is Mr. Dickerson came to my office.

Q. Can you tell the Court what Mr. Dickerson's position at that time was?

A. He was the Manager of the Schine Theatre in Salamanca.

Q. You say he came to your office?

A. That is my best recollection.

Q. Will you please tell the Court what conversation took place?

Mr. McClennen: That I object to.

The Court: Objection overruled.

Q. Had you had prior business dealings? Will you please state the substance of the conversation?

A. I may look at this to refresh my memory?

Q. Yes, you may.

A. Mr. Dickerson told me in substance that the Schine [fol. 3358] Company would build a new theatre on a lot which they previously had purchased on Main Street in Salamanca near the corner of Clinton Street. He told me that Mr. C. C. Young, the District Manager and John Eberson, an architect for the Schine Company had been in Salamanca the day before to inspect the property, that is, this lot, and that plans for a new theatre would be submitted shortly after January 1st, and bids sought immediately; that the plans called for completion of the theatre by the first of May.

The Court: What year was that, Mr. Weber?

The Witness: That was 1938. The Schine Company at that time was operating a theatre in Salamanca, known as the Andrews Theatre, and Mr. Dickerson said that the company planned to continue to operate the Andrews.

Q. Did Mr. Dickerson say what the contemplated theatre—or when it was expected to be built?

The Court: May, 1938?

The Witness: Plans called for the completion of the building by May 1st.

Q. What year?

A. 1938.

Q. This conversation you had with him was on December——

A. Yes, it would be May, 1939, the following May.

[fol. 3359] Q. The conversation you had with him was on December 24th, 1938?

A. Yes.

Mr. Kallis: Now, if the Court please, I offer Plaintiff's Exhibit 854 for identification in accordance with your Honor's previous ruling.

Mr. McClennen: If I might see it?

The Court: Who was the witness who testified?

Mr. Kallis: Just before him?

The Court: On the Salamanca situation?

Mr. Kallis: Irving Cohen.

The Court: What do your interrogatories show in regard to the property after that time?

Mr. Wright: Interrogatory No. 31, if the Court please. It states the following with respect to Salamanca: It says under "Location", "Main Street, Salamanca, New York".

"Nature of interest." "Fee." "Date of acquisition, July, 1927."

"From whom acquired. Ambuski, et, al."

"Nature of improvement now existing. None, used as parking lot."

The date of that interrogatory, I believe is some time in 1941.

[fol. 3360] Mr. McClennen: When does it say the land was acquired?

Mr. Wright: July, 1927.

The Court: Is that the period the Andrews Theatre was then standing?

Mr. Wright: This answer only deals with the unimproved property. I will have the answer as to the theatres in Salamanca. That appears in the answer to interrogatory 17-A, under the "Town Name, Salamanca, Name of Theatre, the Andrews."

"Nature of interest, lessee."

"Extent of interest, 100 per cent."

"Date acquired, October, 1924."

"Owner's interest, if any,——"

did you want the rest of it?

The Court: No, that is all.

Mr. Wright: Again our offer would be limited to the particular part of the paper. There is nothing outlined in this, but the right-hand column which deals with the matter the witness testified to. We are not interested in any other part of the paper other than the right-hand column of the front page.

Mr. McClennen: We object to it. I think that your Honor's ruling in the last case, if followed, would admit it [fol. 3361] over our objection. The article contains somethings not testified to by the witness, even as coming from Mr. Dickerson, if that is the right name, and this is the case of a talk with a local manager of the existing theatre, but I assume that your Honor's ruling would admit this over our objection. I make the objection.

The Court: It may be received the same as the other was. No evidence to show he testified it was the newspaper of that date.

"When was the first time you saw that Exhibit 854?"

"Well, I would say it was about four or five days after this paper was printed, and it was sent to me."

I see no other reference in the testimony of Cohen.

Mr. Wright: I think it is a fair inference if he read the paper that he saw this front page on which this item appeared.

The Court: I will receive it the same as before, anything except the testimony given by Mr. Weber, that is all.

[fol. 3362] (Thereupon the newspaper previously marked as Plaintiff's Exhibit No. 854, was received in evidence.)

Mr. Kallis: That is all.

The Court: Any questions?

Cross-examination.

By Mr. McClennen:

Q. Mr. Weber, referring to the article in Exhibit 854, can you tell me when this theatre was actually completed, which they referred to?

A. I cannot. My memory for dates is not good. The theatre was built some little time after that.

Q. And would you scan down the article and tell us any respect in which the theatre built did not conform to the statement of what was going to be done?

A. I don't think it was built within the four months that was indicated.

Mr. McClennen: We make no contention that it was, but as to the character of the theatre, and so forth.

Mr. Wright: Of course, I think there should be showing first that he is in a position to know.

The Court: I assume if he can state he will state, or if he knows.

[fol. 3363] Mr. Wright: What the characteristics of the present theatre are, he said he doesn't know when it was completed.

By Mr. McClennen:

Q. What is in the article was that it was to contain 1200 seats. You have been in the theatre?

A. I have been in it, yes.

Q. Have you any idea?

A. I would think it would be approximately 1200.

Q. What sort of an appearing theatre?

A. Very lovely theatre.

Q. Is it air-conditioned?

A. Yes.

Q. And does it have modern theatre equipment and fixtures?

A. I am not an expert on the equipment. I should think it was modern.

Mr. McClennen: I think that is all.

Mr. Kallis: That is all.

[fol. 3364] Michael Boumansour recalled as a witness by and on behalf of the Plaintiff, having been previously sworn, was examined and testified as follows:

Direct examination (continued):

Mr. Wright: Before continuing the examination, I want to correct a mis-statement in the record that apparently was inadvertently made by Mr. McClennen. It was apparently due to the form of my question with respect to Ray Smith's testimony at page 1572, I asked the witness what position did he, that is referring to Ray S. Smith, hold with the Company during the period from August, 1933, through February, 1935. His answer was: "Branch Manager, Albany, November 23rd, 1931 to November 12, 1936." The statement had previously been made to your Honor he had ceased being Branch Manager in February, 1935, which apparently was due to notes made on the form of my question rather than the witness' answer.

The Court: When was it?

[fol. 3365] Mr. Wright: The dates are given by the witness, Branch Manager, Albany, November 23rd, 1931 to November 12, 1936. The statement had been made correctly by Mr. McClennen that the record agreed the deceased to be Branch Manager in 1935, and that was due to the form of my question, apparently, and notes taking on the question asked rather than of the witness' answer.

Mr. McClennen: I should say that that comment was correct. That is the question on page 1572 is, "What position did he hold with the Company during the period from August, 1933 through February, 1935?" And the answer "Branch Manager, Albany," and he then continues "November 23rd, 1931 to November 12th, 1936", and that latter part was not on my notes.

The Court: It is agreed he terminated in 1935.

Mr. Wright: No, I say the purpose of reading this was to correct the statement that he terminated in 1935 for it now appears from the testimony of the Witness Doherty that he continued as Branch Manager until November 12th, 1936. That was when he terminated as Branch Manager.

The Court: All right. You mean was that the Smith who [fol. 3366] succeeded Ayres?

Mr. Wright: Yes.

Q. Mr. Boumansour, going back to the spring of 1937, when you were attempting to get second-run products for your theatre there, did you notice whether the Schine Malone Theatre was playing major product second-run there at that time?

A. No, nothing that I recall.

Q. The question was whether you noticed whether they were or not? Did you observe whether they were playing second-run or not?

A. I think they were not playing, they were not playing.

Q. As I recall your testimony before lunch, after you began to play second-run the prices at the Malone Theatre then were changed from 40 to 30 downstairs and 20 to 30 in the Balcony?

A. Yes.

Q. And you continued to change——

A. 25 cents.

Q. 25 cents, and when was the next change made, if any, in the admission price at the Malone and your theatre?

A. I couldn't say for sure about the date. There was some change.

The Court: You said you made it during rush hours, certain rush hours, 15 cents.

[fol. 3367] Mr. Wright: Yes.

Q. When was that change made when you dropped your price to 15 cents, during what hour was that?

A. Between 6:30 and 7 o'clock.

Q. When was it you instituted that price, as nearly as you can recall?

The Court: He said when Schine began to give the money away, he reduced his prices.

The Witness: Yes.

Q. What was the date of that?

A. I don't know the date.

Q. You can only fix it at the time the Schine Malone began to give the money away?

A. Yes, the money night.

Q. After that was there any change in the Schine balcony admission price at the Malone?

A. Well the one time the price was changed at the Malone Theatre to 15 cents at any time first-run, when I was charging 25 cents for second-run.

[fol. 3368] Q. Is that 15 cents all over the house or in the balcony?

A. It was the balcony at all times and 15 cents downstairs up to 7:30, 7 to 7:30, I don't recall exactly.

Q. What was the evening price during that period?

A. That was the evening price, that was the evening price.

Q. No, I understand the evening price in the balcony was 15 cents, but I meant the evening price downstairs.

A. Up to 7:30 or 7 o'clock, I don't recall exactly, it was 15 cents also.

Q. Perhaps I should have said after 7 o'clock, what was the price?

A. 30 cents.

Q. Can you tell us the approximate period that those prices continued?

A. Oh, it continued for approximately, I am not sure, for about 7 to 9 months.

Q. And do you know about when the beginning and end of that period was?

A. It lasted until—I don't recall exactly now, I could not tell for sure—I could not tell for sure until when it lasted.

Q. What is your best recollection as to the year in which that period began and when it finished?

A. Well, 1940.

Q. Ended in 1940?

[fol. 3369] A. About, I couldn't say for sure.

Q. It began some time in 1939?

A. Might have started in 1938 and ended in 1939, or 1939 and 1940, I don't exactly know.

Mr. Wright: I will ask to have this marked with the next exhibit number for identification.

(Thereupon document referred to was marked as Plaintiff's Exhibit No. 858 for identification.)

Q. I show you this clipping attached to Exhibit 858, and ask you if you recognize that as a clipping from the Malone Evening Telegram for January 10th, 1939?

A. Yes, sir.

Q. Did you see that at the time it appeared in the paper?

A. Yes, sir.

Q. Now, with reference to the time you saw this newspaper item, identified as Exhibit 858, can you tell us whether about that time, or before or after you had any conversation with any representatives of the Schine Company?

A. After I saw this clipping in the paper, some time after, I took a trip to Albany and I was discussing this article with some branch manager in Albany.

Mr. McClennen: I ask to have that stricken out. He was asked when he next had a talk with the Schine representative.

[fol. 3370] Mr. Wright: Will you read that question again? I think you will notice the question asked only for a conversation with the Schine Company.

The Witness: With the Schine?

Q. Yes.

A. The day that this article came out in the paper I was out of town myself.

Q. Did you see it when you got back?

A. I saw it when I got back.

Q. How many days later was that, do you remember?

A. About one day after.

Q. Did you have any talk with any one from the Schine Company after you got back and saw the article?

A. No.

Q. Then during the year 1938, did you have any conversations with any representatives of Schine?

A. Not that I recall.

Q. And how about during the year 1939?

A. Yes, sir.

Q. When in 1939?

A. I can't exactly tell you the date of when it was, but it was late in the fall.

Q. The fall of 1939?

A. Yes, sir.

[fol. 3371] Q. Whom did you see then?

A. I saw Mr. Art Newman, representing the Branch Office——

Q. I don't think you understood the question. I asked you about who you saw from the Schine Company?

A. Schine?

Q. Yes.

Mr. McClennen: This is in the fall of 1939?

Mr. Wright: I so understand.

The Witness: Mr. Lynch, George Lynch.

Q. Where did you see him?

A. In my office.

Q. Where was that? At Malone?

A. Yes, sir.

Q. Who else was present?

A. Mr. Arty Newman.

Q. Who was he?

A. He represented Republic Pictures, Branch Manager of Albany.

Q. What was said then?

A. Well, the talk was——

Mr. McClennen: This, in this form, is objected to. Who said what?

The Court: State what was said.

Q. Give us the substance of the conversation as near as you can recall it.

[fol. 3372] A. Mr. Lynch and Mr. Newman said we were both working our heads off and not getting anywhere.

Mr. McClennen: May that go out, if your Honor please? The head has apparently stayed on.

The Court: Who said that?

The Witness: Mr. Lynch and Mr. Newman.

The Court: Both said it?

The Witness: Yes, one was saying one thing and the other was saying another thing.

The Court: You are saying now they both said the same thing?

The Witness: Well, pretty near.

The Court: Tell what Mr. Lynch said and what Mr. Newman said.

The Witness: I remember Mr. Lynch said to me that I think I was better to try to lease my theatre to Schine and that would be better for you, and better for the Schine organization, and let this fight be over with.

Q. What did you say?

A. I said I would lease them the place.

The Court: You would what?

The Witness: I told them I would lease them the place.

Q. Did you have any discussion with them then about terms?

A. Yes, sir.

[fol. 3373] Q. What was said about that?

A. I gave them my terms, and it was perfectly O. K. Mr. Lynch went out of my office——

Mr. McClennen: Just a moment.

The Court: Perfectly O. K. might mean different things. What sis he say?

The Witness: He said to me "I will have to go out for a few minutes to make a telephone call".

The Court: All right.

The Witness: And he went out to the hotel and he told me at that time when he came back that he had called up Mr. Myer Schine personally in Florida, and that he has agreed that he will take my place at that term that we made.

Q. Was that all the conversation you had with him then?

A. Yes, that is all.

Mr. Wright: Have you the exhibits 82 and 83, I think they were, the agreements between this witness and the Schine Company? Are those marked for identification, or are they in evidence?

Mr. McClennen: Here are identifications 81 and 82.

Mr. Wright: I think those are the numbers.

Q. I will show you these, a lease marked for identifica- [fol. 3374] tion as Exhibit No. 81 and an agreement marked for identification as Exhibit 82, and ask you if you recognize those as copies of agreements that you made with the Schine Theatrical Company with reference to your theatre at Malone?

While the witness is looking over those, I would like to read an answer from the interrogatories with reference to Malone; interrogatory No. 31, under "Location", is the statement "Pearl Street, Malone, New York." "Nature of interest, option to buy or lease."

"Date of acquisition, January 10th, 1938."

"From whom acquired, Theresa Hines."

"Date on which interest terminated, February 10th, 1939."

"Nature of improvement now existing, commercial building."

Can you answer the question now? Will you read it to him again?

(Preceding question read.)

The Witness: Yes, sir.

Mr. Wright: I will offer these exhibits 81 and 82 in evidence. Those were copies which were produced by Schine, and identified, I believe, at either New York or here.

[fol. 3375] (Thereupon lease previously marked as Plaintiff's Exhibit 81 for identification was received in evidence.)

(Thereupon agreement previously marked as Plaintiff's Exhibit 82 for identification was received in evidence.)

The Court: This is the second lease, is it? The testimony was that there was a prior lease which had expired.

Mr. Wright: I should have read the dates of these. Yes, this is the lease, Exhibit 81, is dated February 14th, 1941.

The Court: Yes.

Mr. Wright: The agreement, Exhibit 82, memorandum of agreement, is dated January 21, 1941, preceding the making of the lease.

The Court: My point is, Schine had leased these premises once before?

Mr. Wright: Before the witness began to operate the theatre, yes, that was in 1936.

Mr. McClennen: Five years before, if your Honor please, and it had expired.

The Court: Yes.

By Mr. Wright:

Q. I call your attention to the date of this agreement, Exhibit No. 82, which is January 21, 1941; is that about [fol. 3376] the date that that agreement was made?

The Court: How is that? Is that about the date the agreement was made?

The Witness: Yes, the second one was made in January.

Q. Was there any difference in the terms of this agreement marked as Exhibit 82 in evidence and the agreement that you had or the terms that you had discussed with George Lynch in the fall of 1939?

Mr. McClennen: That is objected to, he has not yet stated what those terms were.

The Court: He can state what they were.

Q. What were the terms you discussed in 1939 with George Lynch which you just referred to?

A. The price was to be $8600 a year.

Q. The rent, you mean?

A. Yes, and I had to give my services for one year at $70 a week.

Q. In what capacity?

A. As a manager.

The Court: You mean you would receive that in addition to the $8600?

The Witness: Yes, $70 a week as a manager for one year.

Q. Then after you made this agreement marked as Exhibit 82, did you then enter the employ of the Schine Company?

A. Yes, sir.

[fol. 3377] Q. In what capacity?

A. As a manager.

Q. Of what theatre?

A. Of the Malone Theatre.

Q. What was done with the Plaza?

A. Well, the Plaza was operating three days a week, and with the manager of the—Mr. Mead that used to operate the Malone Theatre.

Q. Then how long did you continue as manager of the Malone?

A. About two years, just about, about, I can't say for sure, it might be a couple of months more or a couple of months less, but about two years.

Q. Then have you had anything to do with the theatre since that time?

A. No.

Q. Except as lessor?

A. No.

Mr. McClennen: Just a moment, that would be after May 19, 1942.

Mr. Wright: I suppose as to what has happened to him it is perfectly competent to take him down to the present time.

The Court: When did the two years expire, about what time?

Mr. Wright: Some time in 1943.

[fol. 3378] The Witness: 1943.

Mr. Wright: I don't think it is of any great importance. Just to make the story coherent, I suppose we ought to know.

The Court: I will let it stand. I don't suppose there is anything claimed for it by reason of his employment subsequent to 1942.

Mr. Wright: There is no significance one way or the other. I just wanted to complete it.

The Court: It continued through May, 1942?

The Witness: Yes, sir.

Q. Then the operation of the Plaza Theatre, did that continue through that same period in the same way you have described?

A. Three days a week.

Q. And during this same period, after you became manager of the Malone, and through May, 1942, do you remember what the admission prices were then?

A. Well, at the time that I became manager of the Malone Theatre and was supervising at the same time the Plaza Theatre, our price was 30 cents and 25 cents at the Plaza.

Q. 30 cents, that is all seats, at the Malone?

A. No, 30 downstairs and 20 cents upstairs.

Q. Evening adult prices you are talking about?

[fol. 3379] A. Yes, sir.

Q. And 25 cents at the——

A. Plaza.

The Court: What did you say it was, 30 and 25 at the Malone?

The Witness: No, 30 and 20; 20 cents in the balcony and 30 on the mezzanine and the Plaza was operating at 25 cents, but both houses were running on the first-run pictures.

Q. That is [illegible]ring this same period?

A. Yes, si[illegible]

Q. Were there any second-run pictures played at the Plaza during that period?

A. No, not that I recall.

Q. I simply want to call your attention, Mr. Boumansour, to the paragraph in Exhibit No. 82, Paragraph 4, which states "Boumansour agrees in the event a lease is executed to deliver an agreement to Schine not to engage in the motion picture business in Malone, New York, or in any town in which Schine operates a motion picture theatre or in any town within a radius of 20 miles therefrom during the term of said lease."

Did you execute such an agreement?

The Court: He has already said he did.

Q. This refers to an agreement to make an agreement; [fol. 3380] 81 is the agreement to make the lease?

The Court: They are both in evidence, and the contract shows——

Mr. Wright: I am not sure that the agreement not to compete is in the—it is apparently not in the lease. I want to find out whether there was another agreement executed.

The Court: You mean a separate agreement?

Mr. Wright: Yes, whether we have them all here or not. Now, would you read the question?

(Last question read.)

The Witness: Yes, sir.

Q. Now, can you tell us about what the date of that was, or was that——

A. About a month ahead of the lease.

Q. Now, have you been able to locate a copy of that agreement?

A. Of this?

Q. No, the agreement not to compete that you just referred to.

A. To locate a copy of this?

Q. Perhaps you did not understand me. I asked you did you execute any agreement, after you made the agreement Exhibit No. 82 here, other than the agreement that is set forth in this Exhibit No. 81?

[fol. 3381] A. No.

Q. Which is the lease?

A. No.

Q. The lease agreement then is the only agreement you made?

A. That is it.

Q. I call your attention to the fact that the lease doesn't contain in it an agreement not to compete, or at least, I didn't read it there. You might look at the lease.

The Court: You called attention to it. What is your question?

Mr. Wright: Read it.

(Foregoing record read.)

Q. Did you make any other agreement with Schine with reference to leasing the theatre or not competing, other than the agreements that are set forth here in Exhibits 81 and 82?

A. I don't recall any other.

Q. Then, as far as you know, those were all that you made?

A. Yes, sir.

Mr. Wright: You may cross-examine.

Cross-examination.

By Mr. McClennen:

Q. Did you promptly notify the Department of Justice of the making of this agreement, Exhibits 81 and 82?

[fol. 3382] A. No.

Q. You wrote the Department of Justice about it, didn't you?

A. I wrote the Department of Justice?

Q. Yes.

A. No.

Q. What?

A. No, I don't recall that.

Mr. McClennen: Will you mark this paper for identification, please?

(Thereupon document referred to was marked as Defendants' Exhibit D-133 for identification.)

Q. Did you write the Department of Justice in the terms of D-133 for identification?

A. Yes, I did write that.

Q. You did write that?

A. Yes, sir.

Mr. McClennen: I offer that.

Mr. Wright: We have no objection, except that it apparently is immaterial. I don't understand what it is supposed to prove.

Mr. McClennen: Well, if you have no objection we won't discuss that.

Mr. Wright: I think the Court ought to see it.

[fol. 3383] Mr. McClennen: Well, if you object to it, why, yes.

Mr. Wright: Yes, I object to it as immaterial. I don't think it has any bearing on the suit one way or the other.

The Court: I want to see the second lease agreement there, too.

(Documents examined by the Court.)

The Court: Overruled. Received.

(Thereupon the document previously marked as Defendants' Exhibit D-133 for identification was received in evidence.)

Mr. Wright: If the Court please, there is no claim on our part that he had any complaint after he leased the theatre.

Mr. McClennen: No, I understand it to be the Department of Justice's contention that it is not material that he promptly notified Department of Justice of this agreement. We claim it is material.

Exhibit D-133 is addressed to the Department of Justice, Washington, D. C., and reads:

"Re U. S. against Schine, H. B. 60-6-30-33-3.

[fol. 3384] Gentlemen: This is to advise that I have succeeded in disposing of my theatre as planned. I have no further complaints. Everything is satisfactory here. Very truly yours, Michael Boumansour."

The Court: What is the date of that?

Mr. McClennen: April 4th, 1941.

The Court: All right.

By Mr. McClennen:

Q. When you said that your letter to the Department of Justice was in the early part of June, 1937, had you been shown the letter of June 30th, 1937, which was produced by plaintiff's counsel here this morning?

A. I don't remember that letter.

Q. What?

A. I don't remember that letter.

The Court: Perhaps he did not understand your question.

Q. You remember that you testified this morning?

A. Yes, sir.

Q. That you wrote the Department of Justice in the early part of June, 1937?

A. Yes, sir.

Q. When/you testified to that——

A. Yes, sir.

Q. (Continuing)—had you been shown the date of the letter to the Department of Justice of June 30th, 1937?

A. I don't remember.

[fol. 3385] The Court: At that time when you testified you wrote to the Department early in June 1937, had you been shown this paper, purporting to be a letter dated June 30th?

The Witness: I don't remember.

By Mr. McClennen:

Q. You don't remember. You arrived here in Buffalo when?

A. This trip? Do you mean this trip?

Q. This trip.

A. I arrived here Saturday morning.

Q. Saturday morning, what date?

A. I haven't got a calendar in front of me.

Q. I will tell you what the Saturdays are that occurred recently. One is the 21st of October, 1944, another is the 14th of October, 1944 and another is the 7th of October.

A. I guess the 21st.

Q. Had you been in Buffalo recently before that?

A. Yes, sir.

Q. When did you arrive that time?

A. Monday morning.

Q. Monday morning, what date?

The Court: What Monday do you mean? A week ago Monday.

The Witness: Week ago Monday.

[fol. 3386] By Mr. McClennen:

Q. That would be the 16th of October, 1944?

A. Yes, sir.

Q. Since October 16, 1944 have you had your attention called to this letter of June 30, 1937 to the Department of Justice?

A. Yes, sir.

Q. When?

A. Just about a week ago.

Q. About a week ago?

A. That Monday that I came here.

Q. That is some one of the attorneys for the United States showed you that letter of June 30, 1937?

A. Personally, I asked to see the file.

Q. You asked to see it?

A. Yes.

Q. And you saw it and you were in the office of the Counsel for the United States when you saw it?

A. Yes, sir.

Q. And when you said that it was the early part of June 1937 did you recall that it was in fact the 30th of June, 1937?

A. It was written the 30th of June 1937.

Q. Yes, and when you said it was written in the early part of June 1937, did you remember that it was actually [fol. 3387] written on the 30th of June, 1937?

A. Really, it has been so long that I don't recall all these dates.

Q. Let us go back to see how long your memory really is. You have just said that in the office of the Counsel for the United States last week you saw this letter of June 30, 1937. Do you remember saying that?

A. Maybe I did.

Q. Maybe you did. Well, the reason that you just testified that you did was because you thought that you did?

A. Yes, even if you ask me again, I will have to say it over again. If it is really the 30th, because my memory is very vague.

Q. What I have asked you is having seen that letter dated June 30th, 1937 last week, did you remember this morning that that was the date of the letter?

A. I will have to see it over again in order to testify for sure, because all my dates I give you, it is only possible that is the date, because I don't recall any of these dates.

Mr. McClennen: May I see the letter?

Mr. Wright: It is right up there in front of the witness.

Mr. McClennen:

Q. This Exhibit 857 for identification you say that you saw in the office of the United States counsel last week? [fol. 3388] A. This letter?

Q. Yes.

A. No. I saw a file but not this. I wasn't even interested.

Q. And counsel for the United States showed you this letter?

A. This letter? No. I saw another file but I didn't see this.

Q. Oh, you didn't see this letter. You did see a file of correspondence of yours?

A. No. Do you want to know what I saw?

Q. I want to know as far as you know, and I only want to know that far. In going over the matter in the office of the counsel for the United States you now say that you were not shown this letter for identification number 857?

A. No.

Q. When did you make up your mind to say that that letter was written in the early part of June? (There was a pause.)

The Court: Can you canswer?

The Witness: I can't answer that question. It is a question that makes me say why I said it was in the early part of June.

Q. What?

A. Well, I thought it was in the early part of June.

Q. When did you make up your mind that it was in the early part of June, 1937 that you wrote this letter dated [fol. 3389] June 30th, 1937?

A. I can't even answer you.

Q. What?

A. I can't even answer your question.

Q. Was it last Saturday, 1944?

A. When did I tell you that, this morning? I told you that this morning. It was this morning that I made my mind up it was the early part of June?

Q. Do you remember just what it was that led you to make up your mind this morning that it was in the early part of June that you wrote this letter of June 30, 1937?

A. Yes. I could make up my mind, if you want to let me explain.

The Court: Just answer the question, and we will get along faster.

(Last question was read.)

The Court: It calls for a Yes or No answer.

A. Yes, I could explain.

Q. You never made up your mind to give that answer until the morning of October 23rd, 1944, have you?

Mr. Wright: That assumes, if the Court please, that he made up his mind at some other previous time as to what to say. There isn't any evidence of that at all.

The Court: I don't know. It may be just at that time [fol. 3390] or prior to that time. The question is tell when you made up your mind, the date. Was it in the early part of June. Now counsel asked you if you made up your mind today, the time when you testified you made up your mind.

A. Your Honor, I knew why I told June, because I knew what happened in June, and I was exhausted and I had to do such things. I do remember it was in June. I don't remember if it was the first part of June or the last part, but I remember it is early part of June. I see the letter the 30th of June and it is the 30th of June.

Q. You have testified to a contract that Mr. Ayres showed to you, concerning which you said that the prices were too high but you signed it?

A. Yes. I don't say exactly it is Mr. Ayres either. It is either one, Mr. Ayres or Mr. Smith. I don't exactly recall if it is Mr. Smith or Mr. Ayres.

Q. You have no memory whatever of which it was?

A. One of the two.

Q. But you don't remember at all. Your mind is perfectly blank?

A. Yes.

Q. As to which it was.

Mr. McClennen: I will ask to have this marked for iden-[fol. 3391]tification.

Mr. Wright: Is that a contract by Warner? We were asked for those contracts and we were told they were not available.

The Court: We haven't got through.

Mr. McClennen: I think it would be desirable to have it marked for identification.

Mr. Wright: So do I. I think it would be desirable in the future that contracts be made available to us the same time they are to you, but we subpoened them.

The Court: Mark it.

(Contract referred to was marked Defendant's Exhibit D-134 for Identification.)

Q. Is this your signature on Exhibit D-134 for identification, your signature is what I was asking you. You will find it down at the bottom of the contract. Is that you signature?
A. Yes, sir.

Q. Is that the contract which Mr. Ayres or Mr. Smith showed you and in which you criticised the prices in and then signed.
A. Yes, sir.

Q. And you dated in some pictures at the time of that [fol. 3392] interview, did you not?
A. I don't remember.

Q. Well, perhaps I misunderstood your testimony. I will ask you definitely, did you date in some pictures, on the date that you signed that contract, protesting about the expense or the price of that?
A. I might have. I don't say I didn't.

Mr. McClennen: I will now ask to have this paper marked for identification.

(Contract thereupon marked Defendant's Exhibit D-135 for identification.)

Q. I show you paper marked Defendant's Exhibit D-135 signed by you?
A. Yes, sir.

Q. Do you recall on that same date you made a contract with Warner for some first-run as well as for some second-run pictures?
A. I don't remember. I may have. If they were pictures.

Q. Look at this Exhibit D-135 and see. Aren't those pictures?
A. Those are gun pictures.

Q. Then I will go back. Do you recall that you made a contract with Warner for some gun pictures on that same day?

[fol. 3393] A. On that say- day?

Q. Yes.

A. I don't remember, sir.

Q. These are gun pictures which you contracted for first-run on that same day?

A. I don't remember now if they are first or second-run. Does it say on it? It must be.

Q. You look at it. I am asking for your recollection about it.

A. Yes, it says first-run on the contract.

The Court: First-run on the contract?

The Witness: Yes, that must have been first-run pictures.

Q. At the time of your signing D-134, Mr. Ayres, or Mr. Smith put before you a contract for 60 pictures of the Warner and First National productions of the '36-'37 season, second-run, did he not?

A. Yes, there is 60 pictures here, I guess.

The Court: Would those be D-134 you say, is that the contract, what does D-134 include?

Mr. McClennen: 134 is the one referred to for 60 second-run pictures.

The Court: For 1936-37?

Mr. McClennen: For the 1936-37 product.

The Court: You now just asked him about another contract which calls for 60 pictures.

[fol. 3394] Mr. McClennen: That is the one. 134 is the 60 pictures.

(Previous question read.)

The Court: These two contracts, I take it, are the same date, one is for a year's first-run.

Mr. McClennen: At the same time that he put before you the contract for the second-run, the 60 pictures he put before you a contract for six gun pictures, first-run?

The Court: He testified to it before that.

The Witness: Yes.

By Mr. McClennen:

Q. And that was on the 14th of June, 1937?

A. That is what I said there.

Q. At the time of testifying that your letter dated June 30th, 1937, was sent in the early part of June, 1937, you had in mind a reason why it was important to get that letter into the early part of June, 1937, did you not?

A. I can't remember, but I know.

Q. I ask you whether you had in mind why it was important.

A. I couldn't answer you that.

Q. Did you have any conversation with Mr. D. Struwe, a Warner salesman in the early part of 1937?

A. Yes, I believe I did.

Q. And did you say to him that you intended to go into a [fol. 3395] second-run policy starting May 1, 1937?

A. Maybe I did.

Q. And did he offer you a 60-picture deal, and you say that you only wanted 30 at that time, these relating to the present season '36-'37, and did he then offer you 30 pictures of '35-'36 product, second-run, and you say that you would not consider any proposition except a thirty-picture deal on the present season?

A. I don't remember.

Q. Is there anything in your memory to the contrary of that?

A. I couldn't tell you contrary and I couldn't tell you for either side.

Q. Now, can you tell me whether such conversation as you did have with him occurred in the early part of February, 1937?

A. I don't remember it.

Q. You do remember, don't you that you told him that you wanted only 30 pictures at that time?

A. I don't remember that, also.

Q. And do you remember now that he offered you 30 pictures of the 1935-36 season or 60 of the 1936-37 season?

A. I don't remember that, either.

Q. Well, I noticed there is the reference to May 1st, as the time when you were thinking of beginning on your second-run policy. How long before that did you talk with [fol. 3396] anybody connected with Warner's, either salesman, or branch manager, concerning the second-run product for that policy you were thinking of beginning May 1st, 1937?

A. That must have been before June that I talked with mostly all film exchanges in Albany that I would like to go into a second-run policy.

Q. That is before June, you had that?

A. Before June.

Q. And before May, 1937, you had had that talk, hadn't you?

A. I don't remember before May, but I knew it was before June.

Q. Do you remember whether Mr. Struwe's visit to you was before or after you had mentioned your second-run policy to either Mr. Ayres or Mr. Smith?

A. I don't remember, sir.

Q. You don't remember whether it was before or after? You never came to a willingness to take the whole 60 Warner pictures at the Warner prices until June 14th, 1937, did you?

A. No, I couldn't answer you that, either.

[fol. 3397] Q. You had two talks with Mr. Grassgreen about selling you Fox second-run, did you not?

A. Yes, sir.

Q. And how far apart were those two talks?

A. Between May and later; between May and later on.

Q. That is the first one?

A. Yes, sir.

Q. Was in May?

A. I couldn't tell you for sure; it was while I was in Albany on other business, I called on him, but I could not tell you for sure which exact months.

Q. It was some time before May, wasn't it?

A. Not for second-run. I have seen him for some slough pictures, before.

Q. Wasn't it some time before May, 1937, that you talked with him about second-run?

A. Maybe I did, too, I don't say I didn't.

Q. What is the first time that you remember talking with him on the second-run subject for your Plaza Theatre in Malone,—Mr. Grassgreen?

A. I couldn't tell you for sure which date, it is impossible.

Q. Well, may it have been in February?

A. Could have been in May, could have been in January, it could have been in December, I don't recall.

Q. That is, December of 1936?
[fol. 3398] A. Surely. I don't recall.

Q. That is, as a matter of fact, you are wholly unable to state the date of the conversation?

A. No.

Q. That is true, is it?

A. That is true.

Mr. McClennen: If your Honor please, I make this part of the cross-examination without waiving my objection to the Grassgreen conversation.

Q. Will you tell me the first time you saw Mr. Grassgreen, what you said and what he said on the subject of letting you have second-run?

A. The first time?

Q. The first time?

A. About second-run?

Q. About second-run.

A. I don't remember, sir.

Q. Well, but didn't you tell us this morning?

A. I told you about first-run, maybe; I didn't tell you about second-run.

Q. Not about second run?

A. Maybe I did, but I don't remember the date.

Q. But if you did tell us——

A. I know I have called on all of the exchanges.
[fol. 3399] Q. Just a moment, I was asking you about Mr. Grassgreen?

Q. Do you remember a word that Mr. Grassgreen said to you on the subject of second-run?

A. I don't.

Q. You don't?

A. Yes, if I can remember the words?

Q. You don't remember?

A. Yes, I do remember the words, I will go twenty years more, and I will remember them.

Q. That is what I asked you; tell me, not giving the date, but on the first occasion when you discussed second-run with Mr. Grassgreen, what did you say to him and what did he say to you?

A. What did I say to him and what he told me, is that what you want to know?

Q. That is what I asked you.

A. I asked him if there was a possible chance of getting second-run pictures. He laughed and he said "Bouman-sour, forget about it, we are not interested at all of selling second-run to Malone, because we have a franchise with our first-run, and we are satisfied, so just forget about it."

Q. Is that all that he said?

A. That I remember.

[fol. 3400] Q. Now, did you have another conversation with him on the subject of second-run in the spring of 1937?

A. I don't remember.

Q. You don't remember any?

A. No.

Q. And you don't remember anything that was——

A. I must have had, because——

Q. Not what you must have had; you don't remember any?

A. No.

Q. And you don't remember in any of the conversations as to second-run with Mr. Grassgreen any variation from what you have described in this first conversation?

A. I remember seeing him once in a restaurant. I was downtown in Albany and I asked him something about it, and he said "Come over and see me at the office," and I don't know if I did go that time or not, but I remember he sent me a letter to that effect, that he could not sell me second-run pictures, because on account they had a good first-run account in the town, and they were pleased with the income of it, and they didn't want any more.

Q. Just a moment. All I asked you was what he said, not about a letter; what did he say about second-run in the restaurant or subsequent to the meeting in the restaurant in conversation to you about second-run?

[fol. 3401] A. That is exactly the same what he wrote me in the letter.

Q. Well, if it was exactly what he wrote you in the letter, then tell us what he said without reference to the letter; what did he say in his talk with you and what was all that he said on the second-run subject?

A. I just told you. I been repeating that conversation over and over again.

Q. I am sorry to bother you, to ask you.

A. No bother.

Q. To ask you to state again in the language that it occurred what he said?

A. He said that they have one first-*one* customer in the Town of Malone, and they were satisfied with the income of it, and they had no room for a second-run with their Company.

Q. And that is all that he said in any of those spring interviews on the subject of second-run, is it?

A. Yes, sir.

Q. In a conversation that he had with you either in the very early part of May, 1937 or before that, did he inform you that if you would buy 100 per cent product, he would consider the deal and advise you immediately as to his disposition in the matter of a second-run sale?

A. If he did tell me that?

Q. That was the question.

[fol. 3402] A. Well, this question never was brought up to me.

Q. He never said anything of that kind?

A. No, I would have kissed his hand back and forth if he ever did.

Q. I didn't catch that last.

A. I said I would have kissed his hand back and forth.

Mr. McClennen: Will you mark this for identification?

(Thereupon document referred to was marked as Defendants' Exhibit D-136 for identification.)

Q. Is this your signature on D-136 for identification? Perhaps you can tell right from looking at the signature without reading the whole of the letter?

A. Yes, I wrote that.

Q. That is your signature?

A. Yes, sir.

Q. Now, I will ask you is this the truth,—"I" meaning you and "you" meaning Mr. Grassgreen,—under date of May 6th, 1937:

"Some time ago when in Albany I had a talk with you in regard to second-run policy. You informed me at that time that if I would buy 100 per cent product, you would consider the deal and advise me immediately as to your disposition in this matter."

Is that a true statement?

[fol. 3403] A. Yes, I wrote that.

Q. Now, when he said that he would consider such a product, did you kiss his hand back and forth?

A. He never considered it at all.

Q. I asked you if you kissed his hand back and forth when he told you that?

A. Yes, sir.

Q. You did?

A. At that time?

Q. Yes.

A. Well, this talk——

Q. No, no, just the hand and the kiss.

A. I didn't kiss him.

Q. You didn't?

A. No, I didn't kiss him.

Q. Well, now, that conversation was some time before 1937, wasn't it?

A. Yes, sir.

Mr. Wright: May I see that, please?

(Defendants' Exhibit D-136 handed to and inspected by Mr. Wright.)

Q. Well, now, why didn't you kiss his hand back and forth when he made that proposition to you?

A. Why, because my theatre wasn't open at that time. I asked him. My theatre wasn't open at that time. I asked [fol. 3404] him, when he refused me first-run, I asked him if there was a possibility of second-run.

Q. In what month was that?

A. That was before I opened up. It must be early October, or something like that.

Q. Early October?

A. '36.

Q. 1936. So that when you said your conversations with him on the subject of second-run were between December and May, you were in error, were you not?

A. No, I wouldn't say I was in error.

Q. Now, when you opened and for some months thereafter, with the Republic and Monogram first-run and rejects of the first-run of the other distributors, you had a sufficient number of pictures with which to operate your theatre?

A. Yes, sir.

Q. Did you not?

A. Yes, sir.

Q. And you didn't consider the matter of going to a second-run until you found that you were getting short of first-run pictures, is that correct?

A. Correct, sir.

Q. Can you remember whether you had any conversation with any distributor's representative as to second-run [fol. 3405] pictures before your conversation with the Warner representative?

A. Sure, I did.

Q. You are sure of that?

A. Yes, sir.

Q. Well, now, which one did you have any talk with before the early part of February, 1937, and I arrest your attention on the date that I showed you in the Struwe matter?

A. I don't remember, sir, the date.

Q. Do you remember any with any other distributor's representative before the early part of February, 1937, or earlier than the talk with Mr. Struwe on the subject of second-run?

A. I don't remember.

Q. Can you remember of any one of them with which you discussed second-run before you discussed it with Mr. Struwe?

A. I never discussed anything with Mr. Struwe, never did.

Q. You told Mr. Struwe, didn't you that you were thinking of going to second-run May 1st?

A. If I tell him? I told him——

Q. Yes.

A. I don't remember telling him; but I didn't do any business with him.

[fol. 3406] Q. Came to see you, didn't he?

A. Oh, he used to come in every time he came to Malone. I might have told him, too, you see.

Q. Do you remember mentioning your plan of going to second-run at any time before you talked with Mr. Struwe on that subject?

A. I was planning even to go into second-run before I did even open the theatre at all.

Q. What I asked you was, whether you remembered any talk about getting second-run pictures with any distributor's representative before a talk with Mr. Struwe on that subject?

A. Sure.

Q. Well, now, keeping in mind the early part of February, 1937, tell me in person in each distributor's office, with whom you had discussed——

A. Second-run?

Q. Second-run?

A. With all the major distributors.

Q. No, no. The persons, the names.

A. The names?

Q. Yes.

A. I will give you Mr. Pielow.

Q. Mr. Pielow of——

A. Metro-Goldwyn-Mayer. I talked with either Mr. [fol. 3407] Ayres or Mr.——

Q. Smith?

A. Smith of Warner Brothers.

Q. Yes.

A. I have talked with—talked with the Paramount Branch Manager.

Q. Mr. Eastman?

A. Eastman, and Mr. Fox of Columbia.

Q. Columbia?

A. Mr. D. C. Flannigan of R.K.O.

Q. Do you remember any others you talked with about second-run before this talk with Mr. Struwe?

A. Yes, sir.

Q. Now, what others?

A. Mr. Grassgreen of Fox.

Q. Grassgreen of Fox, and what others?

A. Well, that is the ones I talked with.

Q. Is that all?

A. Pretty near.

Q. Let us make it complete. Did you talk with somebody from Universal?

A. Yes, sir.

Q. Who was that?

A. I don't remember. I don't remember the name of the branch manager at that time, because they changed in a [fol. 3408] short time the manager, and I don't recall.

Q. And did you talk with any branch manager of United Artists?

A. No, I met him once, a few months after that, in Albany. They have no branch in Albany, but I met him. He was——

Q. Then all these others you talked with about your project of second-run before February, 1937, did you?

A. I don't remember, sir, if it was before that.

Q. You have no recollection whatever of ever talking with any one of them before the talk with Mr. Pielow?

A. I have talked with them regarding second-run, but the date and the time I can't tell you.

Q. You have no present recollection of talking with any of them before the talk with Mr. Pielow in the early part of February, 1937?

A. I don't remember.

Q. Well, do you remember when Mr. Pielow talked over the matter with you, whether or not you had had any proposition for a second-run?

A. Yes, I had, sir.

Q. Before his?

A. No, if I had a proposition already from any other person for second-run, no, at that time, when I asked him for second-run, there was no other proposition coming in.

[fol. 3409] Q. And do you remember now when it was that you saw that the rejects and the Monogram and the Republic first-run were likely not to last you much longer in the operation of the theatre?

A. Well, when I was exhausted of Republic, oh, four or five years previously——

Q. I am asking you the time.

A. The time?

Q. When you foresaw that your Monogram, Republic and rejects of the other distributors were likely to prove short of your requirements; when that was?

A. That was around May.

Q. May of 1937?

A. 1937, around, I don't say for sure, either.

Q. But that is the best you can fix the date, around May?

A. It might be May; it might be June.

Q. What is your best recollection as to the time?

A. Oh, I would say between May and June.

Q. And when you saw the possibility that you wouldn't have enough of these first-run, did you take up for consideration the matter of going on with the first-run as far as you could and getting some second-run in addition to help you out?

A. I could not answer you that, sir.

Q. You don't remember giving any consideration to that?

[fol. 3410] A. Myself, particularly?

Q. Yourself.

A. I would have rather opened up with second-run, but I could not get the merchandise to open up, so that is why I had to take what was on the market.

Q. I was asking you about——

A. I know what you asked.

Q. Why not answer it instead of saying something else?

A. You put us in a position, so we have to answer you some way to clear your mind of what is going on.

Q. I see.

A. ~~Yes.~~

Q. I am glad you got that point.

A. Yes.

Q. What I asked you was, when the time was when you foresaw the possibility of the Monogram and Republic and other rejects proving insufficient to run your theatre, and taking up the consideration of getting some second-run, and you told me that it might have been in May or June, 1937. Now, what I have asked you is, did you consider the possibility of keeping on with your first-run as far as that would go and supplementing it with second-run; did you consider that possibility?

A. I can't answer that, neither.

Q. You have no recollection of considering that?

[fol. 3411] A. No.

Q. Well, does it lie in your mind that there was a time when you wanted to get 30 second-run pictures right away in order to show them?

A. I don't remember.

Q. And isn't it a fact that at that time Mr. Struwe told you that he would sell you the whole 60 of the 1936-37 run, but wouldn't sell you half of them?

A. There was never any business connection between me and Mr. Struwe about pictures. He used to come in as visiting, but never talked of business, because he was never allowed to talk business with me. That is what he always told me. He never talked business with me.

[fol. 3412] Q. Well, whether we call it business or not, you did tell him that you were intending to go to a second-run policy?

A. I may have.

Q. And you told him that you were planning to start it about May 1st?

A. I may have.

Q. And he offered you a sixty-picture deal and you said you only wanted thirty?

A. Never offered me any deal.

Q. Well, now, I wish you would look at this memorandum and see if it is not an accurate memorandum of a conversation between Mr. Strueme and you. That is the only one that relates to you.

A. I never had any business as far as a picture deal with Mr. Strueme.

Q. That isn't what I asked you. I asked you if that is not an accurate memorandum of that conversation?

A. I don't remember.

Q. You don't remember anything but what that is true, do you?

A. No.

Mr. Wright: Has that been identified?

Mr. McClennen: No. I will have the memorandum which I have shown the witness identified, being a memorandum [fol. 3413] of February 4, 1937 and approximately identified as being that which relates to the Plaza, Malone.

(Memorandum referred to was marked Defendant's Exhibit D-137 for identification.)

Mr. Wright: Do you mind if I see it?

(Document handed to Mr. Wright.)

Q. From 1922 to the fall of 1936 did you have any dealings with the branch managers of any of the distributors at Albany?

A. Between 1922 and 1936? I don't remember.

Q. Did you have any moving picture business in those 14 years?

A. Part time, yes.

Q. At the Plaza?

A. Yes.

Q. What was that part time operation? Give us the time of it.

A. I don't remember exactly now, but it was at least several times. I don't recall exactly now how long I have run the theatre myself.

Q. Can you recall any period from 1922 to 1936 when you operated the theatre yourself?

A. No, I don't remember.

Q. Is it your best recollection that you did not operate [fol. 3414] the theatre in that period?

A. I know that between 1922 and 1936 that was fourteen years——

Q. Perhaps that figure will enable you to answer the question, whether you operated yourself a moving picture theatre in that period?

~~A. I remember operating~~ it, but I don't remember how long, and what was the term?

Q. Between those years?

A. Yes, I did operate the place.

Q. What was it between 1922 and 1936 that you operated?

A. Because the theatre was opened. I opened this myself.

Q. What is the period, I am asking you.

A. I don't remember.

Q. Give us some idea.

A. I haven't any idea. I haven't got these figures.

Q. Did you operate that theatre at any time between——

A. Yes, after it was completed. I operated it.

Q. That was back in 1922?

A. 1922.

Q. For a year or so?

A. I don't remember how long, but I knew after I operated it for a short time the competition was very severe, I leased it for five years.

Q. And you leased it in about 1923?

[fol. 3415] A. Maybe.

Q. After that time——

A. I took possession of it.

Q. After that time?

A. After the five years.

Q. After that time in 1923 up to 1936 did you operate yourself?

A. I think I did for a short time.

Q. When was that?

A. I don't recall the date.

Q. Was it in 1928 or thereabouts?

A. I couldn't tell you for sure.

Q. Did you operate that theatre at any time between 1930 and 1936?

A. I don't think so.

Q. Between 1930 and 1936 did you have dealings with the branch managers at Albany of the various distributors, as far as you can recall?

A. I don't remember.

Q. Do you remember of any?

A. No.

Q. And you were in Europe in 1935?

A. Yes.

Q. And after the time of your seeing the branch managers as you testified to it, in the fall of 1936, you have had [fol. 3416] no occasion to deal with those particular branch managers, had you?

A. I don't think so.

Q. Did you know the policy, I mean, of changes a week on which the Malone Theatre was operating in the period a year or two prior to the end of their lease in September, 1936?

A. No, I didn't.

Q. Did you know whether or not they were operating on a policy of four changes a week in that period of say the season of 1934-1935 up to the end of 1936?

A. Well, I made a check of that,

Q. And was that the policy?

A. The policy of three changes a week and four changes a week.

Q. Three of those changes were double features and one single feature?

A. Three changes of double some weeks, three changes of double and one change of single.

Q. Very soon after you opened, did you place an advertisement in the newspaper that the newspaper ad as a coupon with 25 cents would admit two adults to your theatre?

A. Yes.

Q. That is, almost at the outset you advertised a virtual 12 and one-half cents admission?

[fol. 3417] A. Yes, sir.

Q. And you were operating at that time on first-run pictures?

A. Yes, sir.

Q. And soon after did you institute a dish give-away?

A. Yes.

Q. Those dishes cost what, something like 10 or 11 cents apiece?

A. Yes, sir.

Q. So that with a 12-½ cents admission you could get an 11 cent dish, is that it?

A. No.

Q. 25 cents admission for one and the other going in free, we will say, with a coupon?

A. No.

Q. You couldn't get an 11-cent dish?

A. No.

Q. What kind of dishes were those that you could get at that time?

A. They were ten-cent dishes.

Q. Ten-cent dishes.

A. Yes, but we were not giving it away to a person who goes in for 12½ cents.

Q. How much did he or she have to pay?

A. The person that has a dish has to pay the regular price [fol. 3418] of 25 cents.

The Court: A Dish for each one of them, everyone of them?

The Witness: No, just the ladies.

Q. Very early in 1937 you instituted the prize contests also, did you not?

A. Prize?

Q. Prize contests.

A. I don't know what you mean.

The Court: Prize contests.

Q. Give away a prize on some contest?

A. I don't remember that.

Q. You don't remember anything of that?

A. No.

Q. After you instituted your second-run policy you used at times to announce from the stage, did you not, to patrons that there is no use wasting their money paying high prices to see pictures anywhere else, that they would be coming along soon in your house?

A. I said that on one picture.

Q. Which picture was that?

A. It was a Metro-Goldwyn-Mayer picture.

Q. What was the picture?

A. "Boystown."

Q. Pretty good picture, wasn't it?

A. You bet, a darn good one.

[fol. 3419] Q. You made that announcement?

A. Yes.

Q. At the time that the picture was playing in the other theatre, did you not?

A. If you will let me explain.

Q. No, just that time, it doesn't require any explanation. Did you tell us it was when that other picture was playing in the other theatre, was it?

A. Yes.

Q. Were you at all familiar with the Code of Fair Practices in the moving picture industry that the President approved in November, 1933?

A. Yes, sir.

Q. And you knew that that had been disapproved?

A. Yes, sir.

Q. Then you instituted a policy of "Lucky", did you not?

A. Yes, sir.

Q. Tell us what "Lucky" is.

A. "Lucky"?

Q. Yes, describe it.

A. Lucky is a game very similar to Bingo.

The Court: Similar to what?

The Witness: Similar to Bingo. Your Honor, you have five beans and you put them on the B*I*N*G*O and in Lucky, Lucky is just contrary to Bingo. It is just to make [fols. 3420-3422] it from Bingo to Lucky. It is a game very much like Bingo.

The Court: You play it in the theatre, you mean.

The Witness: Yes.

Q. You instituted that in your theatre in 1937?

A. I don't remember, but I had the Lucky game?

Q. What?

A. I said I don't remember the date, but I had the game.

Q. You sought to have the distributors make you an allowance for the cost to you of the Lucky performance, did you not?

A. On some percentage pictures.

The Court: I think we had better suspend at this time until tomorrow morning ten o'clock.

(Whereupon a recess was taken until Tuesday, October 24th, 1944, at 10 a.m.)

[fol. 3423] UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF NEW YORK

Civil 223

UNITED STATES OF AMERICA

vs.

SCHINE CHAIN THEATRES, INC., et al., Defendants

Continuation of trial before Honorable John Knight, United States District Judge for the Western District of New York, October 24th, 1944, 10 o'clock A.M.

Appearances: Robert L. Wright, Esq., John F. Clagett, Esq., Harold L. Schilz, Esq., Special Assistants to the Attorney General, and Philip Marcus, Esq., and Milton Kallis, Esq., Special Attorneys, in behalf of the United States.

Edward F. McClennen, Esq., Willard S. McKay, Esq., Saul E. Rogers, Esq., Arthur E. Whittemore, Esq., Arthur J. Homans, Esq., and Edward M. Antevil, Esq., appearing for the Defendants.

[fol. 3424] PROCEEDINGS

The Court: I have examined a portion of the proposed exhibits and referred to the objections raised in them. I understood you yesterday to say that while your objections applied to all of them, certain of those were not objected to. I got that impression.

Mr. McClennen: No, they are all objected to.

The Court: I thought you said perhaps some of them were not included.

Mr. McClennen: Some of them had special objections that are not referred to in the general narrative, because those were not applicable to all of them.

The Court: I thought there were some. While your objections were general, I thought you meant there were certain of them that there was no objection to. The point of my statement is simply this: Admission of these documents involves a question about which the Court should be specially careful, I think, so I would like you to submit some authorities if you have them that will bear on the question of the admission of these documents. Some of them may [fol. 3425] be differentiated, I don't know. I did not examine enough of them to determine that. I went home last night and went over some of these, the general character of them.

Mr. McClennen: We have submitted our authorities in the preliminary printed memorandum, and I referred to them in the notation.

The Court: Does that cover the question of the admission of inter-company communications?

Mr. McClennen: It seemed to me that it did.

The Court: What have you to say, Mr. Wright?

Mr. Wright: We will be glad to submit a further memorandum, if your Honor please. I think at the time we submitted a trial brief, we also included a general discussion of authorities with reference to admissibility of evidence of that character. Of course, as to a specific discussion of each, we can give your Honor a memorandum with respect to any particular document that you may have some question about.

The Court: What I am concerned with is the question of the introduction of these inter-company reports and answers as concerns the question of necessity of the produc- [fol. 3426] tion of the authors of these communications. These are admissible, I take it, as inter-company statements, made by one who is a co-conspirator.

Mr. Wright: As I understood the question of necessity of production, it was settled last June at the time it was raised in the course of offering those documents. At that time your Honor ruled that it was not necessary to produce the author. The proof you would require was proof that it came from the company's files, and proof as to who these people were who wrote and received them, and that is the proof we made.

Mr. Rogers: I don't recall any general ruling.

Mr. Wright: The ruling, I think, is on page 305 of the transcript.

The Court: That might depend upon just what it was.

Mr. McClennen: Reference to your Honor's rulings are noted—objections to which your Honor is referring begin in the record at page 3285, and on page 3286 there is a reference to the action of the Court before, and it does not militate against any of the objections made at this time. [fol. 3427] Your Honor, at an early stage in the case was careful repeatedly to say that these various things, both the oral and the written, were received only subject to being connected up with the defendants. Now, we are approaching the end of the plaintiff's case. No such connection with the defendants has been made, and there is nothing to be admitted further on an expectation of something to come in the course of the plaintiff's case. I submit that the position which your Honor took at that time in no way affects the action which the Court should now take on the objections that are now made, and they rest upon their own intrinsic soundness, and the places in the brief or memorandum on this question of admissibility of evidence are referred to on page 3287 and 3288 of the record by specific reference to the pages of the printed memorandum where those authorities occur.

The Court: The plaintiff's, do you mean?

Mr. McClennen: No, if I said "plaintiff's" I am sorry. I meant defendants' memorandum of authorities.

[fol. 3428] The Court: I wish you would just submit anything you want to, because there is a question in my mind as to whether the action the Court has taken meets the situation now, or whether it does not. There is a specific situation presented rather than a general proposition. Perhaps the broad question is whether the proposition refers to all the files of one of the co-conspirators rather than to these matters in question. That is the broad question here.

Mr. McClennen: Of course, our fundamental contention with respect to that is that the evidence has shown no conspirator in respect to any of the matters to which these inter-office memoranda refer, and no conspiracy has been shown that would carry within its scope any of the things that are presented in these inter-office memoranda and make them in any wise binding upon the defendants.

The Court: If we assume for the purpose of the argument that there is certain proof of a conspiracy, then what do you say as to the admissibility of these inter-company communications?

[fol. 3429] Mr. McClennen: I should submit if we went so far as to say that, we would be making a mistake, that the evidence does not warrant it.

The Court: I am only saying, assuming there is some evidence from which the Court might find that there was a conspiracy between these major companies and the defendant, still it would be questionable whether it would be competent to show communications between some manager or some branch manager with the major companies.

Mr. McClennen: I respectfully submit that the only basis on which an assumption by the Court could be made would be the evidence that has been presented, and that there cannot be pointed out any evidence which would warrant such an assumption. At this stage of the case there is no occasion to make any assumption at all. The time has arrived when the evidence has to speak on this question so that we do not have to deal with how we would deal with these papers if we made an assumption.

The Court: No, no, assuming I found there was evidence of a conspiracy, then we come to the question—even then we [fol. 3430] come to the question of the admissibility of these letters, these communications.

Mr. McClennen: If your Honor please, I was dealing only with the first question that your Honor put to me, that is, the question of conspiracy. I can make my language no more impressive to your Honor than by reading to your Honor what the Supreme Court has said, and I quote from Glasser vs. the United States, 315 United States 60, a very recent decision, never brought to your Honor's attention by the parties in this case until this memorandum of authority was handed to your Honor on September 25th, 1944. In that the Court says, and I am reading from page 8 of the memorandum: "Declarations are admissible over the objection of an alleged co-conspirator who was not present when they were made only if there is proof aliaunde that he is connected with the conspiracy. Otherwise, hearsay would lift itself by its own boot straps to the level of competent evidence." That picturesque illustration that the Court [fol. 3431] itself has used is by way of warning that these statements should not be received, and then from them infer a conspiracy. It must be shown in some other way. This case is out of the ordinary class of cases where we had some conspirators joined, so that—let me illustrate without meaning anything by the particular name—the United Artists, we will say, is joined as a conspirator, a defendant conspirator. Then the statement made by the duly authorized agent of United Artists is admissible according to the ordinary principles of evidence against United Artists. It is not admissible against Schines until there has been shown actual conspiracy between Schine and the United Artists. In the case that we are now trying, United Artists is not a party defendant and, therefore, even if the statement was one authorized by United Artists, it is not admissible at all against the defendants in this case and is, therefore, not admissible in this case before it has been shown that there was a conspiracy between that company and the defend- [fol. 3432] ants, and that the scope of that conspiracy was of such a nature that this was an authorized act done in the course of the conspiracy. Now, as I have said, I am laboring in my own words, but I know nothing more impressive with this Court than the language of the Supreme Court of the United States directly on this point. Before we could deal with these various inter-office communications, it would be necessary to arrive at a conclusion as to each particular one of those distributors whose inter-office communications is offered, and determine whether that particular distributor had conspired with the defendants. It cannot be dealt with in a group.

[fol. 3433] When we get by this question of the conspiracy then we have these other objections, many of which were not present, the ground for them not present, in the particular evidence that was presented at the time when these general objections were discussed. Now here is a piece of paper that has the typewritten name of a branch manager. There is nothing to show that he ever uttered it, nothing to show that he ever signed it, nothing to show that he dictated it and in some instances right in the documents themselves indications of error in the statement contained in the document. We could not, on the present evidence, charge that man with that paper. We don't know if it, for instance, was from, we will say, the Albany branch office. We don't know that it ever went out of the Albany branch office. These papers were collected by the distributor to present here as what they found in their files in the home office—in the branch office. We don't know whether that paper ever left the hands of the man whose typed name [fol. 3434] appears at the bottom of it or was ever seen by him after it was typed.

Now, this is not a matter of dealing with an impossible situation for proof because if it is desired to show that that man said those things then he can be called by the plaintiff as a witness, then the objections will still exist that the mere fact that he put them on paper, if he did put them on paper, does not make them any more admissible than they would be intrinsically because he testified to those facts, but then the witness would be present and his recollection could be improved by showing some of the other papers of the time and we could then determine in the ordinary course in which an issue is determined, by evidence of witnesses whom we have an opportunity to examine, whether his statement is correct or not.

Now, again, we find by comparisons in other negotiations in this case differences between the communication that was sent and the carbon copy, even, or the subsequently [fol. 3435] made copy which render into importance the rule that it is the original and not the copy that should be produced, if anything is to be produced. Of course, I am not speaking here about the matter of photostats. It was, of course, the understanding that photostats should have the place of the thing photostated and they do not lift the thing photostated into any higher plane. A photostat of a copy should not be introduced until the original has been accounted for. No paper should be introduced until it is shown that it was, in fact, signed, or at least sanctioned, by the person purporting to sign it. It should not be introduced until it has been shown he transmitted it. So that, even if we get by this question of these being transactions wholly apart from the defendants, these papers, we respectfully submit, are not admissible in evidence and they are not in any wise covered by the decision that your Honor made with respect to a particular [fol. 3436] paper that was under consideration by your Honor last May or June when some papers were admitted expressly subject to their being connected up with the defendants. Some of these papers are not within the authority that has been shown of the purported signer of them, that is, authority from his own company. The result is simply to put in hearsay testimony. The fact of the communication is of no value whatever in arriving at a result in this case. Of course it was said before that they were not offered as evidence of the truth of the statements made in the papers, but that decision has not stood in the way of subsequent reference to those papers as if they were evidence of the truth of the matters stated in them and it is almost impossible for the most learned and careful Judges to avoid getting into mind the idea that the facts stated in a piece of paper that way or the statement contained in a piece of paper of that kind is a statement of a fact which he should [fol. 3437] treat as a fact and it violates the fundamental principles and men's rights ought not to be determined on hearsay testimony, and particularly when the witness is available to be called by the plaintiff and subjected to cross-examination to test the accuracy of the statement made.

I urge upon your Honor that what occurred last May and June in no manner stands against the recognition of the correctness of the objections now presented and that with the complete consistency with the position which the Court took at that time the Court may deal with these objections on their intrinsic merits and I urge that every one of the nineteen objections is sound. Of course, one of those objections may not apply to this paper and another may not apply to that paper, but that each one of them is sound and deserving of the support of your Honor as an able, considerate Judge, dealing with a very important question in this case.

[fol. 3438] Mr. Wright: If the Court please, as Counsel has advanced the rule of evidence that I think proves all together too much for his purposes; now, in making a case, in proving a conspiracy or combination between the Schine defendants and these distributors for the purpose of eliminating or restraining competition of Schine's independent competitors, we offer proof of three kinds, or, rather, four. We show what was done, what the dealings of these independents were with the distributors, what the dealings of Schine were with the same distributors, and what the dealings of the independents were with Schine. Now, in so far as this testimony of what transpired between the exhibitors and the distributors, that is always necessarily entirely hearsay in so far as the Schine defendants are concerned. There is no more reason for rejecting one of these inter-office memoranda, that are taken from the distributors' files, on the ground that the man who wrote it is not here to be cross-examined than there is for re- [fol. 3439] fusing to permit an independent exhibitor to testify to a conversation that he had with that manager on the ground that the manager is not here to be cross-examined.

Now, in proving any course of business testimony will always necessarily consist of both of the conversations that the exhibitors had with these people, oral negotiations, and it will also consist of contracts made between them, and it will also consist of whatever the company's records may show with respect to those negotiations and those contracts and, in making that proof, for our purposes most of what Counsel has said as to whether or not a particular letter was sent from the branch to the home office, or vice versa, or whether or not the facts in the memoranda may be contradicted by some other facts goes solely to one question and that is the weight to be given to the particular document. In so far as its admissibility is concerned, it is always admissible to show that the company records [fol. 3440] contain that particular memoranda or document. There can't be any question about that, and to the extent that the presence of the document in the Company's file is material or relevant to any of the issues in the suit, clearly the evidence that has been offered here is the best evidence obtainable on that particular fact.

Now, at the time Counsel has said that, with reference to some of these memoranda, we have stated that we were only interested in showing that the Company did have whatever knowledge was reflected in the memoranda which came out of its files, I think in other cases we have asserted that the document itself was also—tended to prove the facts that were stated therein—but in each case that question is a matter of the weight or the scope of the probative value that is to be given to the document. It does not go to the question of admissibility. It is always admissible for the limited purpose of showing that it was there. This [fol. 3441] first came up in testimony. The ruling I was referring to as having been made last June appears in the transcript for June 1st. At that time we offered an exhibit identified as P-13, which was a memorandum from Mr. Dillard of the Loew Company, and we attempted to identify it through Mr. Caskey and we were unable to do so sufficiently to satisfy your Honor. We offered the letter at page 300.

"I am offering this letter which has been marked as P-13 for identification."

Your Honor said, "I will receive it but I am going to strike it out unless it is further connected up."

And Mr. Rogers said, "And subject to my objection?"

The Court said: "Yes. It is only a photostatic copy, is it not?"

"Mr. Wright: Yes. I take it there is no objection from the fact that it is a photostat? Is that correct?

"Mr. Rogers: That is correct."

"The Court: What exhibit is that?"

[fol. 3442] "Mr. Wright: That is P-13. The date is April 7, 1938. It is a letter from Mr. Tyree Dillard, Jr., at the home office of the Loew Company, to the Cleveland Branch Manager, F. D. Drew. It reads (reading letter).

"Mr. McKay: Is that letter offered to show that the second run licensee was in fact changed?

"Mr. Wright: Yes, it is.

Mr. McKay: Then it is certainly objectionable on that ground, your Honor. It cannot be offered as proof of the facts stated in the letter, depriving us of our right of cross examination either of Mr. Drew or Mr. Dillard.

"The Court: The theory on which it would be admitted without the production of the individual writer would be that it appears as part of the records of the company, that they were taken from the records of the company.

"Mr. McKay: It is hearsay as it now appears.

"The Court: I said unless it is connected up as being [fol. 3443] part of the records of the company it will be excluded.

"Mr. Rogers: Your Honor, may I make this suggestion? It seems to me that a certain amount of elasticity may be in order at times, but here we have gone through the testimony of an entire witness, we have got his oral testimony, we have got documentation here, and we haven't a single scintilla of evidence by the plaintiff as to who these people are that wrote these letters, who these people are that are supposed to have made these statements. It seems to me that the plaintiff owes to this Court a more careful degree of preparation than that in the trial of a case. I think they might have devoted a day or devoted two days before bringing the witnesses on to having some accredited representatives of these producers appear and place these documents before the Court, and have these persons identified and have their authority identified, so that we would know just how far these people are authorized to act and what they are doing [fol. 3444] here. We have got a tremendous mass of unconnected documents, unconnected testimony, all hanging by a slender thread. When it comes to making motions to strike those motions are going to take a lot of the time of this Court.

"The Court: I have already passed on those questions. I presume that perhaps they would have some knowledge of the relationship of some of these parties named in these letters. I do not think an objection should be made from a captious standpoint. My view of the matter is that when the company is charged as a conspirator the records are competent as proof when the records are properly identified as company records. As I pointed out, in my view, several times their relation is the same as though they were a party to the action. There is a charge here that there is a conspiracy and if they are conspirators their records relating to these transactions directed to show a conspiracy, if they are properly identified, are competent. I do not [fol. 3445] think Counsel should make captious objections if there is no disagreement about the position that these gentlemen held. On the other hand, Counsel has the right to object and hold the plaintiff to its proof, and that is the proof by an officer of the company who knows that these are a part of the records of that company. It is the simplest thing in the world for an office man or a general manager to come here and testify that these are records taken from that office.

"Mr. Rogers: But the graver part is this tremendous mass of factual matter contained in these letters, which I think we are entitled to have evidence on.

"The Court: The Court will direct him to be here at any time you want them to examine on these letters.

"Mr. Rogers: It is more than merely directing him to be here to examine him on these letters. I think it is rather if the plaintiff is introducing these letters as evidence of the factual matter contained in these letters then we are [fol. 3446] entitled to have the evidence of witnesses as to these factual matters and not merely a declaration in a letter.

"The Court: I disagree with you on that. As I said before, if they are letters shown to have been kept in the regular course of business by one of these companies, and then they are identified as being part of that record, they are competent here. I mean by that you have not got to call one of these gentlemen here to testify that he wrote this letter and so-and-so received it. It is received because they are a part of the records."

The Court: The point of that discussion, first, is that to receive the document and then I don't know—permitting them, any records of the company, if it is claimed it is one of the co-conspirators who wrote some letter it is evidence in itself of conspiracy, as an admission against himself, wouldn't it?

Mr. Wright: Yes.

The Court: But I don't know. The broad question here is whether you can support all the records of the company. [fol. 3447] The backbone of that, of course, is, one point is, Mr. McClennen's point raised about the conspiracy, including the proof of these matters that are written about in these identified exhibits. Now, even the letters themselves being some evidence of a conspiracy, I don't know. I mean, the exhibits may be some proof of conspiracy or—I am not saying that they do, but they might. I don't believe they should be excluded because they are made a part of the account which goes to show there was a conspiracy, but I will look over this.

Mr. Wright: I would like to read the rest of page 305. I read, I believe, Mr. Rogers' or the Court's statement: "It is received because they are a part of the records."

Then Mr. Rogers said: "I will go as far as that, your Honor, but I do not go the rest of the way. That is where this writer of the letter attempts to set forth factually a state of facts which your Honor is going to take as testimony of [fol. 3448] the fact I think we ought to get evidence on those factual matters and we are entitled to evidence on those factual matters and to cross-examination.

"The Court: The question of connection, of course, is to be raised at the end of the trial.

"Mr. Rogers: And that is their duty in spelling out their case. He must get the witness on the stand and prove his facts by the witness.

"The Court: No, I do not agree with that statement."

In reliance on what was said at that time, I don't recall, we did not attempt to make further proof of the kind suggested until the witnesses were brought here to identify the documents and identify the writers and receivers, and I think on the basis of Mr. Rogers' objection at that time it was clear that all they were then concerned with, as far as cross examination goes, was a matter of sight, admittedly there was always evidence of the fact that the company had in its files the document and whatever information was in the document. but the objection was limited there to the [fol. 3449] insistence that if the document was going to be treated as anything more than that it was going to be treated as evidence of the fact that some one, and only that some one, the writer of the document, must be called and put on the stand.

The Court: Let me ask you, how do you give any force to the document itself unless you see some evidence of the fact contained in it?

Mr. Wright: In many cases the document will refer to facts proved by independent evidence. All that the document will show is simply that those facts were brought to the attention of the company, or were written to the company at the time.

[fol. 3450] The Court: How about other facts that are not disclosed?

Mr. Wright: As to those, I suppose it is a question of whether or not the fact is one which would normally be made to appear by evidence such as is recorded in the document. If it is, I suppose it would be accepted as evidence of that fact. If it is not, I suppose then the Court might require further proof as to what the facts were, but in any event, that question is a question of weight and not admissibility. The document would still be admissible to show——

The Court: It may be admissible for one purpose and not for another.

Mr. Wright: That is quite conceivable.

The Court: If it is your position that these documents are receivable for the specific purpose of showing the relation of the officials, one from the other, that is one thing. Of course, if they are offered as evidence of the statements contained in them wholly apart from any question of direct proof being given as to some of the contents, that is another question.

[fol. 3451] Mr. Wright: They are clearly evidence of the fact that the officials whose names appeared thereon did prepare those documents and placed them in the Company's files on or about the dates they bear.

The Court: I am speaking of the contents of the documents, outside of the question of the proof of the capacity of an individual. It does appear—some of these articles are not signed at all. Some of these letters are not signed. They are referred to at the top as made by somebody through somebody else. We have the broad question, it seems to me, of whether all the records of the Company, those charged with conspiring with the defendants, which relate to the question of the acts between the company and the major companies is competent. That is the particular question.

Mr. Wright: I submit, your Honor, communications are clearly competent to show those communications were written, that they occur.

The Court: You have to go further than that. Irrespective of that, you speak about the communications written. [fol. 3452] You distinguish the fact they were written from the fact of their contents.

Mr. Wright: No, I don't think it makes any difference as far as we are concerned whether somebody signed these communications or whether it says "From so and so to so and so" at the top. If it did, that would be another matter, but all we offer them for is what they appear to be on their face.

The Court: That is quite another question. That is the question here. If you offer the exhibits for the purpose of showing the relation of a branch manager or some official of a company as bearing on his authority to act in that capacity, that is one thing, but if they are offered as proof of the facts stated, that is another thing.

Mr. Wright: They are offered to show what he did, in any event, that the branch manager communicated the facts stated therein to whoever it appears they were communicated to, and vice versa. One thing more as to these letters. Some of these letters are letters passing between Schine and the distributors.

The Court: I am not speaking about those. I have not [fol. 3453] come to those.

Mr. Wright: I don't think you can generalize——

The Court: I am not trying to do that. That is true. That might stand on a different basis, of course. They might be connected with others, that is true, but I haven't got that far in the examination of these exhibits. There are so many exhibits I don't just recall what was said about that when they were identified.

Mr. Wright: As to the production of originals, wherever there is a copy of a letter to Schine we have served Schine with a notice to produce.

The Court: You do in your objection raise some question about the copies, although you say it does not make any difference. You apply that to photostatic copies.

Mr. McClennen: These contentions we have just been submitting are primarily dealing with this subject of what purports to be an inter-office communication, and we have not in this present argument—we can deal with that when the particular paper is presented. We have not been deal- [fol. 3454] ing with a communication from or to the defendants. I would like before this subject is left for the present to deal with three things stated by Mr. Wright in the course of the argument. He has read you what occurred with reference to a communication from Mr. Tyree Dillard and the remarks for the defendants with reference to that communication were in our dealing with that communication. We were not dealing with formalities. We were dealing with substances. Everybody knew who Mr. Tyree Dillard was, and there was convincing evidence that that was a letter from him to somebody else, so that none of those questions were involved there. Here we are dealing with an entirely difference situation, and the remarks applicable to Mr. Dillard's letter are not the remarks applicable to the inter-office communications, so-called, that are under consideration here.

The Court: You mean because he was identified as such an official?

Mr. McClennen: I mean because there was convincing evidence there that Mr. Dillard wrote that letter and that [fol. 3455] it was sent and that he was what he was with reference to that company. Now, that was the subject matter that was being discussed, and not the subject matter that is presented by these present communications.

Now, the other two things that I would respectfully ask your Honor's further consideration of are the two statements made by Mr. Wright that these are inter-office communications of a company charged with conspiracy. The only person charged with conspiracy here is the defendants. The defendants are charged with conspiring, if you please, with United Artists, but United Artists are not charged. The charge against them was dismissed.

The Court: I don't think that alters the situation. It is an act of a co-conspirator, whether he is charged in the suit or not. It is a question of what they did.

Mr. McClennen: It affects, if your Honor please, the propriety of asserting an argument in this case that United Artists is charged with conspiracy. I urge upon your Honor that United Artists is not charged with conspiracy.

[fol. 3456] The Court: I don't think it makes any difference so far as accepting the evidence is concerned, whether he is charged or whether he is not, if he did conspire. That is the question.

Mr. McClennen: If your Honor please, I was not dealing with the ultimate question. I was bringing back to your Honor's attention that the statement that United Artists is charged with a conspiracy is contrary to the record, because the charge against the United Artists has been withdrawn and they are not charged. We are charged with conspiring with them, which is a fundamental difference, I respectfully submit, as to the introduction of evidence, because if United Artists was charged then a properly proved admission of United Artists would be admissible in this case against United Artists, but it would not be admissible against the defendants until the connection had been made with the defendants, and, at least, if your Honor please, we can progress to a sound solution of these questions if [fol. 3457] the arguments are accurately presented as to the facts. I urge upon your Honor that the suggestion that United Artists is charged as a conspirator in this case is not so. They are not charged. Schines are charged with conspiring with United Artists. The Government abandoned the charge against United Artists and voluntarily dismissed the suit as to United Artists. I picked one name as illustrative of the entire situation.

The other thing is this: It was seriously argued to your Honor that presenting this piece of paper coming from the file of the company containing an assertion that somebody else said something was the same as calling these outsiders to the stand to testify that somebody said something to that outsider. Well, we can't cross-examine that piece of paper. We have had some of these outsiders, and before they got through with their testimony, it has been demonstrated from their own lips, the falsity of the statement in direct-examination as to what was said and done. Now, we cannot conduct a cross-examination of a piece of paper, [fol. 3458] and the distinction is as wide as the difference between a court of justice and an Indian powwow.

The Court: These witnesses are waiting, I assume. I think I will have to take this matter up later. I did not think we would go into the matter at length this morning, but we have witnesses here, and I think we better proceed.

Micheal Boumansour resumed the stand by and on behalf of the Plaintiff, having been previously sworn, was examined and testified as follows:

Mr. McClennen: I have no further questions.

Redirect examination.

By Mr. Wright:

Q. This Exhibit D-133 was a copy of the letter that you wrote to the Department on that date?

A. It must be.

Mr. Wright: I will ask to have this marked for identification with the next plaintiff's Exhibit number.

[fol. 3459] Mr. McClennen: For identification?

Mr. Wright: Yes.

(Thereupon letter sent by Witness Boumansour to the Department of Justice, was marked as Plaintiff's Exhibit 859 for identification.)

Mr. Wright: I will ask to have this marked for identification, and this.

(Thereupon copies of two letters addessed to Witness Boumansour by the Department of Justice, were marked as Plaintiff's Exhibits Nos. 860 and 861 for identification.)

Mr. McClennen: These are all for identification.

By Mr. Wright:

Q. This document, plaintiff's exhibit 859 for identification, is that your signature on there?

A. Yes, sir.

Q. That is the original of which Defendants' Exhibit D-133 is a copy?

A. Just alike.

Q. I will show you this letter addressed to you, or a copy of a letter addressed to you, which has been marked as Plaintiff's Exhibit 860 for identification, and ask you if you received that shortly after that date on there, March 4th, 1941? Did you receive the original?

[fol. 3460] A. I received the original.

Q. Did you also receive the original of this Exhibit 861 shortly after February 8th, 1941?

A. Yes, I did receive this.

Q. Then, at the time you received these exhibit- 860 and 861, you were then managing the Malone Theatre for Schine, were you?

A. I believe—not this one here, because on February 8th, I was still operating my own theatre.

Q. At the time you got the letter of February 8th, Plaintiff's Exhibit 861 for identification, you were still operating the Plaza?

A. Yes, sir.

Q. Although you had then signed the agreement to lease it to the Schine?

A. Yes, I signed the agreement just about a few weeks ahead.

Q. Then when you got Exhibit 860 in March, were you then managing the Malone Theatre for Schine?

A. Yes, sir.

Q. When you got that letter, do you remember what you did with it?

A. I don't remember.

Q. Do you remember whether you showed it to any one connected with the Schine organization?

A. I don't think so.

[fol. 3461] Q. Then, when this letter marked Exhibit 859 for identification was written, did you prepare that yourself?

A. I couldn't tell. I don't remember.

Q. Do you remember whether you made the copy here marked Exhibit D-133 at the time the original Exhibit 859 was sent?

A. I never remember making this letter, but I know it is my signature

Q When you say "this letter" you are referring to the copy marked Defendants' Exhibit D-133?

A. I am sure I have signed this letter.

Q. By "this letter" you are there referring to Exhibit 859 for identification?

A. Yes. I have surely signed this letter, because it is my signature, but——

Q. At the time you sent that letter, did you have any discusssion about the letter with any respresentative of the Schine Company?

A. No.

Q. When was it that you signed this copy, Defendants' Exhibit D-133?

A. I don't remember at all.

Q. Do you remember what was done with this Defendants' Exhibit D-133 after you signed it, who, if anyone, you gave it to?

[fol. 3462] A. I don't recall at all both of these letters, but I know sure that they are my signature.

Q. You don't know what, if any, discussion you had with anybody in the Schine organization with reference——

A. Oh no, I am sure of that. There is nothing connected as far as Schine handing me any document of this kind to sign. I am sure of that.

Q. You are sure you signed this copy?

A. I signed this paper.

Q. What did you do with the copy after you signed it? Did you keep it in your own files?

A. I surely don't know.

Q. What did you do with your files at the theatre there when you left, did you take them with you, or did you turn them over to Schine?

A. No, they are still over there in my office.

Q. Your correspondence file?

A. Yes.

Q. Were all left with Schine——

A. No, no, I have my own office in the theatre, at the Plaza Theatre, on the second floor. My offices remain where it is.

Q. This Exhibit D-133, did that come out of your files?

A. I told you really the truth, I never remember seeing this paper.

[fol. 3463] Q. You mean prior to the time it was shown to you yesterday?

A. Yes, but in another way, it is surely, it is my signature.

Q. You don't remember when you signed it or what you did with it after you signed it?

A. No, this letter, I usually write with my head letter.

Mr. McClennen: What is the witness referring to by identification number now?

The Witness: 859.

Mr. Wright: We will offer in evidence Plaintiff's Exhibits 860 and 861.

Mr. McClennen: These came from your files, Mr. Wright, did they?

Mr. Wright: That is right.

Mr. McClennen: Exhibit 859 also came from your files?

Mr. Wright: Yes, we will also offer 859.

Mr. McClennen: No objection.

(Thereupon Plaintiff's Exhibits Nos. 859, 860 and 861, previously marked for identification, were received in evidence.)

Mr. Wright: Exhibit 861 is a letter dated February 8th, 1941, to Mr. Boumansour signed "Thurman Arnold", entitled "U. S. against Schine."

[fol. 3464] "Dear Sir: We are proceeding with our preparation for trial in the above-entitled case, and it is expected that a trial date will be set in the near future. We are, therefore, interested in learning whether anything has happened in the Malone situation since Mr. Terrell of the Department saw you during the latter part of July, 1941, which you think may be of interest to us in the prosecution of this case. What further negotiations, if any, have you had in regard to leasing your theatre to Schine? Have you been able to secure any first-run product for exhibition during the current motion picture season? What second-run product are you exhibiting during this season? Very truly yours."

Exhibit 860 is a letter dated March 4th, 1941, addressed to Mr. Boumansour, at the Plaza Theatre, Malone.

The Court: Mr. who?

Mr. Wright: Mr. Boumansour, Mr. Michael Boumansour, the witness.

The Court: Oh, yes. I thought you were speaking about [fol. 3465] a reply.

Mr. Wright: "Plaza Theatre, Malone, New York, re U. S. against Schine. Dear Sir: We have not received a reply to our letter of February 8th, 1941, copy of which is enclosed for your information. Very truly yours, Thurman Arnold."

Exhibit 859 is the original letter which is addressed to the Department of Justice, Washington, D. C., re U. S. against Schine. "Gentlemen: This is to advise that I have succeeded in disposing of my theatre as planned. I have no further complaints. Everything is satisfactory. Very truly yours, Michael Boumansour."

By Mr. Wright:

Q. You had informed Mr. Terrell of the Department, had you, in July, 1940, with respect to the negotiations with Schine then in progress?

A. I think I did. Nothing sure. I think I did.

Mr. Wright: I will ask to have this affidavit and two letters that are attached marked with the next exhibit number for identification.

(Thereupon affidavit with two letters attached, were marked as Plaintiff's Exhibit 862 for identification.)

[fol. 3466] Q. The first page of his Exhibit 862, do you recognize that as a copy of a letter you received shortly after October 30, 1939?

A. Yes.

Q. And the second page is that your signature on that letter?

A. Yes.

Q. October, 25th, 1939?

A. Yes, sir.

Q. You wrote that on or about that date?

A. Yes.

Q. And the document attached there headed "Affidavit" was that sent with the letter to which it is attached?

A. I don't believe so. This document——

Q. Read the letter.

A. Yes, that went together with the letter.

Q. Is that your signature on the affidavit?

A. Yes, sir.

Q. That was made on or about the day it bears?

A. 24th day of August, 1939.

Q. Made at Malone?

A. Yes.

Q. Were you shown that affidavit before you testified?

A. Yes.

Q. You read it?

[fol. 3467] A. Yes, sir.

Q. That affidavit set forth the facts, did it, as you recalled them at that time?

A. As I recalled them.

Q. About your dealings with Schine and the distributors?

A. Yes, sir.

Q. I call your attention to page 7, and do you see anything there with reference to the letter to the Department of Justice?

A. Yes, sir.

Q. And the date of the letter appears there, does it not?

A. June 30th, 1937.

Q. June 30, 1937?

A. Yes, sir.

Mr. Wright: Have you that Warner contract that was in evidence, I think it is Exhibit 132?

Mr. McClennen: I think you mean for identification D-134.

Mr. Wright: Yes, I do mean this, D-134. I thought that had been offered. We will offer it in evidence.

Mr. McClennen: That was for identification.

Mr. Wright: We are offering it now.

(Thereupon Warner contract previously marked Defendants' Exhibit D-134 for identification was thereupon received in evidence and marked as Plaintiff's Exhibit 863 in evidence.)

[fol. 3468] Q. I hand you this document, which is marked in evidence as Plaintiff's Exhibit 863, and which was shown you on cross-examination. I believe you testified at that time that that is a contract you signed on or about the typewritten date there, June 14, 1937, is that right?

A. I know I have signed it, but I don't remember what date I signed it.

Q. Do you remember when you got an approved copy of that contract, if at all?

A. I must have had a copy of it but I can't recall now.

Q. I mean an approved copy. Did you ever get a copy of it? That is, get your application back with the approval of the Company noted on it?

A. I can't recall that.

Q. What was done with your contract records at the time you turned the theatre over to Schine?

A. Well, all the contracts that were in force of that same year they were still on—I still had on record, if I had to play myself I turned it over to Schine.

Q. How about the others, the older contracts, what if anything was done with those?

A. Like a copy of this?

Q. Yes, an approved copy of that.

A. I don't know. They must still be on file somewhere [fol. 3469] in my office.

Q. Did you bring any of those contracts down here with you?

A. No.

Q. Before you testified did you have an opportunity—did you make an examination of any contracts?

A. No.

Q. In making the contracts you did make the typewritten date as ordinarily the date of the application?

A. Really, I can't remember.

Q. What was the ordinary course of business in making the contracts you made, or that you testified to, for second-run pictures? Did you first make an application?

A. Yes.

Q. Sign an application?

A. Yes.

Q. Then a typewritten date would be put in at that time?

A. Well, in cases, but in this particular case that was not the way it was done, this particular contract.

Q. Of course, on your ordinary contracts you signed an application?

A. Signed an application.

Q. Typewritten date would be put in there at the time you signed the application, is that right?

A. Yes.

Q. Later you would receive an approved copy of the [fol. 3470] application?

A. Of the application.

Q. Is that right?

A. Yes.

Q. Do you have any recollection what happened with respect to this particular contract, Exhibit 863?

A. I never signed any other copy of this contract before. I mean just the original, that is all.

Q. That was the copy you signed?

A. That contract was written as it is, as it stands right there, and I came over to the Albany office and I signed it right there without looking any more.

Q. Do you remember whether you got an approved contract at a later date or whether you took the contract with you then?

A. No, I didn't take any contract with me at that time.

Q. You weren't given any approved contract then?

A. Not at that time.

Q. Do you have any recollection as to when you got an approved contract?

A. I can't recall that.

Q. I show you this Exhibit 857 for identification and I call your attention to the fourth paragraph and ask you if that refreshes your recollection as to whether or not at the time you wrote that letter of June 30th you had received [fol. 3471] an approved contract like this Plaintiff's Exhibit 863?

A. I am quite positively sure that when I wrote this letter there was no contract signed with the Warner Bros.

Q. You mean signed by whom?

A. I mean that due to the fact that I wrote this letter of June 30th it is because I was entirely out of——

Mr. McClennen: May that last be stricken out?

The Court: Just answer the question.

(Last question read.)

A. This letter, dictated by me and signed by my assistant.

By Mr. Wright:

Q. I was referring to the contract. Your statement relating to the contract, you mean it was not signed by you or was not signed by the company?

A. That is my signature right there.

Q. I understood you to say at the time you wrote the letter of June 30th you didn't think this contract, Plaintiff's Exhibit 863, had been signed, and I was trying to find out whether you meant by that your signature or the signature of the sales manager?

A. This is my signature right there on the contract.

Q. That had been signed, is that right?

A. Yes.

Q. But you had not received a copy signed by Mr. Sears, [fol. 3472] is that right?

A. Not at that time.

Q. June 30th?

A. No.

Q. With reference to the time that you bought other second-run products, was that before or after June 30th?

A. After.

Q. And the dates on which you made those other contracts and the season's pictures you bought would appear on the face of the contracts?

A. Mostly.

Q. I noticed this contract here that is marked as 863 calls for the pictures of—can you tell me by looking at it which season that covers?

A. I can't see anything.

Q. Maybe I can find it.

The Court: Isn't it on the back?

By Mr. Wright:

Q. I call your attention to what appears on the back there.

A. Season 1936-37.

Q. These second-run pictures you bought on this contract, Exhibit 863, in June, 1937, do you know about how many of those had already been released and played in the Schine houses, first-run?

A. Of these here?

[fol. 3473] Q. Yes.

A. I can't recall, but at that time they were mostly all played.

Q. The season only had a couple of months to run, isn't that right?

Mr. McClennen: That is objected to as leading. For second-run purposes it is obvious that the season had about six months to run.

The Court: The terms are variable here. There seems to be no definite time as far as I know from the record.

Mr. Wright: I think it appears from the record, and also from the contract.

The Court: Let him state what time, if he knows. He said '36-'37 season. Did you run those pictures there that are shown in that contract?

The Witness: Yes, sir.

The Court: Over what period of time did you run them?

The Witness: I usually exhibit about six to eight pictures a week so I can't recall exactly the time it would take to exhibit all these pictures.

The Court: Six or eight a week.

Q. At the time this contract was handed to you and you [fol. 3474] signed it, was anything said about second-run pictures for the '37-'38 season?

A. No.

Q. At a later time, do you recall when it was, if at all, that you got '37-'38 products second-run?

A. Oh, I did.

Q. I say, do you recall when it was?

A. Not exactly.

Q. Did you later talk to the Warner Exchange about '37-'38 pictures for second-run?

A. Well, yes, later. After most of these pictures were all played.

Q. That is, after these pictures that are on this Exhibit 863 were played?

A. Were played.

Q. And prior to that time was any offer made to you, or was anything said, about you playing '37-'38 pictures?

A. No.

Mr. McClennen: That is objected to. This has nothing to do with the cross-examination.

The Court: I don't know. We have gone over these dates here. He testified the dates in 1937. Have you gone over this, Mr. Wright. I don't know whether it has been during that time.

[fol. 3475] Mr. Wright: Well, I think we can show what else was bought and when by the contracts, when and if they were produced. They are subpoenaed. So far we have only had some of them.

The Court: Testified to the pictures he got in the fall of '37 and also various pictures from other companies:

By Mr. Wright:

Q. You recall how long it was after you made that or sent in that affidavit that is part of Exhibit 862 that George Lynch saw you? I believe you testified yesterday that you saw him in the fall of 1939?

A. Yes, sir.

Q. Was that before or after that letter of yours dated October 23rd that is attached to Exhibit 862 for identification?

A. Is this 862? Is this the letter you are referring to?

Q. No, I refer to your letter.

A. This letter right here. I can't recall. I don't know if it is before or after.

Q. Did you see him in 1940?

A. Yes, I saw him in 1940.

Q. Where did you see him then?

A. Where?

Q. Yes.

[fol. 3476] Mr. McClennen: Just a moment. That has been gone into and was left on cross-examination without any dealing with that subject.

The Court: He said on direct examination the fall of 1939, "I saw George Lynch". That is the direct examination.

Q. Now I — asking him: Did you see him at any time after you sent that affidavit in to the department?

A. Yes, sir.

Q. When was that?

A. That is when I—a few days before I closed the deal of leasing the theatre in 1940, late in 1940.

Q. Late in 1940?

A. Yes, pretty near in December, 1940.

Q. Did you at any time furnish Mr. Lynch with a copy of that affidavit?

A. Yes, but not in 1940.

The Court: What?

A. Not in the year 1940.

By Mr. Wright:

Q. When was that?

A. I don't recall now, but I know I did furnish him with a copy.

Q. Can you give us the approximate time?

A. I can't recall the time.

[fol. 3477] Q. Can you recall it with reference to the time you had this conversation about a deal for the theatre?

A. Maybe I could.

Q. Let's see if you can.

The Court: What are the dates of 81 and 82?

Mr. McClennen: 81 is February 14, 1941. 82 is January 21, 1941.

The Court: All right. That takes care of that.

The Witness: I can't recall exactly the date but I know that I did furnish him with a copy.

By Mr. Wright:

Q. Was it sometime between that first conversation you had with him and the time you made the agreement that is marked in evidence here as Exhibit 82, which is dated January, 1941?

A. It is much before this.

Q. By "this" you are referring to——

A. Much ahead of this.

Q. —Exhibit 82?

A. Yes, ahead of this.

The Court: The affidavit bears a date, doesn't it? Don't you know when you drew it and showed it to Lynch?

The Witness: I can't remember, your Honor, the time I did show it, but I know I did show it.

[fol. 3478] By Mr. Wright:

Q. Then when you showed it to Lynch did you have any conversation with him about the affidavit?

A. Yes.

Q. What was said?

Mr. McClennen: That is objected to, if your Honor please.

The Court: Overruled.

A. That is when the deal didn't go through.

The Court: He asked you what was said when you showed that to Lynch.

The Witness: What he said? At that time he took the affidavit from me and he showed it to somebody else in the office.

Q. Did he say anything to you about it?

A. Not himself.

Q. Did Mr. Myer Schine say anything to you about it?

A. Not that I recall.

Q. Well, when was this now, as nearly as you can recall?

A. It is in '39.

Q. Then what was said about the deal after you gave him the affidavit, copy of the affidavit, what was said?

A. Well, they couldn't do any deal unless I had this affidavit returned to me, the original. We couldn't make any deal unless you could withdraw the affidavit with the Department.

[fol. 3479] The Court: Who said that?

The Witness: I recall Mr. McKay.

By Mr. Wright:

Q. Where was that?

A. I can't exactly tell you the date.

Q. Can you recall the place?

A. Yes.

Q. Where?

A. In Gloversville.

Q. And then did you do anything about withdrawing the affidavit?

A. Yes.

Q. What did you do?

A. I called up Washington, called up Seymour Graber.

Mr. McClennen: Just a moment. I object to his going any further.

The Court: The point is whether he got the affidavit back, not what talk he had. Did you get the affidavit back?

The Witness: No.

Mr. Wright: I will ask you again whether you had any conversation with anybody with the Schine Company before this letter, Exhibit 859, was written to the Department?

A. I don't recall. I know——

[fol. 3480] Mr. McClennen: He should not go further.

The Court: He said he does not recall.

The Witness: I don't recall it.

Q. You don't remember whether you wrote that or dictated it or somebody else did?

A. It is my signature.

The Court: That does not answer the question. Do you recall whether you dictated it or somebody else?

The Witness: No, I don't recall.

Mr. Wright: Have you the letter from the witness to Mr. Grassgreen, I think that is No. 133?

Mr. McClennen: I think you have reference to Defendants' Exhibit 136 for identification.

By Mr. Wright:

Q. With respect to Defendants' Exhibit 136 for identification, that was referred to on cross-examination, did you get any answer to that letter other than this letter which has been marked in evidence as Exhibit 195?

A. I wrote this letter.

Q. Yes. The question was whether you got any answer to it.

A. No, never.

Q. As I understood it, you previously testified you got that Exhibit 195 shortly after that date?

A. Yes.

[fol. 3481] Q. Other than this Exhibit 195 I call your attention to the fact Exhibit 195 states: "Following up your recent letter, I regret to inform you I will not be interested in serving second-run in the city of Malone." Now, did you write any letter before that, other than this one marked for identification Exhibit 136?

A. No, I never wrote any letter before that.

Q. Or afterward, between that date and May 21st?

A. No, that is all, as I recall.

Q. You were asked on cross-examination yesterday by Mr. McClennen: "Well, now, why didn't you kiss his hand back and forth when he made that proposition to you?" Was there any proposition made to you by Mr. Grassgreen?

A. No.

The Court: He didn't say there was a proposition. He said he would have done this.

Mr. Wright: I wanted to make it clear there wasn't any proposition made. Mr. McClennen's question assumed there had been and I did not catch it at the time.

Mr. McClennen: Not at all. The assumption was what he said in the letter was true.

The Court: I am speaking about his oral testimony.

Mr. McClennen: Yes, but what I said about the proposi-[fol. 3482] tion, the context showed was the proposition contained in his letter of May 6th that refers to——

The Court: He hadn't made that proposition, you mean?

Mr. McClennen: He testified that that statement was true of what he said Mr. Grassgreen had proposed to him.

Mr. Wright: I will offer the letter in evidence.

(The letter referred to, previously marked as Defendants' Exhibit 136 for identification was received in evidence and marked Plaintiff's Exhibit 864.)

The Court: Had he made him a proposition, if he had made such a proposition he would have shook his hand, and so forth.

Mr. McClennen: The course of the testimony was before I showed him this letter I asked him if Mr. Grassgreen had made such a proposition as the one stated in the letter and he said he had not.

The Court: Yes.

Mr. McClennen: That he would have kissed his hand if he had.

The Court: Yes.

Mr. McClennen: Then, if your Honor please, I showed him the letter and he then said Mr. Grassgreen did make [fol. 3483] that statement. I was speaikng about the first conversation.

Mr. Wright: The letter is dated May 6, 1937, addressed to 20th Century-Fox Film Corporation, Film Row, Albany, N. Y., attention Mr. Grassgreen. "Dear Sir: Some time ago when in Albany I had a talk with you in regard to second-run policy. You informed me at that time that if I would buy 100 per cent product you would consider the deal and advise me immediately as to your disposition of this matter. I am now open to buy pictures as follows: 100 per cent 1937-1938 product, also shorts and news reels, 25 pictures 1936-1937 product. If this proposition is O.K. please send your representative here at his earliest possible convenience. Hoping to receive a reply by return mail I remain, Yours truly."

Q. Did Mr. Grassgreen at any time offer to sell you 100 per cent of the product, or any other part of the Fox product, for second-run?

[fol. 3484] A. If I recall, he might have approached me before I even opened up the theatre.

Q. I don't think you understood the question. I didn't ask you if you talked to him. I asked you if he made you an offer?

Mr. McClennen: I submit that statement should not be made. There isn't any report he didn't understand.

(Last question read.)

A. No, I never did.

Mr. Wright: That is all.

[fol. 3485] Recross examination.

By Mr. McClennen:

Q. That is, this statement in your letter of May 6th, 1937, in the first paragraph, Exhibit 864, is not true, is it?

A. In one way, there is a difference——

Mr. Wright: If the Court please, the first statement—the statement does not say he made an offer of pictures.

Mr. McClennen: There is nothing the matter with my question, and I think my brother must know it.

The Court: Go ahead. State whether it is true or not.

Mr. McClennen: Read the question so that he will have it clearly before him.

(Question read.)

The Witness: I can't answer that question.

Q. Well, it is true or it is not true.

A. I can't answer it.

Q. Which is it?

A. I can't answer it.

Q. You mean, don't you, that you won't answer it?

A. I can't understand the question, how this is——

Q. Let me see if I can't make it clear to you: You see this statement that you made?

[fol. 3486] A. Yes.

Q. Some time ago?

A. Yes.

Q. "When in Albany I had a talk with you in regard to second-run policy. You informed me at that time that if I would buy 100 per cent product you would consider the deal and advise me immediately as to your disposition in this matter." Did Mr. Grassgreen say to you some time before May 6th, 1937, what you stated in your letter that he said to you?

A. He may have, I don't recall. He may have, but I don't recall.

Q. Well, now, considering your disposition to be truthful, now that you see it in the letter, don't you think that he said just that to you, namely, "You informed me at that time that if I would buy a hundred per cent product you would consider the deal and advise me immediately as to your disposition in this matter"? Don't you, seeing what you said in your own letter, recall that that is just what Mr. Grassgreen said to you?

A. He may, but I don't recall.

Q. Would it be equally true for you to say he "He may not, but I don't recall"?

A. He may not, and I don't recall. I will tell you both ways.

[fol. 3487] The Court: Why would you write that in the letter if it were not so? Why would you write what Mr. Grassgreen said if it were not the fact? Can you explain a reason?

The Witness: Reason is, seven years away from today.

The Court: No, no, why would you write a letter making that statement if it were not accurate?

The Witness: He might have told me something about it, your Honor, that if I do buy a hundred per cent, but he never came through with it.

The Court: You said in this letter he had told you that. Is that true? That is the point.

The Witness: It might have been true, it might not. I don't know, your Honor.

Mr. McClennen: That is all.

The Court: We will take a recess now.

(Whereupon a recess was taken until 2 o'clock P. M.)

[fol. 3488] After recess, 2 o'clock P. M.

Appearances: As before noted.

Leon J. McCarthy, a witness called by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Wright:

Q. Where do you live, Mr. McCarthy?

A. Canandaigua.

Q. What is your occupation?

A. Newspaper man.

Q. With what paper?

A. I was formerly connected with the Daily Messenger in Canandaigua.

Q. In what capacity?

A. Editor.

Q. Were you editor of the Daily Messenger in May, 1938?

A. Yes, sir.

Q. I will show you this page marked for identification as Exhibit 806, and ask you if you recognize that as the page from that paper published on Tuesday, May 10, 1938?

A. That is right.

[fol. 3489] Q. You were the editor on that date?

A. Yes.

Q. You know Mr. William McFarland?

A. Yes.

Q. Who was he?

A. He is the manager of the Playhouse Theatre.

Q. In Canandaigua?

A. Canandaigua.

Q. Calling your attention to the statements in the second and third paragraphs of the first column there, can you tell us whether or not those statements came to you from Mr. McFarland?

A. Yes, that is true.

Mr. Wright: We will offer this exhibit 806 in evidence. The part in which we are particularly interested is the item in the left-hand top corner of the page there, on which the exhibit number appears, and I assume it may be understood that any data in the item which is not based on statements from Mr. McFarland may be disregarded for our purposes?

Mr. McClennen: This is objected to. It would be impossible to know what it is going to be claimed was attrib-[fol. 3490]utable to Mr. McFarland. It has not appeared in evidence what Mr. McFarland said to the witness and we make the objection that what he did say on the present showing is not admissible in evidence.

The Court: Isn't that true? There is nothing yet to show that the statements therein contained were statements made by Mr. McFarland to the witness.

Mr. Wright: (I referred to the second and third paragraphs in the exhibit, which I take it speaks for itself.

The Court: Who is the gentleman who testified with relation to that theatre?

Mr. Wright: This exhibit I believe was identified when Mr. Lauer was on the stand.

Mr. Kallis: Shall I read your Honor the relative portions——

The Court: What is the date of that?

Mr. Kallis: The date of the testimony?

The Court: Yes.

Mr. Kallis: October 11th, at page 2562, is where it really begins.

The Court: What was his name?

Mr. Kallis: Anthony J. Lauer. Mr. De Toto testified [fol. 3491] with respect to the same item last June 7th—6th or 7th.

The Court: June 6th or 7th?

Mr. Wright: This is Mr. Lauer's testimony there.

(Handing testimony to Court).

The Court: Perhaps the witness can state what conversation he had.

Mr. Wright: If the Court please, it is already—read the question and answer there.

(Question and answer read, as follows:

> "Q. Calling your attention to the statements in the second and third paragraphs of the first column there, can you tell us whether or not those statements came to you from Mr. McFarland?
>
> A. Yes, that is true.")

Mr. Wright: It appears on the face of the exhibits.

The Court: The statement came to you? You mean made to you by Mr McFarland?

The Witness: Well, the statement, the announcement—may I see that and I will clarify that?

Mr. Wright: Surely.

(Handing exhibit to witness.)

Mr. McClennen: What Mr. McFarland said is objected to on the usual ground.

[fol. 3492] The Court: His answer was that it came to him. I was trying to find out what he meant by that.

Mr. McClennen: I am saving the major objection.

The Court: We have not come to that yet. We will pass on that later.

The Witness: The second paragraph says "Announcement was made today"——

Mr. McClennen: Just a moment.

The Court: How did it come to you, that is the point? Don't read it. Were you talking to Mr. McFarland?

The Witness: I don't recall at the moment that I talked with him or that I wrote this particular article. My best recollection is that one of the reporters handled it, although I knew at the time that it was coming subject to release later, and as the article itself states——

Mr. McClennen: Just a moment.

The Court: You can't state the contents. I will receive it. Mr. Lauer testified he read this particular article. Objection overruled.

Mr. McClennen: I again urge upon your Honor that the last statement of the witness does not even connect this [fol. 3493] with Mr. McFarland. He is not sure he talked with Mr. McFarland.

The Court: This is the newspaper which Mr. Lauer testified that he read. That is his testimony, that he read that particular column.

Mr. McClennen: He did testify to that effect when your Honor excluded for the time being, until it was connected in some way. Now it is not connected in any way. Just a reversal of your Honor's ruling on the subject.

The Court: It is connected with the publication.

Mr. McClennen: Connected with anybody connected with the defendants.

The Court: By his own testimony, he said that was published in such and such a paper.

Mr. McClennen: What was under consideration was, when your Honor excluded it, not that that was not the newspaper and not that it did not appear in the newspaper, but that it was not attributable to the defendants in any way. That has not changed. This witness does not recall that he even talked with Mr. McFarland.

The Court: Very true. Therefore there is no evidence [fol. 3494] that Mr. McFarland ever said any of the things that appear in the newspaper.

The Court: My thought was this: Was an article written Mr. Lauer upon which he acted, or failed to act, whichever it was?

Mr. McClennen: That was the situation at the time your Honor excluded it until it is shown it was connected in any way with us, and it is not shown.

The Court: Objection overruled. Received in evidence.

(The newspaper article, previously marked as Plaintiff's Exhibit 806 for identification, was received in evidence.)

The Court: Is that all?

Mr. Wright: That is all.

Cross-examination.

By Mr. McClennen:

Q. Did you personally have any talk with Mr. McFarland prior to this issue of May 10, 1938, Plaintiff's Exhibit 806?

A. Yes, I had talked with Mr. McFarland in regard to this purchase as mentioned in that article, but I don't recall whether it was before or after, however.

[fol. 3495] Q. You don't recall whether it was before or after this article was published?

A. After that.

Q. At the time this article was published, Plaintiff's Exhibit 806, the first two paragraphs, had Mr. McFarland told you any of the things set out in the first two paragraphs, that is, before this was published?

A. As I recall it, I met Mr. McFarland one day on the street.

Q. This was before this was published?

A. Yes. There had been a rumor——

Mr. McClennen: May that be stricken out, if your Honor please?

The Court: He objects to the use of the word "rumor." You met Mr. McFarland?

The Witness: I asked Mr. McFarland if the Schine people were planning to construct a new theatre and he said "Yes," that there were some plans under way and that he expected an announcement would be made soon, and as this article shows——

Q. Never mind. Is that all he said to you?
A. Yes, in substance, that is it.
Q. That is all that occurred before this newspaper article went out?
[fol. 3496] A. As I recall it, yes.
Q. And you did not write the article?
A. I don't think I did, sir.
Q. Do you recall when the new theatre in Canandaigua was completed?
A. The new theatre?
Q. Yes. There has been a theatre built in Canandaigua since May 10, 1938?
A. Referring to the Lake Theatre?
Q. I mean the Lake Theatre.
A. Yes, I remember it was constructed. I can't give you any dates. I don't recall that.
Q. Was it soon after this article?
A. I couldn't tell you that, sir, without looking it up.

Mr. McClennen: That is all.
Mr. Wright: That is all.
Mr. McClennen: If your Honor please, merely to reserve our rights, I move that the newspaper article be stricken out.
The Court: Denied.

[fol. 3497] Robert I. Pierce a witness called by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Wright:

Q. Where do you live, Mr. Pierce?
A. Ilion, New York.
Q. What is your occupation?
A. I am now in the retail shoe business.
Q. How long have you been so engaged?
A. Five years.

Q. You were formerly in the theatre business at Ilion?

A. Yes, sir.

Q. Connected with what theatre?

A. Various theatres, since 1915.

Q. All in Ilion?

A. Yes, sir.

Q. What was the name of the last one?

A. The last one was the Capitol Theatre.

Q. That was operated by what company?

A. Young & Whitney, Inc.

Q. What position did you hold with the corporation?

A. Stockholder, Secretary-Treasurer and Manager.

Q. That Capitol Theatre there was built when?

[fol. 3498] A. In 1925.

Q. By whom?

A. Yonng & Whitney, Inc.

Q. In 1925, when the Young & Whitney Company built the Capitol, what other theatres were there in Ilion?

A. The Old Ilion Opera House, Big Ben Theatre, and the Temple Theatre.

Q. Who owned those theatres?

A. The Ilion Opera House and Big Ben Theatre were owned by Young & Whitney. The Temple Theatre was owned by the United Odd Fellows Association.

Q. Then at that time was there a theatre operating in Herkimer?

A. Yes, there were two theatres, the Star Theatre and Richmond Theatre. No, at that time the new theatre, it was called the Gem, which is now the Liberty.

Q. And what other?

A. The Richmond.

Q. Do you know who operated those theatres?

A. The new theatre was operated by a company of Moyer, Gloo & Irvin. The Richmond Theatre was operated by Schultz & Letson.

Q. Where are the towns of Herkimer and Ilion, with reference to each other?

A. Herkimer is three miles east of Ilion.

[fol. 3499] Q. And where are they with reference to Utica?

A. Ilion is ten miles east of Utica. Herkimer is three miles further east.

Q. Where are the town- of Herkimer and Ilion with reference to Little Falls?

A. Herkimer is ten miles west of Little Falls and Ilion is thirteen miles west of Little Falls.

Q. When you built the Capitol Theatre, tell us what kind of theatre it was with reference to size and appointments?

A. Why, I think it was classed at that time as one of the magnificent theatres for a town of its size in the country.

Q. How big was it?

A. 1300 seats, approximately.

Q. All on one floor?

A. No, 1100 seats on the ground floor and about 200 in the balcony.

Q. And do you recall what its approximate cost was?

A. Around 300 and some thousand dollars.

Q. During the years 1925 through 1928 what sort of a picture policy was it operated on?

A. You mean in relationship to Herkimer?

Q. Well, first, with reference to the pictures.

A. That was really before there was any protection [fol. 3500] granted either way. There was open buying. We bought some ahead of Herkimer. Herkimer bought some ahead of us. There was no protection from Utica.

Q. What, if any, change occurred in 1928?

A. 1928 the Herkimer house and the Little Falls house was taken over by the Schine circuit, approximately at that time.

[fol. 3501] Q. Then they operated the houses in Herkimer and Little Falls how long, if you remember?

A. They operated until Fox took them over. I think it was 1934. Now, I am not positive of that date.

Q. You continued to operate the Capitol Theatre at Ilion during the same period until Fox——

A. Yes, sir.

Q. —took that theatre over, too?

A. Yes, sir.

Q. Do you recall that year might have been 1930?

The Court: You said "theatre, too." What theatre are you referring to, taken over by Fox, the one in Herkimer?

Mr. Wright: All three.

The Witness: Those dates are quite hazy. It might have been 1930 or 1931. It was along in there.

The Court: What did they take over then?

The Witness: The Fox theatres took over Herkimer, Ilion and Little Falls.

The Court: You said Schine took them over first and then Fox?

The Witness: Yes, I think Schine took them in 1928.

By Mr. Wright:

Q. Then during the period that Schine was operating in Herkimer and Little Falls, when you were operating in [fol. 3502] Ilion——

Mr. McClennen: You are now going to what period, the 1928 period?

Mr. Wright: The question I asked him, I think, speaks for itself. Read the question.

(Last question read.)

Mr. McClennen: It appears there was more than one such period.

Q. With specific reference to 1928 through 1930, or whenever the deal with Fox was made. During that time, when did you play pictures at Ilion, with reference to when they played in Herkimer and Little Falls?

A. Put that question again, please.

(Question read.)

A. Behind Herkimer.

Q. And Little Falls?

A. Yes, sir.

Q. Then you took your Capitol back from the Fox Company, did you?

A. Yes, sir.

Q. Do you remember about when that was?

A. They operated it two years. They operated approximately two years. I couldn't give you the definite date——

Q. When you got it back?

A. Two years from the time——

[fol. 3503] Mr. Rogers: A little louder.

The Witness: We took it back approximately two years. I think they operated it close to two years.

Q. By "they" you are referring to Fox Metropolitan?

A. Fox Metropolitan Theatres, that is right.

Q. That would be in 1932 or 1933 that you got it back?

A. January, whatever year it was.

Q. Then do you know whether or not Schine resumed operation of the houses at Herkimer and Little Falls?

A. It was some short time afterwards. I think we got possession of our house ahead of Mr. Schine. I think it was several months.

Mr. Wright: I will ask to have these contracts marked with the next Plaintiff's Exhibit numbers for identification.

Mr. McClennen: Are those for identification only?

Mr. Wright: These are being marked for identification.

(Thereupon six contracts referred to were marked as Plaintiff's Exhibits Nos. 865 through 870 for identification.)

Mr. Wright: Would you——

Mr. McClennen: Before you get to those, would you let us have these?

Mr. Wright: I will hand you these while he is marking [fol. 3504] the others. Mark these 871 and 872, respectively.

(Thereupon two agreements referred to were marked as Plaintiff's Exhibits Nos. 871 and 872 for identification.)

Q. I show you these documents marked——

Mr. McClennen: Before you go on, would you let us know what they are, so we can follow them? 865 is a Paramount, August 20, 1935, with Young & Whitney.

866 is a Paramount unsigned. I don't see the date at the moment.

867, Columbia. I don't see the date.

868, Warner, October 17, 1935, approval date.

869, United Artists, sometime in—February 1st, 1936.

Mr. Wright: Those are all marked as one exhibit. Those United Artists contracts are all marked as one exhibit.

Mr. McClennen: And there are three of the same date. 870 is an R.K.O., January 20, 1936.

By Mr. Wright:

Q. I show you this memorandum of agreement marked as Exhibit 871 for identification, which is dated December 10th, [fol. 3505] 1936, and ask you if you recognize the signatures on that agreement?

A. Yes, sir, I do.

Q. The signature on behalf of Young & Whitney, is that Mr.——

A. Frank C. Whitney.

Q. On behalf of the Perry Theatre Corporation?

A. John A. May.

Q. Was that document, Exhibit 871 for identification, made on or about the date it bears?

A. It was made on that date.

Q. Then I will show you this Exhibit 872 for identification, and ask you if you recognize the signatures on that?

A. Yes.

Q. Those are——

A. *Frank C. Whitney*, and *Robert I. Pierce.*

Q. The second is your signature?

A. Yes.

Mr. Rogers: Will the witness please speak up? We can't hear him here.

Q. Who signed that on behalf of the Perry Theatre Corporation?

A. I think it is Schussman or something, I can't make it out.

Q. Selzmer?

A. That is right, Selzmer.

[fol. 3506] Q. This agreement dated May 24, 1937, marked as Plaintiff's Exhibit 872 for identification, that was executed on that date, was it?

A. Right, yes, sir.

Mr. Wright: We offer 871 and 872 in evidence.

Mr. McClennen: This 872 ought to be fastened together. It is loose, three pages of it.

(Thereupon Plaintiff's Exhibits 871 and 872, previously marked for identification, were received in evidence.)

The Court: Are there any questions raised about these other exhibits?

Mr. McClennen: There is no objection.

The Court: I mean the others as well. You mentioned a group of them.

Mr. McClennen: These others have not been offered yet.

The Court: I did not know whether there was an objection or not.

Mr. McClennen: I don't know whether they are going to be offered.

The Court: It has not been offered. I assume they will be. You can look them over.

Mr. Wright: Yes, they will be offered.

Mr. McClennen: They will be offered as part of this witness' testimony?

[fol. 3507] Mr. Wright: Yes, I was going to ask him a question as to what they were, and then offer them—where they came from.

Mr. McClennen: There is no objection to them if they will be offered.

The Court: If it is by consent, you can state what they are.

Q. As I understand it, these contracts that have been marked as exhibits for identification 865 through 870, inclusive, are all of the contracts that you brought with you which relate to feature pictures and were made by you during the period from 1932 to 1936?

A. That is all I had in my possession, yes, sir.

The Court: 1932 to 1936, you say?

Mr. Wright: Yes.

Mr. McClennen: It is suggested to me, if your Honor please, as to Exhibit 871 and Exhibit 872, that in what I have just stated, we are not waiving our general objection.

The Court: Oh, no.

Mr. McClennen: That these are purely local transactions, and they are not admissible. We desire to have that objection apply to these as well.

The Court: Received.

[fol. 3508] (Thereupon contracts previously marked as Plaintiff's Exhibits 865 through 870, inclusive, for identification were received in evidence.)

Mr. McClennen: I notice that Exhibit 872 refers to an agreement executed concurrently therewith, which is not with the paper. The agreement 871 is an agreement five months earlier in date, so that the whole of the May 24th, 1937 transaction is not shown by Exhibit 872.

[fol. 3509] Q. Mr. Pierce, was there another agreement executed on the 27th when Exhibit 872 was executed?

A. This agreement was made previous to that.

Q. Wait a minute. The date on this 871 is December 10, 1936?

A. That is right.

Q. The question I asked you was whether when either one of these agreements were made, 871 or 872, were there any other agreements made on those dates?

A. I don't think there was. I don't remember.

Q. Then do you remember when you turned over possession of the Capitol Theatre to Schine?

A. September 1, 1937.

Q. September 1, 1937. Were there some more papers exchanged on that date? Just possession of the theatre?

A. Just possession. Oh, yes, there were papers. No, I wouldn't say there was.

Q. As far as you know, the only agreements you made——

A. This was the agreement which was fulfilled on September 1, 1937.

Q. When you say "this", you are referring to 871 and 872?

A. This one here, the purchase.

Q. After this agreement, 871, was made, did you have anything to do with buying a film for the theatre?

A. No, I didn't buy any further film.

Q. That is, after December, 1936?

[fol. 3510] A. After this agreement was signed I didn't buy any further film since Schine took it over.

Q. Prior to December, 1936, what, if any, connection did you have with the buying of the film for the Capitol Theatre?

A. I done all the buying.

Q. That is, during the period from the time you took it back from Fox until you sold it to Schine?

A. That is right.

Q. I call your attention to the provisions in this Exhibit 870, 865, 866 and 868, the provision, "Ten days after Herkimer." Do you recall whether you had any conversation with any of the exchange managers about that [illegible]vision?

A. About the clearance situation on this p[illegible]icular contract?

Q. On the contracts that you made with, let us say with Warner Bros., who did you deal with?

A. Personally with Ray Smith.

Q. Who was he?

A. He was a branch manager.

Q. When you dealt with Smith did you have any conversation with him with respect to where you were with reference to Herkimer?

A. I asked for reduction of clearance.

Q. Just answer yes or no to the conversation.

[fol. 3511] A. Yes, I did.

Q. Do you recall when you had that conversation with him or those conversations with him?

A. It was when he was in my office negotiating for the contracts.

Q. That was more than once?

A. Every time. Every year when I negotiated contracts.

Q. During what years?

A. Every year on the purchase.

Q. 1933-34?

A. '33, '34, '35.

Q. What was said when you talked to him in your office?

Mr. McClennen: That is objected to, three different conversations should not be included in one question.

The Court: The first one you recall.

Mr. McClennen: We object to the conversation anyway, the contract tells what contract they made.

The Court: Sustained. State the talks separately and as near as you can the time.

Q. Can you recall any particular one as distinguished from another?

A. This contract, for instance, here.

Q. By "this one here," you are referring to this Exhibit 868 of Warner's?

[fol. 3512] A. Yes.

Q. What is the date of that?

Mr. Wright: That is dated October 7, 1935.

Q. At the time you made that contract do you recall whether you had any conversation with Mr. Smith about the clearance?

A. Yes, sir.

Q. Where was that?

A. In my office in Ilion.

Q. At Ilion?

A. Yes.

Q. What was said then?

Mr. McClennen: Same objection.

The Court: Overruled.

A. Part had been sold at Herkimer and clearance had been given.

Q. Was anything said by you in reference to the clearance?

A. I was told it was out of their hands.

Q. Trying to get at what you said, if anything.

A. There wasn't much I could say, except ask for reduction on the clearance, which was not granted.

Q. Had you prior to that time asked Mr. Smith for a reduction in that Herkimer clearance?

A. The previous year.

Q. Do you recall what it was?

[fol. 3513] A. No, I don't.

Q. Whe-ver you negotiated the contract?

A. Whenever I negotiated the contract.

Q. What was said then?

Mr. McClennen: Objected to.

A. Practically the same thing.

The Court: Was that about the same time as the other contract?

The Witness: Yes.

The Court: State the conversation.

Mr. Wright: As clearly as you can recall.

A. The product had already been sold in Herkimer. I couldn't negotiate a different contract.

The Court: What did you say to him on that subject?

The Witness: That the contract—clearance had been set up at Herkimer. I could buy the pictures that way. I asked him for clearance but he couldn't give it to me. I could ask for reduction but he couldn't grant it.

The Court: What did he say?

The Witness: Reduction in clearance?

The Court: Reduction in clearance. Why did he say?

The Witness: The pictures had already been sold to Herkimer with a clearance.

Q. Did you discuss with him at any time playing pictures [fol. 3514] at Ilion with or ahead of Herkimer?

A. I discussed it with him but it was useless because they didn't sell me my product until after they had sold Herkimer.

Q. Did you have any discussion with him as to the relative character of the theatres at Herkimer and your theatre?

Mr. McClennen: That is objected to.

The Court: The question is the conversation was had. It is leading.

Mr. Wright: Strike it out.

Q. Now did the Schine theatres at Herkimer compare with your theatre with reference to size and age and general construction?

Mr. McClennen: That, if your Honor please, has been ruled out time and again. He can describe each of the theatres, not the comparison.

The Court: That is very true. I don't know how he can base the question of the priorities here on the size of the theatre.

Mr. McClennen: The objection I am making——

The Court: I am agreeing with you.

By Mr. Wright:

Q. You know what the age of the Schine theatre in Herkimer was?

A. It was two years older than the Capitol.

[fol. 3515] Q. What was its size, about?

A. Its size was, I think, around 1100.

Q. Do you know how many of those seats were in the balcony?

A. I think there were more seats—close to 600 seats—more seats in the balcony.

Q. What is the general character of the population of Ilion?

A. Ilion has a little different type population. It doesn't have quite as many foreign extraction as Herkimer. It is practically all American mechanics, where Herkimer, I think, has a large portion of foreign population.

Q. What were the admission prices at the Schine theatre at Herkimer and your Capitol Theatre at Ilion?

A. The same.

Mr. McClennen: At what time?

Q. During the period 1933 through 1936.

A. 10, 20 and 30 cents, same both places.

Q. 10 for what?

A. 10 for children, 20 balcony, and 30 for loges and lower floor.

Q. Who did you deal with at Paramount?

A. Eastman.

Q. Where did you see him?

A. In his office.

Q. Whereabouts?

[fol. 3516] A. Albany.

Q. Did you have any discussion with him there as to when you could play films with reference to when they played in Herkimer?

A. I was not allowed to buy them until they had already been sold to Herkimer.

Mr. McClennen: I ask to have that stricken out.

The Court: It is not responsive.

Q. You will have to state, as nearly as you can, just what was said, what you had to say and what he had to say.

Mr. McClennen: General objection.

The Court: Approximately the time when it was said.

A. Asking him for reduction of protection, I was told the same thing, that they had already been sold with protection in Herkimer.

Q. What occurred——

A. All the major companies.

Mr. McClennen: May that be stricken out, if your Honor please?

The Court: Not responsive. Strike it out.

Q. That occurred with reference to Paramount on how many occasions would you say during the period 1933 through 1936?

A. Every year.

Q. Every year when you made a season deal?

A. There was one year that we were led to believe that [fol. 3517] we might purchase Paramount.

Q. Do you know what year that was?

A. I don't know off-hand. I think it was 1933 or 1934.

Q. What was the conversation you had with them that year?

A. That they had closed with Schine at that time.

Q. Do you remember what time of the year that was?

A. No, I do not.

Q. What else was said?

A. That was all.

Mr. McClennen: Objection.

A. That they had closed with Schine and I might buy the pictures clear.

Q. Clear of what?

A. Protection.

Q. Clear of Herkimer protection. Were you given a chance to buy them that way?

A. No, I was not. Eventually Schine bought the pictures with protection.

Q. Who did you do business with at RKO?

A. C. R. Halligan.

Q. He was what?

A. Branch Manager.

Q. At Albany?

A. Yes.

Q. Where did you see him when you talked to him about a deal?

[fol. 3518] A. At my office in Ilion.

Q. Did you have any conversation with him about playing pictures clear of Herkimer?

A. Yes, sir.

Q. When did you talk to him about it?

A. At the time I negotiated the contract.

Q. You mean each year?

A. Each year, yes.

Q. That is during the period 1933 through 1936?

A. Yes, sir.

Q. What was said then?

Mr. McClennen: The same objection.

The Court: Overruled.

A. The pictures had already been sold in Herkimer, with existing protection.

Q. What was said by you?

A. There was nothing I could say. I either had to buy them or let them go. Didn't have any choice.

Q. Were you doing business with Fox then?

A. Yes, sir.

Q. Who did you make your Fox deals with?

A. Made those with a salesman. I think his name was Keith Goldsmith.

Q. Did you have any talks with Goldsmith about playing clear of Herkimer?

[fol. 3519] A. I did.

Q. When did you talk to him about it?

A. The day we signed the contracts.

Q. You mean each year that you made a season deal?

A. Yes.

Q. What was said then?

Mr. McClennen: Same objection.

The Court: The same ruling.

A. Pictures had already been sold at Herkimer, existing protection was granted.

Mr. Wright: I will ask to have this marked with the next plaintiff's identification number.

(The letter referred to was marked as Plaintiff's Exhibit 873 for identification.)

[fol. 3520] Q. I will show you this exhibit 873 for identification and ask if you recognize the signature on there?

A. Yes, Keith Goldsmith, Salesman for the Fox Film Corporation.

Q. Was that signed and given to you on or about the date it bears?

A. It was a rider attached to our contracts.

The Court: Contract of that year?

The Witness: That year. Mr. Schine has the contracts now.

Mr. Wright: I will offer Plaintiff's Exhibit 873 in evidence.

Mr. McClennen: This is objected to, if your Honor please, because it is part of the contract on its face, and the contract is not attached to it, so that it is not a whole document.

The Court: Should it not be included with the contract exhibit?

Mr. McClennen: The contract exhibit has not been offered.

Mr. Wright: He hasn't got the contract. He said these were all the contracts that were marked, for feature pictures.

The Court: Let me see it.

Mr. McClennen: It is also evident that it is an unauthorized statement, agreement, not signed by any authorized [fol. 3521] representative of the company.

The Court: Overruled.

(Thereupon Plaintiff's Exhibit No. 873 previously marked for identification was received in evidence.)

Q. After you got that Exhibit 873, do you recall whether any of the other major companies sold you any features with less than ten days protection in favor of Herkimer?

A. No, it was ten days. It states ten days there, written "ten days" on the contracts.

Q. Whom did you do business with at Metro?

A. Ralph Pielow.

Q. Where did you see him?

A. I think the last contract was signed in my office.

Q. At Ilion?

A. Ilion.

Q. Did you ever discuss with him whether or not you could play films at the Capitol clear of Herkimer?

A. I did.

Q. What did he tell you?

Mr. McClennen: Same objection.

The Witness: Same thing, pictures had already been sold to Herkimer with existing clearance.

Q. How often were you told that?

A. Every time I negotiated for new contracts.

[fol. 3522] Q. That was once a year?

A. Once a year.

Q. Do you recall whom you dealt with at Universal?

A. I can't place the name. The last year it was Nate someone, but I can't recall the name. Nate Sauber, I think.

Q. Where did you see him?

A. In his office.

Q. Where?

A. At Albany.

Q. Did you have any talk with him about playing pictures clear of Herkimer?

A. I did.

Q. What did he tell you?

A. Same thing.

Mr. McClennen: Same objection.

The Witness: Pictures had already been sold at Herkimer.

The Court: When was that?

The Witness: The last contracts that I signed.

The Court: What is the date of that, 1936?

The Witness: 1936.

Mr. Rogers: Will the witness please raise his voice? We can scarcely hear him.

Q. Did you talk to him about it before then?

A. I talked to him every time we signed a contract.

Q. That was how often?

[fol. 3523] A. Yearly.

Q. What was said in the prior years?

Mr. McClennen: Same objection.

The Court: The same man each year?

The Witness: No, no. That year. The previous year I think it was a fellow by the name of Dana in the office.

Q. Do you remember the conversation?

A. I am kind of vague on Universal, because they changed managers so often.

Q. Do you remember what conversation you had with Dana?

Mr. McClennen: Same objection.

The Court: Overruled.

The Witness: Practically the same, asked for reduction in clearance.

Q. You said you asked for reduction in clearance. What did he say?

A. Pictures had been sold to Herkimer with existing clearance.

Q. United Artists, whom did you deal with?

A. Salesman.

Q. Do you remember his name?

A. I don't remember his name.

Q. I will show you this Exhibit 869, United Artists contract, and ask if that refreshes your recollection?

[fol. 3524] A. Herman. The last name is Herman.

Q. Where did you see him?

A. At my office.

Q. Did you have a conversation with him about playing clear of Herkimer?

A. No, I don't remember in that particular case that I did, United Artists. I knew the pictures had already been sold to Herkimer.

Q. Do you remember having any conversation with anybody from United Artists about that clearance?

A. No.

The Court: Did Schine have any theatres in Ilion?

The Witness: He has now, yes.

The Court: At that time?

The Witness: No, he did not.

Mr. Wright: I think that is all, except these exhibits. I suppose it may be understood that they be read in evidence.

The Court: Yes, they are in evidence.

Mr. McClennen: That is, we understand that Exhibits 865 to 870 are now in evidence?

The Court: Is there any point you make about those exhibits?

Mr. Wright: What is that?

The Court: Is there any point you make on any of these [fol. 3525] contracts?

Mr. Wright: They show the amount of purchase price and the one agreement, I believe, is an agreement not to compete for a period of ten years on behalf of Mr. Whitney and Mr. Pierce in any similar business in the Village of Ilion or within a radius of 35 miles. ~~I have~~ just been informed by Mr. Kallis in response to a subpoena served on the distributors they have produced contracts for this same period. I am going to offer——

Mr. McClennen: Before you get to new exhibits, while we are dealing with the introduction of 865 to 870, it is called to my attention that 870 is a short.

Mr. Wright: That is attached to a feature contract.

Mr. McClennen: The paper marked Plaintiff's Exhibit 870——

Mr. Wright: If you object, I will be glad to remove it and have the stamp placed on the feature contract.

Mr. McClennen: That will simplify it.

Mr. Wright: Put this 870 stamp on here.

(Handing to reporter.)

Mr. McClennen: And cross it off the other one, so that we do not have confusion.

[fol. 3526] The Court: These are the same contracts.

Mr. Wright: The contracts I introduced in evidence were those that the witness produced. In pursuance to a subpoena served on the distributors, they have produced some, and I think before offering them I had better compare the ones he produced so that there are no duplications. I will put in those which are not duplicates of what are already in evidence. You may cross-examine.

Mr. McClennen If later contracts are going to be put in as part of this witness' testimony, they ought to be put in before he leaves the stand. I have no objection to going ahead with the cross-examination now.

Mr. Wright: That is what I intended. I just wanted to compare these with the ones produced by the distributors, so that we can eliminate any duplications.

Mr. McClennen: I was merely calling attention to the fact that they ought to go in as part of this witness' testimony, while he is on the stand.

The Court: They will.

Mr. Wright: That is right.

Mr. McClennen: Then we are in accord.

[fol. 3527] Cross-examination.

By Mr. McClennen:

Q. I want to show you these exhibits and see if you have not, I think inadvertently, made an error in one of your statements. You notice Exhibit 871 is an agreement of December 10, 1936, calling for a subsequent sale of the properties therein mentioned. If you will speak out loud, because we all want to hear.

A. Yes.

Q. Now, pursuant to that agreement, among other things, as a part of that sale, you executed this agreement, Plaintiff's Exhibit 872, of May 24, 1937?

A. That is right.

Q. And in that you observed that there is a reference to a sale and conveyance by agreement executed concurrently herewith. Now, you notice that in Exhibit 871, there was no conveyance. Is it not a fact that on May 24th, 1937, you did concurrently with the execution of 872, execute a conveyance?

A. No, I don't recollect.

Q. Well, now, I show you Exhibit for Identification number, Plaintiff's Exhibit 85 for identification, an agreement dated May 24th, 1937. This is a photostat, and do you recognize the signature of Frank C. Whitney on there for [fol. 3528] Young & Whitney, Incorporated?

A. Yes.

Q. As you see that, it enables you to state, does it not, that at the time of executing Exhibit 872, May 24th, 1937, Young & Whitney, Inc., did also execute a conveyance?

A. Yes. It was such a long period, I have forgotten some of the papers.

Q. I was sure it was just an inadvertence on your part. Without going into the details of the instrument, that was a conveyance of the whole ownership of the Capitol Theatre in Ilion, and a transfer of a lease of the Temple Theatre in Ilion and a transfer of the old Opera House property?

A. That is right.

Q. Those properties in Ilion had all been in the ownership and control of Young & Whitney, Inc., at least since the early part of 1933?

A. That is right.

Q. And there was no Schine interest in Ilion at that time?

A. No, there was not.

Q. And there was but one theatre operating company in Ilion at that time, namely——

A. Young & Whitney.

Q. Young & Whitney, Inc.?

[fol. 3529] A. That is right.

Q. How far away was Herkimer?

A. Three miles.

Q. From 1929 to something like 1933, the Fox Metropolitan operated the Ilion Theatre?

A. Yes.

Q. And the Herkimer Theatre?

A. That is right.

Q. And in those days the Herkimer Theatre had a clearance of 14 days over Ilion?

A. That is right.

Q. When you or the Young & Whitney Company made their first contracts in 1933 for product after that company had reacquired that Ilion operation, you bought subject to a 14-day clearance in favor of Herkimer?

A. No, it was reduced to ten days, I think, in some instances.

Q. Well, now, aren't you thinking of a later date, and before I ask you to answer that question, I show you some agreements which I will ask to have marked for identification.

The Court: The agreement was marked?

Mr. McClennen: I see that I haven't here all that I want in this connection. May I have from Plaintiff's counsel the [fol. 3530] agreement of January 24th, 1933, the Paramount contract with Young & Whitney, Inc., for the year 1932-1933 product?

Mr. Wright: They are all here together. I think that is the top one. I was going to put them all in a folder, and if we had a folder, it would not be necessary to mark these contracts separately.

Mr. McClennen: I think I should want these with a separate number for the examination of this witness.

Mr. Wright: All right.

Mr. McClennen: May I also have the contract of March, 1933, of R.K.O. with Young & Whitney for 30 features of the 1932-1933 product for the Capitol?

Mr. Wright: Here is March 2nd, 1933, that is the group.

(Handing documents to Mr. McClennen.)

Mr. McClennen: And the Warner First National contract with Young & Whitney for the 1932-1933 product.

(Document referred to produced.)

Mr. McClennen: Perhaps instead of having them marked, in view of the suggestion that plaintiff desires to keep them together in folders, will you look at those that I have mentioned and recall that there was a clearance of 14 days [fol. 3531] in favor of Herkimer in the contract that you made for Ilion, that is, the Young & Whitney, Inc., made for Ilion in January, 1933. That refreshes your recollection?

The Witness: Yes, sir.

Q. That you did buy subject to 14 days clearance?

A. Yes.

Q. And would that enable you to say that in all those earlier contracts, while Fox Metropolitan was still operating the Herkimer Theatre, the Ilion theatres of Young & Whitney, Inc., were subject to a 14-day clearance in favor of Herkimer?

A. That is when Young & Whitney operated it?

Q. Yes.

A. Yes.

Q. And when Fox Metropolitan was still operating the Herkimer Theatre?

A. I presume it was the same clearance.

Q. Now, thereafter the Herkimer Theatre came into the hands for operation of the Schine organization?

A. That is right.

Q. And the clearance was reduced to ten days in favor of Herkimer over Ilion?

A. When you say—it was not returned immediately.

Q. But not long after the Schine organization took over?

[fol. 3532] A. That is right.

Q. From that time on the Schine organization did not receive as much clearance in favor of Herkimer as had been in operation under the Fox Metropolitan operation of Herkimer?

A. That is right.

Q. The means of communication between Herkimer and Ilion is over good roads, and they are short?

A. Yes.

Q. And there are people living within a mile and a half of your theatre in Ilion as it was, and a mile and a half of the theatre in Herkimer?

A. That is right.

Q. It was clearly a commercial benefit to Herkimer to have clearance over Ilion?

A. That is right.

Q. Would tend to make the patronage of the Herkimer Theatre larger than it would be if it did not have that clearance?

A. That is right.

Q. Herkimer is the shopping town of the area, is it?

A. Why, it is the county seat. I presume it would be classed as a shopping town, that is right.

Q. It is the local center of that general vicinity?

A. Yes.

[fol. 3533] Mr. Wright: I want to put the contracts in. I will have them marked by folders.

Mr. McClennen: Are you having them marked for identification?

Mr. Wright: I am offering them.

Mr. McClennen: Are you offering them in a group?

Mr. Wright: By distributors. I have season contracts for each distributor, that were produced by the distributors, in a separate folder, and I am asking to have each folder marked.

The Court: You mean each company's contracts in one folder, for several years?

Mr. Wright: Yes, that is right.

Mr. McClennen: Then may the contents of the folder, each paper, have a separate letter, so that we will know what is in the folder, and a description in the stenographer's record of the date and parties to the contract?

The Court: Yes.

Mr. McClennen: Then if we find, in this wholesale introduction, that some things got in that ought not to be in we can call attention to it and have it taken out, if it should be.

The Court: Yes.

[fol. 3534] The Court: Surely.

(The five folders referred to, containing various contracts were received in evidence and marked Plaintiff's Exhibits 874, 875, 876, 877 and 878 in evidence, and each separate paper in each folder was marked commencing with "A", etc.)

(See last page of today's transcript for descriptive list.)

By Mr. Wright:

Q. I will show you these Fox contracts that are in evidence in this folder marked Plaintiff's Exhibit 877, and call your attention to the first four of them, which contain the words "Usual clearance". Can you say what that meant in those contracts?

A. "Usual clearance" meant the established clearance behind Utica and Herkimer.

Q. Established how?

A. By the Clearance Board in Albany.

Q. What was the Clearance Board?

A. I don't know. Members of the exchanges who arrived at the clearance, evidently.

Q. Then do you recall what the usual clearance was during this period?

A. Fourteen days, thirteen behind Utica, fourteen behind Herkimer.

The Court: To save time we will take a recess for five minutes.

(Short recess.)

[fol. 3535] By Mr. Wright:

Q. Mr. Pierce, did I understand you to testify on cross examination that when Fox had the theatres at Ilion and Herkimer——

A. When Fox had the Ilion theatre?

Q. Yes.

A. I know they did for a while.

Q. What the arrangements were; did you have anything to do with the contracts that Fox made?

A. Not the contracts. I managed it for Fox. I knew that the same condition existed.

Q. The name of the operating corporation was what, the Central New York Theatres, Inc.?

A. Not in Ilion. That was in Herkimer.

Q. Operated the Herkimer theatre. Did you ever see contract made by the Central New York Theatres, Inc., which simply sold the pictures first-run at the Liberty or Capitol at Herkimer or Ilion?

A. No, I never did.

Q. Did you see the contracts that were made?

A. No, I never did.

Q. You had nothing to do with making the contracts?

A. No, not under the Fox operation.

Q. You don't know what the clearance provisions, if any, were that prevailed between Herkimer and Ilion during the [fol. 3536] Fox operation?

A. I do not.

Q. And those would appear in whatever contracts Fox made?

A. That is right.

The Court: Operating the theatre, wouldn't you know the time? You operated the Ilion theatre while Fox was the owner of both. You would know?

The Witness: Yes, I would know. There was still a clearance existing. I managed it for seven months.

The Court: That clearance was fourteen or ten days?

The Witness: It was fourteen days when it started. I don't know how it finished up.

By Mr. Wright:

Q. What seven months are you talking about?

A. The first seven months.

Q. The first seven months that Fox took over?

A. Yes.

Q. Of the Central New York Theatres, Inc., operation?

A. That is right.

Q. Then you ceased to become manager and that would be the 1931-32 season?

A. That is right?

Q. Did you know what the clearance provisions of the contracts were at that time with Fox, that were negotiated? [fol. 3537] A. I did not. The bookings were all made in Syracuse.

Q. I understood you to tell the Court that you knew that there was a 14-day clearance continued at that time; is that correct?

A. My intention was not to say that.

Q. The fact is you don't know?

A. I had no access to the contracts whatever. I did not know what the bookings were that were arranged in the booking office in Syracuse.

Mr. Wright: That is all.

Recross-examination.

By Mr. McClennen:

Q. You did know when you got back the Ilion theatres, and the Fox Metropolitan was still operating the Herkimer Theatre, that the Herkimer theatre then at the beginning of 1933 had 14-days clearance?

A. Yes, I was aware of that as soon as I started operation.

Q. And you found that to be what was the then existing clearance?

A. That is right.

Q. And that is the clearance referred to in this Paramount contract, Plaintiff's Exhibit 878-A, dated January, 1933?

A. That is right.

Mr. Wright: If the Court please, I think the contract speaks for itself. I don't understand what he means by [fol. 3538] that. The contract states what the clearance was for that year.

Mr. McClennen: Yes, I have brought out the fact that this 14-day clearance was persisting at that time; I would make it perfectly clear,—and instead of the witness I could have called your Honor's attention to Plaintiff's Exhibit 878-A is a Paramount contract of January, 1933, and it provides for 14 days after Herkimer.

The Court: That was the clearance of all of the companies there at that time?

Mr. McClennen: At that time.

The Court: While he was operating Ilion and while Fox was operating Herkimer.

By Mr. McClennen:

Q. Now, you spoke of the Clearance Board at Albany. That was the Clearance and Zoning Committee set up under the N. R. A.?

A. That is right.

Q. And this Fox contract of September 20, 1934, which has the term clearance usually, I call your attention to these words in it, and I am referring to Plaintiff's Exhibit 877-B, the words "Clearance usual", and then the words "This contract is subject to the ruling of the Clearance and Zon- [fol 3539] ing Committee"?

A. That is right.

Q. And that is what you had reference to as the Board?

A. That is right.

Q. And in the case of some of the companies at that time that was ten days, and in the case of others it was fourteen days?

A. That is right.

Mr. McClennen: That is all.

Redirect examination.

By Mr. Wright:

Q. Mr. Pierce, did you know at the time this contract with Paramount, dated January 24, 1933, was made, whether or not Schine or Fox was then operating the theatre at Herkimer?

A. Well, I must have been aware of it at the time. I can't recollect the date. I must have been aware who was operating the theatre.

Q. Do you have any recollection now?

A. No, I couldn't tell you.

Q. Whether it was Schine or Fox?

A. No, I couldn't.

Mr. McClennen: Mr. Wright, I don't want to intrude on your method of examination, but don't these contracts that [fol. 3540] you put in show it was the Fox Metropolitan that was operating at Herkimer at that time?

Mr. Wright: I don't recall putting in any contract of Fox Metropolitan. The only contracts I offered were those made by Young & Whitney, and I don't think it appears in any of those contracts as to who was operating the theatre at Herkimer at the time any of these contracts were made.

The Court: Would it make such a difference whether the fourteen days continued prior to Schine?

Mr. Wright: I don't see it makes any great difference. I didn't want the witness to be led into making statements, by Mr. McClennen, that he was not competent to make.

The Court: Somebody here should be able to say which was in operation then.

Mr. Wright: The interrogatories should show.

Mr. McClennen: The interrogatories should show if at this time we did not have the Herkimer theatre.

Mr. Wright: If the witness can't recall, obviously, he can't state.

Mr. McClennen: The witness had recalled enough to say that he knew. Now, let me make sure.

[fol. 3541] By Mr. McClennen:

Q. Let me make sure. You were aware in the common sense, when you got your Ilion theatres back at the beginning of 1933, that the Fox Metropolitan operation was still going on at Herkimer?

A. Yes, they were, for several months, I think.

The Court: Next witness.

LAWRENCE J. CARKEY, a witness called by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Wright:

Q. Where do you live?

A. Utica, New York.

Q. What is your occupation?

A. Theatrical business.

Q. What theatre?

Mr. Rogers: Will the witness speak up? We can't hear him. Was that Utica, New York, where you say you lived?

The Witness: Utica, New York.

[fol. 3542] The Court: What theatre?

The Witness: Family Theatre.

Q. How long did you operate that theatre?

A. Since March 25th, 1940.

Q. Before that were you engaged in the theatre business?

A. Yes, sir.

Q. Where?

A. Prior to that I was in Pennsylvania.

Q. Operating theatres?

A. Yes, sir.

Q. Are you familiar with the Town of Ogdensburg, New York?

A. Yes, sir.

Q. Had you formerly run a theatre there?

A. Yes, sir.

Q. For whom?

A. Schine.

Q. When was that?

A. 1926.

Q. What was the name of the theatre?

A. Strand Theatre.

Q. You operated that for how long—you managed the theatre how long for Schine?

A. From September, Labor Day, until the following March.

Q. Then did you have occasion to be in Ogdensburg after that?

[fol. 3543] A. Yes, sir.

Q. Were you there in 1940?

A. Not operating theatres.

Q. When was the last time you had any connection with theatre operations there?

A. Oh, possibly 1928, something like that.

The Court: By that you mean some time other than the time you operated the theatre?

The Witness: I was division manager for the Schine Circuit, and I used to go in there after I left there as manager.

Q. That until 1928?

A. Between 1926 and 1928.

Q. What theatres were there in Ogdensburg at that time?
A. The Star, now the Pontiac and the Strand.
Q. Then did you go back there in 1940?
A. Yes, sir.
Q. What time of the year?
A. About in July.
Q. What theatres did you notice there then?
A. Strand and Pontiac.
Q. Were they both operating?
A. The Strand was operating.
Q. The Pontiac was closed?
A. I believe Saturdays and Sundays and week-ends.
[fol. 3544] Q. It operated Saturdays and Sundays?
A. Yes.
Q. How big is that Strand Theatre?
A. Oh, possibly thirteen or fourteen hundred seats.
Q. That was how old?
A. What was that?
Q. Do you remember when it was built?
A. It was built back in 1916.
Q. The Pontiac, how large was that?
A. Possibly 700 seats.
Q. Do you recall when that was built?
A. Prior to the Strand, way back.
Q. What was the occasion for your going to Ogdensburg in July, 1940?
A. I tried to find a location for a new theatre.
Q. When you went there, what did you do?
A. I found a location.
Q. Where?
A. City Market, in the City of Ogdensburg.
Q. Where was that City Market with reference to the theatres that were there?
A. On Isabella Street.
Q. Was there a theatre in it at the time?
A. No, sir.
Q. What, if anything, did you do about converting those [fol. 3545] premises to a theatre?
A. They were especially adapted for a theatre, the building.

Mr. McClennen: I move to strike that out.
The Court: Yes, it is not responsive. What did you do?
The Witness: What did I do?

The Court: Yes, what did you do?

The Witness: Repeat the question again, please.

(Question read.)

The Witness: Well, we hadn't done nothing.

Q. Well, did you talk to any city officials about——

A. We talked to the Mayor and the City Clerk.

Q. Then after you talked to the city officials about that, did you return to Ogdensburg again?

A. Yes, sir.

Mr. Wright: I will ask to have this certified copy of the minutes of a meeting of the Common Council held September 4, 1940, marked with the next exhibit number for identification.

(Thereupon certified copy of minutes of Common Council meeting at Ogdensburg, marked as Plaintiff's Exhibit No. 879, for identification.)

Q. I will show you Plaintiff's Exhibit 879 for identification and ask you if the part beginning "City Treasurer, [fol. 3546] City of Ogdensburg, dated August 10, 1940" is a copy of a communication from you?

A. Yes, sir.

Mr. Wright: I will offer this exhibit in evidence.

Mr. McClennen: We object on the ground that this is most local in its character, would be a local transaction if it could be described as a transaction, but it is no transaction at all, not in any way admissible in this case, and not to be put in through this witness, having no relation whatever to the defendants in any way.

The Court: Is this certified by the clerk?

Mr. Wright: Yes, this is certified by "I, Simon S. Sargent, City Clerk of said city, do hereby certify"——

The Court: Let me see what it says. I thought counsel said it was not connected with the witness in any way.

Mr. Wright: No, he said, I believe, not connected with the defendants in any way.

The Court: Objection overruled, received.

(Thereupon Plaintiff's Exhibit No. 879, previously marked for identification, was received in evidence.)

[fol. 3547] Mr. Wright: Mark these.

(Thereupon two blue-prints referred to were marked as Plaintiff's Exhibits No. 880 and 881 for identification.)

Q. Then, after your bid was accepted, Mr. Carkey, did you have any plans prepared?
A. Yes, sir.

Mr. McClennen: That is objected to, if your Honor please. It does not appear that the bid was accepted. It appears ~~there was a~~ vote of the City Council on the exhibit your Honor has let in.

The Court: It was accepted by action of the Council, the very last clause.

Mr. Wright: It states here: "Alderman Caldwell moved that the bids as enumerated be accepted with the exception of the MacNaughton Market Lease in the bid of Ernest Whitcomb on nine lots. Seconded by Alderman Ramie, all voting in the affirmative with the exception of Alderman Doe voting nay. Motion carried."

The Court: Read the very last.

Mr. Wright: At the bottom of the second page, "Alderman Caldwell moved that the bid of L. J. Carkey be ac- [fol. 3548] cepted subject to a lease to be drawn up by the Market Commissioner together with the Corporation Counsel for a term of ten years with an option of five years. Carried, ayes all."

The Court: What is that certificate? I did not look at the certificate. It seems to be contradictory.

Mr. Wright: I do not so understand it.

The Court: Oh, I see. I will permit him to answer that he drew—certain plans were drawn at a certain time.

Mr. McClennen: My objection was to the characterization in the question.

The Court: Yes.

Mr. McClennen: If what he wants to show is after that date——

The Court: Objection sustained.

Q. I will show you these plans marked Plaintiff's Exhibits 880 and 881 for identification, and ask you if you can tell us what those are?

A. These are plans for the proposed theatre on the MacNaughton Market Building in Ogdensburg.

Q. Who prepared that?

A. Michael D. De Angelus.

[fol. 3549] Q. He is a theatre architect?

A. Yes.

Q. About when were those prepared?

A. Between July 15th and August 15th of 1940. I think it was August 26th, to be exact. I am not sure. It is in there somewhere. I am not sure of the date. It may have been September.

Q. Some time in August or September?

A. That is right.

Mr. Wright: I will ask to have this letter and lease marked with the next two exhibit numbers.

(Thereupon copy of letter and lease referred to were marked as Plaintiff's Exhibits 882 and 883 for identification.)

Q. I will show you these exhibits 882 and 883 for identification and ask you if you can say what those are, respectively?

A. Yes, it shows the William B. O'Connell——

The Court: What are they?

The Witness: It is a letter enclosing a copy of proposed lease from the City Council in Ogdensburg.

Q. The letter you refer to is Exhibit 882 for identification?

A. Yes, sir.

Q. You received the original of that letter?

[fol. 3550] A. Yes, sir.

Q. On or about September 30th?

A. Yes, sir.

Q. 1940. With the letter was enclosed this agreement marked Exhibit 883?

A. Yes, sir.

Mr. Wright: I will offer 882 and 883 and 880 and 881.

Mr. McClennen: These three exhibits are objected to on the grounds already stated with respect to the vote. Exhibit 883 is particularly objected to on the further ground that it never became an effective instrument and is not in accordance with the terms of the vote or the bid which the vote purported to accept.

The Court: I think it would be competent, if at all, on the question of what activities the witness made. It would be competent, if at all, to show what activities he engaged in in connection with the effort as claimed to construct a theatre. Not the question of the contents of the instrument. The fact some instrument was prepared. I don't think these plans—he testified the plans were drawn. I think the two [fol. 3551] exhibits should be received as going to show the activities on the part of the witness directed to the purpose.

Mr. Wright: By the two you are referring to 882 and 883. There isn't any claim that this lease was actually entered into.

The Court: The only reason is, showing what his activities were in that connection.

(Thereupon Plaintiff's Exhibits 882 and 883, previously marked for identification, were received in evidence.)

Q. Did you execute a lease with the city for this property described in Exhibit 883?

A. No.

Q. Did you go ahead with any theatre project in Ogdensburg?

A. No, sir.

Q. Why not?

Mr. McClennen: That is objected to.

The Court: I will let him state what occurred.

The Witness: I couldn't get the film of the product for the City of Ogdenburg.

Mr. McClennen: I move to strike that out.

The Court: Yes. State what occurred.

Q. Tell us what, if any, efforts you made to get——

[fol. 3552] Mr. McClennen: May that go out, what he said, if your Honor please?

The Court: Yes, strike it out. He made an effort to get films, he said.

Mr. Wright. Just a minute.

The Court: State what happened.

The Witness: After the proposed lease was offered me?

The Court: Yes.

The Witness: I made an effort to contract the various major picture companies for product for this proposed theatre in Ogdensburg. I was advised by each one of them——

Mr. McClennen: May that be stricken out?

Q. Just tell us who you contacted and where.

A. I contacted M.G.M., Warner Brothers, Columbia——

The Court: Who, that is the point?

The Witness: Gene Vogel of M.G.M., salesman. George Tucker of R.K.O., salesman. Jerry Spandau, Universal, Manager. Richard Struwe, Warner Brothers, salesman. Jack Arms of Columbia, salesman. Fred Sliter, Fox salesman, and I can't recall the United Artists salesman.

[fol. 3553] Q. Were those salesmen you have referred to salesmen you were doing business with at Utica?

A. Yes, sir.

Mr. McClennen: That is objected to, if your Honor please, grouping masses of men in a question that way.

The Court: I will let him state he knew these men at certain points and certain places.

Mr. McClennen: That was not the question put, if your Honor please. I object to the question that was put.

Mr. Wright: I don't see that there is any objection to grouping that as such, if they fall into a group.

The Court: Objection overruled. Whether he did business with these men at Utica, is the answer "Yes"?

The Witness: Yes, sir.

By Mr. Wright:

Q. Where was it that you saw them with reference to product for Ogdensburg?

Mr. McClennen: That is objected to. It is obvious he couldn't have seen all eight of them at one place.

The Court: State where it was.

[fol. 3554] A. At my office in Utica.

Q. When was this? Can you recall the approximate time you saw any one of the particular individuals there?

A. July 15th, between the 1st and 15th of July.

The Court: Of '40?

The Witness: Of 1940, yes, sir.

Q. You say you saw them all then?

A. Between the 1st of July and July 15th.

Q. Then do you recall what order you saw them in, or which one you saw first? This is with reference to Ogdensburg.

A. I saw them one at a time, and do you want me to explain the conversation? I saw them one at a time.

Q. I want to fix the order, if you can. If you don't remember the order——

A. I don't know the order in which I seen them all.

Q. Do you remember the individual conversations you had with them?

A. Yes, sir.

Q. Which individual did you talk to there?

A. Richard Haas of Paramount. I called him in my office from Albany, told him I was negotiating for a theatre——

Mr. McClennen: This is subject to our objection.

The Court: Go ahead.

A. —I was negotiating and had an O.K. to erect a theatre in Ogdensburg and asked him if second-run product was [fol. 3555] available in the city of Ogdensburg and he told me that he thought—he told me that second-run product was not sold in the city of Ogdensburg; and I told him I would be ready in a few weeks to talk to him about product. He said, "All right".

Q. And who else did you see at that time?

A. I seen Jack Arms of Columbia Pictures Corporation along about the same time, and asked him—told him I was about to erect a theatre in Ogdensburg, and asked him if second-run product would be available in Ogdensburg, and he told me "Yes".

I seen Richard Struwe, a salesman for Warner Bros., and told him that in a few weeks I would be ready to talk business with him on product for the city of Ogdensburg, if it would be available, second-run, and he told me "Yes".

I contacted George Tucker, salesman for R.K.O., and told him in a few weeks I was thinking—I had a proposed lease, erecting a theatre in Ogdensburg, and asked him if he would have second-run product available, and he told me "Yes". He didn't know of any second-run product sold in Ogdensburg. He knew it was not.

I contacted Gene Vogel, salesman for M.G.M., and asked him if second-run product would be available in Ogdensburg [fol. 3556] that fall, and he told me there was no second-run product sold. I contacted Jerry Spandau, Manager of Universal, and asked him if the second-run product was available in Ogdensburg, and he told me "Yes". I told him I would be ready to talk to him in a few weeks.

I talked with Fred Sliter, salesman for Fox, and asked him if second-run product would be available in Ogdensburg in a few weeks and he told me "Yes".

That cleans up the major product and people I talked with.

Q. When was the next time you talked with these people you just mentioned about product for Ogdensburg?

Mr. McClennen: I have not interposed a separate objection. Of course, it is understood it applies to all that.

The Court: Yes.

A. This first talk I was telling you about was prior to the proposed lease. It was before I received this proposed lease and then I started and went through this thing with the city officials in Ogdensburg.

Mr. McClennen: I ask to have it stricken out, if your Honor please.

The Court: Yes, strike it out. What happened afterwards?

[fol. 3557] A. I went ahead with the negotiations for this lease and contacted——

Mr. McClennen: I ask to have it stricken out, if your Honor please.

The Court: No.

Mr. McClennen: Conclusion of that kind, if it is admissible at all, it should be that he saw so-and-so and talked with so-and-so, or wrote so-and-so and talked with so-and-so, and not his conclusion. I object to the answer and ask to have it stricken out.

The Court: Did you get through with your negotiations? Did you describe the negotiations and talk?

Mr. McClennen: It is for the Court to determine. It is not for the witness.

The Court: State what was done.

The Witness: I notified the Mayor and City Council and City Clerk in Ogdensburg that I was practically sure——

Mr. McClennen: Just a moment. It does not appear whether this was oral or written, and what he said in either instance, and not notified. I object to this.

The Court: Sustained.

[fol. 3558] Mr. Wright: I take it it is proper for him to say he notified the Mayor and City officials?

The Court: What was done? Did he talk to them or write to them?

Mr. Wright: I take it that comes under the head of what was done.

Mr. McClennen: If notification was in writing the paper should be presented.

The Court: He can say what he did.

The Witness: I drove to Ogdensburg personally. I told them I was practically sure of product.

Mr. McClennen: I object to this, if your Honor please.

By Mr. Wright:

Q. You went to Ogdensburg and you saw—when was this you made the trip you just referred to?

A. Around July 15th, around in there, perhaps before.

Q. Was this after you had the conversations with the film salesmen you just referred to?

A. That is right.

Q. You went to Ogdensburg?

A. That is right.

Q. And talked to whom there?

A. The City Clerk and the Mayor.

Q. Then what did you do after that?

A. Well, they advised me—

[fol. 3559] Mr. McClennen: That is objected to.

By Mr. Wright:

Q. You can't say what was said. Just tell us what you did.

A. I told them I was ready to proceed with this proposition.

Q. Then what did you do?

A. Well, I had to wait until they got permission from the State to lease that property for other than a market place. They had to get a court order in order to lease that property.

The Court: You mean the City had to get a court order?

The Witness: Yes, sir, because money appropriated for that property was partly appropriated by the State back in the old days when they had the farmers bring their produce there.

By Mr. Wright:

Q. Do you know whether such a court order was obtained?

A. Yes, sir.

Mr. McClennen: That is objected to.

The Court: Sustained. The Court order is the best evidence.

Q. What did you do then after you had these conversations in Ogdensburg? Did you go back to Utica?

A. I went back to Utica.

Q. Then did you see any of these film salesmen again?

A. Not yet, no.

Q. What did you do next?

[fol. 3560] A. I had to wait until I heard from Ogdensburg.

Q. Did you hear from Ogdensburg between August 15 and September 30 when you got this agreement, Exhibit 883?

A. Yes, sir.

Q. Well, was that in the form of a letter?

A. I don't recall.

Q. Well, do you recall about when it was?

A. Between August 15 and 30th.

Q. Between August 15th and August 30th?

A. I think it was around before the 15th of August. I think it was the last of July.

Q. Well, then, after you received this further word from Ogdensburg, did you then contact any of the film salesmen?

A. I didn't contact the film salesmen until after August 15th.

The Court: Didn't, what?

The Witness: Didn't contact the film salesmen again until after August 15th.

Q. How soon after did you see them?

A. Between August 15th and the next week or so.

Q. Where did you see them then?

A. My office in Utica.

Q. Who did you see at that time?

A. I saw Fred Sliter of Fox Film Corporation.

Q. What was said then?

A. Told him I was ready at that time to sign contracts [fol. 3561] for second-run product in Ogdensburg, N. Y.

He advised me Schine had bought second-run. He told me they were told by their home office that Schine had bought second-run product in the city of Ogdensburg.

Mr. McClennen: Objected to, if your Honor please.

The Court: Receive it.

The Witness (Continuing): And it could not be available to me, although he could sell me third-run, which I was not interested in.

I contacted Mr. Struew of Warner Bros. and asked him to come in my office. He came in. I told him——

Mr. McClennen: Same objection, if your Honor please.

The Court: Same ruling.

The Witness (Continuing):—I was ready to talk product in the city of Ogdensburg, as per our conversation of a few weeks before. He told me he was very sorry for me, that he was instructed by his home office that Schine had bought second-run in the city of Ogdensburg.

I called in Jerry Spandau of Universal and his salesman was with him. I can't recall his name.

Mr. McClennen: Same objection to this.

[fol. 3562] The Court: Overruled.

The Witness (Continuing): I told him I was ready to talk to him about second-run product for the city of Ogdensburg, and he told me he was ready at that time and he could have made out a contract that day in my office for second-run product in the city of Ogdensburg. I called in Jack Arms, of Columbia. I told Jerry Spandau at that time—he was the first one who offered me second-run—and I told him I would see him in a coule of days, that I wanted to have the major companies in there. I was satisfied I could get second-run Universal.

I called in Jack Arms of Columbia and told him I was ready to talk second-run product for the city of Ogdensburg, as per our conversation of a few weeks before.

Mr. McClennen: Same objection.

The Court: Same ruling.

The Witness (Continuing): And he advised me second-run had been sold to Schine.

I called in Richard Haas of Paramount and told him [fol. 3563] I was ready to buy second-run product for the city of Ogdensburg as per our conversation——

Mr. McMcClennen: The same objection.

The Witness (Continuing): And he advised me Schine bought second-run product for the city of Ogdensburg. I called in Gene Vogel of M.G.M. and told him I was then ready to talk to him.

Mr. McClennen: Same objection.

The Witness (Continuing): And he informed me second-run product had been sold in Ogdensburg; that they had been informed by their home office of such fact.

I talked to George Tucker of RKO and he advised me second-run product had been sold in Ogdensburg, which left me only the Universal product.

Mr. McClennen: I ask to have the last stricken out.

The Court: The last may be stricken out.

By Mr. Wright:

Q. Then what did you do?

A. I had this proposed lease in my possession, ready to sign, so I wrote Ogdensburg, the County Clerk——

Mr. McClennen: I object to that.

[fol. 3564] Mr. Wright: You can't say what you wrote to them.

Q. After you saw these other salesmen did you go back and talk to Spandau about second-run?

A. No, I didn't.

Q. Did you have any further negotiations with any of the film companies for second-run in Ogdensburg?

A. No, sir.

Mr. Wright: That is all.

Mr. McClennen: No questions.

Mr. Wright: That is all.

The Court: We will suspend at this time until tomorrow morning.

(Whereupon a recess was taken until tomorrow, Wednesday, October 25th, 1944, at 10 o'clock A.M.)

[fol. 3565] (Contents of folder previously marked as Plaintiff's Exhibit 874 further identified as follows:

Contract between R.K.O. and Young & Whitney, dated March 10, 1933, marked as Exhibit 874-A.

Contract between Young & Whitney and R.K.O., dated February 21st, 1934, marked as Exhibit 874-B.

Contract between Young & Whitney and R.K.O., dated November 5th, 1934, marked Exhibit 874-C.

Contract between R.K.O. and Young & Whitney, dated March 3rd, 1937, marked as Exhibit 874-D.)

(Contents of folder previously marked as Plaintiff's Exhibit 875 was further marked as follows:

Contract between Young & Whitney and Warner Brothers, dated February 6th, 1933, marked as Plaintiff's Exhibit 875-A.

Contract between Young & Whitney and Warner Brothers, dated October 28th, 1933, marked as Exhibit 875-B.

Contract between Young & Whitney and Warner Brothers, dated October 11th, 1934, marked as Exhibit 875-C.

[fol. 3566] Contract between Young & Whitney and Warner Brothers, dated Ocober 17th, 1935, marked as Exhibit No. 875-D.

Contract between Young & Whitney and Warner Brothers, dated August 31, 1936, marked as Exhibit No. 875-E.)

(Contents of folder previously marked as Plaintiff's Exhibit 876 was further marked as follows:

Contract between Young & Whitney and Metro, dated September 23rd, 1933, marked as Exhibit No. 876-A.

Contract between Young & Whitney and Metro, dated August 17, 1934, marked as Exhibit No. 876-B.

Contract between Young & Whitney and Metro, dated July 5th, 1935, marked as Exhibit No. 876-C.

Contract between Young & Whitney and Metro, dated July 10th, 1936, marked as Exhibit No. 876-D.)

(Contents of folder previously marked as Plaintiff's Exhibit No. 877 was further marked as follows:

Contract between Young & Whitney and Fox, dated September 6th, 1933, marked as Exhibit No. 877-A.

[fol. 3567] Contract between Young & Whitney and Fox, dated September 20, 1934, marked as Exhibit No. 877-B.

Contract between Young & Whitney and Fox, dated April 20th, 1935, marked as Exhibit No. 877-C.

Contract between Young & Whitney and Fox, dated October 2nd, 1935, marked as Exhibit No. 877-D.

Contract between Young & Whitney and Fox, dated 19th of May, 1936, marked as Exhibit No. 877-E.)

(Contents of folder previously marked as Plaintiff's Exhibit No. 878, was further marked as follows:

Contract between Young & Whitney and Paramount, dated January 24, 1933, marked as Exhibit No. 878-A.

Contract between Young & Whitney and Paramount, dated October 20, 1933, marked as Exhibit No. 878-B.

Contract between Young & Whitney and Paramount, dated January 18, 1935, marked as Exhibit No. 878-C.

[fols. 3568-3570] Contract between Young & Whitney and Paramount, dated July 5th, 1935, marked as Exhibit No. 878-D.

Contract between Young & Whitney and Paramount, dated August 26th, 1936, marked as Exhibit No. 878-E.)

[fol. 3571] UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF NEW YORK

Civil 223

UNITED STATES OF AMERICA

vs.

SCHINE CHAIN THEATRES, INC., ET AL., Defendants

Continuation of trial before Honorable John Knight, United States District Judge for the Western District of New York, October 25th, 1944, 10 o'clock A. M.

APPEARANCES:

Robert L. Wright, Esq., John F. Clagett, Esq., Harold L. Schilz, Esq., Special Assistants to the Attorney General, and Philip Marcus, Esq., and Milton Kallis, Esq., Special Attorneys, in behalf of the United States.

Edward F. McClennen, Esq., Willard S. McKay, Esq., Saul E. Rogers, Esq., Arthur E. Whittemore, Esq., Arthur J. Homans, Esq., and Edward M. Antevil, Esq., appearing for the Defendants.

[fol. 3572] PROCEEDINGS

CHARLES S. CANTWELL, a witness called by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

(Copy of Ogdensburg Journal, Thursday, September 26, 1940, page 7, was marked as Plaintiff's Exhibit 884 for identification.)

(Copy of Ogdensburg Journal, Saturday, October 26, 1940, page 4, was marked as Plaintiff's Exhibit 885 for identification.)

Mr. McClennen: If your Honor please, it appears by the record of yesterday that Exhibit 880, the blue print of September 17, 1940, and the Exhibit 881, are marked for identification only. I had had the impression they had been admitted over our objection.

The Court: They were not received.

Mr. McClennen: They were not received?

The Court: No. He testified the plans were drawn. Of course, Counsel, if you desire to inquire——

Mr. McClennen: No, I just want to be sure that the record was as the matter was left.

[fol. 3573] Direct examination.

By Mr. Wright:

Q. Where do you live, Mr. Cantwell?

A. Ogdensburg, New York.

Q. What is your occupation?

A. Managing Editor of the Ogdensburg Journal.

Q. How long have you held that position?

A. That particular position since 1928.

Q. I show you a document that has been marked for identification as Plaintiff's Exhibit No. 884 and ask you if you recognize that as page 7 of the Ogdensburg Journal for Thursday, September 26, 1940?

A. That is right.

Q. And I call your attention to the article in the third column from the left at the bottom of the page, headed "Schine Pontiac to open on seven-day basis." Can you tell the Court where you got the information that is carried in that article?

Mr. McClennen: Just a moment. It has not appeared he got the information and it is only material if it comes from somebody connected with us.

Mr. Wright: Well, I asked him where he got it.

Mr. McClennen: That is, the person from whom he got it?

The Court: Did you get the material that appears in that exhibit?

[fol. 3574] The Witness: I handled this particular article, yes.

The Court: Now the question is: What was the source of the information that appears in that article?

The Witness: This article was brought in to my office by Jacob Weber, who was the Manager of the Strand Theatre in Ogdensburg.

The Court: By Mr. Weber?

The Witness: Yes.

The Court: Go ahead. Does that appear as an advertisement?

Mr. McClennen: That was a news article.

The Court: Oh, a news article?

The Witness: A news article quoting Mr. Weber.

By Mr. Wright:

Q. Then I call your attention to this document that has been marked for identification as Exhibit 885 and I ask you if you recognize that as page 4 of the Ogdensburg Journal for Saturday, October 26, 1940?

A. That is correct.

Q. And I call your attention to the ad headed "Schine Pontiac" at the bottom, in the left-hand corner. Do you recall whether that was published as a paid ad on that day?

A. I have no connection with the advertising department but I can testify that it was published on that day in the Journal on that page.

[fol. 3575] Q. And that it was an advertisement?

A. An advertisement of the Pontiac Theatre.

Mr. Wright: I will offer these Exhibits 884 and 885, but it has been already agreed with Counsel that if they are received the papers themselves need not be detached and the data we have referred to, appearing on those exhibits, may simply be read in evidence, and we have already had the reporter record the contents.

Mr. McClennen: We object to the introduction of the papers.

The Court: Well, I think Exhibit 884, the first one, should be received. The next question is: Does it show here who put the advertisement in?

Mr. Wright: I beg your pardon?

The Court: It does not show here who put the advertisement in.

Mr. Wright: If the Court please, I don't think there is any dispute about the fact it is in the record that the Strand

Theatre there is the Schine Theatre and I don't think there is any doubt but what anybody else, other than the Schine people, advertised the attractions at the Schine theatre.

The Court: Of course, what we don't think about it is not [fol. 3576] very conclusive.

Mr. Wright: I take it there is no dispute about that point.

Mr. McClennen: Seeing that advertisement in the newspaper, I imagine that Mr. Weber probably authorized that be put in. That is all I know about it, and nobody else authorized it.

The Court: That is not the point of your objection then?

Mr. McClennen: The point of my objection went to the other article particularly and I have no objection to its appearing that in the newspaper there was this advertisement. I disclaim its being attributable to anybody but Mr. Weber.

The Court: Objection overruled. I will receive them.

(Page of newspaper, previously marked as Plaintiff's Exhibit 884 for identification, was received in evidence.)

(Page of newspaper, previously marked as Plaintiff's Exhibit 885 for identification, was received in evidence.)

(Plaintiff's Exhibit 884 reads as follows: "Schine Pontiac to Open on Seven-day Basis.

Announcement was made this morning by Jacob Weber, [fol. 3577] Manager of Schine theatres in Ogdensburg, that starting Friday the Pontiac Theatre on Isabella Street will run full time.

Mr. Weber stated that now that the fall season is here it is felt that with the curtailment of outdoor activities opening the Pontiac will give the theatre patrons a choice of pictures at any time.

The operating policy will be the most liberal ever offered in this part of the country, he said. All programs will be double-featured, and the usual procedure will be that one picture will be one which has been brought back as an outstanding production, while the second feature will be a first-run. A selected program of short subjects will also be featured.

The admission price will also be reduced.

The opening features for Friday and Saturday are "Saturday's Children" and "Ride-em-Cowboy".")

(Plaintiff's Exhibit 885 reads as follows: "Schine's Pontiac, Ogdensburg, N. Y.

[fol. 3578] "Last Times To-Nite. R.K.O. Radio Pictures presents Lee Tracy 'Millionaires in Prison' John Wayne in 'Haunted Gold' 'The Mystery of a Ghost' plus 'Adventures of Red Ryder.' To-Nite Cash Jack Pot $20.00 Free. Bingo $20.00 Jack Pot. Always 14 sure winners.

(Starting Saturday, November 2nd this theatre will be open: Saturdays and Sundays open. Continuous Performance Both Days). Always two big hits—at bargain prices. Matinee on Saturdays, 15 cents—Evenings, balcony, 15 cents, Orchestra, 20 cents. Children under 12, ten cents, any time. Sunday and Monday—2 Ace Hits. 'Captain Caution'—'Gangs of Chicago.' (And some detailed description of these two pictures.)"

[fol. 3579] Mr. Wright: We have other volumes of the Journal, with respect to which we wanted to make some negative proof and I discussed the matter with Counsel, who agreed that we could handle this without the identification and offering of the Journal in evidence, by simply making a statement as to the contents.

The Court: Yes.

Mr. Wright: What we wanted to show by these issues, which are complete from October 26, 1940, the date of Exhibit 885, through the edition of January 31, 1941, with the exception of November 1st, 2nd, 3rd and 4th, and December 31, 1940, and January 1, 1941,——

The Court: The charges, you mean?

Mr. Wright: No, what we wanted to show was that the last date during that period on which an ad for the Pontiac Theatre appeared was, I believe, Saturday, December 14, 1940.

The Court: The defendant is willing to concede the date of the last publication, subject to the source, the question of the source?

Mr. McClennen: I said to Mr. Wright that there is, of course, no opportunity to consult this period at this time [fol. 3580] and that if he will give his personal assurance that that was the last advertisement within that period, with the exception of the papers not available, as he has described, that we would take that as the equivalent of the introduction of the newspapers themselves.

The Court: That stipulation is unnecessary to consider only the termination, that is all.

Mr. McClennen: That is all the newspapers there are here.

The Court: There are a lot of newspapers there. We have the last date. That's all.

Mr. McClennen: The last one that is here is January 31, 1941, and this is confined to the period from October, 1940, to January 31, 1941.

Mr. Wright: There is one qualification I would like to add to that. I say that the issue of Sunday, December 15, 1940, also appears to be missing here, and in addition to the showing that the last ad——

What did I say there before?

(The reporter read as follows: "Mr. Wright: No, what we wanted to show was that the last date during that period [fol. 3581] on which an ad for the Pontiac Theatre appeared was, I believe, Saturday, December 14, 1940.")

Mr. Wright: That the Pontiac advertised throughout the period from November, or from the date of Exhibit 885, that is, October 26, 1940, through December 14, 1940, and then did not advertise; there were no ads for the Pontiac after that date through January 30, 1941. Now, of course, this is based on a hasty check that we ourselves made this morning and, of course, if it appears on a further check that there are any inaccuracies, and what I say, I assume an appropriate correction can be made.

The Court: Are you concerned with the publications prior to the last publication? The question here is, in other words, on the statement made by both Counsel, seems to be the question of when the last publication was.

Mr. Wright: There isn't any doubt about that.

The Court: Do you want all the papers, all those dates, you mean, between these two dates shown?

[fol. 3582] Mr. Wright: Yes, in so far as—I stated the period for which we had the publications of the newspaper here, and then my statement was with reference to those newspaper publications, the dates on which Pontiac advertisements appeared and the period when they did not appear.

The Court: You said awhile ago that the question, this question, did not concern the question of charges or prices.

Mr. Wright: No, I was not offering it for that purpose. This was merely to show the discontinuance of the Pontiac operation during this period.

[fol. 3583] Mr. McClennen: That, of course, is not part of our agreement at all. The Pontiac was not discontinued.

Mr. Wright: I did not suggest that it was.

Mr. McClennen: I think you were a little inaccurate in your language. It better be corrected right away.

Mr. Wright: The purpose of the offer was not to show any particular admission prices. That is all.

The Court: Any cross-examination?

Mr. McClennen: No questions.

The Court: Next witness.

William C. Smalley a witness called by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Wright:

Q. Mr. Smalley, what is your occupation?

A. I am President and General Manager of the Smalley Theatres.

The Court: You have to speak louder than that.

Q. You have to speak louder so the Court and counsel can [fol. 3584] hear you.

A. Manager and President of the Smalley Theatres.

Q. Where do you live?

A. Cooperstown, New York.

Q. What business is the Smalley Theatres engaged in?

A. Theatrical business.

Q. Operation of motion picture theatres?

A. Yes, sir.

Q. Where?

A. Cooperstown, Stamford, Delhi, Walton, Sidney, Oxford, Norwich, Camden, Dolgeville, St. Johnsville, Fort Plain, Johnstown. Then I have two summer towns, that run three months a year.

Q. Which are those?

A. Hensonville, Sharon Springs.

Q. How long have you been engaged in the business of operating theatres?

A. About 30 years.

Q. Calling your attention to the year 1930, did you operate in Norwich then?

A. Yes, sir.

Q. When did you begin operations there?

A. It was November 4th.

Q. 1930?

A. 1930.

[fol. 3585] Q. What was the name of the theatre?

A. Strand Theatre.

Q. Were any other theatres operating in Norwich then?

A. Yes, sir, the Colonial Theatre.

Q. Who was operating the Colonial then?

A. Fox Theatres.

Q. During the 1930-1931 season, can you tell us what major film product you exhibited at the Strand?

A. R. K. O., Pathe First National, United Artists and Columbia.

Q. What did you have for the 1931-1932 season?

A. 1931-1932, I had all of First National, all of Warner and all of Columbia.

Q. For 1932-33?

A. 1932-33 I had a split with R. K. O., a split with Warner Brothers, a split with First National, a split with Columbia, a split with United Artists.

Q. When you say "a split" what do you mean?

A. I mean an equal split of half the pictures.

Q. The other half were played at the——

A. At the other theatre.

Q. Colonial?

A. Yes, sir.

Q. Then do you recall when Schine resumed operation of the Colonial?

[fol. 3586] A. I believe it was in the spring of 1933.

Q. Then, did your theatre burn down in 1932?

A. Yes, sir.

Q. When was that?

A. March 24, 1932.

Q. Was it rebuilt?

A. Yes, sir.

Q. And reopened by you?

A. Yes, it was a new theatre and reopened on November 10, 1932.

Q. Then was it renamed?

A. Yes, it was renamed the "Smalley Theatre."

The Court: Was that in 1932, did you say?

The Witness: 1932, yes, sir.

Q. Then, calling your attention to the spring and summer of 1933, did you see, or have any conversation with anybody with reference to licensing the Warner product for the 1933-1934 season?

A. Yes, sir, I saw Mr. Ray Smith, the Manager.

Q. Where did you see him?

A. In Albany.

Q. About when was that?

A. About June.

Q. What was said then?

Mr. McClennen: The usual objection.

[fol. 3587] The Court: Overruled.

The Witness: I just asked about the split——

The Court: What is that?

The Witness: I asked him if I was going to get a split of his pictures for the new season. He told me that he could not tell me anything about that, because that was done in New York.

Q. Then, did you see him later in the summer with reference to a product for Norwich?

A. Yes, he came to Cooperstown in August.

Q. What was said then?

Mr. McClennen: Same objection.

Q. About pictures for Norwich?

A. He came in and said that he was ready to sell me the new product, and so we went in and sat down and started talking over a new deal, and we went over several of my theatres and when he came to Norwich, I said, "What about Norwich?" He said, "Well, I can't sell you any pictures in Norwich." I said, "I need pictures in Norwich just as bad as I do in my other towns," and so we talked about the deal for a few minutes, and he said "Why, I will call up Andy Smith"—he was the salesmanager. So he called up Andy Smith, and he came back and told me that he could not sell [fol. 3588] me Norwich, so he would have to let the thing drop. I told him all right, and he went away, and that is all there was to it.

Q. Then, what other theatres were you operating at that time that you say you talked to him about?

A. Well, I was operating—I was not operating some of the theatres I am operating now. They were different small theatres that I turned over to small operators. I mean they were different theatres than I named. I think there was the Sherburne I was running then, and the Hamilton.

Q. I just wondered about how many there were.

A. About 11 theatres.

Q. About 11 theatres you were talking about?

A. Yes, sir.

Mr. Wright: Mark these as the next exhibit number.

(Thereupon letter dated November 4th with enclosure, was marked as Plaintiff's Exhibit 886 for identification.)

Q. I will hand you this document marked Plaintiff's Exhibit 886 for identification and ask you if you received that with the attached document shortly after November 4th, 1933?

A. Yes, sir.

Mr. Wright: I will offer in evidence Exhibit 886.

[fol. 3589] Mr. McClennen: If your Honor please, in connection with the discussion yesterday morning, I desire, if your Honor will permit, to have it made a little more explicit on the record, when these communications, oral or written, between the outsider and the distributor are received in evidence by your Honor. I assume from what was said yesterday that it is with the understanding that they are received as communications and not as any evidence of the truth of the statements contained in them. I take it that this will serve as a good illustration. Here is a letter marked for identification Plaintiff's Exhibit 886, in which it is stated that all the pictures at Norwich of this particular company are under contract to the Schine Theatre. Of course, in many instances, it makes no difference, because the fact—and very likely in this case—the fact is shown by extraneous evidence, but I ask that this type of testimony and exhibit be received not as evidence of the fact as stated in the letter. That was under discussion yesterday morning [fol. 3590] with your Honor, and we ask your Honor to make that ruling, that is, that they are received only as the communications that took place and not as evidence of the truth of the things recited in the oral or written communications, because they are manifestly in that respect so far as we are concerned, merely hearsay, and that the receipt of the evidence be limited to the fact of the communication, and not to the fact declared in the communication, whether it be an oral or written communication. I make the objection to this exhibit marked for identification 886.

Mr. Wright: The document is offered generally, your Honor, without restriction as to what may be the facts or not the facts. This is what Mr. Smith wrote at that time. If it is the truth, it is the truth. If it is not the truth, and contradicted by something else, then it is not true. In any event, that has nothing to do with its admissibility in evidence.

Mr. McClennen: The catch in that remark, if your Honor please, is "If it is contradicted by something else." Now, [fol. 3591] in the course of arguing to your Honor, Mr. Wright said, and it was read to you yesterday, that, of course, these were not offered as evidence of the truth of the statements contained in them——

Mr. Wright: That is not correct.

Mr. McClennen: But merely as to the communications that were made. I have been interrupted by the statement that that is not correct. I am referring to the statement that was read to your Honor yesterday from his position. Now, if he is offering these, and if they are received as hearsay evidence of the truth of the statement contained in them, we have one impressive objection. If they are received only as communications we have a less impressive objection, and it is time, I submit, that it be made perfectly clear whether your Honor is receiving these as evidence of the truth of the statements contained in them, or only as the communications which passed between the parties speaking and the party listening or the party writing and the party receiving the letter. The record should be clear on this, because I respectfully submit that if these are received [fol. 3592] as evidence of the truth of the statements made in them, there is an unanswerable objection to them, that we are having the facts proved against us by hearsay testimony, and I urge upon your Honor that the ruling determine whether these are being received as evidence of the truth of the statement contained in them or only as the communications which passed between the speaker and the listener, or the writer of the letter and the recipient of the letter.

Mr. Wright: If the Court please, in the statements that were made yesterday by me with reference to the reception of certain documents, merely to show that certain knowledge was brought home or for other purposes not connected with the truth of the document, it was confined to inter-office memoranda. I said in some instances we would expect the document to establish the truth of the matter that appears on there, and others we were not interested in that precise question. In so far as these letters which are written to witnesses are concerned, there isn't any occasion at the time [fol. 3593] the document is offered for your Honor to attempt to determine whether or not the statements made therein are true or not. Certainly they are, I suppose, prima facie evidence of the truth of the facts that are being communicated if they are facts over which one who writes the communication is supposed to have accurate knowledge. Certainly there is no occasion for your Honor each time any of these exhibits is offered and received in evidence to make any ruling whatsoever as to whether or not what was said in the document is taken as true or false. That, of course, depends upon the view of all the evidence in the case.

Mr. McClennen: There is the precise statement. Of course, it is not necessary for your Honor to determine whether the facts stated are true or false, and no one paying attention to what I have just said could have inferred that I was asking anything of the kind, but here is the statement reiterated that this letter, if it goes in, is prima facie evidence of the truth of the statement contained in it. That [fol. 3594] does not call upon your Honor to determine whether it is true or false, but it does call upon your Honor to resolve the issue between us on this question of the significance of the evidence that is offered. We urge that a letter from an outsider to a distributor, or from a distributor to an outsider is not prima facie evidence of the truth of the statement contained in the letter, that it is no evidence whatever. Now, this is a very fundamental question and one that must be decided, I respectfully submit, by your Honor, and I ask your Honor to rule that these are not received as any evidence of the truth of the statements contained in them. I do not ask your Honor to find that the statements contained in them is false, but I ask your Honor to rule that the letter, if it goes in, is not even prima facie evidence, or any other kind of evidence of the truth of the statement contained in the letter. Now, I am either right or wrong in that contention, and if I am wrong, why your Honor's ruling will determine it. If I am right, I am entitled to have the [fol. 3595] ruling made.

The Court: The exhibit here purports to be a letter from the witness to one of the distributors, as I understand it.

Mr. Wright: No, if the Court please, it is a letter from the General Sales Manager of one of the distributors to the witness.

The Court: Oh, the theory on which a considerable part of the testimony has been received has been that these branch managers or officers occupy positions—general sales managers—were acting within the scope of their authority in the conduct of the affairs to which these letters relate. Standing alone, certain of these letters, such as the one here and other letters, there might be little significance. It has to be connected up, of course, all the time bearing in mind that the distributors represented by these officers are alleged co-conspirators. Of course, the paper itself, if it is received simply for the purpose of showing a communication under a certain date, that might mean very little, but if the Court is correct in its position that the acts of the general sales [fol. 3596[manager bind the company, then it seems to me what the sales manager has written or what he has spoken is competent to be received as some evidence of the fact. I cannot follow your reasoning unless our fundamentals are wrong. Of course, if the general sales manager, Mr. Smith, named here, had no authority to write these letters, to transact business in connection with the Norwich situation, then, of course, my foundation for the reception of this letter as evidence is false.

Mr. McClennen: I apparently have failed to make my position clear. I have no question that Mr. Smith, being the writer of the letter, had authority from Warner to write that letter. He had no authority to tell any one in the world for Schine that Schine had bought his pictures, and it is not binding upon Schine in any way, and it is not evidence that Schine had bought the pictures.

The Court: You waive aside the question of the conspiracy, it seems to me.

Mr. McClennen: I am making my contention and I am seeking your Honor's ruling on my contention. If my con- [fol. 3597] tention is sound, this letter, if it goes in, should be so limited that it is no evidence against Schine, that Schine had bought the pictures as stated in that letter. If I am wrong in my contention, I urge upon your Honor that you make a ruling——

The Court: I shall do that, and I think I realize the importance of the ruling. I might say this, in connection with this letter, this specific exhibit, that this witness has testified to the same facts that are purported to be set forth in this exhibit. He testified Smith told him—I think he did—am I in error?

Mr. Wright: The conversation he had was with Ray Smith, I think, the Branch Manager.

The Court: Oh, that is another Smith.

Mr. Wright: There are two Smiths.

Mr. McClennen: I am not speaking about this being an accurate statement of the conversation between this man and Warner. This presents an opportunity for a specific determination. If your Honor receives this in evidence, we ask you to rule that it is no evidence that, in fact, Schine had bought this Warner contract at this time. I dare say [fol. 3598] that the fact was so, but the difference is this: If this letter goes in as prima facie evidence that we had made this contract with Warner, if it becomes at all important, we have got [illegible] go forward with evidence to show that we did not. If this letter does not go in as evidence that we have made that contract with Warner, then the plaintiff, if it is a material fact, must go forward with evidence to show that we had bought it. I conceive of no way in which to make this clearer, and it is a very important matter as we approach the time when we are called upon to introduce evidence. If these statements, hearsay as to us, are to be taken as truth of the facts stated in them, then there is one line of defense for us to take. If they are taken merely as I respectfully submit they should be, as evidence only of the communication that passed, then there is another line of defense to be taken by us.

The Court: What would be the reason for the introduction if they were offered simply to show that a communica- [fol. 3599] tion passed? To show the date or something?

Mr. McClennen: Why, I don't know what the reason would be. I had assumed that your Honor had received them so as to see what information Warner had at the time Warner acted in the way that it acted, and not as hearsay evidence of what we had done.

The Court: You go a little further when you say you assume it was offered to show that the information was brought to Warner on which Warner acted.

Mr. McClennen: And I am asking that it be limited to that, and not be taken as evidence that Schine had made that contract with Warner. The distinction is perfectly clear. I am right or I am wrong in that contention, and I urge upon your Honor that you rule on that position.

The Court: In taking that position the Government is placed in the position of having to show what was actually done by Warner in this respect.

Mr. McClennen: Was actually done by Schine.

The Court: Or by Schine—well, you say it is receivable [fol. 3600] as showing the information on which Warner acted. The next question is, how did Warner act?

Mr. McClennen: All I say is that this letter should be received as no evidence that Schine had that contract which Warner said that Schine had and——

The Court: Would it make any difference, assuming there is evidence to establish that there was a conspiracy? Would that make any difference in your position?

Mr. McClennen: No, I have stated my position which is that such a letter as this, conspiracy or no conspiracy, and waiving aside any question of whether there has been any evidence of any conspiracy at this time—I contend that in the present state of the evidence in this case, when this letter is offered, that this exhibit 886 for identification, if received, is no evidence that we had made—that Schine had made the contract with Warner therein stated. Now, if I am wrong in that contention, I take it your Honor will so rule, and my objection will be saved. I have taken a specific [fol. 3601] case, because it runs all the way through.

The Court: Yes, it runs all the way through.

Mr. McClennen: If I am right in the contention, your Honor in receiving it will receive it not as evidence of the fact that Schine had a contract with Warner. I have selected this as illustrative clearly and definitely of the distinction which we make, and urge upon your Honor that we have a ruling upon that question.

The Court: The same comparable situation would arise in respect to a large group of exhibits offered here, showing inter-company communications.

Mr. McClennen: It would arise in the case of many of those.

The Court: Yes.

Mr. McClennen: Of course, some of them are not letters in which anything is stated that Schine had done. Here is something that it is stated that Schine had bought the Warner contract. Now, it furnishes a clear opportunity for us to know how we are to proceed in the defense of this case, and I urge upon your Honor to rule that this letter just received is limited so that it is no evidence that Schine [fol. 3602] had made the contract with Warner stated in the letter, and that if that is a material fact, then that fact must be shown in some other way.

The Court: Aren't these contracts available, Mr. Wright?

Mr. Wright: If the Court please, if your Honor should so rule at this time, I think your Honor would be clearly in error. I don't think there is any question at all about the propriety of the position that has been taken so far, that the communications made by the responsible officials of these distributors who are charged as co-conspirators with respect to the business they transacted with Schine, which is in issue in this case, is prima facie evidence of those facts that they set forth, whether they set it forth in a letter to one of these exhibitor witnesses, whether they set it forth in a letter to Schine or whether they record it as a part of their own records. I don't understand that there is any dispute at all among the authorities on that precise point. If your Honor were to now rule that these numerous com-[fol. 3603]munications that have been offered here with witnesses on the stand, with respect to which the point has not heretofore been raised, that, of course, would mean an entire recasting of our case. The consequences would be, as counsel pointed out, we would then, of course, seek to make other proof of those same facts. However, we don't think there is any necessity for such a recasting of our case, or furnishing additional redundant evidence to prove something is so which a responsible official of one of these companies has said is so with respect to his dealings with Schine.

The Court: In this particular case, of course, it is easy enough to produce the contract, is it not?

[fol. 3604] Mr. Wright: In that case there probably would be a contract, that is right.

The Court: It would show whether he had any rights.

Mr. Wright: That is true, but if we were going to be put now to a re-examination of all of the material which has gone in evidence here and determine in which instances we thought it was necessary to confirm or supplement a statement that had been made by one of these officials, as to what the facts were, we would then have to present a different and considerably more extensive case than we have presented, and I submit it would be clear error to compel us to do so, because there isn't any question about the fact that these statements that these people made are at least prima facie evidence of the truth of what they are talking about.

The Court: You have offered in evidence many of these contracts made for pictures and it is easily producable, the contracts made by Warner with Schine for Norwich.

Mr. Wright: We have put numerous contracts in evidence, of course, and we shall put more in, but I submit [fol. 3605] that it is an entirely futile and redundant proceeding to put in evidence a contract to prove something that has already been established by other means.

The Court: Wouldn't it make your case stronger to have the document itself, showing what the terms were, rather than stated by an official of the company?

Mr. Wright: That, I suppose, is a question that occurs in every case that at some point there is a cut-off as to the extensiveness of the record or proof which we want to make. When we have competent evidence in the record of a certain fact I see no reason why we should then attempt to produce additional evidence of the same fact.

The Court: Of course, it is less conclusive upon the Court than the document itself would be. It might give less weight by reason of the fact you don't produce the contract.

Mr. Wright: Decisively a question of weight.

The Court: I give you an exception.

Mr. McClennen: If your Honor please, there was one thing that Mr. Wright said, which I want to refer back to. [fol. 3606] He said these things have been going on in this way. Mr. Rogers made it crystal-clear when this matter was up, and it is right there, read to your Honor yesterday, and I think the page is 286, I have it not before me, of the testimony, that these should not be received, these communications, oral or written, should not be received as any of the evidence.

The Court: Who do you mean made that statement?

Mr. McClennen: Mr. Rogers.

The Court: I don't question that. The point was raised all right. I thought you stated Mr. Wright made the statement.

Mr. McClennen: No, I said Mr. Rogers, and the reason I said it was because of Mr. Wright's statement, nothing that the Court has said, that this was going on in this way, and

I was recalling to your Honor's attention the fact that Mr. Rogers had made it last May or June.

The Court: Yes.

Mr. McClennen: And at that time this statement appears that of course these are not to be taken as evidence of the [fol. 3607] truth of the matters contained in them. Now, there is nothing at the present time——

The Court: What followed that statement by Mr. Rogers when made?

Mr. McClennen: Have you got that here?

Mr. Rogers: They have it here.

Mr. McClennen: I am speaking of this now, not with respect to what your Honor has done.

The Court: I want to know what the Court said at that time, with reference to the statement by Mr. Rogers; if the Court said it was received under those circumstances, under those conditions, why, the Court wants to know that.

Mr. McClennen: I understand it can be gotten here in a moment.

The Court: Have you other witnesses, Mr. Wright, to follow this?

Mr. Wright: This is the last witness, if the Court please.

The Court: Is this in reference to Norwich alone?

Mr. Wright: Yes, principally as to Norwich.

The Court: I want to step to the telephone just a moment.

(Short recess taken.)

Mr. McClennen: If your Honor please, the paper that [fol. 3608] was under consideration at the moment, on page 286, was an inter-office communication of one of the distributors. Mr. Rogers said: "May it please the Court, of course these letters cannot be accepted as establishing factually what is contained in these letters. That should be established by the plaintiff by competent evidence, and that is exactly why I objected to the admission of these letters. Mr. Wright: Of course they are not offered for that purpose."

Now, that is what I refer to.

Mr. Wright: Would you mind reading the rest of it?

Mr. McClennen: No, I would be very glad to read the rest of it, but what I referred to was the correctness of my statement of what Mr. Wright had said, and Mr. Rogers having made the assertion that these were not to be taken as any evidence of the truth of the facts in them. Mr.

Wright said "Of course they are not offered for that purpose." Mr. Rogers then continued: "If they are offered not for that purpose will you limit the purpose for which [fol. 3609] you claim they are offered?

Mr. Wright: They are clearly offered to show that Columbia could not and would not deal with this exhibitor until it had been unable to make the deal with the Schine Company and——

The Court: Your letters do not show that, do they?

Mr. Rogers: No.

Mr. Wright: The letter P-10 says very clearly 'We can make more money by selling Long here, get more money out of Long than they would get out of Schine', but Bissell's letter to Jackter says, 'We had to hold the deal up on account of Schine', and what these letters very clearly establish is that they were not able to sell——

The Court: Standing alone they would not show that. I will receive the letters, anyway. If they are competent for any purpose they are competent to be received."

That was said on the strength of what Mr. Wright had [fol. 3610] said, as I have read it to you, "Of course they are not offered for that purpose."

Now, that is what I am urging here, and there has been no change of position. That has been maintained throughout.

The Court: True.

Mr. Wright: If the Court please,——

The Court: I don't think it is necessary to go into that. I overrule the objection and receive the exhibits and give you an exception.

Mr. McClennen: You overrule my motion to have the effect limited so it shall not be taken as evidence of the truth of the matter stated in the letter?

The Court: Yes.

(The letter referred to, previously marked as Plaintiff's Exhibit 886 for identification, was received in evidence.)

Q. After you received this letter, Exhibit 886, did you have any further talk with Ray Smith?

A. Yes. Mr. Smith came down to Cooperstown again.

Q. That is Ray Smith you are talking about?

A. Yes, Ray Smith, the manager.

Q. Where did you see him there?

A. I saw him in Cooperstown, in my office.

[fol. 3611] Q. How long after you got this letter was this?

A. I would say two or three weeks.

Q. Then what was said then?

Mr. McClennen: If your Honor please, to avoid the misunderstanding hereafter, I object to the receipt of this, and I ask your Honor to rule that if received it is not as evidence of the truth of the statements made in the conversation.

The Court: I deny your motion and note your reasons for the objection, the grounds of your motion. Proceed. When was it?

Mr. Wright: Will you read the last question?

(Last question read by reporter.)

A. Mr. Smith come in and told me he couldn't do anything for me; that the product was gone and he couldn't sell me any pictures for that season.

Q. I show you this telegram, dated May 22nd, from you to A. W. Smith, Jr., and letter attached, dated May 24th, both 1934, from Smith to you, marked for identification as Exhibit 888, and ask you if you sent the telegram and received that letter, on or about the dates that they bear?

A. Yes, sir.

Q. And I will show you this letter, dated August 9, 1934, [fol. 3612] from you to Mr. Smith, Jr., and the reply dated August 9, 1934, from you to Mr. Smith, Jr., and the reply dated August 13, 1934, from him to you, both marked as Exhibit 887 for identification, and ask you if you wrote and received those letters, respectively, on or about the dates there?

A. Yes, sir.

Mr. Wright: I will offer these Exhibits 887 and 888 in evidence,

Mr. McClennen: If your Honor please, this question having been clearly presented, it will be constantly up and I hate to make a motion every time.

The Court: Yes.

Mr. McClennen: And the objection every time. May it be understood——

The Court: Yes, sir.

Mr. McClennen: —as to each of these communications heretofore received and hereafter received, communications between an outsider and a company not Schine, a party to it,——

The Court: Yes.

Mr. McClennen: —that we persist in the objection and also in the motion that the letter or oral communication [fol. 3613] should not be taken as evidence of the truth of the matter stated in it, and that your Honor has overruled our objection and denied our motion?

The Court: Yes.

Mr. McClennen: And our objection is saved.

The Court: That is all that is necessary, it seems to me.

(Mr. Wright hands the letters referred, Plaintiff's Exhibits 887 and 888 to the Court.)

(The telegram and letter, previously marked as Plaintiff's Exhibit 887 for identification were received in evidence.)

(The letter, August 9, 1934, and reply, dated August 13, 1934, previously marked as Plaintiff's Exhibit 888 for identification were received in evidence.)

Mr. Wright: If your Honor has read them I won't bother reading them into the record.

The Court: Yes.

(Six papers were marked as Plaintiff's Exhibits 889, 890, 891, 892, 893 and 894 for identification.)

By Mr. Wright:

Q. Between the time you got this Exhibit 888 and Exhibit 887 did Mr. Ray Smith, or any other representative of [fol. 3614] Warner's call on you with reference to selling you a product for Norwich first-run?

A. No, sir.

Q. Then after you received Exhibit 887 what, if any, efforts did you make to license Warner Bros. pictures first-run in Norwich?

A. Well, when I was in Albany I would ask the manager if anything different developed. He would say "No, the pictures are sold." That's all I can do.

Q. With reference to the next season, that would be the '34-'35 season?

A. The same way. I wasn't able to buy any product in the next season either.

Q. And the same thing would be true with respect to 1935-36?

A. Yes, sir.

Q. '36-'37?

A. Yes.

Q. '37-'38?

A. Yes, sir.

Q. '38-'39?

A. Yes, sir.

Q. '39-'40?

A. Yes, sir.

Q. '40-'41?

A. Yes, sir, with the exception of once in a while I might [fol. 3615] get a rejected picture during those years. They would spot book or sell me one rejected picture, something like that.

Q. I am referring to season deals, either for a split or for a full deal.

A. No, I wasn't able to buy any.

Q. During that period was there any discussion of terms?

A. Terms?

Q. For Norwich; what you would pay or what you wouldn't pay?

A. No.

Mr. McClennen: This is as to Warner's?

Mr. Wright: Yes, as to Warner's.

A. Yes, as to Warner's.

Q. Then do you recall when a new method of selling was introduced under the consent decree?

A. I believe about '41.

Q. The fall of '41?

A. Yes.

Q. Can you tell the Court what change occurred in the method of selling Warner films at about that time?

A. Well, they sold their pictures in blocs of five or four, whatever it might be, a bloc of pictures.

Q. Beginning with the fall of 1941 and through the rest of '41, did any one from Warner's offer you or offer to discuss terms with you on any of those blocs that were [fol. 3616] then released?

A. Well, for my other towns, but not for Norwich.

Q. My question was with respect to first-run Norwich.

A. Yes.

Q. Was that true also with reference to 1942 through the month of May?

A. Yes, sir.

The Court: You mean by that you did not get the first-run up to May, 1942?

The Witness: No, sir.

The Court: What effort did you make after 1941, after the consent decree, what effort did you make?

The Witness: I tried the same way. I sent wires, letters, and everything.

The Court: All right.

By Mr. Wright:

Q. Going back to the year 1933, I will hand you this letter from Mr. Streimer, to you, dated June 27, 1933, marked Plaintiff's Exhibit 889 for identification, and ask you if you received that on or about that date?

A. Yes, sir.

Mr. Wright: We offer Plaintiff's Exhibit 889 in evidence.

(The letter referred to, dated June 27, 1933, Streimer to Smalley, previously marked as Plaintiff's Exhibit 889 for [fol. 3617] identification was received in evidence.)

Mr. Wright: Exhibit 889 is dated June 27, 1933, addressed to Mr. William C. Smalley at Cooperstown, "Dear Bill: Will you kindly see to it that play dates are submitted to us as soon as possible in accordance with the list I left with you showing the undated pictures in your various towns—not forgetting the Disney's.

I'd appreciate very much having this cleaned up before I leave for the Chicago convention, so that I shall be in a position to show that everything is dated.

I have taken the matter up with Mr. Lichtman regarding a split in Norwich on the new product and Al told me to work out a split with you when I got back from Chicago. At this time I might also advise that I received a telegram from Mr. O. L. Van Horne, representing himself as your attorney, concerning the new season's product for Norwich, and I replied to him by separate letter to this effect.

[fol. 3618] With kindness regards, Sincerely yours, United Artists Corporation, Moe Streimer, Sales Manager."

By Mr. Wright:

Q. Mr. Streimer was the manager at the New York Exchange?

A. Yes.

Q. Then Mr. VanHorne was your attorney at that time, was he?

A, Yes, sir.

Q. After you received this Plaintiff's Exhibit 889 did you see Mr. Streimer?

A. I didn't see Mr. Streimer until August.

Q. Where did you see him then?

A. At Utica.

Q. And who was present at that conversation? Who else was there, any one?

A. Mr. Streimer and myself.

Q. What was said then?

A. Mr. Streimer told me that Schine's had made a complaint to Mr. Lichtman that I had cut my admission prices in some of my towns and he said Mr. Lichtman was very sore about it and before I could discuss to split any more he had to see me to see what it was all about, and I told him it was very untrue, that I hadn't cut any admission prices, and I gave him my admission prices, and he took them back [fol. 3619] with him and he told me he would go back and try again, but he would appreciate it if I would write Mr. Lichtman in regard to the situation.

Q. I will show you this copy of a letter, dated September 5, 1933, from you to Mr. Lichtman, which has been marked for identification as Plaintiff's Exhibit 890. I ask you if that is a copy of a letter that you wrote Lichtman on or about that date?

A. Yes, sir.

Q. Then after you wrote the letter to Lichtman marked for identification as Plaintiff's Exhibit 890 did you have any further conversation with Mr. Streimer about first-run United Artists for Norwich?

A. Well, I called him up several times to see whether he could get the split for me and whether he could get me any pictures, and finally he told me, in December, he couldn't get me any, the pictures were sold. he couldn't get me any pictures.

Q. In the meantime had you written him the letter of November 2, 1933, which is from you to Mr. Streimer, and received the reply attached, dated November 4, 1933, both of which are marked as Plaintiff's Exhibit 892 for identification?

A. Yes, sir.

Mr. Wright: We will offer Plaintiff's Exhibit 892 in [fol. 3620] evidence.

(The letter, dated November 2, 1933, and reply, dated November 4, 1933, previously marked as Plaintiff's Exhibit 892 for identification, received in evidence.)

Mr. Wright: Plaintiff's Exhibit 892 consists of a copy of a letter from Smalley to Mr. Streimer, dated November 2, 1933:

"Dear Mr. Streimer: We are asking once more for the opportunity to buy or lease from your Company an equal split of your 1933-34 product, as previously promised, for our Smalley theatre, Norwich, N. Y.

Very truly yours, William C. Smalley."

And the reply, dated November 4, 1933, from Mr. Streimer to Mr. Smalley, states: "Dear Mr. Smalley: Acknowledging your letter of November 2nd, please be advised only this morning we received a letter from the Schine Company, pursuant to our correspondence, concerning a split in Norwich, from which we are quoting below in full:

'In response to your letter of October 30, you are ad- [fol. 3621] vised that we are not in a position to give up a split of your product in Norwich, N. Y., in view of the fact that we have contracted for only such pictures as we actually need to operate our theatre. Signed J. Myer Schine.'

According to this letter you ought to be in a position to buy a lot of other product for Norwich. However, I'll keep after them so far as our own product is concerned and do everything I *can* possibly can to effect a split.

Sincerely yours, United Artists Corporation, Moe Streimer, Sales Manager."

By Mr. Wright:

Q. Then after you got that letter I just read do you recall about when the next time was you saw Mr. Streimer?

A. In December, he called me up and told me that the product had been all sold and he couldn't get me a split.

Q. Now I show you this letter, dated November 9, 1933, from you to Mr. Streimer, marked Plaintiff's Exhibit 893 for identification, and ask you if that is a copy of the letter you wrote to him on or about that date? In this letter dated [fol. 3622] November 11, 1933, from Mr. Streimer to you, marked Plaintiff's Exhibit 894 for identification, is that the reply you received on or about that date?

A. Yes, sir.

Mr. Wright: I will offer Plaintiff's Exhibit 893 and 894 for identification.

(The letter, dated November 9, 1933, Smalley to Streimer, previously marked as Plaintiff's Exhibit 893 for identification was received in evidence.)

(The letter, dated November 11, 1933, from Streimer to Smalley, previously marked as Plaintiff's Exhibit 894 for identification was received in evidence.)

Mr. Wright: Plaintiff's Exhibit 893 is a letter, dated November 9, 1933, from Mr. Smalley to Mr. Streimer, and it says:

"Dear Moe: I note that 'I'm No Angel,' 'Tugboat Annie,' 'Golddiggers,' and other pictures are playing Norwich four days, but your pictures such as 'The Bowery' are only playing two days.

I fail to see the drift of Schine's letter to you and your statement that although Schine bought all of your product [fol. 3623] there should be plenty left. Schine is not only demanding all of your product but he is demanding the product of every other Company, including Monogram.

I am today taking the matter up with the proper authorities in Washington, to see if *I see if* I shall have 50 per cent of the United Artists Pictures.

Mr. Rosenblatt informed me that I was to have an equal split of pictures from various companies until I had enough to operate my theatre in Norwich. I had already told him that you promised me 50 per cent of your product, but after receiving your last letter I shall, of course, have to refute this statement.

Very truly yours, William C. Smalley."

[fol. 3624] Q. Who was Mr. Rosenblatt?

A. He was the head of the motion picture theatres of the N.R.A.

Q. Administrator of the N.R.A. Code Authority?

A. Yes.

The Court: Mr. or Mrs. Rosenblatt?

The Witness: Mister.

Mr. Wright: Then, Exhibit 894, the reply, is dated November 11, 1933, addressed to Mr. Smalley. "Dear Bill: I have your letter of November 9th, and in reply want to advise that I am going to be in Gloversville on Tuesday of this coming week at which time I am going to try to force an issue direct with the Schines for a split in Norwich. I will advise you of the results of my efforts which I hope will be successful. With kind regards, sincerely, United Artists, by Moe Streimer, Sales Manager."

By Mr. Wright:

Q. And then, did you receive any further advice from him as to the result of his efforts?

A. Well, he called me in December and told me he could not get any pictures for me for Norwich.

[fol. 3625] Q. Then, I will show you this letter of August 9th, 1934, from you to Al. Lichtman, General Manager of United Artists, and the reply to you dated August 14th, 1934, both marked for identification as Plaintiff's Exhibit 891, and ask you if you wrote and received those letters on or about the date they respectively bear?

A. Yes, sir.

Mr. Wright: We offer Exhibit 891.

(Thereupon Plaintiff's Exhibit 891, previously marked for identification, was received in evidence.)

Mr. Wright: Mark these, please.

(Thereupon group of contracts referred to were marked as Plaintiff's Exhibit 895 for identification.)

Mr. Wright: Plaintiff's Exhibit 891 is a letter of August 9, 1934, from Mr. Smalley to Mr. Lichtman. It states: "On May 22nd, I sent you a telegram as follows: "I desire to buy or lease at least 50 per cent of your 1934-1935 product for use in Smalley Theatre, Norwich, New York stop. Please have your representative contact me immediately.' Up to this date your representative has not called on me or communicated with me, and I again request that you [fol. 3626] have him contact me at once, because I desire to buy or lease at least 50 per cent of your 1934-1935 product for Smalley Theatre, Norwich, New York. Very truly yours."

The reply dated August 14, 1934, states:

"We are in receipt of your esteemed letter of the 9th. We have an appointment in the near future to talk with the Schine Theatrical Enterprises who bought our product in Norwich last year. If we can arrange to sell you some of our pictures, at Norwich, we will be glad to do so. Frankly, we have an obligation for all the pictures to Schine, inasmuch as he bought them last year, also because they are good customers, and they usually buy our pictures for all their theatres. However, we will tell Mr. Schine at the time we negotiate with him of your desire to buy some of our pictures and all things being equal we would like to accommodate you. Just as soon as we see Mr. Schine, we will communicate with you either through Mr. Streimer or our Mr. [fol. 3627] Harry Gold. Thank you for your interest. Sincerely yours, United Artists Corporation." I believe that is A. Lichtman, Vice President and General Manager.

By Mr. Wright:

Q. I will show you these contracts clipped together with a tab "United Artists, 1934-1935", which has been marked for identification collectively as Plaintiff's Exhibit 895, and ask you if those are the contracts for the United Artists pictures that you bought for first-run in your theatre at Norwich during that season?

A. Yes, sir.

Q. The deal was made with whom representing the United Artists?

A. Well, part of the deal was made in November by Mr. Streimer, and the other part of the deal was made later on by Mr. Herman.

Q. The contracts dated in November, 1934, are those negotiated with Mr. Streimer?

A. Yes, sir.

Q. And those bearing the later dates of April, 1935, those were with Mr. Herman, the salesman?

A. Mr. Leon Herman.

Q. Then, did you play those pictures that year?

A. Yes, sir.

[fol. 3628] Q. Between the time you got the letter from Mr. Lichtman that I last read to you, letter of August 14, 1934, and November, 1934, had Mr. Streimer or Mr. Herman offered you any of those pictures?

A. Well, we had a deal going along right along, trying to buy the pictures, and in November we was able to buy them. I mean, it might have been one time or it might have been two or three times.

Q. Had they been offered to you prior to the time you bought them in November?

A. Yes, sir.

Q. What, if any, efforts did you make to buy or license the United Artists films first-run in your theatre at Norwich for the succeeding season? That would be 1935-1936?

A. I tried the same usual way, starting in as soon as the season opened, the buying season, and during the summer I probably saw Mr. Streimer two or three times in New York and once in Cooperstown.

Q. That is with reference to first-run of the 1935-1936 season?

A. 1935-1936 in Norwich, yes, sir.

Q. Do you recall what was said on those occasions?

A. Well, he told me that he was going to try to get me the product, because I had it the previous year, and he said [fol. 3629] certainly there would not be any reason why I would not receive a split if I did not get it all for the 1935-1936, but I never was able to buy any of them.

Q. You did not get a split?

A. No, sir.

Q. Or the season's product was not offered to you?

A. No, sir.

Q. Do you recall when you were told that you could not have a split of the product or all of it?

A. In December, up to the middle of December.

Q. About the middle of December, 1935?

A. Yes.

Q. Who told you that?

A. Mr. Streimer.

Q. Where was that?

A. That was in, I believe, in New York.

Q. Any one else present?

A. Well, there was probably—there might have been somebody in the office present, I don't know, outside of Mr. Streimer and me.

Q. What was said?

A. He just told me he had tried every way that he knew of, and he said that the deal, the Schine deal, had been handled by some one higher up, and it took it out of his hands, so he could not do anything else, who sold—it was [fol. 3630] sold as a circuit deal, and he was unable to do anything for me.

Q. Did you make any efforts to license the United Artists films for the 1936-1937 season?

A. Yes, sir.

Q. Season deal, that is?

A. Yes, sir.

Q. What did you do in that connection?

A. Well, I done practically the same thing, started in as soon as the picture season opened and tried to buy all the while, from then up to December.

Q. Were you offered a season deal?

A. I was never offered anything, with the exception sometimes they would offer me a foreign picture, one picture or two pictures from the foreign market.

Q. Was that true also with respect to the 1937-1938?

A. Yes, sir.

Mr. McClennen: Just a moment. These leading questions——

The Court: That is true.

Mr. Wright: Well, I will take him over it.

Q. What did you do with respect to the next season, 1937-1938?

A. I tried the same way for every year right up to 1942 without any success.

Mr. Wright: Mark these with the next exhibit numbers.

[fol. 3631] (Thereupon correspondence between Mr. Van Horne and Mr. Sauber, marked as Plaintiff's Exhibits Nos. 896 and 897 for identification.)

By Mr. Wright:

Q. Do you know whether this telegram, dated June 26th from Van Horne to Sauber, Manager of Universal, and the reply from Sauber to Van Horne, dated July 10th, 1933, were sent and received on or about the respective dates they bear?

A. Yes, sir.

Q. The Mr. Van Horne that is referred to there was the man who was your attorney at the time?

A. Yes, sir.

Q. And did you write and receive on or about the dates they bear, this letter from you to Nate Sauber, dated November 2nd, 1933 and the reply of November 4th, 1933, marked for identification as Exhibit 897?

A. Yes, sir.

Mr. Wright: We offer Exhibits 896 and 897 in evidence.

(Thereupon Plaintiff's Exhibits Nos. 896 and 897, previously marked for identification were received in evidence.)

Mr. Wright: Exhibit 896 is a wire from Van Horne to Sauber, Manager of Universal Film Exchange at Albany. [fol. 3632] "Smalley Theatres, desire the opportunity to buy or lease at least 50 per cent of your 1933-1934 product first-run for Smalley Theatre, Norwich, New York. Our percentage of product to be on an equitable basis."

The reply of July 10th, 1933, from Sauber to Van Horne states:

"Answering your telegram of June 26th, with regard to your request for 50 per cent of our 1933-1934 product for showing at the Smalley Theatre, Norwich, wish to advise that we are not in position to make available for sale any of our product. We are serving the Schine Theatrical Enterprises, who are now operating in Norwich under a franchise agreement which has been in effect since August 1st, 1931. This particular franchise covers all towns that are now operating or any additional theatres they might acquire during the life of our agreement. In accordance with the workings of this franchise, we have no alternative, but to make available to Schine's Norwich Theatre all of the product we intend releasing during the 1933-1934 season. [fol. 3633] Very truly yours, Universal Film Exchanges, by Nate Sauber."

Exhibit 897 is a letter dated November 2nd, 1933, from Mr. Smalley to Mr. Sauber. It states:

"We are asking once more for the opportunity to buy or lease from your company a reasonable portion of your 1933-1934 product for Smalley's theatre, Norwich, New York."

The reply, dated November 4th, 1933, states:

"Replying to your communication of the 2nd, again wish to advise that we are not in a position to offer your theatre in Norwich any portion of our 1933-1934 feature product. If you will recall, we stated in our recent communication that Universal was tied up with Schines Theatres on a franchise agreement whereby we are obligated by the terms thereof to make available our feature product to all Schine theatres."

It is signed by Nate Sauber.

By Mr. Wright:

Q. I will show you this document previously marked for [fol. 3634] identification as Exhibit 422, a letter from W. F. Rodgers, or a copy of a letter from W. F. Rodgers, to William C. Smalley, dated July 20th, 1933, and ask you if you have made any search of your files to locate the original that corresponds to that letter?

A. Yes, sir.

Q. Have you been able to find the original?

A. No, sir, I was not able to find the original.

Q. Have you attempted to locate the letter of July 11th that is referred to in the first paragraph of that letter?

A. No, sir—during the N.R.A. I had all my letters——

Q. I don't think you understood the question. Have you attempted to locate the letter of July 11th?

A. I did try to locate it.

Q. Could you find that?

A. No, I could not. 7

Q. Do you have any recollection now as to whether or not you received the original of that letter?

A. I would not want to say that I received it, or I did not receive it, because I haven't the copy, or I haven't the letter.

Q. You don't recall at this time whether you got it or not?

A. I would not want to say.

Q. In the 1933-34 season what major product did you [fol. 3635] first-run for your theatre at Norwich?

A. 1933-1934?

Q. Yes.

A. I had Columbia and a split with R.K.O.

Q. Any others?

A. No, sir, with the exception of independents.

Q. Then for the 1934-1935 season, what, if any, first-run product did you have for the Norwich Theatre?

A. 1934-1935 I had United Artists.

Q. Any others?

A. No other, only slough pictures or rejected. That is the way they call them.

Q. What major first-run, if any, did you have there for the 1935-1936 season?

A. I did not get the question.

Q. I say what major first-run product did you have for the 1935-1936 season?

A. I just had a split of Columbia.

Q. Then for the 1936-1937 season?

A. I did not have any, only just rejects and slough pictures.

Q. For 1938-1939?

A. No major.

The Court: You asked about that before.

Mr. Wright: I am asking him now about what he had in the theatre. I had asked him before with reference to [fol. 3636] negotiations over this period with the companies.

The Court: He testified before after a certain date he did not have any first-run.

Mr. Wright: What was the last question and answer?

(Last question and answer read.)

The Court: 1941, he said, once in a while he got a reject. Go on,

Q. For 1939-1940 and 1940-1941, you had no major first-run, regular deal, either?

A. No deal, but just rejected pictures.

Q. And the same thing was true with respect to 1941-1942 through May, 1942?

A. Yes, sir.

Q. During the period when you had no regular season's deal with first-run major product at Norwich there, what, if any, efforts did you make to license such films other than those you have already spoken about with reference to United Artists and Warner?

A. Well, I sent a wire or telegrams and letters and practically the same that I did Warner's and United Artists, practically every year.

Q. Each season?

A. Every season, yes, sir.

Q. You talked to the Exchange Managers?

[fol. 3637] A. Yes, sir.

Mr. McClennen: This is objected to. It cannot be grouped in this way.

The Court: Objection sustained.

Q. Well, can you tell specifically, let us say with reference to R.K.O. now, when was the last year you had a split of the R.K.O. product?

A. 1933-1934.

Q. Then the next season did you try to license for 1934-1935?

A. Yes, sir.

Q. Whom did you talk to about that?

A. I talked to Mr. McEvoy and Mr. Halligan, and they told me that Schine had a deal for their product, and it was a selective deal, and whatever pictures they rejected I could have, and that is what I did receive, that is what I bought from that day right up to today, is all I ever received from R.K.O., is rejected pictures.

Q. With reference to Columbia, when was the last time you had a split of Columbia?

A. 1935-1936.

Q. Then, did you attempt to license pictures for Norwich for the 1936-1937 season?

A. Yes, sir.

Q. Whom did you talk to about that?

A. I think it was Phil Fox, Manager in Albany.

[fol. 3638] Q. What was said?

A. Well, I tried to——

Mr. McClennen: A little louder, please.

The Witness: —buy a product, or buy a split, but I could not buy it, that is all.

Q. Was there any discussion of terms?

A. Well, I offered the same terms that Schine or I paid before. I offered the same terms that I paid before, or Schine was paying.

Q. Can you tell us what, if any, efforts you made to get Metro product during the 1933-1934 season?

A. Well, I sent a wire. Of course, they always sent me back a very courteous letter that they had a good customer in Norwich.

Q. You had not used the Metro product there before?

A. No, sir, I never used any Metro.

Q. Then, from 1933-1934 through 1940-1941, was any offer made to you of a deal for Metro pictures there?

A. Why, I think, not for a deal. I had a few rejected over a period of years.

Q. I am talking about first-run in all these cases?

A. No.

Q. Then, when the new method of selling began in September, 1941, were you given any opportunity to license any Metro blocs?

[fol. 3639] A. No, sir.

Mr. McClennen: That is objected to.

The Court: Sustained. It calls for a conclusion. Strike it out.

Q. Did you have any conversation with any representative of Metro with respect to the blocs released beginning in August or September of 1941?

A. Yes, sir.

Q. Whom did you talk to?

A. I talked to Mr. Ripps.

Q. Who was he?

A. He was the manager of the Albany Exchange.

Q. Had you done business with him in your other towns?

A. Yes, I do business with him in all my other towns.

Q. What was your conversation that you had with him?

A. Well, he just—I just asked him about a picture. I says "What about a picture once in a while for Norwich out of some of these blocs." He just smiled and said "You know the situation. We have been over that for years." That is all there was to it.

The Court: Was there anything to prevent your bidding on these pictures?

The Witness: I didn't——

Q. Was there anything to prevent you bidding on these pictures after 1941?

[fol. 3640] A. I bid, but they just tell me that they have a satisfactory account, they don't want to change their account in Norwich. It wouldn't make any difference what I paid or bid, I wouldn't get the pictures. I could not buy the pictures.

Mr. McClennen: I ask that the last be stricken out.

The Court: Yes, the latter part may be stricken out.

Q. With reference to Fox, will you tell us what, if any, efforts you made to get Fox product first-run for your theatre in Norwich beginning with the 1933-1934 season?

A. Yes, sir, I tried to buy with wire or letter and conversation.

Q. Whom did you talk to at Fox?

A. Pardon.

Q. Whom did you talk to at the Fox Company? Whom did you have your dealings with?

A. I think at that time Grassgreen.

Q. What did he tell you?

A. Well, he told me that Schines had all the products bought, and they were a satisfactory customer, and that there was no pictures for sale for me.

Q. Then did they offer you a season first-run deal at any time during the seasons 1933-1934 through 1940-1941?

A. No, sir.

Mr. McClennen: That is objected to.

[fol. 3641] The Court: Strike it out.

Mr. Wright: What they offered, I think, is——

The Court: No, no, that is a conclusion. He may state what was said.

Q. Tell us, then, the talks, as nearly as you can recall them, that you had with Fox representatives after the 1933-1934 season that you have just referred to?

A. I tried every way to buy——

The Court: No, no, what you said.

Q. Just what was said as nearly as you can recall.

A. Well, I sent letters and wires to Fox——

The Court: No, no, what did you say to somebody and what was the reply as you remember it?

The Witness: I talked to Mr. Grassgreen, the Manager.

The Court: What did you say to him and what did he say to you, as you remember it?

The Witness: I asked him if I would be able to buy some Fox product, and he said, "No, you can only buy just the reject pictures Schine don't like," and that is all I could ever buy.

Mr. McClennen: I ask to have that last stricken out.

The Court: Strike it out.

Mr. Wright: I think he can say——

The Court: What he could buy is a conclusion. That is not proper.

[fol. 3642] Q. Is that all you ever did buy?

A. That is all I ever did buy, yes.

Q. Beginning with the new method of selling in the fall of 1941, did you have any conversations with the Fox representatives about licensing the films first-run for your theatre at Norwich in blocs?

A. Yes, I have tried to buy blocs——

The Court: What?

The Witness: I tried to buy blocs of pictures each year.

Q. State what you did.

A. In bloc, I tried to——

Mr. McClennen: I ask that it be stricken out.

The Court: It is not responsive.

Q. I called your attention specifically to the fall of 1941, when the small bloc sales began, do you recall whether you had any conversation with any representative of Fox with reference to those blocs that began to be released then?

A. Yes, I tried to buy a bloc.

Q. Whom did you talk to?

A. I talked to the Manager of the Fox Film Exchange in Albany.

Q. Do you remember who that was, or what his name was?

A. It was not Mr. Grassgreen. It was—I can't think of his name for the minute.

[fol. 3643] Q. Was it a fellow that you did business with in your other towns?

A. Yes.

Q. Can you tell us what was said?

Mr. McClennen: This is objected to because the witness characterizes this person as the manager of the Fox Albany Exchange, and not Mr. Grassgreen.

The Witness: Mr. Harry Alexander.

The Court: Just a moment. Can you tell whom you talked with?

The Witness: Yes, Mr. Harry Alexander. He was the manager at that time. It just slipped my mind.

Mr. McClennen: May that last be stricken, if your Honor please?

The Court: He talked with Mr. Harry Alexander. That is the man you talked with?

The Witness: Yes, sir.

Mr. McClennen: The rest may be stricken out, if your Honor please?

The Court: Yes.

[fol. 3644] By Mr. Wright:

Q. Did you know what Mr. Alexander's job was there?

A. He was manager.

Q. At Albany?

A. Yes.

Q. What was said?

Mr. McClennen: I ask to have it stricken out, if your Honor please. The evidence has been put in and it shows that Mr. Grassgreen was the manager at this time, and this witness obviously would not be able to know who was the manager, in the face of the Company's statement it was Mr. Grassgreen..

Mr. Wright: Could I see the record on that?

Mr. McClennen: Page 1369.

Q. Do you remember whether it was Grassgreen or Alexander, or who it was you actually talked to?

A. Mr. Grassgreen was manager, and Mr. Alexander was in there the same time Mr. Grassgreen was, because Mr. Alexander became manager after Mr. Grassgreen went to Boston.

Mr. McClennen: I ask to have it stricken out, that characterization.

The Court: He didn't ask about that.

Q. At the time you had this conversation do you recall [fol. 3645] whether it was with Alexander or with Grassgreen?

A. Will you tell me what year you are talking about?

Q. I am talking about the fall of '41.

A. That was Mr. Grassgreen.

Q. When the new method of selling went into effect?

A. Yes, sir.

The Court: Who was it?

The Witness: Grassgreen.

Q. Did Mr. Grassgreen, or did Mr. Alexander, or anybody else, offer to you any of those blocs of pictures?

Mr. McClennen: That is objected to, if your Honor please.

The Court: Sustained.

Q. Can you tell us what was said?

Mr. McClennen: By whom?

Q. At these conversations you had.

Mr. McClennen: I object if it is "these conversations".
The Court: Sustained.

Q. Do you recall any particular conversation you had with respect to the blocs of films offered by the Fox Company in the fall of 1941?

A. When I was trying to buy—when I bought the product for my other towns I asked Mr. Grassgreen——

Mr. McClennen: That is objected to. All he was asked is if he remembered the conversation.

The Court: Do you remember the conversation about the [fol. 3646] bloc-buying, buying pictures in blocs, some time in 1941?

The Witness: I was unable to buy a bloc.

The Court: I know. But do you remember a conversation with some official in reference to that?

The Witness: I had a conversation with Mr. Grassgreen, the manager of the Fox.

The Court: All right.

By Mr. Wright:

Q. What was said?

A. I asked him if he would sell me a bloc of his pictures for Norwich. He said "No, the picture is already sold to Schine."

Q. Did you have any other conversation with him at that time?

A. Well, practically the same thing every time they come with a block of pictures. They sold five at a time.

Mr. McClennen: May that be stricken out?
The Court: Strike it out.

Q. You did talk to him each time there was a bloc of five released?

Mr. McClennen: Objected to.
The Court: Sustained.

Q. Just tell us when, after this first conversation, you had any further conversations with Mr. Grassgreen with [fol. 3647] reference to Fox pictures for first-run in your theatre at Norwich?

A. Well, I bought—they sold the pictures in blocs of five and every time they offered me a bloc of five pictures for my other towns I tried to buy them for Norwich. I don't know what else I can say.

Mr. McClennen: I ask to have it stricken out.

The Court: Strike it out, not responsive.

Q. All you can say is what the conversations you had were, as nearly as you can recall them, if you can fix, first, the approximate dates when you had them.

A. After the consent decree went in 1941 I had conversations with Mr. Grassgreen and Mr. Grassgreen told me it was impossible to sell me any pictures.

The Court: That is the conversation you told us about before?

Q. That is with respect to the first bloc that was offered?

A. That is the first bloc.

Q. Did you have a conversation with respect to the next bloc?

A. Yes, I had a conversation.

Q. What was said then?

Mr. McClennen: This is with Mr. Grassgreen?

The Court: With whom was this second conversation? was this the same man, you mean?

[fol. 3648] The Witness: Yes, Mr. Grassgreen.

The Court: That would be when?

The Witness: That would be '41. I suppose he is talking about '41. Is that what you are talking about?

The Court: You told about the conversation in '41, with reference to buying a bloc. Now is this another one the same year?

The Witness: I wouldn't say whether the next bloc—I cant remember when the next bloc came out, but if it came out in '42 I had a conversation with him then in reference to buying pictures for Norwich, and I asked him if there were any pictures for sale for Norwich and he would say "No."

Q. Now can you tell us something about the general characteristics of your theatre at Norwich?

A. Why, it was built in 1932, Spanish type, and all modern, up-to-date equipment.

The Court: How many seats?

The Witness: 856, all on the lower floor, just one floor.

By Mr. Wright:

Q. Can you describe, generally, the Colonial Theatre there, with reference to size and age, if you know?

A. The Colonial Theatre was built in 1914.

[fol. 3649] Q. How large is it?

A. I think it is 1046 or 1044, 1046, I believe, and about 690 seats on the lower floor, and 356 in the balcony, I think is what it is.

Q. Was your theatre, and the Colonial Theatre, the only theatres that were operating in Norwich during this entire period you have been talking about, from '33 through '41?

A. Yes, sir.

Q. Norwich is the largest town in which you operate a theatre?

A. No, sir, Johnstown.

Q. And is yours the only theatre in Johnstown or is there another theatre there?

A. No, there is another theatre there, a small theatre.

Q. With respect to the other towns you have operated in, those are all one-theatre towns, are they?

A. Yes, sir.

The Court: What materiality has this?

Mr. Wright: I just wanted to give a general picture of the nature of his operations.

The Court: We are not concerned with the other towns. Let us not spend any unnecessary time, whether the others are one-theatre towns or not is immaterial, as far as I can see.

[fol. 3650] Mr. Wright: All I wanted to ask is for the size.

By Mr. Wright:

Q. Those were all towns of less than 4,000 people, were they, the other towns?

A. Yes, sir.

Q. Throughout this period you played the major product in the other theatres you had?

A. Yes, sir.

The Court: He stated that before.

Q. Can you tell us the general location of these other towns you operated in, with reference to the towns in which Schine operated theatres?

Mr. McClennen: If this is being dealt with for Norwich only, I object to this question.

Mr. Wright: If, what?

Mr. McClennen: I understood the Court's suggestion to be we were dealing with Norwich and I understood that this was the place that we were going into, and if so, it is wholly immaterial, the relationship between his other towns and Schine.

Mr. Wright: The complaint covers these features with respect to the other towns, if the Court please. There are allegations with respect to unreasonable clearance over [fol. 3651] towns in which he operated theatres, and I wanted to ask him where those towns were with reference to the Schine towns.

The Court: You are going to show none of these towns were within unreasonable clearance of Schine?

Mr. Wright: Yes, the Schine contracts, of course, will themselves show what the clearance provisions were, but the contracts will not show the locations of the towns over which Schine held clearance, that he operated with respect to the Schine towns. I simply wanted to ask him to locate his towns with reference to those Schine towns.

Mr. McClennen: If your Honor please, the reason I made the objection, Mr. Wright informed me that he was going into Norwich, that he was going to refer to the other towns, but my understanding of what he said—perhaps I misunderstood him—was that he was not going into the question of clearance in these other towns. We have no objection to his going into the clearance in these other towns, but we don't want just a little bite of it. We have got to cross-examine extensively on those if we are to go into them. [fol 3652] Now, if we are to go into them it is because of the clearance charges and we should know whether it is purposed to press with this witness the matter of the clearance charges. I inquired of Mr. Wright, with a view to the preparation to be made. We can go into the clearance all right but we ought to know whether that is a part of what this witness is to testify to and we ought not to be embarrassed by any saving of time when it comes to cross-examine on those subjects.

The Court: I don't want to spend any unnecessary time. If it isn't material he shouldn't go into it.

Mr. Wright: The statement I made to Mr. McClennen was that the testimony would be principally devoted to Norwich. I do intend at this time to cover with the witness any specific product negotiations with respect to any other town. We do expect to show that Schine, by means of the franchises and other circuit deals that it made, got unreasonable clearance in favor of its towns over town- in which [fol. 3653] this witness operated. We expect to show that principally by the contracts themselves. All that we are now offering to show by this witness and all that we propose to take him over on his direct examination is the relative positions, geographical locations, of these towns with respect to the Schine theatres.

The Court: I will let him locate these towns and, of course, — the question of clearance comes up he will be entitled to go into other towns.

State, as quickly as you can, where these towns are located.

The Witness: Only on clearance?

The Court: No, where are they located. That is all.

By Mr. Wright:

Q. Just give us the location of the towns where you operate theatres that follow Schine towns on major products and cover the town you follow and the distance between your town and that town.

A. Cooperstown is 23 miles from Oneonta; Delhi is 21 miles from Oneonta.

Q. You operate a theatre in Cooperstown?

A. And I operate the theatre in Delhi.

[fol. 3654] Q. Both of those follow Oneonta?

A. Yes, sir.

Q. Go ahead.

A. And then my Sydney theatre has to follow the Norwich theatre, which is 24 miles away.

Q. That is your theatre at Sydney?

A. Yes.

Q. That is 24 miles from Norwich?

A. Yes, sir.

Q. Any others?

A. Oxford is my theatre, which is eight miles away from Norwich, and that has to follow Norwich, and St. Johnsville.

Dolgeville is my theatre and St. Johnsville and Dolgeville, and they have to follow Schine's theatre in Little Falls, and Johnstown is a small theatre and that has to follow the Schine theatre in Gloversville.

Q. Those theatres you just named have all been operated by you during what period?

A. During 1930 up to today.

Q. From 1930 to date?

A. Yes.

Q. I don't belive you stated how far St. Johnsville and Dolgeville were from Little Falls.

A. St. Johnsville is, I would say, about eleven miles, [fol. 3655] and Dolgeville is about nine.

The Court: If this is going to take much longer we will have to adjourn. It is a quarter past 1.

Mr. Wright: I would say it would take another five or ten minutes.

The Court: We had better adjourn now until two o'clock.

(Whereupon a recess was taken until two o'clock P.M.)

[fol. 3656] After Recess, 2 o'clock P. M.

Appearances: As before noted.

William C. Smalley, a witness resumed by and on behalf of the Plaintiff, testified further as follows:

Direct examination (continued).

By Mr. Wright:

Q. Mr. Smalley, how far is Johnstown from Gloversville?

A. I would say about three miles.

Q. Calling your attention to the month of May, 1934, did you have a conversation with Mr. Myer Schine at that time?

A. Yes, sir.

Q. Where?

A. It was May 24th.

Q. Whereabouts?

A. At Johnstown, New York.

Q. Where in Johnstown?

A. Johnstown is right next to Gloversville.

Q. No, I say whereabouts in Johnstown?

A. At the Johnstown Hotel.

Q. Who else was present if any one?

[fol. 3657] A. No one else was present.

Q. What was said at that conversation?

A. Well, Mr. Schine made an appointment with me to meet him at Johnstown in reference to ten pictures that was awarded by the N.R.A., and we discussed the 10 pictures——

Mr. McClennen: I ask that this be stricken out. What was said?

The Court: Yes.

Q. Tell us as nearly as you can remember what was said by him and what was said by you?

A. Well, Mr. Schine told me that he had the ten pictures that he was willing to reject to me, and I told Mr. Schine that I did not know whether I was going to accept them—the pictures or not, because I might appeal the case, and so then we went over the pictures again and talked about them, and then Mr. Schine said to me, he said, "Bill, why don't you sell me your Norwich Theatre?" And I said "Myer," I said, "why don't you sell me your Norwich Theatre?" And he says, "I am buying theatres; I am not selling them," and the discussion was that if I made up my mind to sell the Norwich Theatre or lease it, that I would let Mr. Schine know.

Q. Those pictures you were talking about were pictures for what theatre?

A. Norwich Theatre.

[fol. 3658] Q. Then did you ever at any later date let him know that you wanted to sell your theatres?

A. He didn't ask me about my theatres. He just asked me about Norwich.

Q. Your Norwich Theatre?

A. No, I never let him know.

Q. Then did anybody else from the Schine organization ever talk to you about buying any of your theatres?

A. Yes, sir, Mr. Willard McKay.

Q. When was that?

A. September 10, 1934.

Q. Nineteen what?

A. 1934.

Q. The date of the conversation with Mr. McKay?

A. September 10th.

Q. Yes, but——

A. 1933.

Q. The year?

A. I told you——

Q. Where was the conversation you had with Mr. McKay?

A. Mr. McKay was 1940.

Q. What time in 1940?

A. It was May—September 10, 1940.

Q. 1940?

A. Yes.

[fol. 3659] Q. Where was that?

A. That was in Albany.

Q. Was any one else present there?

A. No, sir.

Q. What was said at that time?

A. Well, I met Mr. McKay at the Ten Eyck Hotel, and Mr. McKay invited me to Keeler's for dinner. We went down and had dinner, and in about 15 minutes Mr. McKay says "I am here to make a proposition with you for your circuit for the Schine Theatres," and I told Mr. McKay that I was not interested, and he said "Well, if you ever are, let me know."

Q. Is that all that was said then?

A. That is all — was said regarding the dealing, except we might be talking back and forth something.

Mr. Wright: That is all. Cross-examine.

Cross-examination.

By Mr. McClennen:

Q. In the early part of 1942, that is, before May 19, 1942, did you have some signboards with reference to your theatre between Johnstown and Gloversville?

A. I wouldn't know.

Q. By that do you mean that you don't know?

A. No, sir, I do not.

[fol. 3660] Q. Do you get to Johnstown from time to time?

A. Yes, sir.

Q. Were you there in the early months of 1942?

A. In Johnstown? Why, I might have been. I don't know.

Q. Well, have you any recollection of being?

A. No, sir.

Q. Do you have any recollection of traveling the road between Johnstown and Gloversville?

A. I very seldom ever go to Gloversville.

Q. Now, perhaps that will enable you to answer my question which is: Do you have any recollection of traveling the road between Johnstown and Gloversville?

A. No, sir, I haven't.

Q. You have no recollection of ever going over that road?

A. Oh, yes, I have been over the road.

Q. How often?

A. I would say maybe once a year, maybe, something like that.

Q. Well, then, you do recall going over that road perhaps once a year?

A. Yes, sir.

Q. For a number of years back?

A. Yes, sir.

Q. On any of your trips did you ever see a sign of which I show you a photograph?

[fol. 3661] A. Yes, sir.

Q. Was that sign*ed* erected by your theatre?

A. Yes, sir.

Q. And do you remember how long that sign was up before May 19, 1942?

A. No, I wouldn't.

Q. Well, you do remember that you had a sign on the road between Johnstown and Gloversville, do you not?

A. No, I didn't say that. I said I remembered those signs. I wouldn't know. The managers put those up, put up the billings. I wouldn't know where the locations were.

Q. Don't you ever remember seeing one of them up?

A. I have seen them in Johnstown, but I don't remember seeing one between Gloversville and Johnstown.

[fol. 3662] Mr. McClennen: I will offer the photograph referred to.

Mr. Wright: Has it been marked?

Mr. McClennen: No.

Mr. Wright: The photograph appears to be immaterial and certainly is not related to anything Mr. Smalley testified to on his direct examination.

Mr. McClennen: It is related to clearance which he testified to on his direct examination.

The Court: Let me see it.

(Mr. McClennen hands photograph referred to to the Court.)

Mr. McClennen: It is quite as material as the distance between Johnstown and Gloversville, which he testified to on his direct examination.

The Court: It relates to clearance, you say?

Mr. McClennen: Yes, if your Honor please.

The Court: Standing alone it does not. I thought you meant it had some necessary direct connection with clearance. I will receive it.

(The photograph referred to was received in evidence and marked Defendants' Exhibit D-138.)

Q. I show you another photograph of a sign. Did you ever see such a sign as that in North Arlington Avenue, [fol. 3663] Gloversville?

A. No, sir, I never did. I wouldn't know where North Arlington Avenue was.

Q. Did your knowledge of your Johnstown theatre ever go so far as to know that you were billboard advertising it in Gloversville?

A. No, sir. The manager takes care of that and puts out the billboards and puts up the posters. I wouldn't have time to go all over and check up where every one of those billboards was every time he changes it.

Q. Didn't you have anything to do with the policy of the operation of the Johnstown theatre?

A. Do I have anything to do with it?

Q. Yes.

A. Yes, I do.

Q. Did you approve of the idea of putting up billboards in Gloversville advertising the Johnstown theatre?

A. Well, I told the manager to take care of that himself. I didn't pay any attention to that. I gave him authority to put out billboards and put out posters.

Q. In Gloversville?

A. No, I didn't say in Gloversville. Any place he saw fit.

Q. Did you ever inquire where he put them up?

A. No, sir.

Q. Did you ever caution him not to put them up in Glov- [fol. 3664] ersville?

A. No, sir.

Mr. McClennen: I will offer this second photograph.

Mr. Wright: That is objected to.

The Court: It has not been identified by him as one of the signs, has it, irrespective of where it is put up?

Mr. McClennen: I think it would be arguable from the testimony thus far that he is subject to charge of responsibility for this sign.

The Court: No proof yet it was put up in Gloversville, or anywhere.

Mr. McClennen: What?

The Court: No proof yet it was put up anywhere. It bears a name?

Mr. McClennen: That is true. And I am appreciative of the caution of having these things proved directly.

The Court: Ask the witness. Why don't you inquire of the witness if it is one of the signs he saw put up in different places? Nothing to show yet.

Q. Is this, referring to this same photograph, the type of sign that was put up by your manager?

A. Yes, this is one of my billboards, if that is what you [fol. 3665] want to know.

Mr. McClennen: Well, I will offer this as one of his billboards, without the presence of any assertion as to where it was put up.

Mr. Wright: Same objection. There are two now just alike.

The Court: I will receive it. Of course, it is necessary to connect it up.

(The photograph referred to was received in evidence and marked Defendants' Exhibit D-139.)

Q. Clearance in favor of the Schine theatres in Gloversville over your theatre in Johnstown was of financial advantage to the Gloversville theatres, was it not?

A. I wouldn't know that.

Q. How long have you been in the business?

A. Thirty years.

Q. And you wouldn't know whether clearance in favor of the Gloversville theatres was of assistance to those theatres in their competition with the Johnstown theatres?

A. Oh, yes, I would say yes to that.

Q. That is, it was?

A. Yes.

Q. Of substantial advantage?

A. Yes, sir.

Q. Would it be apt to preserve to the Gloversville theatres patronage that might otherwise go to Johnstown?

[fol. 3666] A. Yes, sir.

Q. And the same thing is true with respect to every other one of the Schine theatres that you have mentioned that have clearance over your theatres?

A. I don't quite get that.

Q. It is of financial advantage to the Schine theatres in each of the localities that you have mentioned to have clearance over your theatre in the locality, is it not?

A. No, I wouldn't say that. In towns 23, 24 miles away, I wouldn't say it does.

Q. Does that clearance hurt your theatre in any way?

A. Well, it hurts me in booking.

Q. It hurts you in box office receipts?

A. No, booking pictures.

Q. It doesn't diminish your box office receipts a particle?

A. Not 23, 24 miles away, I would say not.

Q. So as far as box office receipts are concerned you have not been injured at all in those theatres by the fact that a Schine theatre has clearance over your theatre?

A. Oh, yes, I have been injured to the extent I am not able to book my pictures when I want to book them.

Q. That affects your box office receipts?

A. Yes, sir, it does.

Q. And it has the effect of having some of those patrons [fol. 3667] go to other theatres?

A. I imagine so, yes.

Q. And benefits those other theatres to that extent?

A. Yes.

Q. In your negotiations for pictures you seek clearance in favor of your theatres over other theatres in the locality, do you not?

A. Yes, sir.

Q. And you regard it as important to your business to have that clearance?

A. Well, not necessarily.

Q. If not necessarily, then possibly?

A. Well, if I didn't have it by way of Schine having clearance over me in another town and if I didn't have clearance over the other little town the other side of me, the other little town the other side of me would get the pictures before I do, because they would have an automatic clearance, which Schine has against me.

Q. And some of the theatres over which you have clearance are theatres that are not ahead of Schine theatres or open booking with them, isn't that true?

A. I don't quite understand that.

Q. Well, perhaps I will put it more simply then. You seek clearance for some of your theatres that are not in a vicinity of a Schine theatre, do you not?

[fol. 3668] A. Yes.

Q. And you get it?

A. Yes, sir.

Q. And you seek it because you think it will help your theatre in the competition with the theatre against which you have the clearance?

A. Yes, sir.

Q. It is a valuable part of the purchase of the picture to you, is it not?

A. Is it part of the purchase of the picture, did you say?

Q. I say, it is a valuable part of the purchase of the picture?

A. Yes, to a certain extent.

Q. In those theatres against which the Schine theatres have clearance you purchase, to some extent, by selective contracts, do you not?

A. In the towns where Schine has selective clearance?

Q. In towns over which Schine has clearance you have, in some of them, selective contracts, have you not?

A. Most all of them.

Q. Most all of them. And selective contracts which you have are contracts by which you have the right to select a certain number of pictures of the year's release?

A. Yes.

Q. And the prices are determined, in part, by the char-[fol. 3669] acter of the pictures over which you have the right of selection?

A. Yes, sir.

Q. And the effect of those selective contracts is to give you the better part of the year's release of the particular company, without being obliged to take the whole of that season's release?

A. Yes, sir.

Q. Your circuit consists of about how many theatres, take it the first part of 1942?

A. 1942, fourteen.

Q. Fourteen. And in 1932 it was about the same number?

A. No, eleven.

Q. Eleven.

A. I believe that is what it was.

Q. Was that eleven after the Smalley theatre in Norwich had been built?

A. Yes, sir.

Q. Now, you have what you call a closed town in every one of those theatres except Norwich?

A. Norwich and Johnstown.

Q. Norwich and Johnstown?

A. Yes, sir.

Q. And in those towns which you call closed towns you do not buy all the product of any particular distributor, do [fol. 3670] you?

A. Well, I do from probably 25 per cent of the majors, of the big majors.

Q. Take it in general, in your closed towns do you buy substantially all the first-run product of Paramount?

A. Practically, yes.

Q. And of Loew's?

A. Yes, sir.

Q. And of Warner's?

A. Yes.

Q. And of RKO?

A. No, I wouldn't say. I didn't buy as many RKO.

Q. And of Fox?

A. What are you speaking of now? I mean are you speaking of the present time?

A. No, I am not speaking of the present time because we are not speaking of anything after May of 1942. Were you buying in that period of from '32 to '42 in your closed towns substantially all of Fox's product?

A. Well, I couldn't tell on that, no.

Q. Any recollection at all about that?

A. I think maybe one year I might buy it all, or 80 per cent, and the next year I might buy 60 per cent. My situation is I could only use so many pictures and I try to buy some from everybody, every major company.

[fol. 3671] Q. In those closed towns, as you call them, did you buy all or substantially all of the product of Universal?

A. No, sir.

Q. Or of United Artists?

A. Well, I might not buy the foreign pictures or the rejects, or something like that.

Q. But you would buy the regular line of United Artists?

A. Yes, sir.

Q. And Columbia, did you buy the full line in your so-called closed town, of Columbia?

A. No, sir, I think there were about four or five years I didn't buy any Columbia pictures. Maybe it was three years.

Q. In your closed towns?

A. In all of my towns.

Q. Which of the four or five years in which you did not buy any pictures of Columbia in any of your towns?

A. Might have been four or five; might be three or four. I am just guessing at that.

Q. Why did you say four or five? Was it in your recollection that that was fairly descriptive of the number of years you did not buy Columbia in any of your towns?

A. Well, it might be more or less.

Q. Might be more or less than four or five years?

A. Yes.

[fol. 3672] Q. You mean it might be as many as six years you did not buy any Columbia in any of your towns?

A. It could be, yes.

Q. What do you mean by "it could be"? Was it?

A. Well, I don't know.

Q. I wonder if you have any way of thinking it over and telling us whether you are not able, from your recollection, to say that there was no period of six years in which you bought no Columbia pictures for any of your towns?

A. No, I couldn't. I couldn't tell that.

Q. If it may have been six years in which you did not buy any Columbia in any of your towns, when were those six years?

A. When were the six years?

Q. Yes.

A. I would say from '37 to '42.

Q. That is, as your memory serves you now, from 1937 to 1942 you bought no Columbia pictures in any of your towns, is that correct?

A. No, I wouldn't say that.

Q. What did you mean by '37 to '42?

A. You asked me between what period that I thought.

Q. Yes.

A. I told you it was probably between that period and '42.

[fol. 3673] Q. That is the six years that you thought of were between 1937 and 1942?

A. I didn't say six years. I said four or five years, more or less, because I don't know.

Q. Do you also recall that you said it might have been as many as six years in which you did not buy any Columbia pictures in any of your towns? Do you remember saying that?

A. I might have said it.

Q. You don't even remember you said it within the last fifteen minutes?

A. I said I remember saying three or four or four or five years. I remember that.

Q. But you remember saying that it might have been six years, don't you?

A. Yes.

Q. And you remember saying that those six years might have been from 1937 to 1942; you remember saying that, don't you?

A. Yes, sir.

Q. And by that you meant to leave it that it might be that from 1937 to 1942, in those six years, you might have bought no Columbia pictures in any of your towns?

A. I didn't say that. I said I might have bought in not all of my towns. You were speaking of all of my towns. [fol. 3674] I might have bought some Columbia pictures in some other towns and might have bought ten pictures in one town, twenty pictures in another town, and thirty pictures in another town. I didn't mean that they were left right out entirely, that I didn't have a Columbia picture running in any theatre.

Q. Do you remember saying there might have been a period, and it might have been six years long, in which you did not buy any Columbia pictures in any of your towns?

A. If I said that it was an error. I didn't mean it.

Q. You don't recall why you said it, do you?

A. Well, because you asked me the question.

[fol. 3675] Q. You answered it regardless of whether it was so or not, is that it?

A. Oh, no, I wouldn't say that.

Q. Why wouldn't you say that?

A. Because I wouldn't. I am trying to tell you to the best of my memory what I had.

Q. Well, is it the best of your memory that in the six years, 1937 to 1942, you did not buy any Columbia pictures for any of your towns?

A. No, I did not say that. I would not mean that.

Q. Is it the best of your memory that there never was a year from 1932 to 1942 in which you did not buy some Columbia pictures for some of your towns?

A. That is correct, I bought some pictures for some towns.

Q. But there were a good many of those years in which you did not buy Columbia in any of your towns except Norwich, is that true?

A. It might be, yes.

Q. It was, was it not, according to your recollection?

A. No, I say it might be. I couldn't tell whether I bought them for Norwich alone one year, and then maybe the same year I bought some for some other town. I can't remember that, that's all.

Q. In those closed towns if a distributor does not furnish pictures to you, that distributor has no opportunity that [fol. 3676] year to show that distributor's pictures in the town. That is true, is it not?

A. Yes, sir.

Q. And the distributors in their negotiations with you ordinarily negotiate with you for your entire circuit?

A. Yes, sir.

Q. And they strive to sell you as many pictures as possible in your closed towns?

A. Yes, sir.

Q. And they try to sell their pictures in the towns where there is buying competition to those exhibitors who will buy their full line product in that exhibitor's closed town, do they not?

Mr. Wright: May I hear that question.

The Witness: I would not say what they done in general. I wouldn't know anything about that.

Mr. Wright: What was that question?

(Question read.)

Mr. Wright: As to what the distributors try to do generally, I suppose, that should come from some distributor witness rather than from Mr. Smalley.

Mr. McClennen: What was the answer?

(Answer read.)

Q. With those exhibitors that you dealt with, at times you [fol. 3677] told them that you would not buy in some of your closed towns if they would not sell you first-run in Norwich?

Mr. Wright: I think you said exhibitors. I suppose you meant "distributors".

Mr. McClennen: Thank you. I meant distributors. Will you read the question with that correction?

(Question read.)

The Witness: Well, I bought all the other pictures for my other towns, but I couldn't get any pictures in Norwich, so that wouldn't make sense.

Q. That is a piece of information, but now if you will just turn your attention to the question and answer it.

The Court: Did you tell them that, that is the question, that you would not buy the pictures unless they sold you for Norwich?

The Witness: I might have told them that in order to get pictures.

Q. You might have told them that quite a number of different times in the ten years?

A. Oh, no, I wouldn't say quite a number of different times.

Q. Well, how many times should you say in your recollection that you had told them that?

A. If I didn't buy Columbia——

Q. No, how many times?

[fol. 3678] A. How many times? Well, I would say once.

Q. Why do you say once?

A. Because you asked me.

Q. Well, if I asked you twice, would you say twice?

A. Not necessarily.

Q. What?

A. Not necessarily, because you don't let me explain the question you are asking me.

Q. Well, you explain to me the question that I am asking you, will you?

A. You ask the question and let me hear it again. Let me hear the question again, please.

(Question read, as follows: "Q. Well, how many times should you say in your recollection that you had told them that?")

A. I might have told them that to get the pictures, but that didn't interfere me from buying in the other towns.

The Court: How many times, is the question, the number?

The Witness: Oh, I would say quite a few times, but I didn't word it in that way.

The Court: You answered the question.

By Mr. McClennen:

Q. When you built in 1932, the Smalley Theatre in Norwich, was that the first time that there had been by name a Smalley Theatre in Norwich?

[fol. 3679] A. Well, I called the old theatre the Smalley Strand, the one before it burned up.

Q. You mean the Smalley Strand bore the name on the outside of the Smalley Strand?

A. That is the way it was advertised, Smalley Strand.

Q. Wasn't it advertised as Smalley's Strand?

A. Because it was the Strand——

Q. I say, wasn't it advertised as Smalley's Strand, the name of the theatre being the Strand and the name of the operator being Smalley? Wasn't that it?

A. Yes, sir.

Q. And the first time that you named the theatre the Smalley Theatre was when you built it in 1932?

A. Yes, sir.

Q. When did you complete the building of the Smalley Theatre?

A. When did I complete it?

Q. Yes.

A. I opened it November 10th.

Q. What year?

A. 1932.

Q. Now, how long had there been no theatre in the town except the Colonial at that time?

A. You mean the difference between the fire and the time that I opened?

Q. The difference between the time when the Strand disappeared in the fire and the time when you [fol. 3680] opened the Smalley, how long a time was that?

A. It was about seven months.

Q. About seven months?

A. Yes.

Q. And in those seven months, you had no occasion for any pictures of any distributor in Norwich, is that correct?

A. That is correct.

Q. At the time that the Strand burned, you had under contract enough pictures to have run the Strand for a good six months, had you not?

A. Yes, sir.

Q. When was the Strand built?

A. In 1919.

Q. And was it equipped for sound?

A. That I couldn't tell.

Q. Did you know anything about the Strand prior to 1930?

A. Well, I know the gentleman that operated prior—before Mr. Schine took it over.

Q. When was that?

A. I think Mr. Schine took it over in 1922.

Q. You had known of the operation before that?

A. I knew Mr. Ford, the man who operated it before that.

Q. From its condition in 1922, did you know anything about it until 1930?

[fol. 3681] A. No, I didn't know anything about it.

Q. The Strand Theatre had how many seats?

A. By golly, I forget. I don't remember.

Q. Well, see if you can't give us some idea. You know that your new theatre, the Smalley, had 856. How did the old Strand compare in seating capacity?

A. Well, when I took over the old Strand, I remodeled it, and reseated it, so I don't remember how many seats the old Strand had, but I could tell you how many seats I had after I remodeled it.

Q. How many seats did you have in 1930 after you had completed your remodeling?

A. I think it was 742, that is as nearly as I can remember.

Q. 742?

A. Yes, sir.

Q. Do you remember how many new seats you put in, that is, how much you increased the seating, if at all, in 1930?

A. No, I couldn't tell that.

Q. Was the theatre in operation at the time that you took it over?

A. No, sir.

Q. What time did you open it up?

A. Open up——

Q. In 1930, the Strand?

A. On the 5th of September, I think.

[fol. 3682] Q. On the 5th of September, 1930. How long had it lain idle at that time?

A. I wouldn't know.

Q. Weren't you in Norwich investigating before you acquired that theatre enough to get some idea of how long it had been idle?

A. The people that owned the theatre came over to Cooperstown, and I went and leased the theatre before I went—without going over and looking at it.

Q. You mean you never saw the theatre from 1922 until you took a lease of it?

A. I wouldn't say that. I might have been in it—in and out of it once or twice. I don't know.

Q. Before signing the lease of the theatre, how many times, then, recently, had you been in the theatre, the Strand Theatre?

A. Recently?

Q. That is, before you signed the lease under which you opened up in September, 1930?

A. I don't think I had been in it a year before that, I would say a year. It was a year anyway.

Q. Was it in operation the last time you were in it?

A. I believe it was, yes.

Q. Did you go there on an inspection tour, or just to go to the movies?

[fol. 3683] A. No, I just dropped in. I have a habit, when I go to a town, drop into a theatre and look over the back rail and walk out to see whether there is any business or not.

Q. Do you remember doing that in 1930 before you signed the lease?

A. No, I didn't go into the theatre in 1930 before I signed the lease.

Q. But perhaps the year before you signed the lease, you had been in the theatre and looked over to see how the business was?

A. Well, I just went in and glanced around. I had no reason to go into the theatre for anything, because I wasn't interested in the theatre whatsoever.

Q. You said you had a habit of going in to see how business was in the theatre?

A. I might go in a theatre here in Buffalo, and walk in and say "Hello" to the manager and look over the rail and see if there is any business in the house and walk out.

Q. You might do that sort of thing in Norwich?

A. Yes.

Q. The theatre was operating at the time you did this?

A. Yes.

Q. And it was running on second-run product at that time?

[fol. 3684] A. That I would not know.

Q. You mean with your knowledge of the theatre business, you would not know right away whether the product was first or second-run?

A. You are talking about something in 1929. For me to remember that I walked into a theatre and remembered whether it was second-run picture or first-run picture——

Q. Oh, you did not mean, then, that you did not know at the time. You meant you don't remember now whether it was running second-run?

A. Yes.

Q. Didn't you make any investigation before you took a lease as to the way in which that theatre had been operating?

A. No, the people came over and seen me, people that owned the building came over and saw me and asked me if I wanted to lease it. I said "No, I don't believe I am interested." They said Mr. Schine did not want it or the Fox did not want it, and they asked me if I wanted to lease it, and I said "No, I did not think I was interested." They came back two or three times and finally they gave me a pretty good proposition and told me that they would put in some of the money and help fix it up and remodel it, and I said "All right," and I signed the lease with them [fol. 3685] before I ever went over and saw the theatre.

Q. Did they tell you anything indicating that it was a good theatre for you to take on beyond the fact that neither Fox nor Schine wanted it?

A. No, they told me, one of the things they brought out the most, at that time the Strand Theatre had some apartments in it and a couple of stores, and they said they wanted me to come over and run it, because the people were kicking over there. I said I would not be interested in that, that would not bother me any, and I said if I went over there I would want the house remodeled.

Q. Well, now, apart from the fact that the people were kicking and that Schine did not want the theatre and Fox-Metropolitan did not want the theatre, what else did they tell you about the theatre that seemed to make it a good proposition for you to take the lease on without looking at it?

A. Well, the lease they gave me, I thought it was a good proposition. After they told me they would pay for fixing it up and putting on a stage and so, I figured there must be four walls there, anyway.

Q. Where did you get the idea that it needed fixing up?

A. Pardon?

Q. Where did you get the idea that it needed fixing up?

A. Well, what I wanted was a stage more than I wanted [fol. 3686] anything else.

Q. Well, where did you get the idea that it needed a stage?

A. Because they told me they did not have any.

Q. What else did they tell you that made that an attractive type of theatre for you to get?

The Court: Is it essential to go into these details, Mr. McClennen?

Mr. McClennen: I am desirous of developing, if your Honor please, the type of house this was in the competition for pictures with the Colonial.

The Court: I think it should be done in a less roundabout way. I think we will save a little time by going right to it. He said he did not see the theatre prior to the time he bought it. He can describe the building. You asked him why he did not know there was a stage there and he said he was told that. You can ask him his knowledge of what the building was.

Mr. McClennen: I suggest to your Honor we are very much interested in the candor of this witness, and I should like to develop those things that might bear on it, but I will depart from the line on your Honor's suggestion.

By Mr. McClennen:

[fol. 3687] Q. Describe to me the condition of that theatre at the time you first went into it in 1930?

A. Well——

The Court: Go ahead and describe it. You ought to be able to do that.

The Witness: That is just what I was thinking. It had a booth in the middle of the auditorium. I remember that, and we took that out, and, of course, I don't know who owned the equipment, if Mr. Schine or whoever owned the equipment that was in there, that was taken out before we went in there, and what we done is redecorated the place and put on a small stage, Western Electric sound and fixed it up and went ahead. That is about all I can tell you.

The Court: Was this a large opening—had it been used for a picture show before?

The Witness: Oh, yes, there was a picture show in there.

The Court: Who did you say owned it before that?

The Witness: Mr. Layton.

The Court: You mentioned another name was the owner of operator.

The Witness: Mr. Schine.

The Court: When was that? When did Mr. Schine [fol. 3688] operate it?

The Witness: Mr. Schine had it, I think, from 1922 to 1929, when he sold out to Fox.

Mr. McClennen: If your Honor please, so that there may be no misunderstanding, he did not own it. Schine did not own it.

The Court: I did not know. It was operated by Mr. Schine from 1922 to 1929?

The Witness: When I went in there Fox was operating the Schine house, the Fox people, and this house was, that I went in, was the other house that—I don't know whether it had been closed or whether it was running. I wouldn't know that.

The Court: I thought he said Schine leased this particular house, the so-called Strand.

Mr. McClennen: If your Honor is inquiring for the fact?

The Court: Yes, I am inquiring from the witness.

Mr. McClennen: The fact is that the Schines operated as lessees from 1922 to 1929.

Mr. Wright: The witness so stated.

Mr. McClennen: The Strand Theatre. What?

Mr. Wright: As I understood it, that is what the witness said.

The Court: I just wanted to get it straight in my mind. [fol. 3689] At that time Fox was operating the other theatre?

Mr. McClennen: No, your Honor.

The Court: Do you mean Schine was operating both of them?

Mr. McClennen: Mr. Schine became the owner of the Colonial in 1921. He operated the Colonial and he operated the Strand as lessee from 1922 to 1929.

The Court: That answers my inquiry. Go ahead.

Mr. McClennen: And then Fox-Metropolitan operated both of them, both the Colonial and the Strand.

The Court: To the time the witness took over?

By Mr. McClennen:

Q. Is that correct?

A. I don't believe Fox ever run the Strand. I think the Fox just took over the Colonial.

Q. You mean you did not see the operation in the Strand Theatre after 1929?

A. I did not see the operation?

Q. You spoke of being in the Strand Theatre in 1929 and it being in operation?

A. Yes.

Q. Do you know by whom it was being operated at that time?

A. No, sir, I do not.

[fol. 3690] Q. Well, now, you were describing what you did to the Strand in 1930. Had you described all that you did?

A. Well, no, I haven't described. I might have put down carpets, or I might have painted the outside, or I might have done a lot of things. I don't remember exactly all the little details.

Q. Do you remember any big things?

A. Yes, I put in Western Electric sound. That was pretty big.

Q. Do you remember anything else?

A. I put in some seats.

Q. Do you mean the theatre was not equipped for sound at all when you took the lease?

A. No, sir.

Q. That is, it had never been operated as far as you knew up to the time you took the lease as a theatre with sound, that is, for sound pictures?

A. Not that I know of.

Q. So that at that time it was a brand new operation for it in the fall of 1930?

A. Yes, sir.

Q. That was the first time that it had ever operated with sound as far as you know?

A. Yes, sir.

Q. And by that time substantially all the pictures pro- [fol. 3691] duced by the various distributors were sound pictures, were they not?

A. Yes, they was practically in 1930—some of them were half and half and some of them were a hundred per cent.

Q. Up to the time that you opened the Strand, there was no place in Norwich in which a distributor could have his sound pictures shown except in the Colonial?

A. That I would not know.

Q. Well, you never in any investigation that you made then or thereafter discovered any other place, did you?

A. I didn't know whether there was ever sound in the Strand Theatre or not when Mr. Schine run it. I didn't know anything about that.

Q. You never heard of there being sound in that theatre?

A. I don't remember, no, sir.

Q. When you visited the theatre there was no sound equipment in there?

A. I don't remember that. I remember going into the theatre and going through town on my way to Hamilton, and I just stopped off and looked the theatre over, that is all.

Q. So far as you were concerned, you took it up as a new proposition at that time?

A. As far as I was concerned, I put in sound when I opened up, if that is what you mean.

[fol. 3692] Q. You did not take on any existing good-will of anybody else?

A. No.

Q. You started a new proposition?

A. Yes, sir.

Q. You operated up to the time of the fire, a year and a half, about?

A. Yes.

Q. And at that time the Colonial was already running the first-run of the great bulk of the moving picture releases of the period?

A. They were running all of the first-runs, did you say?

Q. The great bulk, I say?

A. Great part of it?

Q. Yes.

A. No, I had quite a lot of product in 1930-1931.

Q. Well, now, for 1930-1931, the Colonial had Metro, that is, Loew's?

A. Yes, sir.

Q. Paramount?

A. Yes, sir.

Q. Fox?

A. Yes, sir.

Q. R.K.O.?

A. No, I had R.K.O.

[fol. 3693] Q. They had no R.K.O.?

A. Not as I knew of.

Q. Did they have any Warner?

A. Yes, they had all of Warner.

Q. That included First National?

A. No, I had First National.

Q. That is, dealing with it in terms of Vitagraph, Vitagraph put out all the Warner pictures and all the First National pictures?

A. Not in those days, no. They were supposed to be partners, but they had different exchanges, and there were different salesmen and different contracts and different managers.

Q. And the Colonial had all of Warner?

A. Yes, sir.

Q. Did the Colonial have all of Universal?

A. I believe it did, yes, sir.

Q. Did the Colonial have all of Columbia?

A. No.

Q. Did the Colonial have any of Columbia?

A. That I don't remember. I had Columbia, but I don't know as I had a hundred per cent or not. I had——

Q. Did the Colonial have United Artists?

A. No, I had United Artists.

Q. Did the Colonial have any United Artists?

[fol. 3694] A. That I would not know.

Q. Now, of R.K.O., you had a split of the product in 1931 to the time of the fire, did you not?

A. No, I did not. I did not have R.K.O. I didn't have R.K.O.—I had R.K.O. 1930-1931, not 1931-1932.

Q. That is, you did not have R.K.O. 1931-1932?

A. No, sir.

Q. And when the 1932-1933 product was released you had no theatre in operation?

A. When the 1932-1933——

Q. Yes.

A. Was released?

Q. When that releasing season began, you had no theatre in operation?

A. Yes, I had a theatre in operation.

Q. When did it burn down?

A. It burned down March 24th.

Q. March 24th, 1932?

A. Yes.

Q. When the 1932-1933 releasing season opened, you had no theatre in operation, isn't that so?

A. The releasing season opened in the fall always, and 1932-1933 would start just about the time I opened my new theatre.

Q. You mean R.K.O. releasing season started in 1932-[fol. 3695] 1933 in November?

A. No, I wouldn't say November. I think they used to be in September.

Q. When did you open your theatre?

A. November 10th.

Q. What?

A. November 10th.

Q. Now, is it not pretty easy for you to say that when R.K.O. releasing season for 1932-1933 opened in September of 1932, you had no theatre in operation? That is true, is it not?

A. Yes, that would be true.

Q. Now, you say from 1931-1932, that season you did not have the R.K.O. product?

A. No, I did not have the R.K.O. product.

Q. And Fox-Metropolitan was then operating the Colonial Theatre?

A. Yes, sir.

Q. They showed in that season R.K.O. product?

A. Well, I imagine they did, yes.

Q. Then, for the 1933-1934 season, that was after Schine had re-acquired the Colonial and was operating it?

A. Yes, sir.

Q. And in that season you had one-half the R.K.O. product?

A. Yes, sir.

[fol. 3696] Q. That was more of the R.K.O. product than you had had since the 1930-1931 season, was it not?

A. I beg your pardon? I had a split of it the year before you are talking about.

Q. Then I misunderstood you. Didn't you say that for the 1932-1933 season you did not have the R.K.O. product?

A. No, I had the split in 1932-1933. I said 1931-1932. I said I did not have R.K.O. 1931-1932. I had a split 1932-1933.

Q. Then you had a split of the 1933-1934 R.K.O. product?

A. Yes.

Q. And a split was approximately 26 pictures?

A. Why, I imagine so, yes.

Q. And then of the 1934-1935 product you had 20 R.K.O. pictures?

A. They were the rejected pictures. I had no contract. I just took the pictures that were rejected by Mr. Schine.

[fol. 3697] Q. My question was whether you had them or not? Did you?

A. Yes, I had 20 RKO pictures.

Q. And you had, for the 1935-36 product RKO, 15 pictures?

A. I imagine. I am saying yes. I would have to check my records to be correct.

Q. Then the next year, the 1936-37 product, you had from 28 to 34 pictures, that is, not more than 34 and not less than 28, of the RKO product?

A. But I don't know as I got that many.

Q. That was your contract?

A. That was the contract I had.

Q. And for 1937-38 you got the same kind of a contract, that is, for not less than 28 nor more than 34 RKO pictures?

A. There is a clause in there——

Q. Did you get that contract?

A. I got some RKO pictures.

Q. And the provision there was that you should have not less than 28 nor more than 34?

A. Well, the provision was that Schine would have the choice.

Mr. Wright: It seems to me the simplest way to get at the provision is to offer the contract.

The Court: It is cross-examination.

Mr. McClennen: I was perfectly willing to do this. I thought this was so clear we could get it as quickly the [fol. 3698] other way.

The Court: He can state. It is cross-examination. He can state, if he knows.

Mr. Wright: As I understand it, it is perfectly clear from the contract what he got were the pictures that Schine rejected. If there is an attempt to show there was something else, all right.

Mr. McClennen: Mr. Wright, I am not cross-examining you. I am cross-examining the witness.

By Mr. McClennen:

Q. Is this contract dated September 7, 1937, approval date September 9, 1937, with RKO, the one that you refer to?

A. Yes, sir.

Mr. Wright: Is that one the producers produced?

Mr. McClennen: That is one Mr. Clagett—yes, it is from distributors' files.

Mr. Wright: It apparently was previously identified. I thought we might as well put it in under the same number.

Mr. McClennen: We might just as well give it a number. It is alone.

(The contract, dated September 7, 1937, approval date September 9, 1937, with RKO, was received in evidence and marked Defendants' Exhibit 140.)

[fol. 3699] Mr. McClennen: Defendants' Exhibit 140 is the contract just described in the questions to the witness, signed by Smalley Chain Theatres, Inc., W. C. Smalley, and the clause as to the pictures is: "Exhibitor agrees to use all pictures rejected by Schine, not to exceed 34 pictures or to be less than 28 pictures, if distributor produces 54 features as scheduled."

Q. What was the reason for inserting, do you recall, the top limit of 34 pictures in the contract?

A. What was the reason for that?

Q. Yes.

A. I wouldn't know.

Q. What?

A. I wouldn't know, what that reason was for.

Q. You knew why the figure 28 was inserted, did you not?

A. Well, Schine has the pick of all of those pictures there.

Q. You knew why the figures 28, was inserted, did you not?

A. I think there was a percentage figured out that I would get a certain percentage of the pictures and after Schine rejected so many, why, I would get a certain percentage of them. I think that was the way it was figured out.

Q. What was the percentage based on, do you remember?

[fol. 3700] A. No, I don't.

Q. You notice that this was based on a total production of 54 pictures, a split would have meant 27. Now, why was 28 put in as the number that you should be entitled to get?

A. 28 instead of 27?

Q. Yes.

A. I don't know.

Q. Now, in the case of Columbia you had some contract in every year from the 1936-37 season through the 1940-41 season, did you not?

A. Those were rejects. I had no contract, I don't believe.

Q. Didn't you?

A. I say I don't believe I had a contract.

Q. Don't you remember having a contract?

A. I think most of the—I might have a contract if they sold me three or four rejects.

Q. Do you mean to say you don't remember having a contract with Columbia in those years?

A. I had so few contracts with the majors.

Q. I am asking you about Columbia.

A. Well, Columbia is supposed to be a major.

Q. And therefore do you remember whether you had contracts in those years for Columbia?

A. I did the year I had the split.

[fol. 3701] Q. You had some contract with Columbia in every one of those seasons, did you not?

A. Well, I had—there might be a minimum contract. You can't make a contract up at the beginning of the season for pictures if you don't have them.

Q. Did you have some contract with Columbia in every one of those years?

A. I might have had.

Q. Don't you remember that you did have?

A. No.

Q. For 1935-36 is this Columbia contract, dated August 12, 1935, approved August 21, 1935, signed by you? Look at the signature. That is what I am asking you about. It is down at the bottom of the page.

A. Yes, but, by the way, you said on that other contract it was my signature and it was not. On the other contract you showed me it was "per". You did not read the "per", the one who signed it.

Q. Which was the "per" one? The RKO?

A. Yes.

Q. It was your contract, wasn't it?

A. Yes, but——

Q. Look at this and see if this is signed by you or by a "per"?

A. This is signed by me, yes. This is the year I had the [fol. 3702] split. I said I had a contract the year I had the split.

Q. All I was asking you was whether this was signed by you.

A. Yes, it was.

Mr. McClennen: I will offer that.

Mr. Wright: No objection.

(The contract, dated August 12, 1935, approved August 21, 1935, Columbia Pictures Corporation, was received in evidence and marked Defendants' Exhibit 141.)

Mr. Wright: That was what season?

The Court: '36-'37?

Mr. McClennen: That is '35-'36, if your Honor please. Now, this contract, Defendants' Exhibit 141, by Columbia, with W. C. Smalley, reads: "Total number of feature motion pictures offered 52; total number of feature motion pictures licensed 52."

Q. That was the contract that you made, was it not?

A. No, sir, I made an understanding I would release 50 per cent, before they would let me buy this.

Q. You agreed to take 52 pictures unless they chose to recall half of them?

A. Yes, that is right.

Q. And the contract that you signed and they signed was for 52 pictures, was it not?

[fol. 3703] A. Yes, sir.

Q. Then there was a separate agreement made, which is attached, is it not, to Exhibit 141?

A. Yes, sir

Mr. McClennen: The attachment, if your Honor please, is in terms: "It is agreed and understood between both parties that Columbia Pictures Corporation shall have the privilege of withdrawing one-half of the 52 pictures from this contract sold to William C. Smalley of the Smalley Theatres, Norwich, N. Y., this date. It is also understood and agreed that the one-half of the product which shall be withdrawn will be determined by Mr. William C. Smalley of the Smalley Theatres, Norwich, arranging two even splits of the product, and the opposition theatre, which may buy the other one-half of the split shall have the privilege of selecting which split they wish to buy, or the opposition theatre may arrange the split and Mr. Wm. C. Smalley of the Smalley Theatre, Norwich, New York, will have the privilege of selecting which one-half of the product they shall retain."

[fol. 3704] The Court: It seems to be a sort of contradictory position, doesn't it? It gives one party the right of selection and then the other party the right of selection.

Mr. McClennen: No, if your Honor please, it gives Mr. Smalley first this opportunity to arrange the two blocs.

The Court: What do you mean by "arrange"?

Mr. McClennen: I mean to determine which picture shall go in one bloc and which in the other.

The Court: Where do they go from the bloc? Do you mean by that Mr. Smalley could select 26 out of the group or half of them?

Mr. McClennen: Mr. Smalley may determine which shall go in one bloc and which shall go in the other bloc and then the opposition theatre may determine which of those blocs it will take or——

The Court: You mean grouping half of them together and half of them together?

Mr. McClennen: That is exactly it.

The Court: And then select which bloc?

[fol. 3705] Mr. McClennen: The opposition selects which bloc they will take, and conversely, if the opposition determines what shall be in each bloc then Mr. Smalley has the choice of the blocs.

The Court: 50-50?

Mr. McClennen: 50-50.

Q. Now, when you made your contract for the rejects for the 1938-39 season, do you say that you offered to pay as much for the select pictures as Schine paid?

A. In 1938-39?

Q. Yes.

A. Whose product?

Q. Columbia.

A. Well, offered to pay whatever they asked. They asked a price.

Q. Well, you say you offered to pay what Schine was paying for the select product?

A. No, the understanding is that when they split the product if——

Q. I am not speaking of split product. I am speaking of the time when you made the contract for rejects.

A. Oh, rejects.

Q. At that time you say you offered to pay as much as Schine was paying for the select product?

[fol. 3706] A. Oh, no, I wouldn't pay as much for rejects as I would for selects.

Q. No, no. Don't you remember saying that you said that you offered, if you could have the select product, to pay as much as Schine was paying?

A. That is right.

Q. And at that time Schine was paying $125 a picture for the select pictures, was he not?

A. I don't know.

Q. You knew what you were offering to pay, didn't you?

A. I wouldn't know anything about what Schine paid for pictures.

Q. You just said, without knowing what Schine was paying, you would pay what Schine paid; is that it?

A. No, when they would come in to me they would say, "We certainly wouldn't sell you any cheaper than we would sell Schine", and I said, "That's all right. I will pay the same price."

Q. You did not inquire what that price was?

A. What was the use of inquiring what the price was?

Q. You did not inquire what the price was?

A. I inquired if they would sell me pictures.

Q. You did not inquire what the price was?

A. I did not inquire about the price.

Q. That is what I have asked you.

[fol. 3707] A. If I could get a picture to inquire about——

Q. You did not inquire about the price that Schine was paying at the time you had this talk about you would pay whatever Schine was paying, did you?

A. If I did inquire they wouldn't tell me.

Q. You didn't inquire, did you?

A. Certainly I did.

Q. You did?

A. Certainly.

Q. Did they tell you he was paying $125 a picture?

A. That I wouldn't remember.

Q. Did they tell you under preferred pictures, in the preferred bracket, he was paying $150 a picture?

A. I wouldn't know what they told me.

Q. You wouldn't know but what those were the figures that Schine was paying?

A. How would I know?

Q. You didn't know, did you?

A. No.

Q. And you got your pictures for $25 a picture, did you not?

A. I don't know. If I did I did. I don't know.

Q. Don't you remember anything about it?

A. About rejects?

Q. Or about the price of rejects?

A. Yes.

[fol. 3708] Q. Wasn't it $25?

A. I imagine that is right, about right, yes.

Q. And that was the price, the highest price, that you paid for Norwich to Columbia in any subsequent year?

A. I don't think that is true. You have got contracts that you just looked at that I paid over $100 for pictures in Columbia. You had a contract here a few minutes ago.

Q. After 1938-39?

A. On 1938-39, no. I didn't pay it to them because I didn't have the opportunity.

Q. I ask you whether it wasn't a fact that those you bought from Columbia or after you paid only $25 a picture?

A. I couldn't swear to that.

Q. Well, do you remember paying any more than $25 a picture after that date for any Columbia pictures?

A. I don't remember whether I did or whether I didn't. I paid whatever they asked me.

Q. Now, in buying pictures you have found, have you not, that you can sometimes get a better price out of the distributor if you don't hurry up too much in buying? Haven't you found that?

A. If I don't hurry up?

Q. Yes.

A. I will buy pictures in Norwich any time I can get them.

[fol. 3709] Mr. McClennen: Will you read the question?

The Witness: Are you talking about Norwich or talking about all theatres in general?

Mr. McClennen: I am talking about buying pictures that you are familiar with.

(Previous question read by reporter.)

A. Not necessarily, no.

Q. You never found that out?

A. Sometimes you do and sometimes you don't.

Q. You have found out, have you not, that when the season has progressed so far that you are the only available customer for the distributor that you can sometimes make a better trade on prices, have you not?

A. No, that is silly.

Q. What?

A. That is silly.

Q. You have found that to be silly, have you?

A. No, I say it is silly to make that statement.

Q. You have found it to be silly to wait until late in the season in buying, have you?

A. No, I never did wait until late in the season unless we had some argument about something, but I mean I wouldn't—of course today it is different when you are buying five pictures at a time.

Q. Oh, I was referring to the earlier time. You did not [fol. 3710] make your Columbia contract for the 1936-37 product until April 30, 1937, did you?

Mr. Wright: What product are you talking about?

Mr. McClennen: The Columbia product.

Q. That is a fact, isn't it?

A. '36-'37, for the '35-'36, did you say?

A. I said '36-'37 product. You did not make your contract for, you did not sign your application for, before April 30, 1937, did you?

A. Speaking about Norwich?

Mr. Wright: I submit the examination would be quite a bit fairer if he would be shown the contract.

The Witness: Speaking of Norwich or the towns?

Q. Speaking about Norwich.

A. Probably not, if I signed a contract, because they wouldn't know what pictures were rejected before that time.

Q. I show you contract of Columbia, approved May 6, 1937, purporting to be signed W. C. Smalley, by—can you tell me the name of the signer?

A. Tarbell.

Q. He was your manager?

A. No.

Q. Who was he?

[fol. 3711] A. He was a fellow who assists me in booking, that's all; a booker.

Mr. McClennen: I will offer that.

Mr. Wright: No objection.

(The contract, approved May 6, 1937, with Columbia Pictures Corporation was received in evidence and marked Defendants' Exhibit 142.)

Q. Now I call your attention to Defendants' Exhibit 142 and it is clear, is it not, that it is for twenty pictures, without any name or designation to the particular pictures, except they are of special feature attractions, group W-4, with the provision in the run and clearance, first run only on pictures rejected by the Colonial? Those are the terms, you see, of the contract?

A. Yes.

Q. And no pictures had to be rejected before you made that contract?

A. Well, it says right on there "rejected pictures", so I couldn't get them until they were rejected. It says right in your clause they were rejected pictures and how could I get them until they are rejected?

Q. What is there that stood in your way of making that contract in the fall of 1936 for 20 pictures, limited to be only those that should be rejected by Schine?

[fol. 3712] A. Well, I tried other ways to buy the pictures and I couldn't. All I got were the rejects.

Q. You referred to the efforts which you made to get pictures and correspondence with respect thereto. Did you receive a letter of June 3, 1940, from Leonard S. Picker of the Legal Department of Columbia, addressed to you, in the terms of what purports to be a copy of a letter?

(A pause.)

The Court: Can't you tell whether that is a copy of a letter received by you?

The Witness: I have to get down in it to tell whether I received it. I believe I received that letter. I think I have a copy of it.

Mr. McClennen: I offer that.

Mr. Wright: No objection.

(The letter, dated June 3rd, 1940, to Smalley, was received in evidence and marked as Defendants' Exhibit 143.)

(Mr. McClennen read Defendants' Exhibit 143 as follows:

"June 3rd, 1940.

Mr. William C. Smalley, Smalley Theatres, Cooperstown,
N. Y.

Dear Mr. Smalley:

Your telegram of May 27th addressed to Mr. Abe Mon- [fol. 3713] tague has been turned over to me for my attention.

I beg to advise you that the offer made by Columbia to you in the past, as repeated in a letter addressed to you by my associate, Mr. Moross, is once again repeated by me, namely—that Columbia Pictures Corporation is ready, willing and able to have its representative meet with you and discuss the licensing of an equitable split of our pictures to you provided you are prepared to pay a fair price for the same.

According to our records, Mr. Louis Weinberg, of our Sales Department wrote you on December 7th, 1939 that he would be glad to meet you at any place convenient to yourself if you would give him forty-eight hours notice, and I am certain that if you had a sincere desire to buy Columbia Pictures you could have found some time between December 7th, 1939 and January 4th, 1940 to meet him.

However, despite your failure to meet with our business representative, Columbia has made honest and sincere efforts to contact you and sell you a fair and equitable split, [fol. 3714] but at no time have you been willing to sit down with Mr. Weinberg to discuss same.

As you undoubtedly know, Mr. Weinberg is leaving today for the Columbia convention and will not be available to discuss this matter with you until June 18th, and if you are sincere in the statement you made in your wire of May 27th, you can make arrangements with Mr. Joe Miller, our Albany Branch Manager, for an appointment with Mr. Louis Weinberg for any time after June 18th.

Yours very truly, Leonard S. Picker, Legal Department.")

By Mr. McClennen:

Q. Did you receive a letter of November 13, 1939, addressed to Smalley Theatres, Inc., signed by Irving Moross, of the Legal Department, of which I show you what purports to be a copy?

A. Yes.

Mr. McClennen: I offer that.

Mr. Wright: No objection.

(The copy of letter, dated November 13, 1939, signed by Irving Moross, to Smalley Theatres, Inc., was received [fol. 3715] in evidence and marked Defendants' Exhibit 144.)

(Mr. McClennen read Defendants' Exhibit 144 as follows:

"November 13, 1939.

Smalley Theatres, Inc., Cooperstown, N. Y.

Attention Mr. W. Smalley

Gentlemen: Your letter November 7th, addressed to Mr. A. Montague, has been turned over to me for reply. Upon investigation of your complaint I find that the same is entirely unfounded as for a number of years past we have offered to you at least one-half of our product for exhibition in your theatre in Norwich. Our offer to you has been on fair and reasonable terms. In each instance you have declined to accept such offer and have made a counter-offer in terms so low that the terms were not acceptable to us. I would be very happy to have our representative meet with you and discuss licensing of a split of our pictures to you provided you are prepared to pay a fair price for the same.

Yours very truly, Irving Moross, Legal Department.")

[fol. 3716]. Q. Of the 1936-1937 product, did the Columbia Company have a lot of trouble with your circuit in procuring datings and liquidating of the 1936-1937 product?

A. I wouldn't know that.

Q. You don't remember anything of that?

A. I remember there was some deal where at the end of the season we bought some pictures for the next year to wash up the following delinquency on the previous year, that's all I remember, there was some kind of a deal on it.

Q. When the releasing season came to the end, you were behind on the playing of the product that you had of that season?

A. Well, there was some pictures there that we did not care to play, and it was understood with the Columbia people that they would rechange them for some others on the new season.

Q. And they, you remember, were urging you before the end of the season to play up those pictures, and you said you did not want to play them?

A. I said I did not want to play them?

Q. Yes.

A. There is a lot of pictures I don't want to play, but I have to.

Q. What I said was, you said to them that you did not [fol. 3717] want to play those pictures?

A. I don't recollect that.

Q. You recollect within the last three minutes saying that there were certain of those pictures that you did not want to play?

A. Yes, I said that.

Q. Didn't you tell them you did not want to play them?

A. Well, I would have to play them if they don't——

Q. Didn't you tell them you did not want to play them?

A. No, I did not tell them in that way.

Q. Do you know how they found out that you did not want to play them?

A. They exchanged them for some other pictures.

Q. Do you know how they found out that you did not want to play them?

A. They probably wrote me a letter and told me about it, is all I know.

Q. Now, you referred to a complaint that was made about your low-admissions. Do you remember your testimony this morning on that subject?

A. Yes, sir.

Q. Having cut——

A. Yes.

Q. As early as 1934 you had cut admission prices for children at matinees down to 5 cents, had you not?

[fol. 3718] A. I think we run a couple special matinees for children. Never was no regular price.

Mr. Wright: Where was this? I did not hear the town.

Mr. McClennen: 1934.

The Witness: Is this supposed to be Norwich?

Mr. McClennen: Norwich.

Mr. Wright: Is this Norwich?

Mr. McClennen: This is Norwich.

Q. You advertised in the town five-cents admission for children?

A. That was just for special matinee.

Q. You did advertise it, did you not?

A. I might have put it on——

Q. Don't you know that you did?

A. I imagine I did.

Q. Why say you might have when you know that you did, did you not?

A. If you had an ad of it I did, yes.

Q. Then again in 1934, you put in that same ad, did you not?

A. Well, I couldn't tell how many I put in, or I couldn't tell how many of those special kiddie matinees I ran. I don't remember.

Q. You advertised in 1934 that five-cent admission for children matinees a number of times, did you not?

A. I wouldn't know how many times that I advertised it.

[fol. 3719] Q. You remember that it was a goodly number of times, don't you?

A. I remember it was two or three times.

Q. And then you repeated that same thing in later years, did you not?

A. That—I don't know that, no.

Q. Then you advertised free tickets to students, did you not?

A. Free tickets to students?

Q. Yes, that is exactly what I said, free tickets to students?

A. No.

Q. You advertised them, did you not?

A. I never run any free shows.

Q. What?

A. I never run any free tickets that I know of.

Q. You never advertised any free tickets to students?

A. Unless there was some catch in it, I don't know.

Q. You mean to say they could not get in even if they tried it?

A. Oh, no, I don't mean that, but I mean, there must be some catch in your paper you have there or something.

Q. Did you ever see any of these tickets that I show you?

(Handing to witness.)

The Court: What is your answer? Did you see these [fol. 3720] tickets?

The Witness: Yes, sir, I have seen those tickets.

Q. And did you issue tickets to children at five cents?

A. I have already stated we had kiddies' matinee. I don't know what tickets we used for the kiddies' matinee. There is no price on those tickets.

Q. Did you ever see any of these which I show you bearing a stamp date of October 25th, 1939 on the reverse side?

A. Yes, that is a kiddie matinee.

Mr. McClennen: I offer that.

Mr. Wright: This is objected to on the ground it is immaterial to any of the issues here that are being tried.

The Court: What does it purport to be?

Mr. McClennen: This purports to be a free ticket good for all students.

Mr. Wright: That has nothing to do with the direct-examination.

The Court: Overruled.

(Thereupon ticket purporting to be a free ticket to students, was received in evidence and marked as Defendants' Exhibit D-145.)

Mr. McClennen: This is a card about three or four inches long, two inches wide, saying: "Smalley's Norwich Theatre, [fol. 3721] special morning matinee, Saturday, October 21st, at 10 A. M. Big triple show. Hit No. 1, from the famous Sunday comic strip, Dick Tracy's G-men. Hit No. 2, Gene Autry, "Smiley Burnette," "Home on the Prairie." Hit No. 3, Jack London's famous story "Mutiny of the Elsinore." This is positively one of the greatest kiddie shows ever to play in Norwich. Notice: Be sure to bring this ticket. You may get in free. Good for all students."

By Mr. McClennen:

Q. You say that one of the distributors told you that a complaint had been made about your reducing prices, do you not?

A. Well, if that is what I said, that Schine made the complaint.

Q. You told that distributor that you had not reduced prices?

Mr. Wright: I think the Court's attention should be called to the fact this is 1939, and that conversation that was testified to in the direct testimony occurred in 1933, a six-[fol. 3722] year difference. Obviously this testimony as to this matinee has no relevancy to that conversation.

Mr. McClennen: Is this by way of objection to my question, or just argument to bring to the attention of the witness?

Mr. Wright: It is by way of additional objection to your offering this ticket, as to what happened in 1939 which was not covered on direct, which has nothing to do with the direct-examination and is improper cross-examination.

The Court: No mention has been made of the date.

Mr. Wright: On this ticket.

The Court: The point is your remark to the Court might call attention to some specific date. I don't know what may follows.

Mr. Wright: I understood it had a date on it. There is a date on the back, October 25th, 1939.

The Court: Yes, I have seen it. Go ahead. It may be connected up with some reduction of prices, on the date the reduction was made.

By Mr. McClennen:

Q. A few minutes ago you stated that you had never issued any free admission tickets, did you not?

A. Well, that——

[fol. 3723] Q. Do you remember that you stated that a few minutes ago?

A. Yes, I made that statement. That is not an admission ticket there. That is not a ticket.

Q. What?

A. That is not a ticket. I probably would not run another 10 o'clock matinee again in five years. I just give the kiddies a treat once in my life. I had a right to do that, if I wanted to.

Q. You advertised free admission to students, did you not?

A. To children in the morning.

Q. To students, did you not?

The Court: The paper shows, I think, Mr. McClennen.

Mr. McClennen: Well, if your Honor please, the witness testified that he never did such a thing, and I am trying to get him to admit that he did.

The Court: He had admitted they issued these tickets here. We may conclude what that is from what it states.

Mr. McClennen: I was pressing as a cross-examiner in the hope that the witness would be willing to admit that he had made a mis-statement on the witness-stand in view of what I have shown here. If your Honor thinks I should [fol. 3724] not press it further, I will not.

The Court: There is already testimony here that he did not change his prices. You claim this to be in contradiction of that. We have to get through with this witness today. I have to get away soon, or we will have to keep the witness over until Friday.

Mr. Wright: If the Court please, there is a witness here that I have with some documentary material from the United Artists whom we told we would excuse today. It is just a question of identification of documents, and I would like to interrupt and put him on if this is—if the examination is not going to be finished today.

Mr. McClennen: I should hope the examination would be finished today.

The Court: You think so?

Mr. McClennen: Of this witness?

The Court: Yes.

Mr. McClennen: I hope so.

The Court: I don't know how long you will be. Don't misunderstand me. I don't want to curtail you in your examination. The only point is, if we don't get through today, [fol. 3725] we have to go on Friday, that is all.

Mr. McClennen: I am ready to do whatever suits the convenience of the Court. If I should suspend with this witness now, I am perfectly willing to do so, but I think I can finish today if I am not interrupted, and still leave time for this witness to take the stand to identify documents, but I am perfectly willing to do whichever is wanted.

The Court: You better proceed now. Proceed.

By Mr. McClennen:

Q. What was your admission price, your advertised admission price at your theatre at this time?

A. At which time now?

Q. At the time when these free tickets to students were issued, what was the admission price of your theatre at that time?

A. I couldn't tell you offhanded.

Q. Was it 10 and 20 cents?

A. You mean 10 and 20 for—I never run for 10 and 20 cents at night.

Q. Apparently you can tell us this much about it. Can't you tell us what your admission prices were?

A. They have never been 10 and 20 cents at night. I know that.

[fol. 3726] Q. What have they been?

A. They have never been below 25 cents.

Q. Never been below 2[illegible] cents at any time?

A. If you bring out something that might happen once every four or five years, like you did on this morning show, there might have been a benefit or something like that. I might give some benefit, five cents on a ticket or ten cents on a ticket, I don't know, but my regular run of admissions has never been below 25 cents.

Q. Do you recognize this photograph as of a display ad of yours?

A. Well, that still would not be 22 cents.

Q. Does that mean that you do recognize it or don't?

A. What is that?

Q. I asked you if you recognized that——

A. It says "Smalley's Norwich Theatre." I couldn't tell you where this is, but I am reading what it is, but that probably included tax—22 cents net and 3 cents tax would be 25 in those days.

Q. Do you recall that in January, 1942, you had display signs saying "Smalley's Norwich Theatre, the most entertainment for the least money, prices 10-20 cents"? Do you remember having those?

A. It don't say that.

Q. Do you remember having such as I have just said?

[fol. 3727] A. I say that it looks like one of my signs. I don't know anything about it. It don't tell me where the location is or where it is or what it is. You come—it looks like a banner or something, but it has got "Smalley's Theatre" on, so it must be a picture of one of my advertisements. I don't know.

Mr. McClennen: I offer that.

The Court: You read the word "Norwich", didn't you?

Mr. McClennen: Yes, your Honor.

Mr. Wright: We have the same objection that we had to the other.

The Court: Overruled.

(Thereupon photograph was received in evidence and marked as Defendants' Exhibit D-146.)

Mr. McClennen: I will show this to your Honor.

(Handing photograph to the Court.)

By Mr. McClennen:

Q. Now, will you describe to me the Colonial Theatre at this time, that is, January, 1942?

A. You say "at this time"? How do I know that is 1942, that picture you showed me? You just showed me a picture. It might have been taken 15 years ago.

Q. That is the kind of advertisement you might have issued any time along in the last 10 or 15 years?

[fol. 3728] A. I don't know when it is. You didn't give me any date.

Q. But you remember now that this 10-cent admission was advertised on banner form by you time and time again?

A. Oh, no, no.

Q. And throughout the years from time to time?

A. No, no.

Q. Well, what time? Can you remember when you put those 10 or 15-cent banner advertisements out?

A. Probably when we didn't have any pictures.

Q. Well, that was true of the whole period, was it not?

A. Pardon?

Q. That was true of the whole period, was it not?

A. Yes.

Q. That is, throughout the ten years from 1932 to 1942, you issued from time to time these banners, 10-20-cent admission advertisements, because you did not have any pictures, is that it?

A. That is not what I said. You said 1932. I said nothing about 1932. You told me this picture that you showed me was between 1936 and 1942, and I said I didn't know about it.

Q. Well, do you mean that on a number of occasions in that period you were advertising 10 and 20-cent admissions?

A. No, I don't know of any time I was advertising, but you showed me a picture where I was, and I would like to [fol. 3729] know where it was.

Q. You know very well, don't you?

A. I don't.

Q. And that you issued 10 and 20-cent banner advertisements?

A. I know what you showed me, a picture.

Q. You know you issued those, don't you?

A. I know I saw that picture.

Q. You know it was issued by you, don't you?

A. No, it was not issued by me.

Q. Whom was it issued by?

A. My manager, or anybody.

Q. Oh, your manager. You know that your manager issued such advertisements from time to time?

A. I would not say from time to time. It might have been a special occasion, or something else, like this morning matinee you showed me here.

Q. You notice that that banner does not say anything about a special occasion, don't you? You notice that?

A. It don't say anything about tax, either, does it?

Q. If it doesn't say anything about tax, would it enable you to say that you noticed that it did not say anything about special occasion on the banner?

A. Let me see the picture.

(Photograph handed to witness.)

[fol. 3730] A. What I mean to say here——

Q. All I asked you was, you noticed that it did not say anything about special occasion, did you not?

A. No, I don't see anything about special occasion, but I say, that price there could be a net price of 22 cents and a 3-cent tax is 25.

Q. Do you know whether you sent along with the banner when it was published, somebody to explain to those who saw the banner that they might have to pay some more besides this? Do you remember whether you did anything of that kind?

A. I don't know what you are driving at.

Q. Couldn't you answer the question without knowing what I am driving at?

A. In the old days, when the tax first came in, people advertised a net, their prices net, and they had to pay a tax on it. They didn't know until they got to the box office what the tax was going to be.

Q. What was the tax on a 20-cent admission in January, 1942, do you remember?

A. Tax on a 20-cent admission?

Q. Yes.

A. It would be 2 cents, I imagine, I don't know. 3 cents for 25-cent ticket, I think.

Q. That was the meaning of the "22" on the banner, was [fol. 3731] it not, including tax you would have to pay 22 cents?

A. No, 22 and 3 is 25.

Q. The banner does not say anything about that?

A. I know the banner doesn't say anything about it.

The Court: You have three different prices there. Were you advertising three prices?

The Witness: Well, the price would be children 10 cents and the other price——

The Court: That indicates 22 is the total with tax, that is the point.

The Witness: The other price would be matinee. Prices were different at matinee than at night.

The Court: You have three prices, 10, 20, 22.

The Witness: Yes, that would be three prices, 10 cents all day for children and probably in the afternoon it would be 20 plus 2, and at night 22 plus 3. It could be, but I don't know what this means. I don't remember. I don't make the banners.

Q. What it means, does it not, that your price of admission was 20 cents and there was 2 cents tax, so that the amount a person had to pay was 22 cents to get in?

A. What does the other side mean? You tell me what this side means. What does that side mean?

Q. If you look at the two sides and see they are exactly [fol. 3732] the same, you will be able to answer both questions at once.

A. That is what I say.

Q. That is, you know, Mr. Witness, as you sit there, don't you——

A. No, I don't know, or I would say so.

The Court: Just answer the question. Go ahead with your question. He answered before you completed your question.

Q. You know that what you intended to convey by that advertisement or your manager intended to convey was that the top price of admission was 20 cents plus a 2-cent tax, making it 22 cents, and that is the reason the 22 was put in bolder type. You know that, don't you?

A. No, I don't know that. You don't, either.

Q. I beg your pardon?

The Court: Strike out the last part, not responsive.

The Witness: I say you don't know that, either.

The Court: That is not necessary. Strike that out.

Q. At the time referred to, that is, January, 1942, will you describe the Colonia Theatre?

A. 1942?

Q. In January, 1942.

A. I don't believe I have been in the Colonia.

[fol. 3733] Q. What?

A. I have not been in the Colonia Theatre in 1942.

Q. When was the last time you were in the Colonia Theatre?

A. Golly, I couldn't tell you.

Q. Can you give me any idea at all?

A. No, I couldn't.

Q. Have you been in there at any time prior to May 19, 1942, and since 1938?

A. I might have been.

Q. Have you any recollection that you were not, or that you were?

A. No, I have not.

Q. The last time that you were in there, will you describe that theatre?

A. Describe it? About all I know about it, it is a theatre, and it has got a balcony, and it has got a long lobby, got some stores in front, some office building. It has a stage, has carpet and seats, just the same as any other theatre. Paint on the wall just the same as any other theatre.

Q. That is the best description you can give to the Court that desires to know the character of that theatre, is it?

A. What else do you want to know about it?

Q. Was it a first-class theatre?

[fol. 3734] A. Yes, I would say it was first-class.

Q. Right up, modern improvements in every way?

A. I should think so, yes.

Q. A desirable house in which to show first-run pictures?

A. Yes.

Q. The best house in town?

A. No, sir.

Q. It was the best house in town up to November, 1932, was it not?

A. That I couldn't tell, because I was not there then. I did not go in until 1930.

Q. What did you understand the date in my question to be?

A. I thought you said 1922.

Q. 1932, I said.

A. I beg your pardon.

Mr. McClennen: Now, if you will read the question and put an emphasis on the " '32" as you read it.

The Court: What he means is before your theatre was rebuilt, I suppose. The best theatre before your theatre was rebuilt?

The Witness: Well, I would say after I remodeled my theatre——

The Court: No, no.

The Witness: That is what he asked me.

[fol. 3735] Q. I said "before".

A. Is that what you asked me?

Q. What?

A. Is that what you asked me, 1930 to 1932?

Q. If the Colonia was the best house in town in that period?

A. Yes, I would say it was, yes, sir.

Q. Now, tell me the respects in which the Smalley Theatre built in 1932 is superior to the Colonia Theatre as it was in 1939?

A. I never said it was——

The Court: I don't think we ought to pursue that examination. He has described the Colonia Theatre as a first-class theatre. It seems to me you are going a good ways drawing conclusions from the facts that there are some differences in the construction of the buildings. Whether it was elaborate, that might bear on the questions involved here, but both are suitable for use as first-class and second-class pictures. The details of comparison of theatres, it seems to me is spending needless time.

Mr. McClennen: I suspend in deference to your Honor's suggestion on that subject. That is all.

The Court: Mr. Wright, we will have to go along.

[fol. 3736] Mr. Wright: I have this material. I will try to put it in as fast as I can.

Redirect examination.

By Mr. Wright:

Q. I will show you this telegram, dated May 27th, from you to Mr. Montague at Columbia, and ask you if that is the telegram you sent on or about that date?

A. That is it.

Mr. Wright: Mark this with the next plaintiff's exhibit number.

(Thereupon telegram dated May 27th, from Smalley to Montague, referred to, marked as Plaintiff's Exhibit No. 899 for identification.)

By Mr. Wright:

Q. I will show you this letter, December 4th, 1939, from you to Mr. Moross, and ask you if you wrote—if that is a copy of a letter you wrote on or about that date?

A. This is the attorney?

Q. Yes.

A. Yes, that is the answer to the other letter.

Mr. Wright: I will ask to have that marked with the next plaintiff's Exhibit number.

[fol. 3737] (Thereupon letter dated December 4, 1939, from Smalley to Mr. Moross, referred to, was marked as Plaintiff's Exhibit No. 900 for identification.)

Q. I will show you this telegram dated May 4th, 1939, from Abe Montague to O. L. Van Horne, and ask you if that was received on or about that date?

A. Yes, sir.

Mr. Wright: I will ask to have this marked with the next Plaintiff's Exhibit number.

(Thereupon telegram dated May 4th, 1939, from Montague to Van Horne, referred to, was marked as Plaintiff's Exhibit No. 901 for identification.)

Q. I will show you telegram from Van Horne to Montague, dated May 2nd, 1939, and ask you if you recognize that as the copy of the telegram that was sent to Mr. Montague on that date?

A. Yes, sir.

Mr. Wright: I will ask that this be marked with the next Plaintiff's Exhibit number.

(Thereupon telegram from Van Horne to Montague, dated May 2nd, 1939, referred to, was marked as Plaintiff's Exhibit No. 902 for identification.)

Mr. Wright: I will offer in evidence those exhibits 899 through 902.

[fol. 3738] Mr. McClennen: We object to each one of these, 899, 900, 901 and 902, and also ask that if received, they be not received as any evidence of the truth of the statements contained in them, and in order that your Honor may observe the significance of this in one of the many respects I call your Honor's attention to identification 902, to the fact that it is from an attorney and not in the course of business and indicative of the self-serving statements made in the process of working up a case.

Mr. Wright: If the Court please——

The Court: What does that mean "per Federal Officials"?

Mr. Wright: Both Exhibits 143 and 144 offered by the defendants were letters received from counsel for Columbia. This completes the picture of this so-called attorney correspondence with Columbia.

The Court: What does that mean "per Federal Officials"?

Mr. Wright: I will ask the witness.

Mr. McClennen: These have not yet gone in evidence, I understand.

The Court: No.

By Mr. Wright:

[fol. 3739] Q. Do you know, Mr. Smalley, what the phrase in this Exhibit 902 for identification "per Federal Official's Advice" refers to?

Mr. McClennen: Just a moment. That I object to.

The Court: All right. I will receive them.

Mr. McClennen: I renew my motion, if your Honor please, that these be not received as any evidence of the truth of the statements contained in them.

The Court: Motion denied.

(Thereupon Plaintiff's Exhibits Nos. 899 to 902, inclusive, for identification, were received in evidence.)

By Mr. Wright:

Q. After you got this letter, June 3rd, 1940, marked as Defendants' Exhibit 143 in evidence, did you have any conversation with Mr. Weinberg or Mr. Miller about Columbia pictures for Norwich?

A. Well, Mr. Weinberg and Mr. Miller came up to Cooperstown and saw me.

Q. When was that?

A. I think it was in 1943, I think.

Q. I am talking about with reference to June 3rd, 1940, did they come to see you after or in 1940 after that?

A. Mr. Miller did, but Mr. Weinberg did not.

[fol. 3740] Q. When did you see Miller?

A. I should say it was—I would say about August.

Q. Where did you see him?

A. Cooperstown.

Mr. Rogers: Please raise your voice. We can't hear a word you are saying. What did he say?

(Question and answer read.)

Q. What was said then?

A. Mr. Miller told me Weinberg couldn't come up, that he would have to make an appointment later for him to come, and that he was riding Weinberg, and as soon as he heard from him, why, they would come up and see me.

Q. Then did they ever come up and see you in 1940?

A. 1940, no, I think it was the next year that they came up and saw me.

Q. 1941?

A. Yes.

Q. Do you know when it was in 1941 that they saw you?

A. I think it was in June or July, one or the other.

[fol. 3741] Q. Then it was in June or July, 1941?

A. No, it was earlier than that. I would say June. I think that is about when it was, in June.

Q. June, 1941?

A. Yes.

Q. Do you remember what was said then?

A. I took it up with Mr. Weinberg, that I had been corresponding with him and talking with Joe Miller and talking with Phil Fox in regard to clearance. The reason we couldn't get together with Columbia,——

Q. Just say what the conversation was.

A. I am telling you the conversation that I said to Mr. Weinberg, the reason we couldn't get together with Columbia was the clearance, that Columbia was demanding more than the other major companies over my other towns.

Q. This was with respect to Norwich?

A. No.

Q. I am asking you with respect to Norwich. Did you have a conversation with respect to Norwich?

A. Yes, this was in regard to Norwich. We couldn't get together in Norwich because he wouldn't sell me Norwich alone and he wouldn't sell me my other towns unless I paid the clearance which they had which was a lot more than the other major companies was giving Schine.

Q. Then there was no deal then made for Norwich?
[fol. 3742] A. No, there was no deal made.

Mr. Wright: That is all.

Recross-examination.

By Mr. McClennen:

Q. I show you, Mr. Smalley, a contract dated December 17, 1940, with Smalley Theatres, Inc., signed by H. L. Johnson, with the notation Joe Miller as the Columbia salesman, and approved December 20, 1940. Was that a contract which you made?

A. Are you referring to the conversation I just had?
Q. I am asking you if that is a contract which you made?
A. Oh, yes.
Q. And with what person did you negotiate that contract?
A. Joe Miller.
Q. And at what time?
A. The time it was signed there.
Q. Around about December, 1940?
A. Yes.

Mr. McClennen: I ask to have it marked.
Mr. Wright: We have no objection.

(The contract referred to, dated December 17, 1940, approved Dec. 20, 1940, with Columbia Pictures Corporation, was received in evidence and marked Defendants' Exhibit 147.)

The Court: A Columbia contract, was it?
[fol. 3743] Mr. McClennen: A Columbia contract, Defendants' Exhibit No. 147.

Q. This Exhibit, Mr. Smalley, recalls to your mind that you were in error just now in saying that you didn't see Mr. Miller in 1940?

A. I didn't mean Mr. Miller in regard to this. I meant in regard to a split or first-run contract in Norwich.
Q. Then you did see Mr. Miller after the time when he came up first and said that Mr. Weinberg could not come at that time? He did come again in 1940 and negotiated with you for a contract, did he not?
A. Yes, according to that.

Q. And your statement that you did not see Mr. Miller in 1940 was incorrect, was it not?

A. No. It might be incorrect if I said I hadn't seen him. I mean I hadn't seen him and Mr. Weinberg, which the letter you had there—that Mr. Weinberg and Mr. Miller was coming up and see me, and they didn't. That is what I meant, Mr. Miller and Mr. Weinberg did not come up together.

The Court: Is that all?

Mr. Wright: I think your Honor's attention should be called to the fact——

The Court: Is that marked?

Mr. Wright: Yes. First-run pictures rejected by Colonia [fol. 3744] Theatre.

Mr. McClennen:

Q. And during all this period you were getting second-run pictures from the various distributors, were you not?

A. Yes.

The Court: That is all. Is this other documentary evidence?

Mr. Wright: I think we can stipulate that.

Mr. McClennen: It is suggested we need not take your Honor's time. Mr. McGrath is here. I understand he has some papers and I suppose he will say that he has brought those papers from his Company's files.

Stephen W. McGrath resumed the stand in behalf of the Plaintiff, having been previously sworn, was examined and testified further as follows:

The Witness: That is correct.

Mr. Wright: I thought we could have the material marked and identified without the presence of the Court.

Mr. McClennen: That is what I thought.

The Court: Submit the papers to Mr. McClennen and then we will see.

M.. McClennen: The witness has handed — a paper and that can just as well be marked for identification.

[fol. 3745] Mr. Wright: Yes, I was going to say if the Court wants to get away I don't see any reason for the Court's presence.

The Court: How many are there?

Mr. Wright: Just one.

(The paper, dated February 9, 1941, United Artists' clearances, was marked as Plaintiff's Exhibit 903 for identification.)

(Paper, subpoena, was marked as Plaintiff's Exhibit 904 for identification.)

Direct examination.

By Mr. Wright:

Q. Mr. McGrath, as I understand it, this document introduced here marked Plaintiff's Exhibit 903 for identification is the only document you have been able to locate in the United Artists' files containing the descriptions contained in the exhibit marked 904 for identification, is that right?

A. That is right.

Q. Have you exhausted the records of the Company in that respect?

A. I have exhausted the search.

[fols. 3746-3749] Mr. Wright: That is all.

The Court: We will adjourn until Friday morning at 10 o'clock.

(Whereupon a recess was taken until Friday, October 27, 1944, at 10 o'clock A.M.)

[fol. 3750] UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF NEW YORK

Civil 223

UNITED STATES OF AMERICA

vs.

SCHINE CHAIN THEATRES, INC., et al., Defendants

Thursday, October 26th, 1944, 10 A. M.

In the absence of the Judge and by agreement of counsel there are marked for identification papers as follows:

Those so marked are for identification only.

Those marked without objection are introduced in evidence.

APPEARANCES:

Robert L. Wright, Esq., John F. Clagett, Esq., Harold L. Schilz, Esq., Special Assistants to the Attorney General, and Philip Marcus, Esq., and Milton Kallis, Esq., Special Attorneys, in behalf of the United States.

Edward P. McClennen, Esq., Willard S. McKay, Esq., Saul E. Rogers, Esq., Arthur E. Whittemore, Esq., Arthur J. Homans, Esq., and Edward M. Antevil, Esq., appearing for the defendants.

[fol. 3751] OFFERS IN EVIDENCE

Mr. Marcus: The first matter on this morning is the introducing in evidence portions of Schines' answers to the Government's interrogatories. It is suggested that this be done by introducing the material in these answers by page reference with the understanding that the similar page in the original answer filed with the Clerk of this court will be considered to be in evidence.

The first two pages in Schines' answers to interrogatories being a prefatory statement are offered in evidence.

The following matter in Schines' answers to interrogatory No. 2 are offered in evidence. The information in column 1 in respect to Myer Schine, Louis Schine and John A. May, and the statement under the heading of "Name and Period of Employment of Marsh Gollner, District Manager, 10/1/38 to date."

There has been read in evidence the information in respect to Louis Lazar, transcript pages 500-501, and in respect to Lee Insley, transcript page 2954.

Mr. McClennen: Then we understand that nothing in [fol. 3752] answer to interrogatory No. 2 except what has been specifically stated is in evidence.

Mr. Marcus: That is right.

We offer in evidence the following portions of Schines' answers to interrogatory No. 3. The information stated in respect to J. Myer Schine, Louis W. Schine, John A. May, Willard S. McKay, and George V. Lynch. The information in respect to John A. May has been in part read in evidence at transcript pages 151-152.

It is understood that the above statement refers to the information in respect to the Schine Chain Theatres, Inc.

As to Schines' answers to interrogatory No. 3 in respect to Schines Circuit, Inc., the information stated in respect to

Louis W. Schine, John A. May, Willard S. McKay, is offered in evidence.

In respect to Schines' answers to interrogatory No. 3 as to the Schine Theatrical Co., Inc., the information stated in respect to J. Myer Schine, Louis W. Schine, John A. May, is offered in evidence.

In respect to Schines' answers to interrogatory No. 3, [fol. 3753] concerning the Schine Enterprises Corporation, the information stated as to J. Myer Schine, Louis W. Schine and John A. May is offered in evidence.

In respect to the answers in response to interrogatory No. 3, concerning Schine-Lexington Corporation, the information stated as to J. Myer Schine, John A. May, Willard S. McKay and Louis Lazar, Eugene Custer and Lou Hensler, is offered in evidence.

It is believed that information in respect to Louis Lazar has been read into the record at transcript pages 500-501.

In respect to Schines' answers to the Government's interrogatory No. 3, as to the Chesapeake Theatre Corporation, the information stated in respect to J. Myer Schine, Louis W. Schine, John A. May, Willard S. McKay and Marsh Gollner, is offered in evidence.

Mr. McClennen: It is understood that no other parts of the answer to interrogatory No. 3 are to be deemed in evidence.

Mr. Marcus: Schines' answer to interrogatory No. 4 is [fol. 3754] offered in evidence.

In respect to Schines' answers to interrogatory No. 7, the information stated as to Schine Chain Theatres, Inc., as to Class A common and Class B common, is offered in evidence.

The foot-note at the bottom of the page in respect to the St. Lawrence Holding Company is included in this offer.

We also offer in evidence Schines' answers to interrogatory No. 7 as to the ten largest stockholders of preference stock as of 8/31/40, Schinebro, Inc., 3,146 shares, J. Myer Schine, 1,384 shares, Louis W. Schine, 1,352 shares.

We also offer the statement made at the bottom of page 4 to Schines' answers to Interrogatory No. 7, to the effect that as to other Schine corporate defendants all stock held by the Schine Chain Theatres, Inc.

Mr. McClennen: We contend that by this offer there goes in evidence the other portions of the answer to interrogatory No. 7 as to the other stockholders and holdings in the class [fol. 3755] from which the above portion has been sorted out.

Mr. Marcus: The Government does not agree with this contention. It is our purpose in offering the mass of material in these answers to put in just the matters that are necessary in order not to make the record larger than it would otherwise be. We suggest that as to any matters which the defendants would like to offer in evidence in respect to these answers be made upon application to the Court, or, perhaps, after conference with plaintiff's counsel upon stipulation.

Mr. McClennen: We do not accept the suggestion.

Mr. Marcus: We offer in evidence Schines' answer to interrogatory No. 16. In respect to Schines' answers to interrogatory No. 17, 17-A, 18 and 23, we offer in evidence the following portions:

The first page of Schines' answers to interrogatory No. 17, except for the statement made in respect to the Regent Theatre in Amsterdam, New York, under the heading "Remarks Re Closing Periods," "Open occasionally or part [fol. 3756] time, as business warrants."

Mr. McClennen: We make the same claim that this answer is in as a whole by this offer and that the deletion of a part of the particular answer is ineffective.

Mr. Marcus: The Government does not agree with this contention.

As part of this offer in evidence of the material on the first page of Schines' answers to interrogatory 17, 17-A, 18 and 23, the supplemental schedule to interrogatory No. 18 in respect to Amsterdam, New York, is offered in evidence.

[fol. 3757] Mr. McClennen: We contend that this makes the whole of the supplemental schedule a part of the evidence.

Mr. Marcus: We also offer in evidence Schine's answer to interrogatory No. 18, as contained in the supplemental schedule in respect to Auburn, N. Y.

Mr. McClennen: We make the same contention as in the case of the preceding portions of a supplemental schedule.

Mr. Marcus: We offer in evidence page 2 of Schine's answers to interrogatory No. 17-A, 18 and 23, except for the statement made under the heading of "Name of purchaser, if so, or remarks."

Mr. McClennen: We contend that this offer puts into evidence the whole of the answer referred to and that a portion of it may not be elided in this way and that the elision is ineffective.

Mr. Marcus: We offer in evidence Schine's answers to interrogatories 17-A, 18 and 23, as contained on page 3, except for the statements made under the heading: "Remarks re Closed Period," for Corning and Cortland theatres, Cortland, N. Y. [fol. 3758]

Mr. McClennen: We contend that this offer puts in evidence the whole of that page with respect to the theatres referred to in the offer and that the elision of a part may not be made and that it is ineffective.

Mr. Marcus: We offer in evidence the answers made in respect to interrogatory No. 18, as contained in the supplemental schedule concerning Corning and Cortland, N. Y.

We offer in evidence page 4 of Schine's answers to interrogatory 17-A, 18 and 23, except for the statement made under the heading, "Remarks re Closed Period," for the Temple Theatre at Geneva, N. Y.

Mr. McClennen: We make the same contention, that a part of a single item of an answer in this way may not be elided, that the part so attempted to be elided is in evidence, and that the elision is ineffective.

Mr. Marcus: We offer in evidence page 5 of Schine's answers to interrogatory 17-A, 18 and 23, except for the statements made under the heading "Remarks re Closed Period" for the Richmond Theatre, Herkimer, the Temple [fol. 3759] Theatre, Ilion and the Crescent Theatre, Newark.

Mr. McClennen: We make the same contention that by this offer the portions of the item attempted to be elided are in evidence and that the attempted elision is ineffective. An answer cannot be distorted by leaving a phrase of a part of it out.

Mr. Marcus: The Government at this time would like to make clear that, in part, it is not offering the statements except for the reason that it believes that they are self-serving declarations and conclusions.

The Government also offers in evidence Schine's answers to Interrogatory No. 18, contained in the supplemental schedule in respect to Herkimer, N. Y., save for the statement "Obsolete," and in respect to Newark, N. Y., and in respect to Little Falls, N. Y.

Mr. McClennen: We contend that by this offer the schedule as a whole is in evidence, that the attempted elision is ineffective and would distort the answer as to the particular items as to which the answer has been put in evidence.

[fol. 3760] Mr. Marcus: We offer in evidence page 6 of Schine's answers to interrogatories 17-A, 18 and 23, except for the statements made under the heading, "Remarks re Closed Periods", for the Hippodrome Theatre, Little Falls, and the Hi-Art Theatre, Lockport, N. Y.

Mr. McClennen: We contend that by this offer the entire answers as to these items are in evidence, that the attempted elision is ineffective and that the answer may not be distorted by removing a phrase from it, or attempting to do so.

Mr. Marcus: We offer in evidence page 7 of Schine's answers to interrogatories 17-A, 18 and 23, except for the statements made under the heading, "Remarks re Closed Periods", for the Pontiac Theatre, Ogdensburg, and the Strand Theatre, Onenta, and we also do not offer in evidence the statements made under the heading "Name of Opposition Theatre", for Norwich, because that matter has been testified to.

Mr. McClennen: We contend that by this offer the items from an item attempted to be elided are in evidence; that the attempted elision is ineffective and that an answer may [fol. 3761] not be distorted by omitting a phrase of the particular item of the answer.

Mr. Marcus: The Government also offers in evidence Schine's answer to interrogatory No. 18 as contained in the supplemental schedule in respect to Ogdensburg, N. Y., and Oswego, N. Y.

Mr. McClennen: We contend that by this offer the schedule is in evidence, that a portion may not be elided in this way and that to leave out a portion of an item distorts the answer.

Mr. Marcus: We offer in evidence page 8 of Schine's answers to interrogatories 17-A, 18 and 23. We are not offering in evidence Schine's answer to interrogatory No. 18 as contained in supplemental answer in respect to Rochester, N. Y.

Mr. McClennen: We contend that by this offer the parts just stated, attempted to be elided, are in evidence, that the attempted elision is ineffective, and that an answer may not be distorted by leaving out a portion of a phrase in this way.

Mr. Marcus: The record should show that the statement omitted by the Government from its offer in respect to [fol. 3762] Rochester, refers to matters contained on page 9 of Schine's answers to interrogatory 17-A, 18 and 23.

We offer in evidence page 9 of Schine's answers to interrogatory 17-A; 18 and 23, except for the statement made under the heading "Remarks re Closed Period", for the Seneca Theatre, Seneca Falls.

Mr. McClennen: We contend that by this offer this entire page is in evidence; that the attempted elision is ineffective and that an item of an answer may not be distorted by leaving out a phrase thereof.

Mr. Marcus: We offer in evidence Schine's answers to interrogatory 17-A, 18 and 23, as contained on page 10.

We offer in evidence page 11 of Schine's answers to interrogatories 17-A, 18 and 23.

We are not offering the statement made in respect to Athens, Ohio, the Court Theatre, as contained in Schine's answers to interrogatory No. 18 in the supplemental schedule.

We are offering in evidence Schine's answers to inter- [fol. 3763] rogatory 17-A, 18 and 23, as contained on page 11, and as contained in the supplemental schedule of answers to interrogatories No. 18, except as otherwise stated.

Mr. McClennen: We contend that by this introduction in evidence the portions attempted to be elided are in evidence; that the attempted elision is ineffective, and that an answer may not be distorted by leaving out a phrase thereof.

Mr. Marcus: The Government asks that it be stated for the record that these answers to interrogatories 17-A, 18 and 23 are made in respect to specific theatres in specific towns and in respect to different interrogatories.

We offer in evidence page 12 of Schine's answers to interrogatories 17-A, 18 and 23, except for the statements made under the heading "Remarks re Closed Period" for the Court Theatre, Athens, the Strand Theatre, Bellefontaine, the Southern Theatre, Bucyrus, and for the State Theatre, Bucyrus, and also for the Star Theatre, Delaware, Ohio.

[fols. 3764-5] Mr. McClennen: We contend that by this offer the parts attempted to be elided are in evidence; that the elision attempted is ineffective and that an answer may not be distorted by leaving out a phrase of it.

Mr. Marcus: We also offer in evidence Schine's answers to interrogatory 18 as contained in its answers to that supplemental schedule in respect to Bellefontaine, Ohio, Bucyrus, Ohio, and Delaware, Ohio.

Mr. McClennen: We contend that by this offer the parts attempted to be elided are in evidence; that the attempted elision is ineffective and that an answer may not be distorted by leaving out a phrase thereof.

Mr. Marcus: We offer in evidence page 13 of Schine's answers to interrogatories 17-A, 18 and 23, except for the statement under the heading "Closed Periods, if any", made in respect to the Opera House, Kent, Ohio, "Unable to obtain product."

Mr. McClennen: We contend that by this offer the part attempted to be elided is in evidence, that the attempted elision is ineffective, and that an answer may not be dis-[fol. 3766] torted by leaving out a phrase of it.

Mr. Marcus: We offer in evidence page 14 of Schine's answers to interrogatories 17-A, 18 and 23.

We also offer in evidence Schine's answer to interrogatory 18 as contained in its supplemental schedule in respect to Norwalk, Ohio.

We offer in evidence page 15 of Schine's answers to interrogatories No. 17-A, 18 and 23, except for the statement made under the heading "Remarks re Closed Periods" for the Opera House at Wooster, Ohio.

Mr. McClennen: We contend that by this offer the entire page is in evidence; that the attempted elision is inffective, and that an answer may not be distorted by leaving out a phrase of the particular part of it.

Mr. Marcus: The Government at this time asks Defendants' Counsel to supply the date of the dismantling of the theatre and the lapsing of the lease in respect to the Wallace Theatre, Wooster, as stated in Schine's answers to interrogatory 17-A, the date not being supplied.

[fol. 3767] Mr. McClennen: We have not the date here at hand.

Mr. Marcus: We also offer in evidence Schine's answer to interrogatory No. 18 as contained in the supplemental schedule in respect to Wooster, Ohio.

We offer in evidence page 16 of Schine's answers to interrogatories 17-A, 18 and 23.

We also offer in evidence Schine's answer to interrogatory No. 18 as contained in supplemental schedule in respect to Richmond, Kentucky.

We offer in evidence page 17 of Schine's answers to interrogatories 17-A, 18 and 23, except for the statement made under the heading "Remarks re Closed Periods", in respect to the State Theatre, Richmond, Kentucky.

Mr. McClennen: We contend that by this offer the part of the phrase of the answer attempted to be elided is in evidence; that the attempted elision is ineffective and that an answer may not be distorted by leaving out a phrase of the particular item.

Mr. Marcus: We offer in evidence page 18 of Schine's answers to interrogatories 17-A, 18 and 23, and we also [fo. 3768] offer in evidence Schine's answer to interrogatory No. 18 in respect to Cambridge, Maryland, for the purpose of the answers to these interrogatories, except the statement made at the end of Schine's answer to supplemental schedule No. 18.

We offer in evidence page 19 of Schine's answers to interrogatories 17-A, No. 18 and 23.

We offer in evidence Schine's answers to interrogatories 17-B and 17-C.

We offer in evidence Schine's answer to interrogatory No. 15, consisting of seven pages.

We offer in evidence page 1 of Schine's answer to interrogatory No. 19, page 2, page 3, page 4, page 5. On page 5 of Schine's answer to interrogatory No. 19 I am informed by Defendants' Counsel that the proper date under heading "Date Acquired" for the Southern Theatre, Bucyrus, should be April, 1937.

Page 6, except for the statement under the heading "From Whom Acquired", in respect to the Princess Theatre, [fol. 3769] Medina, the Government believes that the defendants are mistaken in this respect.

Mr. McClennen: We contend that by the introduction of this page 6 the portion attempted to be elided is in evidence and that the attempted elision is ineffective and that the answer may not be distorted by leaving out a portion thereof, and that the belief of plaintiff's Counsel should not become a part of the record.

We stipulate that with respect to this item of acquisition of 25 per cent interest, the actual acquisition was as is already having appeared in evidence in the trial of this case.

Mr. Marcus: We agree.

Page 7, page 8, page 9, page 10 and page 11.

We do not offer in evidence page 12 of Schine's answer to interrogatory No. 19.

Mr. McClennen: We contend that by this offer the portion which has been stipulated should be furnished and was furnished on this page is in evidence.

[fol. 3770] Mr. Marcus: We ask that the record show that the heading of Schine's answer to interrogatory No. 19 on page 12 is as to theatres built by the Schine defendants, the following information is furnished pursuant to stipulation, and that all the other information supplied in Schine's answers to interrogatory numbered 19 are under the heading with respect to each financial interest acquired by the defendant on or after August 31, 1931, with respect to theatres listed in answer to interrotatory No. 17, the following information is herewith furnished.

Mr. McClennen: The contents of the answers to interrogatories and the page in question appear in the text as filed in court.

Mr. Marcus: We offer in evidence Schine's answer to interrogatory No. 22.

We offer in evidence Schine's answers to interrogatory No. 31.

Mr. McClennen: We call to the attention of plaintiff's Counsel that in the answer to interrogatory No. 31 the next to the last item on the page, the date of the option to buy or [fol. 3771] lease is stated as January 10, 1938, and that this is a typographical eror and should read "January 10, 1939."

Mr. Marcus: Subject to anything in the record to the contrary, we accept the change.

We offer in evidence Schine's answers to interrogatory No. 32, consisting of two pages. We understand that interrogatory No. 32 consists merely of one page and we are offering that page.

We also offer the certification made by John A. May in respect to the answers to the interrogatory.

Mr. Wright: I will offer as Plaintiff's Exhibit 704-A the play-off sheet of the Universal Pictures in Lexington, Kentucky, for the 1938-1939 season.

(The play-off sheet, Universal Pictures, 1938-1939, was received in evidence and marked as Plaintiff's Exhibit 704-A.)

Mr. Wright: I will offer as Plaintiff's Exhibit 704-B the play-off sheet for the 1934-35 season at the Madison Theatre, Rochester.

[fol. 3772] (The play-off sheet for the 1934-35 season, Madison Theatre, Rochester, was received in evidence and marked Plaintiff's Exhibit 704-B.)

Mr. Wright: I will offer as Plaintiff's Exhibit 704-C the play-off sheet for the '35-'36 season.

(The play-off sheet for the 1935-36 season was received in evidence and marked Plaintiff's Exhibit 704-C.)

Mr. Wright: I will offer as Plaintiff's Exhibit 704-D the play-off sheet for the '36-'37 season.

(The play-off sheet for the '36-'37 season was received in evidence and marked as Plaintiff's Exhibit 704-D.)

Mr. Wright: Plaintiff's Exhibit 704-E is the same for the '37-'38 season.

(The play-off sheet for the 1937-38 season was received in evidence and marked as Plaintiff's Exhibit 704-E.)

Mr. Wright: Plaintiff's Exhibit 704-F is the Universal play-off at the Monroe Theatre, Rochester, for the 1934-35 season.

(The play-off sheet, Monroe Theatre, Rochester, 1934-35 season, was received in evidence and marked as Plaintiff's Exhibit 704-F.)

Mr. Wright: Plaintiff's Exhibit 704-G is the same for the 1935-36 season.

[fol. 3773] (The play-off sheet for the 1935-36 season was received in evidence and marked as Plaintiff's Exhibit 704-G.)

Mr. Wright: Plaintiff's Exhibit 704-H is the same for the 1936-37 season.

(The play-off sheet for the 1936-37 season was received in evidence and marked as Plaintiff's Exhibit 704-H.)

Mr. Wright: Plaintiff's Exhibit 704-I is the same thing for the 1937-38 season.

(The play-off sheet for the 1937-38 season was received in evidence and marked as Plaintiff's Exhibit 704-I.)

Mr. Wright: Plaintiff's Exhibit 704-J is the Universal play-off for the Riviera and Liberty Theatres at Rochester for the 1934-35 season.

(The play-off sheet, Riviera and Liberty Theatre, Rochester, for 1934-35 season was received in evidence and marked Plaintiff's Exhibit 704-J.)

Mr. Wright: Plaintiff's Exhibit 704-K is the same thing for the 1935-1936 season.

(The play-off sheet for 1935-36 season was received in evidence and marked as Plaintiff's Exhibit 704-K.)

[fol. 3774] Mr. Wright: Plaintiff's Exhibit 704-L is the same for the 1936-37 season.

(The play-off sheet for 1936-37 season referred to was received in evidence and marked Plaintiff's Exhibit 704-L.)

Mr. Wright: Plaintiff's Exhibit 704-M is the same for the 1937-38.

(The play-off sheet for 1937-38 was received in evidence and marked as Plaintiff's Exhibit 704-M.)

Mr. Wright: 704-N is the Universal play-off for the State and Dixie Theatres in Rochester for the 1934-35 season.

(The play-off sheet, Universal, for State and Dixie Theatres, Rochester, 1934-1935 season, received in evidence and marked as Plaintiff's Exhibit 704-N.)

Mr. Wright: Plaintiff's Exhibit 704-O is the same thing for the 1935-1936 season.

(The play-off sheet was received in evidence and marked as Plaintiff's Exhibit 704-O.)

Mr. Wright: Plaintiff's Exhibit 704-P is the same for the 1936-1937.

(The play-off sheet for 1936-1937 was received in evidence and marked as Plaintiff's Exhibit 704-P.)

[fol. 3775] Mr. Wright: Plaintiff's Exhibit 704-Q is the same for the 1937-1938.

(The play-off sheet for 1937-1938 was received in evidence and marked as Plaintiff's Exhibit No. 704-Q.)

Mr. Wright: I will offer as Plaintiff's Exhibit 704-R, the play-off of Universal Pictures in Van Wert, Ohio, for the 1934-1935 season.

(The play-off sheet, Universal, in Van Wert, Ohio, was received in evidence and marked as Plaintiff's Exhibit 704-R.)

Mr. Wright: Plaintiff's Exhibit 704-S is the same for the 1935-1936 season.

(The play-off sheet for 1935-1936 season was received in evidence and marked as Plaintiff's Exhibit 704-S.)

Mr. Wright: Plaintiff's Exhibit 704-T is the same for the 1936-1937 season.

(The play-off sheet for 1936-37 season was received in evidence and marked as Plaintiff's Exhibit 704-T.)

Mr. Wright: Plaintiff's Exhibit 704-U is the same for the 1937-1938 season.

[fol. 3776] (The play-off sheet for 1937-1938 season was received in evidence and marked as Plaintiff's Exhibit 704-U.)

Mr. Wright: Plaintiff's Exhibit 704-V is the same for the 1938-1939 season.

(The play-off sheet for 1938-1939 season was received in evidence and marked as Plaintiff's Exhibit 704-V.)

Mr. Wright: Plaintiff's Exhibit 704-W is the same for the 1939-1940 season.

(The play-off sheet for 1939-1940 season was received in evidence and marked as Plaintiff's Exhibit 704-W.)

(Whereupon, a recess was taken until 2 o'clock P. M.)

[fol. 3777] After recess, 2 o'clock P. M.

Appearances: As before noted.

Mr. Wright: Plaintiff's Exhibit 718-A is a page taken from Exhibit 718, which shows the play-off of United Artists features, first-run, at Auburn, New York, for the seasons 1934-35 and 1935-36.

Plaintiff's Exhibit 718-B is the page from Exhibit 718, which shows the play-off of United Artists features in Lockport, New York, first-run, for the season 1931-32, 1932-33 and 1933-34.

718-C, is the page which shows the play-off in the same town for the seasons 1934-35, and 1935-36, first-run.

718-D, is the page from 718, which shows the play-off at Bucyrus, Ohio, first-run for 1934-35 and 1935-36 seasons.

718-E, is the sheet which shows the first-run play-off at Mount Vernon, Ohio, for the 1934-35 and 1935-36 seasons.

718-F is the sheet which shows the first-run play-off at Norwalk, Ohio, for the 1934-35 and 1935-36 seasons.

[fol. 3778] Mr. McClennen: It is understood that the letters "P.N.P." indicate "Paid not played."

Mr. Wright: 718-G is the page showing the first-run play-off at Van Wert, Ohio, for the 1934-35 and 1935-36 seasons.

718-H is the page showing the first-run play-off at Little Falls, New York, for the 1934-35 and 1935-36 seasons.

718-I is the sheet which shows the first-run play-off at Norwich, New York, for the 1934-35 and 1935-36 seasons.

(Thereupon the sheets referred to were marked as Plaintiff's Exhibits Nos. 718-A, 718-B, 718-C, 718-D, 718-E, 718-F, 718-G, 718-I in evidence.)

Mr. Wright: Will you mark this?

(Thereupon United Artists Corporation answers to interrogatories Nos. 15 and 16, previously marked for identification, were received in evidence and marked as Plaintiff's Exhibit No. 719.)

Mr. Wright: This folder designated Malone, New York, Paramount, Boumansour, will be marked Plaintiff's Exhibit 905, and it contains all of the documents produced by [fol. 3779] Paramount Pictures, Inc., and Paramount Film Distributing Corporation in response to the subpoena served upon it returnable October 21st, 1944, calling for the production of "All license agreements between your company and Michael Boumansour for the exhibition of feature motion pictures at the Plaza Theatre, Malone, New York, for the motion picture seasons 1936-37 through 1941-42," such document being Plaintiff's Exhibit 905-A, a contract dated September 19, 1938, for group S-10, second-run.

905-B, contract of the same date for second-run of "Men With Wings."

905-C, a contract of April 3, 1940 for second-run of group S-11.

905-D, a contract dated April 3, 1940, for second-run of S-12.

905-E, a contract dated April 3, 1940, for six "Hop Along Cassidy," second-run.

Plaintiff's Exhibit 906 is a folder containing all of the documents produced by Loew's Incorporated in response to a subpoena returnable October 23, 1944, calling for "All license agreements between your company and Michael [fol. 3780] Boumansour for the exhibition of feature motion pictures at the Plaza Theatre, Malone, New York, for the motion picture seasons 1936-37 through 1941-42," which documents are 906-A, a contract for five features, first-run, the application date January 27, 1937.

906-B, a contract with application date September 24, 1937 for second-run of 1936-37 feature productions.

906-C, a contract with application date May 4, 1938 for second-run of 1938-39 productions.

906-D, a contract, application date July 27th, 1938 for seven feautres entitled, respectively, "Wilderness," "Born to Dance," "The Devil is Sissy," "Family Affair," "Old Hutch," "Tarzan Escapes," "Tale of Two Cities."

906-E, a contract, application date August 4, 1938 for second-run of 1937-38 for fifteen 1937-38 productions.

906-F, will be contract with application date October 26, 1939, for second-run of 1939-40 features.

[fol. 3781] 906-G is contract, application date November 7, 1940, for second-run of 1940-41 features.

906-H is contract, application date January 14th, 1941, for "Babes in Arms," repeat-run.

907 is a folder containing all of the documents produced by R.K.O. Radio Pictures, Inc., in response to a subpoena returnable October 23, 1944, calling for "All license agreements between your company and Michael Boumansour for the exhibition of feature motion pictures at the Plaza Theatre, Malone, New York, for the motion picture seasons 1936-37 through 1941-42," which documents are 907-A, a contract, application dated January 31, 1938, for "Music for Madame," "Living on Love," "Everybody's Doing it," "There Goes the Groom," "Quick Money," "Make a Wish," second-run.

907-B is contract, application date January 31, 1938, for fourteen 1936-37 features, second-run.

907-C is dated October 31, 1938, for 48 1938-39 features, [fol. 3782] second-run.

907-D is dated May 6th, 1940, for second-run of 20 1939-40 features,

907-E is contract dated October 31, 1940, for "Pinocchio," second-run.

908 is a folder containing all of the documents produced by Warner Brothers Pictures, Inc., in response to a subpoena returnable October 23rd, 1944, calling for "All license agreements between your company and Michael Boumansour for the exhibition of feature motion pictures at the Plaza Theatre, Malone, New York, for the motion picture seasons 1936-37 through 1941-42."

This is also produced in response to the subpoena. If you want to give testimony to the other thing we will put your testimony in the record.

Mr. McClennen: This is not the time for putting testimony in.

Mr. Wright: I submit on this particular question we can come to an agreement as to what happened. We do want the testimony in as to just what happened. All we are [fol. 3783] covering here is what you produced in court in response to the subpoena.

Mr. McClennen: If you persist in indicating that this folder is all that Warner produced in response to the subpoena, we protest that that statement should not go on the record, because of the fact that we are advised that Warner in pursuance of the subpoena sent to Buffalo certain contracts and that one of those contracts was asked for for the purpose of cross-examination of Mr. Boumansour by defendants' counsel and was handed by Warner's representative to defendants' counsel at that time, used in the cross-examination and subsequently put in evidence by plaintiff's counsel as plaintiff's Exhibit 863.

Mr. Wright: This folder, Exhibit 908 contains all of the documents produced in response to the subpoena of ——, ——, calling for "All license agreements between your company and Michael Boumansour for the exhibition of feature motion pictures at the Plaza Theatre, Malone, New York, for [fol. 3784] the motion picture seasons 1936-37 through 1941-42," except Plaintiff's Exhibit 863 and the contract marked as Defendants' Exhibit 155 for identification which were delivered to counsel for the defendants prior to the receipt by plaintiff's counsel of any advice to the effect that those contracts were in Buffalo.

Mr. McClennen: At the request of defendants' counsel in court where the papers were in the course of the cross-examination of the Witness Boumansour for the purpose of their being available for that cross-examination.

Mr. Wright: Such documents are, 908-A, contract dated, —and these are all the application dates,—January 23rd, 1940 for second-run of 1939-40 features with letter of June 26th, 1940 from G. L. Sears to Michael Boumansour and three notifications of elimination attached.

908-B is dated January 23, 1939, "The Great Garrick," "Wine, Women and Horses," "Expensive Husbands," "They Won't Forget," "Missing Witnesses," "Patient In Room 18," "Mystery House," "Fools For Scandal," first-run.

[fol. 3785] 908-C is dated March 20, 1939, contract for second-run of the 1938-39 features with a notification of cancellation of 13 features attached and notation that cancellations offset by 12 other releases.

908-D is dated January 23rd, 1940, for second-run of six John Wayne Westerns.

908-E is dated 12/28/36 for "Lucky Legs," "Jail Break," "Broadway Hostess," "Man of Iron," "Widow from Monte Carlo," "Murder of Dr. Harrigan," "Personal Maid's Secrets," "Two Against the World," first-run.

We will offer this Defendants' Exhibit D-155 in evidence as Plaintiff's Exhibit 909.

It is stipulated that in response to subpoena served upon 20th Century-Fox Film Corporation, returnable October 23, 1944, calling for "All license agreements between your company and Michael Boumansour for the exhibition of feature motion pictures at the Plaza Theatre, Malone, New York, for the motion picture seasons 1936-1937 through [fol. 3786] 1941-42," that no documents were produced.

Mr. McClennen: The Fox representative states that none have been found or produced.

Mr. Marcus: The Government is now offering in evidence leases as hereafter specified, produced by the defendants, pursuant to a notice to produce, dated October 11, 1944.

Mr. McClennen: It is stipulated that the defendants may withdraw the original and substitute photostats.

Mr. Marcus: I ask to have these five documents marked in evidence.

(Thereupon five leases referred to were marked as Plaintiff's Exhibits Nos. 910, 911, 912, 913 and 914 in evidence.)

Mr. Marcus: Plaintiff's Exhibit 910 in evidence is a lease between Stanhope Boal, lessor and the Sidney Theatre Corporation as lessee for the Bijou Theatre in Piqua, Ohio, for three years and two months, from the first day of May, 1931, to the 30th day of June, 1934. The lease is dated May 16, 1931.

[fol. 3787] Plaintiff's Exhibit 911 in evidence is a lease covering the Bijou Theatre in Piqua, Ohio, between the Piqua National Bank & Trust Company of Piqua, Ohio, Trustee under the Will of Stanhope Boal, deceased, by August S. Clause, Assistant Trust Officer thereof, as lessor, and the Belpak Theatre Corporation of Ohio, as lessee for the term of two years from the first day of March, 1934 to the 28th day of February, 1936. The lease is dated February 23, 1934.

Plaintiff's Exhibit 912 in evidence is a lease between the Piqua National Bank & Trust Company of Piqua, Ohio, Trustee, under the Will of Stanhope Boal, deceased, by George M. Peffer, Trust Officer thereof, as lessor and the Belpak Theatre Corporation of Ohio, as lessee, for the Bijou Theatre in Piqua, Ohio, for a term of two years from the first day of March, 1936 to the 28th day of February, 1938. The lease is dated the 15th day of February, 1936.

Plaintiff's Exhibit 913 in evidence is a lease between the [fol. 3788] Piqua National Bank & Trust Company of Piqua, Ohio, Trustee, under the Will of Stanhope Boal, deceased, by George M. Peffer, Trust Officer thereof, as lessor, and the Belpak Theatre Corporation of Ohio, as lessee, for the Bijou Theatre in Piqua, Ohio, for a term of two years from the first day of March, 1938, to the 28th day of February, 1940. The lease is dated November 27th, 1937.

Plaintiff's Exhibit 914 in evidence is a lease between *between* the Piqua National Bank & Trust Company of Piqua, Ohio, Trustee, under the Will of Stanhope Boal, deceased, as lessor, and the Belpak Theatre Corporation of Ohio, as lessee of the Bijou Theatre in Piqua, Ohio, for a term of five years from the first day of March, 1940, to the 28th day of February, 1945. The lease is executed as of the 10th day of January, 1940.

(Thereupon two leases were marked as Plaintiff's Exhibits 915 and 916 in evidence.)

Mr. Marcus: Plaintiff's Exhibit 915 in evidence is a lease and option to purchase between Robert A. Landry, individ- [fol. 3789] ually, and Robert A. Landry and Mildred C. Madlin, as Executors of the Estate of Ruby F. Castle, deceased, to Schine Chain Theatres, Inc., of the Star Theatre, Ogdensburg, New York, commencing September 6, 1941, and expiring September 6, 1946, at noon. The lease was executed as of the 25th day of October, 1941.

Plaintiff's Exhibit No. 916 is a lease and option to purchase by the Ogdensburg Strand Theatre Co., Inc., to Schine Chain Theatres, Inc., of the Star Theatre, Ogdensburg, New York, dated September 6, 1936, expiring September 5, 1941. The Star Theatre referred to in Plaintiff's Exhibit 916 is also known as the Pontiac. The lease was executed August 20, 1936.

(Thereupon a lease was marked as Plaintiff's Exhibit 917 in evidence.)

Mr. Marcus: Plaintiff's Exhibit 917 in evidence is a lease between the Ogdensburg Strand Theatre Company, Inc., and Schine Chain Theatres, Inc., of the Star Theatre in Ogdensburg, New York, dated September 6, 1926 for a term [fol. 3790] commencing the 6th day of September, 1926, to the 6th day of September, 1936.

Mr. McClennen: The lease of the Strand Theatre simultaneous with that of the Star, Exhibit 917, not being called for by the notice to produce is not here in court, and I understand that the plaintiff does not desire it.

Mr. Marcus: That is right.

(Thereupon a lease and agreement were marked as Plaintiff's Exhibits Nos. 918 and 919, respectively, in evidence.)

Mr. Marcus: Plaintiff's Exhibit 918 in evidence is a lease made the 31st day of October, 1934, between Henry Pohl and Rebecca Pohl, lessors, and J. Steel, of Oberlin, Ohio, and William K. Selman, of Cleveland, Ohio, as lessees, of premises located in the City of Norwalk, as described in said lease on which premises subsequently the Forum Theatre was built. The lease is for a term of 10 years beginning on the 1st day of January, 1935 and ending on the 31st day of December, 1944. The lease is executed as of the 31st day of October, 1934.

[fol. 3791] Plaintiff's Exhibit 919 in evidence is an agreement as of the 5th day of January, 1942, between Henry Pohl and Rebecca Pohl, called the lessors, and the Norwalk Theatre Corporation, called the lessee, reciting the assignment of a lease bearing date the 31st day of October, 1934, marked in evidence as Plaintiff's Exhibit 918, stating that the aforesaid lease marked as Plaintiff's Exhibit 918 is cancelled.

(Thereupon a lease and two agreements were marked as Plaintiff's Exhibits Nos. 920, 921 and 922, respectively.)

Mr. Marcus: Plaintiff's Exhibit No. 920 in evidence is a lease beween G. W. Croucher, as lessor and Newark Theatres, Inc., dated the 15th day of April, 1926, of the building known as the Crescent Theatre Building, located in Newark, New York.

Mr. McClennen: Referring to Newark, you have heretofore had marked for identification Exhibit 83, leasing the Crescent Theatre at Newark.

Mr. Marcus: I offer Plaintiff's Exhibit 83 for identification in evidence.

[fol. 3792] (Thereupon the lease referred to, previously marked as Plaintiff's Exhibit 83 for identification, was received in evidence.)

Mr. Marcus: Continuing in respect to Plaintiff's Exhibit 920 in evidence, the lease is for a term of five years, from the 15th day of April, 1926, to midnight, April 14, 1931.

Plaintiff's Exhibit 921 in evidence is an agreement made the 15th day of May, 1934, between Rose E. Croucher, as lessor, and Dominion Operating Co., Ltd., as lessee, leasing the Newark Theatre Building, Newark, for a term of 2 years, from the first day of October, 1934, to the 30th day of September, 1936.

Plaintiff's Exhibit 922 in evidence is an agreement between Rose E. Croucher and Dominion Operating Co., Ltd., extending the lease dated May 15, 1934, for a term of five years from the first day of October, 1936, to the 30th day of September, 1941. The agreement is dated May 14th, 1936, and is executed by Rose E. Croucher as of the 19th day of May, 1936, and by J. A. May, as Comptroller of the [fol. 3793] Dominion Operating Co., Ltd., May 28th, 1936.

Plaintiff's Exhibit 83 in evidence is an agreement made August 23, 1940, between William G. Croucher and Altus P. Croucher, as lessors, and the Dominion Operating Co., Ltd., leasing the building known as the Newark Theatre Building, for a term of five years, from the 1st day of October, 1941, to the 30th day of September, 1946. It is understood that these leases refer to the Crescent Theatre in Newark.

(Thereupon two leases, an option and an agreement, were marked as Plaintiff's Exhibits Nos. 923, 924, 925 and 926, respectively, in evidence.)

Mr. Marcus: Plaintiff's Exhibit 923 in evidence is a lease made the 8th day of January, 1926, between J. J. Lanigan, as lessor, and Hi-Art Theatre Corporation, as lessee, leasing the Hi-Art Theatre in the City of Lockport, New York, for a term of 10 years, commencing on the 10th day of January, 1926, and ending on the 9th day of January, 1936.

Plaintiff's Exhibit 924 in evidence is a lease made the [fol. 3794] 25th day of May, 1933, between J. J. Lanigan, as lessor, and Schine Theatrical Co., Inc., as lessee, leasing the Hi-Art Theatre, Lockport, New York, for a term of two years and 10 months, commencing on the 10th day of March, 1933, and ending on the 9th day of January, 1936.

Plaintiff's Exhibit 925 in evidence is an option of renewal made on the 5th day of October, 1933, between J. J. Lanigan and Schine Theatrical Co., Inc. The option of renewal relates to a lease made the 25th day of May, 1933, between said parties for a term of two years and ten months, commencing on the 10th day of March, 1933, and ending on the 9th day of January, 1936.

Plaintiff's Exhibit 926 in evidence is an agreement made the 31st day of December, 1937, between J. J. Lanigan, as lessor, and the Schine Theatrical Co., Inc., as lessee, leasing the Hi-Art Theatre in Lockport, New York, for a further term of ten years from the 9th day of January, 1941, to the 9th day of January 1951.

[fol. 3795] (Thereupon a lease and an agreement were marked as Plaintiff's Exhibits Nos. 927 and 928 in evidence.)

Mr. Marcus: Plaintiff's Exhibit No. 927 in evidence is a lease between Odd Fellows Temple Association, as lessor, and the Schine Theatrical Co., Inc., of the Auditorium Room and stage on the main floor of the Odd Fellows Temple Building, for five years, beginning on the first day of July, 1936, and ending on the 30th day of June, 1941. The lease was executed on the 29th day of June, 1936.

Plaintiff's Exhibit 928 in evidence is an agreement made on the 8th day of April, 1942, between the United Odd Fellows Association of Ilion, and the Schine-Ilion Corporation, leasing a part or portion of the building known as the Temple Building, or Odd Fellows Building, in Ilion, for the term of five years, to commence on May 5, 1942, and to end on May 4, 1947.

Mr. McClennen: Plaintiff's Exhibit 85 for identification, dated May 24, 1937, relates to this same subject matter and has been referred to in the examination or cross-examina- [fol. 3796] tion of Mr. Pierce, the witness.

(Thereupon two leases were marked as Plaintiff's Exhibits Nos. 929 and 930 in evidence.)

Mr. Marcus: It is understood that Plaintiff's Exhibit 928 is a lease of the premises referred to as Temple Theatre in Schines' answers to interrogatory 17-A.

Plaintiff's Exhibit No. 929 in evidence is a lease made the 25th day of June, 1935, between Charles L. Mickey and Claud W. Mickey, as lessors, and Carl M. Kahn, of the first floor and basement of the business room located at No. 115 North Main Street, Fostoria, Ohio, for five years, commencing on the first day of July, 1935, and ending on the 30th day of June, 1940.

Plaintiff's Exhibit 930 in evidence is a lease made the 11th day of June, 1940, between Charles L. Mickey and Claud W. Mickey, as lessors, and the Fostoria Theatre Corporation, of the first floor and basement of the business room located at No. 115 North Main Street, Fostoria, for five years, beginning the first day of July, 1940, and ending [fol. 3797] the 30th day of June, 1945.

It is understood that Plaintiff's Exhibits in evidence Nos. 929 and 930 relate to the premises known as the Roxy Theatre, Fostoria.

(Thereupon two leases were marked as Plaintiff's Exhibits Nos. 931 and 932 in evidence.)

Mr. Marcus: Plaintiff's Exhibit 931 in evidence is a lease made the first day of April, 1936, between the National City

Bank of Cleveland, Trustee of Phoebe S. Carroll, as lessor, and the Crawford Theatre Company as lessee, leasing the Southern Theatre for five years beginning the first day of April, 1936, and ending the 31st day of March, 1941.

Plaintiff's Exhibit No. 932 in evidence is a lease made the first day of April, 1941, between the National City Bank of Cleveland, Trustee of the Phoebe S. Carroll, et al., Trust, as lessor, and the Crawford Theatre Company, as lessee, leasing the Southern Theatre in Bucyrus, Ohio, for two years, beginning on the first day of April, 1941, and ending [fol. 3798] on the 31st day March, 1943.

(Thereupon six leases were marked as Plaintiff's Exhibits Nos. 933, 934, 935, 936, 937 and 938 in evidence.)

Mr. Marcus: Plaintiff's Exhibit No. 933 in evidence is a lease made the first day of August, 1933, between the Opera Block Company, as lessor, and the Schine Theatrical Company, Inc., leasing the Opera House in Bellefontaine, Ohio, for one year beginning September 1, 1933, and ending August 31, 1934.

Plaintiff's Exhibit No. 934 in evidence is a lease made the 3rd day of August, 1937, between the Opera Block Company and the Schine Theatrical Company, Inc., of the Opera House, Bellefontaine, Ohio, for the term of one year beginning on the 1st day of September, and ending on the 31st day of August, 1938.

Plaintiff's Exhibit No. 935 in evidence is a lease made the 31st day of August, 1938, between the Opera Block Company, as lessor, and the Schine Theatrical Company, Inc., as lessee, of the Opera House in Bellefontaine, Ohio, for the [fol. 3799] term of one year, beginning on the first day of September, 1938, and ending on the 31st day of August, 1939.

Plaintiff's Exhibit 936 in evidence is a lease made the 31st day of August, 1939, between the Opera Block Company, of Bellefontaine, as lessor, and the Schine Theatrical Company, Inc., as lessee, leasing the Opera House in Bellefontaine, Ohio, for the term of one year beginning on the 1st day of September, 1939, and ending on the 31st day of August, 1940.

Plaintiff's Exhibit No. 937 in evidence is a lease made the 14th day of August, 1940, between the Opera Block Company, as lessor, and the Schine Theatrical Company, as lessee, leasing the Opera House in Bellefontaine, Ohio, for the term of one year, beginning on the first day of September, 1940, and ending on the 31st day of August, 1941.

Plaintiff's Exhibit 938 in evidence is a lease made the 18th day of August, 1941, between the Opera Block Company, as lessor, and the Schine Theatrical Company, Inc., [fol. 3800] as lessee, of the Opera House, Bellefontaine, Ohio, for the term of one year beginning on the first day of September, 1941, and ending on the 31st day of August, 1942.

(Thereupon three leases were marked as Plaintiff's Exhibits 939, 940 and 941 in evidence.)

Mr. Marcus: Plaintiff's Exhibit 939 in evidence is a lease between Daniel Gutilla, lessor, and the Schine Enterprises, Inc., as lessee, of the Strand Theatre in Bellefontaine, Ohio, for a term beginning the first day of July, 1931, and ending on the first day of June, 1934, and an agreement to assign to the lessee the present lease of the Opera Block Theatre. The date of the lease is the 28th day of July, 1931.

Plaintiff's Exhibit No. 940 in evidence is a lease between Daniel Gutilla, as lessor, and the Schine Theatrical Co., Inc., as lessee, of the Strand Theatre for a term beginning the first day of June, 1934, and ending on the first day of June, 1936. The lease is dated the 29th day of March, [fol. 3801] 1934.

Plaintiff's Exhibit No. 941 in evidence is a lease dated the 22nd day of May, 1936, between Daniel Gutilla, as lessor, and the Schine Theatrical Co., as lessee, of the Strand Theatre, in Bellefontaine, Ohio, for a term beginning the first day of June, 1936, and ending on the first day of June, 1938.

Mr. McClennen: Plaintiff's Exhibit 646 is in evidence at page 1602, a lease of April 30th, 1938, Gutilla to Schine.

647 is in evidence at page 1618, a lease July 1, 1940.

(Thereupon four leases were marked as Plaintiff's Exhibits 942, 943, 944 and 945 in evidence.)

Mr. Marcus: Plaintiff's Exhibit 942 in evidence is a lease between Daniel M. Osborne, as lessor, and Maurice A. Shea, as lessee, of the New Jefferson Theatre, Auburn, New York, beginning the 15th day of October, 1918, and ending October 15, 1928. The lease is dated the 9th day of March, 1918.

Plaintiff's Exhibit 943 in evidence is a lease made the 5th [fol. 3802] day of August, 1929, between Charles D. Osborne and Lithgow Osborne, as Executors and Trustees under the Last Will and Testament of Thomas M. Osborne, as lessors, and Maurice A. Shea, as lessee, of the New Jefferson Theatre in the City of Auburn, New York, for a term beginning the 15th day of October, 1929, for five years, ending October 14th, 1934.

Plaintiff's Exhibit 944 in evidence is a lease made between Maurice A. Shea, as lessee, and the Up State Amusement Co., as sub-lessee, of the New Jefferson Theatre, Auburn, New York, for five years, commencing October 15th, 1936, and terminating on the 14th day of October, 1941, executed on the 5th day of May, 1937.

Plaintiff's Exhibit No. 945 in evidence, is a lease made the 9th day of July, 1938, between Charles D. Osborne, and Lithgow Osborne, as executors and trustees under the Last Will and Testament of Thomas M. Osborne, as lessors, and the Up State Amusement Company, Inc., as lessee, of the New Jefferson Theatre, Auburn, New York, for a term [fol. 3803] beginning the 16th day of May, 1938, and ending May 15th, 1948.

Mr. McClennen: Referring back to Plaintiff's Exhibit 927, it is stipulated that pursuant to the option therein the lease was renewed for five years, ending June 30th, 1946.

(Thereupon an assignment was marked as Plaintiff's Exhibit No. 946 in evidence.)

Mr. Marcus: Plaintiff's Exhibit No. 946 relates to Plaintiff's Exhibits 923, 924, 925 and 926 in evidence. Plaintiff's Exhibit No. 946 in evidence is an assignment by the Hi-Art Theatre Corporation to the Lockport Enterprises, Inc., of its interest in a lease dated the 8th day of January, 1926, between J. J. Lanigan, as lessor, and the Hi-Art Theatre Corporation, as lessee. The assignment is made as of the first day of October, 1927.

(Thereupon a lease was marked as Plaintiff's Exhibit No. 947 in evidence.)

Mr. Marcus: Plaintiff's Exhibit No. 947 in evidence is a lease made the 20th day of May, 1936, between John Palfi [fol. 3804] and Susie Palfi, as lessors, with the Sidney Theatre Corporation as lessee, for premises described therein in Kent, Ohio, for a term of five years, commencing the first day of June, 1936, and ending the 30th day of May, 1941, dated the 20th day of May, 1936. The premises referred to in Plaintiff's Exhibit No. 947, is the Opera House, Kent, Ohio.

Mr. McClennen: It is stipulated that this lease was renewed pursuant to the option until May 31, 1946.

(Thereupon an agreement previously marked for identification as Plaintiff's Exhibit No. 85, was received in evidence.)

Mr. Marcus: Plaintiff's Exhibit No. 85 in evidence relates to Plaintiff's No. 928 in evidence. Plaintiff's Exhibit No. 85 in evidence is an agreement made the 24th day of May, 1937, between Young & Whitney, Inc., called the seller and the Perry Theatre Corporation, called the purchaser. The agreement relates to the property known as the Capitol Theatre in Ilion, and the Opera House in Ilion. The seller [fol. 3805] agrees to assign to the purchaser the lease dated May 5, 1937, made between United Odd Fellows Association and the seller, covering the premises known as the Temple Theatre.

Mr. Wright: This is Plaintiff's Exhibit No. 685. It has already been identified as the Columbia play-off records for these towns.

685-A will be the play-off record for the Southern Theatre at Bucyrus, Ohio, for the 1934-35 season.

Plaintiff's Exhibit 685-B is the Bucyrus and State Theatres, at Bucyrus, Ohio, 1935-36 season.

685-C is the play-off for the Southern Theatre at Bucyrus, Ohio, for the 1935-36 season.

Exhibit 685-D is the Moose Theatre, at Norwalk, Ohio, 1935-36.

685-E is the Forum and Moose Theatres, Norwalk, Ohio, 1936-37 season.

685-F is the Smalley Theatre at Norwich, New York, 1933-34 season.

685-G is the Colonia Theatre at Norwich, New York, 1934-35.

[fol. 3806] 685-H is the Smalley Theatre at Norwich, 1934-35 season.

685-I is the Colonia Theatre, Norwich, 1935-36 season.

685-J is the Smalley Theatre, Norwich, 1935-36 season.

685-K is the Smalley Theatre, Norwich, 1936-37 season.

685-L is the Colonia Theatre, Norwich, 1936-37 season.

685-M is the Madison Theatre, Rochester, New York, 1937-38 season.

685-N is the Monroe Theatre, Rochester, 1937-38 season.

685-O is the Dixie Theatre, Rochester, 1937-38 season.

685-P is the Riviera Theatre, Rochester, 1937-38 season.

685-Q is the Liberty Theatre, Rochester, 1937-38 season.

685-R is the State or Dixie, Rochester, 1938-39 season.

685-S is also the State or Dixie, Rochester, 1938-39 season.

685-T is the Monroe Theatre, Rochester, 1938-39.

[fols. 3807-3810] 685-U is the Madison Theatre, Rochester, 1938-39 season.

685-V is the Liberty or Riviera, Rochester, for 1938-39 season.

685-W is the Liberty, Rochester, 1938-39 season.

685-X is Ohio Theatre, Van Wert, Ohio, 1935-36 season.

685-Y is Strand and Van Wert Theatres, Van Wert, Ohio, 1936-37 season.

(Whereupon a recess was taken until Friday, October 27th, 1944, at 10 o'clock.)

[fol. 3811] UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF NEW YORK

Civil 223.

UNITED STATES OF AMERICA

vs.

SCHINE CHAIN THEATRES, INC., et al., Defendants

Continuation of trial October 27th, 1944, at 10 o'clock.

APPEARANCES:

Robert L. Wright, Esq., John F. Clagett, Esq., Harold L. Schilz, Esq., Philip Marcus, Esq., Special Assistants to the Attorney General and Milton Kallis, Esq., Special Attorney, in behalf of the United States.

Edward F. McClennen, Esq., Willard S. McKay, Esq., Saul E. Rogers, Esq., Arthur E. Whittemore, Esq., Arthur J. Homans, Esq., and Edward M. Antevil, Esq., appearing for the Defendants.

In the absence of the Judge, and by agreement of Counsel, there are marked for identification papers as follows:

Those so marked are for identification only.

Those marked without objection are introduced in evidence.

[fol. 3812] Mr. Wright: We will offer the Loew franchise that has been marked as Exhibit 618 for identification. Plaintiff's Exhibit 618 for identification is a photostatic copy of franchise for the Loew's and Schine, dated October 1, 1936, for 1936-37 through 1940 seasons, together with a series of amending letters, dated December 22, 1937. It is relating to Ogdensburg clearance. Letter December 22, 1937, relating to Oneonta clearance. Letter of December 29, 1937, relating to Piqua, Ohio, and deal sheet, dated August 31, 1937, covering second-run at Strand or Palace, Auburn, N. Y. Deal sheet dated August 7, 1937, covering 1937-38 product, first-run, at State or Civic Theatre, Fostoria, Ohio. Deal sheet, dated August 7, 1937, covering first-run, 1937-38 product, at Princess Theatre, Medina, Ohio. Deal sheet, dated August 7, 1937, covering second-run for 1937-38 product, at Opera House, Ashland, Ohio. Deal sheet, dated August 7, 1937, covering second-run on 1937-38 product at Lyric Theatre, Mount Vernon, Ohio. Deal sheet, dated Au-[fol. 3813]gust 7, 1937, covering second-run, 1937-38 product, at Strand Theatre, VanWert, Ohio.

Mr. McClennen: Then you will just mark the folder as containing the things you described?

Mr. Wright: And deal sheet, dated July 21, 1937, for seasons 1937-38, 1939-40, for Capitol Theatre, Ilion, N. Y.

(The folder containing documents referred to, previously marked for identification as Plaintiff's Exhibit 618, was received in evidence.)

Mr. Wright: This agreement, dated August 29, 1934, between Vitagraph, Inc., and Schine Theatrical Co., Inc., covering all contracts signed as of that date, was identified as one of the documents produced in the folder marked Plaintiff's Exhibit 644 for identification and is now offered in evidence as Plaintiff's Exhibit 644-A.

(The agreement referred to, dated August 29, 1934, between Vitagraph, Inc., and Schine Theatrical Co., Inc., was received in evidence and marked Plaintiff's Exhibit 644-A.)

Mr. McClennen: It is agreed that Plaintiff's Exhibit 644 for identification, heretofore described in the testimony, [fol. 3814] contains no other agreement for the 1934-1935 season.

Mr. Wright: We will offer this contract, dated September 19, 1934, between Mamyer Corporation and Paramount, for first-run of Group S-6 at Jefferson, Strand or Palace theatres, Auburn, N. Y., which was contained in the folder previously identified as Plaintiff's Exhibit 339, as Exhibit 339-E.

(The contract, dated September 19, 1934, between Mamyer Corporation and Paramount, was received in evidence and marked Plaintiff's Exhibit 339-E.)

Mr. Wright: We will offer in evidence this contract between Vitagraph and Schine, dated January 15, 1937, for second-run, at Regent or Strand, Amsterdam, N. Y., which was contained in folder marked Plaintiff's Exhibit 642 for identification as Plaintiff's Exhibit 642-A.

(The contract, dated January 15, 1937, between Vitagraph and Schine, was received in evidence and marked Plaintiff's Exhibit 642-A.)

Mr. Wright: And we will offer these two contracts, both dated June 17, 1936, between Schine and Fox, for the K-4 [fol. 3815] group for first and second-run, respectively, in Amsterdam, N. Y., which were previously contained in folder marked Plaintiff's Exhibit 324 for identification as Plaintiff's Exhibits 324-A and 324-B, respectively.

(The two contracts, dated June 17, 1936, between Schine and Fox were received in evidence and marked Plaintiff's Exhibits 324-A and 324-B, respectively.)

Mr. Wright: And we will offer the contract for first-run of Group S-5 at Amsterdam, between Kronik and Paramount, contained in folder marked Plaintiff's Exhibit 339 for identification, as Plaintiff's Exhibit 339-A.

(The contract between Kronik and Paramount, Amsterdam, N. Y., referred to was received in evidence and marked Plaintiff's Exhibit 339-A.)

Mr. Wright: And we will offer three contracts, contained in the same folder, made between Amsterdam Consolidated Corporation and Paramount for first-run at Amsterdam, for the Group S-6, S-7 and S-8 features, respectively, as Exhibits 339-B, 339-C and 339-D, respectively.

[fol. 3816] (The three contracts between Amsterdam Consolidated Corporation and Paramount at Amsterdam, for Groups S-6, S-7 and S-8 were received in evidence and marked Plaintiff's Exhibits 339-B, 339-C and 339-D, respectively.)

Mr. Wright: We offer the contract between Schine and RKO for first-run at Auburn, N. Y., contained in folder 622 for identification, for the 1933-34 season, as Plaintiff's Exhibit 622-A.

(The contract between Schine and RKO, for 1933-34 season, was received in evidence and marked Plaintiff's Exhibit 622-A.)

Mr. Wright: Will you mark these, please?

(The two contracts referred to were received in evidence and marked Plaintiff's Exhibit 948.)

Mr. Wright: Plaintiff's Exhibit 948 is two contracts, both dated August 20, 1934, between the State Bucyrus Co. and Vitagraph, Inc., for Warner and First National Productions, respectively, in the State Theatre at Bucyrus, Ohio.

Mr. McClennen: Will you mark this as the next defendants' exhibit?

(The papers referred to were marked as Defendants' Exhibit D-148-A, B, C, D, E and F, respectively, for identification.)

[fol. 3817] Mr. McClennen: Defendant's Exhibit D-148 A is a contract, Vitagraph with the State-Bucyrus Company, M. H. Bryer, July 13, 1935, approved July 23, 1935, first-run, and attached to that is "B," the accompanying memorandum, July 13, 1935, signed by "F. J. B." and "C," July 13, 1935, signed by Vitagraph by Brant and State-Bucyrus Company by Bryer, and "D," Warner; State-Bucyrus Company, undated, approved September 5, 1935, and "E," cancellation, December 2, 1935, signed by M. A. Mooney, Branch Manager, and "F," another cancellation, December 11, 1935, signed by M. A. Mooney.

Mr. Wright: We object to Counsel for the defendants offering at this time the contracts that they are as appropriate to their case. We have no objection to the identification at this time but we do object to the offer in evidence and I might say if we proceed in this manner we are not going to be able to close the case today.

Mr. McClennen: I have completed all of this kind that I have in contemplation for today and I put it in for con- [fol. 3818] venience, as it is connected with Bucyrus.

Mr. Wright: It is marked for identification. We object to its being admitted at this time. We have no objection to its being identified.

Mr. McClennen: Well, you can put the marking on.

[fol. 3819] Mr. McClennen: These papers marked D-148-A to 148-F for identification I now offer, inasmuch as we are proceeding in the absence of the Court for the joint convenience of the Court, plaintiff's counsel and defendant's counsel, as exhibits. I recognize that there is no one present to determine whether they may be marked as exhibits, and it was only for the convenience as the Town of Bucyrus was in the plaintiff's offer that I offered them at this time and persist in the offer to be passed on by the Court when the Court is present if counsel is disposed not to recognize this convenient method of having them in.

Mr. Wright: I will offer in evidence three contracts contained in Exhibit 698 for identification, as Exhibits 698-A, B and C, respectively, which are in their order a first-run contract between Schine and Universal for Corning, New York, dated November 21st, 1933, a second-run contract between the same parties for the same town, December 11, 1933, and a contract for second-run between Gaby and Cohen [fol. 3820] for Corning, dated September 12th, 1933.

(Thereupon three contracts, Universal, Corning, New York, were received in evidence and marked as Plaintiff's Exhibits Nos. 698-A, 698-B and 698-C.)

Mr. McClennen: Note that 698-A has an approval stamp of Universal by J. R. Granger, and the paper is dated November 21st, 1933, recited to be with Schine Theatrical Company, Inc., but has no signature.

Mr. Wright: I next offer a series of contracts contained in the folder identified as Exhibit 637 in evidence as 637-A, B, C, D, E and F, respectively. Each exhibit consists of two sheets, one for First National Productions and the other for Warner Brothers productions. A is dated August

29th, 1934, and is between Schine and Vitagraph for first-run Corning.

637-B bears the same date and is between the same parties and covers second-run, Corning.

637-C is between Gaby and Vitagraph and is dated October 15, 1934, and covers third-run, Corning.

[fol. 3821] 637-D is dated September 14th, 1933, and is between Schine and Vitagraph for first-run, Corning.

637-E is between the same parties and bears the same date and is for second-run, Corning.

637-F is between Gaby and Cohen and Vitagraph and is dated March 28th, 1934, and covers third-run, Corning.

(Thereupon six contracts, each containing two sheets, one for First National and one for Warner Brothers were received in evidence and marked as Plaintiff's Exhibits 637-A to 637-F, inclusive.)

Mr. Wright: I offer in evidence nine contracts from the folder marked for identification as Exhibit 326, as Exhibits 326-A, B, C, D, E, F, G, H and I, respectively.

Mr. McClennen: These are all as to what place, Corning?

Mr. Wright: Yes, this is Corning material.

326-A and B are contracts between Schine and Fox for second-run, Corning, K-3 product, 326-A being for Fox and B representing 20th Century-productions, both dated August 5th, 1935.

[fol. 3822] 326-C is dated August 24, 1936, and is between Gaby & Cohen and Fox for K-3 product at the Plaza Theatre at Corning.

326-D and E are contracts between Schine and Fox, both dated June 29th, 1934, for first and second-run, Corning, respectively on K-2 product.

326-F is dated November 20th, 1934, between Fox and Gaby & Cohen for K-2 at the Plaza Theatre.

326-G is a contract between Schine and Fox, dated August 3rd, 1933, for the Fox Theatre, Corning, K-1 product.

326-H is between Schine and Fox, dated October 23rd, 1933, for second-run of group K-1 in Corning.

326-I is between Gaby & Cohen and Fox, dated December 4, 1933, for second and third-run in Corning, K-1.

(Thereupon nine contracts relating to Corning, Fox, were received in evidence and marked as Plaintiff's Exhibits 326-A to 326-I, inclusive.)

Mr. Wright: I offer in evidence as Exhibit 611-A and B, two contracts from the folder identified as Exhibit 611, [fol. 3823]. A being one between Schine and Metro, dated February 14, 1934, for second-run, Corning on 1933-1934 features and B one between Gaby & Cohen and Metro, dated February 20, 1934, for exhibition of 1933-34 features at the Plaza, Corning.

(Thereupon two Metro contracts relating to Corning were received in evidence and marked as Plaintiff's Exhibits 611-A and 611-B.)

Mr. Wright: I offer in evidence as Plaintiff's Exhibits 341-A, B, C, D and E, respectively, five contracts contained in Exhibit 341 for identification, which are as follows:

341-A is dated June 29, 1933, between Schine and Paramount S-4 productions, first-run, in Corning.

341-B is dated April 11, 1933, between Fred Gerber and Paramount for S-4 productions, second-run at the Plaza, Corning.

341-C is dated September 27, 1933, between Schine and Paramount for first-run of S-5 productions in Corning.

341-D is dated December 23rd, 1933, between Schine and [fol. 3824] Paramount for second-run Corning on group S-5.

341-E is between Gerber and Paramount for second-run at Palace, Corning, dated August 26, 1933, for group S-5.

(Thereupon five Paramount contracts relating to Corning, were received in evidence and marked as Plaintiff's Exhibits 341-A to 341-E, inclusive.)

Mr. Wright: With respect to Corbin, Kentucky, I want to offer in evidence four contracts, which have been previously marked for identification 30, 31, 37 and 42, and a document headed "Cancellation or alteration of the contract," previously identified as 39.

(Thereupon Plaintiff's Exhibits previously marked for identification as 30, 31, 37, 39 and 42 were received in evidence.)

Mr. Wright: I want to call attention to the fact, I think, all of these were previously offered and objected to last May or June.

Mr. McClennen: Note that the defendants object as to Exhibit 39 to its reception in evidence as any proof of the truth of the memorandum contained on it. It is our understanding that its unlimited admission is covered by the [fol. 3825] ruling heretofore made by the Court, and we note our persistence in the objection to that ruling.

Mr. Wright: I will offer in evidence contract previously marked as Plaintiff's Exhibit 635-A.

(Thereupon contract previously marked as Plaintiff's Exhibits 635-A for identification was received in evidence.)

Mr. Wright: We will offer in evidence as Exhibit 642-A, a contract between Southland Amusement Company and Vitagraph, dated June 30, 1939, for fourth-run in Lexington, 1939-1940 product, at the Opera House, taken from Exhibit 642 for identification.

(Thereupon contract between Southland Amusement Company and Vitagraph was received in evidence and marked as Plaintiff's Exhibit 642-A.)

Mr. Wright: I next offer as Exhibit 611-A, B, C and D, four contracts taken from Exhibit 611 for identification.

611-A is for Warner Brothers productions, dated September 14, 1931, between W. Wood and Warner for the Hippodrome Theatre at Little Falls, first-run.

[fol. 3826] 611-B is two sheets, one for First National productions and the other for Warner Brothers productions, both dated October 25th, 1932, between Vitagraph and Central New York Theatres Corporation, for first-run at Rialto Theatre, Little Falls.

611-C is two sheets, one for First National and one for Warner Brothers productions both dated May 16th, 1933, between Schine and Vitagraph for first-run at Rialto, Little Falls.

611-D is dated August 5th, 1935, between Schine and Vitagraph for first-run, Little Falls.

(Thereupon four contracts pertaining to Little Falls, Vitagraph, were received in evidence and marked as Plaintiff's Exhibits Nos. 611-A to 611-D, inclusive.)

Mr. Wright: I offer in evidence as Exhibits 672-A, B, C, D, E and F, respectively, six contracts taken from Exhibit 672 for identification.

672-A is between William Wood and Columbia for first-run at Hippodrome, Little Falls, dated October 23rd, 1931.

[fol. 3827] 672-B is between Central New York Theatres and Columbia, dated October 18, 1932, for first-run, Little Falls.

672-C is dated October 30, 1933, between Schine and Columbia, for 1933-1934 season, Little Falls.

672-D is dated November 12th, 1934, between Schine and Columbia, for first-run, Little Falls.

672-E is dated November 18, 1935, and is between Schine and Columbia for Little Falls, 1935-1936 season.

672-F is dated July 23rd, 1936, between Schine and Columbia for 1936-1937 features at Little Falls.

(Thereupon six Columbia contracts pertaining to Little Falls were received in evidence and marked as Plaintiff's Exhibits Nos. 672-A to 672-F, inclusive.)

Mr. Wright: I offer in evidence as Exhibits 324-A, B and C, three contracts taken from Exhibit 324 for identification, which are, 324-A, a contract between Fox and Schine, dated August 3rd, 1933 for first-run, Little Falls.

[fol. 3828] 324-B, a contract between the same parties, dated June 23rd, 1934, for first-run, Little Falls.

324-C, a contract between the same parties, dated August 5th, 1935, for first-run, Little Falls.

(Thereupon three Fox contracts pertaining to Little Falls were received in evidence and marked as Plaintiff's Exhibits Nos. 324-A, 324-B and 324-C.)

Mr. Wright: I offer in evidence as Exhibit 604-A, B, C, D and E, five contracts from Exhibit 604 for identification.

604-A, dated September 30, 1932, between Central New York Theatres Corporation and Metro for first-run, Little Falls.

604-B, dated May 23rd, 1933, between Schine and Metro for first-run, Little Falls with rider attached dated May 23rd, 1933.

604-C, dated August 10, 1933, between Schine and Metro for first-run, Little Falls, with rider attached, dated August 10, 1933.

604-D, dated October 5, 1934, between Schine and Metro, [fol. 3829] first-run, Little Falls.

604-E, dated July 11, 1935, between Schine and Metro, first-run, Little Falls.

(Thereupon five Metro contracts pertaining to Little Falls were received in evidence and marked as Plaintiff's Exhibits No. 604-A, to 604-E, inclusive.)

Mr. Wright: I offer in evidence as Exhibit 399-A, B, C, and D, respectively, four contracts from Exhibit 399 for identification.

399-A is a contract between Fox Metropolitan Play Houses, Inc., and Paramount for group S-3 in Little Falls.

399-B is a contract between Schine and Paramount for first-run, Little Falls, group S-4.

399-C is a contract for first-run, Little Falls, group S-5, signed only by George Lynch.

399-D is dated September 19, 1934, between Schine and Paramount for first-run, Little Falls, group S-6.

(Thereupon four Paramount contracts pertaining to Little Falls, were received in evidence and marked as Plaintiff's Exhibits 399-A to 399-D, inclusive.)

[fol. 3830] Mr. Wright: I offer in evidence as Exhibits 604-F, G and H, three contracts from the folder identified as Exhibit 604.

604-F being a contract between Schine and Metro, dated October 30, 1931, for first-run, Lockport, 1931-1932 features.

604-G being dated December 29, 1932, between Reliance Theatres, Inc., and Metro for first-run, Lockport, 1932-1933 features.

604-H being between Schine and Metro, dated July 31, 1933 for 1933-1934 features, first-run, Lockport.

(Thereupon three Metro contracts pertaining to Lockport were received in evidence and marked as Plaintiff's Exhibits 604-F, 604-G and 604-H.)

Mr. Wright: For Mount Vernon, Ohio, we have four contracts between E. W. Long and Son, and Metro which were produced by him but after the time that Long was on the stand. They should have been identified at that time, but we want to offer them now. It is understood those are contracts made with Metro.

Mr. McClennen: These you say came from Mr. Long's file?

[fol. 383 Mr. Wright: That is my understanding, that those were produced by him rather than Metro. I did not have them at the time he was examined.

Mr. McClennen: These will take a new number?

Mr. Wright: Yes, they will take the next Plaintiff's exhibit number.

Mr. McClennen: If you will describe them to me. These will be 949-A, B, and so on?

Mr. Wright: I think we might as well number them consecutively.

Mr. McClennen: All right.

Mr. Wright: 949 is dated May 16, 1938 and is between Long and Metro for 1937-1938 product, second-run, Mount Vernon.

950 is dated May 16th 1938, betwen the same parties for second-run, Mount Vernon on 1938-1939 product.

951 is dated December 14, 1936, between the same parties and is for second-run, Mount Vernon, 1936-1937 features.

952 is between the same parties, dated December 3rd, 1936, and is for second-run, Mount Vernon, for the "Great Ziegfield."

Mr. McClennen: Just one picture?

Mr. Wright: The "Great Ziegfield."

[fol. 3832] (Thereupon four Metro contracts pertaining to Mount Vernon were received in evidence and marked as Plaintiff's Exhibits Nos. 949, 950, 951 and 952.)

Mr. Wright: I offer in evidence as Exhibit 635-A, B, C and D, respectively, four contracts from the folder identified as Exhibit 635.

635-A consists of two sheets, one covering Warner Brothers productions and the other First National productions, both dated September 5, 1934, between Vitagraph and C. O. Federick, covering first-run, Norwalk, Ohio, at Moose Theatre.

635-B is between Vitagraph and Loyal Order of Moose, dated July 16, 1935, for first-run of Warner Brothers productions at Norwalk.

635-C is dated August 7, 1935, between Norwalk Theatre Corporation, signed by George Lynch for first-run, First National productions at Forum Theatre, Norwalk.

635-D is dated March 24th, 1936, between Belpik and Vitagraph for both First National and Warner Brothers productions at Forum Theatre, Norwalk.

[fol. 3833] (Thereupon four Vitagraph contracts pertaining to Norwalk, Ohio, were received in evidence and marked as Plaintiff's Exhibits 635-A to 635-D, inclusive.)

Mr. Wright: Here are two Norwalk Columbia contracts, that I do not have an identification number for. I believe they were both produced by Max Rose from the Columbia files.

953 is between Schine and Columbia, dated Sept. 26, 1936, for first-run, Norwalk, at Forum Theatre, for 1936-1937 season.

954 is between Loyal Order of Moose and Columbia, dated August 9, 1935, for first-run, Norwalk, at Moose Theatre for 1935-1936 season.

(Thereupon two Columbia contracts pertaining to Norwalk were received in evidence and marked as Plaintiff's Exhibits Nos. 953 and 954.)

Mr. Wright: The next is a contract between Schine and Columbia for Norwich, New York, which is dated July 23rd, 1936, and I believe was produced by Mr. Rose at the same time the contracts which were produced and offered in evidence during Mr. Smalley's cross-examination.

[fol. 3834] (Thereupon contract between Schine and Columbia for Norwich, New York, was received in evidence and marked as Plaintiff's Exhibit No. 955.)

Mr. Wright: And we will offer in evidence Paris, Kentucky contract between Fox and Schine, dated December 13, 1938, which was previously marked for identification, as Exhibit No. 219.

(Thereupon contract previously marked as Plaintiff's Exhibit No. 219 for identification, was received in evidence.)

Mr. Wright: We offer in evidence as Plaintiff's Exhibit 604-I, contract from Exhibit 604 for identification, between Van Wert Amusement Company and Metro, dated September 27th, 1934, for 1934-19335 features, first run, Van Wert.

(Thereupon contract between Van Wert Amusement Company and Metro, was received in evidence and marked as Plaintiff's Exhibit 604-I.)

Mr. Wright: We will offer in evidence as Plaintiff's Exhibit 606-A and B, respectively, two contracts from Exhibit 606 for identification, which are:

606-A is one dated July 11th, 1935, between Glove City [fol. 3835] Amusement Company and Metro for first-run Van Wert, 1935-1936 features.

606-B is dated December 31st, 1936, between Carl Moore and Metro for second-run, Van Wert, 1936-1937 season.

(Thereupon two Metro contracts pertaining to Van Wert were received in evidence and marked as Plaintiff's Exhibit 606-A and 606-B.)

Mr. Wright: We offer in evidence as Plaintiff's Exhibits 635-A and B, respectively, contracts from Exhibit 635 for identification.

635-A consists of two sheets, one for Warner Brothers and the other for First National productions, both between Van Wert Amusement Company and Vitagraph, dated September 7, 1934, for first-run in Van Wert.

635-B, contract between Belpik and Vitagraph, dated August 10, 1935, for Van Wert, for the Warner Brothers and First National productions.

(Thereupon two Vitagraph contracts, pertaining to Van Wert, were received in evidence and marked as Plaintiff's Exhibits 635-A and 635-B.)

[fol. 3836] Mr. Wright: We offer in evidence as Plaintiff's Exhibits 399-A and B, two contracts from Exhibit 399 for identification.

399-A is dated September 12th, 1934, between Van Wert Amusement Company and Paramount for first-run, Van Wert, on group S-6.

399-B, between Belpik and Paramount for Van Wert on group S-8, dated April 15, 1936.

(Thereupon two Paramount contracts, pertaining to Van Wert, were received in evidence and marked as Plaintiff's Exhibits No. 399-A and 399-B.)

Mr. Wright: Then we will offer this contract between Schine and Paramount, dated September 19, 1935, for group S-7, Van Wert, and previously identified as Exhibit P-45 for identification.

(Thereupon contract, previously marked for identification as Exhibit P-45, was received in evidence.)

Mr. Wright: I offer in evidence as Exhibits 344-A, B and C, three contracts taken from Exhibit 344 for identification, which are:

344-A is dated August 25th, 1936, between Carl Moore [fol. 3837] and Paramount for second-run, Van Wert on Group S-8.

344-B is dated November 23rd, 1937, between Schine and Paramount for second-run, Van Wert, on group S-9.

344-C is dated September 22nd, 1938, between Schine and Paramount for second-run, Van Wert on groups S-10.

(Thereupon three Paramount contracts, pertaining to Van Wert, were received in evidence and marked as Plaintiff's Exhibits Nos. 344-A, 344-B and 344-C.)

Mr. Wright: We offer in evidence as Exhibit 324-A and B, two contracts taken from Exhibit 324 for identification, 324-A, being dated October 9, 1935, between Belpik and Fox for group K-3 at Van Wert, Ohio.

324-B is dated March 12th, 1935, between Van Wert Amusement Company and Fox for group K-3, Van Wert, Ohio.

(Thereupon two Fox contracts, pertaining to Van Wert, Ohio, were received in evidence and marked as Plaintiff's Exhibits Nos. 324-A and 324-B.)

Mr. Wright: We offer in evidence as Exhibits 330-A, B and C, three contracts taken from Exhibit No. 330, for [fol. 3838] identification, which are:

330-A, is dated December 18, 1936, between Carl Moore and Fox for second-run, Van Wert on K-4.

Exhibit 330-B, is dated June 24th, 1937, for second-run, Van Wert on K-5, between Moore and Fox.

330-C, is dated January 31, 1938, for second-run, Van Wert, K-6, between Moore and Fox.

(Thereupon three Fox contracts, pertaining to Van Wert, were received in evidence and marked as Plaintiff's Exhibits 330-A, 330-B and 330-C.)

Mr. Wright: I have here two Columbia contracts for Van Wert, which I believe were produced by Max Rose after the previous identification. One of them is between Moore and Columbia for Van Wert for the 1935-1936 season, dated April 8th, 1935.

957 is dated September 26th, 1936, between Schine and Columbia, for first-run, Van Wert, 1936-1937 season.

(Thereupon two Columbia contracts, pertaining to Van Wert, were received in evidence and marked as Plaintiff's Exhibits 956 and 957.)

Mr. McClennen: Note on Exhibit 956 that the run is "Only run Van Wert."

[fol. 3839] Mr. Wright: We are now offering in evidence the United Artists' agreements, which were identified as Plaintiff's Exhibits 122 to 161, inclusive.

(The United Artists' agreements, previously marked for identification as Plaintiff's Exhibits 122 to 161, inclusive, were received in evidence.)

Mr. Wright: We are offering in evidence a document previously identified as Plaintiff's Exhibit 312, but are substituting therefor a photostatic copy which has attached to it the clearance schedule referred to in Exhibit 312, and are asking to have the photostat attached to the schedule marked as Plaintiff's Exhibit 312 in evidence. The letter is December 22, 1939.

(The photostat with attachment referred to, dated December 22, 1939, was received in evidence and marked Plaintiff's Exhibit 312.)

Mr. Wright: We will offer the documents previously identified as Plaintiff's Exhibits 281, 313, 314 and 903, all of which relate to United Artists clearance for the Schine Circuit.

[fol. 3840] (The documents relating to United Artists clearance for Schine Circuit, previously marked for identification as Plaintiff's Exhibits 281, 313, 314 and 903 were received in evidence.)

Mr. Wright: Mark these with the next exhibit numbers.

(Schedule dated November 16, 1938, was received in evidence and marked Plaintiff's Exhibit 958.)

(List of clearances dated February 19, 1941 was received in evidence and marked Plaintiff's Exhibit 959.)

Mr. Wright: Plaintiff's Exhibit 958 is schedule dated November 16, 1938, signed on behalf of United Artists by B. N. Stearn and Schine Enterprises by E. A. Lynch, which was produced by the defendants.

Plaintiff's Exhibit 959 is a list of clearances dated February 19, 1941, headed "United Artists Clearances, 1940-41," signed by B. N. Stearn, on behalf of United Artists and L. Goldstein, on behalf of Schine Enterprises, produced by the defendants.

We will offer this exhibit, previously marked Plaintiff's Exhibit 717 for identification, which is United Artists [fol. 3841] release schedule as Plaintiff's Exhibit 717 in evidence.

(The United Artists release schedule, previously marked as Plaintiff's Exhibit 717 for identification was received in evidence.)

(Whereupon a recess was taken until 2 o'clock P. M.)

[fol. 3842] After Recess: 2 o'clock P. M.

Appearances: As before noted.

(Proceedings continued in the absence of Judge Knight by agreement.)

Mr. Wright: We will now offer in evidence the agreements that were previously marked for identification as Plaintiff's Exhibits 96, 97, 111, 113, 117, 118, 120 and 121, under the same numbers.

Plaintiff's Exhibit 96 refers to exhibits attached thereto, marked A, B, which are not attached. I assume that they can be furnished and attached to that exhibit or you can substitute a complete copy.

Plaintiff's Exhibit 97 also refers to Exhibits A and B, which were not attached, and I assume those can be supplied.

(Thereupon the agreements previously marked Plaintiff's exhibits 96, 97, 111, 113, 117, 118, 120 and 121 for identification were received in evidence.)

Mr. Wright: I will offer in evidence as Exhibit 687 the letter and attached release schedule for Paramount Pic- [fol. 3843] tures, which was previously identified as Plaintiff's Exhibit 687.

(Thereupon the letter and attached release schedule for Paramount Pictures, previously marked Plaintiff's Exhibit 687 for identification was received in evidence.)

Mr. Wright: And I will offer in evidence Plaintiff's Exhibit 619, the Metro release schedules previously identified as Exhibit 619.

(Thereupon the Metro release schedules previously marked Plaintiff's Exhibit 619 for identification were received in evidence.)

Mr. Wright: And I will offer in evidence as Exhibit 645 the Warner First National releases, previously identified as Plaintiff's Exhibit 645.

(Thereupon the Warner First National releases, previously marked as Plaintiff's Exhibit 645 for identification, were received in evidence.)

Mr. Wright: I will offer in evidence the Fox release schedules as Plaintiff's Exhibit 337, which are contained in the folder previously identified under that number.

[fol. 3844] (Thereupon the Fox release schedules, previously marked as Plaintiff's Exhibit No. 337 for identification, were received in evidence.)

Mr. Wright: Then I will offer in evidence as W- 33 (17) the two-sheet contract, dated August 29, 1934, between Schine and Vitagraph for third-run at the State or Dixie Theatres, Rochester, N. Y., which was previously identified as W-33 (17).

(Thereupon the contract, dated August 29, 1934, between Schine and Vitagraph, previously marked as Plaintiff's Exhibit W-33(17), was received in evidence.)

Mr. Wright: And I will offer in evidence as Exhibit W-33(16) the two sheet contract for Warner Bros. and First National Productions, dated August 29, 1934, between Schine and Vitagraph for fourth-run at the Liberty or Riviera, at Rochester, N. Y., which was previously marked for identification, under the same number.

(The contract for Warner Bros. and First National Productions, dated August 29, 1934, previously marked as Plaintiff's Exhibit W-33(16) for identification was received in evidence.)

[fol. 3845] Mr. Wright: And I will offer in evidence as Exhibit W-18 the contract between Schine and Vitagraph for fourth-run at Liberty or Riviera at Rochester, N. Y., dated July 24, 1935, previously identified under the same number.

(The contract between Schine and Vitagraph, dated July 24, 1935, previously marked as Plaintiff's Exhibit W-18, was received in evidence.)

Mr. Wright: And I will offer in evidence as Exhibit W-19 the contract dated July 24, 1935, between Schine and Vitagraph for fourth-run at the State or Dixie theatre, Rochester, N. Y., previously identified under that number.

(The contract dated July 24, 1935, between Schine and Vitagraph, previously marked as Plaintiff's Exhibit W-19 for identification, was received in evidence.)

Mr. Wright: I will offer in evidence as Exhibit F-87 contract between Schine and Fox, dated June 20, 1934, for repeat runs, at State for Dixie on Group K-2, previously identified under the same number.

(The contract between Schine and Fox, dated June 20, 1934, previously marked as Plaintiff's Exhibit F-87, was received in evidence.)

[fol. 3846] Mr. Wright: I will offer in evidence as Exhibit 613 A and B the two contracts contained in Exhibit 613 for identification. A being dated July 11, 1935, between Schine and Metro, for second-run at Watertown, N. Y., for 1935-36 features, and "B" being contract for the same season between Vorunkis and Metro for subsequent runs, Watertown, dated September 7, 1935.

(Thereupon a contract, dated July 11, 1935, between Schine and Metro, for 1935-36 features, was received in evidence and marked Exhibit 613-A.)

(Thereupon a contract, dated September 7, 1935, between Vorunkis and Metro, for 1935-36 features, was received in evidence and marked Exhibit 613-B.)

Mr. Wright: Then I will offer in evidence as Plaintiff's Exhibit 328 A, B, C and D, respectively, contracts from the folder identified as Plaintiff's Exhibit 328, which are: A, dated August 3, 1933, between Schine and Fox for second-run for Watertown, on Group K-1.

B, dated June 22, 1934, between the same parties, for [fol. 3847] second-run, Watertown, on Group K-27.

C, a two-page contract, dated August 5, 1935, Group K-3, second-run, Watertown.

D, dated June 17, 1936, between the same parties, for K-4, second-run, Watertown.

(Thereupon the contract, dated August 3, 1933, between Schine and Fox, Group K-1, was received in evidence and marked as Plaintiff's Exhibit 328-A.)

(Thereupon the contract, dated June 22, 1934, same parties, Group K-27, was received in evidence and marked as Plaintiff's Exhibit 328-B.)

(Thereupon the contract, two pages, dated August 5, 1935, Group K-3, was received in evidence and marked as Plaintiff's Exhibit 328-C.)

(Thereupon the contract, dated June 17, 1936, same parties, for K-4, Watertown, was received in evidence and marked as Plaintiff's Exhibit 328-D.)

Mr. Wright: I offer in evidence as Plaintiff's Exhibit 343 A, B, C, D, E, F and G, contracts from Exhibit 343 for identification, which are:

A, one dated 11-29-33, between Schine and Paramount for Group S-5, second-run, Watertown.

B, dated September 19, 1934, same parties, same run, [fol. 3848] for Group S-6.

C is dated September 13, 1935, same parties, same run, Group S-7.

D, dated April 10, 1936, same parties, same run, Group S-8.

E, superseding contract dated August 3, 1936, same parties, same run, same season.

E, October 28, 1937, same parties, same run, Group S-9.

G, September 22, 1938, same parties, same run and Group S-10.

(Thereupon the contract from Exhibit 343 for identification dated 11-29-33, between Schine and Paramount for Group S-5, was received in evidence and marked Plaintiff's Exhibit 343-A.)

(Thereupon the contract dated September 19, 1934, same parties, for Group S-6, was received in evidence and marked Plaintiff's Exhibit 343-B.)

(Thereupon the contract, dated September 13, 1935, same parties, Group S-7, was received in evidence and marked Plaintiff's Exhibit 343-C.)

(Thereupon the contract, dated April 10, 1936, same parties, Group S-8, was received in evidence and marked Plaintiff's Exhibit 343-D.)

[fol. 3849] (Thereupon the contract superseding contract dated August 3, 1936, same parties, same run, same season, was received in evidence and marked as Plaintiff's Exhibit 343-E.)

(Thereupon the contract, dated October 28, 1937, same parties, same run, Group S-9 was received in evidence and marked as Plaintiff's Exhibit 343-F.)

(Thereupon the contract, dated September 22, 1938, same parties, same run, Group S-10, was received in evidence and marked as Plaintiff's Exhibit 343-G.)

Mr. Marcus: Will you mark these, please?

(Thereupon the lease referred to was received in evidence and marked Plaintiff's Exhibit 960.)

(Thereupon the agreement referred to was received in evidence and marked Plaintiff's Exhibit 961.)

(Thereupon another lease referred to was received in evidence and marked Plaintiff's Exhibit 962.)

Mr. Marcus: Plaintiff's Exhibit 960 in evidence is a lease dated the 16th day of September, 1933, of the Opera House, Wooster, Ohio, for the term of two years, beginning September 1, 1933, and ending the 31st day of August, 1935, with the option on the part of the lessee to have the term extended [fol. 3850] for an additional period of three years. The lessor is the City of Wooster, Ohio, and the lessee is the Wooster Theatres, Inc. It is stated that the Director of Public Service and Safety, having duly advertised for bids for five consecutive weeks, the Wooster Theatres, Inc., presented its bid for the leasing of said premises, which bid was the highest and best bid therefor and was accepted.

Plaintiff's Exhibit 961 in evidence is an agreement between the City of Wooster, Ohio, and the Wooster Theatres, Inc. It is executed as of the 3rd day of October, 1935. It provides that in exercising their three-year option the lessee and the lessor agree to certain modifications specified in the agreement.

Plaintiff's Exhibit 962 in evidence is a lease appearing to be made on or about April, 1938, between the City of Wooster, as lessor, and the Wooster City Opera House, the highest and best bidder of the Opera House, Wooster, [fol. 3851] Ohio, for the term of three years, beginning June 1, 1938, and ending May 31, 1941, with an option on the part of the lessee to have the term extended for five years.

Mr. McClennen: It is stipulated that this option was exercised extending the lease to May 31, 1946.

Mr. Marcus: It is stipulated that defendants need not answer plaintiff's request for admission of facts served on October 25, 1944, the defendants having produced leases concerning the items asked for in said request.

Mr. Wright: Mark these for identification.

(Thereupon the sixteen contracts referred to were marked as Plaintiff's Exhibits 963 to 978, inclusive, for identification.)

Mr. Wright: We offer in evidence as Plaintiff's Exhibits 963 through 978, inclusive, sixteen contracts, which are all of the documents produced by 20th Century-Fox Film Corporation in response to paragraph 1 of subpoena returnable October 25, 1944, calling for all contracts for exhibition of [fol. 3852] the following group of films in Syracuse, N. Y.:

"Charlie's Aunt", "Dressed to Kill", "Wild Geese Calling", "Private Nurse", and "Sun Valley Serenade", except for a contract for this group of films for second-run exhibition in the Regent Theatre at Syracuse, which has not yet been located, but which, when received, may be identified and received in evidence as Plaintiff's Exhibit 979.

Then we will offer in evidence the tabulation previously marked for identification as Plaintiff's Exhibit 832, under the same number.

Mr. McClennen: What you have just stated now is your complete description of the exhibits? You are not going into detail beyond that?

Mr. Wright: At this time, no. We can have a description read in.

Mr. McClennen: I didn't ask that. I wanted to make sure that you are not going to, so my notes would conform to the stenographer's.

(Thereupon the tabulation referred to, previously marked as Plaintiff's Exhibit 832 for identification, was received in evidence.)

[fol. 3853] Mr. Wright: And we will offer as Plaintiff's Exhibit 980 the two pages bearing pencil notations, clipped together, and previously identified as Defendants' Exhibits D-114 and D-115, respectively.

(Thereupon the two pages referred to, previously marked as Defendants' Exhibits D-114 and D-115 for identification were received in evidence and marked Plaintiff's Exhibit 980.)

[fol. 3854] Mr. McClennen: It should be noted that Exhibit 980 is composed of two sheets of paper, one in Mr. Wallace's handwriting and the other in Mr. Smith's handwriting that were shown to the witness and spoken of separately, one as D-114 and the other as D-115 for identification.

Mr. Kallis: Just a moment on that.

Mr. Wright: The notation is there. The record speaks for itself. It is perfectly clear.

We offer Plaintiff's Exhibit 53 in evidence.

Mr. McClennen: Note that the receipt of Plaintiff's Exhibit 53 in evidence is objected to.

Mr. Wright: Do you want this presented to the Court or marked over your objection?

Mr. McClennen: I do not see that it makes any particular difference as long as our objection is there on the record.

(Thereupon Plaintiff's Exhibit No. 53 previously marked for identification was received in evidence.)

Mr. McClennen: I understand these papers have no marking in the present record.

Mr. Wright: It is part of the record of the case. It is [fol. 3855] not a record made in court.

Mr. McClennen: I want to have this record show numbers that are mentioned as put in now.

Mr. Wright: It will.

Mr. McClennen: Well, then, all right, let's have it.

Mr. Wright: We will offer in evidence as Plaintiff's Exhibits F-101 (1) to F-102 (40), inclusive, 40 contracts between Fox and Schine previously identified under the same numbers, and we also offer as Exhibits F-101 (42) and F-101 (43), two contracts between Fox and Schine previously identified under the same numbers. All of these contracts F-101 (1) through F-101 (43), relate to the 1935-1936 season.

Mr. McClennen: Put this note on the record. Mr. Wright's statement of these identification numbers has reference to the identification of them in the taking of a deposition of Mr. Selmser at Gloversville by the plaintiff in April, 1942, and the numbers do not appear elsewhere in this record in this court.

Mr. Wright: What was that statement?

(Statement read.)

Mr. Wright: That's right.

[fol. 3856] (Thereupon 40 contracts between Fox and Schine, previously identified, were received in evidence and marked Plaintiff's Exhibits F-101 (1) to F-101 (40), inclusive, and F-101 (42) and F-101 (43).)

Mr. Wright: We have served a series of notices covering the originals of letters which we have offered from time to time, and we would like to have those letters produced, if you have them, before we complete our offer to the Court.

Mr. McClennen: We have produced as you have asked for them every one that we had that was so asked.

Mr. Wright: Let us go over the list. Letter from H. D. Shreffler, dated January 23rd, 1926, on the letterhead of Castambe Theatre, addressed to Mr. Louis Lazar, Bellefontaine, Ohio.

Mr. McClennen: I could not tell by that description whether you have asked in court for that particular one or not.

Mr. Antevil: That is P-74 for identification.

Mr. Wright: I think P-74 is the copy. We asked for the original. As I recall, the introduction of the copy was [fol. 3857] objected to. While we served notice to produce——

Mr. McClennen: We have not here in the court-room at this moment that particular letter. We have handed you originals in the court-room as they have been asked for.

Mr. Wright: When would you be able to tell us whether you can produce or not this particular document?

Mr. McClennen: Not until we have time to investigate the file to see whether we have it.

Mr. Wright: I would assume that would have been done at the time you received the notice to produce.

Mr. McClennen: I think very likely it was. We had them ready, those that we were able to find, and, as they have been asked for in the course of the proceeding, we have produced them. We were not aware on this particular morning you wanted that letter, and we haven't it here. If we have it among our papers here, we can produce it tomorrow morning.

Mr. Wright: Suppose we go down the list, then. We also ask for your copy of letter from Louis Lazar, Schine Theatrical Co., and Belpik Theatre Corporation, Belle- [fol. 3858] fontaine, Ohio, dated January 14, 1936, addressed to the Shelby Globe, Shelby, Ohio, relative to deal for rental or possible outright sale of a theatre building in Shelby, Ohio, which is also specified in the notice to produce served on October 11th.

Mr. McClennen: The same comments would apply there. If you give us a list, and will check those that you want us to produce in court tomorrow, we will see if we have them, and produce them if we have.

Mr. Wright: We want all of the letters which have been specified in the notice to produce heretofore served upon you that have not as yet been produced. If you want any additional specification——

Mr. McClennen: Do you mean you are going to put in evidence all these voluminous lists of letters? We don't want to have to go down through a great long list when you are not going to put in a great many of them. By this time, I take it, you know which ones you want to put in, and if you will tell us which those are, we will try to get them, and if they are here, we can get them right away. We will [fol. 3859] have them here in court tomorrow morning.

Mr. Wright: I think we have offered secondary evidence with respect to every one of those letters that are listed.

Mr. McClennen: Then I understand that those you do not have any particular desire for us to produce.

Mr. Wright: We desire to have them produced in view of the objection made that what we offered was not an original, and, in the absence of such production, I assume that objection has no merit.

Mr. McClennen: I am advised that we have no indication that we have ever received the notice from which you have just been reading.

Mr. Wright: I think you are mistaken on that, Mr. McClennen. There is no question about the notice from which I have just read. You have it there.

Mr. McKay: To the best of my recollection I never saw it.

Mr. McClennen: Mr. Wright, the notice that you refer to has on it two letters. Those two letters, if we found them, would be over in the office, and we can have them here [fol. 3860] tomorrow morning. We cannot have them earlier than that, and those are the only two letters that we know of covered by a notice to produce which has been served on us. It certainly is the only notice that I can recall that has come to my attention.

Mr. Wright: Mr. Schilz advises me he thinks that other notice was sent by mail, and he is checking to see what was done in that connection.

Mr. Rogers: This is before Mr. McClennen was in the case.

Mr. Wright: Yes, that is right.

Mr. McClennen: If you have got a list that you can hand us of the original that you really want produced in the case, we can check and see whether we have those or any of them here, and if we have them here, we can produce them tomorrow morning, but I want a list to go by.

Mr. Wright: Mark these. In marking them, just mark the pink feature copy, not the pink copy on shorts or news. Just the pink feature. That will be one in each folder.

Mr. McClennen: Those will be new consecutive numbers?

Mr. Wright: Yes.

Mr. McClennen: I think the record should show what your [fol. 3861] exhibit number is. Will you put in the date of the contract, the name, for example, Loew's to Schine?

Mr. Wright: We might cover that by a statement all of these are Loew or Schine contracts for a particular season.

Mr. McClennen: These are all Loew's?

Mr. Wright: Yes, and have him note the towns and runs.

Mr. McClennen: If you will put into the record that they are all Loew's contracts to Schine and the respective exhibit numbers or dates, and put in the dates and the towns and the run.

Mr. Wright: It should be noted these are all 1940-1941 season.

[fol. 3862] (Thereupon 83 contracts between Loew's and Schine for the 1940-1941 season were received in evidence and marked Plaintiff's Exhibits 981 (1) to 981 (83), tabulated as follows):

Date	Town	Run	Ex. No.
8-22-40	Amsterdam	First	981 (1)
8-22-40	Auburn	Second	981 (2)
8-22-40	Ballston	First	981 (3)

Date	Town	Run	Ex. No.
8-22-40	Bath	First	981 (4)
8-22-40	Canandaigua	First	981 (5)
8-22-40	Granville	First	981 (6)
8-22-40	Mechanicville	First	981 (7)
8-22-40	Corning	First	981 (8)
8-22-40	Cortland	First	981 (9)
8-22-40	E. Rochester or Fairport	First	981 (10)
8-22-40		Second	981 (11)
8-22-40	Geneva	First	981 (12)
8-22-40	Glens Falls	First	981 (13)
8-22-40	Glens Falls	Second	981 (14)
8-22-40	Gloversville	First	981 (15)
8-22-40	Gloversville	Second	981 (16)
8-22-40	Hamilton	First	981 (17)
8-22-40	Herkimer	First	981 (18)
8-22-40	Hudson Falls	First	981 (19)
8-22-40	Little Falls	First	981 (20)
[fol. 3863]			
8-22-40	Lockport	First	981 (21)
8-22-40	Lockport	Second	981 (22)
8-22-40	Malone	First	981 (23)
8-22-40	Massena	First	981 (24)
8-22-40	Norwich	First	981 (25)
8-22-40	Newark	First	981 (26)
8-22-40	Ogdensburg	First	981 (27)
8-22-40	Oswego	First	981 (28)
8-22-40	Penn Yan	First	981 (29)
8-22-40	Perry	First	981 (30)
8-22-40	Rochester	Sub.	981 (31)
8-22-40	Rochester	Sub.	981 (32)
8-22-40	Rochester	Sub.	981 (33)
8-22-40	Rochester	Sub.	981 (34)
8-22-40	Rochester	Sub.	981 (35)
8-22-40	Rochester	Sub.	981 (36)
8-22-40	Rochester	Second	981 (37)
8-22-40	Rochester	Second	981 (38)
8-22-40	Rochester	Sub.	981 (39)

Date	Town	Run	Ex. No.
8-22-40	Salamanca	First	981 (40)
8-22-40	Saranac Lake	First	981 (41)
8-22-40	Seneca Falls	First	981 (42)
8-22-40	Tupper Lake	First	981 (43)
[fol. 3864]			
8-22-40	Watertown	First	981 (44)
8-22-40	Watertown	Second	981 (45)
8-22-40	White Hall	First	981 (46)
8-22-40	Ashland, Ohio	First	981 (47)
8-22-40	Athens, O.	First	981 (48)
8-22-40	Bellefontaine, O.	First	981 (49)
8-22-40	Bolling Green, O.	First	981 (50)
8-22-40	Bucyrus, O.	First	981 (51)
8-22-40	Delaware, O.	First	981 (52)
8-22-40	Forstoria, O.	First	981 (53)
8-22-40	Kent or Ravenna, O.	First	981 (54)
Undated	Kent or Ravenna, O.	Second	981 (55)
8-22-40	Medina, O.	7 days after first run, Akron	981 (56)
8-22-40	Mt. Vernon, O.	First	981 (57)
8-22-40	Mt. Vernon, O.	45 days after first	981 (58)
8-22-40	Norwalk, O.	First	981 (59)
8-22-40	Piqua, O.	First	981 (60)
8-22-40	Shelby, O.	7 days after first Mansfield	981 (61)
8-22-40	Van Wert, O.	First	981 (62)
8-22-40	Tiffin	First	981 (63)
8-22-40	Wooster, O.	First	981 (64)
[fol. 3865-6]			
8-22-40	Corbin, Ky.	First	981 (65)
8-22-40	Lexington, Ky.	First	981 (66)
8-22-40	Lexington, Ky.	Second	981 (67)
8-22-40	Lexington, Ky.	Third	981 (68)
8-22-40	Lexington, Ky.	Fourth	981 (69)
8-22-40	Maysville, Ky.	First	981 (70)
8-22-40	Paris, Ky.	First	981 (71)
8-22-40	Pikeville, Ky.	First	981 (72)
8-22-40	Richmond, Ky.	First	981 (73)

Date	Town	Run	Ex. No.
8-22-40	Cambridge, Md.		981 (74)
8-22-40	Easton, Md.	First	981 (75)
8-22-40	Federalsburg, Md.	First	981 (76)
11-9-40	Hurlock, Md.	14 days after Cambridge	981 (77)
8-22-40	Laurel, Del.	7 days after Seaford	981 (78)
8-22-40	Middlesboro, Ky.	First	981 (79)
8-22-40	Milford, Del.	10 days after first	981 (80)
8-22-40	Salisbury, Md.	First	981 (81)
11-9-40	Salisbury, Md.	30 days after first	981 (82)
11-9-40	St. Michaels, Md.	7 days after Easton	981 (83)

[fol. 3867] Mr. Wright: With reference to a notice to produce consisting of seven pages, addressed to Mr. McKay, Mr. Rogers and Mr. McCarthy, calling for the production of certain original letters, our records show that a copy of the notice was mailed to Mr. Rogers on August 5, 1944, and that the original was mailed to Willard McKay on the same date.

Mr. McKay: Let me state that I never received it.

Mr. Homans: When was it mailed?

Mr. Wright: It was mailed August 5, 1944.

Mr. Schilz: I offer in evidence RKO National Release schedules for the season 1933-34, 1934-35, 1935-36, 1936-37, 1937-38, 1938-39, 1939-40, 1940-41, 1941-42. They had previously been offered as Plaintiff's Exhibit 634 for identification. I will offer them under the same number.

(Thereupon the RKO national release schedules, previously marked as Plaintiff's Exhibit 634 for identification, were received in evidence.)

Mr. Wright: Plaintiff offers in evidence documents previously identified as Exhibits 516, 549, 430, 433, 435, 494, 496, 500, 499, and 574.

The offer just made is in addition to the offer made of [fol. 3868] the documents previously identified by the following numbers:

Plaintiff's Exhibits 76, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 176, 178, 179, 190, 216, 218, 226, 227, 228, 229, 230, 236, 243, 259, 273, 282, 283, 286, 288, 292, 300, 307, 308, 310, 318, 319, 321, 322, 323, 338, 356, 361, 363, 366, 367, 368, 369, 370, 374, 381, 384, 385, 386, 387, 388, 390, 393, 396, 397, 412, 413, 425, 426, 444, 488, 497, 518, 519, 526, 527, 528, 530, 539, 542, 554, 559, 560, 561, 566, 567, 574, 597, 598, 599, 600, 601, 662.

And delivered to Judge Knight in accordance with Mr. Wright's letter to Mr. McClennen of October 19, 1944.

(At this point in the proceedings Judge Knight presided.)

Mr. Wright: If the Court please, in addition to the documents that we are marking in evidence, we have now offered an additional group of memoranda——

[fol. 3869] The Court: They have been marked?

Mr. Wright: Yes, previously marked documents. These are documents (handing the documents to the Court) previously marked for identification, which the reporters have already listed.

The Court: Are they objected to?

Mr. Wright: As I understand it, the same objection goes to these that was made to those your Honor already has in your possession.

Mr. McClennen: As I understand it now, just before your Honor came in, Mr. Wright made offer of the 89 identified exhibits which have heretofore been handed to your Honor.

The Court: Yes.

Mr. McClennen: And these that he now, I will say, adds to that group, beginning with identification number 546 and ending with identification number 574, these last being arranged in order of dates, and we make the objection that we have heretofore made and discussed with your Honor as to all of these.

The Court: Yes.

Mr. Wright: Before closing our case I want to call your [fol. 3870] Honor's attention to testimony which I think is judicially noticeable before your Honor because it was taken in a prior proceeding in this case before your Honor. I call your attention to it now in case there is any question as to the accuracy of the transcript which was made. If there is we will, of course, offer to make proof of what was said.

I refer specifically to the testimony of John A. May that was given at the hearing before your Honor on March 20, 1944, in connection with the motion for leave to purchase the Liberty Theatre at Cumberland, Maryland. The part I want to call your attention to is as follows:

Page 55:

"John A. May was called as a witness on behalf of the Defendants, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Goodwin:

Q. Will you state your name?
A. John A. May.
Q. Your address?
A. Gloversville, New York.
[fol. 3871] "Q. Your occupation?
A. Comptroller of the Schine Chain Theatres."

'Then on page 66, under Cross-examination by me the following testimony appears:

"Q. You are familiar with the policy in your company in acquiring theatres, are you not? You have something to do with that policy?

A. Yes, sir.

Q. And that policy is, is it not, wherever you go into any situation, to secure control of it by getting control of all of the first-run theatres, isn't that correct?

A. That is sometimes advisable from a business standpoint. It isn't necessary.

Q. You found advisable and have actually achieved that result in 75 per cent or 80 per cent of the situations in which you operate theatres, isn't that true?

A. Possibly, yes.

Q. Well, it is true, is it not?

A. Yes.

Q. If your acquisition and policy in Cumberland follows the course that your acquisition and policy has previously followed in other situations you will wind up in possession [fol. 3872] of all of the first-run theatres there, isn't that correct?

A. Barely possible.

Q. It is not only possible, it is quite probable, is it not?"

This goes to page 67:

"A. Well, it is not necessarily so.

Q. You regard that a desirable situation from Schine's standpoint, do you not, to control all the first-run theatres in the town?

A. Yes."

Then the further question is asked:

"Q. As far as you are concerned there is no public advantage to competition in any situation, is that right?

A. I would not say so, no. Competition sometimes is desirable in some lines of business.

Q. As far as Schine is concerned, it is more desirable to have a monopoly, is it not?

A. Not necessarily.

Q. The fact that you have achieved those monopolies in 75 per cent of your situations you say you regard as purely accidental?"

It goes to page 68:

"A. It depends upon your definition of what 'monopoly' is.

[fol. 3873] Q. I wish you would answer my question.

A. I don't like the word 'monopoly.'

Q. Well, whether you call it a monopoly or whether you call it a closed town, or use any other name that you like for it, it has been a definite policy of Schine's, has it not, to acquire all of the first-run theatres in any particular community in which Schine enters?

A. Yes, sir."

The Court: Was this testimony taken on the question of the disposition of the Liberty Theatre?

Mr. Wright: This was taken at the time—that is right—in connection with the motion to acquire the Liberty Theatre, made by Schine, and this is being offered as an admission made by one of the defendants here in the course of that hearing.

The Court: Is there an objection to that?

Mr. McClennen: We make the objection that has been made in other similar situations, that this related to a local acquisition and not something which had any tendency to restrain or monopolize interstate commerce as evidenced by the fact that your Honor, if I am rightly informed, hearing the testimony, permitted the acquisition of this theatre [fol. 3874] and, so far as it is offered as an admission by a defendant, we ask that it be confined to the defendant May as he was the only one who made this admission, if it was an admission, and only if he was called as a witness in court and not in any respect in the course of the business of the defendants or any of them.

The Court: The first question you raised is the question of this being local. That would have to apply here because we are dealing with this statement as concerns the whole charge of conspiracy. Now, if the Court was right in holding that these are not local transactions and this so-called admission relates to the whole thing, the admission, or so-called admission, as to whether this is a monopoly or policy of the Company, relates to the policy and monopoly as to interstate actions. In other words, if this is not a local transaction, then, of course, the admission applies to all—[fol. 3875] in relation to the way the monopoly, if it is called a monopoly—what was said in that respect?

Mr. McClennen: Evidently I have not well expressed myself to make myself clear to your Honor.

The Court: You are urging the same objection you urged before right through the case, that it is a local transaction, to be applied to each situation by itself?

Mr. McClennen: More than that. The matter before the Court was the question whether we should be permitted to acquire a theatre in Cumberland, if I rightly understand the situation.

The Court: Yes.

Mr. McClennen: And the witness was before the Court on that one subject.

The Court: Yes.

Mr. McClennen: Of that one local transaction. That did not clothe him with any representative capacity to deal with other defendants. He was required in his duty to the Court to answer the questions that were put to him, in that he was not engaged upon the business of the defendants; he was before your Honor as a witness, and what he said on [fol. 3876] the witness stand is not an admission with respect to any other defendants, and particularly because the issue then up for consideration was the one of the right to acquire a particular theatre in a particular locality.

The Court: I think you have got to look beyond that, at what was said. No matter what case was being examined it would be entirely—nothing in any way connected with these proceedings—the sale of any theatres. Assuming that in some other suit he had testified that such-and-such was the policy of the Company wouldn't his declarations be—wouldn't that be binding and be material as far as the Company is concerned?

Mr. McClennen: I most respectfully submit now that when a man is called in another suit to testify he is not engaged in the business of the defendants in any way and while his expressions may be binding upon him and while if he were called here now he could be confronted with this as cross-examination, this is now being put in by the [fol. 3877] plaintiff as the Government's testimony.

The Court: Yes.

Mr. McClennen: And it is not a part of the province of a witness on the stand to make admissions binding upon anybody but himself as admissions and that is part of the objection which we urge, and I merely want——

The Court: Of course, it looks to me as though the proceedings start with the sale of the Liberty Theatre. That is entirely an independent suit.

Mr. McClennen: I understand that that was entirely independent of this suit.

The Court: I am so considering, anyway, and of course it is unusual. Isn't that the fact that that is an independent proceeding?

Mr. Wright: If the Court please, the decree under the order under which the proceedings were held was, of course, an order entered in this suit and these proceedings, as I understand them, were a part of this suit, and when your Honor entered an order approving the Liberty acquisition it was entered appropriately without prejudice to such rights as we might have to the divestiture of that theatre.

[fol. 3878] The Court: Yes.

Mr. Wright: Upon the completion of the entire case, upon the merits.

The Court: I know, but does that have to do with the question of monopoly or violation of the Anti-Trust Law here? It appears to me like it is an independent proceeding.

Mr. Wright: Regardless of whether you regard it as an independent proceeding or part of the proof, Mr. May took the witness stand for the purpose of assisting in or establishing a record upon which your Honor would permit one or more of these defendant corporations to acquire that theatre. As such he was clearly embarked on the business of the corporation and I don't think there is any question at all about the admissibility here of such admissions as he might have made while engaged in so testifying, both as to him individually and as to this corporation.

The Court: Of course, it is in the nature of an admission.

Mr. Wright: As a defendant in the suit. He, of course, may take the stand on behalf of the defendants and explain [fol. 3879] what he said there, in any way that he chooses, but we are entitled to——

The Court: You are producing the evidence upon the admission—upon the trial of this side of the case?

Mr. Wright: Yes.

The Court: They have the right, of course, have they not, to cross-examine Mr. May?

Mr. Wright: The theory under which admissions of a defendant are admissible in evidence, as I understand it, not based upon any assumption that cross-examination was available but because the defendant had made a statement which is inconsistent with the position he assumes in the lawsuit, and as to such statements, whenever they are made, under circumstances as this one was made, for example, in a judicial proceeding under oath when he was about the business that we are concerned with here, the statement is clearly admissible for that purpose and an admission against interest.

The Court: What do you say in answer to his statement [fol. 3880] that the admission is not binding upon the corporation?

Mr. Wright: I would like to call your Honor's attention to Section 340 of Article 33 of the Civil Practice Act of this State, which states:

"The admission of a member of an aggregate corporation who is not a party"—this goes further than that we are concerned with here——

"shall not be received as evidence against the corporation unless it was made concerning and while engaged in a transaction in which he was the authorized agent of the corporation or unless it was made while a member of such corporation and testified as a witness concerning a transaction of the corporation when the official record of such testimony shall be received."

That, it seems to me, is precisely the situation that we have here with the additional element that Mr. May himself was a defendant and that testimony was taken not in [fol. 3881] some unrelated lawsuit but in this lawsuit itself.

The Court: Wouldn't it have to be binding in that proceeding?

Mr. Wright: I think not, if the Court please. This deals with the general question of the admissibility of admissions.

The Court: With respect to a corporation, that is the point of the rule. That does not go to the question of admission as concerns the different proceedings. Of course, while what has been done, they started this action years ago, has nothing to do with the acts themselves, the sale of a theatre during a trial.

Mr. Wright: Assuming it was an independent proceeding, I cannot conceive of any circumstances under which a defendant or an officer of a corporation could make a binding admission if he cannot make one when he is testifying on behalf of the corporation in connection with a matter concerning corporate business under oath. I would suppose those were circumstances under which admissions of the highest possible probative value could be made.

The Court: That corporate proceeding?

[fol. 3882] Mr. Wright: In that proceeding. The testimony is not received because it is an admission, it is received because a witness there testifying just like any other witness. The only time we are concerned with the admissibility of such testimony as an admission is when it is offered in another city from the original one in which it occurred and was made.

The Court: Isn't the point of that rule that the admission of the officer is an admission as against the corporation? That is the purpose of that rule, isn't it?

Mr. Wright: Yes. I take it the rule extends to the doctrine of admissions, generally. If it were merely considering what happens in a suit, or a corporate officer testifies on behalf of the corporation, there isn't any question, of course, but what that evidence, even without any statute, or considering the law of admissions, is admissible and binds his corporation. What we are concerned with here is the extent of such statements that an officer of a corporation makes at some other time and place are admissible against him and the corporation in a subsequent proceeding, and I understand the law to be that where the officer makes a statement in the course of performing the corporation business, which relates to that business and which he is authorized to make, then that statement may be, when properly proved, used as an admission against him and the corporation in any subsequent proceeding, in so far as it may be relevant to the issues then being tried. I do not understand that Counsel himself has suggested that there is any disagreement as to that rule of law.

[fol. 3883]

Mr. McClennen: Well, there is. If you did not understand it you misunderstood what I just said.

I submit, if your Honor please, that the theory of admissions being binding upon somebody else than the man who spoke is that they constitute the words of the corporation, if you please, which he was authorized by the corporation to utter. When a witness is called to the witness stand he is not engaged on the business of the corporation. He is engaged in the business of giving testimony to a court and if the corporation knew that the witness was of the opinion or belief that a certain thing was the fact, and the corporation and the corporate officers, other than himself, were of the belief that it was not the fact, that if in that testimony it would be possible for what he said to be an admission by the corporation then it would be within the power of the corporation and the right of the corporation to say at this juncture, "You are not to open your mouth because we do not believe that what you believe is the fact."

[fol. 3884]

Now, manifestly, they cannot do it when he is testifying in a court, and the very illustration that I use shows that when testifying in court he is not engaged upon the business of the corporation and he is not authorized to make admissions in the proceeding in which he appears; what he says is effective, not as admissions, but as testimony, and it goes no further.

[fol. 3885]

It is a fundamental of the law of admissions by a cooperator, an officer of the corporation, that an admission made after the period of the conspiracy in question or before the beginning of the conspiracy in question, is not a part of the carrying out of that conspiracy.

It is not an admission that is binding upon the other parties. There are those initial and terminal limits.

[fol. 3886] Now, when this witness was testifying in court, he was not engaged in the carrying out of any conspiracy. He was engaged in giving the testimony in accordance with his belief on the facts concerning which he was interrogated. That was not an admission by the corporation when he made that admission. It was a statement of a piece of evidence by himself, and it went no further.

The Court: Are we very far apart on this question here, whether we treat it as an admission by the defendant corporation, or whether we treat it as a- admission by the individual? The position of the company is shown here.

Mr. Wright: I think we are agreed it is clearly admissible. The only question is whether or not, the extent to which it is admissible against other defendants than the defendant May.

Mr. McClennen: What an astounding remark. We are not clearly agreed on any such thing.

The Court: I think the discussion centers around the question largely of whether it is binding on the Company. [fol. 3887] I thought perhaps we did agree on that phase of it. That is the question here, how it should be treated if received. That is right, is it not?

Mr. McClennen: I had just stated, if your Honor please, as my position just before this remarkable statement was made that we contended that a statement by Mr. May on the witness-stand had its effect as testimony in the cause in which he was testifying, and that it stopped there.

The Court: Your position is that it is not receivable at all under any circumstances by reason of that fact?

Mr. McClennen: My position here is, first, that it is not receivable at all, and, second, that if it were received it should be received as an admission of Mr. May only, if it is received as an admission.

The Court: That is just exactly what I inquired about. If it is received as his statement, simply as his admission, rather than an admission of the company itself.

Mr. McClennen: If your Honor please, I was not addressing myself to anything that your Honor had said. I was [fol. 3888] addressing myself to Mr. Wright's statement that I agreed to something which I do not agree to.

The Court: I thought we agreed in that respect. Do you have something further?

Mr. Wright: There is one case I think on this question of admissibility against the corporation, that is, Pan American against U. S., 273 U. S., 456. That was the case in which Mr. Doheny, while President of the oil company appeared before a Senate Investigating Committee. In the course of his testimony he made certain statements. At a subsequent trial in which he was a defendant—

The Court: Individually?

Mr. Wright: No, in which his corporation was a defendant.

The Court: And individually, also?

Mr. Wright: I believe he was also an individual defendant. In that trial over objection his statements before the Committee were received in evidence, and the Court held that under the facts and circumstances in that case Doheny had acted for the corporation within the scope of his authority, when he testified before the Committee and [fol. 3889] his statements were, therefore, properly taken as admissions by that corporation and were admitted against the corporation in the subsequent suit. Now, we have the same situation here. Mr. May did not appear in this court to buy that theatre himself. He appeared voluntarily for the purpose of satisfying your Honor that his company should be permitted to acquire that theatre. I don't think there is any question at all under the Pan American case that the testimony is admissible.

The Court: I will receive the evidence, and I will determine the question of the weight of the evidence, that is all.

Mr. McClennen: May I, before this matter is cold, call your Honor's attention, that in the case cited the corporation was under investigation by a Senate Committee. That was the business of the corporation that was then up. In the proceeding that was before your Honor, your Honor was not trying or purporting to try, or attempting to try, and that was not a part of the proceeding, a transaction of the corporation concerning an alleged conspiracy or policy [fol. 3890] of business. The matter up for consideration by your Honor was whether it was proper for this corporation to obtain this local theatre in this one place at this time, and your Honor decided that it was proper that that should be done. Now, I am not making these statements by way of seeking to persuade your Honor further on the ruling you have already made, but so that it may be perfectly clear on the record, the distinctions which I am making.

The Court: I will receive it, but I will give it such weight as I determine. Anything besides exhibits now?

Mr. Wright: I have some additional matters, yes.

The Court: What is your plan about tomorrow. Do you want to go on tomorrow? Do just as you men agree. It makes no difference to me.

Mr. McClennen: I think it would very seriously inconvenience my associates to be here tomorrow, and, therefore, I am afraid my suggestion to your Honor is an admission that I was not permitted or authorized to make.

The Court: What is that?

[fol. 3891] Mr. McClennen: I will say that when I suggested to your Honor that we go on tomorrow, I made an admission which I was not authorized by my associates to make.

The Court: I would just as soon not be here.

Mr. Wright: Before we adjourn, I would like to give your Honor a memorandum, a copy of which I have given to counsel.

The Court: What is that concerning?

Mr. Wright: Which concerns decisions of the Appeal Board under the consent decree with respect to certain clearances that are in evidence in this case. The decisions themselves I do not believe are judicially noticeable, because they are not officially reported, but I have procured certified copies which I would like to have marked in order that there——

The Court: Relating to what?

Mr. Wright: These decisions are five in number. They relate to clearances there established in evidence in this case by contracts which are in evidence, and they are decisions which hold those clearances to be unreasonable.

[fol. 3892] The Court: You mean Schine clearances?

Mr. Wright: Yes.

The Court: How do they come up?

Mr. Wright: They come up under the consent decree, the consent decree which was attached to the memoranda set up a system of arbitration whereby an exhibitor who complained that clearance held over his theatre by another exhibitor with respect to pictures of one of the consenting companies, either Fox, Loew, Metro, R. K. O., or Warner was unreasonable, he would have the right to arbitrate the question before an arbitrator and secure an award to that effect if the clearance was unreasonable. The decree then set up a system of review of these arbitrators' decisions by a three-man board which was appointed by the District Court of New York for that purpose, and these decisions I am referring to here are the decisions of that three-man Appeal Board reviewing awards of arbitrators made in proceedings brought by independent exhibitors who complained about certain clearances held by Schine Theatres.

[fol. 3893] The Court: Schine, of course, was not a party to the consent decree.

Mr. Wright: That is quite true, but these arbitration rules provide when the exhibitor files his complaint, he shall give notice to other exhibitors affected, and then the other exhibitors affected have the opportunity to intervene and become a party. In all but one of these cases, Schine exercised that intervention privilege and was a party.

The Court: You don't mean to be binding——

Mr. Wright: Not at all, nothing more than such persuasive value as their intrinsic merit may give them upon a reading by your Honor.

Mr. McClennen: On this statement of Mr. Wright, I submit your Honor should not read them. In 1939 there was presented to this Court and your Honor, the suit we are now trying, and in that there were allegations made concerning the reasonableness of clearances. The issue has been opened and is now open before your Honor. These decisions are not brought as res adjudicata, as just stated by Mr. Wright. If they are not res adjudicata, they are merely [fol. 3894] somebody else's view about these clearances. Whether these clearances are reasonable or not, is to be taken by your Honor on evidence of the facts. Now, you cannot be assisted in the slightest by knowing that some gentlemen, be they members of the Appeal Board or some other position, entertained a certain view concerning those clearances. They were not experts on the subject. They have not been called as witnesses where they could be cross-examined as to what they knew about what they were doing, as to whether the case was properly tried before them, as to whether the facts on which they reached their conclusions were all the facts, and I submit that——

The Court: Are these the reports of the arbitrators or the reports of the appeal?

Mr. McClennen: This is the decision of the Appeal Board, sometimes confirming and sometimes not the action of the arbitrator in reaching his conclusion, and all of them, with one exception, after May 19th, 1942. Whoever they are by, I submit your Honor's mind should not be affected at all by what somebody else thought upon the issue which is [fol. 3895] an issue, to be decided by you, and that they should not even be looked at by your Honor. They can be of no assistance whatever. They contain views and opinions of men not experts on the subject.

The Court: Supposing there were an article in Harper's Review or some other monthly magazine, some local article, should I read it?

Mr. McClennen: If your Honor would be willing to read it in this case, we would like to give you an article in The Saturday Evening Post that made a survey of these very clearances and reached some conclusions, and if this sort of thing is admissible, why, that would be a matter that might be at least of interest to your Honor. I submit your Honor should not look at it.

The Court: I will let you submit what you want, and as I said before, I have to pass on the question myself independent of anybody else as far as the issue here. If it is not res adjudicata, I am not bound by any action taken. What else have you got today?

Mr. Wright: I think that will conclude our case, sub- [fol. 3896] ject to a check.

Mr. McClennen: These I understand do not go in evidence in this case.

Mr. Wright: Merely for the purpose—the purpose of marking them is simply to——

The Court: I supposed you were ma-king them as part of the brief. You refer to them in the brief?

Mr. Wright: If it might be understood that these are correct and true copies of the decisions in question, there is no need to have them marked in evidence.

The Court: Oh, no, they are not part of the evidence, Submit it the same as a brief is submitted.

Mr. Wright: The only purpose for marking them would be to eliminate the question of lack of judicial noticeability.

The Court: If you can take judicial notice of them. Of course, they do not need to be marked.

Mr. Wright: If there is no objection on that ground, they need not be marked.

Mr. McClennen: If they are not to be evidence in the case, it becomes unnecessary to consider whether you can take judicial notice or not. We protest that they are not before your Honor.

The Court: I am not receiving them as any evidence of [fol. 3897] any fact, any matters they contain. Simply as I understand it in the nature of a brief to the Court of a situation or holding, that is all.

Mr. Wright: That is correct, your Honor. There is one more thing I should like to call your Honor's attention to, that is, the testimony, certain testimony of the witness Burke at the same hearing on March 20th, 1944, to which I——

The Court: What is the name?

Mr. Wright: Thomas H. Burke, at the hearing of March 20th, 1944. Mr. Burke, if your Honor recalls, was the man who owned the Liberty Theatre, which was involved in the supposed acquisition at the time. He testified in that proceeding as a witness called on behalf of the defendants, and the part of his testimony that I wanted to bring to his Honor's attention which I think is also judicially noticeable by your Honor by virtue of its having been given in a proceeding in this suit, is as follows——

Mr. McClennen: Before you read it, I submit this should [fol. 3898] not be read to the Court, that is not admissible.

The Court: What do you claim for it?

Mr. Wright: Briefly the testimony that I am referring to is that which refers to events prior to the entry of the order. Testimony that was developed on cross-examination.

The Court: Transactions by Burke with Schine or his representative?

Mr. Wright: With Schine and with Warner. There was testimony on cross-examination with reference to a so-called sellaway of the better Warner pictures during 1941, and also of conversations between Burke and Mr. May with reference to acquisition of the Liberty in the same year. The admissibility here, or the consideration of the testimony here, I think, depends entirely on whether your Honor views the record there made as a part of this suit. If your Honor takes the position that this testimony was not given in this proceeding, then I think it is true that we would have to call Mr. Burke as a witness in order to make proof. However, I believe that it clearly appears that the proceeding in which [fol. 3899] the testimony was given was a proceeding in the course of this suit.

The Court: I think it is going too far, because that testimony was not given in the light of any—pendency of any action in this court. It is a separate action, than the testimony of Mr. May. This is a statement of a third party.

Mr. Wright: That is right.

The Court: Well, I don't think it can be received. Anything further?

Mr. Wright: I think that is all, subject to a check of the marking of documents. There have been a number of documents that we have not had actually marked.

The Court: Do you want to go on next week Monday?

Mr. McClennen: Yes, your Honor.

The Court: I think we will have to put it on at 2 o'clock. I have a long argument in the morning. It would be safer to put it down at 2 o'clock.

Mr. McClennen: As I understand it, Mr. Wright, the evidence is now closed subject to a checking of papers——

Mr. Wright: Subject to a ruling——

[fols. 3900-3905] Mr. McClennen: I was about to say that, of course, your Honor has not yet ruled on that long list of exhibits and, of course, that is still open, but barring those two things, the checking of the exhibits, and with that the plaintiff's case is ended.

The Court: All right. We will adjourn until 2 o'clock Monday.

(Whereupon a recess was taken until Monday, October 30th, 1944, at 2 o'clock P. M.)

[fol. 3906] UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF NEW YORK

Civil 223

UNITED STATES OF AMERICA

vs.

SCHINE CHAIN THEATRES, INC., et al., Defendants.

Continuation of trial October 30th, 1944, at 10:30 o'clock.

APPEARANCES:

Robert L. Wright, Esq., John F. Clagett, Esq., Harold L. Schilz, Esq., Philip Marcus, Esq., Special Assistants to the Attorney General, and Milton Kallis, Esq., Special Attorney, in behalf of the United States.

Edward F. McClennen, Esq., Willard S. McKay, Esq., Saul E. Rogers, Esq., Arthur E. Whittemore, Esq., Arthur J. Homans, Esq., and Edward M. Antevil, Esq., appearing for the Defendants.

[fol. 3907] PROCEEDINGS

In the absence of the Judge, and by agreement of Counsel, there are marked for identification papers as follows:

Those so marked are for identification only.

Those marked without objection are introduced in evidence.

Mr. McClennen: I hand you herewith, Mr. Wright, as requested, lease of June 15, 1933, Lawrence M. Wooley, Executor under the Will of Norman L. Bates, to G. C. Theatre Corp., of property known as Richardson Theatre, corner of East First and Oneida Streets, Oswego.

May 1, 1935, letter exercising option for three years from July 31, 1935;

July 5, 1938, lease of same to same of same property.

June 17, 1940, extension, same to same, of same property, for one year, ending July 31, 1941.

June 30, 1941, notice of extension for one year from July 31, 1941.

Mr. Wright: We will ask to have the lease dated June 19, [fol. 3908] 1933, and the attached exercise of option, dated May 1, 1935, marked as Plaintiff's Exhibit 982.

Mr. McClennen: Note the usual objection, local transaction exclusively.

(Thereupon the lease dated June 19, 1933, referred to was received in evidence and marked as Plaintiff's Exhibit 982.)

Mr. Wright: We will ask to have the lease dated July 5, 1938, marked in evidence as Exhibit 983.

(Thereupon the lease dated July 5, 1938, referred to was received in evidence and marked as Plaintiff's Exhibit 983.)

Mr. Wright: The agreement dated June 17, 1940, as Plaintiff's Exhibit 984 and the letter dated June 30, 1941, as Exhibit 985.

(Thereupon the agreement, dated June 17, 1940, referred to was received in evidence and marked as Plaintiff's Exhibit 984.)

(Thereupon the letter, dated June 30, 1941, referred to was received in evidence and marked as Plaintiff's Exhibit 985.)

Mr. Wright: We will ask to have the Columbia release schedules for the seasons 1938-1939 through 1941-1942, in- [fol. 3909] clusive, previously identified as Exhibit No. 682 marked in evidence under the same number.

(Thereupon the Columbia release schedules previously marked as Plaintiff's Exhibit 682 for identification were received in evidence.)

Mr. Wright: Mark this stipulation, dated October 17, 1944, with respect to film rentals paid by the exhibition of Paramount features at Auburn, N. Y., during the 1932-33, 1933-34, and 1934-35 motion picture seasons, as the next exhibit.

(Thereupon the stipulation, dated October 17, 1944, re Paramount features at Auburn, N. Y., was received in evidence and marked Plaintiff's Exhibit 986.)

Mr. Wright: Mark the stipulation regarding total film rentals paid by the Schine Circuit to Fox for the seasons 1935-36 through 1939-40, respectively, as Plaintiff's Exhibit 987.

(Thereupon the stipulation re rentals, Schine Circuit to Fox, referred to was received in evidence and marked Plaintiff's Exhibit 987.)

Mr. Wright: And the stipulation relating to the total feature film rentals paid by the Schine Circuit to Loew for the [fol. 3910] seasons 1935-36 through the seasons 1939-40, respectively, as Plaintiff's Exhibit 988.

(Thereupon the stipulation re rentals Schine Circuit to Loew referred to was received in evidence and marked as Plaintiff's Exhibit 988.)

Mr. Wright: And the stipulation relating to feature film rentals received by Paramount from the Schine Circuit for the seasons 1934-35 through 1939-40, respectively, is marked as Plaintiff's Exhibit 989.

(Thereupon the stipulation re rentals Schine Circuit to Paramount referred to was received in evidence and marked as Plaintiff's Exhibit 989.)

Mr. Wright: The stipulation as to total film rentals received from the Schine Circuit by RKO for the seasons 1935-36 through 1939-40 will be Exhibit 990.

(Thereupon the stipulation re rentals Schine Circuit to RKO referred to was received in evidence and marked as Plaintiff's Exhibit 990.)

Mr. Wright: The stipulation relating to the feature film rentals received from Vitagraph, Inc., for the seasons 1934-35 through 1939-40, respectively, will be Plaintiff's Exhibit No. 991.

[fol. 3911] (Thereupon the stipulation re rentals Vitagraph, Inc., referred to was received in evidence and marked Plaintiff's Exhibit 991.)

Mr. Wright: I will offer in evidence the stipulation concerning the directorship in the Universal Pictures Company, Inc., held by J. Myer Schine during the period April 19, 1934, to March 3, 1938, and the connection of Willard S. McKay with that Company during the period 1931 through 1940.

(Thereupon the stipulation re directorship referred to was received in evidence and marked Plaintiff's Exhibit 992.)

Mr. Wright: I will offer in evidence this stipulation of September 28, 1944, as to service of prints by Columbia, United Artists, Universal, Fox, Loew, Paramount, RKO and Warners to defendant's theatres in Virginia, Delaware, Maryland and Kentucky, from exchanges in Washington, D. C., Philadelphia, Pa., and Cincinnati, Ohio.

(Thereupon the stipulation, dated September 28, 1944, referred to was received in evidence and marked as Plaintiff's Exhibit 993.)

Mr. Wright: We are offering in evidence as Plaintiff's [fol. 3912] Exhibit 994 the stipulation offered by Counsel for defendants with respect to the theatres operated by the various operating corporations listed in the answer to interrogatory No. 15.

(Thereupon the stipulation re theatres operated by various operationg corporations referred to was received in evidence and marked as Plaintiff's Exhibit 994.)

Mr. Wright: Will you mark the request for admission of facts served on the defendants by the plaintiff with the next number? This request is dated June 6, 1944.

(Thereupon the request for admission of facts, dated June 6, 1944, referred to was marked as Plaintiff's Exhibit 995 for identification.)

Mr. Wright: And defendants' first answer to said request marked for identification as Exhibit 995 will be Exhibit 996, and which was filed some time in August, 1944.

(Thereupon defendants' first answer to request for admission of facts referred to was marked as Plaintiff's Exhibit 996 for identification.)

Mr. Wright: We will also have the supplemental answer to request for admission of facts filed by defendants and [fol. 3913] dated September 25, 1944, and served September 24, 1944, marked with the next exhibit number for identification.

(Thereupon the supplemental answer to request for admission of facts, dated September 25, 1944, referred to was marked Plaintiff's Exhibit No. 997 for identification.)

Mr. Wright: We will offer in evidence paragraph 19 of Plaintiff's Exhibit 995 for identification and paragraph 19 of Exhibit 997 for identification.

(Paragraph 19 of Plaintiff's Exhibit 995 for identification reads as follows:

"19. On November 10, 1941 there were no theatres in the following towns other than those operated by the defendant exhibitors or in which the defendant exhibitors owned a financial interest.

New York
Amsterdam
Bath
Ballston Spa
Canandaigua
Carthage
Cortland
E. Rochester
Fairport
Gloversville
Hamilton
Herkimer
[fol. 3914] Hudson Falls
Ilion
Little Falls
Newark
Lockport
Malone
Ogdensburg
Oneonta
Oswego
Penn Yan
Perry
Salamanca
Saranac Lake
Seneca Falls
Whitehall
Mechanicville
Clifton Springs

Kentucky
Maysville
Paris
Richmond
Middlesboro
Corbin
Lexington

Delaware
Laurel
Milford

Virginia
Appalachia

Ohio
Ashland
Athens
Bellefontaine
Bucyrus
Delaware
Fostoria
Kent
Mount Vernon
Medina
Norwalk
Piqua
Ravenna
Tiffin
Wooster
Bowling Green

Maryland
Cambridge
Easton
Federalsburg
Hurlock
St. Michaels.")

(Paragraph 19 of Exhibit 997 for identification reads as follows:

"19. Admitted, reserving the right to show the facts to be otherwise if investigation so discloses and becomes material.")

Mr. Wright: And we are offering paragraph 20 of Ex- [fol. 3915] hibit 995 for identification and paragraph 20 of Exhibit 997 for identification.

(Paragraph 20 of Plaintiff's Exhibit 995 for identification reads as follows:

"20. The following are towns in which no theatres other than those in which the defendant exhibitors have owned a financial interest have been operated at any time since August 7, 1931, or since the defendant exhibitors acquired a financial interest in a theatre or theatres in said towns, if such acquisition occurred after August 7, 1931:

New York

Bath
Ballston Spa
Mechanicville
Whitehall
Granville
Oneonta
E. Rochester
Fairport
Gloversville
Perry
Canandaigua
Newark
Hudson Falls
Hamilton
Ilion
Ogdensburg
Saranac Lake
Herkimer
Salamanca
Penn Yan

Maryland

Cambridge
Easton
Federalsburg
Hurlock
St. Michaels

Delaware

Milford
Laurel

Ohio

Ravenna
Bowling Green
Piqua

Kentucky

Paris
Richmond
Middlesboro")

[fol. 3916] (Paragraph 20 of Plaintiff's Exhibit 997 for identification reads as follows:

"20. Admitted, reserving the right to show the facts to be otherwise if investigation so discloses and becomes material")

Mr. Wright: We are also offering paragraph 10 of Exhibit 995 for identification and paragraph 10 of Exhibit 997 for identification.

(Paragraph 10 of Plaintiff's Exhibit 995 for identification reads as follows:

"10. About ninety per cent of the total film rental paid by the exhibitor defendants during the five years preceding the filing of this suit was paid to the eight major distributors.")

(Paragraph 10 of Plaintiff's Exhibit 997 for identification reads as follows:

"10. Denied. It is admitted that the percentage would be well upwards of 75 percent.")

Mr. Wright: We are offering paragraph 98 of Exhibit 995 for identification and paragraph 98 of Exhibit 996 for identification.

[fol. 3917] (Paragraph 98 of Plaintiff's Exhibit No. 995 for identification reads as follows:

"98. That the Answer to Interrogatory No. 16 would be the same now as it was at the time the answer was submitted October 6, 1941.")

(Paragraph 98 of Plaintiff's Exhibit No. 996 for identification reads as follows:

"98. The defendants admit that the answer to Interrogatory No. 16 would be the same now as on October 6, 1941.")

Mr. Wright: And we offer paragraph 99 of Exhibit 995 for identification and paragraph 99 of Exhibit 996 for identification.

(Paragraph 99 of Plaintiff's Exhibit 995 for identification reads as follows:

Town	Population 1930	Population 1940
New York		
Amsterdam	34,817	33,329
Auburn	36,652	35,753
Bath	4,015	4,696
Ballston Spa	4,591	4,443
Buffalo	573,076	575,961
Canandaigua	7,541	8,321
Carthage	4,460	4,207
[fol. 3918]		
Corning	15,777	16,212
Cortland	15,043	15,881
East Rochester	6,627	6,691
Fairport	4,604	4,644
Geneva	16,053	15,555
Glens Falls	18,531	18,836
Gloversville	23,099	23,329
Hamilton	1,700	1,790
Herkimer	10,446	9,617
Hudson Falls	6,449	6,654
Ilion	9,890	8,927
Little Falls	11,105	10,163
Newark	7,649	9,646
Lockport	23,160	24,379
Malone	8,657	8,743
Massena	10,637	11,328
Norwich	8,378	8,694
Ogdensburg	16,915	16,346
Oneonta	12,536	11,731
Oswego	22,652	22,062
Penn Yan	5,329	5,308
Perry	4,231	4,468
Rochester	328,132	324,975
Salamanca	9,577	9,011
Saranac Lake	8,020	7,138
Seneca Falls	6,443	6,452
Syracuse	209,326	205,967
Tupper Lake	5,271	5,451

Town	Population 1930	Population 1940
Watertown	32,205	33,385
Whitehall	5,191	4,851
[fol. 3919]		
Mechanicville	7,924	7,449
Granville	3,483	3,173
Clifton Springs	1,819	1,413
Ohio		
Ashland	11,141	12,453
Athens	7,252	7,696
Bellefontaine	9,543	9,805
Bucyrus	10,027	9,727
Delaware	8,675	8,944
Fostoria	12,790	13,453
Kent	8,375	8,581
Medina	4,071	4,359
Mt. Vernon	9,370	10,122
Norwalk	7,776	8,211
Piqua	16,009	16,049
Ravenna	8,091	8,538
Shelby	6,198	6,643
Tiffin	16,428	16,102
Van Wert	8,472	9,227
Wooster	10,742	11,543
Bowling Green	6,688	7,190
[fol. 3920]		
Kentucky		
Corbin	8,036	7,893
Harlan	4,327	5,122
Lexington	45,736	49,304
Maysville	6[illegible]	6,572
Paris	6,204	6,697
Richmond	6,495	7,335
Pikesville	3,376	4,185
Middlesboro	10,350	11,777
Maryland		
Cambridge	8,544	10,102
Easton	4,092	4,528

Town	Population 1930	Population 1940
Federalsburg	1,369	1,749
Hurlock	765	800
St. Michaels	1,308	1,309
Salisbury	10,997	13,313
Cumberland	37,747	39,483
Delaware		
Laurel	2,542	2,884
Milford	3,719	4,214
Virginia		
Appalachia	3,595	3,010

[fol. 3921] (Paragraph 99 of Plaintiff's Exhibit 996 for identification reads as follows:

"99. Subject to possible corrections on the basis of census figures:

The defendants admit that the populations of the towns listed in this paragraph were as stated.")

Mr. McClennen: Mr. Wright, as requested, I hand you herewith folders marked on the outside in pencil F-2 to F-123. These numbers being the numbering at the deposition taken in Gloversville by the plaintiff in 1942, except those elsewhere, heretofore produced, numbered F-98 and F-101.

Mr. Wright: We are offering in evidence contracts previously marked for identification as F-2 through F-64, inclusive, being contracts between Fox and Schine, being contracts for 1936-37 and subsequent seasons for the following towns and runs:

Exhibit No. in Evidence	Town	Run
F-2	Amsterdam, N. Y.	1st
F-3	"	2nd
F-4	Auburn, N. Y.	1st
[fol. 3922]		
F-5	Bath	First
F-6	Canandaigua	"
F-7	Carthage	"
F-8	Corning	30 days on Plaza
F-9	Corning	2nd

Exhibit No. in Evidence	Town	Run
F-10	Cortland	1st
F-11	Geneva	1st
F-12	Glens Falls	1st
F-13	Glens Falls	2nd
F-14	Gloversville	1st
F-15	Gloversville	2nd
F-16	Hamilton	1st
F-17	Herkimer	1st
F-18	Hudson Falls	1st
F-19	Little Falls	1st
F-20	Lockport	1st
F-21	Lockport	2nd
F-22	Malone	1st
F-23	Massena	1st
F-24	Norwich	1st
F-25	Ogdensburg	1st
F-26	Oneonta	1st
F-27	Oneonta	2nd
[fol. 3923]		
F-28	Perry	As available
F-29	Perry	As available
F-30	Rochester	2nd
F-31	Rochester	14 days over Plaza
F-32	Rochester	As available
F-33	Rochester	As available
F-34	Rochester	14 days on Lyric
F-35	Salamanca	1st
F-36	Saranac Lake	1st.
F-37	Seneca Falls	1st
F-38	Tupper Lake	1st
F-39	Watertown	1st
F-40	Watertown	3rd
F-41	Ashland	1st
F-42	Athens	
F-43	Bellefontaine	30 days over Lakeview
F-44	Bucyrus	1st

Exhibit No. in Evidence	Town	Run
F-45	Delaware, Ohio	1st
F-46	Mt. Vernon, Ohio	1st
F-47	Norwalk, Ohio	1st
F-48	Piqua, Ohio	Open booking with Troy
F-49	Lexington, Ky.	2nd
[fol. 3924]		
F-50	Lexington, Ky.	60 days clearance over sub. runs
F-51	Richmond, Ky.	"
F-52	Ilion, N. Y.	30 days ahead of Frankfort
G-53	Ilion, N. Y.	"
F-54	Kent or Ravenna, Ohio	
F-55	" " " "	
F-56	Tiffin, Ohio	Second
F-57	" "	First
F-58	(Exhibit missing)	
F-59	Oswego, N. Y.	First
F-60	Oswego, N. Y.	Second
F-61	Penn Yan, N. Y.	As available
F-62	" " "	" "
F-63	Van Wert, Ohio	First
F-64	Wooster, Ohio	30 days over Orville

(Thereupon the contracts between Fox and Schine, previously marked as Plaintiff's Exhibits F-2 to F-64, inclusive, were received in evidence.)

[fol. 3925] Mr. Wright: The next we are offering in evidence are deal sheets between Fox and Schine, identified as F-102 to 109, inclusive, under the same numbers.

(Thereupon deal sheets previously marked for identification were received in evidence as follows:

Plaintiff's Exhibit F-102, Hamilton.
Plaintiff's Exhibit F-103, Glens Falls.
Plaintiff's Exhibit F-104, Herkimer.
Plaintiff's Exhibit F-105, Hudson Falls.
Plaintiff's Exhibit F-106, Little Falls.
Plaintiff's Exhibit F-107, Malone.

Plaintiff's Exhibit F-108, Athens, Ohio.

Plaintiff's Exhibit F-109, second-run, Oneonta and Gloversville, New York.)

Mr. Wright: We offer deal sheet dated October 27th, 1937, between Fox and Schine for Fostoria, Ohio, to be marked in evidence as F-110, the number under which it was previously marked.

(Thereupon deal sheet dated October 27th, 1937, between Fox and Schine for Fostoria, Ohio, previously marked for identification was received in evidence as Plaintiff's Exhibit F-110.)

[fol. 3926] Mr. Wright: We offer Exhibit F-111, which is a deal sheet for the Princess Theatre, Medina, Ohio, dated 10-11-39.

(Thereupon deal sheet for Princess Theatre, Medina, Ohio, dated 10-11-39, previously marked for identification was received in evidence as Plaintiff's Exhibit F-111.)

Mr. Wright: Exhibit F-112, is deal sheet dated 10-28-36, Palace Theatre, Watertown.

(Thereupon deal sheet dated 10-28-36, Palace Theatre, Watertown, previously marked for identification was received in evidence as Plaintiff's Exhibit F-112.)

Mr. Wright: Exhibit F-113 is a deal sheet dated August 11, 1937, Perry, New York.

(Thereupon deal sheet dated August 11, 1937, Perry, New York, previously marked for identification was received in evidence as Plaintiff's Exhibit F-113.)

Mr. Wright: Exhibit F-114 is deal sheet dated 8-11-37, Penn Yan, New York.

(Thereupon deal sheet dated 8-11-37, Penn Yan, New York, previously marked for identification was received in evidence as Plaintiff's Exhibit F-114.)

Mr. Wright: Exhibit F-115 is deal sheet dated 4-27-37, [fol. 3927] Ilion, New York.

(Thereupon deal sheet dated 4-27-37, Ilion, New York, previously marked for identification was received in evidence as Plaintiff's Exhibit F-115.)

Mr. Wright: We are offering Exhibit F-117——

Mr. McClennen: No 116 at this time?

Mr. Wright: No.

Exhibit F-117 is contract between Fox and Schine for Pikeville, Kentucky, Group K-6.

(Thereupon contract between Fox and Schine for Pikeville, Kentucky, Group K-6, previously marked for identification, was received in evidence as Plaintiff's Exhibit F-117.)

Mr. Wright: Exhibit F-118, same parties, same group, Paris, Kentucky.

(Thereupon contract between Fox and Schine for Paris, Kentucky, Group K-6, previously marked for identification, was received in evidence as Plaintiff's Exhibit F-118.)

Mr. Wright: F-119, same parties, same group, Middlesboro, Kentucky.

(Thereupon contract between Fox and Schine for Middlesboro, Kentucky, Group K-6, previously marked for identification was received in evidence as Plaintiff's Exhibit F-119.)

[fol. 3928] Mr. Wright: Exhibit F-120, same parties, same group, Granville, New York.

(Thereupon contract between Fox and Schine, for Granville, New York, group K-6, previously marked for identification were received in evidence as Plaintiff's Exhibit F-120.)

Mr. Wright: F-121, same parties, same group, Harlan, Kentucky.

(Thereupon contract between Fox and Schine, for Harlan, Kentucky, group K-6, previously marked for identification were received in evidence as Plaintiff's Exhibit F-121.)

Mr. Wright: Exhibit F-122, the same parties, Lexington, Kentucky, groups K-6, 7, 8 and 9.

(Thereupon contract between Fox and Schine, for Lexington, Kentucky, groups K-6, 7, 8 and 9, previously marked for identification were received in evidence as Plaintiff's Exhibit F-122.)

Mr. McClennen: As requested, I hand you what purports to be a copy of a letter dated January 14th, 1936, from Louis Lazar to the Shelby Globe.

Mr. Wright: I will ask to have that marked with the next plaintiff's exhibit number, and we will offer it.

[fol. 3929] Mr. McClennen: The objection is saved.

(Thereupon copy of letter dated January 14th, 1936, from Louis Lazar to the Shelby Globe, was received in evidence and marked as Plaintiff's Exhibit 998.)

Mr. McClennen: Mr. Wright, you have asked us to produce a letter dated January 23rd, 1936, from H. D. Schreffler, to Louis Lazar, Bellefontaine, Ohio, apparently referring to identification P-74. We find no indication of the receipt of such a letter.

Mr. Wright: I offer Exhibit P-74 in evidence.

Mr. McClennen: Note an objection to the receipt of Exhibit P-74 in evidence.

(Thereupon letter dated January 23, 1936, from H. D. Schreffler to Louis Lazar, Bellefontaine, Ohio, previously marked for identification was received in evidence as Plaintiff's Exhibit P-74.)

Mr. Clagett: We offer Plaintiff's Exhibits P-69 and P-70, which have previously been marked for identification.

Plaintiff's Exhibit P-69 is a contract between the Bucyrus Theatre Company, by Phil Charnas, with Paramount, dated September 11th, 1934, for pictures at the Southern Theatre, [fol. 3930] Bucyrus.

Plaintiff's Exhibit P-70 is a contract between Schine Theatrical Enterprise and Paramount, dated September 17th, 1935, for the exhibition of pictures at the Schine or State Theatres, Bucyrus, Ohio.

(Thereupon contract between the Bucyrus Theatre Company, by Phil Charnas, with Paramount, dated Sept. 11th, 1934, previously marked for identification, was received in evidence as Plaintiff's Exhibit P-69.)

(Thereupon contract between Schine Theatrical Enterprise and Paramount dated September 17th, 1935, previously marked for identification, was received in evidence as Plaintiff's Exhibit P-70.)

Mr. Wright: At page 3851 of the transcript it appears that Exhibits 963 through 978, inclusive, were offered in evidence and have actually been marked in evidence, although their reception in evidence was not recorded in the transcript at the time. These are Fox contracts for Syracuse.

Mr. McClennen: Are these different seasons?

Mr. Wright: No, one group of pictures.

Mr. McKay: Five special pictures, the names appear in [fol. 3931] the transcript at page 3852.

(Thereupon Plaintiff's Exhibits Nos. 963 through 978, inclusive, in evidence, as should have been recorded at page 3851 of the transcript.)

Mr. Wright: That, I think, concludes the offers. There are quite a number of marking errors to be corrected. I suppose that can be done at any time, but we might as well note now the ones we have so far noted.

Mr. McClennen: Is it worth while now? That is purely a mechanical operation.

Mr. Wright: The duplicate exhibit number should be noted now.

Mr. McClennen: Well, all right, put it in the record now.

Mr. Wright: The Warner contract in evidence as Exhibit 642-A should be remarked as Exhibit 635-F.

(Thereupon Warner contract received in evidence as Exhibit 642-A is remarked as Exhibit 635-F in evidence.)

Mr. Wright: The Paramount contracts that were marked 399-A, B, C and D should be remarked as 339-E, F, G and H.

(Thereupon Paramount contracts previously marked as Plaintiff's Exhibits 399-A, B, C and D, should be remarked as Plaintiff's Exhibits 339-E, F, G and H, in evidence.)

[fol. 3932] Mr. Wright: The Warner contracts marked as Exhibits 611-B, C and D, should be remarked as 635-G, H and I.

(Thereupon contracts previously marked as Plaintiff's Exhibits 611-B, C and D, were remarked as Plaintiff's Exhibits — G, H and I in evidence.)

Mr. Wright: The Paramount contracts marked as Exhibits 399-A and B should be remarked 339-I and J.

(Thereupon Paramount contracts previously marked as Exhibits 399-A and B should be marked as Plaintiff's Exhibits 339-I and J in evidence.)

Mr. Wright: The Metro contract marked as 606-A should be remarked as Exhibit 604-J.

(Thereupon Metro contract previously marked as Plaintiff's Exhibit 606-A should be remarked as Plaintiff's Exhibit 604-J in evidence.)

Mr. Wright: The Warner contracts marked as 635-A and B should be remarked as —J and K.

(Thereupon Warner contracts previously marked as Plaintiff's Exhibits 635-A and B should be remarked as Plaintiff's Exhibits 635-J and K in evidence.)

Mr. Wright: The Norwalk Warner contracts marked as 635-A through D should be remarked as 635-L, M, N [fol. 3933] and O.

(Thereupon Norwalk Warner contracts previously marked as Plaintiff's Exhibits Nos. 635-A through D, should be remarked as Plaintiff's Exhibits Nos. 635-L, M, N and O in evidence.)

Mr. Wright: 635-C-1 and 2, for Warner and Fostoria contracts that are marked as 635-A and B should be stricken out as duplications of contracts offered under other numbers.

That is all the corrections we have now, but I am sure that a further check is going to reveal further discrepancies of that kind. The only thing I can see to do is to take them up with the reporter and you people as they occur.

Mr. McClennen: Now, that closes your evidence, except for something like 100 identified exhibits which the Judge has under consideration to see whether he will let them in or not?

Mr. Wright: That is it. Conceivedly his ruling on those might cause us to offer something further.

(Whereupon a recess was taken until 2 o'clock P.M.)

[fol. 3934] After Recess, 2 o'clock P.M.

Honorable John Knight presiding.

Appearances: As before noted.

The Court: I am sorry I was detained. I had some other business to attend to.

Mr. McClennen: If your Honor please, we were very glad of the extra time. We put in a day's work this morning already in your absence.

There have been put in with the stenographer a lot of exhibits that carry the plaintiff's regular exhibit number through exhibit 998.

The Court: Those were exhibits marked for identification.

Mr. McClennen: Marked as in evidence, to save going over it again.

The Court: Are they new exhibits?

Mr. McClennen: Those that have these new numbers are new exhibits.

The Court: Plaintiff's Exhibits?

Mr. McClennen: Plaintiff's Exhibits.

The Court: These exhibits do not include any submitted to the Court in this folder?

[fol. 3935] Mr. Wright: No, they do not, your Honor.

The Court: They run through 998?

Mr. McClennen: Yes. This completed his case, except the matter of something like one hundred and some identified exhibits that your Honor has under consideration and if your ruling on those exhibits was such that he had to put in more evidence that would still be open, otherwise, the plaintiff's case is at a close, depending upon your ruling on those.

The Court: I want to give them some attention, but before we come to that, I don't know just what the record discloses about the decisions of the arbitrators in these cases before the Arbitrator. What does the record show? I received that some day in some way.

Mr. Wright: The decisions that were handed to your Honor were, I believe, all decisions that the Appeal Board—I don't recall if there were any arbitrators' awards.

The Court: What was it you submitted?

Mr. Wright: What we submitted were decisions of the Appeal Board reviewing decisions of the arbitrators.

[fol. 3936] The Court: The point I am going to make on the rest of those is that they are not a part, that the decisions are of no binding force upon this Court.

Mr. Wright: Yes.

The Court: Submitted as part of the brief is one thing, but what somebody else said, I don't think the Court should recognize that as an adjudication.

Mr. Wright: I think the record is clear in that respect.

The Court: Do you understand that?

Mr. McClennen: I think the record made clear that they were not in evidence. We urged that your Honor should not read them even, because they are decisions on factual matters. They are not decisions on any propositions of law. In that connection I would say that if your Honor is going to read those decisions then in like manner we would like to call to your attention the decision in No. 61.

[fol. 3937] The Court: I will stop you right there. I am not going to consider the decisions except as part of the brief, that is all. If it is submitted as part of the Government's brief, then, of course, you will have an opportunity to answer it. I am not going to examine it now.

Mr. McClennen: A cognate case is No. 61, in No. 61, the Appeal Board decision of March 25th, 1943, in the matter of the arbitration between the Sidney Theatre Corporation and the distributors therein named.

Now, I mention this only because if that territory is to be surveyed, even if in connection with a brief by your Honor at a later date, then this one should be considered also, but we do not offer it or urge it.

The Court: What I said is that you will have an opportunity to reply, if it is submitted. I don't think it should be considered by this Court in any way at this time.

About these exhibits, I have examined a considerable number of these which I think should be received. The main point of my reception of those is they are largely [fol. 3938] communications from Schine or Schine's representatives with the companies, these here, I will give you those. (Referring to group of exhibits.)

By way of illustration, in Exhibit 539, a letter from Mr. Kramer to Mr. Smith, of Warner Brothers, "I have just received the following wire from Mr. Lynch of Schine Enterprises," and he quotes the telegram. Is the telegram in evidence?

Mr. Wright: May I see the exhibit?

The Court: Yes.

(Document handed to and inspected by Mr. Wright.)

Mr. Wright: No, I do not believe it is. I don't know that there is a copy of such a telegram available. As far as I know it was never produced.

The Court: What?

Mr. Wright: As far as I know no such telegram was produced.

The Court: This relates to the Bellefontaine situation.

Mr. Wright: Yes.

The Court: What do you claim for that exhibit?

Mr. Wright: Well, this communication shows that on or [fol. 3939] about this date, September, 1932, Mr. Kramer, the Branch Manager of Warner, at Cleveland, advised the General Sales Manager, Mr. Smith, that he had received this request for product from the Schine Enterprises, Inc.

The Court: What does that prove?

Mr. Wright: Well, in this particular connection, I suppose that simply shows the course of business between Schine and Warner, that they advised the information came into the branch that Schine wanted to acquire that product at that time, and that was passed along to the home office. In order to fit the thing into the entire picture, for that situation, I would have to refer back to the Bellefontaine exhibits.

The Court: Standing alone that would not——

Mr. Wright: Standing alone it does not prove anything more than what I have just said.

The Court: It is difficult to connect these up.

Mr. Wright: It is difficult to handle them in this way.

The Court: Unless we receive them all,—there are a great many here.

Mr. Wright: They all have to be considered in connection [fol. 3940] with all the other evidence in connection with the situation.

The Court: On the other hand, you cannot just throw in all the records of the companies here.

Mr. Wright: I was perfectly willing to offer those and have them discussed, each one individually. It was, I think, at your Honor's suggestion that we filed them all at once.

The Court: I do not know about that. I do not think there is any question about the rule that inter-company communications are properly received in this case, but, at the same time, I think the communications must be connected, or they must be some evidence in and of themselves, or connected with some other part of the testimony, because in this case there is charged a conspiracy with these distributors. I think the authorities hold that particular inter-company communications are receivable under circumstances corresponding to those here.

The rule in the Minneapolis case was one where the Court ruled to the same effect, that the question of conspiracy makes these communications competent.

[fol. 3941] Mr. McClennen: This particular exhibit, Exhibit No. 539, furnishes an illustration of the particular thing that we urge.

We first urge that such an inter-company communication as Exhibit 539 for identification should not be received at all for the reasons extensively set out at pages 3285 to 3288 of the record.

The Court: That is in the memorandum filed with the Court, you mean?

Mr. McClennen: Yes, your Honor, and in the discussion in the record at page 3424 to 3458. If we do not prevail in persuading your Honor that the communications should be excluded altogether, then we urge for the reasons set out in the record at pages 3589 to 3610, that it should not be received as any evidence of the facts stated in it. The fact in this particular case in the statement—or the statement in this particular case is the statement that Mr. Kramer, the Branch Manager, has received a telegram from Mr. Lynch.

Now, we urge that this exhibit, if received, should not be received as any evidence that Mr. Lynch had sent such [fol. 3942] a telegram. This is a specific illustration of what occurs in others of the inter-company, inter-office of the distributor company communications. The objections to the introduction of each of the something like 100 communications now under consideration, we urge that each separately should not be received and each separately that if it is received, the statement be not evidence of what it purports to say.

This happens to be an inter-office communication of one of the companies. The objection would apply to all of them. The request for limitation would apply to all of them. The same objection and the same request for limitation would also apply to each communication between an employee of a distributor and an outsider, whether it be an oral communication or a written communication.

[fol. 3943] The Court: Well, I don't agree with that view. As I expressed myself before, inter-company communications are tied in with, you might say, other testimony in the case. Then I think they are receivable. Of course there are some instances here in which they perhaps are not so, but, as I said at the outset, quite a number of these exhibits examined showed direct contact with the defendant.

Here is a telegram, for instance, Exhibit 243, concerning 1931-32 and 1932-33 product, Schine Enterprises.

Here is another one here, Schine Enterprises, which includes communication from the Schine representative, as I recall it. There are a lot of exhibits here that seem to be—here is a letter, Exhibit 171 for identification, signed by Mr. Lynch to the Fox Film Corporation, New York. A good many of these exhibits include correspondence directly from Schine companies to one of the major companies. Of course, a different rule, I assume, would be applicable to those exhibits, rather, other rules [fol. 3944] apply to others and would not apply to that. There is another exhibit, No. 338, from Mr. Lynch.

Here is a letter to Mr. Schine of this group. I think you will find some more that do not come within the rule which you seek to sustain or claim.

Mr. McClennen: I had understood that your Honor had ruled against our objection and our motion already and I merely, that is, in the earlier time, but I merely referred to it again because your Honor had singled out a particular paper that it seemed to me was a concrete example of what we were talking about. That is, about communications, inter-office communications, of a distributor and communications between a distributor and outsider, whether oral or written.

Now, my remarks were directed, particularly, to Exhibit 539 for identification as a specimen case and I did not mean to over-argue in any way but merely to make clear to your Honor what our objection is.

[fol. 3945] The Court: The branch manager is the third party. I think they are competent if connected up with other proof in the case. There may be some of these—quite a number of them—that I am doubtful about any connection, but, an exhibit like this, I doubt whether it should be received, the one from Mr. Grady, the branch manager.

Mr. McClennen: You say it should be received?

The Court: I doubt, I say. It is to the Kentucky Theatre, Mr. Merrenbloom, and it says, among other things: "The surest way to keep opposition out of your town, Louis, is to have some long-time franchises tucked away in your safe and even though you would probably pay us a little more money under a franchise than you would if you bought from year-to-year, the franchise is still great insurance."

I think a declaration coming from the branch manager is hearsay unless there was something here to show—was it Mr. Lynch?

Mr. McClennen: Would your Honor indicate the number you just mentioned?

[fol. 3946] The Court: Exhibit No. 190.

Mr. McClennen: I should urge that a declaration of that kind in Exhibit No. 190 was of the same character as that in Exhibit 539.

Here is a declaration in Exhibit 539: "It is very evident that some one is taking over the Opera House in competition to the Schine Enterprises." Now, that is a declaration and opinion and in that sense of an extraneous fact and is in the same category in that respect as the declaration in Exhibit 190 to which your Honor has just referred. They both contain statements ostensibly of facts outside, and it is that that we subject that they should not be received as evidence of.

Mr. Wright: If the Court please, I think what the question comes down to here is purely a matter of weight. Now, your Honor may not attach the significance to any of these things that are referred to that we attach to it, or you may not be persuaded that they prove the things we say they prove, but I take it that is a question different from their [fol. 3947] being admissible, in the first instance. They are admissible if they are evidence of the facts which we say we want to draw to your attention. This letter of Grady to Merrenbloom, which your Honor just mentioned, is a record kept between Fox Film Company of a view that their branch manager expressed with reference to the question of franchises at that time. We think that that fact that that had happened is significant in connection with the interpretation that is ultimately to be placed by your Honor on the purpose and effect on the numerous franchises that have been introduced in evidence, many of them outside the presence of the Court, and this to the extent that that issue is a material one this document is clearly evidence which may be considered in connection with the determination of the issue.

The Court: Well, I think it makes a difference where it comes from. If that statement were made by one who had authority to make it, one of the policy-making members [fol. 3948] of the corporation, or something of that kind, it would be of different weight. But supposing a branch manager or salesman or somebody else writes and says, "Here you have to take a franchise", does that show any authority?

Mr. Wright: Again I say that only goes to the weight. There isn't any question Grady had the right to write Merrenbloom.

The Court: He had the right to sell pictures and that, yes.

Mr. Wright: This is a letter he wrote in the course of performing his duties and it was kept as part of the Fox Company records. Your Honor may properly say this has considerably less weight than a similar letter written by, say, Mr. Sussman or Mr. Kent, the President, but it still is something which your Honor is entitled to consider. It has attached to it what consideration it should be given. It is expressing his view what a franchise would and would not do, and I submit it is clearly admissible for that purpose, even though your Honor may disagree with us as to the [fol. 3949] amount of weight to be ultimately attached to it.

The Court: It does not seem to me—I don't think you can assume the authority of a branch manager to make a statement of that kind. Unless that is connected up.

Mr. Wright: He clearly has authority to solicit independent exhibitors. He writes this letter in the course of soliciting one and this is what he says. Certainly no further proof of authority than that is necessary to make it admissible as far as the weight to be given to it is concerned. Of course, it has less weight than if the same statement had been made by some one who had a greater measure of responsibility in determining the policies of the Fox Company, but this is still a fact to be considered with numerous other facts as to what the Fox Company did, in determining what its purposes were.

Mr. McClennen: The Exhibit 190 is evidently an urging by the branch manager upon an outside exhibitor, not of the Schine group, that he should take a franchise, and [fol. 3950] offering him that franchise. That fact is wholly apart from the expression of opinion which he makes as to the effect of that. The matter that I am particularly urging is not only that the letter should be excluded but if it is received that it should not be received as evidence of the things stated in it, but only as a communication from the branch manager to what is described as the independent exhibitor, urging a franchise upon him.

The Court: If it is to the effect of a franchise being urged upon him, that is all I think the plaintiff is asking for.

Mr. Wright: No, if the Court please, we offer it as evidence of the fact that it was urged upon him for the reason set forth in the letter. It is evidence of the fact that Grady did express the views that are stated here with respect to the purpose and effect of the franchise on this occasion. Now, that is only one fact which, taken alone, might not be regarded as having any significance at all by your Honor, [fol. 3951] but it is a fact which we are entitled to prove as part of the multitude of facts which we rely on to make our case.

[fol. 3952] The Court: Well, here is another thing here, let us take up some of these that I called attention to. This is the one on the Corbin situation. It sets out the sales of pictures and at the bottom it says——

Mr. McClennen: The number of that, if your Honor please?

The Court: Yes, 393. It says:

"This deal was intended for a new theatre to be built in Corbin by Mr. Scott. In the meantime, the Schine Circuit have acquired the Hipp and Kentucky theatres and have made a deal with Mr. Scott whereby the new theatre will not be built. Mr. Miller negotiated a new contract with Schines, making it necessary to cancel this contract with Mr. Scott, please approve."

What bearing has that?

Mr. Wright: This. I happen to recall the circumstances. Mr. Scott, you will remember, started to build a theatre in

Corbin, and he signed an application for a contract with Universal. The application was taken. He never got an approved contract back. This shows what happened to that contract that he sent to Universal. That contract was [fol. 3953] apparently approved and never sent to him and cancelled, instead, when Schine made the deal with Mr. Scott to stop constructing his theatre. This completes the picture as to what happened to Scott's application.

The Court: My point was this, I did not think there was any disagreement about the facts. It states the cancellation of these contracts after the sale by Scott, which is not disputed.

Mr. Wright: We attach some significance to the fact it does show Universal had approved his contract, although they had not delivered the approved contract to him.

The Court: In the meantime Scott had sold out.

Mr. Wright: What Schine was negotiating for and made the deal, of course, apparently while his, Scott's contract was being held up by Universal, and we attach significance to the fact that it was held up.

The Court: You mean as a reason why he sold, because he could not get Universal?

Mr. Wright: Yes, in part.

Mr. McClennen: It would be, of course, impossible to go [fol. 3954] into a discussion of the facts surrounding this matter. This shows that after Mr. Scott had withdrawn from his plan, if his investigations be called a plan, that there was, of course, no occasion for a contract with him for a theatre which he had not and might never have had, so that there was, of course, no reason for sending him a contract which he could not use in any way. The principle doesn't change in any way from what appears in the case of other exhibits that we urge should not be taken as any evidence of the truth of the statements contained in them.

The Court: Well, there is another one that is about Jones and the Lockport matter.

I am going to receive these exhibits. I think there is a doubt about some of these, but I think the Court can take care of those in the consideration of the case. There are so many of them that are not of any special significance that they are material, I will receive them.

Mr. McClennen: That applies to the whole 100?

The Court: Yes.

[fol. 3955] Mr. McClennen: Then without going into them, may we hand them to the stenographer and let him make a record by number, showing the date, from whom to whom?

The Court: I am receiving these on the assumption they are connected up in other parts of the testimony. That is the point. If they are not, I will deal with them later.

(Thereupon certain exhibits previously marked for identification were received in evidence. See page 3983 for detail.)

Mr. McClennen: Then, not seeming to be repeating too much, I now move that these exhibits, and I move it with respect to each one of them, be received only as a communication and not as any evidence of the truth of the statement contained in the communication.

The Court: What does that mean, as evidence of a communication?

Mr. McClennen: Well, I go back to Exhibit 539 as illustrative. We ask that the statement in Exhibit 539, now in evidence, that Lynch had sent a telegram to Kramer be no evidence that Lynch had in fact sent a telegram to [fol. 3956] Kramer.

The Court: All right. How about the balance of the material in the exhibit?

Mr. McClennen: I spoke of that as illustrative of exactly what I am speaking of, that either this is going to be received as evidence that Lynch had sent a telegram or is not to be received as evidence that Lynch had sent a telegram, and I am urging that it be received as no evidence that Lynch had sent a telegram.

The Court: Well, what do you say? What I am trying to get at, that statement is clear; this letter contains a statement that "It is very evident that some one is taking over the Opera House in competition to the Schine Enterprises, and I am passing this information along to you for the reason that if you have made your first-run deal with them, you also can handle the second-run deal as well for the 1931-32, 1932-33 product."

That later statement may have some relevancy, and your application is to strike out everything except that there [fol. 3957] was a communication with somebody. You pick out a statement that there was a telegram sent, and that telegram should not be accepted.

Mr. McClennen: What I intended to say was, first, that the letter should not go in at all, and you have ruled against us on that. Next, that if it goes in, it goes in only as Kramer's communication to the home office that Lynch had sent a telegram, but not as any evidence of the fact that Lynch had sent a telegram, so that dealing with this alone, the case closes barren of any evidence that Lynch had in fact sent any such telegram as is there stated.

The Court: That is very clear; that is the statement. As to whether the Court should consider other statements in the letter, other than referring to the reception of the telegram,—the other one to which attention was called, I think is a similar instance. For instance, this one here to Merrenbloom has two statements. The first might not be objectionable and the last be objectionable, or they both [fol. 3958] might be objectionable from the standpoint of the case.

Mr. McClennen: I had understood that your Honor was not going to allow our motion, but I stated it because this presented a very good opportunity for an illustration and coming, as it does, at the close of the plaintiff's case, and when we are about to go forward with the defendants' case; now, assuming that there is no evidence anywhere else in the case as to whether Lynch had sent a telegram or not, it seemed that we ought to be apprised of the fact whether we are meeting a case in which, by virtue of this letter, there is evidence that Lynch sent that telegram or whether we are meeting a case where, although there is this communication, there is no evidence that Lynch sent such a telegram, so that at the proper time we may argue before you that there is no evidence that Lynch had sent such a telegram. Now, I know of no way of making our position clearer on this than this particular concrete illustration and we are anxious to know whether there is, by virtue of the [fol. 3959] receipt of this letter, evidence in the case that Lynch did send that telegram or no evidence that Lynch did send that telegram.

The Court: Well, I am going to receive it, because I want to know about it. You may be correct in your viewpoint in that respect, but it might not be well taken if there is some evidence in other parts of the proof in the case, I mean, with reference—to illustrate here—there is the question of whether Schine did buy the product for these years for second-run. It appears in the evidence, I mean now, the fact he sent the telegram, and the fact he got the contract. The telegram would mean a little bit more——

Mr. McClennen: I should submit that the fact that Schine did buy the product or did not buy the product for those years was no evidence that Lynch had sent the telegram as stated in the letter. Now, I understand that your Honor is receiving that letter as evidence that he did send the telegram, and I am now saving my objection to that ruling.

[fol. 3960] The Court: Well, you mark these exhibits. Is that all you have?

Mr. Wright: That is all we have, your Honor.

The Court: The plaintiff rests. I had a number of exhibits here.

Mr. McClennen: Well, I take it that the stenographer will mark these all in evidence by the same number as the identification number and in the sequential order of the numbers.

If your Honor please, the evidence for the plaintiff now being closed, I move to strike from the evidence separately the many letters that have been received in evidence over our objection, the many communications so received, both in writing and orally, on the ground that the evidence has not connected the particular communication, whether it be an oral one or a written one, a communication between different employees of a given distributor, one with another, or a communication between an employee of a distributor and an outsider.

I recognize that I am dealing with exactly the same sub-[fol. 3961] ject matter with which your Honor has just been dealing, but for the perfection of our rights we move so to strike separately each one of the communications for the reasons that have been extensively discussed this afternoon before your Honor, and which were stated at pages 3285 to 3288, and pages 3424 to 3458, and pages 3589 to 3610.

The Court: Let me go back to just one question. The first objection you made here was they were not from the defendants' files. I understand you do not raise that question.

Mr. McClennen: If the Court please, these did not come from the defendants' files.

Mr. Wright: There is no question of this particular group coming from the defendants' files.

Mr. McClennen: There is no question that they did not come from the defendants' files.

The Court: They came from the distributors' files.

Mr. Wright: From the distributors' files, I should have said.

Mr. McClennen: Precisely.

The Court: When I looked at it at first I thought you were raising the question there wasn't sufficient proof of [fol. 3962] them coming from the source from which they came.

Mr. McClennen: My motion to strike is brought concretely to attention with these something like one hundred exhibits that have just been received in evidence, but, of course, it applies to exhibits all the way back from the beginning of the trial.

The Court: You do not raise any question about them having come from the distributors' files?

Mr. McClennen: Those that are shown to have come from the distributors' files, we raise no question about their having come from the distributors' files.

The Court: Is it not the contention of the Government that they all came from the distributors' files?

Mr. Wright: As to these your Honor has been ruling on, it is our understanding, and I believe they were so identified at the time the distributors' representatives were on the stand. I don't understand there is any dispute about that testimony.

Mr. McClennen: Now, I await your Honor's action on the motion.

The Court: Well, I understand that. If these come [fol. 3963] from some agent's files or somewhere else, it creates an entirely different situation. I assumed all the while there was no question raised that these last referred to exhibits came from the distributors' files.

Mr. McClennen: If your Honor please, many of these papers and communications that are the subject matter of this motion were not those that came from the distributors' files; they came from other sources. Those that are shown to have come from the distributors' files are clearly shown. I don't recall it, but I think this last one hundred all came from the distributors' files.

The Court: That is what I am talking about.

Mr. McClennen: I am moving for the exclusion of similar things from the beginning of the trial, so there will be no question about it.

The Court: In my last remark I had in mind only this one hundred, because when I first referred to your memorandum of objections I thought you possibly were objecting to the source of these documents. Now, we understand each other.

[fol. 3964] All right, the motion is denied, in all respects denied.

Mr. McClennen: If your Honor please, before going to the opening, I speak of one matter. The witness Mooney testified to prices of admission at his theatre in Bellefontaine, and that the defendants' theatre in Bellefontaine, and in cross-examination practically adopted the newspaper of Bellefontaine's statement of the admission prices that were presented; subsequently, by agreement, out of your Honor's presence, the newspapers were put into the record, or what either side chose to read from them. That is at page 2290 to 2299. I think it was the next day I called your Honor's attention to what had been done, and stated that that must be read to your Honor. We claimed that that should be read as a part of the cross-examination of Mooney, and your Honor stated at page 2327 that I might read them to you at any time. Strictly I think that I should offer them now to your Honor, but it obviously would be much more in-[fol. 3965] telligible for your Honor to deal with them when we come to evidence concerning Bellefontaine, than to put it in at this particular moment.

The Court: You mean it contradicts his testimony, as I recall it?

Mr. McClennen: Yes, and I just present the offer now, and shall welcome your Honor's permission——

The Court: You are speaking about the newspaper now?

Mr. McClennen: Speaking about the newspaper.

The Court: I think you should offer it as part of your cross-examination, or part of your case.

Mr. McClennen: I deem that properly I should offer it now as part of that cross-examination, but I suggest to your Honor it would be more intelligible to your Honor if the actual reading took place when we got into our case in connection with Bellefontaine, if that is agreeable to your Honor.

Mr. Wright: We would object at this time to it being offered as part of the cross-examination, because the newspaper wasn't produced until after Mr. Mooney left the stand. Some of the data in the newspaper are not self-[fol. 3966] explanatory. There are gaps in the papers in which no admission prices appear. Even to get a proper grasp of the situation even as to admission prices, it should have been asked while Mr. Mooney was here.

The Court: You do not deny the prices stated in the paper?

Mr. Wright: No, as to what the paper shows, there isn't any question about that, we have read that into the record, and it is in the record. The only objection I have is as to its being offered as part of the cross-examination. The only thing is I think it *it* should be offer- as part of the defendants' case, because Mr. Mooney was not available when it was considered.

The Court: It is only one item of evidence. I do not think it makes much difference.

Mr. McClennen: Then I offer it now and ask to defer the actual reading of it to your Honor until later.

The Court: Very well.

Argument

Mr. McClennen: In opening this case to your Honor for the defense, now that the evidence for the plaintiff is closed, [fol. 3967] I would prefer to make no prediction as to the length of time that we will require to present the defense, because it is dependent upon so many circumstances of the future. We believe, as at present advised, that we shall be able to introduce that evidence in less than the 29 days which have been taken for the plaintiff. We shall make it as much less than that as we can, adequately presenting the evidence.

In the long run it will shorten the time consumed if I may outline to some extent the facts as we contend them to be. In stating them as facts, in the course of the opening, I am stating them as facts, so far as the evidence has already established them, and as facts which we propose to show to you by evidence and, therefore, of course, when I refer, in the course of the opening, to a thing as a fact, I recognize that frequently it is not yet a fact proven before your Honor, but is a fact which we expect to offer evidence to prove.

In order to make the facts, as they come forth in the evi- [fol. 3968] dence, clearly significant, it is advisable that we present to you in outline the principles of law which we contend are controlling in this case, so that the true position of any fact in this case may be apparent in the light of the law as we contend that it is.

This case is dependent for a recovery, if any there can be by the plaintiff, upon the Sherman Anti-Trust Act; indeed, the jurisdiction of this Court over the matters presented here is dependent upon that law, if it should so appear that some wrong has been done in any way by the defendants, and we believe and urge that it has appeared so far and will continue to appear that the defendant has done no wrong in the matters under consideration.

[fol. 3969] This, however, is a small part of the situation for, should it appear that there has been a wrong done, it is of no consequence in this case unless there is a violation of the Sherman Anti-Trust Act, and when I use that phrase I, of course, include in it that Act as it may have been amended from time to time up to the present time. There are only two sections of that Act that are brought in play here, the first section and the second section. Of course I lay to one side the later section which gives the remedy. The right, if any, to complain is based upon Sections 1 and 2 and unless there has been that which one or the other of those two sections condemns there is no case here present.

Under Section 1, conspiracy, culmination or contract by the defendant with someone else is essential. This means that so far as Section 1 is concerned it makes no difference that the defendant restrained even interstate commerce unless there is a contract, combination or conspiracy to do so. [fol. 3970] Now, for brevity, I absorb those three words, "contract", "combination and/or conspiracy" into the one "conspiracy", because, manifestly, that is the broadest term of them all.

Our first contention is that there is not, and that at the close of the evidence in the whole case there will be no evidence calling for a finding that there has been a conspiracy by the defendant to restrain interstate commerce. The only conspiracy alleged is a separate conspiracy by the defendant with certain distributors separately. These distributors are not parties to this case.

Now, for brevity, I use the word "Schine", not merely to mean Mr. Schine but to mean, as a rough, convenient expression, those organizations which are defendants here.

The distributors I abbreviate in the same way, into Columbia, Fox, Loew's, Monogram, RKO, Republic, the United Artists, Universal and Vitagraph, or more conveniently called Warner.

[fol. 3971] Mr. Wright: I don't like to interrupt, but there are no allegations in the complaint with respect to Monogram or Republic.

Mr. McClennen: If you had not interrupted I was about to say that there was no allegation of a conspiracy between Schine and Republic or Monogram, and I was telling your Honor the terms that I was going to use to describe the leading distributors in the motion picture industry.

Mr. Wright: I am sorry, I misunderstood you.

The Court: Let Counsel proceed.

Mr. Wright: I thought he was undertaking to summarize the complaint.

The Court: Proceed.

Mr. McClennen: Now, as the case now stands the plaintiff does not make any charge against any distributor. The plaintiff has dropped the charges against the particular distributors, Columbia, Fox, Loew's, Paramount, RKO, the United Artists, Universal and Warner. That repetition makes me fearful that I omitted the name Paramount in the first list.

The plaintiff continues to charge against Schine only [fol. 3972] that Schine conspired with Columbia alone, that Schine conspired with Fox alone, that Schine conspired with Loew alone, that Schine conspired with Paramount alone, that Schine conspired with RKO alone, that Schine conspired with United Artists alone, that Schine conspired with Universal alone, that Schine conspired with Warner alone.

There has been, we contend, in the plaintiff's evidence, no evidence of any one of those eight separate conspiracies and we predict that at the close of the whole evidence there will be no evidence of any one of those eight conspiracies. The term "conspiracy" has a concrete meaning. The fact that it takes so much miscellaneous evidence to establish a conspiracy tends to break down decent regard for true expression in defining what a conspiracy is.

A conspiracy, after all the evidence is in, if one is shown, can be stated as concretely with the same statement of its [fol. 3973] terms and scope as a contract can be stated. In fact, a conspiracy is but a loosely stated form of contract. Essential to conspiracy is the existence of an agreement, not formally stated, not necessarily expressed in words, but derivable from the evidence as a whole, but there must be an agreement, not merely a concurrence of action by a concert of action, an understanding together, not in the sense of comprehension or appreciation but in the sense of agreement, and unless that agreement is shown the charge of conspiracy must fall.

That agreement must be proved with the same certainty that an ordinary contract is proved. The difficulties of traveling through the evidence, the extent which things on the borderline of immateriality may be considered, none of those considerations make against the fact that the conspiracy must, in the end, be proved by a fair preponderance of the evidence, just as any other fact must be proved.

Under the second section of the Sherman Anti-Trust [fol. 3974] Act there is a provision condemning the monopolization or attempt to monopolize interstate commerce. That is a thing which may happen without the assistance of a co-conspirator. One man, by running a corner in the stock market, without the knowledge or conscious cooperation of any broker, or any one else, may monopolize a certain stock in the market and monopolize interstate commerce in that stock.

Much confusion has been brought into the consideration of this matter by the conception that a unitary position is a monopoly. It is not. In no place probably in shorter compass is this set out than in the extensive opinion in the Standard Oil case, where there is developed clearly that for monopolizing, as the term is used in the Sherman Anti-Trust Act, there must be something which constitutes unreasonable restraint of trade. To put the thing very concretely, a man sees a flourishing, prosperous town, with no [fol. 3975] place of laudable amusement in it. He goes into that town and he builds a theatre. He builds it so well, so adequately, that it pleases the possible patrons in the town. He builds it large enough to accom-odate all those patrons. He goes on for years in that situation. He has not monopolized anything. Now, that is the kind of a thing that avid pursuers of success in the trial of cases like to call a monopoly, like to call the towns in which a man has a monopoly, when all that he has done is to create something that never existed before. To com-at that disposition, to misdescribe a situation, takes time and patience, but the fact remains that that man is not a monopolist.

In this particular industry there has grown up another phrase, a short-cut phrase, that is not harmful in any way until you come to stretch its meaning over something that it does not mean, a closed town. Now, all that is meant, as these men in this industry use the term, is that there is no [fol. 3976] other theatre in the town. They do not use it in the sense that anybody has closed that town to access by anybody else of sufficient ability, industry, wisdom and resources, to enter that town. I speak of the term because it is inevitable that it shall be used and it is not a misleading term if there is always kept in mind the fact that the term does not in any way indicate intrinsically any impropriety of conduct whatever, but frequently indicates the commendable, industrious, wise, diligent spirit that has put into that town something that nobody else has had the disposition or energy to put into that town. That is not monopolizing.

If, after the pioneer in the town has built that theatre, somebody else buys it from him, that does not monopolize that town. In this respect it makes no difference whether the man who owned the theatre wanted to sell it and got an excessive price, or a fair price, or too small a price. It [fol. 3977] still is not a monopolization. There was the selling operator of that theatre before. He was not monopolizing and the man who took his place by purchase is no more monopolizing than the seller was. The scope of enterprise is not lessened in any way by the transaction.

After an investigation has been made by your Honor into the various acquisitions that have been shown here as made by the defendants, so far as the Sherman Anti-Trust Act is concerned, it will be immaterial whether they were fair and good bargains for the seller or were not. The effect upon the industry is just the same, the substitution of one owner and operator for another owner and operator.

In the particular case there are two reasons why that does not constitute a violation of Section 2 of the Sherman Anti-Trust Act, one, that it does not constitute monopolizing and the other that it does not constitute monopolizing of interstate commerce. I am not speaking now of the fact [fol. 3978] that the transaction takes place locally alone. There are many things which constitute a restraint of interstate commerce that take place locally. The parties involved may never leave the State.

Let me put an unimaginable case. If one man in New York meets another man in New York and is successful in buying the wheat production of the Western fields of a given season, so that he has them all, it is not the fact that he did not move out of his tracks in New York that is the determining factor. It is a fact that his act has had the direct and substantial effect of monopolizing the interstate wheat commerce of the country.

Here in this case we are dealing with something entirely different. An exhibitor of motion pictures is not in the business of interstate commerce. A distributor of motion pictures to exhibitors frequently is engaged in the business of interstate commerce. An exhibitor of motion pictures is no more engaged in interstate commerce than the man [fol. 3979] who runs the village grocery store in the same town. It makes no difference that he may get his bananas from the American Fruit Company, his sugar from the American Sugar Refining Company, his provision in beef and otherwise from the packers at a distance. His business is a local business. Nothing could be more definitely local. A man who runs a theatre locally is no more engaged in the business of interstate commerce than a man who runs a ball park or a skating rink. It has nothing to do with interstate commerce.

Now, the reason that the Sherman Anti-Trust Act was limited at the time it was passed to interstate and foreign commerce was because that was the only thing that was within the province of Congress to legislate upon. Congress might not, under the Constitution, take steps to prevent unreasonable restraints of local competition, unreasonable restraints of local trade. This matter is fundamental in the case now on trial. It distinguishes this case from the [fol. 3980] many that have got into the books, foreign, pretty much all of them. The distributors engaged in interstate commerce have been the parties sued. Their conduct, if it was proven to be in restraint of commerce, was easily in restraint of interstate commerce. Such is not the case with the exhibitor.

Repeatedly the Court has said that to come within the prohibitions of this Act there must be a substantial and direct restraint upon interstate commerce and the interstate is the important word that removes this from the domain of government of State to the domain of the United States.

We contend that on the evidence thus far introduced, if there has been any restraint of commerce, if there has been any monopolization of commerce, it has not been a restraint upon interstate commerce or a monopolization of interstate commerce. Of course, I am not at this time bringing to your Honor's attention the decisions which support the [fol. 3981] contention which I am presenting. I believe that every decision, certainly of the Supreme Court of the United States and of the courts of appeals of the several circuits that have dealt with this problem, are in accord on it and that there is nothing left for debate upon that subject. The cases are briefly referred to in the supplemental pre-trial, white-covered brief for the defendants, filed September 26, 1944, and more extensively covered, except as to the later decisions that did not exist at the time, in Mr. McKay's memorandum of law filed with your Honor in 1942.

The next step in bringing clarity into this case is to lay before you in one place this motion picture industry as it has developed, with its features, many of them not common to the industries that we knew forty and more years ago, and that we know mostly now. It is an entirely different field of operation, in many respects, than is occupied by any other industry.

[fol. 3982] Now, as it must necessarily take a little time for this, if agreeable with your Honor, I would rather not break it in the middle, if we could wait for that until tomorrow morning, unless your Honor prefers to go on.

The Court: No, it is after half-past 4. I would like to adjourn at this time, unless you want to go on with it.

We will recess until tomorrow morning at 10 o'clock.

(Whereupon a recess was taken until Tuesday, October 31st, 1944, at 10 o'clock A. M.)

[fol. 3983] (The following exhibits were received in evidence as Plaintiff's Exhibits:

Ex. No.	Description
190.	Letter dated Dec. 8, 1936, Grady to Merrenbloom.
216.	Letter, Nov. 8, 1938, Lynch to Grady.
218.	Letter, Nov. 17, 1938, Sussman to Grady.
273.	Paramount Cancellation of Contract, March 4, 1940.
356.	Letter, May 8, 1934, Lynch to Dave Miller.
363.	Universal contract, Gaby & Cohen, Feb. 28, 1935.
366.	Letter July 16, 1935, Sauber to A. Schimel.
530.	RKO, Change of Contract, Dec. 11, 1935, Corning.
393.	Universal Cancellation or Alteration of Contract, Dec. 15, 1938, re Mr. Scott in Corbin.
367.	Letter Lynch to Sauber, Sept. 11, 1935.

Ex. No. Description.

368. Letter Universal (Sauber) to Lynch, Sept. 14, 1935.

539. Inter-office communication Kramer to Mr. Smith, Dated Sept. 10, 1932.

259. Letter, Sept. 30, 1937 Opera House to Paramount.

597. Inter-office communication Sachson to Dunbar, dated Dec. 9, 1940.

598. Letter, Dec. 13, 1940, to Sachson, unsigned.

599. Inter-office communication Dec. 20, 1940 from Sachson to Dunbar.

600. Copy of letter Dec. 23, 1940 to Sachson unsigned.

601. Letter Dec. 27, 1940, Sachson to Lynch.

[fol. 3984] 76. Letter Jan. 14, 1936 from Lazar to Shelby Globe.

662. Columbia, Alteration of contract, approved Dec. 17, 1935, Southern Theatre, Bucyrus.

526. Letter Jan. 8, 1935, RKO to E. L. McEvoy.

527. Letter Jan. 10, 1935, McEvoy to Dixon.

528. Letter Feb. 18, 1935 Dixon to McEvoy.

300. Inter-office letter from Bykowski, Buffalo to S. Lehman, dated Sept. 16, 1937.

307. Inter-office letter from Lazarus, United Artists, to M. Stahl, Dated Dec. 7, 1938.

310. Letter, Dec. 15, 1939 from Frances Turner to Edward Mullen.

318. Letter, Dec. 16, 1940 from Lynch to Lehman.

319. Letter, Dec. 18, 1940 from Lehman to Lynch.

397. Letter, June 8, 1939 from Kreisler, Universal, to F. J. A. McCarthy.

518. Inter-office letter from Halligan to McEvoy, RKO.

425. Letter, Oct. 21, 1933 from Lynch to Jack Flynn, Metro-Goldwyn-Mayer.

426. Letter, Jan. 4, 1934 from Pielow to J. E. Flynn.

488. Letter May 15, 1939 from Maw to O'Shea.

387. Letter, Jan. 28, 1938 from Sauber to Lynch.

381. Letter, June 22, 1937 from F. J. A. McCarthy to [fol. 3985] Krieger.

374. Letter, Oct. 28, 1936 from P. T. Dana to Paul Krieger.

390. Letter dated Feb. 15, 1938 from L. Goldstein to Nate Sauber.

412. Letter dated Sept. 10, 1932 from Lynch to Flynn.

413. Letter, Sept. 12, 1932 from Flynn to Lynch.

384. Letter, Jan. 4, 1938 from Dave Miller to Lynch.

Ex. No.	Description
385.	Inter-office communication, Jan. 21, 1938 from Miller to F. J. A. McCarthy.
386.	Letter, Jan. 27, 1938 from McCarthy to Lynch.
388.	Letter, Feb. 1, 1938 from W. B. Kraemer to McCarthy.
361.	Letter Nov. 28, 1934 from Dave Miller to Myer Schine.
338.	Letter, October 24, 1932 from Lynch to Jack Sichelman (Fox).
163.	Inter-office communication, Sept. 13, 1932 from Schmertz to Sichelman.
165.	Inter-office communication, Sept. 24, 1932 from Schmertz to Sichelman.
166.	Letter, Sept. 27, 1932 from Sichelman to Schmertz.
167.	Inter-office communication, Oct. 3, 1932 from Schmertz to Sichelman.
168.	Inter-office communication, Oct. 13, 1932 from [fol. 3986] Schmertz to Sichelman.
169.	Letter, Oct. 21, 1932 from Sichelman to Schmertz.
170.	Letter, Oct. 21, 1932 from Sichelman to Schine.
171.	Letter, Oct. 24, 1932 from Lynch to Sichelman.
172.	Letter, Oct. 24, 1932 from Lynch to Schmertz.
243.	Telegram, Sept. 10, 1932 from Lynch to Paramount Publix Corp.
494.	Inter-office communication Nov. 7, 1935 from Pielow to Flynn.
444.	Inter-office communication, June 15, 1936 from O'Shea to Flynn.
497.	Inter-office communication from Pielow to Flynn, dated Nov. 30, 1936.
430.	Inter-office communication Aug. 1, 1935 from Pielow to Flynn.
554.	Inter-office communication Feb. 26, 1935 from R. S. Smith to A. W. Smith, Jr.
546.	Inter-office communication June 25, 1934 from R. S. Smith to A. W. Smith, Jr.
549.	Inter-office communication Aug. 31, 1934 from R. S. Smith to R. Mochrie.
574.	Contract—recommendation, Boumansour, Malone, Plaza dated June 22, 1937.
173.	Inter-office communication Dec. 28, 1932 from Sydney Samson to J. Sichelman.

Ex. No. Description

[fol. 3987] 282. Inter-office communication Feb. 21, 1934 from Lazarus to J. Kaplan (United Artists).

283. United Artists Contract Change Report, Feb. 23, 1934, Hi-Art, Lockport.

288. Inter-office communication from Jack Kaplan to S. W. McGrath, dated May 7, 1935.

321. Letter Jan. 21, 1937 from United to Charles Stern.

322. Letter Feb. 8, 1937 from Charles Stern to A. M. Goodman.

323. Letter March 8, 1937, United, from Bert M. Stearn to Charles Stern.

226. Letter, June 26, 1939; Sussman to Samson.

227. Inter-office communication, June 27, 1939, from Samson to Sussman.

228. Letter June 27, 1939, Sussman to Grassgreen.

229. Letter, June 30, 1939, Grassgreen to Sussman.

230. Letter, June 30, 1939, Sussman to Sydney Samson.

236. Letter, Feb. 13, 1940 from Sussman to Bloom.

292. Inter-office communication Feb. 5, 1936 from S. W. McGrath to Nat Beier.

369. Letter Sept. 23, 1935 from Dana to Dave Miller.

370. Letter, Sept. 23, 1935, to Frank McCarthy, re Buffalo, Ohio and Albany territory.

[fol. 3988] 559. Inter-office communication Dec. 27, 1935 from M. A. Mooney, Cleveland to R. Mochrie.

560. Copy of telegram March 25, 1936 from A. W. Smith to M. A. Mooney.

561. Copy of Telegram April 1, 1936 from Mochrie to M. A. Mooney.

566. Contract recommendation, Sept. 16, 1936 from M. A. Mooney re Colonial, Fostoria.

164. Inter-office communication, Sept. 19, 1932 from Samson to Sichelman.

286. Inter-office communication, Oct. 8, 1934 from Kaplan to Lazarus, United Artists.

308. Letter March 18, 1939 from Bykowski to Kraemer.

519. Letter Oct. 17, 1933 from C. R. Halligan to McEvoy, RKO.

396. Letter May 23, 1939, Universal from John Scully to F. J. A. McCarthy and letter May 19, 1939 from McCarthy to Scully.

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Vol. IV

TRANSCRIPT OF RECORD

(Pages 2607 to 3486)

Supreme Court of the United States

OCTOBER TERM, 1947

No. 10

SCHINE CHAIN THEATRES, INC., ET AL.,
APPELLANTS,

vs.

THE UNITED STATES OF AMERICA

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE WESTERN DISTRICT OF NEW YORK

FILED OCTOBER 4, 1946.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 10

SCHINE CHAIN THEATRES, INC., ET AL., APPELLANTS,

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THE UNITED STATES OF AMERICA

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE WESTERN DISTRICT OF NEW YORK

VOL. IV

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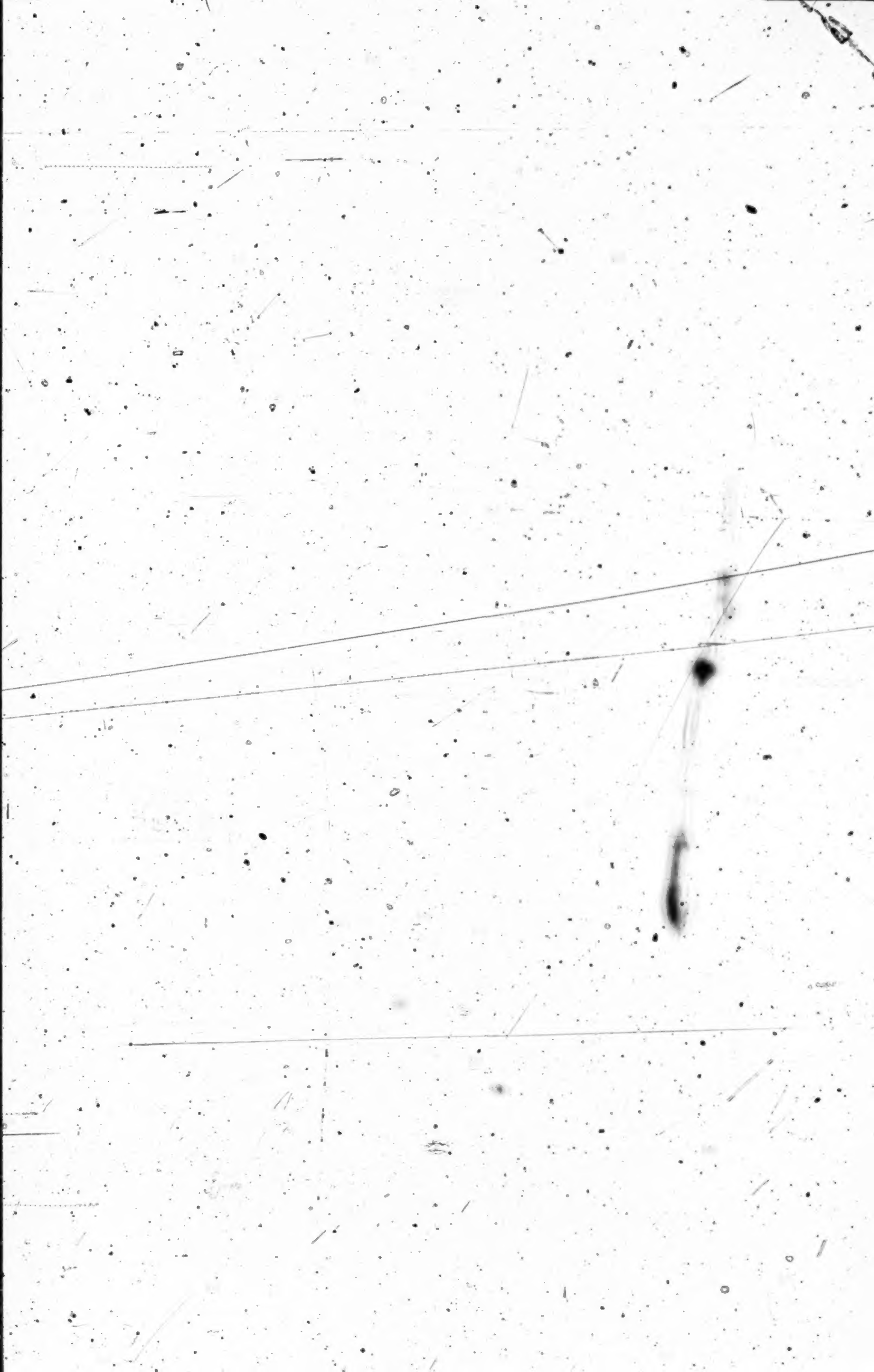

Ex. No.	Description
542.	Inter-office communication, Vitagraph, Jan. 12, 1934 from R. S. Smith to A. W. Smith, Jr.
176.	Letter, Fox Film, July 9, 1934 from Grassgreen to T. H. Bailey.
178.	Letter, Fox Film, Aug. 20, 1934 from Grassgreen to T. H. Bailey.
[fols. 3989-3991] 179.	Letter, August 21, 1934 from Tom H. Bailey to Moe Grassgreen.
430.	Letter August 26, 1935 from Lynch to Pielow.
435.	Letter, Sept. 27, 1935 from Lynch to Pielow.
456.	Letter, August 30, 1937, from Booth to O'Shea.
459.	Letter, Nov. 1, 1937 from Booth to O'Shea.
476.	Letter Feb. 28, 1936 from E. W. Aaron, Metro, to Ralph Pielow.
499.	Letter March 19, 1937 from Lynch to Drew.
500.	Telegram, March 18, 1937 from Lynch to J. E. Flynn, Metro-Goldwyn-Mayer.

[fol. 3992] UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF NEW YORK

Civil 223

UNITED STATES OF AMERICA,

vs.

SCHINE CHAIN THEATRES, INC., et al., Defendants

Continuation of trial before Honorable John Knight, United States District Judge for the Western District of New York, October 31st, 1944, at 10 o'clock A.M.

Appearances: Robert L. Wright, Esq., John F. Clagett, Esq., Harold L. Schilz, Esq., Philip Marcus, Esq., Special Assistants to the Attorney General, and Milton Kallis, Esq., Special Attorney in behalf of the United States.

Edward F. McClennen, Esq., Willard S. McKay, Esq., Saul E. Rodgers, Esq., Arthur E. Whittemore, Esq., Arthur J. Homans, Esq., and Edward M. Antevil, Esq., appearing for the defendants.

Mr. McClennen: If your Honor please, I resume at the point I left off at yesterday afternoon.

The application of the principles of law, which we have submitted, to the conduct of the defendants can best be stated after the facts of that conduct, as they have been proved or are to be proved, are laid before you. Fundamental to the proper appraisal of the defendants' conduct is the development and methods of business of the distributors of motion picture film.

That brings us to a consideration of those methods and what the distributors have done or tried to do. It is of no consequence in the case that is on trial against the defendants whether the distributors, or any of them, have behaved rightly or wrongly in their conduct with the public or with their customers and intending buyers. That broad statement is not cut down by this exception: If the defendants have restrained interstate commerce then it does become important to know whether the distributors or any [fol. 3994] of them has co-operated by agreement in that restraint. It is only in that connection that the conduct of the distributors is of any consequence in this case, and the burden is not upon us to justify in any respect the courses of conduct which the distributors have pursued.

I do not mean by this to indicate that there is anything in their conduct, shown in this case, in any respects reprehensible. I merely point out that we are not called upon to assume the burden of convincing you of a proper appraisal of the rightness of the conduct of the distributors. The only person, the only defendants charged in this case are these or this exhibitor and to that we address ourselves, and it is only in order that there may be a proper appraisal of that conduct that I refer to the distributors at all.

The motion picture industry, in the feature picture sense, had its beginnings about 1912. There is a span of 30 years to be covered before the 19th of May, 1942.
[fol. 3995] I shall constantly make the error, I fancy, of speaking in the present tense. Your Honor will understand, I have no doubt, that when I speak of these matters I am speaking exclusively to what happened before the 19th of May, 1942, as that is the date which the plaintiff has set to the acts of the defendants of which the plaintiff complains, and I use that date only on that account.

Another matter, there was a somewhat substantial change in the methods of doing business by some of the distributors after 1940, pursuant to the decree entered in the District Court of the United States for the Southern District by the consent of the distributors and of the United States, and I speak generally of the methods in existence before that time arrived.

In that span of 30 years there has been, of course, many developments in the industry. The early days are important only as shedding light on the days that are involved in this case.

The producers of film have concentrated their production [fol. 3996] efforts, each one of them, to a considerable extent to California. When I say each one of them, of course, I am speaking of those distributors who are producers, not a distributor like the United Artists that does no producing, and there may be some of the other distributors that do no producing.

The feature film has come to mean a film a mile or more in length, to distinguish it from shorts, single-reelers and two-reelers for other divisions that do not conform to the definition of length necessary to make the production a feature production.

Production in its present sense did not come into existence until about 1928. I chose that date roughly as the time when the production of feature pictures, accompanied by sound, substantially began. That was an extremely radical change, a change in many ways. The acoustical properties of a theatre or a store that had been improvised into [fol. 3997] a theatre were a minor consideration prior to that date as compared with what those were after that date.

The expense of production, the time required for production of a picture was greatly increased by this change. The value of the picture to the producer, the necessary valuation to cover the expense of production, the value of the picture to the distributor to cover those features and to obtain the distributors' appropriate part of the ultimate value of the displaying of his picture was greatly increased.

The amount that he had to charge, and that he ought to charge, was greatly increased. The only way in which properly conceived and carried out, and artistically good and entertainingly valuable pictures could be obtained was by putting large amounts of money into the effort to make this better production. This could not be done unless adequate box office receipts would enable the exhibitor to pay either by percentage or rental the amount which was necessary to meet these costs, and these greatly added costs of [fol. 3998] production. The number of pictures that could be produced by any distributor or producer in a given space of time was greatly reduced because of the added time necessary to gather in, not merely those persons who could have their pictures taken, but those persons who could really act and synchronize their expressions with their actions, and in many cases those who had musical, vocal or instrumental abilities, as well, a tremendous increase in requirements came with that, and a corresponding impossibility of producing as many pictures as might have been produced in the old days before that which took place.

In the marketing of pictures there was, in the early days, a great variation in methods. It was a tremendous undertaking to get any systemization into this industry that would make it possible for a theatre-operator to get pictures in quantity at the time and of the character required for his particular theatre. He could not get them all from one source and there arose the normal business strife [fol. 3999] between the distributors, to have him get as many as possible of his pictures from the particular distributor, and to get the proper time allotted to those pictures for the best results to that distributor. It has become a commonplace that the week end time, conspicuously Saturday and Sunday, but varying in its beginnings and endings in different places, is the preferred time, the time that will bring the greatest attendance and therefore the greatest revenue from the showing of a particular picture.

Each of the ten or a dozen distributors wants to get as much of that time in that particular desirable theatre as he can get. It develops a hard competition between the distributors in this respect. It is a matter that can be determined by the exhibitor by no fixed rules. He has to trade it out in his negotiations with the different distributors. Of course that is done at times by the allocating of those preferred times to the best product of each distribu- [fol. 4000] tor. That presents another complication.

The distributors desire, so far as possible, to have their pictures shown in a given theatre in the order of release of those pictures. That is one of the points at which they strive. Conceivably the dozen different distributors may each produce an outstanding picture, release it on, we will say, on the 15th of January, and then there is the unsolvable problem, the exhibitor wants to show in his theatre those outstanding pictures at an early date. He wants to show them in preferred times when they will bring in the best results, and there is no solution of that problem. It has just to be cut across to try to get the various requirements, giving to each distributor the preferred time, giving to each distributor an early date, and at the same time endeavoring to conform to the order of release of the pictures.

In the development of the industry it has come about that [fol. 4001] the distributors classify their pictures into annual seasons, beginning about the first of September. It is obvious why that period, or thereabout, in the year is chosen as the dividing time. It is a commonplace that except for summer resorts the summer is the lighter time in the exhibition of motion pictures and the desire is, therefore, to get the product of the year started at a fresh time, in the fall, which under normal conditions is apt to be one of the best times in the year.

This division between the releasing seasons is important, more to get some organization into the industry than anything else. They have got to have periodic limits on their descriptions of their product and therefore when we speak of a releasing season we speak of a year beginning approximately September 1st. That does not mean that the pictures released necessarily must be played even first-run before the first of September of the next year. They [fol. 4002] may extend into the later period, and, on the other hand, some pictures of, what I will call, the September 1 season may be released earlier than September 1. There are incidental cases in evidence already of pictures of, I will say, the '41-42 season, that were released in July of '41. Again, a great deal of confusion may be met unless it is kept in mind that the playing season in the later runs extends way beyond the year of release. To make that specific. A picture released on the 1st of September, on the 15th of August, 1939, belonging to the releasing season of 1938-39, may not get its first-runs all out of the way in the course of the next month. Where those runs take place will determine something of when the second-runs will take place. The second-runs may not be played for many days after the first-run and the subsequent-runs after that.

The clearance that is placed in favor of the first-run upon the second-run may define the time when for the first time the exhibitor may have the right to exhibit the picture, but [fol. 4003] it by no means determines the time at which he can exhibit the picture, for several reasons. He cannot date into his theatre each picture of each distributor that is just expiring with respect to clearance, because he has got to have regard to what else he is going to show in his theatre at that time. He has got to have regard to whether it is the proper time in his theatre to show this picture. The mere fact that it is released does not make it desirable that he should show a picture in which Christmas carols predominate on the 4th of July or that he should exhibit in his theatre, in those areas where there is a high sense of religious disposition, in the Lenten season.
[fol. 4004] He cannot put into his theatre on a Good Friday a hilarious picture without offending the taste of many of his possible patrons. There are an infinite number—infinite is too large a word—there are many reasons why pictures, in the proper exhibition business, cannot be shown immediately they are available. That is only one of the considerations that stand in the way of this mathematical figuring out of when a picture is going to be shown.

There is another very important consideration; that is the matter of positive prints, and before I speak further of its effect in the way that I have just mentioned, I go back to the matter of production.

Since the sound pictures have come in, after the enormous expense of the production of a picture, we have reached only the stage of the negative that is taken. By the way, of course, there is no such thing as a moving picture. Each picture on the reel is a still picture, catching the expression [fol. 4005] or the action of the moment, with another one taken so rapidly that the eye is deceived into the belief that it is a continuous affair, but it is, of course, nothing but a sequence of a very large number of still pictures.

When sound came in first, one of the devices was a separate taking of the sound and that had to be produced, had to be projected, synchronizing with the picture. It was an almost impossible thing. I dare say that you may, yourself, have observed in the early days when the words came out an appreciable length of time after the mouth in the picture was closed, and the synchronization was a matter that could not be fully mechanically accomplished and it was necessary to have an adjuster sitting right there to correct the difficulty. Then came the putting of the sound track on the reel itself.

Now, after that enormous production expense is by, and the negative produced, there is nothing yet ready for the [fol. 4006] presentation of the picture by the exhibitor. Positives have to be made. A single positive of a picture of feature length is an expensive thing; very small as compared with the production of the negative, but still substantial.

It is immaterial for the present to attempt to state exact figures, but running somewhere from near $200 a particular positive up to several hundred, and particularly in the technicolor pictures.

Now, a picture may be leased for its first-run at, we will say, a $1,000, and the exhibition goes down through subsequent-runs that may get down as low, ultimately, as $25, $20, $15 and $10 rental for that picture, an amount of rental that hardly covers the expense of handling the positive that is furnished to the theatre.

Now, obviously a producer, having a film, could not make a $200 positive for each $10 or $25 theatre or, indeed, for any of the rentals that are commonly charged for a deferred-run, even if it is only deferred to second-run. The possi- [fol. 4007] bility of getting the pictures into these cheaper cost theatres has been brought about by making the positive do as many tours of duty as is possible.

In the United States there is this very large amount of theatres equipped for sound. Whether it is ten thousand or fifteen thousand is unnecessary to resolve for present purposes.

To get this into more concrete position, I refer to some particular district of distribution. The larger dozen distributors have about 30 to 32 different districts in the country called exchange districts. These figures that I am now stating are very approximate only. A distributor having 32 exchange districts may make approximately 320 positives of a particular picture, so that a district can be allocated, say, 10 positives. That district may have 500 theatres within its confines. Some pictures practically every theatre in that district will show; some pictures less than the whole will show. That means that ten positives have got to serve [fol. 4008] possibly 500 theatres.

Now, 10 positives, it is obvious, can serve no more than ten theatres on a given night. That means, in the figures that I have just mentioned, that a positive has got to go through 50 tours of duty in order to make the ten positives spread over the 500 theatres. The time required for a tour of duty of a positive, on the average, may be in the vicinity of four days to a tour of duty possibly five. A positive going into an exchange center theatre may go out to the theatre that day, back the next day,—if it is a one-day exhibition,—and be inspected in the inspection room and go out again, so that the matter might be accomplished, if it was a one-day showing, in a total of three days, but in those places in the exchange centers it is much more likely that the picture, that the positive will operate in the first-run, it may be a week, it may be for considerably more than that; on the other hand, there is almost no theatre that shows a picture [fol. 4009] that doesn't show it at least two days. The theatres on the extreme limits of the area served out of an exchange may require from one to two days of time to transport the film out to the theatre, the positive out to the theatre, and two or more days to get it back again, with two more days for the time that it is on exhibition in the theatre, and the day for inspection on return, so that you may well have that positive busy for a week in serving that theatre.

The two extremes that I speak of are the reasons for taking four or five days as a fair average time for a tour of duty. That means then that it is going to take from 200 to 250 days for that positive to serve the whole of the 50 theatres that it must serve.

This makes it necessary for these, what I will call mechanical reasons, to have some theatres showing much after the release date. If there were no provisions for clearance and availability, the mere mechanics of the industry would require this length of time before some of the theatres could [fol. 4010] show the pictures.

The same mechanical difficulties that I speak of make it impossible, on the figures assumed, for more than ten theatres in that district to show the picture at the same time.

There is, of course, this strong contest amongst the exhibitors to be the ones to get that print early. It is a contest that manifests itself in the communications with the distributors, but the contest is really between the large number of exhibitors, all of whom are actuated by the same desire to get the print.

When the picture is shown in the first-run, in the principal place, when that positive is engaged, the one possibility of making progress in exhibition is to have the other nine making a first-run showing in nine other theatres so far removed from each other and from this first theatre that their first-run showings will not detract from the attendance at the other places. That is, I am picking places at random. [fol. 4011] One may be shown in Buffalo another in Rochester, another within a small town not within the range of easy access to either of the other two, and so on through ten theatres to which those prints are allocated in exhibition.

Care has to be taken to see that the first-run exhibition is not deprived of its just possible returns by the knowledge of the patrons that they may see the picture within too short a time, either at a less admission price or at a theatre that they like to attend better than the chosen first-run theatre, either because that theatre, that first-run theatre is not convenient to them, or for many other reasons. The important thing is that the showing shall not take place soon enough so that the largest reasonably possible revenue shall not be obtained by the first-run theatre. This is of prime import- [fol. 4012] ance, not only to the exhibitor but to the distributor. This is demonstrably true in the case of percentage pictures. It is about as obviously true in the case of flat rental pictures. In the case of the percentage picture it is a mere matter of computation. The more that comes in at the box office of that theatre the more money directly the distributor receives for that picture. But the flat rentals are determined by the possibilities. The flat rentals of a given year are determined when the contract for that year for that flat rental picture is made, but in determining what that flat rental should be one of the things closely observed is what comparable pictures did in that theatre the preceding season. Of course, the exhibitor wants to get his rental as low as possible, within reason, and the distributor wants to get that rental as high as possible, within reason. One of the tests of what shall be done in bringing one of those [fol. 4013] two points of view into focus is what a similar picture did the year before. Therefore, both the distributor and the exhibitor are interested in what the first-run return at that theatre is, in the long run, quite as much for the flat rental picture as for the percentage picture.

There is another element that comes in. These rentals are determined on prospects of the picture, what the picture will do. It is a matter of experience that a very fine picture, artistically well-produced, with high expectations, does not take with the public generally, all the public, of particular communities, and as a result the picture is rated, when it is shown, as the trade term is, a "flop". These distributors are doing business over a long period of years with these respective exhibitors. If the development shows that too high a price has been fixed in the original contract it is not a matter of prudent business to insist on the full rental or to ignore the request of the exhibitor for an allowance or reduction.

[fol. 4014] At this point there comes into play a very important item. The distributors recognize the importance of dealing in a businesslike spirit with a businesslike exhibitor. They come to know that exhibitors, some exhibitors, are decent in their negotiations with the distributor. They come to know that other exhibitors are what, in modern slang, are called "chiselers", and that they will try to get allowances which the facts do not warrant. They make allowances to the first type of man and decline them to the second, because they do not believe that they can rely on the representations which the second man makes. This disposition to make allowances is another reason why the distributor is directly interested in what the picture does in the theatre and is, therefore, directly interested in having the service of that picture under such conditions that the box-office receipts will not become lessened by this experience of intending patrons that they can see the picture too soon elsewhere. [fol. 4015] The very large proportion of the revenue of each distributor comes from the first-run exhibitions of that picture. It is useless, for purposes of this case, to attempt to get that into any fixed percentage. It would be different with some distributors from what it would be with others, but with all it is safe to say that it is way above half of the revenue that comes from that first-run production, as against the numbers of second-run that that picture may go through.

In the matter of clearance the most important thing is the sequence of the runs, more important than the length of time of the clearance. It has always been recognized, and is recognized in the consent decree, that the owner of the picture should be able, with a free hand, to determine to whom he will license the first-run of his picture, because it is known how much there is involved in those words:

"Oh, I have seen that picture before. I am not going [fol. 4016] tonight to that theatre because I have seen that picture before."

The consent decree, of course, fixes no rules of law by a judicial determination of those rules of law, because it was a consent decree and was entered because it was a consent decree, because it was the consent of the parties to it, but it does do this: It shows the approval of a court of justice to a settlement arrangement that has been made by the parties to the litigation, an approval which a court would not give consciously if it was doing any wrong to outsiders. There is in the consent decree, then, this clear recognition of the existing principle of law that the distributor may select his first-run customer.

In the case now on trial we are dealing with the matter of clearance in a very different way from what might have been the case in 1939 when the suit began. As to clearance, of course, the only question would be whether there should be a dismissal of the case so far as that feature was concerned, [fol. 4017] or an injunction against a particular clearance. The latter releases would be inappropriate now, anyway, because the policy of the United States, as evidenced by its consent to the decree, is that there shall be set up tribunals that are at once accessible to any exhibitor who thinks that he is being subjected to too much clearance and who may determine, as fair men of affairs, viewing the situation, whether the particular clearance that the distributor has chosen to place in the first-run contract is unreasonable. That whole department really drops out of any important consideration in this case for that reason. The propriety of imposing clearance is determined by whether that clearance will assist to preserve the revenue of the first-run theatre.

I speak of first-run theatre here for brevity. Of course second-run theatres frequently are given clearance over third or subsequent-run houses, but it is not necessary to [fol. 4018] go into that further detail. The propriety of the clearance is determined by whether it will serve the purpose of preserving or increasing the revenue of the first-run theatre by removing this antagonistic possibility of going to another theatre too soon to see the picture.

Now, the test of that is not at all whether it does or does not hurt the prospects of the second-run theatre. The clearance is properly imposed to accomplish the purpose designed. The distributor owns this picture. He has the right, and it is reasonable that he should exercise it, to determine whether he will exercise it by giving the whole of the exhibition of that picture to one theatre and never giving it to another, just as he might withhold the picture from exhibition all together, and may sell the whole of that license to one theatre, and there is nothing unreasonable in his doing that if it will serve the purpose of getting the best return [fol. 4019] to that distributor from that theatre, either because it is a percentage exhibition or because he, the distributor, can get a larger rental from that exhibitor if the picture, if the whole exhibition right, is given to that exhibitor.

So far as these five distributors were concerned, a radical change, by agreement, was made in consenting to the consent decree. There was a provision in that that subsequent-run houses should be permitted to apply for subsequent runs of the picture and that the distributor was called upon to furnish some run on particular terms. That was no determination that that was a legal requirement. Manifestly, the consent decree was a matter of compromise and the distributors possibly to give up their existing legal right to sell their pictures for all exhibition to one the theatre. They subjected themselves to this requirement, which has its force by their consent, and the approval of the Court. [fol. 4020] It does not change the law in any way. It still is the law that distributors unaffected by that agreement can sell their exhibition rights of a picture entirely to the customer whom they choose.

Since it is their legal right and reasonable that they should exercise it, that they sell exclusively to one exhibitor in a district, so it is their legal right and reasonable that they should exercise it to sell that picture exclusively to that exhibitor for a period of, we will say, 50 days and then that they shall have the right, so far as that exhibitor is concerned, to sell it to somebody else. I have chosen the expression 50 days at random just to make the position concrete. The thing, of course, which they may not do, any more than the owner of a horse in making a sale may do, is to make use of their legal right to accomplish some sinister result that they are not entitled to accomplish. So long as they are placing the clearance at what in the judgment of the distributor and the exhibitor will bring about [fol. 4021] the result of giving the best return to the first-run house, their judgment is determinative. It is a business proposition. It cannot be otherwise determined. We have had evidence already in the case, from sources none too favorably disposed to the defendants, that clearance is very valuable to the run and in the periods stated. The chief complainant against clearance has informed the Court that the clearances imposed against his theatres were of real commercial value to the theatres of the defendants which enjoyed the benefit of that clearance.

For these several reasons it would seem that the clearance matters drop out of the case, so far as matters of any importance are concerned, and leave us free to devote time to the matters of real consequence in the case.

I have spoken of the disposition of the distributor in this way to get the most that he can, by way of financial return, out of his picture. There are several other things which [fol. 4022] enter into the consideration in the legitimate, proper negotiations between distributor and exhibitor.

It is manifest that the almost country-wide effect upon the success of a picture is determined by the type of houses in which it is first shown. The effect in a smaller locality than the width of the country is even greater. From this it follows that the distributor naturally, and actually, desires to get his picture shown first-run in the house that he thinks in that locality is the best house for the purpose. That may be because of the repute of the house in the community; it may be because of the type of the theatre in its general characteristics; it may be, and one of the most important considerations, the confidence of the distributor in the type of showmanship that is in operation at that house, whether the operator knows the way of attracting the possible attendance, knows how to advertise in the best way, [fol. 4023] knows what to do in the matter of advertising, knows what, from a sensitive appreciation of the needs of the community, will be the thing that will be most attractive to show in that community at that time. All of these are the considerations that are far more determinative of the choice of the distributor than is the particular financial return in film rental for this particular picture. He is looking at his whole field of operation in that town. He is looking at it for this year and for the years to come.

In dealing with the exhibitor the distributor, of course, is much influenced in his judgment as to which customer to select by historic considerations. Has he had a long period of satisfactory dealing with this particular proposed customer? Has he had not so satisfactory dealings with the other proposed customer? Has he had more satisfactory dealings with the new customer that comes on the scene than he has had with the existing customer? None of these [fol. 4024] questions are answered by any inflexible rule.

If the new house or the renovated house is better in the long run for his, the distributor's revenue, it is a reason, at once, why, ~~if~~ he can get his picture into the renovated house or the new house, on any endurable terms, so that he gets a foothold in that house, it is a reasonable, a fair and proper proposition that he should do so, and these are the considerations that actuate the distributor in determining to which house he should sell.

In the same way, in the spirit of the Sherman Anti-Trust Act for free competition, it is proper and reasonable that the new man should seek to get the desirable pictures for his theatre. It would be quite at variance with the underlying conceptions of the Anti-Trust Act if there were built up a position of prior legal right by reason of what had happened in the past. If, by proper negotiation, the new man can persuade the distributor that his theatre is a [fol. 4025] better one for him to exhibit in, so much better that in the new venture the distributor can afford to give him less burdensome rentals than before, it is important, in order to carry out the spirit underlying the Anti-Trust Act, that the distributor should have the right to do this and that the exhibitor should have the right to make the effort.

There has been much said already about the power of a circuit in buying pictures. There has been little said so far about the importance to the industry and to the attending communities in having a circuit engaged in this business.

Now, the first thing to be noted is that the fact that the circuit operates in more than one state does not change the situation in any way. Exhibition by one exhibitor in one town in one state, being a typical example of something that is not interstate commerce, that does not change its character in any way by multiplication into other states. Each theatre is still engaged in exhibition and not in [fol. 4026] interstate commerce.

There is another way in which the circuit is an important advantage to the industry and to the public. In the long run, properly prepared and shown pictures cannot be exhibited at admission prices that will not cover the cost of those operations and a reasonable profit thereon. In the long run the attending public is interested in this way, in having the cost of operation from the beginning of the production of the picture to the time when it is passed through its exhibition on that screen, as low as possible, and there is an inevitable reflection in the admission prices, endurable admission prices which the exhibitor can endure to place on the exhibition as against a higher price that he must charge if those costs are higher.

In the negotiation for the pictures it is an expensive thing for a small, single operator to go through all the traveling and negotiating and setting off of one distributor against another in the buying of his pictures, as compared [fol. 4027] with the expense of conducting such negotiation for one hundred or one hundred and fifty theatres at once. There is a great saving in the operation which enures eventually to the benefit of the attending public.

There is something more than this. The distributor, in determining how much he must get from this theatre for this picture, is necessarily influenced by how much he is going to get for this picture in the aggregate from one hundred or one hundred and fifty different theatres.

The distributor is subjected in this way to the appeal of the circuit exhibitor to make him sufficiently low terms so that his circuit can live throughout. If a distributor, instead of having to conduct one hundred and fifty negotiations, by paid employees, can conduct one negotiation, of course, that negotiation is necessarily going to take very much more time and energy from its beginning to its completion than is taken for the single case, but the effect in the saving of administrative expense is great. The competition [fol. 4028] of the exhibitor with the distributor to buy, is a competition in which, if the distributor is to be kept to low terms calls for an intelligent and strong exhibitor to secure those terms.

There is nothing prejudicial to the public interest in the existence of a circuit as a means of getting these pictures from their original production into their display on the screen in the theatres to the satisfaction and enjoyment of patrons well served.

There is another element of high importance in serving this operation, and that is the possibility and the actuality of the circuit exhibitor having a trained personnel to inspect and care, in the engineering sense, for his different theatres throughout the circuit, giving a care, consideration and protection to the safety of patrons that a small theatre operation cannot afford at all.

The circuit, therefore, is not in any respect intrinsically an invasion of any principles of the Sherman Anti-Trust [fol. 4029] Act.

The possibility of the main relief sought in this case being granted, it seems to me, does not exist. The idea of making a capital case out of this, to execute and condemn to death a circuit, is, I submit, inconceivable.

If the circuit were a production of restraint of interstate commerce there would be a different question presented. I submit that even then it would be inconceivable that the circuit should be extinguished and its assets in theatres beneficently given by the Government to other men who had nothing to do with the production of the result. I say "given," of course, given after an opportunity that might be afforded for some return in money to the circuit on a slaughter sale, forced by a court decree.

[fol. 4030] To approach the matter at all, however, it is necessary to see whether this circuit has been built up by restraint of interstate commerce. That is an entirely different question from whether here, there, or elsewhere, there can be found some instance of what would be called restraint of interstate commerce in a particular instance. I submit that on the facts so far in evidence, and on those to be introduced, there is not even that in the case, but if this were otherwise it still would be important to know whether the growth of this circuit from its beginning has been a normal growth, the result of diligence, skill, perseverance and wisdom, or whether it has been the product, in general, of seizing from other men, by a restraint of interstate commerce, that which they had created. Have these men proceeded in a proper manner as creators of a great volume of commerce or have they proceeded to unreasonably diminish that commerce?

This makes it necessary to bring to your attention the [fol. 4031] growth of this enterprise, to show you that it has been normal, businesslike, and accomplished by a high degree of diligent attention, skill and wisdom.

Mr. Schine's connection with this industry begins almost with the beginning of the feature motion picture industry.

He had theatres before those that play any part in this case. The first theatre that this, I urge, uncalled for attack upon him would, if successful, rip away from him was acquired twenty-seven years ago in Gloversville, where he has lived ever since. It is a striking commentary on this idea that the success has been due to an improperly acquired position to look at that first place. He entered there with an inferior theatre, with others having the best of the product. He operated in such an approved way, with no strength of financial position of any kind, that soon he, and his theatre, was the one that was succeeding in a way that brought about the desires of the operators of the better [fol. 4032] theatres to dispose of their theatres to him. It was no different in character from what he has gone on to since. As an example of what industry, perseverance, skill and wisdom will produce in a competitive world to arouse the envy and jealousy of others, and an effort even advanced by representatives of the Plaintiff to destroy rather than to create successful competitive effort.

By two years he had acquired an interest in the next town, speaking chronologically, whose name appears in this case, Oneonta, in 1919. The third town was Norwich, in 1921. By the beginning of 1923 he was in five towns. One of those was Lockport, where he began in 1922. The next town named was Auburn, where he acquired a half-interest in 1923, getting the other half four years later.

By the beginning of 1924 he was in eight towns. Canandaigua he entered in 1924, Corning in 1924, Rochester in 1924, Geneva in 1924, Salamanca in 1924.

[fol. 4033] By the beginning of 1925 he was in sixteen towns. In 1925 he was in Herkimer, in 1925 he was in Little Falls.

By the beginning of 1926 he was in twenty towns. In 1926 he was in six more towns, making twenty-six of these. One was Malone, another was Ogdensburg, reaching twenty-six towns.

By the beginning of 1927, he was in 1927 in Syracuse, in Watertown, and by the beginning of 1928 he was in thirty-four towns.

By the beginning of 1929 he was in forty towns. In 1929 he sold nearly all of his theatres to Fox-Metropolitan. Why it was not quite all is immaterial to this case. His act was indicative not of seizing upon the motion picture industry but of reducing greatly his position in that industry.

In the year 1930 he sold several more of his theatres. By the end of 1930 the only towns in which he had formerly had theatres which he retained were Buffalo, Lockport, Geneva, Malone, Massena, Ogdensburg, Rochester, a total [fol. 4034] of seven towns, plus a half-interest in Amsterdam. That is, he was a smaller operator in numbers than Mr. Smalley then owned in a short time thereafter. He was a smaller operator than Messrs. Essick and Fine were at a little later date.

In 1930 he built and opened a theatre in Cortland. This then presents the situation as we enter 1931 when we are confronted with this charge of this powerful operator having such a strong hold on the distributors of motion pictures. It was in the year 1931 that he entered Bellefontaine.

If your Honor please, this is a case of so many, many, many details that it is almost impossible to be sure that one has got them all right. I have tried to state these dates and these numbers after a careful examination, and you will know I am confident that if it develops that an error has been made by me it is fully unintentional and not the result of any failure to try to get the facts in shape to [fol. 4035] present them to you in the most intelligible manner.

Now, one of the towns about which we have heard much is Bellefontaine. In 1931, having acquired property not developed as a motion picture theatre, at an expense of $27,500, Mr. Schine built the Holland Theatre, a splendid theatre, at an expense of $196,800. At that time there were in the town one operating theatre. It seems to me that it was the Strand, but like enough I have got it wrong, and two that were not operating and had not operated for a long time. That theatre, the Strand, if that is the right name, was the one which Mr. Mooney testified was the only thing he had to sell at that time and he sold it for $2500 later. At the time that I am speaking of, if I recall aright, he was not operating the Strand.

Now, the complaint seems to be, about Bellefontaine, that the distributors, having presented to them for the first time an opportunity to sell their first-run pictures to [fol. 4036] a new, up-to-date theatre, costing over $120,000, each decided that they would sell their first-run pictures to that theatre. I say that it is a misfortune in the pursuit of a just result that we should be brought here in an effort to show that we did something wrong in getting those first-run pictures. We could not have put an enormous investment of this kind into the town unless we had supposed that the common sense, the common business judgment, of each distributor would make him rush to sell us the first-run pictures, rather than sell them to an old theatre, not in good condition, and in a town where this new theatre was wholly adequate to all the needs of the town for motion picture attendance patrons to be served to their liking.

In that same year, 1931, Mr. Schine was in Wooster. The name has been mentioned and therefore I mention it.

The next name that has been mentioned as calling for any real consideration is Mt. Vernon. Mr. Schine was there [fol. 4037] in 1934.

A change had taken place in 1933, with a few immaterial exceptions, and pursuant to an order of Court in bankruptcy proceedings of what I will call Fox-Metropolitan. I don't know just the company but it was that organization to which Mr. Schine had sold in 1929, pursuant to that order of the Court, and with a few exceptions and theatres that Fox-Metropolitan had given up on the expiration of the lease or disposed of otherwise, Mr. Schine got back a lot of theatres that he had obtained originally between 1917 and 1929.

[fol. 4038] He had then again become a circuit of a considerable number of towns; I haven't the figure at hand as to the number. Passing again, Mt. Vernon, acquired in 1934, we come to 1935, when he was in Seneca Falls, in Bucyrus, in Norwalk, in Van Wert and in Perry to the extent of the acqusition of land and the development of a project of a new theatre. In 1936 he was in Lexington and in Paris. In giving these names, I am making no reference to names about which no complaint whatever has been shown in evidence, regardless of the complaints made in the bill of complaint.

In Lexington and Paris, the interests were acquired by the fairest of negotiations, on Mr. Schwartz' own testimony, which the plaintiff has brought to you.

In 1937, he was in Ilion, in Medina and in Shelby. Those are the towns in which the creative genius of this man, his industry, his skill, his intelligence, his wisdom, has placed him. These are the towns which it is insinuated that it is the duty of the Government of the United States [fol. 4039] to seek to get away from him and to give some one else.

I have spoken of the realities of this great extension which this man has made to the possibilities of interstate commerce, in contra-distinction to the slightest subtraction, reduction of that commerce or any restraint whatever on that commerce.

In that contribution to the commerce, the local opportunity of the community to see motion pictures in properly conducted houses under enjoyable conditions, and at reasonable prices, there has been expended for the cost of land and buildings acquired $6,509,100. There has been added to the facilities for the opportunity for the public of the particular communities to see motion pictures, under those conditions, there has been added in cost of buildings and improvements since acquisition $3,506,400; that is to the properties owned by the defendants. To the leased properties defendants have made additions and improve- [fol. 4040] ments at their expense of $631,600. In addition to this, in the properties only partly owned, the defendants have added about $270,000. That is then in what they have created above what they bought from others, they have added about $4,400,000, which some one has had the heart and the temerity to suggest should be taken away from the defendants and given to some one else at such a sale as the Court might order and at such a price as some one else might be willing to pay.

Now, I have spoken of these facts, before making the specific applications of the principles which we urge govern the case.

I turn to those now, to deal with all the things that have—the classes of all the things that have been suggested on behalf of the plaintiff, in order to submit to you that interstate commerce is not unreasonably restrained by building a theatre, even if it is the only theatre that ever arrives in the town and does not make the builder a monopolist [fol. 4041] of interstate commerce by adding the one theatre to the perhaps ten thousand in the country.

The Court: It is really a question of law. These things you are discussing are questions of law. Why deal with them at this time?

Mr. McClennen: Well, I had thought that the plaintiff, in opening, had announced propositions of law as guiding in the listening to the evidence and that it would facilitate the proper appraisal of the evidence as it went along if I briefly did the same, doing no more, by way of projecting those questions of law before your Honor, before the evidence is introduced, than the plaintiff had done, and intending only briefly to indicate the application to the case on which we are to present evidence.

The Court: The thought I had in mind is, the Court understands the positions. It is a question of the application of law or the question of the construction of law and its applicability to the situation. Go ahead. I did not mean to curtail you. Proceed.

[fol. 4042] Mr. McClennen: I think I have only a few minutes needed for that purpose.

As I said: (1) The building of a theatre does not unreasonably restrain interstate commerce even if it is the only theatre in the town;

(2) Telling a competitor already in the town of a plan to build that theatre in advance of doing it is not a restraint of interstate commerce;

(3) Buying an existing theatre, whether by fair dealing or by arousing apprehension, and with an agreement of the seller not to destroy the goodwill that he is selling by going into the theatre business within a short time in that town, is not a restraint of interstate commerce;

(4) Securing the best pictures on the best runs and terms for the defendants' theatres is not restraint of interstate commerce;

(5) Increasing a market from other theatres for the product of Republic, Monogram and other distributors by buying the needed product of the distributors that have [fol. 4043] been named in this case, the 8, is not a restraint of interstate commerce;

(6) Increasing the competition between the distributors to sell their product in the town where the defendants are the only possible purchasers are not restraints of interstate commerce.

Very briefly stated, I think, that I have stated the only claims of restraint of interstate commerce which has been supported,—I won't say supported,—attempted to be supported by the introduction of any evidence in the case which we now proceed to the introduction of our evidence in defense.

The Court: You have completed, have you?

Mr. McClennen: Yes, if it please the Court.

The Court: We will suspend now until 2 o'clock.

(Whereupon a recess was taken until 2 o'clock P.M.)

[fol. 4044] After Recess, 2 P.M.

Appearances: Same as before noted.

J. Myer Schine, a witness called by and on behalf of the Defendants, and having been first duly sworn was examined and testified as follows:

Direct examination.

By Mr. McClennen:

Q. Where do you reside, Mr. Schine?

A. Gloversville, N. Y.

Q. How long have you resided there?

A. 27 years.

Q. That is beginning in 1917?

A. 1917.

Q. When did you first enter the business of exhibitor of motion picture film?

A. I was connected in 1914——

Q. Just the time is all I need.

A. —with theatres in Syracuse and then I went — Syracuse to Gloversville in 1917.

Q. Was that consecutive? Was there any extended period of time when you were out of the business?

A. No, that was about a week or two after I sold out my [fol. 4045] interest in Syracuse I went to Gloversville.

Q. The theatres in Gloversville are the earliest which you acquired which are now a part of your circuit?

A. Yes.

Q. Will you inform us what you did, by way of entry into the exhibition business in Gloversville?

A. After I sold out my interest in Syracuse a film salesman told me that there was available a theatre in Gloversville known as the Hippodrome and I went there and found the theatre was being operated by the Odd Fellows Lodge of that city and I met the Trustees and we worked out a lease by which I agreed to pay a rental of $1500 a year for a period of fifteen years.

Q. You were about 27 years old at that time?

A. About 25 years old at that time.

Q. About 25 years?

A. Yes.

Q. Will you describe that Hippodrome Theatre at that time?

A. The Hippodrome Theatre was originally a skating rink and this skating rink was converted into a motion picture theatre principally by building a false floor in the interior, which gave it a pitch, and installing a projection booth and a screen and some wooden-veneer chairs on the floor, and that's about all that was done to make it appear as a theatre.

[fol. 4046] Q. Do you remember how many seats it had?

A. It had about 750, and also it had a number of steps to walk up in order to get there. The building originally had about six steps to walk up in order to get into the building but when they raised the back of the floor inside it added about six more steps, so it really was a second-story building, with windows on each side, which were covered with some plush drapes to keep the lights out.

Q. Is this a good representation of the theatre at that time?

A. That is just about the way I found it. Some of the men in the picture are still employed in the theatre.

Mr. McClennen: I offer this.

Mr. Wright: Objected to as completely immaterial and irrelevant to any of the issues in the case.

Mr. McClennen: I don't care to press it.

The Court: He described it. I think that is probably sufficient.

Mr. McClennen: Will you mark this for identification?

(Thereupon the photograph of Hippodrome Theatre, Gloversville, referred to was marked as Defendants' Exhibit D-149 for identification.)

[fol. 4047] Q. Now, at this time had you any interest in any moving picture producing company?

A. No.

Q. In any distributing company?

A. No.

Q. In any other theatre?

A. No.

Q. At this time what were some of the prominent producers of the better class of moving pictures?

A. There was Paramount which at that time dominated the field, and there was Fox. Metro was not released under the name—oh, yes, it was released, pardon me, under the name of "Metro".

Q. By the way, let me interrupt you, Metro at that time was a producing company, not yet connected with Goldwyn or Mayer?

A. That is right.

Q. Proceed, what other prominent——

A. And there was a company known as Triangle and there were a number of smaller companies whose names I don't recall.

Q. What other theatres were there in Gloversville at the time?

A. There was a brand new theatre, a very fine theatre known as the Glove.

[fol. 4048] By the Court:

Q. What?

A. The Glove.

Q. The Glove?

A. The Glove. It had been built about a year or two before 1917, and the same people who operated the Glove also had a vaudeville theatre known as the "Family". The Family was also an upstairs house like the one I got, perhaps a little more so, and they played in that house vaudeville and pictures. It was not a nice theatre, but the Glove was a very fine theatre and played pictures exclusively.

By Mr. McClennen:

Q. What were the pictures in those days that the Glove played?

A. The Glove had Paramount and in those days Paramount released 104 pictures. They also had——

Q. You mean 104 pictures a year?

A. Yes, two pictures a week, and they also had most of the pictures released, most of the good pictures released by various other companies, except Metro and Fox, which were furnishing pictures at the rate of one a week each to the Hippodrome.

Q. This was before the days of double-featuring, was it not?

[fol. 4049] A. Yes, sir.

Q. And do you recall in those days how many changes a week the Glove made?

A. The Glove made three changes a week, I believe. They had no Sundays then.

Q. You subsequently became the owner of the Glove, also?

A. Yes, sir.

Q. In the period before you entered into the Glove in any way, what pictures were you showing at the Hippodrome?

A. Well, when I came there they had under contract "Fox" and "Metro", but in those days contracts were only good for four weeks. Either party had a right to cancel the existing contract, and after I was in Gloversville for about six weeks I had a cancellation from Fox and Metro, both, and they sold the product to the other houses. I succeeded in getting Triangle pictures.

Q. How many were Triangle releasing?

A. Triangle was releasing about 80 a year, but they were then about to discontinue business, and they weren't making pictures regularly, and then I bought some pick-ups, whatever I could get.

Q. And were those your sources of supply up to the time of the Glove, of your entering into the Glove?

A. Yes, sir.

Q. Describe the way in which the possibility of your going [fol. 4050] into the Glove came before you.

A. When I came to Gloversville I found the business in the Hippodrome was very slim, very, very little, and I checked as to the reason why. Some nights when we played a good picture the crowd still wouldn't come, and I came to the conclusion that they don't like to come to the theatre because the theatre was inadequate. Its wash rooms were very bad; projection was poor and ventilation was bad, and I immediately proceeded to correct those phases of the theatre, and after spending about four or five thousand dollars in redecorating and putting in new projection machines, and new screen, and improved ventilation, and the public spaces, the business seemed to improve and had continuously improved until the Odd Fellows asked me to buy the building from them, and I did buy the building and then made plans to make the Hippodrome into a modern theatre. This required an expenditure of about thirty or thirty-five thousand dollars, which we did, and when we opened the theatre, we had a capacity business every day, and then the owners of the other theatres, through a real estate man, came to me and wanted me to meet them and I did meet them, and they asked whether I would be interested in buying their theatres. After some negotiations I did buy their two theatres.

[fol. 4051] Q. And the Glove you have operated ever since?

A. We have operated it ever since.

Q. And do you remember which year it was that you obtained the Glove, as you have just described?

A. In 1920.

Q. Now, have you a memorandum of the amount that you expended and have expended for the acquisition and improvement of those two theatres, the Hippodrome and the Glove?

A. You mean since to date?

Q. Yes.

A. I think I have, yes.

Q. Tell us, first, how much you expended for the acquisition of the ownership of those two theatres.

A. We paid for the Hippodrome $22,500, and the Glove, $126,000.

Q. What have you put into the building and improvement and equipment since that acquisition?

A. We have spent on the Hippodrome— —

Mr. Wright: If the Court please, I don't like to interrupt, but I think some statement ought to be m[illegible] as to what the materiality or relevancy is of this situation, before we go into these matters. It is not clear to me.

The Court: I was wondering myself what the relevancy is of these transactions.

Mr. McClennen: The plaintiff is contending that this circuit should be dissolved and these theatres taken [fol. 4052] from us and I think it is material to show how much we have expended in bettering the theatres.

The Court: The details, perhaps, concerning it might be immaterial. I mean you can show the amounts expended, without the descriptions of the theatres.

Mr. Wright: Even that, if the Court please, the plaintiff is not making any contention Mr. Schine should be deprived of any of these theatres for any amount less than what his investment is in them. I don't see what possible relevancy that investment has.

The Court: I think perhaps the details are unnecessary, but it is all right to show what he expended.

Mr. McClennen: I was simply asking the round amounts.

The Court: I think it was referring to some of the testimony received in the tracing of the purchase, and so on. I will let you show the amount he expended all together.

By Mr. McClennen:

Q. What are the amounts expended in the improvement of the two theatres?

The Court: That is, up to date.

[fol. 4053] A. $227,000 was expended for improving the two theatres.

Mr. McClennen: The next place, if your Honor please, that has been mentioned is Oneonta. The interrogatory answers already read show that the Strand in Oneonta was obtained in October, 1919. The Oneonta, November, 1922——

The Court: That is, the Strand at Oneonta and the Oneonta, you mean?

Mr. McClennen: The Strand at Oneonta was October, 1919. The theatre Oneonta at Oneonta——

The Court: Yes, I understand.

Mr. McClennen: —was November, 1922. And the Palace, formerly the Maxey, was leased in 1923 and the ownership obtained in September——

The Court: What was that last name?

Mr. McClennen: The Palace, formerly known as the Maxey, September, 1927.

By Mr. McClennen:

Q. Will you refer to your memorandum and inform us how much you expended for the acquisition of the Palace and of the Oneonta Theatre, both in Oneonta?

A. Palace, $161,800.

Q. And the Oneonta?

A. The Oneonta, $130,000.
[fol. 4054] Q. Since its acquisition what have you expended on the improvement of those two theatres?
A. About $30,000.

Mr. McClennen: The answers to interrogatories with reference to Norwich show that the ownership of the Colonia was obtained in November, 1921.

Q. Will you refer to your memorandum and inform us the cost of the acquisition of the Colonia?
A. $80,700.

Mr. Wright: If the Court please, we, of course, object to all of this data, on the ground it is immaterial and irrelevant. It seems to me considerable time could be saved. If they want to present a comprehensive memorandum of these expenditures, then we could agree that the witness would testify that those amounts were expended. I don't see the necessity of taking the witness over each one.

The Court: The Norwich may stand on a different basis than the others because that is one of the cities concerning which testimony has been given. That is Norwich.

Mr. McClennen: I will offer the memorandum, if your Honor please, that Mr. Wright suggests, as the next ex-[fol. 4055] hibit.

Mr. Wright: Well, we would agree that Mr. Schine, if asked about each of these theatres and towns, would testify that the figures set forth here are correct, although we, of course, preserve our objection that all of this data is immaterial and irrelevant, not within the issues we are trying.

The Court: Received.

(Thereupon the memorandum concerning the Colonia Theatre referred to was received in evidence and marked as Defendants' Exhibit D-150.)

Mr. McClennen: Of course, it would serve no useful purpose to read this great mass of figures to your Honor at this time.

The Court: No.

Mr. McClennen: I merely call attention to the fact that the figures are as stated in my opening this morning.

By Mr. McClennen:

Q. When you acquired the Colonia did you acquire the Strand in Norwich at the same time?

A. No, a little later.

Q. How much later did you acquire the Strand?

A. I should say about a year later.

[fol. 4056] Q. Were those two theatres, the Colonia and the Strand in Norwich, both included in the sale in 1929 to Fox-Metropolitan?

A. No.

Q. Fox-Metropolitan did acquire the Colonia?

A. The Colonia on lease.

Q. Did you negotiate with them with a view to their taking the Strand?

A. Yes.

Q. And what conversations did you have on that subject?

A. They did not want to take it.

Q. What happened to the Strand? Did you continue to operate it?

A. No, we leased it to some one else for the period our lease still had to run.

Q. Do you remember how long that was?

A. That was, I should say, about three or four months.

Q. And then at the end of that lease did your connection with that theatre, in all respects, terminate?

A. Yes.

Mr. Wright: Excuse me. Has the period when that occurred been fixed?

Mr. McClennen: That was in 1929.

Q. Describe the Colonia as it was in 1929, '30 and '31?

A. The Colonia Theatre was a large, complete theatre, large stage, good ventilation and good seats, with nice [fol. 4057] entrance and was housed in an extraordinary substantial building which was built by local citizens' subscription. It was regarded as the outstanding theatre in the whole area.

Mr. Wright: I move to strike it out as not responsive.

The Court: The last part may go out, "It was regarded as the outstanding theatre in the whole area."

Q. In the surrounding 50 miles from the Colonia did you know of any theatre approaching equality to the Colonia?

A. Binghamton had as good a theatre, which is 40 miles.

Q. How far away is Binghamton?

A. 40 miles.

Q. With that exception was there any other within 50 miles?

A. No.

The Court:

Q. How far is Norwich from Utica?

A. I should say about 65 miles, 70 miles.

Q. Further than Syracuse?

A. Yes.

By Mr. McClennen:

Q. Describe the Strand at the time your lease of it expired around about 1929 or whatever the date was?

A. The Strand was a much smaller theatre. It had no stage. The ceiling was low and the projection booth was on the ground floor, so when you walked in you had to walk around the booth in order to get in the theatre. It was what [fol. 4058] was known as a glorified store show.

Q. Do you remember the time when you put these $29,500 of improvements into the Colonia, I am referring to Defendants' Exhibit No. 150?

A. I believe improvements were made from time to time, but the major improvements was made in 1938.

Q. That is in 1938?

A. Yes, sir, 1938.

Q. And when those improvements were made, how was the Colonia in reference to modern standards?

A. It was as modern as any theatre could be.

Mr. Wright: Well, if the Court please——

The Court: That is not responsive. I don't know how modern it could be.

The Witness: It had fine cushion seats with springs. It had a ventilating system and was finely decorated with rather attractive marquee, plenty of lights in front, and what was more important, the projection and the sound was the very latest type.

The Court: The outside the same, was the outside changed?

The Witness: Yes, the outside was changed with a new marquee, and the inside had fine carpets, and it was, I would say, an outstanding theatre.

[fol. 4059] By Mr. McClennen:

Q. Has that theatre been operated from the inception of your operation as a first-run run?

A. Yes, sir.

Q. During the time that you operated the Strand how was that operated?

Mr. Wright: I don't think the date has been fixed yet.

The Witness: The operation was the same as had been operated by the previous exhibitor, a Western house, and secondary feature house.

By Mr. McClennen:

Q. When you say a Western house, you mean for the exhibition of pictures?

A. Of action.

Q. Pictures called Western?

A. Yes, sir, Western pictures.

Q. Describe in some more detail what is classified as a Western.

A. A Western, as a rule, is a picture that has a lot of action in it. Usually the story is not too logical, but it has many thrilling incidents which pleases a good many people.

Q. Are there communities in which a Western has a better appeal than a better picture?

A. Oh, yes.

[fol. 4060] Q. What, as your experience goes with the theatre going public, what are the places where you get that?

A. In Kentucky we find Westerns are particularly sought after by the public, much more than the so-called big stars.

Q. The answers to interrogatories show that in Lockport the Palace was acquired in 1927. Had you become interested in any respect in Lockport prior to that date?

A. Yes, sir, 1927, you mean?

A. I think it was 1927 that is in the answer to the interrogatories?

A. Yes, sir.

Q. Can you fix approximately when it was that you became interested in Lockport?

A. I believe it was in 1922.

Q. What was the interest then and how acquired?

A. A real estate agent from Buffalo wrote me.

Q. And as a result of that did you see anybody?

A. Yes, sir. He drove me down to Lockport, and we met Mr. Thurston, the owner of a theatre known as the "Temple" and——

Q. What conversation did you have with Mr. Thurston?

A. Well, Mr. Thurston——

Mr. Wright: If the Court please, how can that possibly be relevant to anything we are trying here?

[fol. 4061] The Court: I will let him state what he did. State what you did.

The Witness: Mr. Thurston told me——

Mr. Wright: No, what you did.

The Witness: What I did? We bought the theatre.

Mr. McClennen: I presume that called for what conversation he had. That is what he did.

The Court: Yes, with the seller.

Mr. McClennen: That is what he is about to give.

Mr. Wright: We object to that.

The Court: If it is limited to what he said he would take for it and what he would give for it, is one thing. If it goes further it is another.

Mr. Wright: If the Court please, I don't see what that has to do with the case. It is an acquisition. There was no testimony offered with respect to this acquisition he is testifying about.

The Court: Was it listed in those just read in evidence here?

Mr. Wright: That is right, but we offered no testimony with reference to negotiations in connection with that theatre, nor the circumstances in the acquisition at all.

The Court: Does it appear in the exhibit the amount paid [fol. 4062] for the Temple and when acquired?

Mr. McClennen: It appears in the exhibit against Lockport, that the Rialto was acquired for $27,500, and the Palace for $200,000, and that the expenditures in the improvement of the building and so forth were $126,400. The name "Temple" does not appear.

The Court: I will let him state—I will let you show what happened to the Temple, but the conversation between him and the seller I don't think is material. It is incompetent.

By Mr. McClennen:

Q. Do you get the limits that his Honor suggests?
A. Yes, sir.
Q. Proceed.
A. We bought the Temple Theatre.

The Court: In 1922, you say?
The Witness: In 1922, about that, I think.

By Mr. McClennen:

Q. Do you remember what amount of money——
A. I think we paid $70,000, I believe.

The Court: Seventy?
The Witness: Seventy.

Q. The answers to the interrogatories, which have been read, show that the ownership of the land for the Auburn [fol. 4063] Theatre was acquired December, 1923, and that the Palace Theatre was acquired as lessee in November, 1923, and the Jefferson was acquired as lessee in March, 1927 to the extent of 50 per cent, and the remaining 50 per cent from the Shea interest in August, 1937.

The Court: Where did you say that was? What town?
Mr. McClennen: Auburn.

Q. Now, pause before you answer this question. What brought the Auburn situation to your attention? You may proceed to answer.
A. You mean from the very beginning?
Q. Yes.
A. Mr. Schwartzwolder, who was operating the Palace Theatre, had written to me to come out and see him.

Mr. Wright: That is objected to, if he is going to go into negotiations here, I don't think that is material.
Mr. McClennen: I judge this is an objection.
Mr. Wright: That is right.
The Court: Well, I will let him——
Mr. McClennen: Then I don't press the matter any further.

The Court: I will let him state how he happened to go to Auburn. I will let him state that.

Mr. McClennen: If the negotiation is so immaterial to this case that the statement of it is objectionable, I don't care [fol. 4064] to go into it at all.

The Court: I don't think so. We are concerned with theatres here. I will allow you to show what was done with reference to them, what was paid for these theatres, as bearing on their condition. I guess it already appears in the stipulation, unless there is something further in the exhibits.

Mr. McClennen: It appears from Exhibit No. 150 that the property acquired in Auburn was at a cost of $83,500, that is, for the Auburn Theatre, and that there was subsequently expended on it $245,000; that the Palace Theatre in Auburn was acquired as lessee and there was expended in the improvement of it $14,500, and that the Jefferson Theatre was acquired by lease, and there was expended on it $4500. These sums, of course, are wholly apart from the sums that the lessors may have expended in the improvement or building of the property and are only the expenditures by the lessees.

Mr. McClennen:

Q. Now, will you describe the Jefferson Theatre in Auburn, New York, as it was when it was being operated [fol. 4065] as your leading theatre there?

A. The Jefferson is a theatre seating——

Mr. Wright: Can we have the date fixed?

Q. It is suggested that we would like the date or the period during which you operated the Jefferson Theatre as your leading theatre in Auburn.

A. That was prior to 1928.

Q. Beginning first when?

A. In about 1927.

Q. And your operation of that as the leading theatre was interrupted by the Fox Metropolitan operation from 1929 to 1933?

A. Yes, sir.

Q. And then resumed by you?

A. Yes, sir.

Q. Now, perhaps the simplest way is to take 1933 and describe the Jefferson Theatre then.

A. It was a theatre that had been built quite some time ago. It had a lower floor seating about 650, a balcony seating around 300 and a second balcony seating another 300. While it was a nice theatre, I wouldn't call it a modern theatre.

[fol. 4066] Q. At that time what other theatres were operating, that is, in 1933, in Auburn?

A. In 1933 there was the Strand, which had previously been a hall built for conventions and concerts, and converted into the motion picture theatre. It was rather old, had no modern appliances, and it had a bad location. And then the Palace, which was a theatre seating about 1100, but lacked modern facilities. And then there was the Capitol, which was an up-stairs house, rather old, and that's all there was in town.

Q. Do you remember when it was that you built the Auburn?

A. In '38.

Q. It appears that you spent $245,000 in the building of that theatre. Why did you build it?

A. Well, the town didn't have a modern theatre and the town needed a new theatre.

Q. Describe the Auburn Theatre.

A. The Auburn Theatre is located in the heart of the city, has a fine large lobby, spacious public rooms, with every modern convenience, has a large auditorium with very luxurious seats, finely decorated walls, refrigerated air, which works on a basis of conditioning the air as wanted, and is very attractive all the way through to the point where it brings people from all around the entire area to Auburn.

[fol. 4067] Q. After you had opened the Auburn that, of course, was your first-run, preferred house?

A. Yes.

Q. And what did you do with respect to the other theatres that you had there?

A. The Palace continued on the same policy I had before. The Strand was at that time condemned by the local authorities, as being unsafe. We closed it and ultimately tore it down. The Jefferson we modernized and re-seated to make it attractive, but we couldn't keep it open regularly for lack of pictures.

Mr. Wright: I move to strike out the latter part. He can testify what he did, but as to why requires some considerable examination.

Mr. McClennen: That is part of what he did.

The Court: He can state whether he was able to acquire pictures.

Mr. Wright: He can state what he did with reference to trying to get pictures for it, but his statement purely that he closed it because he couldn't get pictures; the fact he closed it certainly is not objectionable.

Mr. McClennen: Your Honor; I have been guilty of a court offense in not restraining my merriment as I think [fol. 4068] of the efforts made by my Brother Wright to have other witnesses tell why they closed their theatres. I had those questions in mind in proceeding with this examination. Now I submit that the answer should go forward.

The Court: Well, I think, when the objection is raised, that the witness be required to state what efforts he made, what the results were.

By Mr. McClennen:

Q. Will you state the efforts you made to get product for the Jefferson Theatre?

A. We made every effort possible.

Mr. Wright: Now, I move to strike it out as not responsive.

The Court: Yes.

Mr. McClennen: I should think that was very responsive. It may be rather a generalization.

The Court: Too broad.

Q. Did you direct that any applications be made to people who have pictures for sale?

A. Yes.

Q. Did you participate personally in carrying out of those directions or was it done by others?

A. I participated in some instances but mostly the request for the pictures was carried on by others.

[fol. 4069] Q. What did you find as to availability of pictures for the operation of the Jefferson?

Mr. Wright: That is objected to. If it is important he can recite the negotiations he had and he can have whoever else he had who participated in them say what their negotiations were, so your Honor would be in position to know whether there were pictures available to that theatre or whether there weren't. I don't think he can make that conclusion for your Honor.

Mr. McClennen: All that is of consequence is to show why the curtailment of the Jefferson operation took place. It doesn't make any difference beyond that.

The Court: It is an important inquiry as to why the questions involved here, as to why he had to close a certain theatre. I think you should make proof of facts, rather than a conclusion. It requires some endeavors to do it, some endeavors should be shown.

Mr. McClennen: If your Honor please, we are not proceeding here in a complaint against anybody for our having been obliged to close the Jefferson Theatre. There is the [fol. 4070] difference. Or curtail its operations. But we are here to show that there is a proper transaction.

The Court: Yes.

Mr. McClennen: By the defendant to curtail his own theatre——

The Court: Yes.

Mr. McClennen: —by reason of the situation that he found to exist.

The Court: Yes, that is very true.

Mr. McClennen: And that is all I am asking.

The Court: I think that proof should be made by showing the efforts that were made, rather than his conclusion, that every effort was made and he was unable to, for the very reasons you suggest.

Mr. McClennen:

Q. Without any generalization as you gave before, state the efforts which you made, either by personal contact or by direction to others, to get enough product so that you could run the Jefferson in full as it had theretofore run.

A. Well, I spoke to two or three representatives, asking whether we could get second-run after the Capitol and Columbia pictures.

Mr. Wright: I ask to have who these representatives were [fol. 4071] and when.

The Witness: Mr. Weinberg was the representative.

The Court: And the other company?

The Witness: Columbia.

Mr. Wright: And when was this?

The Witness: I wanted to buy——

Mr. Wright: When, was the question.

The Witness: That was about, I would say, about three years ago.

By Mr. McClennen:

Q. Would you state again when it was the Auburn opened up?

A. The Auburn opened in '38 and we found that playing in the Palace six pictures, in the new theatre three, and the Capitol absorbing about eight a week, took up all the pictures.

Mr. Wright: That is objected to as a conclusion. He can state what the theatres played, but as to whether that took up all the pictures is something else.

The Court: The direct inquiry is what he did and, if he didn't get pictures, show what happened. You spoke about Mr. Weinberg, one of the representatives?

The Witness: Columbia representatives.

The Court: Did you see anybody else?

[fol. 4072] The Witness: Well, there wasn't anything further that I did myself.

The Court: What did Weinberg tell you?

The Witness: He said he doesn't want to sell second-run in town.

By Mr. McClennen:

Q. At that time how many pictures a week were you playing at the Auburn?

A. Three.

Q. Was that being run as a single-feature house?

A. Single-feature for four days and double the last half of the week, three days.

Q. So that you took one picture for four days and two pictures for three days?

A. Yes. The single-feature was sometimes run three days, depending on the merits of the pictures. Once in a while we run it five days.

Q. How many pictures were you running at that time at the Palace?

A. Palace we ran six.

Q. How many pictures were being run at the Capitol?

A. Six to eight.

Q. So far as other distributors were concerned for pictures for the Jefferson your information was confined to the reports that were made to you with respect thereto, [fol. 4073] was it?

A. Yes.

The Court: What theatres were running first-run aside from the Auburn?

The Witness: The Auburn ran first-run. The Palace had first and second-run. The slough pictures, second-run, and the Jefferson played the week-end with two first-run pictures, but we had to keep closed the rest of the week.

Mr. Wright: I move to strike that "we had to".

The Court: It was closed?

The Witness: It was closed, yes.

The Court: Leave that stand.

By Mr. McClennen:

Q. Was there any reason known to you personally, beyond this lack of pictures that you have described, for closing the Jefferson down to a week-end operation?

A. No.

Mr. McClennen: The answers to interrogatories with respect to Canandaigua show that the Playhouse was acquired in October, 1924, and that the Lake was leased November, 1939, and the Fee obtained August, 1940.

Q. Now, from 1924, except for the period of the Fox-[fol. 4074] Metropolitan, 1929 to 1933, did you operate the Playhouse in Canandaigua continuously?

A. Yes, sir.

Q. And it was run as a first-run theatre?

A. Yes.

Q. And when did you take up for consideration the possibility of building an additional theatre in Canandaigua?

A. I think it was '37.

Q. Did something *happened* in Canandaigua likely to affect the theatre need of the town?

A. Yes.

Q. What was it?

A. The State was—I don't know whether it was the State or the Federal Government—was constructing a very large hospital there and it was expected that several hundred families would move into town as a result of it.

Q. Did you make any examination in the town to see what was possible by way of theatre sites there?

A. Yes.

Q. Do you remember when you hit upon the site that you finally acquired?

A. Yes.

Q. And when was that?

A. In '38, I believe.

Q. Do you remember how long a period of time you en- [fol. 4075] gaged in the efforts to proceed to the determination of a site of building and the necessary plans and specifications and the building and completion of the theatre?

A. About two years, I believe.

The Court: You said you hit on the site in '38. Do you mean by that you acquired the site in '38?

The Witness: Yes.

The Court: Two years to complete the project?

The Witness: About that.

[fol. 4076] The Court: It took two years to complete the present building?

Mr. Wright: I did not hear the last question.

(Question read, as follows: Q. Do you remember how long a period of time you engaged in the efforts to proceed to the determination of a site of building and the necessary plans and specifications and the building and completion of a theatre.")

Mr. Wright: That is objected to, both on the grounds it is leading and calling for a conclusion. He can say as to when it was built. As to what happened in the intervening time, it should be brought out by facts.

The Court: Yes, he should state what was done.

Mr. McClennen: Then do I understand that is all out of the record?

The Court: I understand your question contemplated the consideration of things mentally, perhaps.

Mr. McClennen: I wasn't making any objection. I wanted to be sure that was off the record so I have a clear way to proceed.

The Court: All right.

Mr. McClennen: Then I understand it is stricken out.

[fol. 4077] Q. Do you remember how continuously the building of that theatre and its preliminaries of sketches, plans and building plans and specifications and attempts at bids and actual operation of the building went on?

A. You mean previous to the commencement of construction?

Q. Yes.

The Court: Including the construction.

Q. And including the construction?

A. It took about two years.

Mr. Wright: If the Court please, it isn't clear yet what took two years.

Q. Well, what do you mean, Mr. Schine, took two years?

A. The planning and finishing the theatre.

Q. Were you actuated in any way in taking the steps relative to building the theatre by any knowledge that any one else was thinking of building there or opening a theatre?

A. No.

Q. Did you know that Mr. Wallace had thought of the subject of building in Canandaigua?

A. Well, I heard rumors to that effect.

Q. Do you remember when it was that you heard any rumors about it?

A. I do not remember.

Q. Was it after or before you entered upon this project as you have described in 1937?

[fol. 4078] A. I couldn't tell you because I don't remember as to when the rumors were afloat.

Q. It appears that the first step in the matter of the title to the land was the obtaining of the lease in November, 1939, and that the title itself was obtained in August, 1940. What steps had you taken, yourself, with reference to the project of building there; that is, by way of seeing what could be done in the way of planning a theatre adapted to the land, or to which the land was adapted, do you remember?

A. Yes. I went out to Canandaigua and looked over the various sites and this site was particularly suitable, and the owner came to Gloversville and a lease was negotiated with an option to buy the land and the building. We then proceeded to engage an architect and plans were drawn and the contractor was given the job to construct a theatre,—I should say reconstruct, because the intent was to use the walls.

Q. That is the walls of an existing building?

A. Of the existing building. The price was fixed by the architect and the contractor as $12,000, but after construction started it appears that an error was made in the planning and one of the walls gave way with the unfortunate result that a man got killed, and that tied up for some time with court litigation, and the contractor refused to go [fol. 4079] through with his plans and did, and for months the matter was argued pro and con, until we had to, in order to get it finished, agree to pay the additional cost in excess of the price which was about, I would say $15,000 or $18,000 more than the price agreed upon by the contractor.

Q. It has appeared from Exhibit D-150 that the property for the Lake Theatre cost $15,000, and that the expenditure thereafter upon it was $38,500; that the Play House had been acquired for $180,000 and there was expended upon it thereafter $16,700. Do you remember when that Play House expenditure took place?

A. I would say about 1937 or '38, '37, probably, I am not sure of the date.

Q. Will you describe the Lake Theatre upon its completion?

A. The Lake Theatre is a smaller theatre than the Play House. It is located in the very busy part of Canandaigua, has fine lavatory space for men and women and seats about 400 or 450. It has fine upholstered spring cushion seats, and the latest projection equipment, as well as sound equipment, and it is very artistically decorated.

Q. You have spoken of the expected increases coming from the hospital. What was the actual development in the town as it turned out?

[fol. 4080] A. As it turned out we kept the Lake Theatre open for some time and lost money and we finally had to close it. The expected increase in population did not materialize.

By the Court:

Q. From the Veterans Hospital, you mean?

A. Yes, sir.

Q. You spoke about a third theatre, I did not get that name.

A. The Lake.

Q. What is that name?

A. Not in Canandaigua, there is a Lake in Rochester.

Q. No, the Play House, Lake and what is the third one?

A. No, there is only two.

Q. Both on the same side of the road?

A. The back of the Lake Theatre abuts the Play House. The Lake is on the main street and the Play House is off the main street. They both go back together with an alley in between.

Q. Both on the east side of Main Street?

A. Yes, sir.

By Mr. McClennen:

Q. Turning to Corning. The answers to interrogatories show the acquisition of the Fox or the Liberty, as it was then known, in October, 1924, and the acquisition of the State in that same month, and the acquisition of the Palace, [fol. 4081] formerly the Regent, in April, 1938. Directing your attention to October, 1924, will you relate what you did to acquire those two theatres, or any others at that time in Corning in 1924?

A. We acquired three theatres in Corning in 1924.

Q. And what were they?

A. They were the Regent, which was later named the Palace; the State and the Liberty which later was rebuilt and called the Fox.

Q. The Liberty at some time burned down?

A. The Liberty burned down.

Q. Do you remember when that was?

A. I think it was in 1924, just when we were acquiring it, and it burned down.

Q. Did you build the Fox?

A. The Fox.

The Court: What is the name?

Q. The Fox?

A. The Fox was built by us.

Q. On the site of the Liberty?

A. On the site of the Liberty.

Q. How soon did you build the Fox after the burning of the Liberty?

A. About three years later or four years later, I believe it was finished in 1929.

[fol. 4082] Q. These theatres passed to Fox Metropolitan in 1929?

A. They did.

Q. And what did you get back in Corning in 1933?

A. I want to make a correction there. The Regent did not pass to Fox. The Regent we sold to a man by the name of Gerber, who was a manager for us. We sold to Fox Metropolitan the State and the Liberty, which was, I stated, later named the Fox.

Q. And the Regent, later called the Palace, was the one that Mr. Gerber acquired?

A. Gerber. The Regent was closed at the time we sold it to him.

By the Court:

Q. What was the last answer, the Regent was closed when?

A. At the time we sold to Mr. Gerber.

Q. That was subsequently known as the Palace?

A. The Regent is known as the Palace now.

By Mr. McClennen:

Q. Did you have to do, yourself, with the acquisition of that property in 1924?

A. Yes, sir.

Q. And from whom did you acquire it?

A. From Mr. Dygert.

Q. Did you acquire other theatres in other places from him?

[fol. 4083] A. Yes, sir.

Q. As a part of the same transaction?

A. Yes, sir.

Q. There was, when it came to you then, what—or, there were what theatres in your operation in Corning?

A. When it come back from Fox Metropolitan?

Q. In 1933, yes.

A. The State and the Fox.

Q. What other theatres were there in 1933 in Corning?

A. There was the Palace and across the bridge was the Plaza.

Q. And the Palace was in the operation of Mr. Gerber?

A. Yes, sir.

Q. And the Plaza of Mr. Gaby and Mr. Cohen?

A. Yes, sir.

Q. Will you describe your two theatres separately as they were in 1933?

A. The Fox was a brand new theatre. It had all modern improvements and appointments. It had been finished in 1929 as stated and had all the very latest equipment. The State was an old theatre, in good condition, but had not been running regularly. I think they were running it week-ends, and when we took it over we followed that policy.

Q. Now, describe the Palace.

A. The Palace was a smaller theatre, seating about 500. [fol. 4084] Mr. Gerber had expended some money and made a rather attractive, little theatre out of it, and it was specially well located on the main street.

Q. Now the Plaza?

A. Well, the Plaza was located across the railroad track. It had a community of its own, with several stores, and it is a small theatre and lacks in modern appliances.

Q. The Fox was operated as the first-run theatre, was it?

A. Yes, sir.

Q. From the time it was built?

A. Yes, sir.

Q. And has continued to be ever since?

A. Yes, sir.

Q. What was the operation of the State in the period from 1933 to——

A. Well, the State closed and opened, and operated intermittently, and usually it ran week-ends, but occasionally we tried to operate it for a full week.

Q. What, in the period from 1933 to 1938, was the operation of the *Plaza*?

A. The *Plaza* ran first and second-run pictures.

Q. What was the operation of the Plaza?

A. Well, they ran mostly Western pictures, some second and third-run.

Q. Do you know, was the Plaza built as a theatre, or was [fol. 4085] it renovated over?

A. It is a converted store theatre, but it is a little better than the average store show. It has a high ceiling.

Q. Will you relate the facts of your acquisition of the Palace from Mr. Gerber in 1938, or leading up to that acquisition?

A. Mr. Gerber had sent for us, or for me, rather, and I could not go down to see him, so I sent down Mr. May, and he worked out a lease with him for ten years, whereby we paid him an advance rental of $7500, I believe, and I think we were paying him a rental of either $6500 or $7500 a year. He complained of illness and wanted to retire and——

Mr. Wright: I move to strike it out. This is a conversation that he apparently had with some one else, I take it.

The Court: Well, of course, if he talked with Gerber—he said Mr. May did this.

Q. This you were about to state was not of your own knowledge?

A. No, Mr. May told me Mr. Gerber was very sick.

Mr. McClennen: Then I consent to that going out.

Q. At the time of your acquisition of this lease, did Mr. May make some report to you of what Mr. Gerber had told him as to his reasons for retiring?

[fol. 4086] A. Yes, sir.

By the Court:

Q. What did you say you paid him? You said something about $7500.

A. $7500 advance rent, and I don't remember, your Honor, whether it was $6500 or $7500 a year for a ten-year lease.

By Mr. McClennen:

Q. The answers to interrogatories as to Rochester show that you acquired some interest in the Webster Theatre in 1927. Prior to that acquisition you had some talk, did you, with Mr. Tishkorf?

A. I did.

[fol. 4087] Q. At that time what theatres did you have, in one way or another, in Rochester?

A. You want me to give you the names or just the number.

Q. The names.

A. The Grand, the Liberty, the Riviera, the State.

The Court: We will suspend for five minutes.

(Short recess taken.)

By Mr. McClennen:

Q. It has appeared that there was an acquisition of the Grand by you in 1924. Was that the beginning of Rochester, as far as you were concerned?

A. Yes.

Q. At the time of the conversation with Mr. Tishkoff was Mr. Fogel also present?

A. You mean the first conversation?

Q. Yes.

A. No.

Q. It was Mr. Tishkoff alone?

A. Alone.

Q. Now, at that time, it has appeared, there was a Plaza Theatre between the proposed site of the Webster Theatre and the existing State Theatre. Did you have anything to do with that theatre, the Plaza?

A. No.

[fol. 4088] Q. Do you know who was the operator of that theatre?

A. I can't recall his name. He was a Colonel, called as such, "Colonel," and I don't remember his name.

Q. Will you come to the conversation that you had with Mr. Tishkoff, the first conversation, on this subject of a proposed Webster Theatre?

A. Well, the conversation took place rather informally at the Seneca Hotel, in the lobby. I met him there and we chatted, and then I asked him whether it was true that he and his associates proposed to build a theatre in the neighborhood of the State and the Plaza and he said it was true, and I asked him whether he thought the location was suited for a third theatre. He said he didn't know. I then asked him, "How did you happen to get into it?" He said, "I don't know. My partner got into it and I just went along with it, but" he said "why don't you come up to my office tomorrow and I will have all my associates there and see if we can't work out something whereby we might have a partnership in the theatres?" And the next day I did go up. Mr. May went along with me and Mr. Schafer, who was a local manager, went along, and we met in Mr. Tishkoff's office of the Murray Theatre and there was Mr. Fogel and two other men—I can't think—who was it—Mr. Robfogel [fol. 4089] and someone else. I don't know his name. And we talked about a new theatre they proposed to build and I pointed out——

Q. No, not what you pointed out.

A. I told them——

Q. Just the best that you can, after seventeen years, relate that conversation. Somebody said something and somebody else said something, and who said it, and what it was.

A. I told the group of men there that the neighborhood is already over-seated and that the Plaza had just been remodeled and there isn't enough room for a third theatre, and we talked pro and con, and talked the possibility of forming a partnership, but we couldn't get anywheres. I was not agreeable to it and——

Mr. Wright: I move to strike that. Let him say what he said.

The Court: He objects to the word "agreeable."

Q. Just how you put it.

A. I told them we wouldn't go into partnership and I told them they were over-seating a neighborhood and there is no reason why they should; if they really wanted to build a theatre there were so many other neighborhoods where a theatre is needed, but they said they owned a lot and they were going ahead with it. Well, I said there was no sense to it, any more than there would be sense in build- [fol. 4090] ing a theatre in the neighborhood near the Murray, and after some conversation about different things I left their place, and that terminated that conversation that we had.

Q. Have you stated all that you recall that occurred in that conversation?

A. Well, I don't remember of anything else.

Q. Was anything said in substance that if they persisted in going ahead with the Webster project that you would put in a theatre next to the Murray?

A. No.

Q. Anything approaching that in any way?

A. No.

Mr. Wright: Well, if the Court please, just say what was said.

The Court: Yes.

Mr. McClennen: Well, I have asked him what was said.

The Court: You said "anything approaching that." He can state the conversation. He said there was no talk about it.

Q. Is it the fact that there was no talk about the possibility of you building another theatre near the Murray, beyond what you have already stated?

A. It is a fact.

Q. When did you next have any conversation with Mr. Tishkoff or with Mr. Fogel, touching the subject of the Webster project?

[fol. 4091] A. We had several talks. I used to go to Rochester quite frequently and we would meet in the hotel and talk generally.

Q. Now come to the first one you can remember where there was anything said about this Rochester project, and do the best you can to tell us who said what?

A. Well, I met Mr. Tishkoff and Mr. Fogel together and they——

Mr. Wright: Can we have the time of this and the place?

Q. Can you fix the time in any way?

A. Oh, that was the same year when they were building the theatre. It was in about '26, I believe, or '27.

Q. It has appeared, I think, that the actual date was 1927.

A. Yes. Well, they told me how they had gone ahead and that the theatre is reaching completion and that they thought it would be an advantage to both if we could form a partnership whereby we would take a half interest in the lease and I asked him on what terms. They said, "$20,000 a year rent," and I told him, "I will think the matter over." I met him again later——

Q. Let me interrupt you. This was a lease that was to be taken from this group?

A. Yes.

Q. As the owners of the property?

A. Yes. Mr. Tishkoff was one of the owners of the [fol. 4092] property, and four others. I met him again and at that meeting they had Mr. Robfogel and Mr. Bigger, was one of the men, and they were willing to form a corporation in which we would have a half interest and they would have a half interest. This corporation would lease the Webster from the owners but to do that they told me the leasing corporation would have to put up $20,000 as advance rent, of which I would have to put up ten, and I also would have to take half of the product run first in the State and give them. We, in lieu of that, would get a contract to buy the pictures and we would get five per cent of the gross receipts. The operation, however, would be in the hands of Mr. Fogel.

After some weeks I agreed to that.

Q. In all of this had anything more than you have now stated been said in any of the conversations with reference to the Murray Theatre, or any project of building a theatre near the Murray Theatre?

A. No.

The Court: When was the Webster built?

The Witness: In '28.

The Court: '28?

The Witness: Yes, I think that is the date. The State was built about a year before that.

[fol. 4093] By Mr. ~~McClennen~~:

Q. Was anything said in any of those conversations about your buying power, if a theatre was put up near the Murray?

A. No.

[fol. 4094] Q. My associates called to my attention that I haven't asked you about the type of theatres in Lockport. Will you describe the theatres in Lockport, taking it at first when you acquired your interest, as you have already stated, and take them one by one and describe the Rialto?

A. When we first acquired the Temple, it was an old theatre, built cheaply, and lacked in modern appointments and equipment. Its projection was good, but the seats were not, and the building was a very cheaply constructed building. At that time there was one other theatre which was a rebuilt store show and it was known as the Hi-Art. After we acquired the Temple we found business was exceedingly good, in spite of the poor theatre we had, so we decided to build a new theatre and, after looking around for sites, Mr. Thurston, of whom we bought the Temple, suggested that we buy his building across the street, which had at one time been operated as a skating rink, but was at the time we speak of used as a garage, a very large building. I looked it over, brought an architect to make a survey as to its suitability and we finally bought the building. We then proceeded to rebuild it into a modern, large picture theatre.

At about the same time a group of men started to build the Palace Theatre and, rather oddly, they used the same [fol. 4095] architect. Our theatre was finished several months before the Palace was finished, and it was then opened for first-run pictures.

Q. And this theatre you are now describing is the——

A. Rialto.

Q. Rialto?

A. Rialto. The Rialto had a great advantage over any other theatre they had there before, because it had a very large downstairs seating capacity; had about 1500 seats on one floor and only about 75 or 100 in the balcony. After the——

Q. Well, now, next describe the Palace, when it was subsequently completed.

A. The Palace was a very fine theatre too and it was built primarily for vaudeville; a big stage, high loft, and a very large balcony with boxes around the sides and the theatre was leased to Paramount by the owners.

Q. Well, now, what became of the Temple Theatre?

A. The Temple, if you don't mind, I would like to go on further, if you want a little more about the theatre. In the meantime, and at the same time, the Hi-Art was also rebuilt into a much larger and better theatre than it had been before.

Q. Who did that?

A. This was done by a man named Lannigan, so the town, from having no theatre worth while, had three good [fol. 4096] theatres, and the Temple was the poorest of the three, and the product situation was so bad we ultimately tore it down.

Mr. Wright: I move to strike it out.

The Witness: We could not get pictures for the Temple, so we tore it down.

Mr. Wright: I move to strike it out.

The Court: Strike it out.

The Witness: Well, all right.

Q. Well, you tore the Temple down?

A. I tore the Temple down.

Q. Apart from the product situation as you discovered it to be, was there any other reason why you tore the Temple down?

A. Well, there was no reason except we didn't do business in there.

Q. Then did the Hi-Art and the Rialto go over to the Fox Metropolitan?

A. No, if you don't mind, I want to correct you a little. The Hi-Art we didn't own at that time.

Q. Did the Rialto go over to the Fox Metropolitan?

A. No.

Q. After the ending of the Temple did you operate the Rialto?

[fol. 4097] A. Well, we operated while the Temple was there as well as afterwards the Rialto Theatre.

Q. And during the time that you were operating the Rialto, and the Temple, was Paramount operating the Palace?

A. Paramount had also taken a lease on the Hi-Art, and after an attempt to operate it for a while, they closed up the Hi-Art and they were then operating the Palace. We were operating the Rialto, and come to think about it, we operated for a while the Temple, too. They played vaudeville and pictures in the Palace, and we played the best pictures in the Rialto.

Q. What was played in the Temple?

A. In the Temple was played secondary and second-run. By "Secondary" I mean slough pictures.

Q. Now, you say that—am I right that Paramount closed the Hi-Art?

A. Yes, sir.

Q. You continued on operating the Rialto?

A. Yes, sir.

Q. There came a time, it has appeared, when the Palace went into the Dickinson operation?

A. That was later.

Q. That Palace was owned by the Elder-Dickinson, the father of the witness here?

A. No, it was owned by a group which was controlled [fol. 4098] by the Elder Dickinson.

Q. Now, when the younger Dickinson began to operate, either for himself or anybody else, the Palace, what else was done in the operation in Lockport?

A. When he first began to operate the Palace?

Q. Yes.

A. The Rialto was then the only theatre in operation.

Q. And how long had it been since there had been any other theatre except the Rialto in operation?

A. You mean how long after——

The Court: When he took over.

Q. When he took over.

A. After he took over, well——

Q. At the time he took over?

A. We were ousted from the Palace and we then proceeded to——

By the Court:

Q. You were ousted from the Palace?

A. Yes, sir.

Q. You rented the Palace from Dickinson?

A. No, we had the Palace after that.

By Mr. McClennen:

Q. When did you acquire the operation of the Palace?

A. Well, I believe it was in 1928 Paramount was operating the Palace and we were operating the Rialto, and we were [fol. 4099] both losing heavily——

Mr. Wright: I move to strike out as to what Paramount was doing, not responsive.

The Court: Well, when were you operating the Palace?

The Witness: In 1928 we started to operate the Palace as well as the Rialto.

By Mr. McClennen:

Q. And you continued to operate the Palace and the Rialto, both of them how long together?

A. About two or three years, I would say.

Q. And during the latter part of that period was there any other theatre operating in Lockport?

A. You mean while we were operating the Palace and the——

Q. Rialto.

A. And the Rialto? No.

Q. And what was the operation which you conducted in each of those two theatres during the time that you were operating both of them?

A. The Palace played vaudeville and pictures most of the time. Part of the time it played pictures only. The Rialto played the better pictures at one period. Later——

Mr. Wright: If he means better than what played at the Palace, I move——

The Court: What do you mean?

The Witness: The best pictures, the first-class pictures.

[fol. 4100] Later, however——

Mr. Wright: I think he ought to state what pictures they played, what companies played at various theatres, and your Honor can draw your own conclusion as to which had the better pictures.

By Mr. McClennen:

Q. Well, if further detail is desired, what picture was the Rialto playing first-run in those days?

A. You mean in the early part?

Q. I am now speaking in the period when you were operating the Rialto and then took up the operation of the Palace?

A. At the time the Rialto was playing the first-class releases.

The Court: The first-run, you mean?

The Witness: First-run.

Q. And do you remember of what distributors?

A. Well, of all distributors.

Q. Then when you lost the lease of the Palace you had on your hands the Rialto in operation and the Hi-Art idle, is that correct?

A. Yes, that is correct.

Q. Have I omitted something that is in your mind?

A. Yes, sir, if you don't mind me telling it. Later we found vaudeville in the Palace wasn't paying.

[fol. 4101] Mr. Wright: I object to that.

Q. Wasn't paying?

A. Wasn't paying.

Mr. Wright: I object to that volunteered statement.

The Witness: We dispensed with vaudeville and we found——

Mr. Wright: Before he goes any further, I think he ought to be examined by counsel and give a response to counsel.

The Court: State what you did, you discontinued vaudeville?

The Witness: Yes, and we moved the best pictures we had into the Palace.

The Court: From the Rialto?

The Witness: Out of the Rialto.

The Court: First-run, you mean?

The Witness: Yes, and we played at the Rialto first and second-run and Hi-Art was still closed.

By Mr. McClennen:

Q. Then when you lost the lease of the Palace, you were engaged up to that time in the operation of two theatres in Lockport?

A. Yes, sir.

Q. And the loss of the Palace reduced you to one operating theatre?

A. Yes, sir.

[fol. 4102] Q. And from then on what did you play at the Rialto?

A. We then picked the first-class, first-run pictures and then we proceeded to make the necessary improvements in the Hi-Art and put the policy of the Rialto into the Hi-Art.

The Court: What?

The Witness: The policy of pictures, the same pictures that we had at the Rialto we moved over to the Hi-Art.

By Mr. McClennen:

Q. So that your Rialto was then your best first-run house, and the Hi-Art was your second best of first-run, and your second-run?

A. Yes, sir.

Q. And that operation continued on——

A. Until about 1937.

Q. It has appeared from the answers to the interrogatories that the Palace operation by you ended in December, 1932. Do you remember at that time whether or not you had made your contracts for Lockport product for the releasing season of 1932-33?

A. We had our contracts made at that time.

Mr. Wright: If the Court please, that is a crucial date. The contracts themselves would be the best evidence if they are available. If they are not available, then we [fols. 4103-4104] can take this.

Mr. McClennen: I don't know whether they are already in evidence or not. I should have to check over the mass of exhibits.

Q. Put in another way, whatever contracts were made by you for Lockport for the 1932-33 product, had they been negotiated before December, 1932?

A. Yes, sir.

The Court: Did you say before December, 1932?

Mr. McClennen: Before December of '32.

The Court: Oh, yes.

Mr. McClennen: I am using that date because——

The Court: It is all right.

Mr. McClennen: Because of the answers to the interrogatory showing that was the time when this operation of the Palace ceased.

The Court: Yes.

Mr. McClennen: Now, if your Honor please, I hate very much to speak of a personal matter, but I have been standing on my feet for six hours now, except for the noon intermission.

The Court: I know what is following. I intended to adjourn at five. We might as well adjourn now.

(Whereupon a recess was taken until November 1st, 1944, at 10 o'clock.)

[fol. 4105] UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF NEW YORK

Civil. 223

UNITED STATES OF AMERICA

vs.

SCHINE CHAIN THEATRES, INC., et al., Defendants.

Continuation of trial before Honorable John Knight, United States District Judge for the Western District of New York, November 1, 1944, 10 o'clock A.M.

Appearances: Robert L. Wright, Esq., John F. Clagett, Esq., Harold L. Schilz, Esq., Special Assistants to the Attorney General, and Philip Marcus, Esq., and Milton Kallis, Esq., Special Attorneys, in behalf of the United States.

Edward F. McClennen, Esq., Willard S. McKay, Esq., Saul E. Rogers, Esq., Arthur E. Whittemore, Esq., Arthur J. Homans, Esq., and Edward M. Antevil, Esq., appearing for the Defendants.

[fol. 4106] **PROCEEDINGS**

J. MYER SCHINE resumed the stand in behalf of the Defendants, having been previously sworn, was examined and testified as follows:

Direct examination (continued).

By Mr. McClennen:

I am sorry to open the month confessing an error. On page 4032 of the opening I said that the half-interest in Auburn was acquired in 1923. I should have said the whole interest.

By Mr. McClennen:

Q. Resuming, Mr. Schine, with Lockport, on which we were at the close yesterday, it appears from Defendants' Exhibit D-150 that the original acquisition cost of the Rialto was $27,500 and the building additions, and so forth, thereafter $118,400. Was that $118,000, the bulk of it, expended in the early development of that theatre?
A. Yes.
Q. And that would be along in the middle '20's?
A. Yes, that was in '23, I would say.

The Court: Did you buy the Rialto as early as '23, you say?
The Witness: Yes, might have been a little later.
[fol. 4107] The Court: You had the Temple in '22?
The Witness: It might have been '24, thereabouts.

By Mr. McClennen:

Q. Coming now to Salamanca in 1924——

The Court: '24, did you say?
Mr. McClennen: 1924, yes.

Q. What did you acquire in Salamanca at that time?
A. The Andrews Theatre.
Q. When was the land acquired on which you subsequently built your new theatre?
A. I think it was in '27, if I am not mistaken.
Q. When did you take up with the architect the matter of preparing for building on that land?
A. In '38.

Q. And can you tell me what time?

The Court: You bought the land in '27?
The Witness: Yes.

A. I would say about the middle of the summer of '38.
Q. I ask you to refresh your recollection from this letter which I show you, or copy of letter, and tell me when you sent the blue prints to the architect?
A. According to this letter——
Q. No, not according to the letter. I want you to look at the letter and tell me——
A. In August.
[fol. 4108] Q. What time in August?
A. 23rd of August.

The Court: '38?
The Witness: '38.
Mr. Wright: Could we have that marked?
Mr. McClennen: The paper referred to is marked for identification.

(Thereupon the copy of letter, dated August 23, 1938, referred to was marked as Defendants' Exhibit D-151 for identification.)

Q. Describe that theatre on its opening.
A. You mean the new theatre?
Q. The new theatre.

The Court: Did you say when it was opened?

Q. Do you recall when it was opened?
A. It was opened, I think—it was started in '40, construction started in '39 or '40, I don't remember. It was opened about a year later.
Q. Now, if you will describe.
A. It is a theatre seating around 1,250, and is constructed of brick and steel. It is fire-proof and has all modern conveniences for public spaces and wash room facilities for men and women. It has a large lower floor and balcony, with stores in front.

The Court: That would be on the south side of Main [fol. 4109] Street or on the north?
The Witness: Well, your Honor, I couldn't quite tell.
The Court: On the opposite side from the Dudley Hotel?
The Witness: It is on the other end as you drive in.

The Court: Across the River, is it?
The Witness: Yes.
The Court: Oh, yes, I recall that, on the left-hand side.
The Witness: Yes.
The Court: I know most all of these towns pretty well, to which you refer here.

[fol. 4110] By Mr. McClennen:

Q. From Exhibit D-150 it appears that you expended in the original acquisition, at whatever the date was, I think you said 1927, $24,300, and in the construction and improvement thereafter $164,300.

The Court: Three hundred what?
Mr. McClennen: $164,300.
The Witness: That is right.

Q. Coming now to Syracuse, in 1927, according to the answers to interrogatories, what did you acquire there?
A. The Eckel Theatre.
Q. That was an operating theatre at the time you acquired it?
A. It was.
Q. At some time you entered into an arrangement with R.K.O. for joint operation of that and some of the R.K.O. theatres?
A. That is right.
Q. Downtown?
A. That is right.
Q. Now, what were those downtown theatres?
A. You mean operated by R.K.O.?
Q. The R.K.O., yes.
A. They had the Keith, the Paramount and the Strand.
Q. What was the first that brought to your attention the [fol. 4111] possibility of this joint operation?
A. Well, while I was in New York I met one of the representatives of R.K.O., Senator Walters, and he was asking me about Syracuse.

Mr. Wright: I object to the conversations between the witness and Senator Walters.
The Court: Was Senator Walters representing R.K.O.?
The Witness: Yes.
The Court: All right.
Mr. McClennen: You have to stop there.

Q. Now, that developed into the joint operation in what proportions?

A. We got 40 per cent and R.K.O. got 60 per cent of the net profits.

Q. Did those percentages continue at that?

A. It continued for five years.

Q. Then was the proportion changed?

A. Yes, sir.

Q. To what?

A. To 30 per cent for us and 70 per cent for R.K.O.

Q. Dealing with those theatres that you have just mentioned, that is the Eckel and these three of R.K.O., under the arrangement you did what in the operation?

Mr. Wright: If the Court please, I assume there is a contract that sets forth who was to do what. If there is, I [fol. 4112] think that would be the best evidence.

The Court: Do you mean by the inquiry who actually operated?

Mr. McClennen: All I want is in the practical operation, specifically, who did the buying and booking for those theatres.

The Witness: R.K.O. did the buying and booking.

By the Court:

Q. Did you say when this year's arrangement was made with R.K.O.?

A. The first arrangement was in 1935, I believe.

Q. Altogether until what time?

A. It was for five years.

Q. You said it was later——

A. Later it was renewed again, but we only got 30 per cent out of it.

Q. That went on for how long?

A. That is still in existence.

By Mr. McClennen:

Q. When the change was made from 40 per cent down to 30 per cent for you, was there any change in the buying and booking?

A. No.

Q. That was still conducted by R.K.O.?

[fol. 4113] A. Yes, sir.

The Court: Did that include the Eckel also?
The Witness: Yes, sir.

Q. Now, after the disposal of the theatres that you made in 1929 and 1930, I direct your attention to Buffalo, Lockport, Geneva, Malone, Massena, Ogdensburg, Rochester and a half interest with the Shea organization in Amsterdam; did you retain any other places?
A. You mean immediately after this disposition?
Q. No, retain——
A. Immediately after we sold?
Q. Immediately.
A. We had two other towns, East Rochester and Fairport, which was disposed of to some other exhibitors at about the same time.
Q. And with that exception did you retain any other than I have mentioned?
A. No.

The Court: You mean by your answer that after this arrangement you had no other theatres?
The Witness: No other theatres.
The Court: I thought in your opening you spoke of several, a number of theatres which he had retained.
Mr. McClennen: These are the ones.
The Court: Aside——
[fol. 4114] Mr. McClennen: No, Buffalo——
The Court: You said aside from those.
Mr. McClennen: Aside from those.
The Court: I did not recall that you included Buffalo in that exception before.

By Mr. McClennen:

Q. To put it less awkwardly than I did, after these disposals, including East Rochester, and so forth, the only places that you retained were in Buffalo, Lockport, Geneva, Malone, Massena, Ogdensburg, Rochester and a half interest in Amsterdam?
A. Right.

Mr. McClennen: Turning now to Bellefontaine I bring to the Court's attention another correction that should be made in my opening. At page 4036 I said at the top, with reference to this new theatre in Bellefontaine, the Holland, which I had described on the preceding page as having been the site acquired at $27,500, and the expense of building the the theatre above that $196,800, I said at the top of page 4036, "Costing over $120,000". Obviously I should have said "Costing over $220,000".

Now, if your Honor please, with reference to Bellefon- [fol. 4115] taine, pursuant to your Honor's leave, at page 2327, I should like to put before you the publications in the Bellefontaine newspaper set out at pages 2290 to 2299, which I will read to your Honor. I suggest that the stenographers need not take this down again.

The Court: It is marked as an exhibit?

Mr. McClennen: No, your Honor, it is in the text of the testimony. This was after your Honor adjourned and we took off from the paper what either side wanted.

(Whereupon Mr. McClennen commenced to read the preceding record at page 2290, which was not reported in pursuance to the foregoing instructions.)

[fol. 4116] The Court: What is the population of Bellefontaine?

The Witness: About 10,000.

The Court: What were the theatres, outside of the Strand and the Holland? Does it appear that there are others? Were there other picture shows there?

The Witness: There were two closed theatres.

The Court: Oh, yes, the Opera House——

The Witness: And the Majestic.

Mr. McClennen: The reason that I offered this evidence that I have just read in the effort to have it a part of Mr. Mooney's testimony was because of the flat contradiction between the prices and Mr. Mooney's statement, but it serves its purpose as well put in at this time.

By Mr. McClennen:

Q. Mr. Schine, what first directed your attention to the possibility of going into Bellefontaine?

A. Our manager from Sidney, Ohio,——

Q. In consequence of what he said to you did you receive any communication, or have any conversation with some one else?

A. I had a conversation with one of the citizens of Bellefontaine, who came over to see me in Sidney, Ohio.

[fol. 4117] Q. Do you remember his name?

A. Mr. Peters.

Q. And what did he say to you?

Mr. Wright: That is objected to. I don't see it makes any difference what Mr. Peters said to him at that time.

The Court: Yes.

By Mr. McClennen: I propose to show, if I am permitted to do so, that Mr. Peters and a group of citizens of Bellefontaine came to Mr. Schine and urged upon him the need of a new and proper theatre for Bellefontaine, that this was not at all a projection of himself into the town, but was at invitation from prominent citizens of the town. Now I urge that that is material.

The Court: Of course, in the first place, what was said between them may only be shown, if it is shown at all, and in the next place it seems to me he can show that a delegation came to him with reference to the establishment of the theatre in Bellefontaine.

[fol. 4118] By Mr. McClennen:

Q. Well, is that latter, as his Honor has stated, the fact?

A. Yes.

Mr. Wright: If the Court please, we object.

The Court: I will overrule the objection.

Mr. Wright: It doesn't make any difference whether he was invited in or whether he conceived the idea himself. He went in.

The Court: It may have some bearing.

Q. You acquired the land for your carrying-out of that invitation in 1930?

A. I think it was.

The Court: You say carrying-out of the invitation. There is no proof of any invitation.

The Witness: It was either '29 or '30.

Mr. McClennen: I didn't quite understand.

The Court: You said "carrying-out of the invitation." There is no proof of any invitation. Members of that town came to see him with reference to putting up a theatre, and as the result of that he may state what happened. You used the word "invitation." Of course that raises the point of the objection.

Q. Was this acquisition of this land as a result of the [fol. 4119] call of that deputation upon you?

A. Yes.

Q. It appears from Defendants' Exhibit D-150 that the original cost was $27,500 and that the building and improvement was in addition $196,800. Now, was the theatre to which those figures relate the Holland, which opened on February 12, 1931?

A. Yes.

Q. Will you describe that theatre at that time?

A. This theatre is built of brick and steel and completely fire-proof and is known as atmospheric. It has clouds and stars in the ceiling and, due to its name and the architect, who happened to be Dutch, the design was of Dutch character, with windmills and various other decorations, and seats around 1400 people, with every modern convenience and appointment for public spaces and air-conditioning and cushioned seats with springs in them, and the very latest projection and screen, which gave that town a theatre they were all proud of.

Mr. Wright: If the Court please, that is objected to.

The Court: The latter part of the statement, that it gave them a theatre they were proud of, may go out.

[fol. 4120] By Mr. McClennen:

Q. Come now to Mt. Vernon and 1934. From what source did the idea of your going into Mt. Vernon come to your attention?

A. From the owner of two theatres of Mt. Vernon.

Q. And who was that?

A. Mr. Smoots.

Q. And what *was* the two theatres?

A. One was the Vine which he owned and the Memorial, which he had under lease.

Q. As a result did he meet you somewhere?

A. I met him in Mt. Vernon.

Q. And what conversation did you have with him?

Mr. Wright: That is objected to, if the Court please.

The Court: Sustained. I will let you show that he purchased these theatres.

Q. Did he propose to you that you acquire his theatre and the lease he had of the Memorial?

Mr. Wright: That is also objected to, calling for a conclusion as to what the conversation was.

Mr. McClennen: But it is wholly immaterial——

The Court: I will let him state what the proposal itself was. I will let it stand.

Q. What was Mr. Smoots' proposal?

[fol. 4121] A. He proposed to lease us his Vine Theatre and sell us the lease on the Memorial Theatre.

The Court: How do you spell that name?

The Witness: Smoots, S-m-o-o-t-s.

Q. Now, at about that time did Mr. Platt see you?

A. Yes, sir.

Q. And did Mr. Platt—first, what was Mr. Platt's connection with the theatre business?

A. Mr. Platt operated the Lyric.

Q. And did Mr. Platt propose to you what should be done with respect to that?

A. Yes.

Mr. Wright: That is objected to, if your Honor please.

The Court: That calls for a conclusion.

Mr. Wright: I think he should be confined to saying what he did, not what Mr. Platt did.

The Court: What was done with reference to the theatre?

The Witness: Mr. Platt proposed to sell us the equipment and lease of the Lyric, provided he could get a job to manage the theatres.

Mr. Wright: I move to strike it out. This is just an indirect way of getting in the conversations that were excluded.

The Court: Did Mr. Platt testify?

[fol. 4122] Mr. Wright: No.

Mr. McClennen: No, your Honor.

Mr. Wright: There wasn't any testimony at all with respect to these acquisitions.

The Court: What is that?

Mr. Wright: There was no testimony offered by us with respect to these acquisitions.

The Court: Well, I think it is competent to show that some one came to him and proposed a proposition for the purchase and sale of the property.

Mr. Wright: What difference could it possibly make? If you were going to attempt to judge whether the proposal did come from him, or had come from Mr. Schine, I suppose it would be necessary to know the entire conversation that occurred. It is always a conclusion as to what happened, assuming it is material.

The Court: That would not be so. It might be entirely separate from anything else, as an offer, but it has a bearing.

Mr. Wright: If it is in writing, I suppose the written offer, if one was made, could be produced and that is the best [fol. 4123] evidence. If it is a conclusion to be drawn from the conversation itself, then it seems to me it is just as objectionable as the conversation itself would have been. There is no occasion, as I see it, to permit this witness to characterize the results of these negotiations as proposals made to him any more than they would be characterized as proposals he made to the man he dealt with. In each case, I suppose it would be eventually that there were proposals back and forth.

The Court: I will let him state what he said on the subject, what he said he would take for the property.

By Mr. McClennen:

Q. What did Mr. Platt say with reference to the sale of the property of the Lyric to you?

Mr. Wright: Just a minute, do I understand your Honor's ruling now to be that he may go into all conversations with respect to acquisitions with respect to which we offered no testimony?

The Court: I will meet that situation when we come to it. [fol. 4124] I confine the ruling to this one thing. Go on and state what he said.

The Witness: He said he would like to sell us the equipment and lease of the Lyric Theatre provided he could get a job to manage the theatres in town.

By Mr. McClennen:

Q. About when did you close your deal with Mr. Platt?

A. Well, it was about a month after we acquired the Smoots theatres.

Q. Well, that would be how early in 1934?

A. I would say it was in February.

The Court: That was in writing, I presume?

The Witness: I beg your pardon?

The Court: That was in writing?
The Witness: Yes, sir.

Q. Subsequently did you have any survey made with respect to improving the Vine or building another theatre?
A. Yes, sir.
Q. And when did you begin on the making of that survey?

The Witness: Yes.
The Court: When?

Q. When?
A. Oh, when, that was—we first made moderate improvements on the Vine, and about a year later we started to make a survey of enlarging the Vine, and making that into a [fol. 4125] modern theatre.

Q. And when did you begin on that survey, that is, how soon after your deal with Mr. Platt which you have placed in February, 1934?
A. Oh, I would say in 1935 we started to make a survey of the Vine Theatre, and we had the architect give us an opinion as to what could be done with it.

Q. What was the location and the description of the three theatres, the Vine, the Memorial and the Lyric? Take first the Vine. Before you had made any changes in it, where was it located and what was its description?
A. The Vine was near the busy part of the square, a little off the main street and the theatre itself was a one-floor theatre seating about 600 people. It had a high ceiling, but lacked in modern appointments and conveniences and the lobby was very short.

Q. Very short?
A. Short, yes, had no depth to it. The Lyric was an old——

Q. Location first.
A. The location was 100 per cent location of the town.
Q. Well, by that you mean it was——
A. The finest location we could get; right on the square and the busy part of the city near the chief department store.

Q. Was that the site on which you subsequently built?
[fol. 4126] A. Yes, sir.

Q. The new Vernon Theatre?
A. Yes, sir.

Q. Describe the Lyric Theatre as it was in the beginning of 1934.

A. The Lyric Theatre was a very narrow building. I should say it was one of the first theatres built for motion pictures; had a high ceiling, but only had one aisle in the center, with about four or five seats on each side. It had no lavatory facilities and had a stove in the rear of the theatre right in the aisle.

Q. You mean a heating stove?

A. Yes, a heating stove, and the booth projected right over part of the audience, and the ceiling of that was low. Is that all you want?

Q. Now, the Memorial, its location and description.

A. The Memorial was out of location.

Mr. Wright: That is objected to. He should state where it is.

Mr. McClennen: Strike out "out of location".

The Court: Tell where it was.

The Witness: The Memorial was on top of a hill, I would say about a block and a half or two blocks from the business section and was a county building.

[fol. 4127] Q. A county building?

A. A county building where they have county offices, and in the entrance you have to walk, I would say, about 100 feet off the sidewalk and the entrance was just an ordinary door. It has no appearance of a theatre. Then you walk into a hall which contains seats, has a balcony and is equipped with a booth and screen. Its seating capacity, however, was larger than either the Vine or the Lyric.

Q. Did the Lyric site, as it was in 1934, and at the time of your survey, furnish enough land for the building of the Vernon which you built on that site later?

A. No.

[fol. 4128] Q. What was necessary in order to get an adequate amount?

A. We had to buy additional land.

Q. Will you describe the New Vernon Theatre when it was completed?

A. The New Vernon Theatre——

Mr. Wright: Can we have the date?

Q. It is suggested you give the date of completion? Have you that in mind?

A. I don't think I have. It was probably in '37. I haven't got the date, I am sorry. Was it '37? I could look up my notes. '37 or '38. It was in '38, April, '38.

Q. Describe the Vernon at its completion in April, 1938?

A. It is a modern, fire-proof constructed theatre with a wide marquee in front, no stores, and it has a large lobby, and in-doors it is decorated in a very modernistic style. It has the finest seats obtainable, as all the other equipment. It has a fine mezzanine, furnished rather attractive, and comfortable, has fine public spaces for men and ladies upstairs and downstairs, and seats around 1300 people.

Q. It appears from Defendants' Exhibit D-150 that in the additions, including improvement of the Vernon, you expended $48,600. Was that substantially all expended in the period from 1934 to the opening in 1938?

A. You mean by us?

[fol. 4129] Q. By you, yes.

A. That was all respent on the building after it was completed.

Q. By that do you mean that the owner of the land spent sums in addition to that?

A. The owner built the building and we equipped it.

Q. So that this was but a part of the cost?

A. Yes.

The Court: The equipment part?

The Witness: Yes.

Q. Do you happen to know approximately how much the owner's expenditure was?

A. You mean besides the land or with the land?

Q. I mean above the land.

A. Above the land, I think they spent $120,000 to $130,000.

Mr. McClennen: I offer in evidence Defendants' Exhibit D-148-A, B, C, D, E, and F for identification.

Mr. Wright: We have no objection.

(Thereupon the Vitagraph contract dated July 13, 1935, paper dated July 13, 1935, paper dated July 13, 1935, and contract approved September 5, 1935, cancellation notice, dated December 11, 1935, and cancellation notice, dated December 11, 1935, previously marked as Defendants' Exhibits D-148-A, B, C, D, E and F, respectively, for identification were received in evidence.)

[fol. 4130] Mr. McClennen: Defendants' Exhibit D-148-A is a Vitagraph contract, dated July 13, 1935, approved by Vitagraph July 23, 1935, with the State-Bucyrus Company, by M. H. Breyer, Secretary.

Defendants' Exhibit D-148-B is a paper dated July 13, 1935, attached to the contract, saying "This is the same deal as last year, except that on the Shorts and 32 features I gave him the privilege of three or four days instead of two or three days. He figures he may go to two changes a week. However, I gave him no assurance New York or you would approve. I tried to get an increase on this but you know the set-up. I also got the 14 de luxe trailers in at $4 instead of $3 and the four pictures at 25%, show a 15% increase. The paying arrangement on figures to start at expiration of present paying arrangement. Regards, F. J. B."

Defendants' Exhibit D-148-C is July 13, 1935. "It is agreed that in consideration of contract signed by Warners, First National and Vitagraph 1935-36 product, Vitagraph, [fol. 4131] Inc., agrees to cancel the Shorts unplayed from season 1934-35. The amount not to exceed $60." That is signed by Vitagraph, Inc., by F. J. Brandt and by the State-Bucyrus Co., by M. H. Breyer.

Defendants' Exhibit D-148-D is a contract for the 60 Warner-First National productions of the 1935-36 seasons, signed by Vitagraph by F. J. Brandt and by the State-Bucyrus Company by M. H. Breyer, Secretary, and approved September 5, 1935.

Defendants' Exhibit D-148-E is the cancellation notice of the First National part of this contract, dated December 11, 1935, by M. A. Mooney, Branch Manager.

Defendants' Exhibit D-148-F is the cancellation notice of the Warner's pictures of this contract and dated December 11, 1935, both "E" and "F" signed by M. A. Mooney, say: "This house was taken over by the Schine Theatrical Co., Inc. Re-submitting new contract signed by Schine's." [fol. 4132] That is in the block on the paper headed, "Reason for cancellation."

The Court: That is Warner's?

Mr. McClennen: That is Warner's in both cases.

The Court: What do you claim for these particular contracts?

Mr. McClennen: To meet Mr. Breyer's testimony. He had evidently forgotten this contract.

Mr. Wright: If the Court please, there is nothing in his testimony at all inconsistent with what has been offered. He testified he signed that application and sent it in. He never got an approved contract. This shows what happened to that application.

Mr. McClennen: I won't go into argument at this time.

The Court: All right.

Mr. McClennen: I submit that Mr. Breyer did not testify in the way just stated and that this is inconsistent with his testimony, and we attribute it to forgetfulness on his part.

By Mr. McClennen:

Q. It has appeared that you acquired the interest of Mr. Charnas at Bucyrus. What was the first thing that came to your attention with reference to that possibility, that resulted in your making that arrangement?

A. You mean with Mr. Charnas?

[fol. 4133] Q. Yes.

A. I met Harry Charnas in New York, a brother of this Charnas, and we had dinner together.

Q. Never mind the dinner, and so forth. He said something to you about this and what did you say?

A. He talked to me about a possibility about buying out his brother.

Q. What did he say?

Mr. Wright: If the Court please, I don't see how it is proper here to go into a conversation that this witness had with a brother of the witness about buying out the other witness's theatre.

The Court: Well, I suppose the question is how he came into the picture there of buying, to show he had a discussion with a brother of the owner about this theatre.

Mr. Wright: I don't understand what it is competent to show. How can that possibly, any more than if he had a conversation with me or your Honor, or any one else, relative to buying that theatre? What relevance has that got to any of the issues that we are trying here?

The Court: It may not be of great materiality but I think [fol. 4134] it is competent to show he met somebody who brought up the subject of this theatre.

Mr. Wright: He might have discussed this theatre with representatives of the exhibitors with Charnas' aunt, his uncle, his father, twenty other people. If we are going into that field it seems to me there are no limits to the lawsuit.

The Court: It shows how it came about, on the subject of purchase, that is all.

Mr. Wright: Let him ask him, then.

The Court: You met the brother of Mr. Charnas?

The Witness: Yes, and he——

The Court: Never mind, what you said to him. What next happened?

The Witness: We bought him out after we——

The Court: Bought the brother out?

The Witness: Yes, after the price was agreed on.

By Mr. McClennen:

Q. You did not buy out the brother who made the proposal to you?

A. No, we saw his brother.

Q. Was this conversation of Harry Charnas' the first thing that occurred with respect to the purchase that you subsequently made from his brother?

[fol. 4135] A. Yes.

Q. In that conversation did Harry tell you that his brother wanted to sell out?

A. Yes.

Mr. Wright: That is objected to.

The Court: Sustained. I think it sufficiently appears.

Mr. McClennen: I was putting it intentionally leading, to avoid all the extraneous parts.

The Court: You testified that is the first you knew of this matter was the talk with his brother in New York. If you want to show when it was, with reference to the time he bought it——

Mr. McClennen: I beg your Honor's pardon?

The Court: I will let you show when it was with reference to when he bought it.

Q. How long was it before you bought out Mr. Charnas that his brother Harry spoke to you about it?

A. I would say it was several months.

Q. Seven months?

A. Several months.

Q. You pause before answering this question: What did Harry Charnas at that time say to you on the subject matter of a purchase of his brother's interests?

Mr. Wright: Same objection.

[fol. 4136] The Court: Sustained.

Mr. McClennen: I offer, if your Honor please, to show that the witness, if permitted to answer, would say, in substance, that Harry Charnas informed him that his brother wanted to go to another place and wanted to sell out his interest to Mr. Schine so that he could do so.

The Court: Perhaps you may elicit the information from the brother from whom it was purchased.

Mr. Wright: That is precisely the point. The brother from whom the purchase was made, as I recall, testified.

The Court: What is that?

Mr. Wright: Mr. Phil Charnas, from whom the purchase was made, was on the stand here. They had ample opportunity here to cross-examine him.

The Court: The objection is sustained.

Mr. Wright: Instead of asking questions of this kind.

The Court: The objection is sustained to this question.

By Mr. McClennen:

Q. Was it in consequence of the conversation with Harry Charnas that the purchase from his brother was made?

A. Yes.

[fol. 4137] Mr. Wright: That is objected to. That calls for a conclusion as to what factors influenced the purchase. There may have been a very substantial number. I think that is a conclusion that your Honor should draw. He can state what all the circumstances were prior to that purchase and then I think your Honor can make a decision as to whether or not the purchase resulted simply because he had talked to Harry Charnas, or whether there were other factors that entered into the particular purchase.

The Court: What do you mean by "all the circumstances"?

Mr. Wright: Well, the circumstances are, among other things, that that was a theatre there which was operating in competition with one he had, that Schine was then engaged in expansion program in that part of Ohio. He can tell what their activities were at that time when they bought the theatre. That, it seems to me, are the circumstances. He also had conversation with his brother Harry and from those circumstances I suppose your Honor can draw the [fol. 4138] conclusion as to what, if any, factor made them decide to make the deal.

The Court: This question goes too far, but it looks to me, by reason of the conversation he had with the brother, that he went to that person's brother and as the result purchased the property.

Mr. Wright: That is not what this last question was.

The Court: That is very true. I think that is as far as he can go. I mean as to that. He can inquire whether, by reason of that talk with the brother, he went to the brother's brother and took up the subject of the purchase of the property. Let him answer that.

[fol. 4139] Mr. McClennen: Well, I am not sure that he went himself.

The Court: Or if he sent somebody.

Q. Was it in consequence of this conversation with Harry Charnas?

A. Yes.

Mr. Wright: That is objectionable.

The Court: Oh, no, I will let him answer, by reason of this talk, after this talk, or by reason of this talk about a possible sale of this property he went or sent somebody to the one who told him.

The Witness: Yes, sir.

Q. It appears in Exhibit D-150 that for the Bucyrus Theatre at Bucyrus, you expended for the acquisition $15,500, and for improvement on that or construction $81,500?

A. Yes.

The Court: I suppose it appears what theatres there were in Bucyrus?

Mr. Wright: I think that was testified to by Mr. Breyer and Mr. Charnas.

Q. And from the answers to interrogatories that the land was acquired in August, 1935 and the theatre, the Bucyrus, completed in 1936. Will you describe that theatre after its completion?

A. That theatre is a modern structure, built of brick and [fol. 4140] steel, and has all modern improvements with ample public spaces for men and women. It is air-conditioned and has a lower floor, furnished with fine upholstered seats, and it also has a balcony. It has two small stores in front and a marquee with a large sign in front of it, and is located in the heart of the city, which I might say is a 100 per cent location, I would call it.

Q. What was the thing that started you on that acquisition?

A. I received a letter from——

Q. And in consequence of that letter did you have any conversation with any one?

Mr. Wright: If the Court please, this entire line of testimony, of calling attention to what started you then, and in consequence of this, did you do that, all calls for a mass of conclusions this witness isn't competent to make, and I think your Honor should make. I think what should be done is to show what the facts and circumstances were, fix the time when certain things occurred prior to the acquisition, what occurred, and as to whether or not any of those things that occurred, or some other facts that occurred, [fol. 4141] were the moving factors, it seems to me should be decided by the Court and not something we should have from this witness.

The Court: Well, if you follow that line I think the question in the present form is incompetent because it really calls for a conclusion as to the contents of letters. I will let you show, as you did before, that he received a letter on a certain date and what he did subsequent to that. It isn't a question that he received a letter that related to the subject of the participation, it speaks for itself, because if it was received you should produce it.

Mr. McClennen: I will proceed to show then what took place without any reference to any letter.

Q. Did a group of citizens of Buycrus call on you?

A. They asked me to call on them.

Q. And about when was this?

A. That was about the early part of 1935.

Q. And what conversation—do you remember the names of any of those gentlemen?

A. I do not.

Mr. Wright: Does it appear this was in the form of an [fol. 4142] oral invitation, or are you getting back to the letter?

The Witness: That was a—the letter was the invitation.

Mr. Wright: It seems to me, if we are going to have that, we ought to have the letter.

By the Court:

Q. Did you answer that you received a letter from them and out of that you met this group?
A. I received a letter to stop in Bucyrus on the next trip, which I did.

The Court: He said he received a letter to stop in Bucyrus on his next trip.

By Mr. McClennen:

Q. When you met these gentlemen will you state the conversation that you had?

Mr. Wright: If the Court please, that is objected to. It doesn't even appear who these gentlemen were, or where and when he met them. Certainly the conversation he had with them would not be material in any event.
The Court: The same situation as before. He may state they came to him and discussed the subject of erecting a theatre, but to go into the question of whether they invited him to build a new building is a question of the conversation [fol. 4143] and would not be competent.

By Mr. McClennen:

Q. Is the fact as put to you by his Honor correct?
A. Yes, sir.
Q. Now, what was the conversation?
A. The conversation was——

Mr. Wright: That is objected to.
The Court: No, you are going a little farther than what I said. What I said was I would let him tell they came to see him on the subject of building a theatre at that place, but not the details of the conversation.

Q. That is the fact, is it?
A. That is the fact.
Q. Did they take you to see an uncompleted theatre in the town?
A. They took me to see an uncompleted theatre in the town.

Q. And did they talk with you on the subject of how that theatre had come to be in that shape?

A. Yes, sir.

Q. And what was the state of completion or incompletion of that theatre at that time as you saw it?

A. The walls were up, and the steel was up, and it had been standing that way for two or three years, and they told me it was an eye sore in town, and they would like to [fol. 4144] see——

Mr. Wright: That is just an effort to get in what is already objected to and ruled out.

The Court: Describe the building.

The Witness: The walls were up and the steel, the girders on the roof, were up and it was standing there.

The Court: Partly, you mean?

The Witness: Partly completed.

The Court: We will suspend for five minutes.

(Short recess.)

By Mr. McClennen:

Q. Was the Bucyrus Theatre that you built put upon the incomplete structure that the deputation from Bucyrus had shown you?

A. We completed the unfinished structure that was standing there.

Q. Now, will you describe the capacity of that theatre?

A. I think I just did describe it.

The Court: What is that?

The Witness: I thought I did describe the Bucyrus Theatre.

The Court: No.

Q. I think you did not state the seating capacity. Do you bear that in mind?

A. It has about a little less than 1300 seats.

[fol. 4145] Q. Come now to Van Wert, Ohio. It appears that you acquired—it appears from the answers to interrogatories that you acquired the Van Wert Theatre or that later the Van Wert Theatre became such in February, 1935. Can you tell me when the architects were put to work on the preparation for that construction?

A. In '34.

Q. Do you remember at what time in '34?

A. I couldn't say the exact time.

Q. Do you remember how long it took to complete the construction of that theatre before February, 1935?

A. I think it took about six or eight months.

Q. Well, that would enable you to state something of how early in 1934?

A. It was the early part of 1934.

The Court: When did you open it?

The Witness: We opened it in February, 1935.

Q. I think, or, do you recall the course of the preparations for the taking of the lease and the preparing for construction of the theatre before the lease was taken, that is, the preliminary investigations?

A. Yes, sir.

Q. And had you obtained the architect's blue-prints before you entered upon the lease?

A. Yes, sir.

[fol. 4146] Q. And you think something like six months before?

A. Something like that, yes, sir.

Q. Come now to Perry in the year 1935.

The Court: Perry, you said?

Mr. McClennen: Perry.

The Court: In 1935?

Mr. McClennen: In 1935.

Q. This has reference to matters preceding the dealings with Mr. Herzberger. Will you mark this for identification?

(Thereupon blue-prints for theatre at Perry, New York, were marked as Defendants' Exhibit D-152 for identification.)

Q. Referring to Exhibit D-152 for identification, a set of blue-prints dated September, 1935, were these blue-prints for a new theatre which you had in contemplation for Perry, New York?

A. Yes, sir.

Mr. McClennen: Will you mark these three for identification as D-152-A, B and C?

(Thereupon specifications for theatre building at Perry, New York, were marked as Defendants' Exhibits D-152-A, D-152-B and D-152-C for identification.)

Q. I show you three sets of specifications for identifica- [fol. 4147] tion, D-152-A, B and C. Are these the specifications for that same theatre?

A. Yes, sir.

Q. Do you recall, or can you tell by refreshing yourself from these the time fixed for receiving bids for the construction of this theatre?

A. October 4th, 1935.

By the Court:

Q. Did you acquire the land at that time?

A. The land was acquired previously.

Q. To that time?

A. To that time, that was the date set by the architect.

Q. You had acquired land prior to 1935?

A. Yes, we owned land at that time.

Q. Where was that?

A. That was in 1935.

Q. Where?

A. In Perry?

Q. Yes.

A. It was on the main street known as the Davis property. It used to be a garage. A wooden structure was on it. I think it is across from one of the office buildings there.

Q. Near the hotel?

A. No, the hotel, I think, is further up. We are down below a little bit. It is on the corner.

[fol. 4148] Mr. McClennen: Coming now to Paris, Kentucky. Will you mark this for identification?

(Thereupon an ordinance was marked as Defendants' Exhibit D-153 for identification.)

Mr. McClennen: Will you mark this as Defendants' Exhibit D-153-A?

(Thereupon the permit referred to was marked as Defendants' Exhibit D-153-A for identification.)

By Mr. McClennen:

Q. Referring to Defendants' Exhibit D-153-A, dated October 7, 1937, can you tell me when, approximately, you received that permit?

A. Oh, we received it about the early part of October.

Q. In what year?

A. In 1937.

Q. And when did you receive this ordinance, Defendants' Exhibit D-153 for identification? Was it before it or after the time you received the permit of October 7, 1937?

A. Well, it was just before that. About the same time I would say regarding both.

Mr. McClennen: I offer these Exhibits D-153 and D-153-A in evidence.

Mr. Wright: No objection.

[fol. 4149] (Thereupon the ordinance previously marked as Defendants' Exhibit D-153 for identification was received in evidence.)

(Thereupon the permit previously marked as Defendants' Exhibit D-153-A for identification was received in evidence.)

Mr. McClennen: This Defendants' Exhibit D-153 is an ordinance of the Council of Paris, Kentucky, setting out the authorization of a permit to the Phoenix Amusement Company for the erection, maintenance and operation of a motion picture theatre on the lot in Paris, Kentucky, described in it, and Defendants' Exhibit 153-A is the permit to——

The Court: You referred to it as an ordinance.

Mr. McClennen: The first was an ordinance for a permit.

The Court: All right.

Mr. McClennen: Defendants' Exhibit D-153-A is entitled: "Permit to Phoenix Amusement Company for erection, maintenance and operation of a theatre in the city of Paris, Kentucky," and starts out with the words "Pursuant to ordinance No. A." And ordinance No. A is Defendants' Exhibit D-153, and the permit is dated October 7, 1937.

Q. Did you proceed to have planned the theatre to be con-[fol. 4150] structed pursuant to that ordinance?

A. Yes.

Q. And do you remember when you got bids for its construction?

A. We first got bids in '37.

Q. What time in '37?

A. About the middle of the summer, I think.

Q. I attract your attention to the fact that the ordinance is dated October 7, 1937.

A. Yes, but it took some time to draw the plans and get the things ready, and then we sent it out to the contractors. It was probably the early part of the spring or summer.

Q. Of what year?

A. Of '38, I think it was.

Q. You were inadvertent in saying '37 earlier?

A. Yes.

The Court: Was the building completed in '38?

The Witness: The building was not completed in '38. It was completed in about '40, I believe.

The Court: '40?

The Witness: Yes. In 1939 it was completed; I beg your pardon.

Q. Mr. Schine, for the acquisition of theatres have you personally made any threats or misrepresentations?

A. No.

[fol. 4151] Mr. Wright: Just a minute. If the Court please, that question is objected to. He is entitled to say what he did and what he said to people, and that, I take it, is for your Honor to conclude whether what was done and said constitutes a threat, or anything of that sort; not competent for him to state.

Mr. McClennen: This, if your Honor please, is not what he did. It is what he did not do. He cannot describe it in any way.

The Court: Testimony on the part of the Government here with reference to acts by the defendant or his associates. Of course, the testimony is what was said.

Mr. Wright: The testimony as to what was said or done. If there is anything any witness testified to what was said or done that he thinks is wrong he should so state. That is the way the testimony should be given. It isn't proper to have him say he never made any threats or never did acts from which your Honor might conclude was the threat or not the threat. It is something for him not to say.

Mr. McClennen: I submit that when in a bill of complaint [fol. 4152] in equity a man is charged with making threats or misrepresentations that he is in a position where he is entitled to show that he did not do anything of the kind, even if no evidence has been introduced, and of course you can't go in any way to this point except by the straight negative if he did nothing of the kind. If he did something then is the time for a statement of the conversation, or what not, but if he did not do anything of the kind there is no conversation to be stated.

The Court: Of course the word "threats" itself is a conclusion. An act. I would think it would be sufficient on the part of the defendant if it meets the issue to direct the inquiry to the particular individuals who have testified with reference to acts directed to show threats.

Mr. McClennen: If your Honor please, no witness has testified to any threats by Mr. Schine.

The Court: I know, but they testified he did so-and-so.

Mr. McClennen: They have not testified to anything of that sort so far as Mr. Schine is concerned.

[fol. 4153] The Court: Well, if that is true why is it incumbent upon the defendant to deny it?

Mr. McClennen: I think it is not incumbent upon the defendant, but advisable that the defendant should do so, when he stands charged by a solemn complaint on the files of the Court with having done such a thing.

The Court: Well, there is some testimony that indicates, from which the conclusion might be drawn, that certain things were threatened to be done if certain other things were not done.

Mr. McClennen: I urge upon your Honor by Mr. Schine personally, and that is this question. He is personally a defendant.

The Court: We will recess now until 2 o'clock.

(Whereupon a recess was taken until 2 o'clock P. M.)

[fol. 4154] After recess, 2 o'clock P. M.

Appearances: As before noted.

(Thereupon photostatic copy of excerpt from Telegraph-Forum, Bucyrus, Ohio, Friday, September 6, 1935, marked as Defendants' Exhibit D-154 for identification.)

Mr. McClennen: If your Honor please, I asked to have marked as Defendants' Exhibit D-154 for identification a photostat of the Telegraph-Forum, Bucyrus, Ohio, Friday, September 6, 1935.

The Court: Is that marked?

Mr. McClennen: It is marked for identification.

The Court: What is it marked?

Mr. McClennen: As D-154.

I, this morning, put in evidence as D-148-D a contract with the State Bucyrus Company by M. H. Breyer, Secretary, approved by Vitagraph September 5, 1935. On that contract, amongst others, is the Warner Production No. 905. The Warner release schedule, Exhibit 645 shows that No. 905, released September 7th, 1935, was the picture "Page [fol. 4155] Miss Glory" with Marion Davies heading the cast.

The reason for offering the Exhibit 154 is that it advertises Marion Davies——

Mr. Wright: Just a minute. There isn't any proof at all that this so-called ad here actually appeared as an ad. He has a photostat there that he says is a copy of the paper which we have had no opportunity to check, and if Breyer were here I suppose he could check all of this, which is now being offered long after Breyer has left the stand and after we have been deprived of the opportunity of asking Breyer what he knows about this material that is now being offered, with nothing more than counsel's statement as to what it is and what it contains.

Mr. McClennen: As I was saying, in describing the offer, it is an advertisement of Marion Davies in "Page Miss Glory," three days, starting Sunday. Sunday following September 6th, 1935 was September 8th, 1935, one day after "Page Miss Glory" was released, according to the Warner schedule, Exhibit No. 645.

[fol. 4156] I offer this.

The Court: What significance has that particular showing?

Mr. McClennen: Because of the argument this morning with reference to this contract with Mr. Breyer, dated in approval September 5th, 1935, that this is an advertisement by the State Theatre, Mr. Breyer's theater, that that picture was coming on Sunday, September 8th, bearing out, we submit, the furnishing of that picture to Mr. Breyer pursuant to the approved contract.

The Court: Well, what is the evidence to the contrary? What is the evidence of Mr. Breyer with reference to that?

Mr. McClennen: The evidence of Mr. Breyer was that he did not have the Warner contract.

The Court: This is Warner?

Mr. McClennen: This is to meet that.

The Court: What is this exhibit here? This was a Warner production, did you say?

Mr. McClennen: The Exhibit No. 645 already in evidence shows that this was a Warner production number 905, released September 7th, 1935, and this advertisement is to [fol. 4157] show its play by Mr. Breyer's theatre on September 8th.

The Court: The point of counsel is there is no basis for the reception of the photostatic copy, no foundation has been laid.

Mr. McClennen: I recognize the fact that they have nothing but our assurance that this is a photostatic copy. Photostatic copies have been received in the past. I urge that this be received.

Mr. Wright: If the Court please, I think your Honor ought to understand the state of the record here and the purpose for which this offer is apparently made. Mr. Breyer, while on the stand, testified that he made this application for Warner product for the 1935-36 season; that he never got an approved contract back and that he didn't get the product. We put in evidence and there is in evidence, in addition to his contract, the contract which was made between Warner and Schine for the 1935-36 season, which is, I believe, Exhibit No. 62, which showed that the contract with Schine for that season's product was ap- [fol. 4158] proved on July 25th, 1935, and it also appears in this contract that production No. 905 was omitted from the deal that was made with Schine.

Now, if this had been brought up, this attempted impeachment, suggested impeachment had been brought up while Breyer was here on the stand, the facts could have been developed as to how that one particular picture happened to play, if it played, but there is certainly no way in which that can be determined at this time, simply by offering a piece of paper here which shows he advertised that one picture, assuming that he did advertise and play it. There is nothing in that fact to contradict the story that he gave from the witness-stand to the effect that he sent in his application, did not get an approved copy back and did not get the 1935-1936 pictures which this exhibit 62 shows were sold to Schine on a contract that was approved prior to the time of approval stated on this contract that is in evidence here as D-148-D.

[fol. 4159] The Court: You claim it is not properly proved and that they have no effective proof?

Mr. Wright: That is right.

The Court: On the first objection I would have to rule with you.

Mr. McClennen: That is on the ground that we have not proved that this is a photostatic copy of the newspaper?

The Court: Well, yes.

Mr. Wright: Assuming it to be a photostat, the time to have offered it was while Breyer was on the stand so we could have asked what the circumstances were, how he happened to get that particular picture.

The Court: No, I do not sustain on that ground.

Mr. McClennen: Before I go to the next offer I will ask to have it marked for identification with the next number, and the reply attached with an "A" of that number.

(Thereupon the two letters referred to were marked Defendants' Exhibit 155 and 155-A for identification.)

Mr. McClennen: I offer the exhibit for identification, D-155 and D-155-A in evidence.

Mr. Wright: There is no question but what these letters [fol. 4160] were written and sent, but what they offer to prove is beyond me.

Mr. McClennen: I understand that that is my Brother's objection to their being received in evidence.

Mr. Wright: Yes, indeed, and I would like to know what the purpose of the offer was.

Mr. McClennen: The purpose of the offer was to show that the representatives of the Department of Justice were apprised of the fact before ever Mr. Breyer was put on the stand that this contract that I have put in this morning was in existence and that there is no surprise and that the reason why the objection that this is a photostat and not the original is pressed at this time is the purpose.

Mr. Wright: There is no claim of surprise at the introduction of these contracts. The only claim that was given was that the photostat of the newspaper ad should have been brought to Breyer's attention at the time he was on the stand, so that he could have given the facts, whatever they were, with respect to the advertising or playing of that one particular picture which appears in the ad.

[fol. 4161] Mr. McClennen: Pardon me. There was also another objection that this was a photostat and not the original, which was the objection that prevented my presenting the merits of the question.

Mr. Wright: You are quite right.

The Court. This letter does not refer to this particular play at all as a particular number?

Mr. McClennen: It refers to this contract, if your Honor please.

The Court: Yes, it refers to this contract, that is true. I don't think it is material. Of course, if you have made the proof in the regular way and shown the publication of this. Do you claim that is taken from the public newspaper?

Mr. McClennen: This is a photostat made last summer at their request, after Mr. Breyer had testified and left the stand, not known to us while he was on the stand, of this periodical.

The Court: Where do you claim it appeared?

Mr. McClennen: It appeared in The Telegraph-Forum [fol. 4162] of Bucyrus, Ohio, in the issue of Friday, September 6, 1935.

The Court: Well, I don't see any reason why the defendant should not be permitted to show the publication of this article.

Mr. Wright: Well, if the Court please, assuming that Breyer advertised on September 6th this picture, there isn't any claim on what is in evidence here that Schine bought that picture away from him. That picture is excluded from the contract which is in evidence, which Schine bought for the 1935-36 season.

The Court: Well, your argument is it is immaterial?

Mr. Wright: Yes.

The Court: Objection overruled. I ruled before it is not the best evidence.

Mr. Wright: Well, it certainly is not any evidence, if the purpose of it is to show that he played the picture. I don't know what the facts are with respect to actual play of the picture. For all I know, it may have been pulled before it was played. All this means is, if this sort of thing goes into evidence at this time, that we have to get hold of Breyer on some fact that it seems to me is inconsequential in any event, [fol. 4163] and then opens up additional possible rebuttal. This should have been, if it was thought to be of any real importance, it should have been covered at the time Breyer was on the stand. That is my point.

The Court: Counsel just stated he obtained this photostat after the time Breyer testified.

Mr. Wright: In what way does it impeach Breyer's testimony?

The Court: I don't know that it does. You claim that it does not. If it does not, it doesn't do any harm.

Mr. Wright: It just clutters up the record and gives Counsel an opportunity for making an argument based on inferences, when we had a witness here who could have stated the facts had they been inquired into.

The Court: It is not sufficiently proved anyway, so I will sustain the objection at this time.

Mr. McClennen: I understand your Honor's ruling was, so far as ~~materiality is concerned~~—

The Court: Not the best evidence.

Mr. McClennen: Yes. But I don't want to get the custodian of this newspaper here, if it is going to be excluded when that comes in.

The Court: No, I shall receive it.

[fol. 4164] Mr. Wright: You won't have to get the custodian of the newspaper here. We do want a reasonable opportunity to find out what the circumstances were about that particular ad. It will not be necessary.

Mr. McClennen: On the question if it was in the newspaper?

Mr. Wright: If you will give us a copy of it we will be glad to send it to Mr. Breyer and find out what the facts are.

Mr. McClennen: You will send it to the newspaper, I take it?

Mr. Wright: I assume Mr. Breyer would know whether he saw it in the newspaper at that time or not, or whether he made such an ad in the newspaper, and whether or not the picture was played. Those are all things we would want to know about.

Mr. McClennen: This question, as far as using the photostat is concerned, would it not satisfy you if we secured the certificate of the newspaper that this is a photostatic copy?

Mr. Wright: Surely. No question about that.

The Court: And you can send it to Breyer and see what his intention was.

Mr. McClennen: The statement of Mr. Breyer, to which I direct attention in this, is on page 1035 of testimony [fol. 4165] before your Honor, where the question is: "Did you ever get Warner's product for the 1935-'36 season?

A. I did not."

We do not charge Mr. Breyer with intentional falsehood in that. We wish to prove that he made a mistake.

The Court: The omission in this one picture?

Mr. McClennen: The omission in stating he did not get Warner product.

The Court: The omission states the one particular product, you mean?

Mr. McClennen: Any Warner product of that season.

The Court: That is true. You claim he only got one, don't you, one Warner product?

Mr. McClennen: I cannot, at the moment, assert how many he got. I don't know. I am asserting that he got the contract approved September 5, and played the next day, and that the exhibits in evidence in this 135 series show the cancellation later of this contract and the submission of the Schine contract, which I infer was dated in accordance with the original contract, and that that accounts for that date. I have nothing in support of that assertion [fol. 4166] except what appears on the face of the papers.

The Court: Well, we come back to what I had in mind. What your contention is, I understand here, is, so far as you have been able to establish, there is one of these pictures he did actually play included in the contract with Warner. The only one this advertisment purports to show is the one in the public ad, the showing of one picture?

Mr. McClennen: This particular publication shows the showing of one of these pictures and we argue from that, inferentially, that he got this contract.

The Court: I understand that.

Mr. McClennen: That had been approved for the whole line of 1935-36 Warner and First National productions.

The Court: All right.

J. MYER SCHINE resumed the stand in behalf of the Defendants, having been previously sworn, was examined and testified further as follows:

Direct examination (Continued).

[fol. 4167] By Mr. McClennen:

Q. Mr. Schine, returning from Bucyrus to Bellefontaine, I show you a copy of Plaintiff's Exhibit 170, a letter of October 21, 1932, from Mr. Sichelman to yourself, and I direct your attention to the fourth paragraph of that letter and I ask you whether Mr. Granger, on or prior to October 21, 1932, promised that Fox would not sell any one in Bellefontaine? Read the letter before you answer the question.

The Court: Let me see: Who do you claim Mr. Granger is?

Mr. McClennen: This is Mr. James R. Granger, then of Fox.

The Court: A Manager?

Mr. McClennen: A Manager. And this letter was in the group that your Honor admitted over our objection at the end of the plaintiff's case.

The Court: Purporting to be from Mr. Granger?

Mr. McClennen: To Mr. Sichelman from Mr. Granger, and it contains a statement——

The Court: Mr. Sichelman is who?

Mr. McClennen: Mr. Schelman was Mr. Granger's assistant.

The Witness: I take it the name instead of Schwartz is Smertz; isn't it?

Mr. McClennen:

Q. Well, my question to you is: Did Mr. James R. Granger, on or prior to October 21, 1932, promise you that Fox would not sell any one in Bellefontaine?

A. No.

[fol. 4168] Q. Did you in any conversation with Mr. Schmerz inform Mr. Schmerz that Mr. Granger had made such a promise?

A. No.

Mr. Wright: Can I see the exhibit, please?

Mr. McClennen: Just a moment, I can give you a copy.

Mr. Wright: Oh.

Q. Mr. Schine, did you, in the course of negotiations for the acquisition of any theatre, at any time say to the prospective seller that if he did not sell to you he would have difficulty in getting product for his theatre?

A. I did not.

Q. Did you say to any such person that if he did not sell to you you would open up another theatre?

A. No.

Q. In the town?

A. No.

Q. Have you told any one else to make any such statements in negotiating for theatres for you?

A. No, sir.

Q. Were you at the time of any such negotiations aware that any one had made any such statements?

A. I was not.

Q. Have you in any way approved of the making of any such statements?

[fol. 4169] A. I have not.

Mr. Wright: That is objected to, calling for a conclusion.

The Court: Sustained.

Mr. Wright: That is a matter for the Judge, what happened, what he did.

The Court: State if he has ever done anything in connection with any such statement.

Q. Have you said to anyone that you approved of their making or having made any such statements?

A. I never did so.

Q. Have you had any conversation with any employee of Columbia, Fox, Loew's, Paramount, R.K.O., United Artists, Universal and Vitagraph, that any one of them should not deal with a competing exhibitor to you?

A. No, sir.

Mr. Wright: If the Court please, that calls for a conclusion, based on the series of unspecified conversations on unspecified subjects. What is the net conclusion to be drawn from all these negotiations he may have had with these people is something, I suppose, that could only be drawn from a consideration of what was actually said and what the circumstances were under which these conversa- [fol. 4170] tions occurred.

Mr. McClennen: These are very specific conversations that I am asking him about, namely, the conversations that never occurred.

The Court: Just read the whole question.

(Question read.)

The Court: Overruled.

Q. Have you written any such statement to any of them?
A. No.

Q. Have you said to anyone of them that if they made such a sale you would not buy from them elsewhere in your circuit?
A. No, sir.

Mr. McClennen: That concludes the direct examination.

Cross-examination.

By Mr. Wright:

Q. Mr. Schine, the figures on this Exhibit D-150, that first column showing the town, next column the theatre, then the column "Cost of Land and Building Acquired", does that cost in that column represent the cost of the land on which the particular theatre named there was located was acquired?

A. That cost represents the land and/or land and building.

Q. Well, in every case is it the land on which the theatre [fol. 4171] was erected or does it include other land?

A. Well, it includes the land on which the building was erected plus the building itself, if we bought a building already erected.

Q. And does it include whatever land you might have acquired in connection with that theatre even though you did not erect a theatre on it?

A. Well, in specific cases it probably—on this list there is no such an item.

Q. Well, how about the Auburn Theatre there at Auburn, that $83,500, does that represent the cost of the land on which the Auburn Theatre stands?

A. On the Auburn land, no, that does not represent the land alone, but it represents the land as originally bought plus the carrying charge of the land.

Q. What do you mean by the carrying charge of the land?

A. Well, taxes, interest and insurance.

Q. And does it include other land that was bought in Auburn on which a theatre wasn't built?

A. Yes, for exit purposes.

Q. Does it include the church property you bought there?

A. That is the church property.

The Court: What is the church property?

The Witness: On which the theatre is built.

Q. And that property was bought when?

[fol. 4172] A. In 1926, I believe.

Q. Do you remember when it was bought with reference to the time that you got the Palace from Schwartzwolder?

A. Yes, sir.

Q. How long before was it?

A. At about the same time.

Q. Was it before or afterwards?

A. It was just before.

Q. And at that time there was nothing on the property but an abandoned church?

A. A church, yes, sir.

Q. And you didn't buy that property, then, did you, for the purpose of conducting any services there?

A. No.

Q. Then after that you said it was when you made the deal with Schwartzwolder for the Palace?

A. Yes.

Q. Now, on these items that you have got listed here as leased properties, what does that figure that is included under the heading, that is stated under the heading "Additions and Improvements" cover?

A. Well, that means putting in extra equipment and decorating and making such improvements as we thought would be necessary.

Q. Does that include the cost of the leases?

[fol. 4173] A. Well, it wouldn't because the leases would be written down by that time. This was gotten up recently.

Q. Well, do you know whether it includes or not what was paid for a particular lease in the cases where you paid something for a lease?

A. It does not.

Q. Are you sure of that?

A. Well, I can see by the figure this cost us a great deal more than that. The lease cost us a great deal——

Mr. McClennen: Mr. Schine, we are all interested in what you say.

Q. Calling your attention again to Auburn, the Palace Theatre doesn't appear on the list at all, does it?

A. In there (indicating).

Q. It is there, yes. The item $14,500, you say that doesn't include what, if anything, was paid to Mr. Schwartzwolder for his lease?

A. No.

Q. That consists of what?

A. This consists of improvements made on the Palace Theatre.

Q. What improvements?

A. Well, we put in new seats and decorated it and fixed up the ladies' and men's room.

Q. When was that?

Mr. McClennen: Mr. Schine, it is difficult for the Court [fol. 4174] to hear and for us to hear.

The Witness: Pardon me. That was after we acquired the Palace.

Q. You don't remember when, though?

A. Well, this would be in 1926, I would say.

Q. Well, do you know?

A. Yes, sir.

Q. That was what you spent in 1926 in remodeling that theatre?

A. Yes, sir.

Q. And nothing has been spent since then, is that right?

A. Well, it is possible that instead of $14,500 it may be a little less and after that we would have mostly maintenance.

Q. Well, you have your maintenance expense in that figure there?

A. Well, by maintenance I don't mean taking care of it, I mean by retouching, redecorating, something like that, but we haven't done very much with it since.

Q. Items of that kind are all included under the heading "Additions and Improvements?"

A. No, this was the basic cost.

Q. Well, then, there was nothing, that column doesn't represent anything done by way of additions and improvements since you got the Palace from Schwartzwolder, is [fol. 4175] that right?

A. No, it does not.

Q. And where a theatre doesn't appear on the list at all, that means nothing was spent with respect to the additions or improvements as to that particular theatre?

Mr. McClennen: That is objected to, because it leaves out of consideration those theatres that were bought and disposed of and so are not any longer on the list.

Mr. Wright: I am trying to find out what is on and what isn't on.

The Court: He can explain that.

The Witness: What was the question, please?

(Question read.)

The Witness: I wouldn't know that, if they omitted to list the theatre then, of course, it just wouldn't be on the list.

Q. What is that list supposed to represent?

A. This list was taken off our books and represents exactly as stated on the top of the column.

Q. Well, is that supposed to include whatever your books show by way of additions and improvements or original expenditures on all of the theatres that you now have under lease or ownership?

A. Unless—these were taken off the books.

[fol. 4176] The Court: The books were present, and it refers to your present holdings, is that it?

The Witness: Yes.

Q. All of them, is that right?

A. Unless some theatres were omitted—I don't know.

Q. Who prepared the data?

A. Our auditing department.

Q. They would know, wouldn't they?

A. I assume they would, yes.

Q. Now, who was it in your auditing department that prepared this, do you know?

A. Miss Thompson.

Q. Well, actually, she would be in a better position to give testimony here as to what is in and what not in that list, and what it covers than you would, wouldn't she?

Mr. McClennen: That is objected to. A witness isn't called upon to conclude whether she is a better witness than he is or not.

The Court: Ask him if he knows personally about these expenses and expenditures.

The Witness: I requested such a list and this was submitted to me.

Q. All you know is that is what you got?
A. Yes.

Q. Now, as to these acquisitions, this—or, this first [fol. 4177] column here on your own theatres "Cost of Land and Building Acquired", in each instance that may or may not represent an expenditure by one or more of your companies, isn't that right?
A. I don't quite understand the question.

Mr. Wright: Would you read it?

(Question read.)

The Witness: That is right.

Q. And in many instances it represents amounts that were invested by somebody else before you ever took over the property, isn't that right?
A. You mean in this column?
Q. Yes.
A. No, this represents only what we put in the properties.
Q. Well, then, your former answer was incorrect.

Mr. McClennen: That is objected to, that comment is objected to.

Q. This column then represents what you paid for the property?
A. Yes, sir.
Q. And in the case where you bought a corporation which happened to own the theatre that you acquired——
A. Yes, sir.
Q. These figures represent what you paid for the cost or what you paid for the stock in the corporation?
[fol. 4178] A. That is right.

Q. And that may or may not represent the amount of money that went into any particular theatre, is that right?

A. That represents the amount we paid.

Q. And I say you are not in a position to say what, if any relation the amount you paid for the stock of a particular theatre holding corporation has to what the investment was in any one of those theatres, is that right?

The Court: If the company whose stock was bought owned more than one theatre——

Mr. Wright: Perhaps I can make it clear this way:

Q. The figures that you have recorded here are simply the amounts that you paid, that is, when you bought a corporation that owned a theatre, for the stock interest in the corporation that you acquired, is that right?

Mr. McClennen: You are now referring to that first column?

Mr. Wright: Yes.

The Witness: That is right.

Q. And those figures, the relation between those figures and what that corporation or somebody else may have actually put into the property is something you are not in a position to state at this time, is that correct, something that isn't disclosed by that list?

A. That is correct.

Q. Now, those amounts that were expended, you didn't [fol. 4179] mean to have the Court understand, when you referred in your direct testimony, in saying you had spent this money, that any of it represented a personal investment on your part, did you?

Mr. McClennen: That is objected to. What he meant to have the Court understand or infer is not for the witness to say. What he said is important.

The Court: Ask him if he understood he was testifying to that effect.

Q. Is it your testimony, Mr. Schine, that these amounts that are listed on Defendants' Exhibit D-150 were expended personally by you?

A. No.

Q. None of them were, were they?

A. No.

Q. And the money that was put in was furnished by various corporations in which you had some interest, is that right?

A. Yes, sir.

Q. In some cases, and in other cases it was borrowed?

A. Well, we spent the money.

Q. I understand the money was spent. I am talking about the source. There is nothing here to show how much was borrowed or how much came out of the——

[fol. 4180] A. That is right.

Q. —company itself. And it all come out of the pockets of the people who patronized your theatres eventually, didn't it?

Mr. McClennen: That is objected to.

The Court: I don't see how it makes any difference.

Mr. Wright: I understood the purpose of these elaborate figures here was to show that Mr. Schine had made some special contribution of some $6,000,000 to the welfare of the motion picture industry.

The Court: I suppose the corporation did probably expend its money for a certain purpose. That purpose would be—the money was to be derived through industry. It is not claimed he did this personally, that his company purchased or obtained these theatres.

By Mr. Wright:

Q. And all the money——

Mr. McClennen: Just a moment before you go on with the question. The purpose was the one that we stated.

The Court: What?

Mr. McClennen: The purpose was the one that we stated, that the improvements in theatres and building of theatres [fol. 4181] above the original cost had in the case of owned property amounted to $3,506,600, that was the purpose.

The Court: I think it was actually paid out of the company.

Mr. Wright: He hasn't answered that.

The Court: The answer is it was paid out of the company.

By Mr. Wright:

Q. And all the money paid by these companies came from the motion picture operations of those companies, is that right?

A. Part of it came from stockholders that we sold the stock to.

Q. Other than that?

A. Other than that it was from the company.

Q. And those companies were all companies engaged in the motion picture theatre operation?

A. Yes, sir.

Q. It was their source of income?

A. Motion picture operation or real estate.

Q. Real estate operated incidentally or in connection with the operation of theatres?

A. Yes, sir.

Q. Have you got any non-theatre investments in there?

A. Not here, but we have real estate that are not theatres.

[fol. 4182] Q. Did you ever see the answers to the interrogatories that were filed in this case by and on behalf of your companies?

A. No.

Q. I want to call your attention to the fact that you stated in response, the defendant stated in response to interrogatory No. 19, as to theatres built by the Schine defendants, that the cost of construction, including land, building and equipment of the Auburn Theatre was $242,716.88. Do you recall seeing that figure before?

A. You mean this figure here? $245,000 is given here. (Referring to exhibit.)

[fol. 4183] Q. I was calling your attention to the figure that you supplied in answer to interrogatories. It was $250,859 cost for construction, including land, building and equipment.

A. Well, this is the——.

Q. I also call your attention to the figures on your Exhibit 150 here, which show the cost of the land as $83,500 and the cost of the building and improvements since acquisition, $245,000.

A. Well, I don't know what the interrogatories are, but these are the statements given to me by our auditing department.

Q. When did you say that that theatre was finished?

A. It was finished, I believe, in '38.

Q. Have you made any major improvements in it since '38?

A. Well, we add on now and then.

Q. I say have you made any major improvements in the Auburn since then?

A. Yes.

Q. How much have you spent on improvements?

A. I haven't the figures here, except this list.

Q. Well, have you figures that would show? You know you haven't spent more than a few thousand dollars in that respect, don't you?

A. Well, I don't think we spent a lot of money. We [fol. 4184] installed a number of items that cost a few thousand dollars.

Q. Well, is there any way that you can, as you sit there, reconcile the discrepancy between the total of $320,000 that is shown as the investment there and $242,000 figure that was furnished in the answer to the interrogatory?

Mr. McClennen: That is objected to as assuming that there is a discrepancy, when it is obvious from the face of the papers that there is no such discrepancy. One was the cost of the acquisition of land and such building as was on it, to which is added the cost of a new building and improvement. The other shows land and new building, if it was a new building.

The Court: Without equipment, you mean?

Mr. McClennen: No, with equipment also.

The Court: I don't see the distinction you make then.

Mr. McClennen: Well, let ~~me~~ illustrate what I mean. If they bought an existing piece of property for $83,000 and demolished a building, leaving only the vacant land with, we will say, $27,000, I am imagining that, if the cost of the land, then added to that the cost of the new building, [fol. 4185] appears in the answer to the interrogatory. The two things are not stating the same thing.

The Court: I suppose there are times it will show the both things, the total cost, and of course the total cost would include the building that was demolished, in addition to the land. It would include the valuation of $83,000.

Mr. McClennen: If your Honor please, the interrogatory——

The Court: I don't know how these headings are described.

The Witness: The headings, your Honor,—— (Handing papers to the Court.)

Mr. McClennen: The interrogatory asks a different question than the one covered.

The Court: It says, "Cost of land and building acquired". The next is, "Cost of new building and improvement". It would make a total in that case of $255,000.

Mr. McClennen: Yes. If your Honor please, if what is asked in the interrogatory for the cost of the land and the new building put upon it, it is a different thing from the original investment than has been shown to be stock in the corporation, owning the property.

The Court: Building and land, they both are real estate, [fol. 4186] I suppose. I don't know. In Auburn, cost of land and building, $83,500, cost of building and improvements since acquisition, that means cost of land and building would be $38,000. How does your interrogatory read?

Mr. Wright: The interrogatory answer reads: "Cost of construction, including land, building and equipment, $242,716.88".

The Court: If it included building in that land the total would be the same. That figure is $242,000.

Mr. McClennen: If your Honor please, this original cost in Exhibit D-150 in that column would include the land and the church upon it.

The Court: It says so at the top, "Land and building".

Mr. McClennen; The church burned down, and in the answer to the interrogatory they did not include what they had paid for the burned church. That included what they had paid for the vacant land, plus the building they put on.

The Court: As I said before, it is a question of whether they can include the real estate in both. Read that caption again, Mr. Wright.

Mr. Wright: The answer states, "Cost of construction, [fol. 4187] including land, building and equipment, $242,716.88.

The Court: All right.

Mr. McClennen: That is briefly put. That answer does not include the church burned down.

The Court: Whether it does or does not, it might and it might not.

Mr. McClennen: I was making my comment because of the assertion there was an inconsistency between the two figures, assuming there was no such inconsistency.

The Court: Ordinarily, if you are buying two pieces of land, buying that property and land, including it as part of the land, you speak of it as the land.

Mr. Wright: Let me see if I can find out from the witness what actually occurred.

By Mr. Wright:

Q. This $83,500 item is that what you paid for that land that the old church was on at the time you acquired it before you got the Palace from Schwartzwolder?

A. No.

Q. What did you pay for that?

A. I can't tell you, but this figure appears high and I shall be glad to call up and get the information you want.

Q. I don't want the information. I want to know what [fol. 4188] you know about the figures on the list.

A. I am not in position to tell you now but I shall be glad to find out for you.

Q. You don't know what you paid for the property with the church on it at the time you bought it?

A. No, I don't recall it.

Q. And that property just stood idle there until 1938, didn't it? You did nothing with that?

A. No.

Q. The building on there was virtually worthless, was it not?

A. Well, it was not worthless.

Q. Well, was it used for anything?

A. No.

Q. Just stood there?

A. Stood there.

Q. And then the building burned down?

A. That is right.

Q. In '38?

A. No, it was a little earlier than that, I believe.

Q. Can you recall whether you collected insurance on the building?

A. Yes, we collected some insurance.

Q. Do you know how much?

A. I do not recall.

Q. Was that deducted from the cost of what you paid there?

[fol. 4189] A. I cannot say by these figures, but I will have it in the morning for you.

Q. If somebody wanted to know what the actual cost of that land on which the Auburn Theatre is built, and the building, your figure of $242,000 that you furnished in the interrogatory would be about right, wouldn't it?

A. I wouldn't know that at this time. I will know it in the morning though.

Q. Calling your attention to this item on the Colonia Theatre at Norwich: You say cost of land and building acquired, $80,700. That theatre was acquired, was it not, from the corporation?

A. Yes.

Q. You did not buy any land and buildings. What you bought was stock in a corporation? You bought a controlling interest, didn't you?

A. That is right.

Q. Now, is $80,700 what you paid for the controlling interest in that corporation?

A. For all of it.

Q. All of what?

A. All of the stock, assets.

Q. All of the stock that you bought?

A. Yes.

Q. You don't know how much you paid for the control?

[fol. 4190] A. I do not know.

Mr. McClennen: Mr. Schine, continue to remember that you are testifying chiefly for the Court to hear and not Mr. Wright.

The Witness: All right.

The Court: I can hear him. Maybe you can't.

The Witness: Mr. Wright is so close.

The Court: How large a place is Norwich?

The Witness: Norwich is 8,000.

By Mr. Wright:

Q. As far as any figures on this paper, Defendants' Exhibit D-150, are concerned they do not show what the Colonia Theatre, land and theatre building, actually cost, do they, to construct?

A. The Colonia cost much more than is indicated in this column.

Q. Just answer the question.

Mr. Wright: Will you repeat that?

(Last question read.)

A: No.

Q. Do you have records, Mr. Schine, which show the actual construction costs?

A. No.

Q. Those improvements you have there for the Colonia, that shows $29,500, and those represent improvements made [fol. 4191] on the Colonia Theatre?

A. It does.

Q. And I believed you testified on your direct examination those were made all in 1938 or the major part of them?

A. Not all. Major part.

Q. What was it you did then?

A. We re-seated, redecorated.

Q. What do you mean when you say re-seated?

A. Plush seats.

Mr. McClennen: Show that the answer was broken off because it was not completed when the next question was put.

The Court: It was re-seated.

Mr. Wright: It is probably obvious. I wanted to get a definition of the term before we left it.

The Witness: Re-seated.

Q. What do you mean? New seats?

A. Yes.

The Court: Go on.

A. (Continuing) Redecorated and various other improvements in the public spaces, like the wash rooms and carpets and a marquee.

Q. And how much did those improvements cost you just described?

A. Well, I haven't got the figures here. The total spent [fol. 4192] is $29,500 all together.

Q. Yes. Will you answer the question?

Mr. Wright: Will you read the question?

(The question was read.)

A. Well, I would say probably cost around $20,000.

Q. I believe you testified yesterday with respect to reseating one of your theatres at Auburn, the Jefferson?

A. Yes.

Q. When you said re-seating then did you mean buying new seats?

A. Yes.

Q. When was that?

A. That was probably about '39 or '40.

Q. And when you did that you actually took out the old seats and put in new ones?

A. Yes.

Q. That is what you call re-seating?

A. Yes.

Q. You just did not recover them?

A. No.

The Court: Did you put $100,000 into a theatre in a place like Norwich?

The Witness: Yes.

The Court: $83,000 is for a site and building?

The Witness: Yes.

[fol. 4193] The Court: It seems such a large amount to me for the size of the place.

The Witness: You can't get anything for less, if you want a nice theatre.

The Court: It is a lot of money to put into a place of that size.

By Mr. Wright:

Q. Calling your attention to Lockport: I understand that you first bought the Temple there?

A. Yes.

Q. And then you converted—what was it—a skating rink into the Rialto?

A. We bought a building and built a theatre there, used the old walls and the roof.

Q. At about that time, as I understood your testimony, the people in the town there built the Palace?

A. Yes.

Q. Do you remember which project started first there?

A. Well, the foundation of the Palace was started six or eight years before by a different company and then it stopped. They didn't do anything then.

Q. And it was revived at about the time that you started to convert the Rialto?

A. Yes.

Q. A little bit before, wasn't it?

[fol. 4194] A. I wouldn't remember that.

Q. And then when it was completed it was operated by Paramount?

A. Yes.

Q. And at that time Paramount was out of your circuit, was it not?

Mr. McClennen: Just a moment. That is objected to as assuming that Paramount had ever been in the circuit.

The Court: Let him ask if Paramount was furnishing him pictures at that time.

Q. Were you buying Paramount features in your theatres you were then operating?

A. We bought Paramount pictures every year except one year or so.

Q. What year was that?

A. I don't recall.

Q. Might have been the year in which the operation of the Palace was taken over?

A. I don't recall what year it was.

Q. And then shortly after that you made a pooling arrangement with Paramount, isn't that right?

A. Not shortly after that.

Q. Well, how long after?

A. Well, I believe it was about two years after that.

Q. That you made the pool?

[fol. 4195] We made a partnership.

Q. And under which you split the profits from the town 50-50 between you and Paramount, is that right?

A. There weren't any profits to split.

Q. Well, whatever was earned was to be divided equally between you and Paramount?

A. That was the intent, but there were losses instead.

Q. You had the only theatres there, is that right?

A. No, Mr. Lanigan had a theatre there.

Q. Are you talking about the period before or after you made the pool?

A. That was before.

Q. And the agreement which you made, the pooling agreement, called for an equal division of the profits between you and Paramount, isn't that right?

A. That is what the partnership called for, yes.

Q. And you continued to manage the theatre?

A. Yes.

Q. And bought the films for them?

A. Yes.

Q. And you didn't mean to suggest here that there were no profits after the pooling arrangement was made, did you?

A. I do.

Q. There was none?

A. No profit, but losses.

[fol. 4196] Q. During that time, however, you received fees for booking the films?

A. I received a fee of $30 a week for managing the town.

Q. And you booked films too?

A. And booked films.

Q. Then you also testified, I think, that while this pool was in operation you kept the Hi-Art and the Temple both closed, weren't they?

A. The Hi-Art was closed before the partnership took place.

Q. Just answer the question.

Mr. McClennen: That, I submit, answers the question.

The Court: Were they both closed during the time of the partnership, that was the question, both the Hi-Art and the Temple.

A. Yes.

Q. And the Temple was then later converted into commercial property?

A. No, it was demolished.

Q. It was demolished and the Hi-Art stayed closed until when?

A. Well, it was opened in about '33, I would say.

Q. October, '33?

A. I don't remember the month.

Q. And when was it that you closed the Palace?

A. When?

Q. Yes.

[fol. 4197] A. In December, 1932, I believe.

Q. That was when you left the premises, but had you closed before then? Were you still operating?

A. We left forcibly.

Q. You say you were operating up until the time you left?

A. Yes.

Q. You hadn't closed it before then?

A. No.

Q. And then how long did this pooling arrangement with Paramount continue?

A. Until Paramount refused to put up more money.

Mr. Wright: I move to strike that.

The Court: The time.

Q. Just answer the question.

A. It terminated about that time.

Q. About the same time?

A. Yes.

Q. Then you got out of the Palace?

A. Yes.

Q. Then this pool with RKO, you say, was made in 1935?

A. In Syracuse. Yes.

Q. Did you have a pool with them anywhere else?

A. No.

Q. And before that time you had been operating the Eckel Theatre there?

[fol. 4198] A. The Eckel Theatre.

Q. RKO had all the other first-run theatres, except Loew's?

A. Loew's, yes.

Q. And that pool operates through the S. K. E. Operating Company?

A. Yes.

Q. And you own 30 per cent of the stock of that corporation?

A. There are two types of stocks there, A and B. We get 30 per cent of the profits. Originally it was 40 and 60. They got 60 and we got 40. The directorship, however, is equally divided, 2 and 2.

Q. Who are the two Directors who represent your interests?

A. I think myself is one and Mr. McKay is another, for convenience, living in New York.

Q. And the RKO directors?

A. They are—I know Mr. Kingsberg is one and an attorney, I think it is Whittman, is the other.

Q. And this division of profits that occurs through payment of dividends on stock, or is there some agreement in addition to the stock ownership with respect to how profits are to be divided?

A. Are you speaking of the first arrangement?

Q. Let us begin with the first arrangement.

A. I would like to have that question again, please.

(Question read.)

[fol. 4199] A. There is an agreement whereby we were to get 40 per cent and RKO would get 60 per cent.

Q. This is a written agreement you are talking about?

A. Yes.

Q. Who were the parties to that agreement?

A. I think it was RKO was one and one of our corporation was the other.

Q. Then is there another agreement in effect now, or modification of that agreement?

A. Yes.

Q. You still have a written agreement, then, that covers the——

A. Yes

Q. —division of profits?

A. Yes.

Q. Could you produce a copy of that agreement for us?

A. Not here, but I assume I could.

Q. You have one?

A. I think so.

Q. With reference to Canandaigua, Lake Theatre, I recall you said you opened it and then closed it, on your direct testimony; is that right?

A. Yes.

Q. How long was it you kept it open?

A. Several months.

[fol. 4200] Q. How many?

A. I would say about four or five months.

Q. Do you have an accurate record of that period?

A. I haven't here of that period but I can find out exactly the dates.

Q. Those few months are the only time it has ever been operated?

A. No, we tried again several times.

Q. You refer to a Veterans Hospital there that had something to do with your deciding to build that theatre?

A. Yes.

Q. Then that Veterans Hospital was built, was it not?

A. It was.

Q. So that there wasn't any change in your plans caused by any change in the plans for the Veterans Hospital, is that right?

A. I don't quite get your question.

[fol. 4201] Q. Will you read it?

(Question read.)

A. The plans were changed by lack of business.

Q. Just answer the question.

A. Well, I think I have answered it.

Q. Will you repeat the question to him?

(Question read.)

A. The Veterans Hospital caused us to build the theatre.

Mr. Wright: I move to strike it out. Will you attempt to answer the question?

The Witness: If you will ask it to me so I can understand it a little better, I will try to answer it.

Q. Listen to it carefully.

(Question read.)

A. Why, I don't know as the Veterans Hospital changed any plans.

Q. You know they didn't?

A. Most likely didn't, I don't know anything about it, except they were to build one.

Q. And they built it?

A. Well, they built it and it didn't help our business.

Q. Now, you remember testifying this afternoon about completing this theatre in Salamanca, the last one there?

[fol. 4202] A. Yes, sir.

Q. You said, I believe 1939?

A. Yes, sir.

Q. Actually it wasn't completed until about three years later, was it?

A. In Salamanca?

Q. Yes.

A. I think you are wrong, Mr. Wright, pardon me. I don't want to question you, but when you said I said it was completed in 1939, I didn't say that as far as I recollect.

Q. What did you say?

A. I don't remember.

Q. What is your best recollection now as to what you said?

A. Regarding what, the Salamanca Theatre?

Q. Yes, when it was completed and opened?

A. I said it was completed about 1940 or '41.

Q. That is what you said, is it?

A. Yes, sir.

Q. Well, what is the fact?

A. I have my notes here. I can give you the information you want. It was finished in 1942. It was held up by some material they could not get according to my notes.

[fol. 4203] Q. Now, you have a set of records there which contain an accurate record of these dates you testified to?

A. Regarding the completion of the Salamanca Theatre?

Q. Yes, do those appear in your records, isn't that right?

A. Yes.

Q. If you wanted to give the Court an accurate statement of when these openings occurred you could have supplied an accurate record, couldn't you, and wouldn't have to rely on your memory?

A. I don't feel as though I wanted to delay the answer, it is about correct.

Q. You haven't answered the question. Will you read it?

A. I shall be glad to do so.

Q. I am not asking you to do it; I am asking you if you could not have done it instead of getting on the stand here and relying — your memory?

A. I could have done it. I could have referred to the record.

Q. Are there any of those other dates you gave us about openings or starting the construction that you think are as wrong as the one you gave on Salamanca?

Mr. McClennen: That is objected to, the witness is not called upon to compare, in a long examination, the different answers given for the different places, the forms of the [fol. 4204] questions varying as to those places.

The Court: I will let him answer whether there is any variance in the dates in the construction of other theatres.

Mr. McClennen: That wasn't the question I was objecting.

The Court: Or the comparisons.

The Witness: I don't think there was any inaccuracies in my answers.

The Court: The answer was it was opened in 1941, as I have it.

The Witness: Well, it was finished in 1942. There was some material they had to have.

Mr. McClennen: If your Honor please, the testimony as to Salamanca was not in error as to date as given by the witness.

The Court: My record is its opening was in 1941; it was bought in 1927, opened in 1941; the land was bought in 1927 and the opening was in 1941, as I have it.

Mr. McClennen: If your Honor please, the note that we have is that the construction started——

The Court: Are you reading his testimony?

Mr. McClennen: No, I was reading from a note, in order that there might be no misunderstanding as to what the tes- [fol. 4205] timony was, and I, of course, haven't the stenographer's notes here, but the note that was made at the time was that he stated the construction started in 1939 or 1940, and opened a year later.

The Court: That would be 1941, wouldn't it?

The Witness: Opened a year later. It was opened in 1942.

The Court: 1941 would be the same date I have.

By Mr. Wright:

Q. You testified, didn't you Mr. Schine, with respect to the time when you got a permit for that theatre, did you not?

A. No.

Q. You didn't testify to that?

A. In Salamanca?

Q. Do you recall when you got the permit to start construction?

A. I do not.

Q. Does October, 1941, sound about right, is that right?

A. I don't know whether that would be the date or not.

Q. It might have been, you didn't start construction until the fall of 1941, is that right?

A. No, we started earlier than that.

Q. Did you get a permit before October, 1941?

A. I don't know when the permit was got.

Q. You usually get a permit before you start construction, [fol. 4206] don't you?

A. Well, that is the usual procedure.

The Court: You must have some records to show.

The Witness: I haven't any records here, your Honor.

The Court: I mean you must have it somewhere?

The Witness: Yes, we would have a record in the office.

The Court: When you commenced construction and whether it was October?

The Witness: Yes.

By Mr. Wright:

Q. And you opened in the fall of 1942, according to the best of your recollection now, is that right?

A. In the summer of 1942, I believe.

Q. It was after August, wasn't it?

A. No, it was opened in August, not after.

Q. August what?

A. 1942.

Q. Do you know the date?

A. No.

Q. Now, with respect to this conversation you had, the conversations you had with Mr. Tishkorf on Rochester, as I understand you, all you told him about building a theatre near his Murray Theatre was that it would be foolish for you to do it, is that right?

A. Near the Murray Theatre?

[fol. 4207] Q. Yes.

A. It would be foolish for him to do it?

Q. I understood you testified what you told him, all you told him about building a theatre near his Murray Theatre was that it would be a foolish thing for you to do?

A. Yes, that is what I told him.

Q. And that is all you told him about it, is that right?

A. Yes, sir.

Q. And had you ever actually had any negotiations with respect to building a theatre near his Murray Theatre?

A. No.

Q. Never did?

A. Never did.

Q. Not at any time?

A. I was offered theatres in every part of Rochester, but I never gave it any consideration.

Q. Well, were you offered one near the Murray?

A. Well, I was offered in every part of the city. It probably included in that section as well.

Q. Are you referring now to offers of existing theatres?

A. No, new theatres.

Q. Somebody offered to build a new theatre for you?

A. That is right.

Q. Near the Murray Theatre, is that right?

[fol. 4208] A. I don't know whether it was near the Murray. I never went out to look at the site.

Q. You knew that the site that you talked about was right around the corner from the Murray on Lyle Avenue, didn't you, whether you looked at it or not?

A. Well, I did not know how close it was to the Murray.

Q. Well, you knew where the location was, didn't you?

A. No, I didn't go to look at the location.

Q. Just answer the question.

A. What was your question?

Mr. Wright: Will you read it?

(Question read.)

The Witness: I knew in what section of the town it was; approximately.

Q. And you know Mr. Goldstein?

A. Which Mr. Goldstein are you referring to?

Q. Well, what Mr. Goldsteins do you know in Rochester?

A. I know a lot of them.

Q. The one you discussed the location *new* the Murray Theatre with?

A. Well, I talked to many people in Rochester, and I don't remember their names.

Q. You don't remember whether these discussions you had with respect to a theatre near the Murray were with Goldstein or some one else, do you?

[fol. 4209] A. No.

Q. Do you remember when they occurred?

A. No, I don't.

Q. As a matter of fact, they occurred about the same time that you were negotiating with Tishkorf and Fogel, isn't that right?

A. I don't remember.

Q. Would you say they didn't occur then?

A. At one period every builder was offering me theatres in every part of the city.

Mr. Wright: I move to strike it out.

Q. Just see if you can answer the question.

The Court: Strike it out.

Mr. Wright: Will you read him the last question?

(Question read.)

The Witness: In reference to what theatre are you referring?

Q. The construction of a new theatre near the Murray?

A. I don't recall considering a new theatre near the Murray. I gave no consideration to offers of that type.

Mr. Wright: I move to strike it out.

Q. I did not ask you what you were considering.

The Court: Just answer the question and save time.

The Witness: I would say "No."

Q. No what, that you did not have any negotiations with respect to a theatre near the Murray at or about the time [fol. 4210] you were negotiating with Fogel and Tishkorf for the Webster, is that your testimony?

A. That I didn't have?

Q. Yes, your testimony is now you didn't have at or about that time, is that right?

A. Well, we—I can't remember when it took place—we had negotiations or we talked about theatres most every time I was in Rochester. Whether it was before or after I met Tishkorf, I can't recall.

Q. Now, you say, as I understood your direct testimony, when you first talked to those people about the Webster you told them that was no place to put a theatre and you didn't want any part of it, you didn't want any interest in it, is that right?

A: I didn't tell them in that way, Mr. Wright.

Q. You told them you were not interested in acquiring any interest in the theatre, isn't that correct?

A. That is right.

Q. Then later you told them you would take a half interest, is that right.

A. That is right.

Q. And the deal that you made, you got a half interest in the property and you got 5 per cent of the gross for booking the films, is that it?

A. Yes, and we invested $10,000.

[fol. 4211] Q. When you say you invested, you mean you advanced half of the first year's rent, is that right?

A. Well, I had to give them that, not the first year's, no.

Q. Is that the kind of expenditure you have listed on this Exhibit D-150 as an investment or cost of land or building or leases?

A. Do you see the Webster Theatre there?

Q. I am just asking you. Just answer my question.

A. No.

Q. You don't regard that as a capital investment, is that right?

A. No, not advanced rent.

Q. And part of the deal was that they were to get pictures to play with the Dixie and be able to play half the Dixie's product at the Webster?

A. Half the State.

Q. The State, I beg your pardon?

A. Yes, sir.

Q. So what it came down to, wasn't it, you gave them half of the State's pictures for five per cent of the gross?

A. No.

Q. Well, that is what happened?

A. No, we gave them half of the pictures, because we were interested in the theatre. We had a half partnership in it.

[fol. 4212] Q. And you got a percentage of the gross for taking care of the booking and buying of films?

A. And supervising the management.

Q. I understood you to say the management was in the hands of Mr. Fogel?

A. Mr. Fogel, but we were supposed to supervise it.

Q. I believe you gave testimony yesterday with respect to Corning, did you not, Mr. Schine?

A. I did.

Q. You undertook to tell us how the State had been operated there before you got it and after you got it?

A. Well, I can answer that question because it is broad.

Q. Well, read the question again.

(Question read.)

A. Got it when? I got it twice.

Q. When you got it back in 1933?

A. In 1933, yes, sir.

Q. And you said, I think, that it had just been operated showing Western pictures before that or on week-ends, Westerns and some second-run.

A. You mean after,—in 1933?

Q. The prior operation, that was your statement as to the prior operation?

A. When who had it?

Q. Fox.

[fol. 4213] A. Fox,—I was informed that they were running secondary pictures and Westerns in the State Theatre.

Q. And just operating it week-ends?

A. Yes, sir.

Q. Then I think you said that you maintained the same policy after you took it over.

A. I think we did, yes.

Q. As a matter of fact, your policy varied widely, did it not, during the next few years that you operated that theatre?

A. Oh, we tried every policy.

Q. You didn't have any set policy for it at all?

A. No, we tried every policy, but didn't make it pay.

Q. Your statement was incorrect, that you just simply followed the policy that had been followed by Fox?

A. For a while we did.

Mr. McClennen: That question is objected to, as contrary in its assumption as to what the witness said.

The Court: He said now he followed the policy for a while.

Mr. McClennen: The question was, it was incorrect. I was objecting to the question, that it was not incorrect.

The Court: He may ask him whether he made a statement [fol. 4214] that it was incorrect.

By Mr. Wright:

Q. That is what you testified to on direct-examination, that you followed the policy Fox had followed?

A. Yes, sir.

Q. I understand your testimony to be you followed a wide variety of policies?

A. Later on.

Q. How much later?

A. From time to time, if the policy we had didn't work, we tried another policy.

Q. You tried a number of policies, didn't you?

A. Yes, sir, we did.

By the Court:

Q. You mean by "policy", a change of prices?

A. A change, a different way of booking; sometimes booked it Sunday, Monday and Tuesday, and then when you find it is too long a run, you would book it in for Sunday and Monday only.

Q. The policy included, you mean, the type of picture and price?

A. That is right.

Q. And the changes?

A. That is right.

[fol. 4215]. By Mr. Wright:

Q. And that policy that you ran it on was directed, was it not, toward the acquisition by you of the Palace?

A. No.

Q. Had nothing to do with that?

A. Nothing to do with it.

Q. You weren't interested in acquiring the Palace at all while you were operating the State?

A. Well, I never gave it much consideration.

Q. Just answer the question.

A. What was the question?

(Question read.)

A. No.

Q. Never had any negotiations with respect to the Palace until 1938, is that right?

A. Never had negotiations as far as I know, I have no recollection of ever having negotiations.

Q. You personally, you don't know what negotiations may have been going on with other members of the organization?

A. Well, I would know if they had.

Q. Well, do you know?

A. I do not.

Q. You mean you don't know whether there were or not?

A. I have not heard of any negotiations.

Q. You know Mr. Gerber is dead, don't you?

[fol. 4216] A. Yes, sir.

Q. Died in 1940?

A. Yes, sir.

Q. Do you know where his son is?

A. I do not.

Q. You don't know that he is overseas?

A. I do not.

Q. Now, at the time that purchase was made, Mr. Robert Gerber was engaged with his father, Mr. Frederick Gerber, in operating the theatre, was he not?

A. I understood so.

Q. Well, you knew that he was?

A. I did not, but I was told he was.

Q. Didn't he go to work for you as a manager?

A. Yes, sir.

Q. And that was part of the deal?

A. Yes, sir.

Q. And then he worked for you for two years?

A. Yes, sir.

Q. And then you let him go?

A. We did not let him go.

Q. He left, anyway?

A. He resigned.

Q. And at the time the deal was closed you for one knew that Mr. Robert Gerber was not interested in leaving the [fol. 4217] theatre business?

A. I did not know that.

Q. Think anybody else in your organization did?

A. I don't know.

Q. You don't have any idea then as to what did transpire in the negotiations which led up to that sale?

A. Well, I have a pretty good idea.

Q. And entirely second-handed, isn't it?

A. No, I was kept informed.

Q. I say your information was second-hand?

A. Well, if you call it second-hand.

Q. And the impression you attempted to convey to the Court that the sale occurred because Mr. Gerber was ill, was entirely based on what other people told you, isn't that right?

Mr. McClennen: That is objected to in that form.

The Court: I don't understand the question myself. Read the question there.

(Question read.)

The Court: I will let him say whether he did seek to convey the impression that it was because Mr. Gerber was ill that the sale took place.

The Witness: Mr. Gerber was ill, and I knew he was ill.

By Mr. Wright:

Q. Just answer the question that the Court asked you.

[fols. 4218-4219] The Court: Didn't you attempt to convey the impression to the Court that it was because Mr. Gerber was ill?

The Witness: Yes, sir.

By Mr. Wright:

Q. Do you know the name of the man who had the negotiations? You know who gave you the information?

A. About his illness?

Q. About the deal?

A. Yes.

Q. Mr. John May, is that right?

A. Yes, sir.

Q. Mr. May is available here; there is nothing to keep him from testifying in the case?

A. I don't know of anything.

Mr. Wright: I think, your Honor, this would be a good point to suspend if you are agreeable.

The Court: All right. We will suspend until tomorrow morning.

(Whereupon a recess was taken until Thursday, November 2nd, 1944, at 10 o'clock.)

[fol. 4220] UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF NEW YORK

Civil 223

UNITED STATES OF AMERICA

vs.

SCHINE CHAIN THEATRES, INC., et al., Defendants

Continuation of trial before Honorable John Knight, United States District Judge for the Western District of New York, November 2nd, 1944, 10 o'clock A. M.

Appearances:

Robert L. Wright, Esq., John F. Clagett, Esq., Harold L. Schilz, Esq., Philip Marcus, Esq., Special Assistants to the Attorney General, and Milton Kallis, Esq., Special Attorney, in behalf of the United States.

Edward F. McClennen, Esq., Willard S. McKay, Esq., Saul E. Rogers, Esq., Arthur E. Whittemore, Esq., Arthur J. Homans, Esq., and Edward M. Antevil, Esq., appearing for the Defendants.

[fols. 4221] PROCEEDINGS

Mr. McClennen: Mr. Wright, we have got over the telephone from Miss Thompson, the best we could overnight, all those figures about which you were inquiring if you find that you want them.

J. MYER SCHINE resumed the stand in behalf of the Defendants and testified further as follows:

Cross-examination (continued).

By Mr. Wright:

Q. You have the Auburn figures there now, Mr. Schine?
A. Yes, sir.
Q. Will you tell us what was paid for the church property?
A. The church property cost originally $35,000. We bought additional——
Q. That was for the land and the building on it?
A. And the church, yes. We bought additional land which cost us $13,000 and another plot of ground which cost $5,316.
Q. When were those purchases made?
A. The church property was bought in——
Q. I am referring to the latter.
[fol. 4222] A. To the land that was bought in about—one piece was bought in 1937, I think, and the other piece was bought at about the same time.
Q. And that was the total cost of the land on which the Auburn Theatre stands?
A. That was the basic cost. We also spent, since its acquisition, in taxes and insurance, approximately $15,000 and the interest on the investment was $31,500.

By the Court:

Q. That would mean from the time——

A. From the time we bought the property.

Q. Up to the time of construction?

A. Up to the time of construction.

Q. Completion?

A. Yes, sir, the total is, therefore, $99,816. We received insurance, when the church burned down in the sum of $16,893.80, leaving a net investment of $82,922,20. No interest was computed on the cost of the second or third lots.

By Mr. Wright:

Q. Was that interest item $31,500?

A. Correct.

Q. That was interest accrued on the $35,000 investment?

A. Yes, sir.

Q. Over——

[fol. 4223] A. 15 years.

Q. 15 years?

A. Yes, sir.

Q. Was that interest actually paid or set up according to an arbitrary formula?

A. Actually paid at 6 per cent.

Q. To whom?

A. Well, we borrow money all the time and we pay that interest.

Q. You don't know whom the money was borrowed from, or who got the interest payments?

A. Well, for a period there was a mortgage on the property and we borrowed the money from banks at 6 per cent interest.

Q. Now, then, what was the actual cost of the building and equipment?

A. The actual cost of the building and equipment was $240,000 less $316.53, which would be $239,683.47.

Q. So that the information you supplied in the answers to the interrogatories I called your attention to was to the effect that the cost of land, building and equipment was $244,000 and some odd cents, that was an in-currate figure?

A. That was 150 per cent correct.

The Court: 150 per cent?

[fol. 4224] The Witness: Yes, your Honor, and I will tell you why. They did not charge for the land when they made up that figure. They only charged for one piece of property which cost us $5,316 plus the cost of construction and equipment, and that is how they arrived at your figure.

By Mr. Wright:

Q. Yes, and in furnishing that figure then the error lay in not including the total cost of the land on which the building had been constructed?

A. They did not include the cost of the basic land.

Q. Now, on these other figures that you have given us on that Exhibit D-150, where you have land cost noted there, does that also include the cost of land and cost of, let us say, unexercised options that might have been taken on land in connection with the ultimate construction?

A. No, those are figures actually taken off our books.

Q. I assume they came off the books, but I am trying to get at how your books are set up. Do you include in your land costs such costs as options which might not have been exercised or costs of plans which were not used, and things of that sort?

A. They would not be included in the cost of the land.

[fol. 4225] Q. What that shows is not the actual cost, original cost, plus taxes and interest?

A. No, it does not include the taxes.

Q. What carrying charges does it include?

A. Nothing at all in the rest of it.

Q. You mean the Auburn figure was set up in a different manner from the other figures?

A. The Auburn figure was set up exactly as I told you.

Q. Yes, well, was the same method used in general in computing the other figures that are on Exhibit D-150?

A. No, sir.

Q. Why not?

A. Well, at the time the church burned it was allocated on a basis of $35,000 with $30,000 for the building and $5,000 for the land, and when it burned—then the building was depreciated right along each year—and when it burned down, having received the $16,000 in insurance, the land did not cost anything on our books, but that is the actual cost of what we have laid out in money.

Q. Then sometimes you used the cost as it appeared on your books, and in other cases you used other costs, is that right?

A. In this case we set up the figures exactly as it cost originally.

[fol. 4226] Q. Now, all the other figures are costs as per your books?

A. As paid without including taxes or insurance on any of these properties.

Q. But including interest, is that right?

A. No interest.

Q. Not including taxes, interest, or any other carrying charges?

A. That is right.

The Court: You are referring now up to the time of operation?

The Witness: Yes. This was a vacant lot where the others are operating theatres.

The Court: That would not be charged in that way?

The Witness: That is right.

By Mr. Wright:

Q. So that actually your book cost on that land was then the $5,000 figure, approximately the $5,000 figure, that was used in supplying the answer to the interrogatory?

A. That is the way they got up the interrogatories. The actual cost is $83,500.

Q. I believe you testified yesterday, or the day before, that you entered into the theatre business in Syracuse, is that right?

A. Right.

Q. You operated or participated in the operation of the [fol. 4227] Novelty Theatre there?

A. That is right.

Q. From 1917 to 1920?

A. No, it was from 1914.

Q. From 1914 to 1917?

A. That is right.

Q. Then you said you had sold out?

A. I did.

Q. The interest you had there was a lease?

A. A lease.

Q. And did you sell the lease to somebody else?

A. I did.

Q. Who?

A. Mr. Buck and Mr. Schafer.

Q. Then when you took this theatre over in Gloversville,—I believe it was the Hippodrome?

A. That is right.

Q. —that had been operated as a theatre before you took it over, was it not?

A. It was operated by different people and closed at different times.

Q. There was a theatre there at the time you took it over?

A. Yes, just as I described it.

Q. And you bought the Glove and took over the Glove and Family in 1920?

[fol. 4228] A. In 1920.

Q. And you closed the Family and operated the Glove and Hippodrome?

A. Not immediately.

Q. How soon afterwards?

A. Well, we ran it part-time. You see,——

Q. Just answer the question.

A. All right.

Q. When did you close it finally?

A. Finally we leased our theatres in Gloversville to the Fox-Metropolitan Company.

Q. That would be in 1929?

A. That is right.

Q. By the way, you didn't sell any of your theatres to Fox, did you?

A. No.

Q. You simply made a lease?

A. Made a lease.

Q. And then you got them back when the Fox-Metropolitan theatres went into bankruptcy?

A. That is right.

Q. Then I understood you to say yesterday that you bought or leased the Lyric Theatre from Mr. Smoots and you took over a lease he had on the Memorial?

A. No, we leased the Vine Theatre from Mr. Smoots.

[fol. 4229] Q. The Vine?

A. Yes.

Q. And you took over the lease he had on the Memorial at the same time?

A. That is right.

Q. What connection did Mr. J. S. Payne of Cleveland, Ohio, have with the Vine Theatre?

A. Mr. Smoots, six months after he leased the theatre to us, died and Mrs. Smoots married Mr. Payne.

The Court: Married Mr. Payne?
The Witness: Yes. Mrs. Smoots married Mr. Payne after her husband died.

By Mr. Wright:

Q. The lease than was with Payne?
A. No.
Q. You made the lease originally with Smoots?
A. Yes, sir.
Q. And then shortly after that you acquired the Lyric from Mr. Platt?
A. Yes.
Q. And then you closed the Lyric and the Memorial, did you?
A. The Memorial was closed when we first got it.
Q. Answer the question.
A. I am answering it.

Mr. McClennen: I submit that answers it.
[fol. 4230] The Court: After he got the Lyric?
The Witness: The Memorial was closed.
The Court: It was opened after you got it?
The Witness: We opened while we were remodeling the Vine and then after the Vine reopened we found the Memorial did not pay to operate it. We ran for awhile and then we closed it.

By Mr. Wright:

Q. Just answer the question as to the other theatre, the Lyric.
A. The Lyric was operated for a period full time, then business was so bad that we operated it week ends.
Q. You can give the explanation when your Counsel is examining you. All I want to find out is what the facts were as to when these closings occurred.
A. All right.
Q. As I understand it, you got the Vine and the Memorial from Mr. Smoots, and at the time you got them you say the Memorial was closed and the Vine was operated?
A. That is right.

Q. You then continued to keep the Memorial closed and you continued to operate the Vine, is that right?

A. At first we made an attempt to open the Memorial and then we found it didn't pay. We closed it again.

Q. You closed it how long after you acquired it, that [fol. 4231] you closed it again?

A. Several weeks after we acquired it.

Q. Was that before or after you acquired the Lyric from Mr. Platt?

A. That was after we acquired the Lyric, because the Lyric was acquired at about the same time.

Q. Then at the time you acquired the Lyric that was operating, is that right?

A. That was operating.

Q. And then when did you close the Lyric?

A. As soon as we found it was losing money.

Q. Just give it to us in terms of a date.

A. I should say a few months after that we closed part time.

Q. A few months after you acquired it?

A. Yes.

Q. You shut it down to part time?

A. Yes.

Q. Then when was it you shut it down all together?

A. Well, when business got very bad.

Q. Just give it to us by date.

A. I am not sure of dates nor am I sure we closed it all together.

Q. You don't remember?

A. I don't remember.

Q. Platt managed all your theatres in Mt. Vernon for [fol. 4232] you after you took over the Lyric, is that right?

A. Yes.

Q. Still does today?

A. Yes.

The Court: Where?

Mr. Wright: In Mt. Vernon is where these theatres were located.

Q. Mr. Schine, yesterdayI think you testified that you sent some blue prints, or a blue print, to your architect in connection with Canandaigua in 1938, August, 1938. Do you recall that?

A. I don't recall testifying that way.

Q. What is your recollection now as to whether you did send the architect blue prints at that time?

A. I don't recall sending blue prints to the architect about Canandaigua at that time.

Q. Well, if it happens that you so testified would you say now you think you were mistaken?

A. I would.

Mr. Wright: Have you the Defendants' Exhibit D-151?

Mr. McClennen: 151, what is that?

Mr. Wright: It was a letter, I think, of August, 1938.

Mr. McClennen: Is that an exhibit or for identification?

Mr. Wright: Identified only, I believe.

Q. I hand you this letter that was marked Defendants' [fol. 4233] Exhibit D-151 for identification and see if that refreshes your recollection what the testimony was?

A. This does not apply to Canandaigua, sir.

Q. What does that apply to?

A. Salamanca.

Q. And it was with reference to Salamanca that you sent blue prints to the architect about that time?

A. It states so right on the top of the letter.

Q. I know what the letter states. I am asking you.

A. Yes. This is so.

Q. And the only blue prints referred to in that letter is a blue print of a lot, is it not?

A. That is right.

Q. Your testimony is not that you sent a blue print or prints of any theatre building to the architect at that time; is that right?

A. I certainly wouldn't have any theatre building blue prints to send to an architect.

Q. Just answer the question.

A. Well, I did.

Mr. Wright: Would you read it?

(Question read.)

The Witness: No.

Mr. Wright: Have you the letter, Defendants' Exhibit 45, a letter, I believe, addressed to Mr. Schine that was identified [fol. 4234] and not offered, with reference to Medina? Have you got a copy of it?

Mr. Antevil: It will probably be back today. It went out the first thing yesterday morning.

Mr. McClennen: Mr. Wright, doesn't that Exhibit D-151 for identification say blue prints of the land?

Mr. Wright: Yes.

[fol. 4235] Q. Mr. Schine, I am calling your attention to a letter dated in March, 1937, signed by several citizens of Medina, Ohio; do you know the letter I am referring to? Do you recall receiving such a letter?

A. I do not know what letter you are referring to, sir.

Q. You don't recall if you received it or not?

A. No, I get a good many letters, and I would like to see the letter.

Mr. McClennen: Mr. Wright, are you in your question referring to this identification 45?

Mr. Wright: Yes, I am.

Mr. McClennen: That was the letter from the lodge, I think.

Mr. Wright: As I recall, it was signed by a number of people connected with the Odd Fellows Lodge in Medina.

The Witness: I remember that letter.

Q. Do you recall that letter now?

A. I remember that letter.

Q. Do you remember receiving it?

A. Yes, sir.

Q. With that letter in mind can you tell me whether in your testimony yesterday you sought to give the Court the impression that whenever you got a communication from local citizens that communication was an invitation to come into the town to build a theatre?

[fol. 4236] Mr. McClennen: That I object to.

The Court: Sustained.

Q. Now, do you recall testifying about the Strand at Auburn?

A. Yes, sir.

Q. I don't believe you testified as to when that was first acquired; can you tell us that?

A. I believe it was in 1927.

Q. That was after you acquired the Palace?

A. Yes, sir.

Q. Then you had the Strand and at that time M. A. Shea was operating the Jefferson?

A. We did not have the Strand alone. Mr. Shea had an option on the Strand, and he sold me a half interest in the Strand.

Q. Now, when was it Mr. Shea began to operate the Jefferson, then?

A. I do not know.

Q. Well, it was prior to that time, wasn't it?

A. Yes, sir.

Q. And then you were operating the Palace in opposition to Mr. Shea's Jefferson, is that right?

A. That is right.

Q. Then you and Mr. Shea made a pooling arrangement where you divided the town, is that correct?

A. We made a partnership for joint operation.

[fol. 4237] Q. And split the profits from all theatres operated in the town, is that right?

A. We had a 50-50 interest.

Q. That 50-50 interest extended to all theatre operations in the town, didn't it?

A. Yes, sir.

Q. You don't remember whether you got the Strand before or after you made that pooling arrangement?

A. It was after we made the partnership arrangement.

Q. When you acquired it did you operate it?

A. Oh, yes.

Q. How long?

A. Until it was condemned by the building authorities.

Q. When was that?

A. That was in about 1935 or '36,—1934 or '35, I would say. I don't want to give you dates, because I may be wrong on the exact date.

Q. 1934 or '35, and what do you mean when you say it was condemned, just what was done?

A. The building authorities demanded that the balcony be rebuilt, that the beams supporting the roof be replaced and the wiring be completely changed, and that entailed a much larger expense than the building warranted.

Q. You mean that they told you that those repairs and improvements would have to be made if you wanted to [fol. 4238] keep on operating it as a theatre, is that right?

A. That is right.

Q. You think now that was some time in 1935?

A. I think it was about that time.

Q. You testified yesterday at 4067 that—let us see if this recalls what you said—"Q. After you had opened the Auburn that, of course, was your first-run, preferred house?" and the answer is "Yes".

A. Yes, sir.

Q. "Q. And what did you do with respect to the other houses that you had there? A. The Palace continued on the same policy I had before. The Strand was at that time condemned by the local authorities, as being unsafe——"

A. That is right.

Q. Well, you opened the Auburn in 1938, did you not?

A. I mean it had been condemned previously.

Q. Then what you *you* meant to say was it had been condemned three years before?

A. That is right.

Q. The Auburn was completed?

A. That is just what I meant to say.

Q. And you went on to say that you closed it and you ultimately tore it down; how long did you keep it standing there closed?

A. Oh, we kept it standing closed, you mean, for the period?

[fol. 4239] Q. Yes, when was it?

A. That was, well, the building proved to be so unsafe——.

Q. Just give me the time, just answer the question.

A. That was, I would say, around 1940, I would say, or 1939, I can't give you the exact date.

Q. 1941 or '42?

A. No, it was earlier than that.

Q. Earlier than what?

A. Earlier than 1942.

Q. You can't give the year?

A. I can't give you exactly the year. If you will pardon me, I may refer to my notes and see if I have got it.

Q. Go ahead.

(Witness examines notes.)

A. No, I have no record of it here, I am sorry.

Q. Then you went on to say, after you said you closed the Strand and ultimately tore it down, "The Jefferson we modernized and reseated to make it attractive, but we couldn't keep it open regularly for lack of pictures"; do you recall saying that?

A. Yes, sir.

Q. And then when was it that you closed the Jefferson?

A. I don't believe the Jefferson was closed wholly at any time. I think it was open week-ends.

Q. Well, when did you cut down the operation?

[fol. 4240] A. Well, I couldn't say just when, I don't think it was ever cut down completely. Sometimes, when we had product we would play a full week, and if we didn't, we would close during the early part of the week and open week-ends.

Q. It is a fact, isn't it, after you acquired the Auburn and opened the Auburn, you kept right on operating the Jefferson full time for a substantial period?

A. We kept it open when we had the product.

Q. Just answer the question.

A. Well, I did answer it. We kept it open as long as we had the product.

Q. Listen to the question.

A. All right.

Q. And I don't want an answer in terms of your conclusions; I want an answer in terms of dates.

A. I am giving you the answer according to the facts.

Mr. Wright: Will you read it to him?

(Last question read.)

The Court: "Yes" or "No" answer to that.

The Witness: Yes.

The Court: You spoke on your direct-examination of modernizing the Jefferson. When was that done?

The Witness: That was done in about——

[fol. 4241] The Court: I mean with reference to when the Auburn started.

The Witness: After the Auburn started.

By Mr. Wright:

Q. Now, at page 4073, do you recall testifying in this way, question by Mr. McClennen: "Q. Was there any reason known to you personally, beyond this lack of pictures that you have described, for closing the Jefferson down to a week-end operation?", and you answered "No", is that right?

A. That is right.

Q. Now, the fact is, is it not, that whenever you closed the theatre, the decision to close is governed by the fact of whether or not it is finally advantageous to you to close it or to keep it open, isn't that right?

A. Well, if you have no pictures, it is financially——

Q. Just answer the question.

The Court: You would prefer to keep it open, it isn't a question of pictures, it is a question of its profitability.

The Witness: Yes.

By Mr. Wright:

Q. There are a number of other factors which enter into that determination of profitability other than picture sup- [fol. 4242] ply, isn't that right?

A. Oh, there might be some.

Q. One reason might be it might assist negotiations with the landlord?

The Court: What?

Q. Might assist your negotiations with the landlord for renewals, if you had a theatre closed, is that right?

A. Not with me, sir.

Q. You never close theatres prior to negotiations for a renewal of the lease?

A. We never close a theatre for that purpose.

Q. Just answer the question.

The Court: You never closed a theatre prior to the renewal of the lease?

The Witness: Well, I can't recall. If the theatre is profitable we don't close.

Q. Now, do you recall closing the Strand in Syracuse prior to negotiating renewals, don't you?

A. That theatre was a losing theatre.

Q. Just answer the question.

A. Yes.

The Court: That, you said, was condemned?

The Witness: No, that is in Syracuse Mr. Wright is referring to, the Strand in Syracuse.

Q. Now, in your testimony about the pictures that were [fol. 4243] available for the Jefferson, do you recall saying this at page 4071, a question by Mr. McClennen: "Q. Would you state again when it was the Auburn opened up?

A. The Auburn opened in '38 and we found that playing in the Palace six pictures, in the new theatre three, and the Capitol absorbing about eight a week, took up all the pictures''; do you remember saying that?

A. Yes, sir.

Q. That was a correct statement, was it?

A. About correct, yes, as to the number of pictures.

Q. Were you talking about feature pictures there?

A. Feature pictures, yes, sir.

Q. Now, it is a fact, isn't it that during the year 1938 the Capitol never played more than four pictures a week?

A. I wouldn't say that is a fact.

Q. Well, do you know whether it is or isn't?

A. I know they played double features there and have three to four changes a week.

Q. You know that, do you, they had that in 1938?

A. Yes, sir.

Q. You are positive of that?

A. I wouldn't say I am positive. They may change their policy every week, I don't know, but I have seen the newspapers of Auburn, and I saw how often they changes their pictures.

[fol. 4244] Q. Well, you know that they used three changes a week, double features, or six pictures a week during 1938, is that right?

A. They used a minimum of six.

Q. A minimum of six features

A. Six features.

Q. Each week during the year 1938?

A. Yes, sir.

Q. Throughout the year?

A. Yes, sir.

Q. Then your testimony is the same for 1939?

A. Well, it would be about the same, yes, sir.

Q. Well, how did you happen to say here that they were using eight a week?

A. They used between six and eight.

Mr. Rogers: Pardon me, Mr. Wright, the testimony is not that; the testimony is about eight a week as appears in the record.

Q. How did you happen to use the figure "about eight a week"?

A. They used sometimes three changes a week double features which would be six and sometimes four changes a week double features which would be eight.

Q. Your testimony now is during the year of 1938 they were using sometimes eight pictures a week, is that correct?

[fol. 4245] A. That is right.

Q. And you know that to be a fact?

A. That is a fact.

Q. And you are quite sure about it, you don't have any doubts?

A. Well, as sure as anybody can be, I am not there at all times or any time.

Mr. McClennen: Mr. Wright, I invite your attention to Page 4072, the answer last on the page.

Mr. Wright: We will take him over the entire testimony with respect to what was played, if you will just be patient.

The Court: Yes.

Mr. McClennen: I am not at all impatient.

The Court: Just a moment, Mr. McClennen, let him proceed. You have a right on redirect examination to bring out any of these things you desire.

Mr. McClennen: If your Honor please, I expressly put my remarks so that it should not come to the attention of the witness but I thought Mr. Wright was in a misapprehension when he put his question as he did, and I called it to his attention on that account. If he doesn't desire it, [fol. 4246] of course, I do not press it.

Mr. Wright: Would you read the last question and answer?

(Question and answer read.)

By Mr. Wright:

Q. Well, your company maintains records of the play-off of pictures in Auburn, doesn't it?

A. As far as our theatres are concerned, we have a record of it.

Q. And you keep track of what plays at the opposition house, too, don't you, where there is one?

A. Well, those records are not kept systematically. We get reports as to what the other theatres are playing.

Q. And is the best evidence your company has as to what actually played the Capitol during the year 1939-

1938, the recollection that you are now giving us from the stand?

A. I was informed that they played between six and eight features a week.

Q. And you made a special effort to determine the accuracy of that information, Mr. Schine?

A. I didn't make a special effort, no.

Q. Well, who informed you of that?

A. Our booking department.

Q. And your only basis then for saying that you knew that they played six to eight features a week is that that [fol. 4247] is what your booking department told you, is that right.

A. That is right.

Q. And whether they are right or wrong, is something that you don't know?

A. Well, I assume they are right.

[fol. 4248] Q. Calling your attention to page 4072, you say there, in the answer to the question: "Q. How many pictures were you running at that time at the Palace? A. Palace we ran six.

Q. How many pictures were being run at the Capitol? A. Six to eight."

Now I will call your attention to the previous testimony so you can see if you can recall what time you were talking about. This was after you had a conversation you were asked about the conversation with Weinberg of Columbia. You said, "He said he doesn't want to sell second-run in the town."

A. That is right.

Q. Mr. McClennen asked you: "Q. At that time how many pictures a week were you playing at the Auburn?" You answered: "A. Three."

"Q. Was that being run as a single feature house?

A. Single feature for four days and double feature the last half of the week, three days.

Q. So that you took one picture for four days and two pictures for three days?

A. Yes. The single feature was sometimes run three days, depending on the merits of the pictures. Once in awhile we run it five days.

Q. How many pictures were you running at that time at [fol. 4249] the Palace?

A. Palace we ran six.

Q. How many pictures were being run at the Capitol?

A. Six to eight."

What time was that?

A. Well, that was after the Auburn Theatre opened.

Q. Well, how long after?

A. Well, I couldn't say exactly. We frequently modified the policy and run three changes a week at the new theatre, but in the past few years it has been running on a basis of two changes a week all the while.

Q. Is that the best answer you can give to my question?

A. Well, that is the best answer I can give, yes.

Q. And if you wanted to give the Court an accurate picture of what features played your theatres during this period, or any other time, you have records in the booking department which would show those facts, haven't you?

A. I have, and I believe I gave the Court the correct answer.

Q. Well, all you know is what your booking department supplied; is that right?

A. That is right.

Q. If there are any errors you are not in a position to say what they are or how they occurred?

A. Well, I doubt whether they were errors deliberately.

[fol. 4250] Q. Just answer the question.

A. All right.

(Question read.)

The Court: I think it appears he said his statement is based on the report in the booking department.

Mr. Wright: I beg your pardon?

The Court: He said his statement is based on the report of the booking department.

By Mr. Wright:

Q. The fact is, is it not, that you don't know how many pictures, how many feature pictures, were played at the Jefferson Theatre during 1938 or at the Capitol Theatre during 1938, 1939, 1940, or any other year, do you?

A. I do not know the exact number, but approximately I do know.

Q. And you don't know how many were played each week during those periods, do you?

A. Not exactly.

Q. Well, you don't even know, with any accuracy, approximately, do you?

A. Yes, I do.

Q. Of your own knowledge?

A. Of the information I have had from our booking department.

Q. I am talking about you, yourself.

[fol. 4251] A. Well, I haven't checked that.

Q. You personally don't have any knowledge on that subject, other than what you say your booking department gave you?

A. That is right.

Mr. Wright: If your Honor please, I move to strike this testimony that has been given as to how many pictures have been played at these theatres of his and the opposition. Certainly it clearly appears his statements are not the best evidence of those facts. He has no personal knowledge on the subject at all.

The Court: What is the testimony offered by the Government with respect to these theatres in the time that they were operating?

Mr. Wright: We gave testimony as to what the general policies were. I don't think we had any testimony which undertook to show the exact number of pictures played per week at any particular time. Now, if that is material I submit that the records should be brought here which show what was played. If it isn't, there is no occasion for Mr. Schine to make these statements which put us to the necessity of producing the evidence which will rebut [fol. 4252] them.

The Court: Were you at Syracuse from time-to-time personally?

The Witness: Yes.

The Court: You know, yourself, of the showings of the pictures at these two theatres during that time?

The Witness: You refer to Auburn, don't you, your Honor?

The Court: I mean Auburn. I beg your pardon.

The Witness: I wouldn't know exactly how many pictures were played each week, because I don't keep track of each week's bookings, but the information I had is in accordance with what I testified to.

The Court: My point is, did you know personally about the showing of these pictures, whether you knew at that time, on the occasion of your visit at Auburn whether they were showing these pictures?

The Witness: When I was there at different times they either showed six or eight, meaning three changes or four changes a week.

The Court: Those occasions are within your personal knowledge?

The Witness: Yes.

[fol. 4253] The Court: I think the statements of the information from the booking department is hearsay. I believe it is hearsay, aside from what he has personally observed. I think the balance of his testimony relative to information obtained in the booking department is hearsay.

Mr. McClennen: If the motion of Mr. Wright is directed to what was brought out in direct examination, in this respect, we have no objection to its allowance. We do object to his cross-examining and bringing out facts and then having that stricken out.

The Court: It should all be stricken out, or, of course, there was no objection raised on the direct examination, anyway.

Mr. Wright: If the Court please, he simply gave these as facts.

The Court: I suppose your intent is to strike out all the testimony with reference to it?

Mr. Wright: Surely, with reference to it all. My only point is that there is no need, or there shouldn't be any need, to have us bring in rebuttal for evidence which is not competent anyway.

[fol. 4254] The Court: It seems to me it should be stricken on both the direct and cross.

Mr. McClennen: I object to the cross-examiner experimenting with the facts and after he has brought them out moving that his own be stricken out. I urge that that should not be done.

The Court: No, I believe after inquiries, if the information is not first-hand knowledge, if it is developed——

Mr. McClennen: Your Honor was stating your understanding of my agreement. I do not agree that what he has elicited on cross-examination should be stricken out. I have no objection to the allowance of his motion as to the direct examination, but that is the extent of anything being done by consent. What your Honor rules is a separate question.

The Court: Do you apply it to all of his cross-examination of this subject, do you mean, or just portions of it? It seems to me to strike out his statements with reference to the number of the showings of these types of pictures at these theatres.

Mr. McClennen: Your Honor, I take it, refers only to the [fol. 4255] Capitol Theatre, not his own theatres?

The Court: Yes, the Capitol.

Mr. McClennen: I await your Honor's ruling. We urge what has been brought out by Mr. Wright in cross-examination should not be stricken out.

The Court: Well, of course, I don't think it should all be stricken out. I limit the portion which should be stricken out, both as to the direct and the cross-examination, the statements of the witness as to the number and type of showing of pictures for specific times at the other opposition theatre.

Mr. McClennen: Well, does your Honor include in that the testimony of the witness when he was at Auburn?

The Court: No, no, that is just the point. I don't include that. I leave that in. I made it specific. Well, as to that, in so far as it is shown to refer to information obtained from his booking department.

Mr. McClennen: As to what was playing at the Capitol Theatre.

Mr. Wright: If the Court please, our motion goes farther than that. It goes to what was played at all of the [fol. 4256] theatres, which was based on something the booking department told him rather than what he observed himself.

The Court: Do you apply it to his own theatre, you mean, as well?

Mr. Wright: Why, yes. If some one were here who kept the records, we would expect to show on cross-examination that the statements which were made with respect to the policy of his own theatres are not accurate.

The Court: Well, if he makes a statement and it is not accurate——

Mr. Wright: I say the statement is made without any opportunity on our part to cross-examine the man who has the first-hand information, I say the statement, to the extent it is based on something his booking department told him, should go out.

The Court: He can know about bookings of his own theatres.

Mr. Wright: He says that he does not.

Mr. Rogers: There is no such testimony, no.

Mr. Wright: Let me ask a question.

By Mr. Wright:

Q. Mr. Schine, as to the number of feature pictures played in your theatree in Auburn during the years 1938, 1939, [fol. 4257] 1940, is there any part of that testimony that is not based on information that was supplied you for this purpose by the booking department of your theatre?

A. I know the policies of our own theatres.

Q. Let us just see what you know about policies during that period. You know, do you, how many features played each of your theatres in Auburn during the year 1938, is that right?

A. Not exactly, no, but I know the policy which would be at first when we opened the theatre we tried to run with three features a week playing Sunday, Monday, Tuesday, or Sunday, Monday, Tuesday and Wednesday, and double features Thursday, Friday, Saturday. Then we played Sunday, Monday, Tuesday and double feature Wednesday and Thursday. An other double feature Friday and Saturday or a single feature Wednesday and Thursday and a single feature Friday and Saturday.

Q. What theatre are you talking about?

A. The new theatre.

Q. The Auburn?

A. Yes. Then we finally settled on a policy playing one feature first half of the week and two features the last half of the week.

Q. Do you know when that change occurred?

[fol. 4258] A. I do not know exactly the date.

Q. You don't know when. What do you know about the policy of the Palace?

A. The Palace Theatre plays three changes, two features each.

Q. You are talking about what period?

A. Well, I talk about a period substantially the entire period.

Q. What entire period?

A. Between '38 and the present. That is what you are referring to, isn't it?

Q. What you are referring to, what you know about it?

A. Yes.

Q. Is there any particular week you might sometime have played seven features, with four changes?

A. That is possible.

Q. It is possible they did that for a substantial period of time?

A. It would be possible but I don't think it is probable.

Q. Well, you don't know, do you?

A. No, I don't.

Q. Now, the Jefferson?

A. The Jefferson played, at first, a policy similar to the new house, one feature the first half and two the last half, and then we tried different policies and finally——

[fol. 4259] Q. Do you know when the change occurred?

A. I don't know the exact date.

Q. Do you know the approximate date?

A. Well, the approximate date was from time to time after the new theatre opened—I can't give you the exact dates because we had many policies there.

Q. Do you know what the other policies were?

A. Yes. The other policies were the last half——

The Court: The Jefferson?

The Witness: The Jefferson.

A. —the last half of the week we played two features.

Q. That was one of the policies?

A. That was one.

Q. And what were the others?

A. The others were playing all week.

Q. How many features?

A. Three or four.

Q. Or five?

A. I don't think so. Not that I can recall.

Q. Well, you don't know whether there was a time when you played five or six or seven features at the Jefferson?

A. We never played seven features.

Q. You might have played five or six?

A. I wouldn't want to testify to that.

Q. You don't know?

[fol. 4260] A. But I am testifying to the best of my knowledge and I believe it is quite accurate.

Q. It isn't as accurate as your booking records, is it?

A. Not absolutely, no.

Q. They would be the best evidence of what policy you pursued in each theatre with respect to the number of features and the time during which it was, is that right?

A. That would be accurate so there is no error on a single feature.

Q. Let us see what you know about the policy at the Capitol. The information you got yourself you say you visited Auburn?

A. I visited Auburn.

Q. What were these occasions when you visited Auburn and you noticed the policy of the Capitol?

A. That was just when I happened to visit the theatres.

Q. Well, when?

A. During the summer of '38 or the fall. I visited several times.

Q. Do you know when?

A. I couldn't give you the date, no.

Q. You don't know the times at all that your observation of the policy at the Capitol relates to, is that right?

A. I visit the Auburn several times a year but I can't give you the exact date as to when.

[fol. 4261] Q. You can't give us the times or what you saw on any particular occasion with reference to the Capitol, is that right.

A. Well, I couldn't give you an accurate, detailed statement.

Mr. Wright: I renew my motion, your Honor.

The Court: I rule, as I have indicated before, that I refuse to strike out the testimony with reference to his own personal knowledge, to which he has testified, as to the Capitol Theatre. The testimony is that he has some personal knowledge of what was done, but other than as to the specific number of pictures that may be stricken out as hearsay.

Mr. Wright: I think that is all.

The Court: No further cross?

Mr. Wright: That is all.

The Court: Any redirect?

Mr. McClennen: No, your Honor.

That is all.

If your Honor please, we had planned on the expectation that Mr. Schine would be on all this week. When it began to be apparent that it was ending earlier we have hurried in some witnesses. I think that I can't get any here until [fol. 4262] 2 o'clock. If your Honor would adjourn until then we should be able to go on.

The Court: Is there anything else we can do in the meantime, anything else you have in mind?

Mr. McClennen: I don't know of anything.

I understand that some of the witnesses have arrived and we can go on in a very few minutes, if your Honor will adjourn until 12 o'clock.

The Court: All right, recess.

(Whereupon a recess was taken until 12 o'clock M.)

(Whereupon at 12 o'clock M. a recess was taken until 2 o'clock P. M.)

[fol. 4263] After Recess, 2 o'clock P. M.

Appearances: As before noted.

William C. Rowell, a witness called by and on behalf of the Defendants, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. McClennen:

Q. Mr. Rowell, what is your residence?

A. Rochester, New York.

Q. What is your occupation?

A. I am a representative for 20th Century-Fox pictures.

Q. A salesman?

A. A salesman.

Q. Did you occupy that same position in September and October of 1941?

A. I did.

Q. It has appeared in the testimony of Mr. Wallace in this case, beginning at page 2807, that you called upon him on September 11th, 1941. Does that date conform to your recollection?

A. It does.

Q. Did you go because of some direction from some one else?

[fol. 4264] A. Well, I went at the request of Mr. Wallace, that he was interested in pictures.

Mr. Wright: I move to strike it out. It is not responsive.

The Court: First answer "Yes" or "No", if he went in response to somebody else. I sustain the objection.

Mr. McClennen: I will preface that question by another.

The Court: All right.

Q. Did you receive information of a telegram that Mr. Wallace had sent to your office?

A. Mr. Samson communicated that information to me.

Q. And it was in consequence of that that you went to see Mr. Wallace

A. Yes, sir.

Q. Without going into the details of what Mr. Samson said, did you receive from him instructions as to what you might say to Mr. Wallace?

A. I made that visit with Mr. Samson.

Q. And on that visit on the 11th of September, 1941, will you relate to the best of your recollection what was said by Mr. Samson, Mr. Wallace and yourself in as near as you can the order of the conversation, stating who said what?

A. Well——

[fol. 4265] Mr. Wright: Has this conversation been placed yet?

Mr. McClennen: This conversation is placed as the 11th of September.

Mr. Wright: I mean as to geography.

By Mr. McClennen:

Q. This conversation was in Syracuse?

A. At the Strand Theatre.

Q. At the Strand Theatre?

A. Yes, sir.

Q. Now, will you——

A. Mr. Samson really carried on the conversation.

Q. Tell us what Mr. Samson said.

A. He asked Mr. Wallace what he was interested in. Mr. Wallace told us he was interested in various runs, and if I can recall correctly——

Mr. Wright: That is objected to. Let him state what was said. That he was interested in various runs calls for a conclusion. Let us have the conversation.

Mr. McClennen: I agree.

The Witness: Well, Mr. Wallace was interested in some first-run.

Q. No, what Mr. Wallace said.

The Court: What did he say? Did he say he was interested in them?

[fol. 4266] The Witness: You are asking me to go back a great many years.

The Court: Give the substance of it.

The Witness: Mr. Wallace was- some first-run pictures and we told Mr. Wallace we had an established first-run account and there were no first-run pictures available. He asked for second-run and we informed him we had an established second-run account and there was no second-run available. He asked for third-run and we also told him we had a third-run account of many years standing. Then Mr. Wallace said he was interested in anything at that time. Part of the time, if I recall it correctly, Mr. Wallace could not give us a definite policy that he was going to operate the theatre on.

Mr. Wright: If the Court please, this again is in the field of a conclusion.

The Court: What did he say in substance, that he could not give you any definite policy.

The Witness: Well, we did not make a deal that particular day because you can't make a deal on any kind of a product unless you know the policy the theatre is going to operate on.

[fol. 4267] The Court: What did he say about an indefinite policy, what did he say about that, the substance of it?

The Witness: Well, we did not make Mr. Wallace a proposition that day, and we told him we would see him later.

By Mr. McClennen:

Q. When did you see him next?

A. I believe the date was October 3rd.

Q. And was any one else with you at that time?

A. I was alone.

Q. At this meeting on October 3rd, 1941, was it at the same place, at the Strand Theatre?

A. The Strand.

Q. By the way, Mr. Samson, whom you have mentioned, was what?

A. He was Manager of our Buffalo Exchange.

Q. Now, before you went to this conversation with Mr. Wallace on October 3rd, 1941, had you had some conversation with Mr. Samson with respect to what you should do? I don't ask you what it was. Now, don't tell me what it was. I want to know whether you had any conversation on that subject.

A. Yes, sir, after we left the theatre that day we had a [fol. 4268] discussion on it.

Q. Now, on October 3rd, 1941, when you went to Mr. Wallace, had you already prepared a memorandum of possible offers to make to him?

A. No.

Q. I show you three papers which I will ask to have marked for identification with the next exhibit numbers.

(Thereupon the three papers referred to were marked as Defendants' Exhibits D-156, D-157 and D-158, respectively, for identification.)

[fol. 4269] Q. Are these three exhibits for identification, Defendants' Exhibits 156, 157 and 158 in your handwriting?

A. Yes, sir, they are.

Q. When were they written?

A. Well, they were written in Mr. Wallace's office, after he gave me his definite house policy.

Q. Then, before we go to these memoranda, will you state what Mr. Wallace said was his house policy on October 3, 1941?

Mr. Wright: I think that we ought to have the entire conversation and then as to what was said about the house policy can be gotten from that.

A. There was a record made of the house policy, as far as I can remember it.

Mr. Wright: Just a minute.

The Court: Just a moment. Go ahead and state what was said by Mr. Wallace.

The Witness: I asked Mr. Wallace if he had a definite house policy at that time. He gave it to me and from that house policy——

The Court: Just a minute.

Mr. Wright: What we want to find out is what he actually said to you and what you said to him.

The Court: Just a moment, Mr. Wright.

[fol. 4270] The Witness: As near as I can recall the house policy——

The Court: Just a moment. Let us go back a moment. We just want to save time and confusion, if we just limit our answers to the conversation, if you remember the substance of it, but what did you say on the subject matter?

The Witness: I will start all over again. He gave me the house policy.

The Court: Did you ask him?

The Witness: I asked him for the house policy. I wrote it down as he gave it to me.

The Court: All right.

The Witness: Now what?

The Court: You mean by "house policy"——

The Witness: Method of operation, the days, changes, the admission price, and various other things that go into the operation of the theatre.

Mr. McClennen: I will ask to have these two papers marked for identification.

(Thereupon the two papers, dated October 3, 1941, referred to were marked as Defendants' Exhibits D-159 and D-160 for identification.)

By Mr. McClennen:

Q. Are these two papers, Defendants' Exhibits D-159 and [fol. 4271] D-160 for identification, in your handwriting?

A. Yes, sir.

Q. And were they written on October 3, 1941?

A. Yes, sir.

Mr. McClennen: Will you mark another for identification?

(Thereupon the paper, dated October 3, 1941, referred to, was marked as Defendants' Exhibit D-161 for identification.)

Q. Is that paper, Defendants' Exhibit D-161 for identification, in your handwriting?

A. Yes, sir.

Q. And was that written on October 3, 1941?

A. Yes, sir.

Q. Do any one of these papers contain what you wrote with respect to the house policy?

A. This one does.

Q. You say "This one does", referring to Defendants' Exhibit D-159 for identification?

A. That is the house policy I am talking about.

Q. With that before you, will you tell me, in as near Mr. Wallace's language as you can, what he said his house policy was?

A. Well, Sunday, Monday, Wednesday, Thursday and Saturday he was going to charge them an admission of 25 cents an evening net, 25 cents; matinee, net 20, and children [fol. 4272] was ten cents. On Tuesday and Friday evenings there were 24 games of Bingo, $650 give-away, with admission to adults 50 cents net. He was to have two changes a week of pictures. They were to run Saturday, Sunday, Monday, Tuesday; another change Wednesday, Thursday and Friday. Policy in pictures, first-run if available; second-run, if available; third-run, if available. If those runs were not available he was interested in anything we had for sale.

Q. Did you then have some talk with him with respect to what you could offer him?

A. From the result of that I made him a proposition, which I put on paper.

Q. I show you Defendants' Exhibit D-156 for identification. From that can you state what you said to him as your proposition?

A. Well, this is a list of older top-grossing pictures, which the price was stated, and there was a companion picture, as I remember, everything double feature, and if he was interested in these pictures that I would send him a list of the companion pictures that were available for selection, and that he could buy these pictures in blocs of five, groups of five. That's all.

Q. And it was stated in the terms that you set down in [fol. 4273] this memorandum?
A. Just as it is there.

Mr. McClennen: I will offer this.
Mr. Wright: No objection.

(Thereupon the paper dated October 3, 1941, previously marked as Defendants' Exhibit D-156 for identification was received in evidence.)

Q. Did you make to him any other proposition?
A. Yes, sir, I did.
Q. Is this Defendants' Exhibit D-157 the proposition?
A. Yes, sir.

Mr. McClennen: I will offer this.
Mr. Wright: No objection.

(Thereupon the paper dated October 3, 1941, previously marked as Defendants' Exhibit D-157 for identification was received in evidence.)

By Mr. McClennen:

Q. Did you offer him a third proposition?
A. Yes, sir.
Q. I show you Defendants' Exhibit D-158 for identification. Is that the third proposition?
A. Yes, sir.

Mr. McClennen: I offer that.
Mr. Wright: No objection.

[fol. 4274] (Thereupon the paper, dated October 3, 1941, previously marked as Defendants' Exhibit D-[illegible]r identification was received in evidence.)

Q. Relate, as nearly as you can, all that was said about these three propositions, 1, D-156, the other, D-157, and the other, D. 158, and I lay them all three before you to assist you refresh your recollection as far as it does.

Now, permit me to call this to your attention. You have stated in answer to several questions before the result in terms, "He wanted", and so forth. See if you can't give it in the terms that were said. Of course, we don't expect you are going to remember every word, but "he said" and "I said" with respect to those three separate propositions.

A. Well, I can take this D-157, I will recall more on that than any. Mr. Wallace objected to one thing, the fact that with his policy of Bingo he was unable to stand a 35 per cent of the gross.

The Court: What did you say first about the policy of Bingo?

The Witness: With his policy of $650 Bingo, give-away, they were unable to stand to pay 35 per cent of the gross receipts.

The Court: To your Company?

The Witness: I beg your pardon?

The Court: He couldn't stand to pay 35 per cent of the gross receipts to your Company, you mean?

The Witness: Correct.

[fol. 4275] The Court: If he had $650 Bingo.

The Witness: Yes. There was very little was said, as I can recall, on the balance of the pictures. I told Mr. Wallace I would discuss the Bingo proposition with Mr. Samson.

The Court: I thought you said this was the proposition made by you to him.

The Witness: I did make that proposition but he objected to a certain part of this proposition.

The Court: He objected to the amount?

The Witness: He objected to paying 35 per cent of the gross and giving away $650 Bingo.

The Court: You said——

The Witness: I said I would discuss that point of the thing with Mr. Samson.

The Court: All right.

By Mr. McClennen:

Q. Was there anything said in the conversation referring to this first one about the character of the pictures and as to their availability?

A. I don't recall anything regarding the character of the picture. Mr. Wallace did question the availability, that it might be after every other theatre in town, which didn't happen to be a fact as probably of the subsequent-runs there were twelve or thirteen of them that hadn't [fol. 4276] been sold.

Mr. Wright: Is this a conversation now or is this something else?

By the Court:

Q. Did you tell him that or did he call attention to that?

A. He did question the availability date.

Q. What did you say when he did that?

A. I told him that——

Q. You say there was a large number available, did you tell him what they were?

A. I told him we hadn't sold but very few of the balance of the accounts, that is all I can recall of this, outside of the availability date and percentage; the availability date was in the conversation.

By Mr. McClennen:

Q. I notice on Exhibit D-157 there are some statements of availability, were those put on there at the time?

A. At the time I made the proposition out.

Q. That is, that "Charlie's Aunt" would be available October 29th, 1941?

A. That is correct.

Q. And "Private Nurse" November 20th, 1941?

A. That is correct.

Q. And "Wild Geese Calling" December 10th, 1941?

A. That is correct.

[fol. 4277] Q. Then again the two, "Sun Valley Serenade" and "Dressed to Kill", it appears "Saturday, Sunday, Monday and Tuesday, available December 10th, 1941"?

A. That is correct.

Q. And that was the date that you told him they would be available?

A. Yes, sir.

Q. Now, as originally written at first were these words "Ahead of Empire" on the sheet?

A. No "Ahead of Empire" was put on the sheet as we went through it, discussing it as these sheets were written, and he wanted to be assured that these pictures would be "Ahead of the Empire", so I added it on both sheets individually. There was a carbon copy of this.

The Court: Did you give him a copy of these?

The Witness: Yes, I did.

Mr. McClennen: I will say, if your Honor please, that Exhibit 818 has fastened together with a feature release sheet attached at the end of it, three sheets; the first sheet is apparently a carbon copy of Exhibit 156, except that the words "To be selected in groups of five" are written on this first sheet of Exhibit 818 in original pencil and is not carbon from the other sheet.

[fol. 4278] The Court: Does it appear on the original?

Mr. McClennen: It appears on the original, but it appears on the carbon not in carbon. That is, it is obvious that the carbon had been made before those words were put on.

The Court: It does appear on the original?

Mr. McClennen: It does appear on the original and does appear on the carbon, first impression on the carbon.

The Court: All right.

Mr. McClennen: Then exhibit 157 is like the carbon which is the second sheet of Exhibit 818, with these differences, that on the carbon there appears the words "$650 Bingo—From Gross". That does not appear at all on Exhibit D-157 on the carbon. There is also in pencil, not in carbon "50-50-over $1200". That does not appear on the original. The words "Ahead of Empire" appearing on D-157 do not appear in carbon on the second sheet of Exhibit 818, but is written in in pencil "Ahead of Empire", again apparently added after the carbon had been made.

Exhibit 158 appears by carbon as the third sheet of Exhibit 818, with this exception, the words "No run" which [fol. 4279] appear on the original D-158, do not appear in carbon on the third sheet of Exhibit 818, but are written in in pencil "No Run", evidently added after the carbon had been made.

The Court: As I have the testimony of Mr. Wallace, didn't he testify that he played the runs shown on these exhibits?

Mr. McClennen: I am sorry, I haven't it in mind at the moment.

The Court: He also testified that Exhibit 818 was the offer of Mr. Rowell.

Mr. Wright: The offer he testified to is just what has been referred to here as this exhibit 818. This is what Mr. Wallace identified when he was on the stand.

The Court: Yes, he said it was the proposed offer by Mr. Rowell. All right.

Mr. Wright: Yes, sir.

The Court: All right.

By Mr. McClennen:

Q. Was there any talk as to what season's product this proposal, Defendants' Exhibit 157 was?

A. Well, that was current product.

Q. That was current product?

[fol. 4280] A. Current product.

Q. That is of the year 1941-42?

A. Current releases.

Q. This proposal, Defendants' Exhibit D-158, of what season's product was that?

A. That was the previous season's product.

Q. That is the 1940-41?

A. 1940-41, the 1940-41 season.

Q. Now, this other proposition, Defendants' Exhibit 156, what was the significance of the words "Return engagement special" at the top of the sheet?

A. Well, these pictures were older, they had been top grossing pictures and we were bringing them out as return engagement special productions.

Q. Was there anything said with respect to whether these three propositions were alternate propositions or separate propositions or together?

A. They were to be bought just as they were written.

By the Court:

Q. What does that mean, were they alternate propositions?

A. He could buy any or all of them, just as he pleased, just as they were written on the individual sheets.

Q. The question is whether they were duplications, different pictures in each group?

A. Well, there were three individual propositions there.

[fol. 4281] Q. What I am getting at, were the individual propositions of separate productions, I mean, pictures?

A. No, they were separate propositions, they were a number of products on each sheet, one was not dependent on the other. He could take any one of those propositions or could have them all.

Q. That isn't the question. Was there a duplication of pictures on the sheets?

A. No, sir.

By Mr. McClennen:

Q. I call your attention to Plaintiff's Exhibit 978, with the approval stamp stencil April 13th, 1942; Exhibit 977, with the approval stamp date January 21, 1942; Exhibit 976 with the stencil acceptance date January 12th, 1942; Exhibit 975 with the stencil acceptance date December 18th, 1941; Exhibit 974 with the stencil acceptance date December 18th, 1941; Exhibit 973 with the acceptance stencil date October 30th, 1941; Exhibit 972 with the acceptance stencil date October 30th, 1941; Exhibit 971 with the stencil acceptance date October 30th, 1941; Exhibit 970 with the stencil acceptance date October 25th, 1941; Exhibit 969 with the stencil acceptance date October 17th, 1941; Exhibit 968 with no stenil, but having a date stamp on it of September 24th, 1941; Exhibit 967, no stencil, but a stamp date September [fol. 4282] 24th, 1941; Exhibit 96[illegible] with the stamp date September 24th, 1941; Exhibit 965, no stencil, with the stamp September 25th, 1941; Exhibit 964, with the acceptance stencil date October 14th, 1941; and No. 963 with the acceptance date October 14th, 1941 in stencil. Will you look at that group or set of exhibits and inform me whether you had — to do with the sale of any of those contracts? If you find that you did have, state the exhibit number as you answer.

A. Well, Exhibit No. 978 I did; Exhibit 977, yes; Exhibit 976, yes; Exhibit 975, yes; Exhibit 974, yes; Exhibit 973, yes; Exhibit 972, yes; Exhibit 971, yes; Exhibit 970, yes; Exhibit 969, yes; Exhibit 968, yes; Exhibit 967, yes; Exhibit 966, yes; Exhibit 965, yes;—do you want me to turn these over that I had nothing to do with?

[fol. 4283] Q. No, just mention that you didn't, with the number.

A. 964, no. 963, no.

Q. At the time that you made the offers to Mr. Wallace on October 3, 1941, were the pictures available as stated by you to him?

A. On those dates.

The Court: You mean those dates on the exhibits?

The Witness: The dates that are written on that exhibit, whatever the number is.

Mr. McClennen: The witness refers to Defendants' Exhibit D-157 and to the second page of Exhibit 818.

Q. You left with Mr. Wallace, did you, these first three pages of Exhibit 818?

A. Yes, sir.

Q. Were they separate sheets at the time you left them?

A. Separate sheets, absolutely.

Q. After you had made these three offers to Mr. Wallace on October 3, 1941, relate, as nearly as you can, all of the conversation, if there is any left, beyond what you have already stated.

A. Well, on one of those sheets—I would have to see the number—he thought there were too many pictures. On this particular sheet he thought there were too many pictures.

Q. You are referring to Defendants' Exhibit D-156?

[fol. 4284] A. I am referring to Exhibit D-156, and at that time I wrote on the sheet that they could be selected in groups of five. That's all there was in reference to that. There was no comment on this, as I recall.

Q. Referring to Exhibit D-158?

A. D-158. And there was no further comment on that, outside of the fact that he did make me a counter-proposition, as I recall now.

Q. You are referring to Defendants' Exhibit D-157?

A. I am referring to Defendants' Exhibit D-157.

Q. And what did he say?

A. As near as I can recall, I made a counter-proposition that he could take his house expense and the cost of the Bingo and we would split over $1600 gross, as I can recall. There should be a report on that because I sent a report in. I can't give you the exact figure because it is too far back.

Q. Now, in that connection, on the sheet that you say you left with him, which has now been stapled as a part of Exhibit 818, appear the words "50-50 over 1200". Does that recall anything to your mind?

A. This I know nothing about. This isn't my writing.

Q. Well, what did you say about a counter-proposition?

A. I believe it was $1600 split figure, that he be permitted to deduct the house expense, and I believe it was the amount [fol. 4285] of the Bingo and split over $1600. I believe that was his counter-proposition.

The Court: Was that the counter-proposition to your No. 2 proposal there, $600 Bingo proposition?

The Witness: No, I hadn't made him any proposition outside of the 35 per cent, and I told him I would discuss it with Mr. Samson and he told me he would make a counter-proposition to discuss.

The Court: That is the one offered on the basis of $1600 or $1650?

The Witness: Right. I believe it was $1600. I can't state positively.

Mr. McClennen: It is Defendants' Exhibit D-157 that is the 35 per cent.

The Court: There are three of those?

Mr. McClennen: Yes. He made this counter-proposition, you say, and you said you couldn't do anything about it but discuss it with Mr. Samson?

A. I would discuss it with Mr. Samson.

Q. Did you subsequently discuss it with Mr. Samson?

A. I did.

Q. And after that discussion did you return at some time to Mr. Wallace and see him again at the Strand Theatre?

[fol. 4286] A. I did.

Q. And I show you two papers that I will ask to have marked for identification.

(Thereupon the two papers dated October 10, 1941, referred to were marked as Defendants' Exhibits D-162 and D-163 for identification.)

Q. These two papers are marked for identification D-162 and D-163. Are they in your handwriting?

A. Yes, sir.

Q. When did you write them?

A. On October 10, 1941.

Q. And is that the date of your next interview with Mr. Wallace?

A. Yes, sir.

Q. Now, with the assistance of those memoranda will you relate, as nearly as you can, the whole of that conversation in the terms "he said" and "I said," or "I said" and "he said"?

Mr. Wright: The date of this?

Mr. McClennen: October 10, 1941.

A. Well, in relation to the counter-proposition, or that is the proposition of the percentage pictures with Bingo and his counter-proposition, I made him another proposition in which I offered to permit him to deduct the difference between the Bingo admission and the regular admission [fol. 4287] before computing the percentage.

Q. Did he say anything about that?

A. I can't recall whether he did or not.

Q. And it is to that that this Exhibit D-163 refers?

A. That is the proposition it refers to.

Mr. McClennen: I will offer Defendants' Exhibit D-163.

Mr. Wright: No objection.

(Thereupon the paper dated October 10, 1941, previously marked as Defendants' Exhibit D-163 for identification was received in evidence.)

The Court: What do you mean, deduct the difference between the Bingo admission? That is an additional amount?

The Witness: No, he was charging 50 cents for Bingo and 25 cents was his normal admission. I allowed him to deduct the difference between 50 and 25, otherwise I would only receive the percentage on the normal admission, nothing to do with the additional admission to see the Bingo.

The Court: All right. Did the house receive any revenue for the playing of Bingo, other than the admission?

The Witness: I didn't get you.

The Court: It might be involving some question of lia- [fol. 4288] bility. I don't know. I don't mean this case. What is the difference? Do they generally charge for the Bingo?

The Witness: Well, a number of theatres run pictures and Bingo.

The Court: The point of my inquiry was whether the admission was increased, the price that the spectators pay to play the game.

The Witness: I couldn't answer that, sir.

By Mr. McClennen:

Q. Now, does this Exhibit D-162 for identification also refer to this same matter of your interview on October 10, 1941?

A. This is my report to the office on the result of the visit of October 10th. That is my report to the office.

Q. Was anything more said at that interview on October 10, 1941?

A. If there was I can't recall it.

Q. Was there in any form or words any acceptance or rejection of the pending offers?

A. Well, there wasn't any acceptance or I would have written a deal.

Mr. McClennen: That is all.

[fol. 4289] Cross-examination.

By Mr. Wright:

Q. Mr. Rowell, how long have you been a film salesman for Fox?

A. 25 years.

Q. And in the course of performing that job you ordinarily take an application when you solicit contracts?

A. If we can make a satisfactory deal, yes.

Q. That is the way your business is ordinarily done, isn't it? You go out and talk to the exhibitor first and then you work out a deal, you fill out a contract form, is that right?

A. If we come to terms that is the way it is done.

Q. You write up a contract and the exhibitor signs the application?

A. That is right.

Q. And then you send it in to the Exchange and take it back to the Exchange?

A. Either mail it or take it in.

Q. And it goes to the home office?

A. Right.

Q. And if it is approved it is sent back to the exhibitor?

A. Right.

Q. And if it is disapproved then what do you do?

A. Go back to the exhibitor.

Q. And see if you can make a better deal?

[fol. 4290] A. That is right, see if we can get the terms the Company wants.

Q. Then, before you solicit an exhibitor on any particular deal, what do you do with respect to determining how much film rental he ought to pay?

A. What do I do?

Q. Yes.

A. Well, I have covered that territory for 25 years and I pretty near know what the terms ought to be. It isn't a question of sitting down and working out a deal with myself. I have sold those accounts for 25 years.

Q. In Syracuse?

A. I worked in Syracuse off and on for 25 years.

Q. And you know and you knew at the time back there in '40-'41 what the Syracuse theatres were accustomed to pay for Fox films?

A. Correct.

Q. All of them?

A. No, there are some of them I didn't handle.

Q. Those you didn't handle you weren't familiar with, is that right?

A. Not fully familiar, no.

Q. Had you handled the Strand before?

A. No, sir.

Q. That is the first time you ever sold the Strand?

[fol. 4291] A. I will take that back. Years ago, yes, the early '20s, I handled the Strand Theatre.

Q. When Warner was operating it?

A. No, before Warner was operating it. When Moe Marks was operating it.

Q. You hadn't sold any pictures to the Strand since then, is that right?

A. I didn't sell them any then.

Q. What?

A. I didn't sell them any then.

Q. I say you haven't sold any since?

A. No, sir.

Q. Then when you went out to see Wallace to make this offer had you made any inquiry to determine what the Strand had been paying for Fox films?

A. Well, the Strand hadn't been playing any Fox films of that particular run. This was completely a new venture, completely new run, completely new everything.

Q. See if you can answer the question.

Mr. Wright: Will you read it?

(Question read.)

A. No.

Q. As I understood your testimony, the first thing that happened when you saw Wallace alone was that he told you what the policy of the house was and you wrote it down on [fol. 4292] this piece of paper that is marked Defendants' Exhibit D-159?

A. That is correct.

Q. Was that some paper you brought with you or did he give it to you? Do you know where it came from?

A. It came from the back of my book. It happened to be the hotel I stop at and it was some scratch paper I had in the back of my book.

Q. You had some paper in your pocket and you wrote this down?

A. In my book.

Q. Then the next thing that happened was that you wrote down these propositions here that are set forth in Defendants' Exhibits D-156, D-157 and D-158?

A. Correct.

Q. Where did you get the paper for those, that they were written on, do you know?

A. Possibly back of my book, probably from Mr. Wallace's office.

Q. You don't know where it came from?

A. I can't tell you. I just pick up any paper and stick it in my book.

Q. You just picked up these papers. Did you have a sheet of carbon paper with you?

A. Always.

Q. And you took the carbon and put it in between the [fol. 4293] two sheets. You wrote these out. Which one did you write first?

A. I can't tel you that. I can say I wrote this one first because that was your current product.

Q. 157 first?

A. I would say so, yes.

Q. And then did you write 156 and 158 immediately or was there some talk about 157?

A. I wrote them all out together.

Q. First you wrote out 157?

A. It probably was the first one.

Q. Then you wrote out the other two immediately with the copies. Then what did you do with the copies?

A. Gave them to Mr. Wallace.

Q. Did you give those to Mr. Wallace?

A. I retained those.

Q. Then when you had your discussion of the terms did you discuss them separately?

A. As an individual deal. They were individual deals.

Q. You discussed each one individually, is that right?

A. Individually.

Q. Which one did you discuss first, do you remember?

A. I would still make a guess that it was the current product.

Q. You still think it was 157?

A. Because that is what he was more interested in.

[fol. 4294] Q. In the course of the discussion you wrote down "Ahead of Empire," on your original 157 there?

A. Right.

Q. And then you reached over and wrote down "Ahead of Empire" on this sheet that is attached to 818?

A. That is correct.

Q. Then you had the discussion about the Bingo. Was that when you had that discussion?

A. We were discussing this proposition here (indicating).

Q. The current product. You didn't write anything down with respect to the Bingo, is that right, on either?

A. Just what do you mean on that? Do you mean in respect to something I agreed to let him do?

Q. No, as to what he had said he had wanted to do in respect to Bingo.

A. These were proposition sheets.

Q. There was nothing written by you?

A. Not on those sheets.

Q. On either copy, with respect to Bingo?

A. No, sir, not on those sheets.

Q. With respect to your D-157, you told them that you had been authorized by the Company to make this particular proposition that is set forth there?

A. (Witness nods in negative.)

Q. What did you tell him?

[fol. 4295] A. I told him that was the proposition we were making.

Q. Whose proposition was it?

A. It was mine. It wasn't the Company's. It was my proposition.

Q. This was your idea of what the deal ought to be?

A. No. I had, after our first visit, seen Mr. Samson. We had generally discussed terms but we could not put anything down, anything concrete, until we had a house policy, and from the house policy I made out those deals.

Q. After you got the house policy, this that you wrote down here on this proposition sheet, as you have referred to it, marked D-157, was your idea of what he ought to pay for those pictures in that theatre on that policy?

A. That is correct.

Q. And you didn't, as I understand it, have any authority to accept or make the deal at that time if he had said "Yes, I want them at those terms"; is that right?

A. If he said "Yes, I want them", I would have written a contract.

Q. You would have then prepared an application, is that right?

A. That is correct.

Q. And you would have him sign it?

A. That is correct.

Q. And the application would have had to go through the [fol. 4296] normal channels?

A. Through the normal channels.

Q. And be approved before he had a deal, is that right?

A. Yes.

[fol. 4297] Q. And then the same thing,—oh,—with respect to those availability dates, now, how did you determine those?

A. How did I determine those dates?

Q. Yes.

A. I had my third-run dates. I determined them from the third-run dates.

Q. You knew then when these pictures were going to play third-run?

A. Yes, sir.

Q. And then what did these dates represent with respect to availability in terms of number of days after third-run?

A. Well, that I can't answer, because I don't think they are all the same. I don't think they are the same number of days.

Q. Well, how did you determine it?

A. Well, that was determined from a lapse of playing time between third-run and the time I made it which would permit other theatres to play the pictures, certain theatres that it was necessary to protect on account of the $650 Bingo; not necessarily the theatres, but our own product it was necessary to protect.

Q. What were the pictures you wrote the availability date to protect?

A. It would be what theatres that had been sold at that particular time, I can't answer what those were.

[fol. 4298] Q. You don't know what those were, but those included the first three runs, is that right?

A. First three runs.

Q. As I understand you to say these availabilities were all after the first three runs?

A. Correct.

Q. So you had then sold the first three runs?

A. Yes, sir.

Q. By the way, at this point have you been able to locate the second-run contracts yet? I might say, so that your Honor would know what these contracts are about here, these that were identified as Exhibits Nos. 963 to 978, inclusive, were produced in response to a subpoena calling for all of the Syracuse contracts for the sale of these five pictures that are contained in this offer and the exhibit No. 979 was left open for the second-run contract which was not available at the time these others were identified, and I, of course, would like to have that contract before we conclude the examination of Mr. Rowell.

Mr. Caskey: You can't.

Mr. Wright: You had it here once before.

Mr. Caskey: We sent it back. It is in New York.

The Court: Well, is there any dispute about the fact that there was this second-run contract?

[fol. 4299] Mr. Wright: Well, I don't know. At the time I asked for it there seemed to be some question as to whether there was a contract or where it was.

The Court: How would that have any effect?

Mr. Wright: I wanted to know definitely here what the situation was with respect to those first——

The Court: You mean the first——

Mr. Wright: The first three runs.

The Court: That they were exhausted, you mean?

Mr. Wright: No question about the fact that the first three runs had been sold on these five pictures at the time you made this offer, is that right?

The Witness: That is correct.

Mr. McClennen: In order that the record may not confuse us at a later time, this request for the production of these contracts is addressed to Warner's representatives and not to the defendants; Fox representatives, I beg your pardon.

The Court: You wouldn't naturally concede that you had the second-run; you wouldn't have the second-run contracts, you mean?

Mr. McClennen: We wouldn't be having the second-run.

[fol. 4300] The Court: No, I say that.

Mr. McClennen: The reference in this long list of contracts that were put in, it appears that there were only four that had been accepted.

The Court: The witness said that they had all been exhausted.

By Mr. Wright:

Q. The first three runs were sold, were those all exclusive runs in Syracuse?

A. Exclusive runs, first-runs, second-runs, third-runs.

Q. Then there were some other theatres, you say, that you, in addition to those that you fixed these availability dates to protect?

A. Not to protect the theatres, but to protect our pictures.

Q. Well, protecting your pictures in other theatres than those first three runs?

A. We had some valuable pictures there, and pictures running a house with Bingo $650——

Q. Let us see if I can get an answer to the question, the first-run theatres there that had contracts for the pictures were what, do you know?

A. First-run theatres?

Q. Yes, maybe this will help you.

A. R.K.O., Paramount and Capitol.

Q. That is according to this contract No. 963, the first- [fol. 4301] run was all for exhibition in the Paramount, Strand, Keith and Eckel, is that right?

A. Strand is something I didn't make the contract for; Paramount, Keith or Eckel.

Q. That was made at a time when the Strand was still in the pool?

A. Yes, sir.

Q. And then the exhibit No. 964 is the contract for a move-over at the Eckel, is that right?

A. That is correct.

Q. That would be a run immediately following the first-run?

A. Not a run, it is a move-over.

Q. Well, the picture would play under this contract marked Exhibit No. 964 immediately after the conclusion of the play date at the Paramount, Keith or Eckel, is that right?

A. Well, you have the conclusion that it is at the finish of the engagement. It was a move-over and as soon as one house was finished it was moved over to the other house.

Q. That is what I was saying.

A. You said at the conclusion of the engagement; there isn't any conclusion of the engagement until it finishes at the Eckel.

[fol. 4302] Q. Then the picture would play at the Regent; is that right?

A. That is the second-run theatre, that is correct.

Q. That we don't have the contract for; then that would play at the Cameo?

A. Correct.

Q. Third-run, not less than seven days after the run at the Regent, is that right?

A. I don't exactly know the clearance offhand, but whatever is on there, third-run, Syracuse, seven days after Regent Theatre, seven days clearance on all subsequent-runs.

Q. Do you know what the interval was there that the Regent was supposed to play behind the Eckel?

A. 30 days.

Q. 30 days. Then after the conclusion of the run at the Cameo a picture would be available to all of the other runs in Syracuse, is that right, simultaneously?

A. Well, not all of them, no. There are some other runs that might have a clearance over some other in the particular zone, but, generally, they would be available after the Cameo.

Q. Well, now, what if any theatres were there other than the Regent and Cameo and Keith, Paramount and Eckel that you fixed this protection with reference to?

[fol. 4303] A. This protection?

Q. Yes.

A. None I have reference to there, but you said they would be available for all theatres; there are some theatres that they wouldn't.

Q. I understood you to say that in fixing these availability dates that are on this Exhibit D-157, you fixed those with reference to protecting the exhibition of these pictures in certain theatres?

A. Those theatres that had already been sold the product.

Q. Now, you don't know then what the names of those theatres are?

A. What the theatres are now, I could not tell you without the contracts.

Q. You don't know whether they included more than I have just mentioned or fewer?

A. Well, it wouldn't include the Regent and Cameo, because they are prior runs.

Q. And it wouldn't include the Novelty, either?

A. If the Novelty had been sold prior to that time (September 12th, yes, it would include the Novelty.

Q. And Happy Hour?

A. Novelty and Happy Hour, yes, I would say so. I would say it wouldn't include this, because it was a late dating house.

[fol. 4304] Q. And the Harvard?

A. The Harvard, possibly include the Harvard.

Q. And is that the Turn Hall?

A. No, it didn't include the Turn Hall at all because the Turn Hall wasn't sold at that time; it couldn't include the Turn Hall.

Q. It happens the Turn Hall was sold here October 9th, is that right?

A. That is correct.

Q. And this offer was made on October 3rd, is that right?

A. Correct.

Q. So then——

A. It didn't include this offer.

Q. So those theatres you were protecting then in addition to the first three runs were the Harvard, the Happy Hour and the Novelty?

A. Not the theatres, I was protecting——

Q. Is that right?

A. Not the theatres, I was protecting my product.

Q. You were protecting the exhibition of your product by these availability dates?

A. Not the Novelty?

Q. The Novelty, yes.

A. The Novelty happens to be a very, very late dater, six months after the release.

[fol. 4305] Q. Do you want to correct your testimony?

A. Not the Novelty, you said the Novelty.

Q. You said, as I understood, that the ones you fixed the preference for product, those were the ones sold prior to October 3rd?

A. The Novelty didn't include that.

Q. Did you say that?

A. Yes, sir, I did.

Q. It now appears you were mistaken?

A. On the Novelty. After all, I am guessing what contracts were sold there; you have them in front of you, I don't know, you have them in your hand. You let me see them, and I will tell you which theatres I was protecting or which pictures.

The Court: Is it necessary to go all over this again? He states here he left out the Novelty. We are now concerned with the question of priority with reference to some of these first three runs over Wallace at the Strand.

Mr. Wright: It is important to show, from our standpoint, what these other theatres were with reference to which he fixed his protection.

The Court: He has already told you, he gave you a list of them. Now he says while it appears to have included the [fol. 4306] Novelty that shouldn't be included.

Mr. Wright: That is what I want to find out, whether there are any other corrections he wants to make.

The Witness: Those are the two theatres. (Referring to contracts). The Novelty appears to have been sold, but wasn't protected. If I protected the Novelty the availability wouldn't be on here until January, February, or March or April.

Q. The Harvard appears here?

A. Yes, sir.

Q. The Harvard admission price was what?

A. 20 cents.

Q. 20 cents evening adults, and children 10 cents?

A. Correct.

Mr. McClennen: Mr. Witness, it is very hard for the stenographer, your not speaking louder.

The Court: You are around the corner there so much. Speak louder.

Q. Then, the price for "Charlie's Aunt" in this contract for the Harvard was what?

A. $27.50.

Q. And the price on "Charlie's Aunt" that you quoted to [fol. 4307] Mr. Wallace was $200?

A. Correct.

Q. And according to your policy notations, Mr. Wallace was to play that at the Strand at a 25-cent evening admission?

A. Correct.

Q. And he was to pay you $200 for playing "Charlie's Aunt" on a 25-cent admission after the Harvard had played the same picture at 20 cents at a $27.50 rental, is that right?

A. Correct.

Q. And setting up——

By the Court:

Q. That difference in price, what was that based on, the difference in the charge or the question of patronage?

A. The difference in the possibility of the theatre grossing. Some theatres can gross $2,000 and another gross $1,000 and another gross $100.

Q. How did the Harvard compare with the Strand?

A. With the Strand, just a fraction of the gross.

Q. The size of the theatre?

A. The size of the theatre?

Q. Yes.

A. Oh, possibly a third, maybe not that much.

Q. Larger, you mean?

[fol. 4308] A. Smaller. Probably it would seat a third or less than the Strand.

Q. How do you account for the difference in the price?

A. In admission?

Q. Yes.

A. Well, Mr. Wallace apparently put an admission on the Strand Theatre with the idea that it would be as cheap an admission as there was uptown, and not having a first-run picture he probably thought that was a suitable price. I don't know why he put a quarter on. The Harvard put 20 cents on because they thought that was a suitable price for a neighborhood theatre.

Q. I mean your charge?

A. Our charge?

Q. Yes, to the Harvard.

A. The cost of the picture?

Q. Yes.

A. The price of pictures are predicated on the gross of the theatre or the possibility of grossing, not on how much admission they charge, not on how many seats they have; it is predicated on the possibility of that theatre grossing.

Q. The grossing would necessarily depend on the size of the theatre?

A. No, the size of the theatre doesn't mean the amount [fol. 4309] the theatre can gross.

Q. That, combined with the charge for admission?

A. Providing they fill their seats, yes, it would have a lot to do with it, but first they have to fill their seats.

Q. They charge so much for the Harvard and so much for the Strand?

A. The Strand is a downtown theatre, one is a neighborhood theatre; one runs all day and the other runs just in the evening.

The Court: I did not understand about that. I did not know about that.

By Mr. Wright:

Q. Now, going back to the Novelty, you had sold the Novelty at the time you made this offer, hadn't you?

A. Yes, sir.

Q. And as far as your contract was concerned, there was nothing to prevent the Novelty from playing these pictures that you had on your offer to Mr. Wallace ahead of the Strand, is that right?

A. There was nothing to prevent them providing he got them in and played it ahead of that particular date; that way he would have played them ahead.

Q. Will you just answer the question; would you read him the question?

[fol. 4310] A. I believe the question you will have to read for me.

(Preceding question read.)

A. That is right.

Q. And the price at which the Novelty played films was the price fixed on this contract, 15 cents for adults evenings?

A. That is correct.

Q. And the rental is $25?

A. Correct.

Q. And as far as Mr. Wallace is concerned, how many theatres played ahead, played these films on your exhibit

No. 157 ahead of him, other than those we have mentioned, depended entirely on when you would happen to make a contract with them, is that right?

A. Well, wait, at the time this was made there was no contract made with the others.

Q. I say, there wasn't anything to prevent you from, as far as the deal, your offer to Wallace was concerned, from selling them all the next day, was there?

A. Nothing to prevent it.

Q. Including the ten-cent houses?

A. Including any theatre if I could sell them the next day, just the question of the element of time.

Q. So that at the time you made him this proposition, and the proposition you made him didn't give him any assurance at all that the films would not play in every house [fol. 4311] in Syracuse except the Empire before he got a chance to play them, is that right?

A. The Empire was the only theatre that came in question on that proposition.

Q. See if you can answer the question? Repeat it.

(Question read.)

Mr. McClennen: I submit the question was answered by the witness.

The Court: I will hear the question.

(Question read again.)

The Witness: That is correct.

Q. And had the Strand ever been sold that way before, as far as you know?

A. As far as I know I don't think I can answer that, because there was too many years elapsed in between the managers that had it, it went through too many hands, I could not answer that. I don't know.

Q. Now, as I understood you, there was no discussion at all of these rentals that are written down on this Exhibit D-157?

A. The only discussion I can recall is the 35 per cent.

Q. Well, would you say there wasn't any other discussion?

A. Not to my knowledge. I can't recall it.

Q. Nothing was said about the amount of rentals at all, is that right?

[fol. 4312] A. No.

Q. That applied, too, to Exhibit 156, and have you the other one over there?

The Court: 158.

Q. Oh, yes, 158.

A. It applies to the three of them.

Q. Now, I notice on Exhibit D-158 you have some red pencil notations there; when were those put on?

A. This was my copy; those were put on after I made the proposition because the pictures were subsequently sold.

Q. Just when were they put on and where?

A. This is my copy. I put these on myself.

Q. I said when?

A. Possibly at the office when I found the pictures had been sold; I could not tell exactly where.

Q. Now, what did you do with these originals, D-158, D-156 and D-157, after you left the Strand Theatre?

A. Put them in my, what we call a "Sales Control Book", pinned to the sheet marked "Strand Theatre".

Q. And took it into the office?

A. No, sir, they are my copies for the next visit to Mr. Wallace.

Q. You didn't make any record in the office at all as to what had happened?

A. Oh, yes.

[fol. 4313] Q. Where is that record?

A. I don't know if I have got it or not. You will find a report with this all on it.

Q. Do you think you can find that for us?

A. Do I think I can find that for you?

Q. Yes.

A. It should be here.

Mr. McClennen: I think it is lying right on the table here, Mr. Wright.

(Document shown to and inspected by Mr. Wright.)

Mr. Wright: Has this been marked?

Mr. Rogers: Yes.

Mr. Wright: Oh, yes.

Q. Is this Exhibit No. 160 for identification, the report that you made?

A. Yes, sir.

Q. And you made that when you got back to the office?

A. I made that when I got back to my hotel.

Q. Then what did you do with it?

A. Mailed it into the office with my weekly reports.

Q. To the branch office?

A. Branch office.

Q. At Albany?

A. At Buffalo.

[fol. 4314] Or at Buffalo, and then you say you kept——

A. I kept that.

Q. That, yourself?

A. For my own personal record.

Q. And when was it you made these notations on here in the red?

A. I can't tell you, some time subsequent to October 3rd.

Q. You don't remember when it was?

A. The date?

Q. Yes.

A. No, there was no particular reason for remembering the date.

Q. You are sure you didn't make it at the time you had the conversation with Wallace?

A. With Wallace, no.

The Court: There is in the evidence one of these exhibits, a latter from the main office in reference to the sale of "The Empress".

Mr. Wright: I beg your Honor's pardon.

The Court: There is amongst the exhibits here one communication purporting to be from the main office with reference to the selling of the "Empress".

Mr. Wright: Selling of the "Empress" or "The Empire Theatre"?

[fol. 4315] The Court: The title of the film "The Empress", there is one in the exhibits.

Mr. Wright: I don't recall it.

The Court: "The Empress" and one other.

Mr. Wright: Such an exhibit, I think the titles of these five are "Charlie's Aunt", "Private Nurse", "Wild Geese Calling", "Sun Valley Serenade" and "Dressed to Kill".

The Court: Probably it isn't there, I thought amongst those 100 exhibits, those last introduced.

[fol. 4316] Mr. McClennen: If your Honor please, I think you have in mind the sale Martina of the "Mad Empress" by Warner's.

The Court: All right. I knew it was in there somewhere. I can't recall where it was. Yes, I guess it was one of the pictures referred to in that same letter. Go ahead, Mr. Wright.

By Mr. Wright:

Q. I call your attention to this notation you made on your report, Defendants' Exhibit D-160 for identification, and ask you if that does not recall to your mind the fact that Mr. Wallace complained about the availibility that you had stipulated in this Exhibit D-156?

A. D-156?

Q. I beg your pardon. In D-157.

A. Well, I said that he objected to the availibility.

Q. And what did you say?

A. That was the availibility.

Q. That nothing could be done about that?

A. No particular thing. When we were making pictures available it was ahead of the Empire Theatre.

Q. Of course, the Empire Theatre never bought any of those pictures, did it?

A. Any of that particular group? I would have to look [fol. 4317] up that and see if they were ever played. I couldn't tell you. They were playing our pictures right along. They may have played some of them and may not.

Mr. Wright: That is all.

Re-direct examination.

By Mr. McClennen:

Q. You spoke about taking into consideration the grossing possibilities in fixing the price to be charged to a theatre.

A. Yes, sir.

Q. Will you state just in what way you take that into consideration when fixing a flat rental?

A. How we take the grossing ability of a theatre into consideration when we fix the flat rental in a picture?

Q. Yes.

A. That all depends on the picture. If it is a top grossing picture we try to figure somewhere around 35 per cent of the gross as flat rental.

The Court: Rather than fixing a percentage?

The Witness: No, you are talking about flat rental now.

Q. In fixing flat rental the witness said they endeavored to arrive at the figure from top grossing figures of 35 per cent of the expected gross; is that correct?

A. That is correct. Take the gross and take 35 per cent [fol. 4318] and try to arrive at a figure at what you rent.

The Court: Wouldn't that depend on the time it was played, even though it was a high quality picture?

The Witness: It is pretty hard to tell when you are fixing the time of a picture when it is going to play. It may be six weeks, it may be two months, it may be six months from that time. It all depends on where you are dealing.

The Court: What do you charge for the first-run?

The Witness: Well, first-run I do not handle.

The Court: I mean the first-run there.

The Witness: I do not handle, I do not make the first-run contracts.

By Mr. McClennen:

Q. Well, is it a usual thing in the sale of pictures that the rentals charged the suburban houses are very much less than rentals charged the down-town houses?

A. The dollar-and-cent-rental, you mean?

Q. Yes.

A. Yes, it is less.

Q. When you gave these prices, the proposed prices, to Mr. Wallace did you believe that they were fair prices for this downtown theatre, as he had described he proposed to operate it?

[fol. 4319] Mr. Wright: If the Court please, I think his belief is immaterial.

The Court: He can state whether that was fair rental.

Q. I ask you that.

A. I would say it was very fair.

Q. Did Mr. Wallace criticize the rental rates, except in this way you spoke of, having the Bingo deducted from the percentage pictures?

A. I can't recall any discussion outside of the 35 per cent due to the playing with Bingo.

Q. Did you say to him—and I am referring to page 2815—"That is the best we can do for you. You know we must protect the Schine account in Syracuse"?

A. Absolutely not.

Q. Did he say to you that your proposal did not constitute a valid offer?

A. If he did I can't recall it.

Q. This being the conversation of October 3 that I am speaking of, a week before your return on the Bingo question. Did he on October 3 say that he rejected the proposals?

A. Well, rejected in the sense that apparently 35 percentage was the obstacle.

Mr. Wright: That is objected to.

The Court: Yes.

[fol. 4320] The Witness: I don't know how else to answer it. He rejected it. He didn't buy it.

The Court: What did he say?

By Mr. McClennen:

Q. What did he say?

The Court: Did he say something about it?

A. The only way I can answer it is he objected to the 35 per cent with his Bingo.

Q. What did you say to him?

A. I said I would discuss that point with Mr. Samson and he made me a counter-proposition.

Q. Was anything more said?

A. Not that I can recall.

Mr. McClennen: That is all.

The Court: That is all.

Mr. Wright: I just want to ask him a question.

The Court: All right, very well.

Re-cross examination.

By Mr. Wright:

Q. When you say you thought those rentals were fair for that situation, did you have some other particular comparable situation in mind?

A. No.

Q. You don't know of any?

[fol. 4321] A. Comparable to that?

Q. Yes, in Syracuse.

A. No.

Q. At the time these offers were made you knew about this lawsuit, didn't you?

A. This lawsuit at the time those offers were made?

Q. Yes.

A. I can't say that I did, no.

Q. Do you know whether you did or not?

A. Well, was it on then? How can there be a suit?

Q. Just answer the question.

A. No, I didn't know.

Q. Did you know then whether there was also a suit against the major film distributors?

A. I did.

Q. You knew about that?

A. Yes, sir.

Mr. Wright: That is all.

The Court: That is all.

ANDREW WILLIAM SMITH, JR., a witness called by and on behalf of the Defendants, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. McClennen:

[fol. 4322] Q. Your residence?

A. Greenwich, Connecticut.

Q. Your present position?

A. Eastern Sales Manager for 20th Century-Fox Film Corporation.

Q. When did you come to that position?

A. In July, 1942.

Q. Next prior to that what was your position?

A. Prior to that I was General Sales Manager for RKO-Radio Pictures.

Q. And when did you come to that position?

A. In October, 1939.

Q. And next prior to that what were you?

A. I was General Sales Manager for United Artists' pictures.

Q. And when did you come to that position?

A. In October, 1936.

Q. Next prior to that what was your position?

A. I was General Sales Manager for Warner Bros. pictures.

Q. How long prior to the latter part of 1936 had you been connected with Warner Bros.?

A. I had been connected with Warner Bros. since the year 1928.

Q. When did you enter the distribution of pictures business?

A. In September, 1914.

Q. In what capacity?

[fol. 4323] A. I was a salesman for Pathe, on the Lower East Side of New York City.

Q. How long did you go on in that position?

A. I believe I held that position for about a year and then I became booker in the New York branch office, the office that served the motion picture theatres with their films in the Metropolitan area.

Q. That is, of Pathe?

A. Yes, sir.

Q. Then you went on in that position how long?

A. That was about a year and then I became the Assistant Branch Manager in New York and then went to the Boston office, where I was a salesman, and again a booker, and from there I went to Dallas, Texas, still for Pathe, as Assistant Branch Manager, and then I became Branch Manager in Dallas, Texas. That brought me up to 1918 and after that I again went back with Pathe for a few years, and then in 1924 I became a special sales representative for First National Pictures, and later became Eastern Sales Manager for First National Pictures, and remained with them up to the time that the Company was bought by Warner Bros. in 1928.

Q. And then the position you took with Warner Bros.?

A. I was a District Manager and later a Division Manager and then I became one of two general sales managers [fol. 4324] that Warners had. I became the General Sales Manager for the East in about 1932.

Q. And you continued in that position to the end of your connection with Warners, did you?

A. Yes, sir, July, 1936.

Q. And when you speak of Warners, in those days, technically, you mean Vitagraph?

A. Vitagraph, yes, sir.

Q. That position with Warner-Vitagraph brought you into general familiarity with the way in which contracts were handled as they came into the main office from the various branches?

A. Yes, sir.

Q. As the contracts came in were they given a number?

A. Yes, sir.

Q. And was the listing of them carried out on an abstract of contracts sent in from the branch office when the contract was submitted?

A. Yes, sir. With each separate contract, or with each group of contracts sent in from the branch, there would be an abstract of contract that would come into the home office.

Mr. McClennen: I ask to have this marked for identification.

(Thereupon the abstract of contracts, August 15, 1935, referred to was marked as Defendants' Exhibit D-164 for identification.)

[fol. 4325] The Court: Do you have several of the same kind like that? You better have them all at the same time.

Mr. McClennen: I ask to have this also identified.

(Thereupon the abstract of contracts referred to, December 2, 1935, was marked as Defendants' Exhibit D-165 for identification.)

Q. I show you Defendants' Exhibit D-164, entitled "Abstract of contract, dated August 15, 1935," and call your attention to the column "Contract Number" and on it the numbers 4446 and 4447. What, according to the office system, did those numbers indicate?

A. Those numbers indicated that the first number, 4446, indicated that that was the next contract in line after 4445, to be sent in to the home office by the branch and 4447 would be the next one after 4446.

Q. And were the contracts numbered in the order in which they were received?

A. Approximately, yes, sir. The contracts would be numbered in the branch when they were ready to be sent in to the home office and then they would be sent in after the number had been put on and the branch would generally send in the contracts just as soon as they were made and as soon as the branch manager was satisfied that the deal was one that he felt was satisfactory for the Company and one that he would recommend.

[fol. 4326] Q. Refreshing your recollection from this Exhibit D-164 of August 15, 1935, will you tell us what No. 4446 was?

A. No. 4446 on this abstract of contract form, dated August 15, 1935, sent in from the Cleveland, Ohio, branch, stated that the contract was for the State Theatre of Bucyrus, Ohio; that it covered 30 Warner Bros. pictures, and stated the amount of money that the contract totaled.

Q. And 4447 was what?

A. 4447 was the same date, the same branch office, Cleveland, Ohio, the same theatre, the State Theatre, Bucyrus, Ohio, and it covered 30 First National pictures and stated the amount of the contract in dollars and cents.

Q. From your knowledge of the system pursued can you tell me whether this Exhibit D-148-A in evidence, having the contract number 4446, and the date July 13, 1935, and the approval date July 23, 1935, signed by the State-Bucyrus Co., M. H. Breyer, Secretary, is the contract there referred to?

A. Yes, sir.

Q. And is the contract, Exhibit D-148-D, No. 4447, signed by the State-Bucyrus Company, M. H. Breyer, Secretary, approved September 5, 1955, the contract there referred to under that number on the abstract of August 15, 1935, Defendants' Exhibit D-164 for identification?

[fol. 4327] A. Yes, sir.

Q. And is this approval stamp "A. W. Smith, Jr.," appearing on each of these contracts, your approval stamp?

A. Yes, sir.

Q. Calling your attention to Exhibits D-165 for identification, abstract of contract, dated December 2, 1935, and the item number 4797, State-Bucyrus, Ohio, the contract marked Plaintiff's Exhibit W-8 (16) for identification, March 26, 1942, signed by Belpik Theatre Corporation, the contract referred to in this abstract of contracts, December 2, 1935?

A. You wish me to identify it?

Q. Bearing the same number. Yes?

A. Yes, sir.

Q. Was the system pursued to have the contracts numbered in the approximate order of the receipt of them?

A. Yes, sir, the contracts, the system was to have the contracts carry consecutive numbers?

The Court: You mean consecutive numbers in the several districts or consecutive numbers of the total?

The Witness: It would be the consecutive number in the order of numbers for the branch. In this case it is the Cleveland branch. It would be contract 4497 for the Cleve- [fol. 4328] land branch.

Q. I notice that this number 4447, August 15, 1935, is 350 numbers earlier than 4797 on the abstract of contracts of December 2, 1935. At that time can you give us any approximation of the length of time in the Cleveland branch that it would take to make 350 contracts?

A. I would say a minimum of three months.

Mr. McClennen: I see that the contract which I described as Plaintiff's Exhibit W-8 (16) for identification, March 26, 1942, has in the present trial in 1944 become Plaintiff's Exhibit 62.

The Court: I was going to ask you about that exhibit because I did not remember any such numbering. The number is what now?

Mr. McClennen: The Plaintiff's Exhibit 62 in this trial.

The Court: All right. That is the exhibit you referred to as W-8 (16).

By Mr. McClennen:

Q. Mr. Smith, when you were in the position that you described from '32 to '36 with Warners, you were familiar with the sales policies prevailing from time to time in the company, were you?

A. Yes, sir.

[fol. 4329] Q. What part did you have to do with examining those sales policies?

A. I was the executive head, sir, of distribution for the eastern half of the United States and had the final say as to policy.

Q. How long had you been familiar with the policies generally pursued by the film distributing companies of the country?

A. Well, that is a rather difficult question to answer, sir. I had practically the—it is the only business I have ever been in, the motion picture business, and I always tried to be a student of it and to acquaint myself with as much of it as I possibly could, not only distribution but exhibition and production. I felt if I could round out my knowledge I could do a better job of distribution.

Q. What did you observe as to the way in which these companies marketed their product, from season to season? I mean what the general course was that was pursued in the marketing of the product by distribution companies? To make it specific, take a season 1933-34, say. Will you describe, in a general way, how the season was projected and the way in which the sellers went to work to get their product on the market?

A. Well, we generally started our plans with a visit to [fol. 4330] the studio. In the group would be our Western Sales Manager, myself as Eastern Sales Manager, and we would have our Advertising Manager, and there would be other people in lesser positions. We would go to the studio and discuss with the head of production. At the particular time I speak of that production head was Jack Warner, one of the three Warner brothers, the youngest one, and he had charge of the Warner Studio at Burbank, California.

They had about 75 acres there. They had a real fine studio, and we would get out there and go into conference with him as to what our product for the new season would be.

Q. What time of year are you talking about, in the rough?

A. That would be around the end of January; might be February. And as time went on—it might be December of the previous year—and we would be headed toward a selling season starting September 1.

If we went in January, 1932, we would be headed toward a distributing season which would start December 1, 1932. To differentiate between selling and distributing, the selling generally was started well in advance of the distribution of the pictures for that new season.

Q. And I take it would be in advance of the production [fol. 4331] of those pictures?

A. Yes, sir. We would have our conferences with Jack Warner, as to the stories that he had. He would tell us about any plays that they had bought and he would tell us how much he had to pay for this play or that one, because he bought it in competition with everybody else that was making pictures, and sometimes we felt that he was paying quite a bit of money for them. And it might be too much. But we didn't say very much about that because the Warner brothers liked to run their business and Jack didn't like too much criticism. I don't think there is any production head out there that does like too much there. They are sort of temperamental. They feel they are doing a great job and they are all wonderful, and they really have made rapid strides.

We are currently in our fiftieth year of motion pictures and it is a far cry from the first ones that we had to the ones we see today.

After we had our sessions with Jack Warner and a line-up with the product he would give us as much information as he could as to stories, as to star in the different pictures, as to the cast in them. He would give us all possible information that would be useful to us in the sale [fol. 4332] of the pictures. We then would be ready for a convention and our convention would take place—it might be in the middle of May. It would generally be before the end of June. And to that convention we would bring our different exchange managers, with the executives of the branch offices.

To give you a little further idea on that: Fox, 20th Century-Fox, has 31 branch offices in the United States. Those are 31 selling and distribution points. Buffalo is one such point. Albany is a distribution point, New Haven, Boston, New York, Philadelphia, Washington, cities such as that.

We would bring our sales organization, branch managers, district managers, and sales managers, in to a central point. At that convention we would tell them about the pictures that were coming along and we would outline the manner in which we wanted them sold, because at all times we were in charge of the sale of those pictures and we had the final say as to policy and as to how our pictures were to be sold to the theatres.

Sometimes we didn't have too much information about a certain picture that Jack Warner was going to make and then we had to use a little imagination and paint a story [fol. 4333] and we tried to create as much honest enthusiasm in our sales staff as we possibly could. We hoped that most of the time that they believed in us and believed in our product and when they didn't there were many of them that would come out and tell you that they didn't.

The sales staff, after the convention, would go back to their respective branches, to the 31 branches, and then they would proceed with the selling of that season's product. They would make their deals and send them in to us for approval.

[fol. 4334] Q. How did you arrive at any method of pricing, and by that I mean the price that you would set to get, after you got some theatres, what were the considerations that led to a determination of that?

A. We attempted always to get a fair price for our product in so far as we were able to determine what a fair price should be. We felt that just like we were in a business, out of which we were trying to make some profits, that the exhibitor, too, should have an opportunity to make profits out of our pictures and in our pricing we had the interests of our customer as well as our own interest in mind, probably our own had a little priority over the customer.

The Court: You had the first cost, the price of the picture to start with?

The Witness: Your Honor, the cost price of a picture is not too great a determining factor.

The Court: The original cost to Warner of a product.

The Witness: I was just going to answer that, your Honor. That cost of the picture is not too great a determining factor in the amount of money a picture should bring in to you, because we generally sell our pictures based on their box office grossing ability, based on their value [fol. 4335] when they play the theatres. We did invest $1,500,000 this past season, 20th Century-Fox did, in a picture called "Life Boat." I don't know whether you saw it or not. It is a story of some people that were marooned on a raft after their ship was struck by a German submarine and what happened to it, and a German sub-marine captain got on board and they had a lot of struggles. It was a well made picture, directed by one of the best directors in the business. We had a lot of trouble, because we could not get a proper script on it, that is, they have a script, and they shoot the dialogue in words, and they shoot it from that, and we could not get a satisfactory script. I think we paid about $500,000 before we got into shooting the picture, photographing the picture at all. Sometimes we make mistakes like that. The fact that a picture costs all that money, didn't mean the exhibitor had to pay all that cost. We sold that picture for what we honestly thought it was worth to every theatre to whom we did sell it. I be- [fol. 4336] lieve we have sold that picture now to about 10,000 accounts. A real good picture like a Betty Grable picture "Coney Island," we will sell that to about fourteen to fifteen thousand accounts in the United States.

By Mr. McClennen:

Q. By the way, around about how many moving picture theatres equipped for sound are there in operation in the United States?

A. I believe in number something in excess of 17,000.

Q. To divert from the course that you were on, after you have got your picture taken on your negative, it is not then ready for distribution until positives are taken?

A. That is quite right. The negative is just like the—did you ever own a Brownie camera?

Q. I don't want to admit anything on that score.

A. The negative is like the negative in a Brownie or Eastman, maybe an Eastman you had. You take your picture with a little camera and that is a negative that is on the little roll. You take it to the drug store and he makes positive prints for you. We do the same thing. We take our motion picture negative and make positive prints from that.

[fols. 4337-4338] Q. And what can you tell us of the cost of making one positive after you have got your negative ready for it?

A. A positive print of a black and white subject costs approximately somewhere in the neighborhood of $185. A color picture costs about three times as much.

Q. In the ordinary run of pictures, leaving aside the poorer ones, if you would be willing to admit you have some poorer ones, and especially good ones, about how many positives do you make of a picture?

A. I believe our average pictures will run about 300 positive prints of an A picture. On an especially good picture we will run as high as 360, 370 prints.

The Court: Does that mean——

The Witness: Those are the positives.

The Court: Those go into your distribution?

The Witness: Yes, those are copies, the positive prints that are sent to our branches, yes.

The Court: I think we will have to adjourn now.

(Whereupon a recess was taken until Friday, November 3rd, 1944, at 10 o'clock.)

[fol. 4339] UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF NEW YORK

Civil 223

UNITED STATES OF AMERICA

vs.

SCHINE CHAIN THEATRES, INC., et al., Defendants

Continuation of trial before Honorable John Knight, United States District Judge for the Western District of New York, November 3rd, 1944, 10 o'clock A. M.

Appearances:

Robert L. Wright, Esq., John F. Clagett, Esq., Harold L. Schilz, Esq., Philip Marcus, Esq., Special Assistants to the Attorney General, and Milton Kallis, Esq., Special Attorney, in behalf of the United States.

Edward F. McClennen, Esq., Willard S. McKay, Esq., Saul E. Rogers, Esq., Arthur E. Whittemore, Esq., Arthur J. Homans, Esq., and Edward M. Antevil, Esq., appearing for the Defendants.

[fol. 4340] PROCEEDINGS

(Reporter's Note: Correction, page 3562, line 13, reading "the distributors" should read: "two distributors").

ANDREW WILLIAM SMITH, JR., resumed the stand in behalf of the Defendants, having been previously sworn, was examined and testified further as follows:

Direct examination (Continued).

By Mr. McClennen:

Q. Mr. Smith, you said at the close yesterday that for your "A" pictures you would average to make 300 positive prints. What do you mean by an "A" picture?

A. By an "A" picture I mean a picture that is good enough in box-office values, or has a sufficient amount of box-office value, to play in the best theatre, where there is more than one first-run theatre, and to play—and where the playing time is less than a full week to play during the most productive days of the week which are, in general, Saturday and Sunday.

Q. And if a picture is not an "A" picture how do you denominate it?

A. Generally call it a "B" picture.

Q. And does the classification "B" exhaust the lists of all below the A's?

A. In the general classification, yes.

[fol. 4341] Q. Of your A pictures you say an average of 300 prints. You have said that there were some 17,000 theatres equipped for sound in the United States. In a rough, general, how many of those theatres would you be selling to in a given season?

A. Well, a very good picture would play approximately 14,000 of those theatres.

Q. Then one of your 300 prints would be called upon to serve just a little under 50 theatres?

A. Yes, between 40 and 50.

Q. And service of that print, we will say, to the first theatre, means sending it out from the exchange to the theatre in time to play at the booked time, the number of days that it plays there, its return to the exchange, and inspection before it is ready for its next tour?

A. Yes, sir.

Q. Ordinarily, where the theatre is not in the exchange city, how is that delivery made?

A. Where the theatre is not in the exchange city delivery is made by a common carrier. That might be a trucking service, it might be by bus, it might be by train. It would be made through some common carrier.

Q. What would you reckon to be an average, fair allowance of time per tour, taking into consideration the quick [fol. 4342] deliveries in the same city as the exchange and the distant deliveries in the remoter parts of the exchange area? What should you say was an average time for a tour of duty of one print, assuming that it is two or three days on the tour?

A. That is a rather difficult question to answer, sir. We serve a print over a period of about a year's time. It plays more during the first 90 days than it does after that and there are some play dates that are subsequent to the year, and after two years' time we take all prints of a subject out of service. Does that answer your question, sir?

Q. Well, the answer can be computed from that, I think, without asking you any further.

A. Yes.

Q. Now, an exchange area throughout the country, as a whole, with your 14,000 theatres to be served out of how many exchanges?

A. Thirty-one.

[fol. 4343] Q. An average area served out of the exchange for those 14,000 theatres would then be in the vicinity of 450 to 500 theatres?

A. Yes, sir.

Q. What is the way that you bring about serving some 450 or 500 theatres with only 10 or less positives?

A. Well, the theatres are served in a sequence of time. We start our picture, the regular procedure of distribution is to first play the larger theatres in the larger cities and towns and play those because those are the theatres that do the biggest business. Those are—sometimes we call a theatre in a large city a show window for that entire exchange territory and in that show window the picture is well advertised; the exhibitor buys space in the newspapers advertising that picture; he many times has a radio program; he has what we call a lobby display; that is, a display in front of his theatre and inside his lobby of scenes from the picture and of special announcements that he gets up and some that we furnish to him.

Q. Now, of your first-run theatres in a given exchange area, am I right that you can start off only 10 crack on the first day?

A. Well, you might possibly start off more by borrowing some prints that weren't working in another territory, but [fol. 4344] that ten would be the normal way to handle it.

Q. In the selection of the first-run theatres to play it is an effort made so that those theatres, those first-run theatres will be chosen in such a way that they are not directly pulling from each other on that particular day?

A. Yes, sir.

Q. Will you state the basis of the competition between the first-run in a given town or competitive area and the second-run which must come later, if there is any competition between the two?

A. Well, we generally figure that there is a certain amount of money that an individual, we will say the public, has to spend for motion picture entertainment and if we say that that amount of money is $1.00 that they have to spend during a given week, then there is competition for that $1.00 because once that $1.00 is spent by the individual it can't be spent again and the first-run theatre is in competition with the second-run theatre or with any other theatre for that dollar and they want to get it and we want the first-run theatre to get that $1.00 because we can get more money out of that theatre than we can get out of the subsequent-run theatres.

Q. In approximate amounts how much do you figure, [fol. 4345] what percentage do you figure of your revenue comes from the first-run exhibitions as compared with the second and all other runs?

A. I think that figure will run pretty close to 70 per cent.

The Court: Does the answer mean that the second-run would be subject to 70 per cent of the first-run or the first-run would pay 70 per cent?

The Witness: No, your Honor, I mean that 70 per cent of all the money that comes into your company, into a distribution company, will come from those first-run theatres and 30 per cent will come from all other theatres.

By Mr. McClennen:

Q. 30 per cent approximately being the product the second-run, the third-run, fourth-run, fifth-run or any number of subsequent-runs of that picture?

A. Yes, sir.

Q. When did the plan of clearance for the protection of the prior run against the subsequent-run first come into the industry?

A. The plan of clearance came into the industry, I can't name the year, but it was at a time when the motion picture business, we might say, grew up, and instead of having [fol. 4346] motion pictures shown in little stores or barns, or things like that, there was an investment made on the part of some one; an investment in what we call bricks and mortar. A man would buy or lease a piece of property and he would build a theatre, and before he was ready to show a picture he would have a very substantial investment in that theatre. I imagine that in the beginning a sizable theatre in a medium sized town could be built for between $75,000 and $100,000. In later days there were some theatres having an investment of a million dollars or more and when the man had that kind of an investment he wanted a protection for his investment and he wanted, if there was some other theatre near him and he had this investment, he wanted—he tried to bring about a condition whereby he had first crack at the picture and got to play it before the other man did, if the other man was in a competitive area, and I think that in general would be the start of clearance.

Q. As a matter of time has that method been in operation for upwards of 20 or 25 years past?

A. Yes, sir.

Q. It is obvious that where you sell a picture to a theatre on percentage, that you are directly interested in the amount of the box office receipts of the theatre. Now, will you go [fol. 4347] on from that and tell us in what respect you are interested either at once or for the future in the high grossing possibilities of the theatre as affecting fixed rentals?

A. We use the knowledge we get from playing pictures on percentage in the theatre, at which time we are a partner of the theatre manager. We use the knowledge we get from that to determine what a fair price will be for a flat rental picture. If we have to—there are certain things we have to know before we can determine that, and we get as much knowledge as we possibly can before us and then proceed to determine a flat rental price. That flat rental price of necessity is based on the amount of dollars, the number of dollars that the theatre takes in on a flat rental picture, just the same as it is on a percentage picture, and the exhibitor, if we ask an exhibitor to pay us $200 as a flat rental price, with all the factors before us, we believe that $200 is a fair price, and if he plays the picture and comes to us and says "Now, look, this $200 was too much. I lost money when I played the picture", it is a custom of our company and a custom of the industry to listen to that man and in many, many instances reduce the flat rental price to the point where he can at least break even or show a small profit.

[fol. 4348] Q. That adjustment being made after he has played the picture?

A. Yes, sir.

Q. When you come to fixing the flat rental price which you are willing to take on a new operation of a theatre, where you haven't a past experience with that exhibitor and that operation, what are the elements that you take into consideration in determining that price?

A. Well, again, we would endeavor to estimate how much money that theatre could gross. We would probably ask the theatre man what his expenses were. He might tell us and he might not. Some of them are rather peculiar that way. They don't like to tell you too much about their expenses and sometimes when they give you a figure it isn't as correct as it might be, but we do as good a job as we can to estimate what the gross on the picture will be and from that we arrive at a fair film rental and then when our pictures start playing that theatre—now, sir, as you know, we sell pictures only in small groups.

Q. In all the questions I put to you please assume that we are talking about a period before 1940.

A. Oh, yes.

Q. On these general descriptions.

A. In the case of a new operation, such as that, the procedure would be to sell a limited number of pictures and [fol. 4349] then to, what we call, to check the box-office of a theatre during the time that the picture was playing. By checking the box-office of a theatre I mean have a man there who would stand in front of the theatre with a clock and every time a person would go in the theatre he would press a little button and that would register an admission. He would do that for everybody he saw go in the theatre. Some might go in the back way and he might miss them, but your check is generally pretty accurate, and knowing what the man's admission price is we can compute how much business that he did on our picture, and from that point on we don't have to guess. We know the figure.

Q. If you have a theatre in a down-town city district, running a normally successful operation, with, say, three-a-day, that is, a matinee and an early evening and a late evening, and have the number of seats—take for illustration 1600 seats in the house—in the estimating in the industry how many admissions during the course of the day, taking the three times into consideration, is it figured that those seats will be filled? That is, whether it is once or less than once, on the average, or twice, or once and a half, or what?

A. We customarily figure so that a theatre operating, as [fol. 4350] you say, in a down-town section of a city, will have one full house during three shows. That means if a theatre has 1600 seats that there will be 1600 admissions sold during the three performances, where the possibilities would be three times 1600 or 4800.

Q. So that on the figures assumed you would get, if it was a 25-cent house, $400 a day in box-office returns?

A. Yes, sir, if 25 cents was the average price. There might be a differential between matinee and evening price but if 25 cents was the average price that is what it would be.

Q. And for four days you would have, on that basis, a matter of $1600?

A. Yes, sir.

Q. You say your effort on your A pictures is to get 35 per cent of the box office receipts?

A. Yes, sir.

The Court: Are most of the A pictures let on a percentage basis?

The Witness: Yes, sir.

Q. So that if there was nothing more to be said your $1600 would make an asking price of something like $550?

A. For a flat rental picture?

Q. For a flat rental picture.

A. Yes, sir.

[fol. 4351] Q. Do you remember "Sun Valley Serenade" that Fox brought out in the '41-'42 season?

A. Yes, sir.

Q. What grade of picture was that?

A. That was an A picture.

Q. We have been speaking so far of first-run pictures, first-run theatres. Is this 35 per cent that you speak of a mark that you aim at in second and subsequent runs also?

A. Yes, sir.

Q. There is one element still to be considered. Suppose you have "Sun Valley Serenade" at 35 per cent and are aware of the fact that in order to get in the $1600 imagined you have to have a second feature, or vaudeville or bingo, or some other attraction. What part does that play in your arriving at your figures? Do you make allowance against the gross for the cost of those things or how do you get so that you are getting only 35 per cent of what is fairly attributable to your picture?

A. Where a theatre plays or operates on a double-feature program, playing two feature pictures on the same program, or where a theatre has some other form of entertainment that is played with the feature picture, such as bingo, which many theatres used to have, and that has been ruled illegal, [fol. 4352] I believe, in most States now, the custom is to allow a deduction from the total receipts of the theatre during the time the picture in question has played, allow a deduction from the total number of dollars that come in at the box office. The deduction in the case of a second feature would, in general, be the actual cost, the actual amount of film rental that the theatre paid for that second feature. In the case of an attraction, some other attraction, you follow the same procedure. In general it would be the actual cost of that attraction and that sum of money would be deducted from the total number of dollars the theatre took in while the feature was playing and then we would get our 35 per cent of the remainder.

Q. In the suppositious pictures I put before you, before we get to the $550, there would have to be these deductions you have just mentioned?

A. Yes, from the total sum of $1600 there would be a deduction.

The Court: That would not contemplate a playing of two so-called A pictures at the same time, would it?

The Witness: The theatre would have to make an awfully good buy on one of those two pictures, your Honor, to be [fol. 4353] able to play two A pictures on the same program. They would have to have a deal on that picture that would permit that. If they were playing two A pictures and they were both 35 per cent pictures, if we let them deduct 35 per cent of the gross on the second picture, there wouldn't be much left for the other.

The Court: They wouldn't ordinarily do that?

The Witness: No, sir.

By Mr. McClennen:

Q. With your knowledge of the business, on the figures you have just stated, if you assumed that the Strand Theatre in Syracuse had upwards of 1600 seats and was to open up at an admission price of 25 cents and was to play for four days and was to play "Sun Valley Serenade" in the fall of 1941 at $200 a.g.; 35 per cent for four days—I am reading from Defendants' Exhibit D-157—first let me ask you what that expression means in the trade, $200 a.g. 35 per cent four days"?

A. That means $200 against 35 per cent of the gross. It means that we are to get 35 per cent of the gross of the theatre during the time it plays that picture but in no event [fol. 4354] less than $200.

Q. On the assumptions I have just made, in your experienced opinion, what would be a reasonable guarantee figure in the business sense for such a picture?

Mr. Wright: If the Court please, that is objected to. This witness has not given any testimony which demonstrates qualifications to make this particular judgment. I submit that if anybody is going to come here and say whether or not that particular offer was reasonable it ought to be somebody who knew what the Syracuse situation was at the time, who would be doing business with those theatres. This witness, I believe, was not even with the Fox Company at the time that that deal was made. There hasn't been any showing that he knew what the conditions in Syracuse were at that time, what runs what theatres played, what the policy of that particular theatre was, or what the other theatres in Syracuse did, and he hasn't any basis at all for estimating what the gross receipts that might be expected [fol. 4355] from that particular theatre and that particular picture were at that time, or would be, and in the absence of any such knowledge it is obviously incompetent to tell correctly what a proper price would be.

[fol. 4356] The Court: Is the question based on the assumption there will be a certain amount of gross in the town? Is the inquiry based on the assumption of a certain amount of gross?

Mr. McClennen: Yes, if your Honor please.

The Court: A gross of $1600?

Mr. McClennen: A gross of $1600, and so far as the argument in opposition is concerned, we have already done that part; we have shown by the evidence of the experienced man Rowell, with 25 years' experience, of Syracuse, that this is a fair price. Now, so far as an expert in this industry is concerned, if the United States can bring a more qualified man than Mr. Smith to testify, we await that event, one of the most experienced men in the industry dealing with this subject, and this is not asking him more than just the expert witness' opinion.

The Court: Let me understand it, because I do not understand it. Is this question as to the proper charge based upon the gross of $1600?

[fol. 4357] Mr. McClennen: It is based on these facts that were at hand when this figure was arrived at as set out in Defendants' Exhibit D-157, October 3rd, 1941; these facts are the experiences in the industry as to what can be expected ordinarily in a theatre and based upon a seating capacity of 1600 seats, and the policy stated to Mr. Rowell of 25 cents admission. Those are definite factors in the situation, and now I am asking this witness what, in his opinion, would be, in the business sense, a fair guarantee figure to have in the offer under those circumstances.

The Court: Well, under just what circumstances?

Mr. McClennen: A downtown theatre in Syracuse, with over 1600 seats, and an exhibitor proposing to operate that theatre at a 25-cent admission and to run Bingo as an attraction and the picture up for consideration being such a picture as "Sun Valley Serenade" has been described to be in the season 1941-42. Those are the known definite elements which I assume.

Mr. Wright: If the Court please, on his own statement, [fol. 4358] the question there eliminates a number of elements that were then known and which this witness isn't shown to have known anything about,—to-wit: the operating policies and admission prices and rentals paid by other theatres in the City of Syracuse. Now, this——

The Court: He is assuming and is anticipating that a certain policy and admission price,—the question of 25 cents for the average time.

Mr. Wright: I said with respect to other theatres. There is nothing in the—there is no question about the fact that at the time this offer was made the man who made it was familiar with the price policies of the other theatres in Syracuse and the time when they played or would play these pictures with reference to the play at the Strand Theatre. Those are, of course, necessary factors which had to be considered in determining what price the Strand ought to pay, and they have been completely omitted from the question and they are, of course, factors about which [fol. 4359] this witness hasn't testified that he knows anything.

The Court: You spoke about Bingo. Now, does this question contemplate an allowance for Bingo in the price at the time?

Mr. McClennen: It contemplates that an allowance would be made for Bingo following the course which the witness has described and which the Witness Rowell described.

The Court: The fundamental—or the difficulty seems to be that we cannot tell what the income would be or the gross would be, without the benefit of different circumstances being assured. Of course, the evidence so far—there is evidence so far, of course, showing the basis of the charge, based upon a certain amount of income per year. Now, if you assume that in three days this theatre had an income in gross of $1600——.

Mr. McClennen: Four days.

The Court: Four days, whatever the period might be, and some definite amounts were deducted for Bingo, then he is in a position to state whether that is a reasonable charge based on such a gross.

Mr. Wright: I might make the further objection that [fol. 4360] there is no showing at all that Rowell made any offer with reference to any Bingo allowance. The offer as made by him, and written out, did not include any statement with reference to Bingo whatsoever. There was no such offer made. The offer was as written there to pay these certain percentages and rentals.

The Court: There was testimony that it played Bingo there.

Mr. Wright: The policy—have you got the exhibit that has the policy written on it?

Mr. McClennen: The policy appears there as, that when Bingo was played the admission price was to be 50 cents.

Mr. Wright: The statement as to policies that Mr. Rowell had when he made out the offer simply said "Tuesday and Friday Evenings, Bingo, $650, Adults 50 cents net," and he then wrote out the offer and there was no allowance offered for any picture on such nights, as Bingo might play. If it played on Monday or played on Saturday, Sunday, Monday or Wednesday and Thursday, Bingo wouldn't figure in the offer at all.

[fol. 4361] Mr. McClennen: Perhaps I might put a preliminary question to the witness.

By Mr. McClennen:

Q. In the period when Bingo was being played in the theatres, can you tell me whether or not where it was only intermittently played, whether the Bingo nights were usually the slack nights of the week rather than the nights when a prominent striking picture was to be played?

A. In general Bingo was played during the nights that up to that time had not been producing much in the way of revenue and, in an effort to try and get more money into the box office, the exhibitor had a Bingo game or something else to help out.

Q. I will ask you to assume this also, that the salesman making the proposition said at page 4286 "Well, in relation to the counter proposition, or, that is the proposition of the percentage pictures with Bingo and his counter proposition, I made him another proposition in which I offered to permit him to deduct the difference between the Bingo admission and the regular admission before computing the percentage." Now——

Mr. Wright: Of course, just a minute, what counsel is reading from is testimony given with reference to a later [fol. 4362] conversation on October 10th.

Mr. McClennen: If you will let me finish the question, it will appear. Mr. Stenographer, will yo upick up before the interruption and give me the latter part of what I was saying?

(Latter part of preceding question read.)

Q. Now, I want to assume also that that proposition was made a week later and that at the time that the original proposition, D-157 Exhibit was made, there had been no suggestion made to Mr. Rowell that Bingo was to be played on the same night as "Sun Valley Serenade." Now, adding those things to the question, I ask you what, in your opinion, would be a fair business-like price to state against 35 per cent on such a picture as "Sun Valley Serenade"?

Mr. Wright: It still, if your Honor please, does not appear that this witness knew any factors which are obviously of importance in determining what a fair price would be: (1) What that theatre had paid for pictures before; (2) What other theatres in that town paid, what policy they played on with respect to runs and admission price and [fol. 4363] what, if any comparable situations there were to the one that was being then sold. There hasn't been any showing.

The Court: As I pointed out in the first place, I don't see how any one can make an estimate of the proper price in a theatre unless he was advised in reference to certain factors; that the largest thing and the important thing would be that he knew what the attendance was, what it would ordinarily be. Now, if you say you assume here an attendance of 1600 were going to see the show or the picture, then, of course, the witness may say what is the proper charge for a picture to be displayed to such a capacity house. Again there is nothing to show here, in your assumption, the amount deducted for Bingo. Of course, you say the Bingo levels off the period of the whole week so that the average would be for the week or the period of the show. Of course, if you take that into consideration in estimating the amount the purchaser pays, then it would be competent. On the other hand, does it appear when this show was [fol. 4364] showed, what time it was showed.

Mr. McClennen: This proposition was not accepted.

The Court: No, no. What dates were fixed? Were dates fixed?

Mr. McClennen: This proposition was made on October 3rd, 1941.

The Court: There were no dates then fixed, Friday, Saturday or Sunday, or Saturday, Sunday and *Monday*?

Mr. McClennen: The dates fixed in the proposition are Saturday, Sunday, Monday and Tuesday, and then further that "Sun Valley Serenade" and "Dressed to Kill" were to be played on the same bill, and that the proposal of "Dressed to Kill" was a flat rental of $100.

The Court: You see, again, that is another factor that seems to me makes the inquiry more speculative. If he knows the basis for it then he can say what a proper charge would be.

Mr. McClennen: If your Honor please, if I might rest there, I will ask Mr. Smith:

Q. Will you assume, also, the elements that his Honor has just mentioned and state what, in your opinion, would [fol. 4365] be a fair bottom price on such a picture as "Sun Valley Serenade" when dealing with a situation of a theatre that had had only 12 days' experience in running as a new operation at that time?

Mr. Wright: If the Court please, the question is now, it seems to me, completely unintelligible and pure argument in any event and still omits factors which would necessarily have been taken into account in determining any fair rental, to-wit: the number of theatres which would play the same pictures ahead of this theatre and the prices at which they would play at the period of time during which they would exhibit them.

The Court: There is considerable merit in what you say, but there is some testimony directed to the same proposition. I think the confusion is overcome, perhaps, by adding what I suggested, but there are so many factors entering into this question; now, if you knew what the gross from the house was, the answer would be simple. Now, the question is assuming that there is a gross of $1600 for the four days of the show, over which this film will be showed. Then [fol. 4366] I think the witness is competent to answer what would be a fair charge for the service.

Mr. Wright: Of course, the witness has already testified it isn't customary to assume a gross where they have a new operation. They run some pictures and check them and find out what the gross is.

The Court: If there is no basis for it, of course, it wouldn't count much, but taking that assumption, assuming this house grossed $1600 during the period of this film, then what would be a proper charge, and I think you can go farther than that and state if there is Bingo.

Mr. McClennen: That is the assumption I make.

Q. Mr. Smith, what would be a proper——

A. In my opinion a proper rental, if we were to deal on a percentage basis, would be 35 per cent of the gross. It was estimated it would do $1600. After taking from that gross $100 paid for the second feature "Dressed to Kill," then you have 35 per cent of $1500, and in arriving at the flat rental, 35 per cent of the gross of $1500 as a flat rental, maybe shading that a little bit, because you are estimating and you don't know whether you are right or wrong, and [fol. 4367] when a man pays a flat sum, that is a guarantee and the money goes to you; you are not sharing in what comes in in that case, and he is entitled to a figure that would be less than 35 per cent of the estimated gross.

Q. Then, if it was $1600, you would take away $100 for the second feature?

A. Yes, sir.

Q. Making it $1500; then if there was no Bingo your answer amounts to saying 35/100 of $1500?

A. Yes, sir.

Q. And if there was to be deducted, not Bingo at cost, but instead the difference in the admission price when Bingo was played over what that admission price was when Bingo was not played and the percentage were figured only on the balance of the $1600 which came from the 25-cent admission, by which the $1600 had been arrived at, your figure would still be 35 per cent of $1500?

A. Yes, sir.

The Court: In other words, you are figuring on a gross of the same amount, I mean, the average right through the same?

The Witness: Yes.

The Court: That the attendance would level off the gross in estimating your percentage?

The Witness: Yes.

[fol. 4368] The Court: I mean by that your statement relates to the inquiry where a charge of 50 cents is made, that might fall down to 25 cents certain dates, and that is made up on the bingo nights, so the average would be $1600 gross?

The Witness: Yes, sir.

By Mr. McClennen:

Q. Mr. Smith, in determining your sales policy——

The Court: Just one question. Let me ask you: What is the name of the picture you referred to?

Mr. McClennen: "Sun Valley Serenade."

The Court: Where was that played in Syracuse?

The Witness: I don't know, sir. As Mr. Wright pointed out, I was not with the Company at the time that picture was put into release. I did see the picture when I joined the Company. It is a Sonja Henie picture.

The Court: The question is where it was played and what the charge was.

Mr. McClennen: I think from contracts not yet in evidence we will be able to answer that in a moment. I don't recall that the testimony shows.

Mr. Wright: We have the contract that shows where it played.

The Court: I forgot what that was.

[fol. 4369] Mr. Wright: We put in the contracts for all of the theatres in Syracuse that played the picture, with one exception.

The Court: The point of my inquiry was: What percentage does that show?

Mr. McClennen: Those are the contracts I told you we were sending for, if your Honor please, to show what the runs were.

Mr. Wright: We have the contracts in evidence.

The Court: What does that show?

Mr. Wright: The contract for the first-run shows "Sun Valley Serenade" sold first-run, Syracuse, to the Paramount, Strand, Keith or Eckel, a contract dated August 8, 1941, with S.K.E. Operating Corporation, "Sun Valley Serenade" to play the Keith or Paramount seven days, no guaranteed minimum license fee, distributor's fee on the gross receipts 35 per cent.

The next contract was between the same parties and the same date, which is Exhibit 964, provides for a moveover to be played at the Eckel Theatre, with no minimum guaranteed license fee, to play seven days. The distributor's [fol. 4370] share of the gross receipts 25 per cent.

The second-run contract has not yet been produced.

By the way, has that been received yet?

Mr. McKay: No.

The Court: What was the name of that?

Mr. Wright: The Eckel.

The Court: Was that a down-town theatre?

Mr. Wright: Yes. The Eckel Theatre and Paramount were all operated by the Schine-RKO pool.

Mr. McClennen: These two contracts, if your Honor please, are Exhibits 963 and 964, which were approved 11 days after this offer was made by Mr. Rowell to Mr. Wallace.

Mr. Wright: The approval date does not appear here.

Mr. McClennen: The approval date appears stenciled in at the signature as 10-14-41.

Mr. Wright: Well, this is the approval date here, 10-14-41.

The Court: What significance has the approval date?

Mr. McClennen: Because there was no contract in existence up to the time of the approval date, October 14, 1941.

The Court: For this film?

Mr. McClennen: For this picture, to any theatre.

Mr. Wright: Well, if the Court please, there was an appli- [fol. 4371] cation on August 8, 1941, which set forth these terms, and which was ultimately approved. There is no question about what had been done prior to October 3rd.

The Court: What was the theatre after that?

Mr. Wright: The second-run theatre was the Regent, for which we don't have the contract.

The third-run theatre was the Cameo, and I believe the contract is here. Yes, that is application date September 12, 1941, and is signed by Herman Lauber. If it has an approval date on it I don't know where it is.

The Court: What are the terms?

Mr. McClennen: It hasn't in terms any approval date, but I rather suspect this date up here, September 25, 1941, is the approval date on Exhibit 965.

Mr. Wright: I suppose that probably is too.

Mr. McClennen: There is a stamp up there "September 25, 1941."

The Court: What are the terms?

Mr. Wright: The terms are on "Sun Valley Serenade," a minimum guarantee of $100, and the distributor's share [fol. 4372] in gross receipts is 35 per cent. The exhibitor is given the privilege of deducting the cost of the second feature, not to exceed the price of exhibitor's bottom flat from gross receipts of 201 and 205, before computing distributor's share. It is "Sun Valley Serenade."

The Court: Is this the Cameo?

Mr. Wright: This is the third-run, yes.

The Court: What is the capacity of that theatre?

Mr. Wright: It doesn't appear from the contract.

The Court Is that a suburban of down-town theatre?

Mr. Wright: I am not sure whether it is down-town or not, but it was the third-run. The witness Rowell testified it was the exclusive third-run in Syracuse.

The Court: I suppose the amount depends on the class of house.

Mr. Wright: I would assume so. I would assume it would also depend on the admission prices charged and the period when the picture played and how much of the customer's dollar had been taken out in the course of prior engagements at other theatres.

The Court: Ordinarily charge rent after the first showing?

[fol. 4373] Mr. Wright: Ordinarily the rentals would decrease with the age of the picture.

The Court: Proceed then.

Mr. McClennen: It does not appear in evidence the Cameo Theatre was in fact a neighborhood house running nights only. It does not, of course, appear in evidence the returns which the distributors received on those 35 per cent contracts from those other theatres, so I am not in position to state those figures to you.

The Court: I do not recall. You say there is nothing in the evidence to show the location of the Cameo. Certain of these theatres are outside of the business district center.

Mr. McClennen: I am not sure enough of its being in evidence to assert it. It seems to me it was, in general, stated that we have heard these other names of the downtown theatres and the rest were neighborhood houses, but I can't remember at the moment the Cameo having been mentioned.

The Court: We will find out later.

[fol. 4374] By Mr. McClennen:

Q. I notice in Mr. Wright's remarks to the Court just now the assertion that the percentage should go down as the runs progressed onward or downward, as you may call them. Does that affect at all your testimony to the contrary, given this morning, that the effort was to obtain the same percentage of gross receipts from the later runs as from the earlier?

A. No, sir.

The Court: You mean by that the effort was to obtain the same percentage?

The Witness: Yes, your Honor.

The Court: Same percentage of each run?

The Witness: Of each run.

By Mr. McClennen:

Q. Mr. Smith, have you any approximate information as to the number of the approximately 17,000 theatres you have spoken of in the country that are situated in towns or cities where there is only the one theatre to which you can sell?

A. I don't have any knowledge of that, sir.

Q. When a theatre is the only theatre in the town what is the sales effort that you make directed against? That is, what competition for that business?

A. Where there is only one theatre we are in competition [fol. 4375] for the sale of our product with at least nine other companies—do you wish me to name the companies, sir?

Q. You may as well, and I am asking this as of some time prior to 1940, so include your own company, making ten, and name the list.

A. I will start with the best company, 20th Century-Fox, and Paramount, Metro-Goldwyn-Mayer, Warner Bros, RKO, Universal, Columbia, Monogram and Republic.

Q. I counted only nine there. Did you mention United Artists?

A. United Artists. I did not mention it.

Q. Under those circumstances do you find it necessary to attune your prices so as to see that you get the business, if possible, as against the nine others?

A. Yes, sir.

Q. When you have a place where there is more than one theatre and the two or more theatres are in operation of disconnected parties, in exercising your desire to select your customer, as between the two or more, what are the elements that you take into consideration in, let me say, the years 1932 to the beginning of the year 1940?

A. In selecting a customer for our product in a competitive area during that period of time we would take into consideration the ability of the customer to gross. We [fol. 4376] would want to know how much money one theatre could be expected to do on a certain picture as against the amount that the other theatre would be expected to do. We would try and arrive at that estimate, if we didn't have figures. Then we would take into consideration the operation of the theatre, the people who were conducting that business. We would try to find the more substantial business man of the two. We would take into consideration the theatre itself. We, of course, like to play our pictures in the nicest theatre, a theatre that has comfortable seats, a theatre that shows a good clear picture on the screen, a theatre that is well-ventilated and well-managed all the way through. We would prefer to have our pictures play in that type of theatre. If the admission price of one theatre was higher than the admission price of the other we would, in general, desire to play our picture in the theatre charging the higher admission price.

Those would be some of the factors. There would be others too.

Q. In determining whether or not you will sell a second-run in that town, or in that competitive area, or any later runs, what are the elements that you take into consideration?

[fol. 4377] A. In selecting a second-run in a competitve area we take into consideration, first, a protection of the film rental that we expect to get out of the first-run. Before we select a second-run theatre we make sure that the operation of that theatre and the playing of our picture there will not harm the possibility of that picture during its full amount of business, the full amount of business it is capable of doing at the first-run house.

We take into consideration also the same elements that we take into consideration for the first-run theatre, the condition of the house itself, the projection, sound, ventilation, and so forth.

We take into consideration the location of the house. If there is a house in an area that is on a busy corner, or is located where more people are closer to the theatre, we like to play that house, rather than one that is around the corner and off the beaten path.

Q. Will you describe the terms "hold-over", "carry-over" or "move-over"? As they are used in the trade.

A. The term "hold-over" means continuing the engagement of a picture for more than the contracted number of days in the same theatre. For instance, in Buffalo, we generally contract for a picture to play seven days at the [fol. 4378] Great Lakes Theatre. If the picture does a very substantial amount of business it is the custom of the Great Lakes Theatre to hold that picture over for an additional seven days and that would be a "hold-over".

Sometimes they hold a picture over for a third week and then you have 14 days "hold-over".

A "carry-over" and "move-over" is moving the picture over or carrying it over to another theatre in the same city, in the same competitive area, another first-run theatre.

Carry-overs and move-overs are continuation of the first-run and they are in the theatres that are owned, or theatres in which the first-run theatre has an investment.

Q. Where there is either a "hold-over", a "carry-over" or a "move-over", is the entire operation still treated as the first-run?

A. Yes, sir, including the admission price, which remains the same throughout the entire run.

Q. When you sell a picture—and, by the way, that term "sell" is the one regularly used in the trade to describe your licensing a picture for exhibition?

A. Yes, sir. We don't really sell the picture to the theatre. We deliver it to the theatre for a contract engage- [fol. 4379] ment and then we get that picture back.

Q. When you license a picture to a theatre on a percentage of the gross receipts how do you know how to bill a theatre?

A. The theatre prepares a box-office statement. They prepare the figures daily. That box-office statement shows the number of admissions sold at each performance during the day and the price at which those admissions were sold. Then at the conclusion of the engagement we have a statement of the entire run of the picture and sometimes we check the theatre. We have a checker at the box office and we compare our count with the report that the theatre gives us. Sometimes there is a slight discrepancy between the two figures.

Q. Are those percentage reports ordinarily signed by the man who operates the theatre at the time that the percentage picture played?

A. They are signed by the man who is operating the theatre or his theatre manager, or some one from his company.

Q. And those reports, when they come in, if they haven't been tested, checked, or otherwise shown to be erroneous, are taken as the basis for billing the theatre for the rental of that picture?

A. Yes, sir.

The Court: We will suspend for five minutes.

(Short recess taken.)

[fol. 4380] Mr. McClennen: I am told, and I am not sure that it is in evidence, that "Sun Valley Serenade" was played at the Keith from September 18th to 24th, seven days, and that at the Eckel, September 25th to October 1, seven days.

Mr. Wright: If the Court please, if we are going to have evidence on this, I suppose we ought to have it introduced in the usual way. There are playoff records which I suppose will show all the rentals received.

Mr. McClennen: I did not suppose there was any question about it and I withdraw my remark.

Mr. Wright: I think we ought to know what they received.

Mr. McClennen: I said I didn't suppose there was any question about it and I withdraw my remark.

By Mr. McClennen:

Q. Since you have come to the head-ship of this sales department of Fox, have you had occasion to familiarize yourself with the policies that were prevailing with the Company in the period prior to your coming there?

A. Yes, sir.

Q. I confine this question which I am about to put to you to your personal knowledge, not what you have been told [fol. 4381] by anybody else; to your knowledge has there been any conversation with any of the defendants or their executives or employees not to deal with any competing exhibitor or to restrict the terms of such dealings?

Mr. Wright: If the Court please, that question isn't one that could be properly answered in my opinion by any witness, least of all this one who is now giving testimony. That would be purely hearsay in any event, what came to his attention with respect to the prior policy of the Fox Company, and certainly isn't competent evidence on any issues that we are trying here.

The Court: He was the manager of the company.

Mr. Wright: He was asked about, as I understand it, the policy with respect to the period before he came with the company, if I understood the question correctly.

Mr. McClennen: This question is not directed to the Fox Company. It is directed to his personal knowledge and was prefaced by a warning that he should not go outside of his personal knowledge. This man has been a head in the sales department of Warner, R.K.O. and United Artists during [fol. 4382] the periods involved in this case, that is, from 1932 to 1942. He did not come to the head-ship of Fox until after the date that has been selected as terminal, May 19th, 1942.

The Court: Well, at least your question should be limited to the companies with which he was employed. I don't think he can answer the question generally as to all the companies.

Mr. McClennen: If your Honor please, he might have been present at a conference at which he heard some defendant say something to somebody else. I am clearing the way of his knowledge.

The Court: That is too indefinite for a denial of the charge. How can the plaintiff seek to show the contrary?

Mr. McClennen: If there was nothing, he will answer "No", and if there was something then it becomes important to find out what that is.

The Court: Suppose he answers "No"; what position would the plaintiff be in to show the contrary of that in every company?

Mr. McClennen: I am asking him only his own personal knowledge.

[fol. 4383] The Court: I will disallow it except you show the companies.

Mr. Wright: If the Court please, even as to that it would be objectionable as calling for a conclusion. What he ought to state, if he is going to state anything, is what negotiations he had with the defendants here, what was said during the course of these negotiations. It doesn't appear yet whether he participated in them, or whether he participated at all. All that would have to appear there to be any foundation for this question now being asked.

The Court: Mr. Smith, in his position, it seems to me his relations with these companies since 1932 is such he had some contact with those making licensing agreements.

Mr. McClennen: I am not asking——

Mr. Wright: The extent of the contacts, who they were with, when they occurred, where they took place is something he isn't informing us about at all. I submit before he is given an opportunity to draw any general conclusions, such as he is asked to draw here, there ought to be testimony [fol. 4384] at least fixing the scope of these matters he is talking about.

Mr. McClennen: I am not asking him for any conclusions whatever. I am asking him for the plain facts.

The Court: Well, it is the same question we had some time ago, the question of whether any threats were made of that nature. Just read the question there.

(Question read, as follows: "Q. I confine this question which I am about to put to you to your personal knowledge, not what you have been told by anybody else; to your knowledge has there been any conversation with any of the defendants or their executives or employees not to deal with any competiting exhibitor or to restrict the terms of such dealings?")

Mr. Wright: That plainly calls for a conclusion as to what the nature of the conversations were, if any, the kind of a conclusion that your Honor has got to draw ultimately in this case from the evidence that is offered as to what the actual course of dealings was. It isn't for this witness to [fol. 4385] state that conclusion himself with no opportunity on our part to know what these conversations were that he is basing this conclusion upon.

The Court: When you use the word "Conversation", I suppose if there was any statement made in those respects——

Mr. McClennen: Yes, if your Honor please.

Mr. Wright: It isn't so much merely a question of a statement made, it is the way the statements——

The Court: I am construing the statement, that is all. I think I will receive it. It is not a trial by jury, and if necessary or advisable I will strike it out.

The Witness: The answer is "No, sir".

Mr. McClennen: That is the end of the direct examination.

Cross-examination.

By Mr. Wright:

Q. Mr. Smith, you testified quite generally with respect to the policies and practices and the methods of distribution employed by these companies with which you were associated. Is your testimony the same as to all of them?

A. In general, yes, sir.

[fol. 4386] Q. All, United Artists, R.K.O., Warner and Fox, all use the same method of distribution?

A. No, sir.

Q. What are the differences, if any?

A. Well, every company has its own. Each company that I have been with has had its own policy, and there is no standard set of policies for distribution companies that I have ever heard. All the policies in the companies I have been with have been made as conditions developed. Selling policy for one season's product in the same company might change. The motion picture business is a very timely business and decisions are made quickly, and you have to anticipate things. I don't know of any standard set of rules.

Q. It is your testimony then there wasn't any uniform selling policy as between these companies you have been associated with, is that right?

A. Yes, sir.

Q. There were also some differences in actual methods of sale and distribution, were there not?

A. Yes, sir.

Q. That is, United Artists would sell pictures of the smaller groups?

A. Yes, United Artists was quite different from any of the others. That company was owned by—there were five [fol. 4387] shares of stock only in that company. One share was owned by Mary Pickford, one by Charlie Chaplin; one by Alexander Cordeau of England; one by the ex-deceased Douglas Fairbanks—that four.

Q. And the company itself was engaged just in distributing films?

A. Yes, it was a separate distribution company that distributed the pictures made by United Artists companies. United Artists, they were independent producing units, such as Sam Goldwyn. Sam Goldwyn made pictures for distribution through United Artists. David Selznick made pictures for distribution by them. Sam Goldwyn owned the fifth share of stock.

The Court: What?

The Witness: He owned the fifth share of stock.

The Court: You said here United Artists were not a producing company; what I understood you to say was individuals produced pictures for them to sell?

The Witness: Yes, sir.

By Mr. Wright:

Q. United Artists owns no theatres and has no theatre affiliates?

A. That is correct.

Q. And didn't have while you were associated with them?

[fol. 4388] A. That is correct.

Q. On the other hand, R.K.O. and Fox and Warner companies all have theatre operating affiliates, isn't that right?

A. Yes, sir.

Q. Now, at the time you entered the industry, that was when?

A. 1914.

Q. 1914?

A. Yes, sir.

Q. At that time there were a great many more pictures being produced than now, were there not?

A. In 1914?

Q. And distributed?

A. As a matter of fact, there were no feature pictures being produced at all. We hadn't yet gotten to that point.

Q. When did they get to the point of feature pictures?

A. About 1915 they started.

Q. In 1915 and 1916, at that time there were a large number of those companies making and distributing features?

A. No, sir, the industry was very young at that time and there weren't too many people making pictures. As the industry progressed and became established there were more companies came into it, more pictures made.

Q. How about 1917, 1918 and 1919?

[fol. 4389] A. They kept coming up. The number of pictures kept increasing and the number of theatres kept increasing. The market became—the market grew for more pictures.

Q. And there were a large number of distributors in the market then, were there not?

A. Yes, sir, I would say so.

Q. And those distributors individually, for example, Paramount then releasing over 100 features a year?

A. Paramount at one time released over 100 features a year. I don't recall the exact year.

Q. They have never released that many since, have they?

A. No, they haven't.

Q. Generally at that time the emphasis was simply on quantity of film rather than quality?

A. No, sir.

Q. Well, would you say there were more or less features released in, let us say, 1920, than are being released today?

A. Well, I can't answer that. I don't have the records of that. They are easily available.

Q. What is your best recollection?

A. I would say there might be a lesser number today.

Q. Then prior to 1920 the only important theatre owning distributor was Paramount, is that right?

A. Well, I can't quite place the period. Paramount was [fol. 4390] one of the first companies, first distributing company to also engage in exhibition.

Q. And it was some time around that period, or in the 20's that other distributors and theatre operating companies became associated together in a common enterprise, such as Loew, the Loew theatres and Metro-Goldwyn-Mayer pictures?

A. Yes, sir.

Q. And by 1930 you had about the same general set-up in the industry with respect to theatre ownership by distributors that you have today, is that right?

A. Yes, there was a little different financial set-up with the different companies. Quite a few of them went through bankruptcy and re-organized.

Q. Yes, I understand that, but in 1930, the Fox, Loew's, Paramount, R.K.O. and Warner all had very substantial circuits of theatres, isn't that right?

A. They had theatre holdings.

Q. Well, they were large circuits?

A. Yes, they were.

Q. And they continued to have those down to the present?

A. Yes, sir.

Q. And they were during this period the only distributors who had these theatre circuit affiliates, is that right?

A. No, sir, for a time the Universal Company had some [fol. 4391] theatres. I don't believe they have any today.

Q. That was during what time?

A. I can't quite place the year when that was.

Q. Do you remember what circuits they were affiliated with?

A. They had theatres, not particular circuits, they had—the company bought theatres, either bought them outright or bought an interest in certain theatres scattered throughout the United States.

Q. That period was prior to 1931, wasn't it?

A. I would say so, yes, sir.

Q. Then the other principal distributors at that time besides the ones I have just named were Columbia and United Artists?

A. Yes, sir.

Q. So you had those eight companies were generally referred to as the major film distributors, is that right?

A. Yes, sir.

Q. And produced substantially all of the pictures you call "A" pictures?

A. Yes, those companies produced most of the better quality of pictures.

Q. My question was substantially all, is that correct?

A. Yes, that would be correct.

Q. And I believe you said about 70 per cent of your film revenue comes from the first-run theatres throughout the [fol. 4392] country?

A. Yes.

Q. And most of those first-run theatres in the cities of 100,000 or more are theatres in which either Fox, Loew's, Paramount, R.K.O. or Warner has some financial interest?

A. I don't know I would use the word "most" there. I would say they have many theatres.

[fol. 4393] Q. You know that they have the great majority, do you not?

A. I would have to look over the situation to answer that.

Q. You don't recall it?

A. No, sir.

Q. And then the first-runs in the smaller cities are principally owned by large, so-called, independent theatre circuits, is that right?

A. No, sir.

Q. You would say no?

A. I would say no. There are many individual theatre operators in the United States, very many.

Q. But they produce the smaller part of the revenue, isn't that right, total revenue?

A. There are many independent exhibitors in large cities. There is one here in Buffalo, Mr. Yellen, at the Century Theatre. He is an independent theatre operator. The Music Hall is an independent operation.

Q. In addition to the large theatre circuits affiliated with the distributors, there are large theatre circuits that you refer to in the trade as independent circuits, is that right?

A. Yes, sir.

Q. Those independent circuits are circuits in which a distributor does not directly own the financial stock interest, isn't that right?

[fol. 4394] A. There are circuits in which a distributor does not own directly or indirectly——

Q. A stock interest?

A. Yes, sir.

Q. And among those circuits is the Schine circuit?

A. Yes, sir.

Q. And do you know about how that circuit compares in size with respect to other independent circuits?

A. I believe the Schine circuit is just about the largest independent theatre circuit.

Q. And has been for how long, would you say?

A. I would say for the last five or six years.

Q. And in selling your films to all of the theatres, I believe you refer to a number of accounts that you sold. Did you use that term synonymously with theatres?

A. Included in that number there might be some repeat engagements or return engagements.

Q. But when you spoke of the 15,000 accounts on a good picture you meant the picture would play in approximately 15,000 theatres, rather than that you would bill 15,000 exhibitors, isn't that right?

A. Yes, sir. There would be 15,000 engagements of the pictures.

Q. And with exception of what you refer to as repeat engagements?

[fol. 4395] A. Yes, sir.

Q. In the same theatre, that would be the number of accounts that would be approximately the same as the number of theatres in which the picture played?

A. Yes, sir.

Q. And your selling policy, as I understand you, is generally to sell the maximum number of theatres that you can, is that right?

A. Yes. Our policy is to sell the maximum number of theatres that we can sell, having in mind always the best interest of our companies. There might be some theatres we could sell and wouldn't sell, for many reasons.

Q. Generally speaking, you get the most money out of the picture by having it shown for as much playing time as you can get and as many theatres as you can supply a print to, is that right?

A. That is so. Generally figure a film in the vaults in our various branches doesn't make any money.

Q. On this service of prints, of course, when you first have your print supply made up you distribute a certain share to each exchange based, I suppose, on the number of theatres you expect the exchange to service; isn't that right?

A. Yes. History enters into that. Each branch has a [fol. 4396] quota of prints. For instance, the quota of prints for the Buffalo branch, on an A picture, would be, say, eight and every time an A picture comes along Buffalo knows that they are going to have eight prints and that number is arrived at by history, what happened in the territory. We feel that territory can absorb eight prints of a picture and eight prints will take care of the needs of the territory. If they need more they borrow some from another exchange.

Q. That is what I was going to say. When you have a demand for prints in a particular exchange area in excess of the amount that the exchange happens to have at the time, you may borrow a print from some other exchange, is that right?

A. Yes. It is not too easy to get them because the exchange manager likes to have his own prints there and he doesn't get any credit for any billings that are made in another territory, so it is not too easy to move them around.

Q. As I understand it, the distribution of prints throughout the whole country is under a central control from New York City, isn't that right?

A. Yes, sir.

Q. So that you may, as circumstances require, divert prints from one area to another?

[fol. 4397] A. Yes, sir.

Q. In selling films you have the same personnel sell the circuits that you do the individuals, small theatre-operators?

A. No, sir.

Q. The smaller operators are sold by the salesmen and the branch managers?

A. Sometimes and sometimes the executives sell them too.

Q. I am speaking generally.

A. Generally, yes.

Q. And the circuit deals are negotiated, generally, in New York?

A. No, sir.

Q. Negotiated by the so-called New York sales representatives of the company?

A. Yes, sir.

Q. And in your general scheme of release do you sell the first-run accounts in the various areas first?

A. Yes, sir.

Q. You hold up the selling of the later runs until after you have sold the first-run accounts?

A. It isn't necessary to do that. Sometimes it goes that way.

Q. Sometimes you do and sometimes you don't?

A. Since you sell the later runs for a later run and since [fol. 4397-A] they have a position established by history, by past procedure, you can sell any time that you want to.

Q. That is, there is nothing to prevent you selling them?

A. No, sir.

Q. Before you sell the earlier runs?

A. Of course when you do that you have to be very certain you are going to be able to sell your earlier runs, because if you don't get the early run you find yourself with a second-run customer and no first-run customer, and you will get very little money out of your picture. You lose that substantial money that comes from the first-runs.

Q. When you do that I suppose you go back and attempt to negotiate a first-run instead of a second-run deal?

A. In general that man wouldn't be able to operate on a first-run policy. You wouldn't be able to salvage much that way.

Q. When it comes to servicing the prints that, of course, is dependent upon such clearance provisions as you may have in the contracts that are sold, is that right?

A. Yes, sir.

Q. And then the number of prints into the subsequent runs is controlled by the clearance provisions, if any, in the first-run contracts, isn't that right?

A. Clearance is one of the most important things that we [fol. 4398] sell, and every contract has—every theatre has a position and every theatre has clearance and theatres over a long period of time fit into a pattern of clearance. That was established first by the theatres themselves.

Q. Just see if you can answer the question there.

A. Would you repeat it, please?

(Question read).

A. No, sir.

Q. It isn't? That is, when you have a provision in the first-run contract that says that the second-run can't play the picture until 30 days after the exhibition of the film in the first-run house you are perfectly free to serve a print to the second-run house within the 30-day period?

A. No, sir.

Q. Where your first-run contract has clearance provisions in it, then it does control the service of prints to later runs, does it not?

A. Yes, the clearance controls the distribution of your picture in a given area.

Q. Yes. And these clearances that you refer to are stated generally in the contracts which you make with the exhibitors, is that right?

A. Clearance is always stated, sir. It is a very important [fol. 4399] part of our contract.

Q. Yes. And it appears in the contract, and the contract will generally fix the playing position of the theatre that is playing the picture, either with reference to some other theatre or certain run in the town; is that right?

A. Yes, sir.

Q. In your contracts you also customarily include a provision with respect to minimum admission prices?

A. Yes. The contract has a spot there where you write in the admission price that the theatre is to charge. Is that what you refer to?

Q. Yes. The contract form, the license agreement.

A. Yes, sir.

Q. Has a space for writing in the matinee, evening and adult and the children admission prices, isn't that right?

A. Yes, sir.

Q. And under the contract the exhibitor undertakes to charge not less than those prices during the time he is exhibiting the pictures named on the contract; isn't that right?

A. Yes, sir. That is considered to be his admission price scale. That is the price he advertises in the newspaper, that is the price the public knows he charges, that is the price posted on his box-office window, so when someone [fol. 4400] goes up to the window they can look at the scale and know what they have to pay to get in.

Q. The price you insert in the contract that he undertakes to charge is generally the price he happens to be charging at that time or contemplates charging during the play-off of the contract; isn't that right?

A. Yes, sir.

Q. And that price is generally a uniform one, is that correct?

A. No, sir. I don't quite know what you mean by "uniform one."

Q. Perhaps I didn't make myself clear. These films, that is, up until the year 1941, you customarily included in the single agreement all of the feature films that you licensed, or that you expected to have available during one year of motion picture season; isn't that right?

A. We tried to sell all the pictures we had available for a season, yes.

Q. Those pictures that you would have available would vary so widely in cost——

A. Yes, sir.

Q. —and also vary widely in box-office, the ability to draw patrons to the box office?

A. Not at the time we were selling them.

[fol. 4401] Q. Even at the time you were selling them you assumed that certain variations would occur, did you not?

A. Yes, sir. We sold pictures at different terms.

Q. You would have different price brackets, is that right?

A. Yes, sir.

Q. And the ones you thought were going to be the better ones you would generally stipulate a guarantee against the percentage on?

A. No, sir.

Q. You didn't try to do that?

A. We would try to get the better terms for better pictures and there was a question of what the company policy was as to terms.

Q. Your best terms, I suppose, are always a guarantee against a high percentage. That is, the best and most favorable deal you can make?

A. History comes in there again. If we have a customer who is a solid customer, a man who pays his bills and gives us an honest count, and we have been dealing with him over a long period of time, we don't get a guarantee from him. We are willing to sell percentage.

Q. Will you please answer the question?

A. I am trying to answer.

Mr. Wright: Will you read it?

(Question read).

[fol. 4402] The Witness: I really believe your question requires an explanation.

Q. You can't answer that yes or no?

A. No, sir.

Q. In any event, in making deals with the exhibitor, you attempt to put the terms in the contract which will get you—which will assure you of the most revenue from the exhibition of the film in the theatre, isn't that right?

A. Yes, sir.

Q. And there is always, of course, a substantial difference in what you try to get and what you get?

A. No, sir.

Q. It never happens?

A. It does happen, yes, but your question was "always".

Q. Sometimes you get what you try to get; is that right?

A. Many times you get it.

Q. And many times you get less than you think you are entitled to get, is that right?

A. Yes, sir.

Q. And the extent that you approach what you think you ought to get, I suppose, is in part dependent upon the relative bargaining power of the exhibitor that you are dealing with, is that right?

A. That, in addition to the selling ability of the man [fol. 4403] who is attempting to get the deal.

Q. That is the result of the combination?

A. Buyer and seller.

Q. The selling ability of the distributor and the selling ability of the exhibitor?

A. Yes, sir.

Q. Your results in the particular situation may vary widely from the so-called 35 per cent ideal?

A. We try to get 35 per cent terms from all runs. We do our very best to get them. Sometimes we don't get it.

Q. Of course, specifically, you remember the deals made with the Schine Circuit there while you were sales manager?

A. I have always considered the Schine Circuit terms to be very satisfactory terms.

Q. That was not my question. Will you confine yourself to the answers to the questions?

A. I am sorry.

Q. Counsel here can make the necessary argument. The answer is "Yes" to my question?

A. Would you repeat the question?

(Question read).

A. Which company do you refer to?

Q. Warner?

A. Well, as I recall there, the deals I made with the [fol. 4404] Schine Circuit while I was with Warners, they were comparable with the deals we made with anybody else.

Q. Do you recall selling features to the Schine Circuit on the basis of a 20 per cent rental or a flat rental at the exhibitor's option?

A. I don't recall that, sir, but if you will mention the theatre or town I believe the contract will show what it was.

Q. You don't remember of making a deal of that kind?

A. No, sir.

Q. And you remember selling the Schine opposition on terms like that?

A. No, sir. In selling a group of pictures to the Schine Circuit there might be pictures there, some are sold at 35 per cent terms, some are sold for lesser terms, some on the same contract are sold flat. It depended on the quality of the picture, in general, and your ability to get the price.

Q. You would always try, of course, to get the most that you could?

A. Yes, sir.

Q. For any of the pictures?

A. Try very hard.

Q. And if you thought you could get 40 per cent you would try to get 40 per cent, is that right?

[fol. 4405] A. Yes, sir, if we felt 40 per cent was fair.

Q. The question of whether it was fair or not was really primarily a question of whether you thought it was fair to your company, isn't that a fact?

A. No, sir.

Q. You attempted to get only what you thought was fair to the exhibitor?

A. Fair to both. After all, you sell a man today, you have to go back and sell him again tomorrow, and if you over-charge him you probably won't be able to sell him again.

Q. But you are in a more comfortable position when you can take care of an over-charging by the way of adjustments, isn't that right?

A. We consider that a good business position to be in.

Q. You find that if you sell a picture on 35 per cent and you later feel it is worth 40 you have considerable difficulty in going back to the exhibitor and telling him you want 40 and getting it?

A. That is very difficult to do.

Q. So your aim is always to get in the contract in the first instance the maximum rental which you think you can get out of the theatre; isn't that a fair statement?

A. No, sir. I would still like to include the man that I am selling to in that thought. I don't like—you might be [fol. 4406] able to get your 40 per cent and he might agree to pay it, but you might be getting too much from him.

[fol. 4407] Q. And you might make such a contract, is that right?

A. Well, it is possible.

Q. It has been done?

A. I assume it has.

Q. Now, with respect to these admission prices, as I understand you, customarily in selling all the theatres that you sell, you write in these admission price provisions in the contracts at the time they are made, is that right?

A. Yes, sir.

Q. Then you expect the exhibitors to maintain those prices on the pictures that are covered by the contract, is that right?

A. Yes, sir.

Q. And in general those admission prices are to some extent determined, are they not, by the time in a particular competitive area that the exhibitor gets the picture?

A. No, sir, I wouldn't say that.

Q. You don't think that is generally true?

A. No, sir, there are many, many theatres, many suburban and subsequent-run theatres that charge just as much as the first-run theatre. There is one theatre I have in mind in New York City, a subsequent-run theatre, the Plaza Theatre that charges more than first-run theatres.

[fol. 4408] Q. What you are giving me are the exceptions to the general rule?

A. They are more than the exceptions, they are a great many theatres.

Q. They are more than the exceptions?

A. Yes, sir.

Q. That is, ordinarily you stipulate an exhibitor's admission price that he is going—in his contract that he charges an admission price of 25 cents, you would not expect him to play the pictures at that price if they had played a substantially number of theatres in the same competitive area at, we will say, 15 or 20 cents, is that correct?

A. I would say, no, I can't answer such a general question, because there are so many factors you have to have in mind in determining that. I can't answer the question.

Q. I understand there are many factors; one factor in determining when one exhibitor should be permitted to play films with respect to the time that another competing exhibitor should be permitted to play them, is the admission price charged by the theatre?

A. Admission price is one factor in determining that, yes, sir.

Q. As I understood you to say, when the theory on which [fol. 4409] protection clearance, as you call it, was introduced in the business, it was to protect the investment of somebody in a theatre by stipulating that if he plays the first-run at such an admission price, why, then, it won't be played for a certain number of days in theatres which might charge a lower admission price, is that correct?

A. Your contract with that first-run theatre would stipulate its clearance. It would have nothing in there in regard to the admission price to be charged by any other theatre.

Q. All it would have would be a statement of the clearance, but that clearance would be fixed at least to some extent with reference to the admission prices at which the pictures bought might be subsequently exhibited in the same competitive area, is that right?

A. Admission price always is one of the factors in determining the clearance.

Q. And in general the shape that your clearance and admission price structure takes in any particular competitive area is that the first-run theatres charge the highest price and then the second-run the next, and so on down the line through regular runs?

A. With many, many exceptions.

Q. And those exceptions, of course, depend, I suppose, on [fol. 4410] individual circumstances in the evaluation of individual cases?

A. It depends also on the possibility of the theatre to get that kind of an admission price. They may be in an area where they know they can get it and try to get as much as they can.

Q. I assume in all cases, as far as the exhibitor is concerned, he wants to get the most admission price he can get, considering what he has got to play?

A. Yes, sir.

Q. And the character of what he has got to play is, of course, determined in part by the extent that what he is offering the customers has been already offered them in other theatres in the area that he draws from?

A. Yes, sir.

Q. As far as the later run operator is concerned, he ordinarily has no way of controlling the amount of playing time that occurs in the theatres that play ahead of him over particular pictures, is that right?

A. Yes, sir.

Q. So that the only protection that is got for whatever investment he may have in his theatres is simply the good faith of the distributor in seeing that the value of the picture isn't completely destroyed or eliminated before it gets to him?

[fol. 4411] A. Well, generally a man like that, Mr. Wright, knows before he leases a theatre——

Q. Just see if you can answer the question.

A. Will you read the question, please?

(Question read.)

A. I would say "No" to that question.

Q. Well, what protection does his contract give him with respect to the matter that I just stated?

Mr. McClennen: Just a moment. That I object to. The contract should be laid before the witness if such a question is to be put.

The Court: Overruled.

The Witness: I could not answer that question——

The Court: It is a comparison.

The Witness: (Continuing)—without naming a specific theatre and specific situation.

Q. Let us assume a theatre that is playing in Syracuse at a 25-cent admission; now, all you do is sell him the contract which provides that he charges 25 cents and he plays the picture; he can play the picture on a certain date; he has no assurance at all as to the extent to which the value of the picture may have been completely absorbed by prior runs, isn't that right?

A. No. sir.

Q. Well, what protection does he get?

[fol. 4412] A. He knows ahead of time how previous pictures have played to begin with so he knows the situation, and there is clearance straight on down the line. The first man takes clearance over the second man; the second man takes clearance over the third man; the third man takes clearance over the fourth man, and so forth. It runs all the way down from the first man to the last man. With every theatre there is clearance until it gets down to the last man. Maybe there is no theatre left, so it will have to stop some place.

Q. Then you say whatever assurance he has depends on the history of the particular theatre that is involved?

A. And the knowledge that he, himself, has.

Q. As to where the theatre has played in the past, is that right?

A. Yes, sir.

Q. And in determining how much—strike that out. Generally speaking your rentals also decrease with the lateness of the runs on which the picture plays in accordance with the decrease in admission price and lateness of play time, isn't that right?

A. Generally so, yes, sir.

Q. And in fixing a rental for any particular theatre, one of the factors you always take into account is the terms on which the picture has played other theatres in the area, is [fol. 4413] that right?

A. Would you repeat the question?

(Question read.)

A. No, sir.

Q. That is not a factor?

A. No, sir.

Q. You don't give any consideration, in fixing the terms for one theatre, as to what the terms are for a competing theatre on the same picture, is that right?

A. That is right.

Q. And that applies to clearance terms and admission prices?

A. Yes, sir.

Q. So that in determining, when you testified that as to what you thought was the fair rental here, in so far as you were concerned, that was the rental on which you excluded entirely from consideration the terms with respect to admission price, clearance run and film rentals on which the pictures were sold to other theatres in the area?

A. Yes, sir.

Q. Now, in terms of fairness to an exhibitor—strike that out.

The Court: We will suspend at this time.

(Whereupon a recess was taken until 2 o'clock P. M.)

[fol. 4414] **After Recess, 2 P. M.**

Appearances: Same as before noted.

(By consent of Counsel, Plaintiff's Exhibit 550 for identification is replaced with a plainer photostat and is marked with the same exhibit number.)

Andrew William Smith, Jr., resumed the stand in behalf of the Defendants, having been previously sworn, was examined and testified further as follows:

Cross-examination (Continued).

By Mr. Wright:

Q. When we adjourned, Mr. Smith, I think we were discussing the question of film rental. As I understand it, you say the determination of the rental is based upon what you expect the theatre to gross for the pictures in question; is that right?

A. Yes, sir.

Q. And that expectation of gross is based upon what the admission price will be and how many people will come into the theatre to see the picture on that admission; is that right?

A. Yes, sir.

Q. In that connection it is a fact, is it not, that the number [fol. 4415] who may be expected to come in and see the picture at a particular price will be, in part, determined by the number from the area who have already seen the picture, isn't that right, somewhere else?

A. Yes, sir, some of them may want to see it again.

Q. On this question of what you call a "move-over," as I understood you, that is where you move a picture that has been played first-run for a certain length of time in one theatre over to another theatre without any time elapsing between and it continues to play at the same admission price; is that correct?

A. That is true.

Q. And while you stated, I believe, that it was customary to have those move-overs only in situations where the first-run theatre and second-run theatre were in some way connected through ownership or operating policy, if you chose to do so there would be nothing to prevent you from arranging for or licensing a move-over run at a theatre which was not owned or operated by the first-run theatre owner, isn't that right?

A. Your designation of first and second-run is not quite correct, sir. They are both first-run theatres.

Q. I didn't say second-run. If I did I misspoke myself. I said second theatre.

The Court: You said second-run.

[fol. 4416] Mr. Wright: I meant the second theatre.

A. I don't know of any law against it, sir, but I don't know of a move-over ever having taken place from one theatre to another theatre unless the move-over theatre was owned or controlled by the first theatre.

Q. The policy you pursued in that respect was simply because that was the way you wanted to operate, is that right?

A. No, sir.

Q. You say there is no law against it, other than such inhibitions as the Sherman Act might place upon it, is that right?

Mr. McClennen: That is objected to, if your Honor please. Of course, there is no law against calling something that is not a move-over——

The Court: I think the question should be put in another form, Mr. Wright. State what the inhibitions were.

Mr. Wright: All right.

Q. What, if any, inhibitions are there which you say prevent you from licensing features in that manner?

Mr. McClennen: He didn't say.

The Court: Well, he is asking now if there were inhibitions. What, if any, were the inhibitions, that is the question as I took it to be. You mean to prevent the move-over [fol. 4417] to some theatre which had no connection with the original theatre, isn't that your question, Mr. Wright?

Mr. Wright: Yes.

The Witness: It would be a question of business judgment, Mr. Wright, and I would say, off-hand, it would be bad business judgment to move a picture over from a first-run theatre to another theatre owned by someone else.

By Mr. Wright:

Q. Whether or not it would be good or bad business judgment would depend, I suppose, on just whose interests you felt it advisable to serve at the time; isn't that right?

A. We generally consider our own interests important.

The Court: Do your license agreements make a provision for a *over*-over or do they not?

The Witness: When you make a move-over you write up a license agreement for that move-over, just like you write the agreement for the first-run.

The Court: How about your clearance then?

The Witness: If the clearance in the particular situation is——

The Court: The third day, say, or the end of the first [fol. 4418] period, you mean, or the second?

The Witness: No, sir. I will have to state that another way. The move-over run is still a part of the first-run. The first-run has not terminated until the end of the move-over run.

The Court: It would run until the end of the move-over?

The Witness: Yes.

[fol. 4419] Q. So in writing your license provision for the "Move-over" run, you simply provide that the "Move-over" commence immediately at the conclusion of the run in the first theatre, would you not?

A. No, sir, you would probably write the contract stating the date that the "Move-over" run was to start, and that would be the——

Q. As I say, in the case of a move-over that would be immediately following the completion of the exhibition in the first theatre?

A. Yes, sir.

Q. Whereas in the second-run contract there would be an interval of time elapse and probably a lower admission price, isn't that right?

A. Yes, sir.

The Court: Supposing in the interim there was an expiration of the clearance, in that case, you extend the time and make your terms extending the time of clearance which is extended?

The Witness: Well, your Honor, it is hard to answer that general question in that regard. We would have to have a special situation in mind and see what the clearance situation is there. It might be possible for the same clear- [fol. 4420] ance to exist as would exist if the picture only played the first-run theatre and did not then move over for the continuation of the first-run in the move-over theatre. In other words, if it was a 30-days' clearance on the Great Lakes, and the other picture moved over to the Hippodrome, the other theatre might come in and play 23 days after the Hippodrome.

By Mr. Wright:

Q. In each case it would depend on the kind of clearance provision you chose to provide, is that right?

A. The kind of clearance agreed upon, yes.

Q. In setting up all of the runs or clearances in a particular area, I suppose as far as the film company's objective is concerned, you attempt to get the maximum total rental you can out of the picture in the area?

A. Yes, sir.

Q. I believe you said before on your direct-examination that some of the factors you took into account, in deciding where you would play your pictures was, I think, the size of the theatre and character of the operator; those were, I think, the two you mentioned, and you said there were others?

[fol. 4421] A. Are you referring, sir, to the selection of the second-run account?

Q. The selection of any account?

A. Yes, sir.

Q. As to the size of the theatre, that, of course, doesn't necessarily control in itself what revenue you are going to get out of your pictures, isn't that correct?

A. If the theatre had a very small number of seats it could control, sir.

Q. I suppose that would depend entirely on the amount of playing time your pictures actually got in the theatres also?

A. The playing time would be a determining factor.

Q. That is, if you got five days of playing time on a particular picture in a 300-seat theatre, you might get more revenue from the picture out of that theatre than you would from playing the same picture for two days in a 500-seat house, is that right?

A. That is possible.

Q. So that one of the factors you always have to consider is the amount of playing time that you can expect to get for your features in a particular theatre?

A. Yes, sir.

Q. And I suppose the amount of time that you can get is to some extent determined by the extent to which the [fol. 4422] theatre is committed to play pictures of other distributors?

A. Yes, the amount of time would be dependent to an extent on the theatre's operating policy at that time.

Q. The policy, of course, is made up of the number of changes a week?

A. Yes, sir.

Q. And the other features that play?

A. Yes, sir.

Q. And the admission prices?

A. Yes, sir.

Q. And as to admission prices generally you attempt to maintain them at the highest levels you can, is that right?

A. We like to have them put as high as they possibly can be consistent with good business judgment.

Q. Well, that is, you mean high enough to give you the most revenue you can get out of a particular run?

A. Yes, sir.

Q. And now I think you said in your direct-examination that in determining film rentals, you, of course, took into account the theatre's policy and where it was a double-feature policy in effect, why, you would make allowances for what had to be paid for another feature perhaps sold by some other distributor in determining what you ought to [fol. 4423] get for yourself, is that right?

A. Yes, sir, the customer would tell us what he paid for the other feature and, in general, we would allow that as a deduction from the gross before computing our contract.

Q. You mean, if it were provided in the contract that the deduction could be made, isn't that right?

A. Yes, sir.

Q. Now, your policy with respect to what you provide in the contract is something a little different from merely making adjustments based upon the use of a certain feature, isn't it?

A. I don't understand the question, sir.

Q. Well, to be specific, you, in your printed license provision that you normally use in making your contract do not have any provision there which states that if a second feature is played that the cost of that feature may be deducted from the rental paid for one of your pictures, isn't that right?

A. That is right.

Q. Whenever that is done that is a special provision?

A. That is quite correct, sir.

Q. And the same thing is true, is it not, with respect to a bank night, or similar attractions, the regular form on which these companies, and you have seen them, license [fol. 4424] films, doesn't make a provision for deducting from the cost of the film such amounts as the exhibitor might expend for his bank night or Bingo or similar extra attractions, is that right?

A. Is your question that the printed clauses do not cover such deductions?

Q. Your regular form of contract, that is right?

A. That is correct.

Q. And if you do make any such arrangement that is the result of a special agreement covering the points, is that correct?

A. Yes, sir.

Q. Now, I notice in a contract that is in evidence here, as —or a letter agreement in evidence as F-193, a letter dated June 8th, 1939, signed by 20th Century-Fox Film Company Corporation, by William Sussman, and Schine Enterprises Corporation, dated June 8th, 1939, which covers the seasons 1939-40, 1940-41 and 1941-42, the following provision appears:

"If any picture played on percentage is played in conjunction with bank night or similar attractions, you shall have the right to deduct the actual cost of the operation of such attraction from the gross receipts before accounting to us for our percentage."

When you do make special agreements for the deduction [fol. 4425] of the expenses of bank night or similar attraction, is that the form that you ordinarily use?

A. Do you mean is that the phraseology, the wording, is that your question?

Q. Well, that provision, yes.

A. Yes, that is the general form.

Q. And when you make a concession for a bank night or a similar attraction, that would include, I suppose, Bingo or games of that kind, the provision is one permitting the exhibitor to deduct his cost of the attraction, is that right?

A. Yes, that is quite right, and that would be handled and written right in the contract agreement.

[fol. 4426] Mr. Wright: While the witness is on the stand I want to offer in evidence a memorandum that has previously been identified as having come from the Warner files. It is marked for identification as Plaintiff's Exhibit 550 and it is an inter-office communication, dated September 1, 1934, from H. A. Seed, Branch Manager, to Mr. A. W. Smith, Jr., at the Home Office, and I am now offering that in evidence.

Mr. McClennen: This Plaintiff's Exhibit 550 for identification we object to on the ground that has heretofore been discussed with your Honor, as an inter-office communication, not admissible in evidence, and if received to be limited so that it shall not be evidence of the facts stated in it, that considerable portion of it has relation to Shorts and not to feature contracts, and that this introduction is not cross-examination of the witness on any subject on which he was examined in chief.

The Court: Let me see it.

(Counsel hands Plaintiff's Exhibit 550 for identification [fol. 4427] to the Court.)

The Court: Objection overruled. I will receive it.

(Thereupon the two-page photostat copy of inter-office communication, dated September 1, 1934, previously marked as Plaintiff's Exhibit 550 for identification was received in evidence.)

By Mr. Wright:

Q. Mr. Smith, I believe you testified on your direct examination you identified some Warner branch office records?

A. Yes, sir.

Q. In the branch offices, not only of Warner but these other companies you worked for, as well, there are maintained, are there not, so-called cut-off or play-off records which show where all of the theatres in which your features pictures played and the periods during which they played, and the contracts under which they played?

A. You are covering quite a few records there, sir. We do maintain complete records of where our pictures play and the dates and the gross receipts.

Q. And the contracts under which they play?

A. Yes, sir.

Q. And those records you keep for the benefit, among others, of those in the sales department who are engaged in [fol. 4428] soliciting accounts or licensing your films, isn't that correct?

A. Yes, sir.

Mr. Wright: That is all.
The Court: Anything, Mr. McClennen?
Mr. McClennen: No.
The Court: All right. Next witness.

Richard Struewe, a witness called by and on behalf of the Defendants, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. McClennen:

Q. Your residence?

A. Albany, New York.

Q. You are in the employ of what company at the present time?

A. Republic Pictures Corporation.

Q. In January and February, 1937, were you in the employ of Warners?

A. Yes.

Q. I show you identification Defendants' Exhibit 137. Is this in your handwriting?

A. Yes.

Q. And is that the report which, on or about that date, you handed in of your daily activities to your office?

[fol. 4429] A. That is correct.

Mr. McClennen: I offer it.

Mr. Wright: No objection.

Mr. McClennen: The portion offered is under the heading "Theatre-Plaza. Location: Malone," and does not include the report for the other theatres contained on this report in other places.

The portion offered reads: "Theatre: Plaza. Location: Malone. Exhibitor: M. Boumansour. This situation intends to go to second-run policy starting 5-1. Offered him a 60-picture deal. Only wants 30. Offered him 30 pictures, 1935-36 product second-run. He would not consider any proposition except a 30-picture deal on this year's pictures."

That is under date of February 4, 1937.

(Thereupon the report referred to, dated February 4, 1937, previously marked as Defendants' Exhibit D-137 for identification was received in evidence.)

Mr. Wright: If the Court please, I apparently misunderstood Counsel. I thought we were to have Mr. Ed. Smith [fol. 4430] and Mr. Louis following Mr. Andy Smith and if we could have a recess for five minutes I believe I could get hold of the documents I intend to examine Mr. Struewe on.

(Short recess.)

Cross-examination.

By Mr. Wright:

Q. Mr. Struewe, this memorandum or report that is marked as Defendants' Exhibit D-137, you say that records the results of a conversation you had with Mr. Boumansour at Malone on February 4, 1937?

A. That is right.

Q. You were at that time traveling the Albany territory for Warner Bros.?

A. Yes, sir.

Q. Soliciting accounts?

A. Yes, sir.

Q. This satement that you have here offered in the 60-picture deal, that relates to some statement you made to him?

A. Yes.

Q. And what was it you told him?

A. Well, in that particular year we were selling 60 pictures. That report is dated in 1937. That means I offered [fol. 4431] him the 1936-37 product at that time.

Q. What you told him was he could have the 1936-37 product second-run if he bought all of the pictures?

A. That is correct.

Q. And if he only bought—if he only wanted to play 30 pictures he could only have 1935-36 product?

A. That's all I would offer him on a 30-picture deal.

Q. Before you called on him had you had any discussion with the branch manager as to what you should or should not offer to Mr. Boumansour?

A. I don't recall that.

Q. You don't know whether you did or not?

A. No.

Q. Did you know the policy that the Plaza was being operated on at that time?

A. I didn't get that question,

Q. Did you know the policy that the Plaza was being operated on at that time?

A. I am not sure of it, no.

Q. You don't know whether you did or not?

A. I said I wasn't sure. He had first-run policy and a second-run policy.

Q. At that time?

A. I don't know when he changed from first to second.

Q. Your report says that he intends to go to a second-run [fol. 4432] policy starting May 1. Is that what he told you?

A. That is correct.

Q. That is what he told you he would like to do?

A. That is correct.

Q. You say you don't know whether you had any discussion with the manager of the exchange before you went up there and made this offer or not?

A. I am not sure.

Q. Who was the manager then?

A. Mr. Norman Ayers.

Q. Do you recall whether you had had any discussion with any other Warner sales representative before you went up and made this offer?

A. No, I don't recall.

Q. Normally, when you were calling on accounts in that area at that time, and the exhibitor wanted to buy some pictures, you would write up an application for what he wanted to buy, if it was open, and then send it in to the branch, wouldn't you?

A. Correct.

[fol. 4433] Q. But in this instance you didn't have any discussion of terms with him at all?

A. You mean Mr. Boumansour?

Q. Yes.

A. Not that I recall, I didn't.

Q. And all you told him was that if he wanted 1936-37 product, beginning in the spring of 1937, that he would have to buy 60 pictures, is that right?

A. A complete deal, yes, whatever the season called for.

Q. If he only wanted to buy 30 pictures then he could not have 1936-37 product, he could only have 1935-36, is that right?

A. That is correct.

Q. Now, your job, generally speaking, was to get additional revenue from the towns that were in your territory wherever you could, wasn't it?

A. That is correct.

Q. And even 30 pictures of the 1936-37 season second-run in that town would have given you more revenue for 1936-37 pictures out of that town than you were then getting, isn't that right?

A. That is correct.

Q. You had no second-run there?

A. No.

Q. But you refused to even discuss terms for a 30 picture [fol. 4434] deal on the 1936-37 product, is that right?

A. That is right.

Mr. Wright: That is all.

Mr. McClennen: That is all.

Jacob Armm, a witness called by and on behalf of the Defendants, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. McClennen:

Q. Your residence?

A. Albany.

Q. In August of the year 1940, what was your occupation?

A. Salesman for Columbia Pictures.

Q. You know Mr. Lawrence J. Carkey?

A. Yes, sir.

Q. I call your attention to Mr. Carkey's testimony, the year 1940, as stated at page 3554, the period of the conversation as between August 15th, 1940 and August 30th, 1940, stated at page 3560 and the conversation stated at 3562, where he says "I called in Jack Arms of Columbia and told him I was ready to talk second-run product for the [fol. 4435] City of Ogdensburg as per our conversation of a few weeks before"; did Mr. Carkey tell you that?

A. Why, he didn't call me in. I used to come in to see him every other week. I came in there every Tuesday, every other Tuesday, rather.

Q. When you went in there at that time, I continue "he," that is meaning you, "advised me second-run had been sold to Schine"; did you so advise him?

A. No, sir.

Q. Did you have some talk about his buying some second-run Columbia pictures for Ogdensburg?

A. I did.

Q. What did you say to him and he to you on that subject?

A. Well, he told me at that time that he contemplated opening a theatre in the market place in Ogdensburg and that he was waiting for—I am trying to think of the man's name, he was an interior decorator who was supposed to furnish him with money, and another man in Ogdensburg, and a certain builder, I forget his name, he was there at the time, and he showed me plans for the place. It was not Colombo, I am trying to think of the man's name. He asked me was there a second-run in Ogdensburg, and I said "No, there wasn't." Could he buy it, and I said "Yes, the [fol. 4436] Pontiac was closed at the time and Schine didn't have a second-run, there was no reason why he could not have it." He asked me what the terms would be. I told him the thing to do at that time was to open up. "I have no idea of terms for a place not opened up, and after you play them we will check the pictures and determine what they are worth, that is the only way I could even talk price on a deal, where there was no theatre operating."

Q. Have you stated the whole of the conversation at that time?

A. Yes, sir.

Mr. Wright: What time was this?

The Witness: I did not hear you.

Q. Have you any recollection of the time of this first conversation?

A. Oh, it was in the summertime. I don't know exactly when.

Q. And did you subsequently have another talk with him about Ogdensburg?

A. Oh, yes, several talks, quite a few, and at that time I had an appointment with him, and it was a few weeks later, and he left word with his son that he would meet me in Norwood, where he was taking over two other theatres, the Norwood and Norfolk from another party, his name was Curry, that I would meet him in Utica and go to Norwood from there. I was on my way to Potsdam, [fol. 4437] and I would meet him on the four o'clock train that day. I could not tell you what day it was, it was in July or August. I met him there and sold him two contracts at that time, one for Norwood and one for Norfolk. I said "Larry, let's go up and see this market place." I could not get it in my head where it was. I had gone through the town several times. He said "I guess we will have to forget about it temporarily because—I think Mr. Shapiro, I think was the man's name who was to finance it—had backed out." I never went up to Ogdensburg.

Q. Was that all the conversation as far as Ogdensburg was concerned?

A. I don't think there was ever anything mentioned further about it because there was nothing done about it.

Cross-examination.

By Mr. Wright:

Q. When and where was this second conversation you just testified to?

A. This last one?

Q. Yes.

A. In Norwood.

Q. When was that?

A. It was in the summertime, I can't tell you just when it [fol. 4438] was, quite a few years ago.

Q. In the summer of 1940?

A. Probably 1940.

Q. This is the town called——

A. Norwood.

Q. Norwood?

A. Norwood, yes, Norwood and Norfolk, there was two towns.

Q. Where are those two towns?

A. Do you know where Potsdam is?

Q. Where are they from Ogdensburg?

A. Just a few miles from Ogdensburg. I will try and figure that out.

Q. Whereabouts in this town did you see him?

A. Norwood.

Q. Whereabouts in the town?

A. In the theatre.

Q. What theatre?

A. Norwood Theatre.

Q. Who else was present?

A. Who else was present? There was some mechanics there, four or five mechanics there tearing the walls out.

Q. I mean during the,—or in your presence and Carkey's presence, when you had this conversation, who were the parties to the conversation, anybody but you and Carkey?

A. Just Larry and I.

[fol. 4439] Q. Just you two?

A. Yes, sir.

Q. What was it that was said then?

A. I had sold him the deals, as I told you, for these two theatres there, Norwood and Norfolk.

Q. Yes.

A. And I asked Larry to let's go up and take a look at that market place where he was going to build a theatre.

Q. At Ogdensburg?

A. At Ogdensburg, yes, sir, it isn't very far from there, maybe 35 miles, I am not sure of the exact distance.

Q. Then what was it he told you?

A. I am not sure about this man's name. He told me this decorator who was doing his work was his partner who was going to give him the money to fix it up with, and he had backed out.

Q. Did he tell you anything else?

A. I can't remember that far back exactly what conversation there was. There was nothing much more that would interest me.

Q. At that time that is all you remember?

A. I really can't remember; if there was anything important I might have remembered it; there might have been some minor things, I can't remember that far back.

Q. You don't remember whether you had any further conversation with him later about Ogdensburg at all, is that right?

[fol. 4440]

A. We talked about it casually now and then. I asked him a few times, I can't tell you when I asked him, we would go out and eat and talk about those things, nothing doing, could not get the finances.

Q. Where did you talk to him next time?

A. Well, I can't say, in his office, or probably across the street in the restaurant, I can't tell you exactly where. I used to see him quite often.

Q. Could you tell us exactly when?

A. No, I could not tell you exactly when. It might have been the second Tuesday after, because I usually stopped there on a Tuesday.

Q. When was it you had the last conversation with him about Ogdensburg?

A. Oh, I could not tell you that.

Q. You don't have any idea?

A. No. I wouldn't have any reason to try to remember it, I couldn't tell you.

Mr. Wright: That is all.

Mr. McClennen: That is all.

[fol. 4441] **Elmer Lux** a witness called by and on behalf of the Defendants, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. McClennen:

Q. Your residence?

A. Buffalo, New York.

Q. You know Mr. Hubert P. Wallace?

A. I do, sir.

Q. Mr. Wallace, speaking of 1937, at page 2784, said "Mr. Lux pointed out to me that he did not think it would be a practical thing for me to run second-run and first-run at the same time, that is, at the same theatre at the same time, and he discouraged me. He said "I think it is not a good plan"."

Did you have such a conversation as that with Mr. Wallace?

Mr. Wright: Excuse me, I don't believe the date of this has been fixed.

Mr. McClennen: 1937.

The Court: I suppose it does appear in Mr. Wallace's testimony, but whom did you work for, were you in the office, where?

[fol. 4442] The Witness: I was with the Company in 1937.

The Court: Which Company?

The Witness: R. K. O. Radio Pictures.

Mr. Wright: This is with respect to what theatre are we on now?

Mr. McClennen: This is with respect to Mr. Wallace's testimony at page 2784, and he is speaking about the subject matter of second-run in the Capitol Theatre at Auburn.

[fol. 4443] Q. Did you have such conversation as I have just read to you?

A. In nineteen—I did not.

Q. What was your position in the motion picture business in 1937?

A. In March, 1937, I came to work for RKO Pictures, salesman in the Buffalo city proper and immediate vicinity.

Q. And how long did you continue in that particular position?

A. Until June or July, 1941, when I was promoted to branch managership.

Q. During the time that you were a salesman was Auburn within your area?

A. No, it was not.

Q. In 1941 you became what?

A. Branch manager.

Q. For RKO?

A. RKO-Radio Pictures.

Q. What time in 1941?

A. It was either late June or early July. I wouldn't be definitely certain of the date.

Q. As branch manager where was your office?

A. Here in Buffalo.

Q. Prior to your becoming branch manager here in Buffalo where was your office?

A. I also worked in the Buffalo office.

[fol. 4444] Q. You worked in the same office?

A. Out of the same office, yes.

Q. Can you inform me where you were on the 11th of September, 1941?

A. I would probably have to refresh my memory by looking at my records of that week.

Mr. McClennen: Will you mark this for identification?

(Thereupon weekly expense account report referred to was marked as Defendants' Exhibit D-166 for identification.)

Q. I show you Defendants' Exhibit D-166 for identification. What is that paper?

A. That is my weekly expense account report, sir.

Q. From that can you state where you were on September 11, 1941?

A. On that date I was in Syracuse, New York.

Q. And on the 12th of September where were you?

A. On the 12th of September I was en route from Buffalo, stopping in Batavia, and then on into Buffalo, all the same day.

Mr. McClennen: Will you mark this for identification?

(Thereupon weekly expense account report referred to was marked as Defendants' Exhibit D-167 for identification.)

[fol. 4445] Q. I show you Defendants' Exhibit D-167 for identification. Is that your expense account for the following week?

A. For the week ending September 20, 1941, it is, sir.

Q. Where were you on Monday, September 15th?

A. Well, on that day I left Buffalo in the morning, went to Albany.

Q. And where were you on the 16th?

A. In Albany all day, leaving probably late in the afternoon, returning to Buffalo.

Q. Where were you on September 17, 1941?

A. On September 17, 1941, I went from Buffalo to Rochester and stayed over night in Rochester.

Q. Where were you on September 18, 1941?

A. On the 18th I worked in Rochester and then returned to Buffalo that same day.

Q. Did you have a telephone conversation with Mr. Ed. Smith and with Mr. Wallace in September, 1941?

A. I did.

Q. And where were you at the time you had the talk?

A. I was in Warner Bros. theatre office in Albany and I believe they called me from Syracuse.

Q. Was that the only day that you were in Albany in the two weeks from September 7, 1941, to September 20, 1941?

A. I believe I was there over night that night and part of the next day, returning the next day, if I remember that [fol. 4446] correctly.

Q. Referring back to Defendants' Exhibit D-167 for identification, can you tell me whether on September 16, 1941, you flew back from Albany to Buffalo?

A. I did return by air, indicated by the fact that I took a bus to the Airport.

Q. Was this call by telephone when you were at the Warner Bros. theatre office in Albany on your call or on somebody calling you?

A. They called me, sir.

Q. And who called you and spoke first?

A. Specifically, I couldn't say. I do know that both Wallace and Smith talked to me on the occasion of that date, but who talked first I wouldn't know—I wouldn't recall.

Q. Do you remember anything about what Mr. Wallace said to you in that conversation?

A. Well, generally it concerned a discussion of some pictures that we did have open or, rather, available, and that he had been interested in buying for the Strand Theatre in Syracuse.

Q. Can you remember any more of the detail of it, what the pictures were?

A. Two of them I do recall were his opening pictures. If I remember correctly, one of them was the animal picture, [fol. 4447] Frank Buck picture, "Jungle Cavalcade", and I believe the other one was the musical picture, "Flying Down to Rio." While there were probably five or six pictures discussed, those two I do recall were for opening consideration, and he also was interested in two other pictures we had, which were, of course, under contract to our own theatre department there in Syracuse but which I told him if they did not find room for them in the usual manner, or if they rejected them, which was probably their privilege, I would be interested in giving him the opportunity to have them.

Q. Do you remember the names?

A. One of them was, "Hurry, Charlie, Hurry", I believe, and the other was "They Meet Again".

Q. In the course of that conversation by telephone do you recall telling him anything more about those two pictures than you just stated?

A. Specifically, no. The conversation beyond that was probably of a general nature. I did more or less assure him that he would have the first two pictures I mentioned without any difficulty, although I did not have immediate home office approval, which usually is necessary, in fact, is necessary, but I felt confident I could go along on those two so that he might proceed with proper advertising, and so forth.

[fol. 4448] Q. Did you say anything more to him than you have stated as to these two pictures, "Hurry, Charlie, Hurry", and "They Meet Again"?

A. I did tell him, as I had previously mentioned, that if our theatre department was not going to exercise their privilege and use them under our own contract, why, I would be glad to sell them to him, but I would have to let him know about that because, after all, the pictures rightfully belonged under license contract to our own two theatres in Syracuse.

Q. When you say in your own theatre department, you meant RKO theatres in Syracuse?

A. RKO, New York, for the RKO-Schine theatres, Syracuse.

Mr. McClennen: I ask to have this marked for identification.

(Thereupon a memo, dated September 16, 1941, referred to was marked as Defendants' Exhibit D-168 for identification.)

Q. I show you Defendants' Exhibit D-168 for identification. Can you tell me what that is?

A. Well, that is a memo note report from Salesman Ed. Smith regarding the Strand Theatre, Syracuse.

Q. Did that paper come to your attention at about this time, September 16, or thereabout, 1941?

A. It is obvious that it did, sir.

Q. You have no independent recollection?

[fol. 4449] A. No. It must have been brought to my desk though. I see my own personal marking on it.

Q. There is a marking of yours somewhere on it?

A. Yes, this happens to be my writing (indicating exhibit).

Q. Did you have anything to do with the drawing of this line through the words "Hurry, Charlie"?

A. I may have but I couldn't exactly say that I did, sir.

Q. Did you have anything to do with the drawing of this line through the words "They Meet Again"?

A. That same would be true, sir, the same as "Hurry, Charlie, Hurry".

Q. Did you send this telegram, Plaintiff's Exhibit 831, on September 18, 1941?

The Court: That is in evidence?

Mr. McClennen: It is in evidence.

The Witness: We did.

Q. Up to the time of sending this telegram had there been any conversation between you and Mr. Wallace beyond what you have given as over the telephone as to "Hurry, Charlie" and "They Meet Again"?

A. I don't recall—I don't believe so.

Mr. McClennen: Will you mark for identification this paper?

(Thereupon carbon copy of letter, dated September 18, 1941, referred to was marked as Defendants' Exhibit D-169 for identification.)

[fol. 4450] Q. Was this letter, of which I show you a carbon, dated September 18, 1941, for identification as Exhibit D-169, written by you or dictated by you?

A. That was dictated by me, sir.

Q. Did you transmit to the New York office any application or contract for "Hurry, Charlie, Hurry" or "They Meet Again" for Mr. Wallace's theatre?

A. I did not, sir.

Q. Have you ever seen any contract with Mr. Wallace or with that Strand Theatre in Syracuse, containing any such pictures?

A. I don't believe I have ever seen any application.

The Court: You mean application by Mr. Wallace?

Mr. McClennen: By Mr. Wallace, yes.

Q. Do you know Mr. Fred Myers?

A. Do I know Fred Myers?

Q. Yes.

A. Casually, yes.

Q. Did you inform Mr. Wallace that Freddie Myers or Mr. Myers had insisted on having the pictures, "Hurry, Charlie, Hurry" and "They Meet Again"?

A. I did not say that, sir.

[fol. 4451] Q. Was Mr. Myers in the employ of R.K.O. in September, 1941?

A. If my recollection serves me right, I believe he left our company early in 1941.

Mr. McClennen: That is all.

Cross-examination.

By Mr. Wright:

Q. Mr. Lux, you began with R.K.O. as a salesman when?

A. In March or April of 1937.

Q. As a city salesman here in Buffalo?

A. Yes, sir.

Q. And how long did you cover that area?

A. Until I was promoted in either June or July, 1941.

Q. Then what was the area that you covered from March, 1937 until you became Branch Manager in 1941?

A. The area of Niagara County and parts of Cattaraugus and Chautauqua County.

Mr. Wright: Have you those exhibits that were identified?

Mr. McClennen: There are those, and you have the other one.

Q. These exhibits 166 and 167 for identification are the records that you made of your expenses during the weeks ending September 20th, 1941 and September 13th, 1941, respectively?

A. I have to make those every week, yes, sir.

[fol. 4452] Q. These were made by you?

A. Those were definitely made by me personally.

Q. As I understand it, according to these records you were in—you went to Albany on the 15th?

A. I believe that is a Monday morning, yes, sir.

Q. And you came back on the 16th?

A. Yes, sir.

Q. Do you remember which of those days it was that you had the telephone conversations with Smith and Wallace?

A. I believe it was late in the afternoon of Monday, the 15th.

Q. Do you have anything which helps you to fix that time other than your recollection?

A. No, I wouldn't have anything other than my own recollection, sir.

Q. And this memoranda, that is marked as Exhibit 168 for identification, when was it that you say that came to your attention?

A. This may have come to my attention either on Tuesday night, Tuesday evening or Wednesday morning, that would be September 16th or 17th. I go directly to the office when I return.

Q. How do you fix the date when this exhibit D-168 came to your attention?

A. Because it follows in line the negotiations that took [fol. 4453] place on Monday obviously between Smith and Wallace about which they called me.

Q. There is nothing on the document itself to indicate to you when you first saw it, is that right?

A. Well, it would have to be some time between that period, because he is giving in this letter a date for his opening, two pictures "Jungle Cavalcade" and "Flying Down to Rio" to open with on September 20th; shipment would have to be made on the 18th or 19th.

Q. The fact that "Jungle Cavalcade" and "Flying Down to Rio" were apparently dated for September 20th to 23rd is what makes you feel you must have seen this before the 20th, is that right?

A. Yes, that is reasonable to assume that, the way we operate.

Q. But there isn't anything on the memo which would fix the date any better than that?

A. No, there isn't, sir, except a note "Ship Jungle and Rio, to arrive September 19th,—which would mean he possibly would have got this letter out on the 15th with the assumption that we would have to ship it on the 17th to have it there by that date.

Mr. Wright: By the way, is Mr. Smith going to testify?

Mr. McClennen: Mr. Smith, I believe, is going to testify. There won't be time this afternoon.

[fol. 4454] Mr. Wright: If the Court please, we ought at least to see what Mr. Smith's testimony would be before we conclude any cross-examination of Mr. Lux. We would be glad to go as far with him now as we can, but we would want the opportunity to question him again after Mr. Smith testifies.

Mr. McClennen: There is no objection to that, if we can take it on a day when Mr. Lux is otherwise in Buffalo.

By Mr. Wright:

Q. Now, the parts on here that you can identify as in Mr. Smith's handwriting are what?

A. Well, it is all Mr. Smith's handwriting with the exception of that "O.K." That is $8.00, that is my heavy pencil.

Q. You write the "O.K."?

A. Yes, and also this here is my handwriting "Letter to Cleveland 9-24 to home office", indicating I must have borrowed it from Cleveland probably.

Q. The 9-24 would indicate the date you made the call to Cleveland for the print?

A. No, it probably indicates Cleveland was to ship us a print on the 24th, and after I got through with it I was to send it to the home office, probably a borrowed print.

[fol. 4455] Q. And the $8.00?

A. Is probably the price of this news. I probably was interested in it and made a note of it.

Q. Otherwise the handwriting is all that of Mr. Smith?

A. With the exception of this.

Q. With the exception of what you have just stated?

A. Yes, sir.

Q. These lines that are drawn through the notations "Hurry Charlie" and what is this?

A. Argentina.

Q. And "They Meet Again", you don't know whether you wrote those or Smith or somebody else?

A. I may have stricken those out knowing that they could not be served.

Q. You are not able to testify from looking at it?

A. Not exactly that I did that.

Q. Whether you drew those or Smith did, or somebody else?

A. I could not say, I wouldn't know except to say knowing I could not serve those pictures they would be obviously crossed off.

Q. I will show you these forms entitled "Special License Agreement" that have been marked in evidence here as Exhibit 819. Do you recognize the forms?

A, That is an application, a memo application form, Exhibitor's copy.

[fol. 4456] Q. And when those are made up, the original there, is an original made at the same time?

A. Usually there is.

Q. And that original form is the same as this, is it?

A. Yes, should be.

Q. Or is it a different color?

A. It is a different color, sir.

Q. What color is it?

A. Well, there are five or six copies to this contract. There is the white, blue, pink and brown, and I couldn't say, some other color, anyway.

Q. What happens to those other colored copies?

A. Usually this is made in duplicate. The exhibitor would sign all seven copies and the application is sent from the branch then, after the salesman transmits it to the branch.

Q. You leave one copy with the exhibitor and take six back to the branch, is that it?

A. That is right, sir.

Q. What do you do with the six the branch gets?

A. Well, we take the duplicate of this and usually type the other five copies so they are clear and legible and them submit them to the home office for consideration and approval with our recommendations as to whether or not we feel they are equitable contracts and whether they should [fol. 4457] be accepted.

Q. If they are approved, what happens?

A. If the contract is approved, we are notified by our home office and we in turn approve to the exhibitor.

Q. You do that how?

A. Usually by telegram and it is followed up with the approved copy of the contract which bears the home office stamp of approval.

Q. That goes from where to where?

A. The home office copy would be stamped in New York, forwarded to the branch and then forwarded to the exhibitor with an accompanying letter.

Q. You would also have a copy in the branch?

A. Usually retained a copy in the branch.

Q. The other five copies at the branch?

A. Usually retain the other five copies in the branch.

Q. And before you came here to take the witness-stand, did you make any search to determine whether you had any copies in the branch there of these five license agreements that are marked Exhibit 819?

A. No, a short time ago I looked up one contract in connection with, I believe, a five-picture contract; I recall looking at it recently, but I haven't looked at any four or five copies.

Q. Will you repeat the question?

[fol. 4458] A. I did not.

Q. And do you know whether you have any such copies there?

A. It is possible we might have a copy in the files. That is, if it is an approved contract. We don't usually save all memo applications if they are rejected, because when they are re-negotiated the useless copies would be probably destroyed because they have no bearing on our records.

Q. As to those that are approved?

A. We would have a copy or the approved copies.

Q. Before you return to the witness-stand, will you make the search and see if you have any?

A. If you will give me a specific list I would be glad to.

Q. If you have copies of contracts which you have in front of you, you can take the exhibit along, if you want to.

A. Yes, I will take it along and check it.

Mr. Wright: Do you want to adjourn at 4 o'clock?

Mr. McClennen: Yes, could we adjourn now?

The Court: Do you want to adjourn over the first of the week?

Mr. Wright: As I understand it the adjournment now is until Wednesday morning.

The Court: You don't want to work on Election Day?

Mr. Wright: I have that argument in Washington which [fols. 4459-4460] is for the 6th and 7th.

The Court: Very well, we will adjourn until Wednesday morning, at 10 o'clock.

(Whereupon, a recess was taken until Wednesday, November 8th, 1944, at 10 o'clock A. M.)

[fol. 4461] UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF NEW YORK

Civil 223

UNITED STATES OF AMERICA

vs.

SCHINE CHAIN THEATRES, INC., et al., Defendants

Continuation of trial before Honorable John Knight, United States District Judge for the Western District of New York, November 8, 1944, 10 o'clock A. M.

APPEARANCES:

Robert L. Wright, Esq., John F. Clagett, Esq., Harold L. Schilz, Esq., Philip Marcus, Esq., Special Assistants to the Attorney General, and Milton Kallis, Esq., Special Attorney, in behalf of the United States.

Edward F. McClennen, Esq., Willard S. McKay, Esq., Saul E. Rogers, Esq., Arthur E. Whittemore, Esq., Arthur J. Homans, Esq., and Howard M. Antevil, Esq., appearing for the Defendants.

[fol. 4462] PROCEEDINGS

Mr. McClennen: If the Court please, I have asked to have marked as Defendants' Exhibit 170 for identification, from the files of Warner, a carbon copy of a letter of September 9, 1935, from M. A. Mooney, Branch Manager, to M. H. Breyer, Secretary of State Theatre, Bucyrus, Ohio. And as

Defendants' Exhibit 171 for identification a percentage report from the files of Warner, signed by M. H. Breyer, for the percentage on the play of "Page Glory" under contract 4447, at the State Theatre, Bucyrus, on September 8th to 10th, 1935.

(Thereupon the carbon copy of letter, September 9, 1935, referred to was marked as Defendants' Exhibit 170 for identification.)

(Thereupon the Warner Bros, percentage report, Cleveland Exchange, September 8th to 10th, 1935, was marked as Defendants' Exhibit D-171 for identification.)

Mr. McClennen: I offer these two in evidence.

Mr. Wright: As far as I know, there has not been any prior identification of these documents. I assume some- [fol. 4463] body from Warner Bros. might be able to establish the identity. As far as the letter of September 9th is concerned that also appears to be a copy and I suppose there ought to be some showing as to the unavailability of the original. I see no objection to having these marked at this time, but I do not see that they have been made competent by Mr. McClennen's statements, and we would like to reserve——

The Court: Did not the defendant consent to the introduction of these other documents as coming from the records of the Company? Certain of these were consented to before. Was there a question raised about that?

Mr. Wright: We identified all of the documents that we offered as having come from the records of the company by witnesses who appeared and said that they did. I have not any reason to doubt that these did come from the files of the company, but, again, this is a matter concerning correspondence with Breyer, a report that is supposed to have been sent in by Breyer.

The Court: Do you object to them?

Mr. Wright: At this time I object to having them offered [fol. 4464] in evidence.

The Court: Objection sustained. They are not sufficiently proven.

[fol. 4465] Mr. McClennen: If your Honor please, I first press Exhibit D-171 which shows by comparison of signatures of exhibits already on file as signed by M. H. Breyer.

The Court: I can't compare the signatures. How can the Court do that?

Mr. McClennen: It is obvious on inspection of the exhibits, if your Honor please.

The Court: No.

Mr. McClennen: Then I will state that these papers were received from the attorney for Warner Brothers in New York, having been collected from the files of Warner, and I ask if Mr. Wright is going to make me have him come to Buffalo to state that fact, or will you accept my statement?

Mr. Wright: That will depend entirely on what we are able to learn about these papers from Mr. Breyer. If Mr. Breyer says he got the original of this letter and that he signed this statement, I think that no further identification would be necessary, but, of course, we want to make the check with him.

The Court: If the attorney is called to the stand he can [fol. 4466] testify they were taken from the records of the Company.

Mr. McClennen: Yes, if your Honor please.

The Court: And Breyer's testimony might and might not be material. That would not affect the introduction of the exhibits as showing they were received except the introduction of the copy.

Mr. Wright: I don't think there is any occasion on the admissibility of the documents at this point, anyway, because we haven't any one on the stand who had anything to do with this situation.

The Court: You had better have the attorney come.

Mr. McClennen: That is, have some one come from New York to identify them?

The Court: Yes, proceed.

Ned E. Depinet a witness called by and on behalf of the Defendants, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. McClennen:

Q. What is your residence?

[fol. 4467] A. I live in Greenwich, Connecticut.

Q. What is your position?

A. I am President of R.K.O.—Radio Pictures, Inc.

Q. When did you enter the motion picture distribution business?

A. In the fall of 1907.

Q. In what capacity and with what company?

A. Well, I worked for a man named Pierce who had a film exchange in New Orleans, Louisiana. I was the shipper and film inspector and booker and errand boy, and so forth. There were about four of us in the office.

Q. Will you with approximation of dates briefly state your relationship to this business down to the time when you came into the employ of R.K.O.?

A. Well, I worked in New Orleans in that office that I have just mentioned for a couple of years. The industry was beginning to grow and I finally was sent out on the road as a salesman in 1909 and traveled through the South. Along about 1912 or '13 I became a Branch Manager and a year or so later Southern District Manager which position I held until 1924, when I came to New York as one of the sales managers of Universal Film Company, remaining there a year or so and became the General Sales Manager and Vice President of First National Pictures where I [fol. 4468] remained until that Company was purchased by Warner Brothers, and I remained there a couple of years longer under the ownership of Warner Brothers, and eventually joined R.K.O. in 1931.

Q. I am not sure, were you with Pathe before it became R.K.O.?

A. R.K.O. owned two producing and distributing organizations when I joined them, and the one I joined was called R.K.O.-Pathe, and I became the Vice President and General Sales Manager of that Company when I joined the organization.

Q. And you have occupied that position of Vice President and General Sales Manager of R.K.O. from 1931 down to what date?

A. Down to about two years ago when I was made President.

Q. Did you then remain as General Sales Manager?

A. No, but I have always specialized on distribution and still do.

Q. When you first came to R.K.O. in 1931, it was already the owner of theatres?

A. Yes, R. K. O. owned theatres, R.K.O.-Pathe; the first company that I joined did not own theatres.

Q. You had to do with the distribution end of the business and not the theatre operating end of the business?

A. That is correct.

Q. When you began whose production of pictures was [fol. 4469] R.K.O. distributing?

A. Well, R.K.O. was distributing pictures that R.K.O. produced and pictures that R.K.O.-Pathe produced. They had two studios.

[fol. 4470] Q. At that time was it distributing any pictures of other producers than those two?

A. Well, I am not clear as to that at that time, at that particular time. I don't know whether they had any outside pictures independently produced or produced by other people at that time or not.

Q. Confining yourself now to the period from 1931 to May 19, 1942,—and I am selecting that date not because of any supposed change in your business, but because of the course that this case is pursuing—will you state the sources of the product that RKO has from time to time distributed?

A. Until what date?

Q. From 1931 to May 19, 1942.

A. Well, the sources of the various product that we distributed during that period among others were Pathe News, March of Time, both produced by other companies; all of Walt Disney's products, both short subjects and features, such as "Snow White and the Seven Dwarfs" and others that he produced; the product of RKO Radio, which the company produced at its own studio; Samuel Goldwyn's pictures during that period; Sol Lesser's pictures, I believe, during that period; and then there were several other independently produced pictures that we distributed, all of [fol. 4471] which I cannot recall at the moment.

Q. And when you say "during that period" I take it you mean from time to time during that period and not all of those over all of that period?

A. Of course. We may have just had one from one of those sources during that period. A man named Deterle produced pictures for us during that period.. Another outfit made some Dr. Christian pictures, which we distributed, and another concern made pictures of that very homey New England character——

Q. We do not like to concede that there are any such.

The Court: He said "homey", not "homely".

Mr. McClennen: Then I will withdraw my remark.

A. This was a very nice character on the screen. I can't think of his name. There were a series of six of those. Scattergood Baines, that was the gentleman's name. There were six of those. I only distributed them for several years.

Q. In the theatre exhibition department of RKO who were the persons with whom you came in contact for that department in the superior positions?

A. Well, over the period of time since I joined the organization, is that what you mean?

Q. Yes.

A. Well, there was Joe Plunkett and Senator J. Henry Walters, Harold B. Franklin, John O'Connor, Jules Levy, [fol. 4472] Phil Reisman, Freddy Myers and Eddie Alperson.

Q. Do you happen to remember the period when Freddy Myers was with RKO?

A. Very well.

Q. What was he?

A. Well, Fred was there when I joined the Company. He had previously worked for me in New York as a salesman when I was in charge of First National. So had Jules Levy. So I am quite familiar with their activities. They both left First National to join RKO when Joe Plunkett took over the theatre department. Jules was the head of the film booking department and Freddy was one of his first assistants.

Q. How long did Freddy Myers stay with that department?

A. Well, he stayed until 1941. I think it was May, 1941, when he resigned to join Universal.

Q. Where you—and I am using you as RKO—distributed pictures of other producers what was the practice with respect to the obtaining of the approval or not obtaining the approval of those producers?

Mr. Wright: If the Court please, I do not like to interrupt, but the relevancy of this line of inquiry is not apparent to me.

The Court: Read the question again.

[fol. 4473] (Question read.)

The Court: Obtaining their approval; that is the question. Obtaining approval to use the other pictures, you mean?

Mr. McClennen: The approval of the distribution contract; that is, if a contract came in, or an application came in to RKO's central office for, we will say, X theatre in the town of Y, and the production was that of some one other than RKO, what was done, if anything, with respect to obtaining the producer's aproval before making the contract?

A. Well, there were two different arrangements. With some of the producers they retained the right to approve every exhibition license. Others grant us the right to approve it. For instance, Samuel Goldwyn, we can negotiate a license and if he likes it he can accept it. If he wants to sell his pictures otherwise or to some one else the final right remains in his hands.

Q. What has been the practice with reference to the product which RKO was distributing, so far as the playing of those pictures in RKO's own theatres is concerned?

A. Well, RKO's theatres negotiated for those pictures [fol. 4474] just like any other exhibitor.

Q. And were the terms, the price per picture, or the percentage per picture, the clearance, and what not, a matter of negotiation between the distributing department and the theatre department?

A. Oh, yes.

Q. What do you have to say about the approval of distribution contracts, either to your own theatres or to other exhibitors?

A. Well, I carry the responsibility of approving all contracts. My name is signed to the license agreements. Of course I am only human and I have to have assistants to help me to carry out and perform my duties. But the final authority rests in me.

Q. Will you state the sales policy of RKO, as you have pursued it, in respect to the dealing with theatres affiliated with other distributors and theatres of independent circuits and theatres of one-theatre operators in the negotiations for your product, the places where they are carried on, any distinctions between the different classes of negotiations, and the considerations determinative of your making contracts with particular theatres where there were other theatres in the town available as a possible customer? Will you state that, with any changes that may have occurred [fol. 4475] in the course of the period, if there have been any, and as fully as you can, carrying that question in mind?

[fol. 4476] Mr. Wright: If the Court please, I think the question is at least triple barreled.

Mr. McClennen: If it is objected to I will not press it. I thought it would be a great saving of time.

Mr. Wright: A matter of clarity.

Mr. McClennen: I am not going to press the question.

Mr. Wright: It isn't a question of saving time, it is a matter of clarity.

Mr. McClennen: I am not going to press it if you object.

Mr. Wright: We do object.

The Court: The *question* is withdrawn.

Mr. McClennen: I do not press it. I withdraw the question.

Q. Mr. Depinet, where there are two theatres or more in a city or town possibly available for the first-run or subsequent-run of your pictures, what is your policy with respect to determining to which you will try to sell or consent to sell?

A. Well, our principal desire in the distribution of our pictures is to place them with an exhibitor who we know to be a fair dealer, a reputable operator, a good, live showman. Naturally, the accessibility of his theatre, the reputation of his theatre, the convenience of his theatre, the amount of money that can be earned by a picture in his theatre, his willingness to advertise and establish the pic- [fol. 4477] ture for the surrounding theatres in that locality, all play an important part. Being in the commercial business we desire to get as much revenue as we can, leaving fair and reasonable amount for the theatre, because without that it can't exist. I think those are the principal considerations.

Q. In applying those considerations what weight do you give to the isolated consideration that the theatre is operated by a producer affiliated circuit or an independent circuit or a one-theatre operator?

A. Well, the principal considerations that I have just given you in the sale or licensing of our pictures we have certain policies which are determined when the picture is produced, and we know what it is and the customer who is willing to abide by those terms and if all of the other considerations are satisfactory, why, that is the fellow we do business with and, naturally, the large customer is important to us but he has a lot of brick and mortar which isn't any good to him without film, and we have film that isn't any good to us, except for the theatres, so we deal with him like anybody else, and eventually we get together. We don't permit him to take advantage of us and he does not permit us to take any advantage of him. It wouldn't make any difference to me whether he was an independent or a chain [fol. 4478] operator in the licensing of my pictures if he could leave up to the requirements and it was the best place to sell.

Q. Where there is only one theatre in the town, and if it is a theatre, striving to operate on the best type of pictures, what is your competition for that business, from what other distributing companies?

A. Well, there are plenty of competition. There is the Paramount Company and Metro-Goldwyn-Mayer, Warner Brothers, 20th Century-Fox, Universal, United Artists, Columbia, Republic, Monogram and independent distributors and the British pictures.

Q. In the general run of production, there is no question that some of those companies that you have named do a better job than others of them; their product is more desirable?

A. Yes, but there are various types of theatres, and some of them what you might call smaller companies are producers of product that is more valuable in some of those one-theatre towns; for instance; Western pictures in — Republic and Monogram specialize, are most popular in the little towns of the South and West, and sometimes those exhibitors prefer those pictures to our big, expensive pictures. There are various types of theatres and various types of pictures that are popular in different theatres and [fol. 4479] different localities. You probably wouldn't want to see a "Lum 'n Abner" picture. But down in Kentucky they break all records and there are various sections of the country in which certain pictures do not appeal, and when you go out with all the film there is on the market in one town, you have plenty of competition.

Q. When did the plan of clearance of first-run for its protection against subsequent-runs first come into substantial use?

A. Well, to the best of my recollection it came along with the advent of the feature film, that is, the film of five reels in length, or longer, and as our industry grew. At the beginning there might be one theatre in a town or locality and then as other theatres sprung up, for the orderly conduct of our business, for the convenience of the public, for the protection of our revenue, we had to adopt some sort of a schedule for the playing of the pictures in the various theatres and that slowly developed into the present clearance.

Q. What are the considerations which influence you in determining the length of that clearance?

A. Well, that clearance is negotiated with the exhibitor. History probably has something to do with it, the locality of the theatre, whether it is on the other side of the river [fol. 4480] or the street car runs by there. There are many things that determine the length of clearance. It varies in almost every city. It is hard to define just what it is. You want to get all the revenue that you can out of the first house and then you move onto the second and you want to do the same job there and this clearance is to space the showing of the film. Price has something to do with it, naturally. The first time a picture is shown downtown the admission price is higher and as a general rule, although not always, the admission price lowers as you go along. The public want to know where they can see pictures at various prices, and by this clearance system we make the same picture that might be shown for a dollar in one house so eventually the poor man may see it in a ten-cent house somewhere by spacing the clearance. And then the number of prints is important. We couldn't possibly handle our possibly sixteen thousand theatres with a reasonable number of prints unless the exhibition was divided in some way, such as it has been through the development and growth, the history of clearance.

Q. You mentioned sixteen thousand theatres. Was that just for illustration, or does it betoken the number of theatres you are selling to?

A. I mention that because the War Activity Committee [fol. 4481] of the motion picture industry in its endeavor to cooperate with the Government in this emergency has taken steps to contact the theatres, have them pledge support, and, I think, it is slightly over sixteen thousand exhibitors that have signed up to help the Government, so, assuming that any American would do that, I would say there would be slightly over sixteen thousand theatres.

Q. Do you bear in mind approximately how many of those theatres, say in 1941, R.K.O. licensed to?

A. Varied number, depending upon the quality and popularity of the picture from maybe as low as eight thousand up to fourteen thousand, or more.

Q. You have spoken of the interest in your revenue. It is obvious in the case of the percentage picture how you are interested in the gross receipts of the theatre showing your picture first-run. Will you indicate in what way you are interested in that revenue in the case of flat rental pictures, either currently or for future prospects, or otherwise?

A. Well, film rental is a percentage of the receipts regardless of how the exhibitor pays it to you.

Q. Will you stop right there and indicate just what you mean by that?

A. Well, I mean by that that if a man takes in a thousand [fol. 4482] dollars and gives you 35 per cent of it, it is $350. If you sell it to him for flat rental for $400 and he takes in a thousand, you have received 40 per cent of his receipts. The exhibitor whose purpose it is to buy as reasonably as he can sometimes believes that he can buy more reasonably through flat rental, and if he is willing to pay a reasonable flat rental, why, we don't want to be arbitrary about it in every case. Sometimes we let him buy it the way he wants to buy, but we still get a percentage of the receipts, maybe lower than our regular terms, maybe a little higher, depending on the trading ability of the exhibitor and the distributor.

Q. When you have agreed with him on a flat rental and the picture is a flop at his theatre, what is the common occurrence?

A. Well, he comes in and asks for an adjustment and generally he gets it, if there is fairness in his plea.

Q. In fixing on the flat rentals for a particular theatre in this year what, if any consideration do you give to what have been his gross receipts in a prior year on pictures?

A. Well, naturally in establishing what we think is the fair flat rental we take into consideration and use for our calculation his grossing prospects, and we know pretty [fol. 4483] well what a certain theatre ought to gross with a certain picture and the rental is always based on a percentage of the receipts that will give us an adequate rental, leaving him his expenses, plus a reasonable profit. We don't try to get the last dollar, because there is no sense in putting him out of business.

Q. You have several times mentioned 35 per cent. Was that selected just for illustration or is it a significant figure?

A. Well, it is significant in that for quite some time 35 per cent has been a basic figure around which you work. Sometimes you go higher and sometimes you go lower, depending on the quality and drawing power of the picture.

Q. When you sell a picture to a theatre first-run, and also second-run, what, if any, influence does the agreed figure for the first-run have upon the figure for the second run?

A. When you say "figure," what do you mean, Mr. McClennen?

Q. Well, I mean——

A. The film rental?

Q. The film rental, yes, that is what I mean by that, the film rental?

A. They don't have any influence on each other. Each theatre is a separate entity. One theatre may have for unusual reasons a very heavy overhead, another theatre [fol. 4484] may have a cheap overhead. Our calculations are primarily aimed at a rental which will give us a reasonable return and leave a reasonable amount with the exhibitor.

[fol. 4485] Q. If both runs are sold to one theatre——

The Court: I did not understand your answer to that question as being an answer to the question put. Your question was where they continue the run beyond the first run in the same theatre?

The Witness: I did not understand it that way.

The Court: What was the rental charge?

Mr. McClennen: I did not mean a continuance in the sense that we have referred to it at other times.

By Mr. McClennen:

Q. Let me put you this question: In a given town there is a theatre X and a theatre Y. The considerations are obvious that make you want to put your first-run into theatre X. Theatre X and theatre Y both would like to get the second-run in the town 30 days or 60 days, or what not, after the first-run. In determining the film rental for the second-run to X how much do you take into consideration, if at all, the fact that X is buying the first-run also, and what considerations do you have to determine what in that competition for the second-run will determine what you should do with theatre Y?

A. Well, I don't quite understand that question.

Q. I am assuming that X is in one ownership and Y is in [fol. 4486] another ownership entirely independent.

A. Those are both second-run theatres?

Q. No. X is a first-run theatre that, for pressure of product or for other reasons, has to have the second-run perhaps as a second feature or otherwise on other pictures, but for business reasons wants to get the second-run. Now, when you negotiate the first-run under those circumstances, do you ordinarily negotiate it at the same time that you make the first-run contract?

A. Yes, I think you would in an instance of that sort.

Q. How much are you affected in determining whether you shall let Theatre X have that second-run by the fact that X is paying for the first-run the price fixed for the first-run?

The Court: How does that affect the question of the rental as between X and Y for the second-run?

Mr. McClennen: First as to how they arrive at the rental for X.

The Court: In view of the fact that they are also contracting for a second-run, you mean?

Mr. McClennen: In view of the fact that they are the contractor for the first-run.

A. Well, as clearly as I understand your question, they are two separate transactions and would be dealt with and treated separately. There is an advantage to us, perhaps, [fol. 4487] in having the first-run also play the second-run. He would be more apt to protect—or, rather, not hinder the first-run by the second-run operation. They would probably allow sufficient clearance and there would be advantages in putting the picture over better because he knew it would come back eventually and play again in his second-run theatre; but the two deals would be negotiated individually and be determined on their merits.

Q. In dealing with circuits of theatre are they ordinarily dealt with in one negotiation or a series of negotiations for the season?

A. Well, not today. Today we try to sell every picture individually.

Q. I forgot to call to your attention that we are not talking about today in the case. I will take it, for illustration, in the year 1939.

A. Well, at that time circuits were sold in different ways. Some circuits that had a central buying place where you made a deal after negotiations, individual negotiations, for each theatre, might do it at one place. Other circuits were divided and had offices in different parts of the country. There was not any set rule about it. The only set rule was that you took up individually every theatre and sat down and negotiated for that particular theatre, whether you [fol. 4488] did it all at one time or whether you did it at different places or at the same place.

Q. The plaintiff has adopted as the definition of a franchise, for the purposes of this case, a contract covering more than one season's production. Without attempting to commit you one way or the other to the correctness of that definition, just assume it in the questions that I put to you from now on.

Are franchises a common or an uncommon thing with RKO?

A. Well, they are very uncommon today. There was a time——

Q. Again I will say in 1939.

A. There was a period when we had quite a few. That was in the early days that I was with the company, but in the main the theatres covered by franchise were a very, very small number of the total theatres that we supplied.

Q. In issuing those franchises was any distinction made between producer-controlled theatres, independent circuits and individual theatres?

A. Not to my knowledge.

Q. In dealing with individual theatres in competition with the other large producers, there were times, were there not, when some of the other large producers were supplying to the theatre which RKO did not supply?

A. Will you read that, please?

[fol. 4489] (Question read.)

A. Of course.

Q. Were any efforts made, as a matter of your policy, to get that theatre to take a franchise from RKO?

A. Well, RKO over the period of years has made a determined effort to sell or license its product to every theatre in America, regardless of who else was selling pictures there, and we try to sell the theatres that we think would make good customers and that we think our product should play in, regardless of what else the exhibitor may have had.

Q. What were the advantages and disadvantages, if any, of either to you in your selling policy in giving franchises to independent theatres?

A. Well, at the time we felt that a franchise would give us a continuous source of exhibition for our pictures in that particular theatre. It saved us the expense of going back and selling them each year. It gave us a sense of security in the production of our pictures. We knew we had an outlet.

Q. And would the same considerations apply to your giving a franchise to a circuit of theatres?

A. Of course they are all theatres to us regardless of who owns them.

Q. I confine myself now to the matters of your personal [fol. 4490] knowledge and not what you have been told by anybody else. To your knowledge has there been any conversation with any of the defendants in this case or their executive or employees not to deal with any competing exhibitor, or to restrict the terms of such dealings?

A. No, sir.

Mr. Wright: If the Court please, there is not any showing so far that this witness would have any occasion to have such knowledge, if it had occurred, and he is also drawing a conclusion here as to what the effect of some conversation might or might not be. The form of the question, I believe, called for whether he knew of a conversation to the effect that such a thing had happened. Now, I submit that he is not in any position to answer such a question and that it is a conclusion.

Mr. McClennen: The precise question was put at page 4381 and admitted by your Honor.

The Court. I take it that there is the question of his being in a position to know whether such a conversation was had. The other thing is whether it calls for a conclusion. You have to assume that he has some knowledge that contracts [fol. 4491] were made for the distribution of pictures.

Mr. Wright: I would agree in assuming that he might have some knowledge of the contracts. There has not been any showing that he had any knowledge whatsoever as to the negotiation of any particular contract that is in evidence here.

The Court: He goes farther than that. You might assume by reason of his position as President he might have some knowledge of some negotiations at the time.

Mr. Wright: I suppose that would depend on the facts of the particular contract.

The Court: You may inquire as to his own personal experience, what he has done with reference to the negotiation, what he has known personally of the negotiation of contracts from time to time, and what he had to do with the negotiation of contracts. I think that is true, but I think it might be reenforced by something more definite as to his opportunity for knowledge.

By Mr. McClennen:

Q. Mr. Depinet, you have known from 1931 to May 19, [fol. 4492] 1942, have you, that your company was making contracts with the various theatres, or some of them, from time to time, of the Schine Circuit?

A. Yes, sir.

Q. You have had those contracts come up to you for approval?

A. Yes, sir, I visited Gloversville myself and talked about contracts.

The Court: Have you negotiated from time to time with the Schine people with reference to contracts?

The Witness: Yes, sir.

The Court: Objection overruled.

Mr. McClennen: That is all.

Cross-examination.

By Mr. Wright:

Q. Mr. Depinet, in addition to yourself, there were at various times during this period, were there not, a number of others who engaged in the negotiation of contracts with the Schine Circuit?

A. Oh, yes, sir.

Q. And, in general, what you did was simply to place the final approval on whatever deals were worked out; isn't that right?

A. Nobody else had any authority to license any of our pictures but myself.

[fol. 4493] Q. I understand that, and what you did in these deals was simply to approve the deal that was finally made?

A. Well, now, Mr. Wright, as head of the distribution I do more than just sit there and say yes or no.

Q. I understand you attempt to satisfy yourself——

A. I lay out the policies——

Q. Just don't interrupt. Let me finish the question. As I understand you, you, at the time you approve any contract, or any one that is important, attempt to satisfy yourself from whatever information you have at hand that the contract is the kind you ought to have or the best you can get? That is right, isn't it?

A. Yes, sir.

Q. All of this general procedure you outlined I suppose represents what you like to do or what you try to do; isn't that correct?

A. I don't understand what procedure you mean.

Q. Your previous testimony, in which you went over the policies of the Company in general situations.

A. No, it is what we do do.

Q. You never have any variations from the policy as outlined; is that right?

A. Well, any policy is flexible, Mr. Wright. We adhere to that policy to the best of our ability. There are a lot of ways to skin a cat and if we have to make a change here [fol. 4494] or there to get the same result we do it.

Q. Your performance, of course, in particular situations, I suppose varies widely from what you set up as the ideal; is that correct?

A. I don't know as to that. I wouldn't agree to that—widely. It may vary, but I don't know how widely it varies.

Q. Or the extent of the variation, I suppose it would depend on a rather careful analysis of all the contracts you made with what you set out to do; isn't that right?

A. No, our desire is to make a license with an exhibitor that gives us a fair rental and leaves him a reasonable return. That is our policy and that is what we adhere to. We do it in different ways, but that is the way we end up or at least try to end up.

Q. And I suppose it would be impossible to say how often you ended up that way, without a study of the exhibitor's books for that matter, wouldn't it?

A. Well, those come into play. When he comes in and wants help he brings his books.

Q. That does not quite answer my question.

A. Yes, his books and our knowledge of his theatre. There is no great mystery about the operation of a motion picture theatre.

Q. In your general efforts to get what you regard as [fol. 4495] favorable terms you try to get whatever the product you think you are selling is worth? Isn't that about what it comes down to?

A. Up to the point that we try to get all that we can get and still leave the man a reasonable part of the receipts.

Q. And in terms of percentage and flat rentals your terms vary quite widely, in accordance with what you regard as the value of the particular exhibition that you are selling; isn't that right?

A. The particular theatre.

Q. And the particular run and the theatre it is playing in, I suppose?

A. Yes, that is true, but different theatres cost different amounts to operate. Some theatres can pay a higher percentage than others, due to the overhead, due to the rents, and so on.

Q. In general, is it not a fact that you do not expect to get as big a share of the distributor's receipts for the less desirable runs and pictures than you expect to get for the first runs of the top pictures?

Mr. McClennen: Mr. Wright, I think you meant exhibitor. You said distributor's receipts.

Mr. Wright: Yes, I will change that.

A. Well, that does not hold true. We expect to get a percentage of the receipts for the exhibition of our pictures [fol. 4496] in a given theatre that will leave the exhibitor a reasonable sum and give us a reasonable sum. Now, as I have said before, some theatres can pay a higher percentage and still end up with a better profit than other theatres.

Q. I understand what you said before. Will you read the question and see if we can get an answer to the question?

(Question read as follows:

"Q. In general, is it not a fact that you do not expect to get as big a share of the exhibitor's receipts for the less desirable runs and pictures than you expect to get for the first runs of the top pictures?")

A. Well, the percentages would vary. The amount of money paid varies because in the big theatre you get a much larger sum of money than you do in the smaller theatre.

Q. Your answer to the question is no? You expect to get, do you, just as much in the way of percentage, just as high a percentage of the exhibitor's gross, whether you are selling him a last run in one of your bottom brackets or whether you are selling somebody first-run on one of your top bracket pictures; is that right?

A. No, that is not what I said. You talked about top pictures. I will say this, that the older the picture gets, or the older the run is, the rental naturally diminishes as the [fol. 4497] receipts of the theatre diminish.

Q. And the percentage of the receipts that you get as film rental also diminishes, does it not?

A. Yes, to an extent it does, yes.

Q. You testified generally, I believe, as to clearances. Did you take any part in negotiating any of the clearances that are involved in this case, any of the clearances with the Schine Circuit?

A. I don't believe I did.

[fol. 4498] Q. And I believe you also testified as to your general policy in selling circuits of various types and independents, that you treated them the same?

A. That is right.

Q. And in your selection of a particular theatre, or your sales as to particular theatres in a particular locality, your general policy would be to negotiate on a theatre against theatre basis, is that right?

A. That is right.

Q. And, of course, the extent to which the policy was carried out, and the extent to which variations occurred would only appear from an examination of what happened in particular situations, isn't that right?

A. I imagine that is correct.

The Court: Just one question. You spoke about the question of variation of percentages from the percentage on the first-run pictures to percentage on the later runs of the same picture in perhaps a smaller theatre. You said it made a difference to some extent. What do you mean by that? There is evidence in this case of some charges for smaller theatres that seem to be in excess of that charge for the first-run pictures.

[fol. 4499] The Witness: Well, what I meant by that was this—I thought I was answering his question—there are certain pictures on which the terms are cut and dried for every theatre in America, and it doesn't make any difference if it is the one hundredth run or the first run.

The Court: The figures are cut and dried?

The Witness: As to the terms. Maybe it is a so-called 50 per cent picture, and the producer and distributor will not play it anywhere except under those terms. Then there are other pictures which are not so expensive, not so good and which, like any other merchandise, the price may be lessened somewhat as it gets older and plays in older theatres, but basically, your Honor, the distributor tries to get a percentage of the income of a theatre and it might be the fifteenth run in a town, but the company figures its gross possibilities. It might earn you more than the fifth or eighth or tenth run. That happens.

The Court: You said, "To an extent." I didn't know what you meant by that.

[fol. 4500] Mr. Wright: I missed your Honor's earlier comments, and could you read me what the Judge said before?

The Court: The answer with respect to comparative prices and later runs. I mean, rentals, and he said "To an extent that affected the difference in rentals."

You can go back there, if you want to.

(Reporter then read the following:

"The Court: Just one question. You spoke about the question of variation of percentages from the percentage on the first run pictures to percentage on the later runs of the same picture in perhaps a smaller theatre. You said it made a difference to some extent. What do you mean by that? There is evidence in this case of some charges for smaller theatres that seem to be in excess of that charge for the first-run pictures.

The Witness: Well, what I meant by that was this—I thought I was answering his question—there are certain pictures on which the terms are cut and dried for every [fol. 4501] theatre in America——")

The Court: I mean rentals.

Mr. Wright: I heard the answer.

I think that is all.

Mr. McClennen: That is all, Mr. Depinet.

The Witness: Am I through?

Mr. Wright: Yes, sir.

The Witness: Thank you.

Mr. Wright: I might say in reference to the Warner exhibits it won't be necessary to have any one come here. My associates called my attention to the fact in the past we had a letter from the distributor representative identifying them. If some one will give us a letter what they are, and where they came from that will be sufficient.

The Court: All right.

Mr. McClennen: This remark refers to Defendants' Exhibits for identification D-170 and D-171.

The Court: You mean not to receive them now, but await the letter?

Mr. Wright: The letter should be sufficient to establish they came from the files. We reserve our objection as [fol. 4502] to impeachment of the witness on the ground that it should have been brought to the attention of Breyer when he was on the stand. It is the same thing that applies to the other documents produced.

The Court: Do you offer them now?

Mr. McClennen: I will offer them now giving the assurance that the letter will be forthcoming.

The Court: All right.

Mr. McClennen: Then these exhibits become Exhibits D-170 and D-171 in evidence.

(Thereupon copy of letter dated September 9, 1935 to Breyer from Mooney, previously marked as Defendants' Exhibit D-170 for identification was received in evidence.

(Thereupon Warner Brothers' percentage engagement report signed by M. H. Breyer, dated 9-8-10, previously marked as Defendants' Exhibit D-171 for identification was received in evidence.)

[fol. 4503] WILLIAM F. RODGERS a witness called by and on behalf of the Defendants, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. McClennen:

Q. Where is your residence?

A. Rye, New York.

Q. Your position?

A. Vice President and General Sales Manager of Loew's, Inc.

Q. When did you enter the motion picture distribution industry?

A. In the spring of 1910.

Q. Will you trace that down, briefly, by time, position, employer, until you came into the employ of Metro-Goldwyn-Mayer, or any of its constituent companies?

A. Well, in 1910, I entered the industry in the employ of the General Film Company in the capacity of a clerk, and over a period of several years, I occupied the positions of traveling auditor, bookkeeper, salesman and branch manager. I later was associated with the Mutual Film Corporation as an assistant to a Vice President and traveling representative. I later was with the Triangle Film [fol. 4504] Corporation as a manager of its Pittsburgh, Pennsylvania, office and also a field representative, and for a very short period I was with the Hall Mark Company. I can't recall the dates, but I was a sales manager there. I left the Triangle to come back with the General Film Company and stayed there possibly a year or so as sales manager of the company, and later entered the employ of the Goldwyn Company about 1917 as an assistant to the Vice President and left them in 1918, and in 1920, for a very short period, I was with Paramount Pictures, as sales manager of short subjects, and entered the employ of the Goldwyn Company in 1920 again, and from that time on I have been either with the Metro-Goldwyn-Mayer or Loew's, Inc.

Q. And in what positions with the Loew's, Inc., or its constituent companies from the beginning of that connection which I think you said was 19——

A. The Goldwyn Company 1920, but we merged with the Metro Company in 1924.

Q. And the Mayer conjunction came in about the same time?

A. Approximately the same time, yes.

Q. Take it from 1924 down to date, what has been your connection, position, with Metro-Goldwyn-Mayer Company and with Loew's, Inc.?

A. Well, I was an assistant to the Western Sales Man- [fol. 4505] ager and assistant to the Eastern Sales Manager too, for a very short time after the merger, and then later was the Eastern Sales Manager, and I had that position for approximately 11 or 12 years until I was appointed General Sales Manager in 1936, and two or three years ago I was appointed a Vice President of the Company.

Q. Do you recall Mr. Charles E. Dickinson, Jr., one time interested in the operation of a theatre in Lockport?

A. Yes.

Q. Mr. Dickinson has testified to a conversation with you apparently in 1933. He gives the conversation at page 1962 in these terms, he, meaning yourself, "He told me he would like to have his pictures played in the Palace Theatre, that Metro-Goldwyn-Mayer always liked to have their pictures played in the best house in any town, the most outstanding house, but that a contract with the Palace Theatre for the 1933-1934 season in contrast with a contract for the Schine Chain would amount to peanuts, and he was sorry, but he could not do anything for us." Did you at any time say that last to Mr. Dickinson?

A. I did not.

Q. Give me to the best of your recollection the conversation that you had with him in the summer of 1933 in the terms "I said" and "He said," or "He said" and "I said."

[fol. 4506] A. Well, Mr. Dickinson called upon me in New York—I can't recall the exact time—desiring to have our pictures for the following season, and I told him at that time very definitely that I didn't think that we would sell him. He then demanded the pictures, claimed he had a right to them. I told him at the time the only reason he played our pictures was for the reason we had a serious disagreement with the Schine outfit at the time and he was the only outlet in Lockport to play them at the time, and in having the disagreement with Schine, we preferred to go back to them in the next year, and he became very abusive and I thought, under those circumstances——

Mr. Wright: If the Court please, this calls for conversation.

The Court: If you recall what was said.

The Witness: He threatened me at that time with a lawsuit. He threatened me with various different things. He was very abusive in his conversation.

The Court: The word "abusive" is a conclusion of the mind. Confine yourself to the conversation in your testimony.

The Witness: He threatened me. I told him then we [fol. 4507] would not sell him. He told me his standing in the community, why we should sell it to him. I told him he had no rights whatever, and I told him then as far as I was concerned, we would not offer him any part of our product.

Q. Mr. Rodgers, have you been in the court room this morning during the entire testimony of Mr. Depinet?

A. Yes.

Q. Have you heard that testimony?

A. Yes.

Q. Was your attention arrested on any respects in which Metro-Goldwyn-Mayer policy of sale and dealing with theatres differed from that of R.K.O.?

A. Well, I might say somewhat slightly, yes. We set up our policy in maybe a little different fashion. We try to select, as Mr. Depinet outlined, the logical customer in a locality based upon many, many elements, try to deal with them as fair as we can. We have a basis of dealing which is in many, many places, automatic, according to the terms that the theatre finally pays us. We have a sliding scale of percentage, so to speak, where a fair percentage of our customers pay under such arrangements, where the gross receipts are fixed, he pays upon the gross receipts on the amount of business they do, or based on percentage in con- [fol. 4508] nection with the gross, but, generally speaking, I might say we try to conduct our business much along the same way Mr. Depinet outlined.

Q. Have you had any personal dealings with the Schine Circuit?

A. Well, not for many years.

Q. Have the negotiations with the Schine Circuit and the consequent contracts been reported to you from time to time for your approval or consideration?

A. Well, not necessarily for my approval, but for my consideration, and sometimes acquaintanceship with progress of developments or negotiations, but not for my approval. Our sales manager approves those contracts.

Q. Those sales managers being who, from time to time?

A. We have an eastern sales manager now, Mr. E. K. O'Shea, and we have a central sales manager, Mr. J. J. Maloney, and a western sales manager, Mr. J. E. Flynn, and what we call a circuit sales manager, Mr. E. W. Aaron, and I have an assistant general sales manager, E. M. Saunders.

Q. In that territorial division I take it that the Buffalo and Albany districts would fall in the eastern division?

A. Well, the Albany would, but Buffalo is in a central division, and it is just in the course of being transferred now back to the East.

Q. The central division would include Buffalo and Ohio [fol. 4509] and Kentucky and Maryland and the District of Columbia, among others?

A. Not the District of Columbia. That would be in the East. The others would be in the Central.

Q. Going back to 1931 to 1939, what was your division among sales managers for these respective districts? Do you remember who were over which district?

A. From 1931 to 1936 I was the Eastern Sales Manager, and I believe at that time we only had—yes, we had a Southern Sales Manager with just charge of the southern office up until 1936, and a Western Sales Manager, who had charge of everything from Chicago west.

Q. From the period 1931 to 1936, you were the Sales Manager that would cover the area, New York, Ohio, Kentucky, Maryland and the District of Columbia?

A. Yes, sir.

Q. Representatives of Loew's, Inc. want me to ask you, in substance, if Metro-Goldwyn-Mayer or Loew's, Inc., are the best distributors in the motion picture industry, with the finest pictures and regard themselves as tops in all respects, is that so?

A. It depends under what circumstances. Sometimes we admit it and other times we don't.

Q. Well, if you at this time think of any respect in which any other distributor is in any more prominent position, or [fol. 4510] has any better pictures, in general, will you state it now?

A. Well, I don't believe anybody has as good, not any better pictures, and, as far as distribution is concerned, we think that we are fairly good.

Q. Mr. Rodgers, I confine this question, which I am about to put to you to your personal knowledge, not what you have been told by anybody else. To your knowledge, has there been any conversation with any of the defendants, or their executives, or employees, not to deal with any competing exhibitor or to restrict the terms of such exhibitor?

A. No.

Mr. Wright: Same objection.

The Court: I will receive it.

Cross-examination.

By Mr. Wright:

Q. Mr. Rodgers, when you had this conversation with Mr. Dickinson in the summer of 1933, you say, you referred to some disagreement you had with the Schine Circuit?

A. Yes.

Q. You are referring to that by the fact you had been out of the circuit for the 1932-33 season?

A. We had been out for some time. I don't know whether [fol. 4511] it was the 1932-33 season, but it was immediately preceding that time.

Q. This conversation you had was about the 1933-34 season?

A. I don't recall how long we were out of them. I don't recall at the time.

Q. The disagreement you are referring to?

A. Was the preceding year.

Q. Was after you had been out of the circuit for the preceding year?

A. Yes.

The Court: What do you mean by "disagreement"?

The Witness: Mr. Schine had a representative that came to New York to negotiate with me, and he did negotiate a deal, and when he returned he returned to his headquarters, they had some disagreement there which resulted in a disagreement with me, so he didn't do any business.

Mr. Wright: Would you read to me the last question and answer of Mr. McClennen's?

(Reporter then read last question of Mr. McClennen's on direct-examination, on page 4510, lines 6 to 12, inclusive.)

The Court: Was the question in a different form than it was before, Mr. McClennen?

[fol. 4512] Mr. McClennen: Your Honor please?

The Court: I thought the form of your question might be a little different.

Mr. McClennen: That question was read from the one put before.

The Court: I had reference to the word "statement" in there, something about a statement made, I don't know.

Mr. McClennen: Well, the question put to Mr. Andrew Smith and to Mr. Depinet, and as I intended to phrase it to Mr. Rodgers was: I confine this question, which I am about to put to you, to your personal knowledge, not what you have been told by anybody else. To your knowledge has there been any conversation——

The Court: What was that?

Mr. McClennen (Continuing): —to your knowledge has there been any conversation with any of the defendants, or their executives, or employees, not to deal with any competing exhibitor or to restrict the terms of such dealings?

The Court: It was the same as before.

[fol. 4513] ~~The Court: Mr.~~ Wright was cross-examining.

Mr. Wright: If the Court please, there is something that has come up here that I would appreciate a short recess to look over before we excuse Mr. Rodgers.

Mr. McClennen: There are one or two questions I will put, if I may.

The Court: All right.

By Mr. McClennen:

Q. In the period 1931 to 1936 was the approval or disapproval of contracts proferred from the Eastern Division in your hands?

A. Yes, sir.

(Short recess taken.)

Mr. Wright: If the Court please, I have concluded my examination. I wanted to offer while Mr. Rodgers was on the stand letters which were previously identified. The first one, 441 for identification, is a letter dated February 7, 1936, addressed to Mr. Lynch. It just has the initials at the bottom, "W.F.R."

By Mr. Wright:

Q. Those are your initials, are they?
[fol. 4514] A. I do not see my initials. I just see dictated initials, but I can't see mine on here. I assume that it is, however.
Q. That is a letter that you wrote?
A. Yes, sir.

Mr. McClennen: Those that you showed you need not bother with.
Mr. Wright: It did not have the name on it.
Mr. McClennen: What exhibit is that?
Mr. Wright: That is 441.
Mr. McClennen: What is it?
Mr. Wright: That is a letter dated February 7, 1936, from Mr. Rodgers to Mr. Lynch. We offer this Exhibit 441 and Exhibit 424 for identification, which is a letter from Mr. O'Shea to Mr. Rodgers, dated October 13, 1933. An Exhibit 491 for identification, which is a letter or a memorandum from Mr. Rodgers to Mr. Conners, dated June 8, 1939, and Exhibit 509 for identification, which is a memorandum from Mr. Aaron to Mr. Rodgers, dated August 2, 1938, and Exhibit No. 510 for identification, which is a memorandum, dated July 29, 1938, from Mr. Rodgers to Mr. Conners.

[fol. 4515] (Thereupon the letter, dated February 7, 1936, Rodgers to Lynch, previously marked as Plaintiff's Exhibit 441 for identification was received in evidence.)

(Thereupon the letter, dated October 13, 1933, O'Shea to Rodgers, previously marked as Plaintiff's Exhibit 424 for identification was received in evidence.)

(Thereupon the memorandum, dated June 8, 1939, Rodgers to Conners, previously marked as Plaintiff's Exhibit 491 for identification was received in evidence.)

(Thereupon the memorandum, dated August 2, 1939, Aaron to Rodgers, previously marked as Plaintiff's Exhibit 509 for identification was received in evidence.)

(Thereupon the memorandum, dated July 29, 1938, Rodgers to Conners, previously marked for identification as Plaintiff's Exhibit 510 was received in evidence.)

The Court: Does that conclude your examination?

Mr. Wright: Yes.

Mr. McClennen: That is all.

The Court: We will take a recess until 2 o'clock P.M.

(Whereupon a recess was taken until 2 o'clock P.M.)

[fol. 4516] After Recess, 2 P.M.

Appearances: Same as before noted.

Edwin J. Smith, a witness called by and on behalf of the Defendants and having been first duly sworn was examined and testified as follows:

Direct examination.

By Mr. McClennen:

Q. What is your residence?

A. Buffalo, New York.

Q. In September, 1941, what was your employment and with what company?

A. Salesman for RKO-Radio, Inc.

Q. Did your territory include Syracuse?

A. Yes.

Q. It has appeared that on September 9, 1941, Mr. Wallace telegraphed—I haven't the words before me—in substance that he wanted to talk about pictures for the Strand Theatre in Syracuse. Did that telegram come to your attention?

A. I can remember that Mr. Lux asked me to contact this exhibitor in Syracuse.

The Court: Speak up louder.

A. Mr. Lux, the Buffalo Manager, asked me to contact [fol. 4517] that theatre in Syracuse. Whether it was on the 13th or a few days afterwards, I don't recall.

Q. So that the first you had was some word from Mr. Lux that you were to see Mr. Wallace?

A. That is right.

Mr. McClennen: Mark this for identification.

(Thereupon the expense account referred to was marked as Defendants' Exhibit D-172 for identification.)

Q. I show you Defendants' Exhibit 172 for identification. What is that paper?

A. That is my weekly expense account for traveling.

Q. Did you at some time, in Mr. Wallace's office or the Strand Theatre office in Syracuse, telephone to Mr. Lux at the Warner Theatre Company's office in Albany?

A. I talked on the telephone with Mr. Lux and I don't know—it was either Albany or Buffalo.

Q. Against this date on Exhibit for identification D-172 I call your attention to the item "Tuesday, September 16, 1941, L.D. 'phone service charge 30 cents." Can you recall what that was for?

A. Well, it was to try to contact Mr. Lux. Whether I called him at Albany or Buffalo I do not know.

Q. Did you telephone Mr. Lux more than once about that time concerning the Strand Theatre possibilities?

[fol. 4518] A. That is hard to remember, but I usually contacted him once or twice a week on various matters and I can't recall any specific call there.

Q. It has appeared from Mr. Lux's testimony that he was in Albany on September 15 and 16, 1941. Now, with that fact before you, can you recall whether it was to Albany at that time that you telephoned him?

A. That clears it up. It must have been Albany that I talked to him on that day.

[fol. 4519] Q. Up to that date or the day before, September 15, 1941, do you recall having seen Mr. Wallace after September 9th, 1941?

A. I have a faint recollection I talked to him between the 14th and including the 16th. I mean in the previous week.

Q. The 14th would be Sunday. Do you mean by that that you had talked with Mr. Wallace before Sunday, September 14th, 1941?

A. I talked to him sometime. I don't know whether it was a personal conversation or a telephone call.

Q. And that was at sometime after you had learned that you were to see Mr. Wallace from Mr. Lux after his telegram of September 9th?

A. Yes, that is right.

Q. If there was a telephone call in that period, have you any recollection of what was said in that conversation with Mr. Wallace?

A. The only thing that I recall saying that I had word from Mr. Lux to contact him and that I had product available for him, for his theatre.

Q. Did you describe the product or name the product?

A. No, not over the phone.

Q. Did you at that time over the phone arrange when you would see him?

[fol. 4520] A. I don't recall, but naturally I must have made an appointment for the 15th or 16th.

Q. On the 15th or 16th of September, 1941, you had conversation with him at the Strand Theatre office in Syracuse?

A. Yes.

Q. And that was the first personal conversation you had with him on this Strand subject?

A. If I recall—I mean, it is so long ago my memory is not clear on it.

Q. Relate the conversation that you had with Mr. Wallace on that occasion, be it September 15th, 1941 or September 16th, 1941, and keep away from any conclusions. State "He said" and "I said," just as nearly as you can reproduce that conversation.

A. Well, as I recall Mr. Wallace said he was in need of product for the Strand Theatre and my reply was that I had a number of pictures which I listed for his purchase.

Q. How did you list them?

A. According to price and age and classification, and so forth.

Q. When you listed you mean that you scratched them down on paper?

A. I imagine so, yes.

Q. I show you Plaintiffs' Exhibit 980 in two sheets. Are [fol. 4521] those in your handwriting?

A. The first sheet is not in my handwriting, the top sheet.

Q. And how about the second sheet?

A. The second sheet is in my handwriting except the figures below which are not mine, on the bottom part, and this figure.

Q. That is these seven picture names are in your handwriting?

A. Yes.

Q. Is this below the line, "Snowwhite" also in your handwriting?

A. Yes.

Q. Can you recall what you told Mr. Wallace about those five pictures under the heading "First-run" and three pictures under the heading "Second-run", using that paper to refresh your recollection as far as it will?

A. As I recall I told Mr. Wallace I had a number of pictures, some first-run and some second-run, but the two films listed as first-run "They Meet Again" and "Hurry, Charlie, Hurry" were under contract to another theatre and, if they were released, I could negotiate with those. The others were available.

Q. And when you say "released", you don't mean in the sense released for exhibition, but released from the prior contract?

A. Released from under contract to another party.

[fol.4522] Q. The other party in this instance was RKO——

A. RKO Schine Theatres.

Q. What were the release dates of the pictures as you set them down on that memorandum?

A. I notice that the year is missing, but as I recall the release dates were in rotation as of June 6, 1941, July 11, 1941, July 25, 1941, and September 28, 1941.

Q. "Saint's Vacation" being June 6th; "They Meet Again", July 11th, and "Hurry, Charlie, Hurry", July 25th, and "Jungle Cavalcade", September 28—that is 9-28?

A. Yes, sir.

Q. I call your attention that on the RKO release schedule, Exhibit 634, at page 3867, it appears that "Jungle Cavalcade" was released for exhibition June 27, 1941. This date, July 28, 1941, is the availability date under your heading "Second-run", is it not?

A. Well, I think that this date here referred to a subsequent run. That is beyond the second run.

Q. Beyond the second-run?

A. Yes, sir.

Q. So that September 28th was the date when that picture coming out in June, 1941, would be actually available for Mr. Wallace, if he took that picture?

A. I think that is correct.

Q. At that interview of September 15 or 16, 1941, did you [fol. 4523] make out these five sheets that are Plaintiff's Exhibit 819?

A. Yes.

The Court: Did you say the 15th?

The Witness: 15th or 16th. I think it was concluded on the 16th, this application copy.

By Mr. McClennen:

Q. And these were the copies left with Mr. Wallace or Mr. Carr by you?

A. Yes, sir.

Q. Did you have some talk with Mr. Wallace at that time on either one of those two days as the pictures available for his opening proposed for September 20, 1941?

A. Yes.

Q. Is this Exhibit D-168 for identification in your handwriting?

A. Yes, and the dates set opposite it were tentative dates subject to the approval of the office and the availability of prints.

Q. That is, you told him that "Jungle Cavalcade" would be available for September 20th to 23rd and "Flying Down to Rio" also?

A. I didn't say available. I said subject to the prints being available, and the dates were tentative.

Q. Now, it appears against "Flying Down to Rio" that [fol. 4524] over at the right-hand side of the paper are the words "Sept. 20-23." Are those in your handwriting?

A. Yes.

Q. And what is the significance of those dates over there?

A. The same reason. They are tentative dates.

Mr. Wright: Just a minute. I suppose we ought to have here what he actually said about the dates at the time and then your Honor can judge what the significance of them was.

The Court: Let him state what was said about them.

Q. What did you say to Mr. Wallace about the availability of "Flying Down to Rio"?

A. Well, I would say the same thing to Mr. Wallace that I would say to any of my——

Q. No. What you did say to him.

A. I said I would take the dates subject to the approval of the office.

The Court: That is for showing from the 20th to the 23rd, you mean?

The Witness: Yes, sir. And that applies to all dates.

By Mr. McClennen:

Q. Was there anything said in that conference on either September 15 or September 16, 1941, as to finding out from the office whether that picture "Jungle Cavalcade" or any others would be available?

[fol. 4525] A. I recall a telephone conversation with Mr. Lux at Albany.

Q. What did you say over the telephone to Mr. Lux in Mr. Wallace's presence?

A. Well, I asked Mr. Lux if he thought these dates would be available, that Mr. Wallace wanted these pictures on the dates submitted, and he said that he had no record of it there, but he would have to take it up with the Buffalo office.

Q. In that telephone conversation did you say anything with reference to the availability of "Hurry, Charlie, Hurry" and "They Meet Again"?

A. I could not give him anything definite on that because the pictures were under contract to another party.

Mr. Wright: I move to strike that as not responsive.

The Court: What did you say to him about the pictures?

Q. In Mr. Wallace's presence did you hear anything said about those two pictures?

A. Well, naturally, they were part of——

Q. No. If you don't remember, say so. If you do remember, say so.

A. I don't recall.

[fol. 4526] Q. Did you take away counter parts of these five applications, Exhibit 819?

A. Yes.

Q. And what did you do with them?

A. I mailed them to the Buffalo office for this procedure and approval.

Q. Do you remember whether you had any further conversation with Mr. Wallace, either September 15th or 16th, 1941, or thereafter with reference to "Hurry, Charlie, Hurry" and "They Meet Again"?

A. Well, I had a number of conferences with Mr. Wallace, after that, but I cannot remember the dates specifically pertaining to those two pictures.

Q. Can you remember anything that you said about those two pictures to him?

A. As I stated previously I told him that the pictures were not in the clear at the present time, and if they were open for sale I would be glad to negotiate for him and get the playing time.

Q. At any time thereafter do you remember whether you told him that they were cleared on the earlier contract or were not cleared on the earlier contract?

A. Not that I can recall.

Mr. McClennen: That is all.

[fol. 4527] Cross-examination.

By Mr. Wright:

Q. This second sheet of Plaintiff's Exhibit 980 that I believe you said was in your handwriting, are there any parts of that that aren't in your handwriting?

A. This is not my handwriting.

Q. When you say "this" you are referring to the figure 1,000 with a circle around it?

A. 1,000.

Q. Any others?

A. I am not sure of that.

Q. When you say "that" you are referring to 25 cents?

A. 25 cents. Sixty-two fifty don't look like my figures and these are not my figures.

Q. When you say "these" you refer to 350-157-50?

A. 350-157-50.

The Court: How about the drawing? What does that mean?

The Witness: I don't know. It has no bearing, your Honor.

Mr. Wright:

Q. Are there any other figures or words on there that aren't in your handwriting?

A. The writing of "Tim Holt" after "Six Gun Gold" is not my writing.

[fol. 4528] Q. That isn't yours?

A. No.

Q. Is there anything else?

A. That doesn't look like my writing, the word "now" after "They Met in Argentina."

Q. The word "now" do you say it is or is not yours?

A. It doesn't look like mine.

Q. Do you know?

A. I am not positive.

Q. You don't know whether you wrote it or not?

A. I am sure it is not mine.

Q. The word "now" after "Argentina" you say is not yours?

A. No.

Q. How about the figures 100?

A. That is not mine.

Q. But you say the word "now" is yours?

A. Yes.

Q. How about the word after the title "Reluctant Dragon," you think now that is yours?

A. That looks like it.

Q. And the 200 after that?

A. No, that is not mine. I make a different "2" usually than that. That is mine. I am sure of that.

Q. You think it is yours?

A. Yes, I am sure.

[fol. 4529] Q. And then this "Jungle Cavalcade," "X O.K.," that is yours, is it?

A. I can't tell whether next is mine or somebody's else's, but it looks like mine. It is written at the same time with the same lead pencil. You see that is lighter lead.

Q. This 9-28?

A. That is my figures, yes, sir.

Q. As I understood your testimony on direct-examination, these dates you wrote in here opposite "Saint's Vacation," and "They Meet Again" and "Hurry, Charlie, Hurry," were the dates on which those pictures were generally released, is that right?

A. Generally released or available for second or subsequent-runs.

Q. Well, which?

A. Both.

Q. Well, the pictures on the dates that they were generally released, that would be the date on which they became available to the first-runs, isn't that right?

A. That is right. That refers to the upper three pictures.

Q. So that these dates July 6th, July 11 and July 25——

Mr. McClennen: Through June 6th.

Mr. Wright: Through June 6th. I beg your pardon.

Q. Those are all the dates on which those pictures became available for exhibition first-run in Syracuse, is that right?

[fol. 4530] A. As I recall now.

Q. Then you say this "Jungle Cavalcade" date you wrote in there was the date on which that picture became available for second-run?

A. I think that was the subsequent-run picture.

Q. What about the date? Was that 9-28- the date on which it became available for second or subsequent-run?

A. Well, I don't recall now, but I should say it was the subsequent-run, because it had a prior run, as I recall it, at the Cameo Theatre, which is the third-run in the city.

Q. I thought you said before it was the date on which it became available—it would be available to Wallace at the Strand?

A .Well, that would apply as a subsequent run.

Q. As I understand it, this Exhibit D-168, that is entirely written by you, is that right?

A. That is right.

Q. And when and where was that written?

A. I imagine that this was written in the office of the Strand Theatre.

Q. When you say "this" you are referring to your D-168?

A. Yes.

Q. At the time you had your talk with Mr. Wallace?

[fol. 4531] A. Yes.

Q. And during the time you were also talking with Mr. Lux?

A. I don't remember whether these dates were laid down and this sheet was written before or after I talked to Mr. Lux, this particular sheet.

Q. When you say "this" you are referring to you- D-168?

A. That is right.

Q. You don't remember whether you wrote what is on there before or after you talked to Lux?

A. I don't.

Q. Might have written some of it before and some after?

A. No, it was all written at one time.

Q. All written at once?

A. Yes.

Q. But you don't recall whether it was before or after you talked to Lux?

A. No.

Q. These dates that you wrote on Exhibit D-168, that first one "Jungle" and "Flying Down to Rio" for September 20 to 23, that was the date on which they were to be exhibited at the Strand?

A. No, that is the dates that were requested by Mr. Wallace. He did a lot of juggling trying to work out a program and submitted dates on double-feature policies.

Q. Those were the dates that Wallace wanted the pictures [fol. 4532] for the Strand, the 20th to 23rd on those two pictures?

A. That is right.

Q. They were to be followed on the 24th to 26th, "They Met in Argentina" and "Hurry, Charlie, Hurry"?

A. Providing the pictures were in the clear.

Q. Well, those were the dates you discussed those dates with Wallace at the time?

A. Those were the tentative dates they were taken.

Q. And then the dates here September 27th to 30th that you have opposite "Reluctant Dragon" and "They Meet Again" are the dates for—he was going to play or he wanted to play those pictures at the Strand, isn't that right?

A. Yes.

Q. What is this figure after the date on "Tom, Dick and Harry," on here?

A. I don't know. It looks like "On" and again it looks like "O. K."

Q. Which is it?

A. I can't tell you.

Q. Look at it carefully?

A. I can't tell you.

Q. If you wrote "On" what would that mean?

A. I don't know.

Q. You don't know how you happened to write that?

A. No, I don't. It is so far back I don't recall it. It [fol. 4533] looks like an "O.K." I don't write "O.K." that way, that's all.

Q. Is that in your handwriting or somebody else's?

A. That is very difficult——

Q. What?

A. That is very difficult for me to tell you. I imagine it is in my handwriting.

Q. You wrote up the sheet. Nobody else wrote on it?

A. There is other figures. This figure here, for instance, the rest of the sheet is all mine.

Q. You can tell from looking at this you wrote "Tom, Dick and Harry," October 16-17," can't you?

A. It looks like "O.K." to me.

Q. That is what you wrote, isn't it?

A. I don't write a "k" like that. I mean—let's see here. I don't write a "k" like that. I can't give it to you definitely whether that is my writing or not.

[fol. 4534] Q. You don't know whether you wrote it or not?

A. No.

Q. Who do you think wrote it, if you didn't?

A. I wouldn't know because there are many figures on these other sheets that are not mine. It might have been written before or afterwards.

Q. Give me any other figures you see on this Exhibit 168 which you think you didn't write.

A. I didn't write that (indicating).

Q. When you say "that" you are referring to "B" in parenthesis?

A. Yes, sir. All those down this side here (indicating) do not look like my handwriting, 1, 2, 3, 4, 5, 6 of them.

Q. All of these notations in the column headed "Second Choice" there you say you didn't write?

A. That is right.

Q. Who wrote those?

A. I don't know.

Q. Well, what did you do with the paper after you wrote it?

A. I sent it in to the Buffalo office.

Q. You don't know who worked on it there?

A. I do not.

Q. You know that the figures you have just referred to were either put on by you or somebody at your Buffalo [fol. 4535] office; is that right?

A. I know that I didn't put them on; that is all.

Q. Just answer my question. Don't you know that you put them on or somebody at your Buffalo office put them on?

A. No, I don't.

Q. Who else could have put them on?

A. I don't know. I know I didn't put them on.

Q. Who else do you think could have put them on other than as I have suggested?

A. I have no idea what happened to the paper after it reached the Buffalo office.

Q. I say, do you know that either you wrote those figures there or they were written by somebody after it got to the Buffalo office?

A. Right. That is different.

Q. Now, as I understand it, you said that these pictures, "They Meet Again" and "Hurry, Charlie, Hurry" were under some contract to the RKO-Schine Theatres there?

A. Yes, sir.

Q. Have you got a copy of that contract?

A. No, I haven't. I have never seen it.

Q. And those dates you wrote down there on this Exhibit 980 were the dates on which they became available for first-run exhibition under that Schine-RKO contract; is that right?

[fol. 4536] A. I believe that is right.

Q. And then do you know what the custom was as to how much of an interval of time ordinarily elapsed after the picture became available before those theatres would tell you whether or not they wanted to use the picture?

A. That is impossible to tell. It varies in many situations and it varies according to the class of picture. It may be held off for two weeks, three weeks, or six months.

Q. For six months or a year?

A. If they can't find the right booking spot for it that is possible.

Q. That is, even if they don't book it, you do not try to sell it to any one else?

A. Not unless it is in the clear.

Q. When does it become in the clear?

A. That is beyond me. That was not any of my duties.

Q. You didn't know anything about that?

A. No.

Q. You didn't make any effort to determine whether any of these pictures that you wrote down on this sheet 980 were then available for Mr. Wallace's Strand Theatre; is that right?

A. Oh, yes, I do. I knew that these other pictures aside from the first-run pictures were available.

Q. When you say "aside from the first-run pictures" you [fol. 4537] mean aside from "Saint's Vacation", "They Meet Again", "Hurry, Charlie, Hurry"; "Flying Down to Rio", and the others?

A. "Six Gun Gold", "They Met in Argentina", "Reluctant Dragon", "Jungle Cavalcade" and "Snow White".

Q. You say all of those were not then available; is that right?

A. No, I said, as I recall, they were all available for tentative booking, tentative play dates, but the three in the first-run situation.

Q. That is, the three that were not available were "Saint's Vacation", "They Meet Again" and "Hurry, Charlie, Hurry"?

A. As far as I knew at that time.

Q. How did you happen to write those dates down opposite those names; do you remember?

A. That I don't recall. It is hazy to me.

Q. You don't know why you wrote those down?

A. No, I don't.

Q. You say you wrote down the dates that are on this Exhibit D-168 simply because those were the dates that Wallace told you he wanted those pictures for the Strand Theatre; is that right?

A. No, those were the dates that were requested.

Q. When was it you prepared these contract applications that have been marked here in evidence as 819, with [fol. 4538] reference to the time that you made up these sheets marked D-168 and 980?

A. These applications for contracts were written up on the 16th.

Q. That was after you had prepared this memoranda D-168 and 980?

A. The contracts were written first, as I recall it.

Q. Which is right?

A. I recall the contract application was written first. Whether this was written on the same day or the next day, I am not positive.

Q. The first thing you did before you had any discussion of dates you wrote up these applications; is that right?

A. Yes, sir.

Q. Then you discussed with Mr. Wallace the dates on which the pictures mentioned in these contracts marked 819 would become available for his theatre, did you not?

A. In answer to that, I don't recall whether all these dates were discussed on that very day after the application copy was taken, whether there was part of them discussed that day and part of them the next day, and then mailed to the Buffalo office.

Q. How about the next?

A. I am not positive.

Q. But it was after you took the applications?

[fol. 4539] A. Yes.

Q. Then you discussed the dates for the pictures?

A. That is right.

Q. Did you make any inquiry with respect to availability of those pictures and the prints and when you would have prints for Mr. Wallace on them?

A. I don't recall. I know that was part of the discussion with Mr. Lux at the time I talked to him.

Q. As to when these prints would be available; is that right?

A. Yes.

Q. Now, then, you remember when these lines were drawn through "They Meet Again" and "They Met in Argentina"?

A. No, I do not.

Q. Did you draw the lines?

A. Not that I know of.

Q. That was done by somebody at the RKO branch?

A. I don't know. I didn't do it now as I recall. I wouldn't draw any lines. I wouldn't see any purpose of drawing any line.

Q. The last time you had anything to do with this D-168 the lines that are drawn through those titles were not on there; is that right?

A. I imagine so.

Q. As I understand it, you had this conversation with Mr. Wallace about these dates and you took the contracts, [fol. 4540] or sent the contracts in, to the Buffalo office, and you also had these calls about the availability of the pictures and the prints, and then you never told Mr. Wallace when the pictures would be available and if they were available; isn't that right?

A. Well, I don't recall clearly, but it is only natural that I would tell them that some of the pictures were not in the clear, that they were still under contract and the dates taken were tentative and could not be approved.

Mr. Wright: See if you can answer the question. Read it again.

(Last question read.)

A. Yes, I did.

Q. You did? When did you tell him that?

A. I can't recall. I can't remember when it was, whether it was the week following or the second week following.

Q. Was this over the telephone or in person?

A. It was in person as I remember.

Q. You made another call?

A. I made a number of calls there after that.

Q. I mean with reference to these pictures that are on the contract applications here identified as 819.

A. Well, I should say I called on him at least twice in the following week.

[fol. 4541] Q. By the following week you mean what week, the week of the 23rd?

A. No, the week of the 16th and the following week.

Q. As I understand it, you saw him on the 15th and 16th?

A. That is right.

Q. First you took these contract applications—you think that was on the 15th——

A. No, that was on the 16th.

Q. You think this was on the 16th that you took the contract application?

A. That is right.

Q. And then after that on the 16th you prepared this Exhibit D-168 and you wrote these figures on Exhibit 980; is that right?

A. Which is 980, that first one?

Q. This page ~~here, this~~ second page of Exhibit 980 (indicating).

Mr. McClennen: Which pictures are you indicating?

Mr. Wright: Whatever he wrote on that page.

A. These figures here were written up before the application contracts were taken.

Q. This was the first thing you wrote when you talked to Mr. Wallace on the 15th; is that right?

A. That is right. That is the work sheet.

Q. This is what you wrote up on the 15th?

[fol. 4542] A. Yes, 15th or 16th. I don't recall.

Q. This was the first written document you prepared was this 980; is that right?

A. Yes.

Q. And you think that was on the 15th or the 16th?

A. That is right.

Q. Then the next thing you wrote out were these applications, Exhibit 819, is that right?

A. That is right.

Q. And that was either on the 15th or 16th?

A. I am sure that that was on the 16th.

Q. That was on the 16th?

A. Yes, sir.

Q. And then after you wrote up the application then you prepared this Exhibit D-168; is that right?

A. That is right.

Q. You sent that along to the office at Buffalo with——

A. I don't know whether this was written on the 16th or the following day or so.

Q. That might have been the 17th?

A. That is possible.

Q. You didn't send it in to Buffalo at the same time that you sent in 819?

A. Not that I recall. There is nothing to guide me there.

Q. And then when was the next time after you had sent [fol. 4543] this D-168 in to Buffalo that you saw Mr. Wallace?

A. I don't remember. I saw him a number of times from then on, possibly twice a week from then on.

Q. Do you remember when it was that you gave him definite information about what dates he could have and what dates he couldn't have?

A. No, I don't recall, because ordinarily or usually that confirmation comes direct from the Buffalo office.

Q. You don't recall, then, any time that you talked to him about a date for any of these pictures that are listed here on D-168 after that was prepared?

A. No, it is so long ago that I don't remember.

Q. You don't know whether you ever confirmed a date to him or not on any of them?

A. No, sir, I do not. That is not in my power to do that.

Mr. Wright: See if you can answer the question. I move to strike out what is not in his power.

A. No.

Q. You never did that?

A. Not that I recall.

Q. You know, do you not, that some of these pictures were supplied and played on the dates that are noted there; isn't that right?

A. That is right.

Q. On 168?

[fol. 4544] A. Yes, sir.

Q. And as to "They Meet Again", do you remember what finally happened to that?

A. No, I remember that the picture was not released from the RKO-Schine contract.

Q. When you say it was not released, did you have anything to do with releasing it or getting it released?

A. No, nothing whatever.

Q. Do you know when it was released?

A. No, I do not.

Q. Or what was done in that connection?

A. No, I do not.

Mr. Wright: I move to strike out his answer then as to knowing that it was not released.

The Court: Granted. You mean that you do not know the time when it was released? You know of its being shown?

The Witness: Yes, I understood it was to be shown.

The Court: Not what you understood. Do you know yourself that it was shown?

The Witness: I can't recall, but I assume it was shown.

Mr. Wright: I was going to ask him about the actual exhibition.

By Mr. Wright:

Q. The picture played the Eckel Theatre there in Syra- [fol. 4545] cuse at about the same time, or around September 25th, didn't it?

A. I don't know that.

Q. You don't remember that?

A. No, sir.

Q. Can you remember that it was substituted there on the second half of a double-bill for a double-bill that had been moved over from the Keith or Paramount?

A. No, I would have no way of knowing that.

Q. You know nothing about that?

A. No, I have nothing to do with those houses.

Mr. Wright: That is all.

Redirect examination.

By Mr. McClennen:

Q. Were you aware at the time of the fact of the playing of "They Meet Again" at the Eckel Theatre beginning September 25, 1941?

A. No, I was not.

Q. Were you aware of the fact of the playing of "Hurry, Charlie, Hurry" at the Eckel Theatre, October 30 to November 5, 1941?

A. No.

Q. Were you aware of the sending of this telegram, Plaintiff's Exhibit 820, dated September 18, 1941, to the Strand [fol. 4546] Theatre, saying "Impossible supply '*Je*rry Charlie' September 24-26" or "'They Meet Again' 27-30", or, as the office copy, Plaintiff's Exhibit 831, reads "Impossible supply 'Hurry, Charlie' September 24-26" or "'They Meet Again' 27-30"; were you aware of the sending of those?

A. I don't recall seeing those.

[fol. 4547] Q. Do you bear in mind whether you were aware that just after you sent in those applications, Exhibit 819, the Strand Theatre was notified that they couldn't have those two pictures as I have stated?

A. Yes.

Mr. McClennen: That is all.

Elmer Lux recalled by and on behalf of the Defendants, having been previously sworn, was examined and testified further as follows:

Mr. McClennen: If your Honor please, Mr. Lux was under cross-examination at the end of Friday, and Mr. Wright had expressed a desire to have Mr. Smith's testimony before he completed the examination, and, therefore, I put Mr. Smith on first. Mr. Lux is ready for further cross-examination.

Cross-examination (continued).

By Mr. Wright:

Q. Mr. Lux, you remember when we adjourned, I asked you to see whether you could find any copies of this Exhibit 819, and you were going to make a search and let us know [fol. 4548] the results. Did you make such a search?

A. I looked for them and couldn't find the exact copies of them, but I believe, as I mentioned to you, three of these pictures appear in our detail and clerical records as having been played as per the detail of this contract. The other two, as you know about and as I previously mentioned, they were not even considered, but Wallace was so advised.

Q. You couldn't find a copy of any of these contracts that are identified here as Exhibit 819, is that right?

A. No, but I probably could get three out of the New York office, and the other three they wouldn't have.

Q. Will you see if you can get them?

A. Yes.

Q. As I understood your previous testimony you would keep five of those copies at the branch office, is that right?

A. No, I did not testify to that. We keep one copy here and the other copies go to the office in New York. It is made in five copies. Our records show we played three of these pictures to conform with that setup.

Q. You haven't been able to find the copies?

A. No, but it is reasonable to assume that they exist and these are facsimiles or exact copies of them.

Q. As I recall your testimony then, the other day you [fol. 4549] weren't able to fix the time as the 15th or 16th on which you talked to Mr. Smith and Mr. Wallace about the pictures for the Strand Theatre?

A. That is right. I said it was probably late on the afternoon of the 15th or some time on the day of the 16th prior to my departure for Buffalo.

Q. Now that you heard Mr. Smith's testimony is your recollection helped at all as to which day it was?

A. No. I talked to him and it was on either one of those two days.

Q. You still don't know which one?

A. No, I couldn't testify to the exact day, sir.

Q. This telegram I believe you said was sent out by you, the telegram, which has been identified as Exhibit 831?

A. Sent out from my branch, and it is possible I may have dictated it.

Q. You don't remember whether you——

A. I am reasonably certain I did in this instance, because I gave it my personal attention as the result of having been called on it, I remember vaguely.

Mr. Wright: I think that is all.

The Court: That is all.

Mr. McClennen: That is all, Mr. Lux.

[fol. 4550] **Herman Wobber**, a witness called by and on behalf of the Defendants, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. McClennen:

Q. Your residence?

A. San Francisco,

Q. California?

A. California.

Q. Your present position?

A. I am the Division Manager, 20th Century-Fox.

Q. Of what?

A. Of the 11 western states in charge of sales.

Q. Will you describe briefly from the beginning your relations to the motion picture distribution business, the dates, as far as you can quickly fix them and the concerns with which you were from the beginning?

A. I have been in the distribution of motion pictures about 33 years, 21 years, with Paramount and the last 11 or 12 years with Fox. I was a Division Manager for Paramount about 20 years in the same territory that I have now for Fox. The 11 western states. I was Division Manager for Fox for about five years, and then became General Sales [fol. 4551] Manager of Fox for three and a half years from mid 1928 until the end of '41, since which time I have returned to the Coast as Division Manager.

Q. What was the period as exactly as you can fix it before becoming General Sales Manager for Fox that you were Division Manager, and what was the division?

A. The division was the 11 western states. I think it was from January, 1933 until the middle of June, 1938, end of June, '38.

Q. Who was your immediate predecessor as General Sales Manager for Fox?

A. John D. Clark.

Q. And when did he die? I don't care for the exact date?

A. May, '38.

Q. How long then had John D. Clark been the General Sales Manager for Fox?

A. I think five and a half years.

Q. Do you remember who was the General Sales Manager next prior to John D. Clark?

A. James Granger.

Q. You have been familiar, then, with the general sales policy from either the general or division managers' standpoint of Fox since what time?

A. Since 1933.

Q. You then were familiar with the general sales policy of [fol. 4552] Paramount for what period?

A. 21 years prior to that time.

Q. I think it has appeared that Mr. Kent went from either General Manager or General Sales Manager of Paramount to Fox. Do you have in mind approximately the date?

A. I think he moved over either in the latter part of '31 or early part of '32.

Q. And Mr. Kent is now dead?

A. Yes, sir.

Q. During the period from 1933 to May 19, 1942—and I do not mean by that question to intimate there was any change at that time, but that is a limiting date that has been adopted in this case—during that period 1933 to May 19, 1942, were you familiar with the sales policies of Fox determining their choice of the theatres that should be their customers in any particular place or locality?

A. Yes.

Q. Take the period from 1933 to 1938, will you relate the policy of Fox with reference to selling second-runs in smaller towns in opposition to their first-run customer?

Mr. Wright: If the Court please, I think that the best evidence as to what was done would be the contracts that were made. I don't think this witness is in a position to [fol. 4553] give information of the kind that he has been asked to give here, except in terms so general they wouldn't have any relevancy to the issues we are trying.

Mr. McClennen: If your Honor please, it is obviously not possible to put before you all the contracts made during the period of five years with from ten to fifteen or sixteen thousand different theatres in the United States. It is important to show to you the relation of what was done in the particular case on trial before you in conformity or out of conformity with the general prevailing policy of the company. Now, the only way in which to show that general policy is by one experienced with that policy, and this man in the period that I have spoken of is the living man, the only living man, best fitted to describe that policy. That is the reason I put the question.

The Court: Well, it is the same question that was answered before, isn't it?

Mr. Wright: The other questions as I got them, I didn't understand them to be quite as broad and sweeping as this. [fol. 4554] This is nation wide without reference to what was done in this territory.

The Court: I think you can avoid any question by reframing your question to ask him what he does as Division Manager in these types, or instances in sales.

Q. Mr. Wobber, what is the course in determining the question of sales of second-runs in small towns in the period 1933 to 1938 to opposition to your first-run account?

A. We have always felt that it was most desirable to have the first and the second-run in the same ownership, expecting from the first-run the maximum amount of [illegible] maximum amount of advertising so that if the first-run didn't fully benefit that benefit would accrue to the second-run. Where there is competition we found frequently that the first-fun seldom advertised to the maximum.

Q. In the period from 1933 to 1938, or until you became General Sales Manager in 1938, the actual contracts or proposals of contracts in the area, New York, Ohio, Kentucky, Maryland, Delaware and the District of Columbia, would not come to your attention, would they?

A. No, they would not.

Q. Take that same area in the period from the time you [fol. 4555] became General Manager and up to, we will say the beginning of 1942, what was your course with respect to contracts, applications, out of that area?

A. All contracts reached my desk and were approved or were rejected by me.

The Court: Out of what area?

Mr. McClennen: 1938 to the beginning of 1942.

The Court: What area?

Mr. McClennen: This same area, New York, Ohio, Kentucky, Maryland, Delaware and the District of Columbia.

The Court: How would he get those contracts?

Mr. McClennen: Because he was the General Sales Manager in that period.

The Court: You mean covering the whole United States?

Mr. McClennen: Covering the whole United States.

The Court: I beg your pardon. I was confused. I thought you spoke of the General Sales Manager for the eleven states, General Manager over the Sales Managers for the eleven states. All right.

Q. In that period, from the time when you became General Sales Manager in 1938 to January, we will say 1942, where there were possibilities of more than one customer in a town, what were the considerations which actuated you in determining whether to have applications solicited from [fol. 4556] given theatres or approving or disapproving applications when the contracts came to you for consideration?

A. We base that upon many conclusions. First of all, the reliability and dependability upon the contract that was submitted. Whether the exhibitor was aggressive, what performance on prior contracts, we had a selfish interest in the success of the pictures, because many of them played on percentage and we, naturally, wanted to be with those accounts that were capable of getting the greatest box office results out of our pictures.

Q. Did you in the period of your General Managership from 1938 up to the beginning of 1942 come into actual contact with the Schine Circuit representatives?

A. Only very rarely. My recollection is that I had inherited a franchise that had been made by my predecessor, John D. Clark.

Q. And you currently were aware of that franchise?

A. I was.

Q. When there is a franchise such as the one of Fox to the Schine Circuit, what is the method of determining what picture shall be played in what places and at what prices?

Mr. Wright: If the Court please, to the extent that that is covered by the franchise, I suppose it would not be com- [fol. 4557] petent for this witness to say and it not appearing he had anything to do with the negotiations, I don't know how it would be competent to testify about it in any event.

Mr. McClennen: I only wish to offer it. If it is objected to, I await your Honor's ruling on the objection.

The Court: The franchises are the best evidence.

Q. Were you, while you were General Sales Manager, aware of the franchises that were outstanding or made in that period between Fox and the theatres of the country?

A. Yes.

Q. Without committing to the definition, the plaintiff has adopted as the definition of "franchise": A contract for product for a period of more than one year. In that period of four years could you approximate the number of different franchises that Fox had obtained in the country?

A. I would say, roughly, at least several hundred.

Q. Could you give me any idea of how many of those were with single-theatre operators?

A. I would say about 150 of the 200, or more.

Q. What are the business considerations which in the course of the actual operation of this business led to appli- [fol. 4558] cations by theatres for franchises or proffers by Fox to theatres of franchises?

A. Will you read that, please?

(Last question read.)

[fol. 4559] The Court: He can state the reason why they got the franchise.

Mr. Wright: I assume that the answer will be limited to his reasons as a distributor. He is not going to undertake to say why exhibitors——

The Court: He can say what reason they have for having the franchise.

A. I may say I think the reasons were mutual in so far as I doubt whether we could have sold a franchise that did not seem to offer advantages to an exhibitor, or from the same reasoning we rarely accepted a contract that was not equally mutual to us. In determining whether we would accept a franchise we took a lot of things into consideration, the size and location of the house, its operation, its maintenance, its aggressiveness, the honesty and the ability of the exhibitor to carry out the terms of the franchise, and a lot of other similar reasons.

The Court: Was there any uniformity of tenure or duration, or did they vary?

The Witness: They varied. The terms were invariably very similar for the franchises. The length of time differed. Sometimes they were made for one, two, three or five years, depending upon the set-up.

[fol. 4560] By Mr. McClennen:

Q. I confine this question which I am about to put to you to your personal knowledge, not what you have been told by anybody else. To your knowledge has there been any conversation with any of the defendants, or their executives or employees, not to deal with any competing exhibitor or to restrict the terms of such dealings?

Mr. Wright: The same objection that we made to the same question.

The Court: Overruled.

A. There was never any conversation with me about any restrictions.

Mr. McClennen: That is all.

Cross-examination.

By Mr. Wright:

Q. I am not sure I understood what your position was from 1932 to 1938.

A. I was Division Sales Manager for 20th Century-Fox, operating in the eleven Western States.

Q. At that time who was the Eastern Sales Manager?

A. We had several district managers that operated in two or three States. John D. Clark was the General Sales Manager. Eddie Granger was here most of the time, I believe.

[fol. 4561] Q. As Eastern Sales Manager?

A. As Eastern Sales Manager.

Q. He was the one who had supervision over the States of New York, Ohio, Maryland and Kentucky?

A. I don't know his exact territory. He was back East here and I believe had that territory.

Mr. Wright: That is all.

Mr. McClennen: That is all.

(Short recess taken.)

Frank J. A. McCarthy a witness called by and on behalf of the Defendants and having been first duly sworn was examined and testified as follows:

Direct examination.

By Mr. McClennen:

Q. What is your residence?

A. 117 Harmon Avenue, Pelham, New York.

Q. Your position?

A. Southern and Canadian Sales Manager of Universal Picture Corporation.

Q. When did you enter the motion picture distribution business?

A. I think it was in 1915 or 1916 in Boston.

[fol. 4562] Q. Will you trace on down to 1930 your positions and connection, briefly, giving the approximate dates?

A. Well, I started in Boston and then I enlisted in the First World War, and after my discharge from the Army I went back to the Fox Film Corporation and was the manager in Buffalo, N. Y., in 1918 or 1919. Then I went to Pittsburgh as the manager of the district office for approximately one year. After that I became the field representative of the General Sales Manager of the Fox Film Corporation, covering the eastern section of the United States.

Q. And that lasted until when?

A. That was until about 1920 or 1921. Then I went with Paramount as a special representative in Buffalo for about two years, I think, and then became the First National Manager in Buffalo until 1930. I left in either 1929 or 1930 and became the Universal Manager in Boston: I was there approximately a year.

Q. That was Branch Manager?

A. A branch manager.

Q. In Boston for Universal?

A. Yes, sir. I was there for not quite a year and I came to New York as the Eastern Division Sales Manager of [fol. 4563] Universal Pictures.

Q. And you occupied that position up to what time?

A. Until 1939 or 1940.

Q. And then you became what?

A. Southern and Canadian Sales Manager.

Q. During the period that you were Eastern Sales Manager for Universal did your territory include some or all of these: New York, Ohio, Kentucky, Maryland, Delaware, and the District of Columbia?

A. It did.

Q. In that period who had the practical determination of whether an application for a contract in that area should be approved?

A. I did, with one exception, and that was where the General Sales Manager himself negotiated the deal.

Q. In that period when you were dealing with the approval or disapproval of contracts did you have come before you for consideration any contracts with the Schine Circuit?

A. Yes, sir.

Q. Did you become familiar with what were the competing theatres to the Schine Theatres?

A. At that time, yes.

Q. And did the applications for contracts for those competing theatres come before you for approval or disapproval?

[fol. 4564] A. Yes, sir.

Q. I confine this question which I am about to put to you to your personal knowledge, not what you have been told by anybody else. To your knowledge has there been any conversation with any of the defendants or their executives or employees not to deal with any competing exhibitor or to restrict the terms of such dealings?

A. Not to my knowledge.

Mr. Wright: The same objection as previously.

The Court: Yes. That is the same question you have had before. I think it would have more probative force if he were to testify to what he had done himself. It is sort of a negative answer.

Q. Will you relate at this distance of time what dealings you had directly with the Schine Circuit and with the representatives of opposition theatres? I don't mean you to go into detail with each one, but give to the Court some description of your dealings.

A. The opposition sales were not made by me, nor were they negotiated by me.

Q. How about the Schine Circuit?

A. I sat in on the negotiations for the Schine Circuit.

Q. Uniformly?

A. Not always.

[fol. 4565] Q. Was it the general course that you did?

A. That was the general course.

Mr. McClennen: That is all.

Cross-examination.

By Mr. Wright:

Q. A large part of the negotiations were conducted, were they not, by your exchange managers?

A. No, sir.

Q. Isn't that correct?

A. No sir.

Q. As to clearances?

A. I beg your pardon?

Q. How about as to clearances?

A. They sat in on clearances with the district manager.

Q. Who was that?

A. In that case it was Dave Miller.

Q. A large part of the negotiations, then, were carried on with Dave Miller; isn't that correct?

A. No, sir.

Q. What part of the negotiations were carried on with Dave Miller?

A. He merely sat in on the negotiations.

Q. He didn't have any negotiations that you didn't sit in on?

A. Not much.

[fol. 4566] Q. Will you answer the question?

Mr. Wright: Read the question.

(Question read.)

A. Yes, there were negotiations which I didn't sit in on.

Q. That Miller conducted; isn't that right?

A. No, sir.

Q. There were none of those?

A. Is that another question?

Q. There were none of those, no negotiations that Miller——

A. Not to my knowledge.

Q. I show you this letter that has been marked for identification as Exhibit 392. That is a copy of a letter you wrote?

A. That is right.

Q. And that letter I just showed you was written in response to the one I have handed you, marked for identification as No. 391, was it not?

A. This is 392?

Q. Yes. I say this 392 that you just looked at was written in response to the one I am now handing you, marked 391, was it not?

A. That is correct.

Mr. Wright: I will offer Exhibits 391 and 392 for identification in evidence.

(Thereupon the letter, November 14, 1938, referred to, previously marked as Plaintiff's Exhibit 391 for identifica- [fol. 4567] tion was received in evidence.)

(Thereupon the carbon copy of letter, December 14, 1938, referred to, previously marked as Plaintiff's Exhibit 392 for identification was received in evidence.)

Mr. Wright: I will ask to have this letter marked with the next Plaintiff's Exhibit number for identification.

(Thereupon the carbon copy of letter, October 28, 1935, referred to was marked as Plaintiff's Exhibit 999 for identification.)

By Mr. Wright:

Q. I will hand you a copy of this letter, dated October 28, 1935, from Dave Miller to George Lynch, which is marked for identification as Exhibit 999, and which bears at the bottom the notation "Copies to F. J. A. McCarthy and Mr. P. T. Dana," and ask you if you recognize that as a copy of a letter that came to your attention?

A. Yes, sir.

[fol. 4568] Q. Who was Mr. Scully, who is referred to in this Exhibits 392 and 391?

A. General Sales Manager.

Q. For Universal, at that time?

A. That is right.

Q. And who was Mr. Granger, who is referred to in this Exhibit 999?

A. General Sales Manager.

Q. At the time that that was written?

A. That is correct.

Q. After you saw these letters, you still want to affirm the statement that there were no negotiations between Dave Miller and the Schine representatives?

A. Well, you must make a distinction. You first asked me if he negotiated a Schine Circuit deal. I said "No, he did not." That is an individual deal after the Circuit deal was made.

Q. It is a fact, is it not, that there were negotiations with respect to Universal Pictures played in the Schine Circuit which occurred between Dave Miller and representatives of Schine when you were not present, isn't that right?

A. Not the Circuit as a whole, no. Individual situation, yes, but not the Circuit deal, as a whole.

Q. By the Circuit deal, as a whole, you mean the time [fol. 4569] when you finally approved or disapproved a deal for the entire circuit?

A. No, I don't mean any such thing. I mean the entire negotiation of the deal, whether it took one week, two weeks, three weeks or when.

Q. I tried to understand what you mean when you said Miller might have negotiated for some of the situations in the circuit, but Miller didn't have any negotiations in reference to the Circuit as a whole?

A. I didn't negotiate——

Q. Except when you were present.

A. I didn't negotiate for any house in the Circuit deal, at the time the Circuit deal was made.

Q. You mean that was after the deal was made, Miller's negotiations?

A. That was acquired after the deal was made.

Q. As to all the negotiations that were with Miller for the Circuit as a whole, you were present, is that right?

A. At most of them.

Q. Is it all or most?

A. Well, some of them the general sales manager was there.

Q. That was either Scully or Granger during the period?

A. That was Granger during that time. It wasn't Scully. It was Granger.

The Court: Do I understand your answer to the last [fol. 4570] question to be there were times when the negotiation for the Schine Circuit was in its entirety when you were not present?

The Witness: Not that year in which that deal was negotiated, no, but in other years I may not have been there, but, if I sat in on any part of the Schine Circuit negotiations, I finished with it.

By Mr. Wright:

Q. That is in the years that you took part?

A. In the years I was in on the deal.

Q. You finished it up?

A. That is right.

Q. But there were, of course, years in which it was apparently handled by Miller and Granger or Miller and Scully?

A. Handled by Granger or handled by Scully, not only Miller sat in, but you had a branch manager there in the office affected.

Q. That would be possibly Dana or some of the others?

A. That is right.

Q. Did I understand you correctly as saying clearance negotiations were not carried on by branch managers?

A. No, not to my knowledge.

Q. Do you know whether they were or not?

[fol. 4571] A. I doubt very much if they were carried on by the branch manager alone.

Q. You don't know, though?

A. No, I don't know.

Mr. Wright: If the Court please, we seem to be missing a few documents. I can locate them in a few minutes. I don't know whether your Honor wants to take a recess or not.

The Court: Have you another witness here?

Mr. McClennen: I have no one in the court room at the present moment and I think I haven't anybody in town now.

Mr. Wright: The only thing we have left—my impression is there was some merely identified material which relates to this witness that I wanted to offer and that is what I wanted to clear up before he left the stand.

Mr. McClennen: As far as that is concerned, when it is located no formality will be necessary. The fact that the witness has left the stand I shan't press as a witness why the document should not be admitted if otherwise it is appropriate.

The Court: Is that satisfactory, Mr. Wright, so we can [fol. 4572] dispense with the witness then?

Mr. Wright: I suppose under those conditions it wouldn't be necessary to hold him.

The Court: Is that for identification, as I understand?

Mr. Wright: It is identified material that we would want to offer.

The Court: Anything else today, then?

Mr. McClennen: That ends Mr. McCarthy, then?

Mr. Wright: Yes.

Mr. McClennen: That is all, Mr. McCarthy.

If your Honor please, as I say I haven't any one else here. If we are successful in getting in the witnesses that we hope for, we hope to be able to rest the defendants' evidence tomorrow morning, November 9th, before the noon recess. I can't be sure that they will get here.

The Court: What is your pleasure, then?

Mr. Wright: We, of course, would like to finish with our rebuttal just as quickly as we can. We are taken somewhat by surprise by the timing. Mr. McClennen told me this morning he might rest tomorrow. We will do the best [fols. 4573-4575] we can to line up rebuttal material to go ahead perhaps through tomorrow noon.

Mr. McClennen: That is my hope now if I can get the witnesses here.

The Court: Will you go right on with rebuttal then?

Mr. Wright: Go on tomorrow and Friday, and I think we should be able to finish up Monday, close our rebuttal by Monday.

The Court: That is more progressive than I had in mind or thought.

We will adjourn until tomorrow morning at 10:15. We have naturalization first.

(Whereupon a recess was taken until Thursday, November 9th, 1944, at 10:15 o'clock A. M.)

[fol. 4576]

UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF NEW YORK

Civil 223

UNITED STATES OF AMERICA

vs.

SCHINE CHAIN THEATRES, INC., ET AL., Defendants

Continuation of trial before Honorable John Knight, United States District Judge for the Western District of New York, November 9, 1944, 10:15 o'clock A. M.

APPEARANCES:

Robert L. Wright, Esq., John F. Clagett, Esq., Harold L. Schilz, Esq., Philip Marcus, Esq., Special Assistants to the Attorney General, and Milton Kallis, [illegible]q., Special Attorney in behalf of the United States.

Edward F. McClennen, Esq., Willard S. McKay, Esq., Saul E. Rogers, Esq., Arthur E. Whittemore, Esq., Arthur J. Homans, Esq., and Howard M. Antevil, Esq., appearing for the Defendants.

[fol. 4577]

PROCEEDINGS

Mr. Wright: If the Court please, I have this material here now with reference to Mr. McCarthy that was mentioned yesterday, and also another letter not previously identified, which I spoke to Mr. McClennen about. It appears that there are two letters dated December 14, written by Mr. McCarthy in response to the letter which went in evidence as Exhibit 391. The one which he wrote to Mr. Dave Miller, of that date, went into evidence as Exhibit 392. I should also have shown him at the time the letter of the same date to Mr. Paul Baron, which I will ask to have marked with the next exhibit number.

(Thereupon the carbon copy of letter, December 14, 1938, referred to was marked as Plaintiff's Exhibit 1000 for identification.)

Mr. Wright: I think it is understood that his testimony would have been the same with respect to this Exhibit 1000 for identification as with respect to Exhibit 392, that it was written in response to Exhibit 391.

Mr. McClennen: We concede that it may be taken that [fol. 4578] Mr. McCarthy so testified.

Mr. Wright: Then we will offer Exhibit 1000 for identification in evidence, and we also offer previously identified exhibits 389, 409, and 999 in evidence under the same numbers.

Mr. McClennen: The Exhibit 999 that was identified yesterday there is no objection to. It shows that a copy was sent to Mr. McCarthy.

(Thereupon the copy of letter, previously marked as Plaintiff's Exhibit 999 for identification was received in evidence.)

Mr. McClennen: Exhibit 409 for identification, from Mr. Dana to Mr. McCarthy, of September 23, 1935, we make the objection to it that we have to other inter-office communications, which I assume your Honor overrules.

The Court: Yes.

(Thereupon the communication of Sept. 23, 1935, Dana to McCarthy previously marked as Plaintiff's Exhibit 409 for identification was received in evidence.)

Mr. McClennen: Exhibit 389, February 7, 1938, from Mr. Dana to Mr. Herman, with a copy to Mr. McCarthy, we make that same objection to.

The Court: Same ruling.

[fol. 4579] (Thereupon the communication, February 7, 1938, Dana to Herman, previously marked as Plaintiff's Exhibit 389 was received in evidence.)

(Thereupon the carbon copy of letter, December 14, 1938, previously marked as Plaintiff's Exhibit 1000 was received in evidence.)

Mr. McClennen: Yesterday, if your Honor please, you admitted for us Exhibits D-170 and D-171 on our assurance that we would procure the letter from the attorney showing the source.

Mr. Wright: Mr. McClennen has shown me the letter. We are satisfied that they came from the files of the Warner Company.

The Court: They were received yesterday.

Mr. McClennen: The letter shows the fact that they were discovered on November 2, 1944, in the files of the Cleveland Exchange.

The Court: Very well.

[fol. 4580] Gradwell LeBerthon Sears, a witness called by and on behalf of the Defendants, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. McClennen:

Q. Your residence?

A. Harrison, New York.

Q. Your position?

A. I am Vice President of United Artists Pictures Corporation of Delaware.

Q. That "of Delaware" refers to the Incorporation State?

A. Yes.

Q. And that is the United Artists Corporation that distributes the United Artists pictures, is it?

A. Yes, sir.

Q. Will you relate briefly by date positions and companies your entry and pursuit in the moving picture distribution business from the beginning?

A. I started to work for the World Film Corporation in New York City selling pictures in 1919. I was subsequently transferred to St. Louis, and I was there until December, 1920, which time I went to Chicago and I was in Chicago [fol. 4581] with the First National Pictures Corporation from December, 1920 until August, 1925. I became Branch Manager of the Cleveland, Ohio, Exchange of First National Pictures in August, 1925, and remained there until 1928. In 1928 I returned to Chicago as Chicago Branch Manager. I was there until maybe 1929. I came in to New York as the Western Sales Manager of First National Pictures. Subsequently, Warner or Vitagraph, rather, and First National were merged, and I became Western Sales Manager of the combined operation, and I was in that capacity until about, I would say, 1936. Early in 1936 I became General Sales Manager and President of Vitagraph Corporation, which position I occupied until October, 1941, and I severed my connection with Warner Brothers and joined United Artists shortly after, and I am still with United Artists.

Q. And in your present position with United Artists beginning in 1941?

A. Yes, I started in October, 1941, with United Artists.

Q. Mr. Sears, I show you contract of Warner Brothers, dated October 13, 1937, approved October 27th, 1937, with your stamp signature with Belpik Theatre Corporation, the Schine organization, for the Princess Theatre, Medina, Ohio, marked Exhibit 635.

Mr. Wright: If it is one document taken from a folder [fol. 4582] which is mark d for identification as 635—there are a number of other contracts in the folder.

The Court: Is there a mark on it?

Mr. McClennen: It has the identification mark, but none on the paper itself.

The Court: Well, let it show for itself what it is, 635?

Mr. McClennen: Marked for identification as Exhibit 635.

The Court: Not in evidence?

Mr. McClennen: And I think a copy is in evidence with a sub-lettering, but I am not sure, and to avoid any doubt, I will put this in as Defendants' D-173.

The Court: You have two markings, then?

Mr. McClennen: This 635 is merely the bulk identification marking. There is nothing on the paper itself.

(Thereupon contract of Warner Brothers, dated October 13, 1937, with Belpik Theatre Corporation for the Princess Theatre, Medina, Ohio, was marked as Defendants' Exhibit D-173 for identification.)

[fol. 4583] Mr. McClennen: It may be noted that we are in doubt at the moment whether this is a duplication of another exhibit or not.

Q. Mr. Sears, at the time this contract was approved had you heard of any claim by Mr. Essick or Mr. Fine that Mr. Kalmenson had promised them this product for their new theatre soon to open in Medina, Ohio?

A. No, sir.

Q. Mr. Essick has testified that in November, 1937, when the matter came up at the New York office of Vitagraph—and the testimony is at page 1824—Mr. Kalmenson denied that he had made any such promise. Do you remember whether Mr. Kalmenson's denial was brought to your attention?

A. It was.

Mr. Wright: If the Court please, that calls for a conclusion there as to what——

The Court: Is it not hearsay, brought to his attention?

Mr. McClennen: I just wanted to make sure that he did know of the denial. That is, Mr. Essick has testified that when the claim was made that Kalmenson had made the promise that Kalmenson then denied it, and I am merely asking whether that denial came to the attention of Mr. Sears.

[fol. 4584] Mr. Wright: I think again, if the Court please, that Mr. Kalmenson would be the man who would have to be here to testify to whatever he had done.

Mr. McClennen: Mr. Kalmenson would not be the man that knew whether it came to Mr. Sears' attention. There is no dispute about the fact. Mr. Essick has testified that Kalmenson denied that he made the promise. I am merely asking whether the fact that Mr. Kalmenson had denied the promise came to Mr. Sears' attention.

The Court: You do not claim that Mr. Sears was there at the time the claimed denial was made, do you?

Mr. McClennen: I am not sure about that.

Q. Were you present when Mr. Kalmenson made the denial?

A. No, sir.

Mr. McClennen: I still press the question as to whether it did come to his attention that the denial had taken place.

The Court: Well, the form of your question is objectionable. It calls for a hearsay conversation. He could testify that he knew there had been a denial of the making of this contract.

Q. Well, you did know at the time that Kalmenson had [fol. 4585] denied that he had made such an agreement?

A. That is right.

Mr. McClennen: That is all I care for on that.

Q. Mr. Sears, in the period from 1931 to the beginning of 1942, first, with your connection with Warner's, Vitagraph and thereafter with United Artists, you knew of the Schine Circuit?

A. Yes, sir.

Q. Did you personally have any dealings with the Schine Circuit in connection with the negotiation or consideration of their applications for product and contracts made with them?

A. On occasion during that period.

Q. I confine this question which I am about to put to you to your personal knowledge, not what you have been told by anybody else. To your knowledge has there been any conversation with any of the defendants, or their executives or employees, not to deal with any competing exhibitor or to restrict the terms of such dealings?

A. No, sir, at no time.

Mr. McClennen: You may ask.

Cross-examination.

By Mr. Wright:

Q. Mr. Sears, did I understand you to say on your direct [fol. 4586] examination that at the time that this contract which was just shown you, that you have in front of you, was made there, you hadn't heard of any claim that the product involved there had been promised to Essick and Fine, but that you had heard that Kalmenson had denied promising it to them?

Mr. McClennen: No, that is not his testimony.

Mr. Wright: I am just trying to find out. That is the way I understood it. Read the record.

Mr. McClennen: Will you read the record of Mr. Sears' answers to these questions?

(Testimony read.)

Mr. Wright: Now read my last question again.

(Last question read.)

Mr. McClennen: That question I object to.

The Court: If you put the last part alone it would meet the objection, I think. I mean the very last statement there whether he had learned that Kalmenson had denied it.

By Mr. Wright:

Q. As I understand it, before you approved this contract that is marked in evidence as D-173, you had, you say, been informed that Mr. Kalmenson had denied promising that product to Essick and Fine; is that right?

Mr. McClennen: That question I object to because the [fol. 4587] examiner has no right to state his understanding.

The Court: That is as I understand it.

Mr. McClennen: If your Honor please, it is clearly stated in the questions and answers. The contract that was approved when he had no knowledge of any such claim was approved on October 27, 1937. Thereafter, in November, it appears that Mr. Essick appeared at the office and made a claim which Mr. Kalmenson had denied in November, a month or so after this contract had been made. That is the first time there is any suggestion of any denial that could come to Mr. Sears' attention, and for the question to assume a misstatement of this testimony makes it objectionable.

The Court: I do not understand it to be a misstatement of his testimony. Irrespective of the dates I think the question is exactly the question that you put to him.

Mr. McClennen: May I have the question read, so that you may see the misassumption in Mr. Wright's question? That is, he assumes that Mr. Sears has testified that at or [fol. 4588] before November 27th——

The Court: He has not referred to any date whatsoever. He is referring to the question of whether he had knowledge that there had been a denial by Mr. Kalmenson.

Mr. McClennen: At the time he approved this contract of October 27th; that is the objection I make to the question.

The Court: Is that a part of your question, Mr. Wright?

Mr. Wright: I think it was.

(Question read.)

Mr. McClennen: I have no objection, if your Honor please, to a question by Mr. Wright as to whether on October 27th he knew that or had heard that. What I am objecting to is the assertion by Mr. Wright in the question of something that the witness has not testified to, wholly unnecessary for the question. If he wants to know what he knew at any given time it is a perfectly simple thing to ask him.

(Question read.)

By Mr. Wright:

Q. I will put it in this form: Is that a fact?

Mr. McClennen: That is objected to because it does not [fol. 4589] appear except by reference back to several questions what he means by "is that a fact".

The Court: Clarify the question.

Q. At the time that you approved this contract D-173 had you then been informed that Kalmenson had denied promising the product to Essick and Fine?

A. No, sir.

[fol. 4590] Q. You are positive of that?

A. Yes, sir.

Q. How do you know? Do you have any memorandum or anything which would indicate that to you?

A. No, sir.

Q. What did you do to refresh your recollection on that point before you came here today?

A. Nothing.

Q. You just as you sat there remember when you saw that contract—you haven't had any prior knowledge of that dispute between Essick and Fine and Kalmenson about Medina, is that right?

A. Right.

Q. Then you say you did get knowledge of the dispute when?

A. Subsequent to the first Essick visit to New York.

Q. And is that the way you fixed the time?

A. Fixed what time?

Q. The time when the matter came to your attention.

A. The matter came to my attention after a contract had already been approved with Schine.

Q. You mean after you made—you first had made, had you not, a contract for the entire product with Schine, is that right?

A. That is right.

Q. You remember as part of your franchise you made a [fol. 4591] three-year deal there?

A. That is my recollection of it.

Q. Selling all the pictures to Schine?

A. That is right.

Q. Then you made this contract that is front of you selling half the pictures to Schine, is that right?

Mr. McClennen: Mr. Wright, this contract is not half the pictures, is it?

Mr. Wright: It looks that way to me.

The Court: Let the witness examine it, and he can answer the question.

Mr. McClennen: Where do you see "half the pictures"?

Mr. Wright: I beg your pardon.

By Mr. Wright:

Q. This is the contract for all of the pictures executed pursuant to the franchise, is that right?

A. That is correct.

Q. And then it was after you learned of the complaint and Kalmenson's denial that you made a contract with Schine for half the pictures and with Essick and Fine for half the pictures, is that right?

A. That is correct.

Mr. Wright: I had assumed in my question it was a contract for half. I now see it is a contract for all.

[fol. 4592] The Court: It is a contract for all?

Mr. Wright: Yes, that I believe is in evidence as Exhibit 635-C.

The Court: What date is that?

Mr. Wright: That bears the date January 18, 1938.

Q. You recognize this contract in evidence, Exhibit 635-C as the contract that was made for half the pictures with Mr. Schine or with the Schine Circuit? (A pause).

Mr. Wright: This is the Essick contract.

Mr. McClennen: What is the date of the one you have just shown him?

Mr. Wright: This is January.

Mr. McClennen: January, '38.

Mr. Wright: The contract I would like to have is the one which was made with Schine for half the product.

Mr. McClennen: Is this 635-C the contract with Fine and Essick?

Mr. Wright: Yes, this is for half. I am looking for the contract that Schine had.

By Mr. Wright:

Q. While we are looking for the copy of the contract that was made with Schine for half of that same season's product that is covered by these Exhibits D-173 and 635-C, you do remember that after you found out about the Fine [fol.4593] and Essick claim and the Kalmenson denial, you then made this contract for half the pictures with Fine and Essick, which is marked 635-C?

A. Yes, sir.

Q. And you also, at or about the same time, made a new contract for the other half with Schine, is that right?

A. That is correct.

Q. And both those contracts were made after you found out about the claim that they had made and Kalmenson's denial?

A. That is correct.

The Court: What was the reason for modifying this original contract?

The Witness: At the time the original contract was modified apparently between two of our customers there was a disagreement as to what one of our representatives had allegedly agreed, and I have always found it is the surest policy in a disagreement of that kind to customers is to try to do a Solomon and give each one of them half of the product and, in that way, avoid a lot of difficulty.

The Court: You understood your representative agreed to it?

The Witness: That is right.

The Court: That included one-half of the product in [fol. 4594] the contract?

The Witness: Yes. We simply took the entire product and gave one-half, and the other half.

Mr. Wright: We haven't been able to locate any contract other than this deal sheet which is marked in evidence as W-4 (37).

By Mr. Wright:

Q. Do you recognize that as the deal sheet for Medina on the three-year franchise deal?

Mr. Wright: That is in evidence.

Mr. McClennen: What is the number?

Mr. Wright: W-4 (37).

Mr. McClennen: And the date?

The Court: Where did you get the "W"?

Mr. Wright: Because it came from the Warner Company.

The Court: I didn't know it was marked that way.

Mr. Wright: It was identified before. The exhibit number is W-4-(37).

Mr. McClennen: The date is September 28th, 1937.

The Court: Read the question.

(Last question read.)

The Witness: Yes, sir.

By Mr. Wright:

Q. This notation on there, this deal which you see at the bottom reading "This deal was later changed to read [fol. 4595] "Split deal 50 per cent with the opposition", that has the same initials, do you recognize the handwriting or the initials?

A. No, I do not.

Q. Is it your recollection that the half of that, half of the product covered by this contract, Exhibit D-173, that you ultimately sold to Schine was served under the same terms that are set forth in this deal sheet W-4 (37)?

The Witness: May I have the question, please?

(Question read.)

The Witness: That is my recollection.

The Court: Served or sold, the same terms?

Mr. Wright: Yes.

Mr. McClennen: The deal sheet being for the whole preceding——

The Court: September?

Mr. McClennen: That is in September—preceding the contract D-173.

The Court: There is no question half of it was sold later.

Mr. McClennen: There is no question.

Mr. Wright: All I want to do is establish the terms under which it was sold.

The Court: He said the same terms.

Mr. Wright: I think that is all.

[fol. 4596] Mr. McClennen: That is all.

The Court: Next witness.

Mr. McClennen: I beg your pardon.

Q. I am told that I did not ask you to define your duties with the United Artists so far as distribution is concerned.

A. I am the General Manager of world wide distribution for United Artists.

Q. And have been ever since you joined United Artists?

The Court: That is '41.

The Witness: I have been in charge of domestic distribution. I am now in charge of foreign distribution as well. Is that all?

Mr. McClennen: That is all. Thank you.

Neil Francis Agnew, a witness called by and on behalf of the Defendants, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. McClennen:

Q. Your residence?

A. New York City.

Q. Your position?

[fol. 4597] A. I am representing Mr. David Selznick and Vice President of the Vanguard Film Company at present.

Q. Will you begin at the beginning of your connection with the moving picture distribution business giving approximately the position that you held, with what company, during what dates?

A. I started in 1920, January of that year, working in the Chicago Exchange of the Paramount Company as booker. I became a salesman there three or four months later, and after a lapse of about a year and a half I went to Milwaukee in charge of their Milwaukee office. I was there for about two years, and then transferred to Chicago as Chicago Branch Manager for the same company. Later I became district manager in that same territory, covering the Chicago Exchange territory, the Detroit, Indianapolis and Milwaukee territories. In 1932 I was called in to New York to take charge of the Western Division for Paramount sales.

Q. By Western Division you mean what territory?

A. Well, generally the territory represented west of the Mississippi River, but from—the Chicago-Detroit District also was in the Western Division, everything west of that.

Q. Then if you will continue.

A. Yes, then from that time about two years later I [fol. 4598] became Assistant Sales Manager.

Q. That would be something like 1934?

A. Yes, 1934.

Q. And that was Assistant Sales Manager for the whole country?

A. For the domestic department, yes, all of the United States and Canada. In 1936 I became General Sales Manager for Paramount in charge of the domestic territory. I was there in that capacity until last April.

Q. That is, April, 1944?

A. 1944, that is right.

Q. Mr. Agnew, do you recall some season years in which Paramount did not come to terms with any theatres in which the Shea Circuit or Mr. Shea had an interest?

A. Mr. Mort Shea?

Q. Mr. Mort Shea.

A. Yes, there was a season I should say about '33-'34 when at least for a greater part of the season Paramount did not sell the Shea Circuit.

[fol. 4599] Mr. McClennen: Mr. Wallace has testified to this fact, if your Honor please, at pages 3096 and 3097.

Q. What did you do or direct to be done in the effort to place the Paramount product where the Shea negotiations had broken down in towns where the theatre in which Shea was interested had been the regular customer in the past?

A. That season I had no personal jurisdiction over that territory in which the Shea circuit was located.

Q. Did you know what was done?

A. I remember that wherever pictures could be sold to an opposition theatre they made the attempt at least to sell them and did sell a number of them.

The Court: You mean in opposition to Shea?

The Witness: Yes.

Mr. McClennen: It has appeared, if your Honor please, that Shea and Schine were interested in the theatres in Auburn.

Q. I show you Exhibit 814, which is a contract of February 8, 1934, for the Capitol Theatre in Auburn, with the Auburn Theatre Corporation. Am I right in understanding that you did not have to do with that particular contract yourself? The copy there is not the approved copy. It does not have any Paramount signature on it, but there is no question that it is such a contract.

[fol. 4600] A. No, I had nothing to do with this contract.

Q. In subsequent years was effort made to restore the relations with the Shea theatres and get the Paramount product into those theatres as they had been before the interruption?

A. Yes, sir.

Mr. Wright: If the Court please, I suppose what should be offered, if anything, is what was done or what was said.

The Court: It calls for his conclusion. He may state what was done.

Q. After the 1934-1934 season did you have dealings with the Shea circuit and the Schine circuit yourself?

A. In the case of the Shea circuit I had some dealings with Mr. Shea and his associates. I don't recall ever having dealt directly with the Schine circuit.

Q. What did you do in the effort to get the product restored into the Shea theatres?

Mr. Wright: There is not any testimony yet that he did anything.

Q. Did you do something?

A. Yes, sir:

Q. What did you do?

A. Mr. Shea came in to see me and related his difficulties——

Mr. Wright: If the Court please, I do not see that what [fol. 4601] passed between Mr. Shea and this witness would be relevant in any event.

The Court: Mr. Shea came in to see him. He may say what was done.

Q. What was done as a result?

A. He related his difficulties and his viewpoint with respect to his inability to buy the pictures.

The Court: The conversation is not competent.

Q. Did you then sell pictures generally throughout the Shea Circuit?

A. We did.

Q. Mr. Agnew, in the period when you were General Sales Manager of Paramount, in dealing with a theatre in a town where there was no other theatre or no other first-run theatre, what were the elements that you had to take into consideration in the competition with the other distributors to get the Paramount pictures placed in that theatre?

A. Well, naturally, you would emphasize the desirability of the pictures you were selling and try to create a greater demand in the man's mind for the product. You have to compete with the other people who offered pictures for sale, based on price, runs and such things as clearance, where there were other subsequent run theatres in the town.

[fol. 4602] Q. Will you describe in that connection what preferred playing time is and what competition you encounter in getting the preferred playing time? And I am limiting this to the period prior to 1942, while you were General Sales Manager.

A. Well, preferred playing time, as known in the industry generally, is Saturday and/or Sunday. At that time, if I remember correctly, the preferred playing time in the smaller towns was divided between the Saturday run and the Sunday run pretty generally. In other words, very seldom did any picture exhibition get both days of the same week. The limits therefore were 104 pretty generally, and in week-run situations naturally 52.

Q. What is the reason for the desire of a particular distributor to get as much as possible of the preferred playing time?

A. Well, the general theatre attendance on Saturday and Sunday is greater, all other things being equal. Therefore his earning capacity is greater.

Q. And in negotiating for the preferred playing time do you encounter the competition of the other distributors who want that same preferred playing time?

A. You do.

Q. Take it even before you became General Sales Manager [fol. 4603] and while you were Western Division Manager, you were familiar with Paramount General sales policy throughout the country?

A. Yes, sir.

Q. In the earlier days when did the season's effort begin to get the contracts placed for the on-coming season?

A. Any time from the first of July on.

Q. And what were the significant steps in the sales effort?

A. Well in those days the sales effort generally was preceded by a sales convention or a series of them, in which the company announced most of the product which they intended to release for the ensuing season. Booklets sometimes were made up with descriptive matter with respect to the pictures, the names of the players, and so forth, and these were circulated in the trade, advertised in the trade papers, and usually copies of them were carried by the salesmen when they went out to solicit the sale of pictures, and all other available information. Following the announcement, so-called, of the product of each of the companies, the sales effort then became general with respect to soliciting exhibitors.

Q. As time went on was there any change in the dates of the beginnings of the sales effort?

A. In the very early period in the '20s those meetings [fol. 4604] and the things which I have just described began in September, but there was found to be a great eagerness because of the competitive situation with each of the companies to get out a little further in front in advance of the season with their sales, and that gradually moved up the selling period from September and August up to as early as July because of the desirability of getting in there first and selling the pictures before the other fellow was there, I suppose.

Q. Have you heard or read the testimony of any of the other sales managers for the other distributors in this present case?

A. Just Mr. Sears.

Q. Mr. Sears is the only one that you have heard or read?

A. That is right.

Q. Have you had occasion during the period that you were General Sales Manager for Paramount to familiarize yourself with the similarity and differences of sales policy as pursued by your competitor distributors?

A. Some of the policies of the other companies with respect to details of sales were known to the salesmen because of the exchange of opinions with the exhibitors. Exhibitors would and do make a point very often of the much easier sales policy of another company. In that way such information did become general property with respect to [fol. 4605] certain general matters of how many pictures they would accept as a minimum number and matters that are of trade interest of that sort.

Q. Take it in the period that you were General Sales Manager, in the sale of the Paramount product where there was more than one possible first-run theatre in the town or subsequent-run theatres, what were the considerations which you had before you in determining which theatre in the town you would have your sales force seek to get your pictures into or where you would approve applications for contracts from those theatres when they came in?

A. Well, the general considerations are numerous. One that we particularly valued was the length of the service of the customer, the length of time in which we had sold pictures to that particular account. Paramount was one of the older companies in the business and therefore a great many of these exhibitor customers of ours rather grew up with the company.

Other practical considerations would be the location and the size of the theatre, the manner in which the theatre was operated, if there was a choice to be made in that direction, and the ability of the theatre to earn film rental. The most film rental was of course a major consideration.

[fol. 4606] Q. Where you sold your pictures on percentage it is, of course, obvious that your interest was in the grossing powers of the theatre. Will you state how you are interested in that question where the picture was sold for a flat rental?

A. The desirablitiy of the theatre was always a consideration, because it was of value to be associated with the better type of operation, and also again, even through a picture was sold on flat rental, the earning power of the theatre and the good will of the theatre in the community was of great value because a flat rental picture, in the final analysis, has to earn its way just as well as a percentage picture does.

To keep a satisfied exhibitor you must make a profit with your pictures, both flat rental and percentage pictures.

Q. Where a picture has been licensed at a flat rental, on the expectations, but for some reason it appears to be a flop in that theatre, what is the customary thing that happens?

A. Well, it is customary in the trade, because of the fact that we more or less deal in intangible values, to make an exhibitor an adjustment of the price of that flat rental picture. I think more accurately you could say that that adjustment would be made on a number of pictures rather [fol. 4607] than on individual pictures, unless it happened to be a very important picture, a high-priced picture, which was sold alone and by itself. Otherwise adjustments became seasonal things, rather than individual picture problems.

Q. In fixing the flat rental for a given year what consideration is given to what the theatre has done in the prior years in the matter of gross box-office receipts?

A. The first consideration is his ability to earn, what he has been able to accomplish with the product in the preceding seasons, what his current level of business is, and a general consideration of the overhead operation, and the matter of what we mutually agree is a fair profit.

Q. In the period between 1942, when you were General Sales Manager of Paramount, can you say with any approximation what proportion the film rentals from the whole United States came from the first-run theatres?

A. Of course you mean by first-run all first-runs, cities, villages, everywhere, do you not?

Q. Yes.

A. About 70 to 75 per cent, I should say.

Q. Can you state with any approximaton how much the first-run revenue came from, as you put it, towns, villages [fol. 4608] and cities, say, under 50,000 population?

A. This would have to be an approximation. I should say that under 50,000, in the first-runs only——

Q. In the first-runs only.

A. You probably get about 35 per cent.

Q. Now let me see if I correctly re-state what this is: That is, of your total film revenue, you get from 25 to 30 per cent from subsequent-run houses, from 70 to 75 per cent from first-run houses, of which some 35 per cent comes from the under 50,000 places and the other 35 to 40 per cent from the over 50,000 places?

A. Yes. I think perhaps that figure a little higher with respect to the under 50,000. At one time it was 33⅓ in the case of Paramount, but I should say today it is probably less than that. Perhaps 25.

Q. When you say today, to make that more specific, we will say in the year 1941, what would you say was——

A. I should say instead of 35 it would be 25 to 30, perhaps.

[fol. 4609] The Court: That depends somewhat on the quality of the film?

The Witness: Yes, but those figures are annual figures based on your general average performance over the year.

Q. Take it in the year 1939, or thereabouts, approximately what percentage of the total film revenue of Paramount came from the Schine Circuit?

A. I never have computed it, but I would risk a guess of about one per cent, I guess.

Q. It has appeared in contracts in evidence that there were provisions as to the amount of the rate of admission prices that the exhibitor was charging. Will you state the considerations leading the distributor to have those provisions in the contracts?

A. Generally, they were recorded in contracts normal admissions, but very rarely where the consideration with respect to the sale, once you had determined all of the other factors and the desirable theatre, the admission scale was also desirable, and, therefore, was not a point at issue in making a sale, but contracts generally did carry a record of what that admission scale was. In the case of our company we had a minimum admission requirement of 15 cents. We didn't care to sell theatres charging less than that.

[fol. 4610] The Court: For any run, you mean?

The Witness: Yes, sir.

Q. If the admission price was cut from that stated in the contract by the exhibitor, or if he reduced his admission prices by the device of two for one bargains, and so forth, not usually was the distributor interested in that dispute from the contract?

A. Well, a reasonable fluctuation in admission policy over the year was not regarded as a reason for dispute with the exhibitor. Occasionally, however, an exhibitor would go out on a campaign of slashing admission prices, obviously to hurt his competitor to the point where the prestige of the pictures and the theatre itself were reduced. In those cases we generally had discussion with the exhibitor and brought about some amicable settlement of the matter, or, in some rare instances we had to choose not to sell until he did change his price policy, where we felt we were seriously affected.

Q. The plaintiff in this case has adopted as the definition for franchise a contract for more than one year season's product. Without asking you to adopt that franchise definition, either as correct or otherwise, but assuming it for the purpose of the question that I am putting to you, has Paramount from time to time in the period of 1931 to 1940 issued franchises?

[fol. 4611] A. Yes, we had some.

Q. And in issuing those franchises has distinction been made by the producer controlled theatres, independent circuits and exhibitors operating one theatre only?

Mr. Wright: If the Court please, that is objected to as calling for a conclusion. It would be necessarily based upon an examination of the wide course of dealing which is not in evidence in this case. It is a conclusion, I suppose, that would have to be drawn.

The Court: Read the question.

(Last question read.)

The Court: Well, state whether franchises of these various types of exhibitors——

Mr. Wright: Yes, he can state what they did.

Q. Will you state what Paramount did in each respect?

A. We had had franchises, so-called, two-year deals, and the greater length of time with a limited number of those franchises with different type of theatre operation, circuits and otherwise. I don't recall any number at the present time, but we had them.

Q. Well, take it in the year 1939-40, or thereabouts, could you approximate how many franchises Paramount had outstanding with a single-theatre operators?

[fol. 4612] A. Well, I recall one. At the present time—that is of the time of which you speak—we had a franchise, Paramount had a franchise, with a theatre operator in Champaign, Illinois. In 1939 we had discouraged the sale of franchises previous to that for the past four or five previous years, and they were diminishing rapidly in numbers at the time you state, and we had only a limited number of them of any kind at that date. I don't remember any others of any consequence of single operation.

Q. Take it back before you had this disposition to depart from the operation by franchise, say 1934, could you approximate the number of franchises with single-theatre operators at that time?

A. Not with any accuracy, but I would think there were at least 12 or 15 in existence at that time, at some period during that time.

Q. Do you remember whether at any time the Schine Circuit had a franchise with Paramount?

A. Yes, I believe they did.

Q. And do you remember when that was?

A. I don't remember the years, no.

Q. Within any recent years back of 1940, did Schine have any franchise?

A. I would say perhaps in 1938, '39, '37, along there.

[fol. 4613] Q. And do you remember whether that was for *the entire circuit?*

A. No, I don't.

Q. I confine this question which I am about to put to you to your personal knowledge, not what you have been told by anybody else. To your knowledge has there been any conversation with any of the defendants or their executives or employees not to deal with any competing exhibitor, or to restrict the terms of such dealings?

A. No, sir.

Mr. Wright: If the Court please, I make the same objection I made previously. I omitted to make the same objection when it was asked of Mr. Sears, and I would like to have it considered recorded to that question also.

The Court: All right.

Mr. Wright: Did he answer?

Mr. McClennen: Yes.

Mr. Wright: The answer is "No."

If the Court please, I wonder if we could have a little recess?

The Court: It is 12 o'clock. We could recess now.

Mr. Wright: I think we can finish with him in five minutes.

The Court: All right, a short recess.

[fol. 4614] (Short recess.)

By Mr. McClennen:

Q. Mr. Agnew, I find that I confined my question too narrowly to you, and I want to put another one. Along in the middle of the 30s, say 1934, how many franchises did Paramount have out with strictly independent theatre operators operating not more than five theatres and not affiliated with any circuit?

A. I should say 60 to 70. You asked me first about individual theatres, did you not?

Q. Yes.

The Court: How many franchises do you recall that you had altogether.

The Witness: Probably double that number at that time.

The Court: Altogether?

The Witness: Altogether.

The Court: All franchises?

The Witness: Yes, sir.

Mr. McClennen: That is all. Thank you.

Mr. Wright: That is all.

Mr. McClennen: No cross-examination?

Mr. Wright: No, no further questions.

Mr. McClennen: If your Honor please, the defendant filed in May, 1944, notice to admit facts addressed to the plaintiff. [fol. 4615] The answers are on file and they are brief those that we wish to put in evidence, and I, therefore, will read them.

"No. 1. In response to paragraph 1, plaintiff admits that for the past fifteen to twenty years the normal method of licensing the exhibition of copyrighted motion pictures photoplays in the United States of America, including the States of New York, Ohio, Kentucky, Maryland, Delaware and Virginia, has been and now is on a so-called run basis, to wit: for a first-run, to a theatre in a local competitive area with such exclusive exhibition rights and clearance privilege, if any, as may be appropriate to the successful exploitation of said copyrights in said area; for such subsequent runs in said area, and with such exclusive exhibition rights and clearance privileges, if any, as may be appropriate to the successful exploitation of said copyrights in said area. Except as admitted herein the truth of the facts stated in said paragraph is denied.

[fol. 4616] 2. In response to paragraph 2, plaintiff admits that it has been the usual and customary practice for the distributor to agree with its licenses that it will not exhibit or grant a license to exhibit its photoplays for exhibition in conflict with the run licensed the exhibitor or prior to the clearance period agreed upon with the exhibitor. Except as admitted herein, the truth of the facts stated in said paragraph is denied.

3. Plaintiff admits the truth of the facts stated in paragraph 3."

Paragraph 3 of the notice reads:

"3. The motion picture industry has developed under the existence of clearance and runs. It is by such a system, with initially large receipts from prior run exhibitions and successive reduction of license charges, that satisfactory revenue can be derived by the producers and distributors, so that costly feature pictures can be made available to the whole public at varying admission prices.

4. In response to paragraph 4, plaintiff admits that *ib* [fol. 4617] each competitive area, under normal business conditions of free competition, each distributor desires to license its films for successive runs in such area under such clearance terms as will yield the maximum total license revenue from the area. In determining which theatres shall have which runs, its past business relations with the theatre, the skill and character of its management, its size, location, equipment and drawing power are all factors which, among others, may influence such a decision. Except as admitted herein, the truth of the facts stated in said paragraph 4 is denied.

11. Plaintiff admits the truth of the facts stated in paragraph 11."

Paragraph 11 of the notice reads:

"11. Of the so-called Schine Theatres, approximately 60 per cent are located in cities or villages with populations under 10,000, and approximately 87 per cent are located in cities or villages with population under 25,000.

23. Plaintiff admits the truth of *of* the facts stated in [fol. 4618] the first two sentences of paragraph 23. Plaintiff denies the truth of the facts stated in the last sentence of paragraph 23."

The first two sentences of paragraph 23 of the notice reads:

"23. Motion pictures are works of art and are the subject of copyright. They have no uniform or market value, and the revenue which the owner of a copyright can derive from any picture or group of pictures depends upon the ability of the distributor to market them in different situations to the best advantage."

The Court: That is the admission in that paragraph?

Mr. McClennen: That is the admission in that paragraph.

[fol. 4619] The Court: With these admissions in mind, considerable of the testimony has been repetitious, has it not? It does no harm, perhaps. These facts are already testified to, are they not?

Mr. McClennen: A great deal of it is not the matter of controversy, as these admissions indicate. My next witness, if your Honor please, was promised before 12:30, but he is coming from a distance.

The Court: He is not here now?

Mr. McClennen: He is not here at the moment.

The Court: You have no one here?

Mr. McClennen: I have no one here. He is the only witness now in contemplation.

The Court: I am prepared to run on Saturday, if it will help conclude the rebuttal testimony.

Mr. Wright: Now I feel that if the defendants conclude today we probably ought to be able to finish up tomorrow, without using any Saturday session.

The Court: Assuming that we do conclude in a day or two can we discuss now the question of the subsequent proceedings?

Mr. McClennen: If the testimony is concluded on Friday [fol. 4620] would your Honor consent to sit Saturday morning and go on with the argument?

The Court: I would not want to do it that way. I want to have it submitted on briefs, and an argument on the briefs.

Mr. McClennen: Does your Honor mean not to hear oral argument at all?

The Court: No, I will hear oral argument on the briefs, when we have got the matters in front of us. I mean you can argue it on the briefs as you would an appeal perhaps. I think in a case of this size we ought to follow that plan. I think it is really surplusage to have an oral argument and then some time afterwards furnish briefs. The Court gets a better understanding of it by argument on the briefs.

Mr. McClennen: What I had in mind with reference to the matter of the briefs, before your Honor spoke, was that it will be a very great amount of wastage if we go into the matter on briefs before knowing what the plaintiff is intending to rely upon. That is, to anticipate many things that will not be brought home.

[fol. 4621] The Court: He will serve his brief on you and you may serve your brief, and then a reply brief furnished.

Mr. McClennen: Could it be so that we could have the plaintiff's brief and then serve our brief and then the plaintiff a reply brief?

The Court: I think that is a fair way to do it.

Mr. Wright: I think that would be agreeable to us, your Honor.

The Court: I think we had better handle it that way and get all the points presented and considered. If you argue it now and then submit briefs afterwards it would be a waste of time. How long a time would you want? When your briefs are in I could hear you at any time.

Mr. Wright: I should think we would want 30 days, and I was going to suggest that perhaps your Honor, with the brief, would want us to submit proposed findings of fact and conclusions of law, and then I suppose Counsel, with their brief, would also submit their proposed findings and conclusions.

The Court: I think it could be done in a reasonably short time.

[fol. 4622] Mr. McClennen: With the plaintiff's brief to be served by December 10th?

Mr. Wright: Yes.

Mr. McClennen: And then may we have 30 days in which to prepare ours?

The Court: Is that satisfactory?

Mr. Wright: I should think so.

The Court: And your reply could be served when?

Mr. Wright: Fifteen days for a reply.

Mr. McClennen: Of course if we can get our brief ready shorter than the 30 days the 15 days can begin to run on the reply then.

The Court: Do it as rapidly as you can. I think that is a more satisfactory way for the Court.

We will recess now until 2 o'clock.

(Whereupon a recess was taken until 2 o'clock P.M.)

[fol. 4623] After Recess, 2 P.M.

Appearances: Same as before noted.

Hobert L. Himes, a witness called by and on behalf of the Defendants, having been first duly sworn, ~~was~~ examined and testified as follows:

Direct examination.

By Mr. McClennen:

Q. What is your residence?

A. Canandaigua, New York.

Q. You are a member of the Bar, practicing law, with offices in Canandaigua?

A. Yes, sir.

Q. And you have been in practice there since when?

A. About 1938, in the spring.

Q. And prior to that you were practicing in Buffalo?

A. Yes, sir.

Q. Your wife is the sister of J. W. Jenkins, Jr.?

A. That is right.

Q. And were they the two persons interested in the Jenkins Block, inherited from their father?

A. Yes, sir. Their mother had a life use of it, I believe.

Q. In the spring of 1938 of what did that block consist as it then was?

[fol. 4624] A. Well, there was a men's store in the south portion or part of it. In the northern portion or part there was a ladies' store. On the second floor there were two offices, occupied, one was by Mr. Levy and one was by myself. On the third floor there was more or less of a store room. I think the Carpenter's Union had a meeting room on the third floor.

Q. This room occupied by yourself was your law office at that time?

A. It was.

Q. It has been in the evidence of Mr. Hubert Wallace, at page 2755, that in the spring of 1938 he had some conferences, either alone or with Mr. Anthony J. Lauer, at your home and possibly elsewhere in Canandaigua, I am not sure. Do you remember anything about the episode?

A. It seems to me I saw Mr. Wallace in Canandaigua. I definitely remember Mr. Lauer stopping at the house one late afternoon or evening. I don't know Mr. Wallace as well as I know Mr. Lauer.

Q. At that time had there been any recent changes in that Jenkins Block?

Mr. Wright: Could we have the time fixed?

A. Do you mean the structural changes?

Q. Yes.

[fol. 4625]. The Court: At what time?

Mr. Wallace: At the time of these talks with Mr. Wallace and Mr. Lauer.

Q. I will postpone the question to you as to the building. Have you any means of fixing the approximate date of your meetings with Mr. Lauer and Mr. Wallace?

A. No, sir, I have not.

[fol. 4626] Q. Going back I asked you with reference to whether there had been any changes made in the building within any recent time, or any improvements?

A. No. The building was altered by Mr. Jenkins, Sr., but at or around that time there were no changes there. You are talking about structural changes, I assume?

Q. Yes.

A. There were none.

Q. Have you recently looked at your old files in this matter?

A. Yes, sir, I did.

Q. Do you find any correspondence with Mr. Lauer on this subject?

A. Yes, sir.

Q. And what is the first in date that you have, by way of telegram or letter?

A. I have another file there. Whether there is any previous to this in there, I do not know. (A pause). May and June, 1938.

Q. When is the first letter or telegram addressed by you to Mr. Lauer or by him to you?

A. June 15, 1938 is a telegram I sent to Mr. Lauer.

Mr. McClennen: I offer that.

Mr. Wright: I don't believe he responded to the question, did he? Is this supposed to be the first correspondence [fol. 4627] between him and Lauer?

The Witness: He asked me my first communication to Mr. Lauer first, as I understand the question, and that I believe is the first that I have here or recall, that I know anything about. It was my first communication to him. There is a letter from him in here in May. I tried to answer that part of the question first.

(Thereupon copy of telegram dated June 15, 1938, from Hobart L. Himes to A. J. Lauer, Esq., referred to, was received in evidence and marked as Defendants' Exhibit D-174.)

Q. This telegram of June 15, 1938, from Hobart L. Himes to A. J. Lauer, Esq., says "Our final answer is no stop. Letter will follow". Have you the letter to which that refers?

A. Yes, sir, a copy of it.

Mr. McClennen: That is dated June 16, 1938. I offer that.

Mr. Wright: As to this letter, it is objected to on the ground that there isn't any showing that the original was not available, and also on the ground that it appears to be *be* immaterial and irrelevant in any event. It is a letter, I [fol. 4628] suppose, that Mr. Lauer could have been asked about when he was on the stand. He testified here as a witness.

Mr. McClennen: I first learned of the existence of this letter at 2 o'clock this afternoon, and, therefore, was not in a position to show it to Mr. Lauer when he was on the stand.

I press the offer. The matter is not one of communication to Mr. Lauer. It is one of action by this witness and the fact that he prepared such a carbon copy as this is just as significant as the original.

Q. Perhaps I might ask you: Did you mail the letter of which this is a copy to Mr. Lauer?

A. The letter was mailed. I don't know whether I mailed it or not—through the office.

Mr. McClennen: Before I press the letter further, if your Honor please,——

Q. Have you any letter from Mr. Lauer acknowledging receipt of this?

A. That is the 17th?

Q. This is the 16th.

A. I don't see that. That mentions the 17th letter.

[fol. 4629] Mr. McClennen: Before going to the next I will ask to have this letter that is in suspense, or this carbon copy of June 16, 1938, marked as Defendants' Exhibit 175 for identification.

(Thereupon the carbon copy of letter of June 16, 1938, referred to was marked as Defendants' Exhibit 175 for identification.)

Q. In the order of dates, what is the next letter after June 15th that you have?

A. I have a letter dated June 16th from Mr. Lauer.

Mr. McClennen: That I will offer in evidence.

(Thereupon the letter dated June 16th from Mr. Lauer referred to was received in evidence and marked Defendants' Exhibit D-176.)

Mr. McClennen: Exhibit D-176 is dated June 16, 1938, on the letter-head of A. J. Lauer, Inc., Rialto, Auburn, N. Y.

"Mr. Hobert L. Himes, Jenkins Bldg.,
Canandaigua, N. Y.

Dear Mr. Himes: Thank you for your telegram of yesterday. In the absence of your letter which you stated would follow, I do not know what your final decision is regarding your refusal to rent the main floor and basement of the [fol. 4630] Jenkins Building. From my past experience I do know it is nothing unusual for owners of properties in small cities to recognize the importance of having presented to them a plan whereby a definite income is assumed from the property. The reason for this attitude is when a prospect becomes interested in renting the property the owner always feels it has a greater value than if the property were offered for rent or sale by the owner himself. I am putting you on the list as the seventh party who during the past four years refused to make a deal relieving them of the responsibility in the management of the property. Each and every one of them during the past year, including two parties this year, have come to me and asked me if it would be possible to close a deal for them. In other words, I make this prophecy, that you are making a terrific mistake and while you may not give me the satisfaction of coming to me at some future date you will always remember this com- [fol. 4631] munication, particularly so whereas you are not requested to spend any money for improvements.

In closing I wish to say I am not grieved excepting we have had promise after promise that a definite decision would be made before this date and we were held off to such a late date that it will be almost impossible to start making improvements for the fall and winter business unless the transaction is closed before July 1st.

We, of course, ask you to kindly keep this matter in confidence as to the nature of business we had in mind in opening the store.

With kindest regards to you and Mrs. Himes and Mr. Jenkins, I am,

Very truly yours, A. J. Lauer."

Q. Now, have you a letter from you, dated June 17, 1938?

A. Yes, sir, a copy (handing to Counsel).

Mr. McClennen: Will you mark that for identification?

(Thereupon carbon copy of letter, dated June 17, 1938, [fol. 4632] Himes, referred to was marked as Defendants' Exhibit D-177 for identification.)

Mr. McClennen: I offer D-177 for identification, a letter from Mr. Himes to A. J. Lauer, June 17, 1938, a carbon copy.

Mr. Wright: I have the same objection to this letter as to the other.

Mr. McClennen: Before pressing the offer I will go to this:

Q. Did you receive a letter of June 23, 1938, from A. J. Lauer to you?

A. Yes, sir.

Mr. McClennen: I will offer that.

Mr. Wright: No objection.

(Thereupon the letter of June 23, 1938, Lauer to Himes, referred to was received in evidence and marked Defendants' Exhibit D-178.)

Mr. McClennen: Exhibit D-178 is June 23, 1938:

"Mr. Hobert L. Himes,
90 S. Main St.,
Canandaigua, N. Y.

Dear Mr. Himes:

Thank you for your letter of June 17th. Will you state definitely what your lease terms will be, expecting of course [fol. 4633] that they are within reason and fairness to all parties concerned. With best wishes to you and Mrs. Himes, I am,

Very truly yours, A. J. Lauer."

Q. Now, Mr. Himes, other than these letters appearing in your file, in carbon copy form, Exhibit D-175, June 16, 1938, and D-177, June 17, 1938, do you find in your files any indication that you wrote any other letter to Mr. Lauer of those dates?

A. No, sir.

Mr. McClennen: I press the offer in evidence of identification D-175 and D-177, if your Honor please.

The Court: Copies of letters by the witness to Mr. Lauer?

Mr. McClennen: Yes.

The Court: Is that objected to, Mr. Wright?

Mr. Wright: This letter of the 17th is clearly referred to in D-178. That would indicate, I suppose, that that was received. I do not see any reference in any of these letters in evidence to the one marked D-175. As to D-175 I think our objection would be the same.

Mr. McClennen: May D-177 be marked, then, if your Honor please?

The Court: Do you have an objection?

[fol. 4634] Mr. Wright: I assume from the fact that D-178 refers to it that it was received and I withdraw any objection based on the ground that it is not the original. Of course the relevance of any of this material has not yet been made clear to me. Of course we have a general objection on the ground of relevancy.

The Court: I will overrule your objection, then, if that is the only ground.

Mr. Wright: I withdraw the objection as to not being an original.

Mr. McClennen: Mark D-177 in evidence.

(Thereupon the letter of June 17, 1938, carbon copy, Himes to Lauer, previously marked as Defendants' Exhibit D-177 for identification was received in evidence.)

Mr. McClenhen: It reads: "June 17, 1938. A. J. Lauer, Esq., 1 South Street, Auburn, N. Y.

Dear Mr. Lauer: Our letters must have crossed in the mail. In any event, I thank you for your letter of the 16th inst., which arrived this morning, and have carefully noted its contents. No, I do not think our property is any more [fol. 4635] valuable than before. I certainly want you to feel free to call on me at any time, as I want to be able to contact you. If we have made a mistake it probably will not be the first one and no doubt not the last. Our discussions will be kept in confidence.

Wishing you and Mr. Wallace continued success, I am,

Yours very truly."

It has the initials "H. L. H." as the dictator.

[fol. 4636] If your Honor please, in view of the fact that Exhibit D-178, June 23, 1938, acknowledges the receipt of Exhibit D-177 of June 17, 1938, which contains the assertion, "Our letters must have crossed in the mail", and the fact that there is no comment in D-178 to the contrary of that, I re-urge the admission of Exhibit D-175, the one of June 15, 1938.

Mr. Wright: We object to it. I don't think it is apparent from the——

The Court: Sustained.

Q. Calling your attention and asking you to refresh your recollection from the exhibit for identification D-175, I will ask you if this was an accurate statement of your attitude, namely "Under all the circumstances I felt and still feel that your offer was not sufficient——"

Mr. Wright: We have an objection here.

The Court: Yes.

Mr. Wright: At the time that Mr. Lauer and Mr. Wallace were on the stand, as I recall, they were not permitted to go into the conversations had with Mr. Jenkins or Mr. Himes with reference to the property, and I don't suppose it is proper.

[fol. 4637] The Court: He is not asking for the conversation now, he is asking now for the truth——

Mr. Wright: Yes.

The Court: If that is what was said that is another question.

Mr. Wright: It is simply another way of——

The Court: I agree with you.

Q. Have you any memorandum in your files in your handwriting indicating the terms of the offer to which this correspondence related?

A. Yes, sir.

Mr. McClennen: I will ask to have that marked for identification.

(Thereupon memorandum referred to was marked as Defendants' Exhibit D-179 for identification.)

Mr. McClennen: I will offer D-179 in evidence.

Mr. Wright: Well, there isn't any foundation laid at all for the admission of this, nor does it show when it was made, who made it, who prepared it, any of the facts, any one would want to know before it is received in evidence.

The Court: Do you object?

Mr. Wright: Yes.

[fol. 4638] The Court: Sustained.

Q. Can you tell me whether the offer referred to in the memorandum marked for identification as Defendant's Exhibit D-179 is the offer referred to in the telegram, Exhibit D-174 saying, June 15th, "Our final answer is no"?

A. I have no present recollection, sir, as to the date of that. The offer says "The last offer" in my minutes, and in my memorandum.

Q. Having before you this correspondence of June 15th to June 23rd, 1938, and your memorandum identification Exhibit D-179, will you tell us as refreshed by that memorandum as best you can what Mr. Lauer or Mr. Wallace or both had said to you as the offer which they made?

Mr. Wright: That is objected to, if the Court please, they weren't permitted to testify to that on their examination. I do not see what possible purpose is being served here by asking this witness to go into conversations which were not gone into in the plaintiff's case.

The Court: Well, of course, the question as formed is objectionable. Whether or not he can state his recollection now what the conversation was about an offer; I understand [fol. 4639] you to say that the question as asked about it was objected to and the objection to it was sustained.

Mr. Wright: My recollection is that neither questions asked I believe of Mr. Lauer or Mr. Wallace while they are on the stand with respect to negotiations on this Flannigan property—all they were permitted to do was state that they did have conversations with these gentlemen with respect to the property, and that my recollection is they were not permitted to state what the conversations, if any, were. (A pause.) Somebody has gone down to get the transcript so I can see what it is.

The Court: Yes. Isn't the question here, Mr. McClennen, of what the negotiations were or whether there were negotiations?

Mr. McClennen: I am leading up to the question why they did not accept this offer.

The Court: You were examining the record there. What did you find?

Mr. McClennen: I find nothing in my brief notes of Mr. Lauer to indicate that there was any exclusion of any con-[fol. 4640] versation or terms of offer. It is contained in pages 2556 to 2568.

The Court: Is that testimony to the effect that they did negotiate with Mr. Himes or the Jenkins' interest?

Mr. McClennen: The testimony is to the effect they negotiated relative to the rental of a store owned by Jenkins. That is at page 2557. Then there was identified plans of a proposed theatre and then a telegram of May 10, 1938 from Mr. Jenkins to Mr. Lauer and that was offered and excluded at that time; then there was a copy of the Canandaigua Daily Messenger of May 10, 1938, at page 2561, and that was excluded, and then there was an offer of the plans prepared by an architect and that was excluded. I find no indication——

The Court: There was proof that the plans had been drawn. That was excluded because there was proof that plans had been made.

Mr. McClennen: There was no exclusion of the terms of the offer or any inquiry.

The Court: Are you asking this witness for conversations where you are seeking to establish what the contents [fol. 4641] of that letter from Mr. Himes to Mr. Lauer is?

Mr. McClennen: No, I am seeking to show to the best of this witness' recollection what the terms were that he was dealing with.

The Court: That calls for conversation, what his talk was in the presence of Lauer.

Mr. McClennen: That is what I was just asking.

The Court: You are seeking to establish by parol what the letter June 16th to Mr. Lauer shows.

Mr. McClennen: No. I was asking to refresh his recollection from that letter, and to state what the conversations were.

The Court: He does not need to refresh his recollection at all. Ask him the question first.

Mr. Wright: I just wanted to call your Honor's attention to what I had reference to while Mr. Lauer was on the stand. He was asked by Mr. Kallis: "Q. After your discussion with Mr. Jenkins, Mr. Lauer, can you tell the Court whether a deal was definitely agreed upon?

Mr. McClennen: That is objected to.

The Court: Sustained.

[fol. 4642] Q. Do you have in your possession any figures which were the subject of discussion?

A. I have a memorandum which I have with me which was rather a—on which we discussed with Mr. Jenkins the arrangements for a lease of the property.

Mr. McClennen: Just a moment, that fully answers the question.

Mr. Kallis: All right.

Q. Did you and Mr. Wallace make a proposition to Mr. Jenkins?

A. We did.

Mr. McClennen: That is objected to.

Mr. Kallis: The question can be answered 'Yes' or 'No,' if the Court please, and doesn't do these defendants any harm, 'Yes' or 'No'.

Mr. McClennen: I quite agree that the answer will not do the defendants any harm, but I object to the question.

Mr. Kallis: It is a preliminary to something that follows, whether they made a proposition to Mr. Jenkins. I did not [fol. 4643] ask him what the terms of the proposition were.

The Court: I will let him state whether they made a proposition."

The Court: The question was objected to and my ruling was upon the ground that they were calling for conclusions of the witness.

Mr. Wright: My impression was that they were all your Honor was permitting him to do was simply to state whether or not a proposition was made without going into the terms of the offer.

The Court: I don't think you follow the conversations right through. My questions were from the standpoint, the ruling was upon the ground that it called for a conclusion, whether they made a deal. That was the point.

Mr. Wright: The final decision of your Honor was this statement: "I will let him state whether they made a proposition," and the answer was "We did." I assume that represented the limits to the extent your Honor wanted him to go and he couldn't state the conversation, all he could state was the ultimate fact whether or not they made a proposition. That is the way I interpreted it at the [fol. 4644] time.

The Court: I don't think you need to ask him.

Mr. Wright: As far as I can find out here, I don't see any testimony by Mr. Lauer as to conversations with this witness.

The Court: Even though there were not such conversations——

Mr. Wright: I assume the purpose in offering it is to reply to, or contradict something that the plaintiff established.

The Court: It relates to the whole subject matter and not some specific question.

Mr. Wright: So far it does not appear what, if any, connection he had with the Jenkins negotiations. I suppose that ought to be brought out in order to lay a proper foundation for what Mr. McClennen says he is going to do.

The Court: It does appear from this communication he did have some communication.

Mr. Wright: That he had some further negotiations with Mr. Lauer apparently occurring after the negotiations Mr. Lauer states he had with Jenkins.

The Court: I will let him state what was said by Jenkins [fol. 4645] with Lauer or Wallace, what was said about this subject about leasing this property.

Mr. McClennen: Before putting the question, if your Honor please, I referred to Mr. Wallace on cross-examination at page 3067, which I have briefly noted—I haven't the testimony here—that William Jenkins, the son, and Mrs. Himes, the daughter, he assumed to be the ones interested in the estate, Mr. Himes was a lawyer, such negotiations as he had were with the son and with Mr. Himes. That is at page 3067.

Mr. Wright: There hasn't been any testimony by this witness as to what negotiations he had with Mr. Wallace at all so far.

Mr. McClennen: No, there has been obvious reasons why there haven't been because you have been objecting to my showing.

[fol. 4646] Q. Let me preface it: Up to within the last few days have you had any occasion to think of this matter in six years?

A. Yes.

Q. Well, when did you have occasion to think of it?

A. Mr. Lauer—I don't mean Mr. Lauer. Mr. Wallace, the gentleman over there, Mr. Kallis, I think, stopped in my office perhaps two months ago or thereabout.

The Court: The question is with reference to some document or his own knowledge?

Mr. McClennen: In putting the question, your Honor,——

The Court: Let us find out whether he did have a conversation. We do not know whether he needs to refresh his recollection by contact with somebody or from the documents.

Q. Will you tell us, as nearly as you can recall it, the conversations you had with Mr. Wallace and Mr. Lauer on this subject of a possible leasing of the Jenkins Block?

Mr. Wright: Can we have the date fixed here?

The Court: About when? State about when.

Q. First, what is the best you can do to fix the date?

A. That would be awfully hard. I remember seeing Mr. Lauer once. It seems to me it was the afternoon, as I said—the late afternoon or evening at the house. I don't think Mr. Wallace was there. I think Mr. Lauer was over more [fol. 4647] than once. Yes, he was over more than twice, I would say, from this memorandum that I have. I have no recollection of how many times, other than that, or without that. And I know that Mr. Lauer and Mr. Wallace were there at the time this last proposition, as I call it, was discussed. It is around—I would have to guess—in May or June, 1938, this last proposition.

The Court: You can fix the year, at least, by the telegram?

The Witness: That is right.

The Court: About May or June.

By Mr. McClennen:

Q. Just when do you bear in mind that you moved your office to Canandaigua?

A. Around April, 1938.

Q. Then you would be certain that it was after that that you had this talk, would you not?

A. I couldn't say that, sir. Mr. Jenkins and Mr. Lauer and Mr. Wallace, so they stated, had been negotiating, and I knew that this matter was being discussed. Whether I saw Mr. Wallace or Mr. Lauer before I moved to Canandaigua I can't now remember. We went back frequently week-ends.

Q. Mr. Wallace has spoken of a conference at the house in Canandaigua. Was Mrs. Himes living in Canandaigua [fol. 4648] before you moved your office from Buffalo to Canandaigua?

A. No, we went to Canandiagua at the same time. I think it was April, the last part of April.

Q. With that as the best fixing of dates that you can give us, relate the conversations that you had with Mr. Lauer and Mr. Wallace, as best you can, and, so far as they related to terms proposed, what those terms were.

Mr. Wright: That is objected to, if the Court please.

The Court: I will let him answer. Go ahead.

A. Well, I couldn't tell you the terms until I looked at this memorandum I made.

The Court: You can use the memorandum to refresh your recollection.

A. I know they wanted to rent the Jenkins Block. My recollection is that they proposed to make some changes in the block itself. They made a proposition to pay so much a year on a graduate scale, and then this memorandum that I have, in my own handwriting, says "Wallace and Lauer's last offer," rent for the first three years was to be $3,000, for the next three years it was to be $3,500 a year, and during the first five years of that there was to be paid in addition seven per cent of the gross; the next four years the rent was $4,000 a year and they wanted a privilege of renewal for ten years at $4,500 a year. That is the best [fol. 4649] I can trace it.

Q. Now, do you remember whether anything was said in conversation, ignoring for the moment what may have been said in the letters, was anything said in conversation, by you or Mrs. Himes or Mr. Jenkins, her brother, in your presence, with respect to that offer?

A. I would say that Mr. Lauer and Mr. Wallace were not present when Mr. Jenkins and my wife discussed this offer that I have just given you. They left it and they went on their way and the family talked it over after they had gone.

Q. Then, before you sent this telegram of June 15, 1938, "Our final answer is no", Exhibit D-174, there had been some conversation between you and Mrs. Himes and Mr. Jenkins with respect to this matter of whether you should or should not accept the offer?

A. That is right, yes, sir.

Q. In that conversation was anything said about the prospect of a new Schine theatre being built in town?

Mr. Wright: If the Court please, the conversations are objected to.

The Court: Sustained.

Q. What were the considerations which led you to conclude not to accept the offer?

Mr. Wright: If the Court please, that is objected to also.

[fol. 4650] The Court: Same ruling. It calls for his conclusion.

Mr. McClennen: I offer to show, if your Honor please, if the witness were permitted to answer that he would testify that the rejection had nothing to do with any knowledge——

The Court: I will let you show if he had any knowledge of the activities on the part of Mr. Schine in Canandaigua.

Q. Did you have any knowledge of any activities on the part of Mr. Schine?

A. You mean at the time of this offer?

Q. At the time of this rejection of this offer.

A. Will you read that question again?

(Question read.)

A. I don't know how to answer that, sir.

The Court: It is very broad.

A. Yes, I realize what you probably mean.

Q. Did you have any knowledge at that time of a prospect of Mr. Schine's building or opening a new theatre in Canandaigua on the Flanigan lot?

A. I do not now recall, sir.

Q. Were any such activities, if there were any such, the cause of your rejecting the offer?

Mr. Wright: That is objected to, if the Court please.

The Court: Same ruling again. This letter is on that [fol. 4651] subject. You can call Mr. Lauer and find out if he received that letter.

Mr McClennen: This does not ask about the letter, if your Honor please.

The Court: I assume that letter has some reference to the reason why the offer was rejected.

Mr. McClennen: The rejection was by this telegram which is in evidence.

The Court: The reason for it.

Mr. McClennen: I am asking the witness that.

The Court: What I said was this: It seems to me it is hearsay for him to state the conversation between themselves about the reason why it was rejected. As I said before, this letter written to Mr. Lauer, dated June 16, shows the reason for the rejection. You can call Mr. Lauer and see if he received this letter.

Mr. McClennen: If your Honor please, we, of course, are not trying the question of any conflicts between Mr. Lauer and this witness. What we are seeking to show is that this witness, in rejecting the offer, was actuated by considerations other than any prospect of a Schine theatre on the [fol. 4652] Flanigan lot in Canandaigua.

Mr. Wright: There is not any showing yet, your Honor, that this witness had any interest in that property other than the fact that his wife was a part owner. He is not the one whose testimony would be conclusive as to the issue of why the offer was rejected in any event. There is nothing to show that he had any other connection with it than the fact that he sat in on some of the negotiations and that his wife was a half-owner. That is the way the record stands now.

The Court: As I say, it is hearsay testimony. I will let him state whether he had any knowledge that the Schine interests were negotiating for the Flanigan property at that time. That is a little different from the question as put by you. I think the witness has an interest——

Mr. McClennen: Will you read his Honor's suggested question and will you treat this as my question, Mr. Himes?

The Court: At the time you sent this telegram of rejection did you have any knowledge that the Schine interests [fol. 4653] were negotiating for the Flanigan property?

The Witness: Will you read that once more, please?

(Question read.)

The Witness: If the Court please, I wouldn't—living in Canandaigua, if this agitation was on the street I probably had some knowledge about it, some information.

The Court: In other words, you can't say?

The Witness: No, that wasn't my reason for what happened.

Mr. Wright: On the record as it stands, what his reason was is completely immaterial anyway. It was not his property.

The Court: Strike out that question and answer.

By Mr. McClennen:

Q. I will put the specific question: What was the reason for your sending this telegram of June 15, 1938, rejecting the offer?

Mr. Wright: That is objected to. It calls for a conclusion as to what a lot of people other than himself might have said or thought.

The Court: It seems fairly obvious from the testimony so far that in the telegram he is referring to the reasons as stated in the letter of June 16, to which the telegram [fol. 4654] referred. It says "Offer rejected, see my letter of such date". I think the better way is to prove that in writing.

Q. Observing your letter of June 16, 1938, and refreshing your recollection from it, will you state what your reason was for rejecting that offer?

Mr. Wright: That is objected to.

The Court: Sustained.

Mr. McClennen: I offer to show that the witness, if permitted to answer, would answer that it was because of the belief that it was not a desirable offer to accept and not because of any idea of the prospect of a new Schine theatre coming into town.

Mr. Wright: I submit if he gave that answer it would not be responsive to the question. The question that was asked him is what the reason was. He was not asked what was not the reason.

The Court: The question is what bearing has the motive of the proposed seller, so far as the sale is concerned? What materiality has that?

Mr. McClennen: I submit, if your Honor please, that wholly apart from any question of a new Schine theatre [fol. 4655] being projected for Canandaigua, this offer was rejected. Then it shows that there was no consequent effect from the proposal of a theatre there, if there was such a proposal made.

The Court: The answer to that is simply this, that there is nothing in the case to show that any activities of Schine in that direction were brought to their attention.

Mr. McClennen: That being so, it is very likely that the inference carries it far enough without my showing the actual facts, but I don't want to stop at that when the witness, who knows why he sent that telegram declining that offer is on the stand and could state what influenced him to send that, and that is the reason I offer it.

Mr. Wright: If the Court please, even on Counsel's statement, it could only go to the question of possible damages. This is not a damage suit. Even if Mr. Schine did not succeed in breaking off this deal, as the result of this false publicity about the activity on the Flanigan property, [fol. 4656] that whould in no way relieve the defendants of liability, the fact that the scheme was unnecessary or that the deal fell through that Wallace was trying to make, for some other reason. It could not possibly relieve the defendants from the consequences of that kind of act in any event.

Mr. McClennen: If your Honor please, we are trying a case here in which it is contended that the activity of Schine had some effect upon interstate commerce at Canandaigua, and we are offering to show that it had no effect whatever, and we offer it on that ground.

The Court: The other objection as pointed out by the Counsel is that this witness has no interest in the matter and the question of what actuated him is not material. If it was competent at all it would be what actuated the owners of the property in rejecting the sale. So that it is incompetent for that reason as well.

Mr. McClennen: He was acting, if your Honor please, as husband and attorney in this transaction.

[fol. 4657] Mr. Wright: That has not yet appeared.

The Court: Objection sustained.

Q. Were you in these communications that have been put in acting as attorney in this matter?

A. Yes, sir.

Q. And in sending the telegram were you carrying out the decision which had been reached by the owners?

Mr. Wright: That calls for a conclusion and is objected to.

The Court: It seems to me it is immaterial. It already appears he was attorney, and he sent the telegram of rejection of the offer.

Mr. Wright: There is no question that he is an attorney. It does not appear yet who he was attorney for in this particular transaction.

The Court: He would have to be either attorney for the wife or the brother-in-law.

Mr. Wright: One or the other. And it does not appear which, if either.

The Court: Go ahead. You were acting as attorney for whom then?

The Witness: Well, for the Estate, your Honor.

The Court: The owners of the estate were who?

The Witness: Mr. Jenkins and my wife.

The Court: I will let him state whether this telegram [fol. 4658] was sent pursuant to instructions from its clients.

By Mr. McClennen:

Q. Is that the fact?

A. That is right. We discussed the matter and that was our answer.

Q. In that discussion was there stated the reasons why that offer should not be accepted?

Mr. Wright: That is objected to.

The Court: Sustained.

Mr. McClennen: I offer to show that if permitted to answer the witness would answer yes.

Q. Was that offer rejected because of any knowledge that the Schine organization was projecting a new theatre in Canandaigua?

Mr. Wright: That is objected to.

The Court: Whose knowledge, the witness's knowledge or the client's knowledge?

Mr. McClennen: This witness.

The Court: Objection sustained.

Mr. McClennen: I offer to show if the witness were permitted to answer he would answer no.

Q. I ask you what your belief was as to whether or not the offer was sufficient to warrant you in liquidating the Jenkins' Store, Inc., and making all the necessary [fol. 4659] changes?

Mr. Wright: It is perfectly obvious he did not want the offer or he would not have rejected it.

The Court: It is apparent that there was some reason.

Mr. McClennen: And all that I am concerned with is in showing that that reason was not any Schine project.

The Court: Of course if you say their sole concern was the financial effect upon the Estate that, of course, answers the questions that have heretofore been asked and objected to. I do not see that your question as you put it has any materiality in the form in which it was put, in the language in which it was put.

Mr. McClennen: Will you read the question?

(Question read.)

The Court: That is as I understood it before. Objection sustained.

Q. What was the Jenkins Store, Inc.?

A. The Jenkins Stores, Inc., was a corporation which I had incorporated to conduct a clothing business in this Jenkins Block in Canandaigua. There was a men's store in the south part and an archway through into a larger store [fol. 4660] which was a ladies' store, and the stock in that, if I correctly recall, 98 per cent of it was owned by Mr. Jenkins, Sr., and J. W. Jenkins, Jr., had one share and I think at one time I had one share.

Q. Was it or was it not your opinion that the offer under consideration when you rejected it by your telegram of June 15, 1938, was not sufficient to warrant the liquidation of that business and the making of all the necessary changes?

A. Will you read that, please?

(Question read.)

Mr. Wright: The same objection. It seems to me we have gone over this several times.

The Court: I think so, in another form. Objection sustained.

Mr. McClennen: I offer to show that if this witness were permitted to answer he would say that that was his opinion, and to make perfectly sure, if your Honor please, that I have put this matter in proper form, I ask you whether or not as attorney, in sending this telegram of June 15, 1938, Exhibit D-174, you were actuated in any way by any expectation or belief or apprehension that the Schine organization was proposing to put a new theatre on the Flanigan property in Canandaigua?

[fol. 4661] Mr. Wright: The same objection.

The Court: Objection sustained. He was sending this telegram, according to his instructions, as to whether this contract should be accepted or whether it should not. How he was actuated in sending the telegram is not material in any way that I can see.

[fol. 4662] Mr. McClennen: I offer to show that the witness, if permitted to answer, would say that he was not actuated by any such considerations.

Cross-examination.

By Mr. Wright:

Q. Mr. Himes, do you do any legal work for any of the Schine companies?

A. No, sir.

Q. You had no retainers from any of them?

A. No, sir.

Q. When was it Mr. Jenkins, Sr., died?

A. I can't give you the exact date. It is probably 12, 15 years ago.

Q. And his heirs were your wife and Mr. J. W. Jenkins, Jr.?

A. That is right, and his wife, of course. Mrs. Jenkins survived him.

Q. And Mrs. Jenkins, Sr.?

A. That is right.

Q. Then there was an executor for the estate, was there?

A. Yes, J. W. Jenkins, Jr., and my wife were the executors.

Q. They were the executors?

A. That is right.

Q. You don't recall, you say, when it was the first offer that was made by Wallace or Lauer for the property?

[fol. 4663] A. I don't recall when the first offer was made?

Q. Yes.

A. No, I don't recall.

Q. You knew there were some negotiations with Mr. Jenkins, Jr., before you got into the picture?

A. Yes, sir.

Q. And do you remember when it was that you first found out about this telegram here that has been marked for identification as Exhibit 805?

A. I saw that today for the first time.

Q. As a matter of fact the time that went out weren't you told about that by Mr. Jenkins, Jr.?

A. I couldn't say as to that, sir. Mr. Jenkins, Jr., was then up at the Armstrong Chemical Company. He moved out of the store, and I have no recollection about that, sir.

Q. Just think. Would you say that he didn't tell you at that time that he sent that telegram?

A. Oh, no, I wouldn't say he didn't tell me about that. I wouldn't say that.

Q. You just don't recall.

A. No, I don't recall.

Q. You don't recall what, if any, negotiations there were prior to the time that telegram was sent?

A. Oh, yes, there were negotiations, sir.

[fol. 4664] Q. I say, you don't recall what they were, is that right?

A. No. As to figures you mean, dollars and cents on the lease?

Q. What the negotiations were; as I understand it, prior to that time they were with Mr. Jenkins, is that right?

A. That is right. I must have been in Canandaigua when that telegram was sent, according to the date of it. I was living in Canandaigua at that time. I have no recollection whether or not Mr. Jenkins talked with me about it or not.

Mr. Wright: We will offer this Exhibit 805 in evidence. It has been identified before as having been received by Lauer.

The Court: What does it say?

(Mr. Wright hands Exhibit 805 to the Court.)

The Court: Have you got copies?

Mr. Wright: He has had it.

Mr. McClennen: I object to the receipt of this, if your Honor please, at this time.

The Court: By whom was it identified?

Mr. Wright: That was identified by Mr. Lauer as having been received by him.

The Court: Overruled.

(Thereupon telegram dated May 10, 1938, Lauer to Jenkins, Jr., referred to was marked as Plaintiff's Exhibit 805 in evidence.)

[fol. 4665] Mr. Wright: That is all.

Redirect examination.

By Mr. McClennen:

Q. Can you tell us whether this last offer so noted on your memorandum, Defendants' Exhibit D-179 for identification was after this date of May 10, 1938, appearing on Plaintiff's Exhibit 805?

Mr. Wright: He has already said he did not know.

The Court: Just a minute. You can by reference to the date?

The Witness: I didn't know Mr. Jenkins sent this telegram. That is what I understood your question to be. My recollection the last offer here was after the telegram of May 10th, Exhibit 805 in evidence, and before my telegram to Mr. Lauer on June 15th.

Mr. McClennen: That is all.

The Court: Next witness.

Mr. McClennen: May we photostat these papers of Mr. Himes' and substitute the photostats?

Mr. Wright: Yes.

Mr. McClennen: If you will leave them, Mr. Himes, we will send them back to you.

The Witness: I want a memorandum of what you have got.

[fol. 4666] Mr. McClennen: If your Honor please, I offer in evidence Defendants' Exhibit D-154 for identification, the Telegraph Forum of Bucyrus, Ohio, of September 6th, 1935, announcing that "Page Miss Glory" would play at the State Theatre in Bucyrus, Ohio, beginning Sunday, which would be September 8th, 1935, to which there is now attached a certificate by a bookkeeper of the Bucyrus Telegraph that this advertisement appears in the issue of that date.

Mr. Wright: We have no objection, except I think it appears from other and better evidence that the picture played.

The Court: Received.

Mr. Wright: It is purely cumulative.

The Court: What exhibit is that?

Mr. McClennen: This is Defendants' Exhibit D-154.

(Thereupon photostate of ths Telegraph Forum, dated September 6, 1935, previously marked as Defendants' Exhibit D-154 for identification, was received in evidence.)

Mr. McClennen: That concludes the evidence for the defense.

Mr. Wright: If we may have about five minutes, I think we could have a rebuttal witness.

[fol. 4667] The Court: All right, short recess.

(Short recess.)

Mr. Wright: Will you mark these for identification, please?

(Thereupon records starting the week January 3, 1938, through to December 27, 1938, *was* marked as Plaintiff's Exhibit 1001 for identification, and a tabulation of the records contained in the previous exhibit 1001, was marked as Plaintiff's Exhibit 1002 for identification.)

Cecelia H. Kulakowski a witness called by and on behalf of the Plaintiff, having been first duly sworn, testified in rebuttal as follows:

Direct examination.

By Mr. Wright:

Q. Where do you live, Mrs. Kulakowski?

A. Auburn, New York.

Q. And what is your occupation?

A. Secretary and house manager for the Capitol Theatre.

Q. The Capitol Theatre in Auburn?

A. Yes, sir.

Q. How long have you held that position?

[fol. 4668] A. For ten years.

Q. And in performing your duties in that job, have you had occasion to keep a record of the feature pictures that played at the Capitol?

A. I have.

Q. And I will hand you these cards that are held together by string all marked as Plaintiff's Exhibit 1001 for identification, and ask you if those are records kept by you?

A. They are.

Q. And those are the records of the features and shorts that played the Capitol during what period?

A. From the week beginning January 3, 1938 through the week of December 27th, 1938.

Q. Have you from those records that you hold there prepared a tabulation of the feature pictures that played the Capitol during that period?

A. I have.

Q. And is that this tabulation that has been marked as Plaintiff's No. 1002 for identification?

A. Yes, this is it.

Q. And you know this to be an accurate tabulation of the data that appears in the record, Exhibit 1001?

A. Yes, sir.

Mr. Wright: I will offer the tabulation in evidence, [fol. 4669] Exhibit 1002.

Mr. McClennen: We object to this going in evidence rather than the original, but if we may take it and the cards overnight we can check them and see if it may be the exhibit.

The Court: Yes.

By Mr. Wright:

Q. Did you examine these records in order to determine whether there was any consecutive seven-day period in which more than four features played at the Capitol?

A. I have examined it and we never played more than the four.

Q. There was no seven-day period in which you played more than four features?

A. Never.

Mr. Wright: That is all.

Mr. McClennen: That is all.

Mr. Wright: Of course, we don't like to hold the witness overnight for examination. Could you let us know today?

Mr. McClennen: I think in the course of a very short time after court adjourns, we can make the check and notify you whether there is any occasion to ask any questions. If we find any variations or additions, we can probably agree.

[fol. 4670] The Court: The original records would show the whole thing.

Mr. Wright: He has the original record.

The Court: That is not in evidence?

Mr. Wright: No, that is right. For convenience I offered the tabulation, because the original records include shorts as well as features.

The Court: The other is marked for identification?

Mr. Wright: Yes.

Mr. McClennen: We will try to let you know as early this evening as we can.

The Court: No, can't you check that in a few minutes? Can't you check that right away? Have you any other evidence this afternoon, Mr. Wright?

Mr. Wright: No, we have no other witnesses. There is one more question. It appears on the face of the tabulation there are 205 features.

The Court: The total?

Mr. Wright: Yes, the total.

The Court: You can check those now in a few minutes?

Mr. McClennen: I don't know how many minutes it will take. We can go right at it.

The Court: We have an hour yet, if that is all there [fol. 4671] is to be done this afternoon.

Mr. McClennen: Would your Honor recess then, and we will go ahead with the checking?

The Court: Yes. Do you have other witnesses in the morning?

Mr. Wright: It is questionable whether we will have any other witnesses or not. We may have no more witnesses. We probably will have some documents that we will offer, and that I think will finish up the rebuttal.

The Court: We will stand in recess.

(Short recess.)

[fol. 4672] Mr. McClennen: If the Court please, I wish to urge the objection to the introduction of Exhibit 1001 for identification, which has not been offered, because the schedule, Exhibit 1002 for identification, was proposed as an exhibit, and the grounds for our objection are these: That the exhibit is confined to the year 1938, whereas the testimony, which it would seem that it was offered to rebut, was for the years 1938 and 1939, beginning at page 4243 and going on to 4244, and it subsequently developing that Mr. Schine was speaking by report of what had been told him by his booking department. Your Honor, at page 4253, 4255 and covering all at page 4261, struck out all that testimony, so that there is none to rebut. We make these objections therefore to the admission of Exhibit for identification 1002 because no basis exists for its admission.

Mr. Wright: If the Court please, what Counsel says is correct as to the prior statements about 1938 and 1939 of [fol. 4673] Schine having been based upon the information gotten from the booking department, but in making your ruling your Honor limited it to striking only that information which he got from the booking department and letting the other stand. Here was the ruling at page 4253:

"I think the statements of the information from the booking department is hearsay. I believe it is hearsay, aside from what he has personally observed. I think the balance of his testimony relative to information contained in the booking department is hearsay."

Then on page 4255 the Court states: "Well, of course, I don't think it should all be stricken out. I limit the portion which should be stricken out, both as to the direct and the cross-examination, the statements of the witness as to the number and type of showing of pictures for specific times at the other opposition theatre."

Then Mr. McClennen says: "Well, does your Honor include in that the testimony of the witness when he was at [fol. 4674] Auburn?

The Court: No, no, that is just the point. I don't include that. I leave that in. I made it specific. Well, as to that, in so far as it is shown to refer to information obtained from his booking department."

Then later on the witness made these statements, and this is what compelled us to bring in the rebuttal. At page 4260 there is a question by me:

"Let us see what you know about the policy at the Capitol. The information you got yourself you say you visited Auburn?

A. I visited Auburn.

Q. What were these occasions when you visited Auburn"——

The Court: Whose testimony are you reading from now?

Mr. Wright: This is Mr. Schine.

"Q. What were these occasions when you visited Auburn and you noticed the policy of the Capitol?

A. That was just when I happened to visit the theatres.

Q. Well, when?

[fol. 4675] "A. During the summer of '38 or the fall. I visited several times.

Q. Do you know when?

A. I couldn't give you the date, no.

Q. You don't know the times at all that your observation of the policy at the Capitol relates to, is that right?

A. I visit the Auburn several times a year but I can't give you the exact date as to when."

~~On the basis of~~ that statement I thought it was clearly incumbent on us to show that he was not mistaken in testifying from personal knowledge based on visits to Auburn during that period.

The Court: Specifically what did he state on personal knowledge?

Mr. Wright: He had previously stated that the Capitol at Auburn used six to—at one point he said about eight features a week and later he said six to eight and had used up all the product and that was why they had no pictures for the Jefferson. As I say, it went out as to what came from the booking department. After that ruling was made he [fol. 4676] reaffirmed that he had personal knowledge on these visits to Auburn in 1938. That is why I felt it incumbent to bring these records as to what actually played there in 1938.

[fol. 4677] Mr. McClennen: If your Honor please, in reading that testimony Mr. Wright stopped at the foot of page 4260, and the very next question:

"Q. You can't give us the times or what you saw on any particular occasion with reference to the Capitol, is that right?

A. Well, I couldn't give you an accurate, detailed statement."

"Mr. Wright: I renew my motion, your Honor.

"The Court: I rule, as I have indicated before, that I refuse to strike out the testimony with reference to his own personal knowledge to which he has testified as to the Capitol Theatre. The testimony is that he has some personal knowledge of what was done, but other than as to the specific number of pictures that may be stricken out as hearsay." And that concludes the matter.

The Court: As to the specific number of pictures, were there two answers there preceding that?

Mr. Wright: In his preceding testimony he has stated flatly and definitely that the Capitol Theatre used either [fol. 4678] six or eight pictures a week during the year 1938, as was stated from what information was obtained from the booking department, and then it appeared he insisted he knew some of it personally because he visited there, and that was the result of your Honor's ultimate ruling, which let stand——

The Court: Aside from the exhibits the witness testified they never used six or eight pictures in any one week.

Mr. Wright: Her testimony was with reference to this period. The testimony that she gave is a summary of this record. Of course, that fact appears in this record, Exhibit 1002, as to that period. If her testimony is regarded as competent without these supporting records——.

The Court: She testified to that directly.

Mr. Wright: Then there is no need for these.

The Court: She has been with the Capitol there during that time. She testified directly on the fact on the number of pictures.

Read her testimony.

(Thereupon the reporter read from the direct-examina- [fol. 4679] tion of the Witness Kulakowski, starting on page 4668, line 11 to page 4669, line 16.)

The Court: It is within her personal knowledge.

Mr. Wright: The testimony was based on the tabulation.

The Court: Ask her if she personally knew if that was so, that they never played more than four. I think it should be received, Mr. McClennen. It is admitted that is a copy of the records, of course, it is the secretary's evidence, the document or book itself is the best evidence, but, on the other ground, the objection would not be sustained.

Mr. McClennen: If your Honor please, so far as any personal knowledge as to the exemplified thing, here is exactly the way the testimony reads—in the first place, both the year 1938 and '39 were inquired of Mr. Schine, and this is only 1938.

The Court: All right.

Mr. McClennen: If your Honor please, I am endeavoring to lay before you the significance of your ruling. Now, when we get to page 4259, the question is as to the Jefferson [fol. 4680] Theatre, his own, and then it reads down with reference to that:

"Q. Well, you don't know whether there was a time when you played five or six or seven features at the Jefferson?

A. We never played seven features.

Q. You might have played five or six?

A. I wouldn't want to testify to that.

Q. You don't know?

A. But I am testifying to the best of my knowledge and I believe it is quite accurate.

Q. It isn't as accurate as your booking records, is it?

A. Not absolutely, no.

Q. They would be the best evidence of what policy you pursued in each theatre with respect to the number of features and the time during which it was, is that right?

A. That would be accurate so there is no error on a single feature.

Q. Let us see what you know about the policy at the Capitol. The information you got yourself you say you [fol. 4681] visited Auburn?

A. I visited Auburn.

Q. What were these occasions when you visited Auburn and you noticed the policy of the Capitol?

A. That was just when I happened to visit the theatres.

Q. Well, when?

A. During the summer of '38 or the fall. I visited several times.

Q. Do you know when?

A. I couldn't give you the date, no.

Q. You don't know the times at all that your observation of the policy at the Capitol relates to; is that right?

A. I visit the Auburn several times a year but I can't give you the exact date as to when.

Q. You can't give us the times or what you saw on any particular occasion with reference to the Capitol, is that right?

A. Well, I couldn't give you an accurate, detailed statement.

Mr. Wright: I renew my motion, your Honor.

The Court: I rule, as I have indicated before, that I re- [fol. 4682] fuse to strike out the testimony with reference to his own personal knowledge, to which he has testified, as to the Capitol Theatre. The testimony is that he has some personal knowledge of what was done, but other than as to the specific number of pictures that may be stricken out as hearsay."

The Court: "Other than as to the specific number of pictures".

Mr. McClennen: If your Honor please, there is in the full, fair and accurate interpretation of your Honor's ruling, there does not remain in this testimony any such period of time as is presented in this exhibit.

The Court: Go back to the testimony as to the time and see what he testified to it. Read that portion of it.

Mr. McClennen: He testified, there is no question, to the time of 1943 and 1944 judged by what he had got from his booking department, and he never testified to having seen any week in which there were three changes.

The Court: I want to see what he said, not what your [fol. 4683] statement of it is.

Mr. McClennen: Then, if your Honor will permit me, I [fol. 4684] will read it consecutively. That is the first time that I see any reference to his own visits. It is clearly shown to be on the information obtained from the booking records.

Mr. Wright: I beg your pardon. Some of it refers to what he said he saw in the newspapers. Page 4243 is where it originated.

Mr. McClennen: Page 4243 is where the subject opened with this answer:

"A. The Auburn opened in '38 and we found that playing in the Palace six pictures, in the new theatre three, and the Capitol absorbing about eight a week, took up all the pictures', do you remember saying that?"

(Mr. McClennen continues reading to and including line 14, page 4258)

The Court: Is this material to the objection, this part of the testimony?

Mr. McClennen: Yes, your Honor, your ruling comes after that.

(Mr. McClennen continues reading down to line 3, page 4261.)

[fol. 4685] Now, that ended the testimony of the witness, the end of the cross-examination.

The Court: Let me say this. I have your view about the matter. The ruling I think is clear. He did testify distinctly and definitely of times when he visited Auburn, he knew the Capitol Theatre was playing six pictures. That was definite, at a certain time. He did not testify generally to the number of pictures. That was stricken out as hearsay on the ground it was with reference to bookkeeping, but he did testify specifically as appears from what you have read there were times when he did visit Auburn and frequently, and saw and knew that the Capitol was showing six pictures, and the ruling is clear. From the ruling the differences were defined, as brought out. What was stricken out was what he referred to as his knowledge from the bookkeeping. That, perhaps, is not very definite altogether, but then the question of the rebutting testimony could not have the same [fol. 4686] effect as though there were perhaps a more specific answer.

Mr. McClennen: If your Honor please, there is not an item on this schedule that is offered with slight exceptions that I refer to that conform to the record, there is not an item on there that indicates that at any of the times that Mr. Schine, himself, saw that theatre there was anything more than what he said, because his testimony is over a period of time. These visits and this schedule is confined to this year, and the records of the Capitol Theatre, itself, will show that in the periods following there were changes that would warrant this statement of a minimum of six changes a week, and this exhibit ought not to go in picked out from the whole period.

The Court: Well, let us see what period it was that was testified to by Mr. Schine.

Mr. Wright: As I read his testimony the only dates that he fixed for us on which he made visits to Auburn and observed the policy of the Capitol, was the year 1938.

The Court: Where does it say that?

Mr. Wright: At page 4260.

[fol. 4687] The Court: What does it say?

Mr. Wright: The question was, first:

"Q. What were these occasions when you visited Auburn and you noticed the policy of the Capitol?

A. That was just when I happened to visit the theatres.

Q. Well, when?

A. During the summer of '38 or the fall. I visited several times."

Then I asked and tried to fix it further in the year:

"Q. Do you know when?

A. I couldn't give you the date, no.

Q. You don't know the times at all that your observation of the policy at the Capitol relates to, is that right?"

The Court: You mean the specific time?

Mr. Wright: Yes. Then he said:

"A. I visited the Auburn several times a year but I can't give you the exact date as to when."

Then I said:

"Q. You can't give us the times or what you saw on any [fol. 4688] particular occasion with reference to the Capitol, is that right?

A. Well, I couldn't give you an accurate detailed statement."

I understand that all the testimony in the record that is left as to his personal observation relates to this year 1938. Now, if there is any contention that he has any testimony left in the record as to what the policy of the Capitol was, the number of pictures the Capitol used, we will bring in the record for the year after that and before, or any time he made a statement about it, because his statement was false as to any year.

Mr. McClennen: If your Honor please, it is perfectly obvious from the testimony as a whole that he was talking about a period after the Auburn opened and the Auburn didn't open until September of 1938.

The Court: Well, one question is specifically directed as to the year 1938. It says so.

Mr. McClennen: Here there is presented this list of the playings in the period from January to September, 1938, [fol. 4689] and nothing presented as to the period immediately following that in 1939.

Mr. Wright: I beg your pardon. This is January——

The Court: Beyond September.

Mr. Wright: —this is January '38. The last play date is January 2, 1939. It covers the entire one-year period.

Mr. McClennen: That is what I said.

Mr. Wright: You said September.

Mr. McClennen: I didn't say that was the whole of [illegible] I was pointing out to your Honor that they were offer[illegible] these plays for a period to which Mr. Schine's testimony on personal visits there did not relate, because the Auburn Theatre did not open until September, 1938.

The Court: Excepting one remark in that statement, September, 1938, and there are three months left in '38, aren't there?

Mr. McClennen: Your Honor, I was speaking in an endeavor to give a fair and accurate picture if it was going to be a presentation of what the record showed, and calling to your attention that there is nothing in here of the period immediately following this. That is in January, [fol. 4690] 1939, and we believe those records show that there were six pictures a week played in 1939.

The Court: Counsel said he is willing to admit it.

Mr. Wright: I want to know now whether there is any claim that there is competent evidence by Mr. Schine as to the fact that the Capitol was playing six to eight pictures a week in any year other than '38. If there is, I will bring in the records for that year. As I read the testimony the only year he fixed when he visited the Capitol and observed the policy of the Capitol was 1938. Counsel said he testified to another year, and if he will name the year or years, we will bring in competent records for each of those years.

Mr. McClennen: I submit that in what I have read is just that testimony, and I submit that by your Honor's ruling it is not in the record.

The Court: It is clear that he testified to something with reference to 1938. What was left in that record, as I read it, is the statement that on certain occasions, when he was there, he knew certain things being done at the Capitol, [fol. 4691] or what they were showing at the Capitol. That was what was left and that is what the Court intended to leave in the testimony.

Mr. McClennen: If your Honor please, on a normal interpretation of that testimony, I submit that there is nothing to indicate that he was in Auburn for any whole week in any period, or could have any personal knowledge of that playing that is referred to, and he had given his testimony of the information given him by his booking department, and that that is the only testimony that is in as to numbers played.

The Court: If that is the construction that takes all of it into consideration in connection with this exhibit proposed here. It may be considered, I think, in connection with the consideration of the whole testimony. In the aggregate it might have some force. As I stated repeatedly the record now stands that at some time he personally knew what was being done. Now that stands out, it seems to me, as a clear statement. Whether it was intended by him [fol. 4692] to mean knowledge from the bookings, or not, does not show.

Mr. McClennen: I respectfully urge your Honor that the testimony as it has been read as a whole contains no statement of him that in any week did he personally observe the playing of six pictures in that theatre, and that the real substance of it was drawn from the booking department.

The Court: Mr. Schine can be recalled, and testify again.

Mr. McClennen: I am speaking, if your Honor please, about the admissibility of this record.

The Court: Of course, the copy is not admissible, if there is an objection to that, but a copy of the original records I think it is competent here to take in connection with the testimony of Schine.

Mr. McClennen: As to the checking we have checked the record and, with a few exception-, the schedule in this exhibit fairly sets out the record as the whole record would show and in summary form, and the exceptions which I make are as I have stated them, and not to the use of a table [fol. 4693] instead of the original record. If this is to go in I want to ask the witness some questions.

The Court: All right. Step forward.

CECELIA H. KULAKOWSKI resumed as a witness by and on behalf of the Plaintiff, having been previously sworn, testified further in rebuttal, as follows:

Cross-examination.

By Mr. McClennen:

Q. Did you investigate the records to see what was being played at the Capitol Theatre immediately before the year 1938 and immediately after the year 1938?

A. No.

Q. You made this schedule on some direction as to what you should investigate, didn't you?

A. Yes.

Q. And you were told to make up a schedule from the record of 1938?

A. Because 1938——

Q. Not "because" but that is what you were told, was it?

A. That is the year that was in question.

Mr. McClennen: I will ask to have that stricken out.

[fol. 4694] Q. You were told, were you, to make up this schedule for 1938?

A. Yes, sir.

Q. And you did not look before or after that?

A. No, sir.

Q. Do you remember that in parts of the year 1939, the Capitol was playing three changes a week?

Mr. Wright: If the Court please, this is not cross-examination. If he wants to go into this, into other periods, I suppose we would then have the question of other records.

The Court: When we reach the question we will pass upon it.

Mr. Wright: I say I object to the question now. I want to point out it is not cross-examination. I object to it on that ground. I assume he makes the witness his for that purpose.

The Court: I will receive it. There might be some question as to the time Mr. Schine was testifying concerning.

Mr. Wright: I don't see how she can settle the question of what period Mr. Schine was testifying about.

The Court: No, I mean his question, the question asked [fol. 4695] by the counsel is covering more than the period, the year 1938.

Mr. Wright: I asked him to state a year, and his response was there was no testimony in the record that Mr. Schine gave testimony of personal knowledge as to any year.

The Court: Objection overruled.

Mr. McClennen: Will you read the question?

(Last question read.)

The Witness: I do not remember.

Q. You don't remember anything about that? Were your duties such that you were at the theatre?

A. I was all over the theatre. Mr. Wallace was there.

Q. You were what?

A. I was in and out of the theatre.

The Court: You were there every day?

The Witness: I was there every day.

The Court: So you would know what was showing?

The Witness: Yes, sir.

Mr. McClennen:

Q. You mean that you don't know whether the Capitol played three changes a week in 1939?

A. I can't recall offhand.

Q. You can't recall?

A. No, sir.

[fol. 4696] Q. Your records, of course, would show that?

A. Yes, sir.

Q. And does your recollection go so far as to enable you to say that at some times the Capitol played three changes a week?

A. I cannot answer that.

Q. You mean——

A. I don't remember.

Q. You don't ever remember when the Capitol played three changes a week?

A. Unless I look back into the records.

Q. What part of the bookkeeping do you do?

A. I do the regular bookkeeping work, enter the transactions as the confirmations come in. Mr. Wallace does the dating.

[fol. 4697] Q. Do you enter on your books of account the film rentals to be paid?

A. Yes, sir.

Q. And the number of pictures played per week in those film rental accounts?

A. Will you repeat that, please?

Q. And the number of pictures played per week in those film rental accounts?

A. From each company, from the company that we played during that week.

Q. And do you say that you never remember a single week in which the Capitol played three changes a week?

Mr. Wright: If the Court please, it is wholly immaterial what this witness remembers. She has records. The records can be produced for any year that the Counsel is interested in.

The Court: She has already answered that question. She says she has no record of any time that the features were played a week.

Mr. McClennen: I am not asking for the record now. I am asking if this witness, from her connection with the theatre, can answer that.

The Court: She has answered that question specifically. She said she did not remember.

[fol. 4698] By Mr. McClennen:

Q. That you don't remember of any week in which three changes were played in a week?

A. I do not remember off-hand.

Q. How quickly could you ascertain from your records about that?

A. I would have to go back to Auburn this evening.

Q. That is, you couldn't get the record here, by telephone or in some such way?

A. No, sir.

Q. Well, would you make that investigation and let us have the results tomorrow morning?

A. That is impossible to get it tomorrow morning because I have to go back to Auburn and I won't get in there until early in the morning.

Mr. McClennen: I will ask if your Honor will allow me to suspend the cross-examination of this witness——

The Court: I want to get through with this evidence today.

Mr. Wright: I will repeat what I said before, that if there is any claim that there is now testimony in this record by Mr. Schine that he observed six or eight pictures a week being played at the Capitol Theatre during any other year than 1938 we shall see that the records for that year [fol. 4699] are produced.

Mr. McClennen: We do not claim that there is any such testimony in the record as Mr. Wright has just stated.

The Court: You do not claim that his testimony related to any year other than 1938, you mean?

Mr. McClennen: I claim that his testimony did not go to the point of a personal observation of six changes a week at any time and that he did not distinguish between 1938 and 1939.

Mr. Wright: What possible purpose does this examination serve that he is now conducting?

Mr. McClennen: I have said that I believe that there is no testimony in this record of Mr. Schine's personal knowledge that six pictures played in any week. Now, if we are in accord on that then there is no need of this, but if it is contended otherwise, why, then, we ought to have this information.

The Court: I do not think it is necessary to go into that: I can read the testimony and draw my own conclusions. Counsel has offered to submit the records of 1939. It is [fol. 4700] your claim that Mr. Schine's testimony includes that year and could be so construed as to include that year.

Mr. McClennen: If your Honor please, I have endeavored to make perfectly clear my position, which is that Mr. Schine has not testified by personal knowledge to any time, but if I am wrong on that and he has testified of personal knowledge that there was any week in which there were six pictures played, that that is not confined to 1938, but that he is speaking of the period after the Auburn theatre opened.

The Court: What period? How long a period?

Mr. McClennen: An indefinite period. He mentions as far back as 1940 in one of his answers, but certainly not beginning until September, 1938, because he fixes this whole thing as the shortage of pictures that existed after the Auburn was opened, so that we have a beginning date but not an ending date.

The Court: You would not submit the records of 1939?

Mr. Wright: If your Honor rules that Mr. Schine's testi- [fol. 4701] mony from his personal knowledge as to what played at the Capitol may be construed as referring to 1939, 1940 or 1941, we will produce the records for all of those years.

The Court: Counsel says only up to 1940.

Mr. Wright: Do I understand that you mean 1939 or 1940? If there is any question about 1940 we ought to have the 1940 records here.

Mr. McClennen: Well, I do not think that we have checked the 1940 records enough to make any assertion concerning them, but I am speaking particularly of the 1939 records.

The Court: This witness will be excused. We will adjourn until tomorrow morning. As I said before, I will receive this transcript of the record showing the date, as I take it, that the pictures were played, as relating to the testimony of Mr. Schine. I do not know whether that will be construed by me, after reviewing the testimony, as showing that he is referring to booking records all the time or whether it is an absolute statement of his own personal knowledge. [fol. 4702] I will have to pass on that when considering all the evidence.

Mr. McClennen: While not seeking to intrude on your Honor's ruling I would like to have my objection in addition to the others specifically to the portion of this exhibit for identification 1002, which relates to a date before September, 1938, and specifically that it does not extend into 1939, both of those periods.

The Court: Counsel for the Government suggested that they would submit 1939.

Mr. Wright: As I read the testimony the only date——

The Court: Do not go over that again.

Mr. Wright: This means a trip by the witness back to Auburn and bringing these records. If your Honor has any doubt about my contention that the only date he fixed on which he had personal knowledge is 1938, then I will bring in 1936, 1937, 1939, 1940 and 1941, all that we have got.

The Court: Objection overruled. I will receive the exhibit.

(Thereupon the tabulation contained in Exhibit 1001 previously marked Plaintiffs' Exhibit 1002 for identification [fols. 4703-4705] was received in evidence.)

The Court: Is there anything further?

Mr. Wright: We have no further witnesses today. We may have some documentary evidence tomorrow. I think we ought to finish up tomorrow morning.

The Court: All right. We will adjourn until 10:30 tomorrow morning.

(Whereupon an adjournment was taken until tomorrow, Friday, November 10, 1944, at 10:30 o'clock A.M.)

[fol. 4706] UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF NEW YORK

Civil 223

UNITED STATES OF AMERICA

vs.

SCHINE CHAIN THEATRES, INC., et al., Defendants

Continuation of trial before Honorable John Knight, United States District Judge for the Western District of New York, November 10, 1944, 10:30 o'clock A.M.

APPEARANCES:

Robert L. Wright, Esq., John F. Clagett, Esq., Harold L. Schilz, Esq., Philip Marcus, Esq., Special Assistants to the Attorney General, and Milton Kallis, Esq., Special Attorney in behalf of the United States.

Edward F. McClennen, Esq., Willard S. McKay, Esq., Saul E. Rogers, Esq., Arthur E. Whittemore, Esq., Arthur J. Homans, Esq., and Howard M. Antevil, Esq., appearing for the Defendants.

[fol. 4707] PROCEEDINGS

Mr. Wright: Will you give these the next three Plaintiff's numbers for identification?

(Thereupon the certified copy of meeting of Salamanca Common Council Oct. 6, 1941, was marked as Plaintiff's Exhibit 1003 for identification.)

(Thereupon the agreement, dated Oct. 3, 1935, between B. F. Keith Corp. and Dominion Operating Co., Ltd., and Schine Chain Theatres, Inc., and S. K. E. Operating Corporation, Ltd., was marked as Plaintiff's Exhibit 1004 for identification.)

(Thereupon the agreement, dated July 31, 1939, between the same parties, was marked as Plaintiff's Exhibit 1005 for identification.)

Mr. McClennen: If your Honor please, we are in accord that on page 3562, line 13, "the" should read "two", and that on page 4153, line 12, after "honor" and before "by" a "not" should be inserted.

Mr. Wright: There are a number of corrections that I think will have to be made in the record. We are going to try to handle those by an exchange of letters within the next week or so.

We offer in evidence a document marked for identification [fol. 4708] as No. 1003, which is a certified copy of the meeting of the Salamanca Common Council, dated October 6, 1941, granting a permit to Schine Theatre Company to build a theatre.

Mr. McClennen: Pursuant to the plans and specifications on file in the City Clerk's office.

(Thereupon the certified copy of meeting of Salamanca Common Council, previously marked as Plaintiff's Exhibit 1003 for identification was received in evidence.)

Mr. Wright: We should also like to offer at this time an exhibit previously identified as Defendants' No. 45. That was an exhibit that was to be photostated. At the time that Mr. Schine was on the stand he recalled having received it. It is a letter from the people in the Masonic Lodge at Medina to Mr. Schine.

(Thereupon the letter, Defendants' Exhibit 45 for identification, was received in evidence and marked Plaintiff's Exhibit 1006.)

Mr. Wright: That, I think, concludes the rebuttal testimony. We have some other material here which consists of documents and which were not produced at the time we [fol. 4709] closed our case. Two of those are Exhibits 1004 and 1005 for identification, 1004 being the agreement dated October 3, 1935, between B. F. Keith Corporation, Dominion Operating Company, Ltd., and Schine Chain Theatres, Inc., and S. K. E. Operating Company, Ltd., Exhibit 1005 is an agreement, dated July 31, 1939, between the same parties. These were the agreements I believe referred to in Mr. Schine's examination, which we asked to have produced and which have been produced by the defendants, and we offer them in evidence.

Mr. McClennen: There is no objection to these, but it leaves the matter incomplete because the agreements refer to certain leases and without those leases there does not appear on the face of the papers the proportions of interest that have been testified to. I think it is quite immaterial so long as you are not misled by not having all of the documents.

The Court: Do you want to produce the leases?

Mr. McClennen: I should suggest that they be appended as part of these exhibits.

Mr. Wright: The only reason why we have not offered the leases with these is simply that all the leases do, as Counsel suggested, show the proportion of interest and we [fol. 4710] feel that the oral testimony adequately covers that point. The leases are rather voluminous and I did not want to encumber the record with them unless there is some special point that Counsel has in mind.

Mr. McClennen: Mr. Wright's suggestion covers all that I had in mind. If you read these papers alone they would not seem to support the oral testimony, but if the oral testimony is to be undisputed in respect to these proportions then we do not need the leases.

Mr. Wright: I might say in that connection that this exhibit 1004 refers to a letter agreement, dated August 21, 1935, which this Exhibit 1004 cancels, and that agreement I believe was not produced and was not available.

Mr. McClennen: You do not care for it?

Mr. Wright: It might be said also that that agreement might be necessary to a full understanding of 1004 and I would be glad to offer it also, if it is available, but I was informed that it was not available.

[fol. 4711] Mr. McClennen: I am told that was just a preliminary agreement that was merged into this one that you have put in. It may be understood that we may substitute photostats for these originals?

Mr. Wright: Yes.

(Thereupon the agreement, dated Oct. 3, 1935, between Keith, et al., and S.K.E. Operating Co., Ltd., previously marked Plaintiff's Exhibit 1004 for identification, was received in evidence.)

(Thereupon the agreement, dated July 31, 1939, same parties, previously marked Plaintiff's Exhibit 1005 for identification, was received in evidence.)

(Thereupon letter from Mr. Morgan of Paramount to Mr. Marcus, dated October 26, 1944, referred to, was marked as Plaintiff's Exhibit 1007 for identification.)

(Thereupon the agreement, dated November 6, 1941, was marked as Plaintiff's Exhibit 1008 for identification.)

Mr. Wright: I have had marked for identification as Exhibit 1007 a letter from Mr. Morgan of Paramount to Mr. Marcus, dated October 26, 1944, which shows the play-off of Paramount features for 1939-1940 in Salisbury, Mary- [fol. 4712] land, showing the title of each picture, the exhibitor that played it, and the dates on which he played it.

(Thereupon letter, dated October 26, 1944, previously marked as Plaintiff's Exhibit 1007 for identification was received in evidence.)

Mr. Wright: Then we had marked as Exhibit 1008 for identification an agreement, dated November 6, 1941, between Henry and Rebecca Pohl, of Norwalk, Ohio, and the Norwalk Theatre Corporation, which covers, I believe, the premises formerly occupied by the Forum Theatre, which we offer in evidence under the same number.

(Thereupon the agreement, dated November 6, 1941, previously marked as Plaintiff's Exhibit 1008, was received in evidence.)

Mr. Wright: Then we have here a photostatic copy of the license contract between Fox and the Kallet Theatres, Inc., for the Regent Theatre at Syracuse, which has been produced pursuant to our subpoena as the contract under which the group of five pictures, headed by "Charley's [fol. 4713] Aunt", played the Regent Theatre. At the time the other Syracuse contracts relating to those same five pictures were offered a number was left for this contract, which was No. 979, and I will ask to have this marked and received in evidence as Exhibit 979.

(The photostatic copy of license contract between Fox and Kallet Theatres, Inc., referred to, was received in evidence as Plaintiff's Exhibit 979.)

Mr. McClennen: The date of Exhibit 979 is August 8, 1940.

Mr. Wright: Then we have material here, which was previously identified, but which was not offered at the time we closed our case, through inadvertence. That is, these two contracts with Columbia, which were marked for identification as Exhibits 750 and 751, between Columbia and the theatres operated by the witness Fenyvessy at Rochester.

The Court: What theatre?

Mr. Wright: 750 is for the Monroe and 751 is for the Madison. They are both second-run contracts. The Madi-[fol. 4714] son contract is for 1936-1937 and the Monroe is for 1937-1938. We offered, I believe, all of the identified material in respect to those theatres.

Mr. McClennen: Exhibit 750 is dated "Approved June 18, 1937," for the Monroe for Group A 4, 5 and 6, and Exhibit 751 for the Madison is dated "Approved November 2, 1936" for Group W 4, 5 and 6.

The Court: For what years, the balance of one year?

Mr. Wright: 751 refers to the pictures released during the period beginning September 1, 1936, and ending September 30, 1937, and 750 refers to the period commencing Sept. 1, 1937, and ending September 30, 1938. It appears that 751 is for the 1936-1937 season and 750 for the 1937-1938 season.

Mr. McClennen: I am told that these two contracts are already in evidence under those numbers. It is simply a matter of their not having been checked on the face of the contracts by the number on page 2247.

Mr. Wright: In any event, they may be so marked now.

[fol. 4715] (Thereupon the license agreement, Columbia Pictures Corporation with Fenyvessy, previously marked as Plaintiff's Exhibit 750 for identification was received in evidence.)

(Thereupon the license agreement, Columbia Pictures Corporation with Fenyvessy, Madison Theatre, 1936-37, previously marked as Plaintiff's Exhibit 751 for identification was received in evidence.)

Mr. Wright: Then we also have some RKO material, which was previously identified, but which I do not believe has been offered and marked in evidence. We would now like to offer Exhibit 520 for identification as an agreement dated September 22, 1933, between Schine Theatrical Co. and its subsidiaries and RKO Distributing Corporation, whereby it is agreed that on the deal signed for the 1933-1934 pictures the following clauses are to become part and parcel of the deal and the approval of the contract will be an automatic approval of this letter. Exhibit 524 is a similar agreement, dated October 29, 1934, between Schine Theatrical Co., Inc., and its subsidiaries and RKO Distributing Corporation, and which refers to the deal for the [fol. 4716] 1934-1935 pictures.

Mr. McClennen: On Exhibit 520 against paragraph seven there is in pencil "Only in Buffalo and Albany territory." This is not an original paper but simply has typed signatures on it.

Mr. Wright: That is right. These are mimeographed copies produced from the files of RKO.

(Thereupon the agreement, dated September 22, 1933, between Schine Theatrical Co. and RKO, previously marked as Plaintiff's Exhibit 520 for identification, was received in evidence.)

(Thereupon the agreement, dated October 29, 1934, between Schine Theatrical Co., Inc. and RKO, previously marked as Plaintiff's Exhibit 524 for identification, was received in evidence.)

Mr. Wright: Then we have these photostatic copies of RKO contracts, all of which were identified as part of the folder marked for identification as 628. They all relate to Corning, New York, and the seasons 1933-1934 and 1934-1935. We had offered material in respect to Corning for, I believe, Universal, Fox, Loew's, Paramount, Warner, and these should have been offered at that time.

I will ask to have marked as 628-A the contract with [fol. 4717] the application date October 23, 1933, between Schine and RKO for first-run Corning, 1933-1934 productions.

628-B is the application, dated August 19, 1933, between Fred Gerber and RKO for second-run, Corning, 1933-1934 features.

628-C is the application, dated February 19, 1934, between Gaby & Cohen for third-run, Corning, 1933-1934 features.

628-D is the contract application date October 31, 1934, between Schine and RKO for first-run, Corning, for the 1934-1935 season.

628-E is the contract application date October 31, 1934, between Schine and RKO for second-run Corning, 1934-1935 features.

628-F will be the contract application date April 15, 1935, between Gaby and RKO for third-run, Corning, on 1934-1935 features.

[fol. 4718] (The contract applications referred to, dated August 19, 1933, February 19, 1934, October 31, 1934, October 31, 1934, and April 15, 1935, were received in evidence and marked Plaintiff's Exhibits 828-A, B, C, D, E and F, respectively.)

Mr. Wright: It is stipulated that the picture "Charley's Aunt" played first-run in Syracuse at the Keith Theatre from August 14th to 20th, 1941, and then at the Eckel from August 21 to 27, the same year. "Wild Geese Calling" played at the Paramount September 3rd through 9th, 1941. "Private Nurse" played the Paramount August 20th through 26th, 1941. "Dressed to Kill" played the Paramount August 27th through September 2nd, 1941.

All of those dates I have read are for first-run Syracuse.

"Sun Valley Serenade" played at Keith's, first-run Syracuse from September 18 through 24, 1941, and with it was played a feature called "Three Sons of Guns", during the same period.

Then "Sun Valley Serenade" played the Eckel from [fol. 4719] September 25 through October 1, 1941, with "They Meet Again" as the second feature during the same period, and "Hurry, Charlie, Hurry" played the Eckel October 30 through November 5th, 1941.

Again, all of these engagements are first-run Syracuse.

We have here a clearance schedule, which was produced by Universal, but which I do not believe was identified while Mr. Murray was on the stand. If there is any question about the authenticity we will not offer it. I assume it is a copy of a schedule that the defendants have in their possession.

Mr. McClennen: How do you know that this is a Universal schedule?

Mr. Wright: I understand it was produced by Mr. Murray pursuant to a subpoena, but it was not included in any of the folders that were identified by him while he was on the stand. That is all I know about it, and, as I say, I assume that it is a copy of a schedule that the defendants [fol. 4720] have in their files.

Mr. McClennen: May this be done: May it be marked as an exhibit and if we find on checking that it is not right it will go out on our notifying Counsel?

Mr. Wright: That is entirely agreeable?

Mr. McClennen: I notice that there is one place where 120 days in type is changed to 90 in pencil and the name of the company does not appear on the sheet.

The Court: Very well.

(Thereupon the clearance schedule, produced by Universal, was received in evidence and marked Plaintiff's Exhibit 1009.)

Mr. Wright: Little Falls, Warner contract, Exhibit 611-A, should be changed to 635-D. That is a contract dated September 19, 1931, with W. Wood, for the Hippodrome Theatre, and is in evidence at page 3825.

(Thereupon the Warner contract, Little Falls, N. Y., dated September 19, 1931, referred to was received in evidence and marked Plaintiff's Exhibit 635-D.)

Mr. Wright: That concludes our case.

The Court: Is there anything more, Mr. McClennen?

[fols. 4721-4723] Mr. McClennen: No.

The Court: Then this concludes the taking of testimony. I want to thank all the Counsel for their uniform courtesy throughout the trial of this case and the fairness of Counsel in endeavoring to agree on those matters that were not to be disputed.

Mr. McClennen: For my part, I thank you, your Honor, and I want to say that we deeply appreciate the attention and consideration that the Court has given our efforts throughout the trial.

Mr. Wright: That also expresses our sentiments, your Honor.

The Court: Then we will adjourn now.

[fol. 4724] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

ORDER APPROVING CONTRACT OF SALE

The Court having made an Order, dated and entered on October 9, 1944, directing a further Hearing upon the application for confirmation of the purchase by A. C. Hayman from Schine Circuit, Inc., as Agent, of certain theatre properties and their leases, to wit: The fee of the State Theatre, Appalachia, Virginia, and the leaseholds on the Appallachian Theatre, Appalachia, Virginia, the Viv Theatre, Corbin, Kentucky and the Liberty Theatre, Pikeville, Kentucky, all pursuant to the terms and conditions of a certain contract between A. C. Hayman and Schine Circuit, Inc., as Agent, which contract is dated October 2, 1944, and has been considered by the Court, and the Court having [fol. 4725] given due notice of such Order of October 9, 1944, and this matter coming on regularly to be heard on the 16th day of October, 1944, and it appearing to the satisfaction of the Court that there is no sufficient reason why said purchase contract should not be confirmed.

It Is Hereby Ordered that the contract of sale between A. C. Hayman, a resident of Niagara Falls, New York, and Schine Circuit, Inc., a New York Corporation, as agent, which contract is dated October 2, 1944 and provides for the disposal of the fee of the State Theatre, Appalachia, Virginia, and the leaseholds on the Appallachian Theatre, Appalachia, Virginia, the Viv Theatre, Corbin, Kentucky and the Liberty Theatre, Pikeville, Kentucky, be and the same hereby is in all respect ratified, confirmed and approved.

John Knight, United States District Judge.

Dated: Buffalo, New York, October 16, 1944.

[fol. 4726] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

REPORT OF DEFENDANTS—Filed November 16, 1945

The undersigned, so-called, "Schine Defendants," hereby report as follows with respect to the Temporary Consent Order entered herein on the 19th day of May, 1942, and such other orders as have subsequently been entered herein with respect to said Temporary Consent Order, and, particularly the Order of this Court dated October 15, 1944.

1. The transaction between "The Schine Defendants," and, "A. Charles Hayman," of Niagara Falls, New York, referred to in said Order of October 16, 1944, has been closed, Documents of Title having been executed and de-

livered, and, the initial payment having been received by the undersigned Defendants.

2. With respect to the remaining five (5) Theatres, covered by said Temporary Consent Order, to wit:

1. *Opera House*, Lexington, Ky. (Leasehold).
2. *Plaza Theatre*, Malone, N. Y. (Leasehold).
3. *Ada Meade Theatre*, Lexington, Ky. (Leasehold).

[fols. 4727-4730] 4. *Memorial Theatre*, Lexington, Ky. (Leasehold).

5. One-half Interest in Corporation holding lease of *Margie Grand Theatre*, Harlan, Ky.

the undersigned report that notwithstanding repeated efforts to dispose of said five (5) Theatres, they have not been able to dispose of said Theatres.

Upon the 10th day of November, 1944, the undersigned caused to be published in the Motion Picture Daily, and, the Film Daily, two trade publications having the widest circulation possible in the Motion Picture Industry, paid notices, inviting offers for these five (5) Theatres. The two papers also carried news stories in the same respective issues regarding said notices. No offers have as yet been received.

3. With the original of this report the undersigned is handing the Court a copy of the November 10 issue of the Motion Picture Daily, and a copy of the November 10 issue of the Film Daily, and we respectfully refer the Court to Page 13 of the issue of the Motion Picture Daily, and, Page 16 of the issue of the Film Daily.

Respectfully submitted, Schine Chain Theatres, Inc., et al., by (S.) Edward F. McClennen, Esq., Counsel for Defendants. (S.) Willard S. McKay, Esq., Counsel for Defendants.

• • • • • • •

[fol. 4731] In the District Court of the United States

[Title omitted]

Defendants' Request for Findings—January 24, 1945

The defendants request the Court to make the findings hereinafter set forth.

In order to avoid repetitions in these requests they have been grouped, as far as possible, with indications of the separate applications. The Court is requested to treat them as if the words of each request had been repeated as to each situation.

For brevity the name "Schine" is used to signify the defendant corporations involved, without distinguishing between the principal corporation and any subsidiary.

For brevity the respective principal distributing corporations are described by the single names, respectively, Columbia, Fox, Loew's or Metro, Monogram, Paramount, Republic, RKO, United Artists, Universal, Warner.

In marked contrast with these requests, the plaintiff's requests and brief contain many statements as of facts and conclusions which are either contrary to the evidence or baseless. Some of these are noted in the following brief for defendants, p. 846 *et seq.*

[fol. 4732] First. The defendants request the Court to find that the cities and towns in which the evidence shows that the defendants had, or were interested in the ownership or operation of, a theatre at any time between January 1, 1917 and May 19, 1942, were none other than those set forth in the following

List of Cities and Towns

Amsterdam, N. Y.
Appalachia, Va.
Ashland, O.
Athens, O.
Auburn, N. Y.
Ballston Spa, N. Y.
Bath, N. Y.
Bellefontaine, O.
Big Stone Gap, Va.
Bowling Green, O.
Bucyrus, O.
Buffalo, N. Y.
Cambridge, Md.
Canandaigua, N. Y.
Carthage, N. Y.
Clifton Springs, N. Y.
Corbin, Ky.
Corning, N. Y.
Fremont, O.
Geneva, N. Y.
Glens Falls, N. Y.
Gloversville, N. Y.
Granville, N. Y.
Hamilton, N. Y.
Harlan, Ky.
Herkimer, N. Y.
Hudson Falls, N. Y.
Hurlock, Md.
Ilion, N. Y.
Kent, Ohio
Lake Placid, N. Y.
Laurel, Del.
Lexington, Ky.
Little Falls, N. Y.
Lockport, N. Y.
Malone, N. Y.
Norwich, N. Y.
Ogdensburg, N. Y.
Oneonta, N. Y.
Oswego, N. Y.
Paris, Ky.
Penn Yan, N. Y.
Perry, N. Y.
Pikeville, Ky.
Piqua, O.
Ravenna, O.
Richmond, Ky.
Rochester, N. Y.
Sacandaga Park, N. Y.
Salamanca, N. Y.
Salisbury, Md.
Saranac Lake, N. Y.
Seneca Falls, N. Y.
Shelby, O.

List of Cities and Towns—Continued

Cortland, N. Y.
Cumberland, Md.
Delaware, Ohio
Dolgeville, N. Y.
Easton, Md.
East Rochester, N. Y.
Fairport, N. Y.
Federalsburg, Md.
Fostoria, O.
Massena, N. Y.
Maysville, Ky.
Mechanicsville, N. Y.
Medino, O.
Middlesboro, Ky.
Milford, Del.
Mt. Vernon, O.
Newark, N. Y.
Norwalk, O.
St. Michaels, Md.
Syracuse, N. Y.
Tiffin, O.
Tupper Lake, N. Y.
Utica, N. Y.
Van Wert, O.
Watertown, N. Y.
Whitehall, N. Y.
Wooster, O.

[fol. 4733] Second. The defendants request the Court to find the facts to be as to each city and town separately in the foregoing list as follows:

1. It does not appear on the evidence that in fact the defendants have monopolized trade or commerce among any of the several states for Amsterdam, N. Y.

The defendants repeat this request with respect to each of the cities and towns in the list on page 101, substituting for Amsterdam the name of the particular city or town.

2. It does not appear on the evidence that in fact the defendants have conspired with Columbia to restrain trade or commerce among any of the several states for Amsterdam, N. Y.

The defendants repeat this request with respect to each of the cities and towns in the list on page 101, substituting for Amsterdam the name of the particular city or town.

3. It does not appear on the evidence that in fact the defendants have conspired with Fox to restrain trade or commerce among any of the several states for Amsterdam, N. Y.

The defendants repeat this request with respect to each of the cities and towns in the list on page 101, substituting for Amsterdam the name of the particular city or town.

4. It does not appear on the evidence that in fact the defendants have conspired with Loew's to restrain trade or commerce among any of the several states for Amsterdam, N. Y.

The defendants repeat this request with respect to each of the cities and towns in the list on page 101, substituting for Amsterdam the name of the particular city or town.

5. It does not appear on the evidence that in fact the defendants have conspired with Monogram to restrain trade

or commerce among any of the several states for Amsterdam, N. Y.

[fol. 4734] The defendants repeat this request with respect to each of the cities and towns in the list on page 101, substituting for Amsterdam the name of the particular city or town.

6. It does not appear on the evidence that in fact the defendants have conspired with Paramount to restrain trade or commerce among any of the several states for Amsterdam, N. Y.

The defendants repeat this request with respect to each of the cities and towns in the list on page 101, substituting for Amsterdam the name of the particular city or town.

7. It does not appear on the evidence that in fact the defendants have conspired with RKO to restrain trade or commerce among any of the several states for Amsterdam, N. Y.

The defendants repeat this request with respect to each of the cities and towns in the list on page 101, substituting for Amsterdam the name of the particular city or town.

8. It does not appear on the evidence that in fact the defendants have conspired with Republic to restrain trade or commerce among any of the several states for Amsterdam, N. Y.

The defendants repeat this request with respect to each of the cities and towns in the list on page 101, substituting for Amsterdam the name of the particular city or town.

9. It does not appear on the evidence that in fact the defendants have conspired with United Artists to restrain trade or commerce among any of the several states for Amsterdam, N. Y.

The defendants repeat this request with respect to each of the cities and towns in the list on page 101, substituting for Amsterdam the name of the particular city or town.

10. It does not appear on the evidence that in fact the defendants have conspired with Universal to restrain trade or commerce among any of the several states for Amsterdam, N. Y.

[fol. 4735] The defendants repeat this request with respect to each of the cities and towns in the list on page 101, substituting for Amsterdam the name of the particular city or town.

11. It does not appear on the evidence that in fact the defendants have conspired with Warner to restrain trade or commerce among any of the several states for Amsterdam, N. Y.

The defendants repeat this request with respect to each of the cities and towns in the list on page 101, substituting for Amsterdam the name of the particular city or town.

[fol. 4736] Third. At the end of the year 1930 Schine had disposed by sale, lease or otherwise of all the theatres formerly owned or operated by Schine except those in Buffalo, Cortland, East Rochester, Fairport, Lockport, Geneva, Malone, Massena, Ogdensburg and Rochester, and a half interest with Shea in Amsterdam—Test. 4113.

2. In 1933 twenty-five theatres situated respectively in *sixteen* towns, Auburn, Bath, Canandaigua, Carthage, Corbin, Corning, Gloversville, Herkimer, Little Falls, Newark, Norwich, Oneonta, Oswego, Salamanca, Saranac Lake, Syracuse and Watertown, N. Y., came back to Schine as a consequence of the Fox-Metropolitan bankruptcy proceedings—Int. Ans. 17 (A), pp. 1-11.

3. Schine's purpose and effect in obtaining these was to resume the conduct of theatre business in these towns, and not to restrain or monopolize commerce among any of the several states—T. 4150-4170.

4. The purpose was not either the destruction or absorption of competitors—same references.

5. The number of motion picture theatres operating in New York State was upwards of 1350; in Ohio, upwards of 800; in Kentucky, upwards of 200; in Maryland, upwards of 200; in Virginia, upwards of 270; in Delaware, upwards of 30.

[fol. 4737] Fourth. The amount expended by Schine for the cost of land and buildings acquired is set forth in the first money column of pages next succeeding this, and the additional amounts expended by Schine above the cost of acquisition are set forth in the last money column of the same pages.

[fol. 4738]

Theatres Owned

Town	Theatre	Cost of Land and Building as Acquired	Cost of Building and Improvements Since Acquisition
Amsterdam	Strand	$200,000.00	$55,000.00
"	Regent	142,000.00	8,000.00
Ashland	Ashland	15,000.00	197,500.00
Athens	Athena	135,000.00	13,000.00
Auburn	Auburn	83,500.00	245,000.00
Bellefontaine	Holland	27,500.00	196,800.00
Bucyrus	Bucyrus	15,500.00	81,500.00
Canandaigua	Lake	15,000.00	38,500.00
"	Playhouse	180,000.00	16,700.00
Carthage	Strand	57,500.00	24,500.00
Corning	Fox	18,000.00	101,500.00
Cortland	State	60,000.00	233,500.00
"	Temple	96,000.00	7,000.00
Cambridge	Arcade	60,000.00	5,500.00
Cumberland	Strand	235,000.00	45,500.00
Easton	Avalon	95,000.00	7,800.00
"	Easton		52,000.00
Federalsburg	Federal	50,000.00	2,500.00
Fairport	Temple	77,000.00	47,500.00
Geneva	Temple	97,900.00	17,000.00
"	Geneva	88,000.00	313,000.00
Gloversville	Hippodrome	22,500.00	117,500.00
"	Glove	126,000.00	109,300.00
Glens Falls	Rialto	250,000.00	45,000.00
Hamilton	State	22,500.00	47,300.00
Herkimer	Liberty	188,500.00	15,000.00
Hudson Falls	Strand	40,000.00	7,000.00
Ilion	Capitol	250,000.00	14,000.00
Kent	Kent	130,000.00	7,500.00
Lexington	Ben Ali	200,000.00	20,000.00
Little Falls	Rialto	210,300.00	21,000.00
Lockport	Rialto	27,500.00	118,400.00
"	Palace	200,000.00	8,000.00
Malone	Malone, formerly Grand	151,800.00	106,000.00
Middlesboro	Manring	85,000.00	10,600.00
Milford	Plaza	62,500.00	50,500.00
Newark	Capitol	20,000.00	143,700.00
Norwich	Colonia	80,700.00	29,500.00
Ogdensburg	Strand	137,000.00	155,800.00
Oswego	Oswego	42,500.00	249,800.00
"	Strand	75,000.00	2,000.00
"	Capitol	60,000.00	3,500.00
Oneonta	Palace	161,800.00	4,500.00
"	Oneonta	130,000.00	24,300.00
Paris	Paris	24,000.00	71,000.00
Penn Yan	Elmwood	110,000.00	10,000.00
Ravenna	Ravenna	128,500.00	9,500.00
"	Ohio	33,000.00	44,500.00
Richmond	Madison	75,000.00	5,500.00
Rochester	Riviera	304,100.00	7,500.00
"	Cameo	60,000.00	25,500.00
"	Grand	95,000.00	16,000.00
"	State	145,000.00	9,000.00
Salamanca	Senaca	24,300.00	164,300.00
Saranac Lake	Pontiac	135,000.00	165,500.00
Salisbury	Wicomico	26,000.00	7,600.00
		$6,509,100.00	$3,506,400.00

[fol. 4739]

Theatres Leased

Town	Theatre	Additions and Improvements
Ashland	Palace	$10,500.00
Auburn	Palace	14,500.00
Amsterdam	Rialto	68,000.00
Auburn	Jefferson	4,500.00
Bath	Babcock	9,500.00
Bellefontaine	Strand	4,500.00
Delaware	Strand	48,500.00
East Rochester	Rialto	6,000.00
Corbin	Hippodrome	3,500.00
"	Viv	2,500.00
Geneva	Regent	3,000.00
Glens Falls	Empire	10,000.00
Laurel	Waller	14,500.00
Lexington	Kentucky	27,500.00
"	Strand	6,500.00
Massena	Massena, formerly Strand	72,500.00
Mt. Vernon	Vine	3,300.00
"	Memorial	6,100.00
"	Vernon	48,600.00
Ogdensburg	Pontiac	8,700.00
Piqua	Miami	8,000.00
"	Piqua, formerly Ohio	10,500.00
Paris	Bourbon	15,000.00
Pikeville	Liberty	2,800.00
Perry	Auditorium	7,500.00
Seneca Falls	Strand	19,500.00
Salisbury	Arcade	29,300.00
Syracuse	Eckel	78,300.00
Tupper Lake	State	8,800.00
Van Wert	Van Wert	3,500.00
Watertown	Avon	38,500.00
"	Olympic	37,500.00
		$631,600.00

Theatres Less Than 100% Either Owned or Leased

Town	Theatre	Land	Improvements
Norwalk	Norwalk	$16,350.00	$123,100.00
"	Forum		17,500.00
Wooster	Wayne	12,000.00	66,000.00
"	Wooster		37,500.00
Tiffin	Ritz		6,900.00
Benton partnership—approximately			50,000.00
			$301,000.00

Ex. D-150, Interrogatory Answer 19, p. 12; Testimony 4055, 4221-4226.

[fol. 4740] These total expenditures for original acquisition and for additions and improvements were paid out not by Mr. Schine personally, but by the Company, from money which came from stockholders, and from money borrowed by the corporation, and from income derived from theatre operations, and from real estate investments—T. 4181, 4179.

Schine paid this original purchase money of $6,509,000 and added these buildings and improvements at a cost of $3,506,400 and $631,000 and $301,000 for the purpose of conducting the business of theatre exhibition locally in the respective cities and towns with such attractiveness to patrons as Schine hoped would make the business profitable, and not for the purpose of driving anybody out of town or out of business—Ex. D-150; T. 4044-4193.

These amounts, as appears from page 403, do not include the very substantial amounts originally paid by Schine for leasehold interests, as only sums paid for additions and improvements are there stated.

[fol. 4741] Fifth. The defendants request the Court to make the findings of fact as to each city and town as set forth immediately hereinafter under the name of the respective city or town as follows.

For convenience of reference these cities and towns have been arranged in these requests alphabetically.

[fol. 4742]

AMSTERDAM

Pop. 33,329

1. Schine became half owner of the Regent theatre, and of the Strand theatre and of the lease of the Rialto theatre on September 10, 1928, and of the other half of these three in 1935 or 1936, at a cost of $342,000 in the aggregate—Int. Ans. 17(A), Ex. D-150.

2. Schine expended for building and improvements since acquisition, of the Strand $55,000, of the Regent, $8,000, and of the Rialto $68,000.

3. Maurice Kronick operated the Orpheum theatre from July 1, 1931 to May 1941—T. 2303.

4. The Orpheum was originally a store and after remodeling had 299 seats, of which the first six rows were of little use, and it had no retiring rooms—T.2318.

5. In the first place Kronick went to Schine and told him that the city was not large enough for two second run theatres and that he was ready to sell out for $10,000—T. 2321, 2310.

6. Kronick had no lease but was a tenant at will and had only equipment to sell—T. 2312, 2321.

7. Kronick was ready to go out of business if he could make a good deal—T. 2322.

8. Kronick did not conduct a daily continuous operation—T. 2324.

9. Kronick closed the theatre for a few weeks or a month several summers as business was very poor in the city and he would take a vacation—T. 2325.

[fol. 4743] 10. The Schine theatres were all operated, the Rialto and the Strand as first-run houses, and the Regent as a second run house—T. 2325, 2309, 2312.

11. According to Kronick the Strand and the Rialto were nice houses when he saw them in 1941-42—T. 2320.

12. The town was primarily a one-industry town, carpets —T. 2325.

13. Business was falling off in 1940-41—T. 2324.

14. When Kronick went to Schine it was his desire to go out of business if he could make a good deal, and when he sold he had made up his mind to get out of business—T. 2322.

15. In May 1941 Kronick sold the good will of the business and all the equipment, furniture and fixtures, with the usual clause not to engage in the same line of business in the city of Amsterdam for a period of five or six years, for $7,000—T. 2304, 2308.

16. The Rialto and the Strand each had a seating capacity of over 1,000 seats—T. 2319.

17. Kronick admittedly had sufficient second run with Paramount, Warner, Fox and Columbia. Later he got Metro second run along with Paramount, Universal and Columbia—T. 2320, 2322-3.

[fol. 4744]

APPALACHIA

1. In February 1941 Schine became lessee of the Appalachian theatre, 859 seats, and owner of the State theatre, 379 seats—Int. Ans. 17(A), p. 19.

2. Schine bought and booked for the Appalachian theatre from May 1940 to February 1941 and received therefor $297.36 to August 3, 1940 when payment ceased—Int. Ans. 17(B), (C), p. 4.

[fol. 4745]

ASHLAND

Pop. 12,453

1. In November 1935 Schine became lessee of the Palace theatre, 634 seats, to the extent of 75%, and in October 1937 of the remaining 25%—Int. Ans. 17(A), p. 11.

2. In May 1936 Schine became lessee of the Opera House to the extent of 75% and in October 1937 of the remaining 25% and disposed of it in February 1941 when the City of Ashland, the owner, condemned the theatre and dismantled it—Int. Ans. 17(A), p. 11.

3. In July 1938 Schine became lessee of the Ohio theatre, 307 seats—Int. Ans. 17(A), p. 11.

4. Schine expended for additions and improvements to the Palace, $10,500—Ex. D-150.

5. Schine expended for the acquisition of the land for the Ashland theatre $15,000, and in the building and improvement of the theatre $197,500—Ex. D-150.

[fol. 4746]

ATHENS

Pop. 7,696

1. In September 1935 Schine became owner of the Athena theatre, 893 seats, at a cost of $135,000, and expended in addition for building and improvements thereafter $13,000—Int. Ans. 17(A), p. 11.

2. In January 1936 Schine became lessee of the Court theatre, 267 seats, and of the Ohio theatre, 299 seats—Int. Ans. 17(A), p. 12.

[fol. 4747]

AUBURN

Pop. 35,763

1. In 1923 Schine became lessee of the Palace theatre, 850 seats, and thereafter owner of the land on which the Auburn theatre, 1800 seats, was subsequently built—Int. Ans. 17(A), p. 1.

2. Schine and M. A. Shea became equal lessees of the Palace theatre, the Jefferson theatre, 1100 seats, and owners of the Strand theatre in 1927. In 1937 Schine bought Shea's 50 percent interest—Int. Ans. 17(A), p. 1.

3. A part of the land on which the Auburn theatre was built had on it an abandoned church, which subsequently burned down. Originally this land and church was acquired at a cost of $35,000—T. 4221.

4. Additional land subsequently bought for this new Auburn theatre cost $18,316—T. 4221.

5. Taxes, interest and insurance during the period of idleness of the church and the vacant land brought the actual land cost up to $83,500—T. 4225-26, Ex. D-150.

6. Schine expended for the construction and equipment of the new Auburn theatre $245,000—T. 4064, Ex. D-150.

7. Schine expended for additions and improvements to the Palace theatre $14,500, and to the Jefferson $4500—T. 4064, Ex. D-150.

8. Schine built the new Auburn theatre in 1938, at a time when the town did not have a modern theatre and needed one—T. 4066.

9. The Auburn theatre is located in the heart of the city, has a fine large lobby, spacious public rooms with every [fol. 4748] modern convenience, has a large auditorium with very luxurious seats, finely decorated walls, refrigerated air which works on a basis of conditioning the air as wanted, and is very attractive all the way through to the point where it brings people from all around the entire area to Auburn—T. 4066.

10. The Auburn, ever since its construction, has been the first run house—T. 4067.

11. The Strand was condemned by local authorities and then was torn down—T. 4067.

12. The Jefferson theatre was always the leading theatre in Auburn from a time prior to 1928 until the construction of the Auburn—T. 4065.

13. Fox-Metropolitan conducted this operation from 1929 to 1933 and Schine-Shea then resumed it and continued it until Schine bought Shea's interest and the new Auburn theatre was built—T. 4065.

14. Schine operated the Palace as its second best theatre with the same Fox-Metropolitan interruption—T. 4067.

15. After the opening of the Auburn, Schine made effort, without success, to obtain pictures for the continued full-time operation of the Jefferson theatre—T. 4070-72.

16. After the new Auburn opened, it ran first run and the Palace ran first run sloughs and second run. The Jefferson at first played three changes and then two changes a week and finally week-ends with two first run pictures and was kept closed the rest of the week—T. 4073.

17. Schine knew of no reason for closing the Jefferson down to a week-end operation except the lack of pictures—T. 4073.

[fol. 4749] 18. Hubert P. Wallace says that Schine operated the three theatres, the Jefferson, the Palace and the Strand, full time from 1935 to 1938—T. 2769.

19. Hubert P. Wallace began to operate the Capitol theatre in Auburn in April 1931—T. 2756.

20. At this time the Jefferson, Palace and Strand were in operation by Fox-Metropolitan—T. 2756.

21. The Capitol was a rather old upstairs house—T. 4066, 3069, Ex. D-122.

22. From 1931-1933 the greater part of the first run pictures were licensed to Fox-Metropolitan, and after 1933 to Schine.

23. Wallace had the first run of Columbia pictures for the season of 1934-35 and thereafter—Ex. D-123, D-124, T. 3071-79.

24. Wallace had Columbia franchises from June 17, 1937 through five years—Ex. D-125, D-129, T. 3080-83.

25. When Wallace started operating the Capitol in 1931 the other three theatres, Jefferson, Palace and Strand, had Paramount, Metro, Fox, RKO, Warner and Universal and Wallace had United Artists, Columbia and Pathe—T. 3085, 2757.

26. In 1931 an employee of United Artists and an employee of Columbia each had a financial interest in the operation of the Capitol theatre. This interest had ceased by 1933—T. 3096.

27. From 1927 to 1937 the Shea Circuit had a half interest in the Jefferson, Palace and Strand theatres—Int. Ans. 17 (A), p. 1.

[fol. 4750] 28. In the fall of 1933 Paramount was unable to negotiate a 33-34 contract with the Shea interests and therefore could not make contracts with the Shea-Schine partnership, with the result that the Capitol was the only outlet for Paramount product in Auburn for that season—T. 3096, 4598.

29. Late in the season, on February 8, 1934, Paramount made a contract with Wallace for the 33-34 product—T. 3097.

30. The Fox-Metropolitan operation of the theatres in Auburn was under the management of Mr. Skouras—T. 3100.

31. Wallace appreciated the fact that this operation had first call on the product for the Jefferson and Palace theatres —T. 3100, Ex. D. 130.

32. In 1935 Wallace had all of United Artists, 44 of Columbia, some RKO rejects and, roughly, 100 Independents and Westerns, all first run product—T. 3101.

33. In this period Wallace was cutting his public admission prices and giving discounts—T. 3108.

34. There isn't any question that Wallace could buy substantially all the foreign pictures at any time from anybody—Wright 3113-14.

35. For the year 1934-35 Paramount sold the Shea Circuit generally, including the Shea-Schine Auburn theatres—T. 4601.

36. In the season 1933-34, in which Paramount sold its product first run to Wallace, the film rental revenue averaged less per picture than for the subsequent season in which Paramount sold to Schine-Shea—Ex. 986, T. 3909.

37. In September 1938, after the opening of the Auburn, Schine's weekly requirements for pictures were: For the Auburn 3, for the Palace 6, for the Jefferson 6 until shortage [fol. 4751] of pictures compelled the cutting of the Jefferson down to week-ends, and 2 pictures. Before this cut, allowing the usual ten percent right of rejection of pictures unsuitable for a particular theatre, or not actually released, Schine required contracts for 866 pictures, to leave after the ten percent rejection, 780 annually—T. 4073.

38. This was nearly three times the number of pictures in the aggregate released annually by Columbia, Fox, Loew's, Paramount, RKO, United Artists, Universal and Warner. Release Schedules in evidence of these distributors, Exs. Columbia 682, Fox 337, Metro 619, Paramount 687, RKO 634, United Artists 717, Warner 645, Universal T. 2160, Ex. 704 Id.

39. Schine's inability to get any second run pictures from Fox and Columbia, necessitated cutting down the Jefferson to week-ends—T. 4073, 2789.

40. Wallace's efforts were to get first run pictures for the Capitol, a theatre which was not equal in box office drawing power to the Auburn, the Jefferson and the Palace —T. 2770, 4066, 3069, Ex. D-122.

41. Lux did not point out to Wallace that it would not be a practical thing for Wallace to run second run and first run at the same time—T. 4443, 4441.

42. There is no evidence as to the number of pictures per week that Wallace required from 1931 to 1942, except for the year 1938, as in which there is evidence that he played two hundred and five pictures—T. 4670, 4686, 4694-96.

43. In 1935 Wallace ran double features 2 or 3 changes a week and sometimes also used Westerns for Saturday morning shows for children—T. 3106.

44. The Auburn, Palace and Jefferson theatres needed more pictures annually than all the first and second run of

Columbia, Fox, Metro, Paramount, RKO, United Artists, Universal and Warner—Release Schedules Ex. 337, 619, 634, 645, 682, 687, 717, T. 2160, Ex. 704 Id.

[fol. 4752]

BALLSTON SPA

Pop. 4,443

1. In April 1937 Schine became the owner of a 50% interest in the lease of the Capitol theatre—Int. Ans. 17(A), p. 2.

[fol. 4753]

BATH

Pop. 4,696

1. In October 1924 Schine became lessee of the Babcock theatre, 693 seats—Int. Ans. 17(A), p. 1.

[fol. 4754]

BELLEFONTAINE

Pop. 9,808

1. In 1930 a delegation from Bellefontaine called on Mr. Schine with reference to the establishment of a new theatre in Bellefontaine—T. 4117-18.

2. As a result of the call of that deputation Schine acquired land in Bellefontaine at a cost of $27,500, on which Schine built the Holland theatre, 1319 seats, at an additional cost of $196,800, which was opened on February 12, 1931—T. 4117-4119.

3. This theatre is built of brick and steel and completely fireproof, and is known as atmospheric, with clouds and stars in the ceiling, of Dutch design and decoration and seats around 1400 people, with modern convenience and appointment for public spaces and air conditioning and cushion seats, with springs in them, and the very latest projection and screen—T. 4119, 1801.

4. At this time Milton A. Mooney as lessee was operating the Strand theatre—T. 1812.

5. Mooney had theretofore operated the Majestic only during the annual fair week, and in the years 1928-31 it was closed entirely—T. 1749.

6. The Majestic was very small and a very old converted store show, with 250 seats, without equipment for sound pictures—T. 1750.

7. Mooney also had the Opera House, an upstairs house, 75 years old, without sound equipment and closed except for an occasional stage show—T. 1753.

8. The Majestic and the Opera House were of no value and the balance of the lease on the Strand and its equip- [fol. 4755] ment, which had been in use seven years, was all that Mooney had to sell—T. 1812, 1759.

9. In May or June 1931 Mooney saw Mr. May, who offered $2500 for the lease and Mooney sold the balance of the lease of the Strand and its equipment, which had been in use seven years, in July 1931—T. 1659, 1812, 1759, Int. Ans. 17(A), p. 12.

10. Six weeks before the Holland opened on February 12, 1931 the Strand on December 27, 1930 advertised the sale of $2.50 worth of tickets for $2.00—T. 2295.

11. In February 1931 the advertised admission prices of the Strand were 10¢ and 30¢ throughout the day and evening after 2 P. M.—T. 2291.

12. This made the top admission price for ticket book holders 24¢.

13. The Holland at opening on February 12, 1931 had admission prices matinee, children 10¢ and adults 30¢, nights, children 15¢ and adults 40¢—T. 2290.

14. February 20, 1931 the Strand reduced its afternoon admission prices to 25¢, making a price to ticket book holders, of 20¢—T. 2291.

15. On March 12, 1931 the Strand advertised admissions from 1:30 to 2:00 o'clock, called an Early Bird Matinee, 15¢ —T. 2293.

16. The following day the Holland advertised that starting March 15, 1931 the admission prices would be, matinee, balcony 15¢, main floor 25¢, nights, balcony 25¢; main floor 40¢, children all times 10¢—T. 2293-94.

17. March 14, 1931 the Strand advertised from 5:30 to 6:30 admissions 15¢, and beginning March 15, 1931 from two [fol. 4756] o'clock, admissions 10¢ and 25¢, with Bargain Matinees Mondays, adults 15¢, and nights 25¢—T. 2293-94.

18. The Strand advertised several repetitions of $2.50 books for $2.00—T. 2296.

19. May 14, 1931 the Strand advertised, this complete ad and 25¢ admit two tonight—T. 2298.

20. May 29, 1931 the Strand advertised 15-cent bargain admissions Friday from 6:30 to 7:30 and Saturday from 1:30 to 2:30 and from 5:30 to 6:30, and a Memorial Day price for children from 2 to 6 P. M., 5¢—T. 2298.

21. May 14, 1931 the Holland advertised matinee prices 15¢ and 25¢, nights 25¢ and 40¢ and kiddies 10¢—T. 2298.

22. When Schine bought the land and began to build the Holland theatre he was operating only in the cities and towns named in the third request.

[fol. 4757] BIG STONE GAP

1. Schine did the buying, booking and supervising of the Big Stone theatre, Big Stone Gap, from May 1940 to February 1941 for $208.36, payment ceasing August 3, 1940—Int. Ans. 17(B), (C), p. 4; T. 3768.

[fol. 4758] BOWLING GREEN

Pop. 7,190

1. In June 1939 Schine began buying and booking for the Cla-Zel theatre, 776 seats and the Lyric theatre, 348 seats. On April 1, 1941 Schine became the lessee of these theatres. Schine gave up the lease in June 1942, following the Consent Order of May 19, 1942—Int. Ans. 17(A), p. 15.

[fol. 4759] BUCYRUS

Pop. 9,727

1. At some time prior to 1934 the Moose Lodge or other local interests started to build a new theatre but did not have enough money to complete it.—T. 1050, 1043.

2. In the early part of 1935 a group of citizens of Bucyrus came to see Schine on the subject of building a theatre in Bucyrus and took Schine to see an uncompleted theatre in the town and talked to him on the subject of how the theatre had come to be in that shape, with the walls up and the steel up, standing that way for two or three years, with the girders on the roof—T. 4143-44.

3. Schine bought the land and uncompleted structure in August 1935 at a cost of $15,500, and completed the Bucy-

rus theatre, 1,097 seats, in 1936, at a cost in addition of $81,500—Int. Ans. 17(A), p. 12; Ex. D-150; T. 4139.

4. The Bucyrus theatre is a big, beautiful modern brick and steel structure with all modern improvements and ample public spaces, air conditioned, with a lower floor furnished with fine upholstered seats, and a balcony and two small stores in front, and a marquee with a large sign in front. It is located in the heart of the city, a best location—T. 1045, 4140, 4144, 1044.

5. In 1935 Harry Charnas, a brother of Philip Charnas, talked to Schine about the possibility of buying out his brother, Philip. This was the first thing that occurred with respect to the purchase subsequently made in consequence of this conversation and as the result—T. 4138, 4136, 4135, 4139.

6. The Southern theatre, 450 seats, was an old theatre, the lease of which Philip Charnas sold to Schine in April 1937—T. 1042, Int. Ans. 17(A), p. 12.

[fol. 4760] 7. In June 1934 Milton H. Bryer began to operate the State theatre, a small, old fashioned theatre, and continued to operate it until he sold it to Schine for operation beginning September 29, 1935—T. 1042, 1026, 1041, Int. Ans. 17(A), p. 12.

8. On July 13, 1935 Bryer signed a contract with Vitagraph for the first run of its 1935-36 product which was approved on September 5, 1935 and sent to Bryer on September 9, 1935. Bryer advertised a picture, "Page Miss Glory", with Marion Davies as star, in the Bucyrus newspaper, the Telegraph-Forum of Friday, September 6, 1935, and played it under this contract for three days, beginning September 8, 1935, on percentage. Bryer's contract was numbered 4447, and was sent to the Vitagraph home office for approval, together with other contracts bearing consecutive current numbers, and an abstract of transmittal, under date of August 15, 1935—Exs. D-170, D-171; T. 4324, 4154; Ex. D-154; T. 4666; Ex. D-148 A-F, Id. Ex. D-164; T. 4328, 4163.

9. Thereafter, about November 29, 1935, two months after Schine bought the State theatre, this Bryer contract was cancelled and was replaced by a superseding contract with Schine covering the same 1935-36 Vitagraph pictures, ex-

cept for those that had already been played and were crossed out from the substituted contract. These included one picture, "Page Miss Glory," which Bryer had already played beginning September 8, 1935. The superseding contract with Schine was given the same date as the contract with Bryer, for which it was substituted, and bore contract number 4797, which was the transmittal number then current in the Vitagraph office, some three months later in the series of numbers than the number 4447 on the Bryer contract, and appeared in the abstract of transmittal with which it was sent to the home office under date of December 2, 1935. The cancellation notice on the Bryer contract was [fol. 4761] dated December 11, 1935—T. 1041; Ex. 62, Id. Ex. P-65; T. 4325; Id. Ex. D-165; T. 4129; Ex. D-148 A-F; T. 4324-28, 4162.

10. In the negotiations for the sale of the lease of the Southern by Charnas to Schine and in the negotiations for the sale by Bryer of the lease of the State to Schine, Schine made no threats or misrepresentations and did not say to either of them that if he did not sell he would have difficulty in getting product for his theatre, or that if he did not sell Schine would open up another theatre, and Schine did not tell any one else to make any such statements, and was not aware that any one had made such statements, and has not said that he approved of their making or having made any such statements—T. 4150, 4167-70.

11. The Fox salesman offered Fox first run product to Charnas before selling Schine—T. 1072-4.

12. Charnas testified that he had not played Paramount product for the two seasons prior to 1935-36—T. 1044-5.

13. The uncompleted theatre was sold to Schine at a public sale. Charnas did not bid although he had an opportunity to do so—T. 1103.

[fol. 4762]

Buffalo

Pop. 575,901

1. In December 1926 Schine became lessee of the Granada theatre, 1702 seats, and the owner in June 1939—Int. Ans. 17(A), p. 2.

2. In August 1926 Schine became lessee of the Riverside theatre, 1281 seats, and the owner in December 1940—Int. Ans. 17(A), p. 2.

3. In June 1928 Schine became lessee of the Jubilee theatre, and surrendered the lease in March 1933—Int. Ans. 17(A), p. 2.

[fol. 4763]

CAMBRIDGE

Pop. 10,102

In April 1938 by one contract Schine became owner of over 90% of the Arcade, 933 seats, the State, 833 seats, and the Grand theatres. The Grand had been closed for some time prior thereto—Int. Ans. 17(A), p. 18.

[fol. 4764]

CANANDAIGUA

Pop. 8,321

1. In October 1924 Schine became owner of the Playhouse, 1070 seats, at a cost of $180,000, to which improvements were added at a cost of $16,700, and has operated it thereafter except for the period of the Fox-Metropolitan operation 1929-1933—Int. Ans. 17(A), p. 2, T. 4074, Ex. D-150.

2. About 1937 Schine took up for consideration the possibility of building an additional theatre in Canandaigua, when there was prospect of the construction of a large veteran's hospital that would bring several hundred families into town—T. 4074.

3. The planning and finishing of the theatre took about two years—T. 4077.

4. Schine was not actuated in any way in taking the steps relative to building the theatre by any knowledge that any one else was thinking of building there or opening a theatre—H. 4077.

5. Schine paid $15,000 for the land and structure on it and paid in addition for building the Lake theatre $38,500—Ex. D-150, T. 4079.

6. The new theatre, the Lake, is smaller than the Playhouse and located in the very busy part of Canandaigua, has fine lavatory space and seats about 400 or 450, with

fine upholstered, spring cushion seats, the latest projection equipment, as well as sound equipment, and very artistic decorations—T. 4079.

7. The building of the hospital did not bring the expected increase in business, and the Lake, after being kept open for some time, was closed and then reopened again from time to time—T. 4080, 4199-4201.

[fol. 4765] 8. In the spring of 1938, Anthony J. Lauer, a real estate broker, sought to get a lease of the Jenkins block in Canandaigua for Mr. Wallace from Mr. Jenkins and Mrs. Himes, who had inherited the block from their father—T. 4626.

9. These negotiations were not dropped by Mr. Lauer in May 1938 (T. 2564), but on the contrary he made a later offer (Ex. D-179, T. 4665) and continued his efforts to acquire the property as late as June 23, 1938—Ex. D-178, T. 4632.

10. Hobert L. Himes, an attorney (T. 4623) and the husband of Mrs. Himes, one of the co-owners, acted as attorney for the Jenkins estate in these negotiations—T. 4657, 2791-92, 3066-67.

11. He does not recall that he had any knowledge of any activities on the part of Mr. Schine or prospect of Mr. Schine's building or opening a new theatre in Canandaigua on the Flanigan lot—T. 4650.

12. It does not appear that any such knowledge was the reason for rejecting the offer—T. 4653.

13. The defendants offered to show by the testimony of Mr. Himes that the rejection of this offer was not actuated in any way by any expectation or belief or apprehension that the Schine organization was proposing to put a new theatre on the property in Canandaigua, but this was excluded because not material—T. 4662.

[fol. 4766]

CARTHAGE

Pop. 4,207

1. In November 1922 Schine became owner of the Strand theatre, 786 seats—Int. Ans. 17(A), p. 2.

2. In March 1935 Schine became owner of the premises on which the State theatre stood and made them into a store and commercial building—Int. Ans. 31.

[fol. 4767] CLIFTON SPRINGS

Pop. 2,500

1. In August 1941 Schine became lessee of the Palace theatre, 340 seats. This lease was given up in July 1942, following the Consent Order of May 19, 1942—Int. Ans. 17(A), p. 11.

[fol. 4768] CORBIN

Pop. 7,893

1. In November 1938 Schine became lessee of the Kentucky theatre, 394 seats, and of the Hippodrome theatre, 824 seats—Int. Ans. 17(A), p. 16.

2. Hiram H. Owens and his wife acquired in about 1935 the property on which the Viv theatre, 516 seats, is now located and about October 24, 1938 Owens made a contract with Grover Scott for the construction and leasing of a theatre, and Scott assigned his contract to Schine. Owens cancelled the contract and then completed the theatre and leased it to Mitchell K. Murphy. Schine bought the lease in May 1940—Int. Ans. 17(A), p. 16; T. 3954, 507.

3. Mitchell K. Murphy operated the Viv theatre, Corbin, from October 1939 to May 1940 and made a profit. He sold it to Schine because he saw a chance to make a good trade, and not because he needed product—T. 635-638, 640.

4. The Hippodrome theatre was a much more substantially constructed and more expensive theatre than the Viv —T. 643, 645.

[fol. 4769] CORNING

Pop. 16,212

1. In 1924 Schine became owner of the Liberty for $18,000, the State and the Regent theatres, as a part of a purchase of these and other theatres from Dygert—Int. Ans. 17(A), p. 3; T. 4081, Ex. D-150, T. 4082.

2. The Liberty burned and Schine built the Fox, 1333 seats, on the site at an additional cost of $101,500—Int. Ans. 17(A), p. 3; T. 4081, Ex. D-150.

3. From 1929-1933 the Liberty, then called the Fox, and the State, 906 seats, were leased to Fox-Metropolitan—Int. Ans. 17(A), p. 3; T. 4081, Ex. D-150.

4. The Regent, which was closed at the time was sold by Schine to Gerber, who subsequently rebuilt and opened it as the Palace, 398 seats, T. 4082, 3183-4.

5. Gaby and Cohen operated a fourth theatre, the Plaza —T. 4083.

6. In 1933 the Fox was a brand new theatre with all modern improvements and appointments, finished in 1929 with the very latest equipment. The State was an old theatre, in good condition and running week-ends when Schine reacquired it—T. 4083.

7. The Palace was a smaller theatre, on which Gerber had expended some money and made a rather attractive little theatre, well located on the main street—T. 4084.

8. The fourth theatre, the Plaza, was located across the railroad track in a community of its own, with several stores, and lacked modern appliances. It was a converted store, a little better than the average store show, with a high ceiling —T. 4084-85.

[fol. 4770] 9. The Fox from its inception was operated as the first run theatre—T. 4084.

10. The State was closed and opened intermittently and usually ran week-ends but occasionally for a full week—T. 4084.

11. The Plaza, when the Palace was closed during the Fox-Metropolitan operation, got some first run and some second run pictures which the Palace didn't play, and thereafter, when the Palace was opened by Gerber, the Plaza got some second and some third runs; T. 3185-3187.

12. The Fox was a 40-cent house and the Palace a 35-cent and the State a 25-cent, and the Plaza at first a 25-cent and then a 20-cent and then a 10- and 15-cent house—T. 3192, 3216-17.

13. In April 1938 Gerber sent for Schine and made a ten-year lease to Schine for an advance rental of $7500 and an annual rental of $6500 or $7500—T. 4085, 4217-18.

14. Thereafter Schine did not have enough product to operate all three theatres and kept the State closed after 1939—T. 3195, Int. Ans. 18, p. 3.

[fol. 4771]

CORTLAND

Pop. 15,881

1. Schine became owner of the site of the State theatre, 1632 seats, in September 1926 and completed and opened the theatre in 1930, at a cost of $60,000 for the land and in addition $233,500 for the building and improvements—Int. Ans. 17(A), p. 3; Ex. D-150.

2. In September 1932 Schine became owner at the same time of the Temple theatre, 588 seats, and the Cortland theatre at a cost of $96,000, to which improvements to the Temple were added at an additional cost of $7,000 and the Cortland, closed when acquired, was made into a commercial property—Int. Ans. 17(A), p. 3; Ex. D-150.

[fol. 4772]

CUMBERLAND

Pop. 39,483

1. Schine bought the Strand theatre, 1405 seats, by a contract dated May 21, 1940 and a deed of May 1, 1941 for $235,000 and added improvements costing the additional sum of $45,500—Int. Ans. 17(A), p. 18; Ex. D-150.

[fol. 4773]

DELAWARE, OHIO

Pop. 8,944

1. In January 1936 Schine became lessee of the Strand theatre, 777 seats, and thereafter made additions and improvements to it at a cost of $48,500—Int. Ans. 17(A), p. 12; Ex. D-150.

2. In March 1938 Schine became lessee of the Star theatre, 266 seats—Int. Ans. 17(A), p. 12.

3. Schine became owner of Bieberson's fifty percent interest in the Delaware operation in January 1940—Int. Ans. 17(A), p. 12.

[fol. 4774]

DOLGEVILLE

In March 1923 Schine became owner of the Strand and sold it in March 1933—Int. Ans. 17(A), p. 3.

[fol. 4775]

EASTON

Pop. 4,528

1. In October 1938 Schine became owner of the Avalon theatre, 616 seats, and lessee of the Music Hall, 250 seats, at a cost for the Avalon of $95,000, to which Schine added improvements costing $7800. In 1940 Schine became the owner of land on which the Easton theatre, 646 seats, was built at a cost of approximately $52,000, to replace the Music Hall, which was surrendered to the County at its request—Int. Ans. 17(A), p. 18, Int. Ans. 19, p. 12; Ex. D-150.

[fol. 4776]

EAST ROCHESTER

Pop. 6,691

1. In October 1924 Schine became lessee of the Rialto theatre, 900 seats, acquired from Dygert, and made additions and improvements to it at a cost of $6,000—Int. Ans. 17(A), p. 3; Ex. D-150.

[fol. 4777]

FAIRPORT

Pop. 4,644

1. By lease of November 1926, followed by deed of January 1928, Schine became owner of the Temple theatre, 850 seats, at a cost of $77,000, to which Schine added building and improvement costing $47,500—Int. Ans. 17(A), p. 3; Ex. D-150.

[fol. 4778]

FEDERALSBURG

Pop. 1,369

1. In October 1938 Schine became owner of the Federal theatre, 712 seats, at a cost of $50,000 to which Schine added improvements at a cost of $2500—Int. Ans. 17(A), p. 18; Ex. D-150.

[fol. 4779]

FOSTORIA

Pop. 13,453

1. In May 1936 Schine became owner of the lease of the Civic theatre, 516 seats, and of the lease of the Roxy theatre, 280 seats—Int. Ans. 17(A), p. 13.

2. In July 1937 Schine became interested to the extent of 50% in the lease of the State theatre, 667 seats—Int. Ans. 17(A), p. 13.

3. Arthur Buck and Ural Buck and others have the other 50% of the leases of these three theatres—same references.

[fol. 4780]

FREMONT

1. In April 1931 Schine became lessee of the Strand and the Opera House and disposed of them in August 1931—Int. Ans. 17(A), p, 13.

[fol. 4781]

GENEVA

Pop. 15,555

1. In October 1924 Schine became owner of the Opera House and Temple and lessee of the Regent, 1055 seats. After the burning of the Opera House, Schine built the Geneva, 1868 seats, to replace it in 1931. The original cost for the Temple was $97,900, to which Schine added improvements costing $17,000, and the original cost of the Opera House was $88,000, in addition to which Schine expended for the building and improvement of the Geneva $313,000, and for the improvement of the Regent $3,000—Int. Ans. 17(A), p. 4; Ex. D-150.

2. The Geneva theatre was operated full-time, the Regent theatre was operated on a weekend policy only during the summer and full-time otherwise, and the Temple theatre was closed until 1942—Int. Ans. 17-A & 18, p. 4.

3. Schine played second run at the Regent, Geneva, prior to the 1939-40 season and thereafter—Ex. W-4(57) & P. 204.

4. DeToto requested and obtained the product of United Artists, Paramount, RKO, Monogram, Republic and Grand National for the Park theatre. He refused to purchase the product of Warner and Paramount when it was offered to him—T. 912, 918-20.

[fol. 4782]

GLENS FALLS

Pop. 18,836

1. Schine became the owner of the Rialto by a lease of March 1933, followed by a deed of January 1937, at a cost of

$250,000, to which Schine added improvements at a cost of $45,000—Int. Ans. 17(A), p. 4.

2. In June 1933 Schine became lessee of the Empire theatre, 750 seats, and added improvements at a cost of $10,000—Int. Ans. 17(A), p. 5; Ex. D-150.

3. June 1, 1940 Schine became lessee of the Paramount theatre, 1186 seats and relinquished its lease in May 1942 following the consent order of May 19, 1942—Int. Ans. 17(A), p. 5.

[fol. 4783] GLOVERSVILLE

Pop. 23,329

1. Schine became lessee of the Hippodrome, 1151 seats, in 1917, and owner in February 1919, at an original cost of $22,500, to which Schine added for new building and improvement at a cost of $117,500—Int. Ans. 17(A), p. 5; Ex. D-150; T. 4045-53.

2. In April 1920 Schine became owner of the Glove, 1298 seats, at an original cost of $126,000, to which Schine added improvements at a cost of $109,300, and owner of The Family, which was made into a store and commercial building—Int. Ans. 17(A), p. 5; Ex. D-150; Int. Ans. 31.

[fol. 4784] GRANVILLE

1. The extent of the interest in the Ritz and the buying of pictures for it and the expenditures for improvements are set out under Mechanicsville hereinafter, Int. Ans. 17(A), p. 11.

[fol. 4785] HAMILTON

Pop. 1,668

1. In August 1934 Schine became owner of the State theatre, 712 se-ts, at a cost of $22,500, to which Schine added improvements at a cost of $47,300—Int. Ans. 17(A), p. 5; Ex. D-150.

[fol. 4786] HARLAN

Pop. 5,122

1. In January 1941 Schine became owner of a 50% interest in the lease of the Margie Grand, 690 seats, for which

he had booked pictures at a fee of 5% of the gross from 1938—Int. Ans. 17(B), p. 3; Int. Ans. 17(A), p. 16.

2. Price Coomer began to operate the New Harlan, then closed, in 1934 with Columbia and United Artists first run product and the balance 2nd run product. At that time the Margie Grand was playing the first run product of Metro, Paramount, Fox, Universal, Warner and RKO. Subsequently Coomer bought the first run product of Universal and Warner which the Margie Grand had previously played —T. 721-2, 726-8, 732-3.

[fol. 4787]

HERKIMER

Pop. 9617

1. In June 1925 Schine became half owner of the Liberty theatre, 1046 seats, and as part of the same transaction lessee of the Richmond theatre, and Schine subsequently became owner of the Liberty at a cost of $185,500, to which Schine added improvements at a cost of $15,000—Int. Ans. 17(A), p. 5; Ex. D-150.

2. Herkimer is the county seat, shopping town and local center for the surrounding area which includes Ilion with which it competes for patronage—T. 3531-2.

3. Herkimer is subject to clearance in favor of Utica which is some 13 miles distant—Exs. 874-878, W-6 (11), W-8 (5), R-2 (11), R-13, F-17, F-101 (13), F-104.

[fol. 4788]

HUDSON FALLS

Pop. 6654

1. In July 1935 Schine became the owner of the Strand Theatre, 891 seats, at a cost of $40,000, to which Schine added improvements at a cost of $7,000—Int. Ans. 17(A), p. 5; Ex. D-150.

[fol. 4789]

HURLOCK

Pop. 800

1. In October 1938 Schine became the lessee of the Hurlock theatre, 471 seats—Int. Ans. 17(A), p. 18.

[fol. 4790] ILION

Pop. 8927

1. Pursuant to agreements of December 1936 and May 1937 with Schine, Young & Whitney, in 1937, sold their only operating theatre, the Capitol, 1238 seats, the Opera House and a lease of the Temple theatre, to Schine for $250,000, and Schine added improvements at a cost of $14,000, Int. Ans. 17(A), p. 5; Ex. D-150, T. 3502, Exs. 871, 872, Id. Ex. 85, T. 3528, 3497.

2. Ilion is subject to clearance in favor of Utica which is some 10 miles distant. Exs. 874-878, W-6 (11), W-8 (5), R-2 (11), R-13, F-17, F-101 (13), F-104, 867.

3. During the period when Fox Metropolitan operated the theatres in Herkimer and Ilion, Herkimer was granted a clearance of 14 days over Ilion. This clearance was reduced to 10 days after the Ilion theatre was re-acquired by Young & Whitney, Inc. and the Herkimer theatres were reacquired by Schine—T. 3500-2, Exs. 874-878.

[fol. 4791] KENT

Pop. 8581

1. In June 1936 Schine became lessee of the Opera House, 592 seats, and in December 1937 owner of the Kent theatre, 943 seats, at a cost for the Kent of $130,000, to which Schine added improvements at an additional cost of $7500—Int. Ans. 17(A), p. 13; Ex. D-150.

2. The Opera House was closed in September 1937 because of inability to obtain product—Int. Ans. 17(A) & 18, p. 13.

[fol. 4792] LAKE PLACID

1. From May 1926 to May 1936 Schine bought and booked for the Palace Theatre and the Lake Placid Club at 5 percent of the gross receipts—Int. Ans. 17(B), p. 1.

[fol. 4793] LAUREL

Pop. 2884

1. In January 1939 the Waller Estate leased the Waller, 716 seats, to Schine and Schine improved it at a cost of

$14,500. The theatre was rebuilt in 1940 after destruction by fire—Int. Ans. 17(A), p. 19; Ex. D-150, Int. Ans. 18, p. 19.

[fol. 4794]

LEXINGTON

Pop. 49,304

1. In November 1936 Schine bought 97 percent of the stock of the Phoenix Amusement Company, owner of the Ben Ali theatre, 1375 seats, lessee of the Kentucky theatre, 1257 seats, and of the State theatre, 895 seats, and of the Strand theatre, 1255 seats, at a cost of $200,000, to which Schine added improvements to the Ben Ali at a cost of $20,000, to the Kentucky at a cost of $27,500, to the Strand at a cost of $6500. In October 1939 Schine became lessee of the Opera House, 1188 seats, and in September 1940, lessee of the Ada Meade, 668 seats—Int. Ans. 17(A), p. 16; Ex. D-150.

2. From 1931 to 1934 the Opera House charged 10 cents for all seats at all times—T. 2934.

3. It is hot in the summertime in Lexington, Kentucky.

4. Schine's reductions in prices were confined to the summertime of years preceding 1939—T. 2927.

5. In the summer preceding Schwartz' lease to Schine, Schine made no reduction in summer prices—T. 2927.

[fol. 4795]

LITTLE FALLS

Pop. 10,163

1. In May 1925 Schine became half owner of the Rialto, 1200 seats, and in June 1936 lessee of the Hippodrome, 550 seats, and subsequently owner of the Rialto at a cost for it of $210,300, to which Schine added improvements at a cost of $21,000—Int. Ans. 17(A), p. 5; Ex. D-150.

2. The Rialto was a fine modern theatre with a very fine modern balcony and operated in 1934 with all first run major product except United Artists at admission prices of children 10 cents, balcony 20 cents, orchestra 30 cents, T. 2332, 2333, 2334.

3. The Hippodrome had a very small, not very good balcony and ran at admission prices of children 10 cents, adults 20 cents anywhere in the house—T. 2332-33.

4. Soon after the death of her husband, William J. Wood, Mrs. Marion D. Wood in the fall of 1934 took up the operation of the Hippodrome, which was closed at the time, with Thomas Edward Warne as manager, on a second run policy, the policy which Wood had before he died—T. 2330-32, 2359, 2360.

5. In the spring of 1935 the Hippodrome admissions were reduced and family tickets at the price of a single admission were good for two admissions—T. 2348-49.

6. The Hippodrome was closed in the summer—T. 2348.

7. After a telephone call from Judge Blumberg, Warne called on J. G. Selmser, Assistant Treasurer of Schine Theatres, Inc., who said that he was in position to make an offer—T. 2353.

8. Warne took the matter up with Mrs. Wood and then told Selmser that we wouldn't be tough to do business with [fol. 4796] and invited an offer from him. In the meantime Warne had made an inventory of the equipment and a few outstanding debts and he closed the deal with Mr. Selmser to take over the equipment of the theatre for about $400 and payment of outstanding debts for rent, advertising and local merchants and for electrical work, a total in addition to the cash of, say, $1300—T. 2354-55.

9. The Hippodrome building was owned by the Odd Fellows Temple Association and was operated by Wood and Warne, without any lease. In the spring of 1936 the rent was probably three months in arrears, and there had been a small fire in the theatre and a bill was owed for the consequent repairs—T. 2369-74.

10. The Rialto was operated by Fox-Metropolitan from August 1929 to April 1933—Int. Ans. 17(A), p. 5.

[fol. 4797]

LOCKPORT

Pop. 24,379

1. About 1922 a real estate agent wrote Schine and drove him to Lockport to meet Mr. Thurston, the owner of the Temple theatre, and Mr. Thurston sold him the Temple theatre for $70,000—T. 4060-62.

2. Mr. Thurston suggested that Schine buy his building across the street which had once been a skating rink but

was then used as a garage. The building was a very large one and Schine bought it and rebuilt it into a modern, large motion picture theatre containing 1484 seats, all of which with the exception of 75 to 100 seats were on the ground floor. The name of this theatre was the Rialto Theatre and it had a great advantage over any other theatre in Lockport because of its downstairs seating capacity. The cost to Schine of the Rialto was originally $27,500.00 plus $118,400.00 for improvements—T. 4094-95, Int. Ans. 17(A), p. 6; Ex. D-150.

3. In October, 1927 Schine became a half owner in the lease of the Hi-Art Theatre, 10[illegible] seats, a store show, and in the lease of the Palace Theatre, 1698 seats. In October, 1936 Schine became the owner of the Palace Theatre at a cost of $200,000 to which Schine made increases in rebuilding and improvements to the extent of $8,000—Int. Ans. 17(A), p. 6; Ex. D-150.

4. The Temple was an old, cheaply built theatre, lacking modern appointments and equipment, with good projection but poor seats—T. 4094.

5. At about the time the Rialto was built a group of men started to build the Palace, a very fine theatre, built primarily for vaudeville, with a big stage, high loft, and very [fol. 4798] large balcony with boxes around the sides and leased it to Paramount—T. 4094-4095.

6. At the same time the Hi-Art was rebuilt into a much larger and better theatre than it had been before, and the town from having no theatre worth while had three good theatres. The Temple was the poorest and was torn down for no reason except the product situation, as Schine discovered it to be, and because Schine did not do business in there—T. 4095-96.

7. While Schine was operating the Rialto and the Temple, Paramount had taken a lease on the Hi-Art, and after attempting to operate it for a while they closed it up and operated the Palace with vaudeville and pictures, and Schine played the best pictures in the Rialto, with the Temple playing secondary or slough pictures and second run—T. 4097.

8. The Palace was owned by a group controlled by the father of Charles E. Dickinson, Jr.—T. 4097.

9. In 1928, when Paramount was operating the Palace and Schine was operating the Rialto, Schine started in a partnership with Paramount, receiving a fee of $30 a week for managing, buying and booking, for the Palace as well as the Rialto. This operation continued until ousted from the Palace—T. 4098-99, 4194-96.

10. During this time the Rialto played the best first class pictures and the Palace played vaudeville and pictures and, part of the time, pictures only—T. 4099.

11. The Rialto was playing the first class releases of all the distributors—T. 4100.

12. Later Schine discontinued vaudeville at the Palace and moved the best pictures into the Palace and played first and second run at the Rialto—T. 4101.

[fol. 4799] 13. Schine was then engaged in operating two theatres, the Rialto and the Palace, and on the loss of the Palace was reduced to one operating theatre—T. 4101.

14. Schine restored the first class first run pictures to the Rialto and, after making the necessary improvements in the Hi-Art, put the recent Rialto policy into the Hi-Art so that the Rialto was Schine's best first run house and the Hi-Art was the second best with first run and second run, and that operation continued until about 1937—T. 4102.

15. Before Schine was forced out of the Palace in December 1932 it had negotiated for all its contracts for the 1932-33 product—T. 4103, 4197.

16. When Dickinson opened the Palace, the Rialto was showing all the product of the eight companies, except Metro —T. 1997-98.

17. Charles E. Dickinson, Jr. testified that about October 18, 1933 Mr. Carroll called on him to talk about his accepting an offer which Mr. May had previously made, which was for a rental for the Palace of about $16,000 a year, plus a percentage of the net profits per year, and stated that Schine was withholding opening the Hi-Art for an additional few days for him to decide whether or not he would accept the proposal, and Dickinson said that they weren't interested—T. 2066.

18. October 20, 1933 the Lockport newspaper published: "The merchants of West Main Street welcome the opening

of the newly decorated and thoroughly remodelled Hi-Art theatre, Saturday, October 21, under Schine management, assuring Lockport another high class program for theatregoers. Come down. The latest releases from the greatest motion picture studios"—T. 2141.

19. Charles E. Dickinson, the elder, died December 7, 1933. James A. White and Mrs. Dickinson and LeGrand O. Robson became executors of his estate—T. 2098-99.

[fol. 4800] 20. On May 21, 1935 the executors wired Schine requesting a meeting on a strictly confidential matter and following this they went to Rochester with their attorney and met Myer Schine and Mr. May and informed them that they wanted to sell the Palace theatre and asked for an offer in writing—T. 2100-2104.

21. In June 1935 Schine made, and the executors rejected, an offer of $159,000 for the Palace theatre—T. 2103-2110, Ex. 688.

22. The executors advertised the property for sale at a public auction, to be held on April 20, 1936 in their attorney's office in Lockport. There were present at the sale Mr. Warner Thompson, attorney for Dipson, Mr. Robson, Mr. Fogle, attorney for the executors, Mr. Schine, Mr. Osborne, Mr. May and Mr. Dipson. The property was sold to Mr. Osborne for $37,600, assumption of a $90,000 first mortgage, operating loss of $8902.37, advances for interest and taxes $13,700.20, and interest on various items of $1225.22, making a total of $151,427.79—T. 2112-17, Ex. 690.

23. The bidders at the sale were Mr. Osborne, Mr. Dipson's righthand man, and Mr. Schine—T. 2113, 2117.

24. The sale of the theatre to Mr. Osborne, pursuant to this bid, was completed on May 20, 1936—T. 2118, Ex. 691.

25. On June 16, 1936 Warner Thompson, attorney for Dipson and Osborne, talked with Willard S. McKay, as attorney for Schine, pursuant to the request of Mr. Dipson —T. 2124. Mr. Thompson testified to the conversation as follows: I told Mr. McKay that we had a telephone conversation with Mr. Dipson, that he had notified us that he had had discussions with Mr. Schine in reference to making an arrangement between them for the theatres in Lockport, that we understood—we had been told that Schine had offered $200,000 for the theatre, which had been re-

[fol. 4801] jected; that they had thereafter discussed a pooling arrangement whereby all theatres in Lockport would be combined; the Hi-Art would be closed; rent would be paid to Dipson for the Palace theatre and to Schine for the Rialto, in an amount to be agreed upon; that thereafter profits each year, up to a sum of approximately $50,000, should be divided 65% to Schine, 35% to Dipson, and above that 50-50. That Schine should have the management of all theatres and Dipson and Schine each to have 50% of the stock of the new corporation. Mr. McKay stated first that of course they were not at all afraid of this action which the Reliance Theatres had previously brought, that in their opinion our chances of success were nil. McKay stated that Schine had two theatres in Lockport, and that he absolutely required the number of pictures that he bought; that he actually used, played them, and paid for them; that he did not believe any court would interfere with that arrangement. He said, however, that it would be very expensive to defend the suit; that also, under the present conditions in Lockport, neither Schine nor Dipson were able to make as much money as the situation warranted. That if they got together both would make increased profits in the future. That for the purpose of settling the suit and increasing the profits in Lockport they were willing to enter into a pooling arrangement, whereby the Hi-Art would be closed, the Rialto and Palace theatres operated, management thereof to be exclusively in Schine's hands, because of his superior buying position; that rental was to be paid for both the Palace and Rialto theatres, respectively. No definite basis of rental was discussed, except that it was suggested that rental should be based upon a fixed return upon the investment in each theatre. Mr. McKay further said that he understood from Schine that Dipson had agreed that Schine could have 65% of the profits and Dipson 35% after payment of expenses and rental, and the rental of the Hi-Art theatre, which was to be closed. He further stated that Dipson insisted upon 50% of the stock in the new corporation, but they did not trust Dipson to any extent whatsoever. Therefore they felt it inadvisable to allow a 50—50 stock division, for the [fol. 4802] reason that at any time Dipson might cause a dissolution of the new corporation, which if it occurred after the better pictures were placed and played in the Palace by Schine's management, might be used by Dipson against

Schine in a subsequent anti-trust suit, in the event pictures were withdrawn from the Palace. That they could not allow this to happen; that if they went into the arrangement they wanted it permanent for at least 20 years. That he did not believe that an agreement on our part not to dissolve would be binding. That therefore, inasmuch as Schine was to have the management and 65% of the profits, it would necessarily follow that he should have at least a majority of the stock. That if Dipson actually physically desired 50% of the stock that could be handled by a voting trust arrangement for all the stock, whereby Schine had the appointment of two of three voting trustees; that if these conditions were satisfactory the deal could be closed in short order. I told him that we would consider the matter, advise with Mr. Dipson, and notify him of our reply. I talked with Mr. McKay on the telephone on June 18, 1936 and advised him Schine's offer was rejected for the reason that Dipson, under the arrangement, would be only a minority stockholder. Mr. McKay replied that he did not believe any other arrangement would be satisfactory, but that he would inform Mr. Schine of our decision. I did not have any further conversation with him. I was attorney for the plaintiff, Reliance Theatres, Inc., in the suit referred to—T. 2130-36.

26. When Mr. Dickinson in the summer of 1933 sought to get the Metro product for the Palace theatre for the next year Mr. Rodgers, the General Sales Manager, informed him that the only reason that they had let him have pictures for the season then about to end was a serious disagreement that they had had with Schine, so that the Palace was the only outlet they had that season in Lockport and that they preferred to go back to Schine for the coming season—T. 4506, 4510, 4511.

[fol. 4803] 27. Dickinson had a franchise of the first run of Columbia pictures for the season 1934-35 and 1935-36—Exs. D-47, D-48, D-49; T. 2008-2010.

28. In January 1934 Dickinson was offered United Artists product on first, second or third run and played a substantial number of United Artists pictures first run in 1934, 1935 and 1936—Exs. D-50 to 107; T. 3013-2014.

29. Charles Dickinson, Jr. had had no experience in the theatre business prior to December 1932.—T. 2002.

30. Dickinson admitted that Schines were regular customers of the 8 major companies.—T. 2004-5.

31. Sidney Samson, Buffalo Branch Manager of Fox, offered Dickinson Fox pictures on second run and was turned down because of price—T. 2052.

[fol. 4804]

MALONE

Pop. 8743

1. In September 1926 Schine became the lessee of the Malone theatre, formerly the Grand, 800 seats, later enlarged to 1400 seats, and of the Plaza, 610 seats, and in April 1937 became owner of the Malone, at a cost of $151,800, to which Schine added improvements at an additional cost of $106,000—Int. Ans. 17-A, p. 6, T. 3290-1.

2. In the sumer of 1935 Michael Boumansour, the lessor of the Plaza, received a letter, after which he went to see Mr. May in Gloversville, who told him that the Plaza was condemned and they would discontinue the payment of rent. The rent was paid for the ensuing year—T. 3292-95.

3. Boumansour remodelled the Plaza in 1936 and spent $20,000. When he opened it in November 1936 he had sufficient first run pictures and he did not consider using second run until later—T. 3296, 3404.

4. On Febuary 4, 1937 Boumansour informed Richard Struewe, a salesman for Warner, that he intended to go to a second run policy on May 1, 1937, and Struewe offered him 60 pictures of the 1936-37 season second run, and Boumansour said that he wanted only 30, and Struewe then offered him 30 pictures of the 1935-36 season but Boumansour said that he would not consider any proposition except a 30-picture deal of the 1936-37 season—Ex. D-137, T. 4429.

5. Boumansour signed his first application for second run pictures on June 14, 1937 for the 60 Warner-First National pictures which Struewe had offered him on February 4, 1937, and this contract was approved June 29, 1937 before Boumansour's letter of June 30, 1937 to the Department of Justice—Exs. 863, 909, T. 3393, 3397, 3413, Id. Ex. 857.

[fol. 4805] 6. Boumansour may have dated some pictures under this contract on the same day he signed, and he remembered that of the pictures called for in the contract he played about 6 or 8 pictures a week—T. 3392, 3473.

7. On the same trip to Albany on which Boumansour signed this contract, he went over and showed the contract to the Paramount branch manager and Paramount sold him some second run and he also showed it to the Metro manager and he got some Metro second run—T. 3326-3328.

8. The second run pictures which Boumansour bought under the contract, Ex. 863, in June 1937 had mostly all been played first run—T. 3472, 3473.

9. After Boumansour instituted his second run policy he announced from the stage to patrons that it was no use going to the other theatre in town, since the pictures shown there would be coming along soon in his house—T. 3418-3419.

10. Some time between December 1936 and May 1937, and before May 6, 1937, the Albany branch manager for Fox informed Boumansour that if he would buy 100% product, Fox would consider the deal and advise Boumansour immediately—T. 3402, 3404, 3483, 3486, 3487.

11. After Boumansour had begun cutting admission prices (T. 3417) and the Malone theatre had followed with reductions, Boumansour saw George Lynch in his office at Malone in the presence of Arty. Newman. Lynch said that they were both working their heads off and not getting anywhere, and that it would be better for both if he leased his theatre to Schine. Boumansour said that he would, and stated his terms. Lynch said that he had to call Myer Schine in Florida and then came back and said he had agreed to the terms of rent $8600 a year and Boumansour's services for one year at $70 a week—T. 3372-3376.

[fol. 4806] 12. The lease which Boumansour made was dated February 14, 1941, pursuant to the agreement of January 21, 1941, providing that Boumansour should not compete within twenty miles of any Schine town—Exs. 81, 82, T. 3380, 3381.

13. Boumansour continued as manager for about two years, during which the Plaza was operated three days a week—T. 3377-3378.

14. The admission prices at the Malone theatre during

this period were 30¢ orchestra and 20¢ balcony and at the Plaza 25¢—T. 3378-9.

15. Boumansour notified the Department of Justice that he had disposed of his theatre as planned and that everything was satisfactory—T. 3382-84, Ex. D-133.

16. Except for a short period in 1922 and possibly again prior to 1930, Boumansour had not operated the Plaza prior to 1936 but the competition was so severe that he decided to lease the theatre to Meehan in 1923—T. 3414-3415.

17. Prior to the date of the opening of the Plaza theatre and thereafter the Malone theatre double featured major pictures during each week, with 3 to 4 changes per week, playing single features only on weekends—T. 3311, 3416.

18. Boumansour advertised 2-for-1 tickets, or a 12½¢ admission price with a coupon, practically at the outset of his operation of the Plaza theatre at a time when he was playing first run pictures. Soon after this he instituted dish give-aways, each patron receiving a dish costing 10¢ with each admission, and he also instituted a game known as "Lucky" for the use of which he was granted an allowance by the film companies—T. 3416-20.

[fol. 4807]

MASSENA

Pop. 11,328

1. In August 1926 Schine became lessee of the Massena theatre, 1111 seats, and the Rialto theatre, and expended in the improvement of the Massena $72,500—Int. Ans. 17(A), p. 6; Ex. D-150.

2. Schine gave up the Rialto lease in 193[illegible] the present operator acquired it—Int. Ans. 17(A), p. 6.

[fol. 4808]

MAYSVILLE

Pop. 6572

1. In June 1938 Schine became the lessee of the Russell theatre, 700 seats, and in January 1939 became interested to the extent of 60% in the Washington, 500 seats, and the Hollywood, 300 seats. S. Kaplan had an interest of 40% in these three theatres until December 7, 1940—Int. Ans. 17(A), p. 17.

[fol. 4809]

MECHANICSVILLE

Pop. 7449

1. From April 1937 Schine had a fifty percent interest in and did the film buying, first at $100 a week and then at $200 a week in the aggregate for four theatres, the State at Mechanicsville, the Capitol at Ballston Spa, the Capitol at Whitehall, and the Ritz at Granville, and expended in the improvement of these four theatres approximately $50,000—Int. Ans. 17(A), p. 11, 17(B), p. 1; Ex. D-150.

[fol. 4810]

MEDINA

Pop. 4359

1. In September 1937 Schine became interested in 50% of the lease of the Princess theatre, 350 seats, Yudelvitz and associates retaining 50%. In April 1939 the Schine and the Yudelvitz interests became interested in 50% of the lease of the Temple theatre, 857 seats, the other 50% being retained by Essick and Fine, who also acquired a 50% interest in the lease of the Princess, so that in April 1939 and thereafter the interest in the two leases stood Yudelvitz 25%, Schine 25%, and Essick and Fine 50%—Int. Ans. 17(A), p. 13; T. 1847.

2. Yudelvitz and Willis were lessees and operators of the Princess theatre, with all the first run product they wanted, when by January 1, 1937 they had learned that Fine and Essick with a circuit of some 29 theatres, an independent circuit, that is, not connected with any producing company, were proposing to come into Medina in opposition to them—T. 1870, 1883.

3. On March 18, 1937 Yudelvitz and Willis entered into an agreement with Schine to come in with them and to build a new theatre—Ex. D-46, p. 1901.

4. At almost the same time the Masonic Lodge of Medina entered into the reconstruction of their building with a theatre in it. In March 1937, they wrote to Schine asking him not to go ahead with the plan to build a new theatre in Medina. The Masonic Lodge under date of January 18, 1938 leased to Essick and Fine—T. 1861, Ex. 648, Ex. 1006 same as Id. Ex. D-45.

5. The new theatre, the Temple, alone was ample for the town, but the Princess was not—T. 1876, 1885.

6. Before the new theatre, the Temple, opened Yudelvitz was playing Metro, Paramount, Fox, RKO, and Republic [fol. 4811] pictures because with the Western stars, Ken Maynard and Gene Autry, he wanted to play Republic on Fridays and Saturdays, although he was not forced to do so from any lack of product—T. 1888, 1889.

7. When the Yudelvitz 25%, Schine 25%, Fine and Essick 50% contract was made Schine and Yudelvitz contributed the lease and equipment of the Princess and Fine and Essick contributed the lease of the new theatre to the new corporation. After the payment of operating expenses the first $3,000 of profit was to be divided in the above proportions, then the next $1500 of profits went to Fine and Essick to repay the $53,000 that they had invested in the development of the new Temple theatre, and then the remaining profits were to be divided 25% to Yudelvitz, 25% to Schine and 50% to Fine and Essick—T. 1892-84, Ex. 648.

8. Schine said nothing to Essick and Fine by way of threat—T. 1921.

9. In the operation of the Medina Temple theatre the town has been very well served and the worth while pictures of all the distributors from time to time have been exhibited there—T. 1922.

10. The admission prices depend on the product, what the pictures are, what company produces them, and so on—T. 1924.

11. The cost of pictures to the exhibitor is one of the things which Essick would take into consideration in determining the price of admission—T. 1925.

12. Yudelvitz and Schine in the spring or fall of 1937 had expended in the vicinity of $15,000 in the improvement of the Princess theatre, and the contract shows that this was not to be paid back and there was no separate agreement to pay it back—T. 1926, 1928, Ex. 648, 648A.

[fol. 4812] 13. Essick did not ask Loew's for product until after he learned that Schine had entered the picture, and subsequently he made no effort to get Metro, Paramount, Fox, and RKO—T. 1913.

14. At the time the contract between Warner and Schine was approved by the general sales manager of Warner on October 27, 1937, he had heard no claim by Mr. Essick or Mr. Fine that Mr. Kalmenson had promised the Warner product to Essick or Fine—T. 4583.

15. When Mr. Essick made his claim in November 1937, Mr. Kalmenson denied that he had made any such promise and this denial was brought to the attention of the general sales manager—T. 4583.

16. In view of the controversy the general sales manager secured a reduction of the number of pictures to Schine to one half of the product and licensed one half of the product to Essick and Fine, pursuant to his policy to adjust matters in case of a disagreement between customers—T. 4591, 4593.

17. In the conversation which Essick and Fine had with Mooney and Kalmenson regarding Warner product there was no discussion as to terms, season, date of opening of the theatre or other details—T. 1806.

[fol. 4813]

MIDDLESBORO

Pop. 11,777

1. Schine became lessee of the Manring theatre, 965 seats, and the Brownie theatre, 412 seats, in January 1939, and the owner in February 1941, at a cost for the Manring of $85,000, to which Schine added improvements at an additional cost of $10,600—Int. Ans. 17(A), p. 17; Ex. D-150.

[fol. 4814]

MILFORD

Pop. 4214

In January 1939 Schine became the owner of the Plaza theatre, 1057 seats, at a cost of $62,500, to which Schine added improvements at an additional cost of $50,500—Int. Ans. 17(A), p. 19; Ex. D-150.

[fol. 4815]

MT. VERNON

Pop. 10,122

1. Mr. Smoots, the owner of the Vine and lessee of the Memorial, brought the matter of going into Mt. Vernon to Schine's attention and proposed to lease the Vine to Schine

and assign his lease on the Memorial, which was then closed —T. 4120, 4121.

2. At about the same time Mr. Platt, who operated the Lyric, said that he would like to sell Schine the equipment and lease of the Lyric provided he could get a job to manage the theatres in town, and this deal was closed about February 1934—T. 4124.

3. Schine became the lessee of the Vine theatre, 585 seats, and of the Memorial theatre, 1065 seats, in January 1934, and of the Lyric theatre in February 1934, and of the Memorial again at the end of December 1940, and expended in the improvement of the Vine $3300, and of the Memorial $6100—Int. Ans. 17(A), p. 13, 14; Ex. D-150, T. 4126.

4. Schine first made moderate improvements on the Vine and about a year later started making a survey for enlarging the Vine into a modern theatre—T. 4124.

5. The Vine was near the busy part of the Square, a little off the main street, with one floor, seating 585 people, with a high ceiling, but lacking modern appointments and conveniences, and with a very short lobby—T. 4125.

6. The Lyric location was the finest location in the town, right on the Square, near the chief department store. On this site, in April 1938, the new Vernon theatre, 1266 seats, was built. Schine expended on this new theatre an additional $48,600—T. 4125-26, Ex. D-150, Int. Ans. 17(A), p. 13, 14.

[fol. 4816] 7. The Lyric was a very narrow building, one of the first theatres built for motion pictures, with a high ceiling, but only one aisle in the center, with about 4 or 5 seats on each side, and with no lavatory facilities and with a stove in the rear of the theatre, right in the aisle, and a booth projecting right over part of the audience, making the ceiling there very low—T. 4126.

8. The Memorial was on top of a hill, about a block and a half or two blocks from the business section. It was in a county building with county offices and a walkway about 100 feet off the sidewalk. The entrance was just an ordinary door, with no appearance of a theatre, leading to a hall which contains seats and a balcony, and is equipped with a booth and screen—T. 4127.

9. The Lyric site was inadequate for the new Vernon theatre, and it was necessary to buy additional land—T. 4128.

10. The new Vernon theatre, completed in April 1938, is a modern fireproof constructed theatre with a wide marquee in front, no stores, a large lobby, and in the interior decorated in very modernistic style, with the finest seats obtainable, has all the other equipment and a fine mezzanine furnished attractive and comfortable, with fine public spaces for men and ladies upstairs and downstairs. The $48,600 spent by Schine for equipment was in addition to the money expended by the owner in building the building at a cost of from $120,000 to $130,000—T. 4129.

11. Emerson W. Long obtained a lease of the Memorial at the end of 1934 and operated it until December 1940—T. 199.

12. In 1937 Mr. Custer, followed by Mr. May, tried to work out a deal with Long or build a new theatre and advised a sale. The visit was a friendly one and the advice given was of a friendly nature with no threats involved—T. 154-6.

[fol. 4817] 13. Before the new Vernon was opened, Long was getting adequate product and played to crowded houses —T. 236, 256, Exs. D-1, 2, 3, 6, 9.

14. Long was interested in first run product of which he had all he wanted, and he turned down offers of second run product—T. 254, 260.

15. When Long requested first run product in December 1934 and was told it was sold he did not consider it unusual at that date—T. 218-220.

16. Long operated the only theatre in Cadiz, Ohio, where he also had a closed theatre, and he tried to use the pressure of this situation to get product for Mount Vernon—T. 200, 205, 235, Ex. D-2-9.

17. At the conclusion of Long's lease in 1939, he was awarded a new lease although the owners received a better bid from Schine—T. 336.

18. On December 18, 1940 a lease was awarded to Schine, after Long was given first opportunity to renew his lease—T. 333, 337-340.

19. From 1940 on the conditions in Mt. Vernon improved —T. 345.

[fol 4818]

NEWARK

Pop. 9,646

1 In October 1924 Schine became the owner of the Capitol, 1210 seats, at a cost of $20,000, to which Schine added building and improvements at an additional cost of $143,700, and in April 1926 the lessee of the Crescent theatre, which became obsolete and unusable—Int. Ans. 17(A) and 18, p. 5.

[fol. 4819]

NORWALK

Pop. 8211

1. Schine became interested to the extent of 66⅔% in the lease of the Forum, 537 seats, in July 1935 and as owner of the Moose, 838 seats, in December 1936, and as owner of the Norwalk in March 1940, completed and opened August 13, 1941 at a cost for land of $16,350, to which Schine added building and improvements at an additional cost of $123,100. The improvements to the Forum cost $17,500—Int. Ans. 17(A), p. 14; Ex. D-150.

2. The Forum was completed and opened with all new equipment in December 1934, T. 472, 936.

3. The Moose was built about 1904. The only other theatre which had been in the town had been acquired in 1926 and closed in 1931 by the operators of the Moose, T. 970-971.

4. Schmertz gave Felter the first opportunity to purchase ½ of the Fox product of the 1935-36 season and gave him 15 days to decide. Felter talked to Schmertz two weeks later and was told the product was still open and that he could have 3 more days. After the 3 days expired he called Schmertz and was then told that the product had been sold—T. 956-959.

[fol. 4820]

NORWICH

Pop. 8694

1. Schine became owner of the Colonia theatre, 1045 seats, in November 1921, at a cost of $80,700, to which Schine added improvements at an additional cost of $29,-

500, and Lessee of the Strand from 1922 to 1930—Int. Ans. 17(A) and 23, p. 7; Ex. D-150.

2. The Colonia is a large complete theatre, with a large stage, good ventilation, good seats, nice entrance, and is housed in an extraordinary substantial building which was built by local citizens' subscriptions, with no theatre approaching equality to it within 50 miles except that at Binghamton, 40 miles away. After the major improvements in 1938 it was as modern as any theatre could be, with fine cushion seats with springs, ventilating system, finely decorated, with rather an attractive marquee with plenty of lights in front, and more important, the projection and sound was of the very latest type, and fine carpets, an outstanding theatre—T. 4056-68.

3. The Strand in 1929 was a much smaller theatre with no stage, a low ceiling and a projection booth on the ground floor, so that it was necessary to walk around it to enter the theatre, and was known as a glorified store show—T. 4057-58.

4. The Colonia was operated from the inception as a first run house—T. 4059.

5. The Strand was operated by Schine prior to 1929, as it had been operated by the previous exhibitor, as a Western and secondary feature house for action and Western pictures. The latter have not too logical stories and thrilling incidents, with a better appeal, in such places as Kentucky, than the so-called big stars—T. 4059-60.

6. William C. Smalley, operator of the Smalley Circuit, with eleven theatres in 1932 and fourteen in 1942, began to [fol. 4821] operate the Strand, built in 1919, with 740 seats after remodelling on November 4, 1930—T. 3669, 3584, 3681.

7. The Strand was not equipped for sound until 1930 and was a brand new operation in sound—T. 3690.

8. Up to this time the Colonia was the only outlet for sound pictures in Norwich and had Metro, Paramount, Fox, Universal, some Columbia, some United Artists—T. 3692-93.

9. In March 1932, the Strand burned and it was not re-

opened until November 1932, after the beginning of the release year 1932-33—T. 3586, 3694-3695.

10. Smalley began cutting admission prices as early as 1934 and continued to do so and advertised prices of 10¢ and 20¢ as late as January 19, 1942—T. 3718-3732, Exs. D-145, 146.

11. Smalley was getting such first run pictures as he was willing to buy from Columbia as late as December 1940 at $25 each—T. 3742, 3705-8, Exs. D-141, 142, 143, 144.

12. He was getting second run pictures throughout the whole period from all distributors—T. 3744.

13. The reason that the distributors sold to the Colonia was that that theatre was a satisfactory customer—T. 3641.

14. The distributors in negotiating with Smalley ordinarily negotiated for his entire circuit, striving to sell as many pictures as possible in his closed towns of which he had 12 as compared with 2 open towns, Norwich and Johnstown—T. 3637.

15. Smalley told the distributors that he would not buy pictures for his closed towns unless they sold him for Norwich—T. 3677.

[fol. 4822]

OGDENSBURG

Pop. 16,346

1. In September 1926 Schine became lessee of the Strand theatre, 1311 seats, and of the Pontiac theatre, 460 seats, and later owner of the Strand at an original cost for the Strand of $137,000, to which Schine added new building, equipment and improvements at an additional cost of $155,800, and improvements to the Pontiac, formerly the Star, of $8700—Int. Ans. 17(A), p. 7; Ex. D-150.

2. Lawrence Carkey testified that between July 1 and July 15, 1940 second run product was available, unsold in Ogdensburg, and he saw Jack Armm of Columbia, Richard Haas of Paramount, Richard Struewe of Warner, George Tucker of RKO, Gene Vogel of Metro, Jerry Spandau of Universal, Fred Sliter of Fox, and each said that it was available—T. 3554-56.

3. Carkey testified that he saw these salesmen again between August 15 and August 30, 1940 and each said that

the second run Ogdensburg had been sold to Schine except that Spandau of Universal offered to sell him second run, and that Carkey told him that he would see him in a couple of days, that he wanted to have two major companies, and that he called in Jack Armm of Columbia and Jack Armm informed him that second run had been sold to Schine, and thereafter he had no further negotiations with any of the film companies for second run—T. 3560-64.

4. On September 4, 1940 the Common Council of Ogdensburg voted, authorizing a lease of the city market to Carkey —Ex. 879.

5. Carkey did nothing toward converting this into a theatre—T. 3545.

6. On September 17, 1940 a blue print sketch was prepared—T. 3547, Id. Ex. 880-881.

[fol. 4823] 7. On September 30, 1940 a proposed lease was submitted, which Carkey never signed—T. 3550-51.

8. Armm did not tell Carkey that second run had been sold to Schine. Armm told Carkey that Schine did not have a second run and there was no reason why Carkey could not have second run and that he could have it at a price not stated, but to be determined after he opened up and a check of the pictures showed what they were worth—T. 4435-36.

9. Later, when Armm met Carkey in Norwood and suggested going to look at the market place in Ogdensburg, where he was to build a theatre, Carkey said, I guess we will have to forget about it temporarily because Mrs. Shapiro, who was to finance it, has backed out, that the decorator who was doing his work and who was going to give him the money to fix it up with, and he had backed out. Thereafter on later visits, when they talked about Ogdensburg, Carkey told Armm that there was nothing doing, he could not get the finances—T. 4437, 4439, 4440.

[fol. 4824]

Oneonta

Pop. 11,731

1. Schine became the owner of the Strand theatre in October 1919; of the Oneonta theatre, 1217 seats, in November 1922 and of the Palace theatre, 866 seats, formerly the

Maxie, by lease in March 1923 and deed in September 1927, at an original cost for the Oneonta of $130,000, and which Schine improved at an additional cost of $24,300, and at an original cost for the Palace of $161,800, and which Schine improved at a cost of $4500—Int. Ans. 17(A), p. 7; Ex. D-150.

[fol. 4825] **OSWEGO**

Pop. 22,062

1. Schine became owner of the Strand, 950 seats, the Capitol, 696 seats, and lessee of the Richardson in September 1922, and owner of the State in November 1934, and of the land for the Oswego, 1704 seats, in June 1937. The Oswego theatre was completed January 22, 1941. The original cost for the Strand was $75,000, to which Schline added improvements at an additional cost of $2,000. The original cost for the Capitol was $60,000; to which Schine added improvements at an additional cost of $35,000. The original cost for the land for the Oswego was $42,500, above which Schine built and added improvements at an additional cost of $249,800—Int. Ans. 17(A), p. 7; Ex. D-150.

[fol. 4826] **PARIS**

Pop. 6,697

1. Schine became owner of 97% of the stock of Phoenix Amusement Company, lessee of the Bourbon theatre, 634 seats, in November 1936, and added improvements at a cost of $15,000. Schine became owner of the land for the Paris in December 1937 at a cost of $24,000. The theatre was completed in December 1939, 932 seats, at a cost for building and improvements of $71,000—Int. Ans. 17(A), p. 17; Ex. D-150.

2. Early in October 1937 the Phoenix Amusement Company, pursanut to an ordinance dated October 7, 1937, received a license dated October 7, 1937 to erect and operate a new theatre—Ex. D-153, 153-A, T. 4148. Schine proceeded to have plans drawn, got bids in the spring or summer of 1938 and completed the new theatre in 1939—T. 4149, 4150.

3. On November 2, 1938 Harry Schwartz obtained a lease of property in Paris, about four months after he knew of the proposal for the new Schine theatre—T. 2905, Ex. 823.

4. In November 1938 Lazar asked Schwartz if he had not seen the sign on the lot Schine had purchased some time ago and that they were going to build a new theatre on it, and Schwartz told him that he had, and Lazar said that they had every intention of building a theatre in Paris and were not decided on just what type or what size, and that is why they had not begun earlier, and that he felt that Schwartz was making a mistake in building in competition with them, and Schwartz told him that he did not think so or he would not have signed a 20-year lease on the main corner of the town, and that he felt that he had the best location in Paris and that the theatre would be self-supporting. Lazar asked him if he would not come to meet him at the Lafayette Hotel, and Schwartz said that he would be glad to do so and went later in the day to the Lafayette Hotel—T. 2915, 2916.

[fol. 4827] 5. There, Lazar said that he did not feel that Paris could support three theatres and that as long as they had been in Paris operating a theatre and had anticipated building a new larger theatre, he could not quite understand what would prompt Schwartz to go into the town as competition. Schwartz repeated that his location was the better of the two and that he was not afraid of competition. Lazar asked him to think things over, that he felt that Schwartz was making a great mistake and would lose plenty of money, and that, if Schwartz cared to, Lazar would take this lease off his hands. Schwartz said for how much, and Lazar said, are you trying to hold me up, and Schwartz said I am not trying to hold you up; you called me up and I did not come to see you or call you up. Lazar said well, I believe that Mr. Schine would be willing to take this lease off your hands and relieve you of that obligation, and Schwartz said that he was not intending to give up the lease and that he was going ahead with the theatre, and that ended the conversation, T. 2916, 2917.

6. After Schwartz began construction, Lazar called Schwartz on the telephone and asked whether he was still determined to build or whether he was just starting operations to stop within a week or so, and Schwartz told him that he intended to go ahead, had plans drawn by a theatre architect and a contract had been signed with the construction company to build the theatre, and he fully intended to build it. Lazar told him that his offer was still good, and Schwartz told him that he did not believe he would care to sell the theatre or assign the lease—T. 2918.

7. Three weeks later, after the side walls were already constructed, Lazar called Schwartz on the telephone and asked Schwartz to stop construction and come to see him about a deal. Schwartz saw Lazar at the Lafayette Hotel. There they went over the same discussion and Lazar said he was willing to enter into a deal for the Opera House property in Lexington, Schwartz' Paris theatre and a theatre [fol. 4828] that Schwartz was operating in Frankfort, Ky. At this time Schine was building in Paris (T. 2919), and they made a deal and Schwartz stopped construction about August 30, 1939—T. 2919-20.

8. The agreements are dated September 15, 1939. They contain a provision that the assignors will not be interested for fifteen years in the motion picture, theatrical or amusement business in any city or town in the State of Kentucky, in which the assignee or any of its affiliated or associated companies are now engaged, except that the assignor may invest in stock and securities listed on any recognized stock exchange, and that Schine pay to the assignor $5,000 for the Paris leases and assume liabilities and that Schine pay to the lessor $22,500, for the Opera House lease, Ex. 823, T. 2921-27, Ex. 828, T. 2924-2925.

9. Before the Opera House was leased, Schine's first run houses in Lexington were charging 40¢ in the evening and 25¢ at matinee, and the second run house, the Strand, was charging 25¢ at night and 15¢ in the afternon. This was not changed from what it had been, except that prices had been reduced in the summer months of 1937-38, but not of 1939. Starting in 1934 the State was charging 10¢ matinee and 15¢ in the evening, and before that it was a 10¢ house and the Ada Meade was charging 10¢—T. 2927-28, 2933-34.

10. About six months after Schwartz leased the Opera House to Schine the admission price was made 16¢ for the matinee and 22¢ at night, and the prices at the other Schine houses were not raised until, subsequently, with the increase in taxes, the prices were raised a few cents, not very much—T. 2928-29.

11. Paris was not big enough for more than two theatres—T. 2934.

[fol. 4829] 12. Schwartz in his dealings with the Schine interest was met only with courtesy and fair discussion of negotiations. There is nothing in the record to show intimidation and no threats were made. The two agreements were a good deal for Schwartz and he got not only the money consideration, but a new lease of the Opera House running to Schwartz as lessor at a fair and satisfactory rental—T. 2934-36.

13. At the time of the agreements the only Kentucky towns that Schine was in were Middlesboro, Corbin, Pikeville, Paris, Richmond, Lexington and Maysville—T. 2937.

14. The Paris theatre is a very fine theatre—T. 2938.

[fol. 4830]

PENN YAN

Pop. 5,308

1. Schine became the owner of the Elmwood theatre, 716 seats, in September 1936, at a cost of $110,000, to which Schine added improvements at a cost of $10,000—Int. Ans. 17(A), p. 8; Ex. D-150.

[fol. 4831]

PERRY

Pop. 4,486

1. Schine became lessee of the Auditorium, 652 seats, in October 1936—Int. Ans. 17(A), p. 8; Ex. D-150.

2. Schine bought the Davis property a little below the hotel, at a corner on the Main Street, in July 1935—T. 4147, 2572.

3. In July 1935 Mr. May called on John C. Herzberger, the operator of the Auditorium theatre, and introduced himself and said that he had just closed a deal with Porter Davis, buying a lot for Mr. Schine, on which they were to build a theatre seating 1,000 persons and costing about $100,000 and that he hoped that they would be friends—T. 2570.

4. In August 1935 Herzberger met Schine at the Seneca Hotel in Rochester and Schine offered Herzberger $5,000 for his lease from the Town of Perry of the Auditorium. An agreement was signed, subject to the approval of the Town Board to the sale of the lease, and to expire on September 1—T. 2577.

5. In August 1935 the Town Board wanted Herzberger to stay and would not let him sell the lease—T. 2578.

6. Schine received the blue prints for a new theatre in Perry, dated Septmber 1935, and specifications therefor, and the time fixed for receiving bids for the construction was October 4, 1935—T. 4146-47, Id. Ex. D-152.

7. In September or October 1935 Mr. Osborne of Dipson & Osborne came to Mr. Herzberger several times about taking over his lease for more money than Schine had offered, and he made a deal with them and continued to manage the theatre for a year—T. 2582, 2579.

[fol. 4832] 8. Dipson improved the theatre at a substantial expense of about $13,000, that made the theatre a satisfactory theatre and removed any occasion for having another theatre built in the town. Before this improvement the theatre was not at all a modern theatre but had been built in 1898 for stage performances. After rebuilding it had about 700 seats, as Dipson reseated the theatre—T. 2584-86.

9. Dipson and Osborne sold their lease to Schine and Schine made additional improvements to the theatre at a cost of $7500—T. 2580, Ex. D-150.

10. No other theatre has been built in Perry—T. 2580.

[fol. 4833]

PIKEVILLE

Pop. 4,185

1. Beginning in November 1938, Schine bought and booked for the Liberty theatre at a fee of 5% of the gross receipts and in August 1939 Schine became the lessee of this theatre, 700 seats, and expended in the improvement of it $2800—Int. Ans. 17(A), p. 17.

[fol. 4834]

PIQUA

Pop. 16,049

1. In May 1931 Schine became the lessee of the Piqua theatre, 958 seats, the Miami, 712 seats, and the Bijou theatre, 375 seats, and improved them at a cost in the aggregate of $18,500—Int. Ans. 17(A), p. 14; Ex. D-150.

[fol. 4835]

RAVENNA

Pop. 8,538

1. In December 1937 Schine became the owner of the Ravenna, 871 seats, and the Ohio, 499 seats, then closed,

at an original cost for the Ravenna of $128,500, to which Schine added improvements at an additional cost of $9,500, and at an original cost for the Ohio of $33,000, to which Schine added improvements at an additional cost of $44,500 and reopened it in June 1941—Int. Ans. 17(A), p. 14, 18, p. 14; Ex. D-150.

[fol. 4836]

RICHMOND

Pop. 7,335

1. In November 1936 Schine became owner of 97% of the stock of the Phoenix Amusement Company, the owner of the Madison, 987 seats, and lessee of the State, 666 seats, and lessee of the Alhambra, at an original cost for the Madison of $75,000, to which Schine added improvements at a cost of $5,500—Int. Ans. 17(A), p. 17; Ex. D-150.

[fol. 4837]

ROCHESTER

Pop. 324,975

1. Schine became the owner of the Grand, 834 seats, in August 1925; the Liberty, 1256 seats, by lease in October 1926 and deed in February 1939; the Riviera, 1508 seats, by lease in October 1926 and deed in April 1927; the State, 1062 seats, by lease in January 1926 and deed January 1928; the Cameo, 1258 seats, in May 1936; the Madison, 1381 seats, in February 939; the Monroe, 1186 seats, in February 1939; the West End, 832 seats, in February 1939; and the Webster, 1099 seats, in September 1940; and the Plaza in September 1940; and the lessee of the Dixie, 892 seats, in August 1932; and of the Lake, 840 seats, in January 1936. The original cost of the Grand was $95,000, to which Schine added improvements at an additional cost of $19,000. The original cost of the State was $145,000, to which Schine added improvements at an additional cost of $9,000. The original cost of the Riviera was $304,100, to which Schine added improvements at an additional cost of $7500. The original cost of the Cameo was $60,000, to which Schine added improvements at an additional cost of $25,500—Int. Ans. 17(A), p. 8; Ex. D-150.

2. The price paid by Schine for the Madison, Monroe, Liberty and West End properties was as much as Fenyvessy paid for them—T. 2415, 2481-2484.

3. In 1927 Mr. Tishkoff and Mr. Schine had a conversation informally in the lobby of the Seneca Hotel. Schine asked him whether it was true that he and his associates proposed to build a theatre in the neighborhood of the State and Plaza, and Tishkoff said that it was true. Schine asked him whether he thought the location was suitable for a third theatre, and Tishkoff said that he didn't know, that his partner got into it and he went along. Tishkoff said why don't you come up to my office tomorrow and I will have my associates there and see if we can't work out some-[fol. 4838] thing whereby we might have a partnership in the theatres—T. 4088.

4. The next day they met in Mr. Tishkoff's office and Schine told the group that the neighborhood was already overseated and that the Plaza had just been remodelled and that there wasn't room for a third theatre. They talked the possibility of a partnership, and Schine said that he wouldn't go into the partnership, that they were overseating a neighborhood and that if they really wanted to build a theatre there were many other neighborhoods where a theatre was needed, but they said that they owned a lot and were going ahead, and Schine said that there would be no more sense in it than in building a theatre near the Murray. Nothing was said in substance that if they persisted Schine would put in a theatre next to the Murray, and there was no talk about the possibility of Schine's building another theatre near the Murray or about buying power if a theatre was put up near the Murray. The possible harmful effect on the Plaza theatre had been considered by Tishkoff and Fogel—T. 4089, 4093, 4090, 3242.

5. Later Tishkoff and Fogel told Schine that they had gone ahead and that the theare was reaching completion and that they thought it would be of advantage to form a partnership of a half interest in the lease of the property which they and their associates owned, at $20,000 a year, and Schine said that he would think the matter over—T. 4091.

6. They met again and they said that they were willing to form a corporation to take a lease of the Webster with $20,000 to be put up as advance rent, $10,000 of it by Schine, and Schine would have to take half of the product run first in the State and give them, and Schine would get a contract

to buy the pictures at 5% of the gross receipts, with the operation in the hands of Mr. Fogel, and after some weeks Schine agreed to that—T. 4092.

7. The State theatre had been built about a year before —T. 4092.

[fol. 4839] 8. The first run theatres in downtown Rochester are Loew's Century, Palace, Regent and Temple—T. 2217.

9. Loew's was operated by Loew's, the Century and Regent by Comerford and Paramount, the Palace and Temple by RKO—T. 2218-19.

10. The location of the theatres in Rochester and the distances apart appear on Ex. D-112, T. 2423-32, 2439-44.

11. In 1939 Mr. Fenyvessy, the father of the witness Chester Fenyvessy, after operating theatres in Rochester for thirty years and at the age of eighty-four, desired to dispose of his theatre interests and conducted negotiations which resulted in a deal with Mr. Schine for the sale to him of the Madison, Monroe, Liberty and West End theatres—T. 2433.

12. The unrest in Europe affected the supply of suitable foreign language and other product theretofore obtainable for the Little theatre in Rochester, and the pictures licensed to other theatres in Rochester could not be licensed on the same run to this theatre—T. 2508, 2516.

13. There was nothing abnormal about the sequence of runs or clearance licensed by the respective distributors to the respective theatres—T. 2384-2555.

14. Schine disposed of the Webster and of Schine's interest in the Plaza theatres in June 1942, following the consent order entered May 19, 1942.

15. When the Madison was obtained by Mr. Fenyvessy, father of the witness Chester Fenyvessy, in 1929, Schine was already operating the Riviera, Liberty, State and Dixie on the prior run—T. 2484-85.

16. From the early thirties, the Liberty was a source of revenue to Mr. Fenyvessy, the father, who bought it subject to the lease to Schine and continued to lease it to Schine—T. 2484-85.

17. The Fenyvessy theatres took clearance over all the Schine theatres in Rochester except the Riviera, State, Dixie and Liberty—T. 2439.

[fol. 4840] SACANDAGA PARK

1. Schine has bought and booked for the Rustic theatre since the summer of 1937 at a fee of $250 a year—Int. Ans. 17(B), p. 4.

[fol. 4841] SALAMANCA

Pop. 9011

1. In October 1924 Schine became the lessee of the Andrews theatre, 735 seats, and in 1927 bought the land on which the new theatre was subsequently built. The original cost of the land was $24,300, to which Schine added a building and improvements at an additional cost of $164,300—Int. Ans. 17(A), p. 9; T. 4107, 3359, Ex. D-150.

2. Under an agreement with Fox-Metropolitan, Schine undertook to construct a new theatre on its land in Salamanca and to lease it to Fox-Metropolitan. This agreement was terminated and the theatre was not then erected—Int. Ans. 27.

3. Schine took the new building project up with the architects in mid-summer of 1938 and sent blue prints of the land to the architect on August 23, 1938. The plan to complete the theatre in 1939, was held up by lack of materials which could not be obtained, and the completion and opening was in August 1942—T. 3358, 4202, 4206, Id. Ex. D-151.

4. The new theatre is a very lovely theatre, air conditioned, with modern equipment, with about 1200 seats—T. 3363.

[fol. 4842] SALISBURY

Pop. 13,313

1. Schine became the lessee of the Arcade, 914 seats, and the Wicomico, 601 seats, in September 1938, and the owner of the Wicomico in July 1940, and the lessee of the Ritz, a colored theatre, 462 seats, in September 1940, at a cost for the Wicomico of $26,000, to which Schine added im-

provements at an additional cost of $7600, and added improvements to the Arcade at a cost of $29,300—Int. Ans. 17(A), p. 18; Ex. D-150.

2. Bernard Ulman is a manufacturing pharmacist in Baltimore and President of the corporation that operates the Ulman theatre and the New theatre in Salisbury—T. 2951.

3. In May or June 1941 Mr. May came to see Mr. Ulman and asked for a lease to Schine of his two theatres and Ulman asked him for an offer, and May requested figures of the business they were doing, upon which an offer could be based. Ulman did not give him any figures and May said he would come back later—T. 2953.

4. The Ulman theatre burned in June 1941—T. 2953.

5. Shortly thereafter May came to see Ulman. Ulman informed him that he was going to rebuild. May said that he did not think it would be advisable because there would be difficulty in getting pictures on account of the war situation, and the theatre was not needed in the town—T. 2953.

6. Thereafter Lee Insley, Divisional Manager of the booking office for booking pictures for theatres from the Washington exchange, Maryland and Delaware, with such duties as are assigned by the executive office, came to see Ulman and said that Schine was in a better position to run the theatre than he and also they were in a better position to buy pictures—T. 2954-55.

[fol. 4843] 7. The Ulman theatre always had a split of Paramount product prior to the 1938-39 season and again in the 1939-40 season—T. 2941-2950.

8. There are five theatres in the town, of which the Arcade, Wicomico, Ulman and New theatres play first run product. At the time Schine acquired the Arcade it was playing the first run product of Warner, Metro and Columbia, and at the time Schine acquired the Wicomico it was playing the first run product of RKO and Universal—T. 2941, 2949, 2950-1.

[fol. 4844]

SARANAC LAKE

Pop. 7838

1. In March 1927 Schine became the owner of the Pontiac, 1218 seats, at a cost of $135,000, to which Schine added

improvements at an additional cost of $165,500—Int. Ans. 17(A), p. 9; Ex. D-150.

[fol. 4845] SEAFORD

1. Mr. Thomas E. Ayers testified that on several occasions in 1938 and 1939 Mr. May and Mr. Insley spoke to him, the operator of the Palace theatre and the Layton theatre and the Sussex theatre in Georgetown, about buying the theatres and he said that he wasn't interested and didn't want to sell—T. 2959.

2. Ayers testified that after Schine acquired the Waller theatre in Laurel in April 1939, Mr. Schine and Mr. McKay and Mr. May said that if he was interested in selling, they would like to make a deal, and he said he was not, and they wanted to know if he would go in as partners with them, and he said that he was not interested, and they said they thought it would be more to his profit if he would go in partners with them because they could secure pictures much cheaper than he could, and at the end he would probably make as much money as if he was by himself, and he told them that he was not interested—T. 2961.

3. Ayers testified that Mr. Insley wanted to know if there was any way it would be possible to make a deal and that it was very foolish not to make one because they have Laurel and are likely with the buying power they had to get the product away from me and I would wind up probably playing Independent companies rather than playing the type of pictures that I was already playing, and he told them that he would have to take that chance, that he still was not interested—T. 2962.

4. Ayers testified that Mr. May the last time he was there asked him if he would not reconsider on making a deal, and he told him no, that he had started to build a second theatre, the Layton, and he said that they would take that house over in connection with the Palace if he would make a deal, and he told him no—T. 2963.

[fol. 4846] SENECA FALLS

Pop. 6452

1. In September 1935 Schine became the lessee of the Strand, 943 seats, and in April 1936 the owner of the Seneca,

and made improvements on the Strand at a cost of $19,500 —Int. Ans. 17(A), p. 9; Ex. D-150.

2. At the time Schine came into possession of the Seneca it was not in condition to operate as a theatre because the equipment had been removed by the former operator—Int. Ans. 17(A), p. 9.

[fol. 4847]

SHELBY

Pop. 6653

1. In September 1937 Schine bought a 50% interest in the lease of the Castamba, 749 seats—Int. Ans. 17(A), p. 14.

2. January 23, 1936 Halmer D. Shreffler, operator of the Castamba, wrote Louis Lazar and later was in touch with Lazar, who wanted to make a partnership deal—T. 1113, 1116.

3. After July 3, 1937 and in latter August or first of September 1937, at Shreffler's carriage works, Lazar said that Nick Dipson was going to put in a theatre in Shelby—T. 1130-32.

4. Shreffler testified that at this conversation Lazar said that he needed the Schine organization to stay in business as Dipson would smother him and that Schine was coming into Shelby and would buy the State theatre and pay $1,000 more than Shreffler could afford and would take the product —T. 1132-34.

5. The Film Daily, the moving picture periodical, said that Dipson was coming in to build a de luxe theatre in Shelby—T. 1135.

6. At this time the Castamba had 476 seats—T. 1136.

7. Shreffler decided to go in with Schine and the contract was signed on September 19, 1937—T. 1137.

8. Shreffler testified that Lazar said that if they found that Schine was coming in the chances were that the State wouldn't be built—T. 1144.

9. Shreffler testified that he began remodelling in June 1937 and spent $30,000 on the theatre and opened up September 28 or 29, 1937, and Schine paid him $15,000 for half of the building cost—T. 1145.

10. Shreffler didn't own the building and had no lease and paid $145 a month rent—T. 1146-47.

11. Shreffler receives $50 a week for managing the theatre and his son does not have to render any services—T. 1162.

[fol. 4848] 12. On July 8, 1938 Schine offered to get out and sell his stock back to Shreffler but Shreffler did not accept the offer—T. 1177, 1190.

13. On Thanksgiving Day, 1937, Richard T. Kemper, one time associated with the Dipson Circuit, opened the State theatre, 454 seats. The Opera House, an upstairs house, 325 seats and not too good was also operating at the time—T. 1193, 1194, 1201.

14. Kemper met Lazar, who said that Shelby was not too profitable and wanted to know what Kemper's investment was and what he would take for it and Kemper said his investment was $15,000—T. 1208.

15. In July 1938 Kemper met Lazar and Lazar said that Schine could not pay the amount, that he had a partner in Shelby and he was not willing to make the deal—T. 1212.

16. Kemper testified that Lazar asked if there was any provision in the lease as to when the theatre must be kept open and Kemper told him the Opera House two days, but nothing in the State, and Lazar said that they would probably close the State and operate the Opera House—T. 1214.

17. In September 1937 Kemper represented Dipson in another matter—T. 1223.

18. Kemper did not make any deal with Schine and in July 1939 turned his theatre over to his associates—T. 1215.

19. Shreffler had another business in town and did not depend on the theatre for his livelihood—T. 1185-1186.

20. Since 1930 Shreffler had received many offers for the purchase or acquisition of an interest in his Castamba theatre—T. 1112.

21. When Shreffler heard that Dipson was going to build a theatre in Shelby he knew that Dipson was a keen competitor of Schine—T. 1176-7.

22. Kemper was successful in obtaining the product of Universal, United Artists, Columbia and Monogram on first run and he was also able to get some first run RKO product for his theatre.—T. 1193, 1124, 1126-7, Ex. D-42.

[fol. 4849] **St. Michaels**

Pop. 1308

1. In July 1939 Schine became the lessee of the Marada, 524 seats—Int. Ans. 17(A), p. 18.

[fol. 4850] **Syracuse**

Pop. 205,967

1. In January 1927 Schine became lessee, to the extent of a half interest, of the Eckel theatre, 1408 seats, and made additions and improvements at a cost of $78,000—Int. Ans. 17(A), p. 9.

2. In 1935 Loew's was operating the State theatre and RKO subsidiaries were operating the Keith, Paramount and Strand theatres, all first run houses. Senator Walters, representing RKO, asked Schine about Syracuse, and this developed into a joint operation of RKO and Schine, at first 60% to RKO and 40% to Schine and later 70% to RKO and 30% to Schine, under which RKO did the buying and booking. This covered all the first run houses, except Loew's, among the approximately 25 theatres in Syracuse—T. 4110-13, 4197, 2858, 2688.

3. Charles B. Martina obtained a lease of the Empire theatre from March 1, 1940 and sought to buy first run pictures for the Empire and found that they were already licensed to the other first run theatres, of which he had made a survey before he went in. Martina was also aware of the fact that the second run product was already licensed in Syracuse—T. 2603-2626, 2687-2689, 2692-94.

4. The Empire had not had first run or second run—T. 2626, 2693-2694.

5. Martina operated three weeks and six days and played such first runs as were released from the licenses to the first run theatres—T. 2634, 2697.

6. In 1929 the owners of the Strand theatre made a ten-year lease to Warner Bros. Theatre Company, which was transferred later to RKO—T. 2725.

7. In the summer of 1939 Stanley G. Falk, for the owners, negotiated with Mr. Schine and Mr. Myers of RKO for an extension of the lease for two years, ending in August 1941—T. 2734.

[fol. 4851] 8. In the summer of 1941 the owners took up with RKO and Schine the matter of a further renewal. Schine offered a rental of $18,000 plus a percentage of the profits, and Falk was unwilling to lease on these terms—T. 2743.

9. In September 1941 the owners leased to a corporation, of which the owners held half the stock and Hubert P. Wallace the other half, which operated for four or five months—T. 2746, Ex. 812, T. 2793.

10. Wallace, beginning September 9, 1941, sought to get pictures for the Strand and found that he could obtain only those released from the prior runs, or subsequent runs of pictures licensed to other theatres for prior runs. He was advised that first run was sold, as was second run, and that there was a third run choice of an established trade—T. 2859-70, 2801-13, 2816-17.

11. The distributors whose salesmen he approached offered him such pictures as they had available. He refused offers of product made by Metro, Fox and Paramount—T. 4441-59, 2974-3064, 4263-4320, 4516-17, 2807, 2815-19.

12. The prices which the salesmen offered were reasonable prices for such a theatre as the Strand—T. 4348-67, 4441-59, 2974-3064, 4263-4320, 4516-47.

13. Before Wallace became interested in the lease of the Strand in September 1041, Fred Myers had already severed his connection with RKO in May 1941—T. 4472.

14. The pictures offered Wallace for this new venture at the Strand were all open for the runs and dates offered, and subsequently many of them were licensed to others—T. 4283, 4291, 4296; Exs. D-156, 157, 158, 159, 160, 161, 963-978; T. 4273, 4281, 4520-45.

15. The pictures which Wallace selected for the opening of the Strand were RKO's Jungle Cavalcade, released for first run June 27, 1941, and Flying Down to Rio; and he opened with these—T. 4522, Ex. 634, T. 3867, 4447, Ex. D-116.

16. The first call which RKO's salesman Smith made on Wallace in September 1941, was on September 15, at which [fol. 4852] time or the following day, Smith offered Wallace Jungle Cavalcade, Flying Down to Rio, Met in Argentina,

Reluctant Dragon, and Six Gun Gold. Smith informed him that Hurry Charley Hurry and They Meet Again were under contract to the RKO-Schine Syracuse first run theatres and that if passed up by them, these pictures would be available for the Strand; but neither Smith, nor RKO's Branch Manager Lux, assured Wallace of these pictures at any time; and they were shown at the Eckel Theatre in September and October 1941—T. 4719, 4520, 4526, 4535, 4545, Ex. 820, T. 3003, 2996, 2988, 2993, Ex. D-114, D-115, T. 3047, Ex. 980.

17. Wallace did not — in reliance on anything that Smith or Lux had said order the painter, on September 10, 1941 or at any other time, to put Hurry Charley Hurry and They Meet Again on the new front of the Strand, and he did not advertise them.—T. 4519, 4521, 4526, 4535, 3010, 3015, Ex. D-116.

18. Wallace contracted with RKO for several other pictures which he did not play at the Strand and RKO brought suit and recovered judgment for non-performance—Ex. D-117, 118, T. 3024-26.

19. In addition to motion pictures, Wallace played many stage shows, with bands, acts and other things at the Strand and he also offered Bingo games as an added attraction to his patrons—T. 3038-3045, 3055-3056, Id. Ex. D-159.

20. The new operation of the Strand beginning September 20 1941 was an experiment which the owners undertook, because they must pay the fixed charges on the property, even if it was idle, and if the theatre could pay operating expenses and any margin above, it was so much gain over idleness; and an intimation of the plan in operation might induce RKO-Schine to increase their offer of rent above $18,000; but it did not—T. 2743, 2735, 2741.

21. Schine did not have an interest in all of the first run theatres in Syracuse and had no interest in the second, third or subsequent run theatres except the Empire and Palace—Exs. 965-979.

[fol. 4853]

Tiffin

Pop. 16,102

1. Schine became interested to the extent of 50% in the lease of the Ritz, 1322 seats, and the Grand, 750 seats, in March 1936 and the Tiffin, 825 seats in February 1938 and

made improvements to the Ritz at a cost of $6900—Int. Ans. 17(A), p. 15; Ex. D-150.

[fol. 4854]

TUPPER LAKE

Pop. 5451

In January 1935 Schine became the lessee of the State theatre, 509 seats, and made improvements thereon at a cost of $8800—Int. Ans. 17(A), p. 15; Ex. D-150.

[fol. 4855]

UTICA

Pop. 100,518

1. In January 1927 Schine became the lessee of the Avon, the Gaiety, the De Luxe and the Majestic, and disposed of its entire interest in them from time to time before June 1933—Int. Ans. 17(A), p. 10.

[fol. 4856]

VAN WERT

Pop. 9227

1. In February 1935 Schine became lessee of the Van Wert, 1710 seats, newly completed and operated in August, 1935, and in September 1935 of the Strand, and improved the Van Wert at a cost of $3500—Int. Ans. 17(A), p. 15; Ex. D-150, T. 357, 358.

2. In October 1934 Carl B. Moore opened the Ohio theatre and operated it as a first and second run house until the Van Wert opened and then as a second run house—T. 432, 371, 357, 358.

3. In April 1936 Moore offered to sell to Schine and a deal was made and then cancelled at Moore's request, because he wanted to continue to operate the theatre—T. 410, 415.

4. The plaintiff does not offer to show that Moore could not get second run pictures except one season of Metro, and Moore continued to do nicely for second run—T. 429, 456.

5. Moore opened the Ohio at 10¢ and 25¢ in the evening and 10¢ and 15¢ matinee, and in 1935 changed to a straight evening policy of 10¢ and 15¢. This was before Schine opened the Van Wert—T. 441-444.

6. The Ohio theatre had 347 seats and had been closed

for, Moore did not know how many years when Moore opened it—T. 387.

7. It had been a store and converted to a little moving picture show, 40 feet wide and 120 feet deep—T. 388.

[fol. 4857]

WATERTOWN

Pop. 33,385

1. Schine became the lessee of the Avon, 1376 seats, and the Olympic, 1649 seats, in January 1927, and of the Palace, 594 seats, in September 1936, and improved the Avon at a cost of $38,500 and the Olympic at a cost of $37,500—Int. Ans. 17(A), p. 11; Ex. D-150.

2. Peter C. Vournakis began to operate the Strand, 400 seats in 1924 and the Liberty, 700 seats, in 1933—T. 3142-43.

3. On August 29, 1934 Vournakis came to Gloversville and received an offer from Schine to buy pictures for his theatres or to buy the theatre for $15,000. Vournakis declined. Schine offered to buy film for $25 a week, and if Schine acquired the Palace he would pay Vournakis a good rent for the Strand, and Vournakis said no—T. 3157-58.

4. On September 3, 1934 Vournakis wrote Schine a letter, to which he received no reply—T. 3157-58.

5. Vournakis testified that, in 1938, he had a conversation with Schine and said we were trying hard to make a living up here and Schine asked if I was interested to sell out, and I said I never thought of it, and Schine said that if I wanted to do anything to tell Bill Tubbert, who was there, and he would bring the proposition over, and about three or four weeks later I decide to go home to Greece and they offered me $35,000 for the Liberty, and I said that I would sell both houses for $85,000 and I haven't heard anything more except the offer for the Liberty—T. 3164-66.

6. A little later we got together, because there were too many houses in town, to close up two houses up there and just open them Saturday and Monday—T. 3169.

[fol. 4858] 7. On September 20, 1939 Vournakis had a conversation with Lynch. Vournakis said:—Schine called me on the telephone and told me that if I went down to Gloversville they had something for me, that would be a benefit up there so we can straighten out the Watertown situation, and I told him that I wasn't feeling good but I would go down and see him, and I went down and Lynch gave me the paper—T. 3171, Ex. 845, T. 3172.

8. About an hour later I talked with Schine and I told him it would be better if we closed up two houses there and he said may be have to do something like that, because they got too many houses—T. 3172.

9. Afterwards he dictated that letter and asked me if I wanted to sign it all right and if I don't want to sign it all right, and I signed it—T. 3173, Ex. 846.

10. The first paper read; Mr. Peter Vournakis of the Strand and Liberty theatres, Watertown, has requested and I have agreed to reduce the clearance of 60 days second run over third run to 30 days on the following companies, Paramount, Fox, Warner, RKO and United Artists—George Lynch—T. 3174, Ex. 845.

11. The later paper was an affidavit stating that Vournakis had been in the theatre business in Watertown for twenty years, "a great portion of that time I had been operating and still operate two theatres in opposition to the Schine theatres in that city, and during the entire period I have never experienced any unpleasantness and at no time have I had any difficulty in obtaining the pictures I wanted to buy. I have always found that their theatres were conducted in a businesslike manner, on a fair competitive basis", and this was sworn to on September 20, 1939—T. 3175, Ex. 846.

12. The offer of $15,000 was for the Strand alone as Vournakis had turned the Liberty back—T. 3176-77.

[fol. 4859] 13. When Schine offered $35,000 Vournakis told him that he wanted $85,000 for both places or nothing and to let him know right away and that was the Strand and the Liberty. They never let him know—T. 3179.

14. The statements in the affidavit are true as far as the thing is there. I always be able to buy pictures after him but not before him. That means I have to wait after they get through and then buy them. As far as the competitive business we always competed there—T. 3179-80.

15. Vournakis couldn't say whether the $15,000 offer was above the mortgage. The mortgage was $10,000—T. 3181.

16. At the time that Vournakis requested second run product of Universal, Metro and Columbia he was not using the product of those companies—T. 3152, 3154-5.

17. When Schine resumed operation of the Avon and Olympic in 1933 the Olympic was charging 25¢ and 35¢, the Avon was charging 35¢ and 40¢, and the Strand and Victoria were charging 25¢. Shortly thereafter the Olympic went to 25¢ all over the house, the Strand and Liberty went to 20¢, and the Avon remained at 35¢ and 40¢. In 1935 the Olympic went to 15¢ in the balcony, the Strand went to 15¢ and 20¢, and the Liberty to 15¢ with 2-for-1 admissions being given out at the Strand and Liberty. After the Palace was taken over by Schine the Olympic went to 25¢ and the Palace charge 15¢ and 20¢. These prices remained in effect until increased due to the tax, and all went up again in 1940—T. 3167-9.

[fol. 4860]

WHITEHALL

Pop. 4851

1. The extent of interest in the lease of the Capitol and buying of pictures for it and the expenditures for improvements are set out under Mechanicsville hereinbefore—Int. Ans. 17(A), p. 11.

[fol. 4861]

WOOSTER

Pop. 11,543

1. Schine became interested to the extent of 50% in the lease of the Wooster, 1123 seats, in July 1931, the Opera House, 1100 seats, in September 1933, and the Wallace dismantled and made into a store in November 1932, and in the ownership of the Wayne, 679 seats, by the purchase of the land in July 1937 at a cost of $12,000. The cost of erecting the new Wayne theatre, completed in 1938, was $66,000 and the cost of added improvements to the Wooster was $37,500—Int. Ans. 17(A), p. 15; Ex. D-150.

[fol. 4862] Sixth. The defendants request the Court to find the facts following:

1. It does not appear that any distributor or representative thereof promised Schine not to sell to competitors—T. 4167.

2. James R. Grainger, then General Sales Manager of Fox, made no such promise—T. 4167.

3. Schine did not inform Schmertz that Grainger had made such a promise—T. 4162.

4. Schine did not in the course of negotiations for the acquisition of any theatre at any time say to the prospective seller that if he did not sell to Schine he would have difficulty in getting product for his theatre—T. 4168.

5. Schine did not say to any such person that if he did not sell to Schine he would open up another theatre in the town—T. 4168.

6. Schine has not told any one else to make any such statements in negotiating for theatres for Schine—T. 4168.

7. Schine was not at the time of any such negotiations aware that any one had made any such statements—T. 4168.

8. Schine has not said to any one that he approved of their making or having made any such statements—T. 4169.

9. Schine has not asked any distributor to suggest to any person with whom Schine was negotiating for a theatre, or for any interest therein, that unless the theatre or an interest therein was sold to Schine, it would be difficult for the theatre to obtain product —T. 4169.

[fol. 4863] 10. Schine has not in any conversation with any employee of Columbia, Fox, Loew's Paramount, RKO, United Artists, Universal or Vitagraph said that any one of them should not deal with a competing exhibitor to Schine—T. 4169.

11. Schine has not written any such statement to any of them—T. 4170.

12. Schine has not said to any one of them that if they made such a sale Schine would not buy from them elsewhere in the Schine Circuit—T. 4170.

13. Schine has not for the acquisitions of theatres made any threats or misrepresentations—T. 4150.

14. It does not appear that in negotiating for product for the Schine Circuit there has been any departure from the normal and usual courses pursued in the industry for such negotiations to get the best prices and terms and runs and

clearances obtainable for the Circuit by earnest and fair negotiation. Plaintiff's Admissions T. 4615-4618, T. 4334-4356, 4478, 4375, 4476, 4376-4378, 4556, 4605, 4415, 4386, 4508, 4604, 4397-4398, 4401-4421, 4487, 4554, 2468, Exs. 741-744, T. 1166, 4557-4559, 4488-4489, 4614, 2864, 3665-3668, 2408, 2447, 2452, 2492, 2536, 4508, 4609, 3946, Ex. 190, D. 2-9, T. 200, 235, 3637, 3677.

15. Schine has not monopolized or restrained the flow of moving pictures from any other state into any town in any state, either in quality or in money value.

16. It does not appear that the financial growth of Schine has been out of line with the physical enlargement and betterment in the number and character of the Schine theatres.

17. This enlargement has been predominantly by Schine, and not by combination with others.

18. It has been by normal business practices, and not predatory.

[fol. 4864] Seventh. The defendants request the Court to find the facts as to the policy of the several distributors to be as follows:

1. For the past 15 to 20 years the normal method of licensing the exhibition of copyrighted motion picture photoplays in the United States of America, including the states of New York, Ohio, Kentucky, Maryland, Delaware and Virginia, has been on a so-called run basis, to wit: For a first run to a theatre in a local competitive area with such exclusive exhibition rights and clearance privileges, if any, as may be appropriate to the successful exploitation of said copyrights in said area; for such subsequent runs in said area, and with such exclusive rights and privileges, if any, as may be appropriate to the successful exploitation of said copyrights in said area—Plaintiff's Admissions 4615.

2. It has been the usual and customary practice for the distributor to agree with its licensees that it will not exhibit or grant a license to exhibit its photoplays for exhibition in conflict with the run licensed the exhibitor, or prior to the clearance period agreed upon with the exhibitor—Pltf's. Adm. 4616.

3. The motion picture industry has developed under the existence of clearance and runs. It is by such a system with

initially large receipts from prior run exhibitions and successive reduction of license charges that satisfactory revenue can be derived by the producers and distributors so that costly feature pictures can be made available to the whole public at varying admission prices—Pltf's. Adm. 4616.

4. In each competitive area under normal business conditions of free competition each distributor desires to license its films for successive runs in such area under such clearance terms as will yield the maximum total license revenue from the area. In determining which theatre shall have which runs its past business relations with the theatre, [fol. 4865] the skill and character of its management, its size, location, equipment and drawing power are all features which among others may influence such decision—Pltf's. Adm. 4617.

5. Motion pictures are works of art and are the subject of copyright. They have no uniform or market value and the revenue which an owner of a copyright can derive from any picture or group of pictures depends upon the ability of the distributor to market them in different situations to the best advantage—Pltf's. Adm. No. 23, 4618.

6. Of the Schine theatres approximately 80% are located in cities or villages with populations under 25,000 and 60% are located in cities or villages with populations under 10,000—Pltf's. Adm. No. 11, 4617.

7. In a competitive area, where there are opposing possible theatres, to which films may be licensed, the distributor generally licenses the picture and determines the rental in accordance with the box office grossing ability of the picture at the theatre to which the distributor decides to license the picture—T. 4334.

8. The cost of the original production of a picture to the point where the negative is ready, so that positives for showing can be made, at times runs into millions of dollars. Each positive taken from the negative costs approximately $185 or more in addition, and if it is in technicolor the cost of the positive runs much higher—T. 4335, 4337.

9. For the average picture Fox makes about 300 positive prints of an "A" picture and on an especially good picture as high as 360-370 such prints—T. 4337.

10. There are in operation in the United States, equipped for sound, in excess of 17,000 theatres—T. 4336.

11. A very good picture distributed by Fox would play approximately 14,000 of those theatres—T. 4341.

[fol. 4866] 12. A single print would be called upon to serve from 40 to 50 theatres—T. 4341.

13. An ordinary tour of a print from the time it leaves the exchange to go to one theatre, through transportation time, time of exhibition at the theatre, transportation time on return of the print, and inspection requires several days before the print can start out for its next theatre—T. 4341.

14. Fox serves that print over about a year of time to cover all the theatres in which that particular print is exhibited—T. 4342.

15. Fox has 31 exchange centers, each serving an area in which from 450 to 500 theatres on an average are located —T. 4343.

16. The prints are served in a sequence of time, starting generally to play first the larger theatres in the larger cities and towns, because those are the theatres that do the biggest business and the distributor regards them as a show window for the entire exchange territory, and in that show window the picture is well advertised, in the newspapers and sometimes in radio programs and in lobby displays and in front of the theatre—T. 4343.

17. The effort of the distributor and of the exhibitor is to have the selection of the theatres to show at a particular time, so made that they will be spaced in areas so that the pictures are shown in the different theatres in such a way that a particular picture showing in one theatre will not draw directly away from another theatre playing the same picture that day—T. 4344.

18. In determining the runs and the period and area of clearance the distributor figures that there is a certain amount of money that an individual of the public has to spend for motion picture entertainment during a given week, and that there is competition for that sum because what [fol. 4867] is spent to see it in the first run house will leave so much less to be spent in the second run house, so that the first run house and the second run house playing later

are in competition with each other or with any other theatre, and the distributor desires to have as much go into the first run house because the distributor can get more money out of that theatre than out of subsequent run theatres—T. 4344.

19. It is estimated that of the total revenue of a distributor 70% comes from the first run theatres and 30% from all other theatres playing second and subsequent runs, and that the 70% or 75% is made up of 35% or 40% from towns under 50,000 population and the other 40% or 35% from those over 50,000 population—T. 4345, 4608.

20. The plan of clearance came into the industry as a means of protecting the prior run theatre whose capital cost is very large, running in a medium sized town in the early days from $75,000 to $100,000 up to an investment of a million dollars or more in later days, which needed the protection for the investment by playing the first run of the picture a sufficient length of time before a second run in the same competitive area, so that the expectation that the picture might be seen in the same competitive area too soon would not detract from the attendance at the first run theatre and the consequent box office receipts there—T. 4479, 4346.

21. In determining the film rental, whether a percentage rental or a flat rental, the distributors aim at 35% of the gross box office receipts as the index in pricing—T. 4347-50, 4482, 4483, 4317, 4319.

22. It is the custom of the industry, if the box office receipts fall below the expectation on which the flat rental was based, to make subsequently a reduction in that rental to the point where the exhibitor can at least break even or show a small profit—T. 4347.

[fol. 4868] 23. In determining the rental in the first place the distributor endeavors to estimate how much money the theatre could gross on the particular picture—T. 4348.

24. In the normally successful downtown city theatre, with a seating capacity of 1600, conducting a matinee and two successive evening performances, it is estimated that in the course of the three performances there will be in the aggregate 1600 admissions, so that if the average admission price was 25 cents, the gross to be expected would be $400 a day, or for a 4-day showing $1600—T. 4350.

25. At 35% of this estimate the asking price would be something like $550 for a flat rental for the picture—T. 4350.

26. It is customary to allow a deduction for the cost of a second feature if the theatre is showing double features, and for the cost of outside attractions at the theatre while showing the picture before applying the 35%—T. 4352.

27. The effort of the distributor is to get the percentage of gross receipts at a second or subsequent run theatre in the same way as at a first run theatre—T. 4374.

28. Where there is only one theatre in a particular competitive area, the principal competition to supply pictures to that theatre is among the ten larger companies—Columbia, Fox, Metro, Monogram, Paramount, Republic, RKO, United Artists, Universal and Warners—and of these, Fox, Metro, Paramount, RKO and Warner are sometimes spoken of as the Big Five, producing the larger number of pictures which are box office attractions in the cities, but the Western and action pictures, in which Republic and Monogram have specialized, are most popular in the little towns of the South and West and more preferred on that account by exhibitors —T. 4478, 4375.

29. Where there is more than one theatre that is a possibility for the distributor to sell, the distributor in selecting the customer to be obtained, if possible, takes into consid- [fol. 4869] eration the ability of the customer to gross, the operation of the theatre, the people conducting the business, the more substantial business man of the two, the theatre itself, in view of the distributor's desire to play its pictures in the nicest theatre with comfortable seats, a theatre showing a good clear picture on the screen, one that is well ventilated and well managed all the way through, with a desire to play the picture in the theatre charging the higher admission price, and there are other elements to be considered—T. 4476, 4376, 4556, 4605.

30. In selecting a second run in a competitive area the distributor takes into consideration first a protection of the film rental that is expected to come out of the first run and then the distributor makes sure that the operation of the theatre and the playing of the picture there will not harm the possibility of that picture doing its full amount of business, the full amount of business it is capable of

doing at the first run house, and the distributor also takes into consideration the condition of the house itself, the projection, sound, ventilation and location of the theatre, with an inclination toward a busy corner or a location where more people are closer to the theatre, rather than one that is around the corner and off the beaten path—T. 4377.

31. At times a picture after playing a first run in a theatre will be moved over to another theatre operated in common interest with the first, and this is ordinarily done without any interval of time between the end of the showing in the one theatre and its opening up in the other, and this is called a move-over run, which is treated as a part of the first run, as an entire run, and not as a second run—T. 4378, 4415.

32. The foregoing policies are in general the policies of each of the distributors—T. 4386, 4507-8, 4476, 4556, 4604.

33. The United Artists is not a producing company, but distributes the pictures produced by several independent producers—T. 4387.

[fol. 4870] 34. Distributors consider that clearance is one of the most important things that they have to sell—T. 4397-98.

35. Prior to 1941 each distributor tried to sell at one time all the pictures that this distributor had for the coming season—T. 4400.

36. If a customer is a solid customer, who pays his bills and gives an honest count, and the distributor has been dealing with him over a long period of time, they don't get a guarantee from him on the percentage pictures—T. 4401.

37. The distributors considered the Schine Circuit terms to be very satisfactory terms and the deals made with that Circuit were comparable with the deals made with anybody else—T. 4403, 4404.

38. In selling a group of pictures to the Schine Circuit there might be some pictures sold at 35%, some sold for lesser terms, and some on flat rental, dependent on the quality of the picture in general and the distributor's ability to get the price—T. 4403.

39. The effort of the distributor is to get a price which

is fair both to the distributor and to the exhibitor, and to take into consideration the effect on subsequent sales to him —T. 4405.

40. In fixing a price to one theatre consideration is not given to the price charged to another theatre, but to the expectation of the gross box office receipts of the particular theatre—T. 4413-14.

41. Size of theatre alone does not determine, as amount of playing time and ability to fill the house must also be considered—T. 4421.

42. It is to the advantage of the distributor to have the first run theatre also play the second run—T. 4487, 4554.

[fol. 4871] 43. In issuing licenses for more than one season's product, which the plaintiff has described as a franchise, no distinction is made between large circuits and independent exhibitors operating only a few theatres, and more franchises have been issued to the latter than to the former—T. 2468, Exs. 741-744, T. 1166, 4557, 4488, 4614, Id. Ex. D-39, Exs. D-47, D-48, D-123-129, T. 1170; Id. Ex. D-39.

44. Such a franchise to independent small exhibitors and to circuits is advantageous at times both to the distributor and to the exhibitor as it gives the distributor an assured outlet in the town, saves the expense of going back and selling the town each year, and it gives the exhibitor an assured supply—T. 4489, 4559, 3946, Ex. 190.

45. It does not appear that these licenses for more than a year have been made for the purpose of restraining or monopolizing interstate trade—same references as 43 and 44.

46. They have been made to give the distributor an outlet for the period of the licenses and the exhibitor product for his theatres for the same period—same references as 43 and 44.

47. Independent exhibitors and affiliated exhibitors regarded clearance as of much importance and sought and believed that it improved the receipts of the theatre having it—T. 2864, 3665-68, 2408, 2447, 2452, 2492, 2536.

48. Distributors in the general course of their sales policy

send out salesmen to solicit theatres which the distributor desires to sell and to bring in applications for contracts, if they can be obtained, to the branch managers, who consider them. If they disapprove, they send the salesman back to see whether a better contract can be obtained, or if the branch manager thinks the contract an advisable one, he forwards it with his recommendations either to the home office of the distributor or to the district manager, who in turn if he favors the contract forwards it to the home office. No contract is made until the general manager at the [fol. 4872] home office has approved the contract, and no one except such manager has authority to approve a contract—T. 4492, 4513, 4555, 4563, 1508, 1428, 1435, 1392, 1401, 1407, 1522, 1528.

49. In the case of circuits the preliminary negotiations were usually carried on directly from the New York office by the New York sales representatives and not through the branch offices—T. 4397.

50. It is estimated that about 1% of Paramount's film rental revenue came from the Schine Circuit—T. 4609.

51. It does not appear that in negotiating with the Schine Circuit any distributor has pursued any abnormal policy—Plaintiff's Admissions T. 4615-4618, T. 4334-4356, 4478, 4375, 4476, 4376-4378, 4556, 4605, 4415, 4386, 4508, 4604, 4397-4398, 4401-4421, 4487, 4554, 2468, Exs. 741-744, T. 1166, 4557-4559, 4488-4489, 4614, 2864, 3665-3668, 2408, 2447, 2452, 2492, 2536, 4508, 4609, 3946, Exs. 190, D-143, D-144, D-170.

52. To the knowledge of the general sales managers of the respective distributors, Fox, Loew's Paramount, RKO, United Artists, Universal and Warners, there has not been any conversation with any of the defendants or their executives or employees not to deal with any competing exhibitors or to restrict the terms of such dealings—T. 4381, 4385, 4490, 4510, 4560, 4564, 4585, 4613.

The defendants request the Court to find each and all of the facts hereinbefore set forth.

By their Attorneys, Edward F. McClennen, Willard S. McKay, Howard M. Antevil.

[fol. 4873] IN THE DISTRICT COURT OF THE UNITED STATES

[Title Omitted]

CERTIFICATE OF CLERK

I, May C. Sickmon, Clerk of the United States District Court for the Western District of New York, do Hereby Certify that Plaintiff's proposed Findings of the Court and Judgment, referred to as part of Item 7 of Defendant's Supplemental praecipe dated June 26, 1946 are the same Findings and Judgment as those forwarded as Items 9 and 10 of the Defendant's praecipe dated April 16, 1946.

In Witness Whereof I have hereunto set my hand and the seal of this Court this 2nd day of July, 1946.

May C. Sickmon.

Subscribed and sworn to before me this 2nd day of July, 1946. Margaret E. Baysor, Notary Public—Niagara County. Certificate filed in Erie Co., N.Y.

[fol. 4874] IN THE UNITED STATES DISTRICT COURT—WESTERN DISTRICT OF NEW YORK

Civil No. 223

UNITED STATES OF AMERICA, Plaintiff,

v.

SCHINE CHAIN THEATRES, INC., et al., Defendants

Appearances:

Wendell Berge, Assistant Attorney General; Robert L. Wright, John P. Claggett, Harold L. Schilz, Albert Boggess, Special Assistants to The Attorney General; Philip Marcus, Milton Kalas, Special Attorneys; George L. Grobe, United States Attorney; for the United States.

Edmund McCarthy, Attorney of record; Willard S. McKay, Edward F. McClennen, Saul F. Rogers, Arthur J. Homans, Arthur H. Whitemore, Howard M. Antevil, of Counsel for Defendants.

OPINION—Oct. 8, 1945

KNIGHT, District Judge:

This suit is brought by the United States to restrain violations of Sections 1 and 2 of the Sherman Act (28 Stat. 209, 15 U. S. C. Secs. 1 and 2). Schine Chain Theatres, Inc., a [fol. 4875] New York holding and service corporation, five other corporations in which Schine Chain Theatres, Inc. owns all the stock to wit, Schine Theatrical Co., Inc., an operating company, Schine-Lexington Corporation, a holding company, Schine Enterprise Corporation, a service corporation, Schine Circuit, Inc., a service corporation, and Chesapeake Theatre Corporation, a holding corporation, and also three individuals, J. Meyer Schine, Louis Schine and John A. May, are the defendants. Hereinafter the corporate defendants will be referred to as "Schine", the "Schine Circuit" or as "the Circuit".

This organization has seen an exceedingly rapid growth. Its origin was the purchase by defendants J. Meyer Schine and Louis Schine of three theatres in Gloversville, New York, in 1920. In the twenty-one years following, these defendant corporations acquired, either as purchaser or as lessee, an interest in 175 theatres and in addition some 42 separate parcels of real estate for theatre purpose, or connected with such purpose. The development came about in this manner. Schine Chain Theatre, Inc., the parent corporation, was organized in 1920. The above-named subsidiary corporations came into being in the several years 1926, 1935, 1937 and 1938.

Steps following in line with the purpose of the "Schine Circuit" were the organization of realty holding corporations and what may be termed local corporations, or the taking over of others of such for the operations of theatres. Since 1931, there have been 118 theatre corporations in which an interest has been acquired by "Schine". As of the time of the commencement of this suit there were 62 of such operating corporations and in 48 of these "Schine" owned 100 percent of the stock, in 12, 50 percent. Schine [fol. 4876] operates 93 theatres in 73 towns (including cities). The towns run generally in population from 5000 to 35000 and include 39 in New York, 16 in Ohio, 8 in Kentucky, 7 in Maryland, 2 in Delaware and 1 in Virginia. In addition to its theatrical and realty operations, "Schine" has booked and bought for and supervised 37 theatres since

1931, and when this suit was brought there were 27 for which it so acted. Since 1928 the closed towns (those in which there was no opposition) show a total increase of 56. In 1941 there were only 3 towns in which Schine's competitors (hereinafter called independents) were playing major film product. In a single season, 1939-1940, Schine paid $1,647,000 to six film companies. The "Schine Circuit" buying power beyond peradventure was extremely large, and its opportunity to utilize this power in the purchase of films to the detriment of its competitors is apparent. These defendants together control the largest independent theatre circuit in the country. For theatre acquisitions and capital improvements there has been expended admittedly upwards of $10,948,100, not including dividend payments on operating expenses and cash on hand.

Some of the computations as hereinbefore shown are not the same as those claimed either by the government or by the defendants. These computations are made from defendants' extensive answers to interrogatories. The differences are not of material moment. There are eight so-called major film companies: Fox, Loew, Paramount, Radio-Keith-Orphum (RKO), Warner, Columbia, Universal and United Artists. Columbia and Universal produce and distribute films; United Artists only distributes; and the other companies both produce and distribute films and operate theatres. These eight companies supply "Schine" [fol. 4877] a large percent. of the feature films used by him and together receive upwards of 75 percent. of the total film rental paid by Schine. All of them originally were made parties to this suit, but all have since been dropped as such. However, each is claimed to have participated separately with Schine in the conspiracy charged and in aid of Schine's monopolization of the film exhibiting business. The principal sales office of each major distributor company is in New York City and that city serves theatres here involved. The methods of licensing and servicing of films *is* similar with each. Each has its district manager and branch manager. The feature films are mostly produced in California where the negatives are taken, the prints being generally manufactured in New York and New Jersey. Film license applications are solicited by salesmen from the branch office, and the delivery and return of films are made through the branch. Prints of films are sent from the various exchange offices in the various states to the exhibitors of the main office, though the recommendation for approval ordinarily is made by the branch manager who is close to the situation. It was the usual custom for the distributors to make license agreements for feature films for a period of a year commencing about September. These license agreements were made before the films were produced. Ordinarily each major producing company put out 40 to 60 feature films a year and these were released at the rate of about one a week. Now the practice generally is to sell group pictures only after production and in groups rather than for a year.

The individual defendants hold the principal offices in the defendant corporations and hold other offices in the various so-called local corporations. They are the princi- [fol. 4878] pal stockholders in the parent corporation and have general supervision of the operations of the circuit. The film buying for the circuit and the companies in which it had an interest was conducted through "Schine" or one of its subsidiaries. Lazar, a regional manager for "Schine" covering several states, and Silverman and Hensler, district managers, and one Insley, principally carried on negotiations for acquisitions, though the defendants Schine and May engaged directly in some, while one Lynch was "the Circuit's" chief film buyer. In circuit buying "Schine" generally negotiated deals with the division manager. The agreements so made are referred to as "master agreements and deal sheets", but these were usually followed by license agreements signed by the chief sales executive of the distributors.

To substantiate its claims that these defendants have violated the aforesaid provisions of the Sherman Act, the government contends that they have used their great buying power to suppress competition by bringing about various restrictions on the competitors' ability to compete, resulting in persuading the competitor either to sell to "Schine", operated on an inferior basis or join in pooling his interests with "Schine"; that this suppression has been brought about in various ways, to wit: by depriving independents of first and second run products, either entirely or to such a time as materially lessened income and force sales or abandonment, by implied threats voicing "Shine's" great buying power, by threats to construct theatre buildings to discourage other construction, by cutting admission prices, by inducing theatre sales through agreements to employ sellers, by fixing by agreement the duration of time and the distance within which an independent selling should [fol. 4879] not be permitted to compete and by unreasonable clearances obtained from the distributor. These generally are the claims. The defendants' denial make the issues.

Section 1 of the Sherman Act provides that "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade of commerce among the several states * * * is hereby declared to be illegal * * *", and

Section 2 of that Act provides that "Every person who shall monopolize, or attempt to monopolize, or combine, or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several states, * * * shall be guilty of a misdemeanor."

Said the court in Northern Securities Co. v. United States, 193 U. S. 197 (404): "All that is added to the first section by section 2 is that like penalties are imposed upon every single person who, without combination, monopolizes or attempts to monopolize commerce among the States; and that the liability is extended to attempting to monopolize any part of such trade or commerce." "* * * the two sections overlap in the sense that a monopoly under section 2 is a species of restraint of trade under section 1." United States v. Socony-Vacuum Oil Co., 310 U. S. 150 (226).

Any question as regards the applicability of the Sherman Act in certain respects here shown has been clearly answered by the decision of the Supreme Court in United States v. Crescent Amusement Co., 323 U. S. 173. Under definitely comparable facts that Court held: 1. That this court has jurisdiction. 2. That it is immaterial whether the distributors or any one of them were members of a conspiracy or joined in the effort to monopolize. 3. That [fol. 4880] while the business or the showing of motion pictures is local, a combination of exhibitors may violate the Sherman Act by using their collective buying power to restrict or restrain competitors. 4. That the relationship between the circuit members is such that they may be capable of conspiring or combining with each other in violation of the Act. 5. That the circuit, in essence, is not a single exhibitor. "All three phases of the motion picture business * * * constitutes a part of interstate commerce." William

Goldman Theatres, Inc. v. Loew's, opinion filed August, 1945, (3d. C.).

In the Crescent case twelve theatre operating companies, and certain individual stockholders, as well as distributor companies, were charged with the violation of the Sherman Act in combining with each other and with major distributors to effect monopolies. This language from the opinion supports the statement as to the aforesaid conclusions: "And as we have said, the course of business which involves the regular exchange of film in interstate commerce is adequate to bring the exhibitors within the reach of the Sherman Act" and "The District Court found that some of the exhibitors were co-conspirators on certain phases of the program. But we can put that circumstance to one side * * *. For it is immaterial whether the distributors technically were or were not members of the conspiracy." and "But action by a combination of exhibitors to obtain an agreement with a distributor whereby commerce with a competing exhibitor is suppressed or restrained is a conspiracy in restraint of trade and a conspiracy to monopolize a part of the trade or commerce among the States." Sustaining the action, the court necessarily held the Circuit is not in essence a single exhibitor; and that there can be [fol. 4881] concerted action between a corporation and its wholly owned subsidiaries, and the fact that defendants owned one-half or less percent. of the stock of corporations who are not parties herein does not preclude consideration of acts done by these corporate officers or by defendant's acts in connection with such corporation. Vide also: Chicago Board of Trade v. United States, 246 U. S. 231; Paramount Famous Lasky Corp. v. United States, 282 U. S. 30; Interstate Circuit v. United States, 306 U. S. 208; United States 1. General Motors Corp., 121 F. (2d) 376, cert. denied 314 U. S. 618, 708.

The defendants assert that buying the only theatre in a town and building additional theatres, or buying additional theatres, or advising of intention to open another theatre, or making known the product buying ability of the chain, or buying product on better terms than a competitor, or becoming large by normal growth, causing inability of inferiorly operated theatres to get good product, or agreeing with the seller of a theatre not to compete within defined limits for any period of time, cutting or raising admission prices, obtaining clearances, or using so many pictures that demand for product of minor distributors is increased, does not monopolize or restrain trade or commerce among any of the several states. "We may assume that if a single exhibitor launched such a plan of economic warfare he would not run afoul of the Sherman Act." Crescent case, supra. Obviously, doing any one of the aforementioned things, disassociated from any other act, would not be violative of the Sherman Act; but surely a circuit may so utilize one or more of such efforts as to illegally stifle competition or monopolize the theatre business in different locations. Motive is essential.

[fol. 4882] The defendants say that the Sherman Act prohibits only unreasonable restraint of trade and that it must affect trade or commerce between states. Apex Hosiery Co. v. Leader, 310 U. S. 469. There can be no question that this is a correct statement of law. The Act does not condemn monopolies as such, but prohibits monopolization or attempts to monopolize trade or commerce between the states. The verb monopolize comprehends conduct or actions. Standard Oil Co. v. United States, 221 U. S. 1. Through monopolization a monopoly may be secured. We are concerned here with what are claimed to be unreasonable restraints of trade. The word unreasonable as so used is broad enough to include a conspiracy in restraint of trade and monopolization of a business in restraint of trade. Unreasonable, as used in the statute, refers to a degree of restraint. Defendants further assert that the Act does not condemn restraints of trade which do not have a direct and immediate effect upon interstate commerce. The contrary of this assertion, as applicable here, is decided by the Crescent case, supra. Defendants also say that an agreement for purchase of product coupled with clearances over succeeding runs is valid, citing Standard Oil Co. v. United States, supra. Of course, the mere agreement for the purchase of first runs and reasonable clearances is within the law; but the charge of a conspiracy contemplates a "combination of two or more persons by some concerted action to accomplish * * * an unlawful purpose" and monopolization contemplates acts to monopolize or control trade or commerce between the states to the exclusion and disadvantage of others.

The record herein includes 4728 pages of testimony and 1380 exhibits. We are here concerned with 32 different [fol. 4883] situations, each involving the testimony of various witnesses and numerous exhibits. It is not only practically impossible to set out in this opinion every phase of the testimony which has been presented, but it is unnecessary.

Many objections were raised by the defendants to the reception of evidence of inter-department communications and statements of and communications from representatives of the distributors. These objections were based, both on the ground that such were incompetent in the absence then of proof of a conspiracy, and also that there was no proof of the authority of such representatives to make the declarations or give the communications.

It is not necessary that proof of the conspiracy be made before overt acts are proved. The order of the proof lies within the discretion of the court. "There is no hard and fast rule that the evidence of concert should be first put in. * * * The order of production of evidence is one largely in the discretion of the court." Doyle v. United States, 169 F. 625. Among other cases supporting this view are: Eastern States Retail Lumber Ass'n v. United States, 234 U. S. 600; Cohen v. United States, 157 F. 651, cert. denied 207 U. S. 596; Paramount Pictures Inc. v. United Motion Picture T. O. 93 F. (2d) 714, Glaser v. United States, 315 U. S. 60, cited by defendants, does not support their view.

Statements and acts of agents or representatives within the scope of their authority indubitably are admissible to show a conspiracy. Hitchman Coal & Coke Co. v. Mitchell, 245 U. S. 229; Erie RR. Co. v. Winter, 143 U. S. 60; Johnson v. J. H. Yost Lumber Co., 117 F. (2d) 53. Further, in conspiracy cases a great deal of latitude is permitted the court in the reception of evidence. "The rule [fol. 4884] will be sustained if the testimony which is admitted tends even remotely to establish the ultimate fact." Clune v. United States, 159 U. S. 590. See also: Williamson v. United States, 207 U. S. 425; Wiberg 1. United States, 163 U. S. 32; Isenhouer v. United States, 256 F. 842; White v. United States, 80 F. (2d) 515.

There is a conflict in the testimony in many of the situations. The court recognizes the burden is cast upon the plaintiff to establish its cause and/or causes of action by a fair preponderance of the proof. It is quite patent from the nature of the charges here that they have to be established by numerous acts and transactions having relation some way to the charge. These acts must be considered together to show intent, and intent to "combine", "conspire" and/or "monopolize" must be the reasonable and natural conclusions from the acts or transactions, as believed by the court. Ordinarily proof of such acts comes from circumstantial evidence and the inferences which are ordinarily drawn from these. As was said in William Goldman Theatres, Inc. v. Loew's, supra: "The picture of conspiracy as a meeting of a trio of sinister persons in pointed hats close together belongs to the dark ages"., and further: "The requirement is to fit the inferential facts into the framework of the primary parts * * *." "It is elementary, however, that conspiracies are seldom capable of proof by direct testimony and may be inferred from the things actually done, * * *." Eastern States Retail Lumber Ass'n v. United States, supra.

It is the opinion of this court that the defendants have violated Section 1 and Section 2, supra, of the Sherman Act, in that they have maintained an unlawful combination among themselves by means of which they have unreason- [fol. 4885] ably restrained trade or commerce among the several states and have monopolized the business of operating theatres and the supplying of major films in various towns and cities, and that each of the major distributors hereinbefore named, by the methods which it has employed in its dealings with Schine and the independents, has aided and abetted these defendants in unreasonably restraining trade or commerce between the states and the "monopolization" of theatre operations.

The great film buying power of the defendant corporations gave opportunity to exert pressure on the distributors to obtain preferences. The extent of this film buying is demonstrated by the exceedingly large number of theatres controlled by "Schine" and the large amount of money which must have been paid for film rentals. The aggregate of the amount paid all distributors in total or for one season is not shown, but what the "Circuit" paid six of the major distributors, for features for a single season, does appear. This buying power included both closed and open towns. By combining the open and closed towns in Schine's deals with the distributors, Schine was enabled to dictate terms to the distributors. This ability to dictate terms was further increased by the authority of Schine to buy product for theatres not owned or operated by it. Schine acquired by purchase or lease 55 theatres from 1922 to 1931, and 80 from 1936 to 1941, inclusive, 15 in 1938 and 15 in 1939.

The means and methods employed by the different defendant corporations through their officers and authorized representatives to obtain a "monopolistic" control were numerous. Principally among these were arbitrarily depriving independents of first and second run pictures, se-[fol. 4886] curing unreasonable clearances, making threats to build or open closed theatres to prevent construction or operation by independents, lowering admission prices, obtaining rental concessions, restricting independents who sold to Schine as to periods and places of operation, making long time franchise agreements covering the "Circuit."

Standing out as clearly indicative of intent to "monopolize" are communications and statements made by May, Lunch, Lazar, Hensler and Insley, undisputedly authorized representatives of the defendant corporations. There are others from defendant J. Meyer Schine as well.

Some specific instances showing the predatory means used by "Schine" follow.

The Schine defendants arbitrarily deprived independents of the first run product which they had previously enjoyed in several towns. Independents were deprived of 1936-37 Columbia product at Norwalk; 1935-36 Fox product at Van Wert and Bucyrus; Loew's product for 1930-31 at Bellefontaine and for 1935-36 at Van Wert; Paramount's 1935-36 product at Van Wert and Bucyrus; RKO product for 1933-34 at Auburn and 1935-36 at Norwalk; of United Artists 1936-37 at Norwalk; and of Warner for 1933-34 at Norwich, 1936-37 at Norwalk, and 1941-42 at Harlan.

Independents were arbitrarily deprived of second run product which they had previously exhibited, losing 1938-39 Columbia at Rochester, Loew's 1935-36 at Van Wert and 1934-35 Warner at Watertown. After "Schine" secured the product from the independents for the aforementioned seasons, he retained it and the independent was unable to secure it in subsequent seasons. Relative to six towns including Corning, Lynch wrote on October 21, 1933, Metro: "If there are any other opposition towns where you be-[fol. 4887] lieve you can sell a second run, I would appreciate it if you would take the matter up with me first before selling." In 1932 Lynch wrote Flynn a letter saying, among other things: "I want you to refrain from selling him (independent) any pictures whatsoever." and Metro through Flynn agreed not to do so. Lynch also wired Fox to withhold selling to this independent and wrote Fox' agent saying "have also asked him (Schmertz—Fox agent) to refrain from selling this man second run."

"Schine" was able to secure unreasonable clearances year after year in many towns. A few only need be mentioned. At Corning, New York, RKO permitted 90 to 180 days, and Fox permitted 160 days. At Seneca Falls, New York, Columbia and United Artists permitted 120 days. At Little Falls, New York, RKO, Columbia and Universal permitted 120 days and United Artists permitted 115 days. At Carthage, RKO permitted 120 days and United Artists 90. United Artists permitted 90 days at Watertown, New York, and 90 days at Amsterdam, New York; Bucyrus, Kent, Norwalk, Tiffin and Fostoria, Ohio; and Lexington and Van Wert, Kentucky.

The license contracts with "Schine" in many instances specified minimum admission prices for the various runs as well as clearance period. To an extent this affects adversely the time given the competitor. Interstate Circuit v. United States, supra, clearly points the reasons for condemning such provisions in a film license contract or agreement. Schine got clearance of Herkimer over Ilion where none existed before.

"Schine" made threats to build in various towns, such as Paris, where there was a sign up, Canandaigua by a sign and newspaper article published, and where he eventually did build. In Perry, a statement by May and a newspaper [fol. 4888] article announcing that land had been bought for theatre purposes came at a time when "Schine" was trying to purchase the independent's lease. "Schine" did not build, but later got the lease. In Salamanca, just after independents acquired a site for a contemplated theatre, through the press "Schine" announced its intention to build. In Medina, "Schine" announced the making of an agreement to erect a new theatre immediately after independents started construction. In Mount Vernon, May contacted the independent to buy, saying "Schine" would build unless the deal could be put through.

Defendants' authorized agents made statements to independents which are reasonably construed as threats.

At Bellefontaine, during negotiations for the renewal of a lease with an independent, Lazar threatened to re-open the Opera House, if the independent opened the Strand.

With reference to Paris, Lazar told the independent, who was taking steps to build, that if the independent went ahead with his projects "Schine" would build a 1200 seat theatre in Lexington where the independent had a theatre and that the house would be run with 10¢ policy at all times. At Paris, Schine and an independent began construction at practically the same time. Lazar asked the independent to stop construction and see him about a deal. Subsequently Schine took over the independent's Lexington and Paris theatres under an agreement prohibiting for fifteen years the independent from engaging in the theatre business in any town in Kentucky where Schine had a theatre.

Just before Schine acquired the "Forum" theatre in Norwalk, Lazar advised an independent to "get in with us * * * we are a big company. You know what it means if you are not in with us," and further stated: "If you lease [fol. 4889] your theatre Mr. William Selman (part owner of the "Forum") will walk out of town."

At Van Wert, the operator of the "Ohio" theatre could not get first run product it had had. During negotiations for the sale of the "Ohio" to Schine, Lazar said that Moore would have trouble getting product; Schine would have the first runs; and that Schine was interested in buying in order to raise prices.

At Lockport, during negotiations with "Schine" for the "Palace" theatre, May said it would be necessary to re-open the Hi-Art owned by "Schine" to use up "the large volume of product they had bought." This statement evidently was made to induce Reliance to sell the "Palace." In this instance it is to be noted that the independents experienced great difficulty in getting product. Hi-Art had then been closed for seven years. Metro, Fox, Universal and Loew's refused major product to the independent. Indicative of the attitude of the distributors is the letter from the Eastern Salesmanager of Loew's who wrote:

> "In our negotiations with the Schine interests it will very likely be that we will have to give them consideration for our product at Lockport, as well as other situations, and as we are hardly in a position to forego or jeopardize the business from their other situations, and for the further reason that they have for a number of

years been a very representative account, we feel that our interests would be best served by giving them such consideration."

At Perry, May told the independent that "Schine" had bought a lot to build a 1000 seat theatre there. This was a town of less than 5000 population. The independent theatre building was owned by the town and leased to the independ- [fol. 4890] ent. When May said this, a local newspaper article to the same effect was given out.. Schine did not build but Herzberger sold shortly thereafter, and through the purchaser of this interest Schine acquired the lease.

Insley and May tried to buy an independent theatre at Seaford and Georgetown. Insley said it was foolish that the independent did not make a deal with "Schine" because he had recently purchased the theatre at Laurel and "Very likely, with the buying power they had they would get away the product" from the independent. Insley said Schine had bought a lot with the intention to build a theatre in Seaford, and also said: "Well, if I were you I would sell the theatres to Schine because they are going to build a theatre there, and, naturally, they are going to get the product." Insley, under a written contract with "Schine", had authority "in negotiations for the acquisition of motion picture theatres within the above-described territory" (Delaware, Maryland, Virginia). Seaford and Georgetown are in Delaware.

At Rochester, J. Meyer Schine told independents, who were then building the "Webster", that the location was not appropriate, that it was too near the "State" (Schine's) and not justified, and Schine said he would build a theatre near the Murray theatre (owned by independents). The "State" and the "Webster" theatres were ¾ mile apart. Schine later took over the "Webster". Schine testified he said that it would not be sensible to build the "Webster," but denied that he said he would build near the "Murray."

At Seneca Falls, after an independent had taken steps toward building a theatre, a sign was placed on the Seneca theatre, (shortly theretofore purchased by Schine) which read: "Closed for alterations. Will re-open soon as a Schine theatre." Independent then discontinued efforts to [fol. 4891] build. "Schine" did not re-open. Practically the same things recurred two years later. The same independent took steps to build. The sign re-appeared on the "Seneca." The independent did not go through with his plan. The "Seneca" did not open. It had not been open in several years.

After "Schine" opened a theatre within a town, it was arbitrarily able to keep the independents from opening a theatre in the town with suitable run products, as in Auburn, Lockport, Mt. Vernon, Paris and Bellefontaine.

"Schine" was able to monopolize first run product at Corbin, Medina and Lockport even though the physical facilities of the independents in those towns were better than Schine's. He was able to monopolize the first neighborhood run in Rochester even though the physical facilities of the independents were better.

The evidence discloses that "Schine" cut admission prices at Corbin, Geneva, Lexington, Malone, Ogdensburg and other towns; gave out cut rate tickets in Addison, good in his Corning theatre for students, and frequently engaged in two for ones and bank nights in other towns.

In cases of purchase or the assumption of leases other than those hereinbefore referred to, the agreements therefor provided for no competition by the independents for long periods of time. The non-competitive feature was also extended to cover outside towns, i. e.: Amsterdam, Ilion, Malone, Paris and Lexington.

By reason of franchise agreements entered into prior to May 19, 1942, (voided thereafter, see Decree herein of that date) permitting special film rentals not given independents, "Schine" was able to reap benefits unavailable to independents and these were utilized against independent [fol. 4892] operators as a means of restraint. These have a definite bearing on the competitive effect of buying power. Rather than make contracts for a single year, as appears to have been Schine's practice prior to 1936, he then began making such a period of two or three years. These contracts included both the entire circuit and also those theatres for which Schine did the booking. The great buying power of "Schine" enable him to obtain concessions not obtainable by independents. In 1936 Schine made a three year agreement with Fox, and as a result he obtained the Fox feature product in all the towns which "Schine" then operated, and this agreement was later made to include subsequently acquired theatres. In 1938 a subsequent three year agreement was made. These agreements provided for payment of certain percentage of gross receipts after deduction of operating costs, and also fixed minimum admission charges. With Loew in 1936, a four year agreement was made unler substantially the same terms as made with Fox. In 1937 a comparable three year agreement was made with Warner; in 1938 a similar one with RKO; a similar two year one with Columbia in the same year and a three year agreement was made with Universal in 1939. In the instance of United Artists, a distributing corporation, separate contracts were made for each feature for all Schine theatres. Another feature of these agreements was in the inclusion of unfair and inequitable clearance provisions.

Proofs connecting the distributors with certain of the aforesaid acts of defendants come from the provisions of the franchise agreements and acts of the distributors, interdepartment communications of the distributors and statements made by their authorized representatives, of which numerous ones have been set forth herein. It is hardly be- [fol. 4893] lievable that the executive officers of the distributors did not know some of the methods employed by "Schine" in its efforts to restrict competition. Distributors' salesmen, branch managers and district managers are necessarily in constant touch with "Schine's" operations. By the very terms of the franchise agreements they insured strength against competition. These long term deals were made by each of the distributors, except United Artists whose term deals were necessarily somewhat different, and they were in effect profit sharing agreements and created a virtual partnership with "Schine." To the same end were the unreasonable clearances given "Schine" by each of the distributors. Attention has heretofore been directed to some of these. The plaintiff has submitted in connection with its briefs papers purporting to be arbitration awards fixing clearances in certain instances and which arbitrations are purported to have been made pursuant to the Consent Decree entered in the District Court of the United States for the Southern District of New York on November 20, 1940. These arbitration awards are not in evidence. They have no binding effect as res adjudicata or otherwise, and this court has not considered them as evidence. However, it is hardly necessary to look to any other decision to support the view that clearances of 180 or 120 or 90 or 60 days are not reasonable in the instances herein in which they have been allowed. It is true some of these were clearances over third runs but many were over second run. In numerous instances these unreasonable clearances were allowed over towns in which Schine did not operate, and some towns distant from 10 to upwards of 20 miles, and towns in which there were no theatres. Gloversville got clearance of 45 days over Johnstown, and "Schine" was given clearance [fol. 4894] both over Newfane and Mohawk where there were no theatres. Many clearances were over outside towns of comparably small population, distant so far that no clearance is justified, such as Randolph, Little Valley and Ellicottville, New York. Many recently were given over towns over which there had been no previous clearance. Metro gave clearance in Ashland over Loudonville and Lodi, Ohio; United Artists gave clearance in Auburn over Skaneateles, New York, and Fox in Hornell over Earlville, New York.

The record is replete with inter-department communications between major film representatives which recognize the unreasonableness of the clearances given to Schine at his demand. This is shown by the communications and representations made by Lehman of United Artists, Pielow of M.G.M., Dana and Sauber of Universal, Smith of Warner, and Sussman and Grassgreen of Fox, which are admissible in evidence because these men all held positions in their respective companies so that it was within the scope of their duties to make the representations in the communications that they did as a natural incident of the office, i.e.: branch or district manager.

Pielow, MGM resident manager, wrote: "I feel that in some of the situations (unnamed) (discussing Schine contracts), the clearance that he (Lynch) is demanding is unfair * * *." Dana, branch manager of Universal wrote the district manager that he had asked Louis Schine relative to clearances over the Smalley circuit (Norwich) and that he refused to grant the privilege of serving the pictures with shorter clearance. Universal branch manager Sauber wrote Lynch that they wanted to serve Waterloo in less time than the 30 days clearance after Seneca Falls [fol. 4895] because other majors were, but Lynch refused though Universal had the right under its contract to so do. At Rochester Scully, of Universal, said it would be satisfactory if the Madison and Monroe came within the Schine 21 day clearance.

Smith, branch manager of Warner, wrote to the Home office that Canton would do more business if it were not for Schine at Ogdensburg having 30 days clearance and if it was reduced: "It will make a better condition for us all

* * *." Smith also wrote relative to Seneca Falls stating that he hoped Lynch would break down their 60 days clearance: "As I told you this morning over the phone, the clearance set up is all wet * * *."

Sussman, of Fox, wrote to Grassgreen that the 60 day clearance in Glens Falls and elsewhere seemed excessive. Sussman went on to comment that he noted that 60 day clearance was given over second run at Malone when Fox had no second run in Malone, and furthermore, as previously stated, 60 days over second run seemed excessive. Grassgreen replied that while the 60 days at Glens Falls might seem excessive, Lynch insisted upon it. Grassgreen said that Schine insisted upon the 60 day clearance because they wanted to be consistent with their demands for 60 days over subsequent independent runs.

In certain instances the distributors refused to negotiate with the independents for runs not bought by Schine. Such are seen in the refusal of RKO, Fox, Paramount, MGM and Universal to furnish second run at Auburn; of MGM at Amsterdam until the "Schine" deal did not materialize; by United Artists at Geneva; and by RKO, Universal and Fox at Paris.

In many instances the distributors refused to negotiate with the independents for runs. After "The Circuit" came into the town, in many instances it was impossible for the [fol. 4896] independent to get a good run of major product, or even to have his requests to purchase considered. RKO would not sell to the independent after "The Circuit" came in for 1933-34 in Auburn, 1935-36 in Mt. Vernon; MGM would not sell 1930-31 in Bellefontaine, 1933-34 in Lockport and Norwich, 1935-36 in Van Wert, 1936-37 in Lexington, 1938-39 in Medina; Paramount would not sell 1933-34 in Lockport, 1934-1935 in Auburn, 1935-36 in Mt. Vernon; Fox would not sell 1933-34 in Norwich, 1935-36 in Amsterdam and Mt. Vernon; Universal would not sell 1933-34 in Lockport, and Norwich; United Artists would not sell 1935-36 in Mt. Vernon and Van Wert; and Warner would not sell 1933-34 in Norwich, 1936-36, 1935-36 in Amsterdam, 1938-39 in Medina and 1941 in Norwich. In these instances, when the independent attempted to make application for product, he was simply advised that the product had been sold to "Schine" in a circuit deal.

Special privileges were granted, as in the option of paying a percent. of the gross receipts from product or flat rental, and as in deducting cost of competitive devices (bank nights, etc.) from gross before computing the distributor's share.

Special license provisions were given by tying up second runs, as in Lockport and Corning.

In certain instances Schine's film contracts called for lower minimum admission charge than those for the independent for subsequent run. This happened in Lexington and Corning.

United Artists with respect to the Capitol theatre in Ilion wrote: "We do not want to encounter any difficulty with the Schine Circuits * * *, we want to be definitely assured that the clearance as submitted in the contracts is satisfactory to the Schine Company."

[fol. 4897] Sichelman, assistant sales manager for Fox, wrote Schine that Fox was free to sell ten pictures of first run and also 100% second run in Bellefontaine and that the branch manager was being directed to sell these. In reply, Lynch said, in part: "The only product which he (independent) has been able to buy has been from independent companies. There has not been a major company that has sold him any product. * * * We are charging a top of 40¢ admission * * * and we don't want to have the distributing companies make it impossible for us to continue getting this price. * * * I have also written Mr. Schmertz advising him that we will take the remaining pictures which we did not buy first run, and, have also asked him to refrain from selling this second run house." Lynch also wrote to the Fox branch manager asking him to hold off selling the independent.

Further, Lynch wrote United Artists that "Schine" "should be allowed the privilege of playing pictures ahead of a situation (Sodus) charging a lesser admission price." To this the reply, in part, was: "Therefore, in the future, we will grant you fourteen days, or whatever clearance you see fit to take on towns like Elmira etc. in that locality." The Fox home office wrote its branch with reference to Glens Falls, second run: "I note that you have changed the clearances hereby providing for sixty days over third run Glens Falls. Sixty days clearances here and elsewhere seem to be excessive.", and to this the branch manager replied that Schine always provided for this clearance over third run and "George Lynch insisted in carrying it through for the future."

There is much other evidence going to show the influence of "Schine" with the distributors to gain preference over [fol. 4898] independent competitors and also the cooperation of the distributors with "Schine" to the same end.

Sales managers for each of the major distributors who had authority to approve film leases, called by the defendants, gave testimony, in substance, that to their knowledge there has not been any conversations with and defendants or their executives or employees not to deal with any competing exhibitors to restrict the terms of such dealings. These sales managers can be only a small number of those employed as such during the period in question, and they speak only of their own knowledge. Some six branch and exchange managers have testified as to transactions in contradiction of the plaintiff's proof as to five of the situations in question. In Interstate Circuit v. United States, supra, the court said that the failure to call those officers who had authority to act for the distributors and were in a position to know whether they acted in pursuance of an agreement "is itself persuasive that their testimony, if given, would have been unfavorable to appellants." While that case was stronger with respect to the proof in this connection, the defense herein is weakened both by the failure to call others of the officers authorized to act and by the nature of the testimony given by these. "The production of weak evidence when strong is available can lead only to the conclusion that the strong would have been adverse. * * * Silence then becomes evidence of the most convincing character." Interstate Circuit v. United States, supra.

Proof herein that these defendants conspired is shown by something more than inferences, and this together with the reasonable inferences to be drawn from the direct proof, suffices to show intent to conspire.

[fol. 4899] It is recognized that the matter of clearances is of major importance in the consideration of the issues herein. One position taken by the defendants is that adequate relief in so far as clearances are concerned may be had under the Consent Decree hereinbefore mentioned in United States v. Paramount Pictures, Inc., et al. Such Consent Decree was for a trial period of three years from the date of its entry, and it further provided that during such period the petitioner, the United States, would not seek any relief prayed in certain sections of the petition and of the amended and supplemental complaint and in certain other directions. After the expiration of said three year period, the government filed an application for modification of the decree. The defendants therein not admitting the existence of violations to which the application for modification was primarily directed, the suit as originally brought has been continued and has not yet been determined. This seeks the divorcement of theatres from the film producing companies. It is to be noted that Columbia, Universal and United Artists were not parties to the Consent Decree, and as heretofore noted the other major distributors originally parties defendant in this suit have been dropped as such. The arbitration features have continued to remain in effect since the expiration period by agreement of the parties, and so far as the record discloses there has been no arbitration under this Decree of any clearances involved herein existing at any time. We are called upon in this suit to decide whether there were any violations by these defendants of the law as laid in the complaint. Paramount et al. are not parties here. The violations herein are alleged to have occurred prior to the date of the Consent Decree. There is now no method by which either party can [fol. 4900] compel arbitration. The action taken in the adoption of the Consent Decree and the present availability of arbitration by agreement, however, do have a bearing on the extent of the judgment or decree to be made herein. Some of the major companies are exhibitors as well as distributors. The government by the Consent Decree entered in an agreement setting up procedure purported to provide a fair and equitable sale, distribution and showing of pictures to all distributors. Just what was accomplished by the Decree, other than some arbitration of clearances, does not appear. The government in entering into the Consent Decree evidently contemplated that such decree would obviate the necessity of a trial of the issues and intended to let by-gones be by-gones. As compared with some of the major distributors, these defendants when combined are relatively small. The Consent Decree, therefore, brings up the question of whether the harsh determination of dissolution as urged by the government should be compelled or whether some adjustment or re-organization can be agreed on or fixed by the court which will as definitely as possible prevent future violations.

The motion picture business in production, distribution and exhibition has come to be a leading industry in this country. The producer-distributors and chains of exhibitors occupy positions from which "monopolization" is easily brought about. Each have lawful advantages which are sufficiently remunerative. The public, as well as the individual independent exhibitor, has an interest in fair competition, and it is entitled to have exhibitions at reasonable prices, well selected products and reasonable clearances between available theatres. A theatre owner naturally seeks to furnish those pictures which attract the greatest revenue. The record does not disclose any different attitude [fol. 4901] on the part of "Schine". The record does not disclose that it has not furnished sufficiently attractive entertainment. Fair competition should benefit the public, but "monopolization" when exercised by a strong wide reaching organization or group of affiliated organizations crushes or weakens opposition, eliminates fair competition to the disadvantage of the public and the individual competitor.

The defendants have maintained an unlawful combination among themselves and with their affiliated corporations and have monopolized the licensing of the exhibition of motion picture films in various cities and towns in violation of the aforesaid sections of the Sherman Act and, through the unlawful combination between themselves and their affiliates by their predatory practices, have monopolized the business of operating motion picture theatres in various towns and have attempted to monopolize in various other towns; and the defendants have contracted, conspired and combined with each other and their affiliated corporations and with each of the aforesaid major film corporations for the purpose, and with the effect of suppressing competition and monopolizing exhibition of films distributed by each of said film corporations in various towns and cities, in violation of the aforesaid statute.

The plaintiff is entitled to a judgment enjoining the defendants:

(1) from monopolizing the supply of major first run films in any situation where there is a competing theatre suitable for first run exhibition thereof, and from monopolizing the supply of second run films in any situation where there is a suitable theatre for second run exhibitions thereof;

(2) from demanding or receiving clearance over theatres operated by others which unreasonably restrict their

[fol. 4902] ability to compete with a theatre owned or operated by a defendant, or corporation controlled by it;

(3) from conditioning the licensing of films in any competitive situation, outside of Buffalo, New York, upon the licensing of films in any other situation;

(4) from selling or acquiring any theatre interests pending the further order of this Court;

(5) from enforcing any existing agreements heretofore entered into by the defendants not to compete, or to restrict the use of any real estate to non-theatrical purposes; from the use of any threats or deception as a means whereby a competitor is induced to sell;

(6) from continuing the heretofore described "conspiracy" or "monopolization" in restraint of trade and commerce between the states and the entering into any combination or conspiracy for the purpose or with the effect of restraining trade and commerce between the states;

(7) and directing the entering of a decree adjudging that the defendants and their affiliated corporations be dissolved, re-aligned or reorganized in their ownership and control, so that fair competition between them and other theatres be restored and hereafter maintained; and that the determination of the question of the dissolution, re-alignment of reorganization of the parties aforesaid and the method to be employed in the accomplishment of the same be left to be fixed by this court after further consideration with the parties.

As to the objections of the defendants that certain testimony is hearsay, it is to be said this was received in evidence on the explicit statement of the attorneys for the government that the authority to make the statements and write the communications would be shown. The Court [fol. 4903] reserved the right to strike out in default of making of such connections. This connection has not been made in certain instances, and the court is attaching and submitting herewith a statement of its action with respect thereto. However, it is believed that the exclusion or inclusion of this testimony does not affect the decision on the issues.

In the instant case voluminous records of the distributors were received in evidence on stipulation of the parties. These, among others, included many agreements made by the distributors with the defendants and others. Various interdepartment communications to which objections were made were properly received as a part of the record of the distributors, and further many of them were made by officials acting in their ordinary and usual capacity as representatives of the distributors. Acceptance of this type of evidence is supported by many authorities. Murray v. United States, 10 F, (2d) 409, cert. denied 271 U S. 673; Lewis v. United States, 38 F. (2d) 406; Johnson v. J. H. Yost Lumber Co., 117 F. (2d) 53; Patterson v. United States, 222 F. 599, cert. denied 238 U. S. 635; United States v. Corn Products Refining Co., 234 F. 964; Hartford Empire Co. v. United States 323 U. S. 386.

The parties herein have heretofore submitted lengthy proposed Findings of Fact and Conclusions of Law. It seems that it would simplify matters if, in the light of this opinion, new Findings were submitted. This seems specially advisable because of the numberous situations involved in the suit. However, this matter will be left to the desires of counsel.

October 8, 1945.

—— ——, United States District Judge.

[fol. 4904] Acting upon the objections made by defendants, the following are stricken from the record:

Testimony by Long (R. 127) that Granger, Fox general sales manager, told him that Fox could not afford to give up $50,000 worth of business in order to get $5,000:

Testimony by Dasher (R 352-353) that MGM branch manager Drew told him, "Schine has 60 theatres, you have got one. What do you expect us to do."

Testimony by Cohen (R 3201) that Seed, Warner exchange manager, told him that Schine would pay $25.00 more if Warner did not sell the independent.

Testimony by De Toto (R 808-809) as to what Lehman said Schine was going to do in relation to opening additional theatres.

Testimony by Moore (R 383-384) as to what "Schine" asked that Metro hold (product) for them.

Testimony by Ayres (R 2963-2970) relative to the showing of Metro picture "Gone With The Wind".

Testimony by Warner (R 2350-2355) relative to his being called before the Film Board of Trade by a representative of RKO for a violation of the National Recovery Act in selling "two for one" tickets.

While we have generally held in favor of inter-office communications or memoranda, certain of them are hearsay and are stricken out:

In exhibit 370; "Lynch claims that he does not want a second run policy to prevail at the second run opposition and has promises from other major companies that they will not sell second run" is stricken.

[fol. 4905] Exhibit 456 refers in part to the fact that the independent told the local branch manager that he might be forced to charge 10¢ balcony and 15¢ main floor at night in order to meet his competition, and that is stricken.

The part of exhibit 519 which refers to the opinion of the branch manager that conditions were "chaotic" is not evidence against "Schine."

Exhibits 163, 229, 542, 546 and 554 are not stricken but are strictly construed. We believe them to be within the authority of the distributor's agent to make such statements, being incident to their scope of authority.

Objection was frequently made to the testimony by the independent that when he requested product of the exhibitor, he was told that it had been sold to "Schine". It is not felt that this is hearsay or beyond the scope of authority of the branch or district manager or of the salesman. He knew that it was sold, and to whom. The statement that it was sold is admissible, and it is also admissible to state to whom it had been sold.

John Knight, U. S. D. J.

[fol. 4906] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

CERTIFICATE OF CLERK

I, May C. Sickmon, Clerk of the United States District Court for the Western District of New York, do hereby certify that no Notice of Settlement of the Findings of the Court and Judgment submitted by the Plaintiff to the District Court on or about the 24th day of October, 1945 was filed by the Plaintiff in the District Court.

In Witness Whereof I have hereunto set my hand and the seal of this Court this 2nd day of July, 1946.

May C. Sickmon.

Subscribed and sworn to before me this 2nd. day of July, 1946. Margaret E. Baysor, Notary Public—Niagara County. Certificate filed in Erie Co., N. Y.

[fol. 4907] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

STIPULATION AS TO CERTAIN FACTS

It Is Hereby Stipulated between the parties hereto, by their respective counsel, that the following facts may be made a part of the record on appeal:

(1) Plaintiff's proposed findings, described as Item 7 in the supplemental praecipe filed by the defendants herein on June 26, 1946, were forwarded to Judge Knight with a covering letter dated October 24, 1945, a copy of which is attached hereto and marked Exhibit "A".

(2) A copy of the foregoing letter and said findings was sent to counsel for the defendants with a letter dated October 25, 1945, but was not received by Mr. McKay until October 29, 1945.

(3) On October 30, 1945, Mr. McKay wrote a letter to the Court with respect to said proposed findings, a copy of which is attached hereto as Exhibit "B", and a copy of which was sent to and received by plaintiff.

(4) A copy of plaintiff's proposed amended findings and proposed amended judgment was sent to counsel for the defendants by the plaintiff on March 19, 1946 and received by them within a few days thereafter.

(Sgd.) Willard S. McKay, Counsel for Plaintiff.
Robert L. Wright, Counsel for Defendants.

Dated, Sept. 6, 1946.

[fol. 4908] **Exhibit "A"**

60-6-30-33-10

October 24, 1945.

Honorable John Knight, United States District Judge,
Western District of New York, Buffalo, New York.

Re: United States v. Schine Theatres, Inc.

Dear Judge Knight:

Enclosed are findings and a judgment in the above case which we have prepared in accordance with the Court's opinion of October 8, 1945 and Rule 52a of the Federal Rules of Civil Procedure. In these documents, we have only undertaken to reflect literally the views of the Court as expressed in its opinion and are enclosing a mimeographed copy of the opinion to which page references are made following each paragraph of the findings in question. Although we shall probably wish to be heard upon proposals to amend the findings and judgment provided for in the opinion in minor respects, Rule 52b provides that any party may be heard as to the ultimate form that the findings and judgment shall take by appropriate motions filed within ten days after the entry of the judgment. We therefore suggest that the prompt entry of a judgment in some form is essential to a reasonably expeditious final determination of the suit.

You will note that we have expressly provided in the judgment for further hearings by the Court after the parties have submitted concrete plans for accomplishing the dissolution directed by the Court and filed such objections and counter proposals to the plans submitted as they desire to bring to its attention. In this connection, we have suggested no time limitations as the opinion indicated none but believe that sixty days for the submission of plans and thirty days thereafter for filing of objections are appropriate limits.

We have sent copies of the enclosed findings, judgment and opinion and this letter to the defendants' counsel with suggestion that they advise you directly of their views as to the procedure.

As previously indicated, insofar as they desire to raise any questions as to the ultimate form of the findings and judgment, we assume that this will be done by formal motions under Rule 52b after the entry of this judgment. We shall, of course, appreciate receiving a copy of the findings and judgment in the form in which they are respectively filed and entered by the Court together with the date of entry as promptly as possible after the entry.

Sincerely Yours, Wendell Berge, Assistant Attorney General.

[fol. 4909] **Exhibit "B"**

October 30, 1945.

606-30-33-10.

Honorable John Knight, United States District Judge,
United States Court House, Buffalo, New York.

Re: United States States v. Schine Chain Theatres, Inc.

My Dear Judge Knight:

Yesterday I received a letter dated October 25, 1945 from Wendell Berge, Esq., Assistant Attorney General, enclosing a copy of a letter from him to your Honor, dated October 24, 1945, together with copies of the enclosures referred to therein. These enclosures include copies of new proposed findings, and a copy of a proposed judgment.

The plaintiffs apparently take the position that proper procedure is for the Court to enter judgment without having found the facts specially, as provided by Rule 52, and then to put the burden upon the defendants of convincing the Court that some or all of the provisions of the judgment should be modified. The defendants strenuously disagree with this position. It is clear that under Rule 52 and the decisions construing the same, judgment cannot be entered until the Court has specially found the facts, and stated separately its conclusions of law upon the basis of which judgment is to be entered.

Counsel are now actively engaged in examining your Honor's opinion and preparing new proposed findings, as suggested in the final paragraph thereof, and we would probably have had our suggestions ready for submission to your Honor at this time, had it not been for the fact that the undersigned has only recently been discharged from the hospital after an operation which caused his confinement for slightly over three weeks, and which has seriously limited his activities since then.

At first glance, it appears that the plaintiff has done nothing more than to take your Honor's opinion which consists of a discussion both of the law and of the facts and to split it up with occasional eliminations and interpolations under the guise of proposed findings of fact, without attempting to separate the facts from the law.

The findings which we submitted originally were quite complete, and of course extensive, and it will require another ten days for us to revamp them in the light of your Honor's opinion.

We are sending a copy of this letter to plaintiff's counsel.

We trust that this will be satisfactory to your Honor.

Respectfully yours, —— ——.

[fol. 4910] IN UNITED STATES DISTRICT COURT

[Title omitted]

Findings of the Court—October 31, 1945

FINDINGS OF FACT

1. The defendants in this suit are: Schine Chain Theatres, Inc., a New York holding and service corporation, five other corporations in which Schine Chain Theatres, Inc. owns all of the stock, to wit, Schine Theatrical Co., Inc., an operating company, Schine-Lexington Corporation, a holding company, Schine Enterprise Corporation, a service corporation, Schine Circuit, Inc., a service corporation, and Chesapeake Theatre Corporation, a holding corporation; and also three individuals J. Meyer Schine, Louis Schine and John A. May. Hereinafter the corporate defendants will sometimes be referred to as "Schine," the "Schine Circuit" or as "the Circuit." (p. 1 and 2.)

2. From 1920 to 1941 these defendants acquired, either as purchaser or as lessee, an interest in 175 theatres and in addition some 42 separate parcels of real estate for theatre purpose, or connected with such purpose. (p. 2.)

3. Since 1931, there have been 118 theatre corporations in which an interest has been acquired by "Schine." As of the time of the commencement of this suit there were 62 of such operating corporations and in 48 of these "Schine"

[fol. 4911] owned 100 per cent of the stock, in 12, 50 per cent. Schine operates 93 theatres in 73 towns (including cities). The towns run generally in population from 5000 to 3500, and include 39 in New York, 16 in Ohio, 8 in Kentucky, 7 in Maryland, 2 in Delaware and 1 in Virginia. In addition to its theatrical and realty operations, "Schine" has booked and bought for and supervised 37 theatres since 1931, and when this suit was brought there were 27 for which it so acted. Since 1928 the closed towns (those in which there was no opposition) show a total increase of 56. In 1941 there were only 3 towns in which Schine's competitors (hereinafter called independents) were playing major film product. (p. 2 and 3.)

4. In a single season, 1939-1940, Schine paid $1,647,000 to six film companies. These defendants together control the largest independent theatre circuit in the country. For theatre acquisitions and capital improvements there has been expended admittedly upwards of $10,948,100, not including divident payments on operating expenses and cash on hand. (p. 3.)

5. There are eight so-called major film companies: Fox, Loew, Paramount, RKO, Warner, Columbia, Universal and United Artists, which supply Schine a large per cent of the feature films used by Schine and together receive upwards of 75 per cent of the total film rental paid by Schine. The principal sales office of each is in New York City and the method of licensing and servicing of films is similar with each except that United Artists Licenses its films subject to the approval of the respective producers of whose film it distributes. The feature films are mostly produced in California where the negatives are taken, the prints being generally manufactured in New York and New Jersey. Film license applications are solicited by salesmen from the branch office, and the delivery and return of films are made through the branch. Prints of films are sent from the [fol. 4912] various exchange offices in the various states to the exhibitors of the main office and all contracts are subject to approval by the main office at New York although the recommendations for approval ordinarily are made by the branch manager who is close to the situation. Prior to the 1941-1942 season it was the usual custom for all of the distributors to make license agreements for feature films for a period of a year commencing about September of each

year, which license agreements were ordinarily made before the film was produced. Since that season the films of Fox, Loew, Paramount, RKO and Warner have been licensed in blocks generally not exceeding five in number rather than in season blocks. (p. 3-4.)

6. The individual defendants hold the principal offices in the defendant corporations and hold other offices in the various so-called local corporations. They are the principal stockholders in the parent corporation and have general supervision of the operations of the circuit. The film buying for the circuit and the companies in which it had an interest was conducted through "Schine" or one of its subsidiaries. Lazar, a regional manager for "Schine" covering several states, and Silverman and Hensler, district managers, and one Insley, principally carried on negotiations for acquisitions, though the defendants Schine and May engaged directly in some, while one Lynch was "the Circuit's" chief film buyer. In circuit buying "Schine" generally negotiated deals with the division manager. The agreements so made are referred to as "master agreements and deal sheets," but these were usually followed by license agre-ments signed by the chief sales executive of the distributors. (p. 4-5.)

7. The great film buying power of the defendant corporations gave opportunity to exert pressure on the distrib- [fol. 4913] utors to obtain preferences. The extent of this film buying is demonstrated by the exceeding large number of theatres controlled by "Schine" and the large amount of money which must have been paid for film rentals. This buying power included both closed and open towns. By combining the open and closed towns in Schine's deals with the distributors, Schine was enabled to dictate terms to the distributors. This ability to dictate terms was further increased by the authority of Schine to buy product for theatres not owned or operated by it. Schine acquired by purchase or lease 55 theatres from 1922 to 1932, and 80 from 1936 to 1941, inclusive, 15 in 1938 and 15 in 1939. (p. 12-13.)

8. The means and methods employed by the different defendant corporations through their officers and authorized representative to obtain a "monopolistic" control were numerous. Principally among these were arbitrarily

depriving independents of first and second run pictures, securing unreasonable clearances, making threats to build or open closed theatres to prevent construction or operation by independents, lowering admission prices, obtaining rental concessions, restricting independents who sold to Schine as to periods and places of operation, making long time franchise agreements covering the "Circuit." (p. 13.)

9. Some specific instances showing the predatory means used by "Schine" follow:

(a) The Schine defendants arbitrarily deprived independents of the first run products which they had previously enjoyed in several towns. Independents were deprived of 1936-37 Columbia product at Norwalk; 1935-36 Fox product at Van Wert and Bucyrus; Loew's product for 1930-31 at Bellefontaine and for 1935-36 at Van Wert; Paramount's 1935-36 product at Van Wert and Bucyrus; [fol. 4914] RKO product for 1933-34 at Auburn and 1935-36 at Norwalk; of United Artists 1936-37 at Norwalk; and of Warner for 1933-34 at Norwich, 1936-37 at Norwalk, and 1941-42 at Harlan. Independents were arbitrarily deprived of second run products which they had previously exhibited, losing 1938-39 Columbia at Rochester, Loew's 1935-36 at Van Wert and 1934-35 Warner at Watertown. After "Schine" secured the product from the independents for the aforementioned seasons, he retained it and the independent was unable to secure it in subsequent seasons. Relative to six towns including Corning, Lynch wrote on October 21, 1933, Metro: "If there are any other opposition towns where you believe you can sell a second run, I would appreciate it if you would take the matter up with me first before selling." In 1932 Lynch wrote Flynn a letter saying, among other things: "I want you to refrain from selling him (independent) any pictures whatsoever." And Metro through Flynn agreed not to do so. Lynch also wired Fox to withhold selling to this independent and wrote Fox' agent saying "have also asked him (Schmertz-Fox agent) to refrain from selling this man second run." (p. 13-14.)

(b) "Schine" was able to secure unreasonable clearances year after year in many towns. A few only need be mentioned. At Corning, New York, RKO permitted 90 to 180 days, and Fox permitted 160 days. At Seneca Falls, New York, Columbia and United Artists permitted 120 days. At Little Falls, New York, RKO, Columbia and Universal permitted 120 days and United Artists permitted 115 days. At Carthage, RKO permitted 120 days and United Artists 90. United Artists permitted 90 days at Watertown, New York, and 90 days at Amsterdam, New York; Bucyrus, Kent, Norwalk, Tiffin and Fostoria, Ohio; and Lexington and Van Wert, Kentucky. (p. 14-15.) Schine got clearance for Herkimer over Ilion where none existed before.

[fol. 4915] (c) The license contracts with "Schine" in many instances specified minimum admission prices for the various runs as well as clearance periods. This affects adversely the time given the competitor. (p. 15.)

10. "Schine" made threats to build in various towns, such as Paris, where there was a sign up, Canandaigua by a sign and newspaper article published, and where he eventually did build. In Perry, a statement by May and a newspaper article announcing that land had been bought for theatre purposes came at a time when "Schine" was trying to purchase the independent's lease. "Schine" did not build, but later got the lease. In Salamanca, just after independents acquired a site for a contemplated theatre, through the press "Schine" announced its intention to build. In Medina, "Schine" announced the making of an agreement to erect a new theatre immediately after independents started construction. In Mount Vernon, May contacted the independent to buy, saying "Schine" would build unless the deal could be put through. (p. 15.)

11. Defendants' authorized agents made statements to independents which are reasonably construed as threats.

(a) At Bellefontaine, during negotiations for the renewal of a lease with an independent, Lazar threatened to re-open the Opera House, if the independent opened the Strand. (p. 15.)

(b) With reference to Paris, Lazar told the independent, who was taking steps to build, that if the independent went ahead with his projects "Schine" would build a 1200 seat theatre in Lexington where the independent had a theatre and that the house would be run with 10¢ policy at all times. At Paris, Schine and an independent began construction at practically the same time. Lazar asked the independent to stop construction and see him about a deal. [fol. 4916] Subsequently Schine took over the independent's Lexington and Paris theatres under an agreement prohibiting for fifteen years the independent from engaging in the theatre business in any town in Kentucky where Schine had a theatre. (p. 16.)

(c) Just before Schine acquired the "Forum" theatre in Norwalk, Lazar advised an independent to "get in with us * * * we are a big company. You know what it means if you are not in with us," and further stated: "If you lease your theatre Mr. William Selman (part owner of the "Forum") will walk out of town." (p. 16.)

(d) At Van Wert, the operator of the "Ohio" theatre could not get first run product it had had. During negotiations for the sale of the "Ohio" to Schine, Lazar said that Moore would have trouble getting product; Schine would have the first runs; and that Schine was interested in buying in order to raise prices. (p. 16.)

(e) At Lockport, during negotiations with "Schine" for the "Palace theatre, May said it would be necessary to re-open the Hi-Art owned by "Schine" to use up "the large volume of product they had bought." This statement evidently was made to induce Reliance to sell the "Palace." In this instance it is to be noted that the independents experienced great difficulty in getting product. Hi-Art had then been closed for seven years. Metro, Fox, Universal and Loew's refused major product to the independent. Indicative of the attitude of the distributors is the letter from the Eastern Salesmanager of Loew's who wrote:

> "In our negotiations with the Schine interests it will very likely be that we will have to give them consideration for our product at Lockport, as well as other situations, and as we are hardly in a position to forego or jeopardize the business from their other situations, [fol. 4917] and for the further reason that they have for a number of years been a very representative account, we feel that our interests would be best served by giving them such consideration."

(f) At Perry, May told the independent that "Schine" had bought a lot to built a 1000 seat theatre there. This was a town of less than 5000 population. The independent theatre building was owned by the town and leased to the independent. When May said this, a local newspaper article to the same effect was given out. Schine did not build but Herzberger sold shortly thereafter, and through the purchaser of this interest Schine acquired the lease. (p. 17.)

(g) Insley and May tried to buy an independent's theatre at Seaford and Georgetown. Insley said it was foolish that the independent did not make a deal with "Schine" because he had recently purchased the theatre at Laurel and "very likely, with the buying power they had they would get away the product" from the independent. Insley said Schine had bought a lot with the intention to build a theatre in Seaford, and also said: "Well, if I were you I would sell the theatres to Schine because they are going to build a theatre there and, naturally, they are going to get the product." Insley, under a written contract with "Schine" had authority "in negotiations for the acquisition of motion picture theatres within the above-described territory (Delaware, Maryland, Virginia). Seaford and Georgetown are in Delaware. (p. 17-18.)

(h) At Rochester, J. Meyer Schine told independents, who were then building the "Webster," that the location was not appropriate, that it was too near the "State" (Schine's) and not justified, and Schine said he would build a theatre near the Murray theatre (owned by independ- [fol. 4918] ents). The "State" and the "Webster" theatres were ¾ mile apart. Schine later took over the "Webster." Schine testified he said that it would not be sensible to build the "Webster," but denied that he said he would build near the "Murray." (p. 18.)

(i) At Seneca Falls, after an independent had taken steps toward building a theatre, a sign was placed on the Seneca theatre, (shortly theretofore purchased by Schine) which read: "Closed for alterations. Will re-open soon as a Schine theatre." Independent then discontinued efforts to build. "Schine" did not re-open. Practically the same things recurred two years later. The same independent took steps to build. The sign re-appeared on the "Seneca." The independent did not go through with his plan. The "Seneca" did not open. It had not been open in several years. (p. 18.)

12. After "Schine" opened a theatre within a town, it was arbitrarily able to keep the independents from opening a theatre in the town with suitable run product, as in Au-

burn, Lockport, Mt. Vernon, Paris, and Bellefontaine. (p. 18.)

13. "Schine" was able to monopolize first run product at Corbin, Medina and Lockport even though the physical facilities of the independents in those towns were better than Schine's. He was able to monopolize the first neighborhood run in Rochester even though the physical facilities of the independents were better. (p. 19.)

14. "Schine" cut admission prices at Corbin, Geneva, Lexington, Malone, Ogdensburg and other towns; gave out cut rate tickets in Addison, good in his Corning theatre for students, and frequently engaged in two for ones and bank nights in other towns. (p. 19.)

[fol. 4919] 15. In cases of purchase or the assumption of leases other than those hereinbefore referred to, the agreements therefor provided for no competition by the independents for long periods of time. The non-competitive feature was also extended to cover outside towns, *i. e.:* Amsterdam, Ilion, Malone, Paris, and Lexington. (p.19.)

16. By reason of franchise agreements entered into prior to May, 19, 1942, (voided thereafter, see Decree herein of that date) permitting special film rentals not given independents, "Schine" was able to reap benefits unavailable to independents and these were utilized against independent operators as a means of restraint. These have a definite bearing on the competitive effect of buying power. Rather than make contracts for a single year, as appears to have been Schine's practice prior to 1936, he then began making such for a period of two or three years. These contracts included both the entire circuit and also those theatres for which Schine did the booking. The great buying power of "Schine" enabled him to obtain concessions not obtainable by independents. In 1936 Schine made a three year agreement with Fox, and as a result he obtained the Fox feature product in all the towns which "Schine" then operated, and this agreement was later made to include subsequently acquired theatres. In 1938 a subsequent three year agreement was made. These agreements provided for payment of certain percentages of gross receipts after deduction of operating costs, and also fixed minimum admission charges. With Loew in 1936, a four year agreement was made under substantially the same terms as made with

Fox. In 1937 a comparable three year agreement was made with Warner; in 1938 a similar one with RKO; a similar two year one with Columbia in the same year and a three year agreement was made with Universal in 1939. In the [fol. 4920] instance of United Artists, a distributing corporation, separate contracts were made for each feature for all Schine theatres. Another feature of these agreements was the inclusion of unfair and inequitable clearance provisions. (p. 19-20.)

17. In numerous instances unreasonable clearances were allowed to Schine over towns in which Schine did not operate, and some towns distant from 10 to upwards of 20 miles, and towns in which there were no theatres. Gloversville got clearance of 45 days over Johnstown, and "Schine" was given clearance both over Newfane and Mohawk where there were no theatres. Many clearances were over outside towns of comparably small population, distant so far that no clearance is justified, such as Randolph, Little Valley and Ellicottville, New York. Many recently were given over towns over which there had been no previous clearance. Metro gave clearance in Ashland over Loudonville and Lodi, Ohio; United Artists gave clearance in Auburn over Skaneateles, New York, and Fox in Hornell over Earlville, New York. The record is replete with inter-department communications between major film representatives which recognize the unreasonableness of the clearances given to Schine at his demand. This is shown by the communications and representations made by Lehman of United Artists, Pielow of M. G. M., Dana and Sauber of Universal, Smith of Warner, and Sussman and Grassgreen of Fox, which are admissable in evidence because these men all held positions in their respective companies so that it was within the scope of their duties to make the representations in the communications that they did as a natural incident of the office, *i. e.:* branch or district manager. Pielow, MGM resident manager, wrote: "I feel that in some of the situations (unnamed) (discussing Schine contracts), the clearance [fol. 4921] that he (Lynch) is demanding is unfair * * *." Dana, branch manager of Universal wrote the district manager that he had asked Louis Schine relative to clearances over the Smalley circuit (Norwich) and that he refused to grant the privilege of serving the pictures with shorter clearance. Universal branch manager Sauber wrote Lynch

that they wanted to serve Waterloo in less time than the 30 days clearance after Seneca Falls because other majors were, but Lynch refused though Universal had the right under its contract to do so. At Rochester, Scully, of Universal, said it would be satisfactory if the Madison and Monroe came within the Schine 21 day clearance. Smith, branch manager of Warner, wrote to the Home office that Canton would do more business if it were not for Schine at Ogdenburg having 30 days clearance and if it was reduced: "It will make a better condition for us all * * *." Smith also wrote relative to Seneca Falls stating that he hoped Lynch would break down their 60 days clearance: "As I told you this morning over the phone, the clearance set up is all wet * * *." Sussman, of Fox, wrote to Grassgreen that the 60 day clearance in Glens Falls and elsewhere seemed excessive. Sussman went on to comment that he noted that 60 day clearance was given over second run at Malone when Fox had no second run in Malone, and furthermore, as previously stated, 60 days over second run seemed excessive. Grassgreen replied that while the 60 days at Glens Falls might seem excessive, Lynch insisted upon it. Grassgreen said that Schine insisted upon the 60 day clearance because they wanted to be consistent with their demands for 60 days over subsequent independent runs. (p. 21-23.)

18. In certain instances the distributors refused to negotiate with the independents for runs not bought by Schine. Such are seen in the refusal of RKO, Fox, Paramount, [fol. 4922] MGM and Universal to furnished second run at Auburn; of MGM at Amsterdam until the "Schine" deal did not materialize; by United Artists at Geneva; and by RKO, Universal and Fox at Paris. (p. 23.)

19. In many instances the distributors refused to negotiate with the independents for runs. After "The Circuit" came into the town, in many instances it was impossible for the independent to get a good run of major product, or even to have his requests to purchase considered. RKO would not sell to the independent after "The Circuit" came in for 1933-34 in Auburn, 1935-36 in Mt. Vernon; MGM would not sell 1930-31 in Bellefontaine, 1933-34 in Lockport and Norwich, 1935-36 in Van Wert, 1936-37 in Lexington, 1938-39 in Medina; Paramount would not sell 1933-34 in Lockport, 1934-35 in Auburn, 1935-36 in Mt. Vernon; Fox would

not sell 1933-34 in Norwich, 1935-36 in Amsterdam and Mt. Vernon; Universal would not sell 1933-34 in Lockport, and Norwich; United Artists would not sell 1935-36 in Mt. Vernon and Van Wert; and Warner would not sell 1933-34 in Norwich, 1935-36 in Amsterdam, 1938-39 in Medina and 1941 in Norwich. In these instances, when the independent attempted to make application for product, he was simply advised that the product had been sold to "Schine" in a circuit deal. (p. 23-24.)

20. Special privileges were granted, as in the option of paying a per cent of the gross receipts from product or flat rental, and as in deducting cost of competitive devices (bank nights, etc.) from gross before computing the distributor's share. (p. 24.)

21. Special license provisions were given by tying up second runs, as in Lockport and Corning. (p. 24.)

22. In certain instances Schine's film contracts called for lower minimum admission charge than those for the inde- [fol. 4923] pendent for subsequent run. This happened in Lexington and Corning. (p. 24.)

23. United Artists with respect to the Capitol theatre in Ilion wrote: "We do not want to encounter any difficulty with the Schine Circuit * * *, we want to be definitely assured that the clearance as submitted in the contracts is satisfactory to the Schine Company." (p. 23-24.)

24. Sichelman, assistant sales manager for Fox, wrote Schine that Fox was free to sell ten pictures of first run and also 100% second run in Bellefontaine and that the branch manager was being directed to sell these. In reply, Lynch said, in part: "The only product which he (independent) has been able to buy has been from independent companies. There has not been a major company that has sold him any product. * * * We are charging a top of 40¢ admission * * * and we don't want to have the distributing companies make it impossible for us to continue getting this price. * * * I have also written Mr. Schmertz advising him that we will take the remaining pictures which we did not buy first run, and, have also asked him to refrain from selling this second run house." Lynch also wrote to the Fox branch manager asking him to hold off selling the independent. (p. 25.)

25. Lynch wrote United Artists that "Schine" should be allowed the privilege of playing pictures ahead of a situation (Sodus) charging a lesser admission price." To this the reply, in part, was: "Therefore, in the future, we will grant you fourteen days, or whatever clearance you see fit to take on towns like Elmira etc. in that locality. (p. 25.)

26. The Fox home office wrote its branch with reference to Glens Falls, second run: "I note that you have changed the clearances hereby providing for sixty days over third run Glens Falls. Sixty day clearances here and elsewhere [fol. 4924] seem to be excessive", and to this the branch manager replied that Schine always provided for this clearance over third run and "George Lynch insisted in carrying it through for the future." (p. 25-26.)

27. There is much other evidence going to show the influence of "Schine" with the distributors to gain preference over independent competitors and also the cooperation of the distributors with "Schine" to the same end. (p. 26)

28. As compared with some of the major distributors [1] these defendants when combined are relatively small. Some of the major companies are exhibitors as well as distributors. The producer-distributors and chains of exhibitors occupy positions from which monopolization is easily brought about. (p. 28.)

29. The record does not disclose that Schine did not seek to furnish its patrons with those pictures which attracted the greatest revenue or that it has not furnished sufficiently attractive entertainment. (p. 29.)

CONCLUSIONS OF LAW

1. The court has jurisdiction of this cause under the provisions of the Act of July 2, 1890, entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies," hereinafter referred to as the Sherman Act.

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[1] The term "major distributors" as used herein refers to the distributors known in the trade as Fox, Loew, Paramount, RKO, Warner, Columbia, Universal and United Artists.

2. The defendants have violated Section 1 and Section 2 of the Sherman Act in that they have maintained an unlawful combination among themselves by means of which they have unreasonably restrained trade and commerce among [fol. 4925] the several states and have monopolized the business of operating theatres and the supplying of major films in various towns and cities, and that each of the major distributors by the methods it has employed in its dealings with the defendants and their independent theatre opposition has aided and abetted these defendants in such restraint of trade and monopolization of theatre operations. (p. 12.)

3. The defendants have maintained an unlawful combination among themselves and with their affiliated corporations and have monopolized the licensing of the exhibition of motion picture films in various cities and towns in violation of the aforesaid sections of the Sherman Act and, through the unlawful combination between themselves and their affiliates by their predatory practices, have monopolized the business of operating motion picture theatres in various towns and have attempted to monopolize in various other towns; and the defendants have contracted, conspired and combined with each other and their affiliated corporations and with each of the aforesaid major film corporations for the purpose, and with the effect of suppressing competition and monopolizing exhibition of films distributed by each of said film corporations in various towns and cities, in violation of the aforesaid statute. (p. 29-30.)

4. The principal means and methods employed by the defendant corporations through their officers and authorized representatives to obtain said monopolistic control of theatre operations are as follows:

(a) Arbitrarily depriving independents of first and second run pictures;

(b) Securing unreasonable clearances for the defendants' theatres over independent theatres;

(c) Making threats to build or open or close theatres to prevent construction or operation by independents;

[fol. 4926] (d) Lowering admission prices;

(e) Obtaining rental concessions;

(f) Restricting independents who sold to them as to periods and places of theatre operation, and

(g) Making long time franchise agreements covering the "Circuit." (p. 13.)

5. The plaintiff is entitled to a judgment enjoining the defendants:

(a) From monopolizing the supply of major first run films in any situation where there is a competing theatre suitable for first run exhibition thereof, and from monopolizing the supply of second run films in any situation where there is a suitable theatre for second run exhibitions thereof;

(b) From demanding or receiving clearance over theatres operated by others which unreasonably restrict their ability to compete with a theatre owned or operated by a defendant, or corporations controlled by it;

(c) From conditioning the licensing of films in any competitive situation, outside of Buffalo, New York, upon the licensing of films in any other situation;

(d) From selling or acquiring any theatre interests pending the further order of this Court;

(e) From enforcing any existing agreements heretofore entered into by the defendants not to compete, or to restrict the use of any real estate to non-theatrical purposes; from the use of any threats or deception as a means whereby a competitor is induced to sell;

(f) From continuing the heretofore described "conspiracy" or "monopolization" in restraint of trade and commerce between the states and the entering into any combination or conspiracy for the purpose or with the effect of restraining trade and commerce between the states;

[fol. 4927] (g) And directing the entering of a decree adjudging that the defendants and their affiliated corporations be dissolved, re-aligned or reorganized in their ownership and control, so that fair competition between them and other theatres be restored and hereafter maintained; and that the determination of the question of the dissolution, re-alignment or reorganization of the parties aforesaid and the method to be employed in the accomplishment of the same to be left to be fixed by this Court after further consideration with the parties. (p. 30-31.)

John Knight, U. S. D. J.

Feb. 31, 1945
at Buffalo, N. Y.

[fol. 4928] IN UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF NEW YORK

Civil No. 223

UNITED STATES OF AMERICA, Plaintiff,

vs.

SCHINE CHAIN THEATRES, INC., et al., Defendants

JUDGMENT—October 31, 1945

This cause having come on for hearing before this Court upon the pleadings and upon the testimony, both oral and documentary, introduced at the trial of this cause, and the same having been argued by counsel upon briefs submitted, and the Court having rendered its opinion herein on October 8, 1945 and herewith filed its findings of fact and conclusions of law wherein the defendants herein have been found to violate Sections 1 and 2 of the Sherman Act:

It is hereby ordered, adjudged and decreed as follows:

I

1. The defendants have maintained an unlawful combination among themselves and with their affiliated corporations and have monopolized the licensing of the exhibition of motion picture films in various cities and towns in violation of Sections 1 and 2 of the Sherman Act and, through the unlawful combination between themselves and their affiliates by their predatory practices, have monopolized the business of operating motion picture theatres in various towns and have attempted to monopolize in various other towns; and the defendants have contracted, conspired and combined with each other and their affiliated corpora- [fol. 4929] tions and with each of the aforesaid major film

corporations for the purpose, and with the effect of suppressing competition and monopolizing exhibition of films distributed by each of said film corporations in various towns and cities, in violation of the aforesaid statute.

II

Each of the defendants is hereby enjoined and restrained:

1. From monopolizing the supply of major first run films in any situation where there is a competing theatre suitable for first run exhibition thereof and from monopolizing the supply of second run films in any situation where there is a suitable theatre for second run exhibition thereof.

2. From demanding or receiving clearance over theatres operated by others which unreasonably restricts their ability to compete with a theatre owned or operated by a defendant or corporation controlled by it.

3. From conditioning the licensing of films in any competitive situation outside of Buffalo, New York, upon the licensing of films in any other situation.

4. From selling or acquiring any theatre interest pending the further order of this Court.

5. From enforcing any existing agreements heretofore entered into (1) not to compete or (2) to restrict the use of any real estate to non-theatrical purposes.

6. From using any threats or deception as a means whereby a competitor is induced to sell.

7. From continuing any contract, conspiracy or combination with each other or with any other person which has the purpose or effect of maintaining the exhibition or [fol. 4930] theatre monopolies of the defendants or of preventing any other theatre or exhibitor from competing with the defendants or any of them, and from entering into any similar contract, conspiracy, or combination for the purpose or with the effect of restraining or monopolizing trade and commerce between the States.

III

The defendants and their affiliated corporations be dissolved, realigned, or reorganized in their ownership and control so that fair competition between them and other theatres may be restored and thereafter maintained. The plaintiff and the defendants shall each within 60 days from the entry hereof submit a plan to this Court for such dissolution, realignment or reorganization as they believe will attain this end and serve copies thereof upon opposing counsel. Within 30 days after the service of such a plan upon counsel for the parties they shall advise the Court in writing of their objections, if any, to such plans and such counter or substitute proposals for the carrying out of this provision of this judgment as they may desire to submit.

IV

Jurisdiction of this cause is retained for the purpose of entering such further orders as may be necessary to amend, construe, and carry out this judgment after such hearings thereon as the Court may direct.

Enter,

John Knight, U. S. District Judge.

Dated the 31 day of October, 1945.

[fol. 4931] IN UNITED STATES DISTRICT COURT

[Title omitted]

DEFENDANTS' MOTION PURSUANT TO RULE 52(b) OF THE RULES OF CIVIL PROCEDURE, TO AMEND THE COURT'S FINDINGS OF FACT AND CONCLUSIONS OF LAW, TO MAKE ADDITIONAL FINDINGS AND CONCLUSIONS OF LAW, AND TO AMEND THE JUDGMENT ACCORDINGLY.

The defendants move the Court to amend its findings of fact and conclusions of law, dated October 31, 1945 and entered herein November 1, 1945, in the particulars hereinafter set forth, and to amend the judgment herein, dated October 31, 1945 and entered November 1, 1945 accordingly all pursuant to the provisions of Rule 52 (b) of the Rules of Civil Procedure.

The defendants do not by this motion, or by any submission or request for findings on the evidence and exhibits now in the case, waive any objection to the admissibility of any evidence or exhibit which has been admitted over the objection of the defendants and the inclusion in the findings of any statement based on that evidence or on that exhibit. Nor do they waive or withdraw any request for findings heretofore made by them.

With the aforesaid reservations, each defendant in this case separately moves the Court that the findings of fact and conclusions of law heretofore filed and entered herein be amended in each of the respects hereinafter set forth. Each defendant makes this motion with respect to each paragraph separately. In accordance with the foregoing, each defendant moves the Court to amend its findings and conclusions in the following particulars:

I. STRIKING OUT THE FOLLOWING NUMBERED FINDINGS OF FACT AND MAKING THE FOLLOWING IN LIEU THEREOF*

1. In place of finding of fact No. 3, substitute the following finding:

> [fol. 4932] "Since 1931 there have been 118 theatre corporations which have been incorporated or in which an interest has been acquired by Schine. Among the theatres in which Schine became financially interested there are 25 theatres situated respectively in 16 towns, Auburn, Bath, Canandaigua, Carthage, Corning, Gloversville, Herkimer, Little Falls, Newark, Norwich, Oneonta, Oswego, Salamanca, Saranac Lake, Syracuse and Watertown, New York, which had belonged to Schine before 1930 and had been leased to the Fox-Metropolitan Circuit in 1929, and which reverted to Schine in 1933 as a consequence of the termination of the leases in the Fox-Metropolitan bankruptcy proceedings. The result of this reversion was that it was necessary for Schine to resume the operation of the said theatres. At the end of the year 1930 Schine had no motion picture theatres, except suburban theatres in Buffalo and Rochester, motion picture theatres in Courtland, East Rochester, Fairport, Rockport, Geneva, Malone, Medina and Ogdensburg, and a half

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* The defendants have not as yet received copies of the findings of fact and conclusions of law as actually filed. Numerical references to findings of fact heretofore filed are therefore made to the numerical designations of the findings of fact proposed by the plaintiff, which the defendants understand were signed by the Court as proposed.

interest in Amsterdam, and a theatre under construction in Bellefontaine, Ohio. As of the time of the commencement of this suit there were 62 of such operating corporations, and in 48 of these Schine owned 100% of the stock, in 12, 50%. Schine operates 93 theatres in 73 towns (including cities). The towns run generally in population from 5,000 to 35,000 and include 39 in New York, 16 in Ohio, 8 in Kentucky, 7 in Maryland, 2 in Delaware, and 1 in Virginia. There are upwards of 1,350 motion picture theatres in New York state, upwards of 800 theatres in Ohio, upwards of 200 theatres in Kentucky, upwards of 200 theatres in Maryland, upwards of 270 theatres in Virginia, and upwards of 30 theatres in Delaware. In addition to its theatrical and realty operations Schine has booked and bought for and supervised 37 theatres since 1931, and when this suit was brought there were 27 for which it so acted. At the date of the commencement of this action Schine operated motion picture theatres in 59 towns in which Schine owned the only motion picture theatres operating in such towns. In most of these towns, all of the theatres had been operated by a single owner, and was so operated at the time of the acquisition of the same by Schine. In the other 17 towns there were theatres operated by other than Schine. Since 1928, including the 25 theatres reverting from Fox-Metropolitan, the number of theatres in towns in which there was no opposition theatre increased by 56. In most of these no theatre, or not more than one theatre, had operated before Schine began operating there. Schine built, bought or received a lease of its first run theatre in each of the above mentioned 73 towns in the ordinary course of the expansion of its business.

2. In place of finding of fact No. 4, substitute the following finding:

"Schine has expended for the cost of land and buildings acquired by it the sum of $6,509,100.00 and for the cost of building additions and improvements the sum of $4,439,000.00. These expenditures were made in the normal course of the developments of Schine's business for the purpose of conducting the exhibition business locally in the respective cities and towns so attractively [fol. 4933] to patrons as to make the business profitable, and not for the purpose of acquiring any monopoly or restraining interstate trade or commerce or for the purpose of driving any other person out of the exhibition business."

3. In place of finding of fact No. 5, substitute the following finding:

> "There are eight so-called major film companies, Fox, Loew, Paramount, RKO, Warner, Columbia, Universal and United Artists, which supply Schine a large percentage of the feature film used by Schine and together received upwards of 75% of the total film rental paid by Schine. Other major distributors not classified with the eight are Monogram and Republic. The principal sales office of each distributor is in New York City, and the method of licenses and servicing of films is substantially similar with each. The feature films are mostly produced in California, where the negatives are made, the positive prints being generally manufactured in California, New York or New Jersey. Film license applications are solicited by salesmen from the branch office and the delivery and return of films are made through the branch. All contracts are subject to approval by the main office at New York. Prior to the 1941-1942 season it was the usual custom for all of the distributors to make license agreements for feature films for a period of a year, commencing about September of each year, which license agreements were ordinarily made before the film was produced. Since that season the films of Fox, Loew, Paramount, RKO and Warner have been licensed, after production, in blocks, generally not exceeding five in number, rather than in season blocks."

4. In place of finding of fact No. 6, substitute the following finding:

> "One or more of the individual defendants held one or more of the principal offices in the defendant corporations and other offices in the various so-called local corporations. None of the individual defendants own any stock in any of the corporate defendants, nor have they owned any stock since August 31, 1931, except that John May owned 1331 shares of the Class A

common stock of Schine Chain Theatres, Inc., which stock he disposed of on February 19, 1932, and except that J. Myer Schine, Louis W. Schine and John A. May owned from time to time various shares of the preference stock of Schine Chain Theatres, Inc., (a non-voting stock, except in certain contingencies provided for in the certificate of incorporation). The preference stock was retired by the corporation on March 1, 1944. The duties and authority of Lazaar, Silverman, Hensler and Insley were in each instance, subject to the supervision and direction of the executive office at Gloversville. Negotiations for the licensing of motion pictures was generally carried on in the first instance by Lynch. He negotiated generally with the respective distributors through their respective division managers in New York. Any proposed contracts resulting from such negotiations were subject in every instance to approval on the part of the distributors by their duly authorized representatives (generally the general sales [fol. 4934] manager), and on the part of Schine by Lynch's superiors.

Occasionally agreements between Schine and the respective distributors took the form of what is known in the industry as a "master agreement" supplemented by "deal sheets," but this was by no means the invariable practice."

5. In place of finding of fact No. 7, substitute the following finding:

"The Circuit had the normal influence of a very large buyer with each of the distributors. This improved the opportunity of the Circuit to make more favorable terms than a small customer. The extent of this film buying is demonstrated by the large number of theatres controlled by Schine and the large amount of money which had been paid and was to be paid for film rentals. This buying power included both towns in which there was no opposition exhibitor, called "closed" towns, and those in which there was an opposition buyer, sometimes called "open" towns. The negotiations for film for the different theatres were conducted sometimes separately and sometimes involving more than one town. Sometimes the contracts were made separately and sometimes a "master agreement" with deal sheets was made for a number of towns, some open and some closed. The fact that Schine was buying product for theatres not owned or operated by it increased the value of his patronage and also increased the prospect of getting contracts favorable to the theatres for which Schine was buying. Schine acquired by purchase or lease 55 theatres from 1922 to 1931 and 80 from 1936 to 1941, inclusive, 15 in 1938 and 15 in 1939. The 55 theatres included the 25 which, as above stated, had been acquired by Schine and sold or leased to Fox-Metropolitan and which reverted to Schine in 1933 in the Fox-Metropolitan bankruptcy proceedings."

6. In place of finding of fact No. 8, substitute the following finding:

"The means and method employed by the Schine Circuit in carrying on its business were numerous. The Circuit required so many pictures for its theatres that its purchases frequently left no first run, and sometimes no second run, pictures for other theatres in the same town. Schine sought to obtain clearances in the competitive areas against subsequent runs and obtained them to the extent hereinafter set out. These clearances provided that subsequent runs of the pictures could not be shown in the areas described until after the number of days stated in the clearance terms." (See also Proposed Amendments 27-30.)

"Schine made agreements with some of the distributors for the supply of product for a period of more than one year, as hereinafter set forth. Such agreements are described herein as "franchises." Schine made these franchise agreements so as to get a definite assurance of the product for the times stated in them. The respective distributors who entered into the agreements made them for the purpose of having an assured output for the places stated and for the times stated." (See also Proposed Amendment 67.)

[fol. 4935] 7. In place of finding of fact No. 9, substitute the following finding:

"Whenever Schine built, bought, leased or otherwise acquired a theatre or theatres in any town, the Circuit endeavored to license the film necessary to operate the theatres, generally Schine was able to obtain such pictures because of its reputation as a good customer. Whatever film was licensed by Schine for any specified run could not be licensed for the same run to any other exhibitor."

8. In place of finding of fact No. 10, and findings 11 (b), 11 (f), substitute the following finding:

(a) "In 1937 Schine took up for consideration the possibility of building an additional theatre in Canandaigua when there was prospect of the construction of a large veterans' hospital that would bring several hundred families into town. The planning and finishing of the theatre took about two years. During this period a sign was put up. By whom does not appear. The sign bore no signature, either written or printed. It was erected on a lot occupied by Montgomery Ward & Co., called the Flanagan lot. It said something about a new theatre to be erected by Schine or the Schine organization, or some such thing like that. The newspaper in Canandaigua published an article that the Schine Circuit was going to build a new theatre. The new theatre was built, not on the lot occupied by Montgomery Ward & Co., but on another lot, for which Schine paid $15,000 for the land and structure on it and paid in addition for building the Lake theatre, $38,500. This new theatre, the Lake, was a theatre of 400 or 450 seats, of fine construction, equipment and decoration."

(b) "In Paris, Ky., in October 1937, Schine received a license, pursuant to the city ordinances to erect and operate a new theatre. Schine proceeded to have plans drawn and got bids in the spring or summer of 1938 and completed the new theatre in 1939. In November 1938 Harry Schwartz, about four months after he knew of the proposal for the new Schine theatre, obtained a lease of property in Paris. Lazar asked Schwartz if he had not seen the sign on the lot Schine had purchased some time ago and that they were going to build a new theatre on it, and Schwartz told Lazar that he had. Lazar said they had every intention of building a theatre in Paris and were not decided on just what type or what size, and that is why they had not begun earlier, and that he felt that Schwartz was making a mistake in building in competition with them, and Schwartz told him that he did not think so or he would not have signed a 20-year lease on the main corner of the town, and that he felt that he had the best location in Paris and that he felt the theatre would be self-supporting. Lazar asked him if he would not go to meet him at the Lafayette Hotel, and Schwartz said that he would be glad to do so and went later in the day to the Lafayette Hotel. Lazar said that he did not feel that Paris could support three theatres and that as long as they had been in Paris operating a theatre and had anticipated building a new larger theatre, he could not quite understand what would prompt Schwartz to go into the town as [fol. 4936] competition. Schwartz repeated that his location was the better of the two and that he was not afraid of the competition. Lazar asked him to think things over, that he felt that Schwartz was making a great mistake and would lose plenty of money, and that if Schwartz cared to, he would take this lease off his hands. Schwartz said for how much, and Lazar said, are you trying to hold me up, and Schwartz said I am not trying to hold you up; you called me up and I did not come to see you or call you up. Lazar said well, I believe that Mr. Schine would be willing to take this lease off your hands and relieve you of that obligation, and Schwartz said that he did not intend to give up the lease and that he was going ahead with the theatre, and that ended the conversation. After Schwartz began construction, Lazar called Schwartz on the telephone and asked him whether he was still determined to build or whether he was just starting operations to stop within a week or so, and Schwartz told him that he intended to go ahead, had plans drawn by a theatre architect and a contract had been signed with the construction company to build the theatre, and he fully intended to build it. Lazar told him that his offer was still good, and Schwartz told him that he did not believe he would care to sell the theatre or assign the lease. Three weeks later, after the side walls were already constructed, Lazar called Schwartz on the telephone and asked Schwartz to stop construction and see him about a deal. Schwartz saw Lazar at the

Lafayette Hotel. There they went over the same discussion and Lazar said he was willing to enter into a deal for the Opera House property in Lexington, Schwartz' Paris theatre and a theatre that Schwartz was operating in Frankfort, Ky. At this time Schine was building in Paris, and they made a deal and Schwartz stopped construction about August 30, 1939. The agreements are dated September 15, 1939. They contain a provision that the assignors will not be interested for fifteen years in the motion picture, theatrical or amusement business in any city or town in the State of Kentucky, in which the assignee or any of its affiliated or associated companies are now engaged, except that the assignor may invest in stock and securities listed on any recognized stock exchange, and that Schine pay to the assignor $5,000 for the Paris leases and assume liabilities, and that Schine pay to the lessor $22,500, for the Opera House lease. Paris was not big enough for more than two theatres. Schwartz in his dealings with the Schine interest was met only with courtesy and fair discussion of negotiations. The two agreements were a good deal for Schwartz and he got not only the money consideration, but a new lease of the Opera House running to Schwartz, as lessor at a fair and satisfactory rental. At the time of the agreements the only Kentucky towns that Schine was in were Middlesboro, Corbin, Pikeville, Paris, Richmond, Lexington and Maysville. The Paris theatre is a very fine theatre."

(c) "In Perry in July 1935, Schine bought the Davis property a little below the Hotel, at a corner on the Main Street. Thereafter Mr. May called on John C. Herzberger, the operator of the Auditorium theatre, and introduced himself and said that he had just closed a deal with Porter Davis, buying a lot for Schine, on [fol. 4937] which they were to build a theatre seating 1,000 persons and costing about $100,000, and that he hoped that they would be friends. In August 1935 Herzberger met Myer Schine at the Seneca Hotel in Rochester and Schine offered Herzberger $5,000 for his lease from the Town of Perry of the Auditorium. An agreement was signed subject to the approval of the Town Board to the sale of the lease, and to expire on September 1. In August 1935 the Town Board wanted Herzberger to stay and would not let him sell the lease. Schine received the blue prints for a new theatre in Perry, dated September 1935, and specifications therefor, and the time fixed for receiving bids for construction was October 4, 1935. In September or October 1935, Mr. Osborne of Dipson & Osborne came to Mr. Herzberger several times about taking over his lease, and for more money than Schine had offered, and Herzberger made a deal with them and continued to manage the theatre for a year. Dipson improved the theatre at a substantial expense of about $13,000 and made the theatre a satisfactory theatre and removed any occasion for having another theatre built in the town. Before this improvement the theatre was not at all a modern theatre but had been built in 1898 for stage performances. After rebuilding it had about 700 seats, as Dipson reseated the theatre. Dipson & Osborne later sold this lease to Schine and Schine made additional improvements to the theatre at a cost of $7,500. No other theatre has been built in Perry."

(d) "In Salamanca, in October 1924, Schine became the lessee of the Andrews theatre, 735 seats, and in 1927 bought the land on which the new theatre was subsequently built. The original cost of the land was $24,300, to which Schine added a building and improvements at an additional cost of $164,300. Under an agreement with Fox-Metropolitan, Schine undertook to construct a new theatre on its land in Salamanca and to lease it to Fox-Metropolitan. This agreement was terminated and the theatre was not then erected. Schine took the new building project up with the architects in mid-summer of 1938 and send blue prints of the land to the architect on August 23, 1938. The plan to complete the theatre in 1939 was held up by lack of materials, which could not be obtained, and the completion and opening was in August 1942. The new theatre is a very lovely theatre, air conditioned, with modern equipment, with about 1200 seats. In December 1938, C. R. Dickerson, manager of the Schine theatre in Salamanca, came into the office of the publisher of the newspaper, Salamanca Republican Press, and told him that the Schine company would build a new theatre in Salamanca and that the architect was at work on the plans, calling for completion in the following May. The publisher wrote and published an article to this effect in the Salamanca Republican Press on December 24, 1938."

(e) "In Medina, Ohio, Yudelvitz and Willis were lessees and operators of the Princess theatre as a first run theatre, with all the first run product they wanted. By January 1, 1937 they had learned that Fine and Essick, with a circuit of some 29 theatres, an independent circuit, that is, not connected with any producing company, were proposing to come into Medina in opposition to them. Thereupon Yudelvitz and Willis negotiated with Schine and on March 18, 1937 entered into [fol. 4938] an agreement with Schine to come with them and to build a new theatre. At almost the same time the Masonic Lodge of Medina entered into the reconstruction of their building with a theatre in it. In March 1937 they wrote to Schine asking him not to go ahead with the plan to build a new theatre in Medina. In September 1937, through negotiations with Yudelvitz and associates, Schine became interested in 50% of the lease of the Princess theatre, which Yudelvitz and Willis were operating. After the reconstruction of the Masonic Temple building, the new Temple theatre alone was ample for the town, but the Princess was not. Before the new theatre, the Temple, opened Yudelvitz was playing Metro, Paramount, Fox, RKO and Republic pictures (the last named because with the Western stars, Ken Maynard and Gene Autry, he wanted to play Republic on Fridays and Saturdays, although he was not forced to do so from any lack of product). The Princess continued to have the first run product required for the operation of that theatre. Essick and Fine could not buy the same product which had already been sold to the Princess for the same run. In April 1939 after extended "cross the table" negotiations the Schine and Yudelvitz interests became interested in 50% of the lease of the Temple theatre, the other 50% being retained by Essick and Fine, who also acquired a 50% interest in the lease of the Princess, so that in April 1939 and thereafter the interest in the two leases stood, Yudelvitz 25%, Schine 25%, Essick and Fine 50%. Schine said nothing to Essick and Fine by way of threat. In the operation of the Medina Temple theatre the town has been very well served and the worth while pictures of all the distributors from time to time have been exhibited there."

(f) "In Mt. Vernon, Ohio, Mr. Smoots, the owner of the Vine theatre and lessee of the Memorial theatre, brought the matter of going into Mt. Vernon to Schine's attention and proposed to lease the Vine to Schine and to assign his lease on the Memorial, which was then closed. At about the same time Mr. Platt, who operated the Lyric, said that he would like to sell Schine the equipment and lease of the Lyric provided he could get a job to manage the theatres in town, and this deal was closed about February 1934. Schine became the lessee of the Vine theatre and of the Memorial theatre in January 1934, and of the Lyric theatre in February 1934, and of the Memorial again at the end of December 1940. The Lyric location was the finest location in town. In April 1938, on the Lyric site and on additional land bought, Schine built the new Vernon theatre. The new Vernon theatre is a modern fireproof constructed theatre with a wide marquee in front, no stores, a large lobby, and in the interior decorated in very modernistic style, with the finest seats obtainable. It has all the other equipment and a fine mezzanine furnished attractive and comfortable, with fine public spaces upstairs and downstairs. The cost was from $120,000 to $130,000."

9. In place of finding of fact No. 11 (a), 11 (e), 11 (h) and 11(i), substitute the following finding:

(a) "At Bellefontaine, Ohio, in 1930 a delegation from Bellefontaine called on Mr. Schine with reference to the establishment of a new theatre in Bellefontaine. [fol. 4939] At this time the Schine Circuit was operating in only eleven cities and towns. These were all in New York State. As a result of the call of this delegation Schine acquired land in Bellefontaine in 1930 and built the new Holland theatre, which was opened on February 12, 1931. It was of the latest type of first class moving picture theatre. At this time

Milton A. Mooney as a lessee was operating the Strand theatre. He operated the Majestic theatre during the annual fair week, and in the year 1928 to 1931 he closed it entirely. It was a small, old converted store show, without equipment for sound pictures. He also had the Opera House, an upstairs house, seventy-five years old, without sound equipment, and closed except for an occasional stage show. The Majestic and the Opera House were of no value, and the balance of the lease of the Strand and its equipment, which had been used for seven years, was all that Mooney had to sell. In May or June 1931, Mooney saw Mr. May, who offered $2500 for the lease, and Mooney sold the balance of the lease of the Strand and its equipment in July 1931. The lessor of the Strand was one Gutilla. It had been made in 1924, expiring in 1934. Gutilla then renewed the lease until 1938. This negotiation was with Mr. May or with Mr. Lazar. In these negotiations Mr. Lazar said that if the Strand lease was not renewed and Gutilla operated it, Schine was going to play second run at the Opera House, on which he had a lease. The Opera House had been closed from 1932 to 1934 and open from 1934 to 1936 as a second run house. From 1932 to 1934 it had been open about six or seven months. Gutilla had his final negotiations for the lease with Mr. Schine."

(b) "At Lockport, N. Y., Schine began to exhibit in 1922. He bought a large building which had been a skating rink and then used as a garage, and converted it into a modern large motion picture theatre, the Rialto theatre. It had great advantage over any other theatre in Lockport because of its downstairs seating capacity. It cost, for original purchase, $27,500, and for improvements $118,400. In October 1927 Schine became half owner in the lease of the Hi-Art and of the Palace theatre constructed several years after Schine had opened the new Rialto. The Rialto had been playing the best first class pictures and the Palace played vaudeville and pictures and part of the time pictures only. Later Schine discontinued vaudeville at the Palace and moved the best pictures into the Palace and played first and second run at the Rialto. Schine was forced out of the Palace theatre in December 1932.

Before this Schine had negotiated for contracts for the 1932-33 product sufficient to operate two theatres which Schine was then operating. The owner of the Palace thereupon opened the Palace. The Rialto was showing all the product of the eight companies except Metro. Schine, on losing the Palace, remodelled the Hi-Art, to be operated in place of the theatre that he had lost. Before reopening the Hi-Art, Mr. May made an offer for the Palace and stated that Schine was withholding opening the Hi-Art for an additional few days for him to decide whether or not he would accept the proposal, and that Schine would reopen the Hi-Art to play the product under contract. The owner of the Palace was unwilling to accept the offer. The Hi-Art, which had been closed during the seven years that the Palace was operated, was reopened."

[fol. 4940] (c) "At Rochester, N. Y., beginning in August 1925, Schine operated from time to time twelve theatres. One of these was the State. In 1927 Mr. Tishkoff and Mr. Schine had a conversation informally in the lobby of the Seneca Hotel. Schine asked him whether it was true that he and his associate proposed to build a theatre in the neighborhood of the State operated by Schine and Plaza operated by a independent, and Tishkoff said that it was true. Schine asked him whether he thought the location was suitable for a third theatre, and Tishkoff said that he didn't know, that his partner got into it and he went along. Tishkoff said why don't you come up to my office tomorrow and I will have my associates there and see if we can't work out something whereby we might have a partnership in the theatres. The next day they met in Mr. Tishkoff's office and Schine told the group that the neighborhood was already overseated and that the Plaza had just been remodelled and that there wasn't room for a third theatre. They talked about the possibility of a partnership, and Schine said that he wouldn't go into the partnership, that they were overseating a neighborhood and that if they really wanted to build a theatre there were many other neighborhoods where a theatre was needed, but they said that they owned a lot and were going ahead, and Schine said that there would be no more sense in it than in building a theatre near the Murray. Schine said that the Webster location was not appropriate, that it was too near the State. The State and the Webster were three-quarters of a mile apart. Schine later acquired the Webster."

(d) "At Seneca Falls, N. Y., Schine bought the Seneca theatre. A sign was then put on it, 'Closed for Alterations—Will Reopen Soon as a Schine Theatre.' An independent, who was without financial resources and was seeking to acquire the means to build a theatre, discontinued these efforts for two years. The sign reappeared on the Seneca. The Seneca did not reopen. The independent did not raise the money."

10. In place of finding of fact No. 12, substitute the following finding:

"In any town in which Schine bought motion picture product for a specified run, it was of course impossible for any other theatre to buy such product for the same run. This condition existed in Auburn, New York, Lockport, New York, Mount Vernon, Ohio, Paris, Kentucky and Bellefontaine, Ohio. In such instances the operator of the other theatre would buy a different run or from a different distributor."

11. In place of finding of fact No. 13, substitute the following findings:

"At Corbin, Medina and Lockport, Schine had the first run product. In Corbin, Schine was the licensee of this product before there was any other theatre in town. One of these theatres, the Hippodrome, was a much more substantially constructed and more expensive theatre than the new theatre that was built. The facts as to Medina and Lockport have been stated hereinbefore.

[fol. 4941] In Rochester, N. Y., Schine had the first run neighborhood product for the Riviera, State, Dixie and Liberty theatres. These included the best neighborhood houses in Rochester. The Fenyvessy theatres took clearance over all other Schine theatres in Rochester. Schine had these first neighborhood runs before the independents acquired their theatres."

12. In place of finding of fact No. 15, substitute the following finding:

> "In certain cases when Schine purchased or acquired a lease of a motion picture theatre or theatres as going concerns, an agreement was made with the former operator which provided that such operator would operate the motion picture theatres within limited competitive areas for limited periods of time. In certain instances this non-competitive agreement covered nearby towns other than the towns in which the former operator had been in business."

13. In place of finding of fact No. 16, substitute the following finding:

> "The franchise agreements hereinbefore described were voided as of May 19, 1942. It does not appear that in negotiating for product or franchises for product for the Schine Circuit there has been any departure from the normal and usual courses pursued in the industry for such negotiations to get the best prices and terms and runs and clearances obtainable for the Circuit by earnest and fair negotiations. As far as material the terms of the franchise agreements are set out herein. Franchise agreements were made by the respective distributors with independents. Franchise agreements gave the holder and the distributor the benefits stated therein. Conspicuously, they gave the holder the assurance of the product covered for more than one season, and they gave the distributor the assurance that that product was placed for more than one season. It was Schine's practice prior to 1936 to make contracts for a single year. He then began to make contracts for a period of two or three years. These contracts included the entire Circuit and those theatres for which Schine did the booking. The extent of Schine's business generally and his superior ability as an exhibitor made him the customer most to be desired by each distributor. In 1936 Schine made a three-year agreement with Fox for the feature product in all the Schine towns. This agreement was later made to include subsequently acquired theatres. In 1938 a subsequent three-year agreement was made. These agreements provided in the case of certain pic-

tures for payment of certain percentages of gross receipts as film rental, and also for fixed minimum admission charges. With Loew in 1936 a comparable four-year agreement was made. In 1937 a comparable three-year agreement was made with Warner. In 1938 a comparable one was made with RKO. A comparable one was made for Columbia for two years. A comparable agreement was made with Universal for three years in 1939. In the instance of United Artists, a distributing corporation, separate contracts were made for each feature for all Schine theatres. These agreements contained clearance provisions.''

[fol. 4942] 14. In place of finding of fact No. 17, substitute the following finding:

"In certain instances clearances were allowed to Schine over towns in which Schine did not operate. Some towns were distant from ten to upwards of twenty miles. Gloversville got clearance of 45 days over Johnstown. Gloversville is three miles from Johnstown. Schine was given clearance over Newfane and Mohawk, where there were no theatres. Many of the clearances were over outside towns of small population, such as Randolph, Little Valley and Elliottville, New York. The competitive conditions existing in these towns, such as shopping centers and business centers, do not appear. In certain instances clearances have been given over towns where there had been no previous clearance. It does not appear what have been the changes in shopping and other relations between the towns. Metro gave clearance in Ashland over Londenville and Lodi, Ohio. United Artists gave clearance in Auburn over Skaneateles, New York. Fox gave clearance in Hornell over Earlville, New York. The interdepartment communications between employees of major film companies and some letters written by Schine employees are stated below. Among these are communications by Lehman of United Artists, Pielow of Metro, Dana and Sauber of Universal, Smith of Warner, Sussman and Grassgreen of Fox. These communications were admitted in evidence over the objection of the defendants, pursuant to a ruling that it was within the scope of their duties to make the representations in the communications, and that they did it as a natural incident of the office, namely, a branch or district manager. None of these persons were called as witnesses by the plaintiff, and no attempt was made to qualify them as experts upon the subject of clearance, or to ascertain what factors they or any of them considered in determining whether any given clearance was reasonable or unreasonable. Pielow, M. G. M. resident manager, wrote: 'I feel that in some of the situations (unnamed) (discussing Schine contracts) the clearance that he (Lynch) is demanding is unfair . . .' Dana, branch manager of Universal, wrote the district manager that he had asked Louis Schine relative to clearances over the Smalley Circuit (Norwich), and that he refused to grant the privilege of serving the pictures with shorter clearance. Universal branch manager Sauber wrote Lynch that they wanted to serve Waterloo in less time than the 30 days clearance after Seneca Falls, because other majors were doing so, but Lynch refused. There was a written contract covering this. At Rochester, Scully of Universal said it would be satisfactory if the Madison and Monroe came within the Schine 21-day clearance. Smith, branch manager of Warner, wrote to the home office that Canton would do more business if it were not for Schine at Ogdenburg having 30 days clearance and if it was reduced: "It will make a better condition for us all . . ." Smith also wrote relative to Seneca Falls stating that he hoped Lynch would break down their 60-day clearance: "As I told you this morning over the phone, the clearance set up is all wet . . ." Sussman of Fox wrote to Grassgreen that the 60 days clearance in Glens Falls and elsewhere seemed excessive. Sussman went on to comment [fol. 4943] that he noted that 60 days clearance was given over second run at Malone when Fox had no second run in Malone, and furthermore, as previously stated, 60 days over second run seemed excessive. Grassgreen replied that while the 60 days at Glens Falls might seem excessive, Lynch insisted upon it. Grassgreen said that Schine insisted upon the 60 days clearance because they wanted to be consistent with their demand for 60 days over subsequent independent runs. In each competitive area, under normal business conditions of free competition, each distributor desires to license its films for successive runs in such area and under such clearance terms as will yield the maximum total license revenue from the area. In determining which theatre shall have which runs, its past relations with the theatre, the skill and character of its management, its size, location, equipment, and drawing power are all features which among others may influence such decision. Motion pictures are works of art and are the subject of copyright. They have no uniform or market value and the revenue which the owner of a copyright can derive from any picture or group of pictures depends upon the ability of the distributor to market them in different situations to the best advantage. The distributor generally licenses the picture and determines the rental and clearance in accordance with the box office grossing ability of the picture at the theatre to which the distributor decides to license the picture. The effort of the distributor and of the exhibitor is to have the selection of the theatres to show at a particular time, so made that they will be spaced in areas so that the pictures are shown in the different theatres in such a way that a particular picture showing in one theatre will not draw directly away from another theatre playing the same picture that day. In determining the runs and the period and area of clearance the distributor figures that there is a certain amount of money that an individual of the public has to spend for motion picture entertainment during a given week, and that there is competition for that sum, because what is spent to see it in the first run house will leave so much less to be spent in the second run house, so that the first run house and the second run house playing later are in competition with each other or with any other theatre, and the distributor desires to have as much go into the first run house because the distributor can get more money out of that theatre than out of subsequent run theatres. Where there is only one theatre in a particular competitive area the principal competition to supply pictures to the theatre is among the ten larger companies, Columbia, Fox, Metro, Monogram, Paramount, Republic, RKO, United Artists, Universal and Warner, and of these Fox, Metro, Paramount, RKO and Warner are sometimes spoken of as the Big Five, producing the larger number of pictures which are box office attractions in the cities, but the Western and action pictures in which Republic and Monogram have specialized, are most popular in the little towns of the South and West and more preferred on that account by exhibitors. Where there is more than one theatre that is a possibility for the distributor to sell, the distributor in selecting the customer to be obtained, if possible, takes into consideration the ability of the customer to gross, the operation of the theatre, the people conducting the business, the more substantial business man of the two, [fol. 4944] the theatre itself, in view of the distributor's desire to play its pictures in the nicest theatre with comfortable seats, a theatre showing a good clear picture on the screen, one that is well ventilated and well managed all the way through, with a desire to play the picture in the theatre charging the higher admission price, and there are other elements to be considered. In selecting a second run in a competitive area the distributor takes into consideration first a protection of the film rental that is expected to come out of the first run and then the distributor makes sure that the operation of the theatre and the playing of the picture there will not harm the possibility of that picture doing its full amount of business, the full amount of business it is capable of doing at the first run house, and the distributor also takes into consideration the condition of the house itself, the projection, sound, ventilation and location of the theatre, with an inclination toward a busy corner or a location where more people are closer to the theatre, rather than one that is around the corner and off the beaten path. Each distributor considers the clearance one of the most important things that the distributor has to sell. Each distributor considered the Schine Circuit terms to be very satisfactory terms and that the deals made with that Circuit were comparable with the deals made with anybody else. It is of advantage to the distributor to have the operator of the first run theatre also play the second run, to avoid any reduction of revenue brought about by conflicting showings in the same competitive area of the pictures of the particular distributor."

15. In place of finding of fact No. 20, substitute the following finding:

> "In certain instances the distributors made contracts providing for film rental based upon a percentage of the gross receipts and in certain other instances, the rental was a flat rental. When a percentage picture was played, with a competitive device (bank nights, etc.) sometimes provision was made for the deduction from the gross receipts of the cost of such competitive device before computing the distributors rental. These provisions were also in contracts with independents."

16. In place of finding of fact No. 21 substitute the following finding:

> "In Lockport and Corning Schine bought some product second run and during the currency of the Schine contracts this run did not remain open for sale to others."

17. In place of finding of fact No. 22 substitute the following finding:

> "In Lexington and Corning some film contracts with Schine did not contain a provision for the minimum admission price. At the same time the contracts with the independent for a subsequent run contained a provision for the minimum admission price. Experience had shown that Schine's policy of operation would lead him to set admission prices at what might be expected to bring the best return."

[fol. 4945] 18. In place of finding of fact No. 27, substitute the following finding:

> "The facts appearing in evidence, as far as material to show the influence of Schine with the distributors and in cooperation on the part of any distributor have been stated above."

19. In place of finding of fact No. 28, substitute the following finding:

> "As compared with some of the major distributors, the Schine Circuit is relatively small. Some of the major companies are exhibitors as well as distributors."

II. MAKING THE FOLLOWING ADDITIONAL FINDINGS OF FACT.

20. All findings made herein with respect to any acts committed by the defendants or any of them or any course of conduct pursued by them which the Court holds to be in violation of the Anti-Trust laws are limited to acts committed or course of conduct pursued prior to May, 19, 1942, plaintiff's counsel having stated at the opening of the trial that he would not offer any evidence beyond that date.

21. There is no evidence that J. Myer Schine, acting as an individual, committed any act or pursued any course of conduct in violation of the Anti-Trust laws.

22. There is no evidence that Louis W. Schine, acting as an individual, committed any act or pursued any course of conduct in violation of the Anti-Trust laws.

23. There is no evidence that John A. May, acting as an invdividual, committed any act or pursued any course of conduct in violation of the Anti-Trust laws.

24. J. Myer Schine acted in connection with any matter involved in the issues in this case, as an officer, director or agent of the corporate defendant Schine Chain Theatres, Inc.

25. Louis W. Schine acted if at all in connection with any matter involved in the issues in this case, as an officer, director or agent of the corporate defendant Schine Chain Theatres, Inc.

26. John A. May acted in connection with any matter involved in the issues in this case, as an officer, director or agent of the corporate defendant Schine Chain Theatres, Inc.

27. For the past 15 to 20 years the normal method of licensing the exhibition of copyrighted motion picture photoplays in the United States of America, including the states of New York, Ohio, Kentucky, Maryland, Delaware and [fol. 4946] Virginia, has been on a so-called run basis, to wit:—For a first run to a theatre in a local competitive area with such exclusive exhibition rights and clearance privileges, if any, as may be appropriate to the successful exploitation of said copyrights in said area; for such subsequent runs in said area, and with such exclusive rights and

privileges, if any, as may be appropriate to the successful exploitation of said copyrights in said area (Plaintiff's Admissions 4615).

28. It has been the usual and customary practice for the distributor to agree with its licensees that it will not exhibit or grant a license to exhibit its photoplays for exhibition in conflict with the run licensed the exhibitor, or prior to the clearance period agreed upon with the exhibitor (Pltf.'s Adm. 4616).

29. The motion picture industry has developed under the existence of clearance and runs. It is by such a system with initially large receipts from prior run exhibitions and successive reduction of license charges that satisfactory revenue can be derived by the producers and distributors so that costly feature pictures can be made available to the whole public at varying admission prices (Pltf.'s Adm. 4616).

30. In each competitive area under normal business conditions of free competition each distributor desires to license its films for successive runs in such area under such clearance terms as will yield the maximum total license revenue from the area. In determining which theatre shall have which runs its past business relations with the theatre, the skill and character of its management, its size, location, equipment and drawing power are all features which among others may influence such decision (Pltf.'s Adm. 4617).

31. Motion pictures are works of art and are the subject of copyright. They have no uniform or market value and the revenue which an owner of a copyright can derive from any picture or group of pictures depends upon the ability of the distributor to market them in different situations to the best advantage (Pltf.'s Adm. No. 23, 4618).

32. Of the Schine theatres approximately 80% are located in cities or villages with populations under 25,000 and 60% are located in cities or villages with populations under 10,000 (Pltf.'s Adm. No. 11, 4617).

33. In a competitive area, where there are opposing possible theatres, to which films may be licensed, the distributor generally licenses the picture and determines the rental in accordance with the box office grossing ability of the picture at the theatre to which the distributor decides to license the picture (T. 4334).

[fol. 4947] 34. The cost of the original production of a picture to the point where the negative is ready, so that positives for showing can be made, at times runs into millions of dollars. Each positive taken from the negative costs approximately $185 or more in addition, and if it is in technicolor the cost of the positive runs much higher (T. 4335, 4337).

35. For the average picture Fox makes about 300 positive prints of an "A" picture ~~and on an especially good~~ picture as high as 360-370 such prints (T. 4337).

36. There are in operation in the United States, equipped for sound, in excess of 17,000 theatres (T. 4336).

37. A very good picture distributed by Fox would play approximately 14,000 of those theatres (T. 4341).

38. A single print would be called upon to serve from 40 to 50 theatres (T. 4341).

39. An ordinary tour of a print from the time it leaves the exchange to go to one theatre, through transportation time, time of exhibition at the theatre, transportation time on return of the print, and inspection requires several days before the print can start out for its next theatre (T. 4341).

40. Fox serves that print over about a year of time to cover all the theatres in which that particular print is exhibited (T. 4342).

41. Fox has 31 exchange centers, each serving an area in which from 450 to 500 theatres on an average are located (T. 4343).

42. The prints are served in a sequence of time, starting generally to play first the larger theatres in the larger cities and towns, because those are the theatres that do the biggest business and the distributor regards them as a show window for the entire exchange territory, and in that show window the picture is well advertised, in the newspapers and sometimes in radio programs and in lobby displays and in front of the theatre (T. 4343).

43. The effort of the distributor and of the exhibitor is to have the selection of the theatres to show at a particular time, so made that they will be spaced in areas so that the pictures are shown in the different theatres in such a way that a particular picture showing in one theatre will not

draw directly away from another theatre playing the same picture that day (T. 4344).

44. In determining the runs and the period and area of clearance the distributor figures that there is a certain [fol. 4948] amount of money that an individual of the public has to spend for motion picture entertainment during a given week, and that there is competition for that sum because what is spent to see it in the first run house will leave so much less to be spent in the second run house, so that the first run house and the second run house playing later are in competition with each other or with any other theatre, and the distributor desires to have as much go into the first run house because the distributor can get more money out of that theatre than out of subsequent run theatres (T. 4344).

45. It is estimated that of the total revenue of a distributor 70% comes from the first run theatres and 30% from all other theatres playing second and subsequent runs, and that the 70% or 75% is made up of 35% or 40% from towns under 50,000 population and the other 40% or 35% from those over 50,000 population (T. 4345, 4608).

46. The plan of clearance came into the industry as a means of protecting the prior run theatre whose capital cost is very large, running in a medium sized town in the early days from $75,000 to $100,000 up to an investment of a million dollars or more in later days, which needed the protection for the investment by playing the first run of the picture a sufficient length of time before a second run in the same competitive area, so that the expectation that the picture might be seen in the same competitive area too soon would not detract from the attendance at the first run theatre and the consequent box office receipts there (T. 4479, 4346).

47. In determining the film rental, whether a percentage rental or a flat rental, the distributors aim at 35% of the gross box office receipts as the index in pricing (T. 4347-50, 4482, 4483, 4317, 4319).

48. It is the custom of the industry, if the box office receipts fall below the expectation on which the flat rental was based, to make subsequently a reduction in that rental to the point where the exhibitor can at least break even or show a small profit (T. 4347).

49. In determining the rental in the first place the distributor endeavors to estimate how much money the theatre could gross on the particular picture (T. 4348).

50. In the normally successful downtown city theatre, with a seating capacity of 1600, conducting a matinee and two successive evening performances, it is estimated that in the course of the three performances there will be in the aggregate 1600 admissions, so that if the average admission price was 25 cents, the gross to be expected would be $400 a day, or for a 4-day showing $1600 (T. 4350).

[fol. 4949]. 51. At 35% of this estimate the asking price would be something like $550 for a flat rental for the picture (T. 4350).

52. It is customary to allow a deduction for the cost of a second feature if the theatre is showing double features, and for the cost of outside attractions at the theatre while showing the picture before applying the 35% (T. 4352).

53. The effort of the distributor is to get the percentage of gross receipts at a second or subsequent run theatre in the same way as at a first run theatre (T. 4374).

54. Where there is only one theatre in a particular competitive area, the principal competition to supply pictures to that theatre is among the ten larger companies—Columbia, Fox, Metro, Monogram, Paramount, Republic, RKO, United Artists, Universal and Warners—and of these, Fox, Metro, Paramount RKO and Warner are sometimes spoken of as the Big Five, producing the larger number of pictures which are box office attractions in the cities, but the Western and action pictures, in which Republic and Monogram have specialized, are most popular in the little towns of the South and West and more preferred on that account by exhibitors (T. 4478, 4375).

55. Where there is more than one theatre that is a possibility for the distributor to sell, the distributor in selecting the customer to be obtained, if possible, takes into consideration the ability of the customer to gross, the operation of the theatre, the people conducting the business, the more substantial business man of the two, the theatre itself, in view of the distributor's desire to play its pictures in the nicest theatre with comfortable seats, a theatre showing a good clear picture on the screen, one that is well ventilated

and well managed all the way through, with a desire to play the picture in the theatre charging the higher admission price, and there are other elements to be considered (T. 4476, 4376, 4556, 4605).

56. In selecting a second run in a competitive area the distributor takes into consideration first a protection of the film rental that is expected to come out of the first run and then the distributor makes sure that the operation of the theatre and the playing of the picture there will not harm the possibility of that picture doing its full amount of business, the full amount of business it is capable of doing at the first run house, and the distributor also takes into consideration the condition of the house itself, the projection, sound, ventilation and location of the theatre, with an inclination toward a busy corner or a location where more people are closer to the theatre; rather than one that is around the corner and off the beaten path (T. 4377).

[fol. 4950] 57. At times a picture after playing a first run in a theatre will be moved over to another theatre operated in common interest with the first, and this is ordinarily done without any interval of time between the end of the showing in the one theatre and its opening up in the other, and this is called a move-over run, which is treated as a part of the first run, as an entire run, and not as a second run (T. 4378, 4415).

58. The foregoing policies are in general the policies of each of the distributors (T. 4386, 4507-8, 4476, 4556, 4604).

59. Distributors consider that clearance is one of the most important things that they have to sell (T. 4397-98).

60. If a customer is a solid customer, who pays his bills and gives an honest count, and the distributor has been dealing with him over a long period of time, they don't get a guarantee from him on the percentage pictures (T. 4401).

61. The distributors considered the Schine Circuit terms to be very satisfactory terms and the deals made with that Circuit were comparable with the deals made with anybody else (T. 4403, 4404).

62. In selling a group of pictures to the Schine Circuit there might be some pictures sold at 35%, some sold for lesser terms, and some on flat rental, dependent on the

quality of the picture in general and the distributor's ability to get the price (T. 4403).

63. The effort of the distributor is to get a price which is fair both to the distributor and to the exhibitor, and to take into consideration the effect on subsequent sales to him (T. 4405).

64. In fixing a price to one theatre consideration is not given to the price charged to another theatre, but to the expectation of the gross box office receipts of the particular theatre (T. 4413-14).

65. Size of theatre alone does not determine, as amount of playing time and ability to fill the house must also be considered (T. 4421).

66. It is to the advantage of the distributor to have the first run theatre also play the second run (T. 4487, 4554).

67. In issuing licenses for more than one season's product, which the plaintiff has described as a franchise, no distinction is made between large circuits and independent exhibitors operating only a few theatres, and more franchises have been issued to the latter than to the former (T. 2468, [fol. 4951] Exs. 741-744, T. 1166, 4557, 4488, 4614, Id. Ex. D-39, Exs. D-47, D-48, D-123-129, T. 1170; Id. Ex. D-39).

68. Such a franchise to independent small exhibitors and to circuits is advantageous at times both to the distributor and to the exhibitor as it gives the distributor an assured outlet in the town, saves the expense of going back and selling the town each year, and it gives the exhibitor an assured supply (T. 4489, 4559, 3946, Ex. 190).

69. Independent exhibitors and affiliated exhibitors regarded clearance as of much importance and sought and believed that it improved the receipts of the theatre having it (T. 2864, 3665-68, 2408, 2447, 2452, 2492, 2536).

70. Distributors in the general course of their sales policy send out salesmen to solicit theatres which the distributor desires to sell and to bring in applications for contracts, if they can be obtained, to the branch managers, who consider them. If they disapprove, they send the salesman back to see whether a better contract can be obtained, or if the branch manager thinks the contract an advisable one, he forwards it with his recommendations either to the home

office of the distributor or to the district manager, who in turn if he favors the contract forwards it to the home office. No contract is made until the general manager at the home office has approved the contract, and no one except such manager has authority to approve a contract (T. 4492, 4513, 4555, 4563, 1508, 1428, 1435, 1392, 1401, 1407, 1522, 1528).

71. It is estimated that about 1% of Paramount's film rental revenue came from the Schine Circuit (T. 4609).

72. It does not appear that in negotiating with the Schine Circuit any distributor has pursued any abnormal policy (Plaintiff's Admissions T. 4615-4618, T. 4334-4356, 4478, 4375, 4476, 4376-4378, 4556, 4605, 4415, 4386, 4508, 4604, 4397-4398, 4401-4421, 4487, 4554, 2468, Exs. 741-744, T. 1166, 4557-4559, 4488-4489, 4614, 2864, 3665-3668, 2408, 2447, 2452, 2492, 2536, 4508, 4609, 3946, Exs. 190, D-143, D-144, D-170).

73. To the knowledge of the general sales managers of the respective distributors, Fox, Loew's, Paramount, RKO, United Artists, Universal and Warners, there has not been any conversation with any of the defendants or their executives or employees not to deal with any competing exhibitors or to restrict the terms of such dealings (T. 4381, 4385, 4490, 4510, 4560, 4564, 4585, 4613).

[fol. 4952] 74. Schine did not in the course of negotiations for the acquisition of any theatre at any time say to the prospective seller that if he did not sell to Schine he would have difficulty in getting product for his theatre. Schine did not say to any such person that if he did not sell to Schine he would open up another theatre in the town. Schine has not told any one else to make any such statements in negotiating for theatres for Schine. Schine was not at the time of any such negotiations aware that any one had made any such statements. Schine has not said to any one that he approved of their making or having made any such statements. Schine has not asked any distributor to suggest to any person with whom Schine was negotiating for a theatre, or for any interest therein, that unless the

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* The reference contained in Nos. 27 to 69 inclusive are to formal admissions made by the plaintiff in connection with the defendants request for the admission of facts pursuant to the Rules of Civil Practice. Also references on the pages where testimony was given.

theatre or an interest therein was sold to Schine, it would be difficult for the theatre to obtain product. Schine has not in any conversation with any employee of Columbia, Fox, Loew's, Paramount, RKO, United Artists, Universal or Vitagraph said that any one of them should not deal with a competing exhibitor to Schine. Schine has not written any such statement to any of them. Schine has not said to any one of them that if they made such a sale Schine would not buy from them elsewhere in the Schine Circuit. Schine has not for the acquisitions of theatres made any threats or misrepresentations.

75. No competent or properly qualified witness was produced by the plaintiff upon the trial to testify as an expert, as to what constituted reasonable or unreasonable clearance, or as to the factors which must be considered in determining whether clearance is reasonable or unreasonable.

III. Striking and Eliminating from Any Findings of Fact Heretofore or Hereafter Made Any Statement or Language Which in Substance Constitutes a Conclusion of Law or Involves a Conclusion of Law and Any Statement or Language Which is Not Warranted by the Evidence and Exhibits. Without Limiting the Generality of the Foregoing Defendants Specify the Following Statements as Examples.

76. Any statement that any employee was authorized. This involves a conclusion of law. The facts of his position, relation and instructions, if any, should be stated, leaving the effect to be dealt with in the Conclusions of Law.

77. That "Schine could dictate to any of the distributors" should be stricken, as a conclusion of law and one not warranted by the evidence. "Monopoly," "monopolistic" and "monopolizing" should be stricken. They are conclusions of law and they are not warranted by the evidence.

78. "Arbitrarily depriving" should be stricken, as conclusions of law and unwarranted by the evidence: Schine [fol. 4953] did not deprive any other theatre of product. Schine bought the product for Schine's theatres from the respective distributors. The result, that other exhibitors could not get the product which had been licensed to Schine, is not depriving and is not arbitrary.

79. "Unreasonable" as applied to clearances should be

stricken from the text in which it has been used, because it was not related to any monopolistic control of commerce among the several states, and because length of clearance in the amounts stated in the facts are not *ipso facto* unreasonable in the absence of evidence that the competitive relations were not such that this clearance would improve the prospect of attendance in the same competitive area at the defendant's theatre, and that this was the purpose sought and the effect obtained. (See proposed Amendments 27-30.)

80. The terms "threats" should be stricken. It involves a conclusion. The facts of what was said and done complete the narrative of facts. The evidence does not warrant the conclusion of law that the things said and done were threats. A reference to the dictionary meaning of the term in law suffices to show this, namely:—An expression of an intention to inflict loss or harm on another *by illegal means, especially when effecting coercion or duress of the person threatened.* There were no threats within the common meaning of the term.

81. "Lowering admission prices" should not be stated without a statement of the circumstances. The evidence shows that under the circumstances there was no lowering not required by local conditions.

82. "Predatory" should be stricken, because it is a conclusion of law and not a statement of fact, and is not warranted by the evidence. What was done and said completes the narrative of the facts. A reference to the dictionary definition of the term shows that there was nothing predatory, namely:—Plundering, practising rapine, given to robbery, pillaging, living by preying upon other animals, damaging crops or buildings, as predatory insects or birds.

83. No statement in substance that any one of the defendants conspired with any other of the defendants to restrain trade among the several states should be made in the statement of Findings of Fact, because whether the conduct described amounted to a conspiracy between any of them as a conclusion of law, and also because such a conclusion is not warranted by the evidence. The Findings of Fact should be confined in this particular to what each defendant did with any other defendant, so that the question of law, whether or not this constituted a conspiracy between them in restraint of commerce among the several states may

[fol. 4954] be presented on the face of the Findings of Fact without the need of resort to the evidence, or absence of evidence, to warrant any such conclusion.

84. No statement in substance that any distributor conspired with any of the defendants in restraint of trade among the several states should be contained in the Findings of Fact, because whether the conduct described in the findings constituted such a conspiracy is a conclusion of law, and also such a conclusion is not warranted by the evidence with respect to any one of the distributors. The Findings of Fact should state what each did so that it will be unnecessary in determining the question of law, to refer to the evidence or the lack thereof, and the correctness of any conclusion of law can be determined from the statement of the facts found.

IV. STRIKING OUT THE FOLLOWING CONCLUSIONS OF LAW 1, 2, 3, 4(a), 4(b), 4(c), 4(d), 4(e), 4(f), 4(g).

V. MAKING THE FOLLOWING ADDITIONAL CONCLUSIONS OF LAW.

1. The defendant Schine Chain Theatres, Inc., is entitled to judgment dismissing the complaint as to such defendant.

2. The defendant Schine Theatrical Co., Inc., is entitled to judgment dismissing the complaint as to such defendant.

3. The defendant Schine-Lexington Corporation, is entitled to judgment dismissing the complaint as to such defendant.

4. The defendant Schine Enterprise Corporation, is entitled to judgment dismissing the complaint as to such defendant.

5. The defendant Schine Circuit, Inc., is entitled to judgment dismissing the complaint as to such defendant.

6. The defendant Chesapeake Theatre Corporation, is entitled to judgment dismissing the complaint as to such defendant.

7. The defendant J. Myer Schine, is entitled to judgment dismissing the complaint as to such defendant.

8. The defendant Louis Schine, is entitled to judgment dismissing the complaint as to such defendant.

9. The defendant John A. May, is entitled to judgment dismissing the complaint as to such defendant.

[fol. 4955-4956] VI. AMENDING THE JUDGMENT ACCORDINGLY BY STRIKING OUT ALL PROVISIONS THEREIN AND ENTERING JUDGMENT FOR THE DEFENDANTS AND EACH OF THEM DISMISSING THE COMPLAINT HEREIN.

VII. THE DEFENDANTS RESERVE THE RIGHT TO AMEND and/or SUPPLEMENT THIS MOTION UP UNTIL THE TIME FINALLY SET FOR HEARING HEREOF.

Respectfully submitted, Edward F. McClennen, Samuel S. Isseks, Willard S. McKay, Attorneys for the defendant.

Each of the above named attorneys appears for each of the above named defendants separately.

[fol. 4957] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

PLAINTIFF'S MOTION PURSUANT TO RULE 52(b) TO AMEND THE COURT'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT

Plaintiff moves the Court to amend the findings of fact, conclusions of law, and judgment in this cause, dated October 31, 1945 and entered herein November 1, 1945, in the following particulars:

1. In the place of Finding of Fact No. 22, substitute the following:

> 22(a). At Corning, Lexington, and in other situations Schine's film contracts called for lower minimum admission prices than those for independents on subsequent runs, and minimum admission prices were omitted from Schine's contracts, although the contracts of his independent competitors specified minimum admission prices.

(b). In Corning, New York, during the seasons 1933-34 and 1934-35, Schine operated the Fox and State Theatres, playing ahead of the Plaza Theatre, which was independently operated. The latter reduced its adult evening admission price for the reason that it could obtain major product only on second or third [fol. 4958] run. The State Theatre cut its admission prices several times, going as low as 15 cents. The Warner contracts for the 1933-34 season provided for a minimum admission price at the State of 15 cents and a similar admission price at the Plaza. The Plaza contracts in evidence prohibited it from charging less than 15 cents. The Fox contracts for the 1933-34 season permitted Schine's State Theatre, with a 60-day clearance over the Plaza, to charge an adult evening orchestra admission price five cents lower than the Plaza was required to charge. Fox's contract with Schine for first run at the Fox contained no minimum admission price requirements. Metro's 1933-34 contract for Schine's State Theatre omitted any minimum admission price requirement, as did the Universal contract for the State and the RKO contracts for the Fox and State Theatres in both the 1933-34 and 1934-35 contracts.

(c). In Lexington, Kentucky, Schine acquired four theatres in November, 1936. At that time, Schwartz, an independent, operated the Opera House. Schwartz at all times from 1936 maintained a 16 cent night price. During the summer of 1937 and throughout 1938, Schine cut its admission prices at some of its prior run theatres. Schine's contract with Fox for the 1936-37 first run product provided for minimum admission prices in Schine's Lexington theatre for the first run showing of Fox pictures.

Despite the existence of this contract, Schine cut its admission price below the minimum prices fixed (R. 2888-2892). Schwartz complained to Fox and Paramount about these admission price cuts by Schine (Ex. 209), and the Fox branch manager brought these cuts to the attention of the Fox home office (Ex. 200), advising that Schine's:

> [fol. 4959] * * * are advertising these prices (16¢) exclusively within a radius of sixty miles of

Lexington, with the result that all surrounding towns are complaining to us and other distributors.

The home office in turn complained to Schine about these cuts, calling attention to the fact that they were in violation of the contract (Ex. 201), but Myer Schine merely replied that the cuts were "quite essential and proved to be beneficial" (Ex. 202). Fox then omitted all minimum admission price requirements in the Schine second and third run contracts for the succeeding seasons (Exs. F-49, 122), while at the same time providing in its contract with Schwartz' Opera House for minimum evening adult admission prices of 15 cents for that theatre (Ex. 829).

(d). Schine complained to United Artists about the admission prices charged by an independent exhibitor in competition with its theatre at Norwich, New York. Schine also complained to Loew about the admission prices charged by an independent exhibitor operating in competition with its theatre at Bellevue, Ohio, demanded that Loew refuse to sell him films for a second run in that town, and Loew agreed not to sell him such a run.

2. Insert the following additional finding of fact as No. 11(j):

(j) In a number of situations Schine maintained closed theatres, or theatres operated for brief period for the purpose of intimidating potential competitors. Schine renewed leases from time to time on such theatres and expended considerable sums of monies in paying renewal rentals.

3. Insert the following additional conclusion of law No. 4(h):

[fol. 4960] (h) Controlling the existence and extent of admission price differentials between Schine's and other competing theatres by agreement with distributors and by demanding that distributors refrain from licensing other theatres charging admission prices objectionable to Schine.

4. Amend Conclusions of Law 5(b) by striking the semicolon and adding the words "and from attempting to con-

trol the admission prices charged by others by agreement with distributors, demands made upon distributors, or by any means whatsoever;", so that 5(b) reads as follows:

> (b) From demanding or receiving clearance over theatres operated by others which unreasonably restrict their ability to compete with a theatre owned or operated by a defendant, or corporations controlled by it, and from attempting to control the admission prices charged by others by agreement with distributors, demands made upon distributor, or by any means whatsoever;

5. Amend Conclusions of Law 5(c) by striking the semicolon and adding the words "and from entering into any film franchise", so that 5(c) reads as follows:

> (c) From conditioning the licensing of films in any competitive situation outside of Buffalo, New York, upon the licensing of films in any other situation, and from entering into any film franchise;

6. Amend paragraph 2, Section II, of the Judgment by striking the period and adding the words "and from attempting to control the admission prices charged by others by agreement with distributors, demands made upon distributors, or by any means whatsoever;", so that paragraph 2, Section II of the Judgment reads as follows:

> [fol. 4961] 2. From demanding or receiving clearance over theatres operated by other-' which unreasonably restricts their ability to compete with a theatre owned or operated by a defendant or corporation controlled by it and from attempting to control the admission prices charged by others by agreement with distributors, demands made upon distributors, or by any means whatsoever;

7. Amend paragraph 3, section II, of the Judgment by adding the words "and from entering into any film franchise", so that paragraph 3, section II of the Judgment reads as follows:

> 3. From conditioning the licensing of films in any competitive situation ~~outside of~~ Buffalo, New York, upon the licensing of films in any other situation and from entering into any film franchise.

8. Add a section V to the Judgment, to read as follows:

For the purpose of securing compliance with this judgment, and for no other reason, duly authorized representatives of the Department of Justice shall, on the written request of the Attorney General or the Assistant Attorney General in charge of antitrust matters, and on notice of any consenting defendant reasonable as to time and subject matter, made to such defendant at its principal office, and subject to any legally recognized privilege, (1) be permitted access, during the office hours of such defendants, to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of such defendants, relating to any of the matter contained in this judgment, and (2) subject to the reasonable convenience of such defendant, and without restraint or interference from it, be permitted to interview its officers or employees regarding [fol. 4962] any such matters, at which interview counsel for the officer or employee interviewed and counsel for the company may be present.

Information obtained pursuant to the provisions of this Section shall not be divulged by any representative of the Department of Justice to any persons other than a duly authorized representative of the Department of Justice except in the course of legal proceedings to which the United States is a party, or as otherwise required by law.

Respectfully submitted. Robert L. Wright, Louis B. Schwartz, Special Assistants to the Attorney General.

Wendell Berge, Assistant Attorney General.
George L. Grobe, United States Attorney.

[fols. 4963-4964] IN UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF NEW YORK

Civil No. 223

UNITED STATES OF AMERICA, Plaintiff,

v.

SCHINE CHAIN THEATRES, INC., et al., Defendants.

SUPPLEMENTAL JUDGMENT—Filed Nov. 13, 1945

The judgment dated October 31, 1945, and entered November 1, 1945, in the above cause be, and it hereby is, amended to add the following paragraph:

"V. Paragraphs 1 to 7, inclusive, or paragraph II of this judgment shall go into effect thirty (30) days from November 8, 1945."

Enter

JOHN KNIGHT
United States District Judge

Dated, November 8, 1945.

No objection to the entry of the foregoing supplemental judgment.

ERNEST S. MEYERS
Attorney for Plaintiff
WILLARD S. MCKAY
Attorney for Defendants.

Approved
as to form
G. L. G.

[fol. 4965] IN UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF NEW YORK.

[Title Omitted]

TRANSCRIPT OF HEARING ON MOTIONS PURSUANT TO RULE 52 (b) OF THE RULES OF CIVIL PROCEDURE.

Proceedings before Honorable John Knight, United States District Judge for the Western District of New York, Monday, February 25th, 1946, at the United States Court House, Buffalo, New York, at 10 o'clock a. m.

Appearances:

Robert L. Wright, Esq., Philip Marcus, Esq., of counsel, Special Assistant United States Attorneys, for the Plaintiff.

Willard S. McKay, Esq., Edward F. McClennen, Esq., and Howard M. Antevil, Esq., appearing for the Defendants.

[fol. 4966] **Proceedings**

The Court: We have two motions here, have we?

Mr. Wright: Yes, if the Court please.

The Court: All right, Mr. McClennen.

Mr. McClennen: This case, if your Honor please, No. 223, United States against Schine, is before your Honor this morning on the defendants' motion to amend the findings of fact by the removal of some of what we urge are conclusions from the findings of fact and the addition of other facts which we urge are essential to the judgment to be entered.

The motion to amend the findings of fact carries with it, of necessity, motions for changes in the conclusions and in the judgment consequent on those changes.

The plaintiff also has filed a motion for changes in the findings of fact by additions thereto. That motion I will defer speaking on until later.

The defendants' motion was filed on or about November 10, 1945. Before coming to the particulars of it, I will speak of certain general features which I may repeat myself on, as we go on with the details.

The judgment as now entered has as its most drastic feature a provision for the dissolution, reorganization, or [fol. 4867] re-alignment of the defendants' circuit. That, of necessity, involves a determination of the characteristics and surroundings of the beginnings of the various theatres which are a part of that circuit. That is, we urge that the defendants should not be required to break up and dispose of their holdings without a judicial determination of the fact that the different holdings have been acquired in a manner which is contrary to law.

The Court: You mean the original holdings?

Mr. McClennen: The original holdings. To depart for a moment, in view of your Honor's inquiry: The cases in which in order to remedy a found restrain of trade or monopolization, where they have resulted in any requirement for the disposal of any properties—and I use the word "disposal" in the limited sense—have been cases in which the property to be disposed of had in its acquisition elements of violation of the Anti-Trust Act. The normal remedy where that acquisition has been contrary to the Anti-Trust Act is the return of that property to the sources from which it came, not a turning over of that property to other members of the industry involved. The difference between such a decree, such a judgment, as is now in the draft entered [fol. 4968] about November 1, 1945, and all other cases is emphasized by a recent occurrence.

The plaintiff has just filed a proposed plan of dissolution, re-alignment, or reorganization—whichever it may be characterized. There are many objections to that plan, which have not even been formulated yet, as it has only just been received. They are fundamental——

The Court: You mean that in reference to this case here a plan has been proposed?

Mr. McClennen: A plan has just been proposed by the plaintiff.

The Court: I have no knowledge of it.

Mr. McClennen: The objections are very fundamental. I refer to the plan for two reasons: One is it shows a plan, the design of which is to achieve a professionally desirable result, a professional triumph for the plaintiff, and not a just result for the parties, or a result that has within it any prospect of any help to the public interest in any way.

It is a plan designed to mutilate the defendant organization. To go into that takes time to formulate the definite objections which, of course, cannot be made now and make more explicit what I have said in general.

[fol. 4969] The other thing about the plan is that it has brought right into focus the vice in a dissolution, because it proposes to deprive the defendant of properties obtained with no violation whatever of the Anti-Trust Law or any other law—properties, the acquisition of which is not criticised by a vestige of evidence in this case.

It proposes to take from the defendants theatres in the towns where there never has been any competition, where the business was created by the defendants or the defendants' predecessors, where there is nothing whatever to indicate that requiring the defendant to part with its theatres would advance competition a particle; no indication that it would produce any result of a second theatre in the place; no indication that a second theatre in the place is desirable for the community served or needed there in any way.

Now that being the way in which the plaintiff proposes to implement this judgment of your Honor shows emphatically the importance of having the findings show the facts with respect to each of the theatres.

The Court: How many do you claim there are in that classification?

[fol. 4970] Mr. McClennen: There are about 70 places where the defendants' entry into the town was either by buying, building, or leasing substantially the only first-run theatre in the town. Now, the numbers in other details I am not able to state to your Honor, because I have just read the plan through but once, and deem that I should not take any of the valuable time of today on that, as today is devoted to this question of the effort to have the findings amended. But I have referred to it for the purpose of bringing before you this very emphatic reason why we should have in the findings of fact themselves the facts on which a judgment on any dissolution or order for the disposal of any theatre is based. No judgment, I believe I may say emphatically, can with propriety be made that a theatre shall be disposed of unless the facts concerning that theatre are in the findings of fact which are the basis of that judgment.

Going now to the details of the motion: We have asked for certain substitutions, certain striking out, and certain additions. It was the proposal of the defendants to make their objections to the plaintiff's draft of findings of fact, and what would have been the essence of this motion, before [fol. 4971] the findings of fact were made. We got the draft in the very latter days of October—I haven't in mind the date now—and were at work upon the proposed changes which we wish to urge when we got word that the draft which the plaintiff had presented had been signed by the Court; so that our only remedy was an after-judgment remedy, which we pursued by this motion to amend.

Not only did we have no opportunity to call attention to the specific objections to the plaintiff's draft, but this is a case in which today is the first oral argument on the facts of the case, and, therefore, this, except as it is predicted by our motion as filed, is the first time to bring to your Honor's attention what we submit are the true facts of this case with respect to the way in which the defendant obtained the properties which it is now sought to wrest from the defendant.

The first paragraph of our motion, as filed on or about November 10, 1945, is for a substitution of another paragraph for the paragraph 3 of the findings as drafted by the plaintiff. That substitution contains all the facts that are in the plaintiff's paragraph that the evidence will warrant, and adds these things:

[fol. 4972] In the paragraph as filed there were set out the numbers of theatres acquired in different periods. We have asked that in order to make that complete and in balance this important addition be made:

"Among the theatres in which Schine became financially interested there are 25 theatres situated respectively in 16 towns, Auburn, Bath, Canandaigua, Carthage, Corning, Gloversville, Herkimer, Little Falls, Newark, Norwich, Oneonta, Oswego, Salamanca, Saranac Lake, Syracuse and Watertown, New York, which had belonged to Schine before 1930 and had been leased to the Fox-Metropolitan Circuit in 1929, and which reverted to Schine in 1933 as a consequence of the termination of the leases in the Fox-Metropolitan bankruptcy proceedings. The result of this reversion was that it was necessary for Schine to resume the operation of the said theatres. At the end of the year 1930 Schine had no motion picture theatres, except suburban theatres in Buffalo and Rochester, motion picture theatres in Cortland, East Rochester, Fairport, Rockport, Geneva, Malone, Medina and Ogdensburg, and a half interest in Amsterdam, and a theatre under construction in Bellefon-[fol. 4973] taine, Ohio."

Those facts, of course, come from the evidence introduced by the plaintiff. They are not in controversy in any way. They are important facts as showing the circumstances under which those theatres were re-acquired in 1933 or relapsed back into the Schine hands in 1933.

The other features in this paragraph which are added are these—and before I read them, let me preface: This is the paragraph in which it is set out that Schine held theatres in so and so many closed towns. What we have to urge here is it is, of course, no violation of the Anti-Trust Act to build the only theatre in town, to buy the only theatre in town, to lease the only theatre in town. There is in that no element of violation of the Act in any way. The term "closed town" is a trade term, but if read out of the trade, and in a judicial decision, would run the chance of it being thought that Schine had closed the town.

Of course, in these cases he had not closed the town he had—if he had done anything—opened the town where he built a theatre where there was none before, or he had kept open the town where he had bought a theatre where there [fol. 4974] was one before, and there is no element of closing in that.

We urge these words to take care of that possibility for error:

"At the date of the commencement of this action Schine operated motion picture theatres in 59 towns in which Schine owned the only motion picture theatres operating in such towns. In most of these towns, all of the theatres had been operated by a single owner, and *was* so operated at the time of the acquisition of the same by Schine. In the other 17 towns there were theatres operated by other than Schine. Since 1928, including the 25 theatres reverting from Fox-Metropolitan, the number of theatres in towns in which there was no opposition theatre increased by 56. In most of these no theatre, or not more than one theatre, had operated before Schine began operating there. Schine built, bought or received a lease of its first-run theatre in each of the above mentioned 73 towns in the ordinary course of the expansion of its business."

Now there again there is no going into any question that is a matter of controversy in evidence. This comes out in the facts that have been put in evidence by the plaintiff, and [fol. 4975] not by the defendants.

The next, that is, paragraph No. 2 of the motion, is asking a substitution for No. 4 of the plaintiff's draft. This is not at variance with what is said in the draft, but a precise statement of the facts as they appear in evidence.

"Schine has expended for the cost of land and buildings acquired by it the sum of $6,509,100.00 and for the cost of building additions and improvements the sum of $4,439,000.00. These expenditures were made in the normal course of the developments of Schine's business for the purpose of conducting the exhibition business locally in the respective cities and towns so attractively to patrons as to make the business profitable, and not for the purpose of acquiring any monopoly or restraining interstate trade or commerce or for the purpose of driving any other person out of the exhibition business.''

Now there are uncontroverted facts as brought out from the evidence, introduced by the plaintiff, and not requiring recourse to the defendants' evidence.

The Court: Would that last sentence be consistent with the decision of the Court, that last sentence commencing with [fol. 4976] "These expenditures were made in the normal course of the development of Schine's business''? Would that be consistent with the decision of the Court?

Mr. McClennen: I should think so. I find in the decision of the Court no statement of facts of any dollar that has been expended in any other way.

The Court: Well, there might not be a specific statement in that respect, but——

Mr. McClennen: Well, I urge that if there is any specific fact that we are entitled to have it stated in the statement of facts.

The Court: But I say that that last clause would be inconsistent with the decision of the Court itself.

Mr. McClennen: Not inconsistent with any finding of the Court.

The Court: All right, go ahead.

Mr. McClennen: That is, our urging is that the conclusions and judgment are not warranted by the findings of fact that has been made, and if there is anything that has been expended for this purpose in the acquisition and improvement of these properties, that was done for any other purpose than just that, then those facts should be stated in the findings of fact; otherwise a judgment has been entered not [fol. 4977] supported by the findings of fact.

But I urge upon your Honor that if the sums be taken, theatre by theatre, the sums expended to buy those theatres, the sums expended to build those theatres, the sums expended to improve those theatres—for these are the moneys that we are talking about—there is not evidence of a single dollar that has been expended for any other purpose than the one which I have stated, and the test of the accuracy of my assertion is that there be pointed out any piece of evidence that shows anything to the contrary.

The Court: Well, I think there were pointed out some specific purchases which the Court has found were purchases for the purpose of extending the monopoly.

Mr. McClennen: That, if left with no more, amounts to a statement that everything that Schine has done in the way of going into the theatre business, buying theatre buildings, theatre——

The Court: Well, I mean in my decision I pointed out certain instances where properties were bought, and the circumstances under which they were purchased, as an element going to show the purpose to effect a monopoly.

Mr. McClennen: But not in these sums of money that are [fol. 4978] listed here.

The Court: Well, I don't know about that. You will have to tie down specifically the items making up these expenditures.

Mr. McClennen: Well, they are all right in a single sheet of paper, showing the payment for each place.

The Court: All right, go ahead.

Mr. McClennen: Now this suggestion of your Honor's brings forcibly forward Gloversville: Here was a man with nothing, starting a theatre on a shoe string there. That operating has gone on for 28 years. Is he to be charged with having put his money into that enterprise for the purpose of monopolizing trade?

The Court: No, I don't think so.

Mr. McClennen: Well, I have spoken of one. Now, we may go down the list and find again and again and again just as clear cases of absolutely nothing except the effort to expand the theatre business, to put theatres into towns, or to improve theatres in towns, for the purpose of making those profitable enterprises, and with no other object in view. The expansion of this circuit to the size that it has grown has been for the purpose of having a large business, [fol. 4979] and the fact that as a result of it being a large business it has a position where it can deal in the industry, properly get the material for operating its business, does not betoken an intention to monopolize; it betokens an intention to grow big, just as any energetic, capable, diligent man may grow big by the exercise of his abilities, his industry, and not for the purpose of injuring the business of others but for the purpose of progressing in the business that he is engaged in building up.

Now if there is in this, as I have urged upon your Honor, and as investigation of the evidence will disclose, some 70 towns that way, then this money which your Honor has put into the findings is not, I urge, justly to be found to be money that has been invested for the purpose of monopolizing. It has been expended for the purpose of building a great business where there was not a business before.

That is applicable to the very great majority of the towns in this circuit, and towns which it is suggested ought to be wrested from the defendant where there is no wrong connected with the original entry into that town in any way.

The third paragraph of the motion asks for a substitu- [fol. 4980] tion for finding No. 5 as drafted by the plaintiff. That is but a slight change.

The Court: Yes, I see.

Mr. McClennen: That is the paragraph that tells about the eight so-called major film companies, and adds: "Other major distributors not classified with the eight are Monogram and Republic."

The Court: There isn't much change in that. Where is the change in that?

Mr. McClennen: Just that: "Other major distributors not classified with the eight are Monogram and Republic."

The Court: That is all I could see. I thought it was substantially the same.

Mr. McClennen: The fourth asks a substitution for No. 6 of the plaintiff's draft. No. 6 of the plaintiff's draft says, "The individual defendants hold the principal offices in the defendant corporations and hold other offices in the various so-called local corporation-."

The Court: What changes do you want there?

Mr. McClennen: That we ask this for:

"One or more of the individual defendants held one or more of the principal offices in the defendant corporation and other offices in the various so-called local corporations. [fol. 4981] None of the individual defendants own any stock in any of the corporate defendants, nor have they owned any stock since August 31, 1931, except that John May owned 1331 shares of the Class A common stock of Schine Chain Theatres, Inc., which stock he disposed of on February 19, 1932, and except that J. Myer Schine, Louis W. Schine and John A. May owned from time to time various shares of the preference stock of Schine Chain Theatres, Inc., (a non-voting stock, except in certain contingencies provided for in the certificate of incorporation.) The preference stock was retired by the corporation on March 1, 1944. The duties and authority of Lazaar, Silverman, Hensler and Insley were in each instance subject to the supervision and direction of the executive office at Gloversville. Negotiations for the licensing of motion pictures was generally carried on in the first instance by Lynch. He negotiated generally with the respective distributors through their respective division managers in New York. Any proposed contracts resulting from such negotiations were subject in every instance to approval on the part of the distributors by their duly authorized representatives (generally the general sales manager), and on the part of [fol. 4982] Schine by Lynch's superiors.

Occasionally agreements between Schine and the respective distributors took the form of what is known in the industry as a 'master agreement' supplemented by 'deal sheets,' but this was by no means the invariable practice."

Now, I will hand to your Honor later the specific references where these facts may be found in the record.

Now the fifth is for change in No. 7 of the plaintiff's draft. No. 7 as the plaintiff drew it said "The great film buying power of the defendant corporations gave opportunity to exert pressure on the distributors to obtain preferences."

We urge that that should not be in a findings of fact. It is a conclusion. And I submit that plaintiffs are in error in submitting any such conclusion as that.

There was no pressure exerted by Schine on the distributors. The distributors were very much bigger fellows than Schine was; the distributors, where there were other theatres, had all the opportunities of that competition in their dealings with Schine, and where there were not other theatres, each distributor was in competition with each [fol. 4983] other distributor for the sale of his products, and they were not subject to that which may properly be concluded to be pressure, a conclusion and not a statement of a fact of which there is any evidence.

We urge as the finding instead: "The circuit had the normal influence of a very large buyer with each of the distributors. This improved the opportunity of the Circuit to make more favorable terms than a small customer. The extent of this film buying is demonstrated by the large number of theatres controlled by Schine and the large amount of money which had been paid and was to be paid for film rentals." And so on through that paragraph.

We are asking that there be put in there the plain, full statement of what the evidence shows, and not the——

The Court: Well, that is really a substitution of the entire sixth, isn't it?

Mr. McClennen: They are all substitutions.

The Court: I mean, it is a big substitution.

Mr. McClennen: Well, it is substitution of their very own words, except in the particulars that I read.

"This buying power included both towns in which there [fol. 4984] was no opposition exhibitor, called "closed" towns, and those in which there was an opposition buyer, sometimes called "open" towns. The negotiations for film for the different theatres were conducted sometimes separately and sometimes involving more than one town. Sometimes the contracts were made——" So on it goes down through, containing the facts that are in the plaintiff's draft. Now, if your Honor please——

The Court: Well, as I see it, it doesn't conform to the plaintiff's draft of 6.

Mr. McClennen: It is a substitution for the plaintiff's draft, and if I may say so, we claim that our draft of the findings is just as persuasive to me with the Court as the plaintiff's draft of a finding.

The Court: What I had in mind was the question whether you were substituting some paragraph or some sentence, rather than making a redraft of the whole paragraph, don't you see? You have redrafted the entire paragraph, that is the point.

Mr. McClennen: It is our draft of the findings that ought to be made, I urge your Honor.

The Court: I was looking for the extent of it.

Mr. McClennen: We do not believe in this peculiar circumstance where the findings as signed by the Court are [fol. 4985] made by the plaintiff's draft, we do not deem that we are before this Court limited to asking merely for an amendment of the plaintiff's language. We are here asking for findings of fact that will be as ample as the evidence warrants, and as explicit as the evidence makes it to be. And under the circumstances we urge that these paragraphs be taken not by comparison with the plaintiff's paragraphs, except to show what the subject matter is. This is not a matter of having the findings drafted by the successful parties, and I plan to go back of the final draft.

Again and again in the findings we find the very language of the plaintiff at the earlier stages, so that what is signed by the Court here is traceable directly to the plaintiff's language and accomplishes, I submit, the very thing that the Supreme Court and Court of Appeals has reprobated, that is, that a decision of the Court on the facts ought not to be in the language of the successful party. They have said it in so many words. It puts us in the position of having to try to frame our findings of fact onto the plaintiff's language or as nearly as we can without violating the evidence.

[fol. 4986] The solution, I submit, is a return to the evidence and observing whether what we ask for findings are not in truth the findings which the evidence shows, regardless of what the plaintiffs put into their draft.

As I say, the references will be handed to your Honor so that they will be available.

The sixth is for a change in the eighth paragraph as drafted by the plaintiff. Now, in that paragraph are contained six things which are conclusions and not statements, and which can be tested as to their accuracy in any court only by going back to a laborious investigation of the evidence.

The purpose of Rule 52 in so carefully distinguishing between facts and conclusions was so that there might be spread into small compass by a comprehensive statement all of the facts that any Court would have need to consider in determining what is the right judgment. Now in there are contained words which we submit are—and which we wish to be in a position to submit with as little recourse to the evidence as possible to show the correctness of our statement—conclusions that we urge are not supported by [fol. 4987] the evidence and which, even if they were, should not be in the narrative of fact, and the plaintiff's counsel should not have put them there.

They are "Monopolistic control", "Arbitrarily deprived", "Unreasonable clearances", "Making threats", "Lowering admission prices", "Making long-time franchise agreements".

Now, the first, of course, is the worst effort of the plaintiffs in their draft. That "Monopolistic" is a conclusion. Rule 52 provides there will be set out the fact and then there can be determined whether such a conclusion is warranted by the facts set out in the findings.

"Arbitrarily deprived". That is a conclusion, whether it was arbitrarily or deprived, and we respectfully submit that the plaintiffs have asked for an erroneous conclusion in both respects. The simple statement of fact there is this, that when Schine built or acquired the theatre in the town Schine negotiated for and got for the future pictures, first-run, and, course, when he obtained them they could no longer be sold; they had already been sold to him and were not available for sale to the others. But no case of buying pictures except for the purpose of his theatres, no depriving, no taking away from a man a chattel or a picture which he [fol. 4988] already had, which is the thing that happens in every case where a man buys what is the only thing of that kind: When he buys it, somebody else can't buy it.

Now, there was no depriving, there was no taking away a picture which a man already had under contract. It was simply that after one buyer had bought it, others could not buy it. And it was not done arbitrarily. It was done for the purpose of operating the defendant's theatres. That is what he bought for. That is not arbitrary. That is the rational thing that any theatre operator does. He licenses the pictures required for his theatre. That is not an arbitrary act in any sense, and I submit that the plaintiff should never have asked for a finding of such a conclusion as that.

The next is "Unreasonable clearances". I will deal with that more at length when coming to clearances. But whether clearance is unreasonable or not is a conclusion, and should not be stated in the findings of fact.

The findings of fact ought to set out what the cl-arance was in the different places, then to show whether the circumstances in evidence disclose that those were unreasonable.

[fol. 4989] "Making threats". Now, if your Honor please, it will come later in some detail. Paris is one of the places that is mentioned later. The evidence with reference to that all came from the plaintiff's witness Schwartz. I think he was the man. And he specifically said that no threats of any kind were made. And what the plaintiff is endeavoring to do is to have a conclusion tucked into the findings of fact instead of stating the facts of what was done. And we have later asked to have those facts stated in full as the plaintiff's evidence shows them to be in every case where there has been any statement or intimation that there was anything like a threat. We submit that that conclusion should not have been stated here and should never have been stated, because the facts do not warrant calling it a threat.

Of course, the primary meaning of "threat" is an expression of intention to do bodily harm, to do an act which is primarily to injure the person addressed. These statements in each instance were statements of nothing of the kind. They were statements before the defendant did what it did that it was going to do that thing.

I submit that if the defendant desires to have a theatre [fol. 4990] in a town and there is a theatre there, that to throw any obstacle in the way of the defendant in doing that is the very reverse of what Anti-Trust Acts are designed for. The man who has the theatre in the town hasn't acquired any right to keep another out of the town, and, if the defendant, having determined that it is good business for him to have a theatre in the town, says "We are going to build a theatre in this town unless we can buy yours", he has done an act which is entirely proper if, at the time he does it, it is his intention to build a theatre if he can't acquire one by purchase.

And that is the type of thing that occurred in a number of these places that have been taken up for specific criticism and where no misstatement of any kind was made, no threat of any kind was made, but merely this type of statement that I have just referred to.

The Court: Well, the testimony with reference to that Paris situation was that the defendants told Schwartz that they would build in Lexington, another place in which the independents had a theatre, and not specifically that they would build another theatre in Paris, the town in which [fol. 4991] the independents were operating.

Mr. McClennen: When we come to the place where Paris and Lexington are described we have the facts right in as they occurred, but what we are urging is that there be no statement of a conclusion of this kind, that there be a statement of the fact.

This draft, putting this sort of thing in here, was just in line with the attitude of the plaintiff's counsel in starting the case—a dreadful thing, I submit. The issue in this case is what the remedy should have been. If this were on a criminal proceeding the defendants would be subject to heavy penalties. A monstrous way to approach a case! I submit, a monstrous way to approach a case!

Here we were, before a Court of justice, seriously presenting the facts of the case, and expecting the case to be tested by the evidence presented to the Court, and that there should be no thought of remedy until it was determined what had been done and whether that calls for any remedy, and that there should be no suggestion of what might have been done in a criminal proceeding when this wasn't a criminal proceeding, and when it was obvious that there never could be got from any self-respecting Grand Jury [fol. 4992] an indictment or from any self-respecting trial jury a conviction.

Now here this is the same sort of thing, endeavoring to get into a findings of fact these things which are conclusions, without stating the fact in the findings of fact.

If the facts amount to these things, on our draft, when we get to that point, they will be in the conclusions, but there should not be a prejudgment by conclusions before there is a statement of the fact.

Now instead of eight we have put in so much of the facts as appear in the sixth number in our motion:

"The means and method employed by the Schine Circuit in carrying on its business were numerous. The Circuit required so many pictures for its theatres that its purchases frequently left no first-run, and sometimes no second-run, pictures for other theatres in the same town. Schine sought to obtain clearances in the competitive areas against subsequent runs and obtained them to the extent hereinafter set out. These clearances provided that subsequent runs of the pictures could not be shown in the areas described [fol. 4993] until after the number of days stated in the clearance terms."

Now that is all that is in there. The detail is dealt with when we come later to those different matters of procedure.

"Schine made agreements with some of the distributors for the supply of product for a period of more than one year, as hereinafter set forth. Such agreements are described herein as 'franchises'. Schine made these franchise agreements so as to get a definite assurance of the product for the times stated in them. The respective distributors who entered into the agreements made them for the purpose of having an assured output for the places stated and for the time stated."

Now that is what the evidence shows; and all that the evidence shows with respect to that matter of franchises.

Now while I am anticipating, I might as well do it here and have it out of the way: Franchises are now a matter entirely of past history. On the 19th of May, 1942 a consent decree was entered in this case. It entirely did away with franchises. There have been no franchises since, and no reason to anticipate that there will be any franchises. There is, as is known to your Honor, in the [fol. 4994] Southern District of New York, a consent decree in the motion picture industry case of the United States against Paramount and others. Some suggestion has been made that your Honor may have thought that that had run out. It has not run out as to franchises; it has not run out as to clearances. It is still oper-ative. I will hand your Honor, if I may, an informal print of that decree that shows that fact.

Incidentally, the findings of fact that we submit state on their face that they are made for a period ending May, 1942. That was the express statement of counsel for the plaintiff when we started the trial before your Honor, and there is no evidence of anything after that date playing any part in the evidence in this case, on the facts of this case or on what would be required for remedy or relief in this case.

The next is our No. 7, asking a substitute finding for No. 9. Here again is, I respectfully submit, an improper suggestion in the plaintiff's draft that you should find as a fact some specific instances showing the predatory means used by Schine.

"Predatory means", also "Arbitrarily depriving the [fol. 4995] independent," these same detailed statements of conclusions, not a fact, and, we submit, conclusions not warranted by any evidence.

Just think, if your Honor please, what predatory commonly means when you hear it: Birds which kill other birds to live on them, which destroy crops. Why should a court of justice be asked to use in a statement of a finding of fact any such language as that?

The Court: You find that statement in the opinion, don't you, the use of that term?

Mr. McClennen: I found the use of that term in the opinion.

The Court: Yes.

Mr. McClennen: Taken from the findings requested——

The Court: Oh, no, in the opinion, in the decision, you will find the same expression.

Mr. McClennen: Yes, if your Honor please, and in the findings requested before the opinion.

The Court: Yes, I know.

Mr. McClennen: That word came in from the plaintiff's——

The Court: Well, your criticism, as directed to the Government, is also directed to the Court as well.

Mr. McClennen: I think not, if your Honor please, because a court of justice, dealing with counsel for the United States, would very likely be impressed with the language [fol. 4996] used by the counsel for the United States.

The Court: I gave the use of the word careful consideration.

Mr. McClennen: And if it is to be taken as a criticism of the Court's language, it is merely that the Court has improvidently, I submit, used the term.

The Court: When I say I used the word advisedly, understand me, I knew what it meant, when I used the term. With respect to the use of the word in the proposed findings, I think it was in the proposed findings, as you say.

Mr. McClennen: Then the eighth asks for a substitution of other paragraphs for No. 10 and 11 (b) and 11 (f). They were thrown into two paragraphs in the plaintiff's draft, but seem to be of the general character of 10.

Here are these same words of threat spread throughout, and subject, I respectfully submit, to the just criticism which I have made in reference to the other.

Now, instead of that we have put in just what the facts were:

"In 1937 Schine took up for consideration the possibility of building an additional theatre in Canandaigua when there [fol. 4997] was prospect of the construction of a large veterans' hospital that would bring several hundred families into town. The planning and finishing of the theatre took about two years. During this period a sign was put up. By whom does not appear. The sign bore no signature, either written or printed. It was erected on a lot occupied by Montgomery Ward & Co., called the Flanagan lot. It said something about a new theatre to be erected by Schine or the Schine organization, or some such thing like that. The newspaper in Canandaigua published an article that the Schine Circuit was going to build a new theatre. The new theatre was built, not on the lot occupied by Montgomery Ward & Co., but on another lot, for which Schine paid $15,000 for the land and structure on it and paid in addition for building the Lake Theatre, $38,500. This new theatre, the Lake, was a theatre of 400 or 450 seats, of fine construction, equipment and decoration."

Now that is the whole of the story with reference to Canandaigua that the evidence shows Schine had any connection with.

Then we go to Paris:

[fol. 4998] "In Paris, Ky., in October, 1937, Schine received a license, pursuant to the city ordinances to erest and operate a new theatre. Schine proceeded to have plans drawn and got bids in the spring or summer of 1938 and completed a new theatre in 1939. In November, 1938, Harry Schwartz, about four months after he knew of the proposal for the new Schine theatre, obtained a lease of property in Paris. Lazar asked Schwartz if he had not seen the sign on the lot Schine had purchased some time ago and that they were going to build a new theatre on it, and Schwartz told Lazar that he had. Lazar said they had every intention of building a theatre in Paris and were not decided on just what type or what size, and that is why they had not begun earlier, and that he felt that Schwartz was making a mistake in building in competition with them, and Schwartz told him that he did not think so or he would not have signed a 20-year lease on the main corner of the town, and that he felt that he had the best location in Paris, and that he felt the theatre would be self-supporting. Lazar asked him if he would not go to meet him at the Lafayette Hotel, and Schwartz said that he would be glad to do so and went later in the day to the Lafayette Hotel. Lazar said that [fol. 4999] he did not feel that Paris could support three theatres and that as long as they had been in Paris operating a theatre and had anticipated building a new larger theatre, he could not quite understand what would prompt Schwartz to go into the town as competition."

I think I needn't read down the whole of that. It is right in the language of the testimony, what was said and what was done in this section. I can see no just reason that the plaintiff can urge why that narrative of the evidence should not go in as the facts to be found. If the phraseology departs from the evidence, isn't warranted by the evidence, well and good: specific things can be pointed out, if there are any. We have tried to make it so that there are none.

Now we come to Perry:

"In Perry in July, 1935, Schine bought the Davis property a little below the hotel, at a corner on the Main Street. Thereafter Mr. May called on John C. Herzberger, the operator of the Auditorium Theatre, and introduced himself and said that he had just closed a deal with Porter Davis, buying a lot for Schine, on which they were to build a theatre seating 1,000 persons and costing about $100,000, and that [fol. 5000] he hoped that they would be friends. In August, 1935, Herzberger met Myer Schine at the Seneca Hotel in Rochester and Schine offered Herzberger $5,000 for his lease from the Town of Perry of the Auditorium. An agreement was signed subject to the approval of the Town Board to the sale of the lease, and to expire on September 1. In August, 1935, the Town Board wanted Herzberger to stay and would not let him sell the lease. Schine received the blue prints for a new theatre in Perry, dated September, 1935, and specification therefor, and the time fixed for receiving bids for construction was October 4, 1935. In September or October, 1935, Mr. Osborne of Dipson & Osborne, came to Mr. Herzberger several times about taking over his lease, and for more money than Schine had offered, and Herzberger made a deal with them and containued to manage the theatre for a year. Dipson improved the theatre at a substantial expense of about $13,000 and made the theatre a satisfactory theatre and removed any occasion for having another theatre built in the town. Before this improvement the theatre was not at all a modern theatre but had been built in 1898 for stage performances. After rebuilding it had about 700 seats, as Dipson reseated the theatre. [fol. 5001] Dipson & Osborne later sold this lease to Schine and Schine made additional improvements to the theatre at a cost of $7,500. No other theatre has been built in Perry."

That is a complete statement of the evidence—a complete statement; no more is shown.

"In Salamanca, in October, 1924, Schine became the lessee of the Andrews Theatre, 735 seats, and in 1927 bought the land on which the new theatre was subsequently built. The original cost of the land was $24,300, to which Schine added a building and improvements at an additional cost of $164,300. Under an agreement with Fox-Metropolitan, Schine undertook to construct a new theatre on its land in Salamanca and to lease it to Fox-Metropolitan. This agreement was terminated and the theatre was not then erected. Schine took the new building project up with the architects in mid-summer of 1938 and sent blue prints of the land to the architect on August 23, 1938. The plan to complete the theatre in 1939 was held up by lack of materials, which could not be obtained, and the completion and opening was in August, 1942. The new theatre is a very lovely theatre, air conditioned, with modern equipment, with about 1200 seats. In December, 1938, C. R. Dickerson, manager of the [fol. 5002] Schine theatre in Salamanca, came into the office of the publisher of the newspaper, Salamanca Republican Press, and told him that the Schine Company would build a new theatre in Salamanca and that the architect was at work on the plans, calling for completion in the following May. The publisher wrote and published an article to this effect in the Salamanca Republican Press on December 24, 1938."

There is the whole statement of the facts for Salamanca as they occurred.

"In Medina, Ohio, Yudelvitz and Willis were lessees and operators of the Princess Theatre as a first-run theatre, with all the first-run product they wanted. By January 1, 1937, they had learned that Fine and Essick, with a circuit of some 29 theatres, an independent circuit, that is, not connected with any producing company, were proposing to come into Medina in opposition to them. Thereupon Yudelvitz and Willis negotiated with Schine and on March 18, 1937 entered into an agreement with Schine to come with them and to build a new theatre. At almost the same time the Masonic Lodge of Medina entered into the reconstruction of their building with a theatre in it. In March, 1937, they [fol. 5003] wrote to Schine asking him not to go ahead with the plan to build a new theatre in Medina. In September, 1937, through negotiations with Yudelvitz and associates, Schine became interested in 50% of the lease of the Princess Theatre, which Yudelvitz and Willis were operating. After the reconstruction of the Masonic Temple building, the new Temple Theatre alone was ample for the town, but the Princess was not. Before the new theatre, the Temple, opened Yudelvitz was playing Metro, Paramount, Fox, RKO and Republic pictures (~~the last named~~ because with the western stars, Ken Maynard and Gene Autry, he wanted to play Republic on Fridays and Saturdays, although he was not forced to do so from any lack of product.) The Princess continued to have the first run product required for the operation of that theatre. Essick and Fine could not buy the same product which had already been sold to the Princess for the same run. In April, 1939, after extended 'cross the table' negotiations the Schine and Yudelvitz interest-s became interested in 50% of the lease of the Temple Theatre, the other 50% being retained by Essick and Fine, who also acquired a 50% interest in the lease of the Princess, so that in April, 1939, and thereafter the interest in the two leases [fol. 5004] stood, Yudelvitz 25%, Schine 25%, Essick and Fine 50%. Schine said nothing to Essick and Fine by way of threat. In the operation of the Medina Temple Theatre the town has been very well served and the worth while pictures of all the distributors from time to time have been exhibited there."

That is a full narrative of the facts with reference to Medina, and I submit that those facts show nothing in violating the Anti-Trust Act in the things done, nothing that was not proper. There is no reason why Yudelvitz and Willis, apparently aware that a new circuit was coming in, shouldn't get ahold of Schine to come in with them; and the pictures that they could get for their theatre, they were entitled to get; and in no way was there anything by way of threats or any msiconduct of any kind whatever.

But whether there is or not, if that constitutes misconduct, it will be in the statement of facts, so that it will be available for whatever is the proper conclusion to be reached on those facts.

"In Mt. Vernon, Ohio, Mr. Smoots, the owner of the Vine Theatre and lessee of the Memorial Theatre, brought the matter of going into Mt. Vernon to Schine's attention [fol. 5005] and proposed to lease the Vine to Schine and to assign his lease on the Memorial, which was then closed. At about the same time Mr. Platt, who operated the Lyric, said that he would like to sell Schine the equipment and lease of the Lyric provided he could get a job to manage the theatres in town, and this deal was closed about February, 1934. Schine became the lessee of the Vine Theatre and of the Memorial Theatre in January, 1934, and of the Lyric Theatre in February, 1934, and of the Memorial again at the end of December, 1940. The Lyric location was the finest location in town. In April, 1938, on the Lyric site and on additional land bought, Schine built the new Vernon Theatre. The new Vernon Theatre is a modern fireproof constructed theatre with a wide marquee in front, no stores, a large lobby, and in the interior decorated in very modernistic style, with the finest seats obtainable. It has all the other equipment and a fine mezzanine furnished attractive and comfortable, with fine public spaces upstairs and downstairs. The cost was from $120,000 to $130,000."

Those facts are not open to controversy, and we submit they should be in the findings.

The ninth asks for a substitution for 11 (a), (e), (h) and [fol. 5006] (i), and the others we have not asked for any change.

The Court: All right.

Mr. McClennen: 11 (b) and (f) were in the preceding one.

The Court: Yes, I noted that.

Mr. McClennen: There again is the word "threat" used as to Bellefontaine, and what we ask is this:

"At Bellefontaine, Ohio, in 1930, a delegation from Bellefontaine called on Mr. Schine with reference to the establishment of a new theatre in Bellefontaine. At this time the Schine Circuit was operating in only eleven cities and towns. These were all in New York State. As a result of the call of this delegation Schine acquired land in Bellefontaine in 1930 and built the new Holland Theatre, which was opened on February 12, 1931."

At this time Schine was a small circuit, he had parted with 25 theatres and had theatres only in these nine places, and no theatres in Ohio. I think I am right in that.

I go on reading: "It was of the latest type of first class moving picture theatre. At this time Milton A. Mooney, as a lessee, was operating the Strand Theatre. He operated the Majestic Theatre during the annual fair week, and in the [fol. 5007] year- 1928 to 1931 he closed it entirely. It was a small, old converted store show, without equipment for sound pictures. He also had the Opera House, an upstairs house, seventy-five years old, without sound equipment, and closed except for an occasional stage show. The Majestic and the Opera House were of no value, and the balance of the lease of the Strand and its equipment, which had been used for seven years, was all that Mooney had to sell. In May or June, 1931, Mooney saw Mr. May, who offered $2500 for the lease, and Mooney sold the balance of the lease of the Strand and its equipment in July, 1931. The lessor of the Strand was one Butilla. It had been made in 1924, expiring in 1934. Gutilla then renewed the lease until 1938. This negotiation was with Mr. May or with Mr. Lazar. In these negotiations, Mr. Lazar said that if the Strand lease was not renewed and Gutilla operated it, Schine was going to play second-run at the Opera House, on which he had a lease. The Opera House had been closed from 1932 to 1934 and open from 1934 to 1936 as a second-run house. From 1932 to 1934 it had been open about six or seven months. Gutilla had his final negotiations for the lease with Mr. Schine."

[fol. 5008] That is the whole of the occurrences in Bellefontaine.

The Court: Well, you criticize the use of the word "threat" by the Government as a conclusion. Yet in your proposed findings you say, "Schine said nothing to Essick & Fine by way of threat."

Mr. McClennen: That is the testimony of Essick.

The Court: Well, you criticize the use of the word "threat" by the Government here as a conclusion, do you not?

Mr. McClennen: I am criticising the use of the word as a conclusion based on the evidence. The witness testified that no threat was made to him. That was a truthful piece of testimony. We are merely asking a finding of that fact.

The Court: Well you say, "Schine said nothing to Essick & Fine by way of threat." You use the word "threat." That is what I had in mind.

Mr. McClennen: Well I used it because the witness testified that no threat was made to him.

The Court: All right. But it is a conclusion when it stands alone, when you don't say anybody testified to that. When you say, "Schine said nothing to Essick & Fine by way of threat," that is a conclusion as to what the testimony of the witness is.

Mr. McClennen: It would serve the same purpose if it was [fols. 5009-5010] put in that form. I put it in as a direct paraphrase of the witness' testimony.

"At Lockport, N. Y., Schine began to exhibit in 1922. He bought a large building which had been a skating rink and then used as a garage, and converted it into a modern large motion picture theatre, the Rialto Theatre. It had great advantage over any other theatre in Lockport because of its downstairs seating capacity. It cost, for original purchase, $27,500, and for improvements $118,400. In October, 1927, Schine became half owner in the lease of the Hi-Art Theatre and of the Palace Theatre constructed several years after Schine had opened the new Rialto. The Rialto had been playing the best first-class pictures and the Palace played vaudeville and pictures and part of the time pictures only. Later Schine discontinued vaudeville at the Palace and moved the best pictures into the Palace and played first and second-run at the Rialto. Schine was forced out of the Palace Theatre in December, 1932. Before this Schine had negotiated for contracts for the 1932-33 product sufficient to operate two theatres which Schine was then operating. The owner of the Palace thereupon opened the Palace. The Rialto was showing all the product of the eight companies [fol. 5011] except Metro. Schine, on losing the Palace, remodelled the Hi-Art, to be operated in place of the theatre that he had lost. Before reopening the Hi-Art, Mr. May made an offer for the Palace and stated that Schine was withholding opening the ~~Hi-Art for~~ an additional few days for him to decide whether or not he would accept the proposal, and that Schine would reopen the Hi-Art to play the product under contract. The owner of the Palace was unwilling to accept the offer. The Hi-Art, which had been closed during the seven years that the Palace was operated, was reopened."

Now, that is the exact statement of the facts there and shows the significance of the words used about reopening the Hi-Art. Schine had been operating for a long time two theatres in that place and he lost the Palace, and the only way in which he could operate two theatres was either to renegotiate a lease for the Palace or open up the Hi-Art, and he told the man that he was negotiating with that if he couldn't get the Palace he was going to open up the Hi-Art, and he did so.

That, I submit, is an entirely proper business transaction. It is not a transgression of the Sherman Anti-Trust Act, [fol. 5012] or any other law in existence.

At Seneca Falls we have set out exactly the facts of what occurred: Buying the theatre, setting up a sign that it would reopen soon after alterations as the Schine theatre, and that an independent who was without financial resources and was seeking to acquire the means of building the theatre discontinued his efforts for two years, the sign reappeared on the Seneca, the theatre did not reopen, the independent did not raise the money. That is the story of the facts there.

The Court: Well, we had better suspend now till 2 o'clock.

(Whereupon a recess was taken until 2 o'clock p. m.)

[fol. 5013] After recess, 2 o'clock p. m.

Appearances: Same as before noted.

Mr. McClennen: If your Honor please, I had reached the tenth paragraph which asks a substitution of 12. There again is the use of the word "arbitrarily." We ask a statement of the fact, in that we believe this fully covers the substance of that paragraph:

"In any town in which Schine bought motion picture product for a specified run, it was of course impossible for any other theatre to buy such product for the same run. This condition existed in Auburn, New York, Lockport, New York, Mount Vernon, Ohio, Paris, Kentucky and Bellefontaine, Ohio. In such instances the operator of the other theatre would buy a different run or from a different distributor."

Then eleven is as to No. 13. That, as drawn by the plaintiffs, had in it the word "monopolizes," and named particular places.

We ask this substitution: "At Corbin, Medina and Lockport, Schine had the first-run product. In Corbin, Schine was the licensee of this product before there was any other theatre in town. One of these theatres, the Hippodrome, [fol. 5014] was a much more substantially constructed and more expensive theatre than the new theatre that was built. The facts as to Medina and Lockport have been stated hereinbefore.

In Rochester, N. Y., Schine had the first-run neighborhood product for the Riviera, State, Dixie and Liberty theatres. These included the best neighborhood houses in Rochester. The Fenyvessy theatres took clearance over all other Schine Theatres in Rochester. Schine had these first neighborhood runs before the independents acquired their theatres."

Then No. 12 is as to No. 15, and we ask this substitution:

"In certain cases when Schine purchased or acquired a lease of a motion picture theatre or theatres as going concerns, an agreement was made with the former operator which provided that such operator would operate the motion picture theatres within limited competitive areas for limited periods of time. In certain instances this noncompetitive agreement covered nearby towns other than the towns in which the former operator had been in business."

That fully states the facts as they appear in evidence. [fol. 5015] No. 13 is asking a change as to the franchise agreement. There again, in 13, we have narrated at length all the features referred to in the original, without characterization but stating what those agreements contain.

14 is asking a change in 17. This is the long one relating to clearance. Now that has in it a statement of the clearances at certain places without description. Here was an entertaining illustration: After your Honor had stated the length of the clearances in your opinion, you said it is true that some of these were over third-run. Plaintiff puts in the clause nearly like your opinion, but with no reference to that very important distinguishing fact.

Now, so far as clearance is so concerned, we submit that the facts to be found here—if they are to be found at all—about clearance should show the places and the length, and the distances. For instance, very strikingly: The 45-day clearance for Gloversville, containing no reference to the fact that Johnstown, the place cleared, is only three miles away. And it comes right after the statement that some of these clearances were as near as 20 miles. One has to [fol. 5016] search the evidence to find out that the place next referred to with a 45-day clearance is only three miles away.

Now clearance is not just a matter of distance, just a matter of time, but involves a trial of the circumstances to show whether or not it is unreasonable. The purpose of clearance, that for which it has long been established, is so that instead of the owner of a picture having it shown in one place only once, in which event all the value of it would be got on the first run, this plan has been adopted by which it may be shown in other theatres at subsequent runs, provided they are so placed that they don't take away from the patronage that would be available to the first run.

The owner of the picture is entitled to all the return to be expected from that picture in the neighborhood. He gets a larger either percentage or flat rental for the first run, and is directly interested in having the box office receipts in that theatre large. And clearance does not become unreasonable until it so extends the time or the area as to put an inhibition on a later theatre which will do no good to the theatre cleared.

The consent decree lays down the principles to govern in determining whether clearance is reasonable or not. [fol. 5017] None of those things are presented here. There is no testimony that the clearance exceeded that which was needed for the protection of the first run. There is direct evidence from the plaintiff's witnesses that some of the places cleared were competitive, although in different towns; and none of the requirements to establish unreasonable clearance are presented in the case.

It has been urged that it was unreasonable merely because of the length of time and merely because of the distance. Now it is a known fact that greater distances than that, and greater lengths of time than that, affect the first runs, and there is nothing in the distance or in the length that in itself establishes that the clearance is unreasonable.

We urge first that the facts should be stated, what the clearance is, what the distances are, and so much of the competition, as has been shown in evidence, and that the matter stop there, not attempting to try out clearance that is not in this case, where no evidence has been offered, and particularly when there is now no occasion whatever to take the time or call for the labor of a court of equity on that subject because of this comprehensive provision as to [fol. 5018] clearance that is contained in the consent decree, so that if there is any clearance taken that is more than it should be, the remedy is right there available without the need of any injunction in this proceeding.

There is this also to be said about this clearance provision: In this paragraph there has been introduced these statements of branch managers, for instance, to their district managers or home office, expressing their views as to clearance. We have urged that those are not admissible in evidence, and in the course of the opinion, the Court, in dealing with the question of admissibility, used words indicative of a possibility that findings might be made of these things without reference to the letters. Then, in this clause comes the test of the letters. We urge that right where that is stated it should be stated that these were received over the objections of the defendants. Then, if we are right in our objection, that must go out. But if it is put in here as a fact, without disclosing the fact that it is taken out of those objectionable letters, we do not have the means, without going extensively into the testimony, to show that this was one of the objectionable letters. That [fol. 5019] is, if the Court deems the letter admissible, and then found a finding of fact upon it, we submit that it should be shown at that point, that that is based on the letter that is objected to.

The Court: Well, doesn't that appear in the record? The ones that were stricken out were specifically stated.

Mr. McClennen: Yes, true. But if your Honor please, the idea of Rule 52 was to make the record as simple for the use of the Appellate Court as could be.

Now where a letter that is objected to is put right into the text of the opinion, even if the letter is described by the sender and the recipient, it takes a reference to that, and to the exhibit, to explain that this is a piece of evidence subject to objection. Whereas, it does no harm to anybody, and greatly conveniences both the upper Court and counsel, if it appears right there, so that that burden doesn't have to be met.

The Court: You want it to appear where, you mean?

Mr. McClennen: Well, we put it in in this form:——

The Court: There is more than one instance of that.

Mr. McClennen: About a third of the way down on our page 12 in 14:

"The inter-department communications between employees of major film companies and some letters writ-

[fol. 5020] ten by Schine employees are stated below. Among these are communications by Lehman of United Artists, Pielow of Metro, D[illegible]a and Sauber of Universal, Smith of Warner, Sussman and Grassgreen of Fox. These communications were admitted in evidence over the objection of the defendants, pursuant to a ruling that it was within the scope of their duties to make the representations in the communications, and that they did it as a natural incident of the office, namely, a branch or district manager. None of these persons were called as witnesses by the plaintiff and no attempt was made to qualify them as experts upon the subject of clearance, or to ascertain what factors they or any of them considered in determining whether any given clearance was reasonable or unreasonable."

Then there is stated, as we have noted before, the contents of those letters, and no one is obliged to go extensively into the record to show the relation between the objection to evidence and the finding of fact, but it is clearly and concisely stated there.

The Court: It would seem to me it would lumber up the findings in your case if you would have to put into the findings the rulings of the Court on evidence submitted all [fol. 5021] the way through the case, wouldn't it?

Mr. McClennen: I am not suggesting that the objections be extensively dealt with; I am suggesting it be presented right there by a sentence so that it shows that the source of these things stated here in the communications was objected to.

The Court: Of course, on first thought I wouldn't think that that would be proper in the findings. You have your rulings and exceptions to the testimony as it is in the record.

Mr. McClennen: Yes, if your Honor please, but if this isn't stated in this way, then it becomes necessary not only to show what we submit is the error in the ruling, but also the prejudice that has resulted and makes necessary to show that Exhibit No. 42, if you please, is the one that contains the language that you have quoted in your findings and then in that way to show that we have been prejudiced by the receipt of that exhibit, by its being introduced into the findings.

Now, no conceivable harm is done to any one if that simplification takes place of showing that these were not communications that had come in in ordinary course without [fol. 5022] objection, and it does not make it necessary for the Court of Appeals to go into the record, or be taken into the record by these extensive references and cross references. They are all in one place, and no one is hurt by it in any way.

The Court: Well, it seems to me it would be establishing a wrong principle, because in that course of pursuit you might ask the insertion of the evidence pertaining to any question concerning which you raised objection and objection was overruled.

Mr. McClennen: Well, I should submit that where a finding is made based entirely on objection to evidence that it is a principle that is not an objectionable principle, one that simplifies the work of the Court, which is the design of the rule, and does no harm to any one—relieves a great deal of unnecessary labor on the part of the upper court and of counsel, and particularly is it of some significance here because here it was stated in the opinion that the same results might have been reached without a reference to these objected to exhibits. That is put in the opinion.

Now here we wish to show, in as concrete fashion as possible, that here something has gone in which, if we should [fol. 5023] prevail in our objections, should go right out of the findings—and we have not complicated the record in any way, but simplified it by that course.

Now in dealing with clearance we have asked on pages 13 and 14 of our motion for a statement of the facts of the industry with reference to clearance. These facts are mainly drawn from the plaintiff's admission of facts. They are concrete, they are in short compass, and they tell the story in the admittedly correct words of what clearance is and what its purpose is, and what the actuating motives are in general course of the industry in determining clearance. They are essential to knowing just what clearance is and what are the considerations which indicate whether there was anything monopolistic in obtaining the clearance, as distinguished from seeking to get all that could be got from the picture in its first run.

The 15th is asking a substitution for the 20th, which states that special privileges were granted, as in the case of bank nights, and so on. Those were spoken of as special privileges, and the evidence shows that they were not special to Schine; that they were regular things. We have phrased it in this way:

[fol. 5024] "In certain instances the distributors made contracts providing for film rental based upon a percentage of the gross receipts and in certain other instances, the rental was a flat rental. When a percentage picture was played, with a competitive device (bank nights, etc.) sometimes provision was made for the deduction from the gross receipts of the cost of such competitive device before computing the distributors rental. These provisions were also in contracts with independents."

Now that is the fact. There is nothing indicative of special privileges or special benefit of any kind in such a clause. It is recognized that the box office receipts at a first-run picture may be enhanced by the fact that there is a double feature, another feature shown, and they may also be enhanced by the fact that there is a bank night or other attractive device which costs money to put in. Those are proper costs of the exhibition, and proper, therefore, to be deducted by agreement from the box office receipts before the percentages apply. It is an entirely reasonable proposition. It shows no indication of an intention to do a special favor to the particular exhibitor. It is a common provision and is made for independent exhibitors as well [fol. 5025] as for circuit exhibitors.

Now in our numbers 16, 17, 18 and 19 we have made requests for changes of language to take out anything that is of a conclusion nature by simply stating the facts as they appear in the evidence. A comparison of each one of those paragraphs with the evidence shows that they state fully all that is contained in the plaintiff's draft which the evidence warrants.

That brings me to the second general division of our motion, which begins on page 15, and the first paragraph of that is No. 20. The purpose of that is to make clear the date that we are speaking of:

"All findings made herein with respect to any acts committed by the defendants or any of them or any course of conduct pursued by them which the Court holds to be in violation of the Anti-Trust laws are limited to acts committed or course of conduct pursued prior to May 19, 1942, plaintiff's counsel having stated at the opening of the trial that he would not offer any evidence beyond that date."

Otherwise, on casual observation, it might be thought that the findings were showing the conditions which existed [fol. 5026] in 1946, when, as a matter of fact, they show conditions that existed not later than May 19, 1942.

The Court: Doesn't that appear in the opinion?

Mr. McClennen: But not in the findings.

The Court: But doesn't it appear in the opinion?

Mr. McClennen: I think it may. But not in the findings, and as the findings, under Rule 52, should be self contained, that provision should be in the findings. There is, of course, no dispute about the fact.

Now the next numbers, 21 to 26, relate to the capacity in which the different individuals acted as far as they acted. That is, they were acting, as far as they acted in these matters, for the corporation.

It becomes of special importance because in a very recent decision the Supreme Court actually struck out the injunctive provisions that had been entered below against the individuals because, although the individuals had done the very acts that were to be prohibited in the future, they had done them only as officers of a corporation; it was a corporate act, and wasn't contemplated as an individual act.

I respectfully submit that there is no way of distinguish- [fol. 5027] ing that position which the Courts took in that case from the case here.

In addition to that, there is the fact that—well, conspicuously, Louis Schine, among the individual defendants—there isn't any evidence that Louis Schine has done anything in violation of the Anti-Trust Act. He has cooperated in every way—this is dealing with him as individual. There is no evidence that he has taken any step in violation of the Act. The evidence is that J. Myer Schine was the policy making officer, the executive head of the corporation. There is no indication that any others did anything except as it is shown—the conversations they had, the steps that they took—and those were not taken as individuals in their own right or in their own interests, only as officers of the corporation as far as they came within the authority that they had or those acts were approved later by the corporation.

Next we have from 27 to 32. Those are statements that are in the exact language that the plaintiffs have admitted to be the facts. They are right in the admissions, in the admissions which were introduced in evidence in this case, [fol. 5028] and they are facts about which there can be no controversy and which have a very substantial bearing in interpreting the things that were done in this case to show whether or not they are abnormal and had a significance on that account, or were normal in accordance with the ordinary business methods of the industry.

We urge that most clearly 27 to 32 should all be in.

The Court: In 32, shouldn't that be 70 per cent instead of 80 per cent?

Mr. McClennen: Well, I should have to refer to the record, which I haven't here.

The Court: That is what the admission was, as I have it here.

Mr. McClennen: A comparison with the admissions will, of course, show what is the right figure.

Now, 33 to 72 differ from what I have just been referring to, in that there is no specific admission on the record that it is so, but they are from testimony of witnesses as to the methods of the industry, testimony not in the least——

The Court: Well, you pick me out certain parts of the testimony——

Mr. McClennen: That is, 33 to 72?

[fol. 5029] The Court: In 34 you have the statement that the positives at times run into millions of dollars and that if it is in technicolor the cost runs much higher.

Mr. McClennen: Well, yes, I would have to refer to the testimony. Now, all of these are facts of the industry that bear upon the reasons for the methods pursued, the necessity for successive runs, the necessity for clearances sufficient so that an adequate number of prints, endurable in the matter of cost, will make it possible to serve all the theatres that are to get the prints. In this instance, each one of these statements has the testimony reference against it. We hope that these references bear out the findings requested. These are additional to the findings so far made.

The Court: In 43, I don't think findings should show efforts of the distributor and of the exhibitor.

Mr. McClennen: Well, one of the things that the exhibitor is vitally interested in is that a picture showing in one theatre will not draw directly away from another theatre, playing the same picture. That is particularly the exhibitor's desire, as well as the distributor's.

The Court: Well, wouldn't that be a conclusion, the same as you claim with respect to some of the other findings [fol. 5030] signed, the effort of the distributor and exhibitor?

Mr. McClennen: Well, that is the testimony of what they try to do.

The Court: That runs down to——

Mr. McClennen: It runs to 72.

The Court: I have been all through these mostly.

Mr. McClennen: Then we come to the negatives. There is no reference in the findings—there was a reference in the opinion, but I think there is no reference in the findings which the plaintiffs presented about the denial of anything of the nature of a conspiracy in the relations of the distributors to each other or to Schine.

Now that fact that they did so testify is a fact in itself. That is, we had in the Interstate case the most concrete announcement that if you do not call the leading executives when it is claimed that there was a conspiracy by the concern itself, that their absence is some evidence of conspiracy. Now, we have shown that that does not exist in this case, because they have been called.

Of course, there is this very marked distinction here: The distributors were not parties as they were in the [fol. 5031] Interstate case, and there was a failure to call a party. Here we went beyond that, and called these nonparties to show the fact that nothing was to be inferred from their silence. There was no one else to call. They weren't under our control. We had to get them here. We couldn't just tell them to come and they come.

The fact that we couldn't get them here would have been an excuse for their not testifying. But we got them here, and so, as to each one of these distributors, in these periods in question, came this evidence of the men who, if there has been any agreement, concert of action of any kind, would have been the ones who would have known of it.

They have testified that there was none, and there is nothing to impugn their testimony in any way.

We are not asking here to have some Government witness disbelieved because these men have come and testified. We are not asking in this that any fact, even if it be adverse to us, or any conversation or any dealing, should be found differently from what the evidence for the plaintiff shows it to be, because of a contradiction. We are meeting the inference that might be drawn from the fact that these [fol. 5032] men who would know of a conspiracy, if there was one, had not testified. The mere fact that they testified is a fact in itself which we submit most certainly should be incorporated into the findings of fact. There is no witness that can be pointed to that would have known about this conspiracy of the distributors, if it was a conspiracy, that has not been called. We urge, therefore, that the request to find in paragraph 73 be granted.

Then we come to the same sort of thing: The policy maker of the Schine Circuit, the only policy maker of the Schine Circuit, Mr. Schine, testified, and we ask that what he testified be stated so as to show that no inference is to be drawn of a conspiracy from his failure to come forward and testify upon the subject. That is the 74th request.

Then is the 75th, which relates back to the subject of clearance:

"No competent or properly qualified witness was produced by the plaintiff upon the trial to testify as an expert, as to what constituted reasonable or unreasonable clearance, or as to the factors which must be considered in determining whether clearance is reasonable or unreasonable."

[fol. 5033] We believe that is very important because of the judicial determination in the consent decree in the case of the United States against Paramount, which lists the factors which determine whether clearance is reasonable or not, and shows that there has been no evidence offered of that character in this proceeding.

Then we come to special strikeout requests, and those are Nos. 76 to 84. The first of these deals with the same statement that I have referred to as they appeared from time to time in the plaintiff's draft of findings, that is, as to "authorized", "dictate", "monopoly", "monopolistic", "arbitrarily", "unreasonable threat", "lowering admission prices", without any statement of the surrounding circumstances, "predatory", and "conspiracy."

That question of whether the facts constitute a conspiracy or not is a matter not of statement of facts, but a statement of the conclusion to be drawn from the facts that are laid forth in the evidence.

Then there is put into the findings of fact this omnibus statement of monopoly and of two classes of conspiracy, one class, among the defendants, and the other, the class of conspiracy by Schine with the various distributors. And there [fol. 5034] has been put in this statement of both of those things.

We urge first the matter of conspiracy among the defendants: An act done by an officer of a corporation cannot be at the same time the act of the individual and the act of the corporation so as to constitute a conspiracy between that man and that corporation. It has been so laid down in the decisions and with none to the contrary.

Where you have a unit, a corporate unit, and an act done which is the act of an officer of that unit, that act cannot be both the act of the individual as an individual and the act of a corporation, as constituting a conspiracy.

Now this matter is a matter which, we submit, should not be approached until the point for the conclusions is reached, and then it should be so presented that it will be apparent that the conclusion is based on the statement of the findings of fact that have preceded the conclusion, so that it is not necessary to go outside the statement of the findings of fact when dealing with the matter on appeal but can be directly dealt with by reference to the findings of fact to test whether we are right or not in contending that there is no evidence of conspiracy.

[fol. 5035] We do so contend that there is no evidence whatever of a conspiracy of Schine with Schine Circuit or May with Schine Circuit, or these several other corporations. And, incidentally, there is not a word in the evidence that some of these corporations have done a thing. Not merely is there no evidence that they have done any thing that contravenes the Anti-Trust Act but, we submit, there is a complete absence of evidence of such a conspiracy by the defendants *inter sese.*

Then we come to the question of conspiracy with the distributors. Now we most earnestly urge that these distributors should be taken separately and tested to see whether there is any evidence against them. We have put them down alphabetically here. Of course, Schine did not conspire with Columbia, unless Columbia conspired with Schine, and you are asked here in this case to convict Columbia of a conspiracy with Schine.

Now, we urge that the evidence may be consulted, as a whole or in detail, and that there is not a particle of evidence that Columbia conspired with Schine to restrain trade or to monopolize. All that Columbia did was to supply its pictures to what it deemed was its best customer under all [fol. 5036] the circumstances. In order to make what Columbia did a conspiracy to restrain trade, it must be shown that Columbia had knowledge that the motive actuating Schine in buying his pictures was not to get pictures for his theatres, but to restrain trade; not to get pictures on the best terms that he could, but to restrain trade. Now, there is in the evidence here none whatever of such a conspiracy.

Going back to the conspiracy *inter sese* of the defendants, we have this very striking thing: The decision in the Crescent case came down now a good many months ago. In their requests for findings of fact, the plaintiff's counsel took words of the Crescent case and put them in as is applicable in this case.

The Court: There was no opinion in that case? There was just the findings?

Mr. McClennen: Well, there was an opinion finally in the Supreme Court.

The Court: I mean in the lower court.

Mr. McClennen: In the lower court I think there were findings; I don't think there was any opinion.

The Court: There wasn't any opinion.

Mr. McClennen: And those words were taken so as, I re- [fol. 5037] spectfully submit, to misfit in this case, into a case that had already been decided, which was a different case. There there were different interests, not wholly owned companies, that had been brought into this combine that was ordered to be broken up. There is not a single reference to a corporation of the Crescent Circuit which was in truth a subsidiary of the circuit as a subsidiary. The references are to affiliated corporations, a term well understood as distinguishable from a hundred per cent subsidiary. Where there are two corporations, and one owns all the stock of the other, and it is merely an instrument of operation of the major corporation, the action of those two corporations does not constitute a conspiracy. You cannot have a conspiracy between your left hand and your right hand. It is a unit.

In the Crescent case that was not the fact, and that language being withdrawn from that case into this case by the plaintiff's requests and arguments brings distortion into this case. It is a difficult situation, an entirely different situation. Here there were no conspiracies, among themselves, within the defendants. There is a unit here. This [fol. 5038] Circuit is a unit in this matter, and the owner of the stock, all of the stock, of these many corporations that are sought to be grasped away from this Circuit.

Of course, there is such a case as Medina, where they don't own all of the stock, where they are not even the dominant owner. Essick and Fine own 50 per cent there and Schine owns only 25. And the cases are rare where there is any division of ownership. In most cases of these theatres which it is the effort of plaintiff's counsel to tear away from us, they have always been wholly ours; no other interest, no chance for any finding of conspiracy, no chance for any finding of monopolizing in that sense, because it is a unit. It is the case where one unit has built up this Circuit and owns this Circuit. Those are not acts of conspiracy.

The Court: Well, in your construction such an aggregation of entities would be exempt from the Statute? They couldn't commit a conspiracy then?

Mr. McClennen: Well, there is no question of exemption. You can't hold a man for conspiracy with himself, regardless of how many theatres he may have.

The Court: Well, it is a question of the relationship be- [fol. 5039] tween the circuit members, the entities in the corporation.

Mr. McClennen: In that case there were different interests.

The Court: I know there were. But, if you are right in that construction, that goes to the very foundation of the Statute itself.

Mr. McClennen: I hope it does, but I hope, of course, your Honor doesn't go on to find that there is a conspiracy here just to hold us for conspiracy, if there is one.

The Court: No. I am speaking argumentatively, that is all.

Mr. McClennen: It is as simple, if your Honor please, as this statement: One man cannot conspire with himself; two men can conspire.

The Court: Well, that is the essence of the law.

Mr. McClennen: And it is the same whether they do it in their individual names or do it in corporations in which they respectively own all the stock. It is still one man dealing with himself in this case, and in the other case one man with another man or more.

The Court: Of course, this case isn't that case, because you have in this case the representatives of different corpo- [fol. 5040] rations, not solely the one man, Schine. We have representatives of the different corporations committing certain acts as part of a conspiracy. It isn't as though it were a question of Mr. Schine, as though he did everything. Your parallel doesn't follow out, it seems to me, here anyway, even if you are right in your contention. If a corporation were being run by one individual, you might say, having no one who has anything to do with its operation except him, then your argument might be correct, because he couldn't conspire with himself. But you have a different case than that here.

Mr. McClennen: Well, there is no case, no instance here, where one Schine officer did this act with another Schine officer, each acting in his separate capacity. When an officer of a corporation takes a given step or has a given thought, that cannot be at once the thought of the corporation and the thought of the individual man himself—and I am speaking here in language of the Supreme Court when I make this argument. It is not any invention of my own, or anything that I have thought out first; it is there in the opinions.

There is this recent case where they actually didn't issue [fol. 5041] the injunction against the individuals who had done the improper acts, because they had done the acts as representing the corporation, and it was only the corporation that had acted in those acts.

Now, this is not bringing forward old and superseded law, but a very recent decision resting on exactly the same principles which I have urged upon your Honor with respect to this matter.

Now I have spoken of these in dealing, on page 24, with the paragraph having before it the Roman number four, asking the striking out of those various conclusions of law. Of course, that would involve striking the same conclusions from the judgment. I take it there is no occasion for repeating that with reference to the judgment, because, if we prevail in striking out those conclusions from the conclusions, they would fall from the judgment as a matter of course.

And the concluding paragraphs are for conclusions as a result of changes which we urge in the findings.

Now, of course, the most vital matter in all this is in this provision of the judgment directing that the defendants and their affiliated corporations be dissolved, re-aligned, or [fol. 5042] re-organized in their ownership, and controlled so that fair competition between them and the other theatres may be restored and thereafter maintained.

That is an utter impossibility of performance. Here are all these places where there never has been another theatre. How can we so dispose of ours, or re-align them, or located them, so that competition between them and other theatres may be created? It can't be created, but——

The Court: Well, that may be presupposed, that would fit right into the re-organization,—where there wasn't any competition. I don't think that would be an obstruction to carrying out the provisions of judgment.

Mr. McClennen: Well, if your Honor please, the plaintiff's counsel seems to have read this to mean that we must dispose of those theatres in towns where there never was another theatre.

The Court: Where did you get such a construction?

Mr. McClennen: In his plan that they have just filed.

The Court: Well, I don't know anything about the plan. I haven't seen it.

Mr. McClennen: Well, if your Honor please, attributing to plaintiff's counsel——

[fol. 5043] The Court: That plan may or may not accord with the judgment, I don't know.

Mr. McClennen: I know, but what I was about to say, your Honor, is this: If, in your judgment, you have used words that lead responsible counsel for the Government to think that you could have meant any such plan that they now have presented, it is a reason that your judgment should be couched in other language so that there be no misunderstanding.

The Court: Well, I had no definite plan in my own mind. I was, in effect, asking, you may say, the parties to agree on some plan.

Mr. McClennen: But when we start to agree on a plan we are called upon to present a plan for re-alignment, reorganization, or dissolution, in the terms of the judgment, so that fair competition between us and other theatres may be restored and thereafter maintained. And that can't be done, because the severance of these theatres from us will not produce any competition with those theatres. Somebody else will be the man who owns the only theatres in town. There is no more competition than before. There is no more competition, because A. B. owns a theatre than because Schine owns the theatre.

The Court: Well, of course, it might apply from that stand- [fol. 5044] point to those individual cases where no specific property was taken over by Schine or where nobody was claimed forced out of business, and Schine is the only one there. Now, there may be instances, as there are here, this case of the only theatre in town, where there is no reason for changing, you might say, except a general provision that you do not violate this law.

Mr. McClennen: Well, we couldn't make a plan that conformed to that language. It is an impossibility to write such a plan, because it involves just this thing, and I can't at the moment think of any case of a man who has parted to us with his theatre who wants it back—no case.

Now, he isn't helped out—the seller—isn't helped out by giving it to A. B., instead of to Schine. No public gain of any kind is to come from such a re-organization as proposed in this plan which has been submitted by plaintiff's counsel. The only effect of it will be to wrest from us these theatres, with no gain to the public, nothing done except to mutilate us.

The very matter that has been a matter for comment by the Court in New York in the case now going on—now, of course, I can't cite that case to you as a decision, or the [fol. 5045] statements made in the course of it as a decision of the Court of Appeals—but it is the fact that the utterances were the utterances of a Judge of the Court of Appeals, pointing out that what was up here was an effort to destroy, an effort to destroy an existing business, without showing anything better in its stead, and with the strongest indications in the language used that the Court would not tolerate such a thing being done.

I have said the time has not arrived for presenting the objections in detail to the plan, and will not arrive for some time to come. There are these things that I should like to lay before your Honor because they will eventually be presented, whatever is the plan presented:

One is the judgment we have appealed from on very fundamental grounds. After the changes in the findings which we move for have been made, I assume that a new, complete judgment will be entered if we have prevailed in any of the changes that we request that are of value. If not, then the judgment as it stands is the one which is subject to the appeal which we have filed, and which the cases indicate is not yet ripe for allowance by your Honor until these matters are out of the way.

[fol. 5046] The matter of the plan is a matter of implementing the judgment. That is, the finality is in the judgment already, and the plan is a method of execution of the judgment, so to speak.

Now, I urge upon your Honor that it is waste motion to go into the details of a plan of dissolution or re-alignment until it is known whether the judgment is to stand. And, therefore, the time for any plan would be after the disposal of the appeal. Until that time it cannot be known whether there is to be an occasion for any plan of dissolution, and, therefore, we should urge that no plan be approved, and, indeed, no plan be considered, until the appeal is out of the way, and we know what is to be the finality in the case on these very fundamental questions that are involved.

The Court: Well, on the other hand, of course, if you agree on the plan there wouldn't be any need of any appeal.

Mr. McClennen: Yes, that is perfectly true. Of course, an agreed plan would be all right. But this plan which the Government has presented is not an invitation to agreement.

The Court: I see.

Mr. McClennen: That is, an agreement to have your head cut off doesn't seem likely.

[fol. 5047] The Court: You wouldn't want to agree to do that?

Mr. McClennen: We wouldn't agree to that. And nothing less than that seems to be suggested as appropriate for consideration by the Government.

The Court: My thought about it is that if you were to dispose of some 16 of these theatres early, don't you know, that perhaps some plan could be made upon which you could agree about the balance of the setup.

Mr. McClennen: Well, of course, if there were any possibility that the Government would accept a plan as your Honor suggests for a disposal of certain theatres, there would be the possibility that always exists for compromising a litigation. But there is no indication of any disposition whatever to do anything of that kind on the part of the Government in this case.

The Court: I see.

Mr. McClennen: And it is for that reason that I urge that the matter of plan for disposal, and any consideration of it or formulation of it, do not take place until the appeal is out of the way.

Now there is also the plaintiff's motion to amend the findings. This is the situation with respect to that:

[fol. 5048] The trial ended in November of 1944, the briefs were closed in on both sides by March of 1945, except for some supplements to bring to your Honor's attention later decisions that had been rendered; your Honor's opinion was handed down in early October, and the plaintiff's counsel then set to drafting findings of fact for your Honor's signature.

They had had all that time in which to determine what they urged should be in the findings of fact. It wasn't new. It was all laid out on paper before, and they come forward with a statement of findings in which they deviate appreciably from the opinion of the Court, but yet indicated that they might like some more, and didn't tell what they were.

We promptly, after those findings were in, made our motion for changes in the findings.

Now, about the first of February, 1946, they filed a motion for additional findings. I submit that properly we may ask that that motion be disregarded at such a late date, and we do urge that none of it be granted.

As to the particular things sought I will not speak until I have heard more of what is to be said in support of the [fol. 5049] motion. I do not, however postpone this part:

This is a motion not only as to findings, but to add to the judgment additional features. And one of the features is that without one slightest showing that we are going to commit any contempt of any judgment that this court enters, without the slightest showing of any probable cause, it is asked of your Honor that you issue what amounts to a warrant for search of our papers—no limit, no showing that something has happened that ought to be investigated; that you issue a warrant directing our employees to submit to cross-examination by Government's counsel, not in the presence of any Court or any Magistrate but—to be sure, I think they do consent that we might be present when they are cross-examined, but not that we might stop the cross-examination in any way.

That is what is seriously—I will say apparently seriously

—urged upon this Court by a counsel for the United States.

I said of the plan—and I say of this motion also—that it is a motion to accomplish a professional triumph and not a motion to accomplish a just result. Why, the very provisions of the Constitution of the United States would be [fol. 5050] violated by the issuance of any such roving commission to make an inquest into our affairs.

When, in 1942, there were reasons for it, a consent decree was entered—entered by consent—that investigation could be made, obviously designed to deal with the subject that was up, the disposal of certain theatres which we had agreed to. We consented that such an order might be entered. What was agreed to at that time has no bearing on what should be issued or could be issued by a court under the Constitution in the absence of such an agreement.

Mr. Wright: If the Court please, I think it is necessary to make a preliminary statement here, to go back over the things that were done prior to the entry of this judgment that is under attack by the defendants' motion.

As your Honor will recall, prior to the conclusion of the case, elaborate briefs were filed by both sides. We filed a main brief; they filed a main brief. We filed a reply; they filed a reply. And in those briefs we outlined proposed findings of fact, conclusions of law, that we thought the Court should adopt. They also submitted elaborate findings [fol. 5051] of fact and conclusions of law.

Then your Honor had those under study for, I believe, ten or eleven months, and when the decision came, it came in the form of an opinion, which did not follow either our findings and conclusions or theirs, and your Honor suggested the submission of new findings in accordance with the opinion, and so, what was done, was that the literal language of the opinion was taken and put in finding and conclusion form and submitted as the Court's findings and judgment, after omitting, of course, such recitals in the opinion as to what had occurred during the course of the trial, rulings on evidence, and so forth, which obviously had no proper place in the findings.

Then at that time—of course, that brought the ten-day period provided by Rule 52-(b) into operation, in which any one can move to amend, and that time, I think, was extended for both parties once and for us, I believe, twice, with the result that their motion was filed first, some time in December; ours wasn't filed until February, inasmuch as we were engaged in the trial of the other case in New York, prior to that time.

Now, instead of filing what we had assumed would be [fol. 5052] filed, and what they got an extension of time for the privilege of filing, that is, a motion to amend the judgment in accordance with Rule 52-(b), what they filed, in effect, was a motion to vacate the judgment and enter a judgment of dismissal, a motion which virtually asked for a rehearing, which could only be had under Rule 59 of the Procedure.

Now it is perfectly obvious, by comparing those rules, that the only relief available under 52-(b) is an amendment of the findings and conclusions in a manner that is consistent with the decision of the Court, and it is evident from the face of Mr. McClennen's motion and his argument, that that is not the purpose or effect of his motion at all.

Now if the losing party wants to overturn a decision and secure a judgment on his findings, in his favor, he must either appeal or else he must file a motion to vacate or for rehearing. There is a case, Matyas vs. Feddish, decided in the District Court, Middle District of Pennsylvania, May 12th, 1945, in which the losing party claimed that under Rule 52 (b) he could ask the Court to amend its findings in a manner which would amount to a reversal of the judgment. [fol. 5053] In disposing of this contention the Court said:

"The purpose of Rule 52 is to clarify matters for the Appellate Court's better understanding of the basis of the decision of the trial court. Tulsa City Line v. Mains, 10 Cir., 107 F. 2nd 377. The Rule permits the Court in its discretion to 'amend' findings of fact or to 'make additional findings,' thus amplifying and expanding the facts. The Rule does not provide for a reversal of the judgment or for a denial of the facts as found, which is what the plaintiff requests at present." Which is what the defendants in this suit, of course, are requesting.

The Court: That would apply to only part of this motion?

Mr. Wright: Why, his entire motion is under Rule 52 (b).

The Court: Yes, but I say that that Rule, what you have said, wouldn't apply to those parts which are applications to amend the findings.

Mr. Wright: Well, in a large part, the so-called amendments are simply the substitution of the findings which he asked for in his brief and didn't get, because of what the Court found.

The Court: You mean in so far as they contradict the language of the opinion?

[fol. 5054] Mr. Wright: Where they contradict the decision. But even where they don't contradict the language of the opinion, it is simply a narrative statement which is calculated to support a judgment of dismissal.

The Court: Well, I mean they have the same purpose you have here, at least, to add some light in instances where they are within the meaning of the opinion.

Mr. Wright: Yes, any amendment consistent with the opinion, there is no question as to that. To the extent that amendments offered are consistent with the decision, of course, they might properly be considered.

But I am merely pointing out that it is apparent from his argument and motion that that is not the purpose of the motion at all. There is no attempt here to clarify or to bring to the Court's attention any errors or matters which might have been overlooked.

As an example, he is apparently careful to re-incorporate in these proposed findings an inadvertent error in the findings as made as to the number of theatres that Schine operates.

The Court, I believe, originally found that Schine operated 93 theatres in 73 towns, which was evidently computed, I think, by adding up the list of theatres in the defendants' [fol. 5055] brief in which he said certain improvements were made.

Well, actually it appears later on in his own proposed findings here that Schine had acquired 150-odd, so that the 150 theatre figure would be correct instead of 93, as to which no effort has been made to change, obviously because that isn't the kind of a change that would add a finding in the defendants' favor.

Now, I cite that merely as an illustration to show that there hasn't been any effort here to get at the facts and to get you to make the decision or findings as they now exist a more accurate or better statement of the facts than you have now. The effort is simply an effort to have you adopt an argumentative narrative statement of the evidence which fits in with the claims made in the defendants' brief.

Now, another matter which was not, of course, suggested in his brief, was that it is now proposed for the first time to find that the Schines don't control the Schine Chain Theatres, Inc., and don't own stock in it. Of course, it appeared, and there was no dispute at the time of the trial but what the Schines dominated the corporation, and [fol. 5056] the interrogatory answers show, I believe, that the majority of the common stock is held by Schine Theatrical Co., Inc., a personal holding company. But the effort is now made in the form of this finding to make it appear that the Schines don't control these corporations. Well, now, it is wholly immaterial whether they have that stock themselves or whether it is held by Schine Theatrical Co., Inc., but I merely point out that these proposed findings don't in any way represent an effort to get a correct statement of the facts into the record but are only for argumentative purposes.

Now the real question in the consideration of these findings involves, I think, the question of what the purpose of findings is. Counsel's notion of findings evidently is that they are supposed to be a narrative statement of the evidence. Now, that is a view which the Courts I do not believe entertain.

A narrative statement of the evidence and the events that occurred in a trial is a clerical function, or at most, a lawyer's function in presenting an appeal. The purpose of findings, the only legitimate purpose, is to show the facts that the Court regarded as significant, and which control [fol. 5057] his decision.

And in setting out those facts, and in making those findings, the Court necessarily draws certain conclusions as to what certain evidence and certain facts show or do not show, and his findings, the findings of fact, necessarily take a conclusory form, because the findings of fact are, and should be, conclusions—not mere recitals of evidence from which those conclusions are drawn.

Counsel recognized that at the time his findings were submitted, I just quote from page 602 of his brief, asking the Court to make findings, Paragraph 15: "Schine has not monopolized or restrained the flow of motion pictures from any other state into any town", and so forth.

No. 18, "It has been but normal practice, and not predatory——"

Of course, to the suggestion that the word "predatory" came from the plaintiff's brief rather than from theirs is a simple answer: What the objection is, is that the Court found there were predatory practices instead of finding that there were not predatory practices.

Now, nothing, it seems to me, is to be gained by any discussion of form or elaboration of form of that sort. [fol. 5058] We, in our brief, submitted a shorter, more conclusory, form of findings than the Court adopted. It seems to me the Court took a middle course between the very elaborate findings in the Crescent case, and the simpler and more general ones which we submitted. But in any event, there is no obligation, whatsoever, on the Court at this time to reconsider all of this material that was offered at length to the Court before merely to try to accommodate the defendants' notions as to what kind of findings would help him most in the event of an appeal and most effectively present his theory of the case.

He has the entire evidence at his disposal, and there is no obligation whatsoever on the part of the Court to repeat in finding form facts which are otherwise in the record simply because he says he thinks his argument would be made more convenient by that procedure.

Now, even if your Honor treated this motion that is made ostensibly pursuant to Rule 52 (b) here as a motion for rehearing, that wouldn't open the door for re-examination of the matters that he seeks to open here, as stated under Rule 59, which says:

[fol. 5059] "In an action tried without a jury, for any of the reasons for which rehearings have heretofore been granted in suits in equity in the courts of the United States."

That is the grounds on which he would be entitled to rehearing, which was the basis for rehearing prior to the adoption of the new rules.

Now, in commenting on that provision, Section 5902, at page 3247, Volume III, says:

"Just as in new trial at law, a rehearing would not lie merely to relitigate old matter."

Now, this motion really contains no new matter, or the kind of matter which would properly be subject of a motion for a rehearing, and raises no new point at all or no new argument not previously made, and the Courts, of course, have not been disposed to rehear these cases indefinitely.

I would like to quote what the District Court for the Northern District of Illinois said in Stewart-Warner Corporation vs. Levally, 16 Fed. Supp., at pages 778 and 779, in disposing of a motion for rehearing in an equity suit in a patent case.

It says: "Defendants' first premise is the alleged discovery of additional material evidence; its second, alleged [fol. 5060] error by the Court in its findings, conclusions and decree. Defendants' action in the latter respect is equivalent merely to an attempt to reargue issues previously determined, after a voluminous record had been made and full and complete briefs and arguments submitted. Such practice is not to be encouraged, for, if a Court has once rendered its best efforts to arrive at proper solution of questions submitted, upon complete presentation, it should not be subjected to a demand to consider the same again. Otherwise, litigation would never end; 'suits would become immortal, and the decision be postponed indefinitely.'"

The Court's language there is equally applicable here. We had a decision in this case last October, and the time has come, I think, when there should be a final judgment, and in order to get a final judgment which will dispose of the matters at issue, it is necessary, of course, not only to dispose of these pending motions and amended findings, but also to fix a time and plan of re-organization which will carry out Section III of the Court's judgment.

Now, the defendants, of course, simply refused the invitation extended by your Honor's opinion to attempt to [fol. 5061] reach any agreement at all as to a plan which would carry out the judgment. Their position has been simply that they have not, and do not, propose to file any plan whatever, that we cannot have any plan of dissolution or re-organization, such as the court decreed.

We filed a plan last week, or we sent one up here, and sent it at the same time to counsel for the defendants, which they apparently received at the end of the week, but which apparently didn't reach your Honor. I saw Mr. Grobe in the hall this morning. He had it, and he said it came in Saturday.

The Court: I see.

Mr. Wright: We did submit this plan with a memorandum in support, which complies with the general theory of your opinion—and, contrary to what Mr. McClennen tells you about it, the purpose of the plan is to keep Schine as a competitive factor in every situation that we can.

The main purpose of the plan is to put competition in all of the closed situations. The plan contemplates leaving the defendant with a very substantial circuit of theatres, one in which they have opposition in all possible localities, [fol. 5062] instead of the existing situation where you have this extensive link-up of closed towns.

I don't want to go into it at length here, because under the Court's prior order they are entitled to thirty days in which to file objections to the plan, and then presumably your Honor will have a hearing at which the plan and objections will be considered, and the judgment will incorporate whatever plan that your Honor sees fit to impose. And it seems to me that that is the phase of the case on which the Court may most profitably spend its time now in order to get a final judgment, and we would like to ask to have a hearing set before we leave here today at which that question of the execution of the plan may be gone into.

Now, as to our motion: We filed a memorandum in support—I don't know whether your Honor has read it or not—and I am perfectly willing to submit it on that.

I might just say, in passing, that in so far as this books and records clause is concerned, which counsel laid great stress on as a violation of the defendants' constitutional rights, among other things, it is one which has appeared in every decree, either litigated or by consent, that we have [fol. 5063] entered in the last three or four cases here either in this or a somewhat modified form.

These same provisions were before the Supreme Court in the Bausch & Lomb case, which was decided, I think, the term before last.

(At the conclusion of the proceeding Mr. Wright requested the following citation be inserted in the record: U. S. vs. Bausch & Lomb Optical Co., 321, U. S. 707, pp. 725-728).

In that particular decree we had not only our standard books and records clause, such as you see here, but we had an additional provision requiring periodic reports from the defendants, and the Court, in considering the provision, held that we were not entitled to have the provision requiring reports, but the rest of the provisions are the same as those that you have here, and they received the approval of the Court at that time, so that you are not dealing here with anything that has been conceived of by the plaintiff in this case.

As counsel pointed out, a similar provision was in the consent order here in 1942, and, as I say, has been in all of our judgments in this period of time.

The Court: You don't specify any particular period of [fol. 5064] time — disclose whether or not a violation had occurred.

The only purpose of a provision of this character is to eliminate in advance any dispute as to access to relevant material of that kind. There is nothing, as I say, in the provision that hasn't been used in all of our consent and litigated decrees in the last three or four years, and it has been approved by the Supreme Court itself, so I don't think it is a matter which really raises any substantial controversy at all.

The other provisions, the other changes we suggested in the judgment are merely the incorporation of prohibitions against franchises, which are similar to the ones that were in the consent order.

Contrary to what counsel has told you, the franchise clause still is a proper one. There are no prohibitions against it today. Three of the major defendants are not even parties to the consent decree, and it is just as appropriate now to have a clause prohibiting franchises as it was in 1942. The consent order contained the same prohibitions.

As to the admission price material that we propose to add, we feel that it was necessary for clarity. We didn't think that the single paragraph that was devoted to the question [fol. 5065] in the opinion made the Court's position sufficiently clear on that point, and we also thought there should be a corresponding injunctive provision.

All of those matters, as I say, have been dealt with in our memorandum and I am perfectly willing to submit them on the memorandum.

There is another matter I want to call your attention to before I stop, and that is the gross misrepresentation by Mr. McClennen of what was said in New York. Now, I don't know whether your Honor paid any attention to that —I don't suppose you should—but if you do want to concern yourself with what the argument was in the Paramount case, and what each one said, the entire argument was printed up, and I would be very glad to supply you with a copy. But I don't want your Honor to get the impression here that what was said by Mr. McClennen is all of what happened there. That is of no significance, in any event, but if you do want an accurate record, I would be glad to supply it.

The Court: Well, on this subject of access to the books, and so on, wouldn't it be better to place a provision in this judgment that the parties abide by the decision of the Court [fol. 5066] whenever there is disagreement between them concerning such access?

Mr. Wright: Well, of course, the normal course would be a contempt proceeding, that is, before there could be any action against the defendants.

The Court: Well, I mean, you would simply have to put up to the Court the reason for your request. That is the point.

Mr. Wright: Well, obviously, there is no way of compelling compliance. What I mean is all they have to do is say "No, get out of here——"

The Court: I know, but on the other hand, I take it that it is a sequence, something to be followed out in support of the judgment, in that you could apply to the Court in the event that your request was refused, instead of applying to the Court in the first instance.

Mr. Wright: Yes. It seems to me in practice you would come out the same way. If they have anything they don't want to show you, or if they don't want to let you see the books or talk to their people, then we can't make them do it. We would have to come into court and get an order under any scheme.

The Court: Well, I don't see how you could judge them in contempt without coming into court, and, correspond-[fol. 5067] ingly, I would say you could make application to the Court when necessary.

Mr. Wright: Well, that particular provision has no particular substance, as far as we are concerned. The only reason I offer it is because it has been habitual in all the judgments we have offered. I have no interest in sustaining it, or not. I can submit it to your Honor on that basis.

The Court: Well, now, I suppose the thing we are confronted with is the order of procedure in the future. I mean by that this: The question of whether the case goes up prior to any action on the plan, or whether the plan is considered, some plan is adopted by the Court and approved by the Court. It seems to me that is the main thing we ought to consider here now.

Mr. Wright: Yes. What counsel is suggesting, if I understand him correctly, is a double appeal, spread out over the longest possible interval.

As I understand it, what he wants to do now is appeal from the judgment as entered with the provision that there shall be a plan in it, a concrete plan; and then, presumably, he would have a second appeal from such plan as actually was put into effect.

[fol. 5068] Of course, that is a great convenience to the defendants, but I don't think the burden that that would impose, both on this Court and the other Courts, should be imposed. I think we should get a final order entered here so that the whole thing may be heard in the Supreme Court at one time, and then we can get a final disposition over-all. He suggests that we get no final disposition in the Supreme Court or at the next hearing down here.

The Court: Why isn't that so, Mr. McClennen? Why should we be required to take two appeals?

Mr. McClennen: Well, I see no reason to think there would be a second appeal. When we have the Supreme Court's statement as to what we must do, then we will be able to proceed.

The Court: Why, the Supreme Court will either sustain or not sustain the decision of this Court, and it seems to me that if they sustain, it leaves us in a position here to go on and then later take action on the plan, and if that plan isn't approved by you, why, you, appeal again.

Mr. McClennen: Well, it is my position that if the Supreme Court did not decide the fundamental things that I spoke of but held that we must dispose of theatres, the Supreme Court would indicate whether or not the other [fol. 5069] thing that I spoke of, that is, whether we must dispose of theatres that we got originally properly without any restraint of trade or not.

If the Supreme Court says we must dispose of the theatre in Gloversville, for instance, why then, we can move forward with the plan for that purpose.

The Court: But the Supreme Court isn't going to speak on that subject in the first instance unless a plan has been proposed. I am just arguing it.

Mr. McClennen: From the way the Supreme Court has acted in the past, I shall be very much surprised if the Supreme Court did not deal with that bald proposition, that is, whether we must dispose of theatres that we have acquired properly.

The Court: You think they would decide that on this appeal or wouldn't?

Mr. McClennen: I think they would on this appeal. When a decree has been entered that says there will be a dissolution, re-alignment, or re-organization such as to produce competition, we appeal from that apart from the fundamental question as to whether there should be any decree against us, we appeal from that, and that presents to the Court the question of whether there is to be a dissolution [fol. 5070] or realignment that will take away from us theatres obtained properly originally.

The Court: Wouldn't they be likely to say that there should be a distribution or re-alignment and then send it back to the Court to effect such a distribution or re-alignment?

Mr. McClennen: I should expect that they would not fail to deal with that very fundamental question of whether we must give up theatres that were obtained properly originally.

The Court: I should think ordinarily there would have to be a re-alignment in the first instance, approved by the trial court, and then you would have to start with that.

Mr. McClennen: If your Honor please, before the remark gets cold that I had made a gross misrepresentation to the Court of what Judge Hand said. I am going to read to you just what he did say.

Mr. Wright: Of course, I object to carrying into this record any single statement made by the Court in another argument. If your Honor wishes to read this entire volume, I have no objection. But I do object to him seizing a single statement in the course of another argument and inserting it in the record here.

[fol. 5071] Mr. McClennen: When I am charged, your Honor, not only with having made a mis-statement, but a gross mis-statement, I urge that I should be permitted to read to your Honor the language which I paraphrased to see whether it was a misrepresentation.

The Court: I don't think that what was said here has very much bearing on the situation, and I don't think counsel intended to state that you didn't correctly state what was said by the Judge in that case.

Mr. McClennen: He said that I made a gross mis-statement.

Mr. Wright: My objection is that the effect is misleading of simply picking out any statement made by a Judge in an argument and then asking your Honor to consider that as a comment on what is being said here.

Mr. McClennen: That isn't what he said. He said I made a gross mis-statement of what Judge Hand said. I urge upon your Honor that I be permitted to read what Judge Hand said.

The Court: I thought what he said was that the whole statement taken together was misleading.

Mr. McClennen: What he said was that a gross mis-statement was made by me.

Mr. Wright: I take it you have no objection to leaving that volume with the Court?

Mr. McClennen: I have no objection to leaving the volume [fol. 5072] with the Court to have him see all that the Court said. And this is the statement:

"Judge Hand: Why do you have to sell theatres in order to cure that, if there is a wrong there?

Mr. Wright: Well, the agreement is, I would say, per se illegal, and of course——

Judge Hand: You seem really to aim at, I won't say nothing, because you are calling attention now to other wrongs, but your great aim is to upset all the ownership of theatres. Now that is an extremely drastic remedy that I should think was extremely likely for this court to give. But that is merely a first impression by myself, and I have got to study this thing very carefully in other ways than just by reading through the briefs once, of course. But this sort of thing that you are arguing now is the kind of thing that has always been argued, and remedies have constantly been granted that were thought sufficient. Maybe they have not been against the kind of thing you are calling our attention to here."

Now I do not urge upon your Honor these arguments contained in this volume. I had wanted to hand these arguments to you as a whole, but I doubted the propriety [fol. 5073] of my doing so, because it would bring before your Honor things of which there is no evidence whatever in this case. But with those preliminary comments, since Mr. Wright wants it, I leave with you the printed argument in the case and ask your Honor——

Mr. Court: When was this case submitted?

Mr. Wright: It was submitted on January 18th, and I think there should be a decision very shortly.

Don't misunderstand me, your Honor. There is no obligation on your part, as I said, to examine the argument in another case at all. But I insist that the only fair way to go into it, if your Honor is going to pay any attention to what was said on an argument in regard to another case, that you would have to examine the entire contents of the argument. My statement was that there was no occasion for your Honor to examine the contents at all.

The Court: Well, whatever you gentlemen agree on. If you want to submit it to the Court, all right. If there is objection either way, why—I don't know what if any value it might have so far as the decision in this matter is concerned.

Mr. McClennen: Well, I have the volume here, and I as- [fol. 5074] sert that I have made no misrepresentation of anything that Judge Hand said in it, and the volume is available. If Mr. Wright wants your Honor to have it to see whether I have made any gross misrepresentation of anything that Judge Hand said, I leave that matter at that.

Now it is said as to the matter of the object of a motion to amend, and I refer to the decision of the Supreme Court in the Crescent case, on December 11, 1944, where the motion in that case was up, and the Court, by Judge Douglas said, "The motion to amend the findings.

If it was not addressed to mere matters of form, but raised questions of substance, that is, if it sought a reconsideration of certain basic findings of fact and the alteration of the conclusions of the Court, an examination of the motion makes plain that matters of substance were raised."

That is the Supreme Court's characterization of the object of the motion in that case.

Now, it is said that in all these cases—of course, I can't answer all these cases, because I don't know what they are

—that there has been these provisions for search of the [fol. 5075] defendants' records. I have here the final decree in the Crescent case as filed May 17, 1943, and the order of the District Court, after the appeal was out of the way, entered February 19, 1945, and I find in my copy of it no provision for any such examination of the records of the Crescent Company.

The Court: What do you say to the Court's suggestion in that connection?

Mr. McClennen: For examination of the records?

The Court: That isn't an ordinary way of handling it.

Mr. McClennen: Well, any such thing wasn't put into the decree in the Crescent case.

The Court: Well, that might be very true, but I am saying why wouldn't that be the proper way to handle it here?

Mr. McClennen: Because I say that it would violate the Constitution. *We are entitled* to be free from unreasonable searches, and a search is unreasonable unless it is shown that there is probable cause to believe that there has been a violation of the injunction.

The Court: Well, that would be avoided by the procedure I have suggested. Let application be made to the Court, the Court passes on it right then.

Mr. McClennen: That is not the proposal in this case.

[fol. 5076] The Court: I understand. That is my proposal.

Mr. McClennen: I submit that there should be no provision in the decree for an examination of our records until there is presented to your Honor reasonable cause to believe that there has been a violation of the injunction, and then the matter is presented, and that there should be no investigation of our records until that time.

As I say, this case that has been so much relied on has no provision for such an examination, and I cite this to your Honor because of the assertion here that in all these cases this was a provision that had been put in. That is the reason that I am calling your attention to one that I happen to have handled, knowing not what the others are which he has referred to.

The Court: Well, I cannot see the necessity for putting it in anyway. Application can be made to the Court at any time, and the Court can pass upon it then.

Mr. McClennen: Well, that would be true of any decree, the ordinary decree that is entered. The plaintiff can come into court and say there is reasonable cause to believe that this decree has been violated and we ask an opportunity to see the records to see whether that is so, and then if there [fol. 5077] is a showing, reasonable cause to believe that there is such a violation, then such an order may be entered.

But there is no occasion for it in advance in a decree because it is a matter that relates to a subsequent contempt proceeding, if there is grounds for such a proceeding.

Now, if your Honor please, it is suggested that what we are asking for is a narrative of the evidence. Well, in this very motion to amend which the plaintiffs present, they ask for a more elaborate narrative of the facts because they think your statement is too inadequate for the plaintiff's purposes, that is, the principle for which they contend is, "Don't narrate the evidence, except where it is favorable to the plaintiff. Don't put in any evidence on which a judgment of dissolution is to be based which is favorable to the defendants."

That is the summary of their position in this matter.

The Court: Well, they claim that these proposed statements of theirs come within the decision of the Court, while their claim is, on the other hand, that your proposed findings are in contradiction of the decision of the Court.

Mr. McClennen: Then I say that statement is not so. In [fol. 5078] many of these cases where they have made a simple statement, where their draft of findings said we made a threat, for instance, we have substituted a statement of just what we did do. That is all.

Now, why should the representatives of the Government desire to keep their own facts out of the findings of fact, on which so serious a judgment is to be entered? What reason for such a position? We ask to have a fair narrative of the facts put into the findings, so that it can be tested whether on that state of facts we are called upon to have wrested from us these great numbers of theatres.

We are charged with making no attempt to clarify. Clarify? When we have laid out exactly what was said, so as to make it perfectly clear what was said. Absolutely no basis for any such assertion.

No effort to get at the facts, it is said of our motion. Why, what a monstrous statement, your Honor, when we are laying before you the facts exactly as the evidence introduced for the plaintiff showed those facts to be.

Then there is this statement that there is an effort made to make it appear that Schine is not in control. And that [fol. 5079] is said on the very afternoon that I have argued that Schine was the policy maker for this corporation; that he was the one that designed the course that that corporation was to pursue. Of course, there has been no effort whatever to suppress the fact that J. Myer Schine was the controlling head of this corporation, and the only controlling head. But your Honor had findings of fact as to the stockholdings that simply were not so that had been laid before you by plaintiff's counsel, and if they are all stricken out, all right. But if they go in, they should go in as the fact is, and that is simply the reason why the fact is stated in the motion.

Now, there was the statement at the outset that there had been an agreed extension of time to file a motion, which they spoke of as being a motion under 52 (b). Well, we filed this motion before there was any extension of time; we filed this motion within ten days of the judgment, and filed at that time the things that we ask for in this motion. There was no occasion for their having any supposition as to what was going to be filed pursuant to the extension of time, because it had already been filed before anything was [fol. 5080] extended so far as time was concerned. Now, if your Honor please, his specific——

The Court: Counsel stated that you made first an application for extension of time.

Mr. McClennen: Well, the first application for extension of time was at the request of the Government's counsel. The plaintiffs asked for two months' extension. We had already filed our motion, and we joined in that two months' extension provision.

The Court: Well, what I had in mind that counsel said there is that the first application was made by you. You said this motion was filed in ten days. Now, his statement is to the contrary, that you made an application for extension of time to file.

Mr. McClennen: We had filed the motion that is before you before there was any extension of time.

Mr. McKay: The first extension was filed at the same time.

Mr. Wright: It was by agreement. I have the order here. It was made on November 8th, and it is within that extended time that the defendants' motion was filed.

Mr. McClennen: Our motion was filed, Mr. Wright, without any extension of time. It was filed on the 10th day of November.

Mr. Wright: The only thing I have in the file is the order of November 8th.

[fol. 5081] Mr. McClennen: Well, the United States Attorney's endorsement of the service shows that he received our motion on November 10th, 1945.

Mr. Wright: Well, I assume that is when it was filed.

The Court: The point then, counsel, is why did he have to join in the consent?

Mr. McClennen: The Government wanted more time.

The Court: I understand that. Why did you have to join?

Mr. McClennen: There was no need for time as far as we were concerned. We had filed ours. Now, it ought not be necessary that we should clear that up. We filed our motion before that consent. We filed it in time.

The Court: I don't think that makes very much difference here. The reason I spoke about it was that there was an apparent discrepancy in your statements.

Now, you said, Mr. Wright, you want some date fixed for a hearing on the proposed plan?

Mr. Wright: That is what the order calls for, the filing of objections by them and then a date for hearing on the objections. You have thirty days from whenever it was received. I don't know when you received the plan.

Mr. McClennen: I got the plan on the morning of February 22nd, 1945 at my house.

[fol. 5082] The Court: Well, I haven't seen it. What dates do you want to fix then?

Mr. Wright: Well, I would assume that their objections would be filed by March 22nd, and I would suppose that we could have it set down for the first week in April.

Mr. McClennen: Of course, it is very trifling, but I think March 24th would be the expiration of thirty days, and then whatever time is a convenient time thereafter I should think would be satisfactory.

The Court: Well, the 24th of March is a Sunday. Monday is the 25th. How long a time do you want after that? It is immaterial to me.

Is it your view, Mr. McClennen, that your time to appeal will date from—you have already served notice of appeal—but I mean is it your contention that irrespective of that you have the right to take an appeal in thirty days after the action on the findings?

Mr. McClennen: Sixty days. I infer that that is the view of the Supreme Court, that is, they had just that situation in the other case, the appeal was taken, and then another one was taken, and they dismissed the first one as premature, and went on with the second one.

[fol. 5083] The Court: I assume that that will have to be done here. I was just thinking from your standpoint of the question of time, that is all. What time do you want to come up here in April? You can fix your own date, so far as I am concerned.

Mr. McClennen: Am I right in assuming that it would be preferable to your Honor that it should be on a Monday?

The Court: I don't think that makes much difference.

Mr. McClennen: I would rather have it some other day. If your Honor will fix any Tuesday in April.

The Court: Is the 9th agreeable?

Mr. McClennen: Mr. McKay suggests the 16th rather than the 9th.

The Court: 16th is all right.

Mr. McClennen: I have two briefs, one in opposition of their motion, that is dated February 23, 1946, and one in support of our motion, dated February 5, 1946, and I hand Mr. Wright a copy.

Mr. Wright: I haven't any formal memorandum of those authorities I mentioned today. If your Honor wants them I would have a list typed and leave them with you.

The Court: All right.

(Whereupon an adjournment was taken until April 16th, 1946.)

[fol. 5084] IN UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF NEW YORK

Civil No. 223

UNITED STATES OF AMERICA, Plaintiff,

v.

SCHINE CHAIN THEATRES, INC., et al., Defendants

Appearances:

Robert L. Wright, Louis B. Schwartz, Special Assistants to the Attorney-General; Wendell Berge, Assistant Attorney-General; George L. Grobe, United States Attorney; for Plaintiff.

Edward F. McClennen, Samuel S. Isseks, Willard S. McKay, for the Defendants.

DECISION OF JUDGE KNIGHT ON MOTIONS TO AMEND FINDINGS, CONCLUSIONS, AND JUDGMENT

KNIGHT, District Judge:

Both parties have moved under Rule 52(b) of the Federal Rules of Civil Procedure to amend the Findings of Fact and Conclusions of Law and the Judgment heretofore filed herein.

The Findings made by the court follow closely the opinion. It is usually the practice of this court to ask the prevailing party to submit Findings. No need has been seen for asking an unsuccessful party to submit Findings. The latter has the opportunity to present the record on appeal.

The amendments proposed by the defendants set out in detail large portions of the testimony. Many of these also contain conclusions contrary to the Findings made. [fol. 5085] It is believed that the Findings and Judgment as made are sufficient. It is not the duty of the court to set out the details of the testimony as proposed.

The question has been raised that the relief sought by the defendants is grantable only by motion under Rule 59 and not under Rule 52(b). It is true that the granting of defendants' motion in toto would amount to a reversal of the Judgment. In view of the action herein taken, it seems unnecessary to determine this question. Irrespective, however, of any obligation of the court so to do, certain amendments are allowed.

Defendants' Proposed Findings

Proposed Finding No. 1—Allowed—

"Among the theatres in which Schine became financially interested there are 25 theatres situated respectively in 16 towns, Auburn, Bath, Canandaigua, Carthage, Corning, Gloversville, Herkimer, Little Falls, Newark, Norwich, Oneonta, Oswego, Salamanca, Saranac Lake, Syracuse and Watertown, New York, which had belonged to Schine before 1930 and had been leased to the Fox-Metropolitan Circuit in 1929, and which reverted to Schine in 1933 as a consequence of the termination of the leases in the Fox-Metropolitan bankruptcy proceedings. The result of this reversion was that it was necessary for Schine to resume the operation of the said theatres. At the end of the year 1930 Schine had no motion picture theatres, except suburban theatres in Buffalo and Rochester, motion picture theatres in Courtland, East Rochester, Fairport, Rockport, Geneva, Malone, Medina and Ogdensburg, and a half interest in Amsterdam and a theatre under construction in Bellefontaine, Ohio."

and to be added to Finding No. 3 as found and not substituted therefor. The remainder of the proposed Finding is disallowed.

[fol.5086] Proposed Finding No. 2—Allowed—

"Schine has expended for the cost of land and buildings acquired by it the sum of $6,509,100.00 and for the cost of building additions and improvements the sum of $4,439,000.00."

and to be added to Finding No. 4 as found and not substituted therefor. The remainder of the proposed Finding is disallowed.

Proposed Finding No. 3—Disallowed.

Proposed Finding No. 4—Disallowed.

Proposed Finding No. 5—Allowed—

"Schine acquired by purchase or lease 55 theatres from 1922 to 1931 and 80 from 1936 to 1941, inclusive,

> 15 in 1938 and 15 in 1939. The 55 theatres included the 25 which, as above stated, had been acquired by Schine and sold or leased to Fox-Metropolitan and which reverted to Schine in 1933 in the Fox-Metropolitan bankruptcy proceedings."

and to be added to Finding No. 7 as found. The remainder of the proposed Finding is disallowed.

Proposed Finding No. 6 to No. 14, inclusive,—Disallowed.

Proposed Finding No. 15—Allowed and to be added to Finding of Fact No. 20, but not in substitution therefor.

Proposed Finding No. 16—Allowed and to be added to Finding of Fact No. 21, and not to be substituted therefor.

Proposed Finding No. 17—Disallowed.

Proposed Finding No. 18—Disallowed.

Proposed Finding No. 19—Disallowed.

Proposed Finding No. 20—Allowed.

[fol. 5087] Proposed Finding No. 21 to No. 26, inclusive,—Disallowed.

Proposed Finding No. 27 to No. 31, inclusive,—Disallowed.

Proposed Finding No. 32—Allowed, except that the record shows approximately 87% are located in cities and villages.

Proposed Finding No. 33 to 44, inclusive,—Disallowed.

Proposed Finding No. 45—Allowed, except that "or 40" percent should be stricken.

Proposed Finding No. 46 to No. 84, inclusive,—Disallowed.

CONCLUSIONS OF LAW

V-1-9, inclusive, Denied.
VI—Denied.
VII—Denied.

PLAINTIFF'S PROPOSED FINDINGS

1. Add at the end of Finding No. 22 the following: "Minimum admission prices were omitted from Schine's contracts, although the contracts of his independent competitors specified minimum admission prices.

> "The Plaza contracts in evidence prohibited it from charging less than 15 cents. The Fox contracts for the 1933-34 season permitted Schine's State Theatre with a 60-day clearance over the Plaza, to charge an adult evening orchestra admission price five cents lower than the Plaza was required to charge. Metro's 1933-34 contract for Schine's State Theatre omitted any minimum admission price requirement, as did the Universal contract for the State and RKO contracts for the Fox and State Theatres in both the 1933-34 and 1934-35 contracts.
>
> [fol. 5088] "In Lexington, Kentucky, Schine's contract with Fox for the 1936-37 first run product provided for minimum admission prices in Schine's Lexington Theatre for the first run showing of Fox pictures. Schine cut its admission price below the minimum prices fixed. Schwartz complained to Fox and Paramount about these. Fox advised Schine of this complaint and Myer Schine replied that the cuts were 'quite essential and proved to be beneficial.' Fox then omitted all minimum admission price requirements in the Schine second and third run contracts for the succeeding seasons, but provided for minimum evening adult admission prices of 15 cents for the independent theatre."

In other respects the proposed finding is disallowed.

2. Disallowed.

Nos. 3 to 7, inclusive, Allowed. It seems to me that the proposed amendments are reasonably based on the opinion herein.

8. It is believed that the court should not at this time include any Finding with respect to authorizing representatives of the Department of Justice to have access to books, etc. of a defendant corporation and to interview officers of

a defendant corporation. It is believed that the court has the authority to make this direction. (United States v. Bausch & Lomb, 321 U. S. 707) A plan of reorganization of the defendants or re-alignment of the theatres in suit has been submitted by the plaintiff and action on it is pending. We see no reason why the matter proposed in No. 8, *supra,* should not await consideration of the plan or some further action relative to the judgment.

March 8, 1946.

John Knight, United States District Judge.

[fol. 5089] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

CERTIFICATE OF CLERK

STATE OF NEW YORK,
City of Buffalo,
County of Erie, ss:

I, May C. Sickmon, Clerk of the United States District Court for the Western District of New York, do Hereby Certify that Plaintiff's proposed amended Findings of the Court and amended Judgment submitted to the Court shortly prior to March 29, 1946, referred to as Item 10 of Defendant's supplemental praecipe, are the same amended Findings of the Court and amended Judgment as those forwarded as Items 15 and 16 of Defendant's praecipe dated April 16, 1946.

In Witness Whereof I have hereunto set my hand and the seal of this Court this 2nd day of July, 1946.

May C. Sickmon.

Subscribed and sworn to before me this 2nd day of July, 1946. Margaret E. Baysor, Notary Public, Niagara County. Certificate filed in Erie Co., N. Y.

[fol. 5090] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

CERTIFICATE OF CLERK

STATE OF NEW YORK,
City of Buffalo,
County of Erie, ss:

I, May C. Sickmon, Clerk of the United States District Court for the Western District of New York, do Hereby Certify that no Notice of Settlement of the Amended Findings of the Court and Amended Judgment submitted by the Plaintiff to the District Court on or about the 29th day of March, 1946 was filed by the Plaintiff in the District Court.

In Witness Whereof I have hereunto set my hand and the seal of this Court this 2nd day of July, 1946.

May C. Sickmon.

Subscribed and sworn to before me this 2nd day of July, 1946. Margaret E. Baysor, Notary Public, Niagara County. Certificate filed in Erie Co., N. Y.

[fol. 5091] IN UNITED STATES DISTRICT COURT

[Title omitted]

Amended Findings of the Court—March 29, 1946

FINDINGS OF FACT

1. The defendants in this suit are: Schine Chain Theatres, Inc., a New York holding and service corporation, five other corporations in which Schine Chain Theatres, Inc. owns all of the stock, to wit, Schine Theatrical Co., Inc., an operating company, Schine-Lexington Corporation, a holding company, Schine Enterprise Corporation, a service corporation, Schine Circuit, Inc., a service corporation, and Chesapeake Theatre Corporation, a holding corporation; and also three individuals J. Meyer Schine, Louis Schine and John A. May. Hereinafter the corporate defendants will sometimes be referred to as "Schine", the "Schine Circuit" or as "the Circuit."

2. From 1920 to 1941 these defendants acquired, either as purchaser or as lessee, an interest in 175 theatres and in addition some 42 separate parcels of real estate for theatre purpose, or connected with such purpose.

3. Since 1931, there have been 118 theatre corporations in which an interest has been acquired by "Schine." Among the theatres in which Schine became financially interested there are 25 theatres situated respectively in 16 towns, [fol, 5092] Auburn, Bath, Canandaigua, Carthage, Corning, Gloversville, Herkimer, Little Falls, Newark, Norwich, Oneonta, Oswego, Salamanca, Saranac Lake, Syracuse and Watertown, New York, which had belonged to Schine before 1930 and had been leased to the Fox-Metropolitan Circuit in 1929, and which reverted to Schine in 1933 as a consequence of the termination of the leases in the Fox-Metropolitan bankruptcy proceedings. The result of this reversion was that it was necessary for Schine to resume the operation of the said theatres. At the end of the year 1930 Schine had no motion picture theatres, except suburban theatres in Buffalo and Rochester, motion picture theatres in Courtland, East Rochester, Fairport, Rockport, Geneva, Malone, Medina and Ogdensburg, and a half interest in Amsterdam, and a theatre under construction in Bellefontaine, Ohio. As of the time of the commencement of this suit there were 62 of such operating corporations and in 48 of these "Schine" owned 100 per cent of the stock, in 12, 50 per cent. Schine operates 93 theatres in 73 towns (including cities). The towns run generally in population from 5000 to 35000 and include 39 in New York, 16 in Ohio, 8 in Kentucky, 7 in Maryland, 2 in Delaware and 1 in Virginia. In addition to its theatrical and realty operations, "Schine" has booked and bought for and supervised 37 theatres since 1931, and when this suit was brought there were 27 for which it so acted. Since 1928 the closed towns (those in which there was no opposition) show a total increase of 56. In 1941 there were only 3 towns in which Schine's competitors (hereinafter called independents) were playing major film product.

4. In a single season, 1939-1940, Schine paid $1,647,000 to six film companies. These defendants together control the largest independent theatre circuit in the country. For [fol. 5093] theatre acquisitions and capital improvements there has been expended admittedly upwards of $10,948,100,

not including dividend payments on operating expenses and cash on hand. Schine has expended for the cost of land and buildings acquired by it the sum of $6,509,100 and for the cost of building additions and improvements the sum of $4,439,000.

5. There are eight so-called major film companies: Fox, Loew, Paramount, RKO, Warner, Columbia, Universal and United Artists, which supply Schine a large per cent of the feature films used by Schine and together receive upwards of 75 per cent of the total film rental paid by Schine. The principal sales office of each is in New York City and the method of licensing and servicing of films is similar with each except that United Artists licenses its films subject to the approval of the respective producers of whose films it distributes. The feature films are mostly produced in California where the negatives are taken, the prints being generally manufactured in New York and New Jersey. Film license applications are solicited by salesmen from the branch office, and the delivery and return of films are made through the branch. Prints of films are sent from the various exchange offices in the various states to the exhibitors of the main office and all contracts are subject to approval by the main office at New York although the recommendations for approval ordinar-ly are made by the branch manager who is close to the situation. Prior to the 1941-1942 season it was the usual custom for all of the distributors to make license agreements for feature films for a period of a year commencing about September of each year, which license agreements were ordinarily made before the film was produced. Since that season the films of Fox, Loew, Paramount, RKO and Warner have been [fol. 5094] licensed in blocks generally not exceeding five in number rather than in season blocks.

6. The individual defendants hold the principal offices in the defendant corporations and hold other offices in the various so-called local corporations. They are the principal stockholders in the parent corporation and have general supervision of the operations of the circuit. The film buying for the circuit and the companies in which it had an interest was conducted through "Schine" or one of its subsidiaries, Lazar, a regional manager for "Schine" covering several states, and Silverman and Hensler, district managers, and one Insley, principally carried on negotiations for

acquisitions, though the defendants Schine and May engaged directly in some, while one Lynch was "the Circuit's" chief film buyer. In circuit buying "Schine" generally negotiated deals with the division manager. The agreements so made are referred to as "master agreements and deal sheets", but these were usually followed by license agreements signed by the chief sales executive of the distributors.

7. The great film buying power of the defendant corporations gave opportunity to exert pressure on the distributors to obtain preferences. The extent of this film buying is demonstrated by the exceedingly large number of theatres controlled by "Schine" and the large amount of money which must have been paid for film rentals. This buying power included both closed and open towns. By combining the open and closed towns in Schine's deals with the distributors, Schine was enabled to dictate terms to the distributors. This ability to dictate terms was further increased by the authority of Schine to buy product for theatres not owned or operated by it. Schine acquired by purchase or lease 55 theatres from 1922 to 1931, and 80 from 1936 to [fol. 5095] 1941, inclusive, 15 in 1938 and 15 in 1939. The 55 theatres included the 25 which, as above stated, had been acquired by Schine and sold or leased to Fox-Metropolitan and which reverted to Schine in 1933 in the Fox-Metropolitan bankruptcy proceedings.

8. The means and methods employed by the different defendant corporations through their officers and authorized representatives to obtain a "monopolistic" control were numerous. Principally among these were arbitrarily depriving independents of first and second run pictures, securing unreasonable clearances, making threats to build or open closed theatres to prevent construction or operation by independents, lowering admission prices, obtaining rental concessions, restricting independents who sold to Schine as to periods and places of operation, making long time franchise agreements covering the "Circuit."

9. Some specific instances showing the predatory means used by "Schine" follow:

(a) The Schine defendants arbitrarily deprived independents of the first run product which they had previously enjoyed in several towns. Independents were deprived of

1936-37 Columbia product at Norwalk; 1935-36 Fox product at Van Wert and Bucyrus; Loew's product for 1930-31 at Bellefontaine and for 1935-36 at Van Wert; Paramount's 1935-36 product at Van Wert and Bucyrus; RKO product for 1933-34 at Auburn and 1935-36 at Norwalk; of United Artists 1936-37 at Norwalk; and of Warner for 1933-34 at Norwich, 1936-37 at Norwalk; and 1941-42 at Harlan. Independents were arbitrarily deprived of second run product which they had previously exhibited, losing 1938-39 Columbia at Rochester, Loew's 1935-36 at Van Wert and 1934-35 Warner at Watertown. After "Schine" secured the [fol. 5096] product from the independents for the aforementioned seasons, he retained it and the independent was unable to secure it in subsequent seasons. Relative to six towns including Corning, Lynch wrote on October 21, 1933, Metro: "If there are any other opposition towns where you believe you can sell a second run, I would appreciate it if you would take the matter up with me first before selling." In 1932 Lynch wrote Flynn a letter saying, among other things: "I want you to refrain from selling him (independent) any pictures whatsoever." And Metro through Flynn agreed not to do so. Lynch also wired Fox to withhold selling to this independent and wrote Fox' agent saying "have also asked him (Schmertz-Fox agent) to refrain from selling this man second run."

(b) "Schine" was able to secure unreasonable clearances year after year in many towns. A few only need to be mentioned. At Corning, New York, RKO permitted 90 to 180 days and Fox permitted 160 days. At Seneca Falls, New York, Columbia and United Artists permitted 120 days. At Little Falls, New York, RKO, Columbia and Universal permitted 120 days and United Artists permitted 115 days. At Carthage, RKO permitted 120 days and United Artists 90. United Artists permitted 90 days at Watertown, New York, and 90 days at Amsterdam, New York; Bucyrus, Kent, Norwalk, Tiffin and Fostoria, Ohio; and Lexington and Van Wert, Kentucky. Schine got clearance for Herkimer over Ilion where none existed before.

(c) The license contracts with "Schine" in many instances specified minimum admission prices for the various runs as well as clearance periods. This affects adversely the time given the competitor.

10. "Schine" made threats to build in various towns, such as Paris, where there was a sign up, Canandaigua by a [fol. 5097] sign and newpaper article published, and where he eventually did build. In Perry, a statement by May and a newspaper article announcing that land had been bought for theatre purposes came at a time when "Schine" was trying to purchase the independent's lease. "Schine" did not build, but later got the lease. In Salamanca, just after independents acquired a site for a contemplated theatre, through the press "Schine" announced its intention to build. In Medina, "Schine" announced the making of an agreement to erect a new theatre immediately after independents started construction. In Mount Vernon, May contacted the independent to buy, saying "Schine" would build unless the deal could ~~be put~~ through.

11. Defendants' authorized agents made statements to independents which are reasonably construed as threats.

(a) At Bellefontaine, during negotiations for the renewal of a lease with an independent, Lazar threatened to reopen the Opera House if the independent opened the Strand.

(b) With reference to Paris, Lazar told the independent, who was taking steps to build, that if the independent went ahead with his projects "Schine" would build a 1200 seat theatre in Lexington where the independent had a theatre and that the house would be run with 10¢ policy at all times. At Paris, Schine and an independent began construction at practically the same time. Lazar asked the independent to stop construction and see him about a deal. Subsequently Schine took over the independent's Lexington and Paris theatres under an agreement prohibiting for fifteen years the independent from engaging in the theatre business in any town in Kentucky where Schine had a theater.

(c) Just before Schine acquired the "Forum theatre in Norwalk, Lazar advised an independent to "get in with us [fol. 5098] * * * we are a big company. You know what it means if you are not in with us" and further stated: "If you lease your theatre Mr. William Selman (part owner of the "Forum") will walk out of town."

(d) At Van Wert, the operator of the "Ohio" theatre could not get first run product it had had. During negotiations for the sale of the "Ohio" to Schine, Lazar said that Moore would have trouble getting product; Schine would have the first runs; and that Schine was interested in buying in order to raise prices.

(e) At Lockport, during negotiations with "Schine" for the "Palace" theatre, May said it would be necessary to re-open the Hi-Art owned by "Schine" to use up "the large volume of product they had bought." This statement evidently was made to induce Reliance to sell the "Palace." In this instance it is to be noted that the independents experience great difficulty in getting product. Hi-Art had then been closed for seven years. Metro, Fox, Universal and Loew's refused major product to the independent. Indicative of the attitude of the distributors is the letter from the Eastern Salesmanager of Loew's who wrote:

> "In our negotiations with the Schine interests it will very likely be that we will have to give them consideration for our product at Lockport, as well as other situations, and as we are hardly in a position to forego or jeopardize the business from their other situations, and for the further reason that they have for a number of years been a very representative account, we feel that our interests would be best served by giving them such consideration."

(f) At Perry, May told the independent that "Schine" has bought a lot to build a 1000 seat theatre there. This [fol. 5099] was a town of less than 5000 population. The independent theatre building was owned by the town and leased to the independent. When May said this, a local newspaper article to the same effect was given out. Schine did not build but Hersberger sold shortly thereafter, and through the purchaser of this interest Schine acquired the lease.

(g) Insley and May tried to buy an independent's theatre at Seaford and Georgetown. Insley said it was foolish that the independent did not make a deal with "Schine" because he had recently purchased the theatre at Laurel and "very likely, with the buying power they had they would get away the product" from the independent. Isnley said Schine had bought a lot with the intention to build a theatre in Seaford, and also said: "Well, if I were you I would sell the theatres to Schine because they are going to build a theatre there and, naturally, they are going to get the product." Insley, under a written contract with "Schine", had authority "in negotiations for the acquisition of motion picture theatres within the above-described territory" (Delaware, Maryland, Virginia). Seaford and Georgetown are in Delaware.

(h) At Rochester, J. Meyer Schine told independents, who were then building the "Webster", that the location was not appropriate, that it was too near the "State" (Schine's) and not justified, and Schine said he would build a theatre near the Murray theatre (owned by independents). The "State" and the "Webster" theatres were ¾ mile apart. Schine later took over the "Webster". Schine testified he said that it would not be sensible to build the "Webster", but denied that he said he would build near the "Murray."

(i) At Seneca Falls, after an independent had taken steps toward building a theatre, a sign was placed on the [fol. 5100] Seneca theatre, (shortly theretofore purchased by Schine) which read: "Closed for alterations. Will reopen soon as a Schine theatre." Independent then discontinued efforts to build. "Schine" did not re-open. Practically the same things recurred two years later. The same independent took steps to build. The sign re-appeared on the "Seneca." The independent did not go through with his plan. The "Seneca" did not open. It had not been open in several years.

12. After "Schine" opened a theatre within a town, it was arbitrarily able to keep the independents from opening a theatre in the town with suitable run product, as in Auburn, Lockport, Mt. Vernon, Paris, and Bellefontaine.

13. "Schine" was able to monopolize first run product at Corbin, Medina and Lockport even though the physical facilities of the independents in those towns were better than Schine's. He was able to monopolize the first neighborhood run in Rochester even though the physical facilities of the independents were better.

14. "Schine" cut admission prices at Corbin, Geneva, Lexington, Malone, Ogdensburg and other towns; gave out

cut rate tickets in Addison, good in his Corning theatre for students, and frequently engaged in two for ones and bank nights in other towns.

15. In cases of purchase or the assumption of leases other than those hereinbefore referred to, the agreements therefor provided for no competition by the independents for long periods of time. The non-competitive feature was also extended to cover outside towns, *i. e.:* Amsterdam, Ilion, Malone, Paris, and Lexington.

16. By reason of franchise agreements entered into prior to May 19, 1942 (voided thereafter, see Decree herein of [fol. 5101] that date) permitting special film rentals not given independents, "Schine" was able to reap benefits unavailable to independents and these were utilized against independent operators as a means of restraint. These have a definite bearing on the competitive effect of buying power. Rather than make contracts for a single year, as appears to have been Schine's practice prior to 1936, he then began making such for a period of two or three years. These contracts included both the entire circuit and also those theatres for which Schine did the booking. The great buying power of "Schine" enabled him to obtain concessions not obtainable by independents. In 1936 Schine made a three year agreement with Fox, and as a result he obtained the Fox feature product in all the towns which "Schine" then operated, and this agreement was later made to include subsequently acquired theatres. In 1938 a subsequent three year agreement was made. These agreements provided for payment of certain percentages of gross receipts after deduction of operating costs, and also fixed minimum admission charges. With Loew in 1936, a four year agreement was made under substantially the same terms as made with Fox. In 1937 a comparable three year agreement was made with Warner; in 1938 a similar one with RKO; a similar two year one with Columbia in the same year and a three year agreement was made with Universal in 1939. In the instance of United Artists, a distributing corporation, separate contracts were made for each feature for all Schine theatres. Another feature of these agreements was the inclusion of unfair and inequitable clearance provisions.

17. In numerous instances unreasonable clearances were allowed to Schine over towns in which Schine did not op-

erate, and some towns distant from 10 to upwards of 20 [fol. 5102] miles, and towns in which there were no theatres. Gloversville got clearance of 45 days over Johnstown, and "Schine" was given clearance both over Newfane and Mohawk where there were no theatres. Many clearances were over outside towns of comparably small population, distant so far that no clearance is justified, such as Randolph, Little Valley and Elliottville, New York. Many recently were given over towns over which there had been no previous clearance. Metro gave clearance in Ashland over Londenville and Lodi, Ohio; United Artists gave clearance in Auburn over Skaneateles, New York, and Fox in Hornell over Earlville, New York. The record is replete with inter-department communications between major film representatives which recognize the unreasonableness of the clearances given to Schine at his demand. This is shown by the communications and representations made by Lehman of United Artist; Pielow of M. G. M., Dana and Sauber of Universal, Smith of Warner, and Sussman and Grassgreen of Fox, which are admissible in evidence because these men all held positions in their respective companies so that it was within the scope of their duties to make the representations in the communications that they did as a natural incident of the office, *i. e.:* branch or district manager. Pielow, MGM resident manager, wrote: "I feel that in some of the situations (unnamed) (discussing Schine contracts), the clearance that he (Lynch) is demanding is unfair * * *." Dana, branch manager of Universal wrote the district manager that he had asked Louis Schine relative to clearances over the Smalley circuit (Norwich) and that he refused to grant the privilege of serving the pictures with shorter clearance. Universal branch manager Sauber wrote Lynch that they wanted to serve Waterloo in less time than the 30 days clearance after Seneca Falls because other majors were, but Lynch refused [fol. 5103] though Universal had the right under its contract to do so. At Rochester, Scully, of Universal, said it would be satisfactory if the Madison and Monroe came within the Schine 21 day clearance. Smith, branch manager of Warner, wrote to the Home office that Canton would do more business if it were not for Schine at Ogden-burg having 30 days clearance and if it was reduced; "It will make a better condition for us all * * *." Smith also wrote relative to Seneca Falls stating that he hoped Lynch would break down their 60 days clearance: "As I told you this morning over the phone, the clearance set up is all wet * * *." Sussman, of Fox, wrote to Grassgreen that the 60 day clearance in Glens Falls and elsewhere seemed excessive. Sussman went on to comment that he noted that 60 day clearance was given over second run at Malone when Fox had no second run in Malone, and furthermore, as previously stated, 60 days over second run seemed excessive. Grassgreen replied that while the 60 days at Glens Falls might seem excessive, Lynch insisted upon it. Grassgreen said that Schine insisted upon the 60 day clearance because they wanted to be consistent with their demands for 60 days over subsequent independent runs.

18. In certain instances the distributors refused to negotiate with the independents for runs not bought by Schine. Such are seen in the refusal of RKO, Fox, Paramount, MGM and Universal to furnish second run at Auburn; of MGM at Amsterdam until the "Schine" deal did not materialize; by United Artists at Geneva; and by RKO, Universal and Fox at Paris.

19. In many instances the distributors refused to negotiate with the independent for runs. After "the Circuit" came into the town, in many instances it was impossible for the independent to get a good run of major product, or even to have his requests to purchase considered. RKO would [fol. 5104] not sell to the independent after "the Circuit" came in for 1933-34 in Auburn, 1935-36 in Mt. Vernon; MGM would not sell 1930-31 in Bellefontaine, 1933-34 in Lockport and Norwich, 1935-36 in Van Wert, 1936-37 in Lexington, 1938-39 in Medina; Paramount would not sell 1933-34 in Lockport, 1934-35 in Auburn, 1935-36 in Mt. Vernon; Fox would not sell 1933-34 in Norwich, 1935-36 in Amsterdam and Mt. Vernon; Universal would not sell 1933-34 in Lockport, and Norwich; United Artists would not sell 1935-36 in Mt. Vernon and Van Wert; and Warner would not sell 1933-34 in Norwich, 1935-36 in Amsterdam, 1938-39 in Medina and 1941 in Norwich. In these instances, when the independent attempted to make application for product, he was simply advised that the product had been sold to "Schine" in a circuit deal.

20. Special privileges were granted, as in the option of paying a percent of the gross receipts from product or

flat rental, and as in deducting cost of competitive devices (bank nights, etc.) from gross before computing the distributor's share. In certain instances the distributors made contracts providing for film rental based upon a percentage of the gross receipts and in certain other instances, the rental was a flat rental. When a percentage picture was played, with a competitive device (bank nights, etc.) sometimes provision was made for the deduction from the gross receipts of the cost of such competitive device before computing the distributors rental. These provisions were also in contracts with independents.

21. Special license provisions were given by tying up second runs, as in Lockport and Corning. In Lockport and Corning Schine bought some product second run and during the currency of the Schine contracts this run did not remain open for sale to others.

[fol. 5105] 22. In certain instances Schine's film contracts called for lower minimum admission charge than those for the independent for subsequent run. This happened in Lexington and Corning. Minimum admission prices were omitted from Schine's contracts, although the contracts of his independent competitors specified minimum admission prices.

The Plaza contracts in evidence prohibited it from charging less than 15 cents. The Fox contracts for the 1933-34 season permitted Schine's State Theatre with a 60-day clearance over the Plaza, to charge an adult evening orchestra admission price five cents lower than the Plaza was required to charge. Metro's 1933-34 contract for Schine's State Theatre omitted any minimum admission price requirement, as did the Universal contract for the State and RKO contracts for the Fox and State Theatres in both the 1933-34 and 1934-35 contracts.

In Lexington, Kentucky, Schine's contract with Fox for the 1936-37 first run product provided for minimum admission prices in Schine's Lexington theatre for the first run showing of Fox pictures. Schine cut its admission price below the minimum prices fixed. Schwartz complained to Fox and Paramount about these. Fox advised Schine of this complaint and Meyer Schine replied that the cuts were "quite essential and proved to be beneficial." Fox then omitted all minimum admission price requirements in the Schine second and third run contracts for the succeeding seasons, but provided for minimum evening adult admission prices of 15 cents for the independent theatre.

23. United Artists with respect to the Capitol theatre in Ilion wrote: "We do not want to encounter any difficulty with the Schine Circuit * * *, we want to be definitely [fol. 5106] assured that the clearance as submitted in the contracts is satisfactory to the Schine Company."

24. Sichelman, assistant sales manager for Fox, wrote Schine that Fox was free to sell ten pictures of first run and also 100% second run in Bellefontaine and that the branch manager was being directed to sell these. In reply, Lynch said, in part: "The only product which he (independent) has been able to buy has been from independent companies. There has not been a major company that has sold him any product, * * * We are charging a top of 40¢ admission * * * and we don't want to have the distributing companies make it impossible for us to continue getting this price. * * * I have also written Mr. Schwartz advising him that we will take the remaining pictures which we did not buy first run, and, have also asked him to refrain from selling this second run house." Lynch also wrote to the Fox branch manager asking him to hold off selling the independent.

25. Lynch wrote United Artists that "Schine" should be allowed the privilege of playing pictures ahead of a situation (Sodus) charging a lesser admission price." To this the reply, in part, was: "Therefore, in the future we will grant you fourteen days, or whatever clearance you see fit to take on towns like Elmira etc. in that locality."

26. The Fox home office wrote its branch with reference to Glens Falls, second run: "I note that you have changed the clearances hereby providing for sixty days over third run Glens Falls. Sixty day clearances here and elsewhere seem to be excessive," and to this the branch manager replied that Schine always provided for this clearance over third run and "George Lynch insisted in carrying it through for the future."

[fol. 5107] 27. There is much other evidence going to show the influence of "Schine" with the distributors to gain preference over independent competitors and also the cooperation of the distributors with "Schine" to the same end.

28. As compared with some of the major distributors[1] these defendants when combined are relatively small. Some of the major companies are exhibitors as well as distributors. The producer-distributors and chains of exhibitors occupy positions from which monopolization is easily brought about.

29. The record does not disclose that Schine did not seek to furnish its patrons with those pictures which attracted the greatest revenue or that it has not furnished sufficiently attractive entertainment.

30. All findings made herein with respect to any acts committed by the defendants or any of them or any course of conduct pursued by them which the Court holds to be in violation of the antitrust laws are limited to acts committed or course of conduct pursued prior to May 19, 1942, plaintiff's counsel having stated at the opening of the trial that he would not offer any evidence beyond that date.

31. Of the Schine theatres approximately 87% are located in cities or villages with populations under 25,000 and 60% are located in cities or villages with populations under 10,000 (Pltf's. Adm. No. 23, 4617).

32. It is estimated that of the total revenue of a distributor 70% comes from the first run theatres and 30% from all other theatres playing second and subsequent runs, and that the 70% or 75% is made up of 35% from towns [fol. 5108] under 50,000 population and the other 40% from those over 50,000 population.

CONCLUSIONS OF LAW

1. The court has jurisdiction of this cause under the provisions of the act of July 2, 1890, entitled "An Act to Protect Trade and Commerce against Unlawful Restraints

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[1] The term "major distributors" as used herein refers to the distributors known in the trade as Fox, Loew, Paramount, RKO, Warner, Columbia, Universal and United Artists.

and Monopolies," hereinafter referred to as the Sherman Act.

2. The defendants have violated Section 1 and Section 2 of the Sherman Act in that they have maintained an unlawful combination among themselves by means of which they have unreasonably restrained trade and commerce among the several States and have monopolized the business of operating theatres and the supplying of major films in various towns and cities, and that each of the major distributors by the methods it has employed in its dealings with the defendants and their independent theatre opposition has aided and abetted these defendants in such restraint of trade and monopolization of theatre operations.

3. The defendants have maintained an unlawful combination among themselves and with their affiliated corporations and have monopolized the licensing of the exhibition of motion picture films in various cities and towns in violation of the aforesaid sections of the Sherman Act and, through the unlawful combination between themselves and their affiliates by their predatory practices, have monopolized the business of operating motion picture theatres in various towns and have attempted to monopolize in various other towns; and the defendants have contracted, conspired and combined with each other and their affiliated corporations and with each of the aforesaid major film corporations for the purpose, and with the effect of suppressing [fol. 5109] competition and monopolizing exhibition of films distributed by each of said film corporations in various towns and cities, in violation of the aforesaid statute.

4. The principal means and methods employed by the defendant corporations through their officers and authorized representatives to obtain said monopolistic control of theatre operations are as follows:

(a) Arbitrarily depriving independents of first and second run pictures;

(b) Securing unreasonable clearances for the defendants' theatres over independent theatres;

(c) Making threats to build or open or close theatres to prevent construction or operation by independents;

(d) Lowering admission prices;

(e) Obtaining rental concessions;

(f) Restricting independents who sold to them as to periods and places of theatre operations;

(g) Making long time franchise agreements covering the "Circuit"; and

(h) Controlling the existence and extent of admission price differentials between Schine's and other competing theatres by agreement with distributors and by demanding that distributors refrain from licensing other theatres charging admission prices objectionable to Schine.

5. The plaintiff is entitled to a judgment enjoining the defendants:

(a) From monopolizing the supply of major first run films in any situation where there is a competing theatre suitable for first run exhibition thereof, and from monopoliz- [fol. 5110] ing the supply of second run films in any situation where there is a suitable theatre for second run exhibition thereof;

(b) From demanding or receiving clearance over theatres operated by others which unreasonbly restrict their ability to compete with a theatre owned or operated by a defendant, or corporation controlled by it and from attempting to control the admission prices charged by others by agreement with distributors, demands made upon distributors, or by any means whatsoever;

(c) From conditioning the licensing of films in any competitive situation, outside of Buffalo, New York, upon the licensing of films in any other situation, and from entering into any film franchise;

(d) From selling or acquiring any theatre interests pending the further order of this Court;

(e) From enforcing any existing agreements heretofore entered into by the defendants not to compete, or to restrict the use of any real estate to non-theatrical purposes; from the use of any threats or deception as a means whereby a competitor is induced to sell;

(f) From continuing the heretofore described "conspiracy" or "monopolization" in restraint of trade and commerce between the states and the entering into any combination or conspiracy for the purpose or with the effect of restraining trade and commerce between the states;

(g) And directing the entering of a decree adjudging that the defendants and their affiliated corporations be dissolved, re-aligned or reorganized in their ownership and control, so that fair competition between them and other [fol. 5111] theatres be restored and hereafter maintained; and that the determination of the question of the dissolution, realignment or reorganization of the parties aforesaid and the method to be employed in the accomplishment of the same be left to be fixed by this Court after further consideration with the parties.

Dated at Buffalo, New York this 29 day of March, 1946.

John Knight, U. S. District Judge.

[fol. 5112] IN UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF NEW YORK

Civil No. 223

UNITED STATES OF AMERICA, Plaintiff,

v.

SCHINE CHAIN THEATRES, INC., et al., Defendants

AMENDED JUDGMENT—March 29, 1946

This Court having rendered its opinion herein on October 8, 1945 and having filed its findings of fact and conclusions of law and entered judgment in accordance therewith on October 31, 1945 wherein the defendants herein were found to have violated Sections 1 and 2 of the Sherman Act, and this cause having again come on for hearing upon the parties' motions pursuant to Rule 52(b) of the Federal Rules of Civil Procedure to amend the aforesaid findings of fact, conclusions of law, and judgment, and the Court having rendered an opinion dated March 8, 1946 granting and denying in part each of said motions and having filed herewith findings of fact and conclusions of law amended in accordance with said opinion.

It is hereby Ordered, Adjudged and Decreed as follows:

I

1. The defendants have maintained an unlawful combination among themselves and with their affiliated corporations and have monopolized the licensing of the exhi- [fol. 5113] bition of motion picture films in various cities and towns in violation of Sections 1 and 2 of the Sherman Act and, through the unlawful combination between themselves and their affiliates by their predatory practices, have monopolized the business of operating motion picture theatres in various towns and have attempted to monopolize in various other towns; and the defendants have contracted, conspired and combined with each other and their affiliated corporations and with each of the aforesaid major film corporations for the purpose, and with the effect of suppressing competition and monopolizing exhibition of films distributed by each of said film corporations in various towns and cities in violation of the aforesaid statute.

II

Each of the defendants is hereby enjoined and restrained:

1. From monopolizing the supply of major first run films in any situation where there is a competing theatre suitable for first run exhibition thereof and from monopolizing the supply of second run film in any situation where there is a suitable theatre for second run exhibition thereof.

2. From demanding or receiving clearance over theatres operated by others which unreasonably restricts their ability to compete with a theatre owned or operated by a defendant corporation controlled by it and from attempting to control the admission prices charged by others by agreement with distributors, demands made upon distributors, or by any means whatsoever.

3. From conditioning the licensing of films in any competitive situation outside of Buffalo, New York, upon the [fol. 5114] licensing of films in any other situation and from entering into any film franchise.

4. From selling or acquiring any theatre interest pending further order of this Court.

5. From enforcing any existing agreements heretofore entered into (1) not to compete or (2) to restrict the use of any real estate to non-theatrical purposes.

6. From using any threats or deception as a means whereby a competitor is induced to sell.

7. From continuing any contract, conspiracy or combination with each other or with any other person which has the purpose or effect of maintaining the exhibition or theatre monopolies of the defendants or of preventing any other theatre or exhibitor from competing with the defendants or any of them, and from entering into any similar contract, conspiracy, or combination for the purpose or with the effect of restraining or monopolizing trade and commerce between the States.

III

The defendants and their affiliated corporations be dissolved, realigned, or reorganized in their ownership and control so that fair competition between them and other theatres may be restored and thereafter maintained. [The plaintiff and the defendants shall each within 60 days from the entry hereof submit a plan to this Court for such dissolution, realignment or reorganization as they believe will attain this end and serve copies thereof upon opposing counsel. Within 30 days after the service of such a plan upon counsel for the parties they shall advise the Court in writing of their objections, if any, to such plans and such counter or substitute proposals for the carrying out of this provision of this judgment as they may desire to submit.*]

[fol. 5115]

IV

Jurisdiction of this cause is retained for the purpose of entering such further orders as may be necessary to amend, construe, and carry out this judgment after such hearings thereon as the Court may direct.

Enter:

Dated the 29 day of March, 1946.

John Knight, U. S. District Judge.

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*Clerk's Footnote: The above elimination appears in pen and ink on the original.

[fol. 5116] PLAN OF REORGANIZATION*

The following plan is submitted in accordance with Section III of the Final Judgment in this cause, dated October 31, 1945, to dissolve, realign, and reorganize the Schine circuit, so that fair competition between Schine theatres and independent theatres may be restored and thereafter maintained.

I. *Theatre Interests to be Divested*.

The defendants should be divested of the following theatre interests to the end that they may not, individually or collectively, retain such film buying power as would endanger future competition in the areas where they continue to operate theatres.

A. All theatre interests in the following towns, where the defendants now own or control the only theatre:

Bath, N. Y.
Carthage, N. Y.
Dolgeville, N. Y.
East Rochester, N. Y.
Fairport, N. Y.
Federalsburg, Md.
Hamilton, N. Y.
Hudson Falls, N. Y.
Hurlock, Md.
Laurel, Del.
Milford, Del.
Newark, N. Y.
Penn Yan, N. Y.
Perry, N. Y.
St. Michaels, Md.
Saranac Lake, N. Y.
Tupper Lake, N. Y.

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*Clerk's Note: This document is part of a document filed by Plaintiff's Attorney, Feb. 25, 1946, and designated as "Plan of Reorganization of the Schine Circuit proposed by the Plaintiff and Memorandum in Support Thereof."

[fol. 5117] B. All of the defendants' theatre interests in the following towns, except in one theatre to be selected by them. The name of the theatre which the defendants desire to retain in each of said towns should be filed with the court within 30 days after approval of the Plan.

Amsterdam, N. Y.
Ashland, Ohio
Athens, Ohio
Auburn, N. Y.
Bellefontaine, Ohio
Bucyrus, Ohio
Cambridge, Md.
Canandaigua, N. Y.
Corning, N. Y.
Cortland, N. Y.
Delaware, Ohio
Easton, Md.
Geneva, N. Y.
Gloversville, N. Y.
Herkimer, N. Y.
Ilion, N. Y.
Kent, Ohio
Lexington, Ky.
Little Falls, N. Y.
Lockport, N. Y.
Middlesboro, Ky.
Maysville, Ky.
Ogdensburg, N. Y.
Oneonta, N. Y.
Oswego, N. Y.
Paris, Ky.
Piqua, Ohio
Ravenna, Ohio
Richmond, Ky.
[fol. 5118] Salamanca, N. Y.
Seneca Falls, N. Y.
Tiffin, Ohio
Watertown, Ohio
Wooster, Ohio

C. Theatres still undisposed of under consent order of 1942:

Cumberland, Md.
  Strand Theatre
Harlan, Ky.

Margie Grand Theatre
(50% interest)
Lexington, Ky.
Opera House and
Ada Meade Theatres
Malone, N. Y.
Plaza Theatre
Mt. Vernon, Ohio
Memorial Theatre

D. The Riviera or Liberty and the Monroe or Madison Theatres in Rochester, N. Y. to be sold, with the defendants designating the two theatres in this group of four to be retained, within 30 days after approval of the Plan.

E. The existing pooling arrangements in the following towns should be dissolved by sale of the defendants' stock in the respective corporations operating the theatres there:

Fostoria, Ohio
Medina, Ohio
Norwalk, Ohio
Shelby, Ohio
Ballston Spa, N. Y.
Granville, N. Y.
Mechanicville, N. Y.
Whitehall, N. Y.

[fol. 5119] The pooling arrangement now in effect in Syracuse, N. Y. should be terminated by sale of Schine's interest in SKE Operating Co. and return of Schine's theatres to the defendants for separate operation.

F. In addition to the foregoing requirements, the defendants should also make an election as to which of the following towns they will withdraw from completely in the following areas where the defendants now operate in two or more towns within approximately 25 miles of each other. In each designated area the defendants should dispose of all theatre interests except those held in one town. As to the town in which the defendants elect to remain, the option specified in "B" above should apply:

Area 1
Kent and Ravenna, Ohio
Area 2
Ashland and Wooster, Ohio

Area 3
  Bucyrus and Tiffin, Ohio
Area 4
  Cambridge and Easton, Md.
Area 5
  Lexington and Paris, Ky.
Area 6
  Amsterdam and Gloversville, N. Y.
Area 7
  Ilion, Herkimer, and Little Falls, N. Y.
Area 8
  Auburn and Seneca Falls, N. Y.
Area 9
  Geneva and Canandaigua, N. Y.

II. *Terms of Sale*

The properties described in Section I hereof should be sold as rapidly as possible upon such terms and upon such [fol. 5120] prices as the court may approve. When feasible, theatre sales should be made by transfer of the ownership of existing corporations through which said theatres are owned and operated. The parties should be afforded a reasonable opportunity to file objections with the court to any proposed sale and if the court finds that the proposed sale might itself result in an unreasonable restraint of competition or would otherwise not effectuate the purpose of the Plan, it may disapprove the sale. In exercising any choice among prospective purchasers for the same property, the court should favor the purchaser which will, after approval of the sale, have the lesser circuit buying power. In no event should a sale to any person in any way affiliated with a distributor of motion pictures be approved.

III. *Trustee for Sale*

In order to effectuate this Plan the court should appoint a trustee with full power to negotiate and make the sales provided above. The trustee should be required to (1) make every effort to sell these theatres as rapidly as possible by public advertisement for bids, private negotiations, and the employment of real estate or business brokers whenever necessary; (2) present to the court for approval such sales as he believes will effectuate the Plan; and (3) present a quarterly report to the court which will include a detailed account of (a) all offers received for any of said properties, together with the names and addresses of the offerors and the amounts offered, (b) the efforts made to sell all unsold theatres, and (c) the prospects for disposition of all unsold theatres in the succeeding quarter. If within a period of one year the trustee has not succeeded in disposing of more than one-half of the total properties required to be sold, the court should review the trustee's operations for the purpose of determining what, if any, modification in the disposition procedure should be made in order to insure the completion of the Reorganization Plan within the next succeeding year. [fol. 5121] The trustee should be authorized (1) to examine all books and records of defendants, to employ such accounting assistance as may be necessary for the purpose of ascertaining any information as to earnings or value of the theatres in question as he may require; (2) to have free access to the theatres involved at all times for the purpose of showing them to prospective purchasers, providing only that such access shall not interfere with the normal operation of the theatres; (3) to examine all executed film licenses of the defendants and to ascertain from inquiry of the defendants' employees the current status of film licensing negotiations and other data relevant to the current operation of the theatres; and (4) to employ all assistance necessary to negotiate and close sales for the properties in question, including legal counsel.

The expenses and compensation of the trustees should be paid from the proceeds of sales made by him in such amounts as the court may from time to time approve. In determining his compensation the number and rapidity of the sales made should be considered. All amounts paid by purchasers should be received by the trustee and distributed by him only upon the order of the court. Except as specifically outlined above or as expressly authorized by the court, the trustee should not participate in the actual operation of any of the theatres in question.

IV. *Booking Agencies Prohibited*

No defendant shall buy or book films for any theater other than those in which the defendant owns a financial interest.

V. *Restrictions on Schine Expansion*

No defendant shall acquire a financial interest in any additional theatres except after an affirmative showing that such acquisition will not unreasonably restrain competition. Such showing shall be made before this court upon reasonable notice to the Attorney General at Washington, D. C.

[fol. 5122] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

PLAN OF REORGANIZATION OF THE SCHINE CIRCUIT PROPOSED BY PLAINTIFF AND MEMORANDUM IN SUPPORT THEREOF—Filed February 20, 1946

The purpose of the Plan submitted by plaintiff and attached hereto is to comply with Section III of the Judgment and at the same time permit the greatest possible flexibility in the defendants' mode of compliance. The Plan accomplishes only a partial dissolution of the circuit as such inasmuch as it leaves the defendants in possession of a substantial circuit of theatres. It provides no realignment of theatre ownership in the sense of transferring operations from one area to another, but it does reorganize the circuit by a method of theatre divestiture which is calculated to insure active competition for the defendants' theatres wherever they operate.

The Plan substantially dilutes the circuit buying power possessed by the defendants and found by the court to have been illegally used by them to achieve their present dominance of motion picture exhibition in the areas where they operate. This is essential to a restoration of competitive conditions. We have attempted to insure such restoration of theatre operating competition in the future in the areas involved without eliminating the defendants as a substantial competitive factor in these areas. Thus, in Utica, Buffalo, Glens Falls, Norwich, New York, and Salisbury, Maryland, where other existing theatres offer substantial competion, Schine's holdings would not be disturbed by this Plan.

The proposed sale of the theatres listed in Section I, paragraph "A", divests the defendants of established monopolies in one-theatre closed towns by opening these towns to [fol. 5123] competition in the only sense possible. In these towns theatres are henceforth to be operated by owners who will be dependent for success upon the extent to which they can individually meet the needs of these communities rather than by the use of monopolistic circuit buying power.

The divestiture proposed for the towns listed in paragraph "B", Section I of the Plan, in each of which the defendants own or operate two or more theatres, permits the defendants to continue to ~~operate~~ in each of these towns what they regard as the best existing theatre. However, the sale of the other theatres in these town to independents will create a situation where these towns may enjoy competitive theatre service. In all but Amsterdam, Auburn, Corning, and Watertown, New York, and Van Wert, Ohio, there is no competition of any kind at the present time. In the latter four towns there is a single competitor in each which the record shows has not been able to offer substantial competition to Schine in the past. It has therefore been necessary to provide for divestiture in these towns, as well as in the closed situations, to insure such competition.

Rochester, New York, presents a special situation in which Schine has and will still have upon completion of the Plan more theatres than any other exhibitor in the town. However, in view of the ~~fact that~~ Schine's position is subordinate to the downtown first run theatres, it was felt that the general competitive situation in this town would be best served by limiting the divestiture to two theatres, which would permit the first neighborhood run competition which should have occurred but was illegally suppressed by Schine when the Monroe and Madison were independently owned.

The Plan further provides for terminating all of the existing pooling arrangements. These are the situations where Schine partially or wholly eliminated competition by the formation of corporations jointly owned by the defendants and other exhibitors in the towns in question and the Plan provides for complete withdrawal of the defendants from these pools.

Since the completion of divestiture along these lines would still leave the defendants with a substantial circuit of more than 50 theatres, some of which would be concentrated in relatively small geographical areas, in order to insure [fol. 5124] area as well as town competition, the requirements specified in paragraph "F" have been added. They break up these area concentrations by preventing operation in two or more towns within twenty-five miles of each other and thus further dilute the circuit buying power possessed by the defendants.

In fixing the terms of sale complete flexibility has been provided with a view to actually accomplishing the sales required to effectuate the Plan as rapidly as possible, although the rights of the parties have been protected by a provision for court approval of every sale. The Plan, to be effective, of course, contemplates the transfer of the theatres involved to independent exhibitors rather than those affiliated with motion picture distributors or other large circuits and appropriate provisions have been inserted to this end.

The plan also provides for the appointment of an agent by the court to take active charge of the execution of the Plan, but preserves to the defendants the right to operate the theatres involved pending sale. In view of the history of the defendants' failure to comply with the prior consent order for the sale of a limited number of theatres nearly four years after its entry, we think the court would be fully warranted in appointing a receiver to actually take over and operate the defendants' theatres pending completion of the Plan. However, we have not proposed a receivership at this time simply because we feel that the court's agent may function more effectively if his entire time is devoted to actually making theatre sales instead of concerning himself with operating details. The record made in the course of efforts to enforce the prior consent order has fully demonstrated that the defendants have neither the will nor the ability to dispose rapidly of the properties ordered sold.

Even if now reconciled to the court's decision, the defendants' prior failure to perform a bargain which they themselves made is conclusive evidence that under no circumstances may the execution of a plan be left to them. Anything less than a trustee for sale leaves the dissolution in the hands of those who will profit from postponing it. The choice is therefore one between a trustee for sale and a full-scale receiver. In our view the less drastic trustee for sale method should be given a trial, although a receivership [fol. 5125] may ultimately be necessary if the trustee's more limited powers prove insufficient to effectuate the Plan.

The provisions against booking films for others and acquiring interests in other theatres are self-explanatory. Any plan of dissolution could, of course, be frustrated by an expansion of either character. The safeguard imposed by Section V simply follows in express language the one approved by the court in *United States* v. *Crescent Amusement Co., Inc., et al.*, 323 U. S. 173.

Respectfully submitted, Robert L. Wright, Philip Marcus, Louis B. Schwartz, Special Assistants to the Attorney General.

Wendell Berge, Assistant Attorney General.
George L. Grobe, United States Attorney.

[fol. 5126] Plan of Reorganization

The following plan is submitted in accordance with Section III of the Final Judgment in this cause, dated October 31, 1945, to dissolve, realign, and reorganize the Schine circuit so that fair competition between Schine theatres and independent theatres may be restored and thereafter maintained.

I. *Theatre Interests to be Divested*

The defendants should be divested of the following theatre interests to the end that they may not, individually or collectively, retain such film buying power as would endanger future competition in the areas where they continue to operate theatres.

A. All theatre interests in the following towns, where the defendants now own or control the only theatre:

Bath, N. Y.
Carthage, N. Y.
Dolgeville, N. Y.
East Rochester, N. Y.
Fairport, N. Y.
Federalsburg, Md.
Hamilton, N. Y.
Hudson Falls, N. Y.
Hurlock, Md.
Laurel, Del.
Milford, Del.
Newark, N. Y.
Penn Yan, N. Y.
Perry, N. Y.
St. Michaels, Md.
Saranac Lake, N. Y.
Tupper Lake, N. Y.

B. All of the defendants' theatre interests in the following towns, except in one theatre to be selected by them.

The name of the theatre which the defendants desire to retain in each of said towns should be filed with the court within 30 days after approval of the Plan.

Amsterdam, N. Y.
Ashland, Ohio
Athens, Ohio
Auburn, N. Y.
Bellefontaine, Ohio
Bucyrus, Ohio
Cambridge, Md.
Canandaigua, N. Y.
Corning, N. Y.
Cortland, N. Y.
Delaware, Ohio
Easton, Md.
Geneva, N. Y.
Gloversville, N. Y.
Herkimer, N. Y.
Ilion, N. Y.
Kent, Ohio
Lexington, Ky.
Little Falls, N. Y.
Lockport, N. Y.
Middlesboro, Ky.
Maysville, Ky.
Ogdensburg, N. Y.
Oneonta, N. Y.
Oswego, N. Y.
Paris, Ky.
Piqua, Ohio
Ravenna, Ohio
Richmond, Ky.
Salamanca, N. Y.
Seneca Falls, N. Y.
Tiffin, Ohio
Watertown, N. Y.
Wooster, Ohio

[fol. 5127] C. Theatres still undisposed of under consent order of 1942:

Cumberland, Md.
  Strand Theatre

Harlan, Ky.
  Margie Grand Theatre
  (50% interest)

Lexington, Ky.
  Opera House and
  Ada Meade Theatres

Malone, N. Y.
  Plaza Theatre

Mt. Vernon, Ohio
  Memorial Theatre

D. The Riviera or Liberty and the Monroe or Madison Theatres in Rochester, N. Y. to be sold, with the defendants designating the two theatres in this group of four to be retained, within 30 days after approval of the Plan.

E. The existing pooling arrangements in the following towns should be dissolved by sale of the defendants' stock in the respective corporations operating the theatres there:

Fostoria, Ohio
Medina, Ohio
Norwalk, Ohio
Shelby, Ohio
Balston Spa, N. Y.
Granville, N. Y.
Mechanicville, N. Y.
Whitehall, N. Y.

The pooling arrangement now in effect in Syracuse, N. Y. should be terminated by sale of Schine's interest in SKE Operating Co. and return of Schine's theatres to the defendants for separate operation.

F. In addition to the foregoing requirements, the defendants should also make an election as to which of the following towns they will withdraw from completely in the following areas where the defendants now operate in two or more towns within approximately 25 miles of each other. In each designated area the defendants should dispose of all theatre interests except those held in one town. As to the town in which the defendants elect to remain, the option specified in "B" above should apply:

Area 1
  Kent and Ravenna, Ohio
Area 2
  Ashland and Wooster, Ohio
Area 3
  Bucyrus and Tiffin, Ohio
Area 4
  Cambridge and Easton, Md.
[fol. 5128] Area 5
  Lexington and Paris, Ky.
Area 6
  Amsterdam and Gloversville, N. Y.
Area 7
  Ilion, Herkimer, and Little Falls, N. Y.
Area 8
  Auburn and Seneca Falls, N. Y.
Area 9
  Geneva and Canandaigua, N. Y.

II. *Terms of Sale*

The properties described in Section I hereof should be sold as rapidly as possible upon such terms and upon such prices as the court may approve. When feasible, theatre sales should be made by transfer of the ownership of existing corporations through which said theatres are owned and operated. The parties should be afforded a reasonable opportunity to file objections with the court to any proposed sale and if the court finds that the proposed sale might itself result in an unreasonable restraint of competition or would otherwise not effectuate the purpose of the

Plan, it may disapprove the sale. In exercising any choice among prospective purchasers for the same property, the court should favor the purchaser which will, after approval of the sale, have the lesser circuit buying power. In no event should a sale to any person in any way affiliated with a distributor of motion pictures be approved.

III. *Trustee for Sale*

In order to effectuate this Plan the court should appoint a trustee with full power to negotiate and make the sales provided above. The trustee should be required to (1) make every effort to sell these theatres as rapidly as possible by public advertisement for bids, private negotiations, and the employment of real estate or business brokers whenever necessary; (2) present to the court for approval such sales as he believes will effectuate the Plan; and (3) present a quarterly report to the court which will include a detailed account of (a) all offers received for any of said [fols. 5129-5132] properties, together with the names and addresses of the offerers and the amounts offered, (b) the efforts made to sell all unsold theatres, and (c) the prospects for disposition of all unsold theatres in the succeeding quarters. If within a period of one year the trustee has not succeeded in disposing of more than one-half of the total properties required to be sold, the court should review the trustee's operations for the purpose of determining what, if any, modification in the disposition procedure should be made in order to insure the completion of the Reorganization Plan within the next succeeding year.

The trustee should be authorized (1) to examine all books and records of defendants, to employ such accounting assistance as may be necessary for the purpose of ascertaining any information as to earnings or value of the theatres in question as he may require; (2) to have free access to the theatres involved at all times for the purpose of showing them to prospective purchasers, providing only that such access shall not interfere with the normal operation of the theatres; (3) to examine all executed film licenses of the defendants and to ascertain from inquiry of the defendants' employees the current status of film licensing negotiations and other data relevant to the current operation of the theatres; and (4) to employ all assistance necessary to negotiate and close sales for the properties in question, including legal counsel.

The expenses and compensation of the trustees should be paid from the proceeds of sales made by him in such amounts as the court may from time to time approve. In determining his compensation the number and rapidity of the sales made should be considered. All amounts paid by purchasers should be received by the trustee and distributed by him only upon the order of the court. Except as specifically outlined above or as expressly authorized by the court, the trustee should not participate in the actual operation of any of the theatres in question.

IV. *Booking Agencies Prohibited*

No defendant shall buy or book films for any theatre other than those in which the defendant owns a financial interest.

V. *Restrictions on Schine Expansion*

No defendant shall acquire a financial interest in any additional theatres except after an affirmative showing that such acquisition will not unreasonably restrain competition. Such showing shall be made before this court upon reasonable notice to the Attorney General at Washington, D. C.

[fol. 5133] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

DEFENDANTS' OBJECTIONS TO PLAINTIFF'S SO-CALLED PLAN OF REORGANIZATION

April 1, 1946

On or about the 25th day of February, 1946, the plaintiff submitted to the Court what is called a "Plan of Reorganization of the Schine Circuit", together with a supporting memorandum. This "Plan" purported to be submitted in compliance with Section III of the Judgment. Among the encomia self-applied by the plaintiff to the "Plan" plaintiff said: "The Plan accomplishes only a partial dissolution of the circuit as such inasmuch as it leaves the defendants in possession of a substantial circuit of theatres. It provides no realignment of theatre ownership in the sense of transferring operations from one area to another, but it does reorganize the circuit by a method of theatre divestiture which is calculated to insure active competition for the defendants' theatres wherever they operate."

[fol. 5134] The defendants are filing herewith their objections to the "Plan" submitted by the plaintiff as provided for by Section III of the Judgment. Each objection is filed by each defendant separately.

In that part of the opinion of the Court which was preparatory to paragraph (7) of the directive language and to paragraph III of the Judgment, the Court said (pp. 39-40):

> "Some of the major companies are exhibitors as well as distributors. The government by the Consent Decree entered in an agreement setting up procedure purported to provide a fair and equitable sale, distribution and showing of pictures to all distributors. Just what was accomplished by the Decree, other than some arbitration of clearances, does not appear. The government in entering into the Consent Decree evidently contemplated that such decree would obviate the necessity of a trial of the issues and intended to let by-gones be by-gones. As compared with some of the major distributors, these defendants when combined are relatively small. The Consent Decree, therefore, brings up the question of whether the harsh determination of dissolution as urged by the government should be compelled or whether some adjustment or reorganization can be agreed on or fixed by the court which will be as definitely as possible prevent future violations."

Some weeks later when the case of United States v. Paramount, et al., was being argued before the Three-Judge Expediting Court in the Southern District of New York, Circuit Judge Augustus N. Hand voiced practically the identical sentiments in the excerpt quoted on pp. 33 and 34 of our brief, dated February 25, 1946, and read to this Court in the course of the argument of defendants' motion [fol. 5135] under Rule 52 B, on February 25, 1946, at page 108 of the transcript, to wit:

> "'Judge Hand: Why do you have to sell theatres in order to cure that, if there is a wrong there?

Mr. Wright: Well, the agreement is, I would say, per se illegal, and of course——

Judge Hand: You seem really to aim at, I won't say nothing, because you are calling attention now to other wrongs, but your great aim is to upset all the ownership of theatres. Now that is an extremely drastic remedy that I should think was extremely unlikely for this court to give. But that is merely a first impression by myself, and I have got to study this thing very carefully in other ways than just by reading through the briefs once, of course.

But this sort of thing that you are arguing now is the kind of thing that has always been argued, and remedies have constantly been granted that were thought sufficient. Maybe they have not been against the kind of thing you are calling our attention to here."

Jacob Siegel Co. v. *Fed. Trade Comm.*, Mar. 25, 1946, 325 U. S. ——, furnishes in another field a decision pertinent in this case. The Federal Trade Commission had found that the petitioner's trade name, Alpacuna, applied to coats containing no vicuna, was deceptive and misleading. Consequently, the Commission, in its order, banned the use of the word Alpacuna. The Supreme Court reversed because "the policy of the law to protect them as assets of a business indicates that their destruction 'should not be ordered if less drastic means will accomplish the same result.'"

The directive language of this Court leading to paragraph III of the Judgment reads as follows:

> [fol. 5136] "(g) and directing the entering of a decree adjudging that the defendants and their affiliated corporations be dissolved, re-aligned or reorganized in their ownership and control, so that fair competition between them and other theatres be restored and hereafter maintained; and that the determination of the question of the dissolution, re-alignment or reorganization of the parties aforesaid and the method to be employed in ~~the~~ accomplishment of the same be left to be fixed by this court after further consideration with the parties."

The above quoted excerpts from the opinion of this Court must be borne carefully in mind in considering whether the plaintiff's "Plan" even remotely approximates what the Court had in mind in its decision. It is submitted that it does not.

The very word "Plan" presupposes familiarity on the part of the planner with the subject matter of the plan and a careful study by the planner of the problem involved, so that the application of the plan will have at least a reasonable chance of accomplishing the desired results. The "Plan" as suggested by the plaintiff, does not indicate any familiarity with the subject matter, nor any careful study by the planner of the problem involved, nor any reasonable prospect that the "Plan" will accomplish the professed desired results.

In this instance the plaintiff admits that its "Plan" does not provide for any "re-alignment" of the circuit, and the plaintiff further admits that the "Plan" provides for a "partial dissolution" of the circuit, which the plaintiff seeks to justify by lugging in the word "reorganization" without any justification whatsoever. In submitting this "Plan" the plaintiff has, by its own admission, adopted the very remedy characterized by the Court as "harsh".

[fol. 5137] The Court has stated in so many words that the purpose of the judgment should be to prevent as definitely as possible future violations of the Statute and to restore and hereafter maintain fair competition between theatres operated by the defendants and other theatres by some method of adjustment or reorganization to be agreed upon or fixed by the Court. Restoration of competition necessarily implies that at some time in the past competition did actually exist between Theatre "A" and Theatre "B" and in order to justify the inclusion of Section III of the Judgment, the plaintiff must prove as to each theatre affected by Section III that such competition did exist and was *illegally* eliminated by the defendants in violation of the provisions of the Sherman Act. Thus in cases where there never was, and in all probability never will be any competition, or in cases where existing competition was eliminated by legal methods, there is no occasion for any action on the part of the Court such as is contemplated here. In the brief submitted by the plaintiff on December 26, 1944 (when the plaintiff was endeavoring to persuade the

Court that some limited divestiture might be necessary) the plaintiff said, on page 60:

> "As a further means of dissipating the illegal effects of the defendants' monopoly, it may be necessary to order the sale of specific theatres *in each town where the defendants were shown to have eliminated previously existing independent competition, to the end that such competition may be restored.*" (Italics ours)*

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* The above quoted sentence is the first sentence in the fifth paragraph of Section III C of plaintiff's brief. The page citation is to the printed copy of said brief.

[fol. 5138] However, after the plaintiff was able to persuade the Court to decide this case in its favor, the plaintiff discarded its sheeps' clothing and now seeks to compel the sale not only of one or more theatres in each town in which the defendants operate (with only four exceptions), but also to compel the defendants to get out of certain towns entirely without any reference whatsoever to the status of competition in these towns at any time during or prior to the existence of the Schine Circuit. There is absolutely no justification for the plaintiff's attempt in the remainder of the above quoted paragraph to drag in the May, 1942, order as an indication that it is difficult to induce independents to enter into competition with Schine and that this alleged fact is the reason why Schine was unable to dispose of all of the theatres covered by said May, 1942, order. There is not a scintilla of evidence in the record of the truth of the claim made by the plaintiff in this paragraph, and the fact is that the theatres which were not sold at the time the order expired were not sold because no one wanted to pay as much money as Schine had paid for these theatres.

In formulating its so-called "Plan" the plaintiff has attempted to deal not only with the thirty-two towns regarding which the plaintiff offered evidence and which are mentioned in the opinion and findings, but with every town in which the Schine Circuit operates one or more theatres and, in fact, with two towns in which Schine does not operate any theatres at all. Since obviously the defendants were not required to offer any evidence as to towns ignored by the plaintiff in the presentation of its affirmative case, the record is barren of any information (except purely statistical information contained in the answers to interrogatories) regarding the majority of the towns which [fol. 5139] would be affected by the "Plan". If, therefore, in our discussion of individual towns we should make any statements of fact not found in the record, we assure the Court that such statements are made only because the plaintiff seeks to include in the judgment towns not mentioned in the evidence and can be proved beyond all question of doubt by indisputable evidence.

The only sense in which the plaintiff may be said to have planned anything is that, realizing from the language of the Court that a complete dissolution of the circuit would not be ordered, plaintiff has determined the maximum number of theatres which it felt that it might be able to persuade the Court to take away from the defendants, and has tortured out what it is pleased to call a "Plan of Reorganization" to accomplish this end. This will appear in our detailed objections as we proceed to discuss the "Plan" item by item. In discussing this "Plan" item by item we wish to make it clear that every single item of the "Plan" is so vicious that it alone is sufficient entirely to destroy the legality, propriety or effectiveness of the "Plan". This is not a "Plan" which can be corrected. It must be rejected *in toto*.

[fol. 5140]

I

The Submission, Discussion, Approval or Execution of any Plan at this Time is Premature

A

At the time that we entered upon the preparation of these objections the Court had under consideration a motion by the defendants under Rule 52B to amend the findings, conclusions and judgment herein, and a similar motion by the plaintiff, and we intended strongly to stress the point that no plan should be submitted, discussed, approved or put into execution until the Court had decided these motions, and settled the findings of fact, conclusions and judgment in final form.

We are now in receipt of the decision of the Court upon each of these motions, from which it appears that while the

Court has disallowed most of our proposed amendments, it has allowed two amendments to the judgment requested by the plaintiff. We, therefore, respectfully submit that no action is necessary or proper under the judgment until the entry of a new judgment in conformity with the decision of the Court and the expiration of the statutory time required after the entry of such judgment.

Therefore, in filing these objections at this time, and in proceeding with a hearing on April 16, 1946, the defendants and each of them do so, reserving, as to each defendant, its respective rights in the premises and without waiving any objection to the consideration at this time of the "Plan" submitted by the plaintiff.

[fol. 5141]

B

Aside from any legal consideration, as urged in A above, it is submitted that until the Supreme Court of the United States shall have heard and determined the appeal which the defendants and each of them will now take from the judgment about to be entered pursuant to the Court's decision on March 8, 1946, no "Plan" should be submitted, discussed, approved, or put into execution.

This proposition was partially argued before the Court on February 25, 1946, and the Court was apparently influenced in deciding in favor of immediate consideration by plaintiff's argument that not to do so at this time would result in two appeals to the Supreme Court. A study of the transcript indicates that this discussion was diverted into other channels before the question had been fully argued.

Presumably even the plaintiff will concede that nothing can be done about putting any plan approved by the Court over the objections of any defendant into execution until the entire matter has been passed upon by the Supreme Court. Certainly no trustee appointed by this Court would be allowed to enter upon a course of selling theatres belonging to the defendants until the Supreme Court has decided our appeal.

In the *Crescent* case, so much relied upon and cited by the plaintiff (and frequently cited by the Court), the plan of divestiture has not as yet been put into execution, although judgment was entered in the District Court on May 17, 1943, and affirmed in the Supreme Court on December

11, 1944. In the appendix hereto we print the latest ruling of the Court further extending the time to perform the acts of dissolution. There was never any danger of the possibility of two appeals in that case.

[fol. 5142]

II

The Court is without power or authority under the Sherman Act, or any other act, judicially to enforce performance of the plan submitted by the Plaintiff in this case.

This objection is entirely apart from the objection which will be made *infra* in relation to the illegality and unconstitutionality of the method of sale proposed by the plaintiff. The objection is based upon the fact that the Court has not and never has had before it in this case the parties whose compliance would be necessary to carry into effect the plaintiff's "Plan."

This is not the type of case referred to in the *Crescent* case where the Supreme Court held that the absence of minority stockholders of defendant companies was not a legal barrier to the separation of the companies, citing *United States* v. *American Tobacco Co.* The rule applicable in this case is that laid down by the Supreme Court in *Minnesota* v. *Northern Securities Co.*, 183 U. S. 199, where the Court, citing *Hogan* v. *Walker*, 14 How. 35, 14 L. ed. 315, said:

> "It remains true, notwithstanding the act of Congress and the 47th rule, that a circuit court can make no decree affecting the right of an absent person, and can make no decree between the parties before it, which so far involves or depends upon the rights of an absent person that complete and final justice cannot be done between the parties to the suit without affecting those rights."

In this case, no showing has been made that the theatres which the plaintiff is seeking to persuade the Court to take away from the defendants are owned, leased or operated [fol. 5143] by the defendants who are before the Court in this suit. In fact, so far as there is any evidence, the contrary, for the most part, appears. On September 29, 1944, at the request of the plaintiff, and the suggestion of the Court, the defendants furnished the plaintiff with a list of the operating companies listed in answer to Interrogatory

15 and the theatres then operated by said companies. This stipulation was marked Exhibit 994. There was no evidence as to the companies owning the fee of these theatres or holding underlying leases thereon, and there is no evidence as to the state of affairs existing since September 29, 1944.

The plaintiff is asking the Court to order the sale of certain theatres notwithstanding the fact that with very few exceptions there is nothing in the record to indicate that the persons owning, leasing or operating these theatres are present before the Court and subject to any order or judgment in this case.

The plaintiff apparently realizes this and has suggested that, when feasible, theatre sales should be made by the transfer of ownership of existing corporations through which the theatres are owned and operated, but the burden would be upon the plaintiff to show that such method of transfer would be feasible. No such evidence is before the Court nor can it be produced.

It may be conceded, but only for the purpose of this single objection, that the situation would be different *if the defendants and their subsidiaries were to be regarded as a single unit.* The defendants urged this theory upon the Court, as is clearly shown in defendants' brief submitted on January 24, 1945, pp. 853 to 855, defendants' brief dated February 25, 1946, pp. 31-34, and upon the argument before [fol. 5144] this Court on February 25, 1946, appearing on pp. 69-76, inclusive, of the transcript, and will press for its acceptance by the Supreme Court on any appeal herein, but for the present at least the theory was rejected by the Court, first, in its opinion on pp. 10 and 11, and again in the argument above mentioned where the Court stated at page 73 of the transcript:

"The Court: Well, in your construction such an aggregation of entities would be exempt from the Statute? They couldn't commit a conspiracy?" And again on page 74: "The Court: I know there were. But, if you are right in that construction that goes to the very foundation of the statute itself."

Therefore, we are faced with this position; if the Schine Companies are to be regarded, as we contend, as a single entity, the Court has before it all parties whose presence is necessary to enforce an order of sale, but in that case there would be no judgment because there would be no conspiracy. (This Court, in its opinion, quoted the Supreme Court opinion in the *Crescent* case as follows:

> "We may assume that if a single exhibitor launched such a plan of economic warfare, he would not run afoul of the Sherman Act.")

If, on the other hand, the Schine Companies are to be regarded as separate individuals so as to permit proof of conspiracy between them, the Court has not now before it the companies whose presence is necessary to permit the enforcement of a plan such as the plaintiff is seeking here.

[fol. 5145]

III

The proposed "plan" seeks the divestiture of theatres which were acquired in the ordinary course of business by entirely legal methods and without any violation or thought of violation of the statute.

Except as the Court may have found to the contrary as to some of the thirty-two situations mentioned in the opinion and in the findings of fact, there is absolutely no evidence even remotely indicating that the acquisition of the theatres comprising the Schine Circuit was other than by wholly legal means and in the ordinary course of business, nor is there any evidence that the defendants in their operation of the said theatres have in any way violated the Sherman Act.

(The defendants contend that the evidence presented regarding the thirty-two situations referred to in the opinion does not indicate any violation of the statute, but for the purpose of our discussion of this point we shall omit these thirty-two situations and deal only with the situations as to which there is no evidence at all).

Notwithstanding the failure on the part of the plaintiff (and we are certain that such failure was due solely to its inability to produce the same) to produce any evidence indicating or tending to indicate any violation by the defendants of the Statute in these other situations, the plaintiff now asks the Court to take away from the circuit, theatres which it obtained and has been operating in a perfectly legal manner.

As has been pointed out, the failure of the plaintiff to introduce evidence as to many situations, other than the thirty-two mentioned in the opinion, led the defendants to confine the evidence offered by them to these thirty-two situations and resulted in a trial record barren of any information regarding the majority of the towns which [fol. 5146] would be affected by the "Plan." However, the Court will find in the answering affidavits submitted by Schine in opposition to the plaintiff's motion for a preliminary injunction, which was the opening gun fired by the plaintiff in this case, sworn and uncontradicted statements from many of the former owners of theatres now operated by the circuit, setting forth the circumstances under which these theatres were acquired by the Schine Circuit.

Thus, as in the cases of Messrs. Wilkins, Wheatley & Brohan (in Milford, Delaware, Easton and Federalsburg, Maryland and Cambridge, Maryland) the owners had substantial outside business interests to which they desired to devote all of their time, and for which reason they desired to sell the theatres to an experienced operator. In other cases, the terms offered by the circuit were so favorable that the former owner considered it good business to make a deal. In none of these instances was there any indication whatsoever that any of the former operators was influenced to dispose of his theatre by reason of any so-called threat made directly or indirectly by any member of the Schine Circuit, or by reason of any burdensome competition.

Even with respect to the thirty-two situations mentioned in the opinion, we submit that although the testimony of many obviously biased and hostile witnesses was introduced by the plaintiff, there is no evidence that any former independent exhibitor was "forced out of business" in any town, or that interstate commerce was restrained by any improper activities on the part of Schine.

The attempt on the part of the plaintiff to take away from the Circuit property legally acquired and legally operated is not justified by any principle of law under the Sherman Act or any other statute, and is even inconsistent with the theory upon which the plaintiff submitted this case to the Court as indicated in the quotation from plaintiff's brief, page 5, *supra*.

[fol. 5147]

IV

Objections to the Disposition Proposed by the Plaintiff with Respect to Each Individual Town.

A

Towns in Which the Plaintiff Concedes the Existence of Competition

The plaintiff refrains from disturbing the Schine interests in the following towns: Utica, Buffalo, Glens Falls, Norwich, New York, and Salisbury, Maryland.

It is significant to note that the Schine Circuit has not operated any theatres in Utica since 1930, and that in Buffalo the circuit operates only two neighborhood houses in a city of nearly 600,000 inhabitants, where several other circuits, much stronger than the Schine Circuit, are established.

Furthermore, if this principle were to be adopted, we are unable to see why there should not be included in this category such towns as Syracuse, Cumberland, Amsterdam, Gloversville, Auburn, Corning and Watertown. In all of which the Schine interests have substantial competition, as will be indicated in our detailed analysis of the separate towns.

B

One Theatre Towns

The plaintiff names seventeen towns, in fifteen of which the Schine Circuit operates the only theatre in the town, and in one of which (Dolgeville, New York) the Schine Circuit has no theatre. These towns are all small towns, running from Hurlock, Maryland, with a population of 800, to Saranac Lake, New York, with a population of 7,138, but for the most part the population is 5,000 or under.

[fol. 5148] Newark should be included in the two or more theatre towns because, while there is only one theatre in operation there, Schine also holds the lease upon the Crescent Theatre. (Int. Ans. 17(A) and 18, p. 5.) The theatres in East Rochester and Fairport should properly be treated as Rochester suburban theatres. Both East Rochester and Fairport are suburbs of Rochester and their theatres are to all intents and purposes neighborhood houses subject to clearances from first run downtown Rochester.

The remainder are typical one theatre towns, capable of supporting one theatre and one theatre only. In fact, in some cases, such as Hurlock, Maryland, they have difficulty in supporting even one theatre. In seeking the sale of these towns the plaintiff wholly disregards the principle for which it argued in the passage quoted from its brief of December 14, 1944, which principle was accepted by the Court in the passages quoted, *supra*, from the opinion. The competitive situation (there never was any competition, there is no present competition, and there is no likelihood that there ever will be competition) would not be changed one iota by the sale of these towns, or any of them; the only result would be that instead of the towns being operated by Schine they would be operated by some other person under exactly the same conditions.

None of these towns is even mentioned in the opinion or findings, except Perry, where Schine tried to buy the theatre, but the independent preferred to sell it to a different circuit which circuit subsequently sold to Schine, and Carthage where RKO and United Artists apparently at one time granted clearances (over whom it does not appear, which meant nothing, and against which there was never any complaint made).

[fol. 5149] Detailed Historical Analysis[*]

(F.M.) Bath. (Population 6,496.) Schine acquired the lease of the Babcock Theatre in 1924. At that time Schine was operating in only seven towns. The Babcock Theatre is the only theatre in the town.

This town is not mentioned in the Opinion or Findings of Fact.

[fol. 5150] (F.M.) Carthage. (Population 4,207.) Carthage was the fourth town in which Schine acquired a theatre. This was in 1922 when Schine acquired the fee of the Strand Theatre. Schine also acquired at that time there, from the former owner, the lease of the Hippodrome Theatre, but that lease expired in 1929 at the time Fox-Metropolitan took over the Strand and the building was converted to commercial use. The Strand Theatre was destroyed by fire in March, 1945. Rebuilding has been delayed due to war time restrictions, but it is expected that a new theatre will be ready for operation by the end of April, 1946. This new building will cost more than three times as much as the old building. The plaintiff has closely watched the Schine Circuit and must know these facts, but it has not mentioned them in the "Plan" and apparently expects Schine now to turn over to some other exhibitor a building which it has taken Schine over a year to complete. The Strand Theatre is the only theatre in town.

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[*] Wherever in any of the analyses contained herein the symbol (F.M.) appears before the name of a town, it means that the Schine Theatres in that town were leased to Fox-Metropolitan Playhouses in August, 1929 and reverted to Schine in the Fox-Metropolitan receivership in April, 1933.

This is one of the towns mentioned in the Opinion and Findings of Fact.

Alleged Abuse: Finding of Fact No.

United Artists permitted ninety days clearance and R.K.O. permitted one hundred and twenty.

Facts. This alleged abuse is meaningless. It is not stated over whom the clearance was permitted, or whether it was ever exercised, and there is no evidence that any one ever complained about it.

[fol. 5151] East Rochester. (Population 6,691.) Schine acquired a lease on the Rialto Theatre in 1924, at a time when it was operating in only seven towns. East Rochester is a suburb of Rochester and the theatre is in fact a neighborhood theatre, subject to clearance from Rochester first-run downtown theatres. The Rialto Theatre is the only theatre in East Rochester.

This town is not mentioned in the Opinion or Findings of Fact.

[fol. 5152] Fairport. (Population 4,644.) Schine leased the Temple Theatre from the builder in November, 1926, and in 1928 Schine bought the real estate and improved the building and equipment. The Temple Theatre is the only Theatre in Fairport. Fairport, like East Rochester, is a suburb of Rochester. The theatre is in effect a neighborhood house and is subject to clearance from downtown Rochester.

This town is not mentioned in the Opinion or Findings of Fact.

[fol. 5153] Federalsburg, Maryland. (Population 1,369.) Schine acquired the fee of the Federalsburg Theatre in 1938 from several local businessmen. The deal was made concurrently with the deal for the theatres in Easton, *infra.*

The theatre had been built and was being operated by local business men as a matter of local pride and they were anxious to dispose of the theatre to an experienced operator. (See affidavit of Wheatley on motion for preliminary injunction.) The Federal Theatre is the only theatre in the town.

This town is not mentioned in the Opinion or Findings of Fact.

[fol. 5154] Hamilton, New York. (Population 1,790.) Hamilton is the site of Colgate University. Schine acquired the fee of the State Theatre in 1934. Prior thereto the theatre had been leased to the Smalley Circuit and upon the expiration of the lease Smalley told the owner that he was going to build a new theatre unless she would reduce the rent. Thereupon she came to Gloversville and induced Schine to buy the theatre. The owner was an elderly widow who is dead and whose testimony was not available at the trial, but the matter was litigated both in the New York State Supreme Court and before the N.R.A., and Schine was successful, in each forum. Schine spent a very large sum of money modernizing and improving the theater and was successful in more than doubling the attendance. The State Theatre is the only theatre in the town.

This town is not mentioned in the Opinion or Findings of Fact.

[fol. 5155] Hudson Falls, New York. (Population 6,654). Schine bought the fee of the Strand Theatre in July, 1935. Hudson Falls is a suburb of Glens Falls, which is only four miles away. The Strand Theatre is the only theatre in the town.

This town is not mentioned in the Opinion or Findings of Fact.

[fol. 5156] Hurlock, Maryland. (Population under 800.) Hurlock is a small town on the "Eastern Shore". Schine leased the Hurlock Theatre in 1938 as a part of the deal for the Wicomico Theatre, Salisbury. The only reason for leasing the theatre was that the former owner did not want to keep the Hurlock after disposing of the Wicomico. The Hurlock Theatre is the only theatre in the town.

This town is not mentioned in the Opinion or Findings of Fact.

[fol. 5157] Laurel, Delaware. (Population 2,277). In 1939 Schine leased the Waller Theatre from the Waller Estate. The theatre burned down in 1940 and Schine rebuilt it in 1941, spending for such purpose considerably more than the proceeds of insurance. The Waller Theatre is the only theatre in the town. Under Schine management the attendance at the theatre has shown a marked increase.

Although Ayers testified that Insley told him that he was foolish not to make a deal with Schine at Seaford because the Circuit had bought the Laurel Theatre, and might get away his product, the fact is that Ayers' theatres in Seaford got clearance over Laurel on all product except half of Warners.

[fol. 5158] Milford, Delaware. (Population 3,719). Schine bought the fee of the Plaza Theatre, Milford, from William Wilkins in 1939. Wilkins was an elderly butcher living in Wilmington. He had been advised by his attorney to dispose of the theatre (see affidavit of Wilkins on motion for preliminary injunction). After Schine acquired the theatre he was obliged to close it before running it because of structural weakness in the roof. Schine then made structural and decorative improvement, as a result of which when the theatre reopened there was a marked improvement in attendance. Milford is subject to clearance from Wilmington which is approximately seventy miles distant.

This town is not mentioned in the Opinion or Findings of Fact.

[fol. 5159] (F.M.) Newark, New York. (Population, 9,646), Schine acquired the fee of the Capital theatre in 1924 when Schine was operating in only seven towns. In 1926 Schine leased the Crescent Theatre which had been opened for a short time but was found not to be suitable for sound pictures and has been kept closed since Schine reacquired the town in 1933. Newark should be included among the two theatre towns.

This town is not mentioned in the Opinion or Findings of Fact.

[fol. 5160] Penn Yan, New York. (Population 5,308). Schine bought the Elmwood Theatre in 1936. This is the only theatre in the town.

This town is not mentioned in the Opinion or Findings of Fact.

[fol. 5161] Perry, New York. (Population 4,468). Schine bought the lease of the Auditorium Theatre from the Dipson Circuit in 1936. Previously Schine had negotiated for the lease of the theatre with Herzberger, the former operator, and had made a deal with Herzberger (Herzberger withdrew from the deal and sold to Dipson). The Auditorium Theatre is the only theatre in Perry. Perry is close to and in competition with Warsaw, which has two theatres, neither of which is operated by Schine.

This is one of the towns mentioned in the Opinion and Findings of Fact.

Alleged Abuse: (Findings of Fact 10 and 11 (f)) May told Herzberger that Schine was going to build a one thousand seat theatre there and a local newspaper article appeared to the same effect.

Facts: The Auditorium Theatre was an old out-moded opera house unsuitable for the needs of the town and Schine, therefore, decided to build a new theatre in the town. Schine had gone as far as getting blueprints for the theatre, but before bids were received Herzberger, who had previously agreed to sell his lease to Schine, sold it to the Dipson Circuit, which made substantial improvements in the old theatre. The theatre was then adequate for the needs of the town and Schine abandoned the plan to build. Later the Dipson Circuit sold the lease to Schine.

[fol. 5162] St. Michaels, Maryland. (Population 1,308). Schine leased the Marada Theatre in 1939. This is the only theatre in the town.

This town is not mentioned in the Opinion or Findings of Fact.

[fol. 5163] (F.M.) Saranac Lake, New York. (Population 7138). Schine bought the Pontiac Theatre in Saranac Lake. This town is competitive with Lake Placid, which is ten

miles away. The Pontiac is the only theatre in Saran
Lake.

This town is not mentioned in the Opinion or Findings of Fact.

[fol. 5164] Tupper Lake, New York. (Population 5,451): Schine leased the State Theatre in 1935. This theatre is competitive with the theatre at Tupper Lake Junction, approximately two miles away, and which is considered as being practically a part of Tupper Lake; except for the Tupper Lake Junction Theatre, the State Theatre is the only theatre in the town.

This town is not mentioned in the Opinion or Findings of Fact.

[fol. 5165] C

Two or More Theatre Towns

In this category (which is "B" of the plaintiff's "Plan"), the plaintiff has listed thirty-four towns in each of which Schine has two or more theatres and, according to the "Plan", the Circuit is required to dispose of all theatre interests except one theatre to be selected by the Circuit in each town. This would seem to leave the Circuit with thirty-four theatres in thirty-four towns, but a provision is made under "F" of the plaintiff's "Plan", which we shall discuss later, which would take away from the Circuit all of its theatres in ten of these towns so that the Circuit would then be left with twenty-four theatres in twenty-four towns.

Fourteen of these towns are not mentioned in the Opinion or the Findings of Fact, but no distinction is made between these fourteen towns and the twenty towns which are mentioned, in depriving the Circuit of its theatres.

Historically these towns fall naturally into certain classifications, to wit:

(1) Towns which were among the original acquisitions by Schine at a time when either there was no circuit at all, or the Circuit was so small that not even the plaintiff will contend that it had buying power sufficient to intimidate another exhibitor.

(2) Towns in which all the theatres have always been under the same management, either that of Schine or its predecessor.

(3) Towns in which there was originally only one theatre, but where Schine built a new theatre because the growth of the town demanded it.

[fol. 5166] (4) Towns which had one or more theatres which were inadequate to serve the needs of the town, and where Schine was induced by the residents to build a new theatre.

(5) Towns where there was at one time a theatre operated by an exhibitor other than Schine, which theatre was acquired by Schine by wholly legal and proper means.

(6) Towns where there *were* always was, or now is, an exhibitor other than Schine operating one or more theatres.

The foregoing will appear in detail from the historical analyses of the towns which follows, and it will further appear from such analyses that in no case has any theatre been illegally acquired, or illegally operated by Schine. Nevertheless the plaintiff seeks to reduce the holdings of the Circuit in these thirty-four towns to twenty-four theatres in twenty-four towns.

[fol. 5167] Detailed Historical Analysis

Amsterdam. (Population 33,329). In 1928 the Schine Circuit and the Shea Circuit each purchased a one-half interest in three theatres in Amsterdam (The Rialto, The Strand (fee) and The Regent (fee). At that time these theatres were the only theatres in the town. The buying, booking and management was handled by Shea. In 1935 Schine acquired Shea's interest, as a result of a buy or sell arrangement, in which Schine finally became the highest bidder. In 1931 Kroniek opened a small store show, known as the Orpheum Theatre. He had no lease and did not conduct a continuous business in the theatre, which lacked the customary facilities and conveniences, and was condemned by the city authorities in 1941. Amsterdam is in direct competition with Schenectady, a considerably larger city where The Fabian Circuit and R.K.O. operate theatres.

This is one of the towns mentioned in the Opinion and Findings of Fact.

Alleged Abuses: Finding of Fact 9B: United Artists permitted 90 days clearance at Amsterdam.

Finding of Fact 15: Non-competitive agreement.

Finding of Fact 18: Alleged refusal of MGM to negotiate with Kronick until Schine deal did not materialize.

Finding of Fact 19: Alleged refusal of Fox to sell Kronick in 1935-36 and alleged refusal of Warner in 1938-39.

The Facts: The United Artists clearance, as elsewhere, is meaningless. The non-competitive agreement is reasonable as to period and area involved. Kronick was not doing a continuous business. He had only a month to month lease in a theatre which he opened in a converted store many years after the town had been adequately supplied by the existing theatres. It is not strange that occasionally some distributors may have preferred not to sell him. No reasons for this alleged refusal are assigned.

[fol. 5168] Ashland, Ohio. (Population 11,141). Schine acquired an interest in The Palace Theatre (the best theatre in the town) in 1935. The other theatres were (1) an old Opera House, which was owned by the City; and (2) The Ohio, a small converted store show.

Schine acquired an interest in the lease of the Opera House in 1936, but in 1941 the theatre was condemned and the building reverted to the City, which dismantled the theatre. In 1937 Schine acquired the remaining interest in The Palace and in 1938 leased The Ohio Theatre. Later Schine built The Ashland Theatre, a new, modern theatre, which was opened in 1942.

Ashland is thirteen miles from Mansfield, Ohio, and the Warner Theatres there have clearance over Schine's theatres in Ashland.

This town is not mentioned in the Opinion or Findings of Fact.

[fol. 5169] Athens, Ohio. (Population 7,696). Schine bought the fee of the Athena Theatre in 1935. There were then two other theatres in the town (The Cor[illegible] and The Ohio). They were converted store shows, each having less than 300 seats, and had been opened for only a short time. In 1936 these theatres were leased by Schine.

This town is not mentioned in the Opinion or Findings of Fact.

[fol. 5170] (F.M.) Auburn, N. Y. (Population 35,753). In 1923 Schine leased The Palace Theatre and the Old Opera House (now The Capitol). At that time Schine was operating theatres in only six other towns. There were then two other theatres in Auburn, The Jefferson and The Strand (an old and large auditorium which was then closed). As none of these theatres was a modern or an adequate theatre, Schine foresaw that it would be necessary at some time to build a new theatre, and, therefore, acquired a lot, upon which there was then located an old church, for such purpose. The Opera House lease expired in 1926. In 1927 Schine, then operating the Palace Theatre, and Shea, then operating The Jefferson Theatre, bought The Strand Theatre and made a new lease on the Opera House.

In the 1929 deal with Fox-Metropolitan that company took over The Palace, Jefferson and Strand Theatres, but refused to take the Opera House because it was an old upstairs house and also refused to permit Schine-Shea to operate the same. In 1931, while Fox-Metropolitan was operating the other theatres, Wallace leased the Opera House under the name of The Capitol Theatre. In 1933, The Palace, Jefferson and Strand reverted to Schine-Shea in the Fox-Metropolitan bankruptcy.

In 1933 the Strand was condemned by the city and closed. It was torn down in 1939. After The Strand was condemned Schine insisted on building a new theatre in Auburn because it was apparent that the town needed a new up-to-date theatre. Shea was unwilling to undertake the necessary expenditure and this difference of opinion resulted in Schine's purchase of Shea's interest in the Auburn theatres in 1937. Schine immediately entered upon the construction of The Auburn Theatre in Auburn on a lot which [fol. 5171] he had bought some fifteen years earlier. The theatre was completed and opened in 1938 and is generally regarded as the finest theatre in upstate New York, except for the large cities, such as Buffalo, Rochester and Syracuse.

This is one of the towns mentioned in the Opinion and Findings of Fact.

Alleged Abuses: Finding of Fact 9A: Deprived independents of RKO product for 1933-34.

Finding of Fact 12: After Schine opened a theatre in the town it was arbitrarily able to keep the independents from opening a theatre with suitable run product.

Finding of Fact 17: United Artists gave clearance in Auburn over Skaneateles.

Finding of Fact 18: RKO, Fox, Paramount, MGM and Universal refused to furnish second run at Auburn.

Finding of Fact 19: RKO would not sell independent in 1933-34. Paramount would not sell in 1935-36.

The Facts: Wallace did not come into Auburn until 1931 which was eight years after Schine had first leased the theatre, which is now the Capitol Theatre. Schine had been unable successfully to operate that theatre and Fox Metropolitan had refused to operate it. Nevertheless, Wallace, despite his complaints, has been able to obtain sufficient first run product to operate the theatre from 1931 up to the present time. Obviously, Wallace cannot buy all the product he wants because Schine with theatres far superior to the Capitol Theatre, is unable to obtain sufficient product for its own needs. Clearance between Auburn and Skaneateles has been arbitrated under Section 8 of the consent decree and 21 days was held to be reasonable by the Appeal Board.

[fol. 5172] Bellefontaine, Ohio. (Population 9,543). In 1930 Schine was induced by a group of local citizens to build a new modern theatre in Bellefontaine. This theatre was opened early in February, 1931, as The Holland Theatre. It is a new, entirely modern theatre, of what is known as the atmospheric type, seating around 1,400 people.

At the time that Schine built The Holland Theatre, Schine had just disposed of all theatres formerly owned or operated by the Circuit except those in Cortland, Lockport, Geneva, Malone, Massena, Ogdensburg, a half interest with Shea in Amsterdam and neighborhood theatres in Buffalo and Rochester (including East Rochester and Fairport). At the time that Schine started to build in Bellefontaine, there were three other theatres in the town controlled by Milton A. Mooney, who was also the Warner Branch Manager in Cleveland. The theatres were old and inadequate for the town and only The Strand was operated continuously. The Majestic (250 seats) and no sound equipment had been operated only during the Annual Fair Week and was closed entirely from 1928 to 1931. The Opera House was a seventy-five year old upstairs theatre with no sound equipment and it was never open except for an occasional stage show.

This is one of the towns mentioned in the Opinion and Findings of Fact.

Alleged Abuses: Finding of Fact 9A: Mooney lost Loew's product for 1930-31.

Finding of Fact 11A: During negotiations for the renewal of the Strand lease Lazar is claimed to have threatened to reopen the Opera House if Gutilla (the lessor) opened the Strand.

[fol. 5173] Finding of Fact 12: After Schine opened a theatre in Bellefontaine, it was arbitrarily able to keep independents from opening a theatre in the town with suitable run product.

Finding of Fact 19: Alleged refusal of MGM to sell independent in 1930-31 (this is the same as 9A).

Finding of Fact 24: Lynch wrote Fox asking that company not to sell to independent in Bellefontaine.

The Facts: When Schine opened the Holland Theatre in Bellefontaine it was the only Schine theatre in the state of Ohio, and Schine only had a few theatres in New York State. It had no circuit-buying power whatsoever. The desire of the distributors to deal with Schine was due entirely to the fact that the Holland theatre was a large, modern theatre with 1400 seats, and far and away the best outlet for their product in the town. Obviously, if the distributors could license their product to the Holland theatre (irrespective of who was operating it) it was desirable and profitable for them to do so in preference to any of the theatres which had previously operated in the town.

Lynch's request can be construed as nothing more than an attempt by Lynch to prevent fly by night operation.

[fol. 5174] Bucyrus, Ohio. (Population 10,027). Schine came into Bucyrus early in 1935, at the solicitation of a group of local businessmen who asked him to complete the construction of a theatre which had been attempted by other local interests, but abandoned because of lack of funds. The building had only the walls and steel work erected and was to be sold at a sheriff's sale. Schine purchased the property and completed a 1,100 seat modern brick and steel theatre building, with all modern conveniences, located in the heart of the city (the so-called "A" location). The theatre was opened in 1936.

At the time that Schine purchased the uncompleted Bucyrus theatre, the only other theatres in the town were the State Theatre, a small old-fashioned converted store show, which had been operated since June, 1934, by one, Milton Breyer, and the Southern Theatre, an old 450 seat house operated by Philip Charnas. Schine purchased the lease of the State Theatre in 1935 (the lease expired a few years later and was not renewed by Schine), and purchased the lease of the Southern Theatre in 1937.

This is one of the towns mentioned in the Opinion and Findings of Fact.

Alleged Abuses: Finding of Fact 9A: Independents were deprived of Paramount and Fox product for 1935-36.

Finding of Fact 9B: United Artists permitted 90 days clearance at Bucyrus.

The Facts: Charnas had refused to buy the Fox product when it was ~~offered to~~ him and was regarded as a bad account by Paramount for failure to pay bills. This was aside [fol. 5175] from the fact that Schine had just opened the new theatre in Bucyrus which was far superior to the other theatres in the town. The 90 day United Artist clearance is wholly meaningless, as it is everywhere it is mentioned in the findings.

[fol. 5176] Cambridge, Maryland. (Population 10,102). Early in 1938 the local businessmen, who owned the three theatres in Cambridge, put an ad in The New York Times offering them for sale. A representative of the Schine Circuit answered the ad, as a result of which Schine purchased the controlling stock in the corporation owning these theatres (The Arcade, The State and The Grand or Opera House). All three theatres are owned in fee.

The stockholders were local businessmen who had taken over the operation of the theatres as a matter of local pride and desired to dispose of them to an experienced operator. Schine immediately offered to purchase the stock of any other stockholder on the same terms as those having the controlling interest. (See affidavit of Brohan on motion for preliminary injunction).

Schine renovated and improved the theatres, as a result of which the attendance showed an immediate improvement.

This town is not mentioned in the Opinion or Findings of Fact.

[fol. 5177] (F.M.) Canandaigua, New York. (Population 8,321.) Schine acquired the fee of The Playhouse Theatre in Canandaigua in 1924, at a time when it was only operating in seven other towns. At that time The Playhouse was the only theatre in the town and it remained so until 1939 when Schine entered actively on the construction of a theatre which had been contemplated since 1937. The new theatre (The Lake Theatre) was completed and opened in 1941. It was built because of the fact that it was proposed to construct a large Veterans Rehabilitation Hospital in Canandaigua, which Schine thought would justify the existence of another theatre in the town.

This is one of the towns mentioned in the Opinion and Findings of Fact.

Alleged Abuse: Finding of Fact No. 10.

Schine made threats to build in "* * * Canandaigua by a signed newspaper article published and where he eventually did build."

The Facts: Schine started planning the construction of the new theatre as early as 1937 when it was first learned that the Veterans Hospital would probably be built in the town. The representative of the owners of the real estate, in which Wallace was interested, had no knowledge of Schine's plan and no such knowledge resulted in the rejection of Wallace's offer. (Testimony 4074-4079; 4626 to 4663.)

[fol. 5178] (F.M.) Corning, New York. (Population 16,212.) In 1924 (when Schine was operating in only seven other towns) Schine acquired The Liberty, State, Regent and Princess theatres in Corning, as a part of a single deal. The Princess Theatre was obsolete and was devoted to commercial use almost immediately after it was acquired.

When the deal was made with Fox-Metropolitan, Schine built the Fox Theatre to replace the Liberty, which had burned down, and sold The Regent (which was closed at the time) to Gerber, who remodeled it and operated it until 1938 when, because of poor health which shortly thereafter resulted in his death, he leased it to Schine. The only other theatre in the town is The Plaza, a small converted store theatre, operated for many years by Gaby M. Cohen.

The Theatres in Corning are subject to clearance in favor of the theatres in Elmira operated by the Warner Circuit, the Dipson Circuit and an independent.

This is one of the towns mentioned in the Opinion and Findings of Fact.

Alleged Abuses: Finding of Fact 9(A). Deprived or attempted to deprive competition of product.

Finding of Fact 9(B). Alleged unreasonable clearance.

Finding of Fact 14. Used cut-rate students tickets.

Finding of Fact 21. Bought second-run product.

Finding of Fact 22. Contracts called for lower minimum admission than did independent contracts.

The Facts: As to 9(A) and 21, the product bought by Schine was only the product needed to operate the Schine theatres in Corning. Necessarily when a given product is given to one exhibitor, such product is not available to another exhibitor for the same run in the same territory. [fol. 5179] No evidence was furnished that any coercive measures were used by Schine in order to buy product for its theatres, and no evidence is offered to show that Schine bought product for any reason other than the fact that it was needed by the Schine theatres.

As to 9(B) it is stated that R.K.O. contracts in Corning permitted ninety to one hundred and eighty days clearance and Fox contracts permitted one hundred and sixty days. There is no evidence as to the theaters over which this clearance was granted, or that it was ever actually applied, or that anyone ever complained about it. The mere fact that there may have been a provision in some isolated contracts permitting this clearance, cannot be used even as cumulative evidence to show that Schine restrained interstate trade and commerce without proof that it was actually used with such motive.

Findings of Fact 14 and 22—certainly the fact that Schine allowed students to come to the Corning Theatre at reduced prices does not constitute restraint of interstate commerce. Changes in admission prices and the use of business stimplants *is* common to all motion picture theatres, whether circuit operated or individually operated, when weather or business conditions in the locality seem to the particular exhibitor involved to make them necessary.

[fol. 5180] Cortland, New York. (Population 15,881.) In 1926, at the invitation of local merchants, Schine built The State Theatre, a large, modern, fully equipped theatre, having over 1,600 seats. The town badly needed a new theatre and Schine spent well over a quarter of a million dollars for that purpose. At the time there were two old, inadequate theatres, The Temple and the Opera House, in fact, the Opera House was obsolete. Schine improved The Temple at a very considerable expense, so that it could be operated as the "B" house, and leased the Opera House property to Sears Roebuck.

Cortland is located between Ithaca and Syracuse, both of which cities draw to a certain extent from Cortland.

This town is not mentioned in the Opinion or Findings of Fact.

[fol. 5181] Delaware, Ohio. (Population 8,675.) In 1936 Schine acquired a half interest in The Strand Theatre, which was by far the better of the two theatres operating in Delaware at the time. The other theatre was the Star Theatre, operated under lease by John Buckman. The other fifty percent of The Strand Theatre was owned by Henry Bieberson, Jr., who originated the negotiations with Schine for the acquisition of their half interest. Buckman only had a month to month lease on the Star Theatre. He sent for Schine's representatives and arranged to sell his equipment and good will.

The Schine-Bieberson interests renovated and improved the Star Theatre and thereafter operated it at full or part time as conditions warranted (Delaware is a college town and while the college is open business is better than during the vacation periods). In 1940 Schine acquired Bieberson's remaining fifty percent interest.

The plaintiff took the depositions of Bieberson and Buckman just prior to the trial of this case but did not read either of them on the trial.

This town is not mentioned in the Opinion or Findings of Fact.

[fol. 5182] Easton, Maryland. (Population 4,528.) In November, 1938, Schine bought the fee of The Avalon Theatre (616) seats, and the lease of the Music Hall, an upstairs theatre of 250 seats, as a part of a single transaction. The theatres had been operated by a group of local citizens who desired to sell, and who were told by Mayor Brohan and other Cambridge citizens that they had made a good deal with Schine (see affidavit of Wheatley on motion for preliminary injunction).

The Music Hall was operated as a "B" house for the benefit of the poorer residents of the town. The building in which the Music Hall was located was owned by the County and shortly after Schine came into the town the County arranged with WPA for remodeling and improvement thereof and asked Schine to give up its lease. Schine thereupon relinquished the lease, but saw that the town could still have a "B" theatre, acquired a new site and erected a new theatre at considerable cost to replace the Music Hall.

This town is not mentioned in the Opinion or Findings of Fact.

[fol. 5183] Geneva, New York. (Population 15,555.) In 1924 when Schine was operating only seven other towns, it acquired in a single transaction the fee of the Opera House; the fee of The Temple and the lease of the Regent Theatre. These were the only theatres in the town. The Opera House burned down in 1930 and Schine then built The Geneva Theatre to replace it. The Geneva was a fine new modern theatre, having almost 1,900 seats, and was opened in 1931. After The Geneva was opened, The Temple, which was obsolete, was closed, but with the improvement of business conditions it was extensively remodeled and reopened.

This is one of the towns mentioned in the Opinion and Findings of Fact.

Alleged Abuse: Finding of Fact 14. It is claimed that Schine cut admission prices in Geneva.

Finding of Fact 18. It is claimed that United Artists did not negotiate with De Toto for second-runs at Geneva, although Schine had bought second runs.

The Facts: As to 14. As has already been several times indicated changes in admission prices are seasonal only and are not used for the purpose of restraining interstate commerce.

As to Finding of Fact 18. United Artists offered to sell DeToto second-run product in Geneva in April, 1939, for

$15 to $25 per picture, but DeToto refused to buy the product, saying the price was too high. Later in 1939 DeToto attempted to buy the 1939-1940 product for second-run, but this deal was not completed, and for this reason, as well as for the fact that the first-run in Geneva had not as yet been sold. The Branch Manager told him that it was too early to discuss the deal with him; De Toto said he would come back when the theatre was ready, but never did so.

[fol. 5184] (F.M.) Gloversville. (Population 23,094.) This is the first town in which Schine acquired a theatre. This initial acquisition was the lease of The Hippodrome Theatre, an upstairs hall in one of the main streets of the town. The acquisition took place in 1917, at which time there were two other theatres in the town, to wit: The Glove, a newly constructed theatre, and The Family, an old opera house specializing in vaudeville. The Glove and The Family were operated by the same individuals.

In 1919 Schine bought the fee of The Hippodrome and enlarged and improved the theatre. In 1920 Schine bought The Glove and The Family Theatres. The Family Theatre was an old obsolete theatre and was converted to commercial use. A large part of it is used by Schine as part of the Circuit home offices. Since acquisition the Hippodrome and Glove have been renovated and improved by Schine several times.

The Glove and Hippodrome Theatres have always had competition from the Smalley Theatre, Johnstown, operated by the Smalley Circuit (a circuit of about seventeen theatres). The Smalley Theatre is only three miles from the Glove and Hippodrome Theatres, and although Johnstown and Gloversville are separate towns, they are contiguous interrelated communities.

This is one of the towns mentioned in the Opinion and Findings of Fact.

Alleged Abuse:

Finding of Fact No. 17: "Gloversville got clearance of forty-five days over Johnstown.

The Facts: This clearance which had already been voluntarily reduced to 30 days was further reduced to [fol. 5185] 21 days in a clearance proceeding under Section 8 of the Consent Decree in United States v. Paramount. Schine voluntarily appeared.

In holding 21 days clearance to be reasonable, the Arbitration Board necessarily held that Gloversville and Johnstown were competitive. In the course of the argument on February 25, 1946, the following colloquy took place between defendants' counsel and the Court:

> "Mr. McClennen: Now this suggestion of your Honor's brings forcibly forward Gloversville; Here was a man with nothing, starting a theatre on a shoe string there. That operation has gone on for twenty-eight years. Is he to be charged with having put his money into that enterprise for the purpose of monopolizing trade?
>
> "The Court: No, I don't think so."

[fol. 5186] Herkimer, New York. (Population 9,617.) In 1925 Schine acquired a half interest in the only two theatres in Herkimer (Liberty Theatre fee and Richmond Theatre lease). This interest was acquired from local business men who were then operating these two theatres and the two theatres in Little Falls, which were acquired in the same transaction; the other fifty percent was owned by Universal Pictures, but later on when Universal Pictures decided that the exhibition business was unprofitable and was disposing of all of its theatre interest, Schine bought the other fifty percent interest,

This is one of the towns mentioned in the Opinion and Findings of Fact.

Alleged Abuses: Finding of Fact 9(B). Clearance for Herkimer over Ilion. "Schine got clearance for Herkimer over Ilion where non-existed before."

The Facts: This finding is incorrect. The record shows that clearance for Herkimer over Ilion was instituted during the Fox-Metropolitan operation and after Schine reacquired Herkimer this clearance was reduced.

[fol. 5187] Ilion, New York. (Population 8,927.) In a transaction started in December, 1936, and culminating in May, 1937, Schine acquired from the same interests the fee of The Capitol Theatre and the lease of The Temple Theatre in Ilion, New York. They were the only theatres in the town. Ilion had been previously operated by Fox-Metropolitan but reverted to the former owners at about the same time as the Schine Theatres came back to Schine.

This is one of the towns mentioned in the Opinion and Findings of Fact.

Alleged Abuse: Finding of Fact 15. Non-competitive agreement.

The Facts: This agreement was reasonable as to time and areas covered.

[fol. 5188] Kent, Ohio. (Population 8,581.) Schine acquired a lease on The Opera House at Kent, Ohio, in June, 1936, and operated that theatre until September, 1937, when the theatre had to be closed because of lack of product.

In December, 1937, Schine bought The Kent Theatre from the Flanagan interest, which also operated the two theatres in Ravenna (which two theatres were acquired by Schine in the same transaction).

Kent is nine miles from Akron, and is subject to fourteen days clearance from the theatres operated by the Warner, Shea and RKO Circuits, and a theatre operated by an independent.

This is one of the towns mentioned in the Opinion and Findings of Fact.

Alleged Abuses: Finding of Fact 9(B). United Artists gave ninety days clearance at Kent.

The Facts. It is assumed, since the statement appears in the opinion, that at least one contract was introduced at the trial relating to Kent, which had a ninety day clearance provision. Obviously this provision was never operative.

[fol. 5189] Lexington, Kentucky. (Population 45,736.) In 1936 Schine acquired a majority of the stock of Phoenix Amusement Company from the stockholders, who were local businessmen. At that time Schine was not operating any theatres in Kentucky. Phoenix Amusement Company operated the Ben Ali, Kentucky, Strand and State Theatres in Lexington. It also operated the only theatre in Paris and the only two theatres in Richmond, Kentucky.

Later Schine acquired the Opera House, Lexington, and the Ada Meade, Lexington (both subsequent run houses). Under the Consent Order of May, 1942, Schine agreed to endeavor to sell these two last named theatres, but the terms on which they were acquired were so favorable to the seller that they refused to take them back, and no other exhibitor was found either during the pendency of the order, or since, who was desirous of acquiring them at those terms.

This is one of the towns mentioned in the Opinion and Findings of Fact.

Alleged Abuses: Finding of Fact 9B: United Artists gave 90 days clearance at Lexington.

Finding of Fact 14: "Schine cut admission prices" in Lexington.

Finding of Fact 15: Non-competitive agreement.

Finding of Fact 19: MGM would not sell Schwartz in Lexington in 1936-37.

Finding of Fact 22. In the 1936-37 season Schine is claimed to have cut admission prices for first run showing of Fox pictures below the minimum fixed in the contract. In reply to an inquiry by Fox, J. M. Schine replied that the [fol. 5190] cuts "were quite essential and proved to be beneficial." Thereafter, Fox omitted minimum admission prices in second and third run contracts, but provided for a fifteen cent minimum evening adult admission price for Schwartz.

The Facts: The non-competitive agreement with Schwartz was reasonable both as to period of time and area involved. Any difficulty that Schwartz had in obtaining product was occasioned only by the competitive situation in Lexington and by his unwillingness to pay the prices asked by the distributors. He was always able to obtain sufficient suitable product to operate his theatre.

It will be noted that the changes in admission prices in Lexington occurred only during the summer season when the temperature is extremely high. Any benefit which Schine might have derived from changes in admission prices was necessarily also beneficial to the distributor.

[fol. 5191] (F.M.) Little Falls, New York. (Population 10,163.) In 1925 Schine acquired a half interest in the two theatres in Little Falls from the local businessmen who were operating these two theatres and two theatres in Herkimer. The other fifty percent was owned by Universal Pictures, but later when Universal Pictures decided that the exhibition business was unprofitable and disposed of its theatre interest, Schine bought the other fifty percent interest both in Herkimer and in Little Falls.

The local citizens who sold to Schine had other business interests to which they desired to devote their entire energies. During the Fox-Metropolitan tenancy the Hippodrome lease expired and was not renewed, but Schine made a new lease on this theatre in 1936 and has since operated it part time.

This is one of the towns mentioned in the Opinion and Findings of Fact.

Alleged Abuses: Finding of Fact 9B: RKO, Columbia and Universal permitted 120 days clearance, and United Artists permitted 115 days.

The Facts: There is no evidence this alleged clearance was ever operative.

[fol. 5192] Lockport, New York. (Population 24,379.) In 1922 Schine acquired The Temple Theatre, Lockport. Prior to 1922 Schine was operating in only three towns. At that time the only other theatre operating in Lockport was the Hi-Art, which was a converted store show.

In 1924 Schine purchased from the same man who had owned The Temple a large building across the street from The Temple, which had formerly been a skating rink, but which was then being used as a garage. Schine completely rebuilt the building into a large modern theatre (The Rialto) with 1,500 seats, 1,400 of which were on the ground floor. At about the same time a group of local citizens undertook the construction of a new theatre (The Palace) and in connection with the transaction in 1924 when Schine acquired a number of theatres, Schine also acquired a preliminary lease on The Palace Theatre. However, this lease was repudiated and the building was leased to Paramount, which company also held a lease on the Hi-Art, but was not operating it.

Hi-Art was remodeled and rebuilt into a much larger and better theatre so that there were then three good theatres in the town, together with Schine's Temple, which was the oldest and least suitable for a theatre.

In 1927 or '28, Schine and Paramount combined theatre operations in Lockport. At that time they closed the Hi-Art and The Temple was torn down. In 1932 the Dickinson interests, who controlled the corporation owning the Palace Theatre succeeded in ousting Paramount-Schine and immediately formed an affiliation with the Dipson Circuit to operate The Palace, which they continued to operate until

1936. When Schine lost The Palace Theatre, The Hi-Art was reopened as the Schine "B" house in Lockport.

[fol. 5193] Dickinson died in 1933 and in 1935 his executors sold The Palace Theatre at public auction. The property was purchased by the Dipson Circuit. Subsequent to this the Dipson Circuit sold The Palace Theatre to Schine at a considerable profit over what it had paid the Dickinson Estate for the property.

This is one of the towns mentioned in the Opinion and Findings of Fact.

Alleged Abuses: Finding of Fact 11(E). Alleged statement by May immediately after ouster of Schine from Palace, "* * * If they could not lease The Palace, they would have to reopen the Hi-Art to use up product under contract." Alleged difficulty on part of independents in obtaining product from Metro, Fox, Universal and Loew's.

Finding of Fact 12: "After Schine opened a theatre within a town it was arbitrarily able to keep the independents from opening a theatre in the town provided with suitable run product as in * * * Lockport * * *."

Finding of Fact 13: Claim that Schine was able to monopolize first-run product at Lockport, although physical facilities of the independents in the town were better than Schine's.

Finding of Fact 19: Alleged refusal on the part of RKO to sell product to Lockport in 1933-34; Paramount 1933-34; Universal 1933-34.

Finding of Fact 21: Purchase by Schine of second-run product.

The Fact: When Schine was ousted from The Palace Theatre, it had already contracted for the 1932-33 product, and The Rialto was using the product of all major companies, except Metro. The only reason Schine was not [fol. 5194] using Metro product at that time was because there had been a serious disagreement with Schine, which disagreement was subsequently eliminated. Charles Dickinson, Jr. admitted that Schine was a regular customer of the eight major companies; The Palace had a franchise for Columbia Pictures, first-run, for 1934-1935 and 1935-1936, and played United Artists first-run product in 1934, 1935, and 1936. The Palace Theatre refused to buy Fox product second-run.

Findings of Fact 12 and 13 are not correct. Schine was operating a theatre in Lockport before The Palace Theatre was built and at no time after The Palace Theatre was acquired by Dickinson and Dipson Circuit did Schine use more or different product that it was using prior to such acquisition. Although The Palace Theatre was a larger theatre than The Rialto, The Rialto had a better location and more seats downstairs and was, therefore, better adapted for the showing of motion pictures.

[fol. 5195] Maysville, Kentucky. (Population 6,572). Schine leased the Russell Theatre in June, 1938. The other two theatres in town were the Washington, operated by Kaplan and Frisch, and the Hollywood operated by another exhibitor. Kaplan and Frisch acquired the Hollywood, and shortly thereafter made a deal with Schine for a part interest in all three theatres. Schine subsequently purchased a one hundred percent interest.

This town is not mentioned in the Opinion or Findings of Fact.

[fol. 5196] Middlesboro, Kentucky. (Population 11,777). In January, 1939, Schine acquired the lease on the Mannering and a lease on the Brownie Theatres from the same exhibitor. Thereafter, and after Schine had made extensive improvements to each building, Schine acquired the fees.

This town is not mentioned in the Opinion or Findings of Fact.

[fol. 5197] Ogdensburg, New York. (Population 16,346). In 1926 Schine leased The Strand Theatre and The Pontiac Theatre from the same individuals, who had previously operated the same, and who were also interested in the operation of two theatres in Malone. These are and always have been the only theatres in the town.

This is one of the towns mentioned in the Opinion and Findings of Fact.

Alleged Abuses: Finding of Fact 14. Cut admission prices.

Finding of Fact 17. Warner's Branch Manager told Home Office Canton would do more business "if it were not for thirty days clearance for Schine at Ogdensburg over Canton, and if it was reduced it will make a better condition for us all • • •"

The Facts: As to 14. As there never was any other theatre in Ogdensburg, a change in the admission prices could not affect interstate commerce in any way.

As to 17. The clearance between Ogdensburg and Canton was arbitrated under Section 8 of the Consent Decree in *United States* v. *Paramount.* As a result of such arbitration, clearance was reduced to three days. In making such reduction the Board held that the towns were competitive, but that three days clearance would be adequate. Schine acquiesced in that decision.

[fol. 5198] (F.M.) Oneonta. (Population 11,731). This is the second town in which Schine acquired a theatre or theatres. Schine leased The Strand Theatre, which was a small poorly constructed theatre in 1919, very shortly after he started operating in Gloversville. At that time the best theatre in Oneonta was operated by a circuit (the Hathaway Circuit). Schine bought this theatre in 1922 (at that time Schine was operating only in Gloversville, Oneonta and Norwich).

In 1923 the Palace Theatre was built and leased to Schine (at that time Schine was operating in Gloversville, Oneonta, Norwich, Carthage and Oswego). Schine bought the fee of The Palace Theatre in 1927. When the theatres of the town were leased to Fox-Metropolitan that company refused to lease The Strand Theatre because it was obsolete and unsatisfactory for a theatre; the theatre was thereafter sold and converted by the purchaser to commercial use.

This town is not mentioned in the Opinion or Findings of Fact.

[fol. 5199] (F.M.) Oswego. (Population 22,062). Schine acquired The Strand, Capitol and Richardson Theatres as a part of a single deal in Oswego in 1922. Prior to 1922 Schine was operating theatres in only three towns; the Strand and Capitol were operated full time and the Richardson was operated from time to time.

The land upon which the Oswego Theatre was built was acquired in 1937. The Oswego Theatre is a large, modern theatre costing over a quarter of a million dollars, seating over 1,700 people, and was opened in January, 1941. All of the theatres in the town were operated by Fox-Metropolitan from 1929 to 1933.

This town is not mentioned in the Opinion or Findings of Fact.

[fol. 5200] Paris, Kentucky. (Population 6,204). When Schine acquired 97% of the stock of the Phoenix Amusement Company from Lexington businessmen in 1936, that company was the lessee and operator of The Bourbon Theatre, the only theatre in the town. Schine soon decided that Paris needed a new, modern theatre, and in 1937 purchased the necessary land and obtained the necessary building permit. In the spring and summer of 1938 Schine had plans drawn for and obtained bids for the construction of the new theatre which was completed and opened as The Paris Theatre in 1939.

This is one of the towns mentioned in the Opinion and Finds of Fact.

Alleged Abuses: Findings of Fact 11B and 15: Lazar is said to have told Schwartz if he built in Paris, Schine would build a 1200 seat theatre in Lexington. When Schine acquired Schwartz's Paris and Lexington interests Schwartz signed a non-competitive agreement.

Finding of Fact 12: After Schine opened a theatre in Paris, it was arbitrarily able to keep independents from opening a theatre there with suitable product.

Finding of Fact 18: Alleged refusal of Fox, RKO and Universal to negotiate at Paris.

The Facts: As to Findings of Fact 11B and 15: Schine made no "threats" to build in Paris. He decided to build a new theatre in the town shortly after he acquired the Bourbon Theatre and went through with those plans expeditiously. The plans were initiated before there was any intimation that Schwartz contemplated building. Schine announced its intention to build in the summer of 1937 and Schwartz did not lease the property until November, 1938. [fol. 5201] There is no evidence in the record that any one ever told Schwartz that Schine would build a new 1,200 seat theatre in Lexington. As a matter of fact, the only exhibitor who would have been injured by a new theatre in Lexington would have been Schine, who then was operating all of the first-run theatres in the town.

The non-competitive agreement which Schwartz signed is believed to be wholly proper, both as to time and area, and has not been the subject of complaint from anybody except the plaintiff. Schwartz had an opportunity (under the Consent Order of May, 1942) to reacquire the theatre in Lexington which he had leased to Schine, but the terms which he had obtained were so favorable that he had no desire to take back the theatre, nor has anyone else indicated willingness to take it under these terms.

As to Findings of Fact 12 and 18: Schwartz's request for product was made in November, 1938 after the 1938-39 product had been sold. RKO and Universal told Schwartz that they might be able to sell him some product after his theatre was completed. Grady (Fox) said about the same thing in a conversation. All three mentioned the fact that Schine was building a new theatre in Paris.

Schwartz testified at the trial that his dealings with Schine were met only with courtesy and fair discussion of negotiations; that no threats were made to him; that he made his two deals for Paris and the Opera House, Lexington because he thought they were good business deals; and that Paris was not large enough for three theatres.

[fol. 5202] Piqua, Ohio. (Population 16,049). Schine leased The Piqua Theatre, The Miami Theatre and The Bijou Theatre in Piqua, Ohio, in May, 1931, as a part of a single deal. This was during the period that most of the New York theatres previously operated by Schine were being operated by Fox-Metropolitan, and Schine was in only one other town in Ohio (Bellefontaine).

Although Piqua is twenty-nine miles from Dayton, the R.K.O. theatres and a theatre operated by an independent there are given clearance over Schine's theatres.

This town is not mentioned in the Opinion or Findings of Fact.

[fol. 5203] Ravenna, Ohio. (Population 8,538). In 1937, Schine bought The Ravenna and Ohio Theatres in Ravenna, Ohio. They were purchased as a part of a single transaction with the owner of The Kent Theatre in Kent, Ohio, which was purchased at the same time. The Ohio Theatre had been closed for some time prior to its acquisition by Schine, but had to be incorporated in the deal. Subsequently business conditions improved and The Ohio was renovated and opened for operation.

Ravenna is subject to clearance in favor of the Warner, Shea and R.K.O. Circuits and also an independent theatre in Akron. Ravenna has always played after Kent.

This town is not mentioned in the Opinion or Findings of Fact.

[fol. 5204] Richmond, Kentucky. (Population 7,335). When Schine acquired the stock of Phoenix Amusement Company, that company owned The Madison Theatre and leased The State Theatre in Richmond, Kentucky, which were, and are, the only operating theatres in the town. Schine made improvements to The Madison Theatre.

This town is not mentioned in the Opinion or Findings of Fact.

[fol. 5205] Salamanca, New York. (Population 9,011). In 1924 when Schine was operating in only seven other towns, Schine acquired a lease upon the Andrews Theatre. In 1927 Schine decided to build a new theatre in Salamanca and acquired a site therefor. When the Andrews Theatre was sub-leased to Fox-Metropolitan, Schine agreed to build and lease to Fox a new theatre on a site acquired by it in 1927. Business conditions got bad and neither Fox nor Schine wanted a new theatre in the town at the time and the agreement was cancelled.

After The Andrews reverted to Schine in the Fox-Metropolitan bankruptcy, Schine began to consider the construction of a new theatre, but conditions did not justify such construction until 1938, at which time preparation of plans was started. These plans were completed in 1939, but due to war conditions the theatre was not completely built and opened until August, 1942.

This is one of the towns mentioned in the Opinion and Findings of Fact.

Alleged Abuse: Finding of Fact No. 10.

> "In Salamanca, just as independents acquired a site for a contemplated theatre, through the press Schine announced its intention to build."

The Facts: As appears from the above recital, Schine intended to build a new theatre as far back as 1927. This determination was not in any way influenced by the acts of any other exhibitor. Performance was held up by bad business conditions, but when business conditions justified it the theatre was built.

[fol. 5206] Seneca Falls, New York. (Population 6,452). Schine leased the Strand Theatre in 1935, and at that time The Seneca Theatre was operated by DeToto, who had a month to month lease from the bank which owned the property and was desirous of selling the same. Schine purchased the property from the bank in 1936. At the time of the purchase, DeToto, who had been offered the property by the bank, and had refused to buy it, had removed the equipment.

This is one of the towns mentioned in the Opinion and Findings of Fact.

Allegel Abuses: Finding of Fact 9(B). "At Seneca Falls, New York, Columbia and United Artists permitted 120 days". (clearance).

Finding of Fact 11(I). Alleged attempt to prevent DeToto from building new theatre in Seneca Falls by announcing prospective reopening of Seneca Theatre.

The Facts: It is possible that isolated Columbia and United Artists contracts contained provisions with respect to 120 days clearance, but these provisions were never operative.

As to Finding of Fact 11(I), the evidence clearly shows that DeToto never made a bona fide attempt to build a new theatre in Seneca Falls and, further, that he never had money either of his own, or others, sufficient to finance any such project.

[fol. 5207] Tiffin, Ohio. (Population 16,102). In 1932 Schine acquired a half interest in the leases on the Ritz Theatre and Grand Theatre from their then operators, who retained the remaining fifty per cent interest. In 1938 Schine and its partners acquired the lease on the Tiffin Theatre.

This is one of the towns mentioned in the Opinion and Findings of Fact.

Alleged Abuse: Findings of Fact 9(B). "United Artists gave ninety days clearance in Tiffin."

The Facts: While this clearance may appear in one or more isolated contracts, there is no evidence that it was ever operative.

[fol. 5208] (F.M.) Watertown, New York. (Population 33,385). In January, 1927 Schine leased the Avon (1376 seats), and the Olympic (1649 seats). Later, after the Fox-Metropolitan operation, Schine acquired the Palace (594 seats). In 1924 Vournakis commenced to operate the Strand and in 1933 acquired the Liberty theatre. There is also the Victoria theatre, operated by Graham and Ludlow.

This is one of the town- mentioned in the Opinion and Findings of Fact.

Alleged Abuses: Finding of Fact 9A: Independent is claimed to have lost Warner second run 1934-35 product.

Finding of Fact 9B: United Artists permitted 90 days clearance at Watertown.

The Facts: In an affidavit sworn to on September 20, 1939 Vournakis said, among other things, "that I have been in the theatre business in Watertown for twenty years and that a great portion of that time I had been operating and still operate two theatres in opposition to the Schine theatres in that city, and during the entire period, I have never experienced any unpleasantness and at no time have I had any difficulty in obtaining the pictures I wanted to buy. I have always found that their theatres were conducted in a businesslike manner on a fair competitive basis." When Vournakis testified at the trial he confirmed the truth of the statement in said affidavit.

The 90 day United Artists clearance again is meaningless.

[fol. 5209] Wooster, Ohio (Population 11,543). In July, 1931, Schine acquired a half interest in the Wooster Theatre. At that time most of the New York theatres previously operated by Schine were being operated by Fox-Metropolitan and Schine was operating in only two towns in Ohio, Bell*a*fontaine and Piqua. The only other operating theatre in the town was a converted store show, which was closed by the operator in 1932 and reconverted to commercial purposes.

In 1933, Schine and others leased the Opera House and tried to operate it, but the theatre was old and obsolete and, therefore, in 1937, a new site was acquired on which the new Wayne Theatre was constructed and opened in 1938.

This town is not mentioned in the Opinion or Findings of Fact.

[fol. 5210] D

Theatres Which Were Originally Listed in the Consent Order of May 19, 1942, and Which Schine Still Owns

On page 4 of the memorandum submitted in support of its "Plan" plaintiff criticizes defendants' performance under the consent order and makes the charge that the defendants deliberately failed to comply with the order. Furthermore the plaintiff claims that this deliberate failure to comply has continued for four years after the entry of the order.

There is absolutely no basis for this charge, but it is typical of the plaintiff's attitude throughout this entire case. The plaintiff is fully aware of the fact that the consent order was originally intended to remain in force only until May 19, 1944. Thereafter it was extended by order of the Court and consent of the parties until Nov. 15, 1944, at which time it finally terminated and since which time it has been of no force or effect whatsoever. During the period that the order was in force the defendants rendered periodical reports setting forth their efforts to dispose of the theatres mentioned in the order and, during this period, although the plaintiff at times complained that not all of the theatres had been sold, no charge was ever made that the failure of the defendants to sell all of the theatres was deliberate and willful. This charge was fully answered before this Court which found that the defendants had made considerable and reasonable efforts to sell.

In this connection we deem it advisable to refer to the comment of the Court made during the argument of February 25, 1946, and appearing at page 82 of the transcript, where the Court was evidently thinking about the provisions [fol. 5211] of the consent order in relation to the sixteen theatres named therein. Lest the Court should get any impression that the defendants willingly agreed to dispose of these theatres because they felt that it would assist the competitive situation, or because there was anything improper in connection with their acquisition, we state emphatically that the order itself shows on its face that the disposition of these theatres was insisted upon by the plaintiff so as to restore the status of the Schine Circuit to what it was at the time of the institution of this action, and the order itself further shows expressly that no wrong doing of any kind was conceded by the defendants or asserted by the plaintiff.

The attention of the Court is invited to the excerpt from the transcript of the proceedings before this Court on May 19, 1942, which is noted in our brief, dated February 23, 1946, at page 5 (footnote).

It appears that there are four theatres and an interest in a fifth theatre named in the order which Schine still holds. Detailed statements regarding these situations are set forth *infra.* The case of the Strand theatre, Cumberland, was fully argued before the Court at the time that the Liberty theatre, Cumberland, was acquired after a hearing before this Court. The Court then ruled that the defendants should be permitted to acquire the Liberty theatre, and that they need not continue to endeavor to sell the Strand theatre. Grace Fisher, the present owner of two theatres in Cumberland, appeared at the hearing and testified that she had made an offer for the Liberty theatre to prevent its purchase by a company other than Schine. On learning that Schine was a prospective purchaser, she asked to withdraw her offer and the deposit made on it, and expressed her willingness that Schine make the purchase. Her "A" theatre is the same type of theatre, and plays the [fol. 5212] same type and run of motion pictures as the Strand and Liberty.

The interest in the Memorial Theatre, Mount Vernon, Ohio, consisted of a lease which only had a short time to run and which has now expired. As the plaintiff well knows, this building is owned by the County Commissioners of Knox County, Ohio, and the lease is put up for competitive bidding every few years, so that no one is able to guarantee long term occupancy of the building.

In the case of the Margie Grand Theatre, Harlan, Kentucky, Leon Scott the owner of the remaining 50% opposed any change in the set-up so vigorously (and without in any way being influenced by Schine) that it is not difficult to see why there was no purchaser for Schine's interest. Leon Scott appeared for this purpose at the hearing held in this Court on April 10, 1944, and stated in open court that he was very happy in his relationship with Schine and did not desire to have any one else associated with him in the operation of the theatre. This theatre is in active competition with the New Harlan, operated by Price Coomer.

In the case of the Opera House and Ada Meade Theatres, Lexington, Kentucky, and the Plaza Theatre, Malone, New York, the terms upon which Schine acquired these theatres were so favorable to the sellers that it was impossible to find another purchaser who would duplicate the terms. In Malone, Boumansour notified the Department of Justice that he had disposed of his theatre on a basis entirely satisfactory to him. The non-competitive agreement was proper as to length of time and area covered and was particularly appropriate as Boumansour entered Schine's employment at that time.

[fol. 5213]

E

Suburban or Neighborhood Theatres in Rochester, New York

Out of the 10 neighborhood theatres (but not including Fairport and East Rochester) operated by the Schine Circuit in Rochester, New York, the plaintiff asks the Court to order Schine to sell either the Riviera or Liberty Theatre, and either the Monroe or Madison Theatre. The explanation of this suggestion, which appears on page 3 of the memorandum accompanying the "Plan" does not make sense. Schine admittedly does not control any first run theatres in the City of Rochester. The first-run theatres are all downtown and are operated by Loew's-Comerford and Paramount, and R. K. O. Loew's, Paramount and R. K. O. were once defendants in this case and still are in *United States* v. *Paramount* in the Southern District of New York.

The Riviera and Liberty Theatres were acquired by Schine in 1926 from different owners and during the twenty years in which they have been operated by Schine there never has been any complaint about the manner of their acquisition or their operating policy. The Monroe and Madison Theatres were acquired in February, 1939, from one, Fenyvessy, who had been operating theatres in Rochester for thirty years and who was then 84 years old and actively desirous of disposing of his theatres. They had always been operated by Mr. Fenyvessy under one manngement so that the change of ownership did not affect the competitive situation as between these two theatres. There is no reason why any of the four theatres should be sold.

[fol. 5214] The alleged abuses referred to in the Opinion and Findings of Fact relate (9A) to an isolated instance in which some exhibitor did not buy Columbia product; (11H) involving the Webster theatre, which was planned and eventually built between the State theatre (a Schine theatre) and the Plaza theatre (an independent theatre), (Schine claimed that the district could not stand a third theatre, but it was built and eventually taken over by one of the original promoters); and (12) a claim that Schine was able to monopolize first neighborhood run, although the physical facilities of the independent were better.

The fact is that the neighborhood theatres operated by Schine were far and away the best neighborhood houses in Rochester. The above complaints were not made about, nor do they affect the Riviera, Liberty, Madison or Monroe theatres which are proposed to be sold.

Incidentally in the *Crescent* case the plaintiff expressly excluded from the charges, from any evidence, and from any prayer for relief a large number of suburban theatres operated by Crescent in Nashville, Tennessee. There is no reason why the same policy should not apply here.

[fol. 5215]

F

Pooling Arrangements

The plaintiff lists eight towns (exclusive of Syracuse, New York), in which it asks the Court to order the dissolution of "existing pooling arrangements" by the sale of the defendants' stock in the respective corporations operating the theatres there.

The term "pooling arrangement" is universall recognized in the motion picture industry as meaning a situation where Exhibitor "A" and Exhibitor "B" each operate one or more theatres in a given locality and mutually agree to combine their operations.

Only two of the towns listed by the plaintiff (exclusive of Syracuse) fall within this definition, to wit: Fostoria and Medina.

1. In Norwalk, Schine acquired a two-thirds interest in the corporation operating the Forum Theatre. Subse-

quently this corporation built the Norwalk Theatre and acquired the Moose Theatre. There never was a theatre operating pool in the town.

2. In Shelby, Ohio, Schine acquired a half interest in the Costamba Theatre. Subsequently they offered to sell back this half interest to the other 50% owner who, however, did not want to buy. There never has been a theatre operating pool in Shelby.

3. In Ballston Spa, Granville, Mechanicsville and Whitehall (four small one-theatre towns in the vicinity of Albany, New York) Schine acquired as a part of a single transaction [fol. 5216] a half interest in the four theatres. There never has been a theatre operating pool in any of these towns.

This leaves Fostoria, Ohio and Medina, Ohio (in addition to Syracuse, New York) as towns in which Schine had an interest in a so-called "pooling arrangement."

4. In Fostoria, Schine was operating the Civic and Roxy Theatres and Arthur and Ural Buck operated the State Theatre. The Buck brothers testified at the trial. Arthur Buck was anxious to retire from the theatre business and the Bucks accordingly approached Schine with a view to forming a partnership in Fostoria. An arrangement was made which has at all times proven satisfactory to the Bucks, who have so emphatically expressed themselves. No evidence was offered indicating that anyone else was in any way damaged or even effected by this arrangement.

5. In Medina, Yudelevitz and Willis were operating the Princess Theatre, which was the only theatre in town. They interested Schine in the theatre and succeeded in selling Schine a 50% interest. At that time it was contemplated that they would build a new theatre in the town because the Princess Theatre had only 350 seats. They then learned that Fine and Essick, who were substantial circuit operators (they operated some twenty-nine theatres in the vicinity of Cleveland) were planning to build a new theatre in the reconstructed Masonic Lodge. As the town could not stand three theatres, the Yudelevitz-Schine interests abandoned their plans for the construction of a new theatre and made extensive improvements to the Princess Theatre. After the new Temple Theatre was open the various parties entered into an arrangement under which the two theatres were [fol. 5217] leased to a new corporation and in which Yudele-

vitz had 25%, Schine 25% and Fine and Essick 50%. Essick and Fine testified as to these negotiations and found no fault with the manner in which they were conducted by Schine. The operation of the town since the arrangement was made has been wholly satisfactory and no one in or outside of the town has made any complaint about it.

Other than as set forth above the plaintiff has not furnished another detail regarding the mechanics of the so-called "pools" in Fostoria or Medina.

If all of the facts regarding these so-called "pooling arrangements" were disclosed, it would immediately appear that they cannot be dissolved simply by the sale of the stock interest of the Schine Circuit in the operating corporations, if any. In each case there are rights, privileges and obligations appertaining to each party to the so-called pool which cannot be abrogated without the consent of the other party.

6. With respect to Syracuse, the plaintiff suggests that the existing arrangement should be terminated by the sale of Schine's interest in S. K. E. Operating Co. and the return of Schine's theatres to the defendants for separate operation. R. K. O., which is the other stockholder in S. K. E. Operating Co., was originally a defendant in this case, but was dismisseed as a defendant by the plaintiff. Irrespective of the merits of the proposal, it is impossible to achieve the result desired by the plaintiff without the presence before this Court of R. K. O., as would readily appear if the entire structure of the corporation and the nature of its holdings were before the Court, which they are not.

Furthermore, there cannot be any justification for seeking a dissolution of S. K. E. Operating Co., when it is in [fol. 5218] direct competition in Syracuse with Loew's, Inc., which, we believe, is unanimously conceded to be the most powerful single producer-distributor-exhibitor in the industry, and even more significantly, when Schine has nothing to do with the buying and booking for the S. K. E. theatres and when the corporation which does handle the buying and booking has been dismissed as a defendant in this case at the request of the plaintiff.

[fol. 5219] Detailed Historical Analysis

Norwalk, Ohio. (Population 8,211). In 1935 Schine acquired a two-thirds interest in the corporation holding the lease on The Forum Theatre (537 seats), which theatre had been opened in December, 1935. At that time the only other theatre in the town was The Moose Theatre, operated by The Elks, and managed by one Felter. The Moose was an old opera house, constructed in 1904 and located down an alley. In 1936 the corporation acquired The Moose Theatre and as the stockholders, after trying to operate the two theatres, found them to be inadequate for the town, the corporation built The Norwalk Theatre (1,111 seats), a large modern theatre which was completed and opened in 1941.

This is one of the towns mentioned in the Opinion and Findings of Fact.

Alleged Abuses: Finding of Fact No. 9(B). United Artists permitted 90 days clearance in Norwalk.

Finding of Fact No. 10(C). Just before Schine acquired The Forum Theatre in Norwalk Lazar advised that an independent to "get in with us; we are a big company; you know what it means if you are not in with us; and further stated, 'if you lease your theatre Mr. William Sellman (part owner of The Forum) will walk out of town.' "

The Facts: Finding of Fact 9(B). The isolated clearance provision in a United Artists contract is wholly meaningless and there is no evidence that it was ever operated.

Finding of Fct 10(C). This cannot be regarded as anything more than conversation on the part of Lazar, Schine having no theatre in the town at the time, obviously it would not influence the independent one iota. Furthermore, there is no proof of Lazar's authority to make the statement if he did make it.

[fol. 5220] Shelby, Ohio. (Population 6,653). In 1937 Schine acquired a fifty percent interest in the lease of The Castamba Theatre. At that time the only other theatre in Shelby was an old upstairs opera house. As a part of the deal the theatre was improved and the seating capacity increased from 476 seats to 749 seats.

There had been an article in The Film Daily that the Dipson Circuit was going to build a new deluxe modern theatre in the town. Shortly after interest was acquired by Schine in The Castamba Theatre, Kempar, a former employee of Dipson, whose letterheads represented himself as a circuit operator, converted a garage into a motion picture theatre, known as The State Theatre, with 454 seats. Kempar subsequently acquired the lease of the opera house; subsequently Kempar sold his interests to the Gregory interest who operate theatres in other towns.

This town is not mentioned in the Opinion or Findings of Fact.

Ballston Spa, New York.	(Population 4,443).
Granville, New York.	(Population 3,173).
Whitehall, New York.	(Population 4,851).
Mechanicsville, New York.	(Population 7,449).

These are four small towns, in each of which there was one theatre. The towns are located generally in the district surrounded by Saratoga Springs, Glens Falls, Schenectady, Albany and Troy, all of which are large cities and in each of which, *except Saratoga Springs and in each of which,* except Saratoga Springs and Troy, there are distributor-exhibitor-circuit operated theatres. In Troy the first-run theatres are run by the Fabian Circuit.

[fol. 5221] These four theatres were formerly operated one hundred percent by William Benton, an exhibitor of long standing, who, in 1939, in a single transaction sold a fifty percent interest to Schine, with an agreement as to a division of the managerial and booking duties. Benton and Schine each put up a considerable sum of money for the purpose of improving the theatres.

None of these towns are mentioned in the Opinion or Findings of Fact.

[fol. 5222] Fostoria, Ohio. (Population 13,453). In 1936 Schine acquired the lease of The Civic Theatre (516 seats) and the lease for The Roxy Theatre (280 seats) from the same individual. At that time the only other theatre in the town was The State Theatre operated by Arthur and Ural Buck and other local people. In 1937, at the request of the Bucks, Schine and the Bucks formed a corporation to operate the three theatres, in which corporation the Buck interests owned fifty percent and Schine owned fifty percent.

This is one of the theatres mentioned in the Opinion and Findings of Fact.

Alleged Abuses: Finding of Fact 9(B). United Artists permitted 90 days clearance at Fostoria.

The Facts: There is no evidence as to when, or against whom, this isolated incident of clearance was granted, or that it was ever operated.

[fol. 5223] Medina, Ohio. (Population 4,359). In 1937 the only theatre in Medina was The Princess Theatre, which was owned and operated by Willis & Yudelevetz. Early in 1937 they asked Schine to take an interest in the theatre and also in the construction of a new theatre which they wished to build in the town (The Princess Theatre had only 350 seats). Schine thereupon acquired a 50% interest in The Princess Theatre and agreed to contribute its share toward the construction of a new theatre.

The original agreement between Schine and Yudelevetz was signed on March 18, 1937.

Some time in the same month, the Masonic Lodge of Medina, decided to reconstruct their building and to include in such reconstruction a theatre. They thereupon wrote to Schine asking Schine not to go ahead with the plan to build a new theatre. Schine and Yudelevetz then learned that the Fine and Essick Circuit (a substantial circuit operating about thirty theatres in the vicinity of Cleveland), were planning to lease the new theatre in the Masonic Building. This lease was finally made on January 18, 1938, and the new theatre was opened shortly thereafter.

When Schine and Yudelevetz became convinced that Fine and Essick actually intended to go forward with the theatre in the Masonic Building, they abandoned their plans to build a new theatre and remodeled The Princess at a considerable cost.

Before The Temple Theatre was opened, The Princess Theatre had all the first-run product that the theatre could use in Medina. The Princess Theatre and The Temple Theatre were operated in opposition to each other until April, 1939, when the operation was taken over by a corpo-[fol. 5224]ration, in which the Fine-Essick interests owned fifty percent; Schine owned twenty-five percent and Yudelevetz owned twenty-five percent.

This is one of the towns mentioned in the Opinion and Findings of Fact.

Alleged Abuses: Findings of Fact 10 and 13.

Finding of Fact No. 10: "In Medina Schine announced the making of an agreement to erect a new theatre immediately after independents started construction."

Finding of Fact No. 13: Schine was able to monopolize first-run product at Medina even though the physical facilities of the independent in that town were better than Schine's.

The Facts: Neither of the above statements is correct. As appears from the evidence Schine made an agreement with Yudelevetz before Schine knew of the intention of Fine and Essick to come into the town and, when satisfied that such intention was genuine, the plan to build a new theatre was abandoned. Construction of The Temple Theatre, although contemplated in March, 1937, was not commenced until months later.

With respect to the product situation, the evidence clearly showed that before Schine came into the town, and while the independents, Yudelevetz and Willis were the only operators, they had all the first-run product they could use from the first-run company. If product was taken away from any one by any one, it was taken away by Fine & Essick from Schine and Yudelevetz.

[fol. 5225] (F.M. as to Eckel Theatre only). Syracuse, New York. (Population 205,967). In 1927 Schine acquired a half interest in the lease of the Eckel Theatre, Syracuse. Subsequently Schine acquired a one hundred percent interest in the operation of this theatre. After the theatre reverted to Schine in the Fox-Metropolitan bankruptcy, it was in competition in downtown Syracuse with Loew's State Theatre, and The Keith Strand and Paramount Theatres operated by R.K.O.

Schine and R.K.O. formed a corporation, to which were leased or sub-leased, the Keith Paramount, Strand and Eckel Theatres. R.K.O. was the majority stockholder and did the buying and booking. When the Strand lease expired, the R.K.O.-Schine Company renewed the lease for a short period but had to give up the theatre, which is now operated by Loew's as a "moveover" Theatre.

Aside from the fact that it would be impossible to cancel any of the leases or sub-leases on these theatres without the consent of S.K.E. and R.K.O., neither of whom are parties to this action, the subsequent run situation in Syracuse would not be in any way changed by the reversion of the Eckel Theatre to Schine. The only effect would be that the Eckel Theatre with 1,200 seats and little or no product would be forced to compete with R.K.O. and Loew's.

This town is not mentioned in the Opinion or Findings of Fact.

G

[fol. 5226] Towns Within a Radius of Approximately 25 Miles from Each Other

In this category (which is "F" of plaintiff's "Plan"), the plaintiff has listed eight so-called areas in which the defendants operate in two towns, and one area (No. 7), in which the defendants operate in three towns.

Out of all the theatres now operated by the defendants in these nineteen towns, the plaintiff says that the defendants may keep only nine. The reason for this appears on page 3 of plaintiff's accompanying memorandum, where the plaintiff says that since the application of "A", "B", "D" and "E" would leave the defendants with fifty theatres out of the well and legally operated Circuit which they now have, it is necessary to devise an artificial scheme which the plaintiff choose to call "Area Competition" in order to deprive the defendants of still more theatres.

"Area Competition", according to the plaintiff, means that any two towns within a radius of twenty-five miles from each other, are necessarily competitive. No such proposition has ever been advanced, much less accepted, in the motion picture industry. Any practical exhibitor in the business knows that competition may exist within a radius of as much as seventy miles (viz., the first run theatres in Wilmington, Delaware, take clearance over theatres on the so-called Eastern Shore for a distance of seventy miles), whereas there may be no competition between theatres as close together as three to five miles.

Each one of the towns mentioned in this subdivision of the plaintiff's "Plan" is also mentioned under "B". Therefore, by the time this provision was put into effect, a situation [fol. 5227] would exist in these nineteen towns where Schine would be operating only one theatre, and some other exhibitor would be operating all of the other theatres now owned by Schine in each such town. Nothing further should be required to demonstrate the wholly unscientific, unbusinesslike and unfair nature of the proposal, and also to demonstrate that the only object which the plaintiff has in submitting this "Plan" is reduce the Circuit to a point beyond which even the plaintiff does not dare venture.

The detailed historical analysis with respect to each of these towns is covered under "B" of this Section IV. Here we shall simply set forth the facts regarding the areas designated by the plaintiff as competitive areas.

[fol. 5228] Area 1. Kent and Ravenna, Ohio. There are two theatres in each of these towns, but one of the theatres in Kent is closed. The three theatres which are now operating full time were owned and operated by the same interests for years before Schine acquired them. These two towns are suburbs of the City of Akron and subject to clearance in favor of the theatres in that city. Within the twenty-five mile radius set up by the plaintiff, there are the following towns: Bedford, Alliance, Warren, Segring, Cuyahoga Falls, Akron, Wadsworth, Barberton.

[fol. 5229] Area 2. Ashland and Wooster.

These towns are 22 miles apart. Ashland is 13 miles from Mansfield and subject to clearance in favor of the theatres there which are operated by Warner and by an independent.

Wooster is nearer Massillon and usually plays after the theatres there.

Within the 25 miles radius fixed by the plaintiff are the following towns: Mansfield, Gallion, Lodi, New London, Wellington, Plymouth, Shelby, Crestline, Loudonville, Orville, Wadsworth, Rittman, Massillon, Shreve, Barberton and Millersburg.

[fol. 5230] Area 3. Bucyrus and Tiffin.

These towns are 26 miles apart and therefore do not fall within the plaintiff's arbitrary theory of "Area Competition". Bucyrus is subject to clearance in favor of the Paramount theatres in Marion and Tiffin is nearer to Fremont and Findlay, and usually plays after the theatres there.

Within the 25 mile radius fixed by the plaintiff are the following towns: Mansfield, Marion, Gallion, Plymouth, Willard, Carey, Upper Sandusky, Cardington, Mt. Gilead, Bellview, Clyde, Fremont and Findlay.

[fol. 5231] Area 4. Cambridge and Easton, Maryland. Cambridge is a canning town on the Eastern Shore of Maryland, almost wholly dependent on the activity of the Phillips Canning Company (the owner of the trade-mark "Phillip's Delicious) for employment. It is almost entirely an industrial town. Easton is on the other side of the Choptank River, which is very wide at the point, and is about fifteen miles upstream. It is a non-commercial town and contains many summer homes owned by people living further north. The theatres in Cambridge were formerly owned by local businessmen of the town who sold them to Schine as a result of an advertisement they placed in The New York Times. The theatres in Easton were formerly owned by local business men of that town, who sold them to Schine because the Cambridge people told them they had gotten a good deal from the Circuit. Schine has materially increased the attendance at the theatres in each of these towns over the average attendance while they were separately operated.

[fol. 5232] Area 5. Lexington and Paris, Kentucky. Lexington and Paris were both formerly operated by the Phoenix Amusement Company (a company controlled by local stockholders), and when Schine acquired the stock of this company it naturally took over the operation of the two towns. At that time Paris had only one theatre, but Schine saw that the town needed another theatre and accordingly built a fine new theatre there. Lexington has a population of 45,000 people, whereas Paris has only 6,000 inhabitants. Within the twenty-five mile radius set up by the plaintiff, there are the following towns: Cynthiana, Millersburg, Georgetown, Sadieville, Frankfort, Versailles, Midway, Wilmore, Nicholasville, Richmond, Winchester, Lawrenceburg Mt. Sterling, Sharpsburg, Nichols, Mt. Olivet.

[fol. 5233] Area 6. Amsterdam and Gloversville: Although these two towns are within twenty-five miles of each other, they are not directly competitive. Amsterdam is on the direct railroad line from Albany to Chicago and on the Erie Canal, whereas Gloversville is eight miles from the railroad in the Foothills of the Adirondacks. Gloversville's competition comes from the Smalley Theatre in Johnstown (a circuit operated theatre), which is located within three miles of the two theatres in Gloversville and has always been in very close competition with them. Amsterdam's competition comes principally from Schenectady, where RKO and The Fabian Circuit operate. Within the twenty-five mile radius set up by the plaintiff there are the following towns: Schenectady, Saratoga, Scotia, Broadalbin, Northville, Johnstown, Fonda, Canajoharie, Fort Plain, St. Johnsville.

[fol. 5234] Area 7. Ilion, Herkimer and Little Falls. Prior to their acquisition by Schine in 1925, Herkimer and Little Falls had always been operated by the same interests, i.e., local businessmen. From 1929 to 1933 these two towns and Ilion were operated by Fox-Metropolitan Playhouses, Inc. When Fox-Metropolitan went bankrupt operation of Herkimer and Little Falls reverted to Schine and the operation of Ilion reverted to the former owner, who, however, apparently tired of operating theatres and sold Ilion to Schine. All three towns are close to Utica; Ilion, ten miles; Herkimer, thirteen miles; Little Falls, twenty miles; and the Warner theatres in Utica are granted clearance over Herkimer and Ilion. Within the twenty-five mile radius set up by the plaintiff there are the following towns: Fort Plain, Canajoharie, St. Johnsville, Utica, Dolgeville, Frankfort, Poland, Richfield Springs, Waterville, Oriskany.

[fol. 5235] Area 8. Auburn and Seneca Falls. Auburn already has competition within the town itself. Seneca Falls is in active competition with Waterloo which is operated by another circuit. Within the 25 mile radius fixed by the plaintiff are the towns of Syracuse, Baldwinsville, Camillus, Marcellus, Weedsport, Clyde, Lyons, Waterloo, Geneva, Moravia, Phelps, Wolcott and Penn Yan.

[fol. 5236] Area 9. Geneva and Canadaigua. These two towns have always been operated by the same interests. Prior to their acquisition by Schine they were operated by a corporation known as Associated Theatres. These theatres were acquired in 1924 when Schine was only operating in seven towns. At that time Canandaigua had only one theatre, but Schine built another theatre there in 1939 because of the contemplated construction of a large Veterans Hospital there. From 1929 to 1933 Fox-Metropolitan operated Canandaigua and Schine operated Geneva. Geneva had been included in the deal under which Fox-Metropolitan acquired Canandaigua, but Fox rejected the title to one of the Geneva theatres. Metro gives Rochester clearance over Canandaigua. Within the twenty-five mile radius fixed by the plaintiff are Waterloo, Seneca Falls, Clyde, Lyons, Palmyra, Phelps, Newark, Clifton Springs, Penn Yan, Naples.

Detailed Historical Analysis is covered under IV C (pp. 35 to 77, *supra*).

[fol. 5237]

V

The Terms of Sale, the Proposed Appointment of a Trustee and the Proposed Powers and Compensation of the Trustee Are Unprecedented, Improper, Illegal and in Violation of the Fifth Amendment to the Constitution.

It is believed that the plaintiff cannot cite a single instance in the history of the Sherman Act where any such wholesale destruction of a sound businesss has been ordered or permitted by the Court, irrespective of the extent or magnitude of a violation of the Act by the defendants in such case. In this case, the worst that could possibly be charged against the defendants under any construction of the evidence is, that in building up and conducting their business in the same manner as that pursued by countless others, without interference by the Government, since the industry was first started, they may have done something which may now be considered to be in violation of the Sherman Act, the recurrence of which in the future should be prevented by the Court. No proof whatsoever either of intent or motive has been offered. This is the limit for which the plaintiff can contend in this case and is not, of course, conceded by us to represent the proper or even remotely justifiable result to be arrived at from the evidence presented.

Nevertheless the plaintiff asks the Court to turn over to a so-called trustee having unspecified qualifications, a business which the defendants have painstakingly built up over a period of thirty years, starting with an original investment of only $1,500, giving to such trustee *carte blanche* with respect to the disposal of properties owned by the defendants with no restriction whatsoever on the terms [fol. 5238] of sale, method of sale, expenses to be incurred, or the trustee's compensation, except the approval in certain instances by the Court.

With respect to the approval of the Court the "Plan" provides that this is limited in the case of terms of sale to a disapproval by the Court of a sale which might not effectuate the purpose of the "Plan," or which might result in an unreasonable restraint of competition. There is no provision for disapproval by the Court in the event that it finds the purchase price inadequate, or the terms of sale otherwise unfair to the defendants. The whole provision is confiscatory to the nth degree. Furthermore, the Court is directed to determine the trustee's compensation based upon the number and rapidity of sales made by him. Thus, the faster he sells the property, the larger will be his compensation irrespective of the loss suffered by the owners. Every inducement is given the trustee to sell to the first rather than the highest bidder.

The visitorial power- granted to the trustee are such as to render the defendants' business, even as to such theatres as they may be permitted to retain, wholly worthless.

There is no provision for payment of any moneys to the defendants, but any such provision would probably be meaningless because under the "Plan" proposed there would be no money left for the defendants.

[fol. 5239]

VI

Booking Agencies

The plaintiff asks the Court to enjoin the defendants from buying or booking motion pictures for any theatres other than those in which they hold a financial interest.

In the Opinion and in the Findings, it is stated that at the time this suit was brought the Schine Circuit was buying and booking for twenty-seven theatres. It is not stated whether it is contended that the theatres for which Schine was booking, or any of them were or were not theatres in which Schine had a financial interest. This information was apparently obtained from the answers to Ints. 17(B) and 17(C). An examination of these answers shows that all of these booking arrangements which are still in force, cover theatres in which Schine has a financial interest, with the exception of the Rustic Theatre, at Sacandaigua Park, New York, which is a summer theatre near Gloversville, and where Schine gets $250 a season for taking care of the film service.

Furthermore, with respect to booking arrangements in force at the time the suit was instituted, but which have since expired, Schine had a financial interest in all of these theatres with the exception of Big Stone Gap, Virginia. (Incidentally the owner of the theatre defaulted in his performance of the contract.)

[fol. 5240]

VII

Restrictions on Schine Expansion

The plaintiff seeks inclusion in the final judgment of a provision that no defendant shall acquire a financial interest in any additional theatres, except after an affirmative showing that such acquisition will not unreasonably restrain competition.

We concede that there is such a provision in the Crescent decree. However, in contrast to the provision in the Crescent decree is the entirely different provision contained in the Consent Decree in the *United States* v. *Paramount*, which provided:

> "XI. * * *
>
> "(5) For a period of three years following the entry of this decree, no consenting defendant shall enter upon a general program of expanding its theatre holdings. Nothing herein shall prevent any such defendant from acquiring theatres or interests therein to protect its investment or its competitive position or for ordinary purposes of its business. Proceedings based on a violation of this subdivision (5) shall be only by application to the Court for injunctive relief against the consenting defendant complained against, which shall be limited to restraining the acquisition, or ordering the divestiture, of the theatres or interests therein, if any, about to be acquired, or acquired, in violation of this Section."

While this provision of the Consent Decree was still in full force and effect, some of the consenting defendants acquired numerous theatres and successfully resisted an attempt by the plaintiff, in the Court where the action was pending, to force them to divest themselves of these new acquisitions.

[fol. 5241]

VIII

Summary of the Effect of Plaintiff's "Plan"

In order to evaluate what the plaintiff is really seeking to accomplish by means of its "flexible", "only partial dissolution of the circuit" it is only necessary to summarize what would be left of the Schine Circuit if the Court were to accept the plaintiff's "Plan" (a possibility which we find it difficult to contemplate) and if the "Plan" could be put into practical operation (which we do not believe to be legally possible).

As evolved by the plaintiff this is what would be left of the Circuit.

1. Under page 2 of the plaintiff's memorandum
   - (a) 2 suburban theatres in Buffalo
   - (b) 2 theatres in Glen's Falls
   - (c) 1 theatre in Norwich
   - (d) 2 theatres in Salisbury

2. Under "A" of plaintiff's "Plan"
   No theatres

3. Under "B" & "F" of plaintiff's "Plan"
   24 theatres in 24 towns.

"B" purports to leave the defendants 34 theatres but "F" takes away 10 of these.

4. Under "C"
   No theatres

[fol. 5242] 5. Under "D"
   8 suburban theatres in Rochester.

6. Under "E"
   The Eckel Theatre, Syracuse, N. Y.—a 1200 seat downtown theatre which would be in competition with R.K.O. and Loew's.

Thus, all that would be left of a business that has taken 30 years to build, by laborious, industrious, efficient and (as we contend) wholly legal methods would be 38 theatres of which 10 would be suburban theatres and 1 (the Eckel) would be more of a liability than an asset.

The foregoing demonstrates more forcibly than any argument that we can make that what the plaintiff seeks to achieve in this litigation is not the restoration of competition in localities where it is claimed to have existed previously—but a monument to a new philosophy and interpretation of the Sherman Act—not warranted by any precedent or by the existence of any conditions disclosed by the evidence in this case. To accomplish this the plaintiff is quite willing to destroy at one blow the fruits of the labors of innocent parties accumulated over a period of 30 years.

[fol. 5243]

IX

The Results Which the Court Indicates Should Be Obtained in This Litigation Can Be Attained Without Requiring the Sale by the Defendants of a Single Theatre.

A discussion of this point is, of course, without prejudice to our basic position that no violation of the Sherman Act has been proved in this case, and that no judgment against the defendants, or any of them, is warranted. Anything that we may say under this heading regarding the possibility of curing alleged abuses, or the possible fixing of certain conditions under which the defendants would continue to do business, is subject and subordinate to that basic position and subject to the arrival at a complete solution of the entire problem which will not involve any conditions other than those hereinafter discussed and which specifically would not involve the sale or other disposition of any theatres.

Keeping the foregoing always in mind, we suggest the following possible remedies for the alleged abuses referred to by the Court in its Opinion, Findings and Judgment.

[fol. 5244]

A

Alleged Excessive Circuit Buying Power

This alleged abuse is the one upon which the Court seems to have placed the greatest emphasis. The Court attributes this buying power to the fact that the Schine Circuit is claimed to have combined "open" and "closed" towns in its dealings with the distributors. The Opinion also states that Schine was accustomed to buying product for theatres not owned or occupied by it. This, the Court says, brought about and increased the ability of Schine to dictate terms to the distributors. The Court also stated that in one single season (1939-1940) Schine paid film rental of $1,647,000 to six film companies.

Of course, the above alleged abuses, and all other abuses mentioned in the Opinion and Findings occurred prior to May 19, 1942. No violation of the Act since that date has been claimed or could be proved. Any abuse which may have resulted from combining "open" and "closed" towns, in making deals with distributors, was eliminated by the provisions of the Consent Order of May 19, 1942, under which the Schine Circuit agreed to buy separately for its "open" towns and its "closed" towns. We repeat here the excerpts quoted on pp. 21 and 22 of our brief, dated February 25, 1946.

> "In presenting the consent order to the Court on May 19, 1942, counsel for the plaintiff said among other things:
>
> (Minutes of May 19, 1942, page 6)
>
> 'Mr. Wright: I think it goes further than the consent decree in the other case. One of the allegations [fol. 5245] in the complaint here, if your Honor recalls, is that the——
>
> The Court: The combination.
>
> Mr. Wright: Yes. In substance this prevents the Schine Circuit from combining its closed towns with these competitive situations in making film licenses.'
>
> It thus appears that if there had been any combined buying for open and closed towns in Schine's deals with the distributors prior to May 1942, as indicated in the Court's opinion, this practice definitely stopped with the entry of the consent order.
>
> At the opening of the trial on May 19, 1944, Mr. Wright stated among other things as follows:
>
> (Reference T. 40-41)
>
> 'Mr. Wright: Of course it is perfectly true that in so far as these franchise agreements are concerned, for example, you will recall that the temporary order that was entered in May, 1942, avoided those franchises, discontinued those contracts, so that

in accordance with what is stated here there is no continuing conspiracy in so far as licensing contracts are concerned which have been terminated, and, we assume, of course, that during the period of our temporary order the order was obeyed. That is, that order prohibited, as you recall, the defendants from combining competitive situations and licensing film in dealing with any distributors. So that I should say it is clear from this statement and the entry of the order that the conspiracies that we rely upon between each of the distributors and Schine continued up to the date of the entry of that order on May 19, 1942.

Mr. McKay: I am not sure whether I understood you, Mr. Wright. You mean they stopped with the entry of the order on May 19, 1942?

[fol. 5246] Mr. Wright: I presume so. The purpose of the order was, of course, to preserve the status quo pending the continuance of this suit, and I assume that the order was obeyed. As it was the continuance of the conspiracies was not permitted by the order, of course, and I assume it didn't occur. But the evidence which we will offer will not go beyond that date. As we understand it, the situation was effectively, let us say, frozen or suspended as of the entry of that order, and our evidence will, in any event, be confined to the prior period. And that is what I assume he is principally interested in knowing.' "

With respect to the authority of Schine to buy and book for theatres not owned or operated by it, we have already pointed out that all of Schine's existing booking contracts at the present time are made with theatres in which it has a financial interest, with the exception of the summer theatre at Sacandaigua Park, New York, and that the same observation applies to all contracts in force at the time of the commencement of this litigation. (There was a contract with the Big Stone Theatre, Big Stone Gap, Virginia, running from May, 1940 to February, 1941. Schine had no financial interest in this theatre except an option to purchase a one-half interest. It received a total compensation of $208.36 for its services under the contract and the theatre owner defaulted in performance thereof.) It is, therefore, not a correct statement to say that Schine's buying power has been increased because it buys for theatres in which it has no financial interest.

The sum of $1,647,000, represents, we concede, a substantial film rental, but we believe that investigation will [fol. 5247] show that there is at least one single theatre in New York which pays annually a film rental in excess of this amount.

Irrespective of the extent of the buying power of the Circuit, there is no evidence in the case to show that this buying power was used to purchase pictures which were not needed by the Circuit for exhibition in theatres operated by it, or to purchase pictures at prices lower than those which a competing theatre was willing to pay. Therefore, the fact that in certain instances when Schine had a contract for product, a competing exhibitor was unable to obtain the same product for the same run, cannot, standing alone, be cited as a violation of the Sherman Act.

While the segregation of buying power as between "open" and "closed" towns, as provided by the Consent Order was entirely satisfactory from May, 1942 to May, 1944, and should be a satisfactory solution now, if it is felt that further precautions are necessary, it might be possible, subject to the reservations above set forth, further to decentralize the Circuit film buying by handling the licensing of films for the defendants' theatres separately in the exchange centers respectively serving the defendants' theatres.

Neither of these suggestions would require the sale of a single theatre with the resultant destruction of a substantial enterprise which the defendants have built up over a period of thirty years by laborious, industrious and wholly ~~honest~~ business methods.

[fol. 5248]

B

Clearance

This alleged abuse seems to be the second in importance in the Opinion of the Court and in the Findings.

As we have already pointed out in our brief, dated February 25, 1946 (pp. 13-15, 19 and 26, 27 and 28), there is no evidence in this case that any of the clearances referred to in the Opinion and Findings were in fact unreasonable.

An analysis of some of the clearances, to which reference is made, would show that they meant absolutely nothing. The Statement and Finding of Fact 9(b) that Schine got clearance from Herkimer over Ilion where none existed before is wholly erroneous. The record shows (T. 3500 to 2, Exs. 874, 878) that clearance was first granted to Herkimer over Ilion during the time when Fox-Metropolitan operated both towns. This clearance was fourteen days. Later when Schine reacquired Herkimer and Young and Whitney reacquired Ilion, the clearance was reduced to ~~ten~~ days.

Irrespective of any of the foregoing, there is now in existence machinery especially designed and effectively operating to handle all disputes regarding clearance. We refer to the arbitral system set up under the Consent Decree in the Southern District of New York and supervised by the American Arbitration Association. Reference to this system is made on pp. 26 and 27 of our brief, dated February 25, 1946.

In submitting the arbitration provisions of the Consent Decree to the Court in the *Paramount* case, Asistant Attorney General Hayes, representing the *United States,* said:

> [fol. 5249] "And I may say in that connection that it has long been felt, both by exhibitors and by distributors, ~~that~~ there is no fairer way to handle and dispose of complaints concerning clearance then to have the clearance fixed by some impartial arbitrator, and that is precisely what is accomplished by Section VIII. * * * Those of us who have worked on this decree after reviewing, as I said at the very beginning, the numerous industry problems in all their ramifications with the government representatives keeping constantly before their eyes, as was their duty, the complaints of exhibitors and the complaints of public groups, are of the opinion that the decree is a desirable forward step. We believe it will work. We believe it will produce good. We recommend the decree to your Honor."

Purely for the limited purpose of demonstrating to the Court that that system is operating effectively, we print in the Appendix hereto the testimony of J. Noble Braden, Secretary of the American Arbitration Association given in

U. S. v. *Paramount*, and we hand the Court herewith a copy of Ex. 390, prepared by the American Arbitration Association, and submitted to the Court in that case.

As a practical matter, since the institution of this system, the Schine Circuit has voluntarily participated in the arbitration proceedings in every case where one of its theatres was involved. A formal consent by Schine to continue this practice in the future would furnish an effective and expeditious manner of disposing of all clearance disputes in which any of the Schine theatres might be involved.

In order to anticipate any objection on the part of the plaintiff that only the so-called Big Five are bound by subject to the reservation set forth above, it would be possible to provide that any clearance fixed by the arbitrators [fol. 5250] in any proceeding involving Schine and any one or more of the Big Five would be the clearance to prevail on all contracts involving the distributor parties to such arbitration, irrespective of the distributor. If this were not satisfactory, it would be possible to provide, subject again to the above reservations, that any clearance disputes between a Schine theatre and another theatre where the distributor was not one of the Big Five should be settled by arbitration under the rules of the American Arbitration Association.

[fol. 5251]

C

Franchises

The Court attributes a considerable part of the advantage which it finds that Schine had over so-called independents to the fact that Schine was in the habit of making franchises (i. e., film contracts covering a period of more than one year) with the various distributors.

Although much has been said in the Opinion and in the Findings to the effect that Schine was able to obtain "concessions not obtainable by independents" because of the existence of these franchises, there does not appear in the record a single instance where a so-called exhibitor was unable to obtain the same provisions in his contract as were to be found in the Schine contracts *if he had asked for the inclusion of these provisions.* Nor does there appear in the record any instance where an exhibitor—a so-called independent—was unable to make a franchise agreement with a distributor for any product that was open for his theatre, if he so desired. The record shows that in making franchise agreements no distinction is made between large circuits and independent exhibitors operating only a few theatres and more franchises have been issued to the latter than to the former, (T. 2468, Exs. 741 to 744; T. 1166, 4457, 4488, 4614, Exs. D-47, D-48, D-123 to 129; T. 1170). Any failure on the part of a so-called independent to license motion pictures under franchises, or to obtain in his film contracts provisions similar to those found in the Schine contracts, was due not to his inability or to superior circuit buying power on the part of Schine, but to his own ignorance, or indifference.

Irrespective of the foregoing, all of the franchises held by the Schine Circuit were voided by the Consent Order [fol. 5252] of May 19, 1942 and, subject to the above stated reservations, it would be possible to provide that no franchises shall be made in the future. Any such provision would, of course, have to be subject to a further provision that if licensing by franchise again became prevalent in the industry, then the Schine Circuit would be permitted again to license films under franchises to the same extent as other exhibitors.

[fol. 5253]

D

Other Alleged Abuses

The Opinion and Findings and Conclusions mention other alleged abuses, but these do not appear either prevalent or important, if the remedies suggested under "A", "B" and "C" are put into operation:

1. Presumably it will be conceded that business stimulants, such as Bank Nights, Bingo, Two-for-One, China Give Aways, etc., were wholly the result of the depression starting in the early 1930s, and have now almost entirely disappeared. Certainly they do not exist to such extent as to constitute them unfair competitive practices.

2. Changes in admission prices are almost entirely seasonal, or the result of unusual conditions in a particular locality. It is natural for a distributor, who has had a long period of experience with a particular exhibitor (whether the owner of a single theatre or a large circuit), whom he has found to be a capable theatre operator, to leave to the

judgment of that exhibitor the question of admission prices. No instance has been shown in this case where any one was harmed by changes in admission prices made by Schine and, in any event, a very mild injunctive provision would be all that is required to eliminate this possibility *in toto*.

3. The Court has included in the Judgment a provision against so-called non-competitive agreements. A number of these agreements were physically introduced in evidence. but no attempt was made to analyze the same, or any of them, nor was any evidence introduced indicating that they had in any way operated to restrain competition. The obvious purpose of these agreements was to protect the good [fol. 5254] will which the Schine Circuit was buying in connection with its purchase of the land and buildings in which a certain motion picture enterprise was being operated. Such an agrement, properly limited as to scope, has always been upheld by the courts as entirely legal and proper. If, in any instance, the defendants have overstepped the bounds, this should be pointed out to them so that in the future the scope of the agreements will be properly limited. We are certain that Court did not intend absolutely to forbid the making of any such agreements at all.

A comparison of the above suggestions with the alleged abuses reference to which appears in the Opinion and the Findings of Fact shows that every alleged abuse complained of can be completely eliminated by the application of the suggested remedies without ordering the sale by Schine of a single theatre.

Thus, in the case of "evils" which are claimed to have resulted from buying power exercised by Schine by combining "towns" in making deals with distributors, the requirement that Schine buy separately for "closed towns" and "open towns" which operated successfully under the 1942 Consent Order will operate with equal success now. It has been pointed out repeatedly not only in this case, but in other litigation, that where a motion picture has been licensed by an exhibitor for a given run, it is necessarily impossible for the distributor to license the same picture for the same run to a different exhibitor. However, the segregation of buying as between "open" and "closed" towns would effectively deprive Schine of any unfair competitive advantage which it might be claimed to have had in the past. The suggestion goes even further and entertains the possibility of separate buying for separate exchange centers.

[fol. 5255] In this connection, the remarks of Assistant Attorney General Robert Sher in connection with the presentation to the Court of the Consent Decree in *U. S.* v. *Paramount, et al.* are pertinent. Mr. Sher said:

> "One of the objectives of the anti-trust law, as I see it, is to bring about competition. Now competition in the motion picture industry, the ideal competitive system, would be to have every picture individually sold to the highest bidder. That would bring about an increase in cost that would probably be prohibitive at this time. We approached that when we got to cutting down the size of the block. We did not quite get there, but we approached it, and it seems to me what most of the objections that have been presented here today involve is the objection to competition, and not an objection to the decree."

With respect to clearance, it appears that numerically more instances of claimed unfair clearance are mentioned in the opinion and findings than any other single alleged abuse. It is submitted that the system of arbitration established under Section VIII of the Paramount Decree furnishes a convenient, expeditious and impartial forum for the correction of any and all abuses in relation to clearance.

The plaintiff may now argue, reversing the position previously taken by it with respect to clearance, as indicated by the quotation from Mr. Hayes at page 117 *supra, that* clearance *per se*, is illegal. In fact, in the course of the argument in *U. S.* v. *Paramount*, et al. before the Three Judge Court, Mr. Wright stated point blank in answer to direct questions asked by Judge Hand, that although at one time he had not thought that there should not be any [fol. 5256] clearance provisions at all by anybody, he now does so think and desires to scrap the Consent Decree completely insofar as it purports to arbitrate the clearance. If the plaintiff should be successful in establishing this proposition, there would be no need to consider clearance remedies at all as far as Schine is concerned, because clearance would not exist.

The subject of franchises might properly be considered a sub-head under buying power, but this is somewhat academic at this time, as Schine has no franchises and has not had any since 1942, and would be willing not to have any unless the buying practices of the industry in general necessitate buying by means of franchise.

THE PLAINTIFF'S SO-CALLED PLAN SHOULD BE REJECTED IN TOTO.

Respectfully submitted; Edward F. McClennnen, Willard S. McKay, Samuel S. Isseks, Howard M. Antevil, Attorneys for the Defendants severally.

[fol. 5257] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

PLAINTIFF'S REPLY TO DEFENDANTS' OBJECTIONS TO PLAN OF REORGANIZATION FILED ON FEBRUARY 25, 1946

While the procedure outlined by the court does not require the filing of any formal reply to defendants' objections to our proposed plan of reorganization, we think it would be helpful to have on file before the argument a full statement of the plaintiff's position. We are, therefore, filing in this form a statement of the reasons which make the defendants' objections untenable.

At the outset it should be noted that the objections filed by the defendants are mainly a reiteration of the argument on the merits already presented to the court by the defendants' main brief, reply brief, and brief in support of their motion to amend the findings and judgment. The defendants' fundamental position with respect to section III of the judgment is that the court may not enforce the judgment of dissolution, realignment, or reorganization that it has already entered. The defendants do not propose another form of reorganization than that suggested by the plaintiff, nor have they suggested any alternative scheme of dissolution or realignment to accomplish the objective stated by the court of restoring and maintaining fair competition between them and others. They simply insist that the court declare the most important section of its judgment a nullity.

In this respect the defendants' position is similar to that adopted by them in their July, 1943, report with respect to the limited divestiture ordered by the consent judgment of May, 1942. The defendants then assumed that they were free to repudiate all or any part of that order whenever they [fol. 5258] found it expedient to do so. They now apparently regard the lapse of time during which they have illegally enjoyed ownership of those theatres and the substantial profits resulting therefrom as having relieved them from any necessity of disposing of the properties remaining unsold under that order. We do not believe that the lapse of time makes a judgment any less binding, no matter how profitable such lapse may be to the defendants, and we see no reason to take any different view toward the present litigated judgment than we did toward the former consent judgment. In both cases the court is confronted with a defiance of its orders which falls dangerously close to the line dividing argument from contempt.

In our view the court would be fully justified, in the light of the objections filed, in simply entering an order embodying the plan of reorganization proposed by plaintiff without any further hearing. The court is under no obligation to devise a plan of its own. Traditionally, when confronted with situations of this kind in enforcing the Sherman Act, the courts have necessarily placed the burden on the parties of submitting such detailed plans as they believe will accomplish general objectives outlined by these courts. Where prior Sherman Act judgments have ordered dissolution we know of no other instance in which a defendant declined to submit any plan whatsoever when directed to do so by the court. By this course of conduct we submit that the defendants have deprived themselves of standing to object to any plan upon the ground that it will not carry out the objectives stated in the judgment. Since that is actually the only purpose of further hearings, the question as to whether or not the judgment should have been entered having already been disposed of, the April 16 hearing would appear to be superfluous under the present state of the record.

However, if the court chooses to consider the defendants' objections notwithstanding that they are in reality directed to the purposes of the court's judgment rather than the means by which it is to be carried out, we are submitting the following comments regarding the plan for the court's consideration.[1]

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[1] Comments concerning individual situations referred to in the objections have been confined to an appendix attached hereto.

[fol. 5259]

I

In Making Effective a Plan of Dissolution, Realignment, or Reorganization for the Purpose of Restoring and Maintaining Competition the Court Must View the Competitive Situation as a Whole and Frame Its Judgment Primarily With Respect to Future Operations

The defendants have apparently suggested that unless a particular property has been expressly found to have been illegally acquired it may not be divested, no matter how flagrant is the monopoly power enjoyed by the defendants through possession of an aggregation of similar properties nor how widespread and repeated their abuses of that monopoly power have been.[2] Underlying the defendants' position is a false assumption that the judgment calls for the restoration of competition between particular theatres whereas it actually requires restoration of competition between the defendants' business, viewed as a whole, and other businesses. The defendants cite no authorities of any description in support of this suggestion and a reference to a few cases in which it has been expressly rejected in dissolving combinations found to have violated the Sherman Act will suffice to show that it is completely erroneous.[3]

> In fashioning the remedy decreed by Section 11 (b) (1) Congress was following a pattern set many years ago by decisions applying the Sherman Antitrust Act, Northern Securities Company v. United States, 193 U. S. 197; Standard Oil Co. v. United States, 221 U. S. 1; Continental Insurance Co. v. United States, 259 U.S. 156, and the Commodities Clause of the Hepburn Act, United States v. Lehigh Valley Railroad, 220 U. S. 257; U. S. v. D. L. & W. Railroad, 238 U. S. 516.

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[3] On April 1, 1946, the Supreme Court, in sustaining the constitutionality of the Public Utility Holding Company Act of 1935, as applied to the North American Company by dissolution order unsupported by any finding that it had illegally acquired the properties divested, pointed out that:

[2] We say this is *apparently* suggested by their objections inasmuch as even in the situations where there are findings of specific illegal conduct attending a specific acquisition the defendants still insist that divestiture would be improper.

In *United States* v. *Crescent Amusement Co.*, 323 U. S. 173, there was no express finding by the court that the acquisition of any of the stock interests there ordered divested were in themselves illegal. Each of the corporate defendants there involved was ordered to divest itself of all stock interests held in affiliated corporations, whether defendants or non-defendants, except one which had been dismissed as a defendant at the close of the plaintiff's case. Each individual defendant was compelled to sever all connection with [fol. 5260] all such corporations except one to be chosen by him.

In the *Crescent* case the court specifically found that the acquisition of some of the stock interests ordered divested resulted in an elimination of pre-existing theatre operating competition, as is always the case in using a stock acquisition to purchase a competitor's theatre or an interest in it. However, as to other affiliations, notably Crescent with Rockwood, there was no such finding and the court's conclusion that the defendant corporations should be separated from each other and from their affiliated non-defendant corporations as well, necessarily rested upon the combined use of all of these corporation to secure illegal film licensing advantages over competitors.

If the same standard for dissolution were applied here, each corporate and individual defendant here involved would be left in possession of only a few theatres and the result would be far more drastic than the plan proposed by plaintiff in this case. We have suggested here less rigid standards than the complete separation of the defendant corporations and their affiliates adopted in the *Crescent* case because we believe the flexible standards set up by our plan promise more in the way of effective future competition than application of the *Crescent* formula would yield.

In *Standard Oil Co.* v. *United States*, 221 U. S. 1, the test which has guided dissolution decrees ever since was laid down at page 78 as follows:

> As penalties which are not authorized by law may not be inflicted by judicial authority, it follows that to meet the situation with which we are confronted the application of remedies two-fold in character becomes essential: 1st, To forbid the doing in the future of acts like those which we have found to have been done in the past which would be violative of the statute. 2d,

> The exertion of such measure of relief as will effectually dissolve the combination found to exist in violation of the statute, and thus neutralize the extension and continually operating force which the possession of the power unlawfully obtained has brought and will continue to bring about.

The decree in that case dismembered the Standard Oil trust by complete divestiture of the subsidiaries of the New Jersey corporation without reference to the manner in which the particular stock interests involved had been acquired. The defendants' brief, filed March 7, 1910, in the Supreme Court, protested in vain that the decree there involved took away from this company "*all supervision over these different refining companies, even over those which they themselves, working jointly, have absolutely created with their* [fol. 5261] *own joint means,* and compels these refineries to stand alone, to be independent, to compete with one another." (pp. 123-124)

A dissolution decrees much broader in scope but somewhat similar in conception to the one involved here was considered in *United States* v. *International Harvester Co.*, 274 U. S. 693 (1927). There a combination in restraint of trade in harvesting machinery, which had been originally formed in 1902 by combining *five* independent manufacturing competitors, was ordered dissolved in 1914 by separating the combination into *three* substantially equal parts. This decree was modified by consent decree in 1918, which provided that International should sell three harvesting machine lines made and sold under the trade names "Osborne," "Milwaukee," and "Champion," respectively, and further provided that the defendant company was prohibited from "having more than one representative or agent in any city or town for the sale of harvesting machines and other agricultural implements."

The decree also provided that if at the end of a specified period of time competitive conditions should not have been restored, the United States might move for further relief designed to accomplish this objective. In 1923 the Government filed a supplemental petition alleging that competitive conditions had not been restored and praying for further dissolution relief. The trial court found against the Government and declined to disturb the 1918 decree.

Upon the Government's appeal it argued that restoring competition meant restoring competition as it had existed in 1902, just before the combination was formed. The court rejected this argument and in affirming the District Court pointed out that substantial competition had arisen since 1918 in the towns where International harvesting machines were sold by virtue of the loss of five thousand dealers under the provision limiting International to one dealer per town. It had formerly marketed its machines under several brand-names, each one of which was handled by a different dealer on an exclusive basis.

The Supreme Court pointed out that the 1918 decree had therefore resulted in many of the dealers formerly engaged in marketing International machines being taken over by competitors and that active competition in the sale of harvesting equipment had been thereby restored. There was [fol. 5262] no finding that any of the lost dealers had been unlawfully acquired. In fact, the trial court which originally ordered the dissolution expressly found that the general conduct of International toward its competitors since the formation of the combination in 1902 had been fair. The sole basis for the entry of the dissolution decree was the merging of five competing manufacturing units with a monopolistic intent, but these could obviously never be restored to their 1902 status.

The notion that a judgment of dissolution "to restore competition" must be read as restoring conditions which existed prior to the formation of the illegal combination was thus expressly rejected by the Supreme Court when advanced by the Government. So far as we know, no defendants other than those involved in the instant case have suggested such a proposition to any court. In any event, a careful study of the dissolution decrees which have been litigated discloses none in which any court has ruled that property ordered disposed of to dissipate a monopoly or unlawful restraint of trade must be limited to the property found to have been illegally acquired.

In *United States* v. *American Tobacco Co.*, the original decree entered by the trial court (1 D & J 157) contained no plan of dissolution. On appeal, the Supreme Court held that dissolution was required, 221 U. S. 106. The final decree (1 D & J 165) required the organization of several new corporations and the transfer to such corporations of specific plants and equipment of certain of the defendants which would make the new corporations effective competitors, without reference to how these assets had been originally acquired.

In *United States* v. *Eastman Kodak Co.*, 226 Fed. 62 (W. D. N. Y. 1915), the Government brought a suit under the Sherman Act against the Kodak Co. of New York, the Kodak Co. of New Jersey, and a number of individuals. The final decree of this court, entered on January 20, 1916, required that the business and assets of the two defendant corporations be divided in such manner and into such number of parts of separate and distinct ownership as might be necessary to establish competitive conditions and bring about a new condition in harmony with law. A plan to effectuate this judgment proposed by the Government came on for hearing and was approved, 230 Fed. 522 (W. D. N. Y., [fol. 5263] 1916). Judge Hazel refused to approve the proposed plan of the defendants because it failed to provide for complete separation of these businesses.

An appeal was taken to the Supreme Court but was dismissed by the defendants and thereafter the parties submitted an agreed plan which became the judgment of the court on February 1, 1921. This plan required the Eastman Kodak Co. of New York to offer for sale certain real and personal property acquired by the defendant from other manufacturers. Each purchaser had to be approved by the Attorney General and had to have the purpose to make and sell the lines of goods represented by the purchase. It was perfectly clear from this provision that the plan was quite properly concerned with the creation of future competition rather than the original mode of acquisition of the property. If there were any disagreements as to price, the matter was to be settled by agreement between the Attorney General and the defendant, or in case of their failure, by the court. If the properties were not sold within two years, then on the request of the Attorney General, they were to be sold at public auction to the highest bidder but not for less than an upset price.

In *United States* v. *E. I. Dupont de Nemours & Co.*, 273 Fed. 869 (D. Del., 1921), the court pointed out that control of the industry in that case (explosives) was not so much numerical as it was territorial. Therefore, in its decree (1 D & J 195) it required the creation of two new corporations and the turning over to such corporations of numerous plants in various parts of the country, in a manner designed to create competition with the DuPont company in each state where its remaining plants were located. In the instant case, Schine's control is both numerical and territorial and therefore the plan proposed by the Government is designed to diminish both types of control.

In *United States* v. *Hartford Empire,* 323 U. S. 386, the court required the defendants to make available all of their present glass-making machinery patents to all comers upon reasonable royalties, although there was no proof or finding of illegal acquisition as to the great majority of these patents. It also made the same order with respect to future patents which obviously could not have been predicated upon any theory of illegal acquisition.

The court in that case applied the doctrine stated by [fol. 5264] Judge Learned Hand in *United States* v. *Corn Products Refining Co.,* 234 U. S. 964, 1018 (S. D. N. Y., 1916), appeal dismissed, 249 U. S. 621 (1919), as follows:

> In all cases where the history of the combination has been such as this, the Supreme Court has declined to rest upon injunctions alone. The difficulties of proof, the delay, the cumbersome inquiry necessary to ascertain again whether the defendants shall have actually discontinued, all make against such a limitation. It may be safely assumed that evidence such as was by chance available here of the actual purposes of those in charge will never again exist. Without it, perhaps, it is doubtful whether the case could have been proved. Yet it is a reasonable assurance to take that, when an innate proclivity has so abundantly manifested itself over a period of years, it shall be disabled from further opportunity.

The court's judgment, entered November 13, 1916 (1 D & J 433), in that case required that the factories, business and assets of the Corn Products Refining Co. should be divided in such manner and into such parts of separate and distinct ownership as should be necessary "to restore competitive conditions and bring about a situation in harmony with law." A consent judgment of March 31, 1919 provided for the sale of specified properties and the divestiture of security interests in other properties with a view to future competitive operations. No attempt was made to recreate the precise competition found to have been suppressed.

Any Sherman Act injunction of necessity looks to the future rather than to the past. Putting Schine and its competitors back in the position they respectively occupied before Schine embarked upon a program which resulted in the widespread competitive injuries revealed by the evidence, if it were possible at all, would clearly involve a far more drastic scheme of dissolution than that here proposed. It would also involve an impossible estimate of the profits illegally derived by Schine from these activities and an impossible distribution of such profits among the injured competitors and members of the public who have been paying tribute to Schine in the form of monopoly admission prices in the majority of its towns for many years. The suggestion that the existence or non-existence of particular competition in the past should be the test as to whether an opportunity to compete in the future should now be created and maintained is unsupported by precedent and wholly impractical as well.

[fol. 5265] The Plan Contemplates No Destruction or Confiscation of Property Values

The defendants' suggestion that the properties ordered divested would be sold at prices unfair to them simply assumes that the court would not administer the plan fairly, since the plan expressly provides for court approval of all sale prices. In providing the defendants with a reasonable opportunity to file objections the plan does not limit the scope or character of their objections and they may clearly object to such prices or any other terms as they choose. The action of this court in permitting the defendants to offer the properties ordered sold under the 1942 judgment at prices which were substantially greater than the maximum they had agreed to when the order was entered clearly demonstrates a willingness to protect the defendants' sale prices. The suggestion that the court will not adequately protect the defendants' rights in this respect in the future is thus wholly unwarranted.

If there is to be any criticism of the plan with reference to alleged confiscatory effects, it must be directed to the plan's failure to disturb the defendants' existing capitalization of property confiscated from competitors and the public in the past by the illegal practices described in the court's opinion. It is, of course, impossible to estimate the precise amount of money extracted from the public in the Schine towns in the form of excessive admission prices directly attributable to the defendants' suppression of competition in those situations, but it is clear enough by this time that it amounts to many thousands of dollars. Similarly, their record shown a systematic destruction of competitors' profits by illegal means in amounts impossible to compute.

The net result of these violations, insofar as they are effected by this plan, is simply that Schine is now compelled to convert the capitalized value of this past confiscation of other people's property into cash when the market is more favorable to Schine than at any time since the violations occurred. The defendants' claim of confiscation in this case is reminiscent of the defendants' argument in the *Crescent* case before the Supreme Court that the taxes payable upon the large profits to be realized in disposing of [fol. 5266] the stock interests ordered divested by the District Court would amount to confiscation. The Chief Justice commented that that was the kind of confiscation to which most of us would like to be subjected and his remark is equally applicable here.

The suggestion also appears in the defendants' objections that execution of the plan would so injure the rights of absent parties that it could not be made effective in any event. Among these absent parties are said to be the numerous subsidiary corporations wholly owned and controlled by the defendants, through which their various theatre operations are carried on. The suggestion that the court may not, through the defendants, exercise the same control over these corporations that the defendants themselves do, simply because its opinion recognized them as the separate legal entities which they undoubtedly are, needs no comment. The claim that divestiture could not be ordered in the absence of other stockholders and corporations which the defendants do not control was expressly rejected in the *Crescent* case. In any event, such objections as such stockholders might have to any particular sale must be made by them rather than by the defendants, who have standing in this suit to represent themselves and their controlled subsidiaries only.

III

The Powers Granted To The Trustee Are Clearly Proper And Necessary To Effectuate The Plan

From the defendants' objections one would suppose that the appointment of a trustee to sell property was a novel proceeding in a Sherman Act case. The Court, of course, knows that this is a well-established practice, but it may wish to refer to the following cases as instances in which other federal courts have explicitly recognized or used the power to appoint receivers or trustees to carry out a program of divestiture under the antitrust laws: *United States v. American Tobacco Co.*, 221 U. S. 106, 188; *United States v. Great Lakes Towing Co.*, 217 Fed. 656, 661 (N. D. Ohio), appeal dismissed, 245 U. S. 675; *United States v. International Harvester Co.*, 214 Fed. 987, 1001 (D. Minn.); *United States v. Lake Shore Ry.*, 203 Fed. 295, 281 Fed. 1007, 1013 (S. D. Ohio), appeal dismissed, 248 U. S. 587; *United States v. New York, New Haven & Hartford R. R. Co.*, S. D. N. Y., April 15, 1916, 1 D & J 529. Unreported decrees [fol. 5267] in railroad cases have also included the appointment of trustees to hold, vote and dispose of shares of which defendants were to be divested. *United States v. Lehigh Valley R. R.* (S. D. N. Y., Eq. No. 11-129, November 7, 1923); *United States v. Reading Co.* (E. D. Pa., No. 1095, June 6, 1921).

The much litigated *Swift* case, 276 U. S. 311, 279 U. S. 553, 286 U. S. 106, concluded with the appointment of a trustee to take possession and dispose of Swift's holdings in Libby, McNeill & Libby. Order Appointing Trustee, *United States v. Swift & Co.*, Supreme Court of D. C., Eq. No. 37623, July 8, 1933.

So settled is the power that the appointment of a trustee is a frequent feature of consent decrees, many of which are unreported. *United States v. Columbia Gas & Electric Corp.* (D. Del., Eq. No. 1099, January 29, 1936); *United States v. Fox Theatre Corp.* (S. D. N. Y., Eq. No. 51122, April 15, 1931 and July 10, 1931); *United States v. Rand Kardex Bureau* (S. D. N. Y., Eq. No. 39-14, December 9, 1926); *United States v. Joseph Leibner* (S. D. N. Y., Eq. No. 37-319, July 2, 1926); *United States v. Borax Consolidated* (N. D. Cal., Civil No. 23690-G, August 16, 1945).

Defendants' animadversions upon the powers of the trustee proposed in plaintiff's plan are astonishing, in view of the fact that all sales are subject to approval of the court, that the trustee may not pay out one cent except on order of the court, and that he is expressly excluded from participation in the management or operation of defendants' theatres pending sale. The only novel feature of this arrangement is that, unlike the numerous decrees cited above, our proposal withholds from the trustee complete possession and jurisdiction over the extensive holdings of the guilty defendants. The *Borax* decree, for example turned over to the receiver possession of the mining property involved to be administered and maintained pending sale pursuant to court order; and the defendants were enjoined to "cooperate fully with the receiver in effectuating the transfer."

In the *Swift* case the trustee was directed to sell the Libby stock "as quickly as may be at a reasonable price; the defendant to furnish all necessary assistance in locating prospective purchasers." The trustee was given the "right and it shall be his duty to examine into and give constant attention to the relations and transactions between defendant Swift & Company and Libby, McNeill & [fol. 5268] Libby and to the manner of the exercise by the defendant Swift & Company of its rights derived from the ownership of the said shares." The trustee was to vote the shares but not "so as to interfere with the management and conduct of Libby" unless the trustee thought Swift was using its ownership interest in a manner inconsistent with the decree. Compensation was ordered in such amount as the court "may consider fair and just at the conclusion of his services," and this was subsequently amended to fix $10,000 as the annual salary. In the *Fox* decree the trustee was allowed "reasonable compensation, the amount thereof to be approved by the court." The *Rand Kardex* decree ordered the trustee to sell "at public or private sale and on terms fixed by him," defendant to pay expenses and "reasonable compensation" of the trustee. The Special Master appointed under the *Leibner* decree was ordered to sell the property at auction, subject to a stated upset price. Sale at a "reasonable price" or at auction was expressly provided for in *United States* v. *International Harvester Co.*, 274 U. S. 693; *United States* v. *Eastmen Kodak Co.*, 226 Fed. 62 (W. D. N. Y., 1915); *United States* v. *Cement Securities Co.* (D. Colo., Eq. No. 7295), and there is nothing inconsistent with such sales in the plaintiff's proposal.

It goes without saying that no trustee may perform the function of selling property without the means of determining all of the facts concerning what he is selling. That is obviously all that the limited visitorial powers provided for in the plan give him. The *Bausch & Lomb* case, 321 U. S. 707, previously submitted, discusses at length the extent to which the Justice Department may be granted such powers. Clearly, powers given by the courts to an agent to carry out its judgment should be no less extensive.

Conclusion

The defendants assume that they have been discharged by lapse of time from their obligation to dispose of the theatres remaining unsold under the order of May, 1942. The court will recall that jurisdiction to appoint a trustee to effectuate these sales was expressly reserved at the hearing in May, 1944, pending the outcome of further efforts by defendants themselves to dispose of these thea[illegible]s. Although at that time they sought and obtained a modification of the order permitting them to sell at prices in excess of those specified by the order, to wit, the amount [fol. 5269] of their investment, due to an asserted increase in the market value of the theatres, we are now told that they have not been sold because no one would pay what Schine had invested in them. These contradictory assertions simply give further proof of the essential unreliability of the defendants themselves to carry out any commitment involving the sale of property.

We submit that regardless of the form taken by the plan put into effect to carry out the court's judgment of October 31, 1945, as amended by the final judgment filed on April 1, 1946, and regardless of whether or not an appeal is perfected by the defendants from that judgment, a trustee should be appointed at this time to sell the theatres still unsold under the 1942 judgment, even though sales may be stayed as to other theatres pending the outcome of whatever appeal may be filed from the 1946 judgment. If the defendants are permitted to continue their successful defiance of the prior judgment, they will certainly be encouraged to use the same tactics to frustrate enforcement of the later judgment, with the result that the entire suit will become a nullity.

The defendants obviously do not regard the injunctive provisions of the existing judgment as any bar to continuing domination of the motion picture business in the areas where they operate. The only threat to that position is that posed by actual competitive theatre operation in those areas. That the nature of the competition which plaintiff's plan would make possible is extremely mild apparently has no effect on the defendants' determination to prevent any competition whatsoever. Actually, the right to retain a theatre of their choice in the towns where they own two or three theatres means that the defendants may retain a dominant position in most of those situations. There are wide differences in seating capacity which permit them to retain a far larger theatre than any sold in most cases. Also, one theatre may have been closed for years and another operated part-time or as a second run house. Thus, the divestiture proposed is even less drastic in terms of control of volume of business than it is in terms of number and character of units to be disposed of.

We respectfully suggest that if any other plan could be devised which would establish substantial theatre operating competition in the territory now dominated by the defend- [fol. 5270] ants with any less extensive transfers of theatre ownership than those proposed by plaintiff, we should welcome such a plan The burden imposed on the Justice Department by any plan of dissolution is one which it undertakes only with the greatest reluctance at any time, yet that burden must be assumed here in order to discharge its obligations under the law. We submit that the defendants' failure to offer any alternative proposal is in itself the clearest recognition that the plan proposed by the Government is the minimum which may be accepted by the court, if substantial meaning is to be given to section III of its judgment.

Respectfully submitted, Robert L. Wright, Philip Marcus, Louis B. Schwartz, Special Assistants to the Attorney General.

Wendell Berge, Assistant Attorney General.
George L. Grobe, United States Attorney.

We are indebted to the defendants for calling our attention to two inadvertent errors in the plan. Dolgeville and Newark, New York, should be omitted from Section I A and Newark should be included in Section I B. Van Wert, Ohio, was also inadvertently omitted from Section I B.

The plaintiff's proof in this, as in any antitrust case, was confined to that thought sufficient to establish the violations charged and point the way to the remedy required to terminate them. Likewise, the Court's opinion and findings were even more selective in embracing only what was necessary to support the judgment. Thus, the defendants' general assumption that any facts not explored by the proof or the Court's opinion were favorable to them is untenable on its face. Their further effort to supply facts which they regard as favorable to them in situations where the record is silent, by mere assertion of counsel, also requires no reply.

We have, however, set out the following comments on towns referred to in the objections which point up the inadequacy of the defendants' record references in these individual situations, even if an elaboration of their history were thought to be relevant to the problem now before the Court.

1. Ashland, Ohio.

According to the defendants' recital, on page 36 of its objections, Schine acquired the best theatre, the Palace, in 1935; it acquired the Opera House, an old theatre, in 1936; and it acquired the use of a small converted store show in 1938. Because of Schine's buying power, it has been able to obtain a clearance of 90 days over 2nd run for a first run in the "old Opera House" as well as in the "best theatre" from Paramount, Columbia, and United Artists (Exhibits P. 224, C. 181 (35), 903). Loew for the 1940-41 season was giving both theatres a 60 day clearance in the town (Exhibit 981 (47)). Paramount, Columbia, United Artists, and Warner gave clearance over various towns to both theatres (Exhibits P. 224, C. 181 (35), 903, W. 3).

2. Athens, Ohio.

Defendants on Page 37 of their objections state that Schine bought the Athens Theatre in 1935 and in 1936 acquired the Court and the Ohio which the defendants used as "converted store shows." These "converted store [fol. 5272] shows" as well as the Athens were given clearance over all theatres in Athens County by Columbia, Fox, and United Artists (Exhibits C. 181 (46), F. 184, 958).

3. Bath, N. Y.

In their "detailed historical analysis" of this town on Page 17 of their objections, the defendants fail to mention that this one-theatre town has obtained a 30 day clearance over 1 to 5 other towns (Exs. R. 4, F. 139, W. 3, Sched. E., 981 (4), 959, C. 181 (1), P. 174).

4. Cambridge, Maryland.

Although the recital in defendants' objection on Page 44 would indicate that all 3 theatres have been operated, Schine's answers to interrogatories reveal that one of these theatres has been kept closed and has been only occasionally opened and the contracts in evidence in respect to this situation cover only the Arcade and State Theatres.

5. Carthage, N. Y.

In its recital on Page 18 of defendants' objections, the inference is given that Schine never had competition in this town and a 90 day clearance given by United Artists and 120 day clearance given by RKO is said to be meaningless. The discrimination practiced by the distributors in favor of Schine with respect to Schine's *opposition* in Carthage in 1934 is spelled out in Exs. 176, 178, and 179. It is noteworthy that at the time of the trial Schine no longer had any competition in Carthage.

6. Cortland, N. Y.

Groton and Marathon are respectively about 12 and 14 miles from Cortland. In 1933-34 Schine's United Artists contracts did not provide for clearance over Groton (Ex. 280). Subsequently they did (Exs. 958, 959). In May of 1939, Metro's local branch manager recommended that Schine's 30 day clearance over Groton and Marathon be reduced to 14 days (Ex. 488). But Metro, Fox, Warner, Paramount, United Artists, and Columbia continued to give both the State and Temple Theatres a 30 day clearance over these towns as well as over several other towns (Exs. 618, 981 (9), F. 143, W. 3, W. 34 (1), P. 202, 959, C. 181 (61)). This is one of the towns in which Schine's theatres have been given a clearance over towns in which there was no theatre (Tully-Exs. 226-229).

[fol. 5273] 7. Gloversville, N. Y.

Since the defendants in their recital of objections on Pages 52 and 53 have seen fit to refer to an arbitration proceeding, we may call the Court's attention to the fact that in that arbitration decision (Appeal Board Decision No. 67), a copy of which plaintiff has furnished to the Court, it was found that the distributors had unreasonably given Schine's two theatres, widely varying in revenue possibilities, the same clearance over the Johnstown Theatre.

8. Hamilton, N. Y.

The defendants on Page 22 of their objections state that this town is not mentioned in the Court's findings of fact. This is true only because of what appears to have been a typographical error in the Court's opinion where it refers to Hornell taking a clearance over Earlville, as to which there had been no previous clearance. Schine does not operate theatres in Hornell but does in Hamilton and it is in respect to Hamilton that such clearance was taken. See Exs. F. 101 (12), F. 16, and F. 152.

9. Kent, Ohio.

Defendants' objections refer to two theatres, one of which Schine closed in September, 1937. Not mentioned is the fact that the lease of this closed theatre was kept renewed at a commitment of $18,000 (Ex. 947).

10. Little Falls, N. Y.

As to Little Falls, the recital of defendants' objections, on Page 59, refers to certain clearances and states that there is no evidence that the alleged clearance was over operative. It might be observed that the absence of competition to Schine in Little Falls would indicate that the clearance was quite operative. Moreover, this recital tends to give the impression that Schine had no opposition during the period in which such clearances were in operation. The record shows, however, that in 1931 and 1932 the Hippodrome Theatre was operated by an independent exhibitor by the name of Wood, see Exs. 635 D and 672 A. Since Schine did not acquire this theatre until 1936, it is fair to assume that during the interim Schine had opposition from this theatre.

During the Fox operation, the maximum clearance taken [fol. 5274] by theatres in Little Falls over Dolgeville appears to have been 15 days (Exs. 635 G, 635 R, 672 B). During the NRA days the Code Authority decided the clearance of 30 days Schine had over Dolgeville be reduced to 14 days. But in a letter dated August 31, 1934, R. S. Smith, Warner's local branch manager, wrote to his home office superior, R. Mochrie: "Lynch insisted that we go along on a 30 day basis even though the Board approved the 14 day arrangement." (Ex. 549.) Schine got the 30 day clearance (Exs. 672 E, 958, 618, C. 181 (70), 1009, 324 C, 635 I, P. 210). It was during Schine's operation that clearance was given over Ft. Plain over which clearance had not previously been given (Exs. 635 H, 635 I, 672 C, 672 D, 339 H, P. 210, 604 D, 604 E).

11. Milford, Delaware.

It is significant to note that although Schine had no opposition in this one theatre town, it was obtaining from Warner for the 1939-40 and 1940-41 season a clearance of 90 days in Milford and from Fox for the 1939-40, 1940-41 seasons a clearance of 30 days (Exs. W.4 (98), F.127).

12. Newark, N. Y.

The defendants on Page 27 of their objections say that this town is not mentioned in the opinion or findings of fact. The Court in its opinion refers to letters between Schine and United Artists with respect to this situation although the opinion does not refer to the situation by name. In this town Schine has kept the Crescent, a closed theatre, on renewal leases, at a commitment of $35,200 (Exs. 921, 922, 83).

13. Oneonta, N. Y.

According to the defendants' recitals on Page 66 of their objections, Schine acquired the best theatre in this town and also a "smaller, poorly constructed" theatre. The record shows that both the good theatre and the "smaller, poorly constructed" theatre were given clearances by the distributors over 5 to 6 towns, a number of which were a considerable distance from Oneonta, and this despite the fact that a difference in the rental possibilities of the two theatres was recognized by certain of the distributors in different film rentals for the two theatres, see Exs. W. 34 (20), U. 207 (19). For many years Schine took a clearance of 30 days over these various towns, getting 40 days from United Artists in 1933-34, as to 4 towns, see Ex. 281.

[fols. 5275-5276] 14. Oswego, N. Y.

In defendants' objections, on Page 67, they do not refer to the fact that Schine has kept the Richardson, a closed theatre, renewed at a commitment of $58,500 (Exs. 982, 983, 984, 985).

15. Piqua, Ohio.

The defendants' objections do not refer to Schine's renewals of a lease on the Bijou, a closed theatre, at a commitment of $13,220 (Exs. I. A. 17 (a), 18, 23 P. 14, Exs. 911, 912, 913, 914).

16. Wooster, Ohio.

Defendants in their objections do not refer to the fact that Schine has kept renewed a lease on the closed theatre, the Opera House, at a commitment of $16,000 (Exs. 962, R. 3851).

[fol. 5277] IN UNITED STATES DISTRICT COURT

[Title omitted]

TRANSCRIPT OF HEARING

Proceedings before the Honorable John Knight, United States District Judge for the Western District of New York, Justice presiding, at the U. S. Court House, Buffalo, New York, Tuesday, April 16, 1946, at 10 o'clock a. m.

APPEARANCES:

Robert L. Wright Esq., Special Assistant to the Attorney General, appearing in behalf of the United States.

Willard S. McKay, Esq., appearing in behalf of the Defendants.

[fol. 5278] PROCEEDINGS

The Court: You were just speaking to me about this motion and the question of some postponement of it.

Mr. McKay: Yes, your Honor, I received on Friday what is called a plaintiff's reply to the objections filed by the defendants to the plan originally submitted by the plaintiff. As I say I got it Friday. It consisted of 25 pages. It raises points that seem to be new to me. I was obliged to send it immediately to the mimeographer first, because I had to have copies for Mr. Antevil and Mr. Schine and other people who had not been furnished it, so that I did not even have the benefit of Friday to look at it. I did write to your Honor on Friday, with a copy to Mr. Wright. I don't know when he got the letter, but I especially came in to New York to dictate it on Friday.

The Court: Why did you not call him by phone?

Mr. McKay: Well, I unfortunately did not hear from Mr. Penney after I talked to him the first time until last night I saw him when I came in here.

This new paper raises, as I say, a lot of new matter which requires study before the argument. I think they take a new theory on some of their points. They say that [fol. 5279] we have not submitted a plan. Well, we have not submitted a formal plan, but we did submit in our objections certain suggestions which were drawn from the consent order of 1942, which probably could be implemented into a formal plan if any indications were given that such a solution would be desirable.

There are 16, I believe, towns mentioned in this paper where they are citing some exhibits that are not referred to either in the opinion or the findings. I have not copies of the exhibits in the case. That does not mean that the defendants have not got them, but I haven't them. I depend on Mr. Antevil for that work. He had not received the copy I sent him as late as Saturday noon. I know he has it now, but he got it after noon on Saturday, and I think it would be profitable from every standpoint if we were allowed the same amount of time which the government had after the receipt of our objections to prepare an answer to this new paper, for which there is no justification, your Honor, even under the old judgment.

In the new judgment the provision about submission of a plan and submission of objections is stricken, and I have [fol. 5280] a motion—the filing of the motion I concede was not timely. I had about decided not to make the motion when I received this new paper, and if I am able to get the adjournment I will withdraw the motion. I simply want to protect my right to make a study of these new contentions of the plaintiff before arguing this very important matter. I consider this matter of the utmost importance to the defendants and they should not be forced on to argue today after receiving this very voluminous document. I do not want to talk about a lot of ancient history, but I want to remind your Honor that our motion for an amendment of the findings was made on November 10th, and it was submitted for argument on December 7th. I could have argued that motion on the 7th of December, but at Mr. Wright's request I consented to a two-months' adjournment. If it had not been for that adjournment, that motion would have been disposed of in December before the time within which the plan was to be submitted ran out. I gave Mr. Wright that two-months' adjournment, and unfortunately right after New Year's I was taken ill. I do not believe I have been out of the house on more than five occasions [fol. 5281] since that time. I am still under the constant care of a physician. It was with extreme difficulty that I persuaded him to let me come up here today, and I do not see how an adjournment of two weeks to give me time to study the plan and to consult with Mr. Schine about the possibility of implementing the suggestions contained in our objections can be objected to, where I say that the objectives sought by the Court can be obtained without divestiture, which I take it to be your Honor's desire if such a result can be reached, and when those objections are drawn directly from and go beyond the consent order which was satisfactory to the Government in 1942, and which apparently worked from 1942 to 1944. I frankly do not see who is going to be hurt by a two-weeks' adjournment of this hearing.

Mr. Wright: If the Court please, our plan, as your Honor may recall, was filed last February with a supporting memorandum. They were supposed to file under the plan set forth in the order objections within 30 days. Then they were given an extension until April 1 to file their objections by a stipulation which expressly provided that the extension to April 1st was made with the assurance that the [fol. 5282] hearing on the plan would still occur on April 16th, as previously set by your Honor. That was stated in that stipulation. This paper that Mr. McKay is now seeking to use as a basis for further delay is simply a statement of what we proposed to say to your Honor here at the hearing on the plan and objections. In other words, we were good enough to serve him in advance of the argument with a full statement of what our position would be here at the argument. Now, far from being an excuse for any delay the receipt of that paper by him simply put him in a more advantageous position than he would ordinarily have been had we not undertaken to advise him at all prior to today of the points and authorities on which we would rely in the course of this argument. So that there is no basis whatsoever for any continuance of this hearing because we had given him the benefit of a statement of our position prior to the hearing.

Now, in so far as he wants to reply further to anything that is in our reply, I suppose your Honor would entertain whatever memoranda or collection of authorities he might wish to submit in that connection, although it is rather late date for him to do that. They filed their objections and [fol. 5283] the appropriate time to file whatever material they had to support their objections I should have thought was on April 1st, when they filed the objections. This whole proceeding has reached the point where I think it is perfectly clear from Mr. McKay's speech today and his entire conduct that what the defendants are interested in here is delay as such regardless of the merits of the particular procedural device that they use to get it. There certainly is no merit in any of the reasons he has suggested here today for further postponement and consideration of this plan and how your Honor's final judgment shall be implemented.

The Court: This paper was only served on Friday. I have gone through it. It relates solely to what you would say on the argument. You served the notice of appeal yesterday?

Mr. McKay: Yes.

Mr. Wright: I might say in connection with the notice of appeal, your Honor, that I do not believe yet there is any appealable order entered in so far as Section 3 of the judgment is concerned. I do not think you get a final order until there is an actual approval of a plan of dissolution and [fol. 5284] re-organization or realignment. Any appeal is clearly premature as to that portion of the judgment.

The Court: What do you say to that, Mr. McKay?

Mr. McKay: The judgment as entered now does not say anything about a plan. It does not indicate the submission of a plan. All references to a plan are cut out from the judgment. All it says is that we shall be dissolved, re-organized and re-aligned so as to restore competition.

Mr. Wright: Obviously the only reason that the judgment as entered in March does not refer to a procedure for hearings on the plan is that that procedure had already been carefully outlined by a series of orders in the court. The effect of those orders is exactly the same.

The Court: You mean the proceedings with reference to the trusteeship and the possession of the property is not concerned in this appeal?

Mr. Wright: I say it is concerned. Mr. McKay's point is this, if I understand it—and if it is a point. You will recall the original judgment entered in October in accordance with your opinion provided certain periods within which both sides were to submit plans, and then periods for [fol. 5285] objections. Then he says now because of the amended judgment entered in March after your Honor had entered other orders relating to the plan when the plan was to be filed, because that does not contain the old time limitations in it, then he says there is no basis for a further plan. That is ridiculous on its face.

The Court: Not considering it from that standpoint, but considering it from the standpoint of the appeal, that is all.

Mr. Wright: I say from the standpoint of an appeal there is no appealable order as to Section 3 until there is an actual plan approved by the Court.

The Court: That may be so, but the appeal itself will bring up the question of the validity of the findings and the violation, will it not?

Mr. Wright: Yes, sir. It is purely a matter of time in the appeal line.

The Court: As rapidly as possible the matter ought to be disposed of, but assuming that the defendants were successful on appeal that would vitiate everything that is done under the plan, of course.

Mr. Wright: Yes.

The Court: Then the inquiry would be if we should not wait for the determination of that appeal pending any [fol. 5286] further motion.

Mr. Wright: My point is, your Honor, that you do not have an appealable order. You cannot constitute an appeal until there is actually a final judgment, and you do not have final judgment as far as Section 3, which provides for dissolution of the circuit, until there is an approved plan of dissolution.

The Court: That does not answer my question. I say, waiving that question for the present, they do have a right to appeal, an appealable order, on the judgment itself except as to Section 3 of the appeal.

Mr. Wright: I think that is quite possible.

The Court: An appeal and a reversal would obviate the necessity of any appeal from the plan.

Mr. Wright: If the Court please, I think in the interest of over all expedition of the matter that the case should be divided up for the purpose of disposition in the Supreme Court on a series of successive appeals. In any event, no appeal could be heard prior to the next term. I assume that your Honor will have taken final action on the plan within the next few weeks or at least in time so that their appeal from the entire judgment or such appeal as they wish to prosecute may be consolidated and heard together. [fol. 5287] Such appeal as we might want to take in connection with the plan could also be taken and the entire matter could be disposed of next Fall.

Mr. McKay: We have just been charged by Mr. Wright with seeking delay. We filed this appeal 16 days after the entry of the amended judgment. We could have waited 60 days. So that by filing this appeal at this time we have expedited the possibility of a hearing before the Supreme Court.

The Court: How will your appeal as now taken affect the matter in so far as the laying down of any plan by and by? There will be another appeal, will there not?

Mr. McKay: Yes, but that might not be for some time.

The Court: Supposing you were to make a plan or adopt a plan within three or four weeks, or something like that, then you would still have a right to appeal from that?

Mr. McKay: I think we would. But I think your Honor will agree that that judgment which your Honor signed on the 29th of March is a complete final judgment as it stands and does not require any explanation or elucidation.

The Court: Then you think on the appeal the Supreme Court would not have before it the plan at all?

[fol. 5288] Mr. McKay: They would not know what steps were going to be taken to dissolve or reorganize or re-align the circuit. But I wish to point this out to your Honor, that in either in the judgment or the conclusions—I think it was in the conclusions your Honor stated that whatever method of dissolution or re-alignment or re-organization was to be followed would be determined after discussion by such discussion as the Court might desire with counsel. Right up to now we have not had any such discussion. And I also point this out to your Honor: We had this motion pending for amendment of our findings of fact. The motion was made in good faith and it covered substantial points. We had the right to hope at least and maybe expect that it would be granted, that a substantial part of it would be granted. If it had been granted substantially, it would not materially change whatever plan might have been submitted, and I submit that the submission of any plan prior to your Honor's decision on our motion would have been premature, and your Honor decided the motion on the 11th of March, and the reason it was not decided until the 11th of March was because the plaintiff, not the defendants, asked for two months' adjournment. We would have argued [fol. 5289] that motion in December, and the only reason we had to ask for an adjournment after February 4th was that I was sick, and then after I had given them two months voluntarily he restricted me to 21 days.

Mr. Wright: If the Court please, I call your attention to the fact that Mr. McClennen announced in open court six weeks ago that the defendants proposed to file no plan whatsoever. Mr. McKay's statements today are completely irresponsible. He is now saying that they do want to file a plan. At some point there has to be some counsel that can speak with sufficient authority for the Court to rely on it. You have had completely contradictory statements from both of them.

Mr. McKay: Mr. Wright has got onto another siege of making charges againts counsel. Last time he charged Mr. McClennen with making a gross misstatement of fact, which was proven to be completely incorrect. Now he says I am irresponsible. I am the attorney of record in this case and I am responsible. What I have said about a plan is that I have submitted suggestions in line with the consent order that was entered in May, 1942, which was satisfactory to the Government at that time, which the Government ad- [fol. 5290] mitted in 1944 had not been violated. We have gone further than that, beause we have agreed to adhere to the clearance system. We have not changed our position at any time through the case, and Mr. Wright changes his every time he turns around. We do not know where we stand with him from one day to the next, and I have said that if I had had any indication that such suggestions that I had made would be satisfactory as a solution of this problem, we would endeavor to implement them. I have said so not only here, but in the brief which is signed by Mr. McClennen. We went down, your Honor, within the week after this judgment was signed, the original judgment in November, we went down, Mr. Isseks and I went down to Washington and we talked to Mr. Ernest Myers, who is an assistant attorney general, as I understand it, in the Decree Department. The purpose of our discussion with him was to see whether a plan could be arrived at. Mr. Myers called a man by the name of Meyer in, and the two of them told us point blank that if we had any idea of presenting to this Court any kind of a plan that was like the Crescent decree we might as well stop wasting our time. So that what kind of encouragement was that to work with the Government in agreement on a [fol. 5291] plan. Then we concentrated on our motion. The motion was not decided until the 11th of March, because the plaintiff got an adjournment of two weeks. Now we come along and ask for two weeks to present this case fully to the Court and we meet with an objection by the plaintiff.

The Court: In the Crescent case, what course did that take?

Mr. Wright: The present status of that is that the defendant——

The Court: I mean on the appeal in the Supreme Court.

Mr. Wright: The decree there was self-executing. The decree itself provided that the defendants should sell all their stock interest in the affiliated corporations.

The Court: How about these other cases where you have a comparable situation here as to a plan?

Mr. Wright: The traditional method has been that both sides have been invited to submit plans, and in every case both sides have submitted plans, and then the Court has made a choice between them, or modified one or the other, and then entered final judgment embodying that plan.

The Court: Is there any case where the appeal had been prosecuted prior to the adoption of the plan?

Mr. Wright: I know of no case where there has been an [fol. 5292] appeal prosecuted prior to the adoption of a plan. In almost every case the hearings on the plan occur, and then a final judgment is entered embodying the final plan approved by the Court, and an appeal taken from the judgment as finally written with the plan set forth.

The Court: I would like to have what the defendants may call their ultimate proposal, the plan of re-alignment or re-organization.

Mr. Wright: I assumed that you had it in the form of those objections, and you certainly had Mr. McClennen's statement before that they were not going to propose a plan.

The Court: I am speaking of the present.

Mr. Wright: I suppose as far as they are concerned if they can keep your Honor from entering any kind of a final plan in this case that is their desire.

The Court: The Court will have to take care of the question of delay.

Mr. Wright: I mean that it seems to me that the past history of the thing indicates that this is a pure delay device.

The Court: As counsel has pointed out, I think that is true that you asked for an adjournment of a couple of months while you were on a case in New York City. We cannot [fol. 5293] charge that against him.

Mr. Wright: If there was a good faith intention upon the part of these defendants to submit any kind of a plan which would accomplish any of the objectives that your Honor outlined in Section 3, they certainly have had ample opportunity to make that intention known to the Court or the

Department in some tangible form before this, and they have submitted nothing, either to your Honor or to us, at any time.

The Court: That is very true. I am speaking as of the present. What have you got in mind, Mr. McKay, as far as this memorandum submitted by the plaintiff is concerned? I think you should be given time to answer that. Can't we proceed somewhat today with the matter before us?

Mr. McKay: Your Honor, I would like to present our case completely at one time. I note that while the memorandum consists of 25 pages and is supposed to be a reply to our paper, it does not say what is wrong with the suggestions we have made. Now I am asking for two weeks in which to study the memorandum and find out what portions of it require attention. I undertake in that two weeks to see what can be done about implementing our suggestions, so [fol. 5294] as to possibly formalize them. I cannot make any guarantee as to how far that will go, but I will say this: That if at the end of two weeks I am able to present the Court with some kind of a definite prospect of submitting a plan, I will not ask any further time.

I want to say this also to your Honor: There was a time, I will concede, early in the course of this case when occasionally we asked for time, but since this case was tried, in the proceedings since the close of the actual trial, the only delay that we have been responsible for is the 21 days that I asked for because I was sick. We filed our briefs ahead of time. Mr. Wright filed his behind time. He has been the man who has been delaying this case ever since the close of the trial, and he does not have any standing to come here and say that we are trying only to delay. The mere fact that we filed this appeal 45 days ahead of time shows whether we are trying to delay it or not, and my request for a two weeks' adjournment I submit is a very modest one.

The Court: Why can you not answer this in writing as well as to come here again?

Mr. McKay: I think, your Honor, that the presentation of it orally might be more effective. Sometimes discussion [fol. 5295] opens up avenues that you do not see in your formal exchange of briefs, and if I were asking for any substantial length of time I would feel possibly that——

The Court: Would you reply be limited to answering, or do you propose to submit any plan?

Mr. McKay: What I would undertake to try to do would be to show your Honor how these suggestions that I have made in the objections could work. Your Honor, in your opinion, pointed out that apparently the principal evil was that we had buying power which resulted from the combined buying of open and closed towns. When your Honor started to discuss things that were wrong with the circuit that was your opening gun, and I propose to show your Honor that that can be eliminated by substantially the methods that were used in 1942. The way the thing stands now I will try to show you the machinery that would be used to put that sort of thing into effect. The 1942 consent order did not try to do anything about clearance, but we have proposed that we would come in and agree that any clearance complaints against us we would consent to arbitration, just the same as is done under the decree in the [fol. 5296] Southern District. I handed your Honor with my memorandum a synopsis showing the way that clearance system has worked and showing that any exhibitor who felt aggrieved could get quick and expeditious relief. We have said in those objections that we were not making any more franchises. We cut out the franchises in 1942. We will agree that we will not make any more, with the proviso that if buying by franchise becomes the general method of buying in the industry, then we can go back to it. I do not think anybody could object to that saving clause, and I feel that with the addition of a certain amount of machinery to those suggestions we can show your Honor that everything that your Honor wanted to accomplish in this action can be accomplished along those lines.

It is a strange thing, but in the four cases affecting this industry, by that I mean the case in the Southern District and the Crescent and the Griffith cases and this case, this case is the only case where the plaintiff is really pressing to have the defendants get rid of some theatres.

The Crescent case was decided by the Supreme Court about a year ago, I think, finally, before your Honor's decision was handed down anyway, and as Mr. Wright says, [fol. 5297] the plan in that case was so simple that it could be written right into the judgment. Nevertheless, simple as that plan is, the Government consented that no action need be taken on it until next July, and that consent was signed by Wendell Berge, Mr. Wright's superior.

The Court: No action was taken on it?

Mr. McKay: No, the Crescent people did not have to put that dissolution or divestiture into effect until July 8th, I think.

The Court: There may have been certain reasons for that.

Mr. Wright: The reasons are recited in the stipulation. There were some people who were to buy these interests who were having difficulty in raising capital to buy them. We gave them additional time on that basis. Their position is wholly different from that of these defendants.

Mr. McKay: In this case, when it was started, Mr. Thurman Arnold came out in a public statement and said that it was supplementary to the Paramount case in the Southern District. He said that the main case was the Southern District case, and that this case is a supplement to it, and so is the Griffith and the Crescent case. Nothing has hap- [fol. 5298] pened to the five defendants in the Southern District who own probably nearly 4,000 theatres. They were started long before us and yet they say that we make delays.

The Court: I should think that this whole matter could be submitted on paper.

Mr. McKay: We would like an opportunity to argue, your Honor.

Mr. Wright: You have your opportunity today.

Mr. McKay: We had expected to argue it, but you surprised us. I do not think that a two weeks' adjournment is a very long one.

The Court: I think you will accomplish the same result by submitting it in writing.

Mr. McKay: I do not like to give up the prospect of oral argument without consulting with Mr. Schine and Mr. McClennen. They did not get in here until quite late last night, some time after midnight, and I only saw them for just about a minute before I left to come here. Would your Honor be disposed to grant any adjournment at all, even if only for a week? We do want to argue this.

The Court: If Mr. McClennen is here why had we not better go ahead?

Mr. McKay: Mr. McClennen and I have not had an op- [fol. 5299] portunity to talk except once since we were here back in February.

The Court: What do you say ~~to a~~ two weeks' delay, Mr. Wright?

Mr. Wright: We would object, if the Court please. There was no excuse, as I see it, for the way this attempted adjournment has been handled at all. As your Honor pointed out he could very easily have called us last week, and we might conceivably have made arrangements to postpone this. The futility of any postponement is this: It is apparent from what Mr. McKay has said here that they do not propose to present to your Honor at the end of two weeks or any other time any plan of carrying into effect this Section 3 of your Honor's judgment. They just want to argue for the third time that there should not be any dissolution here at all, that Section 3 should be declared a nullity and some other kind of negative injunction provisions should be substituted. Those questions, it seems to me, were finally decided by the opinion of March 11th, and I do not see why they should be continually given the opportunity to cover the same ground.

The Court: Why do we not go ahead today, and then you will have an opportunity also to submit a brief further? [fol. 5300] Wouldn't that meet all the exigencies of the situation?

Mr. McKay: It is not the way I would like to handle it.

The Court: You can hear what Mr. Rice has to say and then you can answer it, and submit a brief also.

Mr. McKay: Then I make this suggestion, your Honor, will you hold this until 2 o'clock and allow me an opportunity to consult with Mr. Schine and Mr. McClennen, because I want their opinion as to whether it would be preferable to submit the thing on brief or argument?

The Court: I will give you a chance to do both. You can argue today and submit anything you want.

Mr. McKay: They may prefer to submit the entire thing on brief rather than to have a half of an argument.

The Court: We could finish it this afternoon, could we not?

Mr. McKay: I think so. Supposing you make it one o'clock?

The Court: I cannot do that. I have to be away at that time.

Mr. McKay: I think if we decided to argue we can finish in a comparatively short time.

The Court: We can make it half-past one. I will hold it until that time.

(Whereupon a recess was taken until 1:30 o'clock p. m.)

[fol. 5301] After Recess, 1:30 o'clock P. M.

Appearances: Same as before noted.

Mr. McKay: Your Honor, after consulting with my colleagues, we have decided that we prefer to submit this matter on briefs, in reply to this brief. However, we have one waiver, and I think a more important suggestion, and that is that we have decided in view of what has been said this morning, that we will, if the opportunity is given to us, submit a plan of re-alignment. That, of course, will require more time than the 14 days we would need for a brief, but I think the time would be profitably spent, because we are not going to enter into the preparation of such a plan without in good faith doing our part to work out a plan that we think will be accepted, and at this point I want again to emphasize the fact that we have never arbitrarily stated that we did not intend to submit a plan. We did, as I told your Honor this morning, go to Washington in the hope that we could start discussion looking toward the submission of a plan, and we were discouraged there. Mr. Wright this morning said that Mr. McClennen—in fact he said it twice, that Mr. McClennen had declared that we [fol. 5302] would not submit any plan. Well, I looked up the transcript of the hearing before your Honor, and the interchange occurs at pages 77 to 82, and there is no statement there by Mr. McClennen that we would not submit a plan. What he was pointing out to your Honor was what our position was, and still is, that the submission and consideration of a plan should await the determination of the Supreme Court on the merits of the case. Your Honor ruled against us on that, and so we now say if your Honor will fix a reasonable time within which to give us an opportunity to submit a plan of re-alignment, we undertake to do so.

The Court: What have you to say about it, Mr. Wright?

Mr. Wright: If the Court please, in so far as submission of a plan is concerned, at any time, of course, they can always come in with a plan, even after an appeal is perfected and pending. There is nothing to prevent them by anything that is done today or at any other particular time which would foreclose them from submitting a plan that they think would be acceptable to your Honor and to us.

The Court: You want it to be presented before adoption by the Court?

By Mr. Wright: I say that there never will be a plan [fol. 5303] submitted by these people that amounts to anything until and unless there is a final judgment of dissolution which actually puts or approves a scheme for a dissolving, re-aligning and re-organizing of the circuit, and it is important I think that there be no further delay in actually implementing the judgment that has been rendered with whatever the Court views as a proper plan to implement it with. On the timing of it I see no reason at all why, if they have anything they want to submit to your Honor, it cannot be submitted within a couple of weeks, within the same length of time that it would take them to answer our reply. Whatever they want to file they are perfectly at liberty to include suggestions of any nature whatsoever, and I suppose they will do it, but in no event should that be made the excuse for deferring the entry of a final appealable order in the case. That I think should be done within the next, say, four or five weeks, so that we do not have any docketing of appeals there in the Supreme Court, so that we can have the matter heard of and disposed of on their appeal from the entire judgment and such cross-appeal that we might elect to take all at one time. There should be no further delay, it seems to me, in actually [fol. 5304] getting a final order. That is the only thing we are concerned with. So far as their submitting a plan to your Honor, they can, of course, do that at the time that they file this memorandum that they say they want to file, and anything we have to say about it, I suppose, could be communicated to your Honor in writing.

I think your Honor has already indicated that there is no occasion for any further hearings before we get to an order.

The Court: That we have and will have is sufficient. The only question I can see now is—of course, you and your associates are very familiar with the whole situation here, and with the examinations you have made of the proposed plan and the prior proposals, it would not be like going into something new, to organize your proposal, so that it can be done, I think, in a reasonable time.

Mr. McKay: It will be done as expeditiously as possible, but in examining that situation from the research Mr. Schine pointed out that a comprehensive plan will require a very considerable amount of work by accountants to determine just how the financial adjustments between the various [fol. 5305] theatres are to be made. What Mr. Wright has said to your Honor presupposes that if we do not put in a plan your Honor is going to approve the plaintiff's plan.

The Court: I do not know what he presupposes, but, of course, the Court has the final say about it.

Mr. McKay: We feel that your Honor will be in a much better position to determine what plan should be adopted if you have before you a plan submitted by us.

The Court: What time do you figure you would want?

Mr. McKay: I think we should have the same time that was provided in the original judgment, and which, I think, should have been carried over into this judgment, and that is 60 days.

The Court: No, I do not think the question of the original judgment has anything to do with the time.

Mr. McKay: The judgment allowed 60 days for the preparation of a plan, and I think——

The Court: We have had that 60 days already, and we still have the matter under consideration. The amendment would not affect it at all.

Mr. McKay: During that time we were considering other matters. We were considering then the question of these amendments to the findings of fact, which we felt had to be disposed of before we could consider what would be the [fol. 5306] next step, and we felt then and still feel that it would be preferable to have the ruling of the Supreme Court on the merits, and the indication of how far the Supreme Court felt we should go before any plan was submitted. Your Honor has ruled against us on that, so that we say——

The Court: You can protect your rights. There could not be any carrying out of the plan before the disposition by the Supreme Court. It could not be carried out.

Mr. McKay: That is true.

The Court: One suggestion that was made, as I recall, by Mr. Wright was that in the event of any delay here that the Court should carry out the provisions of the 1942 decree directing the sale of the balance of 16 theatres that had not been sold.

Mr. McKay: There is no 1942 decree or order any more. That we do not need to discuss any more.

The Court: I suppose the situation is the same now as it was then?

Mr. McKay: Yes, I believe it is. I mean as far as the ownership of the theatres. I would not want to say so definitely, but——

The Court: It seems to me that the question of the plan is a very important thing, that is true. You have known [fol. 5307] of this so long, and you know pretty definitely what you should do I should think in the making of some plan. You could present it in every detail.

Mr. McKay: This is a rather unusual type of case for a plan of this kind, and we would be very reluctant to say to your Honor that we will come in with a plan unless we felt when we did come in with a plan it would be one at least that represented our best judgment as to how these theatres could be re-aligned. It is a very important proposition. I do not think that 60 days is any great length of time. I think in the long run time will be conserved by giving us additional time.

The Court: It will be in the Supreme Court this Fall. That ought to be considered.

Mr. McKay: We have indicated our willingness to expedite the bringing of the case to the Supreme Court by filing the notice, which your Honor now has before you for an allowance.

Mr. Wright: These accounting details that counsel has referred to are nothing that would concern the Court at this time in any event. All the embodying of the plan would be to outline the character of the dissolution. It would not attempt to settle all of those details. I want to [fol. 5308] make myself clear on what I said this morning about when this order became appealable. I do not say that you have to work out all the details before there is an appealable judgment, but you have to have a judgment——

The Court: Some order on it, anyway?

Mr. Wright: Yes; which indicates the kind of dissolution which is to occur. I took the trouble this morning to examine the files in the Eastman Kodak case here in this court, and I noticed the original opinion there which was rendered in November, 1915, did spell out, as your Honor's opinion did here, simply in general terms a dissolution of the monopoly, to create competition, the defendants were then given 30 days to submit a plan which would effectuate that purpose. Otherwise the Court said it would appoint a Receiver. They came in with a plan which was not acceptable to Judge Hazel within the period, and then in January, 1916, he did enter with an opinion which we referred to in our memorandum a judgment which specified that these two companies should be separated, naming them, but that judgment, of course, then, gave the defendants a further time in which to actually submit a plan for the purpose of accomplishing the mechanics of the dissolution, and that, of [fol. 5309] course, was stayed pending an appeal. Here I would assume that the actual execution of any plan that might be decreed would, of course, be stayed pending the appeal to the Supreme Court. So that there is no occasion for your Honor at this time to concern yourself with these accounting problems which might arise in the course of executing such plan as the Court might outline.

The Court: I will give you three weeks on this. Today is the 16th. I will give you three weeks in which to submit your argument on this motion here, and also if you wish to submit any tentative plan at that time that may be done.

Mr. McKay: That does not involve any commitment on my part.

The Court: That you shall submit a plan? No. You want a week to answer that, Mr. Wright?

Mr. Wright: Yes.

Mr. McKay: When is there going to be an end to this, your Honor. We ought to come in on equal terms.

The Court: We came in today for a proposed argument. I think he should have time to reply. He might want to ask you something.

Mr. McKay: Then if we find anything new in that answer, we will be obliged to ask you for more time.

[fol. 5310] The Court: It would be the same as though you spoke here today. If you spoke he would have an opportunity to reply.

Mr. McKay: We are to submit our brief within three weeks?

The Court: Yes; and also any tentative proposal. If the Court sees merit in your proposals, I would be disposed to give further time to counsel.

Mr. McKay: That is satisfactory, because we will know by three weeks——

The Court: That will be the 7th of May, and you have until the 14th to answer, Mr. Wright.

Mr. Wright: One thing more, if the Court please: I assume this petition for appeal has simply been filed; no order was entered allowing it?

The Court: No. I did not decide whether I should or not.

Mr. Wright: I think the signing of the order should be deferred until after there is a final order entered, and the thing I wanted to point out was that I noticed their petition asked for a stay of the entire judgment, and we would, of course, oppose any stay except as to Section 3 of the judgment, the dissolution.

The Court: You want to file a notice of appeal now? Can you not wait until after the——

Mr. McKay: I am not sure whether we can safely delay [fol. 5311] the filing——

Mr. Wright: They have that 60 days.

Mr. McKay: We are not making a request for supersedeas at this time. Is not the allowance of the appeal automatic?

Mr. Wright: I think the mere filing of the petition stays the time as far as worrying about the 60-day interval. I think the filing of the petition brings them within the time.

The only other thing, I did want to mention a couple of points that were not covered in the written memorandum, and I might as well call them to your Honor's attention so that they will be in the transcript. One point which we did not stress in the typewritten reply, and which I want to make now, had to do with the defendants' assumption that there is no future competition as a possibility in the one theatre communities that are now controlled by Schine, even if those theatres were operated by somebody else. We want to point out that there is no way in which the Court can possibly undertake to determine what the competitive possibilities are in any community, except by creating conditions which make motion picture theatre operat- [fol. 5312] ing conditions possible. As far as this record is concerned, it appears in Medina, Ohio, a town of less than 5,000 people, was one which Schine apparently thought would be a profitable location for a third theatre, although there were already two operating there. And the Town of Perry, New York, you will recall was served by one sizable theatre, and was also regarded by Schine as a likely location for the erection of another theatre. Of course, the existing operators in both those towns were independent. From common experience we know that almost no town is too small to invite competition as a spot for another theatre, providing only that the existing operator is so firmly entrenched as to be able to freeze out prospective competition by the sort of film buying control that you saw in this case. Only the other day we got a letter——

Mr. McKay: I object to any statement about correspondence.

Mr. Wright (Continuing): —about a town in West Virginia, a little town with less than a thousand people in it. This fellow said somebody had just opened a theatre there and had come in against him.

Mr. McKay: This has nothing to do with the Schine Circuit. It should not go in this record.

[fol. 5313] The Court: That is simply an illustration. The Court has had several communications from people that wanted to buy theatres.

Mr. Wright: It has always been apparent in every community there are enough films for two theatre operations if the operators are willing to operate with comparative profits. You can always make a great deal more money if you have the only theatre in the town, but it is absurd to assume, as the defendants apparently do, that merely because a town has only had one theatre in the past that it is always going to have one theatre in the future, regardless of what other conditions are present.

The other thing that I wanted to emphasize is the—of course, one other reason that some of these one-theatre towns have continued to be one-theatre towns in Schine's hands were the threats which were in evidence in this record, such as you had in Salamanca and Canandaigua; when somebody threatened to come into town they were intimidated by Schine in a threat to put in an additional theatre, which preserved the one-theatre monopoly.

The other point I wanted to say a little bit more about was this question of the defendants' opposition to divesti-[fol. 5314] ture of stock interest in corporations where they are not the sole owners, that is corporations which are partly owned by non-defendants. We pointed out in our memorandum, of course, that they did not have standing to make whatever objections that these other non-defendant interested people might want to make. I wanted to point out in addition now that in the Crescent case after the mandate came down from the Supreme Court petitions were heard in a couple of cases filed by the other stockholders in these corporations that the Crescent Company divest itself of stock in praying that the divestiture not be carried out, and the District Court denied those petitions in that case.

As I say I do not want to repeat here anything that is said in the reply that we filed, and I think there is nothing more I have to add than that we are here to answer any questions that your Honor might wish to raise on your own motion, and I would like to do that if there is any.

The Court: I will do that after further consideration. I would not want to do it now.

Mr. Wright: That is entirely agreeable.

[fol. 5315] Mr. McKay: I am not going to argue this case any further now, as I told you, but I do want to state that what Mr. Wright has said about Medina and Perry is not so, and we will so demonstrate in our reply. And what he has said about Salamanca and Canandaigua is not so. Those are two-theatre towns, not one-theatre towns.

The Court: I see in running over this you call some attention there with reference to Hornell. It should be Hamilton, as you pointed out. That is the name of the place.

Mr. McKay: We called that to the plaintiff's attention some months ago.

The Court: I do not think that is of any significance whatsoever. Hamilton was mentioned.

[fol. 5316] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

NOTICE OF APPEAL AND PETITION FOR ALLOWANCE THEREOF, AND ORDER ALLOWING APPEAL—April 15, 1946

The defendants, Schine Chain Theatres, Inc., Schine Theatrical Co., Inc., Schine-Lexington Corporation, Schine Enterprises Corporation, Schine Circuit, Inc., Chesapeake Theatre Corporation, J. Myer Schine, Louis W. Schine and John A. May, separately alleging that each is aggrieved by the final judgment entered in the above entitled cause on or about the first day of November, 1945, and by the amended judgment entered on the twenty-ninth day of March, 1946, pursuant to the decision filed herein on the eleventh day of March, 1946, disallowing in part the defendants' motion filed on November 10, 1945 under Rule 52(b) to amend the findings of fact and conclusions of law and the judgment, ~~and~~ allowing in part the plaintiff's motion filed on or about February 1, 1946 under Rule 52(b) [fol. 5317] to amend the findings of fact and conclusions of law and the judgment and by the proceedings on which said judgments are based, do each separately hereby appeal to the Supreme Court of the United States from said judgments and each of them in the respects which more fully appear in the assignment of errors which is filed herewith, and each prays that this claim of appeal may be allowed and that the judgments be superseded and stayed until after the determination of said appeal, and that a transcript of the record proceedings and papers upon which the said decree was based, duly authenticated, be sent to the Supreme Court of the United States.

Schine Chain Theatres, Inc., Schine Theatrical Co., Inc., Schine-Lexington Corporation, Schine Enterprises Corporation, Schine Circuit, Inc., Chesapeake Theatre Corporation, J. Myer Schine, Louis W. Schine, John A. May, by their respective attorneys, Edward F. McClennen, Willard S. McKay.

This appeal is allowed Buffalo, N. Y., April 17, 1946.

John Knight, United States District Judge.

[fol. 5318] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

DEFENDANTS' ASSIGNMENT OF ERRORS—December 28, 1945, April 15, 1946

Each of the defendants, Schine Chain Theatres, Inc., Schine Theatrical Co., Inc., Schine-Lexington Corporation, Schine Enterprises Corporation, Schine Circuit, Inc., Chesapeake Theatre Corporation, J. Myer Schine, Louis W. Schine and John A. May, assigns as the errors in the record and proceedings in the above entitled case, on which the defendants intend to rely in briefs and argument in the Supreme Court of the United States, the following:

First Assignment

The Court erred in decreeing November 1, 1945 and March 29, 1946 that the defendants and their affiliated corporations be dissolved, realigned or reorganized in their ownership or control so that fair competition between them [fol. 5319] and other theatres may be restored and thereafter maintained; because this decree was not warranted by the findings of fact and by the evidence, and was contrary thereto.

Second Assignment

The Court erred in its conclusions and judgment that Schine Chain Theatres, Inc. has monopolized and attempted to monopolize the licensing of the exhibition of motion picture films in various cities and towns in violation of sections 1 and 2 of the Sherman Act, and the business of operating motion picture theatres in various towns in violation of the aforesaid statute; because this judgment and these conclusions were not warranted by the findings of fact and by the evidence, and were contrary thereto.

Third Assignment

The Court erred in its conclusions and judgment that Schine Theatrical Co., Inc. has monopolized and attempted to monopolize the licensing of the exhibition of motion picture films in various cities and towns in violation of sections 1 and 2 of the Sherman Act, and the business of operating motion picture theatres in various towns in violation of the aforesaid statute; because this judgment and these conclusions were not warranted by the findings of fact and by the evidence, and were contrary thereto.

Fourth Assignment

The Court erred in its conclusions and judgment that Schine-Lexington Corporation has monopolized and at- [fol. 5320] tempted to monopolize the licensing of the exhibition of motion picture films in various cities and towns in violation of sections 1 and 2 of the Sherman Act, and the business of operating motion picture theatres in various towns in violation of the aforesaid statute; because this judgment and these conclusions were not warranted by the findings of fact and by the evidence, and were contrary thereto.

Fifth Assignment

The Court erred in its conclusions and judgment that Schine Enterprises Corporation has monopolized and attempted to monopolize the licensing of the exhibition of motion picture films in various cities and towns in violation of sections 1 and 2 of the Sherman Act, and the business of operating motion picture theatres in various towns in violation of the aforesaid statute; because this judgment and these conclusions were not warranted by the findings of fact and by the evidence, and were contrary thereto.

Sixth Assignment

The Court erred in its conclusions and judgment that Schine Circuit, Inc. has monopolized and attempted to monopolize the licensing of the exhibition of motion picture films in various cities and towns in violation of sections 1 and 2 of the Sherman Act, and the business of operating motion picture theatres in various towns in violation of the aforesaid statute; because this judgment and these conclusions were not warranted by the findings of fact and by the evidence, and were contrary thereto.

[fol. 5321]

Seventh Assignment

The Court erred in its conclusions and judgment that Chesapeake Theatre Corporation has monopolized and attempted to monopolize the licensing of the exhibition of motion picture films in various cities and towns in violation of sections 1 and 2 of the Sherman Act, and the business of operating motion picture theatres in various towns in violation of the aforesaid statute; because this judgment and these conclusions were not warranted by the findings of fact and by the evidence, and were contrary thereto.

Eighth Assignment

The Court erred in its conclusions and judgment that J. Myer Schine has monopolized and attempted to monopolize the licensing of the exhibition of motion picture films in various cities and towns in violation of sections 1 and 2 of the Sherman Act, and the business of operating motion picture theatres in various towns in violation of the aforesaid statute; because this judgment and these conclusions were not warranted by the findings of fact and by the evidence, and were contrary thereto.

Ninth Assignment

The Court erred in its conclusions and judgment that Louis W. Schine has monopolized and attempted to monopolize the licensing of the exhibition of motion picture films in various cities and towns in violation of sections 1 and 2 of the Sherman Act, and the business of operating motion picture theatres in various towns in violation of the aforesaid statute; because this judgment and these conclusions were [fol. 5322] not warranted by the findings of fact and by the evidence, and were contrary thereto.

Tenth Assignment

The Court erred in its conclusions and judgment that John A. May has monopolized and attempted to monopolize the licensing of the exhibition of motion picture films in various cities and towns in violation of sections 1 and 2 of the Sherman Act, and the business of operating motion picture theatres in various towns in violation of the aforesaid statute; because this judgment and these conclusions were not warranted by the findings of fact and by the evidence, and were contrary thereto.

Eleventh Assignment

The Court erred in its conclusions and judgment that the defendant Schine Chain Theatres, Inc., has maintained a combination with the other defendants and contracted, conspired and combined with them to monopolize, and for the purpose of monopolizing the licensing of the exhibition of motion picture films in various cities and towns in violation of sections 1 and 2 of the Sherman Act, and with the effect of suppressing competition and monopolizing exhibition of films distributed by each of the film corporations described in various towns and cities in violation of the aforesaid statute; because said conclusions and judgment were not warranted by the findings of fact and by the evidence, and were contrary thereto.

[fol. 5323] Twelfth Assignment

The Court erred in its conclusions and judgment that the defendant Schine Theatrical Co., Inc. has maintained a combination with the other defendants and contracted, conspired and combined with them to monopolize, and for the purpose of monopolizing the licensing of the exhibition of motion picture films in various cities and towns in violation of sections 1 and 2 of the Sherman Act, and with the effect of suppressing competition and monopolizing exhibition of films distributed by each of the film corporations described in various towns and cities in violation of the aforesaid statute; because said conclusions and judgment were not warranted by the findings of fact and by the evidence, and were contrary thereto.

Thirteenth Assignment

The Court erred in its conclusions and judgment that the defendant Schine-Lexington Corporation has maintained a combination with the other defendants and contracted, conspired and combined with them to monopolize, and for the purpose of monopolizing the licensing of the exhibition of motion picture films in various cities and towns in violation of sections 1 and 2 of the Sherman Act, and with the effect of suppressing competition and monopolizing exhibition of films distributed by each of the film corporations described in various towns and cities in violation of the aforesaid statute; because said conclusions and judgment were not warranted by the findings of fact and by the evidence, and were contrary thereto.

[fol. 5324]

Fourteenth Assignment

The Court erred in its conclusions and judgment that the defendant Schine Enterprises Corporation has maintained a combination with the other defendants and contracted, conspired and combined with them to monopolize, and for the purpose of monopolizing the licensing of the exhibition of motion picture films in various cities and towns in violation of sections 1 and 2 of the Sherman Act, and with the effect of suppressing competition and monopolizing exhibition of films distributed by each of the film corporations described in various towns and cities in violation of the aforesaid statute; because said conclusions and judgment were not warranted by the findings of fact and by the evidence, and were contrary thereto.

Fifteenth Assignment

The Court erred in its conclusions and judgment that the defendant Schine Circuit, Inc. has maintained a combination with the other defendants and contracted, conspired and combined with them to monopolize, and for the purpose of monopolizing the licensing of the exhibition of motion picture films in various cities and towns in violation of sections 1 and 2 of the Sherman Act, and with the effect of suppressing competition and monopolizing exhibition of films distributed by each of the film corporations described in various towns and cities in violation of the aforesaid statute; because said conclusions and judgment were not warranted by the findings of fact and by the evidence, and were contrary thereto.

[fol. 5325]

Sixteenth Assignment

The Court erred in its conclusions and judgment that the defendant Chesapeake Theatre Corporation has maintained a combination with the other defendants and contracted, conspired and combined with them to monopolize, and for the purpose of monopolizing the licensing of the exhibition of motion picture films in various cities and towns in violation of sections 1 and 2 of the Sherman Act, and with the effect of suppressing competition and monopolizing exhibition of films distributed by each of the film corporations described in various towns and cities in violation of the aforesaid statute; because said conclusions and judgment were not warranted by the findings of fact and by the evidence, and were contrary thereto.

Seventeenth Assignment

The Court erred in its conclusions and judgment that the defendant J. Myer Schine has maintained a combination with the other defendants and contracted, conspired and combined with them to monopolize, and for the purpose of monopolizing the licensing of the exhibition of motion picture films in various cities and towns in violation of sections 1 and 2 of the Sherman Act, and with the effect of suppressing competition and monopolizing exhibition of films distributed by each of the film corporations described in various towns and cities in violation of the aforesaid statute; because said conclusions and judgment were not warranted by the findings of fact and by the evidence, and were contrary thereto.

[fol. 5326]

Eighteenth Assignment

The Court erred in its conclusions and judgment that the defendant Louis W. Schine has maintained a combination with the other defendants and contracted, conspired and combined with them to monopolize, and for the purpose of monopolizing the licensing of the exhibition of motion picture films in various cities and towns in violation of sections 1 and 2 of the Sherman Act; and with the effect of suppressing competition and monopolizing exhibition of films distributed by each of the film corporations described in various towns and cities in violation of the aforesaid statute; because said conclusions and judgment were not warranted by the findings of fact and by the evidence, and were contrary thereto.

Nineteenth Assignment

The Court erred in its conclusions and judgment that the defendant John A. May has maintained a combination with the other defendants and contracted, conspired and combined with them to monopolize, and for the purpose of monopolizing the licensing of the exhibition of motion picture films in various cities and towns in violation of sections 1 and 2 of the Sherman Act, and with the effect of suppressing competition and monopolizing exhibition of films distributed by each of the film corporations described in various towns and cities in violation of the aforesaid statute; because said conclusions and judgment were not warranted by the findings of fact and by the evidence, and were contrary thereto.

[fol. 5327]

Twentieth Assignment

The Court erred in its conclusions and judgment that Columbia Pictures Corporation and the defendants have contracted, conspired and combined with each other with the effect of suppressing competition and monopolizing exhibition of films distributed by said distributor corporation in various towns and cities, in violation of sections 1 and 2 of the Sherman Act; because said conclusions and judgment were not warranted by the findings of fact and by the evidence, and were contrary thereto.

Twenty-first Assignment

The Court erred in its conclusions and judgment that Twentieth Century-Fox Film Corporation and the defendants have contracted, conspired and combined with each other with the effect of suppressing competition and monopolizing exhibition of films distributed by said distributor corporation in various towns and cities, in violation of sections 1 and 2 of the Sherman Act; because said conclusions and judgment were not warranted by the findings of fact and by the evidence, and were contrary thereto.

Twenty-second Assignment

The Court erred in its conclusions and judgment that Loew's Incorporated and the defendants have contracted, conspired and combined with each other with the effect of suppressing competition and monopolizing exhibition of films distributed by said distributor corporation in various towns and cities, in violation of sections 1 and 2 of the Sherman Act; because said conclusions and judgment were [fol. 5328] not warranted by the findings of fact and by the evidence, and were contrary thereto.

Twenty-third Assignment

The Court erred in its conclusions and judgment that Paramount Pictures, Inc. or Paramount Film Distributing Corporation and the defendants have contracted, conspired and combined with each other with the effect of suppressing competition and monopolizing exhibition of films distributed by said distributor corporation in various towns and cities, in violation of sections 1 and 2 of the Sherman Act; because said conclusions and judgment were not warranted by the findings of fact and by the evidence, and were contrary thereto.

Twenty-fourth Assignment

The Court erred in its conclusions and judgment that R. K. O. Radio Pictures, Inc. and the defendants have contracted, conspired and combined with each other with the effect of suppressing competition and monopolizing exhibition of films distributed by said distributor corporation in various towns and cities, in violation of sections 1 and 2 of the Sherman Act; because said conclusions and judgment were not warranted by the findings of fact and by the evidence, and were contrary thereto.

Twenty-fifth Assignment

The Court erred in its conclusions and judgment that United Artists Corporation and the defendants have contracted, conspired and combined with each other with the [fol. 5329] effect of suppressing competition and monopolizing exhibition of films distributed by said distributor corporation in various towns and cities, in violation of sections 1 and 2 of the Sherman Act; because said conclusions and judgment were not warranted by the findings of fact and by the evidence, and were contrary thereto.

Twenty-sixth Assignment

The Court erred in its conclusions and judgment that Universal Pictures Company, Inc. or Universal Film Exchanges, Inc. and the defendants have contracted, conspired and combined with each other with the effect of suppressing competition and monopolizing exhibition of films distributed by said distributor corporation in various towns and cities, in violation of sections 1 and 2 of the Sherman Act; because said conclusions and judgment were not warranted by the findings of fact and by the evidence, and were contrary thereto.

Twenty-seventh Assignment

The Court erred in its conclusions and judgment that Warner Bros. Pictures, Inc. or Vitagraph, Inc. and the defendants have contracted, conspired and combined with each other with the effect of suppressing competition and monopolizing exhibition of films distributed by said distributor corporation in various towns and cities, in violation of sections 1 and 2 of the Sherman Act; because said conclusions and judgment were not warranted by the findings of fact and by the evidence, and were contrary thereto.

[fol. 5330]

Twenty-eighth Assignment

The Court erred in its conclusions and judgment that Schine Chain Theatres, Inc. had, as a means of monopolizing contrary to sections 1 and 2 of the Sherman Act, used predatory practices; because this judgment was not warranted by the findings of fact and by the evidence, and was contrary thereto.

Twenty-ninth Assignment

The Court erred in its conclusions and judgment that Schine Theatrical Co., Inc., had, as a means of monopolizing contrary to sections 1 and 2 of the Sherman Act, used predatory practices; because this judgment was not warranted by the findings of fact and by the evidence, and was contrary thereto.

Thirtieth Assignment

The Court erred in its conclusions and judgment that Schine-Lexington Corporation had, as a means of monopolizing contrary to sections 1 and 2 of the Sherman Act, used predatory practices; because this judgment was not warranted by the findings of fact and by the evidence, and was contrary thereto.

Thirty-first Assignment

The Court erred in its conclusions and judgment that Schine Enterprises Corporation had, as a means of monopolizing contrary to sections 1 and 2 of the Sherman Act, used predatory practices; because this judgment was not [fol. 5331] warranted by the findings of fact and by the evidence, and was contrary thereto.

Thirty-second Assignment

The Court erred in its conclusions and judgment that Schine Circuit, Inc. had, as a means of monopolizing contrary to sections 1 and 2 of the Sherman Act, used predatory practices; because this judgment was not warranted by the findings of fact and by the evidence, and was contrary thereto.

Thirty-third Assignment

The Court erred in its conclusions and judgment that Chesapeake Theatre Corporation had, as a means of monopolizing contrary to sections 1 and 2 of the Sherman Act, used predatory practices; because this judgment was not warranted by the findings of fact and by the evidence, and was contrary thereto.

Thirty-fourth Assignment

The Court erred in its conclusions and judgment that J. Myer Schine had, as a means of monopolizing contrary to sections 1 and 2 of the Sherman Act, used predatory practices; because this judgment was not warranted by the findings of fact and by the evidence, and was contrary thereto.

Thirty-fifth Assignment

The Court erred in its conclusions and judgment that Louis W. Schine had, as a means of monopolizing con- [fol. 5332] trary to sections 1 and 2 of the Sherman Act, used predatory practices; because this judgment was not warranted by the findings of fact and by the evidence, and was contrary thereto.

Thirty-sixth Assignment

The Court erred in its conclusions and judgment that John A. May had, as a means of monopolizing contrary to sections 1 and 2 of the Sherman Act, used predatory practices; because this judgment was not warranted by the findings of fact and by the evidence, and was contrary thereto.

Thirty-seventh Assignment

The Court erred in enjoining the defendants from monopolizing the supply of major first run films in any situation where there is a competing theatre suitable for first run exhibition thereof, and from monopolizing the supply of second run films in any situation where there is a suitable theatre for second run exhibition thereof; because this injunction was not warranted by the findings of fact and by the evidence, and was contrary thereto, and was too general and indefinite in terms and in excess of any appropriate remedy.

Thirty-eighth Assignment

The Court erred in enjoining the defendants from demanding or receiving clearance over theatres operated by others, which unreasonably restricts their ability to compete with a theatre owned or operated by a defendant or [fol. 5333] corporation controlled by it and from attempting to control the admission prices charged by others by agreement with distributors, demands made upon distributors, or by any means whatsoever; because this injunction was not warranted by the findings of fact and by the evidence, and was contrary thereto, and was too general and indefinite in terms and in excess of any appropriate remedy.

Thirty-ninth Assignment

The Court erred in enjoining the defendants from conditioning the licensing of films in any competitive situation outside of Buffalo, New York upon the licensing of films in any other situation and from entering into any film franchise; because this injunction was not warranted by the findings of fact and by the evidence, and was contrary thereto, and was too general and indefinite in terms and in excess of any appropriate remedy.

Fortieth Assignment

The Court erred in enjoining the defendants from selling or acquiring any theatre interest, pending the further order of this Court; because this injunction was not warranted by the findings of fact and by the evidence, and was contrary thereto, and was too general and indefinite in terms and in excess of any appropriate remedy.

Forty-first Assignment

The Court erred in enjoining the defendants from enforcing any existing agreements heretofore entered into [fol. 5334] (1) not to compete or (2) to restrict the use of any real estate to non-theatrical purposes; because this injunction was not warranted by the findings of fact and by the evidence, and was contrary thereto, and was too general and indefinite in terms and in excess of any appropriate remedy.

Forty-second Assignment

The Court erred in enjoining the defendants from using any threats or deception as a means whereby a competitor is induced to sell; because this injunction was not warranted by the findings of fact and by the evidence, and was contrary thereto, and was too general and indefinite in terms and in excess of any appropriate remedy.

Forty-third Assignment

The Court erred in enjoining the defendants from continuing any contract, conspiracy or combination with each other or with any other person which has the purpose or effect of maintaining the exhibition or theatre monopolies of the defendants or of preventing any other theatre or exhibitor from competing with the defendants or any of them, and from entering into any similar contract, conspiracy, or combination for the purpose or with the effect of restraining or monopolizing trade and commerce between the states; because this injunction was not warranted by the findings of fact and by the evidence, and was contrary thereto, and was too general and indefinite in terms and in excess of any appropriate remedy.

[fol. 5335]

Forty-fourth Assignment

The Court erred in entering findings of fact, conclusions of law and judgment drafted and submitted by plaintiff's attorneys without affording to defendants' attorneys any opportunity to present objections thereto or to propose changes therein or pertinent additions thereto, or any opportunity to be heard thereon, and notwithstanding the fact that said findings of fact, conclusions of law and judgment were not warranted by the facts found and by the evidence, and were contrary thereto.

Forty-fifth Assignment

The Court erred in not granting in its entirety the defendants' motion filed November 10, 1945 to amend the Findings of Fact and Conclusions of Law entered by the Court on or about November 1, 1945, and in the several particulars in which it was not granted.

Forty-sixth Assignment

The Court erred in granting in part the plaintiff's motion filed on or about February 1, 1946 to amend the findings of fact and conclusions of law and the judgment entered by the Court on or about November 1, 1945 and in the several particulars in which said motion was granted.

Forty-seventh Assignment

The Court erred in making findings of fact and quotations based exclusively on the papers erroneously admitted in evidence and described in the forty-eighth assignment of [fol. 5336] errors. These findings and quotations are set out in the Findings of Fact drafted by plaintiff's attorneys and entered by the Court on November 1, 1945, particularly in paragraphs 17, 8 and 9 thereof particularly as to clearance.

Forty-eighth Assignment

The Court erred, at the close of the evidence for plaintiff, in admitting in evidence by a single ruling, and in denying defendants' motion to strike out and to limit the effect so that they would not be taken as evidence of the truth of the statements contained in them, the exhibits listed below, notwithstanding the fact that all that had appeared as to who fabricated them was that in compliance with a subpoena the respective distributor corporations, not defendants, had directed a search of files in their respective home, district and branch offices and had produced them by a designated officer or employee who had no further knowledge concerning the papers produced. There was no evidence as to who, if any one, dictated them, who wrote them, who, if any one, signed them, or that they were uttered, sent or received by any one. There was no evidence that any opinions stated in them were those of a qualified person or within the scope of the duties of any person. There was no opportunity to examine or to cross examine any witness concerning the papers or the opinions or other statements in them. There was no evidence that any of these papers had gone from or to any of the defendants or were known to them. Most of the papers were framed like internal memoranda within the respective distributors. There was no evidence that any one of these papers was [fol. 5337] an act in furtherance of any conspiracy. On the contrary, many of them disclosed non-cooperation and competitive antagonism. The defendants' objections covering all these matters, and separately as to each paper, were summarized and stated at length in the record at typewritten pages 3285-3288, 3589-3610, 3424-3458, 3941-3963. The ruling is at typewritten pages 3610, 3612, 3955-3964.

The list of the exhibits so admitted is as follows:

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Respectfully submitted for each defendant separately, Edward F. McClennen, Willard S. McKay, Attorneys for Defendants.

[fols. 5338-5339] IN UNITED STATES DISTRICT COURT

[Title omitted]

DEFENDANTS' MOTION FOR A STAY

The defendants, severally, move the Court to stay any and all acts or proceedings herein taken or attempted to be taken pursuant or purporting to be pursuant to the second and third sentences of Paragraph III of the Judgment entered herein on the 1st day of November, 1945, on the ground that said provisions of said Judgment were stricken and eliminated therefrom by the Amended Judgment, entered on the 29th day of March, 1946, and that there now exists no warrant or authority for any action under said provisions or either of them.

Respectfully submitted, Willard S. McKay, Attorney for the Defendants-Severally.

Dated: New York, New York, April 5, 1946.

[fol. 5340] IN UNITED STATES DISTRICT COURT

[Title omitted]

Transcript of Hearing

Proceedings before Honorable John Knight, United States District Judge for the Western District of New York, May 8th, 1946, at 9:30 o'clock a.m., Buffalo, New York.

Appearances: Honorable George L. Grobe, United States Attorney for the Western District of New York, by R. Norman Kirchgraber, Esq., Assistant U. S. Attorney, appearing for the United States.

Willard S. McKay, Esq., 630 Fifth Avenue, New York, N. Y., and Samuel S. Isseks, Esq., 30 Broad Street, New York, N. Y., and Howard M. Antevil, Esq., Gloversville, New York, appearing for the Defendants.

[fol. 5341] Proceedings

Mr. McKay: I have, with Mr. Isseks, who has had a lot of experience, and Mr. Ferguson, who has been our accountant for 25 years, been doing the best I could to work out what I think is a workable plan. We have been somewhat handicapped, No. 1, because Mr. Isseks is recently in the case and, No. 2, Mr. Ferguson's father has undergone a serious operation which kept him in Washington and unavailable for a week, and he is going under another one today or tomorrow, but I do honestly feel what I gave you last night represents something that will accomplish what I think you want to accomplish in this case, and what I would really appreciate is any suggestions you might have, where you see some places where it could be improved upon, or any objections, so that I can try and bring it more in line, if possible. When I told you we were trying to work out a plan, I meant that exactly, and we were going to do everything possible to arrive at a result to accomplish what, in your opinion, you said you wanted to accomplish, of course, always reserving the right to appeal on the merits.

The Court: The one thing, of course, that suggests itself to me and naturally to you, is that you are retaining the [fol. 5342] same control all the way through, through a family division. While you say it is an independent interest, "Present beneficial owners"—you divide them into two groups, the wives of the two principal owners at the head of the other group.

Mr. McKay: That is true, and as I told you yesterday, that is in line with the re-organization approved by the Supreme Court in the Crescent case. In that case the principals were Mr. Sudekan, his son-in-law, and his wife, and there has been no disturbance of the stock ownership, except the son-in-law is to own all the stock in one, Mr. Sudekan is to own all the stock in another, and the wife in another, and incidentally just about a week ago Mr. Sudekan dropped dead, and that is going to seriously complicate that plan, but that hasn't anything to do with this case. I take it, particularly in line with the cases that the Government cited, in no case was the ultimate stock ownership disturbed. It was simply the management or control that was segregated. In our case, we have provided for separate control of the theatres in New York by one individual, we have provided for separate control of the theatres in Ohio by another individual, and separate control in the remainder of the theatres by the two other individuals which I think complies with what the courts have [fol. 5343] decided in the past and your decision, and particularly so when it is combined, not only with the injunctive provisions in the judgment, but with the suggestions we have indicated our willingness to have.

Mr. Kirchgraber: Yesterday after this was submitted to our office, I called Mr. Wright in Washington, and, as well as I could over the phone, explained to him the two proposed re-alignments on this, plan 1 and 2, so I merely tried to explain to him, which is a difficult job, just what they had in mind on the change, and Mr. Wright said as far as he could see it did not materially alter the present situation, and he would like to have a week or ten days to look this over before making any formal objections, but he said tentatively it would not change the present situation.

Mr. Isseks: If your Honor will look at Chart III, which is the proposed re-alignment plan 2, you will note that it divides the present theatres into three different companies, based on the different localities from which they buy their products. Of course, I am new in this thing, but as I read your Honor's opinion, your Honor was primarily trying to break up this so-called large buying power, film buying power, the Schine Circuit. This breaks that effectively. [fol. 5344] You have separate corporations, with separate buying power. Secondly, this plan is on a traditional basis following the tobacco case and the Standard Oil case. I realize in those cases they had hundreds of stockholders, if not thousands of stockholders. What they did there—take the tobacco case, the American Tobacco Company had bought out ten or twelve different tobacco companies. Along came the Government and said "That is a monopoly." The Supreme Court said it was. They said "You have to break it up into four companies", but, they said, "The stockholders in the present company will each be entitled to the same beneficial interest in the four companies". We have provided here that the present beneficial owners shall be the same beneficial owners in these three new companies. Your Honor says that the control will be the same. We have provided that there will be no interlocking officers or directors or voting trustees in either company. The only place where there would be united control would be through the beneficial owners. Mr. McKay said he was willing to adopt any suggestions or modifications that your Honor has in mind with regard to that problem of the control, but we have provided here that there shall be no interlocking control. The [fol. 5345] only control would be through the fact a person retains stock interest. If your Honor has any other suggestions in mind, I gather from Mr. McKay, he would not only be willing to consider them, but propose to adopt them, but this is traditional.

The Court: Under that plan, of course, a voting trust agreement could be changed at any time.

Mr. Isseks: No, sir.

The Court: By a majority.

Mr. Isseks: No, sir. It is within your Honor's supervision. You have to have a ten-year voting trust under the New York law. It could be clear and unequivocal and, of course, we did not make it clear—we intended to, that it can be subject to your Honor's approval.

Mr. McKay: That was definitely intended.

The Court: You would not string this along under the supervision of the Court.

Mr. Isseks: Let me make another suggestion. Apparently Mr. Wright, whom I know very well, wants some time to consider this thing. That is fair enough. During that period of time why don't we try to meet any objections your Honor has by submitting something to you and to Mr. Wright.

[fol. 5346] The Court: I know nothing about Mr. Wright, except as just stated. The fundamental question, it seems to me, is the question of retention of family control. You point out the Crescent case, but there, there was a greater separation. I am not clear about that myself, but that is the thing that immediately struck me.

Mr. Isseks: We had in mind, your Honor, while the beneficial ownership would be in the present two stockholders, that by separate voting trusts for a period of, let us say, ten years, which we did not spell out here, you would have a separate control of each unit in the trustee, but there again I think we had in mind to consider any suggestions made either by your Honor or the Government.

Mr. McKay: The beneficial owners, as such, would have nothing except the right to get dividends. They have no control under their character as beneficial owners.

Mr. Isseks: As your Honor knows, in these various cases in the Supreme Court and elsewhere, the courts have made it clear that there is no intention to penalize in any decree under the Anti Trust Laws, the beneficial owners, or no intent to penalize them. They are the only two beneficial [fol. 5347] owners. Your Honor's point is that they should not be able to control. We recognize that. We do not dispute it. That is why we set up voting trustees. We could, during this interval that Mr. Wright wants to consider the plan, perhaps, amplify the question of control——

The Court: You say nothing here about any ten-year provision for continuation of the trust control or the control of the Court at all, do you, in this proposal?

Mr. Isseks: No, we did not.

Mr. McKay: This was gotten up under considerable pressure, and that is why it was put in as a tentative proposal. We know there are plenty of things that need to be supplied, and we are entirely conscious of that.

The Court: I have not examined his plan much at all. I just looked roughly through the provisions of the way it is treated, but what I wanted to do first was to set these all down separately and show just where they are in each state and also show just what relation the various corporations have to these various situations. You have divided it first into the real estate corporation and leasing corporation, operating corporation, buying and booking corporation, service corporation. That is the present setup.

Mr. McKay: There will be more than one operating [fol. 5348] corporation in the present setup. Those are the categories in which they fall.

The Court: Does this first list include any of those in the 1942 decree?

Mr. McKay: He has a separate paragraph, your Honor, as to the 1942 decree in his plan. Nearly all of the theatres in the 1942 decree have been disposed of already except about four, and we have explained those in our objections. Of course, the 1942 decree, that was simply a method of bringing our status back to the status at the beginning of this suit.

The Court: That brings me to an inquiry, and the point of my inquiry is the question—I don't recall what the effect of the 1942 decree is—it was generally applicable to all of the theatres, wasn't it, so far as any continuation of clearance and things of that kind?

Mr. McKay: The provisions of the 1942 decree applied to the whole circuit. That is my understanding, that that decree was an order, so designated, a "Temporary Order," that ran out on November 15th, 1944. It had no further effect after that date, and at that time we had disposed of all of the theatres except Cumberland, where your Honor had stated, when the Department allowed us to acquire one [fol. 5349] theatre in Cumberland—your Honor said he could not see the logic of disposing of one and acquiring another. In Mount Vernon the lease expired, and there was half interest in Harlan, where the other half owner came in and testified that he was very much opposed to anybody being in business with him. He did not want the half interest back, and there were two small theatres in Lexington and one in in Malone we were not able to sell, as we reported the day after the expiration of the order.

The Court: What is the status of the Paramount case?

Mr. McKay: Nobody knows when that will be decided, and on that I might point out I have read—I cannot say I have read all the briefs, but I have most of it, and as far as I can see the Government in that case is not asking that anything happen to these theatres except that they be separated from distribution. In other words, if I am correct—I am not making it as a definite assertion— I am saying that is as far as I have been able to see in my examination so far —what happens if the Government gets what it wants in that case would be that these five circuits the present distributors have would still remain as circuits, but they would be separated from the distribution part of the business, but each one of these circuits is much larger than the [fol. 5350] Schine Circuit, so it would seem funny that those units which are very much more powerful than we are could continue to operate as circuits when we could not. Mr. Schine from the very start of the case has always taken the position that he is perfectly willing to conduct his business in the same manner as the rest of the industry does, if there is a standard set. They tried to set a standard back in 1933 under the N.R.A., and he subscribed to that standard, and it was thrown out. During the period that that was effective, he signed what they called the Motion Picture Industry Code, and conformed to the practices of the Code, and he would do it again if it were standard, but it does seem to be unfair that he should be singled out and asked to do business on a basis that nobody else in the eighteen thousand theatres in the United States does.

The Court: What is his idea, to let you pick out one theatre out of this group?

Mr. McKay: What he says is, every town where we have two theatres, we can keep one and we have to sell the other, and we can choose the one we want to keep.

The Court: There are two in each of these towns?

Mr. McKay: At least two.

[fol. 5351] The Court: That is not so. There aren't two in Perry.

Mr. McKay: Those are the one-theatre towns that you are reading (referring to papers).

The Court: Yes, you are right about that. I had forgotten about that.

Mr. McKay: He says where there is only one theatre in a town we have to give up the town.

(Court reads from plan).

Mr. McKay: The only towns of these single theatre towns that were mentioned in the opinion or findings—I have not attempted to read the 4700 pages of the record—but the only towns mentioned in the opinion or findings were Perry, and there was one other, I believe—all of that is analyzed completely—Carthage was mentioned. Those were the only ones.

The Court: East Rochester was mentioned.

Mr. McKay: Not East Rochester, just Rochester.

The Court: Wasn't East Rochester mentioned?

Mr. McKay: No, East Rochester as a suburb of Rochester was not mentioned. If you throw East Rochester into the Rochester neighborhood houses, as we think it should be, then you might say it was mentioned in connection with Rochester, but what was objected to in Rochester was those Madison, Webster and Monroe Theatres, and as to [fol. 5352] those he suggests we give up two of those houses.

The Court: There is a separation as to what you call East Rochester and suburban.

Mr. McKay: Yes, and also Fairport is in the same category.

The Court: Perry and Carthage, as you say. Also Milford and Laurel.

Mr. McKay: I don't think Milford was mentioned and Laurel was mentioned indirectly. I think there was a mention of Laurel in Ayre's testimony. I don't think that was in the findings of fact. There was only casual mention of it.

The Court: Is there any change in the situation of any of those theatres since the trial?

Mr. McKay: The biggest change happens in Carthage. The theatre that was there when the trial was had burned down, and he has just about finished a new theatre which is much nicer. Under this plan we have to take the theatre and turn it over to somebody else.

The Court: In the list of the two-theatre cities is there any change?

Mr. McKay: In the two-theatre towns I don't think there is any change. The theatre has burned down in Salisbury.

The Court: Do you have both theatres in Salamanca?

Mr. McKay: Yes, we have both theatres in Salamanca.

[fol. 5353] The Court: Have you looked this over to determine what you would concede could be done to meet the plan in so far as it relates to the divestiture of any of these theatres?

Mr. McKay: Our reply deals separately with each town, and in our opinion we don't think that the sale of any of these theatres should be ordered. We don't think that it is called for by the opinion or the decision. We feel that by a plan such as we have suggested, embodying a separation of control and the injunctive provisions, you will get everything that you want to assure you that the Act will be complied with. We pointed out several times after the consent order was signed in 1942, there hasn't been any complaint about the conduct of our business. Nobody has made any complaint, and no evidence was offered at the trial, which was two years later, so that—and Mr. Wright, at the opening of the trial, said he assumed that the consent order had been performed. That leaves us to the natural thought, if we not only take the provisions of that consent order, but elaborate on them and add this separation of control we have suggested, we are going to present to your Honor a plan that will go far beyond anything that has ever been accomplished in an anti-trust case so far.

[fol. 5354] The Court: Of course, the consent decree was made after the action was brought.

Mr. McKay: Yes, but as you very correctly stated and as Judge Hand repeated about two weeks after your opinion—Judge Hand said practically the same thing, that this dissolution remedy is very harsh, and he said the Court probably would not apply it—you said the Court should not apply it, or words to that effect.

The Court: I said "re-alignment."

Mr. McKay: I think this is proper re-alignment, and particularly so when it embodies everything and more than was in the consent order, which obviously worked, because it did away with all complaints from 1942 through to the start of the trial. I don't believe there have been any complaints since. I have not heard any.-

The Court: Of course, even that might involve disposition of some theatres. Some situation might be more aggravated than others.

Mr. McKay: I have yet to see any such situation that I could call really aggravated. Even the people who testified here at the trial, most of them, admitted that they had not been harmed. Nobody has come in here and showed any damage to that particular person resulting from any con- [fol. 5355] duct by Schine. Their complaint was primarily that they could not get what they wanted. Nobody can get what he wants. We don't get what we want, either.

The Court: Of course, you have to take a long range view, you might say.

Mr. Isseks: As Mr. McKay pointed out, these injunctive provisions, your Honor, provided for in the judgment and in your opinion, would prevent in future any kind of a situation that your Honor found reprehensible. The question on the re-alignment could be handled on traditional methods, the way they did in the tobacco and Standard Oil case and the duPont case and International Harvester case. In none of those cases, and those are the well known monopoly cases, did they direct the sale of any of the properties. It was suggested when the Government applied for modification in the International Harvester case that there be some sale of properties, but the Supreme Court said "No." They said "When you realign the properties" as they did there. Our situation here is we have three companies. The only question your Honor raised is whether the control would still be the same. As to that we thought we would avoid that by having separate voting trusts and [fol. 5356] provisions that there be no interlocking directors or officers or even having the same kind of office space in the building, and we would have separate independent booking which your opinion indicates was the thing most improper and tended most to restrain trade so far as independent theatres were concerned. Under this plan we have in mind no one unit would be very large, and there would be many more independent units larger than any one of these units. I think if Mr. Wright wants some time, and we be given some time to work out details, perhaps your Honor would indulge us a period of time for all of us to be here and perhaps we could do what your Honor indicated, that the parties sit down and see what we could work out. We would then be in a position to take up every item in their plan which we found goes beyond the decided cases, and we could discuss the two plans and perhaps come up with a third plan.

The Court: I think the way to handle it now in view of what Mr. Kirchgraber said would be to let Mr. Wright submit in writing what he wants to submit in a week, to answer the plan, and then I will determine the question of whether we have to get together to consider the matter [fol. 5357] further. When he gets that in, I will see what he has.

Mr. Kirchgraber: Will your Honor hold it for some particular date for Mr. Wright to get in whatever he would like to get in?

The Court: You said a week.

Mr. Kirchgraber: I think he will be able to get it in a week; a week from today?

The Court: I will give you what time you want, any reasonable time.

Mr. Isseks: You said ten days.

Mr. Kirchgraber: I think ten days would be better.

The Court: I have not done much with it because of the fact that you were going to submit something. Time was given to submit something.

Mr. Isseks: The 17th or 18th.

The Court: A week from next Monday would be all right. That would be the 20th.

Mr. Isseks: Will your Honor consider tentatively at least setting down a hearing for the 28th, and we could come in with Mr. Wright. I think if we had him here and had his objections we could come back on the 28th or the 27th, either one, and we could all sit down and perhaps suggest something to your Honor that would be feasible.

The Court: All I had in mind was that perhaps there [fol. 5358] might not be any necessity of that, if we had your papers in here. I don't know as it makes much difference.

Mr. Isseks: We don't mind coming back the 27th or the 28th.

The Court: What is your idea?

Mr. Kirchgraber: I would submit this to Mr. Wright, and I think perhaps by that time he would be able to come up here, by the 28th.

Mr. Isseks: Why not set it down for the 28th?

The Court: We will hold this. Let him submit his memorandum by the 20th.

Mr. Kirchgraber: And we come back on the 28th?

The Court: That would be the 27th. I guess you better make it the 28th.

Mr. Isseks: The 27th is on a Monday. The 28th is on a Tuesday. 10 o'clock?

The Court: Yes. In the meantime—I have not examined your brief much because I have been waiting to get these cases that you discussed in your brief, the Harvester case——.

Mr. Isseks: Your Honor, that is in the new briefs that we are going to file today.

The Court: I mean the one you filed before.

Mr. McKay: Those have not been cited before, but this brief discusses each town very carefully. Would your Honor want some extra copies?

[fol. 5359] Mr. Kirchgraber: Have copies of that been served?

Mr. McKay: Yes, you have those. I will leave one extra and send a couple more up.

The Court: That is already filed here?

Mr. McKay: Yes.

Mr. Isseks: This is the reply brief that discusses all the cases.

Mr. Kirchgraber: Mr. Wright has a copy?

Mr. Isseks: No.

Mr. Kirchgraber: Then would you give me two, please?

Mr. Isseks: We will get their brief on the 20th, and we will be here on the 28th with as much as we can possibly work out on our plan, and we will try to meet the objections your Honor has raised today.

The Court: I think you ought to go into as much detail as you can, unless you have it sufficiently clear.

Mr. McKay: I don't think it is.

Mr. Isseks: No, it is not. We will have something for your Honor.

The Court: Are they still operating under this consent decree, I mean, the arbitration provisions?

Mr. McKay: The arbitration provisions of the decree, the last I saw, were extended for six months.

The Court: To what date?

Mr. McKay: I think it runs until about November.

[fol. 5360] The Court: This year?

Mr. McKay: Yes, and the defendants were willing to continue that provision indefinitely. In the appendix to that brief I have included a report from the arbitration association. That shows how it has worked. Mr. Wright before the Three-Judge court took a slightly different position. He now says there should not be any clearance at all.

The Court: That is what he stated in here. You said here (reading from papers), and then you go on and say here referring back to what Mr. Hayes says, "The plaintiff may now argue, reversing the position previously taken by it with respect to clearance, as indicated by the quotation from Mr. Hayes at page 11 supra, that clearance per se is illegal."

Mr. McKay: He supported the arbitration provision, but in the answer to an inquiry from Judge Hand on the argument before the Three-Judge Court, Mr. Wright said that clearance should be abolished entirely. That was last January.

The Court: He said "In that connection it has long been felt both by exhibitors and by distributors that there is no fairer way to handle and dispose of complaints concerning clearance than to have the clearance fixed by some impartial arbitrator."

[fol. 5361] Mr. McKay: That is what Hayes says.

The Court: "Those of us who have worked on this decree after reviewing, as I said at the very beginning, the numerous industry problems in all their ramifications with the Government representatives keeping constantly before their eyes, as was their duty, the complaints of exhibitors and the complaints of public groups are of the opinion that the decree is a desirable forward step." Where do you say Mr. Wright has taken the position now that he is in favor of abolition?

Mr. McKay: That is exactly what he did in arguing to Judge Hand. That is the statement of Mr. Wright.

The Court: That he had not thought that there should not be any clearances, but now so thinks.

Mr. McKay: He now thinks that there should not be any clearances. One time he had not thought that there should not be any clearances. Now he does think that there should not be. That is what he told Judge Hand. I don't know whether he will take that position here or not, but he did, in answer to a specific inquiry from Judge Hand, state that there should not be any more clearance.

The Court: I don't know whether he was correctly understood in that statement or not.

[fol. 5362] Mr. McKay: It was regarded so significant that it was published in headlines by all the trade papers.

The Court: It was?

Mr. McKay: Yes, I will be glad to send you a copy. It was considered in the industry as a very significant statement.

The Court: Your situation is that you don't need anything of that kind.

Mr. McKay: My suggestion is, even though we were not bound by the Southern District decree, we have submitted every case that came up, and we are willing to continue it. Back in the N. R. A. we had arbitration about clearances, and we submitted every dispute that there was then. We have never refused to arbitrate a clearance dispute with anybody, and we think that is probably a cheap, inexpensive and quick way of getting a determination of what is a fair clearance.

The Court: When was the Paramount case finally submitted?

Mr. McKay: The briefs were submitted around the first of January. It was argued for about four days. I think it ended January 16th or 17th.

The Court: There ought to be an opinion pretty soon.

Mr. McKay: I understand none of the judges,—Judge Goddard, Judge Bright and Judge Hand—none of them [fol. 5363] have taken any assignments, so they must be working on their opinion.

The Court: Judge Hand has taken assignments.

Mr. McKay: Not within the last month. That is Augustus Hand.

The Court: That might be so.

Mr. Isseks: It is pretty clear neither Judge Goddard nor Judge Bright have sat since then in a district, and it apparently clear Judge Augustus Hand has not sat since then.

The Court: We will leave the matter. Is there anything else you want to discuss today?

Mr. McKay: I wanted to ask your Honor a couple of questions about the record. I spoke to Mr. Wright last night. We filed a precipe and Mr. Wright has filed a counter precipe, and Miss Sickmon is concerned about the amount of work involved in preparing this record to be sent to the Clerk of the Supreme Court. You know that the record is actually printed by the Clerk of the Supreme Court. What the clerk here does is certify the record and send it down and then he takes charge of the printing. We have supplied copies of practically everything that we had designated in our precipe and we will supply the rest.

[fol. 5364] The Court: What is his proposal? Don't you agree on that?

Mr. McKay: Mr. Wright has designated a lot of papers in addition to the ones we have designated. It seems to me some of them are unnecessary, but I will try to work that out with Mr. Wright, and I don't know what the forum is in which it can be determined. I suppose if either side were to contend a certain paper should be printed, he would be entitled to have it printed. How could you know you had a fair record before the Supreme Court unless it was printed? There is a penalty for unnecessary papers that are printed. The offending party has to pay the cost. That is all the penalty there is.

The Court: I don't know why there should be any confusion about it. It seems to me your stenographic record and papers would show.

Mr. McKay: We designated the entire stenographic record and asked to have all the exhibits sent to Washington without copying, because we have got to arrive at some method to handle those exhibits. There are three thousand exhibits, most of them printed contracts. Your Honor can see that it would be impossible to hand up a record with every one of those contracts printed, but in Mr. Wright's counter precipe he has designated what I would consider [fol. 5365] collateral and interlocutory matters not a part of the actual trial or the controlling decision.

The Court: Motions you mean?

Mr. McKay: Interim reports that were filed with regard to the consent order. We designated the consent order, but he designated interim reports.

The Court: It would not make any difference to you if it were put in.

Mr. McKay: Except I think the printer in Washington is pretty expensive. I tried to give the job to the man up here, but I found I could not. I do understand, however, if there is any real dispute, your Honor, this Court is the forum to which we should bring it. If I cannot agree with Mr. Wright, I have no reason to think that I cannot agree, I will submit what I think should be eliminated.

The Court: There should not be any trouble about it. The only question is whether they are material.

Mr. McKay: That is the whole thing. I think some of these things have no bearing on the ultimate result, and I think it would be advisable to leave them out of the record.

[fols. 5366-5368] IN UNITED STATES DISTRICT COURT

[Title omitted]

DEFENDANTS' MOTION FOR ORDER TO TAKE FURTHER TESTIMONY

The defendants move the Court for an order decreeing that prior to the approval or adoption by the Court of any method of compliance with Paragraph III of the amended judgment, hearings be held at which testimony may be taken relevant, pertinent and necessary to the consideration of the method of compliance with Paragraph III of the said judgment and of plans submitted by the respective parties or any amendments or modifications thereof, and in the Court's discretion that a Master be appointed for the purpose of such hearings.

In making this motion the defendants do not waive their right to claim that any further order of this Court with respect to the performance of paragraph III of the amended judgment herein prior to the determination of the appeal herein by the Supreme Court of the United States is premature, which claim has been heretofore made and is now specifically reserved.

Respectfully submitted, Willard S. McKay, Attorney for the Defendants.

Arthur Garfield Hays, of Counsel.

Dated: New York, New York, May 22, 1946.

[fol. 5369] IN UNITED STATES DISTRICT COURT

[Title omitted]

SUPPLEMENTAL AFFIDAVIT OF ARTHUR GARFIELD HAYS

ARTHUR GARFIELD HAYS, being duly sworn, says:

This affidavit is submitted to supplement the motion papers previously served and filed herein.

Under the amended judgment of March 29, 1946, no provision was made for the submission of plans by either party. The plan of the plaintiff was filed pursuant to the provisions of the original judgment. That has been superseded by the amended judgment, which makes no provision for the submission or consideration of any plan whatever.

In view of the fact that an appeal to the Supreme Court has been taken and allowed, which defendants are prosecuting with all reasonable speed, no procedure looking towards the adoption and enforcement of a plan of any kind should be taken until after that appeal has been determined.

However, defendants, without prejudice to their contentions as aforesaid, and without prejudice to their contention that they have not violated the law, are willing to cooperate in an endeavor to explore the possibilities of a plan of realignment even while the appeal is pending. They be- [fol. 5370] lieve, however that a consideration of any such plan is not proper on the basis of the facts now before the Court, and that it is essential to take testimony in order to determine what plan would properly conform with the terms of this Court's judgment (if it should, contrary to defendants' contention, be sustained by the Supreme Court) and at the same time protect the legitimate interests of the defendants. The reasons why defendants ask for this hearing of testimony as to the facts are in short as follows:

At the trial, the testimony was confined to the plaintiff's endeavor to show that there had been a violation of law in the past, to wit: during the period preceding May 19, 1942. That testimony, as the Government readily admits, did not attempt to cover all of the localities or all of the theatres involved. The findings and opinion deal with only a limited number. Any plan must concern itself with the specific conditions affecting each of the theatres and each of the localities which would be affected by the plan.

As appears from the opinion of the Court, the case of the Government rested on these main considerations: circuit buying power, clearance, franchises, and the manner in which the various theatres had been acquired and operated. Particularly with reference to clearance and franchises, the testimony taken at the trial in no way reflects the present existing situation. Moreover, in order to understand the effect of circuit buying presently it is necessary to understand the relationship of defendants' theatres to the industry as a whole, as of the present time.

As stated, the plan proposed by the Government deals [fol. 5371] with circumstances in about 70 different localities. It is obvious that more than half of these were not discussed in detail at the trial at all. The Court, therefore, is wholly without information concerning the present day situation in these localities. As an illustration—the plaintiff's plan proposes that in order to carry out the purposes of the judgment that Theatre A in Town B should be sold. It is the only theatre in the town, or in the near vicinity. There never was competition there and there is no competition today. Why did the Government choose this particular theatre? What are the facts? None appear in the record. No plan of realignment or reorganization can be intelligently arrived at except after factual presentation relating to such plan and its effects upon competition. The testimony at the trial was in no way directed to this end.

Actually, the formulation of a plan should first be preceded by an examination into the facts upon which any conformity with the Court's judgment rests. It is easy just to submit a plan. The plaintiff's plan proposes the selling off of theatres arbitrarily. This, the Court has already characterized as a harsh remedy which should be avoided. It would work a hardship on the defendants without accomplishing any legitimate purpose intended by the judgment—in letter or in spirit.

Defendants are not seeking to retry the case. They realize that their remedy on this score is in the Supreme Court. But the generality of the testimony which was adduced at the trial in an attempt to show that there had been illegal restraints can in no wise now be adopted and enlarged upon to show that such restraints will continue unless the [fol. 5372] drastic alleged remedy proposed by the plaintiff in this plan be adopted. Plaintiff is acting like a witch doctor who is trying to exercise the devil by killing the patient.

In amplification of the foregoing, defendants refer particularly to the discussion of the individual situations contained in the objections to plaintiff's plan previously filed by defendants on April 1, 1946. The facts stated in those objections are hereby incorporated into and made a part of this application. Commencing on page 17 and continuing through page 104, there is a brief discussion of each of the localities in which defendants are operating a theatre or theatres, approximately 70 localities in all. The facts set forth indicate the nature of the evidence which should be produced at hearings and which is appropriate for the Court's consideration of any proposed plan. We submit that either the Government admit the facts therein stated and others that defendants wish to show, or preferably that defendants have an opportunity to prove them and make them a part of the record. The mere statement of the Government that these facts do not throw light upon the plan should not prevent the defendants from making them a part of the record.

It is obvions, as the Government itself admits in the appendix to the Reply to Defendants' Objections, that the only evidence produced at the trial concerned facts tending to establish a violation and to "point the way" to the remedies required to correct them. Therefore, since the evidence at the trial merely pointed the way, it is obvious that the proper remedy cannot be determined until that evidence can [fol. 5373] be brought up to date and supplemented. No better example can be given of this than the position taken by the Government in its Reply to Defendants' Objections which states in the appendix:

> "The plaintiff's Proof in this, as in any antitrust case, was *confined to that thought sufficient to establish the violations charged* and point the way to the remedy required to terminate them. Likewise, the Court's opinion and findings were even more selective in embracing only what was necessary to support the judgment. Thus, the defendants' general assumption that any facts not explored by the proof or the Court's opinion were favorable to them is untenable on its face. Their further effort to *supply facts* which they regard

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> as favorable to them in situations *where the record is silent* by mere assertion of counsel, also requires no reply."

We are not attempting to quibble over what facts were or were not in the record at the trial. The approach to the problem is entirely different now because *the problem is different:* There, the Court and the parties were concerned, as the Government readily admits, with facts tending to show violations of law. Here, we are concerned with not merely "pointing the way" to a remedy but with laying down the facts upon which conformity with the amended judgment must soundly rest. The ready analogy which comes to mind is that of a criminal prosecution. The prosecutor establishes a record to show violations of the law; after conviction it is the duty of the Court to pass sentence. The Court as a matter of practice never refuses to hear all of the facts bearing on the question of sentence. This is not obviated merely because a record has been established as to the violation of the law itself.

It is submitted that the defendants should not be deprived of the opportunity of supporting any plan proposed by them with testimony directed to the relevant, pertinent [fols. 5374-5375] and necessary facts. In like regard, a factual basis should be afforded for the consideration, if any, of the plaintiff's plan. For example, under the plaintiff's plan, an effort is sought to compel defendants to get out of certain towns entirely. But opportunity should be afforded to establish the facts with regard to the present conditions existing in those towns or to the competitive situation in and concerning these localities.

In conclusion, therefore, the defendants contend that without the taking of further testimony it will be impossible to make a direction to carry out the terms of the Court's judgment which would be related to the actual facts and protect the public and defendants alike. Defendants suggest that, as has been done in similar cases, the Court consider the advisability of appointing a Master to take this testimony and to render his report thereon.

On the foregoing considerations, we submit that the defendants' motion should be granted.

Arthur Garfield Hays.

Sworn to before me this 27th day of May, 1946.
Frederick Griffin, Notary Public, New York County.
Comm. expires 3/30/48.

[fol. 5376] IN UNITED STATES DISTRICT COURT

[Title Omitted]

Transcript of hearing.

Proceedings before Honorable John Knight, United States District Judge for the Western District of New York, at the U. S. Court House, Buffalo, New York, Tuesday, May 28, 1946, at 10 o'clock.

Appearances: Honorable George L. Grobe, United States Attorney for the Western District of New York, and James R. Privitera, Esq., Assistant U. S. Attorney, of counsel, for the United States of America.

Willard S. McKay, Esq., and Hays, St. John, Abramson & Schulman, by Arthur Garfield Hays, Esq., and Seymour M. Heilbron, Esq., and Howard M. Antevil, Esq., of counsel, for the Defendants.

[fol. 5377] PROCEEDINGS

The Court: There seems to be no appearance on the part of the Government. What is the status of the matter?

Mr. McKay: I was in Washington yesterday, your Honor, and I phoned Mr. Wright's office, I tried to reach Mr. Wright, he was in the building, but not in his office, and I told his secretary that I wanted to be sure that Mr. Wright understood that Mr. Hays and I would be present this morning pursuant to the hearing that had been previously set and to the notice of motion which was served last week, and the secretary said that Mr. Wright so understood. I didn't speak to Mr. Wright personally. He wasn't in his office at the time I called.

Also Mr. Hays yesterday sent a telegram to Mr. Wright——

The Court: There is no change in the date, then?

Mr. McKay: No change in the date, no, sir.

The telegram reads, "Re U. S. vs. Schine Judge Knight will hear argument at hearing tomorrow, May 28th at 10 a.m., Buffalo, as heretofore noted. Arthur Garfield Hays."

The Court: Well, a little while ago I called up Mr. Kirchgraber, who had some contact heretofore with the matter. [fol. 5378] He is the first Assistant District Attorney. I don't know whether he wants to appear or not. He had not had any advice to appear.

Mr. McKay: ~~Of course~~, our information was that Mr. Wright had previously said he would leave the matter to Mr. Kirchgraber. And Mr. Penney, who was in communication with your Honor yesterday, informs me that on talking to Mr. Kirchgraber, Mr. Kirchgraber simply said that he would rely on my having notified Mr. Wright, which I had promised to do, and which I did.

The Court: I called him. He said he was tied up with some people there. I don't know whether he is coming up or not.

(Subsequently Mr. George L. Grobe and Mr. James R. Privitera appeared in person in the court-room).

The Court: Your discussion today is to be directed to some specification of the plans in the outline heretofore laid down or submitted by you?

Mr. McKay: We have two matters to take up with your Honor today. The first is that we have here in final form our proposals regarding re-organization, re-alignment, [fol. 5379] which was submitted previously only tentatively. We are now making a formal submission, subject, of course, to the reservations which we have stated regarding the jurisdiction.

The Court: Yes.

Mr. McKay: And I will hand a copy to your Honor and a copy to the Clerk. (Presenting copies to the Court and to the Clerk). I have here a copy for the other side, and I will see that it is delivered to Mr. Kirchgraber.

In this plan we have not withdrawn either of the two plans previously submitted, but we have added a third alternative in which we have split up not only the control and management of the separate corporations, but the beneficial ownership, so that under Plan 3, which appears on Chart 4, at Page 9, of the proposal, the separate corporations would be separately owned—not only separately controlled, but separately owned—one by J. Meyer Schine, one by Louis Schine, one by the two wives.

Now, this plan 3, in our opinion, falls squarely within the re-alignment which was approved by the Supreme Court in the Crescent case. In that case the ownership of the circuit [fol. 5380] was split up into circuits, one of which was owned by Tony Sudekum, the founder of the circuit, another by Kermit Stengel, his son-in-law, another by Mrs. Sudekum, and another by a man by the name of Rosenbaum, who had formerly been a partner of Mrs. Sudekum, and I think that, as far as the physical setup of this circuit permits, we have met the Crescent decision, and we have gone beyond the Crescent decision, because in our proposals with respect to arbitration of clearances, we have taken care of what seemed to us to be one of the most troublesome questions before your Honor on the trial of this case. We have proposed that we will come in under the arbitral system now in operation under the Paramount decree, and thereby afford any exhibitor who feels he has a grievance with respect to clearance enjoyed by us a speedy and inexpensive forum for fixing what is fair clearance.

The Court: Well, assuming the effect of the Paramount decree were taken away in some way, supposing that decree were vacated, or you might say died, or went out of existence, what would you provide in that event?

Mr. McKay: Well, we have suggested in this proposal, your Honor, that with respect to cases not falling under the [fol. 5381] Paramount decree we are willing to abide by arbitration under the rules of the American Arbitration Association, which we think to be the fairest forum that exists, aside from the forum set up under the Paramount decree for the determination of such disputes.

Obviously we, as a small circuit, are not in a position by ourselves to establish and maintain the machinery that has been established and maintained under the Paramount decree.

The Court: Of course, that wouldn't be necessary as long as that decree continues, probably.

Mr. McKay: No. But we are hopeful that system will continue. Your Honor will have noted in the discussion contained in the arguments before the three-judge court that it was continued subject to the further order of the Court.

The Court: It probably will continue in that or some other form.

Mr. McKay: Yes. Now, your Honor, you have also before you at this time a motion made last week about the possibility of taking extra testimony, and if I may, I would like to defer further consideration of this present submission until you have heard Mr. Hays on his motion.

[fol. 5382] The Court: All right.

Mr. Hays: If your Honor please, this is a motion to have testimony taken either by your Honor or by a Special

Master, of evidence which we deem to be necessary in connection with the approval of any plan.

I have been in this case, your Honor, only about ten days, but I have read most of the material that has been supplied to the Court recently, and the first matter that confused me was how any Court could make any decree on facts that were proven as to the situation as it existed in 1942, whereas the decree must be, in fact, of today and have to do with the future.

The Government proposes a plan by which Schine is to be divested—they use the euphonious word "divestiture", but actually it seems to me more like a confiscation—to be divested by about 70 per cent of its circuit. I don't see any provision in the opinion or the judgment by which such action is to be justified, but anyway, if there is to be a restoring to competition, it seems to me that we ought to have some facts upon which to base it.

Even a Government official, clothed with the power and [fol. 5383] authority of the Government, can't say, for instance, "Here, you do this to restore competition", and competition will be restored.

In various towns Schine has one theatre, and the Government blithely says "Our purposes will be carried out if you sell that one theatre." Where this prophecy comes from, I don't know, that if Schine sells the one theatre in a town in which there is only one theatre that competition will be restored.

The Court: Well, it isn't solely a question of restoration of competition. The question is, perhaps, a question of punishment. The Court has found a violation of the Anti-Trust Law. Assuming that the evidence pertaining to a single theatre town, the theatre owned by Schine, disclosed that as a result of their conspiracy or their actions somebody has been wiped out of existence, it wouldn't simply be a question of competition; it would be a question of penalizing the defendant under those particular circumstances because of his acts.

Mr. Hays: Your Honor, I would have more patience with the Government's plan if they had said "Wherever you have destroyed the competition we want you to sell the theatre and restore competition." If the Government had [fol. 5384] limited their plan to those towns where the evidence shows that we have destroyed competition——

The Court: Well, there are those towns, of course, concerning which the evidence was not concerned, that is very true.

Mr. Hays: Yes. And the Government in its plan proposes to sell theatres in various towns to which the evidence didn't refer at all.

The Court: That is very true.

Mr. Hays: I think the evidence referred to some 32 towns at the most, and the Government has proposed that we sell theatres in a number of towns where there is only one theatre in the town and concerning which no evidence has been taken. Besides, it seems to me, your Honor, the cases do not support the theory that the decree should be based on the ground of penalty, and I don't think the Government makes the argument they should be sold as a penalty. I think their claim is that it is remedial and their argument is that they should be sold to restore competition.

The Court: Well, of course, I am speaking of those single theatre towns in which the evidence showed competition had been eliminated by the acts of the defendant. It could be [fol. 5385] restored there. I am not saying anything now about those towns concerning which no evidence had been given.

Mr. Hays: Well, that would apply only to a small number of theatres. But, as I say, even there they don't base the plan on that theory. They simply make the statement that where there is one theatre in a town, that theatre must be sold, and I don't know what their theory is.

The Court: Well, they don't do it in all the single theatre towns?

Mr. Hays: Not all, but practically all. They leave us only about 30 per cent of the theatres we had before. If Schine sells the only theatre in a town where the population couldn't support more than one theatre, how would that have any effect in restoring competition? You may have a town where there is one theatre owned by Schine, and within another town a short distance away there may be other theatres in competition with him. How will the sale of that theatre by Schine restore competition?

For instance, in the section where I live, your Honor, in New Rochelle, there is one theatre. In Mt. Vernon there are perhaps two. Those cities are about five miles apart. [fol. 5386] In between are Pelham and Larchmont, each with one theatre. Certainly, no restoration of competition would be effected by the sale of the one theatre in New Rochelle, if New Rochelle has never supported more than one theatre.

In this motion all I am asking your Honor to do is before you approve a plan to have some testimony taken not only as to whether the plan in general is sound, but specifically whether it is feasible in the light of conditions existing at present.

For instance, the Government has suggested another category of towns where there are two or more theatres owned by Schine. No evidence has been taken to prove whether the other theatres in those towns are competitive with the two theatres he owns. A good example is in Eastern Maryland, where you have the negro problem. One theatre may be for white, one may be for negroes. Those theatres are not in competition. Where do we have a record of such facts on which we could argue on appeal that the plan is unsound? There is no record.

The Court: The point is, haven't we gone all over this on the trial, the very question you raise? It is true, if you [fol. 5387] had two theatres, one for colored, one for white, they wouldn't be in competition. But that would apply in the South only; it wouldn't apply here. Weren't those things all brought out on the trial of the case itself? We went over this question of competition, the factors involved, clearances, and so forth.

Mr. Hays: Oh, I don't want to raise that again. My point is that you can't arbitrarily say that because there are three theatres in a town that those theatres necessarily would be competitive, and, therefore, Schine should be compelled to sell one of them; that it takes evidence before you can come to that conclusion. My point all the way through is that you have a very different problem in connection with the decree than you have in connection with the trial of the case itself.

The Court: Well, that might be so. You bring up a broad question, whether the Court has power to just separate these theatres in any way it wants to without any proof regarding the question of competition, location, and things like that. And you bring up the point, in the single theatre towns where there is no evidence of any competition and where there is nothing in the record bearing on the question of [fol. 5388] the necessity of eliminating those towns from the circuit, whether that should be done without taking evidence. I look at it broadly. But if you have a situation in a town of say three theatres owned by Schine, and the proposal by the Government is that Schine be left one and sell the others, and we have the evidence in the case—I am assuming we have; I am not speaking of those cases where we haven't the evidence—we have evidence showing the conditions in that town, you wouldn't want to take evidence on that situation, would you?

Mr. Hays: No, I shouldn't in such cases, except where we have conditions in 1946, which are different than they were in 1942.

The Court: Well, that is another question.

Mr. Hays: But my point is that unless you have the facts, it is impossible to tell whether or not we have a fair plan.

May I read this statement by the Government? It makes my argument very clear. In speaking of the case, the plaintiff said, "The plaintiff's proof in this, as in any anti-trust case, was confined to that thought sufficient to establish the violations charged and point the way to the remedy re- [fol. 5389] quired to terminate them. Likewise, the Court's opinion and findings were even more selective in embracing only what was necessary to support the judgment. Thus, the defendants' general assumption that any facts not explored by the plaintiff or the Court's opinion were favorable to them, is untenable on its face. Their further effort to supply facts which they regard as favorable to them in situations where the record is silent, by mere assertion of counsel also required no reply."

Well, the Government is right in that where we in our brief state that things are so, you merely have the assertion of counsel. How are we going to establish the fact to prove that the Government's plan is unfair and confiscatory and not, as they claim, that it is the object to restore and maintain competition? We can't do it unless we have a basis of fact. And, if we go up on appeal, not only from the judgment but also from the approval of a plan, what facts have we in the record to show whether or not the plan worked out is an equitable one? What we want to do is to prove those facts.

In your Honor's opinion you refer, for instance, to the [fol. 5390] situation of clearances having been changed. Well, we want to show and prove how the situation has been changed. I think I have made a note here of your Honor's statement about that in the opinion. Your Honor said, "The violations herein are alleged to have occurred prior to the date of the Consent Decree. There is now no method by which either party can compel arbitration. The action taken in the adoption of the Consent Decree and the present availability of arbitration by agreement, however, do have a bearing on the extent of the judgment or decree to be made herein."

Now, there is nothing in the record showing what the present arbitration situation is, or what has happened in that respect, and that is one of the features on which your Honor laid a great deal of stress. There is no evidence in the record, for instance, as to the franchise situation today. I understand there are no franchises any more. There is no evidence in the record of many of the evils you referred to. There is no record, largely because of the action of the Government against the big companies.

The Court: Assume we have found these violations and [fol. 5391] practices have ceased since the trial commenced. That wouldn't lessen the liability of the defendant?

Mr. Hays: If it is a matter of penalty, no.

The Court: Well, I know, but there is a charge of violation of the Sherman Act. Of course, the mere observance of the Sherman Act after the event wouldn't excuse what went on before, would it?

Mr. Hays: Well, your Honor, if the Government had said that in those towns where the Court found unfair competition something has to be done, I could understand the basis for that. But the Government in its plan proposes nothing of the kind, and that is what troubles me, because if they did, then we would know on what the Government based its desire that certain theatres be sold. Now we don't know at all.

The Court: Of course, there might be some force in that argument.

Mr. Hays: May I refer your Honor to Hartford-Empire Co. vs. United States, 323 U. S. 386, where Mr. Justice Roberts said, "We may not impose penalties in the guise of preventing future violations."

And in the Aluminum Company case Judge Learned Hand said, "Dissolution is not a penalty but a remedy; if the in- [fol. 5392] dustry will not need it for its protection, it will be a disservice to break up an aggregation which has for so long demonstrated its efficiency."

I have thought throughout these cases that there was no question of penalty here; that the question was one of remedy: How one would do away with competition which violates the law or how one would create a setup which restored competition. So I never thought of the plan as a penalty. But if the Government had said "We want certain theatres sold because you gained those theatres by illegal means", it wouldn't be in accordance with these cases, and I might protest against it, but at any rate I would know what the basis was on which the Government wanted the theatres sold. As it is, I don't know.

For instance, after they get through divesting us the Government still feels we have too many theatres left, so they have under "F" a plan by which if there are theatres within 25 miles of each other that are owned by Schine they must be sold. There may be dozens of towns in between and dozens of theatres in those towns. Conditions may indicate that the[illegible]s a great deal of competition and that that com- [fol. 5393] petition should stand. But the Government attorneys blithely say, "We want those theatres sold because we don't like the situation." They give us no reason for it, nor do they give facts.

What has always troubled me, your Honor, is that we lawyers are inclined to be reasonable men, but as soon as any of us get into Government employ we acquire an aura of authority and power and think our prophecies are sacrosanct. Who are these men who so blithely would take away property which had been built up over a period of thirty years without even giving a reason and apparently, as they oppose this motion, say, "We don't want you to put the facts in evidence?" How is it that men suddenly become omniscient and infallible when they come into Government employ? When the authority is stripped of them they are just lawyers. How can they say, "We don't want evidence"?

I notice up there (indicating) this sign which says "Justice". I have been in this case ten days, and I am so fed up with hearing in reply to every suggestion I make, "You are trying to delay this case. Delay! Delay! Delay!"

Well, I know that totalitarian methods don't delay, but [fol. 5394] they rarely work out justice. Democratic methods do.

I am saying right now to your Honor that if there is evidence taken in this case it won't be for the purpose of delay. There won't be any time taken that I don't think is necessary for the protection of my client. After all, that sign should read "Justice", not "Speed".

What are we asking for here? We are asking that evidence be presented before your Honor signs a decree that a great many theatres should be sold whether that sale accomplishes a purpose or not—theatres picked out at random because the Government says, "You should lose just so and so many. You shouldn't own more than 30 per cent of what you now have."

And what do we come down to? Today conditions are very different than they were in the thirties, when business was bad. In the thirties you had a buyer's market, where there was an oversupply of product and the buyer could dictate terms and take advantage of his competitors. Today you have not only a seller's market, where the terms are dictated by the sellers, but you have a situation in this [fol. 5395] business where the big companies are wary of government attack. They don't show favoritism. There isn't any danger of the situations and abuses as they existed before returning under these conditions.

There is no evidence on any of these points because when the Government tried this case they just pointed the way to the fact that we have violated the Sherman Anti-Trust Law. And yet they go far beyond the facts to penalize us, even though the Courts say that the purpose of the law is not one of penalty, but the purpose is one to restore competition. As a matter of fact, if it were a question of penalty, you could fix a fine. You might fix a fine of a hundred dollars, a thousand dollars, or a hundred thousand dollars. The property involved may be worth millions of dollars. Is there any basis of fact in the record for that? Does it depend on past violations? Not at all. "We think you should be just as big and no bigger."

Now, the other violations that existed before 1942, because of the change in the industry, most of them have been done away with. The only one that can't be met is possibly buy- [fol. 5396] ing power. I submit the only plan to correct that situation is the one that we have submitted, and that is to divide up this corporation into three corporations, which we have proposed to do, and manage those three corporations separately.

The Government says, "Nonsense. It is merely a sham. These people still own their property.". But the Government fails to realize that competition comes about through management, not through stock ownership. When the big corporations were divided up in the past, time and again the new corporations were set up through the same stockholders, and it was found that by separate management, by the zeal of one management to show its superior ability over the others, was competition brought about—not in one week, not in two weeks, but over the course of years.

A few years ago I was in Russia, your Honor, where at the beginning everybody said lawyers won't be needed in twenty years; ownership is all in the Government; competition will be eliminated. Yet I found industry A competing with industry B. They were all fighting among themselves. Everybody had the zeal to show the unique ability of his management over the others.

[fol. 5397] In this plan we have created the situation where we have divided up our buying power. And, after all, that is some sacrifice to us. But it will do a great deal to restore competition. It isn't necessary to take away from us and compel us to sell a great deal of our property. But whatever the final outcome is, even assume our plan is approved, it will require evidence to support it—not a mere statement of what we intend to do, but evidence upon which to base it in fact.

All I am asking for in this motion is a thing which I should think would be granted without very much consideration, and the Government's absence here today leads me to believe that they don't feel very seriously opposed to it. All this motion amounts to is a request that testimony be taken from which your Honor can determine should a theatre here be sold and should a theatre there be sold.

I would suggest that your Honor personally take the testimony, except that it might be advisable to have a Master who can go to one town or another and thereby make it possible to explain the situation and make it more clear to [fol. 5398] the Court.

We are ready to take this testimony at any time, and I hope that after almost a lifetime at the Bar I have at least established a good enough reputation so that the Court will realize my sincerity when I say that neither this nor any other motion we make will have in it any purpose of delay. But I don't see how we can present this situation or how the

Court can consider a plan, how we can have an appeal, unless the Court will consider the evidence, and that is what I ask the opportunity to do.

The Court: Of course, so far as many of these situations are concerned, evidence has been taken to show conditions there. There are, as you have pointed out before, certain smaller towns where there are single theatres and concerning which there is no proof. I remember the first town listed, I think, in the Government's proposed re-organization plan. That starts out with Bath. Was there any evidence whatsoever concerning that town, Mr. McKay, to show how the theatre there was controlled?

Mr. McKay: The evidence was such, apparently, as to not warrant any mention in either the opinion or the findings.

[fol. 5399] The Court: I know, but I am going back of that. Is there any evidence in the record?

Mr. McKay: There was apparently no evidence, except such as was furnished by answers to the interrogatories, which simply stated that we bought the theatre, The Babcock Theatre, in 1944.

The Court: It doesn't say how it was purchased, what the conditions were, or what else there is about it?

Mr. McKay: There was no evidence offered. This information is obtained from our answers to the interrogatories, and that is all the evidence in the case.

The Court: Well, I spoke of that only because it was named first there and because of its being included as a single theatre town, and I have noted what you have said in your brief. I didn't recall any testimony with reference to the conditions at Bath.

Mr. McKay: There was no testimony.

The Court: Supposing you were to have a reference to take proof on the conditions at Bath. What more would you know than you know now?

Mr. Hays: You would know the character of the community, you would know whether the community supported more than one theatre, you would have evidence concerning comparable towns to find out if they supported more than one theatre.

[fol. 5400] The Court: The question isn't whether the community can support more than one theatre, is it?

Mr. Hayes: No, except that the theory of the Government is that in single town theatres if the theatre is sold it would restore competition.

The Court: It occurs to me that in cases like that there would be no need for the taking of proof, because the inclusion of such towns must be based upon the whole record in the case. You may say that as a result of the finding of violation of the Act the sale in such towns is proposed as more of a re-organization or divestiture. But it doesn't look to me as though we are concerned in towns like that with the single factor of competition as a reason for the sale. I am not saying I am against the inclusion of such towns.

Mr. Hays: Let me read what the Government says, "The proposed sale of the theatres listed in Section I, in paragraph 'a' ", that is one-theatre towns, "divests the defendants of established monopolies in one-theatre closed towns by opening these towns to competition in the only sense possible."

In other words, the only basis they give for selling the theatres in 'a' is that if the defendant sells the theatres in [fol. 5401] the one-theatre towns, it will open competition. How?

The Court: They assume that if the defendant continues there he will drive others out. The Government assumes he will monopolize.

Mr. Hays: If Schine sells his theatre and somebody else comes in you will still have one theatre. How does his selling the theatre restore competition?

The Court: Leaving Schine in Bath today doesn't prevent some other theatre going in there.

Mr. Hays: It would prevent some one else from going in there?

The Court: No, it wouldn't.

Mr. Hays: No, it wouldn't. But suppose Bath is a community that would sustain only one theatre, and suppose you could show comparable towns of that kind in the vicinity that, with or without Schine, can't support more than one theatre?

The Court: Well, I mean you can presume that Bath is a town that supports one theatre.

Mr. Hays: And could support only one?

The Court: I say, assume that.

Mr. Hays: No. I want to prove the facts to show whether that is so or not, because certainly no competition is restored by Schine selling the one theatre unless he was [fol. 5402] preventing another theatre from setting up there.

The Court: Well, my feeling is that the Court would be justified in eliminating that town without such proof, irrespective of any other result of the judgment, because there is no proof now, standing alone, except the bald fact that here is a town of one theatre, and the population of the town is shown.

Mr. Hays: I don't think the Court should eliminate that theatre. I think the Government should put in its evidence supporting the rationality of its plan. I don't feel that we can take the chance that your Honor will eliminate a theatre in a town like that when there is no evidence. We want to put in the evidence to show this plan wouldn't work out.

The Court: My argument is along the line of your own, but the sense of it is that under the general provisions of the law and the findings of the Court, the Court would have the right, in order to re-align and re-organize the corporation, to do what you say it shouldn't do without taking any proof of the conditions there.

Mr. Hays: I don't see how the Court could do it. The Court has the power, but I don't see how the Court can take the responsibility without having before it the conclusions [fol. 5403] of fact. I feel the Court should of its own motion ask for evidence before it takes a position that might destroy the value of a great deal of property, because, mind you, under the Government's plan not only are we compelled to sell; we are compelled to sell under the most onerous conditions. We don't have a free market. The consideration will not be the price; it will be the effect on competition. Not only that, the sales must be speedy, and the Government suggests an agent should sell our property under conditions that are the most audacious I have ever seen. The whole thing seems to me outrageous and so contrary to all known theories of disposing of property, that we should have an agent to sell our property and his commission should depend upon his speed in disposing of our property. And why? "Because you didn't observe the Consent Order of 1942."

Now, I have read the briefs on that. There is a conflict of fact as to what happened. Mr. Schine's position is that he did observe that decree so far as it was possible for him to do so. When I go up on appeal the higher court may have one attitude or another toward whatever pressure [fol. 5404] was put on Schine to sell the theatres provided for in the decree. But a great deal will depend upon whether he observed the order of 1942 in good faith, and I have no evidence on which to argue that.

The Court: Didn't that decree include a stipulation that those theatres be sold, and wouldn't that have some bearing on the question?

Mr. Hays: Oh, yes. The whole thing, all the facts I would like to prove could be proved by stipulation.

The Court: I am speaking about a past stipulation. There was a stipulation made on which these 16 theatres were directed to be sold. That was done, I suppose?

Mr. Hays: Well, I suppose. They sold 12 or 13 of them. They had difficulty getting rid of the others.

Mr. McKay: 11 of them.

Mr. Hays: 11 of them, and it has been a matter of record here. But I don't know whether the record on appeal would show those facts if we wanted to present them to the higher court. I do know there is no record on any of the disputed facts that appear in the Government's brief and ours.

The Court: You would have the benefit of that on appeal. If it were necessary to have shown in this case the necessity of selling those five theatres you would have the benefit of [fol. 5405] it, if it were necessary to be shown, and it was not shown on the trial.

Mr. Hays: How would I have the benefit of it?

The Court: Because of the lack of proof.

Mr. Hays: But the Government claims that my client has been contumacious in not living up to an order. My client's claim is that he acted in good faith. There is no record on it one way or the other. Is the higher court going to assume that my client is lying or that the Government is wrong, when there is nothing in the record showing one way or the other?

The Court: Well, it wouldn't be perhaps strictly a question of being contumacious. The question in my mind is whether they, having stipulated to sell these theatres, it is not consistent with the status of the matter today that that stipulation should be carried out.

Mr. McKay: If I may interrupt for a moment on that point, your Honor. The Consent Order to which we stipulated required in effect that we use our best efforts to carry it out. At the time of the starting of the trial Mr. Wright conceded in open court that the order had been observed. The order was about to expire and your Honor extended [fol. 5406] the order for six months, during which time we got rid of four additional theatres, and your Honor provided at that time for a final report, and your Honor reserved to the plaintiff the right to renew its motion for a trustee if it appeared that we hadn't used our best efforts to get rid of these remaining theatres.

We filed our final report the day after this order expired, and nothing happened. The plaintiff did not make any attempt to renew its motion, and we were entitled to assume at that time that we had done everything that we were required to do under the order which expired and was of no further effect after November 15, 1944.

Fifteen months later the plaintiff comes along and is using the fact that there were remaining a few theatres that we weren't able to sell under the terms of the order, and doing everything possible to persuade your Honor to impose confiscatory terms on us, not only as to those theatres but as to every other theatre that we have.

His last paper filed in this case is based almost entirely on a wholly fallacious claim that we didn't observe or re- [fol. 5407] spect the terms of this order. And I want to say on that point, your Honor, that I stood here in open court when that order was presented to your Honor and stated that we were only entering into that order at that time not because of any wrongdoing, but because we felt, and the Government agreed with us, that after just having entered into the most serious war that we had ever become involved in, our time and the Government's time and the Court's time should not be taken up by this case.

That was the basis on which this order was entered, not because we admitted we were wrong in taking over those theatres. The plaintiff got the benefit of an injunction *pendente lite* to maintain the *status quo,* which it had previously tried to get from your Honor on a motion and which the Court had denied. And then he comes along, months later, and says that we are contumacious and have not observed the order.

Mr. Hays: You see, your Honor, my difficulty is that in reading these briefs I find these statements of fact concerning which there is no evidence in the record. All the evidence that was taken on the trial was not taken to point the way toward what should be done to curing a situation [fol. 5408] the Government alleged was illegal.

If your Honor will permit me just two further comments: At one time the Government apparently had the same theory as is in your Honor's mind today, that something should be done to compel the defendants to sell theatres in those specific instances where the defendants were found to have violated the Anti-Trust Act. I quote the Government's brief of November 26, 1944, "It may be necessary to order the sale of specific theatres in each town where the defendants were shown to have eliminated previously existing competition to the end that such competition may be restored."

Now, then, if they had made a plan on that, at any rate, I might be able to argue to the Court that the plan should not be based on that theory; that the purpose of the law is not one of imposing penalties. In any event, I would know that we have a pure question of law. But obviously the Government has gone much further, and has changed its mind, and is asking for a so-called divestiture in any number of towns concerning which there is nothing whatever in the record.

And then finally, in support of my argument, I should [fol. 5409] like to quote from a statement Mr. Wright made on April 16th. A question arose at that time as to whether an appeal could be taken from the judgment or whether the appeal should be taken from the judgment and decree fixing the plan, and your Honor asked Mr. Wright whether there were any cases where an appeal had been prosecuted prior to the adoption of a plan. Mr. Wright said, "I know of no case where there has been an appeal prosecuted prior to the adoption of a plan. In almost every case, the hearings on the plan occurred, and then a final judgment was entered embodying the final plan approved by the Court, and an appeal taken from the judgment as finally written with the plan set forth."

In other words, in almost every case the hearings on the plan occur before final judgment is entered. Now, the "hearings" must also involve the taking of facts if an attorney wants the Court to consider that in good faith. The facts taken on the trial show the situation as it existed up to 1942. The trial of the case was devoted to determining whether or not there was a violation of the Anti-Trust Law, and later your Honor is called upon to determine [fol. 5410] what should be done in the future. The facts of 1946 should be considered, particularly in an industry where practices have changed so much as they have in the movie industry. You must have evidenec to determine what should be done. That is the purpose of my motion.

The Court: It seems to me that in the instance of many towns and cities the facts were gone over and the situation in reference to the operation of the theatres, the other theatres in the towns, population, and all those things, were certainly thoroughly established. I am not speaking of the single-theatre towns now, and there are perhaps other situations that were not covered. But I can see where a reference as to certain of these towns would be a duplication, going over, of the same subject matter considered on the trial.

Of course, we have had the plans previously submitted by you and the plan being heard now. The hearing on those plans would be an observance of the declaration of Mr. Wright in reference to holding a hearing after the plan is submitted. The Government has submitted a plan here, the defendant has submitted objections to it in great detail, and the defendant has submitted a plan, and you [fol. 5411] are today submitting a modification, another plan. Now, I don't know whether it is contemplated that you should go over this same ground.

Mr. Hays: I don't want to do it, your Honor. We haven't any time to waste here. But where does the record show, your Honor, the changes that have taken place in the situation of clearances?

The Court: Well, assume that today clearance has been wiped out entirely. That doesn't make any difference.

Mr. Hays: Well, it would make a difference in the situation in these various towns. If all the abuses that were found in this record here were wiped out in 1946, then your remedy wouldn't be nearly as drastic as if they still existed.

The Court: No. But assuming the law has been violated, I don't see how the fact that the situation was changed today, or a little earlier, affects the right of the Court to order re-organization or some change.

Mr. Hays: Well, your Honor has already granted injunctions that protect the Government and protect the public.

The Court: That is very true, but that is an entirely different situation.

Mr. Hays: Let me put it this way: When you restore com- [fol. 5412] petition in towns A, B, C and D by compelling

Schine to sell his theatres there, and state what the facts in each of those towns are, I would say that is restoring competition and not penalty, if your Honor so stated. Then I would have a question of law that I could raise to a higher court, whether your judgment is correct or not. But the Government doesn't make any statement. They submit a plan not based on this law. They base it on the statement that 70 per cent of the theatres owned by Schine must be sold, even if in 90 per cent of the 70 per cent there was no violation of law found. They don't care. They say we may not operate in two or more towns within 25 miles of each other. We say "Why 25 miles? Why not ten miles? Why not thirty miles?"

The whole business is arbitrary, and before anything like that is done I say the Court must have facts, and, before I can argue that the plan is arbitrary and unfair, I must have facts to base my argument on.

For instance, today I don't know—and I don't know whether your Honor knows or not—I don't know how many of the towns where they would like us to sell theatres are [fol. 5413] towns where there were any practices that were alleged to have been illegal and in violation of the Sherman Anti-Trust Law. I don't know whether your Honor knows. I don't believe there was any evidence of that in the record here.

The Court: Well, you can go through the record and point it out. That is true, in certain of these towns there is no evidence concerning them at all. It simply brings up the question of whether the Court can find there were elements of monopoly in the one-theatre towns and that competition was suppressed as a basis for the judgment eliminating them, without having something in the record to show it.

Mr. Hays: Then your Honor knows there were many towns here where the Government proposes to sell our theatres where there was no evidence in the record?

The Court: That is true.

Mr. Hays: On what basis do they present such a novel proposition?

The Court: Well, the basis, as I construe it is on the large basis that the Court has authority to reorganize the whole setup of the corporation.

Mr. Hays: Well, your Honor, so far as the record shows, and so far as your knowledge goes, the 30 per cent of [fol. 5414] our circuit that they are leaving to us might be the 30 per cent of the theatres that are all losing money. In other words, you might be sending us to ruin, so far as you know. In other words, so far as you know, the Government may be saying "Well, all right. Sell all the good theatres; you keep the bad ones." Have we a right to show that to your Honor and prove that that might be the fact? And how about expert testimony? If the purpose here is to work out a plan to restore and maintain competition, certainly, these lawyers in Washington, new to the business, haven't as much knowledge to do it as men in the business.

They say blithely, "Sell this theatre. That will restore competition." Why? I don't know. There is no evidence in the record of what will restore competition. In other words, on this new problem that exists today, the evidence in the case is not at all conclusive. Not only that, but when I see the briefs on all sides, the briefs of the Government and the briefs of Mr. McKay and see that they are about split on questions of fact which are not questions of fact that were tried in the case, but are questions of fact upon the determination of which a proper plan has to be [fol. 5415] based, how is anybody going to argue before you as to whether these facts are right or wrong? As the Government says, they are assertions of counsel; as we say, they are assertions of Government counsel. Thank heavens, in this country we still stand on the same footing. But they are questions of fact. How are we going to resolve these issues, when every two briefs bearing on what happened since 1942 differ? How is your Honor going to determine who is right on these statements of fact? Or are you going to say, "I don't care. This is what he wants, so I am going to enter a decree without evidence?" How can you do it?

The Court: Statements of fact with reference to what particular things do you mean?

Mr. Hays: Clearances; franchises, the Consent Order of 1942.

The Court: Well, we did go over that before, that is, concerning those towns about which we have taken testimony. That is the point I make. If there is any merit to your motion, it seems to me it should be applicable only to those town concerning which there is no evidence. And that again brings up the question of whether the Court is justified in eliminating those towns where there is no evidence to show the conditions.

[fol. 5416] Mr. Hays: Now, your Honor, another thing I don't understand is that your opinion and judgment refer to re-organization or re-alignment or dissolution to restore competition. Well, isn't it necessary to have the facts to find out whether any judgment will restore competition?

The Court: Well, we must make our judgment on the evidence of the conditions in the certain localities. We must take each situation where we can say that restoration of competition can be got by the elimination of a single theatre in a large town based on all the facts. But I can't see what we gain by going back over that same ground again.

Mr. Hays: I don't, either, and I shouldn't take the time to do it if I felt the record contained the facts that I wanted.

The Court: Well, I had particular reference to many of these towns where you say you think facts should be shown and where sufficient evidence has already appeared as a basis for some plan or some arrangement whereby competition will be restored.

Mr. Hays: But the evidence, your Honor, taken in the record was not taken for that purpose, to throw light on what would restore competition, and the question today is what will restore competition.

[fol. 5417] The Court: In the Crescent case there was no such application made that I know of.

Mr. Hays: I am not sure. I think the judgment included the plan.

Mr. McKay: In the Crescent case, your Honor, the divestiture was embodied in the judgment. There was no need for further application of a plan, and it didn't require any further elucidation. If your Honor will bear with me, I think I have here what the judgment said in the Crescent case.

The Court: Well, I suppose the judgment in this case could have done the same thing. But, at least, I don't recall the defendants in that case requested the opportunity to take further proof.

Mr. Hays: Let me present this analogy to your Honor: Suppose a company files a petition under the Chandler Act, the old 77-B, and a re-organization is required.

The Court: Yes.

Mr. Hays: The fact is determined by the filing of the petition that they can't get along in business. But certainly the Courts hear evidence in connection with the formulation of a plan for re-organization. And what would you think about having thrust on you as a Judge the burden [fol. 5418] of reorganizing the company without hearing evidence as to the status of the company in the industry?

The Court: Well, you have begged the question there, as to the status in towns where evidence has been taken. We have taken evidence in many of these towns to show how competition has been eliminated, and in those particular towns I think the Court is in a position to say what change should be made in order to restore competition.

I am not going so far as to say that that applies to all the towns in this record, but I am speaking of the cases where there is evidence showing, as I pointed out before, the operations of the defendant. Assuming by his method he has forced two or three theatres out of business and in different ways has eliminated competition, in those cases where the evidence is all here, I can't see the sense of duplicating it.

Mr. Hays: Your Honor, where it is all here there is no sense, and I hope you realize that we, as lawyers, are observant of that. We are not trying to put in duplicate evidence. But in many cases that is not shown.

Let me say this: Suppose the company had sixty theatres, [fol. 5419] and then they acquired one more theatre, the sixty-first theatre, by forcing out a competitor, doing something illegal, and the Court found that they did. On what basis can the Government come in and say "We want you to sell 40 of your 60 theatres"?

The Court: Well, that is different. That is based on conspiracy.

Mr. Hays: I know, but you have a claim of conspiracy in the analogy I make. Is it possible to sell 40 theatres because a person is found wrong in the acquisition of one theatre?

The Court: Well, that wouldn't rise to the dignity of a conspiracy. This is a conspiracy between a group of corporations organized under a single head.

To go back to this town of Bath: There is nothing in the record shown about that, except that there is a theatre there, a single theatre owned by Schine. Supposing we opened up the testimony. What would you want to show about Bath? I take that town by illustration because that is the first one named.

Mr. Hays: Well, your Honor, my difficulty is I am not familiar with these specific theatres. I have been in this case such a short time.

[fol. 5420] The Court: Well, what is your general idea of what you want to show?

Mr. Hays: Well, my general idea is to show it is a town of 5,000 people.

The Court: Yes.

Mr. Hays: And before Schine came there there was one theatre; that Schine came there; that there is still one theatre.

The Court: That he bought that theatre out?

Mr. Hays: That he bought that theatre out and there is still one theatre; that surrounding towns of the same character and population, 5,000, don't support more than one theatre; that in the vicinity there are perhaps fifteen towns with one motion picture theatre. Then I would say how would it bring about the restoration of competition, that the Court desires, to make Schine sell that theatre.

The Court: Well, that, of course, is based on the theory that competition had been eliminated. But the point with me is—and I am arguing, perhaps, along the line of your arguments—there is nothing to show about that here now whether it is a one-theatre town or whether it could support more than one theatre, is there?

[fol. 5421] Mr. Hays: Not that I know of. I know of nothing in the record as to many of these towns. I don't know about this specific town.

The Court: Well, then, the question is whether the Court, by and large, in the absence of any testimony as to competition or anything else, has the right to include that town in the whole plan of reorganization.

Mr. Hays: But even in your opinion your Honor stated in one of the discussions that the remedy of dissolution is a harsh one and that if the restoration of proper conditions could be brought about otherwise you didn't intend to resort to that harsh remedy. And the opinion of Judge Hand said, too, that if it could be accomplished in some other way, it would be a disservice to break up an organization by dissolution. I think perhaps your Honor would like to hear evidence on that point, just what we propose to do.

The Court: Well, I have pointed out here, perhaps as in the Crescent case where they re-organized different groups under the same corporations, you might say, separated, that on the face of it the question might arise whether you accomplish much by simply transferring the ownership from a [fol. 5422] father to a son, or a husband to his wife.

Mr. Hays: You wouldn't accomplish anything, your Honor, if it were not done in good faith and if it was a sham. I was a little prejudiced against it myself from the beginning, and then I thought it through, and I realized that competition comes through management and not through stock ownership, and then I realized also that a great many of our big corporations in preceding anti-trust cases have been divorced in management, but they issued new stock for the old to the same stockholders, and that was the way they were dissolved. Sometimes it took several years before they restored competition as it was intended to be restored, and yet ownership wasn't the problem that concerned the courts at all.

The Court: Of course, this plan doesn't prevent one party from holding any stock ownership in any other corporation.

Mr. Hays: Yes, it does, your Honor.

Mr. McKay: Plan 3, your Honor, has separate ownership of the three corporations.

The Court: Of all of the stock?

Mr. McKay: Plan 3, yes, that is, Chart 4. It provides that J. Meyer Schine will own all the stock of I; Louis [fol. 5423] Schine will own all the stock of II; and the wives will own all the stock of III and IV, so there is absolute divorcement of ownership. Chart 3, Plan 2, provides separate control without separate beneficial ownership; Chart 4, Plan 3, separate both ownership and control.

I would like, in this connection, your Honor, in line with what Mr. Hays has been saying as to the necessity of testimony to support our plan, to state that just a little over a week ago in Washington I had a talk with Mr. Wright, and I asked at that time if there was any possibility of our agreeing on a plan which would be short of requiring us to dispose of some theatres. Mr. Wright said no. Mr. Wright then added that if the Court approved our plan the Government would appeal from that order approving our plan.

Now, as Mr. Hays points out, we may be in the position of the respondent on this feature of the case, and if we are able to persuade your Honor that this plan we are submitting is the kind of plan that should be adopted, we certainly want to be able before the Supreme Court to support your Honor's decision to show why this plan we are submitting is a good plan, why it will accomplish the [fol. 5424] purpose of the judgment.

This application isn't limited to showing what a foolish thing the plaintiff's plan is; we want to show how our plan is the proper plan, so that if we come to that phase we will be in a position of having the facts to support the plan.

The Court: Well, won't your answer be simply that the Government's plan is a divestiture?

Mr. McKay: We feel that that should be sufficient, but we are faced with the definite statement by Mr. Wright that there will be an appeal.

Mr. Hays: The evidence that I would want to show in that connection, your Honor, is the difference that our plan will make in buying power, where the film comes from, and so on.

The Court: Well, they would be independent corporations, but whether they would act together or not is another question. Your plan is to separate them by towns in New York and Ohio?

Mr. Hays: Your Honor, may I recall to you a statement you made in your opinion, "The consent decree, therefore, brings up the question of whether the harsh determination of dissolution as urged by the Government should be compelled, or whether some adjustment or re-organization can [fol. 5425] be agreed on or fixed by the Court which will, as definitely as possible, prevent future violations."

That is why I am a little surprised that your Honor should bring up the punitive side of this thing.

The Court: Well, I used that word not in the ordinary sense, not in the nature of a penalty by fine, but in the nature of a remedy to which the Government is entitled.

Mr. Hays: Well, my point is that if it is a remedy then it must be based on conditions today and on evidence as to what will maintain future competition.

The Court: Well, you say we can do that just by stopping any further violations of the Anti-trust Laws, and leaving the organization as it is?

Mr. Hays: That may be in some cases. But I would want evidence to show that.

The Court: Well, we would have no lawsuit then at all. Just put the defendants on probation for a while.

Mr. Hays: As a matter of fact, these changes in practices in the past few years have changed the whole character of the industry.

Now, Mr. Heilbron has been handing me notes. I wonder [fol. 5426] if your Honor would let him say what he has to say instead of putting it through me.

The Court: Surely.

Mr. Heilbron: The analogy that I wish to make is one showing the difference in approach: After a defendant in a criminal proceeding has already been convicted, you have a record that he has committed an assault, let us say, for example. And yet the Courts, when defendants come before them for sentence, universally say, "I want to hear counsel so that I may know what the man's present occupation is, what he is doing now, and so forth.

It is true that there is a volume of testimony here. However, every word of that testimony was directed toward what the Government says in its reply "We only put in testimony here to show violations."

The thing that I can't get away from is your Honor's own judgment, which speaks of the purpose, the limited purpose, for the re-alignment, and that limited purpose is to restore and maintain competition. There are facts which are necessary to be introduced to show whether or not that purpose can be accomplished by any of the plans submitted. [fol. 5427] Your Honor is perfectly right when you say we may not and should not simply repeat where a theatre is located when that is already in the record, but we believe it is necessary to show what the impact of present conditions in the industry is on that theatre.

For example, let us go back to Bath: There are experts in the industry whom we may call. If the Government wants to call counter-experts, it may do so. An expert may take the stand and say that the purchasing power of the defendants—that which the Government so glibly calls "Excessive cir-uit buying power" and—that the purchasing power of an exhibitor in a town like Bath—and you prove it by distributors and by people who know the industry—cannot be exercised by one, necessarily, who has a circuit, because surrounding Bath there are these other towns, and various other circumstances. For instance, you would also show this—which is very important and is done in every industry—you would show a clocking, and you would take advantage of surveys available to show the number of theatre-goers from place to place——

The Court: Well, in Bath it seems to me it wouldn't be [fol. 5428] necessary to show the surrounding territory, the contiguity of towns on the outside, because there, in the absence of any proof whatsoever, the question is where the burden, if any, rests, whether the Court by reason of the fact that there is no such proof should exclude that town.

Mr. Heilbron: That is well phrased, your Honor, but we are at the point now where there are two plans before the Court, and the hesitancy of the defendants is brought about by this: If they remain silent then the Government says "We are free to take any inferences which you have left uncontested." As soon as we contest their allegations they state this—and Mr. Hays has referred to it, "You cannot supply facts by the assertion of counsel." And supposing your Honor agrees with us that we can, and then we go up on appeal and the Appellate Court says, "No, no, Mr. Hays, Mr. McKay. If you wanted to protect the rights of your client you should have gone before Judge Knight and insisted that you be permitted to supply those facts, not by assertion of counsel, but by calling your witnesses and putting those facts in the record. If you did not insist upon that, then you have been derelict in that respect. We can't [fol. 5429] consider it."

Furthermore, it is not only the plaintiff's plan that is in question here. The defendant has a plan, about which we claim it is a matter of right to show in every detail which the plaintiff has discussed that this defendants' plan covers the purpose and the letter and the intendment of the Court's judgment, and that that intendment was what your Honor said in his judgment, to restore and to maintain competition.

Now, to restore competition there must be facts to show what the condition was prior thereto. And we are not in disagreement as to the towns that weren't mentioned in the record, and I think probably we could get started on our way to take the testimony there.

The only reason that I am taking up more of your Honor's time—with which you have been very liberal so far—is because, as I see it, the focus of the testimony taken on the trial, as the Government admits, and now emphasizes, was not on what would happen competitively in the future; it was an attempt to show that there had been a violation. And I say that you cannot look at a plan in that light, and with [fol. 5430] as little repetition as possible, and for the benefit of both sides, mostly the defendants', because they are presently under attack, there should now be given, under your Honor's direction, the right to take testimony to deal exclusively with the problem of what should go into the plan, without dragging into that plan the consideration of what the Government did or didn't show with respect to those violations.

The Court: Well, I will look over these papers. It seems to me at the moment that so far as your motion to take proof is concerned, we have gone all over the various theatres in the New York area, and the theatres in Ohio and some of the other areas. So I would say on first blush that so far as your proposal to take testimony is concerned, we have got the situation before us in many of these towns from which we would be able to determine whether the plan is a right one or not.

We have also here the question as to your proposed plan, and that is simply a separation of the circuit into three corporations.

Now, take one of these towns, say, in Kentucky, that is proposed to be put under the ownership of the wives: In [fol. 5431] instances where there—two or three theatres in one town, you wouldn't want to go into the question there of whether there should be an elimination? What you are proposing broadly is that you include Kentucky and Maryland in one corporation. You don't propose to offer proof to show that in any of those towns you are justified in continuing your *modus operandi* there now, do you?

Mr. McKay: What we think about that, your Honor, if your Honor accepts our suggestion, we feel that we owe a duty to your Honor to support your Honor's decision before the higher court. Now, we in support of our suggestion would not have to offer the same detailed sort of testimony that we offer in opposition to the plaintiff's suggested plan. Our testimony in support of our plan would be confined more to demonstrating to your Honor the very small buying power that these separate corporations would have.

The Court: Well, take one corporation, for instance, New York: What do you want to show there? We have the evidence as to the theatres there, we know what they are.

Mr. McKay: We would like to show your Honor what has happened to the buying power since we have been buy- [fol. 5432] ing for open and closed towns separately as we agreed to do in 1942. We would like to show that since that time there has not been a single complaint that anybody was being deprived of product.

The Court: That is under the present organization or in this plan?

Mr. McKay: The plan would separate the New York theatres.

The Court: ~~Well, we have~~ the whole picture here. You wouldn't propose, after the testimony is taken, to have the Court finally cut out some of those theatres?

Mr. McKay: Absolutely not. Under no circumstances.

The Court: Well, I will look over these papers.

Mr. Heilbron: May I interrupt just a moment? This is still in answer to what your Honor asked Mr. McKay about the overall considerations here: The question of clearances would still present itself under the defendants' present proposed re-alignment, without any further proof in the record.

The Court: But what effect would that have on the plan?

Mr. Heilbron: Well, in the absence of proof, your Honor, it might have a great deal of effect. Where a plan is presented the proponent should have the right not only to show [fol. 5433] that the particular plan solves the problems which appear on the face, but also the lack of necessity of solving others. Now, Mr. Antevil sent me down from Gloversville a statement, and I was really amazed to see it.

The plaintiff stated that this question of clearances has not been one of arbitration. I find that in a number of cases Schine has been the complainant. Now, that is not in the record.

The Court: But in my mind, you have got a plan for the inclusion of all these theatres. Are we going to consider on the question of whether this plan should be approved where there has been or where there is not a conspiracy to effect unnecessary clearances and then say that that town should be taken out of this plan? You have submitted a plan here that comprehends the retention of all these theatres in New York, that is all there is to it.

Mr. Heilbron: No. Your Honor might say all right, but the Court on appeal might say "That is fine. You have cut down your buying power, but Judge Knight in his opinion said, 'One of the most troublesome questions in this case is that of clearances'. What have you put into the record as to the situation on clearances as it presently [fol. 5434] exists?" And we will have to say we didn't put anything in.

The Court: Well, supposing we find that there is a town where today you are exercising clearances unjustly and improperly. Would you cut that town out of the circuit under your proposed plan?

Mr. Heilbron: Well, we would rather find that out now than have the Government say that there is that particular town, without our even having a chance to show all the factors and take up all the questions to which your Honor referred. For instances, as to franchises: We shouldn't leave it to guesswork, if this goes on appeal, to have the Government say this plan does not eliminate the opportunity of the defendants to get franchises. We want to show what the present condition is as to admission practices, bank night, Bingo, and china give-aways. There is nothing in the record on any of those questions except the statements of counsel.

The Court: Well, it would be a re-trial of the issues as of today, by and large. That is what it would amount to.

Mr. Heilbron: No. It would just be supplementing with respect to a plan.

The Court: Well, what I mean is this: The plan propos- [fol. 5435] ing these things in detail speaks for itself, you might say. Here is a plan by which the groups are concentrated into three different organizations, and if under that plan certain orders in relation to clearances, and so forth, are carried out, well, that is sufficient rather than going to the extent of taking evidence all over again as to conditions as they exist today in distinction from conditions at the time of this trial. I certainly don't think any plan ought to require going to that extent.

Mr. Hays: May I make a suggestion, your Honor? Suppose you permit us to take testimony and provide in your order that we should not duplicate testimony that has already been taken?

The Court: Well, that would be pretty hard to follow.

Mr. Hays: That is right, but we would do our best.

The Court: The only way to eliminate duplication at all, it seems to me, would be to take testimony, if any, only as to towns concerning which there has been no evidence given as to conditions.

Mr. Hays: Suppose your Honor presently made that order, that we could take testimony as to those towns, without prejudice to our later making a further application. [fol. 5436] And you could determine later whether we should go any further.

The Court: Well, I am not deciding one way or the other. I am simply making the statement as a matter of argument. But I don't think it is material if you state today that you won't engage in clearances hereafter.

Mr. Heilbron: Well, may I point out that your Honor said we shouldn't take testimony as to towns that haven't been already considered? I say that you have to, because in each one of those town-, if you go back to the plaintiff's reply, they argue questions of clearance that date back to 1935, which are outdated, and even though this is in connection with a plan for the future. I say that you cannot fairly consider a plan if clearance is the thing to be emphasized, without considering what the clearance situation is in every town, and you can't take the record as it was taken at the trial because it is outmoded. I have gone over the analysis of the testimony and I find any number of clearance situations that were proved as of 1935 and 1936.

The Court: Well, of course, that again begs the question. You may today strictly be observing the provisions of the [fol. 5437] law in all respects as to clearances, cumulative buying, and things of that kind. But the Court has found the fact to exist that there has been a conspiracy here and has made some directions in regard to it.

Mr. Heilbron: But as your Honor said in the judgment, the purpose of the plan is to restore and maintain competition.

The Court: That is true.

Mr. Heilbron: Well, you can't say that a plan will restore competition merely because you have shown violations bearing on 1930 facts.

The Court: Well, there is no question in those towns where there has evidence been given to show that competition has been eliminated. The divide is on the question of where we start, whether now at this time we should take testimony as to present conditions as bearing upon the question of competition.

Mr. Heilbron: Only where there has been a change, and that is so because if there has been no change we can't offer any additional testimony. We don't gain anything by duplication.

The Court: Only where there has been a change in what, you mean?

Mr. Heilbron: Change in the conditions. We don't gain [fol. 5438] anything by duplication. But after all, if the Court is after the truth, that truth must speak as of today, if you are looking at competition.

The Court: Well, in certain towns if you have sold two theatres since the judgment or since the trial of this case, then, of course, a changed condition might exist.

Mr. Heilbron: Then is that the only circumstance under which a changed condition might exist? Why, a town may have become a war town since that time, and its population and whole trend may have gone up to a three-theatre town instead of a one-theatre town. I think that we should have an opportunity in every town to show and get into the record whatever changes there may be as to clearance, population, adjoining territory, anything else.

Mr. Hays: I have just looked at the plan of the plaintiff. It provides that we sell all theatres in seventeen towns, without regard to whether or not there have been any changes in them.

The Court: Well, I have looked at the plan.

Mr. McKay: Your Honor, I am handing up a memorandum that is in page proof form. It will be completed to-[fol. 5439] morrow. I particularly ask you to consider the jurisdictional statement as it relates to the function of the Court at this time, the appeal having been allowed and citation issued, as to whether the Court is not now necessarily required to await the return of the mandate from the Supreme Court before approving any plan.

The Court: But you aren't going to suggest any unnecessary delay?

Mr. McKay: We are not suggesting any unnecessary delay. That is why we are here urging this motion on your Honor.

The Court: Well, it seems to me you are urging it even though you say I have no right to consider it.

Mr. McKay: If the Court will permit us to take testimony we will proceed with the taking of testimony, so that upon the return of the mandate there will be a plan ready as to which there will be complete evidence.

The Court: If you are right in your position that we can't take any testimony in reference to the plan now, then our time is ill spent here.

Mr. McKay: Well, we made our position very clear at the very outset.

The Court: The point is if you have to await the position [fol. 5440] of the Court on the judgment as entered, of course, we lose all of our time here.

Mr. McKay: Well, we were hopeful that your Honor would permit us to start the taking of testimony.

The Court: Well, I don't know. The Supreme Court might take that view later on.

Mr. McKay: Well, we don't want to let the point pass without directing your Honor's attention to it. It is a serious matter for us. This is only a lawsuit to the plaintiff, but it is a very serious matter to us.

Mr. Heilbron: I would like to ask leave to submit a supplemental affidavit by Mr. Hays and also a memorandum of law and argument in support of the motion.

[fol. 5441] In the District Court of the United States

Defendants' Proposals Regarding Realignment of Schine Circuit

At the conference with the Court in Chambers on May 8, 1946, the defendants informally disclosed to the Court two tentative plans of possible realignment of the Schine Circuit, and the defendants promised that at the next hearing they would endeavor to elaborate and improve upon these plans. Without withdrawing either Plan 1 or Plan 2, the defendants now submit on Chart IV a further plan, designated Plan 3.

In submitting these plans, the defendants reserve all objections which they have heretofore made with regard to the formulation, adoption or approval at this time or at any time prior to the determination of the appeal in this case by the Supreme Court, of any plan for the dissolution, reorganization or realignment of the Circuit.

The defendants' position on this point is set forth at length in the memorandum submitted herewith, and although [fol. 5442] not repeated here is incorporated at length herein by reference. Anything that we may say *infra* regarding possible realignments or regarding the possibility of curing alleged abuses, or the possible willingness of the defendants to agree to certain conditions under which they would continue to do business, is subject and subordinate to that basic position and subject to the consent of the defendants and each of them to a complete solution of the entire problem which will not involve any conditions other than those hereinafter discussed and which specifically would not involve the sale or other disposition of any theatres.

In connection with our submission of this proposal, we point out to the Court that in the plaintiff's reply to our objections, there is no criticism, constructive or otherwise of the suggestions advanced by us on pages 111 to 124 of the objections, and that in the "plaintiff's comments on defendants' plan", the princip*le* criticism is that the plan is too simple, and the only suggestion is that the Court should not hold the hearing now fixed for May 28, 1946, to which the plaintiff's representative agreed at the time the date was fixed.

We submit herewith four charts.

Chart I, shows the present alignment of the Schine Circuit.

Chart II shows one proposed realignment, designated "Plan 1".

Chart III, shows a proposed realignment designated "Plan 2".

Chart IV shows a proposed realignment designated "Plan 3".

[fol. 5443] In considering these plans, and particularly with reference to Plan 3, we direct the attention of the Court to the following feature which has not heretofore appeared in this case. Under Plan 3, the ownership, operation and management of the New York theatres is wholly separated from the ownership management or operation of theatres in any other state. This presents an entirely different aspect of the applicability of the Sherman Act to the operation of motion picture theatres from any heretofore presented in any antitrust case which we have been able to find.

In holding that the motion picture business is interstate commerce, and therefore, subject to the Sherman Act, the Courts have universally relied upon the case of *Binderup* v. *Pathe Exchange, Inc.*, 263 U. S. 291. In the matter of *United Artists* v. *Taylor*, 273 N. Y. 334, the Court of Appeals was called upon to decide whether a transaction between a distributor located within the State of New York and a theatre also located in the State of New York constituted interstate commerce. The Court clearly distinguished such a situation from the situation which in the *Binderup* case, the Supreme Court had ruled to be interstate commerce, saying at page 339:

> "Probably by the sale to this appellant in this State by the producer in California of films manufactured in that State and elsewhere outside New York, and their transportation to this State is included within the operation of interstate commerce. (Binderup v. Pathe Exchange, Inc., 263 U. S. 291.) After those positive and negative prints have reached New York they have come to rest here. No longer do they continue a part of interstate commerce any more than oranges grown in [fol. 5444] Florida, automobiles built in Michigan, or textiles spun in Massachusetts. A new intra-state transaction occurs when this appellant, as distributor in New York, who has acquired the right to possession of the films and the license to transfer possession of them for purposes of exhibition in this State, makes contracts in this State for marketing them here. The facts herein differ materially in principle from those in Binderup v. Pathe Exchange, Inc., (supra), upon which appellant places strong reliance. There the distributors in New York contracted with the exhibitor in Nebraska and delivered in Nebraska. In this case, as far as the Appellate Division has held the transaction taxable, the distributor in New York city contracts with the exhibitor in New York city for delivery in New York City. In so far as this appellant deals with exhibitors in New Jersey and other States, that phase of the case is governed by the Binderup case."

It will be noted that in making this distinction, the Court of Appeals was not influenced in any way by the fact that this case involved taxation. What it decided was that when a distributor in New York State makes a contract with a theatre in New York State under which the distributor licenses the exhibition by an exhibitor of a motion picture in New York State, and delivers the print in New York State, the transaction is intra state.

Following this reasoning, it conclusively appears that the operation of New York State theatres by the New York corporation provided for either in Plan 1, Plan 2 or Plan 3, including the contractual arrangements under which these theatres obtain prints from the distributors does not in any way constitute interstate commerce and does not affect interstate commerce, the operation of said theatres having [fol. 5445] been completely separated from the operation of theatres without the state. Under Plans 1 and 2, the management and control is separated, although there is common beneficial ownership of extra-state theatres, but in Plan 3, even the ownership is separated. The only possible basis for the inclusion of the New York theatres in this litigation in the first instance had to be that the operation of the New York theatres in conjunction with the operation of theatres outside of the state, resulted in the use of the buying power of the New York theatres to affect transactions relating to theatres outside of the state, and thereby effecting interstate commerce. This has been completely eliminated by the proposed realignment.

We are confident that there is no decision in any reported motion picture case in conflict with the above position, and we submit that the motion picture industry is such a unique industry that no analagous case can be found.*

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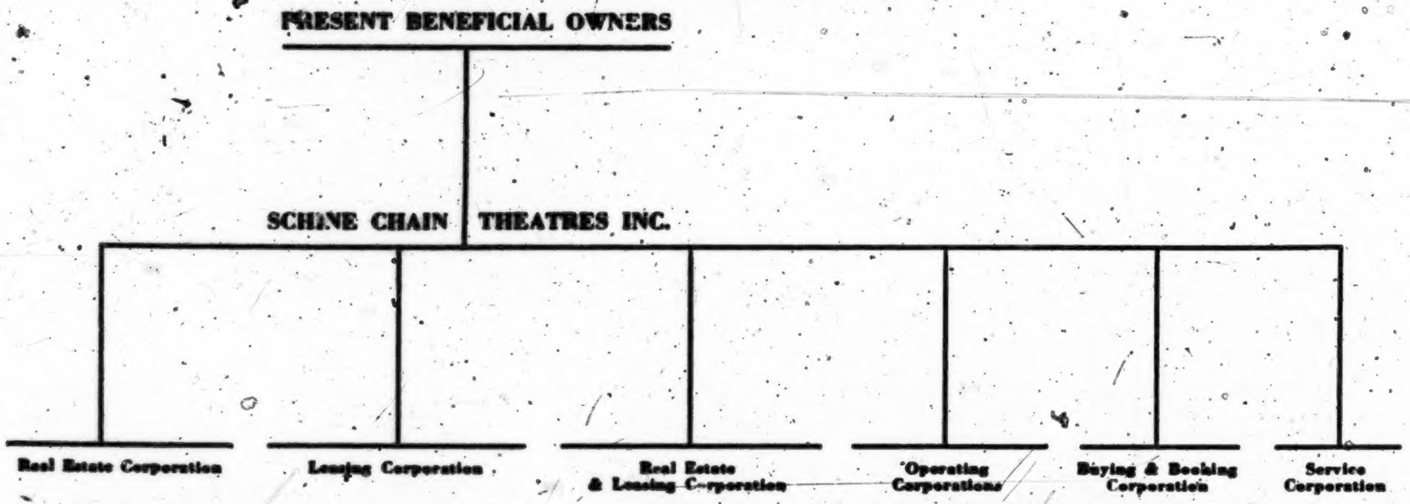
* The opinion of Mr. Justice Botein in the New York State Supreme Court, Special Term, New York County, in the case of *Leader Theatre Corporation* v. *Rand Force Amusement Corporation, et al.*, (which opinion we believe to be unreported), and the cases of *J. J. Theatres, Inc.* v. *Twentieth Century-Fox Film Corporation*, 265 App. Div. 994, and *Peekskill Theatre, Inc.* v. *Advance Theatrical Co.*, 206 App. Div., 138, although dealing with the Donnelley Act do not pass squarely upon this point.

CHART I

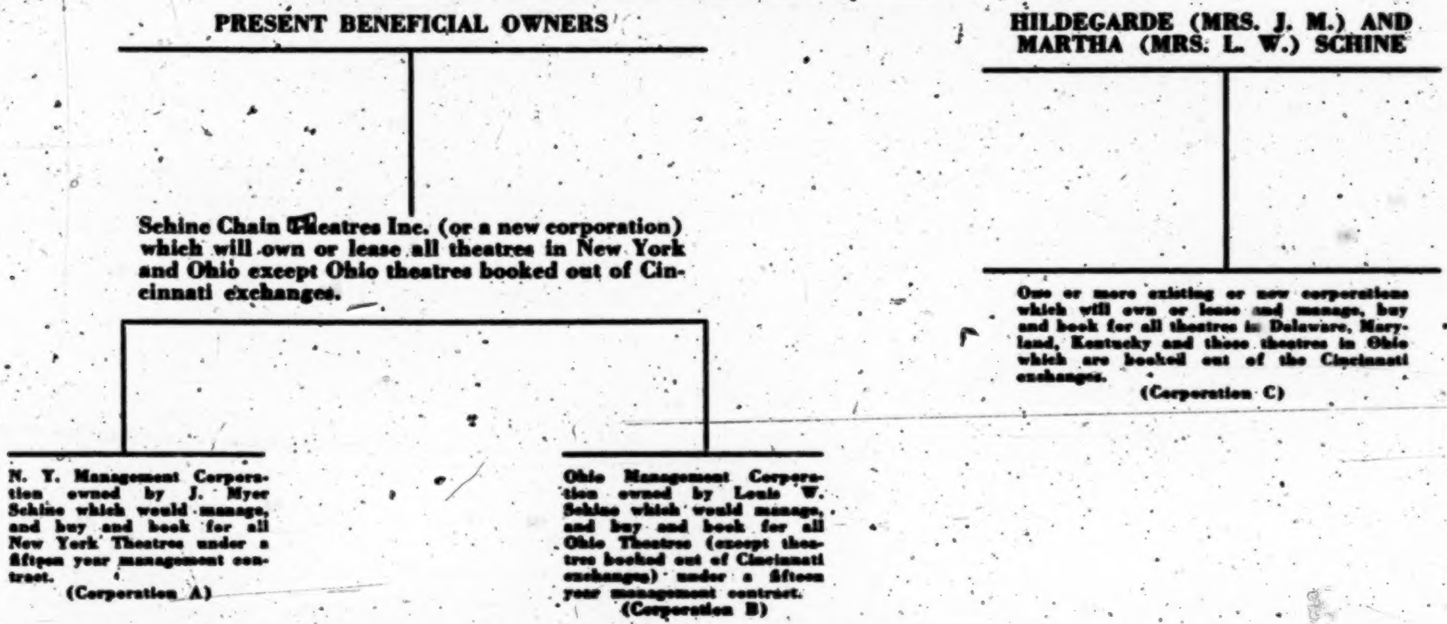
SCHINE CIRCUIT—PRESENT ALIGNMENT


PRESENT BENEFICIAL OWNERS
SCHINE CHAIN THEATRES INC.
Real Estate Corporation
Leasing Corporation
Real Estate & Leasing Corporation
Operating Corporations
Buying & Booking Corporation
Service Corporation

1. The present beneficial owners are J. Myer Schine and Louis W. Schine. John A. May has no legal or beneficial ownership, either directly or indirectly.
2. All of the corporate defendants are included in one or more of the above categories.
3. In some cases a subsidiary is both a leasing and operating corporation or a real estate and operating corporation. In some cases a corporation may both own and lease theatres.

CHART II

SCHINE CIRCUIT—PROPOSED REALIGNMENT (PLAN 1)



PRESENT BENEFICIAL OWNERS

Schine Chain Theatres Inc. (or a new corporation) which will own or lease all theatres in New York and Ohio except Ohio theatres booked out of Cincinnati exchanges.

N. Y. Management Corporation owned by J. Myer Schine which would manage, and buy and book for all New York Theatres under a fifteen year management contract.
(Corporation A)

Ohio Management Corporation owned by Louis W. Schine which would manage, and buy and book for all Ohio Theatres (except theatres booked out of Cincinnati exchanges) under a fifteen year management contract.
(Corporation B)

HILDEGARDE (MRS. J. M.) AND MARTHA (MRS. L. W.) SCHINE

One or more existing or new corporations which will own or lease and manage, buy and book for all theatres in Delaware, Maryland, Kentucky and those theatres in Ohio which are booked out of the Cincinnati exchanges.
(Corporation C)

1. No officer, director or stockholder of Schine Chain Theatres Inc., or of Corporations A or B may, at any time, be an officer, director or stockholder of Corporation C.
2. No officer, director or stockholder of Corporation A may, at any time, be an officer, director or stockholder of Corporation B.

[fol. 5448]

CHART III

SCHINE CIRCUIT—PROPOSED REALIGNMENT (PLAN 2)

PRESENT BENEFICIAL OWNERS

Corporation No. 1 which will own or lease and manage, and buy and book for all New York Theatres.

Under a voting trust agreement J. Myer Schine shall be the sole voting trustee subject to the limitations contained in said agreement.

Corporation No. 2 which will own or lease and manage, and buy and book for all Ohio Theatres (except theatres booked out of the Cincinnati exchanges).

Under a voting trust agreement Louis W. Schine shall be the sole voting trustee subject to the limitations contained in said agreement.

Corporation No. 3 which will own or lease and manage, and buy and book for all theatres in Delaware, Maryland, Kentucky, and the theatres in Ohio which are booked out of the Cincinnati exchanges.

Under a voting trust agreement Hildegarde (Mrs. J. M.) and Martha (Mrs. L. W.) Schine shall be sole voting trustees subject to the limitations contained in said agreement.

1. No officer, director or voting trustee of Corporation 1 may at any time be an officer, director or voting trustee of Corporation 2 or 3.
2. No officer, director, or voting trustee of Corporation 2 may at any time be an officer, director or voting trustee of Corporation 1 or 3.
3. No officer, director, or voting trustee of Corporation 3 may at any time be an officer, director or voting trustee of Corporation 1 or 2.
4. With respect to Corporation 3 it may be necessary to have two or more corporations but for the purposes of this plan they shall be treated as a unit.
5. The terms of the voting trust agreements provided for above, are to be subject to the approval of the Court, so as to assure independent management of each corporation, by the sole voting trustee or trustees. The voting trust agreements shall be for a term of ten years, subject to renewal at the discretion of the Court.

[fol. 5449]

CHART IV

SCHINE CIRCUIT—PROPOSED REALIGNMENT (PLAN 3)

Corporation No. 1 which will own or lease and manage, and buy and book for all New York Theatres.

J. Myer Schine shall own all of the stock of Corporation No. 1.

Corporation No. 2 which will own or lease and manage, and buy and book for all Ohio Theatres.

Louis W. Schine shall own all of the stock of Corporation No. 2.

Corporation No. 3 which will own or lease and manage, and buy and book for all theatres in Delaware, Maryland, and Kentucky.

Hildegarde (Mrs. J. M.) and Martha (Mrs. L. W.) Schine shall be the owners of all of the stock of Corporation No. 3.

1. No officer, director or stockholder of Corporation 1 may at any time be an officer, director or stockholder of Corporation 2 or 3.
2. No officer, director, or stockholder of Corporation 2 may at any time be an officer, director or stockholder of Corporation 1 or 3.
3. No officer, director, or stockholder of Corporation 3 may at any time be an officer, director or stockholder of Corporation 1 or 2.
4. With respect to Corporation 3 it may be necessary to have two or more corporations but for the purposes of this plan they shall be treated as a unit.

[fol. 5450] As part of either Plan 1, Plan 2 or Plan 3, the defendants suggest the following additional provisions:

1. Wherever, the interest presently owned by the defendants in any theatre is less than one hundred percent, such interest shall be included with the one hundred percent owned theatres in the area in which such partially owned theatre is located.

2. The injunctive provisions of the present judgment shall be binding upon the new corporations, provided for under either Plan 1, Plan 2 or Plan 3, except that there shall be no injunction against the acquisition or sale of theatres, the necessity for such injunction having been eliminated by the adoption of either plan.

Obviously there is no need for any injunctive provision against the sale of theatres. No such injunction was prayed for in the complaint, and what the plaintiff has been seeking to accomplish is exactly the opposite. With respect to the acquisition of theatres in the future, we submit that after either of these plans go into effect, there is no compelling reason for an injunction against the acquisition of additional theatres, except that possibly the Court might feel it advisable to prohibit the acquisition by one corporation of any theatre in the territory in which one of the other corporations was operating.

3. Corporations A, B, and C in the case of Plan 1, or corporations 1, 2 and 3, in the case of Plan 2 or Plan 3 shall maintain separate office facilities for the conduct of their respective business operations.

4. Each corporation shall license the motion pictures used by such corporation separately.

[fol. 5451] 5. The defendants shall have at least two years in which to put into operation the realignment suggested.

It will take two years to put a plan of realignment into operation, because there are numerous problems involved in connection with arriving at a fair valuation of the various properties, as between the present owners and the new owners, and there are also problems involved in connection with obtaining necessary consents and other authorizations required for the transfer of some of the properties. There are also serious personnel problems arising out of the necessity of organizing new competent management staffs. More importantly, there are extensive financial arrangements which will have to be made between the individuals arising out of separate instead of combined ownership. Since all of the earnings of the enterprise have been plowed back into the enterprise itself, the individual beneficial owners have no extensive independent financial resources aside from their ownership of the enterprise itself. The Court will recall that at the hearing of April 16, 1946, when the undersigned directed attention to the length of time which it had taken to put into operation the decree in the *Crescent* case (the decree in the *Crescent* case was handed down in March, 1943, the affirmance by the Supreme Court was in October, 1944, and no realignment has as yet been accomplished, the plaintiff having expressly consented to the last postponement which expires in July) counsel for the plaintiff stated that this was because of the fact that the various individuals involved had to make financial arrangements in order to arrange for the separation of their interests and the Court accepted this explanation as entirely logical.

6. There shall be included the following suggested remedies, discussed in the "defendants' objections to plaintiff's [fol. 5452] so-called plan of reorganization", filed on April 1, 1946, none of which were criticized or objected to in any way in the plaintiff's reply brief, or in the "Comments on Defendants' Plan", to wit:*

A

Alleged Excessive Circuit Buying Power

Schine will agree to continue the segregation of film-buying as between "open" and "closed" towns provided for by the Consent Order of May 19, 1942.

This alleged abuse is the one upon which the Court seems to have placed the greatest emphasis. The Court attributes this buying power to the fact that the Schine Circuit is claimed to have combined "open" and "closed" towns in its dealings with the distributors. The Opinion also states that Schine was accustomed to buying product for theatres not owned or occupied by it. This, the Court says, brought about and increased the ability of Schine to dictate terms to the distributors.

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* The following suggested remedies are paraphrased and summarized from pages 112 to 124 inclusive of our objections, filed April 1, 1946, but are repeated here for the convenience of Court and Counsel.

Of course, the above alleged abuses, and all other abuses mentioned in the Opinion and in the Findings of Fact occurred if at all prior to May 19, 1942. No violation of the Act since that date has been claimed or could be proved. Any abuse which may have resulted from combining "open" and "closed" towns, in making deals with distributors, was eliminated by the provisions of the Consent Order of May 19, 1942, under which the Schine Circuit agreed to buy separately for its "open" towns and its "closed" towns. (See our brief dated February 25, 1946, pp. 21-22.)

[fol. 5453] With respect to the authority of Schine to buy and book for theatres not owned or operated by it, we have already pointed out that all of Schine's existing booking contracts at the present time are made with theatres in which it has a financial interest, with the exception of the summer theatre at Sacandaigua Park, New York, and that the same observation applies to all contracts in force at the time of the commencement of this litigation. (There was a contract with the Big Stone Theatre, Big Stone Gap, Virginia, running from May, 1940 to February, 1941. Schine had no financial interest in this theatre except an option to purchase a one-half interest. It received a total compensation of $208.36 for its services under the contract and the theatre owner defaulted in performance thereof.) It is, therefore, not a correct statement to say that Schine's buying power has been increased because it buys for theatres in which it has no financial interest.

Irrespective of the extent of the buying power of the Circuit, there is no evidence in the case to show that this buying power was used to purchase pictures which were not needed by the Circuit for exhibition in theatres operated by it, or to purchase pictures at prices lower than those which a competing theatre was willing to pay. Therefore, the fact that in certain instances when Schine had a contract for product, a competing exhibitor was unable to obtain the same product for the same run, cannot, standing alone, be cited as a violation of the Sherman Act.

The segregation of buying power as between "open" and "closed" towns, as provided by the Consent Order was entirely satisfactory from May, 1942 to May, 1944, and should be a satisfactory solution now. The buying power of these theatres has been further decentralized under each [fol. 5454] of the plans of realignment by dividing up the theatres as indicated in the plans.

With respect to this segregation of buying power, Mr. Wright in presenting the Consent Order of May, 1942, to the Court, stated at page 6 of the transcript of that date:

> 'Mr. Wright: I think it goes further than the consent decree in the other case. One of the allegations in the complaint here, if your Honor recalls, is that the——
>
> The Court: The combination.
>
> Mr. Wright: Yes. In substance this prevents the Schine Circuit from combining its closed towns with these competitive situations in making film licenses.'

B

Clearance

Schine will agree to arbitration of all disputes regarding Clearance.

This alleged abuse seems to be the second in importance in the Opinion of the Court and in the Findings.

As we have already pointed out in our brief, dated February 25, 1946 (pp. 13-15, 19 and 26, 27 and 28), there is no evidence in this case that any of the clearances referred to in the Opinion and Findings were in fact unreasonable. An analysis of some of the clearances, to which reference is made, would show that they meant absolutely nothing.

In any event there is now in existence machinery especially designed and effectively operating to handle all disputes regarding clearance. We refer to the arbitral system set up under the Consent Decree in the Southern District of New York and supervised by the American Arbitration [fol. 5455] Association. Reference to this system is made on pp. 26 and 27 of our brief, dated February 25, 1946.

In submitting the arbitration provisions of the Consent Decree to the Court in the *Paramount* case, Assistant Attorney General Hayes, representing the *United States*, said:

> "And I may say in that connection that it has long been felt, both by exhibitors and by distributors, that there is no fairer way to handle and dispose of complaints concerning clearance then to have the clearance fixed by some impartial arbitrator, and that is precisely what is accomplished by Section VIII. * * * Those

> of us who have worked on this decree after reviewing, as I said at the very beginning, the numerous industry problems in all their ramifications with the government representatives keeping constantly before their eyes, as was their duty, the complaints of exhibitors and the complaints of public groups, are of the opinion that the decree is a desirable forward step. We believe it will work. We believe it will produce good. We recommend the decree to your Honor."

As a practical matter, since the institution of this system, the Schine Circuit has voluntarily participated in the arbitration proceedings in every case where one of its theatres was involved.* A formal consent by Schine to continue this practice in the future would furnish an effective and expeditious manner of disposing of all clearance disputes in which any of the Schine theatres might be involved.

[fol. 5456] In order to anticipate any objection on the part of the plaintiff that only the so-called Big Five are bound by arbitration proceedings under the Paramount Decree the Schine Circuit will agree (subject to the reservations herein set forth) that any clearance fixed by the arbitrators in any proceeding involving Schine and any one or more of the Big Five shall be the clearance to prevail on all contracts affecting the situation under arbitration, irrespective of the distributor. If this is not satisfactory, the Schine Circuit will agree to arbitrate clearances, not covered by the arbitration system under the *Paramount* decree, under the Rules of the American Arbitration Association.

It appears that numerically more instances of claimed unfair clearance are mentioned in the opinion and findings than any other single alleged abuse. It is submitted that the above suggestion furnishes a convenient, expeditious and impartial forum for the correction of any and all abuses in relation to clearance.

The plaintiff may now argue, reversing the position previously taken by it with respect to clearance, as indicated by the quotation from Mr. Hayes at page 11 *supra*, that clearance *per se*, is illegal. In fact, in the course of the final arguments in *U. S. v. Paramount, et al.*, Mr. Wright stated point blank in answer to direct questions asked by Judges Hand and Bright, that although at one time he had not thought that there should not be any clearance provisions at all by anybody, he now does so think and desires to scrap the Consent Decree completely insofar as it purports to arbitrate the clearance.* If the plaintiff should be success- [fol. 5457] ful in establishing this proposition, there would be no need to consider clearance remedies at all as far as Schine is concerned, because clearance would not exist.

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* The records of the defendants to indicate that since May 19, 1942 they have participated in 16 arbitrations under this system, in 9 of which they have been respondents and in 7 of which they have sought relief from alleged excessive clearance granted other exhibitors over Schine Theatres.

C

Franchises

Schine has no franchises now and subject to the reservation hereinafter set forth will not enter into any in the future.

The Court attributed a considerable part of the advantage which it found that Schine had over so-called independents to the fact that Schine was in the habit of making franchises (i.e., film contracts covering a period of more than one year) with the various distributors.

Although much has been said in the Opinion and in the Findings to the effect that Schine was able to obtain "concessions not obtainable by independents" because of the existence of these franchises, there does not appear in the record a single instance where a so-called exhibitor was unable to obtain the same provisions in his contract as were to be found in the Schine contracts *if he had asked for the inclusion of these provisions.* Nor does there appear in the record any instance where an exhibitor—a so-called independent—was unable to make a franchise agreement with a distributor for any product that was open for his theatre, if he so desired. The record shows that in making franchise agreements no distinction is made between large circuits and independent exhibitors operating only a few theatres and more franchises have been issued to the latter than to the former (T. 2468, Exs. 741 to 744; T. 1166, 4457, 4488, 4614, Exs. D-47, D-48, D-123 to 129; T. 1170). Any failure

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* (See p. 2572 "Arguments", *U. S.* v. *Paramount, et al.*, previously furnished the Court. Note also Judge Hand's comment at p. 2702.)

[fol. 5458] on the part of a so-called independent to license motion pictures under franchises, or to obtain in his film contracts provisions similar to those found in the Schine contracts, was due not to his inability or to superior circuit buying power on the part of Schine, but to his own ignorance, or indifference.

Irrespective of the foregoing, all of the franchises held by the Schine Circuit were voided by the Consent Order of May 19, 1942 and, subject to the above stated reservations, it would be possible to provide that no franchises shall be made in the future. Any such provision would, of course, have to be subject to a further provision that if licensing by franchise again became prevalent in the industry, then the Schine Circuit would be permitted again to license films under franchises to the same extent as other exhibitors.

D

Other Alleged Abuses

The Opinion and Findings and Conclusions mention other alleged abuses, but these do not appear either prevalent or important, if the suggestions made above are adopted.

1. Presumably it will be conceded that business stimulants, such as Bank Nights, Bingo, Two-for-One, China Give Aways, etc., were wholly the result of the depression starting in the early 1930s, and have now almost entirely disappeared. Certainly they do not exist to such extent as to constitute them unfair competitive practices.

2. Changes in admission prices are almost entirely seasonal, or the result of unusual conditions in a particular locality. It is natural for a distributor, who has had a long [fol. 5459] period of experience with a particular exhibitor (whether the owner of a single theatre or a large circuit), whom he has found to be a capable theatre operator, to leave to the judgment of that exhibitor the question of admission prices. No instance has been shown in this case where any one was harmed by changes in admission prices made by Schine and, in any event, a very mild injunctive provision would be all that is required to eliminate this possibility *in toto*.

Furthermore, although until the submission of its brief in reply to our objections, the government always contended that the admission prices charged by Schine in certain towns were too low, the government now claims that Schine overcharged its customers (plaintiff's reply brief, page 12).

3. The Court has included in the Judgment a provision against so-called non-competitive agreements. A number of these agreements were physically introduced in evidence, but no attempt was made to analyze the same, or any of them, nor was any evidence introduced indicating that they had in any way operated to restrain competition. The obvious purpose of these agreements was to protect the good will which the Schine Circuit was buying in connection with its purchase of the land and buildings in which a certain motion picture enterprise was being operated. Such an agreement, properly limited as to scope, has always been upheld by the courts as entirely legal and proper. If, in any instance, the defendants have overstepped the bounds, this should be pointed out to them so that in the future the scope of the agreements will be properly limited. We are certain that the Court did not intend absolutely to forbid the making of any such agreements at all.

[fol. 5460]

Conclusion

As we have already stated, the plaintiff did not criticize any of these suggestions either in its reply brief or in its "comments". Nor did the plaintiffs make any suggestion as to the possibility of improving upon any of them, a fact which, we submit, justifies us in assuming that their incorporation in either Plan 1, Plan 2 or Plan 3 will result in a satisfactory solution of the problem before this Court, without invoking a remedy which the Court has already criticized as "harsh" and which Assistant Attorney General Hayes, when speaking only of divorcement of exhibition from distribution, a much milder remedy, characterized as "chaos" (Arguments, p. 2715).

• • • • • • •

Either of the Plans submitted herewith will bring about three separate management units, each with a very limited buying power. There are today many independent theatre circuits all over the United States, not subject to government attack, with much greater buying power than any one of the units suggested under the three Plans.

• • • • • • •

The separation of beneficial ownership provided for under Plan 3 takes care of the question of inter-family control, which the Court mentioned at the discussion in Chambers on May 8th. Plan 3 is entirely consistent with the realignment provided for in the *Crescent* case and approved by the Supreme Court. In the *Crescent* case the Court was not at all concerned by the fact that the separate units provided for by the decree would be owned in whole or in part by an individual, the wife of the individual and the son-in-law of the individual. If the Court, upon fur- [fols. 5461-5462] ther study, should still feel that there may be "aggravated situations" as suggested during the course of the discussion on May 8th, this question can be cleared up by the taking of testimony with respect to those situations as prayed for in defendants' motion to be presented concurrently herewith.

Respectfully submitted subject to the above reservations,
Willard S. McKay, Attorney for the Defendants.
Arthur Garfield Hays, Howard M. Antevil, of Counsel.

[fol. 5463] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

DEFENDANTS' MEMORANDUM OF MAY 28, 1946

As a part of this memorandum we are resubmitting bodily "Reply Brief for Defendants", dated May 7, 1946. We are also including a concise chronological statement of the defendants position regarding the jurisdictional situation in this case, as it has developed since the opinion was handed down, together with what we hope will be a final statement regarding the Consent Order of May 19, 1942.

We are also dealing briefly with other matters touched upon in the "Plaintiff's Comments on Defendants' Plan", served since service of our reply brief. Defendants are also submitting concurrently herewith their proposals regarding possible realignment of the Schine Circuit, which were tentatively presented to the Court on May 8, 1946, and also offered to plaintiff's counsel for the sole purpose of studying the same and commenting thereon. In these proposals we have concientiously endeavored to meet the suggestion made by the Court regarding inter-family control of the [fol. 5464] separate corporations. Since the plaintiff has offered no constructive criticism of our tentative proposals, either as to the machinery set up or the suggestions previously embodied in our objections to the plaintiff's plan, except the assertion that our plan of realignment is too simple and should have been submitted long ago, we have addressed ourselves only to the suggestions of the Court.

We have not dealt in this memorandum with our motion for the taking of testimony, which is to be presented concurrently herewith, and which is covered in separate affidavits and memoranda.

I

The Jurisdictional Situation

The opinion in this case was handed down on October 8, 1945 and the Court suggested that new findings be submitted by counsel in the light of the opinion. In its haste to obtain the entry of a judgment, the plaintiff did not prepare any new findings but simply split up the factual parts of the opinion into numbered findings of fact and sent these along together with new proposed conclusions of law and a proposed judgment. Counsel urged the Court that the judgment be entered immediately and stated that any questions which the defendants desired to raise could be raised under Rule 52B. The Court adopted this suggestion and refused the request of defendants' counsel, who had been ill, for ten days in which to complete new proposed findings. So hasty was the plaintiff in procuring the entry of a judgment that it even carried over from the opinion into the new findings a mistake regarding clearance between Hornel and Earlville, which, months later, it characterized as a [fol. 5465] typographical error and said that the town mentioned should have been Hamilton. The mistake itself was unimportant, but its adoption by the plaintiff typifies the blind haste which has characterized the plaintiff's attempt to enjoy immediately the fruits of its victory.

The judgment was entered on October 31, 1945 and on November 9, 1945 an order was entered on consent extending the time to move under 52B to December 7, 1945.

Plaintiff's counsel particularly desired this extension because he was then engaged in the trial of the case of *U. S.* v. *Paramount, et al.* in the Southern District of New York, although this engagement had not prevented his taking time out to prepare and procure the entry of the findings and judgment.

Although the defendants had until December 7th to make their motion under 52B, the motion was made on November 10th, which was within the original ten days allowed by the rules, so that the extension was of no benefit to the defendants. This motion was noticed by the defendants for hearing on December 10th. On November 28th the plaintiff requested the defendants for further time within which to move to amend the findings of fact and for a postponement of the defendants' motion to amend which was then set for hearing on December 10th. This request was granted by the undersigned attorney and the hearing of the motion and the time to move to amend the findings was adjourned to February 4, 1946.

On December 6th the defendants made a motion returnable on December 17th to stay the execution of, or any proceedings to enforce, the judgment pending final determination of the defendants' motion under Rule 52B. The plaintiff thereupon requested that this motion likewise be [fol. 5466] postponed to February 4, 1946, and the undersigned counsel granted that request.

At this time in discussing the matter with plaintiff's counsel, the undersigned took the position that the pendency of the defendants' motion under 52B would suspend the operation of the judgment until the determination of said motion and cited to plaintiff's counsel in support of this position, *Moore's Federal Practice*, Vol. 3, page 3120, reading as follows:

> "In the April, 1937, Draft it was provided that 'the pendency of the motion (to amend the findings or make additional findings) does not affect the finality of the judgment or suspend its operation.' This provision was stricken on the theory that the motion should have such an effect.
>
> "It must be made *not later than* 10 days after entry of judgment. The motion may be made with a motion for a new trial. As to whether the time for the motion to amend can be extended, see Sec. 607, *supra.*"

The defendants' motion under 52B was postponed from February 4, 1946 to February 25, 1946, because of the illness of the undersigned attorney and was argued on that day. A few days prior to the argument the plaintiff filed a "Plan" under paragraph III of the judgment.

Upon the argument defendants' counsel (Mr. McClennen) argued that no plan should be considered or adopted until the Supreme Court had determined the defendants' appeal. The Court at that time seemed impressed with defendants' contention, but was more impressed by the contention advanced by the plaintiff that there should not be more than one appeal in the case and thereupon set a hear- [fol. 5467] ing on the plaintiff's plan for April 16th, with the requirement that defendants' objections be filed on March 25th. It should be borne in mind that at that time the parties and the Court were operating under the original judgment which expressly provided for a plan.

While the defendants were preparing their objections the Court on March 8, 1946 handed down a decision on the respective motions of plaintiff and defendants under Rule 52B, allowing each in part and denying each in part. However, among the plaintiff's requests granted were requests for amendments to the Conclusions and Judgment.

With the same haste that had characterized the submission of the original judgment, plaintiff now submitted to the Court a proposed amended judgment which contained not only the amendments granted by the Court in response to the motion, but which eliminated from paragraph III of the original judgment the second and third sentences which were the only sentences in the judgment relating to the submission or adoption of a plan. No request for this amendment was before the Court on the motion.

When this came to the attention of defendants' attorney, he directed the Court's attention to this fact and requested that the Court withhold entry of the new judgment until time had been afforded to check all of the provisions of the judgment with the Court's decision and ascertain whether there were any further discrepancies. A few days later the Court was advised that defendants' counsel had found no other discrepancies and that as to the elimination of the two sentences in question defendants' counsel did not take any position. In all frankness, at that time we had not had time to give serious consideration to the probable effect of [fol. 5468] the elimination, but felt that we had discharged our duty to the Court by calling it to the Court's attention.

The Court thereupon signed and entered an amended judgment eliminating the two sentences. Therefore, the amended judgment, which is the only judgment now operative, contains no provisions whatsoever regarding the submission or adoption of a plan, and while it might have been argued that the original judgment was interlocutory and appealable only when it had been implemented by the adoption by the Court of a plan, no such argument can be made regarding the new judgment which is complete on its face and can be read and passed upon by the Supreme Court without any further implementation by the District Court.

It is not at all strange that the Court signed the judgment as presented by the plaintiff. In the first place, the Court undoubtedly felt that the plaintiff, as the successful party, should be given, so far as possible, the kind of a judgment that it requested. In the second place the Court was undoubtedly influenced by the quasi-judicial status which the Department of Justice is expected to and has traditionally occupied in litigation conducted by the Department. Unfortunately in this case, the plaintiff has disregarded this tradition and chosen rather to adopt the "hurry, hurry, hurry" attitude of the circus barker. Under these circumstances certainly no one but the plaintiff can be held responsible for the situation which presently exists.

The amended judgment was entered on March 29, 1946. The defendants' Objections to Plaintiff's Plan were completed and mailed from New York on March 29th before defendants knew that the amended judgment had been entered and before defendants knew that the references to the submission of a Plan had been deleted. On pages 8 and 9 [fol. 5469] of the Objections we discussed the situation as it existed at the time the Objections were being prepared and specifically reserved our rights in the premises. Shortly before the hearing on April 16th the plaintiff, without authorization under either the original judgment or the amended judgment, filed a "Reply to Defendants' Objections." Upon receipt of this paper the undersigned filed a motion noticed for hearing on April 16th, asking the Court to stay any further action under the second and third sentences of paragraph III of the original judgment, in view of the fact that these sentences had been eliminated from the amended judgment and that there was no further warrant for any action thereunder.

On April 15, 1946, defendants filed their notice of appeal from the amended judgment. The situation, therefore, at the time the undersigned appeared before this Court on April 16th was that an appeal had been filed from the amended judgment, but no order allowing the same had as yet been made.

This appeal was the subject of colloquy between the Court and counsel, appearing at pages 7, *et seq.*, of the transcript of April 16, 1946. During this colloquy the undersigned flatly stated to the Court that the defendants' position was that the judgment on its face is complete and that there are no references therein to any plan requiring any action by the parties or the Court prior to the appeal. The position of the plaintiff was stated to be that there was no appealable order in the case and that there could not be an appealable order until there was an approved plan of dissolution. The defendants' position was put squarely before the Court at that time by the statement by the undersigned that the appeal which had just been filed did not [fol. 5470] require the consideration by the Supreme Court of any plan, that the amended judgment of March 29th is a complete final judgment as it stands and does not require any explanation or elucidation; and the question having been raised by the Court, the undersigned stated that when any plan was approved there would be another appeal.

The question was again raised on page 34 of the transcript and the Court in answer to an inquiry by plaintiff's counsel stated that as yet no order had been entered allowing the appeal. The undersigned thereupon (p. 35) pointed out that the allowance should be automatic.

On April 17th the Court signed the order allowing the appeal and subsequently a citation was issued, dated as of the day of the order.

It is the position of the defendants that with the allowance of the appeal and the issuance of the citation the jurisdiction of the case passes from the District Court to the Supreme Court and that the District Court has no further jurisdiction until the return of the mandate from the Supreme Court except to perform the ministerial acts provided for by the Rules of Civil Procedure and the Supreme Court Rules.

Plaintiff's counsel in effect conceded the correctness of this position when he argued that the amended judgment was not appealable until it had been implemented by the adoption of a plan and in counsel's letter of April 22, 1946, addressed to Edward F. McClennen, Esq., which states among other things as follows:

> "Since the record that we should like to have incorporated in any appeal has not yet been completed, and since we would also wish to file a statement opposing jurisdiction until a plan to effectuate Section [fol. 5471] III of the judgment has been approved by the Court, we think the record on appeal would be simplified if the order of allowance were postponed until approval of such a plan."

The statement opposing jurisdiction to which counsel refers is provided for in paragraph 3 of Rule 12 of the Supreme Court Rules and we respectfully submit that if the plaintiff contends that the appeal has not been properly taken to the Supreme Court and that jurisdiction is not now vested in the Supreme Court, the only way that the question can be raised is under the above mentioned rule and a motion under Rule 7, paragraph 3.

Notwithstanding what we consider our very strong position on this point, we have consistently indicated our willingness to cooperate with the Court in endeavoring to arrive at a plan, but we have invariably been met by claims on the part of the plaintiff impugning our good faith, questioning our motives, charging that we are seeking only delay and, most recently, a Gromyko-like attitude of indicating an unwillingness even to attend a hearing which was fixed by the Court after consultation with counsel representing both sides.

The defendants have consistently reserved all of their rights with repect to jurisdiction and a continuance of plaintiff's arbitrary and unfair attitude may conceivably force us to give up our efforts to cooperate and to stand on our legal jurisdictional rights. If this should result in a confused situation, or in delay, which we are certainly not seeking, there will be nobody to blame but the plaintiff.

[fol. 5472]

II

The Consent Order of May 19, 1942

We thought that our discussion of the consent order in this case, which appears at pages 18 to 21 of "Reply Brief for Defendants", dated May 7, 1946 (which is included *infra*) had completely laid the ghost of this order. However, when we received "Plaintiff's Comments on Defendants' Plan" we found that plaintiff places its main reliance, in endeavoring to persuade the Court to accept and approve its harsh and illogical plan, upon this order which was entered upon consent in May, 1942 for the avowed purpose of avoiding a trial of this case at a time when the country had only recently become involved in the most destructive war in its history, and which order expired on and was of no further force or effect after November 15, 1944. In using this order as an argument to prejudice the Court against the defendants at this time plaintiff wholly disregards the plain intendment of the order as set forth in paragraph II, subdivision 1, relating to jurisdiction, and the statement of defendants' counsel at the time the order was presented to this Court, which appears in the record of May 19, 1942, at page 8, as follows:

> "The defendants in this case, the exhibitor-defendants, have consented to the entry of this order and they are motivated very largely by consideration of the fact that under the conditions as they exist now the time of this Court, the time of Government attorneys, and the time of their own attorneys and their executives should not be taken up for a period which we estimate at six months in the trial of this case.
>
> [fol. 5473] "For that reason we have made what we consider very substantial sacrifices, and for that reason we have consented, subject to your Honor's approval, to the entry of this order."

The misuse which the plaintiff has made of this order, and its misrepresentations regarding the same both orally and in writing since the entry of the original judgment herein, are nothing short of outrageous.

The plaintiff in all of its proposals regarding the adoption of a plan has urged the Court to enforce the consent order as if it were still in effect, when at the very start of the order it is plainly provided that it "shall be in effect from the date hereof (May 19, 1942) to and including May 19, 1944." This date was subsequently extended to November 15, 1944, at which time it expired for good and all, and the defendants thereupon, on the very next day, filed a report showing five theatres still undisposed of and stating that notwithstanding repeated efforts they had not been able to dispose of the same. The fact that all the defendants were required to do was to use their best efforts to dispose of the theatres named in the order is clearly shown by the next to the last paragraph of paragraph II, subdivision 4, of the original order and paragraph 4 of the order of May 31, 1944. The plaintiff never exercised the privilege granted to it under said last mentioned order to renew its motion for the appointment of a trustee, which privilege could be exercised only after "* * * the exhibitor-defendant shall fail to have made reasonable efforts to comply with said order, or shall have been unable at the expiration of six months from May 15, 1944 to dispose of said theatres." Nevertheless the plaintiff has consistently claimed that the failure of the defendants to dispose of these theatres was [fol. 5474] contumacious and justifies the Court now in entering a confiscatory decree for the dissolution and disruption of the remainder of the circuit.

Plaintiff states that by the acceptance of the six months extension provided for by the order of May 31, 1944, the defendants avoided the appointment of a trustee for the sale of the theatres. The opinion of the Court, dated May 4, 1944, provided that if Schine did not notify the Court in writing that it would accept the six months extension, a trustee would be appointed (not for the purpose of selling the theatres, but) for the purpose of making a survey of the theatre properties and advising the Court as to what action should be taken with regard to them. Furthermore, during the six months period, the defendants did succeed in disposing of four theatres, and upon the filing of the report of November 16, 1944, the Court and even the plaintiff, at that time, were apparently satisfied that the defendants had done everything possible to comply with the order. The plaintiff's reckless charges made for the first time with the submission of its plan four months after the entry of judgment and fifteen months after the final report fairly illustrates the willingness of the plaintiff to go to any lengths to destroy the Schine Circuit.

The plaintiff's statement that no disclosure as to Mount Vernon was made to plaintiff until the filing of our objections is untrue. This situation was discussed at length in Washington with representatives of the Department of

Justice early in November, 1945, at the time that the lease was about to expire. The argument advanced by the plaintiff in the paragraph beginning at the bottom of page 4 of its "Comments" is particularly unfair and unwarranted. Here the consent order is treated as an admission of wrongdoing, whereas in entering into the stipulation covering the [fol. 5475] order the plaintiff expressly agreed that no violation of the Sherman Act was admitted. Furthermore, the injunctive provisions of the order do not presuppose or admit that the defendants were currently violating the law or engaging in the practices covered by the order, whether legal or illegal, but simply stated that the defendants would not in the future engage in any such practices without dealing with the legality or illegality thereof. We are frankly unable to understand how the Department of Justice, in the exercise of its quasi-judicial functions, can bring itself to suggest to the Court that the consent order can be used as evidence of any violation of the Act or of the existence of any "specific conspiracies" as indicated in the fourth line of the paragraph now under discussion. We frankly state to the Court that it is our honest belief that after reading the plaintiff's "Comments" the Court cannot possibly have any confidence in any of the contentions advanced by the plaintiff on the subject of implementation of the decree.

The plaintiff in the introductory paragraph of its "Comments" in addition to erroneously referring to the consent order as a "Plan to prevent the defendants from continuing to violate the Sherman Act in the conduct of their film business", states that the plaintiff's part of the agreement was the continuance of the suit for a two year period. The fact is, that both the plaintiff and the defendants desired to avoid the trial of this case during the critical period in which the country had only recently found itself. The defendants' statement to that effect was made by the undersigned counsel in open court and the plaintiff's statement to that effect was made by Mr. Thurman Arnold, the Assistant United States Attorney General, to the undersigned in Mr. Arnold's office in Washington, D. C., on the Saturday before the entry of the order when, in discussing [fol. 5476] the order, Mr. Arnold stated in the presence of Mr. Wright, in substance, that he had other matters in which he could more profitably use Mr. Wright's efforts and that he would be very glad to avoid the trial of the case at that time.

Mr. Wright himself stated to the Court at the opening of the trial in May, 1944:

> "The purpose of the order was, of course, to preserve the *status quo* pending the continuance of this suit and I assume that the order was obeyed."

III

In Re Plaintiff's Comments on Defendants' Plan

On page 2 of the "Comments" the plaintiff attacks our contention that there is no evidence indicating that the defendants have eliminated competition by the use of methods which are violative of the Sherman Act. We have reviewed the Findings and Conclusions and are unable to find any Finding or Conclusion to that effect.

The plaintiff refers several times throughout the Comments to the individual owners; i.e., J. Myer and Louis W. Schine, as having violated the Act and being "guilty", but a review of the Opinion, the Findings and the Conclusions reveals no reference to the individuals as such. This is quite different from the situation in the *Crescent* case where, notwithstanding specific findings against the individuals, Sudekum, Stengel and Rosenbaum, they were permitted to remain as owners of circuits so long as no two of them were interested in the same circuit. This same result is accomplished under Plan 3.

On pages 3 and 4 the plaintiff now admits that it has changed its position regarding the remedy to be applied, as we contended in our objections, but now says that the plan [fol. 5477] proposed by the plaintiff is not as drastic as that outlined in its main brief. Plainfiff further says that the divestiture suggested at page 60 of its main brief was that approved by the Supreme Court in the *Crescent* case. We claim that our Plan 3 comes as close to the remedy applied in the *Crescent* case as is possible under the physical setup of the theatres embraced in the Schine Circuit.

The plaintiff's claim that the record of the Schine defendants in suppressing particular theatre operating competition was considerably less favorable to them than that made by the *Crescent* defendants, is wholly untenable. The *Crescent* case was the first of the four cases involving a motion picture industry to be tried, and it was tried first because the plaintiff wanted to puts its best foot forward. The findings in the *Crescent* case consist of 187 Findings of Fact covering 144 printed pages. Contrast this with the 32 findings prepared by the plaintiff in this case, which consist of nothing more than a paraphrase of the Court's opinion.

The plaintiff's whole attitude is typified by its characterization of the judgment in this case as "the Court's *dissolution* judgment" (italics ours). This in spite of the fact that the use of the words "dissolution by the Court" was in its classic rather than punitive sense and that the Court plainly indicated its unwillingness to apply this harsh remedy.

Even when the plaintiff was arguing the *Paramount* case in the Southern District, it said to the Court, when discussing what it would do in the case of *Twentieth Century-Fox* if it had its way, that it would dissolve National Theatres Corporation, which is a holding corporation forming the link between Twentieth Century-Fox, as distributors, and "five large circuits in which National owns all of the stock, all of the National stock being owned by [fol. 5478] Twentieth Century-Fox Film", and that "in short, we submit that the law requires that each of the theatre operating affiliates of each of these defendants must be made to stand on its own competitive feet by dissolution measures of the kind that have already been applied to much smaller units in the industry." (See arguments in *United States v. Paramount, et al.*, a copy of which has been supplied the Court, at page 2577, *et seq.*

Note that counsel referred to "positive dissolution measures". Further note, that the only cases counsel could have had in mind were the *Cres-ent* case and this case. In the *Cres-ent* case the separate circuits were not disturbed, except to be put under non-interlocking control, and that is what the plaintiff was arguing for in the discussion above referred to when it contended that each of the five large Fox Circuits should be made (and, of course, permitted) to stand on its own feet. At the time of this argument the plaintiff had not as yet even submitted a plan in this case.

After reading the "comments", page 5, we are now puzzled as to why the plaintiff cited the authorities referred to, in the first place. We had been under the impression that these cases were cited in the "reply to defendants' objections" to indicate the nature of the remedy customarily applied in anti-trust cases, but, after our analysis of these cases (pp. 13 to 17 of reply brief for defendants, dated May 7, 1946), showing that the realignment or reorganization ordered left the beneficial ownership unchanged, plaintiff, now, "comments" that the remedy discussed with approval by plaintiff in its "Reply" is not suitable or adequate here. Why? We know of no cases and certainly none are cited by plaintiff where a more drastic remedy has been adopted.

[fol. 5479-5512] The plaintiff's statement that if the decree in this case was not intended to divest the defendants of any theatres of any kind or description, then the trial of this suit was a nullity, because the plaintiff had already obtained by consent a limited theatre divestiture and the main purpose of the trial was to determine the extent to which further divestiture should be ordered, verges on the ridiculous.

The purpose of the trial was to prevent alleged violations of the Sherman Act, and if this can be accomplished by injunction, the remedy should be so limited. The divestiture provided for by the consent order was simply a concession made by the defendants as to the theatres which they had acquired since the trial started thereby voluntarily giving the plaintiff the benefit of an injunction *pendente lite* which it had sought from the Court, but had been denied. What the plaintiff is trying to do here is to apply to the small circuit operated by the defendants a special rule, while permitting the rest of the 17,000 motion pictures theatres in the United States to continue to operate as they did in the past and in the same manner as did the defendants prior to this law suit.

The plaintiff's plan should be rejected *in toto*.

If any realignment is necessary the proposals submitted by the defendants are sufficient to accomplish the purpose of the judgment.

Respectfully submitted, Willard S. McKay, Attorney for the Defendants. Arthur Garfield Hays, Howard M. Antevil, of Counsel.

[fols. 5513-5514] IN UNITED STATES DISTRICT COURT

[Title omitted]

DEFENDANTS' MOTION FOR STAY

The defendants move the Court for a stay of all proceedings in connection with consideration, approval or enforcement of any plan or plans of dissolution, realignment or reorganization, said stay to continue until the determination by the Supreme Court of the United States of the Plaintiff-Appellee's motion to dismiss Defendant-Appellant's appeal, which motion is presently pending before it, and in the eve-t of the denial by the Supreme Court of the said motion, the stay to continue until final disposition by the Supreme Court of the present appeal itself.

Respectfully submitted, Willard S. McKay, Attorney for the Defendants.

Arthur Garfield Hays, of Counsel.
Dated New York, N. Y., June 7, 1946.

[fol. 5515] IN UNITED STATES DISTRICT COURT

[Title omitted]

Transcript of Hearing

Proceedings had before Honorable John Knight, United States District Judge for the Western District of New York, at the U. S. Court House, Buffalo, New York, Monday, June 17, 1946, at 10 o'clock.

APPEARANCES:

Honorable George L. Grobe, United States Attorney for the Western District of New York, by Robert M. Hitchcock, Esq., Special Assistant U. S. Attorney, of counsel, for the United States of America.

Willard S. McKay, Esq., and Hays, St. John, Abramson & Schulman, by Arthur Garfield Hays, Esq., and Seymour M. Heilbron, Esq., and Howard M. Antevil, Esq., of counsel, for the Defendants.

[fol. 5516] Mr. Hitchcock: Your Honor, such opposition as there is to this motion is contained in a letter which was just handed to me by Mr. Grobe. It refers to a lett that was sent to you by the Government in reply to o which was sent to you by the attorneys for the defenda and states that the Government's position is fully stat in that letter to you.

I suggest that if Counsel want to be heard in argume if your Honor cares to do so, you could hear their argume then if Counsel for the Government want to submit an thing in opposition that they be given a limited time t do so.

The Court: This is a motion to stay——

Mr. Hitchcock: This is a motion to stay all proceeding I am not familiar with it. And as I understand it, th have no objection to a stay of execution but they do ha objection to the stay of all proceedings.

The Court: It isn't a question of staying execution; is a question of whether a plan be submitted and approv now. Is that it?

Mr. Hays: I might make it clear, your Honor, that in o argument we are not going to ask for a stay in the heari of evidence.

[fol. 5517] The Court: No. That has already been a gued. I will hear you.

Mr. Hays: If your Honor please, since we were last b fore this Court the Government filed a motion asking t Supreme Court to dismiss our appeal on the ground th the judgment appealed from was not a final one.

The Court: Yes.

Mr. Hays: In other words, they left to the Supreme Cou the question of whether our appeal is sound or not; a we think that pending that nothing should be done in t case except perhaps the hearing of evidence as we ask before so that we can get all the evidence on the recor Then, if the time comes when a plan is presented, yo Honor will have all the evidence before you upon whi to base a plan.

One thing we feel sure of is that our appeal is not prem ture, and our reason for asking this stay is this: Ev today, with these suggestions of a plan which might bri about divestiture of theaters, we get constant inquiri about the prospects of change in our business. Our e ployes naturally wonder what is going to happen, natura [fol. 5518] discuss the matter with competitors, natura have in mind that certain theaters are going out of busine

As a result, any plan promulgated at the present time would be harmful to us. Now, we haven't brought this motion before the Supreme Court; the Government brought the motion. All we ask is that these proceedings be stayed except for the taking of evidence.

The Court: How does the appeal have anything to do with it? If the appeal were sustained we would be right back here with a plan. Why, in the meantime, while the matter is still pending before the Supreme Court, shouldn't a plan be submitted so that if the appeal is finally sustained it will be submitted with the whole case?

Mr. Hays: Because, your Honor, one very important thing is the continuity of our business, the stability of our business, and we are afraid of what will happen to our business if rumors get around that we are being required to divest ourselves of theatres.

The Court: Well, that is the situation now. But even if you are sustained in your appeal from the judgment, you would still go along, the plan would be submitted, and it [fol. 5519] would necessitate another appeal, doubtless.

Mr. Hays: But your Honor, that would do us a great deal of harm.

The Court: Well, how are you going to obviate that?

Mr. Hays: Why, by taking up this appeal and finding out whether we are right or wrong. We claim that this Court has no jurisdiction at this time, and that that was the situation before the Government came along and made its motion in Supreme Court to dismiss the appeal. We now ask that until the Supreme Court determines whether our appeal is proper that this Court shouldn't make any further orders.

The Court: Well, that is the same question we had before.

Mr. Hays: Yes, and we hesitated to come before the Court and make a motion on it. Now the Government has done that very thing. And, let me add, your Honor, that a great deal of water has passed under the bridge since we were here last: The Paramount decision seemed to me very, very important.

The Court: I don't know. I have examined that decision several times. It seems to me they criticise the very same things that this Court criticized, exactly.

[fol. 5520] Mr. Hays: That is true. But the decision in the Paramount case brings about a complete change in the industry. The chief argument of the Government here was that the Schine buying power restrained competition. Now that argument no longer exists because the whole industry is changed. The decision in the Paramount case finds that the moving picture companies violated the Anti-trust Law but deals with the situation by injunction and re-arranges the whole industry.

The Court: Will it require the separation of different companies in the Paramount case?

Mr. Hays: In the Paramount case no divestiture of any kind is ordered.

The Court: Oh yes, where two companies are held together——

Mr. Hays: You mean one is to sell out to the other?

The Court: Yes.

Mr. Hays: A situation that I don't understand exists in our case. The chief impression I got from the Paramount case decision is that the Court decided, as it did, against any divestiture because of public interest. That is, instead of compelling theatres to be sold to other people, they said no; that these theatres were successful because of the [fol. 5521] energy and zeal of the operators, and that, because of public interest, they would not direct a divestiture if they could accomplish a restoration of competition otherwise.

The very first time I went to Washington on this case I was met by the never-ending cry of "Delay". I told Government Counsel that if they were fair they would wait to see what light the Paramount decision would throw on the situation. Now the Paramount decision has come down. There is no longer any danger in a group which has a large buying power monopolizing the industry, because from now on pictures are to be sold competitively, one by one.

But all that has to do with a plan—which I am not arguing now. I am trying to lay stress on the fact that here we have today a situation which is completely changed. There are so many other things in this Paramount decision that I think are particularly important: The whole question of clearances is solved; the whole question of franchises is solved.

The Court: How are clearances solved, and franchises? There is still nothing in the law that says they can't obtain [fol. 5522] them. There is nothing obligatory in the law, as far as clearances are concerned, that says what you shall do.

Mr. Hays: The Court directs, as I understand it, arbitration, and lays down certain standards under which clearances are to be determined.

The Court: That hasn't been done in this case.

Mr. Hays: No.

The Court: I realize that.

Mr. Hays: Another thing which is almost exactly in point on my argument here is that in the Paramount case the Court directs that proceedings shall be stayed pending the appeal. In other words, the Court allowed just what we are asking here, that pending appeal nothing further be done.

Now, the Government in its letter suggests that I have abandoned my plan of taking evidence. I haven't abandoned that at all. Even if this case is reversed, before any plan is promulgated I would still ask to take evidence. As I have told your Honor before, I am not trying to delay things, and I would be ready to take any evidence we can in the interim so that no time is lost whatsoever. What I am trying to persuade your Honor to do is not to enter any orders pending the appeal in Supreme Court.

[fol. 5523] The Court: I assume if there is a reversal of the judgment by the Supreme Court it would be a reversal of the plan that goes with it. You have your whole case there. I think you should go ahead with the case. If the outcome of the appeal affects the plan, the plan should be submitted too.

Mr. Hays: Suppose your Honor were right, and suppose we go to a final order here. Then suppose the Supreme Court, on this present motion the Government makes, refuses to dismiss, on the ground that this is an appeal from a final order. In that case your Honor has no jurisdiction. Now, the Government is raising that question in the Supreme Court——

The Court: Refuses to dismiss? You mean——

Mr. Hays: They have made a motion to dismiss, and we ask your Honor to do nothing further until that motion is decided.

The Court: I know, but I don't see how that has anything to do with it, because if your appeal is sustained then you will go right ahead and submit a plan, and then the plan and the whole case will go before the Supreme Court.

Mr. Hays: Well, I haven't made myself clear then, your [fol. 5524] Honor. As I understand, the Government's present motion is to dismiss our appeal on the ground that we are not appealing from a final order. Now, if the Supreme Court refuses to grant that motion to dismiss the appeal, that means we are appealing from a final order and it means this Court has no jurisdiction until our appeal is heard and determined by the Supreme Court.

The Court: Why do you say we have no jurisdiction if the appeal is sustained as being one from a final order?

Mr. Hays: You mean if our right to appeal is sustained?

The Court: Yes.

Mr. Hays: You have no jurisdiction, as I understand it, because we having appealed, all jurisdiction is now in the Supreme Court, and not in this Court at all.

The Court: I think this Court retains jurisdiction to pass upon a plan that is in accordance with the judgment itself.

Mr. Hays: I think that having taken our appeal, this Court has no further jurisdiction, and the whole matter is in the hands of the Supreme Court. And if the Supreme Court takes a position affirming your Honor's judgment, [fol. 5525] then I think a plan would have to be determined by you. But I can't see how anybody would lose anything by your Honor's granting our motion for a stay if, for instance, you were to permit us to take evidence in connection with these theatres before any plan is promulgated. We can do that in the meantime. All I am asking is, while this motion before the Supreme Court, and the appeal, is pending——

The Court: Well, this case is pending for seven years—since 1939. Of course, perhaps a considerable portion of that time was justifiable delay. But I think it ought to be closed up before long.

Mr. Hays: May I ask your Honor if the passage of time hasn't been helpful, as a matter of fact? The whole of the motion picture industry is involved, and we are simply a small segment of it. I think the Paramount decision ought to be very helpful to your Honor in determining what should be done in connection with any plan.

The Court: I think that decision is helpful to some extent, that is true. I think there are features of it that are important here.

Mr. Hays: Well, let me make this statement as to the Paramount decision: We certainly are entitled to equal [fol. 5526] justice with the other companies, and without discrimination. And where you have a decision of that sort, that remodels the whole industry, makes it do business on an altogether different basis, it seems to me that must be taken into consideration in connection with what we are to be required to do under a like judgment that we had violated the Antitrust Law. I think it gives us all an opportunity to consider the whole industry together, and for that reason any delay that has occurred up to the time of the Paramount decision, I should think, your Honor would regard as quite helpful.

The Court: The Paramount decision might have bearing along the line of suggesting changes as far as the dealings with the major companies or distributor companies are concerned, but it wouldn't go to the question of the monopolistic practices within the Schine organization in the acquisition of theatres.

Mr. Hays: Well, it takes away the only argument of the Government that the buying power in the Schine organization has put them in an unfair competitive position, and that is the only reason for which they say they want to [fol. 5527] divest Schine of theatres. And it also makes clear the fact that the Government is not trying to punish the violators but is trying to bring about a situation where there will be fair competition between them. For these reasons I should think it would be a relief to the Court to know that we can be treated in a fair manner.

But that is not what I am asking for here. My argument here is that, the Government having seen fit to make a motion to dismiss our appeal, where there is such an issue between the Government and us on that matter, I can't understand why we are not entitled to a stay until that matter is heard.

They didn't come to this Court; they went to the Supreme Court. They say this is not a final order. If it is a final order, it is an appealable order, and we are asking that we be permitted to go to the Supreme Court just as fast as we can to have that question determined, and while it is being determined all we ask your Honor to do is to stay these proceedings and not hurt our business.

We would agree to a stay of execution pending appeal, but a great deal of harm will have been done in the mean-

[fol. 5528] time. Letters come in by the hundreds, day by day, from people talking about the insecurity of our organization. We feel that—if this is a final order and if this appeal is heard—we are entitled to have things remain as they are, and now particularly, since the Government has put the matter up to the Supreme Court and taken it out of the hands of this Court.

The Court: Of course, you have to make a distinction between the Paramount case and the Crescent case. The Supreme Court decision is superior to the Three-Judge Court decision—I don't argue that for a moment. But I do say that the Crescent case involves the very questions that are here, while only some of the questions involved in both cases, clearances and other things, were decided in the Paramount case.

Mr. Hays: All that the Paramount case did was to find that these practices pointed out in the decision are in violation of the law. That is all. Then it provides for injunctions and grants a stay pending appeal. And here, where we ask the very thing which the Court granted there voluntarily, we are met with opposition. I don't understand why we should be in one position and the big com-[fol. 5529] panies in another, because these practices weren't developed by one small chain; they were developed by the whole industry. All I ask is that my client be treated as well as the others.

Of course, it is difficult, your Honor, to argue here without an opponent, and with the rather contemptuous attitude of the Government of just paying no attention to what we say. How can they come before this Court and say they want to do something to correct the situation by promulgating a plan that may cause our business a great deal of harm, and at the same time ask the Supreme Court to decide that my appeal is not proper?

The Court: When they say your appeal is not a proper one, they assume you can appeal when the plan is in and submit it as part of the whole record. Then, of course, certainly, there would be an appeal, so you wouldn't be deprived of any rights.

Mr. Hays: I think that was so at one time, your Honor, when the judgment here was interlocutory. But then the Government, perhaps in haste, or for some other reason, made it what we regard as a final order.

The Court: I don't see how a great deal of harm can [fol. 5530] result as far as your rights are concerned, because the whole question will come before the Supreme Court eventually. The purpose of your motion, as you have pointed out, is to stay the action pending the decision on the one question.

Mr. Hays: May I point out, your Honor, there is a great difference in life between legal rights and business conditions. I say that any judgment that would have to do with disposition of theatres or would jeopardize our owning of theatres pending appeal would hurt our business tremendously. We want to be in a position of having certain continuity of business, without orders of the Court, pending our opportunity to get to the Supreme Court to determine our rights.

But where would there be any delay, your Honor, if you would grant a stay pending a determination by the Supreme Court? I am hopeful that your Honor will permit us to put in evidence here, and I get a great deal of comfort from the Paramount decision where they show the changes in the industry for every year. For instance, under that three-year stipulation, you will remember that every time a theatre wanted to do anything, buy a new theatre, it had [fol. 5531] to show the changes in the conditions. I feel that all the way through we should be permitted to show what the changes in the situation are before your Honor works out a plan in order to develop a situation where you will maintain competition.

I am perfectly satisfied to put in evidence on that question in the meantime, and I am willing to except that from the stay. I can't see how the Government loses anything thereby, and it will save a situation that is very unfortunate for us, and burdensome, and causes us a loss of money. Perhaps the Government attorney can tell me where there will be harm in such a procedure, but I can't see it.

The Court: I have given this matter a great deal of thought, and have seriously considered what I would do—and I am not changed by your argument, because I think these matters can all be taken care of at the proper time. I am going to deny your motion to take additional evidence, and also deny this motion for a stay.

I see no reason for taking any additional evidence. We have had sufficient evidence before the Court, it seems to me, from which to determine some type of plan to be [fol. 5532] adopted. I think that plan should be submitted promptly so that the matter can be disposed of. That is my idea about this case.

Mr. Heilbron: If your Honor please, we have prepared a memorandum on this motion. Wouldn't your Honor want to read that memorandum before taking action about it? We have taken the trouble of printing it so that our position would be stated more clearly than anything that might be said in an exchange of letters, which is the only opportunity we have had of stating our position thus far. May I present to the Court this memorandum before the determination of the motion is made? I have already given the United States Attorney a copy of it.

The Court: I don't know about that. I know able Counsel here has covered the ground very thoroughly. He is capable of doing it.

Mr. Hays: Apparently not very effectively, though, your Honor.

The Court: Well, sometimes we don't see behind the effect.

Mr. Heilbron: I know that your Honor would not want to disrupt and ruin a thirty-year old business, if your Honor happens to be wrong and the Supreme Court reverses you.——

[fol. 5533] The Court: I don't see why you say, 'disrupt your business' before the plan is submitted. There can be no disposition of theatres pending that.

Mr. Heilbron: You don't ruin somebody's business merely by saying, "You have to sell a theatre." But I have in my hand a copy of a newspaper published in Carthage, and here is what is happening: This circuit has employes. Your Honor signs an order for a plan that does these things. If we lose an employe who is in the assistant bracket and who is looking for promotion we can't replace him because we are regarded as a business in liquidation. There is nothing to be gained, if your Honor happens to be reversed, in destroying a business pending a decision of the Supreme Court. All we ask here is that before that decision comes down from the Supreme Court we be permitted to remain in *status quo*. I think that Judge Hand, and the other judges on the Expediting Court, had that in mind when they wrote a direction for stay into the opinion in the Paramount case. They didn't even wait for the defendants to come into court and say, "Grant us a stay." They wrote, inherently, into the opinion a direction that a stay should be written into the decree. Here is what they said—[fol. 5534] and I am reading from Page 66 of the printed copy of the Paramount decision:

"Proceedings under the decree to be entered shall be stayed pending appeal."

They don't stay execution; they stay proceedings pending appeal. That is what we are asking for here. I don't see any difference between our case and the Paramount case from the standpoint of proceedings being stayed.

The Court: Was there any stay in the Crescent case?

Mr. Heilbron: No. But I am coming to that, if your Honor please, because you have referred to the Crescent case. The Supreme Court of the United States does not choose the cases to come before it. The Government, however, chooses the cases that it will bring before it. This Paramount case, in the interest of orderly procedure, is the case that should have been presented to the Supreme Court first. As a matter of fact, Attorney General Clark in 1942, in this very case, asked for a six month adjournment so that the whole thing could be readjusted in the light of conditions in the industry. And if your Honor will read through your own opinion, you will see there is [fol. 5535] not one element in your opinion that does not depend on the determination of the Paramount case. Why do I say that? Because everything with which these defendants are charged is basically——

The Court: Well, you are in error about that.

Mr. Heilbron: In what respect?

The Court: In respect to the methods employed by these defendants in the acquisition of theatres, the elimination of competition. Those things do not appear in the Paramount case.

Mr. Heilbron: I recognize that, and I can say this: That it would have been useless for one exhibitor to go to another and say, "I'm going to build a theatre," unless he was previously armed with franchises, with clearances, and with the ability to get product. As the Court says, merely to build a theatre is not an act of unfair competition, or merely to say that you are going to build a theatre, unless that act or that statement is coupled with and has a direct relationship to the getting of product.

The Court: That is very true, but you are begging the question there. You don't state the record as it appears [fol. 5536] in this case as to the acquisition of certain of these theatres.

Mr. Heilbron: Then we are back on the same question of penalty we had here before.

The Court: In other words, the record in the Paramount case doesn't show efforts on the part of any of these companies or their subsidiaries to eliminate competition, or acts committed by the representatives of those companies.

Mr. Heilbron: Under the law, we are considering not the imposing of penalty here; we are considering a plan.

The Court: That is very true. We are considering the question of restoring competition.

Mr. Heilbron: Yes. And in the Paramount decision they lay down the only sensible method by which that can be done, because you must treat the problem, as that Court says, upon a nationwide scope.

The Court: How do you read it from your standpoint as being consistent with the Interstate case?

Mr. Heilbron: The answer is easy. The Paramount case wasn't decided at that time. I would like to have Mr. McKay answer that, your Honor.

Mr. McKay: If your Honor please, the Interstate case was not a divestiture case.

The Court: That is true. The Crescent case is.

[fol. 5537] Mr. McKay: In the Crescent case there was not the kind of divestiture that the Government is suggesting in this case.

Mr. Heilbron was in error when he said there was no stay granted in the Crescent case. In the decision in the Crescent case there was a stay of one year, which stay has been continued, as I have previously pointed out to your Honor, so that the action is now stayed until July.

I venture to predict to your Honor that there will now be a motion made in the Crescent case to remand it to the District Court for modification of the decree to make it consistent with this Paramount decision.

Now, your Honor, what has happened in this Paramount case is something that could have happpened right here in this Court, if the Government hadn't dismissed the distributors from this case. If they had been here, before your Honor, you could have done exactly what the Expediting Court did down in the Southern District.

I have pointed out in my memorandum that we don't cite this case to your Honor because it is binding on this Court. We cite it because it is binding on us—not only on us but on [fol. 5538] every exhibitor in the industry. From now on every exhibitor in the industry will be required to do business according to the decree in the Paramount case.

If your Honor will note the paragraph here on divestiture in the Paramount opinion—which I sent you the minute I could get hold of it——

The Court: I have read it.

Mr. McKay: —you will note that the Court deals with the various companies and points out that they own maybe four per cent or three per cent of the theatres—I roughly figure that the Schine theatres amount to eight-tenths of one per cent—and the Court says that that is insignificant and cannot effect a monopoly. Right in the same paragraph it refers to the Crescent case and says there is no reason for taking these theatres away.

The Court: It ignores the fact that numbers do not necessarily create a monopoly. The holding may be only half of one per cent, but at the same time that half of one per cent may be a monopoly because of the monopolistic efforts of the half of one per cent.

Mr. McKay: It is entirely possible, your Honor, that [fol. 5539] they might create a monopoly when coupled with practices in the industry which were common at the time these lawsuits were started.

Now, I have asked your Honor to bear in mind in this case that this motion picture industry is a young industry. It has had to feel its way, and practices that have been indulged in in the industry have been arrived at by trial and error. The Paramount case is the first case where any court has actually had the chance to take the problem as a whole and deal with it at its source.

Your Honor would have had that chance, but the Government took it away from you when they took the distributors out of this case. I think that your Honor probably would have arrived at the same conclusion, because it is significant that the same practices which you cited in your opinion are the very practices that the Expediting Court, having before it the sources of the business, took out by their roots. You could have done that, but the Government took the distributors away and deprived you of that opportunity, and they took them away over our objection.

[fol. 5540] I don't believe your Honor wants to hurt this circuit. You have said so many times. You have said all you want to do is to see that the law is enforced.

Here is the first time we have had an opportunity to know exactly how this business can be conducted so that there will be no danger of violation of the Act.

How can there be any buying power when each picture gets put on the auction block and every exhibitor in the competitive area has a chance to bid for it? It doesn't make any difference that these exhibitors are not parties to the Paramount decree; they are bound by it just the same.

The same thing applies to clearances. Last time we were here your Honor asked what would happen to clearance assuming the effect of the Paramount decree were in some way taken away, and you predicted to me right then that some method would be found whereby this clearance arbitration system would be continued. That is exactly what has happened.

What difference does it make if a distributor, no matter [fol. 5541] how strong, wants to give forty days clearance, when Paramount and Metro and Fox are permitted to give only ten days because ten days is all the arbitration system will allow?

The arbitration system has been extended to cover other disputes, so that an exhibitor has the right to have considered such questions as whether his bid was fairly considered.

Franchises, under this decision, are thrown out completely.

Now, I take your Honor back to the filing of objections: When we filed those objections we endeavored in one part, at the end of our objections, you will remember, to meet by practical suggestions the abuses which your Honor had pointed out in your opinion. We stated there what we would do and what we were willing to do in that regard.

Your Honor has never indicated any feeling about that matter, but it is entirely possible that there may be in your Honor's mind the thought that we being such a small circuit, a simple injunction against us would not provide an effective remedy.

But now you have an injunction against the people from [fol. 5542] whom we have to get our pictures, and, therefore, I say, your Honor, with that in view, the objection ceases to exist. That injunction answers the whole problem. It does away with any possibility of a recurrence of those abuses.

As far as the Crescent case is concerned, I say that this case is right in accord with the Crescent case with respect to divestiture. In the Crescent case, where there was an interlocking ownership, where two circuits had been operating separately and then came together within the Crescent circuit, the Court made those two circuits separate. And that is all it did.

The Court: Well, the same question wasn't involved there, the association of several companies in one circuit.

Mr. McKay: I feel that these questions need very careful study by your Honor, because, I say to your Honor in all frankness, there isn't a man in the motion picture industry today who can prophesy the methods which are going to be applied in the industry after this decision is fully understood and assimilated.

It is going to revolutionize the industry, but it is going [fol. 5543] to revolutionize it into what looks to be like sort of a public utility, so that anybody will be able to come in and buy any picture that he can pay for. That is why the Court said that an ownership of three per cent of the theatres in one company constitutes no danger.

The Court: Of course, numbers are not necessarily controlling; the question is how they operate.

Mr. McKay: Well, there was some testimony here as to admission prices. That is about the only thing I recall concerning which there was actual complaint. We can't do even that any more. Minimum admission prices are abolished, franchises are abolished, by this opinion.

The Court: Well, the question of admission prices was only one feature of this case.

I will be glad to look over your papers and consider it further. But I have given the whole matter a great deal of thought in the light of the motion itself, and it isn't a matter of first impression, as you might say. As I look at it, this whole question might best go up on appeal together.

So far as the plan is concerned, it isn't my view that [fol. 5544] every theatre involved must be sold. I believe it can be accomplished in three ways: By dissolution in part, reorganization in part, and re-alignment in part.

Mr. McKay: May I ask your Honor this: If, after consideration of our memorandum and the entire problem, you still feel that some plan should be promulgated by proof before this Court, may I ask that there be not a formal, but informal, conference with Counsel so as to try to work whatever plan you feel you may want to approve into the picture of the entire industry as indicated in this opinion?

The Court: Well, I will consider that question. I haven't any definite ideas in mind about this matter that I have formulated.

Mr. Hays: Your Honor, what arouses me is that I think the Government is unfair to the Schine circuit. They are exercising pressure, they are ignoring our motions, while, I notice, in the Paramount case they never asked for divestiture of theatres except where they were used unreasonably to restrain commerce.

In the opinion in the Paramount case the court refers to the fact that divestiture would be damaging to the public [fol. 5545] interest as well as to the defendants, and would not accomplish any purpose at the present time. Now, why should the Government exercise pressure to hurry our case and ask the Court for orders which will injure our business——

The Court: I don't think it hurries. Instead of having two appeals you would have one; that is all.

Mr. Hays: I know, but we have an appeal now on a question of law whether we violated the Antitrust Law. What the Government wants is for you to approve a plan before that question is determined.

The Court: Then you would appeal from the plan as proposed all in one appeal.

Mr. Hays: Well, all I can say, your Honor, is to repeat it will do a great deal of harm.

The Court: It would make two appeals otherwise, wouldn't it?

Mr. Hays: I am hopeful it wouldn't make two appeals, because I am hopeful we would reverse.

The Court: If the judgment were sustained there would be another appeal?

Mr. Hays: If the judgment were sustained there would be another appeal, yes, sir, from the plan. But why they should trouble anyone, or harrass anyone, I don't [fol. 5546] know, because it seems to me the whole situation is being cleared up these days because of the changes brought about in the industry by this Paramount decision.

Another thing I don't understand is when the Government comes before the Supreme Court and makes a motion to dismiss our appeal, why the other questions before this Court shouldn't be held until the Supreme Court determines whether we are wrong or not. In the meantime, things are going to happen that will hurt our business.

Mr. McKay: Your Honor, I hope you weren't unduly impressed by the offhand statement that does appear in the record to the effect that this Schine circuit is one of the largest independents in the United States. As I recall, it was made by one of the distributors, and we didn't consider it important enough to go into at that time. But if your Honor has that in mind, the Schine circuit has 150 theatres out of 18,000.

The Court: Oh, no, I didn't have that statement in mind. As a matter of fact, I didn't know whether it was first, second, or third.

[fol. 5547] Mr. McKay: And I might also say, your Honor, if there is any importance attached to the prospect of there being one appeal or two appeals, it appears to me that if we are not successful on our first appeal, and the plan is something that we feel is improper, there doesn't seem to be any way of avoiding two appeals. Our first appeal will reach the Supreme Court in October, and any second appeal wouldn't be reached until some time after that.

The Court: You might like my plan.

Mr. McKay: We might, that is true.

Mr. Hays: That would settle everything.

Mr. McKay: Except, of course, if it is found that we are not violating the Act, then we would not have to do anything.

Mr. Hays: Wouldn't it be helpful to file a memorandum as to the effects of the Paramount decision on this case?

The Court: No, I don't think so. We have been seven years with this case on the calendar.

Mr. McKay: The Paramount case was eight years on the calendar. May we have the opinion in the Paramount case considered as part of Mr. Hays' affidavit?

[fol. 5548] The Court: Yes.

Mr. Hays: I think from the seven years you ought to eliminate the War years, your Honor.

The Court: Oh, yes.

[fol. 5549] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

ORDER DENYING MOTION FOR LEAVE TO TAKE FURTHER TESTIMONY

Upon consideration of the defendants' motion for leave to take further testimony in this suit and the argument of counsel in connection therewith, it is hereby

Ordered, that said motion be denied.

(S.) John Knight, United States District Judge.

Dated: Buffalo, N. Y., June 24, 1946.

[fol. 5550] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

ORDER DENYING MOTION FOR STAY

Upon consideration of the defendants' motion for a stay of proceedings, in connection with the consideration of a plan to effectuate section III of the judgment heretofore entered herein, and the argument of counsel in connection therewith, it is hereby

Ordered, that said motion be denied.

(S.) John Knight, United States District Judge.

Dated: Buffalo, N. Y., June 24, 1946.

[fol. 5551] IN UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF NEW YORK

Civil No. 223

UNITED STATES OF AMERICA, Plaintiff,

v.

SCHINE CHAIN THEATRES, INC., et al., Defendants

Appearances:

Robert L. Wright, Louis B. Schwartz, Special Assistants to the Attorney General; Wendell Berge, Assistant Attorney-General; George L. Grobe, United States Attorney; for plaintiff; Willard S. McKay, of New York City, for Defendants; Arthur Garfield Hays, of Counsel.

Opinion of John Knight, U.S.D.J.—July 5, 1946

Knight, District Judge:

The Decision of this court in this suit directs "the entering of a decree adjudging that the defendants and their affiliated corporations be dissolved, re-aligned or reorganized in their ownership and control, so that fair competition between them and other theatres be restored and maintained; and that the determination of the question of the dissolution, re-alignment or reorganization of the parties aforesaid and the method to be employed in the accomplish- [fol. 5552] ment of the same be left to be fixed by this court after further consideration with the parties."

Pursuant to the foregoing direction, the court, together with the parties, has had under consideration the adoption of several different plans. The general features of the plan submitted, by the plaintiff have been adopted. The principal difference is that the plan as approved does not include the divestiture of the interests of the defendants in numerous towns where the defendants' now own or control the only theatre.

The plan as approved directs these things:

1. That the defendants' interests in theatres located in certain towns, except in one theatre selected by them be sold.

2. That defendants' interests in theatres located in certain towns, except in two theatres selected by them, be sold.

3. That the defendants' interests in the Riviera or Liberty and in the Monroe or Madison theatres in Rochester, N. Y., be sold.

4. That the existing pooling arrangements be made in the manner and at the time directed.

5. That the theatre interests of the defendants remaining and undisposed of under the consent order of May, 1942, be sold.

6. That a trustee as an agent of the court be appointed to make the aforesaid sales; that no defendant shall acquire any financial interest in additional theatres except after affirmatively showing that such acquisition will not unreasonably restrain competition; and that no defendant shall buy or book films for any theatre other than those in which the defendant owns a financial interest.

The decree herein also provides that its provisions may be stayed pending a final determination of any appeal. This is conditioned upon the diligent prosecution by the defendants of such appeal, so that the ultimate enforcement of this order may not be prejudiced.

[fol. 5553] The defendants submitted three so-called "Proposed Re-alignment" plans. No one of these is acceptable. The so-called proposed Re-alignment plan No. IV has been specially urged on the court. This plan contemplates the division of Schine Chain Theatres, Inc., and its subsidiaries, into three separate corporations, in one of which J. Myer Schine would own all of the stock of the New York theatres, in another of which Louis W. Schine would own all of the stock of the Ohio theatres, and the third of which Mrs. J. Myer Schine and Mrs. Louis W. Schine would own all of the stock of the Delaware, Maryland and Kentucky theatres. It proposes that J. Myer Schine own or lease and manage, buy and book for all New York theatres; Louis W. Schine own or lease and manage and buy and book for all Ohio theatres; and Mrs. J. Myer Schine and Mrs. Louis W. Schine to own or lease and manage and buy and book for all theatres in Delaware, Maryland and Kentucky. This plan does not include the divestiture of ownership in any theatre, other than would be caused by the organization of the three corporations and by the holding of the stock interests as aforesaid. The fatal objection to this plan, aside from the question of divestiture, as it appears to me, is that as a practical matter the type of violations of the law found in this suit and condemned by this Court could readily be pursued by a continuation of the three interests. The entire present interests in all this great chain of theatres would be continued in the two Schines, brothers, and their wives. Were this plan proposed with the inclusion of divestiture of the theatres of which the defendants are directed to be divested, it would justify favorable consideration. But the plan adopted by the court is more favorable to the defendants herein than such a division of the corporation together with such divestitures would be. The plan adopted by the court is not a re-alignment in the sense intended in the Decision. The direction was in the alternative. It is now made to appear that a re-alignment is not feasible.

[fol. 5554] The purpose of this and like suits by the government, under its announced policy, is not for the purpose of penalizing defendants but rather the "Restoration of free enterprise and open competition amongst all branches of the motion picture industry.". In order to effectuate this policy the divestiture of theatres, as hereinbefore stated, is deemed necessary.

John Knight, United States District Judge.

July 5, 1946.

[fol. 5555] IN THE DISTRICT COURT OF THE UNITED STATES

[Title Omitted]

ORDER—July 5, 1946

Upon consideration of the plans heretofore filed herein by the plaintiff and the defendants for the purpose of effectuating Section III of the amended judgment heretofore entered herein, the objections filed to said plans by the said parties, and the argument of counsel with respect thereto, it is hereby

Ordered, that the following plan should be and it is adopted for said purpose:

I.

Theatre Interests to Be Divested

A. All of the defendants' interests in theatres located in the following towns, except in one theatre to be selected by them, shall be sold in the manner hereinafter outlined:

Amsterdam, New York
Ashland, Ohio
Athens, Ohio
Bellefontaine, Ohio
Bucyrus, Ohio
Cambridge, Maryland
Canandaigua, New York
Corning, New York
Cortland, New York
Delaware, Ohio
Easton, Maryland
Geneva, New York
Herkimer, New York
[fol. 5556] Ilion, New York
Kent, Ohio

Little Falls, New York
Lockport, New York
Malone, New York
Maysville, Kentucky
Middlesboro, Kentucky
Newark, New York
Norwalk, Ohio
Ogdensburg, New York
Oneonta, New York
Paris, Kentucky
Piqua, Ohio
Ravenna, Ohio
Richmond, Kentucky
Salamanca, New York
Seneca Falls, New York
Tiffin, Ohio
Watertown, New York
Van Wert, Ohio

B. All of the defendants' interest in theatres located in the following towns, except in two theatres to be selected by them, shall be sold in the manner hereinafter outlined:

Auburn, New York
Lexington, Kentucky
Oswego, New York
Wooster, Ohio

C. In Rochester, New York, the defendants shall sell all of their interest in the Riviera or Liberty Theatres and in the Monroe or Madison Theatres in the manner hereinafter outlined.

The names of the theatres which the defendants elect to retain in the towns named in paragraphs A, B, and C above shall be filed with the court within 30 days after the defendants shall have received a copy of this order.

D. The existing pooling arrangements at Fostoria and Medina, Ohio, and Syracuse, New York shall be dissolved. Such dissolution in Syracuse may be effected pursuant to the decision rendered in *United States* v. *Paramount Pictures, Inc. et al.*, on June 11, 1946, and consideration of such further orders as may be appropriate in this suit in this [fol. 5557] connection is reserved until after final judgment shall have been entered in that case. Such dissolution in

Fostoria and Medina may be effected either by dissolution of the respective corporations through which the defendants' theatre interests in these towns are jointly held with non-defendants and return of the theatres involved to the respective stockholders who owned them prior to the formation of the corporation or by a sale of the defendants' stock in such corporations. In the event that said corporations have not been dissolved as outlined above within one year from the entry of this order, the defendants' stock therein shall be sold in the manner hereinafter outlined.

E. The following theatre interests remaining undisposed of under the consent order of May 19, 1942, and more particularly described therein, shall also be sold in the manner hereinafter outlined:

Strand Theatre—Cumberland, Maryland
Ada Meade and Opera House Theatres—Lexington, Ky.
½ interest in the Margie Grand Theatre—Harlan, Ky.

II

Method of Sale

The theatre interests described in Section I hereof shall be sold as rapidly as possible upon such terms and to such purchasers as this court may approve, to the end that the theatres disposed of may operate in competition with theatres retained by the defendants. A trustee is to be appointed herein as the agent of the court for making such sales and is hereinafter designated as the trustee. Within thirty (30) days from the entry of this order the parties hereto may designate the name of a person to be appointed as trustee. In the event of their failure to agree upon the person to be so designated, the court will appoint a trustee. [fol. 5558] The trustee is hereby authorized:

(1) to examine such books and records of the defendants and make such inquiries of their employees as may be necessary to ascertain the value of the theatre interests in question;

(2) to take such action and to employ such assistance as may be necessary to negotiate and close sales of such interests, including real estate brokers, accountants, and legal counsel.

The defendants shall at all times provide the trustee with free access to the theatres to be sold, for the purpose of showing them to prospective purchasers and shall cooperate with the trustee to facilitate said sales, while continuing to maintain and operate said theatres in the ordinary and usual manner. The trustee shall present sales to the court for approval as they are negotiated and shall give reasonable notice to the defendants and the plaintiff of the terms and purchasers involved in such sales as he desires to submit for approval, to the end that they may have a fair opportunity to bring to the attention of the trustee and the court such objections as they deem appropriate.

The sales provided in Section I-E above shall be completed within six months and the remaining sales shall be completed within two years from the entry of this order, subject to such extensions with respect to specific interests as the court may grant, for good cause shown, upon the petition of the trustee or any party.

The trustee shall be compensated and his expenses paid in such amounts as the court may from time to time approve, from the proceeds of sales made by him. Said proceeds [fol. 5559] shall be deposited by him in a special account created for this purpose and disbursed only upon further orders of this court.

III

Restrictions on Future Theatre Acquisitions

No defendant shall acquire a financial interest in any additional theatres except after an affirmative showing that such acquisition will not unreasonably restrain competition. Such showing shall be made before this court upon reasonable notice to the Attorney General at Washington, D. C. No defendant shall buy or book films for any theatre other than those in which the defendant owns a financial interest.

IV

Stay

The provisions of this order may be stayed pending a final determination of any appeal taken therefrom. Such stay shall be conditioned upon the diligent prosecution by the defendants of such appeal as may be allowed them and the maintenance and operation by them of the theatres here involved, pending such appeal, in a manner which will not prejudice the ultimate enforcement of this order.

*Entered this 2d day of July, 1946.

(S.) John Knight, United States District Judge.

[fols. 5560-5561] IN UNITED STATES DISTRICT COURT

[Title Omitted]

DEFENDANTS' MOTION FOR AMENDMENT, RE-SETTLEMENT OR CLARIFICATION OF ORDER OF JULY 5, 1946

The Defendants' move the Court for an Order amending and/or re-settling and/or clarifying its Order heretofore entered herein, dated July 2, 1946, and filed July 5, 1946 in the following respects:

(a) By expressly stating that the Stay provided for in Paragraph IV of said Order is effective immediately and applys to all parts of said Order, including without being limited to the provision for the filing of an election by the Defendants under Paragraph I of said Order,, and the provision for the designation by the parties of a person to be appointed as Trustee under Paragraph II of said Order, and

(b) Directing the entry of a formal Judgment in conformity with the terms of said Order, or, in the alternative, designating said Order as a final appealable order.

Defendants expressly reserve all claims as to jurisdiction previously asserted.

Respectfully submitted, Willard S. McKay, Attorney for the Defendants. Arthur Garfield Hays, of Counsel.

Dated: Buffalo, New York, July 15, 1946.

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*Clerk's note—This order was actually entered on July 5th, 1946.

[fol. 5562] IN THE UNITED STATES DISTRICT COURT

[Title omitted]

Transcript of Hearing

Proceedings before Honorable John Knight, United States District Court Judge, at Buffalo, New York, July 22, 1946.

Appearances: Honorable George L. Grobe, United States Attorney, by R. Norman Kirchgraber, Esq., Assistant U. S. Attorney, appearing in behalf of the Government:

Willard S. McKay, Esq., 630 Fifth Avenue, New York, N. Y., appearing on behalf of the Defendants.

[fol. 5563] Mr. McKay: If the Court please, I don't imagine there is anything controversial about this. It is a matter about which I spoke to your Honor in Chambers last week. I want to state first for the record that the defendants do, in fact, intend to appeal, and that they intend to prosecute the appeal vigorously. As a matter of fact, I now have in the course of preparation my assignments of error. This motion simply is designed to clarify what was the apparent intent of the Court, to-wit, that the stay provided for in the order entered July 5th applies to all parts of the order and is effective so long as we diligently prosecute our appeal. The other point is whether that order was intended to be a final judgment or whether a final judgment should be entered on the order. I might say as to that, I am indifferent. All I want to clarify is that either one or the other is the fact. At first I thought that it was your Honor's intention that judgment be entered on the order, particularly because the order may lack some of the elements of a judgment, but I note it has been docketed in the Clerk's office as a judgment, and as such it probably complies with the provisions of 54-A of the Rules of Civil Procedure with respect [fol. 5564] to judgments. It is not supported by any findings of fact, because your Honor denied our motion to take additional testimony, but that question can be adequately raised on appeal, and I am not even asking that our time to appeal shall run from today. I am not trying to get any time advantage. I am perfectly satisfied to have your Honor designate that order as a final judgment, and that our time to appeal will run from that date. I don't imagine there will be any opposition on the part of the Government. I have not had any indication of any, and I prepared a proposed order which I would like to hand to your Honor simply stating what I have just said to you.

Mr. Kirchgraber: Appearing for the Government, your Honor, I think our views are expressed in a letter under date of July 18th—if you haven't received a copy—you have a copy of that?

Mr. McKay: I certainly have not. I have had nothing from Mr. Wright.

The Court: This letter I have says "A copy of this letter has been sent by Special Delivery to Mr. Grobe, Mr. McKay and Mr. Hays."

(Reading) "We have received a copy of the motion filed [fol. 5565] by the defendants on July 15 and desire to express the following views with respect thereto:

Insofar as the provision for the designation of a trustee is concerned, we do not believe that a stay would seriously prejudice the plaintiff, although we think it would be desirable to complete the exploration of all possibilities of agreement as to the person to be appointed prior to the final disposition of the appeal.

We think a stay as to the operation of the provision requiring the defendants to name the theatres they wish to retain until final disposition of their appeal might seriously prejudice the plaintiff in the ultimate enforcement of the order as this would make it difficult to detect during this period any manipulation of the policies of specific theatres designed to depreciate their ability to offer competition to Schine when ultimately placed in the hands of independent purchasers. We think that such a stay might also deprive the order of the finality which it should have in order to permit a proper appraisal by the Supreme Court. We do not see how the defendants can sustain any prejudice as the result of making such an election prior to the time the case [fol. 5566] is docketed in the Supreme Court and if it should appear upon final disposition that prejudice had resulted, we assume that the Court would permit the defendants to make another election upon an appropriate showing by them.

Insofar as the question raised as to the appealability of the order is concerned, we see no need for any further formal judgment. We think it is perfectly clear from the terms of the order itself that it is a final disposition from which an appeal lies and assume that the time for taking an appeal will commence to run from the date on which disposition of this motion is made.'"

Mr. McKay: I don't care about that fifteen days, your Honor——

The Court: I supposed a stay applied to all of the proceedings, Mr. Kirchgraber. He asks or suggests that a stay should not be operative as to the designation of the theatres which the plaintiff intends to retain.

Mr. Kirchgraber: Has there been an application for such a stay?

Mr. McKay: A stay was provided for in the order. This order simply clarifies it. This order may come up for interpretation by some one other than your Honor.

The Court: Let me see my order. There was a final [fol. 5567] clause in the order as I remember it. "The provisions of this order may be stayed pending a final determination of any appeal taken therefrom. Such stay shall be conditioned upon the diligent prosecution by the defendants of such appeal as may be allowed them and the maintenance and operation by them of the theatres here involved, pending such appeal, in a manner which will not prejudice the ultimate enforcement of this order."

What do you want an order for now? That is part of the judgment. That covers the whole ground as far as you are concerned.

Mr. McKay: It is sufficient for me, if your Honor rules from the Bench that that applies to the entire order and that all of the order is now stayed.

The Court: I think so.

Mr. McKay: That is what I have understood all along, but you see Mr. Wright is again absent, and I have not received a letter from him.

The Court: Let me see your proposed order?

Mr. Kirchgraber: I suppose that whole latter paragraph is a conclusion.

Mr. McKay: You mean our time to run?

Mr. Kirchgraber: No, I question whether or not it is a final order within the meaning of an appealable [fol. 5568] order.

The Court: That is merely declaratory of what was done. I construe this stay as applying to all of the provisions, of the paragraphs of the plan. I think that is the way—as I understood the Government to understand it at that time. The plan they submitted included a stay, and I take it pending an appeal.

Mr. McKay: That is entirely satisfactory to me, and I take it you also construe the order entered July 5th as a final order.

The Court: Yes.

Mr. McKay: That is also satisfactory.

The Court: I think that is the way to handle it.

Mr. McKay: It would be nice some time if, when Mr. Wright wants to oppose our motion, he would be here, do us the courtesy to come up.

The Court: I think he has clarified it.

Mr. McKay: I did not get any such letter.

The Court: They should have sent it earlier. They sent it the 18th. That was Friday. If Saturday is a holiday in New York——

Mr. McKay: My office is closed, and Mr. Wright knows it. I know it was not there by 5:30 Friday.

Mr. Kirchgraber: I think he is probably correct. I think [fol. 5569] ours came in this morning.

The Court: That is the answer to it.

Mr. McKay: There is another matter I wanted to take up with you on these theatres that are closed. From time to time leases on the theatres expire. I suppose that if we are able to renew those leases and thus preserve the status quo, that would be in accordance with your Honor's order. Of course, there may be some we are unable to renew, but if we are able to, it is our understanding that we go ahead and renew them. That will mean the status will be the same as it is now.

The Court: Your lease might run for a length of time—why shouldn't you apply to the Court for authority to renew the lease?

Mr. McKay: Well, as I see it, if we have the lease at the time the Supreme Court passes on it, and if the Supreme Court sustains your order, we will have to sell the theatre anyway. If we don't renew the lease that theatre might go out of existence. I think possibly your Honor might feel we had allowed the theatre to go to rack and ruin if we had an opportunity to renew the lease and had not done it.

The Court: It ought to be kept alive.

[fols. 5570-5571] Mr. McKay: As far as we are able to do so.

The Court: I should think so. That would be my view about it. I don't see why you should not. The Government could not be in any worse position than now if the opinion is sustained.

Mr. McKay: We have to sell it. If the opinion is reversed, we will have what we have.

The Court: I think it ought to be protected.

Mr. McKay: Thank you.

[fol. 5572] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

DEFENDANTS' ASSIGNMENT OF ERRORS—August 26, 1946

Each of the defendants, Schine Chain Theatres, Inc., Schine Theatrical Co., Inc., Schine-Lexington Corporation, Schine Enterprises Corporation, Schine Circuit, Inc., Chesapeake Theatre Corporation, J. Myer Schine, Louis W. Schine and John A. May, assigns as the errors in the record and proceedings in the above entitled case, on which the defendants intend to rely in briefs and argument in the Supreme Court of the United States, the following:—

First Assignment

The Court erred in making and entering the order and judgment filed herein on July 5, 1946, directing the divestiture of certain theatre interests and providing for the appointment of a Trustee for such purpose because the Court at the time of the making of such order was without jurisdiction to make the same.

[fol. 5573]

Second Assignment

The Court erred in making and entering the order and judgment filed herein on the 5th day of July, 1946, directing the divestiture of certain theatre interests and the appointment of a Trustee for such purpose without having specially found the facts and without having separately stated its conclusions of law thereon supporting the entry of such order.

Third Assignment

The Court erred in making and entering its order and judgment, filed July 5, 1946, for the avowed purpose of effectuating section III of the amended judgment herein, without giving the defendants an adequate opportunity or any opportunity at all to comply with said section 3 without such order.

Fourth Assignment

The Court erred in making and entering its order and judgment filed July 5, 1946, for the avowed purpose of effectuating section III of the amended judgment in the absence of any evidence or finding that such order was in any way necessary to effectuate said section III.

Fifth Assignment

The Court erred in ordering the divestiture of the theatre interests described in the order entered herein on July 5, 1946 and directing the appointment of a Trustee for such purpose because such order was not warranted by any findings of fact herein or by the evidence and was contrary thereto.

[fol. 5574]

Sixth Assignment

The Court erred in ordering the sale of the theatre interests described in Section I of its order of July 5, 1946, by a Trustee without allowing the defendants an opportunity for a reasonable time to sell said interests without the intervention of a Trustee, in the absence of any showing that the defendants would be either unwilling or unable to make such sale.

Seventh Assignment

The Court erred in adopting and approving by its order entered July 5, 1946 the plan of dissolution proposed by the plaintiff and designated as a plan of re-organization without having before it any evidence as to the propriety of such plan.

Eighth Assignment

The Court erred in that in and by its order of July 5, 1946, it directed a divestiture of the properties described therein in a manner which would constitute a deprivation of property without due process of law in violation of the Fifth Amendment of the Constitution of the United States.

Ninth Assignment

The Court erred in denying defendants' motion to take further testimony, dated May 22, 1946.

Tenth Assignment

The Court erred in that in and by its order of July 5, 1946, which avowedly sought the "restoration of free en- [fol. 5575] terprise and open competition amongst all branches of the motion picture industry," it ordered the divestiture of certain theatre properties without giving any consideration whatsoever to any of the following factors, to wit:

(a) The question of whether or not there had, at the time said properties were respectively acquired by the defendants, or at any other time, been any competition in said respective localities.

(b) The question of whether or not the theatre properties acquired by the defendants had been acquired for the purpose of eliminating competition or for other reasons including the desire in good faith of the previous owners to dispose of the same.

(c) The existence or non-existence, at the time of the making of the order of July 5, 1946, in the respective localities involved (including cities, towns or villages adjacent to those actually named) of any theatres other than those operated by the defendants.

(d) The probable effect upon the localities involved, of the carrying out of the divestiture directed by said order of July 5, 1946 with particular reference to the different policies, runs, admission prices, type, quality and diversity of entertainment offered, differences in character of population and the general character of the several theatres operated by the defendants in each locality affected;

and without having received any evidence or made any findings with respect to any of the above factors.

[fol. 5576]

Eleventh Assignment

The Court erred in rejecting and refusing to approve the plans of realignment submitted by the defendants as not acceptable without having taken evidence with respect thereto as requested by the defendants in their motion to take further testimony, dated May 22, 1946.

Twelfth Assignment

The Court erred in rejecting the plans of realignment submitted by the defendants on the ground that, as a practical matter, the type of violations of law found in this suit and condemned by the Court could readily be pursued by a continuation of the three interests involved in said plans, without having received any evidence as requested by the defendants as to the feasibility of said plan, and without having given any consideration to the injunctive provisions of the amended judgment herein, or to the further injunctive provisions proposed by the defendants as a part of said plan or realignment, or to the effect of the decision in the case of *United States* v. *Paramount, et al.*, in the Southern District of New York (which decision was before the Court in connection with defendants' motion for a stay, dated June 7, 1946).

Thirteenth Assignment

The Court erred in rejecting and refusing to approve the plans of realignment submitted by the defendants as not feasible and in substituting therefore the remedy expressly designated by the Court as harsh without having received any evidence as requested by the defendants as to [fol. 5577] whether or not realignment was in fact feasible, in view of its express finding that there was no evidence of any acts committed by the defendants or any of them or any course of conduct pursued by them in violation of the anti-trust laws since prior to the commencement of the trial of this case, to wit, since prior to May 19, 1942, and in view of the further fact that there was no evidence of any likelihood that any such acts would be committed or such conduct pursued by the defendants or any of them in the future.

Fourteenth Assignment

The Court erred in directing the divestiture of any of the theater interests of the defendants as necessary to prevent future violations of the anti-trust laws in view of its express finding that there was no evidence of any acts committed by the defendants or any of them or any course of conduct pursued by them in violation of the anti-trust laws since prior to the commencement of the trial of this case, to wit, since prior to May 19, 1942, and in view of the further fact that there was no evidence of any likelihood that any such acts would be committed or such conduct pursued by the defendants or any of them in the future.

Fifteenth Assignment

The Court erred in failing to hold that the injunctive provisions contained in the amended judgment herein, dated March 29, 1946, were sufficient in and of themselves to prevent any future violations of the anti-trust laws by the defendants or any of them in view of its express finding [fol. 5578] that there was no evidence of any acts committed by the defendants or any of them or any course of conduct pursued by them in violation of the anti-trust laws since prior to the commencement of the trial of this case, to wit, since prior to May 19, 1942, and in view of the further fact that there was no evidence of any likelihood that any such acts would be committed or such conduct pursued by the defendants or any of them in the future.

Sixteenth Assignment

The Court erred in failing to hold that the injunctive provisions contained in the amended judgment herein, dated March 29, 1946, were sufficient, together with alternative remedies suggested in defendants' objections to plaintiff's plan and defendants' proposed realignment plans to prevent any future violations of the anti-trust laws by the defendants or any of them, in view of its express finding that there was no evidence of any acts committed by the defendants or any of them or any course of conduct pursued by them in violation of the anti-trust laws since prior to the commencement of the trial of this case, to wit, since prior to May 19, 1942, and in view of the further fact that there was no evidence of any likelihood that any such acts would be committed or such conduct pursued by the defendants or any of them in the future.

Seventeenth Assignment

The Court erred in rejecting the injunctive provisions contained in the amended judgment herein, dated March 29, 1946, as insufficient, together with the alternative remedies [fol. 5579] suggested in defendants' objections to plain-

tiff's plan and defendants' proposed *re*alignment plans, and together with the changes in the method of doing business in the motion picture industry provided for in the decision in *United States* vs. *Paramount et al.* (which decision was before the Court as a part of defendants' motion for a stay, dated June 7, 1946), to prevent any future violations of the anti-trust laws by the defendants or any of them in view of its express finding that there was no evidence of any acts committed by the defendants or any of them or any course of conduct pursued by them in violation of the anti-trust laws since prior to the commencement of the trial of this case, to wit, since prior to May 19, 1942, and in view of the further fact that there was no evidence of any likelihood that any such acts would be committed or such conduct pursued by the defendants or any of them in the future.

Eighteenth Assignment

The Court erred in that in and by its order of July 5, 1946, it ordered a divestiture of the properties described therein as a penalty, rather than as a remedy for any alleged violations of Sections 1 and 2 of the Sherman Act.

Nineteenth Assignment

The Court erred in failing to consider in arriving at a plan of dissolution, reorganization or re-alignment, the effect of any part of the decision in *United States* v. *Paramount, et al.*, (which decision was before the Court in connection with defendants' motion for a stay dated June 7, 1946) except the limited but admitted effect of said decision [fol. 5580] with respect to the defendants theatre interests in Syracuse, New York.

Twentieth Assignment

The Court erred in ordering the sale within six months of certain theatre interests in the Strand Theatre, Cumberland, Maryland; the Ada Meade and Opera House Theatres, Lexington, Kentucky, and the Margie Grand Theatre, Harlan, Kentucky, for no reason other than the fact that these interests were mentioned in a certain consent order dated May 19, 1942, because said order expired by its terms on November 15, 1944 and has, and has had, no further force or effect since said date.

Twenty-first Assignment

The Court erred in making an order for the sale by a trustee of the theatre properties described in Section 1 of its order of July 5, 1946, because there is no evidence to show that the parties actually owning said properties are now or ever have been parties to this action, or that the Court now has or ever had the power through a trustee, or otherwise, effectively to transfer title to said properties.

Twenty-second Assignment

The Court erred in making an order for the sale by a trustee of the theatre properties described in Section 1 of its order of July 5, 1946, because there is no evidence to show who, at the date of the entry of the original judgment herein, on November 1, 1945, or at the date of the entry of said order of July 5, 1946 or at any time between said [fol. 5581] dates, were the legal owners of said properties, or that the Court had at any time acquired such jurisdiction of said properties, or the owners thereof, as to enable the Court through a trustee, or otherwise, effectively to transfer title thereto.

Twenty-third Assignment

The Court erred in ordering the sale, of the theater interests of the defendants in the Strand Theater, Cumberland, Maryland, in view of the fact that the Court had, by its order dated May 31, 1944 permitted the acquisition by the defendants of another theatre in Cumberland, Maryland, to wit, the Liberty Theatre, and excused the defendants from making any further efforts to sell the said Strand Theatre under the terms of said consent order dated May 19, 1942.

Twenty-fourth Assignment

The Court erred in ordering the divestiture of any of the theater interests of the defendants in the absence of any evidence or findings showing any causal connection between the acquisition of such interests by the defendants and the alleged wrongful conduct of the defendants as set forth in the findings of the Court.

Twenty-fifth Assignment

The Court erred in ordering the divestiture of any theatre interests in Amsterdam, N. Y. because the plaintiff failed to introduce any evidence with respect to said locality showing or tending to show that the acquisition by the defendants of any such interest in said locality, or [fol. 5582] the maintenance and use by the defendants of any such interest in said locality was or is the result of, or pursuant to, or has resulted in any conduct on the part of the defendants, or any of them, in violation of Sections 1 and 2 of the Sherman Act or that divestiture thereof or of any part thereof is otherwise warranted by Sections 1 and 2 of the Sherman Act.

Twenty-sixth Assignment

The Court erred in ordering the divestiture of any theatre interests in Ashland, Ohio in view of the failure of the plaintiff to introduce any evidence with respect to said locality and the failure of the Court to make any findings of fact with respect thereto.

Twenty-seventh Assignment

The Court erred in ordering the divestiture of any theater interests in Athens, Ohio in view of the failure of the plaintiff to introduce any evidence with respect to said locality and the failure of the Court to make any findings of fact with respect thereto.

Twenty-eighth Assignment

The Court erred in ordering the divestiture of any theatre interests in Auburn, N. Y. because the plaintiff failed to introduce any evidence with respect to said locality showing or tending to show that the acquisition by the defendants of any such interest in said locality, or the maintenance and use by the defendants of any such interest in said locality was or is the result of, or pursuant to, or [fol. 5583] has resulted in any conduct on the part of the defendants, or any of them, in violation of Sections 1 and 2 of the Sherman Act or that divestiture thereof or of any part thereof is otherwise warranted by Sections 1 and 2 of the Sherman Act.

Twenty-ninth Assignment

The Court erred in ordering the divestiture of any theatre interests in Bellefontaine, Ohio because the plaintiff failed to introduce any evidence with respect to said locality showing or tending to show that the acquisition by the defendants of any such interest in said locality, or the maintenance and use by the defendants of any such interest in said locality was or is the result of, or pursuant to, or has resulted in any conduct on the part of the defendants, or any of them, in violation of Sections 1 and 2 of the Sherman Act or that divestiture thereof or of any part thereof is otherwise warranted by Sections 1 and 2 of the Sherman Act.

Thirtieth Assignment

The Court erred in ordering the divestiture of any theatre interests in Bucyrus, Ohio because the plaintiff failed to introduce any evidence with respect to said locality showing or tending to show that the acquisition by the defendants of any such interest in said locality, or the maintenance and use by the defendants of any such interest in said locality was or is the result of, or pursuant to, or has resulted in any conduct on the part of the defendants, or any of them, in violation of Sections 1 and 2 of the Sherman Act [fol. 5584] or that divestiture thereof or of any part thereof is otherwise warranted by Sections 1 and 2 of the Sherman Act.

Thirty-first Assignment

The Court erred in ordering the divestiture of any theatre interests in Cambridge, Maryland, in view of the failure of the plaintiff to introduce any evidence with respect to said locality and the failure of the Court to make any findings of fact with respect thereto.

Thirty-second Assignment

The Court erred in ordering the divestiture of any theatre interests in Canandaigua, N. Y. because the plaintiff failed to introduce any evidence with respect to said locality showing or tending to show that the acquisition by the defendants of any such interest in said locality, or the maintenance and use by the defendants of any such interest in said locality was or is the result of, or pursuant to, or has resulted in any conduct on the part of the defendants, or any of them, in violation of Sections 1 and 2 of the Sherman Act or that divestiture thereof or of any part thereof is otherwise warranted by Sections 1 and 2 of the Sherman Act.

Thirty-third Assignment

The Court erred in ordering the divestiture of any theatre interests in Corning, N. Y. because the plaintiff failed to introduce any evidence with respect to said locality showing or tending to show that the acquisition by the de-[fol. 5585] fendants of any such interest in said locality, or the maintenance and use by the defendants of any such interest in said locality was or is the result of, or pursuant to, or has resulted in any conduct on the part of the defendants, or any of them, in violation of Sections 1 and 2 of the Sherman Act or that divestiture thereof or of any part thereof is otherwise warranted by Sections 1 and 2 of the Sherman Act.

Thirty-fourth Assignment

The Court erred in ordering the divestiture of any theatre interests in Cortland, New York, in view of the failure of the plaintiff to introduce any evidence with respect to said locality and the failure of the Court to make any findings of fact with respect thereto.

Thirty-fifth Assignment

The Court erred in ordering the divestiture of any theatre interests in Delaware, Ohio, in view of the failure of the plaintiff to introduce any evidence with respect to said locality and the failure of the Court to make any findings of fact with respect thereto.

Thirty-sixth Assignment

The Court erred in ordering the divestiture of any theatre interests in Easton, Maryland, in view of the failure of the plaintiff to introduce any evidence with respect to said locality and the failure of the Court to make any findings of fact with respect thereto.

[fol. 5586]

Thirty-seventh Assignment

The Court erred in ordering the divestiture of any theatre interests in Geneva, N. Y. because the plaintiff failed to introduce any evidence with respect to said locality showing or tending to show that the acquisition by the defendants of any such interest in said locality, or the maintenance and use by the defendants of any such interest in said locality was or is the result of, or pursuant to, or has resulted in any conduct on the part of the defendants, or any of them, in violation of Sections 1 and 2 of the Sherman Act or that divestiture thereof or of any part thereof is otherwise warranted by Sections 1 and 2 of the Sherman Act.

Thirty-eighth Assignment

The Court erred in ordering the divestiture of any theatre interests in Herkimer, N. Y. because the plaintiff failed to introduce any evidence with respect to said locality showing or tending to show that the acquisition by the defendants of any such interest in said locality, or the maintenance and use by the defendants of any such interest in said locality was or is the result of, or pursuant to, or has resulted in any conduct on the part of the defendants, or any of them, in violation of Sections 1 and 2 of the Sherman Act or that divestiture thereof or of any part thereof is otherwise warranted by Sections 1 and 2 of the Sherman Act.

[fol. 5587]

Thirty-ninth Assignment

The Court erred in ordering the divestiture of any theatre interests in Ilion, N. Y. because the plaintiff failed to introduce any evidence with respect to said locality showing or tending to show that the acquisition by the defendants of any such interest in said locality, or the maintenance and use by the defendants of any such interest in said locality was or is the result of, or pursuant to, or has resulted in any conduct on the part of the defendants, or any of them, in violation of Sections 1 and 2 of the Sherman Act or that divestiture thereof or of any part thereof is otherwise warranted by Sections 1 and 2 of the Sherman Act.

Fortieth Assignment

The Court erred in ordering the divestiture of any theatre interests in Kent, Ohio, in view of the failure of the plaintiff to introduce any evidence with respect to said locality and the failure of the Court to make any findings of fact with respect thereto.

Forty-first Assignment

The Court erred in ordering the divestiture of any theatre interests in Lexington, Ky. because the plaintiff failed to introduce any evidence with respect to said locality showing or tending to show that the acquisition by the defendants of any such interest in said locality, or the maintenance and use by the defendants of any such interest in said locality was or is the result of, or pursuant to, or has resulted in [fol. 5588] any conduct on the part of the defendants, or any of them, in violation of Sections 1 and 2 of the Sherman Act or that divestiture thereof or of any part thereof is otherwise warranted by Sections 1 and 2 of the Sherman Act.

Forty-second Assignment

The Court erred in ordering the divestiture of any theatre interests in Little Falls, N. Y. because the plaintiff failed to introduce any evidence with respect to said locality showing or tending to show that the acquisition by the defendants of any such interest in said locality, or the maintenance and use by the defendants of any such interest in said locality was or is the result of, or pursuant to, or has resulted in any conduct on the part of the defendants, or any of them, in violation of Sections 1 and 2 of the Sherman Act or that divestiture thereof or of any part thereof is otherwise warranted by Sections 1 and 2 of the Sherman Act.

Forty-third Assignment

The Court erred in ordering the divestiture of any theatre interests in Lockport, N. Y. because the plaintiff failed to introduce any evidence with respect to said locality showing or tending to show that the acquisition by the defendants of any such interest in said locality, or the maintenance and use by the defendants of any such interest in said locality was or is the result of, or pursuant to, or has resulted in any conduct on the part of the defendants, or any of them, in violation of Sections 1 and 2 of the Sherman [fol. 5589] Act or that divestiture thereof or of any part thereof is otherwise warranted by Sections 1 and 2 of the Sherman Act.

Forty-fourth Assignment

The Court erred in ordering the divestiture of any theatre interests in Malone, N. Y. because the plaintiff failed to introduce any evidence with respect to said locality showing or tending to show that the acquisition by the defendants of any such interest in said locality, or the maintenance and use by the defendants of any such interest in said locality was or is the result of, or pursuant to, or has resulted in any conduct on the part of the defendants, or any of them, in violation of Sections 1 and 2 of the Sherman Act or that divestiture thereof or of any part thereof is otherwise warranted by Sections 1 and 2 of the Sherman Act.

Forty-fifth Assignment

The Court erred in ordering the divestiture of any theatre interests in Maysville, Kentucky, in view of the failure of the plaintiff to introduce any evidence with respect to said locality and the failure of the Court to make any findings of fact with respect thereto.

Forty-sixth Assignment

The Court erred in ordering the divestiture of any theatre interests in Middlesboro, Kentucky, in view of the failure of the plaintiff to introduce any evidence with respect to said locality and the failure of the Court to make any findings of fact with respect thereto.

[fol. 5590]

Forty-seventh Assignment

The Court erred in ordering the divestiture of any theatre interests in Newark, N. Y. in view of the failure of the plaintiff to introduce any evidence with respect to said locality and the failure of the Court to make any findings of fact with respect thereto.

Forty-eighth Assignment

The Court erred in ordering the divestiture of any theatre interests in Norwalk, Ohio, because the plaintiff failed to introduce any evidence with respect to said locality showing or tending to show that the acquisition by the defendants of any such interest in said locality, or the maintenance and use by the defendants of any such interest in said locality was or is the result of, or pursuant to, or has resulted in any conduct on the part of the defendants, or any of them, in violation of Sections 1 and 2 of the Sherman Act or that divestiture thereof or of any part thereof is otherwise warranted by Sections 1 and 2 of the Sherman Act.

Forty-ninth Assignment

The Court erred in ordering the divestiture of any theatre interests in Ogdensburg, N. Y. because the plaintiff failed to introduce any evidence with respect to said locality showing or tending to show that the acquisition by the defendants of any such interest in said locality, or the maintenance and use by the defendants of any such interest in said locality was or is the result of, or pursuant to [fol. 5591] or has resulted in any conduct on the part of the defendants, or any of them, in violation of Sections 1 and 2 of the Sherman Act or that divestiture thereof or of any part thereof is otherwise warranted by Sections 1 and 2 of the Sherman Act.

Fiftieth Assignment

The Court erred in ordering the divestiture of any theatre interests in Oneonta, New York, in view of the failure of the plaintiff to introduce any evidence with respect to said locality and the failure of the Court to make any findings of fact with respect thereto.

Fifty-first Assignment

The Court erred in ordering the divestiture of any theatre interests in Oswego, New York, in view of the failure of the plaintiff to introduce any evidence with respect to said locality and the failure of the Court to make any findings of fact with respect thereto.

Fifty-second Assignment

The Court erred in ordering the divestiture of any theatre interests in Paris, Ky. because the plaintiff failed to introduce any evidence with respect to said locality showing or tending to show that the acquisition by the defendants of any such interest in said locality, or the maintenance and use by the defendants of any such interest in said locality was or is the result of, or pursuant to, or has resulted in any conduct on the part of the defendants, or any of them, in violation of Sections 1 and 2 of the [fol. 5592] Sherman Act or that divestiture thereof or of any part thereof is otherwise warranted by Sections 1 and 2 of the Sherman Act.

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TRANSCRIPT OF RECORD

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Supreme Court of the United States

OCTOBER TERM, 1947

No. 10

SCHINE CHAIN THEATRES, INC., ET AL.,
APPELLANTS,

vs.

THE UNITED STATES OF AMERICA

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE WESTERN DISTRICT OF NEW YORK

FILED OCTOBER 4, 1946.

SUPREME COURT OF THE UNITED STATES

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VOL. V

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243	Telegram from Lynch, Schine Enterprises, dated September 10, 1932, to Paramount Public Corp., 161 North Fifth Street, Columbus, Ohio	6037	3824
259	Letter dated September 30, 1937, from Harry Schwartz to Paramount Pictures Co., Cincinnati, Ohio, attention J. Oulahan	6038	3825
273	Cancellation of Contract Group S-10 for Paris Theatres, Paris, Ky., dated March 4, 1940	6039	3826
281	Letter dated August 22, 1933, from Asst. General Sales Manager (HLG), New York City to George Lynch	6040	3827
282	Inter-office letter dated February 21, 1934, from P. N. Lazarus, Home Office, to J. Kaplan, Buffalo, N. Y. and reply thereto from Jack Kaplan, dated February 23, 1934	6042	3828
283	Contract Change Report dated February 23, 1934, Hi-Art Theatre, Lockport, N. Y.	6043	3830
286	Inter-office letter dated October 8, 1934, from Jack Kaplan, Buffalo, N. Y., to Paul Lazarus, Home Office	6044	3831
288	Inter-office letter dated May 7, 1935, from Jack Kaplan, Buffalo, to S. W. McGrath, Home Office and reply by S. W. McGrath, dated May 7, 1935.	6045	3832
292	Inter-office letter dated February 5, 1936, from S. W. McGrath, Home Office, to Nat Beirr, Home Office	6046	3833
300	Inter-office letter from J. A. Bykowski, Office Manager, Buffalo, to S. Lehman, Buffalo, dated September 16, 1937	6048	3834
307	Inter-office letter dated December 7, 1938, from P. N. Lazarus, Home Office, to M. Stahl, Cincinnati Office	6052	3839
308	Letter dated March 18, 1939, from J. A. Bykowski, Office Manager, to W. B. Kraemer, Schine Circuit, Inc.	6057	3842
310	Letter dated December 15, 1939, from Frances Turner to Edw. Mullen	6058	3842

EXHIBITS PRINTED IN FULL—Continued

		Original	Print
312	Letter dated December 22, 1939, from Office Manager (EM) to George Lynch, Gloversville, N. Y.	6060	3844
313	Letter dated December 26, 1939, from G. V. Lynch, Schine Circuit, Inc., to Charles Stern, N. Y.	6062	3844
314	Letter from Office Manager (EM) to George Lynch, Schine Circuit, dated January 5, 1940	6063	3845
318	Letter, Lynch to Lehman, dated December 16, 1940.	6064	3846
319	Letter dated December 18, 1940, from Lehman to Lynch	6065	3846
321	Inter-office letter dated January 21, 1937, from Branch Sales Manager to Charles Stern, United Artists Corp., 630 Ninth Avenue, N. Y.	6066	3846
322	Letter dated February 8, 1937, from Charles Stern, United Artists, 630 Ninth Avenue, N. Y. C., to A. M. Goodman, Cleveland, Ohio	6067	3848
323	Letter dated March 8, 1937, from Bert M. Stearn, Cleveland, Ohio, to Charles Stern, N. Y. Exchange.	6068	3849
337	Fox contract recap sheets and release schedules	6069	3850
338	Letter October 24, 1932, Lynch to Sichelman	6092	3881
356	Letter dated May 10, 1934 from Dave Miller, Resident Manager, to Geo. V. Lynch, Schine Enterprises, Inc.	6093	3882
361	Letter dated November 28, 1934 from Dave Miller, Resident Manager, to Myer Schine, Schine Enterprises, Inc.	6095	3884
363	Comparative Price Schedule Plaza Theatre, Corning, N. Y., dated February 28, 1935	6097	3886
366	Inter-office letter dated July 16, 1935, from Nate Sauber, Resident Manager, to A. Schimel, Home Office	6098	3888
367	Letter dated September 11, 1935 from G. V. Lynch, Schine Theatrical Co., Inc., to Nate Sauber, Buffalo	6101	3890
368	Letter dated September 14, 1935 from Nate Sauber, Branch Manager, to Geo. V. Lynch, Schine Theatrical Co.	6102	3890
369	Inter-office letter dated September 23, 1935 from P. T. Dana, Branch Manager, Albany, N. Y., to Dave Miller, Cleveland, Ohio	6103	3891
370	Letter dated September 23, 1935 from P. T. Dana, Branch Manager to Frank McCarthy	6104	3892
374	Inter-office letter dated at Albany, N. Y. on October 28, 1936 from P. T. Dana, Branch Manager to Paul Krieger, Universal Film Exchanges	6106	3894
381	Letter dated June 22, 1937 from F.J.A. McCarthy to Paul Krieger, Cincinnati Exchange	6107	3894
384	Letter dated January 4, 1938 from Dave Miller, Branch Manager, Cleveland, Ohio, to Mr. George Lynch, Schine Theatrical Enterprises, Gloversville, N. Y.	6108	3895

EXHIBITS PRINTED IN FULL—Continued

		Original	Print
385	Letter dated January 21, 1938 on letterhead of Universal Film Exchanges, Inc., signed Dave Miller, Branch Manager, Cleveland, Ohio, addressed to Mr. F. J. A. McCarthy, Eastern Sales Manager, Home Office	6109	3896
386	Letter dated January 27, 1938 from F. J. A. McCarthy to Geo. Lynch, Schine Theatrical Enterprises Co	6111	3897
387	Letter dated January 28, 1938 from Nate Sauber, Branch Manager, to G. V. Lynch, Schine Enterprises Corp.	6112	3898
388	Letter dated February 1, 1938 from W. B. Kraemer to F. J. A. McCarthy, Universal Film Exchanges, Inc., Rockefeller Center, N. Y.	6113	3899
389	Letter dated February 7, 1938 from P. T. Dana, Branch Manager, to A. J. Herman, District Manager	6114	3899
390	Letter dated February 15, 1938 from L. Goldstein, Schine Circuit, Inc., to Nate Sauber, Buffalo, N. Y.	6116	3901
391	Inter-office letter dated November 14, 1938, from Paul Baron, Acting Branch Manager, Washington, to A. J. Herman, Home Office	6117	3901
392	Letter dated December 14, 1938 from F. J. A. McCarthy to Paul Baron, Washington Exchange	6118	3902
393	Cancellation or Alteration of Contract dated December 15, 1938, Roxy Theatre, Corbin, Kentucky; also Contract dated January 13, 1939, Hippodrome and Kentucky Theatres, Corbin, Ky.	6119	3902
396	Inter-office letter dated May 23, 1939 from John J. Scully, Branch Manager, to F. J. A. McCarthy, Eastern Sales Manager, Home Office; also attached memorandum dated May 19, 1939 from F. J. A. McCarthy to J. J. Scully, Buffalo Exchange	6120	3903
397	Letter dated June 8, 1939 from B. B. Kreisler, Branch Manager, Washington, to F. J. A. McCarthy, Eastern Division Manager	6123	3905
409	Letter, P. T. Dana to Frank McCarthy, September 23, 1935	6124	3907
412	Letter of September 10, 1932 from G. V. Lynch, Schine Enterprises, Inc., Gloversville, N. Y., by Jack E. Flynn, MGM Corp., Detroit, Michigan	6125	3907
413	Letter of September 12, 1932 from Jack E. Flynn, MGM to Cincinnati, Ohio, branch office, and Geo. V. Flynn, Schine Enterprises, Inc., Gloversville, N. Y.	6126	3908
424	Inter-office memorandum on MGM Distributing Corp. letterhead, dated October 13, 1933 from E. K. O'Shea to W. F. Rodgers	6128	3909
425	Letter dated October 21, 1933 from G. V. Lynch, to Jack Flynn	6129	3910

EXHIBITS PRINTED IN FULL—Continued

		Original	Print
426	Inter-office memorandum on MGM Distributing Corp. letterhead, dated January 4, 1934, from Ralph Pielow to J. E. Flynn	6130	3911
430	Inter-office memorandum on MGM Distributing Corp. letterhead, dated August 1, 1935, from Ralph Pielow to J. E. Flynn	6131	3912
433	Letter dated August 26, 1935, from G. V. Lynch to Ralph Pielow	6132	3913
435	Letter dated September 27, 1935 from G. V. Lynch to Ralph Pielow	6133	3913
441	Unsigned letter (WFR) to G. V. Lynch dated February 7, 1936	6134	3914
444	Inter-office memorandum on Metro-Goldwyn-Mayer Distributing Corporation letter head, dated June 15, 1936, from E. K. O'Shea to J. E. Flynn	6135	3915
455	Inter-office letter dated August 28, 1937 (E. K. O'S) to E. M. Booth	6136	3916
456	Inter-office memorandum dated August 30, 1937, from E. M. Booth to E. K. O'Shea	6137	3917
457	Unsigned letter dated September 1, 1937 (EKO'S) to E. M. Booth	6138	3918
459	Inter-office communication dated November 1, 1937 from E. M. Booth to E. K. O'Shea	6139	3919
476	Letter dated July 13, 1938, G. V. Lynch to Ralph Maw, Buffalo, New York	6140	3920
488	Inter-office memorandum dated May 15, 1939, from R. W. Maw, Buffalo, New York to E. K. O'Shea	6141	3920
491	Inter-office memorandum dated June 8, 1939, from W. F. Rodgers to T. J. Connors	6143	3923
494	Inter-office memorandum dated November 7, 1935, from Ralph Pielow to J. E. Flynn, Detroit, Michigan	6144	3924
496	Letter dated February 28, 1936, from E. W. Aaron to Ralph Pielow	6145	3925
497	Inter-office memorandum from Ralph Pielow, Albany, New York, to J. E. Flynn, Cincinnati, Ohio, dated November 30, 1936	6146	3925
499	Letter from Mr. G. V. Lynch, Schine Theatre Enterprises, to Mr. F. Drew, Metro-Goldwyn-Mayer Pictures, Cleveland, Ohio	6147	3926
500	Telegram, G. V. Lynch to J. E. Flynn, Metro-Goldwyn-Mayer Pictures, at Detroit, Michigan	6148	3927
509	Memorandum from E. W. Aaron, Loew's, Inc., to W. F. Rodgers, dated August 2, 1938	6149	3927
510	Letter, W. F. Rodgers to T. J. Connors, dated July 29, 1938	6150	3928
511	Letter, T. J. Connors to Essick and Fine, dated December 7, 1938	6151	3929
518	Inter-office memorandum dated September 16, 1932, from C. R. Halligan, Branch Manager, Albany, to E. L. McEvoy, Home Office	6152	3929

EXHIBITS PRINTED IN FULL—Continued

		Original	Print
519	Inter-office letter, dated October 17, 1933, from C. R. Halligan, Branch Manager, Albany, N. Y., to E. L. McEvoy, Home Office	6155	3932
520	Agreement, dated September 22, 1933, between the Schine Theatrical Co., Inc., and the RKO Distributing Corp.	6157	3933
524	Agreement, dated October 29, 1934, between Schine Theatrical Co., Inc., and RKO Distributing Corp.	6158	3935
526	Inter-office letter from H. T. Dixon, Branch Manager, Buffalo, N. Y., to E. L. McEvoy, Eastern Sales Manager, dated January 8, 1935	6159	3936
527	Letter from E. L. McEvoy, Eastern Sales Manager, to Harry Dixon, Buffalo, N. Y., dated January 10, 1935	6160	3937
528	Inter-office letter from H. T. Dixon, Buffalo, N. Y., to E. L. McEvoy, Eastern Sales Manager, dated February 18, 1935	6161	3937
530	Contract Modification, Palace Theatre, Corning, N. Y., dated December 11, 1935	6162	3938
539	Inter-office communication, dated September 10, 1932, from S. B. Kramer, Branch Manager, Cleveland, Ohio to A. W. Smith, Jr., Home Office.	6163	3939
542	Inter-office letter, dated January 12, 1934, from R. S. Smith, Branch Manager, Albany, N. Y., to A. W. Smith, Jr., Home Office	6164	3940
546	Inter-office communication, dated June 25, 1934 from R. S. Smith, Branch Manager, to A. W. Smith, Jr., Home Office	6166	3941
549	Inter-office letter, dated August 31, 1934, from R. S. Smith, Branch Manager, to R. Mochrie, Home Office	6167	3942
550	Inter-office letter, dated September 1, 1934, from H. A. Seed, Branch Manager, Buffalo, N. Y., to A. W. Smith, Jr., Home Office	6168	3943
554	Inter-office communication, dated February 26, 1935, from R. S. Smith, Branch Manager, Albany, N. Y., to A. W. Smith, Jr., Home Office	6170	3945
559	Inter-office communication from M. A. Mooney to R. Mochris, dated December 27, 1935	6171	3946
560	Carbon copy of telegram from A. W. Smith, Jr., Home Office to Mooney, Vitagraph, dated March 25, 1936	6172	3947
561	Carbon copy of telegram from Mochrie to Mooney, dated April 1, 1936	6173	3947
566	Contract recommendation signed M. A. Mooney, dated September 16, 1936	6174	3948
567	Carbon copy of Contract Recommendation with Belpik Theatres, Inc., dated October 21, 1936	6175	3948
574	Contract recommendation dated June 22, 1937	6176	3948

EXHIBITS PRINTED IN FULL—Continued

		Original	Print
597	Inter-office letter dated December 9, 1940, from Arthur Sachson, Home Office, to R. H. Dunbar, Cincinnati	6178	3949
598	Inter-office letter dated December 13, 1940, from Branch Manager, (RHD), Cincinnati, to Arthur Sachson, Home Office	6179	3949
599	Inter-office letter dated December 20, 1940, from Arthur Sachson, Home Office, to R. H. Dunbar, Cincinnati	6180	3950
600	Inter-office letter dated December 23, 1940, from Branch Manager, (RHD), Cincinnati, to Arthur Sachson, Home Office	6181	3951
601	Letter dated December 27, 1940, from Arthur Sachson to Geo. V. Lynch, Schine Circuit	6182	3951
602	Inter-office letter dated September 5, 1941, from R. H. Dunbar, Branch Manager, Cincinnati to S. W. Hatch, Home Office	6182a	3952
618	Loew's franchise (10/1/36) letters and deal sheets	6184	3952
619	Metro-Goldwyn-Mayer release schedules	6246	3998
634	RKO release schedules	6282	4078
645	Warner release schedules	6296	4109
648	Agreement, Medina Temple Theatre Company and Schine Medina Corp., 2/28/39	6306	4143
648A	Copy of lease of Princess, Medina, dated April 1, 1937	6327	4160
649	Letter, 5/5/33, O'Shea to Grafiades	6333	4167
650	Letter, 5/8/33, Universal (Sauber) to Grafiades	6334	4168
651	Letter, 5/16/33, Robinson (Para) to Grafiades	6335	4169
652	Letter, 6/1/33, Paramount (Unger) to Grafiades	6336	4170
653	Letter, 6/28/33, M. G. M. (Rodgers) to Grafiades	6337	4170
662	Columbia contracts	6338	4172
682	Columbia release schedules	6340	4173
685 (A to Y)	Columbia release schedules for 1938–1939 to 1941–1942 seasons	6345a	4186
686	List of Columbia release dates	6345c	4186
687	List of Paramount release dates supplied by Morgan	6346	4228
688	Contract, 6/17/35, unsigned, Shannon et al. and G. C. Theatre Corporation	6359	4248
690	Notice of sale of Dickinson Estate assets	6369	4254
691	Memorandum, 4/20/36, Shannon et al. and Dipson et al.	6371	4256
704 (A to W)	Distribution statistics	6377a	4261
717	Release schedule 1919–1941 (United Artists)	6378	4285
718 (A to I)	Distribution statistics	6400a	4296
719	Answers of United Artists Corp. to interrogatories 15 and 16	6402	4314
765	Letter, 4/9/37, Fenyvessy to Rodgers	6411	4328
773	Letter, 8/3/38, Fenyvessy to Maw	6412	4328
774	Letter, 8/11/38, O'Shea to Fenyvessy	6413	4329
775	Letter, 8/16/38, Fenyvessy to O'Shea	6414	4330
776	Letter, 8/16/38, Maw to Fenyvessy	6415	4330

EXHIBITS PRINTED IN FULL—Continued

		Original	Print
790	Non-competitive agreement, C. & D. Fenyvessy to Munmad	6416	4331
800	Letter, 10/4/38, Belinson to Wm. Rodgers Metro.	6418	4332
801	Letter, 10/9/39, Rodgers to Belinson	6420	4333
802	Letter, 9/12/40, O'Shea to Belinson	6421	4334
805	Telegram, 5/10/38, Jenkins to Lauer	6422	4335
812	Lease, Syracuse-Strand to Syracuse Commun. Theatre Co., 9/11/41	6423	4335
818	Memorandum containing deal offered by Fox to Wallace	6451	4353
820	Telegram, RKO to Strand, 9/18/41	6454	4355
823	Agreement, 9/15/39, re Paris, Schine Lexington and Southland, Charles and Harry Schwartz	6455	4355
824	Letter, Fox to Schwartz, 11/17/38	6463	4360
825	Letter, RKO to Schwartz, 11/7/38	6464	4360
826	Letter, Universal to Schwartz, 11/10/38	6465	4361
828	Agreement, 9/15/39, re Opera House, Schine Lexington and Southland, Charles and Harry Schwartz	6466	4362
832	List of play[illegible]s at Empire, Syracuse, beginning 9/12/41 to 2/10/42	6484	4374
834	Letter, Warner to Vournakis, 7/16/34	6486	4375
845	Agreement, 9/20/39, Lynch and Vournakis	6488	4376
846	Copy of affidavit of P. Vournakis, 9/20/39	6489	4376
864	Letter, Boumansour to Grassgreen	6490	4377
873	Rider attached to Fox contract, 4/20/35	6491	4378
879	Certified copy of Minutes of Common Council, Ogdensburg, 9/4/40	6492	4378
882	Letter enclosing copy of proposed lease, 9/30/40	6495	4380
886	Letter, 11/4/33, Warners (A. W. S.) to Smalley and attached copy of letter to O. W. Van Horne, 11/1/33	6496	4381
887	Letter, 8/9/34, Smalley to Smith and reply	6498	4382
888	Wire, 5/22/34, Smalley to Smith and reply letter	6500	4383
889	Letter, Strumer (United Artists) to Smalley, 7/27/33.	6503	4384
891	Letter, Smalley to Lichtman, 8/9/34, and reply 8/14/34	6504	4385
892	Letter, Smalley to Streimer, 11/2/33, and reply 11/4/33	6506	4386
893	Letter, Smalley to Streimer, 11/9/33	6507	4387
894	Letter, Streimer to Smalley, 11/11/33	6508	4387
896	Telegram, 6/26/33, Van Horne to Sauber (Universal) and reply 7/10/33	6509	4388
897	Letter, 11/2/33, Smalley to Sauber and reply 11/4/33	6512	4389
899	Telegram, 5/27/40, Smalley to Columbia	6514	4390
900	Copy of letter 12/4/39, Smalley to Moross, Columbia. Answers letter of 11/13	6516	4391
901	Telegram, 5/4/39, Montague to Van Horne	6517	4391
902	Telegram, 5/2/39, Smalley to Montague	6518	4392
903	United Artists Clearance schedule 1940–41	6520	4392
958–959	United Artists Clearance schedules	6520a	4393

Fifty-third Assignment

The Court erred in ordering the divestiture of any theatre interests in Piqua, Ohio, in view of the failure of the plaintiff to introduce any evidence with respect to said locality and the failure of the Court to make any findings of fact with respect thereto.

Fifty-fourth Assignment

The Court erred in ordering the divestiture of any theatre interests in Ravenna, Ohio, in view of the failure of the plaintiff to introduce any evidence with respect to said locality and the failure of the Court to make any findings of fact with respect thereto.

Fifty-fifth Assignment

The Court erred in ordering the divestiture of any theatre interests in Richmond, Ky., in view of the failure of the plaintiff to introduce any evidence with respect to said locality and the failure of the Court to make any findings of fact with respect thereto.

Fifty-sixth Assignment

The Court erred in ordering the divestiture of any theatre interests in Rochester, N. Y. because the plaintiff failed to introduce any evidence with respect to said locality showing or tending to show that the acquisition [fol. 5593] by the defendants of any such interest in said locality, or the maintenance and use by the defendants of any such interest in said locality was or is the result of, or pursuant to, or has resulted in any conduct on the part of the defendants, or any of them, in violation of Sections 1 and 2 of the Sherman Act or that divestiture thereof or of any part thereof is otherwise warranted by Sections 1 and 2 of the Sherman Act.

Fifty-seventh Assignment

The Court erred in ordering the divestiture of any theatre interests in Salamanca, N. Y. because the plaintiff failed to introduce any evidence with respect to said locality showing or tending to show that the acquisition by the defendants of any such interest in said locality, or the maintenance and use by the deefndants of any such interest in said locality was or is the result of, or pursuant to, or has resulted in any conduct on the part of the defendants, or any of them, in violation of Sections 1 and 2 of the Sherman Act or that divestiture thereof or of any part thereof is otherwise warranted by Sections 1 and 2 of the Sherman Act.

Fifty-eighth Assignment

The Court erred in ordering the divestiture of any theatre interests in Seneca Falls, N. Y. because the plaintiff failed to introduce any evidence with respect to said locality showing or tending to show that the acquisition by the defendants of any such interest in said locality, or the main- [fol. 5594] tenance and use by the defendants of any such interest in said locality was or is the result of, or pursuant to, or has resulted in any conduct on the part of the defendants, or any of them, in violation of Sections 1 and 2 of the Sherman Act or that divestiture thereof or of any part thereof is otherwise warranted by Sections 1 and 2 of the Sherman Act.

Fifty-ninth Assignment

The Court erred in ordering the divestiture of any theatre interests in Syracuse, N. Y. because the plaintiff failed to introduce any evidence with respect to said locality showing or tending to show that the acquisition by the defendants of any such interest in said locality, or the maintenance and use by the defendants of any such interest in said locality was or is the result of, or pursuant to, or has resulted in any conduct on the part of the defendants, or any of them, in violation of Sections 1 and 2 of the Sherman Act or that divestiture thereof or of any part thereof is otherwise warranted by Sections 1 and 2 of the Sherman Act.

Sixtieth Assignment

The Court erred in ordering the divestiture of any theatre interests in Tiffin, Ohio, in view of the failure of the plaintiff to introduce any evidence with respect to said locality and the failure of the Court to make any findings of fact with respect thereto.

[fol. 5595] **Sixty-first Assignment**

The Court erred in ordering the divestiture of any theatre interests in Van Wert, Ohio because the plaintiff failed to introduce any evidence with respect to said locality showing or tending to show that the acquisition by the defendants of any such interest in said locality, or the maintenance and use by the defendants of any such interest in said locality was or is the result of, or pursuant to, or has resulted in any conduct on the part of the defendants, or any of them, in violation of Sections 1 and 2 of the Sherman Act or that divestiture thereof or of any part thereof is otherwise warranted by Sections 1 and 2 of the Sherman Act.

Sixty-second Assignment

The Court erred in ordering the divestiture of any theatre interests in Watertown, N. Y. because the plaintiff failed to introduce any evidence with respect to said locality showing or tending to show that the acquisition by the defendants of any such interest in said locality, or the maintenance and use by the defendants of any such interest in said locality was or is the result of, or pursuant to, or has resulted in any conduct on the part of the defendants, or any of them, in violation of Sections 1 and 2 of the Sherman Act or that divestiture thereof or of any part thereof is otherwise warranted by Sections 1 and 2 of the Sherman Act.

Sixty-third Assignment

The Court erred in ordering the divestiture of any theatre interests in Wooster, Ohio, in view of the failure [fol. 5596] of the plaintiff to introduce any evidence with respect to said locality and the failure of the Court to make any findings of fact with respect thereto.

The following assignments relate to the original judgment and amended judgment and the proceedings, findings and conclusions supporting the same.

Sixty-fourth Assignment

The Court erred in decreeing that the defendants and their affiliated corporations be dissolved, realigned or reorganized in their ownership or control so that fair competition between them and other theatres may be restored and thereafter maintained; because this decree was not warranted by the findings of fact and by the evidence, and was contrary thereto.

Sixty-fifth Assignment

The Court erred in its conclusions and judgment that Schine Chain Theatres, Inc. has monopolized and attempted to monopolize the licensing of the exhibition of motion picture films in various cities and towns in violation of sections 1 and 2 of the Sherman Act, and the business of operating motion picture theatres in various towns in violation of the aforesaid statute; because this judgment and these conclusions were not warranted by the findings of fact and by the evidence, and were contrary thereto.

Sixty-sixth Assignment

The Court erred in its conclusions and judgment that Schine Theatrical Co., Inc. has monopolized and attempted [fol. 5597] to monopolize the licensing of the exhibition of motion picture films in various cities and towns in violation of sections 1 and 2 of the Sherman Act, and the business of operating motion picture theatres in various towns in violation of the aforesaid statute; because this judgment and these conclusions were not warranted by the findings of fact and by the evidence, and were contrary thereto.

Sixty-seventh Assignment

The Court erred in its conclusions and judgment that Schine-Lexington Corporation has monopolized and attempted to monopolize the licensing of the exhibition of motion picture films in various cities and towns in violation of sections 1 and 2 of the Sherman Act, and the business of operating motion picture theatres in various towns in violation of the aforesaid statute; because this judgment and these conclusions were not warranted by the findings of fact and by the evidence, and were contrary thereto.

Sixty-eighth Assignment

The Court erred in its conclusions and judgment that Schine Enterprises Corporation has monopolized and attempted to monopolize the licensing of the exhibition of motion picture films in various cities and towns in violation of sections 1 and 2 of the Sherman Act, and the business of operating motion picture theatres in various towns in violation of the aforesaid statute; because this judgment and these conclusions were not warranted by the findings of fact and by the evidence, and were contrary thereto.

[fol. 5598]

Sixty-ninth Assignment

The Court erred in its conclusions and judgment that Schine Circuit, Inc. has monopolized and attempted to monopolize the licensing of the exhibition of motion picture films in various cities and towns in violation of sections 1 and 2 of the Sherman Act, and the business of operating motion picture theatres in various towns in violation of the aforesaid statute; because this judgment and these conclusions were not warranted by the findings of fact and by the evidence, and were contrary thereto.

Seventieth Assignment

The Court erred in its conclusions and judgment that Chesapeake Theatre Corporation has monopolized and attempted to monopolize the licensing of the exhibition of motion picture films in various cities and towns in violation of sections 1 and 2 of the Sherman Act, and the business of operating motion picture theatres in various towns in violation of the aforesaid statute; because this judgment and these conclusions were not warranted by the findings of fact and by the evidence, and were contrary thereto.

Seventy-first Assignment

The Court erred in its conclusions and judgment that J. Myer Schine has monopolized and attempted to monopolize the licensing of the exhibition of motion picture films in various cities and towns in violation of sections 1 and 2 of the Sherman Act, and the business of operating motion picture theatres in various towns in violation of the aforesaid [fol. 5599] statute; because this judgment and these conclusions were not warranted by the findings of fact and by the evidence and were contrary thereto.

Seventy-second Assignment

The Court erred in its conclusions and judgment that Louis W. Schine has monopolized and attempted to monopolize the licensing of the exhibition of motion picture films in various cities and towns in violation of sections 1 and 2 of the Sherman Act, and the business of operating motion picture theatres in various towns in violation of the aforesaid statute; because this judgment and these conclusions were not warranted by the findings of fact and by the evidence, and were contrary thereto.

Seventy-third Assignment

The Court erred in its conclusions and judgment that John A. May has monopolized and attempted to monopolize the licensing of the exhibition of motion picture films in various cities and towns in violation of sections 1 and 2 of the Sherman Act, and the business of operating motion picture theatres in various towns in violation of the aforesaid statute; because this judgment and these conclusions were not warranted by the findings of fact and by the evidence, and were contrary thereto.

Seventy-fourth Assignment

The Court erred in its conclusions and judgment that the defendant Schine Chain Theatres, Inc. has maintained a combination with the other defendants and contracted, [fol. 5600] conspired and combined with them to monopolize, and for the purpose of monopolizing the licensing of the exhibition of motion picture films in various cities and towns in violation of sections 1 and 2 of the Sherman Act, and with the effect of suppressing competition and monopolizing exhibition of films distributed by each of the film corporations described in various towns and cities in violation of the aforesaid statute; because said conclusions and judgment were not warranted by the findings of fact and by the evidence, and were contrary thereto.

Seventy-fifth Assignment

The Court erred in its conclusions and judgment that the defendant Schine Theatrical Co., Inc. has maintained a combination with the other defendants and contracted, conspired and combined with them to monopolize, and for the purpose of monopolizing the licensing of the exhibition of motion picture films in various cities and towns in violation of sections 1 and 2 of the Sherman Act, and with the effect of suppressing competition and monopolizing exhibition of films distributed by each of the film corporations described in various towns and cities in violation of the aforesaid statute; because said conclusions and judgment were not warranted by the findings of fact and by the evidence, and were contrary thereto.

Seventy-sixth Assignment

The Court erred in its conclusions and judgment that the defendant Schine-Lexington Corporation has maintained a combination with the other defendants and con- [fol. 5601] tracted, conspired and combined with them to monopolize, and for the purpose of monopolizing the licensing of the exhibition of motion picture films in various cities and towns in violation of sections 1 and 2 of the Sherman Act, and with the effect of suppressing competition and monopolizing exhibition of films distributed by each of the film corporations described in various towns and cities in violation of the aforesaid statute; because said conclusions and judgment were not warranted by the findings of fact and by the evidence, and were contrary thereto.

Seventy-seventh Assignment

The Court erred in its conclusions and judgment that the defendant Schine Enterprise Corporation has maintained a combination with the other defendants and contracted, conspired and combined with them to monopolize and for the purpose of monopolizing the licensing of the exhibition of motion picture films in various cities and towns in violation of sections 1 and 2 of the Sherman Act, and with the effect of suppressing competition and monopolizing exhibition of films distributed by each of the film corporations described in various towns and cities in violation of the aforesaid statute; because said conclusions and judgment were not warranted by the findings of fact and by the evidence, and were contrary thereto.

Seventy-eighth Assignment

The Court erred in its conclusions and judgment that the defendant Schine Circuit, Inc. has maintained a combination with the other defendants and contracted, conspired and [fol. 5602] combined with them to monopolize, and for the purpose of monopolizing the licensing of the exhibition of motion picture films in various cities and towns in violation of sections 1 and 2 of the Sherman Act, and with the effect of suppressing competition and monopolizing exhibition of films distributed by each of the film corporations described in various towns and cities in violation of the aforesaid statute; because said conclusions and judgment were not warranted by the findings of fact and by the evidence, and were contrary thereto.

Seventy-ninth Assignment

The Court erred in its conclusions and judgment that the defendant Chesapeake Theatre Corporation has maintained a combination with the other defendants and contracted, conspired and combined with them to monopolize, and for the purpose of monopolizing the licensing of the exhibition of motion picture films in various cities and towns in violation of sections 1 and 2 of the Sherman Act, and with the effect of suppressing competition and monopolizing exhibition of films distributed by each of the film corporations described in various towns and cities in violation of the aforesaid statute; because said conclusions and judgment were not warranted by the findings of fact and by the evidence, and were contrary thereto.

Eightieth Assignment

The Court erred in its conclusions and judgment that the defendant J. Myer Schine has maintained a combination with the other defendants and contracted, conspired and combined with them to monopolize, and for the [fol. 5603] purpose of monopolizing the licensing of the exhibition of motion picture films in various cities and towns in violation of sections 1 and 2 of the Sherman Act, and with the effect of suppressing competition and monopolizing exhibition of films distributed by each of the film corporations described in various towns and cities in violation of the aforesaid statute; because said conclusions and judgment were not warranted by the findings of fact and by the evidence, and were contrary thereto.

Eighty-first Assignment

The Court erred in its conclusions and judgment that the defendant Louis W. Schine has maintained a combination with the other defendants and contracted, conspired and combined with them to monopolize, and for the purpose of monopolizing the licensing of the exhibition of motion picture films in various cities and towns in violation of sections 1 and 2 of the Sherman Act, and with the effect of suppressing competition and monopolizing exhibition of films distributed by each of the film corporations described in various towns and cities in violation of the aforesaid statute; because said conclusions and judgment were not warranted by the findings of fact and by the evidence, and were contrary thereto.

Eighty-second Assignment

The Court erred in its conclusions and judgment that the defendant John A. May has maintained a combination with the other defendants and contracted, conspired and combined with them to monopolize, and for the purpose [fol. 5604] of monopolizing the licensing of the exhibition of motion picture films in various cities and towns in violation of sections 1 and 2 of the Sherman Act, and with the effect of suppressing competition and monopolizing exhibition of films distributed by each of the film corporations described in various towns and cities in violation of the aforesaid statute; because said conclusions and judgment were not warranted by the findings of fact and by the evidence, and were contrary thereto.

Eighty-third Assignment

The Court erred in its conclusions and judgment that Columbia Pictures Corporation and the defendants have contracted, conspired and combined with each other with the effect of suppressing competition and monopolizing exhibition of films distributed by said distributor corporation in various towns and cities, in violation of sections 1 and 2 of the Sherman Act; because said conclusions and judgment were not warranted by the findings of fact and by the evidence, and were contrary thereto.

Eighty-fourth Assignment

The Court erred in its conclusions and judgment that Twentieth Century-Fox Film Corporation and the defendants have contracted, conspired and combined with each other with the effect of suppressing competition and monopolizing exhibition of films distributed by said distributor corporation in various towns and cities, in violation of sections 1 and 2 of the Sherman Act; because said conclusions and judgment were not warranted by the findings of fact and by the evidence, and were contrary thereto.

[fol. 5605]

Eighty-fifth Assignment

The Court erred in its conclusions and judgment that Loew's Incorporated and the defendants have contracted, conspired and combined with each other with the effect of suppressing competition and monopolizing exhibition of films distributed by said distributor corporation in various towns and cities, in violation of sections 1 and 2 of the Sherman Act; because said conclusions and judgment were not warranted by the findings of fact and by the evidence, and were contrary thereto.

Eighty-sixth Assignment

The Court erred in its conclusions and judgment that Paramount Pictures, Inc. or Paramount Film Distributing Corporation and the defendants have contracted, conspired and combined with each other with the effect of suppressing competition and monopolizing exhibition of films distributed by said distributor corporation in various towns and cities, in violation of sections 1 and 2 of the Sherman Act; because said conclusions and judgment were not warranted by the findings of fact and by the evidence, and were contrary thereto.

Eighty-seventh Assignment

The Court erred in its conclusions and judgment that R. K. O. Radio Pictures, Inc. and the defendants have contracted, conspired and combined with each other with the effect of suppressing competition and monopolizing exhibition of films distributed by said distributor corporation in various towns and cities, in violation of sections 1 and 2 of [fol. 5606] the Sherman Act; because said conclusions and judgment were not warranted by the findings of fact and by the evidence, and were contrary thereto.

Eighty-eighth Assignment

The Court erred in its conclusions and judgment that United Artists Corporation and the defendants have contracted, conspired and combined with each other with the effect of suppressing competition and monopolizing exhibition of films distributed by said distributor corporation in various towns and cities, in violation of sections 1 and 2 of the Sherman Act; because said conclusions and judgment were not warranted by the findings of fact and by the evidence, and were contrary thereto.

Eighty-ninth Assignment

The Court erred in its conclusions and judgment that Universal Pictures Company, Inc. or Universal Film Exchanges, Inc. and the defendants have contracted, conspired and combined with each other with the effect of suppressing competition and monopolizing exhibition of films distributed by said distributor corporation in various towns and cities, in violation of sections 1 and 2 of the Sherman Act; because said conclusions and judgment were not warranted by the findings of fact and by the evidence, and were contrary thereto.

Nin-tieth Assignment

The Court erred in its conclusions and judgment that Warner Bros. Pictures, Inc. or Vitagraph, Inc. and the de- [fol. 5607] fendants have contracted, conspired and combined with each other with the effect of suppressing competition and monopolizing exhibition of films distributed by said distributor corporation in various towns and cities, in violation of sections 1 and 2 of the Sherman Act; because said conclusions and judgment were not warranted by the findings of fact and by the evidence, and were contrary thereto.

Ninety-first Assignment

The Court erred in its conclusions and judgment that Schine Chain Theatres, Inc. had, as a means of monopolizing ~~contrary to sections~~ 1 and 2 of the Sherman Act, used predatory practices; because this judgment was not warranted by the findings of fact and by the evidence, and was contrary thereto.

Ninety-second Assignment

The Court erred in its conclusions and judgment that Schine Theatrical Co., Inc., had, as a means of monopolizing contrary to sections 1 and 2 of the Sherman Act, used predatory practices; because this judgment was not warranted by the findings of fact and by the evidence, and was contrary thereto.

Ninety-third Assignment

The Court erred in its conclusions and judgment that Schine-Lexington Corporation had, as a means of monopolizing contrary to sections 1 and 2 of the Sherman Act, used predatory practices; because this judgment was not warranted by the findings of fact and by the evidence, and was contrary thereto.

[fol. 5608]

Ninety-fourth Assignment

The Court erred in its conclusions and judgment that Schine Enterprises Corporation had, as a means of monopolizing contrary to sections 1 and 2 of the Sherman Act, used predatory practices; because this judgment was not warranted by the findings of fact and by the evidence, and was contrary thereto.

Ninety-fifth Assignment

The Court erred in its conclusions and judgment that Schine Circuit, Inc. had, as a means of monopolizing contrary to sections 1 and 2 of the Sherman Act, used predatory practices; because this judgment was not warranted by the findings of fact and by the evidence, and was contrary thereto.

Ninety-sixth Assignment

The Court erred in its conclusions and judgment that Chesapeake Theatre Corporation had, as a means of monopolizing contrary to sections 1 and 2 of the Sherman Act, used predatory practices; because this judgment was not warranted by the findings of fact and by the evidence, and was contrary thereto.

Ninety-seventh Assignment

The Court erred in its conclusions and judgment that J. Myer Schine had, as a means of monopolizing contrary to sections 1 and 2 of the Sherman Act, used predatory practices; because this judgment was not warranted by the findings of fact and by the evidence, and was contrary thereto.

[fol. 5609] **Ninety-eighth Assignment**

The Court erred in its conclusions and judgment that Louis W. Schine had, as a means of monopolizing contrary to sections 1 and 2 of the Sherman Act, used predatory practices; because this judgment was not warranted by the findings of fact and by the evidence, and was contrary thereto.

Ninety-ninth Assignment

The Court erred in its conclusions and judgment that John A. May had, as a means of monopolizing contrary to sections 1 and 2 of the Sherman Act, used predatory practices; because this judgment was not warranted by the findings of fact and by the evidence, and was contrary thereto.

One Hundredth Assignment

The Court erred in enjoining the defendants from monopolizing the supply of major first run films in any situation where there is a competing theatre suitable for first run exhibition thereof, because this injunction was not warranted by the findings of fact and by the evidence, and was contrary thereto, and was too general and indefinite in terms and in excess of any appropriate remedy.

One Hundred First Assignment

The Court erred in enjoining the defendants from monopolizing the supply of second run films in any situation where there is a suitable theatre for second run exhibition thereof; because this injunction was not warranted by [fol. 5610] the findings of fact and by the evidence, and was contrary thereto, and was too general and indefinite in terms and in excess of any appropriate remedy.

One Hundred Second Assignment

The Court erred in enjoining the defendants from demanding or receiving clearance over theatres operated by others, which unreasonably restricts their ability to compete with a theatre owned or operated by a defendant or corporation controlled by it; because this injunction was not warranted by the findings of fact and by the evidence, and was contrary thereto, and was too general and indefinite in terms and in excess of any appropriate remedy.

One Hundred Third Assignment

The Court erred in enjoining the defendants from attempting to control the admission prices charged by others by agreement with distributors, demands made upon distributors, or by any means whatsoever; because this injunction was not warranted by the findings of fact and by the evidence and was contrary thereto, and was too general and indefinite in terms and in excess of any appropriate remedy.

One Hundred Fourth Assignment

The Court erred in enjoining the defendants from conditioning the licensing of films in any competitive situation outside of Buffalo, New York upon the licensing of films in any other situation; because this injunction was not warranted by the findings of fact and by the evidence, and was [fol. 5611] contrary thereto, and was too general and indefinite in terms and in excess of any appropriate remedy.

One Hundred Fifth Assignment

The Court erred in enjoining the defendants from entering into any film franchise because this injunction was not warranted by the findings of fact and by the evidence, and was contrary thereto, and was too general and indefinite in terms and in excess of any appropriate remedy.

One Hundred Sixth Assignment

The Court erred in enjoining the defendants from acquiring any theatre interest, pending the further order of this Court; because this injunction was not warranted by the findings of fact and by the evidence, and was contrary thereto, and was too general and indefinite in terms and in excess of any appropriate remedy.

One Hundred Seventh Assignment

The Court erred in enjoining the defendants from selling any theatre interest pending the further order of this Court; because this injunction was not warranted by the findings of fact and by the evidence and was contrary thereto, and was too general and indefinite in terms and in excess of any appropriate remedy, and further, because this injunction was not among the remedies sought by the plaintiff in any of the pleadings herein, and was directly contrary to the remedies sought by the plaintiff herein.

[fol. 5612]

One Hundred Eighth Assignment

The Court erred in enjoining the defendants from enforcing any existing agreements heretofore entered into (1) not to compete or (2) to restrict the use of any real estate to non-theatrical purposes; because this injunction was not warranted by the findings of fact and by the evidence, and was contrary thereto, and was too general and indefinite in terms and in excess of any appropriate remedy.

One Hundred Ninth Assignment

The Court erred in enjoining the defendants from using any threats or deception as a means whereby a competitor is induced to sell; because this injunction was not warranted by the findings of fact and by the evidence, and was contrary thereto, and was too general and indefinite in terms and in excess of any appropriate remedy.

One Hundred Tenth Assignment

The Court erred in enjoining the defendants from continuing any contract, conspiracy or combination with each other or with any other person which has the purpose or effect of maintaining the exhibition or theatre monopolies of the defendants or of preventing any other theatre or exhibitor from competing with the defendants or any of them, and from entering into any similar contract, conspiracy, or combination for the purpose or with the effect of restraining or monopolizing trade and commerce between the states; because this injunction was not warranted by the findings of fact and by the evidence, and was contrary thereto, and was too general and indefinite in terms and in excess of any appropriate remedy.

[fol. 5613] One Hundred Eleventh Assignment

The Court erred in entering findings of fact, conclusions of law and judgment drafted and submitted by plaintiff's attorneys without affording to defendants' attorneys any opportunity to present objections thereto or to propose changes therein or pertinent additions thereto, or any opportunity to be heard thereon, and nothwithstanding the fact that said findings of fact, conclusions of law and judgment were not warranted by the facts found and by the evidence, and were contrary thereto.

One Hundred Twelfth Assignment

The Court erred in not granting in its entirety the defendants' motion filed November 10, 1945 to amend the Findings of Fact and Conclusions of Law entered by the Court on or about November 1, 1945, and in the several particulars in which it was not granted.

One Hundred Thirteenth Assignment

The Court erred in granting in part the plaintiff's motion filed on or about February 1, 1946 to amend the findings of fact and conclusions of law and the judgment entered by the Court on or about November 1, 1945 and in the several particulars in which said motion was granted.

One Hundred Fourteenth Assignment

The Court erred in making findings of fact and quotations based exclusively on papers erroneously admitted in evidence and described in the one hundred fifteenth assignment of error. These findings and quotations are set out in [fol. 5614] the Findings of Fact drafted by plaintiff's attorneys and entered by the Court on November 1, 1945, particularly in Findings of Fact 9, 11, 17, 23, 24, 25 and 26.

One Hundred Fifteenth Assignment

The Court erred in admitting in evidence, and in denying defendants' motion to strike out and to limit the effect so that they would not be taken as evidence of the truth of the statements contained in them, the exhibits listed below, notwithstanding the fact that all that had appeared as to who fabricated them was that in compliance with a subpoena the respective distributor corporations, not defendants, had directed a search of files in their respective home, district and branch offices and had produced them by a designated officer or employee who had no further knowledge concerning the papers produced. There was no evidence as to who, if any one, dictated them, who wrote them, who, if any one, signed them, or that they were uttered, sent or received by any one. There was no evidence that any opinions stated in them were those of a qualified person or within the scope of the duties of any person. There was no opportunity to examine or to cross examine any witness concerning the papers or the opinions or other statements in them. There was no evidence that any of these papers had gone from or to any of the defendants or were known to them. Most of the papers were framed like internal memoranda within the respective distributors. There was no evidence that any one of these papers was an act in furtherance of any conspiracy. On the contrary, many of them disclosed non-cooperation and competitive antagonism.

[fol. 5615] Defendants' objections to this type of evidence *was* first noted with respect to the introduction of exhibits P10 and P11, which were received in evidence at page 288 of the typewritten stenographic minutes. Defendants' objections to the receipt thereof and of similar exhibits appears at page 276 to page 288 of the typewritten stenographic minutes.

At the close of the plaintiff's case, the Court admitted by a single ruling, the following listed exhibits. The defendants' objections covering all these matters and separately as to each paper were summarized and stated at length in the stenographic minutes at pages 3284 to 3288, 3424 to 3458, 3589 to 3610 and 3937 to 3963. The blanket ruling appears at page 3955 and other rulings appear at pages 3610, 3612 and 3964. The exhibits are described at pages 3983 to 3989.

The list of the exhibits so admitted is as follows:

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163[3]
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229[3]
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370[4]
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430[1]
435
444
456[2]
459[2]
476[5]
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494
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518
519[4]
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542[3]
546[3]
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554[3]
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[1] There are two exhibits 430 listed. The description at page 3989 fits exhibit 433 which is not listed.

[2] These exhibits were originally excluded at pages 3264 to 3278 after which the Court reserved its ruling. Exhibit 456 was thereafter stricken by the memorandum attached to the opinion of October 8, 1945.

[3] These exhibits were to be strictly construed according to memorandum attached to opinion.

[4] These exhibits were partially stricken in memorandum attached to opinion.

[5] Exhibit 476 is described at page 3989 as a letter from Aaron to Pielow. This is exhibit 496 which is not listed. Exhibit 476 is a letter from Lynch to Maw.

[fol. 5616] The Court also erred in admitting the following exhibits at the pages listed:

Exhibit Number	Stenographic Minutes, Page
886	3610
887, 888	3613
200, 201, 202	3263
389	4579
391, 392	4566/7
409	4578
424	4515
441	4515
455	3264-3278
457	3264-3278
491	4515
509, 510	4515
550	4427
567	1697
653	1960

[fol. 5617] One Hundred Sixteenth Assignment

The Court erred in directing the entry of judgment herein on November 1, 1945 without having specially found the facts herein and stated separately its conclusions of law thereon.

One Hundred Seventeenth Assignment

The Court erred in directing the entry herein on March 29, 1946 of an amended judgment without having specially found the facts herein and stating separately its conclusions of law thereon.

One Hundred Eighteenth Assignment

The Court erred in failing to dismiss the complaint herein in view of its express finding that there was no evidence of any acts committed by the defendants or any of them, or any course of conduct pursued by them in violation of the anti-trust laws, since prior to the commencement of the trial of this case, to wit, since prior to May 19, 1942, and in view of the further fact that there was no evidence of any likelihood that any such acts would be committed or such conduct pursued by the defendants or any of them in the future.

[fol. 5618] One Hundred Nineteenth Assignment

The Court erred in enjoining the defendants from continuing any contract, conspiracy or combination with each other or with any other person which has the purpose or effect of maintaining the exhibition or theatre monopolies of the defendants or of preventing any other theatre or exhibitor from competing with the defendants or any of them, and from entering into any similar contract, conspiracy or combination for the purpose or with the effect of restraining or monopolizing trade and commerce between the states in view of its express finding that there was no evidence of any acts committed by the defendants or any of them or any course of conduct pursued by them in violation of the anti-trust laws since prior to the commencement of the trial of this case, to wit, since prior to May 19,1942, and in view of the further fact that there was no evidence of any likelihood that any such acts would be committed or such conduct pursued by the defendants or any of them in the future.

One Hundred Twentieth Assignment

The Court erred in holding that the corporate defendants in this case were not in essence a single exhibitor and as such incapable of conspiring among themselves.

One Hundred Twenty-first Assignment

The Court erred in drawing an inference unfavorable to the defendants from the failure of the defendants to produce as witnesses upon the trial of this case all of the [fol. 5619] persons employed by the distributors who were formerly defendants herein, as sales managers or branch and exchange managers during the period in question in view of the fact that the failure to produce such persons was directly due to the voluntary dismissal by the plaintiff of said distributors as defendants in this case.

One Hundred Twenty-second Assignment

The Court erred in failing to draw an inference unfavorable to the plaintiff from the failure of the plaintiff to call as witnesses more than a small percentage of the persons named by the plaintiff in its bills of particulars and answers to interrogatories as having been injured by the alleged wrongful acts of the defendants, and as being prospective witnesses.

One Hundred Twenty-third Assignment

The Court erred in attempting to determine for itself what constitutes reasonable or unreasonable clearance (Findings of Fact Nos. 8, 9(b), 17, and Conclusions of Law Nos. 4(b) and 5(b)) in the absence of any testimony on that point by any person properly qualified so to testify.

One Hundred Twenty-fourth Assignment

The Court erred in attempting to determine what constitutes reasonable or unreasonable clearance on the basis of hearsay declarations by persons not properly qualified and not produced as witnesses upon the trial of this case.

[fol. 5620] One Hundred Twenty-fifth Assignment

The Court erred in attempting to determine what constitutes reasonable or unreasonable clearance without taking into consideration or requiring any evidence with respect to factors admittedly determinative of such reasonableness or unreasonableness and without giving any consideration to the plaintiff's express admissions of facts relating thereto.

One Hundred Twenty-sixth Assignment

The Court erred in holding (Finding of Fact No. 16) that the defendants, because of their great buying power, were able to obtain concessions not obtainable by independents in view of the absence of any evidence to such effect and in view of the uncontradicted testimony of the sales managers of the distributors to the contrary.

One Hundred Twenty-seventh Assignment

The Court erred in holding (Finding of Fact No. 16) that the defendants, by reason of franchise agreements entered into prior to May 19, 1942 (voided thereafter), were able to reap benefits unavailable to independents and utilize the same against independent operators as a means of restraint, in view of the absence of any evidence to such effect and in view of the uncontradicted testimony of the sales managers of the distributors to the contrary.

One Hundred Twenty-eighth Assignment

The Court erred in holding (Finding of Fact No. 7) that the defendants, because of their great buying power, were [fol. 5621] able to exert pressure on distributors to obtain prefe-nces, in view of the absence of any evidence to such effect and in view of the uncontradicted testimony of the sales managers of the distributors to the contrary.

One Hundred Twenty-ninth Assignment

The Court erred in holding (Finding of Fact No. 7) that the defendants, because of their great buying power and by combining the open and closed towns in deals with distributors, were enabled to dictate terms to the distributors, in view of the absence of any evidence to such effect and in view of the uncontradicted testimony of the sales managers of the distributors to the contrary.

One Hundred Thirtieth Assignment

The Court erred in holding (Finding of Fact No. 7) that the alleged ability of the defendants to dictate terms was further increased by the authority of Schine to buy product for theatres not owned or operated by it in view of the absence of any evidence to such effect and in view of the further fact that, as shown by defendants' answer to plaintiff's interrogatories, all but one of the theatres for which the defendants bought product were theatres in which the defendants had a financial interest.

One Hundred Thirty-first Assignment

The Court erred in making finding of fact No. 3 instead of the finding requested by defendants in Par. I (1) of their motion pursuant to Rule 52(b).

[fol. 5622] One Hundred Thirty-second Assignment

The Court erred in making finding of fact No. 4 instead of the finding requested by defendants in Paragraph I (2) of their motion pursuant to Rule 52(b).

One Hundred Thirty-third Assignment

The Court erred in making finding of fact No. 5 instead of the finding requested by defendants in Paragraph I (3) of their motion pursuant to Rule 52(b).

One Hundred Thirty-fourth Assignment

The Court erred in making finding of fact No. 6 instead of the finding requested by defendants in Paragraph I (4) of their motion pursuant to Rule 52(b).

One Hundred Thirty-fifth Assignment

The Court erred in making finding of fact No. 7 instead of the finding requested by defendants in Paragraph I (5) of their motion pursuant to Rule 52(b).

One Hundred Thirty-sixth Assignment

The Court erred in making finding of fact No. 8 instead of the finding requested by defendants in Paragraph I (6) of their motion pursuant to Rule 52(b).

One Hundred Thirty-seventh Assignment

The Court erred in making finding of fact No. 9 instead of the finding requested by defendants in Paragraph I(7) of their motion pursuant to Rule 52(b).

[fol. 5623] One Hundred Thirty-eighth Assignment

The Court erred in making finding of fact No. 10, 11b and 11f instead of the finding requested by defendants in Paragraph I (8a, b, c, d, e, and f) of their motion pursuant to Rule 52(b).

One Hundred Thirty-ninth Assignment

The Court erred in making findings of fact No. 11a, 11e, 11h and 11i instead of the findings requested by defendants in Paragraph I(9a, b, c and d) of their motion pursuant to Rule 52(b).

One Hundred Fortieth Assignment

The Court erred in making finding No. 12 instead of the finding requested by defendants in Paragraph I (10) of their motion pursuant to Rule 52(b).

One Hundred Forty-first Assignment

The Court erred in making finding No. 13 instead of the finding requested by defendants in Paragraph I (11) of their motion pursuant to Rule 52(b).

One Hundred Forty-second Assignment

The Court erred in making finding of fact No. 15 instead of the finding requested by defendants in Paragraph I (12) of their motion pursuant to Rule 52(b).

One Hundred Forty-third Assignment

The Court erred in making finding of fact No. 16 instead of the finding requested by defendants in Paragraph I(13) of their motion pursuant to Rule 52(b).

[fol. 5624] One Hundred Forty-fourth Assignment

The Court erred in making finding of fact No. 17 instead of the finding requested by defendants in Paragraph I (14) of their motion pursuant to Rule 52(b).

One Hundred Forty-fifth Assignment

The Court erred in making finding of fact No. 20 instead of the finding requested by defendants in Paragraph I (15) of their motion pursuant to Rule 52(b).

One Hundred Forty-sixth Assignment

The Court erred in making finding of fact No. 21 instead of finding requested by defendants in Paragraph I (16) of their motion pursuant to Rule 52(b).

One Hundred Forty-seventh Assignment

The Court erred in making finding of fact No. 22 instead of the finding requested by defendants in Paragraph I (17) of their motion pursuant to Rule 52(b).

One Hundred Forty-eighth Assignment

The Court erred in making finding of fact No. 27 instead of finding requested by defendants in Paragraph I (18) of their motion pursuant to Rule 52(b).

One Hundred Forty-ninth Assignment

The Court erred in making finding of fact No. 28 instead of finding requested by defendants in Paragraph I (19) of their motion pursuant to Rule 52(b).

[fol. 5625] One Hundred Fiftieth Assignment

The Court erred in failing to find as requested by the defendants in their motion under Rule 52(b) that:

"There is no evidence that J. Myer Schine, acting as an individual, committed any act or pursued any course of conduct in violation of the Anti-Trust laws."

One Hundred Fifty-first Assignment

The Court erred in failing to find as requested by the defendants in their motion under Rule 52(b) that:

"There is no evidence that Louis W. Schine, acting as an individual, committed any act or pursued any course of conduct in violation of the Anti-Trust Laws."

One Hundred Fifty-second Assignment

The Court erred in failing to find as requested by the defendants in their motion under Rule 52(b) that:

"There is no evidence that John A. May acting as an individual, committed any act or pursued any course of conduct in violation of the Anti-Trust laws."

One Hundred Fifty-third Assignment

The Court erred in failing to find as requested by the defendants in their motion under Rule 52(b) that:

"J. Myer Schine acted in connection with any matter involved in the issues in this case, as an officer, director or agent of the corporate defendant Schine Chain Theatres, Inc."

[fol. 5626] One Hundred Fifty-fourth Assignment

The Court erred in failing to find as requested by the defendants in their motion under Rule 52(b) that:

"Louis W. Schine acted if at all in connection with any matter involved in the issues in this case, as an officer, director or agent of the corporate defendant Schine Chain Theatres, Inc."

One Hundred Fifty-fifth Assignment

The Court erred in failing to find as requested by the defendants in their motion under Rule 52(b) that:

> "John A. May acted in connection with any matter involved in the issues in this case, as an officer, director or agent of the corporate defendant Schine Chain Theatres, Inc."

One Hundred Fifty-sixth Assignment

The Court erred in failing to find as requested by the defendants in their motion under Rule 52(b) that:

> "For the past 15 to 20 years the normal method of licensing the exhibition of copyrighted motion picture photoplays in the United States of America, including the states of New York, Ohio; Kentucky, Maryland, Delaware and Virginia, has been on a so-called run basis, to wit:—For a first run to a theatre in a local competitive area with such exclusive exhibition rights and clearance privileges, if any, as may be appropriate to the successful exploitation of said copyrights in said area; for such subsequent runs in said area, and with such exclusive rights and privileges, if any, as may be [fol. 5627] appropriate to the successful exploitation of said copyrights in said area."

One Hundred Fifty-seventh Assignment

The Court erred in failing to find as requested by the defendants in their motion under Rule 52(b) that:

> "It has been the usual and customary practice for the distributor to agree with its licensees that it will not exhibit or grant a license to exhibit its photoplays for exhibition in conflict with the run licensed the exhibitor, or prior to the clearance period agreed upon with the exhibitor."

One Hundred Fifty-eighth Assignment

The Court erred in failing to find as requested by the defendants in their motion under Rule 52(b) that:

> "The motion picture industry has developed under the existence of clearance and runs. It is by such a

system with initially large receipts from prior run exhibitions and successive reduction of license charges that satisfactory revenue can be derived by the producers and distributors so that costly feature pictures can be made available to the whole public at varying admission prices."

One Hundred Fifty-ninth Assignment

The Court erred in failing to find as requested by the defendants in their motion under Rule 52(b) that:

> "In each competitive area under normal business conditions of free competition each distributor desires to license its films for successive runs in such area [fol. 5628] under such clearance terms as will yield the maximum total license revenue from the area. In determining which theatre shall have which runs its past business relations with the theatre, the skill and character of its management, its size, location, equipment and drawing power are all features which among others may influence such decision."

One Hundred Sixtieth Assignment

The Court erred in failing to find as requested by the defendants in their motion under Rule 52(b) that:

> "Motion picture are works of art and are the subject of copyright. They have no uniform or market value and the revenue which an owner of a copyright can derive from any picture or group of pictures depends upon the ability of the distributor to market them in different situations to the best advantage."

One Hundred Sixty-first Assignment

The Court erred in failing to find as requested by the defendants in their motion under Rule 52(b) that:

> "In a competitive area, where there are opposing possible theatres, to which films may be licensed, the distributor generally licenses the picture and determines the rental in accordance with the box office grossing ability of the picture at the theatre to which the distributor decides to license the picture."

One Hundred Sixty-second Assignment

The Court erred in failing to find as requested by the defendants in their motion under Rule 52(b) that:

> [fol. 5629] "The cost of the original production of a picture to the point where the negative is ready, so that positives for showing can be made, at times runs into millions of dollars. Each positive taken from the negative costs approximately $185 or more in addition, and if it is in technicolor the cost of the positive runs much higher."

One Hundred Sixty-third Assignment

The Court erred in failing to find as requested by the defendants in their motion under Rule 52(b) that:

> "For the average picture Fox makes about 300 positive prints of an 'A' picture and on an especially good picture as high as 360-370 such prints."

One Hundred Sixty-fourth Assignment

The Court erred in failing to find as requested by the defendants in their motion under Rule 52(b) that:

> "There are in operation in the United States, equipped for sound, in excess of 17,000 theatres."

One Hundred Sixty-fifth Assignment

The Court erred in failing to find as requested by the defendants in their motion under Rule 52(b) that:

> "A very good picture distributed by Fox would play approximately 14,000 of those theatres.

One Hundred Sixty-sixth Assignment

The Court erred in failing to find as requested by the defendants in their motion under Rule 52(b) that:

> "A single print would be called upon to serve from 40 to 50 theatres."

[fol. 5630] One Hundred Sixty-seventh Assignment

The Court erred in failing to find as requested by the defendants in their motion under Rule 52(b) that:

> "An ordinary tour of a print from the time it leaves the exchange to go to one theatre, through transporta-

tion time, time of exhibition at the theatre, transportation time on return of the print, and inspection requires several days before the print can start out for its next theatre."

One Hundred Sixty-eighth Assignment

The Court erred in failing to find as requested by the defendants in their motion under Rule 52(b) that:

> "Fox serves that print over about a year of time to cover all the theatres in which that particular print is exhibited."

One Hundred Sixty-ninth Assignment

The Court erred in failing to find as requested by the defendants in their motion under Rule 52(b) that:

> "Fox has 31 exchange centers, each serving an area in which from 450 to 500 theatres on an average are located."

One Hundred Seventieth Assignment

The Court erred in failing to find as requested by the defendants in their motion under Rule 52(b) that:

> "The prints are served in a sequence of time, starting generally to play first the larger theatres in the larger cities and towns, because those are the theatres that [fol. 5631] do the biggest business and the distributor regards them as a show window for the entire exchange territory, and in that show window the picture is well advertised, in the newspapers and sometimes in radio programs and in lobby displays and in front of the theatre."

One Hundred Seventy-first Assignment

The Court erred in failing to find as requested by the defendants in their motion under Rule 52(b) that:

> "The effort of the distributor and of the exhibitor is to have the selection of the theatres to show at a particular time, so made that they will be spaced in areas so that the pictures are shown in the different theatres in such a way that a particular picture showing in one

theatre will not draw directly away from another theatre playing the same picture that day."

One Hundred Seventy-second Assignment

The Court erred in failing to find as requested by the defendants in their motion under Rule 52(b) that:

"In determining the runs and the period and area of clearance the distributor figures that there is a certain amount of money that an individual of the public has to spend for motion picture entertainment during a given week, and that there is competition for that sum because what is spent to see it in the first run house will leave so much less to be spent in the second run house, so that the first run house and the second run house playing later are in competition with each other or with any other theatre and the distributor desires to have as [fol. 5632] much go into the first run house because the distributor can get more money out of that theatre than out of subsequent run theatres."

One Hundred Seventy-third Assignment

The Court erred in failing to find as requested by the defendants in their motion under Rule 52(b) that:

"The plan of clearance came into the industry as a means of protecting the prior run theatre whose capital cost is very large, running in a medium size town in the early days from $75,000 to $100,000 up to an investment of a million dollars or more in later days, which needed the protection for the investment by playing the first run of the picture a sufficient length of time before a second run in the same competitive area, so that the expectation that the picture might be seen in the same competitive area too soon would not detract from the attendance at the first run theatre and the consequent box office receipts there.".

One Hundred Seventy-fourth Assignment

The Court erred in failing to find as requested by the defendants in their motion under Rule 52(b) that:

"In determining the film rental, whether a percentage rental or a flat rental, the distributors aim at 35% of the gross box office receipts as the index in pricing."

One Hundred Seventy-fifth Assignment

The Court erred in failing to find as requested by the defendants in their motion under Rule 52(b) that:

> [fol. 5633] "It is the custom of the industry, if the box office receipts fall below the expectation on which the flat rental was based, to make subsequently a reduction in that rental to the point where the exhibitor can at least break even or show a small profit."

One Hundred Seventy-sixth Assignment

The Court erred in failing to find as requested by the defendants in their motion under Rule 52(b) that:

> "In determining the rental in the first place the distributor endeavors to estimate how much money the theatre could gross on the particular picture."

One Hundred Seventy-seventh Assignment

The Court erred in failing to find as requested by the defendants in their motion under Rule 52(b) that:

> "In the normally successful downtown city theatre, with a seating capacity of 1600, conducting a matinee and two successive evening performances, it is estimated that in the course of the three performances there will be in the aggregate 1600 admissions, so that if the average admission price was 25 cents, the gross to be expected would be $400 a day, or for a 4-day showing of $1600."

One Hundred Seventy-eighth Assignment

The Court erred in failing to find as requested by the defendants in their motion under Rule 52(b) that:

> "At 35% of this estimate the asking price would be something like $550 for a flat rental for the picture."

[fol. 5634] One Hundred Seventy-ninth Assignment

The Court erred in failing to find as requested by the defendants in their motion under Rule 52(b) that:

> "It is customary to allow a deduction for the cost of a second feature if the theatre is showing double

features, and for the cost of outside attractions at the theatre while showing the picture before applying the 35%."

One Hundred Eightieth Assignment

The Court erred in failing to find as requested by the defendants in their motion under Rule 52(b) that:

> "The effort of the distributor is to get the percentage of gross receipts at a second or subsequent run theatre in the same way as at a first run theatre."

One Hundred Eighty-first Assignment

The Court erred in failing to find as requested by the defendants in their motion under Rule 52(b) that:

> "Where there is only one theatre in a particular competitive area, the principal competition to supply pictures to that theatre is among the ten larger companies—Columbia, Fox, Metro, Monogram, Paramount, Republic, RKO, United Artists, Universal and Warners—and of these, Fox, Metro, Paramount, RKO, and Warner are sometimes spoken of as the Big Five, producing the larger number of pictures which are box office attractions in the cities, but the Western and action pictures, in which Republic and Monogram [fol. 5635] have specialized, are most popular in the little towns of the South and West and more preferred on that account by exhibitors."

One Hundred Eighty-second Assignment

The Court erred in failing to find as requested by the defendants in their motion under Rule 52(b) that:

> "Where there is more than one theatre that is a possibility for the distributor to sell, the distributor in selecting the customer to be obtained, if possible, takes into consideration the ability of the customer to gross, the operation of the theatre, the people conducting the business, the more substantial business man of the two, the theatre itself, in view of the distributor's desire to play its pictures in the nicest theatre with comfortable seats, a theatre showing a good clear picture on the screen, one that is well ventilated and

well managed all the way through, with a desire to play the picture in the theatre charging the higher admission price, and there are other elements to be considered."

One Hundred Eighty-third Assignment

The Court erred in failing to find as requested by the defendants in their motion under Rule 52(b) that:

> "In selecting a second run in a competitive area the distributor takes into consideration first a protection of the film rental that is expected to come out of the first run and then the distributor makes sure that the operation of the theatre and the playing of the picture there will not harm the possibility of that picture doing its full amount of business, the full amount of business it is capable of doing at the first [fol. 5636] run house, and the distributor also takes into consideration the condition of the house itself, the projection, sound, ventilation and location of the theatre, with an inclination toward a busy corner or a location where more people are closer to the theatre, rather than one that is around the corner and off the beaten path."

One Hundred Eighty-fourth Assignment

The Court erred in failing to find as requested by the defendants in their motion under Rule 52(b) that:

> "At times a picture after playing a first run in a theatre will be moved over to another theatre, operated in common interest with the first, and this is ordinarily done without any interval of time between the end of the showing in the one theatre and its opening up in the other, and this is called a move-over run, which is treated as a part of the first run, as an entire run, and not as a second run."

One Hundred Eighty-fifth Assignment

The Court erred in failing to find as requested by the defendants in their motion under Rule 52(b) that:

> "The foregoing policies are in general the policies of each of the distributors."

One Hundred Eighty-sixth Assignment

The Court erred in failing to find as requested by the defendants in their motion under Rule 52(b) that:

> "Distributors consider that clearance is one of the most important things that they have to sell."

[fol. 5637]

One Hundred Eighty-seventh Assignment

The Court erred in failing to find as requested by the defendants in their motion under Rule 52(b) that:

> "If a customer is a solid customer, who pays his bills and gives an honest count, and the distributor has been dealing with him over a long period of time, they don't *get a guarantee from him on the percentage pictures.*"

One Hundred Eighty-eighth Assignment

The Court erred in failing to find as requested by the defendants in their motion under Rule 52(b) that:

> "The distributors considered the Schine Circuit terms to be very satisfactory terms and the deals made with that Circuit were comparable with the deals made with anybody else."

One Hundred Eighty-ninth Assignment

The Court erred in failing to find as requested by the defendants in their motion under Rule 52(b) that:

> "In selling a group of pictures to the Schine Circuit there might be some pictures sold at 35%, some sold for lesser terms, and some on flat rental, dependent on the quality of the picture in general and the distributor's ability to get the price."

One Hundred Ninetieth Assignment

The Court erred in failing to find as requested by the defendants in their motion under Rule 52(b) that:

> "The effort of the distributor is to get a price which is fair both to the distributor and to the exhibitor, and [fol. 5638] to take into consideration the effect on subsequent sales to him."

One Hundred Ninety-first Assignment

The Court erred in failing to find as requested by the defendants in their motion under Rule 52(b) that:

> "In fixing a price to one theatre consideration is not given to the price charged to another theatre, but to the expectation of the gross box office receipts of the particular theatre."

One Hundred Ninety-second Assignment

The Court erred in failing to find as requested by the defendants in their motion under Rule 52(b) that:

> "Size of theatre alone does not determine, as amount of playing time and ability to fill the house must also be considered."

One Hundred Ninety-third Assignment

The Court erred in failing to find as requested by the defendants in their motion under Rule 52(b) that:

> "It is to the advantage of the distributor to have the first run theatre also play the second run."

One Hundred Ninety-fourth Assignment

The Court erred in failing to find as requested by the defendants in their motion under Rule 52(b) that:

> "In issuing licenses for more than one season's product, which the plaintiff has described as a franchise, no distinction is made between large circuits and inde- [fol. 5639] pendent exhibitors operating only a few theatres, and more franchises have been issued to the latter than to the former."

One Hundred Ninety-fifth Assignment

The Court erred in failing to find as requested by the defendants in their motion under Rule 52(b) that:

> "Such a franchise to independent small exhibitors and to circuits is advantageous at times both to the distributor and to the exhibitor as it gives the distributor an assured outlet in the town, saves the expense of going back and selling the town each year, and it gives the exhibitor an assured supply."

One Hundred Ninety-sixth Assignment

The Court erred in failing to find as requested by the defendants in their motion under Rule 52(b) that:

> "Independent exhibitors and affiliated exhibitors regarded clearance as of much importance and sought and believed that it improved the receipts of the theatre having it."

One Hundred Ninety-seventh Assignment

The Court erred in failing to find as requested by the defendants in their motion under Rule 52(b) that:

> "Distributors in the general course of their sales policy send out salesmen to solicit theatres which the distributor desires to sell and to bring in applications for contracts, if they can be obtained, to the branch managers, who consider them. If they disapprove, they send the salesman back to see whether a better contract [fol. 5640] can be obtained, or if the branch manager thinks the contract an advisable one, he forwards it with his recommendations either to the home office of the distributor or to the district manager, who in turn if he favors the contract forwards it to the home office. No contract is made until the general manager at the home office has approved the contract, and no one except such manager has authority to approve a contract."

One Hundred Ninety-eighth Assignment

The Court erred in failing to find as requested by the defendants in their motion under Rule 52(b) that:

> "It is estimated that about 1% of Paramount's film rental revenue came from the Schine Circuit."

One Hundred Ninety-ninth Assignment

The Court erred in failing to find as requested by the defendants in their motion under Rule 52(b) that:

> "It does not appear that in negotiating with the Schine Circuit any distributor has pursued any abnormal policy."

Two Hundredth Assignment

The Court erred in failing to find as requested by the defendants in their motion under Rule 52(b) that:

> "To the knowledge of the general sales managers of the respective distributors, Fox, Loew's Paramount, RKO, United Artists, Universal and Warners, there has not been any conversation with any of the defendants or their executives or employees not to deal with any competing exhibitors or to restrict the terms of such dealings."

[fol. 5641] Two Hundred First Assignment

The Court erred in failing to find as requested by the defendants in their motion under Rule 52(b) that:

> "Schine did not in the course of negotiations for the acquisition of any theatre at any time say to the prospective seller that if he did not sell to Schine he would have difficulty in getting product for his theatre. Schine did not say to any such person that if he did not sell to Schine he would open up another theatre in the town. Schine has not told any one else to make any such statements in negotiating for theatres for Schine. Schine was at the time of any such negotiations aware that any one had made any such statements. Schine has not said to any one that he approved of their making or having made any such statements. Schine has not asked any distributor to suggest to any person with whom Schine was negotiating for a theatre, or for any interest therein, that unless the theatre or an interest therein was sold to Schine, it would be difficult for the theatre to obtain product. Schine has not in any conversation with any employee of Columbia, Fox, Loew's, Paramount, RKO, United Artists, Universal or Vitagraph said that any one of them should not deal with a competing exhibitor to Schine. Schine has not written any such statement to any of them. Schine has not said to any one of them that if they made such a sale Schine would not buy from them elsewhere in the Schine Circuit. Schine has not for the acquisitions of theatres made any threats or misrepresentations."

[fol. 5642] Two Hundred Second Assignment

The Court erred in failing to find as requested by the defendants in their motion under Rule 52(b) that:

> "No competent or properly qualified witness was produced by the plaintiff upon the trial to testify as an expert, as to what constituted reasonable or unreasonable clearance, or as to the factors which must be considered in determining whether clearance is reasonable or unreasonable."

Two Hundred Third Assignment

The Court erred in failing to make the findings requested by the defendants in "Defendants' Request for Findings" dated January 24, 1945, the error being hereby assigned with respect to each failure to make each respective finding requested.

Two Hundred Fourth Assignment

The Court erred in failing to make the conclusions of law requested by the defendants in their motion under Rule 52(b) under Paragraph V, 1 to 9 inclusive.

Two Hundred Fifth Assignment

The Court erred in its failure to strike and eliminate from its findings of fact, the statements and language constituting or involving conclusions of law as requested in defendants' motion under Rule 52(b), Paragraph III, 76 to 84 inclusive.

[fol. 5643] Two Hundred Sixth Assignment

The Court erred in denying defendants' motion to strike all that part of the second amended complaint which deals with any theatres located in the State of New York or operated in the State of New York (which motion and ruling appears at pages 95 and 96 of the typewritten stenographic minutes).

Two Hundred Seventh Assignment

The Court erred in holding that the defendants had illegally stifled competition or monopolized the theatre business in different locations in the absence of any proof of any motive on the part of the defendants so illegally to stifle competition or to monopolize the theatre business and in the face of direct evidence to the contrary.

Two Hundred Eighth Assignment

The Court erred in failing to dismiss the complaint because the evidence introduced by the plaintiff failed to prove the allegations of the complaint as amended and as modified by plaintiff's bills of particulars.

Wherefore the defendants severally pray that said judgments and each of them, may be held erroneous and accordingly reversed and for such other and fit relief as the Court may deem just and proper.

Respectfully submitted for each defendant separately, ~~Willard S.~~ McKay, Attorney for Defendants.

Arthur Garfield Hays, of Counsel.

[fol. 5644] IN UNITED STATES DISTRICT COURT

BOND ON APPEAL

Know all men by these presents, that we, Schine Chain Theatres, Inc., Schine Theatrical Co., Inc., Schine-Lexington Corporation, Schine Enterprises Corporation, Schine Circuit, Inc., Chesapeake Theatre Corporation, J. Myer Schine, Louis W. Schine, John A. May, as principals and Maryland Casualty Company as surety, are held and firmly bound unto the United States of America in the sum of One thousand dollars ($1,000) to be paid to the said United States of America, to which payment we bind ourselves, our successors, and assigns, jointly and severally. Sealed and signed this 26th day of August, 1946.

Whereas, on the fifth day of July, 1946, in an action pending in the United States District Court for the Western District of New York between the United States of America as plaintiff and the first named obligors as defendants, a final order was entered and designated "Order Setting Forth Plan Effectuating Judgment" and the said defendants having obtained the allowance of an appeal from said order to the Supreme Court of the United States.

Now the condition of this obligation is such that if the said defendants shall prosecute their appeal with effect and satisfy the said order in full together with costs, interest and damages for delay, if for any reason the appeal is dismissed or if the order is affirmed, and satisfy in full such modification of the order and such costs, interest and damages as the Supreme Court may adjudge and award, [fol. 5645] then this obligation shall be void, otherwise to remain in full force and effect.

(Sgd) Louis W. Schine, Treas., Schine Chain Theatres, Inc. (Corp. Seal); Louis W. Schine, Treas., Schine Theatrical Co., Inc. (Corp. Seal); Louis W. Schine, Treas., Schine-Lexington Corporation (Corp. Seal); Louis W. Schine, Treas., Schine Enterprises Corporation (Corp. Seal); Louis W. Schine, Treas., Schine Circuit, Inc. (Corp. Seal); Louis W. Schine, Treas., Chesapeake Theatre Corporation (Corp. Seal); J. Myer Schine (L.S.), Louis W. Schine (L.S.), John A. May (L.S.), as Principals. Maryland Casualty Company, By Walter T. Jackson, Jr., Attorney-in-Fact, as Surety.

(Sgd) John Knight, United States District Judge.

Approved August 28, 1946.

Certificate of authorization of attorney in fact and justification attached.

[fol. 5646] IN THE DISTRICT COURT OF THE UNITED STATES

PETITION FOR APPEAL AND ORDER ALLOWING THE SAME—August 26, 1946

The defendants, Schine Chain Theatres, Inc., Schine Theatrical Co., Inc., Schine-Lexington Corporation, Schine Enterprises Corporation, Schine Circuit, Inc., Chesapeake Theatre Corporation, J. Myer Schine, Louis W. Schine and John A. May, having heretofore separately appealed from the judgment entered in the above entitled cause on November 1, 1945 and from the amended judgment entered herein on March 29, 1946, which said appeal was duly allowed by order dated April 17, 1946, and now separately alleging that each is aggrieved by the order and judgment entered herein on July 5, 1946 and designated "Order Setting Forth Plan [fol. 5647] Effectuating Judgment" and by the proceedings upon which said order and judgment is based, do each separately hereby pray an appeal to the Supreme Court of the United States.

Pursuant to Rule 12, Paragraph 1 of the Revised Rules of the Supreme Court of the United States, the defendants present to this court herewith a statement showing the basis of the jurisdiction of the Supreme Court to entertain an appeal in this cause.

The particulars wherein the defendants consider the action of the Court erroneous are set forth in the assignment of errors accompanying this petition and to which reference is hereby made.

Defendants Pray that their appeal may be allowed and that citation be issued as provided by law, and that a transcript of the record, proceedings, documents and papers upon which said decree was based, duly authenticated be sent to the Supreme Court of the United States under the rules of said Court in such cases made and provided.

Schine Chain Theatres, Inc., Schine Theatrical Co., Inc., Schine-Lexington Corporation, Schine Enterprises Corporation, Schine Circuit, Inc., Chesapeake Theatre Corporation, J. Myer Schine, Louis W. Schine, John A. May. By their attorney (for each defendant separately) Willard S. McKay.

Arthur Garfield Hays, of Counsel.

[fols. 5648-5649] The above named defendants having duly filed the foregoing petition for appeal and also having filed their assignment of errors and prayer for reversal, and a jurisdictional statement pursuant to Rule 12, Paragraph 1 of the Revised Rules of the Supreme Court of the United States, and having in all respects conformed to the statutes and rules in such cases made and provided,

It is therefore ordered, that the said appeal be and the same hereby is allowed as prayed for.

Enter,

John Knight, U. S. D. J.

Dated, Buffalo, N. Y., August 26, 1946.

[fol. 5650] IN THE SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS ON WHICH THE APPELLANTS INTEND TO RELY, AND DESIGNATION OF THE PARTS OF THE RECORD WHICH THEY THINK NECESSARY FOR THE CONSIDERATION THEREOF, PURSUANT TO RULE 13, PARAGRAPH 9—Filed October 22, 1946

The appellants, Schine Chain Theatres, Inc., et al., intend to rely upon each of their formal assignments of error, and adopt the same as their statement of points to be relied upon, but for convenience and brevity propose to group the discussion of said points as follows:

1. The Order and Judgment of the District Court, dated July 5, 1946, was improper and without force or effect, for the reasons assigned in the First, Second and Eighth Assignments of Error (Defendants' Assignments of Error, dated August 26, 1946, Case No. 572).

2. The Divestiture Order of July 6, 1946, was improvidently, improperly and prematurely made and entered for the reasons assigned in the Third, Fourth, Fifth, Sixth and Seventh Assignments of Error.

[fol. 5651] 3. The District Court's Divestiture Order of July 6, 1946, was unscientific, illogical, punitive, rather than remedial, in its purpose and effect. It was without any precedent in law, and not based upon any evidence or findings showing the necessity therefor, or that it would have any tendency whatever to correct the alleged evils in the motion picture business, or create, maintain or restore competition in the motion picture industry, or that it would benefit the public, or that it would have any effect whatsoever except to penalize and punish the defendants by inflicting severe financial loss without corresponding benefit to the public.

4. All other considerations aside, the plans of realignment submitted by the defendants should not have been rejected by the District Court in favor of divestiture without having taken any evidence with respect to their probable efficacy, or without giving any consideration to the proven efficacy, up to the date of trial, of the injunctive provisions of the temporary order, dated May 19, 1942, or to the probable effect upon the motion picture business

generally of the decision of the District Court of the Southern District of New York in *United States* v. *Paramount, et al.*, 16 Fed. 323 (which decision, although not binding upon the Court was before the Court in connection with the defendants' motion for a stay, dated June 7, 1946), as more particularly set forth in Eleventh, Twelfth, Thirteenth, Fourteenth, Fifteenth, Sixteenth, Seventeenth and Nineteenth Assignments of Error.

5. In ordering the sale within six months of the properties referred to in paragraph I-E of its Divestiture Order, the District Court went outside of the testimony in the case and ordered the sale of said properties, for no reason except for the fact that on May 19, 1942, the defendants had voluntarily agreed to endeavor to sell said properties but [fol. 5652] had been unable to do so prior to the expiration date of the order of May 19, 1942, as extended, and in the face of the further fact that with respect to the Strand Theatre, Cumberland, Maryland, the defendants had been relieved by the Court from making any further efforts to sell said property.

6. As a corollary to Point 10 in Case No. 571, there is nothing to show that the District Court at any time had before it the parties whose compliance would be necessary to enforce the sale of the theatre properties referred to in the Divestiture Order.

7. In making an order that the theatre properties of the defendants in certain named localities should be sold by a trustee, the District Court acted as to certain properties without any evidence whatsoever with respect thereto, and as to certain other properties without any evidence showing, or tending to show, that the acquisition by the defendants of their-theatre interests in said localities and/or the maintenance and use by the defendants of such theatre interests was, or is, the result of, or pursuant to, or has resulted in any conduct on the part of the defendants or any of them in violation of Sections 1 and 2 of the Sherman Act, or that the divestiture thereof, or of any part thereof, is otherwise warranted by Sections 1 and 2 of the Sherman Act. The errors of the Court in this respect are more particularly set forth in the Twenty fourth to the Sixty third assignments of error, inclusive.

8. There is no reason whatever for including the individual defendants in the Divestiture Order, yet the Court addressed its said order to all of the defendants, including the individual defendants, without assigning any reason for so doing.

[fol. 5653] Said appellants hereby designate as considered necessary for the consideration of the points on which the appellants intend to rely, the following parts of the transcript of the record as certified by the Clerk of the United States District Court for the Western District of New York:

Page No. Clerk's Transcript	
4929*	1. Plaintiff's proposed plan of reorganization, filed about February 25, 1946.
5275*	2. Defendants' objections to plaintiff's so-called plan of reorganization, filed on April 1, 1946.
1	3. Order entered July 5, 1946 and designated "Order Setting Forth Plan Effectuating Judgment."
6	4. Opinion of District Judge Knight dated July 5, 1946.
11	5. The Defendants' motion for an order amending and/or resettling and/or clarifying the order of July 5, 1946, filed July 15, 1946.
14	6. Stenographic transcript of the hearing upon said motion held at Buffalo, New York, July 22, 1946.
24	7. Defendants' motion dated May 22, 1946 for an Order to take further testimony, including supplemental affidavit of Arthur Garfield Hays, sworn to May 27, 1946.
33	8. Stenographic transcript of the hearing upon said motion held at Buffalo, New York, on May 28, 1946.
100	9. Defendants' motion for a stay dated June 7, 1946.
105	10. Stenographic transcript of the hearing upon said motion held at Buffalo, New York, June 17, 1946.
139	11. Stenographic transcript of hearing held at Buffalo, New York, on May 8, 1946.
165	12. Order dated June 24, 1946, denying defendants' motion to take further testimony.

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* Record in Case No. 571.

[fol. 5654]

Page No. Clerk's Transcript	
166	13. Order dated June 24, 1946, denying defendants' motion for a stay.
167	14. Defendants' proposals regarding realignment of Schine Circuit filed May 28, 1946.
188	15. Defendants' memorandum of May 28, 1946 (filed in connection with above Proposals and referred to therein).
238	16. Defendants' motion for a stay filed April 12, 1946.
240	17. Defendants' petition for appeal, and order allowing the same.
244	18. Bond on Appeal.
246	19. Jurisdictional statement dated and filed August 26, 1946.
252	20. Defendants' Assignments of Error dated and filed August 26, 1946.
	21. This statement and designation.

[fols. 5655-5656] This statement and designation is being filed concurrently with a similar statement and designation for Case No. 571. Upon the assumption that these two cases will be argued and submitted either concurrently or consecutively, the appellants state that all points relied upon in Case No. 571 will also be relied upon in Case No. 572, and vice versa, and that all portions of the record designated as necessary to print for consideration of Case No. 571, shall also be a part of the record in Case No. 572, and vice versa.

The appellants respectfully reserve the right to amend and/or supplement the foregoing statement and designation after the determination by the Court of appellee's motion to dismiss or affirm in Case No. 571 now pending before the Court.

Dated: New York, October 18, 1946.

Respectfully submitted for each appellant separately, Willard S. McKay, Attorney for Appellants.

[fols. 5657-5658] [File endorsement omitted.]

[fol. 5659] IN THE SUPREME COURT OF THE UNITED STATES

COUNTER DESIGNATION OF PARTS OF THE RECORD—Filed October 31, 1946

Appellee designates, as considered necessary for the consideration of the appeal, the following parts of the transcript of the record, as certified by the Clerk of the United States District Court for the Western District of New York, which were not included in appellants' designation of Oct. 18, 1946.

1. All exhibits introduced in evidence by the plaintiff.

2. Such parts of defendants' answers to interrogatories as offered in evidence on pages 3751 through 3771 of the stenographer's transcript of the testimony and proceedings on October 26, 1944.

3. Order of July 13, 1942, modifying order of May 19, 1942.

4. Final report re order of May 19, 1942, filed by defendants on July 3, 1943.

5. Amendment to said final report, filed on July 29, 1943.

6. Defendants' motion to dismiss suit, filed on February 24, 1944.

[fol. 5660] 7. Defendants' motion for relief from divestiture provisions of order of May 19, 1942, filed on February 24, 1944.

8. Plaintiff's petition for appointment of a trustee to carry out divestiture provisions of order of May 19, 1942, filed on February 24, 1944.

9. Defendants' motion for leave to acquire Liberty Theatre at Cumberland, Maryland.

10. Transcript of hearing held at Buffalo, New York on March 20, 1944.

11. Transcript of hearing held at Buffalo, New York on April 10, 1944.

12. Defendants' answer to petition for appointment of trustee, filed on April 10, 1944.

13. Order extending time for filing motions to amend findings and judgment to December 7, 1945, entered on November 9, 1945.

14. Order extending plaintiff's time for filing said motions until February 4, 1946 and continuing hearing set for December 10, 1945 on defendants' motions to said date, entered on November 28, 1945.

15. Motion and order extending time of hearing on defendants motions pursuant to Rule 62(b) and (c) from December 17, 1945 to February 4, 1946, entered on December 21, 1945.

16. Motion and order extending time for hearing on defendants' motions and upon plaintiff's motion from February 4, 1946 to February 25, 1946, and extending time of plaintiff and defendants within which to submit plans of reorganization to the same date, entered on February 4, 1946.

17. Plaintiff's memorandum attached to and filed in support of plan of reorganization, filed on February 20, 1946.

18. Transcript of hearing held at Buffalo, New York on February 25, 1946.

[fol. 5661] 19. Motion and order extending defendants' time to file objections to plaintiff's plan to April 1, 1946.

20. Plaintiff's reply to defendants' objections to its plan of reorganization, filed on April 12, 1946.

21. This designation.

With respect to the exhibits and answers by defendants under interrogatories, only such of these should be printed as the parties may agree upon as being necessary for inclusion in the printed record.

This designation is being filed concurrently with a similar designation, in case No. 571.

—— ——, Acting Solicitor General.

I hereby certify that I have this day served a copy of the foregoing Counter Designation of Parts of the Record on

William S. McKay, Esquire, 630 Fifth Avenue, New York (20), N. Y., by mailing a copy to him at his business address.

——— ———, Acting Solicitor General.

Dated at Washington, D. C. this 31st day of October, 1946.

[fols. 5662-5663] [File endorsement omitted.]

[fol. 5664] SUPREME COURT OF THE UNITED STATES.

STIPULATION AS TO PRINTING OF RECORD—Filed July 11, 1947

It is hereby stipulated, consented, and agreed, by and between counsel for the respective parties hereto that the printed record on appeal in this matter shall consist of the following, to be printed in the following order:

	Page Number of Original Transcript
1. Original complaint	4939
2. Amended complaint, filed May 12, 1941	5175
3. Second amended complaint. (Not included in transcript. To be furnished by stipulation.)	
4. Defendants' answer to second amended complaint	4725
5. Bills of particulars filed by plaintiff.	
(a) Bill of particulars, dated July 8, 1940	4965
(b) Bill of particulars, dated October 1, 1940	4991
[fol. 5665] (c) Bill of particulars, dated September 4, 1941	5015
(d) Supplemental bill of particulars, dated December 4, 1941	5019
(e) Amendment to supplemental bill of particulars, dated December 8, 1941	5055

Page Number of
Original Transcript

6. Interrogatories propounded by defendants and plaintiff's answers thereto

   (a) Defendants' interrogatory, dated September 12, 1941 5057

   (b) Plaintiff's answers, dated November 19, 1941 5101

   (c) Further answers of plaintiff to defendants' interrogatories, dated March 5, 1942 5119

   (d) Supplement to further answers, dated March 17, 1942 5143

   (e) Supplement to further answers, dated April 14, 1942 5145

7. Defendants' request for admission of facts, dated May 24, 1944 5211

8. Plaintiff's answer to request for admission of facts, dated June 5, 1944 5147

9. Defendants' answers to plaintiff's interrogatories. (Not numbered in transcript; sent down as originals.)

   (a) The preface to defendants' answers to plaintiff's interrogatories, being the first two pages in booklet containing said answers.

   [fol. 5666] (b) So much of the defendants' answer to plaintiff's interrogatory No. 2 as was introduced in evidence at page 3751 of the stenographer's transcript of testimony.

   (c) So much of the defendants' answer to plaintiff's interrogatory No. 3 as was introduced in evidence at pages 3752-3753 of the stenographer's transcript of testimony.

   (d) Defendants' answer to plaintiff's interrogatories numbered 4, 7, 15, 16, 17,

Page Number of Original Transcript

17-A, 17-B, 17-C, 18 and supplemental schedule thereto, 19, 22, 23, 31, and 32.

10. Stipulation filed on May 19, 1942 for a postponement of the trial until May 19, 1944, and for a temporary order, and a copy of that order entered on or about May 19, 1942 4737

11. Transcript of proceedings before the Court at Buffalo, New York on May 19, 1942 . . . 5161

12. Order of July 13, 1942, modifying order of May 19, 1942 5481

13. Final report *re* order of May 19, 1942, filed by defendants on July 3, 1943 5482

[fol. 5667] 14. Amendment to said final report, filed on July 29, 1943 5519

15. Defendants' motion to dismiss suit, filed on February 24, 1944 5520

16. Defendants' motion for relief from divestiture provisions of order of May 19, 1942, filed on February 24, 1944 5521

17. Plaintiff's petition for appointment of a trustee to carry out divestiture provisions of order of May 19, 1942, filed on February 24, 1944 5522

18. Defendants' answer to petition for appointment of trustee, filed on April 10, 1944 . 5688

19. Motion for leave to acquire Liberty Theatre at Cumberland, Maryland. (See Certificate of Clerk) 5524

20. Transcript of hearing held at Buffalo, New York on March 20, 1944 5525

21. Transcripts of hearings held at Buffalo, New York on April 10 and 11, 1944 . . . 5601

22. Opinion rendered by Court on May 4, 1944 *re* defendants' motions (1) for leave to acquire a theatre, (2) to dismiss suit, and

Page Number of Original Transcript

(3) to be relieved of divestiture provisions of order of May 19, 1942, and plaintiff's petition for appointment of trustee for sale to carry out said provisions 5695

23. Order and stipulation extending order of May 19, 1942 to May 31, 1944, entered on May 19, 1944 5704

[fol. 5668] 24. Order filed by Court on May 31, 1944, pursuant to opinion filed on May 4, 1944 5706

25. Acceptance filed by defendants on June 15, 1944, pursuant to Court's order of May 31, 1944 5710

26. The stenographer's transcript of the testimony and proceedings May 31, 1944 to November 10, 1944, typewritten pages 1 to 4723 inclusive 1

27. Order of the Court, October 16, 1944, approving contract of sale of four theatres to A. C. Hayman 5173

28. Report filed by defendants *re* sale of theatres under order of May 19, 1942, filed on November 16, 1945 5711

29. Defendants' request for findings, dated January 24, 1945 5908

30. Certificate of Clerk, dated June 2, 1946, re proposed findings and judgment 5153

31. Opinion of District Judge Knight, dated October 8, 1945, and accompanying memorandum, pages A & B, and action on Defendants' objections to testimony and exhibits 5218

32. Certificate of Clerk of District Court that no Notice of Settlement of the proposed findings and judgment referred to in Item 30 above, was filed by the Plaintiff in the District Court 5155

Page Number of Original Transcript

[fol. 5669] 33. Stipulation between attorneys for the respective parties, dated September 6, 1946 6052

34. Findings of the Court, dated October 31, 1945, and filed November 1, 1945 4869

35. Judgment of the Court, entered November 1, 1945 4887

36. Defendants' motion to amend findings, conclusions and judgment, filed November 10, 1945 5250

37. Plaintiff's Motion to amend findings, conclusions and judgment 4891

38. Supplemental judgment entered by Court on November 8, 1945 5713

39. Transcript of hearing held at Buffalo, New York on February 25, 1946 5727

40. Decision of Judge Knight on foregoing motions to amend, dated March 8, 1946; filed March 11, 1946 4897

41. Plaintiff's proposed amended findings of the Court and amended judgment, submitted to the Court shortly prior to March 29, 1946. (See Certificate of Clerk, dated July 2, 1946.) 5157

42. Certificate of Clerk of District Court that no Notice of Settlement of the proposed amended findings of the Court and amended Judgment was filed by the Plaintiff in the District Court 5159

43. Amended findings and conclusions of the Court, filed March 29, 1946 4903

[fol. 5670] 44. Amended Judgment entered on March 9, 1946 4925

45. Plaintiff's proposed plan of reorganization, filed about February 25, 1946 4929

Page Number of Original Transcript

46. Plaintiff's memorandum attached to and filed in support of plan of reorganization, filed on February 20, 1946 5719

47. Defendants' objections to Plaintiff's so-called plan of reorganization, filed on April 1, 1946 5275

48. Plaintiff's reply to defendants' objections to its plan of reorganization, filed on April 12, 1946 5847

49. Transcript of hearing held at Buffalo, New York on April 16, 1946 5866

50. Defendants' Notice of Appeal and Petition for allowance and jurisdictional statement, and assignment of errors, filed April 15, 1946, and allowance thereof, dated April 17, 1946 5399

Page Number of Transcript Filed Pursuant to Defendants' Praecipe Dated August 27, 1946

51. Defendants' Motion for a Stay filed April 12, 1946 238

52. Stenographic transcript of hearing held at Buffalo, New York on May 8, 1946 139

[fol. 5671] 53. Defendants' motion dated May 22, 1946 for an Order to take further testimony, including supplemental affidavit of Arthur Garfield Hays, sworn to May 27, 1946 24

54. Stenographic transcript of the hearing upon said motion held at Buffalo, New York on May 28, 1946 33

55. Defendants' proposals regarding re-alignment of Schine Circuit filed May 28, 1946 167

56. Defendants' memorandum of May 28, 1946 (filed in connection with above Proposals and referred to therein 188

	Page Number of Transcript Filed Pursuant to Defendants' Praecipe Dated August 27, 1946
57. Defendants' motion for a stay dated June 7, 1946	100
58. Stenographic transcript of the hearing upon said motion held at Buffalo, New York June 17, 1946	105
59. Order dated June 24, 1946 denying defendants' motion to take further testimony	165
60. Order dated June 24, 1946 denying defendants' motion for a stay	166
61. Opinion of District Judge Knight, dated July 5, 1946	6
62. Order entered July 5, 1946 and designated "Order Setting Forth Plan Effectuating Judgment"	1
[fol. 5672] 63. The Defendants' motion for an order amending and/or re-settling and/or clarifying the order of July 5, 1946, filed July 15, 1946	11
64. Stenographic transcript of the hearing upon said motion held at Buffalo, New York, July 22, 1946	14
65. Defendants' assignments of error dated and filed August 26, 1946	252
66. Bond on Appeal	244
67. Defendants' petition for appeal, and order allowing the same	240
68. This stipulation.	

[fol. 5673] It is further stipulated, consented, and agreed that the following exhibits be printed in their entirety as part of the printed record on appeal:

P-2
P-3
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P-12
P-13
P-17
P-18
P-20
P-21
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[fol. 5674]

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1007
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W 3
W 4 (1–99)
W 5
W 7
W 35 A & B
W 34 (1–80)
U 137
U 137 (1–75)
U 207
U 207 (1–89)

R 1
R 2 (1–51)
R 20
R 37 (1–6) (8–83)
R 42
R 43
F 1
F 102–115
F 193
C 100
C 101
C 102 (1–81)
C 180
C 181 (1–79)
S 73
S 74
S 75
D–1
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[fol. 5675] It is further stipulated, consented, and agreed that the following exhibits be printed as part of the printed record on appeal to the extent or in the manner hereby designated:

81 In lieu of actual Exhibit, substitute the following statement: Lease of February 14, 1941 for 10 years from February 16, 1941, Michael Boumansour to Schine Theatrical Co., Inc., of the Plaza theatre at 10 Pearl Street, Malone, New York, with rental of $8,000 a year and deposit of $8,000 in advance for last year of term. Also print clause 10.

83 Omit acknowledgments.

85 In lieu of Exhibit 85, substitute the following statement: Purchase contract, dated May 24, 1937, be-

tween Young and Whitney, Inc. and Perry Theatre Corporation for sale to latter of property in Ilion, New York, known as the Capitol theatre, also property in Ilion, New York, known as the Opera House, used for commercial and office purposes, and assignment of lease of Temple theatre, Ilion, New York. A copy of said Temple lease is attached to said contract and is for a term of 5 years from May 5, 1937 at a rental of $1750 per year. The purchase price mentioned in said contract is $250,000.

96 Omit acknowledgment.

111 In place of actual Exhibit, copy through paragraph 6, then paragraph 11 and signatures. Omit the rest.

118 In lieu of actual Exhibit, copy through paragraph 6, then paragraph 9 and signatures. Omit the rest.

644-A Print only letter agreement covering 1934-35 season consisting of 2 pages; Pages 97, 98, 99 (deal sheets for Mt. Vernon, Ohio); Pages 105, 107, 108, 110 (control figures for Schine circuit).

[fol. 5676]

646 Print first two pages and first paragraph on Page 3 and signatures. Substitute words "Strand theatre, Bellefontaine, Ohio" for description on first page.

647 Omit starting with second full paragraph on Page 4 down to testimonium clause; also omit acknowledgments.

806 Print article dealing with theatre.

807 Print article dealing with theatre.

811 Print first page down through the word "therewith", fourth line from bottom. Copy Article II, and copy Article IV. Omit the rest.

854 Print article concerning theatre.

871 Omit acknowledgments.

872 Omit acknowledgments.

883 Print through second line on second page, last paragraph on page before signature page and signature page.

910 Print through first paragraph on second page and signature.

911 Print through second paragraph on second page and signatures.

912 Print through first paragraph on second page and signatures.

913 Print through first paragraph on second page and signatures.

914 Print through first paragraph on second page and signatures.

915 Just print the title page and the letter of October 27, 1941 and paragraphs 5, 6, 7, 16 and 24.

916 Print title page and copy paragraphs 4, 5, 6, 7, 16 and 24.

917 Print title page and copy paragraphs 4, 5, 6, 7, 16 and 24.

[fol. 5677]

918 Print first paragraph and last paragraph on page 1; also paragraph numbered 3 on next page. Include following statement: Lessees agree to remodel and equip building as a motion picture theatre and lease contains a provision for renewal at increased rental.

919 In lieu of actual Exhibit, substitute the following statement: Cancellation of Steele and Selman lease of October 31, 1934, covering Forum theatre in Norwalk, Ohio. Cancellation dated January 5, 1942.

920 In lieu of actual Exhibit, substitute the following statement: Lease from G. W. Croucher to Newark Theatres, Inc., dated April 15, 1926, of the Crescent theatre in Newark, New York, for 5 years from April 15, 1926 at annual rental of $4750.

921 Print all except acknowledgments.

922 Print all through signatures.

923 In lieu of actual Exhibit, substitute the following statement: Lease by J. J. Lannigan to Hi-Art Theatre Corporation, dated January 8, 1926, of the Hi-Art theatre in Lockport, New York, for 10 years from January 10, 1926 at $9,500 per year for the first 5 years and $10,000 per year for second 5 years. Print signatures and include guarantee agreement in full.

924 In lieu of actual Exhibit, substitute the following statement: Lease by J. J. Lannigan to Schine Theatrical Co. as of May 25, 1933 of Hi-Art theatre in Lockport, New York, for 2 years 10 months from March 10, 1933 at $4,000 a year.

925 Omit acknowledgments.

926 Copy first page through paragraph 1 over on second page and then state rent fixed at $5,500 a year. Copy signatures.

[fol. 5678]

927 Print first two pages, except last line on page 2; print second full paragraph on page 3 and third and fourth full paragraphs on page 5, and last paragraph on page 5 going over to page 6.

928 Omit acknowledgments.

929 In lieu of actual Exhibit, substitute the following statement: Lease of June 25, 1935 from Charles L. Mickey and Claud W. Mickey to Carl M. Kahn for 5 years from July 1, 1935. Then copy description on first page and second full paragraph on signature page.

930 In lieu of actual Exhibit, substitute the following statement: Lease of June 11, 1940 to the Fostoria Theatre Corporation, for 5 years from July 1, 1940 at $1,500 a year covering the premises (copy description on first page). Also copy paragraph 12 on page 4 and paragraph 14 on page 4 and signatures.

931 In lieu of actual Exhibit, substitute the following statement: Lease of April 1, 1936 from National City Bank of Cleveland, Trustee, to Crawford Theatre Company of the Southern theatre in Bucyrus, Ohio, for 5 years from April 1, 1936. Copy rental terms on pages 1-3, including option.

932 In lieu of actual Exhibit, substitute the following statement: Lease of April 1, 1941 to Crawford Theatre Company of the Southern theatre in Bucyrus, Ohio, for 2 years from April 1, 1941, at $2,400 a year. Copy signatures.

933 Print first 4 paragraphs and then last paragraph on page 3 going over on page 4.

934 In lieu of actual Exhibit, substitute the following statement: Lease of August 31, 1937 to Schine Theatrical Company, Inc., of the Opera House in Bellefontaine, Ohio, for one year from September 1, 1937, at $1,200.

[fol. 5679]

935 In lieu of actual Exhibit, substitute the following statement: Lease of August 31, 1938, to Schine Theatrical Company, Inc., of the Opera House in Bellefontaine, Ohio, for one year from September 1, 1938, at $1,200.

936 In lieu of actual Exhibit, substitute the following statement: Lease of August 31, 1939, to Schine The-

atrical Company, Inc., of the Opera House in Bellefontaine, Ohio, for one year from September 1, 1939, at $1,200.

937 In lieu of actual Exhibit, substitute the following statement: Lease of August 14, 1940, to Schine Theatrical Company, Inc., of the Opera House in Bellefontaine, Ohio, for one year from September 1, 1940, at $1,200.

938 In lieu of actual Exhibit, substitute the following statement: Lease of August 18, 1941, to Schine Theatrical Company, Inc., of the Opera House in Bellefontaine, Ohio, for one year from September 1, 1941, at $1200. Include signatures.

939 In lieu of actual Exhibit, substitute the following statement: Lease of August 3, 1931, by Daniel Guttilla to Schine Enterprises, Inc., of the Strand theatre in Bellefontaine, Ohio. Copy pages 1 and 2.

940 Copy page 1, including full paragraph beginning on that page and running over to page 2.

941 Copy first two pages, including full paragraph beginning on Page 2 and running over to Page 3.

942 In lieu of actual Exhibit, substitute the following statement: Lease of March 9, 1918, from Thomas N. Osborne to Maurice A. Shea of New Jefferson theatre, Auburn, New York, for 10 years from October 15, 1918, at $4,000 a year.

[fol. 5680]

943 In lieu of actual Exhibit, substitute the following statement: Lease of New Jefferson theatre, Auburn New York. Then copy first two paragraphs on Page 1 and habendum clause on Page 2.

944 Print first page and paragraphs numbered first and second on the second page and also signatures.

945 In lieu of actual Exhibit, substitute the following statement: Lease of July 9, 1938, to Upstate Amusement Company, Inc., of the New Jefferson theatre, Auburn, New York, for 10 years from May 11, 1938, at $9,000 a year. Print eleventh paragraph and signatures.

946 Print except for acknowledgments.

947 In lieu of actual Exhibit, substitute the following statement: Lease of May 20, 1936, of Opera House, Kent, Ohio, to Sidney Theatre Corporation for 5

years from June 1, 1936, at $3600 a year. Five year option to renew at same rental. Print last two paragraphs on signature page and signatures.

960 Omit acknowledgments.
961 Print except for acknowledgments.
962 Print first page.
982 Print letter exercising option and first two paragraphs of the lease and the last page through the signatures.
983 In lieu of actual Exhibit, substitute the following statement: Lease of July 5, 1938, to G-C Theatre Corporation of the Richardson theatre in Oswego, New York, for 2 years from August 1, 1938, at $6500 a year.
984 In lieu of actual Exhibit, substitute the following statement: Renewal of lease of the same theatre as in 983 to the same company, dated June 17, 1940, at same rental, for one year from July 31, 1940. Copy paragraph two.

[fol. 5681]

1008 Omit acknowledgments.
S-68 Omit paragraphs 7-12.
S-69 Omit Acknowledgments.
S-70 Omit ackowledgments.
S-71 Omit acknowledgments.
S-72 Print first two pages only. Omit acknowledgments.
S-76 Omit acknowledgments.
S-77 Omit acknowledgments.
D-112 Reproduce in reduced size.

[fol. 5682] It is further stipulated, consented, and agreed that the following exhibits are to be included in the printed record on appeal:

P-14.
P-15.
P-19.
P-23.
P-24.
P-27.
P-28.
P-29.
P-30.
P-31.

P-37.
P-42.
P-61.
P-62.
~~P-66.~~
P-67.
P-68.
P-69.
P-70 (Include rider).

122 (Add typewritten rider consisting of one page attached to and referring to contract for picture "I Knew Her When." Add rider for second run. No duplications.)

126 (Add typewritten rider consisting of one page attached to and referring to contract for picture "Call of the Wild." No duplications.)

128 (Add typewritten first rider attached to and referring to contract for picture "Dark Angel." No duplications.)

129 (Add all typewritten riders attached to and referring to contract for picture "Barbary Coast." No duplications.)

131 (Add all typewritten riders attached to and referring to Contract for three pictures. No duplications.)

[fol. 5683] 135 (Add typewritten rider consisting of two pages attached to and referring to contract for picture "Vogues of 1938." No duplications.)

138 (Add typewritten rider consisting of one page attached to and referring to contract for three pictures. No duplications.)

140 (Add typewritten rider consisting of two pages attached to and referring to contract for two pictures. No duplications.)

141 (Add typewritten rider consisting of two pages attached to and referring to contract for three pictures. No duplications.)

146 (Add typewritten rider consisting of two pages attached to and referring to contract for four pictures. No duplications.)

155 (Add typewritten rider consisting of one page attached to and refering to contract for picture "Great Dictator." No duplications.)

159 (Add typewritten riders attached to and referring to contract for picture "Westerner." No duplications.)

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268.
324 (as lettered).
326 (as lettered).
328 (as lettered).
330 (as lettered).
333 (as lettered).
339 (as lettered).
341 (as lettered).
343 (as lettered).
344 (as lettered).
563.
568.
604 (as lettered).
611 (as lettered).
613 (as lettered).
622 (as lettered).
628 (as lettered).
635 (as lettered).
637 (as lettered).
642 (as lettered).
672 (as lettered).
685 (as lettered).
698 (as lettered).
704 (as lettered).
718 (as lettered).
720-758.
759-764.
779-789.
791-799.
813.
814.
829.
[fol. 5684] 840.
841.
842.
847-853.
863.
865-870.
874 (as lettered).
875-878 (as lettered).
905 (as lettered).
906 (as lettered).
907 (as lettered).
908 (as lettered).

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948 (two contracts).
949.
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959.
963-979.
981 and all sub-numbers.
W-6 (1)-(41).
W-8 (1)-(17).
W-33 (16) & (17).
W-18.
W-19.
R-3.
R-4.
R-5.
R-6.
R-7.
R-8.
R-9.
R-10.
R-11.
R-12.
R-13.
R-14.
R-15.
R-16.
R-17.
R-18.
R-21-34.
P-168-238.
PP-1-10.
F-2-64.
F-87.
F 101 (1)-(40), (42) & (43).
F-117-122.
F-125-192.

F-194-214.
D-42.
D-47.
D-48.
D-49.
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[fol. 5685] D-75.
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D-125.
D-126.
D-127.
D-128.
D-129 (two contracts—also amendments attached).
D-140.
D-141.
D-142.
D-147.
D-148A.
D-148D.

[fol. 5686] However, it is stipulated, consented, and agreed that in printing the group of exhibits starting with P-14 just above listed, the Clerk of the Court shall print, unless otherwise designated above, only the following portions thereof:

Name of Distributor:
Season:
Contract date:
Approval date:
Theatre:
Schedule of Pictures licensed and terms:
No. of pictures offered:
No. of pictures licensed:

All printed portions containing blanks whether filled in or not, e. g., admission prices, clearance, approval dates and signatures, also all typewritten or written matter whether or not included in blanks in printed provisions.

It is stipulated, consented, and agreed that there be printed as part of the record on appeal, the annexed printed film license agreement forms, and it is hereby stipulated and agreed that said forms are to be deemed, as to the distributor concerned, to set forth such portions of the above listed exhibits as not printed. However, where the provisions of any film license agreement in evidence differ from the form of agreement so printed, either party hereto may refer to such different provision and in so doing shall print the actual provision of the agreement referred to as an appendix to its brief.

It is stipulated, consented, and agreed that the parties hereto may refer in their briefs and on oral argument to any portion of the record on appeal in this case on file in the office of the Clerk whether or not said portion is included in the printed record on appeal, and it is further stipulated and agreed that either party may print as an appendix to its brief such portions of the record on file in [fol. 5687] the office of the Clerk as are not included in the printed record on appeal.

Willard S. McKay, Attorney for the Appellants Schine Chain Theatres, Inc., et al. Philip Marcus, Attorney for the United States of America.

Dated: July 10, 1947.

[fols. 5688-5689] [File endorsement omitted.]

[fols. 5690-5692] APPENDIX TO STIPULATION

Columbia—1936-37

Form S—14—A

License Agreement

Branch .... Date .... Contract No. ....

Salesman Name .... Exhibitor's Name ....

COLUMBIA PICTURES CORPORATION

Agreement of license under copyright made in one or more counterparts between Columbia Pictures Corporation, a corporation (hereinafter referred to as the Distributor), party of the first part, and the Exhibitor (hereinafter named and referred to as the Exhibitor, operating the theatre hereinafter designated), party of the second part, as follows:

License

First. The Distributor grants the Exhibitor and the Exhibitor accepts, a limited license under the respective copyrights of the motion pictures embraced in the Schedule hereof and under the copyright of any matter included in any sound recorded therewith, to exhibit publicly said motion pictures and to reproduce for public performances such recorded sound in synchronism therewith, but only at the said theatre for the number of consecutive days specified in the Schedule and for no other use or purpose; provided that the reproducing equipment in the said theatre will operate reliably and efficiently to reproduce such recorded sound with adequate volume and high quality; and provided further that if copyrighted musical compositions are included in such recorded sound, the Exhibitor will have at the date or dates of the exhibition of each such motion picture a license from the copyright proprietor thereof or from any licensee of such copyright proprietor to perform publicly the said [fol. 5693] copyrighted musical compositions. If more than one theatre is hereinafter designated the said motion pictures are licensed for exhibition at only one of such theatres unless otherwise in the Schedule specifically provided in writing.

Term and Warranty

Second. (a) The term of this Agreement shall begin with the date fixed or determined for the exhibition at the said theatre of the first motion picture deliverable hereunder and shall continue for a period of one year thereafter unless otherwise in the Schedule provided. The Distributor agrees during said term to deliver to the Exhibitor, and the Exhibitor agrees to exhibit at said theatre during said term upon the date or dates herein provided for, a positive print of each of said motion pictures. The Distributor warrants that each positive print will be in good physical condition for projection and exhibition, and will clearly reproduce the recorded sound in synchronism therewith if properly used upon standard reproducing equipment. If the recorded sound is not recorded upon a print, all references herein to a print shall be deemed to include the records, discs and any other device upon which sound may be recorded for reproduction with the exhibition of a print.

Damages Failure to Deliver

(b) If the Distributor shall fail or refuse to deliver, or the Exhibitor shall fail or refuse to exhibit during the term hereof, any of said motion pictures, or if the Distributor shall wilfully violate any of the provisions of Clause Seventh hereof, the Exhibitor or the Distributor, as the case may be, shall pay the damage so caused and if such damage cannot be definitely computed shall pay as liquidated damages a sum equal to the fixed sum herein specified as the rental of each such motion picture or a sum computed as provided in Clause Third (c) hereof, if the rental of any such motion picture is to be determined, either in whole or in part upon a percentage of the admission receipts of said theatre or any part thereof or upon a percentage of such receipts and a fixed sum; provided that any claim by the Exhibitor with respect to the condition of a print shall be deemed to have been waived by the Exhibitor unless notice of such claim [fol. 5694] shall have been given by the Exhibitor to the Distributor's exchange from which the Exhibitor is served, by telephone or telegraph, or in person, immediately after the first public exhibition thereof by the Exhibitor and written confirmation thereof mailed by the Exhibitor upon the same day to the Distributor's said exchange.

Payment

Third. (a) Exhibitor agrees to pay for such license as to each such motion picture the fixed sums specified in the Schedule at least three (3) days in advance of the date of delivery of a print thereof at the Distributor's exchange or of the date of shipment to the Exhibitor from another exhibitor, unless after the acceptance of this application by the Distributor such payment shall be otherwise agreed to by the Distributor in writing signed by an officer of the Distributor. All payments hereunder shall be made to the Distributor at the City in which is located the exchange from which the Exhibitor is served.

Percentage Bookings

(b) If the rental of any of such motion pictures is to be determined either in whole or in part upon the admission receipts of said theatre or any part thereof, the Exhibitor agrees to pay such rental immediately after the last exhibition upon the last date of the exhibition of each such motion picture or if requested by the Distributor at the end of each day's exhibition. In each such case the Exhibitor shall deliver to the Distributor immediately after the last exhibition upon each date of exhibition of each such motion picture a correct itemized statement of the gross receipts of said theatre for admission thereto upon each such date.

Such statement shall be signed by the Exhibitor or the Manager or Treasurer of said theatre and the Cashier thereof and shall include a statement of such facts and figures as may be provided in the Schedule to be furnished by the Exhibitor, and if requested by the Distributor, shall be made upon forms furnished by the Distributor. Upon the exhibition date or dates of each motion picture an authorized representative of the Distributor is hereby given the right to verify the sale of all tickets of admission to said [fol. 5695] theatre, and the receipts therefrom; and for such purpose shall have access to the theatre, including the box office, and also the right to examine all relevant entries relating to such gross receipts in all the Exhibitor's books and records, and if hereunder it is provided that the Exhibitor makes certain expenditures and/or deductions, to examine all entries relating to such expenditures and/or deductions. Such right of access and examination of the Exhibitor's books and records limited as aforesaid, shall continue for a period of four (4) months after the receipt by the Distributor of each such statement. The Distributor agrees, unless such representative is in the continuous employ of the Distributor or employed as a checker, not to employ as a representative for such purposes any person a resident of or employed in the place where the said theatre is located, other than a person engaged in business as an accountant.

Liquidated Damages—Percentage Bookings

(c) If the Exhibitor fails or refuses to exhibit any of said motion pictures as herein provided and the rental or any part thereof is to be computed in whole or in part upon a percentage of the admission receipts of said theatre, the Exhibitor shall pay the Distributor as liquidated damages for each day the Exhibitor fails or refuses to exhibit such motion pictures, in addition to any fixed sums payable hereunder in respect of such motion picture, a sum equal to such percentage of the average daily gross receipts of such theatre on each date any feature motion picture distributed by the Distributor was exhibited thereat during the period of ninety (90) days prior to the date or dates when said motion picture should have been so exhibited hereunder, or if no feature motion picture distributed by the Distributor was exhibited at such theatre during said ninety day period, then a sum equal to such percentage of the average daily gross receipts of such theatre during the period of thirty operating days immediately prior to the date or dates when such motion pictures should have been exhibited, or prior to the date of such failure or refusal to exhibit any of said motion pictures; provided that if the Exhibitor shall exhibit such motion pictures for less than the full number of days provided for in the Schedule, for each day less than said full number of days, the sum equal to such [fol. 5696] percentage shall be computed upon a sum equal to sixty-five (65%) per cent of the gross receipts of said theatre during the last day of the exhibition thereat of such motion picture. A sworn statement of the said daily gross receipts shall be delivered by the Exhibitor to the Distributor upon demand therefor.

(d) If the rental of any such motion pictures is to be determined upon the admission receipts but with a minimum guaranteed rental, then the Exhibitor agrees to pay such minimum guaranteed rental in accordance with the provision of Sub-division (a) hereof. Any additional monies to be paid to Distributor as a percentage of the admission receipts shall be paid by the Exhibitor to Distributor in accordance with Sub-division (b) hereof.

Delivery and Return of Prints

Fourth. (a) After each of said motion pictures is generally released for public exhibition and becomes available for exhibition hereunder by the Exhibitor, the Distributor agrees to deliver as hereinafter provided, a print thereof to the Exhibitor.

(b) The public exhibition of any of said motion pictures for three (3) consecutive days at prices usually charged for admission to the theatre where so exhibited in the territory wherein is located the exchange from which the Exhibitor is served, excepting any "road show," "tryout," "preview," or "pre-release" exhibitions thereof, shall be deemed the general release for public exhibition of such motion picture, but only in such territory. A "pre-release" exhibition shall be deemed any exhibition because of seasonal conditions making desirable exhibitions in advance of general release as herein defined.

(c) The Exhibitor agrees to exhibit each of said motion pictures in the order of its general release by the Distributor in the exchange territory in which said theatre is located.

The Exhibitor shall have the right to select any of the motion pictures, excepting the last deliverable hereunder, for exhibition out of the order of its general release, sub-[fol. 5697] ject to prior runs and/or clearance granted other exhibitors, on the date or dates determined as provided in Article Sixth hereof or otherwise agreed upon, but only upon the following conditions (a) that the Exhibitor is not in default hereunder and shall have fully complied with all the provisions, if any, set forth in the Schedule for the exhibition of one or more of said motion pictures at specified intervals; and (b) that the Distributor and the Exhibitor shall then agree upon the date or dates upon which all of the motion pictures generally released prior to the general release of such motion picture and available for exhibition hereunder shall be exhibited by the Exhibitor, which date or dates shall be within thirty (30) days from the first exhibition date of the motion picture to be exhibited out of the order of its general release; or in the alternative the Exhibitor shall then pay to the Distributor the license fee for each of such motion pictures then generally released and available for exhibition hereunder and as to any thereof which shall not be exhibited by the Exhibitor within thirty days from the first exhibition date of the motion picture to be exhibited out of the order of its general release, the grant of the run and clearance period in respect thereof shall be deemed waived by the Exhibitor. Upon the failure or refusal of the Exhibitor to exhibit any of such motion pictures then generally released and available for exhibition hereunder within said thirty-day period or to pay the license fee thereof, the right of the Exhibitor to thereafter select for exhibition any motion picture out of the order of its general release shall be forfeited. The provisions of this paragraph (c) shall not be deemed to limit or qualify the provisions of Article Sixth hereof, excepting as in this paragraph (c) specifically provided.

(d) The distributor shall make deliveries hereunder to the Exhibitor or to the Exhibitor's authorized agent, by delivery at the Distributor's exchange, or to a common carrier, or to the United States Postal authorities. If deliveries are made to a carrier or to a post office, they shall be made in time for prints to reach the place where the said theatre is located in time for inspection and a projection thereof before the usual time for opening said theatre.

[fol. 5698] (e) Exhibitor agrees to return immediately after the last exhibition on the last date of exhibition licensed, each print received hereunder with its reels and containers, to the exchange of the Distributor from which the Exhibitor is served or as otherwise directed by the Distributor in the same condition as when received, reasonable wear and tear due to proper use excepted. Exhibitor agrees to pay all costs of transportation of such prints, reels, and containers from the Distributor's exchange or the last previous exhibitor having possession of the same, and return to the Distributor's exchange; or if directed by the Distributor, to ship such positive prints elsewhere than to the Distributor's exchange, transportation charges collect. It is agreed that the delivery of a positive print properly directed and packed in the container furnished by the Distributor therefor, to a carrier designated or used by the Distributor and proper receipt therefor obtained by the Exhibitor, shall constitute the return of such positive print by the Exhibitor.

(f) If Exhibitor fails to or delays the return of any positive print to the Distributor or fails to forward or delays forwarding (as directed by the Distributor) any such print to any other exhibitor, the Exhibitor agrees to pay the Distributor the damage, if any, so caused the Distributor and in addition the damage, if any, so caused such other exhibitor.

Loss and Damage to Prints

Fifth: The Exhibitor shall pay to the Distributor a sum equal to the cost of replacement at the Distributor's exchange for each linear foot of any print, lost, stolen or destroyed or injured in any way in the interval between the delivery to and the return thereof by the Exhibitor in full settlement of all claims for such loss, theft, destruction or injury. Such payment, however, shall not transfer title to or any interest in any such positive print to the Exhibitor or any other party, nor release the Exhibitor from any liability arising out of any breach of this agreement. The Distributor shall at the option of the Exhibitor repay, or credit to the Exhibitor any sums paid by the Exhibitor for any loss or stolen print, upon the return of such loss or stolen print to the Distributor within sixty (60) days after [fol. 6599] the date when the same should have been returned hereunder. The Exhibitor shall not be liable for the damage or destruction of any print, provided the Exhibitor establishes such damage or destruction occurred while in transit from the Exhibitor and delivery thereof was made as hereinabove provided. The Exhibitor shall immediately notify the Distributor's exchange by telegram of the loss, theft or destruction of or damage or injury to any print. If any print shall be received from the Exhibitor by the Distributor or any subsequent exhibitor in a damaged or partially destroyed condition it shall be deemed to have been so damaged or destroyed by the Exhibitor unless the latter, immediately after the first public exhibition thereof shall have telegraphed the Distributor's exchange that such print was received by the Exhibitor in a damaged or partially destroyed condition, and setting forth fully the nature of such damage and the amount of footage so damaged or destroyed.

Selection of Playdates

Sixth: Unless otherwise agreed upon or unless definitely specified or otherwise provided for in the Schedule, the exhibition date or dates of each said motion pictures shall be determined as follows:

1. Subject to prior runs and/or clearance granted or hereafter granted by the Distributor to other exhibitors and within a reasonable time after a print or prints of any of said motion pictures are received at the exchange of the distributor out of which the Exhibitor is served, and provided the Exhibitor is not in default hereunder, the Distributor shall mail to the Exhibitor a notice in writing of the date when each such motion picture will be available for exhibition by the Exhibitor (which date is hereinafter referred to as the "available date"). Such notice shall be mailed to the Exhibitor at least fifteen (15) days before the available date therein specified.

2. Within fourteen (14) days after the mailing of such notice, the Exhibitor shall select an exhibition date or dates not theretofore assigned to another exhibitor or other exhibitors, within the period commencing upon the available [fol. 5700] date and ending thirty (30) days thereafter and give to the Distributor written notice of the date or dates so selected.

3. Upon the failure of the Exhibitor to so select such date or dates the Distributor shall designate such date or dates by mailing written notice thereof to the exhibitor.

Clearance and Run

Seventh: The Distributor agrees not to exhibit or grant a license to exhibit any of said motion pictures for exhibition in conflict with the "run" or prior to the expiration of the "clearance period" if any in the Schedule specified at any theatre therein named or within the territorial limits therein specified. Such period of clearance as to each of said motion pictures shall be computed from the last date of the exhibition thereof licensed hereunder. If clearance is granted against a named theatre or theatres indicating that it is the intention of the Distributor to grant such clearance against all theatres in the immediate vicinity of the Exhibitor's theatre then unless otherwise provided in the Schedule, such clearance shall include any theatre in such vicinity thereafter erected or opened.

Description of Pictures

Eighth: The Distributor warrants that none of said motion pictures are reissues of old negatives, or old negatives retitled excepting those specifically specified as such in the Schedule.

Advertising Prior to First Run

Ninth: (a) If the Exhibitor is granted a subsequent run of the said motion pictures, the Exhibitor shall not advertise any thereof by any means of advertising prior to or during the exhibition of any one of said motion pictures by any other exhibitor having the right to a prior run thereof. Nothing in this Clause shall be deemed to prohibit the Exhibitor from advertising generally all of said motion pictures as a group, but such general advertising shall not refer to any one of said motion pictures during its exhibition by any other exhibitor having the first or immediately prior run thereof, excepting as herein provided.

[fol. 5701] (b) The Exhibitor shall not advertise by any means of advertising any of said motion pictures which may be roadshown by the Distributor and not excepted and excluded from this license, until after the completion of such roadshowing in the United States, and then only as permitted in paragraph (a) of this Clause.

(c) For a breach of the provisions of this Clause the Distributor shall have in addition to all other rights the right to exclude from this license any motion picture advertised in violation of the provisions hereof by written notice to such effect mailed to the Exhibitor and upon the mailing of such notice the license of such motion picture shall terminate and revert to the Distributor.

Acceptance by Distributor

Tenth: Until accepted in writing by an officer of or any person authorized by the Distributor and notice of acceptance sent to the Exhibitor this instrument shall be deemed only an application for a license under Copyright, and may be withdrawn by the Exhibitor any time before such acceptance. Unless such notice of acceptance is sent the Exhibitor by mail or telegraph within fifteen (15) days after the date thereof if the said theatre of the Exhibitor is located East of the Mississippi River, and within thirty (30) days after the date thereof if located West of said river, said application shall be deemed to have been withdrawn. The deposit by the Distributor of any check or other consideration given by the Exhibitor at the time of application as payment for any purpose or the delivery of a print of any of said motion pictures shall not be deemed an acceptance hereof by the Distributor.

Changes in Writing

Eleventh: This license agreement is complete and all promises, representations, understandings, and agreements in reference thereto have been expressed herein. No change or modification hereof shall be binding upon the Distributor unless in writing signed by an officer of the Distributor, excepting in an emergency and only then, a change or modifi- [fol. 5702] cation may be consented to in writing, but only by the representative of the Distributor managing the Distributor's exchange out of which the Exhibitor is served, provided such change or modification does not change or modify the run, and/or clearance period, or decrease any rental, or eliminate any motion picture specified in the Schedule.

Assignment of Contract

Twelfth: In the event the Exhibitor sells said theatre or transfers any interest therein and is not in default hereunder, the Exhibitor shall have the right to assign this license to the Purchaser of the theatre or of such interest without the written consent of the Distributor provided the Exhibitor or such assignee shall deliver to the Distributor, in form acceptable to Distributor, a written assumption of all the obligations of the Exhibitor hereunder duly executed by the assignee. Any such assignment, however, shall not release the Exhibitor from any liability hereunder unless such release from liability is consented to by the Distributor in writing.

Except as herein provided, the Exhibitor shall have no right to assign this agreement. The Exhibitor agrees that Distributor shall have the right to assign this agreement to any person, firm or corporation without the written consent of the Exhibitor.

Taxes

Thirteenth: The Exhibitor shall pay to the Distributor upon demand a tax fee or any other charge, now and/or hereafter levied, imposed or based upon the delivery and/or the exhibition of prints of motion pictures and/or upon the sums payable under this license by the Exhibitor to Distributor and/or the rental of the rights herein granted by Distributor to Exhibitor hereunder and/or any other reason whatsoever. In the event the Exhibitor fails or refuses to pay upon demand such tax fee or charge, then the Distributor shall have the right at its option to C. O. D. delivery of any print of the motion pictures licensed hereunder and include the amount of such tax fee or other charge in said C. O. D.

[fol. 5703] In the event such tax shall be declared invalid by final judicial decree, the Distributor shall not be liable to the Exhibitor for the return of such taxes, fees or other charges paid by Exhibitor to Distributor if the Distributor shall have paid same over to the governmental agency designated to receive or collect same. If such taxes, fees, or other charges shall not have been paid over to such governmental agency and said tax shall be declared invalid by final judicial decree, then the Distributor agrees to return to Exhibitor such sum or sums as Distributor shall have received from Exhibitor but not paid over to such governmental agency.

Prevention of Performance

Fourteenth: If the Exhibitor shall be prevented from exhibiting or the Distributor from delivering any of the said motion pictures for causes beyond their direct control then this license in respect to each such motion picture shall terminate and revert to the Distributor without liability on the part of either party, provided reasonable written notice of such termination and the cause thereof is given.

First Run Exhibitions

Fifteenth: (a) If the Exhibitor is granted a first run of the said motion pictures, the Exhibitor shall exhibit each of the feature mot-on pictures excepting those described in Paragraph (d) of this Clause within the period beginning with the date scheduled and announced by the Distributor for the general release of each feature motion picture in the territory wherein is located the exchange of the Distributor out of which the Exhibitor is served and ending one hundred and twenty (120) days thereafter, notwithstanding any provision of Clause Sixth hereof to the contrary. If the first exhibition date of any of the said motion pictures shall occur on a date later than ninety (90) days after its scheduled and announced general release date, then the period of clearance of such motion picture shall be reduced so as to expire one hundred and twenty (120) days after said schedule date of its general release. If the Exhibitor is granted a first run of the said motion pictures and [fol. 5704] the Exhibitor fails to exhibit any feature motion picture within said period of one hundred and twenty (120) days, the grant of the said first run and the clearance period in respect thereof shall be deemed waived by the Exhibitor and the license fee as to such feature motion picture shall thereupon forthwith become due and payable to the Distributor, with the right to the Exhibitor to exhibit such feature motion picture as hereinafter in Paragraph (e) of this Clause provided.

Second Run Exhibitions

(b) If the Exhibitor is granted a second run of the said motion pictures and any other exhibitor having been granted the first run thereof immediately prior to such second run fails to exhibit any of the feature motion pictures, excepting those described in Paragraph (d) of this Clause within the said period of one hundred and twenty (120) days specified in Paragraph (a) of this Clause, the Exhibitor shall exhibit each such feature motion picture within the period beginning with the date of the expiration of the said one hundred and twenty (120) days period and ending fourteen (14) days thereafter, notwithstanding any provision of Clause Sixth hereof to the contrary. If the Exhibitor is granted a second run of the said motion pictures and the Exhibitor fails to exhibit any feature motion picture within said fourteen (14) days period the grant of such second run and the clearance period if any in respect thereof shall be deemed waived by the Exhibitor and the license fee as to such feature motion picture shall thereupon forthwith become due and payable to the Distributor with the right to the Exhibitor to exhibit such feature motion picture as hereinafter in Paragraph (e) of this Clause provided.

Subsequent Runs Exhibitions

(c) If the Exhibitor is granted a run subsequent to a second run of the said motion pictures and any other Exhibitor having been granted the second run thereof immediately prior to such subsequent run fails to exhibit any of the feature motion pictures, excepting those described in Paragraph (d) of this Clause within the said period of fourteen (14) days specified in Paragraph (b) of this [fol. 5705] Clause the Exhibitor shall exhibit each feature motion picture within the period beginning with the date of the expiration of the said fourteen-day period and ending seven (7) days thereafter, notwithstanding any provision of Clause Sixth hereof to the contrary. If the Exhibitor is granted a run subsequent to a second run of the said motion pictures and the Exhibitor fails to exhibit any feature motion picture within said seven (7) day period, the grant of such subsequent run and the clearance period if any in respect thereof shall be deemed waived by the Exhibitor and the license fee as to such feature motion picture shall thereupon forthwith become due and payable to the Distributor with the right to the Exhibitor to exhibit such feature motion picture as hereinafter in Paragraph (e) of this Clause provided.

Extended Runs

(d) Any of the motion pictures which shall have been exhibited at any theatre in the said territory for more than one show week prior to the run granted the Exhibitor shall be accepted from the provisions of this Clause and of Paragraph (b) of Clause Fourth.

Exhibition After Revocation of Run and Clearance

(e) Upon the waiver of the grant of the run and/or the clearance period of any feature motion picture as provided in Paragraphs (a), (b), or (c) of this Clause, the Exhibitor upon payment of the sum or sums payable hereunder as provided in this Clause for the license to exhibit such feature motion picture, shall have the right to exhibit the same hereunder upon a date or dates not in conflict with any run and/or clearance period granted or hereafter granted to other exhibitors, upon written request mailed or delivered to the Distributor within sixty (60) days after the last date upon which such feature motion picture should have been exhibited by the Exhibitor as provided in this Clause. Failing to make such request within said period of sixty (60) days the license to exhibit such feature motion picture granted hereunder shall terminate and revert to the Distributor.

[fol. 5706]

Remedies

Sixteenth: If the Exhibitor shall fail or refuse to pay the rental of any of such motion pictures as provided in this license or to furnish statements of the receipts of said theatre, if any are required hereunder, or to give the Distributor's representative access to the said theatre or its box office and/or the Exhibitor's books and records relative to motion pictures the rentals of which are based upon the said theatre's admission receipts as herein provided, or if the Exhibitor shall exhibit or permit the exhibition of any of said motion pictures at any time or place other than as herein specified, or if the Exhibitor becomes insolvent or is adjudicated a bankrupt, or executes an assignment for the benefit of his creditors, or if a receiver is appointed for any of the property of the Exhibitor, or if the Exhibitor voluntarily or by operation of law should lose control of the said theatre or of his said interests therein, making it impossible for the Exhibitor to exhibit the said motion pictures at the said theatre, then upon the happening of any one or more of said events, the Distributor may at its option, (1) terminate this license agreement, or (2) suspend the delivery of additional motion pictures hereunder until such default or defaults should cease and be remedied. It is agreed that the exercise of any of said remedies by the Distributor shall be in addition to and without prejudice to any right or remedy of the Distributor against the Exhibitor at law or in equity and/or otherwise provided for in this license agreement.

Cutting or Alteration of Prints

Seventeenth: The Exhibitor shall exhibit each print in its entirety and shall not copy, duplicate, subrent or part with possession of any print. The Exhibitor shall not cut or alter any print, excepting to make necessary repairs thereto, or when required by any duly constituted public official or authority or with the written or telegraphic consent of the Distributor.

Roadshows

Eighteenth: (a) The Distributor shall have the right to exhibit and/or cause to be exhibited as a "roadshow," at [fol. 5707] any time prior to the exhibition thereof hereunder, such of the motion pictures licensed hereunder as the Distributor may from time to time select and determine, provided, however, that such roadshow exhibitions shall be at theatres at which admission prices for evening performances, during such exhibitions thereof, of not less than one dollar shall be charged for the majority of the orchestra seats, and further provided that, except in the cities of New York and Los Angeles, not more than two of such motion pictures shall be so roadshown.

(b) If and when any such roadshow exhibition shall be in the City of New York and/or the City of Los Angeles, and if the Exhibitor's theatre is situated in the territory then served by the Distributor's exchange or exchanges located in New York or in Los Angeles, as the case may be, the Distributor shall have the right to except and exclude from this license not to exceed two of such motion pictures so roadshown in each or both of said territories, upon sending to the Exhibitor written notice to such effect not later than four (4) weeks after the commencement of such roadshow exhibition and provided that the Distributor shall by like notice except and exclude such motion picture from all other license agreements containing this Clause and licensing the exhibition of such motion picture in such territory. The exception and exclusion of any such motion picture in the territory then served by the Distributor's exchange or exchanges located in the City of Los Angeles or in the City of New York, as the case may be, shall not be deemed to require the Distributor to except and exclude the same motion picture in both of said territories.

(c) If and when any such roadshow exhibition, excepting those in the City of New York and/or in the City of Los Angeles, shall be in the territory served by the Distributor's exchange or exchanges serving the Exhibitor's theatre, the Distributor shall have the right to except and exclude from this license not to exceed two of such motion pictures so roadshown upon sending to the Exhibitor written notice to such effect within seven (7) days after the commencement of such roadshow exhibition and provided that the Distributor shall by like notice except and exclude each such motion picture from all other license agreements containing this Clause and licensing the exhibition of such motion picture in such territory.

[fol. 5708] (d) The inadvertent omission to send to any of such other exhibitors the notice provided for in Paragraphs (a) and (b) of this Clause shall not be deemed to affect the exception and exclusion from this license of any such motion picture.

(e) The Distributor may so exercise such right to except and exclude any such motion picture from time to time, in the respective territories, as above defined, in the United States. Any motion picture so roadshown in any place in the United States, and not excepted and excluded from this license as aforesaid, shall not be deemed available for exhibition hereunder until after the completion of such roadshowing of such motion picture in the United States, and such motion picture shall be exhibited hereunder when generally released by the Distributor and as and when available for exhibition by the Exhibitor, and the term of this license agreement specified in Clause Second shall be in respect to each such motion picture, extended to and including the date or dates of exhibition by the Exhibitor hereunder of each thereof.

(f) For each motion picture that the Distributor shall except and exclude, as aforesaid, the Exhibitor is hereby granted the option to except and exclude from this license one of the other motion pictures licensed hereunder, but only if the Exhibitor shall give to the Distributor written notice to such effect not later than fourteen days before the date fixed for the exhibition hereunder of such other motion picture. The Distributor may exhibit and/or license the exhibition of any and all motion pictures excepted and excluded from this license by the Distributor and/or the Exhibitor, as aforesaid, when and where desired by the Distributor, free from all claims of the Exhibitor in respect thereof and the license of each thereof shall forthwith upon exclusion hereinbefore provided terminate and revert to the Distributor.

Midnight Shows

Nineteenth: The license herein granted for the number of days specified in the Schedule shall not include the right of exhibition at any time previous to dawn of the first licensed and booked date of exhibition without securing express written permission hereunder.

[fol. 5709]

Admission Prices

Twentieth: The Exhibitor during the whole of the licensed exhibition period of each of the motion pictures exhibited hereunder agrees to and shall charge for admission to said theatre the prices listed in the Schedule.

If during any such period less than said admission prices listed in the Schedule is charged, the Distributor in addition to all other rights hereunder shall have the right (a) to immediately terminate the license of the motion picture then being exhibited, by written notice to such effect to the Exhibitor and upon the giving of such notice, the license of such motion picture shall forthwith terminate and revert to the Distributor; or (b) provided the Exhibitor is granted herein a period of "Clearance to reduce such period by not to exceed one-half in respect to each of the motion pictures thereafter deliverable hereunder; or (c) provided no period of "clearance" is specified in the Schedule to withhold for a period not to exceed sixty (60) days notice of the date when each motion picture thereafter deliverable hereunder will be available for exhibition by the Exhibitor; and as to each such motion picture the "run" thereof, if any, granted the Exhibitor, shall be deemed revoked and the Exhibitor agrees to exhibit each such motion picture after notice of the available date thereof upon the date or dates determined as provided in Clause Sixth hereof.

Breach of Other Agreements

Twenty-first: If the Exhibitor shall breach any other agreement between the Exhibitor and Distributor made prior to, simultaneously with or subsequent to the making of this agreement, then any such breach under such agreement shall be deemed to be a breach and a default under this agreement and in any such case the Distributor shall have all the rights and remedies herein provided as well as those at Law, in Equity or otherwise, to the same full force and to the same extent as if such breach had been committed hereunder.

Right to C. O. D.

Twenty-second: It is agreed that the Distributor may at its option deliver to the Exhibitor C. O. D. any motion picture [fol. 5710] deliverable hereunder and may add to said C. O. D. the amount of any past indebtedness owing under this or any other agreement by the Exhibitor to the Distributor. Such indebtedness may include monies due from the Exhibitor to the Distributor for unplayed pictures, played pictures or for any other indebtedness whatsoever.

Moneys in Trust

Twenty-third: Where this agreement calls for the payment of a fixed and definite rental for any motion picture (that is to say, not based upon a percentage of the gross receipts) then in case payment is not made in advance of the exhibition of any such motion picture and credit is extended to the Exhibitor, in consideration therefor, the Exhibitor agrees that the Distributor shall receive its rental for any such motion picture with respect to which credit has been so extended, out of the first admission receipts from the patrons paying admissions during the exhibition of any such motion picture up to the amount due the Distributor and such admission receipts shall belong to and be the property of the Distributor when they are paid by the patrons and shall be held in trust for the Distributor until paid to the Distributor and the ownership of said trust fund by the Distributor shall not be questioned whether the moneys are physically segregated or not and the Exhibitor agrees to keep such portion of the gross receipts as are payable to the Distributor hereunder, in a separate and distinct fund. In the event the admission fees received during the exhibition of said motion picture are not equal to the amount of the license fee and/or rental due to the Distributor on account of such motion picture, the Exhibitor shall nevertheless remain and continue to be liable for the balance of the amount due and payable to the Distributor after the moneys kept in trust for the Distributor shall have been paid to the Distributor.

In the event any motion picture herein embraced is based upon a percentage of the Exhibitor's gross receipts derived from the exhibition of such motion picture the Distributor's share of the gross receipts due to the Distributor hereunder shall belong to the Distributor and shall be held in trust for the Distributor until paid to the Distributor; and the ownership of said trust fund by the Distributor shall not be ques- [fol. 5711] tioned whether the moneys are physically segregated or not, and the Exhibitor agrees to keep such portion of the gross receipts as are payable to the Distributor hereunder, segregated and in a distinct fund.

Advertising and Accessories

Twenty-fourth: The Exhibitor agrees to advertise and announce each motion picture herein embraced as designated in the main title including the designation of the motion picture as a Columbia Pictures Corporation production. The Exhibitor further agrees that in all newspaper advertising and publicity issued by the Exhibitor relating to any said motion picture, the Exhibitor shall adhere to the date of announcement contained in the advertising matter issued by the Distributor.

All advertising accessories used by the Exhibitor in connection with the exhibition of the motion pictures herein embraced, shall be leased from or through the Distributor and same must not be sold, leased or given away by the Exhibitor, but shall be returned promptly to the Distributor after use by the Exhibitor in connection with the exhibition of the particular motion picture.

It is further agreed that the use of the accessories by Exhibitor hereunder is under a license under the respective copyrights relating to such accessories and such accessories shall not be used in any other theatre than the one designated in the Schedule unless otherwise specifically agreed upon in said Schedule.

Twenty-fifth: The following Schedule and all of the written and printed parts thereof are a part of this license:

Schedule for 1936-37 Season

	Theatre	Town and State	Minimum admission price				Seating capacity
			Matinee		Evening		
			Adults	Children	Adults	Children	

Group W—4-5-6

(A) There are licensed for exhibition hereunder all of the sound photoplays of feature length (exclusive of the so-called Western group of photoplays hereinafter referred to [fol. 5712] and exclusive of any and all Frank Capra productions) or such or so many of them as may be specified hereunder under the heading "Special Feature Attractions," embraced in the Distributor's group of pictures to be known as "W-4" not less than thirty (30) and not more than forty (40), which shall be generally released by the Distributor for distribution to motion picture theatres in the United States during the period commencing September 1, 1936, and ending September 30, 1937, and embraced in said group "W-4" (except such photoplays as Distributor is required by contract to obtain the consent or approval of the producer or director thereof or other party to the terms and conditions of licensing the exhibition thereof) and identified by designation numbers running from 7001 to 7040. The "road-showing," "preview" and/or "pre-releasing" of any photoplay during the said period above mentioned shall not be deemed a general release of said photoplay.

(B) There are licensed for exhibition hereunder all of the sound photoplays of the so-called Western group of photoplays or such or so many of them as may be specified hereunder under the heading "Western Feature Attractions," embraced in the Distributor's group of pictures to be known as "W-5" not less than eight (8) and not more than sixteen (16), which shall be generally released by the Distributor for distribution to motion picture theatres in the United States, during the period commencing September 1, 1936, and ending September 30, 1937, and embraced in said group known as "W-5." and identified by designation numbers running from 7201 to 7216.

(C) There are licensed for exhibition hereunder all of the sound one-reel and two-reel motion pictures known as Short Subjects or such or so many of them as may be specified hereunder under the heading "Columbia's Single and Two Reel Attractions" and/or "Court of Human Relations," embraced in the Distributor's group of pictures to be known as "W-6," not less than fifty-two (52) and not more than one hundred and four (104) one-reel and not less than thirteen (13) and not more than twenty-six (26) two-reel which shall be generally released by the Distributor for distribution to motion picture theatres in the United States, during the period commencing September 1, 1936, [fol. 5713] and ending September 30, 1937, and embraced in said group known as "W-6."

For the license to exhibit each of said photoplays and shorts the Exhibitor shall pay to the Distributor the following:

No. Pict. Bought		Consec. No. Days Run	Inc. Sat. —— Sun.	License Fee or Minimum Guaranteed Rental per Picture	Score Fee Per Day	Special Terms
A		—Special Feature Attractions—Group W-4				
B		—Western Feature Attractions—Group W-5				

C —Columbia's Single and Two-Reel Attractions—Group W-6

	Series	No. Cons. days	No. bought	License fee per subject	Total for series
7500	Color Rhapsodies				
7700	Krazy Kat				
7750	Scrappy				
7800	News World of Sports				
7850	New Screen Snapshots				
7900	Columbia Tours				
7950	Columbia Featurettes				
7300	Stooge 2-reel Comedies				
7350	Andy Clyde 2-reel Comedies				
7400	All Star 2-reel Comedies				

C —Court of Human Relations—Group W-6

	Number Cons. Days	Number Bought	License Fee Per Subject	Total for Series
7600		13		

Playing Arrangement: The Exhibitor agrees to play and/or pay for at least Court of Human Relations subjects every commencing the day of , 193 , if and as available and in order of availability until all motion pictures licensed hereunder are exhibited and/or paid for.

[fol. 5714] *Designation.*—It is agreed that the license fees herein specified apply to each respective photoplay and to each respective short subject, licensed hereunder according to the classification thereof by the Distributor, and such license fees are not average license fees regardless of the number of such photoplays or short subjects that may be released by the Distributor, embraced in Group W—4-5-6, within the period hereinabove specified. The Distributor agrees to classify each such photoplay and/or short subject at or before the time of the giving to the Exhibitor of the notice of availability of such photoplay or short subject. Nothing in this paragraph contained shall be deemed to prevent the Distributor from exercising its right of re-application contained in the next paragraph hereof.

Re-Application.—The Distributor shall have the right to apply the rental terms (including the license fee or minimum guaranteed rental, percentage of gross receipts, minimum playing time and other rental terms specified in the Schedule) of any motion picture to any other motion picture listed in the Schedule, provided, however, that the Distributor shall at no time increase the total number of motion pictures to which the same rental terms apply beyond the total of such motion pictures specified in the Schedule.

In case the Distributor desires to change the rental terms of any motion picture as above provided, the Distributor shall notify the Exhibitor of the motion picture affected and the terms to be applied to such motion picture, in the notice of availability sent to the Exhibitor relating to such motion picture or prior thereto.

Playing Arrangement: The Exhibitor agrees to play and/or pay for at least special feature attractions (Group W-4) every and at least western feature attractions (Group W—5) every and at least single reel short subjects (exclusive of Court of Human Relations subjects) every and at least two-reel short subjects every , commencing the day of , 19 .., if and as available and in order of availability until all motion pictures licensed hereunder are exhibited and/or paid for.

[fol. 5715] The Exhibitor agrees to pay for all the short subjects licensed herein, including the Court of Human Relations subjects, the sum of .... to be paid on a weekly basis of $ .... per week, for a period of consecutive weeks, starting .... The weekly sum herein specified to be paid by the Exhibitor shall be paid irrespective of the number of short subjects which the Exhibitor may play hereunder during any week from among those licensed hereunder.

It is agreed that wherever motion pictures hereunder are to be exhibited on a percentage arrangement, said percentage or percentages have been fixed by the Distributor in reliance upon the agreement and representation by the Exhibitor that the policy of the theatre will be a .... policy. In the event said policy is changed by Exhibitor then the percentage or percentages designated in the Schedule shall be increased by 25% of the original percentage terms unless the Schedule expressly otherwise provides.

Run—Clearance and Additional Provisions

....

....

Run: If the Exhibitor is granted hereunder a second or subsequent "run", the Distributor shall have the right in its sole discretion to grant the Exhibitor in respect to any of the motion pictures herein embraced, a "run" prior to such second or subsequent "run" by giving notice in writing to such effect to the Exhibitor and the Exhibitor agrees to exhibit any such motion picture in accordance therewith.

(End of Schedule)

In witness whereof, ... the Exhibitor operating the .... Theatre, located at No. Street .... City .... State has on .... executed this application, which upon written acceptance by the Distributor when countersigned [fols. 5716-5721] and approved in the space to the left provided below shall be deemed to be the license to the Exhibitor for the exhibition of the motion pictures specified in the Schedule at said theatre in accordance with the terms hereof.

Columbia Pictures Corporation

.... L. S.

(Salesman) (Manager) (Exhibitor)

Countersigned and approved: Date .... 193 ..

Columbia Pictures Corporation

By ....

(General Sales Manager)

By ....

(Partner. General Manager. Officer. Individual (Strike out three))

Direction to Salesmen: While you have every right to trade among prospective customers to obtain the best offer possible for your product, after you have selected a particular exhibitor whose offer you believe to be the best obtainable and take a written application from such exhibitor, you are hereby directed to forward the application to the office of your company and make no further effort to sell the same service to any other exhibitor directly competing with such exhibitor until the application so forwarded has been duly rejected, or accepted or withdrawn in accordance with its terms. A violation of this direction will subject you to discharge.

[fol. 5722] Fox—1936–37

Form La. 838

Standard License Agreement

Agreement of license under copyright made in one or more counterparts between Twentieth Century-Fox Distributing Corporation, a corporation (hereinafter referred to as the Distributor), party of the first part, and the Exhibitor, (hereinafter named and referred to as the Exhibitor, operating the theatre hereinafter designated), party of the second part.

Witnesseth: The parties hereto agree as follows:

License

First: The Distributor grants the Exhibitor and the Exhibitor accepts a limited license under the respective copyrights of the motion pictures designated and described in the Schedule hereof and under the copyright of any matter included in any sound recorded therewith, to exhibit publicly said motion pictures and to reproduce for public performances such recorded sound in synchronism therewith, but only at the said theatre for the number of consecutive days specified in the Schedule and for no other use or purpose; provided that the reproducing equipment in the said theatre will operate reliably and efficiently to reproduce such recorded sound with adequate volume and high quality; and provided further that if copyrighted musical compositions are included in such recorded sound, the Exhibitor will have at the date or dates of the exhibition of each of such motion pictures a license from the copyright proprietor thereof or from any licensee of such copyright proprietor to perform publicly the said copyrighted musical compositions. If more than one theatre is hereinafter designated the said motion pictures are licensed for exhibition at only one of such theatres unless otherwise in the Schedule specifically provided in writing.

Notwithstanding the number of days of exhibition specified for each motion picture in the Schedule, the license hereby granted to exhibit such motion picture shall auto- [fol. 5723] matically be limited to, and shall not include any right of exhibition at any time or by any means other than respectively: (a) the date or dates either expressly specified herein or selected pursuant to paragraph sixth hereof and confirmed in writing by the Distributor; and (b) the print of such motion picture designated and furnished by the Distributor for such date or dates.

Term and Warranty

Second: (a) The term of this Agreement shall begin with the date fixed or determined for the exhibition at the said theatre of the first motion picture deliverable hereunder and shall continue for a period of one year thereafter unless otherwise in the Schedule provided. The Distributor agrees during said term to deliver to the Exhibitor, and the Exhibitor agrees to exhibit at said theatre during said term upon the date or dates herein provided for, a positive print of each of said motion pictures except for such as may be excluded as provided in Clause Fifteenth and Nineteenth hereof. The Distributor warrants that each positive print will be in good physical condition for projection and exhibition, and will clearly reproduce the recorded sound in synchronism therewith if properly used upon standard reproducing equipment. If the recorded sound is not recorded upon a print, all references herein to a print shall be deemed to include the records, discs and any other device upon which sound may be recorded for reproduction with the exhibition of a print.

Damages—Failure to Deliver

(b) If the Distributor shall fail or refuse to deliver, or the Exhibitor shall fail or refuse to exhibit during the term hereof, any of said motion pictures, excepting those which may be eliminated as provided in Clause Fifteenth hereof, or if the Distributor shall wilfully violate any of the provisions of Clause Seventh hereof or shall deliver to the Exhibitor a print of any motion picture which print shall be determined was not in condition for exhibition and for the reproduction of sound as provided in Clause Second, the Exhibitor or the Distributor, as the case may be, shall pay the damage so caused and if such damage cannot be definitely computed shall pay as liquidated damages a sum equal to the fixed sum herein specified as the rental of each such motion picture or a sum computed as provided in [fol. 5724] Clause Third (c) hereof, if the rental of any such motion picture is to be determined, either in whole or in part upon a percentage of the admission receipts of said theatre or any part thereof or upon a percentage of such receipts and a fixed sum; provided that any claim by the Exhibitor with respect to the condition of a print shall be deemed to have been waived by the Exhibitor unless notice of such claim shall have been given by the Exhibitor to the Distributor's exchange from which the Exhibitor is served, by telephone or telegraph, or in person, immediately after the first public exhibition thereof by the Exhibitor and written confirmation thereof mailed by the Exhibitor upon the same day to the Distributor's said exchange.

Payment

Third: Exhibitor agrees to pay for such license as to each such motion picture the fixed sums specified in the Schedule at least three (3) days in advance of the date of delivery of a print thereof at the Distributor's exchange or of the date of shipment to the Exhibitor from another exhibitor, unless after the acceptance of this application by the Distributor such payment shall be otherwise agreed to by the Distributor at its main office in New York City. All payments hereunder shall be made to the Distributor at the City in which is located the exchange from which the Exhibitor is served.

Percentage Bookings

(b) If the rental of any of such motion pictures is to be determined either in whole or in part upon the admission receipts of said theatre or any part thereof, the Exhibitor agrees to pay such rental immediately after the last exhibition upon the last date of the exhibition of each such motion picture or if requested by the Distributor at the end of each day's exhibition. In each such case the Exhibitor shall deliver to the Distributor immediately after the last exhibition upon each date of exhibition of each such motion picture a correct itemized statement of the gross receipts of said theatre for admission thereto upon each such date. Such statement shall be signed by the Exhibitor or the Manager or Treasurer of said theatre and the Cashier thereof and shall include a statement of such facts and fig- [fol. 5725] ures as may be provided in the Schedule to be furnished by the Exhibitor, and if requested by the Distributor, shall be made upon forms furnished by the Distributor. Upon the exhibition date or dates of each motion picture an authorized representative of the Distributor is hereby given the right to verify the sale of all tickets of admission to said theatre, and the receipts therefrom; and for such purpose shall have access to the theatre, including the box office, and also the right to examine all relevant entries relating to such gross receipts in all the Exhibitor's books and records, and if hereunder it is provided that the Exhibitor make certain expenditures and/or deductions, to examine all entries relating to such expenditures and/or deductions. Such right of access and examination of the Exhibitor's books and records limited as aforesaid, shall continue for a period of four (4) months after the receipt by the Distributor of each such statement. The Distributor agrees, unless such representative is in the continuous employ of the Distributor or employed as a checker, not to employ as a representative for such purpose any person a resident of or employed in the place where the said theatre is located, other than a person engaged in business as an accountant. The Distributor agrees that any information obtained pursuant to the provisions of this clause will be treated as confidential, excepting in any arbitration proceeding or litigation in respect to this license.

Liquidated Damages—Percentage Bookings

(c) If the Exhibitor fails or refuses to exhibit any of said motion pictures as herein provided and the rental or any part thereof is to be computed in whole or in part upon a percentage of the admission receipts of said theatre, the Exhibitor shall pay the Distributor as liquidated damages for each day the Exhibitor fails or refuses to exhibit such motion pictures, in addition to any fixed sums payable hereunder in respect of such motion picture, a sum equal to such percentage of the average daily gross receipts of such theatre on each day any feature motion picture distributed by the Distributor was exhibited thereat during the period of ninety (90) days prior to the date or dates when said motion picture should have been so exhibited hereunder, or if no feature motion picture distributed by the Dis- [fol. 5726] tributor was exhibited at such theatre during said ninety (90) day period, then a sum equal to such percentage of the average daily gross receipts of such theatre during the period of thirty (30) operating days immediately prior to the date or dates when such motion picture should have been exhibited, or prior to the date of such failure or refusal to exhibit any of said motion pictures: provided that if the Exhibitor shall exhibit such motion pictures for less than the full number of days provided for in the Schedule, for each day less than said full number of days, the sum equal to such percentage shall be computed upon a sum equal to sixty-five percent (65%) of the gross receipts of said theatre during the last day of the exhibition thereat of such motion picture. A sworn statement of the said daily gross receipts shall be delivered by the Exhibitor to the Distributor upon demand therefor.

Delivery and Return of Prints

Fourth: (a) After each of said motion pictures is generally released for public exhibition and becomes available for exhibition hereunder by the Exhibitor, the Distributor agrees to deliver as hereinafter provided, a print thereof to the Exhibitor.

(b) The public exhibition of any of said motion pictures for three (3) consecutive days at prices usually charged for admission to the theatre where so exhibited in the territory wherein is located the exchange from which the exhibitor is served, excepting any "road show," "tryout," "preview," or "pre-release" exhibitions thereof, shall be deemed the general release for public exhibition of such motion picture but only in such territory. A "pre-release" exhibition shall be deemed any exhibition because of seasonal conditions making desirable exhibitions in advance of general release as herein defined.

(c) The Exhibitor agrees to exhibit each of said motion pictures in the order of its general release by the Distributor in the exchange territory in which said theatre is located. The Exhibitor shall have the right to select any of the motion pictures, excepting the last deliverable hereunder, for exhibition out of the order of its general release, subject to prior runs and/or clearance granted other exhibitors, on the date or dates determined as provided in Article Sixth hereof or otherwise agreed upon, but only [fol. 5727] upon the following conditions (a) that the Exhibitor is not in default hereunder and shall have fully complied with all the provisions, if any, set forth in the Schedule for the exhibition of one or more of said motion pictures at specified intervals; and (b) that the Distributor and the Exhibitor shall then agree upon the date or dates upon which all of the motion pictures generally released prior to the general release of such motion picture and available for exhibition hereunder shall be exhibited by the Exhibitor, which date or dates shall be within thirty (30) days from the first exhibition date of the motion picture to be exhibited out of the order of its general release; or in the alternative the Exhibitor shall then pay to the Distributor the license fee for each of such motion pictures then generally released and available for exhibition hereunder, and as to any thereof which shall not be exhibited by the Exhibitor within thirty days from the first exhibition date of the motion picture to be exhibited out of the order of its general release, the grant of the run and clearance period in respect thereof shall be deemed waived by the Exhibitor. Upon the failure or refusal of the Exhibitor to exhibit any of such motion pictures then generally released and available for exhibition hereunder within said thirty day period or to pay the license fee thereof, the right of the Exhibitor to thereafter select for exhibition any motion picture out of the order of its general release shall be forfeited. The provisions of this paragraph (c) shall not be deemed to limit or qualify the provisions of Article Sixth hereof excepting as in this paragraph (c) specifically provided.

(d) The Distributor shall make deliveries hereunder to the Exhibitor or to the Exhibitor's authorized agent, by delivery at the Distributor's exchange, or to a common carrier, or to the United States Postal authorities. If deliveries are made to a carrier or to a post office, they shall be made in time for prints to reach the place where the said theatre is located in time for inspection and a projection thereof before the usual time for opening said theatre.

(e) Exhibitor agrees to return immediately after the last exhibition on the last date of exhibition licensed, each print received hereunder, with its reels and containers, to the exchange of the Distributor from which the Exhibitor is served [fol. 5728] or as otherwise directed by the Distributor in the same condition as when received, reasonable wear and tear due to proper use excepted. Exhibitor agrees to pay all costs of transportation of such print, reels, and containers from the Distributor's exchange or the last previous exhibitor having possession of the same, and return to the Distributor's exchange; or if directed by the Distributor, to ship such positive prints elsewhere than to the Distributor's exchange transportation charges collect. It is agreed that the delivery of a positive print properly directed and packed in the container furnished by the Distributor therefor, to a carrier designated or used by the Distributor and proper receipt therefor obtained by the Exhibitor, shall constitute the return of such positive print by the Exhibitor.

(f) If Exhibitor fails to or delays the return of any positive print to the Distributor or fails to forward or delays forwarding (as directed by the Distributor) any such print to any other exhibitor, the Exhibitor agrees to pay the Distributor the damage, if any, so caused the Distributor and in addition the damage, if any, so caused such other exhibitor. The Exhibitor shall have the right to participate in any compromise of or intervene in any arbitration or legal proceeding based upon any claim for such damage asserted against the Distributor by another exhibitor; notice of which shall be given the Exhibitor by the Distributor.

Loss and Damage to Prints

Fifth: The Exhibitor shall pay to the Distributor a sum equal to the cost of replacement at the Distributor's exchange for each linear foot of any print, lost, stolen or destroyed or injured in any way in the interval between the delivery to and the return thereof by the Exhibitor in full settlement of all claims for such loss, theft, destruction or injury. Such payment, however, shall not transfer title to or any interest in any such positive print to the Exhibitor or any other party, nor release the Exhibitor from any liability arising out of any breach of this agreement. The Distributor shall at the option of the Exhibitor repay or credit to the Exhibitor any sums paid by the Exhibitor for any lost or stolen print, excepting "news reels" upon the return of such lost or stolen print to the Distributor within sixty (60) days after the date when the same should have [fol. 5729] been returned hereunder. The Exhibitor shall not be liable for the damage or destruction of any print, provided the Exhibitor establishes such damage or destruction occurred while in transit from the Exhibitor and delivery thereof was made as hereinabove provided. The Exhibitor shall immediately notify the Distributor's exchange by telegram of the loss, theft or destruction of or damage or injury to any print. If any print shall be received from the Exhibitor by the Distributor or any subsequent exhibitor in a damaged or partially destroyed condition it shall be deemed to have been so damaged or destroyed by the Exhibitor unless the latter, immediately after the first public exhibition thereof shall have telegraphed the Distributor's exchange that such print was received by the Exhibitor in a damaged or partially destroyed condition, and setting forth fully the nature of such damage and the amount of footage so damaged or destroyed.

Selection of Play Dates

Sixth: Unless otherwise agreed upon or unless definitely specified or otherwise provided for in the Schedule, the exhibition date or dates of each of said motion pictures shall be determined as follows:

1. Subject to prior runs and/or clearance granted or hereafter granted by the Distributor to other exhibitors and within a reasonable time after a print or prints of any said motion pictures are received at the exchange of the Distributor out of which the Exhibitor is served, and provided the Exhibitor is not in default hereunder, the Distributor shall mail to the Exhibitor a notice in writing of the date when each such motion picture will be available for exhibition by the Exhibitor (which date is hereinafter referred to as the "available date"). Such notice shall be mailed to the Exhibitor at least fifteen (15) days before the available date therein specified.

2. Within fourteen (14) days after the mailing of such notice, the Exhibitor shall select an exhibition date or dates not theretofore assigned to another exhibitor or other exhibitors, within the period commencing upon the available date and ending thirty (30) days thereafter and give to the Distributor written notice of the date or dates so selected.

[fol. 5730] 3. Upon the failure of the Exhibitor to so select such date or dates the Distributor shall designate such date or dates by mailing written notice thereof to the Exhibitor.

Clearance and Run

Seventh: The Distributor agrees not to exhibit or grant a license to exhibit any of said motion pictures for exhibition in conflict with the "run" or prior to the expiration of the "clearance period," if any, in the Schedule specified at any theatre therein named or within the territorial limits therein specified. Such period of clearance as to each of said motion pictures shall be computed from the last date of the exhibition thereof licensed hereunder. If clearance is granted against a named theatre or theatres indicating that it is the intention of the Distributor to grant such clearance against all theatres in the immediate vicinity of the Exhibitor's theatre then unless otherwise provided in the Schedule, such clearance shall include any theatre in such vicinity thereafter erected or opened.

Reissues, Foreign Pictures, and Advertising Matter

Eighth: The Distributor warrants that none of said motion pictures are reissues of old negatives, old negatives retitled or foreign produced by a foreign producer, excepting those specifically specified as such in the Schedule; and further, that none of said motion pictures contains or will contain any advertising matter for which compensation is received by the Distributor, or any subsidiary or affiliate of the Distributor.

Advertising Prior to First Run

Ninth: (a) If the Exhibitor is granted a subsequent run of the said motion pictures the Exhibitor shall not advertise any thereof by any means of advertising prior to or during the exhibition of any one of said motion pictures by any other exhibitor having the right to a prior run thereof. Nothing in this Clause shall be deemed to prohibit the Exhibitor from advertising generally all of said motion pictures as a group but such general advertising shall not refer to any one of said motion pictures during its exhibition by any other exhibitor having the first or immediately prior run thereof, excepting as herein provided.

[fol. 5731] (b) The Exhibitor shall not advertise by any means of advertising any of said motion pictures which may be roadshown by the Distributor and not excepted and excluded from this license, until after the completion of such roadshowing in the United States, and then only as permitted in paragraph (a) of this Clause.

(c) For a breach of the provisions of this Clause the Distributor shall have in addition to all other rights the right to exclude from this license any motion picture advertised in violation of the provisions hereof by written notice to such effect mailed to the Exhibitor and upon the mailing of such notice the license of such motion picture shall terminate and revert to the Distributor, unless arbitration is herein provided for and immediately upon the receipt of any such notice of exclusion the Exhibitor by written notice given to the Distributor shall deny breaching any of the provisions of this Clause, in which case the question of fact raised by such denial shall be determined by arbitration.

Acceptance by Distributor

Tenth: Until accepted in writing by an officer of or any person authorized by the Distributor and notice of acceptance sent to the Exhibitor this instrument shall be deemed only an application for a license under Copyright, and may be withdrawn by the Exhibitor any time before such acceptance. Unless such notice of acceptance is sent the Exhibitor by mail or telegraph within (15) days after the date thereof, if the said theatre of the Exhibitor is located East of the Mississippi River, and within thirty (30) days after the date thereof if located west of said river, said application shall be deemed to have been withdrawn. The deposit by the Distributor of any check or other consideration given by the Exhibitor at the time of application as payment for any purpose or the delivery of a print of any of said motion pictures shall not be deemed an acceptance hereof by the Distributor.

Changes in Writing

Eleventh: This license agreement is complete and all promises, representations, understandings and agreements [fol. 5732] in reference thereto have been expressed herein. No change or modification hereof shall be binding upon the Distributor unless in writing signed by an officer of the Distributor, excepting in an emergency and only then, a change or modification may be consented to in writing but only by the representative of the Distributor managing the Distributor's exchange out of which the Exhibitor is served, provided such change or modification does not change or modify the run, and/or clearance period, or decrease any rental, or eliminate any motion pictures specified in the Schedule.

Assignment on Sale of Theatre

Twelfth: This license shall not be assigned by either party without the written consent of the other, provided, that if the Exhibitor sells the said theatre or transfers any interest therein and is not in default hereunder, the Exhibitor may assign this license to the purchaser of the theatre or of such interest without the written consent of the Distributor but any such assignment shall not be valid or of any effect hereunder unless a written acceptance thereof by the assignee assuming the obligations of the Exhibitor shall be delivered to the Distributor. Any such assignment shall not release the Exhibitor from any liability hereunder unless such release from liability is consented to by the Distributor in writing.

Taxes

Thirteenth: The Exhibitor shall pay to the Distributor upon demand, any tax, fee or other like charge now and/or hereafter imposed or based upon the delivery and/or the exhibition of prints of motion pictures and/or upon the sums payable under this license by the Exhibitor to the Distributor. If under any statute or ordinance any such tax, fee or other like charge is or shall be payable or paid by the Distributor and the exact amount payable hereunder by the Exhibitor is not therein definitely fixed or cannot be exactly determined, then the Exhibitor shall pay such part of any such tax, fee or other like charge paid or payable by the Distributor as shall be fixed in the manner determined by the then President of the American Arbitration Association.

[fol. 5733]

Prevention of Performance

Fourteenth: If the Exhibitor shall be prevented from exhibiting or the Distributor from delivering of the said motion pictures for causes beyond their direct control then this license in respect to each such motion picture shall terminate and revert to the Distributor without liability on the part of either party, provided reasonable written notice of such termination and the cause thereof is given.

Option to Exclude if Group Licensed

Fifteenth: If the total number of feature motion pictures offered to the Exhibitor by the Distributor, at one time, shall have been licensed by the Distributor hereunder and the license fees of all thereof average not more than Two hundred and fifty ($250.00) dollars, the Exhibitor shall have the right to exclude from this license not to exceed ten (10%) percent of the total number of feature motion pictures so licensed hereunder; provided (1) that the Exhibitor is not in default hereunder, and (2) shall have fully complied with all of the provisions, if any, set forth in the Schedule for the exhibition of one or more of said feature motion pictures at specified intervals. Such right of exclusion may be exercised only upon the following terms and conditions:

(1) The Exhibitor shall give to the Distributor written notice of the Exhibitor's election to exclude any of said feature motion pictures within fourteen (14) days after its general release date in the exchange territory out of which the Exhibitor is served.

(2) The Exhibitor may exclude without payment therefor one (1) motion picture out of each group of ten (10) of the number of feature motion pictures specified in the license agreement provided he has paid for the other nine (9) of such group.

(3) If such privilege of exclusion is not exercised as provided in paragraph (2) above, the Exhibitor may nevertheless exercise such privilege by paying the license fee of each motion picture excluded with the notice of its exclusion. In such case, such payment shall be credited against such [fol. 5734] tenth or succeeding tenth motion picture, as the case may be, which the Exhibitor would otherwise be privileged to exclude as provided in paragraph (2) above.

If the only or last group licensed is less than ten (10) and more than five (5) motion pictures, the privilege to exclude shall apply provided the Exhibitor has paid for all motion pictures but one in such group.

(c) Upon the failure or refusal of the Exhibitor to comply with any term or condition of this license agreement, or to comply with any arbitration award in respect thereto, the privilege or exclusion forthwith shall be revoked and the Exhibitor shall be liable for and pay to the Distributor the license fees of all motion pictures theretofore excluded.

(d) If the license fee of any feature motion picture specified in the license agreement is to be computed in whole or in part upon a percentage of the receipts of the Exhibitor's theatre, such license fee (for the purpose of computing the average license fee of all the motion pictures licensed) shall be determined as follows:

(1) Average the license fees of all of the Distributor's feature motion pictures exhibited upon a percentage basis at the Exhibitor's theatre during the period of one year prior to the term of such license agreement.

(2) If none of the Distributor's feature motion pictures were exhibited upon a percentage basis at such theatre during said period, average the license fees of all feature motion pictures exhibited upon a percentage basis at such theatre during the said period.

(e) If the rental of any motion picture excluded is to be computed in whole or in part upon a percentage of the receipts of the Exhibitor's theatre, the sum to be paid by the Exhibitor as provided in paragraph (3) hereof shall be determined as follows:

(1) Average the gross receipts of all the Distributor's feature motion pictures exhibited at the Exhibitor's theatre during the ninety (90) day period preceding the Exhibitor's notice of exclusion, and apply to such average the percentage terms specified in the license agreement for the picture excluded.

(2) If no feature motion pictures of the Distributor were [fol. 5735] exhibited at the Exhibitor's theatre during said ninety (90) day period, average the daily gross receipts of the Exhibitor's theatre for the period of thirty (30) operating days preceding the Exhibitor's notice of exclusion and apply to such average the percentage terms specified in the license agreement for the picture excluded.

(f) In computing the number of feature motion pictures which may be excluded hereunder, fractions of more than one-half (½) shall be regarded as one (1).

(g) Upon the exclusion of each feature motion picture, the license therefor and all rights thereunder shall terminate and shall revert to the Distributor.

First Run Exhibitions

Sixteenth: (a) If the Exhibitor is granted a first run of the said motion pictures, the Exhibitor shall exhibit each of the feature motion pictures excepting those described in Paragraph (d) of this Clause within the period beginning with the date scheduled and announced by the Distributor for the general release of each feature motion picture in the territory wherein is located the exchange of the Distributor out of which the Exhibitor is served and ending one hundred and twenty (120) days thereafter, notwithstanding any provision of Clause Sixth hereof to the contrary. If the first exhibition date of any of the said motion pictures shall occur on a date later than ninety (90) days after its scheduled and announced general release date, then the period of clearance of such motion picture shall be reduced so as to expire one hundred and twenty (120) days after said scheduled date of its general release. If the Exhibitor is granted a first run of the said motion pictures and the Exhibitor fails to exhibit any feature motion picture within said period of one hundred and twenty (120) days the grant of the said first run and the clearance period in respect thereof shall be deemed waived by the Exhibitor and the license fee as to such feature motion picture shall thereupon forthwith become due and payable to the Distributor, with the right to the Exhibitor to exhibit such feature motion picture as hereinafter in Paragraph (e) of this Clause provided.

[fol. 5736]

Second Run Exhibitions

(b) If the Exhibitor is granted a second run of the said motion pictures and any other exhibitor having been granted the first run thereof immediately prior to such second run fails to exhibit any of the feature motion pictures, excepting those described in Paragraph (d) of this Clause within the said period of one hundred and twenty (120) days specified in Paragraph (a) of this Clause, the Exhibitor shall exhibit each such feature motion picture within the period beginning with the date of the expiration of the said one hundred and twenty (120) days period and ending fourteen (14) days thereafter, notwithstanding any provision of Clause Sixth hereof to the contrary. If the Exhibitor is granted a second run of the said motion pictures and the Exhibitor fails to exhibit any feature motion picture within said fourteen (14) day period, the grant of such second run and the clearance period if any in respect thereof shall be deemed waived by the Exhibitor and the license fee as to such feature motion picture shall thereupon forthwith become due and payable to the Distributor with the right to the Exhibitor to exhibit such feature motion picture as hereinafter in Paragraph (e) of this Clause provided.

Subsequent Runs Exhibitions

(c) If the Exhibitor is granted a run subsequent to a second run of the said motion pictures and any other Exhibitor having been granted the second run immediately prior to such subsequent run fails to exhibit any of the feature motion pictures, excepting those described in Paragraph (d) of this Clause within the said period of fourteen (14) days specified in Paragraph (b) of this Clause the Exhibitor shall exhibit each feature motion picture within the period beginning with the date of the expiration of the said fourteen day period and ending seven (7) days thereafter, notwithstanding any provision of Clause Sixth hereof to the contrary. If the Exhibitor is granted a run subsequent to a second run of the said motion pictures and the Exhibitor fails to exhibit any feature motion picture within said seven (7) day period, the grant of such subsequent run and the clearance period if any in respect thereof shall be deemed [fol. 5737] waived by the Exhibitor and the license fee as to such feature motion picture shall thereupon forthwith become due and payable to the Distributor with the right to the Exhibitor to exhibit such feature motion picture as hereinafter in Paragraph (e) of this Clause provided.

Extended Runs

(d) Any of the motion pictures which shall have been exhibited at any theatre in the said territory for more than one show week prior to the run granted the Exhibitor shall be excepted from the provisions of this Clause and of Paragraph (b) of Clause Fourth.

Exhibition After Revocation of Run and Clearance

(e) Upon the waiver of the grant of the run and/or the clearance period of any feature motion picture as provided in Paragraphs (a), (b) or (c) of this Clause, the Exhibitor upon payment of the sum or sums payable hereunder as provided in this Clause for the license to exhibit such feature motion picture, shall have the right to exhibit the same hereunder upon a date or dates not in conflict with any run and/or clearance period granted or hereafter granted to other exhibitors, upon written request mailed or delivered to the Distributor within sixty (60) days after the last date upon which such feature motion picture should have been exhibited by the Exhibitor as provided in this Clause. Failing to make such request within said period of sixty (60) days the license to exhibit such feature motion picture granted hereunder shall terminate and revert to the Distributor.

If the provisions of this Clause shall in anywise be in conflict with the provisions of any other license agreement made and entered into by the Distributor with any other exhibitor prior to September 1, 1933, the provisions of this Clause shall be deemed to be subordinate and subject to the provisions of such other license agreement.

Remedies

Seventeenth: If the Exhibitor shall fail or refuse to pay the rental of any of such motion pictures as provided in this [fol. 5738] license or to furnish statements of the receipts of said theatre, if any are required hereunder, or to give the Distributor's representative access to the said theatre or its box office and/or the Exhibitor's books and records relative to motion pictures the rentals of which are based upon the said theatre's admission receipts as herein provided, or if the Exhibitor shall exhibit or permit the exhibition of any of said motion pictures at any time or place other than as herein specified, or if the Exhibitor becomes insolvent or is adjudicated a bankrupt, or executes an assignment for the benefit of his creditors, or if a receiver is appointed for any of the property of the Exhibitor, or if the Exhibitor voluntarily or by operation of law should lose control of the said theatre or of his said interests therein making it impossible for the Exhibitor to exhibit the said motion pictures at the said theatre, then upon the happening of any one or more of said events, the Distributor may at its option, (1) terminate this license agreement, or (2) suspend the delivery of additional motion pictures hereunder until such default or defaults should cease and be remedied. It is agreed that the exercise of any of said remedies by the Distributor shall be in addition to and without prejudice to any right or remedy of the Distributor against the Exhibitor at law or in equity and/or otherwise provided for in this license agreement.

It is agreed, that in the event of the failure or refusal of Exhibitor to exhibit or pay the license fees of any one or more of the photoplays covered by this contract, Distributor may, at its option, declare such failure or refusal a breach of the entire contract, entitling Distributor to recover from Exhibitor as damages therefor, the amount payable as license fees in respect to all photoplays not theretofore exhibited and/or paid for, pursuant to the provisions of this contract.

Cutting or Alteration of Prints

Eighteenth: The Exhibitor shall exhibit each print in its entirety and shall not copy, duplicate, subrent or part with possession of any print. The Exhibitor shall not cut or alter any print, excepting to make necessary repairs thereto, or when required by any duly constituted public official or [fol. 5739] authority or with the written or telegraphic consent of the Distributor. The Exhibitor however may cut the print of a news reel, and in such case shall completely restore all parts cut therefrom, prior to the return thereof to the Distributor or shipment elsewhere if so directed by the Distributor, in the same condition as received by the Exhibitor.

Roadshows

Nineteenth: (a) The Distributor shall have the right to exhibit and/or cause to be exhibited as a "roadshow," at any time prior to the exhibition thereof hereunder, such of the motion pictures licensed hereunder as the Distributor may from time to time select and determine, provided, however, that such roadshow exhibitions shall be at theatres at which admission prices for evening performances, during such exhibitions thereof, of not less than one dollar shall be charged for the majority of the orchestra seats, and further provided that, except in the cities of New York and Los Angeles, not more than two of such motion pictures shall be so roadshown.

(b) If and when any such roadshow exhibition shall be in the City of New York and/or the City of Los Angeles, and if the Exhibitor's theatre is situated in the territory then served by the Distributor's exchange or exchanges located in New York or Los Angeles, as the case may be, the Distributor shall have the right to except and exclude from this license not to exceed two of such motion pictures so roadshown in each or both of said territories, upon sending to the Exhibitor written notice to such effect not later than four (4) weeks after the commencement of such roadshow exhibition and provided that the Distributor shall by like notice except and exclude such motion picture from all other license agreements containing this Clause and licensing the exhibition of such motion pictures in such territory. The exception and exclusion of any such motion picture in the territory then served by the Distributor's exchange or exchanges located in the City of Los Angeles, or in the City of New York, as the case may be, shall not be deemed to require the Distributor to except and exclude the same motion picture in both of said territories.

(c) If and when any such roadshow exhibition, excepting those in the City of New York and/or in the City of Los [fol. 5740] Angeles, shall be in the territory served by the Distributor's exchange or exchanges serving the Exhibitor's theatre, the Distributor shall have the right to except and exclude from this license not to exceed two of such motion pictures so roadshown upon sending to the Exhibitor written notice to such effect within seven (7) days after the commencement of such roadshow exhibition and provided that the Distributor shall by like notice except and exclude each such motion picture from all other license agreements containing this Clause and licensing the exhibition of such motion picture in such territory.

(d) The inadvertent omission to send to any of such other exhibitors the notice provided for in Paragraphs (a) and (b) of this Clause shall not be deemed to affect the exception and exclusion from this license of any such motion picture.

(e) The Distributor may so exercise such right to except and exclude any such motion picture from time to time, in the respective territories, as above defined, in the United States. Any motion picture so roadshown in any place in the United States, and not excepted and excluded from this license as aforesaid, shall not be deemed available for exhibition hereunder until after the completion of such roadshowing of such motion picture in the United States, and such motion picture shall be exhibited hereunder when generally released by the Distributor and as and when available for exhibition by the Exhibitor, and the term of this license agreement specified in Clause Second shall be in respect to each such motion picture, extended to and including the date or dates of exhibition by the Exhibitor hereunder of each thereof.

(f) For each motion picture that the Distributor shall except and exclude, as aforesaid, the Exhibitor is hereby granted the option to except and exclude from this license (in addition to those which may be excluded as provided in Clause Fifteenth) one of the other motion pictures licensed hereunder, but only if the Exhibitor shall give to the Distributor written notice to such effect not later than fourteen (14) days before the date fixed for the exhibition hereunder of such ~~other motion~~ picture. The Distributor may exhibit and/or license the exhibition of any and all motion pictures excepted and excluded from this license by the Distributor [fol. 5741] and/or the Exhibitor, as aforesaid, when and where desired by the Distributor, free from all claims of the Exhibitor in respect thereof and the license of each thereof shall forthwith upon exclusion as hereinbefore provided terminate and revert to the Distributor.

Twentieth: The following Schedule and all of the written and printed parts thereof are a part of this license:

Exchange .... Date .... Salesman ....

....

Schedule of exhibition contract

Theatre	Exhibitor	Location of Theatre

Group K-4

There are licensed for exhibition hereunder all of the sound photoplays of feature length, not to exceed fifty-six (56), and not less than forty-five (45), including a maximum of four (4) English produced photoplays, which shall be generally released by the Distributor for distribution to motion picture theatres in the United States during the year commencing August 1, 1936 and ending July 31, 1937, except such photoplays as Distributor is required by contract to obtain the consent or approval of the Producer thereof or other party to the terms and conditions of licensing the exhibition thereof and except the photoplay "As You Like It" and except reissues of photoplays starring Will Rogers and except photoplays based on stories by Harold Bell Wright and Zane Grey, which photoplays will be licensed under separate contract. The "road showing," "pre-view" and/or "pre-release" of any photoplay during the said year shall not be deemed a general release of said photoplay.

For the license to exhibit each of said photoplays, the Exhibitor shall pay to the Distributor the following:

[fol. 5742]

	Consecutive Days Run	Minimum Guaranteed License Fee per Photoplay	Distributor's Share of Gross Receipts per Photoplay	Gross Receipts per Photoplay in Excess of Which Distributor Shares	Recording Charge per Photoplay Which Is in Addition to All Other License Fees
A		$	%	$	$
B					
C					
D					

Number of Photoplays Offered .... Number of Photoplays Licensed ....

It is agreed that the license fees herein specified apply to each respective photoplay licensed hereunder according to the classification thereof by the Distributor, as above provided, and such license fees are not average license fees, regardless of the number of such photoplays that may be released by the Distributor during the year commencing August 1, 1936, and ending July 31, 1937.

It is agreed that in case any photoplay excluded under Exhibitor's "Option to exclude if group licensed" shall have been designated by Distributor to play on percentage terms specified under items A, B, or C in the Schedule hereof, then upon its exclusion such designation shall be deemed to be thereby rescinded and Distributor may designate a different photoplay to play on such specified percentage terms, it being the intent of the parties hereto that Exhibitor shall exhibit hereunder upon the respective percentage terms set forth in said Schedule the number of photoplays specified in said items A, B, and C.

It is further agreed that said option to exclude shall apply only in respect of the photoplays covered by this license agreement.

Of the photoplays hereby licensed the respective number set forth below shall be exhibited on the days specified below:

.... photoplays as selected by Distributor on ....

.... photoplays as selected by Distributor on ....

[fol. 5743] The Exhibitor during the whole of the licensed exhibition period of each of the photoplays exhibited hereunder agrees to and shall charge for admission per person to said theatre the following prices:

Evenings: Adults, Orchestra .... Balcony ....
Children, Orchestra .... Balcony ....
Matinees: Adults, Orchestra .... Balcony ....
Children, Orchestra .... Balcony ....

If during any such period less than said admission prices is charged, the Distributor in addition to all other rights hereunder shall have the right: (a) to immediately terminate the license of the photoplay then being exhibited, by written notice to such effect to the Exhibitor and upon giving of such notice, the license of such photoplay shall forthwith terminate and revert to the Distributor; or (b) provided the Exhibitor is granted herein a period of "clearance" to reduce such period by not to exceed one-half in respect to each of the photoplays thereafter deliverable hereunder; or (c) provided no period of clearance is specified in the Schedule to withold for a period not to exceed sixty (60) days notice of the date when each photoplay thereafter deliverable hereunder will be available for exhibition by the Exhibitor, and as to each such photoplay the "run" thereof, if any, granted the Exhibitor, shall be deemed revoked and the Exhibitor agrees to exhibit each such photoplay after notice of the available date thereof upon the date or dates determined as provided in Clause Sixth hereof; if Distributor does not elect to terminate the license of the photoplay then being exhibited, as provided in Clause (a) of this paragraph, the Exhibitor shall account for all admissions to said theatre during the exhibition of such photoplay on the basis of the admission prices hereinabove stipulated.

Exhibition Arrangement

Clearance—Run ....

....

The license herein granted for the number of days specified in the Schedule shall not include the right of exhibition [fol. 5744] at any time previous to dawn of the first licensed and booked date of exhibition without securing express written permission hereunder.

If, with respect to any photoplay licensed hereunder, the date or dates of exhibition selected, designated, or otherwise agreed upon shall be a number of days less than the maximum number specified in the Schedule hereof, then the license hereby granted for such photoplay shall be automatically limited to the number of days or dates of exhibitions so selected, designated or otherwise agreed upon, regardless of the number of days specified in said Schedule.

The Exhibitor agrees to lease from the Distributor or the Distributor's authorized agent for use only in connection with the exhibition of each of the motion pictures exhibited hereunder and agrees not to sublease or sell the following advertising accessories:

....

The Exhibitor agrees to run photoplays as delivered without alteration, excepting with the written or telegraphic approval of the Distributor, subject to requirements of duly authorized public authorities necessitating any change. The Exhibitor also agrees to advertise and announce each photoplay as "A Twentieth Century-Fox Production." In all newspaper advertising and publicity issued by the Exhibitor relating to said photoplays the Exhibitor shall adhere to the form of announcement contained in the advertising matter issued by the Distributor.

Optional Arbitration Clause

The following Clause is optional with the parties hereto. If it is desired to make such Clause a part of this license, the Exhibitor and the duly authorized representative of the Distributor shall sign their respective names where indicated immediately following this paragraph and unless so signed the said Clause shall be deemed excluded from this license agreement.

It is agreed by and between the parties that the following [fol. 5745] Clause, providing for voluntary arbitration of disputes arising hereunder, shall be included as a part of this License.

....

Representative of the Distributor duly authorized to agree to the following Clause.

....

Exhibitor.

Arbitration

The Exhibitor and the Distributor respectively, freely and voluntarily agree that as a condition precedent to the commencement of any action or proceeding in any court by either of them, to determine, enforce, or protect the legal rights of either hereunder, each shall submit all claims and controversies arising hereunder for determination by arbitration to an Arbitration Board (hereby expressly waiving the oath of the arbitrators) which shall consist of four members, each of whom shall be engaged in the motion picture business, and two of whom to be appointed by the Exhibitor, and the remaining two to be appointed by the Distributor.

Upon the written request of the Distributor or the Exhibitor for the arbitration of any dispute or controversy arising hereunder, the party making such request shall name therein two arbitrators stating the business address and business or business connection of each and shall designate therein the date, time, and place of the hearing of such controversy. The date of such hearing shall not be earlier than seven (7) days from the date of the sending of such notice, unless it shall be claimed in such notice that irreparable injury will result unless there is a speedy determination of such controversy in which case such hearing may be designated to be held earlier than said seven (7) day period.

Within five (5) days after the mailing of such request for arbitration, the party upon whom such request is made shall name two arbitrators in a written notice mailed or delivered to the other party, stating therein the business address and business or business connection of each arbitrator. If either party fails or refuses to name the arbitrators as herein provided or if any arbitrator so named shall fail or refuse to act, or be unable to serve or shall be challenged [fol. 5746] and others are or another arbitrator qualified and then available to act is not then appointed, others or another arbitrator may be appointed by the other party as the case may be.

No member of the Arbitration Board shall hear or determine any controversy in which he has an interest direct or indirect and any member having such interest shall be disqualified to act.

If the arbitrators or a majority of them are unable to reach a decision, then they, or a majority of them, shall immediately select an umpire who shall not be engaged in the motion-picture business. In such case the hearing before the umpire shall be at such time and place as the umpire shall designate and shall be had before the umpire alone, the arbitrators not to be permitted to attend the hearing before the umpire. If the arbitrators or a majority of them are unable to agree upon the selection of an umpire, the American Arbitration Association shall be requested to make such selection.

The Arbitration Board shall have general power to determine such dispute or controversy as shall be submitted, to make findings of fact in respect thereof and to direct specific performance of a contract, and/or that the same has been breached in whole or in part, and/or that damages on such account shall be paid. The Board of Arbitration shall have the power only to give force and effect to the provisions of this license agreement and the rights or obligations of the parties thereunder.

The hearing of any such controversy shall be had before the Arbitration Board in the city wherein is situated the exchange of the Distributor from which the Exhibitor is served, unless the parties agree in writing that such hearings be had in some other place. If either party fails or refuses to submit to arbitration any such claims or controversy, the other party may apply to a United States District Court, or to any other Court, including a court of a state in which such hearings would otherwise not be had, for an order to proceed to arbitrate in which case such hearing shall be had in such place as the court to which such application is made may lawfully direct.

The parties hereto further agree to abide by and forthwith comply with any decision or award of the arbitrators, or a majority of them and consent that any such decision [fol. 5747-5751] or award shall be enforceable in or by any Court of competent jurisdiction pursuant to the law of such jurisdiction now or hereafter in force.

If the Exhibitor shall fail or refuse to submit to arbitration any such claim or controversy or to abide by and comply with the award of the arbitrators in respect thereto, within seven (7) days, the Distributor may at its option suspend the deliveries of the motion pictures provided for in this and in each other existing license agreement between the parties hereto and/or terminate this and each such other license agreement; and upon such termination the aggregate of the license fees of all motion pictures specified in this and any other such license agreement then not exhibited forthwith shall become due and payable by the Exhibitor.

If the Distributor shall fail or refuse to submit to arbitration any such claim or controversy or to abide by and comply with the decision or the award of an Arbitration Board in respect thereto within seven (7) days, the Exhibitor may at the option of the Exhibitor terminate this and any other existing license agreement between the parties hereto by mailing a notice to such effect to the Distributor within seven (7) days after such failure or refusal; and the Exhibitor shall have the rights and remedies provided in Clause Second (b) for failure to deliver motion pictures.

Any such termination by either party shall be without prejudice to any other right or remedy which the party so terminating may have by reason of any breach by the other party to this or any other existing agreement between the parties.

Each of the parties hereto, without notice to the other, may apply to any Court having jurisdiction to make this agreement to arbitrate a rule or order of such Court.

In Witness Whereof, the parties hereto have duly executed these presents, this . . day of . . . . 193 . . .

Twentieth Century-Fox Distributing Corporation.
By
Exhibitor
An Individual—A Partnership—A Corporation
(strike out two), by
Partner—Officer (strikeout one).

[fol. 5752] LOEW'S—1936-37

Form 851-D

Standard License Agreement

Agreement of license under copyright made in one or more counterparts between Loew's Incorporated, a corporation, (hereinafter referred to as the Distributor, party of the first part, and the Exhibitor, (hereinafter named and referred to as the Exhibitor, operating the theatre hereinafter designated) party of the second part.

Witnesseth: The parties hereto agree as follows:

License

First: The Distributor grants the Exhibitor and the Exhibitor accepts, a limited license under the respective copyrights of the motion pictures designated and described in the Schedule hereof and under the copyright of any matter included in any sound recorded therewith, to exhibit ~~publicly~~ said motion pictures and to reproduce for public performances such recorded sound in synchronism therewith, but only at the said theatre for the number of consecutive days specified in the Schedule and for no other use or purpose; provided that the reproducing equipment in the said theatre will operate reliably and efficiently to reproduce such recorded sound with adequate volume and high quality; and provided further that if copyrighted musical compositions are included in such recorded sound, the Exhibitor will have at the date or dates of the exhibition of each of such motion picture a license from the copyright proprietor thereof or from any licensee of such copyright proprietor to perform publicly the said copyrighted musical compositions. If more than one theatre is hereinafter designated the said motion pictures are licensed for exhibition at only one of such theatres unless otherwise in the Schedule specifically provided in writing.

[fol. 5753] Term and Warranty

Second: (a) The term of this Agreement shall begin with the date fixed or determined for the exhibition at the said theatre of the first motion picture deliverable hereunder and shall continue for a period of one year thereafter unless otherwise in the Schedule provided. The Distributor agrees during the said term to deliver to the Exhibitor, and the Exhibitor agrees to exhibit at said theatre during said term upon the date or dates herein provided for, a positive print of each of said motion pictures except such as may be excluded as provided in Clause Fifteenth hereof. The Distributor warrants that each positive print will be in good physical condition for projection and exhibition, and will clearly reproduce the recorded sound in synchronism therewith if properly used upon standard reproducing equipment. If the recorded sound is not recorded upon a print, all reference herein to a print shall be deemed to include the records, discs and any other device upon which sound may be recorded for reproduction with the exhibition of a print.

Damages—Failure to Deliver

(b) If the Distributor shall fail or refuse to deliver, or the Exhibitor shall fail or refuse to exhibit during the term hereof, any of said motion pictures, excepting those which may be eliminated as provided in Clause Fifteenth hereof, or if the Distributor shall wilfully violate any of the provisions of Clause Seventh hereof or shall deliver to the Exhibitor a print of any motion picture which print shall be determined was not in condition for exhibition and for the reproduction of sound as provided in Clause Second, the Exhibitor or the Distributor, as the case may be, shall pay the damage so caused and if such damage cannot be definitely computed shall pay as liquidated damages a sum equal to the fixed sum herein specified as the rental of each such motion picture or a sum computed as provided in Clause Third (c) hereof, if the rental of any such motion picture is to be determined, either in whole or in part upon a percentage of the admission receipts of said theatre or any part thereof or upon a percentage of such receipts and a fixed sum; provided that any claim by the Exhibitor [fol. 5754] with respect to the condition of a print shall be deemed to have been waived by the Exhibitor unless notice of such claim shall have been given by the Exhibitor to the Distributor's exchange from which the Exhibitor is served, by telephone or telegraph, or in person, immediately after the first public exhibition thereof by the Exhibitor and written confirmation thereof mailed by the Exhibitor upon the same day to the Distributor's said exchange.

Payment

Third: (a) Exhibitor agrees to pay for such license as to each such motion picture the fixed sums specified in the Schedule at least three (3) days in advance of the date of delivery of a print thereof at the Distributor's exchange or of the date of shipment to the Exhibitor from another exhibitor, unless after the acceptance of this application by the Distributor such payment shall be otherwise agreed to by the Distributor in writing signed by an officer of the Distributor. All payments hereunder shall be made to the Distributor at the City in which is located the exchange from which the Exhibitor is served.

Percentage Bookings

(b) If the rental of any of such motion pictures is to be determined either in whole or in part upon the admission receipts of said theatre or any part thereof, the Exhibitor agrees to pay such rental immediately after the last exhibition upon the last date of the exhibition of each such motion picture or if requested by the Distributor at the end of each day's exhibition. In each such case the Exhibitor shall deliver to the Distributor immediately after the last exhibition upon each date of exhibition of each such motion picture a correct itemized statement of the gross receipts of said theatre for admission thereto upon each such date. Such statement shall be signed by the Exhibitor or the Manager or Treasurer of said theatre and the Cashier thereof and shall include a statement of such facts and figures as may be provided in the Schedule to be furnished by the Exhibitor, and if requested by the Distributor, shall be made upon forms furnished by the Distributor. Upon the exhibition date or dates of each motion picture an au- [fol. 5755] thorized representative of the Distributor is hereby given the right to verify the sale of all tickets of admission to said theatre, and the receipts therefrom; and for such purpose shall have access to the theatre, including the box office, and also the right to examine all relevant entries relating to such gross receipts in all the Exhibitor's books and records, and if hereunder it is provided that the Exhibitor make certain expenditures and/or deductions, to examine all entries relating to such expenditures and/or deductions. Such right of access and examination of the Exhibitor's books and records limited as aforesaid, shall continue for a period of four (4) months after the receipt by the Distributor of each such statement. The Distributor agrees, unless such representative is in the continuous employ of the Distributor or employed as a checker, not to employ as a representative for such purpose any person a resident of or employed in the place where the said theatre is located, other than a person engaged in business as an accountant. The Distributor agrees that any information obtained pursuant to the provisions of this clause will be treated as confidential, excepting in any arbitration proceeding or litigation in respect to this license.

Liquidated Damages—Percentage Bookings

(e) If the Exhibitor fails or refuses to exhibit any of said motion pictures as herein provided and the rental or any part thereof is to be computed in whole or in part upon a percentage of the admission receipts of said theatre, the Exhibitor shall pay the Distributor as liquidating damages for each day the Exhibitor fails or refuses to exhibit such motion pictures, in addition to any fixed sums payable hereunder in respect of such motion picture, a sum equal to such percentage of the average daily gross receipts of such theatre on each date any feature motion picture distributed by the Distributor was exhibited thereat during the period of ninety (90) days prior to the date or dates when said motion picture should have been so exhibited hereunder, or if no feature motion picture distributed by the Distributor was exhibited at such theatre during said ninety (90) day period, then a sum equal to such percentage of the average daily gross receipts of such theatre [fol. 5756] during the period of thirty (30) operating days immediately prior to the date or dates when such motion pictures should have been exhibited, or prior to the date of such failure or refusal to exhibit any of said motion pictures; *provided* that if the Exhibitor shall exhibit such motion pictures for less than the full number of days provided for in the Schedule, for each day less than said full number of days, the sum equal to such percentage shall be computed upon a sum equal to sixty-five (65%) percent of the gross receipts of said theatre during the last day of the exhibition thereat of such motion picture. A sworn statement of the said daily gross receipts shall be delivered by the Exhibitor to the Distributor upon demand therefor.

Delivery and Return of Prints

Fourth: (a) After each of said motion pictures is generally released for public exhibition and becomes available for exhibition hereunder by the Exhibitor, the Distributor agrees to deliver, as hereinafter provided, a print thereof to the Exhibitor.

(b) The public exhibition of any of said motion pictures for three (3) consecutive days at prices usually charged for admission to the theatre where so exhibited in the territory wherein is located the exchange from which the exhibitor is served, excepting any "road show," "try-out," "preview," or "prerelease" exhibitions thereof, shall be deemed the general release for public exhibition of such motion picture but only in such territory. A "prerelease" exhibition shall be deemed any exhibition because of seasonal conditions making desirable exhibition in advance of general release as herein defined.

(c) The Exhibitor agrees to exhibit each of said motion pictures in the order of its general release by the Distributor in the exchange territory in which said theatre is located. The Exhibitor shall have the right to select any of the motion pictures, excepting the last deliverable hereunder, for exhibition out of the order of its general release, subject to prior runs and/or clearance granted other exhibitors, on the date or dates determined as provided in Article Sixth hereof or otherwise agreed upon, but only upon the following conditions: (a) that the Exhibitor is [fol. 5757] not in default hereunder and shall have fully complied with all the provisions, if any, set forth in the Schedule for the exhibition of one or more of said motion pictures at specified intervals; and (b) that the distributor and the Exhibitor shall then agree upon the date or dates upon which all of the motion pictures generally released prior to the general release of such motion picture and available for exhibition hereunder shall be exhibited by the Exhibitor, which date or dates shall be within thirty (30) days from the first exhibition date of the motion picture to be exhibited out of the order of its general release; or, in the alternative, the Exhibitor shall then pay to the Distributor the license fee for each of such motion pictures then generally released and available for exhibition hereunder, and as to any thereof which shall not be exhibited by the Exhibitor within thirty (30) days from the first exhibition date of the motion picture to be exhibited out of the order of its general release, the grant of the run and clearance period in respect thereof shall be deemed waived by the Exhibitor. Upon the failure or refusal of the Exhibitor to exhibit any of such motion pictures then generally released and available for exhibition hereunder within said thirty (30) day period or to pay the license fee thereof, the right of the Exhibitor to thereafter select for exhibition any motion picture out of the order of its general release shall be forfeited. The provisions of this paragraph (c) shall not be deemed to limit or qualify the Provisions of Article Sixth hereof excepting as in this paragraph (c) specifically provided.

(d) The Distributor shall make deliveries hereunder to the Exhibitor or to the Exhibitor's authorized agent, by delivery at the Distributor's exchange, or to a common carrier, or to the United States Postal authorities. If deliveries are made to a carrier or to a post office, they shall be made in time for prints to reach the place where the said theatre is located in time for inspection and a projection thereof before the usual time for opening said theatre.

(e) Exhibitor agrees to return immediately after the last exhibition, on the last date of exhibition licensed, each print received hereunder, with its reels and containers, to the exchange of the Distributor from which the Exhibitor is [fol. 5758] served, or as otherwise directed by the Distributor in the same condition as when received, reasonable wear and tear due to proper use excepted. Exhibitor agrees to pay all costs of transportation of such prints, reels, and containers from the Distributor's exchange or the last previous exhibitor having possession of the same, and return to the Distributor's exchange; or, if directed by the Distributor, to ship such positive prints elsewhere than to the Distributor's exchange, transportation charges collect. It is agreed that the delivery of a positive print properly directed and packed in the container furnished by the Distributor therefor, to a carrier designated or used by the Distributor and proper receipt therefor obtained by the Exhibitor, shall constitute the return of such positive print by the Exhibitor.

(f) If Exhibitor fails to or delays the return of any positive print to the Distributor or fails to forward or delays forwarding (as directed by the Distributor) any such print to any other exhibitor, the Exhibitor agrees to pay the Distributor the damage, if any, so caused the Distributor and in addition the damage, if any, so caused such other exhibitor. The Exhibitor shall have the right to participate in any compromise of or intervene in any arbitration or legal proceeding based upon any claim for such damage asserted against the distributor by another exhibitor; notice of which shall be given the Exhibitor by the Distributor.

Loss of and Damage to Prints

Fifth: The Exhibitor shall pay to the Distributor a sum equal to the cost of replacement at the Distributor's exchange for each linear foot of any print lost, stolen or destroyed or injured in any way in the interval between the delivery to and the return thereof by the Exhibitor in full settlement of all claims for such loss, theft, destruction, or injury. Such payment, however, shall not transfer title to or any interest in any such positive print to the Exhibitor or any other party, nor release the Exhibitor from any liability arising out of any breach of this agreement. The Distributor shall at the option of the Exhibitor repay or credit to the Exhibitor any sums paid by the Exhibitor for any lost or stolen print, excepting "news reels," upon [fol. 5759] the return of such lost or stolen print to the Distributor within sixty (60) days after the date when the same should have been returned hereunder. The Exhibitor shall not be liable for the damage or destruction of any print, provided the Exhibitor establishes such damage or destruction occurred while in transit from the Exhibitor, and delivery thereof was made as hereinabove provided. The Exhibitor shall immediately notify the Distributor's exchange by telegram of the loss, theft, or destruction of or damage or injury to any print. If any print shall be received from the Exhibitor by the Distributor or any subsequent exhibitor in a damaged or partially destroyed condition, it shall be deemed to have been so damaged or destroyed by the Exhibitor unless the latter, immediately after the first public exhibition thereof, shall have telegraphed the Distributor's exchange that such print was received by the Exhibitor in a damaged or partially destroyed condition, and setting forth fully the nature of such damage and the amount of footage so damaged or destroyed.

Selection of Playdates

Sixth: Unless otherwise agreed upon or unless definitely specified or otherwise provided for in the Schedule, the exhibition date or dates of each of said motion pictures shall be determined as follows:

1. Subject to prior runs and/or clearance granted or hereafter granted by the Distributor or Metro-Goldwyn-Mayer Distributing Corporation to other exhibitors and within a reasonable time after a print or prints of any of said motion pictures are received at the exchange of the Distributor out of which the Exhibitor is served, and provided the Exhibitor is not in default hereunder, the Distributor shall mail to the Exhibitor a notice in writing of the date when each such motion picture will be available for exhibition by the Exhibitor (which date is hereinafter referred to as the "available date"). Such notice shall be mailed to the Exhibitor at least fifteen (15) days before the available date therein specified.

2. Within fourteen (14) days after the mailing of such notice, the Exhibitor shall select an exhibition date or dates [fol. 5760] not theretofore assigned to another exhibitor or other exhibitors, within the period commencing upon the available date and ending thirty (30) days thereafter and give to the Distributor written notice of the date or dates so selected.

3. Upon the failure of the Exhibitor to so select such date or dates the Distributor shall designate such date or dates by mailing written notice thereof to the Exhibitor.

Clearance and Run

Seventh: The Distributor agrees not to exhibit or grant a license to exhibit any of said motion pictures for exhibition in conflict with the "run" or prior to the expiration of the "clearance period" if any in the Schedule specified at any theatre therein named or within the territorial limits therein specified. Such period of clearance as to each of said motion pictures shall be computed from the last date of the exhibition thereof licensed hereunder. If clearance is granted against a named theatre or theatres indicating that it is the intention of the Distributor to grant such clearance against all thea-res in the immediate vicinity of the

Exhibitor's theatre then unless otherwise provided in the Schedule, such clearance shall include any theatre in such vicinity thereafter erected or opened.

Reissues, Foreign Pictures, Advertising Matter

Eighth: Distributor warrants that none of said motion pictures are reissues of old negatives, old negatives retitled or foreign produced by a foreign producer excepting those specifically specified as such in the Schedule; and further that none of said motion pictures contains or will contain any advertising matter for which compensation is received by the Distributor, or any subsidiary or affiliate of the Distributor.

Advertising Prior to First Run

Ninth: (a) If the Exhibitor is granted a subsequent run of the said motion pictures, the Exhibitor shall not advertise any thereof by any means of advertising prior to or during the exhibition of any one of said motion pictures by any other exhibitor having the right to a prior run [fol. 5761] thereof. Nothing in this Clause shall be deemed to prohibit the Exhibitor from advertising generally all of said motion pictures as a group but such general advertising shall not refer to any one of said motion pictures during its exhibition by any other exhibitor having the first or immediately prior run thereof, excepting as herein provided.

(b) The Exhibitor shall not advertise by any means of advertising any of said motion pictures which may be roadshown by the Distributor and not excepted and excluded from this license, until after the completion of such roadshowing in the United States, and then only as permitted in paragraph (a) of this Clause.

(c) For a breach of the provisions of this Clause the Distributor shall have in addition to all other rights the right to exclude from this license any motion picture advertised in violation of the provisions hereof by written notice to such effect mailed to the Exhibitor and upon the mailing of such notice the license of such motion picture shall terminate and revert to the Distributor unless arbitration is herein provided for and immediately upon the receipt of any such notice of exclusion the Exhibitor by written notice given to the Distributor shall deny breaching any of the provisions of this Clause, in which case the question of fact raised by such denial shall be determined by arbitration.

Acceptance by Distributor

Tenth: Until accepted in writing by an officer of or any person authorized by the Distributor and notice of acceptance sent to the Exhibitor this instrument shall be deemed only an application for a license under Copyright, and may be withdrawn by the Exhibitor any time before such acceptance. Unless such notice of acceptance is sent the Exhibitor by mail or telegraph within fifteen (15) days after the date thereof, if the said theatre of the Exhibitor is located east of the Mississippi River, and within thirty (30) days after the date thereof if located west of said river, said application shall be deemed to have been withdrawn. The deposit by the Distributor of any check or other consideration given by the Exhibitor at the time of [fol. 5762] application as payment for any purpose or the delivery of a print of any of said motion pictures shall not be deemed an acceptance hereof by the Distributor.

Changes in Writing

Eleventh: This license agreement is complete and all promises, representations, understandings and agreements in reference thereto have been expressed herein. No change or modification hereof shall be binding upon the Distributor unless in writing signed by an officer of the Distributor, excepting in an emergency and only then, a change or modification may be consented to in writing but only by the representative of the Distributor managing the Distributor's exchange out of which the Exhibitor is served provided such change or modification does not change or modify the *ur*n, and/or clearance period, or decrease any rental, or eliminate any motion picture specified in the Schedule.

Assignment on Sale of Theatre

Twelfth: This license shall not be assigned by either party without the written consent of the other, provided, that if the Exhibitor sells the said theatre or transfers any interest therein and is not in default hereunder, the Exhibitor may assign this license to the purchasers of the theatre, or of such interest without the written consent of the Distributor but any such assignment shall not be valid or of any effect hereunder unless a written acceptance thereof by the assignee assuming the obligations of the Exhibitor shall be delivered to the Distributor. Any such assignment shall not release the Exhibitor from any liability hereunder unless such release from liability is consented to by the Distributor in writing.

Taxes

Thirteenth: The Exhibitor shall pay to the Distributor upon demand, any tax, fee or other like charge now and/or hereafter imposed or based upon the delivery and/or the exhibition of prints of motion pictures and/or upon the sums payable under this license by the Exhibitor to the Distributor. If under any statute or ordinance any such [fol. 5763] tax, fee or other like charge is or shall be payable or paid by the Distributor and the exact amount payable hereunder by the Exhibitor is not therein definitely fixed or cannot be exactly determined, then, the Exhibitor shall pay such part of any such tax, fee or other like charge paid or payable by the Distributor as shall be fixed in the manner determined by the then President of the American Arbitration Association.

Prevention of Performance

Fourteenth: If the Exhibitor shall be prevented from exhibiting or the Distributor from delivering any of the said motion pictures for causes beyond their direct control then this license in respect to each such motion picture shall terminate and revert to the Distributor without liability on the part of either party, provided reasonable written notice of such termination and the cause thereof is given.

Option to Exclude if Group Licensed

Fifteenth: (a) If in this license agreement the total number of feature motion pictures offered to Exhibitor by Distributor at one time shall have been licensed by Distributor hereunder, and the license fees of all thereof average not more than two hundred and fifty dollars ($250.00), the Exhibitor shall have the privilege to exclude from this license agreement not to exceed ten per cent (10%) of the total number of feature motion pictures licensed hereunder; provided the Exhibitor

(1) is not in default under this license agreement, and

(2) shall have fully complied with all of the provisions, if any, set forth in this agreement for the exhibition of such feature motion pictures at specified intervals.

(b) Such privilege of exclusion may be exercised only upon the following terms and conditions:

(1) The Exhibitor shall give to the Distributor written notice of Exhibitor's election to exclude any of said feature motion pictures within fourteen (14) days after the general release date thereof in the exchange territory out of which the Exhibitor is served.

[fol. 5764] (2) The Exhibitor may exclude without payment therefor one (1) motion picture out of each group of ten (10) of the number of feature motion pictures specified in this license agreement provided Exhibitor has paid for the other nine (9) of such group.

(3) If such privilege of exclusion is not exercised as provided in paragraph (b) (2) above, the Exhibitor may nevertheless exercise such privilege by paying the license fee of each motion picture excluded with the notice of its exclusion. In such case, such payment shall be credited against such tenth or succeeding tenth motiton picture, as the case may be, which the Exhibitor would otherwise be privileged to exclude as provided in paragraph (b) (2) above.

If the only or last group licensed is less than ten (10) and more than five (5) motion pictures, the privilege to exclude shall apply provided the Exhibitor has paid for all motion pictures but one in such group.

(c) Upon the failure or refusal of the Exhibitor to comply with any term or condition of this license agreement, or to comply with any arbitration award in respect thereto, the privilege of exclusion forthwith shall be revoked and the Exhibitor shall be liable for and pay to the Distributor the license fees of all motion pictures theretofore excluded.

(d) If the license fee of any feature motion picture specified in this license agreement is to be computed in whole or in part upon a percentage of the receipts of the Exhibitor's theatre, such license fee (for the purpose of computing the average license fee of all the motion pictures licensed) shall be determined as follows:

(1) Average the license fees of all of the Distributor's feature motion pictures exhibited upon a percentage basis at the Exhibitor's theatre during the period of one year prior to the term of this license agreement.

(2) If none of the Distributor's feature motion pictures were exhibited upon a percentage basis at such theatre during said period, average the license fees of all feature motion pictures exhibited upon a percentage basis at such theatre during the said period.

[fol. 5765] (e) If the rental of any motion picture excluded is to be computed in whole or in part upon a percentage of the receipts of the Exhibitor's theatre, the sum to be paid by the Exhibitor as provided in paragraph (b) (3) hereof shall be determined as follows:

(1) Average the gross receipts of all the Distributor's feature motion pictures exhibited at the Exhibitor's theatre during the ninety (90) day period preceding the Exhibitor's notice of exclusion, and apply to such average the percentage terms specified in this license agreement for the picture excluded.

(2) If no feature motion pictures of the Distributor were exhibited at the Exhibitor's theatre during said ninety (90) day period, average the daily gross receipts of the Exhibitor's theatre for the period of thirty (30) operating days preceding the Exhibitor's notice of exclusion and apply to such average the percentage terms specified in this license agreement for the picture excluded.

(f) In computing the number of feature motion pictures which may be excluded hereunder, fractions of more than one-half (½) shall be regarded as one (1).

(g) Upon the exclusion of each feature motion picture, the license therefor and all rights thereunder shall terminate and shall revert to the Distributor.

First Run Exhibitions

Sixteenth: (a) If the Exhibitor is granted a first run of the said motion pictures, the Exhibitor shall exhibit each of the feature motion pictures excepting those described in

Paragraph (d) of this Clause within the period beginning with the date scheduled and announced by the Distributor for the general release of each feature motion picture in the territory wherein is located the exchange of the distributor out of which the Exhibitor is served and ending one hundred and twenty (120) days thereafter, notwithstanding any provision of Clause Sixth hereof to the contrary. If the first exhibition date of any of the said motion pictures shall occur on a date later than ninety (90) days after its scheduled and announced general release date, then the period [fol. 5766] of clearance of such motion picture shall be reduced so as to expire one hundred and twenty (120) days after said scheduled date of its general release. If the Exhibitor is granted a first run of the said motion pictures and the Exhibitor fails to exhibit any feature motion picture within said period of one hundred and twenty (120) days, the grant of the said first run and the clearance period in respect thereof shall be deemed waived by the Exhibitor and the license fee as to such feature motion picture shall thereupon forthwith become due and payable to the Distributor, with the right to the Exhibitor to exhibit such feature motion picture as hereinafter in Paragraph (e) of this Clause provided.

Second Run Exhibitions

(b) If the Exhibitor is granted a second run of the said motion pictures and any other exhibitor having been granted the first run thereof immediately prior to such second run fails to exhibit any of the feature motion pictures, excepting those described in Paragraph (d) of this Clause within the said period of one hundred and twenty (120) days specified in Paragraph (a) of this Clause, the Exhibitor shall exhibit each such feature motion picture within the period beginning with the date of the expiration of the said one hundred and twenty (120) days period and ending fourteen (14) days thereafter, notwithstanding any provision of Clause Sixth hereof to the contrary. If the Exhibitor is granted a second run of the said motion pictures and the Exhibitor fails to exhibit any feature motion picture within said fourteen (14) days period the grant of such second run and the clearance period if any in respect thereof shall be deemed waived by the Exhibitor and the license fee as to such feature motion picture shall thereupon forthwith become due and payable to the Distributor with the right to the Exhibitor to exhibit such feature motion picture as hereinafter in Paragraph (e) of this Clause provided.

Subsequent Runs Exhibitions

(c) If the Exhibitor is granted a run subsequent to a second run of the said motion pictures and any other Exhibitor [fol. 5767] having been granted the second run thereof immediately prior to such subsequent run fails to exhibit any of the feature motion pictures, excepting those described in Paragraph (d) of this Clause, within the said period of fourteen (14) days specified in Paragraph (b) of this Clause, the Exhibitor shall exhibit each feature motion picture within the period beginning with the date of the expiration of the said fourteen (14) day period and ending seven (7) days thereafter, notwithstanding any provisions of Clause Sixth hereof to the contrary. If the Exhibitor is granted a run subsequent to a second run of the said motion pictures and the Exhibitor fails to exhibit any feature motion picture within said seven (7) day period, the grant of such subsequent run and the clearance period if any in respect thereof shall be deemed waived by the Exhibitor and the license fee as to such feature motion picture shall thereupon forthwith become due and payable to the Distributor with the right to the Exhibitor to exhibit such feature motion picture as hereinafter in Paragraph (e) of this Clause provided.

Extended Runs

(d) Any of the motion pictures which shall have been exhibited at any theatre in the said territory for more than one show week prior to the run granted the Exhibitor shall be excepted from the provisions of this Clause and of Paragraph (b) of Clause Fourth.

Exhibition After Revocation of Run and Clearance

(e) Upon the waiver of the grant of the run and/or the clearance period of any feature motion—as provided in Paragraphs (a), (b) or (c) of this Clause, the Exhibitor upon payment of the sum or sums payable hereunder as provided in this Clause for the license to exhibit such feature motion picture, shall have the right to exhibit the same hereunder upon a date or dates not in conflict with any run and/or clearance period granted or hereafter granted to other exhibitors, upon written request mailed or delivered to the Distributor within sixty (60) days after the last date upon which such feature motion picture should have been exhibited by the Exhibitor as provided in this Clause. Fail- [fol. 5768] ing to make such request within said period of sixty (60) days the license to exhibit such feature motion picture granted hereunder shall terminate and revert to the Distributor.

If the provisions of this Clause shall in anywise be in conflict with the provisions of any other license agreement made and entered into by the Distributor with any other exhibitor prior to September 1, 1933, the provisions of this Clause shall be deemed to be subordinate and subject to the provisions of such other license agreement.

Default

Seventeenth: If the Exhibitor shall fail or refuse to pay the rental of any of such motion pictures as provided in this license or to furnish statements of the receipts of said theatre, if any are required hereunder, or to give the Distributor's representative access to the said theatre or its box office and/or the Exhibitor's books and records relative to motion pictures the rentals of which are based upon the said theatre's admission receipts as herein provided, or if the Exhibitor shall exhibit or permit the exhibition of any of said motion pictures at any time or place other than as herein specified, or if the Exhibitor becomes insolvent or is adjudicated a bankrupt, or executes an assignment for the benefit of his creditors, or if a receiver is appointed for any of the property of the Exhibitor, or if the Exhibitor voluntarily or by operation of law should lose control of the said theatre or of his said interests therein making it impossible for the Exhibitor to exhibit the said motion pictures at the said theatre, then upon the happening of any one or more of said events, the Distributor may at its option, (1) terminate this license agreement, or (2) suspend the delivery of additional motion pictures hereunder until such default or defaults shall cease and be remedied. It is agreed that the exercise of any of said remedies by the Distributor shall be in addition to and without prejudice to any right or remedy of the Distributor against the Exhibitor at law or in equity and/or otherwise provided for in this license agreement.

[fol. 5769] Cutting or Alteration of Prints

Eighteenth: The Exhibitor shall exhibit each print in its entirety and shall not copy, duplicate, subrent or part with possession of any print. The Exhibitor shall not cut or alter any print, excepting to make necessary repairs thereto, or when required by any duly constituted public official or authority or with the written or telegraphic consent of the Distributor. The Exhibitor however may cut the print of a newsreel, and in such case shall completely restore all parts cut therefrom, prior to the return thereof to the Distributor or shipment elsewhere if so directed by the Distributor, in the same condition as received by the Exhibitor.

Advertising Accessories

The Exhibitor agrees to lease from the Distributor or the Distributor's authorized agent for use only in connection with the exhibition of each of the motion pictures exhibited hereunder and agrees not to sublease or sell the following advertising accessories: (All advertising accessories used by Exhibitor in connection with the exhibition at said theatre of the motion pictures licensed hereunder).

Roadshows

Nineteenth: (a) The Distributor shall have the right to exhibit and/or cause to be exhibited as a "roadshow", at any time prior to the exhibition thereof hereunder such of the motion pictures licensed hereunder as the Distributor may from time to time select and determine, provided, however, that such roadshow exhibitions shall be at theatres at which admission prices for evening performances, during such exhibitions thereof, of not less than one dollar shall be charged for the majority of the orchestra seats, and further provided that, except in the cities of New York and Los Angeles, not more than two of such motion pictures shall be so roadshown.

(b) If and when any such roadshow exhibition shall be in the City of New York and/or the City of Los Angeles, and if the Exhibitor's theatre is situated in the territory [fol. 5770] then served by the Distributor's exchange or exchanges located in New York or in Los Angeles, as the case may be, the Distributor shall have the right to except and exclude from this license not to exceed two of such motion pictures so roadshown in each or both of said territories, upon sending to the Exhibitor written notice to such effect not later than four (4) weeks after the commencement of such roadshow exhibition and provided that the Distributor shall by like notice except and exclude such motion picture from all other license agreements containing this Clause and licensing the exhibition of such motion picture in such territory. The exception and exclusion of any such motion picture in the territory then served by the Distributor's exchange or exchanges located in the City of Los Angeles, or in the City of New York, as the case may be, shall not be deemed to require the Distributor to except and exclude the same motion picture in both of said territories.

(c) If and when any such roadshow exhibition excepting those in the City of New York and/or in the City of Los Angeles, shall be in the territory served by the Distributor's exchange or exchanges serving the Exhibitor's theatre, the Distributor shall have the right to except and exclude from this license not to exceed two of such motion pictures so roadshown upon sending to the Exhibitor written notice to such effect within seven (7) days after the commencement of such roadshow exhibition and provided that the Distributor shall by like notice except and exclude each such motion picture from all other license agreements containing this Clause and licensing the exhibition of such motion picture in such territory.

(d) The inadvertent omission to send to any of such other exhibitors the notice provided for in Paragraphs (b) and (c) of this Clause shall not be deemed to affect the exception and exclusion from this license of any such motion picture.

(e) The Distributor may so exercise such right to except and exclude any such motion picture from time to time, in the respective territories, as above defined, in the United States. Any motion picture so roadshown in any place in the United States, and not excepted and excluded from this license as aforesaid, shall not be deemed available for ex- [fol. 5771] hibition hereunder until after the completion of such roadshowing of such motiton picture in the United States, and such motition picture shall be exhibited hereunder when generally released by the Distributor and as and when available for exhibition by the Exhibitor, and the term of this license agreement specified in Clause Second shall be in respect to each such motion picture, extended to and including the date or dates of exhibition by the Exhibitor hereunder of each thereof.

(f) For each motion picture that the Distributor shall except and exclude, as aforesaid, the Exhibitor is hereby granted the option to except and exclude from this license (in addition to those which may be excluded as provided in Clause Fifteenth) one of the other motion pictures licensed hereunder, but only if the Exhibitor shall give to the Distributor written notice to such effect not later than fourteen days before the date fixed for the exhibition hereunder of such other motion picture. The Distributor may exhibit and/or license the exhibition of any and all motion pictures excepted and excluded from this license by the Distributor, and/or the Exhibitor, as aforesaid, when and where desired by the Distributor, free from all claims of the Exhibitor in respect thereof and the license of each thereof shall forthwith upon exclusion as hereinbefore provided terminate and revert to the Distributor.

Arbitration

Twentieth: The Exhibitor and the Distributor respectively, freely and voluntarily agree that as a condition precedent to the commencement of any action or proceeding in any court by either of them, to determine, enforce or protect the legal rights of either hereunder, each shall submit all claims and controversies arising hereunder for determination by arbitration to an Arbitration Board (hereby expressly waiving the oath of the Arbitrators) which shall consist of four members, each of whom shall be engaged in the motion picture business, and two of whom to be appointed by the Exhibitor, and the remaining two to be appointed by the Distributor.

Upon the written request of the Distributor or the Exhibitor for the arbitration of any dispute or controversy arising hereunder, the party making such request shall [fol. 5772] name therein two arbitrators stating the business address and business or business connection of each and shall designate therein the date, time and place of the hearing of such controversy. The date of such hearing shall not be earlier than seven (7) days from the date of the sending of such notice, unless it shall be claimed in such notice that irreparable injury will result unless there is a speedy determination of such controversy in which case such hearing may be designated to be held earlier than said seven (7) day period.

Within five (5) days after the mailing of such request for arbitration, the party upon whom such request is made shall name two arbitrators in a written notice mailed or delivered to the other party, stating therein the business address and business or business connection of each arbitrator. If either party fails or refuses to name the arbitrators as herein provided or if any arbitrator so named shall fail or refuse to act, or be unable to serve or shall be challenged and others are or another arbitrator qualified and then available to act is not then appointed, others or another arbitrator may be appointed by the other party as the case may be.

No member of the Arbitration Board shall hear or determine any controversy in which he has an interest direct or indirect and any member having such interest shall be disqualified to act.

If the arbitrators or a majority of them are unable to reach a decision, then they, or a majority of them shall immediately select an umpire who shall not be engaged in the motion picture business. In such case the hearing before the umpire shall be at such time and place as the umpire shall designate and shall be had before the umpire alone, the arbitrators not to be permitted to attend the hearing before the umpire. If the arbitrators or a majority of them are unable to agree upon the selection of an umpire, the American Arbitration Association shall be requested to make such selection.

The Arbitration Board shall have general power to determine such dispute or controversy as shall be submitted, to make findings of fact in respect thereof and to direct specific performance of a contract, and/or that the same has been breached in whole or in part, and/or that damages on such [fol. 5773] account shall be paid. The Board of Arbitration shall have the power only to give force and effect to the provisions of this license agreement and the rights or obligations of the parties thereunder; provided that if after a full hearing of any controversy submitted for arbitration hereunder, excepting any submission to an umpire designated as hereinabove provided, the arbitrators or a majority of them are of the opinion that because of unusual circumstances arising after the execution of this license agreement and beyond the direct control of the parties hereto disclosed at such hearing, a strict enforcement of the provisions of this license agreement would impose undue hardship upon one of the parties, the arbitrators or a majority of them may recommend in writing to the parties a settlement of such controversy upon such terms and conditions deemed by the arbitrators fair and just. If such settlement is not agreed to by the parties within five (5) days after the receipt of a copy of such recommendation, the controversy shall be deemed withdrawn from the arbitrators and shall be submitted with a written statement of all of the facts adduced at the hearing before the arbitrators together with all documentary evidence, to the National Appeal Board in New York. The disposition by the National Appeal Board of any such recommendation shall be final and binding upon the parties hereto.

The hearing of any such controversy shall be had before the Arbitration Board in the city wherein is situated the exchange of the Distributor from which the Exhibitor is served, unless the parties agree in writing that such hearing be had in some other place. If either party fails or refuses to submit to arbitration any such claim or controversy, the other party may apply to a United States District Court, or to any other Court, including a court of a state in which such hearing would otherwise not be had, for an order to proceed to arbitrate in which case such hearing shall be had in such place as the court to which such application is made may lawfully direct.

The parties hereto further agree to abide by and forthwith comply with any decision or award of the arbitrators, or a majority of them and consent that any such decision or award shall be enforceable in or by any Court of competent [fol. 5774] jurisdiction pursuant to the law of such jurisdiction now or hereafter in force.

If the Exhibitor shall fail or refuse to submit to arbitration any such claim or controversy or to abide by and comply with the award of the arbitrators in respect thereto, within seven (7) days, the Distributor may at its option suspend the deliveries of the motion pictures provided for in this and in each other existing license agreement between the parties hereto and/or each existing exhibition contract entered into between Exhibitor and Metro-Goldwyn-Mayer Distributing Corporation and/or terminate this, and each such other license agreement; and upon such termination the aggregate of the license fees of all motion pictures specified in this and any other such license agreement then not exhibited forthwith shall become due and payable by the Exhibitor.

If the Distributor shall fail or refuse to submit to arbitration any such claim or controversy or to abide by and comply with the decision or the award of an Arbitration

Board in respect thereto within seven (7) days, the exhibitor may at the option of the Exhibitor terminate this and any other existing license agreement between the parties hereto by mailing a notice to such effect to the Distributor within seven (7) days after such failure or refusal; and the Exhibitor shall have the rights and remedies provided in Clause Second (b) for failure to deliver motion pictures.

Any such termination by either party shall be without prejudice to any other right or remedy which the party so terminating may have by reason of any breach by the other party to this or any other existing agreement between the parties.

Each of the parties hereto, without notice to the other, may apply to any Court having jurisdiction to make this agreement to arbitrate a rule or order of such Court.

The parties further agree that if the National Appeal Board referred to in the sixth paragraph of this Clause Twentieth is not in existence at the time of the submission to arbitration of any claim or controversy arising hereunder, then and in such event that part of said sixth paragraph of this Clause Twentieth referring to the National Appeal Board (viz., from the word "provided" to the end [fol. 5775] of said sixth paragraph) shall be deemed of no force or effect, and the decision and/or award rendered by the Arbitration Board shall be final and binding upon the parties hereto.

Midnight Shows

Twenty-First: The license herein granted for the number of days specified in the Schedule shall not include the right of exhibition at any time previous to dawn of the first licensed and booked date of exhibition unless Exhibitor receives prior express permission therefor in writing from Distributor.

Twenty-Second: The following Schedule and all of the written and printed parts thereof are a part of this license:

Schedule

There are licensed for exhibition hereunder all of the Distributor's motion pictures of feature length, not to exceed fifty-two (52) and not less than forty-four (44), including not more than one (1) motion picture foreign produced by a foreign producer, generally released by the Distributor or Metro-Goldwyn-Mayer Distributing Corporation for distribution as Distributor's or Metro-Goldwyn-Mayer Distribution Corporation's 1936-37 feature productions to motion picture theatres in the United States during the year commencing September 1, 1936, and ending August 31, 1937, except the motion pictures as to which Distributor is required by contract to obtain the consent or approval of the producer thereof, or other party, to the terms and conditions of licensing the exhibition thereof, unless Distributor obtains such consent or approval to the licensing thereof hereunder. The "road-showing," "tryout," "preview" and/or "pre-release" of any motion picture during the said year shall not be deemed a general release of such motion picture.

It is expressly understood and agreed that neither THE GREAT ZIEGFELD, nor any feature productions licensed by Distributor or Metro-Goldwyn-Mayer Distributing Corporation as 1935-36 feature productions (even if generally released during the year commencing September 1, 1936), are included in this agreement.

[fol. 5776] It is agreed that Women Are Trouble and Kelly the Second, which were generally released prior to said September 1st, 1936, are included herein as 1936-37 productions.

For the license to exhibit said motion pictures at said theatre Exhibitor agrees to pay to Distributor the following:

Classifications

Number of motion pictures	Consecutive days run	License fee or minimum guarantee against % of gross receipts per motion picture		Score charge license fee per motion picture	To be exhibited on below specified days of week
		Rental or minimum guarantee	% of all gross receipts		

Total Number of Feature Motion Pictures Offered ....

Total Number of Feature Motion Pictures Licensed ....

It is agreed that the motion pictures which are to be exhibited by Exhibitor under each of the classifications above provided for shall be designated by the Distributor, and that any motion picture which Distributor does not designate to any of such classifications at least fourteen (14) days prior to the date agreed upon or assigned for the commencement of its exhibition shall be exhibited on the terms provided for in the last Classification above.

It is further agreed that in case any motion picture excluded by Exhibitor under the "Option to Exclude" provision of this agreement shall be or shall have been designated by Distributor to any of the foregoing classifications, then such designation shall be deemed automatically rescinded and Distributor may designate a different motion picture in its place for exhibition upon the terms applicable to the motion picture so excluded.

It is further agreed that in the event any playdates confirmed to Exhibitor for any motion picture designated by Distributor to any of the foregoing classifications shall [fol. 5777] be on days of the week other than those herein provided for pictures of the respective classification, such playdates shall be deemed cancelled and Exhibitor agrees to select other playdates on days of the week herein provided for pictures of the classification to which such picture is designated by the Distributor.

(A) It is agreed that if any of the motion pictures licensed hereunder are licensed upon a "participating basis," that is, if the rental thereof is to be determined in whole or in part upon a percentage of the receipts of said theatre or any part thereof.

(a) that in reporting to Distributor as provided in paragraph (b) of Clause Third hereof Exhibitor shall use the form of statement furnished by Distributor and shall set forth in each such statement the number of admissions at the respective admission prices charged at each performance, the number of free admissions at each performance, and such other data as called for by said form of statement.

(b) that Exhibitor's books and records shall show, among other items, the number of admissions and the gross receipts of each separate performance during the engagement of each of such motion pictures—matinee, evening, and any other performances; and that if Exhibitor's operating expense is an element of the computation of the amount payable to Distributor hereunder, the right herein granted Distributor to audit Exhibitor's books and records shall include the right to examine all of such books and records relating to Exhibitor's operating expenses, and that in computing Exhibitor's operating expenses any and all income (such as amounts payable to Exhibitor from renting and/or sub-renting space in the building where the Exhibitor's theatre is located and/or for screen advertising of any kind on the screen in the theatre; etc.) during the period of the engagement of any motion picture on a "participating basis" shall be deducted from Exhibitor's operating expenses.

(c) that all sums of money accruing to Distributor hereunder shall be held by Exhibitor in trust for Distributor.

(B) It is further agreed that "gross receipts," as such term is used in this agreement, means all sums (exclusive of admission taxes collected) received by Exhibitor for [fol. 5778] admission to said theatre on the date(s) of exhibition of the respective motion pictures.

(C) Exhibitor agrees to advertise and announce each motion picture as a "Metro-Goldwyn-Mayer Production"; and further agrees that in all newspaper advertising and publicity issued by Exhibitor relating to said motion pictures Exhibitor shall adhere to the form of announcement contained in the advertising matter issued by Distributor.

(D) It is agreed that if Exhibitor shall fail or refuse to date, play, or pay the license fees of any motion picture(s) contracted for under any other exhibition contract(s) between the parties hereto or under any exhibition contract entered into between Exhibitor and Metro-Goldwyn-Mayer Distributing Corporation, or if Exhibitor violates any of the other provisions of any of such other contract(s), Distributor may at its option exercise with respect to this agreement any and all of the rights granted Distributor under Clause Seventeenth hereof, and further agreed that in the event Distributor elects to terminate as provided in said Clause Seventeenth Distributor may at its option declare the aggregate of the license fees of all motion pictures specified in this agreement then not exhibited and/or paid for forthwith due and payable by Exhibitor; provided that nothing herein contained shall be deemed to give Distributor any of such rights with respect to a feature motion picture contract because of Exhibitor's default and a short subjects contract or (vice versa) if Exhibitor shall have agreed to arbitrate all claims and controversies arising under all existing exhibition contracts between the parties hereto.

(E) It is agreed that upon a breach or default by Exhibitor under this contract or any other contract between Distributor and Exhibitor or under any exhibition contract entered into between Exhibitor and Metro-Goldwyn-Mayer Distributing Corporation by reason of which Distributor shall have the right to declare same a breach of the entire contract and/or of any or all other contracts between the parties and to recover as damages therefor the amount payable as license fees in respect of all motion pictures contracted for under this contract and/or such other contract(s) not therefore exhibited and/or paid for, the amount Distributor shall be entitled so to recover as [fol. 5779] damages for each day on which any motion pictures licensed under this and/or any such other contract(s) upon a "participating basis" was to have been exhibited is hereby liquidated as follows: Distributor shall be entitled to recover (in addition to any fixed sums payable able in respect of such motion picture) a sum equal to the percentage provided for in such "participating basis" of the average daily gross receipts of the theatre during the exhibition thereat of all feature motion pictures distributed by Distributor exhibited by Exhibitor on a "participating basis" during the period of ninety (90) days prior to the date Distributor so declares such breach of the entire contract; or, in the event no feature motion picture distributed by Distributor was exhibited at said theatre on a "participating basis" during said period, then Distributor shall be entitled to recover (in addition to any fixed sums payable in respect of such motion picture) a sum equal to said percentage of the average daily gross receipts of the theatre during the period of thirty (30) operating days immediately prior to the date Distributor so declares such breach of the entire contract.

(F) Exhibitor hereby expressly grants Distributor the right to demand and receive, as a condition precedent to delivery of the print and/or sound records of any motion picture contracted for hereunder, payment of all amounts then due Distributor by Exhibitor under this or any other exhibition contract(s) between the parties hereto and/or under any exhibition contract(s) entered into between Exhibitor and Metro-Goldwyn-Mayer Distributing Corporation and Distributor may require such payment of all sums then due by means of a C. O. D. shipment or otherwise.

(G) It is agreed that if the number of days of exhibition selected, designated or otherwise agreed upon, and confirmed in writing by Distributor for any motion picture licensed hereunder shall be less than the maximum number of days specified in the Schedule hereof with respect to such motion picture, then regardless of the number of days specified in said Schedule the license hereby granted to Exhibitor as to such motion picture shall be limited to the number of days of exhibition so selected and confirmed, unless Exhibitor prior to the last playdate so confirmed by Distributor shall secure Distributor's consent in writing [fol. 5780] to exhibit such motion picture an additional day or days up to the maximum number of days specified in said Schedule.

It is further understood and agreed that the license hereby granted shall not be deemed to include—

(a) any right of exhibition of any motion picture licensed hereunder at any time other than on the date or dates of exhibition selected, designated or otherwise agreed upon, as herein provided, and confirmed in writing by Distributor to Exhibitor for such picture; nor

(b) any right of exhibition of any motion picture licensed hereunder other than by means of the print of the picture furnished to Exhibitor by Distributor for the express purpose of exhibition on the date or dates of exhibition so selected, designated or otherwise agreed upon, as herein provided, and confirmed in writing by Distributor to Exhibitor for such picture.

(H) It is understood and agreed that the remedy of damages provided for in Clause Second (b) of this agreement shall be the sole and exclusive remedy for any of the defaults by Distributor referred to in said Second (b).

(I) It is understood and agreed that Distributor may furnish prints of any of the motion pictures contracted for hereunder mounted on reels of 2000 feet maximum capacity.

(J) It is agreed that clause Nineteenth hereof (headed "Roadshows") be and same hereby is modified and amended so that the number of motion pictures mentioned in subdivisions (a), (b) and (c) of said clause shall be three (3) instead of two (2).

(K) Exhibitor during the whole of the licensed exhibition period of each of the motion pictures exhibited hereunder agrees to and shall charge for admission to said theatre the following prices:

	Matinee Admission Prices, per person		Evening Admission Prices (Commencing 6 P. M.), per person	
Orchestra:	**Children....**	**Adults......**	**Children.......**	**Adults..........**
Balcony:	**Children....**	**Adults......**	**Children.......**	**Adults..........**

If during any such period less than said respective admission prices is charged, the Distributor in addition to all other rights hereunder shall have the right: (a) to [fol. 5781] immediately terminate the license of the motion picture then being exhibited by written notice to such effect to the exhibitor, and upon the giving of such notice the license of such motion picture shall forthwith terminate and revert to the Distributor; or (b) provided the Exhibitor is granted herein a period of clearance, to reduce such period by not to exceed one-half in respect to each of the motion pictures thereafter deliverable hereunder; or (c) provided no period of clearance is specified in the Schedule, to withhold for a period not to exceed sixty (60) days notice of the date when each motion picture thereafter deliverable hereunder will be available for exhibition by the Exhibitor, and as to each such motion picture the "run" thereof, if any, granted the Exhibitor, shall be deemed revoked and the Exhibitor agrees to exhibit each such motion picture after notice of the available date thereof upon the date or dates determined as provided in Clause Sixth hereof.

It is further agreed that during the entire period of the engagement at said theatre of each of the motion pictures licensed hereunder none of the respective admission prices above set forth shall be reduced without the prior written consent of Distributor, and that if any of the motion pictures licensed hereunder are licensed upon a "participating basis"—that is, if the rental thereof is to be determined in whole or in part upon a percentage of the receipts of said theatre or any part thereof—that Exhibitor shall account to Distributor upon the basis of the respective admission prices set forth above for each person admitted to the theatre, except for a customary and reasonable number of free admissions to bona fide representatives of the press and/or in consideration of theatre advertising at each performance of each of said motion pictures (provided that if at any such performance any of the prices of admission are greater than the respective amounts above set forth Exhibitor shall account to Distributor on the basis of such larger amounts); and further agreed that if during the engagement of any of the motion pictures licensed hereunder any of the respective admission prices above set forth are reduced without prior written consent of Distributor, or upon failure or refusal of Exhibitor to account to Distributor upon the basis herein provided with respect to any one or more of the motion pictures licensed [fol. 5782] hereunder on a "participating basis," Distributor shall have the right to terminate this contract as to all motion pictures not theretofore exhibited hereunder, together with the right at Distributor's option to terminate any other exhibition contract(s) between the parties hereto and/or any exhibition contract(s) entered into between Exhibitor and Metro-Goldwyn-Mayer Distributing Corporation and Distributor may at its option thereupon declare such violation hereof by Exhibitor a breach of this entire contract and/or any or all such other contracts entitling Distributor to recover from Exhibitor as damages therefor the amount payable as license fees in respect of all motion pictures not theretofore exhibited and/or paid for pursuant to the provisions of this contract and/or such other contract(s). It is understood and agreed that such rights shall be in addition to any and all other rights and remedies granted Distributor in this agreement and without prejudice to any and all other rights and remedies of Distributor at law or equity.

Run Clearance

(L) In case Exhibitor is granted a second and/or subsequent run hereunder Distributor may at its option require any of the motion pictures to be exhibited by Exhibitor as a prior run and Exhibitor agrees so to exhibit same.

(M) Separate Applications: It is expressly understood and agreed that the approval or rejection of this application by Distributor shall not be deemed an approval or rejection of any other application or applications signed by Exhibitor at the same time or at any other time.

Playing Arrangement(s)

Exhibitor by executing this application acknowledges that Distributor has two different forms of exhibition contract for the product hereby licensed and has offered Exhibitor the choice, and that Exhibitor has of his (its) own free will selected this form.

[fol. 5783] Optional Arbitration Clause

Optional Clause: The foregoing Clause Twentieth is optional with the parties hereto. If it is desired to make such clause a part of this license, the Exhibitor and the duly authorized representative of the Distributor shall sign their respective names where indicated immediately following this paragraph and unless so signed the said Clause shall be deemed excluded from this license agreement.

It is agreed by and between the parties that Clause Twentieth, providing for voluntary arbitration of disputes arising hereunder, shall be included as a part of this license.

—— ——, Representative of the Distributor Duly Authorized to Agree to the Foregoing Clause Twentieth. Exhibitor —— ——, L. S., An Individual—A Partnership—A Corporation (Strike Out Two), by —— ——, Partner—General Manager—Officer (Strike Out Two).

In witness whereof .... the Exhibitor, operating the .... Theatre, located at .... Street, in the City & State: .... has on Date: .... executed this application, which upon written acceptance thereof by the Distributor shall be deemed to be the license of the said Exhibitor for the exhibition of the motion pictures specified in the Schedule, but only at the said Theatre in accordance with the terms and conditions hereof.

Loew's Incorporated (Distributor of Metro-Goldwyn-Mayer Pictures), by —— ——, (This Signature is for Identification Only and Is Not an Acceptance) Lessee—Owner (Strike Out One). Exhibitor —— ——, L. S., An Individual—A Partnership—A Corporation (Strike Out Two), by —— ——, Partner—General Manager—Officer (Strike Out Two). Accepted, Approved and Countersigned at New York, N. Y. Date —— ——, ——, Loew's Incorporated (L. S.), by —— ——, Vice President or Sales Manager.

[fols. 5784-5791]

Branch	Territory Letter	Exhibitor's Record Card	Contract Register	Contract Number	Amount

[fol. 5792] PARAMOUNT—1936-37

Form 3640D 5-36

Standard License Agreement

Agreement of license under copyright made in one or more counterparts between Paramount Pictures, Inc., a New York Corporation (hereinafter referred to as the Distributor), party of the first part, and the Exhibitor (hereinafter named and referred to as the "Exhibitor," operating the theatre hereinafter designated), party of the second part, Witnesseth: The parties hereto agree as follows:

License

First. The Distributor grants the Exhibitor and the Exhibitor accepts, a limited license under respective copyrights of the motion pictures designated and described in the Schedule hereof and under the copyright of any matter included in any sound recorded therewith, to exhibit publicly said motion pictures and to reproduce for public performances such recorded sound in synchronism therewith, but only at the said theatre for the number of consecutive days specified in the Schedule and for no other use or purpose; provided that the reproducing equipment in the said theatre will operate reliably and efficiently to reproduce such recorded sound with adequate volume and high quality; and provided further that if copyrighted musical compositions are included in such recorded sound, the Exhibitor will have at the date or dates of the exhibition of each of such motion pictures a license from the copyright proprietor thereof or from any licensee of such copyright proprietor to perform publicly the said copyrighted musical compositions. If more than one theatre is hereinafter designated the said motion pictures are licensed for exhibition at only one of such theatres unless otherwise in the Schedule specifically provided in writing.

[fol. 5793] Term and Warranty

Second. (a) The term of this Agreement shall begin with the date fixed or determined for the exhibition at the said theatre of the first motion picture deliverable hereunder and shall continue for a period of one year thereafter unless otherwise in the Schedule provided. The Distributor agrees during said term to deliver to the Exhibitor, and the Exhibitor agrees to exhibit at said theatre during said term upon the date or dates herein provided for, a positive print of each of said motion pictures except such as may be excluded as provided in Clause Fourteenth hereof. The Distributor warrants that each positive print will be in good physical condition for projection and exhibition, and will clearly reproduce the recorded sound in synchronism therewith if properly used upon standard reproducing equipment. If the recorded sound is not recorded upon a print, all references herein to a print shall be deemed to include the records, discs, and any other device upon which sound may be recorded for reproduction with the exhibition of a print.

Damages—Failure to Deliver

(b) If the Distributor shall fail or refuse to deliver, or the Exhibitor shall fail or refuse to exhibit during the term hereof, any of said motion pictures, excepting those which may be eliminated as provided in Clause Fourteenth hereof, or if the Distributor shall wilfully violate any of the provisions of Clause Seventh hereof or shall deliver to the Exhibitor a print of any motion picture which print shall be determined was not in condition for exhibition and for the reproduction of sound as provided in Clause Second, the Exhibitor or the Distributor, as the case may be, shall pay the damage so caused and if such damage cannot be definitely computed shall pay as liquidated damages a sum equal to the fixed sum herein specified as the rental of each such motion picture or a sum computed as provided in Clause Third (c) hereof, if the rental of any such motion picture is to be determined, either in whole or in part upon a percentage of the admission receipts of said theatre or any part thereof or upon a percentage of such receipts and a fixed sum; provided that any claim by the Exhibitor [fol. 5794] with respect to the condition of a print shall be deemed to have been waived by the Exhibitor unless notice of such claim shall have been given by the Exhibitor to the Distributor's exchange from which the Exhibitor is served, by telephone or telegraph, or in person, immediately after the first public exhibition thereof by the Exhibitor and written confirmation thereof mailed by the Exhibitor upon the same day to the Distributor's said exchange.

Payment

Third. (a) Exhibitor agrees to pay for such license as to each such motion picture the fixed sums specified in the Schedule at least three (3) days in advance of the date of delivery of a print thereof at the Distributor's exchange or of the date of shipment to the Exhibitor from another exhibitor, unless after the acceptance of this application by the Distributor such payment shall be otherwise agreed to by the Distributor in writing signed by an officer of the Distributor. All payments hereunder shall be made to the Distributor at the City in which is located the exchange from which the Exhibitor is served.

(b) Percentage Bookings.—If the rental of any such motion pictures is to be determined either in whole or in part upon the admission receipts of said theatre or any part thereof, the Exhibitor agrees to pay such rental immediately after the last exhibition upon the last date of the exhibition of each such motion picture or if requested by the Distributor at the end of each day's exhibition. In each such case the Exhibitor shall deliver to the Distributor immediately after the last exhibition upon each date of exhibition of each such motion picture a correct itemized statement of the gross receipts of said theatre for admission thereto upon each such date. Such statement shall be signed by the Exhibitor or the Manager or Treasurer of said theatre and the Cashier thereof and shall include a statement of such facts and figures as may be provided in the Schedule to be furnished by the Exhibitor, and if requested by the Distributor, shall be made upon forms furnished by the Distributor. Upon the exhibition date or dates of each motion picture an authorized representative of the Distributor is hereby given the right to verify the sale of all [fol. 5795] tickets of admission to said theatre, and the receipts therefrom; and for such purpose shall have access to the theatre, including the box office, and also the right to examine all relevant entries relating to such gross receipts in all the Exhibitor's books and records, and if hereunder it is provided that the Exhibitor make certain expenditures and/or deductions, to examine all entries relating to such expenditures and/or deductions. Such right of access and examination of the Exhibitor's books and records limited as aforesaid, shall continue for a period of four (4) months after the receipt by the Distributor of each such statement. The Distributor agrees, unless such representative is in the continuous employ of the Distributor or employed as a checker, not to employ as a representative for such purpose any person a resident of or employed in the place where the said theatre is located, other than a person engaged in business as an accountant. The Distributor agrees that any information obtained pursuant to the provisions of this clause will be treated as confidential, excepting in any arbitration proceeding or litigation in respect to this license.

(c) Liquidated Damages—Percentage Bookings.—If the Exhibitor fails or refuses to exhibit any of said motion pictures as herein provided and the rental or any part thereof is to be computed in whole or in part upon a percentage of the admission receipts of said theatre, the Exhibitor shall pay the Distributor as liquidated damages for each day the Exhibitor fails or refuses to exhibit such motion pictures, in addition to any fixed sums payable hereunder in respect of such motion picture, a sum equal to such percentage of the average daily gross receipts of such theatre on each date any feature motion picture distributed by the

Distributor was exhibited thereat during the period of ninety (90) days prior to the date or dates when said motion picture should have been so exhibited hereunder, or if no feature motion picture distributed by the Distributor was exhibited at such theatre during said ninety day period, then a sum equal to such percentage of the average daily gross receipts of such theatre during the period of thirty operating days immediately prior to the date or dates when such motion pictures should have been exhibited, or prior to the date of such failure or refusal to [fol. 5796] exhibit any of said motion pictures: *Provided* That if the Exhibitor shall exhibit such motion pictures for less than the full number of days provided for in the Schedule, for each day less than said full number of days, the sum equal to such percentage shall be computed upon a sum equal to sixty-five (65%) of the gross receipts of said theatre during the last day of the exhibition thereat of such motion picture. A sworn statement of the said daily gross receipts shall be delivered by the Exhibitor to the Distributor upon demand therefor.

Delivery and Return of Prints

Fourth. (a) After each of said motion pictures is generally released for public exhibition and becomes available for exhibition hereunder by the Exhibitor, the Distributor agrees to deliver as hereinafter provided, a print thereof to the Exhibitor.

(b) The public exhibition of any of said motion pictures for three (3) consecutive days at prices usually charged for admission to the theatre where so exhibited in the territory wherein is located the exchange from which the exhibitor is served, excepting any "road show", "tryout", "preview", or "pre-release" exhibitions thereof, shall be deemed the general release for public exhibition of such motion picture but only in such territory. A "pre-release" exhibition shall be deemed any exhibition because of seasonal conditions making desirable exhibitions in advance of general release as herein defined.

(c) The Exhibitor agrees to exhibit each of said motion pictures in the order of its general release by the Distributor in the exchange territory in which said theatre is located. The Exhibitor shall have the right to select any of the motion pictures, excepting the last deliverable hereunder, for exhibition out of the order of its general release, subject to prior runs and/or clearance granted other exhibitors, on the date or dates determined as provided in Article Sixth hereof or otherwise agreed upon, but only upon the following conditions (a) that the Exhibitor is not in default hereunder and shall have fully complied with all the provisions, if any, set forth in the Schedule for the exhibition of one or more of said motion pictures at specified intervals; and (b) that the Distributor and the Exhibitor [fol. 5797] shall then agree upon the date or dates upon which all of the motion pictures generally released prior to the general release of such motion picture and available for exhibition hereunder shall be exhibited by the Exhibitor, which date or dates shall be within thirty (30) days from the first exhibition date of the motion picture to be exhibited out of the order of its general release; or in the alternative the Exhibitor shall then pay to the Distributor the license fee for each of such motion pictures then generally released and available for exhibition hereunder, and as to any thereof which shall not be exhibited by the Exhibitor within thirty days from the first exhibition date of the motion picture to be exhibited out of the order of its general release, the grant of the run and clearance period in respect thereof shall be deemed waived by the Exhibitor. Upon the failure or refusal of the Exhibitor to exhibit any of such motion pictures then generally released and available for exhibition hereunder within said thirty-day period or to pay the license fee thereof, the right of the Exhibitor to thereafter select for exhibition any motion picture out of the order of its general release shall be forfeited. The provisions of this paragraph (c) shall not be deemed to limit or qualify the provisions of Article Sixth hereof excepting as in this paragraph (c) specifically provided.

(d) The Distributor shall make deliveries hereunder to the Exhibitor or to the Exhibitor's authorized agent, by delivery at the Distributor's exchange, or to a common carrier, or to the United States Postal authorities. If deliveries are made to a carrier or to a post office, they shall be made in time for prints to reach the place where the said theatre is located in time for inspection and a projection thereof before the usual time for opening said theatre.

(e) Exhibitor agrees to return immediately after the last exhibition on the last date of exhibition licensed, each print received hereunder, with its reels and containers, to the exchange of the Distributor from which the Exhibitor is served or as otherwise directed by the Distributor in the same condition as when received, reasonable wear and tear due to proper use excepted. Exhibitor agrees to pay all costs of transportation of such prints, reels, and containers from the Distributor's exchange or the last previous ex- [fol. 5798] hibitor having possession of the same, and return to the Distributor's exchange; or if directed by the Distributor, to ship such positive prints elsewhere than to the Distributor's exchange, transportation charges collect. It is agreed that the delivery of a positive print properly directed and packed in the container furnished by the Distributor therefor, to a carrier designated or used by the Distributor and proper receipt therefor obtained by the Exhibitor, shall constitute the return of such positive print by the Exhibitor.

(f) If Exhibitor fails to or delays the return of any positive print to the Distributor or fails to forward or delays forwarding (as directed by the Distributor) any such print to any other exhibitor, the Exhibitor agrees to pay the Distributor the damage, if any, so caused the Distributor and in addition the damage, if any, so caused such other exhibitor. The Exhibitor shall have the right to participate in any compromise of or intervene in any arbitration or legal proceedings based upon any claim for such damage asserted against the Distributor by another exhibitor; notice of which shall be given the Exhibitor by the Distributor.

Loss and Damage to Prints

Fifth. The Exhibitor shall pay to the Distributor a sum equal to the cost of replacement at the Distributor's exchange for each linear foot of any print, lost, stolen or destroyed or injured in any way in the interval between the delivery to and the return thereof by the Exhibitor in full settlement of all claims for such loss, theft, destruction or injury. Such payment, however, shall not transfer title to or any interest in any such positive print to the Exhibitor or any other party, nor release the Exhibitor from any liability arising out of any breach of this agreement. The

Distributor shall at the option of the Exhibitor repay or credit to the Exhibitor any sums paid by the Exhibitor for any lost or stolen print, excepting "news reels", upon the return of such lost or stolen print to the Distributor within sixty (60) days after the date when the same should have been returned hereunder. The Exhibitor shall not be liable for the damage or destruction of any print, provided the Exhibitor establishes such damage or destruction occurred while in transit from the Exhibitor and delivery [fol. 5799] thereof was made as hereinabove provided. The Exhibitor shall immediately notify the Distributor's exchange by telegram of the loss, theft, or destruction of or damage or injury to any print. If any print shall be received from the Exhibitor by the Distributor or any subsequent exhibitor in a damaged or partially destroyed condition it shall be deemed to have been so damaged or destroyed by the Exhibitor unless the latter immediately after the first public exhibition thereof shall have telegraphed the Distributor's exchange that such print was received by the Exhibitor in a damaged or partially destroyed condition, and setting forth fully the nature of such damage and the amount of footage so damaged or destroyed.

Selection of Playdates

Sixth. Unless otherwise agreed upon or unless definitely specified or otherwise provided for in the Schedule, the exhibition date or dates of each of said motion pictures shall be determined as follows:

1. Subject to prior runs and/or clearance granted or hereafter granted by the Distributor to other exhibitors and within a reasonable time after a print or prints of any of said motion pictures are received at the exchange of the Distributor out of which the exhibitor is served, and provided the Exhibitor is not in default hereunder, the Distributor shall mail to the Exhibitor a notice in writing of the date when each such motion picture will be available for exhibition by the Exhibitor (which date is hereinafter referred to as the "available date"). Such notice shall be mailed to the Exhibitor at least fifteen (15) days before the available date therein specified.

2. Within fourteen (14) days after the mailing of such notice, the Exhibitor shall select an exhibition date or dates

not theretofore assigned to another exhibitor or other exhibitors, within the period commencing upon the available date and ending thirty (30) days thereafter and give to the Distributor written notice of the date or dates so selected.

3. Upon the failure of the Exhibitor to so select such date or dates the Distributor shall designate such date or dates by mailing written notice thereof to the Exhibitor.

[fol. 5800]

Clearance and Run

Seventh. The Distributor agrees not to exhibit or grant a license to exhibit any of said motion pictures for exhibition in conflict with the "run" or prior to the expiration of the "clearance period" if any in the Schedule specified at any theatre therein named or within the territorial limits therein specified. Such period of clearance as to each of said motion pictures shall be computed from the last date of the exhibition thereof licensed hereunder. If clearance is granted against a named theatre or theatres indicating that it is the intention of the Distributor to grant such clearance against all theatres in the immediate vicinity of the Exhibitor's theatre then unless otherwise provided in the Schedule, such clearance shall include any theatre in such vicinity thereafter erected or opened.

Advertising Prior to First Run

Eighth. (a) If the Exhibitor is granted a subsequent run of the said motion pictures, the Exhibitor shall not advertise any thereof by any means of advertising prior to or during the exhibition of any one of said motion pictures by any other Exhibitor having the right to a prior run thereof. Nothing in this Clause shall be deemed to prohibit the Exhibitor from advertising generally all of said motion pictures as a group but such general advertising shall not refer to any one of said motion pictures during its exhibition by any other exhibitor having the first or immediately prior run thereof, excepting as herein provided.

(b) The Exhibitor shall not advertise by any means of advertising any of said motion pictures which may be roadshown by the Distributor and not excepted and excluded from this license, until after the completion of such roadshowing in the United States, and then only as permitted in paragraph (a) of this Clause.

(c) For a breach of the provisions of this Clause the Distributor shall have in addition to all other rights the right to exclude from this license any motion picture advertised in violation of the provisions hereof by written notice to such effect mailed to the Exhibitor and upon the mailing of such [fol. 5801] notice the license of such motion picture shall terminate and revert to the Distributor, unless arbitration is herein provided for and immediately upon the receipt of any such notice of exclusion the Exhibitor by written notice given to the Distributor shall deny breaching any of the provisions of this Clause, in which case the question of fact raised by such denial shall be determined by arbitration.

Acceptance by Distributor

Ninth. Until accepted in writing by an officer of or any person authorized by the Distributor and notice of acceptance sent to the Exhibitor this instrument shall be deemed only an application for a license under Copyright, and may be withdrawn by the Exhibitor any time before such acceptance. Unless such notice of acceptance is sent the Exhibitor by mail or telegraph within fifteen (15) days after the date thereof, if the said theatre of the Exhibitor is located East of the Mississippi River, and within thirty (30) days after the date thereof if located West of said river, said application shall be deemed to have been withdrawn. The deposit by the Distributor of any check or other consideration given by the Exhibitor at the time of application as payment for any purpose or the delivery of a print of any of said motion pictures shall not be deemed an acceptance hereof by the Distributor.

Changes in Writing

Tenth. This license agreement is complete and all promises, representations, understandings and agreements in reference thereto have been expressed herein. No change or modification hereof shall be binding upon the Distributor unless in writing signed by an officer of the Distributor, excepting in an emergency and only then, a change or modification may be consented to in writing but only by the representative of the Distributor managing the Distributor's exchange out of which the Exhibitor is served provided such change or modification does not change or modify the run, and/or clearance period, or decrease any rental, or eliminate any motion picture specified in the Schedule.

[fol. 5802] **Assignment on Sale of Theatre**

Eleventh. This license shall not be assigned by either party without the written consent of the other, provided, that if the Exhibitor sells the said theatre or transfers any interest therein and is not in default hereunder, the Exhibitor may assign this license to the purchaser of the theatre or of such interest without the written consent of the Distributor, but any such assignment shall not be valid or of any effect hereunder unless a written acceptance thereof by the assignee assuming the obligations of the Exhibitor shall be delivered to the Distributor. Any such assignment shall not release the Exhibitor from any liability hereunder unless such release from liability is consented to by the Distributor in writing.

Taxes

Twelfth. The Exhibitor shall pay to the Distributor upon demand, any tax, fee, or other like charge now and/or hereafter imposed or based upon the delivery and/or the exhibition of prints of motion pictures and/or upon the sums payable under this license by the Exhibitor to the Distributor. If under any statute or ordinance any such tax, fee, or other like charge is or shall be payable or paid by the Distributor and the exact amount payable hereunder by the Exhibitor is not therein definitely fixed or cannot be exactly determined, then the Exhibitor shall pay such part of any such tax, fee, or other like charge paid or payable by the Distributor as shall be fixed in the manner determined by the then President of the American Arbitration Association.

Prevention of Performance

Thirteenth. If the Exhibitor shall be prevented from exhibiting or the Distributor from delivering any of the said motion pictures for causes beyond their direct control then this license in respect to each such motion picture shall terminate and revert to the Distributor without liability on the part of either party, provided reasonable written notice of such termination and the cause thereof is given.

[fol. 5803] **Option to Exclude if Group Licensed**

Fourteenth. (a) If in this license agreement the total number of feature motion pictures offered to the Exhibitor by the Distributor, at one time, shall have been licensed by the Distributor hereunder and the license fee of each thereof averages not more than Two hundred and fifty ($250.00) Dollars, the Exhibitor shall have the privilege to exclude from this license agreement not to exceed ten (10%) percent of the total number of feature motion pictures licensed hereunder; provided that the Exhibitor

(1) is not in default hereunder, and

(2) shall have fully complied with all of the provisions, if any, set forth in this agreement for the exhibition of such feature motion pictures at specified intervals.

(b) Such privilege of exclusion may be exercised only upon the following terms and conditions:

(1) The Exhibitor shall give to the Distributor written notice of the Exhibitor's election to exclude any of said feature motion pictures within fourteen (14) days after the general release date thereof in the exchange territory out of which the Exhibitor is served.

(2) The Exhibitor may exclude without payment therefor one (1) motion picture out of each group of ten (10) of the number of feature motion pictures specified in this license agreement provided the Exhibitor has paid for the other nine (9) of such group.

(3) If such privilege of exclusion is not exercised as provided in paragraph (b) (2) above, the Exhibitor may nevertheless exercise such privilege by paying the license fee of each motion picture excluded with the notice of its exclusion. In such case, such payment shall be credited against such tenth or succeeding tenth motion picture, as the case may be, which the Exhibitor would otherwise be privileged to exclude as provided in paragraph (b) (2) above.

If the only or last group licensed is less than ten (10) and more than five (5) motion pictures, the privilege to exclude shall apply provided the Exhibitor has paid for all motion pictures but one in such group.

[fol. 5804] (c) Upon the failure or refusal of the Exhibitor to comply with any term or condition of this license agreement, or to comply with any arbitration award in respect thereto, the privilege of exclusion forthwith shall be revoked and the Exhibitor shall be liable for and pay to the Distributor the license fees of all motion pictures theretofore excluded.

(d) If the license fee of any feature motion picture specified in this license agreement is to be computed in whole or in part upon a percentage of the receipts of the Exhibitor's theatre, such license fee (for the purpose of computing the average license fee of all the motion pictures licensed) shall be determined as follows:

(1) Average the license fees of all of the Distributor's feature motion pictures exhibited upon a percentage basis at the Exhibitor's theatre during the period of one year prior to the term of this license agreement.

(2) If none of the Distributor's feature motion pictures were exhibited upon a percentage basis at such theatre during said period, average the license fees of all feature motion pictures exhibited upon a percentage basis at such theatre during the said period.

(e) If the rental of any motion picture excluded is to be computed in whole or in part upon a percentage of the receipts of the Exhibitor's theatre, the sum to be paid by the Exhibitor as provided in paragraph (b) (3) hereof shall be determined as follows:

(1) Average the gross receipts of all the Distributor's feature motion pictures exhibited at the Exhibitor's theatre during the ninety (90) day period preceding the Exhibitor's notice of exclusion, and apply to such average the percentage terms specified in this license agreement for the picture excluded.

(2) If no feature motion pictures of the Distributor were exhibited at the Exhibitor's theatre during said ninety (90) day period, average the daily gross receipts of the Exhibitor's theatre during said ninety (90) day period, average the daily gross receipts of the Exhibitor's theatre for the period of thirty (30) operating days preceding the Exhibitor's notice of exclusion and apply to such average

the percentage terms specified in this license agreement for the picture excluded.

[fol. 5805] (f) In computing the number of feature motion pictures which may be excluded hereunder, fractions of more than one-half (½) shall be regarded as one (1).

(g) Upon the exclusion of each feature motion picture, the license therefor and all rights thereunder shall terminate and shall revert to the Distributor.

First-Run Exhibitions

Fifteenth. (a) If the Exhibitor is granted a first run of the said motion pictures, the Exhibitor shall exhibit each of the feature motion pictures excepting those described in Paragraph (d) of this Clause within the period beginning with the date scheduled and announced by the Distributor for the general release of each feature motion picture in the territory wherein is located the exchange of the Distributor out of which the Exhibitor is served and ending one hundred and twenty (120) days thereafter, notwithstanding any provision of Clause Sixth hereof to the contrary. If the first exhibition date of any of the said motion pictures shall occur on a date later than ninety (90) days after its scheduled and announced general release date, then the period of clearance of such motion picture shall be reduced so as to expire one hundred and twenty (120) days after said scheduled date of its general release. If the Exhibitor is granted a first run of the said motion pictures and the Exhibitor fails to exhibit any feature motion picture within said period of one hundred and twenty (120) days, the grant of the said first run and the clearance period in respect thereof shall be deemed waived by the Exhibitor and the license fee as to such feature motion picture shall thereupon forthwith become due and payable to the Distributor, with the right to the Exhibitor to exhibit such feature motion picture as hereinafter in Paragraph (e) of this Clause provided.

Second-Run Exhibitions

(b) If the Exhibitor is granted a second run of the said motion pictures and any other exhibitor having been granted the first run thereof immediately prior to such second run fails to exhibit any of the feature motion pictures, excepting [fol. 5806] those described in Paragraph (d) of this Clause within the said period of one hundred and twenty (120) days specified in Paragraph (a) of this Clause, the Exhibitor shall exhibit each such feature motion picture within the period beginning with the date of the expiration of the said one hundred and twenty (120) days period and ending fourteen (14) days thereafter, notwithstanding any provision of Clause Sixth hereof to the contrary. If the Exhibitor is granted a second run of the said motion pictures and the Exhibitor fails to exhibit any feature motion picture within said fourteen (14) days period the grant of such second run and the clearance period if any in respect thereof shall be deemed waived by the Exhibitor and the license fee as to such feature motion picture shall thereupon forthwith become due and payable to the Distributor with the right to the Exhibitor to exhibit such feature motion picture as hereinafter in Paragraph (e) of this Clause provided.

Subsequent Runs Exhibitions

(c) If the Exhibitor is granted a run subsequent to a second run of the said motion pictures and any other Exhibitor having been granted the second run thereof immediately prior to such subsequent run fails to exhibit any of the feature motion pictures, excepting those described in Paragraph (d) of this Clause within the said period of fourteen (14) days specified in Paragraph (b) of this Clause the Exhibitor shall exhibit each feature motion picture within the period beginning with the date of the expiration of the said fourteen-day period and ending seven (7) days thereafter, notwithstanding any provision of Clause Sixth hereof to the contrary. If the Exhibitor is granted a run subsequent to a second run of the said motion pictures and the Exhibitor fails to exhibit any feature motion picture within said seven (7) day period, the grant of such subsequent run and the clearance period if any in respect thereof shall be deemed waived by the Exhibitor and the license fee as to such feature motion picture shall thereupon forthwith become due and payable to the Distributor with the right to the Exhibitor to exhibit such feature motion picture as hereinafter in this Clause provided.

[fol. 5807]

Extended Runs

(d) Any of the motion pictures which shall have been exhibited at any theatre in the said territory for more than one show week prior to the run granted the Exhibitor shall be excepted from the provisions of this Clause and of Paragraph (b) of Clause Fourth.

Exhibition After Revocation of Run and Clearance

(e) Upon the waiver of the grant of the run and/or the clearance period of any feature motion picture as provided in Paragraphs (a), (b) or (c) of this Clause, the Exhibitor upon payment of the sum or sums payable hereunder as provided in this Clause for the license to exhibit such feature motion picture, shall have the right to exhibit the same hereunder upon a date or dates not in conflict with any run and/or clearance period granted or hereafter granted to other exhibitors, upon written request mailed or delivered to the Distributor within sixty (60) days after the last date upon which such feature motion picture should have been exhibited by the Exhibitor as provided in this Clause. Failing to make such request within said period of sixty (60) days the license to exhibit such feature motion picture granted hereunder shall terminate and revert to the Distributor.

If the provisions of this Clause shall in anywise be in conflict with the provisions of any other license agreement made and entered into by the Distributor with any other exhibitor prior to September 1, 1935, the provisions of this Clause shall be deemed to be subordinate and subject to the provisions of such other license agreement.

Remedies

Sixteenth: If the Exhibitor shall fail or refuse to pay the rental of any of such motion pictures as provided in this license or to furnish statements of the receipts of said theatre, if any are required hereunder, or to give the Distributor's representative access to the said theatre or its box office and/or the Exhibitor's books and records relative to motion pictures the rentals of which are based upon the said theatre's admission receipts as herein provided, [fol. 5808] or if the Exhibitor shall exhibit or permit the exhibition of any of said motion pictures at any time or place other than as herein specified, or if the Exhibitor becomes insolvent or is adjudicated a bankrupt, or executes an assignment for the benefit of his creditors, or if a receiver is appointed for any of the property of the Exhibitor, or if the Exhibitor voluntarily or by operation of law should lose control of the said theatre or his said interests therein making it impossible for the Exhibitor to exhibit the said motion pictures at the said theatre, then upon the happening of any one or more of said events, the Distributor may at its option, (1) terminate this license agreement, or (2) suspend the delivery of additional motion pictures hereunder until such default or defaults should cease and be remedied. It is agreed that the exercise of any of said remedies by the Distributor shall be in addition to and without prejudice to any right or remedy of the Distributor against the Exhibitor at law or in equity and/or otherwise provided for in this license agreement.

Roadshows

Seventeenth. (a) The Distributor shall have the right to exhibit and/or cause to be exhibited as a "roadshow," at any time prior to the exhibition thereof hereunder, such of the motion pictures licensed hereunder as the Distributor may from time to time select and determine, provided, however, that such roadshow exhibitions shall be at theatres at which admission prices for evening performances, during such exhibitions thereof, of not less than one ($1) dollar shall be charged for the majority of the orchestra seats, and further provided that, except in the cities of New York and Los Angeles, not more than two of such motion pictures shall be so roadshown.

(b) If and when any such readshow exhibition shall be in the City of New York and/or the City of Los Angeles, and if the Exhibitor's theatre is situated in the territory then served by the Distributor's exchange or exchanges located in New York or in Los Angeles, as the case may be, the Distributor shall have the right to except and exclude from this license not to exceed two of such motion pictures so roadshown in each or both of said territories, upon sending [fol. 5809] to the Exhibitor written notice to such effect not later than four (4) weeks after the commencement of such roadshow exhibition and provided that the Distributor shall by like notice except and exclude such motion picture from all other license agreements containing this Clause and licensing the exhibition of such motion picture in such territority. The exception and exclusion of any such motion picture in the territory then served by the Distributor's exchange or exchanges located in the City of Los Angeles, or in the City of New York, as the case may be, shall not be deemed to require the Distributor to except and exclude the same motion picture in both of said territories.

(c) If and when any such roadshow exhibition, excepting those in the City of New York and/or in the City of Los Angeles, shall be in the territory served by the Distributor's exchange or exchanges serving the Exhibitor's theatre the Distributor shall have the right to except and exclude from this license not to exceed two of such motion pictures so roadshown upon sending to the Exhibitor written notice to such effect within seven (7) days after the commencement of such roadshow exhibition and provided that the Distributor shall by like notice except and exclude each such motion picture from all other license agreements containing this Clause and licensing the exhibition of such motion picture in such territory.

(d) The inadvertent omission to send to any such other exhibitors the notice provided for in Paragraphs (a) and (b) of this Clause shall not be deemed to affect the exception and exclusion from this license of any such motion picture.

(e) The Distributor may so exercise such right to except and exclude any such motion picture from time to time, in the respective territories, as above defined, in the United States. Any motion picture so roadshown in any place in the United States, and not excepted and excluded from this license as aforesaid, shall not be deemed available for exhibition hereunder until after the completion of such roadshowing of such motion picture in the United States, and such motion picture shall be exhibited hereunder when generally released by the Distributor and as and when available for exhibition by the Exhibitor, and the term of this license agreement specified in Clause Second shall be in respect to each such motion picture, extended to and [fol. 5810] including the date or dates of exhibition by the Exhibitor hereunder of each thereof.

(f) For each motion picture that the Distributor shall except and exclude, as aforesaid, the Exhibitor is hereby granted the option to except and exclude from this license (in addition to those which may be excluded as provided in Clause Fourteenth) one of the other motion pictures licensed hereunder, but only if the Exhibitor shall give to the Distributor written notice to such effect not later than fourteen (14) days before the date fixed for the exhibition hereunder of such other motion picture. The Distributor may exhibit and/or license the exhibition of any and all motion pictures excepted and excluded from this license by the Distributor and/or the Exhibitor, as aforesaid, when and where desired by the Distributor, free from all claims of the Exhibitor in respect thereof and the license of each thereof shall forthwith upon exclusion as hereinbefore provided terminate and revert to the Distributor.

Cutting or Alteration of Prints

Eighteenth. The Exhibitor shall exhibit each print in its entirety and shall not copy, duplicate, subrent or part with possession of any print. The Exhibitor shall not cut or alter any print, excepting to make necessary repairs thereto, or when required by any duly constituted public official or authority or with the written or telegraphic consent of the Distributor. The Exhibitor, however, may cut the print of a news reel, and in such case shall completely restore all parts cut therefrom, prior to the return thereof to the Distributor or shipment elsewhere if so directed by the Distributor, in the same condition as received by the Exhibitor.

Optional Arbitration Clause

Optional Clause. The following Clause Nineteenth is optional with the parties hereto. If it is desired to make such clause a part of this license, the Exhibitor and the duly authorized representative of the Distributor shall sign their respective names where indicated immediately following this paragraph and unless so signed the said Clause shall be deemed excluded from this license agreement.

[fol. 5811] It is agreed by and between the parties that Clause Nineteenth, providing for voluntary arbitration of disputes arising hereunder, shall be included as a part of this license.

—— ——, Representative of the Distributor duly authorized to agree to the following Clause Nineteenth. —— ——, Exhibitor.

Arbitration

Nineteenth. The Exhibitor and the Distributor respectively, freely and voluntarily agree that as a condition precedent to the commencement of any action or proceeding in any court by either of them, to determine, enforce or protect the legal rights of either hereunder, each shall submit all claims and controversies arising hereunder for determination by arbitration to an Arbitration Board (hereby expressly waiving the oath of the arbitrators) which shall consist of four members, each of whom shall be engaged in the motion picture business, and two of whom to be appointed by the Exhibitor, and the remaining two to be appointed by the Distributor.

Upon the written request of the Distributor or the Exhibitor for the arbitration of any dispute or controversy arising hereunder, the party making such request shall name therein two arbitrators stating the business address and business or business connection of each and shall designate therein the date, time and place of the hearing of such controversy. The date of such hearing shall not be earlier than seven (7) days from the date of the sending of such notice, unless it shall be claimed in such notice that irreparable injury will result unless there is a speedy determination of such controversy in which case such hearing may be designated to be held earlier than said seven (7) day period.

Within five (5) days after the mailing of such request for arbitration, the party upon whom such request is made shall name two arbitrators in a written notice mailed or delivered to the other party, stating therein the business address and business or business connection of each arbitrator. If either party fails or refuses to name the arbitrators as [fol. 5812] herein provided or if any arbitrator so named shall fail or refuse to act, or be unable to serve or shall be challenged and others are or another arbitrator qualified and then available to act is not then appointed, others or another arbitrator may be appointed by the other party as the case may be.

No member of the Arbitration Board shall hear or determine any controversy in which he has an interest direct or indirect and any member having such interest shall be disqualified to act.

If the arbitrators or a majority of them are unable to reach a decision, then they, or a majority of them shall immediately select an umpire who shall not be engaged in the motion picture business. In such case the hearing before the umpire shall be at such time and place as the umpire shall designate and shall be had before the umpire alone, the arbitrators not to be permitted to attend the hearing before the umpire. If the arbitrators or a majority of them are unable to agree upon the selection of an umpire, the American Arbitration Association shall be requested to make such selection.

The Arbitration Board shall have general power to determine such dispute or controversy as shall be submitted, to make findings of fact in respect thereof and to direct specific performance of a contract, and/or that the same has been breached in whole or in part, and/or that damages on such account shall be paid. The Board of Arbitration shall have the power only to give force and effect to the provisions of this license agreement and the rights or obligations of the parties thereunder; provided that if after a full hearing of any controversy submitted for arbitration hereunder, excepting any submission to an umpire designated as hereinabove provided, the arbitrators or a majority of them are of the opinion that because of unusual circumstances arising after the execution of this license agreement and beyond the direct control of the parties hereto disclosed at such hearing, a strict enforcement of the provisions of this license agreement would impose undue hardship upon one of the parties, the arbitrators or a majority of them may recommend in writing to the parties a settlement of such controversy upon such terms and conditions deemed by the arbitrators fair and just. If such settlement is not agreed [fol. 5813] to by the parties within five (5) days after the receipt of a copy of such recommendation, the controversy shall be deemed withdrawn from the arbitrators and shall be submitted with a written statement of all of the facts adduced at the hearing before the arbitrators together with all documentary evidence, to the National Appeal Board in New York. The disposition by the National Appeal Board of any such recommendation shall be final and binding upon the parties hereto.

The hearing of any such controversy shall be had before the Arbitration Board in the city wherein is situated the exchange of the Distributor from which the Exhibitor is served unless the parties agree in writing that such hearing be had in some other place. If either party fails or refuses to submit to arbitration any such claim or controversy, the other party may apply to a United States District Court, or to any other Court, including a court of a state in which such hearing would otherwise not be had, for an order to proceed to arbitrate in which case such hearing shall be had in such place as the court to which such application is made may lawfully direct.

The parties hereto further agree to abide by and forthwith comply with any decision or award of the arbitrators, or a majority of them and consent that any such decision or award shall be enforceable in or by any Court of competent jurisdiction pursuant to the law of such jurisdiction now or hereafter in force.

If the Exhibitor shall fail or refuse to submit to arbitration any such claim or controversy or to abide by and comply with the award of the arbitrators in respect thereto, within seven (7) days, the Distributor may at its option suspend the deliveries of the motion picture provided for in this and in each other existing license agreement between the parties hereto and/or terminate this and each such other license agreement; and upon such termination the aggregate of the license fees of all motion pictures specified in this and any other such license agreement then not exhibited forthwith shall become due and payable by the Exhibitor.

If the Distributor shall fail or refuse to submit to arbitration any such claim or controversy or to abide by and comply with the decision or the award of an Arbitration [fol. 5814] Board in respect thereto within seven (7) days, the Exhibitor may at the option of the Exhibitor terminate this and any other existing license agreement between the parties hereto by mailing a notice to such effect to the Distributor within seven (7) days after such failure or refusal; and the Exhibitor shall have the rights and remedies provided in Clause Second (b) for failure to deliver motion pictures.

Any such termination by either party shall be without prejudice to any other right of remedy which the party so terminating may have by reason of any breach by the other party to this or any other existing agreement between the parties.

Each of the parties hereto, without notice to the other, may apply to any Court having jurisdiction to make this agreement to arbitrate a rule or order of such Court.

If at the time of the submission to arbitration of any dispute that shall arise hereunder there shall not then be in existence the National Appeal Board of the Motion Picture Industry, referred to in the sixth paragraph of Article Nineteenth of this agreement, then and in that event the provisions of said paragraph sixth following the words "parties thereunder" in the third line of said sixth paragraph shall be deemed null and void and of no force and effect, and the decision or award rendered by the arbitrators in any such arbitration proceeding shall be final and binding upon the parties thereto.

Description of Pictures

Twentieth. (a) The Distributor shall have and hereby reserves the right in the sole discretion of the Distributor to change the title of any of the said motion pictures, to make changes in, alterations and adaptation of any story, book, or play and to substitute for any thereof any other story, book or play. The Distributor also shall have and hereby reserves the right to change the director, the cast or any member thereof of any of said motion pictures.

(b) The Exhibitor shall not be required to accept for any feature motion picture described in the Schedule as that of a named star or stars, director or named well-known author, book or play, any motion picture of any other star or stars, director, author, book or play nor to accept any [fol. 5815] other feature motion picture in place of any thereof which in the Schedule is designated "no substitute." The right of rejection conferred on the Exhibitor by this Clause is in addition to the right of exclusion provided in Clause Fourteenth hereof.

(c) The Distributor warrants that none of said motion pictures are reissues of old negatives, old negatives retitled or foreign produced by a foreign producer, excepting those specifically specified as such in the Schedule; and further that none of said motion pictures contains or will contain any advertising matter for which compensation is received by the Distributor, or any subsidiary or affiliate of the Distributor.

Advertising Accessories

Twenty-first. The Exhibitor agrees to lease from the Distributor or the Distributor's authorized agent for use only in connection with the exhibition of each of the motion pictures exhibited hereunder and agrees not to sublease or sell the following advertising accessories: (All advertising accessories used by the Exhibitor in connection with the exhibition hereunder of each of the motion pictures licensed hereunder.)

Twenty-second. The following Schedule and all of the written and printed parts thereof are a part of this license:

Schedule

Group S-8

There are licensed for exhibition hereunder all of the Distributor's Group S-8 motion pictures of feature length, not to exceed sixty-five (65), which shall be generally released by the Distributor for distribution to motion picture theatres in the United States during the year commencing August 1, 1936 and ending July 31, 1937, except the motion pictures as to which Distributor is required by contract to obtain the consent or approval of the Producer thereof, or other party to the terms and conditions of licensing the exhibition thereof and except Paramount's six (6) Hopalong Cassidys. The "road showing," "pre-view" and/or "pre-release" of any motion picture during the said year shall not be deemed a general release of said motion picture. [fol. 5816] For the license to exhibit each of said motion pictures, the Exhibitor shall pay to the Distributor the following:

Number of Motion Pictures Offered.......... Number of Motion Pictures Licensed........	Consecutive Days Run	Minimum Guaranteed License Fee Per Motion Picture	Distributor's Share of Gross Receipts Per Motion Picture	Gross Receipts Per Motion Picture inExcess of Which Distributor Shares	Recording Charges Per Motion Picture Which is in Addition to All Other License Fees
Classifications..........		$	%	$	$

Distributor shall have the right to designate from time to time, to the foregoing classifications the motion picture licensed hereunder, regardless of the classification thereof made by the Distributor under any other license agreement.

It is expressly agreed that if any of the motion pictures licensed hereunder shall have been designated by Distributor for exhibition to any of the forgoing classifications, and the Exhibitor shall have exercised the right of exclusion of any thereof hereunder, then such designation by Distributor shall be deemed rescinded and Distributor may designate another motion picture from the motion pictures licensed hereunder for exhibition upon the terms applicable to the motion picture so excluded.

It is agreed that the license fees herein specified apply to each respective motion picture licensed hereunder according to the classification thereof by the Distributor, as above provided, and such license fees are not average license fees, regardless of the number of such motion pictures that may be released by the Distributor during the year commencing August 1, 1936 and ending July 31, 1937.

The Exhibitor agrees to charge minimum admission prices per person to said theatre on the respective exhibition dates thereat of the motion pictures licensed hereunder as follows:

Evenings (After 6 P. M.): Adults, Orchestra ....
Balcony .... Children, Orchestra ....
Balcony ....

[fol. 5817]

Matinees (Before 6 P. M.): Adults, Orchestra ....
Balcony .... Children, Orchestra ....
Balcony ....

If during any such period less than said admission prices is charged, the Distributor in addition to all other rights hereunder shall have the right (a) to immediately terminate the license of the motion picture then being exhibited and/or of all the remaining motion pictures not theretofore exhibited hereunder, by written notice to such effect to the Exhibitor and upon the giving of such notice, the license of such motion picture and/or motion pictures shall forthwith terminate and revert to the Distributor and the Distributor may, at its option, declare such failure or refusal a breach of the entire contract entitling the Distributor to recover from the Exhibitor as damages therefor the license fees payable in respect of all motion pictures not theretofore exhibited hereunder; or (b) provided the exhibitor is granted herein a period of "clearance" to reduce such period by not to exceed one-half in respect to each of the motion pictures thereafter deliverable hereunder; or (c) provided no period of "clearance" is specified in the Schedule to withhold for a period not to exceed sixty (60) days notice of the date when each motion picture thereafter deliverable hereunder will be available for exhibition by the Exhibitor; and as to each such motion picture the "run" thereof, if any, granted the Exhibitor, shall be deemed revoked and the Exhibitor agrees to exhibit each such motion picture after notice of the available date thereof upon the date or dates determined as provided in Clause Sixth hereof; and (d) if the license fee of any such motion picture is to be computed either in whole or in part upon a percentage of the gross admission receipts of said theatre, then the Exhibitor shall account to the Distributor for all admissions to said theatre during the exhibition of such motion picture upon the basis of the said admission prices specified above.

It is expressly understood and agreed that the above minimum admission prices are exclusive of any State, Federal, or local tax which now is or may be imposed upon admission to the theatre or theatres licensed hereunder.

If the Exhibitor shall fail or refuse to perform any other license agreement with the Distributor, the Distributor may, [fol. 5818] at its option, upon such failure or refusal to perform, exercise with respect to this license agreement any or all of the rights granted the Distributor in Article Sixteenth hereof, and if pursuant thereto the Distributor shall elect to terminate this license agreement, then the Distributor shall be entitled to recover from the Exhibitor as damages for such breach the license fees payable in respect of all motion pictures not theretofore exhibited under this license agreement and the Distributor shall be under no obligation thereafter to deliver or offer to deliver any picture or pictures hereunder.

It is agreed that the term "gross receipts" as used in this agreement shall be deemed to mean all sums received by the Exhibitor for admission to the theatre or theatres licensed hereunder on the date or dates of exhibition of the respective motion pictures licensed hereunder, excluding only therefrom any tax imposed by governmental authority expressly upon admissions to said theatre or theatres which is required to be collected by the Exhibitor and pursuant thereto is collected by the Exhibitor.

Exhibition Arrangement

The Exhibitor, in all advertising and exploitation of each motion picture licensed hereunder, shall advertise and announce each such motion picture as "A Paramount Picture" or as otherwise directed by Paramount, and shall otherwise adhere to the form of announcement contained in the advertising matter issued by Paramount in respect of each such motion picture.

If, with respect to any motion picture licenses hereunder, the date or dates of exhibition selected, designated or otherwise agreed upon shall be a number of days less than the maximum number specified in the Schedule hereof, then the license hereby granted for such motion picture shall be automatically limited to the number of days or dates of exhibition so selected, designated or otherwise agreed upon, regardless of the number of days specified in said Schedule.

The license hereby granted for the number of days specified in the Schedule hereof for each motion picture shall not be deemed to include:

[fol. 5819-5824] (a) any right of exhibition at any time during said exhibition period prior to 6:00 A. M. on the date or first date of exhibition herein provided for unless exhibition prior to 6 A. M. on said date or first exhibition date is expressly granted in writing;

(b) any right of exhibition at any time other than on the respective date or dates of exhibition selected, designated or otherwise agreed upon, as provided herein, and confirmed in writing by the Distributor;

(c) Any right of exhibition other than by means of a print of any such motion picture furnished to the Exhibitor by the Distributor for the express purpose of exhibition hereunder in the theatre or theatres selected, designated or otherwise agreed upon as herein provided and confirmed in writing by the Distributor.

It is agreed that the Distributor may at its option deliver to the Exhibitor C. O. D. any motion picture deliverable hereunder, and may add to said C. O. D. the amount of any past due indebtedness owing under this or any other agreement by the Exhibitor to the Distributor.

Run: Clearance:

Exchange . . . . Zone . . . . Salesman . . . .

(End of schedule)

In witness whereof . . . . the Exhibitor,

operating the . . . . Theatre, located at

. . . . in the . . . .
(City and State)

has on . . . . executed this application, which
(Date)
upon written acceptance thereof by the Distributor shall be deemed to be the license of the said Exhibitor for the exhibition of the motion pictures specified in the Schedule, but only at the said Theatre in accordance with the terms and conditions hereof.

Accepted

Date . . . .
(Exhibitor)

Paramount Pictures Inc.

By . . . . By . . . .

Form 3640 D 5–36

[fol. 5825] R. K. O.—1936-37

Form 5352B

RKO Distributing Corporation

Agreement, made in one or more counterparts, between RKO Distributing Corporation, a corporation (hereinafter referred to as "The Distributor"), party of the first part, and the Exhibitor hereinafter named and referred to as the

"Exhibitor," operating the theatre or theatres hereinafter designated, party of the second part,

Witnesseth:

The parties hereto agree as follows:

License

First: Subject to the payment by the Exhibitor of the fixed sums and/or percentages specified in the schedule on the reverse side hereof, which schedule is incorporated herein and made a part of this agreement, and subject to all of the other terms and conditions herein provided, the Distributor hereby grants, and agrees to grant, to the Exhibitor and the Exhibitor hereby accepts, and agrees to accept, a limited license under the copyrights of the respective motion pictures designated and described in the schedule (hereinafter called the pictures) and under any copyrights of any matter included in any sound recorded for reproduction in connection with the exhibition of any of the pictures, to exhibit publicly the respective pictures and to reproduce for public performances such recorded sound in synchronism therewith, but only at the theatre described in the schedule (hereinafter called the theatre) for the number of days specified in the schedule, which days shall be only the dates determined as provided in Article Seventh hereof, and at no other time or place and for no other use or purpose. The license to reproduce such recorded sound, or any thereof, is granted and agreed to be granted only upon the express warranty and agreement by the Exhibitor and upon the express condition that (a) the sound reproducing equipment in the theatre will [fol. 5826] operate reliably and efficiently to reproduce such recorded sound with adequate volume and high quality, whether it is recorded upon a print or upon separate records, discs or other similar devices; and (b) if copyrighted musical compositions shall be included in such recorded sound, the Exhibitor will have, at the time of the reproduction thereof, an effective license from the copyright proprietor thereof or from any licensee of such copyright proprietor to perform publicly such copyrighted musical compositions. The Distributor may record such sound, or any part thereof, on the prints of the respective pictures or on separate records, discs or other devices, as the Distributor may from time to time elect and all references to a print made herein shall be deemed to include any records, discs or other devices upon which sound is recorded for reproduction in connection with the exhibition of such print. The license herein granted in respect of each picture shall extend only to the exhibition of the print of such picture delivered by the Distributor to the Exhibitor pursuant to Article Sixth hereof, and shall not extend to the exhibition of any other print.

If more than one theatre is designated in the schedule, no license is granted or agreed to be granted hereunder for the exhibition of any picture at more than one of such theatres unless it is otherwise specifically so stated in the schedule.

This agreement licenses the exhibition of pictures generally released by the Distributor for distribution in the United States of America during the period commencing September 1, 1936, and ending August 31, 1937, only *Provided however,* That in case the Distributor shall generally release after August 31, 1937, and prior to December 31, 1937, any picture or pictures which it shall have designated to exhibitors generally as a 1936-37 picture or as 1936-37 pictures, such picture or pictures shall be included in this license and shall be exhibited by the Exhibitor hereunder, unless the Exhibitor, on or before September 10, 1937, shall notify the Distributor, in writing, that the Exhibitor has elected to reject such picture, or, if more than one picture, that the Exhibitor has elected to reject all (but not less than all) of such pictures. In the event that the Exhibitor shall give the Distributor any such written notice of [fol. 5827] rejection, such picture or pictures shall be excepted and excluded from this license.

The term of this agreement, unless otherwise provided in the schedule, shall be for a period of eighteen (18) months from the time fixed as hereinafter provided for the exhibition of the first picture hereunder.

Time and Place of Exhibition

Second: The Exhibitor agrees to exhibit the pictures under the license herein granted in the order of their release, if and as available, only at the theatre on the exhibition date or dates fixed in the schedule or determined as hereinafter provided and subject to all of the terms and conditions of this license agreement. The Exhibitor will not allow any positive print to leave the Exhibitor's possession during the period specified for the exhibition thereof by the Exhibitor and will not exhibit or permit the exhibition of any such positive print at any other time or place.

Payment

Third: The Exhibitor agrees to pay for the license to exhibit each picture the fixed sums specified in the schedule at least three (3) days in advance of the date of shipment of the positive print of such picture from the Distributor's exchange or from the last previous exhibitor, as the case may be.

Percentage Bookings

If it is provided in the schedule that all or any part of the license fee for the exhibition of any picture or pictures shall be computed upon the Exhibitor's gross receipts, such payment shall be made immediately after the last exhibition upon the last day of exhibition of each such picture and shall be accompanied by a correct itemized statement of the gross receipts of the theatre for admission thereto upon the exhibition date or dates of the particular picture or pictures. Should the Distributor so require, such itemized statement shall be made upon forms furnished by the Distributor. Upon such exhibition date or dates the Distributor or its authorized representative may verify the sale of all tickets of admission to the theatre and may [fol. 5828] examine the books and records of the Exhibitor insofar as they relate to such gross receipts and for any such purpose may have access to the theatre and its box office. The Distributor or its authorized representative also may have access to all of the Exhibitor's books and records for the purpose of verifying such box office statement and if the operating expenses of the theatre are an element to be considered in computing the amounts payable to the Distributor hereunder, the Distributor or its authorized representative may examine and audit all of the Exhibitor's books and records relating to the Exhibitor's operating expenses, for a period of sixty (60) days after the receipt by the Distributor of the final box office statement and/or statement of operating expenses. Any information obtained by the Distributor pursuant to the provisions of said Article Third shall be treated as confidential except in any litigation in respect of this agreement. The

Distributor agrees that unless its authorized representative shall be a regular employee of the Distributor it will not employ as its authorized representative any person who is a resident of or regularly employed in the place where the theatre is located, except with the written consent of the Exhibitor. In accounting to the Distributor hereunder the Exhibitor shall account on the basis of admission prices to the theatre for each person admitted in the theatre except only for a customary and reasonable number of free admissions to representatives of the press and/or in consideration of theatre advertising.

Payment On Account

Fourth: Payment, if made upon the execution hereof by the Exhibitor shall be deemed payment on account of the sums last payable hereunder.

Clearance and Run

Fifth: (a) In the event that it is stated in the schedule that the theatre shall have "clearance" or a specified "run" and the Exhibitor shall have exhibited each of the pictures on the dates determined as is in Article Seventh hereof provided, the Distributor will not grant a license to any other party to exhibit any of the pictures so exhibited by the [fol. 5829] Exhibitor at any theatre specifically named in the schedule or within the territorial limits specified in the schedule, as the case may be, on a date prior to the expiration of the so-called "clearance period" or prior to the so-called "run" granted the Exhibitor. The period of "clearance" in the case of each picture shall be computed from the last day of the exhibition thereof. If the "clearance" is granted against a named theatre or theatres and it is clearly indicated that it is the intention of the Distributor to grant such "clearance" against all theatres in the immediate vicinity of the Exhibitor's theatre, then, unless otherwise provided in the schedule, such "clearance" shall include any theatre hereafter erected or opened in such vicinity; if such theatre is recognized in the motion picture industry as being in direct opposition to the theatre. Anything herein contained to the contrary notwithstanding, no "clearance" shall be given in respect of any picture not exhibited on the date or dates originally designated by the

Exhibitor in accordance with Article Seventh hereof unless the parties mutually shall agree otherwise in writing.

First Run Exhibitions

(b) If the Exhibitor is granted a first run of the said motion pictures, the Exhibitor shall exhibit each of the feature motion pictures excepting those described in Paragraph (e) of this Clause within the period beginning with the date scheduled and announced by the Distributor for the general release of each feature motion picture in the territory wherein is located the exchange of the Distributor out of which the Exhibitor is served and ending one hundred and twenty (120) days thereafter, notwithstanding any provision of Article Seventh hereof to the contrary. If the first exhibition date of any of the said motion pictures shall occur on a date later than ninety (90) days after its scheduled and announced general release date, then the period of clearance of such motion picture shall be reduced so as to expire one hundred and twenty (120) days after said scheduled date of its general release. If the Exhibitor is granted a first run of the said motion pictures and the Exhibitor fails to exhibit any feature motion picture within said period of one hundred and twenty (120) days, the grant [fol. 5830] of the said first run and the clearance period in respect thereof shall be deemed waived by *teh* Exhibitor and the license fee as to such feature motion picture shall thereupon forthwith become due and payable to the Distributor, with the right to the Exhibitor to exhibit such feature motion picture as hereinafter in Paragraph (f) of this Clause provided.

Second Run Exhibition

(c) If the Exhibitor is granted a second run of the said motion pictures and any other exhibitor having been granted the first run thereof immediately prior to such second run fails to exhibit any of the feature motion pictures, excepting those described in Paragraph (e) of this Clause within the said period of one hundred and twenty (120) days specified in Paragraph (b) of this Clause, the Exhibitor shall exhibit each such feature motion picture within the period beginning with the date of the expiration of the said one hundred and twenty (120) days period and ending fourteen (14) days thereafter, notwithstanding any provision of Article

Seventh hereof to the contrary. If the Exhibitor is granted a second run of the said motion pictures and the Exhibitor fails to exhibit any feature motion picture within said fourteen (14) days period the grant of such second run and the clearance period if any in respect thereof shall be deemed waived by the Exhibitor and the license fee as to such feature motion picture shall thereupon forthwith become due and payable to the Distributor with the right to the Exhibitor to exhibit such feature motion picture as hereinafter in Paragraph (f) of this Clause provided.

Subsequent Runs Exhibitions

(d) If the Exhibitor is granted a run subsequent to a second run of the said motion pictures and any other Exhibitor having been granted the second run thereof immediately prior to such subsequent run fails to exhibit any of the feature motion pictures, excepting those described in Paragraph (c) of this Clause within the said period of fourteen (14) days specified in Paragraph (c) of this Clause the Exhibitor shall exhibit each feature motion picture within the period beginning with the date of the [fol. 5831] expiration of the said fourteen (14) day period and ending seven (7) days thereafter, notwithstanding any provision of Article Seventh hereof to the contrary. If the Exhibitor is granted a run subsequent to a second run of the said motion pictures and the Exhibitor fails to exhibit any feature motion picture within said seven (7) day period, the grant of such subsequent run and the clearance period if any in respect thereof shall be deemed waived by the Exhibitor and the license fee as to such feature motion picture shall thereupon forthwith become due and payable to the Distributor with the right to the Exhibitor to exhibit such feature motion picture as hereinafter in Paragraph (f) of this Clause provided.

Extended Runs

(e) Any of the motion pictures which shall have been exhibited at any theatre in the said territory for more than one show week prior to the run granted the Exhibitor shall be excepted from the provisions of this Clause.

Exhibition After Revocation of Run and Clearance

(f) Upon the waiver of the grant of the run and/or the clearance period of any feature motion picture as provided in Paragraphs (b), (c), or (d) of this Clause, the Exhibitor upon payment of the sum or sums payable hereunder as provided in this Clause for the license to exhibit such feature motion picture, shall have the right to exhibit the same hereunder upon a date or dates not in conflict with any run and/or clearance period granted or hereafter granted to other exhibitors, upon written request mailed or delivered to the Distributor within sixty (60) days after the last date upon which such feature motion picture should have been exhibited by the Exhibitor as provided in this Clause. Failing to make such request within said period of sixty (60) days the license to exhibit such feature motion picture granted hereunder shall terminate and revert to the Distributor.

If the provisions of this Clause shall in anywise be in conflict with the provisions of any other license agreement made and entered into by the Distributor with any other [fol. 5832] exhibitor prior to September 1, 1933, the provisions of this Clause shall be deemed to be subordinate and subject to the provisions of such other license agreement.

Delivery and Return of Prints

Sixth: The Distributor agrees to deliver to the Exhibitor a positive print suitable for exhibition of each of the pictures for exhibition at the theatre on the dates on which such exhibitions are licensed hereunder. Delivery of such positive print by the Distributor to the Exhibitor at the Distributor's exchange or to a common carrier or to the United States postal authorities for mailing or to any agent of the Exhibitor shall be deemed delivery by the Distributor to the Exhibitor hereunder.

All deliveries other than at the Distributor's exchange shall be made in time to enable the carrier thereof, in accordance with the carrier's time schedule, to deliver prints to the Exhibitor or at the place where the theatre is located at least one hour before the usual time for the opening of the theatre.

The Exhibitor agrees to return each positive print received by the Exhibitor hereunder, with the reels and containers furnished therewith, to the exchange of the

Distributor from which the Exhibitor is served, or as otherwise directed by the Distributor, immediately after the last exhibition of such positive print, in the same condition as when received by the Exhibitor, reasonable wear and tear due to the proper use thereof excepted. The Exhibitor agrees to pay all costs of transportation of such positive prints, reels and containers from the Distributor's exchange or the last previous exhibitor having possession of any of such positive prints (as the case may be) and return to the Distributor's exchange; or if directed by the Distributor, to ship such positive prints elsewhere than to the Distributor's exchange, transportation charges collect. It is agreed that the delivery of a positive print properly directed and packed in the container furnished by the Distributor therefor, to a carrier designated or used by the Distributor and proper receipt therefor, obtained by the Exhibitor, shall constitute the return of such positive prints by the Exhibitor.

If the Exhibitor fails to or delays the return of any positive print to the Distributor or fails to forward or delays [fol. 5833] forwarding (as directed by the Distributor) any such print to any other exhibitor the Exhibitor agrees to pay the Distributor the damage, if any, so caused the Distributor and in addition the damage, if any, so caused such other exhibitor.

Selection of Playdates

Seventh: Unless otherwise agreed upon or unless definitely specified or otherwise provided for in the Schedule, the exhibition date or dates of each of said motion pictures shall be determined as follows:

1. Subject to prior runs and/or clearance granted or hereafter granted by the Distributor to other exhibitors and within a reasonable time after a print or prints of any of said motion pictures are received at the exchange of the Distributor out of which the Exhibitor is served, and provided the Exhibitor is not in default hereunder, the Distributor shall mail to the Exhibitor a notice in writing of the date when each such motion picture will be available for exhibition by the Exhibitor (which date is hereinafter referred to as the "available date"). Such notice shall be mailed to the Exhibitor at least fifteen (15) days before the available date therein specified.

2. Within fourteen (14) days after the mailing of such notice, the Exhibitor shall select an exhibition date or

dates not theretofore assigned to another exhibitor or other exhibitors, within the period commencing upon the available date and ending thirty (30) days thereafter and give to the Distributor written notice of the date or dates so selected.

3. Upon the failure of the Exhibitor to so select such date or dates the Distributor shall designate such date or dates by mailing written notice thereof to the Exhibitor. In such event the license fees payable hereunder for such picture shall become due and payable on the date or dates so designated by the Distributor and the Distributor shall be under no obligation to ship or tender a print of such picture to the Exhibitor unless the Exhibitor shall have confirmed such date or dates in writing after the designation thereof by the Distributor.

[fol. 5834] Loss of and Damage To Prints

Eight: The Exhibitor shall pay to the Distributor a sum equal to the cost of replacement at the Distributor's exchange for each linear foot of any positive print lost, stolen or destroyed or injured in any way in the interval between the delivery thereof by the Distributor and the return thereof by the Exhibitor in full settlement of all claims for such loss, theft, destruction or injury. Such payment, however, shall not transfer title to or any interest in any such positive print to the Exhibitor or any other party, nor release the Exhibitor from liability arising out of injury. Such payment, however, shall not transfer title to or any interest in any such positive print to the Exhibitor or any other party, nor release the Exhibitor from liability arising out of any breach of this agreement. The Distributor shall at the option of the Exhibitor repay or credit to the Exhibitor any sums paid by the latter for lost or stolen prints, excepting "news reels," upon their return to the Distributor within sixty (60) days after the date when the same should have been returned hereunder. The Exhibitor shall not be liable for the damage or destruction of any positive print, provided the Exhibitor establishes such damage or destruction occurred while in transit from the Exhibitor. The Exhibitor shall immediately notify the Distributor's exchange by telegram of the loss, theft or destruction of or damage or injury to any positive print. If any positive print shall be received from the Exhibitor by the Distributor or any subsequent exhibitor in a damaged or partially destroyed condition it shall be deemed to have been so damaged or destroyed by the Exhibitor unless the latter, prior to the second public exhibition thereof shall have telegraphed the Distributor's exchange that such print was received by the Exhibitor in a damaged or partially destroyed condition, and setting forth fully the nature of such damage and the amount of footage so damaged or destroyed.

Description of Pictures

Ninth: (a) The Distributor shall have and hereby reserves the right in the sole discretion ~~of the~~ Distributor to [fol. 5835] change the title of any of the said motion pictures, to make changes in alterations and adaptations of any story, book or play, and to substitute for any thereof any other story, book or play. The Distributor also shall have and hereby reserves the right to change the director, the cast or any member thereof of any of said motion pictures.

(b) The Exhibitor shall not be required to accept for any feature motion picture described in the Schedule as that of a named star or stars, director or named well-known author, book or play, any motion picture of any other star or stars, director, author, book or play, nor to accept any other feature motion picture in place of any thereof which in the Schedule is designated "no substitutes." The right of rejection conferred on the Exhibitor by this Clause is in addition to the right of exclusion provided in Article Sixteenth hereof.

(c) The Distributor warrants that none of said motion pictures are reissues of old negatives, old negatives retitled or foreign produced by a foreign producer, excepting those specifically specified as such in the Schedule; and further that none of said motion pictures contains or will contain any advertising matter for which compensation is received by the Distributor, or any subsidiary or affiliate of the Distributor.

Assignment Upon Sale of Theatre

Tenth: This agreement shall not be assigned by either party without the written acceptance of the assignee and the written consent of the other party; provided, that if the Exhibitor sells or disposes of his interest in the theatre, he may assign this agreement to the purchaser of such interest without the written consent of the Distributor and such assignment shall become effective upon the written acceptance thereof by the assignee; such assignment, however, *shall not relieve the Exhibitor* of liability hereunder, unless the distributor consents in writing to release the Exhibitor from such liability. In the event that the Exhibitor shall cease to operate, or shall cease to remain in possession of, the theatre and shall assign this agreement as herein permitted, the Distributor may, at its election, cancel and terminate this agreement immediately, without waiving [fol. 5836] or impairing any other right *or* afforded the Distributor in law or in equity.

Exhibition and Advertising

Eleventh: The Exhibitor agrees to run pictures (excepting "news reels"), as delivered without alteration, excepting with the written or telegraphic approval of the Distributor, subject to requirements of duly authorized public authorities necessitating any change. The Exhibitor also agrees to advertise and announce each picture as a "Radio Picture." In all newspaper advertising and publicity issued by the Exhibitor relating to the pictures, the Exhibitor shall adhere to the form of announcement contained in the advertising matter issued by the Distributor.

Unless this agreement expressly provides for the "first run" in the City or Town wherein the theatre is located, the Exhibitor agrees not to advertise any of the pictures by means of lithographs, slides, trailers, lobby displays, newspaper announcements, advertising or otherwise prior to, and until after the completion of, the exhibition thereof by any other exhibitor having the right of the "first run" or any other prior run thereof in said City or Town.

The Distributor shall not in any wise be liable for any breach of the provisions of the immediately preceding paragraph contained in any other agreement with any other exhibitor.

Taxes

Twelfth: The Exhibitor shall pay to the Distributor upon demand, any tax, fee or other like charge now and/or hereafter imposed or based upon the delivery and/or the exhibition of prints of motion pictures and/or upon the sums payable under this license by the Exhibitor to the

Distributor. If under any statute or ordinance any such tax, fee or other like charge is or shall be payable or paid by the Distributor and the exact amount payable hereunder by the Exhibitor is not therein definitely fixed or cannot be exactly determined, then the Exhibitor shall pay such part of any such tax fee or other like charge paid or payable by [fol. 5837] the Distributor as shall be fixed in the manner determined by the then President of the American Arbitration Association.

Delay in or Prevention of Performance

Thirteenth: If either the Exhibitor or the Distributor shall be prevented from performing its obligations hereunder with respect to any picture or pictures for causes beyond its direct control, the license in respect of each such picture or pictures shall terminate and revert to the Distributor without liability on the part of either party, provided that the party prevented from performing shall give reasonable written notice of the prevention of performance and the nature of such prevention.

Waiver

Fourteenth: The waiver by either party of any breach or default by the other party shall not be construed as a waiver, of any other subsequent breach or default by such other party.

Verbal Promises; Representations

Fifteenth: *This agreement is complete and no promise or representations have been made by either party to the other except as set forth herein.*

Sixteenth: (a) If in this license agreement the total number of feature motion pictures offered to the Exhibitor by the Distributor, at one time, shall have been licensed by the Distributor hereunder and the license fee of each thereof averages not more than Two hundred and fifty ($250.00) Dollars, the Exhibitor shall have the privilege to exclude from this license agreement not to exceed ten (10%) percent. of the total number of feature motion pictures licensed hereunder; provided that the Exhibitor (1) is not in default hereunder, and (2) shall have fully complied with all the provisions, if any, set forth in this agreement for the exhibition of such feature motion pictures at specified intervals:

Option To Exclude If Group Licensed

(b) Such privilege of exclusion may be exercised only upon the following terms and conditions: (1) The Exhibitor [fol. 5838] shall give to the Distributor written notice of the Exhibitor's election to exclude any of said feature motion pictures within fourteen (14) days after the general release date thereof in the exchange territory out of which the Exhibitor is served. (2) The Exhibitor may exclude without payment therefor one (1) motion picture out of each group of ten (10) of the number of feature motion pictures specified in this license agreement provided the Exhibitor has paid for the other nine (9) of such group. (3) If such privilege of exclusion is not exercised as provided in paragraph (b) (2) above, the Exhibitor may nevertheless exercise such privilege by paying the license fee of each motion picture excluded with the notice of its exclusion. In such case, such payment shall be credited against such tenth or succeeding tenth motion picture, as the case may be, which the Exhibitor would otherwise be privileged to exclude as provided in paragraph (b) (2) above. If the only or last group licensed is less than ten (10) and more than five (5) motion pictures, the privilege to exclude shall apply provided the Exhibitor has paid for all motion pictures but one in such group.

(c) Upon the failure or refusal of the Exhibitor to comply with any term or condition of this license agreement, or to comply with any arbitration award in respect thereto, the privilege of exclusion forthwith shall be revoked and the Exhibitor shall be liable for and pay to the Distributor the license fees of all motion pictures theretofore excluded.

(d) If the license fee of any feature motion picture specified in this license agreement is to be computed in whole or in part upon a percentage of the receipts of the Exhibitor's theatre, such license fee (for the purpose of computing the average license fee of all the motion pictures licensed) shall be determined as follows: (1) Average the license fees of all of the Distributor's feature motion pictures exhibited upon a percentage basis at the Exhibitor's theatre during the period of one year prior to the term of this license agreement. (2) If none of the Distributor's feature motion pictures were exhibited upon a percentage basis at such theater during said period, average the license fees of all feature motion pictures exhibited upon a percentage basis at such theatre during the said period.

(e) If the rental of any motion picture excluded is to be [fol. 5839] computed in whole or in part upon a percentage of the receipts of the Exhibitor's theatre, the sum to be paid by the Exhibitor as provided in paragraph (b) (3) hereof shall be determined as follows: (1) Average the gross receipts of all the Distributor's feature motion pictures exhibited at the Exhibitor's theatre during the ninety (90) day period preceding the Exhibitor's notice of exclusion, and apply to such average the percentage terms specified in this license agreement for the picture excluded. (2) If no feature motion pictures of the Distributor were exhibited at the Exhibitor's theatre during said ninety (90) day period, average the daily gross receipts of the Exhibitor's theatre for the period of thirty (30) operating days preceding the Exhibitor's notice of exclusion and apply to such average the percentage terms specified in this license agreement for the picture excluded.

(f) In computing the number of feature motion pictures which may be excluded hereunder, fractions of more than one-half (½) shall be regarded as one (1).

(g) Upon the exclusion of each feature motion picture, the license therefor and all rights thereunder shall terminate and shall revert to the Distributor.

Acceptance by Distributor

Seventeenth: Until accepted in writing by an officer of or any person authorized by the Distributor and notice of acceptance sent to the Exhibitor this instrument shall be deemed only an application for a license under Copyright, and may be withdrawn by the Exhibitor any time before such acceptance. Unless such notice of acceptance is sent the Exhibitor by mail or telegraph within fifteen (15) days after the date thereof, if the said theatre of the Exhibitor is located East of the Mississippi River, and within thirty (30) days after the date thereof if located West of said river, said application shall be deemed to have been withdrawn. The deposit by the Distributor of any check or other consideration given by the Exhibitor at the time of application as payment for any purpose or the delivery of a print of any of said motion pictures shall not be deemed an acceptance hereof by the Distributor.

[fol. 5840] Liquidated Damages, Percentage Bookings

Eighteenth: If the license fee of any picture is to be computed either in whole or in part, upon a percentage of the gross admission receipts of the theatre, and if the Exhibitor fails or refuses to exhibit such picture as provided in this agreement, the Exhibitor shall pay to the Distributor as liquidated damages for each day that the Exhibitor fails or refuses to exhibit such picture (in addition to any fixed sums payable hereunder in respect of such picture) a sum equal to such percentage of the average daily gross receipts of the theatre during the period of thirty (30) operating days immediately prior to the date or dates when such picture should have been so exhibited, provided, however, that if the Exhibitor shall exhibit such picture for less than the full number of days provided for in this agreement, such sum equal to such percentage shall be computed upon a sum equal to seventy-five per cent (75%) of the gross receipts of the theatre for the last day of the exhibition thereat of such picture.

Road Shows

Nineteenth: (a) The Director shall have the right to exhibit and/or cause to be exhibited as a "roadshow," at any time prior to the exhibition thereof hereunder, such of the motion pictures licensed hereunder as the Distributor may from time to time select and determine, provided, however, that such roadshow exhibitions shall be at theatres at which admission prices for evening performances, during such exhibitions thereof, of not less than one dollar shall be charged for the majority of the orchestra seats, and further provided that, except in the cities of New York and Los Angeles, not more than two of such motion pictures shall be so roadshown.

(b) If and when any such roadshow exhibition shall be in the City of New York and/or the City of Los Angeles, and if the Exhibitor's theatre is situated in the territory then served by the Distributor's exchange or exchanges located in New York or in Los Angeles, as the case may be, the Distributor shall have the right to except and exclude from this license not to exceed two of such motion pictures so roadshown in each or both of said territories, upon sending to the Exhibitor written notice to such effect not later than four [fol. 5841] (4) weeks after the commencement of such roadshow exhibition and provided that the Distributor shall by like notice except and exclude such motion picture from all other license agreements containing this Clause and licensing the exhibition of such motion picture in such territory. The exception and exclusion of any such motion picture in the territory then served by the Distributor's exchange or exchanges located in the City of Los Angeles, or in the City of New York, as the case may be, shall not be deemed to require the Distributor to except and exclude the same motion picture in both said territories.

(c) If and when any such roadshow exhibition, excepting those in the City of New York and/or in the City of Los Angeles, shall be in the territory served by the Distributor's exchange or exchanges serving the Exhibitor's theatre, the Distributor shall have the right to except and exclude from this license not to exceed two of such motion pictures so roadshown upon sending to the Exhibitor written notice to such effect within seven (7) days after the commencement of such roadshow exhibition and provided that the Distributor shall by like notice except and exclude each such motion picture from all other license agreements containing this Clause and licensing the exhibition of such motion picture in such territory.

(d) The inadvertent omission to send to any of such other exhibitors the notice provided for in Paragraphs (a) and (b) of this Clause shall not be deemed to affect the exception and exclusion from this license of any such motion picture.

(e) The Distributor may so exercise such right to except and exclude any such motion picture from time to time, in the respective territories, as above defined, in the United States. Any motion picture so roadshown in any place in the United States, and not excepted and excluded from this license as aforesaid, shall not be deemed available for exhibition hereunder until after the completion of such roadshowing of such motion picture in the United States, and such motion picture shall be exhibited hereunder when generally released by the Distributor and as and when available for exhibition by the Exhibitor, and the term of this license agreement specified in Article First shall be in respect to each such motion picture, extended to and including the date [fol. 5842] or dates of exhibition by the Exhibitor hereunder of each thereof.

(f) For each motion picture that the Distributor shall except and exclude, as aforesaid, the Exhibitor is hereby granted the option to except and exclude from this license (in addition to those which may be excluded as provided in Article First and Sixteenth) one of the other motion pictures licensed hereunder, but only if the Exhibitor shall give to the Distributor written notice to such effect not later than fourteen (14) days before the date fixed for the exhibition hereunder of such other motion picture. The Distributor may exhibit and/or license the exhibition of any and all motion pictures excepted and excluded from this license by the Distributor and/or the Exhibitor, as aforesaid, when and where desired by the Distributor, free from all claims of the Exhibitor in respect thereof and the license of each thereof shall forthwith upon exclusion as herein provided terminate and revert to the Distributor.

Additional Pictures

Twentieth: Where any picture is designated in the schedule by the name of a single star or by the name of a single director, such designation shall not refer to, and there shall not be included in this agreement because of such designation, any picture in which such star shall appear with any other star or stars, whether or not such stars are named in the schedule, nor shall there be included in this agreement because of such designation, any picture which may be directed by such director so long as there shall appear in such picture any star or stars.

The Distributor may release, at any time, independently of this agreement, an additional picture or pictures of any star or stars designated in the schedule (but not more than two of such pictures during the period described in Article First hereof) and nothing in this agreement contained shall be deemed to give the Exhibitor any right to any such additional picture, but any such additional picture, whenever released, may be exhibited and/or licensed for exhibition free of any claim thereto by the Exhibitor, without affecting in any manner the Distributor's obligation to furnish, and the [fol. 5843] Exhibitor's obligation to accept, any and all of the pictures, as described in the schedule.

Cancellation in Event of Default

Twenty-first: In the event that the Exhibitor shall (a) fail or refuse to exhibit or pay the license fee in respect of any picture, (b) fail or refuse to select or designate a date for the exhibition thereof as in Article Seventh hereof provided, (c) refuse to permit the Distributor or its authorized representative access to the theatre and its box office for the purpose specified in Article Third hereof, or (d) otherwise default in its obligations hereunder, the Distributor, at its election, may consider any such action or failure to act (hereinafter referred to as a default) as a material breach hereof by the Exhibitor and may, at its election (1) terminate this agreement with respect to pictures not theretofore delivered, (2) withhold the delivery of additional pictures until such default shall be remedied, or (3) if such refusal shall relate to the payment of the license fees in respect of any picture or pictures, the Distributor may deliver any subsequent picture c. o. d. in an amount to pay the license fee for such subsequent picture and all previous pictures in respect of which the license fees are delinquent. If the Distributor shall elect to cancel and terminate this agreement, the license fees of all pictures licensed hereunder immediately shall become due and payable; the grant, if any, of the run or clearance in respect thereof shall stand revoked; the license in respect thereof shall revert to the Distributor; and the Distributor may thereafter license to other exhibitors any or all of such pictures. The Distributor shall not be obligated, however, to attempt to dispose of any such picture or pictures to exhibitors in the same locality for the purpose of mitigating the damages caused by the default of the Exhibitor.

In the event that the Exhibitor is adjudicated bankrupt or insolvent, or makes an assignment for the benefit of creditors, or in the event that a receiver, liquidator or trustee is appointed for the affairs of the Exhibitor, the Distributor, [fol. 5844] at any time thereafter, may terminate this agreement in respect of pictures not theretofore delivered to the Exhibitor hereunder by giving the Exhibitor notice in writing of its election so to do.

The election by the Distributor of any remedy hereunder shall not be deemed an election of such remedy in connection with any other default of the Exhibitor nor shall it be deemed as a waiver of any further or additional right or remedy of the Distributor in law or in equity.

Midnight Shows Consecutive Dates

Twenty-second: The license herein granted for the number of days specified in the Schedule shall not be deemed to include the right of exhibition at any time during the period prior to six A. M. on the date or first date of exhibition herein provided for, unless this license shall otherwise expressly permit exhibition prior to six A. M. on said date or first exhibition date. Unless this license shall otherwise expressly permit exhibition of each picture on dates which are not consecutive, if the number of dates of exhibition designated or otherwise agreed upon, as provided herein, are less than the maximum number of days herein specified, this license shall, upon such designation or agreement, be limited to the number of dates so designated or otherwise agreed upon, and in such event the maximum number of dates herein specified for any such picture shall be deemed to be reduced accordingly.

Twenty-third: The following Schedule and all of the written and printed parts thereof are a part of this license.

Branch . . . . Theatre . . . . .
Town or City . . . . Contract No. . . . .

SCHEDULE

Salesman	Block	Sales possibility		Film or disc equipment	House Classification	Class No.	Key No.
		Page No. . .	Line No. . .				

1936–1938 feature productions

Prod. No.	Title	No. Cons. Days	Sat., Sun., Incl.	License Fees Guaranteed	Score Fee	Sharing Terms of Gross

[fol. 5845] The Exhibitor agrees to play and pay for all feature pictures generally released by the Distributor during the 1936-37 season and further agrees that he shall be entitled to such pictures only as are identified by production numbers running from 701 to 746.

The Exhibitor agrees that the Distributor shall have the right to designate not more than . . . . photoplays to be played on the percentage terms listed in this license, and to designate the terms upon which the remaining photoplays shall be exhibited. The Exhibitor further agrees that the Distributor, in its sole discretion, may interchange the license fees specified in the Schedule to be payable in respect of any photoplay with the license fees specified to be payable in respect of any other photoplay to be exhibited under this agreement. The Distributor agrees to interchange and/or designate the terms for each photoplay by mailing notice in writing to the Exhibitor prior to the exhibition dates. The Exhibitor agrees to accept such photoplays on said terms and to give such photoplays playdates in accordance with clause six of this license agreement and further agrees that the Distributor may designate . . . . of the photoplays to be played on percentage to be played on preferred time including a Saturday and/or a Sunday.

If the license fees for any of the photoplays covered by this agreement are to be determined either in whole or in part upon the admissions receipts of the Exhibitor's theatre, the Distributor may employ any checking agency or its employees as the authorized representative of the Distributor provided for in Article Third hereof. If the Exhibitor shall refuse access to the theatre and its box office to any authorized representative of the Distributor, the Distributor in addition to all other rights or remedies hereunder may terminate the license herein granted in respect of the picture at the time being exhibited and immediately recover possession of the print of such picture without affecting this agreement insofar as it relates to other pictures.

The Exhibitor agrees that none of the feature photoplays licensed hereunder will be exhibited at the same performance with any other feature photoplay as part of a double feature [fol. 5846] program, and a breach of this provision will be considered a material breach of this agreement.

....	....	....	....	....	....	....
....	....	....	....	....	....	....
....	....	....	....	....	....	....
....	....	....	....	....	....	....
....	....	....	....	....	....	....

This license agreement does not include any feature or short subject pictures released by the Distributor during the 1936-1937 season which are produced by independent producers who have contracts with the Distributor providing that the pictures of such independent producers shall be licensed to exhibitors under separate exhibition contracts, nor does it include any feature or short subject pictures produced in color unless such color pictures are definitely indicated in the Schedule as being licensed hereunder.

The license fees above set forth opposite the respective groups of pictures are the actual license fees for each of such pictures in each group and the pictures are not licensed on an average basis.

Number of Features Offered .... Number of Features Contracted for ....

Total Feature License Fees (Including Score) $

Admission Prices

The Exhibitor during the whole of the licensed exhibition period of each of the motion pictures exhibited hereunder agrees to and shall charge for admission to said theatre the following prices:

Matinee: Adults, orchestra .... balcony ....
children, orchestra .... balcony ....
Evening: Adults, orchestra .... balcony ....
children, orchestra .... balcony ....

Unless a greater admission price is specified above, the Exhibitor will charge an admission of not less than fifteen cents (15¢) for adults at evening performances, and not less than ten cents (10¢) at all other performances. If higher [fol. 5847] admission prices are specified above, however, such higher prices shall be charged.

If during any such period less than said admission prices is charged, the Distributor in addition to all other rights hereunder shall have the right: (a) to immediately terminate the license of the motion picture then being exhibited, by written notice to such effect to the Exhibitor and upon the giving of such notice, the license of such motion picture shall forthwith terminate and revert to the Distributor; or (b) provided the Exhibitor is granted herein a period of "clearance" to reduce such period by not to exceed one-half in respect to each of the motion pictures thereafter deliverable hereunder; or (c) provided no period of clearance is specified in the Schedule to withhold for a period not to exceed sixty (60) days notice of the date when each motion picture thereafter deliverable hereunder will be available for exhibition by the Exhibitor; and as to each such motion picture, the "run" thereof, if any, granted the Exhibitor, shall be deemed revoked and the Exhibitor agrees to exhibit each such motion picture after notice of the available date thereof upon the date or dates determined as provided in Clause Sixth hereof.

Advertising Accessories

The Exhibitor agrees to lease from the Distributor or the Distributor's authorized agent for use only in connection with the exhibition of each of the motion pictures exhibited hereunder and agrees not to sub-lease or sell the following advertising accessories:

[fol. 5848]

Item	One Sheet	Three Sheets	Six Sheets	24 Sheets	11 x 14 Colored	22 x 28 Colored	14 x 36 Colored	Stills 8 x 10	1 Color Slides	Press Books	Burgees	Special Circus Heralds	Novelties	Mats	Standard Window Cards	Miniature Window Cards	Hangers	Streamer	
Quantity																			
Amount $																			Total

[fol. 5849] *Run—Clearance—Additional Remarks (no Clearance on Pathe Newsreel):*

	Title or Series	No. Cons. Days	No. Bought	License Fee, per Subject	Total for Series

Exhibitor agrees to play and pay for not less than single reels and two reel comedies to be played at the terms indicated on this contract and to be selected from the regular one and two reel subjects announced for the 1936-37 season.

Pathe News	Sat.	Sun.	Mon.	Tue.	Wed.	Thur.	Fri.	Print No.	Starting Date	No. Bought	Terms		Starting Day Each Week
											No. Cons. Days	License Fee Per Issue	
52 Odd Issues													
52 Even Issues													

The Exhibitor agrees to play and/or pay for not less than features per commencing ;
two-reel comedies per commencing ;
one-reel subjects per commencing ;
Pathe Newsreels per week commencing , if and as available until all pictures herein are exhibited and/or paid for. All pictures must play within thirty (30) days of availability. The Exhibitor agrees to pay each week the sum of $ until the full amount of $ is paid for short subjects including Pathe Newsreels listed in this contract irrespective of the number of short subjects and Pathe Newsreels used each week. Payments to start 193 .

The Exhibitor hereby acknowledges that the Distributor has offered to the Exhibitor the choice of executing this agreement or the optional standard license agreement of the [fols. 5850-5856] *Distributor and that the Exhibitor has chosen to execute this agreement.*

In witness whereof the Exhibitor, operating the Theatre, located at in the has on executed this
(City and State) (date)
application, which, upon written acceptance thereof by the Distributor, shall be deemed to be the license of the said Exhibitor for the exhibition of the motion pictures specified in the Schedule, but only at the said Theatre in accordance with the terms and conditions hereof.

Exhibitor Partnership Corporation Lessee Owner
By Exhibitor (Indicate one)
Partner Gen. Mgr. Officer (Indicate one)
Personally Guaranteed by
Accepted
RKO Distributing Corporation, by —.

* *Direction to Salesmen:* While you have every right to trade among prospective customers to obtain the best offer possible for your product, after you have selected a particular exhibitor whose offer you believe to be the best obtainable and take a written application from such exhibitor, you are hereby directed to forward the application to the office of your company and make no further effort to sell the same service to any other exhibitor directly competing with such exhibitor until the application so forwarded has been duly rejected, accepted, or withdrawn in accordance with its terms, a violation of this direction will subject you to discharge.

[fol. 5857] United Artists—1936-37

Form 220B-1-37-U

Form 220B—1-37-U

Exchange .... Dated ....

Salesman .... Form 41 No. ....

United Artists Corporation

Applications & Contracts

for

.... Productions

Eighteenth: The following Schedule and all the written and printed parts thereof are a part of these licenses:

As and when each of the following motion picture- is completed, delivered by the Producer to the Distributor and generally released, the Distributor shall make such motion picture available to the Exhibitor:

SCHEDULE

Home Office Contract Number	Title of Picture (Subject to Change)	Star or Director	No. Consecutive Days Run and Days of Week	Score Fee	Flat License Fee	Terms
						Guarantee and Percentage $....
						Guarantee and Percentage $....
						Guarantee and Percentage $....

1. Theatre .... 2. Town and State ....
3. Exhibitor .... 4. Zone .... 5. Run ....
6. Clearance ....

[fol. 5858] 7. The Exhibitor agrees to charge as minimum admission when exhibiting the above.

Matinee— Adults . . . . . . Children
After 5 P. M.— " . . . . . . "

The Exhibitor agrees to adhere in its advertising and publicity to the instructions issued to the Exhibitor by the Distributor.

Special Arrangements:

Beginning of the
Contract of License

The following shall constitute the contract of license for each picture for which the application of the Exhibitor is accepted by the Distributor at its home office in New York City:

License

First: The Distributor grants and the Exhibitor accepts a limited license under copyright of the motion picture for which the application is accepted and a license for use of the sound recorded therewith to exhibit publicly said motion picture and to reproduce publicly such recorded sound in synchronism therewith by use of the positive print delivered to the Exhibitor by the Distributor on the dates set in accordance with the terms hereof and specified or confirmed by the Distributor in writing.. Said license does not include any exhibition prior to 8 a. m. of the first date of exhibition.

Music

Second: If copyrighted musical compositions are included in such recorded sound, the exhibitor warrants to have at the date of exhibition a license to perform publicly such music from the copyright proprietor thereof.

Payment

Third: (a) The Exhibitor agrees to pay to the Distributor the license fees in the Schedule set forth at least 7 days in advance [fol. 5859] of the fixed day of the exhibition of each picture as such days are fixed in the Schedule or in accordance with Article Seventh hereof. Any and all payments to be made hereunder shall be payable to the Distributor at the city in which is located the Exchange from which the Exhibitor is served.

Payment Upon Percentage Basis—Trust Funds

(b) If any part of the license fees of said motion pictures shall be computed upon the exhibitor's gross receipts, such payment or part thereof shall be made to the distributor at the end of each day's exhibition together with a correct itemized statement of the gross receipts of said theatre for admission thereto upon the exhibition date or dates of said motion picture for which payment is so required to be made, signed by the Exhibitor or the Exhibitor's Manager and the Exhibitor's cashier or treasurer. Should the distributor so require, such itemized statement shall be made upon forms furnished by the distributor. Upon said date or dates an authorized representative of the distributor is hereby given the right to verify the sale of all tickets of admission to said theatre, and the receipts therefrom, and for such purpose shall have access to the theatre, including the box office, and also the right to examine the exhibitor's books and records relating to such gross receipts. The distributor, or its authorized representative, also shall have access for a period of one (1) year after the receipt by the distributor of each final box office statement, to all of the exhibitor's books and records for the purpose of verifying such box office statement. The distributor agrees that any information obtained pursuant to the provisions of this Clause will be treated as confidential, excepting in any arbitration proceeding, or litigation in respect to this license. The Exhibitor further agrees to segregate the Distributor's share of the gross receipts as such admission moneys are paid into the box office and not to intermingle such funds with any other moneys and to hold such percentage share of such gross receipts in trust for the Distributor and to pay over such trust funds daily as in this paragraph provided, it being intended that the Distributor's share of the gross receipts shall be exclusively the property of the Distributor from the moment it is paid into the box office.

[fol. 5860]

Liquidated Damages for Breach

Fourth: 1. *If Licensed Upon a Flat Fee.*—The Exhibitor recognizes and agrees that the damage suffered by the distributor, if the exhibitor fails to exhibit and pay for any of the aforesaid motion pictures, is the license fee specified in the schedule above.

2. *If Licensed Upon a Percentage Basis.*—If payment hereunder of the license fee of any such motion picture shall be computed either in whole or in part, upon a percentage of the gross admission receipts of said theatre, and if the Exhibitor fails or refuses to exhibit any such motion picture as herein provided, the Exhibitor shall pay to the Distributor as liquidated damages for each day that the Exhibitor fails or refuses to exhibit any such motion picture, a sum equal to such percentage of the average daily gross receipts in such theatre during the period of thirty (30) operating days to wit, the sixteen (16) operating days immediately prior to and the fourteen (14) days immediately after but including the date of the mailing of the notice of availability for the specific unplayed picture as set forth in Article Seventh Subdivision (2) and in addition any fixed sums payable hereunder in respect thereto. If the Exhibitor shall exhibit any such motion picture for less than the full number of days provided for in this license the sum equal to such percentage shall be computed upon a sum equal to seventy-five per cent (75%) of the gross receipts of said theatre during the last day of the exhibition thereat of such motion picture. A sworn statement of the said daily gross receipts shall be delivered by the Exhibitor to the Distributor upon demand therefor.

Delivery of Prints

Fifth: (1) The Distributor shall deliver a print of 2,000-foot reels or less, the length to be at the option of the Distributor, in physical condition for the exhibition contemplated herein.

[fol. 5861] 2. Delivery to the Exhibitor or the Exhibitor's authorized agent by delivery at the Distributor's Exchange, or to a common carrier, or to the United States Postal authorities, shall constitute delivery for all purposes under the terms of this agreement. Any delivery to a carrier shall be made in accordance with the carrier's delivery schedule in time to reach the place where the said theatre is located at least one hour before the usual time for the opening of said theatre.

Road Show

Sixth: A road show is solely under the control of the producer and is not a general release, and the producer does not deliver a picture to the distributor for general release until the completion of any such road shows. Thus said motion picture will become available to the Distributor for distribution only upon the completion of any such road show. However, the Distributor agrees that should any motion picture be "road-shown" in the immediate vicinity of the Exhibitor's theatre, in the same zone, as that word is understood in motion picture parlance, this contract for the exhibition of said motion picture may, at the option of either party, be cancelled by written notice given to the other party within 15 days after the commencement date of such road-show. Otherwise this agreement remains in full force and effect.

Fixing Exhibition Dates

Seventh: The exhibition date or dates of each motion picture, unless definitely specified or otherwise provided for in the Schedule, or otherwise agreed upon in writing, shall be as follows:

(1) This contract contemplates the general release of the pictures to be delivered hereunder within twenty (20) months next succeeding the date of the execution of this contract. Should the Producer not deliver any one or more of these pictures to the Distributor so that the Distributor can generally release said picture or pictures by that date, the contract of license for each such picture not delivered shall be mutually cancelled on that date.

[fol. 5862] (2) Within a reasonable time after the delivery by the producer, and provided the exhibitor is not in default hereunder, or under any other contract with the distributor, the distributor agrees to mail to the exhibitor a notice in writing of the date when such motion picture will be available for exhibition by the Exhibitor, such date being hereinafter referred to as the available date. Such notice shall be mailed to the exhibitor at least fifteen days prior to the available date therein specified.

(3) The Exhibitor shall, within fourteen days after the mailing of such notice, select exhibition date or dates, such dates to be within the period commencing with the available

date and ending thirty days thereafter, by giving to the Distributor written notice of the date or dates so selected. If the exhibition date or dates so selected by the Exhibitor are not open to the Exhibitor, the Distributor shall so notify the Exhibitor, and in such event the exhibition date or dates shall be as provided in the following paragraphs (a) and (b):

(a) If other dates within the same period are open, the Distributor shall notify the Exhibitor thereof, and the Exhibitor agrees immediately to select from such open dates another date or dates. Should the Exhibitor fail so to do, the Distributor may, at its option, either declare the contract to be in default, or designate in writing such date or dates within the period beginning not earlier than two weeks and ending not later than six weeks from the date first selected by the Exhibitor, and give written notice thereof to the Exhibitor fourteen days before the date so designated by the Distributor. The Exhibitor must immediately confirm such dates to the Distributor, and should the Exhibitor not confirm the date so designated, the Exhibitor shall be in default under this contract.

(b) If no other dates within the said thirty days are open, then the Exhibitor shall designate the date or dates which shall be within the period beginning not earlier than two weeks, and ending not later than six weeks from the last day of the said thirty days, and written notices thereof shall immediately be given or mailed to the Distributor by the Exhibitor. If the Exhibitor fails to so designate such date or dates, then the Distributor may, at its option, either declare the contract to be in default, or designate in writing [fol. 5863] such date or dates within the period beginning not earlier than two weeks and ending not later than six weeks from the date first selected by the Exhibitor, and give written notice thereof to the Exhibitor fourteen days before the date so designated by the Distributor. The Exhibitor must immediately confirm such dates to the Distributor, and should the Exhibitor not confirm the date so designated, the Exhibitor shall be in default under this contract.

(4) In the event of Exhibitor's failing to designate exhibition date or dates for any motion picture as in this contract provided, or should the Exhibitor default in any other contract he has with the Distributor, then and there-

upon any sum or sums of money or other fixed consideration payment of which is provided for hereunder shall ipso facto become due and payable by the Exhibitor to the Distributor, anything to the contrary in this contract notwithstanding, and the clearance period provided in this contract in respect to any motion picture shall be revoked. If payment hereunder of the license fee of any motion picture is to be computed in whole or in part upon the percentage of the gross admission receipts of said theatre, damages shall be computed as to all unplayed percentage pictures as agreed upon in paragraph "Fourth," subdivision (2) hereof from the last day of the fourteen (14) days after the mailing of the notice of availability as set forth in paragraph "Seventh," subdivision (2) above which notice of availability was sent concerning the picture in the dating of which the Exhibitor is in default.

(5) The date or dates fixed or determined as in this Article provided shall be for all purposes the exhibition date or dates of the motion pictures as though set forth in the Schedule before execution hereof by the Exhibitor.

(6) The Exhibitor is cognizant that the Distributor is bound by contract to cause the motion pictures distributed by it to be exhibited in the several exchange territories in sequence of the general release of such pictures in each respective exchange territory. Therefore, pursuant thereto, the Exhibitor agrees to exhibit each motion picture for the license of which it contracts with the Distributor in the sequence of the notices of availability given the Exhibitor by the Distributor, and that this order of [fol. 5864] exhibition shall be of the essence of this and the other license agreements entered into by the parties hereto.

Return of Prints by Exhibitor

Eighth: (a) After each exhibition hereunder, the Exhibitor agrees promptly as instructed in writing by the Distributor, either to return the prints to the Distributor's Exchange, or to deliver the same to a carrier designated by the Distributor, or to deliver such print to another exhibitor, and in any case to pay all transportation charges therefor adequately valued and insured.

(b) In the event the Exhibitor is obligated by such written instructions to deliver any such print to another exhibitor, and fails so to do, and the Distributor is damaged thereby, the Exhibitor agrees to pay any and all such damages.

Loss of or Damage to Prints

Ninth: (a) The Exhibitor shall immediately notify the Distributor's Exchange by telegram of the loss, theft or destruction of or damage to any print between the delivery to and the return thereof by the Exhibitor, and in such event, the Exhibitor agrees to pay to the Distributor a sum equal to the cost of replacement for each lineal foot thereof.

(b) The Exhibitor agrees that all claims by him on account of the condition of or the late or non-arrival of a print shall be barred hereunder unless such claim shall be made by telegram, setting forth fully the condition complained of, within twenty-four hours after the exhibition date determined hereunder.

Cutting or Alterations of Prints

Tenth: The exhibitor shall exhibit each picture in its entirety and shall not copy, duplicate, subrent or part with possession of any print thereof nor shall the exhibitor cut or alter the same, excepting to make necessary repairs thereto, or when required by any duly authorized public official or authority or with the written or telegraphic consent of the distributor, and the exhibitor shall return each print in the same condition as received, reasonable wear only excepted.

[fol. 5865]

Clearance and Run

Eleventh: (a) Provided the Exhibitor is not in default hereunder, the Exhibitor agrees to observe the Clearance specified in the schedule hereof.

(b) If the Exhibitor is granted hereunder a second or subsequent run, the Distributor shall have the right in its sole discretion to advance the Exhibitor's run by giving notice in writing to such effect to the Exhibitor, and the Exhibitor agrees to exhibit any motion picture the run of which is thus advanced in accordance therewith, even though the Exhibitor's run thus becomes a first run and there are no runs prior thereto.

Advertising Prior to First Run

Twelfth: If the Exhibitor is granted hereunder a second or subsequent run, the Exhibitor agrees not to advertise any picture to be delivered hereunder except by means of advertisements inside the said theatre not intended for removal therefrom by the public, prior to the exhibition of any such picture by any other exhibitor having the right to the first or prior run thereof. In the event of any violation of this clause the Exhibitor agrees to pay to the Distributor a sum equal to the damage, if any, so caused such other Exhibitor, and the Distributor may, at its option, terminate the license granted hereunder for that picture or any other picture to be delivered by the Distributor. The Distributor, however, shall not be liable for any breach of the provisions of this article caused by any other exhibitor.

Taxes

Thirteenth: The exhibitor shall pay to the distributor upon demand, any tax, fee or other like charge now or hereafter imposed upon the delivery, or the exhibition of prints of motion pictures or upon the sums payable under this license by the exhibitor to the Distributor.

Impossibility of Performance

Fourteenth: Neither party shall be liable unto the other for a default caused by force majeur.

[fol. 5866]

C. O. D. Shipments

Fifteenth: Exhibitor hereby expressly grants Distributor the right to demand and receive, as a condition precedent to delivery of the print or sound records of any motion picture contracted for hereunder, payment of all amounts then due Distributor by Exhibitor under this or any other exhibition contract between the parties hereto and Distributor may require such payment of all sums then due by means of a C. O. D. shipment or otherwise.

Waiver

Sixteenth: A waiver by either party of any breach or default of the other party shall not be construed as a waiver of any other or subsequent breach or default of such other party.

Verbal Promises; Changes Must Be in Writing

Seventeenth: This license agreement is complete, and all promises, representations, understandings, and agreements in reference thereto have been expressed herein. No change, modification, or assignment hereof shall be binding upon the distributor unless in writing signed by an officer or any person duly authorized by the Distributor in its main office in New York City.

The right of the Distributor to approve or reject this application or any other application signed by the Exhibitor at the same time or at any other time is not dependent upon the approval or rejection by the Distributor of this application or of any other application.

The Distributor and Exhibitor agree that the above motion pictures are included in one contract form for convenience only, but that as a matter of substance the application for each picture specified in the Schedule is separate and distinct from the application for any other picture specified in the schedule and each application shall be treated as distinct from any other application by the Distributor and may be accepted or rejected without reference to the accepting or rejecting of any other picture, and that each application accepted is a separate contract as to the particular picture concerned, and this instrument if accepted [fols. 5867-5870] is to be construed as creating for each picture contracted for a separate contract containing the terms and conditions as are in this instrument contained as though there had been such a separate contract between Distributor and Exhibitor for each picture for which a contract is herein made.

Application May Be Rejected Immediately if Exhibitor Does Not Read and Sign Schedule as Indicated

Agreed to ....

Exhibitor

This license applies only to those pictures specifically described in the Schedule, and does not include any other pictured produced by the Producer whether distributed by this Distributor or any other Distributor.

In Witness Whereof, the Exhibitor has on the .... day of .... 19 , executed this application, which upon acceptance by the Distributor at his home office in New

York City by its affixing hereto the facsimile or perforated or written signature of the proper officers, shall constitute a contract of license for the exhibition of the motion picture specified in the schedule, but only at the theatre and on the dates specified herein and in accordance with the terms and conditions hereof.

Exhibitor .... L. S.

An Individual—A Partnership—A Corporation
(Strike out two)
Lessee—Owner—Operator
(Strike out two)

By ....

Partner—General Manager—Officer
(Strike out two)

Guaranteed by ....
Dated the .... day of ...., 193 ...
Accepted at New York, N. Y.

United Artists Corporation.
By ....
General Manager of Distribution

[End of Contract]

[fol. 5871] Universal—1936-37

Form E5

Contract Number ....

Exchange .... Population ....
Salesman .... Seating Capacity ....

For H. O. use only

Exchange	Salesman	By:

Universal Pictures

Optional Standard License Agreement

Agreement of license under copyright made in one or more counterparts between Universal Film Exchanges, Inc., a Delaware corporation (hereinafter referred to as the Distributor) party of the first part, and the Exhibitor (hereinafter named and referred to as the Exhibitor, operating the theatre hereinafter designated), party of the second part.

Witnesseth:

The parties hereto agree as follows:

License

First: The Distributor grants the Exhibitor and the Exhibitor accepts, a limited license under the respective copyrights of the motion pictures designated and described in the Schedule hereof and under the copyright of any matter included in any sound recorded therewith, to exhibit publicly said motion pictures and to reproduce for public performances such recorded sound in synchronism therewith, but only at the said theatre for the number of consecutive days specified in the Schedule and for no other use or purpose; provided that the reproducing equipment in the said theatre will operate reliably and efficiently to reproduce such recorded sound with adequate volume and high quality; and provided further that if copyrighted musical compositions are included in such recorded sound, the Ex- [fol. 5872] hibitor will have at the date or dates of the exhibition of each of such motion pictures a license from the copyright proprietor thereof or from any licensee of such copyright proprietor to perform publicly the said copyright musical compositions. If more than one theatre is hereinafter designated the said motion pictures are licensed for exhibition at only one of such theatres unless otherwise in the Schedule specifically provided in writing.

Term and Warranty

Second: (a) The term of this Agreement shall begin with the date fixed or determined for the exhibition at the said theatre of the first motion picture deliverable hereunder and shall continue for a period of one year thereafter unless otherwise in the Schedule provided. The Distributor agrees during said term to deliver to the Exhibitor, and the Exhibitor agrees to exhibit at said theatre during said term upon the dates herein provided for, a positive print of each of said motion pictures except such as may be excluded as provided in Clauses Fifteenth and Seventeenth hereof. The Distributor warrants that each positive print will be in good physical condition for projection and exhibition, and will clearly reproduce the recorded sound in synchronism therewith if properly used upon standard reproducing equipment. If the recorded sound is not recorded upon a print, all references herein to a print shall be deemed to include the records, discs and any other device upon which sound may be recorded for reproduction with the exhibition of a print.

Damages—Failure to Deliver

(b) If the Distributor shall fail or refuse to deliver, or the Exhibitor shall fail or refuse to exhibit during the term hereof, any of said motion pictures, excepting those which may be eliminated as provided in Clause Fifteenth hereof, and those which may not be generally released as provided in Clause Seventeenth hereof or if the Distributor shall wilfully violate any of the provisions of Clause Seventh hereof or shall deliver to the Exhibitor a print of any motion picture which print shall be determined was [fol. 5873] not in condition for exhibition and for the reproduction of sound as provided in Clause Second, the Exhibitor or the Distributor, as the case may be, shall pay the damage so caused and if such damage cannot be definitely computed shall pay as liquidated damages a sum equal to the fixed sum herein specified as the rental of each such motion picture or a sum computed as provided in Clause Third (c) hereof, if the rental of any such motion picture is to be determined, either in whole or in part upon a percentage of the admission receipts of said theatre or any part thereof or upon a percentage of such receipts and a fixed sum; provided that any claim by the Exhibitor with respect to the condition of a print shall be deemed to have been waived by the Exhibitor unless notice of such claim shall have been given by the Exhibitor to the Distributor's exchange from which the Exhibitor is served, by telephone or telegraph, or in person, immediately after the first public exhibition thereof by the Exhibitor and written confirmation thereof mailed by the Exhibitor upon the same day to the Distributor's said exchange.

Payment

Third: (a) The Exhibitor agrees to pay for such license as to each such motion picture the fixed sums specified in the Schedule at least three (3) days in advance of the date of delivery of a print thereof at the Distributor's exchange or of the date of shipment to the Exhibitor from another exhibitor, unless after the acceptance of this application by the Distributor such payment shall be otherwise agreed to by the Distributor in writing signed by an officer of the Distributor. All payments hereunder shall be made to the Distributor at the City in which is located the exchange from which the Exhibitor is served.

Percentage Bookings

(b) If the rental of any of such motion pictures is to be determined either in whole or in part upon the admission receipts of said theatre or any part thereof, the Exhibitor agrees to pay such rental immediately after the last exhibition upon the last date of the exhibition of each [fol. 5874] such motion picture or if requested by the Distributor at the end of each day's exhibition. In each such case the Exhibitor shall deliver to the Distributor immediately after the last exhibition upon each date of exhibition of each such motion picture a correct itemized statement of the gross receipts of said theatre for admission thereto upon each such date. Such statement shall be signed by the Exhibitor or the Manager or Treasurer of said theatre and the Cashier thereof and shall include a statement of such facts and figures as may be provided in the Schedule to be furnished by the Exhibitor, and if requested by the Distributor, shall be made upon forms furnished by the Distributor. Upon the exhibition date or dates of each motion picture an authorized representative of the Distributor is hereby given the right to verify the sale of all tickets of admission to said theatre, and the receipts therefrom; and for such purpose shall have access to the theatre, including the box office, and also the right to examine all relevant entries relating to such gross receipts in all the Exhibitor's books and records, and if hereunder it is provided that the Exhibitor make certain expenditures and/or deductions, to examine all entries relating to such expenditures and/or deductions. Such right of access and examination of the Exhibitor's books and records limited as aforesaid, shall continue for a period of four (4) months after the receipt by the Distributor of each such statement. The Distributor agrees, unless such representative is in the continuous employ of the Distributor or employed as a checker, not to employ as a representative for such purpose any person a resident of or employed in the place where the said theatre is located, other than a person engaged in business as an accountant. The Distributor agrees that any information obtained pursuant to the provisions of this clause will be treated as confidential, excepting in any arbitration proceeding or litigation in respect to this license.

Liquidated Damages—Percentage Bookings

(c) If the Exhibitor fails or refuses to exhibit any of said motion pictures as herein provided and the rental or any part thereof is to be computed in whole or in part upon a percentage of the admission receipts of said theatre, the [fol. 5875] Exhibitor shall pay the Distributor as liquidated damages for each day the Exhibitor fails or refuses to exhibit such motion pictures, in addition to any fixed sums payable hereunder in respect of such motion picture, a sum equal to such percentage of the average daily gross receipts of such theatre on each date any feature motion picture distributed by the Distributor was exhibited thereat during the period of ninety (90) days prior to the date or dates when said motion picture should have been so exhibited hereunder, or if no feature motion picture distributed by the Distributor was exhibited at such theatre during said ninety day period, then a sum equal to such percentage of the average daily gross receipts of such theatre during the period of thirty operating days immediately prior to the date or dates when such motion pictures should have been exhibited, or prior to the date of such failure or refusal to exhibit any of said motion pictures; provided that if the Exhibitor shall exhibit such motion pictures for less than the full number of days provided for in the Schedule, for each day less than said full number of days, the sum equal to such percentage shall be computed upon a sum equal to sixty-five per cent (65%) of the gross receipts of said theatre during the last day of the exhibition thereat of such motion picture. A sworn statement of the said daily gross receipts shall be delivered by the Exhibitor to the Distributor upon demand therefor.

Delivery and Return of Prints

Fourth: (a) After each of said motion pictures is generally released for public exhibition and becomes available for exhibition hereunder by the Exhibitor, the Distributor agrees to deliver as hereinafter provided, a print thereof to the Exhibitor.

(b) The public exhibition of any of said motion pictures for three (3) consecutive days at prices usually charged for admission to the theatre where so exhibited in the territory wherein is located the exchange from which the Exhibitor is served, excepting any "road show", "tryout", "preview", or "pre-release" exhibitions thereof, shall be deemed the general release for public exhibition of such motion picture but only in such territory. A "pre-release" [fol. 5876] exhibition shall be deemed any exhibition because of seasonal conditions making desirable exhibitions in advance of general release as herein defined.

(c) The Exhibitor agrees to exhibit each of said motion pictures in the order of its general release by the Distributor in the exchange territory in which said theater is located. The Exhibitor shall have the right to select any of the motion pictures, excepting the last deliverable hereunder, for exhibition out of the order of its general release, subject to prior runs and/or clearance granted other exhibitors, on the date or dates determined as provided in Article Sixth hereof or otherwise agreed upon, but only upon the following conditions (a) that the Exhibitor is not in default hereunder and shall have fully complied with all the provisions, if any, set forth in the Schedule for the exhibition of one or more of said motion pictures at specified intervals; and (b) that the Distributor and the Exhibitor shall then agree upon the date or dates upon which all of the motion pictures generally released prior to the general release of such motion picture and available for exhibition hereunder shall be exhibited by the Exhibitor, which date or dates shall be within thirty (30) days from the first exhibition date of the motion picture to be exhibited out of the order of its general release; or in the alternative the Exhibitor shall then pay to the Distributor the license fee for each of such motion pictures then generally released and available for exhibition hereunder, and as to any thereof which shall not be exhibited by the Exhibitor within thirty days from the first exhibition date of the motion picture to be exhibited out of the order of its general release, the grant of the run and clearance period in respect thereof shall be deemed waived by the Exhibitor. Upon the failure or refusal of the Exhibitor to exhibit any of such motion pictures then generally released and available for exhibition hereunder within said thirty-day period or to pay the license fee thereof, the right of the Exhibitor to thereafter select for exhibition any motion picture out of the order of its general release shall be forfeited. The provisions of this paragraph (c) shall not be deemed to limit or qualify the provisions of Article Sixth hereof excepting as in this paragraph (c) specifically provided.

(d) The Distributor shall make deliveries hereunder to the Exhibitor or to the Exhibitor's authorized agent, by delivery at the Distributor's exchange, or to a common carrier, or to the United States Postal authorities. If deliveries are made to a carrier or to a post office, they shall be made in time for prints to reach the place where the said theatre is located in time for inspection and a projection thereof before the usual time for opening said theatre.

(e) The Exhibitor agrees to return immediately after the last exhibition on the last date of exhibition licensed, each print received hereunder, with its reels and containers, to the exchange of the Distributor from which the Exhibitor is served or as otherwise directed by the Distributor in the same condition as when received, reasonable wear and tear due to proper use excepted. Exhibitor agrees to pay all costs of transportation of such prints, reels, and containers from the Distributor's exchange or the last previous exhibitor having possession of the same, and return to the Distributor's exchange; or if directed by the Distributor, to ship such positive prints elsewhere than to the Distributor's exchange transportation charges collect. It is agreed that the delivery of a positive print properly directed and packed in the container furnished by the Distributor therefor, to a carrier designated or used by the Distributor and proper receipt therefor obtained by the Exhibitor shall constitute the return of such positive print by the Exhibitor.

(f) If Exhibitor fails to or delays the return of any positive print to the Distributor or fails to forward or delays forwarding (as directed by the Distributor) any such print to any other exhibitor, the Exhibitor agrees to pay the Distributor the damage, if any, so caused the Distributor and in addition the damage, if any, so caused such other exhibitor. The Exhibitor shall have the right to participate in any compromise of or intervene in any arbitration or legal proceeding based upon any claim for such damage asserted against the Distributor by another exhibitor; notice of which shall be given the Exhibitor by the the Distributor.

[fol. 5878] Loss and Damage to Prints

Fifth: The Exhibitor shall pay to the Distributor a sum equal to the cost of replacement at the Distributor's exchange for each linear foot of any print, lost, stolen or destroyed or injured in any way in the interval between the delivery to and the return thereof by the Exhibitor in full settlement of all claims for such loss, theft, destruction or injury. Such payment, however, shall not transfer title to or any interest in any such positive print to the Exhibitor or any other party, nor release the Exhibitor from any liability arising out of any breach of this agreement. The Distributor shall at the option of the Exhibitor repay or credit to the Exhibitor any sums paid by the Exhibitor for any lost or stolen print, excepting "news reels," upon the return of such lost or stolen print to the Distributor within sixty (60) days after the date when the same should have been returned hereunder. The Exhibitor shall not be liable for the damage or destruction of any print, provided the Exhibitor establishes such damage or destruction occurred while in transit from the Exhibitor and delivery thereof was made as hereinabove provided. The Exhibitor shall immediately notify the Distributor's exchange by telegram of the loss, theft, or destruction of or damages or injury to any print. If any print shall be received from the Exhibitor by the Distributor or any subsequent exhibitor in a damaged or partially destroyed condition it shall be deemed to have been so damaged or destroyed by the Exhibitor unless the latter, immediately after the first public exhibition thereof shall have telegraphed the Distributor's exchange that such print was received by the Exhibitor in a damaged or partially destroyed condition, and setting forth fully the nature of such damage and the amount of footage so damaged or destroyed.

Selection of Play Dates

Sixth: Unless otherwise agreed upon or unless definitely specified or otherwise provided for in the Schedule, the exhibition date or dates of each of said motion pictures shall be determined as follows:

[fol. 5879] 1. Subject to prior runs and/or clearance granted or hereafter granted by the Distributor to other exhibitors and within a reasonable time after a print or prints of any of said motion pictures are received at the exchange of the Distributor out of which the Exhibitor is served, and provided the Exhibitor is not in default hereunder, the Distributor shall mail to the Exhibitor a notice in writing of the date when each such motion picture will be available for exhibition by the Exhibitor (which date is hereinafter referred to as the "available date"). Such notice shall be mailed to the Exhibitor at least (15) days before the available date therein specified.

2. Within fourteen (14) days after the mailing of such notice, the Exhibitor shall select an exhibition date or dates not theretofore assigned to another exhibitor or other exhibitors, within the period commencing upon the available date and ending thirty (30) days thereafter and give to the Distributor written notice of the date or dates so selected.

3. Upon the failure of the Exhibitor to so select such date or dates the Distributor shall designate such date or dates by mailing written notice thereof to the Exhibitor.

Clearance and Run

Seventh: The Distributor agrees not to exhibit or grant a license to exhibit any of said motion pictures for exhibition in conflict with the "run" or prior to the expiration of the "clearance period" if any in the Schedule specified, at any theatre therein named or within the territorial limits therein specified. Such period of clearance as to each of said motion pictures shall be computed from the last date of the exhibition thereof licensed hereunder. If clearance is granted against a named theatre or theatres indicating that it is the intention of the Distributor to grant such clearance against all theatres in the immediate vicinity of the Exhibitor's theatre then unless otherwise provided in the Schedule, such clearance shall include any theatre in such vicinity thereafter erected or opened.

Description of Pictures

Eighth: (a) (1) The Distributor will not substitute for any feature motion picture described in the contract there- [fol. 5880] for as that of a named star or stars or named director or named well-known author, book, or play, one of any other star or stars, director, author, book, or play, nor will the Distributor substitute any other feature motion picture for one which in this contract is designated "no substitute"; and the Exhibitor shall not be required to accept any such substitute motion picture.

(2) Nothing in this Article contained shall be interpreted to prohibit the Distributor from changing the title of any motion picture contracted for, from making changes, alterations, and adaptations of any story, book, or play upon which it is based and from substituting for any such story, book, or play another story, book, or play, or from changing the director, the cast, or any member thereof of any such motion picture, except as hereinabove specifically prohibited.

(b) The Distributor warrants that none of said motion pictures are reissues of old negatives, old negatives retitled, or foreign produced by a foreign producer, except those specifically specified as such in the Schedule; and further that none of said motion pictures contains or will contain any advertising matter for which compensation is received by the Distributor, or any subsidiary or affiliate of the Distributor.

Advertising Prior to First Run

Ninth: (a) If the Exhibitor is granted a subsequent run of any of the said motion pictures, the Exhibitor shall not advertise any thereof by any means of advertising, prior to or during the exhibition thereof by any other exhibitor having the right to prior run thereof.

(b) Nothing herein contained shall be deemed to prohibit the Exhibitor from advertising generally all of the feature motion pictures licensed for exhibition by the Exhibitor as a group, but such general advertising shall not refer to any one of said motion pictures at any time prior to its exhibition by any other exhibitor having first or immediately prior run thereof, excepting as hereinabove provided.

(c) The Exhibitor shall not advertise by any means of advertising any of said motion pictures which may be roadshown by the Distributor and not excepted and ex- [fol. 5881] cluded from this license, until after the completion of such roadshowing in the United States, and then only as permitted in paragraph (a) of this Clause.

(d) For a breach of the provisions of this Clause the Distributor shall have in addition to all other rights the right to exclude from this license any motion picture advertised in violation of the provisions hereof by written notice to such effect mailed to the Exhibitor and upon the mailing of such notice the license of such motion picture shall terminate and revert to the Distributor, unless arbitration is herein provided for and immediately upon the receipt of any such notice of exclusion the Exhibitor by written notice given to the Distributor shall deny breaching any of the provisions of this Clause, in which case the question of fact raised by such denial shall be determined by arbitration.

Acceptance by Distributor

Tenth: Until accepted in writing by an officer of or any person authorized by the Distributor and notice of acceptance sent to the Exhibitor this instrument shall be deemed only an application for a license under Copyright, and may be withdrawn by the Exhibitor any time before such acceptance. Unless such notice of acceptance is sent the Exhibitor by mail or telegraph within fifteen (15) days after the date thereof, if the said theatre of the Exhibitor is located East of the Mississippi River, and within thirty (30) days after the date thereof if located West of said river, said application shall be deemed to have been withdrawn. The deposit by the Distributor of any check or other consideration given by the Exhibitor at the time of application as payment for any purpose or the delivery of a print of any of said motion pictures shall not be deemed an acceptance hereof by the Distributor.

Changes in Writing

Eleventh: This license agreement is complete and all promises, representations, understandings, and agreements in reference thereto have been expressed herein. No change or modification hereof shall be binding upon the Distributor unless in writing signed by an officer of the Distributor, excepting in an emergency and only then, a change or modifica-

[fol. 5882] tion may be consented to in writing but only by the representative of the Distributor managing the Distributor's exchange out of which the Exhibitor is served provided such change or modification does not change or modify the run, and/or clearance period, or decrease any rental, or eliminate any motion picture specified in the Schedule.

Assignment on Sale of Theatre

Twelfth: This license shall not be assigned by either party without the written consent of the other, provided, that if the Exhibitor sells the said theatre or transfers any interest therein and is not in default hereunder, the Exhibitor may assign this license to the purchaser of the theatre or of such interest without the written consent of the Distributor but any such assignment shall not be valid or of any effect hereunder unless a written acceptance thereof by the assignee assuming the obligations of the Exhibitor shall be delivered to the Distributor. Any such assignment shall not release the Exhibitor from any liability hereunder unless such release from liability is consented to by the Distributor in writing.

Taxes

Thirteenth: The Exhibitor shall pay to the Distributor upon demand, any tax, fee or other like charge now and/or hereafter imposed or based upon the delivery and/or the exhibition of prints of motion pictures and/or upon the sums payable under this license by the Exhibitor to the Distributor. If under any statute or ordinance any such tax fee, or other like charge is or shall be payable or paid by the Distributor and the exact amount payable hereunder by the Exhibitor is not therein definitely fixed or cannot be exactly determined, then the Exhibitor shall pay such part of any such tax, fee, or other like charge paid or payable by the Distributor as shall be fixed in the manner determined by the then President of the American Arbitration Association.

[fol. 5883]

Prevention of Performance

Fourteenth: If the Exhibitor shall be prevented from exhibiting or the Distributor from delivering any of the said motion pictures for causes beyond their direct control then this license in respect to each such motion picture shall terminate and revert to the Distributor without liability on the part of either party, provided reasonable written notice of such termination and the cause thereof is given.

Option to ~~Exclude If Group Licensed~~: This Article Does Not Apply to Short Subjects

Fifteenth: (a) If the Exhibitor has contracted to exhibit all of the feature motion pictures listed in the schedule hereto and offered by the Distributor to the Exhibitor, and if the license fees of all of said pictures average no more than $250.00 per picture, the Exhibitor shall have the privilege to exclude from this license agreement not to exceed ten percent (10%) of the total number of feature motion pictures licensed hereunder; provided the Exhibitor

1. Is not in default under this license agreement and,

2. Has complied with all of the provisions hereof, if any, for the exhibition of such motion pictures at specified intervals.

(b) Such privilege of exclusion may be exercised only in the event aforesaid and upon the following terms and conditions:

1. The Exhibitor shall give to the Distributor written notice of each motion picture to be excluded within fourteen (14) days after the general release date thereof in the exchange territory out of which the Exhibitor is served.

2. The Exhibitor may exclude without payment therefor one (1) motion picture of each group of ten (10) of the number of feature motion pictures specified in this license agreement provided he has paid for the other nine (9) of such group.

3. If such privilege of exclusion is not exercised as provided in paragraph (b) 2 above, the Exhibitor may nevertheless exercise such privilege by paying the license fee of each motion picture excluded with the notice of its exclusion. In such case, such payment shall be credited against such tenth or succeeding tenth motion picture, as the case [fol. 5884] may be, which the Exhibitor would otherwise be privileged to exclude as provided in paragraph (b) 2 above.

If the only or last group licensed is less than ten (10) and more than five (5) motion pictures, the privilege to exclude shall apply provided the Exhibitor has paid for all motion picture- but one of such group.

(c) Upon the failure or refusal of the Exhibitor to comply with any term or condition of this license agreement, or to comply with any arbitration award in respect thereto, the privilege of exclusion forthwith shall be revoked and the Exhibitor shall be liable for and pay to the Distributor the license fees of all motion pictures theretofore excluded.

(d) If the license fee of any feature motion picture specified in this license agreement is to be computed in whole or in part upon a percentage of the receipts of the Exhibitor's theatre, such license fee (for the purpose of computing the average license fee of all of the motion pictures licensed) shall be determined as follows:

1. Average the license fees of all of the Distributor's feature motion pictures exhibited upon a percentage basis at the Exhibitor's theatre, during the period of one year prior to the term of such license agreement.

2. If none of the Distributor's feature motion pictures were exhibited upon a percentage basis at such theatre during said period, average the license fees of all feature motion pictures exhibited upon a percentage basis at such theatre during the said period.

(e) If the rental of any motion picture excluded is to be computed in whole or in part upon a percentage of the receipts of the Exhibitor's theatre, the sum to be paid by the Exhibitor as provided in paragraph (b) 3 hereof shall be determined as follows:

1. Average the gross receipts of all the Distributor's feature motion pictures exhibited at the Exhibitor's theatre during the ninety (90) day period preceeding the Exhibitor's notice of exclusion, and apply to such average the percentage terms specified in the license agreement for the picture excluded.

2. If no feature motion picture of the Distributor were exhibited at the Exhibitor's theatre during said ninety (90) [fol. 5885] day period, average the daily gross receipts of the Exhibitor's theatre for the period of thirty (30) operating days preceding the Exhibitor's notice of exclusion and apply to such average the percentage terms specified in the license agreement for the picture excluded.

(f) In computing the number of feature motion pictures which may be excluded hereunder, fractions of more than one-half ($\frac{1}{2}$) shall be regarded as one (1).

(g) Upon the exclusion of each feature motion picture, the license therefor and all rights thereunder shall terminate and shall revert to the Distributor.

First Run Exhibitions

Sixteenth: (a) If the Exhibitor is granted a first run of the said motion pictures, the Exhibitor shall exhibit each of the feature motion pictures excepting those described in Paragraph (d) of this Clause within the period beginning with the date scheduled and announced by the Distributor for the general release of each feature motion picture in the territory wherein is located the exchange of the Distributor out of which the Exhibitor is served and ending one hundred and twenty (120) days thereafter, notwithstanding any provision of Clause Sixth hereof to the contrary. If the first exhibition date of any of the said motion pictures shall occur on a date later than ninety (90) days after its scheduled and announced general release date, then the period of clearance of such motion picture shall be reduced so as to expire one hundred and twenty (120) days after said scheduled date of its general release. If the Exhibitor is granted a first run of the said motion pictures and the Exhibitor fails to exhibit any feature motion picture within the said period of one hundred and twenty (120) days, the grant of the said first run and the clearance period in respect thereof shall be deemed waived by the Exhibitor and the license fee as to such feature motion picture shall thereupon forthwith become due and payable to the Distributor, with the right to the Exhibitor to exhibit such feature motion picture as hereinafter in Paragraph (e) of this Clause provided.

[fol. 5886]

Second Run Exhibitions

(b) If the Exhibitor is granted a second run of the said motion pictures and any other exhibitor having been granted the first run thereof immediately prior to such second run fails to exhibit any of the feature motion pictures, excepting those described in Paragraph (d) of this Clause within the said period of one hundred and twenty (120) days specified in Paragraph (a) of this Clause, the

Exhibitor shall exhibit each such feature motion picture within the period beginning with the date of the expiration of the said one hundred and twenty (120) days period and ending fourteen (14) days thereafter, notwithstanding any provision of Clause Sixth hereof to the contrary. If the Exhibitor is granted a second run of the said motion pictures and the Exhibitor fails to exhibit any feature motion picture within said fourteen (14) days period the grant of such second run and the clearance period if any in respect thereof shall be deemed waived by the Exhibitor and the license fee as to such feature motion picture shall thereupon forthwith become due and payable to the Distributor with the right to the Exhibitor to exhibit such feature motion picture as hereinafter in Paragraph (e) of this Clause provided.

Subsequent Run Exhibitions

(c) If the Exhibitor is granted a run subsequent to a second run of the said motion pictures and any other exhibitor having been granted the second run thereof immediately prior to such subsequent run fails to exhibit any of the feature motion pictures, excepting those described in Paragraph (d) of this Clause within the said period of fourteen (14) days specified in Paragraph (b) of this Clause the Exhibitor shall exhibit each feature motion picture within the period beginning with the date of the expiration of the said fourteen-day period and ending seven (7) days thereafter, notwithstanding any provision of Clause Sixth hereof to the contrary. If the Exhibitor is granted a run subsequent to a second run of the said motion pictures and the Exhibitor fails to exhibit any feature motion picture within said seven (7) day period, the grant of such subsequent run and the clearance period if any in respect [fol. 5887] thereof shall be deemed waived by the Exhibitor and the license fees as to such feature motion picture shall thereupon forthwith become due and payable to the Distributor with the right to the Exhibitor to exhibit such feature motion picture as hereinafter in Paragraph (e) of this Clause provided.

Extended Runs

(d) Any of the motion pictures which shall have been exhibited at any theatre in the said territory for more than one show week prior to the run granted the Exhibitor shall be excepted from the provisions of this Clause and of Paragraph (b) of Clause Fourth.

Exhibition After Revocation of Run and Clearance

(e) Upon the waiver of the grant of the run and/or clearance period of any feature motion picture as provided in Paragraphs (a), (b) or (c) of this Clause, the Exhibitor upon payment of the sum or sums payable hereunder as provided in this Clause for the license to exhibit such feature motion picture, shall have the right to exhibit the same hereunder upon a date or dates not in conflict with any run and/or clearance period granted or hereafter granted to other exhibitors, upon written request mailed or delivered to the Distributor within sixty (60) days after the last date upon which such feature motion picture should have been exhibited by the Exhibitor as provided in this Clause. Failing to make such request within said period of sixty (60) days the license to exhibit such feature motion picture granted hereunder shall terminate and revert to the Distributor.

If the provisions of this Clause shall in anywise be in conflict with the provisions of any other license agreement made and entered into by the Distributor with any other exhibitor prior to January 15, 1934, the provisions of this Clause shall be deemed to be subordinate and subject to the provisions of such other license agreement.

[fol. 5888] Pictures Not Generally Released

Seventeenth: If any of the said motion pictures described in the Schedule, excepting those, if any, which may be road-shown by the Distributor, shall not be generally released by the Distributor for Distribution in the United States during the period beginning Sept. 1, 1936, and ending Aug. 31, 1937, each such motion picture shall be excluded from this license, upon written notice to such effect given to the Exhibitor by the Distributor prior to fifteen (15) days before the end of said period, unless the Exhibitor shall give written notice to the Distributor not later than thirty (30) days after the end of said period that the Exhibitor elects to exhibit hereunder all such motion pictures if generally released during the year immediately following the end of said period. If such notice of election is given as aforesaid the Distributor shall deliver and the Exhibitor shall exhibit each of such motion pictures upon the terms and conditions of this license excepting that any thereof which are not so generally released within the said following year shall also be excepted and excluded from this license. In such case the Distributor may exhibit and license for exhibition each of such motion pictures so excluded when and where desired by the Distributor and all claims of the Exhibitor in respect thereof are hereby expressly waived and the Distributor released and discharged therefrom by the Exhibitor.

Exhibitor's Default

Eighteenth: If the Exhibitor shall fail or refuse to pay the rental of any of such motion pictures as provided in this license or to furnish statements of the receipts of said theatre, if any are required hereunder, or to give the Distributor's representative access to the said theatre or its box office and/or the Exhibitor's books and records relative to motion pictures the rentals of which are based upon the said theatre's admission receipts as herein provided, or if the Exhibitor shall exhibit or permit the exhibition of any of said motion pictures at any time or place other than as herein specified, or if the Exhibitor becomes [fol. 5889] insolvent or is adjudicated a bankrupt, or executes an assignment for the benefit of his creditors, or if a receiver is appointed for any of the property of the Exhibitor, or if the Exhibitor voluntarily or by operation of law should lose control of the said theatre or of his said interests therein making it impossible for the Exhibitor to exhibit the said motion pictures at the said theatre, then upon the happening of any one or more of said events, the Distributor may at its option, (1) terminate this license agreement, or (2) suspend the delivery of additional motion pictures hereunder until such default or defaults should cease and be remedied. It is agreed that the exercise of any of said remedies by the Distributor shall be in addition to and without prejudice to any right or remedy of the Distributor against the Exhibitor at law or in equity and/or otherwise provided for in this license agreement.

Cutting or Altering of Prints

Nineteenth: The Exhibitor shall exhibit each print in its entirety and shall not copy, duplicate, subrent or part with possession of any print. The Exhibitor shall not cut or alter any print, excepting to make necesary repairs thereto, or when required by any duly constituted public official or authority or with the written or telegraphic consent of the Distributor. The Exhibitor, however, may cut the print of a news reel, and in such case shall completely restore all parts cut therefrom, prior to the return thereof to the Distributor or shipment elsewhere if so directed by the Distributor, in the same condition as received by the Exhibitor.

Roadshows

Twentieth: (a) The Distributor shall have the right to exhibit and/or cause to be exhibited as a "roadshow," at any time prior to the exhibition thereof hereunder, such of the motion pictures licensed hereunder as the Distributor may from time to time select and determine, provided however, that such roadshow exhibitions shall be at theatres at [fol. 5890] which admission prices for evening performances, during such exhibitions thereof, of not less than one dollar shall be charged for the majority of the orchestra seats, and further provided that, except in the cities of New York and Los Angeles, not more than two of such motion pictures shall be so roadshown.

(b) If and when any such roadshow exhibition shall be in the City of New York and/or the City of Los Angeles, and if the Exhibitor's theatre is situated in the territory then served by the Distributor's exchange or exchanges located in New York or in Los Angeles, as the case may be, the Distributor shall have the right to except and exclude from this license not to exceed two of such motion pictures so roadshown in each or both of said territories, upon sending to the Exhibitor written notice to such effect not later than four (4) weeks after the commencement of such roadshow exhibition and provided that the Distributor shall by like notice except and exclude such motion picture from all other license agreements containing this Clause and licensing the exhibition of such motion picture in such territory. The exception and exclusion of any such motion picture in the territory then served by the Distributor's exchange or exchanges located in the City of Los Angeles or in the City of New York, as the case may be, shall not be deemed to require the Distributor to except and exclude the same motion picture in both of said territories.

(c) If and when any such roadshow exhibition, excepting those in the City of New York and/or in the City of Los Angeles, shall be in the territory served by the Distributor's exchange or exchanges serving the Exhibitor's theatre, the Distributor shall have the right to except and exclude from this license not to exceed two of such motion pictures so roadshown upon sending to the Exhibitor written notice to such effect within (7) days after the commencement of such roadshow exhibition and provided that the Distributor shall by like notice except and exclude each such motion picture from all other license agreements containing this Clause and licensing and exhibition of such motion picture in such territory.

[fol. 5891] (d) The inadvertent omission to send to any of such other exhibitors the notice provided for in Paragraphs (a) and (b) of this Clause shall not be deemed to affect the exception and exclusion from this license of any such motion picture.

(e) The Distributor may so exercise such right to except and exclude any such motion picture from time to time, in the respective territories, as above defined, in the United States. Any motion picture so roadshown in any place in the United States, and not excepted and excluded from this license as aforesaid, shall not be deemed available for exhibition hereunder until after the completion of such roadshowing of such motion picture in the United States, and such motion picture shall be exhibited hereunder when generally released by the Distributor and as and when available for exhibition by the Exhibitor, and the term of this license agreement specified in Clause Second shall be in respect to each such motion picture, extended to and including the date or dates of exhibition by the Exhibitor hereunder of each thereof.

(f) For each motion picture that the Distributor shall except and exclude, as aforesaid, the Exhibitor is hereby granted the option to except and exclude from this license (in addition to those which may be excluded as provided in Clauses Fifteenth and Seventeenth) one of the other motion pictures licensed hereunder, but only if the Exhibitor shall give to the Distributor written notice to such effect not later than fourteen days before the date fixed for the exhibition hereunder of such other motion picture. The

Distributor may exhibit and/or license the exhibition of any and all motion pictures excepted and excluded from this license by the Distributor and/or the Exhibitor, as aforesaid, when and where desired by the Distributor, free from all claims of the Exhibitor in respect thereof and the license of each thereof shall forthwith upon exclusion as hereinbefore provided terminate and revert to the Distributor.

Twenty-First: The following schedule and all of the written and printed parts thereof are a part of this license:

[fol. 5892]

Schedule of feature contract

Code No.	Production	Consecutive Days Run	Rental Terms the Exhibitor Agrees to Pay the Distributor as License Fee
1001	Madame Curie		
1003	Hippodrome		
1004	Time Out of Mind		
1007	Everybody Sings		
1008	Reno in the Fall		
1009	Untitled Production		
1013	My Children		
1014	Luckiest Girl in the World		
1015	Hello Beautiful		
1016	Roxana		
1017	Untitled Production		
1018	Class Prophecy		
1019	Four Days Wonder		
1020	Untitled Production		
1021	Lessons in Society		
1031	Untitled Production		
1032	Rich and Reckless		
1033	Untitled Production		
1002	My Man Godfrey		
1005	James Whale Production		
1006	Melody Lady		
1010	Two in a Crowd		
1011	Edward Arnold Prod		
1012	As Good as Married		
1022	Victor McLaglen in "A Fool for Blondes"		
1023	Flying Hostess		
1024	Karloff in "Man in the Cab"		
1025	Untitled Production		
1026	Children of Broadway		
1027	Coast Guard		
1028	Untitled Production		
1029	Three Smart Girls		
1030	California Straight Ahead		
1034	Untitled Production		
1035	Untitled Production		
1036	Son of a Champion		

Additional Clauses

Number of Features Offered:
Additional Terms:

Number of Features Licensed:

Playing Arrangement: The Exhibitor agrees to play and pay for ...... of the above productions each and every ...... beginning .... in the order of release, if, and as available.

Of the motion pictures hereby licensed the respective number set forth below shall be exhibited on the days specified below:

.... motion pictures as selected by Distributor on ......
motion pictures as selected by Distributor on ......

[fol. 5893]

Admission Prices

The Exhibitor during the whole of the licensed exhibition period of each of the motion pictures exhibited hereunder agrees to and shall charge for admission to said theatre not less than the following prices:

Matinees:	Adults,	orchestra	balcony
	Children,	orchestra	balcony
Evenings:	Adults	orchestra	balcony
	Children,	orchestra	balcony

If during any such period less than said admission prices is charged, the Distributor in addition to all other rights hereunder shall have the right: (a) immediately to terminate the license of the motion picture then being exhibited, by written notice to such effect to the Exhibitor and upon the giving of such notice, the license of such motion picture shall forthwith terminate and revert to the Distributor; or (b) provided the Exhibitor is granted herein a period of "clearance" to reduce such period by not to exceed one-half in respect to each of the motion pictures thereafter deliverable hereunder; or (c) provided no period of clearance is specified in the Schedule to withhold for a period not to exceed sixty (60) days notice of the date when each motion picture thereafter deliverable hereunder will be available for exhibition by the Exhibitor; and as to each such motion picture the "run" thereof, if any, granted the Exhibitor, shall be deemed revoked and the Exhibitor agrees to exhibit each such motion picture after notice of the available date thereof upon the date or dates determined as provided in clause Sixth hereof. If the Distributor does not elect to terminate the license of the motion picture then being exhibited, as provided in subdivision (a) of this paragraph, the Exhibitor shall account for all admissions to the said theatre during the exhibition of such motion picture on the basis of the respective admission prices above stipulated for each person admitted to the said theatre, at each performance of said motion picture, provided that if at any such performance any of the prices of admission are greater than the respective amounts above set forth, the Exhibitor shall account to the Distributor on the basis [fol. 5894] of such larger amounts. The Distributor shall also have the right to suspend all further deliveries of motion pictures to the Exhibitor until such scale of admission prices at the said theatre shall have been restored to at least the amounts above specified. The use of "two for ones" service passes or similar devices shall be construed as a reduction in admission.

The Distributor agrees that the Exhibitor shall have the following run and clearance (such terms having the meaning generally given them in the trade):

Advertising Accessories

The Exhibitor agrees to lease from the Distributor or the Distributor's authorized agent for use only in connection with the exhibition of each of the motion pictures exhibited hereunder and agrees not to sublease or sell the following advertising accessories:

[fol. 5896] The Distributor may, in its discretion, interchange the film rental and terms (including the theatre if more than one theatre is mentioned herein) of any one or more of the motion pictures herein described, with the film rental and terms of any other motion picture licensed hereunder. Such right may be exercised by giving the Exhibitor written notice of such interchange at or prior to the date upon which notice of availability of such motion picture is mailed to the Exhibitor.

It is agreed that in case any motion picture excluded under Exhibitor's "Option to exclude if group licensed" shall have been designated by Distributor to play on percentage terms, then upon its exclusion such designation shall be deemed to be thereby rescinded and Distributor may designate a different motion picture to play on such specified percentage terms, it being the intent of the parties hereto that Exhibitor shall exhibit hereunder upon the respective percentage terms set forth in said Schedule the number of motion pictures specified in the Schedule to play on percentage.

Exhibitor hereby expressly agrees that Distributor shall have the right to demand and receive, as a condition precedent to delivery of the print and/or sound records of any motion picture contracted for hereunder, payment of all amounts then due Distributor by Exhibitor under this or any other exhibition contract(s) between the parties hereto and Distributor may require such payment of all sums then due by means of a C. O. D. shipment or otherwise.

If the Exhibitor shall fail or refuse to perform any other license agreement with the Distributor, the Distributor, at its option, may, upon such default or refusal to perform, either:

1. Terminate this license agreement, or

2. Suspend the delivery of additional motion pictures hereunder until such default or defaults shall cease and be remedied.

If the Distributor shall elect to terminate this license agreement, then the Distributor shall be entitled to recover from the Exhibitor, as damages for such breach, the license fees payable with respect to all of the motion pictures not theretofore exhibited under this license agreement, and the

Distributor shall be under no obligation thereafter to deliver or offer to deliver any picture or pictures hereunder.

[fol. 5897] Notwithstanding the number of days of exhibition specified for each motion picture in the schedule nor the reference to more than one theatre in the schedule, it is understood and agreed by and between the Distributor and the Exhibitor that the license herein granted is expressly limited to and shall not include any right of exhibition at any time or place or by any means other than:

1. The exhibition of each respective motion picture for the number of days of exhibition selected, designated or otherwise agreed upon, as herein provided, and confirmed in writing by the Distributor to the Exhibitor but not exceeding the maximum number of days specified in the schedule hereof with respect to such motion picture.

2. The exhibition of each respective motion picture at the theatre and on the date or dates of exhibition selected, designated or otherwise agreed upon, as herein provided, and confirmed in writing by the Distributor to the Exhibitor for such picture.

3. The exhibition of each respective motion picture hereunder only by means of the print of the picture furnished to the Exhibitor by the Distributor for the express purpose of exhibition on the date or dates of exhibition selected, designated or otherwise agreed upon, as herein provided, and confirmed in writing by the Distributor to the Exhibitor for such picture.

It is agreed that the Distributor may, at its option, furnish prints of any of the motion pictures licensed hereunder on reels of 2,000 feet maximum capacity.

[End of Schedule]

Midnight Shows

Twenty-second: The license herein granted for the number of days specified in the schedule shall not include the right of exhibition at any time previous to dawn of the first licensed and booked day of exhibition without securing express written permission therefor.

Optional Arbitration Clause

Optional Clause: The following Clause Twenty-third is optional with the parties hereto. If it is desired to make [fol. 5898] such clause a part of this license, the Exhibitor and the duly authorized representative of the Distributor shall sign their respective names where indicated immediately following this paragraph and unless so signed the said Clause shall be deemed excluded from this license agreement.

It is agreed by and between the parties that Clause Twenty-third, providing for voluntary arbitration of disputes arising hereunder, shall be included as a part of this license.

—— ——, Representative of the Distributor duly authorized to agree to the following Clause Twenty-third; —— ——, Exhibitor.

Arbitration

Twenty-third: The Exhibitor and the Distributor respectively, freely and voluntarily agree that as a condition precedent to the commencement of any action or proceeding in any court by either of them, to determine, enforce or protect the legal rights of either hereunder, each shall submit all claims and controversies arising hereunder for determination by arbitration to an Arbitration Board (hereby expressly waiving the oath of the arbitrators) which shall consist of four members, each of whom shall be engaged in the motion-picture business, and two of whom to be appointed by the Exhibitor, and the remaining two to be appointed by the Distributor.

Upon the written request of the Distributor or the Exhibitor for the arbitration of any dispute or controversy arising hereunder, the party making such request shall name therein two arbitrators, stating the business address and and business or business connection of each, and shall designate therein the date, time and place of the hearing of such controvery. The date of such hearing shall not be earlier than seven (7) days from the date of the sending of such notice, unless it shall be claimed in such notice that irreparable injury will result unless there is a speedy determination of such controversy, in which case such hearing may be designated to be held earlier than said seven (7) day period.

Within five (5) days after the mailing of such request for arbitration, the party upon whom such request is made shall [fol. 5899] name two arbitrators in a written notice mailed or delivered to the other party, stating therein the business address and business or business connection of each arbitrator. If either party fails or refuses to name the arbitrators as herein provided or if any arbitrator so named shall fail or refuse to act, or be unable to serve or shall be challenged and others are or another arbitrator qualified and then available to act is not then appointed, others or another arbitrator may be appointed by the other party as the case may be.

No member of the Arbitration Board shall hear or determine any controversy in which he has an interest direct or indirect and any member having such interest shall be disqualified to act.

If the arbitrators or a majority of them are unable to reach a decision, then they, or a majority of them shall immediately select an umpire who shall not be engaged in the motion-picture business. In such case the hearing before the umpire shall be at such time and place as the umpire shall designate and shall be had before the umpire alone, the arbitrators not to be permitted to attend the hearing before the umpire. If the arbitrators or a majority of them are unable to agree upon the selection of an umpire, the American Arbitration Association shall be requested to make such selection.

The Arbitration Board shall have general power to determine such dispute or controversy as shall be submitted, to make findings of fact in respect thereof and to direct specific performance of a contract, and/or that the same has been breached in whole or in part, and/or that damages on such account shall be paid. The Board of Arbitration shall have the power only to give force and effect to the provisions of this license agreement and the rights or obligations of the parties thereunder; provided that if after a full hearing of any controversy submitted for arbitration hereunder, excepting any submission to an umpire designated as hereinabove provided, the arbitrators or a majority of them are of the opinion that because of unusual circumstances arising after the execution of this license agreement and beyond the direct control of the parties hereto disclosed at such hearing, a strict enforcement of the provisions of this license agreement would impose undue hardship upon one of the [fol. 5900] parties, the arbitrators or a majority of them may recommend in writing to the parties a settlement of such controversy upon such terms and conditions deemed by the arbitrators fair and just. If such settlement is not agreed to by the parties within five (5) days after the receipt of a copy of such recommendation, the controversy shall be deemed withdrawn from the arbitrators.

The hearing of any such controversy shall be had before the Arbitration Board in the city wherein is situated the exchange of the Distributor from which the Exhibitor is served, unless the parties agree in writing that such hearing be had in some other place. If either party fails or refuses to submit to arbitration any such claim or controversy, the other party may apply to a United States District Court, or to any other Court, including a court of a state in which such hearing would otherwise not be had, for an order to proceed to arbitrate in which case such hearing shall be had in such place as the court to which such application is made may lawfully direct.

The parties hereto further agree to abide by and forthwith comply with any decision or award of the arbitrators, or a majority of them and consent that any such decision or award shall be enforceable in or by any Court of competent jurisdiction pursuant to the law of such jurisdiction now or hereafter in force.

If the Exhibitor shall fail or refuse to submit to arbitration any such claim or controversy or to abide by and comply with the award of the arbitrators in respect thereto, within seven (7) days, the Distributor may at its option suspend the deliveries of the motion pictures provided for in this and in each other existing license agreement between the parties thereto and/or terminate this and each such other license agreement; and upon such termination the aggregate of the license fees of all motion pictures specified in this and any other such license agreement then not exhibited forthwith shall become due and payable by the Exhibitor.

If the Distributor shall fail or refuse to submit to arbitration any such claim or controversy or to abide by and comply with the decision or the award of an Arbitration [fol. 5901-5912] Board in respect thereto within seven (7) days, the Exhibitor may at the option of the Exhibitor terminate this and any other existing license agreement between the parties hereto by mailing a notice to such effect to the Distributor within seven (7) days after such failure or refusal; and the Exhibitor shall have the rights and remedies provided in Clause Second (b) for failure to deliver motion pictures.

Any such termination by either party shall be without prejudice to any other right or remedy which the party so terminating may have by reason of any breach by the other party to this or any other existing agreement between the parties.

Each of the parties hereto, without notice to the other, may apply to any Court having jurisdiction to make this agreement to arbitrate a rule or order of such Court.

In witness whereof —— —— the Exhibitor, operating the —— Theatre located at —— in the —— City and State has on —— date executed this application, which upon written acceptance thereof by the Distributor shall be deemed to be the license or the said Exhibitor for the exhibition of the motion pictures specified in the Schedule, but only at the said Theatre in accordance with the terms and conditions hereof.

> —— a Partnership, —— a Corporation, —— Trade Name (Strike two out), by —— ——, partner; —— ——, officer; —— ——, owner (strike two out). Universal Film Exchanges, Inc., by —— ——, Manager.

Countersigned and approved by —— ——, Authorized Home Office Official).

Date —— 193—.

[fol. 5913]

WARNER—1936-37

Form 90 WF 36-37 (10M-12-36)

WARNER BROS. AND FIRST NATIONAL PRODUCTIONS

Season 1936-1937

EXHIBITION CONTRACT

Agreement of license under copyright made in one or more counterparts between Vitagraph, Inc., a corporation (hereinafter referred to as the Distributor), party of the first part, and the Exhibitor (hereinafter named and referred to as the Exhibitor, operating the theatre hereinafter designated), party of the second part,

Witnesseth. The parties hereto agree as follows:

License

First: The Distributor grants the Exhibitor and the Exhibitor accepts, a limited license under the respective copyrights of the motion pictures designated and described in the Schedule hereof and under the copyright of any matter included in any sound recorded therewith, to exhibit publicly said motion pictures and to reproduce for public performances such recorded sound in synchronism therewith, but only at the said theatre for the number of consecutive days specified in the Schedule and for no other use or purpose; provided that the reproducing equipment in the said theatre will operate reliably and efficiently to reproduce such recorded sound with adequate volume and high quality; and provided further that if copyrighted musical compositions are included in such recorded sound, the Exhibitor will have at the date or dates of the exhibition of each such motion pictures a license from the copyright proprietor thereof or from any licensee of such copyright proprietor to perform publicly the said copyrighted musical compositions. If more than one theatre is hereinafter designated the said [fol. 5914] motion pictures are licensed for exhibition at only one of such theatres unless otherwise in the Schedule specifically provided in writing.

Term and Warranty

Second: (a) The term of this Agreement shall begin with the date fixed or determined for the exhibition at the said theatre of the first motion picture deliverable hereunder and shall continue for a period of one year thereafter unless otherwise in the Schedule provided. The Distributor agrees during said term to deliver to the Exhibitor, and the Exhibitor agrees to exhibit at said theatre during said term upon the date or dates herein provided for, a positive print of each of said motion pictures except such as may be excluded as provided in Clauses Fifteenth and Seventeenth hereof. The Distributor warrants that each positive print will be in good physical condition for projection and exhibition, and will clearly reproduce the recorded sound in synchronism therewith if properly used upon standard reproducing equipment. If the recorded sound is not recorded upon a print, all references herein to a print shall be deemed to include the records, discs and any other device upon which sound may be recorded for reproduction with the exhibition of a print.

Damages—Failure to Deliver

(b) If the Distributor shall fail or refuse to deliver, or the Exhibitor shall fail or refuse to exhibit during the term hereof, any of said motion pictures, excepting those which may be eliminated as provided in Clause Fifteenth hereof, and those which may not be generally released as provided in Clause Seventeenth hereof or if the Distributor shall wilfully violate any of the provisions of Clause Seventh hereof or shall deliver to the Exhibitor a print of any motion picture which print shall be determined was not in condition for exhibition and for the reproduction of sound as provided in Clause Second, the Exhibitor or the Distributor, as the case may be, shall pay the damage so caused and if such damage cannot be definitely computed shall pay as [fol. 5915] liquidated damages a sum equal to the fixed sum herein specified as the rental of each such motion picture or a sum computed as provided in Clause Third (c) hereof, if the rental of any such motion picture is to be determined, either in whole or in part upon a percentage of the admission receipts of said theatre or any part thereof or upon a percentage of such receipts and a fixed sum; provided that any claim by the Exhibitor with respect to the condition of a print shall be deemed to have been waived by the Exhibitor unless notice of such claim shall have been given by the Exhibitor to the Distributor's exchange from which the Exhibitor is served, by telephone or telegraph, or in person, immediately after the first public exhibition thereof by the Exhibitor and written confirmation thereof mailed by the Exhibitor upon the same day to the Distributor's said exchange.

Payment

Third: (a) Exhibitor agrees to pay for such license as to each such motion picture the fixed sums specified in the Schedule at least three (3) days in advance of the date of delivery of a print thereof at the Distributor's exchange or of the date of shipment to the Exhibitor from another exhibitor, unless after the acceptance of this application by the Distributor such payment shall be otherwise agreed to by the Distributor in writing signed by an officer of the Distributor. All payments hereunder shall be made to the Distributor at the City in which is located the exchange from which the Exhibitor is served.

Percentage Bookings

(b) If the rental of any of such motion pictures is to be determined either in whole or in part upon the admission receipts of said theatre or any part thereof, the Exhibitor agrees to pay such rental immediately after the last exhibition upon the last date of the exhibition of each such motion picture or if requested by the Distributor at the end of each day's exhibition. In each such case the Exhibitor shall deliver to the Distributor immediately after the last exhibition upon each date of exhibition of each such motion [fol. 5916] picture a correct itemized statement of the gross receipts of said theatre for admission thereto upon each such date. Such statement shall be signed by the Exhibitor or the Manager or Treasurer of said theatre and the Cashier thereof and shall include a statement of such facts and figures as may be provided in the Schedule to be furnished by the Exhibitor, and if requested by the Distributor, shall be made upon forms furnished by the Distributor. Upon the exhibition date or dates of each motion picture an authorized representative of the Distributor is hereby given the right to verify the sale of all tickets of admission to said theatre, and the receipts therefrom; and for such purpose shall have access to the theatre, including the box office, and also the right to examine all relevant entries relating to such gross receipts in all the Exhibitor's books and records, and if hereunder it is provided that the Exhibitor make certain expenditures and/or deductions, to examine all entries relating to such expenditures and/or deductions. Such right of access and examination of the Exhibitor's books and records limited as aforesaid, shall continue for a period of four (4) months after the receipt by the Distributor of each such statement. The Distributor agrees, unless such representative is in the continuous employ of the Distributor or employed as a checker, not to employ as a representative for such purpose any person a resident of or employed in the place where the said theatre is located, other than a person engaged in business as an accountant. The Distributor agrees that any information obtained pursuant to the provisions of this clause will be treated as confidential, excepting in any arbitration proceeding or litigation in respect of this license.

Liquidated Damages—Percentage Bookings

(c) If the Exhibitor fails or refuses to exhibit any of said motion pictures as herein provided and the rental or any part thereof is to be computed in whole or in part upon a percentage of the admission receipts of said theatre, the Exhibitor shall pay the Distributor as liquidated damages for each day the Exhibitor fails or refuses to exhibit such motion pictures, in addition to any fixed sums payable here- [fol. 3917] under in respect of such motion picture, a sum equal to such percentage of the average daily gross receipts of such theatre on each date any feature motion picture distributed by the Distributor was exhibited thereat during the period of ninety (90) days prior to the date or dates when said motion picture should have been so exhibited hereunder, or if no feature motion picture distributed by the Distributor was exhibited at such theatre during said ninety day period, then a sum equal to such percentage of the average daily gross receipts of such theatre during the period of thirty operating days immediately prior to the date or dates when such motion pictures should have been exhibited, or prior to the date of such failure or refusal to exhibit any of said motion picture; provided that if the Exhibitor shall exhibit such motion pictures for less than the full number of days provided for in the Schedule, for each day less than said full number of days, the sum equal to such percentage shall be computed upon a sum equal to sixty-five (65%) percent of the gross receipts of said theatre during the last day of the exhibition thereat of such motion picture. A sworn statement of the said daily gross receipts shall be delivered by the Exhibitor to the Distributor upon demand therefor.

Delivery and Return of Prints

Fourth: (a) After each of said motion pictures is generally released for public exhibition and becomes available for exhibition hereunder by the Exhibitor, the Distributor agrees to deliver as hereinafter provided, a print thereof to the Exhibitor.

(b) The public exhibition of any of said motion pictures for three (3) consecutive days at prices usually charged for admission to the theatre where so exhibited in the territory wherein is located the exchange from which the exhibitor is served, excepting any "road show," "tryout," "preview," or "pre-release" exhibitions thereof, shall be deemed the general release for public exhibition of such motion picture but only in such territory. A "pre-release" exhibition shall be deemed any exhibition because of seasonal conditions making desirable exhibitions in advance of general release as herein defined.

(c) The Exhibitor agrees to exhibit each of said motion pictures in the order of its general release by the Distributor [fol. 5918] in the exchange territory in which said theatre is located. The Exhibitor shall have the right to select any of the motion pictures, excepting the last deliverable hereunder, for exhibition out of the order of its general release, subject to prior runs and/or clearance granted other exhibitors, on the date or dates determined as provided in Article Sixth hereof or otherwise agreed upon, but only upon the following conditions (a) that the Exhibitor is not in default hereunder and shall have fully complied with all the provisions, if any, set forth in the Schedule for the exhibition of one or more of said motion pictures at specified intervals; and (b) that the Distributor and the Exhibitor shall then agree upon the date or dates upon which all of the motion pictures generally released prior to the general release of such motion picture and available for exhibition hereunder shall be exhibited by the Exhibitor, which date or dates shall be within thirty (30) days from the first exhibition date of the motion picture to be exhibited out of the order of its general release; or in the alternative the Exhibitor shall then pay to the Distributor the license fee for each of such motion pictures then generally released and available for exhibition hereunder, and as to any thereof which shall not be exhibited by the Exhibitor within thirty days from the first exhibition date of the motion picture to be exhibited out of the order of its general release, the grant of the run and clearance period in respect thereof shall be deemed waived by the Exhibitor. Upon the failure or refusal of the Exhibitor to exhibit any of such motion pictures then generally released and available for exhibition hereunder within said thirty-day period or to pay the license fee thereof, the right of the Exhibitor to thereafter select for exhibition any motion picture out of the order of its general release shall be forfeited. The provisions of this paragraph (c) shall not be deemed to limit or qualify the provisions of Article Sixth hereof excepting as in this paragraph (c) specifically provided.

(d) The Distributor shall make deliveries hereunder to the Exhibitor or to the Exhibitor's authorized agent, by delivery at the Distributor's exchange, or to a common carrier, or to the United States Postal authorities. If deliveries are made to a carrier or to a post office, they shall be made in time for [fol. 5919] prints to reach the place where the said theatre is located in time for inspection and a projection thereof before the usual time for opening said theatre.

(e) Exhibitor agrees to return immediately after the last exhibition on the last date of exhibition licensed, each print received hereunder, with its reels and containers, to the exchange of the Distributor from which the Exhibitor is served or as otherwise directed by the Distributor in the same condition as when received, reasonable wear and tear due to proper use excepted. Exhibitor agrees to pay all costs of transportation of such prints, reels, and containers from the Distributor's exchange or the last previous exhibitor having possession of the same, and return to the Distributor's exchange; or if directed by the Distributor, to ship such positive prints elsewhere than to the Distributor's exchange transportation charges collect. It is agreed that the delivery of a positive print properly directed and packed in the container furnished by the Distributor therefor, to a carrier designated or used by the Distributor and proper receipt therefor obtained by the Exhibitor, shall constitute the return of such positive print by the Exhibitor.

(f) If the Exhibitor fails to or delays the return of any positive print to the Distributor or fails to forward or delays forwarding (as directed by the Distributor) any such print to any other exhibitor, the Exhibitor agrees to pay the Distributor the damage, if any, so caused the Distributor and in addition the damage, if any, so caused such other exhibitor. The Exhibitor shall have the right to participate in any compromise of or intervene in any arbitration or legal proceeding based upon any claim for such damage asserted against the distributor by another exhibitor; notice of which shall be given the Exhibitor by the Distributor.

Loss and Damage to Prints

Fifth: The Exhibitor shall pay to the Distributor a sum equal to the cost of replacement at the Distributor's exchange for each linear foot of any print, lost, stolen or destroyed or injured in any way in the interval between the delivery to and the return thereof by the Exhibitor in full settlement of all claims for such loss, theft, destruction or [fol. 5920] injury. Such payment, however, shall not transfer title to or any interest in any such positive print to the Exhibitor or any other party, nor release the Exhibitor from any liability arising out of any breach of this agreement. The Distributor shall at the option of the Exhibitor repay or credit to the Exhibitor any sum paid by the Exhibitor for any lost or stolen print, excepting "news reels," upon the return of such lost or stolen print to the Distributor within sixty (60) days after the date when the same should have been returned hereunder. The Exhibitor shall not be liable for the damage or destruction of any print, provided the Exhibitor establishes such damage or destruction occurred while in transit from the Exhibitor and delivery thereof was made as hereinabove provided. The Exhibitor shall immediately notify the Distributor's exchange by telegram of the loss, theft or destruction or of damage or injury to any print. If any print shall be received from the Exhibitor by the Distributor or any subsequent exhibitor in a damaged or partially destroyed condition it shall be deemed to have been so damaged or destroyed by the Exhibitor unless the latter, immediately after the first public exhibition thereof shall have telegraphed the Distributor's exchange that such print was received by the Exhibitor in a damaged or partially destroyed condition, and setting forth fully the nature of such damage and the amount of footage so damaged or destroyed.

Selection of Play Date

Sixth: Unless otherwise agreed upon or unless definitely specified or otherwise provided for in the Schedule, the exhibition date or dates of each of said motion pictures shall be determined as follows:

1. Subject to the prior runs and/or clearance granted or hereafter granted by the Distributor to other exhibitors and within a reasonable time after a print or prints of any said

motion pictures are received at the exchange of the Distributor out of which the exhibitor is served, and provided the Exhibitor is not in default hereunder, the Distributor shall mail to the Exhibitor a notice in writing of the date when each such motion picture will be available for exhibition by the Exhibitor (which date is hereinafter referred [fol. 5921] to as the "available date"). Such notice shall be mailed to the Exhibitor at least fifteen (15) days before the available date therein specified.

2. Within fourteen (14) days after the mailing of such notice, the Exhibitor shall select an exhibition date or dates not theretofore assigned to another exhibitor or other exhibitors, within the period commencing upon the available date and ending thirty (30) days thereafter and give to the Distributor written notice of the date or dates so selected.

3. Upon the failure of the Exhibitor to so select such date or dates the Distributor shall designate such date or dates by mailing written notice thereof to the Exhibitor.

Clearance and Run

Seventh: The Distributor agrees not to exhibit or grant a license to exhibit any of said motion pictures for exhibition in conflict with the 'run" or prior to the expiration of the "clearance period" if any in the Schedule specified at any theatre therein named or within the territorial limits therein specified. Such period of clearance as to each of said motion pictures shall be computed from the last date of the exhibition thereof licensed hereunder. If clearance is granted against a named theatre or theatres indicating that it is the intention of the Distributor to grant such clearance against all theatres in the immediate vicinity of the Exhibitor's theatre then unless otherwise provided in the Schedule, such clearance shall include any theatre in such vicinity thereafter erected or opened.

Description of Pictures

Eighth: (a) The Distributor shall have and hereby reserves the right in the sole discretion of the Distributor to change the title of any of the said motion pictures, to make changes in, alteration and adaptation of any story, book or play and to substitute for any thereof any other story, book or play. The Distributor also shall have and hereby reserve-the right to change the director, the cast or any member thereof of any of said motion pictures.

(b) The Exhibitor shall not be required to accept for any feature motion picture described in the Schedule as that of a [fol. 5922] named star or stars, director or named well-known author, book or play, any motion picture of any other star or stars, director, author, book or play nor to accept any other feature motion picture in place of any thereof which in the Schedule is designated "no substitute." The right of rejection conferred on the Exhibitor by this Clause is in addition to the right of exclusion provided in Clause Fifteenth hereof.

(c) The Distributor warrants that none of said motion pictures are reissues of old negatives, ~~old negatives~~ retitled or foreign produced by a foreign producer, excepting those specifically specified as such in the Schedule; and further that none of said motion pictures contains or will contain any advertising matter for which compensation is received by the Distributor, or any subsidiary or affiliate of the Distributor.

Advertising Prior to First Run

Ninth: (a) If the Exhibitor is granted a subsequent run of the said motion pictures, the Exhibitor shall not advertise any thereof by any means of advertising prior to or during the exhibition of any one of said motion pictures by any other exhibitor having the right to a prior run thereof. Nothing in this Clause shall be deemed to prohibit the Exhibitor from advertising generally all of said motion pictures as a group but such general advertising shall not refer to any one of said motion pictures during its exhibition by any other exhibitor having the first or immediately prior run thereof, excepting as herein provided.

(b) The Exhibitor shall not advertise by any means of advertising any of said motion pictures which may be road-shown by the Distributor and not excepted and excluded from this license, until after the completion of such road-showing in the United States, and then only as permitted in paragraph (a) of this Clause.

(c) For a breach of the provisions of this Clause the Distributor shall have in addition to all other rights the right to exclude from this license any motion picture advertised in violation of the provisions hereof by written notice to such effect mailed to the Exhibitor and upon the mailing of such notice the license of such motion picture shall terminate and [fol. 5923] revert to the Distributor, unless arbitration is herein provided for and immediately upon the receipt of any such notice of exclusion the Exhibitor by written notice given to the Distributor shall deny breaching any of the provisions of this Clause, in which case the question of fact raised by such denial shall be determined by arbitration.

Acceptance by Distributor

Tenth: Until accepted in writing by an officer of or any person authorized by the Distributor and notice of acceptance sent to the Exhibitor this instrument shall be deemed only an application for a license under Copyright, and may be withdrawn by the Exhibitor any time before such acceptance. Unless such notice of acceptance is sent the Exhibitor by mail or telegraph within fifteen (15) days after the date thereof, if the said theatre of the Exhibitor is located east of the Mississippi River, and within thirty (30) days after the date thereof if located west of said river, said application shall be deemed to have been withdrawn. The deposit by the Distributor of any check or other consideration given by the Exhibitor at the time of application as payment for any purpose or the delivery of a print of any said motion pictures shall not be deemed an acceptance hereof by the Distributor.

Changes in Writing

Eleventh: This license agreement is complete and all promises, representations, understandings, and agreements in reference thereto have been expressed herein. No change or modification hereof shall be binding upon the Distributor unless in writing signed by an officer of the Distributor, excepting in an emergency and only then, a change or modification may be consented to in writing but only by the representative of the Distributor managing the Distributor's exchange out of which the Exhibitor is served provided such change or modification does not change or modify the run, and/or clearance period, or decrease any rental, or eliminate any motion picture specified in the Schedule.

[fol. 5924] Assignment on Sale of Theatre

Twelfth: This license shall not be assigned by either party without the written consent of the other, provided, that if the Exhibitor sells the said theatre or transfers any interest therein and is not in default hereunder, the Exhibitor may assign this license to the purchaser of the theatre or of such interest without the written consent of the Distributor but any such assignment shall not be valid or of any effect hereunder unless acceptance thereof by the assignee assuming the obligations of the Exhibitor shall be delivered to the Distributor. Any such assignment shall not release the Exhibitor from any liability hereunder unless such release from liability is consented to by the Distributor in writing.

Taxes

Thirteenth: The Exhibitor shall pay to the Distributor upon demand, any tax, fee, or other like charge now and/or hereafter imposed or based upon the delivery and/or the exhibition of prints of motion pictures and/or upon the sums payable under this license by the Exhibitor to the Distributor. If under any statute or ordinance any such tax, fee, or other like charge is or shall be payable or paid by the Distributor and the exact amount payable hereunder by the Exhibitor is not therein definitely fixed or cannot be exactly determined, then the Exhibitor shall pay such part of any such tax, fee, or other like charge paid or payable by the Distributor as shall be fixed in the manner determined by the then President of the American Arbitration Association.

Prevention of Performance

Fourteenth: If the Exhibitor shall be prevented from exhibiting or the Distributor from delivering any of the said motion pictures for causes beyond their direct control then this license in respect to each such motion picture shall terminate and revert to the Distributor without liability on the part of either party, provided reasonable written notice of such termination and the cause thereof is given.

Option to Exclude if Group Licensed

[fol. 5925] Fifteenth: (a) If in this license agreement the total number of feature motion pictures offered to the Exhibitor by the Distributor, at one time, shall have been licensed by the Distributor hereunder and the license fees of all thereof average not more than Two hundred and fifty ($250.00) Dollars, the Exhibitor shall have the privilege to exclude from this license agreement not to exceed ten (10%) percent of the total number of feature motion pictures licensed hereunder; provided that the Exhibitor

(1) Is not in default hereunder, and

(2) Shall have fully complied with all of the provisions, if any, set forth in this agreement for the exhibition of such feature motion pictures at specified intervals.

(b) Such privilege of exclusion may be exercised only upon the following terms and conditions:

(1) The Exhibitor shall give to the Distributor written notice of the Exhibitor's election to exclude any of said feature motion pictures within fourteen (14) days after the general release date thereof in the exchange territory out of which the Exhibitor is served.

(2) The Exhibitor may exclude without payment therefor one (1) motion picture out of each group of ten (10) of the number of feature motion pictures specified in this license agreement provided the Exhibitor has paid for the other nine (9) of such group.

(3) If such privilege of exclusion is not exercised as provided in paragraph (b) (2) above, the Exhibitor may nevertheless exercise such privilege by paying the license fee of each motion picture excluded with the notice of its exclusion. In such case, such payment shall be credited against such tenth or succeeding tenth motion picture, as the case may be, which the Exhibitor would otherwise be privileged to exclude as provided in paragraph (b) (2) above.

If the only or last group licensed is less than ten (10) and more than five (5) motion pictures, the privilege, to exclude [fol. 5926] shall apply provided the Exhibitor has paid for all motion pictures but one in such group.

(c) Upon the failure or refusal of the Exhibitor to comply with any term or condition of this license agreement, or to comply with any arbitration award in respect thereto, the privilege of exclusion forthwith shall be revoked and the

Exhibitor shall be liable for and pay to the Distributor the license fee of all motion pictures theretofore excluded.

(d) If the license fee of any feature motion picture specified in this license agreement is to be computed in whole or in part upon a percentage of the receipts of the Exhibitor's theatre, such license fee (for the purpose of computing the average license fee of all the motion pictures licensed) shall be determined as follows:

(1) Average the license fees of all of the Distributor's feature motion pictures exhibited upon a percentage basis at the Exhibitor's theatre during the period of one year prior to the term of this license agreement.

(2) If none of the Distributor's feature motion pictures were exhibited upon a percentage basis at such theatre during said period, average the license fees of all feature motion pictures exhibited upon a percentage basis at such theatre during the said period.

(e) If the rental of any motion picture excluded is to be computed in whole or in part upon a percentage of the receipts of the Exhibitor's theatre, the sum to be paid by the Exhibitor as provided in paragraph (b) (3) hereof shall be determined as follows:

(1) Average the gross receipts of all the Distributor's feature motion pictures exhibited at the Exhibitor's theatre during the ninety (90) day period preceding the Exhibitor's notice of exclusion, and apply to such average the percentage terms specified in this license agreement for the picture excluded.

(2) If no feature motion pictures of the Distributor were exhibited at the Exhibitor's theatre during said ninety (90) day period average the daily gross receipts of the Ex- [fol. 5927] hibitor's theatre for the period of thirty (30) operating days preceding the Exhibitor's notice of exclusion and apply to such average the percentage terms specified in this license agreement for the picture excluded.

(f) In computing the number of feature motion pictures which may be excluded hereunder, fractions of more than one-half (½) shall be regarded as one (1).

(g) Upon the exclusion of each feature motion picture, the license therefor and all rights thereunder shall terminate and shall revert to the Distributor.

First Run Exhibitions

Sixteenth: (a) If the Exhibitor is granted a first run of the said motion pictures, the exhibitor shall exhibit each of the feature motion pictures excepting those described in Paragraph (d) of this Clause within the period beginning with the date scheduled and announced by the Distributor for the general release of each feature motion picture in the territory wherein is located the exchange of the distributor out of which the Exhibitor is served and ending one hundred and twenty (120) days thereafter, notwithstanding any provision of Clause Sixth hereof to the contrary. If the first exhibition date of any of the said motion pictures shall occur on a date later than ninety (90) days after its scheduled and announced general release date, then the period of clearance of such motion picture shall be reduced so as to expire one hundred and twenty (120) days after said scheduled date of its general release. If the Exhibitor is granted a first run of the said motion pictures and the Exhibitor fails to exhibit any feature motion picture within said period of one hundred and twenty (120) days, the grant of the said first run and the clearance period in respect thereof shall be deemed waived by the Exhibitor and the license fee as to such feature motion picture shall thereupon forthwith become due and payable to the Distributor, with the right to the Exhibitor to exhibit such feature motion picture as hereinafter in Paragraph (e) of this Clause provided.

Second Run Exhibitions

[fol. 5928] (b) If the Exhibitor is granted a second run of the said motion pictures and any other exhibitor having been granted the first run thereof immediately prior to such second run fails to exhibit any the feature motion pictures, excepting those described in Paragraph (d) of this Clause within the said period of one hundred and twenty (120) days specified in Paragraph (a) of this Clause, the Exhibitor shall exhibit each such feature motiton picture within the period beginning with the date of the expiration of the said one hundred and twenty (120) days period and ending fourteen (14) days thereafter, notwithstanding any provision of Clause Sixth hereof to the contrary. If the Exhibitor is granted a second run of the said motion pictures and the Exhibitor fails to exhibit any feature motion picture within said fourteen (14) days period the grant of such second run and the clearance period if any in respect thereof shall be deemed waived by the Exhibitor and the license fee as to such feature motion picture shall thereupon forthwith become due and payable to the distributor with the right to the Exhibitor to exhibit such feature motion picture as hereinafter in Paragraph (e) of this Clause provided.

Subsequent Runs Exhibitions

(c) If the Exhibitor is granted a run subsequent to a second run of the said motion pictures and any other Exhibitor having been granted the second run thereof immediately prior to such subsequent run fails to exhibit any of the feature motion pictures, excepting those described in Paragraph (d) of this Clause within the said period of fourteen (14) days specified in Paragraph (b) of this Clause the Exhibitor shall exhibit each feature motion picture within the period beginning with the date of the expiration of the said fourteen day period and ending seven (7) days thereafter, notwithstanding any provision of Clause Sixth hereof to the contrary. If the Exhibitor is granted a run subsequent to a second run [fol. 5929] of the said motion pictures and the Exhibitor fails to exhibit any feature motion picture within said seven (7) day period, the grant of such subsequent run and the clearance period, if any in respect thereof shall be deemed waived by the Exhibitor and the license fee as to such feature motion picture shall thereupon forthwith become due and payable to the Distributor with the right to the Exhibitor to exhibit such feature motion picture as hereinafter in Paragraph (e) of this Clause provided.

Extended Runs

(d) Any of the motion pictures which shall have been exhibited at any theatre in the said territory for more than one show week prior to the run granted the Exhibitor shall be excepted from the provisions of this Clause and of Paragraph (b) of Clause Fourth.

Exhibition After Revocation of Run and Clearance

(e) Upon the waiver of the grant of the run and/or the clearance period of any feature motion picture as provided in Paragraphs (a), (b), or (c) of this Clause, the Exhibitor upon payment of the sum or sums payable hereunder as provided in this Clause for the license to exhibit such feature motion picture, shall have the right to exhibit the same hereunder upon a date or dates not in conflict with any run and/or clearance period granted or hereafter granted to other exhibitors, upon written request mailed or delivered to the Distributor within sixty (60) days after the last date upon which such feature motion picture should have been exhibited by the Exhibitor as provided in this Clause. Failing to make such request within said period of sixty (60) days the license to exhibit such feature motion picture granted hereunder shall terminate and revert to the Distributor.

If the provisions of this Clause shall in anywise be in conflict with the provisions of any other license agreement made and entered into by the Distributor with any other exhibitor prior to September 1, 1933, the provisions of this Clause [fol. 5930] shall be deemed to be subordinate and subject to the provisions of such other license agreement.

Pictures Not Generally Released

Seventeenth: If any of the said motion pictures described in the Schedule, excepting those, if any, which may be roadshown by the Distributor, shall not be generally released by the Distributor for distribution in the United States during the period beginning September 1, 1936, and ending August 31, 1937, each such motion picture shall be excluded from this license, upon written notice to such effect given to the Exhibitor by the Distributor prior to fifteen (15) days before the end of said period, unless the Exhibitor shall give written notice to the Distributor not later than thirty (30) days after the end of said period that the Exhibitor elects to exhibit hereunder all such motion pictures if generally released during the year immediately following the end of said period. If such notice of election is given as aforesaid the Distributor shall deliver and the Exhibitor shall exhibit each of such motion pictures upon the terms and conditions of this license excepting that any thereof which are not so generally released within the said following year shall also be excepted and excluded from this license. In such case the Distributor may exhibit and license for exhibition each of such motion pictures so excluded when and where desired by the Distributor and all claims of the Exhibitor in respect thereof are hereby expressly waived and the Distributor released and discharged therefrom by the Exhibitor.

Remedies for Breach

Eighteenth: If the Exhibitor shall fail or refuse to pay the rental of any of such motion pictures as provided in this license or to furnish statements of the receipts of said theatre, if any are required hereunder, or to give the Distributor's representative access to the said theatre or its box office and/or the Exhibitor's books and records relative to motion pictures the rentals of which are based upon the said [fol. 5931] theatre's admission receipts as herein provided, or if the Exhibitor shall exhibit or permit the exhibition of any of said motion pictures at any time or place other than as herein specified, or if the Exhibitor becomes insolvent or is adjudicated a bankrupt, or executes an assignment for the benefit of his creditors, or if a receiver is appointed for any of the property of the Exhibitor, or if the Exhibitor voluntarily or by operation of law should lose control of the said theatre or of his said interests therein making it impossible for the Exhibitor to exhibit the said motion pictures at the said theatre, then upon the happening of any one or more of said events, the Distributor may, at its option, (1) terminate this license agreement, or (2) suspend the delivery of additional motion pictures hereunder until such default or defaults should cease and be remedied. It is agreed that the exercise of any of said remedies by the Distributor shall be in addition to and without prejudice to any right or remedy of the Distributor against the Exhibitor at law or in equity and/or otherwise provided for in this license agreement.

Cutting or Alteration of Prints

Nineteenth: The Exhibitor shall exhibit each print in its entirely and shall not copy, duplicate, subrent or part with possession of any print. The Exhibitor shall not cut or alter any print, excepting to make necessary repairs thereto, or when required by any duly constituted public official or authority or with the written or telegraphic consent of the distributor. The Exhibitor, however, may cut the print of a news reel, and in such case shall completely restore all parts cut therefrom, prior to the return thereof to the Distributor or shipment elsewhere if so directed by the Distributor, in the same condition as received by the Exhibitor.

Midnight Shows

Twentieth: The license herein granted for the number of days specified in the Schedule shall not include the right of exhibition at any time previous to dawn of the first licensed [fol. 5932] and booked date of exhibition without securing express written permission hereunder.

Roadshows

Twenty-first: (a) The Distributor shall have the right to exhibit and/or cause to be exhibited as a "roadshow," at any time prior to the exhibition thereof hereunder, such of the motion pictures licensed hereunder as the Distributor may from time to time select and determine, provided, however, that such roadshow exhibitions shall be at theatres at which admission prices for evening performances, during such exhibitions thereof, of not less than one dollar shall be charged for the majority of the orchestra seats, and further provided that, except in the cities of New York and Los Angeles, not more than two of such motion pictures shall be so roadshown.

(b) If and when any such roadshow exhibition shall be in the City of New York and/or the City of Los Angeles, and if the Exhibitor's theatre is situated in the territory then served by the Distributor's exchange or exchanges located in New York or in Los Angeles, as the case may be, the Distributor shall have the right to except and exclude from this license not to exceed two of such motion pictures so roadshown in each or both of said territories, upon sending to the Exhibitor written notice to such effect not later than four (4) weeks after the commencement of such roadshow exhibition and provided that the Distributor shall by like notice except and exclude such motion picture from all other license agreements containing this Clause and licensing the exhibition of such motion picture in such territory. The exception and exclusion of any such motion picture in the territory then served by the Distributor's exchange or exchanges located in the City of Los Angeles, or in the City of New York, as the case may be, shall not be deemed to require the Distributor to except and exclude the same motion picture in both of said territories.

(c) If and when any such roadshow exhibition, excepting those in the City of New York and/or in the City of Los geles, shall be in the territory served by the Distributor's exchange or exchanges serving the Exhibitor's theatre, the [fol. 5933] Distributor shall have the right to except and exclude from this license not to exceed two of such motion pictures so roadshown upon sending to the Exhibitor written notice to such effect within seven (7) days after the commencement of such roadshow exhibition and provided that the Distributor shall by like notice except and exclude each such motion picture from all other license agreements containing this Clause and licensing the exhibition of such motion picture in such territory.

(d) The inadvertent omission to send to any such other exhibitors the notice provided for in Paragraphs (a) and (b) of this Clause shall not be deemed to affect the exception and exclusion from this license, of any such motion picture.

(e) The distributor may so exercise such right to except and exclude any such motion picture from time to time, in the respective territories, as above defined, in the United States. Any motion picture so roadshown in any place in the United States, and not excepted and excluded from this license aforesaid, shall not be deemed available for exhibition hereunder until after the completion of such roadshowing of such motion picture in the United States, and such motion picture shall be exhibited hereunder when generally released by the Distributor and as and when available for exhibition by the Exhibitor, and the term of this license agreement specified in Clause Second shall be in respect to each such motion picture extended to and including the date or dates of exhibition by the Exhibitor hereunder of each thereof.

(f) For each motion picture that the Distributor shall except and exclude, as aforesaid, the Exhibitor is hereby granted the option to except and exclude from this license (in addition to those which may be excluded as provided in Clauses Fifteenth and Seventeenth) one of the other motion pictures licensed hereunder, but only if the Exhibitor shall give to the Distributor written notice to such effect not later than fourteen days before the date fixed for the exhibition hereunder of such other motion picture. The Distributor may exhibit and/or license the exhibition of any and all motion pictures excepted and excluded from this license by the Distributor and/or the Exhibitor, as aforesaid, when [fol. 5934] and where desired by the Distributor, free from all claims of the Exhibitor in respect thereof and the license of each thereof shall forthwith upon exclusion as hereinbefore provided terminate and revert to the Distributor.

Schedule

Twenty-second: The following Schedule and all of the written and printed parts thereof are a part of this license:

[fol. 5935]

Contract Number ....

Salesman ....
Branch ....

Schedule

Theatre	Exhibitor	Location of theatre

WARNER BROS. PRODUCTIONS

Release No.	Consecutive Days Run	Film Rental			Trailer		
		Guarantee		Additional Sharing Terms	No. Days	Rental	
101							
102							
103							
104							
105							
106							
107							
108							
109							
110							
111							
112							
113							
114							
115							
116							
117							
118							
119							
120							
121							
122							
123							
124							
125							
126							
127							

FIRST NATIONAL PRODUCTIONS

Release No.	Consecutive Days Run	Film Rental			Trailer		
		Guarantee		Additional Sharing Terms	No. Days	Rental	
151							
152							
153							
154							
155							
156							
157							
158							
159							
160							
161							
162							
163							
164							
165							
166							
167							
168							
169							
170							
171							
172							
173							
174							
175							
176							
177							

[fol. 5936]

WESTERNS

128							
129							
130							
Totals				x x x	x		

178							
179							
180							
Totals				x x x	x		

[fol. 5937] **Score Rentals:**

Run:	Playing arrangement		Additional Terms
	Features	Trailers	
Clearance:			

Additional Clauses

1. Distributor may in its discretion by giving Exhibitor notice in writing on or before "the available date" of the particular photoplay designate not more than four of the photoplays licensed hereunder for which the film rental and terms agreed to be paid by Exhibitor shall be, instead of the film rental and terms hereinabove provided —— percent of the gross box office receipts of such photoplays, such photoplays to be exhibited in the —— theatre for —— days each.

2. Distributor may in its discretion by giving Exhibitor notice in writing on or before "the available date" of the particular photoplays interchange the film rental and terms (including the theatre, if more than one theatre is mentioned above) of any one or more of the photoplays with the film rental and terms of any other photoplay or photoplays licensed hereunder.

3. *Admission Prices.*—The Exhibitor during the whole of the licensed exhibition period of each of the motion pictures exhibited hereunder agrees to and shall charge for admission to said theatre the following prices:

Evenings: Adults: Orchestra — Balcony — Children —
Matinees: Adults: — Orchestra — Balcony — Children —

Unless a greater minimum admission charge is herein specified, the Exhibitor agrees to and shall charge for admission to said theatre during the whole of the licensed exhibition period of each of the motion pictures, an actual admission fee which shall not be less than fifteen cents (15c) for each adult person for each matinee performance and not less than fifteen cents (15c) for each adult person for each evening performance.

If during any such period less than said admission prices is charged, the Distributor in addition to all other rights hereunder shall have the right: (a) to immediately termi- [fol. 5938] nate the license of the motion picture then being exhibited, by written notice to such effect to the Exhibitor and upon the giving of such notice, the license of such motion picture shall forthwith terminate and revert to the Distributor; or (b) provided the Exhibitor is granted herein a period of "clearance" to reduce such period by not to exceed one-half in respect to each of the pictures thereafter deliverable hereunder or (c) provided no period of clearance is specified in the Schedule to withhold for a period not to exceed sixty (60) days notice of the date when each motion picture thereafter deliverable hereunder will be available for exhibition by the Exhibitor; and as to each such motion picture the "run" thereof, if any, granted the Exhibitor, shall be deemed revoked and the Exhibitor agrees to exhibit each such motion picture after notice of the available date thereof upon the date or dates determines as provided in Clause Fourth hereof.

4. It is conceded by the Exhibitor that the exhibition by it of any photoplay licensed hereunder on the same program, and as a part of the program with any other feature photoplay of five reels or more in length, substantially reduces the exhibition value of such photoplay to other exhibitors in the same city or general territorial division in which the Exhibitor's theatre is located, and furthermore, substantially reduces the film rental which the Distributor is entitled to receive from other exhibitors who have either a prior or subsequent run to the exhibitor licensed in this agreement. Therefore it is covenanted and agreed that the Exhibitor will not exhibit any of the above licensed photoplays as a part of programs or on the same program or bill with any other feature photoplay and that a violation of this covenant by the Exhibitor entitles the Distributor to all the rights and remedies herein given to it for violation or breach of any other covenant, term or provision in this contract.

5. This agreement covers only "Warner Bros. Productions" or "First National Productions," as the case may be, and as provided in the Schedule hereof, and shall not cover the productions not licensed hereunder or which may be generally released under any other or different brand or trade-mark.

[fol. 5939] 6. In the event that Exhibitor shall violate the provisions of any other agreement between Distributor and Exhibitor for feature photoplays therein agreed to be leased or shall fail to date, play and pay for the film rental provided for in such other agreement, Distributor may at its option exercise with respect to this agreement all or any of the rights granted Distributor under Paragraph Eighteenth.

7. The parties hereto recognize that the National Appeal Board referred to in Article Twenty-third is not now and may not during the term of this agreement be in existence. It is agreed, therefore, that until the said National Appeal Board shall be organized, the sixth paragraph of said Article shall be deemed to read as follows:

> "The Arbitration Board shall have general power to determine such dispute or controversy as shall be submitted, to make findings of fact in respect thereof and to direct specific performance of a contract, and/or that the same has been breached in whole or in part, and/or that damages on such account shall be paid. The Board of Arbitration shall have the power only to give force and effect to the provisions of this license agreement and the rights or obligations of the parties thereunder."

8. Distributor hereby grants to the Exhibitor and the Exhibitor hereby accepts a license under copyright, subject to the terms and conditions hereof, to exhibit and reproduce in the theatre or theatres specified in this Schedule, the Trailers (which term shall be deemed to mean films or prints, ordinarily not in excess of one (1) reel in length, and the sound record accompanying same, designed to advertise and introduce coming photoplays), of the photoplays described in this Schedule opposite which there is a sum specified in the column of this Schedule marked "Trailer-Rental," but only for the number of successive days in this Schedule provided, on dates to be determined as follows: in the absence of special provisions for actual dates agreed upon in this Schedule, Exhibitor agrees to commence the first exhibition of each of the trailers seven (7) days prior to the first exhibition date determined as herein provided of the photoplay to which such trailer relates. Exhibitor [fol. 5940] agrees to pay Distributor for the rights herein granted with respect to each such trailer, the respective sums indicated in this Schedule therefor and to make such

payment at least five (5) days prior to the first agreed exhibition date of each such trailer determined as herein provided.

9. Number of pictures offered: — Number licensed: —

[End of Schedule]

Optional Arbitration Clause

The following Clause Twenty-Third is optional with the parties hereto. If it is desired to make such clause a part of this license, the Exhibitor and the duly authorized representative of the Distributor shall sign their respective names where indicated immediately following this paragraph and unless so signed the said Clause shall be deemed excluded from this license agreement.

It is agreed by and between the parties that Clause Twenty-Third, providing for voluntary arbitration of disputes arising hereunder, shall be included as a part of this license.

——, ——, Representative of the Distributor duly authorized to agree to the following Clause Twenty-Third; —— ——, Exhibitor.

Arbitration

Twenty-Third: The Exhibitor and the Distributor respectively, freely and voluntarily agree that as a condition precedent to the commencement of any action or proceeding in any court by either of them, to determine, enforce or protect the legal rights of either hereunder, each shall submit all claims and controversies arising hereunder for determination by arbitration to an Arbitration Board (hereby expressly waiving the oath of the arbitrators) which shall consist of four members, each of whom shall be engaged in the motion picture business, and two of whom to be appointed by the Exhibitor, and the remaining two to be appointed by the Distributor.

Upon the written request of the Distributor or the Exhibitor for the arbitration of any dispute or controversy arising hereunder, the party making such request shall name therein [fol. 5941] two arbitrators stating the business address and business or business connection of each and shall designate therein the date, time, and place of the hearing of such controversy. The date of such hearing shall not be earlier than seven (7) days from the date of the sending of such notice, unless it shall be claimed in such notice that irreparable injury will result unless there is a speedy determination of such controversy in which case such hearing may be designated to be held earlier than said (7) day period.

Within five (5) days after the mailing of such request for arbitration, the party upon whom such request is made shall name two arbitrators in a written notice mailed or delivered to the other party, stating therein the business address and business or business connection of each arbitrator. If either party fails or refuses to name the arbitrators as herein provided or if any arbitrator so named shall fail or refuse to act, or be unable to serve or shall be challenged and others are or another arbitrator qualified and then available to act is not then appointed, others or another arbitrator may be appointed by the other party as the case may be.

No member of the Arbitration Board shall hear or determine any controversy in which he has an interest direct or indirect, and any member having such interest shall be disqualified to act.

If the arbitrators or a majority of them are unable to reach a decision, then they, or a majority of them shall immediately select an umpire who shall not be engaged in the motion picture business. In such case the hearing before the umpire shall be at such time and place as the umpire shall designate and shall be had before the umpire alone, the arbitrators not to be permitted to attend the hearing before the umpire. If the arbitrators or a majority of them are unable to agree upon the selection of an umpire, the American Arbitration Association shall be requested to make such selection.

The Arbitration Board shall have general power to determine such dispute or controversy as shall be submitted, to make findings of fact in respect thereof and to direct specific performance of a contract, and/or that the same has been breached in whole or in part, and/or that damages on such [fol. 5942] account shall be paid. The Board of Arbitration shall have the power only to give force and effect to the provisions of this license agreement and the rights or obligations of the parties thereunder; provided that if after a full hearing of any controversy submitted for arbitration hereunder, excepting any submission to an umpire designated as hereinabove provided, the arbitrators or a majority of them are of the opinion that because of unusual circumstances arising after the execution of this license agreement and beyond the direct control of the parties hereto disclosed at such hearing, a strict enforcement of the provisions of this license agreement would impose undue hardship upon one of the parties, the arbitrators or a majority of them may recommend in writing to the parties a settlement of such controversy upon such terms and conditions deemed by the arbitrators fair and just. If such settlement is not agreed to by the parties within five (5) days after the receipt of a copy of such recommendation, the controversy shall be deemed withdrawn from the arbitrators and shall be submitted with a written statement of all the facts adduced at the hearing before the arbitrators together with all documentary evidence to the National Appeal Board in New York. The disposition ~~by the~~ National Appeal Board of any such recommendation shall be final and binding upon the parties hereto.

The hearing of any such controversy shall be had before the Arbitration Board in the city wherein is situated the exchange of the Distributor from which the Exhibitor is served, unless the parties agree in writing that such hearing be had in some other place. If either party fails or refuses to submit to arbitration any such claim or controversy, the other party may apply to a United States District Court, or to any other Court, including a court of a state in which such hearing would otherwise not be had, for an order to proceed to arbitrate in which case such hearing shall be had in such place as the court to which supplication is made may lawfully direct.

The parties hereto further agree to abide by and forthwith comply with any decision or award of the arbitrators, or a majority of them and consent that any such decision or award shall be enforceable in or by any Court of competent jurisdiction pursuant to the law of such jurisdiction now or hereafter in force.
[fol. 5943]

If the Exhibitor shall fail or refuse to submit to arbitration any such claim or controversy or to abide by and comply with the award of the arbitrators in respect thereto, within seven (7) days, the Distributor may at its option suspend the deliveries of the motion pictures provided for in this and in each other existing license agreement between the parties hereto and/or terminate this and each such other license agreement; and upon such termination the aggregate of the license fees of all motion pictures specified in this and any other such license agreement then not exhibited forthwith shall become due and payable by the Exhibitor.

If the Distributor shall fail or refuse to submit to arbitration any such claim or controversy or to abide by and comply with the decision or the award of an Arbitration Board in respect thereto within seven (7) days, the Exhibitor may at the option of the Exhibitor terminate this and any other existing license agreement between the parties hereto by mailing a notice to such effect to the Distributor within seven (7) days after such failure or refusal; and the Exhibitor shall have the rights and remedies provided in Clause Second (b) for failure to deliver motion pictures.

Any such termination by either party shall be without prejudice to any other right or remedy which the party so terminating may have by reason of any breach by the other party to this or any other existing agreement between the parties.

Each of the parties hereto, without notice to the other, may apply to any Court having jurisdiction to make this agreement to arbitrate a rule or order of such Court.

In witness whereof .... the Exhibitor, operating the .... Theatre, located at .... in the (City and State) ...... has on (Date) ...... executed this application, which upon written acceptance thereof by the Distributor shall be deemed to be the license of said Exhibitor for the exhibition of the motion pictures speci- [fols. 5944-5950] fied in the Schedule, but only at the said Theatre in accordance with the terms and conditions hereof.

VITAGRAPH, INC.
By ....

(The above signature of Vitagraph, Inc. is made only for the purpose of authenticating this application and is not an acceptance thereof.)

Exhibitor —— ——, by —— ——; by ————, General Manager of Distribution, Vitagraph, Inc.

The following application is hereby accepted.

Date —— ——.

[fol. 5950a] SUPREME COURT OF THE UNITED STATES

ORDER NOTING PROBABLE JURISDICTION—June 20, 1947

A petition for rehearing having been filed in this case upon dismissal of the appeal for failure to comply with Rule 12,

Upon consideration thereof, it is ordered by this Court that the petition for rehearing be, and the same is hereby, granted. The judgment of dismissal of December 16, 1946, is vacated and probable jurisdiction is noted.

Mr. Justice Jackson took no part in the consideration or decision of this order.

[fol. 5951] EXHIBIT P-2

Always A Good Show E. W. Long & Sons, Mgrs.
HIGHWAY THEATRES
Western Electric Sound Equipped
Community — Memorial
Cadiz Mt. Vernon

Cadiz, Ohio, Jan. 15th, 1935.

Metro Goldwyn Mayer Dist. Corp.,
Cleveland, Ohio.

Attention of Manager.

DEAR SIR:

Please advise as soon as possible if you can furnish us second-run feature product for our Memorial Theatre at Mt. Vernon O.

Will be in the market for product commencing for dating after Mch. the first. Give release dates and all other information on available subjects.

Yours truly, E. W. Long, Manager, Memorial Theatre, Mt. Vernon, O.

[fol. 5952] EXHIBIT P-3

Always A Good Show E. W. Long & Sons, Mgrs.

HIGHWAY THEATRES
Western Electric Sound Equipped
Community — Memorial
Cadiz Mt. Vernon

Cadiz, Ohio, Jan. 15, 1935.

Paramount Pictures Corp.,
East Fifth St., Columbus, O.

Attention of Manager

DEAR SIR:

Please advise us soon as possible if you can furnish us Second-run features for our Memorial Theatre at Mt. Vernon, O.

We will be in the market for product commencing March the first; give release dates and all other information on available subjects.

Yours truly, E. W. Long, Manager, Memorial Theatre, Mt. Vernon, O.

[fol. 5953] EXHIBIT P-4

Stage and Screen Attractions
Emerson W. Long & Son, Mgrs.
MEMORIAL THEATRE
The House of Perfect Sound

Mt. Vernon, Ohio, Aug. 23, 1936.

Mr. I. J. Schmertz, Manager,
20th Century-Fox Corp.,
2219 Payne Ave., Cleveland, O.

DEAR MR. SCHMERTZ:

Later on we may be interested in running some of your features as repeat runs for Mt. Vernon.

Our records show we have written your office three times in regard to product, but we never have had a reply.

If you are not in a position to give us any advise on this subject, please let us know at once and we will take the matter up direct with New York

Yours truly, E. W. Long, Manager.

P.S. We can use also some short subjects.

[fol. 5954] **Exhibit P-6**

R K O Distributing Corporation.
RKO Building, Radio City
Rockefeller Center
New York

September 13th, 1935.

Mr. E. W. Long,
Memorial Theatre,
Mt. Vernon, Ohio.

Dear Mr. Long:

I will let you know within the next ten days whether or not we will be able to do business with you in Mt. Vernon.

Sincerely yours, E. L. McEvoy, Eastern Sales Manager.

cc-N. Levy
H. Greenblatt

[fol. 5955] **Exhibit P-7**

R K O Distributing Corporation
RKO Building, Radio City
Rockefeller Center
New York

May 21st, 1936.

Mr. E. W. Long,
Memorial Theatre,
Mt. Vernon, Ohio.

Re: Mt. Vernon

Dear Mr. Long:

I am sorry but we will be unable to give you any of our 1936/37 product as we have made a deal with Schine.

Very truly yours, E. L. McEvoy, Eastern Sales Manager.

cc-N. Levy
H. Greenblatt

[fol. 5956]

EXHIBIT P-8

LEASE AND AGREEMENT

This memorandum of Lease and Agreement made this 31 day of Dec., A.D. 1939, between the undersigned, the Board of Trustees of the Memorial Building of Knox County, Ohio, First Party, and E. W. Long, Second Party, witnesseth:

That first party, in consideration of the covenants and agreements hereinafter mentioned to be kept and performed by the second party has demised and leased to second party the premises in the City of Mount Vernon, Knox County, Ohio, known and described as follows:

> Being the Memorial Theatre in the Knox County Memorial Building, situate on East High Street in said city, and including that portion of the building designated and intended for use as a theatre and assembly hall, including the approaches and exits thereto, the right of ingress and egress, through the walks and drives of the premises upon which said building is situated, and the portion of the basement underneath the stage, property room and stage approaches. Also including the use of the heating and ventilating fans and apparatus in the fan room and right of access thereto in common with the owners and tenants of other parts of said building. Together with certain furniture, equipment, scenery and accessories in accordance with an inventory and schedule thereof, hereto annexed and made a part hereof. The same to be used and occupied as a first class, high-grade theatrer, assembly hall and moving picture house. Provided, however, that first party reserves for itself and its employees the right to pass to and from the heating boiler room and fuel storage space situated in said building through the premises included in this lease, but at such times, and in such manner, as will not unreasonably effect second party's rights hereunder.

To have and to hold the same unto second party for the term of one year beginning on the 31st day of December, 1939, and ending on the 30th day of December, 1940.

First party doth hereby covenant with second party as follows, to-wit:

(a) That second party, so long as he shall pay the rent hereinafter provided, and perform and observe each and all of the covenants and promises herein contained, may peaceably hold and enjoy said premises during said term without any interruption by first party, or by any person lawfully claiming through first party, and except as hereinafter provided.

(b) First party will at all times during the term of this lease, keep the main walls, the roof and the exterior of said demises premises in good and substantial repair, together with the main sewer line used in common with other parts of said building, and the main gas, water and electric supply lines used in common with other portions of said building.

(c) First party agrees to furnish for the premises herein leased a reasonable and proper supply of heat from the heating plant in said building and reasonable ventilation through and by the ventilating system provided for said building and keep said system in proper repair, so that the premises herein leased may be reasonably and properly heated and ventilated for the purpose that said premises are to be used as hereinabove provided. First party agrees to assume all responsibility, charge and cost for the full and proper operation of the heating and ventilating plant and apparatus, provided for said building, and cold and hot water supply respectively for all toilets, drinking fountains, wash stands, sinks, etc., throughout same, including the premises herein leased. For the operating of said plant first party agrees to supply an honest and competent operator and engineer and fireman therefor at its own cost and expense. Electricity for the operation of both ventilating fans to be furnished by second party.

[fol. 5957] (d) First party grants to second party the right, at second party's option, but upon not less than three month's prior written notice by second party to first party, to renew this lease for an additional and further term, providing terms may be agreed upon, of one year from and after the expiration of the initial term thereof.

In consideration of said demise, second party doth covenant and agree with first party as follows:

1. To pay as rent for said demised premises the sum of Three Thousand Six Hundred Dollars, ($3,600.00) per year, said rental to be paid in equal monthly installments of Three Hundred Dollars, ($300.00) each, in advance, on or before the 10th of each and every month.

2. Second party admits full knowledge of the conditions of said premises and all property included in this lease, and accepts same in workable condition, and agrees to take good care of said premises and property, including all plumbing, sewers, and apparatus therein, and will keep same in good order and in proper condition, at his own expense, and will yield up said premises, property and apparatus to first party upon the termination of this lease in any way in as good and tenantable condition reasonable wear and tear, and damage by fire, excepted, as the same now are.

3. First party shall not be liable for any damage occasioned by failure to keep said premises in repair, or for any damage done or occasioned by or from plumbing, gas, water, steam or other pipes, or from sewerage, falling plaster, or the bursting, leaking or running of any water pipe, waste pipe or sewer, in or about any of said building or premises, nor for damages occasioned by water, snow, etc., coming through the roof, ventilator, or any other opening or part of the said building, nor for any damage arising from acts or neglect of other occupants of the same building or of the owners or occupants of adjacent property.

4. Second party agrees to pay in addition to the rent above specified, all costs and charges for electricity used and consumed in said demised premises, together with all electricity used to operate all exterior theatre exit lights.

5. Second party agrees to keep all of said demised premises and the property included in this lease, clean and neat and in first class order, repair and condition during the entire term hereof; and further agrees that he will not permit the operation of the theater included in said premises to be suspended or shut down for a period aggregating more than ten (10) days in any calendar months, (excepting during the months of July and August of each calendar year), without the special consent of first party. And second party further agrees that he will operate said theater

at least forty four (44) weeks in each year, and that he will not use or permit the use of said premises for any purpose, performance or exhibition which is immoral or obscene, or may have any tendency to corrupt the characters of persons attending same or that may have any tendency to break down good government and teachings and principles generally understood to be in accordance with the Christian religion.

6. Second party agrees that in the use of said premises and the operation of said theater, he will fully comply with, observe and obey all laws, ordinances, rules, regulations and requirements of all proper and lawful authorities in any way affecting said premises or the use thereof, or this lease; that said premises will not be used or occupied for any unlawful purpose and that no intoxicating liquor of any kind or description shall be kept, used or sold on said premises during said term.

7. That he will not make any alteration or change in the building or the apparatus and equipment without the special written consent of the first party and its approval of a plan and specifications therefor. Second party further agrees that this lease shall not be assigned or transferred, voluntarily or involuntarily, nor shall said premises or any part thereof be under-let without the special written consent of first party first had and obtained. Provided, however, that this shall not apply to permitting said theater to be used for entertainments, etc., where the theater remains at all times under the control of second party. Second party further agrees that first party or its agents may enter upon said premises or any part, at any and all reasonable times to examine the conditions of the same and to make any repairs or improvements, changes or alterations that first party may deem expedient.

[fol. 5958] 8. Should said second party abandon or vacate said premises, or in the event second party should become bankrupt, insolvent, or make an assignment for the benefit of creditors, first party may immediately declare this lease terminated and the premises may be relet by first party upon such terms as said first party may see fit. And if a sufficient sum is not thus realized to satisfy the rent herein reserved and provided, second party agrees to satisfy and pay all deficiences, and agrees to post an approved bond in the sum of Three Thousand Six Hundred Dollars, ($3,600.00) as such guaranty.

9. Second party agrees that at the termination of this lease by lapse of time or otherwise, to yield up immediate possession to first party.

10. Second party agrees to pay all expenses incident to the maintenance and operation of the theater hereinabove mentioned and agrees to keep the equipment, fixtures, furniture and furnishings included in this lease in good order and condition and adequately insured against loss by fire.

11. Second party agrees to protect first party and the owner of the premises herein demised, as well as second party himself, from liability by providing and carrying at his own cost and expense, public liability insurance, applying to said premises and the use thereof in the sum not less than Ten Thousand Dollars, ($10,000.00) liability for injury to one person and Twenty Thousand Dollars, $20,000.00) for injury to two or more persons.

It is further agreed by and between the parties:

Nothing in this lease shall be deemed to prevent full and proper use of said building and the part thereof included in this demise by the general public of Knox County, Ohio, and especially the military organizations thereof, and nothing herein shall be deemed to prevent or preclude the control, management and supervision of the Knox County Memorial Building and grounds including the premises herein demised, under such rules and regulations as first party may from time to time adopt, subject to the approval of the Court of Common Pleas of said County.

Second party shall provide, free of charge or expense, and with[illegible] any right to claim any credit upon the rental price to be paid for said premises, the use of said theater during the daytime of each of holidays known as Memorial Day, usually observed on May 30th, and Independence day, usually observed July 4th, and also during the whole of Armistice Day usually observed November 11th. during each year of the term of this lease, for the use of the public generally and especially organizations composed of former soldiers of said county, or honoring the memory of such soldiers. And such use shall include light, heat, stage scenery in stock, apparatus and accessories, excepting motion pictures machine and screens, and motion picture sound apparatus, together with the services of proper persons qualified to operate a stage, equipment and lighting.

[fol. 5959] Second Party agrees to grant the use of said theatre to Knox County citizens, residents and organizations for any and all proper and lawful meetings, entertainments and assemblies, not contrary to the provisions of this lease or disapproved by first party at a reasonable charge not to exceed the rates hereinafter stated, and when and if the request for such use is given to second party such reasonable length of time prior to the date desired as will permit second party to cancel without loss any other booking or engagement for the use of said theater at the said date or dates desired. In case of any disagreement between second party and any such person desiring the use of said theater in respect to the reasonableness of the notice of the date desired, the amount of the charge for such use made by second party, or the purpose for which such use is desired, it is agreed that first party shall be the arbitrator in respect to such dispute and second party agrees to abide by the decision of said first party. Second party agrees that his maximum charge for such use of said theater, including light, heat and the services of the persons necessary to operate said theater, shall be as follows:

$20.00 for any day used in the operation of said theater. Where the services of additional persons are required, such as stage hands, musicians, ushers, box office attendant, etc., an additional charge may be made by second party to cover the actual cost of supplying such additional help.

Nothing herein, however, shall be deemed to prevent second party from supplying the use of said theater at a less charge or cost than the rate hereinabove mentioned at the option and discretion of said second party, and nothing herein shall be deemed to prevent first party from assuming all or any part of any such charge made for the use of said theater, in which case the amount of such charge so assumed by said first party shall be credited upon the next rental payment to be made hereunder by second party to first party.

It is expressly understood and agreed that the demise herein contained is subject and subordinate to a prior lease and agreement, given and granted by said first party, as lessor, to Mt. Vernon Community Music Club, as lessee, covering said premises, for the several periods hereinafter mentioned to be designated by the optional selection of said Club. For the purpose therefore, of protecting the rights of the parties under said prior lease, said first party herein reserves from the demise of the premises and property herein described any or all of three days, of twenty four hours each, during each year of the initial term hereof and each year of any extension of said term, up to a total of five (5) years from October 31, 1939, for the use of said Mt. Vernon Community Music Club. Said periods, not to exceed an aggregate of three days in each of said years, shall be at the option of said Club, and shall consist of any such day, or days, as may be selected and designated by said Club, in each instance by not less than thirty days prior notice to first party and by similar notice by first party to second party. During said periods the demise herein granted shall be deemed suspended and not in effect, and said prior lease to said Club shall be treated and considered as in effect. At the end of each such period the demise granted by this instrument shall be resumed and again become immediately effective. For each day that the demise herein granted may be suspended by the exercise of the optional rights granted said Club by said prior lease, said second party shall be entitled to receive a rental of Twenty Dollars ($20.00) which shall be collected by the second party.

It is also understood and agreed that if by reason of this lease first party is required to pay taxes on the premises and property herein demised, then, and in such event, if such tax liability may be thus avoided, or unless such liability is assumed by second party, this lease may be terminated by first party at its option upon reasonable notice to second party, but in such case, said premises and property shall not be leased to any one else during the unexpired part of the initial term hereof and/or the option extension thereof herein granted, for the purpose of carrying on a similar, or approximately similar, business by such new lessee as that proposed to be carried on by second party hereunder, without first offering said premises and property to second party under a lease containing similar terms as offered to such new lessee.

[fol. 5960] Should said premises be rendered untenantable by fire or other casualty, no rent shall be charged during the time they shall be necessarily unoccupied by reason thereof, and thereupon first party may at its option, in terminate this lease, or repair said premises within sixty days, and failing to do so, or upon the destruction of said premises by fire or other casualty, the term hereby created shall cease and determine.

It is understood and agreed that the rental price herein provided to be paid by second party to first party is based upon the understanding that second party may use said theater for the exhibition of motion pictures on Sunday, except in the forenoon. It is therefore further agreed that in the event that any time during the initial term, or any extension of the term of this lease, said second party should be prevented from so using said theater on Sundays, except in the forenoon, by reason of the order of a Court, or any public officer having authority, or by the enactment of any law or laws prohibiting such use, then, thereupon and thereafter the rental price herein provided and agreed to be paid by second party to first party shall be reduced by an amount fairly and reasonably equal to the average amount of net profit theretofore derived by second party from the use of said theater on Sundays, except in the forenoon. In case the parties hereto are unable to agree upon the amount of reduction to be applied to the rental sum to be thereafter paid by second party to first party shall be reduced by an amount fairly and reasonably equal to the average amount of net profit theretofore derived by second party from the use of said theater on Sundays, except in the forenoon. In case the parties hereto are unable to agree upon the amount of reduction to be applied to the rental sum to be thereafter paid by second party to first party shall be reduced by an amount fairly and reasonably equal to the average amount of net profit theretofore derived by second party from the use of said theater on Sundays, except in the forenoon. In case the parties hereto are unable to agree upon the amount of reduction to be applied to the rental sum to be thereafter paid by second party to first party on account of the termination of the right to use said theater in said manner on Sundays, except in the forenoon, the fixing of the amount of said reduction shall be determined by arbitration in the usual manner; each party to select one capable disinterested arbitrator, and if the two so selected shall not be able to agree, they shall select a third arbitrator, and the decision of a majority of said arbitrators shall be binding upon the parties hereto.

It is expressly agreed, between the parties hereto, and these presents are upon condition, that if said rent, or any part thereof, shall at any time be in arrears or unpaid, whether formally demanded or not, or if said second party shall at any time fail or neglect to perform or observe any of the covenants or agreements herein contained, upon his part to be performed or observed, then and in such case it shall, at the option of the said first party, work a forfeiture of all the rights and privileges of said second party in this lease, and entitle the said first party or any person or persons, authorized by it in that behalf, privilege and license therefor being hereby given and granted, without any formal notice being given, to enter into and upon said premises, or any part thereof, either with or without process of law, and the said party of the second part, or any person or persons occupying the same, together with its, his or their goods and effects, to expel, remove and put out, using such force as may be necessary so to do, and the said premises to again repossess and enjoy, as before this demise, without prejudice to any remedies which might otherwise be used for arrears of rent or proceeding break of covenants.

It is further agreed by the parties hereto, that after the service of notice, or the commencement of a suit, or after final judgment for possession of said premises, the first party may receive and collect any rent due, and the payment of said rent shall not waive or affect said notice, said notice or said judgment.

The party of the second part further covenants and agrees to pay and discharge all reasonable costs and expenses that shall be made and incurred by the party of the first part in enforcing the covenants and agreements of this lease; and all the parties to this lease agree that the covenants and agreements herein contained shall be binding upon, apply and inure to, their respective successors, heirs, executors, administrators and assigns.

[fol. 5961] Witness the hands of the parties hereto, in duplicate, the day and year first above written.

Board of Trustees of the Memorial
Building of Knox County, Ohio

Lawrence E. Sperry
E. H. Johnson
R. M. Lamb
First Party
E. W. Long
Second Party

Signed and acknowledged in the presence of:

William L. Howell
W. Thurman Todd

State of Ohio,
Knox County, ss:

On this   day of December, in the year 1939, before the undersigned, a Notary Public in and for said County, personally came the Board of Trustees of the Memorial Building of Knox County, Ohio, Rex Lamb, Lawrence Sperry and E. H. Johnson and E. W. Long, the parties to the within lease and acknowledge the signing thereof to be their voluntary act and deed.

Witness my official seal and signature on the day last above written. W. Thurman Todd, Notary Public in and for Knox County, Ohio

---

[fol. 5962] Exhibit P-9

Stage and Screen Attractions.
Emerson W. Long & Son, Mgrs.

Memorial Theatre

The House of Perfect Sound

Mt. Vernon, Ohio, September 30, 1940.

Mr. Lawrence Speery, Sec., Board of Memorial Trustees,
Mt. Vernon, O.

Dear Sir:

In compliance with clause (d) in present lease, of the Memorial theater, dated (blank day) of December, 1939, hereby give notice covering the option to renew same, for another period as provided for and to meet with the board to discuss terms and any other matters in connection with a new proposition.

Respectfully submitted, Emerson W. Long.

[fol. 5963] Exhibit P-10

Home Office, Cleveland

Mr. Rube Jackter. Mr. H. C. Bissell.

February 26, 1935.

My Dear Rube:

Attached herewith you will find contract covering the 1934-35 product for the Memorial Theatre, Mt. Vernon, Ohio, which is opposition to Schine.

In Mr. McConville's letter he states he dislikes to sell this account against Schine and then later perhaps be forced to go back to Schine for business in Mt. Vernon. The only thing I can say is that Mr. Long, the exhibitor who has the Memorial Theatre, has been in business in Cadiz for a number of years and has a very good reputation, not only in picture business but also as a respected citizen of Cadiz, and he owns quite a lot of property. You will note that the contract is not signed as a corporation but by E. W. Long and & Son by Mr. Long. I think he will stay in business in Mt. Vernon as he has leased the theatre from the township, and due to the fact of his good reputation he was able to get the house away from a number of other people who were trying to get a lease.

I believe the deal to be a very good one, and I think if you will check up you will find in dollars and cents it is by far more than we received from Schine last year in both of his towns in the Cleveland territory, which are Mt. Vernon and Wooster. Mr. Long has already given us several dates and has plenty of playing time, and I believe this will be a forerunner of a lot of pleasant business relations in this particular situation.

It was impossible to sell him any of the pictures Schine shelved last year but I believe as we go along we will be able to spot book quite a few of these subjects in. You will note we are protected with preferred playing time on the ten big pictures and we were able to get the same price on the Robinson picture as we did on the Capras. He would not consider the Jones Re-Issues as he does not want to take a chance, and for that reason he would not consider second run on It Happened One Night or Lady for a Day.

I would appreciate a wire of approval on this contract as he has given us some early dates. If we had taken the deal when it was originally submitted, Mr. Long would have been up to date on his contract, but, unfortunately we had to hold the deal up on account of Schine.

Kindest personal regards.

Sincerely yours, ——, Branch Manager.

HCB:GC.
cc Mr. McConville.

[fol. 5964]

EXHIBIT P-11

Columbia Pictures Corporation
729 Seventh Avenue, New York City

Feb. 21st, 1935.

Mr. H. C. Bissell, Columbia Pictures Corporation, Cleveland, Ohio.

DEAR BISS:

With reference to Mt. Vernon, Ohio, due to the fact that we do not seem to be able to get any kind of satisfactory settlement of our difficulties with Schine, believe it advisable for you to sell this situation to the opposition independent account, provided you still believe this independent account is substantial.

I dislike very much to sell this account against Schine and then a little later on be forced to go back to Schine for business in Mt. Vernon. I know that you cannot personally guarantee that the exhibitor will stay in business, but I do want you to give it very careful study and consideration, and make sure, insofar as you possibly can, that it is worth while to take this account, and that within reason you feel sure he will be able to stay in business and continue as a permanent account with us. At least, for the play-off of the entire contract which you will negotiate at this time.

With kind regards.

Sincerely yours, Columbia Pictures Corporation, Jos. A. McConville.

JAM:FLM.

[fol. 5965]

EXHIBIT P-12

United Artists Corporation
Inter Office Letter

From: (Office) Cleveland, (Dept.) Sales, (Name) A. M. Goodman.

To (Office) Home Office, (Dept.) Sales, (Name) Paul N. Lazarus.

Date—Feb. 8th, 1937.

DEAR PAUL:

I know you are thoroughly acquainted with the matter regarding the deal for first and second runs, Memorial Theatre, Mt. Vernon, Ohio.

As I previously advised, the exhibitor did not want any second run pictures but as he is in desperate need of first run product, we naturally used the first run English pictures we had to sell as the club in securing a very fine deal for our entire product, second run, and obtained exceptional prices for the few English pictures, first run.

After you informed me that you could not act on the first run contracts because Schine might pick up these English pictures later on, I had occasion to talk to Charlie Stern in Pittsburgh about this situation. I explained to him that Schine needs these English pictures like he needs a boil on his neck since he has more product than playing time for the Vine Theatre and is only open one day a week at the Lyric. I, further, pointed out to him that in all likelihood, with the exception of one picture, most of these English productions will be booked to play the Lyric, where we would get a couple apples or a button, whereas I submitted contracts at real money for the Memorial.

Charlie, naturally appreciated that it was to our advantage to give these few English pictures to the Memorial in view of the money secured as well as the revenue involved. in the second run contracts, which we could not secure without giving the exhibitor these few English pictures, first run.

Subsequently, Bill Barron had occasion to talk to George Lynch, and George told him that you had contacted him and he was agreeable to the Memorial having these English pictures. However, later ~~on someone~~ contacted Meyer Schine and Schine for the time being would not give up these pictures.

I would appreciate your again taking this matter up with Charlie Stern and advise me if he had since contacted Meyer Schine and whether he was able to get his consent to our selling these English pictures to the Memorial Theatre.

As it now stands, we have no contracts either for second run in Mt. Vernon or first run on the English pictures in question, and the amount involved is somewheres in the [fol. 5966] neighborhood of $1600, which I am loath to lose, particularly in view of the fact that the few English pictures are of no value to Schine and the sale of them plus the second run means a great deal to the Cleveland Exchange.

Would appreciate hearing from you at your earliest convenience.

AMG/rw.
CC Mr. Stearn.

[fol. 5967]

Exhibit P-13

Copy

From T. Dillard Jr.
To F. D. Drew.
Subject: Memorial Theatre-Mt. Vernon, Ohio. Emerson W. Long.
Date: April 7, 1938.

Dear Mr. Drew:

I have just received a letter from the Department of Justice with respect to the complaint of Emerson W. Long of the Memorial Theatre in Mt. Vernon, Ohio from which it appears that Mr. Long is unable to buy sufficient product, and that Schine is overbought.

With respect to each of the seasons 1936-37 and 1937-38, I would like the following information:

I. (a) Who bought first run.
  (b) For exhibition in what theatres.
  (c) Number of pictures bought.
  (d) Number of pictures played.
  (e) Number of pictures cancelled.
  (f) Average ~~film rental~~ paid for first run.
  (g) Clearance over second run.
II. (a) Same information with respect to second run as itemized under I.

With respect to the 1937-38 product, I would like the above information but in addition thereto, a list of every picture so far released, the date of availability for first run, the first run play date, availability for second run and second run play date. I would also like to have the average second run film rental on all product played to date.

I would also like to know the reasons why your second run licensee was changed beginning with the 1937-38 season.

Kindest regards.

(Signed) Tyree Dillard, Jr.

[fol. 5968] **EXHIBIT P-17**

Ohio Theatre,
Van Wert, Ohio,
July 23, 1935.

Mr. Goodman, United Artist Corp., 1611 E. 21st St., Cleveland, Ohio.

DEAR MR. GOODMAN:

I have been reading your announcements of your 1935-1936 product in the trade papers.

Don't forget me. Will you send Mr. Levin down? Or shall I come in and see you about the product?

Awaiting your answer,

I remain, Carl B. Moore.

[fol. 5969] **EXHIBIT P-18**

July 24th, 1935.

Mr. C. B. Moore, Ohio Theatre, Van Wert, Ohio.

DEAR MR. MOORE:

This is acknowledging your letter dated July 23rd.

While we have returned from the Convention in Los Angeles, we are still awaiting selling instructions from our Home Office, and as soon as same are set, Mr. Levin will see you, which will be sometime in the near future.

Kindest regards.

Yours very truly, United Artists Corporation, —— ——, Branch Sales Manager.

AMG/rw.

[fol. 5970] **EXHIBIT P-20**

November 25th, 1938.

Schine Lexington Corporation, Gloversville, N. Y.

GENTLEMEN:

The following is our agreement:

1. The undersigned, G. C. Scott and L. B. Scott, are the owners of a lease on a theatre to be erected in Corbin, Kentucky, between the said G. C. Scott and L. B. Scott as tenants

and Hiram Owens as landlord. The said theatre will be a modern 800 seat theatre, air conditioned. The theatre is to be equipped by the tenant. The lease is a ten year lease at a rental of $300.00 per month. The landlord is to pay the taxes and insurance.

2. The undersigned, G. C. Scott, is the owner of a lease upon the Margie Grand Theatre, ~~Harlan~~, Kentucky, which lease has approximately three and one-half years to run, at a monthly rental of $862.50 per month for the entire building. The commercial rentals derived from the said building are approximately $200.00 per month. The said theatre has approximately 690 seats and is fully equipped. The equipment is owned by the landlord except the sound equipment, which is owned by the tenant subject only to service charges.

[fol. 5971] 3. The undersigned, G. C. Scott, is the owner of a lease on the Liberty Theatre, Pikeville, Kentucky, which lease has approximately five years to run, at a monthly rental of $230.00. The equipment in said theatre building is owned by the landlord, except the sound equipment, which is owned by the tenant subject only to service charges.

The undersigned, G. C. Scott and L. B. Scott hereby agree to assign to you the lease upon the said proposed theatre at Corbin, Kentucky, such assignment to be effected on a date designated by you, within thirty days from the date hereof, and you agree to pay for such assignment the sum of $2500.00.

In consideration of the foregoing the undersigned, G. C. Scott, hereby employs and engages you to negotiate and purchase motion pictures and other attractions for the Margie Grand Theatre and the Liberty Theatre, and generally supervise the operations of the said theatres for a term of five years from and after the date hereof. You hereby accept such employment and agree to use your best efforts in and about the same. As compensation for your services in such connection you are to receive five per cent (5%) of the gross receipts of said theatres payable weekly.

In consideration of the foregoing, the undersigned, G. C. Scott, hereby grants you a good and irrevocable option [fol. 5972] for a period of six months from and after the date hereof, to acquire a one-half interest in the said Margie

Grand Theatre and the said Liberty Theatre, for the sum of Twenty-five Thousand Dollars ($25,000.00).

Such option may be exercised by you at any time within six months from the date hereof, by mailing ten days' written notice to G. C. Scott, addressed as follows:

> "G. C. Scott, Margie Grand Theatre, Harlan, Kentucky."

stating that you elect to exercise such option.

If you elect to exercise such option, it is understood and agreed that we will jointly cause to be organized a Kentucky corporation, to which the leases of the Margie Grand Theatre and the Liberty Theatre will be transferred. Such leases will be transferred free and clear of any encumbrances. The stock of said corporation shall be owned fifty per cent (50%) by you and fifty per cent (50%) by G. C. Scott.

It is expressly understood and agreed that prior to the expiration of said option you will audit the books and records of the Margie Grand Theatre and the Liberty Theatre, and the undersigned, G. C. Scott, will afford you access to such books and records. If, as a result of such audit, it shall be determined that the combined profits of the two said theatres for the years 1938, 1937 and 1936 have [fol. 5973] averaged not less than Fifteen Thousand Dollars ($15,000.) per year, and that the combined profits of the two said theatres for the year 1938 shall have been at least Fifteen Thousand Dollars ($15,000.), then and in that event you shall be obligated to exercise the said option and to pay for the said fifty per cent (50%) interest the sum of Twenty-five Thousand Dollars ($25,000.) as above stated.

As indication of your understanding of and agreement with the foregoing, please execute a duplicate original of this letter, which will constitute this a binding agreement between us.

Very truly yours, G. C. Scott [L. S.], L. B. Scott [L. S.].

Accepted and agreed: Schine Lexington Corporation, by Willard S. McKay [L. S.], Vice Pres.

[fol. 5974]

EXHIBIT P-21

Mr. G. C. Scott, Pikeville, Kentucky. Dec. 2nd, 1938.

DEAR MR. SCOTT:

Confirming our conversation and agreement, this is to advise that we understand, as you have fully detailed to us, that the present lease on the Liberty Theatre in Pikeville, Kentucky, is now in litigation in the Circuit Court of your county.

This is to further advise that we will refund to you the Five Hundred Dollars ($500.00) which you have already paid to Mr. Hiram Owen, of Barbourville, Kentucky, on part payment on his contract to erect and construct a theatre building for you in the City of Corbin, Kentucky.

This is further to confirm our agreement that any additional theatres which you and Schine, or either of whom, may hereafter acquire in Pikeville or Harlan, Kentucky, shall be owned by a corporation in which you own fifty per cent of the outstanding capital stock and Schine owns fifty per cent of the outstanding capital stock.

Very truly, Louis Lazar, for Schine.

[fol. 5975] This Assignment made the 2nd day of Dec., 1938, by G. C. Scott of Pikeville, Kentucky, and L. B. Scott, of Harlan, Kentucky, (herein called the Assignors), to Corbin Theatre Company (herein called the Assignee),

Witnesseth

Whereas, Hiram H. Owens and Georgia B. Owens, of Barbourville, Kentucky, heretofore made, executed and delivered to the Assignors a certain contract of lease dated the 24th day of October, 1938, and recorded in the Harlan County Court Clerk's Office in Book 7 of Miscellaneous Instruments, at page 632, providing for the leasing of a motion picture theatre to be constructed on the premises situate on Main Street, between First and Second Streets, in the City of Corbin, Whitley County, Kentucky, as therein more particulary described, and subject to the rents, terms, covenants and conditions therein contained, and

Whereas, the Assignors represent that they have not defaulted in the performance of any of the terms, covenants and conditions in said contract of lease contained, and

Whereas, the term of said lease is for a period of ten (10) years from and after the date when said theatre shall be completed and ready for occupancy.

Now, therefore, in consideration of the sum of Two Thousand, Five Hundred Dollars ($2,500) to be paid to the Assignors by the Assignee, on or before January 10, 1939, the Assignors hereby assign, transfer, convey and set over unto the Assignee all of their right, title and interest to and in the said contract of lease, including any payments made by the Assignors thereunder, together with the prem- [fol. 5976] ises therein described, with the appurtenances.

To have and to hold the same unto the Assignee, its successors and assigns, from and after said date of payment, for all of the term mentioned in the said lease, and subject to the rents, terms, covenants, provisions and conditions therein set forth.

And the Assignors hereby covenant that the said lease and the assigned premises are free from encumbrances, and that they have good right to assign the same.

In Witness Whereof, the Assignors have hereunto set their hands and seals the day and year first above written.

G. C. Scott (L. S.), L. B. Scott (L. S.)

State of Kentucky,
County of Harlan, (Sct):

I, Elwood Hart, a Notary Public in and for the County and State aforesaid, do hereby certify that on this day personally appeared before me in my said county G. C. Scott and L. B. Scott, who acknowledged and delivered the foregoing instrument with Corbin Theatre Company to be their voluntary act and deed.

My commission expires on the 29 day of June 1939.

Given under my hand and seal of office this 2nd day of December 1938.

Elwood Hart, Notary Public, Harlan County, Ky.
My Commission expires June 29, 1939.

[fol. 5977]

EXHIBIT P-25

Agreement made this 30th day of November, 1938, by and between G. C. Scott of Pikeville, Kentucky, and L. L. G. C. S., of Harlan, Kentucky, herein together called the Operators, parties of the first part, and Schine Lexington Corporation, herein called Schine, party of the second part,

Witnesseth

Whereas, the Operators are the lessees of certain theatres in Harlan and Pikeville, Kentucky, and

Whereas, Schine is engaged, through subsidiary and affiliated corporation, in the supervision and management of the operations of motion picture theatres in the State of Kentucky, and has an organization and facilities adapted thereto, and

Whereas, the Operators desire to avail themselves of said organization and facilities, and have requested Schine to undertake the general management and supervision of the operations of the said theatres now leased, or hereafter acquired, by the Operators, and Schine has agreed to undertake the same, in consideration of the payments to be made to it hereunder, and of the granting to it of an option to purchase a half interest in the leases of said theatres as hereinafter provided,

Now, Therefore, in consideration of the premises, and of the mutual covenants and agreements herein contained, the parties hereto have agreed and do hereby agree as follows:

I. The Operators covenant, represent and warrant as follows:

a) That they are the owners of a good, valid and subsisting lease on the building, including the theatre contained therein, known as the Margie Grand Theatre, Harlan, Kentucky, having a seating capacity of approximately six hundred and ninety (690) seats; that the term of said lease [fol. 5978] has approximately three and one-half (3½) years to run; and that the monthly rental for said theatre building is Eight Hundred Sixty-two Dollars and Fifty Cents ($862.50) per month, and that the commercial rental therefrom is approximately Two Hundred Dollars ($200.00) per month. That the said theatre is fully equipped for operation as a motion picture theatre, duly licensed by all necessary authorities to operate as such, and that the equipment is owned by the Landlord, except for the sound equipment, which is owned by the Tenant, subject only to service charges.

b) That they are the owners of a good, valid and subsisting lease on the theatre known as the Liberty Theatre, Pikeville, Kentucky, having a seating capacity of approximately 700 seats; that the term of said lease has approximately five (5) years to run, and that the monthly rental for said theatre is Two Hundred and Thirty Dollars ($230.00) per month. That the said theatre is fully equipped for operation as a motion picture theatre, duly licensed by all necessary authorities to operate as such, and that the equipment is owned by the Landlord, except for the sound equipment, which is owned by the Tenant, subject only to service charges.

2. The Operators do hereby engage and employ Schine to have complete general management and supervision of the operations of the theatres now leased, or hereafter acquired, by the Operators, for a period of five (5) years commencing as of November 25, 1938, and Schine agrees to act as such, and to render the following services for the Operators in connection therewith.

a) Selecting, purchasing and booking all motion pictures and other attractions and entertainment for said theatres.

b) Determining the operating and entertainment policy of said theatres.

[fol. 5979] c) Auditing and supervising the accounts and records relating to the operations of said theatres, for which purpose Schine shall keep and maintain a complete and accurate set of books and records, showing all receipts and other income, and expenses and disbursements with respect thereto, which shall be open at all times for inspection by the Operators.

3. The Operators agree to pay to Schine, as compensation for its services hereunder, five per cent (5%) of the gross receipts of said theatres, which sum shall be payable each week out of said gross receipts, and the Operators agree to send to Schine, each day addressed to it in care of Schine Circuit, Inc., 40 North Main Street, Gloversville, New York, true, complete and accurate daily statements

showing the receipts from all sources from said theatres, and, in addition, to send to Schine weekly and monthly reports showing all receipts, income, expenses and disbursements in connection with the operations of said theatres.

4. Schine agrees, at all times, to use its best efforts to perform its duties hereunder in a painstaking, careful and businesslike manner and for the best interests and welfare of the Operators.

5. It is agreed that for the purpose of carrying out its duties hereunder, Schine may engage the services of any person, firm or corporation subsidiary to or affiliated with it, or may assign this contract thereto, provided, however, that such employment or assignment shall not relieve Schine of its ultimate responsibility hereunder.

6. In consideration of the agreement of Schine as hereinabove set forth, and of the sum of One Dollar ($1.00) and other good and valuable consideration paid to the Operators by Schine, the receipt whereof is hereby acknowledged, the Operators do hereby grant to Schine a good, valid and irrevocable option, at any time within six months from and [fol. 5980] after the date hereof, to acquire a one-half interest in said leases covering the said Margie Grand Theatre Building, Harlan, Kentucky, and the said Liberty Theatre, Pikeville, Kentucky, for the sum of Twenty-five Thousand Dollars ($25,000).

The said option may be exercised by Schine by giving ten (10) days written notice, at any time within six months from the date hereof, to the Operators, addressed to them in case of G. C. Scott, Margie Grand Theatre, Harlan, Kentucky, of its intention to exercise the same. Immediately upon the exercise of said option, by Schine, the parties hereto shall jointly cause to be organized a Kentucky corporation, and the Operators agree, immediately upon the formation of said corporation, to assign and transfer thereto all of their right, title and interest in and to said leases, and in and to the personal property and equipment owned by them and contained in said theatres, free and clear of all encumbrances, the stock of said corporation to be issued to and owned fifty per cent (50%) by G. C. Scott and fifty per cent (50%) by Schine, or its nominee. The articles of incorporation, by-laws, minutes, and all corporate proceedings with respect to said corporation, including the issuance of its stock and the election of its officers and directors shall be subject to the approval of counsel for Schine.

It is further expressly understood and agreed that Schine shall, at any time after the date hereof, and prior to the expiration of said option, have the right to examine and audit all of the books and records of the Operators, with respect to said theatres, and the Operators agree that the representative or representatives of Schine shall have access to said books and records and may inspect the same at any time for the purpose of making a complete examination and audit thereof. In the event that such examination and audit shall disclose that the combined net profits of the two said theatres for the years 1936, 1937 and 1938 [fol. 5981] have averaged not less than Fifteen Thousand Dollars ($15,000) per year, and that the combined net profit of said theatres for the year 1938 shall have been at least Fifteen Thousand Dollars, then Schine agrees to exercise said option and to acquire a half interest in said theatres, for the sum of Twenty-five Thousand Dollars ($25,000).

7. This agreement and option shall be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns.

In Witness Whereof, the parties hereto have caused these presents to be executed under seal the day and year first above written.

G. C. Scott (L.S.), —— —— (L.S.).

Witness: Lew Hensler.

Schine Lexington Corporation, by Louis Lazar, Asst. Treas. (Seal.)

Witness: L. B. Scott.

State of Kentucky,
County of Harlan, (Sct):

I, Elwood Hart, a Notary Public in and for the County and State aforesaid, do hereby certify that on this day personally appeared before me in my said county G. C. Scott and L. L.-G. C. S., who acknowledged and delivered the foregoing instrument with Schine Lexington Corporation to be their voluntary act and deed.

My commission expires on the 29 day of June, 1939.

[fol. 5982] Given under my hand and seal of office this 2nd day of December, 1938.

Elwood Hart, Notary Public. (Seal.)

STATE OF KENTUCKY,
County of Harlan, (Sct):

I, Elwood Hart, a Notary Public in and for the County and State aforesaid, do hereby certify that on this day the foregoing instrument of writing was produced to me in my said County by Louis Lazar, Ass't. Treasurer of Schine Lexington Corporation, and was acknowledged by the said Louis Lazar of Schine Lexington Corporation to be the act and deed of the Schine Lexington Corporation and his own act and deed as the Ass't. Treasurer of said Corporation.

My commission expires on the 29 day of June, 1939.

Given under my hand and seal of office this 2nd day of December, 1938.

Elwood Hart, Notary Public. (Seal.)

(Here follows 1 Photolithograph, side folio 5983)

[illegible]

EXHIBIT P-39

17

BRANCH COPY

Universal Film Exchanges, Inc.

CANCELLATION OR ALTERATION OF CONTRACT

BRANCH E Cincinnati Ohio

DATE 12/15/38.

1/7/39

THEATRE	TOWN-STATE	EXHIBITOR	POP.	SALESMAN	ZONE
[illegible]	Corbin Ky	S.C.Scott.	8000	[illegible]	4

PCT. [illegible]

PROD. NO.	TITLE OR SERIES	PLAY DATE	CONTRACT NUMBER	NO. PICT.	PRESENT CONTRACT PRICE PER UNIT DAYS	PRESENT CONTRACT PRICE PER UNIT PRICE	NEW PRICE SUBMITTED PER UNIT DAYS	NEW PRICE SUBMITTED PER UNIT PRICE	NET CHANGE INCREASE	NET CHANGE DECREASE	OUTRIGHT CANCELLATION
3941	Dark Rapture		386	1	2	35%					35%
[illegible]	Selective Features		386	8	2	75.00 & 25%					600.00
[illegible]	" "		386	8	2	50.00					400.00
[illegible]	" "		386	8	2	30.00					240.00
[illegible]	" "		386	8	2	20.00					160.00
[illegible]	" "		386	8	2	15.00					120.00
3073-74	[illegible]		386	2	2	25%					35%
[illegible]	[illegible]		386	6	2	20.00					120.00
[illegible]	Maynards		386	6	2	15.00					90.00
[illegible]	[illegible]		386	13	2	5.00					65.00
3941	Cartoons		386	26	2	2.50					65.00
[illegible]	Go Places		386	13	2	2.50					32.50
[illegible]	Fiction		386	13	2	2.50					32.50

1886.00

(REASON: GIVE FULL DATA)

This deal was intended for a new theatre to be built in [illegible] by Mr. Scott.
In the meantime, the [illegible] [illegible] have acquired the Hipp & [illegible] Theatres and have made a deal with Mr. Scott whereby the new theater will not be build.
Mr. Miller negotiated a new contract with Schines, making it necessary to cancel this contract with Mr. Scott.
Please approve

FOR HOME OFFICE USE

BR. MGR. APPROVAL

HOME OFFICE SALES MGR. APP.

9		
EXCHANGE	SALESMAN	CODE

JAA

5983

3782A

[fol. 5984] **Exhibit P-47**

The Seneca Falls Savings Bank

Seneca Falls, N. Y.

April 28, 1936.

Richard DeToto, Seneca Theatre, Seneca Falls, N. Y.

Dear Dick:

Your are hereby advised that we have deeded the Seneca Theatre property to The Schine Theatrical Company today, therefore, future rentals should be paid to their representative Clinton Young.

It has been a pleasure to do business with you and I trust that you will be able to materially improve your position in the movie game in the near future.

With best wishes to a successful career, I am

Very truly yours, C. F. Marsh, Treasurer.

CFM:MS.

[fol. 5985] **Exhibit P-53**

The Daily Messenger, Canandaigua, N. Y.

Tuesday, May 10, 1938.

Early Landmark to make way for another Theatre.

Famous Flannigan Block Sold to Seneca Theatres, Inc. Soon will be razed.

Among the major building operations scheduled for Canandaigua during the current season is one which will mark the passing of one of the best known land marks in this section of the state and the establishment here of another modern motion picture theatre.

Announcement was made today by William J. McFarlane, Manager of the Playhouse, that purchase of the Flannagan Block in South Main Street had been completed by the Seneca Theatres, Inc., a subsidy of the Schine Circuit which operates the playhouse.

[fol. 5986]

EXHIBIT P-60

Option

I, George Angelas of Mansfield, Ohio, have entered into an agreement with one Amelia Troendle for the purchase of certain premises in the City of Norwalk, Huron County, Ohio, and described as follows:

> "Situated in the City of Norwalk, County of Huron and State of Ohio, and being the whole of in-lot Number Fifty (50), excepting a strip Fifteen (15) feet wide taken off the east side thereof to widen Prospect Street. The property is bounded on the north by Monroe Street, on the east by Prospect Street, the south by Main Street and on the west by in-lot Number One Hundred Ninety Eight (198)."

which transaction is about to be consummated, and I contemplate the construction of a building to be used for restaurant, store-rooms and theater purposes on said land, the location of store-rooms and restaurant and dimensions thereof to be determined by me. There will be provided, however, a proper and suitable entrance to the theater from Main Street and ample space and dimensions for a theater with a seating capacity of Nine Hundred (900) to One Thousand (1000) and proper stage facilities. And in consideration of One and no/100 Dollar ($1.00), in hand paid, the receipt of which is hereby acknowledged, I, George Angelas, hereby give and grant unto Schine Circuit, Inc., a corporation organized under the laws of New York, the exclusive right and option when, if and as I determine to construct said building on the above described premises, of leasing the portion of said premises provided by me for theater purposes. I will give written notice to the said Schine Circuit, Inc. of my intention to proceed with the development of said project and the construction of said building, the said Schine Circuit, Inc. is, within ten (10) days from such notice, to then definitely advise the exercise of this option and to enter into a definite arrangement for the construction of said building and the leasing of a portion thereof for theater purposes; and upon failure of said Schine Circuit, Inc. within said time to make definite arrangement and enter into a proper leasing arrangement, for the use of a portion of said premises for theater purposes upon proper terms and conditions, then this option is fully terminated and has no further force and effect.

[fol. 5987] It is further understood as a term and condition of this option that upon notice of the exercise thereof by the said Schine Circuit, Inc. it will join with the undersigned in the prompt preparation and approval of plans and specifications and give proper assistance toward the construction of said building and the preparation thereof for occupancy as a theater at the earliest possible date.

It is further understood that said leasing arrangement shall be for a period of not less than twenty (20) years and that during said period, the said Schine Circuit, Inc. will at all times guarantee the prompt and full payment of all rentals for the use of said building, and at the time of the execution of said leasing arrangement satisfy me as to their financial ability so to do or furnish other satisfactory security for payment of all rentals.

Notice of exercise of this option must be given in writing to the undersigned by registered mail at his address, 195 Maple Street, Mansfield, Ohio.

In witness whereof, I hereto set my hand this 27th day of January, 1939.

George Angelas.

In the presence of: C. H. Henkel, Esther Dunham.

[fol. 5988]

Exhibit P-63

August 23rd, 1935.

Mr. J. Myer Schine, Schine Theatrical Co., Inc., Gloversville, N. Y.

Dear Myer:

This will confirm conference with Mr. Rodgers and myself in New York last Tuesday regarding Bucyrus, O.

In this situation, we are arranging to split the product with Mr. M. H. Bryer of the State Theatre who has been and is our present customer.

However, inasmuch as your new theatre will probably not be open until about the first of the year, have suggested to Mr. Drew that he work out the division of product with Mr. Bryer by having him take all of the releases up to Jan. 1st and thereafter a sufficient number to equal his one-half of the product. Believe that this is the better way to arrange the split of the product rather than attempting to work out a split on paper because we do not know just what pictures will be released nor when.

Mr. Drew will see Mr. Bryer to work out the division along these lines within the next week or so.

With best wishes and kindest regards.

Sincerely, —— ——.

JEF:MM.
c.c. Mr. Rodgers, Mr. Drew.

[fol. 5989] EXHIBIT P-64

Schine Theatrical Co., Inc.
General Offices Gloversville, N. Y.

Gloversville, N. Y.,
August 26th, 1935.

Mr. J. E. Flynn, Metro Goldwyn Mayer Pictures, Detroit, Mich.

DEAR JACK:

Myer has referred your letter dated August 23rd to me regarding Bucyrus.

As I understand it he is willing to give up the product released by your Company from now until the 1st of January but he feels that from the 1st of January on the releases should be his which I, personally, believe is very fair due to the fact that you no doubt will release the largest portion of your hit pictures between now and the first of the year.

I would, therefore, appreciate if you would kindly advise me by return mail the pictures that you are releasing from now until the first of the year so I can mark my records accordingly.

With kindest personal regards, I am

Very truly yours, Schine Theatrical Co., Inc., by
Geo. V. Lynch.

GVL:Z.

[fol. 5990]

Exhibit P-73

Belpik Theatre Corporation

Written at Holland.
Manager ——.
Theatre, City Bellefontaine, Ohio.

Date June 3, 1937.

Paramount Pictures, 1735 E, 23rd St., Cleveland, Ohio.

Gentlemen:

This is to advise you that we are closing the Southern Theatre, Bucyrus, effective June 3, for an indefinite period. Kindly remove any bookings which you may have set for this theatre until we decide to reopen again.

Very truly yours, Joel Golden.

JG/PM.

[fol. 5991]

Exhibit P-74

Castamba Theatre

Western Electric Wide Range System—Shelby, Ohio,

Jan. 23, 1936.

Mr. Louis Lazar.

Dear Sir:

The Shelby Globe owners of Castamba handed me a letter in regard to theatre.

Mr. May and yourself visited my office. I tried to explain the situation to you, you left with the understanding that in event I decided to sell, you would have the first opportunity.

Mr. Lazar, that still stands exactly as I agreed.

I am not in show business as a pure money making proposition and exactly a "Nut" as many salesmen have told you.

Yours respt., H. D. Shreffler.

[fol. 5992] **Exhibit P-75**

Belpik Theatre Corp.

Bellefontaine, Ohio,

July 3, 1937.

Mr. H. D. Shreffler, Castamba Theatre, Shelby, Ohio.

Dear Mr. Shreffler:

I have your letter of July 2 and am somewhat disappointed to learn that you cannot meet me in Cleveland. However, I will arrange to stop in to see you at Shelby the first time I am in that vicinity.

I am very sorry to learn that you do not believe a leasing arrangement could be worked out, as frankly we do not care to make such heavy investments in real estate as would be required in the purchase of the Castamba Theatre, Shelby.

If you could take the time to discuss the advantages of a Schine partnership with Henry Bieberson of Delaware, Ed Mott of Wooster, Dave Britton of Tiffin and Bucks of Fostoria, I am sure that you would not hesitate to help work out a partnership arrangement, as under such arrangement I can assure you that you not only would be considerably happier, but that you also would earn considerably more money.

Insofar as you leaving the business is concerned, I can assure you that there is no need for you doing so as I would be only too happy to have you continue in active operation of Shelby in case we were able to work out some sort of arrangement.

The time is rapidly approaching when the support and protection of a concern as large as ours would be of tremendous value, and I urge you to carefully consider the many advantages, against the possible disadvantages, which an association with us would give you.

Trusting that I may have the pleasure of seeing you shortly, I am

Very truly yours, Louis Lazar.

LL:MW.

[fol. 5993]

EXHIBIT P-76

Copy

Belpik Theatre Corp.

Bellefontaine, Ohio,
Jan. 14, 1936.

The Shelby Globe, Shelby, Ohio.

GENTLEMEN:

The Schine Theatrical Company who formerly operated a number of theatres throughout the State of Ohio and sold them to Warner Brothers, is now expanding its properties in this State. We have recently acquired a number of towns in the vicinity of Shelby, namely, Norwalk, Ashland and Bucyrus, and we should like to know if you would be interested in working out a deal either on a rental basis or possibly an outright sale of the theatre building at a fair price.

Several months ago I had a very nice talk with Mr. Shreffler, who advised me that you were the owners of the building.

If you are interested in discussing a deal, please advise and I shall be pleased to meet you at your convenience.

Yours very truly, (Signed) Louis Lazar, Schine Theatrical Co.

LL:MW.

[fol. 5993a]

EXHIBIT P-82

Memorandum of agreement dated the 21st day of January, 1941, between Michael Boumansour, of Malone, New York, herein called "Boumansour", and Schine Theatrical Co. Inc., a domestic corporation, herein called "Schine",

Witnesseth: Boumansour, who owns and operates the Plaza Theatre, Malone, New York, being desirous of assuring himself of a fixed income for a period of years, has approached Schine with a view to renting his theatre to it, and obtaining a position for himself. As an inducement to Schine to rent the theatre, Boumansour makes the following representations and warranties:

1. That he is the owner of the building in which said theatre is located, in fee simple, free and clear of all encum-

brances, except a mortgage in the amount of Ten thousand dollars ($10,000.00).

2. That said theatre is fully and completely equipped for operation as a motion picture theatre, and that all the equipment and personal property is owned by him, free and clear of any and all liens, claims and encumbrances whatsoever, and that said building, including the theatre located therein, complies with all laws, ordinances and regulations, including the rules and regulations of the Board of Fire Underwriters.

[fol. 5993b] 3. That all bills payable accruing prior to the commencement of said lease will be paid by him or satisfactorily adjusted.

4. Boumansour agrees, in the event a lease is executed, to deliver to Schine an agreement not to engage in the motion picture business in said Village of Malone, New York, or in any town in which Schine operates a motion picture theatre, or within a radius of twenty (20) miles therefrom, during the term of said lease.

In reliance on the representations and warranties of Boumansour, Schine agrees to enter into a lease of said Plaza Theatre, Malone, New York, in form substantially like the lease between the parties hereto made the 2nd day of August, 1934, for a term of ten (10) years, commencing February 16, 1941, on the following terms and conditions:

(a) The rental shall be the sum of Eight thousand dollars ($8,000.00) per year, payable in equal monthly installments in advance, with the last year's rent to be paid upon the execution and delivery of the lease.

(b) Schine agrees to heat the building and to operate the theatre an average minimum of two (2) days per week.

(c) Schine agrees to enter into an employment agreement with Boumansour for a period of one (1) year, at a salary of Seventy-five dollars ($75.00) per week.

(d) Schine agrees to purchase the truck now used by the Plaza Theatre for the sum of Three hundred twenty-six [fol. 5993c] dollars ($326.00), and also to purchase the new Bausch lenses now in said theatre for the sum of One hundred seventy-four ($174.00), said items to be subject to inspection and approval by Schine, and if not satisfactory, Boumansour agrees to refund the purchase price.

(e) Schine agrees to hold Boumansour harmless in connection with the following contracts:

1940-41 Metro, Paramount, Monogram and Republic Film Contracts.

Altec Service Contract.

National Screen Trailer Contract.

Said contracts to be exhibited to Schine prior to the execution and delivery of the lease.

In witness whereof, the parties have executed these presents the day and year first above written.

—— —— (L. S.), Schine Theatrical Co. Inc., by Louis W. Schine.

[fol. 5994]

Exhibit P-89

Agreement made this 29th day of May, 1937, by and between Belpik Theatre Corporation, an Ohio corporation, having its principal office in the City of Cleveland, Cuyahoga County, Ohio, hereinafter called "Belpik", party of the first part, and Arthur J. Buck, Ural Buck, Eulalia Hawkins and Charles H. Mergenthaler, of Fostoria, Seneca County, Ohio, doing business as State Theatre, hereinafter called "State", parties of the second part.

Witnesseth: Whereas, Belpik operates the theatres known as the Civic and Roxy Theatres in the City of Fostoria, Ohio, and

Whereas, State operates the theatre known as the State Theatre in the City of Fostoria, Ohio, and

Whereas, the parties hereto are of the opinion that they will mutually benefit by combining the operations of said theatres as hereinafter provided,

Now, therefore, in consideration of the mutual promises and agreements hereinafter contained, it is hereby agreed as follows:

1. The parties hereto agree to cause to be organized, promptly upon the execution of this agreement, an Ohio corporation (hereinafter called the "New Corporation"), with a nominal amount of paid-in capital, the stock thereof

to be divided into two classes, fifty shares to be known as Class A stock and to be subscribed for and held by Belpik, and fifty shares to be known as Class B stock and to be subscribed for and held by State. Said corporation shall have four directors, two of whom shall be elected by the [fol. 5995] Class A stockholders and two of whom shall be elected by the Class B stockholders. The Class A and Class B shares shall have equal rights in all respects.

2. The by-laws of the new corporation shall provide that neither stockholder shall have the right or privilege to sell, dispose of, or transfer any of his or its stock without first offering said stock to the other stockholder at the same price at which he or it may have received a bona fide offer.

3. The certificate of incorporation of said new corporation shall contain such other provisions as shall be mutually agreed upon.

4. Belpik agrees to assign, or cause to be assigned, to the new corporation the leases covering the Civic and Roxy Theatres in Fostoria, Ohio, together with any renewals or extensions thereof, and State agrees to assign or cause to be assigned, to the new corporation the lease covering the State Theatre, Fostoria, Ohio, together with any renewal or extension thereof.

The rentals to be paid by the new corporation under said leases shall be as follows:

Roxy Theatre,	$125.00	per month
Civic Theatre	205.00	" "
State Theatre	235.00	" "

5. It is mutually agreed that the parties hereto will cause the new corporation, immediately upon its formation to enter into a contract with Belpik, and Belpik agrees to enter into such a contract, for the supervision and management of said theatres in Fostoria, Ohio, with the exclusive right of Belpik to purchase and book all motion pictures and other attractions for said theatres, for which services Belpik is to receive the sum of five per cent (5%) of the gross [fols. 5996-5997] receipts of said theatres.

6. Each of the parties hereto agrees that any theatre or theatres in the City of Fostoria, Ohio, or interest therein, which may hereafter be acquired, either directly or indirectly, by either of the parties hereto, and any and all

agreements relating thereto, shall be acquired for the benefit of the new corporation, and any and all evidence of ownership or interest shall be transferred and conveyed to the new corporation.

7. The parties hereto agree that the amounts which the new company may require from time to time for working capital shall be advanced fifty per cent (50%) by Belpik and fifty per cent (50%) by State, and shall be repaid in the same proportion.

8. Current operating expenses shall be paid by the local manager in Fostoria, and all sums over and above said operating expenses shall be transferred to the reserve account to be opened in the name of the new corporation in a bank in Fostoria, to be designated by the Board of Directors. The surplus remaining in said reserve account each month after paying for rent, film, management fees, taxes, insurance, and other charges, shall be distributed to the stockholders as a dividend.

In witness whereof, the parties hereto have caused this agreement to be executed the day and year first above written.

Belpik Theatre Corporation, by J. M. Schine, Pres. Arthur J. Buck, Charles H. Mergenthaler, Ural Buck, Eulalia Hawkins.

[fol. 5998]

Exhibit P-97

Agreement

This Agreement made and entered into this 23rd day of July 1935, at Cleveland, Ohio, by and between Belpik Theatre Corporation, a New York corporation qualified to do business in the State of Ohio (hereinafter sometimes referred to as "Purchaser"), First Party, and William K. Selman of Norwalk, Ohio, Second Party, and David Selman of Cleveland, Ohio, Third Party (Second and Third Parties being sometimes hereinafter referred to as "Sellers"),

Witnesseth: Whereas, Second Party and Third Party are each the owners of forty (40) shares of the Common Capital Stock of Norwalk Theatre Corporation, an Ohio corporation, said stock being of the par value of $100 per share, and

Whereas, Second Party is the holder of an option executed by Jerome G. Steel of Oberlin, Ohio, to Second Party, giving Second Party the right to purchase of said Jerome G. Steel forty (40) shares of the Common Capital Stock of Norwalk Theatre Corporation, par value $100 per share, for the sum of $4,000.00 on or before July 24, 1935; and

Whereas, the Purchaser desires to purchase said Common Capital Stock owned by Third Party, and desires to acquire the said 40 shares of stock now owned by said Jerome G. Steel and optioned to the Second Party as aforesaid,

Now therefore, it is hereby mutually covenanted and agreed by and between the Parties hereto:

1. The Purchaser agrees to purchase, and the Third Party agrees to sell to the Purchaser or its nominee, 40 shares of Common Capital Stock of Norwalk Theatre Corporation [fol. 5999] now owned by Third Party for the sum of $4,000.00, payable in manner as follows:

$3,800.00 in cash at the consummation of this Agreement.

$200.00 by Purchaser assuming and paying to Norwalk Theatre Corporation the unpaid balance of said amount owing upon the subscription of third party for said stock.

2. Purchaser agrees to acquire and pay for the said 40 shares of Stock of Norwalk Theatre Corporation now owned by Jerome G. Steel. Second Party represents that he holds an option executed by said Steel to him for the purchase of said stock on or before July 24, 1935 for the sum of $4,000.00. Second Party agrees to execute said option in accordance with its terms and to acquire said stock from said Steel. Purchaser agrees to advance the sum of $4,000.00 for the use of Second Party in exercising said option and acquiring said stock. It is understood that upon the acquisition of said stock by Second Party and same will be by him endorsed, assigned and transferred to Purchaser or its nominee. It is understood and agreed that said Steel owes to Norwalk Theatre Corporation an unpaid balance of $200.00 on his purchase of said stock from the Company, and that Second Party will endeavor to obtain the stock of said Steel for the sum of $3,800.00 in cash and the assumption of the unpaid balance of $200.00, but that failing in said efforts said stock is to be acquired for the sum of $4,000.00 cash, which Purchaser agrees to advance.

3. Second Party and Third Party jointly and severally represent that the said shares of stock of Third Party and of said Steel are fully paid except as herein mentioned. That the stock of Third Party is free and clear of all liens and encumbrances of any kind, and that he has the right to sell same; that all of said shares of stock are non-assessable and represent valid and outstanding shares of stock of Norwalk Theatre Corporation; that said corporation is an Ohio corporation in good standing; that all franchise reports due to date have been filed and franchise taxes paid [fol. 6000] for the year 1935; that said corporation owes no sums of money for unpaid salaries to officers or directors nor is it indebted to anyone for wages or salaries except as have accrued since July 19, 1935. Second Party has submitted to purchaser the books of the corporation for inspection, and represents that to the best of his knowledge the books and records submitted show all of the obligations of the Company. Second Party and Third Party further jointly and severally represent that J. Steel of Oberlin, Ohio, and Second Party are the lessees under a certain Indenture of Lease dated October 31, 1934 by and between Henry Pohl and Rebecca Pohl of Norwalk, Ohio, Lessors and said J. Steel and William K. Selman, Second Party, as Lessees, said lease being upon premises known as the "Forum Theatre" in Norwalk, Ohio, and being for a term of ten years ending December 31, 1944, with an option for an additional ten years, subject to all of the conditions, covenants, agreements and terms in said lease which has been exhibited to Purchaser, that said lease was entered into for the benefit of Norwalk Theatre Corporation and is a valid and existing lease upon said premises in accordance with its terms. Said parties further represent that the lessors under said lease have consented to an assignment thereof to Norwalk Theatre Corporation, and Second Party represents that he will join in the execution of said assignment.

4. Third Party agrees to deliver to Purchaser his resignation as officer and director of Norwalk Theatre Corporation, and to deliver to Purchaser the stock certificate or certificates evidencing the shares herein sold. Second Party agrees that he will attempt to procure from said Steel his resignation as director, Secretary and Treasurer of Norwalk Theatre Corporation, and that upon acquisition of said

stock of Steel he will deliver the certificate or certificates evidencing the same to the Purchaser duly assigned and endorsed.

5. Second Party represents that there is due and owing [fol. 6001] to the Oberlin Savings Bank Company upon a certain Promissory Note signed by said Steel, Second Party and Edward J. Sable and T. O. Murphy, the sum of $1,050.00 plus accrued interest on said note, which note is in fact the obligation of Norwalk Theatre Corporation. Purchaser agrees that it will, concurrently with the exercise of the Steel option by second party, advance to said Norwalk Theatre Corporation funds sufficient to pay and discharge the aforesaid note to the said The Oberlin Savings Bank Company.

6. In addition to the sums of money hereinbefore provided for, Purchaser agrees to advance to Norwalk Theatre Corporation the sum of approximately $10,000.00 for the purpose of paying off and discharging the outstanding Chattel Mortgage, Conditional Sale and other liabilities of the Corporation, when, as and if the payment thereof is required by Norwalk Theatre Corporation. The Purchaser further agrees that it will advance or cause to be advanced such sums as may be necessary in the future for the purpose of financing capital improvements, or for any expansion program of the corporation, or for the acquisition of other theatres. No such obligation shall be incurred, however, without the consent of all of the members of the Board of Directors of Norwalk Theatre Corporation. All advances made by Purchaser for the purpose of discharging present obligations of said Norwalk Theatre Corporation, or which may be made in the future for improvements, expansion or acquisition of other theatres, as aforesaid, shall be made upon the understanding that the same are to be repaid by Norwalk Theatre Corporation only out of surplus funds of the Corporation.

7. Purchaser and Second Party hereto agree that no dividends shall be paid by Norwalk theatre Corporation at any time until and unless all obligations of the Corporation, of whatever nature, and including the advances hereinabove referred to, shall have been fully paid, and the parties hereto agree to vote or cause to be voted any shares of stock which [fol. 6002] they own or may own in said Corporation, in accordance with this provision, when the subject of divi-

dends may be up for consideration or action by the corporation.

8. Second Party and Third Party represent that the authorized capital of Norwalk Theatre Corporation is 250 shares of Common Capital Stock of the par value of $100 per share, and that the only shares of stock of said Corporation outstanding aggregate 120 shares of which 40 are owned by Second Party, 40 shares by Third Party and 40 Shares by said Steel.

9. Immediately upon transfer to Purchaser of the 40 shares of stock of Second Party, and of the 40 shares of stock of Steel, as herein referred to, and upon the election and qualification of a new Board of Directors and new officers of Norwalk Theatre Corporation, said new Directors will ratify, approve and adopt an Employment Contract between Norwalk Theatre Corporation and William K. Selman in the exact form of the exhibit hereto marked Exhibit "A" and initialed by the parties hereto.

10. It is further understood and agreed that the new Board of Directors of Norwalk Theatre Corporation, immediately upon its election and qualification, will authorize and direct the execution of a so-called Booking Agreement by and between Norwalk Theatre Corporation and Belpik Theatre Corporation, in the exact form of a copy of said Agreement attached hereto marked Exhibit "B" and initialed by all of the parties hereto.

11. The parties hereto mutually covenant and agree that any theatre or theatres in the City of Norwalk, Ohio, or interest therein, which may be hereafter acquired either directly or indirectly by any of the parties hereto, and all agreements relating to such theatre or theatres shall be acquired for the benefit of Norwalk Theatre Corporation, and the parties agree to transfer and convey and set over unto Norwalk Theatre Corporation any and all evidence of [fol. 6003] ownership or interest in such theatre or theatres.

12. Second Party and Third Party represent that Norwalk Theatre Corporation is not indebted to either of them in any way, and that they have no claims against Norwalk Theatre Corporation for any sums whatsoever, and the said parties further agree that they will, if required, execute a general release to Norwalk Theatre Corporation

evidencing that they have no such claims as of the date of the execution of this instrument.

In Witness Whereof, the parties hereto have set their hands to triplicates hereof, and have initialled Exhibits "A" and "B" hereto attached this 23rd day of July, 1935.

Belpik Theatre Corporation, by John A. May, President, First Party. William K. Selman, Second Party. David Selman, Third Party.

Witnessed as to First Party and Second Party: —— ——, —— ——.

Witnessed as to Third Party: —— ——.

[fol. 6004] EXHIBIT P-163

FOX FILM CORPORATION

Inter-office Correspondence Only

Date: September 13th, 1932.
To: Mr. J. Sichelman.
From: Cleveland.
Subject: Schine's Bellefontaine Situation.

DEAR MR. SICHELMAN:

The following memorandum is for your information regarding Schine Enterprises, which contracts you have in New York.

You will recall Mr. Grainger made a deal with Mr. J. Myer Schine when in New York for the town of Bellefontaine, Ohio covering thirty pictures.

Last week he received a wire from George Lynch asking us to withhold selling any pictures of last year, or a second run of this year's product to an opposition theatre which is just about to reopen. The opposition house is the Court Theatre, operated by Harry L. Moller, formerly connected with Schine. In view of this situation I believe we should get a deal set for one hundred percent product in the city of Bellefontaine.

Expect George Lynch in Cleveland sometime this week. He was in touch with me and stated he would discuss the above. Will inform you after talking to him of what has developed.

Very truly yours, I. J. Schmertz, Branch Manager.

IJS/k.

[fol. 6005]

EXHIBIT P-164

FOX FILM CORPORATION

Inter-office Correspondence Only

Date: September 19, 1932.
To: Mr. J. Sichelman.
From: Sydney Samson—Buffalo.
Subject: Schine Deals.

DEAR MR. SICHELMAN:

I wish you would advise me concerning the status of the Schine deal. You know my Rochester city proposition gives Schine preference throughout the City of Rochester, and naturally I cannot go ahead and deal with the balance of the exhibitors in this town until I know what we will do about accepting the Schine proposition.

We also have pictures available for the Schine houses in the neighborhood houses in Rochester, and I would like to get these pictures dated.

You- advice on this matter will be appreciated.

Very truly yours, Sydney Samson.

SS/M

[fol. 6006]

EXHIBIT P-165

FOX FILM CORPORATION

Inter-office Correspondence Only

Date: September 24th, 1932.
To: Mr. J. Sichelman.
From: Cleveland.
Subject: Schine Situations.

DEAR MR. SICHELMAN:

Please advise what became of our contracts for the Schine situations at Wooster and Bellefontaine, Ohio.

Just recently heard from George Lynch and asked him to communicate with you regarding a change in his deal for Bellefontaine. I suggested and recommended that he buy our entire product one hundred percent, in view of the opposition theatre opening in this town and Mr. Lynch asking us not to sell the opposition any pictures which we might have available in the town, either first run, second run or any other run.

I believe in all fairness if they expect us to stay out and not sell any product in this town to the opposition, we should get a one hundred percent deal and I so informed him in my letter. I believe he will get in touch with you, if not, advise and I will try to work out a deal:

Very truly yours, I. J. Schmertz, Branch Manager.

IJS/k

[fol. 6007] EXHIBIT P-166

September 27, 1932.

File-ST

Mr. I. J. Schmertz,
Fox Film Corporation,
Cleveland, Ohio.

DEAR MR. SCHMERTZ:

In answer to your letter of the 24th, with reference to the Schine situation in Wooster and Bellefontaine, Ohio, we are returning the contracts to you under separate cover.

Regarding Bellefontaine, I believe that Mr. Lynch will see it your way and buy 100% in Bellefontaine in view of the fact that you have an opposition theatre where you can sell a subsequent run.

I also know that Mr. Schine would not be so unfair as to expect us to stay out of the town and not sell the product to the opposition when we can get some revenue out of the town, and if he gets in touch with me I will so advise him.

Very truly yours, J. Sichelman.

JS:T

[fol. 6008].

EXHIBIT P-167

FOX FILM CORPORATION

Inter-office Correspondence Only

Date: October 3rd, 1932.
To: Mr. J. Sichelman.
From: Cleveland.
Subject: Schine Enterprises.

File-ST

DEAR MR. SICHELMAN:

With further reference to your letter of September 27th regarding Schine's situation at Bellefontaine, Ohio, wherein you agree with us that they should purchase our product one hundred percent in this town.

Have already written two or three letters to George Lynch asking whether or not he is coming on to Cleveland, or if they intend doing anything with reference to purchasing our product one hundred percent for this town.

There is no good reason for staying out of the town. As a matter of fact we have received several communications from the opposition theatre, the Court, asking us to let him have our product which was not purchased this year or last year, or second runs.

We have given every opportunity to Lynch to get this situation set and purchase our product one hundred percent, as there is no good reason for Schines getting a selective contract of thirty pictures.

You mentioned in your letter that you were returning Schine's contracts to us. We have not as yet received these contracts nor do I know whether or not you approved same. Will wait another few days to hear from you.

Very truly yours, I. J. Schmertz, Branch Manager.

IJS/k

[fol. 6009] **Exhibit P-168**

Fox Film Corporation

Inter-office Correspondence Only

Date: October 13th, 1932.
To: Mr. J. Sichelman.
From: Cleveland.
Subject: Bellefontaine Situation.

Dear Mr. Sichelman:

Recently wrote you that George Lynch of Schine Enterprises was in to see me at which time discussed with him the matter I wrote you about with reference to changing his deal at Bellefontaine to one hundred percent. I informed you he stated he could not at this time do anything but perhaps would figure it out later on. Of course to me that means nothing and I do not expect anything, excepting that they will run along with a selective contract.

My reason for again writing is that we are in receipt of three or four letters and two telegrams from the opposition, the Court Theatre, inquiring whether or not we have any product available and we really cannot answer and state that we are entirely sold. In fact did not answer any of Moller's letters for the above reason.

In conversation with Lynch he stated that Meyer Schine when in New York discussed this very proposition with Mr. J. R. Grainger who promised Meyer we would not sell the opposition, Moller's Court Theatre any of our product, neither the balance left on this year's contract nor any of last season's product. However, I do not know whether this promise was actually made to Meyer Schine.

We are attaching hereto letter received this day from this same party again.

Very truly yours, I. J. Schmertz, Branch Manager.

IJS/k
Attach.

[fol. 6010]

EXHIBIT P-169

File-ST

October 21, 1932.

Mr. I. J. Schmertz,
Fox Film Corp.,
Cleveland, Ohio.

DEAR MR. SCHMERTZ:

Attached is a copy of a letter I have sent to Mr. Meyer Schine regarding Bellefontaine.

However, don't sell anyone either first or second run until you hear from me. I want to get a rise out of him and see what he has to say before selling. Perhaps he will buy the balance of the pictures first run, and maybe second run.

In any event, if you do not hear from Mr. Schine direct or from the writer within the next ten days, you write him personally and let me know what transpires.

Very truly yours, J. Sichelman.

JS:T
Att.

[fol. 6011]

EXHIBIT P-170

File-ST

October 21, 1932.

Mr. Meyer Schine, Schine Theatrical Enterprises, Gloversville, N. Y.

DEAR MEYER:

You made a deal with Mr. J. R. Grainger for Bellefontaine, to take 32 pictures on the following basis:

8 features at 25% of the gross
8 " " 20% " " "
16 " " $40.00 flat rental.

This means that there are ten pictures open in this town, and at the time you made this deal, you told Mr. Grainger you could not use more than the number of pictures you bought.

This means that we can sell second run and maybe the balance of the first run pictures that you do not use.

Mr. Schmertz now advises me that in a conversation he had with you, you advised him that Mr. Grainger promised that we would not sell anyone in Bellefontaine. This is not so as you know that I was present when the deal was made and Mr. Grainger would never make a statement that would be detrimental to the Fox Film Corporation and whereby we lose 10 pictures on first run and also second run revenue.

We now have a chance to sell the ten pictures that you will not use as first run, and also sell 100% second run, and I am writing Mr. Schmertz to go ahead and sell the balance of the 10 pictures which you haven't bought on first run, and also sell second run.

However, if you decide you want the balance of the 10 pictures first run, you can take the matter up with Mr. Schmertz direct. We have got to sell second run and get the revenue in where it rightfully belongs.

Kindest regards.

Very truly yours, J. Sichelman, Asst. General Sales Mgr.

JS:T.

[fol. 6012]

EXHIBIT P-171

Schine Enterprises, Inc.
General Offices, Gloversville, N. Y.

Gloversville, N. Y.,
October 24th, 1932.

Mr. Jack Sichelman, Fox Film Corporation, New York City.

DEAR JACK:

Myer Schine has referred me to your letter dated Oct. 21st regarding Bellefontaine. Perhaps, Jack, you are not acquainted with what has happened in Bellefontaine. The man who has opened up the Court Theatre was a former empl-yee of ours and due to numerous things which happened during his employment he was let out. He then took over the old Opera House in Bellefontaine and got two men to put up some money and opened up in opposition to us.

The only product which he has been able to buy has been from independent companies. There has not been a major company that has sold him any product. He has advertised in the newspapers that they should patronize local people. He has bucked chain operation and is selling the product for 10¢ and 15¢, children 5¢, not only this but he has flooded the entire town with passes and I am quite sure that it is not your company's intent to encourage opposition of this kind.

If it was possible for us to play second run you may rest assured that we would certainly do it but I believe you will agree with me that a town such as the size of Bellefontaine is not large enough for a first and second run house. We are charging a top of 40¢ admission at our Holland Theatre and we don't want to have the distributing companies make it impossible for us to continue getting this price. I am quite positive that if you will take this matter up and explain to Mr. J. R. Grainger, the things which I have mentioned to you in this letter, he will agree with me that you should not sell second run.

I have also written Mr. Schmertz advising him that we will take the remaining pictures which we did not buy first run, and, have also asked him to refrain from selling this second run house.

[fol. 6013] If you would like to have me forward some of the opposition's ads if you will write me I will be very glad to mail them to you.

With kindest personal regards, I am

Very truly yours, Schine Enterprises, Inc., by Geo. V. Lynch.

GVL:Z

[fol. 6014]

EXHIBIT P-172

Schine Enterprises, Inc.
General Offices at Gloversville, New York

Gloversville, N. Y.,
October 24, 1932.

Mr. I. J. Schmertz, Fox Film Corporation, Cleveland, Ohio.

DEAR IZZY:

I expected to be in Cleveland Thursday of this week but I now find that it is impossible for me to get there.

Regarding Bellefontaine I am willing to take the ten additional pictures at the following deal:—if any of the 10 pictures play the Strand, price to be $25.00; if they play at the Holland, price to be $40.00.

Myer has given me your letter dated October 21st and he wants me to explain to you that he would appreciate very much if you hold off selling the Court Theatre. Their admission price, Izzy, is way under ours not only that but he is flooding the town with passes. There is no question but if you sell accounts as this one you are merely encouraging ten and fifteen cent houses for houses for opposition. We have established a 40¢ admission price in this town and we do not want to deviate one cent from this price notwithstanding the fact that the Court Theatre is advertising "Why Pay More."

I am sure you can appreciate the harm it will do if you insist on sellng hm. I can assure you that f we want—second run we would certainly buy your product but there is no room in a town the size of Bellefontaine for a second run house.

Trusting that I receive a favorable reply from you, I am with kindest personal regards.

Very truly yours, Schine Enterprises, Inc., by George V. Lynch.

GVL:Z

[fol. 6015] Exhibit P-173

Fox Film Corporation

Inter-office Correspondence Only

Date: December 28, 1932.
To: Mr. J. Sichelman.
From: Sydney Samson—Buffalo.
Subject: Lockport-(Schine)

Dear Mr. Sichelman:

We are attaching hereto copies of letters received from Schine in connection with their situation in Lockport, N. Y., where they originally operated two theatres—the Palace and Rialto. They did not renew the lease on the Palace Theatre and are now operating the Rialto.

These letters ask for our agreement to transfer the remaining unplayed pictures to a subsidiary company to be played at the Rialto Theatre. With the exception of the straight percentage pictures, on which our earnings will be decreased by playing them at the smaller theatre—the Rialto—I do not see where we would have any objection to this transfer. Of course, when the Palace is reopened by the owner of the building, they will be in the market for pictures, but in view of our pleasant relations with the Schine organization and the fact that we serve them throughout their circuit, I do not believe we should have any objection to going along with them and serving them in the Rialto Theatre, Lockport.

However, I am submitting these letters for your approval, on receipt of which I will have the proper riders drawn up transferring the remaining pictures to the subsidiary company, which is the Palace Lockport Corporation.

Very truly yours, Sydney Samson.

LEB/M.

(Here follow 2 Photolithographs, side folios 6016-6017)

EXHIBIT 1-176

The SECOND ANNUAL FOX
AUGUST 19th to NOVEMBER 17th, 1934

WANTED
Rosemary Ames
THE CAT'S PAW
Harold Lloyd • Una Merkel • Geo. Barbier
Alan Dinehart
SERENADE
Lilian Harvey
THE WORLD MOVES ON
Madeleine Carroll
Franchot Tone
Reginald Denny
Stepin Fetchit
THE DUDE RANGER
George O'Brien
CHARLIE CHAN IN LONDON
Warner Oland
SERVANTS' ENTRANCE
Janet Gaynor
Lew Ayres • Ned Sparks • Walter Connolly

FOX FILM CORPORATION
1052 BROADWAY
ALBANY. N. Y.

July 9th, 1934

Mr. T. H. Bailey,
Fox Film Corp.,
78 Broadway,
Boston, Mass.

Dear Mr. Bailey:

George Rosenbaum was in this morning with reference to the purchase of our product first-run in Carthage. I, of course, told George that we have already sold our product first-run in Carthage to the Schine Theatrical Enterprises.

He then expressed his desire to purchase our product second-run, and in view of our conversation with George Lynch when in Gloversville, I believe I understood that we were not going to sell George second-run in Carthage.

Warner Oland

SERVANTS' ENTRANCE
Janet Gaynor
Lew Ayres • Ned
Sparks • Walter
Connolly

THE STATE VERSUS ELINOR NORTON

CARAVAN
Charles Boyer
Loretta Young
Jean Parker
Louise Fazenda

HELL IN THE HEAVENS
Warner Baxter

JUDGE PRIEST
Will Rogers • Stepin
Fetchit

FUN ON THE AIR (Tent.)
Joe Cook • James
Dunn • Alice Faye
Stepin Fetchit

CAPTIVE BRIDE (Tent.)
Charles Boyer

atrical Enterprises.

He then expressed his desire to purchase our product second-run, and in view of our conversation with George Lynch when in Gloversville, I believe I understood that we were not going to sell George second-run in Carthage.

He wants me to let him know this week definitely, and I will, therefore, appreciate your writing me regarding this matter.

Yours very truly,

M. GRASSGREEN,
Branch Manager

MG:BEN

[illegible]

6016

EXHIBIT 1-178

The
SECOND
ANNUAL

FOX

AUGUST 19th to NOVEMBER 17th, 1934

WANTED
Rosemary Ames

THE CAT'S PAW
Harold Lloyd · Una Merkel · Geo. Barbier
Alan Dinehart

SERENADE
Lilian Harvey

THE WORLD MOVES ON
Madeleine Carroll
Franchot Tone
Reginald Denny
Stepin Fetchit

THE DUDE RANGER
George O'Brien

CHARLIE CHAN IN LONDON
Warner Oland

FOX FILM CORPORATION
1052 BROADWAY
ALBANY, N. Y.

August 20th, 1934

Mr. T. H. Bailey,
Fox Film Corp.,
Boston, Mass.

Dear Mr. Bailey:

I neglected to discuss with you during your recent visit here regarding George Rosenbaum's desire to purchase last year's product second-run in Carthage.

SERVANTS' ENTRANCE
Janet Gaynor · Lew Ayres · Ned Sparks · Walter Connelly

THE STATE VERSUS ELINOR NORTON

CARAVAN
Charles Boyer
Loretta Young
Jean Parker
Louise Fazenda

HELL IN THE HEAVENS
Warner Baxter

JUDGE PRIEST
Will Rogers · Stepin Fetchit

FUN ON THE AIR (*Tent.*)
Joe Cook · James Dunn · Alice Faye · Stepin Fetchit

CAPTIVE BRIDE (*Tent.*)
Charles Boyer

I find that most of the major companies, including Universal with whom Schine has a franchise, supply the opposition theatre in Carthage first and second-run pictures and, of course, the first-run pictures are those which are passed up by Schine.

Do you think it advisable to contact George Lynch in order to get his re-action?

Yours very truly,

M. GRASSGREEN,
Branch Manager

MG:BEN

100

6017

[fol. 6018] **Exhibit P-179**

August 21, 1934.

Mr. Moe Grassgreen, Branch Manager, Albany Exchange.

Dear Mr. Grassgreen:

I have your letter of August 20th regarding George Rosenbaum's desire to purchase last year's product second run in Carthage.

I think it is okay for you to contact him and if other companies are selling him, I see no reason why we should not also pick up some additional revenue.

Yours very truly, Tom H. Bailey.

THB:EM.

[fol. 6019] **Exhibit P-190**

December 8, 1936.

Mr. L. Merrenbloom, Kentucky Theatre, Corbin, Kentucky.

Dear Louie:

All information that I have been able to secure since my last visit to you seems to confirm the fact that the suggestion which I offered you regarding Twentieth Century-Fox was right.

The surest way to keep opposition out of your town, Louie, is to have some longtime franchises tucked away in your safe and even though you would probably pay us a little more money under a franchise than you would if you bought from year to year, the franchise is still great insurance.

I shall appreciate hearing from you at your convenience.

Very truly yours, J. J. Grady, Branch Manager.

JJG:r.

[fol. 6020] **Exhibit 195**

May 21, 1937.

Mr. M. Boumansour, Plaza Theatre, Malone, N. Y.

Dear Mr. Boumansour:

Following up your recent letter I regret to inform you that we will not be interested in serving second run in the City of Malone, first because of the size of the town and secondly because of the possibility of dissipating our first-run revenue.

We have a franchise in the City of Malone which runs for a number of years and with the maximum number of pictures playing on percentage we do not believe it is good business to play them at a later date second run for there is no question but what it will cut in on our first-run revenue.

In the meantime with kindest regards.

Yours very truly, M. Grassgreen, Branch Manager.

MG:HW.

[fol. 6021] EXHIBIT 200

Cincinnati, July 10, 1937.

Mr. William Sussman.

DEAR MR. SUSSMAN:

Our contract with Schine for first run Lexington provides that a minimum evening admission of 25¢ and a minimum matinee admission of 15¢ will be charged.

I am attaching herewith their ads clipped from the Lexington Leader of July 8th. Please notice that they are operating the Ben Ali and Strand for 16¢, throughout the house, during the matinee, and in the balcony at night. They are advertising these prices exclusively within a radius of sixty miles of Lexington, with the result that all surrounding towns are complaining to us and other distributors.

In addition you will note that the only single feature program they are showing is the 'A' picture opening on Saturday in the Kentucky Theatre.

This reduction in admission prices is so contrary to the imperative trend of this business as expressed by Mr. Kent at the convention that I will appreciate your doing everything you can to rectify this condition.

Very truly yours, J. J. Grady, Branch Manager.

JJG:r.
enc.

CC—Mr. Geo. A. Roberts.

[fol. 6022] **Exhibit 201**

July 13, 1937.

Mr. Meyer Schine, Gloversville, N. Y.

Dear Meyer:

Our contract with the first run theatres in Lexington provides for a minimum evening admission of 25¢ and matinee admission of 15¢.

I have before me clippings of the Lexington Leader of July 8th showing that you are operating the Ben Ali and Strand Theatres for 16¢ during the matinee and in the balcony at night. These prices are being advertised within a radius of sixty miles with the result that all surrounding towns are complaining, particularly as their contracts do have a minimum admission price which they are maintaining.

I know your problem in Lexington, but I do not think that rectification of it involves the violation of our contracts with you, nor do I think a reduction in admission prices is the proper way to solve it. Surely, the trend in this business is to increase the admission prices and for you to take the opposite view point not only affects our revenue in Lexington, but must have an effect in the surrounding territory where admission prices are being kept up, and in a number of instances, are being increased.

I would appreciate hearing from you as to what you intend doing in this regard.

With kindest regards.

Sincerely yours, William Sussman.

CC: Mr. J. J. Grady.

[fol. 6023] **Exhibit 202**

Schine Theatre Enterprises

Gloversville, N. Y.

Mr. William Sussman, Twentieth Century Fox Film Corporation, 444 West 56th Street, New York City, N. Y.

Dear Bill:

I have your letter of Recent date in reference to Lexington and I think your information is erroneous insofar as the general cut. We have, however, made certain modifications in our admissions for the summer which were quite essential and proved to be beneficial. I shall be glad to discuss this matter with you when I see you at an early date.

etc. etc.

Sincerely yours, J. Myer Schine.

[fol. 6024] **Exhibit 209**

The Opera House

Lexington, Kentucky

Operated by the Southland Amusement Co., Inc.

January 17, 1938.

Mr. J. Grady, Mgr. Fox Film Corp., 1638 Central Parkway,
Cincinnati, Ohio.

Dear Mr. Grady:

It is necessary and very urgent that I receive some help on your contract at the Opera House in Lexington in the way of reductions because of the low prices that the Schine Amusement Co. operated under during the past summer and fall on first and second runs. Your "B" and "C" pictures will not draw enough to pay film rental in my house.

If it were not necessary that I receive help, I would not write this letter but a lot of your dates are coming up and I need this assistance immediately in order that I can allow your dates to stand as they are.

Please send your representative to talk to me about this matter.

Yours very truly, The Opera House, Harry Schwartz, Manager.

HS:mb

[fol. 6025] **Exhibit 216**

Schine Circuit, Inc.
General Offices Gloversville, N. Y.

Gloversville, N. Y.,
November 8, 1938.

Mr. J. J. Grady, Twentieth Century Fox Film Corp., 1632 Central Parkway Blvd., Cincinnati, Ohio.

Dear Mr. Grady:

We are arranging to build a second theatre in Paris, Kentucky, which will be completed around the 1st of February and we would like to have you hold your product for second run for our use.

Trusting you will give us whatever consideration you can, with kindest regards, I am

Very truly yours, Schine Circuit Inc., by Geo. V. Lynch.

GVL:H

[fol. 6026] **Exhibit 218**

November 17, 1938.

Mr. J. J. Grady, Cincinnati Exchange.

Dear Jim:

The Schines are desirous of buying second run in Paris and I have agreed.

Will you please let me know your idea of the setup here so that I may work out a deal with George Lynch.

Very truly yours, William Sussman.

cc: Mr. G. A. Roberts.

[fol. 6027] **Exhibit 226**

June 26, 1939.

Mr. Sidney Samson, Buffalo, N. Y.

Dear Mr. Samson:

I have just finished an analysis of the Schine contracts which you submitted, and there are a number of discrepancies that I want to bring to your attention.

Auburn: You should have absorbed $108., whereas you have accounted for only $90.

Bath: You should have absorbed $117.30, whereas you have accounted for only $78.

Canandaigua: You should have absorbed $100.80, whereas you have accounted for only $72.

Corning (1st Run): You should have absorbed $105., whereas you have accounted for only $99.

Corning (2nd Run): You should have absorbed $70.72, whereas you have accounted for only $65.

Cortland: You should have absorbed $78.82, whereas $84. is accounted for. I also note that you have changed the clearance in this situation by adding the towns of Tully and Groton, which were not in last year's schedule.

Geneva: You should have absorbed $87.84, only $84. accounted for.

Lockport (1st Run): You should have absorbed $118.56, only $110.50 accounted for. This account has clearance over Newfane, which it enjoyed last year, but we do not have any record of a theatre in this town.

Newark: You should have absorbed $92.40, only $88. accounted for.

Oswego (1st Run): You should have absorbed $66.24, only $55. accounted for. With reference to the clause permitting the exhibitor to play 15 pictures in the Capitol Theatre, I note that you have increased the price from $30. in K-6 to $34.50 in K-7. What happens to this additional revenue in the event that they do not decide to play any of these pictures in the Capitol Theatre.

Oswego (2nd Run): You should have absorbed $84.76, only $65. accounted for.

Penn Yan: You should have absorbed $112.80, only $106. accounted for.

Perry: You should have absorbed $137.76, only $120. accounted for.

Salamanca: You should have absorbed $151.32, only $140. accounted for. The clearance provides for 30 days on Little Valley, which is the same clearance it enjoyed during the K-6 season. However, we do not have any record of a theatre in Little Valley.

Seneca: You should have absorbed $167.96, only $150. accounted for.

Will you please analyze the various points I have made in this letter, and let me have your reply as quickly as possible.

Very truly yours, William Sussman.

WS:EA

[fol. 6028] **Exhibit 227**

Fox Film Corporation

Inter-office Correspondence Only

Date: June 27, 1939.
To: Mr. W. Sussman.
From: Sydney Samson, Buffalo.
Subject: Schine Circuit.

Dear Mr. Sussman:

This will acknowledge receipt of your letter with discrepancies in score charges for the Schine Circuit. These discrepancies in the main are due to the shift in the deal from a 46 and 49 picture deal to a 52 picture deal.

At the time we shifted into this new deal I recognized that there would be small differences in score but I did not want to open up this subject again inasmuch as at that particular moment securing a waiver elimination on the top groups of both the percentage and flat pictures was my immediate concern and I did not want a further delay in the making up of these deals while the entire Schine office was checking and rechecking the accurate score charge.

The total difference in my entire territory is $193.00, and in many instances some of these differences do not entirely agree with our checked records. Some of these differences are due to breakage in figures as in Geneva $3.84; Newark $4.40; Corning $6.00.

I believe we have recovered as much of the score charge as we possibly can, and only in one instance was there an attempt on Lynch's part to chisel the actual cost of score and that was in Auburn, N. Y., where our figures read $4.38 per picture and he only wanted to pay $3.75. The difference in this town is $18.00.

Regarding the slight changes in clearance: Tully and Groton were added to the Cortland clearance. There is no theatre in Tully, and Cortland has enjoyed clearance over Groton in the last two years. Inasmuch as our Schine contract was made out three years ago Groton was not included at that time.

In Lockport, Newfane has no theatre, but the village is adjacent to Lockport and it is possible that a theatre may go into this town.

Salamanca, no theatre in Little Valley but this village is adjacent to Salamanca and the high school in this town occasionally runs a show.

Oswego, the additional revenue was put on the bottom group where we get $34.50 for each picture played at the Capitol Theatre. If the Capitol decides not to run these pictures then we will get $55 per picture. Inasmuch as the Capitol Theatre needs pictures as much as the Strand in this town, there is every indication that these pictures will be played at the Capitol, or we will benefit by increased revenue if played at the Strand.

Very truly yours, Sydney Samson.

CC Mr. G. A. Roberts.

[fol. 6029] **Exhibit 228**

June 27, 1939.

Mr. M. Grassgreen, Albany, N. Y.

Dear Mr. Grassgreen:

I have completed an analysis of the Schine contracts which you recently submitted and wish to call the following discrepancies to your attention.

Amsterdam—You should have absorbed $65 in score charges whereas you have accounted for only $60. You have also set up both issues of News on the basis of ¾ days, one of these issues should be on the basis of ⅔ days in accordance with the K-6 deal.

Carthage—You should have absorbed $69.44, whereas you have accounted for $110. The days on the short subjects deal should be in accordance with the K-6 contract, namely ½ instead of ⅔ days as you have set it up.

Glens Falls (2nd Run)—I note that you have changed the clearance here by providing for 60 days over third run Glens Falls. 60 days clearance here and elsewhere seems to be excessive.

Gloversville (1st Run)—Should have absorbed $62.40, only $60 accounted for.

Gloversville (2nd Run)—Should have absorbed $36.60, only $30 accounted for.

Hamilton—Should have absorbed $159.12, only $130 accounted for.

Herkimer—You should have absorbed $119.70, only $105 accounted for. The short subjects contract should have been set up on the basis of ½ days instead of ⅔. I also note that you changed the clearance by inserting 14 days after first run Utica. I do not see how you can serve Herkimer under this arrangement when your first run Utica deal definitely specifies that they are to have 30 days over a radius of 15 miles from Utica.

Hudson—You should have absorbed $160.16, only $156 accounted for.

Ilion—You should have absorbed $148.72, only $130 accounted for. Groups "C" and "D" should have been set up on the basis of ½ days instead of ⅔ days. This account has clearance this year, as previously, over Mohawk. Our records do not indicate any theatre in Mohawk.

Little Falls—You should have absorbed $96.60, whereas you have accounted for $100. The days on the short subjects contract should have been ½ instead of ⅔ days.

Malone—You should have absorbed $113.20, only $70 accounted for. The clearance also includes the town of Brushton, but we do not have any record of a theatre in Brushton. The clearance further provides for 60 days over second run. We do not have a second run in this situation and furthermore, as stated previously, 60 days over second run seems excessive.

Massena—You should have absorbed $97.44, only $80 accounted for.

[fol. 6030] Norwich—You should have absorbed $144.04, only $130 accounted for. Groups "C" and "D" should be set up on the basis of ½ days instead of ⅔. You have included the town of Mount Upton in the clearance this year. It wasn't in the K-6 deal nor do we have a record of a theatre in this situation.

Oneonta (1st Run)—You should have absorbed $148, only $120 accounted for. Here too you have changed the clearance by the addition of the towns of Cherry Valley and Worcester.

Oneonta (2nd Run)—You should have absorbed $50, only $25 accounted for. You have also changed the clearance as compared to last year by setting back first run 60 days behind second run.

Ogdensburg—You should have absorbed $150.80, only $130 accounted for. Groups "C" and "D" should be set up on the basis of ½ days instead of ⅔.

Saranac Lake—The days on the short subjects contract should be ½ instead of ⅔.

Tupper Lake—You should have absorbed $174.72, only $130 accounted for.

Watertown (1st Run)—The clearance includes Dexter similar to the K-6 setup, but we do not have any record of a theatre in this situation.

Watertown (2nd Run)—Does the clause permitting the exhibitor to play pictures in the Palace Theatre affect the run of any other theatre?

Will you please analyze the various points I have made in this letter, and let me have your reply as quickly as possible.

Very truly yours, William Sussman.

WS:EA.
CC: Mr. T. H. Bailey.

[fol. 6031] Exhibit 229

Joseph M. Schenck
Chairman of the Board

Sidney R. Kent
President

Twentieth Century-Fox Film Corporation

Head Office 444 West 56th Street, New York

Branches in All Principal Cities of the World

1052 Broadway, Albany, N. Y.

Telephone 3-1203-4

June 30, 1939.

Mr. William Sussman, New York, N. Y.

Dear Mr. Sussman:

I have your letter dated June 27th with reference to your analysis of the Schine contracts and beg to advise as follows:

Amsterdam—Scores: While our earnings showed an average of $2.76 per picture on the scores Mr. Lynch informed me that you were agreeable to leave the odd amounts off in view of which we set the scores up in this situation on the basis of $2.50 per picture.

News: The rental on both issues is $15.00 each which is the same as last year while the number of days call for ¾ days on the Odd Issue and ⅔ days on the Even. The reason we provided for a ¾ day play on both issues is that in the event they should change over to the other issue they could then play it at the maximum number of days without the necessity of putting through any rider to cover the change. At present they are using the Even Issue three days, Sunday-Monday-Tuesday and the Odd Issue two days, Wednesday-Thursday. Inasmuch as we permit them to play one issue ¾ days at $15.00 and the rental of the other issue is the same I cannot see any objection to our providing for a ¾ day play on the other issue. After all they only have seven days at their Rialto Theatre and under the circumstances can only play one issue four days and the other three. While we did discuss this in our telephone conversation of today regarding the possibility of carrying one issue over to the other house and playing it the maximum number of four days, they don't do as much business at their Strand Theatre or "B" house to warrant any increase in rental.

Carthage—Scores: Our average here this year was $2.18 per picture involving $78.48 based on the 46 picture commitment covering 36 flat rental pictures. We added the scores to the remaining group and the difference is brought about by the fact that the deal has been set up on the basis of a 100% feature commitment or six additional pictures.

Shorts: While in previous years the short subject contract was drawn up on the basis of ½ days, I think this was more or less an error as the contract should have provided for the maximum playing time of ⅔ days the same as the feature contract.

[fol. 6032] Glens Falls (2nd run)—Clearance: Our previous contracts with Schine in this situation have always provided for sixty days clearance over third run, and while it may be excessive, this clearance has been set up and George Lynch insisted on carrying it through for the future.

Gloversville (1st run)—Scores: Our average on the scores this year amounted to $2.73 per picture. In order to make it an even amount we set the scores up on the basis of $2.50 per picture which was added to the "D" or remaining group.

Gloversville (2nd run)—Scores: This year we averaged $2.78 per picture. In order to make it an even amount we set the scores up on the basis of $2.50 per picture.

Hamilton—Scores: Here we averaged $3.01 per picture. George Lynch insisted that we set up the scores here on the basis of $2.50 per picture because of the theatre going to have a greater number of double feature changes.

Herkimer—Scores: This year we averaged $2.75 per picture. In order to make it an even amount, the scores were set up on the basis of $2.50 per picture.

Shorts: Same explanation as Carthage.

Clearance: We did not change the clearance in this situation, for although it was omitted from our prior franchise, we have always served Herkimer 14 days after Utica. From Theatre to Theatre the distance is in excess of fifteen miles.

Hudson Falls—Scores: Here we averaged $3.19 per picture. In order to make it an even amount we set the scores up on the basis of $3.00 per picture.

Ilion—Scores: This year we averaged $2.95 per picture. In order to make it an even amount and as George Lynch would not agree to $3.00 it was set up on the basis of $2.50 per picture.

Increase days on "C" and "D" groups: George Lynch informed me that he had an understanding with you that the number of days for the features on all contracts would read 2 or 3 days.

Clearance: While there is no theatre in Mohawk the contracts always provided for clearance over this situation. It did operate in the silent days and the way theatres are springing up in the small towns they insisted that the clearance over Mohawk be included in the contract the same as previous years.

Little Falls—Scores: This year we averaged $2.34 per picture. He agreed to increase the 20 pictures in the "C" group from $35.00 to $40.00 or $100.00, and while it gives us a few dollars more than we earned on the scores last year, it was to make up for some of the situations where we were obliged to leave off the odd amounts resulting in less score rental.

Shorts: Same explanation as Carthage.

[fol. 6033] Malone—Scores: Here we averaged $2.08 per picture and the scores were set up on the basis of $2.00 per picture. On the original basis of a 46 picture commitment it left 35 pictures in the flat rental group which involved $70.00 in view of which we added $3.50 to the "C" group of 20 pictures. When changing the deal to a 100% feature commitment we failed to pick up the scores on the additional six pictures of $12.00.

Clearance over Brushton: While there is no theatre in this situation, it did operate in the silent days, but the fact remains that their contracts always carried clearance over this situation.

Clearance over second-run: While last year's contract did not provide for any clearance over second-run it was understood that it would be 60 days. As they want to be consistent they set up their own subsequent runs on the basis of 60 days which is the same clearance that they demand and get over independent subsequent runs.

Massena—Scores: Here we averaged $2.32 per picture. In setting up the scores we added $5.00 to the "C" group of 16 pictures involving $80.00. On the original basis of 46 picture commitment which left 36 pictures in the flat rental group the total amount involved $83.52 so it is only a question of $3.52 because of our leaving the odd amount off.

Norwich—Scores: Here we averaged $2.50 per picture. In setting up the scores we added $2.50 per picture.

Increased days on "C" and "D" groups: Same explanation as Ilion.

Clearance over Mount Upton: While there is no theatre in this situation one did operate during the silent days. It is situated between Norwich and Sidney. Although last year's contract did not include clearance over Mount Upton in previous years the contract did carry provision for this clearance. If a theatre should open in Mount Upton they are most certainly entitled to 30 days clearance.

Oneonta (1st run)—Here we averaged $3.63 per picture. George Lynch insisted that the scores be set up on the basis of $3.00 per picture which amount was added to the flat rental groups.

Clearance: Regarding the clearance over Cherry Valley and Worcester and while last year's contract did not provide for any they have always enjoyed clearance over these situations. Your contract records will show that Cherry Valley follows Cooperstown and Richfield Springs, Cooperstown playing after Oneonta while Richfield Springs plays after Cooperstown and Ilion. Worcester had always played

30 days after Oneonta although last year's contract did not carry this provision.

Oneonto (2nd run)—Scores: While all of the repeat pictures were played single feature last year, their present policy is double-feature and because of this George Lynch insisted that the scores be set up on the basis of $2.50 per picture.

Clearance: While last year's contract provided for 30 days clearance after first-run in order to be consistent with their demands for 60 days over independent subsequent runs they insisted on setting up 60 days clearance [fol. 6034] in this situation after their own first-run operation.

Ogdensburg—Scores: In this situation we averaged $2.85 per picture. In order to make it an even amount the new deal was set up on the basis of $2.50 per picture.

Increased days on "C" and "D" groups: Same explanation as Ilion.

Saranac Lake—Shorts increased days: Same explanation as Carthage.

Tupper Lake—Scores: In this situation we averaged $3.50 per picture. George Lynch contends that practically everything in this situation is now double-features in view of which he insisted that the scores be set up on the basis of $2.50 per picture.

Watertown (1st run)—Clearance over Dexter: While there is no theatre in Dexter one did operate in the silent days which also applies to Philadelphia and Theresa and their contracts always carried clearance over these situations.

Watertown (2nd run)—For your information the clause permitting them to play pictures in the Palace Theatre does not affect the Strand Theatre which is third-run. Their second-run contract permits them to play pictures second-run at either the Olympic or Palace Theatre after first-run Avon, or second-run at their Palace for those pictures playing first-run at the Olympic. As a matter of fact their contract further provides that any pictures playing first-run at the Olympic or Palace may be cancelled.

Yours very truly, M. Grassgreen, Branch Manager.

MG:HW.
cc: Mr. Tom H. Bailey.

[fol. 6035]

EXHIBIT 230

Twentieth Century-Fox Film Corporation,
Head Office 444 West 56th Street, New York
Branches in All Principal Cities of the World
Telephone Columbus 5-3320 Cable Address, Centfox-New York
Joseph M. Schenck, Chairman of the Board
Sidney R. Kent, President.

June 30, 1939.

Mr. Sydney Samson, Buffalo Exchange.

DEAR SYDNEY:

I have your letter of June 27th regarding the discrepancies in the Schine Circuit deal and I cannot reconcile myself to your excuse that the difference is due to the fact that you did not have time and you did not want to wait until the entire Schine office checked these score charges.

You say the difference in your territory is $198.00 but don't forget that is $198.00 times three because it is a three year deal and when you start to figure up $600. in your territory and the other hundreds in the other territories, it runs into a considerable amount of money.

I want what I am entitled to and I cannot see any reason why you should pass up this money so lightly. As far as clearances are concerned, your explanation for Courtland, Lockport and Salamanca seems to be reasonable.

As far as Oswego is concerned, frankly, I don't know what you are talking about. Even if the 15 pictures do play at the Capital Theatre, at $34.50 what happens to the other 9 pictures in the D group? We are entitled to our score here. Here again I must criticize you for passing up our money so lightly.

The way you have the deal worked out, the only way we can recoup any of our score charge is for the pictures to play at the Capitol Theatre and by your own admission, they may not play there, so we are passing up $66.00 in score charge money.

I don't think we should go for it and I want you to change these deals in accordance with what we should get.

Please let me know when they are taken care of.

Very truly yours, W. Sussman. William Sussman.

cc. Mr. G. A. Roberts.

[fol. 6036] **Exhibit 236**

Twentieth Century-Fox Film Corporation

Inter-Office Correspondence Only.

Date February 13, 1940.

To Mr. Jack Bloom from Mr. William Sussman.

Subject: ——.

It has been decided that East Rochester, Fairport and the Palace Theatre, Syracuse are a part of the three year franchise made with Schine.

Please mark your records accordingly.

William Sussman.

CC: Mr. S. Samson.

[fol. 6037] **Exhibit 243**

Postal Telegraph

1932 Sep 10 PM 12 00.

Paramount Publix Corp 161 North Fifth St Columbus Ohio

Hold nineteen thirty one thirty two thirty three product for me for second run Bellefontaine will see you your exchange next week or week after.

Lynch Schine Enterprises.

[fol. 6038]

Exhibit 259

The Opera House, Lexington, Kentucky

Operated by the Southland Amusement Co., Inc.

September 30, 1937.

Paramount Pictures Co., 1214 Central Parkway, Cincinnati, Ohio.

Attention: Mr. J. Oulaham

Dear Sir:

Regarding the reduction on some of your product, I must insist upon it, definitely. The Schine Amusement Co. has been playing first run product in the Ben Ali at 16¢ matinee bal-*ancy* price and second run at the Strand at 16¢ lower floor matinee price with double features. It is impossible for me to take in enough to pay the expense on many of the program pictures because in showing them I, too, must double feature and expense is too great for the ineffectual drawing power that many of the program pictures have.

I believe I have been very fair in giving you preferred playing time on percentage, on most pictures, many of which should not be thus allocated.

I hope to receive a reply immediately.

Yours truly, Harry Schwartz.

HS/MB.

(Here follows 1 Photolithograph, side folio 6039)

Form 24 Revised (Exchange) 1-40
Printed in U.S.A.

EXHIBIT 273

Paramount Pictures

CANCELLATION OF CONTRACT

THEATRE Paris

ZONE 1

EXCHANGE Cincinnati

TOWN Paris, Ky.

EXHIBITOR Schines Enterprises

GROUP S-10 (USE SEPARATE BLANK FOR EACH GROUP)

DATE 8/4/40

INDIVIDUAL PICTURES

PROD. NUMBER	TITLE	CONTRACT DATE	DAYS	RENTAL TERMS	RECORDING CHARGE	PROD. NUMBER	TITLE	CONTRACT DATE	DAYS	RENTAL TERMS	RECORDING CHARGE

IDEAL CONTRACT GROUP CANCELLATIONS

TOTAL NUMBER PRODUCTIONS CANCELLED	ORIGINAL CONTRACT DATE	DESIG. LETTER	CLASSIFICATION TERMS	TOTAL NUMBER PICTURES REMAINING UNDER CLASSIFICATION	LIST PRODUCTION NUMBERS AND CODE TITLE OF PICTURES DESIGNATED TO BE CANCELLED — IF PLAYED PROD. NO.	IF PLAYED CODE TITLE	NOT PLAYED PROD. NO.	NOT PLAYED CODE TITLE
4	12/1/38	A	2 days - 35%gr.-sc.$2.50	0			NOT DESIGNATED	
			1					
10	"	B	1-2 days - $17.50	0			NOT DESIGNATED	
21	"	C	1-2 days - $12.50	0			NOT DESIGNATED	

RECOMMENDATION:-

At time deal sold Schines contemplated second run in [illegible], however, did not go through with it. Cancelling to clear our records.

NET INCREASE OR DECREASE INVOLVED IN THIS CANCELLATION
THIS INFORMATION MUST BE FILLED IN.
$ [redacted]
482.50

ADED
T D

DISTRICT MANAGER 26

BRANCH MANAGER

6039

3826A

[fol. 6040] EXHIBIT 281

729 Seventh Ave., New York City,
Aug. 22nd, 1933.

Mr. Geo. Lynch, Schine Enterprises, Gloversville, N. Y.

DEAR GEORGE:

Listed below are the clearances we have agreed shall apply to the applications signed today for our 1933-34 products:

Bellefontaine: Clearance on East Liberty.

Fremont: 30 days on Bellview and Port Clinton.

Wooster: 30 days on Rittman, Orville and Wadsworth.

Piqua: — Troy. Open Booking.

Ogdensburg: 30 days on Waddington, Norwood and Canton.

Malone: 30 days on Brushton, Chateaugay and Bangor.

Herkimer: 28 days before Ilion. 60 days on Mohawk. 44 days on Frankfort.

Massena: 21 days on Potsdam. 35 days on Brushton, Brasher Falls, Waddington & Norwood. 60 days over 2nd run.

Saranac Lake—15 days on Lake Placid.

Oneonta: 40 days on Morris, Hartwick, Delhi and Stamford. 30 days on Cooperstown.

Little Falls: 30 days on St. Johnsville. 28 days on Ft. Plain. 50 days on Dolgeville. 115 days in Little Falls.

Norwich: 30 days on Sherburne, Sydney, Hamilton, Delhi & Stamford. 35 days in Norwich.

Gloversville: 55 days on Johnstown. 30 days on Fonda, Broadalbin, Sacandaga Park & Mayfield.

Lake Placid: 100 on Lake Placid Club.

[fol. 6041] Lockport, N. Y.: 90 days in town. 30 days over New Fane, Middleport.

Bath, N. Y.: 30 days over Hammondsport, Cohocton, Plattsburg, and Savona.

Carthage, N. Y.: 90 days in Carthage.

Cortland, N. Y.: 30 days over Tully, Marathon, McGrawsville, Homer.

Corning, N. Y.: 115 days in town, 30 days over Painted Post, Addison.

Salamanca, N. Y.: 45 days over Randolph, Little Valley, Elliotsville. Same availability as Olean.

Geneva, N. Y.: 30 days over Seneca Falls, Waterloo, Phelps, Clifton Springs, Lyons, Palmyra. 10 days over Penn Yann.

Newark, N. Y.: 30 days over Lyons, Palmyra and Clyde.

Canandaigua, N. Y.: 21 days over Naples.

Oswego, N. Y.: 120 days in Oswego, 30 days over Fulton, Mineto, Pulaski, Mexico City.

Watertown, N. Y.: 30 days over Adams, Lowville, Sacketts Harbor, Philadelphia, Dexter, Therosa; 14 days over Alexander Bay. 120 days in Watertown.

Glens Falls, N. Y.: 120 days over any house in Glens Falls charging less than 20¢ evening for adults; 30 days over Hudson Falls, Fort Edward; 7 days before Lake George.

Yours sincerely, United Artists Corporation, —— ——, Asst. General Sales Manager.

HLC:FH.

[fol. 6042] Exhibit 282

United Artists Corporation

Inter Office Letter

Date Feb. 21, 1934.

From: (Office) Home. (Dpt.) Sales. (Name) P. N. Lazarus.

To (Office) Buffalo. (Dept.) Sales. (Name) J. Kaplan.

This is in reference to contracts submitted under date of Feb. 19th on Emperor Jones, $35.—2 days and Henry Eighth, $35. 2 days for the Palace Theatre, 2nd run in Lockport, N. Y. with no explanation on forms #41.

We do not understand why you submit these contracts inasmuch as we already have existing second run contracts with the Hi-Art Theatre, namely—Henry Eighth $30.—2 days, Emperor Jones $30.—2 days.

Evidently these Palace contracts are to supercede the existing contracts with the Hi-Art. However, we are not sure about this and we would like to have an explanation from you.

We are holding these two contracts pending receipt of your reply.

LB:EK.

Reply

Our agreement with Schine on the second run contracts was that they were for the Class B house, and any picture which Schine could not play in his Class A house first run, were to play in the Class B house on preferred playing time, and the second run contract cancelled out.

This situation is one where the two pictures in question were played at the Class B house first run; and we were able to resell the second run to the opposition house at more money.

Form 51 to cover is going thru to Home Office today.

JHK-T.

Reply from (Name) Jack Kaplan. (Dept.) Sales. (Date) 2/23/34.

(Here follows 1 photolithograph, side folio 6043)

FORM 51 15M SETS 9-32 M. Y.

EXHIBIT 283

MADE IN U. S. A.

UNITED ARTISTS CORPORATION

729 SEVENTH AVENUE NEW YORK

CONTRACT CHANGE REPORT

BUFFALO
EXCHANGE

Feb. 22, 1939.
DATE

[illegible]
THEATRE

Schine Theatrical Co.
EXHIBITOR

Lockport,
TOWN

N.Y.
STATE

Contract No.	Date Sold	Play Date	PICTURE	Film Rental	Sound License	Amount Deposit	Amount Cancelled or Reduced	Amount Remaining	Circuit Theatres Only
2130	11/22/38	- -	[illegible] JONES	$[illegible].00	Inc	- -	$[illegible].00	- -	
1672	"	- -	[illegible]	$[illegible].00	"	- -	$[illegible].00	- -	

CANCELLATION OF CONTRACT REQUESTED

The agreement with Schine as regards second run contracts is that those pictures which they cannot play in their Class A house, first run, will play in the Class B house first run, and the second run contract for the Class B house is to be cancelled out.

In this instance, we have resold both these subjects at a higher rate, for second run in Lockport to the opposition house.

[fol. 6044]

EXHIBIT 286

UNITED ARTISTS CORPORATION

Inter Office Letter

Date, Oct. 8, 1934.

From: (Office) Buffalo, (Dept.) Sales, (Name) Jack Kaplan.

To: (Office) Home, (Dept.) Sales, (Name) Paul Lazarus.

In re: Strand-Liberty Theatres, Watertown, N. Y., Run 3

Up to last season, we sold the Avon or Olympic Theatres in this town first run, and then sold the Strand second run.

When we sold Schine last year for the 33-34 group, he bought our product for the Avon or Olympic Theatre, first run, and also made a deal with him to play our product second run at the Olympic Theatre, inasmuch as there was an additional theatre opening up there, namely the Palace, in order to protect his first run in the town, he felt that if he bought the pictures for second run also, he could protect himself by getting longer clearance in this town.

After selling Schine both runs, we made a deal with the Strand Theatre for third run on the same group of pictures. This theatre was always our second run account previously and in making a deal with him, we secured the same prices that we had secured from him for second run in past years. As none of the pictures were available at that time with the change of runs in Watertown, and did not become available to him for several months thereafter, the man did not know how the Olympic would affect his business, and as stated previous , it was several months before he was able to play the pictures and then found that the grosses on the third run in town were about one-half of what they were when he bought and played second run, with the result that he would not play the pictures unless we adjusted the prices.

If you will look at the cards, you will notice that the Strand Theatre, third run, pays us considerably more money than Schine does for second run, for you realize that we took every dollar we could possibly get out of this situation for third run on our product. Every possible effort was made on our part for the past several months to get these pictures played off per contract, but it is simply impossible to do so unless we can get an adjustment of the prices to more equitable terms in accordance with the business done.

By granting him a reduction of 25% on all the pictures, I believe we can get these played off. Please advise.

JHK-T.

Reply from (Name) —— ——. (Dept.) ——. (Date) —— —, 193-.

[fol. 6045]

EXHIBIT 288

UNITED ARTISTS CORPORATION

Inter Office Letter

Date, May 7, 1935.

From: (Office) Buffalo, (Dept.) Sales, (Name) Jack Kaplan.

To: (Office) Home, (Dept.) Sales, (Name) S. W. McGrath.

In re: Palace Theatre, Lockport, N. Y.

The above situation which we have recently sold the unplayed pictures of this season, is a Schine opposition, and is really the best theatre in the town, having the best location and being a modern up-to-date house.

I have a proposition from them today for the following pictures:

Miserables, 40% gross receipts, 5 days including Sunday,

Richelieu, 35% gross receipts, 4 days including Sunday,

Let Em Have It, 30% gross receipts, 4 days, including Saturday or Sunday.

We have been having so much difficulty in getting together with Schine, and while we have not had the results we anticipated from this house so far, I attribute it mainly to the fact that we haven't had a picture on which we could get a break for the reason that we sold this house so late in the season. I honestly believe that there is an opportunity to get some money out of this town and in this situation, and I would like to have the Home Office duly consider all the facts in this case, and if acceptable, approve this deal so that we can get an early run on the pictures, while they are fresh in the minds of the public and see just what we can do in this theatre.

I wish you would take this up with Harry and see what his reaction is and let me have an early reply as to the Home Office attitude in regard to same.

JHK-T.

Reply

In response to your letter above wish to advise the offers as submitted are approved.

SWM:GC.

Reply from: (Name) S. W. McGrath, (Dept.) Sales, (Date) 5/7/35.

[fol. 6046]

EXHIBIT 292

UNITED ARTISTS CORPORATION

Inter Office Letter

Date, February 5th, 1936.

From: (Office) Home, (Dept.) Sales, (Name) S. W. McGrath.

To: (Office) New York, (Dept.) Sales, (Name) Nat Beier.

Re: Ilion, N. Y., Capitol Theatre

It is necessary for us to hold the contracts recently submitted covered by #41's, #106747-#106751 inclusive.

Before considering the deal, we want to be absolutely certain as to the clearance following ten days after Herkimer.

We do not want to encounter any difficulty with the Schine Circuit insofar as clearance is concerned; therefore, we want to be definitely assured that the clearance as submitted in the contracts is satisfactory to the Schine Company.

SWM:SS.

cc; Harry L. Gold, Chas. Stern.

FOR EXCHANGE USE		FOR HOME OFFICE USE		
SALESMAN	EXCHANGE MANAGER	Approval Home Office Sales	O. K. Tabulating Dept.	O. K. Accounting Dept.
KAPLAN				

NOTE:—In "Salesman" Space enter Name of Salesman, if still Employed.
If no longer at Exchange enter "Office" in same space.
If more than one Salesman is involved enter name on line with picture.

6043

3830A

[fol. 6047] UNITED ARTISTS CORPORATION

Inter Office Letter

Date, February 5th, 1936.

From: (Office) Home, (Dept.) Sales, (Name) S. W. McGrath.

To: (Office) New York, (Dept.) Sales, (Name) Nat Beier.

Re: Ilion, N. Y., Capitol Theatre.

It is necessary for us to hold the contracts recently submitted covered by #41's, #106747-#106751 inclusive.

Before considering the deal, we want to be absolutely certain as to the clearance following ten days after Herkimer.

We do not want to encounter any difficulty with the Schine Circuit insofar as clearance is concerned; therefore, we want to be definitely assured that the clearance as submitted in the contracts is satisfactory to the Schine Company.

SWM:SS.

Reply

Confirming telephone conversation, wish to advise that above clearance has been straightened out.

Reply from: (Name) E. Mullen, (Dept.) —, (Date) 2/6/36.

[fol. 6048] EXHIBIT 300

UNITED ARTISTS CORPORATION

Inter Office Letter

Date, 9/16/37.

From: (Office) Buffalo, (Dept.) Office Mgr., (Name) J. A. Bykowski.

To: (Office) Buffalo, (Dept.) Sales, (Name) S. Lehman.

DEAR MR. LEHMAN:

Following is the resume of Schine's clearances, which I consider unfair and should be altered for the 1937-38 season.

Situations that are not mentioned in this letter at all meet with our approval and, therefore, no comment is necessary.

Buffalo, Granada

This situation has always been open booking with Kenmore and as you know, we sold Shea Kenmore on percentage basis and their clearance calls for the same availability as the North Park theatre. This means that according to the Shea set up, we will be unable to give Schine open booking with Kenmore.

I called Bob Murphy on this matter and he was unable to give me any idea how they will book this zone. He did, however, state that it depends on the exchanges when selling Schine.

If they sell the Granada to follow Kenmore, all well and good, but, if the sale is made the same as in the past—open booking with Kenmore, then the Kenmore contracts will have to be altered to conform with that run.

Buffalo, Riverside

In view of the fact that Murphy does not know how the booking for the Kenmore will be done this coming season, I am unable to make any definite statement with reference to this situation.

However, if we are to live up to the present Kenmore contracts, which call for the same availability as Shea's North Park, Kenmore would have to be served ahead of the Riverside, whereas the Riverside theatre in the past had protection of fourteen days over the Kenmore. This, I believe, will also be left up to the discretion of the exchanges.

Geneva

You will find that they request thirty days ahead of Lyons. This town will have to be left out of the Geneva protection entirely as it is our intention to cut the Newark protection over this town; which, if we did, Geneva would interfere as they ofttimes book Newark anywhere from seven to ten days after Geneva.

Newark

The thirty days protection that they have over Clyde, Lyons and Palmyra should be cut down to not more than ten days. As near as I can determine one of the major Distributors serves these three situations ten days after Newark, whereas ours calls for 30.

[fol. 6049] As you *know* dou*d*t know, this has been the biggest sore spot in Schine's protection and should be cut accordingly.

Oswego

Here is another spot that ofttimes causes a great deal of trouble and I believe that the number of days asked ahead of Fulton is unfair.

This should be no more than fourteen days, which, in my estimation, I think is plenty.

Rochester, Dixie, Liberty, Riviera, State

Although you will note that they have various protections listed for these situations, it does not mean much because in the past we also received a supplementary rider, whereby Schine had to play these four situations within three weeks of available date or lose their protection.

In other words, first run gets thirty days, which would make any pictures available for these situations on the 31st day after first run. The runs following Schine, which usualy are the Fenyvessy houses, could, according to this set-up, get the pictures 21 days later whether Schine was dated or not.

It was, therefore, safe for me to make the Fenyvessy houses available at the same time or 52 days after first run. However, we never experienced any trouble here, inasmuch — Schine has always dated the pictures within that three week period, but for our protection, believe that the same set-up should be made this coming season.

The supplementary rider reads as follows: In order that there won't be any misunderstanding deal made for our Rochester houses are for second, third, fourth, fifth run all to be played within twenty one days or run waived.

The balance of the situations in Rochester are okay.

Salamanca

I believe Franklinville, over which town they ask thirty days, should be left out. Last year was the first season that this protection was requested and why, I cannot say.

I believe it unfair for the reason that Franklinville is quite a distance away from Salamanca and not even on the road between Buffalo and Salamanca. Franklinville is situated between Buffalo and Olean and in order for people from this town to go to Salamanca they would have to go either by way of Olean or up north a few miles and turn left on the road leading to Salamanca.

It is needless for me to say that anything you can do to cut down the protections in accordance with this letter will be of great help to us and enable us to serve a good many of our accounts without hard feelings.

JAB:MF.

[fol. 6050] Clearances

1. Buffalo Exchange

Auburn (Jefferson, Strand or Palace): First run. 30 days ahead of Skaneateles and Seneca Falls.

Bath (Babcock): First run. 30 days ahead of Cohocton, Prattsburg, Savona, and Hammondsport.

Buffalo (Granada): 14 days ahead of Varsity, Central Park, Little Kensington, and Williamsville. Open booking with Kenmore.

Buffalo (Riverside): Immediately after Shea's North Park. 14 days ahead of Jubilee, Park, Pastime, and Kenmore.

Canandaigua (Playhouse): 10 days ahead of Clifton Springs. First run.

Carthage (Strand): First run. 14 days clearance over Lowville. 60 days over second run Carthage.

Corning (Fox or State): 30 days ahead of Plaza Theatre, (Corning) Painted Post and Addison. 60 days on City of Corning. First run.

Corning (State): Second run. 60 days over third run.

Cortland (State or Temple): First run. 30 days ahead of McGrawsville, Homer, Marathon, Tully and Groton.

Geneva (Geneva or Regent): First run. 30 days ahead of Seneca Falls, Waterloo, Phelps, Lyons and Clifton Springs. 10 days on Penn Yan.

Lockport (Rialto or HiArt): First run. 30 days ahead of Neufane and Middleport.

Lockport (HiArt): Second run. 60 days after first run. 60 days over third run.

Newark (Capitol): First run. 30 days ahead of Clyde, Lyons and Palmyra.

Oswego (Strand or Capitol): First run. 30 days ahead of Fulton, Minetto and Pulaski. 60 days City of Oswego.

Oswego (Capitol): Second run. 60 days after first run. 60 days over third run.

Penn Yan (Elmwood): 30 days ahead of Dundee.

Perry (Auditorium):

[fol. 6051] Rochester (Cameo): 14 days ahead of Lyric and Empress Theatres. Immediately after Madison and Monroe.

Rochester (Grand): 14 days ahead of Embassy and Empire Theatres.

Rochester (Lake):

Rochester (Riviera or Liberty): Second run. 14 days on subsequent runs, Hudson and Astor Theatres. 14 days ahead of Hub, Sea Breeze. 30 days ahead of Lake and Hollywood Theatres.

Rochester (Riviera or Liberty): Repeat run.

Rochester (State or Dixie): 14 days ahead of Plaza, Culver and Webster Theatres.

Rochester (State or Dixie): Second run. 30 days ahead of Plaza Theatre. Day and date with Riviera or Liberty. 30 days on Embassy.

Salamanca (Andrews): First run. 30 days ahead of Little Valley, Randolph, Ellicottville and Franklinville. Open booking with Olean.

Seneca Falls (Strand): First run. 30 days ahead of Waterloo—after Geneva. 120 days in Seneca Falls.

Watertown (Avon or Olympic): First run. 60 days ahead of second run. 30 days ahead of Adams, Antwerp, Dexter, Philadelphia, Theresa and Sacketts Harbor.

Watertown (Olympic or Palace): Second run. 60 days over third run.

Watertown (Palace): Third run. 30 days over fourth run.

[fol. 6052]

EXHIBIT 307

UNITED ARTISTS CORPORATION

Inter Office Letter

Date: December 7, 1938.

From: (Office) Home (Dept.) Sales (Name) P. N. Lazarus.

To: (Office) Cincinnati (Dept.) Sales (Name) M. Stahl.

Re: Schine Deal, 1938-39

Attached hereto are schedules showing the terms for the pictures of the 1938-39 season that we have sold to Schine.

Relative to the percentage contracts, the following clauses will apply:

It is agreed that the exhibitor shall have the right to deduct the cost of the second feature and bank night in all situations where this policy prevails, and it is understood that only one of these deductions is to be permitted on any of these engagements. The deduction to be made from the gross receipts.

In the percentage towns where the pictures are played on a midnight show, terms for the midnight show to be 5% less than the original terms.

Although playing time is stipulated on the percentage contracts, we have incorporated the following:

Playing time to be mutually agreed upon.

In connection with the flat rental situations, the following clauses will apply:

In all situations where a flat rental picture is used on a midnight show and the midnight show engagement exceeds the number of days the picture is contracted for, the price of the midnight show is to be $10.00.

In any flat rental situation or situations where a picture is used above the contracted number of days, the terms for such additional day or days to be 50% per diem rate.

We have placed the interchange clause on each of the contracts that Mr. Bert Stearn now has. Just as soon as these contracts are signed, we shall send you your copies.

GR:AF

cc Mr. Gold, Mr. Stern, Mr. Stearn, Mr. Dow, Mr. Steele, Mr. Wrege, Mr. Dickstein, Miss Schwartz.

Reply from (Name) —— (Dept) —— (Date) —— 193—

[fol. 6053]

Cincinnati Exchange **Goldwin Pictures**

Cowboy and the Lady
The Last Frontier
The Daring Age
Wuthering Heights

Percentage Deal

Town & State	Theatre	No. Days	Terms
Athens, Ohio	Athena	2-3	35%
Lexington, Ky.	Kentucky	3-4-7	35%
Piqua, Ohio	Piqua	2-3	35%
Maysville, Ky.	Russell	2-3	35%

Flat Rental Rate

Town & State	Theatre	No. Days	Cowboy Frontier	Daring Age Wuthering Heights
Lexington, Ky.	Ben-Ali (2nd run)	3-4	$250.00	$200.00
Lexington, Ky.	Strand (3rd run)	1-2-3	93.75	75.00
Paris, Ky.	Bourbon	1-2	125.00	100.00
Richmond, Ky.	Madison	1-2	125.00	100.00
Middlesboro, Ky.		2-3	135.00	110.00
Paris, Ky.	Bourbon (2nd run)	2-3	35.00	25.00
Corbin, Ky		2-3	75.00	60.00

[fol. 6054]

Cincinnati Exchange **Walter Wanger Pictures.**

Algiers
Stagecoach
Trade Winds
Winter Carnival
Man and His Women

Percentage Deal

Town & State	Stagecoach 35% of gross	Algiers —30% of gross Trade Winds —30% of gross Carnival —25% of gross His Women —25% of gross	No. Days
Athens, Ohio	Athena	Athena or Ohio	2-3
Lexington, Ky.	Kentucky	Kentucky or Ben-Ali	3-4-7
Piqua, Ohio	Piqua	Piqua or Miami	2-3

Flat Rental Deal

Town & State	Theatre	Algiers Stage-coach	Trade Winds Carnival	His Women	No. Days.
Lexington, Ky.	Ben-Ali (2nd run)	$100.00	$75.00	$50.00	3-4
Lexington, Ky.	Strand (3rd run)	75.00	50.00	40.00	1-2-3
Paris, Ky.	Bourbon	60.00	50.00	40.00	1-2
Paris, Ky.	Bourbon (2nd run)	20.00	17.50	15.00	2-3
Richmond, Ky.	Madison	60.00	50.00	40.00	1-2
Maysville, Ky.	Russell	60.00	50.00	40.00	2-3
Middlesboro, Ky.		50.00	40.00	35.00	2-3
Corbin, Ky.		50.00	40.00	35.00	2-3

[fol. 6055]

Cincinnati Exchange

Selznick Pictures
The Young in Heart
Made for Each Other

Percentage Deal

Town & State	Theatre	No. Days	Terms
Athens, Ohio	Athena	2-3	35%
Lexington, Ky.	Kentucky	3-4-7	35%
Piqua, Ohio	Piqua	2-3	35%
Maysville, Ky.	Russell	2-3	35%

Flat Rental Deal

Town & State	Theatre	No. Days	Terms
Lexington, Ky.	Ben-Ali (2nd run)	3-4	$100.00
Lexington, Ky.	Strand (3rd run)	1-2-3	75.00
Paris, Ky.	Bourbon	1-2	60.00
Paris, Ky.	Bourbon (2nd run)	2-3	25.00
Richmond, Ky.	Madison	1-2	60.00
Middlesboro, Ky.		2-3	85.00
Corbin, Ky.		2-3	60.00

[fol. 6056]

Buffalo Exchange

Hal Roach Pictures
There Goes My Heart
Captain Midnight
The Water Gypsies
Topper Takes a Trip

Percentage Deal

Town & State	Captain Midnight 35% of gross	Gypsies —30% of gross Topper —25% of gross There Goes —25% of gross	No. Days
Auburn, N. Y.	Auburn	Auburn or Palace	3-4
Corning, N. Y.	Fox	Fox or Palace	2-3
Cortland, N. Y.	State	State or Temple	2-3
Geneva, N. Y.	Geneva	Geneva or Regent	2-3
Lockport, L. I.	Palace	Palace or Rialto	2-3
Oswego, N. Y.	Strand	Strand or Capitol	2-3
Watertown, N. Y.	Avon	Avon or Palace	2-3

Flat Rental Deal

Town & State	Theatre	Captain	Gypsies	Topper There Goes	No. Days
Auburn, N. Y.	Palace (2nd run)	$50.00	$40.00	$25.00	2-3
Bath, N. Y.	Babcock	75.00	65.00	35.00	2-3
Canandaigua, N.Y.	Playhouse	75.00	50.00	30.00	2-3
Carthage, N. Y.	Strand	50.00	40.00	25.00	2-3
Corning, N. Y.	State (2nd run)	30.00	25.00	17.50	2-3
Newark, N. Y.	Capitol	85.00	75.00	40.00	2-3
Penn Yan, N. Y.	Elmwood	75.00	60.00	50.00	2-3
Perry, N. Y.	Auditorium	60.00	40.00	30.00	2-3
Salamanca, N. Y.	Andrews	75.00	60.00	50.00	2-3
Seneca Falls, N. Y.	Strand	50.00	40.00	30.00	2-3
Watertown, N. Y.	Olympic (2nd run)	60.00	50.00	40.00	2-3
Lockport, N. Y.	Hi-Art or Rialto (2nd run)	40.00	35.00	25.00	2-3
Buffalo, N. Y.	Granada	100.00	75.00	50.00	2-3
Buffalo, N. Y.	Riverside	125.00	100.00	60.00	2-3
Rochester, N. Y.	Cameo	35.00	25.00	20.00	2-3
Rochester, N. Y.	Dixie	75.00	60.00	40.00	2-3
Rochester, N. Y.	Grand	40.00	25.00	25.00	2
Rochester, N. Y.	Lake	25.00	17.50	15.00	2-3
Rochester, N. Y.	Liberty	75.00	60.00	40.00	2-3
Rochester, N. Y.	Riviera	175.00	150.00	100.00	3-5
Rochester, N. Y.	State	75.00	60.00	40.00	3-5

[fol. 6057] **Exhibit 308**

March 18th, 1939.

Mr. W. Kraemer,
Schine Circuit, Inc.,
Gloversville, N. Y.

Dear Bill:

In accordance with your booking request of March 17th, we herewith confirm the change of date on "Drums" from the Olympic-Watertown May 25-26 to the Palace theatre May 28-29.

I notice that your second run dates in this situation are way past availability.

We have always experienced trouble with subsequent runs in Watertown because of ~~the fact~~ that you held up your own second run bookings sixty days after first run and insisted on sixty days protection over third run.

We certainly cannot wait five or six months before making pictures available to the sub runs if we were to base the availabilities on the dates recently given us.

I am, therefore, making the picture available to third run 120 days after first run Watertown, which, I think, is reasonable.

Kindest regards.

Very truly yours, United Artists Corporation, J. A. Bykowski, Office Manager.

JAB:MF

[fol. 6058] **Exhibit 310**

United Artists Corporation
1745 East 23rd Street
Cleveland, Ohio

Mary Pickford
Charlie Chaplin
Douglas Fairbanks
Samuel Goldwyn
Alexander Korda

Tel. Prospect 2985

December 15, 1939.

Mr. Edw. Mullen,
New York Exchange.

Dear Mr. Mullen:

Attached is copy of clearance for the Schine circuit, for situations out of your exchange, on the 1939-40 product.

Very truly yours, United Artists Corporation. Frances Turner, Sec'y to Mr. B. M. Stearn.

ft

UNITED ARTISTS

Clearances (1939-40)

New York Territory

Amsterdam (Rialto, Strand or Regent): 30 days ahead of Broadalbin, Fonda and Johnstown.

Ballston (Capital): First run.

Glens Falls (Rialto or Empire): 14 days ahead of Hudson Falls and Fort Edward. 7 days ahead of Lake George. 60 days ahead of second run Glens Falls. (Empire): Second run. 60 days ahead of third run.

Gloversville (Glove or Hippodrome): 40 days over Johnstown. 30 days over Broadalbin, Mayfield, Sacandaga Park, Fonda, Northville and Canajoharie.

Hamilton (State): 21 days ahead of Waterville and Oriskany Falls.

Herkimer (Liberty): 21 days from last date of first run Utica. 14 days ahead of Frankfort and Mohawk.

Hudson Falls (Strand): 14 days after first run Glens Falls. 14 days ahead of second run Glens Falls. 14 days ahead of Fort Edward.

Ilion (Capitol): 30 days over Mohawk and Frankfort. 21 days over Richfield Springs.

Little Falls (Rialto or Hippodrome): 90 days City of Little Falls. 14 days over Fort Plain. 30 days over St. Johnsville and Dolgeville.

Malone (Malone): 30 days ahead of Brushton and Chateaugay and Fort Covington.

Massena (Massena): 30 days ahead of Norfolk. 60 days over second run.

Mechanicville (State): First run.

Norwich (Colonial): 30 days over Sherburne, Oxford, Greene, New Berlin and Sidney.

Ogdensburg (Strand or Pontiac): 30 days ahead of Waddington, Canton and Norwood.

Oneonta (Oneonta or Palace): 30 days ahead of Morris, Delhi, Cooperstown, Stamford, Hartwick and Worcester.

Saranac Lake (Pontiac): 30 days ahead of Lake Placid with open booking during periods of June 15th to Sept. 15th; Jan. 15th to Feb. 15th. 90 days over Saranac Inn.

Whitehall (Capitol): First run.

Tupper Lake (State): 30 days ahead of Faust and Sunmount.

[fols. 6060-6061] **Exhibit 312**

December 22, 1939.

Mr. George Lynch,
Schine Thea. Ent.,
Gloversville, N. Y.

Dear George:

In line with your conversation with Charlie Stern, I am listing herewith the discrepancies between your 1938-39 clearance and the clearance sheet for 1939-40.

Amsterdam—Rialto, Strand or Regent should read first run.

Gloversville should read first run; 40 days over Johnstown instead of 45 with no clearance over Canajoharie.

Norwich should read 14 days over Oxford and Sidney and not 30 days.

Oneonta should read 14 days over Cooperstown instead of 30 with no clearance over Stamford.

Saranac Lake should read 14 days ahead of Lake Placid.

Inasmuch as we have predicated our deals with other exhibitors on the basis of our last year's clearance, we are changing your 1939-40 clearance to so read.

As a matter of record between your Company and ours, we would appreciate an acknowledgment of this letter.

Yours very truly, United Artists Corporation. ——— ———, Office Manager.

EM:LL

[fol. 6062] **Exhibit 313**

Schine Circuit, Inc.

General Offices: Gloversville, N. Y.

Gloversville, N. Y., December 26, 1939.

Mr. Charles Stern,
United Artists Corp.,
630 Ninth Avenue,
New York City.

Dear Charles:

I am in receipt of a letter from Eddie Mullens in reference to clearance for the 1939-40 contracts.

Amsterdam—he is correct on. It should read first run.

Gloversville—he writes that the clearance should be 40 days over Johnstown instead of 45 days with no clearance over Canajoharie. If he will check up last year's contract, he will find it reads "45 days over Johnstown, 30 days over Canajoharie".

Norwich—he is correct in advising that the clearance should read 14 days over Oxford and Sidney.

Oneonta—he is correct, the clearance should read "14 days over Cooperstown with no clearance over Stamford.

Saranac Lake—the clearance here should read 14 days ahead of Lake Placid.

With kindest regards and best wishes for a Happy and Prosperous New Year, I am

Very truly yours, Schine Circuit, Inc. By: Geo. V. Lynch.

GVL:Z

[fol. 6063]

EXHIBIT 314

January 5, 1940

Mr. George Lynch
Schine Thea. Ent.
Gloversville, N. Y.

Dear George:

This will acknokledge receipt of your letter of December 26th regarding the clearances.

After rechecking, I find that the clearance which you signed with Bert Stearn for the 1938-39 product did carry clearance from Gloversville over Canajoharie. However, in checking back further, I find that in previous years there was no clearance from Gloversville over Canajoharie in our contracts.

I believe the fact that this clearance was inserted last year was an oversight on the part of you and Bert Stearn, and we would sincerely appreciate a further check by you, and if you can do so eliminate this clearance on our present contract.

Yours very truly
United Artists Corporation

EM:LL
c.c.ChasStern

Office Manager

[fol. 6064] EXHIBIT 318

Schine Circuit, Inc.
General Offices Gloversville, N. Y.

Gloversville, N. Y.
December 16, 1940.

Mr. S. Lehman,
United Artists Corp.,
Buffalo, N. Y.

Dear Syd:

I note that you served Kit Carson to Sodus, which just opened up and in opposition to Newark and charging 30¢ admission, ahead of Newark.

Most certainly, Syd, and I believe you will agree with me, Newark—which is charging a greater admission price, should be allowed the privilege of playing pictures ahead of a situation charging a lesser admission price.

Would appreciate your checking right into this now and letting me hear from you.

Thanking you and with kindest regards, I am

Very truly yours,
Schine Circuit, Inc.
By: G. V. Lynch

GVL:Z

[fol. 6065] EXHIBIT 319

December 18th, 1940.

Mr. George Lynch,
Schine Circuit, Inc.,
Gloversville, N. Y.

Dear George:

I have your letter dated December 16th and although you never asked for clearance over Sodus in the past, we will be glad to give it to you, but I believe you will have to ask clearance over Wolcott, in addition to Sodus, due to the fact there is no clearance to or from either of these towns.

Therefore, in the future we will grant you fourteen days, or whatever clearance you see fit to take on towns like Palmyra, etc., in that locality.

I trust this is satisfactory.

Kindest personal regards, and Best Wishes for a very Merry Christmas, I am

Sincerely yours,
United Artists Corporation
Syd Lehman
Branch Sales Manager

SL'C

[fol. 6066]

EXHIBIT 321

January 21st, 1937

Mr. Chas. Stern
United Artists Corpn.,
630 Ninth Ave.,
New York, N. Y.

Dear Charlie:

Relative to the conversation we had while in Pittsburgh, of the pictures left out of the Schine deal, and which I would like to sell in Mt. Vernon and Van Wert to the opposition, am herewith listing same:

Divorce of Lady X
Fire Over England
Troop Ship
Dreaming Lips
Accused
Thief in the Night

As regards Van Wert, am not so much concerned about that situation as we can sell a second run there without giving that account any first run pictures.

However, regarding Mt. Vernon, the only reason why we could secure a second run deal on all of our product was due to the fact that we could give the exhibitor—first run pictures, which he needs badly, and incidentally, we can sell same at very respectable prices.

Am sure that George Lynch will cooperate with you in allowing us to sell these pictures to the opposition in Mt. Vernon.

Your kind cooperation in informing me as soon as possible will be appreciated by the writer as I am holding the entire deal, both first and second run, pending your advice that it meets with Lynch's approval for us to sell these pictures to the opposition in Mt. Vernon.

Kindest regards.

Yours sincerely.
United Artists Corporation
Branch Sales Manager

P. S. Am sending a copy of this letter to you in Washington in the event it misses you in New York.

[fol. 6067] Exhibit 322

United Artists Corporation
630 Ninth Avenue
New York

Telephone Lackawanna 4-4721
Mary Pickford
Charlie Chaplin
Douglas Fairbanks
Samuel Goldwyn
Alexander Korda

Feb. 8, 1937.

Mr. A. M. Goodman
c/o Cleveland

Deat Matt:

Regret that I have delayed answering your correspondence regarding the pictures left out of the Schine deal and which you would like to sell to the opposition in Mt. Vernon and Van Wert, but have been out of town so much that I haven't had a minute.

However, have tried to contact George Lynch of the Schine organization and am advised that he is away on a vacation and will not be back for several more weeks yet. Am going to follow this up for you as soon as he returns and will advise you what I was able to work out.

Until then, kindest regards,

Sincerely yours,
Charles Stern

CS:sm.

[fol. 6068] **Exhibit 323**

March 8, 1937

Mr. Charles Stern
New York Exchange

Dear Charlie:

In the Cleveland office, I am right down to scratch to get new deals and every possibility means a lot to me. Am referring now to the Mt. Vernon situation. As you know, when Andy Smith made the deal for Schine, he omitted the following pictures in Mt. Vernon:

Divorce of Lady X
Accused
When Thief Meets Thief
Dreaming Lips
Troopship
Fire Over England

There is no legitimate second run in the town. However, the Cleveland office was able to go in there and sell the Schine opposition a second run and the little sugar we had to use were the few pictures that Schine did not buy first run and which this exhibitor did buy first run.

The prices secured are way ahead of the prices we had on Schine and personally, I do not think that Schine would ever pick these pictures up. The exhibitor will not accept approval on the second run deal until we are able to approve these few pictures for first run.

You are a lot more intimate with Schine than I am. Will you therefore please see what you can do to get this matter okayed on these few first run pictures. Will greatly appreciate anything you can do to expedite this matter.

Why don't you drop me a line once in a while and let me know what's new?

Kindest regards.

Sincerely,
United Artists Corporation

Bert M. Stearn

BMS:ft
cc/Cleveland office

EXHIBIT 337

Final Release Schedule 1930–31

June 23, 1931

Destroy All Previous Issues

Fox Film Corporation

1930–31 Release Schedule

Production No.	Release Date	Feature	Cast	Director
200	Aug. 17	Common Clay	Constance Bennett–Lew Ayres–Tully Marshall	Victor Fleming
223	24	Man Trouble	Milton Sills–Dorothy Mackaill	Berthold Viertel
247	31	Last of the Duanes	George O'Brien–Myrna Loy	Alfred Werker
208	Sept. 7	Song O' My Heart	John McCormack–Joyce–Garrick–O'Sullivan	Frank Borzage
229	14	On Your Back	Irene Rich–H. B. Warner–R. Hackett	Guthrie McClintic
207	21	The Sea Wolf	Milton Sills–Jane Keith–R. Hackett	Alfred Santell
204	28	Soup to Nuts	Ted Healy and His Racketeers	Benjamin Stoloff
202	Oct. 5	Liliom	Charles Farrell–Rose Hobart–H. B. Warner	Frank Borzage
203	12	Up the River	Claire Luce–Tracy–Hymer–Collier, Sr.	John Ford
230	19	Scotland Yard	Edmund Lowe–Joan Bennett	William K. Howard
213	26	Renegades	Warner Baxter–Myrna Loy–Noah Beery	Victor Fleming
201	Nov. 2	The Big Trail	John Wayne–Churchill–El Brendel	Raoul Walsh
235	9	The Dancers	Lois Moran–Phillips Holmes–Mae Clarke	Chandler Sprague
226	16	A Devil with Women	Victor McLaglen–Mona Maris–H. Bogart	Irving Cummings
205	23	Just Imagine	El Brendel–O'Sullivan–White–Garrick	David Butler
	30	No Release		
210	Dec. 7	Lightnin'	Will Rogers–Louise Dresser–Joel McCrea	Henry King
224	14	Oh, For a Man!	Jeanette MacDonald–Reginal Denny Marjorie White–Warren Hymer	H. MacFadden
219	21	The Princess and the Plumber	Charles Farrell–Maureen O'Sullivan	A. Korda
231	28	Part Time Wife	Edmund Lowe–Leila Hyams	Leo McCarey
243	Jan. 4	Under Suspicion	Lois Moran–J. Harold Murray	A. F. Erikson
211	11	The Man Who Came Back	Gaynor–Farrell	Raoul Walsh
244	18	Men on Call	Edmund Lowe–Mae Clarke–Harrigan	John Blystone
215	25	Once a Sinner	Mackaill–Joel McCrea–Halliday–Gordon	Guthrie McClintic
248	Feb. 1	Fair Warning	Geo. O'Brien–Louise Huntington	Alfred Werker
232	8	Girls Demand Excitement	Virginia Cherrill, John Wayne	Seymour Felix
220	15	Don't Bet on Women	Lowe, MacDonald, Young, Merkel, Kerrigan	Wm. K. Howard
225	22	Body and Soul	Farrell and Elissa Landi	Alfred Santell
	Mar. 1	East Lynne	Harding, Brook, Nagel, Heggie, Mercer	Frank Lloyd
246	8	Not Exactly Gentlemen	McLaglen, Cody, Gribbon, Wray	Benjamin Stoloff
228	15	Doctors' Wives	Baxter, Joan Bennett, Loftus	Frank Borzage
217	22	Mr. Lemon of Orange	Brendel, Dorsay, Collier, Warren	John Blystone
222	29	Seas Beneath	Geo. O'Brien, Marion Lessing	John Ford
214	Apr. 5	A Connecticut Yankee	Rogers, Loy, O'Sullivan, Wm. Farnum	David Butler
221	12	Charlie Chan Carries On	Oland, Churchill, Hymer, Garrick	H. MacFadden
240	19	3 Girls Lost	Lorétta Young, Joan Marsh, Joyce Compton, John Wayne, Lew Cody	Sidney Lanfield
238	26	The Spy	Kay Johnson, Neil Hamilton, Halliday	Berthold Viertel
227	May 3	Quick Millions	Spencer Tracy, Sally Eilers, Marguerite Churchill	Rowland Brown
236	3	Are You There?	Beatrice Lille, Garrick, Grossmith	H. MacFadden
216	10	6 Cylinder Love	Tracy, Sidney Fox, Horton, Merkel	Thornton Freeland
212	17	Young Sinners	Meighan, Dorothy Jordan, Albright	John Blystone
234	24	Always Goodbye	Elissa Landi, Lewis Stone	Menzies-MacKenna
206	31	Women of All Nations	McLaglen, Lowe, Brendel, Nissen	Raoul Walsh
218	June 7	Daddy Long Legs	Janet Gaynor, Warner Baxter	Alfred Santell
233	14	Annabelle's Affairs	Victor McLaglen, Jeanette MacDonald	Alfred Werker
237	21	The Black Camel	Oland, Kerrigan, Eilers	H. MacFadden
239	28	Goldie	Tracy–Hymer–Jean Harlow	Benjamin Stoloff
241	July 5	Hush Money	Bennett, Moore, Albright, Gordon, Loy	Sidney Lanfield
242	12	Their Mad Moment	Baxter–Mackaill–O'Neil	Chandler Sprague
245	19	A Holy Terror	George O'Brien, Sally Eilers	Irving Cummings

Fox Movietone News—Twice Weekly

Destroy All Previous Issues

Fox Film Corporation

1931-32 and 1932-33 Release Schedule

Production No.	Release Date	Feature	Cast	Director
312	Aug. 23	Young As You Feel	Will Rogers, Fifi Dorsay	Frank Borsage
316	30	Transatlantic	Lowe, Nissen, Moran, Halliday, Hersholt	William K. Howard
301	Sept. 6	Merely Mary Ann	Gaynor, Farrell, Mercer	Henry King
309	13	Bad Girl	James Dunn, Sally Eilers, Minna Gombell	Frank Borsage
328	20	The Brat	O'Neill, Dinehart, Albertson, Cherrill, Collyer	John Ford
320	27	The Spider	Lowe, Moran, Phillips, El Brendel	Mensies & MacKenna
326	Oct. 4	Wicked	Landi, McLaglen, Merkel, Rich	Allan Dwan
322	11	Skyline	Meighan, Albright, O'Sullivan, Loy	Sam Taylor
332	18	Riders of the Purple Sage	O'Brien, Churchill, Noah Beery	Hamilton MacFadden
317	25	Sob Sister	James Dunn, Linda Watkins, Gombell	Alfred Santell
306	Nov. 1	The Cisco Kid	Baxter, Lowe, Conchita Montenegro	Irving Cummings
331	8	Heartbreak	Farrell, Cavanaugh, Evans, Albright	Alfred Werker
307	15	The Yellow Ticket	Elissa Landi, Lionel Barrymore, L. Olivier	Raoul Walsh
314	22	Ambassador Bill	Will Rogers, Nissen, Churchill	Sam Taylor
308	29	Over the Hill	Mae Marsh, James Dunn, Sally Eilers	Henry King
325	Dec. 6	Surrender	Warner Baxter, Leila Hyams, Kirkland	William K. Howard
321	13	Good Sport	Watkins, Boles, Nissen, Dinehart	Kenneth MacKenna
	20	No Release		
302	27	Delicious	Gaynor, Farrell, Brendel	David Butler
333	Jan. 3	Rainbow Trail	O'Brien, Ates, Kerrigan, Parker	David Howard
323	10	Stepping Sisters	Dresser, Gombell, Howland, Collier, Sr.	Seymour Felix
311	17	Dance Team	Dunn, Eilers, Maynard, Lane	Sidney Lanfield
324	24	Charlie Chan's Chance	Oland, Watkins, Warner, Nixon	John Blystone
	31	No Release		
327	Feb. 7	Silent Witness	Atwill, Mack, Nissen, Heyburn	Varnel & Hough
310	14	Cheaters at Play	Meighan, Bakewell, Greenwood, Weeks, Watkins	Hamilton McFadden
319	21	She Wanted a Millionaire	Bennett, Tracy, Merkel, Kirkwood	John Blystone
339	28	The Gay Caballero	O'Brien, Montenegro, McLaglen, Gordon	Alfred Werker
313	Mar. 6	Business and Pleasure	Will Rogers, Goudal, McCrea	David Butler
318	13	After Tomorrow	Farrell, Gombell, Nixon, Collier, Sr., Hull	Frank Borsage
305	20	Disorderly Conduct	Tracy, Brendel, Eilers, Bellamy	John Considine, Jr.
335	27	The Devil's Lottery	Landi, Cavanaugh, Kirkland, McLaglen	Sam Taylor
334	Apr. 3	Careless Lady	Bennett, Boles, Gombell, Lane	Kenneth MacKenna
336	10	Amateur Daddy	Baxter, Nixon	John Blystone
315	17	Young America	Tracy, Bellamy, Mercer, Kenyon, Conlon	Frank Borsage
	24	No Release		
337	May 1	Trial of Vivienne Ware	Bennett, Dinehart, Bond, Gallagher	William K. Howard
329	8	While Paris Sleeps	McLaglen, Mack, Bakewell	Allan Dwan
330	15	Woman in Room 13	Landi, Bellamy, Loy, Hamilton	Henry King
341	22	Man About Town	Baxter, Morley, Tearle	John F. Dillon
342	29	Society Girl	Dunn, Peggy Shannon, Tracy	Sidney Lanfield
	June 5	No Release		
346	12	Mystery Ranch	O'Brien, Parker	David Howard
338	19	Week Ends Only	Bennett, Ben Lyon, Halliday	Alan Crosland
345	26	Bachelors Affairs	Menjou, Marsh, Gombell, Dinehart	Alfred Werker
303	July 3	Rebecca—Sunnybrook Farm	Nixon, Bellamy	Alfred Santell
	10	No Release		
[illegible]44	17	Almost Married	Heming, Bellamy, Kirkland	William Mensies
49	24	Cry of the World	Depiction of the Past Ten Years Strife	
304	31	First Year	Gaynor, Farrell	William K. Howard
50	Aug. 7	Congorilla	Mr. and Mrs. Martin Johnson	
347	14	A Passport to Hell	Landi, Kirkland, Oland	Frank Lloyd
340	21	The Painted Woman	Tracy, Shannon	John Blystone
	28	No Release		
8	Sept. 4	Down to Earth	Rogers, Rich, Jordan, Kemp	John Blystone
	11	To be announced		
7	18	Chandu	Lowe, Ware, Lugosi, Mundin	Varnel & Mensies

Magic Carpet of Movietone

1932

Aug. 14	33- 1	Alpine Echoes
21	33- 4	Incredible India
28	33- 2	Big Game of the Sea
Sept. 4	33- 3	Tom-Tom Trail
11	33- 7	Byways of France
18	33- 5	Manhattan Medley
25	33- 9	Rhineland Memories
Oct. 2	33- 8	Fisherman's Fortune
9	33- 6	Zanzibar

[fol. 6071]

Please Destroy Previous Issues

July 24, 1933

Fox Film Corporation 1932-33 Release Schedule

Final

Release Date	No. Production	Production	Cast	Director
Aug. 7	50	Congorilla	Mr. and Mrs. Martin Johnson	
Sept. 4	8	Down to Earth	Rogers, Rich, Jordan, Kemp	David Butler
11	—	No Release		
18	7	Chandu	Lowe, Ware, Lugosi, Mundin, Walthal	Varnel & Menzies
25	5	Hat Check Girl	Eilers, Lyon, Ginger Rogers, Owsley	Sidney Lanfield
Oct. 2	—	No Release		
9	38	Wild Girl	Farrell, Bennett, Bellamy, Pallette	Raoul Walsh
16	11	6 Hours to Live	Baxter, Boles, Miriam Jordan	William Dieterle
23	10	Rackety Rax	McLaglen, Nissen, Pierson	Alfred Werker
30	26	The Golden West	O'Brien, Chandler, Burns	David Howard
Nov. 6	16	Sherlock Holmes	Clive Brook, Jordan, Torrence, Mundin	William K. Howard
13	9	Too Busy to Work	Will Rogers, Marian Nixon	John Blystone
20	2	Tess of the Storm Country	Janet Gaynor, Charles Farrell	Alfred Santell
27	3	Call Her Savage	Clara Bow, Owsley Todd, Roland	John Francis Dillon
Dec. 4	35	Me and My Gal	Bennett, Tracy, Burns	Raoul Walsh
11	—	No Release		
18	—	No Release		
25	15	Handle With Care	Dunn, Mallory, Brendel, Phelps	David Butler
Jan. 1	24	Robber's Roost	O'Brien, Maureen O'Sullivan	Louis King
8	12	Second Hand Wife	Eilers, Bellamy, Jory, Helen Vinson	Hamilton McFadden
15	43	Hot Pepper	McLaglen, Lowe, Velez, Brendel	John Blystone
22	32	Face in the Sky	Tracy, Nixon, Erwin, Simpson	Harry Lachman
27	—	No Release		
Feb. 3	39	Dangerously Yours	Baxter, Miriam Jordan, Mundin	Frank Tuttle
10	17	Infernal Machine	Chester Morris, G. Tobin, Jory	Marcel Varnel
10	47	State Fair	Gaynor, Will Rogers, Ayres, Eilers	Henry King
17	25	Smoke Lightning	O'Brien, Nell O'Day, Betsy Ross	David Howard
24	34	Broadway Bad	Blondell, Cortes, Ginger Rogers	Sidney Lanfield
Mar. 3	31	Humanity	Ralph Morgan, Kirkland, Mallory	John F. Dillon
10	18	Sailor's Luck	Dunn, Eilers, Sammy Cohen, Jory	Raoul Walsh
17	41	After the Ball	Esther Ralston, Basil Rathbone	Milton Rosmer
24	20	Pleasure Cruise	Roland Young, Genevieve Tobin	Frank Tuttle
31	28	Bondage	Dorothy Jordan, Kirkland, Tottenham	Alfred Santell
Apr. 7	—	No Release	(Holy Week)	
14	13	Hello Sister!	James Dunn, Boots Mallory	Alfred Werker
15	48	Cavalcade	Clive Brook, Diana Wynyard	Frank Lloyd
21	37	Trick for Trick	Ralph Morgan, Victor Jory, Sally Blane	Hamilton McFadden
28	36	Zoo in Budapest	Gene Raymond, Loretta Young	Rowland V. Lee
May 5	—	No Release		
12	30	The Warrior's Husband	Elissa Landi, Ernest Truex	Walter Lang
19	42	Adorable	Janet Gaynor, Henry Garat	Wilhelm Dieterle
26	14	Hold Me Tight	James Dunn, Sally Eilers	David Butler
June 2	21	It's Great To Be Alive	Raul Roulien, Gloria Stuart, Mundin	Alfred Werker
9	—	No Release		
16	1	I Loved You Wednesday	Warner Baxter, Elissa Landi, Jory	Henry King
23	40	Best of Enemies	Marian Nixon, Buddy Rogers	Rian James
30	23	Arizona to Broadway	James Dunn, Joan Bennett	James Tinling
July 7	27	Life in the Raw	George O'Brien, Claire Trevor	Louis King
14	33	The Man Who Dared	Zita Johann, Preston Foster	Hamilton McFadden
21	4	The Devil's In Love	Victor Jory, Loretta Young	Wilhelm Dieterle
28	29	F. P. 1	Conrad Veidt, Jill Esmond, Leslie Fenton	Karl Hartl
Aug. 4	—	No Release		
11	22	Shanghai Madness	Spencer Tracy, Fay Wray	John Blystone

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Magic Carpet of Movietone

1932
Aug. 14—33- 1 Alpine Echoes
21—33- 4 Incredible India
28—33- 2 Big Game Of The Sea
Sept. 4—33- 3 Tom-Tom Trail
11—33- 7 Byways Of France
18—33- 5 Manhattan Medley
25—33- 9 Rhineland Memories
Oct. 2—33- 8 Fisherman's Fortune
9—33- 6 Zanzibar
16—33-10 Belles Of Bali
23—33-11 Sailing A Square Rigger
30—33-12 Venetian Holiday
Nov. 6—33-13 Havana Ho!

Nov. 13—33-14 Paths In Palestine
20—33-15 Ricksha Rhythm
27—33-16 Pirate Isles
Dec. 4—33-18 From Kashmir To Khyber
11—33-17 Silver Springs
18—33-19 Desert Tripoli
25—33-20 In The Guianas

1933
Jan. 1—33-21 Mediterranean Memories
8—33-22 Lure Of The Orient
15—33-23 Here Comes The Circus

1933
Jan. 22—33-24 Sicilian Sunshine
29—33-25 Gorges Of The Giants
Feb. 5—33-26 When In Rome
12—33-27 Berlin Medley
19—33-28 Rhapsody Of The Rails
26—33-29 Taking The Cure
Mar. 5—33-31 Paris On Parade
12—33-32 Isles Of The East Indies
19—33-33 Iceberg Patrol
26—33-34 A Gondola Journey
Apr. 2—33-35 Broadway By Day
9—33-36 Sampans And Shadows
15—33-30 Down From Vesuvius

Fox Movietone News—Twice Weekly

June 27, 1934

Please Destroy Previous Issues

Fox Film Corporation 1933-34 Feature Releases

Final Schedule

Release Date	Prod. No.	Running Time Min.	Production	Cast	Director
Aug. 18	403	95	Pilgrimage*	H. Crosman, H. Angel, N. Foster, M. Nixon	John Ford
24	402	60	The Last Trail*	Geo. O'Brien, Claire Trevor, El Brendel	James Tinling
Sept. 1	401	73	Paddy, The Next Best Thing*	Janet Gaynor, Warner Baxter	Harry Lachman
8	404	85	The Good Companions	Jessie Matthews	Victor Saville
15	405	70	Charlie Chan's Greatest Case*	Warner Oland, Heather Angel	Hamilton MacFadden
22	406	76	Doctor Bull*	Will Rogers, Louise Dresser, M. Nixon	John Ford
29	407	74	My Weakness*	Lilian Harvey, Lew Ayres, Harry Langdon	David Butler
Oct. 6	408	76	The Power And The Glory*	Spencer Tracy, Colleen Moore, R. Morgan	William K. Howard
13	409	73	Walls of Gold*	Sally Eilers, Norman Foster	Kenneth MacKenna
20	410	75	The Worst Woman In Paris?	Benita Hume, Adolph Menjou, Harvey Stephens	Monta Bell
27	414	73	The Mad Game*	Spencer Tracy, Claire Trevor, R. Morgan	Irving Cummings
Nov. 3	412	87	Berkeley Square	Leslie Howard, Heather Angel	Frank Lloyd
10	413	79	My Lips Betray*	Lilian Harvey, John Boles, El Brendel	John Blystone
17	417	66	Olsen's Big Moment	El Brendel, Barbara Weeks, Walter Catlett	Malcolm St, Clair
24	415	68	Jimmy and Sally	James Dunn, Claire Trevor	James Tinling
30	416	78	Hoop-La*	Clara Bow, Preston Foster, Herbert Mundin	Frank Lloyd
Dec. 8	411	69	Smoky*	Victor Jory, Irene Bentley, Will James	Eugene J. Forde
15	418	85	I Was A Spy	Herbert Marshall, Conrad Veidt, M. Carroll	Victor Saville
22	419	69	Mr. Skitch*	Will Rogers, Zasu Pitts, Rochelle Hudson	James Cruze
29	420	80	As Husbands Go*	Warner Baxter, Helen Vinson, Warner Oland	Hamilton MacFadden
Jan. 5	421	98	I Am Susanne!*	Lilian-Harvey, Gene Raymond, Marionettes	Rowland V. Lee
12	422	72	Orient Express*	H. Angel, N. Foster, R. Morgan, H. Mundin	Paul Martin
19	423	66	Frontier Marshal*	George O'Brien, Irene Bentley	Lew Seiler
26	424	69	Sleepers East*	Wynne Gibson, Preston Foster, Mona Barrie	Kenneth MacKenna
Feb. 2	425	82	Carolina*	Janet Gaynor, Lionel Barrymore, Robert Young, Henrietta Crosman	Henry King
9	426	72	Ever Since Eve	George O'Brien, Mary Brian, Herbert Mundin	George Marshall
16	427	65	Hold That Girl!	James Dunn, Claire Trevor	Hamilton MacFadden
16	429	60	Devil Tiger	Marion Burns, Kane Richmond, Harry Woods	Clyde E. Elliot
23	428	68	I Believed In You	Rosemary Ames, Victor Jory, John Boles	Irving Cummings
Mar. 2	431	83	David Harum*	Will Rogers, Louise Dresser, Evelyn Venable	James Cruze
9	430	79	Coming Out Party	Frances Dee, Gene Raymond, Alison Skipworth	John Blystone
16	438	78	George White's Scandals*	Rudy Vallee, Alice Faye, Jimmy Durante, Cliff Edwards, Adrienne Ames, George White	George White
23	433	65	3 On A Honeymoon	Sally Eilers, Zasu Pitts, Henrietta Crosman	James Tinling
23	434	84	The Constant Nymph	Brian Aherne, Victoria Hopper	Basil Dean
30	437	84	Bottoms Up*	Spencer Tracy, Pat Paterson, John Boles	David Butler
Apr. 6	432	74	Murder In Trinidad	Nigel Bruce, Heather Angel, Victor Jory	Louis King
13			No Release		
20	436	79	All Men Are Enemies	Hugh Williams, Helen Twelvetrees, Mona Barrie	George Fitzmaurice
27	444	81	Heart Song	Lilian Harvey, Charles Boyer	Frederich Hollaender
May 4	435	80	Stand Up and Cheer*	All Stat Cast	Hamilton MacFadden
4	442	81	Such Women Are Dangerous	Warner Baxter, Rosemary Ames, Rochelle Hudson	James Flood
11	447	87	Now I'll Tell by Mrs. Arnold Rothstein	Spencer Tracy, Helen Twelvetrees ,Alice Faye	Edwin Burke
18	441	76	Change Of Heart	Janet Gaynor, Charles Farrell, James Dunn, Ginger Rogers	John Blystone
25	445	73	Springtime For Henry	Otto Kruger, Nancy Carroll, Nigel Bruce, Heather Angel, Herbert Mundin	Frank Tuttle
June 1	446	64	Call It Luck	Pat Paterson, Herbert Mundin, Charles Starrett	James Tinling
8	440	77	Wild Gold	John Boles, Claire Trevor, Harry Green	George Marshall
15			No Release		
22	439	73	Baby Take A Bow	Shirley Temple, James Dunn, Claire Trevor	Harry Lachman
29	448	76	She Learned About Sailors	Lew Ayres, Alice Faye, Harry Green, Frank Mitchell and Jack Durant	George Marshall
July 6	443		Charlie Chan's Courage	Warner Oland, Drue Layton, Donald Woods	George Hadden
13			No Release		
20	451		She Was A Lady	Helen Twelvetrees, Donald Woods, Ralph Morgan	Hamilton MacFadden
27	450		Grand Canary	Warner Baxter, Madge Evans	Irving Cummings
27	452	81	Handy Andy*	Will Rogers, Peggy Wood, Mary Carlisle	David Butler

* Denotes Pictures to be Re-Recorded on Disc.

Fox Movietone News—Twice Weekly

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June 13, 1935

Fox Film Corporation

1934-35 Feature Releases

Final Release Schedule

Release Date		Prod. Nb.	Running Time Min.	Production	Cast	Director
Aug.	17	501	100	The Cat's Paw	Harold Lloyd, Una Merkel, George Barbier	Sam Taylor
	24	502	68	Pursued	Rosemary Ames, Victor Jory, Pert Kelton	Louis King
	31	503	92	The World Moves On	Madeleine Carroll, Franchot Tone, Reginal Denny, Stepin Fetchit, Louise Dresser	John Ford
Sept.	7	504	88	Servants' Entrance	Janet Gaynor, Lew Ayres, Ned Sparks, Walter Connolly	Frank Lloyd
	14	505	77	Charlie Chan in London	Warner Oland, Drue Leyton	Eugene Forde
	21	506	73	Love Time	Pat Patterson, Nils Asther, Herbert Mundin, Harry Green, Henry B. Walthall	James Tinling
	21	507	64	The Dude Ranger	George O'Brien, Irene Hervey	Edward F. Cline
	28	509	79	Judge Priest	Will Rogers, Tom Brown, Anita Louise, Henry B. Walthall, Stepin Fetchit	John Ford
Oct.	5	508	101	Caravan	Charles Boyer, Loretta Young, Jean Parker	Erik Charell
	12	514	74	365 Nights in Hollywood	James Dunn, Alice Faye, Frank Mitchell, Jack Durant, John Bradford	George Marshall
	19	516	69	Peck's Bad Boy	Jackie Cooper, Thomas Meighan, Jackie Searl, O. P. Heggie, Dorothy Peterson	Edward F. Cline
	26	511	88	Marie Galante	Spencer Tracy, Ketti Gallian, Ned Sparks, Helen Morgan, Siegfried Rumann	Henry King
Nov.	2	510	72	Elinor Norton	Claire Trevor, Gilbert Roland, Henrietta Crosman, Norman Foster, Hugh Williams	Hamilton MacFadden
	2	512	80	Gambling	George M. Cohan, Wynne Gibson, Dorothy Burgess	Rowland V. Lee
	9	517	80	Hell in the Heavens	Warner Baxter, Conchita Montenegro, Russell Hardie, Herbert Mundin	John Blystone
	16	518	83	The White Parade	Loretta Young, John Boles, Astrid Allwyn	Irving Cummings
	23	519	78	The First World War	Edited by Laurence Stallings—Produced by Truman Talley	
	23	520	74	Bachelor of Arts	Tom Brown, Anita Louise, Henry B. Walthall, Stepin Fetchit	Louis King
	30			No Release		
Dec.	7	513	81	Music in the Air	Gloria Swanson, John Boles, Douglass Montgomery, June Lang	Joe May
	14			No Release		
	21	522	74	Helldorado	Richard Arlen, Madge Evans, Ralph Bellamy, Henry B. Walthall, Stepin Fetchit	James Cruze
	28	524	83	Bright Eyes	Shirley Temple, James Dunn, Judith Allen, Jane Darwell, Lois Wilson	David Butler
Jan.	4	523	82	Lottery Lover	Lew Ayres, Pat Patterson, Peggy Fears, Reginald Denny, Alan Dinehart	William Thiele
	11	525	78	County Chairman	Will Rogers, Evelyn Venable, Kent Taylor, Louise Dresser, Stepin Fetchit	John Blystone
	18	515	69	Mystery Woman	Mona Barrie, Gilbert Roland, John Halliday, Rod LaRocque, Mischa Auer	Eugene Forde
	25	526	70	Charlie Chan in Paris	Warner Oland, Mary Brian, Thomas Beck, Erik Rhodes	Lewis Seiler
Feb.	1	521	69	Under Pressure	Edmund Lowe, Victor McLaglen, Florence Rice, Marjorie Rambeau, Charles Bickford	Raoul Walsh
	8	530	72	Baboona	Mr. and Mrs. Martin Johnson	
	15	529	87	One More Spring	Janet Gaynor, Warner Baxter, Walter King, Jane Darwell, Roger Imhof—Stepin Fetchit	Henry King
	15	527	66	When a Man's a Man	George O'Brien, Dorothy Wilson, Paul Kelly	Edward F. Cline
	22	531	80	Little Colonel	Shirley Temple, Lionel Barrymore, Evelyn Venable, John Lodge, Bill Robinson	David Butler
Mar.	1			No Release		
	8	532	70	Great Hotel Murder	Edmund Lowe, Victor McLaglen, Rosemary Ames, Mary Carlisle	Eugene Forde
	15			No Release		
	22	533	79	Life Begins at 40	Will Rogers, Rochelle Hudson, Richard Cromwell, George Barbier, Jane Darwell	George Marshall
	29	534	83	George White's Scandals	Alice Faye, James Dunn, Ned Sparks, George White, Lyda Roberti, Cliff Edwards	George White
Apr.	5	537	70	$10 Raise	Edward Everett Horton, Karen Morley, Alan Dinehart, Glen Boles	George Marshall
	12	536	71	It's A Small World	Spencer Tracy, Wendy Barrie, Raymond Walburn, Virginia Sale, Astrid Allwyn	Irving Cummings
	19	535	58	Spring Tonic	Lew Ayres, Claire Trevor, Walter King, ZaSu Pitts, Jack Haley	Clyde Bruckman
	26			No Release		

Release Date	Prod. No.	Running Time Min.	Production	Cast	Director
May 3	540	69	Ladies Love Danger	Mona Barrie, Gilbert Roland, Donald Cook, Adrienne Ames, Hardie Albright	H. Bruce Humberstone
10	538	67	Cowboy Millionaire	George O'Brien, Edgar Kennedy	Edward F. Cline
17	539	63	Our Little Girl	Shirley Temple, Rosemary Ames, Joel McCrea, Lyle Talbot, Erin O'Brien-Moore	John Robertson
24	528	75	Daring Young Man	James Dunn, Mae Clarke, Neil Hamilton, Warren Hymer, Stanley Fields	William A. Seiter
31	541	78	Under the Pampas Moon	Warner Baxter, Ketti Gallian, Veloz and Yolanda, John Miljan	James Tinling
June 7	542	73	Doubting Thomas	Will Rogers, Billie Burke, Alison Skipworth, Sterling Holloway, Gail Patrick	David Butler
14	543	75	Black Sheep	Edmund Lowe, Claire Trevor, Tom Brown, Eugene Pallette, Adrienne Ames	Allan Dwan
21	544	72	Charlie Chan in Egypt	Warner Oland, Pat Paterson, Thomas Beck, Rita Cansino, Stepin Fetchit	Louis King
28			No Release		
July 5	545	74	Ginger	Jane Withers, Jackie Searle, Walter King, Katherine Alexander, O. P. Heggie	Lewis Seiler
12	546		Orchids to You	John Boles, Jean Muir, Charles Butterworth	William A. Seiter
19	547		Silk Hat Kid	Lew Ayres, Mae Clarke, Paul Kelly	H. Bruce Humberstone
19	548		Hard Rock Harrigan	George O'Brien, Irene Hervey	David Howard
26	549		Curly Top	Shirley Temple, John Boles, Rochelle Hudson, Jane Darwell	Irving Cummings

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February 14th, 1936

Twentieth Century-Fox Film Corporation 1935-36 Feature Releases No. 1

Final Release Schedule

Release Date	Prod. No.	Running Time Min.	Production	Cast	Director
Aug. 2	608	91	The Farmer Takes A Wife	Janet Gaynor, Henry Fonda, Charles Bickford, Slim Summerville	Victor Fleming
9	603	72	Welcome Home	James Dunn, Arline Judge, Raymond Walburn, Rosina Lawrence	James Tinling
16	605	68	Dressed To Thrill	Tutta Rolf, Clive Brook, Robert Barrat, Nydia Westman	Harry Lachman
23	611	88	Dante's Inferno	Spencer Tracy, Claire Trevor, Henry B. Walthall, Alan Dinehart	Harry Lachman
30	604	77	Redheads On Parade	John Boles, Dixie Lee, Jack Haley, Raymond Walburn, Alan Dinehart	Norman McLeod
Sept. 6	612	80	Steamboat Round The Bend	Will Rogers, Anne Shirley, Irving S. Cobb, Eugene Pallette, Stepin Fetchit	John Ford
13	602	76	The Gay Deception	Francis Lederer, Frances Dee, Benita Hume, Alan Mowbray	William Wyler
20	613	67	Thunder In The Night	Edmund Lowe, Karen Morley, Paul Cavanagh, Una O'Connor	George Archainbaud
27	607	58	Thunder Mountain	George O'Brien, Barbara Fritchie, Frances Grant, Morgan Wallace	David Howard
Oct. 4	609	86	Here's To Romance	Nino Martini, Genevieve Tobin, Anita Louise, Maria Gambarelli, Mme. Schumann-Heink	Alfred E. Green
11	610	70	Charlie Chan in Shanghai	Warner Oland, Irene Hervey, Charles Locher, Russell Hicks, Keye Luke	James Tinling
18	614	65	This Is The Life	Jane Withers, John McGuire, Sally Blane, Sidney Toler, Francis Ford	Marshall Neilan
25	615	56	Bad Boy	James Dunn, Dorothy Wilson, Louise Fazenda, Victor Kilian	John Blystone
25	616	84	Way Down East	Rochell Hudson, Henry Fonda, Slim Summerville, Margaret Hamilton, Andy Devine	Henry King
Nov. 1	619	66	Music Is Magic	Alice Faye, Ray Walker, Bebe Daniels, Mitchell and Durant	George Marshall

Release Date	Prod. No.	Running Time Min.	Production	Cast	Director
8	618	79	*Metropolitan	Lawrence Tibbett, Virginia Bruce, Alice Brady, Cesar Romero, Thurston Hall	Richard Boleslawski
15	617	87	*Thanks A Million	Dick Powell, Ann Dvorak, Fred Allen, Patsy Kelly, Paul Whiteman and Band with Ramona, Rubinoff	Roy Del Ruth
22	601	84	In Old Kentucky	Will Rogers, Dorothy Wilson, Russell Hardie, Charles Sellon, Bill Robinson	George Marshall
29	620	66	*The Man Who Broke The Bank at Monte Carlo	Ronald Colman, Joan Bennett, Colin Clive, Nigel Bruce	Stephen Roberts
29	606	72	Navy Wife	Claire Trevor, Ralph Bellamy, Jane Darwell, Warren Hymer, Ben Lyon	Allan Dwan
Dec. 6	621	76	*Show Them No Mercy	Rochelle Hudson, Cesar Romero, Bruce Cabot, Edward Norris	George Marshall
13	622	68	Your Uncle Dudley	Edward Everett Horton, Lois Wilson, John McGuire, Rosina Lawrence	Eugene Forde
20	623	67	Whispering Smith Speaks	George O'Brien, Irene Ware, Kenneth Thomson	David Howard
27	624	73	The Littlest Rebel	Shirley Temple, John Boles, Jack Holt, Karen Morley, Bill Robinson	David Butler
Jan. 3	625	88	King of Burlesque	Warner Baxter, Alice Faye, Jack Oakie, Mona Barrie, Arline Judge, Gregory Ratoff	Sidney Lanfield
10	626	71	Charlie Chan's Secret	Warner Oland, Rosina Lawrence, Charles Quigley, Henrietta Crosman	Gordon Wiles
17	627	76	Paddy O'Day	Jane Withers, Pinky Tomlin, Rita Cansino, Jane Darwell, George Givot	Lewis Seiler
24	628	78	*Professional Soldier	Victor McLaglen, Freddie Bartholomew, Gloria Stuart, Constance Collier, Michael Whalen, C. Henry Gordon	Lav Garnett
31	630	68	My Marriage	Claire Trevor, Kent Taylor, Pauline Frederick, Paul Kelly, Helen Wood, Thomas Beck	George Archainbaud

*Indicates Twentieth Century Pictures.

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Please Destroy Previous Issues

July 13th, 1936

Twentieth Century-Fox Film Corporation 1935–36 Feature Releases No. 2

Final Release Schedule

Release Date	Prod. No.	Running Time Min.	Production	Cast	Director
Feb. 7	637	62	The Jones Family In Every Saturday Night	Jed Prouty, Spring Byington, June Lang, Florence Roberts, Kenneth Howell	James Tinling
14	631	79	*It Had To Happen	George Raft, Rosalind Russell, Leo Carillo, Arline Judge, Alan Dinehart, Andrew Tombes	Roy Del Ruth
21	633	62	Here Comes Trouble	Paul Kelly, Arline Judge, Mona Barrie, Gregory Ratoff, Sammy Cohen	Lewis Seiler
28	638	95	*The Prisoner of Shark Island	Warner Baxter, Gloria Stuart, Claude Gillingwater, Arthur Byron, O. P. Heggie	John Ford
Mar. 6	636	94	The Country Doctor	Dionne Quintuplets, Jean Hersholt, June Lang, Slim Summerville, Michael Whalen, Dorothy Peterson	Henry King
13	642	72	Song and Dance Man	Claire Trevor, Paul Kelly, Michael Whalen, Ruth Donnelly	Allan Dwan
20	634	84	Everybody's Old Man	Irvin S. Cobb, Rochelle Hudson, Johnny Downs, Norman Foster, Alan Dinehart	James Flood
27	640	71	Charlie Chan At The Circus	Warner Oland, Keye Luke, George and Olive Brasno	Harry Lachman
27	639	59	O'Malley Of The Mounted	George O'Brien, Irene Ware, Stanley Fields	David Howard
Apr. 3	641	63	Gentle Julia	Jane Withers, Tom Brown, Marsha Hunt, Jackie Searl	John Blystone
10	632	85	*A Message To Garcia	Wallace Berry, Barbara Stanwyck, John Boles, Alan Hale, Herbert Mundin	George Marshall
17	635	77	Captain January	Shirley Temple, Guy Kibbee, Slim Summerville, June Lang, Buddy Ebsen, Sara Haden	David Butler
24	643	68	The Country Beyond	Rochelle Hudson, Paul Kelly, Robert Kent, Alan Hale, Alan Dinehart, "Buck" (Dog)	Eugene Forde
24	699	85	†A Connecticut Yankee	Will Rogers, Myrna Loy, Maureen O'Sullivan, William Farnum	David Butler
May 1	644	110	*Under Two Flags	Ronald Colman, Claudette Colbert, Victor McLaglen, Rosalind Russell, Gregory Ratoff, Nigel Bruce, Herbert Mundin	Frank Lloyd

Release Date		Prod. No.	Running TimeMin.	Production	Cast	Director
	8	629	59	Champagne Charlie	Paul Cavanagh, Helen Wood, Thomas Beck, Minna Gombell, Herbert Mundin	James Tinling
	15	646	74	The First Baby	Johnny Downs, Shirley Deane, Jane Darwell, Dixie Dunbar	Lewis Seiler
	22	647	66	*Half Angel	Frances Dee, Brian Donlevy, Charles Butterworth, Helen Westley, Henry Stephenson, Sara Haden	Sidney Lanfield
	29	652	66	Human Cargo	Claire Trevor, Brian Donlevy, Alan Dinehart, Ralph Morgan, Helen Troy	Allan Dwan
June	5	645	79	Private Number	Robert Taylor, Loretta Young, Basil Rathbone, Patsy Kelly, Joe Lewis, Marjorie Gateson	Roy Del Ruth
	12	651	72	Little Miss Nobody	Jane Withers, Jane Darwell, Ralph Morgan, Sara Haden, Harry Carey	John Blystone
	19	648	79	*Sins Of Man	Jean Hersholt, Don Ameche, Allen Jenkins, J. Edward Bromberg, Ann Shoemaker	Otto Brower and Gregory Ratoff
	26	655	76	The Crime Of Dr. Forbes	Gloria Stuart, Robert Kent, Henry Armetta, J. Edward Bromberg, Sara Haden, Alan Dinehart	George Marshall
July	3	649	74	*White Fang	Michael Whalen, Jean Muir, Slim Summerville, Charles Winninger, John Carradine, Jane Darwell, Lightning (dog)	David Butler
	3	650	59	The Border Patrolman	George O'Brien, Polly Ann Young, Roy Mason	David Howard
	10	654	57	The Jones Family In Educating Father	Jed Prouty, Shirley Deane, Dixie Dunbar, Spring Byington, Kenneth Howell, June Carlson	James Tinling
	17	653	63	High Tension	Brian Donlevy, Glenda Farrell, Norman Foster, Helen Wood, Robert McWade	Allan Dwan
	24	656		36 Hours To Kill	Gloria Stuart, Brian Donlevy, Douglas Fowley, Isabel Jewell, Stepin Fetchit	Eugene Forde
	24	657	79	The Poor Little Rich Girl	Shirley Temple, Alice Faye, Gloria Stuart, Jack Haley, Michael Whalen, Sara Haden, Jane Darwell	Irving Cummings

*Indicates—Twentieth Century Pictures
†Indicates Re-Issue

Fox Movietone News—Twice Weekly

Printed in U. S. A.

1936-1937 FEATURE RELEASES

Release Schedule FINAL No. 1

(SUBJECT TO CHANGE) *FEBRUARY 5th—PLEASE DESTROY PREVIOUS ISSUES*

A PROMISE MORE THAN FULFILLED!

This release schedule, listing the 20th Century-Fox Pictures for the first six months of the current season, gives us a lot of satisfaction.

It represents a record of accomplishment in which 20th more than made good its promises to you.

It shows a *steady* stream of outstanding product — to keep your theatre prosperous week in and week out.

And out of that powerful array of box office pictures have come new personalities to thrill your audiences: Simone Simon, Tyrone Power, Sonja Henie, Don Ameche, the Ritz Brothers, to mention a few.

There's nothing in show business like a 20th Century-Fox contract!

Release Date	Prod. No.	Running Time Min.	PRODUCTION	CAST	DIRECTOR
Aug. 1	701	92	TO MARY—WITH LOVE	Warner Baxter, Myrna Loy, Ian Hunter, Claire Trevor, Jean Dixon	John Cromwell
7	704	70	CHARLIE CHAN AT THE RACE TRACK	Warner Oland, Keye Luke, Helen Wood, Thomas Beck, Alan Dinehart, Gavin Muir	H. Bruce Humberstone
7	766	94	†STATE FAIR	Will Rogers, Janet Gaynor, Lew Ayres, Sally Eilers, Norman Foster	Henry King
14	702	66	GIRLS' DORMITORY	Herbert Marshall, Ruth Chatterton, Simone Simon, Constance Collier	Irving Cummings
21	703	87	SING, BABY, SING	Alice Faye, Adolphe Menjou, Gregory Ratoff, Ted Healy, Patsy Kelly, Ritz Brothers	Sidney Lanfield
28	705	76	STAR FOR A NIGHT	Claire Trevor, Jane Darwell, Arline Judge, Evelyn Venable, J. Edward Bromberg	Lewis Seiler
Sept. 4	706	101	THE ROAD TO GLORY	Frederic March, Warner Baxter, Lionel Barrymore, June Lang, Gregory Ratoff	Howard Hawks
11	708	64	PEPPER	Jane Withers, Irvin S. Cobb, Slim Summerville, Dean Jagger, Muriel Robert, Ivan Lebedeff	James Tinling
11	709	58	*KING OF THE ROYAL MOUNTED	Robert Kent, Rosalind Keith, Alan Dinehart	Howard Bretherton
18	714	56	THE JONES FAMILY IN BACK TO NATURE	Jed Prouty, Shirley Deane, Dixie Dunbar, Anthony Martin, Spring Byington.	James Tinling
25	707	84	RAMONA (TECHNICOLOR)	Loretta Young, Don Ameche, Kent Taylor, Pauline Frederick, Jane Darwell,	Henry King
Oct. 2	712	57	THANK YOU, JEEVES	Arthur Treacher, Virginia Field, David Niven, Willie Best	Arthur G. Collins
9	710	97	LADIES IN LOVE	Janet Gaynor, Loretta Young, Constance Bennett, Simone Simon, Tyrone Power	Edward H. Griffith
16	715	78	DIMPLES	Shirley Temple, Frank Morgan, Helen Westley, Robert Kent, Astrid Allwyn, Delma Byron	William A. Seiter
23	713	93	PIGSKIN PARADE	Stuart Erwin, Johnny Downs, Arline Judge, Betty Grable, Patsy Kelly, Jack Haley	David Butler
23	767	70	†AMBASSADOR BILL	Will Rogers, Greta Nissen, Marguerite Churchill, Gustav von Seyffertitz	Sam Taylor
30	716	64	15 MAIDEN LANE	Claire Trevor, Cesar Romero, Douglas Fowley	Allan Dwan
Nov. 6	720	63	UNDER YOUR SPELL	Lawrence Tibbett, Wendy Barrie, Gregory Ratoff, Arthur Treacher	Otto L. Preminger
6	718	57	*WILD BRIAN KENT	Ralph Bellamy, Mae Clarke	Howard Bretherton
13	723	70	CAN THIS BE DIXIE?	Jane Withers, Slim Summerville, Helen Wood, Thomas Beck, Sara Haden	George Marshall
20	717	81	REUNION	Dionne Quintuplets, Jean Hersholt, Rochelle Hudson, Helen Vinson, Slim Summerville	Norman Taurog
27	719	65	WHITE HUNTER	Warner Baxter, June Lang, Gail Patrick, Alison Skipworth, Wilfrid Lawson	Irving Cummings
Dec. 4	726	95	BANJO ON MY KNEE	Barbara Stanwyck, Joel McCrea, Helen Westley, Buddy Ebsen, Walter Brennan	John Cromwell
11	724	67	LAUGHING AT TROUBLE	Jane Darwell, Sara Haden, Lois Wilson, Margaret Hamilton, Pert Kelton	Frank R. Strayer
18	728	77	CAREER WOMAN	Claire Trevor, Michael Whalen, Isabel Jewell, Eric Linden, Virginia Field	Lewis Seiler
25	725	86	STOWAWAY	Shirley Temple, Robert Young, Alice Faye, Eugene Pallette, Helen Westley	William A. Seiter
Jan. 1	722	94	ONE IN A MILLION	Sonja Henie, Adolphe Menjou, Don Ameche, Ned Sparks, Jean Hersholt, Ritz Brothers	Sidney Lanfield
8	730	60	CHARLIE CHAN AT THE OPERA	Warner Oland, Boris Karloff, Keye Luke, Charlotte Henry, Thomas Beck	H. Bruce Humberstone
8	711	90	AS YOU LIKE IT	Elisabeth Bergner, Laurence Olivier, Sophie Stewart, Henry Ainley	Paul Czinner
15	727	70	CRACK-UP	Peter Lorre, Brian Donlevy, Helen Wood, Ralph Morgan, Thomas Beck	Malcolm St. Clair
15	731	57	*SECRET VALLEY	Richard Arlen, Virginia Grey	Howard Bretherton
22	733	70	WOMAN-WISE	Rochelle Hudson, Michael Whalen, Thomas Beck, Alan Dinehart, Douglas Fowley	Allan Dwan
29	735	117	LLOYDS OF LONDON	Freddie Bartholomew, Madeleine Carroll, Sir Guy Standing, Tyrone Power, C. Aubrey Smith, Virginia Field	Henry King

† Indicates Reissue
* Indicates Outdoor

Movietone News—Twice Weekly

1936 - 1937 FEATURE RELEASES

Release Schedule FINAL No. 2

(SUBJECT TO CHANGE. JULY 7th, 1937—PLEASE DESTROY PREVIOUS ISSUES

GET IT WHILE THE GETTING'S GOOD!

The money you don't take in today can never be made up. Something to consider during the rest of 1936-1937.

Exhibitors who gave "Wake Up and Live" the advance campaign it rates are far richer than the man who waited before he got busy. And that goes for "Cafe Metropole" and the other big ones.

"This Is My Affair," "Slave Ship" and "Wee Willie Winkie" are yet before you. It's not too early to start planning big campaigns for them now with extra-playing time in mind . . . besides those *extra*-juicy pickings early in the run.

20th has been giving you plenty of boxoffice hits. Have *you* been getting the most out of them?

Release Date	Prod. No.	Running Time Min.	PRODUCTION	CAST	DIRECTOR
Feb. 5	734	67	THE HOLY TERROR	Jane Withers, Anthony Martin, Leah Ray, Joan Davis, El Brendel, Joe Lewis	James Tinling
5	768	79	†DOCTOR BULL	Will Rogers, Marian Nixon, Ralph Morgan, Andy Devine	John Ford
12	732	89	ON THE AVENUE	Dick Powell, Madeleine Carroll, Alice Faye, Ritz Brothers, George Barbier	Roy Del Ruth
19	736	57	THE JONES FAMILY IN OFF TO THE RACES	Slim Summerville, Jed Prouty, Shirley Deane, Spring Byington, Russell Gleason	Frank R. Strayer
19	737	87	WINGS OF THE MORNING (TECHNICOLOR)	Annabella, Henry Fonda, Leslie Banks, John McCormack	Harold Schuster
26	729	78	LOVE IS NEWS	Tyrone Power, Loretta Young, Don Ameche, Slim Summerville, Dudley Digges	Tay Garnett
Mar. 5	740	68	FAIR WARNING	J. Edward Bromberg, Betty Furness, John Howard Payne, Victor Kilian	Norman Foster
12	738	84	NANCY STEELE IS MISSING	Victor McLaglen, Walter Connolly, Peter Lorre, June Lang, Robert Kent	George Marshall
19	741	72	TIME OUT FOR ROMANCE	Claire Trevor, Michael Whalen, Joan Davis, Douglas Fowley, Bennie Bartlett	Malcolm St. Clair
26	742	102	SEVENTH HEAVEN	Simone Simon, James Stewart, Jean Hersholt, Gregory Ratoff, Gale Sondergaard	Henry King
Apr. 2	744	73	MIDNIGHT TAXI	Brian Donlevy, Frances Drake, Alan Dinehart, Sig Rumann, Gilbert Roland	Eugene Forde
9	739	69	STEP LIVELY, JEEVES!	Arthur Treacher, Patricia Ellis, Robert Kent, Alan Dinehart, George Givot	Eugene Forde
16	748	81	FIFTY ROADS TO TOWN	Don Ameche, Ann Sothern, Slim Summerville, Jane Darwell, John Qualen	Norman Taurog
23	749	91	WAKE UP AND LIVE	Walter Winchell, Ben Bernie and Orchestra, Alice Faye, Patsy Kelly, Ned Sparks, Jack Haley, Walter Catlett, Grace Bradley, Joan Davis, Leah Ray, Miles Mander	Sidney Lanfield
30	735	70	THAT I MAY LIVE	Rochelle Hudson, Robert Kent, J. Edward Bromberg	Allan Dwan
May 7	750	83	CAFE METROPOLE	Loretta Young, Tyrone Power, Adolphe Menjou, Gregory Ratoff, Charles Winninger, Helen Westley	Edward H. Griffith
7	745	56	*IT HAPPENED OUT WEST	Paul Kelly, Judith Allen, Johnny Arthur	Howard Bretherton
14	751	59	THE GREAT HOSPITAL MYSTERY	Jane Darwell, Sig Rumann, Sally Blane, Thomas Beck, Joan Davis	James Tinling
14	769	85	DAVID HARUM	Will Rogers, Louise Dresser, Evelyn Venable, Kent Taylor, Stepin Fetchit	James Cruze
21	752	71	CHARLIE CHAN AT THE OLYMPICS	Warner Oland, Katherine DeMille, Pauline Moore, Allan Lane, Keye Luke	H. Bruce Humberstone
21	743	82	UNDER THE RED ROBE	Conrad Veidt, Annabella, Raymond Massey, Romney Brent, Sophie Stewart	Victor Seastrom
28	721	99	THIS IS MY AFFAIR	Robert Taylor, Barbara Stanwyck, Victor McLaglen, Brian Donlevy, Sidney Blackmer, John Carradine, Alan Dinehart, Douglas Fowley, Robert McWade, Frank Conroy	William A. Seiter
June 4	754	71	ANGEL'S HOLIDAY	Jane Withers, Robert Kent, Joan Davis, Sally Blane	James Tinling
11	757	74	SHE HAD TO EAT	Jack Haley, Rochelle Hudson, Arthur Treacher, Eugene Pallette	Malcolm St. Clair
18	739	61	THE JONES FAMILY IN BIG BUSINESS	Jed Prouty, Shirley Deane, Spring Byington, Russell Gleason, Kenneth Howell, Allan Lane	Frank R. Strayer
25	756	64	SING AND BE HAPPY	Anthony Martin, Leah Ray, Joan Davis, Helen Westley, Allan Lane, Dixie Dunbar	James Tinling
July 2	746	92	SLAVE SHIP	Warner Baxter, Wallace Beery, Elizabeth Allan, Mickey Rooney, George Sanders, Jane Darwell, Joseph Schildkraut	Tay Garnett
9	758	58	BORN RECKLESS	Brian Donlevy, Rochelle Hudson, Barton MacLane, Robert Kent, Harry Carey	Malcolm St. Clair
16	753	58	*THE CALIFORNIAN	Ricardo Cortez, Marjorie Weaver, Katherine DeMille	Gus Meins
23	747	63	THE LADY ESCAPES	Michael Whalen, Gloria Stuart, George Sanders, Cora Witherspoon, Gerald Oliver-Smith	Eugene Forde
30	760	99	WEE WILLIE WINKIE	Shirley Temple, Victor McLaglen, C. Aubrey Smith, June Lang, Michael Whalen, Cesar Romero, Constance Collier, Douglas Scott	John Ford
Aug 27	761		*WESTERN GOLD	Smith Ballew, Heather Angel, Spencer Charters, Vic Potel	Howard Bretherton

† Indicates Reissue
* Indicates Outdoor
Indicate Special

1937-1938 FEATURE RELEASES

1938 —

Release Date	Prod. No.	Running Time Min.	PRODUCTION	CAST	DIRECTOR
July 15	870	20	KING GEORGE VI CORONATION IN TECHNICOLOR (SPECIAL)		
Aug. 6	801	99	YOU CAN'T HAVE EVERYTHING	Alice Faye, Ritz Brothers, Don Ameche, Charles Winninger, Louise Hovick, Rubinoff and His Violin, Tony Martin, Arthur Treacher	Norman Taurog
13	802	68	ONE MILE FROM HEAVEN	Claire Trevor, Sally Blane, Douglas Fowley, Fredi Washington, Bill Robinson	Allan Dwan
13	871	82	†HANDY ANDY	Will Rogers, Robert Taylor, Peggy Wood, Mary Carlisle, Conchita Montenegro	David Butler
20	803	75	LOVE UNDER FIRE	Loretta Young, Don Ameche, Borrah Minevitch and His Gang, Frances Drake	George Marshall
27	804	66	THINK FAST, MR. MOTO	Peter Lorre, Virginia Field, Thomas Beck, Sig Rumann	Norman Foster
27	761	56	*WESTERN GOLD (K-4 1936-37)	Smith Ballew, Heather Angel, Leroy Mason, Ben Alexander, Otis Harlan, Victor Potel	Howard Bretherton
Sept. 3	805	78	THIN ICE	Sonja Henie, Tyrone Power, Arthur Treacher, Raymond Walburn, Joan Davis, Sig Rumann, Alan Hale, Leah Ray	Sidney Lanfield
10	806	64	WILD AND WOOLLY	Jane Withers, Walter Brennan, Pauline Moore, Carl "Alfalfa" Switzer, Jack Searl	Alfred Werker
10	807	75	BORNEO	Mr. and Mrs. Martin Johnson	Truman Talley
17	813	85	WIFE, DOCTOR AND NURSE	Loretta Young, Warner Baxter, Virginia Bruce, Jane Darwell, Sidney Blackmer	Walter Lang
24	814	58	THE JONES FAMILY IN HOT WATER	Jed Prouty, Shirley Deane, Spring Byington, Russell Gleason, Kenneth Howell	Frank R. Strayer
Oct. 1	810	94	LIFE BEGINS IN COLLEGE	The Ritz Brothers, Joan Davis, Tony Martin, Gloria Stuart, Fred Stone, Nat Pendleton, Dick Baldwin, Joan Marsh, Jed Prouty	William A. Seiter
8	809	84	LANCER SPY	Dolores Del Rio, George Sanders, Peter Lorre, Joseph Schildkraut, Virginia Field, Sig Rumann, Maurice Moscovich, Lionel Atwill, Luther Adler	Gregory Ratoff
8	812	55	*ROLL ALONG, COWBOY	Smith Ballew, Cecilia Parker, Stanley Fields	Gus Meins
15	816	88	HEIDI	Shirley Temple, Jean Hersholt, Arthur Treacher, Helen Westley, Pauline Moore, Thomas Beck, Mary Nash, Sidney Blackmer	Allan Dwan
22	811	68	CHARLIE CHAN ON BROADWAY	Warner Oland, Keye Luke, J. Edward Bromberg, Joan Marsh, Louise Henry, Joan Woodbury	Eugene Forde
29	815	82	ALI BABA GOES TO TOWN	Eddie Cantor, Tony Martin, Roland Young, June Lang, Louise Hovick, John Carradine, Virginia Field, Alan Dinehart, Douglas Dumbrille, Raymond Scott Quintet, Peters Sisters, Jeni Le Gon	David Butler
Nov. 5	808	81	DANGER—LOVE AT WORK	Ann Sothern, Jack Haley, Mary Boland, Edward Everett Horton, John Carradine, Walter Catlett, Bennie Bartlett	Otto L. Preminger
12	817	62	DANGEROUSLY YOURS	Cesar Romero, Phyllis Brooks, Jane Darwell, Alan Dinehart	Mal St. Clair
12	872	80	†JUDGE PRIEST	Will Rogers, Rochelle Hudson, Tom Brown, Anita Louise, Stepin Fetchit	John Ford
19	818	79	SECOND HONEYMOON	Tyrone Power, Loretta Young, Stuart Erwin, Claire Trevor, Marjorie Weaver, Lyle Talbot, J. Edward Bromberg	Walter Lang
26	821	71	45 FATHERS	Jane Withers, Thomas Beck, Louise Henry, The Hartmans	James Tinling
26	820	77	DINNER AT THE RITZ	Annabella, Paul Lukas, David Niven, Romney Brent, Francis L. Sullivan, Stewart Rome	Harold D. Schuster
Dec. 3	822	70	BIG TOWN GIRL	Claire Trevor, Donald Woods, Alan Dinehart	Alfred Werker
10	824	60	THE JONES FAMILY IN BORROWING TROUBLE	Jed Prouty, Shirley Deane, Spring Byington, Florence Roberts, Kenneth Howell, George Ernest, June Carlson	Frank R. Strayer
17			No Release		

A RECORD UNEQUALLED!

This page tells a story of promises kept . . . a line-up of solid showmanship achievement!

It shows how keenly 20th feels its responsibility to your boxo[illegible] . . . to deliver a [illegible]in, week-out succession of profitable product!

That 20th is not satisfied with this great showing is proven by the attractions 20th will give you during the rest of the season. Some of these pictures are listed on the next page.

the next page.

				No Release		
	24	831	67	**THANK YOU, MR. MOTO**	Peter Lorre, Jayne Regan, Sidney Blackmer, Nedda Harrigan, Pauline Frederick, John Carradine, Thomas Beck	Norman Foster
	31	825	84	**LOVE AND HISSES**	Walter Winchell, Ben Bernie, Simone Simon, Bert Lahr, Joan Davis, Dick Baldwin, Raymond Scott Quintet, Ruth Terry	Sidney Lanfield
Jan.	7	833	60	**CITY GIRL**	Phyllis Brooks, Ricardo Cortez, Robert Wilcox, Esther Muir	Alfred Werker
	7	823	70	**TARZAN'S REVENGE**	Glenn Morris, Eleanor Holm, George Barbier	D. Ross Lederman
	14	829	66	**CHANGE OF HEART**	Gloria Stuart, Michael Whalen, Lyle Talbot, Delmar Watson, Jane Darwell	James Tinling
	14	828	61	***HAWAIIAN BUCKAROO**	Smith Ballew, Evelyn Knapp, George Regas	Ray Taylor
	21	832	71	**CHARLIE CHAN AT MONTE CARLO**	Warner Oland, Keye Luke, Virginia Field, Sidney Blackmer, Robert Kent	Eugene Forde
	28	850	101	**HAPPY LANDING**	Sonja Henie, Don Ameche, Jean Hersholt, Ethel Merman, Cesar Romero, Billy Gilbert, Raymond Scott Quintet, Wally Vernon, Leah Ray	Roy Del Ruth

† Indicates Reissue
* Indicates Outdoor

Movietone News — Twice Weekly 6078

20th CENTURY FOX

Rele[illegible] — JUNE 10th, 1938 —

A GODSEND TO YOUR THEATRE!

This release schedule is the most valuable sheet of paper in your office!

It will keep your theatre open this summer . . . and *prosperous!*

It shows the steady strength of 20th Century-Fox . . . the unfailing supply of *fresh, new* product you will get!

It demonstrates again why exhibitors look to 20th Century-Fox as the No. 1 Company!

Release Date	Prod. No.	Running Time Min.	PRODUCTION	CAST	DIRECTOR
Feb. 4	426	84	INTERNATIONAL SETTLEMENT	Dolores Del Rio, George Sanders, June Lang, Dick Baldwin, Ruth Terry, John Carradine, Keye Luke, Harold Huber	Eugene Forde
11	834	78	CHECKERS	Jane Withers, Stuart Erwin, Una Merkel, Marvin Stephens	H. B. Humberstone
18	835	80	THE BARONESS & THE BUTLER	William Powell, Annabella, Helen Westley, Henry Stephenson, Joseph Schildkraut, J. Edward Bromberg	Walter Lang
18	873	88	†COUNTY CHAIRMAN	Will Rogers, Evelyn Venable, Kent Taylor, Louise Dresser, Stepin Fetchit	John Blystone
25	836	64	THE JONES FAMILY IN LOVE ON A BUDGET	Jed Prouty, Shirley Deane, Spring Byington, Florence Roberts, Ken Howell, George Ernest, June Carlson, Alan Dinehart	Herbert I. Leeds
Mar. 4	827	85	SALLY, IRENE AND MARY	Alice Faye, Fred Allen, Tony Martin, Jimmy Durante, Gregory Ratoff, Joan Davis, Marjorie Weaver, Louise Hovick	William A. Seiter
11	838	69	WALKING DOWN BROADWAY	Claire Trevor, Phyllis Brooks, Leah Ray, Dixie Dunbar, Lynn Bari, Jayne Regan, Michael Whalen, Thomas Beck, Douglas Fowley	Norman Foster
18	837	80	REBECCA OF SUNNYBROOK FARM	Shirley Temple, Randolph Scott, Jack Haley, Gloria Stuart, Phyllis Brooks, Helen Westley, Slim Summerville, Bill Robinson	Allan Dwan
25	841	71	MR. MOTO'S GAMBLE	Peter Lorre, Keye Luke, Dick Baldwin, Lynn Bari, Douglas Fowley, Jayne Regan, Harold Huber, Maxie Rosenbloom	James Tinling
Apr. 1	843	67	ISLAND IN THE SKY	Gloria Stuart, Michael Whalen, Paul Kelly, Robert Kellard, June Storey, Paul Hurst	Herbert I. Leeds
8	842	58	*RAWHIDE	Smith Ballew, Lou Gehrig, Evalyn Knapp	Ray Taylor
15	840	110	IN OLD CHICAGO	Tyrone Power, Alice Faye, Don Ameche, Alice Brady, Andy Devine, Brian Donlevy, Phyllis Brooks, Tom Brown, Sidney Blackmer, Berton Churchill, June Storey	Henry King
22	845	84	BATTLE OF BROADWAY	Victor McLaglen, Brian Donlevy, Louise Hovick, Raymond Walburn, Lynn Bari, Jane Darwell, Robert Kellard	George Marshall
29	848	85	FOUR MEN AND A PRAYER	Loretta Young, Richard Greene, George Sanders, David Niven, C. Aubrey Smith, J. Edward Bromberg, William Henry, John Carradine, Alan Hale, Reginald Denny, Berton Churchill, Barry Fitzgerald	John Ford
May 6	847	63	THE JONES FAMILY IN A TRIP TO PARIS	Jed Prouty, Shirley Deane, Spring Byington, Russell Gleason, Ken Howell, George Ernest, June Carlson, Marvin Stephens, Joan Valerie, Harold Huber	Mal St. Clair
6	874	80	†LIFE BEGINS AT 40	Will Rogers, Rochelle Hudson, Richard Cromwell, George Barbier, Jane Darwell, Slim Summerville	George Marshall
13	844	85	KENTUCKY MOONSHINE	Ritz Brothers, Tony Martin, Marjorie Weaver, Slim Summerville, John Carradine, Wally Vernon, Berton Churchill, Eddie Collins	David Butler
20	849	77	RASCALS	Jane Withers, Rochelle Hudson, Robert Wilcox, Borrah Minevitch and His Gang	H. B. Humberstone
27	846	90	KIDNAPPED	Warner Baxter, Freddie Bartholomew, Arleen Whelan, C. Aubrey Smith, Reginald Owen, John Carradine, Nigel Bruce, Miles Mander, Ralph Forbes, H. B. Warner	Alfred Werker
June 3	839	73	JOSETTE	Don Ameche, Simone Simon, Robert Young, Bert Lahr, Joan Davis, Paul Hurst, William Collier, Sr., Tala Birell	Allan Dwan
10	850	71	ONE WILD NIGHT	June Lang, Dick Baldwin, Lyle Talbot, J. Edward Bromberg, Sidney Toler	Eugene Forde
17	851	75	THREE BLIND MICE	Loretta Young, Joel McCrea, David Niven, Stuart Erwin, Marjorie Weaver, Pauline Moore, Binnie Barnes	William A. Seiter
24	819	63	MR. MOTO TAKES A CHANCE	Peter Lorre, Rochelle Hudson, Robert Kent, J. Edward Bromberg	Norman Foster
July 1	852		ALWAYS GOODBYE	Barbara Stanwyck, Herbert Marshall, Ian Hunter, Cesar Romero, Binnie Barnes, Lynn Bari	Sidney Lanfield

1938 - 1939

FEATURE RELEASES

20th CENTURY FOX

Release Schedule FINAL No. 1

MARCH 2nd, 1939

Release Date	Prod. No.	Running Time Min.	PRODUCTION	CAST	DIRECTOR
Aug. 5	901	74	GATEWAY	Don Ameche, Arleen Whelan, Gregory Ratoff, Binnie Barnes, Gilbert Roland, Raymond Walburn, John Carradine, Maurice Moscovich, Harry Carey, Marjorie Gateson.	Alfred Werker
12	902	77	KEEP SMILING	Jane Withers, Gloria Stuart, Henry Wilcoxon, Helen Westley, Jed Prouty, Douglas Fowley, Robert Allen.	Herbert I. Leeds
19	903	106	ALEXANDER'S RAGTIME BAND	Tyrone Power, Alice Faye, Don Ameche, Ethel Merman, Jack Haley, Jean Hersholt, Helen Westley, John Carradine, Paul Hurst, Wally Vernon, Ruth Terry, Douglas Fowley.	Henry King
26	904	62	SPEED TO BURN	Michael Whalen, Lynn Bari, Marvin Stephens, Henry Armetta, Chick Chandler.	Otto Brower
Sept. 2	905	84	MY LUCKY STAR	Sonja Henie, Richard Greene, Joan Davis, Cesar Romero, Buddy Ebsen, Arthur Treacher, Louise Hovick, George Barbier.	Roy Del Ruth
9	906	58	THE JONES FAMILY IN SAFETY IN NUMBERS	Jed Prouty, Shirley Deane, Spring Byington, Russell Gleason, Ken Howell, George Ernest, June Carlson, Florence Roberts.	Malcolm St. Clair
16	907	80	HOLD THAT CO-ED	John Barrymore, George Murphy, Marjorie Weaver, Joan Davis, Jack Haley, George Barbier, Donald Meek, Johnny Downs	George Marshall
23	908	60	TIME OUT FOR MURDER	Gloria Stuart, Michael Whalen, Chick Chandler, Douglas Fowley, Robert Kellard.	H. B. Humberstone
30	911	68	STRAIGHT, PLACE AND SHOW	Ritz Brothers, Richard Arlen, Ethel Merman, Phyllis Brooks, George Barbier.	David Butler
Oct. 7	910	66	MEET THE GIRLS	June Lang, Lynn Bari, Robert Allen, Ruth Donnelly, Gene Lockhart, Wally Vernon.	Eugene Forde
14	919	85	FIVE OF A KIND	Dionne Quintuplets, Jean Hersholt, Claire Trevor, Cesar Romero, Slim Summerville, Henry Wilcoxon, Inez Courtney, John Qualen, Jane Darwell, Pauline Moore.	Herbert I. Leeds
21	912	63	MYSTERIOUS MR. MOTO	Peter Lorre, Mary Maguire, Henry Wilcoxon, Erik Rhodes, Harold Huber.	Norman Foster
28	913	104	SUEZ	Tyrone Power, Loretta Young, Annabella, J. Edward Bromberg, Joseph Schildkraut, Henry Stephenson, Sidney Blackmer, Sig Rumann, Maurice Moscovich, Nigel Bruce, Miles Mander, George Zucco.	Allan Dwan
Nov. 4	914	69	ALWAYS IN TROUBLE	Jane Withers, Jean Rogers, Arthur Treacher, Robert Kellard, Eddie Collins, Andrew Tombes, Nana Bryant, Joan Woodbury.	Joseph Santley
11	915	71	JUST AROUND THE CORNER	Shirley Temple, Charles Farrell, Joan Davis, Amanda Duff, Bert Lahr, Bill Robinson, Franklin Pangborn, Cora Witherspoon.	Irving Cummings
18	916	64	SHARPSHOOTERS	Brian Donlevy, Lynn Bari, Wally Vernon, John King	James Tinling
25	909	95	SUBMARINE PATROL	Richard Greene, Nancy Kelly, Preston Foster, George Bancroft, Slim Summerville, John Carradine, Joan Valerie, Henry Armetta, Warren Hymer, Douglas Fowley	John Ford
Dec. 2	918	70	ROAD DEMON	Henry Arthur, Joan Valerie, Henry Armetta, Tom Beck, Bill Robinson.	Otto Brower
9	924	77	UP THE RIVER	Tony Martin, Phyllis Brooks, Preston Foster, Arthur Treacher, Alan Dinehart, Slim Summerville, Jane Darwell	Alfred Werker
16	920	61	THE JONES FAMILY IN DOWN ON THE FARM	Jed Prouty, Shirley Deane, Spring Byington, Russell Gleason, Ken Howell, George Ernest, June Carlson, Florence Roberts, Billy Mahan, Dorris Bowdon.	Mal. St. Clair
23	917	73	THANKS FOR EVERYTHING		

No company ever gave exhibitors more consistently successful and brilliantly outstanding attractions than the releases of six months listed on this page!

				Summerville, Jane Darwell	
16	920	61	**THE JONES FAMILY IN DOWN ON THE FARM**	Jed Prouty, Shirley Deane, Spring Byington, Russell Gleason, Ken Howell, George Ernest, June Carlson, Florence Roberts, Billy Mahan, Dorris Bowdon.	Mal. St. Clair
23	917	73	**THANKS FOR EVERYTHING**	Adolphe Menjou, Jack Oakie, Jack Haley, Arleen Whelan, Tony Martin, Binnie Barnes, George Barbier, Warren Hymer.	William A. Seiter
30	923	96	**KENTUCKY** (TECHNICOLOR)	Loretta Young, Richard Greene, Walter Brennan, Douglas Dumbrille, Karen Morley, Moroni Olsen.	David Butler
Jan. 6	922	61	**WHILE NEW YORK SLEEPS**	Michael Whalen, Jean Rogers, Chick Chandler, Robert Kellard, Joan Woodbury.	H. B. Humberstone
6	8010	88	***THE LADY VANISHES**	Margaret Lockwood, Michael Redgrave, Paul Lukas, Dame May Whitty.	Alfred Hitchcock
13	928	68	**CHARLIE CHAN IN HONOLULU**	Sidney Toler, Phyllis Brooks, Sen Yung, Eddie Collins, John King.	H. B. Humberstone
20	926	71	**MR. MOTO'S LAST WARNING**	Peter Lorre, Ricardo Cortez, Virginia Field, John Carradine, George Sanders.	Norman Foster
20	933	83	**SMILING ALONG**	Gracie Fields, Mary Maguire, Roger Livesey, Peter Coke, Jack Donohue, "Skippy."	Monty Banks
27	921	106	**JESSE JAMES** (TECHNICOLOR)	Tyrone Power, Henry Fonda, Nancy Kelly, Randolph Scott, Henry Hull, Slim Summerville, J. Edward Bromberg, Brian Donlevy, John Carradine, Donald Meek, John Russell.	Henry King

*Denotes Gaumont-British Production

Movietone News—Twice Weekly

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1938 - 1939

FEATURE RELEASES

Release Schedule Final No. 2

JULY 24th, 1939

FIRST IN FEATURES!

FIRST IN NEWS!

FIRST IN SHORTS!

Release Date		Prod. No.	Running Time Min.	PRODUCTION	CAST	DIRECTOR
Feb.	3	929	69	THE ARIZONA WILDCAT	Jane Withers, Leo Carrillo, Pauline Moore, William Henry, Henry Wilcoxon	Herbert I. Leeds
	10	925	84	TAIL SPIN	Alice Faye, Constance Bennett, Nancy Kelly, Joan Davis, Charles Farrell, Jane Wyman, Kane Richmond, Wally Vernon, Warren Hymer, Joan Valerie, Edward Norris.	Roy Del Ruth
	17	927	73	THE THREE MUSKETEERS	Don Ameche, Ritz Brothers, Binnie Barnes, Gloria Stuart, Pauline Moore, Joseph Schildkraut, John Carradine, Lionel Atwill.	Allan Dwan
	24	931	68	PARDON OUR NERVE	Lynn Bari, June Gale, Guinn Williams, Michael Whalen, Edward Brophy.	H. B. Humberstone
Mar.	3	930	80	WIFE, HUSBAND AND FRIEND	Loretta Young, Warner Baxter, Binnie Barnes, Cesar Romero, George Barbier, J. Edward Bromberg, Eugene Pallette, Helen Westley.	Gregory Ratoff
	10	934	61	INSIDE STORY	Michael Whalen, Jean Rogers, Chick Chandler, Douglas Fowley, John King, Jane Darwell.	Ricardo Cortez
	17	932	93	THE LITTLE PRINCESS (TECHNICOLOR)	Shirley Temple, Richard Greene, Anita Louise, Ian Hunter, Cesar Romero, Arthur Treacher, Mary Nash, Sybil Jason, Miles Mander.	Walter Lang
	24	935	62	THE JONES FAMILY IN EVERYBODY'S BABY	Jed Prouty, Shirley Deane, Spring Byington, Russell Gleason, Ken Howell, George Ernest, June Carlson, Florence Roberts, Billy Mahan, Reginald Denny.	Mal St. Clair
	31	936	80	THE HOUND OF THE BASKERVILLES	Richard Greene, Basil Rathbone, Wendy Barrie, Nigel Bruce, Lionel Atwill, John Carradine, Barlowe Borland, Beryl Mercer, Morton Lowry, Ralph Forbes.	Sidney Lanfield
Apr.	7	937	70	MR. MOTO IN DANGER ISLAND	Peter Lorre, Jean Hersholt, Amanda Duff, Warren Hymer, Richard Lane, Leon Ames, Douglas Dumbrille.	Herbert I. Leeds
	14	938	97	‡THE STORY OF ALEXANDER GRAHAM BELL	Don Ameche, Loretta Young, Henry Fonda, Charles Coburn, Gene Lockhart, Spring Byington, Sally Blane, Polly Ann Young, Georgiana Young.	Irving Cummings
	21	939	62	WINNER TAKE ALL	Tony Martin, Gloria Stuart, Henry Armetta, Slim Summerville, Kane Richmond.	Otto Brower
	21	945	76	INSPECTOR HORNLEIGH	Gordon Harker, Alastair Sim, Hugh Williams, Steve Geray, Miki Hood.	Eugene Forde
	28	940	71	THE RETURN OF THE CISCO KID	Warner Baxter, Lynn Bari, Cesar Romero, Henry Hull, Kane Richmond, C. Henry Gordon, Robert Barrat.	Herbert I. Leeds
	28	8012	71	*CLIMBING HIGH	Jessie Matthews, Michael Redgrave, Noel Madison, Alastair Sim, Margaret Vyner.	Carol Reed
May	5	941	60	CHASING DANGER	Preston Foster, Lynn Bari, Wally Vernon, Henry Wilcoxon, Joan Woodbury, Harold Huber.	Ricardo Cortez
	12	942	86	ROSE OF WASHINGTON SQUARE	Tyrone Power, Alice Faye, Al Jolson, William Frawley, Joyce Compton, Hobart Cavanaugh, Louis Prima and Orchestra.	Gregory Ratoff
	19	943	72	BOY FRIEND	Jane Withers, Arleen Whelan, Richard Bond, Douglas Fowley, Warren Hymer, George Ernest, Robert Kellard, Minor Watson.	James Tinling
	26	944	66	THE GORILLA	Ritz Brothers, Anita Louise, Patsy Kelly, Lionel Atwill, Bela Lugosi, Joseph Calleia, Edward Norris, Wally Vernon.	Allan Dwan
June	2	946	60	THE JONES FAMILY IN HOLLYWOOD	Jed Prouty, Spring Byington, Ken Howell, George Ernest, June Carlson, Florence Roberts	Mal St. Clair
	9	947	101	‡YOUNG MR. LINCOLN	Henry Fonda, Alice Brady, Marjorie Weaver, Arleen Whelan, Eddie Collins, Pauline Moore, Richard Cromwell, Donald Meek, Dorris Bowdon, Eddie Quillan	John Ford

					Doris Bowdon, Eddie Quillan	
	16	948	71	**CHARLIE CHAN IN RENO**	Sidney Toler, Ricardo Cortez, Phyllis Brooks, Slim Summerville, Kane Richmond, Sen Yung, Pauline Moore, Eddie Collins	Norman Foster
	25	954	78	**SUSANNAH OF THE MOUNTIES**	Shirley Temple, Randolph Scott, Margaret Lockwood, Martin Good Rider, J. Farrell MacDonald, Maurice Moscovich, Moroni Olsen, Victor Jory, Lester Matthews.	William A. Seiter
	30	950	72	**IT COULD HAPPEN TO YOU**	Stuart Erwin, Gloria Stuart, Raymond Walburn, Douglas Fowley, June Gale	Alfred Werker
July	7	952	65	**MR. MOTO TAKES A VACATION**	Peter Lorre, Joseph Schildkraut, Lionel Atwill, Virginia Field, John King, Iva Stewart	Norman Foster
	14	949	87	**SECOND FIDDLE**	Sonja Henie, Tyrone Power, Rudy Vallee, Edna May Oliver, Mary Healy, Lyle Talbot, Alan Dinehart	Sidney Lanfield
	21	953	72	**NEWS IS MADE AT NIGHT**	Preston Foster, Lynn Bari, Russell Gleason, George Barbier, Eddie Collins.	Alfred Werker
	21	8014	72	***THE WARE CASE**	Clive Brook, Jane Baxter, Barry K. Barnes	Robert Stevenson
	28	951	71	**FRONTIER MARSHAL**	Randolph Scott, Nancy Kelly, Cesar Romero, Binnie Barnes, John Carradine, Eddie Foy, Jr.	Allan Dwan

‡ (20th Century-Fox Cosmopolitan Prod.)
* (Gaumont-British Prod.)

Movietone News – Twice Weekly

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Printed in U. S. A.

3870

1939-1940 FEATURE RELEASES

RELEASE SCHEDULE
Final No. 1

APRIL 5, 1940

20TH CENTURY-FOX HAS MORE STARS IN THE "FIRST TEN" THAN ANY OTHER COMPANY...

and

Release Date	Prod. No.	Running Time Min.	PRODUCTION	CAST	DIRECTOR
Aug. 4	001	83	‡ELSA MAXWELL'S HOTEL FOR WOMEN	Ann Sothern, Linda Darnell, James Ellison, Jean Rogers, Lynn Bari, June Gale, Joyce Compton, Elsa Maxwell, John Halliday, Katharine Aldridge, Alan Dinehart.	Gregory Ratoff
11	002	64	CHICKEN WAGON FAMILY	Jane Withers, Leo Carillo, Marjorie Weaver, Spring Byington, Kane Richmond.	Herbert I. Leeds
18	003	101	STANLEY AND LIVINGSTONE	Spencer Tracy, Nancy Kelly, Richard Greene, Walter Brennan, Charles Coburn, Sir Cedric Hardwicke, Henry Hull, Henry Travers.	Henry King
25	004	61	THE JONES FAMILY IN QUICK MILLIONS	Jed Prouty, Spring Byington, Ken Howell, George Ernest, Florence Roberts, Billy Mahan, Eddie Collins, Robert Shaw.	Mal St. Clair
Sept. 1	005	82	THE ADVENTURES OF SHERLOCK HOLMES	Basil Rathbone, Nigel Bruce, Ida Lupino, Alan Marshall, Terry Kilburn, George Zucco, Henry Stephenson, E. E. Clive.	Alfred Werker
8	006	74	CHARLIE CHAN AT TREASURE ISLAND	Sidney Toler, Cesar Romero, Pauline Moore, Sen Yung, Douglas Fowley, June Gale, Douglas Dumbrille, Sally Blane.	Norman Foster
15	011	103	THE RAINS CAME	Myrna Loy, Tyrone Power, George Brent, Brenda Joyce, Nigel Bruce, Maria Ouspenskaya, Joseph Schildkraut, Mary Nash, Jane Darwell, Marjorie Rambeau, Henry Travers.	Clarence Brown
22	008	57	STOP, LOOK AND LOVE	Jean Rogers, William Frawley, Robert Kellard, Eddie Collins, Minna Gombell.	Otto Brower
29	009	83	HERE I AM A STRANGER	Richard Greene, Richard Dix, Brenda Joyce, Roland Young, Gladys George, Katharine Aldridge, Russell Gleason, Edward Norris	Roy Del Ruth
Oct. 6	010	58	THE ESCAPE	Kane Richmond, Amanda Duff, June Gale, Edward Norris, Henry Armetta.	Ricardo Cortez
13	007	96	HOLLYWOOD CAVALCADE (TECHNICOLOR)	Alice Faye, Don Ameche, J. Edward Bromberg, Alan Curtis, Stuart Erwin, Jed Prouty, Buster Keaton, Donald Meek, George Givot, Eddie Collins.	Irving Cummings
13	061	101	*THE ROAD TO GLORY	Frederic March, Warner Baxter, Lionel Barrymore, June Lang, Gregory Ratoff.	Howard Hawks
20	014	75	PACK UP YOUR TROUBLES	Jane Withers, Ritz Brothers, Lynn Bari, Joseph Schildkraut, Stanley Fields, Fritz Leiber.	H. B. Humberstone
20	018	79	SHIPYARD SALLY	Gracie Fields, Sidney Howard.	Monty Banks
27	013	84	‡20,000 MEN A YEAR	Randolph Scott, Preston Foster, Margaret Lindsay, Mary Healy, Robert Shaw, George Ernest, Kane Richmond, Maxie Rosenbloom	Alfred E. Green
27	062	78	*THE FIRST WORLD WAR	Edited by Laurence Stallings Produced by Truman Talley	
Nov. 3	019	62	HEAVEN WITH A BARBED WIRE FENCE	Jean Rogers, Raymond Walburn, Marjorie Rambeau, Glenn Ford, Nicholas Conte.	Ricardo Cortez
10	015	103	DRUMS ALONG THE MOHAWK (TECHNICOLOR)	Claudette Colbert, Henry Fonda, Edna May Oliver, Eddie Collins, John Carradine, Dorris Bowdon, Jessie Ralph, Arthur Shields, Robert Lowery, Roger Imhof.	John Ford
17	016	65	THE JONES FAMILY IN TOO BUSY TO WORK	Jed Prouty, Spring Byington, Ken Howell, George Ernest, June Carlson, Florence Roberts, Billy Mahan, Joan Davis.	Otto Brower

July	1	852		ALWAYS GOODBYE	Barbara Stanwyck, Herbert Marshall, Ian Hunter, Cesar Romero, Binnie Barnes, Lynn Bari	Sidney Lanfield
	8	857	78	WE'RE GOING TO BE RICH	Gracie Fields, Victor McLaglen, Brian Donlevy, Coral Browne	Monty Banks
	8	853		*PANAMINT'S BAD MAN	Smith Ballew, Noah Beery, Evelyn Daw	Ray Taylor
	15	854		PASSPORT HUSBAND	Stuart Erwin, Pauline Moore, Douglas Fowley, Joan Woodbury	James Tinling
	22	855		I'LL GIVE A MILLION	Warner Baxter, Marjorie Weaver, Peter Lorre, Jean Hersholt, John Carradine, J. Edward Bromberg	Walter Lang
	29	856		LITTLE MISS BROADWAY	Shirley Temple, George Murphy, Jimmy Durante, Phyllis Brooks, Edna Mae Oliver, George Barbier	Irving Cummings

† Indicates Reissue.
* Indicates Outdoor

1939 - 1940

20th CENTURY FOX

FEATURE RELEASES

RELEASE SCHEDULE
Final No. 2

MAY 24, 1940

Release Date	Prod. No.	Running Time Min.	PRODUCTION	CAST	DIRECTOR
Feb. 2	030	72	THE MAN WHO WOULDN'T TALK	Lloyd Nolan, Jean Rogers, Richard Clarke, Onslow Stevens, Eric Blore.	David Burton
9	031	100	LITTLE OLD NEW YORK	Alice Faye, Fred MacMurray, Richard Greene, Brenda Joyce, Andy Devine, Henry Stephenson, Fritz Feld.	Henry King
16	032	59	THE JONES FAMILY IN YOUNG AS YOU FEEL	Jed Prouty, Spring Byington, Joan Valerie, Russell Gleason, Ken Howell, George Ernest, June Carlson, Florence Roberts, Billy Mahan, Helen Ericson, George Givot.	Mal St. Clair
23	033	73	THEY CAME BY NIGHT	Will Fyffe, Phyllis Calvert, Anthony Hulme.	Harry Lachman
Mar. 1	035	67	CHARLIE CHAN IN PANAMA	Sidney Toler, Jean Rogers, Lionel Atwill, Mary Nash, Sen Yung, Kane Richmond, Chris-Pin Martin, Lionel Royce, Helen Ericson, Jack La Rue.	Norman Foster
8			No Release	No Release	
15	040	128	THE GRAPES OF WRATH	Henry Fonda, Jane Darwell, John Carradine, Charley Grapewin, Dorris Bowdon, Russell Simpson, O. Z. Whitehead, John Qualen, Eddie Quillan, Zeffie Tilbury.	John Ford
22	025	83	THE BLUE BIRD (TECHNICOLOR)	Shirley Temple, Spring Byington, Nigel Bruce, Gale Sondergaard, Eddie Collins, Sybil Jason, Jessie Ralph, Helen Ericson, Johnny Russell, Laura Hope Crews, Russell Hicks, Cecilia Loftus, Al Shean, Gene Reynolds.	Walter Lang
29	037	67	FREE, BLONDE AND 21	Lynn Bari, Joan Davis, Henry Wilcoxon, Elyse Knox, Mary Beth Hughes, Joan Valerie, Robert Lowery.	Ricardo Cortez
Apr. 5	036	85	STAR DUST	Linda Darnell, John Payne, Roland Young, Charlotte Greenwood, William Gargan, Mary Beth Hughes, Mary Healy, Elyse Knox, Donald Meek.	Walter Lang
12	039	70	VIVA CISCO KID	Cesar Romero, Jean Rogers, Chris-Pin Martin, Stanley Fields.	Norman Foster
19	042	94	JOHNNY APOLLO	Tyrone Power, Dorothy Lamour, Edward Arnold, Lloyd Nolan, Charley Grapewin, Lionel Atwill.	Henry Hathaway
26	041	65	SHOOTING HIGH	Jane Withers, Gene Autry, Marjorie Weaver, Frank M. Thomas, Robert Lowery, Katharine Aldridge.	Alfred E. Green
May 3	043	84	SO THIS IS LONDON	George Sanders, Berton Churchill, Robertson Hare, Alfred Drayton, Fay Compton.	Thornton Freeland
10	038	81	I WAS AN ADVENTURESS	Zorina, Richard Greene, Erich Von Stroheim, Peter Lorre, Sig Rumann, Fritz Feld.	Gregory Ratoff
17	044	63	THE JONES FAMILY IN ON THEIR OWN	Spring Byington, Ken Howell, George Ernest, June Carlson, Florence Roberts, Billy Mahan, Marguerite Chapman, John Qualen, Chick Chandler.	Otto Brower
24	045	127	LILLIAN RUSSELL	Alice Faye, Don Ameche, Henry Fonda, Edward Arnold, Warren William, Leo Carrillo, Helen Westley, Dorothy Peterson, Ernest Truex, Nigel Bruce, Weber & Fields, Eddie Foy, Jr.	Irving Cummings
31	051	56	GIRL IN 313	Florence Rice, Kent Taylor, Joan Valerie, Lionel Atwill, Elyse Knox.	Ricardo Cortez
June 7	034	67	EARTHBOUND	Warner Baxter, Andrea Leeds, Lynn Bari, Charley Grapewin, Henry Wilcoxon, Elizabeth Patterson.	Irving Pichel
14	047		FOUR SONS	Don Ameche, Mary Beth Hughes, Alan Curtis, Eugenie Leontovich, Sig Rumann.	Archie Mayo
21	048	75	CHARLIE CHAN'S MURDER CRUISE	Sidney Toler, Marjorie Weaver, Lionel Atwill, Sen Yung.	Eugene Forde

Coming!

MARYLAND'

in

Technicolor!

GREATER

THAN

'KENTUCKY'!

40 1941 FEATURE RELEASES

RELEASE SCHEDULE
FINAL No. 1

DEC. 12, 1940

Release Date	Prod. No.	Running Time Min.	PRODUCTION	CAST	DIRECTOR
Aug. 2	101	77	THE MAN I MARRIED	Joan Bennett, Francis Lederer, Lloyd Nolan, Anna Sten, Otto Kruger, Maria Ouspenskaya, Ludwig Stossel, Johnny Russell.	Irving Pichel
9	104	73	GIRL FROM AVENUE A	Jane Withers, Kent Taylor, Katharine Aldridge, Elyse Knox, Laura Hope Crews, Jessie Ralph, Harry Shannon, Vaughan Glaser, Rand Brooks.	Otto Brower
16	103	92	THE RETURN OF FRANK JAMES (TECHNICOLOR)	Henry Fonda, Gene Tierney, Jackie Cooper, Henry Hull, John Carradine, J. Edward Bromberg, Donald Meek, Eddie Collins, George Barbier.	Fritz Lang
23	106	66	PIER 13	Lynn Bari, Lloyd Nolan, Joan Valerie, Douglas Fowley.	Eugene Forde
30	109	79	YOUNG PEOPLE	Shirley Temple, Jack Oakie, Charlotte Greenwood, Arleen Whelan, George Montgomery, Kathleen Howard.	Allan Dwan
Sept. 6	110	60	CHARLIE CHAN AT THE WAX MUSEUM	Sidney Toler, Sen Yung, C. Henry Gordon, Marc Lawrence, Joan Valerie, Marguerite Chapman, Ted Osborn.	Lynn Shores
13	105	80	*Elsa Maxwell's* PUBLIC DEB #1	George Murphy, Brenda Joyce, Elsa Maxwell, Mischa Auer, Charlie Ruggles, Ralph Bellamy, Maxie Rosenbloom, Berton Churchill, Franklin Pangborn.	Gregory Ratoff
20	116	65	YESTERDAY'S HEROES	Robert Sterling, Jean Rogers, Katharine Aldridge, Russell Gleason, Emma Dunn, George Irving, Ted North.	Herbert I. Leeds
27	107	113	BRIGHAM YOUNG —FRONTIERSMAN	Tyrone Power, Linda Darnell, Dean Jagger, Brian Donlevy, Jane Darwell, John Carradine, Mary Astor, Vincent Price, Jean Rogers, Ann Todd.	Henry Hathaway
Oct. 4	108	57	THE GAY CABALLERO	Cesar Romero, Chris-Pin Martin, Robert Sterling, Sheila Ryan, Janet Beecher.	Otto Brower
11	115	88	DOWN ARGENTINE WAY (TECHNICOLOR)	Don Ameche, Betty Grable, Carmen Miranda, Charlotte Greenwood, J. Carrol Naish, Leonid Kinskey, Chris-Pin Martin, Henry Stephenson.	Irving Cummings
18	114	93	NIGHT TRAIN	Margaret Lockwood, Rex Harrison, Paul Von Hernreid.	Carol Reed
25	111	71	THE GREAT PROFILE	John Barrymore, Mary Beth Hughes, Gregory Ratoff, John Payne, Anne Baxter, Lionel Atwill.	Walter Lang
Nov. 1			No Release		
8	117	93	THE MARK OF ZORRO	Tyrone Power, Linda Darnell, Basil Rathbone, Gale Sondergaard, Donald Meek, Montagu Love, J. Edward Bromberg, Chris-Pin Martin, Eugene Pallette.	Rouben Mamoulian
15	102	70	STREET OF MEMORIES	Lynne Roberts, Guy Kibbee, John McGuire, Ed Gargan, Hobart Cavanaugh, Jerome Cowan.	Shepard Traube
22	119	66	YOUTH WILL BE SERVED	Jane Withers, Jane Darwell, Robert Conway, Elyse Knox, Joe Brown, Jr. John Qualen, Charles Holland.	Otto Brower
29	120	94	TIN PAN ALLEY	Alice Faye, Betty Grable, Jack Oakie, John Payne, Ben Carter, Esther Ralston, Allen Jenkins, Nicholas Bros.	Walter Lang
Dec. 6	118	70	CHARTER PILOT	Lloyd Nolan, Lynn Bari, Arleen Whelan, George Montgomery.	Eugene Forde
13	121	65	MURDER OVER NEW YORK	Sidney Toler, Marjorie Weaver, Robert Lowery, Ricardo Cortez, Joan Valerie, Kane Richmond, Sen Yung, Melville Cooper.	Harry Lachman
20	122	77	JENNIE	Virginia Gilmore, William Henry, George Montgomery, Ludwig Stossel, Dorris Bowdon, Joan Valerie.	David Burton
[illegible]	[illegible]	[illegible]	[illegible]	Henry Fonda, Dorothy Lamour, Linda Darnell [illegible]	[illegible]

1941
WILL BE
REMEMBERED
AS THE
YEAR
"TOBACCO
ROAD"
CAME
TO THE
SCREEN

1940-1941 20th Century Fox FEATURE RELEASES

RELEASE SCHEDULE
Final No. 2

JULY 15, 1941

20th's Profit-Climax To The Old Season

Release Date	Prod. No.	Running Time Min.	PRODUCTION	CAST	DIRECTOR
Feb. 7	129	59	**RIDE, KELLY, RIDE**	Eugene Pallette, Marvin Stephens, Rita Quigley, Mary Healy.	Norman Foster
14	130	67	**GOLDEN HOOFS**	Jane Withers, Charles (Buddy) Rogers, Katharine Aldridge, George Irving, Buddy Pepper.	Lynn Shores
21	126	95	**WESTERN UNION** (TECHNICOLOR)	Robert Young, Randolph Scott, Dean Jagger, Virginia Gilmore, John Carradine, Slim Summerville, Chill Wills, Barton MacLane.	Fritz Lang
28	132	67	**MURDER AMONG FRIENDS**	Marjorie Weaver, John Hubbard, Cobina Wright, Jr., Mona Barrie, Douglas Dumbrille, Sidney Blackmer.	Ray McCarey
Mar. 7	133	84	**TOBACCO ROAD**	Charley Grapewin, Marjorie Rambeau, Gene Tierney, William Tracey, Elizabeth Patterson, Dana Andrews, Slim Summerville, Ward Bond, Grant Mitchell.	John Ford
14	134	74	**SLEEPERS WEST**	Lloyd Nolan, Lynn Bari, Mary Beth Hughes, Edward Brophy, Ben Carter.	Eugene Forde
21			**No Release**		
28	136	60	**DEAD MEN TELL**	Sidney Toler, Katharine Aldridge, Sen Yung, Sheila Ryan, Robert Weldon.	Harry Lachman
Apr. 4	131	67	**SCOTLAND YARD**	Nancy Kelly, Edmund Gwenn, John Loder, Henry Wilcoxon, Melville Cooper.	Norman Foster
11	137	90	**THAT NIGHT IN RIO** (TECHNICOLOR)	Alice Faye, Don Ameche, Carmen Miranda, S. Z. Sakall, J. Carroll Naish, Curt Bois, Leonid Kinskey.	Irving Cummings
18	138	64	**RIDE ON VAQUERO**	Cesar Romero, Chris-Pin Martin, Mary Beth Hughes, Lynne Roberts.	Herbert I. Leeds
25	139	87	**MAIL TRAIN**	Gordon Harker, Alastair Sim, Phyllis Calvert, Edward Chapman.	Walter Forde
May 2			**No Release**		

"it is recognized that the company having the most stars among the First Ten has the product with the most power at the boxoffice!"

▼

					Roberts, Billy [illegible] Joan Davis.	
	24	020	72	**DAY-TIME WIFE**	Tyrone Power, Linda Darnell, Warren William, Binnie Barnes, Wendy Barrie, Joan Davis.	Gregory Ratoff
Dec.	1	021	74	**CHARLIE CHAN IN CITY IN DARKNESS**	Sidney Toler, Lynn Bari, Richard Clarke, Harold Huber, Pedro De Cordoba, Dorothy Tree, C. Henry Gordon, Douglas Dumbrille, Noel Madison.	Herbert I. Leeds
	1	022	74	**INSPECTOR HORNLEIGH ON HOLIDAY**	Gordon Harker, Alastair Sim, Linden Travers, Wally Patch.	Walter Forde §
	8	026	71	**BARRICADE**	Alice Faye, Warner Baxter, Charles Winninger, Arthur Treacher, Keye Luke, Willie Fung	Gregory Ratoff
	15	024	70	**THE HONEYMOON'S OVER**	Stuart Erwin, Marjorie Weaver, Pat Knowles, June Gale.	Eugene Forde
	22	029	77	**EVERYTHING HAPPENS AT NIGHT**	Sonja Henie, Ray Milland, Robert Cummings, Maurice Moscovich, Leonid Kinskey, Alan Dinehart, Fritz Feld.	Irving Cummings
	29	012	73	**THE CISCO KID AND THE LADY**	Cesar Romero, Marjorie Weaver, Chris-Pin Martin, George Montgomery, Virginia Field, Harry Green.	Herbert I. Leeds
Jan.	5	017	86	**SWANEE RIVER** (TECHNICOLOR)	Don Ameche, Andrea Leeds, Al Jolson, Felix Bressart, Chick Chandler, Russell Hicks, George Reed, Hall Johnson Choir.	Sidney Lanfield
	12	027	57	**CITY OF CHANCE**	Lynn Bari, C. Aubrey Smith, Donald Woods, Amanda Duff.	Ricardo Cortez
	19	023	83	**HE MARRIED HIS WIFE**	Joel McCrea, Nancy Kelly, Roland Young, Mary Boland, Cesar Romero, Mary Healy, Lyle Talbot.	Roy Del Ruth
	26	028	74	**HIGH SCHOOL**	Jane Withers, Joe Brown, Jr., Lloyd Corrigan, Claire Du Brey, Lynne Roberts, Paul Harvey, Cliff Edwards.	George Nicholls, Jr.

§ (20th Century-Fox Cosmopolitan Prod.)
* (Re-issue)

Movietone News — Twice Weekly

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21	048	75	**CHARLIE CHAN'S MURDER CRUISE**	Sidney Toler, Marjorie Weaver, Lionel Atwill, Sen Yung.	Eugene Forde
28	049		**LUCKY CISCO KID**	Cesar Romero, Mary Beth Hughes, Evelyn Venable, Dana Andrews, Chris-Pin Martin.	H. B. Humberstone
July 5	052		**SAILOR'S LADY**	Nancy Kelly, Jon Hall, Joan Davis, Larry Crabbe, Wally Vernon, Mary Nash.	Allan Dwan
12	046	71	**MANHATTAN HEARTBEAT**	Robert Sterling, Virginia Gilmore, Joan Davis, Edmund MacDonald, Don Beddoe	David Burton
19	050		**MARYLAND** (TECHNICOLOR)	Walter Brennan, Fay Bainter, Brenda Joyce, John Payne, Charlie Ruggles, Hattie McDaniel, Marjorie Weaver.	Henry King
26			**No Release**	No Release.	

6083

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	27	123	88	**CHAD HANNA** **(TECHNICOLOR)**	Henry Fonda, Dorothy Lamour, Linda Darnell, Guy Kibbee, Jane Darwell, John Carradine, Ted North, Roscoe Ates, Ben Carter.	Henry King
Jan.	3	115	94	**HUDSON'S BAY**	Paul Muni, Virginia Field, Gene Tierney, Laird Cregar, Nigel Bruce.	Irving Pichel
	10	124	77	**MICHAEL SHAYNE, PRIVATE DETECTIVE**	Lloyd Nolan, Marjorie Weaver, Joan Valerie, Walter Abel.	Eugene Forde
	17	125	73	**ROMANCE OF THE RIO GRANDE**	Cesar Romero, Patricia Morison, Lynne Roberts, Ricardo Cortez, Chris-Pin Martin.	Herbert I. Leeds
	24	128		**TALL, DARK AND HANDSOME**	Cesar Romero, Virginia Gilmore, Milton Berle, Charlotte Greenwood.	H. B. Humberstone
	31	127	77	**GIRL IN THE NEWS**	Margaret Lockwood, Emlyn Williams, Barry K. Barnes.	Carol Reed

Sets The

Profit-Pace

For The New!

May	2			No Release		
	9	140	91	THE GREAT AMERICAN BROADCAST	Alice Faye, Jack Oakie, John Payne, Cesar Romero, Nicholas Brothers, Four Ink Spots.	Archie Mayo
	16	141	68	THE COWBOY AND THE BLONDE	Mary Beth Hughes, George Montgomery, Alan Mowbray, John Miljan.	Ray McCarey
	23	142	80	THE GREAT COMMANDMENT	John Beal, Maurice Moscovich, Albert Dekker, Marjorie Cooley.	Irving Pichel
	30	143	125	BLOOD AND SAND (TECHNICOLOR)	Tyrone Power, Linda Darnell, Rita Hayworth, Nazimova, Anthony Quinn, J. Carrol Naish, John Carradine, Lynn Bari, Laird Cregar.	Rouben Mamoulian
June	6	144	62	FOR BEAUTY'S SAKE	Ned Sparks, Marjorie Weaver, Ted North, Joan Davis.	Shepard Traube
	13	112	55	THE BRIDE WORE CRUTCHES	Lynne Roberts, Ted North, Edgar Kennedy, Robert Armstrong, Lionel Stander.	Shepard Traube
	20	146	102	MAN HUNT	Walter Pidgeon, Joan Bennett, George Sanders, John Carradine.	Fritz Lang
	27	145	79	A VERY YOUNG LADY	Jane Withers, Nancy Kelly, John Sutton, Janet Beecher.	Harold Shuster
July	4	147	91	MOON OVER MIAMI (TECHNICOLOR)	Don Ameche, Betty Grable, Robert Cummings, Charlotte Greenwood, Jack Haley, Carole Landis.	Walter Lang
	11	148	61	ACCENT ON LOVE	George Montgomery, Osa Massen, J. Carrol Naish, Cobina Wright, Jr., Stanley Clements.	Ray McCarey
	18	149	73	DANCE HALL	Cesar Romero, Carole Landis, William Henry, Jane Storey, J. Edward Bromberg.	Irving Pichel
	25	[redacted]	[redacted]	NO RELEASE	[redacted]	

[redacted]

3874

6085

1941-1942 FEATURE RELEASES

RELEASE SCHEDULE

FEB. 18, 1942

FINAL No. 1

20th

Goes On

To

Triumphs

Even

Release Date	Prod. No.	Running Time Min.	PRODUCTION	CAST	DIRECTOR
Aug. 1	201	82	CHARLEY'S AUNT	Jack Benny, Kay Francis, James Ellison, Anne Baxter, Edmund Gwenn, Reginald Owen, Laird Cregar.	Archie Mayo
8	202	74	DRESSED TO KILL	Lloyd Nolan, Mary Beth Hughes, Sheila Ryan, William Demarest, Ben Carter	Eugene Forde
16	203	78	WILD GEESE CALLING	Henry Fonda, Joan Bennett, Warren William, Ona Munson, Barton MacLane.	John Brahm
22	204	61	PRIVATE NURSE	Jane Darwell, Brenda Joyce, Sheldon Leonard, Robert Lowery, Ann Todd, Kay Linaker.	David Burton
29	205	86	SUN VALLEY SERENADE	Sonja Henie, John Payne, Milton Berle, Glenn Miller and Orchestra, Joan Davis, Lynn Bari, Nicholas Brothers.	H. Bruce Humberstone
Sept. 5	206	62	CHARLIE CHAN IN RIO	Sidney Toler, Mary Beth Hughes, Cobina Wright, Jr., Ted North, Victor Jory, Harold Huber, Sen Yung.	Harry Lachman
12	207	87	BELLE STARR (TECHNICOLOR)	Randolph Scott, Gene Tierney, Dana Andrews, John Shepperd, Elizabeth Patterson, Chill Wills, Louise Beavers.	Irving Cummings
19	208	64	WE GO FAST	Lynn Bari, Alan Curtis, Sheila Ryan, Don Deforest	William McGann
26	209	57	LAST OF THE DUANES	George Montgomery, Lynne Roberts, Eve Arden	James Tinling
26	210	69	MAN AT LARGE	Marjorie Weaver, George Reeves, Richard Derr, Steve Geray	Eugene Forde
Oct. 3	211	97	A YANK IN THE R.A.F.	Tyrone Power, Betty Grable, John Sutton, Reginald Gardiner, Gladys Cooper.	Henry King
10	212	73	GREAT GUNS	Stan Laurel, Oliver Hardy, Sheila Ryan, Dick Nelson, Edmund MacDonald	Monty Banks
10	213	56	RIDERS OF THE PURPLE SAGE	George Montgomery, Mary Howard, Robert Barrat, Lynne Roberts, Kane Richmond	James Tinling
17	214	80	WEEK-END IN HAVANA (TECHNICOLOR)	Alice Faye, John Payne, Carmen Miranda, Cesar Romero, Cobina Wright, Jr., George Barbier, Leonid Kinskey, Sheldon Leonard, Chris-Pin Martin	Walter Lang
24	215	68	MOON OVER HER SHOULDER	Lynn Bari, John Sutton, Dan Dailey, Jr., Alan Mowbray	Alfred Werker
31			NO RELEASE	NO RELEASE	
Nov. 7	217	72	SMALL TOWN DEB	Jane Withers, Jane Darwell, Bruce Edwards, Cobina Wright, Jr.	Harold Schuster
14	216	82	I WAKE UP SCREAMING (HOT SPOT)	Betty Grable, Victor Mature, Carole Landis, Laird Cregar, William Gargan, Alan Mowbray	H. Bruce Humberstone
21	219	92	RISE AND SHINE	Jack Oakie, George Murphy, Linda Darnell, Walter Brennan, Milton Berle, Sheldon Leonard, Donald Meek	Allan Dwan
28	220	69	CADET GIRL	Carole Landis, George Montgomery, John Shepperd, William Tracy	Ray McCarey

1941-1942 FEATURE RELEASES

RELEASE SCHEDULE

JUNE 24, 1942

Final No. 2

Release Date	Prod. No.	Running Time Min.	PRODUCTION	CAST	DIRECTOR
Feb. 6	231	73	YOUNG AMERICA	Jane Withers, Jane Darwell, William Tracy, Lynne Roberts.	Louis King
13	232	70	ON THE SUNNY SIDE	Roddy McDowall, Jane Darwell, Stanley Clements, Katharine Alexander, Don Douglas, Freddie Mercer, Ann Todd, Jill Esmond.	Harold Schuster
20	233	74	ROXIE HART	Ginger Rogers, Adolphe Menjou, George Montgomery, Lynne Overman, Nigel Bruce, Phil Silvers, Sara Allgood, William Frawley, Spring Byington, Ted North, Helene Reynolds.	William Wellman
27	234	62	CASTLE IN THE DESERT	Sidney Toler, Arleen Whelan, Richard Derr, Douglas Dumbrille, Henry Daniell, Edmund MacDonald, Sen Yung.	Harry Lachman
Mar. 6	235	67	THE NIGHT BEFORE THE DIVORCE	Lynn Bari, Mary Beth Hughes, Joseph Allen, Jr., Nils Asther, Truman Bradley.	Robert Siodmak
13	236	75	SONG OF THE ISLANDS (TECHNICOLOR)	Betty Grable, Victor Mature, Jack Oakie, Thomas Mitchell, George Barbier, Billy Gilbert, Hilo Hattie, Harry Owens and His Royal Hawaiians.	Walter Lang
20	237	86	RINGS ON HER FINGERS	Henry Fonda, Gene Tierney, Laird Cregar, John Sheppard, Spring Byington	Rouben Mamoulian
20	225	55	LONE STAR RANGER	John Kimbrough, Sheila Ryan, Jonathan Hale, William Farnum, Truman Bradley	James Tinling
27	238	87	H. G. Wells'—KIPPS	Michael Redgrave, Diana Wynyard, Phyllis Calvert, Arthur Riscoe	Carol Reed
27	239	53	SUNDOWN JIM	John Kimbrough, Virginia Gilmore, Arleen Whelan, Joseph Sawyer	James Tinling
Apr. 3	240	72	SECRET AGENT OF JAPAN	Preston Foster, Lynn Bari, Noel Madison, Sen Yung, Janis Carter	Irving Pichel
10	241	86	TO THE SHORES OF TRIPOLI (TECHNICOLOR)	John Payne, Maureen O'Hara, Randolph Scott, Nancy Kelly, William Tracy, Maxie Rosenbloom, Henry Morgan	Bruce Humberstone
17	212	57	WHO IS HOPE SCHUYLER?	Joseph Allen, Jr., Mary Howard, Sheila Ryan, Ricardo Cortez	Thomas Z. Loring
24			NO RELEASE	NO RELEASE	

Triumph

After

Triumph!

20TH

CENTURY-

FOX
Is The
Center
Of
Attractions!

May 1	243	65	**THE MAN WHO WOULDN'T DIE**	Lloyd Nolan, Marjorie Weaver, Helene Reynolds, Henry Wilcoxon.	Herbert I. Leeds
8	244	103	**MY GAL SAL** (TECHNICOLOR)	Rita Hayworth, Victor Mature, John Sutton, Carole Landis, James Gleason, Phil Silvers.	Irving Cummings
15	245	65	**THE MAD MARTINDALES**	Jane Withers, Marjorie Weaver, Alan Mowbray, Jimmy Lydon.	Alfred Werker
22	246	75	**WHISPERING GHOSTS**	Milton Berle, Brenda Joyce, John Shelton, John Carradine.	Alfred Werker
29	247	94	**MOONTIDE**	Jean Gabin, Ida Lupino, Claude Rains, Jerome Cowan, Thomas Mitchell, Helene Reynolds.	Archie Mayo
June 5	248	80	**IT HAPPENED IN FLATBUSH**	Lloyd Nolan, Carole Landis, Sara Allgood, Robert Armstrong.	Ray McCarey
12	249	82	**THE MAGNIFICENT DOPE**	Henry Fonda, Don Ameche, Lynn Bari, Edward Everett Horton.	Walter Lang
19	250	64	**THRU DIFFERENT EYES**	Mary Howard, Vivian Blaine, Donald Woods, George Holmes, Jerome Cowan, Frank Craven.	Thomas Z. Loring
26	251	102	**TEN GENTLEMEN FROM WEST POINT**	George Montgomery, Maureen O'Hara, John Sutton, Laird Cregar, John Shepperd, Sara Allgood, Victor Francen.	Henry Hathaway
July 3	252	66	**POSTMAN DIDN'T RING**	Richard Travis, Brenda Joyce, Emma Dunn.	Harold Schuster
10	254	70	**UNITED WE STAND**		
17			**NO RELEASE**	NO RELEASE	
24	253	110	**THIS ABOVE ALL**	Tyrone Power, Joan Fontaine, Thomas Mitchell, Phillip Merivale, Gladys Cooper.	Anatole Litvak
31			**NO RELEASE**	NO RELEASE	

20th CENTURY FOX

1942-1943
FEATURE
RELEASE SCHEDULE

Final No. 1 NOV. 25, 1942

Release Date.	Prod. No.	Running Time Min.	PRODUCTION	CAST	DIRECTOR
Aug. 1	301	80	FOOTLIGHT SERENADE	John Payne, Betty Grable, Victor Mature, Jane Wyman, James Gleason, Phil Silvers, Cobina Wright, Jr.	Gregory Ratoff
7	302	67	A-HAUNTING WE WILL GO	Stan Laurel, Oliver Hardy, Dante the Magician, Sheila Ryan, John Shelton, Don Costello.	Alfred Werker
14	303	64	LITTLE TOKYO, U.S.A.	Preston Foster, Brenda Joyce, Harold Huber, Don Douglas, June Duprez, George E. Stone.	Otto Brower
21	304	86	THE PIED PIPER	Monty Woolley, Roddy McDowall, Anne Baxter, Otto Preminger, J. Carrol Naish.	Irving Pichel
28	305	67	THE LOVES OF EDGAR ALLAN POE	Linda Darnell, John Sheppard, Virginia Gilmore, Jane Darwell, Mary Howard, Frank Conroy.	Harry Lachman
Sept. 4	308	98	ORCHESTRA WIVES	George Montgomery, Ann Rutherford, Glenn Miller and His Orchestra, Lynn Bari Carole Landis, Cesar Romero, Virginia Gilmore, Mary Beth Hughes, Nicholas Brothers.	Archie Mayo
11	311	70	BERLIN CORRESPONDENT	Virginia Gilmore, Dana Andrews, Mona Maris, Martin Kosleck, Sigman Ruman.	Eugene Forde
18	312	70	CAREFUL, SOFT SHOULDERS	Virginia Bruce, James Ellison, Aubrey Mather, Sheila Ryan.	Oliver H. P. Garrett
25	310	66	JUST OFF BROADWAY	Lloyd Nolan, Marjorie Weaver, Phil Silvers, Janis Carter, Richard Derr, Joan Valerie.	Herbert I. Leeds
Oct. 2	306	79	ICELAND	Sonja Henie, John Payne, Jack Oakie, Felix Bressart, Osa Massen, Joan Merrill, Fritz Feld, Sammy Kaye and His Orchestra, Sterling Holloway.	Bruce Humberstone
9	309	82	GIRL TROUBLE	Don Ameche, Joan Bennett, Billie Burke, Frank Craven, Alan Dinehart, Helene Reynolds.	Harold Schuster
16	314	81	MANILA CALLING	Lloyd Nolan, Carole Landis, Cornel Wilde, James Gleason, Harold Huber.	Herbert I. Leeds
23	315	71	THE MAN IN THE TRUNK	Lynne Roberts, George Holmes, Raymond Walburn, J. Carrol Naish, Dorothy Peterson.	Malcolm St. Clair
30	313	118	TALES OF MANHATTAN	Charles Boyer, Rita Hayworth, Ginger Rogers, Henry Fonda, Charles Laughton, Edward G. Robinson, Paul Robeson, Ethel Waters, "Rochester", Thomas Mitchell, Eugene Pallette, Cesar Romero, Gail Patrick, Roland Young, Elsa Lanchester, George Sanders, James Gleason, Hall Johnson Choir.	Julien Duvivier

Again...

In 1943...

20th Century-Fox Is Going To Make

Greater In '42!

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28	221	60	**MARRY THE BOSS' DAUGHTER**	Brenda Joyce, Bruce Edwards, George Barbier	Thornton Freeland
Dec. 5	218	90	**SWAMP WATER**	Walter Brennan, Walter Huston, Anne Baxter, Dana Andrews, Virginia Gilmore, John Carradine, Mary Howard, Eugene Pallette	Jean Renoir
12	222	73	**CONFIRM OR DENY**	Don Ameche, Joan Bennett, Roddy McDowall, John Loder, Raymond Walburn, Arthur Shields, Eric Blore	Archie Mayo
19	223	62	**PERFECT SNOB**	Lynn Bari, Cornel Wilde, Charlie Ruggles, Charlotte Greenwood, Anthony Quinn, Alan Mowbray	Ray McCarey
26	224	118	**HOW GREEN WAS MY VALLEY**	Walter Pidgeon, Maureen O'Hara, Donald Crisp, Anna Lee, Roddy McDowall, John Loder, Sara Allgood.	John Ford
Jan. 2	226	85	**REMEMBER THE DAY**	Claudette Colbert, John Payne, John Sheppard, Ann Todd, Douglas Croft, Jane Seymour, Anne Revere.	Henry King
9	227	75	**BLUE, WHITE AND PERFECT**	Lloyd Nolan, Mary Beth Hughes, Helene Reynolds, George Reeves.	Herbert I. Leeds
16	228	67	**A GENTLEMAN AT HEART**	Cesar Romero, Carole Landis, Milton Berle, J. Carrol Naish	Ray McCarey
23	229	73	**RIGHT TO THE HEART**	Brenda Joyce, Joseph Allen, Jr., Stanley Clements, Cobina Wright, Jr.	Eugene Forde
30	230	98	**SON OF FURY**	Tyrone Power, Gene Tierney, George Sanders, Frances Farmer, Roddy McDowall, John Carradine, Elsa Lanchester. Harry Davenport	John Cromwell

Exhibitors

Very, Very

Happy!

▼

Nov. 6	317	91	**SPRINGTIME IN THE ROCKIES** (TECHNICOLOR)	John Payne, Betty Grable, Carmen Miranda, Harry James and His Music Makers, Cesar Romero, Edward Everett Horton, Charlotte Greenwood.	Irving Cummings
13	318	76	**THAT OTHER WOMAN**	Virginia Gilmore, James Ellison, Dan Duryea, Janis Carter, Alma Kruger, Bud McAlister.	Ray McCarey
20	307	78	**THUNDER BIRDS** (TECHNICOLOR)	Gene Tierney, Preston Foster, John Sutton, Jack Holt, Dame May Whitty, George Barbier, Richard Haydn, Reginald Denny.	William A. Wellman
27	319	63	**THE UNDYING MONSTER**	James Ellison, Heather Angel, John Howard, Bramwell Fletcher.	John Brahm
Dec. 4	320	85	**THE BLACK SWAN** (TECHNICOLOR)	Tyrone Power, Maureen O'Hara, Laird Cregar, Thomas Mitchell, George Sanders, Anthony Quinn.	Henry King
11	321	58	**DR. RENAULT'S SECRET**	J. Carrol Naish, John Shepperd, Lynne Roberts, George Zucco.	Harry Lachman
18			**NO RELEASE**	No Release.	
25	322	85	**LIFE BEGINS AT 8:30**	Monty Woolley, Ida Lupino, Cornel Wilde, Sara Allgood, Melville Cooper, J. Edward Bromberg.	Irving Pichel
Jan. 1	323	95	**CHINA GIRL**	Gene Tierney, George Montgomery, Lynn Bari, Victor McLaglen, Alan Baxter, Sig Rumann.	Henry Hathaway
8	324	72	**WE ARE THE MARINES**	March Of Time Feature Release.	
15	325	68	**OVER MY DEAD BODY**	Milton Berle, Mary Beth Hughes, Reginald Denny, Frank Orth, William Davidson, Wonderful Smith.	Malcolm St. Clair
22	326	61	**TIME TO KILL**	Lloyd Nolan, Heather Angel, Doris Merrick, Ralph Byrd.	Herbert I. Leeds

MOVIETONE NEWS — TWICE WEEKLY　　**MARCH OF TIME — EVERY FOUR WEEKS**

20th CENTURY FOX

1942-1943 FEATURE RELEASE SCHEDULE

Final No. 2 JULY 22, 1943

(Supercedes Schedule 7-43-43)

A GREAT 20TH YEAR COMES TO ITS CLIMAX WITH HITS THAT SET THE PACE FOR A

Release Date	Prod. No.	Running Time Min.	PRODUCTION	CAST	DIRECTOR
Jan. 29	327	91	IMMORTAL SERGEANT	Henry Fonda, Maureen O'Hara, Thomas Mitchell, Allyn Joslyn, Reginald Gardiner, Melville Cooper, Bramwell Fletcher.	John Stahl
Feb. 5	328	73	CHETNIKS!	Philip Dorn, Anna Sten, John Shepperd, Virginia Gilmore, Martin Kosleck, Felix Basch.	Louis King
12	329	57	THE MEANEST MAN IN THE WORLD	Jack Benny, Priscilla Lane, Rochester, Edmund Gwenn, Matt Briggs, Anne Revere, Margaret Seddon, Helene Reynolds.	Sidney Lanfield
19	330	74	MARGIN FOR ERROR	Joan Bennett, Milton Berle, Otto Preminger, Carl Esmond.	Otto Preminger
26	316	103	THE YOUNG MR. PITT	Robert Donat, Robert Morley, Phyllis Calvert, John Mills.	Carol Reed
Mar. 5			NO RELEASE	NO RELEASE	
12	332	67	DIXIE DUGAN	James Ellison, Charlotte Greenwood, Charlie Ruggles, Lois Andrews, Helene Reynolds, Raymond Walburn, Ann Todd, Eddie Foy, Jr.	Otto Brower
19	331	70	QUIET PLEASE, MURDER	George Sanders, Gail Patrick, Richard Denning, Lynne Roberts.	John Larkin
26	333	98	HELLO, FRISCO, HELLO (TECHNICOLOR)	Alice Faye, Jack Oakie, John Payne, Lynn Bari, Laird Cregar, June Havoc, Ward Bond, George Barbier, Aubrey Mather.	Bruce Humberstone
Apr. 2	334	73	HE HIRED THE BOSS	Stuart Erwin, Evelyn Venable, Thurston Hall, Vivian Blaine, William T. Orr.	Thomas Z. Loring
9	335	90	THE MOON IS DOWN	Sir Cedric Hardwicke, Henry Travers, Lee J. Cobb, Dorris Bowdon, Margaret Wycherly, Peter Van Eyck, William Post, Jr.	Irving Pichel
16	341	61	DESERT VICTORY	Filmed by and showing the British Eighth Army's successful campaign in North Africa.	
23	338	89	MY FRIEND FLICKA (TECHNICOLOR)	Roddy McDowall, Preston Foster, Rita Johnson.	Harold Schuster
30	337	70	TONIGHT WE RAID CALAIS	Annabella, John Sutton, Lee J. Cobb, Beulah Bondi, Blanche Yurka.	John Brahm
May 7	339	73	THEY CAME TO BLOW UP AMERICA	George Sanders, Anna Sten, Ward Bond, Dennis Hoey, Sig Ruman, Ludwig Stossel.	Edward Ludwig
14	340	105	CRASH DIVE (TECHNICOLOR)	Tyrone Power, Anne Baxter, Dana Andrews, James Gleason, Dame May Whitty, Henry Morgan.	Archie Mayo
21	356	75	OX-BOW INCIDENT	Henry Fonda, Dana Andrews, Mary Beth Hughes, Anthony Quinn, William Eythe.	William A. Wellman
28			NO RELEASE	NO RELEASE	

GREATER

YEAR TO

COME!

28					
June 4			NO RELEASE	NO RELEASE	
11	342	74	JITTERBUGS	Stan Laurel, Oliver Hardy, Vivian Blaine, Douglas Fowley, Bob Bailey	Malcolm St. Clair
18	343	96	CONEY ISLAND (TECHNICOLOR)	Betty Grable, George Montgomery, Cesar Romero, Charles Winninger, Phil Silvers, Matt Briggs	Walter Lang
25			NO RELEASE	NO RELEASE	
July 2			NO RELEASE	NO RELEASE	
9			NO RELEASE	NO RELEASE	
16	344	77	STORMY WEATHER	Lena Horne, Bill Robinson, Cab Calloway and His Band, Katherine Dunham and Her Troupe, Fats Waller, Nicholas Brothers, Ada Brown.	Andrew Stone
23			NO RELEASE	NO RELEASE	
30			NO RELEASE	NO RELEASE	

MOVIETONE NEWS — TWICE WEEKLY **MARCH OF TIME — EVERY FOUR WEEKS**

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1943-1944 FEATURE 20th RELEASE SCHEDULE

Final No. 1

JAN. 10, 1944

Release Date	Prod. No.	Running Time Min.	PRODUCTION	CAST	DIRECTOR
Aug. 6	401	70	BOMBER'S MOON	George Montgomery, Annabella, Kent Taylor, Walter Kingsford, Martin Kosleck, Dennis Hoey	Harold Schuster
13	402	112	HEAVEN CAN WAIT (TECHNICOLOR)	Gene Tierney, Don Ameche, Charles Coburn, Marjorie Main, Laird Cregar, Spring Byington, Allyn Joslyn, Eugene Pallette, Louis Calhern, Helene Reynolds	Ernst Lubitsch
27	403	87	HOLY MATRIMONY	Monty Woolley, Gracie Fields, Laird Cregar, Una O'Connor, Alan Mowbray, Melville Cooper, Franklin Pangborn, Eric Blore, George Zucco, Montagu Love, Fritz Feld	John Stahl
Sept. 3	404	91	CLAUDIA	Dorothy McGuire, Robert Young, Ina Claire, Reginald Gardiner, Olga Baclanova, Jean Howard	Edmund Goulding
17	405	82	WINTERTIME	Sonja Henie, Jack Oakie, Cesar Romero, Carole Landis, S. Z. Sakall, Cornel Wilde, Woody Herman And His Orchestra	John Brahm
Oct. 1	408	76	SWEET ROSIE O'GRADY (TECHNICOLOR)	Betty Grable, Robert Young, Adolphe Menjou, Reginald Gardiner, Virginia Grey, Phil Regan	Irving Cummings
15	409	85	PARIS AFTER DARK	George Sanders, Brenda Marshall, Philip Dorn	Leonid Moguy
29	406	94	IN OLD CHICAGO (RE-ISSUE)	Alice Faye, Tyrone Power, Don Ameche, Brian Donlevy, Phyllis Brooks	Henry King
29	407	95	BANJO ON MY KNEE (RE-ISSUE)	Barbara Stanwyck, Joel McCrea, Helen Westley, Buddy Ebsen, Walter Brennan	John Cromwell

YEAR

IN...

YEAR

OUT...

THE

BIG ONES KEEP COMING FROM 20TH!

★

Nov. 5	412	93	**GUADALCANAL DIARY**	Preston Foster, Lloyd Nolan, William Bendix, Richard Conte, Anthony Quinn, Richard Jaeckel	Lewis Seiler
5	414	80	**BATTLE OF RUSSIA**	Distributed for the U. S. Government by 20th Century Fox Film Corporation and exhibited under the auspices of the War Activities Committee Motion Picture Industry.	
19	413	63	**THE DANCING MASTERS**	Stan Laurel, Oliver Hardy, Trudy Marshall, Robert Bailey	Mal St. Clair
26	410	95	**THE RAINS CAME** (RE-ISSUE)	Tyrone Power, Myrna Loy, George Brent, Brenda Joyce, Nigel Bruce	Clarence Brown
26	411	99	**UNDER TWO FLAGS** (RE-ISSUE)	Ronald Colman, Claudette Colbert, Victor McLaglen, Rosalind Russell	Frank Lloyd
Dec. 3	415	75	**HAPPY LAND**	Don Ameche, Frances Dee, Harry Carey, Ann Rutherford, Cara Williams	Irving Pichel
24	416	103	**THE GANG'S ALL HERE** (TECHNICOLOR)	Alice Faye, Carmen Miranda, Phil Baker, Benny Goodman and His Orchestra, Eugene Pallette, Charlotte Greenwood, Edward Everett Horton, Tony De Marco, James Ellison, Sheila Ryan.	Busby Berkeley
Jan. 7	417	84	**THE LODGER**	Merle Oberon, George Sanders, Laird Cregar, Sir Cedric Hardwicke, Sara Allgood	John Brahm
21	418	83	**UNCENSORED**	Eric Portman, Phyllis Calvert, Griffith Jones, Raymond Lovell, Peter Glenville	Anthony Asquith
28	419	96	**LIFEBOAT**	Tallulah Bankhead, William Bendix, Walter Slezak, Mary Anderson, John Hodiak, Henry Hull, Heather Angel, Hume Cronyn, Canada Lee	Alfred Hitchcock

MOVIETONE NEWS — TWICE WEEKLY **MARCH OF TIME — EVERY FOUR WEEKS**

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1943-1944 FEATURE 20th RELEASE SCHEDULE

SUBJECT TO CHANGE

Final No. 2 MAY 17, 1944

★

A NEVER ENDING LINE OF HITS

FEBRUARY

Prod. No.	Running Time	PRODUCTION	CAST	DIRECTOR
420	96	JANE EYRE	Orson Welles, Joan Fontaine, Margaret O'Brien, Peggy Ann Garner, John Sutton, Sara Allgood, Henry Daniell, Agnes Moorehead	Robert Stevenson
421	111	THE SULLIVANS	Anne Baxter, Thomas Mitchell, Edward Ryan, Trudy Marshall, John Campbell, James Cardwell, John Alvin, George Offerman, Jr., Selena Royle, Roy Roberts	Lloyd Bacon

MARCH

Prod. No.	Running Time	PRODUCTION	CAST	DIRECTOR
422	99	THE PURPLE HEART	Dana Andrews, Richard Conte, Farley Granger, Kevin O'Shea, Donald Barry, Trudy Marshall, Sam Levene, Charles Russell	Lewis Milestone
423	89	FOUR JILLS IN A JEEP	Kay Francis, Carole Landis, Martha Raye, Mitzi Mayfair, Jimmy Dorsey and His Orchestra, John Harvey, Phil Silvers and introducing Dick Haymes and the guest stars — Alice Faye, Betty Grable, Carmen Miranda, George Jessel	William A. Seiter

APRIL

Prod. No.	Running Time	PRODUCTION	CAST	DIRECTOR
424	90	BUFFALO BILL (TECHNICOLOR)	Joel McCrea, Maureen O'Hara, Linda Darnell, Thomas Mitchell, Edgar Buchanan, Anthony Quinn, Moroni Olsen	William A. Wellman
425	75	TAMPICO	Edward G. Robinson, Lynn Bari, Victor McLaglen, Robert Bailey, Marc Lawrence, E. J. Ballantine, Mona Maris, Tonio Selwart	Lothar Mendes
426	45	SHRINE OF VICTORY	A story of modern Greece, their sufferings and noble fight for freedom. Filmed with the officers and men of the Greek Navy.	

MAY

Prod. No.	Running Time	PRODUCTION	CAST	DIRECTOR
427	83	PIN UP GIRL (TECHNICOLOR)	Betty Grable, John Harvey, Martha Raye, Joe E. Brown, Eugene Pallette, Skating Vanities, Dave Willock, Condos Brothers, Charlie Spivak and His Orchestra	Bruce Humberstone
428	65	BERMUDA MYSTERY	Preston Foster, Ann Rutherford, Charles Butterworth, Helene Reynolds, Jean Howard	Benjamin Stoloff

[fol. 6092] **Exhibit 338**

copy

Schine Enterprises, Inc.,
Gloversville, N. Y.

October 24, 1932.

Mr. Jack Sichelman,
Fox Film Corporation,
New York, N. Y.

Dear Jack:

Myer Schine has referred me to your letter dated October 21st regarding Bellefontaine. Perhaps, Jack, you are not acquainted with what has happened in Bellefontaine. The man who has opened up the Court Theatre was a former employee of ours and due to numerous things which happened during his employment he was let out. He then took over the old Opera House in Bellefontaine and got two men to put up some money and opened up in opposition to us.

The only product which he has been able to buy has been from independent companies. There has not been a major company that has sold him any product. He has advertised in the newspapers that they should patronize local people. He has bucked chain operation and is selling the product for 10¢ and 15¢, children 5¢, not only this but he has flooded the entire town with passes and I am quite sure that it is not your company's intent to encourage opposition of this kind.

If it was possible for us to play second run you may rest assured that we would certainly do it but I believe you will agree with me that a town such as the size of Bellefontaine is not large enough for a first and second run house. We are charging a top of 40¢ admission at our Holland Theatre and we don't want to have the distributing companies make it impossible for us to continue getting this price. I am quite positive that if you will take this matter up and explain to Mr. J. R. Grainger, the things which I have mentioned to you in this letter, he will agree with me that you should not sell second run.

I have also written Mr. Schmertz advising him that we will take the remaining pictures which we did not buy first run,

FROM 20TH!

JUNE

Prod. No.	Running Time			
429	96	THE EVE OF ST. MARK	Anne Baxter, Michael O'Shea, William Eythe, Vincent Price, Robbie Bailey, John Archer, Dickie Moore	John M. Stahl
430	61	LADIES OF WASHINGTON	Trudy Marshall, Ronald Graham, Anthony Quinn, Sheila Ryan	Louis King

JULY

Prod. No.	Running Time			
431	65	ROGER TOUHY, GANGSTER	Preston Foster, Victor McLaglen, Lois Andrews, Kent Taylor, Anthony Quinn, William Post, Jr.	Robert Florey
432	85	CANDLELIGHT IN ALGERIA	James Mason, Carla Lehmann, Raymond Lovell, Enid Stamp-Taylor	George King
433	103	HOME IN INDIANA (TECHNICOLOR)	Walter Brennan, Jeanne Crain, Lon McCallister, June Haver, Charles Dingle, Ward Bond	Henry Hathaway

MOVIETONE NEWS — TWICE WEEKLY **MARCH OF TIME — EVERY FOUR WEEKS**

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and, have also asked him to refrain from selling this second run house.

If you would like to have me forward some of the oppositions ads, if you will write me I will be very glad to mail them to you.

With kindest personal regards, I am

Very truly yours,
Schine Enterprises, Inc.
By: G. V. Lynch (Signed)

GVL:Z

[fol. 6093] **Exhibit 356**

SCHINE THEATRICAL CO., INC.
General Offices Gloversville, N. Y.

Gloversville, N. Y.
May 8, 1934.

Mr. Dave Miller
Universal Pictures
Buffalo, New York

DEAR DAVE:

Lou Goldstein advised me that Mr. Bork notified him that it was compulsory for us to play 20 pictures second run at the Capitol Theatre, Oswego.

In checking up our contract, I find that technically Mr. Bork is right insofar as the contract reads this way. However, in checking over the deal sheets signed by Sig Wittman, it clearly states that I am to repeat at the Capitol Theatre second run on all pictures which are played first run at the Strand.

I would appreciate it if you would kindly look at the copy of your deal sheet and I believe you will find I am correct in this matter. Then, I would appreciate it if you would kindly advise Mr. Bork regarding this.

Very truly yours, Geo. V. Lynch.

GVL:ECK.

[fol. 6094] May 10, 1934.

Mr. Geo. V. Lynch
Schine Enterprises, Inc.
Gloversville, N. Y.

DEAR GEORGE:

Acknowledging yours of May 8th, with reference to the Capitol, Oswego contract, please be advised that, while I was not present at the time you made the deal with Mr. Wittman, I subsequently sent you contracts, for second runs in Oswego, Corning and Lockport, calling for twenty (20) pictures in each situation, so that we could definitely set up our records covering this transaction, and you signed these contracts and returned them to me, which were then forwarded to New York for approval.

We have no alternative, therefore, but to consider that you are obligated to play twenty (20) pictures second run in each one of these situations.

In view of the impending complaints being brought against you by opposition exhibitors, in just such situations as this, it is my suggestion that you follow through on the terms of these contracts, rather than allow the record to stand as of your deal sheet with Mr. Wittman, which merely allows you to hold up the playing of all of these pictures, in these situations, without any definite commitment.

If you will consult with Mr. Myer Schine, regarding these remarks, I think he will agree that this is good advice. Kindest regards.

Sincerely yours, Universal Film Exchanges, Inc.,
Dave Miller, Resident Manager.

DM-RA.

[fol. 6095] **Exhibit 361**

November 28, 1934.

PERSONAL

Mr. Myer Schine
Schine Enterprises, Inc,
Gloversville, N. Y.

DEAR MYER:

In accordance with our 'phone conversation, regarding Perry, N. Y., I am submitting herewith grosses on some of our pictures played during the 1932-33 Season, most of which played during 1933. We did not sell the exhibitor last year.

Title	No. Days	
Invisible Man	2	$254.60
Moonlight And Pretzels	3	398.90
Her First Mate	2	323.60
Secret Of The Blue Room	2	248.60
Don't Bet On Love	2	[illegible]5.35
King Of Jazz	3	336.60
Kiss Before The Mirror	2	139.85
Out All Night	2	223.65
Cohens & Kellys In Trouble	2	254.50
Big Cage	3	225.60
Private Jones	3	207.15
They Just Had To Get Married	2	262.75
Old Dark House	2	185.45
Air Mail	3	266.80
All American	3	212.10
Once In A Lifetime	2	220.95

These grosses represent playdates on every change of the week, and it is very apparent that the average daily business, in this theatre, is well over $100.00.

[fol. 6096] The theatre is located in an old Town Hall, seating about 650, including a balcony. The Post Office is in the same building.

The town has a population of a little less than 5000, and is, virtually, isolated, the next town, of any consequence, being Warsaw, which is about ten miles away.

Perry has a Knitting Mills, and a Cutlery Works, which are working consistently, besides which, it is the center of a rich farming community—if a farming community can be considered rich these days.

Personally, I would liken the town, in many ways, to Cortland although, naturally, its possibilities are reduced considerably, because of the reduced population as against Cortland.

The exhibitor, now operating the theatre, can hardly be termed a "showman", in any sense of the word, ~~and~~, undoubtedly, has made a lot of money in this town, despite himself.

I feel sure that this situation will bear investigation on your part.

I have tried to locate George Rosing, and have left word for him to get in touch with me at which time I will advise him regarding your desire to see him in Gloversville.

Kindest personal regards.

Sincerely yours, Universal Film Exchanges, Inc.,
Dave Miller, Resident Manager.

DM-RA.

[Here follows Photolithograph side folio 6097.]

EXHIBIT 363

EXHIBIT 363

Form E 12 (1934-35) NPF 5-10 M. Y.

UNIVERSAL FILM EXCHANGES, Inc.
[illegible]

DATE 2/28/35

For H. O. use only

Branch 1 Buffalo Salesman [illegible] Theatre [illegible] [illegible] No. 15777

Town Corning Pop. [illegible] State [illegible] [illegible]

What theatre or towns [illegible] by selling this theatre [illegible] Following accounts in opposition [illegible]

NEWS REEL	Age	No. Issues	Rental per Issue	Total Rental	Starting Date	No. Issues	Rental per Issue	Total Rental	Expiration Date

33-34 Agr.

1934-35 Features	No. Days	Rental Terms	1933-34 Features	No. Days	Rental Terms	Mat
Show Boat			One More River			
Sutter's Gold			Romance in the Rain			
Imitation of Life		Exhibitor agrees to select	Imitation of Life			
Magnificent Obsession		fourteen (14) features	I Give My Love			
Great Ziegfeld		from the 1934-5	Only Yesterday	3	15.00	
Magnificent Obsession		schedule @ $12.50 each	Counsellor at Law			
John Stahl Production		2 days	Little Man What Now			
Night Life of the Gods			Invisible Man	2	12.50	
Bride of Frankenstein			Glamour			
Untitled Prod.			Black Cat			
Fanny			Saturday's Millions	2	12.50	
Bad			Tell the World	2	12.50	
Princess O'Hara			Mountain Lady			
$1,000,000 Ransom			Beloved			
[illegible]			Cross Country Cruise			
The Raven			Let's Be Ritzy			
Keep on Dancing			Life is Not Way			
A Cup of Coffee			Countess M. Cristo			
Transient Lady			Affairs of a Gentleman			
Stranger Wives			Candlelight			
Castles in the Air			Madame Spy			
Cheating Cheaters			Bombay Mail			
It Happened in N. Y.			Embarrassing Moments			
Mystery of Ed. Drood			Poor Rich			
I've Been Around			Crosby Case			
Confessions of Women			S. O. S. Iceberg			
What Women Dream			Midnight			
Man Reclaimed Head			King for a Night			
Great Expectations			There's Always Tomorrow			
Untitled Production			Horse Play			
Joy of Living			Love Captive			
At Your Service			Myrt and Marge			
Untitled Production			Love, Honor, Oh Baby	2	12.50	
Speed			Love Birds	2	12.50	
Untitled Production			Half a Sinner			
Untitled Production			Let's Talk It Over			

EXHIBIT 3-85
FRANK M. KOCHI
[illegible]

Cont. No. 865	TOTAL	Prev. Sold		Tot. Deal 150.00	TOTAL	Prev. Sold 77.50	Tot. Deal
					AVERAGE	Prev. Sold 12.91	Tot. Deal
					All Color		
Buck Jones	6	2	12.50	75.00	Mascot	5 1-2 12.50	62.50
Cont. No. 865	TOTAL	Prev. Sold		Tot. Deal 75.00	TOTAL	Prev. Sold 62.50	Tot. Deal
No. Features Offered	42	No. Features Licensed	14		Net Cancellations $ None		

Additional Terms It is agreed that the features are to be third run in the City of Corning, to follow the Schine houses- Fox and State; or a Schine house and the Palace. Further, it is agreed the Buck Jones westerns are to be second run in the City of Corning.

Playing Arrangement Two per month beginning April 1935.

[fol. 6097a] This deal represents an additional run in the town. Incidentally, this is our initial Third Run representation. This house was formerly our Second Run outlet, but was shoved out when Schine insisted upon a Second Run for the town.

Because of the manner in which Schine operates in their First Run we could not better the 18-picture commitment.

The Western pictures, which are Second Run, played the leading role in lining up the feature proposition.

Rentals are equitable for this situation, which is operating with a 10¢ admission price.

Recommend acceptance.

[fol. 6098]

EXHIBIT 366

"L" Buffalo

Mr. A. Schimel, Home Office.

Re: Reliance Theatres, Inc.

DEAR MR. SCHIMEL:

Relative your letter of July 15th, I am attaching hereto copies of correspondence and contracts in connection with the action referred to.

As is pointed out in our reply to their letter of April 29th, 1933, we have a franchise with Schine which prohibited our negotiating deals with Reliance until Schine eliminated pictures.

In line with this procedure, we sold Reliance the following subjects on the dates and at the terms listed below:

8/26–38/34	I Give My Love	25% of gross)	
8/29/ 8/29–30/34	The Love Captive	25% " ")	
8/31–9/2/34	Embarrassing Moments	25% " ")	First
9/30–10/2/34	All Quiet on Western Front	25% " ")	Run
10/3–4/34	Countess of Monte Cristo	25% " ")	
10/5–6/34	Uncertain Lady	25% " ")	
10/31–11/1/34	Affairs of a Gentleman	25% " ")	

They also used of the 1933–34 releases;

16	16 comedies	— $7.50 each
8 single reels		" $3.50 each and $5.00 each

Six (6) issues of our NEWS were spot booked at $10.00 each and they terminated the agreementthe agreement of their own volition.

On the previous Season's product, we sold the following:

3/22–34/34	Airmail	$17.50)	
3/13–14/34	Kiss Before the Mirror	17.50)	Second
3/11–12/34	Secret of the Blue Room	17.50)	Run
3/22–24/34	King of Jazz	17.50)	

Also:

1 two-reeler @ $7.50 and 2 one-reelers @ $5.50 each

1/21–24/34	The Rebel	$50.00)	
1/21–24/34	Fighting President	15.00)	First Run
1/27–30/24	Be Mine Tonight	50.00)	

[fol. 6099]

Together with:

1/17–18 and 1/19–20/34	2 two-reelers @ $10.00 each
4/22–24/34	1 Strange As It Seemb @ $5.00
1/12–13/34	1 Oswald Cartoon @ $5.00
1/14–16/34	World's Greatest Thrills $10.00
1/7–9 and 1/14–15/34	2 Radio Acts @ $10.00 each

7/14–15/33	Laughter in Hell	$50.00 vs 20%)	
7/21–22/33	Nagana	50.00 " 20%)	First
7/23–25/33	Old Dark House	50.00 " 20%)	Run
5/11–13/33	Afraid to Talk	50.00 " 20%)	

On the 1931-32 Group, we sold second run after Schine:

8/30-31/33	Waterloo Bridge	$20.00
5/18-20/33	Reckless Living	20.00
8/13-14/33	Unexpected Father	20.00
9/7-9/33	Impatient Maiden	20.00
8/16-17/33	Back Street	25.00
8/18-19/33	Radio Patrol	20.00
10/25-26/33	Night World	20.00
7/2-4/33	Fast Companions	20.00
8/16-17	C. & K. in Hollywood	20.00
5/11-13	Brown of Culver	20.00
5/25-27	Scandal for Sale	20.00

On the current Season's product, we have offered them the following pictures, eliminated by Schine, which they have not seen fit to buy as yet, although notification was made by Salesman Siegel to Mr. Grafiades in this office, some months ago. These pictures are:

Great Expectations.
Cheating Cheaters.
Rendezvous at Midnight.

We are attaching also, for your further edification, correspondence in one of the Code Authority cases brought jointly against Schine and various Distributers including ourselves.

The financial responsibility of Reliance, insofar as we are concerned, is good, inasmuch as their bills have been paid promptly and without question.

[fol. 6100] "L" Buffalo

July 16, 1935.

Page #3

Mr. A. Schimel:

We apparently are interested only in the sale and delivery of product after Schine's operation, and we trust that the above information will be of value to you.

We would appreciate your returning the contracts and correspondence after it has served its purpose.

Sincerely yours, Nate Sauber, Resident Manager.

NS:SRM.

CC. Miss Dillon, CC. Mr. F. J. McCarthy, CC. Mr. W. B. Kraemer.

Admission Prices 10¢ | No. Days open each week 7

1934-35 Shorts	No. Sold	No. Days	Price per Subject	Total Rental	1933-34 Shorts	No. Sold	No. Days	Price per Subject	Total Rental
2-Reel Comedies					Tuttle				
Cartune Classics					Doane Comedies				
Oswald Cartoons				9	Mentone Musicals				
Stranger Than Fiction				½ 12	Oswald Cartoons				
Going Places					Strange as It Seems				
					Goofytones				
Red Rider					Gordon Ghost City				
Tailspin Tommy					Pirate Treasure				
Rustlers Red Dog					Vanishing Shadow				
Call of the Savage					Perils Pauline				

Cont. No.	TOTAL	Prev. Sold	This Deal	TOTAL	Prev. Sold	This Deal

Total 1934-35 {Including Features-Shorts / Excluding Newsreel} This Deal $ 225.00

Total 1934-35 {Including Features-Shorts / Excluding Newsreel} Prev. Sold $

Total 1933-34 {Including Features-Shorts / Excluding Newsreel} This Deal $

Total 1933-34 {Including Features-Shorts / Excluding Newsreel} Sold Prev. $ 140.00

6097

Printed in U.S.A.

13 3/16

3886A

[fol. 6101] **Exhibit 367**

SCHINE THEATRICAL CO., INC.
General Offices Gloversville, N. Y.

Gloversville, N. Y.
September 11, 1935.

Mr. Nate Sauber
Universal Film Exchanges, Inc.
Buffalo, N. Y.

DEAR NATE:

I understand that someone has leased the opera house in Phelps and they are now operating under an admission price of 10¢ and 15¢. I would appreciate very much if you would kindly hold this town back 30 days after Geneva. We are charging in Geneva, 40¢, and we most certainly do not want Phelps to play pictures any sooner than 30 days after Geneva.

I would appreciate it if you would kindly advise me regarding this.

Very truly yours, Geo. V. Lynch.

GVL:L.

[fol. 6102] **Exhibit 368**

September 14, 1935.

Mr. Geo. V. Lynch
Schine Theatrical Co., Inc.
Gloversville, N. Y.

DEAR GEORGE:

Acknowledging your letter of September 11th, in the event we are successful in selling Phelps, N. Y., we will be very happy to comply with your wish to keep this town thirty days after Geneva. Kindest regards.

Sincerely yours, Universal Film Exchanges, Inc.,
Nate Sauber, Branch Manager.

NS-RA.

[fol. 6103] **EXHIBIT 369**

Universal Film Exchanges, Inc.
Carl Laemmle, President
Inter-Office Correspondence

Date: September 23, 1935.

From Exchange, Albany, N. Y.

To Mr. Dave Miller, Cleveland, Ohio.

DEAR DAVE:

Just spoke to George Lynch and he okayed the $7.50 News for Wooster. I am submitting contract to him today for signature, inasmuch as he would not let me sign same, due to the fact that he has a partner in Wooster and wanted his own signature on the contract in case of any trouble later on.

In Bucyrus, he wants our product and will make a deal with you direct.

In Van Wert, he wants you to get out of your second run and resell first run, as he does not want this other theatre to establish a second run policy in the town. He claims that he spoke to Mr. McCarthy about this about a week ago, and Mr. McCarthy agreed with him that it would be best to let this other fellow play our pictures first run.

He also claims that no other Company will sell this other theatre second run, and if he allowed us to sell him second run he is afraid all other companies will follow, and thereby establish a second run in the town.

Kindest regards.

Sincerely, P. T. Dana, Branch Manager.

PTD:EA.

[fol. 6104]

Exhibit 370

Albany, N. Y., Sept. 23, 1935.

Mr. Frank McCarthy, Eastern Sales Manager.

Re: Schine Commitments.

Dear Mr. McCarthy:

The attached sheets show short product commitment for the Schine Theatrical Enterprises. It is not a very healthy commitment. However, George gives the following reasons for not buying shorts in the towns we have left out:

Buffalo Territory

Bath: Double feature policy.

All Buffalo Theatres: Double feature policy. Will continue to spot-book both shorts and serials as heretofore at same rentals. Does not contract for shorts or serials with any Company. (I doubt it.)

Canandaigua: Double feature policy.

Corning: Double feature policy.

Lockport: Double feature policy.

Newark: Double feature policy.

Rochester: Same as Buffalo Theatres. Will continue to spot-book at same rentals as heretofore.

Salamanca: Double feature policy.

Syracuse: First and second run—will spot-book at same rentals as heretofore. Claims no commitment with any other Company, but I know that Warners and RKO both had commitments with former operators.

Ohio Territory

Bellefontaine: Double feature policy.

Norwalk: Double feature policy.

Wooster: Double feature policy.

[fol. 6105]

Albany Territory

Herkimer: Double feature policy.

Lake Placid: Bought ten single reels last year—eight are still undated and unplayed.

Massena: Bought ten single reels last year and seven are unplayed.

Norwich: Double feature policy.

Saranac Lake: Double feature policy.

Watertown: Double feature policy. One theatre burned. Still has thirteen undated singles.

Did not make any feature or short product deal for Athens, Bucyrus or Van Wert in Ohio. Meyer would not go along on the same formula for the top pictures in Athens, offering me the same as Bellefontaine. Lynch suggested that he make the deal later direct with Mr. Krieger for this town.

In Bucyrus there was no deal made in New York, and Lynch suggested that he make his deal direct with Dave Miller. He wants the pictures in this town, although, they still haven't a theatre.

In Van Wert, Dave Miller advises that upon Mr. Grainger's suggestion, he took away the first run from the opposition and sold him a second run. Lynch claims that he does not want a second run policy to prevail at the second run opposition and has promises from other major companies that they will not sell second run. Wants Dave Miller to reinstate first run at opposition as they will give up the pictures for this town.

All contracts are signed with the exception of Auburn, first and second runs, Syracuse, and Roosevelt Theatre, Buffalo. These contracts Mr. Lynch kept because they have to be countersigned by his partners.

I would suggest that you check up with Nate Sauber and Dave Miller, also Mr. Krieger as to whether or not the towns mentioned by Lynch as being strictly double features are so.

[fol. 6106] **Exhibit 374**

Universal Film Exchanges, Inc.

Inter-office Correspondence

From Exchange, Albany, N. Y.

Date: Oct. 28, 1936.

Mr. Paul Krieger, Universal Film Exchanges, 1634 Central Parkway, Cincinnati, Ohio.

Dear Paul:

We are encl-sing herewith contracts covering the Schine Circuit for Piqua, Athens and Delaware, Ohio.

If clearances stated on these contracts are not what other major companies granted Schine, you are then to take this matter up directly with George Lynch in Gloversville. It is my understanding with him that clearances as written in these contracts are the same as granted to him by other major companies.

Please have Comparative Price Schedules made out and submitted to New York this week, as Mr. Grainger would like to have these contracts cleared immediately.

Kindest regards.

Sincerely, P. T. Dana, Branch Manager.

PTD:EA.

Athens: 90 days City of Athens. 30 days ahead of Gloucester, Nelsonville, Logan, Pomeroy (x'd out).

[fol. 6107] **Exhibit 381**

June 22nd, 1937.

Mr. Paul Krieger, Cincinnati Exchange.

Dear Mr. Krieger:

In any situation that Schine takes over, where the terms of the former exhibitor's contract are in excess of what Schine pays us over their Circuit, Mr. Grainger has agreed to changing them to meet the terms of the Schine deal. It will therefore be necessary for you to rebill My Man Godfrey in Paris and Richmond, Kentucky, at 30% of the gross.

Kind regards.

Sincerely, F. J. A. McCarthy.

FJM/TH.

c.c. Mr. Lynch:

You evidently have the same inside information on the Braddock-Lewis fight that I have. I understand that the wise money is on Braddock. What are you trying to do, take me for a ride?

[fol. 6108] Exhibit 384

January 4, 1938.

Mr. George Lynch, Schine Theatrical Enterprises, Gloversville, N. Y.

Dear George:

You will recall when I spoke to you over the 'phone last week you were going to let me know by Thursday, December 30th, just what your plans were regarding our 1937-38 product in Medina, Ohio. Up to this writing I have heard nothing from you. At the same time the new opposition house has opened in Medina and we have had numerous requests from them for our product, and I am sure that I can get a very equitable deal from these people in view of this situation. You know, George, that I have been holding this product for you for the past six months and while I don't want to do anything that might be misconstrued by you or Meyer or Louis, certainly your attitude in this particular instance is most unfair, and I must ask that you advise by return mail whether or not you want to make a deal for our product in the Medina situation.

Unless I hear from you by the end of this week, I will consider that you are not interested and I will proceed to make a deal with the opposition house. I feel that in justice to Universal I have no alternative.

Kindest personal regards.

Sincerely yours, Dave Miller, Branch Manager.

M:Y.

[fol. 6109] **Exhibit 385**

Universal Film Exchanges, Inc.

Inter-office Correspondence

From Exchange N—Cleveland.

Date: 1/21/38.

Mr. F. J. A. McCarthy, Eastern Sales Manager, Home Office.

Dear Mr. McCarthy:

Apropos of the Bellevue situation, and prior to that, Shelby, I would like to call to your attention Medina, Ohio, and some of the typical Schine maneuvers involving Universal.

On March 19, 1937, within a few days after we had received a letter from Fine and Essick advising us that they were going into Medina, Ohio, and asking us to hold our product for them, I received the following letter from George Lynch:

"This is to advise that we have taken over the Princess Theatre in Medina, Ohio, and will be in a position to use your product. I will be very glad to make an appointment at your convenience to consummate a deal."

Copy of this letter was sent to Mr. J. R. Grainger. I immediately acknowledged this letter and asked Lynch to further advise whether or not he would be in Cleveland within the next week or whether he felt I should come to Gloversville to arrange this deal, and I sent you a copy of this letter. I recall distinctly that within the next few days, when talking to you over the phone, you advised me not to go to Gloversville.

Later, our Schine deal was received here with no mention whatsoever of a deal for Medina, and I have since then written several reminders to the Home Office about this situation but have had no action from Schine in Medina.

About four weeks ago both Fine and Essick made inquiries regarding our product for their house in Medina, and I tried to get direct from Lynch some admission as to what Schine's plans were, and finally, after Lynch had promised me as of a certain date that he would let me know definitely, and having not kept his promise, I wrote him on [fol. 6110] January 4th giving him my ultimatum regarding this situation; copy of this letter was sent to you at that time and I am attaching a copy of same herewith. I heard nothing further from Lynch and in the meantime Fine and Essick were still pressing as to what our intentions were. I finally called Lynch on the phone on Monday after Grainger was in my office, and asked him just what he expected to do in Medina, and he informed me that he did not want to commit himself in writing but that it would be okay for us to *sell* our product. This "permission" being given to us ten months after he had asked us to hold the product.

Now we find it difficult to consummate a deal with Fine and Essick because of Fine's attitude towards playing Universal pictures on percentage and we are again a victim of the old Schine machine.

The above is for your information.

Kindest regards.

Sincerely yours, Dave Miller, Branch Manager.

M:Y.

[fol. 6111] EXHIBIT 386

c. c. Mr. Miller, Mr. Wittman

January 27th, 1938.

Mr. George Lynch,
Schine Theatrical Enterprise Co.,
Gloversville, N. Y.

DEAR GEORGE:

Prior to March 19th of last year our Cleveland office received a letter from Fine and Essick, advising him that they were going into Medina, Ohio, and wished to purchase our product for that situation. Before Mr. Miller could enter into any negotiations with these gentlemen he received a letter from you requesting that he hold our product for your use in Medina. At that time you advised him you were taking over the Princess Theatre, and you would shortly be in Cleveland to negotiate with him for that situation.

Pursuantly nothing had developed for our Cleveland branch, altho Fine and Essick had been consistently and persistently endeavoring to buy Universal product from the

Cleveland office without success, because of your letter to Mr. Miller. However, on January 4th Mr. Miller wrote you on this matter, and stated that if he had heard nothing from you at the end of that week he would take it for granted that you had no intention of buying our product there, and would, to the best of his ability dispose of the product. I also understand that Mr. Miller called you a week ago Monday and asked what you expected to do in Medina and you informed him it would be okay to sell our product elsewhere. I want you to realize, George, that this information was given us ten months after you requested us to hold the product.

Now Mr. Miller is in the position of being unable to close a deal with Fine and Essick because of our previous refusal to negotiate for this situation. I want you to know that it will be impossible for us to consider any such request unless a deal at the same time is made for our product in that situation.

Kind regards.

Sincerely, F. J. A. McCarthy.

FJM/TH

[fol. 6112] **Exhibit 387**

January 28, 1938.

Mr. G. V. Lynch,
Schine Enterprises Corp.,
Gloversville, N. Y.

Dear George:

It has been brought to our attention that various major Companies are serving Waterloo within the 30-day period of the Seneca Falls showing, and I would want you to extend us the same consideration.

The type of clearance and availability we have on our Waterloo contract provides that we serve them within the 30-day period if any other major distributor does so.

I will anticipate this consideration, for it has been generally understood with you that you would grant me equal consideration if you made any deviations or exceptions to the set-up clearances.

For obvious reasons, I would prefer to discuss this matter with you in person, but not having an opportunity to be in

Gloversville at an early date, I have no alternative but to use this medium.

I will appreciate an early response to this request so that I will be in position to liquidate our contract in Waterloo.

Kind regards.

Sincerely yours, Universal Film Exchanges, Inc.
Nate Sauber, Branch Manager.

NS-RA

[fol. 6113]

Exhibit 388

Schine Circuit, Inc.
General Offices: Gloversville, N. Y.

Gloversville, N. Y., February 1, 1938.

Mr. F. J. A. McCarthy,
Universal Film Exchanges Inc.,
Rockefeller Center,
New York City.

Dear Mr. McCarthy:

No doubt you have heard that George Lynch is ill at his home and will not be able to resume his duties for at least ten days to two weeks and, therefore, cannot give you any definite reply regarding Medina.

Kindest regards.

Sincerely, Schine Circuit, Inc. By: W. B. Kraemer.

WBK:Z

[fol. 6114]

Exhibit 389

Albany, N. Y., Feb. 7, 1938.

Mr. A. J. Herman,
District Manager,
Boston.

Dear Mr. Herman:

I saw Louis Schine today with reference to clearances asked over the Smalley Circuit. Mr. Schine absolutely refuses to grant us the privilege of serving pictures other than the clearances under which his contracts were taken.

He insists that Metro, Fox and any other Company that we claim are not serving in accordance with the clearances requested by him, are not doing so, and that if they are, it is being done without his knowledge.

Mr. Schine warned me that if we serve Smalley, that he will stop booking our pictures.

I had to take this matter up with Mr. Schine today, because Smalley insisted Saturday that I advise him one way or the other, today. George Lynch is still quarantined and could not be reached except by telephone, and when I attempted to call him from Gloversville, his wife answered and told me he was resting and could not be disturbed.

I have wired Smalley today as follows: "Cannot accept contracts as written. Letter follows."

Kindest regards.

Sincerely, P. T. Dana, Branch Manager.

PTD:EA
cc: F. J. A. McCarthy.

[fol. 6115] Exhibit 409

#3

Albany, N. Y., Sept. 23, 1935.

Mr. Frank McCarthy:

Mr. Lynch insisted upon having reversion figures inserted on all contracts. The figures accepted are actually less than those set up by Fox as I would not accept a Fox figure. I saw all the Fox deal sheets for those towns where we have granted a reversion. Our figures are from $150.00 to $400.00 less than the Fox figures.

I secured a $7.50 News contract for Wooster Theatre, Wooster, Ohio, in addition to the deals for the Newsreel already made. Mr. Lynch is signing this contract and will forward it direct to the Cleveland Office.

Kindest regards.

Very truly yours, P. T. Dana, Branch Manager.

PTD:EA

[fol. 6116] **EXHIBIT 390**

SCHINE CIRCUIT, INC.

General Offices: Gloversville, N. Y.

Gloversville, N. Y., February 15, 1938.

Mr. Nate Sauber,
Universal Film Exchanges Inc.,
505 Pearl St.,
Buffalo, N. Y.

DEAR NATE:

Regarding your letter of January 28 to George Lynch, we cannot permit you to serve Waterloo within thirty days clearance period after Seneca Falls. Kindly be guided accordingly.

Very truly Yours, Schine Circuit, Inc. By L. Goldstein.

LG:EMH

[fol. 6117] **EXHIBIT 391**

UNIVERSAL FILM EXCHANGES, INC.

Inter-Office Correspondence

From Exchange: Washington. Date: Nov. 14, 1938.

Mr. A. J. Herman,
Home Office.

DEAR AL:

Oscar Blumenthal this morning called my attention to the deal made by Dave Miller with Schine for the Arcade Theatre, Salisbury, Md.

Very frankly, I think it is lousy in comparison to our former deal, both of which I am enclosing for your edification.

At the same time, Oscar informed me that George Lynch was arranging with Mr. Scully to wash out all the existing deals we have in the towns they have taken over. In three towns, namely, Easton, Hurlock and Federalsburg, Md., we do not as yet have a Schine deal.

Very frankly, Oscar and myself do not know anything at all about the Schine situation, as to what the deals actually are and what disposition is to be made with the deals now existent. Inasmuch as George Lynch has started to date, it becomes imperative that we hear from you on the above so that we might handle this situation in an intelligent manner.

Please let me hear from you immediately.

Kindest regards.

Sincerely, Paul (Paul Baron), Acting Branch Mgr.

PB:BS

[fol. 6118] **Exhibit 392**

December 14th, 1938.

Mr. Dave Miller,
Cleveland Exchange.

Dear Mr. Miller:

Mr. Baron has written us regarding the Schine contract for Salisbury, Maryland. He claims that George Lynch has informed him that he is arranging with Mr. Scully to wash out the existing deals he had in the Washington territory, for Easton, Hurlock and Federalsburg, Md.

Mr. Baron is quite unfamiliar with the Schine situation as to what is to be done with the product unplayed as of last season.

What information can you give him as to your understanding of what was to be done on this old product?

Kind regards.

Sincerely, F. J. A. McCarthy.

FJM/TH

(Here follows 1 Photolithograph, side folio 6119)

[fol. 6120] **Exhibit 396**

Universal Film Exchanges, Inc.

Inter-Office Correspondence

From Exchange Buffalo, N. Y. Date May 23, 1939

Mr. F. J. A. McCarthy
Eastern Sales Manager
Home Office

Dear Mr. McCarthy:

Acknowledging receipt of your letter of May 19th, re- information to assist you in your negotiations with the Schine Circuit, may we suggest that when negotiating for the sale of our releases to the Granada and Riverside Theatres, Buffalo, the Clearance and Run be identified as follows:

Riverside Theatre—Buffalo

Run: Subsequent
Clearance: Immediately after North Park; 14 Days ahead of Kenmore.

Granada Theatre—Buffalo

Run: Subsequent
Clearance: Open Booking with Kenmore; 7 Days ahead of Central Park, Varsity and Grider-Kensington

and in Rochester:

Riviera Theatre—Rochester

Run: Subsequent
Clearance: 30 Days on Hollywood; 21 Days on all Subsequent Runs

Dixie Theatre—Rochester.

Run: Subsequent Run—Must play within Riviera's 21 Days Clearance

State Theatre—Rochester

Run: Subsequent Run—Must play within Riviera's 21 Days Clearance [fol. 6121] Liberty Theatre—Rochester

Run: Subsequent Run—Must play within Riviera's 21 Days Clearance

Madison Theatre—Rochester

Run: Subsequent.
Since Schine now operates—if they wish to come within Riviera's 21 Days Clearance, this is satisfactory.

Monroe Theatre—Rochester

Run: Subsequent.
Since Schine now operates—if they wish to come within Riviera's 21 Days Clearance, this is satisfactory.

West End Theatre—Rochester

Run: Subsequent
Clearance: Open Booking with Arnett

Lake Theatre—Rochester

Run: Subsequent

Grand Theatre—Rochester

Run: Subsequent

Cameo Theatre—Rochester

Run: Subsequent

Very truly yours,
John J. Scully
Branch Manager

JJS-rd
cc—Mr. W. A. Scully
cc—Mr. Dave Miller

[fol. 6122] **Exhibit 396**

Mr. Miller—Same letter to Albany, Cincinnati and Cleveland.

May 19th, 1939.

Mr. J. J. Scully,
Buffalo Exchange

Dear Mr. Scully:

Will you please send to me as quickly as possible, any and all information you might have that will assist in our negotiations with the Schine Circuit, on a deal for our new product.

Kind regards.

Sincerely,

FJM/TH

F. J. A. McCarthy

[fol. 6123] **Exhibit 397**

Universal Film Exchanges Inc.
913 New Jersey Ave. N. W., Washington, D. C.

June 8, 1939

Mr. F. J. A. McCarthy
Eastern Division Manager

Dear Mr. McCarthy:

Rather than wait any longer for the forms to arrive, in accordance with your letter of May 31, we made our own chart for the Schine Circuit in this territory and submitted same to you yesterday.

Kindly note that aside from the fact that Paramount, MGM and Warner Bros. have much better deals, more percentage pictures and full deals in Salisbury, Cambridge and Easton and twenty-six to forty picture deals with the top group at percentage, in Hurlock and Federalsburg, we are entitled to more pictures at percentage, 35% and 30% terms; to full commitments in Salisbury, Cambridge, and Easton; to a minimum of twenty-six pictures in Hurlock plus all Arlen-Devine Features and all of the Westerns based upon past performance in said good situations, with one exception, i.e., Hurlock, before the Schine Circuit took over same.

Our blind checking records substantiate the fact that said circuit is buying our product "at peanut prices". Further, in the period less than a year, since the Schine Circuit "invaded" this unique Eastern Shore Peninsula, (please refer to a map) the business of *all* surrounding town situations has been greatly depleted. Said circuit's policy of featuring previously unheard of "Big Bank Nights" of $400.00 and more in the larger situations, coupled with double billing on certain days (in what was previously a single bill territory), is hurting all other theatre situations in said sector.

Mr. Herman accompanied me along the Eastern Shore and familiarized himself with the aforenamed Schine Circuit situations. Further, he was given the Paramount 1938-39 deal for each of said situations. No information could be obtained about Twentieth Century-Fox, since said company's product is being shown in the New-Ulman's Opera House Theatres, opposition to Schine's Arcade and Wicomico Theatres in Salisbury, the key situation of the Shore.

If there is any further information that you may wish concerning the aforelisted situations, I shall be happy to follow through at your request.

Kind regards.

Sincerely,

B. B. Kreisler
Branch Manager

BBK:LF
cc W. A. Scully
A. J. Herman

[fol. 6124] EXHIBIT 409

Albany N Y Sept. 23, 1935.

#3

Mr. Frank McCarthy:

Mr. Lynch insisted upon having reversion figures inserted on all contracts. The figures accepted are actually less than those set up by Fox as I would not accept a Fox figure. I saw all the Fox deal sheets for those towns where we have granted a reversion. Our figures are from $150.00 to $400.00 less than the Fox figures.

I secur d a $7.50 News contract for Wooster Theatre, Wooster, Ohio, in addition to the deals for the Newsreel already made. Mr. Lynch is signing this contract and will forward it direct to the Cleveland Office.

Kindest regards.

Very truly yours,

P. T. Dana
Branch Manager.

PTD:EA

[fol. 6125] EXHIBIT 412

Schine Enterprises, Inc.
General Offices Gloversville, N. Y.

SE

Gloversville, N. Y.
September 10, 1932.

Mr. Jack E. Flynn,
Metro-Goldwyn-Mayer Corp.,
Detroit, Mich.

Re: Bellefontaine

Dear Jack:

I understand that Mr. Harry Moller, our former manager of the Holland Theatre, Bellefontaine, has taken a short term lease on the Opera House, Bellefontaine. Mr. Moller was discharged from this organization for a number of reasons which I am unable to explain to you in this letter. Since his discharge, which is now over a period of six months, he has been causing us considerable trouble in regard to the propaganda he has been spreading, his main issue being that our admission prices are too high and that no one should have to pay over ten and fifteen cents for a show. He has now been able to sell this idea to the few people in Bellefontaine who have backed him to operate this Opera House. He personally has nothing and I want you to refrain from selling him any pictures whatsoever. Should your Cincinnati office sell or serve him with any pictures you will only be encouraging cheaper admission prices, double features and all in all unfair competition notwithstanding the fact that you will also hurt the film rentals which you are receiving from our theatre.

I know it is not your desire to hurt us and this is therefore the reason I am writing you this letter before the harm is done.

I would appreciate receiving a letter from you regarding this.

Very truly yours,
Schine Enterprises, Inc.
By: G. V. Lynch

GVL:Z

[fols. 6126-6127] **Exhibit 413**

Copy for W. F. Rodgers.

September 12th, 1932

Mr. Geo. V. Lynch,
Schine Enterprises, Inc.,
Gloversville, N. Y.

My dear George:

Yours of the 10th, regarding Harry Moller taking over the Opera House.

We do not feel that selling a second run account in *Bellefontaine* would be to our best interest and, therefore, in the event Mr. Moller should approach us, we will so inform him.

With best wishes.

Sincerely,

JEF:MM.
c.c. Cincy—together with copy of Mr. Lynch's letter 9/10/32.

[fol. 6128] EXHIBIT 424

Metro-Goldwyn-Mayer Distributing Corporation

From Mr. E. K. O'Shea—Buffalo To Mr. W. F. Rodgers

Subject: Berinstein Bros. Date October 13, 1933

Dear Mr. Rodgers:

We finally worked out a deal in Ithaca, N. Y. as to short product, News, preferred playing time and other minor terms, which I believe is now entirely satisfactory.

In all three situations, Ithaca, N. Y.—Seneca Falls, N. Y. and the Colonial Theatre, Albany, N. Y. the 8 specials are to include a Sunday. In Ithaca, N .Y. I have one Can News 4 days in the State Theatre at $25.00. I have another issue 3 days in the Temple, the "B" house at $7.50, the second week of release.

I allowed them some slight modification of terms on several series of comedies amounting in total to $265.00, but on the total sale of last year on our short product we received $2085.00 om Ithaca, and on the total for all series of single and two-reel subjects this year we will receive $2265.00, so that the difference is very little in this situation.

In Seneca Falls, N. Y. despite the fact that Schine has increased his clearance from 10 days to 30 days, Genevq over Seneca Falls, I received the same $40.00 on the flat rental pictures and adjusted the short subject contract $101.00 on the series difference compared to last year, so that this season we will receive $594.00 in total for our short product in Seneca Falls as against $590.00 last season.

In Albany the short subject prices are $7.50 and $12.50 for the Laurel-Hardy single reels the same as last year—no change here, and I received one issue of the News in Seneca Falls, second week of release—2 days—$4.00, and one issue of the News, second week of release—at the Colonial Theatre, Albany, 2 days—$3.00.

I am forwarding the contracts either late today or tomorrow morning, but I wanted you to have this record of the sale as soon as I could get it to you and I do not believe it will be necessary now to take up any matter concerning differences with Mr. Ben Berinstein.

Sincerely
E. K. O'Shea

EKO'S:MF
cc J. E. Flynn

[fol. 6129] **Exhibit 425**

Schine Theatrical Co., Inc.

General Offices Gloversville, N. Y.

Gloversville, N. Y.,
October 21, 1933.

Mr. Jack Flynn, Metro-Goldwyn-Mayer Dist. Corp., 2310 Cass Ave., Detroit, Mich.

Dear Jack:

Kindly excuse the delay in my not writing you regarding the theatres where we will wish to use your product second run. However, they are as follows:

Miami, Piqua.
State, Coming.
Hi-Art, Lockport.
Capitol or Richardson, Oswego.
Empire, Glens Falls.
Olympic, Watertown.

However, if there are any other opposition towns where you believe you can sell at second run, I would appreciate it if you will take the matter up with me first before selling. Regarding the towns on which we now have a positive second run, if you are ready at this time to negotiate a deal, I would appreciate it if you will kindly advise me so that I can make arrangements for the booking of your product.

With kindest personal regards, I am

Very truly yours, Schine Theatrical Co., Inc., G. V. Lynch.

GVL:MG.

[fol. 6130] EXHIBIT 426

Metro-Goldwyn-Mayer Distributing Corporation

For Use Only Between Offices of Corporation

From Mr. Ralph Pielow, Albany, to Mr. J. E. Flynn, Detroit.

Date Jan. 4, 1934.

DEAR MR. FLYNN:

Just returned from Gloversville where I had a long talk with both Meyer and ~~Louis Schine~~, also George Lynch. They will not agree to the contracts for second run in Watertown and Glens Falls as they still want the right to play the percentage pictures on the days which they choose. They still insist upon sixty days clearance over third runs and want the privilege of playing the flat rentals three days when they so desire.

Meyer discussed with me at length the reasons why we should not sell second runs in towns under 75,000. I frankly believe that the reason he does not want us to sell situations of this kind is because he is not in favor of our selling third runs and rather than have us sell a third run, he would rather see us pass up a second run.

If we permit them to have their own way on the second run contracts this year, their demands next year will be entirely out of reason.

George is writing you a letter which I told him was unnecessary, however, he felt that he wanted to write it. He ridiculously stated to me that he felt we did not want to sell him in order that we could sell the other theatres in Watertown and Glens Falls. I told him that this was not the case as we were very pleased to do business with them if we could sell our product in the proper manner.

Will hold up the contracts until I hear from you.

Sincerely, Ralph Pielow, Resident Manager.

RP:FC.

[fol. 6131] **Exhibit 430**

Metro-Goldwyn-Mayer Distributing Corporation

For Use Only Between Offices of this Corporation

From Ralph Pielow, Albany, to Mr. J. E. Flynn, Detroit.

Date August 1, 1935.

Dear Mr. Flynn:

The Schine contracts have all been signed by Mr. Lynch and are today being forwarded to the respective branches with the exception of Auburn and Amsterdam which contracts must be countersigned by Mr. Mort Shea.

Mr. Lynch is holding the contracts for the Granada and Riverside Theatres, Buffalo, as he wants to discuss the clearance for these two theatres with Mr. O'Shea. However, the deals as written up are okay.

Schine would not agree to any weekly payment plan on the short subjects although we discussed the matter at great length.

I feel that in some of the situations, the clearance that he is demanding is unfair and distinctly told Mr. Lynch that in all of the situations where he has clearance over other towns I would expect him to play the pictures immediately as they become available to him and in the event that he did not do so, we would have no other alternative but to reduce the clearance.

Sincerely, Ralph Pielow, Resident Manager.

RP:MAE.

[fol. 6132] **Exhibit 433**

Schine Theatrical Co., Inc.

General Offices Gloversville, N. Y.

Gloversville, N. Y.,
August 26th, 1935.

Mr. Ralph Pielow, Metro Goldwyn Mayer Pictures, Albany, N. Y.

Re: Ogdensburg

Dear Ralph:

In reply to your letter dated August 24th regarding the protection in Ogdensburg over Canton this positively is not the understanding which Mr. Schine had with Mr. Flynn. The protection is to remain 30 days, the way it was agreed upon and the contracts signed called for 30 days in Ogdensburg over Canton. I am, therefore, letting it stand this way until such time as we see Mr. Flynn.

Very truly yours, Schine Theatrical Co., Inc., by Geo. V. Lynch.

GVL:Z.

[fol. 6133] **Exhibit 435**

Schine Theatrical Co., Inc.

General Offices Gloversville, N. Y.

Gloversville, N. Y.,
September 27th, 1935.

Registered return receipt requested.

Mr. Ralph Pielow, Metro Goldwyn Mayer Pictures, Albany, N. Y.

Re: Ogdensburg

Dear Ralph:

Have not as yet received an answer to my letters of August 22nd and the 26th respectively regarding the protection on the Ogdensburg contract to remain "30 days over Canton," until such time as we see Mr. Flynn.

Kindly acknowledge your understanding of this by return mail.

Very truly yours, Schine Theatrical Co., Inc., by Geo. V. Lynch.

GVL:Z.

[fol. 6134] **Exhibit 441**

cc. Messrs. Flynn, O'Shea.

February 7, 1936.

Mr. G. V. Lynch, Schine Theatrical Co., Inc., Gloversville, N. Y.

My Dear George:

The matter affecting Oswego and Fulton again presents itself and for fear Myer Schine may be delayed in his return to New York, it is believed advisable that you take the matter up with him direct in Florida, or if you and Louis Schine want to decide the issue, well and good.

Although we know we are committed for a thirty day clearance to you at Oswego over Fulton this writer is firmly convinced that the clearance is excessive and I believe a ten day, or fourteen day clearance at the outside—but preferably ten day—would be sufficient for the Oswego house over Fulton.

For the reasons explained to you when you were last here, the matter is considered by us as important and sufficiently so to justify my asking you to give it your early consideration and it would be appreciated if you would let me hear from you.

With kindest regards.

Sincerely. ——— ———.

WFR:CS.

[fol. 6135]

EXHIBIT 444

Metro-Goldwyn-Mayer Distributing Corporation

For Use Only Between Offices of this Corporation

From Mr. E. K. O'Shea, Buffalo, to Mr. J. E. Flynn, Detroit.

Subject Schine Circuit.

Date June 15, 1936.

DEAR MR. FLYNN:

Regarding the various bank and cash nights in the Schine Circuit houses, please be advised that they have instituted one and two of these nights in every one of their situations and I am giving below the spots where they are having bank nights twice a week:

Geneva, N. Y.	Wednesday & Saturday
Lockport, N. Y.	Wednesday & Friday
Lake, Rochester	Monday & Thursday
Liberty, Rochester	Tuesday & Saturday
State, Rochester	Tuesday & Friday
Seneca Falls, N. Y.	Thursday & Saturday

In the instances of Geneva and Lockport particularly, you can understand just how difficult it would be to get extended playing time in these two towns because of the extra day on preferred time falling on a bank night. We have up to this time just been allowing the exact amount of the prize only and not allowing them to include any royalty or other expense. On the last several deductions that the Schine Circuit have made, they have added the royalty and while this might be a fair deduction, I want an expression from you before agreeing to this additional deduction because of the Bank Nights. In other words, instead of *their* being a $40.00 deduction in Geneva or Lockport, it would be $60.00 if we allowed the royalty that is paid to the bank night people.

Schine has also been asking us for additional flat rental pictures in these situations due to the Bank Nights, etc. in several of their towns, and are not willing to play percentage pictures on the nights where they have these cash give-aways. This is also getting to be a more difficult situation as far as the proper dating of our pictures is concerned. I wish that you would take this matter up direct with Schine regarding these Bank Nights to this point: That the two bank nights a week in Geneva (Wed. & Sat.), and in Lockport (Wed. & Fri.) preclude the possibility of our getting extended playing time, and the fact that in Seneca Falls, Salamanca, State, Liberty, Dixie Theatres, Rochester, Rialto Theatre, Lockport, Geneva Theatre, Geneva and Riverside and Granada Theatres, Buffalo practically keep the second preferred datings of every week from us because they hesitate to book on a Friday and Saturday, or have as their second best change in most of their situations a Thursday and Friday which is far less desirable than the Friday and Saturday that most of our "A" class action pictures would be entitled to.

I believe if they are to have Bank Nights for the purpose of building up their business on the poorer days of the week, then certainly the bank nights should be without exception on a Wednesday and Thursday so that they would not interfere with the booking of our better class pictures on the more preferred changes of each week.

Sincerely E. K. O'Shea, Resident Manager.

EKO'S:MF.

cc. Mr. Connors. Mr. Pielow.

[fol. 6136] EXHIBIT 455

Copy for T. J. Connors

August 28th, 1937.

Mr. E. M. Booth, Cincinnati.

DEAR MR. BOOTH:

When in Gloversville last week, George Lynch told me of a house where we had sold our pictures that has a 10¢ adult admission at night. I believe it is the Opera House in Lexington, Ky.

As you know, it is the policy of our company not to sell ten cent theatres and I will appreciate your checking into this complaint and advising me.

With best wishes,

Sincerely, ——.

EKO'S:M.

[fol. 6137] **EXHIBIT 456**

METRO-GOLDWYN-MAYER DISTRIBUTING CORPORATION

For Use Only Between Offices of This Corporation

From E. M. Booth, Cincinnati. To Mr. E. K. O'Shea, Detroit.

Subject: Lexington, Ky. Date; August 30, 1937.

DEAR MR. O'SHEA:

Your letter of August 28th.

Mr. Lynch has made a slight error in advising you that the Opera House, Lexington, Ky. plays any of our pictures 10¢ adult admission after six o'clock. We have not and do not permit this practice in any situation. The facts are the admission at the Opera House is 10¢ matinee and 16¢ at night.

Am very sorry that Born to Dance played day and date with Broadway Melody. This was definitely a slip-up and, I agree with you, a bad booking. However, Mr. Schwartz of the Opera House was in the office this morning complaining about the business on Born to Dance which was less than 50% of what he usually does on a Sunday-Monday show.

In my opinion the situation in Lexington is very bad. While it is not my desire to suggest any changes of theatre operation where it tends to lessen our gross, nevertheless Schine's policy is materially affecting the surrounding towns. For instance, the price at the Ben Ali is 16¢ balcony, 22¢ main floor matinee and 22¢ balcony, 33¢ main floor at night with practically all changes double bills.

The Strand, second-run, plays some slough first-runs and always double bills at 16¢ to all matinee, and 16¢ balcony, 22¢ main floor at night. State—10¢ matinee and 16¢ at night.

When we sold Mr. Schwartz of the Opera House fourth run in Lexington, Schines were not operating under this policy. It has made it very difficult for the Opera House to continue under the present contract. He is going to try a few more pictures and then if he cannot possibly stand the prices charged, it will be necessary to make an adjustment. As above stated, he is charging 10¢ matinee and 16¢ at night, playing fourth run after Schines double bill at the Ben Ali, Strand and State on a comparable admission price. He told me this morning he may be forced to charge 10¢ balcony and 16¢ main floor at night in order to meet this competition. Of course I definitely established with him I could not become involved or a party to whatever he decided to do as it related to competition and that we would not supply him our product at less than the contracted admission price, viz. 10¢ matinee and 16¢ at night. What makes it very hard is that for instance a picture like Maytime was played on a double bill at the State at 16¢.

Kindest regards.

Very truly yours, E. M. Booth.

[fol. 6138] **Exhibit 457.**

September 1st, 1937.

Mr. E. M. Booth, Cincinnati.

Dear Mr. Booth:

Yours of Aug. 30th.

When I wrote you regarding admission prices in the Opera House, Lexington, it was not with any thought of an adjustment for this theatre.

Insofar as the Opera House charging 10¢ balcony and 16¢ main floor to meet the competition, I would like to have the gentleman who operates this theatre understand that M-G-M pictures are not being shown anywhere at night for 10¢ and we shall expect him to conform to the prices on his contract. Two wrongs do not make a right and this house going into a 10¢ policy would only force the Schine house to cut their price to meet the wrong kind of competition.

With best wishes.

Sincerely, —— ——.

EKO'S:MM.

[fol. 6139] **Exhibit 459**

Copy for T. J. Connors

E. M. Booth, Cincinnati; Mr. E. K. O'Shea, Detroit; Opera House, Lexington, Ky.

November 1, 1937.

Dear Mr. O'Shea:

The reason for this letter is to explain in more detail the condition in Lexington.

As you know, we have sold Schine 1st, 2nd and 3rd runs. At the time we sold the Opera House the present fourth run contract we did not know that Schine would operate on their present policy. It has made it very difficult for the Opera House to pay the prices. The facts are he is considerably delinquent and it was necessary to make certain adjustments in order that we may quickly liquidate the contract.

The Opera House is charging 10¢ matinee and 16¢ at night all over the house.

The Kentucky, first-run—matinee 27¢, night 40¢—single feature.

The Strand, 2nd-run—matinee 16¢; night balcony 28¢, main floor 22¢; 100% double bill.

The State, 3rd-run—matinee 10¢; night 18¢; 100% double bill.

The Opera House has a $90 a day overhead excluding film. The past few months their average intake has been around $85 a day thru the week; Sunday from $150 to $200 and Saturday approximately the same. When we sold Mr. Schwartz 4th-run for the Opera House, neither of us knew what the possibilities were and Schines were not operating under their present policy.

Feel this exhibitor is definitely entitled to consideration and earnestly recommend approval of the attached alterations.

Very truly yours, Resident Manager.

EMB:EO. Enc.

[fol. 6140]

EXHIBIT 476

SCHINE CIRCUIT, INC.

General Offices, Gloversville, N. Y.

Gloversville, N. Y.,
July 13, 1938.

Mr. Ralph Maw, Metro Goldwyn Mayer Pictures, Buffalo, N. Y.

DEAR RALPH:

This is to advise you that we will require clearance starting with the season of 1938-39 on our Grand Theatre, Rochester, over the Strand Theatre, Rochester.

I will appreciate your giving us whatever consideration you can in this respect.

Kindest regards.

Very truly yours, Schine Circuit, Inc., by G. V. Lynch.

GVL:Z.

[fol. 6141]

EXHIBIT 488

Copy for T. J. Connors

Mr. R. W. Maw, Buffalo, N. Y.; Mr. E. K. O'Shea.

Clearance Changes.

May 15, 1939.

DEAR MR. O'SHEA:

With reference to your letter of April 25th, have analyzed the territory very carefully with regard to certain changes in clearance that I think advisable and justified and I am listing same below with my reasons for your consideration:

(1) Present Schine clearance of 30 days Newark over Lyons, Clyde and Palmyra, N. Y. This clearance is entirely too long as now set up and the three towns should be moved up to no later than 12 days after Newark, N. Y. because they are all within a radius of fifteen miles. Admission prices in each town as follows:

Newark—10¢-25¢-35¢.
Lyons—15¢-25¢.

Palmyra—10¢-25¢-35¢.
Clyde—15¢-25¢.

Prior to the term deal with Schine, these three towns enjoyed a 10-day availability after Newark, N. Y. 10 days, as you know, on Sunday pictures playing Newark would make them available the second Sunday after the Newark playdate to the other towns. Naturally, it is only on the top pictures that these accounts complain of the lateness of their availability. As you also know, we keep Newark back of Rochester and inasmuch as Geneva holds 30 days' clearance over Lyons and Palmyra, this automatically includes Clyde as Clyde and Lyons play pictures on an open booking basis from us. The Schine booker dates Newark after Geneva and this procedure keeps the aforementioned towns a greater number of days back of Geneva than the clearance calls for.

(2) Seneca Falls over Waterloo—present clearance 30 days. Waterloo admission 10¢-25¢, Seneca Falls admission 10¢-25¢-35¢. Seneca Falls, a Schine town, has been enjoying 30 days' clearance over this situation and the towns are about five miles apart. Schine's Geneva Theatre takes 21 days over Seneca Falls and with the present clearance set-up pictures become available from 60 to 90 days after Geneva. Believe this clearance should be reduced to not more than 21 days after Seneca Falls which is the same clearance that Schine's Geneva Theatre takes over Seneca Falls, N. Y.

(3) Kenmore, N. Y. with the Riverside Theatre, Buffalo playing ahead of Kenmore and the Granada and Kenmore Theatres playing day and date, believe the Granada and Kenmore availabilities should be moved up to not more than 14 days after the North Park instead of 21 days. Admission prices are identical.

(4) Dunkirk over Fredonia, Silver Creek and Angola. While clearance of 30 days has been set up over these situations for some time, believe that the smaller towns such as Angola and North Collins are severely affected because of the clearance Dunkirk has taken over Silver Creek, which town in turn gets clearance over Angola and North Collins. We are at a decided disadvantage because each one of these towns can get sufficient product to buy clear on one another and we have for many years enjoyed

representation in all of these situations. I do not believe that the cutting of clearance from 30 to 14 days would effect the business in Dunkirk in the least and recommend that this clearance be reduced from 30 to 14 days. Ad- [fol. 6142] mission prices are as follows:

Silver Creek—10¢-25¢
Dunkirk—10¢-25¢-35¢ Loges 40¢
Fredonia—10¢-20¢-30¢ Loges 35¢
Angola—10¢-25¢

(5) Gowanda over Cattaragus, N. Y.—30 days present clearance. Mr. Lorence of the Cattaraugus Theatre has been agitating a clearance reduction between Gowanda and Cattaraugus for the past several years, altho he alone is definitely responsible for the necessity of longer clearance so granted by the distributors to Mr. Read of the Hollywood Theatre in Gowanda. I do not believe, despite Mr. Lorence's efforts to have the clearance reduced from 30 to 14 days or open booking if he can get it, that it would be to our best interests to reduce this clearance unless Mr. Lorence would definitely agree to conduct his business ethically by not advertising within the confines of the city of Gowanda until after the Gowanda run on our pictures is completed. As you know, Gowanda, N. Y. has been playing our product 100% for a great many years and gives us preferred and extended playing time. I mention this at this time because of the possibility of Messrs. Cohen & Kosch discussing the matter with you. These towns are fourteen miles apart, Cattaraugus charging 10¢-25¢ with a few loge seats at 35¢ and Gowanda charging 10¢ and 30¢.

(6) Suggest a reduction in clearance from Cortland over Marathon, N. Y. from 30 days to 14 days, also the same reduction in clearance from Cortland over Groton, N. Y. Marathon is 15 miles from Cortland and Groton is 12 miles from Cortland, Marathon charging 10¢-25¢, Cortland 10¢-25¢ matinee and 10¢-30¢-40¢ at night. Groton charges 10¢-25¢ and in addition to playing after Cortland also follows Moravia, N. Y.

(7) Present clearance of Ithaca over Moravia and Interlaken 30 days. Suggest changing to 14 days. This situation has been a particularly troublesome one and the cause of many complaints both by the Berinsteins and Mr. Ray

Pashley. I believe Mr. Pashley should be cautioned not to advertise our product in the Ithaca territory prior to the playing of same in the Ithaca "A" theatres where the majority of our pictures play on percentage and it is of the utmost importance that they be given an opportunity to earn. Ithaca charges 15¢-40¢, Interlaken and Moravia 15¢ and 30¢.

Believe the aforementioned changes are constructive and will materially assist in speeding up the liquidation of our product and further better terms, also effect a more pleasant business relationship with the accounts in question.

Sincerely, R. W. Maw.

RWM:MFL.
CC Mr. Connors.

[fol. 6143] Exhibit 491

Metro-Goldwyn-Mayer Pictures

Distributed by Loew's Incorporated

For Use Only Between Offices of This Corporation

From W. F. Rodgers, To Mr. T. J. Connors.
Subject, ——— ———. Date: June 8, 1939.

Mr. J. Myer Schine called on me yesterday and advised that he would reduce the clearance at Clyde, N. Y., over which his Newark house now enjoys 30 days, to 14 days.

He understands, however, we have sold Lyons equal availability with Clyde and he cannot agree to Lyons playing 14 days after Newark.

There is merit to his contention, because he mentioned that even though the information imparted was that Lyons was 10 miles from Newark, he measured it the night before last and from town limit to town limit between the two situations he says it is four and a fraction miles.

Mr. Dillard makes the suggestion that we try to persuade Mr. Schine to let the clearance be reduced to 14 days in both situations for the remainder of the current season and then next year it is quite apparent that when you sell Lyons you will not be able to sell them day and date, but that Newark will have to get a greater clearance against them than they had against Clyde.

Will you take this up with Mr. Dillard and then you might want to talk to Mr. Schine on the telephone.

W. F. Rodgers.

WFR:MTL

[fol. 6144] EXHIBIT 494

METRO-GOLDWYN-MAYER DISTRIBUTING CORPORATION

For Use Only Between Offices of This Corporation

From Mr. R. Pielow, ~~To Mr. J. E.~~ Flynn, Detroit.
Subject ——— ———. Date: Nov. 7, 1935.

DEAR MR. FLYNN:

When discussing different matters with George Lynch yesterday at Gloversville, he mentioned that he was going to meet you in Pittsburgh on Saturday and at that time further discuss with you the matter regarding clearance for Ogdensburg over Canton.

~~You will recall~~ that at the time of signing the contracts he insisted upon 30 days Clearance over Canton for the 1935-36 product in view of the 1934-35 product only having fourteen days. The writer discussed this matter with you when you were in Albany and you refused to permit the 30 days and advised George accordingly, at the same time informing him that the next time that you were in Gloversville with the writer, you would further discuss the matter with him in order that he would be perfectly satisfied.

It seems that other Companies are using the old argument "We will give what Metro gives", and George mentioned he was going to bring this matter up in Pittsburgh but the writer would suggest that in the event he does, you inform him that you would rather hold the matter in obeyance for discussion until you come to Albany. By doing this we can then straighten the matter out I am sure, to the satisfaction of all parties.

Best wishes.

Sincerely, Ralph Pielow, Resident Manager.

RP/KS

[fol. 6145] **Exhibit 496**

METRO-GOLDWYN-MAYER PICTURES
Loew Building, 1540 Broadway
New York

February 28, 1936.

Mr. Ralph Pielow, Albany, N. Y.

DEAR MR. PIELOW:

This is to advise you that Mr. Rodgers has closed the deal for 1936-37 product with the Sehine Circuit.

The same clearance as set up for 1935-36 has been agreed to for the new season, the only exception being that at Ogdensburg, N. Y., the clearance is to be thirty (30) days over Canton, N. Y.

Sincerely, E. W. Aaron.

EWA:DRP

[fol. 6146] **Exhibit 497**

Copy for T. J. Connors.
Pictures—Distributed by Loew's Inc.

Nov. 30, 1936.

Mr. Ralph Pielow, Albany: Amsterdam—2nd Run.

Mr. J. E. Flynn, Netherlands Plaza Hotel, Cincinnati, O.

DEAR MR. FLYNN:

With further reference to second run, Amsterdam, N. Y.

When in Gloversville last week George Lynch mentioned that he would like to play a selective contract, second run, in the Regent Theatre, Amsterdam, and the writer informed George that we could not do business that way, and he then later mentioned that he doubted if the theatre would be opened, but he did not want us to sell the Orpheum Theatre, which request is unfair for him to make.

However, wish to advise that we can obtain the following proposition from the Orpheum Theatre, on the 39 first releases of the 1935-36 product:

7	@	$35.00	against 35%	—Fri.-Sat.
7	@	35.00	" 30%	—Fri.-Sat.
Balance		17.50 each, plus score		

Score $2.50 each picture.

48 Single Reels $2.50 each, in Color $3.00 each.
52 Issues of News @ $3.50
Trailers $1.50.

This theatre has 296 seats and is agreeable to play the pictures at least 45 days after first run. The admission prices are just 5¢ under the Schine second run house 10 and 15¢ in the afternoon and 10 and 20¢ in the evening.

The writer has advised the exhibitor operating this theatre that we would get in touch with him the latter part of this week or the first part of next week and give him a definite answer regarding the above proposition, as we do not feel that in selling this theatre product a year old that it would in any way effect the first run theatre and in view of the fact that other national companies are selling this theatre second run, there certainly should not be any objection to our selling the theatre in the event that we are agreeable to accepting this business.

Sincerely, —— ——, Resident Manager.

RP/KS.

[fol. 6147] EXHIBIT 499

SCHINE THEATRE ENTERPRISES
General Offices: Gloversville, N. Y.

Gloversville, N. Y., March 19th, 1937.

Mr. F. Drew,
Metro Goldwyn Mayer Pictures,
Cleveland, Ohio.

DEAR FRANK:

This is to advise you that we have taken over the Princess Theatre in Medina, Ohio, and will be in a position to use your product.

I will be very glad to make an appointment at your convenience to consummate a deal.

Kindest regards.

Very truly Yours, Schine Theatre Enterprises, by Geo. V. Lynch.

GVL:Z
cc:J. E. Flynn

[fol. 6148] **Exhibit 500.**

Western Union

1937 Mar 18 PM 3 37

UA300 17-WUX Gloversville NY 18 316P
J E Flynn:

Metro Goldwyn Mayer Pictures 2310 Cass Ave. Det.
Just closed deal for Princess Theatre Medina Ohio would like include this town in our f-anchise advise.

Lynch Schine Theatre Enterprises.

[fol. 6149] **Exhibit 509**

Metro-Goldwyn-Mayer Pictures

Distributed by Loew's Incorporated

For Use Only Between Offices of This Corporation
From: E. W. Aaron. To: Mr. W. F. Rodgers.
Subject: ——. Date: August 2, 1938.

When Meyer Fine and Perc Essick were in your office last week they discussed with you the Medina, Ohio situation.

In checking our records we find the following:

Schine has a 350 seat house in the town and has been sold the product for the remaining part of their national deal; therefore, he has two seasons yet to go, namely the 1938-39 season and the 1939-40 season.

The terms are as follows:

4 at 40%.
4 at 35%.
8 at $75.00.
14 at $50.00.
Balance $22.50.

Mr. Essick's house is a brand new one seating 800 and according to Mr. Essick is the best house in the town and one where some of our product should be playing.

I am listing below six pictures that have played on percentage so far:

Production	Days of wk.	Final Percent.	Gross	Net
Double Wedding	SMT	30%	247.83	74.35
Firefly	SMT	35%	272.10	83.65
Rosalie	SMT	37½%	333.39	125.02
Yank at Oxford	SM	35%	247.93	86.78
Girl of Golden West	SMT	35%	281.11	98.39
Test Pilot	SMT	40%	542.04	216.82

These pictures all have a reversion clause on them and the percentage listed is the final settlement.

Mr. Fine advised that the only product that they had for their house was half of Warners, all of Columbia, all of Universal and half of United Artists.

E. W. Aaron.

EWA:CS.

[fol. 6150]

Exhibit 510

Metro-Goldwyn-Mayer Pictures

Distributed by Loew's Incorporated

For Use Only Between Offices of This Corporation

From W. F. Rodgers, To Mr. T. J. Connors.
Subject, —— ——. Date: July 29, 1938.

Concerning the Medina, Ohio, situation, Myer Fine informed me yesterday that he and his associates had commenced operation there before Schine acquired the house he now operates and that he felt they were entitled to Metro-Goldwyn-Mayer product there, or at least half of it. Will you be good enough to investigate the entire situation and let me have facts.

W. F. Rodgers.

WFR:MTL.

[fol. 6151]

EXHIBIT 511

Dec. 7, 1938.

Mrs. Percy Essic, and Mr. Meyer Fine.

DEAR FRIENDS:

Saw Myer Schine when in Buffalo on Monday. He informed me that he was having considerable trouble in the Medina situation and that it was necessary to arrange to buy out one of the partners. Details of purchase have been about concluded and he is now in a position to go forward and suggested that another meeting be arranged in New York for consummation of final details.

Would appreciate your advising me when it will be convenient for you to come to New York so that I can confirm the appointment with Myer.

Hope this will find your families well and happy. Kindest personal regards.

Sincerely, ———.

TJC:KS.

[fol. 6152]

EXHIBIT 518

For Inter-office Correspondence

RKO DISTRIBUTING CORPORATION

Sept. 16, 1932.

To Home Office, Mr. E. L. McEvoy,
From Albany, C. R. Halligan.
Subject: Schine Circuit Deal.

DEAR EDDIE:

Am enclosing signed contracts for the Schine Circuit with the exception of Lake Placid which I will touch on later. You will also note a letter attached which is part of the contracts. The only difference is that they want sixty (60) days over a mythical second run that might open in the various towns, as well as ninety (90) days over Lake Placid Club.

As far as we are concerned in Albany, it means nothing, so it is perfectly satisfactory, because in all those towns

Schine has houses which could be opened second run and the danger of another second run theatre is so slight that I did not hesitate to grant it. However, as far as Bellefontaine and Wooster are concerned, I know nothing about it and while same was included in the letter that is really up to you for agreement.

As far as the second clause in the letter is concerned, it is O.K. in that we would be only too glad to have him pick up additional pictures and when I brought this up to him he said that he wanted it in there irrespective. I was wondering if there is any motive behind such a clause. My reason in mentioning this is that when we took a selective contract in Schroon Lake you rejected it until such time as we could get a clause to the effect that their selection would only be from such pictures announced as of the date of the contract, due to the fact that we might release something that they could secure which would not be agreeable to you.

As far as the last paragraph is concerned relative to cancelling out unplayed product at the Lyric Theatre, Wooster, he already had a signed letter from Harry Dixon on this and inasmuch as the date of said letter was August 17th and would not be in effect as far as these contracts are concerned, he incorporated same in the attached letter and you will note the postscript to the extent that approval of the contracts will also be approval of the attached letter. [fol. 6153] Harry Dixon's deal was not set when I left there. He was trying to get you on the 'phone and naturally, my understanding with Lynch is to the effect that if the Buffalo deal doesn't go through, the contracts I am sending to you are to be held up accordingly.

Regarding Lake Placid, I got in touch with Marshall Taylor and Harry Thompson this week and they agreed to fourteen days protection over Lake Placid with the exception of July and August, when they agreed to waive protection providing Lake Placid did not charge a lesser admission than Saranac Lake. This was agreeable to Lynch but before doing anything he wanted to take it up with Mr. Dodds of Lake Placid. I waited until Mr. Dodds arrived there and the result was that after a conference they decided that inasmuch as Paramount had sold them without any protection over Saranac Lake, as well as Fox, and also due to the fact that Metro agreed on a deal without any protection, they would not allow the protection on our contract with the result that they would not sign the contract we had and naturally, I could not take the contract without it.

On my return to the office I talked with Harry Thompson, stating that I was going to take the matter up with you in New York and he was very agreeable to this in order to bring this to an issue. He stated emphatically that he has protection with Fox and that if Schine has a contract to the contrary it is a trick contract and that someone is liable to get burned. As far as Paramount and Metro are concerned, he claims they have not set the deal and they will not set the deal unless this protection is granted.

I would suggest that you get in touch with Mr. Peskay and bring this to an issue, irrespective of who gets burned, because last year we were innocently burned by similar tactics with Fox against Smalley, as well as Fiber and Shea against Johnstown and I see no reason why our company should be discriminated against by any circuit, regardless of their buying power.

[fol. 6154] Frankly, I think Lynch has a trick contract for Lake Placid. Incidentally, while he promised me that he had protection from Fox, Paramount and Metro over Canton and agreed that if any change in protection was made that we would also benefit, I can assure you right now that I will make the same personal check on Canton and Ogdensburg as I did last year with Oneonta and Cooperstown and Amsterdam and Johnstown and then use that evidence for a fair deal another year.

I could not get any shorts in Ohio. He claimed he could not do anything until the 15th of next month. When I called his attention to the fact that his reason for holding it up was until he got his deal set, he admitted that such was the case and when I mentioned that the reason he was holding us up was that he may be forced to buy shorts from someone else, he got rather peeved. However, I could do nothing on the shorts and naturally on the attached contracts we can do nothing until Harry Dixon gets set with his Buffalo deal.

Would suggest upon receipt of Harry's deal, if same is satisfactory that you wire us approval so that we can start dating the pictures accordingly.

In conclusion, please bring Lake Placid to an issue. Otherwise, we are out of this situation.

With kindest regards, we are

Sincerely, RKO Distributing Corporation C. R. Halligan, Branch Manager.

C.R. Halligan:S.

P. S. The contract which you sent us for Piqua was at a $20.00 average when in reality it should have been a $40.00 average. However, you will note we have corrected same and the contract is now at the $40.00 average.

[fol. 6155] EXHIBIT 519

For Inter-office Correspondence

R K O Distributing Corporation

October 17, 1933.

To Home Office—Mr. E. L. McEvoy.
From Albany—C. R. Halligan.
Subject: Palace and Victoria Theatres—Watertown.

DEAR EDDIE:

The attached contracts for the Palace and Victoria Theatres, Watertown, third and fourth run is an exceptionally good deal considering the fact that Schine is buying second run in this town for $22.50. The writer took a trip with Garvey last week and my main reason was to analyze and if possible, set the subsequent runs in Watertown.

Schine has brought about a very chaotic condition up there in that by his buying second run he leaves four other subsequent runs holding the bag for third run. The Strand and Liberty were naturally in the market for third run but we were able to convince the Palace and Victoria, operated by the same people, to buy third and fourth run in order to protect themselves. Incidentally, they are our old customers and were entitled to any consideration possible.

With the Schine second run at $22.50 and this third and fourth run of $60.00, it is almost as much as we got first run out of the town last year. I might add that owing to the way the runs are set up and the product sold, there is no question in my mind but what we will sell a percentage of this year's pictures fifth run to either the Strand or Liberty because Schine is going to double feature all pictures second run which means the third and fourth run will have to double feature and that naturally brings about a policy that the others will have to follow with the result that they will need pictures and we positively will sell a fifth run also.

You will note we also got a deal on "India Speaks." This was arrived at in an odd way due to the fact that upon arriving in Watertown we found that Halliburton is scheduled to speak there on November 17th which naturally worked to our advantage. We contacted the women under whose auspices Halliburton is going to speak and I am quite certain that a campaign can be started which will do some business for the Palace and if they do business it will show Schine that the picture has possibilities in his other towns. I might add that Schine would not play this picture under [fol. 6156] any consideration and I would like to prove to him in Watertown anyway that it can do business.

You will note we also got a renewal on our News reel and all in all this Palace and Victoria deal is the best deal that ever came out of Watertown for runs of this type. Would therefore, ask that you wire us approval on this immediately.

Yours very truly, RKO Distributing Corporation,
C. R. Halligan, Branch Manager.

C. R. Halligan :S.
Att.

[fol. 6157] EXHIBIT 520

Schine Theatrical Co., Inc.

General Offices, Gloversville, N. Y.

Gloversville, N. Y., September 22nd, 1933.

Agreement entered into this 22nd day of September, 1933 between the Schine Theatrical Co., Inc., and or its subsidiaries and the RKO Distributing Corp. whereby it is agreed that on the deal signed for the 1933-34 pictures the following clauses are to become part and parcel of the deal and the approval of the contracts will be an automatic approval of this letter.

1. In the situations where there are 30% pictures it is agreed and understood that unless these two 30% pictures show the exhibitor a profit equal to 50% of what the distributor received as a film rental, the terms are to revert to 25%.

2. It is agreed and understood that where any 25% pictures are played as a double bill or with stage shows or vaudeville, the pictures are to revert to 15%.

3. It is also understood and agreed that on both the short subject and feature contracts, in towns where we overplay our committment the monies obtained by playing over the committment is to be applied dollar for dollar against towns where the committment is underplayed.

4. It is understood and agreed that if any of the 30% pictures are played on a midnight show the terms for the midnight show engagement is to be 20%. If any of the 25% pictures are played on a midnight show is to be 15%. In connection with these two clauses, it is understood that this midnight show will start between 11:30 and 12:00 Saturday night and is not to be part of the prior performance.

5. It is understood and agreed that in all towns and situations where the exhibitor has a selective contract, that the pictures which he wishes to reject, he will do so not later than 45 days of availability.

6. It is also understood and agreed that the designation of pictures will be given at the time of availability and the distributor has the right to allocate these said designations.

7. It is also understood and agreed that there will be no score charges on the pictures played on percentage. On the pictures played at flat rental basis, $2.50 is to be deducted from the flat buys in each situation and is to be set up as the score for the run.

(Signed) C. Russel Halligan, Branch Manager, RKO, Albany, RKO Distributing Corp. Harry Dixon, Branch Manager, RKO, Buffalo, RKO Distributing Corp. George V. Lynch, Schine Theatrical Co., Inc.

[fol. 6158]

Exhibit 524

Gloversville, N. Y., October 29th, 1934.

Agreement entered into this 29th day of October 1934 and is in addition to any other agreements entered into with Mr. McAvoy between the Schine Theatrical Co., Inc., and or its subsidiaries and the RKO Distributing Corp., whereby it is agreed that on the deal signed for the 1934-35 pictures the following clauses are to become part and parcel of the deal and the approval of the contracts will be an automatic approval of this letter.

1. It is agreed and understood that where any 25% pictures are played as a double bill or with stage shows or vaudeville the pictures are to revert to 15%.

2. It is also understood and agreed that on both the short subject and feature contracts, in towns where we overplay our commitment the monies obtained by playing over the commitment is to be applied dollar for dollar against towns where the commitment is underplayed.

3. It is understood and agreed that if any of the 30% or 35% pictures are played on a midnight show the terms for the midnight show engagement is to be 20%. If any of the 25% pictures are played on a midnight show the terms for the midnight show is to be 15%. In connection with these two clauses it is understood that this midnight show will start between 11:30 and 12:00 Saturday night and is not to be part of the prior performance.

4. It is also understood and agreed that in all towns and situations where the exhibitor has a selective contract that the pictures which he wishes to reject, he will do so not later than 21 days of availability.

5. It is also understood and agreed that the designation of pictures will be given at the time of availability, and the distributor has the right to allocate these said designations.

6. It is also understood and agreed that there will be no score charge on the pictures played on percentage. On the pictures played at flat rental basis $2.50 is to be deducted

from the first buys in each situation and it is to be set up as the score for the run.

C. Russel-Halligan, Branch Manager, RKO, Albany, RKO Distributing Corp. Harry T. Dixon, Branch Manager, RKO, Buffalo, RKO Distributing Corp. George V. Lynch, Schine Theatrical Co., Inc.

[fol. 6159] EXHIBIT 526

For Inter-office Correspondence

RKO Distributing Corporation

To Mr. E. L. McEvoy—Eastern Sales Manager.
From Buffalo #4.
Subject: ——.

January 8th, 1935.

DEAR ED:

I am inclosing herewith deal covering 1934/5 product for the Palace Theatre, Corning, N. Y.

In this town we have sold first run product to Schine for the Fox or State theatre and we have also sold second run product to Schine for the State Theatre.

Of course, all of our pictures will not be played second run by Schine in Corning and we have been successful in securing this deal for the Palace. The contract is written up in an unusual manner, however, it is strictly to our advantage and if there are any pictures for this town that can be used by this independent house the exhibitor in this situation has obligated himself to play them at a rental which I believe to be fair taking into consideration the fact that our best pictures will no doubt, be played first and second run by Schine.

This contract will give us additional revenue and recommend its approval.

Very truly yours, H. T. Dixon, Branch Manager.

H. T. Dixon/LPR.
Inc.
cc: H. J. Michalson.

[fol. 6160]

EXHIBIT 527

Harry Dixon—Buffalo.
E. L. McEvoy—Home Office.

DW #1293.
Jan. 10, 1935.

DEAR HARRY:

Before we accept the deal for the Palace Theatre of Corning, N. Y. I would like to know if the Schine Organization at any time have complained about the low admission charged by this theatre.

Furthermore, I would also like to know what other major distributors have sold this exhibitor their 1934/35 product.

Yours very truly, E. L. McEvoy, Eastern Sales Manager.

ELMcE:G.
Cc—Mr. Michalson.

[fol. 6161]

EXHIBIT 528

For Inter-Office Correspondence
RKO Distributing Corporation

To Mr. E. L. McEvoy, Eastern Sales Manager.
From Buffalo #4.

DW #1293-B
February 18th, 1935.

DEAR ED:

Replying to your letter of February 14th, regarding the deal for the Palace theatre, Corning, N. Y., we are inclosing herewith the contract which is now approved to the exhibitor.

All other companies are serving this account and feel that this contract will not create any bad feelings with Schine.

Very truly yours, H. T. Dixon, Branch Manager.

H.T.Dixon/LPR.
Inc.
cc: H. J. Michalson.

EXHIBIT 530

Radio

HOME OFFICE COPY

RKO DISTRIBUTING CORPORATION

CHANGE OF CONTRACT - CANCELLATIONS

BRANCH Bflo #4 Dossberg-D
DATE ISSUED 12/11/35
REF No. 350
OWNER Fred Gerber
THEATRE Palace
CITY STATE Corning, N.Y.
DATES OF CONTRACTS INVOLVED 8/19/33
CONTRACT NOS 3041

1		2		3		4		5	
		CHANGE FROM			CHANGE TO			CANCELLATION	
PRODUCTION NUMBER	TITLE OF PICTURE	NO. OF DATE	AMOUNT FILM RENTAL	AMOUNT SCORE FEE	NO. OF DATE	AMOUNT FILM RENTAL	AMOUNT SCORE FEE	AMOUNT FILM RENTAL	AMOUNT SCORE FEE
41C101	Becky Sharp	2					Age 35%	17.50	2.50

TOTAL INCREASE FILM RENTAL PLUS FEE	TOTAL DECREASE FILM RENTAL PLUS FEE	TOTAL	TOTAL	TOTAL	TOTAL	TOTAL	TOTAL
	20.00					17.50	2.50

GIVE BELOW FULL DETAILED EXPLANATION (NOT SIMPLY REFERENCES TO CORRESPONDENCE OR PREVIOUS FORMS):

Exhibitor bought a 2nd run contract on this subject. The picture was played 1st run by Schine and 2nd run by Schine in this town. Mr. Gerber of the Palace Theatre refuses to play this subject and as his contract was violated we cannot insist upon a playoff.

BRANCH MANAGER

SERIAL No. 5316

HOME OFFICE APPROVAL

COUNTRY OF ORIGIN U.S.A.

FEB 13 1936

5 co

6162

[fol. 6163] EXHIBIT 539

Vitagraph, Inc.

Distributors of

Warner Bros. Pictures
Inter-Office Communication

First National Pictures Distributing Corporation.
The Vitaphone Distributing Corporation.

From Cleveland. Date September 10, 1932.
To Home Office. Attention of Mr. A. W. Smith, Jr.

Subject: Bellefontaine, Ohio.

When replying please refer to subject and number mentioned above.

DEAR MR. SMITH:

We just received the following wire from Mr. Lynch of the Schine Enterprises, Inc., Gloversville, N. Y., which is self explanatory.

> "Hold 1931-32-33 product for me for second run Bellefontaine. Will see you your exchange next week or week after."

It is very evident that someone is taking over the Opera House in competition to the Schine Enterprises, and I am passing this information along to you for the reason that if you have made your first run deal with them, you also can handle the second run deal as well for the 1931-32, 1932-33 product.

Please advise.

Very truly yours, S. B. Kramer, Branch Manager.

SBK:MM.

CC: Mr. R. H. Haines.

[fol. 6164]

EXHIBIT 542

Vitagraph, Inc.

Distributors of

First National Pictures Warner Bros. Pictures
Vitaphone Short Subjects

Inter-Office Communication

From Albany, N. Y. Date Jan. 12, 1934.
To Home Office. Attention of Mr. A. W. Smith, Jr.
Subject: State Theatre, Glens Falls, N. Y.

DEAR MR. SMITH:

I have the following proposition from the above account. This theatre is operated by Fred Mausert and it is really a third run and even though Schine has sixty days clearance over this theatre at his second run house, Mr. Mausert is agreeable to signing up with us.

3 at 40% 2 days
7 at $17.50 against 30% 2 days
25 at $12.50 2 days
25 at $10.00 2 days
Scores: $2.50
Trailers: 7 days $1.00
78 singles at $2.00
52 doubles at $4.00 making a total of $364

and the exhibitor agrees to pay us $7.00 per week except the weeks when he plays a three reel subject when the payment will be $9.00.

In view of the run, I think this is a very good deal and I hope before long Mr. Lynch will break down the 60 day clearance over this situation. The Empire is supposed to play 60 days after first run and then they hold up 60 days more over the State. Incidentally Mausert will be in the town regardless of how tough they would like to make it for him. I have known Fred for many years and I would class him with Bill Benton. He has never been in the habit of operating under any give away policies or any trick admissions and I should think that this would be taken into consideration in setting up clearance. As I told you this morning over the 'phone, the clearance set up is all wet, but this will eventually be straightened out. At the present time he is hard hit for pictures and I have given him the right to repeat on our present pictures at $10.00. I would also like your okay to serve him Forty Second Street repeat at $25.00 flat rental.

[fol. 6165] In setting up the short product you will note I have arranged for a $7.00 a week payment plan and while we have a deal with Lynch at the Empire, he is not playing same. From his recent conversation with me, he thought it would be all right to serve shorts to the State Theatre with the Empire or ahead of it.

Very truly yours, R. S. Smith, Branch Manager.

RSS: CR.
cc—R. Smeltzer.

[fol. 6166] EXHIBIT 546

VITAGRAPH, INC.
Distributors of
First National Pictures Warner Bros. Pictures
Vitaphone Short Subjects

Inter-Office Communication

From Albany, N. Y. Date: June 25, 1934.
To Home Office. Attention of Mr. A. W. Smith, Jr.
Subject: Canton, N. Y.

DEAR MR. SMITH:

Alex Papayanakos of Canton was in today to date some pictures and in this situation he has been forced to wait a long time for Ogdensburg. In order to get dates I gave him a concession in price similar to the last revision I made and which you okayed. He had the following pictures available which he dated today:

Jimmy the Gent	$25.00	to be	$20.00
Harold Teen	25.00	" "	20.00
Reg. Nurse	20.00	" "	15.00
Modern Hero	20.00	" "	15.00
Upperworld	20.00	" "	15.00

Honorable Guy	25.00	" "	20.00
Merry Wives Reno	25.00	" "	15.00
Smarty	20.00	" "	15.00
Merry Frinks	25.00	" "	17.50
He Was Her Man	25.00	" "	20.00

He has been forced to wait 30 days after Ogdensburg for pictures and they certainly depreciate in this situation for reason it is a college town and most of the pictures are much older than 30 days, as Schine doesn't play them on release date.

At the present time Mr. Papayanakos is trying to eliminate this clearance and if he is successful, it will make a better condition for us all. Canton is a pretty good town under ordinary conditions and I believe if he can get the pictures newer, he will do more business and we could get more rental for our film.

Very truly yours, R. S. Smith, Branch Manager.

RSS:CR
cc-R. Smeltzer.

[fol. 6167] EXHIBIT 549

Vitagraph, Inc.

Distributors of

First National Pictures Warner Bros. Pictures Vitaphone Short Subjects

Inter-Office Communication

From Albany, N. Y. Date Aug. 31, 1934.
To Home Office. Attention of Mr. R. Mochrie.
Subject: Schine Protections.

DEAR BOB:

I am sorry I didn't make myself clear over the telephone today regarding the suggested clearances desired by Schine. What I want to get at is this—take Little Falls for instance, the clearance reads 30 days over Dolgeville, but the Code Authority has already decided it should be 14 days. Lynch insisted that we go along on a 30 day basis even though the Board approved the 14 day arrangement.

Also in Watertown they want 30 days over Lowville the same as last year, even though the Board decided it should be 7 days clearance at the Avon Theatre and open booking with the Olympic.

I am holding up the contracts, but will submit the deal to you by letter. The reason for this is that I wrote George Lynch today relative to this change in the clearance set up, as he wants same to be part and parcel of the contracts.

I am giving you below the clause I read to you over the 'phone.

> "The following are the protections which are to be inserted in the contracts and the protections listed herewith are part and parcel of the contracts signed this 29th day of August 1934 and the approval of the contracts dated this date will be the automatic approval of these protections."

Very truly yours, R. S. Smith, Branch Manager.

RSS:CR.

[fol. 6168] Exhibit 550

Vitagraph, Inc.

Distributors of

First National Pictures Warner Bros. Pictures Vitaphone Short Subjects

Inter-Office Communication

From Buffalo, N. Y. Date Sept. 1st, 1934.
To Home Office. Attention of Mr. A. W. Smith, Jr.
Subject: Schine.

Dear Mr. Smith:

After a two day session at Schines, Ray Smith and I were finally successful in closing a short deal and also complete feature set up for their various situations. Blank contracts for the entire set up were signed.

It was utterly impossible to secure a short deal for Piqua, Ohio, as Mr. Schine claims that he double features each change and did not buy any shorts last year and could not use any there this year.

Although in Bath, Canandaigua and Newark, I was compelled to lower the number of shorts from 52 singles to 40,—and from 52 doubles to 40. I made this up in other situations where last year they contracted for 52 singles and 52 doubles. This year I managed to sell 100%. This, plus increase we received on two reelers and technicolors will net us more money than we received last year as a whole.

In lieu of set up on shorts, per the attached it is necessary that we cancel the Penners in each of the following towns—

3—Bath
3—Canandaigua
4—Corning
1—Cortland
5—Geneva
5—Newark
2—Oswego
5—Salamanca

Although our 1934-35 short deal starts Dec. 1st, 1934, Mr. Schine assured me that on Nov. 30th, 1934, he would pay for any unplayed 1933-34 shorts in his situations.

Regarding features subsequent runs Buffalo and Rochester, I could not get more percentage pictures than we received last year. Same applies to second run in the following situations—Lockport, Oswego and Corning.

Reason for the 40 feature contract, instead of 60 which we received last year,—second run in the above situations is that Mr. Schine does not want to get into a mess with the Code Authorities as he did this past year. He, however, advised that if we do not sell the balance of 20 pic- tures to oppositions—second run,—he will do everything possible to use them.

Regarding protections,—they are set up the same as last year with the exception of the city of Rochester, and Mr Schine absolutely refuses to take any part of his entir deal, unless we stipulate in his third run contracts that h will follow only Capitol and Temple Theatres, Rochester [fol. 6169] This was brought about by the fact that Schine had intended to take over Madison and Monroe Theatre from Fenyvessys, which deal fell thru and there is som talk of Commerford taking over these two houses. Mr. Schine advises that whether or not that deal goes thru, he wants same run as he had last year (3rd run to follow only Capitol and Temple).

We are waiting your decision so that all contracts can be typed up for final approval.

Very truly yours, H. A. Seed, Branch Manager.

HAS-VM.
CC Smeltzer.

[fol. 6170]

Exhibit 554

Vitagraph, Inc.

Distributors of

First National Pictures Warner Bros Pictures Vitaphone Short Subjects

Inter-Office Communication

From Albany, N. Y. Date Feb. 26, 1935.
To Home Office. Attention of Mr. A. W. Smith, Jr.
Subject: Amsterdam, N. Y.

Dear Mr. Smith:

Mr. M. Kronick who operates the Orpheum Theatre, Amsterdam has written me several letters regarding the purchase of our product for second run in this town. At our recent meeting in New York we discussed this and you advised me to write you relative to what product he has bought. At the present time he has Paramount bought.

In talking to Lynch about this course he doesn't want us to sell them, but one thing Mr. Kronick does is at least run his theatre on a businesslike basis and does not cut his admissions. You were not in favor of selling second-run in Amsterdam even prior to the Schine set up, but in view of the fact that Paramount has sold him and no doubt the other companies will sell him, I cannot see any reason why we could stay out.

George Lynch, as you know, is away at the present time and he left us holding the bag for $1200 in short product.

We certainly give him every cooperation and in return he should give us the same. While I do not want to start anything that will effect us on future setups, and I do not want you to think I am trying to depreciate the value of our product by selling second run in Amsterdam, my thought is, while we don't want to get into any jam and I know the answer to why we shouldn't sell, yet there are towns smaller than Amsterdam where we set up second run deals.

This fellow was in here again yesterday and I have been stalling him with the hopes we can work out something here that would satisfy Mr. Schine. If the other fellows keep selling him and still sell Schine the coming season's product, there is no reason why we couldn't get this revenue.

Very truly yours, R. S. Smith, Branch Manager.

RSS:CR.

[fol. 6171] **Exhibit 559**

Vitagraph, Inc.

Distributors of

First National Pictures Warner Bros Pictures Vitaphone Short Subjects

Inter-Office Communication

From Cleveland. Date December 27th, 1935.
To Home Office. Attention of Mr. R. Mochrie.
Subject: Colonial Theatre, Fostoria, Ohio.

Dear Mr. Mochrie:

Enclosing a two year deal for the Colonial Theatre, Fostoria, O. This is a very good deal and suggest you let us have your approval.

Very truly yours, M. A. Mooney, Branch Manager.

MAM/AM.

[fol. 6172]

Exhibit 560

Home Office Copy
Warner Bros. Pictures, Inc.

New York

Telegram

Day Letter

March 25, 1936.

Mr. M. A. Mooney,
Vitagraph Inc.,
Cleveland, Ohio

If absolutely necessary you give Fostoria Exhibitor answer today. Tell him two year deal submitted by you has been rejected Stop Will advise you further in matter Monday or Tuesday of next week.

A. W. Smith, Jr.

[fol. 6173]

Exhibit 561

Home Office Copy

Warner Bros. Pictures, Inc.

New York

Telegram

April 1, 1936.

M. A. Mooney,
Cleveland Office:

Reject definitely Fostoria Deal Stop You may offer Buck half of the product for one season only. Namely First National Group Season thirty six seven Stop For your personal information will sell Schine Warner half.

R. Mochrie.

36 words

Form 35 Rev.—1264-1-35 (RC)

EXHIBIT 566

Printed in U. S. A.

BRANCH
Cleveland

CONTRACT RECOMMENDATION

Salesman: W. J. Brandt

DATE
Sept. 16, 1936

Theatre Colonial

Exhibitor A. J. Buck

Location Fostoria, O.

SUMMARY-COMPARISON

DEAL SUBMITTED HEREWITH				DEAL PRECEDING SEASON			
PRODUCT	NO. UNITS	TERMS—PER UNIT	TOTAL	PRODUCT	NO. UNITS	TERMS—PER UNIT	TOTAL
WB 35	1	150.00 ag. 50%	150.00				
SS	1	5.00	5.00				
TR	1	3.50	3.50				
GRAND TOTAL			158.50	GRAND TOTAL			

PERFORMANCE RECORD

SUBJECT	DAYS PLAYED	GROSS RECEIPTS	TERMS	TOTAL RENTAL

RECOMMENDATION

RECOMMENDATION

I notice that ANTHONY ADVERSE was not included in the Schine contracts and I feel we will get considerable more money from this house than if we sold the Schine situation.

Please let us have your approval.

IMPORTANT!

NO. CHANGES PER WK. ______
NO. SINGLES USED PER WK. ______
NO. DOUBLES USED PER WK. ______
(EXCLUSIVE OF NEWSREELS)

W. J. Brandt
SALESMAN

MANAGER

6174

3948A

[illegible] Printed in U. S. A.

EXHIBIT 567

BRANCH
Cleveland

CONTRACT RECOMMENDATION

DATE
Oct. 21st, 1936.

Salesman: W. J. Brandt

Theatre Civic or Roxy Exhibitor Belpik Theatre Corp. Location Fostoria, O.

SUMMARY – COMPARISON 12,790 Population

DEAL SUBMITTED HEREWITH

PRODUCT	NO. UNITS	TERMS – PER UNIT	TOTAL
WB 36	1	35% to split	$
	3	30% to split	$
	2	20% [illegible]	$
	10	35.00 flat	350.00
	13	30.00 flat	390.00
SC	29	2.50 and 5.00	72.50
TR	29	3.50	101.50
V 36 1R	52	4.00-3.75-3.50	192.00
2R	18	10.00-9.00	165.00
GRAND TOTAL			1371.00

DEAL PRECEDING SEASON

PRODUCT	NO. UNITS	TERMS – PER UNIT	TOTAL
DID NOT SELL LAST YEAR.			
GRAND TOTAL			

PERFORMANCE RECORD

PERFORMANCE RECORD

SUBJECT	DAYS PLAYED	GROSS RECEIPTS	TERMS	TOTAL RENTAL
	DID NOT SELL LAST YEAR.			

CHANGES PER WEEK______ POLICY: S. F.______ D. F.______ USES WKLY: SINGLES______ DOUBLES______

RECOMMENDATION

This deal was sold by Mr. Kalmenson and involves considerable less money than we are getting from the opposition house, with whom we have been doing business for a number of years.

1/14

W. J. Brandt
SALESMAN

MANAGER

6175

FORM 39 REV.—20M-10-36 (SB)

EXHIBIT 574

Printed in U. S. A.

BRANCH
ALBANY, NY

CONTRACT RECOMMENDATION

DATE
JUNE 22, 1937

Salesman: R. STROWE

Theatre PLAZA

Exhibitor M. BOUMANSOUR

Location MALONE, NY.

SUMMARY—COMPARISON

DEAL SUBMITTED HEREWITH					DEAL PRECEDING SEASON			
PRODUCT	NO. UNITS	TERMS — PER UNIT	TOTAL		PRODUCT	NO. UNITS	TERMS — PER UNIT	TOTAL
WB-6	4	50.00-35%	200	00				
	9	40.00-30%	360	00				
	17	25.00	425	00				
	15	20.00	300	00				
	15	17.50	262	50				
Scs.	60	2.50	150	00				
Trs.	60	13 @ 2.00 47 @ 1.50	96	50				
V-6								
2-R	52	6.00	312	00				
1-R	52	3.00	156	00				
GRAND TOTAL			2262	00	GRAND TOTAL			

5

PERFORMANCE RECORD

GRAND TOTAL [illegible]

PERFORMANCE RECORD

5

SUBJECT	DAYS PLAYED	GROSS RECEIPTS	TERMS	TOTAL RENTAL

CHANGES PER WEEK ______ POLICY: S. F. ______ D. F. ______ USES WKLY: SINGLES ______ DOUBLES ______

RECOMMENDATION

Until about six months ago this theatre was under lease to Schine, who kept it closed. Mr. Boumansour, the owner, would not renew the lease unless the theatre was opened, which Schine refused to agree to. Consequently Mr. Boumansour opened the theatre and for the past several months has been running only first run pictures, all of them being Schine rejects from former seasons. It now develops that he is unable to secure sufficient first run product to operate the house on this policy, forcing him to a second run policy or close the house, which he will not do as he has spent considerable money remodeling it. He has applied to other distributors for second run product and to the best of my knowledge at this writing has been unable to secure a contract. I believe the attached deal is the only one actually negotiated at this time. The terms of this deal, in

(over)

SALESMAN

MANAGER

6176

3948C

my opinion, are excellent for second run in this town and do not hesitate to recommend acceptance of same in so far as the terms are concerned. I have discussed this deal with Mr. Kalmenson and he suggested submitting same for approval but prefers for the time being at least, to spot book the pictures as per the terms set up on the contract. In other words, we will not forward the approved copy of these contracts to the exhibitor unless advised to the contrary.

[fol. 6178] **Exhibit 597**

Vitagraph, Inc.

Distributors of

First National Pictures Warner Bros Pictures Vitaphone Short Subjects

Inter-Office Communication

From Home Office. Date December 9, 1940.
To Cincinnati. Attention of Mr. R. H. Dunbar.
Subject: ——.

Dear Mr. Dunbar:

Schine's wish to buy a second run in Harlan, Ky.—also, a 4th run the Ada Mead, Lexington, Ky.

Please look into both these situations and let me know what you think would be a fair proposition.

Yours very truly, Arthur Sachson.

[fol. 6179] **Exhibit 598**

Home Office. December 13, 1940.
Cincinnati. Mr. Arthur Sachson.
Schine—Harlan and Lexington

Dear Mr. Sachson:

With reference to yours of December 9, in regards to selling Schine for second run in Harlan, Ky., if there is any possible way of getting out of selling this account we would greatly appreciate it. We have a very good first run in this situation who pays us tops for this size town and we definitely know it will hurt him considerably to sell a second run in this situation. I talked to Mr. Joel Golden the other day and he advised me that our first run situation here repeated on pictures that he played but upon checking up we find that there is no contract existing for second run product at all in this particular town.

In regards to fourth run Lexington at the Ada Meade, you probably mean fifth run, as we now have four contracts in this situation. You, of course, know that this is a 10¢ theatre and we would rather not go into a contract with this account but during the Drive would like to spot book some of our older pictures. The Schine booker advises they are paying $22.50 top in this situation, everything flat. We feel sure that if we serve this account on a spot booking arrangement, even tho he is charging 10¢ it would not interfere with any of the surrounding theatres and at any time we could withdraw our product if it would cause any trouble.

Kindly advise.

Cordially yours, —— ——, Branch Manager.

RHD:K.
cc: Mr. Smeltzer.

[fol. 6180] **EXHIBIT 599**

Vitagraph, Inc.

Distributors of

First National Pictures Warner Bros Pictures Vitaphone Short Subjects

Inter-Office Communication

From Home Office. Date December 20, 1940.
To Cincinnati. Attention of Mr. R. H. Dunbar.
Subject: Schine—Harlan and Lexington.

DEAR MR. DUNBAR:

In reply to yours of the 13th, be advised we intend to sell Schine second run in Harlan, Ky. Please let me know on what basis we should set up this clearance after the New Harlan Theatre, since your 1940-41 contract does not specify any clearance in the town.

Also let me know what, in your opinion, would be an equitable deal for the Schine Theatre second run.

With respect to the Ada Meade Thea‹ in Lexington, we have decided not to sell this run.

Yours very truly, Arthur Sachson.

[fol. 6181] **EXHIBIT 600**

Cincinnati. December 23, 1940.
Home Office. Mr. Arthur Sachson.
Schine—Harlan and Lexington.

DEAR MR. SACHSON:

Wish to acknowledge receipt of your letter of December 20 regarding Schine for Harlan and Lexington, Ky.

We note what you say in regard to the Ada Meade Theatre, Lexington and, therefore, will not supply this particular theatre with any of our product.

With reference to Harlan, at the time we discussed this with the local Schine booker, he gave us the information that they only use repeat pictures on double bills or bank nights and will only select a very small number of the top pictures thruout the year. Should we negotiate a deal with Schine for second run product, we believe it to our advantage to hold this account at least 60 days after first run.

As soon as you have made a deal kindly advise us.

Kindest regards.

Cordially yours, —— ——, Branch Manager.

RHD.:K.
cc: Mr. Smeltzer.

We have learned from reliable information that Schine is paying on his own repeat and second run pictures which they are using from $15 to $35 for a one or two day play at Harlan.

[fol. 6182] **EXHIBIT 601**

December 27, 1940.

Mr. Geo. V. Lynch,
Schine Circuit, Inc.,
Gloversville, N. Y.

DEAR GEORGE:

Regarding a second run deal for Harlan, Ky., be advised it will be okay to go ahead with bookings on the basis of 60-days after first run, and the next time I see you I will set up a deal with you for this spot.

Yours very truly, Arthur Sachson.

[fols. 6182A-6183] **Exhibit 602**

Vitagraph, Inc.

Distributors of

First National Pictures Warner Bros Pictures Vitaphone Short Subjects

Inter-Office Communication

From Cincinnati, Ohio. Date September 5, 1941.
To Home Office. Attention of Mr. S. W. Hatch.

Dear Mr. Hatch:

Will you please be good enough to add the Ada Meade Theatre, Lexington, Kentucky, to contract #6227 which now calls for the playing of our product in the Strand, State, or Opera House Theatres, Lexington, Kentucky, since Schine is requesting subjects to play in the Ada Meade Theatre on this contract.

Kind regards.

Yours very truly, R. H. Dunbar, Branch Manager.

RHD:LS.

[fol. 6184] **Exhibit 618**

Loew's Incorporated

with

Schine Enterprises Corporation

Dated—Oct. 1, 1936.

Seasons:

1936-37
1937-38
1938-39
1939-40

[fol. 6185] **SCHINE ENTERPRISES CORPORATION**

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[fol. 6186]

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[fol. 6187] Agreement entered into this 1st day of October, 1936, between Loew's Incorporated, a Delaware corporation (herein referred to as "Loew's") party of the first part, and Schine Enterprises Corporation, a New York corporation, party of the second part,

Witnesseth:

First: Loew's hereby grants to Exhibitor upon the terms and conditions herein specified a license to exhibit as herein provided, in synchronism with recorded sound, at the theatres listed on annexed Schedules I and II all of the feature motion pictures and all (unless a less number of the respective product is hereinafter provided for) of the one-reel and two-reel short-subjects, Newsreels and Trailers generally released by Loew's for distribution to motion picture theatres in the United States in each fifty-two week period during the four (4) years commencing September 1, 1936, and ending August 31, 1940. Said period of four (4) years is sometimes herein referred to as the "period" or "period of this agreement"; and said fifty-two week periods as "seasons". The license for such feature motion pictures is for first run in each situation unless a different run is specified on said Schedules.

This license is under the respective copyrights of said feature motion pictures, one-reel and two-reel short-subjects, Newsreels and Trailers and under any copyrights which may be in force with respect to any matter included in such recorded sound. Exhibitor hereby accepts such license and agrees to comply with all the terms and provisions hereof.

It is agreed that the feature motion pictures entitled Kelly the Second and Women Are Trouble, although re- [fol. 6188] leased prior to September 1, 1936, are included in the feature motion pictures of the first fifty-two (52) week period to be furnished by Loew's and exhibited by Exhibitor hereunder.

It is agreed that upon the execution and delivery hereof any and all contracts for motion pictures heretofore entered into for any and all of the theatres covered by this agreement shall be deemed terminated and of no force or effect as to the motion pictures covered by such contracts generally released from and after September 1, 1936, and that all such product shall be furnished and exhibited under and pursuant to the terms and conditions of this agreement.

Second: It is agreed that there shall be excepted and excluded from this license and agreement, even though generally released during the period of this agreement:

(a) all motion pictures as to which Loew's shall be required to obtain the approval of the producer thereof or any other party, except a producer of company owned or controlled by Loew's or under common ownership or control, to the terms and conditions of the licensing thereof, unless Loew's obtains such approval to the exhibition thereof hereunder. Loew's agrees to use its best efforts to obtain such approval.

(b) all reissues, it being understood and agreed that any picture remade by Loew's of any silent or sound picture at any time theretofore released by Loew's or any other distributor under the same or any other title is not to be considered a reissue.

(c) all foreign pictures. The term "foreign" is deemed to mean a motion picture made in a country other than the United States of America, but no motion picture shall be [fol. 6189] deemed to be a "foreign" if such motion picture is made on a location outside of the United States with a director theretofore employed in the making of so-called American-made motion pictures and with a cast in which the leading players shall have theretofore been employed in American-made motion pictures.

It is agreed that Loew's may exhibit and/or license to any other exhibitor for exhibition in any manner Loew's sees fit, free from any claim by Exhibitor thereto, any and all motion pictures excepted and/or excluded as herein provided.

Third: Clearance for the respective theatres covered by this agreement as to the pictures of the first season shall be as set forth on the "Clearance Schedule" hereto annexed and made part hereof; and as to each subsequent season shall be the same as herein provided for unless the parties hereto mutually agree upon other clearance as to the pictures of the respective season.

Fourth: It is understood and agreed that as to pictures herein provided to be exhibited at flat rental prices the license fees herein provided for are for not more than the number of days of exhibition herein set forth, and that as to the pictures herein provided to be exhibited upon a percentage basis the number of days herein provided for is the minimum. If any flat rental picture is exhibited for any extra days, Exhibitor agrees to pay, for each such extra day, fifty (50%) percent of the per diem flat rental of the respective picture.

Fifth: It is further agreed that Loew's is to have the sole right of designation of the particular pictures in each classification hereinafter provided for, and of the respective pictures to play on the respective changes herein provided [fol. 6190] for. Loew's agrees to notify Exhibitor of the classification of a particular picture not later than approximately fourteen (14) days after its general release.

Sixth A: For the license to exhibit the feature motion pictures of each season in each theatre listed on said Schedule I, Exhibitor agrees to pay to Loew's the following:

Classification 1—As to each of four (4) pictures of the respective season—

(a) Forty (40%) percent of all gross receipts where the gross receipts of the engagement of the respective picture at the respective theatre equal or exceed the amount set forth opposite the names of the respective theatres under the heading "40% Control" on the annexed Schedule I.

(b) Thirty-seven and one-half (37½%) percent of all gross receipts where the gross receipts of the engagement of the respective picture at the respective theatre are less than the amount shown under the heading "40% Control" but equal or exceed the amount shown under the heading "37½% Control" on said Schedule I.

(c) Thirty-five (35%) percent of all gross receipts where the gross receipts of the engagement of the respective picture at the respective theatre are less than the amount shown under the heading "37½% Control" on said Schedule I.

Classification 2—As to each of twenty-six (26) pictures of the respective season:

(a) Thirty-five (35%) percent of all gross receipts where the gross receipts of the engagement of the respective picture at the respective theatre equal or exceed the amount set forth opposite the names of the respective theatres under the heading "35% Control" on the annexed Schedule I.

[fol. 6191] (b) Thirty-two and one-half (32½%) percent of all gross receipts where the gross receipts of the engagement of the respective picture at the respective theatre are less than the amount shown under the heading "35% Control" but equal or exceeded the amount shown under the heading "32½% Control" on said Schedule I.

(c) Thirty (30%) percent of all gross receipts where the gross receipts of the engagement of the respective picture at the respective theatre are less than the amount shown under the heading "32½% Control" but equal or exceed the amount shown under the heading "30% Control" on said Schedule I.

(d) Twenty-seven and one-half (27½%) percent of all gross receipts where the gross receipts of the engagement of the respective picture at the respective theatre are less than the amount shown under the heading "30% Control" but equal or exceed the amount shown under the heading "27½% Control" on said Schedule I.

(e) Twenty-five (25%) percent of all gross receipts where the gross receipts of the engagement of the respective picture at the respective theatre are less than the amount shown under the heading "27½% Control" on said Schedule I.

As to each situation on said Schedule I, it is understood and agreed that as to the pictures of each season in this Classification 2, in the event on the basis of said control figures there are not at least six (6) pictures on each of which Loew's shall be entitled to thirty (30%) percent or more of the gross receipts, then Loew's shall have the right to select a maximum of six (6) pictures for each of which Exhibitor agrees to pay sufficient additional film rental to equal thirty (30%) percent of all gross receipts of the respective picture in the respective situation, payment of such additional film rental to be made not later [fol. 6192] than fourteen (14) days after Loew's sends written notice to Exhibitor of its selection of such six (6) pictures.

Classification 3—As to each of the remaining pictures of the respective season—the respective flat rental amounts listed opposite the names of the respective theatres under the heading "Flat Rentals" on said Schedule I.

It is understood and agreed that if any of said twenty-six (26) pictures of Classification 2 are, pursuant to mutual agreement, exhibited in the B house in any of the situations on annexed Schedule Ia, the control figures for such pictures shall be as shown on said Schedule Ia.

B. For the license to exhibit the feature motion pictures of each season in each theatre listed on said Schedule II (except the theatres listed in subdivisions C, D, and E below) Exhibitor agrees to pay Loew's the following:

Classification 1—As to each of four (4) pictures of the respective season—

(a) Forty (40%) percent of all gross receipts where the gross receipts of the engagement of the respective picture in the respective theatre equal or exceed the amount set forth opposite the names of the respective theatres under the heading "40% Control" on the annexed Schedule II.

b) Thirty-seven and one-half (37½%) percent of all gross receipts where the gross receipts of the engagement of the respective picture in the respective theatre are less than the amount shown under the heading "40% Control" but equal or exceed the amount shown under the heading "37½% Control" on said Schedule II.

(c) Thirty-five (35%) per cent of all gross receipts where the gross receipts of the engagement of the respective picture in the respective theatre are less than the amount shown under the heading "37½% Control" on said Schedule II.

Classification 2—As to each of four (4) pictures of the respective season:

(a) Thirty-five (35%) percent of all gross receipts where the gross receipts of the engagement of the respective pic- [fol. 6193] ture in the respective theatre equal or exceed the amount set forth opposite the names of the respective theatres under the heading "35% Control" on the annexed Schedule II.

(b) Thirty-two and one-half (32½%) percent of all gross receipts where the gross receipts of the engagement of the respective picture in the respective theatre are less than the amount shown under the heading "35% Control" but equal or exceed the amount shown under the heading "32½% Control" on said Schedule II.

(c) Thirty (30%) percent of all gross receipts where the gross receipts of the engagement of the respective picture in the respective theatre are less than the amount shown under the heading "32½% Control" but equal or exceed the amount shown under the heading "30% Control" on said Schedule II.

(d) Twenty-seven and one-half (27½%) percent of all gross receipts where the gross receipts of the engagement of the respective picture in the respective theatre are less than the amount shown under the heading "30% Control" but equal or exceed the amount shown under the heading "27½% Control" on said Schedule II.

(e) Twenty-five (25%) percent of all gross receipts where the gross receipts of the engagement of the respective picture in the respective theatre are less than the amount shown under the heading "27½% Control" on said Schedule II.

Classification 3—As to each of the remaining pictures of the respective season—the respective flat rental amounts listed opposite the names of the respective theatres under the heading "Flat Rentals" on said Schedule II. The flat rental prices listed on said Schedule II are for the feature motion pictures of this Classification 3 of the first two (2) seasons (1936-37 and 1937-38) only. As to the next season (1938-39) Exhibitor agrees to pay, instead of said flat rental prices, flat rentals of fifteen (15%) percent more than the respective flat rentals shown on said Schedule II, unless the [fol. 6194] parties shall mutually agree not later than sixty (60) days prior to the beginning of such 1938-39 season that the flat rentals for any particular theatre or theatres shall not be increased; and as to the last season (1939-40), Exhibitor agrees to pay fifteen (15%) percent more than the respective flat rentals herein provided for pictures of the 1938-39 season, unless the parties shall mutually agree not later than sixty (60) days prior to the beginning of such 1939-40 season that the flat rentals for any particular theatre or theatres shall not be increased.

C. For the license to exhibit the feature motion pictures of each season in each of the following theatres, viz.,

Cameo Theatre, Rochester, N. Y. (Sub run)
Lake Theatre, Rochester, N. Y. (Sub run)
Holland Theatre, Bellefontaine, Ohio (First run)
Strand Theatre, Lexington, Ky. (Second run)
State Theatre, Lexington, Ky. (Third run)
Bourbon Theatre, Paris, Ky. (First run)
Madison Theatre, Richmond, Ky. (First run)
Opera House, Ashland, Ohio (First run)
Civic Theatre, Fostoria, Ohio (Second run)
Opera House, Kent, Ohio (Second run)
Ritz Theatre, Tiffin, Ohio (First run)

Exhibitor agrees to pay Loew's the following:

Classification 1—As to each of four (4) pictures of the respective season:

(a) Forty (40%) percent of all gross receipts where the gross receipts of the engagement of the respective picture in the respective theatre equal or exceed the amount set forth opposite the names of the respective theatres under the heading "40% Control" on the annexed Schedule II.

(b) Thirty-seven and one-half (37½%) percent of all gross receipts where the gross receipts of the engagement of the respective picture in the respective theatre are less than the amount shown under the heading "40% Control" but equal or exceed the amount shown under the heading "37½% Control" on said Schedule II.

[fol. 6195] (c) Thirty-five (35%) percent of all gross receipts where the gross receipts of the engagement of the respective picture in the respective theatre are less than the amount shown under the heading "37½% Control" on said Schedule II.

Classification 2—As to each of the remaining pictures of the respective season—the respective flat rental amounts listed opposite the names of the respective theatres under the heading "Flat Rentals" on said Schedule II. The flat rental prices listed on said Schedule II are for the feature motion pictures of this Classification 2 of the first two (2) seasons (1936-37 and 1937-38) only. As to the next season (1938-39) Exhibitor agrees to pay, instead of said flat rental prices, flat rentals of fifteen (15%) percent more than the respective flat rentals shown on said Schedule II, unless the parties shall mutually agree not later than sixty (60) days prior to the beginning of such 1938-39 season that the flat rentals for any particular theatre or theatres shall not be increased; and as to the last season (1939-40), Exhibitor agrees to pay fifteen (15%) percent more than the respective flat rentals herein provided for pictures of the 1938-39 season, unless the parties shall mutually agree not later than sixty (60) days prior to the beginning of such 1939-40 season that the flat rentals for any particular theatre or theatres shall not be increased.

D. For the license to exhibit the feature motion pictures of each season first run at the Fox Theatre, Corning, N. Y., Exhibitor agrees to pay Loew's the following:

[fol. 6196] Classification 1—As to each of four (4) pictures of the respective season—the same as provided in subdivision A of this Article Sixth for Classification 1 pictures.

Classification 2—As to each of four (4) pictures of the respective season—the same as provided in subdivision B for Classification 2 pictures.

Classification 3—As to each of eight (8) pictures of the respective season,—twenty-five (25%) percent of the gross receipts.

Classification 4—As to each of the remaining pictures of the respective season—the respective flat rental amounts listed under the heading "Flat Rentals" on said Schedule I.

E. For the license to exhibit the feature motion pictures of each season, commencing with the 1937-38 season, first run at each of the following theatres, viz:

Capitol Theatre, Ballston, N. Y.
State Theatre, Mechanicville, N. Y.
Capitol Theatre, Whitehall, N. Y.

Exhibitor agrees to pay Loew's the following:

Classification 1—As to each of four (4) pictures of the respective season—the same as provided in Subdivision A of this article Sixth for Classification 1 pictures.

Classification 2—As to each of eight (8) pictures of the respective season—the same as provided in Subdivision B for Classification 2 pictures.

Classification 3—As to each of the remaining pictures of the respective season—the respective flat rental amounts listed under the heading "Flat Rentals" on said Schedule I.

The flat rental prices listed on said Schedule I for the Capitol Theatre, Ballston, N. Y., State Theatre, Mechanicville, N. Y. and Capitol Theatre, Whitehall, N. Y. are for the feature motion pictures of this Classification 3 of the 1937-38 season only. As to the next season, 1938-39, Ex- [fol. 6197] hibitor agrees to pay instead of said flat rental prices fifteen (15%) percent more than the respective flat rentals shown on said Schedule I, unless the parties shall mutually agree not later than sixty (60) days prior to the beginning of said 1938-39 season that the flat rentals for any of said theatres shall not be increased; and as to the last season (1939-40) Exhibitor agrees to pay fifteen (15%) percent more than the respective flat rentals herein provided for the pictures of the 1938-39 season unless the parties shall mutually agree not later than sixty (60) days prior to the beginning of such 1939-40 season that the flat rentals for any of such theatres shall not be increased.

Seventh: ~~(a)~~ It is agreed that whenever any feature motion picture of Classification 2 is exhibited in any theatre listed on Schedules I and II (including the Fox Theatre, Corning, but excluding all theatres covered by subdivision C of Article Sixth) as part of a double feature program, the cost of the second feature may be deducted from the gross receipts before computing Loew's share of the engagement, provided that the amount of the deduction shall in no instance exceed the amount of the flat rental in the next to the lowest bracket for such theatre. For example, if one of the four (4) pictures of Classification 2 herein provided to be exhibited at the Strand Theatre, Carthage, N. Y., is exhibited as part of a double feature program, Exhibitor may deduct the cost of the second feature, but not to exceed Twenty-five ($25.00) dollars.

(b) (Midnight Shows) If any feature motion picture (other than a flat rental) is exhibited at a midnight show, Exhibitor agrees to pay with respect to such midnight show the same percentage of all gross receipts of such midnight show as payable to Loew's on the regular engagement of the respective picture. The receipts of a midnight show are not to be included in computing the percentage payable to [fol. 6198] Loew's with respect to the regular run.

If any feature motion picture licensed hereunder for exhibition on a flat rental basis is exhibited at a midnight show, then with respect to such midnight show exhibition Exhibitor agrees to pay an amount equal to the per diem flat rental of the respective picture; except that where a picture is given a midnight show and is used only the minimum number of days provided for in the annexed Schedules, then there will be no additional charge for such midnight show. For example, if the number of days provided in annexed Schedules for a given theatre is two to three days and the license fee is One hundred fifty ($150.00) dollars, then if the picture is exhibited for a midnight show and two (2) days, Exhibitor pays a total of One hundred fifty ($150.00) dollars, but if the picture is exhibited for a midnight show and three (3) days Exhibitor pays a total of Two hundred ($200.00) dollars.

Eighth: It is understood that the number of tenths which the respective control figures on said Schedules I, Ia and II represent are indicated on said Schedules, three tenths being allocated to Sunday, two tenths to Saturday and one tenth to each other day of the week (except that three tenths is to be allocated to each of the following holidays—Christmas, New Years Day and Thanksgiving,—and two-tenths to Labor Day); and agreed that if any picture in Classification 1 or 2 is exhibited in any theatre a greater number of tenths than indicated on said Schedules for said theatre, all of the control figures for such theatre set forth on the respective Schedule are to be proportionately increased as to such picture, and if exhibited a less number of tenths such control [fol. 6199] figures are to be proportionately reduced, and the percentage payable to Loew's hereunder shall be determined by the control figures as so revised.

As to each of the situations set forth on Schedule IV hereof, each picture in Classification 2 shall be exhibited the minimum number of days set forth opposite the names of the respective theatres.

Ninth: It is agreed that not less than sixteen (16) of the feature motion pictures of each season herein provided to be exhibited on a percentage basis shall be exhibited on the preferred change of the week in the respective theatres. Playing time at the respective theatres for the remaining percentage pictures of each—— season is to be mutually [fol. 6200] agreed upon as the respective pictures become available for exhibition at the respective theatres.

Tenth: With respect to each of the feature motion pictures licensed for exhibition hereunder on a percentage or participating basis, Exhibitor agrees to furnish to Loew's a daily statement of the boxoffice receipts of the respective theatre, showing the number of admissions at the respective admission prices. As to each such picture Exhibitor further agrees to furnish to Loew's immediately following the conclusion of the engagement thereof at the respective theatre, a true and complete settlement statement showing the gross receipts of the entire engagement and any and all additional figures and information necessary to compute the license fees payable hereunder for the respective picture, provided that if any such picture is exhibited for more than one week Exhibitor shall furnish such statement at the end of each week. All such statements shall be upon forms furnished by Loew's should Loew's so demand.

Exhibitor further agrees to keep true, accurate and complete books of account, vouchers and other records, showing the gross receipts of the motion pictures in respect of which a percentage of gross receipts of the exhibition thereof is payable hereunder, and any and all additional information and figures necessary to compute the license fees payable therefore hereunder, and Exhibitor agrees that Loew's shall have access at all times following the engagement of the respective pictures, at all reasonable times, through its accredited representatives, to the box-office of each theatre and to the books of account, vouchers, records and documents of the Exhibitor and any affiliated or subsidiary corporation insofar as they relate to the gross receipts and [fol. 6201] any and all additional information and figures necessary to compute the license fees payable hereunder for each such motion picture. Loew's agrees that all information obtained by it pursuant to the provisions of this paragraph shall be treated as confidential except in any arbitration proceedings and/or litigation in respect of this agreement, in which event such information shall be made available to such arbitrators or the court as the case may be.

Eleventh: Exhibitor agrees that it will not without the prior written consent of Loew's reduce admission prices for the engagement of any feature motion picture covered by this agreement below those shown on the annexed Schedule headed "Admission Prices".

Twelfth: Exhibitor agrees to commence the exhibition of each motion picture in each situation covered by this agreement not later than twenty-one (21) days after the date of availability designated by Loew's of the respective production.

Thirteenth: It is agreed

(1) that as to any situation where Exhibitor has two or more theatres, upon the closing of any of such theatres at any time during the term of this agreement all feature and short subject motion pictures, Newsreels and Trailers then remaining to be exhibited hereunder shall be exhibited in the theatre(s) remaining open;

(2) that with respect to any situation where Exhibitor has one or more theatres, if at any time during the term of this agreement all of such theatres shall be closed, Exhibitor shall be liable for and shall pay to Loew's the license fees herein provided for all the feature and short-subject motion

pictures, Newsreels and Trailers of the then current season [fol. 6202] remaining to be exhibited at such theatre(s), (the amount payable with respect to any and all feature motion pictures herein provided to be exhibited on a percentage and/or participating basis to be computed as provided in the Article hereof headed "Liquidated Damages"), less the amount, if any, Loew's may receive from another exhibitor in such situation to whom Loew's relicenses such product, or part thereof, for exhibition for the same run as that herein granted Exhibitor, and as to all further product this agreement shall be deemed terminated as to such theatre(s).

Fourteenth: In addition to the license fees herein provided for feature motion pictures, Exhibitor agrees to pay Loew's a score charge per picture in the respective amounts shown under "Score Charge" on the annexed Schedule III.

Fifteenth: The minimum number of reels of short-subjects, Newsreels and Trailers, respectively, of each season to be exhibited hereunder, the number of days, and the license fees therefor, are set forth on said Schedule III.

It is understood and agreed that the license fees shown on said Schedule III for short-subjects and Newsreels are for the number of days shown on said Schedule, and that for each additional day Exhibitor shall pay fifty (50%) percent of the per diem rate.

It is agreed that as to each theatre on said Schedule III for which the commitment of short-subjects is less than "All", such commitment is agreed upon because such theatres at present have a double feature policy part of the week; and it is understood and agreed that if at any time during the period of this agreement any of such theatres adopt a single feature policy then from the time such single feature policy goes into effect all of Loew's short-subjects output of each season shall be exhibited in such theatre, the license fees per reel to remain the same as provided in said Schedule III.

[fol. 6203] It is further agreed that as to theatres like the Grand, Rochester, N. Y., no commitment of short-subjects is hereby provided for because such theatres at present have a double feature policy, and that if at any time during the period of this agreement any of such theatres adopt a single feature policy, then not less than fifty (50%) percent of Loew's short-subjects output from that time on is to be exhibited in such theatres at license fees to be mutually agreed upon.

It is understood and agreed that wherever reference is made in this agreement to "one-reel" short product same means a subject ~~of not~~ less than approximately seven hundred (700) linear feet and not more than approximately one thousand (1000) linear feet; and that wherever reference is made to "two-reel" short product same means a subject of not less than approximately fifteen hundred (1500) linear feet and not more than approximately two thousand (2000) linear feet.

It is understood and agreed that Loew's may at any time during the term of this agreement change the brands or series of any of the one-reel and two-reel short-subjects, and/or the number of either, from that released by Loew's as its 1936-37 short product.

It is agreed that Loew's may, if it so desires, cease the distribution of any and all short-subjects and/or News and/or Trailers at any time during the period of this agreement without in any wise affecting this agreement as respects all other motion pictures licensed hereunder.

Sixteenth: It is understood and agreed that the term "gross receipts" as used in this agreement means and shall consist of all sums, exclusive of admission taxes collected, received by Exhibitor for admission to the respective theatres on the dates of exhibition of the respective pictures.

[fol. 6204] Seventeenth: Exhibitor hereby expressly waives any right to exclude motion pictures under the "Option to Exclude" provisions of the printed form of exhibition contract hereinafter referred to, or otherwise.

Eighteenth: It is agreed that the acceptance by Loew's of any sum tendered by the Exhibitor as full payment of any license fee payable hereunder shall not estop or prevent Loew's from thereafter disputing the correctness of the amount of each such respective payment.

Nineteenth: Exhibitor further agrees to expend for exploitation and advertising of Loew's pictures in each theatre at least the average amount Exhibitor expends in the case of other pictures of similar production cost or reputation, and to keep and maintain all of its said theatres and their standard of operation at at least as high a standard as at present maintained.

Twentieth: It is agreed that in the event of default by Exhibitor in the performance of any of the terms or conditions of this agreement Loew's shall by registered mail give notice of such default, and that if such default is not remedied within ten (10) days after the mailing of such notice then Loew's shall have the right to terminate this entire agreement or in lieu thereof and in its discretion may so terminate as to the particular theatre or theatres so in default. It is agreed that any termination herein provided for shall be without prejudice to any other rights or remedies of Loew's hereunder and/or at law or in equity.

Twenty-first: If Exhibitor shall file a voluntary petition in bankruptcy or be adjudicated a bankrupt or be adjudged insolvent by any State or Federal Court of competent jurisdiction, or if a Receiver shall be appointed for substantially all of its assets and such appointment be not vacated within sixty (60) days from the date thereof, then and upon the [fol. 6205] happening of any of such events and at any time within sixty (60) days thereafter Loew's may (in addition to any other rights and remedies that Loew's may have in such respect) terminate the license herein granted as respects any and all motion pictures not theretofore exhibited hereunder, by giving written notice to Exhibitor of Loew's intention so to do.

If Loew's shall file a voluntary petition in bankruptcy or be adjudicated a bankrupt or be adjudged insolvent by any State or Federal Court of competent jurisdiction, or if a Receiver shall be appointed for substantially all of its assets and such appointment be not vacated within sixty (60) days from the date hereof, then and upon the happening of any of such events and at any time within sixty (60) days thereafter Exhibitor may (in addition to any other rights and remedies that Exhibitor may have in such respect) terminate this agreement as respects any and all motion pictures not theretofore exhibited hereunder, by giving written notice to Loew's of its intention so to do.

Twenty-second: *Arbitration:* It is understood and agreed that all claims and controversies arising hereunder shall be decided by arbitration (hereby expressly waiving the oath of the arbitrators), the procedure for any arbitration hereunder to be as follows:

Either party may initiate the arbitration by mailing written notice to the other demanding arbitration, stating in such notice the matter(s) to be arbitrated and the date for the holding of the first hearing (which date shall be not less than five (5) nor more than seven (7) days after the date of the sending of the notice). Upon the date so designated the hearing shall commence before Mr. W. F. Rodgers (or his substitute selected by Distributor) and Mr. J. Myer Schine (or his substitute selected by Exhibitor). In the event either of the aforesaid fails or refuses to meet with the other upon the date designated in the notice, the party which has made the demand for arbitration may at any time [fol. 6206] thereafter, upon written notice to the other party, request the President of the American Arbitration Association to designate a substitute arbitrator, and the hearing of the claim or controversy shall proceed before such two persons.

In case the two arbitrators above provided for cannot agree upon the matter(s) submitted to them for arbitration within thirty (30) days from the date of their first meeting, they shall select a third arbitrator, and in case the two arbitrators cannot agree upon a third arbitrator within thirty-five (35) days from the date of their first meeting then such third arbitrator shall be appointed at the request of either party in writing, upon notice to the other party by the President of the American Arbitration Association. The decision of two (2) of the three (3) arbitrators shall be final and binding and conclusive upon the parties hereto.

The hearing of any arbitration herein provided for shall be held in the City, County and State of New York unless the parties shall mutually agree upon a different place for such hearing.

The parties hereto further agree to produce all relevant records required by the arbitrators to be produced.

Any determination, decision and/or award of the arbitrators herein provided for shall become a part of this agreement and shall be susceptible of enforcement hereunder by appropriate proceedings at law or in equity.

Twenty-third: Any waiver by either party of any of its rights hereunder shall not be deemed a continuing waiver and shall not estop or prevent such party from thereafter enforcing such rights.

Twenty-fourth: This agreement is entire and complete, and no representations or warranties of any kind have been made by either party thereto to the other, except as in this agreement expressly set forth. It is agreed that neither [fol. 6207] party is the agent or partner of the other party, and neither party hereto shall be liable for or bound by any representations of or by the other party.

Twenty-fifth: It is agreed that this agreement shall be construed and interpreted according to the laws of the State of New York.

Twenty-sixth: It is understood and agreed that this license is personal to Exhibitor and that if any theatre covered by this agreement is sold, leased or transferred, the license herein granted as to said theatre may be assigned only if Loew's shall give its prior consent in writing in each particular case to the assignment of this license by Exhibitor and the assumption thereof by the vendee, transferee or lessee, such consent by Loew's to any such assignment not to relieve Exhibitor hereunder from liability under this agreement as to such theatre; and if Loew's does not agree to such assignment then at Loew's option the Exhibitor hereunder shall remain liable for performance of this agreement as to all product of the then current season, and as to subsequent seasons this agreement shall be deemed terminated as to such theatre; Provided, that in the event twenty-five (25%) percent or more of the Class A theatres, or thirty-three and one-third (33 1/3%) percent or more of all theatres, covered by this agreement shall be sold, leased or transferred by Exhibitor; or in the event of the closing for at least fourteen (14) days of twenty-five (25%) percent or more of the Class A theatres, or thirty-three and one-third (33 1/3%) percent or more of all the theatres, covered by this agreement; or if the ownership and/or control of the majority of voting stock of Exhibitor corporation goes out of the hands of those now having such ownership and/or voting control,—then and in any such event Loew's shall have the right to terminate this entire agreement, such termination to be effective at the time fixed in said notice of termination.

[fol. 6208] Twenty-seventh: All notices hereunder shall be served only by registered mail (except notices of availability, notices of exhibition dates, notices of designation of pictures, and similar notices to Exhibitor from Loew's exchange, which may be sent by ordinary mail) addressed, when intended for Exhibitor, to Schine Enterprise Corporation, Gloversville, N. Y., and when intended for Loew's, to Loew's Incorporated, at 1540 Broadway, New York City, New York. If either party shall change such address, such party shall give written notice to the other party to that effect, and until so given the address of such party above specified shall be deemed the address of such party for the giving of any notice hereunder.

Twenty-eighth: Exhibitor agrees to pay to Loew's the license fees payable hereunder as follows:

(a) Exhibitor shall pay any fixed sums and/or guarantees payable hereunder in respect of any feature motion picture, Newsreel and Trailer, not later than Saturday of the week following the close of the week during which the respective picture, Newsreel or Trailer was exhibited in the respective situation.

(b) Exhibitor agrees to pay the amount due Loew's on each picture herein provided to be exhibited on a percentage basis, not later than Saturday of the week following the close of the week during which the respective picture was exhibited at the respective theatre.

Twenty-ninth: It is agreed that the terms and conditions hereto, together with the terms and conditions of the annexed printed forms of exhibition contract for the respective product (features, short-subjects, Trailers and Newsreels), constitute the agreement between Exhibitor and Loew's, [fol. 6209] it being understood and agreed that if any of the provisions of any of such printed forms shall be contrary to or inconsistent with any of the provisions hereof the provisions hereof shall control.

Thirtieth: It is understood and agreed that in the event in any season, after the first season, Loew's adopts a policy of distributing thirty (30) or less pictures as its feature output of the season, the rental terms, playing time and commitments for each theatre shall be revised to a fair and reasonable basis and in the event the parties hereto are unable, within thirty (30) days after Loew's makes public announcement of its intention to release thirty (30) or less feature pictures, to agree upon fair and reasonable terms, playing time and commitments for each of the Exhibitor's theatres, this agreement may be terminated by either party by written notice to such effect to the other party, such termination to be effective with the delivery of the last picture of the then current season.

The announcement herein required shall be made by Loew's not later than sixty (60) days preceding the beginning of the season, which announcement shall state the number of feature photoplays Loew's intends to release during the season in question, and shall be effective only if made generally to the trade in two or more motion picture trade papers.

Thirty-first: It is understood and agreed that notwithstanding the limitation on the number of motion pictures to be roadshown provided in the annexed printed form of features contract, Loew's shall have the right to exhibit and/or cause to be exhibited as roadshows at any time prior to the exhibition thereof hereunder not more than four (4) of the feature motion pictures of the first season of this agreement, and as to each of the following seasons of this agreement not more than four (4) of the feature motion [fol. 6210] pictures of the respective season unless the parties hereto shall mutually agree upon a greater number; and that any motion picture roadshown shall be delivered by Loew's and exhibited hereunder as and when available to Exhibitor after the completion of the roadshowing of such motion picture throughout the United States, provided such motion picture is available for general release during the terms of this agreement.

Thirty-second: *Liquidated Damages:* If Exhibitor fails or refuses to exhibit any of the feature motion pictures licensed hereunder on a percentage and/or participating basis Exhibitor agrees to pay to Loew's as liquidated damages with respect to each such picture a sum equal to the average of the amount which shall have accrued to Loew's for all of the pictures of the same Classification theretofore exhibited hereunder at Exhibitor's theatre where such motion picture should have been exhibited during the period of twelve (12) months prior to the time such picture should have been exhibited, provided that if at the time of such failure or refusal by Exhibitor this agreement shall have been in effect for less than twelve (12) months then Exhibitor shall pay with respect to such picture a sum equal to the average of the amount which shall have accrued to Loew's for all of the pictures of the same Classification exhibited at such theatre hereunder during the period this agreement shall have been in effect.

The right to liquidated damages hereinabove provided for shall be in addition to any and all rights hereunder and/or at law or equity Loew's may have by reason of such breach by Exhibitor.

Thirty-third: It is agreed that if at any time during the term of this agreement Loew's distributes "television productions" (which term means and includes motion pictures [fol. 6211] distributed for exhibition or projection—with or without sound—by television, and/or performances by actors, singers and/or others for transmission and projection—with or without sound—by television; such term television, wherever used, including any new method similar to television) this agreement shall be renegotiated as to "television productions" and if the parties hereto shall not within thirty (30) days after Loew's notifies Exhibitor in writing, or makes announcement to the trade generally by publication in two (2) or more trade papers, of its intention so to distribute "television productions" have entered into a new agreement as to such "television productions" such so-called "television productions" shall not be included in this agreement and Loew's may exhibit and/or license to others for exhibition all "television productions" free from any claim by Exhibitor thereto; but this agreement shall nevertheless continue in full force and effect with respect to all straight sound motion pictures released by Loew's during the balance of the term of this agreement. It is expressly understood and agreed that the provisions of the paragraph hereof headed "Arbitration" shall not apply as to terms for "television productions".

Thirty-fourth: It is agreed that the flat rentals and guarantees for the feature motion pictures, short-subjects, Newsreels, Trailers and score charges, provided to be paid herein are based upon the present value in gold of the lawful monies of the United States of America, and that if during the term of this agreement the value of said monies shall be decreased and such decrease shall be reflected in increased prices charged for admission to the theatres in which the motion pictures licensed hereunder are or shall be exhibited, the flat rentals and guarantees for the feature motion pictures, short-subjects, Newsreels, Trailers and score charges, [fol. 6212] shall be adjusted from time to time upon the request of Loew's so as to be increased in the same relative proportion as such increase in the then prices charged for admission to the theatres shall bear to the present prices charged for admission to said theatres.

Thirty-fifth: It is agreed that if by reason of any statute or ordinance now or hereafter in effect the public exhibition of motion pictures on Sunday be prevented, the legality of this agreement shall not be affected but Sunday shall be excluded from the run of any picture, and equivalent playing time shall be substituted therefor.

Thirty-sixth: It is agreed that any termination herein provided for shall be without prejudice to any of the rights or remedies of either party hereunder and/or at law or in equity.

Thirty-seventh: It is understood and agreed that Loew's shall have the right to assign this agreement to any parent, affiliated or subsidiary corporation.

In Witness Whereof the parties hereto have caused this agreement to be signed, executed and delivered the day and date first above written.

Loew's Incorporated (L. S.)
By T. J. Connors

Schine Enterprises Corporation (L. S.)
By Geo. V. Lynch

[fol. 6213]

Clearance Schedule

City	Theatre	Run
Amsterdam, N. Y.	Rialto, Strand or Regent	First run. 30 days ahead of Johnstown, Broadalbin and Fonda, and 45 days in City of Amsterdam.
"	Regent or Strand	Second run. Not earlier than 45 days after first run.
Glens Falls, N. Y.	Empire	Second run. 30 days over third run.
Gloversville, N. Y.	Glove or Hippodrome	First run. 45 days ahead of Johnstown. 30 days City of Gloversville. 30 days ahead of Fonda, Broadalbin, Northville and Sacandaga Park.
Hamilton, N. Y	State	First run. 21 days ahead of Oriskany Falls and Waterville.
Herkimer, N. Y.	Liberty	First run. 21 days after first run Utica. 10 days ahead of Ilion.
Hudson Falls, N. Y.	Strand	First run. 14 days after first run Glens Falls. 14 days ahead of Fort Edward.
Little Falls, N. Y.	Rialto	30 days ahead of Dolgeville and St. Johnsville. 14 days ahead of Fort Plain.
Malone, N. Y.	Malone	First run. 30 days ahead of Chateaugay and Fort Covington.
Massena, N. Y.	Massena	First run. 45 days ahead of second run. 30 days ahead of Norfolk and Norwood.
Norwich, N. Y.	Colonia	First run. 60 days ahead of second run. 30 days ahead of New Berlin, and Sherburne. 14 days ahead of Sidney.
Ogdensburg, N. Y.	Strand	First run. 30 days ahead of Canton
Oneonta, N. Y.	Oneonta or Palace	First run. 30 days ahead of Morris, Delhi, Cooperstown.
Saranac Lake, N. Y.	Pontiac	First run. 14 days ahead of Lake Placid except during the periods of January 15th to February 15th; and, June 15th to September 15th,—when open booking shall exist. 45 days ahead of Saranac Inn.
Tupper Lake, N. Y.	State	First run. 45 days ahead of Tupper Lake Junction.
Watertown, N. Y.	Avon or Olympic	First run. 60 days ahead of second run. 30 days ahead of Adams, Sackets Harbor and Lowville.
"	Olympic or Palace	Second run. 60 days after first run. 30 days over third run.
Carthage, N. Y.	Strand	First run.

[fol. 6214]

City	Theatre	Run
Auburn, N. Y.	Jefferson, Palace or Strand	First run. 30 days ahead of Skaneateles and 10 days Seneca Falls.
Bath, N. Y.	Babcock	First run. 30 days ahead of Hammondsport.
Canandaigua, N. Y.	Playhouse	First run. 10 days ahead of Clifton Springs.
Corning, N. Y.	Fox or State	First run. 30 days ahead of Painted Post and Addison. 45 days City of Corning.
"	State	Second run. 45 days over third run.
Cortland, N. Y.	State or Temple	First run. 30 days ahead of Homer, Marathon.
Geneva, N. Y.	Geneva or Regent	First run. 30 days ahead of Seneca Falls, Waterloo, Phelps, Clifton Springs and Lyons, and Palmyra. 7 days ahead of Penn Yan.
Lockport, N. Y.	Rialto, Palace or Hi-Art	First run. 30 days ahead of Middleport and Newfane. 50 days City of Lockport.
"	Rialto or Hi-Art	Second run. 50 days after first run Lockport. 30 days over third run.
Newark, N. Y.	Capitol	First run: 7 days ahead of Clyde, Lyons and Palmyra on 1936–37 only. 30 days ahead of Clyde, Lyons and Palmyra on 1937–38, 1938–39 and 1939–40.
Oswego, N. Y.	Strand or Capitol	First run. 30 days ahead of Minetto; 14 days over Pulaski; and, 14 days ahead of Fulton.
Penn Yan, N. Y.	Elmwood	First run. 30 days ahead of Dundee. 7 days after Geneva.
Perry, N. Y.	Auditorium	First run.
Rochester, N. Y.	Cameo	Subsequent run. 14 days ahead of Lyric and Empress Theatres.
"	Grand	Subsequent run. 7 days ahead of Family and Empire.
"	Lake	Subsequent run.
"	Riviera or Liberty	Second run. 14 days on all other subsequent runs. 30 days ahead of Lake. 14 days ahead of Hub and Sea Breeze. 45 days after first run Rochester.
"	Riviera or Liberty	Subsequent run. Third run after Riviera or Liberty. Second run to be played within 21 days clearance or run waived.
"	State or Dixie	Third run. 14 days ahead of Webster Theatre.
"	State or Dixie	Second run. Same clearance as Riviera or Liberty.
Salamanca, N. Y.	Andrews	First run. 30 days ahead of Little Valley, Randolph and Ellicottville.
Seneca Falls, N. Y.	Strand	First run. 30 days ahead of Waterloo.

[fol. 6215]

City	Theatre	Run
Ashland, Ohio	Opera House or Palace	First run. 7 days after Mansfield. (Ahead of Loudenville and Lodi beginning with 1937-38).
Bucyrus, Ohio	Bucyrus or State	First run. 7 days after Marion, Ohio. In any event to be available 28 days after national release.
Delaware, Ohio	Strand	First run. 7 days after Columbus, Ohio. In any event to be available 28 days after national release.
Mount Vernon, Ohio	Vine or Lyric	First run. 45 days in Mount Vernon.
Norwalk, Ohio	Forum or Moose	First run. 7 days after Sandusky. In any event to be available 21 days after national release.
Tiffin, Ohio	Ritz or Grand	First run. 45 days in Tiffin.
Van Wert, Ohio	Van Wert or Strand	First run. After Lima, Ohio. In any event to be available 21 days after national release.
Wooster, Ohio	Wooster	First run. 14 days ahead of Orville. Also 14 days ahead of Rittman and Wadsworth beginning with 1937-38 season.
Athens, Ohio	Athena, Ohio or Court	First run. 30 days City of Athens.
Bellefontaine, Ohio	Holland	First run. 14 days ahead of Lakeview, DeGraff and West Liberty.
Piqua, Ohio	Piqua or Miami	First run. Open booking with Troy, Ohio. 14 days after first run Dayton. Same availability as Troy, Ohio.
Lexington, Ky.	Ben-Ali, Kentucky or Strand	First run. 60 days in the City of Lexington, Ky.
"	Strand	Second run. 30 days over subsequent runs.
"	State	Third run. 30 days after 2nd run.
Paris, Ky.	Bourbon	First run.
Richmond, Ky.	Strand or Madison	First run.
Buffalo, N. Y.	Granada	Subsequent run. 14 days ahead of Williamsville. 10 days ahead of Central Park and Varsity Theatres. Open booking with Kenmore. 21 days after Shea's North Park and Shea's Kensington Theatres.
Buffalo, N. Y.	Riverside	Subsequent run. Immediately after Shea's North Park. 14 days ahead of Jubilee, Park, Pastime and Unity Theatres: Ahead of Victoria Theatre.

Note: As to Granada and Riverside Theatres, Buffalo, this clearance to apply only to September first, 1937, and clearance after such period to be mutually agreed upon.

Schedule I

Control Figures for Classifications 1 and 2

Territory—City	Theatre	Days	Tenths	40% Control	37½% Control	35% Control	32½% Control	30% Control	27½% Control
Albany									
Amsterdam, N. Y.	Rialto	4-Sun-Mon-Tues-Wed	6	$2200.00	$2035.00	$1870.00	$1705.00	$1540.00	$1375.00
Gloversville, N. Y.	Glove	3-Sun-Mon-Tues	5	2000.00	1850.00	1700.00	1550.00	1400.00	1250.00
Norwich, N. Y.	Colonia	3-Sun-Mon-Tues	5	1950.00	1803.75	1657.50	1511.25	1365.00	1218.75
Ogdensburg, N. Y.	Strand	3-Sun-Mon-Tues	5	1088.00	1006.63	922.26	840.89	759.52	678.15
Onsonta, N. Y.	Oneonta	3-Sun-Mon-Tues	5	1500.00	1387.50	1275.00	1162.50	1050.00	937.50
Watertown, N. Y.	Avon	5-Sun-Mon-Tues-Wed-Thurs	7	1725.00	1595.63	1466.26	1336.89	1207.52	1078.15
		3-Sun-Mon-Tues	5	2200.00	2035.00	1870.00	1705.00	1540.00	1375.00
Buffalo									
Auburn, N. Y.	Jefferson	4-Sun-Mon-Tues-Wed	6	2250.00	2081.25	1912.50	1743.75	1576.00	1406.25
Cortland, N. Y.	State	3-Sun-Mon-Tues	5	1950.00	1803.75	1657.50	1511.25	1365.00	1218.75
Geneva, N. Y.	Geneva	3-Sun-Mon-Tues	5	2000.00	1850.00	1700.00	1550.00	1400.00	1250.00
Lockport, N. Y.	Palace	3-Sun-Mon-Tues	5	1900.00	1757.50	1615.00	1472.50	1330.00	1187.50
Oswego, N. Y.	Strand	3-Sat-Sun-Mon	5	1822.00	1688.13	1551.26	1414.39	1277.52	1140.65
Cincinnati									
Lexington, Ky.	Kentucky	7-Sun-Mon-Tues-Wed-Thurs-Fri-Sat	10	3925.00	3630.63	3336.26	3041.89	2747.62	2453.15
Cleveland									
Mt. Vernon, Ohio	Vine	3-Sun-Mon-Tues	5	1150.00	1063.75	977.50	891.25	805.00	718.75
Wooster, Ohio	Wooster	3-Sun-Mon-Tues	5	1425.00	1318.13	1211.36	1104.39	997.52	890.65

[fol. 6217]

SCHEDULE I

Flat Rentals

Territory—City	Theatre	Days	Number of Pictures	Amount per Picture
Albany				
Amsterdam, N. Y.	Rialto or Strand or Regent	2 or 3	4	$100.00
		2 or 3	Balance	75.00
Gloversville, N. Y.	Glove or Hippodrome	1 or 3	10	75.00
		1 or 3	Balance	50.00
Norwich, N. Y.	Colonia	2 or 3	4	50.00
		1 or 2	Balance	35.00
Ogdensburg, N. Y.	Strand	1 or 2	4	75.00
		1 or 2	Balance	40.00
Oneonta, N. Y.	Oneonta or Palace	2 or 3	4	75.00
		2 or 3	Balance	35.00
Watertown, N. Y.	Avon or Olympic	2 or 3	4	100.00
		2 or 3	Balance	50.00
Buffalo				
Auburn, N. Y.	Jefferson or Strand or Palace	2 or 3	4	100.00
		2 or 3	Balance	65.00
Cortland, N. Y.	State or Temple	2 or 3	4	105.00
		2 or 3	Balance	45.00
Geneva, N. Y.	Geneva or Regent	2 or 3	4	85.00
		2 or 3	Balance	47.50
Lockport, N. Y.	Palace or Rialto or Hi-Art	2 or 3	4	70.00
		2 or 3	Balance	50.00
Oswego, N. Y.	Strand or Capitol	2 or 3	4	70.00
		2 or 3	Balance	35.00
Cincinnati				
Lexington, Ky.	Kentucky or Ben-Ali or Strand	3 or 4	Balance	100.00
Cleveland				
Mt. Vernon, Ohio	Vine or Lyric	2 or 3	4	40.00
		2 or 3	Balance	35.00
Wooster, Ohio	Wooster or Opera House	2 or 3	4	65.00
		2 or 3	Balance	40.00

[fol. 6218]

SCHEDULE 1a

Territory	City	Theatre	Days	Tenths	35% Control	32½% Control	30% Control	27½% Control
Albany	Amsterdam, N. Y.	Strand	2—Sun-Mon	4	$780.00	$721.50	$663.00	$604.50
	Gloversville, N. Y.	Hippodrome	2—Sun-Mon	4	815.00	753.88	692.75	631.63
	Oneonta, N. Y.	Palace	2—Sun-Mon	4	425.00	393.13	361.25	329.38
	Watertown, N. Y.	Olympic	3—Sat-Sun-Mon	6	1950.00	1803.75	1657.50	1511.25
Buffalo	Auburn, N. Y.	Palace	3—Sun-Mon-Tues	5	1100.00	1017.50	935.00	852.50
	Corning, N. Y.	State	3—Sat-Sun-Mon	6	650.00	601.25	552.50	503.75
	Cortland, N. Y.	Temple	3—Sun-Mon-Tues	5	530.00	490.25	450.50	410.75
	Geneva, N. Y.	Regent	3—Sun-Mon-Tues	5	715.00	661.38	607.75	554.13
	Lockport, N. Y.	Rialto	3—Sat-Sun-Mon	6	1000.00	925.00	850.00	775.00
	Oswego, N. Y.	Capitol	2—Sun-Mon	4	520.00	527.25	484.50	441.75
Cincinnati	Lexington, Ky.	Ben Ali	4—Sun-Mon-Tues-Wed	6	1220.00	1128.50	1037.00	945.50
		Strand	3—Sat-Sun-Mon	6	1115.00	1031.38	947.75	864.13

[fol. 6220]

Schedule II

Control Figures for Classifications 1 and 2 (Cont'd)

Territory—City	Theatre	Days	Tenths	40% Control	37½% Control	35% Control	32½% Control	30% Control	27½% Control
Buffalo (Cont'd)									
Newark, N. Y.	Capitol	3-Sun-Mon-Tues	5	$875.00	$809.38	$743.76	$678.14	$612.52	$546.90
Penn Yan, N. Y.	Elmwood	3-Sun-Mon-Tues	5	600.00	555.00	510.00	465.00	420.00	375.00
Perry, N. Y.	Schines	3-Sun-Mon-Tues	5	500.00	462.50	425.00	387.50	350.00	342.50
Rochester, N. Y.	Cameo (sub run)	3-Sun-Mon-Tues	5	650.00	602.25	562.50	....	....	....
Rochester, N. Y.	Grand (sub run)	2-Sun-Mon	4	476.00	439.38	403.76	368.14	332.52	296.90
Rochester, N. Y.	Lake (sub run)	3-Sun-Mon-Tues	5	315.00	291.38	267.76	....	....	....
		2-Sun-Mon	4	250.00	231.25	212.50	....	....	....
Rochester, N. Y.	Riviera (sub run)	3-Sun-Mon-Tues	5	1450.00	1341.25	1232.50	1123.75	1015.00	906.25
Rochester, N. Y.	State (sub run)	3-Sun-Mon-Tues	5	815.00	753.88	692.76	631.64	570.52	609.40
Rochester, N. Y.	Dixie (sub run)	3-Sun-Mon-Tues	5	725.00	670.63	616.26	561.89	507.52	453.15
Rochester, N. Y.	Liberty (sub run)	3-Sun-Mon-Tues	5	725.00	670.63	616.26	561.89	507.52	453.15
Salamanca, N. Y.	Andrews	3-Sun-Mon-Tues	5	800.00	740.00	680.00	620.00	560.00	500.00
Seneca Falls, N. Y.	Strand	2-Sun-Mon	4	360.00	333.00	306.00	279.00	252.00	225.00
Cincinnati									
Athens, Ohio	Athens	3-Sun-Mon-Tues	5	1150.00	1063.75	977.50	891.25	805.00	718.75
Paris, Ky.	Bourbon	2-Sun-Mon	4	400.00	370.00	340.00	....	....	....
Piqua, Ohio	Piqua	3-Sun-Mon-Tues	5	1025.00	948.13	871.26	794.39	717.52	640.65
Richmond, Ky.	Madison	2-Sun-Mon	4	625.00	485.63	446.26	....	....	....
Lexington, Ky.	Strand (2nd run)	4-Sat-Sun-Mon-Tues	7	1200.00	1110.00	1020.00	....	....	....
Lexington, Ky.	State (3rd run)	3-Sun-Mon-Tues	5	575.00	531.88	488.76	....	....	....

[fol. 6222]

SCHEDULE II

Flat Rentals

Territory—City	Theatre	Days	Number of Pictures	Amount per Picture
Albany				
Carthage, N. Y.	Strand	2 or 3	8	$35.00
		2 or 3	14	25.00
		2 or 3	Balance	15.00
Glen Falls, N. Y.	Empire (2nd run)	2 or 3	8	35.00
		2 or 3	14	30.00
		2 or 3	Balance	22.50
Hamilton, N. Y.	State	2	8	50.00
		2	14	40.00
		2	Balance	25.00
Herkimer, N. Y.	Liberty	2 or 3	8	75.00
		2 or 3	14	50.00
		2 or 3	Balance	35.00
Hudson Falls, N. Y.	Strand	2 or 3	8	35.00
		2 or 3	14	22.50
		2 or 3	Balance	17.50
Little Falls, N. Y.	Rialto	2 or 3	8	75.00
		2 or 3	14	50.00
		2 or 3	Balance	35.00
Malone, N. Y.	Malone	2 or 3	8	60.00
		2 or 3	14	35.00
		2 or 3	Balance	25.00
Massena, N. Y.	Massena	2 or 3	8	50.00
		2 or 3	14	35.00
		1 or 2	Balance	20.00
Saranac Lake, N. Y.	Pontiac	2	8	75.00
		2	14	45.00
		2	Balance	37.50

[fol. 6223]

Territory—City	Theatre	Days	Number of Pictures	Amount per Picture
Tupper Lake, N. Y.	Strand	2	8	$30.00
		2	14	25.00
		2	Balance	20.00
Watertown, N. Y. (Any picture played 1st run in Olympic to be cancelled from this 2nd run contract)	Olympic (2nd run)	2 or 3	8	50.00
		2 or 3	14	35.00
		2 or 3	Balance	30.00
Buffalo				
Bath, N. Y.	Babcock	2 or 3	8	50.00
		2 or 3	14	35.00
		2 or 3	Balance	25.00
Buffalo, N. Y.	Granada (sub run)	2 or 3	8	100.00
		2 or 3	14	60.00
		2 or 3	Balance	45.00
Buffalo, N. Y.	Riverside (sub run)	2 or 3	8	100.00
		2 or 3	14	65.00
		2 or 3	Balance	50.00
Canandaigua, N. Y.	Playhouse	2 or 3	8	70.00
		2 or 3	14	50.00
		2	Balance	30.00
Corning, N. Y.	Fox or State	2 or 3	14	50.00
		2 or 3	Balance	35.00
Corning, N. Y.	State (2nd run)	2 or 3	8	25.00
		2 or 3	14	17.50
		2	Balance	15.00

SCHEDULE II

Flat Rentals

Territory—City Buffalo (Cont'd.)	Theatre	Days	Number of Pictures	Amount per Picture
Lockport, N. Y.	Rialto (2nd run) or Hi-Art	2 or 3	8	35.00
		2 or 3	14	25.00
		2 or 3	Balance	22.50
Newark, N. Y.	Capitol	2 or 3	8	65.00
		2 or 3	14	45.00
		2	Balance	30.00
[fol. 6224]				
Penn Yan, N. Y.	Elmwood	2 or 3	8	$90.00
		2 or 3	14	50.00
		2 or 3	Balance	35.00
Perry, N. Y.	Schines	2 or 3	8	65.00
		2 or 3	14	40.00
		2 or 3	Balance	30.00
Rochester, N. Y.	Cameo (sub run)	2 or 3	12	60.00
		2 or 3	14	30.00
		2 or 3	Balance	22.50
Rochester, N. Y.	Grand (sub run)	2	8	45.00
		2	14	25.00
		1 or 2	Balance	22.50
Rochester, N. Y.	Lake (sub run)	2 or 3	12	60.00
		2	14	15.00
		1 or 2	Balance	10.00
Rochester, N. Y.	Riviera (sub run) or Liberty	3	8	150.00
		2 or 3	14	100.00
		2 or 3	Balance	75.00
Rochester, N. Y.	State (sub run) or Dixie	2 or 3	8	70.00
		2 or 3	14	50.00
		2 or 3	Balance	40.00
Rochester, N. Y.	Dixie (sub run) or State	2 or 3	8	70.00
		2 or 3	14	50.00
		2 or 3	Balance	40.00
Rochester, N. Y.	Liberty (sub run)	2 or 3	8	60.00
		2 or 3	14	40.00
		2 or 3	Balance	30.00
Salamanca, N. Y.	Andrews	2	8	75.00
		2	14	50.00
		1 or 2	Balance	30.00
[fol. 6225]				
Seneca Falls, N. Y.	Strand	2	8	$55.00
		2	14	40.00
		2	Balance	30.00
Cincinnati				
Athens, Ohio	Athens or Ohio or Court	2 or 3	8	100.00
		2 or 3	14	70.00
		2 or 3	Balance	40.00
Paris, Ky.	Bourbon	1 or 2	12	75.00
		1 or 2	14	25.00
		1 or 2	Balance	15.00
Piqua, O.	Piqua or Miami	2 or 3	8	55.00
		2 or 3	14	40.00
		2 or 3	Balance	27.50
Richmond, Ky.	Madison or Strand	1 or 2	12	100.00
		1 or 2	14	40.00
		1 or 2	Balance	22.50

Schedule II

Flat Rentals

Territory—City	Theatre	Days	Number of Pictures	Amount per Picture
Cincinnati (Cont'd.)				
Lexington, Ky.	Strand (2nd run) or State	3 or 4	12	100.00
		3 or 4	14	50.00
		2 or 3	Balance	40.00
Lexington, Ky.	State (3rd run)	2 or 3	12	75.00
		2 or 3	14	45.00
		2 or 3	Balance	25.00
Cleveland				
Ashland, Ohio	Opera House or Palace	2 or 3	12	100.00
		2 or 3	14	60.00
		2 or 3	Balance	52.50
Bellefontaine, Ohio	Holland	2 or 3	4	110.00
		2 or 3	8	85.00
		2 or 3	14	45.00
		2 or 3	Balance	35.00
Bucyrus, Ohio	Bucyrus or State	2 or 3	8	60.00
		2 or 3	14	35.00
		2 or 3	Balance	27.50
[fol. 6226]				
Delaware, Ohio	Strand	2 or 3	8	$85.00
		2 or 3	14	50.00
		2 or 3	Balance	30.00
Fostoria, Ohio	Civic (2nd run) or Roxy	2 or 3	12	35.00
			14	25.00
			Balance	17.50
Kent, Ohio	Opera House (2nd run)	2 or 3	12	35.00
		2 or 3	14	22.50
		2 or 3	Balance	17.50
Norwalk, Ohio	Forum or Morse	2 or 3	8	65.00
		2 or 3	14	45.00
		2 or 3	Balance	25.00
Tiffin, Ohio	Ritz or Grand	2 or 3	12	160.00
		2 or 3	14	95.00
		2 or 3	Balance	40.00
Van Wert, Ohio	Van Wert or Strand	2 or 3	8	100.00
		2 or 3	14	50.00
		2 or 3	Balance	40.00
Albany				
Ballston, N. Y.	Capitol	2	8	40.00
			12	25.00
			Balance	17.50
Mechanicville, N. Y.	State	2 or 3	8	100.00
			12	50.00
			Balance	30.00
Whitehall, N. Y.	Capitol	2	8	65.00
			12	42.50
			Balance	22.50

[fol. 6227]

Territory	Town	Admission Prices Theatre	Matinee	Evening
Albany	Amsterdam, N. Y.	Rialto or Strand	10-25¢	10-30¢
	Carthage, N. Y.	Strand	10-20	10-30
	Glen Falls, N. Y.	Empire	10-15	10-15-25
	Gloversville, N. Y.	Glove	10-25	10-25-40
	Gloversville, N. Y.	Hippodrome	10-25	10-30
	Hamilton, N. Y.	State	10-25	10-30
	Herkimer, N. Y.	Liberty	10-25	10-25-30
	Hudson Falls, N. Y.	State	10-25	10-30
	Little Falls, N. Y.	Rialto	10-25	10-25-35
	Malone, N. Y.	Malone	10-15-25	10-15-25
	Massena, N. Y.	Massena	10-25	10-25-35
	Norwich, N. Y.	Colonial	10-25	10-25
	Ogdensburg, N. Y.	Strand	10-25	10-25-35
	Oneonta, N. Y.	Palace or Oneonta	10-25	10-25-40
	Saranac Lake, N. Y.	Pontiac	10-25	10-25-35
	Tupper Lake, N. Y.	State	10-25	10-25-35
	Watertown, N. Y.	Avon or Olympic	10-15-25	10-25-35
	Watertown, N. Y.	Olympic (2nd run)	10-15	10-15-25
Buffalo	Auburn, N. Y.	Palace	10-15	10-25
	Bath, N. Y.	Babcock	10-25	10-30
	Buffalo, N. Y.	Granada	10-25	10-25
	Buffalo, N. Y.	Riverside	10-25	10-25
	Canandaigua, N. Y.	Playhouse	10-15	10-25
	Corning, N. Y.	Fox	10-20	10-25
	Corning, N. Y.	State (2nd run)	10-15	10-20
	Cortland, N. Y.	State	10-25	10-25-40
	Geneva, N. Y.	Geneva	10-25	10-25-35

[fol. 6228]

	Lockport, N. Y.	Palace	10-25¢	10-25-40¢
	Lockport, N. Y.	Hiart (2nd run)	10-15	10-20
	Newark, N. Y.	Capitol	10-25	10-25-35
	Oswego, N. Y.	Capitol or Strand	10-25	10-25-40
	Penn Yan, N. Y.	Elmwood	10-25	10-25-35
	Perry, N. Y.	Auditorium	10-25	10-25
	Rochester, N. Y.	Liberty	10-25	10-25
	Rochester, N. Y.	Riviera	10-25	10-25
	Rochester, N. Y.	State	10-25	10-25
	Rochester, N. Y.	Dixie	10-25	10-25
	Rochester, N. Y.	Lake	10-20	10-20
	Rochester, N. Y.	Grand	10-15	10-15
	Rochester, N. Y.	Cameo	10-20	10-20
	Salamanca, N. Y.	Andrews	10-20	10-20-30
	Seneca Falls, N. Y.	Strand	10-25	10-25-35
Cincinnati	Athens, Ohio	Athens	10-25	10-30
Cleveland	Bellefontaine, Ohio	Holland	10-20	10-25
Cincinnati	Paris, Ky.	Bourbon	10-16	10-27
	Piqua, Ohio	Piqua	10-25	10-30
	Richmond, Ky.	Madison	10-16	10-16-27
	Lexington, Ky.	Kentucky (1st run)	10-25	10-35
	Lexington, Ky.	State or Strand (2nd run)	10-10	10-15
	Lexington, Ky.	State (3rd run)	10-10	10-15
Cleveland	Ashland, Ohio	Opera House	10-15	10-30
	Bucyrus, Ohio	Bucyrus	10-15	10-25
	Delaware, Ohio	Strand	10-26	10-31

[fol. 6229]

	Fostoria, Ohio	Civic or Roxy	10-21¢	10-31¢
	Kent, Ohio	Opera House	10-20	10-20
	Mount Vernon, Ohio	Vine	10-25	10-25-35

Schedule II

Control Figures for Classifications 1 and 2

Territory—City	Theatre	Days	Tenths	40% Control	37½% Control	35% Control	32½% Control	30% Control	27½% Control
Albany									
Carthage, N. Y.	Strand	3–Sun–Mon–Tues	5	$650.00	$601.25	$552.50	$503.75	$455.00	$406.25
Glens Falls, N. Y.	Empire (2nd run)	3–Sun–Mon–Tues	6	575.00	531.88	488.76	445.64	402.50	359.40
Hamilton, N. Y.	State	2–Sun–Mon	4	575.00	531.88	488.76	445.64	402.50	359.40
Herkimer, N. Y.	Liberty	3–Sun–Mon–Tues	5	925.00	855.63	786.26	716.89	647.52	578.15
Hudson Falls, N. Y.	Strand	3–Sun–Mon–Tues	5	500.00	462.50	425.00	387.50	350.00	312.50
Little Falls, N. Y.	Rialto	3–Sun–Mon–Tues	5	1025.00	948.13	871.26	794.39	717.52	640.65
Malone, N. Y.	Malone	3–Sun–Mon–Tues	5	1135.00	1049.88	964.76	879.64	794.52	709.40
Massena, N. Y.	Massena	3–Sun–Mon–Tues	5	960.00	888.00	816.00	744.00	672.00	600.00
Saranac Lake, N. Y.	Pontiac	3–Sun–Mon–Tues	5	1100.00	1017.50	935.00	852.50	770.00	687.50
Tupper Lake, N. Y.	Strand	3–Sun–Mon–Tues	5	585.00	541.13	497.26	453.39	409.52	365.65
Watertown, N. Y.	Olympic (2nd run)	3–Sat–Sun–Mon	6	1100.00	1017.50	935.00	852.60	770.00	687.50
Buffalo									
Bath, N. Y.	Babcock	3–Sun–Mon–Tues	5	775.00	716.88	658.76	600.64	542.52	484.40
Buffalo, N. Y.	Granada (sub run)	3–Sun–Mon–Tues	5	925.00	855.63	786.26	716.89	647.52	578.15
Buffalo, N. Y.	Riverside (sub run)	3–Sun–Mon–Tues	5	1050.00	971.25	892.50	813.75	735.00	656.25
Canandaigua, N. Y.	Playhouse	3–Sun–Mon–Tues	5	980.00	906.50	833.00	759.50	686.00	612.50
Corning, N. Y.	Fox	3–Sat–Sun–Mon	6	1200.00	1110.00	1020.00	930.00	840.00	750.00
Corning, N. Y.	State (2nd run)	3–Sat–Sun–Mon	6	350.00	323.75	297.50	271.25	245.00	218.75
Lockport, N. Y.	Rialto (2nd run)	3–Sat–Sun–Mon	6	900.00	832.50	765.00	697.50	630.00	562.50

[fol. 6221]

Schedule II

Control Figures for Classifications 1 and 2 (Continued page 3)

Territory—City	Theatre	Days	Tenths	40% Control	37½% Control	35% Control	32½% Control	30% Control	27½% Control
Cleveland									
Ashland, Ohio	Opera House	3-Sun-Mon-Tues	5	$700.00	$647.50	$595.00	....	....	....
Bellefontaine, Ohio	Holland	3-Sun-Mon-Tues	5	1025.00	948.13	871.26	....	....	....
Bucyrus, Ohio	Bucyrus	3-Sun-Mon-Tues	5	650.00	601.25	552.50	503.75	455.00	406.25
Delaware, Ohio	Strand	3-Sun-Mon-Tues	5	800.00	740.00	680.00	620.00	560.00	500.00
Fosteria, Ohio	Civic (2nd run)	3-Sun-Mon-Tues	5	400.00	370.00	340.00	....	....	....
Kent, Ohio	Opera House (2nd run)	3-Sun-Mon-Tues	5	400.00	370.00	340.00	....	....	....
Norwalk, Ohio	Forum	3-Sun-Mon-Tues	5	700.00	647.50	595.00	542.50	490.00	437.50
Tiffin, Ohio	Ritz	3-Sun-Mon-Tues	5	1000.00	925.00	850.00	....	....	....
Van Wert, Ohio	Van Wert	3-Sun-Mon-Tues	5	700.00	647.50	595.00	542.50	490.00	437.50
Albany									
Ballston, N. Y.	Capitol	2-Sun-Mon	4	230.00	212.75	195.50	178.25	161.00	145.75
Mechanicville, N. Y.	State	3-Sun-Mon-Tues	5	685.00	633.63	582.25	530.88	479.50	428.13
Whitehall, N. Y.	Capitol	2-Sun-Mon	4	330.00	305.25	280.50	255.75	231.00	206.25

Territory	Town	Theatre	Matinee	Evening
	Norwalk, Ohio	Forum	10-20	10-30
	Tiffin, Ohio	Ritz	10-20	10-20-30
	Van Wert, Ohio	Schines	10-15-20	10-15-25
	Wooster, Ohio	Schines	10-25	10-25-35
Albany	Ballston, N. Y.	Capitol	10-20	10-35
	Mechanicville, N. Y.	State	10-25	10-25-35
	Whitehall, N. Y.	Capitol	10-25	10-25-35

Schedule III

Territory	City	Theatre	Score Charge	Short Subjects: Commitment	Short Subjects: No. of Days	Short Subjects: Price per reel	Trailers Each	Newsreels: No. of Issues	Newsreels: Price per issue	Newsreels: No. of days
	Watertown, N. Y.	Palace (2nd run)	2.50 per run	None	—	——	$1.50	52	$5.00	2
Buffalo	Auburn, N. Y.	Palace	2.50 per day	All	2, 3 or 4	$15.60	3.00 (Palace or Strand) 5.00 (Jefferson)	52	15.00	2
	Bath, N. Y.	Babcock	2.50 per run	50%	2	5.00	2.00	52	7.50	2
	Buffalo, N. Y.	Granada (sub run)	2.50 per day	9	2	5.00	3.00	None		
	Buffalo, N. Y.	Riverside (sub run)	2.50 per day	9	2	5.00	3.00	None		
	Canandaigua, N. Y.	Playhouse	2.50 per day	50%	2	7.20	2.00	52	10.00	2
	Corning, N. Y.	Fox (1st run)	2.50 per day	50%	2	8.35	3.00	52	7.50	2
	Corning, N. Y.	State (2nd run)	2.50 per run	9	2	3.00	3.00	52	4.00	2
	Cortland, N. Y.	State	2.50 per day	All	2	10.35	4.00	52	15.00	2
		Temple	——	——	—	——	2.00	—	——	—
	Geneva, N. Y.	Geneva	2.50 per day	All	2	11.75	4.00	52	12.50	2
		Regent	——	——	—	——	2.00	—	——	—
	Lockport, N. Y.	Palace (1st run)	2.50 per day	50%	2 or 3	13.15	4.00	52	15.00	2 or 3
	Lockport, N. Y.	Hi-Art (2nd run)	2.50 per day	9	2	3.50	1.50	52	5.00	2
	Newark, N. Y.	Capitol	2.50 per day	50%	2	6.00	2.00	52	7.50	2
	Oswego, N. Y.	Capitol	2.50 per day	All	2	10.70	2.00	52	10.00	2
							4.00 (Strand)	52	4.00	2
	Penn Yan, N. Y.	Elmwood	5.00 per run	50%	2	4.00	3.00	52	7.50	2
	Perry, N. Y.	Auditorium	5.00 per run	50%	2 or 3	5.00	3.00	52	6.00	2 or 3
	Rochester, N. Y.	Cameo (sub run)	3.00 per run	None	—	3.00 (for any used)	2.00	None		

[fol. 6234]

SCHEDULE IV

City	Theatre	Number of Days
Mount Vernon, Ohio	Vine or Lyric	2 or 3
Wooster, Ohio	Wooster	2 or 3
Lexington, Ky.	Ben-Ali, Kentucky or Strand	3 to 7
Amsterdam, N. Y.	Rialto	2 or 3
Carthage, N. Y.	Strand	2 or 3
Gloversville, N. Y.	Glove	2 or 3
Herkimer, N. Y.	Liberty	2 or 3
Hudson Falls, N. Y.	Strand	2 or 3
Little Falls, N. Y.	Rialto	2 or 3
Malone, N. Y.	Malone	2 or 3
Massena, N. Y.	Massena	2 or 3
Mechanicville, N. Y.	State	2 or 3
Norwich, N. Y.	Colonia	2 or 3
Ogdensburg, N. Y.	Strand) 12 pictures	2 or 3
	) 14 pictures	1 or 2
Oneonta, N. Y.	Oneonta	2 to 4
Saranac Lake, N. Y.	Pontiac	2
Tupper Lake, N. Y.	Strand	2
Watertown, N. Y.	Olympic	2 or 3
Auburn, N. Y.	Jefferson or Strand or Palace	2 to 4
Bath, N. Y.	Babcock	2 or 3
Canandaigua, N. Y.	Playhouse	2 or 3
Corning, N. Y.	Fox or State	2 or 3
Cortland, N. Y.	State or Temple	2 or 3
Geneva, N. Y.	Geneva or Regent	2 or 3
Lockport, N. Y.	Rialto, Palace or Hi-Art	2 or 3
Lockport, N. Y. (2nd run)	Rialto or Hi-Art	2 or 3
Newark, N. Y.	Capitol	2 or 3
Oswego, N. Y.	Strand or Capitol	2 or 3
Rochester, N. Y.	Liberty	2 or 3
"	State or Dixie	2 or 3
"	State Repeat	2 or 3

7

11

[fol. 6235] Copy

December 22nd, 1937.

#1 Letter to Franchise

Mr. J. Myer Schine, Schine Circuit, Inc., Gloversville, N. Y.

Re: Clearance—Ogdensburg, N. Y. over Canton, N. Y.

Dear Myer:

Confirming telephone conversation today, this letter will serve to reduce the clearance of Ogdensburg over Canton as now entered in Franchise from thirty (30) days to fourteen (14) days.

With best wishes.

Sincerely, Tom (Signed).

Accepted and approved: Loews Inc., by T. J. Connors (signed). Schine Enterprises Corp., by Geo. V. Lynch (signed).

[fol. 6236] Copy

December 22nd, 1937.

#2 Letter to Franchise

Mr. J. Myer Schine, Schine Circuit, Inc., Gloversville, N. Y.

Re: Clearance—Oneonta, N. Y. over Cooperstown, N. Y.

Dear Myer:

This will serve to change the clearance which Oneonta has over Cooperstown, as set up in Franchise, from thirty (30) days to fourteen (14) days—this as per Mr. Connors' letter to you under date of Sept. 16, 1937.

With best wishes.

Sincerely, Tom (Signed).

Accepted and approved: Loews Inc., by T. J. Connors (signed). Schine Enterprises Corp., by Geo. V. Lynch (signed).

[fol. 6237] Dec. 29th, 1937.

#3 Letter to Franchise

Mr. Geo. V. Lynch, Schine Circuit, Inc., Gloversville, N. Y.

Dear Mr. Lynch:

This letter will serve to change the number of days on the Newsreel covering the Schine Theatre, Piqua, O., as now entered in the Franchise as "one" day to "two" days—the same as the 1935-36 contract, at the rental of $7.50 per issue.

With best wishes.

Sincerely, J. E. Flynn.

Accepted and approved: Loews Inc., by T. J. Connors. Schine Circuit, Inc., by Geo. V. Lynch.

[fol. 6238] **Deal Sheet**

7/21/37.

Theatre: Capitol Theatre, Ilion, N. Y.

Terms: Metro Goldwyn Mayer—Seasons 1937-38—1938-39, 1939-40. 4 @ 40%—3 days. 3 @ $130—2/3 days. 8 @ $80—2/3 days. 12 @ $50—2/3 days. Bal. @ $27.50—2/3 days. Score: $2.50 per day, $5.00 per run. Trailers: $2.00 each. 1 News—$6.00 per issue. Short Subjects—$6.00 per reel. 50% commitment. Control figure on 40% pictures—$530.00. Above to be part of the Schine Franchise. Clearance: 30 days clearance on Mohawk and Frankfort. 21 days after 1st run Utica, N. Y.

[fol. 6239] Cleveland, O., Aug. 7, 1937.

Deal Sheet—1937-8 Product

Circuit: Schine's.
Town: Fostoria, O., 1st run.
Theatre: State or Civic.

Terms

Features: 4 at 40% of gross—3 days. 26 at 25% of gross—2/3 days. Bal. at $35.00 flat—2/3 days.
Short Subjects: $6.10 per reel—2/3 days.
News: $5.00 per issue (1 issue)—3 days.
Trailers: $3.00 each.

Score Charge: $5.00 per run on % pictures. $3.00 per run on flat rental pictures.

Control Figures—SMT, $855.00—3 days—40%. $790.87—3 days 37½%. $726.74—3 days—35%.

$726.74—3 da. SMT—35%. $662.61—3 da. SMT—32½%. $598.48—3 da. SMT—30%. $534.35—3 da. SMT—27½%. $470.22—3 da. SMT—25%.

40%—Gt. Ziegfield, SMTW, $971.92.
35%—Born To Dance, SMT, $722.03, 32½.
Thin Man, TWT, $558.17, 27½.
Captains Cour., SMT, $460.22, 25.
40%—Maytime, SMT, $555.76, 27½.
35% Day At Races, SMT, $730.90, 35.
Libeled Lady, SMT, 734.12, 35.
30% Mrs. Cheyney, SMT, $498.65, 27½.
Parnell, SMT, $512.54, 27½.
Pers. Prop., SMT, $615.38, 30.
Camille, SMT, $457.25, 25.
Love On Run, WTF, $568.80, 27½ (Thanksgiving).

[fol. 6240]

Cleveland, O., August 7, 1937.

Deal Sheet—1937-38 Product

Schine Circuit—Medina, O. Princess Theatre—(1st run).

Terms

Features: 4 at 40% of gross—3 days. 4 at 35% of gross—3 days. 8 at $75.00 flat—2/3 days. 14 at $50.00 flat—2/3 days. Bal. at $22.50 flat—2/3 days.

Control figures: SMT, $350.00, 3 da—40%. $323.75, 3 da—37½%. $297.50, 3 da—35%.

$297.50—3 da—35%. 271.25—3 da—32½%. $245.00—3 da—30%. $218.75—3 da—27½%. $192.50—3 da—25%.

Short Subjects—$3.25 per reel—2/3 days.
News—$3.00 per issue (1)—2/3 days.
Trailers—$1.50 each.
Score Charge—$2.50 per run.

[fol. 6241] Cleveland, O., August 7, 1937.

Deal Sheet—1937-38 Product

Circuit: Schine's.
Town: Ashland, O. (2nd run).
Theatres: Opera House.

Terms

Features*: 4 at 40% of gross—3 days. 12 at $35.00 flat —2/3 days. 14 at $20.00 flat—2/3 days. Bal. at $15.00 flat —2/3 days.

Control figure: $200.—3 da—40%. $185.—3 da—37½%. $170.—3 da—35%.

Short Subjects*: Audioscopiks—$5.00—2/3 days. Servant of Peo.—$5.00—2/3 days. Laurel & Hardy Reissues—$5.00—2/3 days.

News—$2 per issue (1)—2/3 days.

Trailers—$1.50 each.

Score Charge—$2.50 per run.

Clause: All pictures playing Palace Theatre 1st run to play Opera House 2nd run.

[fol. 6242] Cleveland, O., August 7, 1937.

Deal Sheet—1937-8 Product

Circuit: Schine's.
Town: Mt. Vernon, O. 2nd run.
Theatre: Lyric.

Terms

Features—4 at 40% of gross—3 days. 12 at $50. flat—2/3 days. 14 at $30. flat—2/3 days. Bal. at $15. flat—2/3 days.

Control figure: $200.—3 da.—40%. $185—3 da.—37½%. $170.—3 da.—35%.

Short Subjects—Audioscopiks—$5.00 2/3 days. Servant of People—$5.00 2/3 days. Laurel & Hardy Re*Issue—$7.50 2/3 days.

News—$3.00 per issue (1)—2/3 days.

Trailers—$1.50 each.

Score Charge—$2.50 per run.

Clause: All pictures playing Vine Theatre 1st run, to be played Lyric Theatre 2nd run.

[fol. 6243]

Cleveland, O., August 7, 1937.

Deal Sheet—1937-38 Product

Circuit: Schine's.
Town: Van Wert, O. 2nd Run.
Theatre: Strand.

Terms

Features—4 at 40% of gross—3 days. 12 at $30. flat—2/3 days. 14 at $17.50 flat—2/3 days. Bal. at $12.50 flat—2/3 days.

Control figure: $175.00—SMT—3 day—40%. $161.87—3 day—37½%. $148.74—3 day—35%.

Short Subjects—Audioscopiks—$4.00—2/3 days. Servant of People—$4.00—2/3 days. Laurel & Hardy Reissues—$5.00—2/3 days.

News: $2.00 per issue (1)—2/3 days.
Trailers: $1.50 each.
Score Charge: $2.50 per run.
Clause: Committed to play 26 pictures.

[fols. 6244-6245]

8/31/37.

Deal Sheet

Theatre: Strand or Palace, Auburn, N. Y. (2nd run).

Terms

Metro Goldwyn Mayer. 4 @ 40%—3 days (mid week). 8 @ $100. flat rental—2-3 days—Mid week. 8 @ $75. flat rental—2-3 days—Mid week. 12 @ $60. flat rental—2-3 days—Mid week. Bal. @ $40. flat rental—2-3 days—Mid week.

Clearance:—Forty-two (42) days after first run, Auburn, N. Y.

Second run to play all MGM pictures that play the "A" first run house—not necessary to play pictures repeat that play "B" house.

Accepted, E. K. O'Shea (signed). Accepted, Geo. V. Lynch (signed).

[fol. 6246]

Metro-Goldwyn-Mayer 1931-32 Feature Release Schedule

Bookings Acceptable in Order of Release Only

Theatre Name.................................... City.................................... State..................

National Release Date	Release No.	Production	Director	Cast	Footage	Booking Date
8/15/31	221	Pardon Us	James Parrott	Stan Laurel Oliver Hardy	4962	
8/22/31	238	Guilty Hands	W. S. Van Dyke	Lionel Barrymore, Madge Evans, William Bakewell, Kay Francis, C. Aubrey Smith.	6200	
8/29/31	105	This Modern Age	Nick Grinde	Joan Crawford Neil Hamilton Pauline Frederick Monroe Owsley	6124	
9/5/31	242	The Squaw Man	C. B. De Mille	Warner Baxter, Lupe Velez, Roland Young, Eleanor Boardman, Charles Bickford.	9575	
9/12/31	213	The Phantom of Paris	John S. Robertson	John Gilbert, L. Hyams, Lewis Stone, Jean Hersholt, Natalie Moorhead, C. Aubrey Smith	6634	
9/19/31		No Release Scheduled				
9/26/31	152	Sidewalks of New York	Jules White and Zion Meyers	Buster Keaton Anita Page Cliff Edward	6421	

[fol. 6230]

Schedule III

Territory	City	Theatre	Score Charge	Short Subjects: Commitment	Short Subjects: No. of Days	Short Subjects: Price per reel	Trailers Each	Newsreels: No. of Issues	Newsreels: Price per issue	Newsreels: No. of days.
Albany	Amsterdam, N. Y.	Riato	$2.50 per day	All	2 or 4	$16.55	$3.50	52	$30.00	4
		Strand						52	15.00	3
	Carthage, N. Y.	Strand	2.50 per run	50%	2	5.35	2.00	52	6.00	1
	Glens Falls, N. Y.	Empire	2.50 per run	18	2	2.50	1.50	52	3.50	2
	Gloversville, N. Y.	Glove	2.50 per day	All	2	12.50	3.00	52	20.00	3
	Gloversville, N. Y.	Hippodrome (1st run)	2.50 per run	None						
	Hamilton, N. Y.	State	5.00 per run on % pictures 2.50 per run on Flat Rental pictures	50%	2	3.60	2.00	52	5.00	2
	Herkimer N. Y.	Liberty	2.50 per run	1/3	2	5.30	2.00	52	10.00	2
	Hudson Falls,N. Y.	State	2.50 per run	50%	2	3.50	2.00	52	5.00	2
	Little Falls, N. Y.	Rialto	2.50 per run	1/3	2	5.25	2.00	52	10.00	2
	Malone, N. Y.	Malone	2.50 per run	50%	2	5.60	2.00	52	7.50	1
	Massena, N. Y.	Massena	2.50 per day	50%	2	5.00	2.00	52	6.00	2
	Norwich, N. Y.	Colonia	2.50 per day	50%	2	8.00	2.00	52	10.00	2
	Ogdensburg, N. Y.	Strand	2.50 per day	50%	2	7.75	2.00	52	10.00	2
	Oneonta, N. Y.	Oneonta	2.50 per day	All	2 or 3	9.00	3.00	—	—	—
		Palace	—	—	—	—	2.00	52	10.00	2
	Saranac Lake, N. Y.	Pontiac	2.50 per run	50%	2	7.40	2.00	52	7.50	1
	Tupper Lake, N. Y.	State	5.00 per run on % pictures 2,50 per run on flat rental pictures	50%	2	3.50	2.00	52	5.00	2
	Watertown, N. Y.	Olympic (1st run)	2.50 per day	50%	2 or 3	13.00	2.00	104	12.50	2 or 3
		Avon	—	—	—	—	4.00	—	—	—

[fol. 6232]

	Rochester, N. Y.	Grand (sub run)	$2.50 per run	None	—	——	$2.00	None	——	—
	Rochester, N. Y.	Lake (sub run)	2.50 per run	None	—	$2.50 (for any used)	1.50	52	$2.00	2
	Rochester, N. Y.	Liberty (sub run)	2.50 per day	None	—	——	2.50	52	7.50	2
	Rochester, N. Y.	Riviera (sub run)	2.50 per day	None	—	——	4.00	52	10.00	2
	Rochester, N. Y.	State (sub run)	2.50 per day	None	—	——	3.00	None	——	—
	Rochester, N. Y.	Dixie (sub run)	2.50 per day	None	—	——	2.50	52	7.50	2
	Salamanca, N. Y.	Andrews	2.50 per day	50%	2	6.50	2.00	52	7.50	2
	Seneca Falls, N. Y.	Strand	2.50 per run	All	2	4.50	2.00	52	4.00	2
Cincinnati	Athens, Ohio	Athena	5.00 per run	All	2 or 3	7.00	3.50	52	7.50	3
Cleveland	Bellefontaine Ohio	Holland	2.50 per day	50%	2	7.00	2.00	52	7.50	2
Cincinnati	Lexington, Ky.	Kentucky (1st run)	3 days $10.00 4 " 15.00 7 " 25.00	All	3 or 4	12.35	5.00	52	15.00	3
	Lexington, Ky.	State or Strand (2nd run)	2.50 per day	All	2 or 3	5.00	2.50	52	5.00	2
	Lexington, Ky.	State (3rd run)	5.00 per run	None	—	3.50 (for any used)	2.50	52	8.00	2
	Paris, Ky.	Bourbon	2.50 per run	All	1 or 2	3.25	1.50	52	2.50	1
	Piqua, Ohio	Piqua	2.50 per day	50%	2 or 3	6.00	3.00	52	7.50	1
	Richmond, Ky.	Madison	2.50 per run	All	1 or 2	3.65	2.00–Miami 1.50	52	2.50	1

[fol. 6233]

Cleveland	Ashland, Ohio	Opera House	$5.00 per run	All	2 or 3	$6.00	$2.50	52	$5.00	2
	Bucyrus, Ohio	Bucyrus	2.50 per run	50%	2 or 3	5.25	2.00	52	5.00	2
	Delaware, Ohio	Strand	5.00 per run	All	2 or 3	5.55	2.50	52	5.00	2
	Mt. Vernon, Ohio	Vine	2.50 per day	All	2	7.70	2.00	52	6.00	2
	Norwalk, Ohio	Forum	5.00 per run	All	2 or 3	5.00	2.00	52	5.00	3
	Tiffin, Ohio	Rits	5.00 per run	All	2 or 3	6.25	2.00	52	5.00	3
	Van Wert, Ohio	Schines	2.50 per day	50%	2	4.00	2.00	52	5.00	2
	Wooster, Ohio	Schines	2.50 per day	50%	2	7.25	2.00	52	10.00	1
	Kent, Ohio	Opera House (2nd run)	2.50 per run	50%	2 or 3	2.50	2.00	52	2.50	2
	Fostoria, Ohio	Civic or Roxy (2nd run)	2.50 per run	50%	2 or 3	2.50	2.00	52	2.50	2
Albany	Ballston, N. Y.	Capitol	2.50 per run	76 reels	2	4.20	2.00	52	5.00	2
	Mechanicville, N.Y.	State	5.00 per run	76 reels	2 or 3	5.40	2.50	52	6.00	2

10/3/31	104	The New Wallingford	Sam Wood	William Haines Leila Hyams Ernest Torrence James Durante	8464
10/10/31	127	Susan Lennox	R. Z. Leonard	Greta Garbo Clark Gable Jean Hersholt	6865
10/17/31		No Release Scheduled			
10/24/31	155	The Sin of Madelon Claudet	Edgar Selwyn	Helen Hayes Lewis Stone Neil Hamilton Cliff Edwards	6739
10/31/31	230	The Cuban Love Song	W. S. Van Dyke	Lawrence Tibbett, Lupe Velez, Karen Morley, Cliff Edwards, Ernest Torrence, Louise Fasenda	7754
11/7/31	222	The Guardsman	Sidney Franklin	Alfred Lunt Lynn Fontanne Roland Young Zasu Pitts	7367
11/14/31	236	Flying High	Charles Riesner	Bert Lahr, Charlotte Greenwood, Hedda Hopper, Guy Kibbee, Kathryn Crawford.	7240
11/21/31	207	Possessed	Clarence Brown	Joan Crawford Clark Gable	

Page Two

Metro-Goldwyn-Mayer 1931-32 Feature Release Schedule

Bookings Acceptable in Order of Release Only

Theatre Name.. City.. State..

National Release Date	Release No.	Production	Director	Cast	Running Time (Minutes)	Booking Date
11/28/31	214	West of Broadway	Harry Beaumont	John Gilbert Lois Moran El Brendel Madge Evans	66	
12/5/31	201	The Champ	King Vidor	Wallace Beery Jackie Cooper Irene Rich Roscoe Ates	86	
12/12/31	228	Private Lives	Sidney Franklin	Norma Shearer, Robert Montgomery, Una Merkel, Reginald Denny, Jean Hersholt.	84	
12/19/31	250	The Big Parade (Re-issue)	King Vidor	John Gilbert Renee Adoree Karl Dane	125	
12/26/31	125	Mata Hari	G. Fitzmaurice	Greta Garbo, Ramon Novarro, L. Barrymore, Lewis Stone, Karen Morley.	92	
1/2/32	249	Ben Hur (Re-issue)	Fred Niblo	Ramon Novarro, May McAvoy, Betty Bronson, Francis X. Bushman, Carmel Meyers.	122	

Metro-Goldwyn-Mayer 1931–32 Feature Release Schedule

Bookings Acceptable in Order of Release Only

Theatre Name.. City.. State.........................

National Release Date	Release No.	Production	Director	Cast	Running Time (Minutes)	Booking Date
3/12/32		No Release Scheduled				
3/19/32		No Release Scheduled				
3/26/32	216	Are You Listening?	Harry Beaumont	William Haines, Madge Evans, Anita Page, Karen Morley, Neil Hamilton, Wallace Ford	76	
4/2/32	245	Tarzan, the Ape Man	W. S. Van Dyke	Johnny Weissmuller Neil Hamilton Maureen O'Sullivan C. Aubrey Smith	100	
4/9/32	224	But the Flesh Is Weak	Jack Conway	Robert Montgomery Nora Gregor C. Aubrey Smith Nils Asther Heather Thatcher Edward Everett Horton	~~82~~	
4/16/32	246	The Wet Parade	Victor Fleming	Walter Huston Dorothy Jordan Robert Young Myrna Loy Lewis Stone John Miljan Neil Hamilton	122	

4/23/32	240	Night Court	W. S. Van Dyke	Phillip Holmes Walter Huston Anita Page Lewis Stone	96
4/30/32	204	When a Feller Needs a Friend	Harry Pollard	Jackie Cooper "Chic" Sale Dorothy Peterson Helen Parrish Ralph Graves	76
5/7/32	208	Letty Lynton	Clarence Brown	Joan Crawford Robert Montgomery Nils Asther	85
5/14/32	226	Huddle	Sam Wood	Ramon Novarro Madge Evans Una Merkel Frank Albertson	104
5/21/32		No Release Scheduled			
5/28/32	211	As You Desire Me	G. Fitzmaurice	Greta Garbo Melvyn Douglas Erich Von Stroheim Owen Moore Hedda Hopper	71
6/4/32	231	New Morals For Old	Charles Brabin	Margaret Perry Robert Young Lewis Stone Laura Hope Crewes Myrna Loy	77
6/11/32		No Release Scheduled			
6/18/32		No Release Scheduled			

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Metro-Goldwyn-Mayer 1931–32 Feature Release Schedule

Bookings Acceptable in Order of Release Only

Theatre Name.. City.. State..

National Release Date	Release No.	Production	Director	Cast	Running Time (Minutes) Footages	Booking Date
6/25/32	241	Red Headed Woman	Jack Conway	Jean Harlow Chester Morris Leila Hyams Lewis Stone Una Merkel	83	
7/2/32	248	Unashamed	Harry Beaumont	Helen Twelvetrees Lewis Stone Robert Young Jean Hersholt John Milian	77	
7/9/32	247	Washington Masquerade	Charles Brabin	Lionel Barrymore Karen Morley Nils Asther Diane Sinclair	92	
7/16/32	106	Skyscraper Souls	Edgar Selwyn	Warren William Maureen O'Sullivan Norman Foster Anita Page Jean Hersholt	100	

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Metro-Goldwyn-Mayer 1932-33 Feature Release Schedule

Bookings Acceptable in Order of Release Only

Theatre Name .... City .... State ....

National Release Date	Release No.	Production	Director	Cast	Running Time (Minutes) Footages	Booking Date
9/3/32		No Release Scheduled				
9/10/32	349	Grand Hotel	Edmund Goulding	Greta Garbo John Barrymore Joan Crawford Wallace Beery Lionel Barrymore Lewis Stone	115 10300	
9/17/32	328	Pack Up Your Troubles	Geo. Marshall & R. McCarey	Stan Laurel Oliver Hardy Jacquie Lynn Mary Carr	70 6300	
9/24/32	229	Smilin' Through	Sidney Franklin	Norma Shearer Fredric March Leslie Howard Ralph Forbes Beryl Mercer O. P. Heggie	100 8900	
10/1/32	239	Kongo	William Cowan	Walter Huston Lupe Veles Conrad Nagel C. Huntley Gordon	89 7900	
10/8/32	336	Payment Deferred	Lothar Mendes	Charles Laughton Maureen O'Sullivan Dorothy Peterson Veree Teasdale	82 7400	
10/15/32	225	Faithless	Harry Beaumont	Robert Montgomery Tallulah Bankhead Hugh Herbert Lawrence Grant	84 7600	
10/22/32	219	Red Dust				

1/9/32		No Release Scheduled			
1/16/32	202	Hell Divers	George Hill	Wallace Beery, Clark Gable, Conrad Nagel, Dorothy Jordan, Marjorie Rambeau.	113
1/23/32	223	Lovers Courageous	Robert Z. Leonard	Robert Montgomery Madge Evans, Roland Young, Frederick Kerr Reginald Owen	78
1/30/32	251	Emma	Clarence Brown	Marie Dressler Richard Cromwell Jean Hersholt Myrna Loy John Miljan	73
2/6/32	219	The Passionate Plumber	Ed. Sedgwick	Buster Keaton Jimmy Durante Irene Purcell Polly Moran Gilbert Roland	75
2/13/32	203	The Beast of the City	Charles Brabin	Walter Huston Jean Harlow Wallace Ford Jean Hersholt Dorothy Peterson	90
2/20/32	244	Freaks	Tod Browning	Wallace Ford Leila Hyams Olga Baclanova Roscoe Ates Henry Victor	65
2/27/32	209	Polly of the Circus	Al Santell	Marion Davies Clark Gable C. Aubrey Smith Raymond Hatton David Landau	70
3/5/32	232	Arsene Lupin	Jack Conway	John Barrymore Lionel Barrymore Karen Morley John Miljan Tully Marshall	86

10/22/32	319	Red Dust	Victor Fleming	Clark Gable Jean Harlow Mary Astor Donald Crisp Tully Marshall	86 7700
10/29/32		No Release Scheduled			
11/5/32	205	The Mask of Fu Manchu	Charles Brabin	Boris Karloff Jean Hersholt Karen Morley Charles Starrett Myrna Loy	70 6200
11/12/32	252	Prosperity	Sam Wood	Marie Dressler Polly Moran Anita Page Norman Foster	90 8000
11/19/32		No Release Scheduled			
11/26/32		No Release Scheduled			
12/3/32		No Release Scheduled			
12/10/32	304	Flesh	John Ford	Wallace Beery Karen Morley Ricardo Cortez John Miljan Jean Hersholt	
12/17/32	217	Fast Life	Harry Pollard	William Haines Madge Evans Conrad Nagel Cliff Edwards	
12/24/32	227	Son-Daughter	Clarence Brown	Ramon Novarro Helen Hayes Warner Oland H. B. Warner Louise Closser Hale	
12/31/32	350	Strange Interlude	Robert Z. Leonard	Norma Shearer Clark Gable Alexander Kirkland Ralph Morgan	112 10100

7/23/32		No Release Scheduled			
7/30/32		No Release Scheduled			
8/6/32	215	Downstairs	Monta Bell	John Gilbert Virginia Bruce Reginald Owen Paul Lukas Hedda Hopper Olga Baclanova	84
8/13/32	220	Speak Easily	Edward Sedgwick	Buster Keaton Jimmy Durante Thelma Todd Hedda Hopper	82
8/20/32	210	Blondie of the Follies	Edmund Goulding	Marion Davies Robert Montgomery Billie Dove Jimmy Durante James Gleason Zasu Pitts	93
8/27/32	237	Divorce in the Family	Charles Riesner	Jackie Cooper Conrad Nagel	84

Metro-Goldwyn-Mayer 1932-33 Feature Release Schedule—Continued

Theatre Name.......................................City.......................................State.......................

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1/6/33		No Release Scheduled			
1/13/33		No Release Scheduled			
1/20/33	338	Whistling in the Dark	Elliott Nugent	Ernest Truex Una Merkel Edward Arnold John Miljan	80 7248
1/27/33	348	The Outsider	Harry Lachman	Produced in England from the Broadway play of the same title	74 6682
2/3/33	337	The Secret of Madame Blanche	Charles Brabin	Irene Dunne Phillips Holmes Lionel Atwill Jean Parker Una Merkel	85 7688
2/10/33	326	What! No Beer?	Edward Sedgwick	Buster Keaton Jimmy Durante Phyllis Barry	66 5977
2/17/33	340	Men Must Fight	Edgar Selwyn	Lewis Stone Diana Wynyard Phillips Holmes	73 6597
2/24/33	339	Clear All Wires	George Hill	Lee Tracy Benita Hume James Gleason Una Merkel	79 7118
3/3/33		No Release Scheduled			
3/10/33	321	Fast Workers	Tod Browning	John Gilbert Mae Clarke Robert Armstrong Muriel Kirkland	68 6084
3/17/33		No Release Scheduled			

Metro-Goldwyn-Mayer 1932-33 Feature Release Schedule—Continued

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Theatre Name...City.......................State.........................

5/19/33	330	Made on Broadway	Harry Beaumont	Robert Montgomery Sally Eilers Madge Evans	70 6300
5/26/33	314	Peg O' My Heart	Robert Z. Leonard	Marion Davies Onslow Stevens J. F. MacDonald Juliette Compton	89 7984
6/2/33	341	The Nuisance	Jack Conway	Lee Tracy Madge Evans Charles Butterworth Frank Morgan	85 7639
6/9/33	342	Hell Below	Jack Conway	Robert Montgomery Madge Evans Walter Huston Jimmy Durante Robert Young	105 9495
6/16/33	302	Reunion in Vienna	Sidney Franklin	John Barrymore Diana Wynyard Henry Travers Frank Morgan	100 9026
6/23/33	310	When Ladies Meet	Harry Beaumont	Robert Montgomery Ann Harding Alice Brady Myrna Loy Frank Morgan	87 7826
6/30/33	311	Midnight Mary	William Wellman	Loretta Young Ricardo Cortez Franchot Tone Una Merkel	76 6843
7/7/33	320	Hold Your Man	Sam Wood	Clark Gable Jean Harlow Dorothy Burgess Stuart Erwin	88 7940

7/14/33	343	Storm at Daybreak	R. Boleslavsky	Kay Francis Nils Asther Walter Huston Eugene Pallette Phillips Holmes	7199 80
7/21/33	303	The Stranger's Return	King Vidor	Lionel Barrymore Miriam Hopkins Franchot Tone Stuart Erwin	89 8021
7/28/33	325	Another Language	E. H. Griffith	Helen Hayes Robert Montgomery Louise Closser Hale Henry Travers	77 6947
8/4/33	316	Tugboat Annie	Mervyn LeRoy	Marie Dressler Wallace Beery Robert Young Maureen O'Sullivan	88 7878
8/11/33		No Release Scheduled			
8/18/33		No Release Scheduled			
8/25/33	345	Turn Back the Clock	Edgar Selwyn	Lee Tracy Mae Clarke Otto Kruger Peggy Shannon	80 7224
9/1/33	346	Beauty for Sale	R. Boleslavsky	Madge Evans Otto Kruger Alice Brady Phillips Holmes Una Merkel	88 7966

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Metro-Goldwyn-Mayer 1933–34 Feature Release Schedule

Bookings Acceptable in Order of Release Only

Theatre Name ....City..State..........................

National Release Date	Release No.	Production	Director	Cast	Running Time (Minutes) Footages	Booking Date
9/8/33	404	Penthouse	W. S. Van Dyke	Warner Baxter Myrna Loy Charles Butterworth Mae Clarke	90 8139	
9/15/33	344	Broadway to Hollywood	Willard Mack	Alice Brady Frank Morgan Madge Evans	90 8105	
9/22/33	347	Solitaire Man	Jack Conway	Herbert Marshall Elizabeth Allan Mary Boland Ralph Forbes May Robson Lionel Atwill	68 6119	
9/29/33	440	Stage Mother	Charles Brabin	Alice Brady Maureen O'Sullivan Franchot Tone Phillips Holmes Ted Healy	87 7803	

Metro-Goldwyn-Mayer 1933-34 Feature Release Schedule—Continued

Theatre Name...City...State.................

11/17/33	317	Her Sweetheart	Sam Wood	Marie Dressler Lionel Barrymore Jean Hersholt Russell Hardie	90 8120
11/24/33	432	Dancing Lady	Robert Z. Leonard	Joan Crawford Clark Cable Franchot Tone Fred Astaire Winnie Lightner May Robson	94 8460
12/1/33	402	Should Ladies Behave?	Harry Beaumont	Lionel Barrymore Alice Brady Conway Tearle Mary Carlisle	90 8008
12/8/33	443	The Women In His Life	George Seitz	Otto Kruger Isabel Jewell Ben Lyon Una Merke	76 6882
12/15/33		No Release Scheduled			
12/22/33	315	Going Hollywood	Raoul Walsh	Marion Davies Bing Crosby Fifi D'Orsay Stuart Erwin	
12/29/33	421	Sons of The Desert	William Seiter	Stan Laurel Oliver Hardy Dorothy Christy	

Metro-Goldwyn-Mayer 1932-33 Feature Release Schedule—Continued

Theatre Name...City...State...................

3/24/33	301	Rasputin and the Empress	R. Boleslavsky	John Barrymore Ethel Barrymore Lionel Barrymore Diana Wynyard	125 11233
3/31/33	308	Gabriel Over the White House	Gregory La Cava	Walter Huston Karen Morley Franchot Tone	88 7903
4/7/33		No Release Scheduled			
4/14/33	324	The White Sister	Victor Fleming	Helen Hayes Clark Gable Lewis Stone	108 9697
4/21/33	312	Today We Live	Howard Hawks	Joan Crawford Gary Cooper Franchot Tone Robert Young	114 10300
4/28/33	309	Looking Forward	Clarence Brown	Lionel Barrymore Lewis Stone Benita Hume Colin Clive Elizabeth Allen	83 7501
5/5/33	329	The Devil's Brother	Hal Roach Charles Rogers	Stan Laurel Oliver Hardy Thelma Todd Dennis King	92 8257
5/12/33	332	The Barbarian	Sam Wood	Ramon Novarro Myrna Loy Reginald Denny	88 7900

10/6/33	435	Night Flight	Clarence Brown	John Barrymore Helen Hayes Clark Gable Lionel Barrymore Robert Montgomery Myrna Loy William Gargan	87 7805
10/13/33	416	Bombshell	Victor Fleming	Jean Harlow Lee Tracy Una Merkel Pat O'Brien Frank Morgan	97 8774
10/20/33	425	Meet The Baron	Walter Lang	Jack Pearl Jimmy Durante Zasu Pitts Ted Healy Edna May Oliver	68 6111
10/27/33	441	Day of Reckoning	Charles Brabin	Richard Dix Madge Evans Conway Tearle Una Merkel Stuart Erwin	70 6302
11/3/33	430	The Chief	Charles Riesner	Ed Wynn Dorothy Mackaill Chic Sale William Boyd	67 6000
11/10/33	442	The Prizefighter and The Lady	W. S. VanDyke	Max Baer Primo Carnera Myrna Loy Walter Huston Jack Dempsey	104 9345

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Metro-Goldwyn-Mayer 1933-34 Feature Release Schedule

Bookings Acceptable in Order of Release Only

Theatre Name..City..State........................

Tentative Release Date	Release No.	Production	Director	Cast	Running Time (Minutes) Footages	Booking Dates Requested
1/5/34	831	Fugutive Lovers	Richard Boleslavsky	Robert Montgomery Madge Evans Ted Healy and Stooges	84 7535	
1/12/34	447	Dinner At Eight	George Cukor	Marie Dressler John Barrymore Wallace Beery Lionel Barrymore	113 10,173	
1/19/34	448	Eskimo	W. S. Van Dyke	All Native Cast	116 10,422	
1/26/34	405	You Can't Buy Everything	Charles Riesner	May Robson Lewis Stone Jean Parker William Bakewell	83 7476	
2/2/34	445	This Side of Heaven	W. K. Howard	Lionel Barrymore	—	

Metro-Goldwyn-Mayer 1933-34 Feature Release Schedule—Continued

Theatre Name .... City .... State ....

2/9/34	414	Queen Christina	Rouben Mamoulian	Greta Garbo John Gilbert Lewis Stone	101 9120
2/16/34	333	The Cat and the Fiddle	W. K. Howard	Ramon Novarro Jeanette MacDonald Charles Butterworth Jean Hersholt Frank Morgan	90 8118
2/23/34	423	Mystery of Mr. X	Edgar Selwyn	Robert Montgomery Elizabeth Allan Lewis Stone Ralph Forbes	85 7681
3/2/34		No Release			
3/9/34	X427	The Show-Off	Charles Riesner	Spencer Tracy Madge Evans Lois Wilson	79 7098
3/16/34	444	Lazy River	George Seitz	Jean Parker Robert Young Ted Healy	77 6941
3/23/34		No Release			
3/30/34	334	Riptide	Edmund Goulding	Norma Shearer Robert Montgomery Herbert Marshall Ralph Forbes Mrs. Patrick Campbell Lilyan Tashman	

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Metro-Goldwyn-Mayer 1933–34 Feature Release Schedule

Theatre Name...City.............................State..........

Tentative Release Date	Release No.	Production	Director	Cast	Running Time (Minutes) Footages	Booking Dates Requested
5/18/34		No Release				
5/25/34	407	The Thin Man	W. S. Van Dyke	William Powell Myrna Loy Maureen O'Sullivan	93 8350	
6/1/34	436	Hollywood Party		Jimmy Durante Lupe Veles Laurel-Hardy Charles Butterworth Jack Pearl	70 6289	
6/8/34		No Release				
6/15/34	410	Operator 13	Richard Boleslavsky	Marion Davies Gary Cooper Ted Healy	86 7738	
6/22/34		No Release				
6/29/34	446	Murder in the Private Car	Harry Beaumont	Charlie Ruggles Mary Carlisle Una Merkel Russell Hardie	64 5733	
7/6/34		No Release				
7/13/34	X428	Stamboul Quest	Sam Wood	Myrna Loy George Brent Lionel Atwill	88 7889	
7/20/34		No Release				

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Metro-Goldwyn-Mayer 1934-35 Future Release Schedule

Theatre Name .... City .... State ....

Tentative Release Date	Release No.	Production	Director	Cast	Running Time (Minutes) Footages	Booking Dates Requested
8/10/34	538	Straight Is the Way	Paul Sloane	Franchot Tone Karen Morley Gladys George William Bakewell May Robson	60 5437	
8/17/34	403	Treasure Island	Victor Fleming	Wallace Beery Jackie Cooper Lionel Barrymore Otto Kruger Lewis Stone Dorothy Peterson "Chic" Sale	105 9433	
8/24/34	525	Hide-Out	W. S. Van Dyke	Robert Montgomery Maureen O'Sullivan Edward Arnold	83 7430	
8/31/34	532	Chained	Clarence Brown	Joan Crawford Clark Gable Otto Kruger Stuart Erwin Una O'Connor	77 6968	

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Metro-Goldwyn-Mayer 1933-34 Feature Release Schedule

Theatre Name..City..................................State..................

Tentative Release Date	Release No.	Production	Director	Cast	Running Time (Minutes) Footages	Booking Dates Requested
4/6/34	413	Men In White	Richard Boleslavsky	Clark Cable		
				Myrna Loy	75	
				Jean Hersholt	6790	
				Elizabeth Allan		
				Otto Kruger		
4/13/34	424	Laughing Boy	W. S. Van Dyke	Ramon Nevarro	80	
				Lupe Veles	7259	
4/20/34	438	Tarzan and His Mate	Cedric Gibbons	Johnny Weissmuller	106	
				Maureen O'Sullivan	9572	
				Neil Hamilton	—	
4/27/34	305	Viva Villa!	Jack Conway		94	
					8499	
				Wallace Beery		
				Leo Carrillo	114	
				Fay Wray	10284	
				Stuart Irwin		
5/4/34	406	Manhattan Melodrama	W. S. Van Dyke	Clark Gable		
				William Powell	95	
				Myrna Loy	8515	
				Leo Carrillo		
5/11/34	313	Sadie McKee	Clarence Brown	Joan Crawford		
				Franchot Tone	95	
				Esther Ralston	8511	
				Gene Raymond		

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Metro-Goldwyn-Mayer 1933-34 Feature Release Schedule

Theatre Name...City...................................State.........................

Tentative Release Date	Release No.	Production	Director	Cast	Running Time (Minutes) Footages	Booking Dates Requested
7/27/34	X429	Paris Interlude	Edwin Marin	Robert Young Otto Kruger Madge Evans Una Merkel Ted Healy Mary Carlisle	73 6565	
8/3/34	417	The Girl From Missouri	Jack Conway	Jean Harlow Lionel Barrymore Franchot Tone Lewis Stone Patsy Kelly	73 6583	
8/10/34	538	Straight Is The Way	Paul Sloane	Franchot Tone Karen Morley Gladys George William Bakewell May Robson	60 5437	
8/17/34	403	Treasure Island	Victor Fleming	Wallace Berry Jackie Cooper Lionel Barrymore Otto Kruger Lewis Stone Dorothy Peterson "Chic" Sale	105 9433	
8/24/34	525	Hide-Out	W. S. Van Dyke	Robert Montgomery Maureen O'Sullivan Edward Arnold		
8/31/34	532	Chained	Clarence Brown	Joan Crawford Clark Gable Otto Kruger Stuart Erwin Una O'Connor		

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Metro-Goldwyn-Mayer 1934–35 Future Release Schedule

Theatre Name.. City.. State..

Tentative Release Date	Release No.	Production	Director	Cast	Running Time (Minutes) Footages	Booking Dates Requested
11/2/34	535	The Merry Widow	Ernst Lubitsch	Maurice Chevalier Jeanette MacDonald Edward Everett Horton Una Merkel Minna Gombell	103 9024	
11/9/34	508	Evelyn Prentice	William K. Howard	Myrna Loy William Powell Una Merkel	80 7203	
11/16/34		No Release				
11/23/34	415	The Painted Veil	Richard Boleslavsky	Greta Garbo Herbert Marshall George Brent Warner Oland Jean Hersholt Katherine Alexander	86 7737	
11/30/34	422	Babes in Toyland	Gus Meins and Charles Rogers	Stan Laurel Oliver Hardy Charlotte Henry Felix Knight	79 7123	
12/7/34	540	A Wicked Woman	Charles Brabin	Mady Christians Jean Parker Charles Bickford Betty Furness	74 6625	
12/14/34	542	The Gay Bride	Jack Conway	Carole Lombard Chester Morris Zasu Pitts Leo Carrillo Nat Pendleton	81 7347	

9/7/34	527	Have a Heart	David Butler	Jean Parker James Dunn Una Merkel Stuart Erwin	82 7397
9/14/34	539	Death on the Diamond	Edward Sedgwick	Robert Young Madge Evans Ted Healy Nat Pendleton	72 6487
9/21/34	552	Barretts of Wimpole Street	Sidney Franklin	Norma Shearer Fredric March Charles Laughton Maureen O'Sullivan Katharine Alexander Ralph Forbes	111 10038
9/28/34	506	Outcast Lady	Robert Leonard	Constance Bennett Herbert Marshall Ralph Forbes	79 7085
10/5/34		No Release			
10/12/34	411	Student Tour	Charles F. Riesner	Jimmy Durante Charles Butterworth Maxine Doyle Phil Regan Florine McKinney	86 7710
10/19/34	419	What Every Woman Knows	Gregory La Cava	Helen Hayes Brian Aherne [illegible]	99 8104

12/21/34	541	The Band Plays On	Russell Mack	Robert Young Stuart Erwin Leo Carrillo Betty Furness Ted Healy Preston Foster	88 7933
2/28/34	408	Forsaking All Others	W. S. Van Dyke	Joan Crawford Clark Gable Robert Montgomery Billie Burke Charles Butterworth Ted Healy	84 7585
1/4/35	507	Biography of a Bachelor Girl	Edward H. Griffith	Ann Harding Robert Montgomery Edward Everett Horton Una Merkel Edward Arnold	
1/11/35	326	The Night Is Young	Dudley Murphy	Ramon Novarro Evelyn Laye Charles Butterworth Una Merkel Edward Everett Horton Donald Cook	
1/18/35	833	David Copperfield	George Cukor	W. C. Fields Lionel Barrymore Madge Evans Maureen O'Sullivan Frank Lawton Lewis Stone Elizabeth Allan Roland Young Edna Mae Oliver	

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Metro-Goldwyn-Mayer 1934-35 Feature Release Schedule—Continued

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Theatre Name .... City .... State ....

1/25/35	544	Society Doctor	George Seitz	Chester Morris Virginia Bruce Billie Burke Robert Taylor	68 6109
2/1/35	543	Sequoia	Chester Franklin	Jean Parker Russell Hardie.	73 6540
2/8/35	523	Winning Ticket	Charles Riesner	Leo Carrillo Louise Fasenda Ted Healy Irene Hervey	70 6264
2/15/35	545	Shadow of Doubt	George Seitz	Ricardo Cortez Virginia Bruce Constance Collier Betty Furness	75 6787
2/22/35	516	After Office Hours	Robert Z. Leonard	Clark Gable Constance Bennett Harvey Stephens Stuart Erwin Billie Burke	73 6549
00/00/35	420	Vanessa: Her Love Story	William K. Howard	Helen Hayes Robert Montgomery Otto Kruger Lewis Stone May Robson	76 6859
3/8/35	547	Times Square Lady	George Seitz	Robert Taylor Virginia Bruce Helen Twelvetrees Isabel Jewell	69 6244
3/15/35	546	The Casino Murder Case	Edward L. Marin	Paul Lukas Alison Skipworth Rosalind Russell Louise Fazenda Ted Healy Isabel Jewel Donald Cook	84 7545
3/22/35	504	West Point of the Air	Richard Rosson	Wallace Beery Maureen O'Sullivan Robert Young Lewis Stone Russell Hardie Robert Taylor	90 8139
3/29/35	537	Naughty Marietta	W. S. Van Dyke	Jeanette MacDonald Nelson Eddy Frank Morgan	106 9560
4/5/35	549	One New York Night	Jack Conway	Franchot Tone Una Merkel Conrad Nagel	71 6367
4/12/35	548	Baby Face Harrington	Raoul Walsh	Charles Butterworth Una Merkel Ruth Selwyn	63 5690

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Metro-Goldwyn-Mayer 1934-35 Feature Release Schedule—Continued

damages proximately caused by ordinary negligence in the operation of the State

4/19/35	418	Reckless	Victor Fleming	Jean Harlow William Powell Franchot Tone May Robson	99 8884
4/26/35	501	Mark of the Vampire	Tod Browning	Lionel Barrymore Elizabeth Allan Bela Lugosi Lionel Atwill Jean Hersholt	61 5539
5/3/35	551	Vagabond Lady	Sam Taylor	Robert Young Evelyn Venable Reginald Denny Frank Craven	73 6552
/10/35	550	Age of Indiscretion	Edward Ludwig	Paul Lukas Madge Evans May Robson Helen Vinson Ralph Forbes	80 7173
5/17/35	509	The Flame Within	Edmund Goulding	Ann Harding Herbert Marshall Maureen O'Sullivan Louis Hayward Henry Stephenson	73 6570
5/24/35	524	Murder in the Fleet	Edward Sedgwick	Jean Parker Robert Taylor Ted Healy Una Merkel Arthur Byron	71 6366
5/31/35		No Release			
6/7/35	502	Public Hero No. 1	J. Walter Ruben	Lionel Barrymore Jean Arthur Chester Morris Joseph Calleia Lewis Stone	91
6/14/35	409	No More Ladies	E. H. Griffith	Joan Crawford Robert Montgomery Franchot Tone Reginald Denny Edna Mae Oliver Charles Ruggles	82
6/21/35		No Release			
6/28/35	510	Calm Yourself	George Seitz	Madge Evans Robert Young Betty Furness Hardie Albright	
7/5/35	528	Escapade	Robert Leonard	William Powell Luise Rainer Frank Morgan Virginia Bruce Reginald Owen Mady Christians Laura Hope Crews	
7/12/35	511	Mad Love	Karl Freund	Peter Lorre Frances Drake Colin Clive [illegible]	

Metro-Goldwyn-Mayer 1934-35 Feature Release Schedule—Continued

Theatre Name.. City.. State..................................

7/19/35	612	The Murder Man	Tim Whelan	Spencer Tracy Virginia Bruce Lionel Atwill Harvey Stephens
7/26/35		No Release		
8/2/35	611	Woman Wanted	George B. Seitz	Maureen O'Sullivan Joel McCrea Lewis Stone Louis Calhern Adrienne Ames
8/9/35	614	Pursuit	Edwin L. Marin	Chester Morris Sally Eilers Henry Travers C. Henry Gordon

Metro-Goldwyn-Mayer 1935-36 Feature Release Schedule—Continued

Theatre Name .... City .... State ....

8/30/35	625	Here Comes The Band	Paul Sloane Lucien Hubbard	Ted Lewis and Band Virginia Bruce Donald Cook Spanky McFarland Ted Healy	87 7843
9/6/35	638	Anna Karenina	Clarence Brown David O. Selznick	Greta Garbo Frederic March Freddie Bartholomew Maureen O'Sullivan	94 8449
9/13/35	613	The Bishop Misbehaves	E. A. DuPont Lawrence Weingarten	Edmund Gwenn Maureen O'Sullivan Norman Foster Dudley Digges	87 7827
9/20/35	601	Broadway Melody of 1936	Roy Del Ruth John W. Considine, Jr.	Jack Benny Robert Taylor Eleanor Powell Una Merkel June Knight Sid Silvers The Ebsens Nick Long, Jr. Rasch Ballet	103 9227
9/27/35	505	O'Shaughnessy's Boy	Richard Boleslawski Philip Goldstone	Wallace Beery Jackie Cooper Spanky McFarland Sara Haden	88 7911
10/4/35	512	I Live My Life	W. S. Van Dyke Bernard H. Hyman	Joan Crawford Brian Aherne Frank Morgan Aline MacMahon	99 8903
10/11/35	616	It's In The Air	Charles Riesner Harry Rapf	Jack Benny Ted Healy Una Merkel Nat Pendleton	82 7340
10/18/35		No Release			

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Metro-Goldwyn-Mayer 1935–36 Feature Release Schedule

Theatre Name .... City .... State ....

Tentative Release Date	Release No.	Production	Director Producer	Cast	Approx. Running Time (Minutes) Approx. Footages	Booking Dates Requested
7/19/35	612	The Murder Man	Tim Whelan Harry Rapf	Spencer Tracy Virginia Bruce Lionel Atwill Harvey Stephens	71 6305	
7/26/35		No Release				
8/2/35	611	Woman Wanted	George B. Seitz Philip Goldstone	Maureen O'Sullivan Joel McCrea Lewis Stone Louis Calhern	68 6133	
8/9/35	614	Pursuit	Edwin L. Marin Lucien Hubbard and Ned Marin	Chester Morris Sally Eilers Henry Travers C. Henry Gordon	61 5527	
8/16/35	602	China Seas	Tay Garnett Albert Lewin	Clark Gable Jean Harlow Wallace Beery Lewis Stone	89 8010	
8/23/35	520	Bonnie Scotland	James W. Horne Hal Roach	Stan Laurel Oliver Hardy June Lang	82 7361	
8/23/35	650	Smilin' Through	Sidney Franklin	Norma Shearer Frederic March Leslie Howard Ralph Forbes	100 8956	

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Metro-Goldwyn-Mayer 1935–36 Feature Release Schedule

Theatre Name..City..State........

10/25/35	529	Rendezvous	William K. Howard	William Powell	97
				Rosalind Russell	8689
				Binnie Barnes	
			Lawrence Weingarten	Lionel Atwill	
11/1/35		No Release			
11/8/35	536	Mutiny On The Bounty	Frank Lloyd	Clark Gable	135
				Charles Laughton	12131
				Franchot Tone	
				Herbert Mundin	
			Albert Lewin	Dudley Digges	
11/15/35	644	A Night At The Opera	Sam Wood	Marx Brothers	96
				Kitty Carlisle	8655
				Allan Jones	
				Walter King	
11/22/35	615	The Perfect Gentleman	Tim Whelan	Frank Morgan	73
				Cicely Courtneidge	6583
				Heather Angel	
			Harry Rapf	Richard Waring	
11/29/35	628	Ah, Wilderness	Clarence Brown	Wallace Beery	99
				Lionel Barrymore	8958
				Cecilia Parker	
				Eric Linden	
			Hunt Stromberg	Mickey Rooney	

Metro-Goldwyn-Mayer 1935-36 Feature Release Schedule—Continued

12/6/35	619	Kind Lady	George Seitz Lucien Hubbard	Aline MacMahon Basil Rathbone Mary Carlisle Dudley Digges	78 7032
12/13/35	513	Whipsaw	Sam Wood Harry Rapf	Myrna Loy Spencer Tracy Harvey Stephens William Harrigan	83 7476
12/20/35	617	Last of The Pagans	Richard Thorpe Philip Goldstone	Mala Lotus	72 6456
12/27/35	604	A Tale of Two Cities	Jack Conway David O. Selznick	Ronald Colman Elizabeth Allan Edna May Oliver Basil Rathbone	128 11547
1/3/36	517	Riffraff	J. Walter Ruben	Jean Harlow Spencer Tracy Joseph Calleia Una Merkel	96 8608
1/10/36	618	Three Live Ghosts	Bruce Humberstone John W. Considine, Jr.	Richard Arlen Beryl Mercer Dudley Digges Cecilia Parker	62 5576
1/17/36	621	Exclusive Story	George B. Seitz Lucien Hubbard	Franchot Tone Madge Evans Stuart Erwin Joseph Calleia	75 6789
1/24/36	620	Tough Guy	Chester M. Franklin Harry Rapf	Jackie Cooper Joseph Calleia Harvey Stephens Rin Tin Tin, Jr.	77 6930
1/31/36	643	Rose Marie	W. S. Van Dyke Hunt Stromberg	Jeanette MacDonald Nelson Eddy James Stewart Reginald Owen	112 10047
2/7/36	630	The Voice of Bugle Ann	Richard Thorpe John W. Considine, Jr.	Lionel Barrymore Maureen O'Sullivan Eric Linden Spring Byington	73 6561

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Metro-Goldwyn-Mayer 1935–36 Feature Release Schedule

Theatre Name........................City........................State..........

2/14/36	521	The Bohemian Girl	James W. Horne Charles Rogers Hal Roach	Stan Laurel Oliver Hardy Antonio Moreno Thelma Todd	72 6489
2/21/36	622	Garden Murder Case	Edwin L. Marin Lucien Hubbard and Ned Marin	Edmund Lowe Virginia Bruce H. B. Warner Nat Pendleton	62 5553
2/28/36	606	Wife Versus Secretary	Clarence Brown Hunt Stromberg	Jean Harlow Clark Gable Myrna Loy Hobart Cavanaugh	89 8003
3/6/36	623	Three Godfathers	Richard Boleslawski Joseph Mankiewics	Chester Morris Lewis Stone Walter Brennan Irene Hervey	82 7393
3/13/36		No Release			
3/20/36	645	Petticoat Fever	George Fitamaurice Frank Davis	Robert Montgomery Myrna Loy Reginal Owen	81 7305
3/27/36	624	Moonlight Murder	Edwin L. Marin Lucien Hubbard and Ned Marin	Chester Morris Madge Evans Leo Carrillo	67 6072

Metro-Goldwyn-Mayer 1935-36 Feature Release Schedule—Continued

Theatre Name .... City .... State ....

4/3/36	651	The Unguarded Hour	Sam Wood Lawrence Weingarten	Loretta Young Franchot Tone Roland Young Lewis Stone	87 7942
4/10/36	607	Small Town Girl	William Wellman Hunt Stromberg	Janet Gaynor Robert Taylor Lewis Stone	107 9659
4/17/36	608	Robin Hood of El Dorado	William Wellman John W. Considine, Jr.	Warner Baxter Ann Loring Bruce Cabot Margo	86 7779
4/24/36	609	Absolute Quiet	George B. Seits John W. Considine, Jr.	Lionel Atwill Irene Hervey Ann Loring Stuart Erwin	71 6369
5/1/36		No Release			
5/8/36	652	Speed	Edwin L. Marin Lucien Hubbard	James Stewart Wendy Barrie Una Merkel Ralph Morgan	72 6464
5/15/36	653	The Three Wise Guys	George Seits Harry Rapf	Robert Young Betty Furness Bruce Cabot	75 6768
5/22/36		No Release			
5/29/36	646	Trouble For Two	J. Walter Rubin Louis D. Lighton	Robert Montgomery Rosalind Russell Frank Morgan	75 6790
6/5/36	610	Fury	Frits Lang Joseph Mankiewics	Spencer Tracy Sylvia Sidney Walter Abel	94 8447
6/12/36		No Release			
6/19/36		No Release			

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Metro-Goldwyn-Mayer 1936–37 Feature Release Schedule

Theatre Name..City..................................State.......................

Tentative Release Date	Release No.	Production	Director Producer	Cast	Approx. Running Time (Minutes) Approx. Footages	Booking Dates Requested
7/31/36	701	Women Are Trouble	Errol Taggart Lucien Hubbard Michael Fessier	Stuart Erwin Paul Kelly Florence Rice	59 5335	
8/7/36	657	His Brother's Wife	W. S. Van Dyke Lawrence Weingarten	Barbara Stanwyck Robert Taylor Joseph Calleia Jean Hersholt	90 8143	
8/14/36	655	Piccadilly Jim	Robert Z. Leonard Harry Rapf	Robert Montgomery Madge Evans Frank Morgan Billie Burke	97 8709	
8/21/36	702	Kelly The Second	Gus Meins Hal Roach	Patsy Kelly Charley Chase Pert Kelton Guinn Williams	71 6419	
8/28/36	633	The Gorgeous Hussy	Clarence Brown Joseph Mankiewicz	Joan Crawford Franchot Tone Robert Taylor Lionel Barrymore	105 9448	
9/4/36	700	The Great Ziegfeld	Robert Z. Leonard Hunt Stromberg	William Powell Myrna Loy Luise Rainer Frank Morgan Virginia Bruce	179 16,128	

Metro-Goldwyn-Mayer 1936-37 Feature Release Schedule—Continued

Theatre Name .... **City** .... **State** ....

11/20/36	654	Love On The Run	W. S. Van Dyke Joseph Mankiewicz	Clark Gable Joan Crawford Franchot Tone Reginald Owen	80 7217
11/20/36	706	April Romance	Paul L. Stein	Richard Tauber Jane Baxter	82 7350
11/27/36	709	Born To Dance	Roy Del Ruth Jack Cummings	Eleanor Powell James Stewart Virginia Bruce Una Merkel Sid Silvers Buddy Ebsen	105 9486
12/4/36		No Release			

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Metro-Goldwyn-Mayer 1936–37 Feature Release Schedule

Theatre Name..City..State..................................

Tentative Release Date	Release No.	Production	Director Producer	Cast	Approx. Running Time (Minutes) Approx. Footages	Booking Dates Requested
12/11/36	714	General Spanky	Gordon Douglas Fred Newmeyer Hal Roach	"Spanky" McFarland Our Gang Irving Pichel Rosina Lawrence	71 6421	
12/18/36	712	Sinner Take All	Errol Taggert Lucien Hubbard Samuel Marx	Bruce Cabot Margaret Lindsay Joseph Calleia	76 6634	
12/25/36	713	After The Thin Man	W. S. Van Dyke II Hunt Stromberg	William Powell Myrna Loy Elissa Landi James Stewart Joseph Calleia	113 10,175	
1/1/37	639	Camille	George Cukor Irving Thalberg	Greta Garbo Robert Taylor Lionel Barrymore	110 9887	
1/8/37	715	Under Cover Of Night	George Seitz Lucien Hubbard Ned Marin	Edmund Lowe Florence Rice	71 6413	

9/11/36	703	Sworn Enemy	Edwin L. Marin Lucien Hubbard	Robert Young Florence Rice Joseph Calleia	74 6692
9/18/36	656	The Devil Is A Sissy	W. S. Van Dyke Frank Davis and Bernard Hyman	Freddie Bartholomew Jackie Cooper Mickey Rooney Mary Doran Katherine Alexander	92 8323
9/25/36	639	Old Hutch	J. Walter Ruben Harry Rapf	Wallace Beery Cecilia Parker Eric Linden Elisabeth Patterson	80 7227
10/2/36	704	The Longest Night	Errol Taggart Lucien Hubbard- Samuel Marx	Robert Young Florence Rice Ted Healy	51 4587
10/9/36	648	Libeled Lady	Jack Conway Lawrence Weingarten	Jean Harlow William Powell Myrna Loy Spencer Tracy	98 8829
10/16/36	705	All American Chump	Edwin L. Marin Lucien Hubbard- Michael Fessier	Stuart Erwin Robert Armstrong Betty Furness	63 5684
10/23/36	707	Mr. Cinderella	Edward Sedgwick Hal Roach	Jack Haley Betty Furness Arthur Treacher	76 6860
10/30/36	710	Our Relations	Harry Lachman Hal Roach	Stan Laurel Oliver Hardy	74 6620
11/6/36	711	Tarzan Escapes	Richard Thorpe Philip Goldstone	Johnny Weissmuller Maureen O'Sullivan	89 8039
11/13/36	708	Mad Holiday	George Seitz Harry Rapf	Edmund Lowe Elissa Landi Zasu Pitts Edmund Gwenn Ted Healy	71 6419

6/26/36	636	San Francisco	W. S. Van Dyke John Emerson & Bernard Hyman	Clark Gable Jeanette MacDonald Spencer Tracy Jack Holt	117 10549
7/3/36	626	We Went To College	Joseph Santley Harry Rapf	Walter Abel Una Merkel Charles Butterworth	69 6237
7/10/36	631	The Devil Doll	Tod Browning	Lionel Barrymore Maureen O'Sullivan Frank Lawton	79 7155
7/17/36		No Release			
7/24/36	518	Susy	George Fitzmaurice Maurice Revnes	Jean Harlow Franchot Tone Cary Grant Lewis Stone	93 8385

Metro-Goldwyn-Mayer 1936-37 Feature Release Schedule—Continued

Theatre Name.. City.. State..

1/15/37		No Release			
1/22/37	718	Dangerous Number	Richard Thorpe Lou Ostrow	Robert Young Ann Sothern Reginald Owen	71 6366
1/29/37	716	Man of The People	Edwin L. Marin Lucien Hubbard	Joseph Calleia Florence Rice	81 7303
2/5/37	721	Mama Steps Out	George B. Seitz John Emerson	Alice Brady Guy Kibbee Betty Furness	65 5864
2/12/37		No Release			
2/19/37	719	The Last of Mrs. Cheyney	Richard Boleslawski Lawrence Weingarten	Joan Crawford William Powell Robert Montgomery	98 8833
2/26/37	723	Espionage	Kurt Neumann Harry Rapf	Edmund Lowe Madge Evans Paul Lukas	66½ 5984
3/5/37		No Release			
3/12/37		No Release			
3/19/37	632	A Family Affair	George B. Seitz Lucien Hubbard Samuel Marx	Lionel Barrymore Spring Byington Cecilia Parker	69 6202
3/26/37	720	Maytime	Robert Z. Leonard Hunt Stromberg	Jeannette MacDonald Nelson Eddy John Barrymore	131 11,826

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Metro-Goldwyn-Mayer 1936–37 Feature Release Schedule

Theatre Name .... City .... State ....

Tentative Release Date	Release No.	Production	Director Producer	Cast	Approx. Running Time (Minutes) Approx. Footages	Booking Dates Requested
4/30/37	727	Night Must Fall	Richard Thorpe Hunt Stromberg	Robert Montgomery Rosalind Russell	117 10,451	
5/7/37	732	The Thirteenth Chair	George Seitz J. J. Cohn	Madge Evans Ralph Forbes Elissa Landi	66 5985	
	150	Trader Horn (Re-issue)	W. S. Van Dyke II	Harry Carey Edwina Booth Duncan Renaldo	120 10,794	
5/14/37	731	They Gave Him A Gun	W. S. Van Dyke II Harry Rapf	Spencer Tracy Gladys George Franchot Tone	94 8482	
5/21/37	735	Pick A Star	Edward Sedgwick Hal Roach	Patsy Kelly Lyda Roberti Jack Haley	70 6252	
5/28/37		No Release				
6/4/37	722	Parnell	John M. Stahl	Clark Gable Myrna Loy Edna May Oliver	118 10,613	
	202	Hell Divers (Re-issue)	George Hill	Wallace Beery Clark Gable Conrad Nagel Dorothy Jordan	109 9810	
6/11/37	730	A Day At The Races	Sam Wood	Marx Brothers Maureen O'Sullivan Allan Jones	109 9818	
6/18/37	736	Married Before Breakfast				

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Metro-Goldwyn-Mayer 1937-38 Feature Release Schedule

Theatre Name..City..State....................

Tentative Release Date	Release No.	Production	Director Producer	Cast	Approx. Running Time (Minutes) Approx. Footages	Booking Dates Requested
9/3/37	801	Big City	Frank Borzage	Luise Rainer	80	
				Spencer Tracy		
			Norman Krasna	Janet Beecher	7193	
9/10/37	802	The Women Men Marry	Errol Taggart	George Murphy	61	
				Josephine Hutchinson	5467	
				Claire Dodd		
			Michael Fessier	Sidney Blackmer		
9/17/37	803	My Dear Miss Aldrich	George B. Seitz	Edna May Oliver	73	
				Maureen O'Sullivan	6612	
				Rita Johnson		
				Walter Pidgeon		
9/24/37		No Release				
10/1/37	806	Madame X	Sam [illegible]od	Gladys George	71½	
				Warren William	6441	
				John Beal		
				Reginald Owen		
			J. K. McGuinness	Henry Daniell		
10/8/37	804	The Bride Wore Red	Dorothy Arzner	Joan Crawford	103	
				Franchot Tone	9270	
				Robert Young		
				Billie Burke		
			Joseph L. Mankiewicz	Reginald Owen		

Metro-Goldwyn-Mayer 1937-38 Feature Release Schedule—Continued

Theatre Name .... City .... State ....

12/10/37	815	You're Only Young Once	George Seitz Harry Rapf	Lewis Stone Mickey Rooney Cecilia Parker Ann Rutherford	77 6941
12/17/37		No Release			
12/24/37	816	Rosalie	W. S. Van Dyke II William A. McGuire	Eleanor Powell Nelson Eddy Ray Bolger Frank Morgan Edna May Oliver Reginald Owen	124 11,130
12/31/37	812	Bad Man of Brimstone	J. Walter Ruben Harry Rapf	Wallace Beery Virginia Bruce Dennis O'Keefe Joseph Calleia Bruce Cabot	89 8010
1/7/38	817	Man-Proof	Richard Thorpe Louis D. Lighton	Myrna Loy Rosalind Russell Franchot Tone Walter Pidgeon	74½ 6709
1/14/38	821	Love Is A Headache	Richard Thorpe Frederick Stephani	Gladys George Franchot Tone Mickey Rooney Ted Healy	

6/18/37	736	Married Before Breakfast	Edwin L. Marin Sam Zimbalist	Robert Young Florence Rice Barnett Parker	70½ 6347
7/25/37	717	Captains Courageous	Victor Fleming Louis D. Lighton	Freddie Bartholomew Spencer Tracy Lionel Barrymore	116 10,486
7/2/37	733	The Emperor's Candlesticks	George Fitzmaurice John W. Considine	Luise Rainer William Powell Robert Young Maureen O'Sullivan	89 8017
	406	Manhattan Melodrama (Re-issue)	W. S. Van Dyke II David O. Selznick	Clark Gable William Powell Myrna Loy	90 8117
7/9/37	737	Between Two Women	George Seitz	Franchot Tone Maureen O'Sullivan Virginia Bruce	88½ 7976
7/16/37	738	Topper	Norman McLeod Hal Roach	Roland Young Constance Bennett Cary Grant	97 8745
7/23/37	742.	Saratoga	Jack Conway Bernard Hyman	Clark Gable Jean Harlow Lionel Barrymore	92 8283
7/30/37.	740	London By Night	William Thiele Sam Zimbalist	Rita Johnson Leo Carroll George Murphy	69 6203
8/6/37	741	The Good Earth	Sidney Franklin	Pau Muni Luise Rainer Walter Connolly	138 12,404
8/13/37	537	Naughty Marietta (Re-issue)	W. S. Van Dyke II Hunt Stromberg	Jeanette MacDonald Nelson Eddy Frank Morgan	105 9461
8/20/37	739	Braodway Melody of 1938	Roy Del Ruth Jack Cummings	Robert Taylor Eleanor Powell Sophie Tucker George Murphy	110
8/27/37	743	Bad Guy	Edward Cahn Tom Reed	Bruce Cabot Virginia Grey Edward Norris	69

10/15/37	807	Double Wedding	Richard Thorpe	William Powell	87
				Myrna Loy	7813
				Florence Rice	
			Joseph L. Mankiewicz	John Beal	
10/22/37	808	Live, Love and Learn	George Fitzmaurice	Robert Montgomery	78
				Rosalind Russell	7038
				Helen Vinson	
				Robert Benchley	
			Harry Rapf	Mickey Rooney	
10/29/37	805	Conquest	Clarence Brown	Greta Garbo	111½
				Charles Boyer	10041
				Reginald Owen	
			Bernard H. Hyman	Alan Marshal	
11/5/37	809	The Firefly	Robert Z. Leonard	Jeanette MacDonald	131
				Allan Jones	
			Hunt Stromberg	Warren William	11767
11/12/37	810	The Last Gangster	Edward Ludwig	Edward G. Robinson	81
				James Stewart	7299
				Rose Stradner	
				Lionel Stander	
			Lou Ostrow	Sidney Blackmer	
11/19/37	811	Navy Blue and Gold	Sam Wood	Robert Young	94
				James Stewart	8437
				Lionel Barrymore	
				Florence Rice	
			Sam Zimbalist	Billie Burke	
11/26/37	813	Thoroughbreds Don't Cry	Alfred E. Green	Mickey Rooney	80
				Judy Garland	7171
				Sophie Tucker	
			Harry Rapf	Ronald Sinclair	
12/3/37	814	Beg, Borrow or Steal	William Thiele	Frank Morgan	72
				John Beal	6449
				Florence Rice	
			Frederick Stephani	Janet Beecher	

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Metro-Goldwyn-Mayer 1937–38 Feature Release Schedule

Theatre Name..City..State........................

Tentative Release Date	Release No.	Production	Director Producer	Cast	Approx. Running Time (Minutes) Approx. Footages	Booking Dates Requested
1/21/38	820	Mannequin	Frank Borzage Joseph L. Mankiewicz	Joan Crawford Spencer Tracy Alan Curtis Ralph Morgan Mary Phillips	94½ 8517	
1/28/38	818	Paradise For Three	Eddie Buzzell Sam Zimbalist	Robert Young Frank Morgan Florence Rice Reginald Owen Edna May Oliver Mary Astor	78 7026	
2/4/38	819	Everybody Sing	Edwin L. Marin Harry Rapf	Allan Jones Judy Garland Fanny Brice Reginald Owen Lynne Carver Billie Burke	91 8188	
Lincoln's Birthday 2/11/38	822	Of Human Hearts	Clarence Brown John W. Considine	Walter Huston James Stewart Beulah Bondi	103 9296	

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Metro-Goldwyn-Mayer 1936-37 Feature Release Schedule—Continued

Theatre Name .... City .... State ....

	725	Personal Property	W. S. Van Dyke II John W. Considine	Jean Harlow Robert Taylor Reginald Owen	84 7524
4/2/37	724	Song Of The City	Errol Taggart Lucien Hubbard & Michael Fessier	Margaret Lindsay Edward Norris Nat Pendleton	68 6145
4/9/37		No Release			
4/16/37	726	Romeo and Juliet	George Cukor	Norma Shearer Leslie Howard John Barrymore	126½ 11,387
	734	Way Out West	James W. Horne Hal Roach	Stan Laurel Oliver Hardy Rosina Lawrence	64 5792
4/23/37	728	Good Old Soak	J. Walter Ruben Harry Rapf	Wallace Beery Janet Beecher Betty Furness	76 6855
	729	Nobody's Baby	Gus Meins	Patsy Kelly	68

Metro-Goldwyn-Mayer 1937-38 Feature Release Schedule—Continued

Theatre Name .... **City** .... **State** ....

Washington's Birthday 2/18/38	823	A Yank At Oxford	Jack Conway Michael Balcon	Robert Taylor Lionel Barrymore Maureen O'Sullivan Vivien Leigh Edmund Gwenn	102 9192
2/25/38	824	Arsene Lupin Returns	George Fitzmaurice John W. Considine	Melvyn Douglas Virginia Bruce Warren William	80½ 7256
3/4/38 R	825	Merrily We Live	Norman Z. McLeod Milton H. Bren	Constance Bennett Brian Aherne Billie Burke Alan Mowbray Patsy Kelly	95 8546
3/11/38	826	The First Hundred Years	Richard Thorpe Norman Krasna	Robert Montgomery Virginia Bruce Warren William Alan Dinehart	73 6607
3/18/38	827	Girl of the Golden West	Robert Z. Leonard William A. McGuire	Jeanette MacDonald Nelson Eddy Walter Pidgeon Leo Carrillo	121 10861
3/25/38	828	Judge Hardy's Children	George B. Seitz	Lewis Stone Mickey Rooney Cecilia Parker Fay Holden	77 6955
4/1/38		No Release			
4/8/38		No Release			
Easter Week 4/15/38		No Release			
4/22/38	831	Test Pilot	Victor Fleming Louis D. Lighton	Clark Gable Myrna Loy Spencer Tracy Lionel Barrymore	119 10702

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Metro-Goldwyn-Mayer 1937–38 Feature Release Schedule

Theatre Name .... City .... State ....

Tentative Release Date	Release No.	Production	Director Producer	Cast	Approx. Running Time (Minutes) Approx. Footages	Booking Dates Requested
6/3/38	832	Three Comrades	Frank Borzage	Robert Taylor	98	
				Margaret Sullavan	8850	
				Franchot Tone		
				Robert Young		
			Joseph L. Mankiewicz	Lionel Atwill		
6/10/38	836	The Toy Wife	Richard Thorpe	Luise Rainer	95	
				Melvyn Douglas	8577	
				Robert Young		
				Barbara O'Neil		
			Merian C. Cooper	H. B. Warner	8577	
6/17/38	838	Woman Against Woman	Robert Sinclair	Virginia Bruce	61	
				Herbert Marshall	5485	
				Mary Astor		
			Edward Chodorov	Janet Beecher		
	403	Treasure Island (Re-issue)	Victor Fleming	Wallace Beery	105	
				Jackie Cooper	9433	
				Lionel Barrymore		
				Lewis Stone		
				Otto Kruger		

Metro-Goldwyn-Mayer 1937-38 Feature Release Schedule—Continued

Theatre Name .... City .... State

7/29/38	842	The Chaser	Edwin L. Marin	Dennis O'Keefe	75½
				Ann Morriss	6797
				Lewis Stone	
			Frank Davis	Nat Pendleton	
8/5/38	840	The Crowd Roars	Richard Thorpe	Robert Taylor	90
				Maureen O'Sullivan	8105
				Frank Morgan	
				Edward Arnold	
			Sam Zimbalist	Nat Pendleton	
8/12/38	843	Rich Man, Poor Girl	Reinhold Schunzel	Robert Young	
				Lew Ayres	
				Ruth Hussey	
				Lana Turner	
				Rita Johnson	
			Edward Chodorov	Guy Kibbee	
8/19/38	844	Block-Heads	John Blystone	Stan Laurel	
				Oliver Hardy	
				Patricia Ellis	
				Minna Gombell	
			Hal Roach	Billy Gilbert	
8/26/38	845	Marie Antoinette	W. S. Van Dyke II	Norma Shearer	
				Tyrone Power	
				Robert Morley	
				John Barrymore	
				Anita Louise	
				Joseph Schildkraut	
			Hunt Stromberg	Gladys George	

Metro-Goldwyn-Mayer 1938-39 Feature Release Schedule—Continued

Theatre Name .... City .... State ....

10/21/38	904	Listen, Darling	Edwin L. Marin	Judy Garland	75
				Freddie Bartholomew	
				Walter Pidgeon	
			Jack Cummings	Mary Astor	6726
10/28/38	909	The Citadel	King Vidor	Robert Donat	113
			Victor Saville	Rosalind Russell	10,140
Election Day 11/4/38	908	The Great Waltz	Julien Duvivier	Luise Rainer	103
				Fernand Gravet	9309
				Miliza Korjus	
11/11/38	911	Spring Madness	S. Sylvan Simon	Maureen O'Sullivan	67
			Edward Chodorov	Lew Ayres	6047
Thanksgiving 11/18/38	912	The Shining Hour	Frank Borzage	Joan Crawford	76
				Margaret Sullavan	6880
				Robert Young	
			Joseph Mankiewicz	Melvyn Douglas	
11/25/38	913	Out West With The Hardy's	George Seitz	Mickey Rooney	84
				Lewis Stone	7550
				Cecilia Parker	
				Fay Holden	
12/2/38	914	Flirting With Fate	Frank MacDonald	Joe E. Brown	69
				Leo Carrillo	6251
				Steffi Duna	
			David Loew	Beverly Roberts	
12/9/38	915	Dramatic School	Robert Sinclair	Luise Rainer	80
				Alan Marshal	7201
			Mervyn LeRoy	Paulette Goddard	

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Metro-Goldwyn-Mayer 1938–39 Feature Release Schedule

Theatre Name .... City .... State ....

Tentative Release Date	Release No.	Production	Director Producer	Cast		Approx. Running Time (Minutes) Approx. Footages	Booking Dates Requested
2/3/39	922	Honolulu	Edward Bussell	Eleanor Powell	Gracie Allen	83	
				Robert Young	Rita Johnson	7510	
			Jack Cummings	George Burns	Clarence Kolb		
Lincoln's Birthday 2/10/39	923	The Adventures of Huckleberry Finn	Richard Thorpe	Mickey Rooney	Lynne Carver	91	
				Walter Connoly	Jo Ann Sayers	8173	
				William Frawley	Minor Watson		
			Joseph L. Mankiewicz	Rex Ingram	Elizabeth Risdon		
Washington's Birthday 2/17/39	924	Fast and Loose	Edwin Marin	Robert Montgomery	Alan Dinehart	79	
				Rosalind Russell	Jo Ann Sayers	7150	
				Reginald Owen	Sidney Blackmer		
			Frederick Stephani	Ralph Morgan	Joan Marsh		
2/24/39	926	Let Freedom Ring	Jack Conway	Nelson Eddy	Edward Arnold	87	
				Virginia Bruce	Charles Butterworth	7811	
				Victor McLaglen	Guy Kibbee		
			Harry Rapf	Lionel Barrymore	H. B. Warner		

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Metro-Goldwyn-Mayer 1938–39 Feature Release Schedule

Theatre Name .... City .... State ....

Tentative Release Date	Release No.	Production	Director Producer	Cast	Approx. Running Time (Minutes) Approx. Footages	Booking Dates Requested
Labor Day 9/2/38	901	Three Loves Has Nancy	Richard Thorpe Norman Krasna	Robert Montgomery Janet Gaynor Franchot Tone	69½ 6251	
9/9/38	902	Boys Town	Norman Taurog John W. Considine, Jr.	Spencer Tracy Mickey Rooney	92½ 8333	
9/16/38	903	Too Hot To Handle	Jack Conway Lawrence Weingarten	Clark Gable Myrna Loy	106½ 9586	
Jewish New Year 9/23/38		No Release				
Yom Kippur 9/30/38	905	Vacation From Love	George Fitzmaurice Orville O. Dull	Dennis O'Keefe Florence Rice Reginald Owen	66 5923	
Columbus Day 10/7/38	906	Stablemates	Sam Wood Harry Rapf	Wallace Beery Mickey Rooney	89 8042	
10/14/38	907	Young Dr. Kildare	Harold Bucquet	Lew Ayres Lionel Barrymore	81½ 7344	

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3/3/39	980	Pygmalion	Anthony Asquith Leslie Howard Gabriel Pascal	Leslie Howard Wendy Hiller Wilfrid Lawson Marie Lohr	Scott Sunderland David Tree Jean Cadell Esme Percy	87 7803
3/10/39	925	The Ice Follies of 1936	Reinhold Schunzel Harry Rapf	Joan Crawford James Stewart Lew Ayres	Lewis Stone Lionel Stander Bess Ehrhardt	82 7374
3/17/39	928	Within The Law	Gustav Machaty	Ruth Hussey Tom Neal Paul Kelly William Gargan Paul Cavanagh	Rita Johnson Samuel Hinds Lynne Carver Sidney Blackmer Jo Ann Sayers	65 5871
3/24/39	927	Sergeant Madden	Josel von Sternberg J. Walter Ruben	Wallace Beery Tom Brown Alan Curtis	Laraine Day Fay Holden Marc Lawrence	80 7222
3/31/39	930	Society Lawyer	Edwin L. Marin John W. Considine	Walter Pidgeon Virginia Bruce Leo Carrillo Eduardo Ciannelli	Lee Bowman Frances Mercer Ann Morriss Ian Wolfe	77 6970
Easter Week 4/7/39	931	Broadway Serenade	Robert Z. Leonard Robert Z. Leonard	Jeanette MacDonald Lew Ayres Ian Hunter Frank Morgan Wally Vernon	Virginia Grey Rita Johnson William Gargan Al Shean Katharine Alexander	113 10203
	636	San Francisco (Re-issue)	W. S. Van Dyke II John Emerson and Bernard Hyman	Clark Gable Jeanette MacDonald Spencer Tracy	Jack Holt Jessie Ralph Shirley Ross	117 10549
4/14/39	929	The Kid From Texas	S. Sylvan Simon Edgar Selwyn	Dennis O'Keefe Florence Rice Anthony Allan	Jessie Ralph Buddy Ebsen Virginia Dale	71 6381

4057

6/24/38	837	Lord Jeff	Sam Wood Frank Davis	Freddie Bartholomew Mickey Rooney Terry Kilburn	85 7669
Independence Day 7/1/38	829	Port of Seven Seas	James Whale Henry Henigson	Wallace Beery Maureen O'Sullivan Frank Morgan John Beal	81 7281
7/8/38	839	Fast Company	Eddie Buzzell Frederick Stephani	Melvyn Douglas Florence Rice Mary Howard Nat Pendleton Claire Dodd	74½ 6706
7/15/38	835	The Shopworn Angel	H. C. Potter Joseph L. Mankiewicz	Margaret Sullavan James Stewart Walter Pidgeon Nat Pendleton	85 7633
7/22/38	841	Love Finds Andy Hardy	George B. Seitz	Mickey Rooney Judy Garland Lewis Stone Fay Holden Cecilia Parker Ann Rutherford	91 8199
	533	David Copperfield (Re-Issue)	George Cukor	Freddie Bartholomew W. C. Fields Edna May Oliver	133 11,951

12/16/38	917	A Christmas Carol	Edwin L. Marin Joseph Mankiewicz	Reginald Owen Terry Kilburn Gene Lockhart	69 6214
Christmas 12/23/38	916	The Girl Downstairs	Norman Taurog Harry Rapf	Franciska Gaal Franchot Tone Walter Connolly Rita Johnson	77 6913
New Year 12/30/38	910	Sweethearts	W. S. Van Dyke II Hunt Stromberg	Jeanette MacDonald Nelson Eddy Frank Morgan	114 10,274
1/6/39	918	Stand Up and Fight	W. S. Van Dyke Mervyn LeRoy	Wallace Beery Robert Taylor Florence Rice	97 8718
1/13/39	919	Burn 'Em Up O'Connor	Edward Sedgwick Harry Rapf	Dennis O'Keefe Cecilia Parker	70 6294
1/20/39		No Release			
	920	Idiot's Delight	Clarence Brown Hunt Stromberg	Norma Shearer Clark Gable Edward Arnold Joseph Schildkraut Laura Hope Crews	104 9363
1/27/39	921	Four Girls in White	S. Sylvan Simon	Alan Marshal Florence Rice	73 6608

4/29/38		No Release			
5/6/38		No Release			
5/13/38	833	Hold That Kiss	Edwin L. Marin John W. Considine	Maureen O'Sullivan Dennis O'Keefe Mickey Rooney Fay Holden	79 7139
5/20/38	830	Swiss Miss	John Blystone Hal Roach	Stan Laurel Oliver Hardy Della Lind Walter Woolf King	73 6587
Memorial Day 5/27/38	834	Yellow Jack	George B. Seitz Jack Cummings	Robert Montgomery Virginia Bruce Lewis Stone Henry Hull Andy Devine	83 7445

Metro-Goldwyn-Mayer 1938-39 Feature Release Schedule—Continued

Theatre Name .... City .... State ....

4/21/39	934	The Hardy's Ride High	George B. Seitz	Lewis Stone	Sara Haden	81
				Mickey Rooney	Virginia Grey	7263
				Cecilia Parker	Minor Watson	
				Fay Holden	Halliwell Hobbes	
				Ann Rutherford	John King	
4/28/39	932	Calling Dr. Kildare	Harold S. Bucquet	Lew Ayres	Lana Turner	86
				Lionel Barrymore	Samuel Hinds	7763
				Laraine Day	Lynne Carver	
				Nat Pendleton	Emma Dunn	
5/5/39	933	Lucky Night	Norman Taurog	Mryna Loy	Henry O'Neill	82
				Robert Taylor	Douglas Fowley	7365
			Louis D. Lighton	Joseph Allen	Bernard Nedell	
	536	Mutiny on the Bounty (Re-issue)	Frank Lloyd	Clark Gable	Herbert Mundin	135
				Charles Laughton	Dudley Digges	12,131
			Albert Lewin	Franchot Tone		
5/12/39	935	Tell No Tales	Leslie Fenton	Melvyn Douglas	Florence George	69
				Louise Platt	Halliwell Hobbes	6223
				Gene Lockhart	Zeffic Tilbury	
			Edward Chodorov	Douglas Dumbrille	Tom Collins	
5/19/39	936	It's A Wonderful World	W. S. VanDyke	Claudette Colbert	Frances Drake	86
				James Stewart	Edgar Kennedy	7722
				Guy Kibbee	Ernest Truex	
			Frank Davis	Nat Pendleton	Sidney Blackmer	
Memorial Day						
5/26/39	937	Bridal Suite	William Thiele	Annabella	Gene Lockhart	69½
				Robert Young	Arthur Treacher	6263
				Walter Connolly	Billie Burke	
			Edgar Selwyn	Reginald Owen	Virginia Field	
6/2/39	201	The Champ (Re-issue)	King Vidor	Wallace Beery	Irene Rich	86
				Jackie Cooper	Rosco Ates	7779

Metro-Goldwyn-Mayer 1938-39 Feature Release Schedule—Continued

Theatre Name .... City .... State ....

	643	Rose Marie (Re-issue)	W. S. Van Dyke II	Jeanette MacDonald Nelson Eddy James Stewart	Reginald Owen Allan Jones Alan Mowbray	112 10047
7/14/39	943	They All Come Out	Jacques Tourneur Jack Chertok	Rita Johnson Tom Neal Benard Nedell	John Gallaudet Edward Gargan Addison Richards	69½ 6269
7/21/39	944	Andy Hardy Gets Spring Fever	W. S. Van Dyke II	Lewis Stone Mickey Rooney Cecilia Parker Fay Holden	Ann Rutherford Sara Haden Helen Gilbert Terry Kilburn	85 7681
7/28/39	945	Goodbye, Mr. Chips	Sam Wood Victor Saville	Robert Donat Greer Garson Terry Kilburn	John Mills Paul von Hernried Judith Furse	113 10257
8/4/39	946	Miracles For Sale	Tod Browning	Robert Young Florence Rice Frank Craven	Henry Hull Lee Bowman Cliff Clark	
8/11/39	947	Lady of the Tropics	Jack Conway Sam Zimbalist	Robert Taylor Hedy Lamarr Joseph Schildkraut	Gloria Franklin Ernest Cossart Mary Taylor	
8/18/39	948	These Glamour Girls	S. Sylvan Simon Sam Zimbalist	Lew Ayres Lana Turner Tom Brown Richard Carlson	Jane Bryan Anita Louise Marsha Hunt Ann Rutherford	
8/25/39	949	The Wizard of Oz (Technicolor)	Victor Fleming Mervyn LeRoy	Judy Garland Frank Morgan Ray Bolger Bert Lahr	Jack Haley Billie Burke Margaret Hamilton Charley Grapewin	

Metro-Goldwyn-Mayer 1939-40 Feature Release Schedule—Continued

Theatre Name........................ City........................ State........................

Columbus Day 10/6/39	6	Fast and Furious	Busby Berkeley Frederick Stephani	Franchot Tone Ann Sothern Ruth Hussey Lee Bowman	Allyn Joslyn John Miljan Bernard Nedell Mary Beth Hughes	73 6581
10/13/39	9	Babes In Arms	Busby Berkeley Arthur Freed	Mickey Rooney Judy Garland Charles Winninger Guy Kibbee June Preisser	Grace Hayes Betty Jaynes Douglas McPhail Rand Brooks Leni Lynn	97 8704
10/20/39	8	Marx Bros. "At The Circus"	Edward Buzzell Mervyn LeRoy	Groucho Marx Chico Marx Harpo Marx Kenny Baker	Florence Rice Nat Pendleton Margaret Dumont Fritz Feld	87 7810
10/27/39	10	Bad Little Angel	William Thiele Albert Levoy	Virginia Weidler Gene Reynolds Elizabeth Patterson Ian Hunter	Henry Hull Lois Wilson Reginald Owen Guy Kibbee	72 6472
11/3/39	7	Ninotchka	Ernst Lubitsch	Greta Garbo Melvyn Douglas Ina Claire Bela Lugosi	Sig Rumann Felix Bressart Alexander Granach Gregory Gaye	110 9931
11/10/39	11	Remember?	Norman Z. McLeod Milton Bren	Robert Taylor Greer Garson Lew Ayres Billie Burke Reginald Owen	George Barbier Henry Travers Richard Carle Laura Hope Crews Sara Haden	83 7497
Thanksgiving 11/17/39	13	Another Thin Man	W. S. Van Dyke II Hunt Stromberg	William Powell Myrna Loy C. Aubrey Smith Nat Pendleton William Poulsen	Ruth Hussey Muriel Hutchison Tom Neal Virginia Grey Asta	102 9220

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Metro-Goldwyn-Mayer 1938–39 Feature Release Schedule

Theatre Name .... City .... State ....

Tentative Release Date	Release No.	Production	Director Producer	Cast		Approx. Running Time (Minutes) Approx. Footages	Booking Dates Requested
6/9/39	938	6000 Enemies	George B. Seitz Lucien Hubbard	Walter Pidgeon Rita Johnson Paul Kelly Nat Pendleton	Harold Huber Grant Mitchell Tom Neal John Arledge	62 5562	
6/16/39	939	Tarzan Finds A Son!	Richard Thorpe Sam Zimbalist	Johnny Weissmuller Maureen O'Sullivan John Sheffield Ian Hunter	Henry Stephenson Frieda Inescort Henry Wilcoxon Laraine Day	82 7383	
6/23/39	940	Maisie	Edwin L. Marin J. Walter Ruben	Robert Young Ann Sothern Ruth Hussey Ian Hunter	Cliff Edwards Anthony Allan Minor Watson Richard Carle	74½ 6706	
Independence Day							
6/30/39	941	Stronger Than Desire	Leslie Fenton John Considine Jr.	Walter Pidgeon Virginia Bruce Lee Bowman Ann Dvorak	Ilka Chase Rita Johnson Richard Lane Ann Todd	82 7401	
7/7/39	942	On Borrowed Time	Harold Bucquet Sidney Franklin	Lionel Barrymore Sir C. Hardwicke Beulah Bondi Una Merkel	Bobs Watson Nat Pendleton Henry Travers Grant Mitchell Eily Malyon	98½ 8877	

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Theatre Name .... City .... State ....

Tentative Release Date	Release No.	Production	Director Producer	Cast		Approx. Running Time (Minutes) Approx. Footages	Booking Dates Requested
Labor Day 9/1/39	1	The Women	George Cukor Hunt Stromberg	Norma Shearer Joan Crawford Rosalind Russell Mary Boland	Paulette Goddard Phyllis Povah Joan Fontaine Virginia Weidler	134 12057	
Jewish New Year 9/8/39	5	Blackmail	H. C. Potter John Considine Jr.	Edward G. Robinson Ruth Hussey Gene Lockhart	Bobs Watson Guinn Williams John Wray	81 7275	
9/15/39	4	Thunder Afloat	George B. Seitz J. Walter Ruben	Wallace Beery Chester Morris Virginia Grey Douglas Dumbrille	Carl Esmond Clem Bevans John Qualen Regis Toomey	95 8542	
Yom Kippur 9/22/39		No Release					
9/29/39	3	Dancing Co-Ed	S. Sylvan Simon Edgar Selwyn	Lana Turner Richard Carlson Artie Shaw Ann Rutherford	Lee Bowman Thurston Hall Leon Errol Roscoe Karns	84 7573	

Thanksgiving 11/24/39	12	The Secret of Dr. Kildare	Harold S. Bucquet	Lew Ayres Lionel Barrymore Lionel Atwill Helen Gilbert Nat Pendleton	Laraine Day Sara Haden Samuel S. Hinds Emma Dunn Walter Kingsford	85 7650
12/1/39	14	Joe and Ethel Turp Call On The President	Robert B. Sinclair Edgar Selwyn	Ann Sothern Lewis Stone Walter Brennan	William Gargan Marsha Hunt Tom Neal	70 6312
12/8/39	2	Henry Goes Arizona	Edwin L. Marin	Frank Morgan Virginia Weidler Guy Kibbee	Slim Summerville Douglas Fowley Owen Davis Jr.	66 5970
12/15/39	15	Nick Carter, Master Detective	Jacques Tourneur Lucien Hubbard	Walter Pidgeon Rita Johnson Henry Hull Stanley C. Ridges	Donald Meek Addison Richards Henry Victor Sterling Holloway	59 5338
Christmas 12/22/39	16	Judge Hardy and Son	George B. Seitz	Lewis Stone Mickey Rooney Cecilia Parker Fay Holden Sara Haden Ann Rutherford	June Preisser Maria Ouspenskaya Henry Hull Martha O'Driscoll Leona Maricle Margaret Early	90 8062
New Year's 12/29/39	17	Balalaika	Reinhold Schunzel Lawrence Weingarten	Nelson Eddy Ilona Massey Charlie Ruggles Frank Morgan Lionel Atwill	C. Aubrey Smith Joyce Compton Dalies Frants Walter Woolf King Phillip Terry	102 9175

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Metro-Goldwyn-Mayer 1939-40 Feature Release Schedule

Theatre Name .... City .... State ....

Tentative Release Date	Release No.	Production	Director Producer	Cast		Approx. Running Time (Minutes) Approx. Footages	Booking Dates Requested
1/5/40	18	The Earl of Chicago	Richard Thorpe Victor Saville	Robert Montgomery Edward Arnold Reginald Owen Edmund Gwenn	E. E. Clive Ronald Sinclair Norma Varden Halliwell Hobbes	87 7827	
1/12/40	20	The Shop Around the Corner	Ernst Lubitsch Ernst Lubitsch	Margaret Sullavan James Stewart Frank Morgan Joseph Schildkraut	Sara Haden Felix Bressart William Tracy Ines Courtney	99 8870	
1/19/40	19	Congo Maisie	H. C. Potter J. Walter Ruben	Ann Sothern John Carroll Rita Johnson Shepperd Strudwick	J. M. Kerrigan E. E. Clive Everett Brown Tom Fadden	70 6344	
1/26/40	22	The Lambeth Walk (British Production)	Albert De Courville AnthonyHavelock-Allan	Lupino Lane Sally Gray Seymour Hicks	Norah Howard Enid Stamp-Taylor Wallace Lupino	66 5934	
2/2/40	26	I Take This Woman	W. S. Van Dyke II	Spencer Tracy Hedy Lamarr Verree Teasdale Kent Taylor	Paul Cavanagh Frances Drake Laraine Day Mona Barrie	97 8771	
Lincoln's Birthday 2/9/40	21	Broadway Melody of 1940	Norman Taurog Jack Cummings	Fred Astaire Eleanor Powell George Murphy Frank Morgan Ian Hunter	Florence Rice Lynne Carver Ann Morriss Trixie Firschke Douglas McPhail	101 9126	

Metro-Goldwyn-Mayer 1939-40 Feature Release Schedule—Continued

Theatre	Name		City		State	
4/5/40	32	And One Was Beautiful	Robert B. Sinclair	Robert Cummings	Charles Waldron	70
				Laraine Day	Ann Morriss	6278
				Jean Muir	Esther Dale	
			Frederick Stephani	Billie Burke	Rand Brooks	
4/12/40	30	Dr. Kildare's Strange Case	Harold S. Bucquet	Lew Ayres	Samuel S. Hinds	77
				Lionel Barrymore	Emma Dunn	6933
				Laraine Day	Nat Pendleton	
				Shepperd Strudwick	Walter Kingsford	
4/19/40	33	Two Girls on Broadway	S. Sylvan Simon	Lana Turner	Kent Taylor	73
				Joan Blondell	Richard Lane	6571
			Jack Cummings	George Murphy	Wallace Ford	
4/26/40	34	Forty Little Mothers	Busby Berkeley	Eddie Cantor	Bonita Granville	90
				Judith Anderson	Diana Lewis	8069
				Ralph Morgan	Nydia Westman	
			Harry Rapf	Rita Johnson	Margaret Early	
5/3/40	35	20 Mule Team	Richard Thorpe	Wallace Beery	Noah Beery, Jr.	84
				Leo Carrillo	Douglas Fowley	7514
				Marjorie Rambeau	Arthur Hohl	
			J. Walter Ruben	Anne Baxter	Berton Churchill	
5/10/40	36	Edison, The Man	Clarence Brown	Spencer Tracy	Gene Lockhart	107
				Rita Johnson	Charles Coburn	9614
				Henry Travers	Lynne Overman	
			John W. Considine Jr.	Gene Reynolds	Regis Toomey	

Metro-Goldwyn-Mayer 1939-40 Feature Release Schedule—Continued

Theatre Name .... **City** .... **State** ....

6/21/40	42	The Captain Is A Lady	Robert Sinclair	Charles Coburn	Dan Dailey Jr.	63
				Beulah Bondi	Helen Westley	5,865
				Virginia Grey	Cecil Cunningham	
				Helen Broderick	Marjorie Main	
			Frederick Stephani	Billie Burke	Clem Bevans	
Independence Day						
6/28/40	31	New Moon	Robert Z. Leonard	Jeanette MacDonald	Grant Mitchell	104
				Nelson Eddy	Stanley Fields	9,413
				Mary Boland	Richard Purcell	
				George Zucco	John Miljan	
			Robert Z. Leonard	H. B. Warner	Ivan Simpson	
7/5/40	43	Andy Hardy Meets Debutante	George B. Seitz	Lewis Stone	Ann Rutherford	89
				Mickey Rooney	Diana Lewis	7,874
				Cecilia Parker	George Breakston	
				Fay Holden	Sara Haden	
				Judy Garland	Addison Richards	
7/12/40	44	Sporting Blood	S. Sylvan Simon	Robert Young	Lynne Carver	82
				Maureen O'Sullivan	Clarence Muse	7,388
				Lewis Stone	Lloyd Corrigan	
			Albert E. Levoy	William Gargan	George H. Reed	
7/19/40	45	We Who Are Young	Harold S. Bucquet	Lana Turner	Henry Armetta	80
				John Shelton	Jonathan Hale	7,181
				Gene Lockhart	Clarence Wilson	
			Seymour Nebensahl	Grant Mitchell	Ian Wolfe	
7/26/40	47	Gold Rush Maisie	Edwin L. Marin	Ann Sothern	Mary Nash	82
				Lee Bowman	John F. Hamilton	7,364
				Slim Summerville	Scotty Beckett	
			J. Walter Ruben	Virginia Weidler	Irving Bacon	
8/2/40	46	Pride and Prejudice	Robert Z. Leonard	Greer Garson	Ann Rutherford	118
				Laurence Olivier	Frieda Inescort	10,585
				Mary Boland	Edmund Gwenn	
				Edna May Oliver	Karen Morley	
			Hunt Stromberg	Maureen O'Sullivan	Heather Angel	
8/9/40	50	I Love You Again	W. S. Van Dyke II	Myrna Loy	Frank McHugh	99
				William Powell	Donald Douglas	8,902
				Edmund Loew	Nella Walker	
8/16/40	49	The Golden Fleecing	Leslie Fenton	Lew Ayres	Leon Errol	68
				Rita Johnson	George Lessey	6100
				Lloyd Nolan	Richard Carle	
				Virginia Grey	Ralph Byrd	
			Edgar Selwyn	Nat Pendleton	Marc Lawrence	
8/23/40		No Release				
Labor Day						
8/30/40	48	Boom Town	Jack Conway	Clark Gable	Lionel Atwill	120
				Spencer Tracy	Chill Wills	10,828
				Claudette Colbert	Marion Martin	
				Hedy Lamarr	Minna Gombell	
			Sam Zimbalist	Frank Morgan	Joe Yule	

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Metro-Goldwyn-Mayer 1940–41 Feature Release Schedule

Theatre Name..City..State..............

Tentative Release Date	Release No.	Production	Director Producer	Cast		Approx. Minutes Approx. Footages	Booking Dates Requested
9/6/40	101	Dr. Kildare Goes Home	Harold S. Bucquet	Lew Ayres Lionel Barrymore Laraine Day Samuel S. Hinds	Gene Lockhart Nat Pendleton Emma Dunn John Shelton	79 7083	
9/13/40	102	Wyoming	Richard Thorpe Milton Bren	Wallace Beery Leo Carrillo Ann Rutherford Lee Bowman	Paul Kelly Joseph Calleia Marjorie Main Bobs Watson	88 7916	
9/20/40	104	Haunted Honeymoon	Arthur B. Woods	Robert Montgomery Constance Cummings Leslie Banks Sir Seymour Hicks	Robert Newton Googie Withers Frank Pettingell Joan Kemp-Welch	83 7480	
Jewish New Year 9/27/40	103	Strike Up The Band	Busby Berkeley Arthur Freed	Mickey Rooney Judy Garland Paul Whiteman June Preisser	William Tracy Larry Nunn Margaret Early Ann Shoemaker	120 10,791	
	105	Sky Murder	George B. Seitz Frederick Stephani	Walter Pidgeon Donald Meek Karen Verne Edward Ashley	Joyce Compton Tom Conway George Lessey Dorothy Tree	72 6503	

Washington's Birthday						
2/16/40	24	The Man From Dakota	Leslie Fenton Edward Chodorov	Wallace Beery Dolores Del Rio John Howard	Donald Meek Robert Barrat Addison Richards	75 6753
2/23/40	25	Northwest Passage (Book 1—Rogers' Rangers) In Technicolor	King Vidor Hunt Stromberg	Spencer Tracy Robert Young Walter Brennan Ruth Hussey Nat Pendleton	Louis Hector Robert Barrat Lumsden Hare Donald McBride Isabel Jewell	126 11,370
3/1/40	23	Strange Cargo	Frank Borzage Joseph L. Mankiewicz	Clark Gable Joan Crawford Ian Hunter Peter Lorre	Paul Lukas Albert Dekker J. Edward Bromberg Eduardo Ciannelli	113 10,174
3/8/40	27	The Ghost Comes Home	William Thiele Albert Levoy	Frank Morgan Billie Burke Anne Rutherford John Shelton	Reginald Owen Donald Meek Nat Pendleton Frank Albertson	79 7113
3/15/40	28	Young Tom Edison	Norman Taurog John W. Considine Jr.	Mickey Rooney Fay Bainter George Bancroft Virginia Weidler Eugene Pallette	Victor Kilian Bobbie Jordan J. M. Kerrigan Lloyd Corrigan John Kellog	85½ 7712
Easter Week						
3/22/40		No Release				
3/29/40	29	Florian	Edwin L. Marin Winfield Sheehan	Robert Young Helen Gilbert Charles Coburn Lee Bowman Reginald Owen	Lucile Watson Irina Baronova Rand Brooks Soke Sakall William B. Davidson	93 8352

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Theatre Name .... City .... State ....

Tentative Release Date	Release No.	Production	Director Producer	Cast		Approx. Running Time Minutes Approx. Footages	Booking Dates Requested
5/17/40	37	Waterloo Bridge	Mervyn LeRoy Sidney Franklin	Vivien Leigh Robert Taylor Lucile Watson Virginia Field	Maria Ouspenskaya C. Aubrey Smith Janet Shaw Steffi Duna	108 9,761	
Memorial Day, 5/24/40		No Release					
5/31/40	40	Phantom Raiders. A New Nick Carter Adventure	Jacques Tourneur Frederick Stephani	Walter Pidgeon Florence Rice Joseph Schildkraut John Carroll	Donald Meek Nat Pendleton Steffi Duna Cecil Kellaway	70 6,307	
6/7/40	39	Susan and God	George Cukor Hunt Stromberg	Joan Crawford Frederic March Ruth Hussey John Carroll Rita Hayworth	Nigel Bruce Bruce Cabot Rita Quigley Rose Hobart Constance Collier	117 10,514	
6/14/40	41	The Mortal Storm	Frank Borzage	Margaret Sullavan James Stewart Robert Young Frank Morgan Robert Stack	Bonita Granville Irene Rich William T. Orr Maria Ouspenskaya Gene Reynolds	100 9,023	

10/4/40	106	Dulcy	H. Sylvan Simon Edgar Selwyn	Ann Sothern Ian Hunter Roland Young Reginald Gardiner	Billie Burke Lynne Carver Dan Dailey Jr. Donald Huie	73 6585
Columbus Day Yom Kippur						
10/11/40	107	Third Finger, Left Hand	Robert Z. Leonard John W. Considine, Jr.	Myrna Loy Melvyn Douglas Raymond Walburn Lee Bowman	Bonita Granville Felix Bressart Donald Meek Ann Morriss	92 8804
10/18/40		No Release				
10/25/40	109	Hullabalo	Edwin L. Marin L. K. Sidney	Frank Morgan Virginia Grey Billie Burke Donald Meek	Dan Dailey Jr. Reginald Owen Nydia Westman Ann Morriss	77 6900
11/1/40	108	Escape	Mervyn LeRoy Lawrence Weingarten	Norma Shearer Robert Taylor Conrad Veidt Nazimova	Felix Bressart Albert Basserman Philip Dorn Bonita Granville	104 9334
11/8/40	110	Bitter Sweet (Technicolor)	W. S. Van Dyke II Victor Saville	Jeanette MacDonald Nelson Eddy George Sanders Ian Hunter	Felix Bressart Edward Ashley Lynne Carver Diana Lewis	94 8430
Thanksgiving 11/15/40	111	Gallant Sons	George B. Seitz Frederick Stephani	Jackie Cooper Gene Reynolds Bonita Granville June Preisser	Ian Hunter Gail Patrick Edward Ashley Leo Gorcey	76 6840
Thanksgiving 11/22/40	112	Little Nellie Kelly	Norman Taurog Arthur Freed	Judy Garland George Murphy Charles Winninger Douglas McPhail	Arthur Shields Rita Page Forrester Harvey James Burke	100 8975

Metro-Goldwyn-Mayer 1940–41 Feature Release Schedule—Continued

Theatre Name .... City .... State ....

11/29/40	115	Dr. Kildare's Crisis	Harold S. Bucquet	Lew Ayres	Nat Pendleton	75
				Lionel Barrymore	Walter Kingsford	6728
				Laraine Day	Alma Kruger	
				Robert Young	Bobs Watson	
12/6/40	114	Go West	Edward Buzzell	Groucho Marx	Diana Lewis	82
				Chico Marx	Walter Woolf King	7337
				Harpo Marx	Robert Barrat	
			Jack Cummings	John Carroll	June MacCloy	
12/13/40	113	Comrade X	King Vidor	Clark Gable	Eve Arden	89
				Hedy Lamarr	Sig Rumann	8025
				Oscar Homolka	Natasha Lytess	
			Gottfried Reinhardt	Felix Bressart	Vladimir Sokoloff	
Christmas 12/20/40		No Release				
New Year's 12/27/40	116	Keeping Company	S. Sylvan Simon	Frank Morgan	Gene Lockhart	80
				Ann Rutherford	Virginia Weidler	7222
				John Shelton	Virginia Grey	
			Samuel Marx	Irene Rich	Dan Dailey Jr.	
1/3/41	117	Flight Command	Frank Borzage	Robert Taylor	Shepperd Strudwick	116
				Ruth Hussey	Red Skelton	10,400
				Walter Pidgeon	Nat Pendleton	
			J. Walter Ruben	Paul Kelly	Dick Purcell	
1/10/41	118	Maisie Was A Lady	Edwin L. Marin	Ann Sothern	C. Aubrey Smith	79
				Lew Ayres	Edward Ashley	7130
				Maureen O'Sullivan	Joan Perry	
			J. Walter Ruben	Paul Cavanaugh		

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Theatre Name...City...State...........................

Tentative Release Date	Release No.	Production	Director Producer	Cast		Approx. Minutes Approx. Footages	Booking Dates Requested
1/17/41	119	The Philadelphia Story	George Cukor Joseph L. Mankiewicz	Cary Grant Katharine Hepburn James Stewart Ruth Hussey John Howard	Roland Young John Halliday Mary Nash Virginia Weidler Henry Daniell	112 10,081	
1/24/41	120	Land of Liberty	Sponsored by MPPDA, INC. Edited by C. B. DeMille	Leading stars of 116 pictures produced in last 25 years.		98 8800	
	121	The Wild Man of Borneo	Robert B. Sinclair	Frank Morgan Mary Howard Billie Burke Donald Meek	Marjorie Main Connie Gilchrist Bonita Granville Dan Dailey, Jr.	78 7050	
1/31/41	122	Come Live With Me	Clarence Brown Clarence Brown	James Stewart Hedy Lamarr Ian Hunter Verree Teasdale	Donald Meek Barton MacLane Edward Ashley Ann Codee	86 7761	
Lincoln's Birthday 2/7/41	123	Blonde Inspiration	Busby Berkeley B. P. Fineman	John Shelton Virginia Grey Albert Dekker Charles Butterworth	Donald Meek Reginald Owen Alma Kruger Rita Quigley	72 6500	
2/14/41	125	The Trial of Mary Dugan	Norman McLeod Edwin Knopf	Robert Young Laraine Day Frieda Inescort John Litel	Marsha Hunt Sara Haden Tom Conway Henry O'Neil	90 8090	

Metro-Goldwyn-Mayer 1940-41 Feature Release Schedule—Continued

Theatre Name.. City.. State

Washington's Birthday 2/21/41	126	Andy Hardy's Private Secretary	George Seitz	Lewis Stone Mickey Rooney Ian Hunter Gene Reynolds	Ann Rutherford Fay Holden Sara Haden Kathryn Grayson	101 9084
2/28/41	127	Free and Easy	George Sidney	Ruth Hussey Robert Cummings Nigel Bruce C. Aubrey Smith	Reginald Owen Judith Anderson Forrester Harvey Tom Conway	56 5005
3/7/41	128	Rage In Heaven	W. S. Van Dyke II Gottfried Reinhart	Robert Montgomery Ingrid Bergman George Sanders	Lucile Watson Philip Merivale Oscar Homolka	85 7609
3/14/41	129	The Penalty	Harold S. Bucquet Jack Chertok	Edward Arnold Lionel Barrymore Marsha Hunt Robert Sterling	Gene Reynolds Emma Dunn Veda Ann Borg Richard Lane	80 7238
3/21/41		No Release				
3/28/41	124	The Bad Man	Richard Thorpe J. Walter Ruben	Wallace Beery Lionel Barrymore Laraine Day Ronald Reagan	Henry Travers Chris-Pin Martin Tom Conway Chill Wills	70 6306
4/4/41		No Release				
Easter Week 4/11/41	132	Men of Boys Town	Norman Taurog John W. Considine Jr.	Spencer Tracy Mickey Rooney Bobs Watson Larry Nunn	Darryl Hickman Henry O'Neill Mary Nash Lee J. Cobb	106 9546
4/18/41	131	Washington Melodrama	S. Sylvan Simon Edgar Selwyn	Frank Morgan Ann Rutherford Kent Taylor Lee Bowman	Dan Dailey Jr. Virginia Grey Fay Holden Anne Gwynne	80 7242
4/25/41	130	Ziegfeld Girl	Robert Z. Leonard Pandro S. Berman	James Stewart Judy Garland Hedy Lamarr Lana Turner Tony Martin	Jackie Cooper Ian Hunter Charles Winninger Edward E. Horton Philip Dorn	131 11,800
5/2/41	133	The People vs. Dr. Kildare	Harold S. Bucquet	Lew Ayres Lionel Barrymore Laraine Day Bonita Granville	Alma Kruger Red Skelton Paul Stanton Diana Lewis	78 7019
5/9/41	136	A Woman's Face	George Cukor Victor Saville	Joan Crawford Melvyn Douglas Conrad Veidt Osa Massen	Reginald Owen Albert Basserman Marjorie Main Donald Meek	106 9528
5/16/41	135	I'll Wait For You	Robert B. Sinclair Edwin Knopf	Robert Sterling Marsha Hunt Virginia Weidler Paul Kelly	Fay Holden Henry Travers Don Costello Carol Hughes	73 6523
5/23/41	134	Love Crazy	Jack Conway Pandro S. Berman	William Powell Myrna Loy Gail Patrick Jack Carson	Florence Bates Sidney Blackmer Sig Rumann Vladimir Sokoloff	99 8873

Metro-Goldwyn-Mayer 1940-41 Feature Release Schedule

Theatre Name .... City .... State ....

Tentative Release Date	Release No.	Production	Director Producer	Cast		Approx. Running Time (Minutes) Approx. Footages	Booking Dates Requested
Memorial Day							
5/30/41	137	Billy The Kid	David Miller	Robert Taylor	Gene Lockhart	95	
		Technicolor		Brian Donlevy	Lon Chaney Jr.	8582	
				Ian Hunter	Henry O'Neill		
			Irving Asher	Mary Howard	Guinn Williams		
6/6/41	185	Mata Hari	George Fitzmaurice	Greta Garbo	Lewis Stone	89	
		(Re-issue)		Ramon Navarro	Karen Morley	7974	
			George Fitzmaurice	Lionel Barrymore			
6/13/41	138	The Get-Away	Edward Buzzell	Robert Sterling	Henry O'Neill	89	
				Charles Winninger	Dan Dailey Jr.	7996	
			J. Walter Ruben	Donna Reed	Don Douglas		
6/20/41	139	The Big Store	Charles Riesner	Groucho Marx	Virginia Grey	83	
				Chico Marx	Margaret Dumont	7500	
				Harpo Marx	Douglas Dumbrille		
			Louis K. Sidney	Tony Martin	Henry Armetta		
6/27/41	140	They Met in Bombay	Clarence Brown	Clark Gable	Jessie Ralph	92	
				Rosalind Russell	Matthew Boulton	8270	
				Peter Lorre	Luis Alberni		
			Hunt Stromberg	Edward Ciannelli	Rosina Galli		
Independence Day							
7/4/41	141	Barnacle Bill	Richard Thorpe	Wallace Beery	Donald Meek	92	
				Marjorie Main	Barton MacLane	8293	
				Leo Carrillo	Connie Gilchrist		
			Milton Bren	Virginia Weidler	Sara Haden		
7/11/41	186	Navy Blue and Gold	Sam Wood	Robert Young	Florence Rice	94	
		(Re-issue)		James Stewart	Billie Burke	8437	
			Sam Zimbalist	Lionel Barrymore	Tom Brown		

7/18/41	142	The Stars Look Down (British Production)	Carol Reed I. Goldsmith	Michael Redgrave Margret Lockwood Emlyn Williams	Nancy Price Allan Jeaves Linden Travers	99 8901
7/25/41	144	Blossoms In The Dust Technicolor	A Mervyn LeRoy Production Irving Asher	Greer Garson Walter Pidgeon Felix Bressart Marsha Hunt	Fay Holden Samuel S. Hinds Kathleen Howard George Lessey	99 8940
8/1/41	143	Ringside Maisie	Edwin Marin J. Walter Ruben	Ann Sothern George Murphy Robert Sterling	Virginia O'Brien Natalie Thompson Margaret Moffat	95 8542
8/8/41	147	Whistling In The Dark	S. Sylvan Simon George Haight	Red Skelton Conrad Veidt Ann Rutherford Virginia Grey	"Rags" Ragland Henry O'Neill Eve Arden Paul Stanton	78 7007
8/15/41	146	Life Begins for Andy Hardy	George B. Seitz	Lewis Stone Mickey Rooney Judy Garland Fay Holden	Ann Rutherford Sara Haden Patricia Dane Ray McDonald	103 9280
8/22/41	145	Dr. Kildare's Wedding Day	Harold S. Bucquet	Lew Ayres Lionel Barrymore Laraine Day Red Skelton	Alma Kruger Samuel S. Hinds Nils Asther Walter Kingsford	83 7437
Labor Day 8/29/41	148	When Ladies Meet	Robert Z. Leonard Robert Z. Leonard and Orville O. Dull	Joan Crawford Robert Taylor Greer Garson Spring Byington	Herbert Marshall Rafael Storm Mona Barrie	105 9442
[fol. 6280-6281]						
8/1/31	116	Son of India	Jacques Feyder	Ramon Novarro Madge Evans	Conrad Nagel Marjorie Rambeau	6546
8/8/31	No Release					

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Exhibit 634

RKO Radio Pictures, Inc.

Release Schedule 1933-34 Features

Complete

As of Nov. 2, 1934

Subject	Prod. No.	Release Date	Running Time	Running Footage	Director	Cast
August—1933						
Morning Glory	4109	Aug. 18	74	6635	Lowell Sherman	K. Hepburn—Douglas Fairbanks, Jr. Adolphe Menjou—Mary Duncan
September						
Rafter Romance	4129	Sept. 1	75	6751	Wm. A. Seiter	Ginger Rogers—Norman Foster—Geo. Sidney Laura Hope Crews
One Man's Journey	4113	Sept. 8	72	6503	John Robertson	Lionel Barrymore—May Robson—J. McCrea Frances Dee—Dorothy Jordan
Midshipman Jack	4127	Sept. 22	71	6363	Christy Cabanne	Bruce Cabot—Betty Furness—Arthur Lake Florance Lake—Purnell Pratt
October						
Ann Vickers	4102	Oct. 13	76½	6881	John Cromwell	Irene Dunne—Walter Huston—Conrad Nagel Bruce Cabot—Edna May Oliver
Ace of Aces	4120	Oct. 20	77½	6968	J. Walter Ruben	Richard Dix—Eliz. Allan—R. Bellamy
Chance at Heaven	4126	Oct. 27	71½	6430	Wm. A. Seiter	Joel McCrea—Ginger Rogers—Marion Nixon Andy Divine—Virginia Hammond
November						
Aggie Appleby	4132	Nov. 3	73	6566	Mark Sandrich	Chas. Farrel—Wynne Gibson—Wm. Gargan Zasu Pitts—Betty Furness
The Right to Romance	4119	Nov. 17	67	6023	Alfred Santell	Ann Harding—Robt. Young—Sari Maritza Helen Freeman—Arliss Parrish
Little Women	4107	Nov. 24	115	10352	Geo. Cukor	K. Hepburn—Joan Bennett—Paul Lucas Edna May Oliver—Jean Parker—Frances Dee Douglas Montgomery—Henry Stephenson
December						
If I Were Free	4125	Dec. 1	66½	5977	Eliot Nugent	Irene Dunne—Clive Brook—Nils Asther
Son of Kong	4106	Dec. 22	69½	6247	E. B. Schoedsack	Robert Armstrong—Helen Mack
Flying Down to Rio	4104	Dec. 29	89	8024	Thornton Freeland	Dolores Del Rio—Gene Raymond—G. Rogers Fred Astaire—Paul Roulien
January—1934						

January—1934						
Meanest Gal in Town	4130	Jan. 12	62	5561	A Russel Mack Production	Zasu Pitts—Pert Kelton—El Brendel James Gleason—Skeets Gallagher
Long Lost Father	4116	Jan. 19	63	5685	E. B. Schoedsack	John Barrymore—Helen Chandler Donald Cook
Two Alone	4122	Jan. 26	76½	6870	Elliott Nugent	Jean Parker—Tom Brown—Zasu Pitts
February						
Hips Hips Hooray	4111	Feb. 2	67½	6073	Mark Sandrich	Bert Wheeler—Robt. Woolsey—Ruth Etting Thelma Todd—Dorothy Lee—Geo. Meeker
Man of Two Worlds	4114	Feb. 9	96½	8698	J. Walter Ruben	Francis Lederer—Elissa Landi Henry Stephenson—J. Farrel McDonald
Lost Patrol	4131	Feb. 16	73	6542	John Ford	Victor McLaglen—Boris Karloff Wallace Ford—Reginald Denny
March						
Keep 'Em Rolling	4135	Mar. 2	69½	6277	Geo. Archainbaud	Walter Huston—Frances Dee
Success at Any Price	4133	Mar. 16	74½	6696	J. Walter Ruben	Doug. Fairbanks Jr.—Genevieve Tobin—Frank Morgan—Colleen Moore—Edw. E. Horton
Spitfire	4136	Mar. 30	88	7912	John Cromwell	Katherine Hepburn—Robt. Young Ralph Bellamy—Martha Sleeper
April						
Wild Cargo	4103	Apr. 6	96	8627	Armand Denis	Frank Buck
This Man Is Mine	4118	Apr. 13	76	6863	John Cromwell	Irene Dunne—Constance Cummings Ralph Bellamy—Kay Johnson
Sing and Like It	4139	Apr. 20	72	6468	Wm. A. Seiter	Zasu Pitts—Pert Kelton—Ned Spark Edward E. Horton—Nat Pendleton
Crime Doctor	4137	Apr. 27	74½	6719	John Robertson	Otto Kruger—Karen Morley Nils Aster—Judith Wood
May						
Finishing School	4134	May 4	73	6591	Wanda Tuchock and Geo. Nichols, Jr.	Bruce Cabot—John Halliday—Bille Burke Frances Dee—Ginger Rogers
Where Sinners Meet	4149	May 18	72½	6526	J. Walter Ruben	Diana Wynyard—Clive Brook—Billie Burke Reginald Owen—Alan Mowbray
Stingaree	4143	May 25	76½	6893	Wm. Wellman	Irene Dunne—Richard Dix—Mary Boland Conway Tearle—Henry Stephenson

EXHIBIT 634—*Continued*

Subject	Prod. No.	Release Date	Running Time	Running Footage	Director	Cast
June						
Strictly Dynamite	4142	June 1	71	6416	Elliott Nugent	Jimmy Durante—Lupe Velez—Norman Foster Wm. Gargan—Marion Nixon—The Mills Bros.
Murder on the Blackboard	4147	June 15	71½	6423	Geo. Archainbaud	Edna May Oliver—James Gleason—B. Cabot Gertrude Michael—Regis Toomey
The Life of Vergie Winters	4140	June 22	82½	7416	Al Santell	Ann Harding—John Boles—Helen Vinson Betty Furness
Cockeyed Cavaliers	4112	June 29	72	6495	Mark Sandrich	Wheeler-Whoolsey—Thelma Todd—D. Lee Noah Beery—Franklin Pangborn
July						
Let's Try Again	4144	July 6	67	6047	Worthington Miner	Diana Wynyard—Clive Brook—Helen Vinson Irene Hervey—Theodore Newton
We're Rich Again	4145	July 13	71½	6428	Wm. Seiter	Edna May Oliver—Reginald Denny Billie Burke—Marion Nixon—Joan Marsh
Of Human Bondage	4105	July 20	83	7460	John Cromwell,	Leslie Howard—Bette Davis—Reginald Denny Kay Johnson—Frances Dee—Reginald Owen
Bachelor Bait	4141	July 27	74½	6711	Geo. Stevens	Stuart Erwin—Pert Kelton—Skeets Gallagher Rochelle Hudson
August						
His Greatest Gamble	4124	Aug. 3	70½	6353	John Robertson	Richard Dix—Dorothy Wilson—Bruce Cabot
Their Big Moment	4146	Aug. 10	68	6125	James Cruze	Zasu Pitts—Slim Summerville—Wm. Gaxton Bruce Cabot—Kay Johnson
Adventure Girl	4148	Aug. 17	69	6183	Herman Raymaker	Joan Lowell
Hat, Coat and Glove	4110	Aug. 24	65	5864	Worthington Miner	Ricardo Cortez—Barbara P.
Down To Their Last Yacht	4128	Aug. 31	64	5768	Paul Sloane	Mary Boland—Polly Sidney Fox—Sidney

Release Schedule 1934-35 Features—Continued

Subject	Prod. No.	Release Date	Running Time	Running Footage	Director	Cast
January, 1935						
West Of The Pecos	516	Jan. 4	68½	6173	Phil Rosen	Richard Dix—Martha Sleeper—Fred Kohler
Romance in Manhattan	518	Jan. 11	77½	6969	S. R. Roberts	Francis Lederer—Ginger Rogers Arthur Hohl—Jimmy Butler
Grand Old Girl	519	Jan. 18	71½	6443	John Robertson	May Robson—Mary Carlisle Fred McMurray—Alan Hale
February						
Enchanted April	520	Feb. 1	66	5961	Harry Beaumont	Ann Harding—Frank Morgan Reginald Owen—Jane Baxter
Gigolette	521	Feb. 15	67½	6057	Chas. Lamont	Adrienne Ames—Ralph Bellamy Donald Cook—Robert Armstrong
Murder On A Honeymoon	522	Feb. 22	73½	6604	Lloyd Corrigan	Edna May Oliver—James Gleason Chick Chandler—Geo. Meeker
March						
Captain Hurricane	523	Mar. 1	72	6458	John Robertson	James Barton—Helen Westley Helen Mack—Gene Lockhart
Roberta	524	Mar. 8	105½	9488	William A. Seiter	Irene Dunne—Fred Astaire Ginger Rogers—Randolph Scott—Helen Westley
The People's Enemy	527	Mar. 15	70	6282	Crane Wilbur	Melvyn Douglas—Preston Foster Lila Lee—Wm. Collier, Jr.
A Dog Of Flanders	525	Mar. 22	72	6477	Edward Sloman	Frankie Thomas—O. P. Heggie Helen Parrish—"Lightning"
April						
Laddie	526	Apr. 5	69½	6253	Geo. Stevens	John Beal—Gloria Stuart Virginia Weidler
Star Of Midnight	529	Apr. 19	90	8092	Stephen Roberts	William Powell—Ginger Rogers Paul Kelly—Gene Lockhart
Strangers All	531	Apr. 26	69½	6245	Charles Vidor	May Robson—Preston Foster Wm. Bakewell
May						
Chasing Yesterday	528	May 3	77½	6969	Geo. Nicholls, Jr.	O. P. Heggie—Anne Shirley—Helen Westley
Village Tale	530	May 10	79½	7215	John Cromwell	Randolph Scott—Janet Beecher Arthur Hohl—Kay Johnson—Robt. Barrat
The Informer	532	May 24	91	8247	John Ford	Victor McLaglen—Preston Foster Heather Angel—Margot Grahame
Break of Hearts	533	May 31	78	7021	Philip Moeller	Katherine Hepburn—Charles Boyer Jean Hersholt—John Beal
June						
The Nitwits	534	June 7	81½	7344	Geo. Stevens	Bert Wheeler—Robt Woolsey—Fred Keating Betty Grable
Hooray For Love	535	June 14	72	6500	Walter Lang	Gene Raymond—Ann Southern Thurston Hall—Pert Kelton—Bill Robinson Maria Gambarelli
The Arizonian	538	June 28	75½	6811	Charles Vidor	Richard Dix—Margot Grahame Preston Foster—Louis Calhern
July						
She	537	July 12	94½	8505	Irving Pichel & L. C. Holden	Helen Gahagan—Randolph Scott Helen Mack—Nigel Bruce
*Becky Sharp	4101	July 19	84	7574	R. Mamoulian	Miriam Hopkins—Frances Dee Cedric Hardwicke—Bill-e Burke
August						
Old Man Rhythm	539	Aug. 2	75	6729	Edward Ludwig	Charles Buddy Rogers—Geo. Barbier Barbara Kent—Betty Grable Eric Blore—Erik Rhodes
Jalna	540	Aug. 9	78	6998	John Cromwell	Kay Johnson—Ian Hunter C. Aubrey Smith—Nigel Bruce
Hot Tip	542	Aug. 16	68½	6218	Ray McCary & Jas. Gleason	Zsau Pitts—Margaret Callahan James Gleason
Alice Adams	541	Aug. 23	99½	8940	Geo. Stevens	Katherine Hepburn—Fred McMurray Fred Stone—Evelyn Venable
Freckles	536	Sept. 27			Edward Killy Wm. Hamilton	Tom Brown—Virginia Weidler—Carol Stone
Last Days of Pompeii	501	Oct. 4			E. B. Schoedsack	
Three Musketeers	544				Rowland V. Lee	

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RKO Radio Pictures, Inc.

Release Schedule 1935–36 Features

As of Aug. 14, 1936

Subject	Prod. No.	Release Date	Running Time	Running Footage	Director	Cast
September						
Top Hat	601	Sept. 6	99½	8972	Mark Sandrich	Fred Astaire—Ginger Rogers—Ed. E. Horton Erik Rhodes—Eric Blore—Helen Broderick
The Return of Peter Grimm	602	Sept. 13	82½	7424	Geo. Nichols, Jr.	Lionel Barrymore—Helen Mack Edward Ellis—Donald Meek
His Family Tree	604	Sept. 20	68½	6233	Chas. Vidor	Jas. Barton—Margaret Callahan Addison Randall—Maureen Delany Wm. Harrigan
Powdersmoke Range	603	Sept. 27	71½	6448	Wallace Fox	Harry Carey—Hoot Gibson—Bob Steele—Tom Tyler—Guinn Williams
October						
Hi Gaucho	606	Oct. 11	59	5325	Tommy Atkins	John Carroll—Steffi Duna—Rod LaRoque—Montague Love
Rainmakers	605	Oct. 25	78	7028	Fred Guiol	Wheeler & Woolsey—Dorothy Lee—Berton Churchill
November						
To Beat The Band	607	Nov. 8	67½	60[illegible]	Ben Stoloff	Hugh Herbert—Helen Broderick—Roger Pryor—Fred Keating—Eric Blore
Annie Oakley	608	Nov. 15	90½	8158	Geo. Stevens	Barbara Stanwyck—Preston Foster—Melvyn Douglas—Pert. Kelton
In Person	609	Nov. 22	87	7828	Wm. Seiter	Ginger Rogers—Geo. Brent—Alan Mowbray
December						
Seven Keys to Baldpate	611	Dec. 13	68	6103	Wm. Hamilton & Edw. Killy	Gene Raymond—Margaret Callahan—Eric Blore—Erin O'Brien Moore
Another Face	615	Dec. 20	68	6209	Christy Cabanne	Wallace Ford—Brian Don Levy—Alan Hale—Phyllis Brooks—Erik Rhodes
I Dream Too Much	610	Dec. 27	97	8737	John Cromwell	Lily Pons—Henry Fonda—Eric Blore—Osgood Perkins
We're Only Human	612	Dec. 27	68	6196	Jas. Flood	Preston Foster—Jane Wyatt—James Gleason

Release Schedule 1935-36 Features—Continued

Subject	Prod. No.	Release Date	Running Time	Running Footage	Director	Cast
June						
Let's Sing Again	646	June 12	68	6133	Kurt Neumann	Bobby Breen—Henry Armetta—Geo. Houston
The Last Outlaw	629	June 19	70	6325	Christy Cabanne	Harry Carey—Hoot Gibson—Tom Tyler—Henry B. Walthall—Margaret Callahan
Bunker Bean	630	June 26	67	6010	Wm. Hamilton Edw. Killy	Owen Davis, Jr.—Louise Latimer—Robt. McWade—Jessie Ralph
July						
The Bride Walks Out	631	July 10	81	7265	Leigh Jason	Barbara Stanwyck—Gene Raymond—Ned Spark—Robt. Young—Helen Broderick
M'Liss	632	July 17	66	5952	Geo. Nicholls Jr.	Anne Shirley—John Beal—Guy Kibbee—Douglass Drumbrille
August						
Grand Jury	633	Aug. 7	61	5496	Al S. Rogell	Fred Stone—Louise Latimer—Owen Davis, Jr.—Moroni Olsen
Second Wife	635	Aug. 21	59	5348	Edw. Killy	Gerturde Michael—Walter Abel—Erik Rhodes
Mary of Scotland	634	Aug. 28	123	11102	John Ford	K. Hepburn—F. March—F. Eldridge—R. Barrat—Ian Keith—Moroni Olsen—Ralph Forbes—Alan Mowbray
Don't Turn 'Em Loose	636	Aug. 28	..	....	Ben Stoloff	L. Stone—B. Cabot—B. Grable

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RKO Radio Pictures, Inc.

Release Schedule 1936–37 Features

As of Sept. 1, 1937
Page 1

Subject	Prod. No.	Release Date	Running Time	Running Footage	Director	Cast
October						
Mummy's Boys	701	Oct. 2	68	6108	Fred Guiol	Bert Wheeler—Robt. Woolsey—Barbara Pepper
The Big Game	702	Oct. 9	75	6747	Geo. Nicholls Jr.	P. Huston—J. Gleason—J. Travis—B. Cabot
Daniel Boone	781	Oct. 16	77	6955	David Howard	Geo. O'Brien—Heather Angel—Ralph Forbes
Without Orders	704	Oct. 23	64	5763	Lew Landers	Robt. Armstrong—S. Eilers—F. Sage
November						
Make Way For A Lady	705	Nov. 13	65	5829	David Burton	Herbert Marshall—Anne Shirley—Getrude Michael—Margot Grahame
Smartest Girl in Town	706	Nov. 27	58	5202	Jos. Santley	Gene Raymond—Ann Sothern—Helen Broderick—Eric Blore—Erik Rhodes
December						
The Night Waitress	711	Dec. 18	57	5126	Lew Landers	Margot Grahame—Gordon Jones—Vinton Haworth
Rainbow on the River	744	Dec. 25	88	7936	Kurt Neumann	Bobby Breen—May Robson—Chas. Butterworth—Alan Mowbray—Louise Beavers—Benita Hume—Hall Johnson Choir
Winterset	703	Dec. 25	77	6953	A. Santell	B. Meridith—Margo—Edw. Ellis—Eduardo Giannelli—John Carradine
January—1937						
That Girl from Paris	712	Jan. 1	105	9409	Leigh Jason	Lily Pons—Gene Raymond—Jack Oakie—Mischa Auer—Herman Bing
Racing Lady	707	Jan. 22	59	5310	Wallace Fox	Ann Dvorak—S. Ballew—Harry Carey

Release Schedule 1936-37 Features—Continued

Subject	Prod. No.	Release Date	Running Time	Running Footage	Director	Cast
February						
They Wanted to Marry	715	Feb. 5	60	5415	Lew Landers	Betty Furness—Gordon Jones
We're on the Jury	716	Feb. 12	[illegible]	6353	Ben. Holmes	Helen Broderick—Victor Moore—Philip Huston—Louise Latimer
Sea Devils	714	Feb 19	88	7910	Ben. Stoloff	Victor McLaglen—P. Foster—I. Lupino
When's Your Birthday	770	Feb. 26	77	6912	Harry Beaumont	Joe E. Brown—Marion Marsh—Fred Keating—Edgar Kennedy
Park Ave. Logger	782	Feb. 26	66	5921	David Howard	Geo. O'Brien—Beatrice Roberts—Wm. Robertson
March						
Don't Tell the Wife	720	Mar. 5	62	5622	Christy Cabanne	Guy Kibbee—Una Merkel—Lynne Overmann
China Passage	718	Mar. 12	65	5818	Edw. Killy	Constance Worth—Vinton Haworth—Leslie Fenton—Gordon Jones
Quality Street	709	Mar. 26	84	7534	Geo. Stevens	Katharine Hepburn—Franchot Tone—Erik Blore—Fay Bainter—Cora Witherspoon—Estelle Winwood
April						
The Man Who Found Himself	722	Apr. 2	67	6005	Lew Landers	John Beal—Joan Fontaine—Philip Huston
The Soldier and the Lady	717	Apr. 9	85	7631	Geo. Nicholls, Jr.	Anton Walbrook—Margot Grahame—Akim Tamiroff—Elizabeth Allan—Fay Bainter
Too Many Wives	723	Apr. 9	61	5477	Ben Holmes	Anne Shirley—John Morley—Gene Lockhar
Outcasts of Poker Flat	710	Apr. 16	68	6103	Christy Cabanne	Preston Foster—Jean Muir—Van Heflin—Virginia Weidler—Margaret Irving
The Woman I Love	721	Apr. 23	89	7990	Anatole Litvak	P. Muni—Miriam Hopkins—L. Hayward
You Can't Buy Luck	726	Apr. 30	61	5455	Lew Landers	Onslow Stevens—Helen Mack—Vinton Haworth—Maxine Jennings
May						
Shall We Dance	724	May 7	109	9783	Mark Sandrich	Fred Astaire—G. Rogers—Ed. E. Horton—Eric Blore—Ketti Gallian—Harriet Hoctor
Behind the Headlines	727	May 14	58	5210	Richard Rosson	Lee Tracy—Diana Gibson—Phil Huston
There Goes My Girl	728	May 21	74	6686	Ben Holmes	Gene Raymond—A. Sothern
Hollywood Cowboy	783	May 28	64	5726	Ewing Scott	Geo. O'Brien—Cecilia Parker

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RKO Radio Pictures, Inc.

Release Schedule 1936-37 Features

As of Sept. 1, 1937
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Subject	Prod. No.	Release Date	Running Time	Running Footage	Director	Cast
June						
Border Cafe	730	June 4	67	6029	Lew Landers	J. Beal—H. Carey—Armida
Meet The Missus	729	June 11	60	5445	Jos. Santley	H. Broderick—V. Moore—A. Shirley
Riding On Air	771	June 18	71	6365	Ed. Sedgwick	Joe Brown—F. Rice—G. Kibbee
You Can't Beat Love	731	June 25	62	5559	Christy Cabanne	Preston Foster—Joan Fontaine
July						
New Faces of 1937	732	July 2	100	9004	Leigh Jason	M. Berle—J. Penner—H. Hilliard—Wm. Brady—Parkyakarkus—Jerome Cowan—Thelma Leeds
On Again Off Again	725	July 9	68	6141	Edw. Kline	Wheeler—Woolsey—Marjorie Lord—Patricia Wilder
Super Sleuth	734	July 16	70	6304	Ben Stoloff	J. Oakie—A. Southern—Eduardo Giannelli
The Big Shot	735	July 23	60		Edw. Killy	Guy Kibbee—Cora Witherspoon
The Toast of New York	719	July 30	109	9814	Rowland V. Lee	Edward Arnold—Cary Grant—Frances Farmer—Jack Oakie—Donald Meek
August						
Windjammer	784	Aug. 6	58	5214	Ewing Scott	Geo. O'Brien—Constance Worth—Wm. Hall
Hideaway	733	Aug. 13	58	5241	Richard Rosson	Fred Stone—Emma Dunn—Marjorie Lord—Lee Patrick
Flight From Glory	736	Aug.	67	6018	Lew Landers	Chester Morris—Whitney Bourne—O. Stevens
Make A Wish	745	Aug.			Kurt Neumann	Bobby Breen—Basil Rathbone—Marion Claire—Henry Armetta
September						
Life Of The Party*	801	Sept. 3	77	6947	Wm. A. Seiter	Joe Penner—Gene Raymond—Parkyakarkus—Harriet Hilliard—Victor Moore—Helen Brod[illegible]—Billy Gilbert—Ann Miller

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RKO Radio Pictures, Inc.

Release Schedule 1934-35 Features

As of Sept. 13, 1935

August						
The Fountain	**502**	**Aug. 31**	**83½**	**7504**	**John Cromwell**	**Ann Harding—Brian Ahearn Paul Lukas—Jean Hersholt**
September						
Age of Innocence	**503**	**Sept. 14**	**81**	**7296**	**Philip Moeller**	**Irene Dunne—John Boles Lionel Atwill—Laura Hope Crews**
Richest Girl in the World	**504**	**Sept. 21**	**76**	**6815**	**Wm. S. Seiter**	**Miriam Hopkins—Joel McCrea—Fay Wray Henry Stephenson—Reginald Denny**
October						
Dangerous Corners	**506**	**Oct. 5**	**66½**	**5984**	**Phil Rosen**	**Virginia Bruce—Conrad Nagel Melvyn Douglas—Betty Furness**
The Gay Divorcee	**505**	**Oct. 19**	**107**	**9634**	**Mark Sandrich**	**Fred Astaire—Ginger Rogers Alice Brady—Edw. Everett Horton**
Gridiron Flash	**511**	**Oct. 26**	**64**	**5758**	**Glenn Tryon**	**Eddie Quillan—Betty Furness Grant Mitchell—Lucien Littlefield**
Wednesday's Child	**510**	**Oct. 26**	**68½**	**6150**	**John Robertson**	**Karen Morley—Edward Arnold Frankie Thomas**
November						
Kentucky Kernels	**508**	**Nov. 2**	**75**	**6753**	**Geo. Stevens**	**Bert Wheeler—Robt. Woolsey—Mary Carlisle Spanky McFarland—Noah Beery**
By Your Leave	**509**	**Nov. 9**	**82**	**7386**	**Lloyd Corrigan**	**Frank Morgan—Genevieve Tobin—Neil Hamilton—Marion Nixon—Gene Lockhart**
Woman in the Dark	**514**	**Nov. 9**	**69½**	**6251**	**Phil Rosen**	**Fay Wray—Ralph Bellamy Melvyn Douglas—Roscoe Ates**
Anne of Green Gables	**507**	**Nov. 23**	**78½**	**7055**	**Geo. Nicholls, Jr.**	**Anne Shirley—Tom Brown O. P. Heggie—Helen Westley**
The Silver Streak	**513**	**Nov. 30**	**72**	**6501**	**Thos. Atkin**	**Sally Blane—Charles Starrett Hardie Albright—William Farnum**
December						
Lightning Strikes Twice	**517**	**Dec. 7**	**64**	**5734**	**Ben Helmes**	**Ben Lyon—Thelma Todd—Pert Kelton Chick Chandler—Laura H. Crews—W. Catlett**
Red Morning	**515**	**Dec. 14**	**66**	**5918**	**Wallace Fox**	**Steffi Duna—Regis Toomey—Ray Hatton**
The Little Minister	**512**	**Dec. 28**	**110**	**9920**	**Richard Wallace**	**Katharine Hepburn—John Beal Alan Hale—Donald Crisp—Beryl Mercer**

January, 1936						
Sylvia Scarlett	614	Jan. 3	94½	8519	Geo. Cukor	Katherine Hepburn—Edmund Gwenn—Gary Grant
Two in the Dark	616	Jan. 10	74	6647	Ben Stoloff	Walter Abel—Margot Grahame—Wallace Ford—Alan Hale.
Chatterbox	617	Jan. 17	68	6136	Geo. Nicholls, Jr.	Anne Shirley—Phillips Holmes—Erik Rhodes—Margaret Hamilton
February						
The Lady Consents	622	Feb. 7	76½	6903	Stephen Roberts	Ann Harding—Herbert Marshall—Margaret Lindsay—Walter Abel
Muss 'Em Up	619	Feb. 14	68½	6237	Chas. Vidor	Preston Foster—Ralph Morgan—Margaret Callahan—Alan Mowbray—Molly Lamont
Follow The Fleet	613	Feb. 21	110	9907	Mark Sandrich	Fred Astaire—Ginger Rogers—Randolph Scott—Harriet Hilliard
March						
Love on a Bet	620	Mar. 6	77	6928	Leigh Jason	Gene Raymond—Wendy Barrie—Helen Broderick
Yellow Dust	618	Mar. 13	68½	6175	Wallace Fox	Richard Dix—Leila Hyams—Moroni Olsen
Silly Billies	623	Mar. 20	64	5759	Fred Guiol	Wheeler—Wooley—Dorothy Lee
Farmer in The Dell	624	Mar. 27	66½	6001	Ben Holmes	Fred Stone—Jean Parker—Moroni Olsen—Frank Albertson
April						
Two in Revolt	621	Apr. 3	65	5849	Glenn Tryon	John Arledge—Louise Latimer—Moroni Olsen
Murder on the Bridle Path	625	Apr. 17	66	5971	Edward Killy Wm. Hamilton	James Gleason—Helen Broderick—Louise Latime—Owen Davis, Jr.
The Witness Chair	626	Apr. 24	64	5759	Geo. Nicholls, Jr.	Ann Harding—Walter Abel
May						
Special Investigator	627	May 8	61	5513	Louis King	Richard Dix—Margaret Callahan—Erik Rhodes—Owen Davis, Jr.
Ex Mrs. Bradford	628	May 15	81	7335	Stephen Roberts	Wm. Powell—Jean Arthur—E. Blore
Dancing Pirate	670	May 22	85	7642	Lloyd Corrigan	Chas. Collins—Frank Morgan—Steffi Duna

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Release Schedule 1937–38 Features

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Subject	Prod. No.	Release Date	Running Time	Running Footage	Director	Cast
August						
*Make a Wish	745	Aug. 27	77	6899	Kurt Neumann	Bobby Breen—Basil Rathbone—Marione Claire—Henry Armetta
September						
Life of the Party	801	Sept. 3	77	6947	Wm. A. Seiter	Joe Penner—Gene Raymond—Victor Moore—Parkyakarkus—Harriet Hilliard—Helen Broderick
Annapolis Salute	802	Sept. 10	65	5843	Christy Cabanne	Jas. Ellison—Marsha Hunt—Harry Carey—Van Heflin
Forty Naughty Girls	803	Sept. 24	6	5690	Edw. Cline	James Gleason—Zazu Pitts
October						
Music for Madame	804	Oct. 1	81	7291	John Blystone	Nino Martini—Joan Fontaine
Saturday's Heroes	805	Oct. 8	60	5398	Edw. Killy	Van Heflin—M. Marsh—R. Lane
Stage Door	806	Oct. 8	92	8246	Gregory LaCava	K. Hepburn—Ginger Rogers—A. Menjou—G. Patrick
Fit for a King	848	Oct. 15	74	6640	Edw. Sedgwich	Joe E. Brown—Helen Mack—Paul Kelly
*Breakfast for Two	737	Oct. 22	67	6022	A. Santell	Barbara Stanwyck—Herbert Marshall
There Goes the Groom	807	Oct. 29	65	5848	Jos. Santley	B. Meredith—A. Southern—Mary Boland
November						
Fight for Your Lady	808	Nov. 5	67	5992	Ben Stoloff	John Boles—Ida Lupino—Jack Oakie—Margot Grahame
Living on Love	809	Nov. 12	61	5525	Lew Landers	James Dunn—Whitney Bourne
Victoria the Great	861	Nov. 12	113	10157	H. Wilcox	Anna Neagle—Anton Walbrook—H. B. Warner
*A Damsel in Distress	738	Nov. 19	101	9046	Geo. Stevens	Fred Astaire—Geo. Burns—Gracie Allen—Joan Fontaine—Ray Noble
High Flyers	810	Nov. 26	70	6301	Edw. Cline	Wheeler-Woolsey—Lupe Velez
December						
Danger Patrol	812	Dec. 3	60	5372	Lew Landers	John Beal—Sally Eilers—Harry Carey
Quick Money	811	Dec. 10	59	5348	Edw. Killy	Fred Stone—Gordon Jones—Dorothy Moore
Hitting a New High	814	Dec. 24	85	7660	Raoul Walsh	Lily Pons—John Howard—J. Oakie
Wise Girl	815	Dec. 31	70	6329	Leigh Jason	M. Hopkins—Ray Millard—Walter Abel
She's Got Every Thing	818	Dec. 31	72	6520	Jos. Santley	A. Sothern—G. Raymond—H. Broderick V. Moore—Parkyakarkus
January						
Crashing Hollywood	816	Jan. 7	61	5467	Lew Landers	Lee Tracy—Joan Woodbury
Everybody's Doing It	817	Jan. 14	67	6031	Christy Cabanne	Preston Foster—Sally Eilers
The Rat (English Prod.)	862	Jan. 21	69	[illegible]76	Jack Raymond	Ruth Chatterton—Anton Walbrook
Double Danger	820	Jan. 28	62	5556	Lew Landers	Preston Foster—W. Bourne—D. Meek Samuel S. Hinds

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Subject	Prod. No.	Release Date	Running Time	Running Footage	Director	Cast
February						
Snow White & Seven Dwarfs	891	Special Rel. Dat. Feb. 4	83	7462	....	Walt Disney Feature
Radio City Revels	823	Feb. 11	90	8105	Ben Stoloff	Bob Burns—J. Oakie—M. Berle Kenny Baker—H. Broderick—Ann Miller J. Froman—V. Moore—Hal Kemp & Orch.
Bringing Up Baby*	739	Feb. 18	102	9201	Howard Hawks	K. Hepburn—C. Grant—Chas. Ruggles May Robson
Night Spot	821	Feb. 25	60	5390	Christy Cabanne	J. Woodbury—Gordon Jones—Parkyakarkus Allan Lane
March						
Maid's Night Out	822	Mar. 4	65	5820	Ben Holmes	J. Fontaine—B. Gilbert—Allan Lane
Hawaii Calls	846	Mar. 11	73	6530	Edw. Cline	B. Breen—I. Cobb—Ned Sparks Raymond Paige & Orchestra
April						
Condemned Women	813	Apr. 1	77	6921	Lew Landers	Sally Eilers—Louis Hayward Anne Shirley—Lee Patrick
This Marriage Business	824	Apr. 8	71	6415	Christy Cabanne	Victor Moore—Allan Lane—Vicki Lester
Joy of Living	826	Apr. 15	91	8160	Tay Garnett	Irene Dunne—Doug. Fairbanks, Jr.—Alice Brady Guy Kibbee—L. Ball
Go Chase Yourself	825	Apr. 22	70	6327	Edw. F. Cline	Joe Penner—Lucille Ball
May						
Law of the Underworld	827	May 6	61	5490	Lew Landers	Chester Morris—Anne Shirley—E. Giannelli W. Abel
Gun Law	881	May 13	60	5412	David Howard	Geo. O'Brien—Rita Oehmen
Vivacious Lady*	740	May 13	90	8140	Geo. Stevens	Ginger Rogers—James Stewart
Bline Alibi	829	May 20	61½	5536	Lew Landers	Richard Dix—W. Bourne
June						
Saint in New York	830	June 3	72	6518	Ben Holmes	Louid Hayward—Kay Sutton—Sig Rumann Jonathan Hale
King Kong (Reissue)	870	June 10	100	9029	M. Cooper F. Schoedsack	F. Wray—Bruce Cabot—Robt. Armstrong
Blond Cheat	831	June 17	62	5572	Jos. Santley	Joan Fontaine—Derrick DeMarney
Border G. Man	882	June 24	60	5444	David Howard	Geo. O'Brien—Larraine Johnson—Ray Whitley
July						
Having Wonderful Time.	819	July 1	70	6272	Alfred Santell	G. Rogers—D. Fairbanks, Jr.—L. Ball—Ann Miller—Red Skelton—Harvest Moon Contest Dancers
Crime Ring	836	July 8	70	6266	Leslie Goodwins	Allan Lane—F. Mercer
Little Women (Reissue)	871	July 8	115	10352	Geo. Cukor	K. Hepburn—J. Bennett—Paul Lukas—F. Dee—Jean Parker—May Oliver—Doug. Montgomery
Sky Giant	835	July 22	80	7243	Lew Landers	R. Dix—C. Morris—Joan Fontaine
Mother Carey's Chickens	833	July 29	82	7398	R. V. Lee	Ruby Keeler—A. Shirley—J. Ellison—Fay Bainter
August						
I'm From The City	834	Aug. 5	66	5953	Ben Holmes	Joe Penner—Richard Lane—Paul Guilfoyle—Kay Sutton—Lorraine Krueger
Painted Desert	883	Aug. 12	59	5288	David Howard.	Geo. O'Brien—Larraine Johnson—Ray Whitley
Smashing The Rackets	832	Aug. 19	69	6201	Lew Landers	Chester Morris—Frances Mercer—Bruce Cabot
Breaking The Ice	845	Aug. 26	82	7337	Edward Cline	B. Breen—Chas. Ruggles—Dolores Costello
September						
Carefree	837	Sept. 2	83	7460	Mark Sandrich	Fred Astaire—Ginger Rogers—Ralph Bellamy—Kay Sutton
The Renegade Ranger	884	Sept. 16	59	5211	David Howard	Geo. O'Brien—Rita Hayworth—Ray Whitley

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Subject	Prod. No.	Release Date	Running Time	Running Footage	Director	Cast
September						
Affairs of Annabel	902	Sept. 9	68	6094	Ben Stoloff	Jack Oakie—L. Ball
Fugitives for a Night	903	Sept. 23	63	5688	Leslie Goodwin	Frank Albertson—Eleanor Lynn—Adrienne Ames
Room Service	901	Sept. 30	78	7054	Wm. S. Seiter	Marx Bros.—Lucille Ball—Ann Miller—Frank Albertson
October						
Mr. Doodle Kicks Off	904	Oct. 7	77	6962	Leslie Goodwin	Joe Penner—June Travis
A Man to Remember	905	Oct. 14	79	7142	Garson Kanin	Edward Ellis—Anne Shirley—Lee Bowman
The Mad Miss Manton	906	Oct. 21	80	7214	Leigh Jason	Barbara Stanwyck—Henry Fonda
Tarnished Angel	907	Oct. 28	68	6106	Leslie Goodwin	Sally Eilers—Ann Miller—Lee Bowman
November						
Lawless Valley	981	Nov. 4	59	5296	David Howard	Geo. O'Brien—Kay Sutton
Annabel Takes A Tour	908	Nov. 11	67	6061	Lew Landers	Jack Oakie—L. Ball
The Law West of Tombstone	909	Nov. 18	73	6585	Glenn Tryon	Harry Carey—Tim Holt—Evelyn Brent—Jean Rouverol—Clarence Kolb
Peck's Bad Boy With The Circus	948	Nov. 25	68	6115	Edw. F. Cline	Tommy Kelly—Ann Gillis—Edgar Kennedy—Benita Hume—Billy Gilbert—Grant Mitchell
December						
Next Time I Marry	910	Dec. 9	65	5826	Garson Kanin	Lucille Ball—Jas. Ellison—Lee Bowman
January, 1939						
Pacific Liner	914	Jan. 6	76	6840	Lew Landers	Vic. McLaglen—Chester Morris—Wendy Barrie
The Great Man Votes	913	Jan. 13	72	6456	Garson Kanin	John Barrymore—Peter Holden—Virginia Weidler
Arizona Legion	982	Jan. 20	58	5262	David Howard	Geo. O'Brien—Laraine Johnson
February						
Boy Slaves	911	Feb. 10	72	6469	P. S. Wolfson	Anne Shirley
Star of Midnight (Reissue)	990	Feb. 17	90	8092	Stephen Roberts	Wm. Powell—Ginger Rogers—Leslie Fenton—Gene Lockhart
Lost Patrol (Reissue)	991	Feb. 17	73	6542	John Ford	Victor McLaglen—Boris Karloff—Wallace Ford
Gunga Din	912	Feb. 17	117	10523	George Stevens	Cary Grant—Victor McLaglen—Douglas Fairbanks, Jr.—Joan Fontaine
Beauty For The Asking	915	Feb. 24	68	6114	Glenn Tryon	Lucille Ball—Patrick Knowles—Donald Wood
March						
Twelve Crowded Hours	917	Mar. 3	64	5800	Lew Landers	Richard Dix—Lucille Ball—John Arledge
The Saint Strikes Back	918	Mar. 10	64	5785	John Farrow	Geo. Sanders—Wendy Barrie—Neil Hamilton
Trouble In Sundown	983	Mar. 24	60	5394	David Howard	Geo. O'Brien—Rosalind Keith—Ray Whitley
Almost A Gentleman	920	Mar. 31	65	5831	Lee Goodwins	Jas. Ellison—Helen Wood—Robt. Kent
April						
Love Affair	916	Apr. 7	88	7910	Leo McCarey	Charles Boyer—Irene Dunne
Flying Irishman	919	Apr. 7	72	6446	Leigh Jason	Douglas Corrigan—Paul Kelly—Robt. Armstrong
They Made Her A Spy	921	Apr. 14	69	6221	Jack Hively	Sally Eilers—Allan Lane
Fixer Dugan	922	Apr. 21	68	6141	Lew Landers	Lee Tracy—Virginia Weidler—Peggy Shannon
The Rookie Cop	923	Apr. 28	61	5456	David Howard	Tim Holt—Virginia Weidler—Janet Shaw

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Subject	Prod. No.	Release Date	Running Time	Running Footage	Director	Cast
May						
Sorority House	924	May 5	64	5751	John Farrow	Anne Shirley—James Ellison
Panama Lady	925	May 12	65	5877	Jack Hively	Lucille Ball—Allan Lane
Racketeers of the Range	984	May 26	62	5601	D. Ross Lederman	Geo. O'Brien—Marjorie Reynolds
June						
The Girl From Mexico	928	June 2	71	6424	Leslie Goodwin	Lupe Velez—Donald Woods—Leon Errol
The Girl and the Gambler	926	June 16	63	5660	Lew Landers	Leo Carrillo—Steffi Duna—Tim Holt
Five Came Back	927	June 23	75	6760	John Farrow	Chester Morris—Wendy Barrie—Lucille Ball
Timber Stampede	985	June 30	59	5340	David Howard	Geo. O'Brien—Marjorie Reynolds
The Saint in London	929	June 30	72	6502	J. P. Carstairs	Geo. Sanders—Sally Gray
July						
Career	930	July 7	79	7094	Leigh Jason	Anne Shirley—Edward Ellis
Lost Squadron (Reissue)	994	July 14	79	7123	Geo. Archainbaud	Joel McCrea—Richard Dix—Mary Astor—Robert Armstrong
Of Human Bondage (Reissue)	993	July 14	83	7460	John Cromwell	Leslie Howard—Bette Davis
Way Down South	947	July 21	63	5630	Bernard Vorhaus	Bobby Breen—Alan Mowbray—Ralph Morgan
The Spellbinder	931	July 28	69	6241	Jack Hively	Lee Tracy—Barbara Read—P. Knowles
August						
Bachelor Mother	932	Aug. 4	82	7393	Garson Kanin	Ginger Rogers—David Niven
Bad Lands	933	Aug. 11	70	6327	Lew Landers	Robert Barrat—N. Beery, Jr.—D. Walton
In Name Only	936	Aug. 18	94	8496	John Cromwell	Carole Lombard—Cary Grant—Kay Francis
September						
Conspiracy	935	Sept. 1	59	5328	Lew Landers	Allan Lane—Linda Hayes—Robt. Barrat
The Fighting Gringo	986	Sept. 8	59	5318	David Howard	George O'Brien—Lupita Tovar
Full Confession	*003	Sept. 8	73	6581	John Farrow	Victor McLaglen—Sally Eilers—Jos. Calleia—Barry Fitzgerald
The Day The Bookies Wept	*002	Sept. 15	64	5739	Les Goodwins	Joe Penner—Betty Grable—Tom Kennedy
My Fifth Ave. Girl	934	Sept. 22	83	7484	Gregory LaCava	Ginger Rogers—Walter Connelly—Verce Teasdale—James Ellison
Nurse Edith Cavell	*001	Sept. 29	98	8811	Herbert Wilcox	Anna Neagle—Edna May Oliver—Geo. Sanders May Robson—Zasu Pitts
October						
Every Thing's On Ice	946	Oct. 6	67	6007	Bernard Vorhaus	Irene Dare
Three Sons	*004	Oct. 13	72	6517	Jack Hively	Edward Ellis—Virginia Vale—Robt. Stanton—William Gargan

* Indicates 1939–1940 Production.

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Feature Release Schedule—1939-40 Season

June 26, 1940

Rel. Date	Prod. No.	Title	Director	Cast
Sept. 8	003	Full Confession	John Farrow	V. McLaglen—S. Eilers—J. Calleia
Sept. 15	002	The Day the Bookies Wept	Les Goodwins	J. Penner—B. Grable
Sept. 29	001	Nurse Edith Cavell	Herbert Wilcox	A. Neagle—E. M. Oliver—G. Sanders
Oct. 13	004	Three Sons	Jack Hively	E. Ellis—W. Gargan—K. Taylor
Oct. 27	012	Sued for Libel	Les Goodwins	K. Taylor—L. Hayes—R. Lane
Nov. 3	010	The Flying Deuces	Ed. Sutherland	S. Laurel—O. Hardy—J. Parker
Nov. 3	081	Marshal of Mesa City (O'Brien #1)	David Howard	G. O'Brien—Virginia Vale
Nov. 10	006	Allegheny Uprising	Wm. A. Seiter	J. Wayne—C. Trevor—G. Sanders—B. Donlevy
Nov. 17	005	Meet Dr. Christian	Bernard Vorhaus	J. Hersholt—D. Lovett
Nov. 24	011	That's Right, You're Wrong	David Butler	K. Kyser—A. Menjou—L. Ball—M. Robson
Dec. 1	008	Reno	John Farrow	R. Dix—G. Patrick—A. Louise
Dec. 8	013	Two Thoroughbreds	Jack Hively	J. Lydon—J. M. Kerrigan
Dec. 29	015	The Hunchback of Notre Dame	Wm. Dieterle	C. Laughton—M. O'Hara—C. Hardwicke
1940				
Jan. 5	082	Legion of the Lawless (O'Brien #2)	David Howard	G. O'Brien—Virginia Hale
Jan. 12	016	Mexican Spitfire	Les Goodwins	Lupe Velez—Donald Woods—L. Errol
Jan. 19	014	Married and in Love	John Farrow	Alan Marshal—B. Read—P. Knowles—H. Vinson
Jan. 26	021	The Saint's Double Trouble	Jack Hively	G. Sanders—J. Hale—H. Whitney
Feb. 2	018	The Marines Fly High	Ben Stoloff	R. Dix—C. Morris—L. Ball—S. Duna
Feb. 9	007	Vigil in the Night	George Stevens	C. Lombard—A. Shirley—B. Aherne
Feb. 16	019	Swiss Family Robinson	Edward Ludwig	T. Mitchell—E. Best—F. Bartholomew
Feb. 23	091	Pinocchio		Walt Disney Production
Mar. 1	020	Little Orvie	Ray McCarey	J. Sheffield—E. Truex—D. Tree
Mar. 8	017	Isle of Destiny	Elmer Clifton	W. Gargan—Wallace Ford—June Lang
Mar. 15	022	Millionaire Playboy	Les Goodwins	J. Penner—Linda Hayes—Dick Lane
Mar. 22	023	Primrose Path	Gregory LaCava	G. Rogers—J. McCrea—M. Rambeau
Apr. 5	030	The Courageous Dr. Christian	Bernard Vorhaus	J. Hersholt—D. Lovett
Apr. 12	083	Bullet Code (O'Brien #3)	David Howard	G. O'Brien—Virginia Vale
Apr. 19	009	Abe Lincoln in Illinois	John Cromwell	R. Massey—R. Gordon—M. Howard
Apr. 26	027	Curtain Call	Frank Woodruff	B. Read—J. Archer—H. Vinson
May 3	024	Irene	Herbert Wilcox	A. Neagle—R. Milland—R. Young—M. Robson
May 10	031	Beyond Tomorrow	Lee Garmes	C. Winninger—C. Aubrey Smith—Harry Carey
May 17	025	My Favorite Wife	Garson Kanin	I. Dunne—C. Grant—R. Scott
May 24	032	You Can't Fool Your Wife	Ray McCarey	L. Ball—J. Ellison
May 31	028	Bill of Divorcement	John Farrow	M. O'Hara—A. Menjou—F. Bainter
June 7	033	The Saint Takes Over	Jack Hively	G. Sanders—Wendy Barrie
June 14	084	Prairie Law (O'Brien #4)	David Howard	G. O'Brien—Virginia Vale
June 21	034	Pop Always Pays	Les Goodwins	L. Errol—Dennis O'Keefe—Adele Pearce
June 28	035	Anne of Windy Poplars	Jack Hively	A. Shirley—J. Ellison—Patrick Knowles—L. Campbell
July 5	036	Dr. Christian Meets the Women	Wm. McGann	J. Hersholt—Rod LaRocque—D. Lovett
July 12	039	Cross Country Romance	Frank Woodruff	Gene Raymond—Wendy Barrie
July 19	029	Tom Brown's School Days	Robt. Stevenson	Jimmy Lydon—Freddie Bartholomew—Cedric Har-wicke—Josephine Hutchinson
July 26	037	Millionaires in Prison	Ray McCarey	Lee Tracy—Linda Hayes
July 26	085	Stage to Chino (O'Brien #5)	Edward Killy	G. O'Brien—Virginia Vale
Aug. 2	041	Stranger on the Third Floor	Boris Ingster	Peter Lorre—John McGuire—Margaret Tallichet
Aug. 9	061	Queen of Destiny	Herbert Wilcox	Anna Neagle—Anton Walbrook
Aug. 16	042	One Crowded Night	Irving Reis	Billie Seward—Wm. Haade
Aug. 23	038	Lucky Partners	Louis Milestone	G. Rogers—Ronald Colman
Aug. 23	043	Wildcat Bus		Fay Wray—Charles Lang
Aug. 30	[illegible]	[illegible]	[illegible]	[illegible] Ball

Future Release Schedule

1940–41 Season

August 6, 1941

Rel. Date	Prod. No.	Title	Director	Cast
1940				
Aug. 16	171	The Ramparts We Watch		March of Time Prod.
Sept. 6	101	Men Against the Sky	Leslie Goodwins	Richard Dix—K. Taylor
Sept. 13	102	Dreaming Out Loud	Harold Young	Lum & Abner—F. Langford
Sept. 27	103	I'm Still Alive	Irving Reis	K. Taylor—Linda Hayes
Oct. 4	181	Wagon Train (Tim Holt #1)	Edward Killy	Tim Holt—M. O'Driscoll
Oct. 11	105	The Villain Still Pursued Her	Edward F. Cline	Hugh Herbert—A. Louise
Oct. 18	107	Laddie	Jack Hively	Tim Holt—V. Gilmore
Oct. 25	104	They Knew What They Wanted	Garson Kanin	C. Lombard—C. Laughton
Nov. 1	109	Li'l Abner	Albert Rogell	G. Owen—Mona Ray
Nov. 8	106	Too Many Girls	George Abbott	L. Ball—R. Carlson
Nov. 15	111	Mexican Spitfire Out West	Leslie Goodwins	Lupe Velez—Leon Errol
Nov. 22	108	You'll Find Out	David Butler	Kay Kyser & Orchestra
Nov. 29	113	Remedy for Riches (Dr. Christian #1)	Erle C. Kenton	J. Hersholt—D. Lovett
Dec. 6	182	Fargo Kid (Tim Holt #2)	Edward Killy	Tim Holt—J. Drummond
Dec. 13		No Release		
Dec. 20	114	No, No, Nanette	Herbert Wilcox	Anna Neagle—R. Carlson
Dec. 27	112	Kitty Foyle	Sam Wood	G. Rogers—D. Morgan
1941				
Jan. 3	161	Convoy	Pen Tennyson	C. Brook—J. Clements
Jan. 10	110	Little Men	Norman McLeod	K. Francis—Jack Oakie
Jan. 17	115	Let's Make Music	Leslie Goodwins	Bob Crosby—J. Rogers
Jan. 24	116	The Saint in Palm Springs	Jack Hively	G. Sanders—W. Barrie
Jan. 31	117	Mr. & Mrs. Smith	Alfred Hitchcock	C. Lombard—R. Montgomery
Feb. 7	183	Along the Rio Grande (Tim Holt #3)	Edward Killy	Tim Holt—Ray Whitley
Feb. 14	121	Play Girl	Frank Woodruff	K. Francis—J. Ellison
Feb. 21	123	Scattergood Baines	Christy Cabanne	Guy Kibbee—Dink Trout
Feb. 28		No Release		
Mar. 7		No Release		
Mar. 14	120	A Girl, A Guy and a Gob	Richard Wallace	G. Murphy—L. Ball
Mar. 21	119	Footlight Fever	Irving Reis	A. Mowbray—D. McBride
Mar. 28	124	Melody for Three (Dr. Christian #2)	Erle C. Kenton	Jean Hersholt
Mar. 28	162	Vivacious Lady (Re-issue)	George Stevens	G. Rogers—J. Stewart
Apr. 4	125	Repent at Leisure	Frank Woodruff	K. Taylor—W. Barrie
Apr. 11	122	The Devil and Miss Jones	Sam Wood	J. Arthur—R. Cummings
Apr. 18	184	Robbers of the Range (Tim Holt #4)	Edward Killy	Tim Holt—Virginia Vale
Apr. 25	128	They Met in Argentina	Leslie Goodwins	M. O'Hara—J. Ellison
May 2	163	Bringing Up Baby (Re-issue)	Howard Hawks	K. Hepburn—C. Grant
May 9		No Release		
May 16		No Release		
May 23	132	Scattergood Pulls the Strings	Christy Cabanne	Guy Kibbee—M. Coles
May 30	133	Sunny	Herbert Wilcox	Anna Neagle—J. Carroll
June 6	131	The Saint's Vacation	Leslie Fenton	H. Sinclair—S. Gray
June 13	185	Cyclone on Horseback (Tim Holt #5)	Edward Killy	Tim Holt—Ray Whitley
June 20	191	The Reluctant Dragon		Walt Disney's Sensational Feature Production
June 27	166	Frank Buck's Jungle Cavalcade (See note)		Frank Buck
July 4	126	Tom, Dick and Harry	Garson Kanin	G. Rogers—G. Murphy
July 11	134	They Meet Again (Dr. Christian #3)	Erle C. Kenton	J. Hersholt—D. Lovett
July 18	172	The Story of the Vatican	March of Time	Rt. Rev. Mon. Fulton J. Sheen
July 25	129	Hurry, Charlie, Hurry	Chas. Roberts	L. Errol—K. Howell—M. Coles
Aug. 1	135	My Life with Caroline	Lewis Milestone	R. Colman—Anna Lee—C. Winninger
Aug. 8	186	Six Gun Gold (Tim Holt #6)	David Howard	T. Holt—R. Whitley—Lasses White
Aug. 15		No Release		
Aug. 22	136	Scattergood Meets Broadway	Christy Cabanne	Guy Kibbee
Aug. 29	175	The Little Foxes	Wm. Wyler	Bette Davis—Herbert Marshall

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RKO Radio Pictures, Inc.

Feature Release Schedule

1941/1942 Season

Release Date	Production No.	Title	Director	Cast	Running Time (Minutes)
			First Group		
9/5/41	201	Citizen Kane	Orson Welles	Orson Welles, Joseph Cotten, Dorothy Comingore, Ruth Warwick	119
9/12/41	202	Parachute Battalion	Les Goodwins	Rob't Preston, Edmond O'Brien, Harry Carey	75
9/26/41	203	Lady Scarface	Frank Woodruff	Dennis O'Keefe, Frances Neal, Judith Anderson	66
10/3/41	204	Father Takes a Wife	J. Hively	Adolphe Menjou, Gloria Swanson, Desi Arnaz	79
10/17/41	205	All That Money Can Buy	Wm. Dieterle	Edw. Arnold, Walt. Huston, Anne Shirley, Simone Simon, Jas. Craig	106
			Second Group		
10/24/41	206	The Gay Falcon	Irving Reis	Geo. Sanders, Wendy Barrie, Allen Jenkins	67
11/7/41	207	Unexpected Uncle	Peter Godfrey	Chas. Coburn, Anne Shirley, James Craig	67
11/14/41	208	Suspicion	Alfred Hitchcock	Cary Grant, Joan Fontaine, Sir Cedric Hardwicke	99
11/21/41	209	Look Who's Laughing	Allan Dwan	Ed. Bergen, Charlie McCarthy, Fibber McGee & Molly, Lucille Ball	79
11/28/41	210	Mexican Spitfire's Baby	Les Goodwins	Lupe Velez, Leon Erroll, Chas (Buddy) Rogers	70
			Third Group		
12/12/41	211	Week End for Three	Irving Reis	Den. O'Keefe, Jane Wyatt, Philip Reed, Edw. E. Horton, Zasu Pitts	66
12/26/41	212	Playmates	David Butler	Kay Kyser & Orchestra, John Barrymore, Lupe Velez, Mae Robson	96
1/16/42	213	A Date with the Falcon	Irving Reis	George Sanders, Wendy Barrie, James Gleason	63
1/23/42	214	Four Jacks and a Jill	Jack Hively	Ray Bolger, Anne Shirley, Desi Arnaz	68
1/30/42	215	Obliging Young Lady	Richard Wallace	Joan Carroll, Edmond O'Brien, Ruth Warwick	80
			Fourth Group		
2/6/42	216	Valley of the Sun	George Marshall	Lucille Ball, Jas. Craig, B. Gilbert, Sir C. Hardwicke, Dean Jagger	79
2/13/42	217	Call Out the Marines	Frank Ryan	Victor McLaglen, Edmund Lowe, Binnie Barnes, Paul Kelly	67
2/20/42	218	Joan of Paris	Robert Stevenson	Michele Morgan, Paul Henreid, Th. Mitchell, L. Cregar, M. Robson	91
3/6/42	219	Sing Your Worries Away	Ed Sutherland	B. Lahr, June Havoc, B. Ebsen, Patsy Kelly, Dor. Lovett ,S. Levene	71
3/13/42	220	Mexican Spitfire at Sea	Les Goodwins	L. Velez, L. Erroll, C. (B'dy) Rogers, Z. Pitts, E. Risdon, M. Martin	73
			Fifth Group		
4/24/42	221	The Bashful Bachelor	Mal St. Clair	Lum & Abner, Zasu Pitts, Louise Currie, Benny Rubin, Grady Sutton	77
5/1/42	222	Tuttles of Tahiti	Charles Vidor	Charles Laughton, Jon Hall, Peggy Drake, Victor Francin	91
5/8/42	223	Scattergood Rides High	C. Cabanne	Guy Kibbee, Dorothy Moore, Charles Lind, Ken. Howell, Jed Prouty	66
5/15/42	224	Mayor of 44th St.	Alfred E. Green	G. Murphy, A. Shirley W. Gargan, R. Barthelmess, F. Martin & Band	86
			Sixth Group		
5/22/42	226	Syncopation	Wm. Dieterle	Adolphe Menjou, Jackie Cooper, Bonita Granville, Geo. Bancroft, Robert Benchley, Ted North, Frank Jenks, Mona Barry	88
5/29/42	227	Falcon Takes Over	Irving Reis	George Sanders, Lynn Bari, James Gleason, Allen Jenkins	63
6/12/42	228	My Favorite Spy	Tay Garnett	Kay Kyser, Ellen Drew, Jane Wyman, Robt. Armstrong, Helen Westley, Ish Kabibble	86
6/19/42	229	Powder Town	Roland V. Lee	Victor McLaglen, Edmond O'Brien, June Havoc, Dorothy Lovett	79
6/26/42	230	Mexican Spitfire Sees a Ghost	Les Goodwins	Leon Errol, Lupe Velez, Charles Buddy [illegible]	[illegible]

RKO Radio Pictures Inc.

Feature Release Schedule

1941/1942 Season

Release Date	Production No.	Title	Director	Cast	Running Time (Minutes)
			Tim Holts		
10/10/41	281	Bandit Trail	Edward Killy	Tim Holt, Ray Whitley, Janet Waldo, Lee (Lasses) White	60
12/12/41	282	Dude Cowboy	David Howard	Tim Holt, Ray Whitley, Marjorie Reynolds, Lee (Lasses) White	59
2/27/42	283	Riding the Wind	Edward Killy	Tim Holt, Ray Whitley, Mary Douglas, Lee (Lasses) White	60
4/17/42	284	Land of Open Range	Edward Killy	Tim Holt, Ray Whitley, Janet Waldo, Lee (Lasses) White	60
6/5/42	285	Come on Danger	Edward Killy	Tim Holt, Frances Neal, Ray Whitley, Lee (Lasses) White	58
7/10/42	286	Thundering Hoofs	Lesley Selander	Tim Holt, Ray Whitley, Lee (Lasses) White, Luana Waters	61
			Specials		
10/31/41	293	Dumbo	Walt Disney	Walt Disney Cartoon Feature	64
1/9/42	252	Ball of Fire	Howard Hawks	B. Stanwyck, G. Cooper, Gene Krupe & Orchestra	111
4/10/42	292	Fantasia	Walt Disney	Walt Disney Production	81

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RKO Radio Pictures, Inc.

Feature Release Schedule

1942/1943 Season

Release Date	Production No.	Title	Director	Cast	Running Time (Minutes)
			First Group		
9/4/42	301	The Big Street	Irving Reis	H. Fonda, L. Ball, B. MacLane, A. Moorehead, E. Pallette, S. Levene, R. Collins	88
9/11/42	302	Mexican Spitfire's Elephant	Les Goodwins	L. Velez, L. Erroll, W. Reed, L. Talbot, E. Risdon	63
9/18/42	303	Wings and the Woman	Herbert Wilcox	A. Neagle, R. Newton	96
10/2/42	304	Highways by Night	Peter Godfrey	R. Carlson, J. Randolph, B. MacLane, J. Darwell	63
10/9/42	305	Here We Go Again	Allan Dwan	Fibber McGee and Molly, E. Bergen and C. McCarthy, H. (The Great Gildersleeve) Peary, G. Simms, R. Noble's Orchestra, B. (Mr. Wimple) Thompson	77
10/16/42	306	Scattergood Survives a Murder	Christy Cabanne	G. Kibbee, M. Hayes, J. Archer, W. Ford, J. Miljan, W. Best	66
2/12/42	307	Journey Into Fear	Norman Foster	O. Welles, J. Cotten, D. Del Rio, R. Warrick, E. Sloan, R. Bennett	71
10/30/42	308	The Navy Comes Through	A. Edward Sutherland	P. O'Brien, G. Murphy, J. Wyatt, J. Cooper, F. Jenks, D. Arnaz, M. Baer	82
11/6/42	309	The Falcon's Brother	Stanley Logan	G. Sanders, T. Conway, J. Randolph	63
11/13/42	310	Seven Days' Leave	Tim Whelan	V. Mature, L. Ball, H. (The Great Gildersleeve) Peary, M. McGuire, G. Simms, M. Cortez, B. Clark, R. Edwards' "Truth or Consequences" and C. Victor's "Court of Missing Heirs" Radio Shows, F. Martin's Orchestra, L. Brown and his Orchestra	87

1942/1943 Season

Release Date	Production No.	Title	Director	Cast	Running Time (Minutes)
			Third Group		
11/27/42	311	Once Upon A Honeymoon	Leo McCarey	G. Rogers, C. Grant, W. Slezak, A. Dekker, A. Basserman	115
12/4/42	312	Army Surgeon	A. Edward Sutherland	J. Ellison, J. Wyatt, K. Taylor, W. Reed	63
12/25/42	313	The Cat People	Jack Tourneur	S. Simon, J. Holt, J. Randolph, K. Smith, T. Conway	73
1/1/43	314	The Great Gildersleeve	Gordon Douglas	H. (The Great Gildersleeve) Peary, J. Darwell, F. Mercer, N. Gates, C. Arnt, M. Field	62
1/8/43	315	Seven Miles From Alcatraz	Edward Dmytryk	J. Craig, B. Granville, C. Edwards, F. Jenks, E. Gage, T. Birell	62
			Fourth Group		
1/22/43	316	Hitler's Children	Edward Dmytryk	T. Holt, B. Granville, O. Kruger, K. Smith, H. B. Warner, E. Gage	83
2/19/43	317	Two Weeks To Live	Mal St. Clair	Lum and Abner with F. Pangborn, H. Rawlinson, K. Linaker, I. Bacon	76
2/26/43	318	Cinderella Swings It	Paul Sawtelle	G. Kibbee, W. Best, R. Hogan, G. Warren, L. Kinsky	70
3/12/43	319	Tarzan Triumphs	William Thiele	J. Weissmuller, F. Gifford, J. (Boy) Sheffield	78
3/19/43	320	Forever And A Day	Rene Clair Edmund Goulding Sir C. Hardwicke Frank Lloyd Victor Saville Robert Stevenson Herbert Wilcox	B. Aherne, S. Allgood, W. Barrie, L. Belmore, B. Bevan, E. Blore, R. Bolger, N. Bruce, C. Coburn, C. Cook, G. Cooper, E. Cossart, D. Crisp, R. Cummings, R. Gardner, P. Godfrey, E. Gwenn, Sir C. Hardwicke, L. Hare, R. Haydn, H. Hobbes, E. E. Horton, I. Hunter, B. Keaton, P. Knowles, E. Lancaster, C. Laughton, G. Lockhart, M. Love, I. Lupino, H. Marshall, J. Matthews, V. McLaglen, R. Milland, O. Myrtil, A. Neagle, M. Oberon, U. O'Connor, R. Owen, C. Rains, S. Robertson, C. A. Smith, K. Smith, R. Warrick, Dame M. Whitty, R. Young and 30 featured players.	104
			Fifth Group		
4/23/43	321	Fight For Freedom	Lothar Mendez	R. Russell, F. McMurray, H. Marshall, E. Cianelli	101
4/9/43	322	Ladies' Day	Les Goodwins	L. Velez, E. Albert, P. Kelly, M. Baer, J. Barclay, J. Cowan, I. Adrian	62
4/23/43	323	This Land Is Mine	Jean Renoir	C. Laughton, M. O'Hara, G. Sanders, W. Slezak, K. Smith, N. Gates, U. O'Connor, P. Merivale, G. Coularis, T. Hall, J. Donat	103
4/30/43	324	I Walked With A Zombie	Jack Tourneur	F. Dee, T. Conway, J. Ellison	69
5/7/43	325	The Falcon Strikes Back	Edward Dmytryk	T. Conway, J. Randolph, H. Hilliard, C. Edwards, E. Kennedy, W. Gibson	66
			Sixth Group		
5/21/43	326	Squadron Leader X	Lance Comfort	A. Dvorak, E. Portman, W. Fitzgerald, B. Jones	99
6/4/43	327	Gildersleeve's Bad Day	Gordon Douglas	H. (The Great Gildersleeve) Peary, J. Darwell, N. Gates, F. Mercer, C. Arnt, L. Randolph	62
6/25/43	328	The Leopard Man	Jack Tourneur	D. O'Keefe, Margo, R. Corday, J. Brooks, I. Jewell	66
as avail.	329	Bombardier	Richard Wallace	P. O'Brien, R. Scott, A. Shirley, E. Albert, W. Reed, B. MacLane	99
as avail.	330	Mr. Lucky	H. C. Potter	C. Grant, L. Day, C. Bickford, P. Stewart, H. Stephenson, G. Cooper	100
			Seventh Group		
as avail.	331	Petticoat Larceny	Ben Holmes	R. Warwick, J. Carroll, W. Reed, W. Brown, T. Kennedy	61
as avail.	332	The Falcon In Danger	William Clemens	T. Conway, J. Brooks, E. Shephard	70
as avail.	333	Spitfire's Blessed Event	Leslie Goodwin-	L. Velez, L. Errol, W. Reed	63

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Warner Bros.—First National 1940–41 Feature Release Schedule

June 25, 1941

National Release Date	Release No.	Production	Cast	Run. Time Mins.
9/7/40	W 519	Calling All Husbands	George Tobias–Lucile Fairbanks Ernest Truex–George Reeves Florence Bates	64
9/14/40	F 554	No Time For Comedy	James Stewart–Rosalind Russell Genevieve Tobin–Charlie Ruggles	93
9/21/40	W 506	City For Conquest	James Cagney–Ann Sheridan Frank Craven–Donald Crisp Frank McHugh	106
9/28/40		(No Release)		
10/5/40	W 502	Knute Rockne–All American	Pat O'Brien–Gale Page Ronald Reagan–Donald Crisp	98
10/12/40	F 569	Father Is A Prince	Grant Mitchell–Nana Bryant John Litel–George Reeves Jan Clayton–Lee Patrick	56
10/19/40	W 511	A Dispatch From Reuter's	Edward G. Robinson–Edna Best Eddie Albert–Albert Basserman Gene Lockhart–Otto Kruger	90
10/26/40	F 561	Tugboat Annie Sails Again	Marjorie Rambeau–Alan Hale Jane Wyman–Ronald Reagan	77
11/2/40	F 570	Always A Bride	Rosemary Lane–George Reeves John Eldredge–Virginia Brissac	58
11/9/40	F 562	East of the River	John Garfield–Brend Marshall Marjorie Rambeau–George Tobias William Lundigan	74
11/16/40	W 513	South of Suez	George Brent–Brenda Marshall George Tobias–James Stephenson Lee Patrick–Eric Blore	86
11/23/40	F 552	The Letter	Bette Davis–Herbert Marshall James Stephenson–Frieda Inescort Gale Sondergaard	97
11/30/40	W 512	Lady With Red Hair	Miriam Hopkins–Claude Rains Richard Ainley–Laura Hope Crews	81
12/7/40	F 571	She Couldn't Say No	Roger Pryor–Eve Arden Cliff Edwards–Clem Bevans	63
12/14/40		(No Release)		
12/21/40	W 525	Here Comes The Navy (Re-release)	James Cagney–Pat O'Brien	86
12/28/40	F 551	Santa Fe Trail	Errol Flynn–Olivia de Havilland Raymond Massey–Ronald Reagan	110
1/4/41	W 503	Four Mothers	Lane Sisters–Gale Page Claude Rains–Jeffrey Lynn Eddie Albert–May Robson	86
1/11/41	F 572	Case of the Black Parrot	William Lundigan–Maris Wrixon Eddie Foy, Jr.–Paul Cavanaugh	60

National Release Date	Release No.	Production	Cast	Run. Time Mins.
1/18/41	W 510	Honeymoon For Three	Ann Sheridan–George Brent Charlie Ruggles–Osa Massen Jane Wyman	77
1/25/41	F 556	High Sierra	Ida Lupino–Humphrey Bogart Alan Curtis–Arthur Kennedy Joan Leslie–Henry Hull	100
2/1/41	W 520	Father's Son	John Litel–Frieda Inescort Billy Dawson–Christian Rub	57
2/8/41	W 514	Flight From Destiny	Geraldine Fitzgerald Thomas Mitchell–Jeffrey Lynn James Stephenson	74
2/15/41	W 515	The Great Mr. Nobody	Eddie Albert–Joan Leslie Alan Hale–William Lundigan	71
2/22/41	F 559	The Strawberry Blonde	James Cagney–Olivia de Havilland Rita Hayworth–Alan Hale Jack Carson–George Tobias	97
3/1/41	F 573	Shadows of the Stairs	Frieda Inescort–Paul Cavanagh Heather Angel–Bruce Lester	63
3/8/41	W 509	Footsteps In The Dark	Errol Flynn–Brenda Marshall Ralph Bellamy–Alan Hale	96
3/15/41	W 521	Here Comes Happiness	Mildred Coles–Edward Morris Richard Ainley–Russel Hicks	58
3/22/41	W 501	The Sea Wolf	Edward G. Robinson–Ida Lupino John Garfield–Gene Lockhart	100
3/29/41	F 568	Knockout	Arthur Kennedy–Olympe Bradna Virginia Field–Cliff Edwards	73
4/5/41	W 522	A Shot In The Dark	William Lundigan–Nan Wynn Ricardo Cortez–Regis Toomey	57
4/12/41	W 504	The Great Lie	Bette Davis–George Brent Mary Astor–Lucile Watson Hattie McDaniel	107
4/19/41	F 567	Strange Alibi	Arthur Kennedy–Joan Perry Jonathan Hale–John Ridgely	63
4/26/41	F 560	The Wagons Roll At Night	Humphrey Bogart–Sylvia Sidney Eddie Albert–Joan Leslie	84
5/3/41	500	Meet John Doe	Gary Cooper–Barbara Stanwyck Edward Arnold–Walter Brennan Spring Byington–James Gleason and Gene Lockhart	123
5/3/41	W 516	Thieves Fall Out	Eddie Albert–Joan Leslie Jane Darwell–Alan Hale	72
5/10/41	F 566	Affectionately Yours	Merle Oberon–Dennis Morgan Rita Hayworth–Ralph Bellamy	88
5/17/41	F 563	Singapore Woman	Brenda Marshall–David Bruce Virginia Field–Jerome Cowan Rose Hobart	64
5/24/41	W 523	The Nurse's Secret	Lee Patrick–Regis Toomey	65

National Release Date	Release No.	Production	Cast	Run. Time Mins.
5/31/41	W 508	Million Dollar Baby	Priscilla Lane–Jeffrey Lynn Ronald Reagan–May Robson	100
6/7/41	550	Devil Dogs of the Air	James Cagney–Pat O'Brien Margaret Lindsay–Frank McHugh	86
6/7/41	F 564	Shining Victory	James Stephenson Geraldine Fitzgerald Donald Crisp–Barbara O'Neil	80
6/14/41	F 555	Out of The Fog	John Garfield–Ida Lupino Eddie Albert–Thomas Mitchell George Tobias	86
6/21/41	W 524	Passage From Hongkong	Lucile Fairbanks–Keith Douglas Paul Cavanagh–Richard Ainley Marjorie Gateson	61
6/28/41	F 558	Underground	Jeffrey Lynn–Mona Maris Philip Dorn–Kaaren Verne	95
7/5/41	W 517	Kisses For Breakfast	Dennis Morgan–Jane Wyatt Shirley Ross–Lee Patrick Jerome Cowan–Una O'Connor	82
7/12/41	W 507	The Bride Came C.O.D.	James Cagney–Bette Davis Stuart Erwin–Eugene Pallette Jack Carson–George Tobias	92
7/19/41	W 518	Bullets For O'Hara	Joan Perry–Roger Pryor Anthony Quinn–Maris Wrixon	
7/26/41	F 557	Bad Men of Missouri	Dennis Morgan–Jane Wyman Wayne Morris–Arthur Kennedy	
8/2/41	F 574	Three Sons O' Guns	Wayne Morris–Marjorie Rambeau Irene Rich–Tom Brown William T. Orr–Susan Peters	65
8/9/41	W 505	Manpower	Edward G. Robinson Marlene Dietrich–George Raft Alan Hale–Frank McHugh	
8/16/41		(No Release)		
8/23/41	F 565	Highway West	Brenda Marshall–Arthur Kennedy Olympe Bradna–William Lundigan Slim Summerville	63
8/30/41	F 553	Dive Bomber (Technicolor)	Errol Flynn–Fred MacMurray Ralph Bellamy–Alexis Smith Robert Armstrong–Regis Toomey Allen Jenkins	

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Warner Bros.—First National 1939-40 Feature Release Schedule
August 31, 1940

National Release Date	Release No.	Production	Cast	Run. Time Mins.
9/2/9	F 452	The Old Maid	Bettie Davis–Miriam Hopkins George Brent–Donald Crisp Jane Bryan–Louise Fazenda	95
9/9/9	W 419	Nancy Drew and the Hidden Staircase	Bonita Granville–John Litel Frankie Thomas	60
9/16/9	F 461	Dust Be My Destiny	John Garfield–Priscilla Lane Alan Hale–Frank McHugh	88
9/23/9	F 469	No Place To Go	Dennis Morgan–Gloria Dickson Fred Stone	57
9/30/9	F 462	Espionage Agent	Joel McCrea–Brenda Marshall Jeffrey Lynn–George Bancroft	83
10/7/9	W 418	Pride of The Bluegrass	Gantry, The Blind Horse Edith Fellows–James McCallion	65
10/14/9	F 463	On Your Toes	Zorina–Eddie Albert–Alan Hale Frank McHugh–James Gleason	94
10/21/9	F 470	Smashing The Money Ring	Ronald Reagan–Margot Stevenson Eddie Foy, Jr.	57
10/28/9	W 403	The Roaring Twenties	James Cagney–Priscilla Lane Jeffrey Lynn–Humphrey Bogart Gladys George	106
11/4/9	W 411	Kid Nightingale	John Payne–Jane Wyman Walter Catlett–Ed Brophy	57
11/11/9	W 402	The Private Lives of Elizabeth and Essex (Technicolor)	Bette Davis–Errol Flynn Olivia deHavilland Donald Crisp	106
11/18/9	W 413	"Dead End" Kids On Dress Parade	"Dead End" Kids–John Litel Frankie Thomas–Cissie Loftus	62
11/25/9	F 458	We Are Not Alone	Paul Muni–Jane Bryan Flora Robson	112
12/2/9	F 464	The Return of Doctor X	Wayne Morris–Rosemary Lane Humphrey Bogart–Dennis Morgan	62
12/9/9	F 471	Private Detective	Jane Wyman–Dick Foran Gloria Dickson–Maxie Rosenbloom	55
12/16/9	V 481	The Mad Empress	Medea Novara–Lionel Atwill Conrad Nagel	72
12/25/9	F 453	Four Wives	Priscilla, Rosemary, Lola Lane Gale Page–Claude Rains Jeffrey Lynn–Eddie Albert John Garfield–May Robson	99
12/30/9	W 408	Invisible Stripes	George Raft–Jane Bryan William Holden–Humphrey Bogart Flora Robson	82
1/6/40	W 415	A Child Is Born	Geraldine Fitzgerald Gladys George–Jeffrey Lynn Gale Page–Spring Byington	79

National Release Date	Release No.	Production	Cast	Run. Time Mins.
1/13/40	W 406	Brother Rat and a Baby	Priscilla Lane–Jane Bryan Jane Wyman–Wayne Morris Eddie Albert–Ronald Reagan	87
1/20/40	W 416	British Intelligence	Boris Karloff–Margaret Lindsay Bruce Lester–Leonard Mudie	62
1/27/40	F 451	The Fighting 69th	James Cagney–Pat O'Brien George Brent–Jeffrey Lynn Alan Hale–Frank McHugh Dennis Morgan–Dick Foran	90
2/3/40	W 420	Calling Philo Vance	Jas. Stephenson–Margot Stevenson Henry O'Neill–Edward Brophy	62
2/10/40	W 421	Granny Get Your Gun	May Robson–Harry Davenport Hardie Albright	56
2/17/40	F 459	Castle On The Hudson	John Garfield–Ann Sheridan Pat O'Brien–Burgess Meredith	77
2/24/40		(No Release)		
3/2/40	F 457	The Story of Dr. Ehrlich's Magic Bullet	Edward G. Robinson–Ruth Gordon Otto Kruger–Donald Crisp	103
3/9/40		(No Release)		
3/16/40	F 465	Three Cheers for the Irish	Priscilla Lane–Thomas Mitchell Dennis Morgan–Alan Hale	100
3/23/40	W 404	Virginia City	Errol Flynn–Miriam Hopkins Randoph Scott–Humphrey Bogart Frank McHugh–Alan Hale Guinn "Big Boy" Williams	121
3/30/40		(No Release)		
4/6/40	W 407	It All Came True	Ann Sheridan–Jeffrey Lynn Humphrey Bogart–Zasu Pitts	97
4/13/40	W 422	King of the Lumberjacks	John Payne–Gloria Dickson Stanley Fields	58
4/20/40	F 456	'Til We Meet Again	Merle Oberon–George Brent Pat O'Brien–Geraldine Fitzgerald Binnie Barnes–Frank McHugh	99
4/27/40	F 468	An Angel From Texas	Eddie Albert–Rosemary Lane Wayne Morris–Ronald Reagan Jane Wyman–Ruth Terry	69
5/4/40	W 423	Tear Gas Squad	Dennis Morgan–Gloria Dickson John Payne	55
5/11/40	W 410	Saturday's Children	John Garfield–Anne Shirley Claude Rains–Roscoe Karns Lee Patrick–Dennie Moore	101
5/18/40	F 466	Flight Angels	Virginia Bruce–Ralph Bellamy Wayne Morris–Dennis Morgan Jane Wyman	74
5/25/40	F 455	Torrid Zone	James Cagney–Ann Sheridan Pat O'Brien–Andy Devine	88
6/1/40	F [illegible]72	Murder In The Air	Ronald Reagan–John Litel Lya Lys	55

RKO Radio Pictures, Inc.

Feature Release Schedule

1942/1943 Season

Release Date	Production No	Title	Director	Cast	Running Time (Minutes)
ter. release	334	Behind The Rising Sun	Edward Dmytryk	Margo, T. Neal, J. C. Naish	88
as avail.	335	The Sky's The Limit	E. H. Griffith	F. Astaire, J. Leslie, R. Benchley	90
			Tim Holts		
9/25/42	318	Bandit Ranger	Lesley Selander	T. Holt, C. Edwards, K. Harlan, J. Barclay	56
11/20/42	382	Pirates Of The Prairie	H. Bretherton	T. Holt, C. Edwards, Nell O'Day	57
1/29/43	383	Fighting Frontier	Lambert Hillyer	T. Holt, C. Edwards, A. Summers	57
4/2/43	384	Sagebrush Law	Sam Nelson	T. Holt, C. Edwards, J. Barclay	56
5/28/43	385	Avenging Rider	Sam Nelson	T. Holt, C. Edwards, A. Summers	56
7/23/43	386	Red River Robinhood	Lesley Selander	T. Holt, C. Edwards, B. Moffett	57
			Specials		
3/5/43	351	Pride of the Yankees	Sam Wood	G. Cooper, T. Wright, B. Ruth, W. Brennan, Veloz and Yolanda, R. Noble and his Orchestra	128
2/5/43	352	They Got Me Covered	David Butler	B. Hope, D. Lamour, O. Preminger, M. Martin, E. Cianelli, L. Aubert	97
as avail.	353	Spitfire	Leslie Howard	L. Howard, D. Niven, R. John, Pilots and Personnel of the Fighting Command of the Royal Air Force	90
8/21/42	391	Bambi	Walt Disney	W. Disney Animated Technicolor Feature	70
2/19/43	392	Saludos Amigos	Walt Disney	W. Disney's South American Technicolor Musical Feature, starring D. Duck, Goofy, Pedro and introducing J. Carioca, the South American "Jitterbird"	43
as avail.	336	Coastal Command	J. B. Holmes	Officers and Non-Commissioned Officers and men and women of the Coastal Command of the Royal Air Force	60
7/10/42	371	The Magnificent Ambersons	Orson Welles	J. Cotten, D. Costello, T. Holt, A. Baxter, A. Moorehead, R. Collins, R. Bennett	88

National Release Date	Release No.	Production	Cast	Run. Time Mins.
6/8/40	W 405	Brother Orchid	Edward G. Robinson–Ann Sothern Humphrey Bogart–Ralph Bellamy Donald Crisp–Allen Jenkins	91
6/15/40	F 473	A Fugitive From Justice	Roger Pryor–Lucile Fairbanks Don Douglas	53
6/22/40	W 424	Gambling on the High Seas	Wayne Morris–Jane Wyman Gilbert Roland–John Litel Roger Pryor	56
6/29/40		(No Release)		
7/6/40	F 467	Man Who Talked Too Much	George Brent–Virginia Bruce Brenda Marshall–Richard Barthelmess–William Lundigan	75
7/13/40	F 454	All This, and Heaven Too	Bette Davis–Charles Boyer Jeffrey Lynn–Barbara O'Neil Virginia Weidler	143
7/20/40	W 409	My Love Came Back	Olivia deHavilland–Jeffrey Lynn Eddie Albert–Jane Wyman Charles Winninger–Spring Byington	85
7/27/40	F 474	Ladies Must Live	Wayne Morris–Rosemary Lane Roscoe Karns–Lee Patrick	58
8/3/40	F 460	They Drive By Night	George Raft–Ann Sheridan Ida Lupino–Humphrey Bogart Gale Page–Alan Hale–Roscoe Karns	95
8/10/40	W 414	River's End	Dennis Morgan–Elizabeth Earl Victor Jory–James Stephenson	69
8/17/40	W 417	Money And The Woman	Jeffrey Lynn–Brenda Marshall John Litel–Lee Patrick	67
8/24/40	W 412	Flowing Gold	John Garfield–Frances Farmer Pat O'Brien	82
8/31/40	W 401	The Sea Hawk	Errol Flynn–Brenda Marshall Claude Rains–Donald Crisp Flora Robson–Alan Hale	126

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Warner Bros.—First National 1938-39 Feature Release Schedule
August 31, 1939

National Release Date	Release No.	Production	Cast	Run. Time Mins.
9/3/8	W 306	Four's A Crowd	Errol Flynn–Olivia deHavilland Rosalind Russell–Patric Knowles	91
9/10/8	F 365	Secrets Of An Actress	Kay Francis–George Brent Ian Hunter–Gloria Dickson	70
9/17/8	W 305	Valley of the Giants (Technicolor)	Wayne Morris–Claire Trevor Frank McHugh–John Litel	79
9/24/8	F 352	Four Daughters	Priscilla, Rosemary and Lola Lane Gale Page–Claude Raine–Dick Foran John Garfield–Jeffrey Lynn May Robson–Frank McHugh	90
10/1/8	F 358	Garden of the Moon	Pat O'Brien–John Payne Margaret Lindsay–Jimmie Fidler Joe Venuti and His Swing Cats	94
10/8/8	F 368	Broadway Musketeers	Margaret Lindsay–Marie Wilson Ann Sheridan–John Litel Janet Chapman	62
10/15/8	W 302	The Sisters	Errol Flynn–Bette Davis Anita Louise–Ian Hunter Donald Crisp–Patric Knowles	99
10/22/8	F 369	Girls on Probation	Ronald Reagan–Jane Bryan Anthony Averill	63
10/29/8	F 355	Brother Rat	Wayne Morris–Priscilla Lane Jane Wyman–Eddie Albert Johnnie Davis–Henry O'Neill	89
11/5/8	W 310	Hard To Get	Dick Powell–Olivia deHavilland Charles Winninger–Allen Jenkins Bonita Granville–Melville Cooper	79
11/12/8	W 318	Torchy Gets Her Man	Glenda Farrell–Barton MacLane Tom Kennedy	62
11/19/8	W 319	Nancy Drew, Detective	Bonita Granville–John Litel Frankie Thomas	65
11/24/8	F 351	Angels With Dirty Faces	James Cagney–Pat O'Brien The "Dead End" Kids–Ann Sheridan Humphrey Bogart–George Bancroft	97
12/3/8	F 370	Comet Over Broadway	Kay Francis–Ian Hunter–John Litel Donald Crisp–Minna Gombel	69
12/10/8	F 362	Heart Of The North (Technicolor)	Dick Foran–Gloria Dickson Patric Knowles	85
12/17/8		(No Release)		
12/24/8	W 303	The Dawn Patrol	Errol Flynn–Basil Rathbone David Niven–Donald Crisp Melville Cooper	103
12/31/8	F 359	Going Places (C)	Dick Powell–Anita Louise Ronald Reagan–Allen Jenkins	84
1/7/9	W 313	Devil's Island	Boris Karloff–Hedda Harrigan James Stephenson	62

National Release Date	Release No.	Production	Cast	Run Time Mins.
1/14/9	W 317	King of the Underworld	Humphrey Bogart–Kay Francis John Eldredge–James Stephenson	69
1/21/9	W 314	Off The Record	Pat O'Brien–Joan Blondell Bobby Jordan	71
1/28/9	W 307	They Made Me A Criminal	John Garfield–Claude Rains The "Dead End" Kids–Ann Sheridan	92
2/4/9	F 371	Torchy Blane in Chinatown	Glenda Farrell–Barton MacLane Tom Kennedy–Henry O'Neill Patric Knowles	58
2/11/9	W 309	Wings of the Navy (C)	George Brent–Olivia deHavilland John Payne–Frank McHugh John Litel–Victor Jory	89
2/18/9	F 372	Nancy Drew, Reporter	Bonita Granville–John Litel Frank Thomas, Jr.–Mary Lee	68
2/25/9	F 357	Yes,My Darling Daughter	Priscilla Lane–Jeffrey Lynn Roland Young–Fay Bainter May Robson–Genevieve Tobin	75
3/4/9	W 320	Secret Service of the Air	Ronald Reagan–John Litel Ila Rhodes–James Stephenson Eddie Foy, Jr.	61
3/11/9	W 308	The Oklahoma Kid	James Cagney–Humphrey Bogart Rosemary Lane–Donald Crisp	80
3/18/9	W 321	The Adventures of Jane Arden	Rosella Towne–William Gargan James Stephenson–Benny Rubin Dennie Moore	58
3/25/9	F 361	Blackwell's Island	John Garfield–Rosemary Lane Dick Purcell–Victor Jory	71
4/1/9	W 323	On Trial	Margaret Lindsay–John Litel Edward Norris–Janet Chapman	61
4/8/9	W 304	Dodge City (Technicolor)	Errol Flynn–Olivia deHavilland Ann Sheridan–Bruce Cabot Frank McHugh–Alan Hale	104
4/15/9	W 316	Women in the Wind	Kay Francis–William Gargan Victor Jory–Maxie Rosenbloom	65
4/22/9	F 354	Dark Victory	Bette Davis–George Brent Humphrey Bogart–Ronald Reagan Geraldine Fitzgerald.	106
4/29/9	F 364	You Can't Get Away With Murder	Humphrey Bogart–Gale Page Billy Halop–John Litel	78
5/6/9	F 353	Confessions of a Nazi Spy	Edw. G. Robinson–Francis Lederer George Sanders–Paul Lukas Henry O'Neill	102
5/13/9	W 322	Torchy Runs For Mayor	Glenda Farrell–Barton MacLane	60
5/20/9	F 373	Sweepstakes Winner	Marie Wilson–Allen Jenkins Johnnie Davis–Charley Foy	59
5/27/9	F 374	Code of the Secret Service	Ronald Reagan–Rosella Towne Eddie Foy, Jr.	58

National Release Date	Release No.	Production	Cast	Run. Time Mins:
6/3/9	F 375	The Man Who Dared	Jane Bryan–Charley Grapewin Henry O'Neill	60
6/10/9	W 301	Juarez	Paul Muni–Bette Davis Brian Aherne–Claude Rains John Garfield–Donald Crisp	127
6/17/9	W 324	Nancy Drew, Trouble Shooter	Bonita Granville–John Litel Frankie Thomas	69
6/24/9	F 363	The Kid From Kokomo	Pat O'Brien–Wayne Morris Joan Blondell–May Robson	92
7/1/9	W 311	Naughty But Nice	Ann Sheridan–Dick Powell–GalePage Helen Broderick–Allen Jenkins Zasu Pitts–Maxie Rosenbloom	90
7/8/9	W 312	Hell's Kitchen	"Dead End" Kids–Margaret Lindsay Ronald Reagan–Stanley Fields	81
7/15/9	W 325	Waterfront	Gloria Dickson–Dennis Morgan Marie Wilson–Larry Williams	59
7/22/9	F 360	Daughters Courageous	John Garfield–Gale Page Priscilla, Rosemary and Lola Lane Claude Rains–Jeffrey Lynn Fay Bainter–May Robson	107
7/29/9	F 366	The Cowboy Quarterback	Bert Wheeler–Marie Wilson Gloria Dickson	56
8/5/9	W 315	Indianapolis Speedway	Ann Sheridan–Pat O'Brien John Payne–Gale Page Frank McHugh	82
8/12/9	W 326	Torchy Plays With Dynamite	Jane Wyman–Allen Jenkins Tom Kennedy–Sheila Bromley	59
8/19/9	F 356	Each Dawn I Die	James Cagney–George Raft Jane Bryan–George Bancroft	92
8/26/9	F 367	Angels Wash Their Faces	"Dead End" Kids–Ann Sheridan Ronald Reagan	86
8/26/9	F 376	Everybody's Hobby	Irene Rich–Henry O'Neill Jackie Moran–Aldrich Bowker	54

W: Warner
F: First National
C: A Cosmopolitan Picture

Warner Bros.—First National 1937–38 Feature Release Schedule
August 1, 1938

National Release Date	Release No.	Production	Cast	Run. Time Mins.
9/4/7	W 202	Varsity Show	Dick Powell–Fred Waring and His Pennsylvanians–Ted Healy Priscilla Lane–Rosemary Lane	121
9/11/7	W 218	Wine, Women and Horses	Barton MacLane–Ann Sheridan Dick Purcell–Peggy Bates	64
9/11/7	F 180	*Prairie Thunder (X)	Dick Foran–Ellen Clancy Frank Orth–Wilfred Lucas	54
9/18/7	F 254	That Certain Woman	Bette Davis–Henry Fonda Ian Hunter–Anita Louise	93
9/25/7	F 266	Back In Circulation	Pat O'Brien–Joan Blondell Margaret Lindsay	82
10/2/7	W 203	The Life of Emile Zola	Paul Muni–Gale Sondergaard Joseph Schildkraut–Henry O'Neill Erin O'Brien Moore	116
10/2/7	F 269	Love Is On The Air	Ronald Reagan–June Travis–Eddie Acuff–Ben Welden–Robert Barrat	61
10/9/7	F 265	They Won't Forget	Claude Rains–Gloria Dickson Edward Norris–Otto Kruger Allyn Joslyn–Lana Turner	95
10/16/7	F 272	Over The Goal	June Travis–William Hopper Johnnie Davis–Mabel Todd Gordon Oliver	63
10/23/7	F 257	The Perfect Specimen	Errol Flynn–Joan Blondell Hugh Herbert–Edward Everett Horton Dick Foran–Beverly Roberts May Robson–Allen Jenkins	97
10/30/7	W 209	The Great Garrick	Brian Aherne–Olivia deHavilland Edward Everett Horton Melville Cooper–Lionel Atwill Henry O'Neill–Luis Alberni	89
10/30/7	F 164	*West of Shanghai	Boris Karloff–Beverly Roberts Ricardo Cortez	65
11/6/7	F 264	Alcatraz Island (C)	John Litel–Ann Sheridan Mary Maguire–Gordon Oliver Dick Purcell	64
11/13/7	F 271	The Adventurous Blonde	Glenda Farrell–Barton MacLane Anne Nagel–Tom Kennedy Natalie Moorhead	61
11/20/7	W 207	It's Love I'm After	Leslie Howard–Bette Davis Olivia deHavilland–Patric Knowles Eric Blore–George Barbier	90
11/27/7	F 258	Submarine D-1 (C)	Pat O'Brien–Wayne Morris Geo. Brent–Frank McHugh Doris Weston	105
11/27/7	W 223	Expensive Husbands	Patric Knowles–Beverly Roberts Allyn Joslyn–Gordon Oliver	63

National Release Date	Release No.	Production	Cast	Run. Time Mins.
12/4/7	W 210	First Lady	Kay Francis–Preston Foster Anita Louise–Walter Connolly Verree Teasdale–Victor Jory	82
12/11/7	F 268	Sh! The Octopus	Hugh Herbert–Allen Jenkins Marcia Ralston	54
12/11/7	F 273	Missing Witnesses	John Litel–Dick Purcell–Jean Dale	61
12/18/7	F 270	She Loved A Fireman	Dick Foran–Ann Sheridan Robert Armstrong	57
12/25/7	W 201	Tovarich	Claudette Colbert–Charles Boyer Basil Rathbone–Anita Louise	98
1/1/8	W 220	Sergeant Murphy	Ronald Reagan–Mary Maguire Donald Crisp	57
1/8/8	F 274	The Patient In Room 18	Patric Knowles–Ann Sheridan Eric Stanley–John Ridgely Rosella Towne–Jean Benedict	59
1/15/8	F 253	Hollywood Hotel	Dick Powell–Benny Goodman Band Louella Parsons–Rosemary Lane Hugh Herbert–Ted Healy–Lola Lane Glenda Farrell–Frances Langford The Three Stooges	109
1/22/8	W 231	**Bordertown	Paul Muni–Bette Davis Margaret Lindsay–Eugene Pallette	90
1/22/8	W 224	The Invisible Menace	Boris Karloff–Marie Wilson Eddie Craven	55
1/29/8	W 211	Swing Your Lady	Frank McHugh–Humphrey Bogart Louise Fazenda–Allen Jenkins Nat Pendleton–The Weaver Brothers and Elvira–Penny Singleton	79
2/5/8	W 225	Blondes At Work	Glenda Farrel–Barton MacLane	63
2/12/8	F 279	Daredevil Drivers	Beverly Roberts–Dick Purcell Gloria Blondell–Gordon Oliver	59
2/12/8	W 214	The Kid Comes Back	Wayne Morris–Barton MacLane June Travis–Maxie Rosenbloom	61
2/19/8	F 255	(C) Gold is Where You Find It (Technicolor)	George Brent–Olivia deHavilland Claude Rains–Margaret Lindsay	97
2/26/8	W 226	Penrod & His Twin Brother	Billy and Bobby Mauch Frank Craven–Spring Byington	63
3/5/8	F 256	A Slight Case of Murder	Edward G. Robinson–Jane Bryan Allen Jenkins–Ruth Donnelly	85
3/12/8	W 216	Love, Honor and Behave	Wayne Morris–Priscilla Lane John Litel–Dick Foran	71
3/19/8	W 221	He Couldn't Say No	Frank McHugh–Jane Wyman Cora Witherspoon	57
3/26/8	W 204	Jezebel	Bette Davis–Henry Fonda George Brent–Margaret Lindsay	104
4/2/8	W 212	Over The Wall (C)	Dick Foran–June Travis John Litel–Dick Purcell	66

National Release Date	Release No.	Production	Cast	Run. Time Mins.
4/9/8	W 222	Accidents Will Happen	Ronald Reagan–Gloria Blondell Sheila Bromley	62
4/16/8	F 252	Fools For Scandal	Carole Lombard–Fernand Gravet Ralph Bellamy–Allen Jenkins	81
4/23/8	F 261	Women Are Like That	Kay Francis–Pat O'Brien Ralph Fobes–Melville Cooper	78
4/30/8	F 267	Beloved Brat	Bonita Granville–Dolores Costello Donald Crisp–Natalie Moorhead	62
5/7/8	F 275	Torchy Blane in Panama	Lola Lane–Paul Kelly	59
5/14/8	F 251	Adventures of Robin Hood (Technicolor)	Errol Flynn–Olivia deHavilland Basil Rathbone–Claude Rains Patric Knowles–Ian Hunter	102
5/21/8	F 277	Mystery House	Dick Purcell–Ann Sheridan Anne Nagel–William Hopper	56
5/28/8	F 259	Crime School	The "Dead End" Kids Humphrey Bogart–Gale Page	86
6/4/8	W 219	Little Miss Thoroughbred	Ann Sheridan–John Litel Frank McHugh–Janet Chapman	63
6/11/8	W 206	Gold Diggers In Paris	Rudy Valee–Rosemary Lane Hugh Herbert–Allen Jenkins The Schnickelfritz Band	97
6/18/8	F 263	When Were You Born?	Margaret Lindsay–Anna May Wong Lola Lane–Anthony Averill	65
6/25/8	W 208	White Banners (C)	Claude Rains–Fay Bainter Jackie Cooper–Bonita Granville	92
7/2/8	W 215	Men Are Such Fools	Wayne Morris–Priscilla Lane Humphrey Bogart–Hugh Herbert	69
7/9/8	F 260	My Bill	Kay Francis–Bonita Granville Anita Louise–Bobby Jordan John Litel–Dickie Moore	64
7/16/8	W 217	Cowboy From Brooklyn (C)	Dick Powell–Pat O'Brien Priscilla Lane–Dick Foran Ann Sheridan–Johnnie Davis	77
7/23/8	F 276	Penrod's Double Trouble	The Mauch Twins–Dick Purcell Gene Lockhart–Kathleen Lockhart	60
7/30/8	F 262	Amazing Dr. Clitterhouse	Edward G. Robinson–Claire Trevor Humphrey Bogart–Allen Jenkins Donald Crisp–Gale Page	87
8/6/8	W 227	Mr. Chump	Johnnie Davis–Lola Lane Penny Singleton–Donald Briggs	60
8/13/8	W 205	Racket Busters (C)	Humphrey Bogart–George Brent Gloria Dickson–Allen Jenkins	71
8/20/8		(No Release)		
8/27/8	W 213	Boy Meets Girl	James Cagney–Pat O'Brien Marie Wilson–Ralph Bellamy	86

W: Warner
F: First National

C: A Cosmopolitan Picture
X: Western

*: 1936–37 Release
**: Re-Release

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Warner Bros.—First National 1936-37 Feature Release Schedule
July 15, 1937

National Release Date	Release No.	Production	Cast	Run. Time Mins.
9/5/6	W 118	The Bengal Tiger	Barton MacLane–June Travis Warren Hull	60
9/5/6	F 979	*Trailin' West (X)	Dick Foran–Paula Stone Gordon Elliott–Addison Richards Robert Barrat	56
9/12/6	F 155	Stage Struck	Dick Powell–Joan Blondell Frank McHugh–Yacht Club Boys	91
9/19/6	F 177	Down the Stretch	Patricia Ellis–Mickey Rooney Dennis Moore–William Best	66
9/26/6	W 109	Give Me Your Heart (C)	Kay Francis–George Brent Roland Young–Patric Knowles Frieda Inescort	86
10/3/6	W 107	A Midsummer Night's Dream	Dick Powell–Joe E. Brown James Cagney–Olivia deHavilland Anita Louise–Jean Muir–Victor Jory	117
10/10/6	W 119	Isle of Fury	Donald Woods–Margaret Lindsay Humphrey Bogart–Paul Graetz	60
10/17/6	W 103	Cain and Mabel (C)	Marion Davies–Clark Gable	90
10/24/6	F 169	Here Comes Carter!	Ross Alexander–Glenda Farrell Anne Nagel–Craig Reynolds	60
10/31/6	F 170	The Case of the Black Cat	Ricardo Cortez–June Travis Craig Reynolds	66
11/7/6	W 901	*The Charge of the Light Brigade	Errol Flynn–Olivia deHavilland Patric Knowles–Henry Stephenson	115
11/14/6	F 167	The Captain's Kid	Sybil Jason–Guy Kibbee May Robson–Dick Purcell	72
11/14/6	W 930	*California Mail (X)	Dick Foran–Linda Perry Milton Kibbee	56
11/21/6	F 152	Three Men On A Horse	Frank McHugh–Joan Blondell Guy Kibbee–Carol Hughes Allen Jenkins–Sam Levene Teddy Hart	86
11/28/6	W 120	Fugitive In The Sky	Jean Muir–Warren Hull Winifred Shaw	58
12/5/6	W 111	Polo Joe	Joe E. Brown–Carol Hughes Richard "Skeets" Gallagher	65
12/12/6	W 421	**One Way Passage	William Powell–Kay Francis Frank McHugh–Aline MacMahon	69
12/19/6	W 121	King of Hockey	Dick Purcell–Anne Nagel Marie Wilson	55
12/26/6	F 151	Gold Diggers of 1937	Dick Powell–Joan Blondell Victor Moore–Glenda Farrell Lee Dixon–Osgood Perkins Rosalind Maronis	101
1/2/7	W 122	Smart Blonde	Glenda Farrell–Barton MacLane Winifred Shaw–Craig Reynolds	59

National Release Date	Release No.	Production	Cast	Run. Time Mins.
1/2/7	F 950	*Guns of the Pecos (X)	Dick Foran–Anne Nagel	56
1/9/7	F 100	Sing Me A Love Song (C)	James Melton–Patricia Ellis Hugh Herbert–Zasu Pitts Allen Jenkins	79
1/16/7	W 105	God's Country and the Woman (Technicolor)	George Brent–Beverly Roberts Barton MacLane–Robert Barrat Alan Hale	85
1/27/7	F 171	Once a Doctor	Jean Muir–Donald Woods	58
1/30/7	W 108	Black Legion	Humphrey Bogart–Ann Sheridan Dick Foran	83
2/6/7	F 157	Stolen Holiday	Kay Francis–Claude Rains Ian Hunter–Alisno Skipworth Alexander D'Aroy	80
2/13/7	W 110	The Great O'Malley	Pat O'Brien–Humphrey Bogart Sybil Jason–Ann Sheridan Frieda Inescort–Donald Crisp	71
2/20/7	F 154	Green Light (C)	Errol Flynn–Anita Louise Margaret Lindsay–Sir Cedric Hardwicks–Henry O'Neill	86
2/27/7	F 172	Penrod and Sam	Billy Mauch–Frank Craven Spring Byington–Craig Reynolds Harry Watson–Jackie Morrow	64
3/6/7	W 112	Ready, Willing and Able	Ruby Keeler–Lee Dixon Allen Jenkins–Louise Fazenda Winifred Shaw	93
3/6/7	W 134	Midnight Court	Ann Dvorak–John Litel– Walter Miller	63
3/13/7	W 128	Land Beyond the Law (X)	Dick Foran–Linda Perry Wayne Morris	54
3/20/7	F 173	Her Husband's Secretary	Warren Hull–Jean Muir Beverly Roberts	61
3/27/7	W 104	The King & The Chorus Girl	Fernand Gravet–Joan Blondell Edward Everett Horton Mary Nash–Luis Alberni	95
4/3/7	F 174	Men In Exile	Dick Purcell–June Travis Alan Baxter–Margaret Irving	58
4/10/7	F 156	Marked Woman	Bette Davis–Humphrey Bogart Allen Jenkins–Henry O'Neill	96
4/17/7	F 175	That Man's Here Again	Hugh Herbert–Mary Maguire Tom Brown–Teddy Hart	58
4/17/7	W 113	Call It A Day (C)	Olivia deHavilland–Ian Hunter Anita Louise–Alice Brady Roland Young–Frieda Inescort	89
4/24/7	F 161	Mountain Justice	Josephine Hutchinson–George Brent Guy Kibbee–Mona Barrie– Robt. Barrat	82
5/1/7	W 117	Melody For Two	James Melton–Patricia Ellis Dick Purcell–Winifred Shaw	60

National Release Date	Release No.	Production	Cast	Run. Time Mins.
5/8/7	F 152	The Prince and the Pauper	Errol Flynn–The Mauch Twins Claude Rains–Henry Stephenson	120
5/15/7	F 178	Cherokee Strip (X)	Dick Foran–Jane Bryan– David Carlyle	55
5/15/7	F 168	Draegerman Courage	Barton MacLane–Jean Muir Henry O'Neill–Robert Barrat	58
5/22/7	W 115	The Go Getter (C)	George Brent–Anita Louise Charles Winninger–Henry O'Neill	92
5/29/7	W 102	Kid Galahad	Edward G. Robinson–Bette Davis Humphrey Bogart–Wayne Morris Jane Bryan	101
6/5/7	F 176	The Case of the Stuttering Bishop	Donald Woods–Ann Dvorak– Anne Nagel–Linda Perry– Craig Reynolds	70
6/12/7	W 114	Slim	Pat O'Brien–Henry Fonda Margaret Lindsay–Stuart Erwin	86
6/12/7	W 129	Blazing Sixes (X)	Dick Foran–Helen Valkis	55
6/19/7	W 125	Fly-Away Baby	Glenda Farrell–Barton MacLane Hugh O'Connell–Marcia Ralston	60
6/19/7	W 127	White Bondage	Jean Muir–Gordon Oliver– Joseph King	60
6/26/7	W 106	Another Dawn	Kay Francis–Errol Flynn– Ian Hunter–Frieda Inescort Billy Bevan	73
7/3/7	W 101	The Singing Marine	Dick Powell–Hugh Herbert Doris Weston–Lee Dixon– Allen Jenkins	105
7/10/7	W 126	Public Wedding	Jane Wyman–Dick Purcell William Hopper–Marie Wilson	58
7/10/7	F 179	Empty Holsters (X)	Dick Foran–Patricia Walthall	62
7/17/7	F 162	Ever Since Eve (C)	Marion Davies–Robert Montgomery Frank McHugh–Patsy Kelly Allen Jenkins	79
7/24/7	F 166	Talent Scout	Donald Woods–Jeanne Madden Fred Lawrence–Rosalind Marquis	62
7/31/7	W 116	Marry The Girl	Mary Boland–Frank McHugh Hugh Herbert–Carol Hughes Allen Jenkins–Mischa Auer	68
8/7/7	F 163	San Quentin	Pat O'Brien–Humphrey Bogart Ann Sheridan–Barton MacLane	70
8/14/7	F 165	Dance Charlie Dance	Stuart Erwin–Jean Muir Glenda Farrell–Allen Jenkins	64
8/14/7	W 130	The Devil's Saddle Legion (X)	Dick Foran–Anne Nagel	
8/21/7	F 159	Mr. Dodd Takes The Air	Kenny Baker–Frank McHugh Jane Wyman–Alice Brady– Henry O'Neill	

National Release Date	Release No.	Production	Cast	Run Time Mins.
8/21/37	W 123	Footloose Heiress	Ann Sheridan–Craig Reynolds Anne Nagel–Teddy Hart	
8/28/7	F 158	Confession	Kay Francis–Basil Rathbone Ian Hunter–Robert Barrat	
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9/7/35	W 905	Page Miss Glory (C)	Marion Davies–Pat O'Brien Dick Powell–Mary Astor Frank McHugh–Lyle Talbot Patsy Kelly–Allen Jenkins	92
9/7/35	W 918	Little Big Shot	Robert Armstrong–Glenda Farrell Edward Everett Horton Sybil Jason	72
9/14/35	W 908	Special Agent (C)	Bette Davis–George Brent Ricardo Cortez–Jack LaRue Henry O'Neill	78
9/21/35	F 967	The Goose and the Gander	Kay Francis–George Brent Genevieve Tobin–Ralph Forbes	65
9/28/35	W 919	I Live For Love	Dolores Del Rio–Everett Marshall Guy Kibbee–Allen Jenkins Hobart Cavanaugh	64
10/5/35	F 966	The Case of the Lucky Legs	Warren William–Barton MacLane Geneive Tobin–Patricia Ellis	77
10/12/35	F 952	Shipmates Forever (C)	Dick Powell–Ruby Keeler Lewis Stone–Ross Alexander Eddie Acuff–Dick Foran John Arledge	109
10/19/35	W 909	Dr. Socrates	Paul Muni–Ann Dvorak Barton MacLane–Robert Barrat	70
10/26/35	W 920	Personal Maid's Secret	Warren Hull–Margaret Lindsay Ruth Donnelly–Anita Louise	58
11/2/35	W 928	Moonlight on the Prairie (X)	Dick Foran–Sheila Mannors George E. Stone–Robert Barrat	63
11/9/35	F 968	The Payoff	James Dunn–Claire Dodd Patricia Ellis–Alan Dinehart	64
11/16/35	F 958	I Found Stella Parish	Kay Francis–Ian Hunter Sybil Jason–Paul Lukas Barton MacLane–Eddie Acuff	84
11/23/35	W 917	Stars Over Broadway	Pat O'Brien–James Melton Jane Froman–Jean Muir Frank McHugh	89
11/30/35	W 907	Frisco Kid	James Cagney–Margaret Lindsay Ricardo Cortez–Lili Damita	77
12/7/35	F 963	Broadway Hostess	Wini Shaw–Phil Regan Genevieve Tobin–Lyle Talbot Allen Jenkins	69
12/14/35	W 916	Miss Pacific Fleet	Joan Blondell–Glenda Farrell Hugh Herbert–Warren Hull	66

W: Warner F: First National C: A Cosmopolitan Picture
X: Western *: 1935–36 Release **: Re-Issue

National Release Date	Release No.	Production	Cast	Run. Time Mins.
12/21/35	F 969	Man of Iron	Barton MacLane–Mary Astor John Eldredge	61
12/28/35	F 855	*Captain Blood (C)	Errol Flynn–Olivia de Havilland Lionel Atwill–Basil Rathbone Ross Alexander–Guy Kibbee	119
1/4/36	W 910	Dangerous	Bette Davis–Franchot Tone Margaret Lindsay–Alison Skipworth–John Eldredge–Dick Foran	78
1/11/36	F 970	The Murder of Dr. Harrigan	Kay Linaker–Ricardo Cortez Mary Astor–John Eldredge Joseph Crehan	67
1/18/36	W 922	Freshman Love	Frank McHugh–Patricia Ellis Warren Hull–Joe Cawthorn	67
1/25/36	F 953	Ceiling Zero (C)	James Cagney–Pat O'Brien June Travis–Stuart Erwin Barton MacLane	95
2/1/36	W 921	The Widow From Monte Carlo	Warren William–Dolores Del Rio Louise Fazenda–Colin Clive	60
2/8/36	W 904	The Petrified Forest	Leslie Howard–Bette Davis Humphrey Bogart–Genevieve Tobin Dick Foran	83
2/15/36	W 923	Man Hunt	Ricardo Cortez Marguerite Churchill Chas. "Chic" Sale–William Gargan	61
2/22/36	F 956	The Story of Louis Pasteur (C)	Paul Muni–Josephine Hutchinson Anita Louise–Donald Woods	87
2/29/36	F 978	Song of The Saddle (X)	Dick Foran–Alma Lloyd Chas. Middleton–Addison Richards	58
3/7/36	W 915	Boulder Dam	Ross Alexander–Patricia Ellis Lyle Talbot–Henry O'Neill	70
3/14/36	W 914	The Walking Dead	Boris Karloff–Ricardo Cortez Marguerite Churchill	66
3/21/36	W 903	Colleen	Ruby Keeler–Dick Powell Joan Blondell–Jack Oakie Hugh Herbert–Louise Fazenda Paul Draper–Marie Wilson	89
3/28/36	F 964	Road Gang	Donald Woods–Kay Linaker Henry O'Neill–Carlyle Moore, Jr.	62
4/4/36	F 971	Snowed Under	George Brent–Genevieve Tobin Glenda Farrell–Frank McHugh	63
4/11/36	F 954	The Singing Kid	Al Jolson–Wini Shaw–Sybil Jason Edward Everett Horton The Yacht Club Boys Cab Calloway and His Band	84
4/18/36	F 972	Brides Are Like That	Ross Alexander–Anita Louise Kathleen Lockhart–Gene Lockhart	67
4/25/36	W 906	I Married A Doctor	Pat O'Brien–Josephine Hutchinson Ross Alexander–Guy Kibbee	83

National Release Date	Release No.	Production	Cast	Run. Time Mins.
5/2/36	W 929	Treachery Rides the Range (X)	Dick Foran–Paula Stone Monte Blue–Craig Reynolds	56
5/9/36	W 924	Times Square Playboy	Warren William–June Travis Barton MacLane–Gene Lockhart	62
5/16/36	F 973	The Law In Her Hands	Margaret Lindsay–Glenda Farrell Warren Hull–Lyle Talbot	58
5/23/36	F 959	The Golden Arrow	Bette Davis–George Brent Carol Hughes–Henry O'Neill	68
5/30/36	W 911	Sons O' Guns	Joe E. Brown–Joan Blondell Beverly Roberts–Winifred Shaw	79
6/6/36	F 961	Bullets or Ballots	Edw. G. Robinson–Joan Blondell Barton MacLane–Humphrey Bogart Frank McHugh	81
6/13/36	F 974	Murder by an Aristocrat	Lyle Talbot–Marguerite Churchill Claire Dodd–John Eldredge	60
6/20/36	F 955	Hearts Divided (C)	Marion Davies–Dick Powell Charlie Ruggles–Claude Rains Edward E. Horton–Arthur Treacher	70
6/27/36	W 925	The Big Noise	Guy Kibbee–Warren Hull Alma Lloyd–Dick Foran	55
7/4/36	F 951	The White Angel	Kay Francis–Ian Hunter Donald Woods–Henry O'Neill	91
7/11/36	F 977	Two Against The World	Humphrey Bogart–Claire Dodd Henry O'Neill	57
7/18/36	W 926	Hot Money	Ross Alexander–Beverly Roberts Joseph Cawthorn–Paul Graetz	68
7/18/36	F 962	Earthworm Tractors	Joe E. Brown–June Travis Guy Kibbee–Dick Foran Carol Hughes–Gene Lockhart	69
7/25/36	W 913	Public Enemy's Wife	Pat O'Brien–Margaret Lindsay Robert Armstrong–Cesar Romero	69
8/1/36	W 902	The Green Pastures	A Fable by Marc Connelly	93
8/8/36	W 927	Jailbreak	June Travis–Craig Reynolds Barton MacLane	60
8/8/36	W 912	Satan Met A Lady	Bette Davis–Warren William Alison Skipworth–Arthur Treacher	74
8/15/36	F 965	Case of the Velvet Claws	Warren William–Claire Dodd Winifred Shaw	63
8/22/36	F 960	China Clipper	Pat O'Brien–Beverly Roberts Ross Alexander–Humphrey Bogart	
8/22/36	F 975	Love Begins At Twenty	Hugh Herbert–Patricia Ellis Warren Hull–Hobart Cavanaugh	56
8/29/36	W 801	*Anthony Adverse	Frederic March–Olivia de Havilland Anita Louise–Donald Woods Claude Rains–Billy Mauch	139

W: Warner
F: First National
C: A Cosmopolitan Picture
X: Western
*: 1934–35 Release

National Release Date	Release No.	Production	Cast	Run. Time Mins.
9/1/34	W 453	*Dames	Dick Powell–Ruby Keeler Joan Blondell–Zasu Pitts– Guy Kibbee–Hugh Herbert	90
9/8/34	W 821	Desirable	Jean Muir–George Brent Verree Teasdale–John Halliday	68
9/15/34	F 751	*British Agent	Kay Francis–Leslie Howard Irving Pichel–Dorothy Tree Ivan Simpson	81
9/22/34	W 822	The Case of the Howling Dog	Warren William–Mary Astor Helen Trenholme–Allen Jenkins	75
9/29/34	F 862	A Lost Lady	Barbara Stanwyck–Ricardo Cortes Frank Morgan–Lyle Talbot	61
10/6/34	W 830	Big Hearted Herbert	Guy Kibbee–Aline MacMahon Patricia Ellis–Phillip Reed Helen Lowell	60
10/13/34	W 819	Kansas City Princess	Joan Blondell–Glenda Farrell Hugh Herbert–Robert Armstrong	64
10/13/34	W 452	*Madame Du Barry	Dolores del Rio–Reginald Owen Osgood Perkins–Verree Teasdale Victor Jory–Dorothy Tree	77
10/20/34	F 864	6-Day Bike Rider	Joe E. Brown–Maxine Doyle Frank McHugh–Gordon Westcott	69
10/20/34	F 873	I Sell Anything	Pat O'Brien–Ann Dvorak Claire Dodd–Roscoe Karns Hobart Cavanaugh–Harry Tyler– Gus Shy	70
10/27/34	F 854	Happiness Ahead	Dick Powell–Josephine Hutchinson John Halliday–Dorothy Dare Frank McHugh–Allen Jenkins Ruth Donnelly–Russell Hicks	86
11/3/34	W 825	The Firebird	Verree Teasdale–Ricardo Cortez Lionell Atwill–Helen Trenholme	74
11/10/34	W 817	The St. Louis Kid	James Cagney–Patricia Ellis Dorothy Dare–Allen Jenkins Arthur Aylesworth	67
11/17/34	F 872	Gentlemen Are Born	Franchot Tone–Jean Muir– Ann Dvorak–Margaret Lindsay Ross Alexander–Henry O'Neill	74
11/24/34	W 826	I Am A Thief	Mary Astor–Ricardo Cortez Dudley Digges–Irving Pichel Robert Barrat	64
12/1/34	F 752	*Flirtation Walk	Ruby Keeler–Dick Powell Pat O'Brien–Henry O'Neill Ross Alexander	97
12/8/34	F 869	Babbitt	Aline MacMahon–Guy Kibbee Claire Dodd–Maxine Doyle	74
12/15/34	F 877	Murder In The Clouds	Lyle Talbot–Ann Dvorak Gordon Westcott	61

National Release Date	Release No.	Production	Cast	Run Time Mins.
12/15/34	X 881	The Church Mouse	Laura La Plante–Ian Hunter Monty Banks	75
12/22/34	W 811	The Secret Bride	Barbara Stanwyck–Warren William Glenda Farrell–Grant Mitchell Arthur Byron–Douglas Dumbrille	64
12/29/34	W 802	Sweet Adeline	Irene Dunne–Donald Woods Hugh Herbert–Ned Sparks Joseph Cawthorn	87
1/5/35	W 806	Bordertown	Paul Muni–Bette Davis Margaret Lindsay–Eugene Pallette	90
1/12/35	F 876	Maybe It's Love	Gloria Stuart–Ross Alexander Frank McHugh–Helen Lowell	62
1/19/35	W 827	The White Cockatoo	Jean Muir–Ricardo Cortez Ruth Donnelly	73
1/26/35	W 828	The Right To Live	Josephine Hutchinson–George Brent Colin Clive–Peggy Wood Henrietta Crosman	68
2/2/35	F 878	Red Hot Tires	Lyle Talbot–Mary Astor Roscoe Karns–Frankie Darro	61
2/9/35	W 816	Devil Dogs of the Air (C)	James Cagney–Pat O'Brien Margaret Lindsay–Frank McHugh	86
2/16/35	F 863	The Woman In Red	Barbara Stanwyck–Gene Raymond Genevieve Tobin–John Eldredge Dorothy Tree	68
2/23/35	W 805	Sweet Music	Rudy Valee–Ann Dvorak–Ned Sparks Helen Morgan–Robert Armstrong Allen Jenkins–Alice White Rudy Vallee's Connecticut Yankees Frank and Milt Britton Band	95
3/2/35	F 859	Living On Velvet	Kay Francis–Warren William George Brent	80
3/9/35	F 874	While the Patient Slept	Aline MacMahon–Guy Kibbee Lyle Talbot–Patricia Ellis Allen Jenkins	66
3/18/35	F 851	Gold Diggers of 1935	Dick Powell–Adolphe Menjou Gloria Stuart–Alice Brady Glenda Farrell–Frank McHugh Hugh Herbert–Dorothy Dare Winifred Shaw–Ramon and Rosita Dance Team	95
3/23/35	W 823	A Night At The Ritz	William Gargan–Patricia Ellis Allen Jenkins	62
3/30/35	W 829	The Florentine Dagger	Donald Woods–Margaret Lindsay C. Aubrey Smith–Henry O'Neill	69
4/6/35	F 870	Traveling Saleslady	Joan Blondell–William Gargan Ruth Donnelly–Grant Mitchell Hugh Herbert–Glenda Farrell	63
4/13/35	F 879	The Case of the Curious Bride	Warren William–Margaret Lindsay Donald Woods–Claire Dodd	80

National Release Date	Release No.	Production	Cast	Run. Time Mins.
4/20/35	F 853	Go Into Your Dance	Al Jolson–Ruby Keeler Glenda Farrell–Sharon Lynne Patsy Kelly–Benny Rubin–Phil Regan Helen Morgan–Gordon Westcott	97
4/27/35	F 875	Mary Jane's Pa	Aline MacMahon–Guy Kibbee John Arledge	
5/4/35	F 880	G Men	James Cagney–Ann Dvorak Margaret Lindsay–Robert Armstrong Regis Toomey–Harold Huber	85
5/11/35	W 824	Dinky	Jackie Cooper–Mary Astor Roger Pryor–Henry Armetta	65
5/18/35	F 852	Black Fury	Paul Muni–Karen Morley William Gargan	97
5/25/35	F 856	In Caliente	Dolores del Rio–Pat O'Brien Leo Carillo–Edward Everett Horton Glenda Farrell–Phil Regan Winifred Shaw	84
6/1/35	F 858	The Girl From 10th Avenue	Bette Davis–Ian Hunter Colin Clive–Alison Skipworth John Eldredge	69
6/8/35	F 867	Oil For The Lamps of China (C)	Pat O'Brien–Josephine Hutchinson Jean Muir–Lyle Talbot Arthur Byron	97
[illegible]15/35	W 815	Alibi Ike	Joe E. Brown–Olivia de Havilland Ruth Donnelly–Roscoe Karns	72
6/29/35	W 808	Stranded	Kay Francis–George Brent Patricia Ellis–Donald Woods	76
7/6/35	W 818	Going Highbrow	Guy Kibbee–Zasu Pitts Edward Everett Horton	67
7/13/35	W 813	Don't Bet On Blondes	Warren William–Guy Kibbee Claire Dodd–William Gargan	60
7/20/35	W 812	Front Page Woman	Bette Davis–George Brent Roscoe Karns–Winifred Shaw	82
7/27/35	W 804	Broadway Gondolier	Dick Powell–Joan Blondell Adolphe Menjou–Louise Fazenda	98
8/3/35	F 866	The Irish In Us	James Cagney–Pat O'Brien Olivia de Havilland–Frank McHugh Allen Jenkins	
8/17/35	W 820	We're In The Money	Joan Blondell–Glenda Farrell Hugh Herbert–Ross Alexander	
8/24/35	**	Page Miss Glory (C)	Marion Davies–Pat O'Brien Dick Powell–Mary Astor– Frank McHugh–Lyle Talbot Patsy Kelly–Allen Jenkins	
8/31/35	F 865	Broadway Joe (Temp. Title)	Joe E. Brown–Ann Dvorak Patricia Ellis–William Gargan	

W: Warner
F: First National
C: A Cosmopolitan Picture

*: 1933–34 Release.
**: 1935–36 Pre-Release for Special Engagements only.

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National Release Date	Release No.	Production	Cast	Run. Time Mins.
9/2/33	W 450	Gold Diggers of 1933	Warren William–Joan Blondell Ruby Keeler–Dick Powell–Aline MacMahon–Guy Kibbee– Ginger Rogers	96
9/9/33	F 723	*Goodbye Again	Joan Blondell–Warren William Genevieve Tobin	66
9/16/33	F 760	Bureau of Missing Persons	Bette Davis–Pat O'Brien Lewis Stone	74
9/23/33	F 705	*I Loved a Woman	E. G. Robinson–Kay Francis Genevieve Tobin	90
10/7/33	F 775	Wild Boys of the Road	Frankie Darro–Dorothy Coonan Rochelle Hudson–Ann Hovey	68
10/21/33	W 451	Footlight Parade	James Cagney–Joan Blondell Ruby Keeler–Dick Powell Frank McHugh–Guy Kibbee	101
10/28/33	W 457	Ever In My Heart	Barbara Stanwyck–Otto Kruger Ralph Bellamy	68
10/28/33	W 468	Kennel Murder Case	Wm. Powell–Mary Astor Helen Vinson–Ralph Morgan Eugene Pallette	73
11/4/33	W 456	The College Coach	Dick Powell–Pat O'Brien Ann Dvorak–Lyle Talbot	75
11/11/33	F 706	*Female	Ruth Chatterton–George Brent Ruth Donnelly–Laura Hope Crews	60
11/18/33	F 758	Havana Widows	Joan Blondell–Guy Kibbee Ruth Donnelly–Glenda Farrell Frank McHugh–Allen Jenkins	62
11/25/33	F 753	The World Changes	Paul Muni–Aline MacMahon Mary Astor–Donald Cook Margaret Lindsay–Guy Kibbee	93
12/2/33	W 473	From Headquarters	George Brent–Margaret Lindsay Eugene Pallette	63
12/9/33	W 427	*Lady Killer	James Cagney–Mae Clark Leslie Fenton	76
12/16/33	W 269	**Disraeli	George Arliss–Joan Bennett Florence Arliss–Ivan Simpson Anthony Bushell	88
12/23/33	F 729	*Son Of A Sailor	Joe E. Brown–Jean Muir Frank McHugh–Thelma Todd	73
12/23/33	W 469	House on 56th Street	Kay Francis–Ricardo Cortez Gene Raymond–Margaret Lindsay Frank McHugh	68
12/30/33	F 772	Convention City	Joan Blondell–Adolphe Menjou Dick Powell–Mary Astor Guy Kibbee	69
1/6/34	F 776	Big Shakedown	Ricardo Cortez–Bette Davis Charles Farrell	[illegible]4
1/13/34	W 479	Easy To Love	Adolphe Menjou–Mary Astor Genevieve Tobin–Patricia Ellis	61

National Release Date	Release No.	Production	Cast	Run. Time Mins.
1/20/34	F 759	Massacre	Richard Barthelmess–Ann Dvorak Claire Dodd	69
1/20/34	W 458	HI Nellie	Paul Muni–Glenda Farrell Katheryn Sergava	75
1/27/34	F 769	Bedside	Warren William–Jean Muir Allen Jenkins	65
2/3/34	F 773	Dark Hazard	E. G. Robinson–Genevieve Tobin Glenda Farrell	72
2/10/34	F 755	Mandalay	Kay Francis–Lyle Talbot Ricardo Cortez–Warner Oland	65
2/17/34	F 762	Fashions of 1934	Wm. Powell–Bette Davis Frank McHugh–Hugh Herbert	78
2/24/34	W 461	I've God Your Number	Joan Blondell–Glenda Farrell Allen Jenkins–Pat O'Brien	68
3/3/34	W 463	Heat Lightning	Aline MacMahon–Ann Dvorak Preston Foster–Lyle Talbot Glenda Farrell–Frank McHugh Ruth Donnelly	63
3/10/34	F 765	Journal of a Crime	Ruth Chatterton–Adolphe Menjou Claire Dodd	65
3/17/34	W 466	Jimmy The Gent	James Cagney–Bette Davis Allen Jenkins	67
3/24/34	F 750	Wonder Bar	Kay Francis–Al Jolson–Dick Powell Dolores Del Rio–Ricardo Cortez Hal Le Roy–Guy Kibbee Hugh Herbert–Ruth Donnelly Fifi d'Orsay	84
3/31/34	W 467	Gambling Lady	Barbara Stanwyck–Joel McCrea Pat O'Brien–Claire Dodd	66
4/7/34	F 768	Reigstered Nurse	Bebe Daniels–Lyle Talbot John Halliday	62
4/7/34	W 471	Harold Teen (Musical)	Hal Le Roy–Rochelle Hudson Patricia Ellis–Guy Kibbee	66
4/14/34	W 454	As The Earth Turns	Jean Muir–Donald Woods Dorothy Peterson	73
4/21/34	W 460	A Modern Hero	Richard Barthelmess–Jean Muir Marjorie Rambeau–Verree Teasdale	71
4/28/34	W 474	Upperworld	Warren William–Mary Astor Ginger Rogers	72
5/5/34	F 771	A Very Honorable Guy	Joe E. Brown–Alice White Robert Barrat–Alan Dinehart Irene Franklin	62
5/12/34	W 470	Merry Wives of Reno	Margaret Lindsay–Glenda Farrell Donald Woods–Frank McHugh Hugh Herbert–Guy Kibbee Ruth Donnelly	64
5/19/34	W 477	Smarty	Joan Blondell–Warren William Claire Dodd–Edw. Everett Horton	64

National Release Date	Release No.	Production	Cast	Run. Time Mins.
5/26/34	F 754	20 Million Sweethearts	Dick Powell–Ginger Rogers The Four Mills Brothers Ted Fio Rito and Band Pat O'Brien–Allen Jenkins	89
5/26/34	F 767	The Merry Frinks	Aline MacMahon–Guy Kibbee Allen Jenkins–Hugh Herbert	68
6/2/34	F 778	Fog Over Frisco	Donald Woods–Bette Davis Lyle Talbot–Margaret Lindsay	68
6/9/34	W 462	The Key	William Powell–Edna Best Colin Clive–Henry O'Neill	71
6/16/34	W 465	He Was Her Man	James Cagney–Joan Blondell Frank Craven–Harold Huber	70
6/23/34	W 459	Dr. Monica	Kay Francis–Warren William Jean Muir–Verree Teasdale	52
6/30/34	F 761	Circus Clown	Joe E. Brown–Patricia Ellis Gordon Westcott–Tom Dugan	63
7/7/34	W 476	The Personality Kid	Pat O'Brien–Glenda Farrell Claire Dodd–Henry O'Neill	68
7/7/34	F 770	Return of the Terror	Mary Astor–Lyle Talbot John Halliday–Frank McHugh	65
7/14/34	F 777	Side Streets	Aline MacMahon–Paul Kelly Helen Lowell–Ann Dvorak	63
7/14/34	F 779	Midnight Alibi	Richard Barthelmess–Ann Dvorak Helen Lowell–Helen Chandler	59
7/21/34	W 464	Here Comes The Navy	James Cagney–Pat O'Brien Gloria Stuart–Dorothy Tree Frank McHugh	86
7/28/34	W 475	Friends of Mr. Sweeney	Charlie Ruggles–Ann Dvorak Eugene Pallette	68
8/4/34	F 763	Man With Two Faces	Edward G. Robinson–Mary Astor Ricardo Cortez–Louis Calhern	72
8/11/34	W 478	Housewife	Bette Davis–George Brent Ann Dvorak–John Halliday	69
8/18/34 Available for Special Engagements only	W 453	Dames	Dick Powell–Ruby Keeler Joan Blondell–Zasu Pitts Guy Kibbee–Hugh Hubert	
8/25/34	F 764	Dragon Murder Case	Warren William–Margaret Lindsay Lyle Talbot–Eugene Pallette	
9/1/34	W 453	Dames	Dick Powell–Ruby Keeler Joan Blondell–Zasu Pitts Guy Kibbee–Hugh Herbert	
9/8/34	W 819	x Kansas City Princess	Joan Blondell–Glenda Farrell Hugh Herbert–Robert Armstrong	
9/15/34	F 751	British Agent	Kay Francis–Leslie Howard Irving Pichel–Dorothy Tree Ivan Simpson	

W: Warner F: First National *1932–33 Release **Re-Release x 1934–35 Release

Warner Bros.-First National 1932-33 Feature Release Schedule

July 6, 1933

National Release Date	Release No.	Production	Director	Cast	Run Time Mins.
11/5/32	F 724	They Call It Sin	Thornton Freeland	Loretta Young—George Brent—David Manners—Una Merkel	70
11/12/32	W 417	Scarlet Dawn	Wm. Dieterle	Douglas Fairbanks, Jr.—Nancy Carroll—Lilyan Tashman—Guy Kibbee	58
11/19/32	W 402	I Am a Fugitive from a Chain Gang	Mervyn Le Roy	Paul Muni—Glenda Farrell—Sally Blane—Edw. J. McNamara	93
11/26/32	F 727	You Said a Mouthful	Lloyd Bacon	Joe E. Brown—Ginger Rogers—"Farina"—Harry Gribbon	70
12/10/32	F 720	Central Park	John Adolfi	Joan Blondell—Wallace Ford—Guy Kibbee—H. B. Walthall	58
12/17/32	Wx434	Haunted Gold	Tenny Wright	John Wayne—Sheila Terry	58
12/24/32	F 717	Silver Dollar	Alfred E. Green	E. G. Robinson—Bebe Daniels—Aline MacMahon—Robert Warwick	84
12/31/32	F 703	The Match King	Howard Bretherton	Warren William—Lili Damita—Glenda Farrell—Hardie Albright	79
1/7/33	W 430	Lawyer Man	Wm. Dieterle	William Powell—John Blondell—Alan Dinehart—Sheila Terry	68
1/14/33	F 708	Frisco Jenny	Wm. A. Wellman	Ruth Chatterton—James Murray—Louis Calhern—Don Cook	73
1/21/33	F 701	20,000 Years in Sing Sing	Michael Curtiz	Spencer Tracy—Bette Davis—Lyle Talbot—E. J. McNamara	78
1/28/33	W 418	Parachute Jumper	Alfred E. Green	Douglas Fairbanks, Jr.—Bette Davis—Leo Carrillo—Frank McHugh	72
1/28/33	W 424	Hard to Handle	Mervyn Le Roy	James Cagney—Mary Brian—Allen Jenkins	81
2/4/33*	W 358	Ladies They Talk About	Howard Bretherton	Barbara Stanwyck—Preston Foster	69

Warner Bros.-First National 1932-33 Feature Release Schedule

July 6, 1933

National Release Date	Release No.	Production	Director	Cast	Run Time Mins.
4/22/33	F 728	Elmer the Great	Mervyn LeRoy	Joe E. Brown—Patricia Ellis—Frank McHugh—Claire Dodd	74
4/29/33	W 425	Picture Snatcher	Lloyd Bacon	James Cagney—Ralph Bellamy—Patricia Ellis—Alice White	77
5/6/33	W 411	The Working Man	John Adolfi	George Arliss—Bette Davis—Hardie Albright	77
5/13/33	F 709	Lilly Turner	Wm. A. Wellman	Ruth Chatterton—George Brent—Frank McHugh—Guy Kibbee	65
5/10/33	F 718	The Little Giant	Roy Del Ruth	Edward G. Robinson—Mary Astor—Helen Vinson	75
5/10/33	Wx435	Somewhere in Sonora	Mack V. Wright	John Wayne—Shirley Palmer—H. B. Walthall	57
5/27/33 Available special engagements only.	W 450 ***	Gold Diggers of 1933	Mervyn LeRoy	Warren William—Joan Blondell—Ruby Keeler—Dick Powell—Aline MacMahon—Guy Kibbee—Ginger Rogers	98
6/3/33	W 419	The Life of Jimmy Dolan	Archie Mayo	Douglas Fairbanks, Jr.—Loretta Young—Aline MacMahon—Guy Kibbee—Lyle Talbot—Fifi Dorsay	89
6/10/33	W 416	The Silk Express	Ray Enright	Neil Hamilton—Sheila Terry—Allen Jenkins	61
6/10/33	W 423	Private Detective, 62	Michael Curtiz	William Powell—Margaret Lindsay—Ruth Donnelly	67
6/17/33	F 715	Heroes for Sale	Wm. A. Wellman	Richard Barthelmess—Loretta Young—Aline MacMahon.	73
6/24/33	W 426	The Mayor of Hell	Archie Mayo	James Cagney—Madge Evans—Allen Jenkins—Frankie Darro	90
7/1/33	W 407	Baby Face	Alf. E. Green	Barbara Stanwyck—Geo. Brent—Donald Cook	70
7/8/33	W 420	Narrow Corner	Alf. E. Green	D. Fairbanks, Jr.—Patr. Ellis—Ralph Bellamy—Dudley Digges	71
7/15/33	F 726	She Had to Say Yes	Bus. Berkeley—Geo. Amy	Loretta Young—Lyle Talbot—Regis Toomey—Winnie Lightner	64
7/22/33	Wx436	Man from Monterey	Mack V. Wright	John Wayne—Ruth Hall	57
7/29/33	W 428	Mary Stevens, M.D.	Lloyd Bacon	Kay Francis—Lyle Talbot—Glen Farrell—Thelma Todd	72
8/5/33	W 406	Voltaire	John Adolfi	George Arliss—Doris Kenyon—Margaret Lindsay	72
8/19/33	W 405	Captured	Roy Del Ruth	Leslie Howard—D. Fairbanks, Jr.—Paul Lukas—Margaret Lindsay	72
9/2/33	W 450 ***	Gold Diggers of 1933	Mervyn LeRoy	Warren William—John Blondell—Ruby Keeler—Dick Powell—Aline MacMahon—Guy Kibbee—Ginger Rogers	98
9/9/33	F 723	Goodbye Again	Michael Curtiz	John Blondell—Warren William—Genevieve Tobin	66

"W"—Warner
"Wx"—Western
"***"—1933-34 Release
"F"—First National
"*"—1931-32 Release

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Warner Bros.-First National 1932-33 Feature Release Schedule

July 6, 1933

National Release Date	Release No.	Production	Director	Cast	Run Time Mins.
8/27/32	Wx431	Ride Him Cowboy	Fred Allen	John Wayne—Ruth Hall—H. B. Walthall—Harry Gribbon	56
9/20/32	W 401	Blessed Event	Roy Del Ruth	Lee Tracy—Mary Brian—Dick Powell—Ruth Donnelly—Allen Jenkins	84
9/17/32	W 410	A Successful Calamity	John Adolfi	George Arliss—Mary Astor—Evalyn Knapp—David Torrence	72
9/24/32	F 716	Tiger Shark	Howard Hawks	E. G. Robinson—Zita Johann—Richard Arlen—J. Carroll Naish	79
10/1/32	F 702	Life Begins	James Flood & Elliott Nugent	Loretta Young—Eric Linden—Aline MacMahon Frank McHugh—Vivienne Osborn—Glenda Farrell	72
10/8/32	Wx432	The Big Stampede	Tenny Wright	John Wayne—Mae Madison—Noah Beery—Junior Bailey	54
10/8/32	F 707	The Crash	Wm. Dieterle	Ruth Chatterton—George Brent—Lois Wilson—Richard Tucker	58
10/15/32	F 713	Cabin in the Cotton	Michael Curtiz	Richard Barthelmess—Dorothy Jordan—Bette Davis—H. B. Walthall	79
10/22/32	W 421	One Way Passage	Tay Garnett	William Powell—Kay Francis—Frank McHugh—Aline MacMahon	69
10/29/32	F 721	Three on a Match	Mervyn Le Roy	Joan Blondell—Warren William—Ann Dvorak—Bette Davis—Lyle Talbot	64

2/11/33	F 711	Employees' Entrance	Roy Del Ruth	Warren William—Loretta Young—Wallace Ford—Alice White	75
2/18/33	W 404	Wax Museum	Michael Curtiz	Lionel Atwill—Glenda Farrell—Fay Wray—Frank McHugh	78
2/25/33	F 722	Blondie Johnson	Ray Enright	John Blondell—Chester Morris—Claire Dodd—Allen Jenkins	6
2/25/33	W 412	King's Vacation	John Adolfi	George Arliss—Patricia Ellis— Dick Powell—Dudley Digges	62
3/4/33	W 415	Girl Missing	Robert Florey	Ben Lyon—Glenda Farrell—Mary Brian—Guy Kibbee	69
3/11/33	W 403	Forty Second Street	Lloyd Bacon	Warner Baxter—George Brent—Ginger Bogers—Bebe Daniels—Ruby Keeler (Mrs. Al Jolson)—Una Merkel—Dick Powell—Guy Kibbee—George E. Stone	89
3/18/33	F 725	Grand Slam	Wm. Dieterle	Paul Lukas—Loretta Young—Frank McHugh—Glenda Farrell	67
3/18/33	Wx433	Telegraph Hill	Tenny Wright	John Wayne—Marceline Day—Frank McHugh	55
3/25/33	W 422	The Keyhole	Michael Curtiz	Kay Francis—George Brent—Glenda Farrell	69
4/1/33	[illegible]2	The Mind Reader	Roy Del Ruth	Warren William—Constance Cummings—Allen Jenkins	70
4/8/33	W 438	Untamed Africa	W. D. Hubbard	Thrilling African Adventure Special—Wild Animals—Native Life—Jungle Fights	56
4/8/33	W 409	Ex-Lady	Robert Florey	Bette Davis—Claire Dodd—Frank McHugh—Gene Raymond	67
4/15/33	F 714	Central Airport	Wm. A. Wellman	Richard Barthelmess—Sally Eilers—Tom Brown	75

Warner Bros.-First National 1931-32 Feature Release Schedule
October 1, 1932

National Release Date	Release No.	Production	Director	Cast	Run. Time Mins.
8/22/31	W 372	The Star Witness	Wm. A. Wellman	Walter Huston—Chic Sale—Dickie Moore—Ralph Ince—Sally Blane—Frances Starr	68
8/29/31	F 651	Last Flight	W. Dieterle	R. Barthelmess—Helen Chandler—John Mack Brown	76
9/5/31	F 679	The Bargain	Robt. Milton	Lewis Stone—Doris Kenyon—Chas. Butterworth—Evalyn Knapp	70
9/12/31	F 660	I Like Your Nerve	Wm. McGann	Doug. Fairbanks, Jr.—Loretta Young—Boris Karloff	70
9/12/31	W 362	Alexander Hamilton	John Adolphi	George Arliss—Doris Kenyon—Dudley Digges—June Collyer	71
9/19/31	W 376	Side Show	Roy Del Ruth	Winnie Lightner—Donald Cook—Chas. Butterworth—Evalyn Knapp—Guy Kibbee	66
9/26/31	F 680	Five Star Final	Mervyn LeRoy	E. G. Robinson—Marian Marsh—Frances Starr—H. B. Warner—Ona Munson—Geo. E. Stone	89
10/3/31	F 653	Penrod & Sam	Wm. Beaudine	Leon Janney—Junior Coghlan—Matt Moore—Dorothy Peterson—Zasu Pitts	71
10/10/31	W 352	Road to Singapore	Alfred E. Green	William Powell—Doris Kenyon—Marian Marsh	70
10/17/31	F 665	Honor of the Family	Lloyd Bacon	Bebe Daniels—Warren William—Alan Mowbray—Frederick Kerr	66
10/24/31	W 374	Expensive Women	Hobart Henley	Dolores Costello—Warren William—Anthony Bushell—H. B. Warner—Joe Donahue	63

10/31/31	F 664	Ruling Voice	Rowland V. Lee	Walter Huston—Loretta Young—Doris Kenyon—David Manners—John Halliday—Dudley Digges	73
11/7/31	W 351	Mad Genius	Michael Curtiz	John Barrymore—Marian Marsh—Donald Cook—Carmel Meyers—Chas. Butterworth—B. Karloff	80
11/14/31	W 366	Blonde Crazy	Roy Del Ruth	James Cagney—Joan Blondell—Noel Francis—Guy Kibbee	77
11/28/31	F 670	Local Boy Makes Good	Mervyn LeRoy	Joe E. Brown—Dorothy Lee—Ruth Hall	68
12/5/31	F 668	Compromised	John Adolphi	Ben Lyon—Rose Hobart—Juliette Compton—Claude Gillingwater	65
12/12/31	F 678	Safe in Hell	Wm. A. Wellman	Dorothy Mackaill—Donald Cook—Ralf Harolde	75
12/26/31	F 658	Her Majesty Love	W. Dieterle	Marilyn Miller—Ben Lyon—W. C. Fields—Leon Errol—Ford Sterling	76
1/2/32	W 360	Under Eighteen	Archie Mayo	Marian Marsh—Warren William—Anita Page—Norman Foster	81
1/9/32	F 685	Woman from Monte Carlo	Michael Curtiz	Lil Dagover—Walter Huston—Warren William—John Wray—Robt. Warwick—Geo. E. Stone	58
1/16/32	W 378	Manhattan Parade	Lloyd Bacon	Winnie Lightner—Dickie Moore—Chas. Butterworth—Smith & Dale	77
1/23/32	W 382	Taxi	Roy Del Ruth	Jas. Cagney—Loretta Young—Geo. E. Stone—Guy Kibbee	68
1/30/32	F 662	Union Depot	Alfred E. Grun	L. Fairbanks Jr.—Joan Blondell—Guy Kibbee—Lillian Bond	68
1/30/32	W 354	High Pressure	Mervyn LeRoy	Wm. Powell—Evelyn Brent—George Sidney—Evalyn Knapp—John Wray—Guy Kibbee	74

Warner Bros.-First National 1931-32 Feature Release Schedule

October 1, 1932

National Release Date	Release No.	Production	Director	Cast	Run. Time Mins.
2/6/32	F 681	Hatchet Man	Wm. A. Wellman	E. G. Robinson—Loretta Young—Dudley Digges—Leslie Fenton—Edmund Breese	74
2/20/32	W 363	Man Who Played God	John Adolphi	George Arliss—Violet Heming—Bette Davis	83
2/27/32	F 672	Fireman Save My Child	Lloyd Bacon	Joe E. Brown—Evalyn Knapp—Guy Kibbee—Lillian Bond	67
3/5/32	W 385	The Expert	Archie Mayo	Chic Sale—Dickie Moore—Lois Wilson	69
3/12/32	W 377	Play Girl	Ray Enright	Loretta Young—Winnie Lightner—Norman Foster—Guy Kibbee	61
3/26/32	W 355	Heart of New York	Mervyn LeRoy	Smith & Dale—Geo. Sidney—Ruth Hall—Donald Cook	74
3/26/82	F 652	Alias the Doctor	Michael Curtiz	Richard Barthelmess—Marian Marsh—Norman Foster	62
4/2/32	F 663	It's Tough to Be Famous	A. E. Green	Douglas Fairbanks, Jr.—Mary Brian—Lilian Bond	79
4/9/32	W 380	Beauty & Boss	Roy Del Ruth	Marian Marsh—David Manners—Warren William—Lilian Bond—Chas. Butterworth	66
4/16/32	Wx390	Crowd Roars	Howard Hawks	James Cagney—Ann Dvorak—Joan Blondell—Eric Linden—Guy Kibbee	84
4/23/32	W 369	Man Wanted	Wm. Dieterle	Kay Francis—David Manners—Guy Kibbee	63
4/30/32	W 359	So Big	Wm. A. Wellman	Barbara Stanwyck—George Brent—Dickie Moore—Guy Kibbee—Bette Davis	82

Warner Bros.-First National 1931-32 Feature Release Schedule

October 1, 1932

National Release Date	Release No.	Production	Director	Cast	Run. Time Min.
8/6/32	W 361	Stranger in Town	Erle C. Kenton	Chic Sale—Ann Dvorak—David Manners—Noah Beery	66
8/13/32	W 353	Jewel Robbery	Wm. Dieterle	William Powell—Kay Francis	68
8/20/32	F 659	Crocner	Lloyd Bacon	David Manners—Ann Dvorak—Ken Murray—Guy Kibbee	68
8/27/32	F 654	Doctor X	Michael Curtiz	Lionel Atwill—Fay Wray—Preston Foster—Lee Tracy—John Wray	77
9/3/32	W 381	Two Against the World	Archie Mayo	Constance Bennett—Ne[illegible] Hamilton—Helen Vinson—Gavin Gordon	71
9/10/32	W 356	Big City Blues	Mervyn LeRoy	John Blondell—Eric Linden—Guy Kibbee—Grant Mitchell—Evalyn Knapp	63
12/10/32	W 358	Women in Prison		Barbara Stanwyck	

[fol. 6306] EXHIBIT 648

AGREEMENT

This agreement made and entered into this 28th day of February, 1939, by and between Schine Medina Corporation, a corporation duly organized and existing under and by virtue of the laws of the State of Ohio, hereinafter called "Schine", party of the first part, and The Medina Temple Theatre Company, an Ohio corporation, hereinafter called "Fine", party of the second part,

WITNESSETH

Schine is the ~~operator~~ and lessee of a certain theatre in the City of Medina, known as the "Princess" Theatre, under a lease and certain amendments thereto, copies of which are annexed hereto, made a part hereof, and marked Exhibit "A":

Fine is the operator and lessee of a certain theatre located in the City of Medina, Ohio, known as "The Medina Temple Theatre" under a lease, a copy of which is annexed hereto, made a part hereof, and marked exhibit "B".

The parties hereto believe that a more efficient, economic and beneficial operation of the aforesaid theatres would be obtained under the joint cooperative efforts of the parties hereto and are therefore desirous of associating themselves in the manner and the extent hereinafter set forth in the conduct and operation of the aforesaid theatres in the said City of Medina.

Now, therefore, in consideration of the premises and of the mutual covenants, policies and agreements herein set forth, the parties hereto hereby agree as follows:

First. Within ten (10) days after the execution hereof, Schine and Fine agree that they will cause to be formed under the laws of the State of Ohio, a corporation under the name of "Medina-Princess Corporation", such corporation to be hereinafter referred to as the New Corporation. Such corporation shall have an authorized capital stock [fol. 6307] of One Hundred (100) shares without nominal or par value, of which fifty (50) shares shall be known and designated as Class A Stock, and fifty (50) shares shall be known and designated as Class B Stock. The said fifty (50) shares of Class A stock of the New Corporation shall be subscribed for and purchased by Schine or its designees in the manner hereinafter described, and the said fifty (50) shares of Class B Stock of the New Corporation shall be subscribed for and purchased by Fine or its designees in the manner hereinafter described.

Second. Copies of the proposed Certificate of Incorporation and By-Laws of said New Corporation are annexed hereto, made a part hereof and marked Exhibit C-1 and Exhibit C-2 respectively, but it is in any event agreed with respect to such New Corporation as follows:

(a) The Certificate of Incorporation and By-Laws of the New Corporation shall provide that the holders of Class A Stock shall always have the right to nominate and vote separately and exclusively for one-half (½) of the Board of Directors, and the holders of the Class B Stock shall always have the right to nominate and vote separately and exclusively for the other one-half (½) of the Board of Directors.

(b) The By-Laws shall provide that no salaries or any other compensation are to be paid to any officers of the New Corporation as such, and that except for the election of directors as aforesaid each share of stock shall be equal in all respects to each and every other share of stock, irrespective of class.

(c) The Board of Directors of the New Corporation shall consist of four (4) members and not more unless mutually agreed upon by the holders of the outstanding respective classification of stock. The Certificate of Incorporation and/or By-Laws of the New Corporation shall provide that the presence of a majority of the entire [fol. 6308] Board of Directors shall be necessary to constitute a quorum at any meeting of the Board, and that the affirmative vote of at least one (1) Class A Director and at least one (1) Class B Director and a majority of the whole Board shall always be necessary to determine any question, take any action or pass any resolution by the Board.

A

(d) The By-Laws of the New Corporation shall provide that at each meeting of the stockholders the presence in person or by proxy of the holder of majority in number of the issued and outstanding shares of Class A Stock and a majority in number of the issued and outstanding shares of the Class B Stock shall be necessary to constitute a quorum for the transaction of any business, and that the affirmative vote of the holders of a majority in number of the issued and outstanding shares of each class of stock shall be necessary to adopt any resolution, carry any motion or take any corporate action which requires a stockholder's vote, except, however, actions in connection with the election of directors or the filling of vacancies in the Board of Directors, in which case the respective holders of stock shall vote separately, and that for such voting purposes the Class A Stockholders may vote separately for the election of Class A Directors without the presence of Class B Stockholders, and the Class B Stockholders may vote separately for the election of Class B Directors without the presence of Class A Stockholders.

(e) The By-Laws and Regulations of said New Corporation shall provide that it shall not be necessary for any person to be a stockholder of the corporation, in order to qualify as a director, and further that it shall not be necessary for any person to be a stockholder of the corporation in order to qualify as an officer.

Third. Schine covenants and agrees that the two (2) [fol. 6309] directors elected by the Class A stock will always vote for two (2) officers designated by Fine, and Fine covenants and agrees that the two directors elected by the Class B stock will always vote for two (2) officers designated by Schine. The two (2) officers which Schine shall be entitled to designate shall be the President and Treasurer, and the two (2) officers designated by Fine shall always be the Vice-President and Secretary. The Board of Directors may at any time or from time to time elect such other officers as it may deem necessary or proper.

Fourth. Schine agrees that upon the organization of the New Corporation it will subscribe for fifty (50) shares of Class A capital stock thereof and pay for the same by assigning or transferring, or causing to be assigned and transferred to the new Corporation, the lease upon the Princess Theatre, a copy of which is annexed hereto, made a part hereof and marked Exhibit A, together with all furniture, fixtures, equipment and other personal property now contained in said theatre, now owned by said lessee.

5/7/32	W 375	The Mouthpiece	James Flood & Elliott Nugent	Warren William—Sidney Fox—Ralph Ince—Guy Kibbee	86
5/14/32	F 655	Famous Ferguson Case	Lloyd Bacon	John Blondell—Leslie Fenton—Vivienne Osborne—Grant Mitchell	74
5/21/32	FX690	Rich Are Always With Us	A. E. Green	Ruth Chatterton—George Brent—Bette Davis—John Miljan—Robert Warwick	71
5/28/32	F 674	Strange Love of Molly Louvain	Michael Curtiz	Ann Dvorak—Lee Tracy—Richard Cromwell—Guy Kibbee—Evalyn Knapp	74
6/4/32	F 682	Two Seconds	Mervyn LeRoy	Edward G. Robinson—Preston Foster—Vivienne Osborne—Guy Kibbee	68
6/11/32	W 368	Street of Women	Archie Mayo	Kay Francis—Roland Young	60
6/18/32	F 671	The Tenderfoot	Ray Enright	Joe E. Brown—Ginger Rogers—Lew Cody—Ralph Ince	70
6/25/32	F 661	Love Is a Racket	Wm. A. Wellman	Douglas Fairbanks, Jr.—Ann Dvorak—Frances Dee—Lee Tracy	72
7/2/32	F 669	Dark Horse	A. E. Green	Warren William—Bette Davis—Guy Kibbee—Vivienne Osborne—Robert Warwick	75
7/9/32	F 673	Week-End Marriage	Thornton Freeland	Loretta Young—Norman Foster—George Brent—Aline MacMahon—Vivienne Osborne	66
7/16/32	W 364	Winner Take All	Roy Del Ruth	James Cagney—Marion Nixon—Guy Kibbee—Dickie Moore	67
7/23/32	W 357	The Purchase Price	Wm. A. Wellman	Barbara Stanwyck—George Brent—Hardie Albright	68
7/30/32	F 676	Miss Pinkerton	Lloyd Bacon	Joan Blondell—George Brent—John Wray	66
8/6/32	F 683	Illegal	William McGann	Isobel Elsom—Ivor Barnard—Margot Grahame—D. A. Clarke-Smith	72

Schine shall secure an extension of said Princess Theatre lease to correspond with the termination of The Medina Temple Theatre lease, to-wit: December 31, 1963.

Fifth. Fine agrees that upon the organization of the New Corporation it will subscribe for fifty (50) shares of Class B capital stock thereof and pay for the same by assigning or transferring, or causing to be assigned and transferred to the New Corporation, the lease upon the Medina Temple Theatre, a copy of which is annexed hereto, made a part hereof and marked Exhibit B, together with all furniture, fixtures, equipment and other personal property now contained in said theatre, now owned by said lessee. Said lease shall be for a term expiring December 31, 1963.

It is understood that the New Corporation will get the benefit of any reductions in rental or any allowances on account of rent either under the lease set forth in paragraph (Fourth) above or the lease set forth in the within paragraph.

[fol. 6310] Sixth. Each of the parties agrees that upon the assignment of the respective leases above mentioned to the New Corporation they will be free and clear of any and all claims, charges or encumbrances of any and every nature whatsoever, and that all equipment contained in the respective theatres will either be owned outright by the respective lessees, the assignors of said leases, or by the respective landlords of said theatres, so that the New Corporation will under no circumstances be in any way obligated to pay any moneys or incur any expense in respect of past due charges upon the said leases or in respect of unpaid installments, past or future, upon the said furniture, fixtures and equipment.

It is especially understood, however, that the equipment and chattels contained in the Medina Temple Theatre are subject to a chattel mortgage in favor of the lessor of said lease to secure the faithful performance of the terms and conditions thereof, as is set forth on page 4 of said Medina Temple Theatre lease, and said chattels and equipment shall be accepted only subject to said chattel mortgage, given as security for the faithful performance of said lease; otherwise, said equipment and chattels shall be delivered to the New Corporation free and clear of any liens of claims.

Seventh: The parties hereto agree that the New Corporation shall employ and engage Schine, or its nominee, to manage and operate the said two (2) theatres, or any additional theatres which may hereafter be acquired by this corporation in the City of Medina. Such management and operation shall include and consist of buying and booking of all motion pictures and other attractions for said theatres, the hiring and discharging of all personnel, the keeping of all books of record and accounts, and the general supervision of the operation of the said theatres, subject to the following rights of Fine in said management:

(a) Fine shall have an equal voice as to any future improvements in connection with said theatres, provided [fol. 6311] said improvements shall cost more than Five Hundred Dollars ($500.00).

(b) Fine shall have an equal voice with respect to material changes in policy of said theatres in the future.

(c) It is understood that Schine at the present time is under contract with Ben Yudelevtiz to act as local manager of the Princess Theatre at a compensation of $50.00 per week, and it is agreeable with Fine that said local manager continue at said salary provided that said compensation of Fifty Dollars ($50.00) per week shall include compensation for the management of both the Princess and the Medina Temple Theatres.

Eighth. Fine shall consult and advise with Schine with respect to the management of said theatres, but shall not in any way interfere with the full and complete operation thereof by Schine, except as is more fully set forth in paragraph (Seventh) herein.

Ninth. All rentals and other charges in connection with the operation of the said theatres shall be paid by the New Corporation, and neither party hereto shall be in any way liable or responsible for any expense in connection with the operation thereof.

Tenth. As full payment and compensation for the services to be rendered by Schine hereunder, the New Corporation shall pay to Schine, or its nominee, the sum of Forty Dollars ($40.00) per week, which shall be considered as an expense of said theatres, plus one-half (½) of the first

Three Thousand Dollars ($3,000) profits derived by the New Corporation after payment of all expenses, including the said Forty Dollars ($40.00) per week.

As full payment and compensation to Fine for his services in advising and assisting Schine in the operation of said theatres, the New Corporation shall pay to Fine one-half (½) of the First Three Thousand Dollars ($3,000.00) profits derived by the New Corporation from its operation, after payment of all expenses, including the said Forty [fol. 6312] Dollars ($40.00) per week payable to Schine, plus the next Fifteen Hundred Dollars ($1500.00) of profits derived by the New Corporation, as aforesaid. It being understood that "the next Fifteen Hundred Dollars ($1500.00) of profits" to be paid to Fine, as set forth and referred to in this paragraph, shall be computed, determined and ascertained on an annual basis only; that is to say, such profit, if any, shall be determined each year and on a yearly basis and if the full sum of Fifteen Hundred Dollars ($1500.00) as referred to herein is not earned or available out of the profits in any one year, only the actual amount available, determined and ascertained on this basis shall be paid to Fine, and any loss or deficit sustained in any one year, shall not be carried over to the next or succeeding year.

It being further understood that said Fifteen Hundred Dollars ($1500.00) payments to Fine shall not be cumulative, but shall be annual figures and computed yearly, to-wit: from January 1st to December 31st, except during the first year of the operation of the New Corporation, in accordance with this agreement, said computation shall commence as of the effective date of operation to December 31, 1939.

It is understood between the parties that "the next Fifteen Hundred Dollars ($1500.00) of profits" derived or earned by the New Corporation, as set forth in the preceding paragraph, shall only continue to be paid to Fine until the investment of Fine in the Medina Theatre, represented by Fine as the sum of Fifty-three Thousand Two Hundred Fifty-three Dollars and Fifty-six Cents ($53,253.56) has been paid in full, and any and all payments of said "next Fifteen Hundred Dollars ($1500.00) of profit," shall be applied directly against said account, and after payment of said sum of $53,253.56 from this source, thereafter all profits earned by said New Corporation shall be equally divided between Schine and Fine, it being further expressly understood that the aforesaid amount of $53,253.56 is the result of an audit by Fine, and Schine shall have the right [fol. 6313] and privilege to recheck or verify said audit, and in the event any discrepancies are found, said amount shall accordingly be changed.

Eleventh. After payment of the above sums, the profits derived by the New Corporation from the operation of said theatres shall be divided equally between the Class A and Class B stockholders in such manner as the Board of Directors may determine.

Twelfth. The New Corporation shall have two (2) bank accounts, opened pursuant to appropriate resolutions of its Board of Directors, one of which shall be a general account of the deposit of funds of the New Corporation, which account shall be subject to checks or drafts drawn and signed by two (2) persons who shall be designated by the Board of Directors of the New Corporation. The other account shall be an operating account, in which a balance of at least One Thousand Dollars ($1,000) but not more than Two Thousand Dollars ($2,000) shall always be maintained. Such account shall be subject to checks drawn by any person or persons designated by Schine, said accounts to be originally opened at The Old Phoenix National Bank of Medina, Ohio, subject to subsequent change by the Board of Directors.

Thirteenth. The New Corporation shall furnish Schine and Fine respectively weekly, monthly and annual statements of its business and of the theatres operated by it, and the books of account shall at all reasonable times be subject to audit by the holders of either class of stock, at the expense of the party auditing such books.

Fourteenth. It is understood and agreed that during the terms of the respective leases above mentioned neither the holders of the Class A stock nor the holders of the Class B stock of the New Corporation shall sell or otherwise dispose of, in any manner, the shares of capital stock owned by them in the New Corporation without first offering same for sale to the holders of the other class of stock upon the same terms and conditions as those upon which such party proposes to sell the same to a bona fide purchaser.
[fol. 6314] The foregoing, however, is subject to the right of the holders of Class A stock to sell or transfer said stock

among themselves prior to any offering to the Class B stockholders of said stock, and, likewise, the Class B stockholders shall have the prior right to sell or assign their respective stock among the holders thereof prior to the offering of said stock to the Class A stockholders. It being the intention of this clause to allow each class of stockholders to deal in said stock among themselves, but in the event they offer same to any outside or third parties the provisions of this paragraph shall apply.

Fifteenth. Any pledge, hypothecation or other encumbrance of any stock of the New Corporation shall be subject to the terms hereof with respect to sale and transfer.

All certificates of stock of the New Corporation shall bear an appropriate legend thereon setting forth the above restrictions.

Sixteenth. The parties hereto mutually agree to share equally any and all costs and expenses in connection with the incorporation and qualification of the New Corporation, excepting, however, that each party shall pay its own attorneys fees.

Seventeenth. It is understood and agreed by and between the parties hereto that during the term of the respective leases above mentioned neither party hereto will, directly or indirectly, acquire any interest of any kind in any motion picture or other theatre in the City of Medina, Ohio, without first giving the New Corporation the opportunity to acquire such interest upon the same terms and conditions as those upon which such party proposes to acquire the same. The New Corporation shall have thirty (30) days after written notice of such offer within which to accept or reject the same, and written notice of such rejection or acceptance shall be given to the party submitting the same within such time. In the event that the Board of Directors of the New [fol. 6315] Corporation shall reject such offer, then the party originally negotiating for the same may proceed to acquire such theatre or theatres upon the same terms and conditions as offered the New Corporation.

It is, of course, agreed that the party submitting any proposition for the acquisition of new or additional theatres as in this Article provided will cause its directors to vote in favor of such acquisition, and if the directors of the party submitting such proportion for the acquisition of new or additional theatres shall fail or refuse to vote to acquire the same, then the party submitting such proposition to the New Corporation shall not have the right, either directly or indirectly, to acquire such new or additional theatre or theatres or any interest therein. The provisions of the within paragraph shall also apply to any renewals of the existing leases, namely: before either party renews its lease upon the respective theatres involved in this transaction, or upon any new theatres which may be acquired, the opportunity should be first offered to the New Corporation in the manner as hereinbefore more fully set forth.

Eighteenth. It is mutually agreed between the parties hereto that the regulations and By-Laws of this corporation shall include the following provisions:

(a) That dissolution of this company may be had upon the agreement of all of the Class A and Class B stockholders.

(b) Otherwise, there can be no dissolution of this corporation until as a condition precedent either class of stockholders give to the other at least one year's notice of their respective intention to dissolve said corporation, and no right to dissolve otherwise shall be recognized without the compliance with the foregoing notice provision.

In the event of dissolution, the corporation shall reassign to the respective parties to this agreement the leases of the respective theatres, together with any modifications [fol. 6316] or supplements to said respective leases, and including equipment contained in said theatres, and shall divide any and all cash on hand and supplies equally, and that otherwise the parties shall be restored to the status existing at the date of the execution of the contract in all respects.

Nineteenth. It is further understood and agreed that in the event the New Corporation should require additional financing, either because of losses in operation or for necessary improvements, or for the acquisition of new property, the respective parties will advance the necessary funds to the New Corporation by way of loans in equal amounts.

As security for the performance of this covenant, each party shall deposit its stock in the New Corporation in escrow with the Old Phoenix National Bank of Medina, Ohio, as Escrow Agent, duly endorsed in blank. If either party shall fail to make any loan in accordance with these provisions, the other party shall have the right to make good the deficit and shall have a lien upon the leases and equipment in respect of such advances. At any time when the advance is made by one party for the account of the other, shall aggregate the sum of Twenty-five Hundred Dollars ($2500), the escrow agent shall, on thirty days written notice to the party in default (unless such $2,500 is paid to the other party within said thirty days), deliver the stock of the New Corporation held by the defaulting party and said defaulting party shall have no further interest in said New Corporation.

It is further understood that in the event that Fine for any reason does not wish to comply with the aforesaid deposit of the stock in escrow to be issued to Fine, then in that event and in lieu thereof Fine shall deliver to the New Corporation a guarantee satisfactory to Schine executed jointly and severally by the individuals to whom said Fine stock shall be distributed, to-wit: M. S. Fine, S. H. Stecker, Abe Kramer, P. E. Essick, J. S. Jossey and Charles G. Deckman, guaranteeing that in the event additional financing is required for the reasons above set forth that said [fol. 6317] individuals jointly and severally agree to provide their respective share of said funds required for said financing.

Twentieth. This agreement shall bind and inure to the benefit of the respective parties hereto, their respective successors and assigns.

In Witness Whereof, the parties hereto have affixed their signatures to duplicates hereof the day and place first above written.

Schine Medina Corporation, by Ben Yudelevitz, Pres., Party of the First Part. The Medina Temple Theatre Company, by M. S. Fine, Pres.; by P. E. Essick, Sec., Party of the Second Part.

Witnesses: Peter E. Klein.
Witnesses: Jane McFarland, Florence Johnston.

[fol. 6318] "Exhibit B"

Indenture of Lease

This indenture of lease made and entered into at Medina, Ohio, this 18th day of January, 1938, by and between The Medina Masonic Temple Company, an Ohio corporation, hereinafter called the Lessor, and the Medina Temple Theatre Company, an Ohio corporation, hereinafter called the Lessee,

Witnesseth:

That the Lessor does hereby let and lease unto the Lessee the theatre, auditorium, lobby and remaining unimproved portion of said premises for parking privileges, of the following described premises:

Parcel Described

Situated in the Village of Medina, County of Medina and State of Ohio; and known as being a part of Lots One Hundred Forty Two (142), One Hundrey Forty-Three (143), One Hundred Forty-four (144), One Hundred Forty-seven (147) and One Hundred Forty-eight (148) on the Medina Township side of said Village, bounded and described as follows: Beginning at a point on the north line of aest Liberty Street, One hundred feet east from the south-west corner of Lot 147; thence north thru lots 147 and 148 a distance of one hundred fifty feet to an iron pin; thence west in lot 148 a distance of One hundred feet to an iron pin set in the east line of North Elmwood Street; thence north along the east line of said street a distance of One Hundred Seven feet to an iron pipe; thence easterly in lots 142 and 143 two hundred sixty-eight and three tenths feet to a post; thence south twenty feet to a post; thence east fourteen feet to an iron pin; thence south in lot 144 Seventy-five feet to an iron pin; thence westerly in lots 144 and 148 a distance of one hundred sixty-five and sixty-six hundredths feet to an iron pin; thence south One Hundred sixty-feet to the north line of Liberty Street; thence west along said street line seventeen feet to the place of beginning, it being the intention of the Lessor and Lessee herein to lease that part of the premises owned by the Lessor which will adequately provide the Lessee with sufficient land to cover entirely that portion of the real estate owned by Lessor upon which there has been constructed a theatre, auditorium, foyer and lobby, which the Lessee, by the terms of this lease, is leasing from said Lessor, and, in the event the foregoing description shall not be sufficient to cover that portion of the real estate upon which said theatre, auditorium, foyer and lobby was constructed, it shall then be the undertaking of the parties hereto that the premises described herein shall include all the premises required for [fol. 6319] said purpose, together with the granting to the Lessee and its patrons the right of ingress and egress to and from said premises by right of way leading south therefrom to West Liberty Street; also the right of ingress, by right of way on the north side of the building, to and from the unimproved portion of said premises used for parking space and to provide a driveway for said purpose, which rights shall not be exclusive, but to be enjoyed in common with the Lessor.

The Lessee shall have the right during the term of this lease to have the lobby extended to West Liberty Street, if it so desires. The Lessee shall also have the right to erect on top of the Masonic Temple Building, or any place on premices facing West Liberty Street, a sign or signs for advertising purposes for its theatre.

It is understood between the Lessor and Lessee herein that in connection with the lighting of the driveway leading into the parking space and the parking space herein leased to the Lessee, there are certain facilities already installed on top of the building and on poles in the parking space for the purpose of illuminating said driveway and parking space, and the Lessee agrees to pay for all current used in connection with said lighting.

To have and to hold unto the Lessee for a period of twenty-five (25) years, commencing on the 1st day of January, 1938, and ending on the 31st day of December, 1963, upon the covenants and agreements herein set forth.

The Lessee hereby covenants and agrees to pay the Lessor as minimum rental for the premises during said term, the sum of Six Thousand Dollars ($6,000.00) per year, for the duration of said lease, payable in monthly installments of Five hundred Dollars ($500.00) each in advance on the first day of each and every month.

[fol. 6320] In addition to the above stipulated minimum rental, the Lessee agrees to pay additional rental to the Lessor, computed on the basis of ten per cent (10%) of the gross receipts in excess of Sixty Thousand Dollars ($60,000.00) per year. "Gross receipts" shall be defined as all income taken in at said theatre from the sale of tickets and admission fees, less refunds and any sums collected for city, county, state or federal tax purposes on admissions, imposed by law.

Determination of additional rental, if any, due in accordance with the terms hereof, shall be computed on an annual basis, and Lessee agrees to furnish semi-annually a written statement of all gross receipts taken in at said theatre, and in the event said statement discloses any excess due Lessor on receipts for said six-month period above the sum of Thirty Thousand Dollars ($30,000.00), said excess shall be paid within thirty (30) days after the completion of each semi-annual accounting period. In the event that it shall be found that there has been any overpayment of said additional rent during any of the above mentioned semi-annual periods, computed on an annual basis, then and in that event said Lessee shall be entitled to deduct any excess rental paid during any annual period from the subsequent minimum monthly rental amounts due under the terms of this lease. The payment of any excess rental due Lessor by reason of the foregoing clauses is hereby modified for a period not to exceed twelve and one-half (12½) years from the commencement of this lease as follows:

That during said period not to exceed twelve and one-half (12½) years from the commencement of this lease, the Lessee's obligation to pay additional rental to the Lessor in the manner above set forth *forth* shall be computed on the basis of five per cent (5%) of the gross receipts in excess of Sixty Thousand Dollars ($60,000.00), and the remaining five per cent (5%) shall be retained by the Lessee until such [fol. 6321] time as the Lessee has been repaid the sum of Twenty Thousand Dollars ($20,000.00, which sum of Twenty Thousand Dollars ($20,000.00) is the agreed amount between the parties hereto that shall be returned to the Lessee under this plan by reason of the fact that the said Lessee has contributed an amount in excess of Twenty Thousand Dollars ($20,000.00) for the benefit of the Lessor in connection with the construction of the theatre auditorium, foyer and lobby herein leased. It being the intentions of the parties hereto that in the event said agreed sum of Twenty Thousand Dollars ($20,000.00) to be repaid to the Lessee out of said division of excess rentals, shall be repaid in this manner to said Lessee prior to twelve and one-half (12½) years from the commencement of this lease, then and in that event the within provision shall terminate immediately upon the repayment of the said sum of Twenty Thousand Dollars ($20,000.00) and thereafter any further amount of excess rental due Lessor shall be paid to Lessor in accordance with the original provisions pertaining to the payment of any excess rental which may be due in accordance with the provisions hereinabove set forth; meaning thereby, that the said Lessor shall then receive the original agreed amount of ten per cent (10%) of the gross receipts in excess of Sixty Thousand Dollars ($60,000.00). It is expressly understood that there shall be no obligation upon the Lessor to repay to the Lessee the aforesaid agreed amount advanced by Lessee for the completion of said building as is herein set forth except insofar as said amount may be repaid by the above division of excess rentals which may be due Lessor from Lessee in accordance with the terms of this lease.

All equipment and furnishings now installed by the Lessee or hereafter installed by Lessee, required for the operation of a modern theatre, shall be free and clear of all liens, except purchase money mortgages, it being further understood that the sound equipment shall be on a lease basis.

It is further understood that after all of said equipment and furnishings installed by Lessee have been fully paid [fol. 6322] for, and the purchase money mortgages thereon have been discharged, then at such time the Lessee agrees to execute and deliver to the Lessor as additional security for the faithfull performances of the terms and conditions of the within lease, a chattel mortgage in favor of the Lessor covering said items of personal property installed or hereafter to be installed by Lessee, and Lessee agrees to execute additional chattel mortgage or mortgages when necessary to cover additional equipment or furnishings which may hereafter be installed by Lessee.

The Lessor agrees to furnish the necessary equipment and facilities to properly heat the demised premises and further agrees to furnish a fireman to operate said heating system, and in consideration thereof, the Lessee agrees to furnish and pay for all fuel used to heat said theatre, together with all fuel used in connection with the heating of the Masonic Temple Building.

Lessee shall pay for all electric current and water used and consumed in the leased premises.

Lessee shall pay all expenses in operating and maintaining the air conditioning and ventilating system installed by the lessor.

Lessee shall maintain at its own expense all inside repairs and decorations, pertaining to said theatre, foyer and lobby.

Lessor shall maintain at its own expense the exterior of said building and premises, containing said theatre, foyer and lobby.

Lessee shall carry at its own expense adequate liability insurance for the benefit of both itself and Lessor in the customary amount carried by theatres of this size, but in any event within the $25,000.00-$50,000.00 limits, and Lessor agrees to carry liability insurance in a similar amount for the remaining portion of said building in which said theatre is situated.

Lessor shall maintain at its own expense sufficient fire and tornado insurance covering said portion of said build- [fol. 6323] ing in an amount sufficient to rebuild said theatre, including foyer and lobby, in case of fire or destruction during the term of said lease and in the event of such a contingency Lessor agrees to promptly rebuild any damaged portion of said theatre and the within lease shall remain in full force and effect except no rent shall be paid by the Lessee during said period and until such time as said theatre has been rebuilt and ready for use and occupancy by the Lessee.

It is understood that there shall be no abatement of rental as long as Lessee is able to operate said theatre.

The Lessee agrees that it will not permit the said premises to be used for any unlawful purpose, or in any way that will injure the reputation of the premises or the building of which they are a part, or disturb the tenants of the building or of the neighborhood, except insofar as the normal operation of a theatre would affect same.

The Lessee further covenants that it will not permit any alterations upon any part of the demised premises without the written consent of the Lessor. All alterations or additions to the said premises shall remain for the benefit of the said Lessor.

The Lessee further covenants that it will deliver up and surrender to the Lessor possession of the premises hereby leased upon the expiration of this lease or its termination in any way in as good condition and repair as the same shall be at the commencement of said term (loss by fire, elements and ordinary wear and tear only excepted.)

The Lessee further covenants and agrees that the Lessor may have free access to the premises at all reasonable times for the purpose of examining the same or to make any alterations or repairs to the building that Lessor may deem necessary for its safety or preservation, provided, however, that such repairs or alterations shall not interfere with the operation of the said theatre.

[fol. 6324] The Lessee further covenants and agrees that the Lessor shall not be liable for any damage occasioned by failure to keep said premises in repair and shall not be liable, after Lessor has put said premises in good condition, for any damage done or occasioned by or from plumbing, gas, water, steam, or other pipes, or sewage or the bursting, leaking or running of any cistern, tank, washstand, water closet or waste pipe in, above, upon or about said building or premises, nor for damage occasioned by water, snow or ice being upon or coming through the roof, skylight, trapdoor or otherwise, unless said damage be caused by negligence of the Lessor or its duly authorized agents or servants, nor for any damage arising from acts or negligence of co-tenants or other occupants of the said building, or any owners or occupants of adjoining or contiguous property, unless notice thereof has been duly served upon Lessor by the Lessee and Lessor fails within reasonable time to correct said situation within its power to remedy.

The Lessee further covenants and agrees that every demand for rent, wherever and whenever made, shall have the same effect as if made at the time it falls due and at the place of payment or on the premises; and after the service of any notice or commencement of any suit, or final judgment therein, Lessor may receive and collect any rent due, and such collection or receipt shall not operate as a waiver of nor affect such notice, suit or judgment. Any notice or summons to be served by or on behalf of Lessor upon Lessee under this lease or in connection with any proceedings or action growing out of this lease, or the tenancy arising therefrom, may be sufficiently served by leaving such notice or summons addressed to the Lessee upon the said demised premises. Any notice to be served upon the Lessor under this lease may be served by sending it to the

Lessor at Medina, Ohio, by registered mail, or to any other [fol. 6325] address given to the Lessee by the Lessor.

The Lessee further covenants and agrees at all times to save harmless the Lessor from all damages that may occur to any person or persons on the demised property, or to the property itself, resulting from any act done by or through the Lessee, and to at all times maintain and occupy the said premises in a safe and careful manner.

The Lessee covenants that it will remove from the premises regularly, at its own cost and expense, all garbage, rubbish and waste material, and shall not permit any offensive odors on said premises, and shall provide proper receptacles for garbage, rubbish and waste material, the location of which shall be at the election of the Lessor; and likewise Lessor covenants that it will not allow any other tenants in the building to create any offensive odors on said premises which may be likely to be drawn in by the ventilating system used in said theatre, or allow other tenants to unduly display merchandise in any manner that will obstruct the entrance to the theatre and shall not allow any of the other tenants in said building to in any manner obstruct the outside area-ways used for exit purposes by said theatre.

If the Lessee shall be in default in the payment of rent or any part thereof, or shall violate any of the covenants or obligations of this lease, the Lessor may at its option terminate this lease by serving thirty (30) days written notice of its intention to so terminate. If the default is not cured within the said thirty-day period, the Lessor may then declare the lease void, and enter into possession of the said premises and sue for and recover any and all damages accrued or accruing under this lease. The Lessor may sue for and recover any sums due under this lease without declaring the lease void or entering into possession of the said premises.

The Lessee shall not assign the within lease without the [fol. 6326] written consent of the Lessor.

The Lessor covenants and agrees that if the Lessee shall perform all the covenants and agreements herein stipulated, the Lessee shall at all times during the said term have the peaceful and quiet enjoyment and possession of said premises without any manner of let or hindrance from Lessor or any person or persons lawfully claiming said premises.

Wherever the words "Lessor" and "Lessee" appear in the within lease, the same shall include the Lessor or Lessee and their successors and assigns.

In witness whereof, the parties have hereunto set their hands to duplicates hereof on the day and year and place first above written.

The Medina Masonic Temple Company by (Signed) Geo. S. Mellert, Pres., C. W. Reinhardt, Sec., Lessor.

The Medina Temple Theatre Company, by (Signed) M. S. Fine, Pres., P. E. Essick, Sec., Lessee.

Signed in the presence of: (Signed) N. S. Kellogg, Arthur VanEft, As to Lessor; J. M. Friedlander, Sara Garmone.

Acknowledgments.

[fol. 6327] Copy

Exhibit 648-A

Lease

This indenture of lease, dated for convenience the *1st* day of April, 1937, but actually executed this *21st* day of July, 1937, by and between the Medina Theatre Corporation of Medina, Ohio, a corporation duly organized and existing under and by virtue of the laws of the State of Ohio (hereinafter designated as the "Lessor") and the Schine Medina Corporation, an Ohio corporation with its principal office and place of business in the City of Cleveland, Ohio, (hereinafter designated the "Lessee").

Witnesseth

That said Lessor does hereby demise, let and lease unto the said Lessee, its successors and assigns, the following described premises, situated in the City of Medina, County of Medina and State of Ohio and known as the Princess Theatre, situated at No. 100 Public Square, and further described as the premises located on the N. E. corner of the Public Square in said village, including the building, fixtures, furniture, curtains, scenery, sound equipment, seats and machinery, together with any and all additional furniture, fixtures, equipment and appliances connected therewith and contained in said theatre heretofore conducted by said Lessor and known as the Princess Theatre of Medina, Ohio; it being the intent of said Lessor to let and lease unto the said Lessee that portion of the building only which is known and designated as the Princess Theatre, together with the basement under said premises, with the privilege of using the areaways appurtenant to the above described premises for ingress and egress purposes, in common with the Lessor, other tenants of the building, and all others who may desire to use same for passage, including ingress and egress purposes.

The Lessor covenants and agrees that it will pay all general and special property taxes levied by the State of Ohio, or any subdivision thereof upon the demised premises, or any part thereof, including all general and special property taxes levied by the State of Ohio, or any subdivision [fol. 6328] thereof upon the demised premises, or any part thereof, including all general and special property taxes levied by the State of Ohio, or any subdivision thereof, upon the furniture and equipment hereinbefore described; that the Lessor shall not be required to pay any special taxes or license fees levied, assessed or imposed by law or ordinance upon the business being conducted by the Lessee therein as a motion picture theatre, and shall hold the Lessor harmless therefrom.

The Lessee shall at its own expense and cost supply the theatre and lobby with the necessary heat, having regard for the purpose for which the premises are to be used; Lessor to furnish all water.

The Lessor covenants, represents, warrants and guarantees that the said theatre at the time the demised premises are delivered to the Lessee as provided herein shall be duly and completely equipped for operation as a motion picture theatre, and that all equipment and personal property therein shall be owned by the Lessor free and clear of any and all liens, claims, charges, mortgages or encumbrances of any and every nature whatsoever. The Lessee may at any time replace any of the equipment contained in the demised premises provided that such replacements shall be equal in quality to the quality and condition of the replaced equipment. All furniture, fixtures or equipment removed by the Lessee shall become the property of the Lessee, and all replacements shall, upon the termination of this lease, become the property of the Lessor. Any furniture, fixtures or equipment installed by the Lessee as additional furniture, fixtures and equipment not in the nature of replacements shall at all times remain the property of the Lessee, and may be removed by it from the demised premises at any time.

To Have and to Hold the above described premises with all the rights, privileges, easements and appurtenances thereunto belonging and attaching, unto the Lessee for a term of twenty (20) years, commencing at 12 o'clock, midnight on the 1st day of September, 1937, on which date absolute and complete legal possession of the motion picture theatre in the said building shall be delivered to the Lessee ready for use and operation as a motion picture theatre, in accordance with the provisions hereof.

[fol. 6329] Yielding and paying therefor, during the term aforesaid, the yearly rental of Thirty-six Hundred ($3600) Dollars, payable in equal monthly installments of Three Hundred ($300) Dollars each, in advance, on the 1st day of each and every month of the term hereof, at the office of the Lessor herein.

And the said Lessee, for itself, its successors and assigns, does hereby covenant and agree with said Lessor as follows:

A. That the said Lessee shall indemnify and save harmless the Lessor from and against all loss, liability or damage for injuries to persons or property sustained on said premises and from all loss liability or damage by reason of the operation of said theatre by the said Lessee.

B. That the Lessee will neither do nor permit any act or thing which may increase the fire hazard or insurance rates on said building.

C. That said Lessee shall at its own expense, make all interior repairs to said theatre and that it will indemnify and save harmless the Lessor from and against all liens, claims or damages by reason of any repairs or improvements which may be made by said Lessee on said premises, except the alterations and changes as hereinafter set forth.

D. That said Lessee will pay said rent at the times and places and in the manner aforesaid.

E. That said Lessor will pay all bills for water, and the said Lessee shall pay for all gas and electric current which may be assessed or charged against the occupant of said premises during said term, or any extension thereof.

F. That said Lessee will use and occupy said premises in a careful, safe and proper manner and that it will carefully control and guard all fires that may occur therein.

G. That said Lessee will not commit or suffer any waste therein.

H. That said Lessee will fully comply with and obey all the laws, ordinances, rules, regulations and requirements of all lawfully constituted authorities in any way affecting said premises or the use thereof, or this lease.

I. That said premises will not be used or occupied for any unlawful purpose.

J. That no intoxicating liquor shall be manufactured or sold on said premises during the said term.

K. That the Lessee shall not sell, assign or transfer this lease or underlet the premises, or any part thereof, without the written consent of the Lessor.

[fol. 6330] L. That said Lessor, or its agents, may enter upon said premises at all reasonable times, to examine the condition of the same.

M. That said Lessee will surrender and deliver up said premises at the end of said term in as good order and condition as the same now are, or may be put by said Lessor, reasonable use or natural wear and tear, or unavoidable casualty excepted.

N. That every demand for rent after the same falls due shall have the same effect in law as if made on the day and at the time the same is due, any law to the contrary notwithstanding.

O. That the Lessee will make no alterations or additions in or to said premises without the written consent of the Lessor.

Providing, however, that if said rent, or any part thereof, shall at any time be in arrears and unpaid and shall remain unpaid for a period of thirty (30) days thereafter, and without any demand being made therefor, or, if said Lessee shall fail to keep and perform any of the covenants, agreements and conditions of this lease on its part to be kept and performed, or if said Lessee shall be adjudged a bankrupt, or shall make an assignment for creditors, or if the interest of the Lessee herein shall be sold under execution or other legal process, or if a receiver shall be appointed for any property of the Lessee on said premises in any suit or proceeding by or against the Lessee, it shall be lawful for said Lessor, its successors and assigns, to enter into said premises and again have, repossess and enjoy the same as if this lease had not been made, thereupon this lease and everything herein contained on the part of the said Lessor to be done and performed shall cease, determine and be utterly void; without prejudice, however, to the right of the Lessor to recover from the Lessee, or assigns, all rent due up to the time of such entry, and,

Providing further, that in case said theatre and theatre building, without any fault or neglect of said lessee shall be destroyed by the elements or other cause, said Lessee may thereupon surrender possession of said premises to said Lessor and thereupon this lease shall determine, cease and be utterly void; but in case of partial destruction of said building, the Lessor shall at once proceed to make the repairs necessary to put the building in its former condition and this lease shall not terminate, but during the time in which such repairs are being made, no rent shall be payable, except for such parts of said premises as may then be used [fol. 6331] and occupied by said Lessee.

And said Lessor hereby covenants and agrees with said Lessee, its successors and assigns:

A. That said Lessee, paying the rents and keeping and performing the covenants of this lease, on its part to be kept and performed, said Lessee shall peaceably and quietly hold, occupy and enjoy said premises during said term, without any let, hindrance or molestation by any person whatsoever, and,

B. The said Lessor will make all repairs to the roof, skylights and exterior of said building.

It is further agreed by the parties hereto that said demised premises shall be used for the purpose of conducting and operating therein a motion picture and theatre business and that for such business it is necessary to remodel the exterior and interior of said building and demised premises and it is agreed that such remodeling and alterations shall be done upon the following terms and conditions.

A. That all plans, blue prints and specifications for the remodeling of said building shall conform to any and all building codes of the State of Ohio, or any political subdivision thereof, and approved by all authorities enforcing said codes and shall also have the approval of said Lessee, all to be done before the work of remodeling said building is begun.

B. That all expenses for the plans, blue prints, specifications, estimates and securing the approval as aforesaid, shall be paid by Lessor.

C. That Lessor shall advance and pay the total expense of remodeling and altering said demised premises for use and occupancy as a motion picture and theatre business; all estimates for this work have been submitted to the Lessee herein and it is agreed that said Lessor shall advance and pay, for the purpose of making said alterations and changes in said demised premises, a sum not to exceed Twelve Thousand ($12,000) Dollars, but, in no event shall said alterations and remodeling cost less than Ten Thousand ($10,000) Dollars, including the installation of any and all furniture and fixtures.

It is further stipulated and agreed that the Lessee shall be under no obligation to pay rent for said demised premises until said theatre and theatre building have been completely remodeled and altered in accordance with the plans and specifications heretofore approved by said Lessee, anything herein contained to the contrary notwithstanding.

This lease and all the covenants, provisions, terms, conditions and agreements herein contained shall inure to the profit of and be binding upon the successors and assigns of the parties hereto.

[fol. 6332] In witness whereof, the parties hereto have caused these presents to be executed as of the day and year first above written.

The Medina Theatre Corporation, by —— ——, President, by —— ——, Sec'y. & Treas. The Schine Medina Corporation, by —— ——, President, by —— ——, Secretary.

Witnesses: —— ——,

STATE OF OHIO,
Cuyahoga County, ss:

Before me, a Notary Public in and for said county, personally appeared George S. Willis, President, and Florence Willis, Secretary of the Medina Theatre Corporation, the corporation which executed the foregoing instrument, who acknowledeged that the seal affixed to said instrument is the corporate seal of said corporation; that they did sign and seal said instrument as such President and Secretary in behalf of said corporation and by authority of its board of directors; and that said instrument is their free act and deed, individually, and as such President and Secretary and the free and corporate act and deed of said Medina Theatre Corporation.

In Testimony Whereof, I have hereunto subscribed my name and affixed my official seal at Medina, Ohio, this 21st day of July, 1937.

—— ——, Notary Public.

STATE OF OHIO,
Cuyahoga County, ss:

Before me, a Notary Public, in and for said county personally appeared Ben Yudelevitz, President, and John A. May, Secretary, of The Schine Medina Corporation, the corporation which executed the foregoing instrument, who acknowledged that the seal affixed to said instrument is the corporate seal of said corporation; that they did sign and seal said instrument as such President and Secretary in behalf of said corporation and by authority of its board of directors; and that said instrument is their free act and deed individually and as such President and Secretary and the free and corporate act and deed of said The Schine Medina Corporation.

In Testimony Whereof, I have hereunto subscribed my name and affixed my official seal at Cleveland, this 21st day of July, 1937.

—— ——, Notary Public.

[fol. 6333] **Exhibit 649**

Ars Gratia Artis
Metro-Goldwyn-Mayer Pictures

Metro-Goldwyn-Mayer Distributing Corporation

509 Pearl Street
Buffalo, N. Y.

May 5, 1933

Mr. P. Grafiades
Palace Theatre
Lockport, N. Y.

Dear Mr. Grafiades:

In acknowledgment of your letter received, requesting information as to our 1933-34 product, please be advised that our new season's policy on product has not been set up as yet for the forthcoming season, and we are not now in a position to make any definite commitment regarding the new year's pictures.

However, we appreciate your inquiry and will certainly keep your situation in mind, as you request.

Kindest regards.

Sincerely,

E. K. O'Shea
Resident Manager

EKO'S:MF

[fol. 6334] **Exhibit 650**

Universal Film Exchanges Inc.
505 Pearl Street
Buffalo, N. Y.

May Eighth 1-9-3-3

Mr. Peter Grafiades, President
Reliance Theatres, Inc.
Palace Theatre
Lockport, N. Y.

Dear Sir:

This will acknowledge your letter of April 29th.

In view of the fact that we already have, in existence, a long-term franchise with the Schine Theatres in Lockport, we are unable to comply with your request to commit ourselves to play any of our pictures in your theatre.

We shall be glad to negotiate with you, as we have in the past, on any of the pictures that Schine eliminates in this situation.

Very truly yours,

Universal Film Exchanges, Inc.
Dave Miller
Resident Manager

DM-RA

[fol. 6335] **EXHIBIT 651**

Paramount Pictures Distributing Corporation
Distributor of
Paramount Pictures
464 Franklin St. Buffalo, N. Y.

May 16, 1933.

Mr. Peter Grafiades
Palace Theatre
Lockport, N. Y.

Dear Mr. Grafiades:

We have your recent letter regarding our next season's product for Lockport, N. Y.

It is too early as yet to make plans for next season. We will, however, keep your request at hand until such time as we are ready to sell our new season's product. We will at that time give it consideration.

Very truly yours,

K. G. Robinson,
Branch Manager.

KGR:EB

[fol. 6336] EXHIBIT 652

Paramount Pictures Distributing Corporation
Distributor of Paramount Pictures
Times Square New York
Chickering 4-7040 - Cable Address *Famfilm*

Office of J. J. Unger

June 1st, 1933.

Mr. Peter Grafiades, President,
Reliance Theatres, Inc.,
Palace Theatre,
Lockport, N. Y.

Dear Sir:—

Your letter of May 26th to the Motion Picture Producers and Distributors has been referred to us for attention.

We regret very much that it will be impossible for us to offer you our product for the coming season, because of our partnership with Mr. Schine in the Rialto Theatre.

Naturally, we have to reserve our pictures for our own theatre.

Very truly yours,

JJU:NRC J. J. Unger.

[fol. 6337] EXHIBIT 653

Ars Gratia Artis
Metro-Goldwyn-Mayer Pictures
Loew Building - 1540 Broadway
New York

Office of W. F. Rodgers

July 28, 1933.

Mr. Peter Grafiades,
Palace Theatre,
Lockport, New York.

My Dear Mr. Grafiades:

The delay in acknowledging your letter to me of the 18th has been occasioned by my frequent absences from the city.

In our negotiations with the Schine interests it will very likely be that we will have to give them consideration for our product at Lockport, as well as other situations, and as we are hardly in a position to forego or jeopardize the business from their other situations, and for the further reason that they have for a number of years been a very representative account, we feel that our interests would be best served by giving them such consideration.

Under the circumstances, we are not in a position to offer your our 1933-34 product.

The assurance you speak of as made to you by Messrs. Dipson and Osborne was certainly not with our sanction, as no arrangements were made with them for the delivery of product to the Palace Theatre, Lockport, beyond those pictures covered in the existing agreements and representing those subjects under contract to the above theater for what is known as our 1932-33 product.

We appreciate your letter of inquiry and also the consideration you have seen fit to give us in the past and feel sure that after due deliberation you will fully understand our position in the matter.

With kindest regards,

Sincerely,

W. F. Rodgers

WFR:MTL

Form 85 Rev. 1M 11-34
Printed in U. S. A.

EXHIBIT 662

HOME OFFICE COPY

COLUMBIA PICTURES CORPORATION

2

MEMO ALTERATION OR CANCELLATION OF CONTRACT

BRANCH Cleveland DATE 17/10/35 SALESMAN Becker ZONE 3 NUMBER 1135

CIRCUIT	THEATRE	TOWN AND STATE	DATE OF ORIGINAL CONTRACT	ORIGINAL CONTRACT NO.
Ind	Southern	Bucyrus	8/7/35	35

PRODUCTION NUMBER	PRODUCTION	OLD CONTRACT NO. DAYS	OLD CONTRACT AMOUNT	CHANGED TO NO. DAYS	CHANGED TO AMOUNT	INCREASE	DECREASE	CANCELLED
6010	If you Could Only Cook	3/4	40 - ag 30%			Sat or Sun		
				2	40 - ag 30%	plus midnight show New Years Eve		
6011	Crime + Punishment	3/4	40 - ag 30%			Sat or Sun		
	No Punch			2	40 - ag 30%	Sat or Sun		
TOTALS								

[fol. 6340]

EXHIBIT 682

Columbia Pictures Corporation
Release Schedule

1938–39 As of August 1st, 1939

Features

	Production	Director	Cast	Running time in Minutes	Release Date
1.	You Can't Take It With You	Capra	Jean Arthur, James Stewart, Lionel Barrymore, Edward Arnold, Mischa Auer, Spring Byington, Ann Miller, etc., etc.	127	Sept. 29th
2.	Crime Takes A Holiday	Collins	Jack Holt, Marcia Ralston	59	Oct. 5th
3.	Flight To Fame	Coleman	Charles Farrell, Jacqueline Wells	57	Oct. 12th
4.	The Little Adventuress	Lederman	Edith Fellows, Jacqueline Wells, Cliff Edwards, Robert Paige	62	Oct. 24th
5.	Adventure in Sahara	Lederman	Paul Kelly, Lorna Gray	58	Nov. 15th
6.	Blondie	Strayer	Penny Singleton, Arthur Lake, Dorothy Moore, Larry Simms, Danny Mummert	72	Nov. 30th
	Terror of Tiny Town (Special Release—not part of regular program.)	Sam Newfield	Jed Buell's Midgets	63	Dec. 1st
7.	The Strange Case of Dr. Meade	Collins	Jack Holt, Beverly Roberts, Noah Beery, Jr.	67	Dec. 15th
8.	There's That Woman Again	Hall	Melvyn Douglas, Virginia Bruce, Margaret Lindsay	74	Dec. 24th
9.	Smashing The Spy Ring	Cabanne	Fay Wray, Ralph Bellamy	62	Dec. 29th
10.	Homicide Bureau	Coleman	Bruce Cabot, Rita Hayworth	59	Jan. 5th
11.	The Lone Wolf Spy Hunt	Godfrey	Warren William, Ida Lupino, Ralph Morgan	71	Jan. 27th
12.	North of Shanghai	Lederman	Betty Furness, James Craig	59	Feb. 10th
13.	My Son Is A Criminal	Coleman, Jr.	Alan Baxter, Jacqueline Wells	59	Feb. 22nd
14.	Let Us Live	Brahm	Henry Fonda, Maureen O'Sullivan, Ralph Bellamy	69	Feb. 28th
15.	Blondie Meets The Boss	Strayer	Penny Singleton, Arthur Lake, Dorothy Moore, Larry Simms, Danny Mummert	74	Mar. 8th
16.	Whispering Enemies	Collins	Jack Holt, Dolores Costello, Pert Kelton	63	Mar. 24th
17.	Romance of the Redwoods	Vidor	Charles Bickford, Jean Parker	67	Mar. 30th

EXHIBIT 682

Columbia Pictures Corporation
Release Schedule

1938-39

Features

As of August 1st, 1939

Production	Director	Cast	Running time in Minutes	Release Date
18. The Lady And The Mob	Stoloff	Fay Bainter, Ida Lupino, Henry Armetta, Lee Bowman, Warren Hymer	66	Apr. 3rd
19. First Offenders	McDonald	Walter Abel, Beverly Roberts, Iris Meredith, Johnny Downs	62	Apr. 12th
20. Outside These Walls	McCarey	Dolores Costello, Michael Whalen, Virginia Weidler	61	May 4th
21. Blind Alley	Vidor	Chester Morris, Ralph Bellamy, Ann Dvorak, Joan Perry, Rose Stradner	71	May 11th
22. Missing Daughters	Coleman, Jr.	Richard Arlen, Marian Marsh, Rochelle Hudson, Isabell Jewell	59	May 22nd
23. Only Angels Have Wings	Hawks	Jean Arthur, Cary Grant, Richard Barthelmess, Thomas Mitchell, Rita Hayworth, Noah Beery, Jr.	121	May 25th
24. Trapped In The Sky	Collins	Jack Holt, Katherine DeMille, Ralph Morgan	61	June 1st
25. Clouds Over Europe	Whalen	Laurence Olivier, Valerie Hobson, Ralph Richardson	79	June 20th
26. Parents On Trial	Nelson	Jean Parker, Johnny Downs	58	June 29th
27. Good Girls Go To Paris	Hall	Joan Blondell, Melvyn Douglas, Walter Connolly, Joan Perry	78	June 30th
28. A Woman Is The Judge	Grinde	Rochelle Hudson, Otto Kruger, Frieda Inescort	62	July 10th
29. Blondie Takes A Vacation	Strayer	Penny Singleton, Arthur Lake, etc.	71	July 20th
30. Behind Prison Gates	Barton	Brian Donlevy, Jacqueline Wells, Paul Fix	62	July 28th
31. Coast Guard	Ludwig	Randolph Scott, Ralph Bellamy, Frances Dee, Walter Connolly	—	Aug. 4th
32. The Man They Could Not Hang	Grinde	Boris Karloff, Roger Pryor, Lorna Gray	—	Aug. 17th
33. Five Little Peppers And How They Grew	Barton	Edith Fellows, Dorothy Peterson, Clarence Kolb	—	Aug. 22nd
34. Konga, The Wild Stallion	Nelson	Fred Stone, Rochelle Hudson, Richard Fiske	—	Aug. 30th
35. Golden Boy	Mamoulian	Barbara Stanwyck, Adolph Menjou, William Holden, Joseph Calleia	—	Sept. 5th

Westerns

1. West Of The Santa Fe	Nelson	Charles Starrett, Iris Meredith	57	Oct. 3rd
2. Law Of The Texan	Clifton	Buck Jones, Dorothy Fay	54	Oct. 24th
3. In Early Arizona	Levering	Bill Elliott, Dorothy Gulliver	53	Nov. 2nd
4. Rio Grande	Nelson	Charles Starrett, Ann Doran, Sons of the Pioneers	59	Dec. 8th
5. California Frontier	Clifton	Buck Jones, Carmen Bailey	54	Dec. 15th
6. The Thundering West	Nelson	Charles Starrett, Iris Meredith, Sons of the Pioneers	57	Jan. 12th
7. Frontiers Of '49	Levering	Bill Elliott, Luana De Alcaniz	54	Jan. 19th
8. Texas Stampede	Nelson	Charles Starrett, Iris Meredith, Sons of the Pioneers	57	Feb. 9th
9. Lone Star Pioneers	Levering	Bill Elliott, Dorothy Gulliver	56	Mar. 16th
10. North of the Yukon	Nelson	Charles Starrett, Linda Winters, Sons of the Pioneers	64	Mar. 30th
11. The Law Comes to Texas	Levering	Bill Elliott, Veda Ann Borg, Sons of the Pioneers	58	Apr. 16th
12. Spoilers Of The Range	Coleman, Jr.	Charles Starrett, Iris Meredith, Sons of the Pioneers	58	Apr. 27th
13. Western Caravans	Nelson	Charles Starrett, Iris Meredith, Sons of the Pioneers	58	June 15th
14. The Man From Sundown	Nelson	Charles Starrett, Iris Meredith, Sons of the Pioneers	59	July 15th
15. Riders of Black River	Nelson	Charles Starrett, Iris Meredith, Sons of the Pioneers	—	Aug. 23rd

[fol. 6341]

Columbia Pictures Corporation

1939–40

Release Schedule-

Features

As of Sept 1t

	Production	Director	Cast	Running Time in Minutes	Release Date
	GOLDEN BOY (1938–39)	Mamoulian	Barbara Stanwyck, Adolphe Menjou, William Holden, Joseph Calleia	101	Sept. 5th
1.	Hidden Power	Collins	Jack Holt, Gertrude Michael, Dickie Moore	60	Sept. 7th
2.	Those High Grey Walls	Vidor	Walter Connolly, Iris Meredith, Onslow Stevens	82	Sept. 21st
3.	U-Boat 29	Powell	Conrad Veidt, Sebastian Shaw, Valerie Hobson	79	Oct. 7th
4.	Scandal Sheet	Grinde	Otto Kruger, Ona Munson, Nedda Harrington	67	Oct. 16th
5.	Mr. Smith Goes To Washington	Capra	Jean Arthur, James Stewart, Claude Rains, Edward Arnold, Guy Kibbee, Thomas Mitchell, Beulah Bondi	130	Oct. 19th
6.	Beware Spooks!	Sedgwick	Joe E. Brown, Mary Carlisle	68	Oct. 24th
7.	Miracle on Main Street	Szekele	Walter Abel, Margo, Lyle Talbot, William Collier, Sr.	78	Oct. 29th
8.	Blondie Brings Up Baby	Strayer	Penny Singleton, Arthur Lake, Baby Dumpling (Larry Simms), etc.	69	Nov. 9th
9.	The Amazing Mr. Williams	Hall	Joan Blondell, Melvyn Douglas	86	Nov. 23rd
10.	Cafe Hostess	Salkow	Preston Foster, Ann Dvorak	63	Nov. 30th
11.	Fugitive At Large	Collins	Jack Holt, Patricia Ellis	66	Dec. 7th
12.	My Son Is Guilty	Barton	Bruce Cabot, Jacqueline Wells	63	Dec. 28th
13.	Music In My Heart	Santley	Tony Martin, Rita Hayworth, Edith Fellows, Andre Kostelanetz and his Orchestra	70	Jan. 10th
14.	His Girl Friday	Hawks	Cary Grant, Rosalind Russell, Ralph Bellamy	92	Jan. 18th
15.	The Lone Wolf Strikes	Salkow	Warren William, Joan Perry	67	Jan. 26th
16.	Convicted Woman	Grinde	Rochelle Hudson, Glenn Ford, Frieda Inescort, Lola Lane, June Lang	66	Jan. 31st
17.	Five Little Peppers At Home	Barton	Edith Fellows, Dorothy Peterson, Clarence Kolb, Dorothy Ann Seese	65	Feb. 8th
18.	Blondie On A Budget	Strayer	Penny Singleton, Arthur Lake, Baby Dumpling (Larry Simms), Rita Hayworth, etc.	73	Feb. 29th

REASON (GIVE FULL DATA)

Exhibitor forced to change policy due to opposition which is Schines having all major product under contract, he will now make 4 changes per week instead of 3 as he is unable to buy major product. 2nd Run

INSTRUCTIONS:-

PREPARE IN QUADRUPLICATE, ORIGINAL (WHITE) HOME OFFICE COPY, DUPLICATE (BLUE) DISTRICT OFFICE COPY, TRIPLICATE (YELLOW) BRANCH OFFICE COPY, QUADRUPLICATE (PINK) BRANCH FOLLOW UP COPY, TO BE FILED IN BINDER, SUPPLIED FOR THIS PURPOSE, IN NUMERICAL ORDER. THIS FORM TO BE USED FOR ALTERING OR CANCELLING ANY CONTRACT. BE SURE TO LIST ONLY ONE CONTRACT ON EACH FORM, PLACING AMOUNTS IN PROPER COLUMNS; IF USED AS AN ALTERATION FILL AMOUNTS IN FIRST TWO COLUMNS, AND EITHER THE THIRD OR FOURTH AS NECESSARY. IF USED AS A CANCELLATION ENTER AMOUNTS IN LAST COLUMN ONLY. TOTALS OF EACH COLUMN MUST BE SHOWN.

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HOME OFFICE

6338-6339

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19. Outside The 3-Mile Limit	Collins	Jack Holt, Irene Ware	65	Mar. 7th
20. Men Without Souls	Grinde	John Litel, Rochelle Hudson	62	Mar. 14th
21. Too Many Husbands	Ruggles	Jean Arthur, Fred McMurray, Melvyn Douglas	84	Mar. 21st
22. The Man With Nine Lives	Grinde	Boris Karloff, Roger Pryor, Jo Ann Sayres	73	Apr. 18th
23. The Doctor Takes A Wife	Hall	Loretta Young, Ray Milland, Gail Patrick, Reginald Gardiner, George Metaxa	89	Apr. 25th
21 Days Together (Not included in 1939-40 program)	Dean	Vivien Leigh, Laurence Olivier	72	May 16th
24. Babies For Sale	Barton	Glenn Ford, Rochelle Hudson	64	May 16th
25. Island of Doomed Men	Barton	Peter Lorre	67	May 20th
26. The Lone Wolf Meets A Lady	Salkow	Warren William, Jean Muir	71	May 30th
27. Mad Men of Europe	De Courville	Edmund Gwenn, Mary Maguire	73	June 3rd
28. Passport To Alcatraz	Collins	Jack Holt, Cecelia Callejo, Noah Beery, Jr., Maxie Rosenbloom	60	June 6th
29. Girls of the Road	Grinde	Ann Dvorak, Lola Lane, Helen Mack	61	June 20th
30. Out West With The Peppers	Barton	Edith Fellows, Dorothy Peterson, Dorothy Ann Seece, etc.	62	June 30th
31. Military Academy	Lederman	Tommy Kelly, Bob Jordan, Jackie Searle, Dave Holt	66	July 18th
I Married Adventure (Not included in 1939-40 program)		Osa (Mrs. Martin) Johnson	78	July 24th
32. Blondie Has Servant Trouble	Strayer	Penny Singleton, Arthur Lake, Larry Simms, etc.	70	July 25th
33. The Lady In Question	Vidor	Brian Aherne, Rita Hayworth, Irene Rich, Glenn Ford	81	Aug. 7th
34. The Secret Seven	Moore	Bruce Bennett, Florence Rice	62	Aug. 15th
35. He Stayed For Breakfast	Hall	Loretta Young, Melvyn Douglas	89	Aug. 22nd
36. Five Little Peppers In Trouble	Barton	Edith Fellows, Dorothy Peterson, Dorothy Ann Seese, etc.	65	Sept. 1st
37. Before I Hang	Grinde	Boris Karloff, Evelyn Keyes	—	Sept. 17th
38. The Howards of Virginia	Lloyd	Cary Grant, Martha Scott, Sir Cedric Hardwicke	—	Sept. 19th
39. Glamour For Sale	Lederman	Roger Pryor, Anita Louise	—	Sept. 27th
40. Angels Over Broadway	Hecht	Douglas Fairbanks, Jr., Rita Hayworth, Thomas Mitchell	—	Sept. 30th

Columbia Pictures Corporation

Release Schedule

1939-40

As of Sept. 1st

Features

Westerns

	Production	Director	Cast	Running Time in Minutes	Release Date
1.	Outpost of the Mounties	Coleman, Jr.	Charles Starrett, Iris Meredith, Sons of the Pioneers	63	Sept. 14th
2.	The Stranger From Texas	Nelson	Charles Starrett, Lorna Gray, Sons of the Pioneers	54	Nov. 2nd
3.	Taming Of The West	Deming	Bill Elliott, Iris Meredith	55	Dec. 7th
4.	Two-Fisted Rangers	Lewis	Charles Starrett, Iris Meredith, Sons of the Pioneers	62	Jan. 4th
5.	Pioneers Of The Frontier	Nelson	Bill Elliott, Linda Winters	58	Feb. 1st
6.	Bullets For Rustlers	Nelson	Charles Starrett, Lorna Gray, Sons of the Pioneers	58	Mar. 5th
7.	Blazing Six Shooters	Lewis	Charles Starrett, Iris Meredith, Sons of the Pioneers	61	Apr. 4th
8.	The Man From Tumbleweeds	Lewis	Bill Elliott, Iris Meredith, Walter 'Dub' Taylor	59	May 2nd
9.	Texas Stagecoach	Lewis	Charles Starrett, Iris Meredith, Sons of the Pioneers	59	May 23rd
10.	The Return of Wild Bill	Lewis	Bill Elliott, Iris Meredith, Walter 'Dub' Taylor	60	June 27th

1940-41

Release Schedule

Final

As of Sept. 1st

Features

Production	Director	Cast	Running Time in Minutes	Date Release
26. Her First Beau	Reed	Jane Withers, Jackie Cooper, Edith Fellows, Josephine Hutchinson	78	May 8th
27. She Knew All The Answers	Wallace	Franchot Tone, Joan Bennett, Eve Arden	86	May 15th
28. The Voice In The Night	Asquith	Clive Brook, Diana Wynyard, Ronald Squire, Joyce Howard	83	May 20th
29. Naval Academy	Kenton	Freddie Bartholomew, Jimmy Lydon, Billy Cook	67	May 22nd
30. Adventure In Washington	Green	Herbert Marshall, Virginia Bruce, Gene Reynolds	86	May 30th
31. The Richest Man In Town	Barton	Frank Craven, Eileen O'Hearn, Roger Pryor, Edgar Buchanan	70	June 12th
32. Time Out For Rhythm	Salkow	Rudy Vallee, Glen Gray and Casa Loma Band, Ann Miller, 3 Stooges, Allen Jenkins, Rosemary Lane	75	June 20th
33. Sweetheart Of The Campus	Dmytryk	Ruby Keeler, Ozzie Nelson & Band, Harriet Hilliard, Gordon Oliver	67	June 26th
34. I Was A Prisoner On Devil's Island	Landers	Donald Wood, Sally Eilers, Edward Ciannelli	71	June 30th
35. Two In A Taxi	Florey	Anita Louise, Russell Hayden, Dick Purcell, Noah Beery, Jr.	63	July 10th
36. Blondie In Society	Strayer	Penny Singleton, Arthur Lake, Larry Simms, Wm. Frawley, St. Brendan's Choir	77	July 17th
37. The Officer And The Lady	White	Rochelle Hudson, Roger Pryor, Sidney Blackmer, Bruce Bennett	59	July 24th
38. Tillie The Toiler	Salkow	Kay Harris, William Tracy, Ernest Truex	68	Aug. 7th
39. Ellery Queen And The Perfect Crime	Hogan	Ralph Bellamy, Margaret Lindsay, Spring Byington, Charles Grapewin	70	Aug. 14th
40. Here Comes Mr. Jordan	Hall	Robert Montgomery, Claude Rains, Evelyn Keyes, James Gleason	94	Aug. 21st
41. Our Wife	Stahl	Melvyn Douglas, Ruth Hussey, John Hubbard, Ellen Drew	95	Aug. 28th
42. You'll Never Get Rich	Lanfield	Rita Hayworth, Fred Astaire, Robert Benchley	—	Sept. 25th

Westerns

1. The Durango Kid	Hillyer	Charles Starrett, Marjorie Cooley, Sons of the Pioneers	60	Aug. 15th
2. Prairie Schooners	Nelson	Bill Elliott, Walter 'Dub' Taylor, Evelyn Young	58	Sept. 30th
3. West of Abilene	Cedar	Charles Starrett, Marjorie Cooley, Sons of the Pioneers	57	Oct. 21st
4. Beyond the Sacramento	Hillyer	Bill Elliott, Evelyn Keyes, Walter 'Dub' Taylor	58	Nov. 14th
5. Thundering Frontier	Lederman	Charles Starrett, Iris Meredith, Sons of the Pioneers	57	Dec. 5th
6. The Wildcat of Tucson	Hillyer	Bill Elliott, Evelyn Young	59	Dec. 31st
7. The Pinto Kid	Hillyer	Charles Starrett, Louise Currie, Sons of the Pioneers	61	Jan. 9th
8. Across The Sierras	Lederman	Bill Elliott, Luana Walters	58	Feb. 13th
9. Outlaws of the Panhandle	Nelson	Charles Starrett, Frances Robinson, Sons of the Pioneers	59	Feb. 27th
10. North From The Lone Star	Hillyer	Bill Elliott, Dorothy Fay, Walter 'Dub' Taylor	58	Mar. 31st
11. The Return of Daniel Boone	Hillyer	Bill Elliott, Betty Miles, Walter 'Dub' Taylor	61	May 7th
12. Hands Across The Rockies	Hillyer	Bill Elliott, Mary Bailey, Walter 'Dub' Taylor	57	June 19th
13. The Medico of Painted Springs	Hillyer	Charles Starrett, Terry Walker, Ray Bennett	62	June 26th
14. The Son Of Davy Crockett	Hillyer	Bill Elliott, Iris Meredith, Walter 'Dub' Taylor, Richard Fiske	60	July 15th
15. Thunder Over The Prairies	Hillyer	Charles Starrett, Eileen O'Hearn, Cliff Edwards	61	July 30th
16. Prairie Stranger (formerly The Medico Hits The Trail)	Hillyer	Charles Starrett, Patti McCarty, Cliff Edwards	—	Sept. 18th

[fol. 6243]

[fol. 6344]

1941-42
Release Schedule
As of September 1st

Columbia Pictures Corporation
Release—1941-42
Features

Production	Director	Cast	Running Time in Minutes	Release Date
1. Mystery Ship	Landers	Paul Kelly, Lola Lane, Larry Parks	66	Sept. 4th
2. Harmon of Michigan	Barton	Tom Harmon, Anita Louise, Forest Evashevski	66	Sept. 11th
3. Ladies In Retirement	Vidor	Ida Lupino, Louis Hayward, Edith Barrett, Evelyn Keyes, Elsa Lanchester	93	Sept. 18th
You'll Never Get Rich (1940-41)	Lanfield	Rita Hayworth, Fred Astaire, Robert Benchley	89	Sept. 25th
4. Two Latins From Manhattan	Barton	Jinx Falkenburg, Don Beddoe, Joan Davis, Joan Woodbury	66	Oct. 2nd
5. Texas	Marshall	William Holden, Glenn Ford, Claire Trevor, Edgar Buchanan, George Bancroft	94	Oct. 9th
6. The Blonde From Singapore	Dmytryk	Florence Rice, Leif Erickson, Gordon Jones	70	Oct. 16th
7. Three Girls About Town	Jayson	Joan Blondell, Janet Blair, Binnie Barnes, John Howard, Robert Benchley	73	Oct. 23rd
8. You Belong To Me	Ruggles	Barbara Stanwyck, Henry Fonda, Ruth Donnelly, Edgar Buchanan	97	Oct. 30th
9. The Stork Pays Off	Landers	Maxie Rosenbloom, Rochelle Hudson, Victor Jory, Danny Memmert	68	Nov. 6th
10. Secrets Of The Lone Wolf	Dmytryk	Warren William, Eric Blore, Ruth Ford, Thurston Hall	67	Nov. 13th
11. Ellery Queen And The Murder Ring	Hogan	Ralph Bellamy, Margaret Lindsay, Charles Grapewin, etc.	70	Nov. 18th
12. The Men In Her Life	Ratoff	Loretta Young, Conrad Veidt, Eugenie Leontovich, Otto Kruger, Dean Jagger	90	Nov. 20th
13. Go West, Young Lady	Strayer	Penny Singleton, Glenn Ford, Ann Miller, Charles Ruggles, Bob Wills and His Texas Playboys	70	Nov. 27th
14. Sing For Your Supper	Barton	Jinx Falkenburg, Buddy Rogers, Bert Gordon (The Mad Russian)	65	Dec. 4th
15. Honolulu Lu	Barton	Lupe Velez, Bruce Bennett, Leo Carrillo	72	Dec. 11th
16. Harvard Here I Come	Landers	Maxie Rosenbloom, Arline Judge, Marie Wilson	64	Dec. 18th
17. Bedtime Story	Hall	Loretta Young, Fredric March, Robert Benchley, Allyn Joslyn, Eve Arden	85	Dec. 25th
18. Confessions of Boston Blackie	Dmytryk	Chester Morris, Harriet Hilliard, Joan Woodbury, Richard Lane	65	Jan. 8th
19. Blondie Goes To College	Strayer	Penny Singleton, Arthur Lake, Larry Simms, Janet Blair	74	Jan. 15th
20. Cadets On Parade	Landers	Freddie Bartholomew, James Lydon, Minna Gombell	63	Jan. 22nd
21. A Close Call For Ellery Queen	Hogan	William Gargan, Margaret Lindsay, Charles Grapewin	67	Jan. 29th
22. The Man Who Returned to Life	Landers	John Howard, Ruth Ford, Elisabeth Risdon	61	Feb. 5th
23. The Lady Is Willing	Leisen	Marlene Dietrich, Fred MacMurray, Sterling Halloway	91	Feb. 12th
24. Shut My Big Mouth	Barton	Joe E. Brown, Adele Mara, Victor Jory	71	Feb. 19th
25. The Adventures of Martin Eden	Salkow	Glenn Ford, Claire Trevor, Evelyn Keyes, Stuart Erwin	87	Feb. 26th
26. Tramp, Tramp, Tramp	Barton	Florence Rice, Bruce Bennett, Jackie C. Gleason, Jack Durant	68	Mar. 12th
27. Canal Zone	Landers	Chester Morris, John Hubbard, Harriet Hilliard	79	Mar. 19th
28. Two Yanks In Trinidad	Ratoff	Pat O'Brien, Brian Donlevy, Janet Blair, Roger Clark	83	Mar. 26th
29. Alias Boston Blackie	Landers	Chester Morris, Richard Lane, George E. Stone, Adele Mara	67	Apr. 2nd
30. Blondie's Blessed Event	Strayer	Penny Singleton, Arthur Lake, Larry Simms, Danny Mummert, Jonathan Hale	69	Apr. 9th
31. Hello Annapolis	Barton	Tom Brown, Jean Parker, Robert Stevens, Herbert	62	Apr. 23rd

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Columbia Pictures Corporation
Schedule as of Sept. 1st

Production	Director	Cast	Running Time in Minutes	Release Date
32. The Wife Takes A Flyer	Wallace	Joan Bennett, Franchot Tone, Allyn Joslyn, Elisabeth Risdon	86	Apr. 30th
33. A Desperate Chance For Ellery Queen	Hogan	William Gargan, Margaret Lindsay, Chas. Grapewin, James Burke, John Litel, Lillian Bond	70	May 7th
34. Not A Ladies' Man	Landers	Paul Kelly, Fay Wray, Douglas Croft	60	May 14th
35. Sweetheart Of The Fleet	Barton	Jinx Falkenburg, Joan Woodbury, Joan Davis, Brenda and Cobina, Robt. Stevens	65	May 21st
36. Meet The Stewarts	Green	William Holden, Frances Dee, Marguerite Chapman, Danny Mummert	74	May 28th
37. Submarine Raider	Landers	John Howard, Marguerite Chapman, William Wright	64	June 4th
38. They All Kissed The Bride	Hall	Melvyn Douglas, Joan Crawford, Bille Burke, Roland Young, Helen Parrish	87	June 11th
39. Parachute Nurse	Barton	Marguerite Chapman, Kay Harris, Roger Clark, William Wright	63	June 18th
40. Atlantic Convoy	Landers	John Beal, Virginia Field, Bruce Bennett	66	July 2nd
41. Flight Lieutenant	Salkow	Pat O'Brien, Glenn Ford, Evelyn Keyes	80	July 9th
42. Enemy Agents Meet Ellery Queen	Hogan	William Gargan, Margaret Lindsay, Charles Grapewin, James Burke	64	July 30th
43. Blondie For Victory	Strayer	Penny Singleton, Arthur Lake, Larry Simms, etc.	72	Aug. 6th
44. The Talk Of The Town	Stevens	Cary Grant, Jean Arthur, Ronald Colman, Glenda Farrell, Edgar Buchanan	118	Aug. 20th
45. Sabotage Squad	Landers	Bruce Bennett, Kay Harris, Edward Norris	64	Aug. 27th
46. My Sister Eileen	Hall	Rosalind Russell, Brian Aherne, Janet Blair	—	Sept. 30th
		Special Release		
THE INVADERS (Not included in 1941-42 program)	Powell	Laurence Olivier, Leslie Howard, Raymond Massey, Anton Walbrook, Eric Portman, Glynis Johns	104	Apr. 15th

[fol. 6345-1] **Exhibit 685**

Columbia Pictures

Inter-Office Communication

To Mr. Sam Reice
Attention of
In Regard to U. S. vs. Schine
From Max Rose
By
Date September 11, 1944

I am sending you herewith a response from Mr. Montague's office to our request for printed schedules of feature releases which come within the subpoena served on us by the Government.

I suggest that you put this with the other material which we will be required to produce in Buffalo.

Max.

Encls.

[fols. 6345-2-6345-6] Columbia Pictures

Inter-Office Communication

To Mr. M. Rose
Attention of
In Regard to:
From Mr. Montague's office
By Irene Danels
Date Sept. 8, 1944.
[Stamp:] Received Sept. 8, 1944, Legal Dept.

I am sending you herewith printed schedules of feature releases for the 1938-39 to the 1941-42 seasons inclusive.

I am unable to find printed schedules of this character for any season prior to 1938-39; and I believe it was not the practise of the company to print such schedules prior to the 1938-39 season. We did, during earlier seasons, publish in the Beacon lists of feature pictures in the form of release schedules, but I understand that such lists published in the Beacon do not come within the terms of the subp-ena.

Printed release schedules of the character furnished to you herewith are issued by us at approximately monthly intervals, but the monthly issues for the period beginning 1938-39 are not readily available.

att. Irene Danels.

[fol. 6342]

1940–41

Release Schedule

Final

As of Sept. 1st

Features

Production	Director	Cast	Running Time in Minutes	Date Release
1. Fugitive From A Prison Camp	Collins	Jack Holt, Marian Marsh	59	Sept. 5th
2. So You Won't Talk	Sedgwick	Joe E. Brown, Frances Robinson	69	Oct. 3rd
3. Nobody's Children	Barton	Edith Fellows, Billy Lee	65	Oct. 17th
4. Girls Under 21	Nosseck	Rochelle Hudson, Paul Kelly	64	Oct. 24th
5. Blondie Plays Cupid	Strayer	Penny Singleton, Arthur Lake, etc.	68	Oct. 31st
6. The Lone Wolk Keeps A Date	Salkow	Warren William, Frances Robinson	65	Nov. 23rd
7. Escape to Glory	Brahm	Pat O'Brien, Constance Bennett	74	Nov. 28th
8. Ellery Queen—Master Detective	Neuman	Ralph Bellamy, Charles Grapewin, Margaret Lindsay	68	Nov. 30th
9. The Great Plane Robbery	Collins	Jack Holt, Vicki Lester	53	Dec. 9th
10. The Phantom Submarine	Barton	Anita Louise, Bruce Bennett	70	Dec. 20th
11. Arizona	Ruggles	Jean Arthur, William Holden, Warren William	122	Dec. 25th
12. This Thing Called Love	Hall	Rosalind Russell, Melvyn Douglas	98	Jan. 2nd
13. The Face Behind The Mask	Florey	Peter Lorre, Evelyn Keyes	69	Jan. 16th
14. The Devil Commands	Dmytryk	Boris Karloff, Amanda Duff, Richard Fiske	65	Feb. 3rd
15. Adam Had Four Sons	Ratoff	Warner Baxter, Ingrid Bergman, Fay Wray	81	Feb. 18th
16. Meet Boston Blackie	Florey	Chester Morris, Rochelle Hudson	61	Feb. 20th
17. Blondie Goes Latin	Strayer	Penny Singleton, Arthur Lake, Larry Simms, Janet Burston, Ruth Terry, Tito Guizar	69	Feb. 27th
18. Missing Ten Days	Whelan	Rex Harrison, Karen Verne	77	Feb. 28th
19. The Lone Wolf Takes A Chance	Salkow	Warren William, June Storey	76	Mar. 6th
20. Ellery Queen's Penthouse Mystery	Hogan	Ralph Bellamy, Margaret Lindsay, Charles Grapewin, Anna May Wong, etc.	70	Mar. 4th
21. The Great Swindle	Collins	Jack Holt, Marjorie Reynolds	54	Apr. 10th
22. Under Age	Dmytryk	Nan Gray, Alan Baxter, Patti McCarty	60	Apr. 24th
23. Penny Serenade	Stevens	Cary Grant, Irene Dunne, Beulah Bondi, etc.	120	Apr. 24th
24. The Big Boss	Barton	Otto Kruger, John Litel, Gloria Dickson	70	Apr. 28th
25. They Dare Not Love	Whale	George Brent, Martha Scott, Paul Lukas	76	Apr. 30th

263—1879

Columbia Pictures Corporation
Schedule as of Sept. 1st

Production	Director	Cast	Running Time in Minutes	Release Date
		Westerns		
1. King of Dodge City	Hillyer	Bill Elliott, Tex Ritter, Judith Landen, Walter 'Dub' Taylor	63	Aug. 14th
2. Roaring Frontiers	Hillyer	Bill Elliott, Tex Ritter, Ruth Ford	62	Oct. 16th
3. The Royal Mounted Patrol	Hillyer	Charles Starrett, Russell Hayden, Wanda McKay, Lloyd Bridges	59	Nov. 13th
4. Riders of The Badlands	Bretherton	Chas. Starrett, Russell Hayden, Ilene Brewer, Cliff Edwards	57	Dec. 18th
5. The Lone Star Vigilantes	Fox	Bill Elliott, Tex Ritter, Frank 'Cannonball' Mitchell, Virginia Carpenter, Luana Walters	57	Jan. 1st
6. West Of Tombstone	Bretherton	Charles Starrett, Russell Hayden, Cliff Edwards, Marcelle Martin	59	Jan. 15th
7. Bullets For Bandits	Fox	Bill Elliott, Tex Ritter, Frank Mitchell, Edythe Elliott	55	Feb. 12th
8. Lawless Plainsmen	Berke	Charles Starrett, Russell Hayden, Luana Walters, Gwen Kenyon, Cliff Edwards	59	Mar. 12th
9. North Of The Rockies	Hillyer	Bill Elliott, Tex Ritter, Frank Mitchell, Shirley Patterson	60	Apr. 2nd
10. Down Rio Grande Way	Berke	Charles Starrett, Russell Hayden, Rose Ann Stevens	57	Apr. 23rd
11. The Devil's Trail	Hillyer	Bill Elliott, Tex Ritter, Frank Mithell, Eileen O'Hearn, Ruth Ford	61	May 14th
12. Riders Of The Northland	Berke	Charles Starrett, Russell Hayden, Shirley Patterson, Cliff Edwards	58	June 18th
13. Prairie Gunsmoke	Hillyer	Bill Elliott, Tex Ritter, Frank Mitchell, Virginia Carroll	54	July 16th
14. Bad Men Of The Hills	Berke	Charles Starrett, Russell Hayden, Luana Walters, Cliff Edwards	58	Aug. 13th
15. Vengeance Of The West	Hillyer	Bill Elliott, Tex Ritter, Frank Mitchell, Adele Mara	61	Sept. 3rd
16. Overland to Deadwood	Berke	Charles Starrett, Russell Hayden, Leslie Brooks, Cliff Edwards	58	Sept. 25th

[fol. 6345-7]

EXHIBIT 685-A

Columbia Pictures Corporation
1934-35 Season

Town: Bucyrus, Ohio
Theatre: Southern

Features	Playdates	Film Rental
Broadway Bill	4/14/-16/35	$50.
One Night of Love	2/17-20/35	50.
Love Me Forever	9/23-24/35	50.
Whole Town's Talking	7/21-23/35	50.
Feather In Her Hat	11/24-26/35	30.
She Married Her Boss	10/20-23/35	40.
Carnival	5/30-31/35	30.
Let's Live Tonight	5/15-16/35	30.
Best Man Wins	9/27-28/35	15.
Girl Friend	9/29-10/1/35	15.
Black Room Mystery	10/11-12/35	15.
Eight Bells	8/7-8/35	15.
Mills of the Gods	8/13/35	15.
Party Wire	8/16-17/35	15.
Unwelcome Stranger	7/31-8/1/35	15.
Awakening of Jim Burke	8/28-29/35	15.
I'll Love You Always	5/22-23/35	15.
After The Dance	8/23-24/35	15.
That's Gratitude		
Jealousy		
Champagne For Breakfast	10/9-10/35	15.
Air Hawks	8/2-3/35	15.
Super Speed	10/4-5/35	15.
Death Flies East	11/1-2/35	15.
Together We Live	9/25-26/35	15.
White Lies		
Swell Head	7/10-11/35	15.
Public Menace	10/25-26/35	15.
Men of the Hour	9/20-21/35	15.
Atlantic Adventure	10/2-3/35	15.
In Spite of Danger		
Unknown Woman	9/6-7/35	15.
Behind the Evidence		
Men In Night		
Against The Law		
Westerns		
Prescott Kid	5/16/35	12.50
Westerner	6/13/35	12.50
Square Shooter	7/1/35	12.50
Law Beyond Range	7/17/35	12.50
Revenge Rider	10/10/35	12.50
Fighting Shadows	8/8/35	12.50
Justice of Range	9/12/35	12.50
Riding Wild	10/31/35	12.50

[fol. 6345-8]

Exhibit 685-B

Columbia Pictures Corporation
1935-36 Season

Town: Bucyrus, Ohio
Theatre: Bucyrus-State

Features	Playdates	Film Rental
Mr. Deeds Goes To Town	5/31-6/2/6	85.
King Steps Out	7/21-22/6	60.
Music Goes Round		
She Couldn't Take It		
Devil's Squadron	8/1/6	35.
Lady of Secrets		
If You Could Only Cook		
Crime & Punishment		
And So They Were Married	9/12/6	35.
One Way Ticket		
Lone Wolf Returns		
Grand Exit		
Hell Ship Morgan		
Counterfeit	7/14-16/6	20.
Meet Nero Wolfe		
End of the Trail	12/25/6	20.
Calling of Dan Mathews		
Mine With Iron Door		
They Met In A Taxi	10/30/6	20.
Escape From Devil's Island		
You May Be Next	7/18-19/6	20.
Pride of the Marines	7/25-26/6	20.
Final Hour		
Don't Gamble With Love	8/22-23/6	20.
Roaming Lady		
Blackmailer		
Shakedown		
Two Fisted Gentleman	12/5-6/36	20.
Trapped by Television		
Guard That Girl		
Case of Missing Man		
Too Tough to Kill		
Dangerous Intrigue		
Panic On the Air		
Alibi For Murder		
Killer At Large		
Tugboat Princess		
Westerns		
Western Frontier		
Heir to Trouble		
Western Courage		
Lawless Riders		
Cattle Thief		
Heroes of Range		
Avenging Waters		
Fugitive Sheriff		
Gallant Defender		
Mysterious Avenger		
Secret Patrol		
Stampede		

[fol. 6345-9]

Exhibit 685-C

Columbia Pictures Corporation
1935-36 Season

Town: Bucyrus, Ohio
Theatre: Southern

Features	Playdates	Film Rental
Mr. Deeds Goes To Town		
King Steps Out		
Music Goes Round	[illegible]/22-24/36	$50.
She Couldn't Take It	11/10-12/35	43.31
Devil's Squadron		
Lady of Secrets	3/1-3/36	40.
If You Could Only Cook	1/1-2/36	40.
Crime & Punishment	1/26-27/36	40.
And So They Were Married		
One Way Ticket	1/15-16/36	15.
Lone Wolf Returns	2/13-14/36	15.
Grand Exit	1/3-4/6	15.
Hell Ship Morgan	3/11-12/36	15.
Counterfeit		
Meet Nero Wolfe		
End of the Trail		
Calling of Dan Mathews	2/28-29/36	15.
Mine With Iron Door		
They Met In A Taxi		
Escape From Devil's Island	2/4-5/36	15.
You May Be Next		
Pride of the Marines		
Final Hour		
Don't Gamble With Love		
Roaming Lady		
Blackmailer		
Shakedown		
Two Fisted Gentleman		
Trapped by Television		
Guard That Girl	12/13-14/35	15.
Case of Missing Man	12/27-28/35	15.
Too Tough to Kill	2/21-22/36	15.
Dangerous Intrigue	3/4-5/36	15.
Panic On the Air		
Alibi For Murder		
Killer At Large		
Tugboat Princess		

Westerns

Western Frontier	11/15-16/35	12.50
Heir to Trouble	12/20-21/35	12.50
Western Courage	1/24-28/36	12.50
Lawless Riders	3/27-28/36	12.50
Cattle Thief		
Heroes of Range		
Avenging Waters		
Fugitive Sheriff		
Gallant Defender	2/6/36	12.50
Mysterious Avenger	3/19/36	12.50
Secret Patrol		
Stampede		

Exhibit 685-D

Columbia Pictures Corporation
1935-36 Season

Town: Norwalk, Ohio
Theatre: Moose

Features	Playdates	Film Rental
Mr. Deeds Goes To Town	5/3-6/36	$123.47
King Steps Out	7/19-21/36	75.
Music Goes Round	3/8-10/36	75.
She Couldn't Take It	11/17-19/36	50.99
Devil's Squadron	7/1-2/36	50.
Lady of Secrets	2/23-25/36	50.
If You Could Only Cook	11/19-21/36	50.
Crime & Punishment	1/22-23/36	50.
And So They Were Married	6/24-25/36	50.
One Way Ticket	1/17-18/36	30.
Lone Wolf Returns	1/26-27/36	30.
Grand Exit	11/5-6/35	30.
Hell Ship Morgan	5/6-7/36	17.50
Counterfeit	7/15-16/36	30.
Meet Nero Wolfe	8/2-4/36	30.
End of the Trail	9/27-29/36	30.
Calling of Dan Mathews	2/5-6/36	30.
Mine With Iron Door	7/8-9/36	30.
They Met In A Taxi	9/30-10/1/36	30.
Escape From Devil's Island	12/4-5/35	30.
You May Be Next	2/14-15/36	30.
Pride of the Marines	5/1-2/36	17.50
Final Hour	7/31-8/1/36	17.50
Don't Gamble With Love	3/6-7/36	17.50
Roaming Lady	4/16	17.50
Blackmailer	7/24-3/36	17.50
Shakedown	7/29-30/36	17.50
Two Fisted Gentleman	9/18-19/36	17.50
Trapped by Television	7/17-18/36	17.50
Guard That Girl	10/31/35	17.50
Case of Missing Man	11/7/35	17.50
Too Tough to Kill	12/13-14/35	17.50
Dangerous Intrigue	1/24-25/36	17.50
Panic On the Air	4/8-9/36	30.
Alibi For Murder	10/9-10/36	17.50
Killer At Large	11/6-7/36	17.50
Tugboat Princess	10/20-22/36	17.50
Westerns		
Western Frontier	11/1-2/35	15.
Heir to Trouble	11/22-23/35	15.
Western Courage	10/15/36	15.
Lawless Riders		
Cattle Thief	2/20/36	15.
Heroes of Range	9/17/36	15.
Avenging Waters		
Fugitive Sheriff		
Gallant Defender	12/17-18/35	17.50
Mysterious Avenger	2/7-8/36	17.50
Secret Patrol	5/29-30/36	17.50
Stampede	7/9/36	17.50

[fol. 6345–11]

Exhibit 685-E

Columbia Pictures Corporation
1936–37 Season

Town: Norwalk, Ohio
Theatre: Forum-Moose

Features	Playdates	Film Rental
Man Who Lived Twice		
Craig's Wife	11/19/6	$50.
Adventure in Manhattan	10/23–4/6	50.
Legion of Terror	2/6–7/7	20.
Come Closer Folks	12/26–7/7	20.
Theodora Goes Wild	1/3–5/7	75.
North of Nome	12/30–1/6	20.
Lady From Nowhere	1/30–1/7	20.
Pennies From Heaven	12/6–8/6	75.
Beloved Vagabond		
More Than A Secretary	1/13/7	50.
Counterfeit Lady	2/9/7	20.
Find The Witness		
Woman in Distress		
Devil's Playground	3/27/7	30.
Women of Glamour	3/17/7	30.
Dodge City Trail	4/3/7	20.
When You're In Love	3/7–8/7	75.
Parole Racket		
Trouble in Morocco	6/19–20/7	20.
Let's Get Married	7/17–8/7	30.
Racketeers in Exile	6/12–3/7	30.
Motor Madness		
I Promise To Pay	5/30–1/7	30.
Thunder in the City	6/8–9/7	30.
Criminals of the Air		
Frame Up		
Speed To Spare		
Venus Makes Trouble		
League of Frightened Men		
Girls Can Play		
Devil Is Driving		
Fight to Finish	8/20–1/7	50.
Roaring Timber		
It Can't Last Forever		
Dangerous Adventure		
It's All Yours		
Outlaws of Orient		

Westerns

Westerns	Playdates	Film Rental
Code of the Range	2/26/7	17.50
Cowboy Star	5/14/7	17.50
Westbound Mail	7/2/7	17.50
Trapped	9/24/7	17.50
Two Gun Law		
Two Fisted Sheriff		
One Man Justice		
Unknown Ranger	2/19/7	17.50
Ranger Courage		
Rio Grande Ranger	9/10/7	17.50
Law of the Ranger		
Reckless Ranger		
Rangers Step In		

[fol. 6345-12]

EXHIBIT 685-F

Columbia Pictures Corporation
1933–34 Season

Town: Norwich, New York
Theatre: Smalley

Features	Playdates	Film Rental
Lady For A Day	11/26–28/33	$75.
Man's Castle	12/31–1/3/34	100.
Captain Hates The Sea	11/25–27/34	75.
It Happened One Night	3/11–4/34	100.
No Greater Glory	4/22–24/34	75.
Twentieth Century	5/20–22/34	52.50
Party's Over	5/27–29/34	40.
Lady's Willing	8/26–27/34	30.
Lady By Choice	11/28–30/34	75.
Fog	1/7–8/34	30.
Whom The Gods Destroy	7/12–13/34	40.
Hello Big Boy		
Ninth Guest	3/15–16/34	30.
Once To Every Woman	2/14–16/34	30.
Take The Witness		
Let's Fall In Love	1/21–23/34	40.
Most Precious Thing In Life	6/13–15/34	30.
Defense Rests	7/26–27/34	40.
Black Moon	7/1–3/34	40.
Whirlpool	7/15–17/34	40.
I'll Fix It	11/4–6/34	40.
Fugitive Lady	12/5/34	30.
Sisters Under The Skin	4/29–5/1/34	40.
Blind Date	8/12–14/34	30.
Social Register	3/25–27/34	30.
Above the Clouds	11/29/33	30.
Shadows of Sing Sing	1/24–26/34	30.
Among the Missing	10/3/34	25.
The Line Up	3/28–30/34	25.
Hell Cat	6/7–9/34	25.
Name The Woman	8/9–10/34	25.
Rex King of Wild Horses	12/1–2/33	25.
Crime of Helen Stanley	6/6–8/34	25.
Before Midnight	1/17–19/34	25.
One Is Guilty	5/9–11/34	25.
Girl In Danger	11/14/34	25.
Night of Sin		
Song You Gave Me	3/8–9/34	40.
Lady For A Day	1/4–5/34	25.
It Happened One Night	5/2/34	25.
Let's Fall In Love	6/6/34	15.
Westerns		
Thrill Hunter	11/4–5/33	25.
Fighting Code	12/30/34	25.
Fighting Ranger	3/24/34	25.
Man Trailer	4/28/34	25.
Police Car No. 17	12/8–9/33	25.
Hold The Press	12/22–23/33	25.
Straightaway	1/27/34	25.
Speed Wings	2/24/34	25.
Voice In The Night	4/14/34	25.
Hell Bent	5/26/34	25.
A Man's Game	6/23/34	25.
Beyond the Law	8/4/34	25.

EXHIBIT 685-G

Columbia Pictures Corporation
1934-35 Season

Town: Norwich, New York
Theatre: Colonia

Features	Playdates	Film Rental
Broadway Bill	3/10-2/35	100.00
One Night of Love	2/7-8/35	100.00
Love Me Forever	7/28-9/35	100.00
Whole Town's Talking	3/12-3/35	75.00
Feather In Her Hat	12/17-8/35	75.00
She Married Her Boss	10/20-1/35	75.00
Carnival	2/23/35	50.00
Let's Live Tonight	4/16-7/35	50.00
Best Man Wins	3/16/35	40.00
Girl Friend	11/5-6/35	50.00
Black Room Mystery	8/23-4/35	40.00
Eight Bells	7/25/35	25.00
Mills of the Gods		
Party Wire		
Unwelcome Stranger	4/27/35	25.00
Awakening of Jim Burke	5/29/35	25.00
I'll Love You Always		
After The Dance		
That's Gratitude	1/29-30/35	25.00
Jealousy		
Champagne For Breakfast		
Air Hawks	6/7-8/35	25.00
Super Speed	9/12/35	40.00
Death Flies East		
Together We Live		
White Lies		
Swell Head		
Public Menace		
Man of the Hour		
Atlantic Adventure		
In Spite of Danger	3/30/35	25.00
Unknown Woman		
Behind the Evidence		
Men In Night		
Against The Law	2/9/35	25.00
Westerns		
Prescott Kid	12/7/34	25.00
Westerner	2/1/35	25.00
Square Shooter	3/1/35	25.00
Law Beyond Range	3/22/35	25.00
Revenge Rider	4/11/35	25.00
Fighting Shadows	6/28/35	25.00
Justice of Range	7/19/35	25.00
Riding Wild	8/15/35	25.00

[fol. 6345-14]

EXHIBIT 685-H

Columbia Pictures Corporation
1934-35 Season

Town: Norwich, New York
Theatre: Smalley

Features	Playdates	Film Rental
Broadway Bill	7/6/35	$20
One Night of Love	8/8-9/35	20
Love Me Forever	7/31/36	25
Whole Town's Talking		
Feather In Her Hat		
She Married Her Boss	12/30-31/35	20
Carnival		
Let's Live Tonight		
Best Man Wins		
Girl Friend		
Black Room Mystery		
Eight Bells		
Mills of the Gods	7/11-12/35	25
Party Wire	8/10/35	25
Unwelcome Stranger		
Awakening of Jim Burke		
I'll Love You Always	8/7-8/35	25
After The Dance	9/5-6/35	25
That's Gratitude		
Jealousy	7/10/35	20
Champagne For Breakfast	8/28/35	20
Air Hawks		
Super Speed		
Death Flies East	7/27/35	25
Together We Live	9/22-23/35	20
White Lies	7/24/35	25
Swell Head	8/31/35	25
Public Menace	10/9/35	20
Men of the Hour	9/21/35	20
Atlantic Adventure	9/19-20/35	20
In Spite of Danger		
Unknown Woman	8/13-14/35	25
Behind the Evidence	9/29-30/35	25
Men In Night	10/24-25/35	25
Against The Law		
It Happened One Night	4/25-26/35	25

Westerns	Playdates	Film Rental
Prescott Kid		
Westerner		
Square Shooter		
Law Beyond Range		
Revenge Rider		
Fighting Shadows		
Justice of Range		
Riding Wild		

[fol. 6345-15]

Exhibit 685-I
Columbia Pictures Corporation
1935-36 Season

Town: Norwich, New York
Theatre: Colonia

Features	Playdates	Film Rental
Mr. Deeds Goes To Town	4/26-27/36	$100.
King Steps Out		
Music Goes Round	3/24-25/36	100.
She Couldn't Take It	3/3-4/36	75.
Devil's Squadron	6/6/36	75.
Lady of Secrets		
If You Could Only Cook		
Crime & Punishment		
And So They Were Married		
One Way Ticket		
Lone Wolf Returns		
Grand Exit	2/29/36	35.
Hell Ship Morgan		
Counterfeit	8/1/36	75.
Meet Nero Wolfe		
End of the Trail	1/30/37	50.
Calling of Dan Mathews		
Mine With Iron Door		
They Met In A Taxi		
Escape From Devil's Island		
You May Be Next		
Pride of the Marines		
Final Hour		
Don't Gamble With Love		
Roaming Lady	6/27/36	35.
Blackmailer		
Shakedown	9/5/36	50.
Two Fisted Gentleman	12/22-23/36	50.
Trapped by Television		
Guard That Girl		
Case of Mssing Man		
Too Tough to Kill		
Dangerous Intrigue		
Panic On the Air	6/5/36	35.
Alibi For Murder		
Killer At Large		
Tugboat Princess	1/6/37	35.
Westerns		
Western Frontier		
Heir to Trouble		
Western Courage		
Lawless Riders		
Cattle Thief		
Heroes of Range		
Avenging Waters		
Fugitive Sheriff		
Gallant Defender		
Mysterious Avenger		
Secret Patrol		
Stampede		

[fol. 6345–16]

EXHIBIT 685-J

Columbia Pictures Corporation
1935–36 Season

Town: Norwich, New York
Theatre: Smalley

Features	Playdates	Film Rental
Mr Deeds Goes To Town	6/10–11/36	$25.
King Steps Out	5/31–6/2/36 & 6/4/36	100.
Music Goes Round		
She Couldn't Take It		
Devil's Squadron		
Lady of Secrets	5/10–12/36	37.50
If You Could Only Cook	2/19–21/36	60.
Crime & Punishment	2/23–25/36	60.
And So They Were Married	6/4–5/36	60.
One Way Ticket	3/8–10/36	37.50
Lone Wolf Returns	3/5–7/36	37.50
Grand Exit		
Hell Ship Morgan	3/1–3/36	37.50
Counterfeit		
Meet Nero Wolfe	8/16–18/36	37.50
End of the Trail		
Calling of Dan Mathews	5/3–5/36	37.50
Mine With Iron Door	5/17–19/36	37.50
They Met In A Taxi	11/8–10/36	25.
Escape From Devil's Island	3/26–27/36	37.50
You May Be Next	5/6–7/36	37.50
Pride of the Marines	4/5–7/36	25.
Final Hour	9/22/36	25.
Don't Gamble With Love	5/22/36	25.
Roaming Lady		
Blackmailer	9/4/36	25.
Shakedown		
Two Fisted Gentleman		
Trapped by Television	5/19/36	25.
Guard That Girl		
Case of Missing Man	2/29/36	25.
Too Tough to Kill	4/11/36	25.
Dangerous Intrigue	5/26/36	25.
Panic On the Air		
Alibi For Murder	12/4/36	25.
Killer At Large	11/14/36	25.
Tugboat Princess		
Westerns		
Western Frontier	10/25/35	25.
Heir to Trouble	11/8/35	25.
Western Courage	11/22/35	25.
Lawless Riders	1/31/36	25.
Cattle Thief	3/20/36	25.
Heroes of Range	4/3/36	25.
Avenging Waters	6/5/36	25.
Fugitive Sheriff	8/14/36	25.
Gallant Defender	2/1/36	25.
Mysterious Avenger	2/22/36	25.
Secret Patrol	7/18/36	25.
Stampede	8/10/36	25.

[fol. 6345-17]

Exhibit 685-K

Columbia Pictures Corporation
1936-37 Season

Town: Norwich, New York
Theatre: Smalley

Features	Playdates	Film Rental
Man Who Lived Twice	10/24-26/37	$25.
Craig's Wife		
Adventure in Manhattan		
Legion of Terror		
Come Closer Folks	6/20-1/37	25.
Theodora Goes Wild	6/4/37	25.
North of Nome	7/18-20/37	25.
Lady From Nowhere		
Pennies From Heaven	6/1/37	25.
Beloved Vagabond		
More Than A Secretary		
Counterfeit Lady		
Find The Witness	4/3-4/38	25.
Woman in Distress	7/11-12/37	25.
Devil's Playground		
Women of Glamour	6/22/37	25.
Dodge City Trail		
When You're In Love	6/11/37	25.
Parole Racket	6/25/37	25.
Trouble In Morocco	6/23-24/37	25.
Let's Get Married	5/27/37	25.
Racketeers in Exile	5/15/37	25.
Motor Madness		
I Promise to Pay	5/25-26/37	25.
Thunder in the City	7/25-27/37	25.
Criminals of the Air	6/10-11/38	25.
Frame Up	12/18/37	25.
Speed To Spare		
Venus Makes Trouble	9/12-14/37	25.
League of Frightened Men	11/27/37	25.
Girls Can Play		
Devil Is Driving		
Fight to Finish		
Roaring Timber	8/1-3/37	25
It Can't Last Forever		
Dangerous Adventure		
It's All Yours		
Outlaws of Orient		
Theodore Goes Wild	7/5-6/39	25.
Westerns		
Code of the Range	10/22/37	25.
Cowboy Star	5/21/37	25.
Westbound Mail	11/12/37	25.
Trapped	12/3/37	25.
Two Gun Law	2/5/38	25.
Two Fisted Sheriff		
One Man Justice	2/26/38	25.
Unknown Ranger		
Ranger Courage		
Rio Grande Ranger	5/28/37	25.
Law of the Ranger		
Reckless Ranger		
Rangers Step In		

[fol. 6345-18]

Exhibit 685-L
Columbia Pictures Corporation
1936–37 Season

Town: Norwich, New York
Theatre: Colonia

Features	Playdates	Film Rental
Man Who Lived Twice		
Craig's Wife	1/26/37	$75.
Adventure in Manhattan	2/27/37	75.
Legion of Terror		
Come Closer Folks		
Theodora Goes Wild	2/4–5/37	100.
North of Nome		
Lady From Nowhere		
Pennies From Heaven	1/21–22/37	100.
Beloved Vagabond		
More Than A Secretary	2/11–12/37	75.
Counterfeit Lady		
Find The Witness		
Woman in Distress		
Devil's Playground	3/23–24/37	50.
Women of Glamour		
Dodge City Trail	3/13/37	35.
When You're In Love	7/14–15/37	100.
Parole Racket		
Trouble in Morocco		
Let's Get Married		
Racketeers in Exile		
Motor Madness		
I Promise to Pay		
Thunder in the City		
Criminals of the Air		
Frame Up		
Speed To Spare		
Venus Makes Trouble		
League of Frightened Men		
Girls Can Play		
Devil Is Driving	8/19–20/37	50.
Fight to Finish		
Roaring Timber		
It Can't Last Forever	9/11/37	35.
Dangerous Adventure		
It's All Yours	9/14/37–15	50.
Outlaws of Orient	10/23/37	35.
Westerns		
Code of the Range		
Cowboy Star		
Westbound Mail		
Trapped		
Two Gun Law		
Two Fisted Sheriff		
One Man Justice		
Unknown Ranger		
Ranger Courage		
Rio Grande Ranger		
Law of the Ranger		
Reckless Ranger		
Rangers Step In		

EXHIBIT 685-M

Columbia Pictures Corporation
1937-38 Season

Town: Rochester, New York
Theatre: Madison

Features	Playdates	Film Rental
Lost Horizon	11/21-24/37	$354.46
It Happened in Hollywood	3/23-24/38	60.
Counsel For Crime	5/18-19/38	45.
Game That Kills	1/13-14/38	30.
Life Begins With Love	3/16-17/38	60.
Murder in Greenwich Village	7/13-14/38	30.
Awful Truth	12/21 M & 1/2-5/38	283.78
Trapped by G-Men	7/6-7/38	30.
Paid to Dance	1/27-29/38	30.
She Married An Artist	2/18-19/38	90.
All-American Sweetheart	3/4-5/38	40.
I'll Take Romance	3/20-22/38	150.
The Shadow	7/27-28/38	22.50
Under Suspicion	5/20-21/38	30.
Women in Prison		
No Time to Marry	5/11-12/38	45.
Penitentiary		
Squadron of Honor	7/15-16/38	30.
Little Miss Roughneck	7/22-23/38	45.
Wide Open Faces	5/6-7/38	90.
Who Killed Gail Preston	6/1-2/38	22.50
Start Cheering	5/22-24/38	67.50
Making the Headlines	10/5-6/38	40.
Woman vs. World	7/27-28/38	30.
Lone Wolf in Paris	5/29-31/38	45.
When G-Men Step In	8/3-4/38	22.50
Flight Into Nowhere	9/9-10/38	40.
There's Always a Woman	7/29-30/38	90.
Extortion	9/28-29/38	30.
Main Event	11/2-3/38	22.50
Holiday	8/7-9/38	150.
Highway Patrol	10/14-15/38	40.
City Streets	10/7-8/38	45.
Reformatory	9/21-22/38	40.
Gladiator	11/27-29/38	67.50
Convicted	11/9-10/38	22.50
I Am The Law	11/18-19/38	90.
Lady Objects	12/25-27/38	45.
Juvenile Court		
Girls' School	1/6-7/39	67.50

Westerns		
Old Wyoming Trail		
Outlaws of the Prairie		
Cattle Raiders		
Call of the Rockies		
Law of the Plains		
West of Cheyenne		
South of Arizona		
Colorado Trail		
Heroes of the Alamo	7/21/38	20.
Rolling Caravans		
Stage Coach Days		

[fol. 6345–20]

Exhibit 685-N

Columbia Pictures Corporation
1937–38 Season

Town: Rochester, New York
Theatre: Monroe

Features	Playdates	Film Rental
Lost Horizon	11/21–24/37	$394.24
It Happened in Hollywood	3/23–24/38	75.
Counsel For Crime	5/18–19/38	56.25
Game That Kills	1/13–14/38	40.
Life Begins With Love	3/16–17/38	75.
Murder in Greenwich Village	7/13–14/38	41.25
Awful Truth	12/31 M & 1/2–3/38	299.64
Trapped by G-Men	7/6–7/38	41.25
Paid to Dance	1/27–29/38	40.
She Married An Artist	2/18–19/38	120.
All American Sweetheart	3/4–5/38	55.
I'll Take Romance	3/20–22/38	150.
The Shadow	7/27–28/38	30.
Under Suspicion	5/20–21/38	41.25
Women in Prison		
No Time to Marry	5/11–12/38	56.25
Penitentiary		
Squadron of Honor	7/15–16/38	41.25
Little Miss Roughneck	7/22–23/38	56.25
Wide Open Faces	5/6–7/38	120.
Who Killed Gail Preston	6/1–2/38	30.
Start Cheering	5/22–24/38	90.
Making the Headlines		
Woman vs. World	7/27–28/38	30.
Lone Wolf in Paris	5/29–31/38	56.25
When G-Men Step In	8/3–4/38	30.
Flight Into Nowhere	9/9–10/38	55.
There's Always a Woman	5/18–19/38	120.
Extortion		
Main Event	11/2–3/38	30.
Holiday	8/7–9/38	150.
Highway Patrol		
City Streets		
Reformatory	9/21–22/38	40.
Gladiator	11/27–29/38	90.
Convicted	11/9–10/38	30.
I Am The Law	11/18–19/38	120.
Lady Objects	12/25–27/38	60.
Juvenile Court		
Girls' School	1/6–7/39	90.
Westerns		
Old Wyoming Trail		
Outlaws of the Prairie		
Cattle Raiders		
Call of the Rockies		
Law of the Plains		
West of Cheyenne		
South of Arizona		
Colorado Trail		
Heroes of the Alamo	7/21/38	20.
Rolling Caravans		
Stage Coach Days		

[fol. 6345-21]

EXHIBIT 685-O

Columbia Pictures Corporation
1937-38 Season

Town: Rochester, New York
Theatre: Dixie

Features	Playdates	Film Rental
Lost Horizon	12/6-8/37	$100.
It Happened in Hollywood	4/15-16/38	25.
Counsel For Crime		
Game That Kills		
Life Begins With Love		
Murder in Greenwich Village		
Awful Truth	5/13-15/38	50.
Trapped by G-Men		
Paid to Dance		
She Married An Artist	3/11-12/38	40.
All American Sweetheart		
I'll Take Romance	4/13-14/38	40.
The Shadow		
Under Suspicion		
Women in Prison		
No Time to Marry		
Penitentiary	4/15-16/38	40.
Squadron of Honor		
Little Miss Roughneck	8/10-11/38	25.
Wide Open Faces	5/27-28/38	25.
Who Killed Gail Preston		
Start Cheering	6/22-23/38	25.
Making the Headlines		
Woman vs. World		
Lone Wolf in Paris	7/6-7/38	25.
When G-Men Step In		
Flight Into Nowhere		
There's Always a Woman	8/19-20/38	40.
Extortion		
Main Event		
Holiday	8/31-9/1/38	50.
Highway Patrol		
City Streets		
Reformatory		
Gladiator	12/16-17/38	40
Convicted		
I Am The Law	12/4-6/38	40.
Lady Objects	12/21-22/38	25.
Juvenile Court		
Girls' School	1/25-26/39	25.
Westerns		
Old Wyoming Trail		
Outlaws of the Prairie		
Cattle Raiders		
Call of the Rockies		
Law of the Plains		
West of Cheyenne		
South of Arizona		
Colorado Trail		
Heroes of the Alamo		
Rolling Caravans		
Stage Coach Days		

[fol. 6345-22]

EXHIBIT 685-P

Columbia Pictures Corporation
1937-38 Season

Town: Rochester, New York
Theatre: Riviera

Features	Playdates	Film Rental
Lost Horizon	12/16-18/38	$150.
It Happened in Hollywood	4/15-16/38	35.
Counsel For Crime		
Game That Kills		
Life Begins With Love		
Murder in Greenwich Village		
Awful Truth	2/13-15/38	75.
Trapped by G-Men		
Paid to Dance		
She Married An Artist	3/11-12/38	50.
All American Sweetheart		
I'll Take Romance	4/13-14/38	50.
The Shadow		
Under Suspicion		
Women in Prison		
No Time to Marry		
Penitentiary	4/14-16/38	50.
Squadron of Honor		
Little Miss Roughneck	8/10-11/38	35.
Wide Open Faces	5/27-28/38	35.
Who Killed Gail Preston		
Start Cheering	6/22-23/38	35.
Making the Headlines		
Woman vs. World		
Lone Wolf in Paris	7/6-7/38	35.
When G-Men Step In		
Flight Into Nowhere		
There's Always A Woman	8/19-20/38	50.
Extortion		
Main Event		
Holiday	8/31-9/1/38	75.
Highway Patrol		
City Streets		
Reformatory		
Gladiator	12/16-17/38	50.
Convicted		
I Am The Law	12/4-6/38	50.
Lady Objects	12/21-22/38	35.
Juvenile Court		
Girls' School	1/25-26/38	35.

Westerns		
Old Wyoming Trail		
Outlaws of the Prairie		
Cattle Raiders		
Call of the Rockies		
Law of the Plains		
West of Cheyenne		
South of Arizona		
Colorado Trail		
Heroes of the Alamo		
Rolling Caravans		
Stage Coach Days		

[fol. 6345-23]

Exhibit 685-Q

Columbia Pictures Corporation

1937-38 Season

Town: Rochester, New York
Theatre: Liberty

Features	Playdates	Film Rental
Lost Horizon	12/16-18/37	$80.
It Happened in Hollywood		
Counsel For Crime		
Game That Kills		
Life Begins With Love		
Murder in Greenwich Village		
Awful Truth	2/20-22/38	40.
Trapped by G-Men		
Paid to Dance		
She Married An Artist	3/18-19/38	30.
All American Sweetheart		
I'll Take Romance	4/20-21/38	30.
The Shadow		
Under Suspicion		
Women in Prison		
No Time to Marry		
Penitentiary	4/22-23/38	30.
Squadron of Honor		
Little Miss Roughneck	8/17-18/38	22.50
Wide Open Faces	6/3-4/38	22.50
Who Killed Gail Preston		
Start Cheering	7/1-2/38	22.50
Making the Headlines		
Woman vs. World		
Lone Wolf in Paris	7/13-14/38	22.50
When G-Men Step In		
Flight Into Nowhere		
There's Always a Woman	8/26-27/38	30.00
Extortion		
Main Event		
Holiday	9/7-8/38	40.
Highway Patrol		
City Streets		
Reformatory		
Gladiator	11/23-24/38	30.
Convicted		
I Am The Law	12/11-13/38	30.
Lady Objects	12/28-29/38	22.50
Juvenile Court		
Girls' School	2/1-2/39	22.50
Westerns		
Old Wyoming Trail		
Outlaws of the Prairie		
Cattle Raiders		
Call of the Rockies		
Law of the Plains		
West of Cheyenne		
South of Arizona		
Colorado Trail		
Heroes of the Alamo		
Rolling Caravans		
Stage Coach Days		

[fol. 6345-24]

Exhibit 685-R

Columbia Pictures Corporation
1938-39 Season

Town: Rochester, New York
Theatre: State or Dixie

Features	Playdates	Film Rental
Can't Take It With You	11/24-26/38	$200.00
Crime Takes a Holiday	12/30-31/38	31.25
Flight to Fame	12/14-15/38	31.25
Little Adventuress	12/28-29/38	31.25
Adventure in Sahara		
Blondie	1/11-12/39	31.25
Strange Case of Dr. Meade	4/7-8/39	31.25
There's That Woman Again	3/22-23/39	50.00
Smashing the Spy Ring	2/8-9/39	31.25
Homicide Bureau		
Lone Wolf Spy Hunt	4/26-27/39	31.25
North of Shanghai		
My Son Is a Criminal		
Let Us Live	6/7-8/39	50.00
Blondie Meets The Boss	5/10-11/39	31.25
Romance of the Redwoods	6/30-7/1/39	31.25
Whispering Enemies	5/3-4/39	31.25
Lady and the Mob	8/25-26/39	31.25
First Offenders		
Outside These Walls		
Blind Alley	9/15-16/39	31.25
Missing Daughters	8/16-17/39	31.25
Angels Have Wings	7/23-25/39	80.00
Trapped in the Sky		
Clouds Over Europe	9/27-28/39	31.25
Parents On Trial	9/27-28/39	31.25
Good Girls Go to Paris	9/20-21/39	50.00
Woman Is Judge		
Blondie Vacation	9/15-16/39	31.25
Prison Gates		
Coast Guard	11/19-21/39	50.00
Man Could Not Hang	12/20-21/39	31.25
Five Little Peppers	12/13-14/39	31.25
Konga		
Golden Boy	12/8-9/39	80.00
Terror of Tiny Town		
Westerns		
West of Santa Fe		
Rio Grande		
Thundering West		
Texas Stampede		
North of the Yukon		
Spoilers of the Range		
Western Caravans		
Man From Sun Down		
Riders of Black River		
In Early Arizona		
Frontiers of '49		
Lone Star Pioneers		
Law Comes to Texas		

[fol. 6345-25]

Exhibit 685-S

Columbia Pictures Corporation
1938-39 Season

Town: Rochester, New York
Theatre: State or Dixie

Features	Playdates	Film Rental
Can't Take It With You	11/24-26/38	$125.00
Crime Takes a Holiday	1/6-7/39	30.00
Flight to Fame	12/21-22/38	30.00
Little Adventuress	1/4-5/38	30.00
Adventure In Sahara		
Blondie	1/18-19/39	30.00
Strange Case of Dr. Meade	4/14-15/39	30.00
There's That Woman Again	3/29-30/39	30.00
Smashing the Spy Ring	2/15-16/39	30.00
Homicide Bureau		
Lone Wolf Spy Hunt	5/3-4/39	30.00
North of Shanghai		
My Son Is a Criminal		
Let Us Live	6/14-15/39	30.00
Blondie Meets The Boss	5/17-18/39	30.00
Romance of the Redwoods	7/7-8/39	30.00
Whispering Enemies	5/10-11/39	30.00
Lady and the Mob	9/1-2/39	30.00
First Offenders		
Outside These Walls		
Blind Alley	9/22-23/39	30.00
Missing Daughters	8/23-24/39	30.00
Angels Have Wings	7/30-8/1/39	40.00
Trapped in the Sky		
Clouds Over Europe	10/4-5/39	30.00
Parents on Trial	10/4-5/39	30.00
Good Girls Go to Paris	9/27-28/39	30.00
Woman Is Judge		
Blondie Vacation	9/22-23/39	30.00
Prison Gates		
Coast Guard	11/26-28/39	30.00
Man Could Not Hang	12/27-28/39	30.00
Five Little Peppers	12/20-21/39	30.00
Konga		
Golden Boy	12/15-16/39	40.00
Terror of Tiny Town		
Westerns		
West of Santa Fe		
Rio Grande		
Thundering West		
Texas Stampede		
North of the Yukon		
Spoilers of the Range		
Western Caravans		
Man From Sun Down		
Riders of Black River		
In Early Arizona		
Frontiers of '49		
Lone Star Pioneers		
Law Comes to Texas		

[fol. 6345-26]

EXHIBIT 685-T

Columbia Pictures Corporation
1938-39 Season

Town: Rochester, New York
Theatre: Monroe

Features	Playdates	Film Rental
Can't Take It With You	1/11-14/39	$303.90
Crime Takes a Holiday		
Flight To Fame	4/7-8/39	21.25
Little Adventuress		
Adventure In Sahara		
Blondie	2/5-7/39	35.00
Strange Case of Dr. Meade	4/28-29/39	21.25
There's That Woman Again	4/19-20/39	75.00
Smashing the Spy Ring	3/9-11/39	35.00
Homicide Bureau		
Lone Wolf Spy Hunt	5/17-18/39	35.00
North of Shanghai		
My Son Is a Criminal		
Let Us Live	6/26-29/39	75.00
Blondie Meets The Boss	2/2-3/39	35.00
Romance of the Redwoods	7/28-29/39	35.00
Whispering Enemies	6/7-8/39	21.25
Lady and the Mob	9/15-16/39	35.00
First Offenders		
Outside These Walls		
Blind Alley	10/6-7/39	35.00
Missing Daughters	9/6-7/39	21.25
Angels Have Wings	8/20-22/39	100.00
Trapped in the Sky		
Clouds Over Europe	10/18-19/39	35.00
Parents On Trial	10/18-19/39	21.25
Good Girls Go to Paris	10/11-12/39	75.00
Woman Is Judge	9/27-28/39	21.25
Blondie Vacation	10/6-7/39	35.00
Prison Gates		
Coast Guard	12/17-19/39	75.00
Man Could Not Hang		
Five Little Peppers	1/3-4/40	35.00
Konga		
Golden Boy	1/29-30/39	100.00
Terror of Tiny Town		

Westerns	Playdates	Film Rental
West of Santa Fe		
Rio Grande		
Thundering West		
Texas Stampede		
North of the Yukon		
Spoilers of the Range		
Western Caravans		
Man From Sun Down		
Riders of Black River		
In Early Arizona		
Frontiers of '49		
Lone Star Pioneers		
Law Comes to Texas		

[fol. 6345-27]

PLAINTIFF'S EXHIBIT 685-U

Columbia Pictures Corporation
1938-39 Season

Town: Rochester
Theatre: Madison

Features	Playdates	Film Rental
Can't Take It With You	1/11-14/39	$343.68
Crime Takes a Holiday		
Flight To Fame	4/7-8/39	21.25
Little Adventuress		
Adventure In Sahara		
Blondie	2/5-7/39	35.00
Strange Case of Dr. Mende	4/28-29/39	21.25
There's That Woman Again	4/19-20/39	75.00
Smashing the Spy Ring	3/9-11/39	35.00
Homicide Bureau		
Lone Wolf Spy Hunt	5/17-18/39	35.00
North of Shanghai		
My Son Is a Criminal		
Let Us Live	6/28-29/39	75.00
Blondie Meets The Boss	2/2-3/39	35.00
Romance of the Redwoods	7/28-29/39	35.00
Whispering Enemies	6/7-8/39	21.25
Lady and the Mob	9/15-16/39	35.00
First Offenders		
Outside These Walls		
Blind Alley	10/6-7/39	35.00
Missing Daughters	9/6-7/39	21.25
Angels Have Wings	8/20-22/39	100.00
Trapped in the Sky		
Clouds Over Europe	10/18-19/39	35.00
Parents On Trial	10/18-19/39	21.25
Goods Girls Go to Paris	10/11-12/39	75.00
Woman Is Judge	9/27-28/39	21.25
Blondie Vacation	10/6-7/39	35.00
Prison Gates		
Coast Guard	12/17-19/39	75.00
Man Could Not Hang	1/10-11/40	35.00
Five Little Peppers	1/3-4/40	35.00
Konga		
Golden Boy	12/29-30/39	100.00
Terror of Tiny Town		
Westerns		
West of Santa Fe		
Rio Grande		
Thundering West		
Texas Stampede		
North of the Yukon		
Spoilers of the Range		
Western Caravans		
Man From Sun Down		
Riders of Black River		
In Early Arizona		
Frontiers of '49		
Lone Star Pioneers		
Law Comes to Texas		

[fol. 6345-28]

Plaintiff's Exhibit 685-V

Columbia Pictures Corporation
1938-39 Season

Town: Rochester, New York
Theatre: Liberty or Riviera

Features	Playdates	Film Rental
Can't Take It With You	11/24-26/38	$300.00
Crime Takes a Holiday	12/30-31/38	40.00
Flight to Fame	12/4-5/38	40.00
Little Adventuress	12/28-29/38	40.00
Adventure In Sahara		
Blondie	1/11-12/39	40.00
Strange Case of Dr. Meade	4/7-8/39	40.00
There's That Woman Again	3/22-23/39	62.50
Smashing the Spy Ring	2/8-9/39	40.00
Homicide Bureau		
Lone Wolf Spy Hunt	4/26-27/39	40.00
North of Shanghai		
My Son Is a Criminal		
Let Us Live	6/7-8/39	62.50
Blondie Meets The Boss	5/10-11/39	40.00
Romance of the Redwoods	6/30-7/1/39	40.00
Whispering Enemies	5/3-4/39	40.00
Lady and the Mob	8/25-26/39	40.00
First Offenders		
Outside These Walls		
Blind Alley	9/15-16/39	40.00
Missing Daughters	8/16-17/39	40.00
Angels Have Wings	7/23-25/39	125.00
Trapped in the Sky		
Clouds Over Europe	9/27-28/39	40.00
Parents On Trial	9/27-28/39	40.00
Goods Girls Go to Paris	9/20-21/39	62.50
Woman Is Judge		
Blondie Vacation	9/15-16/39	40.00
Prison Gates		
Coast Guard	11/19-21/39	62.50
Man Could Not Hang	12/20-21/39	40.00
Five Little Peppers	12/13-14/39	40.00
Konga		
Golden Boy	12/8-9/39	125.00
Terror of Tiny Town		

Westerns

West of Santa Fe
Rio Grande
Thundering West
Texas Stampede
North of the Yukon
Spoilers of the Range
Western Caravans
Man From Sun Down
Riders of Black River
In Early Arizona
Frontiers of '49
Lone Star Pioneers
Law Comes to Texas

[fol. 6345-29]

Plaintiff's Exhibit 685-W

Columbia Pictures Corporation
1938-39 Season

Town: Rochester, New York
Theatre: Liberty

Features	Playdates	Film Rental
Can't Take It With You	1/24-26/38	$125.00
Crime Takes a Holiday	1/6-7/39	37.50
Flight To Fame	12/21-22/38	37.50
Little Adventuress	1/4-5/38	37.50
Adventure in Sahara		
Blondie	1/18-19/39	37.50
Strange Case of Dr. Meade	4/14-15/39	37.50
There's That Woman Again	3/39-30/39	37.50
Smashing the Spy Ring	2/15-16/39	37.50
Homicide Bureau		
Lone Wolf Spy Hunt	5/3-4/39	37.50
North of Shanghai		
My Son Is a Criminal		
Let Us Live	6/14-15/39	37.50
Blondie Meets The Boss	5/17-18/39	37.50
Romance of the Redwoods	7/7-8/39	37.50
Whispering Enemies	5/10-11/39	37.50
Lady and the Mob	9/1-2/39	37.50
First Offenders		
Outside These Walls		
Blind Alley	9/22-23/39	37.50
Missing Daughters	8/23-24/39	37.50
Angels Have Wings	7/30-8/1/39	50.00
Trapped in the Sky		
Clouds Over Europe	10/4-5/39	37.50
Parents On Trial	10/4-5/39	37.50
Good Girls Go to Paris	9/27-28/39	37.50
Woman Is Judge		
Blondie Vacation	9/22-23/39	37.50
Prison Gates		
Coast Guard	11/26-28/39	37.50
Man Could Not Hang	12/27-28/39	37.50
Five Little Peppers	12/20-21/39	37.50
Konga		
Golden Boy	12/15-16/39	50.00
Terror of Tiny Town		

Westerns

West of Santa Fe
Rio Grande
Thundering West
Texas Stampede
North of the Yukon
Spoilers of the Range
Western Caravans
Man From Sun Down
Riders of Black River
In Early Arizona
Frontiers of '49
Lone Star Pioneers
Law Comes to Texas

[fol. 6345-30]

PLAINTIFF'S EXHIBIT 685-X

Columbia Pictures Corporation
1935-36 Season

Town: Van Wert, Ohio
Theatre: Ohio

Features	Playdates	Film Rental
Mr. Deeds Goes To Town	6/11-13/36	$85.
King Steps Out	6/21-23/36	85.
Music Goes Round	3/29-31/36	85.
She Couldn't Take It	11/24-26/35	75.
Devil's Squadron	6/7-9/36	75.
Lady of Secrets	3/22-24/36	75.
If You Could Only Cook	2/16-18/36	75.
Crime & Punishment	1/26-28/36	75.
And So They Were Married	6/14-16/36	75.
One Way Ticket	1/22-23/36	25.
Lone Wolf Returns	2/7-8/36	25.
Grand Exit	12/8-10/35	25.
Hell Ship Morgan	3/26-27/36	25.
Counterfeit	7/9-11/36	25.
Meet Nero Wolfe	8/2-4/36	25.
End of the Trail	11/8-10/36	25.
Calling of Dan Mathews	2/9-11/36	25.
Mine With Iron Door	5/31-6/2/36	25.
They Met In A Taxi	9/17-19/36	25.
Escape From Devil's Island	1/15-16/36	25.
You May Be Next	3/1-3/36	25.
Pride of the Marines	6/24/36	17.50
Final Hour	7/9/36	17.50
Don't Gamble With Love	4/26-28/36	25.
Roaming Lady	7/19-21/36	25.
Blackmailer	8/9-11/36	25.
Shakedown	9/2/36	17.50
Two Fisted Gentleman	8/26/36	17.50
Trapped by Television	7/8/36	17.50
Guard That Girl	12/15-17/35	25.
Case of Missing Man	12/29-31/35	25.
Too Tough to Kill	12/15-17/35	25.
Dangerous Intrigue	3/1-3/36	25.
Panic On the Air	6/10/36	17.50
Alibi For Murder	12/2/36	17.50
Killer At Large	1/6/37	17.50
Tugboat Princess	1/13/37	17.50
Westerns		
Western Frontier	9/20-21/35	12.50
Heir to Trouble	9/30-10/135	12.50
Western Courage	2/21-22/36	12.50
Lawless Riders	3/13-14/36	12.50
Cattle Thief	4/24-25/36	12.50
Heroes of Range	4/3-4/36	12.50
Avenging Waters	6/17/36	12.50
Fugitive Sheriff	7/2-4/36	15.
Gallant Defender	12/6-7/35	12.50
Mysterious Avenger	1/29-30/36	12.50
Secret Patrol	7/5-7/36	15.
Stampede	9/3-5/36	15.

[fol. 6345-31]

Plaintiff's Exhibit 685-Y

Columbia Pictures Corporation
1936-37 Season

Town: Van Wert, Ohio
Theatre: Strand-Van Wert

Features	Playdates	Film Rental
Man Who Lived Twice	11/14-15/36	$20.
Craig's Wife	10/14-15/36	20.
Adventure In Manhattan	10/21/36	20.
Legion of Terror	11/21-22/36	20.
Come Closer Folks	11/24/36	20.
Theodora Goes Wild	11/28-30/36	75.
North of Nome	12/27-28/36	20.
Lady From Nowhere		
Pennies From Heaven	12/29-30/36	75.
Beloved Vagabond		
More Than A Secretary	1/19-20/37	30.
Counterfeit Lady	1/1/37	20.
Find The Witness		
Woman in Distress	3/6-7/37	20.
Devil's Playground	2/20/37	30.
Women of Glamour	3/20/37	30.
Dodge City Trail	2/6-7/37	20.
When You're In Love	5/19/37	75.
Parole Racket		
Trouble in Morocco	4/24-25/37	20.
Let's Get Married		
Racketeers in Exile		
Motor Madness		
I Promise To Pay	5/29/37	20.
Thunder in the City	5/4-5/37	30.
Criminals of the Air		
Frame Up		
Speed To Spare		
Venus Makes Trouble		
League of Frightened Men		
Girls Can Play		
Devil Is Driving	7/8/37	65.
Fight to Finish		
Roaring Timber		
It Can't Last Forever		
Dangerous Adventure		
It's All Yours	9/15-16/37	50.
Outlaws of Orient		
Westerns		
Code of the Range		
Cowboy Star		
Westbound Mail		
Trapped		
Two Gun Law		
Two Fisted Sheriff		
One Man Justice		
Unknown Ranger		
Ranger Courage		
Rio Grande Ranger		
Law of the Ranger		
Reckless Ranger		
Rangers Step In		

[fol. 6345-32] **Exhibit No. 686**

Inter-Office Communication

Columbia Pictures

To Mr. Sam Reice.
From Max Rose.
Attention of —— ——.
By —— ——.
In Regard to U. S. vs. Schine.
Date: September 11, 1944.

I am sending you herewith a response from Mr. Montague's office to our request for printed schedules of future releases which come within the subpoena served on us by the Government.

I suggest that you put this with the other material which we will be required to produce in Buffalo.

Max.

Encls.

fol. 6345-33]

Columbia Pictures Corporation
Release Schedule

1938-39, As of August 1st, 1939

Features

Production	Director	Cast	Running Time in Minutes	Release Date
1. You Can't Take It With You	Capra	Jean Arthur, James Stewart, Lionel Barrymore, Edward Arnold, Mischa Auer, Spring Byington, Ann Miller, etc. etc.	127	Sept. 29th
2. Crime Takes A Holiday	Collins	Jack Holt, Marcia Ralston	59	Oct. 5th
3. Flight To Fame	Coleman	Charles Farrell, Jacqueline Wells	57	Oct. 12th
4. The Little Adventuress	Lederman	Edith Fellows, Jacqueline Wells, Cliff Edwards, Robert Paige	62	Oct. 24th
5. Adventure in Sahara	Lederman	Paul Kelly, Lorna Gray	58	Nov. 15th
6. Blondie	Strayer	Penny Singleton, Arthur Lake, Dorothy Moore, Larry Simms, Danny Mummert	72	Nov. 30th
* Terror Of Tiny Town (Special Release—not part of regular program.)	Sam Newfield	Jed Buell's Midgets	63	Dec. 1st
7. The Strange Case of Dr. Meade	Collins	Jack Holt, Beverly Roberts, Noah Beery, Jr.	67	Dec. 15th
8. There's That Woman Again	Hall	Melvyn Douglas, Virginia Bruce, Margaret Lindsay	74	Dec. 24th
9. Smashing The Spy Ring	Cabanne	Fay Wray, Ralph Bellamy,	62	Dec. 29th
10. Homicide Bureau	Coleman	Bruce Cabot, Rita Hayworth	59	Jan. 5th
11. The Lone Wolf Spy Hunt	Godfrey	Warren William, Ida Lupino, Ralph Morgan	71	Jan. 27th
12. North of Shanghai	Lederman	Betty Furness, James Craig	59	Feb. 10th
13. My Son Is A Criminal	Coleman, Jr.	Alan Baxter, Jacqueline Wells	59	Feb. 22nd
14. Let Us Live	Brahm	Henry Fonda, Maureen O'Sullivan, Ralph Bellamy	69	Feb. 28th
15. Blondie Meets The Boss	Strayer	Penny Singleton, Arthur Lake, Dorothy Moore, Larry Simms, Danny Mummert	74	Mar. 8th
16. Whispering Enemies	Collins	Jack Holt, Dolores Costello, Pert Kelton	63	Mar. 24th
17. Romance of the Redwoods	Vidor	Charles Bickford, Jean Parker	67	Mar. 30th
18. The Lady And The Mob	Stoloff	Fay Bainter, Ida Lupino, Henry Armetta, Lee Bowman, Warren Hymer	66	Apr. 3rd

19. First Offenders	McDonald	Walter Abel, Beverly Roberts, Iris Meredith, Johnny Downs	62	Apr. 12th
20. Outside These Walls	McCarey	Dolores Costello, Michael Whalen, Virginia Weidler	61	May 4th
21. Blind Alley	Vidor	Chester Morris, Ralph Bellamy, Ann Dvorak, Joan Perry, Rose Stradner	71	May 11th
22. Missing Daughters	Coleman, Jr.	Richard Arlen, Marian Marsh, Rochelle Hudson, Isabel Jewell	59	May 22nd
23. Only Angels Have Wings	Hawks	Jean Arthur, Cary Grant, Richard Barthelmess, Thomas Mitchell, Rita Hayworth, Noah Beery, Jr.	121	May 25th
24. Trapped In The Sky	Collins	Jack Holt, Katherine DeMille, Ralph Morgan	61	June 1st
25. Clouds Over Europe	Whalen	Laurence Olivier, Valerie Hobson, Ralph Richardson	79	June 20th
26. Parents On Trial	Nelson	Jean Parker, Johnny Downs	58	June 29th
27. Good Girls Go To Paris	Hall	Joan Blondell, Melvyn Douglas, Walter Connolly, Joan Perry	78	June 30th
28. A Woman Is The Judge	Grinde	Rochelle Hudson, Otto Kruger, Frieda Inescort	62	July 10th
29. Blondie Takes A Vacation	Strayer	Penny Singleton, Arthur Lake, etc.	71	July 20th
30. Behind Prison Gates	Barton	Brian Donlevy, Jacqueline Wells, Paul Fix	62	July 28th
31. Cost Guard	Ludwig	Randolph Scott, Ralph Bellamy, Frances Dee, Walter Connolly	—	Aug. 4th
32. The Man They Could Not Hang	Grinde	Boris Karloff, Roger Pryor, Lorna Gray	—	Aug. 17th
33. Five Little Peppers And How They Grew	Barton	Edith Fellows, Dorothy Peterson, Clarence Kolb	—	Aug. 22nd
34. Konga, The Wild Stallion	Nelson	Fred Stone, Rochelle Hudson, Richard Fiske	—	Aug. 30th
35. Golden Boy	Mamoulian	Barbara Stanwyck, Adolphe Menjou, William Holden, Joseph Calleia	—	Sept. 5th

Westerns

1. West Of The Santa Fe	Nelson	Charles Starrett, Iris Meredith	57	Oct. 3rd
2. Law Of The Texan	Clifton	Buck Jones, Dorothy Fay	54	Oct. 24th
3. In Early Arizona	Levering	Bill Elliott, Dorothy Gulliver	53	Nov. 2nd
4. Rio Grande	Nelson	Charles Starrett, Ann Doran, Sons of the Pioneers	59	Dec. 8th
5. California Frontier	Clifton	Buck Jones, Carmen Bailey	54	Dec. 15th
6. The Thundering West	Nelson	Charles Starrett, Iris Meredith, Sons of the Pioneers	57	Jan. 12th
7. Frontiers Of '49	Levering	Bill Elliott, Luana De Alcaniz	54	Jan. 19th
8. Texas Stampede	Nelson	Charles Starrett, Iris Meredith, Sons of the Pioneers	57	Feb. 9th

Columbia Pictures Corporation
Release Schedule

1938-39

As of August 1st, 1939

Features

	Production	Director	Cast	Running Time in Minutes	Release Date
9.	Lone Star Pioneers	Levering	Bill Elliott, Dorothy Gulliver	56	Mar. 16th
10.	North of the Yukon	Nelson	Charles Starrett, Linda Winters, Sons of the Pioneers	64	Mar. 30th
11.	The Law Comes to Texas	Levering	Bill Elliott, Veda Ann Borg, Sons of the Pioneers	58	Apr. 16th
12.	Spoilers Of The Range	Coleman, Jr.	Charles Starrett, Iris Meredith, Sons of the Pioneers	58	Apr. 27th
13.	Western Caravans	Nelson	Charles Starrett, Iris Meredith, Sons of the Pioneers	58	June 15th
14.	The Man From Sundown	Nelson	Charles Starrett, Iris Meredith, Sons of the Pioneers	59	July 15th
15.	Riders of Black River	Nelson	Charles Starrett, Iris Meredith, Sons of the Pioneers	—	Aug. 23rd

[fol. 6345-34]

Columbia Pictures Corporation
Release Schedule

1939-40 As of Sept. 1st

Features

	Production	Director	Cast	Running Time in Minutes	Release Date
	Golden Boy (1938-39)	Mamoulian	Barbara Stanwyck, Adolphe Menjou, William Holden, Joseph Calleia	101	Sept. 5th
1.	Hidden Power	Collins	Jack Holt, Gertrude Michael, Dickie Moore	60	Sept. 7th
2.	Those High Grey Walls	Vidor	Walter Connolly, Iris Meredith, Onslow Stevens	82	Sept. 21st
3.	U-Boat 29	Powell	Conrad Veidt, Sebastian Shaw, Valerie Hobson	79	Oct. 7th
4.	Scandal Sheet	Grinde	Otto Kruger, Ona Munson, Nedda Harrington	67	Oct. 16th
5.	Mr. Smith Goes To Washington	Capra	Jean Arthur, James Stewart, Claude Rains, Edward Arnold, Guy Kibbee, Thomas Mitchell, Beulah Bondi	130	Oct. 19th
6.	Beware Spooks!	Sedgwick	Joe E. Brown, Mary Carlisle	68	Oct. 24th
7.	Miracle On Main Street	Szekele	Walter Abel, Margo, Lyle Talbot, William Collier, Sr.	78	Oct. 29th
8.	Blondie Brings Up Baby	Strayer	Penny Singleton, Arthur Lake, Baby Dumpling (Larry Simms), etc.	69	Nov. 9th
9.	The Amazing Mr. Williams	Hall	Joan Blondell, Melvyn Douglas	86	Nov. 23rd
10.	Cafe Hostess	Salkow	Preston Foster, Ann Dvorak	63	Nov. 30th
11.	Fugitive At Large	Collins	Jack Holt, Patricia Ellis	66	Dec. 7th
12.	My Son Is Guilty	Barton	Bruce Cabot, Jacqueline Wells	63	Dec. 28th
13.	Music In My Heart	Santley	Tony Martin, Rita Hayworth, Edith Fellows Andre Kostelanetz and his Orchestra	70	Jan. 10th
14.	His Girl Friday	Hawks	Cary Grant, Rosalind Russell, Ralph Bellamy	92	Jan. 18th
15.	The Lone Wolf Strikes	Salkow	Warren William, Joan Perry	67	Jan. 26th
16.	Convicted Woman	Grinde	Rochelle Hudson, Glenn Ford, Frieda Inescort, Lola Lane, June Lang	66	Jan. 31st
17.	Five Little Peppers At Home	Barton	Edith Fellows, Dorothy Peterson, Clarence Kolb, Dorothy Ann Seece	65	Feb. 8th
18.	Blondie On A Budget	Strayer	Penny Singleton, Arthur Lake, Baby Dumpling, (Larry Sems), Rita Hayworth, etc.	73	Feb. 29th
19.	Outside The 3-Mile Limit	Collins	Jack Holt, Irene Ware	65	Mar. 7th
20.	Men Without Souls	Grinde	John Litel, Rochelle Hudson	62	Mar. 14th

Columbia Pictures Corporation
Release Schedule

As of Sept. 1st

1939–40

Features

Production	Director	Cast	Running Time in Minutes	Release Date
21. Too Many Husbands	Ruggles	Jean Arthur, Fred MacMurray, Melvyn Douglas	84	Mar. 21st
22. The Man With Nine Lives	Grinde	Boris Karloff, Roger Pryor, Jo Ann Sayres	73	Apr. 18th
23. The Doctor Takes A Wife	Hall	Loretta Young, Ray Milland, Gail Patrick Reginald Gardiner, George Metaxa	89	Apr. 25th
21 Days Together (Not included in 1939–40 program)	Dean	Vivien Leigh, Laurence Olivier	72	May 16th
24. Babies For Sale	Barton	Glenn Ford, Rochelle Hudson	64	May 16th
25. Island of Doomed Men	Barton	Peter Lorre	67	May 20th
26. The Lone Wolf Meets A Lady	Salkow	Warren William, Jean Muir	71	May 30th
27. Mad Men of Europe	De Courville	Edmund Gwenn, Mary Maguire	73	June 3rd
28. Passport To Alcatraz	Collins	Jack Holt, Cecelia Callejo, Noah Beery, Jr., Maxie Rosenbloom	60	June 6th
29. Girls of the Road	Grinde	Ann Dvorak, Lola Lane, Helen Mack	61	June 20th
30. Out West With The Peppers	Barton	Edith Fellows, Dorothy Peterson, Dorothy Ann Seece, etc.	62	June 30th
31. Military Academy	Lederman	Tommy Kelly, Bob Jordan, Jackie Searle, Dave Holt	66	July 18th
I Married Adventure (Not included in 1939–40 program)		Osa (Mrs. Martin) Johnson	78	July 24th
32. Blondie Has Servant Trouble	Strayer	Penny Singleton, Arthur Lake, Larry Simms, etc.	70	July 25th
33. The Lady In Question	Vidor	Brian Aherne, Rita Hayworth, Irene Rich, Glenn Ford	81	Aug. 7th
34. The Secret Seven	Moore	Bruce Bennett, Florence Rice	62	Aug. 15th
35. He Stayed For Breakfast	Hall	Loretta Young, Melvyn Douglas	89	Aug. 22nd
36. Five Little Peppers In Trouble	Barton	Edith Fellows, Dorothy Peterson, Dorothy Ann Seese, etc.	65	Sept. 1st
37. Before I Hang	Grinde	Boris Karloff, Evelyn Keyes	—	Sept. 17th
38. The Howards of Virginia	Lloyd	Cary Grant, Martha Scott, Sir Cedric Hardwicke	—	Sept. 19th
39. Glamour For Sale	Lederman	Roger Pryor, Anita Louise	—	Sept. 27th
40. Angels Over Broadway	Hecht	Douglas Fairbanks, Jr., Rita Hayworth Thomas Mitchell	—	Sept. 30th

Westerns

Production	Director	Cast	Running Time in Minutes	Release Date
1. Outpost of the Mounties	Coleman, Jr.	Charles Starrett, Iris Meredith, Sons of the Pioneers	63	Sept. 14th
2. The Stranger From Texas	Nelson	Charles Starrett, Lorna Gray, Sons of the Pioneers	54	Nov. 2nd
3. Taming Of The West	Deming	Bill Elliott, Iris Meredith	55	Dec. 7th
4. Two-Fisted Rangers	Lewis	Charles Starrett, Iris Meredith, Sons of the Pioneers	62	Jan. 4th
5. Pioneers Of The Frontier	Nelson	Bill Elliott, Linda Winters	58	Feb. 1st
6. Bullets For Rustlers	Nelson	Charles Starrett, Lorna Gray, Sons of the Pioneers	58	Mar. 5th
7. Blazing Six Shooters	Lewis	Charles Starrett, Iris Meredith, Sons of the Pioneers	61	Apr. 4th
8. The Man From Tumbleweeds	Lewis	Bill Elliott, Iris Meredith, Walter 'Dub' Taylor	59	May 2nd
9. Texas Stagecoach	Lewis	Charles Starrett, Iris Meredith, Sons of the Pioneers	59	May 23rd
10. The Return of Wild Bill	Lewis	Bill Elliott, Iris Meredith, Walter 'Dub' Taylor	60	June 27th

Release Schedule

1940-41

Final

As of Sept. 1st

Features

Production	Director	Cast	Running Time in Minutes	Date Release
1. Fugitive From A Prison Camp	Collins	Jack Holt, Marian Marsh	59	Sept. 5th
2. So You Won't Talk	Sedgwick	Joe E. Brown, Frances Robinson	69	Oct. 3rd
3. Nobody's Children	Barton	Edith Fellows, Billy Lee	65	Oct. 17th
4. Girls Under 21	Nosseck	Rochelle Hudson, Paul Kelly	64	Oct. 24th
5. Blondie Plays Cupid	Strayer	Penny Singleton, Arthur Lake, etc.	68	Oct. 31st
6. The Lone Wolf Keeps A Date	Salkow	Warren William, Frances Robinson	65	Nov. 23rd
7. Escape To Glory	Brahm	Pat O'Brien, Constance Bennett	74	Nov. 28th
8. Ellery Queen Master Detetive	Neuman	Ralph Bellamy, Charles Grapewin, Margaret Lindsay	68	Nov. 30th
9. The Great Plane Robbery	Collins	Jack Holt, Vicki Lester	53	Dec. 9th
10. The Phantom Submarine	Barton	Anita Louise, Bruce Bennett	70	Dec. 20th
11. Arizona	Ruggles	Jean Arthur, William Holden, Warren William	122	Dec. 25th
12. This Thing Called Love	Hall	Rosalind Russell, Melvyn Douglas	98	Jan. 2nd
13. The Face Behind The Mask	Florey	Peter Lorre, Evelyn Keyes	69	Jan. 16th
14. The Devil Commands	Dmytryk	Boris Karloff, Amanda Duff, Richard Fiske	65	Feb. 3rd
15. Adam Had Four Sons	Ratoff	Warner Baxter, Ingrid Bergman, Fay Wray	81	Feb. 18th
16. Meet Boston Blackie	Florey	Chester Morris, Rochelle Hudson	61	Feb. 20th
17. Blondie Goes Latin	Strayer	Penny Singleton, Arthur Lake, Larry Simms, Janet Burston, Ruth Terry, Tito Guizar	69	Feb. 27th
18. Missing Ten Days	Whelan	Rex Harrison, Karen Verne	77	Feb. 28th
19. The Lone Wolf Takes A Chance	Salkow	Warren William, June Storey	76	Mar. 6th
20. Ellery Queen's Penthouse Mystery	Hogan	Ralph Bellamy, Margaret Lindsay, Charles Grapewin, Anna May Wong, etc.	70	Mar. 24th
21. The Great Swindle	Collins	Jack Holt, Marjorie Reynolds	54	Apr. 10th
22. Under Age	Dmytryk	Nan Gray, Alan Baxter, Patti McCarty	60	Apr. 24th
23. Penny Serenade	Stevens	Cary Grant, Irene Dunne, Beulah Bondi, etc.	120	Apr. 24th
24. The Big Boss	Barton	Otto Kruger, John Litel, Gloria Dickson	70	Apr. 28th
25. They Dare Not Love	Whale	George Brent, Martha Scott, Paul Lukas	76	Apr. 30th
26. Her First Beau	Reed	Jane Withers, Jackie Cooper, Edith Fellows, Josephine Hutchinson	78	May 8th
27. She Knew All The Answers	Wallace	Franchot Tone, Joan Bennett, Eve Arden	86	May 15th
28. The Voice In The Night	Asquith	Clive Brook, Diana Wynyard, Ronald Squire, Joyce Howard	83	May 20th
29. Naval Academy	Kenton	Freddie Bartholomew, Jimmy Lydon, Billy Cook	67	May 22nd
30. Adventure In Washington	Green	Herbert Marshall, Virginia Bruce, Gene Reynolds	86	May 30th
31. The Richest Man In Town	Barton	Frank Craven, Eileen O'Hearn, Roger Pryor, Edgar Buchanan	70	June 12th
32. Time Out For Rhythm	Salkow	Rudy Vallee, Glen Gray and Casa Loma Band, Ann Miller, 3 Stooges, Allen Jenkins, Rosemary Lane	75	June 20th
33. Sweetheart Of The Campus	Dmytryk	Ruby Keeler, Ozzie Nelson & Band, Harriet Hilliard, Gordon Oliver	67	June 26th
34. I Was A Prisoner On Devil's Island	Landers	Donald Wood, Sally Eilers, Edward Ciannelli	71	June 30th
35. Two In A Taxi	Florey	Anita Louise, Russell Hayden, Dick Purcell, Noah Beery, Jr.	63	July 10th
36. Blondie In Society	Strayer	Penny Singleton, Arthur Lake, Larry Simms, Wm. Frawley, St. Brendan's Choir	77	July 17th
37. The Officer And The Lady	White	Rochelle Hudson, Roger Pryor, Sidney Blackmer, Bruce Bennett	59	July 24th
38. Tillie The Toiler	Salkow	Kay Harris, William Tracy, Ernest Truex	68	Aug. 7th
39. Ellery Queen And The Perfect Crime	Hogan	Ralph Bellamy, Margaret Lindsay, Spring Byington, Charles Grapewin	70	Aug. 14th
40. Here Comes Mr. Jordan	Hall	Robert Montgomery, Claude Rains, Evelyn Keyes, James Gleason	94	Aug. 21st
41. Our Wife	Stahl	Melvyn Douglas, Ruth Hussey, John Hubbard, Ellen Drew	95	Aug. 28th

Release Schedule—Continued

Westerns

	Production	Director	Cast	Running Time in Minutes	Release Date
1.	The Durango Kid	Hillyer	Charles Starrett, Marjorie Cooley, Sons of the Pioneers	60	Aug. 15th
2.	Prairie Schooners	Nelson	Bill Elliott, Walter 'Dub' Taylor, Evelyn Young	58	Sept. 30th
3.	West of Abilene	Cedar	Charles Starrett, Marjorie Cooley, Sons of the Pioneers	57	Oct. 21st
4.	Beyond the Sacramento	Hillyer	Bill Elliott, Evelyn Keyes, Walter 'Dub' Taylor	58	Nov. 14th
5.	Thundering Frontier	Lederman	Charles Starret, Iris Meredith, Sons of the Pioneers	57	Dec. 5th
6.	The Wildcat of Tucson	Hillyer	Bill Elliott, Evelyn Young	59	Dec. 31st
7.	The Pinto Kid	Hillyer	Charles Starrett, Louise Currie, Sons of the Pioneers	61	Jan. 9th
8.	Across The Sierras	Lederman	Bill Elliott, Luana Walters	58	Feb. 13th
9.	Outlaws of the Panhandle	Nelson	Charles Starrett, Frances Robinson, Sons of the Pioneers	59	Feb. 27th
10.	North From The Lone Star	Hillyer	Bill Elliott, Dorothy Fay, Walter 'Dub' Taylor	58	Mar. 31st
11.	The Return of Daniel Boone	Hillyer	Bill Elliott, Betty Miles, Walter 'Dub' Taylor	61	May 7th
12.	Hands Across The Rockies	Hillyer	Bill Elliott, Mary Bailey, Walter 'Dub' Taylor	57	June 19th
13.	The Medico of Painted Springs	Hillyer	Charles Starrett, Terry Walker, Ray Bennett	62	June 26th
14.	The Son Of Davy Crockett	Hillyer	Bill Elliott, Iris Meredith, Walter 'Dub' Taylor, Richard Fiske	60	July 15th
15.	Thunder Over The Prairies	Hillyer	Charles Starrett, Eileen O'Hearn, Cliff Edwards	61	July 30th
16.	Prairie Stranger *(formerly The Medico Hits The Trail)	Hillyer	Charles Starrett, Patti McCarty, Cliff Edwards	—	Sept. 18th

[fol. 6345-36] Inter-Office Communication

Columbia Pictures

To Mr. M. Rose.
From Mr. Montague's Office.
Attention of —— ——.
By Irene Danels.
In Regard to ——.
Date Sept. 8, 1944.
[Stamp:] Received Sep. 8, 1944, Legal Dept.

I am sending you herewith printed schedules of feature releases for the 1938-39 to the 1941-42 seasons inclusive.

I am unable to find printed schedules of this character for any season prior to 1938-39, and I believe it was not the practise of the company to print such schedules prior to the 1938-39 season. We did, during earlier seasons, publish in the Beacon lists of feature pictures in the form of release schedules, but I understand that such lists published in the Beacon do not come within the terms of the subp-ena.

Printed release schedules of the character furnished to you herewith are issued by us at approximately monthly intervals, but the monthly issues for the period beginning 1938-39 are not readily available.

Irene Danels.

att.

Columbia Pictures Corporation

1941-42 Release

Features

Production	Director	Cast	Running Time in Minutes	Release Dete
1. Mystery Ship	Landers	Paul Kelly, Lola Lane, Larry Parks	66	Sept. 4th
2. Harmon of Michigan	Barton	Tom Harmon, Anita Louise, Forest Evashevski	66	Sept. 11th
3. Ladies In Retirement	Vidor	Ida Lupino, Louis Hayward, Edith Barrett, Evelyn Keyes, Elsa Lanchester	93	Sept. 18th
You'll Never Get Rich (1940-41)	Lanfield	Rita Hayworth, Fred Astaire, Robert Benchley	89	Sept. 25th
4. Two Latins From Manhattan	Barton	Jinx Falkenburg, Don Beddoe, Joan Davis, Joan Woodbury	66	Oct. 2nd
5. Texas	Marshall	William Holden, Glenn Ford, Claire Trevor, Edgar Buchanan, George Bancroft	94	Oct. 9th
6. The Blonde From Singapore	Dmytryk	Florence Rice, Leif Erickson, Gordon Jones	70	Oct. 16th
7. Three Girls About Town	Jayson	Joan Blondell, Janet Blair, Binnie Barnes, John Howard, Robert Benchley	73	Oct. 23rd
8. You Belong To Me	Ruggles	Barbara Stanwyck, Henry Fonda, Ruth Donnelly, Edgar Buchanan	97	Oct. 30th
9. The Stork Pays Off	Landers	Maxie Rosenbloom, Rochelle Hudson, Victor Jory, Danny Mummert	68	Nov. 6th
10. Secrets of The Lone Wolf	Dmytryk	Warren William, Eric Blore, Ruth Ford, Thurston Hall	67	Nov. 13th
11. Ellery Queen and The Murder Ring	Hogan	Ralph Bellamy, Margaret Lindsay, Charles Grapewin, etc.	70	Nov. 18th
12. The Men In Her Life	Ratoff	Loretta Young, Conrad Veidt, Eugenie Leontovitch, Otto Kruger, Dean Jagger	90	Nov. 20th
13. Go West, Young Lady	Strayer	Penny Singleton, Glenn Ford, Ann Miller, Charles Ruggles, Bob Wills and His Texas Playboys	70	Nov. 27th
14. Sing For Your Supper	Barton	Jinx Falkenburg, Buddy Rogers, Bert Gordon (The Mad Russian)	65	Dec. 4th
15. Honolulu Lu	Barton	Lupe Velez, Bruce Bennett, Leo Carillo	72	Dec. 11th
16. Harvard Here I Come	Landers	Maxie Rosenbloom, Arline Judge, Marie Wilson	64	Dec. 18th
17. Bedtime Story	Hall	Loretta Young, Fredric March, Robert Benchley, Allyn Joslyn, Eve Arden	85	Dec. 25th
18. Confessions of Boston Blackie	Dmytryk	Chester Morris, Harriet Hilliard, Joan Woodbury, Richard Lane	65	Jan. 8th
19. Blondie Goes To College	Strayer	Penny Singleton, Arthur Lake, Larry Simms, Janet Blair	74	Jan. 15th
20. Cadets On Parade	Landers	Freddie Bartholomew, James Lydon, Minna Gombell	63	Jan. 22nd
21. A Close Call For Ellery Queen	Hogan	William Gargan, Margaret Lindsay, Charles Grapewin	67	Jan. 29th
22. The Man Who Returned To Life	Landers	John Howard, Ruth Ford, Elizabeth Risdon	61	Feb. 5th
23. The Lady Is Willing	Leisen	Marlene Deitrich, Fred MacMurray, Sterling Halloway	91	Feb. 12th
24. Shut My Big Mouth	Barton	Joe E. Brown, Adele Mara, Victor Jory	71	Feb. 19th
25. The Adventure of Martin Eden	Salkow	Glenn Ford, Claire Trevor, Evelyn Keyes, Stuart Erwin	87	Feb. 26th
26. Tramp, Tramp, Tramp	Barton	Florence Rice, Bruce Bennett, Jackie C. Gleason, Jack Durant	68	Mar. 12th
27. Canal Zone	Landers	Chester Morris, John Hubbard, Harriet Hilliard	79	Mar. 19th
28. Two Yanks In Trinidad	Ratoff	Pat O'Brien, Brian Donlevy, Janet Blair, Roger Clark	83	Mar. 26th
29. Alias Boston Blackie	Landers	Chester Morris, Richard Lane, George E. Stone, Adele Mara	67	Apr. 2nd
30. Blondie's Blessed Event	Strayer	Penny Singleton, Arthur Lake, Larry Simms, Danny Mummert, Jonathan Hale	69	Apr. 9th
31. Hello Annapolis	Barton	Tom Brown, Jean Parker, Robert Stevens, Herbert Rawlinson	62	Apr. 23rd

[fol. 6345–38]

Columbia Pictures Corporation

Schedule as of Sept. 1st

Production	Director	Cast	Running Time in Minutes	Release Date
32. The Wife Takes A Flyer	Wallace	Joan Bennett, Franchot Tone, Allyn Joslyn, Elisabeth Risdon	86	Apr. 30th
33. A Desperate Chance For Ellery Queen	Hogan	William Gargan, Margaret Lindsay, Chas. Grapewin, James Burke, John Litel, Lillian Bond	70	May 7th
34. Not A Ladies' Man	Landers	Paul Kelly, Fay Wray, Douglas Croft	60	May 14th
35. Sweetheart Of The Fleet	Barton	Jinx Falkenburg, Joan Woodbury, Joan Davis, Brenda and Cobina, Robt. Stevens	65	May 21st
36. Meet The Stewarts	Green	William Holden, Frances Dee, Marguerite Chapman, Danny Mummert	74	May 28th
37. Submarine Raider	Landers	John Howard, Marguerite Chapman, William Wright	64	June 4th
38. They All Kissed The Bride	Hall	Melvyn Douglas, Joan Crawford, Billie Burke, Roland Young, Helen Parrish	87	June 11th
39. Parachute Nurse	Barton	Marguerite Chapman, Kay Harris, Roger Clark, William Wright	63	June 18th
40. Atlantic Convoy	Landers	John Beal, Virginia Field, Bruce Bennett	66	July 2nd
41. Flight Lieutenant	Shalkow	Pat O'Brien, Glenn Ford, Evelyn Keyes	80	July 9th
42. Enemy Agents Meet Ellery Queen	Hogan	William Gargan, Margaret Lindsay, Charles Grapewin, James Burke	64	July 30th
43. Blondie For Victory	Strayer	Penny Singleton, Arthur Lake, Larry Simms, etc.	72	Aug. 6th
44. The Talk Of The Town	Stevens	Cary Grant, Jean Arthur, Ronald Colman, Glenda Farrel, Edgar Buchanan	118	Aug. 20th
45. Sabotage Squad	Landers	Bruce Bennett, Kay Harris, Edward Norris	64	Aug. 27th
46. My Sister Eileen	Hall	Rosalind Russell, Brian Aherne, Janet Blair	—	Sept. 30th
		Special Release		
The Invaders (Not included in 1941–42 program)	Powell	Laurence Olivier, Leslie Howard, Raymond Massey, Anton Walbrook, Eric Portman, Glynis Johns	104	Apr. 15th

Columbia Pictures Corporation
Schedule as of Sept. 1st

Production	Director	Cast	Running Time In Minutes	Release Date
		Westerns		
1. King of Dodge City	Hillyer	Bill Elliott, Tex Ritter, Judith Landen, Walter 'Dub' Taylor	63	Aug. 14th
2. Roaring Frontiers	Hillyer	Bill Elliott, Tex Ritter, Ruth Ford	62	Oct. 16th
3. The Royal Mounted Patrol	Hillyer	Charles Starrett, Russell Hayden, Wanda McKay, Lloyd Bridges	59	Nov. 13th
4. Riders of The Badlands	Bertherton	Chas. Starrett, Russell Hayden, Ilene Brewer, Cliff Edwards	57	Dec. 18th
5. The Lone Star Vigilantes	Fox	Bill Elliott, Tex Ritter, Frank 'Cannonball' Mitchell, Virginia Carpenter, Luana Walters	57	Jan. 1st
6. West Of Tombstone	Bretherton	Charles Starrett, Russell Hayden, Cliff Edwards, Marcelle Martin	59	Jan. 15th
7. Bullets For Bandits	Fox	Bill Elliott, Tex Ritter, Frank Mitchell, Edythe Elliott	55	Feb. 12th
8. Lawless Plainsmen	Berke	Charles Starrett, Russell Hayden, Luana Walters, Gwen Kenyon, Cliff Edwards	59	Mar. 12th
9. North Of The Rockies	Hillyer	Bill Elliott, Tex Ritter, Frank Mitchell, Shirley Patterson	60	Apr. 2nd
10. Down Rio Grande Way	Berke	Charles Starrett, Russell Hayden, Rose Ann Stevens	57	Apr. 23rd
11. The Devil,s Trail	Hillyer	Bill Elliott, Tex Ritter; Frank Mitchell, Eileen O'Hearn, Ruth Ford	61	May 14th
12. Riders Of The Northland	Berke	Charles Starrett, Russell Hayden, Shirley Patterson, Cliff Edwards	58	June 18th
13. Prairie Gunsmoke	Hillyer	Bill Elliott, Tex Ritter, Frank Mitchell, Virginia Carroll	54	July 16th
14. Bad Men Of The Hills	Berke	Charles Starrett, Russell Hayden, Luana Walters, Cliff Edwards	58	Aug. 13th
15. Vengeance Of The West	Hillyer	Bill Elliott, Tex Ritter, Frank Mitchell, Adele Mara	61	Sept. 3rd
16. Overland To Deadwood	Berke	Charles Starrett, Russell Hayden, Leslie Brooks, Cliff Edwards	58	Sept. 25th

[fol. 6346]

Exhibit 687

Paramount Pictures, Inc.
Times Square, New York, 18
Bryant 9-8700. Sable Address *Famfilm*

Legal Department.

October 2, 1944.

Edward F. McClennen, Esq., Hotel Statler, Buffalo, New York.

Robert Wright, Esq., c/o U. S. District Attorney, Federal Building, Buffalo, New York.

Re: U. S. v. Schine Chain Theatres, Inc., et al.

Gentlemen:

In accordance with the understanding made during the course of my testimony in the above matter on September 28, 1944, I send you each herewith a list of the feature motion pictures released by Paramount together with the actual dates on which they were so released for the season 1931-32 up to and including season 1938-39.

You will note that for the seasons 1939-40 and 1940-41 the days of the month are not set forth with respect to the features released. Commencing with the 1939-40 season it was the policy of this Company not to have so-called national release dates and consequently the release schedules made available to our various exchanges and to the trade throughout the country did not carry any specific days of the month.

I trust that the information submitted constitutes full compliance with the request heretofore made on September 28, 1944.

Very truly yours, Richard P. Morgan.

RPM/MB.

[fol. 6347] U. S. v. SCHINE CHAIN THEATRES, INC., ET AL.:

Paramount Releases 1931-32 through 1940-41

Group S-3 1931-32

August

1 Tabu.
1 The Smiling Lieutenant.
8 Murder by the Clock.
8 Caught.
15 Huckleberry Finn.
22 An American Tragedy.
29 Silence.

September

5 Secrets of a Secretary.
5 Daughter of the Dragon.
12 Personal Maid.
19 Monkey Business.
26 My Sin.

October

3 The Mad Parade.
10 Twenty Four Hours.
17 The Road to Reno.
24 The Beloved Bachelor.
31 Girls About Town.

November

7 Once A Lady.
14 Touchdown.
14 Rich Man's Folly.
21 His Woman.
28 The Cheat.

December

5 The False Madonna.
12 Working Girls.
19 Husband's Holiday.
26 Ladies of the Big House.
26 Sooky.

January

2 Dr. Jekyll and Mr. Hyde.
9 This Reckless Age.
16 Two Kinds of Women.
30 No One Man.

February

5 Tomorrow and Tomorrow.
12 Shanghai Express.
19 Wayward.
26 Broken Lullaby.

March

4 Strangers In Love.
11 Dancers In the Dark.
18 The Wiser Sex.
25 One Hour With You.
25 The Broken Wing.

April

1 The Miracle Man.
8 This Is the Night.
15 The Misleading Lady.
22 The World and the Flesh.
29 Sky Bride.

April

6 The Strange Case of Clara Deane.
13 Sinners In the Sun.
20 Reserved For Ladies.
27 Forgotten Commandments.

[fol. 6348]

June

3 No Release.
10 Merrily We Go To Hell.
17 Thunder Below.
24 Man From Yesterday.

July

1 Make Me A Star.
8 Million Dollar Legs.
15 Lady and Gent.
22 Madame Racketeer.
29 The Vanishing Frontier.

Available for June and July Booking

Aren't We All.
Lily Christine.

Group S-4 1932-33

August

5 Guilty As Hell.
12 Devil and the Deep.
Special Releases, Horsefeathers. Love Me Tonight.

September

2 70,000 Witnesses.
16 Night of June 13.
30 Heritage of the Desert.
Special Releases, Blonde Venus. Movie Crazy.

October

7 Madison Square Garden.
7 The Phantom President.
14 Night After Night.
28 Hot Saturday.

Special Releases, The Big Broadcast. Trouble in Paradise. A Farewell to Arms.

November

4 He Learned About Women.
11 Evenings For Sale.
25 Wild Horse Mesa.
Special, If I Had A Million.

December

2 Under Cover Man.
9 The Devil Is Driving.
30 Madame Butterfly.
Specials, Island of Lost Souls. No Man of Her Own.

January

6 The Billion Dollar Scandal.
6 A Farewell To Arms.
13 Tonight Is Ours.
20 The Mysterious Rider.
27 She Done Him Wrong.

February

3 Luxury Liner.
10 The Sign of the Cross.
17 The Woman Accused.
17 Hello Everybody.
24 The Crime of the Century.
24 From Hell To Heaven.

[fol. 6349]

March

3 A Lady's Profession.
10 King of the Jungle.
17 Strictly Personal.
24 Pick Up.
31 Murders In the Zoo.

April

7 Under the Tonto Rim.
14 Terror Aboard.
21 A Bedtime Story.
28 Song Of the Eagle.

May

5 Supernatural.
12 The Story of Temple Drake.
19 The Eagle and the Hawk.
26 Sunset Pass.
26 The Girl In 419.

June

2 International House.
9 I Love That Man.
16 Jennie Gerhardt.
23 College Humor.
30 Gambling Ship.

July

7 Disgraced.
14 Man of the Forest.
21 Her Bodyguard.
28 Mama Loves Papa.
28 Midnight Club.

Group S-5 1933-34

August

4 Three Cornered Moon.
11 Song of Songs.
18 The Big Executive.
25 This Day and Age.

September

1 One Sunday Afternoon.
8 Torch Singer.
15 To the Last Man.
22 Golden Harvest.
29 Too Much Harmony.

October

6 I'm No Angel.
13 Tillie and Gus.
20 The Way To Love.
27 Take A Chance.
27 Hell and High Water.

November

3 White Woman.
17 Cradle Song.
17 Duck Soup.
24 Sitting Pretty.
24 Thundering Herd.

December

1 Lone Cowboy.
8 Girl Without a Room.
22 Alice In Wonderland.
29 Design For Living.

January

5 Eight Girls In A Boat.
12 Miss Fane's Baby Is Stolen.
12 His Double Life.
19 All Of Me.
26 Four Frightened People.
26 The Last Round Up.

[fol. 6350] February

2 Search For Beauty.
9 Six Of A Kind.
16 Good Dame.
23 Bolero.
23 No More Women.

March

2 No Release.
9 She Made Her Bed.
16 Wharf Angel.
23 Come On Marines.
30 Death Takes A Holiday.

April

6 You're Telling Me.
13 Trumpet Blows.
20 Melody In Spring.
27 We're Not Dressing.
27 The Witching Hour.

May

4 Double Door.
11 Private Scandal.
18 Thirty Day Princess.
25 Murder At the Vanities.

June

1 Little Miss Marker.
8 Many Happy Returns.
15 The Great Flirtation.
22 Here Comes The Groom.
29 Shoot The Works.

July

6 Kiss And Make Up.
13 The Old Fashioned Way.
20 Notorious Sophie Lang.
27 Elmer And Elsie.

Group S-6 1934-35

August

3 Ladies Should Listen.
10 She Loves Me Not.
24 Crime Without Passion.
24 You Belong To Me.
31 Now And Forever.

September

7 The Scarlet Empress.
21 Wagon Wheels.
21 Belle Of the Nineties.
28 Lemon Drop Kid.

October

5 Cleopatra.
12 Ready For Love.
19 Mrs. Wiggs Of The Cabbage Patch.
26 Menace.

November

2 No Release.
9 Limehouse Blues.
16 Pursuit of Happiness.
23 College Rhythm.
30 It's A Gift.

December

7 Behold My Wife.
14 One Hour Late.
21 Home On The Range.
21 Father Brown, Detective.
28 Here Is My Heart.

[fol. 6351]

January

4 Enter Madame.
11 The President Vanishes.
18 The Lives Of A Bengal Lancer.
25 The Gilded Lily.

February

1 Wings In The Dark.
8 Rocky Mountain Mystery.
15 Rumba.
22 All The King's Horses.

March

1 Car 99.
8 Ruggles of Red Gap.
15 Love In Bloom.
22 Mississippi.
29 McFadden's Flats.

August.

5 No Release.
12 Hold 'Em Yale.
19 Private Worlds.
19 Four Hours To Kill.
26 Stolen Harmony.

May

3 The Devil Is A Woman.
10 Once In a Blue Moon.
17 Goin' To Town.
24 People Will Talk.
31 The Glass Key.

June

7 Scoundrel.
14 The Virginian (Reissue).
21 College Scandal.
28 Men Without Names.

July

5 Paris In Spring.
5 Dr. Jekyll and Mr. Hyde (Reissue).
12 This Woman Is Mine.
19 Shanghai.
19 Accent On Youth.
26 Smart Girl.
26 Man On The Flying Trapeze.

Group S-7 1935-36

August

2 Every Night At Eight.
9 This Woman Is Mine (S-6 7/19/35).
16 Without Regret.
23 Accent On Youth (S-6 7/19/35).
23 Hopalong Cassidy (D.V.W.).
30 Here Comes Cookie.

September

6 Annapolis Farewell.
13 Two For Tonight.
20 The Big Broadcast of 1936.
20 Wanderer Of the Wasteland.
27 The Virginia Judge.

October

4 Two Fisted.
4 Little America.
11 The Last Outpost.
18 Hands Across The Table.
25 The Eagle's Brood (2nd D.V.W.).
25 The Crusades.
Special, Wings Over Ethiopia.

[fol. 6352] November

1 Ship Cafe.
8 Peter Ibbetson.
15 Mary Burns Fugitive.
22 So Red The Rose.
29 Nevada.
29 Coronado.

December

6 No Release.
13 Bar 20 Rides Again (3rd D.V.W.).
13 Millions In The Air.
20 Scrooge.
20 It's A Great Life.
27 Collegiate.

January

3 The Bride Comes Home.
10 Rose Of The Rancho.
17 Her Master's Voice.
17 Soak The Rich.
24 Anything Goes.
31 Timothy's Quest.

February

7 The Milky Way.
14 Drift Fence.
14 Woman Trap.
21 Klondike Annie.
28 Desire.
28 The Preview Murder Mystery.

March

6 Call of the Prairie (4th H.C.).
6 Give Us This Night.
13 Trail Of The Lonesome Pine.

March—Continued

13 F Man.
20 Too Many Parents.
27 Desert Gold.
27 13 Hours By Air.

April

3 Big Brown Eyes.
10 The Moon's Our Home.
17 Sky Parade.
17 Till We Meet Again.
24 Three On The Trail (5th H.C.).

May

1 No Release.
8 Florida Special.
8 Case Against Mrs. Ames.
15 Forgotten Faces.
15 Fatal Lady.
22 Princess Comes Across.
29 Border Flight.

June

5 Palm Springs.
5 Early To Bed.
12 Girl Of The Ozarks.
19 Poppy.
19 And Sudden Death.
26 The Arizona Raiders (Zane Grey Western).

July

3 Return of Sophie Lang.
10 Spendthrift.
17 Three Cheers For Love.
24 Yours For The Asking.
24 Heart of the West (6th H.C.).
31 Rhythm On The Range.
31 A Son Comes Home.

[fol. 6353] Group S-8 1936-37

August

7 My American Wife.
14 I'd Give My Life.
21 Hollywood Boulevard.
28 Texas Rangers.
28 Straight From The Shoulder.

September

4 Lady Be Careful.
4 The General Died At Dawn.
11 Three Married Men.
18 Wives Never Know.
25 Murder With Pictures.

October

2 Valiant Is the Word For Carrie.
9 Big Broadcast Of 1937.
16 Wedding Present.
23 Hopalong Cassidy Returns (1st H.C.).
23 Accusing Finger.
30 Rose Bowl.

November

6 Along Came Love.
6 Easy To Take.
13 Go West Young Man.
20 Hideaway Girl.
27 Jungle Princess.

December

4 Arizona Mahoney.
11 Trail Dust (2nd H.C.).
18 Let's Make a Million.
25 College Holiday.
Special, Scrooge.

January

1 The Plainsman.
8 Mind Your Own Business.
15 Bulldog Drummond Escapes.
22 Doctor's Diary.
29 Champagne Waltz.

February

5 Outcast.
12 Clarence.
19 Maid of Salem.
26 Borderland (3rd H.C.).
26 John Meade's Woman.

March

5 Murder Goes To College.
12 Swing High Swing Low.
12 The Crime Nobody Saw.

19 Her Husband Lies.
26 Waikiki Wedding.

April

2 No Release.
9 Girl From Scotland Yard.
16 Internes Can't Take Money.
16 Hills of Old Wyoming (4th H.C.).
23 King of Gamblers.
30 Make Way For Tomorrow.

May

7 No Release.
14 Turn Off The Moon.
21 Night Of Mystery.
28 I Met Him In Paris.

June

4 Hotel Haywire.
11 The Last Train From Madrid.
18 Mountain Music.
25 The Great Gambini.
25 North Of the Rio Grande (5th H. C.).

[fol. 6354]

July

2 Midnight Madonna.
2 Forlorn River (Zane Grey Western).
9 Wild Money.
16 Easy Living.
23 Rustlers' Valley (6th H.C.).
30 Exclusive.
Horsefeathers (Reissue).
Now And Forever (Reissue).

Group S-9 1937-38

August

6 Blonde Trouble.
13 Artists and Models.
20 She's No Lady.
27 On Such A Night.

September

3 Souls At Sea.
3 Hopalong Rides Again (1st H.C.).
10 Sophie Lang Goes West.
17 Double Or Nothing.

August—Continued

17 She Asked For It.
24 Bulldog Drummond Comes Back.

October

1 High Wide and Handsome.
8 Partners In Crime.
15 This Way Please.
22 Thunder Trail (Zane Grey).
29 Angel.

November

5 Hold 'Em Navy.
12 The Barrier.
12 Night Club Scandal.
19 Blossoms On Broadway.
26 Ebb-Tide.
26 Texas Trail (2nd H.C.).

December

3 Love On Toast.
10 Born To The West (Zane Grey).
10 The Lives Of A Bengal Lancer (Reissue).
17 Daughter of Shanghai.
24 True Confession.
31 Wells Fargo.

January

7 Bulldog Drummond's Revenge.
14 Every Day's A Holiday.
21 Thrill Of A Lifetime.
28 Partners Of The Plains (3rd H.C.).

February

4 The Buccaneer.
11 Scandal Street.
18 Big Broadcast Of 1938.
25 Cassidy Of Bar 20 (4th H.C.).

March

4 Romance In The Dark.
11 Dangerous To Know.
18 Bulldog Drummond's Peril.
25 Bluebeard's Eighth Wife.

April

1 Tip-Off Girls.
8 No Release.
15 Her Jungle Love.
22 Heart of Arizona (5th H.C.).
29 College Swing.

[fol. 6355] May

6 Doctor Rhythm.
13 Stolen Heaven.
20 Cocoanut Grove.
27 Hunted Men.

June

3 No Release.
10 You And Me.
17 Prison Farm.
24 Bar 20 Justice (6th H.C.).

July

1 No Release.
8 Pride Of The West (1st H.C.—S-10).
15 No Release.
22 Tropic Holiday.
22 Booloo.
29 Professor Beware.

August

5 Bulldog Drummond In Africa.
12 The Texans.
19 Give Me A Sailor.
26 Spawn Of The North.

Group S-10 1938-39

September

2 Sing You Sinners.
9 In Old Mexico (2nd H.C.)
16 Campus Confessions.
23 Sons of the Legion.
30 King of Alcatraz.

October

7 Touchdown, Army.
14 Arkansas Traveler.
21 Mysterious Rider (Zane Grey).

28 No Release.
Special—Men With Wings.

November

4 Illegal Traffic.
11 If I Were King.
18 Thanks for the Memory.
25 Arrest Bulldog Drummond.
25 Say It in French.

December

2 Little Orphan Annie.
9 Ride a Crooked Mile.
16 The Frontiersmen (3rd H.C.)
23 Tom Sawyer Detective.
30 Artists and Models Abroad.

January

6 Disbarred.
13 Zaza.
20 Ambush.
27 Paris Honeymoon.

February

3 St. Louis Blues.
10 Persons in Hiding.
17 Boy Trouble.
24 One Third of a Nation.
24 Sunset Trail (4th H.C.)

March

3 Cafe Society.
10 The Beachcomber.
17 King of Chinatown.
24 Midnight.
31 Sudden Money.
31 Silver on the Sage (5th H.C.).

[fol. 6356]

April

7 I'm from Missouri.
14 Bulldog Drummond's Secret Police.
14 Never Say Die.
21 Back Door to Heaven.
28 The Lady's from Kentucky.

May

5 Union Pacific.
12 Hotel Imperial.
19 Some Like It Hot.
26 Unmarried.
26 Stolen Life.

June

2 Gracie Allen Murder Case.
9 Undercover Doctor.
16 Invitation to Happiness.
23 Grand Jury Secrets.
23 Heritage of the Desert (Zane Grey).
30 Bulldog Drummond's Bride.

July

7 Man About Town.
14 Million Dollar Legs.
21 The Magnificent Fraud.
28 Island of Lost Men.

August

4 Night Work.
11 Our Leading Citizen.
18 Renegade Trail (6th H.C.).
18 This Man Is News.
25 The Starmaker.

Group S-11 1939-40

September

Death of a Champion.
Range War.
Beau Geste.
$1000 a Touchdown.
Honeymoon in Bali.

October

What a Life.
Jamaica Inn.
Television Spy.
Disputed Passage.

November

Law of the Pampas (2nd H.C.—Special).
The Cat and the Canary.
Rulers of the Sea.
Our Neighbors—The Carters.

December

The Night of Nights.
The Llano Kid.
All Women Have Secrets.
Gulliver's Travels.
The Great Victor Herbert.

January

Emergency Squad.
Geronimo.
Remember the Night.
Santa Fe Marshal (3rd H.C.).

February

Parole Fixer.
The Light That Failed.
Sidewalks of London.
Knights of the Range (Zane Grey).

[fol. 6357] March

Seventeen.
The Showdown (4th H.C.).
Women Without Names.
Road to Singapore.
The Farmer's Daughter.

April

Adventure in Diamonds.
Dr. Cyclops.
The Light of Western Stars (Zane Grey).
French Without Tears.

May

Buck Benny Rides Again.
Opened by Mistake.

May—Continued

Typhoon.
The Biscuit Eater.
Those Were the Days.

June

Hidden Gold (5th H.C.).
Safari.
The Ghost Breakers.
Queen of the Mob.

July

The Way of All Flesh.
Stage Coach War (6th H.C.—Special).
Untamed.

August

Golden Gloves.
Mystery Sea Raider.
Comin' Round the Mountain.
The Great McGinty.

Group S-12 1940-41

September

Rhythm on the River.
I Want a Divorce.
Rangers of Fortune.

October

The Quarterback.
Cherokee Strip.
Moon Over Burma.
Christmas in July.

November

Dancing on a Dime.
Arise My Love.
World in Flames.
Three Men from Texas (1st H.C.).

December

A Night at Earl Carroll's.
Texas Rangers Ride Again.

Love Thy Neighbor.
Northwest Mounted Police (S-11).

January

Second Chorus.
Doomed Caravan (2nd H.C.).
Victory.
Aldrich Family in Life with Henry.

February

You're the One.
The Mad Doctor.
Virginia.
The Monster and the Girl.

March

In Old Colorado (3rd H.C.).
The Lady Eve.
Las Vegas Nights.

[fol. 6358] April

The Roundup.
Road to Zanzibar.
Border Vigilantes (4th H.C.).
Power Dive.

May

Reaching for the Sun.
There's Magic in Music.
Pirates on Horseback (5th H.C.).
I Wanted Wings.

June

One Night in Lisbon.
West Point Widow.
The Parson of Panamint (Aug. Release).

July

Caught in the Draft.
Forced Landing.
The Shepherd of the Hills.

August

Kiss the Boys Goodbye.
Wide Open Town (6th H.C.).
World Premiere:
Flying Blind.
Aloma of the South Seas.

[fol. 6359] EXHIBIT 688

Agreement made at Lockport, New York, this 17th day of June, 1935, by and between Jessamine E. Shannon, LeGrand O. Robson and James A. White, as Executors of the Estate of Charles E. Dickinson, deceased, late of the City of Lockport, Niagara County, New York, having their offices at Room 45, Fourth Floor, Savings Bank Building, Lockport, New York, hereinafter described as the "Sellers" and G. C. Theatre Corp. a New York corporation having its principal office at Gloversville, New York, hereinafter described as the "Purchaser",

Witnesseth:

For and in consideration of the mutual covenants and agreements hereinafter contained, the parties hereto do hereby mutually covenant and agree as follows:

1. The Sellers covenant and agree to sell (as soon as possible and in any event by December 31st, 1935) and the purchaser covenants and agrees to purchase: (a) the premises and property described in Exhibit A annexed hereto and made part hereof, for the sum of $159,000.00, which sum the said Purchaser hereby agrees to pay the Sellers as follows: the sum of $90,000.00 by the assumption and agreement to pay, or the execution, acknowledgment and delivery by the Purchaser to the Sellers or to such person, firm or corporation as the Seller may designate (in which event the mortgage recording tax, recording fee and the revenue stamps on the bond shall be paid by the Sellers) of a bond and first mortgage in the said sum upon the said premises and property, or a portion thereof, the interest whereon, at a rate not to exceed 5½% per annum, shall be payable not more frequently than semi-annually, and the principal whereof shall be payable not sooner than in ten (10) semi-annual

instalments (the first of which shall not become due prior to six (6) months after the date hereof) of $2500.00 each and a final instalment (which shall not become due prior to five (5) years after the date hereof) of $65,000.00, and the sum of $69,000.00 in cash at the time and place of closing [fol. 6360] as hereinafter provided, and (b) the premises and property described in "Exhibit B" annexed hereto and made part hereof, for the sum of $1000.00, which sum the said Purchaser agrees to pay the Sellers at the time and place of closing as hereinafter provided.

Interest items, insurance premiums and water rates shall be pro-rated and adjusted between the parties hereto as of the date of the delivery of the deeds or of the possession of the said premises and property, whichever shall be earlier. All taxes which may be a lien on the said premises and property shall be paid by the Sellers except the City and County taxes for the current fiscal year which shall be pro-rated and adjusted between the parties hereto as of the date of the delivery of the deeds or of the possession of the said premises and property, whichever shall be earlier. All assessments for local improvements now a lien, or which may become a lien prior to the date of the delivery of the deeds or of the possession of the said premises and property, whichever shall be earlier, shall be paid by the Sellers.

The Sellers shall furnish to the Purchaser, at least 15 days before the date of closing, fully guaranteed tax and title searches made by an incorporated title or abstract company and surveys of the said premises and properties, made by a licensed surveyor, showing the lands which are to be conveyed hereunder and all buildings and improvements thereon, and shall tender the Purchaser good, marketable and insurable titles to said premises and property. Upon the payment of the agreed purchase price at the time and in the manner above mentioned, the Sellers shall execute and deliver, or cause to be executed and delivered, to the said Purchaser, or to its assigns, good and sufficient warranty deeds and bills of sale of the said premises and property. The Purchaser shall have possession of each of said premises and property from and after the delivery of said deeds free and clear from all liens and encumbrances not [fol. 6361] otherwise provided for herein and the Sellers shall take such steps as may be necessary to put the Purchaser in possession. The Sellers further covenant and agree to deliver possession of the premises and property so described in "Exhibit A" to the Purchaser as soon as they acquire the right to such possession.

This contract shall be closed, the payments made and the deeds and bill of sale delivered at the office of the Niagara County Clerk, Lockport, New York, on such date prior to the 1st day of January, 1936, as may be specified in a notice by the Sellers to the Purchaser of the readiness of the Sellers to close, which notice shall be sent by registered mail addressed to the Purchaser at its address as hereinabove stated at least 15 days prior to the date indicated in such notice, or, if no such notice shall be given, on December 31st, 1935, at 12 o'clock noon. The risk of loss or damage to said premises and property until the delivery of the deeds and bill of sale therefor is assumed by the Sellers.

2. This agreement shall not be valid for any purpose unless within ten days after the date hereof the Purchaser shall deposit in escrow at the Lockport Exchange Trust Company a certificate of deposit or certified check for $10,000.00, endorsed in blank, to guarantee the performance by the Purchaser of its obligations thereunder, which check or certificate of deposit shall be delivered by the Trust Company to:

(a) The Sellers, when and if the Purchaser shall so request, in writing, to be accepted by the Sellers in part payment of the purchase price of the said premises and property to the extent of the face amount thereof and the interest accrued thereon; or

(b) The Sellers, as liquidated damages and not as a penalty, upon proof to the said Trust Company that the [fol. 6362] Purchaser has failed to fulfill its obligations hereunder but not until ten days after written notice to the Purchaser by the Trust Company of its intention to deliver the same to the Sellers; or

(c) The Purchaser on the 2nd day of January, 1936, in the event that the Sellers, prior thereto, shall not have furnished proof that their obligations hereunder have been fulfilled.

3. In the event that the Sellers shall fail to fulfill their obligations hereunder on or before December 31st, 1935, the Purchaser may, at its option, elect to rescind this agree-

ment. Anything to the contrary hereinabove contained, the Sellers shall not be liable for damages for failure to fulfill their obligations hereunder in the event that the first mortgage held by Massachusetts Mutual Life Ins. Co. upon the premises described in "Exhibit A" shall be foreclosed and the said premises shall be sold in such foreclosure action to a person, firm or corporation, other than the Sellers, or one of the Sellers of the Estate of Charles E. Dickinson, deceased, and over whom or which neither the Sellers nor any of the Sellers, nor any of the Estate of Charles E. Dickinson, deceased, have any control, and in which neither the Sellers, nor any of the Sellers, nor any of the Estate of Charles E. Dickinson, deceased, have any interest, for a purchase price of more than $160,000.00.

4. The Sellers severally represent and warrant that they have the authority and right to enter into this agreement and to make the covenants and agreements herein contained.

5. This agreement and the covenants and agreements herein contained shall be binding on and inure to the benefit of the successors and assigns of the respective parties hereto.

In Witness Whereof, the Sellers have hereunto set their [fol. 6363] hands and seals and the Purchaser has caused this agreement to be executed in its name by its duly authorized officer on the day first above written.

—— ——(L. S.), —— —— (L. S.), —— —— (L. S.), as Executors of the Estate of Charles E. Dickinson, deceased; G. C. Theatre Corp., by —— ——, Vice Pres.

[fol. 6364] State of New York,
County of —,
City of —, ss:

On this — day of June, 1935, before me, the subscriber, personally appeared Jessamine E. Shannon to me known and known to me to be the person mentioned and described in the foregoing agreement, and she duly acknowledged to me that she executed the same as one of the Executors of the Estate of Charles E. Dickinson, deceased.

—— ——, Notary Public.

STATE OF NEW YORK,
County of —,
City of —, ss:

On this — day of June, 1935, before me, the subscriber, personally appeared LeGrand O. Robson to me known and known to me to be the person mentioned and described in the foregoing agreement, and he duly acknowledged to me that he executed the same as one of the Executors of the Estate of Charles E. Dickinson, deceased.

—— ——, Notary Public.

STATE OF NEW YORK,
County of —,
City of —, ss:

On this — day of June, 1935, before me, the subscriber, personally appeared James A. White to me known and known to me to be the person mentioned and described in the foregoing agreement, and he duly acknowledged to me that he executed the same as one of the Executors of the Estate of Charles E. Dickinson, deceased.

—— ——, Notary Public.

[fol. 6365] STATE OF NEW YORK,
County of —,
City of —, ss:

On this — day of June, 1935, before me personally came John A. May, to me personally known who, being by me duly sworn did depose and say that he resides in —— that he is the Vice President of the G. C. Theatre Corp., the corporation described in and which executed the foregoing Instrument; that he knows the seal of said corporation; that the seal affixed to said Instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

—— ——.

[fol. 6366] EXHIBIT "A"

All that tract or parcel of land, situate in the City of Lockport, County of Niagara and State of New York, described as "that part of lot 42, on East Avenue, which lies in Lot 12, Section 14, Township 14, Range 6, and together with that part of lot 42 which lies in lot 10, Section 14, Township 14, and Range 6, designated as A and B, being a piece or parcel of land on Elm Street, in the City of Lockport, County of Niagara and State of New York, 66 feet in depth, and extending from Main Street to an alley. Also all that tract or parcel of land situate in the City of Lockport, County of Niagara and State of New York, and which on a map or survey of the Village of Lockport, made by Jesse P. Haines, surveyor, and published in the year 1845, is known and distinguished as the west part of village lot number 44, on the south side of East Main Street, bounded and described as follows:

Beginning at the northwest corner of said lot and running thence southerly along the west line of said lot two chains, fifty six and one half links to an alley; thence easterly along the north line of said alley, forty-one feet; thence northerly on a line parallel with said west line to Main Street; thence westerly along the south bounds of said Main Street, forty-one feet to the place of beginning, being and intended to be the same premises conveyed by one Joseph Christy and wife to Henry M. Belding by deed dated June 28, 1876, and which deed is recorded in the office of the Clerk of the County of Niagara, in Liber 139 of Deeds, at page 530.

All chairs, seats, carpets, stage equipment and booth equipment (other than sound equipment) now installed in the theatre building erected upon the above described premises.

All personal property now owned by Lock City Theatres, Inc. appurtenant to or used in the operation of a theatre in the theatre building erected upon the above described premises.

[fols. 6367-6368] EXHIBIT "B".

All that tract or parcel of land situate in the City of Lockport, County of Niagara and State of New York, being part of Lot No. 12, Section 14, Range 6 of the Holland Land Company's Survey, and being part of subdivision lot No. 20 on the southerly side of Walnut Street, commencing at a point on the southerly line of Walnut Street one hundred twenty eight feet east of the northwest corner of lot No. 18 and running thence ten inches easterly along the southerly line of Walnut Street; thence southeasterly at right angles to the southerly line of Walnut Street 121 feet 1½ inches more or less; thence southwesterly parallel to the southerly line of Walnut Street ten inches; thence northwesterly at right angles to the southerly line of Walnut Street 121 feet 1½ inches more or less to the point of beginning, said parcel being immediately adjacent to lands on the west formerly owned by Charles E. Dickinson and now owned by the Palace Lockport Corporation, and constituting all property in said Lot No. 20 now owned by the executors and trustees of said Charles E. Dickinson.

[fol. 6369] **Exhibit No. 690**

Lock City Theatres, Inc.

Auctions—Legals

Legal Notices

Notice of Public Sale

Notice is hereby given that a public sale of all or any part of the herein described assets of the Estate of Charles E. Dickinson, late of the City of Lockport, New York, deceased, will be held at the office of the Executors of the Estate at 45 Savings Bank Building, Lockport, New York, on the 20th day of April, 1936, at eleven o'clock A. M.; said sale to be held upon the following terms and conditions, viz.,—

1. Said sale will be held pursuant to the order of the Surrogate of the County of Niagara, granted on the 7th day of April, 1936.

2. Said sale will be made at public auction to the highest bidder for cash.

3. The sale of all or any part of said assets will be made, subject to the lease made by Lock City Theatres, Inc. to Reliance Theatres, Inc.

4. The payment or release of the Estate obligation for operating losses incurred in the operation of the Palace Theatre will be considered a factor and integral part of any

sum offered at such sale for said assets in determining the bid, the acceptance of which is most advantageous to the Estate.

5. Said Executors reserve the right to bid at such sale for the protection of the Estate and to insure a fair price for the assets offered for sale.

6. A deposit of ten percentum of the sale price will be required to be made by the successful bidder or bidders, if any, at the time of the sale and full payment of the purchase price will be required to be made within five days thereafter upon presentation at the office of the Executors, 45 Savings Bank Building, Lockport, New York, of proper instruments of title, executed by the Executors, transferring title to the hereinafter described property, to such successful bidder or bidders.

The property herein offered for sale, as aforesaid, is briefly described as follows:

1. Mortgage dated July 1, 1925, made by Lock City Theatres, Inc. to Charles E. Dickinson, to secure payment of the principal sum of $25,000.00, and interest, and recorded in Niagara County Clerk's Office in Liber 461 of Mortgages at page 304, together with the bond thereby secured, of even date therewith.

2. Mortgage dated May 25, 1925, made by Lock City Theatres, Inc. to Charles E. Dickinson, to secure payment of the principal sum of $25,000.00, and interest, and recorded in Niagara County Clerk's Office in Liber 461 of Mortgages, at page 314, together with the bond thereby secured of even date therewith.

3. Mortgage dated December 23, 1924, executed by Lock City Theatres, Inc., to A. Edmund Lee, to secure payment of the sum of $30,000.00 principal and interest, and recorded in Niagara County Clerk's Office in Liber 453 of Mortgages, at page 58, together with the bond thereby secured, of even date therewith, and thereafter assigned by A. Edmund Lee to Charles E. Dickinson, by assignment dated November 5, 1929, recorded in said County Clerk's Office in Liber 30 of Assignments of Mortgages, at page 339.

4. Mortgage dated June 1, 1924, by Lock City Theatres, Inc. to Harold P. Dygert to secure payment of the sum of

$21,000.00 recorded in said County Clerk's Office in Liber 435 of Mortgages at page 582, together with the bond secured thereby and thereafter assigned to Charles E. Dickinson by Harold P. Dygert, by assignment dated December 3, 1925, recorded in said Clerk's Office in Liber 30 of Assignments of Mortgages, at page 310. That there remains unpaid $13,000.00 of principal upon this mortgage.

5. A note or account owing by Lock City Theatres, Inc., to Charles E. Dickinson, for $25,000.00.

6. 14,270 shares of common stock of Lock City Theatres, Inc., par value $10.00—unlisted.

7. 720 shares of 8% preferred stock of Lock City Theatres, Inc., par value $100.00—unlisted.

8. 33 1-3 shares of common stock of Reliance Theatres, Inc., no par value—unlisted, sale to be subject to agreement of December 22nd, 1932.

Jessamine E. Dickinson Shannon, LeGrand O. Robson, James A. White, Executors.

Dated: April 7th, 1936.

Fogle, Bedenkapp & Andrews, Attorneys for Executors, 40-44 Savings Bank Bldg., Lockport, New York.

8, 14c

[fol. 6370] Receipt is hereby acknowledged from John R. Osborne of One Ten Thousand Dollar ($10,000) 2¾% U. S. Government Coupon Bond No. 14192 B with all coupons attached as payment of a part of the purchase price of the assets offered for sale at public auction on April 20, 1936, as per Notice of Sale herein dated April 7th, 1936.

Fogel, Bedenkapp & Andrews, by Glen R. Bedenkapp.

[fol. 6371] **Exhibit 691**

Memorandum of agreement, made and entered into this 20th day of April, 1936, by and between Jessamine E. Dickinson Shannon, LeGrand O. Robson and James A. White, as Executors of the Estate of Charles E. Dickinson, Deceased, parties of the first part, and Nikitas Dipson, Peter Grafiades and Reliance Theatres, Inc., a domestic corporation, parties of the second part:

Whereas, Charles E. Dickinson, Deceased, and Nikitas Dipson entered into a certain agreement dated December 22, 1932, concerning the formation of Reliance Theatres, Inc.; the respective rights, duties and obligations of said Dickinson and said Dipson to each other and to said Reliance Theatres, Inc.; also concerning its stock, assets, management, control and the assignability of their respective interests therein; and

Whereas, it was provided, in said agreement dated December 22, 1932, that said Dickinson and said Dipson should each have fifty shares of stock of Reliance Theatres, Inc., and that neither could transfer any or all of his stock without consent of the other; and

Whereas, said Dickinson entered into a certain agreement March 14, 1933 with Peter Grafiades of the City of Batavia, New York, whereby said Dickinson agreed that Dipson could transfer his stock in Reliance Theatres, Inc. to Grafiades, and further agreed to accept Grafiades' assumption of Dipson's rights and duties under the agreement of December 22, 1932, wherein Grafiades agreed to accept and assume Dipson's obligations thereunder; and

Whereas, on the 13th day of April, 1933, the said Dickinson and Grafiades entered into a certain agreement whereby it was provided that Dickinson would transfer and [fol. 6372] consent to transfer to Grafiades sixteen and one third (16⅓) shares of Reliance Theatres, Inc. then held by Dickinson, with the provision that said Dickinson should be voting trustee of said stock for a certain number of years, and with the further provision that thereafter Grafiades would assume the obligation connected with said stock and that Dickinson would be released therefrom; and

Whereas, the parties of the first part now desire to transfer and assign all their rights, property, interest, etcetera, in the aforesaid agreements, and in the capital stock of Reliance Theatres, Inc., to which parties of the first part are entitled, said transfer and assignment to be made to John R. Osborne of the City of Batavia, New York;

Now, Therefore, in consideration of the payment of the sum of One Dollar ($1.00), by each of the parties hereto to the other in hand paid, the receipt whereof is hereby acknowledged, and in consideration of the mutual covenants hereinafter set forth, It is agreed as follows:—

1. That the parties of the first part may sell, assign and transfer any and all shares of stock and voting rights therein to John R. Osborne of the City of Batavia, New York.

2. Parties of the second part, individually and collectively, hereby remise, release and forever discharge the parties of the first part and their successors and all parties interested in the Estate of Charles E. Dickinson, Deceased, of and from all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, etcetera, now already due or that may hereafter become due, in any way to the parties of the second part under the terms [fol. 6373] and conditions of certain contracts entered into between Charles E. Dickinson, Deceased, and Nikitas Dipson December 22, 1932, and by and between Charles E. Dickinson, Deceased, and Peter Grafiades March 14, 1933 and April 13, 1933, particularly and specifically releasing and discharging the parties of the first part from the payment of any sum of money at the present time, or at any time in the future, under Paragraph 7 of the agreement of December 22, 1932, for current repairs, replacements and actual operating losses, or for any other purpose.

3. The agreements above referred to, entered into by Charles E. Dickinson, Deceased, December 22, 1932 with Nikitas Dipson, and on March 14, 1933 and April 13, 1933 with Peter Grafiades, are hereby abrogated, rescinded and cancelled by all the parties to said agreements, and it is understood and agreed that henceforth all rights of any of the parties to any of said agreements shall be in every respect terminated, annulled and extinguished.

4. Parties of the first part specifically forego, waive and extinguish any and all right to hold sixteen and one-third (16⅓) shares of common stock of Reliance Theatres, Inc. as voting trustees for Peter Grafiades under the terms and conditions of the agreement of April 13, 1933.

5. From the time of the execution of this agreement forward, parties of the first part will have no interest, voice or concern whatsoever with the corporate affairs of Reliance Theatres, Inc., or with any action taken by any of the parties of the second part in connection therewith.

6. Parties of the first part remise, release and forever discharge the parties of the second part from all claims,

debts, dues, accounts, notes, etcetera for any sums of money [fol. 6374] that may have been advanced by Charles E. Dickinson, Deceased, to Reliance Theatres, Inc. prior to his death, pursuant to the terms of the agreements recited above.

In Witness Whereof, the parties hereto have hereunto set their hands and seals the day and year first above written.

In presence of Jessamine E. Dickinson Shannon (L.S.), James A. White (L.S.), LeGrand O. Robson (L.S.), as Executors of the Estate of Charles E. Dickinson, Deceased, Parties of the first part. Peter Grafiades (L.S.), Nikitas Dipson (L.S.), Reliance Theatres, Inc., by Peter Grafiades, parties of the second part.

State of New York,
County of Niagara,
City of Lockport, ss:

On this 7th day of May, 1936, before me, the subscriber, personally appeared Jessamine E. Dickinson Shannon, LeGrand O. Robson and James A. White, to me personally known and known to me to be the same persons described in and who executed the within Instrument, and they severally duly acknowledged to me that they executed the same.

Glenn R. Bedenkapp, Notary Public.

[fol. 6375] State of New York,
County of Niagara,
City of Lockport, ss:

On this 7th day of May, 1936, before me, the subscriber, personally appeared Nikitas Dipson and Peter Grafiades, to me personally known and known to me to be the same persons described in and who executed the within Instrument, and they severally duly acknowledged to me that they executed the same.

Warren F. Thompson, Notary Public.

State of New York,
County of Niagara,
City of Lockport, ss:

On this 7th day of May, 1936, before me personally came Peter Grafiades, to me personally known, who, being by me duly sworn did depose and say that he resides in the City of Lockport; that he is the President of Reliance Theatres, Inc., the corporation described in and which executed the above Instrument; that he knows the seal of said corporation; that the seal affixed to said Instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

Warren F. Thompson, Notary Public.

[fol. 6376] Endorsed: Memorandum of Agreement between Jessamine E. Dickinson, Shannon, LeGrand O. Robson and James A. White, as Executors of the Estate of Charles E. Dickinson, Deceased, Parties of the first part, and Nikitas Dipson, Peter Grafiades and Reliance Theatres, Inc., Parties of the second part. Dated: April 20, 1936.

[fol. 6377] May 20, 1936.

To: Executors of the Estate of Charles E. Dickinson, Deceased, Lockport, New York.

We hereby agree, within the next ten days, to supply you with an audit of the books of the Reliance Theatres, Inc., covering the period from December 31st, 1934, to December 31st, 1935, and also to supply financial data covering the period from January 1st, 1936 to April 20th, 1936, in order that you may have complete records for your files in respect thereto.

We also agree to make available to you the books of the Lock City Theatres, Inc., so that you may be able to obtain an audit of said books from December 31st, 1933 to April 20th, 1936, and to obtain reports of receipts and disbursements from December 7th, 1933 to December 1st, 1934, and from January 31st, 1936, to April 20th, 1936. You are to obtain this data from the books within the next two weeks.

This data is supplied purely for the files of the Executors and for their own personal use and in any Surrogate's proceeding, but is not in any event to be disclosed in any actions arising between Lock City Theatres, Inc. or Reliance Theatres, Inc. and any third party.

Nikitas Dipson.

[fol. 6378] EXHIBIT 717

UNITED ARTISTS CORPORATION

Pictures Released During Seasons 1919-1941

[fol. 6379] United Artists Corporation

Pictures Released During Season of 1919-20

Release Date Picture

Sept. 1, 1919—His Majesty the American.
Oct. 20, 1919—Broken Blossoms.
Dec. 28, 1919—When the Clouds Roll By.
Jan. 18, 1920—Pollyanna.
Apr. 25, 1920—Down on the Farm.
May 30, 1920—Romance.
June 13, 1920—Mollycoddle.
June 27, 1920—Suds.

[fol. 6380] United Artists Corporation

Pictures Released During Season of 1920-21

Release Date Picture

Sept. 5, 1920—The Love Flower
Dec. 5, 1920—The Mark of Zorro.
Jan. 9, 1921—Love Light.
Mar. 6, 1921—The Nut.
May 15, 1921—Through the Back Door.
May 16, 1921—Dream Street.

[fol. 6381] United Artists Corporation

Pictures Released During Season of 1921-22

Release Date Picture

Aug. 7, 1921—Carnival.
Aug. 21, 1921—Way Down East.
Aug. 28, 1921—Disraeli.
Oct. 2, 1921—Three Musketeers.
Oct. 9, 1921—I Accuse.
Oct. 30, 1921—The Iron Trail.
Nov. 13, 1921—Little Lord Fauntleroy.
Feb. 12, 1922—A Doll's House.

Release Date Picture

Feb. 19, 1922—Ruling Passion.
Mar. 19, 1922—Fair Lady.
Apr. 30, 1922—Orphans of the Storm.

[fol. 6382] United Artists Corporation

Pictures Released During Season of 1922-23

Release Date Picture

Aug. 27, 1922—The Glorious Adventure.
Aug. 27, 1922—The Three Must Get Theirs.
Sept. 24, 1922—Woman's Woman.
Oct. 1, 1922—The Man Who Played God.
Oct. 15, 1922—Tailor Made Man.
Nov. 12, 1922—Tess of the Storm Country.
Dec. 24, 1922—One Exciting Night.
Jan. 1, 1923—Garrison's Finish.
Jan. 28, 1923—Robin Hood.
Feb. 15, 1923—Birth of a Nation.
Feb. 15, 1923—Salome.
Feb. 15, 1923—Girl I Loved.
Feb. 18, 1923—Suzanna.
Mar. 4, 1923—Shiek of Araby.
June 2, 1923—Paddy the Next Best Thing.

[fol. 6383] United Artists Corporation

Pictures Released During Season of 1923-24

Release Date Picture

Aug. 19, 1923—The White Rose.
Oct. 21, 1923—Richard the Lion Hearted.
Oct. 28, 1923—Rosita.
Nov. 4, 1923—Woman of Paris.
Feb. 15, 1924—Loving Lies.
Feb. 15, 1924—No More Women.
Feb. 15, 1924—A Woman's Secret.
Mar. 15, 1924—The Hill Billy.

[fol. 6384] United Artists Corporation

Pictures Released During the Season of 1924-25

Release Date Picture

Aug. 3, 1924—Dorothy Vernon.
Aug. 17, 1924—America.
Nov. 23, 1924—Isn't Life Wonderful.
Dec. 25, 1924—The Thief of Bagdad.
Feb. 1, 1925—Salvation Hunters.
Mar. 29, 1925—Waking up the Town.
July 6, 1925—Wild Justice.

[fol. 6385] United Artists Corporation

Pictures Released During the Season of 1925-26

Release Date Picture

Aug. 2, 1925—Sally of the Sawdust.
Aug. 16, 1925—The Gold Rush.
Aug. 30, 1925—Don Q Son of Zorro.
Oct. 18, 1925—Little Annie Rooney.
Nov. 8, 1925—The Eagle.
Dec. 20, 1925—Tumbleweeds.
Feb. 14, 1926—Partners Again.
Mar. 1, 1926—The Only Way.
Apr. 5, 1926—The Bat.

[fol. 6386] United Artists Corporation

Pictures Released During the Season of 1926-27

Release Date Picture

Aug. 29, 1926—Stella Dallas.
Sept. 5, 1926—The Son of the Sheik.
Sept. 12, 1926—The Black Pirate.
Sept. 19, 1926—Sparrows.
Sept. 26, 1926—Winning of Barbara Worth.
Jan. 22, 1927—Night of Love.
Feb. 5, 1927—The General.
Mar. 5, 1927—Beloved Rogue.
Mar. 12, 1927—The Love of Sunya.
Mar. 19, 1927—Resurrection.

[fol. 6387] **United Artists Corporation**

Pictures Released During the Season of 1927-28

Release Date — Picture

July 24, 1927—Topsy & Eva.
July 29, 1927—College.
Aug. 14, 1927—Magic Flame.
Sept. 23, 1927—Two Arabian Knights.
Oct. 31, 1927—Best Girl.
Nov. 19, 1927—Devil Dancer.
Dec. 2, 1927—Sorrell & Son.
Jan. 1, 1928—The Gaucho.
Jan. 7, 1928—The Circus.
Jan. 7, 1928—The Dove.
Jan. 7, 1928—Sadie Thompson.
Feb. 4, 1928—Garden of Eden.
Feb. 11, 1928—Ramona.
Mar. 31, 1928—Drums of Love.
July 15, 1928—Steamboat Bill, Jr.

[fol. 6388] **United Artists Corporation**

Pictures Released During Season of 1928-1929

Release Date — Picture

July 21, 1928—The Tempest.
Aug. 12, 1928—Two Lovers.
Oct. 13, 1928—Battle of Sexes.
Oct. 21, 1928—Woman Disputed.
Nov. 3, 1928—Revenge.
Nov. 17, 1928—Awakening.
Jan, 12, 1929—The Rescue.
Feb. 16, 1929—Lady of the Pavements.
Mar. 9, 1929—Iron Mask.
Mar. 30, 1929—Coquette.
April 20, 1929—Alibi.
May 11, 1929—Eternal Love.
June 1, 1929—Three Passions.
June 22, 1929—This is Heaven.
July 13, 1929—She Goes to War.

[fol. 6389] United Artists Corporation

Pictures Released During Season of 1929-1930

Release Date Picture

Aug. 3, 1929—Bulldog Drummond.
Aug. 24, 1929—Evangeline.
Sept. 14, 1929—1812.
Sept. 15, 1929—Three Live Ghosts.
Oct. 5, 1929—Trespasser.
Oct. 12, 1929—Venus.
Oct. 26, 1929—Taming of the Shrew.
Nov. 16, 1929—Locked Door.
Dec. 7, 1929—Condemned.
Dec. 14, 1929—Irish Fantasy.
Dec. 28, 1929—New York Nights.
Jan. 18, 1930—Lummox.
Jan. 25, 1930—Glorious Vamps.
Feb. 8, 1930—Be Yourself.
Mar. 1, 1930—Puttin' on the Ritz.
Mar. 22, 1930—Hell Harbor.
Apr. 12, 1930—One Romantic Night.
Apr. 26, 1930—Apprentice.
May 3, 1930—Bad One.
May 24, 1930—2nd Hungarian Rhapsody.

[fol. 6390] United Artists Corporation

Pictures Released During Season of 1930-1931

Release Date Picture

July 26, 1930—Raffles.
Aug. 2, 1930—Americans Come.
Aug. 30, 1930—Eyes of the World.
Sept. 6, 1930—Zampa.
Sept. 13, 1930—What a Widow.
Sept. 27, 1930—Whoopee.
Oct. 11, 1930—Du Barry, Woman of Paris.
Oct. 25, 1930—Lottery Bride.
Nov. 8, 1930—Abraham Lincoln.
Nov. 15, 1930—Hell's Angels.
Nov. 29, 1930—Bat Whispers.
Jan. 10, 1931—One Heavenly Night.
Jan. 31, 1931—Devil to Pay.
Feb. 21, 1931—Reaching for the Moon.

Release Date Picture

Mar. 1, 1931—City Lights.
Mar. 14, 1931—Kiki.
Apr. 4, 1931—Front Page.
Apr. 25, 1931—Indiscreet.

[fol. 6391] United Artists Corporation

Pictures Released During Season of 1931-1932

Release Date Picture

Sept. 5, 1931—Street Scene.
Oct. 3, 1931—Palmy Days.
Oct. 10, 1931—Unholy Garden.
Oct. 17, 1931—Age for Love.
Nov. 28, 1931—Corsair.
Dec. 12, 1931—Around the World.
Dec. 26, 1931—Tonight or Never.
Jan. 16, 1932—Cock of the Air.
Feb. 6, 1932—Struggle.
Feb. 13, 1932—Greeks Had a Name.
Feb. 27, 1932—Arrowsmith.
Mar. 12, 1932—Sky Devils.
Apr. 9, 1932—Scarface.
Apr. 16, 1932—Silver Lining.
Apr. 25, 1932—Congress Dances.

[fol. 6392] United Artists Corporation

Pictures Released During Season of 1932-1933

Release Date Picture

Aug. 4, 1932—White Zombie.
Aug. 13, 1932—Self Made Lady.
Sept. 17, 1932—Robinson Crusoe.
Oct. 22, 1932—Rain.
Nov. 5, 1932—Magic Night.
Dec. 23, 1932—Cynara.
Jan. 27, 1933—Kid from Spain.
Feb. 8, 1933—Hallelujah I'm a Bum.
Mar. 11, 1933—Perfect Understanding.
Apr. 16, 1933—Secrets.
May 12, 1933—I Cover the Waterfront.
May 16, 1933—Yes Mr. Brown.
June 8, 1933—Re-issue Whoopee.
June 23, 1933—Samarang.

[fol. 6393] United Artists Corporation

Pictures Released During Season of 1934-1935

Release Date Picture

July 20, 1934—Bulldog Drummond Strikes Back.
Aug. 24, 1934—Affairs of Cellini.
Sept. 7, 1934—Court of Monte Cristo.
Sept. 21, 1934—Last Gentleman.
Sept. 28, 1934—Our Daily Bread.
Nov. 2, 1934—Transatlantic Merry Go Round.
Nov. 16, 1934—We Live Again.
Nov. 30, 1934—Private Life of Don Juan.
Dec. 21, 1934—Runaway Queen.
Dec. 25, 1934—The Mighty Barnum.
Dec. 28, 1934—Kid Millions.
Jan. 25, 1935—Clive of India.
Feb. 15, 1935—Scarlet Pimpernel.
Feb. 22, 1935—Folies Bergere.
Mar. 8, 1935—The Wedding Night.
Apr. 21, 1935—Cardinal Richelieu.
May 10, 1935—Les Miserables.
May 13, 1935—Thunder in the East.
May 17, 1935—Let 'Em Have It.
May 20, 1935—Brewsters Millions.
June 14, 1935—Nell Gwynn.
June 21, 1935—Escape Me Never.
July 4, 1935—Sanders of the River.

[fol. 6394] United Artists Corporation

Pictures Released During Season of 1933-34

Release Date Picture

Sept. 1, 1933—Masquerader.
Sept. 22, 1933—Bitter Sweet.
Sept. 29, 1933—Emperor Jones.
Oct. 13, 1933—The Bowery.
Oct. 27, 1933—Broadway Thru a Keyhole.
Nov. 3, 1933—Henry the Eighth.
Nov. 24, 1933—Blood Money.
Dec. 1, 1933—Advice to Lovelorn.
Dec. 29, 1933—Roman Scandals.
Jan. 5, 1934—Gallant Lady.
Jan. 19, 1934—Moulin Rouge.
Feb. 16, 1934—Palooka.

Release Date Picture

Mar. 2, 1934—Nana.
Mar. 9, 1934—Looking for Trouble.
Apr. 13, 1934—Catherine the Great.
Apr. 20, 1934—Sorrell & Son.
Apr. 27, 1934—House of Rothschild.
May 18, 1934—Born to Be Bad.

[fol. 6395] United Artists Corporation

Pictures Released During Season of 1936-37

Release Date Picture

Sept. 4, 1936—The Last of the Mohicans.
Sept. 18, 1936—Dodsworth.
Oct. 2, 1936—The Gay Desperado.
Nov. 13, 1936—Come and Get It.
Nov. 20, 1936—The Garden of Allah.
Nov. 27, 1936—Rembrandt.
Dec. 25, 1936—Beloved Enemy.
Jan. 8, 1937—Accused.
Jan. 22, 1937—Men Are Not Gods.
Jan. 29, 1937—You Only Live Once.
Feb. 19, 1937—Man Who Could Work Miracles,
Mar. 5, 1937—Fire Over England.
Apr. 2, 1937—History Is Made at Night.
Apr. 23, 1937—Elephant Boy.
Apr. 30, 1937—A Star Is Born.
May 7, 1937—Woman Chases Man.
May 14, 1937—Love From a Stranger.
May 28, 1937—Dreaming Lips.
June 4, 1937—When Thief Meets Thief.
June 18, 1937—Walt Disney's Revue.
Reissue Kid From Spain.
Reissue Trans-Atlantic.

[fol. 6396] United Artists Corporation

Pictures Released During Season of 1935-36

Release Date Picture

Aug. 9, 1935—Call of the Wild.
Sept. 6, 1935—Dark Angel.
Sept. 13, 1935—Red Salute (&345).
Sept. 27, 1935—Barbary Coast.

Nov. 9, 1935—Melody Lingers On.
Nov. 23, 1935—Splendor.
Jan. 24, 1936—Strike Me Pink.
Feb. 7, 1936—Ghost Goes West.
Feb. 21, 1936—Modern Times.
Mar. 6, 1936—Little Lord Fauntleroy.
Apr. 10, 1936—These Three.
Apr. 17, 1936—Amateur Gentleman.
Apr. 24, 1936—Things to Come.
May 8, 1936—One Rainy Afternoon.
June 19, 1936—I Stand Condemned.
Re-Rothschild.
Re-Henry VIII.

[fol. 6397] United Artists Corporation

Pictures Released During the Season of 1937-38

Release Date	Picture
July 2, 1937	Dark Journey.
July 23, 1937	Knight Without Armor.
Aug. 6, 1937	Stella Dallas.
Aug. 27, 1937	Dead End.
Sept. 3, 1937	Prisoner of Zenda.
Sept. 17, 1937	Wanger's Vogues of 1938.
Oct. 8, 1937	Troop Ship.
Oct. 29, 1937	Stand In.
Nov. 19, 1937	52nd Street.
Nov. 26, 1937	Nothing Sacred.
Dec. 10, 1937	Murder in Diamond Row.
Dec. 24, 1937	Hurricane.
Jan. 14, 1938	Action for Slander.
Jan. 28, 1938	I Met My Love Again.
Feb. 4, 1938	Goldwyn Follies.
Feb. 11, 1938	Tom Sawyer.
Feb. 25, 1938	Storm in a Teacup.
Mar. 4, 1938	Marco Polo.
Mar. 18, 1938	Gaiety Girls.
Apr. 15, 1938	Divorce of Lady X.
Apr. 29, 1938	Return of Scarlet Pimpernel.
June 17, 1938	Blockade.
July 1, 1938	South Riding.
	Reissue Monte Cristo.
	Reissue I Cover the Waterfront.

[fol. 6398] United Artists Corporation

Pictures Released During the Season of 1938-39

Release Date Picture

Aug. 5, 1938—Algiers.
Sept. 30, 1938—Drums.
Oct. 14, 1938—There Goes My Heart.
Nov. 3, 1938—The Young in Heart.
Nov. 17, 1938—The Cowboy and the Lady.
Dec. 22, 1938—Trade Winds.
Dec. 29, 1938—The Duke of West Point.
Jan. 12, 1939—Topper Takes a Trip.
Feb. 10, 1939—Made for Each Other.
Feb. 17, 1939—King of the Turf.
Mar. 3, 1939—Stagecoach.
Mar. 10, 1939—Prison Without Bars.
Apr. 7, 1939—Wuthering Heights.
Apr. 21, 1939—Zenobia.
May 26, 1939—Captain Fury.
June 1, 1939—Re: Hurricane.
June 1, 1939—Re: Star Born.
June 1, 1939—Re: Elephant Boy.

[fol. 6399] United Artists Corporation

Pictures Released During Season of 1939-40

Release Date Picture

July 28, 1939—Winter Carnival.
Aug. 4, 1939—Four Feathers.
Aug. 11, 1939—Man In the Iron Mask.
Aug. 18, 1939—They Shall Have Music.
Sept. 22, 1939—Intermezzo.
Sept. 29, 1939—The Real Glory.
Oct. 12, 1939—Eternally Yours.
Oct. 26, 1939—Housekeeper's Daughter.
Dec. 22, 1939—Slightly Honorable.
Dec. 29, 1939—Raffles.
Jan. 12, 1940—Of Mice and Men.
Jan. 19, 1940—The Lion Has Wings.
Feb. 16, 1940—A Chump at Oxford.
Mar. 1, 1940—House Across the Bay.
Mar. 22, 1940—My Son, My Son.
Mar. 29, 1940—Over the Moon.

Apr. 5, 1940—1,000,000 B. C.
Apr. 12, 1940—Rebecca.
May 3, 1940—Saps at Sea.
May 17, 1940—Turnabout.
May 24, 1940—Our Town.

[fol. 6400] United Artists Corporation

Pictures Released During Season of 1940-41

Release Date Picture

July 19, 1940—South of Pago Pago.
Aug. 9, 1940—Captain Caution.
Aug. 16, 1940—Foreign Correspondent.
Aug. 30, 1940—Kit Carson.
Sept. 13, 1940—Pastor Hall.
Sept. 20, 1940—The Westerner.
Nov. 22, 1940—The Long Voyage Home.
Nov. 29, 1940—Blackout.
Dec. 25, 1940—The Thief of Bagdad.
Jan. 10, 1941—The Son of Monte Cristo.
Jan. 24, 1941—Road Show.
Feb. 14, 1941—So Ends Our Night.
Feb. 21, 1941—Three Cheers for Miss Bishop.
Mar. 7, 1941—The Great Dictator.
Mar. 21, 1941—Topper Returns.
Easter Release—Pot O'Gold.
Apr. 20, 1941—That Uncertain Feeling.
Apr. 30, 1941—That Hamilton Woman.
June 13, 1941—Broadway Limited.

Exhibit 718-A—State: New York

Picture	Contract No.	Date of Contract	Theatre	Film Rental	Date Played	Film Rental Schine	Film Rental Indpt.
			SEASON 1934–35				
Barnum	5187	1/4/35	Capitol	500.00	2/22–26/35		500.00
Last Gentleman	6563	1/4/35	Capitol	253.42	4/5–8/35		253.42
Bulldog Drummond	5433	1/4/35	Capitol	282.47	1/25–28/35		282.47
Affairs Cellini	4995	1/4/35	Capitol	206.25	2/8–11/35		206.25
Richelieu	7188	3/12/36	Capitol	100.00	4/21–23/36		100.00
Clive India	5561	3/19/35	Capitol	300.00	5/31–6/3/35		300.00
Folies Bergere	5509	4/1/35	Capitol	300.00	5/24–27/35		300.00
Les Miserables	7327	3/12/36	Capitol	125.00	4/10–13/36		125.00
Kid Millions	4141	1/28/35	Capitol	503.52	3/1–5/35		503.52
We Live Again	4110	1/28/35	Capitol	300.00	3/8–11/35		300.00
Wedding Night	3907	1/28/35	Capitol	300.00	6/7–10/35		300.00
Monte Cristo	6896	1/4/35	Capitol	400.00	2/15–18/35		400.00
Transatlantic	4632	1/4/35	Capitol	355.02	3/15–18/35		355.02
Let 'Em Have It	6957	3/21/36	Capitol	100.00	5/15–18/36		100.00
Daily Bread	3920	1/4/35	Capitol	125.00	3/29–4/1/35		125.00
Thunder East	979	3/19/35	Capitol	125.00	9/20–23/35		125.00
Don Juan	2771	1/4/35	Capitol	200.00	4/12–15/35		200.00
Sc. Pimpernel	3209	3/19/35	Capitol	225.00	6/14–17/35		225.00
Sanders River	5395	3/12/36	Capitol	100.00	7/31–8/3/36		100.00
Escape Me Never	3442	3/12/36	Capitol	75.00	4/28–30/36		75.00
Nell Gwynn	2059	3/19/35	Capitol	50.00	10/15–17/35		50.00
Runaway Queen	2038	3/19/35	Capitol	50.00	10/1–3/35		50.00
Br. Millions	1135	4/1/35	Capitol	150.00	10/11–14/35		150.00
			TOTAL	5,125.68			5,125.68
			SEASON 1935–36				
Call Wild	8995	3/12/36	Capitol	200.00	4/3–6/36		200.00
Modern Times	5839	5/26/36	Jefferson	B. C.	5/14–16/36	B. C.	
These Three	4326	11/18/35	Jefferson	299.01	5/17–20/36	299.01	
Strike Me Pink	7082	5/26/36	Jefferson	B. C.	5/3–7/36	B. C.	
Barbary Coast	5617	11/18/35	Jefferson	263.16	12/29–31/35	263.16	
Dark Angel	5527	11/18/35	Jefferson	265.06	2/6–8/36	265.06	
Splendor	4657	11/18/35	Jefferson	129.45	2/21–22/36	129.45	
Things To Come	7059	3/10/37	Capitol	25.00	6/8–10/37		25.00
Ghost Goes West	4773	1/22/36	Palace	69.75	4/22–23/36	69.75	
Condemned	3810	3/10/37	Capitol	25.00	6/29–7/1/37		25.00
Melody Lingers On	5438	11/18/35	Palace	61.41	2/19–20/36	61.41	
Red Salute	4181	11/18/35	Palace	80.00	1/29–30/36	80.00	
Lord Fauntleroy	6719	6/10/36	Jefferson	B. C.	7/2–4/36	B. C.	
Rainy Afternoon	7415	3/10/37	Capitol	40.00	5/4–6/37		40.00
Am. Gentleman	0000	0/00/37	Capitol	00.00	0/00–00/00		00.00
			TOTAL	1,457.84		1,167.84	290.00

[fol. 6400-B]

EXHIBIT 718-B

State: New York—Town: Lockport

SEASON 1931-32

Sky Devils							
Palmy Days	471	7/30/31	Hi-Art	700.00	11/1-4/31	700.00	
Unholy Garden	6758	1/27/34	Palace	50.00	2/22-23/34		50.00
Unholy Garden	6773	2/28/34	Palace	25.00	2/24/34		25.00
Street Scene	698	9/30/31	Hi-Art	400.00	10/11-13/31	400.00	
Scarface	7253	1/27/34	Palace	100.00	2/25-28/34		100.00
Greeks	5667	12/26/34	Palace	50.00	3/4-5/34		50.00
Greeks	5674	3/13/34	Palace	50.00	3/6-7/34		50.00
Corsair							
Tonight Never	4748	1/27/34	Palace	50.00	3/11-12/34		50.00
Age Love							
Arrowsmith	5679	1/27/34	Palace	75.00	3/15-17/34		75.00
Struggle							
Around World							
Cock Air	5248	3/13/34	Palace	75.00	3/1-3/34		75.00
Silver Lining							
Congress Dances							
			TOTAL	1,575.00		1,100.00	475.00

SEASON 1932-33

Magic Night						
Zombie						
Robinson Crusoe	3135	1/27/33	Rialto	100.00	2/24-25/33	100.00
Rain	2735	1/27/33	Rialto	100.00	3/1-2/33	100.00
Hallelujah	5424	12/18/33	Hi-Art	59.24	1/7-8/34	59.24
Understanding						
Secrets	2963	6/12/33	Rialto	99.40	7/26-27/33	99.40
Cynara	864	1/27/33	Rialto	300.00	2/22-23/33	300.00

Kid From Spain	747	1/27/33	Rialto	700.00	2/12-15/33	700.00	
Waterfront	2205	6/13/33	Rialto	134.04	7/22-25/33	134.04	
Mr. Brown							
Samarang							
			TOTAL	1,492.68		1,492.68	

SEASON 1933-34

Blood Money	161	8/22/33	Hi-Art	72.50	1/20-22/34	72.50	
Born Bad	5299	7/28/34	Palace	95.69	8/19-21/34		95.69
Bdwy. Keyhole	163	8/22/33	Rialto	174.90	1/5-6/34	174.90	
Bowery	162	8/22/33	Rialto	306.47	11/26-29/33	306.47	
Bowery	9481	6/4/38	Palace	40.00	7/5-6/38	40.00	
Gallant Lady	158	8/22/33	Rialto	291.45	3/11-13/34	291.45	
Advice Lovelorn	161	8/22/33	Hi-Art	64.63	2/10-12/34	64.63	
Moulin Rouge	162	8/22/33	Rialto	125.00	5/2-3/34	125.00	
House Rothschild	161	8/22/33	Rialto	276.87	6/17-20/34	276.87	
Looking Trouble	161	8/22/33	Rialto	54.13	6/6-7/34	54.13	
Masquerader	503	1/27/33	Rialto	300.00	11/17-18/33	300.00	
Scandals	487	12/12/33	Rialto	604.08	1/28-30/34	604.98	
Nana	456	12/21/33	Rialto	130.76	8/15-16/34	130.76	
Palooka	2275	8/22/33	Rialto	125.95	5/11-12/34	125.95	
Henry Eighth	155	8/22/33	Hi-Art	39.05	1/23-24/34	39.05	
Bitter Sweet	2336	1/27/34	Palace	100.00	3/18-20/34	100.00	
Sorrell & Son	3753	6/9/34	Palace	100.00	6/23-26/34		100.00
Catherine Great	2978	5/7/34	Palace	90.48	5/19-20/34		90.48
Emperor Jones	166	8/22/33	Hi-Art	55.36	12/9-11/33	55.36	
			TOTAL	3,047.33		2,761.16	286.17

[fol. 6400-C]

Exhibit 718-C

State: New York—Town: Lockport

SEASON 1934–35

Barnum	163	8/22/33	Rialto	278.88	1/27–29/35	278.88	
Last Gentleman	161	8/22/33	Rialto	120.15	11/21–22/34	120.15	
Bulldog Drummond	7116	4/22/35	Palace	99.77	5/4–6/35		99.77
Affairs Cellini	6220	4/22/35	Palace	44.24	5/1–3/35		44.24
Cardinal Richelieu	5474	5/11/35	Palace	146.30	5/18–21/35		146.30
Clive India	6303	4/22/35	Palace	106.02	5/25–28/35		106.02
Folies Bergere	5993	4/22/35	Palace	112.22	5/11–14/35		112.22
Les Miserables	3515	5/11/35	Palace	227.06	6/1–7/35		227.06
Kid Millions	2815	12/7/34	Rialto	625.00	12/25–28/34	625.00	
We Live Again	2200	12/7/34	Rialto	150.00	1/30–31/35	150.00	
Wedding Night	2137	12/7/34	Rialto	150.00	4/24–25/35	150.00	
Monte Cristo	169	8/22/33	Rialto	202.06	10/28–30/34	202.06	
Transatlantic	6760	4/22/35	Palace	129.00	4/27–30/35		129.00
Let 'Em Have It	1854	5/11/35	Palace	184.75	6/15–21/35		184.95
Daily Bread	5543	4/22/35	Palace	25.48	5/7–9/35		25.48
Thunder East	1754	5/11/35	Palace	75.00	5/29–31/35		75.00
Don Juan	4366	4/22/35	Palace	75.00	5/15–17/35		75.00
Sc. Pimpernel	3881	4/22/35	Palace	88.84	8/22–25/35		88.84
Sanders River	3274	4/22/35	Palace	37.93	8/25–27/35		37.93
Escape Me Never	2567	10/21/35	Palace	50.00	12/1–4/35		50.00
Nell Gwynn	2685	10/23/35	Palace	40.00	11/19–22/35		40.00
Runaway Queen	2250	4/22/35	Palace	50.09	5/7–9/35		50.00
Br. Millions	1648	5/11/35	Palace	50.00	6/8–10/35		50.00
			TOTAL	3,067.90		1,526.09	1,541.81

SEASON 1935–36

Call Wild	7823	11/18/35	Rialto	125.00	11/28–30/35	125.00	
Modern Times	5833	5/26/36	Rialto	B. C.	5/1–2/36	B. C.	
These Three	4325	11/18/35	Rialto	130.76	7/17–18/36	130.76	
Barbary Coast	5616	11/18/35	Rialto	66.35	2/5–6/36	66.35	
Dark Angel	5526	11/18/35	Rialto	129.48	1/29–30/36	129.48	
Things To Come	6685	9/21/36	Palace	50.00	9/16–17/36		50.00
Spendor	4656	11/18/35	Rialto	93.85	3/4–5/36	93.85	
Ghost Goes West	4772	1/22/36	Hi-Art	28.11	4/27–28/36	28.11	
Condemned	3576	9/21/36	Palace	50.00	9/23–24/36		50.00
Melody Lingers On	1672	5/11/35	Palace	171.73	12/8–11/35		171.73
Red Salute	3689	12/27/35	Palace	209.65	1/4–6/36		209.65
Lord Fauntleroy	6713	6/10/35	Rialto	B. C.	6/7–9/36	B. C.	
Rainy Afternoon							
Am. Gentleman	1371	9/28/36	Palace	50.11	10/11–14/36		50.11
			TOTAL	1,105.04		573.55	531.49

[fol. 6400-D]

EXHIBIT 718-D

Picture	Contract No.	Date of Contract	Theatre	Film Rental	Date Played	Film Rental	
						Schine	Indpt.
			SEASON 1934-35				
Barnum	3833	10/16/34	Southern	73.83	3/3-6/35		73.83
Last Gentleman	5451	10/16/34	Southern	34.38	7/27-29/35		34.38
Bulldog Drummond	3454	10/6/34	Southern	23.33	2/15-16/35		23.33
Affairs Cellini	3120	10/6/34	Southern	29.21	12/2-4/34		29.21
Richelieu	2073	10/16/34	Southern	32.28	9/1-3/35		32.28
Clive India	2068	10/16/34	Southern	40.45	3/10-12/35		40.45
Folies Bergere	1879	10/16/34	Southern	42.16	6/16-19/35		42.16
Les Miserables	6277	10/1/35	Southern	45.76	11/3-5/35		45.76
Kid Millions	329	10/16/34	Southern	161.85	1/6-9/35		161.85
We Live Again	360	10/16/34	Southern	25.72	1/10-12/35		25.72
Wedding Night	351	10/16/34	Southern	32.19	5/26-28/35		32.19
Monte Cristo	5546	10/16/34	Southern	39.38	1/13-15/35		39.38
Transatlantic	1902	10/2/34	Southern	53.51	12/31-1/1-3/35		53.51
Let 'Em Have It	5603	10/1/35	Southern	35.64	10/27-29/35		35.64
Daily Bread	1890	10/16/34	Southern	12.07	4/10-11/35		12.07
Thunder East	2186	2/4/35	Southern	15.21	9/27-28/35		15.21
Don Juan	1395	10/16/34	Southern	29.17	3/22-23/35		29.17
Sc. Pimpernel	1062	11/16/34	Southern	25.81	5/12-14/35		25.81
Sanders River	1121	10/16/34	Southern	12.34	10/4-5/35		12.34
Escape Me Never	2256	10/1/35	Southern	17.62	11/15-16/35		17.62
Nell Gwynn	859	10/16/34	Southern	15.17	10/18-19/35		15.17
Runaway Queen	786	10/16/34	Southern	8.28	4/24-25/35		8.28
Br. Millions	973	2/4/35	Southern	27.00	7/20-21/35		27.00
			TOTAL	832.46			832.46
			SEASON 1935-36				
Call Wild	2140	10/16/34	Southern	85.14	10/6-8/35		85.14
Modern Times	5866	5/26/36	Bucyrus	B. C.	5/15-16/36	B. C.	
These Three	2749	11/19/35	State	75.00	6/16-17/36	75.00	
Strike Me Pink	7111	5/26/36	Bucyrus	B. C.	5/2-4/36	B. C.	
Barbary Coast	4224	11/18/35	State	75.00	1/12-14/36	75.00	
Dark Angel	4287	11/18/35	State	75.00	12/22-24/35	75.00	
Splendor	3237	11/18/35	State	60.00	2/18-19/36	60.00	
Things To Come	1171	10/16/34	Southern		Cancelled		
Ghost Goes West	4790	1/22/36	State	50.00	5/20/36	50.00	
Condemned							
Melody Lingers On							
Red Salute	4614	11/18/35	Bucyrus	50.00	4/11/36	50.00	
Lord Fauntleroy	3228	11/18/35	State	40.00	1/22/36	40.00	
Rainy Afternoon	6749	6/10/36	Bucyrus	B. C.	6/13/36	60.00	
Am. Gentleman							
			TOTAL	510.14		425.00	85.14

[fol. 6400-E]

Exhibit 718-E

Picture	Contract No.	Date of Contract	Theatre	Film Rental	Date Played	Film Rental Schine	Film Rental Indpt.
			SEASON 1934-35				
Barnum	5765	1/29/35	Vine	93.89	2/1-2/35	93.89	
Last Gentleman	3572	1/30/34	Vine	84.71	12/23-24/34	84.71	
Bulldog Drummond	5923	1/22/35	Memorial	100.00	3/3-5/35		100.00
Affairs Cellini	5404	1/22/35	Memorial	100.00	3/17-19/35		100.00
Richelieu	4262	1/22/35	Memorial	175.00	6/30-7/2/35		175.00
Clive India	4352	1/22/35	Memorial	175.00	4/21-23/35		175.00
Folies Bergere	4235	1/22/35	Memorial	175.00	5/19-22/35		175.00
Les Miserables	1786	1/22/35	Memorial	175.00	6/1-4/35		175.00
Kid Millions	2013	12/7/34	Vine	325.00	1/15-18/35	325.00	
We Live Again	2037	12/7/34	Vine	100.00	1/24/25/35	100.00	
Wedding Night	1981	12/7/34	Vine	100.00	3/28-29/35	100.00	
Monte Cristo	3644	1/30/34	Vine	95.55	12/16-17/34	95.55	
Transatlantic	5242	1/22/35	Memorial	125.00	2/24-26/35		125.00
Let 'Em Have It	254	1/22/35	Memorial	175.00	9/15-17/35		175.00
Daily Bread	4428	1/22/35	Memorial	40.00	4/17-18/35		40.00
Thunder East	1426	1/22/35	Memorial	85.00	8/4-6/35		85.00
Don Juan	3205	1/22/35	Memorial	40.00	4/3-4/35		40.00
Sc. Pimpernel	2313	1/22/35	Memorial	85.00	7/14-16/35		85.00
Sanders River	2497	1/22/35	Memorial	40.00	8/11-13/35		40.00
Escape Me Never	1628	6/17/35	Memorial	90.00	8/25-27/35		90.00
Nell Gwynn	1692	1/22/35	Memorial	12.50	P. N. P.		12.50
Runaway Queen	1622	1/22/35	Memorial	25.00	Cancelled		
Br. Millions	1341	1/22/35	Memorial	85.00	9/8-10/35		85.00
			TOTAL	2,476.65		799.15	1,677.50

Picture	Contract No.	Date of Contract	Theatre	Film Rental	Date Played	Film Rental Schine	Film Rental Indpt.
			SEASON 1935-36				
Call Wild	4426	1/22/35	Memorial	175.00	9/29-10/1/35		175.00
Modern Times	5861	5/26/36	Vine	B. C.	5/22-23/36	B. C.	
These Three	4337	11/18/35	Vine	155.09	5/2-4/36	155.09	
Strike Me Pink	7106	5/26/36	Vine	B. C.	5/10-12/36	B. C.	
Barbary Coast	5631	11/18/35	Vine	75.00	6/4/36	75.00	
Dark Angel	5540	11/18/35	Vine	65.93	1/28-29/36	65.93	
Splendor	4670	11/18/35	Vine	35.39	3/10-11/36	35.39	
Things To Come	2580	1/22/35	Memorial	85.00	7/5-7/36		85.00
Ghost Goes West	2337	12/12/35	Memorial	125.00	3/1-3/36		125.00
Condemned	1768	12/12/35	Memorial	75.00	12/27-29/36		75.00
Melody Lingers On	262	1/22/35	Memorial	175.00	12/22-24/35		175.00
Red Salute	9761	9/24/35	Memorial	125.00	10/13-15/35		125.00
Lord Fauntleroy	6744	6/10/36	Vine	B. C.	7/7-8/36	B. C.	
Rainy Afternoon							
Am. Gentleman	541	12/23/35	Memorial	100.00	6/28-30/36		100.00
			TOTAL	1,191.41		331.41	860.00

[fol. 6400-F]

Exhibit 718-F

Picture	Contract No.	Date of Contract	Theatre	Film Rental	Date Played	Film Rental Schine	Film Rental Indpt.
			SEASON 1934-35				
Barnum	1792	11/2/33	Moose	88.27	1/6-8/35		88.27
Last Gentleman	1702	11/2/33	Moose	50.00	11/21-23/34		50.00
Bulldog Drummond	3317	10/9/34	Moose	60.00	11/2-3/34		60.00
Affairs Cellini	2992	10/9/34	Moose	67.45	12/2-3/34		67.45
Richelieu	1964	10/9/34	Moose	75.00	5/28-30/35		75.00
Clive India	1963	10/9/34	Moose	75.00	3/19-21/35		75.00
Folies Bergere	1767	10/9/34	Moose	150.00	4/21-23/35		150.00
Les Miserables	2012	2/5/35	Moose	150.00	6/19-21/35		150.00
Kid Millions	281	10/22/34	Moose	150.00	2/17-19/35		150.00
We Live Again	319	10/22/34	Moose	100.00	2/3-5/35		100.00
Wedding Night	503	10/22/34	Moose	100.00	5/15-17/35		100.00
Monte Cristo	1630	11/2/33	Moose	56.81	10/17-19/34		56.81
Transatlantic	1803	10/9/34	Moose	50.00	12/25-27/34		50.00
Let 'Em Have It	143	1/2/35	Moose	75.00	8/4-6/35		75.00
Daily Bread	2196	10/26/34	Moose	40.00	12/21-22/34		40.00
Thunder East	239	1/28/35	Moose	65.00	7/23-24/35		65.00
Don Juan	1288	10/9/34	Moose	60.00	5/8-9/35		60.00
Sc. Pimpernel	989	10/9/34	Moose	40.00	5/19-21/35		40.00
Sanders River	1041	10/9/34	Moose	40.00	10/25-26/35		40.00
Escape Me Never	418	6/14/35	Moose	50.00	11/1-2/35		50.00
Nell Gwynn	958	10/26/34	Moose	12.50	P. N. P.		12.50
Runaway Queen	882	10/26/34	Moose	25.00	5/3-4/35		25.00
Br. Millions	197	1/28/35	Moose	65.00	7/28-30/35		65.00
			TOTAL	1,645.03			1,645.03

Picture	Contract No.	Date of Contract	Theatre	Film Rental	Date Played	Film Rental Schine	Film Rental Indpt.
			SEASON 1935-36				
Call Wild	2023	10/9/34	Moose	83.20	10/20-22/35		83.20
Modern Times	5862	5/26/36	Forum	B. C.	5/24-26/36	B. C.	
These Three	4338	11/18/35	Forum	40.79	8/20-21/36	40.79	
Strike Me Pink	7107	5/26/36	Forum	B. C.	5/17-19/36	B. C.	
Barbary Coast	5632	11/18/35	Forum	77.46	11/11-13/35	77.46	
Dark Angel	5541	11/18/35	Forum	72.26	11/5-6/36	72.26	
Splendor	4671	11/18/35	Forum	28.08	8/6-7/36	28.08	
Things To Come	1078	10/9/34	Moose	60.00	Cancelled		
Ghost Goes West	4786	1/22/36	Forum	19.95	6/18-19/36	19.95	
Condemned							
Melody Lingers On	145	1/2/35	Moose	60.00	10/11-13/36		60.00
Red Salute	4191	11/18/35	Forum	31.00	2/20-21/36	31.00	
Lord Fauntleroy	6745	6/10/36	Forum	B. C.	6/14-16/36	B. C.	
Rainy Afternoon							
Amateur Gentleman							
			TOTAL	412.74		269.54	143.20

Exhibit 718-G

Town: Van Wert—State: Ohio

Picture	Contract No.	Date of Contract	Theatre	Film Rental	Date Played	Film Rental Schine	Film Rental Indpt.
			SEASON 1934–35				
Barnum	3616	10/4/34	Ohio	80.55	1/27–30/35		80.55
Barnum	8148	6/19/35	Ohio	15.00	8/10/35		15.00
Last Gentleman	5276	10/4/34	Ohio	54.53	12/23–25/34		54.53
Bulldog Drummond	2972	10/4/34	Ohio	54.14	11/15–17/34		54.14
Affairs Cellini	2687	10/4/34	Ohio	44.08	11/25–27/34		44.08
Richelieu	1770	10/4/34	Ohio	45.88	6/9–11/35		45.88
Clive India	1772	10/4/34	Ohio	44.81	3/3–5/35		44.81
Folies Bergere	1560	10/4/34	Ohio	77.38	5/5–8/35		77.38
Les Miserables	1918	1/30/35	Ohio	101.12	6/2–6/35		101.12
Les Miserables	4687	6/19/35	Ohio	15.00	8/8/35		15.00
Kid Millions	268	10/4/34	Ohio	117.43	12/30–1/2/35		117.43
Kid Millions	7020	6/19/35	Ohio	15.00	8/6/35		15.00
We Live Again	304	10/4/34	Ohio	42.29	1/6–8/35		42.29
Wedding Night	289	10/4/34	Ohio	50.81	4/7–9/35		50.81
Monte Cristo	5357	10/4/34	Ohio	80.18	11/11–14/34		80.18
Monte Cristo	9021	6/19/35	Ohio	15.00	8/4/35		15.00
Transatlantic	1606	10/4/34	Ohio	51.84	12/9–12/34		51.84
Transatlantic	7328	6/19/35	Ohio	15.00	8/7/35		15.00
Let 'Em Have It	349	1/30/35	Ohio	63.69	6/23–25/35		63.69
Let 'Em Have It	3640	6/19/35	Ohio	15.00	8/9/35		15.00
Daily Bread	1612	10/4/34	Ohio	35.00	10/10–11/35		35.00
Thunder East	316	1/30/35	Ohio	23.81	10/27–29/35		23.81
Don Juan	1130	10/4/34	Ohio	37.02	1/20–22/35		37.02
Sc. Pimpernel	854	10/4/34	Ohio	42.25	5/12–14/35		42.25
Sanders River	907	10/4/34	Ohio	15.96	10/17–18/35		15.96
Escape Me Never	58	5/20/35	Ohio	14.46	10/2–3/35		14.46
Nell Gwynn	1736	1/30/35	Ohio	15.00	9/25–26/35		15.00
Runaway Queen	1669	1/30/35	Ohio	15.00	7/31–8/1/35		15.00
Br. Millions	268	1/30/35	Ohio	37.27	7/13–16/35		37.27
			TOTAL	1,234.50			1,234.50
			SEASON 1935–36				
Call Wild	1824	10/4/34	Ohio	83.22			83.22
Modern Times	5865	5/26/36	Van Wert	B. C.	5/14–15/36	B. C.	
These Three	2748	11/19/35	Van Wert	75.00	7/16–17/36	75.00	
Strike Me Pink	7110	5/25/36	Van Wert	B. C.	5/17–18/36	B. C.	
Barbary Coast	4223	11/18/35	Van Wert	75.00	1/30–31/36	75.00	
Dark Angel	4286	11/18/35	Van Wert	75.00	1/8–9/36	75.00	
Splendor	3236	11/18/35	Strand	60.00	12/17–18/35	60.00	
Things To Come	969	10/4/34	Ohio	26.65	9/13–15/36		26.65
Ghost Goes West	4789	1/22/36	Strand	11.33	5/31–6/1/36	11.33	
Condemned							
Melody Lingers On	357	1/30/35	Ohio	28.70	7/26–28/36		28.70
Red Salute	575	5/20/35	Ohio	32.90	1/11–14/36		32.90
Lord Fauntleroy	6748	6/10/36	Van Wert	B. C.	6/21–23/36	B. C.	
Rainy Afternoon							
Amateur Gentleman							
			TOTAL	467.80		296.33	171.47

[fol. 6400-H]

Exhibit 718-H

Town: Little Falls—State: New York

Picture	Contract No.	Date of Contract	Theatre	Film Rental	Date Played	Film Rental Schine	Film Rental Indpt.
			SEASON 1934-35				
Barnum	171	8/22/33	Rialto	158.43	1/6-7/35	158.43	
Last Gentleman	169	8/22/33	Rialto	87.52	11/22-23/34	87.52	
Bulldog Drummond	6920	4/3/35	Hippodrome	36.41	6/2-4/35		36.41
Affairs Cellini	6124	4/3/35	Hippodrome	22.87	6/30-7/2/35		22.87
Richelieu	5173	4/3/35	Hippodrome	66.80	9/1-4/35		66.80
Clive of India	5883	4/3/35	Hippodrome	44.52	7/7-9/35		44.52
Folies Bergere	5566	4/3/35	Hippodrome	57.54	7/14-16/35		57.54
Les Miserables	2912	4/3/35	Hippodrome	88.07	9/15-18/35		88.07
Kid Millions	6079	4/3/35	Hippodrome	115.00	4/28-30/35		115.00
We Live Again	5864	4/3/35	Hippodrome	30.01	7/21-23/35		30.01
Wedding Night	5640	4/3/35	Hippodrome	52.18	6/23-25/35		52.18
Monte Cristo	177	8/22/33	Rialto	46.95	12/11-12/34	46.95	
Transatlantic	6529	4/3/35	Hippodrome	47.07	5/26-28/35		47.07
Let 'Em Have It	1382	4/3/35	Hippodrome	60.56	8/4-6/35		60.56
Daily Bread	5387	4/3/35	Hippodrome	23.31	6/16-18/35		23.31
Thunder East	1225	4/3/35	Hippodrome	31.38	10/20-22/35		31.38
Don Juan	4239	4/3/35	Hippodrome	31.38	8/23-24/35		31.38
Sc. Pimpernel	3525	4/3/35	Hippodrome	27.98	8/18-20/35		27.98
Sanders River	3171	4/3/35	Hippodrome	29.77	11/16-18/35		29.77
Escape Me Never	545	6/24/35	Hippodrome	32.62	9/29-10/1/35		32.62
Nell Gwynn	2131	4/3/35	Hippodrome	36.09	10/18-19/35		36.09
Runaway Queen	2183	4/3/35	Hippodrome	26.74	11/1-2/35		26.74
Br. Millions	1125	4/3/35	Hippodrome	40.60	8/25-27/35		40.60
			TOTAL	1,193.80		292.90	900.90
			SEASON 1935-36				
Call Wild	5507	4/3/35	Hippodrome	111.30	10/6-9/35	111.30	
Modern Times	5879	5/26/36	Rialto	B. C.	5/22-23/36	B. C.	
These Three	2777	11/18/35	Rialto	150.00	6/18-19/36	150.00	
Strike Me Pink	7178	5/26/36	Rialto	B. C.	5/3-4/36	B. C.	
Barbary Coast	4258	11/18/35	Rialto	150.00	12/29-30/35	150.00	
Dark Angel	4326	11/18/35	Rialto	150.00	2/13-14/36	150.00	
Splendor	3267	11/18/35	Rialto	115.00	2/18-19/36	115.00	
Things To Come	3106	4/3/35	Hippodrome		Cancelled		
Ghost Goes West	4810	1/22/36	Rialto	75.00	5/26-27/36	75.0[illegible]	
Condemned							
Melody Lingers On	1307	4/3/35	Hippodrome	47.16	12/21-23/35	47.16	
Red Salute	1227	6/22/35	Hippodrome	65.48	11/30-12/2/35	65.48	
Lord Fauntleroy	6781	6/10/36	Rialto	B. C.	6/25-26/36	B. C.	
Rainy Afternoon							
Amateur Gentleman	1227	6/22/35	Hippodrome		Cancelled		
			TOTAL	863.94		863.94	

EXHIBIT 718-I

Town: Norwich—State: New York

Picture	Contract No.	Date of Contract	Theatre	Film Rental	Date Played	Film Rental	
						Schine	Indpt.
			SEASON 1934-35				
Barnum	172	8/22/33	Colonial	118.11	1/13-14/35	118.11	
Last Gentleman	170	8/22/33	Colonial	82.61	12/6-7/34	82.61	
Bulldog Drummond	4734	11/12/34	Smalley	150.00	1/20-22/35		150.00
Affairs Cellini	4345	11/12/34	Smalley	150.00	12/9-11/35		150.00
Richelieu	3272	11/12/34	Smalley	200.00	6/9-12/35		200.00
Clive India	3277	11/12/34	Smalley	200.00	2/3-6/35		200.00
Clive India	8672	2/20/39	Smalley	20.00	3/15-16/39		20.00
Folies Bergere	3125	11/[illegible]/34	Smalley	200.00	4/21-24/35		200.00
Les Miserables	645	11/12/34	Smalley	200.00	5/25-29/35.		200.00
Kid Millions	820	11/12/34	Smalley	228.92	12/31-1/4/35		228.92
Kid Millions	8205	5/15/36	Smalley	40.00	5/27-28/36		40.00
We Live Again	896	11/12/34	Smalley	65.80	1/6-8/35		65.80
Wedding Night	849	11/12/34	Smalley	88.78	4/25-5/1/35		88.78
Monte Cristo	178	8/22/33	Colonial	50.41	12/13-14/34	50.41	
Transatlantic	3312	11/12/34	Smalley	100.00	12/2-4/34		100.00
Let 'Em Have It	1732	5/3/35	Smalley	68.02	6/2-4/35		68.02
Let 'Em Have It	8714	3/6/39	Smalley	15.00	3/29-30/39		15.00
Daily Bread	2982	11/12/34	Smalley	75.00	12/16-18/34		75.00
Thunder East	1592	5/3/35	Smalley	35.29	6/30-7/1/35		35.29
Don Juan	2727	12/27/34	Smalley	26.51	1/10-11/35		26.51
Sc. Pimpernel	4086	6/3/35	Smalley	50.86	3/19-21/35		50.86
Sanders River	3344	5/3/35	Smalley	51.37	7/14-16/35		51.37
Escape Me Never							
Nell Gwynn	2229	5/3/35	Smalley	41.90	7/28-30/35		41.90
Runaway Queen							
Br. Millions	1494	5/3/35	Smalley	37.11	6/23-24/35		37.11
			TOTAL	2,295.69		251.13	2,044.56
			SEASON 1935-36				
Call Wild	[illegible]359	11/12/34	Smalley	200.00	9/1-4/35		200.00
Call Wild	12549	1/5/39	Smalley	20.00	1/18-19/39		20.00
Modern Times	5871	5/26/36	Colonial	B. C.	5/14-15/36	B. C.	
These Three	4351	11/18/35	Colonial	112.26	7/16-17/36	112.26	
Strike Me Pink	7170	5/26/36	Colonial	B. C.	5/10-11/36	B. C.	
Barbary Coast	5643	11/15/35	Colonial	61.08	2/6-7/36	61.08	
Dark Angel	5553	11/15/35	Colonial	162.38	12/15-16/35	162.38	
Splendor	4663	11/18/35	Colonial	50.00	4/22/36	50.00	
Things To Come	6748	9/10/36	Smalley	35.00	9/27-29/36		35.00
Ghost Goes West	4819	1/22/36	Colonial	34.89	5/12-13/36	34.89	
Condemned							
Melody Lingers On	1585	4/29/35	Smalley	45.16	11/24-26/35		45.16
Red Salute	340	4/29/35	Smalley	66.39	10/20-23/35		66.39
Lord Fauntleroy	6773	6/10/36	Colonial	B. C.	7/2-3/36	B. C.	
Amateur Gentleman	3413	9/10/36.	Smalley	25.00	10/9/36		25.00
			TOTAL	872.16		420.61	451.55

[fol. 6402]

EXHIBIT 719
Blanket Contracts

			Contract Numbers		
Town	State	Theatre	Modern Times	Strike Me Pink	Lord Fauntleroy
		Buffalo Exchange			
Auburn	N. Y.	Jefferson	#5839	#7082	#6719
Bath	N. Y.	Babcock	5841	7084	6721
Buffalo	N. Y.	Riverside	5852	7095	6732
Buffalo	N. Y.	Granada	5853	7096	6733
Canandaigua	N. Y.	Playhouse	5842	7085	6722
Carthage	N. Y.	Strand	5845	7088	6725
Corning	N. Y.	Fox	5835	7078	6715
Corning	N. Y.	State	5856	7099	6736
Cortland	N. Y.	State	5836	7079	6716
Geneva	N. Y.	Geneva	5837	7080	6717
Lockport	N. Y.	Rialto	5833	7076	6713
Lockport	N. Y.	Hi-Art	5854	7097	6734
Newark	N. Y.	Capitol	5840	7083	6720
Oswego	N. Y.	Strand	5834	7077	6714
Oswego	N. Y.	Capitol	5857	7100	6737
Rochester	N. Y.	Dixie	5848	7091	6728
Rochester	N. Y.	Liberty	5850	7093	6730
Rochester	N. Y.	Riviera	5846	7089	6726
Salamanca	N. Y.	Andrews	5844	7087	6724
Seneca Falls	N. Y.	Strand	5843	7086	6723
Watertown	N. Y.	Avon	5838	7081	6718
Watertown	N. Y.	Olympic	5855	7098	6735
		Total	$3,938.00	$5,250.00	$2,702.00

EXHIBIT 719

Blanket Contracts

			Contract Numbers		
Town	State	Theatre	Modern Times	Strike Me Pink	Lord Fauntleroy
		Buffalo Exchange			

[fol. 6403]

		Cleveland Exchange			
Ashland	Ohio	Palace	#5863	#7108	#6746
Bellefontaine	Ohio	New Holland	5864	7109	6747
Bucyrus	Ohio	Bucyrus	5866	7111	6749
Delaware	Ohio	Strand	5867	7112	....
Mt. Vernon	Ohio	Vine	5861	7106	6744
Norwalk	Ohio	Forum	5862	7107	6745
Van Wert	Ohio	Van Wert	5865	7110	6748
Wooster	Ohio	Wooster	5860	7105	6743
		Total	$1,065.00	$1,420.00	$518.00

[fol. 6404]

EXHIBIT 719

Blanket Contracts

Town	State	Theatre	Contract Numbers Modern Times	Strike Me Pink	Lord Fauntleroy
		Buffalo Exchange			
		New York Exchange			
Amsterdam	N. Y.	Rialto	#5868	#7156	#6769
Glen Falls	N. Y.	Rialto	5872	7171	6774
Glen Falls	N. Y.	Empire	5882	7181	6784
Gloversville	N. Y.	Glove	5874	7173	6776
Hamilton	N. Y.	State	5878	7177	6780
Herkimer	N. Y.	Liberty	5875	7174	6777
Hudson Falls	N. Y.	Strand	5877	7176	6779
Little Falls	N. Y.	Rialto	5879	7178	6781
Malone	N. Y.	Malone	5870	7168	6771
Massena	N. Y.	Massena	5881	7180	6783
Norwich	N. Y.	Colonial	5871	7170	6773
Ogdensburg	N. Y.	Strand	5869	7167	6770
Oneonta	N. Y.	Oneonta	5873	7172	6775
Saranac Lake	N. Y.	Pontiac	5880	7179	6782
Tupper Lake	N. Y.	State	5876	7175	6778
		Total	$2,097.00	$2,950.00	$2,300.00

#15

Total Film Rental Received

Seasons 1934–35 Through 1939–40 Inclusive

Town	State	Run	Theatre	1934–35	1935–36	1936–37	1937–38	1938–39	1939–40	Total
Buffalo Exchange										
Auburn	N.Y.	1		5,125.68	1,457.84	3,243.30	4,505.20	4,430.10	4,124.57	22,886.69
Auburn	N.Y.	2		75.00	50.00	90.00	472.50	662.50	695.00	2,045.00
Avon	N.Y.	1		177.50	212.50	70.00	278.75	282.50	367.50	1,388.75
Bath	N.Y.	1		502.53	600.00	938.75	1,223.75	1,076.25	1,123.75	5,465.03
Bath	N.Y.	2								
Buffalo	N.Y.	Sub	Riverside	912.50	725.00	1,700.00	1,868.75	1,641.25	1,636.25	8,483.75
Buffalo	N.Y.	Sub	Granada	475.00	435.00	1,090.00	1,182.50	1,102.50	1,232.50	5,517.50
Canandaigua	N.Y.	1		810.89	662.50	810.00	1,253.75	987.50	1,187.50	5,712.14
Carthage	N.Y.	1		589.02	482.50	640.00	947.50	762.50	927.50	4,349.02
Carthage	N.Y.	2								
Corning	N.Y.	1		1,818.60	847.66	1,367.26	2,302.47	1,567.72	2,224.49	10,128.20
Corning	N.Y.	2		192.50	67.50	240.00	308.75	353.75	463.75	1,626.25
Corning	N.Y.	3		72.50	52.50	157.50	245.00	240.00	315.00	1,082.50
Cortland	N.Y.	1		1,877.40	843.22	2,032.82	3,275.59	2,414.37	2,538.72	12,982.12
Geneva	N.Y.	1		2,414.85	771.92	2,230.46	3,445.21	2,843.62	2,738.03	14,444.09
Geneva	N.Y.	2			30.00	55.00	75.00	130.00	190.00	480.00
Lockport	N.Y.	1		3,067.90	1,105.04	1,661.90	2,533.89	2,118.70	2,477.52	11,964.95
Lockport	N.Y.	2		100.00	225.00	390.00	867.50	685.00	825.00	3,092.50
Lockport	N.Y.	3								
Newark	N.Y.	1		804.13	662.50	1,018.75	1,412.50	1,180.00	1,266.25	6,344.13
Oswego	N.Y.	1		1,248.38	909.59	1,695.95	2,709.12	1,970.16	2,429.09	10,962.29
Oswego	N.Y.	2		85.00				25.00	120.00	230.00
Pann Yan	N.Y.	1		1,352.23	464.23	590.00	1,011.25	907.50	937.50	5,262.71
Perry	N.Y.	1		201.73		407.50	751.25	623.75	713.75	2,697.98
Rochester	N.Y.	Sub	Cameo	935.00	181.00	420.00	478.75	447.50	572.50	3,034.75
Rochester	N.Y.	Sub	Dixie	700.00	415.00	955.00	1,186.33	976.25	1,211.25	5,443.83
Rochester	N.Y.	Sub	Liberty	425.00	440.00	1,106.25	1,198.75	1,020.00	1,150.00	5,340.00
Rochester	N.Y.	Sub	Madison	1,685.00	1,116.25	947.50	1,270.00	1,090.00	1,020.00	7,128.75
Rochester	N.Y.	Sub	Monroe	1,685.00	1,116.25	947.50	1,270.00	1,090.00	995.00	7,103.75
Rochester	N.Y.	Sub	Riviera	1,600.00	1,500.00	2,512.50	3,393.75	2,236.25	2,461.25	12,703.75
Rochester	N.Y.	Sub	Webster	82.50	305.00	427.50	593.75	562.50	202.50	2,173.75
Rochester	N.Y.	Sub	West End	620.00	413.75	365.00	487.50	415.00	485.00	2,786.25
Salamanca	N.Y.	1		801.64	617.50	865.00	1,298.75	1,050.00	1,240.00	5,872.89
Seneca Falls	N.Y.	1		567.59	342.50	500.00	862.50	697.50	843.75	3,813.84
Syracuse	N.Y.	Sub	Palace	1,207.50	912.50	651.25	1,088.75	762.50	827.50	5,450.00
Watertown	N.Y.	1		3,861.98	2,212.38	2,410.07	3,758.44	2,982.24	3,802.72	19,027.83
Watertown	N.Y.	2		503.75	285.00	635.00	1,037.50	863.75	1,093.75	4,418.75
Watertown	N.Y.	3		202.50	282.50	265.00	387.50	295.00	395.00	1,827.50
Watertown	N.Y.	4		12.50	177.50	207.50	207.50	202.50	267.40	1,074.90
Watertown	N.Y.	5			106.90	165.00	45.00	10.00	30.00	356.90
Blanket contracts—see attached schedule					11,890.00					11,890.00

[fol. 6406]

#15

Total Film Rental Received

Seasons 1934-35 Through 1939-40 Inclusive

Town	State	Run	Theatre	1934-35	1935-36	1936-37	1937-38	1938-39	1939-40	Total
Cincinnati Exchange										
Athens	Ohio	1		2,093.59	1,300.24	1,813.24	2,644.32	2,160.09	2,167.18	12,178.66
Athens	Ohio	2		35.83						35.83
Corbin	Ky.	1		70.00	645.00	620.00	280.00	607.50	760.00	2,982.50
Corbin	Ky.	2				15.00	20.00	242.50	105.00	382.50
Harlan	Ky.	1		1,037.50	964.96	915.00	1,183.89	865.00	1,010.00	5,976.35
Harlan	Ky.	2					52.50	140.00	67.50	260.00
Lexington	Ky.	1		5,942.31	6,379.27	4,365.05	6,554.63	5,919.91	6,946.87	36,108.04
Lexington	Ky.	2		378.50	760.00	1,203.33	1,700.00	1,320.00	1,477.50	6,839.33
Lexington	Ky.	3		90.00	287.50	815.00	855.00	788.75	863.75	3,700.00
Lexington	Ky.	4		15.00	220.00	272.50	227.50	307.50	322.50	1,365.00
Lexington	Ky.	5				27.50	112.50	215.00	260.00	615.00
Maysville	Ky.	1		611.29	646.30	821.68	1,374.48	685.20	797.13	4,936.08
Maysville	Ky.	2		70.00	52.50	25.00	15.00			162.50
Paris	Ky.	1		165.00	565.00	540.00	930.00	760.00	945.00	3,905.00
Pikesville	Ky.	1		1,070.12	775.87	749.24	978.94	752.50	850.00	5,176.67
Piqua	Ohio	1		878.63	1,003.32	1,111.64	1,708.70	1,310.74	1,608.60	7,621.63
Richmond	Ky.	1		665.00	645.00	527.50	930.00	762.50	965.00	4,495.00
Troy	Ohio	1		2,015.55	1,385.16	1,291.13	1,945.45	1,602.90	1,618.92	9,859.11
Cleveland Exchange										
Ashland	Ohio	1		1,265.97	611.24	929.61	1,192.23	939.88	1,473.52	6,412.45
Ashland	Ohio	2		347.50	305.00	315.00	315.00	305.00	347.50	1,935.00
Bellefontaine	Ohio	1		819.56	517.50	1,090.00	1,432.50	1,200.00	1,397.50	6,457.06
Bucyrus	Ohio	1		832.46	510.14	665.00	1,073.75	851.25	1,063.75	4,996.35
Bucyrus	Ohio	2			137.50	32.50				170.00
Delaware	Ohio	1		1,869.74	1,035.00	975.00	1,432.50	1,197.50	1,372.50	7,882.24
Fostoria	Ohio	1		1,750.88	1,508.66	1,459.82	1,575.00	1,300.00	1,457.50	9,051.85
Kent	Ohio	1		1,195.50	1,145.82	1,420.49	1,211.72	732.50	950.00	6,656.03
Kent	Ohio	2		296.06	279.94	174.15	335.00	532.50	427.50	2,045.15
Medina	Ohio	1		60.00	155.00	170.00	986.25	766.25	933.13	3,070.63
Mt. Vernon	Ohio	1		2,476.65	1,191.41	1,344.12	2,196.34	1,293.75	1,741.45	10,243.72
Mt. Vernon	Ohio	2		215.00	420.00	520.00	642.50	538.28	625.00	2,960.78
Norwalk	Ohio	1		1,645.03	412.74	660.06	980.35	930.39	1,133.79	5,762.36
Ravenna	Ohio	1		400.93	352.38	318.72	403.50	684.00	590.00	2,749.53
Ravenna	Ohio	2		781.41	738.93	1,067.20	886.92	575.00	731.25	4,780.71
Shelby	Ohio	1		1,202.97	712.30	673.03	1,259.91	962.50	859.39	5,670.10
Shelby	Ohio	2		27.50	67.50		59.49	272.50	225.00	651.99
Tiffin	Ohio	1		2,099.69	2,114.86	1,646.43	2,327.52	1,782.46	2,245.76	12,216.72
Tiffin	Ohio	2		60.00	420.00	387.50	185.00	355.00	150.00	1,557.50
Van Wert	Ohio	1		1,234.50	467.80	586.67	723.75	576.25	788.75	4,377.72
Van Wert	Ohio	2			225.00	65.00	80.00	75.00	45.00	490.00
Wooster	Ohio	1		1,496.93	651.94	1,580.96	2,409.95	1,836.76	2,165.64	10,142.18
Wooster	Ohio	2							55.00	55.00
Blanket contracts—see attached schedule					3,003.00					3,003.00

[fol. 6407]

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Total Film Rental Received

Seasons 1934–35 Through 1939–40 Inclusive

Town	State	Run	Theatre	1934–35	1935–36	1936–37	1937–38	1938–39	1939–40	Total
New York Exchange										
Amsterdam	N.Y.	1		2,186.51	1,366.03	2,842.76	3,722.10	3,150.63	3,564.62	16,832.65
Amsterdam	N.Y.	2			212.50	345.00	472.50	427.50	437.50	1,895.00
Ballston	N.Y.	1			35.84	602.00	225.00		35.00	897.84
Glen Falls	N.Y.	1		3,387.70	2,218.05	3,183.07	4,364.22	3,816.23	4,657.54	21,626.81
Glen Falls	N.Y.	2		670.00	465.00	630.00	870.00	730.00	805.00	4,170.00
Glen Falls	N.Y.	3		55.00	152.50	325.00	112.50			645.00
Gloversville	N.Y.	1		1,078.12	1,394.37	2,714.21	3,426.33	3,118.66	3,413.56	15,145.25
Hamilton	N.Y.	1		75.00	335.00	560.00	890.00	702.50	835.00	3,397.50
Herkimer	N.Y.	1		262.33	625.00	1,400.00	1,718.75	1,378.75	1,533.75	6,918.58
Hudson Falls	N.Y.	1		52.50	305.00	382.50	541.25	485.00	585.00	2,351.25
Ilion	N.Y.	1		1,315.00	712.50	860.00	893.75	608.75	748.75	5,138.75
Little Falls	N.Y.	1		1,193.80	863.94	1,135.00	1,613.75	1,313.75	1,478.75	7,598.99
Little Falls	N.Y.	2								
Malone	N.Y.	1		635.93	831.64	1,283.57	1,491.25	1,302.50	1,597.50	7,142.39
Malone	N.Y.	2			32.50		80.00	290.00	407.50	810.00
Massena	N.Y.	1		1,063.65	729.89	1,066.25	1,521.25	1,245.00	1,370.00	6,996.04
Mechanicsville	N.Y.	1			26.36	842.50	361.25		60.00	1,290.11
Norwich	N.Y.	1		2,295.69	872.16	1,119.14	1,723.00	1,115.41	1,310.89	8,436.29
Norwich	N.Y.	2		70.00	305.00	260.00	490.00	128.34	127.50	1,380.84
Ogdensburg	N.Y.	1		527.19	724.88	1,558.82	2,598.28	1,787.05	2,163.31	9,359.53
Oneonta	N.Y.	1		692.92	799.43	1,530.48	2,464.35	2,322.25	2,194.49	10,003.92
Saranac Lake	N.Y.	1		483.80	905.00	1,106.25	1,412.50	1,197.50	1,347.50	6,452.55
Tupper Lake	N.Y.	1		50.00	260.00	505.00	723.75	643.75	773.75	2,956.25
Whitehall	N.Y.	1				575.00	260.00		40.00	875.00
Blanket contracts—see attached schedule					7,347.00					7,347.00
Washington Exchange										
Cambridge	Md.	1		1,560.00	922.50	1,380.00	1,985.77	1,030.00	1,205.00	8,083.27
Easton	Md.	1		192.78		645.00	1,012.13	742.50	937.50	3,529.91
Federalsburg	Md.	1		437.50			339.89	335.00	450.00	1,562.39
Hurlock	Md.	1		276.25			253.75			530.00
Laurel	Del.	1		518.75	219.50	166.00	316.43			1,220.68
Milford	Del.	1		860.00	75.00	60.00	754.34	415.00	865.00	3,029.34
Salisbury	Md.	1		1,853.06	1,782.14	2,364.31	3,537.00	3,145.74	4,018.15	16,700.40
Salisbury	Md.	2						25.00	30.00	55.00
Total				93,803.38	90,051.04	94,445.19	131,631.18	108,310.33	123,667.73	641,908.85

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Total Film Rental Received

Theatres Operated by Defendant Exhibitors

Seasons 1934–35 Through 1939–40 Inclusive

Town	State	Run	Theatres	1934–35	1935–36	1936–37	1937–38	1938–39	1939–40	Total
Buffalo Exchange										
Auburn	N.Y.	1			1,167.84	3,208.30	4,120.00	4,430.10	4,124.57	17,051.01
Auburn	N.Y.	2				15.00	472.50	662.50	695.00	1,845.00
Avon	N.Y.	1								
Bath	N.Y.	1		502.53	600.00	938.75	1,223.75	1,076.25	1,123.75	5,465.03
Bath	N.Y.	2								
Buffalo	N.Y.	Sub	Riverside	912.50	725.00	1,700.00	1,868.75	1,641.25	1,636.25	8,483.75
Buffalo	N.Y.	Sub	Granada	475.00	435.00	1,090.00	1,182.50	1,102.50	1,232.50	5,517.50
Canandaigua	N.Y.	1		810.89	662.50	810.00	1,253.75	987.50	1,187.50	5,712.14
Carthage	N.Y.	1		589.02	482.50	640.00	947.50	762.50	927.50	4,349.02
Carthage	N.Y.	2								
Corning	N.Y.	1		1,014.64	488.38	1,367.26	2,302.47	1,567.72	2,224.49	8,964.96
Corning	N.Y.	2		90.00		240.00	308.75	353.75	463.75	1,456.25
Corning	N.Y.	3								
Cortland	N.Y.	1		1,877.40	843.22	2,032.82	3,275.59	2,414.37	2,538.72	12,982.12
Geneva	N.Y.	1		2,404.85	771.92	2,230.46	3,445.21	2,843.62	2,738.03	14,434.09
Geneva	N.Y.	2								
Lockport	N.Y.	1		1,526.09	573.55	1,661.90	2,533.89	2,118.70	2,477.52	10,891.65
Lockport	N.Y.	2		100.00	190.00	390.00	867.50	685.00	825.00	3,057.50
Lockport	N.Y.	3								
Newark	N.Y.	1		804.13	662.50	1,018.75	1,412.50	1,180.00	1,266.25	6,344.13
Oswego	N.Y.	1		1,248.38	909.59	1,695.95	2,709.12	1,970.16	2,429.09	10,962.29
Oswego	N.Y.	2		85.00				25.00	120.00	230.00
Penn Yan	N.Y.	1				590.00	1,011.25	907.50	937.50	3,446.25
Perry	N.Y.	1				407.50	751.25	623.75	713.75	2,496.25
Rochester	N.Y.	Sub	Cameo			420.00	478.75	447.50	572.50	1,918.75
Rochester	N.Y.	Sub	Dixie	700.00	415.00	955.00	1,186.33	976.25	1,211.25	5,443.83
Rochester	N.Y.	Sub	Liberty	425.00	440.00	1,106.25	1,198.75	1,020.00	1,150.00	5,340.00
Rochester	N.Y.	Sub	Madison					815.00	1,020.00	1,835.00
Rochester	N.Y.	Sub	Monroe					815.00	995.00	1,810.00
Rochester	N.Y.	Sub	Riviera	1,600.00	1,500.00	2,512.50	2,393.75	2,236.25	2,461.25	12,703.75
Rochester	N.Y.	Sub	Webster							
Rochester	N.Y.	Sub	West End					415.00	485.00	900.00
Salamanca	N.Y.	1		801.64	617.50	865.00	1.298.75	1,050.00	1,240.00	5,872.89
Seneca Falls	N.Y.	1			300.00	590.00	862.50	697.50	843.75	3,203.75
Syracuse	N.Y.	Sub	Palace					702.50	827.50	1,530.00
Watertown	N.Y.	1		444.79	1,344.76	2,410.07	3,758.44	2,982.24	3,802.72	14,743.02
Watertown	N.Y.	2		153.75	215.00	635.00	1,037.50	863.75	1,093.75	3,998.75
Watertown	N.Y.	3								
Watertown	N.Y.	4								
Watertown	N.Y.	5								
Blanket contracts					11,890.00					11,890.00

#16

Total Film Rental Received
Theatres Operated by Defendant Exhibitors
Seasons 1934–35 Through 1939–40 Inclusive

Town	State	Run	Theatre	1934–35	1935–36	1936–37	1937–38	1938–39	1939–40	Total
Cincinnati Exchange										
Athens	Ohio	1								
Athens	Ohio	2			1,030.00	1,813.24	2,644.32	2,160.09	2,167.18	9,814.83
Corbin	Ky.	1								
Corbin	Ky.	2						607.50	760.00	1,367.50
Harlan	Ky.	1								
Harlan	Ky.	2								
Lexington	Ky.	1					52.50	140.00	67.50	260.00
Lexington	Ky.	2				3,360.23	6,554.63	5,919.91	6,946.87	22,781.64
Lexington	Ky.	3			15.00	1,203.33	1,700.00	1,320.00	1,477.50	5,715.83
Lexington	Ky.	4				765.00	855.00	788.75	863.75	3,272.50
Lexington	Ky.	5		15.00			15.00	15.00	225.00	270.00
Maysville	Ky.	1								
Maysville	Ky.	2						685.20	797.13	1,482.33
Paris	Ky.	1								
Pikesville	Ky.	1				490.00	930.00	760.00	945.00	3,125.00
Piqua	Ohio	1					47.50	752.50	850.00	1,650.00
Richmond	Ky.	1		878.63	1,003.32	1,111.64	1,708.70	1,310.74	1,608.60	7,621.63
Troy	Ohio	1				477.50	930.00	762.50	965.00	3,135.00
Cleveland Exchange										
Ashland	Ohio	1								
Ashland	Ohio	2			337.36	929.61	1,192.23	939.88	1,473.52	4,872.60
Bellefontaine	Ohio	1					315.00	305.00	347.50	967.50
Bucyrus	Ohio	1		819.56	517.50	1,090.00	1,432.50	1,200.00	1,397.50	6,457.06
Bucyrus	Ohio	2			425.00	665.00	1,073.75	851.25	1,063.75	4,078.75
Delaware	Ohio	1			12.50	32.50				45.00
Fostoria	Ohio	1			535.00	975.00	1,432.50	1,197.50	1,372.50	5,512.50
							1,575.00	1,300.00	1,457.50	4,332.50
Kent	Ohio	1					862.50	732.50	950.00	2,545.00
Kent	Ohio	2					335.00	532.50	427.50	1,295.00
Medina	Ohio	1					383.75	521.25	933.13	1,838.13
Mt. Vernon	Ohio	1		799.15	331.41	1,169.12	1,778.84	1,293.75	1,741.45	7,113.72
Mt. Vernon	Ohio	2					52.50	15.00		67.50
Norwalk	Ohio	1			269.54	660.06	980.35	930.39	1,133.79	3,974.13
Ravenna	Ohio	1					402.50	685.00	590.00	1,677.50
Ravenna	Ohio	2					730.00	575.00	731.25	2,036.25
Shelby	Ohio	1								
Shelby	Ohio	2								
Tiffin	Ohio	1			798.45	1,646.43	2,327.52	1,782.46	2,245.76	8,800.62
Tiffin	Ohio	2				65.00	185.00	355.00	150.00	755.00
Van Wert	Ohio	1			296.33	586.67	723.75	576.25	788.75	2,971.75
Van Wert	Ohio	2								
Wooster	Ohio	1		1,496.93	651.94	1,580.96	2,409.95	1,836.76	2,165.64	10,142.18
Wooster	Ohio	2							55.00	55.00
Blanket Contract					3,003.00					3,003.00

#16

Total Film Rental Received
Theatres Operated by Defendant Exhibitors
Seasons 1934–35 Through 1939–40 Inclusive

Town	State	Run	Theatre	1934–35	1935–36	1936–37	1937–38	1938–39	1939–40	Total
New York Exchange										
Amsterdam	N.Y.	1		1,271.49	947.30	2,842.76	3,722.10	3,150.63	3,564.62	15,498.90
Amsterdam	N.Y.	2					350.00	427.50	437.50	1,215.00
Ballston	N.Y.	1								
Glen Falls	N.Y.	1		3,083.48	2,218.05	3,183.07	4,364.22	3,816.23	4,657.54	21,322.59
Glen Falls	N.Y.	2		100.00	405.00	630.00	870.00	730.00	805.00	3,540.00
Glen Falls	N.Y.	3								
Gloversville	N.Y.	1		1,078.12	1,394.37	2,714.21	3,426.33	3,118.66	3,413.56	15,145.25
Hamilton	N.Y.	1		75.00	335.00	560.00	890.00	702.50	835.00	3,397.50
Herkimer	N.Y.	1		262.33	625.00	1,400.00	1,718.75	1,378.75	1,533.75	6,918.58
Hudson Falls	N.Y.	1		52.50	305.00	382.50	541.25	485.00	585.00	2,351.25
Ilion	N.Y.	1					893.75	608.75	748.75	2,251.25
Little Falls	N.Y.	1		292.90	863.94	1,135.00	1,613.75	1,313.75	1,478.75	6,698.09
Little Falls	N.Y.	2								
Malone	N.Y.	1		400.93	746.64	1,188.57	1,491.25	1,302.50	1,597.50	6,727.39
Malone	N.Y.	2								
Massena	N.Y.	1		186.30	530.00	1,066.25	1,521.25	1,245.00	1,370.00	5,918.80
Mechanicsville	N.Y.	1				842.50	361.25		60.00	1,263.75
Norwich	N.Y.	1		251.13	420.61	1,094.14	1,645.50	1,090.41	1,310.89	5,812.68
Norwich	N.Y.	2								
Ogdensburg	N.Y.	1		527.19	724.88	1,558.82	2,598.28	1,787.05	2,163.31	9,359.53
Oneonta	N.Y.	1		692.92	799.43	1,530.48	2,464.35	2,322.25	2,194.49	10,003.92
Saranac Lake	N.Y.	1		483.80	905.00	1,106.25	1,412.50	1,197.50	1,347.50	6,452.55
Tupper Lake	N.Y.	1			260.00	505.00	723.75	643.75	773.75	2,906.25
Whitehall	N.Y.	1				575.00	260.00		40.00	875.00
Blanket Contract					7,347.00					7,347.00
Washington Exchange										
Cambridge	Md.	1						1,030.00	1,205.00	2,235.00
Easton	Md.	1						742.50	937.50	1,680.00
Federalsburg	Md.	1						335.00	450.00	785.00
Hurlock	Md.	1								
Laurel	Del.	1								
Milford	Del.	1						415.00	865.00	1,280.00
Salisbury	Md.	1								
Salisbury	Md.	2						25.00		25.00
Total				29,332.97	53,287.83	70,376.35	106,399.82	97,092.57	112,436.37	468,925.91

[fol. 6411] **Exhibit 765**

Madison & Monroe Theatres

April 9, 1937.

Mr. William F. Rodgers
Loews, Inc.
1540 Broadway
New York City

Dear Mr. Rodgers:

We are operating two theatres, the Madison and the Monroe, which are equal in class to the other neighborhood theatres where your pictures are shown second run, and only after twenty-one days are the pictures made available to us. The Madison and Monroe Theatres are each more than two miles away from the nearest of these second run houses, and are in entirely different neighborhoods.

We should like your consideration of open booking with these houses, and will pay the same price. We have been endeavoring to secure this without any definite satisfaction through your Buffalo office.

Yesterday we discussed our situation with Mr. O'Shea, and he agrees that we should be entitled to open booking.

Will you be kind enough to investigate this situation and advise us on the subject at your earliest convenience?

Cordially, Chester Fenyvessy.

CF:DS.

[fol. 6412] **Exhibit 773**

August 3, 1938.

Mr. Ralph Maw
Metro Goldwyn Mayer
509 Pearl Street
Buffalo, N. Y.

Dear Mr. Maw:

Re-Clearance Schine vs. Madison-Monroe Theatres

Here is a hypothetical case—

A Metro picture opens August 7th at the Riviera Theatre; and opens August 14th at the Liberty Theatre, the last day of this engagement being August 16th. Under the Madison-

Monroe contract, Schine has 14 days clearance, which would make the picture available on August 31st. However, as certain pictures are designated by the distributors as Sunday attractions, in this case the picture would not be available for the Madison and Monroe Theatres until September 4th, which is 28 days from the opening date at Schine's Riviera Theatre.

We should like to know whether this was your intention in drawing up the contract.

Very truly yours, Chester Fenyvessy.

cf:ds.

cc Mr. T. J. Connors, New York City.

[fol. 6413] EXHIBIT 774

Ars Gratia Artis

METRO-GOLDWYN-MAYER PICTURES

630 Ninth Avenue, New York

Office of E. K. O'Shea, District Manager.

August 11, 1938.

Mr. Chester Fenyvessy,
Fenyvessey Enterprises,
Rochester, N. Y.

DEAR CHESTER:

Mr. Connors has requested me to investigate and write you concerning your inquiry as to Clearance on the West End Theatre, Rochester to the Arnett Theatre, Rochester.

As you know, Clearance has never been granted in this situation from one house to the other and these two houses have always been sold on "open availability" which, apparently, has always been satisfactory to all concerned. In fact, our product has been sold to both of these theatres for the season of 1938-39 on the same basis.

Sincerely, Ted. O'Shea.

EKO'S:DRP.

[fol. 6414] **Exhibit 775**

August 16, 1938.

Mr. E. K. O'Shea
Metro Goldwyn Mayer Pictures
630 Ninth Avenue
New York City

Dear Mr. O'Shea:

Your communication of August 11th is at hand, and I thank you for your early reply; however, I do not seem to have made my problem clear.

There is no complaint now, nor has there ever been, regarding the clearance at the West End vs. the Arnett Theatre as far as we are concerned. I only cited that situation as an instance where the distributor is entirely fair with both exhibitors, allowing neither one nor the other an advantage in any way. This is in contrast to the Schine situation vs. Monroe and Madison where the distributor is showing preference by supplying the pictures to the four Schine houses ahead of the Madison and Monroe, with what appears to us to be unreasonable protection after their run.

Originally Schine Theatres were obliged to play Metro pictures within a period of 14 days, and if not so played, there was no further protection, and they became available to the Madison and Monroe. Now it is usually 21 to 28 days after the last Schine showing before the pictures can be shown at our theatres.

I do not want to annoy you or Messrs. Connors and Rodgers with our problems unnecessarily. I feel that our situation is one that requires more than casual observation, as it has been consistently growing worse through the advantages given Schine. When you consider the West End-Arnett as an example of fair impartial treatment, certainly the Schine-Madison-Monroe protection and clearance is a direct indication that the producer is playing with the big exhibitor and imposing a hardship on the little operator.

I hope you have a remedy, and I shall await your reply.

Very truly yours, Chester Fenyvessy.

cf:ds.

(Here follows 1 Photolithograph, side folio 6415)

EXHIBIT 776

METRO-GOLDWYN-MAYER
PICTURES
DISTRIBUTED BY
LOEW'S INCORPORATED
509 PEARL STREET
BUFFALO, N. Y.

SALESMEN'S AND BOOKERS' MONTHS
MAY JUNE JULY AUGUST
REISSUES Sure-Fire $ $ $ BOOK THEM NOW!
BROADWAY MELODY
SARATOGA
CAPTAINS COURAGEOUS
GOOD EARTH
TARZAN ESCAPES
BORDER DANCE
MAYTIME
DAY AT THE RACES
TOPPER
DAVID COPPERFIELD
TREASURE ISLAND
THRILL YOUR CUSTOMERS with "NEWS OF THE DAY"
BALANCE YOUR PROGRAM with M-G-M SHORTS
SELL YOURSELF TO THE PUBLIC with advertising

August 16, 1938

Mr. Chester Fenyvessy
Madison Theatre
Rochester, N. Y.

Dear Chester:

On my next visit to Rochester, I will discuss the contents of your letter dated August 3rd personally with you, relative to the Schine clearance over the Madison and Monroe Theatres.

Kindest personal regards.

Sincerely,

R. W. Maw
Resident Manager

RWM:MFL

M-G-M'S OBJECTIVE
Past Present
and Future
CONSISTENT DELIVERY
OF DEPENDABLE
BOX-OFFICE PRODUCT
SEND
YOUR
DATES
NOW!

GLORIFYING THE AMERICAN SCREEN

NO AGREEMENT OR ORDER WILL BE BINDING ON THIS CORPORATION UNLESS IN WRITING AND SIGNED BY AN OFFICER

6415

4330A

[fol. 6416] Exhibit 790

Agreement

Agreement made this 10 day of February, 1939, by and between Paul Fenyvessy and Chester Fenyvessy, of the City of Rochester, County of Monroe, State of New York, with Munmad Theatre Corporation, of Gloversville, New York.

Witnesseth:

In consideration of One Dollar, ($1.00), in hand paid, and other good and valuable consideration the receipt whereof is hereby acknowledged by each of us severally, we, Paul Fenyvessy and Chester Fenyvessy and each of us agree that we will not, indirectly or directly, personally or through any stock interest, (except ownership of stock in any amusement enterprise listed upon any recognized exchange), partnership with Albert A. Fenyvessy or any other person or association by us, or any of us, or otherwise, engage in the business of the exhibition of motion pictures or in the operation, management or control of motion picture theatres in the City of Rochester, except in the so-called downtown area which is hereby agreed as follows:

Bounded on the West by Plymouth Avenue North and Plymouth Avenue South, on the East by Union Street North and Union Street South, on the North by Andrews Street; and on the South by Court Street, for a period of twenty (20) years from February 10th, 1939, and

Except as to road shows at advanced prices to be presented at the Auditorium Theatre in the Masonic Temple at 875 East Main Street, Rochester, New York.

In witness whereof, each of us has hereunto set our hand and seal the date and year first above written.

(Signed) Paul A. Fenyvessy (L.S.), Chester Fenyvessy, (L.S.).

[fol. 6417] STATE OF NEW YORK,
County of Monroe,
City of Rochester, ss:

On this 10th day of February, Nineteen Hundred and Thirty-nine, before me, the subscriber, personally appeared Paul Fenyvessy and Chester Fenyvessy to me personally known and known to me to be the same persons described in and who executed the foregoing instrument, and they duly acknowledged to me that they executed the same.

Ralph C. Wichins, Notary Public.

[fol. 6418] EXHIBIT 800

October 4, 1939.

Mr. Wm. F. Rodgers
Loew's Inc.
1540 Broadway
New York City

DEAR MR. RODGERS:

We have spoken to your Mr. Maw, regarding our desire to show some of your product, second run, day and date with your second run Rochester account.

That you may more clearly understand the local situation, we present herewith certain facts for your consideration.

The Little Theatre operates daily from 1 to 11 P. M., admission is 25¢ for matinees and 35¢ evenings for adults; 15¢ at matinees and 25¢ evenings for children. Our policy is single features exclusively. Each program plays a minimum of seven days, occasional features are held over indefinitely.

We have no premimum nor gambling nights. Since our opening in 1931, we have never deviated from this policy.

Due to our downtown location, single feature policy and admission (35¢ for one feature as against 40¢, the highest admission in Rochester for double features), we in no way interfere with second run theatres located in neighborhoods five miles from the Little Theatre, not connected with our locality by bus or street car. The second run houses are open evenings only (excepting on Saturday and Sunday), charging 25¢ for adults, 10¢ for children, present double bills entirely, have various gambling and premium nights.

[fol. 6419] Furthermore, we would select mainly the type features which usually attract little patronage in neighborhood theatres. We cater to an entirely different clientele, an exclusive and discriminating patronage.

Columbia Pictures Corporation served us with several of their outstanding releases, among them were "The Awful Truth", "Theodora Goes Wild", "Lost Horizon", "Pennies From Heaven", "Holiday", the Grace Moore features and "You Can't Take it With you". Some were played second run, day and date with Fenyvessy houses, others second run, day and date with Schine theatres. That the results were highly satisfactory to Columbia, you can no doubt readily verify.

May I suggest, therefore, that you give this matter serious thought. This account unquestionably would develop considerable additional revenue for Metro. In fact, having had no experience of any importance with the house, you would be agreeably surprised at the results with suitable second run product.

This revenue could be produced without interfering in any way with any of your other Rochester accounts, as this theatre is in a class by itself.

Trusting that we may hear from you regarding this matter at your convenience, I am,

Very truly yours, Mrs. Ben Belinson.

[fol. 6420] EXHIBIT 801

Ars Gratia Artis

METRO-GOLDWYN-MAYER PICTURES

Loew Building, 1540 Broadway, New York

Office of W. F. Rodgers:

October 9, 1939.

Mrs. F. F. Belinson,
Little Theatre,
240 East Avenue,
Rochester, N. Y.

DEAR MADAM:

We acknowledge your letter of October 4th and the matter of availability of our pictures is a subject with which our Mr. Ralph Maw, of our Buffalo Office, is familiar and we have referred your letter to him. You will hear from him in regard thereto, or when our representative is next in Rochester he will communicate with you direct.

Thanking you for your communication, we are.

Sincerely, W. F. Rodgers, General Sales Manager.

WFR:MTL.

[fol. 6421] **Exhibit 802**

Ars Gratia Artis

Metro-Goldwyn-Mayer Pictures

630 Ninth Avenue, New York

Office of E. K. O'Shea, District Manager

September 12th, 1940.

Mr. Ben Belinson, Little Theatre, Rochester, N. Y.

Dear Mr. Belinson:

Sorry that I missed you when you were in New York, but I received your wire at Gloversville, N. Y., and letter.

As you know, for a number of years we have sold our second run product in Rochester to the Schine interests,—in fact, we have just negotiated another contract with the Schine interests for their subsequent run theatres in the city of Rochester, and therefore will be unable to offer you the run on our pictures in Rochester that you would like to have.

It is the policy of our company, as you know, to continue to solicit our present accounts in all situations.

Kindest regards to Mrs. Belinson and yourself.

Sincerely Ted O'Shea.

EKO'S-BR.

[fol. 6422] **Exhibit 805**

Western Union (12)

Received at 116 Genesee Street, Auburn, N. Y.

1938 May 10 PM 2 14.

SYP 110 10-Canandaigua NY 10 112P
A. J. Lauer:

Have decided to turn down your proposal at this time.

J. W. Jenkins, Jr.

[fol. 6423] **Exhibit 812**

Agreement made this 11th day of September, 1941, by and between Hubert P. Wallace of the City of Auburn, New York, party of the first part, hereinafter called the "First Party," and Syracuse Strand Theatre Company, Inc., a New York State corporation with its principal office at 303 The Herald Bldg., 332 South Warren St., Syracuse, New York, party of the second part, hereinafter called the "Second Party";

Witnesseth: That

In consideration of the mutual promises hereinafter contained, the parties hereto agree as follows:

First: A new corporation with a capital of Twenty-five thousand dollars ($25,000.00) authorized to conduct a moving picture theatre will be formed. The charter of such corporation shall be satisfactory to Lyle Hornbeck, attorney for the First Party, and to Falk, Phillips, Twelvetrees & Falk, attorneys for the Second Party. Said corporation shall hereafter be sometimes referred to as the "operating company."

Second: Each of the parties hereto shall purchase fifty (50) shares of the authorized capital stock of the operating company for the sum of Five thousand dollars ($5,000.00) payable forthwith. The Second Party further agrees that if at any time before April 1, 1942 the First Party determines that the operating company needs additional capital and he is willing and able to contribute thereto an amount or amounts not exceeding in all Twenty-five hundred dollars ($2500.00), the said Second Party shall contribute such amount or amounts not exceeding in all Twenty-five hun- [fol. 6424] dred dollars ($2500.00) as the First Party contributes. Such contribution shall be a loan to the operating company. Neither of the parties hereto shall be required to make any additions to capital beyond the original Five thousand dollars ($5,000.00) after April 1, 1942 provided, however, that upon mutual agreement the parties hereto may make such further additions as they deem desirable.

Third: The operating company shall enter into a lease with the Second Party covering the Syracuse Strand Theatre in the City of Syracuse, New York on the following terms and conditions, and the said Second Party agrees to execute such lease. The term of said lease shall be five (5) years from September 20, 1941. Said lease shall provide for a minimum rental of Twenty thousand dollars ($20,000.00) per year, such minimum rental to be payable in twelve (12) equal monthly installments on the fifth day of each month beginning October 5, 1941, each payment to be for the month commencing the twentieth day of the preceding month.

In addition to such minimum annual rental the tenant shall pay to the landlord, as additional rent, fifty per cent (50%) of the first Fifteen thousand dollars ($15,000.00) of the net profits, as hereinafter defined, of said operating company, and in addition thereto sixty-six and two-thirds per cent (66⅔%) of the net profits of such operating company in excess of Twenty thousand dollars ($20,000.00) per annum. Such net profits shall be computed annually, and payments shall be made on or before October 10th in each year commencing October 10, 1942. Interim computa- [fol. 6425] tions and payments based on such estimated annual profits may be made more frequently when and as determined by the Board of Directors of the operating company, but a final settlement shall be made on or before the 10th day of October in each year as above provided when the annual profits are finally determined.

The operating company shall also have the option to renew such lease for an additional period of five (5) years provided that it shall have fully performed all the terms, covenants and conditions of its lease, and provided that notice of the exercise of such option shall be given to the landlord in writing on or before April 1, 1946. The minimum rental during such additional five (5) year period shall be Twenty-four thousand dollars ($24,000.00) per annum, and additional rentals shall be paid as above provided, i. e., fifty per cent (50%) of the first Fifteen thousand dollars ($15,000.00) of the net profits, as hereinafter defined, of said operating company, and in addition thereto sixty-six and two-thirds per cent (66⅔%) of the net profits of such operating company in excess of Twenty thousand dollars ($20,000.00) per annum.

Fourth: The First Party agrees with the Second Party to enter into a contract with the operating company to act as General Manager of such company during the life of the aforesaid lease, and such General Manager shall receive as compensation for his management services the following compensation: Fifty per cent (50%) of the First Fifteen thousand dollars ($15,000.00) of the net profits of said operating company and thirty-three and one-third per cent (33⅓%) of the net profits of said operating company [fol. 6426] over and above Twenty thousand dollars ($20,000.00) a year. Payment of such management fee shall be made on October 10th of each year commencing October 10, 1942, for the year ending the previous September 20th. Interim computations and payments based on such estimated annual profits may be made more frequently when and as determined by the Board of Directors of the operating company, but a final settlement shall be made on or before the 10th day of October in each year as above provided when the annual profits are finally determined.

Fifth: For the purpose of computing the additional rent as provided in paragraph "Third" hereof and the management fees as provided in paragraph "Fourth" hereof, the net profits of the operating company shall be the actual net profits of such corporation as determined by good accounting practice before the deduction of any Federal or State taxes based upon income, but after the payment of any bonus, not exceeding, however, ten per cent (10%) of the actual net profits, which may be paid to the Manager of the theatre (as distinguished from the General Manager of the corporation).

Sixth: The First Party shall have the option to purchase from the Second Party all of the Second Party's stock in the operating company. Such option may be exercised during the month of October 1942 or during the month of

October 1943. If such option is exercised during the month of October 1942, the First Party shall pay to the Second Party for such stock an amount equal to twice the profits of the operating company for the fiscal year 1941 or Ten thousand dollars ($10,000.00), whichever is greater. If [fol. 6427] such option is exercised during the month of October 1943, the price of such stock shall be the net profits for the fiscal years 1941 and 1942 or the sum of Ten thousand dollars ($10,000.00), whichever is greater. For the purposes of determining the price of such stock, in accordance with the provisions of this paragraph, the net profits of the corporation shall be the amount determined as provided in paragraph "Fifth" above and shall be the net profits without deduction therefrom for additional rent or management fees hereinbefore provided.

Seventh: In the event that the parties shall exercise the option hereinbefore contained the lease between the Second Party and the operating company hereinbefore provided shall be cancelled and terminated, and a new lease containing the same terms as the original lease shall be executed between the operating company and the Second Party except that said lease shall expire on the same date as the original lease, and the rental under such new lease shall be as follows: For the balance of the term ending September 20, 1946 the minimum rental shall be Twenty thousand dollars ($20,000.00), payable in twelve (12) equal installments in advance on the twentieth day of each and every month during the term of said lease, and in addition to the minimum rental the tenant shall pay to the landlord, on the thirtieth day of each month for the month ending on the preceding twentieth day of such month, an amount equal to the difference between such minimum rental and seventeen per cent (17%) of the income of such theatre from all sources whatsoever during the month ending on the preceding twentieth day of such month. The rent during the [fol. 6428] option period shall be at the rate of Twenty-four thousand dollars ($24,000.00) per annum together with such additional payments as may be necessary so that the landlord shall receive seventeen per cent (17%) of the gross income of such theatre as aforesaid, and payable as aforesaid.

Eighth: The directors of the operating company shall be as follows: Charles F. Carr, Lyle W. Hornbeck, William

Coombs, Stanley G. Falk, Hubert P. Wallace and Anne M. Wallace.

The officers of the operating company shall be as follows: Charles F. Carr, Lyle W. Hornback, William Coombs, Vice-President and Lyle W. Hornbeck, Secretary.

Ninth: A copy of the management contract and a copy of the lease to be entered into by the operating company is attached hereto and made a part hereof.

In Witness Whereof, the parties hereto have executed this agreement the day and year first above written.

H. P. Wallace. (L. S.) Syracuse Strand Theatre Company, Inc., by Stanley G. Falk, Pres. (Seal.)

[fol. 6429] This lease made and entered into this 11th day of September, 1941 by and between Syracuse Strand Theatre Company, Inc., a New York corporation with its principal office and place of business in the City of Syracuse, County of Onondaga and State of New York, hereinafter called the "Landlord," and Syracuse Community Theatre Corporation, a New York corporation with its principal office and place of business in the City of Syracuse, County of Onondaga and State of New York, hereinafter called the "Tenant";

Witnesseth:

First: The Landlord for and in consideration of the rents, covenants, conditions and agreements hereinafter expressed on the part and behalf of the Tenant to be kept and performed has demised and leased, and by these presents does demise and lease unto the Tenant, and the Tenant does hereby hire and take from the Landlord, all the real property and the building thereon erected known as the Syracuse Strand located at 501 South Salina Street, Syracuse, New York, together with all appurtenances, entrances, exits, passageways, alleys, courtways and easements belonging to or appertaining thereto, or used in connection therewith, together with all furniture, furnishings and other personal property and all fixtures and equipment upon or in said premises or used in connection therewith.

A schedule of such furniture, furnishings and other personal property is attached hereto, made a part hereof and marked Schedule "A". A description of the land upon which said theatre is located is as follows:

> [fol. 6430] All That Tract or Parcel of Land, situate in the City of Syracuse, Onondaga County, New York, being part of Block Number One Hundred Forty-Two (142) of said City, situate at the northwest corner of said Block and being two (2) chains and nine (9) links on Harrison Street by four (4) rods on Salina Street, the south line thereof being parallel with the north line thereof and the east line thereof being parallel with Warren Street.
>
> Also All That Certain Piece or Parcel of Land, situate in the City of Syracuse, Onondaga County, New York, being part of said Block One Hundred Forty-Two (142) bounded and described as follows, viz: Being that north division of Lot "A" in said Block One Hundred Forty-Two (142) commencing in the easterly line of South Salina Street at a point where the north line of said Lot "A" (according to a map of the Village of Syracuse made by John Lathrop) touches said street; thence easterly along said line one hundred and seventeen (117) feet; thence southerly twenty-seven (27) feet along the line which divided said Lot "A" from Lot Number Three in said Block; thence westerly about one hundred and eight (108) feet by a line nearly parallel with the north line of said Lot "A" to a point in the easterly line of Salina Street twenty-eight (28) feet from the place of beginning; thence northerly along the easterly line of South Salina Street twenty-eight (28) feet to the place of beginning.

All the foregoing real property, buildings, appurtenances, fixtures and equipment demised by this lease are hereinafter sometimes called "the demised premises." All the foregoing furniture, furnishings and other personal property demised by this lease are hereinafter sometimes called "the personal property."

Second: The term of this lease is for five (5) years commencing on September 20, 1941 and ending on September 20, 1946 at 8 o'clock in the forenoon unless sooner terminated as herein provided, for which the Tenant covenants and agrees to pay the Landlord as a partial minimum rent the sum of One hundred thousand dollars ($100,000.00) payable in sixty (60) equal monthly payments on the fifth [fol. 6431] day of each and every month in advance during the said term beginning October 5, 1941, each payment to be for the month commencing the twentieth day of the preceding month, at the office of Clinton S. Carr, 332 South Warren Street, Syracuse, New York, or such other place as the Landlord shall designate in writing to the Tenant.

As additional rent the Tenant covenants and agrees to pay to the Landlord a sum equal to fifty per cent (50%) of the first Fifteen thousand dollars ($15,000.00) of the Tenant's net profits from the operation of the theatre on the demised premises and also a sum equal to sixty-six and two-thirds per cent (66⅔%) of the net profits from such operation as hereinafter defined in excess of Twenty thousand dollars ($20,000.00) per annum. Such net profits shall be computed annually, and payments shall be made on or before October 10th in each year commencing October 10, 1942. Interim computations and payments based on such estimated annual profits may be made more frequently when and as determined by the Board of Directors of the Tenant, but a final settlement shall be made on or before the 10th day of October in each year as above provided when the annual profits are finally determined.

The Landlord covenants and agrees that if this lease is not terminated, as herein provided, and if the Tenant shall during the whole of said term well and faithfully keep and perform the covenants and conditions in this lease contained on its part to be performed, the Landlord will, at the option of the Tenant, extend the term of this lease for a further [fol. 6432] period of five (5) years to commence on the expiration of the term hereby granted on all the terms, covenants and conditions herein contained, except that during said period commencing September 20, 1946 and ending on September 20, 1951 at 8 o'clock in the forenoon, the minimum rental shall be One hundred twenty thousand dollars ($120,000.00) payable in sixty (60) equal monthly payments on the fifth day of each and every month in advance during the said term beginning October 5, 1946, each payment to be for the month commencing the twentieth day of the preceding month, provided that the Tenant shall give the Landlord notice of the exercise of this option in writing on or before April 1, 1946.

As additional rent the Tenant covenants and agrees to pay to the Landlord during the period for which this lease may be extended a sum equal to fifty per cent (50%) of the first Fifteen thousand dollars ($15,000.00) of the Tenant's net profits from the operation of the theatre on the demised premises and also a sum equal to sixty-six and two-thirds per cent (66⅔%) of the net profits from such operation as hereinafter defined in excess of Twenty thousand dollars ($20,000.00) per annum. Such net profits shall be computed annually, and payments shall be made on or before October 10th in each year commencing October 10, 1947. Interim computations and payments based on such estimated annual profits may be made more frequently when and as determined by the Board of Directors of the Tenant, but a final settlement shall be made on or before the 10th day of October in each year as above provided when the annual profits are finally determined.

[fol. 6433] For the purpose of computing the additional rent as hereinbefore provided, the net profits of the Tenant shall be the actual net profits of such corporation as determined by good accounting practice before the deduction of the management fee and of any Federal or State taxes based upon income.

Third: The Tenant shall have the right to use the demised premises during the term of this lease for theatrical purposes and for all forms of public entertainment and for all purposes incidental thereto and for such activities in connection therewith as are or shall be customary and usual, all to be conducted in a proper and lawful manner.

Fourth: The Tenant covenants and agrees to cause said theatre to be operated and open to the public during the usual hours for public performances not less than forty-two (42) weeks in each year during the entire term of this lease.

Fifth: The Tenant agrees throughout the term of this lease that it will pay, or cause to be paid, all charges against the demised premises for heat, water, gas and electricity. The Tenant further agrees to keep all rules and regulations of the local water supply, gas and electric companies supplying said premises with water, gas and/or electricity.

Sixth: The Tenant further covenants and agrees to take good care of the premises and appurtenances, and to keep the interior thereof, in good repair during said term without cost to the Landlord, and to make all repairs and replacements to the woodwork, ceilings, paper, glass, plumbing, [fol. 6434] plumbing works, pipes, heating plant, radiation, heating fixtures and all other equipment, apparatus and appurtenances used in connection with the leased premises, and to take reasonable care that no damage happens to said premises or to any appurtenances or fixtures therein, and at all times to keep, maintain and use said premises, making at its own expense any and all alterations, additions and improvements required, so as to comply with all of the Federal, State and Municipal laws, regulations and ordinances, and the laws, rules, orders, ordinances and regulations of the several local departments and bureaus having jurisdiction over and in the use and occupancy of said premises as the same now exist, or as the same may be made or changed from time to time during the term of this lease. It is agreed, however, that nothing in this instrument contained, however, shall be construed to require the Tenant to make structural changes.

Seventh: The Tenant further agrees that it will, at its own proper costs and charges, keep the building situate on the premises and all appurtenances thereunto belonging and the sidewalks, steps and excavations under the sidewalks, and any alley or alleys adjoining said premises, in a clean and safe condition, and will conform to all municipal ordinances or laws of the City of Syracuse, and all other ordinances and laws affecting said premises and the sidewalks, streets and alleys in front of and around said premises, and that it will keep and save the Landlord forever harmless from any penalty or damage or charges imposed for any violation of any of the said ordinances or laws, and the Tenant will indemnify, save and keep harmless the Landlord from any loss, cost, damage and expense [fol. 6435] arising out of any accident or other occurrence causing injury to any person or property whomsoever and whatsoever, and due directly or indirectly to the use of the premises, or any part thereof, by the said Tenant or any person or persons claiming under it.

Eighth: The Tenant further covenants and agrees to take out and keep in force during the term of this lease, at its own cost and expense, a policy or policies of public liability insurance insuring the Landlord and the Tenant, as their respective interests may appear, against damage or liability arising out of injury to or the death of any one or more persons, in limits of not less than Fifty thousand dollars ($50,000.00) for one person or One hundred thousand dollars ($100,000.00) for more than one person.

Ninth: The Tenant further agrees that it will at all times promptly comply with and execute all rules, orders and regulations of the Board of Fire Underwriters and fire insurance companies, and to extinguish all "faults" which may hereafter develop affecting insurance rates of the premises occupied by the Tenant,—the intention of the aforesaid covenants in relation to fire insurance being to obtain the most favorable rate of insurance for the said premises and the contents thereof customarily granted in such instances where the Board of Fire Underwriters and standard fire insurance companies have no "fault" (so-called) against such premises or its contents.

Tenth: In the event of default by the Tenant of any [fol. 6436] covenant or agreement dealing with the Tenant's obligation to repair and maintain the premises or its fixtures and appurtenances, the Landlord may serve a written notice upon the Tenant, stating the facts which it claims to be a violation of the terms of this lease, and requiring the Tenant to comply with said covenant or agreement immediately thereafter. If the Tenant fails so to do, the Landlord may, without notice to said Tenant, exercise its option to terminate this lease or cause this lease to expire as herein provided, or the Landlord may elect to perform in such case or cases defaulted in by said Tenant in which event the Tenant hereby agrees to reimburse the Landlord for any expense so incurred and which said amount is to be added to and became a part of the following month's rent, the same as if such had been reserved herein to the said Landlord as rental. The Landlord reserves the same rights and remedies to enforce the collection thereof as it may employ in case of default in the payment by the Tenant of the rent first reserved hereunder.

Eleventh: It is understood and agreed that the personal property listed on Schedule "A" attached hereto, belongs to the Landlord. The Tenant leases said personal property in its present condition and shall have the right (but shall not be obligated) to remove, sell or otherwise dispose of any of the personal property and equipment, except any parts of the organ, which have become unfit for satisfactory use through age, change of conditions or obsolescence. The Tenant agrees to make any replacements of such personal property and equipment so disposed of which it shall deem necessary for its operation of the theatre. Any replacements made by the Tenant to the personal property and [fol. 6437] equipment which is now the property of the Landlord shall become the property of the Landlord at the expiration of the term of this lease. Any personal property and equipment which may be installed from time to time during the term of this lease by the Tenant in addition to, and not in substitution for any personal property and equipment owned by the Tenant and listed on Schedule "A," shall remain the property of the Tenant and may be removed from the demised premises by the Tenant at any time before or at the termination of this lease, the Tenant making good any and all damages to the demised premises by reason of such removal.

Twelfth: The Tenant further covenants and agrees (a) not to assign or mortgage this lease, or any interest therein, not to interfere in any manner with this lease, or any interest therein, nor to let, sell or underlet the said premises, or any part thereof, or the possession thereof, for the whole or any part of the same term; (b) not to leave the premises vacant during the term.

Thirteenth: The Tenant covenants and agrees that in the event of default in the payment of rent, or in the payment of any other charge hereby covenanted to be paid, or in the event of default in the performance of any of the covenants or conditions contained in this lease, or in the event that the demised premises shall be abandoned or shall become vacant during the demised term, or in the event that said premises are used for any other purpose than the purpose permitted by this lease, or in the event that the premises are used for any other purpose than a lawful business purpose, or in the event that the Tenant shall assign, transfer, [fol. 6438] make over or mortgage this lease by operation of law or otherwise, or let or underlet the whole or any part of the demised premises contrary to the provisions of this lease, or make any alterations or additions therein, without the consent of the Landlord, in writing first having been obtained, or in the event that the Tenant shall become insolvent or bankrupt or seek relief under any provisions of the Federal Bankruptcy Act, as amended, or shall make an assignment for the benefit of creditors, or in the event that a petition in bankruptcy is filed by the Tenant or that the Tenant is adjudicated bankrupt in any involuntary proceedings, at any time, or in the event that a receiver of the Tenant's property or business is appointed at any time, in any proceedings, or in the event that any execution or attachment shall issue against the Tenant or its property, whereby the demised premises shall be taken of this lease or the rights of the Tenant thereunder shall be levied upon or sold or advertised for sale on execution or other legal process, or in the event that this lease shall pass by operation of law or otherwise to any person other than the Tenant, or in the event that the Tenant encumber this lease by a mortgage, or in any other manner, then, and in any or either of said events, the Landlord may re-enter and re-occupy the demised premises and remove all persons therefrom, either by suitable action or proceedings at law, by force or otherwise, without any liability to prosecution or damages therefor, or the Landlord may elect to and may make any payment which the Tenant should have made, in which event the Tenant hereby agrees to reimburse the Landlord for any expense so incurred as herein provided, or the Landlord may at its option give to the Tenant written notice by registered mail, of its election to end [fol. 6439] the term hereby demised on the day specified in such notice, which day shall be five (5) days from the day of mailing said notice, and thereupon the term hereby demised shall expire on the day so fixed with the same force and effect as if said day were specified in this lease as the date for the expiration of the term hereby demised, and all right of occupation on the part of the Tenant, its successors and assigns, shall cease and end on said day, and the Tenant covenants and agrees that it will thereupon quit and surrender the demised premises to the Landlord. The Tenant hereby expressly waives any and all right to other notice of intention to re-enter or to end the term hereby granted under any law or statute or otherwise. It is hereby expressly agreed, however, that no act or thing done by the Landlord or its agents during the term hereby granted shall be due expression of its election or acceptance of a surrender of said premises, and that no election, or agreement to accept a surrender of said premises shall be valid unless the same be made in writing, signed by the Landlord or its duly authorized agent.

Fourteenth: The Tenant covenants and agrees that in the event of and notwithstanding re-entry or repossession of the premises by the Landlord, or in the event and notwithstanding the Tenant shall be dispossessed by summary proceedings, the Landlord may at its election re-let the demised premises, or any part thereof, for the whole of the balance of the term, or such portions thereof from time to time as opportunity may offer and as the Landlord may deem expedient, as the agent and for the account of the Tenant or otherwise, and apply rents received from any [fol. 6440] such re-letting first, to the payment of such expenses as the Landlord may be put to in re-entering or in re-possessing said premises, and then to the payment and the fulfillment of the Tenant's covenants, conditions and agreements under this lease, the balance, if any, to be paid over to the Tenant, who shall notwithstanding such re-entry or re-possession by the Landlord remain liable for the rent reserved by this lease and for the performance of all covenants, conditions and agreements herein contained. The Tenant covenants and agrees that the Landlord shall in no event be liable in any way whatever for failure to re-let the demised premises or in the event said premises be re-let, for failure to collect the rent therefor under such re-letting; and that the Tenant will be liable for any deficiency of rent which may arise during the remainder of the term as damages for the breach of any of the covenants, conditions or agreements of this lease in addition to other damages sustained by the Landlord thereby, and shall pay the same to the Landlord upon the rent days above provided as the amount thereof shall at such time or times be ascertained.

Fifteenth: The Tenant further covenants and agrees that acceptance by the Landlord of any sums, either for rent or use and occupancy of the whole or any part of the leased premises from anyone other than the Tenant personally, shall not be a waiver of any of the Landlord's rights and remedies under this lease. The Tenant further covenants and agrees that no waiver or act which shall amount to a waiver by the Landlord in any instance shall operate as a waiver of any provisions of this lease, except for that instance alone, and that no waiver or waivers shall [fol. 6441] be construed or thereafter be deemed as continuing or be set up as such by the Tenant, and that the receipt of any rent hereunder or any portion thereto shall not be deemed to operate as a waiver of the right of the Landlord to enforce the payment of rent previously due or rights hereunder reserved to it for breaches of any of the covenants, conditions or agreements herein contained occurring prior to such receipt.

Sixteenth: The Tenant expressly waives, forfeits and surrenders any provision of law, now in force or which may hereafter be enacted, giving the Tenant the right, under any conditions, after default, to the redemption and repossession of the leased premises, or any part thereof, and releases the Landlord from the operation of any such provision.

Seventeenth: The Tenant hires said premises, after examination and without any representations on the part of the Landlord, and no representative or agent of said Landlord is authorized or permitted to make any representations in reference thereto or to vary or modify this agreement in any way. This instrument contains all the agreements and conditions made between the parties hereto. Any additions to, or alterations or changes in this contract, or other agreements hereafter made or conditions created to be binding, must be in writing signed by both parties, and it is agreed that this provision cannot be waived except by writing duly signed by the parties hereto.

Eighteenth: It is hereby agreed that the sending of a written notice and/or demand by registered mail, postage [fol. 6442] prepaid, and addressed to the Tenant at the premises herein demised shall be sufficient notice and/or demand in any case arising under this lease.

Nineteenth: The Tenant shall, in case of fire, give immediate notice thereof to the Landlord. If the premises shall be partially damaged by fire, the same shall be repaired, at the Landlord's expense, as speedily as practicable, due allowance being made for the time taken for the settlement of fire insurance claims and otherwise. The rent hereunder shall not cease, unless the damage shall be so extensive as to interfere with the use of the premises, in which event the rent shall abate proportionately until such time as the demised premises shall be tenantable. In the event of the total destruction of the building, including the demised premises, by fire, or otherwise, or in case the same shall be so damaged, or injured, by fire that the Landlord shall deem it necessary to rebuild the same, then the rent shall be paid up to the time of such destruction, and then and from thenceforth this lease shall cease and come to an end.

Twentieth: The Tenant covenants and agrees that in addition to the other rights and remedies herein provided for, or which the Landlord may have at law or in equity, the Landlord shall have the right to enforce any and all covenants, conditions and agreements contained in this lease by injunction, and that the Landlord shall not be precluded from obtaining any remedy which it would otherwise have by reason of the specification herein of any particular remedy for a specific breach of the covenants, conditions, [fol. 6443] agreements or provisions of this lease.

Twenty-first: In order to induce the Tenant to enter into this lease and in consideration for so doing, the Landlord represents, warrants, covenants and agrees that it has full right and authority to make and enter into this lease; that it is the tenant under a certain lease dated December 13, 1913 between Thomas F. Anderson, as landlord, and Mitchel H. Mark, as tenant, the interest of the tenant under such lease having been assigned to the Landlord; that at the time of the commencement of this lease there will be no default by the Landlord as the tenant under said underlying lease and that this lease is a lien on the demised premises subject only to the lien of said underlying lease; that during the term of this lease, the Landlord will fully observe and perform and comply with all the terms, covenants and conditions on its part to be observed, performed and complied with, pursuant to the provisions of said underlying lease.

The Tenant takes the demised premises subject to the terms, covenants and conditions of said underlying lease. If the Landlord shall fail to perform any of the terms, covenants and conditions on its part to be performed under the underlying lease, the Tenant shall have the right, at its option, to make good any such default and to advance any and all sums which may be required to make good such default, and the Landlord agrees forthwith to repay to the Tenant any and all sums so advanced together with interest thereon at the rate of six per cent (6%) per annum, and in the event of the failure of the Landlord so to do, the Tenant [fol. 6444] shall have the right from time to time, to deduct the amount of any such advance together with interest as aforesaid, from the rent or any other sum payable to the Landlord under this lease.

The Landlord covenants and agrees to immediately deliver to the Tenant, any notice of default received by the Landlord from the landlord under the underlying lease.

Twenty-second: In the event that Hubert P. Wallace shall become the owner of all the outstanding stock of the Tenant-corporation by virtue of an option, which he has, to purchase fifty per cent (50%) of the outstanding stock of the Tenant-corporation, then and in that event this lease shall be cancelled, and the Landlord and the Tenant covenant and agree to enter into a new lease for the unexpired portion of the term, all of the terms, covenants and conditions in this lease, including the option to extend the same for an additional period of five (5) years, to be incorporated in such new lease, but the rental in said new lease shall be as follows: For the period ending September 20, 1946 a minimum rental of One thousand six hundred sixty-six dollars and sixty-six cents ($1,666.66) a month payable on the fifth day of each month in advance for the month commencing on the twentieth day of the previous calendar month, and in addition to such minimum rental the Tenant shall pay to the Landlord, on the thirtieth day of each month for the month ending on the preceding twentieth day of such month, an amount equal to the difference between such minimum rental and seventeen per cent (17%) of the [fol. 6445] income of such theatre from all sources whatsoever during the month ending on the preceding 20th day of such month. During the period commencing September 20, 1946 and ending September 20, 1951, in the event that such lease is extended in accordance with the terms thereof, the minimum rental shall be Two thousand dollars ($2,000.00) per month payable on the fifth day of each month in advance for the month commencing on the twentieth day of the previous calendar month, and in addition to such minimum rental the Tenant shall pay to the Landlord, on the thirtieth day of each month for the month ending on the preceding twentieth day of such month, an amount equal to the difference between such minimum rental and seventeen per cent (17%) of the income of such theatre from all sources whatsoever during the month ending on the preceding twentieth day of such month.

Twenty-third: The Landlord covenants and agrees that the Tenant on paying the rent herein reserved and performing the terms, covenants and conditions on the part of the Tenant to be kept and performed hereunder, shall and may peaceably and quietly have, hold and enjoy the demised premises and the personal property and equipment for the term aforesaid, free from molestation, eviction or disturbance by the Landlord or by any person claiming, by, through or under the Landlord.

Twenty-fourth: It is further agreed that the covenants herein shall apply to and bind the respective successors, legal representatives or assigns of the Landlord and Tenant.

[fol. 6446] In witness whereof, the parties hereto have caused their respective corporate seals to be hereunto affixed, and these presents to be signed by their duly authorized officers, the day and year first above written.

Syracuse Strand Theatre Company, Inc., By Stanley G. Falk, Pres.
Syracuse Community Theatre Corporation, By Charles F. Carr, Pres.

[fol. 6447]

Agreement

Made in the City of Syracuse, State of New York, on September — 1941, between Syracuse Community Theatre Corporation, a corporation duly organized and existing under and by virtue of the Laws of the State of New York, having its principal place of business at Syracuse, New York, hereafter called the Corporation, and Hubert P. Wallace of the Town of Owasco, Cayuga County, New York, hereafter called Wallace.

Wherein it is mutually agreed as follows:

1. The Corporation hereby engages Wallace for and during the term hereinafter provided to render his services to the Corporation as Managing Director of the Strand Theater at 501 South Salina Street, and Wallace hereby accepts such engagement upon the terms hereinafter set forth.

2. Wallace as such Managing Director shall have sole, complete, and exclusive charge of the general conduct and presentation of the entertainment and exhibits given or to be given in said motion picture theater including (without limiting the generality of the foregoing) the following:

(a) Publicity and advertising.

(b) Selection, hire and discharge of musicians, and other employees, their demeanor and uniform.

(c) Selection of motion pictures and artists to be exhibited and to appear in the entertainment.

(d) Preparation of the form of and the programs constituting the entertainment and exhibitions.

(e) Decorations and displays inside and outside the said motion picture theater.

(f) Correspondence directed to such motion picture theater relating to administration, entertainments and exhibitions.

[fol. 6448] (g) The general policy with respect to the character of the entertainment and exhibitions suitable or adapted to the said motion picture theatre.

3. (a) The term of this contract shall commence, on September 15, 1941, and shall continue for a period of five years thereafter.

(b) Wallace shall have the option to renew this agreement for a further period of five years commencing September 15, 1946, provided however, that such option may not be exercised unless the Corporation's lease of said theater shall be continued during such extended period.

4. The Corporation agrees to pay Wallace and Wallace agrees to accept for his services rendered the following: Fifty (50%) per cent of the first Fifteen Thousand ($15,000.00) Dollars of the net profits as hereinafter defined of said Corporation resulting from the operation of said theater and in addition thereto one-third (1/3) of the net profits of such operation in excess of Twenty Thousand ($20,000.00) Dollars per annum; such net profits shall be computed annually and payments shall be made on or before October 10th in each year commencing October 10, 1942. Computations based upon such annual profits may be made more frequently when and as determined by the Board of

Directors of the Corporation but a final settlement shall be made on or before the 10th day of October of each year as above provided when the annual profits are determined.

5. For the purpose of computing the net profits as provided in paragraph "4" hereof, the net profits from the operation of said theater shall be the actual net profits as determined by good accounting practices before the deduction of any Federal or State taxes based upon income and before the computation and payment of any rent beyond [fol. 6449] the minimum amount specified in the lease of said theater.

6. It is understood and agreed that Wallace will not be required to devote his entire time in the performance of the services herein specified.

In witness whereof, the Corporation has caused this Instrument to be signed by its President, thereunto authorized, and its corporate seal to be affixed, attested by its Secretary, and Wallace has hereunto set his hand and seal the day and year first above written.

Syracuse Community Theater Corporation, By:
Charles F. Carr, President.

H. P. Wallace.

[fol. 6450] [Endorsed:] Agreement between Hubert P. Wallace and Syracuse Strand Theatre Company, Inc.

Dated: September —, 1941.

[fol. 6451] **Exhibit 818**

10/3/41.

Props., Strand, Syracuse, N. Y.

Return Engagement Specials

Heidi	75.00	Jesse James	75.00
Happy Landing	75.00	Thanks For Everything	75.00
In Old Chicago	75.00	Little Princess	75.00
Little Miss Bdy.	75.00	Alex. Graham Bell	75.00
Alex. Ragtime Band	75.00	Rose Wash. Sq.	75.00
My Lucky Star	75.00	Young Mrs. Lincoln	75.00
Suez	75.00	Second Fiddle	75.00
Just Around the Corner	75.00		

$40.00 for companion picture to go with picture listed.

Companion picture to be selected from list Co. will furnish upon request.

To be selective in groups of five.

(Signature illegible)

[fol. 6452] 10/3/41.

Strand Syracuse, Props.

Selection of 25 pictures 40/41 season, group K8—No Run.

10 at $100.00.	Western Union.
Frank James.	That Night in Rio.
Down Argentine Way.	Blood & Sand.
Mark of Zorro.	Moon Over Miami.
Tin Pan Alley.	Great American Broadcast.
Chad Hanna.	

15 @ $50.00, to be selected from balance of releases. List attached.

(Signature illegible)

[fol. 6453] 10/3/41.

Props., Strand Theatre, Syracuse

Ahead of Empire Theatre

Charlie's Aunt, $200.00 or 35%—4 days, Sat.-Sun.-Mon.-Tue. Available 10/29-41.

Private Nurse, $75.00 Flat—Available 11/20-41.

Wild Geese Calling, $150.00 Flat—Available 12/10-41.

Sun Valley Serenade, $200.00 or 35%.

Dressed to Kill, $100.00 Flat.

4 days. Sat.-Sun.-Mon. Tue. Available 12/10/41. Sun Valley & Dressed to Kill to be played on same bill.

650 Bingo—from gross.

50-50—over $1200.

(Signature illegible)

[fol. 6454] **Exhibit 820**

Postal Telegraph

Mackay Radio All America Cables

Commercial Cables Canadian Pacific Telegraphs

1940 Sep 18 PM 1 57.

UA2 12 26 SER-PRK Buffalo NY 18 143P

Strand Theatre, Syracuse, N. Y.

Impossible supply Jurry Charlie Sept. 24-26 or They Meet Again 27-30. Suggest Saints Vacation, also first run Sept. 24-26. Will advise later regarding 27-30. Please wire. RKO Radio Pictures Inc.

24-26 27-30 24-26 27-30.

[fol. 6455] **Exhibit 823**

Duplicate

Original

Harry Schwartz and Charles J. Schwartz and Vernon K. Schwartz and Schine Lexington Corporation and Southland Amusement Company, Inc.

Agreement

[fol. 6456] Agreement made and entered into this 15th day of September, 1939, by and between Southland Amusement Company, Inc., a corporation duly organized and existing under and by virtue of the Laws of Kentucky, hereinafter called the "Lessor," party of the first part, and Schine Lexington Corporation, a corporation duly organized and existing under and by virtue of the Laws of the State of New York and duly qualified to do business in the State of Kentucky, hereinafter called the "Lessee," party of the second part, and Harry Schwartz, Vernon K. Schwartz, his wife and Charles J. Schwartz, hereinafter called the "Stockholders," parties of the third part,

Witnesseth:

The Lessor represents and warrants that it is the owner in fee of those certain premises located in the City of Lexington, Fayette County, State of Kentucky, known as the "Opera House," and located at 143 North Broadway, Lexington, Kentucky, more particularly described in the lease executed concurrently with this agreement, together with all furniture, fixtures, personal property and equipment of every kind and nature now used or located therein.

The Lessor has been conducting in and about said premises the business of operating a motion picture theatre and desires to sell the business and good-will thereof unto the Lessee upon the terms and conditions hereinafter set forth. [fol. 6457] The Stockholders own all but three shares of the total outstanding capital stock of the Lessor and join this agreement for the purpose of inducing the Lessee to lease the said theatre.

In consideration of the premises and of the mutual covenants, promises and agreements herein contained, the parties hereto have agreed and do hereby agree as follows:

1. The Lessor hereby grants, sells, assigns and transfers unto the Lessee absolutely and forever the entire and complete business and good-will of the motion picture, theatrical, amusement and exhibition business, heretofore conducted by the Lessor in the City of Lexington, Kentucky, and specifically in the theatre known as the "Opera House", Lexington, Kentucky.

2. In order to effectuate the foregoing sale, the Lessor and the Lessee have concurrently herewith executed a lease from the Lessor unto the Lessee, under which the Lessor has demised and leased unto the Lessee those certain premises known as the "Opera House", 143 Broadway, Lexington, Kentucky, more particularly described in said lease, together with the furniture, fixtures, equipment and any and all personal property of any and every kind and nature now located or used therein, upon terms and conditions set forth in said lease, for a term of fifteen (15) years, each [fol. 6458] and every term and provision of which said lease is hereby made a part hereof as if herein set forth at length.

3. In order to induce the Lessee to make and enter into this agreement, and make and enter into the lease provided

for under the terms hereof, the Lessor and the Stockholders hereby jointly and severally covenant to and with the Lessee as follows:

The Lessor and the Stockholders jointly and severally agree to and with the Lessee that they will not, nor will any one or more of them, for and during a period of fifteen (15) years from and after the date hereof, be or become engaged in or participate or have any interest of any nature whatsoever in, the motion picture, theatrical or amusement business in the capacity of owner, employee, partner, stockholder or in any other manner whatsoever, either directly or indirectly, in any town or city in the State of Kentucky, in which the Lessee or any of its affiliated or associated companies are now engaged in business, provided, however, that this covenant shall not prevent the Lessor or the Stockholders from investing in stocks or securities listed upon any recognized stock exchange.

4. In full consideration of and payment for the sale of the said business and good will and the making of the lease herein provided for, and all of the other covenants and [fol. 6459] agreements of the Lessor and the Stockholders herein set forth, the Lessee agrees to pay unto the Lessor the sum of Twenty-two thousand five hundred dollars ($22,500), payable as follows:

Ten thousand dollars ($10,000) by depositing the same in escrow with the First National Bank & Trust Company of Lexington, Kentucky, upon the execution hereof, to be paid over unto the Lessor on the 14th day of October, 1939 upon delivery by the Lessor to the Lessee of possession of the said demised premises.

Five thousand dollars ($5,000) six (6) months after the date hereof, which said payment shall be represented by the promissory note of the Lessee, endorsed by Phoenix Amusement Company, a Kentucky corporation, bearing interest at the rate of six per cent (6%) per annum and payable at the First National Bank & Trust Company of Lexington, Kentucky.

Seven thousand five hundred dollars ($7,500) twelve (12) months after the date hereof, which said payment shall be represented by the promissory note of the Lessee, indorsed by Phoenix Amusement Company, a Kentucky corporation, bearing interest at the rate of six per cent (6%) per annum and payable at the First National Bank & Trust Company of Lexington, Kentucky.

In Witness Hereof, the undersigned have duly executed these presents under seal this 15th day of September, 1939.

Southland Amusement Company, Inc., by Harry Schwartz, Pres. Schine Lexington Corporation, by Willard S. McKay, Vice Pres. Vernon K. [fol. 6460] Schwartz (L. S.), by Harry Schwartz (L.S.), Attorney-in-fact. Charles J. Schwartz (L.S.).

[fol. 6461] STATE OF NEW YORK,
County of New York, ss:

On this 15th day of September, 1939, before me appeared Harry Schwartz, to me known, who, being by me duly sworn, did depose and say that he resides in Lexington, Kentucky; that he is the President of Southland Amusement Company, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that he signed his name thereto by like order.

Hannah Seidel, Notary Public.

Hannah Seidel, Notary Public, Queens County, Queens Co. Clerk's No. 1834, Reg. No. 1531. N. Y. Co. Clerk's No. 398, Reg. No. CS275. Commission expires March 30, 1940.

STATE OF NEW YORK,
County of New York, ss:

On this 15th day of September, 1939, before me appeared Willard S. McKay, to me known, who, being by me duly sworn, did depose and say that he resides in Greenwich, Conn.; that he is the Vice President of Schine Lexington Corporation, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the

Board of Directors of said corporation and that he signed his name thereto by like order.

Hannah Seidel, Notary Public.

Hannah Seidel, Notary Public, Queens County, Queens Co. Clerk's No. 1834, Reg. No. 1531. N. Y. Co. Clerk's No. 398, Reg. No. CS275. Commission expires March 30, 1940.

[fol. 6462] STATE OF NEW YORK,
County of New York, ss:

On this 15th day of September, 1939, before me personally appeared Harry Schwartz and Charles J. Schwartz, the individuals mentioned in and who executed the foregoing instrument, and they duly and severally acknowledged to me that they executed the same.

Hannah Seidel, Notary Public.

Hannah Seidel, Notary Public, Queens County, Queens Co. Clerk's No. 1834, Reg. No. 1531. N. Y. Co. Clerk's No. 398, Reg. No. CS275. Commission expires March 30, 1940.

STATE OF NEW YORK,
County of New York, ss:

On this 15th day of September, 1939, before me personally appeared Harry Schwartz, the attorney-in-fact for Vernon K. Schwartz, the individual mentioned in the foregoing instrument, and he duly acknowledged to me that he executed the same as and for Vernon K. Schwartz, as her attorney-in-fact.

Hannah Seidel, Notary Public.

Hannah Seidel, Notary Public, Queens County, Queens Co. Clerk's No. 1834, Reg. No. 1531. N. Y. Co. Clerk's No. 398, Reg. No. CS275. Commission expires March 30, 1940.

[fol. 6463] **EXHIBIT 824**

SIXTH ANNUAL S. R. KENT DRIVE

Dedicated to Sidney R. Kent's 20 years of Leadership in the Motion Picture Industry

August 14th to December 17th 1938

TWENTIETH CENTURY-FOX FILM CORPORATION

1632-1638 Central Parkway, Cincinnati, Ohio

Phone: Parkway 5867-5868

November 7, 1938.

Mr. Harry Schwartz,
Southland Amusement Co.,
Lexington, Ky.

DEAR MR. SCHWARTZ:

Thank you for your letter of November 4th.

We regret that our product apparently will not be available for you in Paris, inasmuch as we have a franchise with Schine there and, of course, inasmuch as they are our old account in the town we shall continue to offer our product to them in accordance with the policy of our company.

Very truly yours, J. J. Grady, Branch Manager.

JJG/d.

[fol. 6464] **EXHIBIT 825**

R K O RADIO PICTURES, INC.

1634 Central Parkway, Cincinnati, Ohio

November 7, 1938.

Mr. Harry Schwartz,
Opera House,
Lexington, Ky.

DEAR HARRY:

Replying to your letter of November 4th, all of our service is under contract to play first run at Paris, Ky., but by the time you begin operation in that situation, which according to your letter will be March 1st, 1939, we may have some service available for you.

With kindest regards, I am

Very truly yours, S. C. Jacques, Branch Manager.

SCJacques/L.

[fol. 6465] **Exhibit 826**

Universal Film Exchanges Inc.

1634 Central Parkway, Cincinnati, Ohio

November 10th, 1938.

Mr. Harry Schwartz, President
Southland Amusement Company, Inc.
Opera House
Lexington, Ky..

Dear Harry:

Note from your letter of November 4th that you anticipate building a new theater in Paris and expect to be in operation by March 1st.

For your information, our product has already been sold in Paris. However, there is a possibility of serving you with various pictures that have not been played in Paris during the past year.

It is my suggestion that you let this matter rest until you are ready to open this new house.

Cordially, Universal Film Exchanges, Inc., Paul E. Krieger, Branch Manager.

PEK:NG.

[fol. 6466] EXHIBIT 828

SOUTHLAND AMUSEMENT COMPANY, INC.,

and

SCHINE LEXINGTON CORPORATION

and

HARRY SCHWARTZ, VERNON K. SCHWARTZ, CHARLES J. SCHWARTZ

AGREEMENT

[fol. 6467] Agreement made and entered into this 15th day of September, 1939, by and between Harry Schwartz, a resident of Lexington, Kentucky, hereinafter called the "Assignor", party of the first part, Charles J. Schwartz and Vernon K. Schwartz (the wife of Harry Schwartz), residents of Erie, Pennsylvania and Lexington, Kentucky, respectively, hereinafter called the "Associates", parties of the second part and Schine Lexington Corporation, a New York corporation, duly qualified to do business in the State of Kentucky, hereinafter called the "Assignee", party of the third part, and Southland Amusement Company, Inc., a corporation duly organized and existing under and by virtue of the Laws of the State of Kentucky, hereinafter called the "Guarantor", party of the fourth part,

Witnesseth

The Assignor hereby covenants, represents, warrants and guarantees that he is the sole and exclusive lessee under good, valid and subsisting leases of the following described properties, located in the City of Paris, Bourbon County, Kentucky, to wit:

Parcel A

A certain lot of land situated in said City of Paris, Kentucky, fronting thirty-five (35) feet, more or less, on Chestnut Street (now Seventh Street), and lying and being on the East or North-east side thereof, between Main and High Streets, and running back between [fol. 6468] parallel lines in a Northerly direction, a distance of thirty (30) feet, more or less, to and adjoining the lot of the said lessor now under lease by her to L. B. Baldwin. The above described lot is bounded on one side by the property of L. B. Baldwin and Grover C. Baldwin, and on the other side by the property of Miss Addie Harrison.

Parcel B

A certain storeroom and lot of ground, upon which it stands, situated on the West side of Main Street in the City of Paris, Kentucky, at the intersection of Main and Seventh (formerly Chestnut) Streets, fronting on Main Street 30 feet and extending back therefrom with Seventh (formerly Chestnut) Street 90 feet of uniform width throughout.

Being a part of the same property conveyed to Grover C. Baldwin by L. B. Baldwin by deed dated September 12, 1930 and of record in Deed Book 115, page 293 in the office of the clerk of the Bourbon County Court.

under two certain leases, copies of which are hereto annexed and hereby made a part hereof, marked "Exhibits A and B," respectively.

The Assignor desires to sell and assign the said leases unto the Assignee, fully and absolutely and for the entire remainder of their respective terms, free and clear of and from any and all charges or encumbrances of any and every nature whatsoever, upon the terms and conditions hereinafter set forth, and the Assignee is willing to purchase and acquire said leases upon said terms and conditions.

Now, therefore, in consideration of the premises and of the mutual covenants, promises and agreements herein contained and of the mutual covenants, promises, representations, warranties and agreements herein contained and set [fol. 6469] forth, the parties hereto have agreed and do hereby agree as follows:

1. The Assignor hereby grants, assigns and transfers unto the Assignee, its successors and assigns, fully and absolutely, all that certain leasehold estate created by that certain instrument bearing date the 22nd day of April, 1939, by and between Mary T. Kelly, a single woman, of Paris, Bourbon County, Kentucky, as lessor, and Harry Schwartz, of Lexington, Fayette County, Kentucky, as lessee, a copy of which is annexed hereto, made a part hereof

and marked "Exhibit A", and the Assignor does for himself, his heirs, executors, administrators and assigns covenant and agree to and with the said Assignee to warrant and defend the foregoing grant unto the Assignee, its successors and assigns, against all and every person or persons whomsoever.

2. The Assignor hereby grants, assigns and transfers unto the Assignee, its successors and assigns, fully and absolutely, all that certain leasehold estate created by that certain instrument bearing date the 2nd day of November, 1938, by and between Grover C. Baldwin and his wife, Gladys Talbott Baldwin, of Paris, Bourbon County, Kentucky, as lessor, and Harry Schwartz, of Lexington, Fayette County, Kentucky, as lessee, a copy of which is annexed hereto, made a part hereof and marked "Exhibit B", and the Assignor does for himself, his heirs, executors, administrators and assigns covenant and agree to and with the [fol. 6470] said Assignee to warrant and defend the foregoing grant unto the Assignee, its successors and assigns, against all and every person or persons whomsoever.

3. In order to induce the Assignee to purchase the two leases above-mentioned, and to pay the consideration hereinafter set forth therefor, the Assignor and the Associates hereby jointly and severally covenant and agree to and with the Assignor, its successors and assigns, that they will not, nor will any one or more of them, for and during a period of fifteen (15) years from and after the date hereof, be or become engaged in or participate or have any interest of any nature whatsoever in, the motion picture, theatrical or amusement business in the capacity of owner, employee, partner, stockholder or in any other manner whatsoever, either directly or indirectly, in any town or city in the State of Kentucky, in which the Assignee or any of its affiliated or associated companies are now engaged in business, provided, however, that this covenant shall not prevent the Assignor or the Associates from investing in stocks or securities listed upon any recognized stock exchange.

4. The Assignee hereby accepts the foregoing grant, assignment and transfer and hereby undertakes and agrees to keep, perform and abide by all of the terms, provisions and conditions of the two said leases upon the part of the respective lessees thereof to be performed, accruing from and after the effective date of this agreement.

[fol. 6471] 5. The Assignor and the Guarantor hereby represent, warrant and guarantee that as of the effective date of this agreement there will be no charges or encumbrances against the two respective leasehold estates hereby assigned of any nature or character whatsoever and hereby covenant and agree that they will indemnify and hold harmless the Assignor against any and all such charges or encumbrances, and the Guarantor expressly agrees that in the event that the Assignee shall at any time be required to pay or discharge any charge or encumbrance against the said leasehold estates, accruing prior to the effective date of this agreement, the Assignee shall be entitled to deduct the amount of any such payment from any payment due the Guarantor from the Assignee under either (1) an agreement entered into concurrently herewith between the Guarantor and the Assignee in relation to the leasing by the Guarantor to the Assignee of a certain theatre known as the "Opera House", located in Lexington, Kentucky, or (2) any rental payable by the Assignee to the Guarantor under the terms and conditions of the lease between the Guarantor and the Assignee pursuant to the said agreement.

6. In full payment and compensation of and for the grant and assignment of the two said leases and all rights granted unto the Assignee hereunder, and all warranties, covenants, promises and agreements of the Assignor, the Associates and the Guarantors herein, the Assignee has agreed to pay, and upon the execution and delivery of these presents has [fol. 6472] paid unto the Assignor, the sum of Five thousand dollars ($5,000), the receipt whereof by the Assignor is hereby acknowledged.

7. This agreement shall become effective as of the date hereof.

In witness whereof, the undersigned have duly executed these presents under seal this 15th day of September, 1939.

Harry Schwartz (L.S.), Vernon K. Schwartz (L.S.), By Harry Schwartz (L.S.), Attorney-in-fact. Schine Lexington Corporation, By Willard S. McKay, Vice President. Southland Amusement Company, Inc., By Harry Schwartz, Pres., Chas. J. Schwartz (L.S.).

[fol. 6473] STATE OF NEW YORK,
County of New York, ss:

On this 15th day of September, 1939, before me personally appeared Harry Schwartz, the individual mentioned in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.

Hannah Seidel, Notary Public.

Hannah Seidel, Notary Public, Queens County. Queens Co. Clerk's No. 1834, Reg. No. 1531. N. Y. Co. Clerk's No. 398, Reg. No. CS275. Commission expires March 30, 1940.

STATE OF NEW YORK,
County of New York, ss:

On this 15th day of September, 1939, before me personally appeared Charles J. Schwartz, the individual mentioned in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.

Hannah Seidel, Notary Public.

Hannah Seidel, Notary Public, Queens County. Queens Co. Clerk's No. 1834, Reg. No. 1531, N. Y. Co. Clerk's No. 398, Reg. No. CS275. Commission Expires March 30, 1940.

STATE OF NEW YORK,
County of New York, ss:

On this 15th day of September, 1939, before me personally appeared Harry Schwartz as attorney-in-fact for Vernon K. Schwartz, the individual mentioned in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same as said attorney-in-fact.

Hannah Seidel, Notary Public.

Hannah Seidel, Notary Public, Queens County. Queens Co. Clerk's No. 1834, Reg. No. 1531. N. Y. Co. Clerk's No. 398, Reg. No. CS275. Commission expires March 30, 1940.

[fol. 6474] STATE OF NEW YORK,
County of New York, ss:

On this 15th day of September, 1939, before me personally appeared Willard S. McKay, to me known, who, being by me duly sworn, did depose and say that he resides in

Greenwich, Conn.; that he is the Vice President of Schine Lexington Corporation, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that he signed his name thereto by like order.

Hannah Seidel, Notary Public.

Hannah Seidel, Notary Public, Queens County. Queens Co. Clerk's No. 1834, Reg. No. 1531. N. Y. Co. Clerk's No. 398, Reg. No. CS275. Commission expires March 30, 1940.

State of New York,
County of New York, ss:

On this 15th day of September, 1939, before me personally appeared Harry Schwartz, to me known, who, being by me duly sworn, did depose and say that he resides in Lexington, Kentucky; that he is the President of Southland Amusement Company, Inc., the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that he signed his name thereto by like order.

Hannah Seidel, Notary Public.

Hannah Seidel, Notary Public, Queens County. Queens Co. Clerk's No. 1834, Reg. No. 1531. N. Y. Co. Clerk's No. 398, Reg. No. CS275. Commission Expires March 30, 1940.

[fol. 6475]

Exhibit A

This indenture of lease, made and entered into this the 22nd day of April, 1939, by and between Mary T. Kelly, a single woman, of Paris, Bourbon County, Kentucky, hereinafter called the lessor, and Harry Schwartz, of Lexington, Fayette County, Kentucky, hereinafter called the lessee.

Witnesseth: That the said lessor, in consideration of the rents and covenants hereinafter stipulated to be paid and performed by the lessee, does hereby demise, let and lease unto the said lessee, for a period of twenty (20) years, commencing June 1st, 1939, and ending June 1st, 1959, the following described property, located in the City of Paris, Bourbon County, Kentucky, and more particularly described as follows:

A certain lot of land situated in said City of Paris, Kentucky, fronting thirty-five (35) feet, more or less, on Chestnut Street (now Seventh Street), and lying and being on the East or North-east side thereof, between Main and High Streets, and running back between parallel lines in a Northerly direction a distance of thirty (30) feet, more or less, to and adjoining the lot of the said lessor now under lease by her to L. B. Baldwin. The above described lot is bounded on one side by the property of L. B. Baldwin and Grover C. Baldwin, and on the other side by the property of Miss Addie Harrison.

The said premises hereby leased are to be used by the lessee in connection with the Grover C. Baldwin property now under lease to him, for the operation of a motion [fol. 6476] picture theater, or for such other lawful purpose, or purposes, as said lessee in his discretion may desire.

The lessee agrees to pay to the lessor, for the premises hereby leased, an annual rental of Three Hundred Dollars ($300.00), payable in equal monthly installments of Twenty-Five Dollars ($25.00) per month in advance, on the first of each and every month during the term of this lease.

Said lessee does hereby further agree to pay all taxes assessed against said premises, also the insurance, repairs and upkeep on any buildings or improvements made by him on the leased premises, and any and all other expenses necessary or incidental to his operation of any business on the said premises, during the period of this lease.

Said lessee further covenants and agrees to pay said rent, together with taxes and insurance and other expenses, at the time and in the manner prescribed in the lease; and to use the premises in a safe, careful and proper manner.

In the event said lessee fails to pay said rent for a period of sixty (60) days after the same shall become due and payable, or upon the breach of any of the covenants herein contained, then lessor may terminate this lease and re-enter said premises and take possession of same, provided the lessor shall not be prejudiced as to any rights she may have for unpaid rental by so taking possession of said premises. In case of such default in payment of rent and the re-entry of lessor, said lessor agrees to relet said premises to Grover C. Baldwin for the remainder of the term upon the same [fol. 6477] terms and conditions as stated and contained herein, if he desires to exercise such a privilege; otherwise, said lessor may relet said premises for the remainder of the term for the highest rent obtainable and may recover any deficit from the lessee.

Lessee further covenants and agrees that in the event any building, or buildings, are erected or constructed on the premises herein leased, the same shall conform to the building and fire ordinances and regulations of the City of Paris, Kentucky.

Lessor hereby covenants and agrees with said lessee that said lessee shall have the peaceable and quiet enjoyment of said premises during the term of this lease, provided that said lessee keeps and performs said covenants herein contained.

During the continuance of this lease, the lessee may from time to time change or alter any of the improvements that may hereafter be located upon said premises, or may make any improvements upon said premises, in any manner in which said lessee may from time to time desire, provided said changes or alterations shall not lessen the value of said premises.

A lien is hereby reserved to said lessor upon all of the estate of the lessee hereby granted, and upon all of the improvements now or hereafter located on said premises, to secure the payment of the rents and performance of the covenants herein contained.

It is further agreed that the buildings and other improvements which may be erected on the premises hereby leased shall remain and become the property of the lessor at the termination of this lease.

[fol. 6478] All of the covenants, agreements and conditions of this lease shall inure to and be binding on the heirs, successors, personal representatives and assigns of the parties hereto.

In testimony whereof the parties have hereunto affixed their signatures in duplicate to this instrument on the day and year first above written.

Mary T. Kelly, Harry Schwartz.

STATE OF KENTUCKY,
County of Bourbon.

I, Lillian Hough, a Notary Public in and for the State and County aforesaid, do hereby certify that on this day personally appeared before me in said County Mary T. Kelly, a single woman, and Harry Schwartz, who acknowledged that they did sign the foregoing lease, and that the same is their free act and deed, for the uses and purposes therein set forth.

My commission expires May 22, 1942.

Given under my hand and seal of office this the 22 day of April, 1939.

Lillian Hough, Notary Public, Bourbon County, Kentucky. (Seal.)

[fol. 6479] EXHIBIT B

This Indenture, made and entered into this 2nd day of November, 1938, by and between Grover C. Baldwin and his wife, Gladys Talbott Baldwin, of Paris, Bourbon County, Kentucky, hereinafter called lessor, and Harry Schwartz, of Lexington, Fayette County, Kentucky, hereinafter called lessee,

Witnesseth: That said lessor in consideration of the rents and covenants hereinafter stipulated to be paid and performed by the Lessee, does hereby demise, let and lease the following described property located in the City of Paris, Bourbon County, Kentucky, and more particularly described as follows, to-wit:

A certain storeroom and lot of ground, upon which it stands, situated on the West side of Main Street in the City of Paris, Kentucky, at the intersection of Main and Seventh (formerly Chestnut) Streets, fronting on Main Street 30 feet and extending back therefrom with Seventh (formerly Chestnut) Street 90 feet of uniform width throughout.

Being a part of the same property conveyed to Grover C. Baldwin by L. B. Baldwin by deed dated September 12, 1930 and of record in Deed Book 115, page 293 in the office of the clerk of the Bourbo County Court.

The said premises are to be used by the lessee for the construction and operation of a motion picture theatre and for such other purpose or purposes as said lessee may, in his discretion, desire for a period of twenty (20) years from the date hereof for an annual rental of Two Thousand Six Hundred and Forty ($2640.00) Dollars, to be paid in [fol. 6480] equal monthly installments of Two Hundred and Twenty ($220.00) Dollars each, on the first day of each and every month during said term beginning, however, on March 1, 1939. Said lessee does hereby covenant and agree with said lessor to pay said rent at the time and in the manner aforesaid and to use said premises in a careful, safe and proper manner.

In the event said lessee fails to pay said rent for a period of sixty (60) days after the same shall become due and payable, or upon the breach of any of the covenants herein contained then lessor may terminate this lease and re-enter said premises and take possession of same, provided the lessor shall not be prejudiced as to any rights he may have for unpaid rental by so taking repossession of said premises. In case of such default in payment of rent and the reentry of lessor, said lessor may relet said premises for the remainder of the term for the highest rent obtainable and may recover any deficit from the lessee.

Lessor hereby covenants and agrees with lessee that the said lessee shall peacefully and quietly enjoy said premises during the term of this lease, provided that the said lessee keeps and performs the covenants and conditions herein contained.

Lessor agrees to pay State, County and City taxes on the property herein described and lessee agrees to pay all excise and license taxes necessary or incidental to the operation of said business on said property for any purpose or purposes. Lessee further agrees to pay for all water, gas, electric, janitor services and any other expenses necessary or incidental to his operation of any business on the property hereinbefore described.

[fol. 6481] During the continuance of the lease the lessee may from time to time change, alter or add to the improvements now or hereafter upon said premises in any manner in which said lessee may from time to time desire, provided always that said changes or alterations shall not lessen the value of improvements on said premises.

Said lessor hereby covenants and agrees that during the continuance of this lease he will, at his own expense, insure and keep insured against fire the improvements located on the property hereinbefore described in the sum of Fourteen Thousand ($14,000.00) Dollars. In the event the lessee so alters said premises that additional insurance may be desired or required, then and in that event lessor agrees to increase the amount of insurance and the lessee is to pay the premiums for all of such increased insurance over and above the said Fourteen Thousand ($14,000.00) Dollars, and in the event of loss by fire the lessee shall be entitled to be compensated by any insurance company or companies only in the proportion that the sum or sums of money he has advanced to lessor for premiums bears to the total amount of premiums paid.

A lien is hereby reserved to said lessor upon all of the estate of the lessee hereby granted and upon all improvements now or hereafter on said premises to secure the payment of rent and the performance of the covenants herein contained.

Provided further that in case said premises, without fault or negligence of the lessee, shall be so injured by the elements or by fire or other causes as to be unfit for occupancy [fol. 6482] then the proceeds from any insurance policy or policies shall be used for the purpose of defraying any or all expense incurred to replace said premises in substantially the same condition as they were prior to said casualty. In the event that the proceeds from any such policy or policies are not sufficient to restore said premises then at the option of the lessee all of the proceeds available shall be used for the purpose of reconstructing said premises and said lessee shall, at his own expense, defray the additional costs necessary to replace said building in substantially its original condition. In the event that the proceeds from said insurance policy are not sufficient to defray the expense of reconstructing said premises and the lessee does not elect to pay the difference between the total costs of reconstruction and the proceeds available, within sixty (60) days thereafter, then and in that event this lease shall be cancelled and all of the proceeds from said policy or policies shall become the property of the lessor.

Lessee shall be liable for the payment of all rent up to and including the time when said casualty, if any occurs, but shall not be liable for the payment of any rental between the date of such casualty and the time when said building has been so repaired or rebuilt so as to be fit for occupancy.

In the event that the lease is cancelled because of such casualty the lessee shall be liable for rent until the date of same.

All of the agreements, covenants and conditions of this lease shall inure to and be binding upon the heirs, successors, personal representatives and assigns of the parties hereto.

In witness whereof the parties have hereunto affixed their [fol. 6483] signature in duplicate to this instrument this the day and year first above written.

Grover C. Baldwin, Gladys Talbott Baldwin, Harry Schwartz.

State of Kentucky,
County of Bourbon:

I, Mabel Stone, Notary Public in and for the State and County aforesaid, do hereby certify that the foregoing Lease from Grover C. Baldwin, etc. to Harry Schwartz was this day produced before me in my office and signed by Grover C. Baldwin, Gladys Talbott Baldwin and Harry Schwartz and acknowledged by each of them to be their act and deed for the purpose therein set forth.

In testimony whereof, witness my hand and official seal this the 2nd day of November, 1938.

My commission expires on the 6th day of January, 1941.

Mabel Stone, Notary Public, Bourbon County, Kentucky.

[fol. 6484]

EXHIBIT 832

House closed except on dates listed below:

Empire Syracuse Sept. 12-41 to Feb. 11-42

Attractions		Dates	Admission Prices			
Claudia	(Stage)	Sept. 12–13	55¢, 83¢, $1.10, $1.65 2.20, 2.75 inc. Fed. Tax			
That Night In Rio & Men of Boys' Town		Sept. 16–19	.10, .15, .20 no tax			
Arsenic & Old Lace	(Stage)	Sept. 20	same as Claudia			
Ziegfeld Girl & Strawberry Blonde		Sept. 21–25	10–15–20			
Rags to Riches & Singers' Midgets	(Stage)	Sept. 26–Oct. 2	15–17–30–40–50	inc.	Fed.	Tax
Icecapades & Ted Lewis Orch.	(Stage)	Oct. 3–5	17–30–40–50	"	"	"
Knute Rockne All American & Kitty Foyle		Oct. 6–8	11–22	"	"	"
Sergeant York		Oct. 9–16	17–40–55	"	"	"
Hit the Road & Fats Waller & Orch.	(Stage)	Oct. 17–22	17–30–40–55	"	"	"
Separate Rooms	(Stage)	Oct. 23	same as Claudia			
Cracked Nuts & Five Acts Vaudeville	(Stage)	Oct. 24–26	17–30–40	"	"	"
Fighting 69th & Third Finger Left Hand		Oct. 27–29	11–22	"	"	"
Life With Father	(Stage)	Oct. 30–Nov. 1	same as Claudia			
The Philadelphia Story & Tin Pan Alley		Nov. 2–4	11–22	"	"	"

[fol. 6485]

Empire Syracuse

1941

Attractions		Dates	Admission Prices			
Navy Blues & Pittsburgh Kid		Nov. 5–11	17–30–44	inc.	Fed.	Tax
No Greater Sin & Zis Boom Bah		Nov. 12–25	17–30–44	"	"	"
Glamour Boy & Night of January 16th		Nov. 26–Dec. 2	same			
New York Town & Burma Convoy		Dec. 3–Dec. 9	same			
One Foot In Heaven & Moonlight in Hawaii		Dec. 10–16	same			
Sailors on Leave & Follies of 1942	(Stage)	Dec. 25–28	17–30–40–55	"	"	"
Theatre rented		Dec. 30 1942				
Swing It, Soldier & Deep River Boys	(Stage)	Mid Show Jan. 1–4	17–30–40–55	"	"	"
Mr. District Atty., Carter Case & Gay 90's Revue	(Stage)	Jan. 9–11	17–30–40–55	"	"	"
Devil Pays Off & Hellaballoo	(Stage)	Jan. 16–18	17–30–40–55	"	"	"
Theatre	(Stage)	Jan. 21	55–83–1.10–1.65 220–2.75	"	"	"
Public Enemies & Bernie Cummins Orch.	(Stage)	Jan. 23–25	17–30–40–55	"	"	"
Mercy Island & Insanities of 1942	(Stage)	Jan. 30–Feb. 1	17–30–40–55	"	"	"
Candle In the Wind	(Stage)	Feb. 3	same as Theatre			
Native Son	(Stage)	Feb. 10–11	same as Theatre			

[fol. 6486] **Exhibit 834**

Vitagraph, Inc.

Distributors of

First National Pictures Warner Bros. Pictures
Vitaphone Short Subjects

Home Office, 321 West 44th Street, New York City

July 16th, 1934.

Mr. Peter C. Vournakis,
Strand Theatre,
Watertown, N. Y.

Dear Mr. Vournakis:

Referring to your several letters addressed to our Albany Branch, please be advised that at the present time we have a satisfactory account as second run in Watertown; but should an occasion arise at a later date, we will ask Mr. Ray Smith to get in touch with you.

Cordially yours, R. Mochrie.

R. Mochrie/NL.
CC: Mr. Ray Smith.

[fol. 6487] June 25th, 1934.

Fox Picture Corp.
1052 Broadway,
Albany, New York

Gentlemen:

This letter is to advise you that I am interested in buying the 1934-1935 product from your Company second run in Watertown for my Theatres.

No doubt you are aware of the fact that during the seasons of 1931 to 1933 I only bought second run in Watertown. Last year I made an attempt to buy second run but I was unable to secure same for the reason your Company sold the second runs away.

Kindly advise me by return mail when I may expect your representative to call on me with reference to negotiating a deal on your product second run in Watertown.

Yours very truly, —— ——, Manager.

PCG:MG.
Reg. Mail.

[fol. 6488] **Exhibit 845**

September 20, 1939.

Mr. Peter Vournakis of the Strand and Liberty Theatres, Watertown, has requested, and I have agreed, to reduce the clearance of 60 days second run over third run to 30 days, on the following companies: Paramount, Fox, Warners, RKO and United Artists.

Geo. V. Lynch, Pete Vournakis.

[fol. 6489] **Exhibit 846**

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NEW YORK

Civil Action No. 223

UNITED STATES OF AMERICA, Plaintiff,

v.

SCHINE CHAIN THEATRES, INC., et al., Defendants

AFFIDAVIT

STATE OF NEW YORK,
County of Fulton, ss:

PETER VOURNAKIS, being duly sworn, deposes and says:

I am a citizen of the United States and reside in the City of Watertown, New York.

I have been in the theatre business in the City of Watertown, New York, for the past twenty years. A great portion of that time I have been operating, and still operate, two theatres in opposition to the Schine theatres in that City, and during the entire period I never experienced any unpleasantness, and at no time have I had any difficulty in obtaining the pictures I wanted to buy. I have always found that their theatres were conducted in a businesslike manner and on a fair competitive basis.

Peter C. Vournakis.

Subscribed and sworn to before me this 20th day of September, 1939. —— ——, Notary Public, Fulton Co., N. Y.

[fol. 6490] **Exhibit 864**

Plaza Theatre
10 Pearl Street
Malone, New York

May 6, 1937.

Twentieth Century Fox Film Corp., Film Row, Albany, N. Y.

Att.; To Mr. Moe Grassgreen

Dear Sir:

Sometime ago when in Albany I had a talk with you in regards to Second Run Policy. You informed me at that time that if I would buy 100% product, you would consider the deal and advise me immediately as to your disposition in this matter.

I am now open to buy pictures as follows:

100% 37-38 product, also shorts and news reels. 25 pictures—36-37 product.

If this proposition is O. K. please send you representative here at his earliest possible convenience.

Hoping to receive a reply by return mail, I remain,

Yours truly, Michael Boumansour, Plaza Theatre.

[fol. 6491] EXHIBIT 873

Young and Whitney, Inc.,
Owners and Operators
Capitol Theatre
Ilion, N. Y.

April 20, 1935.

Re: Contract signed this day between Fox Film Corp. and The Capitol Theatre, Ilion, N. Y.

It is understood and agreed that in the event that all Major Companies serving Herkimer during season 1935-36 sell and serve Ilion with a Clearance of 10 days after Herkimer. The Fox Film Corporation's feature product and short subjects are to become available likewise.

Signed and agreed to by: Keith Goldsmith, Fox Film Corp., Salesman.

[fol. 6492] EXHIBIT 879

STATE OF NEW YORK,
City of Ogdensburg,
City Clerk's Office, ss:

I, Simon S. Sargent, City Clerk of said city, do hereby certify that I have compared the foregoing copy with the original minutes of meeting of said city of record in this office, and that it is a correct transcript therefrom and of the whole said original.

In witness whereof I have hereunto subscribed 19 day of October 1944.

Simon S. Sargent, City Clerk. (Seal)

[fol. 6493] COPY FROM MINUTES MEETING COMMON COUNCIL HELD SEPTEMBER 4, 1940

Present: Hon. Francis B. Burns, Mayor and Aldermen Bower, Whalen, O'Hare, Cordwell, Miller Mulligan Doe and Ramie.

Absent: None.

August 15, 1940.

Hon. Francis B. Burns, Mayor and Common Council,

GENTLEMEN:

At a public auction held in the Council Chambers, City Hall, August 15, 1940, the following bids were received:

- MacNaughton Public Market Lease, $1800 per annum by Lawrence J. Carkey, Utica, N. Y., for use as a theatre.

If you approve of any of these bids will you please authorize the Corporation Counsel to prepare the necessary deeds and leases.

Yours truly, M. M. Morse, City Treasurer. (Seal)

Alderman Cordwell moved that the bids as enumerated be accepted, with the exception of the MacNaughton Market lease and the bid of Ernest Whitcomb on 9 lots. Seconded by Alderman Ramie. All voting in the affirmative with the exception of Alderman Doe voting nay. Motion carried.

Utica, N. Y., Aug. 10, 1940.

City Treasurer, City of Ogdensburg, N. Y.

DEAR SIR:

In accordance with your request when the writer was in Ogdensburg, N. Y., this letter will serve as my bid for the market place building in your city.

We request a ten year lease, with an option of five years and five years.

We propose to pay you monthly in advance the sum of $1,800.00 per year rent (Eighteen Hundred Dollars) in (12) monthly installments of $150.00 each.

We propose to conduct a motion picture theatre in the building showing motion pictures, and other forms of entertainment in the theatrical profession only.

We propose to do all inside alterations to transform the building into a theatre, installing such equipment as seats, motion picture projectors, sound, carpet, side wall sound treatment, screen, etc., also marquee and theatre front.

[fol. 6494] Sept. 4, 1940

We propose that the city or lessor furnish a satisfactory heating system, and keep it in major repairs, keep the roof in repair, and building proper during the term of the lease.

My organization will furnish the heat for the building, lights, etc., also keep the sidewalks in front of the building clear of snow and ice during the winter.

We would want permission from the Council to do all the necessary alterations in order to transform the building into a modern motion picture. In the event of a deal, we would furnish the Council the blue prints of the plans of the remodeling and entire work to be done.

Very sincerely yours, (Signed) L. J. Carkey, Family Theatre Building, Utica, N. Y.

Alderman Cordwell, moved that the bid of L. J. Carkey be accepted subject to a lease to be drawn up by the Market Commissioner together with the Corporation Counsel for a term of ten (10) years, with on option of five (5) years. Carried, ayes all.

[fol. 6495] **Exhibit 882**

September 30th, 1940.

Mr. Lawrence J. Carkey, Family Theatre Building, Bleeker Street, Utica, New York.

Dear Sir:

I am enclosing herewith proposed lease of the McNaughton Public Market, in duplicate. If the same meets with your approval, please execute and return, and we will procure the signature of the Mayor and the attestation of the City Clerk.

You may notice that the lease is drawn directly to you and not to the Kadevan Chain Theaters, Inc., as you suggested when you were in Ogdensburg. We feel that in view of the bid made in your name, and in view of the resolution adopted by the Common Council authorizing the lease to you personally, and in no way mentioning the Kadevan Corporation, that it would have been improper to draw the lease otherwise. I suspect that this will make no difference to you.

Very truly yours, William B. O'Connell, Corporation Counsel, City of Ogdensburg.

WBO'C/eip
Enc. (2)

[fol. 6496] EXHIBIT 886

Chickering 4-2200

VITAGRAPH, INC.

Distributors of

First National Pictures Warner Bros. Pictures
Vitaphone Short Subjects

Home Office: 321 West 44th Street, New York City

November 4, 1933.

Mr. Wm. C. Smalley, Smalley's Theatres, Inc., Cooperstown, N. Y.

DEAR BILL:

Mr. O. L. Van Horne, your attorney at Cooperstown, wrote me under date of October 26th requesting pictures for Norwich, and I am attaching herewith a copy of my reply to him.

Up to the present time the situation in Norwich has not changed and our pictures are all under contract there to the Schine Theatre.

Best wishes and kindest personal regards.

Cordially yours, A. W. Smith, Jr., General Sales Manager.

AWS:B

275—1879

[fol. 6497] Copy

November 1, 1933.

Mr. O. L. Van Horne, 201-204 Second National Bank Bldg.,
Cooperstown, N. Y.

DEAR MR. VAN HORNE:

Answering your letter of October 26th regarding the serving of a part or division of our 1933-34 product to Mr. Smalley's theatre at Norwich, N. Y., please be advised that all of this product is under contract in Norwich.

Very truly yours, A. W. Smith, Jr., General Sales Manager.

AWS:B

[fol. 6498] EXHIBIT 887

August 9, 1934.

A. W. Smith, Jr., General Sales Mgr., Warner Bros. Pictures, Inc., 321 West 44th Street, New York, N. Y.

DEAR MR. SMITH:

On May 22nd, I sent you a telegram as follows:

> "I desire to buy or lease at least fifty percent of your 1934-1935 product for use at Smalley's Theatre, Norwich, New York stop Please have your representative contact me immediately".

Up to this date your representative has not called on me or communicated with me and I again request that you have him contact me at once because I desire to buy or lease at least fifty percent of your 1934-1935 product for Smalley's Theatre, Norwich, New York.

Very truly yours, William C. Smalley.

WCS/J
Registered (Return Receipt)

[fol. 6499]

Vitagraph, Inc.
Distributors of
First National Pictures · Warner Bros. Pictures
Vitaphone Short Subjects
Home Office, 321 West 44th Street, New York City

August 13, 1934.

Mr. Wm. C. Smalley,
Smalley's Theatres, Inc.,
Cooperstown, N. Y.

Dear Mr. Smalley:

Answering your letter of August 9th regarding our new season's product for Norwich, please be advised that we have a satisfactory account there and our present intention is to serve all of our new season's product to that account. In the event that the situation changes, we will be glad to advise you.

Very truly yours, A. W. Smith, Jr., General Sales Manager.

AWS:B.

[fol. 6500]

Exhibit 888

Western Union

May 22, 1934.

A. W. Smith, Jr., General Sales Manager
Warner Bros. Pictures, Inc.,
321 West 44th Street, New York, N. Y.

I desire to buy or lease at least fifty percent of your nineteen thirty five product for use at Smalleys Theatre, Norwich, New York. Stop. Please have your representative contact me immediately.

William C. Smalley.

Day Letter.

[fol. 6502]

Vitagraph, Inc.
Distributors of
First National Pictures Warner Bros. Pictures
Vitaphone Short Subjects
Home Office, 321 West 44th Street, New York City

May 24, 1934.

Mr. Wm. C. Smalley,
Cooperstown, N. Y.

Dear Mr. Smalley:

This will acknowledge receipt of your wire of May 22nd, in which you state that you desire to lease at least 50% of our 1943-35 product at Smalleys Theatre, Norwich, and request that our salesman call.

Please be advised that we have a satisfactory customer in Norwich, and are not in a position at this time to deal with you for our new season's product.

Cordially yours, A. W. Smith, Jr., General Sales Manager.

AWS:B.

[fol. 6503] Exhibit 889

United Artists Corporation
Film Center Bldg, 44th St. & 9th Ave., New York City

June 27, 1933.

Mr. William C. Smalley,
Cooperstown, N. Y.

Dear Bill:

Will you kindly see to it that play dates are submitted to us as soon as possible in accordance with the list I left with you showing the undated pictures in your various towns—not forgetting the Disneys.

I'd appreciate very much having this cleaned up before I leave for the Chicago Convention so that I shall be in a position to show that everything is dated.

I have taken up the matter with Mr. Lichtman regarding a split in Norwich on the new product and Al told me to work out a split with you when I get back from Chicago. At this time I might also advise that I received a telegram from Mr. O. L. Van Horner, representing himself as your Attorney concerning the new season's product for Norwich, and I replied to him by separate letter to this effect. With kindest regards.

Sincerely yours United Artists Corporation, Moe Streimer, Sales Manager.

MS:E

[fol. 6504] **Exhibit 891**

August 9, 1934.

Al Lichtman, General Manager
United Artists Corporation
729 Seventh Avenue
New York, N. Y.

Dear Mr. Lichtman:

On May 22nd, I sent you a telegram as follows:

"I desire to buy or lease at least fifty percent of your 1934-1935 product for use at Smalley's Theatre, Norwich, New York stop. Please have your representative contact me immediately."

Up to this date, your representative has not called on me or communicated with me and I again request that you have him contact me at once because I desire to buy or lease at least fifty percent of your 1934-1935 product for Smalley's Theatre, Norwich, New York.

Very truly yours, William C. Smalley.

WCS/J.
Registered (Return Receipt).

[fol. 6505] United Artists Corporation

Home Office, 729 Seventh Ave., New York

August 14th, 1934.

Mr. Wm. C. Smalley, Smalley's Theatres, Inc., Cooperstown, N. Y.

DEAR MR. SMALLEY:

We are in receipt of your esteemed letter of the 9th.

We have an appointment in the near future to talk with the Schine Theatrical Enterprises who bought our product in Norwich last year. If we can arrange to sell you some of our pictures at Norwich we will be glad to do so.

Frankly, we have an obligation for all the pictures to Schine inasmuch as he bought them last year. Also because they are good customers of ours and they usually buy our pictures for all their theatres.

However, we will tell Mr. Schine at the time we negotiate with him of your desire to buy some of our pictures, and all things being equal we would like to accommodate you.

Just as soon as we see Mr. Schine we will communicate with you either through Mr. Streimer or our Mr. Harry Gold.

Thank you for your interest.

Sincerely yours, United Artists Corporation, ——
——, Vice-Pres. & Gen'l Mgr.

AL-R.

[fol. 6506] EXHIBIT 892

November 2, 1933.

Mr. Moe Streimer, United Artists Corporation, New York, N. Y.

DEAR MR. STREIMER:

We are asking once more for the opportunity to buy or lease from your Company an equal split of your 1933-34 product, as previously promised, for our Smalley Theatre, Norwich, New York.

Very truly yours, William C. Smalley.

WCS/J.
Registered (Return Receipt).

[fol. 6507] **Exhibit 893**

November 9, 1933.

Mr. Moe Streimer, United Artists Corporation, New York, N. Y.

Dear Moe:

I note that I'm No Angel, Tugboat Annie, Gold Diggers and other pictures are playing Norwich four days, but your pictures such as The Bowery are only playing two days.

I fail to see the drift of Schine's letter to you and your statement that although Schine bought all of your product, there should be plenty left.

Schine is not only demanding all of your product, but he is demanding the product of every other Company, including Monogram.

I am today taking the matter up with the proper authorities in Washington to see if I shall have 50% of the United Artists' pictures.

Mr. Rosenblatt informed me that I was to have an equal split of pictures from various companies, until I had enough to operate my theatre in Norwich. I had already told him that you promised me 50% of your product but after receiving your last letter, I shall, of course, have to refute this statement.

Very truly yours, William C. Smalley.

WCS/J.

[fol. 6508] **Exhibit 894**

United Artists Corporation
630 Ninth Avenue, New York City

November 11, 1933.

Mr. William C. Smalley, Cooperstown, N. Y.

Dear Bill:

I have your letter of November 9th, and in reply want to advise that I am going to be in Gloversville on Tuesday of this coming week, at which time I am going to try to force an issue direct with the Schines for a split in Norwich.

I will advise you of the results of my efforts, which I hope will be successful.

With kind regards,

Sincerely, United Artists Corporation, Moe Streimer, Sales Manager.

MS:E.

[fols. 6509-6510] **Exhibit 896**

Western Union

June 26, 1933.

To Nate Sauber, Manager, Street and No. Universal Film Exchange, Place, 1054 Broadway, Albany, New York.

Smalley Theatres desire the opportunity to buy or lease at least fifty per cent of your nineteen thirty three nineteen thirty four product first run for Smalleys theatre, Norwich, New York. Our percentage of product to be on equitable basis.

O. L. Van Horne, Attorney, Smalley Theatres.

Night Letter.

[fol. 6511] Universal Film Exchanges Inc.

1054 Broadway, Albany, N. Y.

July 10, 1933.

Mr. O. L. Van Horne, c/o Smalley Theatre, Cooperstown, N. Y.

Dear Sir:

Answering your telegram of June 26th, with regards to your request for fifty percent of our 1933-34 product for showing at the Smalley Theatre, Norwich, wish to advise that we are not in position to make available for sale any of our product.

We are serving the Schine Theatrical Enterprises, who are now operating in Norwich, under a franchise agreement, which has been in effect since August 1st, 1931. This particular franchise covers all towns they are now operating, or any additional theatres they might acquire during the life of our agreement.

In accordance with the workings of this franchise, we have no alternative but to make available to Schine's Norwich Theatre, all of the product we intend releasing during the 1933-34 season.

Very truly yours, Universal Film Exchanges, Nate Sauber Branch Mgr.

NS:EA.

[fol. 6512] EXHIBIT 897

November 2, 1933.

Mr. Nate Sauber, Universal Film Exchange, Albany, New York.

DEAR MR. SAUBER:

We are asking once more for the opportunity to buy or lease from your Company, a reasonable portion of your 1933-34 product for Smalley's Theatre, Norwich, New York.

Very truly yours, William C. Smalley.

WCS/J.
Registered (Return Receipt).

[fol. 6513] Universal Film Exchanges Inc.

1054 Broadway, Albany, N. Y.

Registered Return Receipt Requested

Nov. 4, 1933.

Mr. Wm. Smalley, Smalley Theatre, Cooperstown, N. Y.

DEAR MR. SMALLEY:

Replying to your communication of the 2nd, again wish to advise that we are not in position to offer your theatre in Norwich any portion of our 1933-34 feature product.

If you will recall, we stated in our recent communication that Universal was tied up with Schine's theatres on a franchise arrangement, whereby we are obligated, by the terms thereof, to make available our feature product to all Schine theatres.

Very truly yours, Universal Film Exchanges, Nate Sauber, Branch Manager.

NS:EA.

[fols. 6514-6515] Exhibit 899

Copy

Western Union

Cooperstown, N. Y., May 27, 1940.

To Abe Montague, General Sales Mgr.

Street and No.: Columbia Pictures Corp., 729 Seventh Avenue.

Place: New York.

We are requesting once more as we have in the past the right to buy a fair portion or an equitable split of your companys first run 1940-41 product for Smalleys Norwich Theatre Norwich New York. We are willing to pay the same price flat or percentage that you receive for a situation of this kind. We are badly in need of product in this situation to keep our theatre open. Our Norwich Theatre is equal to any theatre in a situation of this size. Prompt reply requested.

William C. Smalley, Smalley Theatres, Cooperstown, N. Y.

Night Letter.

[fol. 6516] **Exhibit 900**

December 4, 1939.

Mr. Irving Moross, Legal Department, Columbia Pictures Corp., New York.

Dear Sir:

We have your letter of November 13th in reference to product for Smalley's Theatre, Norwich, New York.

It is evident that you have been misinformed because we have not been offered a split of the Columbia product for the past number of years for Smalley's Theatre, Norwich, New York. The only pictures we have been offered are the slough pictures which were rejected by the Schine Enterprises.

A number of years ago, we enjoyed a split of the Columbia product in Norwich but for the past few years, we have been refused a split. Schines having received the pick of the Columbia product.

Very truly yours, W. C. Smalley.

WCS/J.

[fol. 6517] **Exhibit 901**

Postal Telegraph

UK37 26 Ser 3 Extra-S1 New York NY 4-545P

1939 May 4 PM 6 16.

O. L. Vanhorne, Attorney, Cooperstown, N. Y.

Retel we have existing franchise with Mr. Schine for two years. Therefore regret cannot at this time consider proposition expressed in your wire.

Abe Montague, General Sales Mgr., Columbia Pictures Corp.

[fols. 6518-6519] **Exhibit 902**

Copy

Western Union

May 2, 1939.

To Abe Montague, General Sales Manager.
Street and No.: Columbia Pictures Corp.
Place: 729 Seventh Avenue, New York, N. Y.

Per Federal Officials advise we are requesting once more as we have many times in the past the right to buy a fair portion or an equitable split of your companys first run 1939-40 product for Smalleys Norwich Theatre, Norwich, New York. We are willing to pay the same price flat or percentage that you are receiving for a situation of this kind. Prompt reply requested.

O. L. Vanhorne, Attorney for William C. Smalley,
Cooperstown, New York.

[fol. 6520] **Exhibit 903**

United Artists

Clearances

(1940-41)

Cleveland Territory

Ashland (Ohio or Palace): 7 days ahead of Loudenville, Lodi and New London. 90 days over second run.

Bucyrus (Bucyrus, State or Sothern): 90 days over second run.

Fostoria (Civic, State or Roxy): 90 days over second run. 7 days over Carey.

Kent or Ravenna (Kent or Ravenna): 90 days over second run.

(Kent or Ravenna): Second run.

Norwalk (Forum or Moose or new House): 7 days over Huron, New London, Willard, Bellevue and Milan. 90 days over second run.

Tiffin (Ritz, Grand or Tiffin): 90 days over second run.

Van Wert (Van Wert or Strand): 60 days over second run.

Wooster (Wooster or Wayne): 14 days over Orville, Rittman and Wadsworth.

Bellefontaine (Holland): 30 days ahead of Lakeview, DeGraff and West Liberty.

Shelby (Castamba): 60 days over second run.

Bowling Green (Clazel or Lyric): First run.

Delaware (Strand or Star): First run.

Medina (Medina or Princess): First run.

Mt. Vernon (Vernon or Vine or Memorial): First run.

It is understood and agreed that the above clearances apply to the 1940-41 contracts and approval of the contracts is an automatic approval of the above clearances.

United Artists Corp., by B. M. Stearn; Schine Enterprises Corp., by G. V. Lynch.

[fol. 6520a]

EXHIBIT 958

Clearances

Amsterdam (Rialto, Strand or Regent): 30 days ahead of Broadalbin, Fonda and Johnstown.

Ballston (Capitol): First run.

Carthage (Strand): 90 days over City of Carthage. 14 days over Lowville.

Glens Falls (Rialto or Empire): 14 days ahead of Hudson Falls and Fort Edward. 7 days ahead of Lake George. 60 days ahead of second run Glens Falls.

(Empire): Second run. 60 days ahead of third run.

Gloversville (Glove or Hippodrome): 45 days over Johnstown. 30 days over Broadalbin, Mayfield, Sacandaga Park, Fonda, Northville and Canajoharie.

Hamilton (State): 21 days ahead of Waterville and Oriskany Falls.

Herkimer (Liberty): 21 days from last date of first run Utica. 14 days ahead of Frankfort and Mohawk.

Hudson Falls (Strand): 14 days after first run Glens Falls. 14 days ahead of second run Glens Falls. 14 days ahead of Fort Edward.

Ilion (Capitol): First run. 30 days over Mohawk and Frankfort. 21 days over Richfield Springs.

Little Falls (Rialto or Hippodrome): 90 days over City of Little Falls. 14 days over Fort Plain. 30 days over St. Johnsville and Dolgeville.

Malone (Malone): 30 days ahead of Brushton and Chateaugay and Fort Covington.

Massena (Massena): 30 days ahead of Norfolk. 60 days over second run.

Mechanicville (State): First run.

Norwich (Colonia): 30 days over Sherburne, Oxford, Greene, New Berlin and Sidney.

Ogdensburg (Strand or Pontiac): 30 days ahead of Waddington, Canton and Norwood.

Oneonta (Oneonta or Palace): 30 days ahead of Morris, Delhi, Cooperstown, Stamford, Hartwick and Worcester.

Saranac Lake (Pontiac): 30 days ahead of Lake Placid with open booking during the periods June 15th to Sept. 15th; Jan. 15th to February 15th. 90 days over Saranac Inn.

[fol. 6520b] Tupper Lake (State): 30 days ahead of Faust and Sun-Mount.

Watertown (Avon or Olympic): 30 days ahead of Adams, Sacketts Harbor, Antwerp, Philadelphia, Dexter and Theresa. 60 days first run over second run.

(Olympic or Palace): Second run. 60 days ahead of third run.

Whitehall (Capitol): First run.

Ashland (Opera House or Palace): First run. 7 days ahead of Loudonville, Lodi and New London. 90 days over second run.

Bucyrus (Bucyrus, State or Southern: First run. 90 days over second run.

Fostoria, Civic, Roxy or State): First run. 90 days over second run. 7 days over Carey.

Kent or Ravenna (Kent, Opera House or Ravenna): First run. 90 days over second run.

(Kent or Ravenna): Second run.

Norwalk (Forum or Moose): First run. [illegible] days over Huron. New London, Willard, Bellevue and Milan. 90 days over second run.

Tiffin (Tiffin, Ritz or Grand): First run. 90 days over second run.

Van Wert (Van Wert or Strand): First run, 90 days over second run.

Wooster (Wooster or Wayne): First run. 14 days over Orville, Rittman and Wadsworth.

Easton (Avalon or Music Hall): Ahead of St. Michaels and Hurlock.

Federalsburg (Federal): Ahead of Hurlock.

Hurlock (Hurlock): 14 days after Cambridge. 7 days after Federalsburg.

Salisbury (Arcade or Wicomoco): 14 days ahead of Berlin, Snow Hill, Princess Anne and Ocean City—if played 14 days after National release date.

Athens (Athena, Ohio or Court): First run. 14 days over Nelsonville. 30 days clearance after national release date in Athens County.

Lexington (Kentucky, Ben Ali, Strand or State): First run. 60 days over second run at State. 90 days over Opera House and Ada Meade. 14 days over Georgetown and Cynthiana.

Bellefontaine (Holland): 30 days ahead of Lakeview, DeGraff and West Liberty.

[fol. 6520c] Shelby (Castamba): 60 days over second run.

Maysville (Russell): First run. 14 days over Flemingsburg and Augusta, Ripley, Manchester and Brooksville. 60 days over second run.

Paris (Bourbon): First run.

Piqua (Piqua or Miami): Open availability with Troy, Sidney and Greenville.

Richmond (Madison or State): First run.

Auburn (Jefferson or Palace): Second run. 60 days over third run. 30 days over Weedsport.

Bath (Babcock): 30 days ahead of Hammondsport, Cohocton, Prattsburg and Savona.

Buffalo (Granada): 14 days ahead of Varsity, Central Park, Little Kensington and Williamsville. Open booking with Kenmore.

(Riverside): Immediately after Shea's North Park. 14 days ahead of Unity, Jubilee, Kenmore, N. Y., Rialto, Circle, Senate, Allendale, Marlowe, Park and Pastime.

Canandaigua (Playhouse): 14 days ahead of Naples, N. Y. 30 days ahead of Clifton Springs.

Corning (Fox or State): 30 days ahead of Painted Post and Addison. 60 days over City of Corning.

(State or Palace): Second run. 60 days over third run.

Cortland (State or Temple): 30 days ahead of Marathon, Groton, Homer, McGrawsville, Tully and Moravia.

Geneva (Geneva or Regent: 30 days ahead of Lyons, Waterloo, Palmyra, Clifton Springs, Manchester, Phelps and Clyde.

Lockport (Palace, Rialto or Hi-Art): 30 days ahead of Newfane and Middleport.

(Rialto or Hi-Art): Second run.

Newark (Capitol): 30 days ahead of Clyde, Lyons and Palmyra.

Oswego (Strand or Capitol): 30 days ahead of Fulton, Minetto, Pulaski, Mexico.

Penn Yan (Elmwood): 30 days ahead of Dundee.

[fol. 6520d] Rochester (Cameo): 14 days ahead of Lyric, Empress and Rivoli. Immediately after Madison and Monroe Theatres.

(Grand) Immediately after Fennyvessy's Madison and Monroe Theatres. Open booking with Strand. 14 days ahead of Embassy and Empire Theatres. 7 days ahead of Rivoli Theatre.

(Lake) Immediately after Fennyvessy's Madison and Monroe Theatres.

(Riviera or Liberty) Second run. 14 days ahead of Hudson, Aster, Hub, Sea Breeze, N. Y. 21 days over subsequent runs. 30 days ahead of Lake and Hollywood Theatres.

(Liberty-repeat) Second run. To be played within 21 days clearance of Riviera.

(State or Dixie) Second run. 21 days over subsequent runs. 30 days ahead of Plaza. 14 days ahead of Webster Theatre.

State or Dixie—repeat) Second run. To be played within the 21 days clearance of Dixie or State. 14 days ahead of Webster Theatre, Plaza and Culver Theatres.

Salamanca (Andrews): 30 days ahead of Little Valley, Randolph, Ellicottville and Franklinville. Open booking with Olean.

Seneca Falls (Strand): 30 days ahead of Waterloo. 120 days over second run.

United Artists Corporation (By B. M. Stearn);
Schine Enterprises Corporation (By G. V. Lynch).

VOL. VI

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79543
Sup. Ct.

Vol. VI

TRANSCRIPT OF RECORD

(Pages 4397 to 5188)

Supreme Court of the United States

OCTOBER TERM, 1947

No. 10

SCHINE CHAIN THEATRES, INC., ET AL.,
APPELLANTS,

vs.

THE UNITED STATES OF AMERICA

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE WESTERN DISTRICT OF NEW YORK

FILED OCTOBER 4, 1946.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., AUGUST 5. 1947.

—1879

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W4(3)	Deal sheet, first run, Ballston, N. Y., 9/28/37	6608	4458
W4(4)	Deal sheet, first run, Carthage, N. Y., 9/28/37	6609	4459
W4(5)	Deal sheet, first run, Glens Falls, N. Y., 9/28/37.	6610	4460
W4(6)	Deal sheet, second run, Glens Falls, N. Y., 9/28/37	6611	4461
W4(7)	Deal sheet, first run, Glover ville, N. Y., 9/28/37	6612	4462
W4(8)	Deal sheet, second run, Gloversville, N. Y., 9/28/37	6613	4463
W4(9)	Deal sheet, first run, Granville, N. Y., 12/16/38.	6614	4464
W4(10)	Deal sheet, first run, Granville, N. Y., 12/16/38.	6615	4465
W4(11)	Deal sheet, first run, Hamilton, N. Y., 9/28/37	6616	4466
W4(12)	Deal sheet, first run, Herkimer, N. Y., 9/28/37	6617	4467
W4(13)	Deal sheet, first run, Hudson Falls, N. Y., 9/28/37	6618	4468
W4(14)	Deal sheet, first run, Ilion, N. Y., 9/28/37	6619	4469
W4(15)	Deal sheet, first run, Little Falls, N. Y., 9/28/37	6620	4470
W4(16)	Deal sheet, first run, Malone, N. Y., 9/28/37	6621	4471
W4(17)	Deal sheet, first run, Massena, N. Y., 9/28/37	6622	4472
W4(18)	Deal sheet, first run, Mechanicville, N. Y., 9/28/37	6623	4473
W4(19)	Deal sheet, first run, Norwich, N. Y., undated	6624	4474
W4(20)	Deal sheet, first run, Norwich N. Y., 9/28/37	6625	4475
W4(21)	Deal sheet, first run Ogdensburg, N. Y., 8/22/38	6626	4476
W4(22)	Deal sheet, first run, Ogdensburg, N. Y., 9/28/37	6627	4477
W4(23)	Deal sheet, first run, Oneonta, N. Y., undated	6628	4478
W4(24)	Deal sheet, first run, Oneonta, N. Y., 9/28/37	6629	4479
W4(25)	Deal sheet, first run, Saranac Lake, N. Y., 9/28/37	6630	4480
W4(26)	Deal sheet, first run, Tupper Lake, N. Y., 9/28/37	6631	4481
W4(27)	Deal sheet, first run, Whitehall, N. Y., 9/28/37	6632	4482
W4(28)	Deal sheet, first run, Watertown, N. Y., 9/27/38.	6633	4483
W4(29)	Deal sheet, second run, Watertown, N. Y., 9/28/37	6634	4484

EXHIBITS PRINTED IN FULL—Continued

		Original	Print
W4(30)	Deal sheet, first run, Ashland, Ohio, 9/28/37	6635	4485
W4(31)	Deal sheet, first run, Bowling Green, O., 11/2/39	6636	4486
W4(32)	Deal sheet, first run, Bucyrus, O., 9/28/37	6637	4487
W4(33)	Deal sheet, first run, Delaware, O., 9/28/37	6638	4488
W4(34)	Deal sheet, first run, Fostoria, O., 9/28/37	6639	4489
W4(35)	Deal sheet, first run, Kent or Ravenna, O., 9/28/37	6640	4490
W4(36)	Deal sheet, repeat run, Kent or Ravenna, O., 9/28/37	6641	4491
W4(37)	Deal sheet, first run, Medina, Ohio, 9/28/37	6642	4492
W4(38)	Deal sheet, first run, Norwalk, Ohio, 9/28/37	6643	4493
W4(39)	Deal sheet, first run, Shelby, Ohio, 9/28/37	6644	4494
W4(40)	Deal sheet, first run, Tiffin, Ohio, 9/28/37	6645	4495
W4(41)	Deal sheet, first run, Van Wert, Ohio, 9/28/37	6646	4496
W4(42)	Deal sheet, first run, Wooster, Ohio, 9/28/37	6647	4497
W4(43)	Deal sheet, first run, Auburn, N. Y., 9/28/37	6648	4498
W4(44)	Deal sheet, second run, Auburn, N. Y., 9/28/37	6649	4499
W4(45)	Deal sheet, second run, Auburn, N. Y., 3/6/39	6650	4500
W4(46)	Deal sheet, first run, Bath, N. Y., 9/28/37	6651	4501
W4(47)	Deal sheet, first run, Buffalo, N. Y., 9/28/37	6652	4502
W4(48)	Deal sheet, first run, Buffalo, N. Y., 9/28/37	6653	4503
W4(49)	Deal sheet, first run, Canandaigua, N. Y., 9/28/37	6654	4504
W4(50)	Deal sheet, first run, Corning, N. Y., 9/28/37	6655	4505
W4(51)	Deal sheet, second run, Corning, N. Y., 9/28/37	6656	4506
W4(52)	Deal sheet, first run, Cortland, N. Y., 9/28/37	6657	4507
W4(53)	Deal sheet, second run, Cortland, N. Y., 9/41/40	6658	4508
W4(54)	Deal sheet, first run, East Rochester or Fairport, N. Y., 11/2/39	6659	4509
W4(55)	Deal sheet, second run, East Rochester or Fairport, N. Y., 11/2/39	6660	4510
W4(56)	Deal sheet, first run, Geneva, N. Y., 9/28/37	6661	4511
W4(57)	Deal sheet, second run, Geneva, N. Y., 1/16/39	6662	4512
W4(58)	Deal sheet, first run, Lockport, N. Y., 9/28/37	6663	4513
W4(59)	Deal sheet, second run, Lockport, N. Y., 9/28/37	6664	4514
W4(60)	Deal sheet, first run, Newark, N. Y., 9/28/37	6665	4515
W4(61)	Deal sheet, first run, Oswego, N. Y., 9/28/37	6666	4516
W4(62)	Deal sheet, second run, Oswego, N. Y., 9/28/37	6667	4517
W4(63)	Deal sheet, first run, Penn Yan, N. Y., 9/28/37	6668	4518
W4(64)	Deal sheet, first run, Perry, N. Y., 9/28/37	6669	4519
W4(65)	Deal sheet, first run, Rochester, N. Y., 9/28/37	6670	4520
W4(66)	Deal sheet, first run, Rochester, N. Y., 9/28/37	6671	4521
W4(67)	Deal sheet, first run, Rochester, N. Y., 9/28/37	6672	4522
W4(68)	Deal sheet, first run, Rochester, N. Y., 3/23/39	6673	4523
W4(69)	Deal sheet, first run, Rochester, N. Y., 3/23/39	6674	4524
W4(70)	Deal sheet, third run, Rochester, N. Y., 9/28/37	6675	4525
W4(71)	Deal sheet, repeat run, Rochester, N. Y., 9/28/37	6676	4526

EXHIBITS PRINTED IN FULL—Continued

		Original	Print
W4(72)	Deal sheet, third run, Rochester, N. Y., 9/28/37	6677	4527
W4(73)	Deal sheet, repeat run, Rochester, N. Y., 9/28/37	6678	4528
W4(74)	Deal sheet, first run, Rochester, N. Y., 3/23/39	6679	4529
W4(75)	Deal sheet, first run, Salamanca, N. Y., 9/28/37	6680	4530
W4(76)	Deal sheet, first run, Seneca Falls, N. Y., 9/28/37	6681	4531
W4(77)	Deal sheet, first run, Syracuse, N. Y., 11/2/39	6682	4532
W4(78)	Deal sheet, first run, Athens, N. Y., 9/28/37	6683	4533
W4(79)	Deal sheet, first run, Lexington, Ky., 9/28/37	6684	4534
W4(80)	Deal sheet, second run, Lexington, Ky., 9/28/37	6685	4535
W4(81)	Deal sheet, third run, Lexington, Ky., 9/28/37	6686	4536
W4(82)	Deal sheet, first run, Richmond, Ky., 9/28/37	6687	4537
W4(83)	Deal sheet, first run, Bellefontaine, O., 9/28/37	6688	4538
W4(84)	Deal sheet, first run, Mount Vernon, O., 9/28/37	6689	4539
W4(85)	Deal sheet, first run, St. Michaels, Md., 11/2/39	6690	4540
W4(86)	Deal sheet, first run, Hurlock, Md., 10/12/38	6691	4541
W4(87)	Deal sheet, first run, Laurel, Del., 4/2/40	6692	4542
W4(88)	Deal sheet, first run, Paris, Ky., 9/28/37	6693	4543
W4(89)	Deal sheet, second run, Paris, Ky., 12/1/38	6694	4544
W4(90)	Deal sheet, first run, Maysville, Ky., 10/12/38	6695	4545
W4(91)	Deal sheet, first run, Middlesboro, Ky., 12/1/38	6696	4546
W4(92)	Deal sheet, first run, Piqua, Ohio, 9/28/37	6697	4547
W4(93)	Deal sheet, first run, Corbin, Ky., 12/1/38	6698	4548
W4(94)	Deal sheet, fourth run, Lexington, Ky., 1/12/39	6699	4549
W4(95)	Deal sheet, first run, Cambridge, Md., 10/12/37	6700	4550
W4(96)	Deal sheet, first run, Easton, Md., 10/12/38	6702	4552
W4(97)	Deal sheet, first run, Federalsburg, Md., 10/12/38	6704	4554
W4(98)	Deal sheet, first run, Milford, Del., 4/2/40	6706	4556
W4(99)	Deal sheet, first run, Salisbury, Md., 10/12/38	6707	4557
W5	Letter agreement, Vitagraph Inc. and Schine, 3/24/36	6709	4559
W7	Letter agreement, Vitagraph Inc. and Schine, 4/24/35 and supplement letter of 4/29/35	6711	4561
W34(1)	Deal sheet, first run, Cortland, N. Y., 9/11/40	6714	4565
W34(2)	Deal sheet, first run, East Rochester, N. Y. or Fairport, N. Y., 12/6/40	6715	4566
W34(3)	Deal sheet, first run, Geneva, N. Y., 9/11/40	6716	4567
W34(4)	Deal sheet, first run, Glens Falls, N. Y., 9/11/40	6717	4568
W34(5)	Deal sheet, second run, Glens Falls, N. Y., 9/11/40	6718	4569
W34(6)	Deal sheet, second run, Gloversville, N. Y., 12/6/40	6719	4570
W34(7)	Deal sheet, first run, Gloversville, N. Y	6720	4571
W34(8)	Deal sheet, first run, Granville, N. Y., 9/11/40	6721	4572
W34(9)	Deal sheet, first run, Hamilton, N. Y., 9/11/40	6722	4573
W34(10)	Deal sheet, first run, Herkimer, N. Y., 9/11/40	6723	4574
W34(11)	Deal sheet, first run, Hudson Falls, N. Y., 9/11/40	6724	4575

EXHIBITS PRINTED IN FULL—Continued

		Original	Print
W34(12)	Deal sheet, first run, Ilion, N. Y., 9/11/40	6725	4576
W34(13)	Deal sheet, first run, Little Falls, N. Y., 12/6/40	6726	4577
W34(14)	Deal sheet, first run, Malone, N. Y., 9/11/40	6727	4578
W34(15)	Deal sheet, first run, Massena, N. Y., 9/11/40	6728	4579
W34(16)	Deal sheet, first run, Mechanicville, N. Y., 9/11/40	6729	4580
W34(17)	Deal sheet, first run, Norwich, N. Y., 9/11/40	6730	4581
W34(18)	Deal sheet, first run, Ogdensburg, N. Y., 9/11/40	6731	4582
W34(19)	Deal sheet, second run, Ogdensburg, N. Y., 9/11/40	6732	4583
W34(20)	Deal sheet, first run, Oneonta, N. Y., 9/11/40	6733	4584
W34(21)	Deal sheet, second run, Oneonta, N. Y., 9/11/40	6734	4585
W34(22)	Deal sheet, first run, Oswego, N. Y., 9/11/40	6735	4586
W34(23)	Deal sheet, second run, Oswego, N. Y., 9/11/40	6736	4587
W34(24)	Deal sheet, first run, Perry, N. Y., 9/11/40	6737	4588
W34(25)	Deal sheet, first run, Salamanca, N. Y., 9/11/40	6738	4589
W34(26)	Deal sheet, first run, Saranac Lake, N. Y., 9/11/40	6739	4590
W34(27)	Deal sheet, first run, Seneca Falls, N. Y., 9/11/40	6740	4591
W34(28)	Deal sheet, first run, Tupper Lake, N. Y., 9/11/40	6741	4592
W34(29)	Deal sheet, second run, Watertown, N. Y., 9/11/40	6742	4593
W34(30)	Deal sheet, first run, Watertown, N. Y., 9/11/40	6743	4594
W34(31)	Deal sheet, first run, Whitehall, N. Y., 9/11/40	6744	4595
W34(32)	Deal sheet, first run, Ashland, O., 9/11/40	6745	4596
W34(33)	Deal sheet, first run, Athens, Ohio, 9/11/40	6746	4597
W34(34)	Deal sheet, first run, Bowling Green, O., 9/11/40	6747	4598
W34(35)	Deal sheet, second run, Bowling Green, O., 9/11/40	6748	4599
W34(36)	Deal sheet, first run, Bucyrus, O., 9/11/40	6749	4600
W34(37)	Deal sheet, first run, Delaware, O., 9/11/40	6750	4601
W34(38)	Deal sheet, first run, Fostoria, O., 9/11/40	6751	4602
W34(39)	Deal sheet, first run, Kent or Ravenna, O., 9/11/40	6752	4603
W34(40)	Deal sheet, second run, Kent or Ravenna, O., 9/11/40	6753	4604
W34(41)	Deal sheet, first run, Medina, O., 9/11/40	6754	4605
W34(42)	Deal sheet, first run, Norwalk, Ohio, 9/11/40	6755	4606
W34(43)	Deal sheet, first run, Piqua, Ohio, 9/11/40	6756	4607
W34(44)	Deal sheet, first run, Shelby, Ohio, 9/11/40	6757	4608
W34(45)	Deal sheet, first run, Tiffin, Ohio, 9/11/40	6758	4609
W34(46)	Deal sheet, first run, Van Wert, O., 9/11/40	6759	4610
W34(47)	Deal sheet, first run, Wooster, Ohio, 9/11/40	6760	4611
W34(48)	Deal sheet, second run, Wooster, O., 9/11/40	6761	4612
W34(49)	Deal sheet, first run, Corbin, Ky., 9/11/40	6762	4613
W34(50)	Deal sheet, first run, Lexington, Ky., 9/11/40	6763	4614
W34(51)	Deal sheet, second run, Lexington, Ky., 9/11/40	6764	4615

EXHIBITS PRINTED IN FULL—Continued

		Original	Print
W34(52)	Deal sheet, third run, Lexington, Ky., 9/11/40	6765	4616
W34(53)	Deal sheet, fourth run, Lexington, Ky., 9/11/4[illegible]	6766	4617
W34(54)	Deal sheet, first run, Maysville, Ky., 9/11/40	6767	4618
W34(55)	Deal sheet, first run, Middlesboro, Ky., 9/11/40	6768	4619
W34(56)	Deal sheet, first run, Paris, Ky., 9/11/40	6769	4620
W34(57)	Deal sheet, first run, Richmond, Ky., 9/11/40	6770	4621
W34(58)	Deal sheet, first run, Cambridge, Md., 9/11/40	6771	4622
W34(59)	Deal sheet, first run, Easton, Md., 9/11/40	6772	4623
W34(60)	Deal sheet, first run, Federalsburg, Md., 9/11/40	6773	4624
W34(61)	Deal sheet, first run, Salisbury, Md., 9/11/40	6774	4625
W34(62)	Deal sheet, first run, Salisbury, Md., 9/11/40	6775	4626
W34(63)	Deal sheet, first run, Amsterdam, N. Y., 9/11/40	6776	4627
W34(64)	Deal sheet, second run, Amsterdam, N. Y., 9/11/40	6777	4628
W34(65)	Deal sheet, second run, Auburn, N .Y., 9/11/40	6778	4629
W34(66)	Deal sheet, first run, Auburn, N. Y., 9/11/40	6779	4630
W34(67)	Deal sheet, first run, Ballston, N. Y., 9/11/40	6780	4631
W34(68)	Deal sheet, first run, Bath, N. Y., 9/11/40	6781	4632
W34(69)	Deal sheet, first run, Canandaigua, N. Y., 9/11/40	6782	4633
W34(70)	Deal sheet, first run, Carthage, N. Y., 9/11/40	6783	4634
W34(71)	Deal sheet, second run, Corning, N. Y., 9/11/40	6784	4635
W34(72)	Deal sheet, first run, Corning, N. Y., 9/11/40	6785	4636
W34(73)	Deal sheet, first run, Bellefontaine, N. Y., 9/11/40	6786	4637
W34(74)	Deal sheet, first run, Mount Vernon, O., 9/11/40	6787	4638
W34(75)	Deal sheet, first run, Hurlock, Md., 9/11/40	6788	4639
W34(76)	Deal sheet, first run, St. Michels, Md., 9/11/40	6789	4640
W34(77)	Deal sheet, first run, Laurel, Del., 9/11/40	6790	4641
W34(78)	Deal sheet, first run, Milford, Del., 9/11/40	6791	4642
W34(79)	[illegible]al sheet, second run, Lockport, N. Y., 9/11/40	6792	4643
W34(80)	Deal sheet, second run, Geneva, N. Y., 9/11/40	6793	4644
W35A	Agreement, Vitagraph Inc. and Schine, 9/11/40	6794	4645
W35B	Agreement, Vitagraph Inc. and Schine, 9/11/40	6795	4646
U137	Agreement, Universal and Schine, 9/7/38	6796	4649
U137(1)	Deal sheet, first run, Amsterdam, N. Y., 8/26/38	6797	4650
U137(2)	Deal sheet, first run, Ballston, N. Y., 9/26/38	6798	4651
U137(3)	Deal sheet, first run, Carthage, N. Y., 9/26/38	6799	4652
U137(4)	Deal sheet, first run, Glens Falls, N. Y., 9/26/38	6800	4653
U137(5)	Deal sheet, second run, Glens Falls, N. Y., 9/26/38	6801	4654
U137(6)	Deal sheet, first run, Gloversville, N. Y., 9/26/38	6802	4655
U137(7)	Deal sheet, second run, Gloversville, N. Y., 9/26/38	6803	4656
7(8)	Deal sheet, first run, Granville, N. Y., 9/26/38	6804	4657

EXHIBITS PRINTED IN FULL—Continued

		Original	Print
U137(9)	Deal sheet, first run, Hamilton, N. Y., 9/26/38	6805	4658
U137(10)	Deal sheet, first run, Herkimer, N. Y., 9/26/38	6806	4659
U137(11)	Deal sheet, first run, Hudson Falls, N. Y., 9/26/38	6807	4660
U137(12)	Deal sheet, first run, Ilion, N. Y., 9/26/38	6808	4661
U137(13)	Deal sheet, first run, Little Falls, N. Y., 9/26/38	6809	4662
U137(14)	Deal sheet, first run, Malone, N. Y., 9/26/38	6810	4663
U137(15)	Deal sheet, first run, Massena, N. Y., 8/26/38	6811	4664
U137(16)	Deal sheet, first run, Mechanicville, N. Y., 8/26/38	6812	4665
U137(17)	Deal sheet, first run, Norwich, N. Y., 8/26/38	6813	4666
U137(18)	Deal sheet, first run, Ogdensburg, N. Y., 8/26/38	6814	4667
U137(19)	Deal sheet, first run, Oneonta, N. Y., 8/26/38	6815	4668
U137(20)	Deal sheet, first run, Saranac Lake, N. Y., 8/26/38	6816	4669
U137(21)	Deal sheet, first run, Tupper Lake, N. Y., 8/26/38	6817	4670
U137(22)	Deal sheet, first run, Watertown, N. Y., 8/26/38	6818	4671
U137(23)	Deal sheet, second run, Watertown, N. Y., 8/26/38	6819	4672
U137(24)	Deal sheet, first run, Whitehall, N. Y., 8/26/38	6820	4673
U137(25)	Deal sheet, first run, Auburn, N. Y., 8/26/38	6821	4674
U137(26)	Deal sheet, second run, Auburn, N. Y., 8/26/38	6822	4675
U137(27)	Deal sheet, Buffalo, N. Y., 8/26/38	6823	4676
U137(28)	Deal sheet, Buffalo, N. Y., 8/26/38	6824	4677
U137(29)	Deal sheet, first run, Bath, N. Y., 8/26/38	6825	4678
U137(30)	Deal sheet, first run, Canandaigua, N. Y., 8/26/38	6826	4679
U137(31)	Deal sheet, first run, Corning, N. Y., 8/26/38	6827	4680
U137(32)	Deal sheet, second run, Corning, N. Y., 8/26/38	6828	4681
U137(33)	Deal sheet, first run, Cortland, N. Y., 8/26/38	6829	4682
U137(34)	Deal sheet, first run, Geneva, N. Y., 8/26/38	6830	4683
U137(35)	Deal sheet, first run, Lockport, N. Y., 8/26/38	6831	4684
U137(36)	Deal sheet, second run, Lockport, N. Y., 8/26/38	6832	4685
U137(37)	Deal sheet, first run, Newark, N. Y., 8/26/38	6833	4686
U137(38)	Deal sheet, first run, Oswego, N. Y., 8/26/38	6834	4687
U137(39)	Deal sheet, first run, Penn Yan, N. Y, 8/26/38	6835	4688
U137(40)	Deal sheet, first run, Perry, N. Y., 8/26/38	6836	4689
U137(41)	Deal sheet, Rochester, N. Y., 8/26/38	6837	4690
U137(42)	Deal sheet, Rochester, N. Y., 8/26/38	6838	4691
U137(43)	Deal sheet, Rochester, N. Y., 8/26/38	6839	4692
U137(44)	Deal sheet, Rochester, N. Y., 8/26/38	6840	4693
U137(45)	Deal sheet, repeat run, Rochester, N. Y., 8/26/38	6841	4694
U137(46)	Deal sheet, Rochester, N. Y., 8/26/38	6842	4695
U137(47)	Deal sheet, repeat run, Rochester, N. Y., 8/26/38	6843	4696
U137(48)	Deal sheet, first run, Salamanca, N. Y., 8/26/38	6844	4697

EXHIBITS PRINTED IN FULL—Continued

		Original	Print
U137(49)	Deal sheet, first run, Seneca Falls, N. Y., 8/26/38	6845	4698
U137(51)	Deal sheet, first run, Bellefontaine, O., 8/26/38	6846	4699
U137(52)	Deal sheet, first run, Corbin, Ky., 11/10/38	6847	4700
U137(53)	Deal sheet, second run, Corbin, Ky., 1/16/39	6848	4701
U137(54)	Deal sheet, first run, Delaware, Ohio, 8/26/38	6849	4702
U137(55)	Deal sheet, first run, Maysville, Ky., 1/16/38	6850	4703
U137(56)	Deal sheet, first run, Middlesboro, Ky., 11/10/38	6851	4704
U137(57)	Deal sheet, first run, Piqua, Ohio, 8/26/38	6852	4705
U137(58)	Deal sheet, first run, Lexington, Ky., 8/26/38	6853	4706
U137(59)	Deal sheet, second run, Lexington, Ky., 8/26/38	6854	4707
U137(60)	Deal sheet, first run, Paris, Ky., 8/26/38	6855	4708
U137(61)	Deal sheet, first run, Ashland, Ohio, 8/26/38	6856	4709
U137(62)	Deal sheet, first run, Bucyrus, O., 8/26/38	6857	4710
U137(63)	Deal sheet, first run, Fostoria, O., 8/26/38	6858	4711
U137(64)	Deal sheet, first run, Mt. Vernon, O., 8/26/38	6859	4712
U137(65)	Deal sheet, first run, Norwalk, O., 8/26/38	6860	4713
U137(66)	Deal sheet, first run, Tiffin, O., 8/26/38	6861	4714
U137(67)	Deal sheet, first run, Van Wert, O., 8/26/38	6862	4715
U137(68)	Deal sheet, first run, Wooster, O., 8/26/38	6863	4716
U137(69)	Deal sheet, first run, Cambridge, Md., 8/26/38	6864	4717
U137(70)	Deal sheet, first run, Easton, Md., 11/10/38	6865	4718
U137(71)	Deal sheet, first run, Federalsburg, Md., 11/10/38	6866	4719
U137(72)	Deal sheet, first run, Hurlock, Md., 11/10/38	6867	4720
U137(73)	Deal sheet, first run, Laurel, Del., 4/17/39	6868	4721
U137(74)	Deal sheet, Milford, Del., 4/17/39	6869	4722
U137(75)	Deal sheet, first run, Salisbury, Md., 10/21/38	6870	4723
U207	Agreement Universal and Schine, 6/27/39	6871	4724
U207(1)	Deal sheet, Universal and Schine, 6/27/39	6872	4725
U207(2)	Deal sheet, Universal and Schine, 6/27/39	6873	4726
U207(3)	Deal sheet, Universal and Schine, 6/27/39	6874	4727
U207(4)	Deal sheet, Universal and Schine, 6/27/39	6875	4728
U207(5)	Deal sheet, Universal and Schine, 6/27/39, Glens Falls, second run	6876	4729
U207(6)	Deal sheet, Universal and Schine, 6/27/39, Gloversville, first run	6877	4730
U207(7)	Deal sheet, Universal and Schine, 6/27/39, Gloversville, second run	6878	4731
U207(8)	Deal sheet, Universal and Schine, 6/27/39, Granville, first run	6879	4732
U207(9)	Deal sheet, Universal and Schine, 6/27/39, Hamilton, first run	6880	4733
U207(10)	Deal sheet, Universal and Schine, 6/27/39, Herkimer, first run	6881	4734
U207(11)	Deal sheet, Universal and Schine, 6/27/39, Hudson Falls, first run	6882	4735
U207(12)	Deal sheet, Universal and Schine, 6/27/39, Ilion, first run	6883	4736
U207(13)	Deal sheet, Universal and Schine, 6/27/39, Little Falls, first run	6884	4737

EXHIBITS PRINTED IN FULL—Continued

		Original	Print
U207(14)	Deal sheet, Universal and Schine, 6/27/39, Malone, first run	6885	4738
U207(15)	Deal sheet, Universal and Schine, 6/27/39, Massena, first run	6886	4739
U207(16)	Deal sheet, Universal and Schine, 6/27/39, Mechanicville, first run	6887	4740
U207(17)	Deal sheet, Universal and Schine, 6/27/39, Norwich, first run	6888	4741
U207(18)	Deal sheet, Universal and Schine, 6/27/39, Ogdensburg, first run	6889	4742
U207(19)	Deal sheet, Universal and Schine, 6/27/39, Oneonta, first run	6890	4743
U207(20)	Deal sheet, Universal and Schine, 6/27/39, Saranac Lake, first run	6891	4744
U207(21)	Deal sheet, Universal and Schine, 6/27/39, Tupper Lake, first run	6892	4745
U207(22)	Deal sheet, Universal and Schine, 6/27/39, Watertown, first run	6893	4746
U207(23)	Deal sheet, Universal and Schine, 6/27/39, Watertown, second run	6894	4747
U207(24)	Deal sheet, Universal and Schine, 6/27/39, Whitehall, first run	6895	4748
U207(25)	Deal sheet, Universal and Schine, 6/27/39, Auburn, first run	6896	4749
U207(26)	Deal sheet, Universal and Schine, 6/27/39, Auburn, second run	6897	4750
U207(27)	Deal sheet, Universal and Schine, 6/27/39, Bath, first run	6898	4751
U207(28)	Deal sheet, Universal and Schine, 6/27/39, Buffalo (Granada), second run	6899	4752
U207(29)	Deal sheet, Universal and Schine, 6/27/39, Buffalo (Riverside) 2nd run	6900	4753
U207(30)	Deal sheet, Universal and Schine, 6/27/39, Canandaigua, first run	6901	4754
U207(31)	Deal sheet, Universal and Schine, 6/27/39, Corning, first run	6902	4755
U207(32)	Deal sheet, Universal and Schine, 6/27/39, Corning, second run	6903	4756
U207(33)	Deal sheet, Universal and Schine, 6/27/39, Cortland, first run	6904	4757
U207(34)	Deal sheet, Universal and Schine, 6/27/39, E. Rochester or Fairport, first and repeat	6905	4758
U207(35)	Deal sheet, Universal and Schine, 6/27/39, Geneva, first run	6906	4759
U207(36)	Deal sheet, Universal and Schine, 6/27/39, Lockport, first run	6907	4760
U207(37)	Deal sheet, Universal and Schine, 6/27/39, Lockport, second run	6908	4761
U207(38)	Deal sheet, Universal and Schine, 6/27/39, Newark, first run	6909	4762
U207(39)	Deal sheet, Universal and Schine, 6/27/39, Oswego, first run	6910	4763

EXHIBITS PRINTED IN FULL—Continued

		Original	Print
U207(40)	Deal sheet, Universal and Schine, 6/27/39, Penn Yan, first run	6911	4764
U207(41)	Deal sheet, Universal and Schine, 6/27/39, Perry, first run	6912	4765
U207(42)	Deal sheet, Universal and Schine, 6/27/39, Rochester, Cameo	6913	4766
U207(43)	Deal sheet, Universal and Schine, 6/27/39, Rochester—Dixie or State	6914	4767
U207(44)	Deal sheet, Universal and Schine, 6/27/39, Rochester—Dixie or State repeat	6915	4768
U207(45)	Deal sheet, Universal and Schine, 6/27/39, Rochester, Grand	6916	4769
U207(46)	Deal sheet, Universal and Schine, 6/27/39, Rochester, Lake	6917	4770
U207(47)	Deal sheet, Universal and Schine, 6/27/39, Rochester—Rivera or Liberty	6918	4771
U207(48)	Deal sheet, Universal and Schine, 6/27/39, Rochester—Liberty repeat	6919	4772
U207(49)	Deal sheet, Universal and Schine, 12/15/39, Rochester, Madison	6920	4773
U207(50)	Deal sheet, Universal and Schine, 12/15/39, Rochester, Monroe	6921	4774
U207(51)	Deal sheet, Universal and Schine, 12/5/40, Rochester—Webster	6922	4775
U207(52)	Deal sheet, Universal and Schine, 12/18/41, Rochester—Webster	6923	4776
U207(53)	Deal sheet, Universal and Schine, 12/18/39, Rochester—West End	6924	4777
U207(54)	Deal sheet, Universal and Schine, 6/27/39, Salamanca, first run	6925	4778
U207(55)	Deal sheet, Universal and Schine, 6/27/39, Seneca Falls, first run	6926	4779
U207(56)	Deal sheet, Universal and Schine, 6/27/39, Syracuse—Palace	6927	4780
U207(57)	Deal sheet, Universal and Schine, 6/27/39 Athens, Ohio—first run	6928	4781
U207(58)	Deal sheet, Universal and Schine, 6/27/39, Corbin, Ky., first run	6929	4782
U207(59)	Deal sheet, Universal and Schine, 6/27/39, Lexington, Ky.—first run	6930	4783
U207(60)	Deal sheet, Universal and Schine, 6/27/39, Lexington, Ky.—second run	6931	4784
U207(61)	Deal sheet, Universal and Schine, 3/4/40, Lexington, Ky. (Opera House) third run	6932	4785
U207(62)	Deal sheet, Universal and Schine, 1/22/41, Lexington, Ky.—(Ada Meade) fourth run	6933	4786
U207(63)	Deal sheet, Universal and Schine, 6/27/39, Maysville, Ky.—first run	6934	4787
U207(64)	Deal sheet, Universal and Schine, 6/27/39, Middlesboro, Ky.—first run	6935	4788
U207(65)	Deal sheet, Universal and Schine, 6/27/39, Paris, Ky.—first run	6936	4789

EXHIBITS PRINTED IN FULL—Continued

		Original	Print
U207(66)	Deal sheet, Universal and Schine, 6/27/39, Piqua, Ohio—first run	6937	4790
U207(67)	Deal sheet, Universal and Schine, 6/27/39, Richmond, Ky.—first run	6938	4791
U207(68)	Deal sheet, Universal and Schine, 6/27/39, Ashland, Ohio—first run	6939	4792
U207(69)	Deal sheet, Universal and Schine, 6/27/39, Bellefontaine, Ohio—first run	6940	4793
U207(70)	Deal sheet, Universal and Schine, 6/27/39, Bowling Green, Ohio—first run	6941	4794
U207(71)	Deal sheet, Universal and Schine, 6/27/39, Bucyrus, Ohio—first run	6942	4795
U207(72)	Deal sheet, Universal and Schine, 6/27/39, Delaware, Ohio—first run	6943	4796
U207(73)	Deal sheet, Universal and Schine, 6/27/39, Fostoria, Ohio—first run	6944	4797
U207(74)	Deal sheet, Universal and Schine, 6/27/39, Kent or Ravenna, first run	6945	4798
U207(75)	Deal sheet, Universal and Schine, 6/27/39, Kent or Ravenna, repeat	6946	4799
U207(76)	Deal sheet, Universal and Schine, 6/27/39, Medina, first run	6947	4800
U207(77)	Deal sheet, Universal and Schine, 6/27/39, Mt. Vernon, first run	6948	4801
U207(78)	Deal sheet, Universal and Schine, 6/27/39, Norwalk, first run	6949	4802
U207(79)	Deal sheet, Universal and Schine, 6/27/39, Tiffin, first run	6950	4803
U207(80)	Deal sheet, Universal and Schine 6/27/39, Van Wert, first run	6951	4804
U207(81)	Deal sheet, Universal and Schine, 6/27/39, Wooster, first run	6952	4805
U207(82)	Deal sheet, Universal and Schine, 6/27/39, Cambridge, Md. first run	6953	4806
U207(83)	Deal sheet, Universal and Schine, 6/27/39, Easton, first run	6954	4807
U207(84)	Deal sheet, Universal and Schine, 6/27/39, Federalsburg, first run	6955	4808
U207(85)	Deal sheet, Universal and Schine, 12/15/39, Hurlock, first run	6956	4809
U207(86)	Deal sheet, Universal and Schine, 6/27/39, Laurel, Del., first run	6957	4810
U207(87)	Deal sheet, Universal and Schine, 6/27/39, Milford, first run	6958	4811
U207(88)	Deal sheet, Universal and Schine, 6/27/39, Salisbury, Md., first run	6955	4812
U207(89)	Deal sheet, Universal and Schine, 12/15/39, St. Michaels, first run	6960	4813
R1	Agreement, RKO and Schine, 11/20/36	6961	4814
R2(1)	Deal sheet, first run, Auburn, N. Y.	6962	4815
R2(2)	Deal sheet, first run, 11/20/36, Bath, N. Y.	6963	4816

EXHIBITS PRINTED IN FULL—Continued

		Original	Print
R2(3)	Deal sheet, first run, 11/20/36, Canandaigua, N. Y.	6964	4817
R2(4)	Deal sheet, first run, 11/20/36, Carthage, N. Y.	6965	4818
R2(5)	Deal sheet, first and second runs, 11/20/36, Corning, N. Y.	6966	4819
R2(6)	Deal sheet, first run, Cortland, N. Y., 11/20/36.	6967	4820
R2(7)	Deal sheet, first run, Geneva, N. Y., 11/20/36.	6968	4821
R2(8)	Deal sheet, first and second runs Glens Falls, N. Y., 11/20/36	6969	4822
R2(9)	Deal sheet, first run, Gloversville N. Y., 11/20/36	6970	4823
R2(10)	Deal sheet, first run, Hamilton, N. Y., 11/20/36.	6971	4824
R2(11)	Deal sheet, first run, Herkimer, N. Y., 11/20/36.	6972	4825
R2(12)	Deal sheet, first run, Hudson Falls, N. Y., 11/20/36	6973	4826
R2(13)	Deal sheet, first run, Little Falls, N.Y., 11/20/36	6974	4827
R2(14)	Deal sheet, first and second runs, Lockport, N. Y., 11/20/36	6975	4828
R2(15)	Deal sheet, first run, Malone, N. Y., 11/20/36.	6976	4829
R2(16)	Deal sheet, first run, Massena, N. Y., 11/20/36.	6977	4830
R2(17)	Deal sheet, first run, Newark, N. Y., 11/20/36.	6978	4831
R2(18)	Deal sheet, first run, Norwich, N. Y., 11/20/36.	6979	4832
R2(19)	Deal sheet, first run, Oneonta, N. Y., 11/20/36.	6980	4833
R2(20)	Deal sheet, first run, Ogdensburg, N. Y., 11/20/36	6981	4834
R2(21)	Deal sheet, first run, Oswego, N. Y., 11/20/36.	6982	4835
R2(22)	Deal sheet, first run, Penn Yan, N. Y., 11/20/36.	6983	4836
R2(23)	Deal sheet, first run, Perry, N. Y., 11/20/36	6984	4837
R2(24)	Deal sheet, first run, Rochester, N. Y., 11/20/36.	6985	4838
R2(25)	Deal sheet, first run, Rochester, N. Y., 11/20/36.	6986	4839
R2(26)	Deal sheet, first run, Rochester, N. Y., 11/20/36.	6987	4840
R2(27)	Deal sheet, first run, Rochester, N. Y., 11/20/36.	6988	4841
R2(28)	Deal sheet, first run, Rochester, N. Y., 11/20/36.	6989	4842
R2(29)	Deal sheet, first run, Rochester, N. Y., 11/20/36.	6990	4843
R2(30)	Deal sheet, first run, Salamanca, N. Y., 11/20/36	6991	4844
R2(31)	Deal sheet, first run, Saranac Lake, N. Y., 11/20/36	6992	4845
R2(32)	Deal sheet, first run, Seneca Falls, N. Y., 11/20/36	6993	4846
R2(33)	Deal sheet, first run, Tupper Lake, N. Y., 11/20/36	6994	4847
R2(34)	Deal sheet, first and second runs, Watertown, N. Y., 11/20/36	6995	4848
R2(35)	Deal sheet, first run, 11/19/36, Ashland, Ohio	6996	4849
R2(36)	Deal sheet, first run, Athens, O., 11/30/36	6997	4850
R2(37)	Deal sheet, first run, Bellefontaine, O., 11/20/36.	6998	4851
R2(38)	Deal sheet, first run, Bucyrus, O., 11/19/36	6999	4852
R2(39)	Deal sheet, first run, Fostoria, O., 11/20/36	7000	4853
R2(40)	Deal sheet, first run, Norwalk, O., 11/19/36	7001	4854
R2(41)	Deal sheet, first run, Piqua, O., 11/30/36	7002	4855
R2(42)	Deal sheet, first run, Van Wert, O., 11/19/36	7003	4856

EXHIBITS PRINTED IN FULL—Continued

		Original	Print
R2(43)	Deal sheet, first run, Wooster, O., 11/19/36	7004	4854
R2(44)	Deal sheet, first run, Paris, Ky., 11/30/36	7005	4858
R2(45)	Deal sheet, first run, Richmond, Ky., 11/30/36.	7006	4859
R2(46)	Deal sheet, first run, Tiffin, O., 11/20/36	7007	4860
R2(47)	Deal sheet, subsequent run, Buffalo, N. Y., 11/20/36	7008	4868
R2(48)	Deal sheet, subsequent run, Buffalo, N. Y., 11/20/36	7009	4862
R2(50)	Deal sheet, first run, Mt. Vernon, O., 11/20/36.	7010	4863
R2(51)	Deal sheet, first run, Lexington, Ky., 11/30/36.	7011	4864
R20	Letter agreement, 10/18/35	7012	4865
R37			
R37(1)	Deal sheet, first run, RKO and Schine, Amsterdam, N. Y., 11/2/36	7013	4866
R37(2)	Deal sheet, second run, Amsterdam, N. Y., 8/15/38	7014	4867
R37(3)	Deal sheet, first run, Ballston, N. Y., 8/15/38	7015	4868
R37(4)	Deal sheet, first run, Glens Falls, N. Y., 8/15/38.	7016	4869
R37(5)	Deal sheet, second run, Glens Falls, N. Y., 8/15/38	7017	4870
R37(6)	Deal sheet, first run, Gloversville, N. Y., 8/15/38	7018	4871
R37(8)	Deal sheet, first run, Hamilton, N. Y., 8/15/38.	7019	4872
R37(9)	Deal sheet, first run, Herkimer, N. Y., 8/15/38.	7020	4873
R37(10)	Deal sheet, first run, Hudson Falls, N. Y., 8/15/38	7021	4874
R37(11)	Deal sheet, first run, Ilion, N. Y., 8/15/38	7022	4875
R37(12)	Deal sheet, first run, Malone, N. Y., 8/15/38	7023	4876
R37(13)	Deal sheet, first run, Massena, N. Y., 8/15/38	7024	4877
R37(14)	Deal sheet, first run, Mechanicville, N. Y., 8/15/38	7025	4878
R37(15)	Deal sheet, first run, Norwich, N. Y., 8/15/38	7026	4879
R37(16)	Deal sheet, first run, Ogdensburg, N. Y., 8/15/38	7027	4880
R37(17)	Deal sheet, first run, Oeonta, N. Y., 8/15/38	7028	4881
R37(18)	Deal sheet, first run, Saranac Lake, N. Y., 8/15/38	7029	4882
R37(19)	Deal sheet, first run, Tupper Lake, N. Y., 8/15/38	7030	4883
R37(20)	Deal sheet, first run, Watertown, N. Y., 8/15/38.	7031	4884
R37(21)	Deal sheet, second run, Watertown, N. Y., 8/15/38	7032	4885
R37(22)	Deal sheet, first run, Whitehall, N. Y., 8/15/38.	7033	4886
R37(23)	Deal sheet, first run, Auburn, N. Y., 8/15/38	7034	4887
R37(24)	Deal sheet, second run, Auburn, N. Y., 1/11/30.	7035	4888
R37(25)	Deal sheet, first run, Bath, N. Y., 8/15/38	7036	4889
R37(26)	Deal sheet, first run, Canandaigua, N. Y., 8/15/38	7037	4890
R37(27)	Deal sheet, first run, Corning, N. Y., 8/15/38	7038	4891
R37(28)	Deal sheet, second run, Corning, N. Y., 8/15/38.	7039	4892
R37(29)	Deal sheet, first run, Cortland, N. Y., 8/15/38	7040	4893

EXHIBITS PRINTED IN FULL—Continued

		Original	Print
R37(30)	Deal sheet, first run, Geneva, N. Y., 8/15/38	7041	4894
R37(31)	Deal sheet, first run, Lockport, N. Y., 8/15/38	7042	4895
R37(32)	Deal sheet, second run, Lockport, N. Y., 8/15/38	7043	4896
R37(33)	Deal sheet, first run, Newark, N. Y., 8/15/38	7044	4897
R37(34)	Deal sheet, first run, Penn Yan, N. Y., 8/15/38	7045	4898
R37(35)	Deal sheet, first run, Perry, N. Y., 8/15/38	7046	4899
R37(36)	Deal sheet, subsequent run, Rochester, N. Y., 8/16/38	7047	4900
R37(37)	Deal sheet, RKO and Schine, subsequent run Rochester, N. Y., 8/15/38	7048	4901
R37(38)	Deal sheet, subsequent run, Rochester, N. Y., 8/15/38	7049	4902
R37(39)	Deal sheet, subsequent run, Rochester, N. Y., 8/20/38	7050	4903
R37(40)	Deal sheet, subsequent run, Rochester, N. Y., 8/20/38	7051	4904
R37(41)	Deal sheet, repeat run, Rochester, N. Y., 8/15/38	7052	4905
R37(42)	Deal sheet, first run, Salamanca, N. Y., 8/15/38	7053	4906
R37(43)	Deal sheet, first run, Seneca Falls, N. Y., 8/15/38	7054	4907
R37(44)	Deal sheet, first run, Ashland, O., 8/15/38	7055	4908
R37(45)	Deal sheet, first run, Athens, O., 8/15/38	7056	4909
R37(46)	Deal sheet, first run, Bellefontaine, O., 8/15/38	7057	4910
R37(47)	Deal sheet, first run, Bucyrus, O., 8/15/38	7058	4911
R37(48)	Deal sheet, first run, Delaware, O., 8/15/38	7059	4912
R37(49)	Deal sheet, first run, Fostoria, O., 8/15/38	7060	4913
R37(50)	Deal sheet, first run, Kent or Ravenna, Ohio, 8/15/38	7061	4914
R37(51)	Deal sheet, repeat run, Kent or Ravenna, Ohio, 8/15/38	7062	4915
R37(52)	Deal sheet, first run, Medina, Ohio, 8/15/38	7063	4916
R37(53)	Deal sheet, first run, Mt. Vernon, Ohio, 8/15/38	7064	4917
R37(54)	Deal sheet, first run, Norwalk, O., 8/15/38	7065	4918
R37(55)	Deal sheet, first run, Shelby, Ohio, 8/15/38	7066	4919
R37(56)	Deal sheet, first run, Tiffin, Ohio, 8/15/38	7067	4920
R37(57)	Deal sheet, first run, Van Wert, Ohio, 8/15/38	7068	4921
R37(58)	Deal sheet, first run, Wooster, Ohio, 8/15/38	7069	4922
R37(59)	Deal sheet, first run, Lexington, Ky., 8/15/38	7070	4923
R37(60)	Deal sheet, second run, Lexington, Ky., 8/15/38	7071	4924
R37(61)	Deal sheet, third run, Lexington, Ky., 8/15/38	7072	4925
R37(62)	Deal sheet, first run, Paris, Ky., 8/15/38	7073	4926
R37(63)	Deal sheet, first run, Piqua, Ohio, 8/15/38	7074	4927
R37(64)	Deal sheet, first run, Richmond, Ky., 8/15/38	7075	4928
R37(65)	Deal sheet, first run, Little Falls, N. Y., 8/15/38	7076	4929
R37(66)	Deal sheet, RKO and Schine, first run, East Rochester or Fairport, N. Y., 11/28/39	7077	4930
R37(67)	Deal sheet, fourth run, Lexington, Ky., 4/21/41	7078	4931
R37(68)	Deal sheet, first run, Oswego, N. Y., 10/26/38	7079	4932
R37(69)	Deal sheet, first run, Pikesville, Ky., 3/9/39	7080	4933

EXHIBITS PRINTED IN FULL—Continued

		Original	Print
R37(70)	Deal sheet, first run, Salisbury, Md., 11/3/38	7081	4934
R37(71)	Deal sheet, first run, Hurlock, Md., 10/9/40	7082	4935
R37(72)	Deal sheet, first run, 8/15/38, Cambridge, Md.	7083	4936
R37(73)	Deal sheet, first run, Maysville, Ky., 8/15/38	7084	4937
R37(74)	Deal sheet, first run, Easton, Md., 11/3/38	7085	4938
R37(75)	Deal sheet, first run, Federalsburg, Md., 11/3/38	7086	4939
R37(76)	A-deal sheet, RKO and Schine, first run, Granville, N. Y., 12/27/38	7087	4940
	B-deal sheet RKO and Schine, first run, Granville, N. Y., 12/27/38	7088	4941
R37(77)	Deal sheet, no run, Carthage, N. Y., 8/15/38	7089	4942
R37(78)	Deal sheet, RKO and Schine, Rochester, N. Y., 11/28/39	7090	4943
R37(79)	Deal sheet, Rochester, N. Y., 11/28/39	7091	4944
R37(80)	Deal sheet, Rochester, N. Y., 11/28/39	7092	4945
R37(81)	Deal sheet, Rochester, N. Y., 4/1/41	7093	4946
R37(82)	Deal sheet, Syracuse, N. Y., 4/1/41	7094	4947
R37(83)	Deal sheet, Salisbury, Md., 10/9/40	7095	4948
R42	Agreement, RKO and Schine, 10/29/34	7096	4949
R43	Letter, RKO and Schine, 11/1/34	7098	4950
F1	Agreement, Fox and Schine, 8/5/36	7099	4951
F102	Deal sheet, Fox and Schine, 6/17/38, Hamilton, N. Y., 1st run	7103	4955
F103	Deal sheet, Fox and Schine, 6/17/36, Glens Falls, N. Y., 2nd run	7104	4956
F104	Deal sheet, Fox and Schine, 6/17/36, Herkimer, N. Y., 1st run	7105	4957
F105	Deal sheet, Fox and Schine, 6/17/36, Hudson Falls, 1st run	7106	4958
F106	Deal sheet, Fox and Schine, 6/17/36, Little Falls, N. Y.	7107	4959
F107	Deal sheet, Fox and Schine, 6/17/36, Malone, N. Y.	7108	4960
F108	Deal sheet, Fox and Schine, 6/17/36, Athens, O., 1st run	7109	4961
F109	Deal sheet, Fox and Schine, 6/17/36, Gloversville and Oneonta, 2nd run	7110	4962
F110	Deal sheet, Fox and Schine, 10/27/37, Fostoria, O.	7111	4963
F111	Deal sheet, Fox and Schine, 10/11/39, Medina, O.	7112	4964
F112	Deal sheet, Fox and Schine, 10/28/36, Watertown, Palace, 3rd run	7113	4965
F113	Deal sheet, Fox and Schine, 8/11/37, Perry, 1st run	7114	4966
F114	Deal sheet, Fox and Schine, 8/11/37, Penn Yan, 1st run	7115	4967
F115	Deal sheet, Fox and Schine, 4/27/37, Ilion, N. Y.	7116	4968

EXHIBITS PRINTED IN FULL—Continued

		Original	Print
F193	Agreement, Twentieth Century-Fox and Schine, 6/5/39	7116a	4969
C100	Agreement, Columbia and Schine, 10/17/38	7117	4971
C101	Letter, Columbia to Schine, 11/28/38	7119	4973
C102(1)	Deal Sheet, Columbia and Schine, second run, Auburn, N. Y., 10/17/38	7120	4975
C102(2)	Deal Sheet, first run, Bath, N. Y., 10/17/38	7121	4976
C102(3)	Deal sheet, subsequent run, Buffalo, N. Y., 10/17/38	7122	4977
C102(4)	Deal sheet, subsequent run, Buffalo, N. Y., 10/17/38	7123	4978
C102(5)	Deal sheet, first run, Canandaigua, N. Y., 10/17/38	7124	4979
C102(6)	Deal sheet, first run, Cortland, N. Y., 10/17/38	7125	4980
C102(7)	Deal sheet, first run, Geneva, N. Y., 10/17/38	7126	4981
C102(8)	Deal sheet, first run, Lockport, N. Y., 10/17/38	7127	4982
C102(9)	Deal sheet, second run, Lockport, N. Y., 10/17/38	7128	4983
C102(10)	Deal sheet, first run, Newark, N. Y., 10/17/38	7129	4984
C102(11)	Deal sheet, first run, Oswego, N. Y., 10/17/38	7130	4985
C102(12)	Deal sheet, first run, Penn Yan, N. Y., 10/17/38	7131	4986
C102(13)	Deal sheet, first run, Perry, N. Y., 10/17/38	7132	4987
C102(14)	Deal sheet, subsequent run, Rochester, N. Y., 10/17/38	7133	4988
C102(15)	Deal sheet, Subsequent run, Rochester, N. Y., 10/17/38	7134	4989
C102(16)	Deal sheet, subsequent run, Rochester, N. Y. 10/17/38	7135	4990
C102(17)	Deal sheet, subsequent run, Rochester, N. Y., 10/17/38	7136	4991
C102(18)	Deal sheet, repeat run, Rochester, N. Y., 10/17/38	7137	4992
C102(19)	Deal sheet, subsequent run, Rochester, N. Y., 10/17/38	7138	4993
C102(20)	Deal sheet, repeat run, Rochester, N. Y., 10/17/38	7139	4994
C102(21)	Deal sheet, first run, Salamanca, N. Y. 10/17/38	7140	4995
C102(22)	Deal sheet, first run, Seneca Falls, N. Y., 10/17/38	7141	4996
C102(23)	Deal sheet, "You Can't Take It With You"	7142	4997
C102(24)	Deal sheet, First run, Amsterdam, N. Y., 10/18/38	7144	4999
C102(25)	Deal sheet, first run, Ballston, N. Y., 10/17/38	7145	5000
C102(26)	Deal sheet, first run, Carthage, N. Y., 10/17/38	7146	5001
C102(27)	Deal sheet, first run, Glens Falls, N. Y., 10/17/38	7147	5002
C102(28)	Deal sheet, second run, Glens Falls, N. Y., 10/17/38	7148	5003
C102(29)	Deal sheet, first run, Gloversville, N. Y., 10/17/38	7149	5004
C102(30)	Deal sheet, first run, Hamilton, N. Y., 10/17/38	7150	5005

EXHIBITS PRINTED IN FULL—Continued

		Original	Print
C102(31)	Deal sheet, first run, Herkimer, N. Y., 10/17/38	7151	5006
C102(32)	Deal sheet, first run, Hudson Falls, N. Y., 10/17/38	7152	5007
C102(33)	Deal sheet, first run, Ilion, N. Y., 10/17/38	7153	5008
C102(34)	Deal sheet, first run, Little Falls, N. Y., 10/17/38	7154	5009
C102(35)	Deal sheet, first run, Malone, N. Y., 10/17/38	7155	5010
C102(36)	Deal sheet, first run, Mechanicville, N. Y. 10/17/38	7156	5011
C102(37)	Deal sheet, first run, Norwich, N. Y., 10/17/38	7157	5012
C102(38)	Deal sheet, first run, Ogdensburg, N. Y., 10/17/38	7158	5013
C102(39)	Deal sheet, first run, Oneonta, N. Y., 10/17/38	7159	5014
C102(40)	Deal sheet, first run, Saranac Lake, N. Y., 10/17/38	7160	5015
C102(41)	Deal sheet, first run; Tupper Lake, N. Y., 10/17/38	7161	5016
C102(42)	Deal sheet, first run, Watertown, N. Y., 10/17/38	7162	5017
C102(43)	Deal sheet, second run, Watertown, N. Y., 10/17/38	7163	5018
C102(44)	Deal sheet, first run, Whitehall, N. Y., 10/17/38	7164	5019
C102(45)	Deal sheet, first run, Easton, Md., 10/17/38	7165	5020
C102(46)	Deal sheet, first run, Federalsburg, Md., 10/17/38	7166	5021
C102(47)	Deal sheet, first run, Hurlock, Md., 10/17/38	7167	5022
C102(48)	Deal sheet, first run, Salisbury, Md., 10/17/38	7168	5023
C102(49)	Deal sheet, "You Can't Take It With You," Easton, Hurlock, Federalsburg, and Salisbury	7169	5024
C102(50)	Deal sheet, first run, Athens, Ohio, 10/17/38	7170	5025
C102(51)	Deal sheet, first run, Lexington, Ky., 10/17/38	7171	5026
C102(52)	Deal sheet, third run, Lexington, Ky., 10/17/38	7172	5027
C102(53)	Deal sheet, first run, Maysville, Ky., 10/17/38	7173	5028
C102(54)	Deal sheet, first run, Paris, Ky., 10/17/38	7174	5029
C102(55)	Deal sheet, first run, Piqua, Ohio, 10/17/38	7175	5030
C102(56)	Deal sheet, first run, Richmond, Ky., 10/17/38	7176	5031
C102(57)	Deal sheet, first run, Ashland, Ohio, 10/17/38	7177	5032
C102(58)	Deal sheet, first run, Bellefontaine, Ohio, 10/17/38	7178	5033
C102(59)	Deal sheet, first run, Bucyrus, Ohio, 10/17/38	7179	5034
C102(60)	Deal sheet, first run, Delaware, Ohio, 10/17/38	7180	5035
C102(61)	Deal sheet, first run, Fostoria, Ohio, 10/17/38	7181	5036
C102(62)	Deal sheet, first run, Kent or Ravenna, Ohio, 10/17/38	7182	5037
C102(63)	Deal sheet, repeat run, Kent or Ravenna, 10/17/38	7183	5038
C102(64)	Deal sheet, first run, Norwalk, Ohio, 10/17/38	7184	5039
C102(65)	Deal sheet, first run, Tiffin, Ohio, 10/17/38	7185	5040
C102(66)	Deal sheet, first run, Van Wert, Ohio, 10/17/38	7186	5041
C102(67)	Deal sheet, first run, Wooster, Ohio, 10/17/38	7187	5042

EXHIBITS PRINTED IN FULL—Continued

		Original	Print
C102(68)	Subsequent run, deal sheet, Rochester, N. Y., 12/28/39	7188	5043
C102(69)	Deal sheet, subsequent run, Rochester, N. Y., 12/28/39	7189	5044
C102(70)	Deal sheet, first run, Rochester, N. Y., 12/28/39.	7190	5045
C102(71)	Deal sheet, after fourth run, Syracuse, N. Y., 9/28/39	7191	5046
C102(72)	Deal sheet, first run, Cambridge, Md., 4/11/39	7192	5047
C102(73)	Deal sheet, first run, Corbin, Ky., 9/28/39	7193	5048
C102(74)	Deal sheet, first and repeat runs, East Rochester or Fairport, N. Y., 9/28/39	7194	5049
C102(75)	Deal sheet, first run, Laurel, Del., 4/11/39	7195	5050
C102(76)	Deal sheet, first run, Maysville, Ky., 10/23/39	7196	5051
C102(77)	Deal sheet, first run, Middlesboro, Ky., 9/28/39.	7197	5052
C102(78)	Deal sheet, first run, Milford, Del., 4/11/39	7198	5053
C102(79)	Deal sheet, second run, Lexington, Ky., 3/4/40.	7199	5054
C102(80)	Deal sheet, "You Can't Take It With You," 10/17/38	7200	5055
C102(81)	Deal sheet, first run, Bowling Green, Ohio, 9/29/39	7201	5056
C180	Agreement, Columbia and Schine, 11/19/40	7202	5057
C181(1)	Deal sheet, first run, Bath, N. Y., 11/19/40	7205	5061
C181(2)	Deal sheet, subsequent run, Buffalo, N. Y., 11/19/40	7206	5062
C181(3)	Deal sheet, subsequent run, Buffalo, N. Y., 11/19/40	7207	5063
C181(4)	Deal sheet, first run, Canandaigua, N. Y., 11/19/40	7208	5064
C181(5)	Deal sheet, first run, Corning, N. Y., 11/19/40	7209	5065
C181(6)	Deal sheet, first run, Cortland, N. Y., 11/19/40.	7210	5066
C181(7)	Deal sheet, first run, East Rochester or Fairport, N. Y., 11/19/40	7211	5067
C181(8)	Deal sheet, repeat run, East Rochester or Fairport, N. Y., 11/19/40	7212	5068
C181(9)	Deal sheet, first run, Geneva, N. Y., 11/19/40	7213	5069
C181(10)	Deal sheet, first run, Lockport, N. Y., 11/19/40.	7214	5070
C181(11)	Deal sheet, second run, Lockport, N. Y., 11/19/40	7215	5071
C181(12)	Deal sheet, first run, Newark, N. Y., 11/19/40.	7216	5072
C181(13)	Deal sheet, first run, Oswego, N. Y., 11/19/40.	7217	5073
C181(14)	Deal sheet, first run, Penn Yan, N. Y., 11/19/40.	7218	5074
C181(15)	Deal sheet, first run, Perry, N. Y., 11/19/40	7219	5075
C181(16)	Deal sheet, subsequent run, Rochester, N. Y., 11/19/40	7220	5076
C181(17)	Deal sheet, second run, Rochester, N. Y., 11/19/40	7221	5077
C181(18)	Deal sheet, subsequent run, Rochester, N. Y., 11/19/40	7222	5078
C181(19)	Deal sheet, subsequent run, Rochester, N. Y., 11/19/40	7223	5079

EXHIBITS PRINTED IN FULL—Continued

		Original	Print
C181(20)	Deal sheet, subsequent run, Rochester, N. Y., 11/19/40	7224	5080
C181(21)	Deal sheet, subsequent run, Rochester, N. Y., 11/19/40	7225	5081
C181(22)	Deal sheet, subsequent run, Rochester, N. Y., 11/19/40	7226	5082
C181(23)	Deal sheet, second run, Rochester, N. Y., 11/19/40	7227	5083
C181(24)	Deal sheet, second run, Rochester, N. Y., 11/19/40	7228	5084
C181(25)	Deal sheet, subsequent run, Rochester, N. Y., 11/19/40	7229	5085
C181(26)	Deal sheet, subsequent run, Rochester, N. Y., 11/19/40	7230	5086
C181(27)	Deal sheet, first run, Salamanca, N. Y., 11/19/40	7231	5087
C181(28)	Deal sheet, first run, Seneca Falls, N. Y., 11/19/40	7232	5088
C181(29)	Deal sheet, first run, Cambridge, Md., 11/19/40	7233	5089
C181(30)	Deal sheet, first run, Easton, Md., 11/19/40	7234	5090
C181(31)	Deal sheet, first run, Federalsburg, Md., 11/19/40	7235	5091
C181(32)	Deal sheet, first run, Milford, Del., 11/19/40	7236	5092
C181(33)	Deal sheet, first run, Salisbury, Md., 11/19/40	7237	5093
C181(34)	Deal sheet, first run, Salisbury, Md., 10/8/40	7238	5094
C181(35)	Deal sheet, first run, Ashland, Ohio, 11/19/40	7239	5095
C181(36)	Deal sheet, first run, Bellefontaine, Ohio, 11/19/40	7240	5096
C181(37)	Deal sheet, first run, Bowling Green, Ohio, 11/19/40	7241	5097
C181(38)	Deal sheet, first run, Bucyrus, Ohio, 11/19/40	7242	5098
C181(39)	Deal sheet, first run, Delaware, Ohio, 11/19/40	7243	5099
C181(40)	Deal sheet, first run, Fostoria, Ohio, 11/19/40	7244	5100
C181(41)	Deal sheet, first run, Kentor Ravenna, Ohio, 11/19/40	7245	5101
C181(42)	Deal sheet, repeat run, Kent or Ravenna, Ohio, 11/19/40	7246	5102
C181(43)	Deal sheet, first run, Norwalk, Ohio, 11/19/40	7247	5103
C181(44)	Deal sheet, first run, Tiffin, Ohio, 11/19/40	7248	5104
C181(45)	Deal sheet, first run, Van Wert, Ohio, 11/19/40	7249	5105
C181(46)	Deal sheet, first run, Athens, Ohio, 11/19/40	7250	5106
C181(47)	Deal sheet, first run, Corbin, Ky., 11/19/40	7251	5107
C181(48)	Deal sheet, second run, Harlan, Ky., 11/19/40	7252	5108
C181(49)	Deal sheet, first run, Lexington, Ky., 11/19/40	7253	5109
C181(50)	Deal sheet, second run, Lexington, Ky., 11/19/40	7254	5110
C181(51)	Deal sheet, third run, Lexington, Ky., 11/19/40	7255	5111
C181(52)	Deal sheet, second run on "Mr. Smith Goes to Washington," Lexington, Ky., 11/19/40	7256	5112
C181(53)	Deal sheet, first run, Maysville, Ohio, 11/19/40	7257	5113
C181(54)	Deal sheet, first run, Middlesboro, Ky., 11/19/40	7258	5114

EXHIBITS PRINTED IN FULL—Continued

		Original	Print
C181(55)	Deal sheet, first run, Paris, Ky., 11/19/40	7259	5115
C181(56)	Deal sheet, first run, Piqua, Ohio, 11/19/40	7260	5116
C181(57)	Deal sheet, first run, Richmond, Ky., 11/19/40	7261	5117
C181(58)	Deal sheet, first run, Amsterdam, N. Y., 11/19/40	7262	5118
C181(59)	Deal sheet, first run, Ballston, N. Y., 11/19/40	7263	5119
C181(60)	Deal sheet, first run, Carthage, N. Y., 11/19/40	7264	5120
C181(61)	Deal sheet, first run, Glens Falls, N. Y., 11/19/40	7265	5121
C181(62)	Deal sheet, second run, Glens Falls, N. Y., 11/19/40	7266	5122
C181(63)	Deal sheet, first run, Gloversville, N. Y., 11/19/40	7267	5123
C181(64)	Deal sheet, second run, Gloversville, N. Y., 11/19/40	7268	5124
C181(65)	Deal sheet, first run, Granville, N. Y., 1/23/41	7269	5125
C181(66)	Deal sheet, first run, Hamilton, N. Y., 11/19/40	7270	5126
C181(67)	Deal sheet, first run, Herkimer, N. Y., 11/19/40	7271	5127
C181(68)	Deal sheet, first run, Hudson Falls, N. Y., 11/19/40	7272	5128
C181(69)	Deal sheet, first run, Ilion, N. Y., 11/19/40	7273	5129
C181(70)	Deal sheet, first run, Little Falls, N. Y., 11/19/40	7274	5130
C181(71)	Deal sheet, first run, Malone, N. Y., 11/19/40	7275	5131
C181(72)	Deal sheet, first run, Mechanicville, N. Y., 1/23/41	7276	5132
C181(73)	Deal sheet, first run, Odgensburg, N. Y., 11/19/40	7277	5133
C181(74)	Deal sheet, first run, Oneonta, N. Y., 11/19/40	7278	5134
C181(75)	Deal sheet, first run, Saranac Lake, N. Y., 11/19/40	7279	5135
C181(76)	Deal sheet, first run, Tupper Lake, N. Y., 11/19/40	7280	5136
C181(77)	Deal sheet, first run, Watertown, N. Y., 11/19/40	7281	5137
C181(78)	Deal sheet, second run, Watertown, N. Y., 11/19/40	7282	5138
C181(79)	Deal sheet, first run, Whitehall, N. Y., 11/19/40	7283	5139
S73	Agreement, Palace Lockport Corporation, et al. and N. Dipson, et al., 10/10/36	7284	5141
S74	Agreement, Jack Frisch, et al. and J. M. Schine, et al., 1/11/39	7285	5141
S75	Agreement, Charles Brown, et al., and Phoenix Amusement Company, 1/14/39	7286	5142
D1	Letter, Long to Schmertz, Fox, 11/8/35	7287	5143
D2	Letter, Long to McEvoy, RKO, 10/30/35	7288	5144
D3	Letter, Long to Schmertz, Fox, 4/4/35	7289	5145
D4	Letter, Long to Manager, RKO, 4/14/35	7290	5146
D5	Letter, Long to Drew, MGM, 4/20/38	7291	5147
D6	Letter, Drew to Long, 4/12/38	7292	5148
D7	Letter, Long to Mgr., Warners, 4/14/35	7293	5149

EXHIBITS PRINTED IN FULL—Continued

		Original	Print
D8	Letter, Long to McEvoy, RKO, 10/7/35	7294	5150
D9	Letter, Long to McEvoy, RKO, 10/30/35	7295	5151
D10	Contract recommendation for Memorial Theatre, Mt. Vernon, Ohio, 9/8/37	7296	5152
D12	Letter, Himmelein, Paramount, to Mrs. Moore, 1/5/36	7299	~~5153~~
D13	Letter, Moore to Silverman, 4/12/36	7300	5153
D14	Letter, Moore to May, 4/13/36	7302	5154
D15	Letter, Moore to Lazar, 5/12/36	7304	5154
D16	Letter, Moore to Lichter, (Fox) 6/1/36	7305	5155
D25	Contract, Angelas and Norwalk Theatre Corp., 5/19/39	7307	5155
D27	Letters, 1/18/40 and 2/3/40—United Artists to A. Felice	7311	5159
D38	Letter, 8/24/35, Charnas to Paramount	7313	5161
D43	Copy of resolution of stockholders of Bellefontaine Amusement Co.	7314	5161
D44	Agreement between Daniel Gutilla and Bellefontaine Amusement Co., 7/28/31	7315	5162
D46	Agreement, March 18, 1937, Yudelewitz, Willis and Belpik Theatre Corp. re lease of Princess and proposed new theatre	7317	5162
D50	Letter, Kaplan to Grafiades, 1/16/34	7320	5165
D51	Telegram, 1/30/34, Lichtman to Reliance	7321	5166
D52	Telegram, 1/31/34, Lichtman to Reliance	7322	5166
D53	Telegram, 2/26/34, Lichtman to Reliance	7323	5166
D54	Telegram, 5/10/34, Lichtman to Reliance	7324	5167
D55	Telegram, 6/12/34, Lichtman to Reliance	7325	5167
D56	Letter, 6/14/34, Bykowski to Grafiades	7326	5167
D57	Telegram, 6/23/34, Lichtman to Reliance	7327	5168
D58	Letter, 11/7/34, U. A. to Grafiades	7328	5168
D59	Letter, 1/18/35, Bykowski to Grafiades	7329	5169
D60	Letter, 9/21/35, Kaplan to Dickinson	7330	5169
D61	Letter, 11/13/35, Kelly to Reliance	7331	5170
D116	Photostat of Syracuse Post-Standard, Sept. 18, 1941	7332	5170
D120	Copy of letter, Lux to Wallace, 10/16/41	7333	5171
D122	Photograph of Capitol Theatre, Auburn, about 1/1/39	7334	5172
D130	Letter, Wallace to Paramount, 7/4/32	7335	5173
D131	Letter, Wallace to U. A., 6/22/23	7336	5174
D132	Letter, Fox to Wallace, 1/27/39	7338	5175
D133	Copy of letter, Boumansour to Department of Justice, April 4, 1941	7337	5176
D137	Salesman's report, 2/4/37, by Struwe	7339	5176
D138	Photograph of Smalley billboard on Gloversville, Johnstown road	7340	5176
D139	Photograph of Smalley billboard in Gloversville	7341	5176
D143	Letter, Picker to Smalley, 6/3/40	7342	5177
D144	Letter, Moross to Smalley, 11/13/39	7343	5178

EXHIBITS PRINTED IN FULL—Continued

		Original	Print
D145	Advertisement of Smalley's Norwich Theatre	7344	5179
D146	Photograph of Smalley's Norwich billboard showing 10¢–20¢ prices, Jan. 1942	7345	5180
D148B	Letter attached to contract of 7/13/35, Brand to Mooney	7346	5181
D148C	Agreement, 7/13/35, signed for Vitagraph by W. J. Brandt and State Bucyrus Co. by M. Bryer	7347	5181
D148E	Notification of cancellation, 12/2/35, house taken over by Schine. New contract cancels contract No. 4447 dated 7/13/35 attached to contract exhibit 148D re First National Product	7348	5182
D148F	Same for Warner product	7349	5182
D150	Memorandum showing cost of acquisition and improvements to various Schine theatres, etc.	7350	5183
D153	Copy of ordinance No. A of Board of Council, City of Paris, 10/5/37	7356	5185
D153A	Permit from City of Paris, 10/7/37	7358	5187
D154	Photostat of page from Bucyrus Telegraph—Forum, 9/6/35 showing advertisement of "Page Miss Glory" at State Theatre	7359	5188

[fol. 6520e]

Exhibit 959

United Artists

Clearances

(1940-41)

Buffalo Territory

Auburn (Auburn, Jefferson or Palace): 30 days ahead of Skaneateles and Weedsport.

(Jefferson or Palace) Second run. 60 days over third run.

Bath (Babcock): 30 days ahead of Hammondsport, Cohocton, Prattsburg and Savonia.

Buffalo (Granada): 14 days ahead of Varsity, Central Park and Little Kensington and Williamsville. Open booking with Kenmore. 4 days over New Amherst. See letter 12/18/41 to S. Lehman.

(Riverside) Immediately after Shea's North Park. 14 days ahead of Unity, Jubilee, Kenmore, N. Y., Rialto, Circle, Senate, Allendale, Marlowe, Park and Pastime.

Canandaigua (Playhouse or New House): 14 days ahead of Naples, N. Y. 30 days ahead of Clifton Spgs.

Carthage (Strand): 90 days over City of Carthage. 14 days over Lowville.

Corning (Fox, Palace or State): 30 days ahead of Painted Post and Addison. 60 days over City of Corning.

(State or Palace) Second run. 60 days over third run.

Cortland (State or Temple): 30 days ahead of Marathon, Groton, Homer, McGrawsville, Tully and Moravia.

Geneva (Geneva or Regent): 30 days ahead of Lyons, Waterloo, Palmyra, Clifton Springs, Manchester, Phelps and Clyde.

Lockport (Palace, Rialto or Hi-Art): 30 days ahead of Newfane and Middleport.

(Rialto or Hi-Art) Second run.

Newark (Capitol): 14 days ahead of Lyons and Palmyra. 14 days ahead of Clyde.

Oswego (Strand or Capitol): 30 days ahead of Minetto and Mexico. 14 days ahead of Fulton, 5 days ahead of Pulaski.

Penn Yan (Elmwood): 30 days ahead of Dundee.

Rochester (Cameo): 14 days ahead of Lyric, Empress and Rivoli. Immediately after Madison and Monroe Theatres.

(Grand) Immediately after Fenyvessy's Madison and Monroe Theatres. Open booking with Strand. 14 days ahead of Embassy and Empire Theatres.

Buffalo Territory, # 2

[fol. 6520f] Rochester:

(Lake): 7 days after Madison and Monroe Theatres.

(Riviera or Liberty): Second run. 14 days ahead of Hudson, Aster, Hub, Sea Breeze, N. Y. 21 days over subsequent runs. 30 days ahead of Lake and Hollywood Theatres.

(Liberty—repeat): Second run. To be played within 21 days clearance of Riviera.

(Madison): After Riviera, Liberty, State, Dixie and Capitol. 7 days ahead of other subsequent runs. 4 days ahead of Webster Theatre.

(Monroe). After Riviera, Liberty, State, Dixie and Capitol. 7 days ahead of other subsequent runs. 4 days ahead of Webster Theatre.

(State or Dixie): Second run. 21 days over subsequent runs. 30 days ahead of Plaza Theatre. 14 days ahead of Webster Theatre.

(State or Dixie—Repeat): Second run. To be played within the 21 days clearance of Dixie or State. 14 days ahead of Webster Theatre, Plaza and Culver Theatres.

(West End): Open booking with Arnett Theatre.

Salamanca (Andrews or New House): 30 days ahead of Little Valley, Randolph, Ellicottsville and Franklinville. Open booking with Olean.

Seneca Falls (Strand): 30 days ahead of Waterloo. 120 days over second run.

Watertown (Avon, Olympic or Palace): 30 days ahead of Adams, Sackets Harbor, Antwerp, Philadelphia, Dexter and Theresa. 60 days over second run. (Olympic or Palace): Second run. 30 days ahead of third run.

East Rochester or Fairport (Rialto or Temple): 30 days after first run Rochester.

Syracuse (Palace): 7 days after fourth run. Open booking with Acme, Globe and Shiller Park. Ahead of East Syracuse.

It is understood and agreed that the above clearances apply to the 1940-41 contracts and approval of the contracts is an automatic approval of the above clearances.

United Artists Corp., By: B. M. Stearn. Schine Enterprises Corp., By: —— ——.

[fols. 6521-6522] EXHIBIT 980

1st Run

Saint's Vacation, 6/6—200
They Meet Again, 7/11—200
Hurry Charlie Hurry, 7/25—200
Flying Down to Rio—200

2nd Run

They Meet in Argentina—now—100.00
Reluctant Dragon—now—200
Jungle Cavalcade X OK, 9/28—150
Snow White—25%—1000.
4 Academy—25¢

[fols. 6523-6524] Sept. 20-23—Jungle Cavalcade, 9/28
Flying Down to Rio
Sept. 24-26.
Sept. 20-23—300
Sept. 24-26—Argentina-Hurry Charlie—200-25
Sept. 27-30
(Tom, Dick, Harry, Oct-15-) Oct. 4-7
Citizen Kane.—Oct. 8-10
All That Money Can Buy, Parachute Bat-allion
Father Talks, Oct. 11-14. Lady Lucifer, Oct. 15-17
Tom Dick Harry, Sub. 100.

[fol. 6525] EXHIBIT 985

June 30, 1941

Estate of Norman L. Bates
Florence M. Bates, Co-Adm'r.
Oswego, New York

Gentlemen:

You are hereby advised that the undersigned elects to exercise its option, contained in that certain agreement, dated June 17, 1940, extending the lease covering the premises known as the Richardson Theatre, Oswego, New York, to extend said lease for a further period of one year from the expiration of the present term as extended, to wit: July 31, 1941.

You are further advised that said lease is, pursuant to the foregoing exercise of option, extended for one year from August 1, 1941 to July 31, 1942.

Very truly yours,

G.-C. Theatre Corp.
By J. Guy Selms, Vice Pres.

[fol. 6526] Exhibit 986

In the District Court of the United States for the Western District of New York

Civil Action. No. 223

United States of America, Plaintiff,

against

Schine Chain Theatres, Inc., et al., Defendants

Stipulation

It Is Hereby Stipulated and Agreed by and between counsel for the plaintiff and counsel for defendants that a representative of Paramount Pictures, Inc., if called, would testify that the following 1932-33, 1933-34 and 1934-35 feature pictures released by Paramount Pictures, Inc. were exhibited in Auburn, New York, at the theatre and for the film rental and by the exhibitor set opposite the name of each picture.

First Run—1932-33

Feature Title	Theatre	Film Rental Paid	Exhibitor
Guilty as Hell	Strand	$135.00	Central New York Theatres
Devil and the Deep	Strand	135.00	"
Horse Feathers	Jefferson	385.94	"
Love Me Tonight	Jefferson	187.00	"
70,000 Witnesses	Strand	135.00	"
Blonde Venus	Jefferson	305.31	"
Movie Crazy	Strand	377.53	"
Night of June 13	Strand	137.50	"
Heritage of the Desert	Strand	135.00	"
The Phantom President	Jefferson	279.16	"
Madison Square Garden	Strand	140.00	"

[fol. 6527]

Night after Night	Strand	135.00	"
Hot Saturday	Strand	135.00	"
The Big Broadcast	Jefferson	383.13	"
Trouble in Paradise	Jefferson	102.58	"
A Farewell to Arms	Jefferson	339.31	"
He Learned about Women	Strand	135.00	"
Evenings for Sale	Strand	128.00	"
Wild Horse Mesa	Strand	130.00	"
If I had a Million	Jefferson	213.19	"
Undercover Man	Jefferson	140.50	"
The Devil is Driving	Jefferson	133.50	"
Madame Butterfly	Jefferson	167.60	"
Island of Lost Souls	Strand	150.23	"
No Man of Her Own	Jefferson	320.81	"
Sign of Cross	Jefferson	348.16	"
Billion Dollar Scandal	Strand	135.00	"
Tonight is Ours	Jefferson	172.45	"
The Mysterious Rider	Strand	135.00	"
She Done Him Wrong	Jefferson	287.12	"
Luxury Liner	Jefferson	140.50	"
The Woman Accused	Jefferson	140.50	"
Hello Everybody	Strand	196.13	"
Crime of the Century	Strand	135.00	"
From Hell to Heaven	Strand	135.00	"

[fol. 6528]

A Lady's Profession	Jefferson	140.50	Central New York Theatres
Strictly Personal	Jefferson	135.00	Schine Theatre Co. Inc.
Pick Up	Jefferson	340.68	Central New York Theatres Corp.
Under the Tonto Rim	Strand	135.00	"
Murder in the Zoo	Strand	135.00	"
King of the Jungle	Jefferson	231.90	"
Terror Aboard	Strand	135.00	Schine Theatre Co. Inc.
A Bedtime Story	Jefferson	177.61	"
Story of Temple Drake	Strand	135.00	"
Song of Eagle	Strand	137.50	"
I Love that Man	Strand	137.50	"
Supernatural	Capitol	55.00	Auburn Capitol Theatre Corp.
Sunset Pass	Jefferson	135.00	Schine Theatre

First Run—1932-33

Feature Title	Theatre	Film Rental Paid	Exhibitor
			Co. Inc.
Eagle & Hawk	Jefferson	140.50	"
International House	Jefferson	144.00	"
The Girl in 419	Capitol	55.00	Auburn Capitol Theatre Corp.
enny Gerhardt	Strand	137.50	Schine Theatre Co. Inc.
Gambling Ship	Capitol	55.00	Auburn Capitol Theatre Corp.
College Humor	Jefferson	372.42	Schine Theatre Corp.
Man of the Forest	Capitol	55.00	Auburn Capitol Theatre Corp.
Disgraced	Capitol	55.00	"
Mama Loves Papa	Capitol	55.00	"
[fol. 6529]			
Her Bodyguard	Strand	135.00	Schine Theatre Corp.
Midnight Club	Jefferson	140.50	"
Totals		$10,166.76	

Recapitulation

40 pictures	Central New York Theatres	$7,774.23
13 "	Schine Theatre Co. Inc.	2,062.53
6 "	Auburn Capitol Theatre Corp.	330.00
		$10,166.76

First Run—1933-34

Three Cornered Moon	Capitol	$80.00	Auburn Capitol Theatre Corp.
Song of Songs	"	80.00	"
Big Executive	"	80.00	"
This Day & Age	"	80.00	"
To the Last Man	"	80.00	"
One Sunday Afternoon	"	80.00	"
Torch Singer	"	178.79	"
Too Much Harmony	"	362.49	"
Golden Harvest	"	80.00	"
I'm no Angel	"	566.71	"
Tillie and Gus	"	80.00	"
The Way to Love	"	80.00	"
Take a Chance	"	133.55	"
Hell and High Water	"	80.00	"
White Woman	"	80.00	"
[fol. 6530]			
Cradle Song	Capitol	$80.00	Auburn Capitol Theatre Corp.
Duck Soup	"	302.74	"
Sitting Pretty	"	280.37	"
Thundering Herd	"	80.00	"
Lone Cowboy	"	130.00	"
Girl Without a Room	"	80.00	"
Alice in Wonderland	"	198.90	"
Design for Living	"	174.90	"
Eight Girls in a Boat	"	80.00	"
Miss Fane's Baby is Stolen	"	145.46	"

First Run—1933-34

Feature Title	Theatre	Film Rental Paid	Exhibitor
His Double Life	"	80.00	"
All of Me	"	212.15	"
Four Frightened People	"	229.48	"
The Last Round-Up	"	80.00	"
Search for Beauty	"	139.84	"
Six of a Kind	"	207.07	"
Good Dame	"	171.35	"
Bolero	"	154.78	"
No More Women	"	234.58	"
She Made Her Bed	"	80.00	"
Wharf Angel	"	80.00	"
Come on Marines	"	162.80	"
Death Takes a Holiday	"	166.08	"
You're Telling Me	"	80.00	"
Trumpet Blows	"	148.50	"
Melody in Spring	"	130.00	"

[fol. 6531]

We're not Dressing	Capitol	209.02	Auburn Capitol Theatre Corp.
The Witching Hour	"	80.00	"
Double Door	"	80.00	"
Private Scandal	"	143.04	"
Thirty Day Princess	"	174.64	"
Murder at the Vanities	"	223.86	"
Little Miss Marker	"	163.51	"
Many Happy Returns	"	325.95	"
The Great Flirtation	"	80.00	"
Here Comes the Groom	"	80.00	"
Shoot the Works	"	273.10	"
It Ain't No Sin	"	527.69	"
Kiss and Make-Up	"	130.00	"
The Old Fashioned Way	"	130.00	"
Notorious Sophie Long	"	130.00	"
Elmer & Elsie	"	80.00	"

Recapitulation

57 pictures	Auburn Capitol Theatre Corp.	$8,861.35

First Run—1934-35

Ladies Should Listen	Palace	$117.50	Mamyer Corp.
She Loves Me Not	Jefferson	363.87	"
Crime without Passion	Palace	117.50	"
You Belong to Me	Strand	117.50	"
Now and Forever	Jefferson	476.48	"

[fol. 6532]

The Scarlet Empress	Palace	117.50	Mamyer Corp.
Wagon Wheels	Strand	117.50	"
Lemon Drop Kid	Strand	117.50	"
Cleopatra	Jefferson	205.38	"
Ready for Love	Strand	117.50	"
Mrs. Wiggs of the Cabbage Patch	Jefferson	523.64	"
Menace	Strand	117.50	"
Limehouse Blues	Jefferson	117.50	"
Pursuit of Happiness	Strand	117.50	"
College Rhythm	Jefferson	427.70	"
It's a Gift	Strand	117.50	"
Behold my Wife	Jefferson	117.50	"

First Run—1934-35

Feature Title	Theatre	Film Rental Paid	Exhibitor
One Hour Late	Palace	117.50	"
Home on the Range	Strand	117.50	"
Father Brown, Detective	Strand	117.50	"
Here is My Heart	Jefferson	325.97	"
The President Vanishes	Strand	117.50	"
The Lives of a Bengal Lancer	Jefferson	448.48	"
The Gilded Lily	Jefferson	272.34	"
Wings in the Dark	Jefferson	117.50	"
Rocky Mountain Mystery	Palace	117.50	"
Rumba	Jefferson	117.50	"
All the King's Horses	Palace	117.50	"
Car 99	Palace	117.50	"
Ruggles of Red Gap	Jefferson	219.65	"

[fol. 6533]

First Run—1932-33

Feature Title	Theatre	Film Rental Paid	Exhibitor
Love in Bloom	Palace	117.50	Mamyer Corp.
Mississippi	Jefferson	501.76	"
McFadden's Flats	Jefferson	117.50	"
Hold 'Em Yale	Palace	117.50	"
Private Worlds	Jefferson	188.26	"
Four Hours to Kill	Palace	117.50	"
Stolen Harmony	Palace	146.30	"
The Devil is a Woman	Palace	117.50	"
Going to Town	Jefferson	417.24	"
People will Talk	Jefferson	117.50	"
The Glass Key	Palace	117.50	"
Scoundrel	Palace	117.50	"
The Virginian	Capitol	105.00	Auburn Capitol Theatre Corp.
College Scandal	Palace	117.50	Mamyer Corp.
Men without Names	Palace	117.50	"
Paris in Spring	Palace	117.50	"
Dr. Jekyll & Mr. Hyde	Capitol	80.00	Auburn Capital Theatre Corp.
Shanghai	Jefferson	117.50	Mamyer Corp.
Smart Girl	Palace	117.50	"
Man on the Flying Trapeze	Jefferson	117.50	"
Accent on Youth	Palace	117.50	"
	Totals	$8,932.07	

[fol. 6534-6535]

First Run—1934-35 cont'd

Recapitulation

49 pictures	Mamyer Corp.	$8,747.07
2 pictures	Auburn Capitol Theatre Corp.	185.00
		$8,932.07

Dated: Buffalo, New York,
October 17, 1944.

Robert L. Wright
Counsel for the Plaintiff
Edward F. McClennen
Willard S. McKay
Counsel for the Defendants

[fol. 6536] **EXHIBIT 987**

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NEW YORK

Civil Action #223

STIPULATION

UNITED STATES OF AMERICA, Plaintiff,

against

SCHINE CHAIN THEATRES, INC., et al., Defendants.

It is hereby stipulated and agreed by and between the attorneys for the parties hereto that if a representative of Twentieth Century-Fox Film Corporation were called, he would testify that the gross film rental, inclusive of rental from short subject pictures, received by Twentieth Century-Fox Film Corporation from the theatres understood to compose the Schine Circuit, for the motion picture seasons 1935-36 to and including 1939-40, is as follows:

1935-36	$290,000,	approximately,
1936-37	325,000,	"
1937-38	335,000,	"
1938-39	350,000,	"
1939-40	330,000,	"

Dated: Buffalo, New York, October 27, 1944.

Robert L. Wright, Counsel for the Plaintiff
Edward F. McClennen, Willard S. McKay, Counsel for the Defendants.

[fol. 6537] **EXHIBIT 988**

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NEW YORK

Civil Action #223

STIPULATION

UNITED STATES OF AMERICA, Plaintiff,

against

SCHINE CHAIN THEATRES, INC., et al., Defendants.

It is hereby stipulated and agreed by and between the attorneys for the parties hereto that if a representative of Loew's Incorporated were called, he would testify that the gross film rental for features received by Loew's Incorporated from the theatres understood to compose the Schine Circuit for the periods ending on the dates shown below were approximately as follows:

52 weeks ended August 27, 1936 - - -	$265,000
52 weeks ended August 26, 1937 - - -	315,000
53 weeks ended September 1, 1938 - -	340,000
52 weeks ended August 31, 1939 - - -	455,000
52 weeks ended August 29, 1940 - - -	445,000

Dated: Buffalo, New York, October 25, 1944

Robert L. Wright, Attorney for the Plaintiff
Edward F. McClennen, Willard S. McKay, Attorneys for the Defendant.

[fol. 6538] **EXHIBIT 989**

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NEW YORK

Civil Action #223

STIPULATION

UNITED STATES OF AMERICA, Plaintiff,

against

SCHINE CHAIN THEATRES, INC., et al., Defendants.

It is hereby stipulated and agreed by and between the attorneys for the parties hereto that if a representative of Paramount Pictures Inc. were called, he would testify that the gross film rental received by Paramount Pictures Inc. for features from the theatres understood to compose the Schine Circuit, for the motion picture seasons 1934-35 to and including 1939-40, is as follows:

1934-35	$155,000,	approximately
1935-36	210,000,	"
1936-37	260,000,	"
1937-38	265,000,	"
1938-39	290,000,	"
1939-40	300,000	"

Dated: Buffalo, New York, October 23, 1944.

Robert L. Wright, Counsel for the Plaintiff,

Edward F. McClennen, Willard S. McKay, Counsel for the Defendants.

[fol. 6539] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NEW YORK

Civil Action #223

UNITED STATES OF AMERICA, Plaintiff,

against

SCHINE CHAIN THEATRES, INC., et al., Defendants

STIPULATION

It is hereby stipulated and agreed by and between the attorneys for the parties hereto that if a representative of RKO Radio Pictures, Inc. were called, he would testify that the gross film rental, inclusive of rental from short subject pictures, received by RKO Radio Pictures, Inc. from the theatres understood to compose the Schine Circuit, for the motion picture seasons 1935-36 to and including 1939-40, is as follows:

1935-36	$140,000, approximately,
1936-37	155,000, approximately,
1937-38	190,000, approximately,
1938-39	195,000, approximately,
1939-40	235,000, approximately.

Dated Buffalo, New York, October 23, 1944.

Robert Z. Wright, Counsel for the Plaintiff. Edward F. McClennen, Willard S. McKay, Counsel for the Defendants.

[fol. 6540] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NEW YORK

Civil Action #223

UNITED STATES OF AMERICA, Plaintiff,

against

SCHINE CHAIN THEATRES, INC., et al., Defendants

STIPULATION

It is hereby stipulated and agreed by and between the attorneys for the parties hereto that if a representative of Vitagraph, Inc. were called, he would testify that the gross film rental received by Vitagraph, Inc. for features from the theatres understood to compose the Schine Circuit, for the motion picture seasons 1934-35 to and including 1939-40, is as follows:

1934-35	$155,000, approximately
1935-36	195,000, approximately
1936-37	235,000, approximately
1937-38	225,000, approximately
1938-39	250,000, approximately
1939-40	255,000, approximately

Dated Buffalo, New York, October 23, 1944.

Robert L. Wright, Counsel for the Plaintiff. Edward F. McClennen, Willard S. McKay, Counsel for the Defendants.

[fol. 6541] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, Plaintiff,

against

SCHINE CHAIN THEATRES, INC., et al., Defendants

It is hereby stipulated and agreed by and between the attorneys for the respective parties hereto that if an officer of Universal Pictures Company, Inc. having knowledge of the facts were called as a witness in this action he would testify as follows:

1. J. Myer Schine was elected as one of two directors of said corporation at the annual meeting of the stockholders thereof on April 19, 1934 by the votes of the First Preferred Stockholders and that he was re-elected as such director by the votes of the First Preferred Stockholders at every annual meeting thereafter until March 3, 1938, at which time he tendered his resignation, which resignation was accepted.

The First Preferred Stockholders of Universal Pictures Company, Inc. were not in any way connected with the management of the company except by the election of two directors as noted above, and consisted of widely diversified public holdings of First Preferred Stock in the corporation.

2. Willard S. McKay was elected a director of Universal Pictures Company, Inc. in the year 1931 and continued as such director until February 3, 1938, at which time he tendered his resignation, which resignation was accepted (except that during a certain period of the year 1936 Willard S. McKay was not a director of said company).

[fol. 6542] Willard S. McKay was elected Secretary of Universal Pictures Company, Inc. on April 20, 1934 and continued to hold such position until February 3, 1938.

Willard S. McKay was elected one of the Vice Presidents of Universal Pictures Company, Inc. on April 2, 1936 and occupied such position until February 3, 1938 at which time he resigned and his resignation was accepted.

Willard S. McKay acted as General Counsel of Universal Pictures Company, Inc. from early in 1930 until March 17, 1938. At all of these times Willard S. McKay was engaged in the general practice of law and at no time was he a full-time employee of Universal Pictures Company, Inc.

Willard S. McKay has since that time, and particularly between the years 1938 and 1940, acted as Special Counsel for Universal Pictures Company, Inc.

Robert L. Wright, Attorney for Plaintiff. Edward F. McClennen, Willard S. McKay, Attorneys for Defendants.

[fol. 6543] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NEW YORK

Civil Action No. 223

UNITED STATES OF AMERICA, Plaintiff,

v.

SCHINE CHAIN THEATRES, INC., et al., Defendants

STIPULATION—September 28, 1944 as to Service of Prints

Columbia, United Artists, Universal, Fox, Loew's, Paramount, RKO, and Warners, respectively, serve the defendants' theatres with such prints as they furnish from their respective exchanges as follows: — two in Virginia from Washington, D. C., in Delaware and Maryland from Washington, D. C. or from Philadelphia, Pennsylvania, in Kentucky from Cincinnati, Ohio.

Edward F. McClennen, Saul E. Rogers, Willard S. McKay, Attorneys for Defendants.

[fol. 6544] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NEW YORK

Civil Action No. 223

UNITED STATES OF AMERICA, Plaintiff,

v.

SCHINE CHAIN THEATRES, INC., et al., Defendants

STIPULATION—September 29, 1944 as to Operating Companies

It is stipulated that the operating companies listed in the answer to interrogatory 15 referred to in Paragraph 2 of the subpoena returnable October 2, 1944 operate the theatres set opposite their respective names in the accompanying list.

Edward F. McClennen, Saul E. Rogers, Willard S. McKay.

[fol. 6545] Operating Corporations

New York

Amsterdam Consolidated Corp., Regent, Amsterdam; Rialto, Amsterdam.

Bath Theatres, Inc., Babcock, Bath.

Benton-Schine Corporation, Capitol, Ballston Spa.; State, Mechanicville; Capitol, Whitehall; Ritz, Granville.

Berinschine Theatres, Inc., State, Tupper Lake.

Buffalo-Granada Theatre Corp., Colonia, Norwich.

Buffalo-Riverside Corporation, Oneonta, Oneonta.

Corning Opera House Company, Fox, Corning; State, Corning; Temple, Cortland; Palace, Corning.

Dominion Operating Co., Ltd., Rialto, Little Falls; Palace, Oneonta; Capitol, Oswego; Rialto, E. Rochester; Temple, Fairport.

G-C Théatre Corporation, Strand, Carthage.

Geneva Theatres, Inc., Rialto, Lockport; Lake, Canandaigua.

Glove City Amusement Co., Inc., Glove, Gloversville.

Herzberger Amusement Co., Inc., Auditorium, Perry.

Mamyer Operating Co., Inc., Auburn, Auburn; Strand, Auburn; Jefferson, Auburn; Palace, Auburn.

Massena-Strand Corporation, Massena, Massena.

Munmad Theatre Corporation, Strand, Oswego; Oswego, Oswego; Olympic, Watertown.

Norstate Theatre Corporation, Avon, Watertown; Palace, Watertown; Pontiac, Saranac Lake.

Oswego-Orpheum Corporation, Hippodrome, Gloversville.

[fol. 6546] Otlair Corporation, Playhouse, Canandaigua; Madison, Rochester.

Phoenix Amusement Company, Seneca, Salamanca, Andrews, Salamanca.

Reliance Theatres, Inc., Palace, Lockport.

Rochester-Liberty Corporation, Crescent, Newark; Capitol, Newark.

Rochester-State Corporation, Cameo, Rochester; Lake, Rochester; Liberty, Rochester; Riviera, Rochester; State, Rochester.

S. G. Theatre Corporation, Regent, Geneva; Granada, Buffalo; Riverside, Buffalo; Temple, Geneva.

S.K.E. Operating Co., Ltd., Keith, Syracuse; Eckel, Syracuse; Empire, Syracuse; Palace, Syracuse; James, Syracuse.

Schine Amsterdam Corp., Strand, Amsterdam.

Schine Clearance Corporation, Empire, Glens Falls; Rialto, Glens Falls; Strand, Hudson Falls.

Schine Hamilton Corporation, State, Hamilton.

Schine Ilion Corporation, Capitol, Ilion; State, Cortland; Temple, Ilion.

Schine Lexington Corporation, Dixie, Rochester.

Schine-Malone Corporation, Malone, Malone; Plaza, Malone.

Schine-Ogdensburg Corporation, Star, Ogdensburg, (Pontiac); Strand, Ogdensburg.

Schine-Oswego Corporation, Paramount, Syracuse.

Schine Rochester Corporation, Geneva, Geneva; West End, Rochester; Monroe, Rochester.

Schine Theatrical Co., Inc., Hi-Art, Lockport; Strand, Seneca Falls.

Valley Theatre Corporation, Liberty, Herkimer; Richmond, Herkimer; Hippodrome, Little Falls.

Yateswood Corporation, Elmwood, Penn Yan.

Operating Corporations

[fol. 6547] Ohio

Belpik Theatre Corporation, Opera House, Kent; Vernon, Mt. Vernon; Memorial, Mt. Vernon; Bijou, Piqua; Miami, Piqua; Piqua, Piqua; Strand, Van Wert; Van Wert, Van Wert.

Civic Theatre, Inc., Holland, Bellefontaine; Strand, Bellefontaine.

The Crawford Theatre Co., Bucyrus, Bucyrus; Southern, Bucyrus.

Belpik Theatre Corporation, as Agent for Civic Theatre, Inc., and State Theatre Company, Civic, Fostoria; Roxy, Fostoria; ~~State, Fostoria.~~

Kinney-Mott Corporation, Opera House, Wooster; Wooster, Wooster.

Norwalk Theatre Corporation, Moose, Norwalk; Norwalk, Norwalk.

Phoenix Amusement Company, Vine, Mt. Vernon.

Schine Ashland Corporation, Athena, Athens; Court, Athens, Ohio Theatre, Athens; Palace, Ashland; Ohio, Ashland; Ashland, Ashland.

Schine Delaware Corporation, Strand, Delaware; Star, Delaware.

Medina-Princess Corporation, Princess, Medina; Medina Temple, Medina.

Schine Shelby Corporation, Castamba, Shelby.

Seneca Theatres, Inc., Grand, Tiffin; Ritz, Tiffin.

Schine Kent Theatre Corporation, Kent, Kent.

Schine Ravenna Theatre Corp., Ravenna, Ravenna; Ohio, Ravenna.

Schine Tiffin Corporation, Tiffin, Tiffin.

Wooster Theatres, Inc., Wayne, Wooster.

Operating Corporations

[fol. 6548] Kentucky

Corbin Theatre Company, Hippodrome, Corbin; Kentucky, Corbin; Viv, Corbin; State, Richmond.

Liberty Amusement Company, Liberty, Pikeville; Madison, Richmond.

Phoenix Amusement Company, Ben Ali, Lexington; Strand, Lexington; Kentucky, Lexington; State, Lexington; Ada Meade, Lexington; Opera House, Lexington; Bourbon, Paris; Paris, Paris.

Phoenix Harlan Theatre Company, Margie Grand Harlan.

Phoenix Maysville Theatre Company, Russell, Maysville; Hollywood, Maysville; Washington, Maysville.

Phoenix Middlesboro Theatre Company, Brownie, Middlesboro; Manring, Middlesboro.

Maryland

The Cambridge Theatres Company, Arcade, Cambridge; State, Cambridge; Grand, Cambridge; Hurlock, Hurlock; Federal, Federalsburg.

Chesapeake Theatres Corporation, Avalon, Easton; Easton, Easton; Arcade, Salisbury; Wicomico, Salisbury; Ritz, Salisbury; Strand, Cumberland; Liberty, Cumberland.

Hurlock Theatre Corporation, Marada, St. Michaels.

Delaware

Sidney Theatre Corporation, Waller, Laurel; Plaza, Milford.

Virginia

Schine Virginia Corporation, Appalachian, Appalachia; State, Appalachia.

[fol. 6549] EXHIBIT 999

October 28, 1935

Mr. George Lynch, Schine Enterprises, Inc., Gloversville, N. Y.

DEAR GEORGE:

I am sorry to have heard that you and Meyer were both in Cleveland last week and that you did not see fit to get in touch with me. I was particularly anxious to settle both the Van Wert and Bucyrus situations.

In the first instance I have been greatly embarrassed in dealing with the Van Wert situation, particularly in view of the fact that during Meyer's negotiations with Mr.

Grainger in New York, Mr. Grainger phoned me in behalf of Meyer and had me get our account in Van Wert to give up a first run deal for our pictures, in consideration of which I sold him a second run. After having completed these negotiations, I am informed that you now do not want a first run. I have communicated with the exhibitor in Van Wert and he feels that if he is to take back his first run again on this year's product, he wants my assurance that we will continue to sell him first run for at least next year.

In other words, I would like to have your commitment as to exactly what you want to do in this situation, bearing in mind that if you give up the first run in Van Wert, I must deliver a two-year deal to your opposition.

In Bucyrus, Milton Bryer advised me some time ago that you had taken over his house and were assuming his contracts. We have a considerable number of both features and shorts booked and I find that all of these dates have been removed by you with no replacements or no confirmation on your part as to the assuming of these contracts, and furthermore, no deal for Bucyrus.

All in all you are giving me some pretty rough treatment out here, George, and I don't thing I am deserving of it. Will you please advise by return mail as to just what your intentions are regarding both of these situations.

Kindest personal regards.

Sincerely, Dave Miller, Branch Manager.

M:J.

CC Mr. F. J. A. McCarthy, Mr. P. E. Dana.

[fol. 6550] EXHIBIT 1004

Agreement dated October 3 1935, between B. F. Keith Corporation, a New York corporation (hereinafter called "Keith"), party of the first part, Dominion Operating Company Limited and Schine Chain Theatres, Inc., both New York corporations (hereinafter called "Dominion-Schine"), parties of the second part, and S. K. E. Operating Company, Ltd., a New York corporation (hereinafter called "SKE"), party of the third part.

Whereas Keith and Dominion-Schine have heretofore entered into an agreement dated August 21, 1935 (hereinafter called the "Formative Agreement"), providing among other things, for the formation of SKE and the leasing to SKE of the Keith and Eckel Theatres in Syracuse, New York; and

Whereas said parties have also entered into a letter agreement dated August 21, 1935 relating to picture product; and

Whereas SKE has been duly organized under the laws of the State of New York and Keith is the holder of sixty shares of Class A stock and Schine Chain Theatres, Inc., is the holder of forty shares of Class B stock, constituting all [fol. 6551] the issued and outstanding capital stock of SKE; and

Whereas Keith has leased or is about to lease Keith's Theatre, Syracuse, New York, to SKE under a lease dated as of August 24, 1935 for a period of approximately five years and upon the other terms and conditions set forth in said lease; and

Whereas Dominion Operating Company, Limited, has leased or is about to lease the Eckel Theatre, Syracuse, New York, to SKE under a lease dated as of August 24, 1935 for a period of approximately five years and upon the other terms and conditions set forth in said lease; and

Whereas Keith has entered into an agreement with Netco Theatres Corporation, providing for the operation by Keith of the Paramount Theatre in Syracuse, New York, for a period of one year from September 1, 1935, upon the terms and conditions set forth in an agreement dated August 30, 1935 and has secured a franchise for the first run exhibition of Paramount pictures for the 1935-1936 motion picture season in the Keith, Eckel, Paramount or Strand Theatres (hereinafter sometimes called "the Theatres") in Syracuse, New York, under an agreement dated August 30, 1935 with Paramount Pictures Distributing Corporation; and

Whereas Keith is willing to assign its interest in said agreement relating to the operation of said Paramount [fol. 6552] Theatre and said franchise agreement to SKE and SKE is willing to assume Keith's obligations under said agreements; and

Whereas SKE has leased, or is about to lease the Strand Theatre, Syracuse, New York, for a period from September 15, 1935 to August 31, 1937 from Stanley-Mark-Strand Corporation, and has entered into, or is about to enter into a franchise agreement for the first run exhibition of Warner Bros. pictures in the Theatres for the 1935-1936 and 1936-1937 motion picture seasons; and

Whereas the parties desire to cancel said agreements dated August 21, 1935 between Keith and Dominion-Schine and to enter into this agreement.

In Consideration of the mutual promises hereinafter contained, it is mutually agreed as follows:

1. Keith and Dominion-Schine agree to account to SKE for all gross receipts of the Keith, Paramount and Eckel Theatres for the period from August 24, 1935 to the end of each theatre week nearest October 4, 1935 and all expenses of the operation of said theatres paid by Keith or Dominion-Schine, as the case may be, for such period.

[fol. 6553] 2. Keith and Dominion-Schine agree to account to SKE for all gross receipts from the Strand Theatre, for the period from September 1, 1935 to the end of each theatre week nearest October 4, 1935 and all expenses of the operation of said theatre paid by Keith or Dominion-Schine, as the case may be, for said period.

3. With respect to said Keith and Paramount Theatres, Keith agrees to pay to SKE or SKE agrees to pay to Keith, as the case may be, the net amount due under the terms of this agreement. With respect to said Eckel and Strand Theatres, Dominion-Schine agrees to pay to SKE or SKE agrees to pay to Dominion-Schine, as the case may be, the net amount due under the terms of this agreement. It is understood that SKE will also pay the rents due under the leases of the Keith and Eckel Theatres accrued during the period from August 24, 1935 to the date of this agreement.

4. Inventories of supplies in the Theatres have been made by representatives of the parties hereto. The inventories of supplies in the Keith, Eckel and Paramount Theatres have been made as of August 24, 1935, and the inventory of supplies in the Strand Theatre have been made as of September 1, 1935. SKE agrees to pay to Keith and Do-

minion-Schine, as the case may be, the cost of such supplies, as of said dates.

[fol. 6554] 5. Upon said payments being made and said leases of the Keith and Eckel Theatres being executed and delivered, the Formative Agreement and said letter agreement dated August 21, 1935 relating to picture product, shall be deemed to be cancelled and of no further force or effect.

6. Keith hereby assigns to SKE said agreement providing for the operation of the Paramount Theatre and said franchise agreement for the exhibition of Paramount pictures, both dated August 30, 1935 and SKE hereby agrees with Keith to perform all the obligations of Keith under said agreements.

7. Keith and Dominion-Schine hereby assign to SKE and SKE hereby assumes all obligations under the contracts relating to the operation of the Theatres accruing on and after August 24, 1935 with respect to the Keith, Eckel and Paramount Theatres, and accruing on and after September 1, 1935, with respect to the Strand Theatre.

8. At the option of Keith, all vaudeville acts, artists or attractions presented at the Theatres operated by SKE shall be procured and booked exclusively through Keith, or its agent.

9. Keith and Dominion-Schine each agree that they will not acquire directly or indirectly, any interest in any other theatre in or within a radius of ten miles from Syracuse, [fol. 6555] New York, without first offering such interest to SKE on the same terms available to Keith or Dominion-Schine, as the case may be. SKE shall have ten days within which to advise Keith or Dominion-Schine, as the case may be, as to whether it accepts or rejects such offer.

10. The parties hereto will agree from time to time as to whether Keith or Dominion-Schine shall keep the books of SKE and SKE agrees to pay $25.00 a week to such party as shall keep such books from time to time.

11. The parties hereto hereby make the following agreement regarding motion picture product:

> If Dominion-Schine or their affiliated companies shall procure all the picture product produced or distributed

by Twentieth Century Fox (or its successor) and its subsidiary and affiliated companies, hereinafter called "Fox Pictures", for the so-called "Schine Theatrical Circuit" for any motion picture season commencing about September first, they will either make such picture product available to SKE for first run exhibition in the theatres operated by SKE for such motion picture season, or, upon their failure so to do by October first of such motion picture season, Keith shall have the option to terminate its lease of the Keith Theatre to SKE at any time on ten days' written notice.

[fol. 6556] It is understood and agreed that "Fox Pictures" does not include "Twentieth Century Pictures" so long as "Twentieth Century Pictures" are sold as a separate brand of pictures.

If Dominion-Schine or their affiliated companies shall not procure all "Fox Pictures" for the so-called "Schine Theatrical Circuit" for any motion picture season and shall not procure all "Fox Pictures" for first run exhibition in the theatres operated by SKE, and in the event that Dominion-Schine or their affiliated companies shall "spot-book" one or more of the feature "Fox Pictures" for the so-called "Schine Theatrical Circuit" prior to January first of any motion picture season or in the event that they shall "spot-book" more than six feature "Fox Pictures" for such circuit during the period from January first to August thirty-first of such motion picture season, Keith shall have the option, immediately upon the happening of either of such events, to terminate its lease to SKE at any time on ten days' written notice.

If Keith shall procure all the picture product produced or distributed by RKO Radio Pictures, Inc., (or its successor) and its subsidiary companies, (hereinafter called "Radio Pictures") for the so-called "Keith Circuit" for any motion picture season commencing about September first, it will either make such picture product available to SKE for first run exhibition in the theatres operated by SKE for such motion picture season, or upon its failure so to do by October first of such motion picture season, Dominion Operating Company, Limited shall have the option to terminate its lease of the Eckel Theatre to SKE at any time on ten days' written notice.

If Keith shall not procure all "Radio Pictures" for the so-called "Keith Circuit" for any motion picture season and shall not procure all "Radio Pictures" for first run exhibition in the theatres operated by SKE, and in the event that Keith shall "spot-book" one or more feature "Radio Pictures" for the so-called "Keith Circuit", prior to January first of any motion picture season, or in the event that it shall "spot-book" more than six feature "Radio Pictures" for such circuit during the period from January first to August 31st of such motion picture season, Dominion Operating Company Limited shall have the option, immediately upon the happening of either of such events, to terminate its lease to SKE at any time on ten days' written notice.

[fol. 6557] Anything herein contained to the contrary notwithstanding, if Dominion-Schine or their affiliated companies, shall procure all "Fox Pictures" for the so-called "Schine Theatrical Circuit" for any motion picture season and shall not make "Fox Pictures" available for such season for first run exhibition in the theatres operated by SKE, but shall make available, as a substitute for "Fox Pictures" so-called "M-G-M", "Warner" or "Paramount" pictures for first run exhibition in the theatres operated by SKE, upon the conditions hereinafter specified, Keith shall not have the option to terminate its lease of the Keith Theatre to SKE because of the failure of Dominion-Schine to make picture product available to SKE as herein provided.

Anything herein contained to the contrary notwithstanding, if Keith shall procure all "Radio Pictures" for the so-called "Keith Circuit" for any motion picture season, and shall not make "Radio Pictures" available for such season for first run exhibition in the theatres operated by SKE but shall make available as a substitute for "Radio Pictures" so-called "M-G-M", "Warner" or "Paramount" pictures for first run exhibition in the theatres operated by SKE upon the conditions hereinafter specified, Dominion Operating Company, Limited, shall not have the option to terminate its lease of the Eckel Theatre to SKE.

The conditions specified in the preceding paragraphs for the substitution of "Radio Pictures" or "Fox

Pictures" are that SKE shall not have under its control by lease, management contract or otherwise, or be required to lease or operate, a so-called Loew Theatre if M-G-M product is substituted or a Warner Theatre if Warner product is substituted, or a Paramount Theatre if Paramount product is substituted.

All contracts for the exhibition of picture product shall first be submitted to and approved in writing by the operating committee or by the Board of Directors of SKE.

It is understood and agreed that if Dominion-Schine shall be able to procure "Fox Pictures" (or "M-G-M", "Paramount" or "Warner Pictures" as above pro- [fol. 6558] vided) for first run exhibition in the theatres operated by SKE for any motion picture season on terms satisfactory to it or its member of the operating committee and on terms which are comparable to the terms on which such pictures could be secured for theatres of comparable size, location, policy and competitive conditions, but the proposed contract for the exhibition of such pictures shall not be approved by the other member of the operating committee or by the Board of Directors of SKE, Keith shall not be entitled to cancel the lease of the Keith Theatre to SKE because of the failure of Dominion-Schine to procure the picture product for such season.

It is understood and agreed that if Keith shall be able to procure "Radio Pictures" (or "M-G-M", "Paramount" or "Warner" pictures as above provided) for first run exhibition in the theatres operated by SKE for any motion picture season on terms satisfactory to it or its member of the operating committee, and on terms which are comparable to the terms on which such pictures could be secured for theatres of comparable size, location, policy and competitive conditions, but the proposed contract for the exhibition of such pictures shall not be approved by the other member of the operating committee or by the Board of Directors of SKE, Dominion Operating Company, Limited, shall not be entitled to cancel the lease of the Eckel Theatre to SKE because of the failure of Keith to procure picture product for such season.

If any lease from Keith to SKE shall be cancelled pursuant to the terms of this agreement, the lease of the Eckel Theatre shall automatically cease and terminate at the same time and if the lease of the Eckel Theatre from Dominion Operating Company, Limited to SKE shall be cancelled pursuant to the terms of this agreement, the lease from Keith to SKE shall automatically cease and terminate at the same time.

12. Upon the request of any of the parties hereto the other parties agree to execute such further assignments or other instruments as may be necessary or desirable to carry out the purposes of this agreement.

[fol. 6559-6560] 13. The promises herein contained are made solely for the benefit of the parties hereto. Nothing herein contained shall be deemed to confer upon any creditor of Keith, Dominion-Schine or SKE, or upon any person other than the parties hereto, any right or claim of any kind whatsoever against any of the parties hereto.

In Witness Whereof the parties hereto have executed this agreement, as of the day and year first above written.

B. F. Keith Corporation, By W. J. Blumberg, Vice-President; Dominion Operating Company, Limited, By Howard M. Antevil, President; Schine Chain Theatres, Inc., By J. M. Schine, President; S.K.E. Operating Company, Ltd., By —. —. Blumley, Second Vice-President.

[fol. 6561] **Exhibit 1005**

This Agreement dated July 31, 1939, between B. F. Keith Corporation, (herein called "Keith"), Dominion Operating Company, Limited, Schine Chain Theatres, Inc., (herein called "Schine") and S. K. E. Operating Company, Ltd., (herein called "S.K.E."),

Witnesseth:

Whereas the parties hereto have entered into an agreement dated October 3, 1935 relating to the operation of the Keith and Eckel and certain other theatres in Syracuse, New York;

Whereas Keith has leased to S.K.E. said Keith Theatre under a lease dated as of August 24, 1935;

Whereas Dominion Operating Company, Limited has leased to S.K.E. said Eckel Theatre under a lease dated as of August 24, 1935;

Whereas S.K.E. has leased and is operating certain other theatres in Syracuse, New York;

Whereas said leases of the Keith and Eckel Theatres are being amended and extended until August 31, 1949 by agreements dated July 31, 1939 and executed simultane- [fol. 6562] ously herewith upon the terms and conditions therein set forth;

Whereas the parties hereto desire to cancel and terminate said agreement dated October 3, 1935 and to enter into this agreement;

Now, therefore, in consideration of the premises and of the mutual covenants herein contained, it is hereby agreed as follows:

1. Said agreement dated October 3, 1935 is hereby cancelled and terminated.

2. B. F. Keith Corporation is the owner of 60 shares of Class A stock and Schine Chain Theatres, Inc. is the owner of 40 shares of Class B stock of S.K.E. Operating Company, Ltd. The Class A stock is entitled to 60% of any and all dividends and the Class B stock is entitled to 40% of any and all dividends. The parties hereto agree to cause the Certificate of Incorporation of S.K.E. Operating Company, Ltd. to be amended promptly upon the execution of this agreement to provide for an authorized capital stock of 50 shares of Class A stock and 50 shares of Class B stock, to surrender for cancellation the certificates for Class A and Class B stock now held by them and to issue in lieu thereof, a certificate for 50 shares of Class A stock to B. F. Keith Corporation and a certificate for 50 shares of Class B stock to Schine Chain Theatres, [fol. 6563] Inc., each share of stock, whether Class A or Class B, to have the same dividend and voting rights. Schine Chain Theatres, Inc. agrees to pay to B. F. Keith Corporation the sum of $50.00.

3. It is agreed that Schine shall negotiate for "Twentieth-Century Fox" and "Universal" pictures and Keith shall negotiate for "Radio", "Paramount" and "Warner" and any other pictures for exhibition in the theatres operated by S.K.E. from time to time.

If Schine shall fail to conclude negotiations for either "Twentieth-Century Fox" or "Universal" pictures for such theatres prior to August 31st in any year, Keith shall have the right to negotiate for such pictures for which negotiations have not been concluded by Schine by such date.

If Keith shall fail to conclude negotiations for "Radio", "Paramount", "Warner" or any other pictures for such theatres prior to August 31st in any year, Schine shall have the right to negotiate for any such pictures for which negotiations have not been concluded by Keith by such date.

All contracts for such pictures shall first be submitted to and approved in writing by the Operating Committee or the Board of Directors of S.K.E.

4. At the option of Keith, all vaudeville acts, artists or attractions presented at the theatres operated by S.K.E. shall be procured and booked exclusively through Keith or its agent.

[fol. 6564] 5. Keith and Schine each agree that they will not acquire directly or indirectly, any interest in any theatre in or within a radius of ten miles from Syracuse, New York, without first offering such interest to S.K.E. on the same terms available to Keith or Schine, as the case may be. S.K.E. shall have thirty days within which to advise Keith or Schine, as the case may be, as to whether it accepts or rejects such offer.

6. The parties hereto will agree from time to time as to whether Keith or Schine shall keep the books of S.K.E. and S.K.E. agrees to pay $25.00 a week to such party as shall keep such books from time to time.

7. This agreement shall continue in effect from the date hereof until August 31, 1949 provided, however, that if said lease as amended, of said Keith Theatre shall be cancelled or terminated pursuant to the provisions of Section 1 of Article XXV thereof, or if said lease, as amended, of said Eckel Theatre shall be cancelled or terminated pursuant to the provisions of Section 1 of Article XXV thereof, this agreement shall cease and terminate simultaneously with such termination.

8. The covenants herein contained are made solely for the benefit of the parties hereto. Nothing herein contained [fol. 6565] shall be deemed to confer upon any creditor of Keith, Schine or S.K.E. or upon any person other than the parties hereto, any right or claim of any kind whatsoever against any of the parties hereto.

In Witness Whereof, the parties hereto have caused this agreement to be duly executed as of the day and year first above written.

B. F. Keith Corporation, by [Illegible], Treasurer. Dominion Operating Company, Limited, by John W. May, President. Schine-Chain Theatres, Inc., by J. M. Schine, President. S. K. E. Operating Company, Ltd., by [Illegible], President.

[fol. 6566] **Exhibit 1006**

THE MEDINA MASONIC TEMPLE COMPANY

Medina, Ohio

March 25, 1937.

Mr. Meyer Shine, Gloversville, N. Y.

DEAR MR. SHINE:

It has come to the attention of the Masons of Medina, Ohio that you are negotiating with the present owners of the Princess Theatre of Medina, Ohio to build a new theatre in Medina. We feel that perhaps you do not have all the facts concerning the conditions here and at a meeting of the representatives of the various Masonic bodies it was felt that these facts should be laid before you.

The Medina Masonic Temple Company was incorporated and built a Temple in Medina some years ago for the use of the various Masonic Bodies. The stock in this Company is owned by the Masonic Bodies and by individual Masons. We also carry an insurance policy covering money loaned to us by individuals to a considerable amount. Several members are individually signed on notes to considerable amount. The revenue from this Temple is not sufficient to carry it under the present conditions and it has become necessary to make other arrangement for revenue from this Temple or we will lose the Temple and everything that we have invested.

After weeks of negotiating with Mr. M. S. Fine and Mr. P. E. Essicks and their associates of Cleveland, Ohio, and only after investigating their financial standing in which two of the largest banks in Cleveland reported them as being one hundred per cent responsible, we have signed a contract with them to start a picture show theatre in the

Temple in Medina. This contract calls for a lease for a period of twenty-five years with a fair guarantee against a percentage. Work of remodelling the Temple was started March 15th, which time we are quite positive was prior to the time your representative was in Medina and negotiated the agreement with the Princess Theatre.

This matter has been presented to all the Masonic Bodies in Medina and to the stockholders of the Medina Masonic Temple Company who have approved and adopted the plan almost unanimously.

As you know, Mr. Shine, Medina is a small town, and we feel entirely too small for two large theaters. Also the people of Medina are quite clannish and we feel quite positive that they would resent the fact that you are contemplating building a theatre here after we have already started ours.

[fol. 6567] The success of our Temple Picture Theatre is of vital importance to this community for it means the saving of Masonry in Medina, the saving of the Temple and saving the money our people have invested in the stock and the insurance and the life savings of some who have personally signed notes for the Temple Company.

We feel, Mr. Shine, that you should know these facts and sincerely hope that you will consider them as we have tried to put them before you.

Yours very truly, N. H. McClure, Director Temple Co., Trustee Blue Lodge and Chapter, former Common Pleas Judge. C. W. Reinhardt, Secretary-Treasurer, Medina Masonic Temple Co. N. S. Kellogg, Director Temple Company, Trustee Blue Lodge and Chapter, Treasurer The A. I. Root Co. G. H. Wilder, Director Temple Co., Trustee Medina Chapter. E. F. Gibbs, Cashier The Old Phoenix National Bank. H. E. Aylard, Cashier The Savings Deposit Bank Company.

[fol. 6568] EXHIBIT 1007

PARAMOUNT PICTURES INC.
Times Square, New York, 18
BRyant 9-8700. Cable Address Famfilm
Legal Department

October 26, 1944

Philip Marcus, Esq., Assistant to the Attorney General,
502 U. S. Court House, Buffalo, N. Y.

Re: U. S. v. Schine Chain Theatres, Inc., et al.

DEAR SIR:

In accordance with a request from R. E. Nickerson, Esq., I send you herewith a copy of our records, kept in the ordinary course of business, giving the play-off of the pictures released by this company during the 1939-40 season in Salisbury, Maryland, for both Ulman's theatres and Schine's theatres.

Title of Picture	Exhibitor	Play Dates
Death of a Champion	Schine	4/11-13/40
Beau Geste	Ulman	4/22-25/40
$1000 a Touchdown	"	12/21-23/39
Honeymoon in Bali	"	11/20-25/39
What a Life	"	11/15-16/39
Jamaica Inn	"	5/20-22/40
Television Spy	Schine	4/18-20/40
Disputed Passage	"	4/22-24/40
Cat and the Canary	"	3/ 4- 6/40
Rulers of the Sea	Ulman	2/ 5-10/40
Neighbors—The Carters	Schine	4/29-5/1/40
Night of Nights	"	5/ 6- 8/40
The Llano Kid	Ulman	1/31-2/1/40
Women Have Secrets	Schine	4/15-17/40
Gulliver's Travels	Ulman	1/22-27/40
Great Victor Herbert	"	3/25-30/40
Emergency Squad	Schine	7/18-20/40
Geronimo	"	7/15-20/40
Remember the Night	Ulman	3/11-16/40
Parole Fixer	Schine	3/28-30/40
Light that Failed	Ulman	4/ 8-11/40
Sidewalks of London	Schine	8/29-31/40
Knights of the Range	Ulman	6/ 3- 6/40
Seventeen	"	6/ 3- 6/40
Women Without Names	Schine	8/ 1- 3/40
Road to Singapore	Ulman	[illegible]/15-25/40
Farmer's Daughter	"	5/ 6- 9/40

[fol. 6569]

Title of Picture	Exhibitor	Play Dates
Adventure in Diamonds	Ulman	6/10-13/40
Dr. Cyclops	"	5/27-30/40
French Without Tears	Schine	9/12-14/40

Title of Picture	Exhibitor	Play Dates
Light of Western Stars	Ulman	9/ 9–12/40
Buck Benny Rides Again	"	5/27–6/1/40
Opened by Mistake	Schine	9/19–20/40
Typhoon	Ulman	6/10–15/40
The Biscuit Eater	"	7/ 1– 4/40
Those Were The Days	Schine	8/19–21/40
Safari	Ulman	9/ 2– 5/40
The Ghost Breakers	"	9/ 9–14/40
Untamed	"	8/26–31/40
Golden Gloves	"	10/ 7– 8/40
Comin Round the Mountain	"	10/ 7–12/40
The Great McGinty	"	10/14–16/40
Northwest Mounted Police	Schine	11/25–30/40

Recapitulation

Schine's two theatres played	15 pictures
Ulman's two theatres played	27 pictures
Unplayed	3 pictures
Total	46 pictures

I trust that the information her-with supplied sufficiently complies with your request.

Very truly yours, Richard P. Morgan.

RPM:M.

cc: R. E. Nickerson, Esq., Howard Antevil, Esq.

[fol. 6570] EXHIBIT 1009

The following is the clearance granted Schine Theatrical Enterprises on contracts covering the 1936-7 product

Amsterdam: 1st run. 14 days ahead of Johnstown.

Carthage: 1st run.

Glens Falls: 1st run. 14 days ahead of Hudson Falls. 30 days ahead of Fort Edward. (1st) 7 days ahead of Lake George. 60 days 1st run over 2nd run.

Glens Falls: 2nd run. 60 days after the Rialto. 14 days ahead of State Theatre.

Gloversville: 1st run. 45 days ahead of Johnstown. 30 days ahead of Fonda, Broadalbin, Mayfield and Sacandaga Park.

Hamilton: 1st run.

Herkimer: 1st run. 30 days ahead of Mohawk and West Winfield. 14 days ahead of Ilion.

Hudson Falls: 1st run. 14 days after first run, Glens Falls. 14 days ahead of Fort Edward.

Little Falls: 1st run. 90 days city of Little Falls. 30

days ahead of Dolgeville and St. Johnsville. 14 days ahead of Fort Plain.

Malone: 1st run. 30 days ahead of Brushton, Chateaugay, Bangor and Fort Covington.

Massena: 1st run. 30 days ahead of Brasher Falls, Waddington and Norwood.

Norwich: 1st run. 30 days ahead of Oxford, Earlville, Sherburne, New Berlin, Sidney and Greene.

Ogdensburg: 1st run. 30 days ahead of Waddington and Canton.

Oneonta: 1st run. 30 days ahead of Cooperstown, Morris, Hartwick, Delhi and Sidney.

Saranac Lake: 1st run. Ahead of Tupper Lake. 15 days ahead of Upper Saranac Lake, and 30 days ahead of Faust. Ahead of Lake Placid, except from June 15th to September 15th—and January 15th to February 15.

Tupper Lake: 1st run.

Watertown: 1st run. 30 days over Antwerp, Philadelphia, Dexter, Theresa, Adams, Sackets Harbor. 60 days over second run.

[fol. 6571] **EXHIBIT W-3**

Vitagraph Master Agreement.

1937-1938
1938-1939
1939-1940

[fol. 6572] Agreement made this 22nd day of August, 1938, by and between Vitagraph, Inc., a New York corporation, hereinafter called "Distributor", party of the first part, and Schine Enterprises Corporation, a New York corporation and Schine Circuit Inc., a New York corporation, jointly and severally, hereinafter called "Exhibitor", parties of the second part.

Witnesseth:

Whereas, the Distributor is engaged in the business of distributing motion pictures known as Warner Bros. and First National features and Vitaphone short subjects, and

Whereas, the Exhibitor owns or operates certain theatres in the towns hereinafter referred to, and

Whereas, the Exhibitor desires to procure licenses to exhibit the said motion pictures in the said theatres on the terms and conditions hereinafter set forth,

Now, therefore, the parties hereto do hereby agree as follows:

1. Subject to the terms and conditions hereinafter stated, the Distributor hereby grants to Exhibitor and Exhibitor hereby accepts a license under copyright to exhibit, and agrees to exhibit, the Warner Bros. and First National features, the scores and trailers in connection therewith, and Vitaphone short subjects generally released by Distributor for each of the motion picture seasons 1937-38, 1938-39 and 1939-40 in the theatres hereinafter referred to.

2. Annexed hereto, made part hereof and marked Schedules "A1" to "A71", inclusive, are certain memorandum sheets hereinafter to be referred to as "Deal Sheets" show- [fol. 6573] ing for each town the theatres licensed hereunder, the number of features to be exhibited by Exhibitor in each such theatre, the run or runs licensed (wherever a Deal Sheet specifies no run, the run licensed shall be deemed to be first run except for Buffalo and Rochester where it shall be deemed to be subsequent run), the number of days each feature is to be exhibited in each theatre, the film rental to be paid for the license herein granted, the number of features to be exhibited in the respective several film rental (percentage and flat rental) classifications, as well as other terms and conditions governing said licenses.

3. (a) Wherever a Deal Sheet provides that a certain number of features are to be exhibited under the film rental classification of

"35% to Split"

Exhibitor shall pay as film rental for each such feature, computed severally, an initial payment of thirty-five (35%) percent of the gross receipts up to that figure which equals the house expense, plus a sum equal to said initial payment, plus a sum equal to one-half of said initial payment, and thereafter fifty (50%) percent of the gross receipts.

(b) Wherever a Deal Sheet provides that a certain number of features are to be exhibited under the film rental classification of

"35% (Reversion to 30%) to Split if 35%"

Exhibitor shall pay as film rental for each such feature, computed severally, an initial payment of thirty-five (35%) [fol. 6574] percent of the gross receipts up to that figure which equals the house expense, plus a sum equal to said initial payment, plus a sum equal to one-half of said initial payment, and thereafter fifty (50%) percent of the gross receipts.

However, if the gross receipts of any such feature, computed severally, shall not reach a sum equal to the "reversion figure", as hereinafter defined, for the period of exhibition of such feature, then the film rental for such feature shall be reduced to thirty (30%) percent of the gross receipts and in such event the terms herein specified for features originally designated under the film rental classification of "30%" shall apply to such feature.

(c) Wherever a Deal Sheet provides that a certain number of features are to be exhibited under the film rental classification of

"30% (Reversion to 25%)"

Exhibitor will pay as film rental for each such feature, computed severally, as follows:

1. If the period of exhibition consists of week days only:

Thirty (30%) percent of the gross receipts, but if the gross receipts shall not reach a sum equal to the "reversion figure", as hereinafter defined, for the period of exhibition of such feature, then the film rental for such feature shall be reduced to Twenty-five (25%) percent of the gross receipts, and in no event to a lesser percentage.

2. If the period of exhibition consists of a Saturday and/or Sunday plus a week day or week days:

The Saturday and/or Sunday shall be considered the weekend unit of such period and the week day or week days the ordinary unit of such period. The amount to be paid shall be computed separately for each unit, thus:

For the weekend unit Twenty-five (25%) percent of the [fol. 6575] gross receipts derived during said unit and in no event to a lesser percentage.

For the ordinary unit Thirty (30%) percent of the gross receipts derived during said unit, but if said gross receipts shall not reach a sum equal to the "reversion figure", as hereinafter defined, then Twenty-five (25%) percent of the gross receipts derived during said unit and in no event to a lesser percentage.

(d) Should the exhibition period of any feature originally designated under the film rental classification of "(30%)" include a Saturday and/or Sunday, then the film rental for such feature shall be reduced to twenty-five (25%) percent of the gross receipts for the Saturday and/or Sunday exhibition days thereof only and for no other day of the exhibition period thereof.

(e) Should the exhibition period of any feature originally designated under the film rental classification of "(25%)" include a Saturday and/or Sunday, then the film rental for such feature shall be reduced to twenty (20%) percent of the gross receipts for the Saturday and/or Sunday exhibition thereof only and for no other day of the exhibition period thereof.

(f) Should any feature originally designated under the film rental classification of "(25%)" be exhibited in any theatre as part of a double feature program or in conjunction with vaudeville (unit or four acts), then the film rental for each such feature so exhibited shall be fifteen (15%) percent of the gross receipts.

4. The "house expense" of each theatre licensed hereunder shall be the actual cost of operating said theatre. For [fol. 6576] the purpose of computing "house expense" for the day or days on which the features licensed hereunder are exhibited, the apportionment for the days of the week in the theatres licensed hereunder shall be as follows:

Saturday	- 2/10
Sunday	- 3/10
Remaining days	- 1/10 each

5. The "reversion figures" for the features referred to in 3(b) and 3(c) hereof for the period of exhibition of each such feature shall be determined as follows:

Annexed hereto and marked Schedule "B" is a schedule listing the respective towns wherein are located the theatres licensed hereunder, and there is set opposite each such town a per tenth figure applicable respectively to thirty-five (35%) percent features and thirty (30%) percent features.

The "reversion figure" for each theatre in each respective town with respect to the thirty-five (35%) percent and thirty (30%) percent features, as the case may be, shall be determined by multiplying the appropriate figure set opposite such town by the total number of tenths represented by the number of days each such feature is actually exhibited in such town, allowing one-tenth (1/10) for each week day, two-tenths (2/10) for Saturday and three-tenths (3/10) for Sunday.

6. It is agreed that no feature designated under the film rental classification of "35% to split" or "35% (reversion to 30%) to split if 35%" or "30% (reversion to 25%)" shall be exhibited as part of a double feature program or in conjunction with vaudeville.

[fol. 6577] 7. The Distributor shall in its sole discretion designate for each situation the features to be exhibited under the several film rental (percentage and flat rental) classifications specified therefor under the respective Deal Sheets.

8. Exhibitor shall have the right, at its option, to pay as film rental for any of the features in the flat rental classifications in any situation, twenty (20%) percent of the gross receipts instead of the flat rental amount specified therefor in the Deal Sheet covering such situation. Exhibitor shall exercise the right herein granted with respect to any feature to which such right applies by notice in writing to Distributor on or before the date of the notice of selection by the Exhibitor of the play date or dates for such feature, as hereinafter provided. Should Exhibitor exercise the right herein granted with respect to any such feature and should the exhibition period of such feature include a Saturday and/or Sunday, then the film rental for such feature shall be reduced to fifteen (15%) percent of the gross receipts for the Saturday and/or Sunday exhibition days thereof only and for no other day of the exhibition period thereof.

9. In any situation (except first run Glens Falls, N. Y. where First National features only are licensed hereunder) where under the Deal Sheets Exhibitor is obligated to ex-[fol. 6578] hibit during any season less than sixty (60) features, Exhibitor shall have the right to select the number of features to be exhibited in such situation from the

total number of features released by Distributor for such season.

10. In any situation where under the Deal Sheets Exhibitor is obligated to exhibit in any season less than sixty (60) features, then such obligation in such situation shall not be reduced if Distributor releases less than sixty (60) features during such season, or the number of features made available to Exhibitor is less than sixty (60) by reason of censorship or other causes beyond Distributor's control and the number of features which Exhibitor is obligated to exhibit in such situation shall be selected by Exhibitor from the total number actually released during such season.

11. If Distributor releases in any season a lesser number of features than Exhibitor's commitment under the Deal Sheets in any situation, then the number of features which Exhibitor is obligated hereunder to exhibit in said situation under the lowest flat rental classification only shall be reduced by the number of features not so released.

12. In any situation where there are licensed sixty (60) features first run, then Exhibitor shall have the right during each motion picture season to eliminate for such run from the number of features designated under the lowest flat rental classification or classifications only, thirteen (13) features if only one theatre be licensed for such run, and seven (7) features if more than one theatre be licensed for such run.

[fol. 6579] 13. Wherever under this agreement or under the Deal Sheets Exhibitor shall have the right to select in any situation for any run or runs a certain number of features from a larger number, or to select for exhibition a greater number of features than the number specified, or to eliminate a certain number of features, such right shall be exercised by Exhibitor in the following manner:

Within fourteen (14) days from the date of availability covering each feature, Exhibitor will notify Distributor in writing whether Exhibitor desires to reject or eliminate said feature for the theatre or run covered by the notice specifying such date of availability. Failure to send such notice with respect to any feature as herein provided, shall be deemed an acceptance thereof by Exhibitor for the theatre or run covered by such availability notice.

14. (a) Annexed hereto, made part hereof and marked Schedule "C," is a schedule showing for each situation the theatre and run licensed hereunder for the exhibition of Vitaphone short subjects, the number of days each short subject is to be exhibited in each theatre, the respective rentals for the several series of Vitaphone short subjects and the total film rental to be paid by Exhibitor as a minimum commitment for Vitaphone short subjects for each of the motion picture seasons 1937-38, 1938-39 and 1939-40. During each such season, Exhibitor will select, by the same method hereinbefore described in paragraph 13 hereof, from the one and two reel short subjects generally released by Distributor for such season and play in each situation that aggregate number of Vitaphone short subjects which, based upon the respective rentals per short subject ap- [fol. 6580] plicable to the several series of short subjects for such situation as set forth in the said schedule, will equal the total film rental specified in said schedule as a minimum commitment for such situation.

(b) It is agreed that the several series of one and two reel Vitaphone short subjects which may be generally released by Distributor for each of the seasons 1937-38, 1938-39 and 1939-40 shall be the series licensed hereunder for each of said respective seasons. Should Distributor generally release during any such season a series of Vitaphone short subjects not described in Schedule C, then Exhibitor will pay as film rental for such short subjects in each situation, the film rental specified in Schedule "C" for the short subjects of a comparable series, as designated by Distributor, for such situation.

(c) The short subjects licensed hereunder for the motion picture season 1937-38 shall be exhibited during the period of twelve (12) months beginning with December 1, 1937 and ending November 30, 1938. The short subjects licensed hereunder for the motion picture season 1938-39 shall be exhibited during the period of twelve (12) months beginning December 1, 1938 and ending November 30, 1939. The short subjects licensed hereunder for the motion picture season 1939-40 shall be exhibited during the period of twelve (12) months beginning December 1, 1939 and ending November 30, 1940.

(d) It is understood and agreed that where Exhibitor shall, during any season, overplay the minimum commitment for short subjects in any situation, the film rental paid over and above such minimum commitment shall be applied dollar for dollar against any situation where Exhibitor shall underplay the minimum commitment for short [fol. 6581] subjects, provided, however, that during such season Exhibitor shall play that number of short subjects which will yield to the Distributor a minimum aggregate film rental for all situations in the sum of Twenty Eight Thousand Nine Hundred Sixty Dollars and Seventy-five Cents ($28,960.75).

(e) It is understood that the foregoing provisions of paragraph 14 hereof are applicable only to the situations listed in Schedule "C" opposite which there are set up total film rental figures as minimum commitments and rental allocations per short subjects.

15. In addition to the short subjects licensed in Paragraph 14 hereof, Exhibitor shall have the right to exhibit the Floyd Gibbons short subjects for which Exhibitor shall pay as film rental in any situation, the rental specified for Merrie Melody Cartoons in such situation. The Floyd Gibbons short subjects shall be selected by Exhibitor by the same method hereinbefore described in Paragraph 13 hereof. It is agreed that the film rental for the Floyd Gibbons short subjects exhibited in any situation shall not be included in the computation of the total film rental payable as a minimum commitment for such situation, as hereinbefore provided, but shall be paid in addition to the total film rental specified as a minimum commitment for such situation.

16. Unless otherwise provided for herein and not inconsistent with the said Deal Sheets, the exhibition date or dates of each of said features and short subjects at the theatres licensed hereunder shall be determined as follows:

[fol. 6582] Subject to the prior runs and/or clearance granted or hereafter granted by the Distributor to other exhibitors in each situation, and within a reasonable time after a print or prints of any of said features and short subjects are received at the Exchange of the Distributor out of which the Exhibitor is served, and provided the Exhibitor is not in default hereunder, the Distributor shall from time to time mail to the Exhibitor at the address hereinafter specified written notice of availability of such of the features and short subjects covered by the terms of this agreement as shall at the date of sending of such notice of availability be available for exhibition in any of the theatres for the respective runs indicated on the Deal Sheets. Within fourteen (14) days after the mailing of such notice, the Exhibitor shall select an exhibition date or dates not theretofore assigned to another exhibitor or exhibitors within the period commencing upon the available date and ending thirty (30) days thereafter, and give to the Distributor written notice of the date or dates so selected. Subject to the provisions of this paragraph, Distributor agrees to deliver a print of such features and short subjects on the date so designated by the Exhibitor.

17. Exhibitor will pay Distributor with respect to each feature for each theatre licensed hereunder the following trailer rentals up to and including March 12, 1938:

1 change	$10.00
2 changes	5.00
3 changes	3.00
4 changes	2.00
5 changes	1.50

Commencing March 13, 1938, Exhibitor will pay Distributor with respect to each feature licensed hereunder [fol. 6583] the respective trailer charges specified for each situation in the schedule annexed hereto, made part hereof and marked Schedule "D".

18. Exhibitor will pay Distributor with respect to each feature licensed hereunder the respective score charges specified for each situation in the schedule annexed hereto, made part hereof and marked Schedule "D".

19. Distributor shall accord to each theatre licensed hereunder for each feature and short subject actually exhibited the clearance set opposite such theatre on the schedule annexed hereto, made part hereof and marked Schedule "E".

20. Exhibitor agrees to charge in each theatre during the exhibition of the features and short subjects licensed hereunder the minimum admission prices indicated opposite such theatre on the schedule annexed hereto, made part hereof and marked Schedule "F".

21. (a) If the rental for any feature is a fixed sum, then Exhibitor agrees to pay such fixed sum as well as the rental for the scores, trailers and short subjects licensed hereunder at least three days in advance of the date of the first exhibition thereof, determined as herein provided.

(b) If the rental for any feature is to be determined either in whole or in part upon a percentage of the gross receipts, the Exhibitor shall pay such rental immediately after the last exhibition upon the last date of the exhibition of such feature, or if requested by the Distributor at the end of each day's exhibition. The Exhibitor agrees to furnish the Distributor within three (3) days after the [fol. 6584] completion of the exhibition at each theatre of each feature, the film rental for which is based in whole or in part upon a percentage of the gross receipts, an itemized statement of the gross receipts derived by the Exhibitor during such exhibition. Such statement shall be signed by the Exhibitor or the manager or treasurer of such theatre and the cashier thereof, and shall include any and all additional information and figures necessary to compute the license fees payable hereunder for each such feature.

(c) All payments hereunder shall be made to the Distributor at the respective cities in which are located the exchanges from which Exhibitor is served.

(d) Exhibitor agrees to keep full, accurate and complete books of account, vouchers and other records showing all gross receipts of the features licensed hereunder for which the film rental is based in whole or in part upon a percentage of the gross receipts, and the Exhibitor agrees that the Distributor shall have access at all reasonable times, through its accredited representatives, to the books of account, vouchers, records and documents of the Exhibitor in so far as they relate to the said features and to any and all additional information and figures necessary to compute the film rentals payable hereunder for each such feature in each theatre. Such representatives shall have the right to inspect, compare and make copies of any such books of account, couchers, records, documents and any such additional information and figures. During the exhibition period of any such feature, the Distributor shall have the [fol. 6585] right to have a representative stationed at each theatre at which such feature shall be exhibited, who shall have access to all parts of such theatre, including the box office, and shall have the right to check and verify ticket sales, receipts and admissions.

22. (a) If Exhibitor, in any town where more than one theatre is licensed hereunder, shall sell, lease, assign or otherwise dispose of, or in any manner voluntarily or by operation of law, lose its interest in, control of, or cease the operation of one or more but less than all of said theatres, or if Exhibitor shall consolidate or merge with any other person, firm or corporation with respect to the control, ownership, leasehold, operation, management or booking of one or more but less than all of said theatres, then all features, the scores and trailers in connection therewith, and all short subjects licensed hereunder shall be exhibited in the remaining theatre or theatres in such town.

(b) If Exhibitor shall sell, lease, assign or otherwise dispose of or in any manner, voluntarily or by operation of law, lose its interest in, control of or cease the operation of all of the theatres or of the only theatre licensed hereunder in any town, or if Exhibitor shall consolidate or merge with any other person, firm or corporation with respect to the control, ownership, leasehold, operation, management or booking of all of the theatres or of the only theatre licensed hereunder in any town, the Distributor shall have the right, without any further liability of any [fol. 6586] kind on Distributor's part to Exhibitor, to forthwith cancel and terminate this agreement and all rights herein granted Exhibitor with respect to the theatres or theatre in such town, without prejudice to any right or remedy of the Distributor against the Exhibitor at law or in equity and/or otherwise provided for in this agreement in the premises.

(c) If Exhibitor shall sell, lease, assign or otherwise dispose of or in any manner, voluntarily or by operation of law, lose its interest in, control of or cease the operation of all of the theatres or of the only theatre in a majority of the towns wherein are located the theatres licensed hereunder, or if Exhibitor shall consolidate or merge with any other person, firm or corporation with respect to the control, ownership, leasehold, operation, management or booking of all of the theatres or of the only theatre in a majority of the towns wherein are located the theatres licensed hereunder, then Distributor shall have the right, without any further liability of any kind on Distributor's part to Exhibitor, to forthwith cancel and terminate this agreement in its entirety and all rights herein granted Exhibitor with respect to all theatres licensed hereunder, without prejudice to any right or remedy of the Distributor against the Exhibitor at law or in equity and/or otherwise provided for in this agreement in the premises.

(d) It is agreed with respect to the corporation constituting the Exhibitor, that the sale or other disposition of a majority in amount of the stock of such corporation by the present holders hereof to other parties or such sale or disposition of such part thereof to present minority stockholders as shall give them a majority control of such stock or any sale, mortgage, pledge or other disposition, voluntary [fol. 6587] or involuntary, of such stock or any part thereof by or from present holders thereof, as shall result in changing or transferring the control of the stock, and thereby of the corporation through control of its directors or trustees, to parties other than those now in control of such stock of said corporation, shall for all purposes of this clause and agreement be deemed a disposition, sale or assignment of the interest and control in the theatre or theatres owned in part or in whole by such corporation, in the same manner and with like effect as a sale or transfer thereof by the corporation, and in such event, Distributor shall have the right, without any liability of any kind on Distributor's part to Exhibitor, to forthwith cancel and terminate this agreement in its entirety and all rights herein granted Exhibitor with respect to all theatres licensed hereunder without prejudice to any right or remedy of the Distributor against the Exhibitor at law or in equity and/or otherwise provided for in this agreement in the premises.

(e) Exhibitor agrees promptly to notify the Distributor in writing of the happening of any one or more of the events herein described.

23. All notices to be sent to Exhibitor by Distributor hereunder shall be sent by ordinary mail to the following address:

Schine Enterprises Corporation, Gloversville, N. Y.

24. The license herein granted shall be governed by the form or agreement annexed hereto, made part hereof and marked Exhibit "A" with certain deletions made therein, [fol. 6588] and wherever said form of agreement hereto annexed is in conflict with or inconsistent with the above provisions, said provisions shall govern and apply and all other agreements and arrangements, written or oral, with respect to the license herein granted shall be deemed to be of no effect. Wherever the Deal Sheets hereto annexed provide "scores and trailers same as season 1936-37"; "clearance same as season 1936-37", "subject to Master Agreement which prevailed for season 1936-37", or specify score and trailer rentals or clearance terms, said provisions shall be deemed to be eliminated and excluded from said Deal Sheets.

In Witness Whereof, the parties hereto have caused these presents to be executed by their officers thereunto duly authorized the day and year first above written.

Vitagraph, Inc., by —— ——, Schine Enterprises Corporation, by John A. May, Pres., by V. Guy Selman, Vice Pres.

[fol. 6589]

SCHEDULES "A1-A71"

Deal Sheets

[fol. 6590]

Schedule "B"

Reversion Figures

(Each figure is 1/10th of Week)

Town	35% Reversion Pictures	30% Reversion Pictures
Albany Territory		
Amsterdam, N. Y.	$350.00	$330.00
Ballston, N. Y.	45.00	
Carthage, N. Y.	120.00	
Glenns Falls, N. Y.	240.00	210.00
Gloversville, N. Y.	300.00	250.00
Herkimer, N. Y.	170.00	
Little Falls, N. Y.	200.00	
Malone, N. Y.	140.00	
Massena, N. Y.	170.00	
Mechanicville, N. Y.	120.00	
Norwich, N. Y.	160.00	
Ogdensburg, N. Y.	250.00	230.00
Oneonta, N. Y.	200.00	180.00
Saranac Lake, N. Y.	130.00	
Watertown, N. Y.	320.00	240.00
Whitehall, N. Y.	70.00	
Buffalo Territory		
Auburn, N. Y.	220.00	260.00
Bath, N. Y.	110.00	
Canandaigua, N. Y.	150.00	
Corning, N. Y.	190.00	
Cortland, N. Y.	330.00	310.00
Geneva, N. Y.	260.00	270.00
Lockport, N. Y.	240.00	240.00
Newark, N. Y.	140.00	
Oswego, N. Y.	220.00	
Penn Yan, N. Y.	125.00	
Perry, N. Y.	90.00	
Salamanca, N. Y.	150.00	
Seneca Falls, N. Y.	100.00	
Cincinnati Territory		
Athens, O.	200.00	190.00
Lexington, Ky. (Ben Ali or Kentucky)	270.00	230.00
Piqua, O.	140.00	140.00
Cleveland Territory		
Ashland, O.	110.00	
Bellefontaine, O.	140.00	170.00
Bucyrus, O.	100.00	110.00
[fol. 6591]		
Delaware, O.	130.00	
Fostoria, O. (State or Civic)	170.00	150.00
Medina, O. (Tentative)	70.00	
Mount Vernon, O.	150.00	
Norwalk, O.	100.00	110.00
Shelby, O. (Tentative)	70.00	
Tiffin, O.	205.00	
Van Wert, O.	90.00	
Wooster, O.	210.00	210.00
Wooster, O. (Opera House)		60.00

Schedule "C"

Schine Theatres

Short Subject Rental Schedule

Town	Theatre	Run	Play Time	2 Reel Techs.	2 Reel B. & W.	Merrie Melodies	Color Tours	Pictorial Revues	Bands	Vaude. Reels	Novelties	Looney T[illegible]	Minimum Commitment
						Albany Branch							
Amsterdam	Rialto or Strand or Regent	1st	2/3	20.00	15.00	9.00	7.50	7.50	9.00	7.50	7.50	7.50	1,404.00
	Regent	2nd	2/3	5.00	5.00	2.50	2.50	2.50	2.00	2.00	2.00	2.00	Spot Booking
Ballston	Capitol	1st	1/2	8.50	7.00	4.00	4.00	4.00	4.00	3.00	3.00	3.00	325.00
Carthage	Strand	1st	1/2	7.50	6.00						3.00	2.50	236.50
Glen Falls	Rialto or Empire	1st	2/3	17.50	15.00	9.00	7.50	7.50	9.00	7.50	7.50	7.50	694.50
Gloversville	Glove or Hippodrome	1st	2/3	17.50	15.00	8.50	6.50	7.50	8.50	7.50	7.50	6.50	1,342.00
Hamilton	State	1st	2/3	6.00	5.00	2.50			2.50			2.00	277.00
Herkimer	Liberty	1st	2/3	8.50	7.50						4.00	4.00	320.00
Hudson Falls	Strand	1st	1/2	6.00	5.00	2.50			2.50		2.00	2.00	262.00
Ilion	Capitol	1st	1/2	8.50	7.50	4.25	4.25	3.75	3.75	3.50	2.50	2.50	642.00
Little Falls	Rialto	1st	2/3	8.50	7.50	4.00	4.00		4.00	4.00	4.00	4.00	Spot Booking
Malone	Malone	1st	1/2	12.50	11.00	7.50					6.50	6.50	728.50
Massena	Massena	1st	1/2	10.00	9.00	6.50					5.00	5.00	592.00
Mechanicville	State	1st	1/2	10.00	8.50	5.50	5.50	5.50	5.50	5.00	5.00	5.00	429.00
Norwich	Colonia	1st	1/2	8.50	7.50	5.00			5.00		4.00	3.50	544.00
Ogdensburgh	Strand	1st	1/2	14.50	13.50	7.50					6.00	6.00	801.00
Oneonta	Oneonta or Palace	1st	2/3	12.50	10.00	7.50	6.00	6.00	6.00	6.00	5.00	5.00	997.00
Saranac Lake	Pontiac	1st	1/2	8.50	7.00	5.00	4.00					3.50	459.00
Tupper Lake	State	1st	2/3	6.00	5.00	2.50			2.50			2.00	295.50
Watertown	Avon or Olympic	1st	2/3	15.00	12.50	8.50	8.50		8.50	7.50	7.50	7.50	Spot Booking
					10.00							6.50	
Whitehall	Capitol	1st	1/2	10.00	8.00	5.00	5.00	5.00	5.00	4.00	4.00	4.00	390.00
													10,739.00

[fol. 6593]

Schedule "C"

Schine Theatres

Short Subject Rental Schedule

Town	Theatre	Run	Play. Time	2 Reel Techs.	2 Reel B. & W.	Merrie Melodies	Color Tours	Pictorial Revues	Bands	Vaude. Reels	Novelties	Looney Tunes	Minimum Commitment
						Buffalo Branch							
Auburn	Jefferson or Palace	1st	3/4	12.50	12.50	7.50	7.00	7.00	7.00	6.50	6.50	6.50	1,166.00
Bath	Babcock	1st	3	7.50	6.50	4.00			3.50			3.00	405.50
Canandaigua	Playhouse	1st	3	7.50	6.50	4.00			3.50			3.00	405.50
Cortland	State or Temple	1st	2/3	15.00	12.50	7.50	6.50	6.50	6.50	6.00	6.00	6.00	1,138.00
Geneva	Geneva or Regent	1st	3	17.50	15.00	8.50	7.50	7.50	7.50	6.00	6.00	6.00	1,290.00
Newark	Capitol	1st	3	7.50	6.50	4.00			3.50			3.00	405.50
Oswego	Strand or Capitol	1st	3	12.50	11.00	6.50	5.50	5.50	5.50	5.00	5.00	5.00	974.00
Penn Yan	Elmwood	1st	2/3	8.50	7.50	4.50			3.50			3.00	468.00
Perry	Auditorium	1st	2/3	7.50	6.00	4.50			4.00			3.50	409.00
Salamanca	Andrews	1st	3	11.00	10.00	5.00	5.00	4.00		4.00	4.00	4.00	741.00
Seneca Falls	Strand	1st	2	6.00	6.00	3.50	2.75	2.75		2.75			386.25
													7,788.75

[fol. 6594]

Town	Theatre	Run	Play. Time	2 Reel Techs.	2 Reel B. & W.	Merrie Melodies	Color Tours	Pictorial Revues	Bands	Vaude. Reels	Novelties	Looney Tunes	Minimum Commitment
						Cincinnati Branch							
Athens	Athens or Ohio or Court	1st	2/3	12.50	10.00	6.50	5.00	3.50	5.00	3.50	3.50	3.50	839.50
Lexington	Kentucky or Ben-Ali or Strand	1st	3/4	30.00	20.00	15.00	15.00	10.00	10.00	7.50	7.50	7.5	1,375.0
Paris	Bourbon	1st	1	6.00	5.00	3.00	2.50	2.50	2.50	2.50	2.50	2.50	455.00
Piqua	Miami or Piqua	1st	1/2/3	9.50	8.50	5.50	5.50	5.50	5.50	5.50	5.50	4.50	556.00
Richmond	Madison or State	1st	1	6.00	5.00	3.00	2.50	2.50	2.50	2.50	2.50	2.50	370.50
													3,596.00

[fol. 6596]

Schedule "D"

Town	Theatre	Score Rentals	Trailer Rentals Effective 3/13/38
Albany Territory			
Amsterdam, N. Y.	Rialto	$2.50 per day	$3.00
	Strand	2.50 per day—1st run	2.00
		2.50 per run—2nd run	
	Regent	2.50 per run—2nd run	2.00
Ballston, N. Y.	Capitol	2.50 per run	1.50
Carthage, N. Y.	Strand	2.50 per run	2.00
Gloversville, N. Y.	Glove	2.50 per day	3.00
	Hippodrome	2.50 per day—1st run	
		2.50 per run—2nd run	2.00
Glens Falls, N. Y.	Rialto	2.50 per day	3.00
	Empire	2.50 per day—1st run	
		3.00 per run—2nd run	2.00
Hamilton, N. Y.	State	2.50 per run	1.50
Herkimer, N. Y.	Liberty	2.50 per run	2.00
Hudson Falls, N. Y.	Strand	2.50 per run	2.00
Ilion, N. Y.	Capitol	2.50 per run	1.50
Little Falls, N. Y.	Rialto	2.50 per run	2.00
	Hippodrome	2.50 per run	1.50
Malone, N. Y.	Malone	2.50 per day	2.00
Massena, N. Y.	Massena	2.50 per run	2.00
Mechanicville, N. Y.	State	5.00 per run	1.50
Norwich, N. Y.	Colonia	2.50 per day	2.00
Ogdensburg, N. Y.	Strand	2.50 per day	1.50
	Pontiac	2.50 per day	1.50
Oneonta, N. Y.	Oneonta	2.50 per day	3.00
	Palace	2.50 per day	2.00
Saranac Lake, N. Y.	Pontiac	2.50 per day	1.50
Tupper Lake, N. Y.	State	2.50 per run	2.00
Watertown, N. Y.	Avon	[illegible] per day	3.00
	Olympic	2.60 per day—1st run	
		2.50 per run—2nd run	2.00
	Palace	2.50 per run—2nd run	2.00
Whitehall, N. Y.	Capitol	2.50 per run	1.50
Buffalo Territory			
Auburn, N. Y.	Jefferson	2.50 per run	3.00
	Palace	2.50 per run—1st or 2nd	2.00
	Strand (closed)		
Bath, N. Y.	Babcock	2.50 per run	2.00
Buffalo, N. Y.	Granada	2.50 per run	3.00
	Riverside	2.50 per run	3.00
Canandaigua, N. Y.	Playhouse	2.50 per run	2.00
Corning, N. Y.	Fox	2.50 per run	3.00
	State	2.50 per run—1st or 2nd runs	2.00
Cortland, N. Y.	State	2.50 per run	2.00
	Temple	2.50 per run	2.00
Geneva, N. Y.	Geneva	2.50 per day	3.00
	Regent	2.50 per day	2.00

[fol. 6597]

Schedule "D"

Town	Theatre	Score Rentals	Trailer Rentals Effective 3/13/38
Buffalo Territory (cont.)			
Lockport, N. Y.	Palace	2.50 per day	$3.00
	Rialto	2.50 per day—1st run 2.50 per run—2nd run	3.00
	Hi-Art	2.50 per day—1st run 2.50 per run—2nd run	1.50
Newark, N. Y.	Capitol	2.50 per run	1.50
Oswego, N. Y.	Strand	2.50 per run	3.00
	Capitol	2.50 per run—1st or 2nd runs	2.00
Penn Yan, N. Y.	Elmwood	2.50 per run	1.50
Perry, N. Y.	Auditorium	2.50 per run	1.50
Rochester, N. Y.	Riviera	2.50 per run	2.00
	Liberty	2.50 per run	2.00
	Lake	2.50 per run	2.00
	Cameo	2.50 per run	2.00
	Dixie	2.50 per run	2.00
	State	2.50 per run	2.00
	Grand	2.50 per run	2.00
Salamanca, N. Y.	Andrews	2.50 per run	2.00
Seneca Falls, N. Y.	Strand	2.50 per run	1.50
Cincinnati Territory			
Athens, Ohio	Athena	2.50 per run	2.00
	Ohio	2.50 per run	2.00
	Court	2.50 per run	1.50
Lexington, Ky.	Kentucky	5.00 per day—10.00 per run	5.00
	Ben Ali	5.00 per day—10.00 per run	3.00
	Strand	2.50 per run	2.00
	State	2.50 per run	2.00
Paris, Ky.	Bourbon	2.50 per run	1.50
Piqua, Ohio	Piqua	2.50 per run	2.00
	Miami	2.50 per run	1.50
Richmond, Ky.	Madison	2.50 per run	1.50
	State	2.50 per run	1.50
Cleveland Territory			
Ashland, Ohio	Palace	2.50 per run	2.00
	Opera House	2.50 per run	2.00
Bellefontaine, Ohio	Holland	2.50 per day	2.00
Bucyrus, Ohio	Bucyrus	2.50 per run	2.00
	Southern	2.50 per run	1.50

[fol. 6[illegible]98]

Schedule "D"

Town	Theatre	Score Rentals	Trailer Rentals Effective 3/13/38
Cleveland Territory			
Delaware, Ohio	Strand	2.50 per run	2.00
Fostoria, Ohio	State	2.50 per day—5.00 per run	2.00
	Civic	2.50 per day—5.00 per run	1.50
	Roxy	2.50 per day—5.00 per run	1.50
Kent, Ohio	Kent		2.00
Ravena, Ohio	Ravena		2.00
Mount Vernon	Vernon	To be arranged—house not open	2.00
	Vine	2.50 per run	2.00
	Lyric	2.50 per run	1.50
Medina, Ohio	Princess	2.50 per run	1.50
Norwalk, Ohio	Forum	2.50 per run	2.00
	Moose	2.50 per run	1.50
Shelby, Ohio	Castamba	2.50 per run	1.50
Tiffin, Ohio	Ritz	2.50 per run	2.00
	Tiffin	2.50 per run	2.00
	Grand	2.50 per run	1.50
Van Wert, Ohio	Van Wert	3.00-1/2 dys-5.00-3 days	2.00
	Strand	3.00-1/2 dys.-5.00-3 days	1.50
Wooster, Ohio	Wooster	2.50 per run	2.00
	Opera House	2.50 per run	1.50

Schedule "E"

Clearance

Albany Territory

Town	Theatre	Run	Clearance
Amsterdam, N. Y.	Strand or Rialto	1st	30 days ahead of Broadalbin Fonda and Johnstown.
" "	Regent or Strand	2nd	60 days after first run and 60 days ahead of third run.
Ballston, N. Y.	Capitol	1st	No clearance.
Carthage, N. Y.	Strand	1st	90 days over City of Carthage. 14 days over Lowville.
Glenns Falls, N. Y. (Sold F. N. only)	Rialto or Empire	1st	14 days ahead of Hudson Falls and Ft. Edward. 7 days ahead of Lake George. 60 days ahead of second run Glenns Falls.
" "	Empire	2nd	60 days ahead of third run.
Gloversville, N. Y.	Glove or Hippodrome	1st	45 days ahead of Johnstown, 30 days ahead of Broadalbin. Mayfield, Sacandaga Park and Fonda.
" "	Hippodrome	2nd	No clearance.
Hamilton, N. Y.	State	1st	21 days ahead of Waterville and Oriskany Falls.
Herkimer, N. Y.	Liberty	1st	21 days from last date of first run Utica. 14 days ahead of Ilion, Mohawk and Frankfort.
Hudson Falls, N. Y.	Strand	1st	14 days after first run Glenns Falls. 14 days ahead of second run Glenns Falls. 40 days ahead of Ft. Edward.
Ilion, N. Y.	Capitol	1st	10 days after Herkimer. 30 days ahead of Mohawk and Frankfort.
Little Falls, N. Y.	Rialto or Hippodrome	1st	90 days over City of Little Falls. 14 days ahead of Ft. Plain. 30 days ahead of St. Johnsville and Dolgeville.
Malone, N. Y.	Malone	1st	30 days ahead of Brushton, Ft. Covington, Chateaugay and Bangor.
Massena, N. Y.	Massena	1st	60 days over city of Massena.
Mechanicville, N. Y.	State	1st	No clearance.
Norwich, N. Y.	Colonia	1st	30 days ahead of Sherburne, Oxford, Greene, New Berlin and Sidney.
Ogdensburg, N. Y.	Strand or Pontiac	1st	30 days ahead of Waddington, Canton and Norwood.

[fol. 6600]

Schedule "E"

Clearance

Albany Territory

Town	Theatre	Run	Clearance
Oneonta, N. Y.	Oneonta or Palace	1st	30 days ahead of Cooperstown, Morris and Delhi.
Saranac Lake, N. Y.	Pontiac	1st	30 days ahead of Lake Placid—with open booking during the period; June 15 to Sept. 15 and Jan. 15 to Feb. 15th.
Tupper Lake, N. Y.	State	1st	30 days ahead of Faust and Sunmount.
Watertown, N. Y.	Avon or Olympic	1st	30 days ahead of Adams and Sacketts Harbor. 60 days first run over second run.
" "	Olympic or Palace	2nd	60 days ahead of third run.
Whitehall, N. Y.	Capitol	1st	No clearance.

Buffalo Territory

Town	Theatre	Run	Clearance
Auburn, N. Y.	Jefferson or Palace or Strand	1st	30 days ahead of Skaneateles.
" "	Palace or Strand	2nd	60 days over third run.
Bath, N. Y.	Babcock	1st	30 days ahead of Hammondsport, Avoca, Savona, Prattsburg and Cohocton.
Buffalo, N. Y.	Granada	sub.	10 days on Central Park, Varsity and Little Kensington. 14 days ahead of Williamsville.
" "	Riverside	sub.	Immediately after Shea's No. Park. 14 days on Park, Pastime and Unity. 10 days on Kenmore and Victoria. 21 days on all 10¢ houses and 15¢ houses.
Canandaigua, N. Y.	Playhouse	1st	No clearance.
Corning, N. Y.	Fox or State	1st	30 days on Painted Post and Addison. 60 days on City of Corning. 60 days on third run.
" "	State	2nd	30 days on Painted Post and Addison. 60 days City of Corning. 60 days on third run.
Cortland, N. Y.	State or Temple	1st	30 days on Homer, Marathon, McGrawsville, Tully, Groton and Moravia.
Geneva, N. Y.	Geneva or Regent	1st	30 days ahead of Clifton Springs, Lyons, Phelps, Seneca Falls and Waterloo. 7 days on Penn Yan. (?)

[fol. 6601]

Schedule "E"

Clearance
Buffalo Territory (cont.)

Town	Theatre	Run	Clearance
Lockport, N. Y.	Palace or Rialto or Hi-Art	1st	30 days ahead of Neufane and Middleport.
" "	Rialto or Hi-Art	2nd	30 days ahead of Neufane and Middleport. 60 days over third run.
Newark, N. Y.	Capitol	1st	30 days ahead of Lyons, Palmyra and Clyde.
Oswego, N. Y.	Strand or Capitol	1st	30 days ahead of Fulton, Minetto and Pulaski.
" "	Capitol	2nd	60 days on third run.
Penn Yan, N. Y.	Elmwood	1st	30 days ahead of Dundee.
Perry, N. Y.	Auditorium	1st	No clearance.
Rochester, N. Y.	Cameo	sub.	After Fenyvessy's Strand, Madison and Monroe.
" "	Grand	sub.	7 days on Family and Empire. Pictures to become available immediately after Strand-Madison Theas.
" "	Lake	sub.	After Fenyvessy's Strand, Madison and Monroe. 10 days on Empress and Lyric.
" "	Riviera or Liberty	3rd	Second run to play only in Temple and Capitol Theatres. 30 days on Lake, Cameo and Hollywood Theatres. 21 days on all subsequent runs in Rochester. 21 days ahead of all 10¢ houses.
" "	State or Dixie	3rd	To be played day and date with Riviera or Liberty Theatres or within 10 days. State Theatre, 10 days clearance on Webster Thea. Dixie Theatre, 10 days clearance on Hub, Seabreeze, Hudson and Astor. Pictures must be played within 21 days of availability.
" "	Riviera or Liberty	4th	Repeat run—If played within 21 days after Notice of Availability.
" "	State or Dixie	4th	Repeat run—State Theatre, 14 days clearance on Webster Thea. Dixie Theatre, 10 days on Hub, Seabreeze, Hudson, Astor. Pictures must be played within 21 days of availability.
Salamanca, N. Y.	Andrews	1st	30 days ahead of Randolph, Little Valley and Ellicottville.
Seneca Falls, N. Y.	Strand	1st	14 days after Geneva Theatre, Geneva. 10 days after Regent Theatre, Geneva. 30 days ahead of Waterloo.

[fol. 6602]

Town	Theatre	Run	Clearance
	Cincinnati Territory		
Athens, O.	Athena or Ohio or Court	1st	30 days ahead of Nelsonville, Gloucester and Pomeroy.
Lexington, Ky.	Kentucky or Ben Ali or Strand	1st	First run City of Lexington.
" "	Strand or State	2nd	60 days over third run.
" "	Strand or State	3rd	30 days over fourth run.
Paris, Ky.	Bourbon	1st	No clearance.
Piqua, O.	Piqua or Miami	1st	To receive the same availability as Troy.
Richmond, Ky.	Madison or State	1st	First run City of Richmond.
	Cleveland Territory		
Ashland, O.	Palace or O. House	1st	30 days ahead of Ludaire.
Bellefontaine, O.	Holland	1st	30 days ahead of E. Liberty and De Graff.
Bucyrus, O.	Bucyrus or Southern	1st	30 days ahead of Attica and Nevada.
Delaware, O.	Strand	1st	No clearance.
Fostoria, O.	State or Civic or Roxy	1st	As available.
Kent O. or Ravena	Kent or Ravena	1st	30 days ahead of Garrettsville and Mantua.
Kent, O. or Ravena	Kent or Ravena	2nd	As available.
Medina, O.	Princess	1st	No clearance.
Mount Vernon, O.	Vine or Vernon or Lyric	1st	60 days over City of Mount Vernon. 30 days ahead of Utica.
Norwalk, O.	Forum or Moose	1st	60 days in Norwalk. 14 days ahead of Lyons, Huron, New London and Milan.
Shelby, O.	Castamba	1st	7 days after Mansfield. As available.
Tiffin, O.	Ritz or Grand or Tiffin	1st	90 days City of Tiffin.
Van Wert, O.	Van Wert or Strand	1st	30 days ahead of Rockford.
Wooster, O.	Wooster or O. House	1st	14 days ahead of Orville.

Schedule "F"

Admission Prices

Town	Theatre	Matinee	Evening
Albany Territory			
Amsterdam, N. Y.	Rialto or Strand	10–25¢	10–30¢
	Regent	10–15¢	10–15¢
Carthage, N. Y.	Strand	10–20¢	10–30¢
Glens Falls, N. Y.	Rialto	10–25¢	10–30¢
	Empire	10–15¢	10–15–25¢
Gloversville, N. Y.	Glove	10–25¢	10–25–35¢
	Hippodrome	10–25¢	10–30¢
Hamilton, N. Y.	State	10–25¢	10–30¢
Herkimer, N. Y.	Liberty	10–25¢	10–25–30¢
Hudson Falls, N. Y.	Strand	10–25¢	10–30¢
Ilion, N. Y.	Capitol	10–25¢	10–25¢
Little Falls, N. Y.	Rialto	10–25¢	10–25–35¢
	Hippodrome	10–15¢	10–15¢
Malone, N. Y.	Malone	10–15–25¢	10–15–25¢
Massena, N. Y.	Massena	10–25¢	10–25–35¢
Norwich, N. Y.	Colonia	10–25¢	10–25¢
Ogdensburg, N. Y.	Strand	10–25¢	10–25–35¢
	Pontiac (not open at present)		
Oneonta, N. Y.	Oneonta	10–25¢	10–25–35¢
	Palace	10–25¢	10–25¢
Saranac Lake, N. Y.	Pontiac	10–25¢	10–25–35¢
Tupper Lake, N. Y.	State	10–25¢	10–25–35¢
Watertown, N. Y.	Avon	10–15–25¢	10–25–35¢
	Olympic	10–15¢	10–15–25¢
	Palace	10–15¢	10–15¢
Ballston, N. Y.	Capitol	10–20¢	10–35¢
Mechanicville, N. Y.	State	10–25¢	10–25–35¢
Whitehall, N. Y.	Capitol	10–25¢	10–25–35¢
Buffalo Territory			
Auburn, N. Y.	Strand (closed)		
	Jefferson	10–25¢	10–25–35¢
	Palace	10–15¢	10–25¢
Bath, N. Y.	Babcock	10–25¢	10–30¢
Buffalo, N. Y.	Granada	10–25¢	10–25¢
	Riverside	10–25¢	10–25¢
Canandaigua, N. Y.	Playhouse	10–15¢	10–25¢
Corning, N. Y.	Fox	10–20¢	10–25¢
	State	10–15¢	10–20¢
Cortland, N. Y.	State	10–25¢	10–25–35¢
	Temple	10–15¢	10–20¢

[fol. 6604]

Schedule "F"

Admission Prices

Town	Theatre	Matinee	Evening
Buffalo Territory (cont.)			
Geneva, N. Y.	Geneva	10–25¢	10–25–35¢
	Regent	10–25¢	10–25¢
~~Lockport, N. Y.~~	Palace	10–25¢	10–25–35¢
	Rialto	10–25¢	10–25¢
	Hi-Art.	10–15¢	10–20¢
Newark, N. Y.	Capitol	10–25¢	10–25–35¢
Owsego, N. Y.	Strand	10–25¢	10–25–35¢
	Capitol	10–15¢	10–25¢
Penn Yan, N. Y.	Elmwood	10–25¢	10–25–35¢
Perry, N. Y.	Auditorium	10–25¢	10–25¢
Rochester, N. Y.	Liberty	10–25¢	10–25¢
	Riviera	10–25¢	10–25¢
	State	10–15–25¢	10–15–25¢
	Dixie	10–25¢	10–25¢
	Lake	10–20¢	10–20¢
	Grand	10–15¢	10–15¢
	Cameo	10–20¢	10–20¢
Salamanca, N. Y.	Andrews	10–20¢	10–20–30¢
Seneca Falls, N. Y.	Strand	10–25¢	10–25–35¢
Cincinnati Territory			
Athens, Ohio	Athena	10–25¢	10–30¢
	Ohio	10–15¢	10–25¢
	Court (Closed)		
Lexington, Ky.	Kentucky	10–25¢	10–35¢
	Strand	10–10¢	10–15¢
	State	10–10¢	10–15¢
	Ben Ali	10–25¢	10–35¢
Paris, Ky.	Bourbon	10–16¢	10–27¢
Piqua, O.	Piqua	10–25¢	10–30¢
	Miami	10–15–20¢	10–15–20¢
Richmond, Ky.	Madison	10–16¢	10–16–27¢
	State	10–15¢	10–20¢
Cleveland Territory			
Ashland, O.	Opera House	10–15¢	10–30¢
	Palace	10–20¢	10–20¢
Bellefontaine, O.	Holland	10–20¢	10–25¢
Bucyrus, O.	Bucyrus	10–15¢	10–25¢
	Southern	10–15¢	10–20¢
Delaware, O.	Strand	10–26¢	10–31¢
Fostoria, O.	Civic	10–21¢	10–31¢
	State	10–25¢	10–20–30¢
	Roxy	10–15¢	10–15¢

[fol. 6605]

Schedule "F"

Admission Prices

Town	Theatre	Matinee	Evening
Cleveland Territory (cont.)			
Kent, O.	Kent	10–25¢	10–30¢
Medina, O.	Princess	10–20¢	10–30¢
Mount Vernon, O.	Vine	10–25¢	10–25–35¢
	Vernon (new house not yet open)		
	Lyric	10–15¢	10–15¢
Norwalk, O.	Forum	10–20¢	10–30¢
	Moose	10–15¢	10–20¢
Ravena, O,	Ravena	10–25¢	10–35¢
Shelby, O.	Castamba	10–15¢	10–25¢
Tiffin, O.	Ritz	10–20¢	10–20–30¢
	Tiffin	10–15¢	10–20¢
	Grand		10–15¢
Van Wert, O.	Van Wert	10–15–20¢	10–15–25¢
	Strand	10¢	10–15¢
Wooster, O.	Wooster	10–25¢	10–25–35¢
	Opera House	10–20¢	10–20¢

PLAINTIFF'S EXHIBIT W-4 (1)

W 4 (1)

DEAL SHEET

X 9/28/37

THEATRE	TERMS
	Warner - First National Seasons 1937-38 & 1938-39 [illegible]
Rialto or Strand	4 - 3/4 Days 35% to split
	2 - 3/4 " 35% (Remission to 30%) to split of 35%
	8 - 3/4 " 30% no split
	2 - 3/4 " 30% (Remission to 25%)
Amsterdam	10 - 7/3 " 25%
	12 - 7/3 " $125.00
	22 - 7/3 " $100.00

Shorts & Trailers Same as Season 1936-37

Clearance Same as Season 1936-37

Subject to Master Agreement which prevailed for Season 1936-1937

6808

4457

W 4 (2)

9/18/37

DEAL SHEET

THEATRE	TERMS
	Warner - First National Season 1937-38 1938-39 1939-40
Regent	6 @ 50^{00} - 7/3 Days
&	54 @ 22^{00} - 7/3
Strand	Scores & Trailers Same as Season 1936-37
2nd Run	Clearance Same as Season 1936-37
Amsterdam	Subject to Master agreement amended for Season 1936-37

ACCEPTED: Ben Kalmenson
(Distributor)

ACCEPTED: ....
(Schine Circuit, Inc.)

6607

B. & F. [illegible] 2/26/42

W 4(3) x 9/10/37

DEAL MEMO

THEATRE	TERMS
Capitol Ballston, N.Y.	~~[illegible]~~ First National Season 1937-38 1938-39 1939-40
	4 - 2 Days @ 35% to split
	2 - 2 " @ 35% (Minimum to 30%) to split of 35%
	6 2 " @ $50.00
	4 - 1/2 " $25.00
	23 - 1/2 " $20.00
	21 - 1/2 " 12.50
	Scores 2.50
	Trailers 3.00
	Clearance Same as Season 1936-37
	Subject to Master agreement which prevailed in Schine Circuit Season 1936-37

ACCEPTED Ben Kalmenson
(Distributor)

ACCEPTED [illegible]
(Schine Circuit, Inc.)

4459

~~[illegible]~~ 2/26/42

W 4 (4) 9/18/37

DEAL SHEET

THEATRE	TERMS
	Warner-First National Season 1937-38 1938-39 1939-40
	4 - 1/3 Days @ 35% to split
Strand	2 - 1/3 " @ 35% (reverse to 30%) to split of 35%
	6 - 1/3 " @ 30%
Carthage	4 - 1/2 " @ 50.00
	10 - 1/2 " @ 25.00
	34 - 1/2 " @ 17.50
	Screen Trailers Same as Season 1936-37
	Clearance Same as Season 1936-37
	Subject to Master Agreement which Executed for Season 1936-37

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Sabine Circuit, Inc.)

6609

4460

[illegible] ~~[illegible]~~ [illegible]

W4(5)

x

9/28/37

DEAL SHEET

THEATRE	TERMS
Rialto N. Empire Glens Falls N.Y.	First National Seasons 1937-38 1938-39 1939-40 2 - 3/5 Days @ 35% to split 1 - 7/3 " @ 35% (Reversion to 30%) to split if 35% 4 - 7/3 " @ 30% 1 - 7/3 " @ 30% (Reversion to 25%) 9 - 7/3 " @ 25% 11 - 7/3 " @ 20% 2 - 7/3 " @ $50.00 Scores & Trailers same as Seasons 1936-37 Clearance same as Season 1936-37 Subject to Master agreement which prevailed for Season 1936-37

ACCEPTED........Ben Kalmenson
(Distributor)

ACCEPTED.......
(Schine Circuit, Inc.)

6610

4461

W.4(b)x

9/28/37

DEAL SHEET

THEATRE	TERMS
	Warner- First National Season 1937-38 1938-39-1939-40
Empire a. 1st Run Glenns Falls	4 @ 75.00 10 @ 35.00 46 @ 17.50 } 2/3 Days Scores & Trailers Same as Season 1936-37 Subject to Master Agreement which prevailed for Season 1936-37

ACCEPTED Ben Kalmenson
(Distributor)

ACCEPTED J. A. Lynch
(Sabine Circuit, Inc.)

6611

4462

W 4 (7)

1. 2. 3 & 4 & 7 ~~[illegible]~~

DEAL SHEET

9/28/37

THEATRE	TERMS
	Warner-First National Years 1937-38 1938-39 1939-40
	4- 7/4 Days @35% to split
Glove	2- 7/4 - @35% (Revision to 30%) to split of 35%
N	8- 7/4 . @ 30%
	2- 7/4 . @ 30% (Revision to 25%)
Hippodrome	10- 7/3 - @ 25%
	17- 7/3 . @ $100.00
Gloversville N Y	17- 7/3 . @ $80.00
	Scores & Trailers Same as Season 1936-37
	Clearance Same as Season 1936-37
	Subject to Master Agreement which prevails for Season 1936-1937

ACCEPTED: Ben Kalmenson
(Distributor)

ACCEPTED: Geo. Lynch
(Schine Circuit, Inc.)

6612

4463

W 4 (a) 9/28/37

DEAL SHEET

THEATRE	TERMS
	Warner - First National Product Seasons 1937-38 1938-39 10
Hippodrome 2nd Run Gloversville	15 Pictures Minimum Selection out of 60 Pictures 2 Days 50.00 Series 2.00 Trailers 3.00
Nrt Hyde	Clearance 40 Days after 1st Run Gloversville

ALBANY
MOTION PICTURE ARBITRATION TRIBUNAL
SEP 18 1942
Schine EXHIBIT
No. 118 CASE No. 15-3F-42
[illegible] V [illegible]

ACCEPTED Ben Kalmenson
(Distributor)

ACCEPTED Gus Lynch
(Schine Circuit, Inc.)

6613

4464

x W4(9) [illegible]

DEAL SHEET

Warner Bros - 1st National [illegible] 12/16/38

THEATRE	TERMS
1	Season 1939-40

Ritz - Granville N.Y.

4 @ 60.00 2 3 1st

2 @ 50.00 2 3

6 @ 40.00 2 3 "

11 @ 32.50 2 3 "

23 @ 17.50 2 3

13 @ 12.50 2 3

Prices Include Score

Trailers 1.00

All Terms & Trailers 7 franchise to apply

Selection

(a) 2 Reel Subjects

1F. {Color 6.00 2/3 Days
{Black & white 5.00 " "

(b) Selection

1 Reel Subjects

Color or Black & white

3.00 2/3 Days

ACCEPTED Paul [illegible]
(Distributor)

ACCEPTED [illegible]
(Schine Circuit, Inc.)

6614

4465

W4(10)

DEAL SHEET

THEATRE	TERMS
	[illegible]
	Selection of 37 Pictures [illegible]
	2 @ 60.00 2-3 + 2
	1 - @ 60.00 2-3
	[illegible] 40.00 2-3
	4 - @ 32.50 2-3
	15 @ 17.50 2-3
	11 - @ 12.50 2-3
	Trailers 1.50
	All Terms & Conditions [illegible] franchise [illegible] apply

Prices [illegible] Scale

SELECTION

(16) 2 Reel Subjects
IF {COLOR 6.00 7/3 Days
{BLACK & WHITE 5.00 " "

SELECTION

(30) 1 Reel Subjects
COLOR OR BLACK & WHITE
3.00 7/3 DAYS

ACCEPTED Paul Krumenacker
(Distributor)

ACCEPTED [illegible]
(Schine Circuit, Inc.)

6615

4466

W4(11),

~~[illegible] (11) [illegible]~~ 9/8/37

~~[illegible]~~ DEAL SHEET

3/26/42

THEATRE	TERMS
	Warner-First National Season 1937-38 1938-39 1939-40
	4-7/3 Days @ 35% to split
State	7-7/3 " @ $65.00
	4-7/3 " @ $35.00
Hamilton N.Y.	45-1/2 @ $40.00
	Scores & Trailers, Same as Season 1936-37
	Clearance Same as Season 1936-37
	Subject to Master agreement which prevailed for Season 1936-37

ACCEPTED Ben Kalmenson
(Distributor)

ACCEPTED Lynch
(Schine Circuit, Inc.)

6616

4467

W4 (12) - 9/28/37

DEAL SHEET

THEATRE	TERMS
	Warner-First National Seasons 1937-38 1938-39 1939-40
Liberty	4 - 7/3 days @ 35% to split ×
	2 - 7/3 .. @ 35% (Reversion to 30%) to split 30%
	6 - 7/3 .. @ 30%
Herkimer - N.Y.	4 - 7/3 .. @ $75.00
	44 - 7/3 - @ 35.00
	Shorts & Trailers same as Season 1936-37
	Clearance same as Season 1936-37
	Subject to Master agreement which prevailed for season 1936-37

ACCEPTED: Ben Kalmenson
(Distributor)

ACCEPTED: ....
(Schine Circuit, Inc.)

6617

4468

W4(13)

~~[illegible] (13)~~ 9/28/37

DEAL SHEET

~~[illegible]~~

[illegible]

THEATRE	TERMS
	Warner First National Season 1937-38 1938-39 1939-40
	4-7/3 Days @ 35% to Split
Strand	7-7/3 " @ $50.00
	26-1/2 " @ $25.00
Hudson Falls N.Y	23-1/2 " @ $15.00
	Scores - Trailers Same as Season 1936-37
	Clearance Same as Season 1936-37
	Subject to Master Agreement which Prevailed for Season 1936-37.

ACCEPTED: Ben Kalmenson
(Distributor)

ACCEPTED:
(Schine Circuit, Inc.)

6618

4469

W4(14)

Pl. Ex. D-4 (14) 9/28/37

DEAL SHEET

3/24/42

THEATRE	TERMS
	Warner First National Seasons 1937-38 1938-39 1939-40
Capitol Ilion NY	6-7/3 Days $150.00 10-7/3 . 50.00 10-7/3 - 35.00 34-7/3 - 22.50 Scores 2.50 Trailers 3.00 Clearance 30 Days over Frankfort & Mohawk Subject to Master agreement which covering Schine Circuit Season 1937-38

ACCEPTED: Ben Kalmenson
(Distributor)

ACCEPTED: Lynch
(Schine Circuit, Inc.)

8819

4470

Pl. Ex. [illegible]-4 (12)
~~[illegible]~~ W4(15)
3/24/42

DEAL SHEET

9/28/37.

THEATRE	TERMS
	Warner-First National Season 1937-38 1938-39 1939-40
	4-7 days @ 35% to [illegible]
Rialto	2-7/3- @ 35% (Reversion to 30%) to [illegible] of 35%
	6-7/3- @ 30%
	20-7/3- $45.00
Little Falls N.J.	28-1/2- $30.00
	1,0
	Scores & Trailers Same as Season 1936-37
	Clearance Same as Season 1936-37
	Subject to Master agreement which prevailed for Season 1936-37.

ACCEPTED: Benj. Kalmenson
(Exhibitor)

ACCEPTED: [illegible]
(Distributor Company, Inc.)

6620

4471

~~[illegible] (16) [illegible]~~
W4(16)
X
9/28/07

DEAL SHEET

THEATRE	TERMS
	Warner-First Nat'l Season 1937-38 1938-39 1939-40
	4-7/3 days @ 35% to split
Malone	2-7/3 " @ 35% (Percentage 30%) to split of 35%
	10-1/2 " 75.00
Malone, N.Y.	10-1/2 " $50.00
	34-1/2 " $40.00
	~~60~~
	Series & Trailers Same as Season 1936-37
	Clearance Same as Season 1936-37
	Subject to Master agreement when executed for Season 1936-37

ACCEPTED: Ben Kalmenson
(Distributor)

ACCEPTED: [illegible]
(Schine Circuit, Inc.)

8621

4472

[illegible] H-4(17) ~~[illegible]~~

W 4(17) 9/28/37

DEAL SHEET

THEATRE	TERMS
	Warner Bros Feature Season 1937-38 1938-39 1939-40
	4-1/3 Days @ 35% to split
Massena	2-1/3 " @ 35% (Minimum to 20%) to split if 35%
	6-1/3 " @ 30%
	6-1/2 @ $50.00
Massena, N.Y.	42-1/2 @ $35.00
	Shorts & Trailers Same as Season 1936-37
	Clearance Same as Season 1936-37
	Subject to Master agreement like previous for Season 1936-37

ACCEPTED ...... Kalmenson

ACCEPTED ......

(Schine Circuit, Inc.)

6622

4473

~~[illegible]~~

W4(18) 9/28/07

DEAL SHEET

THEATRE	TERMS
	Warner-First National Season 1937-38 1938-39 1939-40
State Mechanicville NY	4-2 days @ 35% to split 2-2 " @ 35% (Reversion to 30%) to split of 25% 6-2 " @ $85.00 4-2 " @ $40.00 44-½ " @ $30.00 Serials $5.00 Trailers $3.00 Same clearance as season 1936-37 which governed season 1936-37 Subject to master agreement

Ben Kalmenson
ACCEPTED.................
(Distributor)

ACCEPTED.................
(Schine Circuit, Inc.)

6623

4474

FIRST NATIONAL
Pictures

WARNER BROS
Pictures

W4(19)
X

VITAPHONE 35
Short Subjects

CIRCUIT SCHINE ENTERPRISES CORP.

BRANCH ALBANY, NY. NO.

OPERATING CO.

TOWN NORWICH, NY.

SEASON 1938-39 and 1939-40.

THEATRES	NO PICT	NO DAYS	FILM RENTAL	SCORES
COLONIA	4	2/3	35% to split	
	2	2/3	25% (Rev. to 30%-to split if 25%)	
	6	2/3	30%	
	6	1/2	$60.00 flat	
	20	1/2	60.00 flat	
	14	1/2	20.00 flat	
			This deal subject to the terms of the Master Agreement.	
				TRAILERS

REMARKS:

Accepted Paul Krumenacker
Distributor

Accepted
Exhibitor

6624

4475

WH(20) 9/18/37

X

DEAL SHEET

THEATRE	TERMS
	Warner-First National Season 1937-38 1938-39 1939-40
Colonia Norwich N.Y.	4 - 1/3 Bays @ 35% to split 2 - 1/3 " @ 35% (Reverses to 30%) to split of 35% 6 - 1/3 " @ 30% 6 - 1/2 " \$75.00 10 - 1/2 " \$60.00 10 - 1/2 " \$45.00 12 - 1/2 " \$30.00 Screen Trailers Same as Season 1936-37 Clearance Same as Season 1936-37 Subject to Master agreement which prevails for Season 1936-37

ACCEPTED........ Ben Kalmenson
(Distributor)

ACCEPTED........
(Schine Circuit, Inc.)

6625

4476

[illegible]

W4 (21)

DEAL SHEET

THEATRE	TERMS			
	WARNER—FIRST NATIONAL (Seasons 1938-39, 39-40).			
	4	@	35% to split	2-3 Days
	2	@	35%(reversion to 30%) to split 1st 35%	2-3 "
Strand	6	@	30%	2-3 "
	2	@	30%(reversion to 25%)	2-3 "
OGDENSBURG	7	@	75.00	1-2 "
	11	@	60.00	1-2 "
	25	@	52.50	1-2 "
	60			

SHORTS and TRAILERS: Same as season 1937-38.

CLEARANCE: 14 days ahead of Canton. 30 days ahead of Waddington and Norwood.

Subject to Master Agreement which prevailed for season 1937-38.

Supersedes deal sheet dated 8/28/37 for the seasons 1938-39 and 1939-40).

ACCEPTED..............................
(Distributor)

ACCEPTED..............................
(Schine Circuit, Inc.)

6626

4477

W4(22)
X

9/18/37

DEAL SHEET

THEATRE	TERMS
	Warner-First National Seasons 1937-38 1938-1939 1939-40
Strand Ogdensburg NY	4 - 1/3 days @ 35% to split 2 - 1/3 " @ 35% (Reversion to 30%) to split of 35% 8 - 1/3 " @ 30% 2 - 1/3 " @ 30% (Reversion to 25%) 8 - 1/2 " @ 25% 11 - 1/2 " @ $60.00 25 - 1/2 " @ $52.50 Shorts & Trailers Same as Season 1936-1937 Clearance Same as Season 1936 & 1937. Same Agreement which prevailed for Season 1936-1937 Subject to Master Agreement

1
1

ACCEPTED: Ben Kalmenson
Distributor

ACCEPTED:
(Schine Circuit, Inc.)

6627

4478

FIRST NATIONAL Pictures

WARNER BROS Pictures

W.4(23)

VITAPHONE Short Subjects

CIRCUIT SCHINE ENTERPRISES CORP.

OPERATING CO.

BRANCH ALBANY, NY. NO.

TOWN ONEONTA, NY.

SEASON 1938-39 and 1939-40.

THEATRES	NO. PICT.	NO. DAYS	FILM RENTAL	SCORES
ONEONTA	4	3	35% to split	
or	2	2/3	25% (Rev. to 30%-to split if 35%)	
PALACE	8	2/3	30%	
	2	2/3	30% (Rev. to 25%)	
	10	1/3	$70.00 flat	
	10	1/3	60.00 flat	
	15	1/3	37.50 flat	
			This deal subject to the terms of the Master Agreement.	

TRAILERS

REMARKS:

Accepted

Accepted

BRANCH

6628

4479

~~[illegible]~~

W4(24) 9/18/37

DEAL SHEET

THEATRE	TERMS
	Warner-First National Seasons 1937-38 1938-39 1939-40
Oneonta	4- 3 Days 35% to split
or	2- 1/3. 35% (Reversion to 30%) to split of 35%
Palace	8- 1/3.. 30%
	2- 1/3. 30% (Reversion to 25%)
	10- 1/3. 25%
Oneonta N.Y	10- 1/3.- $75.00
	24- 1/2.- $57.50
	Shorts + Trailers Same as Season 1936-37
	Clearance Same as Season 1936-37
	Subject to Master Agreement which prevailed for Season 1936-37

ACCEPTED. Benj Kalmenson
(Distributor)

ACCEPTED.
(Schine Circuit, Inc.)

6629

4480

W4(25)x 9/28/37

DEAL SHEET

THEATRE	TERMS
	Warner - First National Seasons 1937-38 1938-39 1939-40
Pontiac	4 - 7/3 Days @ 35% to split 2 - 7/3 " @ 35% (Reversion to 30%) to split of 25% 6 - 2 " @ 30%
Saranac Lake N.Y.	4 - 1/2 @ $70.00 14 - 1/2 @ $50.00 30 - 1/2 @ $40.00
	Serial Trailers Same as Season 1936-37
	Clearance Same as Season 1936-37
	Subject to Master Agreement Signed for Season 1936-37

ACCEPTED: Ben Kalmenson

ACCEPTED:
(Schine Circuit, Inc.)

6630

4481

[illegible] (26) [illegible]
WY(26) 3/24/42
X
9/28/37

DEAL SHEET

THEATRE	TERMS
	[illegible] National Season 1937-38 1938-39
State	4-⅓ days @ 35% to split
	7-⅓ " @ $50.00
	26-½ " @ $20.00
Tupper Lake N.Y.	18-½ " @ $17.50
	5-½ " @ $15.00
	Scores & Trailers Same as Season 1936-37
	Clearance Same as Season 1936-37
	Subject to Master Agreement which prevailed for Season 1936-37

ACCEPTED..........................
(Exhibitor)

ACCEPTED..........................
(Schine Circuit, Inc.)

6831

4482

~~[illegible]~~

W4(27) [illegible]

DEAL SHEET

THEATRE	TERMS
	Warner - First National Seasons 1937-38 1938-39 1939-40
Capitol	4-2 days @ 35% to split
Whitehall N.Y	2-2 " @ 35% (Reversion to 30%) to split of 35%
	6-2 " @ $60.00
	4-½ " @ $30.00
	23-½ " @ $25.00
	21-½ " @ $20.00
	Series $2.50
	Trailers $3.00
	Clearance same as Season 1936-37
	Subject to Master Agreement which Covering for Season 1936-37

ACCEPTED: Ben Kalmenson
(Distributor)

ACCEPTED:
(Schine Circuit, Inc.)

6632

4483

W4(28) 9/18/37

~~W. E. F. 4(28)~~

~~DEAL SHEET~~

3/26/42

THEATRE	TERMS
	Warner-First National Season 1937-38 1938-39 1939-40
Avon or Olympic	4- 2/4 Days @ 35% to split
	2- 4/4 " @ 35% (Rescission to 30%) to split of 50%
	8- 3/4 " @ 30%
	2- 7/4 " @ 30% (Rescission to 25%)
	10- 2/3 - @ 25%
	10- 3/3 - @ $110.00
Watertown N.Y.	24- 7/3 - @ $100.00
	Serial & Trailers Same as Season 1936-37
	Clearance Same as Season 1936-37
	Subject to Master agreement which covered for Season 1936-37

ACCEPTED: Ben Kalmenson
(Distributor)

ACCEPTED: G. Lynch
(Schine Circuit, Inc.)

8633

4484

W4(29) 9/18/37

DEAL SHEET

3/26/42

THEATRE	TERMS
Olympic or Palace nd Run Watertown	Warner-First National Season 1937-38 1938-39 1939-40 6 @ 50.00 } 2/3 Days ✓4 @ 30.00 } Shorts & Trailers same as Season 1936-37 Clearance same as Season 1936-37 Subject to master agreement which prevailed for Season 1932/33

ACCEPTED Ben Kalmenson
(Exhibitor)

ACCEPTED
(Schine Circuit, Inc.)

8634

4485

W4(30) 9/28/37

DEAL SHEET

THEATRE	TERMS
	Warner-First National Season 1937-38 1938-39
Palace or Opera House Ashland-Ohio	4 - 1/3 Days @ 35% to split 2 - 1/3 " @ 35% (Revision to 30%) to split of 3 6 - 1/3 " @ 30% 26 - 1/3 " @ 20.00 22 - 1/3 " @ 40.00 Scores & Trailers Same as Season 1936-37 Clearance Same as Season 1936-37 Subject to master agreement which provides

ACCEPTED: Ben Kalmenson (Exhibitor)

ACCEPTED: (Schine Circuit, Inc.)

6635

4486

~~[illegible]~~
W4(31) 3/21/42

DEAL SHEET 11/9/39 x

THEATRE	TERMS
	Warner - First National
	Season 1939-40
Clazel	6 - @ 35% 2-3 Da
&	10 - @ 30% - 2-3 "
Lyric	12 - @ 43$^{\underline{00}}$ 2-3 "
	12 @ 28$^{\underline{00}}$ 2-3 "
	8 - @ 18$^{\underline{00}}$ 2-3 "
Bowling	Trailers 3$^{\underline{00}}$
Green	
Ohio	

ACCEPTED Atley Snyder
(Distributor)
ACCEPTED J. A. Lynch
(Schine Circuit, Inc.)

6636

4487

W4(32) 9/28/37

DEAL SHEET.

THEATRE	TERMS
	Warner First National Season 1937-38 1938-39 1239.vs
	4-2/3 days @ 35% to Split
Bucyrus	2-2/3 @ 35% (Reissues to 30%) to Split of 35%
	8-2/3 @ 30%
or	2-2/3 @ 30% (Reissues to 25%)
State	20-1/3 @ $30.00
	10-1/3 @ $25.00
	14-1/3 @ 20.00
Bucyrus Ohio	Screen Trailers Same as Season 1936-37
	Clearance Same as Season 1936-37
	Subject to Master Agreement when Prevailed for Season 1937-38

ACCEPTED Ben Kalmenson
(Distributor)

ACCEPTED Gus Lynch
(Schine Circuit, Inc.)

6837

4488

W4(83)

9/18/37

3/2-6.42

THEATRE	TERMS
	Warner Bros. National Season 1937-38 1938-39 1939-40
Strand	4-1/3 Days @ 35% to split
	2-1/3 " @ 35% (Percentage to 30%) to split of 35%
	6-1/3 " @ 30%
Delaware Ohio	4-1/3 " @ 75.00
	10-1/3 " @ 60.00
	9-1/3 " @ 50.00
	13-1/3 " @ 40.00
	12-1/3 " @ 25.00
	Shorts & Trailers Same as 1936 & 1937 Season 1936-1937
	Clearance Same as which prevailed for Season 1936 & 1937
	Subject to master agreement

ACCEPTED: Ben Kalmenson

ACCEPTED:

(Warner Circuit, Inc.)

8838

4489

W 4(34) 9/28/37
~~F. 4(34)~~
DEAL SHEET ~~[illegible]~~
3/26/42

THEATRE | TERMS

Warner-First National Seasons 1937-38 1938-39 1939-40

[illegible]
~~Opera House~~
or
Civic
or
Roxy
Fostoria Ohio

4-2/3 Days @ 35% to split
2-2/3 " @ 35% (Reversion to 30%) to split of 35%
8-2/3 " @ 30%
2-2/3 " @ 30% (Reversion to 25%)
20-2/3 " @ 35.00
24-2/3 " @ 30.00
Serials Trailers Same as Season 1936-37
Clearance Same as Season 1936-37
Subject to Master Agreement which Governs for Season 1936-3

ACCEPTED. Benj Kalmenson
(Distributor)
ACCEPTED. Geo. Lynch
(Schine Circuit, Inc.)

8610

4490

W 4(35)

DEAL SHEET

9/28/37

THEATRE	TERMS
	Warner-First National Season 1937-38 1938-39 1939-40
Schines Kent Ohio or Schines of Ravenna Ohio	4 @ 35% to split - 7/4 Days
	2 @ 35% (Ravenna to 30%) to split of 35% - 7/4 Days
	6 @ 30% - 7/4 Days
	14 @ 60.00 - 7/3
	18 @ 40.00 - 7/3
	16 @ 35.00 - 7/3
	Scores - Trailers same as Season 1936-37
	Clearance same as Season 1936-37
	Subject to Master Agreement which prevailed for Season 1936-37

ACCEPTED........ Ben Kalmenson
(Distributor)

ACCEPTED........ Leo Lynch
(Schine Circuit, Inc.)

6640

4491

[illegible] W4(36) 9/28/37

DEAL SHEET

THEATRE	TERMS
<	Warner-First National Seasons 1937-38 1938-39
Schines Kent or Schines Ravenna	40 Pictures Selection out of 60
	5 - 1/3 Days @ $\$60^{00}$
	5 - 1/3 @ $\$40^{00}$
	20 - 1/2 @ 30^{00}
Repeats	Scores 2^{00}
	Trailers 3^{00}
	Clearance Same as Season 1936-37
	Subject to Schine Meeting agreement
	40 @ FN [illegible] Opening Season 1936-37

ACCEPTED Ben Kalmenson
(Distributor)

ACCEPTED [illegible]
(Schine Circuit, Inc.)

6641

4492

[illegible] (37)

~~[illegible]~~

9/26/[illegible]

W4(37)

9/28/37

DEAL SHEET

THEATRE	TERMS
	Min. - First National Season 1937-38 1938-39 1939-40
Schines	4 - 1/3 days @ 35% to split
	2 - 1/3 " @ 35% (Reversion to 30%) to split of 35%
	10 - 1/3 " @ $40.00
Medina	44 - 1/2 " @ $22.50
Ohio.	
	Scenes - 2.50
	Trailers - 3.00
	Same clearance as 1936-37
	Subject to Schines Master Agreement which [illegible] for Season 1936-37

This deal was later changed to split the product 50% with the opposition house

St

ACCEPTED Benj Kalmenson

(Exhibitor)

ACCEPTED

(Schine Circuit, Inc.)

6642

4493

W-4 (38) 9/28/37

DEAL SHEET

THEATRE	TERMS
	Warner First National Season 1937-38 1938-39 1939-40
	4 - 1/3 days @ 35% to split
Forum	2 - 1/3 @ 35% (Reversion to 30%) to split (35%
	8 - 1/3 @ 30%
or	2 - 1/3 @ 30% (Reversion to 25%)
	12 - 1/3 @ $40.00
Moore	10 - 1/3 @ $30.00
	22 - 1/3 @ $20.00
	Shorts & Trailers Same as Season 1936-37
Norwalk Ohio	Clearance Same as Season 1936-37
	Subject to Master Agreement Which Prevails for Season 1936-3

P.

ACCEPTED Ben Kalmenson
(Exhibitor)

ACCEPTED
(Schine Circuit, Inc.)

0643

4494

W4(39) 9/28/37

[illegible] (39) ~~[illegible]~~

DEAL SHEET

THEATRE	TERMS
	Warner - First National Season 1937-38 1938-39 1939-40
Schines	4 - 7/3 days @ 35% to split
	2 - 7/3 " @ 35% (Revision to 30%) to split of 35%
	6 - 7/3 " @ 30%
Shelby	4 - 7/3 " @ $60.00
	5 - 7/3 " @ $50.00
Ohio	5 - 1/2 " @ $30.00
	34 - 1/2 " @ $25.00
	Scores 2.00
	Trailers 3.00
	Clearance same as 1936-37
	Subject to Schine Master agreement which governs for season 1936-37

ACCEPTED Ben J Kalmenson (Distributor)

ACCEPTED [illegible] (Schine Circuit, Inc.)

0844

4495

W4 (040)

9/18/37

DEAL SHEET

THEATRE	TERMS
	Warner-First National Seasons 1937-38 1938-39 1939-40
Ritz	4 - 1/2 [illegible] @ 35% to split
	2 - 2/3 " @ 35% (Remainder to 30%) to split @ 35%
&	6 - 2/3 " @ 30%
	6 - 1/3 " @ 75.00
Grand	16 - 1/3 " @ 60.00
	13 - 1/3 " @ 50.00
Tiffin	13 - 1/3 " @ 25.00
Ohio	Serials + Trailers Same as Season 1936-37.
	Clearance Same as Season 1936-37
	Subject to Master Agreement [illegible] (1936-37)

ACCEPTED Barney Kalman
(Exhibitor)

ACCEPTED [illegible]
(Vitagraph, Inc.)

0045

4496

W4(41) 9/28/3[illegible]

DEAL SHEET [illegible]

THEATRE	TERMS
	[illegible] Season 1937-38 1938-39 1939-40
	4-7/3 days @ 35% to split
	2-7/3 @ 35% ~~(reversion to 30%) to split~~ 35%
Van Wert	6-7/3 @ 30%
	4-1/3 @ $50.00
"	10-1/3 @ $35.00
Strand	10-1/3 @ $30.00
	24-1/3 @ $20.00
Van Wert - Ohio	Scores & Trailers Same as Season 1936-37 Clearance Same as Season 1936-37 Subject to Master agreement which prevailed for Season 1936-37

ACCEPTED Harry Kalmanson
(Distributor)

ACCEPTED Lynch
(Schine Circuit, Inc.)

6646

4497

[illegible] W41(42)

DEAL SHEET

THEATRE	TERMS
	Warner First National Seasons 1937-38, 1938-39 1939-40
	4 @ 35% to Split 1/3 Days
Wooster	2 @ 35% (Revision to 30%) 1 Pix @ 35% - 1/3 Days
	8 @ 30% - 1/3 Days
or	2 @ 30% (Revision to 25%) 1/3 Days
Opera House	8 @ 25% - 1/3 Days
	6 @ $55.00 - 1/3
	30 @ $42.50 - 1/3
Wooster Ohio	
	Scores & Trailers Same as Season 1936-37
	Clearance Same as Season 1936-37
	Subject to Next agreement when Issued for Season 1936-37

ACCEPTED.............................
(Exhibitor)

ACCEPTED.............................
(Schine Circuit, Inc.)

6647

W4(43)x 9/28/37

DEAL SHEET

~~[illegible]~~

THEATRE	TERMS
	Warner-First National Seasons 1937-38 1938-39 1939-40
	4 @ 35% to Split - 3/4 Days
Jefferson	2 @ 35% (Revision to 30%) to Split of 35% - 3/4 Days
or	1 @ 30% - 3/4 Days
Strand	2 @ 30% (Revision to 25%) 3/4 Days
or	10 @ 25% - 2/3 Days
	34 @ 100.00 - 2/3.
Palace	
	Season Trailers Same as Season 1936-37
	Clearance Same as Season 1936-37
Auburn.	
N.Y.	Subject to Master agreement which prevailed in Schine Circuit for Season 1936-37.

Ben Kalmenson

ACCEPTED.......................
(Distributor)

ACCEPTED.......................
(Schine Circuits, Inc.)

0048

4499

W4(44)x 9/28/37

DEAL SHEET [illegible]

THEATRE	TERMS
	Warner First National Season 1937-38 1938-39 - 193[illegible]
	15 Pictures Minimum Commitment Selection out of 60 Pictures
Palace	6 - ½ @ 50.00
or	Bal. ½ @ 35.00
Strand	
	Series ½ days 2.00
2nd Run	Trailers 3.00
Auburn N.Y.	Clearance 60 Days over 3rd Run & not to be played before 60 Days after 1st Run. subject to ~~next~~ agreement which governed for Season 1936-37

ACCEPTED Ben Kalmenson
(Distributor)

ACCEPTED J. E. Lynch
(Schine Circuit, Inc.)

0640

4500

W4(95)

FIRST NATIONAL
Pictures

WARNER BROS.
Pictures

VITAPHONE
Short Subjects

MAR 6

CIRCUIT SCHINE

OPERATING CO.

BRANCH BUFFALO NO.

TOWN AUBURN, N.Y. (2nd run)

SEASON 1938-39 and 1939-40

THEATRES	NO. PICT.	NO. DAYS	FILM RENTAL	SCORES
PALACE (2nd run)	add'l	1/2	On each additional picture over and above the regular 18 picture second run commitment which plays second run at the Palace, the terms are to be $15.00 flat rental. CLEARANCE: 60 days over third run.	$2.50 TRAILERS $2.00

REMARKS:

Accepted: Arthur Seifer

Accepted:

6650

4501

Pl. Ex. 2 [illegible]

WY(46) 9/28/37

X

DEAL SHEET

THEATRE	TERMS
	Warner First National Season 1937-38 1938-39 1939-40
	4-7/3 Days @ 35% to split
Babcock	2-7/3 " @ 35% (Reversion to 30%) to split of 35%
	6-7/3 " @ 30%
Bath N.Y.	4-7/3 " @ $65.00
	15-7/3 " @ $35.00
	29-7/3 " @ $25.00
	Screen Trailers Same as Season 1936-37
	Clearance Same as Season 1936-37
	Subject to Master agreement which prevailed for Season 1936-37

ACCEPTED Ben Kalmenson
(Distributor)

ACCEPTED
(Schine Circuit, Inc.)

6651

4502

W 4(47) 9/28/37

X

DEAL SHEET

THEATRE	TERMS
	Warner-First National Seasons 1937-38 1938-39 1939-40
Granada	4 - 3 days @ 35% to split
	7 - 3 - @ $100.00
Buffalo	3 - 2/3 - @ 60.00
N.Y.	32 - 2/3 - @ 50.00
	14 - 2/3 - @ 35.00
	Shorts + Trailers same as Season 1936-37
	Clearance same as Season 1936-37
	Subject to Master Agreement when Executed for Season 1936-37

ACCEPTED........ Ben Kalmenson

(Distributor)

ACCEPTED........

(Schine Circuit, Inc.)

6652

4503

W4(49)x 9/28/37

W. F. N. 4(48) ~~[illegible]~~ [illegible]

DEAL SHEET

THEATRE	TERMS
	Warner-First National Seasons 1937-38 1938/39 ~~1939-40~~
Riviera	4 - 3 days @ 30% to split
	7 - 7/3 @ $125.00
	4 - 7/3 @ $100.00
	45 - 7/3 @ $65.00
Buffalo	Scores + Trailers same as season 1936-37
N.Y.	Clearance same as season 1936-37
	Subject to Master agreement which governed for season 1936-37

ACCEPTED. Ben Kalmenson
(Distributor)

ACCEPTED. [illegible]
(Schine Circuit, Inc.)

6653

4504

W4(99) x 9/28/37 11 65

DEAL SHEET 1/1 E. W 4(49) ~~Exceed~~
3/26/42

THEATRE	TERMS
	Warner-First National Season 1937-38 1938-39 1939-40
Playhouse andaigua N.Y.	4-7/3 days @ 35% to split 2-7/3 " @ 35% (Revision to 30%) to split of 35% 6-7/3 " @ 30% 6-7/3 " @ $50.00 42-7/3 " @ $35.00 Screen-Trailers Same as Season 1936-37 clearance Same as Season 1936-37 Subject to Master agreement which prevailed for Season 1936-37

ACCEPTED: Ben Kalmenson
Distributor

ACCEPTED: Gus Lynch
(Schine Circuit, Inc.)

6684

4505

W4(50) x 9/28/37

DEAL SHEET [illegible] (30) [illegible]

THEATRE	TERMS
Fort or State Corning N.Y.	[illegible] Feature National Seasons 1937-38 1938-39 1939-40 4 - 2/3 days @ 35% to split 2 - 2/3 " @ 35% (Reversion to 30%) to split of 35% 6 - 2/3 " @ 30% 4 - 2/3 " @ $75.00 44 - 2/3 " @ $50.00 Shorts & Trailers same as season 1936-37 Clearance same as season 1936-37 Subject to Master Agreement which prevailed for season 193

ACCEPTED Ben Kalmenson
Distributor

ACCEPTED
(Schine Circuit, Inc.)

6655

4506

DEAL SHEET

THEATRE	TERMS
	Warner [illegible] 1939-40
	6-7/3 Eng. 40%
	24-7/3 " 17½

Carmen N.Y.

[illegible] Same no Season 1941-2

no Season 1940-41 1941-42

Same

Subject to Master Agreement

Ben Kalmenson

ACCEPTED..........(Distributor)

ACCEPTED..........(Schine Circuit, Inc.)

6656

4507

W4 (5x) 9/28/37

DEAL SHEET

THEATRE	TERMS
	Warner - First National Season 1937-38 1938-39 1939-40
State or Temple	4 - 2 Days @ 35% to split
	2 - 2 .. @ 35% (Reversion to 30%) to split of 35%
	8 - 2 .. @ 30%
	2 - 2 .. @ 30% (Reversion to 25%)
	10 - ½ . @ 25%
Cortland N.Y.	34 - ½ . @ 100.00
	Serials Trailers same as season 1936-37
	Clearance same as season 1936-37
	Subject to Master agreement which prevailed for season 1936-37

Ben Kalmenson

ACCEPTED.......................
(Distributor)

ACCEPTED.......................
(Schine Circuit, Inc.)

6657

4508

W4(53) Pl. & Ky (53) 9/11/40 96

Season 1939-40

4 @ 30.00 2-3.00

8 @ 22.50 2-3 "

Bal @ 17.50 2-3 "

ripple Minimum Commitment 12 Pictures

artland

2nd run Clearance Same as 1939-40

6658

4509

W4(54) x
[illegible]

DEAL SHEET

11/2/[illegible]

THEATRE	TERMS
	Warner - [illegible]
	Series [illegible]
Rialto	6 - @ 90.00 2 [illegible]
	10 - @ 22.50 2
East Rochester	10 @ 25.00 2
or	Bal @ 20.00 2
Temple	Trailers $1.50
Fairport	

ACCEPTED E. [illegible]
(Distributor)

ACCEPTED [illegible]
(Schine Circuit,Inc.)

[illegible]

4510

W4(55)
X

DEAL SHEET

11/2/39

THEATRE	TERMS
	Warner - 1st Mat
Rialto	Season 1939-40
	6 - @ 62½
East Roc!	12 - @ 25
	16 - @ 15
&	Any additional features 12½
Temple	
Fairport	Trailers 1.00
1st run	

ACCEPTED .... (Distributor)

ACCEPTED .... (Schine Circuit, Inc.)

6660

4511

W4(56) X 9/18/37

DEAL SHEET

THEATRE	TERMS
	Warner-First National Season 1937-38 1938-39 1939-40
Geneva or Regent Geneva N.Y.	4- 3 days @ 35% to split 2- 3/3 @ 35% (Percentage to 30%) to split 35% 8- 3/3 @ 30% 2- 3/3 @ 30% (Percentage to 25%) 8- 3/3 @ 25% 5- 3/3 @ $100.00 10- 3/3 @ $75.00 21- 3/3 @ $60.00 Scores & Trailers — Same as Season 1936-37 Clearance — Same as Season 1936-37 Subject to Master Agreement — where provided for Season 1936-37

ACCEPTED Ben Kalmenson (Exhibitor)

ACCEPTED Lynch (Schine Circuit, Inc.)

0001

4512

SERIAL NUMBER [illegible] - W4(57)

THEATRE | TERMS [illegible]

Season - 1938-39 - 39-40

[illegible]

6 - C 50% [illegible]

[illegible] 15 pictures

[illegible] reel

Season 1939-40

[illegible] 50% 2 [illegible]

Bal. @ 22% 2-3

Selection of 25 pictures

Score 2% per reel

ACCEPTED (Distributor)

ACCEPTED (Schine Circuit, Inc.)

6662

4513

W4(58) ×   9/28/37

DEAL SHEET

THEATRE — TERMS

Warner Bros. [illegible]   1937-38   1938-39   1939-40

Rialto
or
Hart
or
Palace
Lockport
N.Y.

4 - 3 days @ 35% to split
2 - ⅓ @ 35% (Reissues to 30%) to split of 35%
8 ⅓ " @ 30%
2 - ⅓ " @ 30% (Reissues to 25%)
8 - ⅓ @ 25%
5 - ⅓ @ 100.00
10 - ⅓ @ 75.00
21 - ⅓ @ 60.00
Serials & Trailers same as Season 1936-37
Clearance same as Season 1936-37 / with [illegible] to Season 1936-37
Subject to Master Agreement

ACCEPTED........Benj. Kalmenson........
(Distributor)

ACCEPTED........Leo V. Lynch........
(Schine Circuit, Inc.)

6663

4514

W4(59) A 9/10/37

DEAL SHEET Pl. E2 F-1(39)

3/26/42

THEATRE	TERMS
	Warner-First National Season 1937-38 1938-39 1939-40
	6 2/3 Days @ 50%
Rialto	24-2/3 @ 17½%
or	
Hi-Art	Score - Trailers Same as Season 1936-37
2nd Run	Clearance Same as Season 1936-37
Lockport	Subject to Master agreement which prevailed for Season 1936-37

ACCEPTED: Ben Kalmenson
(Exhibitor)

ACCEPTED:
(Schine Circuit, Inc.)

6604

4515

W4(60) 7/19/37

DEAL SHEET

[illegible]

THEATRE	TERMS
	Warner-First National Season 1937-38 1938-39 1939-40
Capitol	4-Y3 ~~[illegible]~~ 35% to split
	2-Y3 - 35% (Revision to 30%) to split y 35%
	6-Y3 - 30%
Newark	4-Y3 - $50.00
	10-Y3 - $45.00
N.Y.	34-Y3 - $35.00
	Score & Trailers Same as Season 1936-37
	Clearance Same as Season 1936-37
	Subject to Master ~~Agreement which~~ provided for Season 1936-37

ACCEPTED Ben Salimann
(Exhibitor)

ACCEPTED [illegible]
([illegible] Circuit, Inc.)

[illegible]

4516

W4(61) 9/1/37

DEAL SHEET

THEATRE	TERMS
	Warner-First National Season 1938-39 [illegible] 1939-40
Strand or Capitol Oswego N.Y.	4 - 3 days 35% to split 2 - 3/3 35% (reversion to 30%) to split of 35% 6 - 3/3 30% 4 - 3/3 $100.00 25 - 3/3 $75.00 19 - 3/3 $60.00 Terms & Trailers Same as Season 1936-37 Clearance Same as Season 1936-37 Subject to [illegible] Agreement Same Period [illegible] 1936-37

ACCEPTED Ben Kalmenson

ACCEPTED [illegible]
(Oswego Capitol, Inc.)

[illegible]

4517

9/28/37
W4(62) x

DEAL SHEET

~~[illegible] 2(62)~~
3/26/42

THEATRE	TERMS
	Warner Bros National Seasons 1937-38 1938-39 1939-40
Capitol 2nd Run Oswego N.Y.	6 - 7/3 Days @ $35.00 24 - 7/3 " @ $17.50 Scores & Trailers Same as Seasons 1936-37 clearance Same as Season 1936-37 Subject to Master agreement which terminates at Season 1936-37

ACCEPTED Benj Kalmenson
(Distributor)

ACCEPTED Lynch
(Schine Circuit, Inc.)

6667

W4 (63) X 9/28/37

DEAL SHEET [illegible]

THEATRE	TERMS
	Warner-First National Seasons 1937-38 1938-39 1939-40
Elmwood	4-7/3 days 35% to split
	2-7/3 " 35% (Graduating to 30%) to split of 25%
	7-7/3 " 60.00
	14-7/3 " 40.00
	15-7/3 " 22.50
Penn Yan	18-7/3 " 25.00
N.Y.	100 Scores + Trailers Same as Season 1936-37
	Clearance Same as Season 1936-37
	Subject to Master agreement [illegible] for Season 1936-37

ACCEPTED Ben Kalmenson
(Distributor)

ACCEPTED
(Schine Circuit, Inc.)

6668

4519

W4(64)x 9/28/37

DEAL SHEET

THEATRE	TERMS
	Warner First National Season 1937-38 1938-39 1939-40
	4-7/3 Days @ 35% to split
Auditorium	2-7/3 " @ 35% (Revision to 30%) to split of 35%
	6-7/3 " @ 30%
	4-7/3 " @ 75.00
Perry	15-7/3 @ 50.00
	20-7/3 @ 37.50
N.Y.	5-7/3 @ 35.00
	4-7/3 @ 25.00
	Series & Trailers same as Season 1936-37
	Clearance same as Season 1936-37
	Subject to ~~Master~~ Agreement which prevailed for Season 1936-37

ACCEPTED Ben Kalmenson
(Distributor)

ACCEPTED Lynch
(Schine Circuit, Inc.)

6689

4520

W4(65)X 4/28/37 74

DEAL SHEET

THEATRE	TERMS
	Warner-First National 1937-38 1938-39 1939-40
	6-7/3 Days @ $75.00
Carnes	5-7/3 " @ 50.00
	49-7/3 @ 25.00
Rochester	Scores Trailers. Same as Season 1936-37
	Clearance Same as Season 1936-37
	Subject to Master Agreement which Prevailed for Season 1936-37

ACCEPTED: Ben Kalmenson
(Distributor)

ACCEPTED:
(Schine Circuit, Inc.)

6670

4521

W4(66)x 9/28/37

DEAL SHEET [illegible] 3 2 6 4½

THEATRE	TERMS
	Warner First National Seasons 1937-38 1938-39 1939-40
Grand Rochester N.Y.	6-7/3 days @ $50.00 7-7/3 " @ $25.00 4-7/3 " @ $22.50 43-7/3 " @ $17.50 Same as 1936-37 Scores Trailers Clearance Same as season 1936-37 Subject to Master agreement which prevailed for season 1936-37

ACCEPTED Ben Kalmenson
(Distributor)

ACCEPTED
(Schine Circuit, Inc.)

6671

4522

1	1– [illegible] 40
	10– [illegible]
	44– [illegible] 10

Seasons 1936-37

Clearance [illegible] Season 1936-37

Subject to master agreement [illegible] 1936-37

NY

ACCEPTED [illegible] (Distributor)

ACCEPTED [illegible] (Schine Circuit, Inc.)

6672

4523

WARNER BROS.

CIRCUIT SCHINE

OPERATING CO.

3/[illegible]/39

BRANCH BUFFALO NO.

TOWN ROCHESTER, N. Y.

SEASON 1938-39 1939-40

THEATRES	NO. PICT.	NO. DAYS	FILM RENTAL	SCORES
MADISON	4	3	35% to split	
	6	2/3	$103.00 Flat	
	42	2/3	$ 30.00 Flat	
	52			

THE FOUR PICTURES AT 35% TO SPLIT ARE TO BE DESIGNATED FROM PICTURES AVAILABLE SINCE THE OPERATION OF THIS THEATRE BY THE SCHINE CIRCUIT

TRAILERS

2.00

REMARKS:

Accepted: Arthur Sachson
DISTRIBUTOR

Accepted:
EXHIBITOR

6873

4524

FIRST NATIONAL
Pictures

WARNER BROS
Pictures

W4 (69) X

VITAPHONE

W. [illegible] (69)

CIRCUIT [illegible]

BRANCH [illegible] NO.

OPERATING CO

TOWN [illegible], N. Y.

3/23/39

SEASON 1938-39 1939-40

THEATRES	NO PICT	NO DAYS	FILM RENTAL	SCORES
[illegible]	4	3	35% to split	
	6	2/3	$100.00 Flat	
	40	2/3	$ 20.00 Flat	
	50			
			THE FOUR PICTURES AT 35% TO SPLIT AND TO BE DESIGNATED FROM PICTURES AVAILABLE SINCE THE OPERATION OF THIS THEATRE BY THE [illegible] CIRCUIT	
				TRAILERS 2.50

REMARKS:

Accepted

Accepted

6674

4525

W4(70) x

9/28/37

DEAL SHEET

THEATRE	TERMS
Riviera or Liberty 3rd Run Rochester N.Y.	Warner-First National Season 1937-38 1938-39 1939- 4 - 3/4 Argyl 35% to split 7 - 3/4 " 100.00 6 - 3/4 " 75.00 43 - 3/4 " 65.00 Screen Trailers Same as Season 1936-37 Clearance Same as Season 1936-37 Subject to Master Agreement when Prevailing as Season 1936-37

ACCEPTED.............................
(Distributor)

ACCEPTED.............................
(Schine Circuit, Inc.)

6675.

4526

Pl. ex W4(71) ~~[illegible]~~ 3/26/42

W4(71) X

9/28/37

DEAL SHEET

THEATRE	TERMS
	Warner-First National Season 1937-38 1938-39 1939-40
Liberty or Riviera Repeats Rochester, N.Y	6-2/3 days @ $60.00 24-1/3 " @ $25.00 Season Trailer Same as Season 1936-37 Clearance Same as Season 1936-37 Subject to Master agreement which governs for Season 1936-37

ACCEPTED Ben Kalmenson
(Exhibitor)

CONFIRMED
(Cinema Circuit, Inc.)

6676

4527

WH(72)X 9/28/37

W. H. W.H.(72)

DEAL SHEET 8/26/37

THEATRE	TERMS
	Warner First National Season 1937-38 1938-39 1939-40
State or Dixie 3rd Run Rochester N.Y.	4-3/4 days 35% to split 7-3/4 " 65.00 6-3/4 " 50.00 43-3/4 " 40.00 Shorts & Trailers Same as Season 1936-37 clearance Same as Season 1936-37 Subject to Master Agreement when signed for Season 1936-

ACCEPTED: Ben Kalmenson
(Distributor)

ACCEPTED:
(Schine Circuit, Inc.)

6677

W.4(73)

9/28/37

DEAL SHEET

THEATRE	TERMS
	Warner-First National Seasons 1937-38 1938-39
State or Dixie Repeats Rochester N.Y.	6 - 7/3 Days $60.00 24 - 7/3 " $20.00 Scores + Trailers Same as Season 1936-37 Clearance Same as Season 1936-37 Subject to Master Agreement which Executed for Season 1936-37

ACCEPTED Ben J Kalmenson
(Distributor)

ACCEPTED Geo Lynch
(Schine Circuit, Inc.)

4529

FIRST NATIONAL
Pictures

WARNER BROS.
Pictures

W41-1411

VITAPHONE
Short Subjects

CIRCUIT SCHINE

OPERATING CO

8/23/39

BRANCH BUFFALO NO.

TOWN ROCHESTER, N. Y.

SEASON 1938-39 1939-40

THEATRES	NO. PICT	NO. DAYS	FILM RENTAL	SCORES
WEST END	4		$50.00 Flat	
	6	2/3	42.50 "	
	42		17.50 "	
			THE FOUR PICTURES AT 50.00 FLAT ARE TO BE DESIGNATED FROM PICTURES AVAILABLE SINCE THE OPERATION OF THIS THEATRE BY THE SCHINE CIRCUIT	
				TRAILERS
				2.00

REMARKS:

Accepted: Arthur Sibley
[illegible]

Accepted:
[illegible]

6679

4560

W4(75)

~~[illegible]~~ (75) [illegible] 9/18/37

DEAL SHEET

~~[illegible]~~ 7/26/42

THEATRE	TERMS
	Warner-First National Season 1937-38 1938-39 1939-40
Andrews	4 - 7/3 Days @ 35% to split
	2 - 7/3 " @ 25% (Reissue to 30%) [illegible]
	6 - 7/3 " @ 30%
	4 - 7/3 " @ $50.00
lamanca N.Y.	10 - 7/3 " @ $45.00
	34 - 7/3 " @ $25.00
	Service Trailers Same as Season 1936-37
	Clearance Same as Season 1936-37
	Subject to Master Agreement this Exhibitor Season 1936-37

ACCEPTED Benj. Salmon

ACCEPTED [illegible]
([illegible], Inc.)

[illegible]

4531

W4(96)

9/28/37

DEAL SHEET

THEATRE	TERMS
	Warner First National Season 1937-38 1938-39 1939-40
	4-2 Days @ 35% to Split
	2-2 @ 35% (Reversion to 30%) to Split if 35%
Strand	6-2 @ $60.00
	48-½ @ 35.00
Seneca Falls	Scores + Trailers same as Season 1936-37
N.Y.	Clearance same as Season 1936-37
	Subject to Master agreement which prevailed for Season 1936-37

ACCEPTED: Benj Kalmenson
(Distributor)

ACCEPTED: G. Lynch
(Schine Circuit, Inc.)

6681

4532

W4(77)

3-d(77) [illegible]

DEAL SHEET

11/7/39

THEATRE	TERMS
	Warner - 1st Half
	Season 1939-40
Palace	6 @ 75.00 2-3 da
	10 @ 45.00 2-3 "
Syracuse	18 @ 35.00 2-3 "
	18 @ 30.00 2-3 "
N.Y.	7 Da after 4th run

ACCEPTED E. [illegible]
(Distributor)

ACCEPTED [illegible]
(Schine Circuit, Inc.)

6682

4533

W4 (78)
1, 2, 3 ~~[illegible]~~ 75 — 9/28/37

DEAL SHEET

THEATRE	TERMS
	WARNER - First National Seasons 1937-38 1938-39
	4 - 1/3 @ 35% to split
athena	2 - 1/3 @ 35% (Reversion to 30%) to split ½ 35%
or	8 - 1/3 @ 30%
ohio	2 - 1/3 @ 30% (Reversion to 25%)
	15 - 1/3 @ $75.00
or	6 - 1/3 @ $65.00
Court	12 - 1/3 @ $50.00
	11 - 1/3 @ $40.00
athens	Scores + Trailers Same as Season 1936-37
ohio	Clearance Same as Season 1936-37
	Subject to Master Agreement which Provides for Season 1936-37

ACCEPTED Benj T. [illegible]
(Exhibitor)

ACCEPTED [illegible]
(Schine Circuit, Inc.)

6683

No (79)

[illegible]

DEAL SHEET

THEATRE	TERMS
	[illegible] 1937-8 1938-39 [illegible]
[illegible]	1 - 3/4 days @ 35% to [illegible]
	2 - 3/4 @ 25% (reduce to 20%) [illegible] 20%
	8 - 3/4 @ 30%
The	- 3/4 @ 20% (reduce to [illegible])
	8 - 3/4 @ 25%
	16 - 3/4 @ 100^{00}
Strand	10 - 7/3 @ 75^{00}
[illegible]	10 - 7/3 @ 50^{00}
	Season Trailer Same as Season 1936-37
	Clearance Same as Season 1936-37
	Subject to Master Agreement & other terms for Season 1936-37

ACCEPTED Henry Salmenson
(Distributor)

ACCEPTED [illegible]
(Saenger Circuit, Inc.)

W41 [illegible]

DEAL SHEET

THEATRE	TERMS
	[illegible]
	4-% [illegible]
	7-%
	14-%
	5-%
	[illegible]
	[illegible] 1934 = 7
Lexington Ky.	Subject to [illegible]

ACCEPTED............................
(Distributor)

ACCEPTED............................
(Schine Circuit, Inc.)

DEAL SHEET

THEATRE	TERMS
[illegible]	[illegible]
	4 - [illegible] $50.00
	7 - [illegible] $35.00
[illegible]	10 - [illegible] $5.00
	7 - [illegible] $12.00
[illegible]	[illegible] Same as season 1936-37
	[illegible] Same as season 1936-37
[illegible]	[illegible] as shown [illegible] 1937-38.

ACCEPTED: Ben Kalmenson
(Distributor)

ACCEPTED: [illegible]
(Schine Circuit, Inc.)

4537

W4

DEAL SHEET

THEATRE	TERMS
	[illegible]
	4- [illegible]
Madison	9-1/2 @ 60^{00}
Ky	
State	14-1/2 @ 35^{00}
	12-1/2 @ 17^{50}
Richmond	21-1/2 @ [illegible]
Ky	Shorts + Trailer Same as Season 1936-37
	Clearance Same as Season 1936-37
	Subject to Master Agreement

ACCEPTED .... (Distributor)

ACCEPTED .... (Schine Circuit, Inc.)

0687

4538

W4(83) 9/28/37

DEAL SHEET

THEATRE	TERMS
	Warner-First National Seasons 1937-38 1938-39 [illegible]
	4-2/3 days @ 35% to split
All	7-1/3 @ 35% (increase to 3[illegible]%) [illegible]
	8-1/3 @ 3[illegible]%
	[illegible]-1/3 @ 30% (increase to [illegible]%)
ortheune	5-1/3 @ $50.00
h.o.	39-1/3 @ $35.00
	Screen Trailers Same as Season 1936-37
	Clearance Same as Season 1936-37
	Subject to Master Agreement which Prevailed for Season 1936-37

ACCEPTED: Ben Kalmenson
(Distributor)

ACCEPTED: [illegible]
(Schine Circuit, Inc.)

4539

W.4 (2.1) 9/28/37

DEAL SHEET 5

THEATRE	TERMS
	Warner-First National Seasons 1937-38 1938-39
Vine or Lyric	4-2/3 Days @ 35% to split
	2-2/3 " @ 35% (Remain to 30%) to ~~split~~
	6-2/3 " @ 30%
Mt Vernon	4-1/3 " @ $75.00
	20-1/3 " @ $60.00
Ohio	9-1/3 " @ $40.00
	15-1/3 " @ $25.00
	Score & Trailers same as 1936-37
	Clearance same as 1936-37 which prevailed for season 193
	Subject to Master agreement

ACCEPTED Ben Kalmenson (Distributor)

ACCEPTED (Schine Circuit, Inc.)

6689

4540

W4(85)

DEAL SHEET 11/2/39

1939-40

Warner - 1st Mat

6-@ $17^{\underline{50}}$ 1-2 ch

8-@ $15^{\underline{00}}$ 1-2 "

14-@ $10^{\underline{00}}$ 1-2 "

rads

Mickels

nd

Trailers $1^{\underline{00}}$

ACCEPTED ....Arthur........
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

6690

[redacted]

4541

WH (86)

DEAL SHEET

Warner Bros 10 12/4

THEATRE	TERMS
	Season 1938 39 - 39.40
Hancock	4 @ 35% 2 da
	12 @ 20.00 2 "
	8 @ 15.00 2 "
Hancock	Bal @ 10.00 2 "
	Score 2.50 per run
Md	Trailer 1.50
	Privilege of eliminating 12 pic
	Subject to all terms & conditions of master agreement excepting reverting flat rentals

ACCEPTED ....
(Distributor)

ACCEPTED J. E. Lynch
(Schine Circuit, Inc.)

0691

FIRST NATIONAL Pictures

WARNER BROS. Pictures W4 (77)

VITAPHONE Short Subjects

CIRCUIT SCHINE

OPERATING CO

BRANCH WASHINGTON NO

TOWN LAUREL, DEL.

SEASON 1939-40

THEATRES	NO PICT	NO DAYS	FILM RENTAL
Waller	8	2	$35.00
	12	2	$25.00
	16	2	$15.00
	12	2	$10.00

CLEARANCE:
Warner Group - 10 days after Wilmington.
14 days after Salisbury. and. 14 days
ahead of Seaford, Del.
First National Group - 14 days after
Seaford. Del.
Both groups ahead of Delmar.Del.

TRAILERS

$1.50

REMARKS:

April 2, 1940

Accepted: Arthur

Accepted:

6692

4543

v14'

DEAL SHEET

THEATRE	TERMS
	[illegible]
	4-2 Days @ 37 [illegible]
Forestport	8-½ @ 35.00
	14-½ @ 20.00
Cairo 1	14-½ @ 15.00
	0-½ @ 10.00
	Scores + Trailers [illegible]
	Clearance same as Season 1936-37
	Subject to Master Agreement [illegible]

ACCEPTED.......................... (Distributor)

ACCEPTED.......................... (Schine Circuit, Inc.)

6693

4544

FIRST NATIONAL Pictures

WARNER BROS Pictures

W4(89)

VITAPHONE Short Subjects

CIRCUIT SCHINE

OPERATING CO.

BRANCH ~~CINCINNATI~~ 37-642 NO.

TOWN PARIS KY

SEASON 1938-39 1939-40

THEATRES	NO PICT	NO. DAYS	FILM RENTAL	SCORES
SCHINE'S	4	2	$15.	
		2	Balance $10. Selection of 26 features	
2nd run				$2.50 per run
				TRAILERS

REMARKS:

December 1,1938

Accepted:
DISTRIBUTOR

Accepted: 6594
EXHIBITOR

4545

W4 (90)

[illegible] 3/20/42 10/12/38

DEAL SHEET

Warner Bros

THEATRE	TERMS
	Season 1938-39 - 39-40
	4 @ 35% - 2-3 on
Russell	12 @ 75.00 2-3 "
	8 @ 37.50 2-3 "
	40 @ 22.50 2-3 "
Maysville	Score 2.50 per reel
Ky.	Trailer 5.00 "
	Priveledge of eliminating 12 pictures
	Subject to all terms & conditions of exhibitor agreement excepting converting flat rentals to percentage

ACCEPTED ....
(Distributor)

ACCEPTED .... Lynch
(Schine Circuit, Inc.)

6695

4546

[illegible] (91) [illegible]
2/28/42
W-4 (91)

FIRST NATIONAL
Pictures

WARNER BROS.
Pictures

VITAPHONE
Short Subjects

CIRCUIT [illegible]

OPERATING CO.

BRANCH [illegible] NO.

TOWN [illegible], [illegible]

SEASON [illegible] [illegible]

X

THEATRES	NO. PICT.	NO. DAYS	FILM RENTAL	SCORES
Henring	4	2	35%	
or	12	2	$45.	
Bounie	[illegible]	2	$87.50	$2.50 per P

Privilege of eliminating 8 pictures

Subject to all terms and conditions of master agreement excepting converting flat rentals to percentage

TRAILERS

$2.

REMARKS:

December 1,1939

Accepted: [illegible]

Accepted: [illegible]

0696

4547

W4(92) 9/25/37

DEAL SHEET

THEATRE	TERMS
	Warner-First National Seasons 19[illegible]38 1938-39 1939-40
Miami or Piqua	4 @ 35% to split 2/3 days 2 @ 35% (Revision to 30%) to split of 35% - 2/3 days 8 @ 30% - 2/3 days 2 @ 30% - (Revision to 25%) 2/3 days 8 @ 25% - 1/3 days
Piqua Ohio	36 @ 42.50 - 1/3 Scores & Trailers same as season 1936-37 Clearance same as season 1936-37 Subject to Master Agreement which prevailed for season 1936-37.

ACCEPTED. Ben Kalmenson
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

6697

4548

W 4(93)
8/26/42

FIRST NATIONAL Pictures — WARNER BROS. Pictures — VITAPHONE Short Subjects

CIRCUIT [illegible]	BRANCH Cincinnati
OPERATING CO.	TOWN [illegible], Ky.
	SEASON 1938-39 1939-40

THEATRES	NO. PICT.	NO. DAYS	FILM RENTAL	SCORES
Hippodrome	4	2	25%	
	12	2	$60.	
of	8	2	$50.	
Kentucky	28	2	$22.50	$2.50 per run

Privilege of eliminating 5 pictures

Subject to all terms and conditions of master agreement excepting converting flat rentals to percentage

TRAILERS
$2.

REMARKS:

December 1,1938

Accepted
[illegible]

Accepted
[illegible]

6698

4549

W4(94)

~~[illegible]~~

906 42

DEAL SHEET

11/2/39

THEATRE	TERMS
Opera House or State Lexington 1st Run	Warner Bros First Nat'l Season of 1938-39 - 39-40 6 - @ 50% 2-3 da 10 - @ 25% 2-3 " Bal at 15% 2-3 " Trailers $7.50

ACCEPTED Arthur Jackson
(Distributor)

ACCEPTED
(Schine Circuit, Inc.)

6899

4550

W4(95)

DEAL SHEET Pl # [illegible] 193 [illegible]

War. Bros [illegible] 10/1/37

THEATRE	TERMS
	Season - 1938-39 - 39-40
Arcade	6 - @ 35% - 2-3 Da
	10 @ 75.00 2-3
	18 @ 37.50 2-3 "
or	2-3 "
	78 @ 25.00
	Serials 2.00 per reel
State	Trailers 2.00
	Privilege of eliminating 12 pictures
Cambridge	Subject to all terms & conditions
	of master agreement - exception
Noel	removing flat rentals

ACCEPTED RMH
(Distributor)

ACCEPTED J A Lynch
(Sabine Circuit, Inc.)

6700

4551

11/22/38.

DEAL SHEET

VITAGRAPH (Shorts)

THEATRE	TERMS
	(Seasons of 1938-39 and 1939-40)
Arcade or Wicomico, Theatres — SALISBURY, Md.	8 Technicolors @ $12.50 22 Black & Whites @ 10.00 30 Singles @ 6.00 22 Singles @ 5.00
	Same number of days as designated on feature contract.
	CLEARANCE: Same as last year.

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

6701

N Y (96) 1 [illegible] ~~[illegible]~~

DEAL SHEET

Warner Bros 10/10/38

THEATRE

TERMS X

Season 1938-39 - 39-40

4 @ 35% - 2 ext

2

15 @ 60% 2

8 @ 35% 2

Rpl's @ 75% 2

Score [illegible]

Trailers 1st

Preceding [illegible] 12 [illegible] time

Subject to all [illegible] excepting

[illegible]

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

6702

4553

11/22/38.

DEAL SHEET

VITAGRAPH (Shorts)

THEATRE	TERMS				
	(Seasons of 1938-39 and 1939-40).				
Avalon Or Music Hall Theatres	6	Technicolors	●	$ 6.00	
	22	Black & Whites	●	5.00	
	30	Singles	●	3.50	
	22	Singles	●	2.00	
DATING	Same number of days as designated on feature contract.				
	CLEARANCE: Same as last year.				

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

6703

4554

W4(97)

[illegible]

DEAL SHEET

1 Warner Bros 10/12/38

THEATRE	TERMS
	[illegible] 1938-39 - 37 [illegible]
	4 @ 25% - 2-3 DR
Federal C	12 @ 20.00 2-3 "
	Bal @ 12.50 2-3 "
Fredericksburg	Shorts 2.50 per reel
	Trailers 1.00
Md	[illegible] allowing 12 [illegible]
	[illegible]
	subject to all terms & conditions
	of [illegible] contract [illegible]
	pending [illegible]

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

0704

4555

11/27/38.

DEAL SHEET
(V I T A G R A P H)--Shorts

THEATRE	TERMS
Federal Theatre FEDERALSBURG, Md.	Seasons of 1938-39 and 1939-40)

8	Technicolors	@	$ 8.00
22	Black & Whites	@	4.00
30	Singles	@	3.00
22	Singles	@	2.50

Same number of days as designated on feature contract.

CLEARANCE: Same as last year.

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

6705

4556

WH(98)

FIRST NATIONAL Pictures	WARNER BROS Pictures	VITAPHONE Short Subjects

CIRCUIT SCHINE

OPERATING CO.

BRANCH WASHINGTON

NO.

TOWN MILFORD, DEL.

SEASON 1939-40 X

..THEATRES	NO PICT	NO DAYS	FILM RENTAL	
Plaza	8	2	$75.00	
	12	2	$40.00	
	26	2	$17.50	
	46			
			CLEARANCE: 10 days after first run Wilmington. 30 days clearance in Milford. ~~30~~ days ahead of Milton, Del. (10) ([illegible])	**TRAILERS** [redacted] $1.50

REMARKS:

April 2, 1940

Accepted

Exhibitor

Accepted

Distributor

6706

4557

W4 (99)

Pl. Ex. 7-4 (99)

3/26/42

10/12/38

DEAL SHEET

Warner Bros

THEATRE

Arcade or Wicomico Salisbury Md.

TERMS

Seasons 1938-39- 39-40

4-@ 35% - 3 Da

2 @ 35% 2-3 " Revision to 30

8 @ 30% 2-3 "

2 @ 30% 2-3 " Revision to 25

14 @ 100.00 2-3 "

B'ks @ 50.00

Scene 2.50 per reel

Trailers 3.00

Priviledge of eliminating 6 pictures

Subject to all terms of Conditions of master agreement excepting Concerning flat rentals to percentage

ACCEPTED ...... (Distributor)

ACCEPTED E.V. Lynch ...... (Schine Circuit, Inc.)

6707

4558

11/22/38.

DEAL SHEET

VITAGRAPH (Shorts)

THEATRE	TERMS
	(Seasons of 1938-39 and 1939-40)
ARCADE or STATE Theatres CAMBRIDGE, Md.	9 Technicolors @ $ 9.00 22 Black & Whites @ 6.00 20 Singles @ 4.50 22 Singles @ 4.00 Same number of days as designated on feature contract. CLEARANCE: Same as last year.

ACCEPTED.............................
(Distributor)

ACCEPTED.............................
(Schine Circuit, Inc.)

6708

[fol. 6709] **EXHIBIT W-5**

Gloversville, N. Y.

Agreement Entered into this 24th day of March in the year of 1936, between Vitagraph, Inc., and Schine Theatrical Co. Inc. whereby it is agreed and understood that the following clauses become part and parcel of all contracts signed this 24th day of March, 1936, and an approval of the contracts will be automatic approval of this letter.

Clause No. 1

In all situations where 30% pictures are played on Saturday and/or Sunday, terms to be 25%.

Clause No. 2

In all situations where 25% pictures are played on a Saturday and/or Sunday terms to be 20%. In all situations where 25% or 20% pictures are used with a double feature bill or with vaudeville (unit or four acts), terms to be 15%.

Clause No. 3

The exhibitor has the option at the time of booking to play any one or more of the allocated flat buys at 20% of the gross if so desired. If any one or more of the flat buys are played at 20% of the gross and used either on a Saturday and/or Sunday, terms to be 15%. However, exchanges must be notified within 5 days after it is dated. This applies to all situations.

Clause No. 4

On the pictures that carry a split figures, the split figure is to be determined as follows:

> The distributor is to receive 35% of the gross receipts, up until such time as the exhibitor shows a profit equal to 50% of the amount the distributor receives as a film rental and to split 50—50 from this point on.

Clause No. 5

In all towns, exhibitor agrees to use Warner-First National trailers and is to pay as follows:

1 change	$10.00
2 changes	5.00
3 changes	3.00
4 changes	2.00
5 changes	1.50

Clause No. 6

(A) It is also understood and agreed that in towns where we overplay, our contracted commit*t*ment on features, the [fol. 6710] monies obtained by overplaying *T*he commit*t*ment is to be applied dollar for dollar against towns where the commitment is underplayed.

(B) It is also understood and agreed that in towns where we overplay our contracted commit*t*ment on shorts, the monies obtained by overplaying the commit*t*ment is to be applied dollar for dollar against towns where the commit*t*ment is underplayed.

Clause No. 7

It is also understood and agreed that in the following towns, the exhibitor has the privilege of eliminating 13 pictures from the Warner-First National contract:

Ashland
Bath
Bellefontaine
Bucyrus
Canandaigua
Carthage
Delaware
Glens Falls (Empire)
Hamilton
Herkimer
Hudson Falls
Little Falls
Malone
Massena
Mount Vernon
Newark
Norwalk
Norwich
Ogdensburg
Piqua
Salamanca
Saranac Lake
Seneca Falls
Tiffin
Tupper Lake
Van Wert
Wooster

and in the following towns, the exhibitor has the privilege of eliminating 7 pictures from the Warner-First National contracts:

Amsterdam
Athens
Buffalo (Granada)
Buffalo (Riverside)
Corning
Cortland
Geneva
Gloversville
Lockport
Oneonta
Oswego
Rochester (Riviera or Liberty)
Rochester (State or Dixie)
Watertown

Clause No. 8

It is also agreed that on the 35% and 30% pictures, they are not to play with vaudeville or double bills.

Clause No. 9

It is understood and agreed that on the Vitagraph 1936-37 short subjects contracted for this 24th day of March 1936, the contract is to start playing on December 1st, 1936.

Clause No. 10

It is agreed and understood that the score charges on the 1936-37 deal is to be the same as paid on the 1935-36 deal.

Harry A. Seed, Buffalo, Warner Branch Manager.
Ray Smith, Albany, Vitagraph, Inc.
George V. Lynch, Schine Theatrical Co., Inc.

[fol. 6711]

Exhibit W-7

Chickering 4-2200

First National Pictures — Vitaphone Short Subjects

Vitagraph, Inc., Distributors of Warner Bros. Pictures
Home Office, 321 West 44th Street, New York City

April 29, 1935.

Schine Theatrical Co., Inc., Gloversville, N. Y.

Gentlemen:

Supplementing our agreement dated April 24, 1935, it is understood that in addition to the number of pictures contracted for, there is to be included in each situation one

(1) picture the terms on which are to be mutually agreed to between us at a later date.

Your signature in the place indicated below will constitute your agreement to the above.

Very truly yours, Vitagraph, Inc., A. W. Mathy,
General Sales Manager.

Agreed To: Schine Theatrical Co., Inc., By Geo. V. Lynch.

[fol. 6712] Schine Theatrical Co., Inc.

General Offices Gloversville, N. Y.

Gloversville, N. Y.

Agreement entered into this 24th day of April in the year of 1935, between Vitagraph, Inc. and Schine Theatrical Co. Inc. whereby it is agreed and understood that the following clauses become part and parcel of all contracts signed this 24th day of April, 1935, and an approval of the contracts will be an automatic approval of this letter.

Clause No. 1

In all situations where 30% pictures are played on Saturday and/or Sunday, terms to be 25%.

Clause No. 2

In all situations where 25% pictures are played on a Saturday and/or Sunday, terms to be 20%. In all situations where 25% or 20% pictures are used with a double feature bill or with vaudeville (unit or four acts), terms to be 15%.

Clause No. 3

The exhibitor has the option at the time of booking to play any one or more of the allocated flat buys at 20% of the gross if so desired. If any one or more of the flat buys are played at 20% of the gross and used either on a Saturday and/or a Sunday, terms to be 15%. However, exchanges must be notified within five days after it is dated.

Clause No. 4

On the pictures that carry split figures, the split figure is to be determined as follows:

> The distributor is to receive 35% of the gross receipts up to until such time as the exhibitor shows a profit equal to 50% of the amount the distributor receives as a film rental and to split 50-50 from this point on. This same clause applies to 30% pictures also.

Clause No. 5

In all towns, exhibitor agrees to use Warner-First National trailers and is to pay as follows:

1 change	$10.00
2 changes	5.00
3 changes	3.00
4 changes	2.00
5 changes	1.50

[fol. 6713]

Clause No. 6

(A) It is also understood and agreed that in towns where we overplay, our contracted commitment on features, the monies obtained by overplaying the commitment is to be applied dollar for dollar against towns where the commitment is underplayed.

(B) It is also understood and agreed that in towns where we overplay, our contracted commitment on shorts, the monies obtained by overplaying the commitment is to be applied dollar for dollar against towns where the commitment is underplayed.

Clause No. 7

It is also understood and agreed that in the following towns, the exhibitor has the privilege of eliminating 13 pictures from the Warner-First National contracts:

Carthage
Malone
Ogdensburg
Salamanca
Piqua
Mount Vernon
Bath
Bellefontaine
Hamilton
Little Falls
Norwich
Newark

Herkimer
Massena
Saranac Lake
Canandaigua
Wooster
Tupper Lake

and in the following towns, the exhibitor has the privilege of eliminating 7 pictures from the Warner-First National contracts:

Gloversville
Lockport
Corning
Buffalo, Granada
Oneonta
Oswego
Geneva
Rochester,
  Riviera or Liberty
Watertown
Cortland
Buffalo, Riverside
Rochester,
  State or Dixie

Clause No. 8

It is also agreed that on the 35% and 30% pictures, they are not to play with vaudeville or double bills.

Clause No. 9

It is understood and agreed that on the Vitagraph 1935-36 short subjects contracted for this 24th day of April, 1935, the contract is to start playing on December 1st, 1935.

Clause No. 10

It is agreed and understood that the score charge on the 1935-36 deal is to be the same as paid on the 1934-35 deal.

Harry Seed, Buffalo, Warner Branch Manager; Ray Smith, Albany, Vitagraph, Inc., Geo. V. Lynch, Schine Theatrical Co., Inc.

PLAINTIFF'S EXHIBIT W-34 (1)

Pl. Ex. W-34(1) for Warner Bros 9/11/46

[illegible] [illegible] [illegible]

2/24 Season 1940-41

State

[illegible] 35% 2-3 [illegible] to 37½ - 40%

½ [illegible] 30%

3-% 2-3

8 @ 112.50 2-3

16 - @ 50.- 2-3 [illegible]

12 - @ 30.- 2-3 "

[illegible] 134.00

ACCEPTED .... (Distributor)

ACCEPTED .... (Schine Enterprises Corp.)

4566

[illegible]

DEAL SHEET

12/6/40.

W.34(2)

Pl. Ex. #. 34(2) for Ident
3/27/42

Season: 1940-41.

THEATRE	TERMS			
EAST ROCHESTER (Rialto) or & FAIRPORT (Temple)	4	@	40.00	2-3 Days
	6	@	25.00	2-3 "
	6	@	25.00	2-3 "
	Balance	@	25.00	2-3 "

CLEARANCE: [redacted] 30 days after first run Rochester.

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Enterprises Corp.)

0715

4567

W34(3)

[illegible] 34(3) [illegible] [illegible] 13 [illegible] 9/11/40

[illegible] 3/27/42 [illegible]

[illegible] 1940-41

Ge[illegible]

a

Regent

Geneva

N.Y.

4 - [illegible] 35% [illegible] 37½ [illegible]

5 - [illegible] 35% 23 (2 [illegible] 30%)

8 - [illegible] 135.00 2-3

16 - [illegible] 45.00 2-3 [illegible]

12 - [illegible] 22.50 2-3 "

6716

4568

W 34 (4)

R. E. H. 34(4) for [illegible]

[redacted] Warner Bros

[redacted] 3/27/42 [redacted]

Season 1940-41

Rialto	4 @ 35% - 37½% - 40%	3-5
or	8 @ 35% 2 Rev 30%	2-3
Empire	8 @ 30% 2 Rev 25%	2-3
for	16 @ 55.	2-3
Paramount	12 @ 40.	2-3
Glens Falls N.Y. 1st run	Clearance same as 1939-40	

ACCEPTED G. Sulin
(Distributor)

ACCEPTED
(Schine Enterprises Corp.)

6717

4569

W 34 (5)

~~W & W 34 (5)~~

Warner Bros

Season 1940-41

Empire

Glens Falls N.Y.

Ind, Mtr

4 @ 85. 7 days

8 @ 50 7d

8 @ 37.50 7d

28 @ 17.50 7d

Clearance same as 1939-40 season

ACCEPTED (Exhibitor)

ACCEPTED (Schine-Enterprises Corp.)

6718

4570

Ig ~~Pl. Ex. 34 (6) for ident.~~

3/27/42

WARNER BROS.

DEAL SHEET

W34(6)

12/6/40.

Season 1940-41

THEATRE	TERMS
	4 @ 80.00 2-3 Days
GLOVERSVILLE Hippodrome Theatre	16 @ 55.00 2-3 "
J. M. Rein [illegible]	[redacted]
	CLEARANCE: See contract.

A. Sachs

ACCEPTED ....

(Distributor)

J. E. Lynch

ACCEPTED ....

(Schine Enterprises Corp.)

6712

4571

WARNER BROS.

DEAL SHEET

12/6/40.

W 34(7)

D/4 W-34(7)

Season: 1940-41. 3/27/42

THEATRE	TERMS			
	4	@	25% to 37½% to 40%	3-4 Days
	8	@	35%(2 revert to 30%)	3-4 "
GLOVERSVILLE	8	@	100.00	3-4 "
Glove	16	@	65.00	3-5 "
or Hippodrome	13	@	45.00	3-5 "

CLEARANCE: See contract.

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Enterprises Corp.)

6720

4572

W34(8) [illegible] Warner Br 9/4/40

~~Pl. & F-34(8) for~~ [illegible]

[illegible] ~~Harlan~~ [illegible]

Season 1940-41

	4 @ 90	2-3 days
Ritz	8 @ 50	2-3 "
	8 @ 30	2-3 "
	16 @ 17.50	2-3 "
Granville	12 @ 12.50	2-3 "

Clearance same as 1939-40 season

ACCEPTED B ....
(Exhibitor)

ACCEPTED ....
([illegible] Enterprises Corp.)

6731

4573

W 34(9)

~~P.E. F-34(9) [illegible]~~

[illegible] Warner Bros 9/9/40

THEATRE 4/27/42 TERMS

Season 1940-41

State

Hamilton

N.Y.

4 @ 2-3 days 35% - 37½% - 40%

8 @ 2-3 " $75

8 @ 2-3 " $42.50

28 @ 1-2 $20

Clearance same as 1939-40 Season

ACCEPTED A. Schine
(Distributor)

ACCEPTED L. Goldstein
(Schine Enterprises Corp.

6722

4574

W 34 (10)

DEAL MADE Warner Bros 9/11/40 ✓

Pl. 4 H. 34(10) ~~[illegible]~~

3/27/41

THEATRE	TERMS
	Season 1940-41
Liberty Herkimer N.Y.	4 @ 7/3 days 35% - 37½% - 40% 8 @ 7/3 " 35% ~~2-ant~~ 30% ~~8~~ @ 7/3 " $65 28 @ 7/3 " $35 Clearance same as 1939-40 Season

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Enterprises Corp.)

6723

4575

W34(11) DEAL SHEET Warner Bros 9/11/40

Al. Ex W-34(11) [illegible]

THEATRE	8/23/42 TERMS
	Season 1940-41
Strand Hudson Falls N.Y.	4 @ 7/3 days 35% - 37½% - 40% 8 @ 7/3 " $60 8 @ 1-2 " 37.50 28 @ 1-2 " 17.50

Clearance same as 1939-40 season

ACCEPTED A. [illegible]
(Distributor)

ACCEPTED [illegible]
(Schine Enterprises Corp.)

6724

4576

W34(12)

Ll. & W34(12) DEAL MEMO Warner Bros. 9/1/40

THEATRE ~~for stand~~ 4/23/42 TERMS Season - 1940-41

Capitol	4 @ 100.00 2-3 0a
	8 @ 65.00 2-3 "
"	8 @ 35.00 2-3 "
Albion	Bal @ 22.50 2-3 "
NY	Clearance same as 1939-40 season

ACCEPTED A. Sealey
(Distributor)

ACCEPTED
(Schine Enterprises Corp.)

6725

4577

W34 (13)

WARNER BROS.

DEAL SHEET

12/6/40.

Season: 1940-41

THEATRE	TERMS				
	4	@	[illegible] to 3½ - 40%	3-5	Days
	5	@	30.00	3-5	"
LITTLE FALLS	5	@	25.00	3-5	"
Rialto	Balance	@	20.00	3-5	"
or					
Hippodrome					

This deal does not effect pictures played prior to 11/28/40.

[redacted]

CLEARANCE: [redacted] Per contract.

ACCEPTED A. ....
(Distributor)

ACCEPTED ....
(Sabine Enterprises Corp.)

6726

4578

W34114

DEAL SHEET Warner Bros 9/11/[illegible]

THEATRE	TERMS
	[illegible]

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Enterprises Corp.)

6727

4579

~~Al. & T. 34(15)~~ [illegible]

W34(15) 9|11|J. [redacted] WARNER BROS.

[redacted]	[redacted]
	SEASON 1940-41
Massena	4 c 1/3 days 35% - 37½ - 40%
	8 @ 1/2 35% - 2 lev to 30%
Massena	8 @ $6.50 } ½ days
NY	28 @ $4.50 } ½ days

Clearance same as 1939-40 Season

[redacted]
[illegible]

[redacted]
[illegible]

6720

4580

Pl. ~~# 34(16) [illegible]~~ W 34(16) 8/23/42 [illegible] Warner Bro 9/11/40

[illegible]	[illegible]
	Season 1940-41
State	4 @ 2 days 35% - 37½% - 40%
	8 @ 2 " 95.
Jacksonville	8 @ 2 " 45.
	28 " 2 " 30.
N.Y.	
	Clearance same as 1939-40 Season

ACCEPTED .... (Distributor)

ACCEPTED .... (Schine Enterprises Corp.)

0720

4531

W 34(17) - DEAL SHEET Warner Bros 9/11/40

M. G. W 34(17) ~~[illegible]~~

THEATRE 3/2/42. TERMS

Season 1940-41

Colonial

Mexico!

17 @ 7/8 days 35% - 37½% - 40%

8 @ 7/8 " 35% - 2 Rev to 30%

8 @ $50 1-2 days

28 @ $35 1-2 "

Clearance same as 1939-40 season

ACCEPTED G. Sc[illegible]

(Distributor)

ACCEPTED [illegible]

(Schine Enterprises Corp.)

6730

4582

W.34(18)

~~W. E. F. 34(18)~~ [illegible] Warner 9/11/40

3/22/41

Season 1940-41

Strand

Ogdensburg

4 @ 2/3 days 35% - 37½% - 40%

8 @ 35% 2/3 days - [illegible] to 30%

8 @ 90 2/3

16 @ 60 1-2

12 @ 50 1-2

Clearance

ACCEPTED A. [illegible]

(Distributor)

ACCEPTED

(Schine Enterprises Corp.)

6731

4533

W34(19)

DEAL SHEET ~~W & 9/34(19) for [illegible]~~ Warner Bros 9/4/40

THEATRE 2/22/42 TERMS

Season 1940-41

ontiac

g densburg

N Y

nd run

4a 30 - 2 days

Ode 17^{50} 2

minimum commitment 12 pictures

Clearance same as 1939-40 season

ACCEPTED A. [illegible]

(Distributor)

ACCEPTED

(Schine Enterprises Corp.)

6732

4534

W 34(30)

DEAL SHEET Wa[illegible]

[illegible] 34 (20) ~~[illegible]~~

THEATRE	3/23/42 TERMS
	Season 1940-41
Oneonta or Palace Oneonta N.Y.	4 @ 3 day 35% 3 [illegible] 8 @ 2-3 35% - 2 [illegible] 8 @ 2-3 $90 16 @ 1-3 $50 - [illegible] 12 @ 1-3 35 - [illegible] Clearance [illegible]

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Sabine Enterprises Corp.)

6733

4535

W34(21)

DEAL SHEET

[illegible] 9/11/40

THEATRE	TERMS
8/27/42	[illegible]
Palace	4 @ 30.00 [illegible]
[illegible]	Minimum [illegible]
	4 in pictures
	157.10

ACCEPTED .... (Distributor)

ACCEPTED .... (Sabine Enterprises Corp.)

6734

4536

W 34 (22) ~~[illegible]~~ Warner Bros 9/11/40

~~[illegible]~~

Season 1940-41

4-@ 35% [illegible] 37½ [illegible] 37½

Strand 8- @ 35% (2 [illegible] = [illegible]) 2 37½

8- @ 90.00 2-3 [illegible]

or 8- @ 45.00 2-3 "

Capitol 16 @ 25.00 2-3 "

12 @

or Oswego

Oswego Clearance [illegible] 1939-40

N Y

ACCEPTED A. J. Sihlay
(Distributor)

ACCEPTED J. A. Tugnell
(Schine Enterprises Corp.)

6735

4587

W34(23)

Pl. & H. 34(23) [redacted] Warner Bros 9/11/40

[redacted] Shu [redacted]

4/27/41 Season 1940-41

4 @ 50.00 2-3 da

Capital 8 @ 35.00 2-3 da

B/ @ 17.50 2-3 "

Osiney

Minimum Committed 70 pictures including top 12 pictures

2nd run Clearance Same as 1939-40

[redacted]

[redacted]

6736

.4588

W 34 (24)

~~Ph. & F. 34 (24)~~ Warner Bros. [illegible]

[illegible] Season 19[illegible]

Auditorium	4 - @ 35% [illegible] 2-3 [illegible]
	8 - @ 60 [illegible] 2-3 [illegible]
	8 - @ 3[illegible] 2-3 [illegible]
Perry	28 @ 2[illegible]
N Y	Clearance [illegible]
1st run	

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Enterprises Corp.)

6737

4589

W 34(25)

~~[illegible] 34(25)~~ Warner Bros 9/11/40

THEATRE ~~[illegible]~~ 3/22/42 TERMS

Season 1940-41

4 @ 35% ½ 37½ [illegible] 2 3.5

ndrews 8 @ 35% [illegible] 30 [illegible]

8 @ 50% 2 3 [illegible]

oleman 28 @ 35% 2 3 "

Clearance [illegible] 1939-40

ACCEPTED (Distributor)

ACCEPTED (Schine Enterprises Corp.)

6738

4530

4 W34 (20) [illegible] Warner Bros. 9/11/40

1/1 & # W34(26)

[illegible] 3/27/42 [illegible]

Season 1940-41

Pontiac
Saranac Lake
N.Y.

4 @ 2-3 day 35% - 3 " 40%
8 @ 2-3 " 35% 2 " 30%
8 @ 1-2 " 55
28 @ 1-2 " 35

Clearance same as 1939-40 season

[illegible] A. Schine
[illegible]

[illegible]
[illegible]

6739

4531

W 34(27)

~~[illegible] 34(27)~~ [redacted] [redacted] Wagner Bros 9/11/40

[redacted] ~~[illegible]~~ [redacted]

3/27/42 Season 1940-41

	4 @ 35% 437 [illegible]
Strand	5 @ 65.00 2 on
Seneca Falls	6 @ 57.50 2 on
	28 @ 22.50 2 "
N.Y.	Clearance Season 1939-40

[redacted] [illegible]

[redacted] [illegible]

6740

4592

[redacted]

W 34(28) ~~St. G. Fabian~~ Warner Bros [redacted] 4/11/40

[redacted] ~~Tupper Lake~~ [redacted]

Season - 1940-41

State

Tupper

Lake

4- @ 100^{00} 2-3 Da

8- @ 50^{00} 2-3 "

8- @ 25^{00} 2-3 "

16 @ 17^{50} 2-3 "

12 @ 15^{00} 2-3 "

Clearance Same as 1939-40

ACCEPTED G. Sch
(Distributor)

ACCEPTED
(Fabian Enterprises Corp.)

0741

4593

W 34 (29) Warner Bros 9/11/40

1 ½ ~~[illegible]~~

3½ 7½

Season 1940-41

Olympic
or
Palace
Watertown
N Y

Ind. Win

4 - @ 100.00 2-3 Da
4 - @ 75.00 2-3 "
12 - @ 50.00 2-3 "
14 - @ 35.00 2-3 "
14 - @ 30.00 2-3 "

Clearance same as 1939-40

6742

4594

[illegible]

W 34(30) ~~L.C.B. W34(30)~~ Warn Bros 9/11/40

THEATRE ~~[illegible]~~ [illegible]

AS 1940-41

Avon

Or

Olympia

Watertown
1st run
N.Y.

4 @ 3-4 days 35% - 30% / [illegible] - 40%
8 @ 2-4 " 35% - 2 res to 30%
8 @ 2-4 " $130.
16 @ 2-3 " $75.
12 @ 2-3 " $50.

Clearance same as 1939-40 Season

APPROVED ....
(Exhibitor)

APPROVED ....
(Schine Enterprises Corp.)

6743

4595

W34(31)

DEAL MEMO Warner Bros 9/11/40

~~[illegible] W34(31) [illegible]~~

REMARKS 3/27/42 TERMS

Season 1940-41

Capitol
Whitehall
NY

4 @ 2 days 35% - 37½% - 40%
8 @ 2 · 60
8 @ 2 · 30
28 @ 2 · 22.50

Clearance same as 1939-40 season

ACCEPTED A. [illegible]
(Distributor)

ACCEPTED L. [illegible]
(Schine Enterprises Corp.)

6744

4596

W34(32) ~~[illegible] W34(32)~~

DEAL SHEET War... [illegible] 9/11/45

THEATRE	TERMS
X	~~[illegible] 4/27/42~~ Season 1940-41
Palace or Opera House Ashland Ohio	4 @ 35% - 37½% - 40% 2-3 days 8 @ $110 2-3 8 @ $50 2-3 28 @ $35 2-3 Clearance same as 1939-40 season

ACCEPTED A. Sch... (Exhibitor)

ACCEPTED (Schine Enterprises Corp.)

6745

4597

2 W34(33) Pl. & W34(33) ~~[illegible]~~

9/2/41 Warner Bros 9/11/40

THEATRE	TERMS
	Season 1940-41
Athena	4-C 35% to 37½ 40% 2 3 Da
or	(per letter of Solotar to Sachen 7/17) 2-3
Ohio	8-C ~~30%~~ 35% (2 remaining 30%)
&	8 @ $75 2-3 days
Court	16 @ $35
Athens	12 @ 22.50
Ohio	Clearance Same as 1939-40

ACCEPTED .... ([illegible])

ACCEPTED .... ([illegible])

6746

4598

W34(34)

[illegible] DEAL [illegible]

[illegible] 34(34) Warner Bros 9/11/40

THEATRE ~~[illegible]~~ TERMS

3/22/41

Season 1940-41

	4 @ 35% to 37½ or 40% 2-3 Sa
Clazel	8 @ 115.00 2-3 Sa
~	8 @ 50.00 2-3 "
Lynne	16 @ 25.00 2-3 "
Bowling Green	12 @ 17.50 2-3 "
Ohio	Clearance Same as 1939-40

ACCEPTED .... G. Sykes
([illegible])

ACCEPTED .... [illegible]
([illegible] Enterprises Corp.)

6747

4599

W34 (35)

DEAL SHEET War.. Bros 9/11/40

~~[illegible] 34 (35) [illegible]~~

THEATRE	TERMS
X	Season 1940-41
Lyric	4 @ 1750 w/3 day
wling Green	8 @ 1250 w/3 "
Olive	Balance $1000 "
Del Rey	Minimum commitment top 18 pictures
	[illegible] per season

ACCEPTED C. Seib..
(Distributor)

ACCEPTED
(Schine Enterprises Corp.)

6748

4600

W34(36) **DEAL SHEET** Warner Bros.

~~-M & W34(36)~~

THEATRE	9/3/41 TERMS
	Season 1940-41
Bucyrus, or Southern	4 @ 3 days 35% - 37½% - 40%
	8 @ $15 1/2 days
	8 @ $50 1/3 "
	28 @ 22⁵⁰ 1/3 "
Bucyrus Ohio	Clearance same as 1939-40 Sea

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Enterprises Corp.)

4601

W 34(37)

[illegible] W34(37) Warner Bros 9/11/40

THEATRE ~~[illegible]~~ TERMS

Season 1940-41

1/ [illegible] 30% [illegible] 40% 2-3 [illegible]

Strand 8 @ 115.00 2-3 [illegible]

8 @ 50.00 "

Clearance 28 @ 22.50 "

Clearance same as 1939-40

ACCEPTED ....
(Distributor)

ACCEPTED ....
([illegible] Enterprises Corp.)

6750

4602

DEAL SHEET

	W34(38)	W34(38) Warner Bros	9/11/4
THEATRE ~~[illegible]~~ 3/27/42		TERMS	

State & Civic Fostoria Ohio	4 @ 35% - to 37½ ~ 40% 25
	8 @ 100.00 2-3 P.C.
	8 @ 50.00 2-3 "
	28 @ 32.50 2-3 "
	Clearance same as 1939

ACCEPTED G. Smiley (Distributor)

ACCEPTED J. Lynch (Sabine Enterprises Corp.)

6751

4603

W 34(39)

1-2 34(39) DIST. AGENT Warner Bros. 9/11/40

THEATRE ~~Kent~~ TERMS

3½ 3 4 Season 1940-41

Kent	11-@ 35% to 31½ av 40% 2-3 Day
	8-@ 35% (remit 2 to 30%)
or	8-@ 45.00 2-3 Da
	28- 22.50 2-3 "
Ravenna	
Ohio	Clearance Same as 1939-40

ACCEPTED

(Distributor)

ACCEPTED

(Sabine Enterprises Corp.)

6752

4604

W34(40)

ID & W34(40) [illegible] NAME Warner Bros 9/11/40

THEATRE ~~[illegible]~~ TERMS

3/23/42 Season 1940-41

Kent	4 @ $60 – } 1/3
or	8 @ $40
Ravenna	8 @ $25
Ohio	Balance $20
Repeat	Clearance same as 1939-40 season
2nd run	

ACCEPTED .... (Distributor)

ACCEPTED .... (Sphinx Enterprises Corp.)

6753

1

4605

DEAL SHEET

W34(41)

Warner Bros 9/11/40

THEATRE

TERMS

Season 1940-41

Medina

&

Princess

Medina

Ohio

4 - @ 35% to 37½ - 40% 2-3 Ch

8 - @ 55.00 2-3 Ch

8 - @ 30.00 2-3

28 - @ 22.50 2-3

Clearance Same as 1939-40

ACCEPTED .... (Exhibitor)

ACCEPTED .... (Salesman Exchange Mgr.)

6754

4606

W34(42)

DEAL SHEET Warner Bros 9/11/40

THEATRE	TERMS
1st 4. W34(42) for	Season 1940-41
~~[illegible]~~ 5/27/42	X 4 @ 35% + 37½ & 40% 2-3
	8 @ 80.00 2-3 Da
Forum	8 @ 35.00 2-3 "
or	28 @ 22.00 2-3 "
Moore	
Norwalk	Clearance same as 1939-40
Ohio	

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Sabine Enterprises Corp.)

6755

4607

7 W34(43) **DEAL SHEET** Warner Bros 9/11/40

THEATRE	TERMS	
H. E. H. 34(43) [illegible]	Season 1940-41	
Piqua	4 @ 35% - 37½% - 40%	2/3 days
	4 @ 35% 2 rent 30%	2/3 "
or	8 @ $75	2/3 "
	16 @ $37.50	2
Miami	12 @ $22.50	2 "
Piqua Ohio	Clearance same as 1939-40 Season	

ACCEPTED ....
(Exhibitor)

ACCEPTED ....
([illegible] Enterprises Corp.)

6756

4608

W34(44)

Warner Bros 9/11/40

THEATRE	TERMS
~~W.T. 34(44)~~ ~~Extend~~ 3/23/42	Season 1940-41
Castamba	4-@ 35% to 37½ ~ 40% 2-3 Da 8-@ 75.00 2-3 Da 8-@ 30.00 2-3 " 28 @ 17.50 2-3 "
Shelby	
Ohio	Clearance Same as 1939-40

ACCEPTED .... (Distributor)

ACCEPTED .... (Schine Enterprises Corp.)

6757

4609

W 34 (45)

[illegible]
Warner Bros 9/11/40

THEATRE | TERMS

A Ex W34 (45) for ~~[illegible] 3/27/41~~ | Season 1940-41

Ritz or Grand or Tiffin	4 @ 35% - to 37½ - 40% 2-3 run 8 @ 35% (2 rent to 30%) 2-3 8 @ 70.00 2-3 run 16 @ 40.00 2-3 " 12 @ 25.00 2-3 "
Tiffin Ohio	Clearance same as 1939-40

ACCEPTED G. Sisk [illegible]
(Exhibitor)

ACCEPTED
([illegible] Corp.)

6758

4610

W34(96)

[redacted] [redacted] Warner Bros 9/11/40

[redacted] [redacted]

Pl. 4 H 34(40) Season 1940-41

~~Stand~~ 3/23/42

4- @ 35% to 37½ - 40% 2-3 DR

Van Wert 8- @ 100.00 2-3 DR

" 8- @ 35.00 2-3 "

Strand 28 @ 22.50 2-3

Van Wert Clearance Time as 1939-40

Ohio

[redacted] (Branch Manager)

[redacted] [illegible]

6759

4611

W34(47)

DEAL SHEET Warner Bros 9/11/40

THEATRE	TERMS
11. Ex W34(47)	Season 1940-41
~~[illegible]~~ 3/27/42	4 @ 35% to 37½ to 40% 2-3 Rx
Wooster	8 @ 35% (some run 1, 2 to 30%) 2-3 Rx
ol	8 @ $80 2-3 days
Wayne	16 @ $40 2-3 "
	12 @ $30 2-3 "
Wooster	Clearance same as 1939-40
Ohio	

ACCEPTED .... (Exhibitor)

ACCEPTED .... ([illegible] Corp.)

6760

4612

W34(48)

WARNER BROS.

DEAL SHEET

12/6/40.

Season: 1940-41.

THEATRE	TERMS
5/31/4	

4	@	40.00	2-3 Days
8	@	25.00	2-3 "
Balance	@	17.50	2-3 "

Woburn

Wayne
Theatre

Minimum of 12 picture commitment.

Second Run

[redacted]

CLEARANCE: 45 days after first run.

ACCEPTED ....
(Distributor)

ACCEPTED ....
([illegible] Enterprises Corp.)

6761

4613

W34(49) Warren 9/11/40

V1 - W34(49) [illegible] Season 1940-41

3/23/42

Hippodrome	4 @ 100.00 2-3 Da
〃	8-@ 65.00 2-3
Vin	8-@ 37.50 2-3
	28 @ 22.50 2-3 〃
Corbin	Clearance Same as 1939-40
Ky.	

ACCEPTED A. Sabin

(Exhibitor)

ACCEPTED [illegible]

(Sabine Enterprises Corp.)

0762

4614

M W 34 (50)

DEAL SHEET
Warner Bros 9/11/40

THEATRE	TERMS
14 4 F 3 4 (50)	Season 1940-41
~~for Strand~~ 9/27/40	4 @ 35% to 37½ to 40% 2-3-4 Wa
Ben Ali	8 @ 35% (2 con [illegible] 30% 2-3
or	8 @ 30% (2 con renew 25% 2-3-4 Wa
Kentucky	16 @ 85.00 2-3-4 Wa
or	12 @ 60.00 2-3-4 Wa
Strand	
Lexington	Clearance same as 1939-40
Ky	

ACCEPTED G. Sutfin
(Exhibitor)
ACCEPTED [illegible]
([illegible])

0703

4615

W34(51)

Warner Bros 9/11/40

THEATRE

TERMS

H.-E. F34(51)

~~[illegible]~~ 3/27/42

Season 1939-40

4-@ 35% to 37½% 40% 2-3 Da

8 @ 112.50 2-3 Da

8 @ 75.00 2-3 Da

28-@ 25.00 2-3 "

Clearance same as 1939-40.

Strand or State or Opera House Lexington Ky

APPROVED A. Sudson (Distributor)

APPROVED (... Enterprises Corp.)

6764

4616

W34(52) Warner Bros 9/11/40

~~K-A-F~~-34(52) Season 1940-41

~~[illegible]~~
3/27/42

Strand or State or Opera House Lexington 3rd run	4-@ 60.00 2·3·1·2 8-@ 35.00 2-3 " 8 @ 25.00 2·3 Bal-@ 15.00/ 2·3 Clearance same as 1939-40

6705

4617

W34(53)

[redacted] Warner Bros 9/11/40

[redacted]

Pl. 4 F 54(53) Season 1940-41

~~Fr Schapt~~
9/22/42

Strand	4- @ 50.00 2-3 Da
a	8-' @ 30.00 2-3 "
State	Bal @ 15.00 2-3 "
or	
Opera House	
Lexington	Clearance Same as 1939-40
4th Run	

[redacted]

[redacted]

0788

4618

W 34(59) [illegible] Warner Bros 9/1/4

[illegible]	[illegible]
P. 4 D 3 4(34)	Same 1940-41
~~[illegible]~~ 5/27/42	4 @ 190 7/2 days
Russell	8 @ 85 7/2
or	8 @ 50 7/2
	28 @ 22.50 7/2
Washington	
	Clearance same as 1939-40 Season
Maysville Ky	

[illegible]

[illegible]

([illegible] Enterprises Corp.)

6707

4619

W34(55) [redacted] Warner Bros 9/11/40

[redacted] [redacted]

~~U.S.H. 34(55)~~	Season 1940-41
~~[illegible]~~ 2/22/42	4 @ 2 days 35% - 37½% - 40%
Manning	8 @ 2 " 75.
or	8 @ 2 " 40.
Browne	16 @ 2 " 27.50
Middletown	12 @ 2 " 17.50
Ky	
	Clearance same as 1939-40 Season

[redacted] A. [illegible]

[redacted] [redacted]

4620

1 W34(56) Warner Bros 9/11/40

R-4 W34(26) Season 1940-41

~~[illegible]~~
3/22/42

Bourbon	4 @ 2 days 35% - 37½ - 40%
or	8 @ 2 " $55-
Paris	8 @ " $35-
Paris Key	18 @ " $15-

4621

W 34 (37) [redacted] Warner Bros. 9/11/40 X

[redacted] [redacted]

~~4 F 244 (37)~~	Season 1939-40
~~for class~~ 3/27/42 1	4 @ 2 days 35% - 37½% - 40%
Madison	8 @ 2 " 80.
or	8 @ 2 " 35.
State	28 @ 2 " 17.50
ichmond	
Ky	Clearance same as 1939-40 Season

[redacted]
[redacted]

6770

1.

V

4622

W34(58)

[illegible] Warner Bros 9/11/40

[illegible]	[illegible]
N.Y. W34(38) Key	Season 1940-41
~~Strand~~ 3/23/42	4 @ 2-3 days 35% - 37½% - 40%
Arcade	8 @ 2-3 " 90
or	8 @ 2-3 " 55
~~State~~	28 @ 2-3 " 30
Cambridge	Clearance same as 1939-40 Season
Md.	

([illegible])

4623

W 34(59)

DEAL SHEET Warner Bros 4/11/41

THEATRE	TERMS
1½ W34(59)	Season 1940-41.
~~[illegible]~~ 3/23/41	× 4 @ 130 7/3 days
Avalon	8 @ 70 7/3 "
or	8 @ 35 7/3 "
New house	16 @ 25 7/3 "
Easton	12 @ 17⁵⁰ 7/3 "
Md.	
	Clearance same as 1939-40 season.

[illegible] A. S[illegible]

[illegible]

([illegible])

[illegible]

4624

W34(60) DEAL SHEET Warner Bros. 9/11/40

THEATRE	TERMS
~~M. E. W34(60)~~	Season 1940-41
~~Ex Burt~~ 3/27/42	× 4 @ 60: 73 days
Federal	8 @ 25 73
	8 @ 17.50 73
Federalsburg	28 @ 12.50 73
Void	
	Clearance same as 1939-40 season

ACCEPTED A. Sucher
(Exhibitor)

ACCEPTED
(Schine Enterprises Corp.)

6773

4625

W34(61)

DEAL SHEET. Warner Bros 9/11/40

THEATRE	TERMS
N 4 W34(61)	Season 1940-41
~~[illegible]~~ 8/22/43	4 @ 3 bkg 35% - 37½% - 40%
Arcade	8 @ 2nd 3. 35% f rev to 30%
or	8 @ 2-3 . $60
Wicomico	16 @ 2-3 " 50
	12 @ 2-3 " 25
Salisbury	
Md	clearance same as 1939-40 season

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Enterprises Corp.)

6774

4626

W34(63) DEAL SHEET Warner Bros 9/11/40

THEATRE	TERMS
Pl. Ex. W34(62)	Season 1940-41
~~[illegible]~~ X	12 @ 12.50 2/3 days
5/27/42	
Colored house Salisbury Md.	Bal @ 10.00 1/2 "
	Minimum commitment 36 pictures

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Enterprises Corp.)

6775

4627

W34(63) [redacted] Warner Bros 9/11/40

[redacted] [redacted]

Pl. Ex. W34(63)	Season 1940-41
~~[illegible]~~ 3/27/42	4 @ 35% - 37½% - 40% 3-4 days
Rialto	8 @ 35% - 2 Rev. to 30% 2-4 "
for	8 @ 30% 2 " to 25% 2-4 "
Strand	16 @ 90. 2-3 "
[illegible]	12 @ 55. 2-3 "
1st run Amsterdam N.Y.	Clearance same as 1939-40 season

[redacted] [illegible]

[redacted] [illegible]

[redacted]

6776

4628

W 84(64) [illegible] Warner Bros 9/11/4

[illegible]	[illegible]
	Season 1940-41
~~Ex W24(64)~~ ~~[illegible]~~ 3/27/42	8 @ 50 % 3 days
Strand	12 @ 37^{50} %
or	Bal @ 22^{50} may play 14 pictures 2-3 days in Reg. at the 12^{50} to be allocated from 22^{50} bracket
Regent	
Amsterdam	
N.Y.	
2nd run	Clearance same as 1939-40 season

ACCEPTED A. Schine
(Distributor)

ACCEPTED L. Schine
(Schine Enterprises Corp.)

6777

4629

W34(65)

DEAL SHEET Warner Bros 9/11/40

THEATRE	TERMS
W.T.W. 34 (65)	Season 1940-41
~~[illegible]~~	
5/23/41	[illegible]
Jefferson	5 & 45
For	51 & 75
Palace	75 & 45
Auburn	
2nd run	Clearance [illegible] 19 [illegible]

ACCEPTED ....
(Distributor)

ACCEPTED ....
([illegible] Enterprises Corp.)

6778

[redacted]

4630

W 34(b6) [redacted] 7

[redacted]	[redacted]
Pt 24 7/3 R(66)	[illegible]

~~Junland~~
3/27/42

Tucson	[illegible]
Jefferson	8 [illegible] 30 [illegible]
A	16 [illegible]
Palace	16 [illegible]
Auburn	Continuous service 1939-4
N.Y.	
Lima	

[redacted] A. Seiler
(Applicant)

[redacted] [illegible]
(Public Employment Supr.)

6779

4631

W.39(5)

DEAL SHEET Warner Bros 9/10/40

THEATRE	TERMS
N.Y. 3/11(67)	Season 1940-41
Capitol	40% 2 days
[illegible]	8-50 2 "
N.Y.	8-30 2 "
	78-15 2 "
	Clearance Same as 1939-40 Season

ACCEPTED .... G. Sulzy
(Distributor)

ACCEPTED .... Bolster
(Schine Enterprises Corp.)

6780

4632

W34(62)

DEAL SHEET

THEATRE	TERMS
[illegible] 34(62)	
	4 @ 35%
	5 @ 7 [illegible]
	8 @ 55.00 3 -
	11 @ 35.00 2-3
	12 @ 25.00 2 3

Clearance [illegible] 1937

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Rabine Enterprises Corp.)

0781

4633

W34(69) DEAL SHEET Warner Bros [illegible]

THEATRE	TERMS
Pl & D34(69)	Season 1940-41
~~[illegible]~~ 3/27/42 Playhouse Canandaigua N.Y.	4 @ 35% - 37½% - 40% 2-3 days 8 @ 35% 2 [illegible] 30% 2-3 8 @ $40. 2-3 28 @ $25. 2-3 Clearance same as 1939-40 season

ACCEPTED .... (Distributor)

ACCEPTED .... (Schine Enterprises Corp.)

6782

4634

W34(70)

DEAL SHEET

THEATRE	TERMS	
[illegible]	Since 1940-4	
[illegible] 5/27/42	4 @ 35%	-4
Arcand	8 - 85	2
	8 @ 50	2-30
	16 @ 25	1-2
Caillou	12 @ 17.50	1-2
N.Y.		

June Clearance 193[illegible]

ACCEPTED A. Sabin
(Distributor)

ACCEPTED
(Schine Enterprises Corp.)

6733

4635

W 34(71)

DEAL DATED Warner Bros 9/11/40

THEATRE	TERMS
1st [illegible] 9/34(71)	Season 1940-41
~~[illegible]~~ 3/[illegible]/42	
	4 - @ 50.00 2-3 wks
	8 - @ 32.50 2-3 "
Palace	Bal. @ 17.50 2-3 "
State	
Corning	Clearance same as 1939-40.
2nd Run	

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Enterprises Corp.)

6784

4636

W34(72)

DEAL SHEET [illegible]

THEATRE	TERMS
[illegible]	Season 1940-41
Fox	4 @ 35% 1 3 [illegible]
or	8 @ 35% 2 3 (same [illegible])
Palace	8 @ 60.00 2 3
Corning	28 @ 35.00 2 3
N.Y.	
first run	Clearance same as 1939-40

ACCEPTED G. Sperling
(Distributor)

ACCEPTED [illegible]
(Schine Enterprises Corp.)

6785

B

4637

W34(73)

Warner Bros 9/11/40

THEATRE

W34(73) Season 1940-41

~~7 [illegible]~~
9/2/42

4-C 35% to 37½ – 40% 2-3 Dr

Holland
8-C 1/5-2-3 D

8 @ 35 2 = "

Bellefontaine
28 C 35 1 3 "

Ohio

Clearance Same as 1939-40.

ACCEPTED .... (Distributor)

ACCEPTED .... (Shine Enterprises Corp.)

6786

4638

W34(74)

DEAL SHEET Warner Bros 9/11/40

THEATRE	TERMS
[illegible] W34(74)	Season 1940-41
~~[illegible]~~ [illegible]	4 @ 35% to 37½ [illegible] 40 [illegible]
Vernon	8 @ 35% ([illegible] 30%)
or	8 @ 60.00 2-3 Days
Vine	28 @ 30.00 2-3 "
Mt Vernon	Clearance Same as 1939-40
Ohio	

ACCEPTED .... (Distributor)

ACCEPTED .... Lynch (Shine Enterprises Corp.)

6787

4639

W 34(75)

DEAL SHEET Warner Bros 9/11/40

THEATRE	TERMS
~~W 34(75)~~	Season 1940-41
[illegible] 3/23/42	10 @ 15.00 2 [illegible]
Hurlock	8 @ 12.50 2
	8 @ 10.00 2

See letter 10/30 in agreement folder.

Hurlock

Md

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Enterprises Corp.).

6788

4640

W34(76)

DEAL SHEET Warner Bros 4/11/4

THEATRE	TERMS
[illegible]	Season 1940-41
~~[illegible]~~ 3/27/42	10 @ 15.00 1-2 [illegible]
Inarova	8 @ 17.50 1-2 [illegible]
	8 @ 10.00 1-2 [illegible]
St Nicholas	

ACCEPTED A. Sunley
(Distributor)

ACCEPTED L. Bolstein
(Schine Enterprises Corp.)

6789

4641

W34(77)

DEAL SHEET Warner Bros 7/11/40

THEATRE	TERMS
[illegible] 4(22)	Season 1940-41
~~[illegible]~~ 7/11/40	4 @ $35.00 8 @ 25.00 8 @ 15.00 28 @ 10.00 } 2 days
New theatre Fairies Delaware	This deal becomes operative on opening of theatre. Exhibitor not obligated to play any pictures becoming available prior to the time theatre opens
	Clearance same as 1939-40 season

ACCEPTED J Sachs
(Distributor)

ACCEPTED
(Schine Enterprises Corp.)

6790

4642

W34(78)

DEAL SHEET Warner Bros 9/11/40

THEATRE	TERMS
All 21 (34/78) for	Season 1940-41
~~[illegible]~~ 3/23/42	4 @ 75 2 days
Plaza	8 @ 50 2
	8 @ 25 2
Milford	28 @ 17.50 2
Del.	
	Clearance same as 1939-40 Season

ACCEPTED A. Smiley
(Distributor)

ACCEPTED
(Schine Enterprises Corp.)

8791

4643

W-34(79) ~~Al. G. F. 34 (77) [illegible]~~

DEAL SHEET

~~2/1/40~~ 9/1/40

THEATRE	TERMS
	Season 1940-41
	4/- @ 60% 2-3 wks
Rialto	8- @ 11% 2-3 "
&	331 @ 17½ 2-3 "
ne Art	Minimum of 20 pictures including top 12
ckpit	Clearance Same as 1939-40
2nd Run	

ACCEPTED A. Sidney
(Distributor)

ACCEPTED [illegible]
([illegible] Enterprises Corp.)

6792

4644

W-34 (58) ~~Ul. & H 30 [illegible]~~ 9/11

Wayne Bros.

THEATRE	TERMS
	Clearance - 7-10-41
Genoa	4 @ 35.00 2-3 .. 8 @ 22.50 2-3 .. Bal @ 17.50 2-3 ..
Regent	Minimum — Commitment 12 pix
2nd run	Same Clearance as '39

ACCEPTED J. Sykes (Distributor)

ACCEPTED (Sabine Enterprises Corp.)

6793

[fol. 6794]

Exhibit W-35-A

Agreement—Covering the 1940-41 product dated September 11th, 1940

In each situation where there are two or more houses, the exhibitor is obligated to play 48 pictures.

In situations where there are two houses with one operating part time, or where there is only one theatre, the exhibitor is obligated to play 40 pictures.

The above covers all situations excepting the following first run situations where the exhibitor is obligated to play only a total of 35 pictures:

Bellefontaine	Ohio	commitment	35 pictures
Medina	Ohio	"	35 "
Van Wert	Ohio	"	35 "
Perry	N. Y.	"	35 "
Salamanca	N. Y.	"	35 "
Hamilton	N. Y.	"	35 "
Ilion	N. Y.	"	35 "
Tupper Lake	N. Y.	"	35 "
Federalsburg	Md.	"	35 "
Laurel	Del.	"	35 "
Milford	Del.	"	35 "
Paris	Ky.	"	35 "
Richmond	Ky.	"	35 "

And, the following runs are also exceptions where the exhibitor is obligated to play only 20 pictures.

Hurlock 1st run	Md.	commitment	20 pictures
St. Michaels 1st run	Md.	"	20 "
Amsterdam 2nd run	N. Y.	"	20 "
Glens Falls 2nd run	N. Y.	"	20 "
Gloversville 2nd run	N. Y.	"	20 "
Watertown 2nd run	N. Y.	"	20 "
Auburn 2nd run	N. Y.	"	20 "
Mount Vernon 2nd run	Ohio	"	20 "
Corning 2nd run	N. Y.	"	20 "
Geneva 2nd run	N. Y.	"	20 "
Lexington 2nd run	Ky.	"	20 "
Lexington 3rd run	Ky.	"	20 "
Lexington 4th run	Ky.	"	20 "
Oswego 2nd run	N. Y.	"	20 "
Lockport 2nd run	N. Y.	"	20 "
Rochester (Lake) subsequent	N. Y.	"	20 "
" (State) repeat	N. Y.	"	20 "
" (Liberty) repeat	N. Y.	"	20 "

Wherever the exhibitor decides to eliminate a picture in accordance with the above minimum commitments, notification of such elimination will have to be made to the distributor in accordance with the provisions outlined in the general terms of the feature contract attached.

Vitagraph, Inc., by Arthur ———. Schine Enterprises Corporation, by Geo. V. Lynch.

[fol. 6795] **Exhibit W-35-B**

Agreement Covering the 1940-41 Product

September 11, 1940.

(1) Admission Prices: Minimum admission prices are to be specified in each contract for each situation.

(2) Double Bills: With respect to the top 20 pictures exhibitor may deduct the actual cost only of the second feature from the gross receipts not to exceed the price indicated for designation #21.

(3) Added Attractions: The exhibitor may deduct the actual but not the accumulated cost of Bank Night, screeno, etc. from the gross receipts on percentage pictures before sharing.

(4) Addition Days: With respect to the flat rental pictures it is understood and agreed that the exhibitor will pay for additional days over the number specified in the contract at a 50% pro rata charge per diem. (For example: A picture sold 2 days at $100.00, if played 3 days the charge for the third day would be $25.00).

(5) Midnight Shows: (On percentage pictures) Any percentage pictures playing on midnight shows, terms to be 20% of the gross receipts with the understanding that the gross receipts for such midnight shows are not to be counted in any control figure grosses.

(On flat rental pictures) Any flat rental pictures playing on midnight shows, where such midnight shows are over and above the number of days specified in the deal sheet, the exhibitor is to pay an additional 25% per diem rate. (For example: A picture sold 2 days at $100.00, if played on a midnight show plus 2 days, the charge for the midnight show would be $12.50).

All midnight shows and regular runs shall be consecutive.

(6) Overages and Underages: Should exhibitor change its policy in a situation which would necessitate playing a lesser number of features and short subjects than its commitment for such situation then the underage in such situation or situations may be applied dollar for dollar against over-played situations in the same territory exchange only.

(7) Control Figures: With respect to designations 1 to 4 inclusive, it is recognized that the control figures agreed

upon are based upon the actual gross box office receipts irrespective of any deductions to which exhibitor may be entitled for double bills, added attractions, etc. For example, if in any situation the film rental calls for 40%, if the gross is $2,000, and the gross be $2,000 then the film rental shall be forty (40%) per cent; and if exhibitor be entitled to a deduction from the gross before sharing of $50.00 for a second feature then the film rental shall be 40% of $1,950.

(8) Eliminations: Exhibitor agrees that wherever he has the privilege of selectivity in the contract to notify distributor within 14 days after the date of the notice of availability of his intentions to accept or reject any given motion picture.

Vitagraph, Inc., by R. H. ——. Schine Enterprises Corporation, by Geo. V. Lynch.

4648

U. 137.

EXHIBIT U-137

Pl. Ex. U. 137
5/4/40

Gloversville, N. Y.

AGREEMENT entered into this 7th day of September in the year of 1938, between Universal Pictures, Inc. and Schine Enterprises Corp. whereby it is agreed and understood that the following clauses become part and parcel of all deal sheets signed the 29th day of August, 1938, and the approval of these deal sheets will be automatic approval of this letter.

CLAUSE No. 1.

In all situations where percentage pictures are used with a double bill, Universal agrees to allow us to deduct the cost of the second feature. The cost not to exceed Universal's flat rental.

CLAUSE No. 2.

It is understood and agreed that in towns where we overplay our contracted commitment, the monies obtained by overplaying the commitment is to apply dollar for dollar against towns where the commitment is underplayed.

CLAUSE No. 3.

It is also understood and agreed that on any subject or subjects used for more days than the number specified on the deal sheet or contract, the cost for each additional day will be 50% per diem rate.

CLAUSE No. 4.

It is further understood and agreed that on any picture or pictures used on a midnight show the terms are to be 25%.

Dave Miller

Dave Miller, District Mgr.
UNIVERSAL PICTURES, INC.

Geo V Lynch

George V. Lynch
SCHINE ENTERPRISES CORP.

4650

DEAL SHEET

Universal Ex. 4 2113 (1)fi

THEATRE	TERMS
	Season 1938-39
	Selection of
	[illegible] 2-3 days
	4 [illegible] 30% 2-3 "
	8 [illegible] 25% 2-3 "
	[illegible] privilege of the 25% picture Strand 75.00 Rialto 125.00
	[illegible] 50.00 2-3
	Rialto 100.00 2-3
	[illegible] 30.00 2-3 "

Any 30% Picture
[illegible] 900
Picture reverts to 30%
of Picture
Guarantee 170

4651

x 38

127 (2)

DEAL SHEET

Universal [illegible]

THEATRE	TERMS
	Season [illegible]
	Selections
	4 @ 40.00 2-3 days
Capitol	4 @ 20.00 2-3 days
Ballston	8 @ 20.00 2-3 days

Clearance same as last year

ACCEPTED............ Dan Mills
(Distributor)

ACCEPTED............
([illegible])

6798

4652

U - 137

DEAL SHEET

Universal A. E. T. 137/39

THEATRE

TERMS

~~[illegible]~~

Season of 1938-39.

Selection of

4 @ 100.00 2 3 [illegible]

4 @ 50.00 2 3

4 @ 25.00 2 2

12 @ 17.50 2 3

6 Bob Baker 12.50 1.2

[illegible] [illegible] [illegible] li

[illegible]

ACCEPTED Dan Mills

6700

4653

[illegible]

Selection of [illegible]

Rialto	4- @ 35% 2-3 da
	4- @ 30% 2 3
or	4- @ 25% 2 3
	14 @ 50^{00} 2 3
Empire	10 @ 32 [illegible] 2 3

[illegible] 6

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

6800

4654

[redacted]

Selection of

Empire 8 @ 32.50 = 2-3 da

12 @ 20.00 2-3 "

Picture that play [illegible] played

ACCEPTED .... Mills
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

4655

[illegible] 137 [illegible]

[illegible]

January 1934-35

5/3/40

Selection of

4- @ 35% 2 [illegible] Rent 30% [illegible] 1750
2[illegible]% " " 1500

4- @ 35% 2 [illegible] "

8- @ 25% 2-3 "

[illegible] the [illegible] of [illegible] four (4) of the 25% [illegible]

[illegible] 75.00

[illegible] 25.00

[illegible] @ [illegible] 35.00

[illegible] 50.00

[illegible] 50.00

[illegible] 75.00

[illegible]

6 [illegible] 25.00 1-2 [illegible]

Slo[illegible]

[illegible]

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

6802

4656

9 Sep 38

137(7)

DEAL SHEET

Universal [illegible] 137(7)

THEATRE	TERMS
	Season of 1938-39
	Selection of
Hyman [illegible]	[illegible]
Florence [illegible]	[illegible]
[illegible]	[illegible]

ACCEPTED Dan Miller
(Distributor)

ACCEPTED
([illegible] Circuit, Inc.)

6803

4657

x

U. 137 (8)

Pl & Cl 137 (8) ~~[illegible]~~ 50/42

DEAL SHEET

Universal 12/29/38

THEATRE

TERMS

Season 1938-39

Pit.
&
Granville
N.Y.

4 - @ 32^{50} 2-3 Da

6 - @ 20^{00} 2-3

10 - @ 12^{50} 2-3

Selection (1) Reissue 3^{50} 1-2 Da

13 Singles 2^{00} 1-2 "

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

6804

4658

[illegible] 137 [illegible]

M. 137(?)

DEAL SHEET

[illegible]

THEATRE	TERMS
	[illegible] 1938-39
	[illegible]

ACCEPTED ....

ACCEPTED ....

[illegible]

4659

[redacted]

Liberty

Herkimer

N.Y.

Selection #

4 @ $100 7 days

4 @ $1.50 7 .

4 @ $35 7 .

10 @ $22.50 7 .

6 Bal Bikes 17.50 1-2 wks

Clearance, same as last year

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

6806

4660

[redacted]

Universal [illegible]

[redacted] [redacted]

Season of 1938-39.

Selection of

Strand 8 @ 35.00 = 2-3 Da

12 @ 20.00 = 2 3 "

6 @ 15.00 = 1-2 & Bot Broken

Warner [illegible]

Tr[illegible] [illegible]

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

6807

4661

9/10/32. ×

U 137(12)

DEAL SHEET

Universal ~~U 137(12)~~

THEATER	TERMS
	~~[illegible]~~
	Season of 1932-33.
	Selection of
Capitol	4 - [illegible] 3 1/2
	8 [illegible] 40% 2 3
	[illegible] 20% 2 3
Albion	
N.Y.	Clean [illegible]

[redacted]

4662

[illegible] Universal U. 137 (13)

~~[illegible]~~

THEATRE	TERMS
	Season of 1938-39.
Re-deal on Hipp	Selection of 4 @ 125.00 2-3 4 @ 50.00 2-3 4 @ 40.00 2-3 out letter 10/27/38 @ 30.00 2-3 out 12 16 @ 30. letter 10/21/38 6 Bob Burns 15.00

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

6800

4663

9/20/38

DEAL SHEET

Universal [illegible] N 137 (14)

THEATRE	TERMS
	Season of 1938-39
	Selection of
	[illegible]
	[illegible]
Malone	[illegible]
	6 [illegible] 3 days
Malone	Same [illegible] last year
N.Y.	

ACCEPTED [redacted]

6810

Universal [redacted]

[redacted] [redacted]

Season of 1938-39.

Selection of

4 - @ 100.00 2-3 Da

4 - @ 50.00 2-2 ..

4 - @ 35.00 2-2 ..

8 - @ 27.50 2-3 ..

6 - Bob Bakers $15.00

Clearance same as last year

ACCEPTED .... Mills,
(Distributor)

ACCEPTED J A Lynch ....
(Schine Circuit, Inc.)

4665

DEAL SHEET

Universal M 13704

~~[illegible]~~

[illegible]	[illegible]
	Season of 1938-39
	Selection of

State

4 @ 75.00 2-3 days

11 @ 50.00 2-3 days

6 @ [illegible].00 2-3 days

ACCEPTED .... (Distributor)

ACCEPTED .... (Schine Circuit, Inc.)

6812

4666

[redacted]

January 19 38.

Selection of

Colonia	4 @ 100.00 2-3 Da 4 @ 80 letter 10/27/38 4 @ 60.00 - 2-3 out 12 @ 35.00 2-3 "
Warner	1 Bal Balance 22.00 1-2 Da

Continuance same as last year

ACCEPTED Alex Mills
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

6813

4667

DEAL SHEET

Universal Pl. [illegible] 9/3/38

THEATRE	TERMS
	Season of 1938-39.
t trand a ntiac enshaw N.Y.	Selection of 4 - @ 35% - 2 dx Remainder 30% Gross bet $1200 " " $1100 4 - @ 30% 2 " out under 25% 10/27 4 @ 75.00 2 4 @ $125 4 @ 60.00 2 4 @ 40.00 2 6 - 3rd Bookers 22.50 1-2 dx Clearance same as last year

ACCEPTED .... (Distributor)

ACCEPTED .... (Schine Circuit, Inc.)

6814

4668

9/20/38

DEAL SHEET

Universal U-137 (1.9)

THEATRE	TERMS
	[illegible] 137 (?)
	Season of 1938-39.
Oneonta or Palace Oneonta N.Y.	Selection of 4 @ 35% 7/3 days Reverts to 30% 4 [illegible] 4 @ 30% 7/3 " " 25% 8 - @ 25% 1-2 dr. as per letter 10/27/38 Exhibitor has the privilege of playing during 8 4 of the 25% pictures at Oneonta 75.00 2-3 dn, at Palace 50 - 1-2 dr. 10 - @ at Oneonta 60.00 2-3 dr at Palace 35.00 1-2

4669

[illegible]

M-137[illegible]

DEAL SHEET

Universal

THEATRE | TERMS

[illegible] 137

Season 19[illegible]

[illegible]

D

[illegible]ntine | [illegible]

[illegible] 53 [illegible]

12 [illegible]

[illegible]

6816

4670

DEAL SHEET

Universal Y-137(2)

THEATRE	TERMS
	M.E.T. 137(2)
	Season of 1931/32.
	Selection of
State	4 @ 75.00 2-3 Dr
	6 @ 37.50 2-3 "
	10 @ 20.00 2-3 "

5/5/31

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

6817

4671

DEAL SHEET

Universal 4~13 [illegible]

THEATRE	TERMS
	Cl. & II - 137 (221)
	Season of 1938-39
	Selection of .3 3/4
	11 @ 35% [illegible] Terms & 30% of [illegible] 1750
	4 @ 30% [illegible] 25%
	8 @ 75.00 [illegible]
	10 @ [illegible] 2 or 40.00
	3 50.00
	of [illegible] 2 65.00
	~~[illegible]~~
	~~[illegible]~~
	6 Bit Baker 17.50 [illegible]
	[illegible]

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

6018

4672

11 : x

DEAL SHEET

4-137(22)

THEATRE	TERMS

~~11 [illegible] 137(22)~~

2/5/40

Olympic
Palace
Watertown

B [illegible]
4- [illegible]
[illegible]
3rd [illegible] 2
[illegible]
[illegible] at the
[illegible]
Olympic [illegible]

2nd Run

Pictures playing Olympic
[illegible] be repeated 2nd run
1st run [illegible] 15c 2-3 [illegible]
at Palace

AKL

ACCEPTED [illegible]

ACCEPTED [illegible]

6810

4673

Universal

U-137(24)

~~P.T.&B.137(24)~~

Season of 1938-39

0/3/42

Selection of

Capitol	4	@	60.00	2-3 days
	4	@	35.00	2-3 days
Whitehall [illegible]	8	@	22.50	2-3 days

[illegible]

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

6820

4674

U 134[illegible]

Universal Pl. E.T. 137[illegible]

THEATRE | TERMS

Season of 1938-39

Auburn	Selection of
or	4 @ 35% 2/4 days Reverts to 30%
Jefferson	[illegible] 25%
or	4 @ 30% 2/4 "
[illegible]	8 @ 25% 2/4 "
	[illegible]
	4 of the 8 - [illegible] pictures [illegible] Auburn 2 days $100 3 " $125.
	[illegible] Jefferson-Palace 2/4 days $50.
	[redacted]
	10 @ [illegible] Auburn - 3 days $75 4 " $100
	$42.
	[illegible]

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

6821

4675

1/11/39x

DEAL SHEET

THEATRE,	TERMS
[illegible]	[illegible]

שורבת - גן

1376

~~[illegible]~~

9/9/42

ACCEPTED .....Sam Mills.........
(Distributor)

ACCEPTED .....[illegible].........
([illegible])

6822

4676

8/26/38

U-127(28)

DEAL SHEET

Universal

THEATRE	TERMS
	Season of 1938-39.

[illegible]

4	@	135.00
12	@	85.00
6	@	60.00
4	@	40.00

Same terms and designation as last year.

Same clearance as last year.

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Robbins Circuit, Inc.)

6823

4677

9/26/38

U-137(28).

DEAL SHEET

Universal.

THEATRE	TERMS
	Season of 1938-39
	Selection of:
Granada	4 @ 115.00
	4 @ 55.00 F
[illegible]	8 @ 50.00
	6 @ 25.00
	1 @ 35.00

f/s 15 1/48

~~[illegible]~~

60%

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

6834

4678

[redacted]

Universal

[redacted] [redacted] [illegible]

Season of 1938-39

5/9/40

Selection of

4 @ 100. 2/2 days

8 @ 50. 2/3 days

8 @ 25. 2/2 days

Babcock

Bath

N.Y.

Same clearance as last years

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

6825

4679

9x6p:8

U-137(39)

DEAL SHEET

Universal

THEATRE	TERMS
Playhouse Canandaigua N.Y.	Season 1938-39 Selection of 4 @ $100. 1/3 [illegible] 4 @ $60. 1/3 4 @ $50. 1/3 8 @ $30. 1/3 6 Dos Boxes @ $15. 1/3 day Same clearance as [illegible]

7/13x36 [illegible]

Hun

2/5/40

6836

4680

U-137[redacted]

DEAL MEMO

Universal

THEATRE	TERMS
	Season of 1938-39
For [illegible] Palace [illegible] N.Y.	Selection of 4 @ 12.5 [illegible] days 4 [illegible] 4 @ 6 [illegible] [illegible] 6 [illegible] [illegible] days

H. & F. 1/37(31)

~~[illegible]~~

2/3/40

[illegible]

ACCEPTED.......................
(Distributor)

ACCEPTED.......................
(Schine Circuit, Inc.)

6827

4631

U-139 [redacted]

[redacted]

Universal

[redacted]	[redacted] N.Y.E.N.B.7(22)
	Season of 1938-39 ~~[illegible]~~

9-5-40

1

Palace

or

1-19-40

Selection of
4 @ $40 1/3 days
[illegible] @ $25 1/3
Any additional pictures used
price to be 17.50 1/3 days

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

[redacted] 6828

4682

½ - 137

DEAL SHEET

[illegible]

THEATRE	TERMS
	[illegible] 1950 [illegible]
	[illegible]
	[illegible] to 30% if gross less than 1950
	[illegible] 1500
	[illegible] 225
	[illegible]
	[illegible] 75% [illegible]
	[illegible]

ACCEPTED [illegible] Mills
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

6829

4683

9/20/38

9-13/39

DEAL SHEET

Universal

THEATRE	TERMS
	Season of 1938-39
[illegible] or Legal [illegible]	Selection [illegible] [illegible] 35% [illegible] 1750 [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

~~[illegible]~~ 2/3/40

6830

4684

8/00/38

U-137 (3x)

DEAL SHEET

Universal

THEATRE	TERMS
	[illegible] 1938-39

PC [illegible] 13 (133)

~~[illegible]~~ 3/3/40

[illegible]

[illegible] 30% of gross less than 1900

[illegible] 25% [illegible] 1750

4/6 30% 1/3

[illegible] 25% 1/3

11 [illegible] 1/3

(Balance [illegible] 25% [illegible]

ACCEPTED Dan Mills
(Distributor)

ACCEPTED [illegible]
(Schine Circuit, Inc.)

6831

4685

DEAL SHEET

Universal

N 137(36)

THEATRE | [illegible]

N.E.G. 137(36)

~~[illegible]~~

9/9/40

Season of 1938-39.

Selection of

4 @ 40 2/3 days

8 @ 25 2/3

If any additional pictures are sold price to be 1750

ACCEPTED .... (Distributor)

ACCEPTED .... (Schine Circuit, Inc.)

6832

4686

N-137P

DEAL SHEET

Universal

THEATRE	TERMS
	Season of 1938-39.
Capitol Newark N.Y.	Selection of 4 @ $100 2/3 days. 4 @ $50 1/2 12 @ $25 1/3 Same terms as last year

N.Y. 137/321

~~File~~

3/5/42

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

6833

4637

4-13(38)

DEAL SHEET

Universal

THEATRE	TERMS
	(1/2)/1137(38)
	Season 1937-38
Richardson or Capitol Oswego N.Y.	[illegible] 4 @ 25% 7/3 days - reverts to 30% if gross less than $1750. 4 @ 30% 7/3 " " " 25% " " " $1500. 8 @ 25% 7/3 " flat exhibitor has the privilege of playing 4 of the 8 25% pictures @ 75. if shown 2/3 days $30 by Capitol 1/5 Letter 12/12/38 11 pictures if shown 2 days 50. 3 " 60. if Capitol 7/3 - 20. 6 B&S 13 [illegible] @ 20 7/3 days. Some clear [illegible]

4 @ 7.50 Oswego

3 @ Capitol

7 @ 60 Oswego

2 Capitol

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

6834

4688

9/26/38

DEAL SHEET

Universal

M-137(39)

THEATRE | TERMS

M.G.D. 137(39)

Season 1938-39

Selection of

Universal

4 @ $100 7/2 days

4 @ $60 7/2

Regan [illegible]

12 @ $22.50 7/2

6 [illegible] @ $15.00 7/2 days

M.J.

Clearance same as last year

ACCEPTED

ACCEPTED

6835

4689

U-13[redacted]

DEAL SHEET

Universal

U E U 137(A)

~~[illegible]~~

6/3/42

THEATRE	TERMS
	Season of 1938-39
	Selection 1 f

ACCEPTED ....
(Distributor)

ACCEPTED ....H. A. Kappel....
(Schine Circuit, Inc.)

6836

U-137(H

DEAL SHEET

THEATRE	TERMS
	[illegible]
	4 @ 50
[illegible]	4 @ [illegible]
	10 @ [illegible]
[illegible]	8 @ [illegible]

[illegible] 2nd [illegible]

Same clearance [illegible]

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

6837

Grapien

-137 (old)

[illegible]

Universal

[illegible]	[illegible]
	Season of 1938-39
	Selection of 8
Grand	4 @ 25.00
	4 @ 17.50
	@ 15.00
[illegible]	@ 12.50
	[illegible] @ 15.00

[illegible] with Strand.

[illegible]

~~[illegible] 21/13 1(40)~~

5/3/40

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

6838

4692

DEAL SHEET [illegible] - 137 (43)

THEATRE	TERMS
[illegible]	2 @ $22.50
	4 @ 17.50 16
	4 @ 15.00
[illegible]	8 @ 12.50
	6 attractions [illegible]

Same run and doing as last year.

Same [illegible] as last [illegible]

ACCEPTED Dave Miller
(Distributor)

ACCEPTED [illegible]
(Schine Circuit, Inc.)

6839

4693

137(44)

DEAL SHEET

THEATRE	TERMS
	[illegible]
	[illegible]
State of Dixie	4 @ $100.00
	4 @ 50.00
Rochester	Balance @ 25.00

Same run and days as last year

Same clearance as last year.

ACCEPTED............................
(Distributor)

ACCEPTED............................
(Schine Circuit, Inc.)

6840

4694

[illegible]

A-137 (43)

DEAL SHEET

Universal

THEATRE. TERMS

Season 1942-43. 11/13/(43)

~~[illegible]~~

9-3/42

Selections [illegible]

State of Dixie (Reprint)

4 @ $50.00

4 @ 35.00

Balance @ 17.50

Rochester

Same run [illegible]

Same [illegible]

ACCEPTED Jos. Mills
(Distributor)

ACCEPTED [illegible]
(Schine Circuit, Inc.)

6841

4695

DEAL SHEET

Universal

No. 137 (46)

THEATRE	TERMS
	Season of 1945-46
	Sole [illegible]
Riviera	4 @ 150.00
〃	4 @ 125.00
Liberty	4 @ 75.00
Rochester	Balance @ 50.00

11, 12 & 13 All,
~~[illegible]~~
9/5/45

Same days and prices as last year.

Same clearance as last yr.

ACCEPTED Alex Mills
(Distributor)

ACCEPTED
(Schine Circuit, Inc.)

6842

4696

8/20/38.

DEAL SHEET

Universal

137 (47)

THEATRE	TERMS
	Season of 1938-39.
Liberty Rochester Repeat	Selection of: 4 @ $50.00 8 @ 25.00 8 @ 17.50 Same per cent days as last year. Same clearance as last y.

Pd. 41 U-12X(47)

6/3/42

ACCEPTED Geo. Mills ....
(Distributor)

ACCEPTED Lynch ....
(Schine Circuit,Inc.)

6843

4697

9/26/38

137 (old)

DEAL SHEET

Universal

THEATRE	TERMS
	Season of 1938-39.
Andrews	Selection of 4 @ 100.00 2-3 Days 6 @ 60.00 2-3 " 12 @ 30.00 2-3 "
Salamanca	Clearance same as last
N.Y.	yr

P.R. & T. 137 (48)
~~[illegible]~~
3/3/40

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

6844

4698

8/26/38

137(49)

D-

11 131(49

~~[illegible]~~

0.3%

DEAL SHEET

Universal

THEATRE	TERMS
	Season of 1938-39
Strand Seneca Falls	Selection of 20 4 @ 50.00 2-3 Da 4 @ 30.00 2-3 " 4 @ 25.00 2-3 " 8 @ 17.50 2-3 " Clearance same as last year

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

6845

4699

[illegible]

137 (37)

DEAL SHEET

Universal [illegible]

~~[illegible]~~

THEATRE	TERMS
	Season 1933-34.

[illegible]

[illegible] 1000
850
35%

[illegible]

[illegible] 50 [illegible]

[illegible] 31 [illegible]

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

6846

4700

11/10/38.

UNIVERSAL

CORBIN, Ky.

HIPPODROME and KENTUCKY Theatres.	4 @	$ 60.00	2-3 Days
	4 @	50.00	2-3 "
	8 @	32.50	2-3 "
	10 @	17.50	2-3 "
	6 BAKERS @	15.00	2-3 "
	6 MAYNARDS @	12.50	2-3 "

Exhibitor has privilege of cancelling any undated 1937-38 product.

Will assume SERIAL deal as set-up by former owner.

CLEARANCE: Same as existed last year.

........................(Distributor)

........................(Schine Circuit, Inc.)

6847

4701

Universal 1/16/3

THEATRE | TERMS

Season 1938-39

U - 137R

All 4 21 137 (32) ~~[illegible]~~
4/3/42

Any pictures used 2nd
run prices to be
4 @ 22.50 2 - 2nd
Bal @ 12.50 2 -

ACCEPTED.................................
(Distributor)

ACCEPTED.................................
(Schine Circuit, Inc.)

6848

4702

9/26/38

DEAL SHEET

137(54)

THEATRE	TERMS
	[illegible]
	[illegible]
	4 @ 35%
	4 @ 50%
	@ 35% = 2-3

137(3)

75%

ACCEPTED ....

ACCEPTED ....

6849

4703

[redacted]

Universal 1/16/39

[redacted] [redacted]

Season 1938-39 Sh. 2-7-37 (55)

5/5/40 - 137 (55)

4 - @ 35% With minimum 2.30

" 2.3.

4 " 30% " 2.3.

8 @ 35% 2.3.

10 @ 25%

Westerns

Harry Newman [illegible] &c

Present [illegible] etc.

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

6850

4704

[illegible]
[illegible]

THEATRE	TERMS
	(Season of 1938-39)

[illegible] 6/3/40

4	3	$ 75.00	2-3	Days
4	6	20.00	2-3	"
8	6	26.70	2-3	"
10	6	20.0	2-3	"

[illegible]
of
Brownie
Theatre

HODGENVILLE,
Ky:

Exhibitor has privilege of cancelling any undated 1937-38 product.

CLEARANCE: "Same" as existed last year.

ACCEPTED: ....
(Distributor)

ACCEPTED: ....
(Schine Circuit, Inc.)

6851

4705

9/20/38

DEAL SHEET Universal — 137 (57)

THEATRE	TERMS
	1st 221 13 2/3 [illegible]
	Season of 1938-39
Piqua or Philharmonic	Selection of 4 @ 25% / 2 days. If gross less than 1250 revert to 30 1100 25 4 @ [illegible] = 8 @ 25 .. 13 prohibition [illegible] playing any or all of the 5 [illegible] pictures at 5c / 3 days 10 @ $25 / 3 days 6 Westerns @ $20 / 2 days
Piqua Ohio	Philharmonic [illegible] [illegible]

ACCEPTED Jas. McD5

ACCEPTED

(Name of [illegible], Inc.)

6352

4706

9/26/38

DEAL SHEET

Universal [illegible] - 137(58)

U. E. 21. 137(38)

~~[illegible]~~

8/3/40

THEATRE	TERMS
	Season of 1938-39
Ben Ali or Kentucky or Strand Lexington KY	Selection 14 4 @ 25% 7/4 days [illegible] 3550. for week. At 30% [illegible] 3150. for week 4 @ 30% 7/4 " 8 @ 25% 7/4 [illegible] exhibitor has the [illegible] any or all of the 8 25% at 30%. 7/4 days 4 @ $85 7/4 days 20 @ $62.50 7/4 " 6 B.s [illegible] @ $40. 7/4 days

ACCEPTED Dan Mills
(Distributor)

ACCEPTED
(Schine Circuit, Inc.)

6853

4707

[illegible] Universal

THEATRE | DATE

Season of 1938-39.

Selection of

Strand at [illegible]

4 @ 35% 2-3 Dz
1 @ 25% 2-3 "
1 @ 12 2-3 "

Any picture playing the Strand or State 1st run may be eliminated.

ACCEPTED .... (Distributor)

ACCEPTED .... (Schine Circuit, Inc.)

6854

4708

9/26/38

DEAL SHEET Universal — 137 (60)

THEATRE	TERMS
	137 (60)
	Season of 1938-39
	1/1
B	4 @ 60.00
	4 @ 32.50
	@ 17.50
	4 @ 12.50

1-2 Days

12.50 1/2 days

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

6855

4709

U - 137 (61)

DEAL SHEET

Universal [illegible] U.137(61)

THEATRE	TERMS
	Season of 1938-39
[illegible]	[illegible] 500
	8 [illegible]
	10 [illegible]
	[illegible] 20 [illegible]

ACCEPTED........................
(Distributor)

ACCEPTED........................
(Schine Circuit, Inc.)

6856

4710

7/20/38

M-137(62)

DEAL SHEET

Universal

THEATRE	TERMS
Bucyrus State Bucyrus Ohio	Season 1938-39 Selections 4 @ 35% - 2 Da. Pool = 15. - 27.70 Run dn 7.50 - 6.00 4 @ 30% - 2 6 @ 25.00 - 2-3 Da 4 @ 17.50 - 2-3 Da 6 Bob Baker 15.00 - 2-3 Da

P.L.G. 137(62)

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

6857

4711

[redacted]

Season of 1938-39.

Selection of

4 @ 35% - 3 or if gross less than 800 reverts to 30%
4 @ 30% 2 days " " . . 700 " " 25%
8 @ $5.00 1/3 "
24 @ 27.50 1/3 "
6 Bob [illegible] @ $20 1/3 days

Carnie

State

a

Ray

Fostrice

ACCEPTED............Jas Mills
(Distributor)

ACCEPTED............J A Lynch
(Schine Circuit, Inc.)

6858

4712

DEAL SHEET

Universal — 137(64)

THEATRE	TERMS
	Pd E.21 137(64)
	Season 1938-39
Vernon or Vine	Selection of 4 @ 35% 7 days Rental @ 30% & 25% 4 @ 30% 7 " 8 @ 50.00 1/3 " 10 @ 27.50 1/3 "
Mt Vernon Ohio	6 1st + 15 [illegible] 1/ [illegible]

~~[illegible]~~ 5/6/42

[illegible] 1000 850

ACCEPTED ....
Distributor

ACCEPTED ....
Schine Circuit, Inc.

6859

4713

9/26/38

137(43)

DEAL SHEET

Universal

THEATRE	TERMS
Forum	Season of 1938-39
or	Selection of
Moose	4 - @ 35% 2 x [illegible] 30% [illegible]
Norwalk	8 @ 50.00 2 3 [illegible]
Ohio	7 @ 22.50 2-3
	7 @ 15.00 2 3
	6 Bob Bakers 12.50 2-3 [illegible]

ACCEPTED

ACCEPTED

6860

4714

[illegible]

-137(66)

DEAL SHEET

[illegible]

THEATRE	TERMS
	[illegible] 137(66)
	Season of 1938-39
	~~[illegible]~~ 5/3/42
[illegible]	Selection of [illegible]
[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	[illegible] 75 [illegible]
[illegible]	[illegible]
[illegible]	[illegible] / 3 days
[illegible]	Same clearance as [illegible]

ACCEPTED ....

APPROVED ....

([illegible], Inc.)

6861

4715

[redacted]

Von West
or
Strand

Von West
Elmo

Selection of
4 @ 25. 7/3 days [illegible]
4 @ 35. 7/3 days
4 @ 25. 7/3
8 @ 17.50 7/3 "
6 Bob Hopes @ 15 7/3 days

Same clearance as last year

ACCEPTED ....
(Distributor)

ACCEPTED ....
([illegible], Inc.)

6602

4716

9/20/38.

137(LA)

DEAL SHEET

Universal

THEATRE	TERMS
	9/2/27 137(LA)
	Season of 1938-39
	5/5/40
	[illegible]
Wrote.	4 @ 20 [illegible] 14 or more @ 30%
	[illegible] @ 25%
	4 @ 30% [illegible]
or	8 @ 20% /3
Wayne	Exhibitor has the privilege of playing
	on all of the 5 - 25% @ 65 /3 days
Wrote.	4 @ 50 /3 days
	6 @ 20 /3 [illegible]
Also	6 Bob Baker @ [illegible] / [illegible] days

0083

471

[redacted]

Universal U- 137 (69)

[redacted] [redacted]

January 19 38 37

[illegible]

[illegible] 25 [illegible]

[illegible] 15 [illegible] 2

[illegible] 20 [illegible] 2

[illegible]

ACCEPTED: [illegible]
Distributor

ACCEPTED: [illegible]
(Schine Circuit, Inc.)

-6804

4718

DISTRIBUTOR

[redacted]

11/10/38.

137(70)

THEATRE : Street

Easton, Md.

AVALON or MUSIC HALL

4 @ $75.00 2-3 Days
4 @ 50.00 2-3 "
12 @ 25.00(if Music Hall $15.00) 2-3 Days
20 @ 15.00 2-3 Days

(26 picture commitment)

Exhibiter has privilege of cancelling any undated 1937-38 product.

CLEARANCE: Same as existed last year.

ACCEPTED..............................
(Distributor)

ACCEPTED..............................
(Schine Circuit, Inc.)

[illegible]

4719

[illegible]
[illegible]

THEATRE	TOWN (1/4 [illegible] 137(71))
	[illegible], [illegible] (Season of 1937-38)

5 3-42

FEDERAL THEATRE	4 @	$ 40.00	2-5 Days	
	4 @	30.00	2-5 "	
	6 @	25.00	2-5 "	
	8 @	15.00	2-5 "	

Exhibitor has privilege of cancelling any undated 1937-38 product.

CLEARANCE: Same as existed last year.

Distributor

[illegible] Inc.)

[illegible]

4720

11/29/38.

[illegible]
[illegible]

137(7-2)

THEATRE	TERMS
	HURLOCK, Md. (Season 1938-39)
	8 @ $ 25.00 2-3 Days
Hurlock Theatre	12 @ 12.50 2-3 "
	Exhibitor has privilege of cancelling any undated 1937-38 product.
	CLEARANCE: Same as existed last year.

(Distributor)

(Schine Circuit, Inc.)

6867

4721

4/17/39.

DEAL SHEET (UNIVERSAL)

THEATRE	TERMS			
	(Season of 1938-39)			
Waller Theatre	4 Pictures @	$ 25.00	2-3 Days	
	6 " @	15.00	2-3 "	
—	6 WESTERNS @	12.50	2-3 "	
LAUREL, Del.				

CLEARANCE: Same as former owner's.

- 7 days after Seaford, Del.

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

6868

4722

4/17/38.

N - 137(7+)

DEAL SHEET (UNIVERSAL)

THEATRE	TERMS			
	(Season of 1938-39)			
New Plaza Theatre	4 Pictures	@	$ 40.00	3-3 Days
	6 "	@	20.00	3-3 "
—	6 WESTERNS	@	12.50	2-3 "
MILFORD, Del.				

CLEARANCE: Same as former owner's.

- 10 days after 1st run Wilmington, Del.

ACCEPTED Mills
(Distributor)

ACCEPTED
(Schine Circuit, Inc.)

6869

[redacted] Universal 10/21/38

[redacted] [redacted] Ll & T. 13 x 30)

Season 1938-39

5/5/40

Selection 7

rcade

or

Wicomico

alisbury Md

4 @ 35% 2-3 Dz } Reverts to 30%

4 @ 75.00 2-3 "

8 @ 30.00 2-3 "

10 @ 17.50 2-3 "

6 Westerns 17.50 2-3 Dz

Rescission Figure 500.00 Mon Tues

" " 750.00 Fri. Sat.

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

6870

EXHIBIT U-207

Gloversville, N. Y.

AGREEMENT entered into this 27th day of June, 1939, between UNIVERSAL PICTURES, INC. and SCHINE ENTERPRISES CORP., whereby it is agreed and understood that the following clauses become part and parcel of all deal sheets signed this 27th day of June, 1939, and the approval of these deal sheets will be an automatic approval of this letter.

CLAUSE NO. 1. In all situations where percentage pictures are used with a double bill, Universal agrees to allow us to deduct the cost of the second feature, the cost not to exceed Universal's flat rental.

CLAUSE NO. 2. If any picture played on percentage is played in conjunction with "Bank Night" or similar attractions, we shall have the right to deduct the unit cost of the operation of such attraction from the gross receipts and before accounting to Universal for their percentage.

CLAUSE NO. 3. It is understood and agreed that in towns where we overplay our contracted commitment, the monies obtained by overplaying the commitment is to apply dollar for dollar against towns where the commitment is underplayed.

CLAUSE NO. 4. It is also understood and agreed that on any subject or subjects used for more days than the number specified on the deal sheets or contract, the cost for each additional day will be fifty percent (50%) per diem rate on flat rental pictures only.

CLAUSE NO. 5. It is understood and agreed that on any percentage pictures used on a midnight show, the terms for the midnight show engagement are to be twenty percent (20%). In the flat rental situations, if any Universal pictures are used, and by playing a midnight show, if this increases the number of days beyond the contracted number of days, the rental for the picture for the midnight show is to be $10. This, however, is not to include New Year's Eve.

CLAUSE NO. 6. In situations where serials have been contracted for, the cost of the trailers is to be $2.00.

CLAUSE NO. 7. It is further understood and agreed that on the RICHARD ARLEN and ANDY DEVINE series, wherever these subjects are played, in no event are they to be allocated higher than Universal's lowest flat rental group.

Dave Miller

DAVE MILLER - DISTRICT MGR.
UNIVERSAL PICTURES, INC.

Geo V Lynch

GEO. V. LYNCH - SCHINE ENTERPRISES CORP.

4725

[illegible] 7(1)

DEAL DATED ~~[illegible]~~ [illegible] 7(1) [illegible]
[illegible]/40

THEATRE	TERMS UNIVERSAL
	Seasons 1939-40, 1940-41 and 1941-42.
	Selection of 26 pictures from regularly released product.
RIALTO - STRAND [illegible] AMSTERDAM N Y	2 @ 35% 2/3 Days
	3 @ 35% 2/3 " (Reduction To 30%)
	5 @ 30% 2/3 " (" " 25%)
	5 @ 25% 2/3 " (Exhibitor has [illegible] of playing 3 of 25% [illegible] flat [illegible] [illegible] failed { IF Rialto [illegible] IF Strand All 2/3
	11 @ { 50.00 2/3 Days IF STRAND 100.00 2/3 " IF RIALTO
	ANY OVER COMMITMENT PICTURES CAN PLAY STRAND @ 35.00 2/3 DAYS
	6 WESTERNS 35.00 2/3 DAYS
	13 Selection [illegible] 10.00 2-3 "

[illegible] 13 [illegible] of Rialto 12.50 [illegible] Strand 7.50 2/3 ACCEPTED [illegible] McClure
(Distributor)

.39 1 " " Rialto 5.00 [illegible] 7.50 3 ACCEPTED [illegible]
(Schine Circuit, Inc.)

[illegible] 3.00 1 day
[illegible] 4.00 2
6.00 3

6872

4726

207(2)

DEAL SHEET

THEATRE	TERMS
Capitol Ballston N.Y.	Season 1940-41 [illegible] [illegible] 16 [illegible] 5 @ 35 /3 days. 5 @ 25 /3 " 6 @ 20 /3 " selection of 3 out of 4 [illegible] at 5.00 /3 days

ACCEPTED Dan Miller
(Distributor)

ACCEPTED [illegible]
(Exhibitor)

6873

4727

207 (3)

DEAL SHEET

THEATRE	TERMS UNIVERSAL
	Seasons 1939-40, 1940-41 and 1941-42.
	Selection of [illegible] pictures from previously released product.

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

6874

4728

6/27/39

Pl. Ex. 207(4) ~~[illegible]~~
[illegible]
207(4)

DEAL SHEET

THEATRE	TERMS UNIVERSAL
	Seasons 1939-40, 1940-41 and 1941-42.
Rialto or Empire Glens Falls N. Y.	Selection of 36 pictures from regularly released product. 2 @ 35% 2/3 Days 3 @ 35% 2/3 " (Reversion to 30%) 5 @ 30% 2/3 " (" " 25%) 5 @ 25% 2/3 " (Exhibitor [illegible] pictures of playing 3 of the [illegible] pictures [illegible] as follows: 1st Rialto 75% 1st Empire [illegible] and 2/3 days 15 pictures @ { 1st Rialto 50.00 2/3 days 1st Empire 32.50 2/3 " 6 " @ 32.50 2/3 Days Exhibitor [illegible] of pictures 16 U.S. [illegible] 2/3 Days @ 25.00 Selection 2 Serials $7.50 2/3 days

ACCEPTED .... U.S.
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

6875

4729

DEAL SHEET

THEATRE	TERMS UNIVERSAL
	Seasons 1939-40, 1940-41 and 1941-42.
MPIRE ENS FALLS N.Y. 2ND RUN,	Selection of — pictures from regularly released product. Pictures play Rialto 1ST Run To play Empire 2ND Run on following Terms: 10 @ 32.50 2/3 Days BAL @ 20.00 2/3 "

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

6876

4730

207(c)

DEAL SHEET

THEATRE	TERMS UNIVERSAL
	Seasons of 1939-40, 1940-41 and 1941-42.
Glove ~~and~~ OR Hippodrome Gloversville N.Y.	Selection of 26 pictures from company's released product. 2 @ 35% 2/3 Days (Reducing to 30%) 3 @ 35% 2/3 " " " 25%) 5 @ 30% 2/3 5 @ 25% 2/3 [illegible] [illegible] 11 @ { 1st Glove 3 Days 75.00 " " 2 " 50.00 " Hipp 3 50.00 " " 2 " 35.00 6 Westerns @ 1/2 Days 25.00 selection of 2 [illegible] 7.50 1-2 days selection of 7-2 reelers. 1 day 7.50 [illegible] 1 day 7.50 2 " 11.25 " " " " 2 " 15 20-1 " 1 " 2.25 " " " " 1 day 2 " 4.50 " 2 " 3

any shorts unplayed at end of season to be cancelled.

ACCEPTED........................
(Distributor)

ACCEPTED........................
(Schine Circuit, Inc.)

6877

4731

[illegible]

207(D)

DEAL SHEET

[illegible]	[illegible]	[illegible]
	[illegible] 1959–60, 1960–61 and 1961–62.	
	[illegible]	

Ev[illegible] was [illegible] spot

[illegible] at [illegible] on

[illegible]

1 day 35

2 day 50

[illegible] 3/3 Days

ACCEPTED [illegible] Myers
(Distributor)

ACCEPTED [illegible]
[illegible]

6876

4732

[illegible] 2 [illegible]

DEAL SHEET

THEATRE | TERMS - UNIVERSAL.

Seasons 1939-40, 1940-41 and 1941-42

Selection of 20 pictures from [illegible] released product.

5 @ 30 / 3 days

5 @ 20 / 3

10 @ 12½ / 3

a.

[illegible]

[illegible] N.Y.

ACCEPTED: [illegible]

ACCEPTED: [illegible]

[illegible]

6670

[illegible]

207(9)

DEAL SHEET

THEATRE	TERMS UNIVERSAL
	Seasons 1939-40, 1940-41 and 1941-42.

Selection of 20 pictures from regularly released product.

5 @ 60.00 2/3 Days

5 @ 40.00 ([illegible] NOT [illegible] [illegible] to [illegible]) 2/3 - Days

10 @ 15.00 2/3 Days

ACCEPTED

ACCEPTED

6880

4734

6/27/39

2 67(19

DEAL SHEET

THEATRE	TERMS UNIVERSAL
	Seasons 1939-40, 1940-41 and 1941-42.

Selection of 3 pictures from regularly released product.

[illegible]

5 @ [illegible] 1/2 Days
5 @ [illegible] 1/2 "
[illegible] 1/2 "
Bal. @ [illegible] 1/2 "

6 Westerns [illegible] 1/2 Days

Selection [illegible]

ACCEPTED .... (Distributor)

ACCEPTED .... Schine Circuit, Inc.

5881

4735

[illegible] [illegible] UNIVERSAL #18207 [illegible]

Seasons 1939-40, 1940-41 and 1941-42.

Selection of 20 pictures from regularly released product. 6/10/42

STRAND

HUDSON FALLS

N.Y.

5 @ 40.00 2/3 Days

5 @ 25.00 2/3 "

10 @ 15.00 2/3 "

6 Westerns 15.00 2/3 Days

1 Selection 7 serials $5.00 1-2 or

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

6882

[illegible] [illegible]

THEATRE	TERMS UNIVERSAL
	Seasons 1939-40, 1940-41 and 1941-42.
CAPITOL ILION. N.Y.	Selection of 30 pictures from regularly released product. 5 @ 45.00 2/3 Days 5 @ 35.00 2/3 " 5 @ 25.00 2/3 " 15 @ 20.00 2/3 " (Spot Book Westerns 12.50) 1-r Dx ✓ Selection Vaudeville 5.00 - 1-2 Dx

2 [illegible] 207 (14) [illegible] 5/8/42

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

4737

DEAL SHEET 6/27/39

2·7(13)

THEATRE	TERMS UNIVERSAL
	Seasons 1939-40, 1940-41 and 1941-42.
RIALTO OR HIPP. LITTLE FALLS N. Y	Selection of 24 pictures from regularly released product 5 @ 100.00 2/3 Days 5 @ 50.00 2/3 " 14 @ 25.00 2/3 " 6 Westerns 17.50 2/3 Days Selection of Serials $5.00 2-3 Da

20 2/12

3/42

This deal
[illegible]
per letter

dated 6/5/41.

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

6884

4738

DEAL SHEET

THEATRE	FROM UNIVERSAL
	Seasons 1939-40, 1940-41 and 1941-42.
MALONE	Selection of 20 pictures from regularly released product.
MALONE	5 @ 75.00 2/3 Days
N. Y.	5 @ 50.00 2/3 "
	10 @ 25.00 2/3 "
	6 Westerns @ 20.00 2/3 Days
	✓ Selection & Serials 6.00 1-2 DA

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

6885

4739

[illegible]

O.K. 707(10)

3/5/42

[illegible]	[illegible] UNIVERSAL
MASSENA - MASSENA N.Y.	Seasons 1939-40, 1940-41 and 1941-42. Selection of 7/0 pictures from regularly released product.

5-@ 175^{00} - 2-3 Da

5-@ 50^{00} - 2-3 "

5-@ 30^{00} 2-3 "

5-@ 75^{00} 2-3 "

1 [illegible] 15^{00} 1-2 Da

Selection 2 serials \$6^{50} 1-2 Da

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

6886

4740

DEAL MEMO

[illegible]

THEATRE	TERMS UNIVERSAL
	Seasons 1939-40, 1940-41 and 1941-42
State Mechanicville N.Y.	Selection of 16 pictures from regularly released product. 5 @ $65. 7/3 days 5 @ $50. 7/3 ″ 6 @ $30. 7/3 ″

ACCEPTED .... Distributor

ACCEPTED .... Schine Circuit, Inc.

6887

4741

6/27/39

DEAL SHEET

207(17)

THEATRE	TERMS [illegible]
	Seasons 1939-40, 1940-41 and 1941-42.
Colonia Norwich N.Y.	Selection of 70 pictures from regularly released product. 5 - @ 12.50 2-3 Da 5 @ 50.00 2-3 5 @ 35.00 2-3 10 - @ 6 - Westerns 22.50 1-2 Da Selection & serials 7.50 1-2 Da

ACCEPTED .... Mills

ACCEPTED ....

6888

4742

6/27/39

207 (18)

Pl. 4 #207 18

5/6/42

DEAL SHEET

THEATRE	TERMS UNIVERSAL
	Seasons 1939-40, 1940-41 and 1941-42.
STRAND or PONTIAC OGDENSBURG N.Y.	Selection of 20 pictures from regularly released product. 5 @ 35% 2/3 Days 5 @ 100^{00} 2/3 " (If playdate does not include Sun. terms revert to 75.00 2/3 days) 5 @ 50^{00} 2/3 Days 5 @ 40^{00} 2/3 " 6 Westerns 12^{50} — 1-2 Da Any additional pictures used at the Pontiac price to be 12^{50} 1 Day Selection 2 serials 7^{50} 2-3 Da

ACCEPTED ....
Distributor

ACCEPTED ....(Exhibitor)

6889

4743

DEAL SHEET

Pl. Ex. 207(12) for Ident.
3/6/42

THEATRE	TERMS UNIVERSAL
	Seasons 1939-40, 1940-41 and 1941-42.
ONEONTA OR	Selection of 26 pictures from regularly released product.
	2 @ 35% 2/3 Days
PALACE	3 @ 35% 2/3 " (Reversion To 30%)
	5 @ 30% 2/3 " (" " 25%)
ONEONTA	5 @ {1st Oneonta 75.00 2/3 Days {1st Palace 50.00 2/3 "
N. Y.	BAL @ {1st Oneonta 60.00 2/3 " {1st Palace 35.00 2/3 "
	6 Westerns @ 20.00 1/2 Days
	✓ Selection 2 Serials 5.00 2-3 Wks

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

6890

4744

[illegible]

THEATRE	TERMS UNIVERSAL
	Seasons 1939-40,1940-41 and 1941-42.
	Selection of 20 pictures from regularly released product
PONTIAC	5 @ 100.00 1/2 Days
SARANAC LAKE	5 @ 50.00 1/3 "
N.Y.	10 @ 30.00 1/3 "

[illegible]

ACCEPTED [illegible] Miller
(Distributor)

ACCEPTED [illegible] Lynch
(Schine Circuit, Inc.)

6891

6/27/39

4745

207 (21)

DEAL SHEET

11 Z.E.S. 7/207(21)

~~[illegible]~~

2/5/42

THEATRE	TERMS UNIVERSAL
	Seasons 1939-40, 1940-41 and 1941-42.
STATE TUPPER LAKE N.Y.	Selection of 20 pictures from regularly released product.
	5 @ 60.00 2/3 Days
	5 @ 35.00 2/3 "
	10 @ 25.00 2/3 "
	Selection 2 serials 5.00 1-2 Dz

ACCEPTED........ [illegible]

[illegible]

6892

4746

6/27/39

(21)

DEAL SHEET

7/20/7 (22)

5/5/42.

THEATRE | TERMS UNIVERSAL

Seasons 1939-40, 1940-41 and 1941-42.

Selection of 26 pictures from regularly released product.

7 C 35% 7-3 Da

Central 3 C 35% 7-3 " (Central 7.30%

or 5 C 30% 7-3 (" 7. 25%

2-3

Orpheum 5 C 15.00

or 4 C 3 46.00

3 25.00

Palace 2 60.00

If Central

Watertown 6 Westerns 17.50 7-3 Da

ANY ADD PICTURES USED 1ST RUN AT Palace
TERMS 20.00 2/3 Days

N.Y.

7.00 Da

[redacted]

4747

[illegible]

297 (2nd)

DEAL SHEET

THEATRE	TERMS	UNIVERSAL U.E.71-207 (22)
	Seasons 1939-40, 1940-41 and 1941-42.	55

Selection of pictures from regularly released product.

Olympic OR Palace
Watertown
N.Y.
(2ND Run)

Pictures playing Avon 1st Run to be repeated at Olympic as follows

5 @ 65.00 2/3 Days
5 @ 40.00 2/3 "
8 @ 30.00 2/3 "

Pictures playing Olympic 1st Run to be repeated at Palace as follows

15.00 2/3 Days

ACCEPTED .... (Distributor)

ACCEPTED .... (Schine Circuit, Inc.)

6894

4748

DEAL SHEET

THEATRE	TERMS UNIVERSAL
	Seasons 1939-40, 1940-41 and 1941-42
	Selection of 16 pictures from regularly released product.
Capitol	5 @ $60. f 3 days
Whitehall	5 $30. f 3 "
N.Y.	6 $20. f 3 "
	1 Selection f 3 serials @ 5.00 f 3 days

ACCEPTED ....(Distributor)

ACCEPTED ....(Schine Circuit, Inc.)

8895

4749

[illegible]

[redacted] 2 0 [illegible]

[illegible] LL & 21-207(30) [illegible]
2/3 4[illegible]

THEATRE	TERMS UNIVERSAL
	Seasons 1939-40, 1940-41 and 1941-42.

Selection of 36 pictures from regularly released product.

wn - Palace 2 @ 35 % 2/3 days
ow 3 @ 35 % 2/3 " (Reduced to 30%)
[illegible] 5 @ 35 % 2/3 " ([illegible] to 25%)
5 @ 35 % 2/3 "
Au b[illegible] (Exhibitor [illegible] privilege of
N.Y. [illegible] 3 [illegible] 25% [illegible] Also
[illegible] 1st [illegible] { 2 days 10%
{ 3 " 10%
1st [illegible] { 3 " [illegible]
{ 4 " [illegible]
11 1st Auburn 3 [illegible]
} 4 [illegible]
1st [illegible] [illegible]

6 W[illegible] 3 [illegible] 3 [illegible]
[illegible] 3-2 [illegible]

ACCEPTED ....
(Distributor)

ACCEPTED Lynch ....
(Schine Circuit, Inc.)

6806

4750

8/29/39

207(2b)

DEAL SHEET

THEATRE	TERMS UNIVERSAL
	Seasons 1939-40, 1940-41 and 1941-42.
	Selection of 20 pictures from regularly released product.
	5 @ 50.00 2/3 [illegible]
	5 @ 35.00 2/3 "
	15.00 2/3 "
	BAL @

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

6897

[illegible]

Cl. 4 II. 207(27)

9/5/40

[illegible]	[illegible] - [illegible]
	Seasons 1939-40, 1940-41 and 1941-42.
	Selection of 20 pictures from regularly released product.
	5 @ $120. 7/3 days
Babcock	5 @ $62.50 7/3 "
	10 @ $25. 7/3 "
Bath	6 pictures @ $15. 7/3 days
N.Y	Selection of serials 5.00 1-2 DX

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

4752

DEAL SHEET

THEATRE	TERMS
Granada Bflo	5-@ 115.00 - 3-4 Da 5-@ 85.00 3-4 D. 5-@ 50.00 3-4 5-@ 35.00 3-4" 11-@ 30 Day's after 1st run

ACCEPTED .... A. Dillo
(Exhibitor)

ACCEPTED ....

6000

47

[illegible] 1297

DEAL SHEET

THEATRE | TERMS UNIVERSAL

Season 1939-40, 1940-41 [illegible] 1941-42

Selection of 36 [illegible]

Riverside

5 @ 130.00 3-4 ''

5 @ 1[illegible] '' 3-4 ''

5 @ 75.00 3-4 ''

11 @ 50.00 3-4 ''

Buffalo

30 Days after Prerelease

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

J. A. Lynch

6900

4754

2.07 (3.07)

[illegible] 21-207 (30) [illegible]

THEATRE	TERMS - UNIVERSAL
	Seasons of 1939-40, 1940-41 and 1941-42.
	Selection of 20 pictures from regularly released product.
Playhouse	5 @ $100 7/3 days
	5 @ $60 7/3
	5 @ $50 7/3
Canandaigua	5 @ $35 7/3
	6 Westerns @ $15 7/3
N.Y.	1 [illegible] [illegible] [illegible] [illegible]

ACCEPTED/..........................
(Distributor)

ACCEPTED..........................
(Schine Circuit, Inc.)

6901

4755

6/27/40.

37 (31)

DEAL SHEET

THEATRE M. E. Hinches ~~[illegible]~~ 6/5/40

TE..S - UNIVERSAL

Seasons 1939-40, 1940-41 and 1941-42.

Selection of 26 pictures from regularly released product.

5 @ $150. 7/3 days
5 @ $115. 7/3 "
5 @ $50. 7/3 "
11 @ 37.50 7/3 "
6 Westerns @ $20. 7/3 "

Selection [illegible] $6.00 7-3 Da

Ifay
or
Palace
or
Flats
Coming
N.Y.

ACCEPTED .... Jan Miller
(Distributor)

ACCEPTED ....
([illegible], Inc.)

6902

4756

[illegible]

207 (3

DEAL SHEET

Pl. Ex. 77 - 207(33)

2/7/42

THEATRE	TERMS - UNIVERSAL
	Seasons 1939-40, 1940-41 and 1941-42.
Palace or State Corning N.Y. Indiana	Selection of 10 pictures from regularly released product. 5 @ 40 1/3 days 5 @ 25 1/3 " If any additional features are used specials 50 17.50 1/3 days

ACCEPTED ....
(Distributor)

ACCEPTED J. A. Lynch
(Schine Circuit, Inc.)

6808

4757

6/27/39

2½ (33)

DEAL SHEET

THEATRE	TERMS UNIVERSAL [illegible] 33⅓
	Seasons 1939-40, 1940-41 and 1941-42. ~~[illegible]~~ 2/3/42
State or Temple Cortland N.Y.	Selection of 26 pictures from regularly released product. 7 @ 35% 2/3 days 3 @ 35% 2/3 " (Revision to 30%) 5 @ 30% 2/3 " (Revision to 25%) 5 @ 25% 2/3 " (Exhibitor has privilege of playing 3 of 25% pictures flat Rental as follows ~~[illegible]~~ ~~1 Temple~~ 15.00) 5 @ 50.00 2/3 days 6 @ 20.00 2/3 " 6 Westerns 20.00 1/2 days Selection of 2 Serials $7.50 - 1/2 days #30 - Single Reels - $5.- 1/3 days #15 - 2 Reels - { ~~[illegible] Temple - $6.- 1/3 days~~ / ~~State - $15.- " "~~

ACCEPTED .... Dan Mills

ACCEPTED ....

6904

4758

207(3

[illegible] 207 (341)

9/2/42

[illegible]

[illegible]

[illegible] | [illegible]

Seasons: 1939-40, 1940-41 and 1941-42. [illegible]

EAST ROCHESTER (Rialto Theatre)	5	@	$ 40.00	2 Days [illegible]
	5	@	25.00	2 "
	10	@	17.50	2 "
or	20	@	12.50	2 "
	6 Westerns	@	12.50	2 "
	2 Serials	@	5.50	2 "
FAIRPORT (Temple Theatre)	[illegible]	@	4.00	2 "

CLEARANCE: 30 days after first run Rochester.

* * * * *

REPEAT DEAL

5	@	$ 25.00	2 Days
5	@	15.00	2 "
14	@	12.50	2 "

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

6605

D.A.P. 207(36) [illegible]

Seasons 1939-40, 1940-41 and 1941-42.

Selection of 36 pictures from regularly released product. [illegible]

eneva or
egent
Geneva
N.Y.

7 @ 35% 2/3 days
3 @ 35% 2/3 " (Reissue to 30%)
5 @ 30% 2/3 " (" to 25%)
5 @ 25% 2/3 "
(Exhibitor has privilege of playing 3 of 25% Pictures Film Rental as follows 1st Geneva 75.00 2/3 days, 1st Regent 50.00 2/3 ")

11 @ 1st Geneva 50.00 2/3 days
1st Regent 25.00 2/3 "

6 Westerns 25.00 2/3 "

Selection 2 serials 7.50-2-3 days
13 2 reelers 1st Geneva 15.00
" Regent 6.00
30 1 " " Geneva 7.00
" Regent 3.50

ACCEPTED [illegible]
(Distributor)

ACCEPTED
(Schine Circuit, Inc.)

3/ Double [illegible] at Regent [illegible] shorts [illegible] at end of [illegible]

0900

4760

[redacted] [redacted]

[redacted] | [redacted] UNIVERSAL D. & F. 207/30

Seasons 1939-40, 1940-41 and 1941-42.

6/4/42

Selection of 36 pictures from regularly released product.

Palace - Rialto
on
Nic. Act
Lockport
N.Y.

2 @ 35% 2/3 days
3 @ 35% 2/3 " (Reissue to 30%)
5 @ 30% 2/3 " (Reissue to 25%)
5 @ 75.00 2/3 " Flat
Bal @ 40.00 2/3 " Flat

6 Westerns @ 25.00 2/3 days
7.50 2-3 Da
Selection 7 serials

ACCEPTED ....
(Distributor)

ACCEPTED Geo. Lynch
(Sabine Circuit, Inc.)

6907

4761

[illegible]	[illegible]
	Seasons 1939-40, 1940-41 and 1941-42.
Rialto and Hi-Art Lockport N.Y (2ND RUN)	Selection of 12 pictures from regularly released product. 5 @ 40.00 1/3 [illegible] 7 @ 25.00 2/3 "

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit,Inc.)

6908

4762

7/30

2 07 (38)

DEAL SHEET

[illegible] (38) ~~[illegible]~~
3/6/42

THEATRE	TERMS
	[illegible] 1939-40, 1940-41 [illegible]
<	[illegible] 20 [illegible]
Capitol Newark N.Y.	5 @ 110 / 3 days 5 @ 55 / 3 " 10 @ 25 / 3 Selection of 2 Westerns @ 6= flat

[illegible]
[illegible] 2 [illegible]
upon [illegible]
10/6/41

ACCEPTED [illegible]

ACCEPTED [illegible]

6900

4763

8/27/39

DEAL SHEET

207(38)

THEATRE	TERMS — UNIVERSAL
	Seasons 1939-40, 1940-41 and 1941-42.
	Selection of 26 pictures from regularly released product.
	2 @ 35% 2/3 Days
	3 @ 35% 2/3 1½ ([illegible] 30%)
	5 @ 30% 2/3 " ([illegible] to 25%)
	5 @ {1st [illegible] [illegible] 2/3 Days {1st [illegible] 30.00 2/3 "
	4 @ {1st [illegible] 60.00 2/3 " {1st [illegible] 20.00 2/3 "
	7 @ {1st [illegible] 2 Days 50.00 [illegible] 60.00 {1st [illegible] 20.00 2/3 Days
	6 [illegible] 20.00 2/3 Days 6.00 2-3 DA
	1 [illegible] [illegible] - 1-2 DA

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

6910

4764

8/27/39.

2 07 (41

DEAL SHEET

THEATRE	TERMS - UNIVERSAL
	Seasons 1939-40, 1940-41 and 1941-42.
	Selection of 20 pictures from regularly released product.
Elmwood	5 @ 10c. 1/3 day
	5 @ 40c. 1/3
Penn Yan	10 @ 22 50 1/3
	6 Westerns @ 15.00 1/3
N.Y.	Selection of serials $5.00 1-2 D

11 & II 207(41)

2/3/42

ACCEPTED Ann McCl........................
(Distributor)

ACCEPTED ....
([illegible] Circuit, Inc.)

6911

4765

8/27/39.

207 (42) + des

DEAL SHEET

Sl. # N. 207 (41) ~~[illegible]~~ 3/5/42.

THEATRE	TERMS - UNIVERSAL.
	Seasons 1939-40, 1940-41 and 1941-42.
Auditorium Perry N.Y.	Selection of 20 pictures from regularly released product. 5 @ 55. 7/3. days 5 @ 30 7/3 " 10 @ 17.50 7/3 " 6 Westerns @ 12.50 7/3 " ~~Serial~~ Selection of serials 5.00 1-2 Da.

ACCEPTED .... Ann Mills ....

APPROVED .... [illegible] ....

6912

4766

6/27/39.

7(42)

DEAL SHEET

THEATRE	TERMS - UNIVERSAL
	Seasons 1939-40, 1940-41 and 1941-42.
Cameo Rochester N.Y.	Selection of 26 pictures from regularly released product. 5 @ $50 3/4 days 5 @ 35 3/4 10 @ 20 3/4 6 @ 12.50 3/4

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Exhibitor)

[illegible]

7

4767

[illegible]

[illegible] | [illegible] - [illegible]

Seasons 1939-40, 1940-41 and 1941-42. [illegible]

Selection of 26 pictures from regularly released [illegible]

/42

Dixie
or
State
Rochester
N.Y.

5 @ 75. 3/4 days
5 @ 50. 3/4 "
16 @ 20 3/4 "

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

0014

4768

GENEVA.

DEAL SHEET

THEATRE	TERMS - UNIVERSAL Pl. & U 207(44)
	Seasons of 1939-40, 1940-41 and 1941-42.
State or Fixer [illegible] Regent	Selection of 20 pictures from regularly released product. 5 @ 75. 3/4 day 5 @ 50 3/4 10 @ 20 3/4

5/3/42

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

6815

4769

8/27/39.

29(45)

DEAL SHEET

THEATRE	TERMS - UNIVERSAL
	Seasons of 1939-40, 1940-41 and 1941-42.
Grand Rochester N.Y.	Selection of 40 pictures from regularly released product. 5 @ 35.00 2/3 days 5 @ 22.50 2/3 " 10 @ 15.00 2/3 " Bal. @ 12.50 2/3 " 6 Westerns 15.00 2/3 "

1.1.4.21 201(40)

~~[illegible]~~

5/3/42

ACCEPTED Dan Miller
(Distributor)

ACCEPTED
(Schine Circuit, Inc.)

6816

4770

6/27/39

207(40)

DEAL SHEET

THEATRE	TERMS UNIVERSAL
	Seasons 1939-40, 1940-41 and 1941-42.
Lake Rochester N.Y.	Selection of 30 pictures from regularly released product. 5 @ 30.00 2/3 days 5 @ 20.00 2/3 days 5 @ 17.50 2/3 days 15 @ 12.50 2/3 days 6 Westerns @ 12.50 1/2 days Unplayed 1938-9 product as of Oct 1st 1939 to be cancelled. Should playing time be cut down to 2 changes per week the commitment to be reduced to minimum of (15) Pictures

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

0017

4771

8/27/39.

DEAL SHEET

207(+2)

THEATRE	TERMS - UNIVERSAL
	Seasons 1939-40, 1940-41 and 1941-42.

[illegible] U-207(42)

Selection of 26 pictures from regularly released [illegible]

5/5/42

Riviera	5 @ 200 - 3/4 DR
	5 @ 150 - 3/4 "
	16 @ 50 - 3/4 "
or	
Liberty	
Rochester	

ACCEPTED: [illegible] Mills
(Distributor)

ACCEPTED: [illegible]
([illegible])

6918

4772

20

DEAL SHEET

Pl. 4 D. 207(a

5/20/4

THEATRE	TERMS — UNIVERSAL
	Seasons of 1939-40, 1940-41 and 1941-42.
	Selection of 20 pictures from regularly released product.
Liberty	5 @ 50. 3/4 days
	5 @ 30. 3/4
Rochester.	10 @ $17^{\underline{50}}$ 3/4
Repeat	

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

8019

4773

[illegible]

[illegible]

2/207(47)

3/5/42

THEATRE	TERMS			
	Seasons 1939-40, 1940-41 and 1941-42.			
ROCHESTER (Madison Theatre)	5	@	$ 75.00	3-4 Days
	5	@	50.00	3-4 "
	10	@	25.00	3-4 "
	6	@	17.50	-3 "
	Selection of 2 SERIALS	@	5.00	1-2 "
	NEWS Reel	@ (Gen)	10.00	3-4 "

CLEARANCE: To follow Schine's Riviera. Dixie. State, Liberty. 7 days clearance on all subsequent runs.

ALL CONDITIONS OF MASTER AGREEMENT TO APPLY.

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Enterprises Corp.

6290

4774

12/12/39.

7(5)

UNIVERSAL

DEAL SHEET

THEATRE	TERMS			
	Seasons: 1939-40, 1940-41 and 1941-42.			
ROCHESTER (Monroe Theatre)	5	@	$100.00	3-4 days
	5	@	75.00	3-4 "
	10	@	35.00	3-4 "
	6	@	17.50	1-2 "
	Selection of: 2 SERIALS	@	5.00	3-4 Days
	NEWS [redacted]	@ (4 dns. Cfg)	$12.50	3-4 "

CLEARANCE: To follow Schines Riviera, Dixie, State and Liberty. 7 days clearance on all subsequent runs.

ALL CONDITIONS OF MASTER AGREEMENT TO APPLY.

ACCEPTED .... (Distributor)

ACCEPTED .... (Schine Enterprises Corp.)

6921

4775

12/5 / 40.

07(5D

DEAL SHEET

UNIVERSAL Season: 1940-41

5/3/42

THEATRE	TERMS			
ROCHESTER Webster Theatre	3 Lloyds	@	40.00	2-3 Days
	3	@	40.00	2-3 "
	8	@	27.50	2-3 "
	12	@	17.50	2-3 "
	12	@	15.00	2-3 "
	7 Arlen-Devine	@	15.00	2-3 "

CLEARANCE: Follows Madison and Monroe Theatres 4 days.

[redacted]

ACCEPTED John J Scully
(Distributor)

ACCEPTED ....
(Schine Enterprises Corp.)

6922

4776

[illegible]

[illegible]	[illegible]	[illegible]
	43 [illegible]	
[illegible]	3 [illegible]	[illegible]
	[illegible] "	[illegible]
	[illegible] "	[illegible]
	[illegible] "	[illegible]
[illegible]	[illegible] "	[illegible]

Additional Provisions

[illegible]

Clearance [illegible]

JAN 2

Accepted ______________________

Accepted ______________________ [illegible] Corp.

4777

12/15/39

207 (SJ)

UNIVERSAL

DEAL SHEET

[illegible]

THEATRE	TERMS			
	Seasons: 1939-40, 1940-41, 1941-42			
	5	@	$40.00	3-4 days
ROCHESTER	5	@	27.50	3-4 "
(WEST END THEATRE)	16	@	15.00	1-2 "
	Selection of: 2 SERIALS	@	5.00	3-4 "
	NEWS (7 das. old)	@	5.00	3-4 "

CLEARANCE: Open booking with Arnett Theatre.

ALL CONDITIONS OF MASTER AGREEMENT TO APPLY.

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Enterprises Corp.

6824

4778

DEAL SHEET

207

THEATRE	TERMS - UNIVERSAL Ll & TT 207 ([illegible]
	Seasons of 1939-40, 1940-41 and 1941-42.

Selection of 20 pictures from regularly released product.

[illegible]

Salamanca

11 /

5 - @ 175.00 2/3 DR

2/3 "

5 - @ 60.00

10 - @ 30.00 1/2

Selection minimum 6.00 per DR

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

4779

[illegible]

[illegible]

207 (55)

THEATRE	TERMS - UNIVERSAL
	Seasons of 1939-40, 1940-41 and 1941-42.

207 (55)

5/5/42.

Selection of 20 pictures from regularly released product.

5 @ 60% 2/3 Da

2/3

[illegible]

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

6886

4780

6/27/42.

DEAL SHEET

THEATRE. | TERMS - UNIVERSAL

Seasons 1939-40, 1940-41 and 1941-42.

5/8/42

Selection of 40 pictures from regularly

Palace

Syracuse

N.Y.

5 - @ 100.00 ⅓ [illegible]

5 - @ 50.00

30.00

10 - @ 17.50

10 - @ 15.00

10 - @ 14.00 2-3

Selection [illegible]

7 Da. after 4th [illegible]

ACCEPTED ....

ACCEPTED ....

6687

Seasons [illegible], [illegible] and [illegible]

Selection of [illegible] pictures from regularly released product.

Athena of Ohio
Athens Ohio

2 @ 35% 7D days
3 @ 35% 7D " Reverts to 30%
5 @ 30% 7D " " " [illegible]
5 @ $50 7D "
Bal @ $25 7D "
6 Westerns @ $25. 7/3 days
selection of 2 serials @ $7.50 7D days
13-2 reelers @ $7.50 7D
3 " 1 " @ $4.00 7D
any shorts by tie-in plan [illegible]
[illegible]

ACCEPTED ....
(Distributor)

ACCEPTED ....
([illegible] Circuit, Inc.)

4732

[illegible] [illegible] [illegible]

[illegible] [illegible] UNIVERSAL 7(5

Seasons 1939-40, 1940-41 and 1941-42 [illegible] 203(87)

Selection of 26 pictures from regularly released product [illegible]

2/8/42

Hippodrome at Kentucky Corbin Ky

5 @ 50. 7 days
5 @ 25. 7 "
5 @ 25. 7 "
11 @ 15 7 "
6 Western @ 12.50 7 "
Selection of 2 serials at 5.00 7 days

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

[illegible]

4783

DEAL SHEET 207(59)

THEATRE	TERMS GENERAL
	Seasons 1959-60, 1960-61 and 1961-62
	Selection of ~~4~~ [illegible] features from [illegible] released [illegible]

[illegible](59)

~~[illegible]~~

2/3/[illegible]

...n- Cale

or

...ntucky

or

Strand

or

State

...exington Ky

7 @ 35 [illegible] [illegible] 35%

3 @ [illegible] [illegible] 30%)

5 @ 30% [illegible]

5 @ 25% [illegible]

[illegible] [illegible] 12 [illegible] westerns

[illegible] [illegible]

at [illegible]

4 @ [illegible] 2 4

Bal @ [illegible] only [illegible]

6 Westerns

selection of 2 serials @ 12^50 3/4 days

...- 2 reissues @ 10^00 3/4 days

... 1 @ 7^00 3/4 !

[illegible]

4784

original

2.7 (60)

DEAL SHEET

THEATRE	TERMS Universal
	Features 1939-40, 1940-41 and 1941-42
	Selection of 36 pictures from [illegible] released [illegible]

2nd run

ACCEPTED .... Mills
(Distributor)

ACCEPTED .... Lynch
(Schine Circuit, Inc.)

6001

4785

[illegible]

[illegible]

O.K. 7/20/[illegible]

THEATRE	TERMS			
	Seasons 1939-40, 1940-41, 1941-42.			
	8 pictures	@	$ 40.00	2-3 Days
[illegible]	8 "	@	30.00	2-3 "
(Opera House)	8 "	@	20.00	2-3 "
	[illegible]	@	15.00	2-3 "
	[illegible]	@	15.00	2-3 "
	Westerns	@	15.00	2-3 "

CLEARANCE: Third run. 45 days over fourth run.

ACCEPTED Peter [illegible]
Distributor

ACCEPTED [illegible]
Schine Enterprises Corp.

[illegible]

4736

[illegible]

[redacted] [redacted]

Season 1940-41

6/9/42

Ada Meade

Lexington

Ky

4th [illegible]

$ 8 @ 17^{50}

4 @ 15.

14 @ 12^{50}

The Fugitive 12^{50}

[illegible] 12^{50}

Westerns 12^{50}

✓ ~~4~~ 2 specials @ 25

All 1/2 days.

ACCEPTED [illegible]
(Distributor)

ACCEPTED [illegible]
([illegible] Enterprises Corp.)

[redacted]

4787

DEAL SHEET

207(63)

THEATRE	TERMS [illegible] (63) ~~[illegible]~~
	[illegible] 1940-41, 1941-42 and 1942-43
	[illegible] 26 [illegible] 8/5/42.
	3 @ 35% 7/3 days
	3 @ 35% [illegible] 30% 7/3 days
	5 @ 30% " " 25% 7/3 days
	5 @ $27.50 7/3 days
	Bal @ 22.50 7/3
	6 Westerns @ $20 7/3
	[illegible] 10.00 7/3 days 20.00 7/3

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

6684

4738

DEAL SHEET 8/17/39

07(54)

THEATRE	TERMS UNIV. N.L [illegible] 207 (6.4
	Season 1939-40, 1940-41, and 1941-42
Manring & Bros [illegible] Ky	Selection of 76 pictures from regularly released product. 3/3/41 5 @ $65 7/3 days 5 @ $50 7/3 " 5 @ $35 7/3 " 11 @ $20 7/3 " 6 Western @ $25 7/3 days selection 2 serials at $15.00 7/3 days sport book 2 reelers at 4.00 7/3 days 1 " " 2.00 7/3 "

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

6035

4789

[illegible] 7/30

20 7 (15)

DEAL SHEET

11-7-[illegible] 29

~~[illegible]~~

5 3 [illegible]

THEATRE	TERMS UNIV [illegible]
	Season 19[illegible] [illegible]
13 Schines Theatres Paris Ky	Selection of 20 pictures [illegible] 5 @ 60. 7/3 days 5 @ 37^{50} 7/2 5 @ 17^{50} 7/3 Bal @ 12^{50} 7/3 6 Westerns @ 12^{50} 7/3 Selection of 2 reel [illegible] @ 5^{00} 7/3 days " 13 1 reel [illegible] 4^{00} 7/3 " 43 1 " " 2^{00} 7/3 If any shorts are left [illegible] end of season these will be cancelled

ACCEPTED.................... (Exhibitor)

ACCEPTED.................... (Universal [illegible], Inc.)

6936

4730

[redacted]

[illegible]

O.K. 7/20/(1C)

5/9/42

[illegible]	[illegible] UNIVERSAL
	Seasons 1939-40, 1940-41 and 1941-42
Piqua or Miami Piqua Ohio	Selection of ~~__~~ pictures from regularly released product. 2 @ 35% 7/3 days 3 @ 35% 7/3 } Reverts to 30% 5 @ 30% 7/3 " " " 25% 5 @ 25% 7/3 " Exhibitor has privilege of playing any or all of the 25% at 30 7/3 days / Bal @ $35. 7/3 days 6 Westerns $20 7/3 days selection of 2 reels @ 7.50 7/3 days 13 2 reelers @ 8.00 7/3 20 1 " @ 4.00 7/3 "

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

6837

4791

[illegible] Ok [illegible]

[illegible]	[illegible] UNIVERSAL
	Seasons 1939-40, 1940-41 and 1941-42

5/9/42

Selection of ~~[illegible]~~ pictures from regularly released product.

5 @ $100. 7/3 days
5 @ $50. 7/3 "
5 @ $22.50 7/3 "
5 @ $15.00 7/3 "
6 Westerns @ $17.50 7/3 days
selection of 2 serials at 5.00 7/3 days
13 2 reelers @ 4.00 7/3 "
30 1 " @ 2.00 7/3 "

Madison
or
State
Richmond
Ky

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

6838

4732

8/27/39.

DEAL SHEET

2 · 7 (6A)

THEATRE	TERMS - UNIVERSAL
	Seasons 1939-40, 1940-41 and 1941-42.
	Selection of 26 pictures from regularly released product.
Palace [illegible]	2 @ 35% 2 Days
Opera House	3 @ [illegible] 2
	5 @ 30% 2
Auditorium	5 @ 25.00 2/3
[illegible]	11 @ [illegible] 2/3
	6 Westerns [illegible] 17.50 [illegible]
	1 [illegible] 2

ACCEPT ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

6939

4793

8/27/39.

DEAL SHEET

207(19)

THEATRE	TERMS - UNIVERSAL
	Seasons 1939-40, 1940-41 and 1941-42.
1	Selection of 20 pictures from regularly released product. 2 @ 35% 2 DAYS 3 @ 35% 2 " (REVERSION TO 30%) 5 @ 30% 2 " (REVERSION TO 25%) 5 @ 50.00 2/3 DAYS 5 @ 37.50 2/3 DAYS [illegible] 6.25 1-2 Da

P.L.A. 207(19)

3/3/42

ACCEPTED ....
(Distributor)

ACCEPTED .... Lynch
(Schine Circuit, Inc.)

6940

4794

207(703)

DEAL SHEET

THEATRE	TERMS [illegible]
	Season [illegible]
	Selection of 26 pictures from regularly released product.
Cla-Zel or Lyric Bowling Green Ohio	2-@ 35% - 2-3 Da 3-@ 35% - 2-3 " (Revision to 40%) 5-@ 65.00 2-3 " 5-@ 50.00 " " [illegible] 4 a [illegible] at the [illegible] price [illegible] 11 [illegible] [illegible] 4.00 2-3 Da 18- 2 reelers - 2.50 2-3 " 36- 1 reels

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

[illegible]

4795

[illegible]

207(M.T.)

[illegible]

[illegible] | [illegible] - [illegible] 207(71)

Seasons 1939-40, 1940-41 and 1941-42. 5/8/42

Selection of 20 pictures from regularly released product.

Bucyrus or
State or
Southern
Bucyrus
Ohio

2 @ 35% 2 Days
3 @ 35% 2 " (Reversion to 30%)
5 @ 30% 2 " (" " 25%)
5 @ 25.00 2/3 Days
5 @ 17.50 2/3 "

15.25 2/3 Days

3-Westerns 7.50 2-3 Da

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

[illegible]

4796

8/27/39.

DEAL SHEET

THEATRE	TERMS - UNIVERSAL
	Seasons 1939-40, 1940-41 and 1941-42.
	Selection of 24 pictures from regularly released product.
STRAND	5 @ 35% 2 Days
DELAWARE	5 @ 50.00 2/3 "
OHIO.	14 @ 25.00 2/3 "

2·7([illegible])

30 x (32)

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

[illegible]

4737

6/[illegible]/42.

207(72)

DEAL SHEET

THEATRE	TERMS - UNIVERSAL
	Seasons 1939-40, 1940-41 and 1941-42. 207(73)
	Selection of 40 pictures from regularly released product. 6/[illegible]/42
VIC OR	2 @ 35% 3 Days
	3 @ 35% 2 " (REVERSION TO 30%)
OXY OR STATE	5 @ 30% 2 " (" " 25%)
STORIA	5 @ 50.00 1/3 "
Dri	BAL @ 27.50 1/3 "
	6 Westerns @ 20.00 1/3 Days
	[illegible]

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

6044

4798

8/27/39.

DEAL SHEET

THEATRE	TERMS - UNIVERSAL
	Seasons 1939-40, 1940-41 and 1941-42.
KENT KENT OHIO OR RAVENNA RAVENNA OHIO	Selection of 40 pictures from regularly released product. 2 @ 35% 2 DAYS 3 @ 35% 2 " (REVERSION TO 30% 5 @ 30% 2 " (" " " 25% 5 @ 50.00 2/3 12 @ 32.50 2/3 BAL @ 22.50 2/3 6 Westerns 20.00 1/3 DAYS

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

6045

4739.

[illegible] [illegible]

THEATRE	TERMS - UNIVERSAL
	Seasons 1939-40, 1940-41 and 1941-42.
	Selection of -- pictures from regularly released product.
KENT KENT OHIO OR	5 @ 65.00 1/3 DAYS BAL @ 22.50 1/3 "
RAVENNA " RAVENNA OHIO IF (REPEATS)	6 WESTERNS 12.50 1/3 DAYS

09(

5/3/42

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

6046

4800

6/3/39

2 07(71)

Pl. Ex. 207(71)

5/7/42

DEAL SHEET

THEATRE	TERMS UNIVERSAL
	Seasons 1939-40, 1940-41 and 1941-42
	Selection of 70 pictures from regularly released product.
Princess in Medina	5 - @ 60.00 2-3 da
	5 - @ 45.00 2-3 "
	5 - @ 30.00 2-3 "
	5 - @ 17.50 2-3 "
Medina	6 - Westerns 12.50 "
Ohio	Selection of serials 4.00 2-3 da

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

6047

4801

8/27/39.

207(97)

DEAL SHEET

THEATRE	TERMS - UNIVERSAL
	Seasons 1939-40, 1940-41 and 1941-42.
	Selection of 7/6 pictures from regularly released product.
ERNON OR	2 @ 35% 2 Days
VINE	3 @ 35% 2 " (Reversion to 30%)
T VERNON	5 @ 30% 2 " (" " 25%)
CHIC	5 @ 50.00 2/3 "
	BAL @ 27.50 2/3 "
	6 Westerns 20.00 F/3 Days
	1 Selection [illegible] 7.50 2-3 Da

Ll & T. 207(77)

5/3/41

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

8848

4802

[redacted] [redacted] — [redacted]

O.E.7.207(7?)

Seasons 1939-40, 1940-41 and 1941-42.

3/7/42

Selection of 26 pictures from regularly released product.

FORUM

NORWALK
O

2 @ 35% - 2 DAYS
3 @ 35% - " " (REVERSION TO 30%)

5 @ $50 - 2/3 DAYS
5 @ $22.50 - 2/3 "
11 @ $15.00 2/3 "

6 WESTERNS - $12.50 2/3 DAYS
1 Selection of serials 5 @ 1-2 D

ACCEPTED ....
(Exhibitor)

ACCEPTED ....
(Schine Circuit, Inc.)

[illegible]

[redacted] - [redacted]

[redacted]	[redacted]
	Seasons of 1939-40, 1940-41 and 1941-42.

5/7/42

TIFFIN RITZ
OR GRAND

TIFFIN
OHIO

Selection of 26 pictures from regularly released product

2 @ 35% 2/3 Days
3 @ 35% 2/3 " (Reverting To 30%)
5 @ 30% 2/3 " (" " 25%)
5 @ 25% 2/3 Days (Exhibitor has privilege of playing any or all of 25%)
4 - 1/3 Days @ (50.00 If Ritz
(25.00 If Grand at Tiffin)
Bal @ 25.00 2/3 Days

6 Westerns @ 20.00 1/3 Days
selection of 2 serials $5.00 2/3 days

ACCEPTED ....
(Distributor)

ACCEPTED ....
([illegible], Inc.)

[illegible]

4804

[illegible]

[redacted]

THEATRE	TERMS - REMARKS
	Seasons 1939-40, 1940-41 and 1941-42.
	(Selection of 20 pictures from regularly released product.)
VAN WERT OR	2 @ 35% 2/3 Days
~~STRAND~~	3 @ 35% 2/3 " (Reversion to 30%)
	5 @ 35.00 2/3 " (If Sun. playdate 50.00)
VAN WERT	5 @ 25.00 2/3
OHIO	5 @ 17.50 2/3
	16 Westerns 15.00 2/3 Days
	selection 2 serials 5.00 2/3 days

[illegible] 3/3/[illegible]

ACCEPTED [illegible] Mills
(Distributor)

ACCEPTED [illegible]
(Schine Circuit, Inc.)

4805

[illegible]

[illegible]

[illegible] | [illegible] - [illegible]

207(7)

[illegible]-207(8)

5/6/42

Seasons 1939-40, 1940-41 and 1941-42.

WOOSTER OR WAYNE

WOOSTER

OHIO.

Selection of % pictures from regularly released product.

2 @ 35% 2/3 DAYS

3 @ 35% 2/3 " (RE-VERSION TO 30%)

5 @ 30% 2/3 " (" " 25%)

5 @ 25% 2/3 " (EXHIBITOR HAS PRIVILEGE OF PLAYING ANY OR ALL OF 25% PICTURES @ 65.00 1/3 DAY. IF SUN 85.00)

5 @ 50.00 2/3 DAYS

BAL @ 30.00 2/3 "

6 Westerns @ 30.00 1/3 Days

✓ Selection 2 serials @ 7.50 70 days.

ACCEPTED .... Distributor

ACCEPTED .... (Schine Circuit, Inc.)

[illegible]

4806

[illegible]

2 @ 7 (B/2)

A. G. D. 20.2/8-2

DEAL SHEET

THEATRE	TERMS, UNIVERSAL
	Seasons of 1939-40, 1940-41 and 1941-42.
Arcade or State Cambridge Ind.	Selection of 26 pictures from regularly released product. 2 @ 35% 7 days 3 @ 35% 7 " Reversion to [redacted] 5 @ $100. 7 " 10 @ $30. 7 " 6 @ $17.50 7 " 6 Westerns @ 17.50 7 days Selection of 2 ~~[illegible]~~ serials @ 6.00 7 days

ACCEPTED ....

ACCEPTED ....

[illegible]

4807

6/27/39

2.7(+3)

DEAL SHEET

Al. E. 21 207/83 [illegible]

~~[illegible]~~ 5/27/42

THEATRE	TERMS UNIVERSAL
	Seasons of 1939-40, 1940-41 and 1941-42.
	Selection of 26 pictures from regularly released product.
Avalon	5 @ $100. 7/3 days
	5 @ 62.50 7/3 "
[illegible]	5 @ 35 of Music Hall $15 7/3 days
Music Hall	11 @ $15. 7/3 days
Fairlee	6 Westerns @ 12.50 7/3 days
	~~[illegible]~~
[illegible]	Selection of 2 Musicals at 5.00 7/3 days

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Sabine Circuit, Inc.)

6664

4808

[illegible]

C.E.A. 77-207/8

6/9/41

[illegible]	[illegible] [illegible]
	Seasons 1939-40, 1940-41 and 1941-42.
Federal Federalsburg Md.	Selection of 20 pictures from regularly released product. 5 @ 35 7/0 days 5 @ 25. 7/0 " 5 @ 20. 7/0 " 5 @ 15. 7/0 " 6 Westerns @ 12.50 7/0 days 1 Selection of serials 5.00 1/2 days

ACCEPTED ....

ACCEPTED ....

4809

December 13, 1939

UNIVERSAL

DEAL SHEET

2.17(85)

M.E.T. 217(85)

2/3/40

THEATRE	TERMS			
	SEASONS: 1939-40, 1940-41, 1941-42			
	SELECTION OF 12 PICTURES			
	5	@	$25.00	1-2 Days
	5	@	20.00	1-2 "
HURLOCK	5	@	15.00	1-2 "
(Hurlock Theatre)	5	@	12.50	1-2 "
✓	12 Two-Reel	@	2.50	1-2 "
✓	13 One-Reel	@	2.00	1-2 "

CLEARANCE: 14 days after Cambridge. 7 days after Federalsburg.

ALL CONDITIONS OF MASTER AGREEMENT TO APPLY.

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Enterprises Corp.

[illegible]

4810

8/27/39

207(80)

DEAL SHEET

207(80)

5/7/40

THEATRE	TERMS UNIVERSAL
	Seasons 1939-40, 1940-41 and 1941-42.
	Selection of 20 pictures from regularly released product.
Walter	5 @ $30 7/3 days
Laurel	5 @ $20 7/3 "
Del	10 @ 12.50 7/3 "
	6 Westerns @ 12.50 7/3 days
	Selection 7 serials @ 5.00 7/3 days

ACCEPTED ....
(Distributor)

ACCEPTED ....Garfinkel....................
(Schine Circuit, Inc.)

COST

4811

8/27/39

207(82)

DEAL SHEET

Pl. Ex. 207(87)

THEATRE	TERMS UNIVERSAL
	Seasons 1939-40, 1940-41 and 1941-42.
	Selection of 20 pictures from regularly released product.

8/3/42

5 @ 75 7/3 days

5 @ 25. 7/3

10 @ 15. 7/3

6 Westerns @ 12.50 7/3 days

Selection of 2 serials @ 5.00 7/3 days

oza

Del

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

[illegible]

6/17/39

2 07(88)

DEAL SHEET

Pl. Ex. 307(88)

5/5/4

THEATRE	TERMS UNIVERSAL
Arcade or Wicomico Salisbury Md.	Seasons of 1939-40, 1940-41 and 1941-42.
	Selection of 40 pictures from regularly released product.
	2 @ 35% 7/8 days
	3 @ 35% 7/8 " Reversion to 50
	5 @ $175. 7/8
	5 @ 62 50 7/8 "
	10 @ 37 50 7/8 "
	15 @ 22 50 7/8 "
	8 Westerns @ 22 50 7/8 days
	7 Arlen-Devine @ 22 50 7/8 "
	Selection 2 serials of Arcade 12 50 7/8 days of Wicomico 7 50 7/8 "
	If any percentage pictures play 4 days may play flats 4 days
	selection 13: 2 reelers of Arcade 10 3/4 days of Wicomico 5 00 7/8 "
	143 1 " of Arcade 5 00 3/4 of Wicomico 2 50 7/8 "

ACCEPTED ....
Distributor

ACCEPTED ....
(Schine Circuit, Inc.)

4813

U-N-I-V-E-R-S-A-L December 15, 1939

207 (89)

DEAL SHEET

[illegible]

THEATRE	TERMS
	SEASONS: 1939-40, 1940-41, 1941-42
	SELECTION OF 12 PICTURES:
	3 @ $25.00 1-2 Days
M. MICHAELS	3 @ 20.00 1-2 "
(Mirada Theatre)	3 @ 15.00 1-2 "
	3 @ 12.50 1-2 "
	13 Two-Reels @ 3.50 1-2 Days
	13 One-Reels @ 2.00 1-2 "
	CLEARANCE: Same as former owners.

ALL CONDITIONS OF MASTER AGREEMENT TO APPLY.

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Enterprises Corp.)

[illegible]

4814

PLAINTIFF'S EXHIBIT R-1

SCHINE THEATRICAL C[redacted]
GENERAL OFFICES GLOVERSVILLE, N.Y.

Pl. Ex. R-1 [illegible]

R1

GLOVERSVILLE, N.Y.
November 20th, 1936

AGREEMENT entered into this 20th day of November 1936 between the Schine Theatrical Co., Inc. and or it's subsidiaries and the RKO Distributing Corp. whereby it is agreed that on the deal signed for the 1936-37 pictures the following clauses are to become part and parcel of the deal and the approval of the contracts will be an automatic approval of this letter.

1. It is agreed and understood that where any 35% pictures are played as a double bill or at midnight shows or with stage shows or vaudeville the pictures are to revert to 25%. Any 30% pictures played on double bills or on midnight shows or with stage shows or vaudeville they are to revert to 25%.
In connection with this clause it is understood that this midnight show will start between 11.30 and 12.00 o'clock midnight and is not to be part of the prior performance.

2. It is also understood and agreed that on both the short subjects and feature contracts, in towns where we overplay our commitment the monies obtained by playing over the commitment is to be applied dollar for dollar against towns where the commitment is underplayed.

3. It is also understood and agreed that in all towns and situations where the exhibitor has a selective contract that the pictures which he wishes to reject, he will do so not later than 45 days of availability.

2

4. It is also understood and agreed that the designation of pictures will be given at the time of availability and the distributor has the right to allocate theses said designations

C. Russell Mulligan, Branch Manager
RKO Distributing Corp. Albany Office

Thomas J. Walsh, Branch Manager
RKO Distributing Corp., Buffalo Office

Herbert Greenblatt, Branch Manager
RKO Distributing Corp., Cleveland Office

Stanley Jacques, Branch Manager
RKO Distributing Corp., Cincinnati Off.

GV Lynch
George V. Lynch
Schine Theatrical Co., Inc.

6061

4815

R 2(1) [illegible] & R 2(1) [illegible]
4/3/46 X 11/20/36

[illegible]	[illegible]
	RKO 1
Jefferson	2 @ 35% - 3 Da
	3 @ 30% - 2 3 "
or	
Palace	1st @ [illegible] % 2 3 "
	10 @ 72.50 [illegible]
"	8 @ 40.00 2 3 "
Strand	Score 2.50 On the Run Flats Only
[illegible]	

ACCEPTED E. J. Mc[illegible]
Distributor

ACCEPTED
[illegible] Co., Inc

[illegible]

4816

M. & R. 2(2) ~~[illegible]~~
R 2(2)

[illegible]

11/30/36

R.K.O.

Babcock 3-@ 135.00 3-4 Da
3-@ 75.00 2-3 "
3 @ 60.00 2-3 "
Bath 21-@ 37.50 2-3 "

Secure 2nd Pre Run

[redacted]

4817

1/1 R(2,3) ~~[illegible]~~ R3(7)

[illegible] 11/20/36

THEATRE	TERMS
	R.K.O
Playhouse	2 @ 150.00 3-4 Wks
	7-@ 60.00 2-3 "
Canandaigua	21-@ 42.50 2-3

Score 2.50 On Run

4818

[redacted]

[redacted] [redacted] [redacted]

R.K.O.

Strand	3 - @ 90.00	2-3 Dz
	2 - @ 70.00	2-3 "
Carthay	10 - @ 35.00	2-3 "
	10 - @ 27.50	2-3 "
	5 - @ 25.00	2-3

ACCEPTED E A McEvoy
Distributor

ACCEPTED
Electrical Co., Inc.

[illegible]

4819

A.H.L. R2(5)
R2(5)

11/29/36

[redacted] [redacted]

[redacted]

R.K.O

Fox W State Corning

3 @ 150.00 3-4 wks
3 @ 125.00 2-3 "
14 @ 50.00 2-3 "
20 @ 42.50 2-3 "

Same 2nd Per Run

2nd run same as last yr.

ACCEPTED E. L. McIvoy
District

ACCEPTED ....
Electrical Co., Inc

0806

4820

1 1 or L ~~[illegible]~~ R2(6)

4/2/43

T 11/24/35

RKJ

State	3 - @ 35% - 3 Da
	5 - @ 30% - 2-3 "
or	14 - @ 25% - 2-3 "
	5 @ 47½ 2 3 "
Temple	~~14~~ @ 42½ 2 3 "
Carlton	

E. L. Maury

4821

P. 2(7)

11/30/36

THEATRE	TERMS
	RKO
Geneva	3. @ 35% – 4. Da
	5- @ 30% - 2-3 "
"	14-@ 25% - 2-3 "
Regent	~~4~~ @ 37^{50} 2 3
	1~~5~~ , 32^{50} 2-3
Geneva	

ACCEPTED E. L. M[illegible]

ACCEPTED

4822

R2(8)

11/28

[redacted]

[redacted] [redacted]

R.K.O

Rialto	3 - @ 35% - 5-7 Ds
	5 - @ 30% - 2-3 "
or	14 - @ 25% - 2-3 "
	2-3
Empire	6 - @ 72.50 2-3 "
	14 - @ 42.50
Glens Falls	Score 2% on run feats only
	2nd run same as last yr

ACCEPTED.........................

ACCEPTED.........................
Schine Theatrical Co., Inc

4823

R2(9)X

[illegible] [illegible] Pl. & [illegible] 11/23/36

[illegible]

[illegible]

R.K.O

Glove 3 - 35% - 3-Day

5 - 30% 2-3 "

10 - 15% 2-3 "

4 - 17 2-3

5 - [illegible] 2-3

9 - 12.50 2-3

50 [illegible] Running [illegible]

ACCEPTED E. L. McEvoy
Distributor

ACCEPTED..............................
Schine Theatrical Co., Inc

6070

4824

R21(

DEAL SHEET

11/30/36

THEATRE	TERMS
	R.K.O
Schines	3 @ 75.00 2-3 Da
	2 @ 60.00 2-3 "
Hamilton	5 @ 30.00 2-3 "
	20 @ 22.50 2-3

[illegible] E. L. McEvoy

[illegible]

4825

R2 (11)

1 DEAL SHEET ~~[illegible]~~ 11/20/36

THEATRE	TERMS
	R.K.O

Fidelity 3 - @ 125.00
2 - @ 90.00
15 - @ 45.00
Harlem 10 - @ 35.00

ACCEPTED E. H. McAvoy

ACCEPTED ....Inc. 6072
[illegible]

4826

[redacted] [redacted]

[redacted] [redacted]

RKO

Strand	3 @ 75.00 2-3 Dz
	12- 25.00 2-3 "
Hudson	15- 17.50 2-3 "
Falls	

Score 2.50 for Run

ACCEPTED........E. L. McEvoy..........
Distributor

ACCEPTED................................
Schine Theatrical Co., Inc

6073

4827

R.K.O.

Reatle	2 - @	135.00	2-3 Da
	1- @	125.00	2-3 "
	3- @,	75.00	2-3 Da
Little	3 @	50.00	
	6 @	45.00	
		40.00	
Totals	25- @		

ACCEPTED: E. L. McEvoy
Distributor

ACCEPTED
Saenger Theatrical Co., Inc

6874

4828

R-2(P1) [illegible] 30/56

DEAL SHEET

THEATRE	TERMS
	RKO
Palace	3 @ 35% - 4 Da
	5 - @ 30% - 2-3 "
"	14 - @ 60.00 2-3 "
Rialto	18 @ 35.00 2-3 "
	[redacted]
"	Same 2nd run as Rialto only
Hi Art	2nd run same as last y
	6 George O'Briens 25.00
Lockport	

[redacted]

4829

R2(15) Pl. 24 L. 2(15)
1/2/1/2.

DEAL SHEET K. 11/20/46

THEATRE	TERMS
	RKO
Malone	3 - @ 35% 2-3 Da
	5 - @ 30% 2-3 "
	14 - @ 50^{00} 2-3 "
Malone	8 - @ 30^{00} 2-3.
	Same 2nd Run Outlets

[redacted]

6076

4830

R2(ii) [redacted]

[illegible] X 4/2/46 11/20/36

[illegible]

R.K.O

Massena	3-6.5⁰⁰	2-3 DC
	7-50⁰⁰	2-3 "
	5-30⁰⁰	2-3 "
Massena	5-27.50	2-3 "
	5-20⁰⁰	2-3 "
N.Y.	5-17.50	2-3 "

ACCEPTED........E. J. M'lwo
Distributor

ACCEPTED..........................
Schine Theatrical Co., Inc

4831

1 R2(17) [illegible] 11/20/36

DEAL SHEET

THEATRE	TERMS
	R.K.O
Capitol	3 @ 110^{00} 3-4 Da 2-3 " 6 @ 60^{00} 2-3 " 71 @ 47^{50}
Newark	

ACCEPTED E. L. McEvoy
Distributor

ACCEPTED
Schine Theatrical Co., Inc

6978

4832

R2(18) P.1 & P-2(18) [illegible]

[illegible] 11/20/24

THEATRE	TERMS
	R.K.O.
[illegible]	3 @ 35% 3 Da
	3 @ 30 [illegible]
	[illegible] 2 - 3
[illegible]	
	[illegible]

4833

R2 (19) R-1 & R-2 (19) fine
~~Detroit~~
11/6/11 / 2

TOTAL [illegible]

THEATRE	TERMS
	R. K. O
Oneonta	8 - @ 35% - 3-4 D
〃	5 @ 30% 2-3
Palace	14 @ 25% 2-3
	9 - @ 45% 2-3
	2-3
Oneonta	9 - @ 32½
	Secures 2nd run [redacted]
	Only

[redacted]

4834

R2 (2nd) [illegible]
11/30

R.K.O.

Strand 3- @ 35% - 2 - days
5- @ 30% 2-3 "
Ogdensburg 14- @ 60 2-3 "
8 @ 30 " 2 3 "

Same 2nd run as flats

ACCEPTED E. [illegible]

ACCEPTED ....
[illegible] Theatrical Co., Inc

[illegible]

4835

R2(21) [illegible] R-2(21) [illegible]

[redacted] [illegible] 11/20/36

[redacted] [redacted]

R.K.O.

Strand	3 - @ 35% - 3 Da
	5 - @ 30% - 2-3 "
"	12 - @ $66^{\underline{50}}$ 1-3
Capital	10 - @ $57^{\underline{50}}$ 2-3 "
	18 @ $50^{\underline{00}}$ 2-3 "
Oswego	Lean $2^{\underline{50}}$ Per [illegible] [illegible] [illegible] [illegible]

ACCEPTED........E. A. McEvoy........

ACCEPTED..........................

Schine Theatrical Co., Inc

[illegible]

4836

R2(22)

[illegible] 221
forward [illegible]

DEAL SHEET 11/20/36

THEATRE TERMS

R.K.O.

Elmwood 3 @ 100.00 2-3 bkgs
6 @ 75.00 2-3
9 @ 35.00 2-3 "
Penn [illegible] 12 @ [illegible] 2-3 "

Same 2nd for the [illegible]

[redacted]

4837

1 [illegible] R 2 (27)

DEAL SHEET 11/20/36

THEATRE	TERMS
	R K O
[illegible]	2 @ 75— 2 = 1 [illegible]
	5 @ 40 = 2 =
Perry	2 3 @ 22 50 2-3
	6 C [illegible] — 15.00 1:30 [illegible]
N Y	Same 2 ½ per [illegible]

[illegible]

4838

R2(24)

DEAL SHEET

11/20

THEATRE	TERMS
State	3 - @ 75^{00} - 2-3 or
	3 - @ 35^{00} "
or	19 - @ 20^{00} "
Dixie	Scale 2^{50} Per Person

ACCEPTED E. J. McGrey

ACCEPTED [illegible]

4839

M.G. C-21-[illegible] R2(25)

~~[illegible]~~
4/2/42
DEAL SHEET

11/20/36

THEATRE	TERMS
	R.K.O
Riviera and State Rochester	3-@ 175.00 3-4 Wks 4-@ 150.00 3-4 " 8-@ 140.00 2-3 " 30 @ 120.00 2-3 "
	Series 2nd [illegible] Run

4840

R2(26) R2(26)

[redacted]

11/20/36

[redacted] [redacted]

R.K.O.

Liberty

Rochester

N.Y.

3 – 50.00 2-3 wa

3 – 20.00 2-3

39 – 15.00 7-3

Score 2.00 per Run

ACCEPTED. .... Distributor

ACCEPTED. ....
Schine Theatrical Co., Inc

6687

4841

[illegible]

[redacted] 8 11 [illegible]

[redacted] [redacted]

R.K.O

Lake Rochester	2 - @ $25^{\underline{00}}$ 2-3 Da 38 - @ $15^{\underline{00}}$ 2-3 "
	Score $2^{\underline{00}}$ Per Run

ACCEPTED....F. L. McCoy....
Exhibitor

ACCEPTED.......................
Schine Theatrical Co., Inc.

[illegible]

4842

~~[illegible]~~ #2(28)

DEAL SHEET

11/20/36

THEATRE	TERMS
	R.K.O.

Grand ~~[illegible]~~ 5- @ 25.00 1-2 (letter file) ~~2-3~~ Dr

3- @ 20.00 ~~1-2~~

37- @ 15.00

Rochester 60 Pictures 15.00 1-2

Score 2.50 per Pic

ACCEPTED E. L. McEvoy
Distributor

ACCEPTED ....
[illegible] Montreal

6060

4843

1' R2(29)

DEAL SHEET 1/20/30

THEATRE	TERMS
	R.K.O
Geneseo	2 - @ 80.00 2-3
	5 - @ 40.00 2-3
Rochester	33 @ 25.00 2-3

Series 2 S [illegible]

ACCEPTED [illegible]

[redacted]

6000

4844

Pl. A. R2 [redacted] R2 (30) 11/30

[redacted] [redacted]

R.K.O.

Andrews 2 @ 150.00 3-4 da

7 @ 60.00 2-3 "

3 @ 43.50 2-3 "

Salamanca 18 @ 37.50 2-3 "

ACCEPTED........E. L. McEvoy
Distributor

ACCEPTED........
Schine Theatrical Co.,Inc

6901

4845

[illegible] R2C [illegible]

R.K.O.

Pontiac

Saranac Lake #

3 - @ 35% - 2-3 Da
5 - @ 30% - 2-3 "
14 @ 40.00 2-3 "
8 - @ 35.00 2-3 "

Score 2.50 Per

Run as of Cal

ACCEPTED.......................................
Distributor

ACCEPTED.......................................
Schine Theatrical Co., Inc

6002

4846

[redacted]

[redacted]	[redacted]
	R.K.O.
Strand	2 @ 50^{00} 2-3 da
	5 - @ 32^{50} 2-3 "
Seneca	23 - @ 22^{50} 2-3 "
	6 O'Brien 15^{00} 1-2 "
Falls	Serv: 2^{50} per Run

ACCEPTED ....
Distributor

ACCEPTED ....
Schine Theatrical Co., Inc

6093

4847

[illegible] R2(33)

11/20/36

[illegible] [illegible]

R. K. O

State

3 @ 60.00 2-3 Da

2 @ 47.50 2-3 "

5 @ 25.00 2-3 "

Tupper Lake

20 @ 20.00 2-3 "

ACCEPTED E. L. McEvoy
Distributor

ACCEPTED ....
Schine Theatrical Co., Inc

6904

4848

~~[illegible]~~ R2(34)

DEAL SHEET

11/25/36

THEATRE	TERMS
	RKO
Olympia	3- @ 35% 3 day
"	5- @ 30% 2-3 "
or	14- @ 25% 2-3 "
Avon	6 @ 72.50 2-3 "
or	14 @ 42.50 2-3 "
Palace	Scale 2.50 per run flat deal
Watertown	2nd run deal same as last yr

ACCEPTED........

ACCEPTED........ [illegible]

R2(35)

11/19/36

TERMS

R.K.O

[illegible] 3 @ 35% - 3 Da -

5 - @ 30% - 2-3 "

14 @ 25% - 2-3

[illegible] 18 @ 25% 2-3.

[illegible] Some 2.50 Per Run flat Rentals.

ACCEPTED..................................

ACCEPTED.................................. [illegible]
[illegible]

[redacted]

4850

A 2 (96) [redacted]

[redacted]	[redacted]
	RKO
Athens	3 - @ 35% 2-3 D
a	5 - @ 30% . 2-3 "
	2-3 "
Ohio	14 - @ 60.00 2-3 "
	18 @ 30.00
a	
Court	Score 2.50 per reel Flats Only

ACCEPTED E. K. McIlvoy
Distributor

ACCEPTED
Schine Theatrical Co., Inc

4851

D. [illegible] R2(37) [redacted]

11/20

[redacted] [redacted]

R.K.O.

Holland 3-@ 35% - 2-3 Da
3 @ 30% - 2-3 "
24 @ 20^{00} 2-3 "

Bellfontaine

Score 2^{50} per run feat
Only

E. E. McGeary

ACCEPTED........Exhibitor

ACCEPTED..................
Schine Theatrical Co., Inc

6000

4852

R 2(38)

11/19/36

THEATRE	TERMS
	R.K.O
Bucyrus	3 - @ 35% - 1 day -
	5 - @ 30% 2 "
	15 - @ 25% 2 "
	17 - @ 17^{50} 2 "

Same 2nd Per Rates,
flat Rentals

ACCEPTED..........................

[redacted]

4853

1 R2(39)

1 11/26/36

DEAL SHEET

THEATRE	TERMS
	R.K.O

Prem
3 @ 35% 3 15
5 @ 30% 2-3 Da

Postnew
14 @ 35% 2-3
28 @ 25% 2-3

1 Score 2nd run flats
Only

ACCEPTED... E. L. McEvoy

ACCEPTED...

[illegible] Co., Inc

7000

4854

SHORT 11/19/40

section of 22 pictures released and/or [illegible] for the above seasons.

@	35%	2 Days
@	37.50	2 "
@	20.00	2 "
Westerns @	[illegible]	2

[illegible] Right Run.

~~[illegible]~~ R 2 (40) [redacted] 12/40

11/19/36

[redacted]	[redacted]
	R.K.O.
Marwick	3 - @ 35% 3 Days 5 - @ 30% - 2/3 10 - @ 25.00 - 2/3 12 @ 15.00 2/3
	Same 25% Per Run on Flat Rentals

ACCEPTED........................
Distributor

ACCEPTED........................
Schine Theatrical Co., Inc.

T001

4855

R2(41)

DEAL SHEET

11/20/42

THEATRE	TERMS
	R.K.O
Pequa	3 @ 35% 2/3 Dz
	5 @ 30% 1/2
w	2 @ 25% 2/3
Meama	5 @ 50.00 1/2
	10 @ 37.50 2/3
Pequa	15 @ 25.00 2/3
	Same 2.50 per run flat Only

ACCEPTED [redacted]

APPROVED

TOUR

4856

1 [illegible] R 2 (42)

11/19/36

THEATRE [illegible] TOWN R.K.O

[illegible] 3 @ 35%
4 @ 50.00
20 @ 27.50
10 @ 20.00

6 - 0 [illegible] 10.00

Same 2.50 Per Run on flat Rentals

ACCEPTED
Distributor
ACCEPTED

7003

4857

[illegible] R2(43)

4/24/ [illegible]

11/19/3 [redacted]

THEATRE	TERMS
	RKO

Written 3 @ 35% - 3 da

5 - @ 30% - 2-3 "

M 7 - @ 25% - 1-2 "

[illegible] 20.00 1-2 "

1 - @ 35.00 1-2 "

8 - @

- 25.00 1-2 da.

6 O Brien

Score 2.53 ~~Per Reel~~

flat Rentals

ACCEPTED.............................
Distributor

ACCEPTED.............................
Sabine Theatrical Co. Inc.

7004

4858

~~Pl. Ex. L-2(44)~~ R 2 (44)
~~[illegible]~~
11/2/44

DEAL SHEET

11/29/36

THEATRE	TERMS - Rico
PARIS, KY.	5 @ $75.00 - 2 days -- If 3 days - $100.00
	5 @ 40.00 - 2 "
Bourbon	5 @ 30.00 - 1/2 "
	35 @ 12.50 - 1/2 "
	SCORE: $2.50 per run
	SHORTS: Same price as contracted.

ACCEPTED..
Distributor

ACCEPTED..
[illegible]ane Theatrical Co., Inc

7006

4859

Pl. Ex. L-2 (45)
R. 2 (45)
4/2/40

DEAL SHEET

11/24/36

THEATRE	TERMS - 1410
RICHMOND, KY.	48 Pictures @ $32.50 average
Madison	5 for 2/3 days
or	5 " 2 "
State	19 " 1/2 "
	19 " 1 day
	SCORE: $2.50 per run
	SHORTS: Same as contracted

ACCEPTED......................
Distributor

ACCEPTED......................
Schine Theatrical Co., Inc

7006

4860

—Rz(46) ✕

11/20/26

DEAL SHEET

THEATRE	TERMS
	RKO
"Ritz	3 - 35% - 3 Da
	5 - 30% 2-3
or	12 - $4.2^{\underline{50}}$ 2-3
	20 - $25^{\underline{00}}$ 2-3
Grand	
	6 - O'Briens $17^{\underline{50}}$ 2-3 Da
Tiffin	Score $2^{\underline{50}}$ per Run flat Only.

ACCEPTED...

ACCEPTED...

7007

1

R 2147

DEAL SHEET 11/30/36

THEATRE	TERMS
	R.K.O.
Granada	2 - @ 120.00 2-3 [illegible]
	10 - @ 60.00 2-3
	33 @ 42.50 2-3
[illegible]	

[illegible]

7003

4862

R 2 (48)

11/20/3

THEATRE	TERMS
	R. K. O.
Riverside	3- @ 100^{00} [illegible] 2. 3. (later [illegible])
	3- @ 65^{00} 2-3 "
	36- @ 45^{00} 2-3
Bflo.	
6	O'Brien 95.00 2-3
	Lease 2^{50} per Run

ACCEPTED E. K. W. Gray
Distributor

ACCEPTED
[illegible] Theatrical Co., Inc

7009

4863

[redacted]

RKO

Vine

3 @ 35% - 3 Da

5 - @ 30% 2-3 Da

C

11 @ 25% - 1-2 "

/ @ 32^{oo} 1-2 "

/ @

-25^{oo} 1-2 D

//

Scale 2nd Run

flat Rentals

ACCEPTED............................
Distributor

ACCEPTED............................
Schine Theatrical Co. Inc.

7010

4864

R2(51)

11/30 36

DEAL SHEET

THEATRE	TERMS
LEXINGTON, KY.	
	3 @ 30% - 4 days - Ben Ali or Kentucky
Ben Ali	5 @ 30% - 2/4 " " " " "
or	14 @ 25% - 2/4 "
Kentucky	4 @ $100.00 - 2/4 days
or	11 @ 75.00 - 2/4 "
Strand	11 @ 50.00 - 2/4 "

SCORE: $2.50 per run - flats only

SHORTS: Same as contracted.

ACCEPTED... E. L. ...

APPROVED...

7011

PLAINTIFF'S EXHIBIT R-20

P.L.4. R-20
4/3/42

RKO DISTRIBUTING CORPORATION R20

RKO BUILDING
RADIO CITY
ROCKEFELLER CENTER
NEW YORK

October 18th, 1935

Mr. Meyer Schine
Schine Enterprises
Gloversville, N.Y.

Dear Meyer:

This will confirm our agreement made today to the effect that in the situations where you buy all flat rental, with the exception of Oswego and Norwich, the fifteen (15) top priced pictures in each situation are to be increased by 20% over the amount paid last year. It is also agreed that the total amount of the increase in each situation may be allocated by the distributor.

In Oswego and Norwich there are to be six (6) percentage pictures @ 35% -- three are to be without any reversion and three may revert to a minimum of 25%. It is understood that none of the Fred Astaire Pictures are to be subject to this reversion.

In the percentage situations, the terms are to be

3 @ 35% with no reversion.
3 @ 35% that may revert to minimum of 25%

in the event that the gross does not reach the figures shown on the deal sheets for each situation.

2 @ 30% that may revert to 25%
14 @ 25%

The balance of the deal is to be the same as the 1934-35 deal.

Score charge: Same as last year.

Very truly yours

E L McEvoy

E. L. McEVOY
Eastern Sales Manager

DEAL SHEET 11/19/40

Seasons: 1940-41, [illegible] and 1942-43

Selection of 25 pictures released and/or produced for the above seasons:

2	@	80.00	[illegible]
	@	60.00	2-3
8	@	25.00	2-3
Balance	@	20.00	2-3
6 Westerns	@	17.50	1-2

Pl. Ex. R-37(1)

PLAINTIFF'S EXHIBIT R-37 (1) (1) 4/4/42

[redacted]

Signed at Germantown 9/15/38

[redacted] [redacted]

Seasons 1938-39, 39-40, 40-41.

Product released and/or produced.

1 @ 35% - 3 Days
5 @ 30% 2-3 "
14 @ 25% 2-3
4 @ 75.00 2-3
5 @ 70.00 2-3
8 @ 45.00 2-3
6 O'Briens 25.00 2-10
Selection [illegible] the [illegible]
playing 7 7 the 25% pictures
75.00 flat rental 2-3 Days

Same as master agreement dated

4867

R37(2)

R.K.O. R37(2) 4/2/42

DEAL SHEET

Signed at Greenville 9/15/38.

THEATRE	TERMS
	Seasons 1938-39, 39-40, 40-41.
	Product released and/or produced
	15
	Same Master Agreement dated 11/20/36.

ACCEPTED:

7014

4868

Capitol 3 @ 60.00 2-3
6 @ 35.00 2-2 "
15.00 1-2 "
31 @

Bal. Tran. 6 D'Bros 12.00 1-2 Da

See Master Agreement dated 1/10/50.

ACCEPTED ....E. M. Ewing........

ACCEPTED ....
([illegible], Inc.)

4869

1.1 & K 37-4 [illegible]

R.K.O. R37(4) [illegible]

DEAL SHEET

Signed at Glens Falls 8/15/38.

THEATRE	TERMS
	Seasons 1938-39, 39-40, 40-41.
	Product released w/or produced.
Rialto	4 @ 35% - 4
	5 @ 30% - 3
&	14 @ 25% - 2-3
	6 @ 72.50 2-3 } Same 2 day run
Empire	14 @ 12.50 2-3
	Exhibitor has the privilege
	(7) one of the 14
Glens Falls	of playing
	pictures at 80.00 2-3 days

Same theatre agreement dated [illegible]

T016

[redacted]

Empire 3 @ 50.00 2-3 Da

3 @ 30.00 2-3 "

Bal @ 17.50 2-3 "

Glens Falls Pictures playing Rialto 1st run to be played 2nd run at Empire

2d Rialto

Same Master Agreement dated 11/20/36

ACCEPTED. E. L. McEvoy
(Distributor)

ACCEPTED. ....
(Schine Circuit, Inc.)

4871

11 A R 37(6) ~~[illegible]~~

R.K.O. R37(6) 4/2/42

DEAL SHEET

Signed at Ellenville 8/15/38.

THEATRE	TERMS
	Season 1938-39, 39-40, 40-41.
	Released and/or produced

[illegible]

[illegible]

[illegible]

[illegible]

Same Master Agreement dated 11/20/36.

[illegible] McGrory

[redacted]

7018

4872

RKO: R37(8)

DEAL SHEET

Signed at Seminole 8/15/38

THEATRE	TERMS
	Seasons 1938-39, 39-40, 40-41
	Pictures released & not produced.
	Same Master Agreement as the [illegible]

[redacted]

4873

[illegible] [illegible]

[redacted] [redacted]

Season 1938-39, 3rd [illegible], [illegible]

Product released and/or produced

[illegible]

2 @ 125.00 2 3 Days [illegible]

2 @ 75.00 2 [illegible]

1 @ [illegible] 2 [illegible]

[illegible] dated 11/30/36.

ACCEPTED..........[illegible]..........
(Distributor)

ACCEPTED............................
(Schine Circuit, Inc.)

7020

4874

[redacted]

Strand	2 @ 75.00 2-3 Days 12 @ 25.00 2-3 " 15 @ 17.50 2-3 "
Hudson	
[illegible]	

Same Dist. Agreement dated 11/20/36.

ACCEPTED........................
(Distributor)

ACCEPTED........................
(Schine Circuit, Inc.)

7021

4875

R.K.O.ˣ R37(11)

DEAL SHEET S.E. R-37(11) [illegible]

Signed at Gloversville 9/17/38. 4/1/42

THEATRE	TERMS
	Seasons 1938-39, 39-40, 40-41.
	Product released and/or produced.
Capitol	3 @ 100.00 2-3 Days
	10 @ 60.00 2-3 "
	12 @ 30.00 2-3 "
Ilion	5 @ 25.00 1-2 "
	6 O'Briens 25.00 1-2 Days
N.Y.	

Score 2.50 Per [illegible]

Same Master Agreement dated 11/20/36.

ACCEPTED Ralph M. [illegible]

ACCEPTED J. M. [illegible]
(Schine Circuit, Inc.)

7022

4876

R.K.O.   R37(12)

~~P 1 4 R 37(1~~ ~~[illegible]~~
4/2/4

DEAL SHEET

Signed at Gloversville 8/1938

THEATRE	TERMS
	Seasons 1938-39, 39-40, 40-41.
Ls	Product released and/or produced.
	1 [illegible]
	[illegible] 30 % [illegible]
	[illegible] 50 [illegible]
Ma	8 [illegible] 30 [illegible]
Malone	
N.Y.	See Master Agreement dated 11/30/36

ACCEPTED C. E. McIlroy (Exhibitor)

ACCEPTED [illegible] (Schine Circuit, Inc.)

7023

4877

x

R.K.O. R37(13)

Pl. Ex. R-37(13)

4/2/42

DEAL SHEET

Signed at Gloversville 9 N 38.

THEATRE	TERMS
	Seasons 1938-39, 39-40, 40-41.
	Product released and/or produced
elina	3 - @ 65.00 2-3 DA. Score
	7 - @ 50.00 2-3 "
	10 @ 27.50 2-3 " 2nd Run
	10 @ 20.00 2-3 "
Massena	
Massena	
N.Y.	See Master Agreement dated 11/30/38.

7034

4878

R37(14)

Ll. # R-37(

DEAL SHEET

Signed at Florence 8/15/38.

THEATRE	TERMS
	Seasons 1938-39, 39-40, 40-41.
State Mechanicville N.J.	Product released and/or produced. 3 @ $125. 7/3 days 6 @ $50. 7/3 31 @ $25 7/3 6 Others 17.50 7/2

Score 2.50 per run

Same master agreement dated 11/30/36.

ACCEPTED.
(Exhibitor)

ACCEPTED.
([illegible], Inc.)

7025

4879

[illegible]

Signed at Gloversville [illegible]

[illegible]	[illegible]
	Seasons 1938-39, 39-40, 40-41
	Product releases and/or produces
Colonia	4 @ 35% 7/3 days
	2 @ 30% 7/3
Norwich	13 @ 47½ 7/3
N.Y.	

Same Master Agreement dated 11/20/36

ACCEPTED E C McEvoy
(Distributor)

ACCEPTED
(Schine Circuit, Inc.)

4830

O.A.O. [redacted]

R3 M. E. K.

Signed at Seminole 9/17/38.

[redacted] [redacted]

Seasons 1938-39, 39-40, 40-41.

Product released and/or produced

[illegible] 1/6 38 [illegible]

[illegible] 3 6 30 [illegible]

13 6 60 [illegible]

[illegible] 5 6 [illegible]

[illegible]

See Master Agreement dated 11/30/36.

ACCEPTED E. L. McElroy
(Distributor)

ACCEPTED........................
(Schine Circuit, Inc.)

7027

RKO R37(17)

P/ 4 R 37(17) [illegible]

4/2/46

DEAL SHEET

Signed at [illegible] 5/1 38

THEATRE	TERMS
Oneonta or Palace Oneonta N.Y.	Licenses 1-2-3 [illegible] 2-- [illegible] 4--- [illegible] Product [illegible] 4 [illegible] 11 @ 35 3 [illegible] 5 @ 30 1/2 14 @ 25 1/2 9 @ 45 1/2 [illegible] 8 @ 37.50 1/2 $2.50 [illegible] exhibitor [illegible] of playing seven (7) [illegible] fourteen 25 pictures @ 75 of Oneonta } 23 45 of Palace } Out Same master agreement dated [illegible]/36

[redacted]

7028

4882

R. K. O R37(18)

R. K. R. 37(18) 4/2/42

[illegible]

SIGNED AT GLOVERSVILLE 8/15/38

[illegible]	[illegible]
	Seasons 1938-9, 39-40, 40-41
	PRODUCT RELEASED AND/OR PRODUCED
	4 @ 35% 1/2 days
	5 @ 30% 1/2
	14 @ 40 2/3 } Above
	7 @ 35 2/2 } $7.50 per run

SAME MATTER AGREEMENT DATED 11/20/36

[redacted]

7038

R.K.O. R37(19) N. & L-3X(19)

4/2/42

SIGNED AT GLOVERSVILLE 8/15/38

SEASONS 1938-9, 39-40 & 40-41

PRODUCT RELEASED AND/OR PRODUCED

" " " " "

Same
2 50/—
per
Ellen

SAME MASTER AGREEMENT DATED 11/20/36

[redacted]

4834

R. KO. [redacted]

R 37 (20)

Pd. # R-37(20) [illegible]

SIGNED AT [illegible] 8/15/38

4/3/42

[redacted] [redacted]

SEASON 1938-9 39-40 40-41

PRODUCT RELEASED AND/OR PRODUCED

Avon
or
~~Olympic~~
or
Palace
Watertown
N.Y.

4 e 35% 3 days 1
5 e 30% 2/3 " 1
14 e 25% 2/3 " 1
6 e 72.50 2/3 " } Avon
13 e 42.50 2/3 " } 25.00 [illegible]
exhibitor has the privilege of playing seven (7) of the (14) fourteen 25% pictures at Avon 12.50
" Olympic 6.00

7081

R. K. O R37(21)

~~PH & R37(21)~~

4/2/42

DEAL SHEET

Signed at Gloversville 8/15/38

THEATRE	TERMS
	Seasons 1938-9, 39-40 - 40-41
[illegible]	Product Released and/or Produced
	3 @ [illegible]
	[illegible] 35 [illegible]
	[illegible]
	[illegible]
[illegible]	[illegible]

Same master [illegible] Dated 11/30/36

ACCEPTED.......................... McGroy
(Distributor)

ACCEPTED..........................
(Schine Circuit, Inc.)

7032

RKO R[illegible]

[illegible]

Signed at Gloversville 7/18/38

Seasons 1938-39 · 39-40, 40-41
Product Released and/or Produced

Capitol Whitehall N.Y.

3 @ $85 7/3 days
6 @ $35 7/2
21 @ 20. 7/2
6 Westerns @ $15 1/2

} Acme $2.50 per run

Same master agreement dated 11/30/38

ACCEPTED E. R. McEvoy
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

Y. R37(23) P.M. R-37(23)
~~[illegible]~~
11/2/42

DEAL SIGNED Signed at Gloversville 8/15/38

THEATRE TERMS R.K.O.

Season 1938-39 – 39-40 – 40-41

Product released 1/2 [illegible]

4 – @ 35% – 3 Days /

5 – @ 30% – 2-3 "

14 – @ 25% – 2-3 "

10 – @ 20% – 2-3 } 25.00 flat run – Sun.

7 – @ 40% – 2-3

For the privilege of Exhibitor playing Seven (7) of the 14 – 25% pictures at $110.00 2-3 Days – [illegible]

See master agreement dated [illegible]

7034

4838

DEAL SHEET RKO R 37(24) 1/11/39

THEATRE	TERMS
	Seasons 1938-39 - 39-40 & 40-41
	3 @ $50.00 1/3 days
Jefferson	7 @ $35. 1/3 "
	4 @ $22.50 1/3 "
	If any additional features are released in cycle to be $17.50 1/3 days.
Palace	
Auburn	13 issues March of Time starting
N.Y.	with #5 @ $5.00 1/3 days.
	60 days over 3rd season
2nd run	score @ 2.50 per run.
	Subject to all terms and conditions of master agreement

3/1/41 R 37(24)

4/2/42

ACCEPTED ....

ACCEPTED ....

4839.

R37(25)

DEAL SHEET

Signed at Gloversville 8/15/38

THEATRE

FIRM RKO

Seasons 1938-39 - 39-40 - 40-41

Product released and/or produced

Babcock

3 @ 135 – 3-4 Da. } Same
3 @ 70 – 2-3 " } 2nd Run
3 @ 60 – 2-3 " } Term
21 @ 37½ 2-3 "

Bath

See master agreement dated 11/[illegible]/38

||| /

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuits, Inc.)

7036

4830

[redacted]

Written at Greenville

Season 1938-39 - 39-40 - 40-41.

Product released and/or produced

Playhouse	2-- @ 150.00 3-4 or 7- @ 60.00 2-3 " 21- @ 42.50 2-3 " Same per season
Canandaigua N.Y.	See master agreement dated 11/10/36

ACCEPTED........................ Girolz
(Distributor)

ACCEPTED........................
(Schine Circuit, Inc.)

7037

[redacted]

R57 [illegible]

Signed at Greenville 8/N/38 4/26

Season 1938-39-39-40-40-41

Product released and/or purchased

3 - @ 150.00 3 - 4 Da

3 - @ 75.00 2-3 "

14 - @ 50.00 2-3 "

[illegible] @ 112.50 2-3 "

Score 2.50 Per reel

Sc

[illegible] agreement dated 11/29

ACCEPTED.. E. J. McIlvoy
(Distributor)

ACCEPTED..........................
(Schine Circuit, Inc.)

7098

4832

x R.K.O.

~~B. & P. 37/38~~ R 37(38)

~~Sub~~

Signed at Gloversville 7/11/38

Seasons 1938-39-39-40-40-41

1

State	3 - @ $25^{\underline{00}}$ 2-3 Da
	2 @ $22^{\underline{50}}$
&	1 - @ $17^{\underline{00}}$
Palace	3 @ $16^{\underline{00}}$
	6 @ $15^{\underline{00}}$
Corning	Any addition of pictures
N.Y.	used price to be $12^{\underline{50}}$
2nd run	Score $2^{\underline{50}}$ per run on all

R37(29) M.4 C 37(39) P.A.C.

[illegible] 4/3/42

DEAL SHEET

Signed at Gloversville 8/10/38

THEATRE	TERMS
	Season 1938-39 — 39-40 — 40-41
	Product re [illegible] and/or [illegible]
	4 @ 35% - 3 d.c.
	5 @ 30% 2-3 "
	14 @ 25% 2-3 "
	5 @ 47.50 2-3 "
	12 @ 12.50
	1 [illegible] the principle
	Specials [illegible] (7) of the (14) at 65.00
	[illegible] 35% pictures [illegible]
	[illegible]
	[illegible] agreement [illegible]
	[illegible]
N.Y.	11/21/36

1940

[redacted]

[illegible]

Product released [illegible]

Geneva

a

Regent

[illegible]

N.Y

4 - @ 35% - 3 da
5 - @ 30% - 2-3 "
14 - @ 25% 2-3 "
4 - @ 37.50 2-3 "
13 @ 32.50 2-3 "

[illegible]

[illegible] the privilege [illegible] Geneva [illegible] the [illegible] of playing [illegible] 25% pictures at [illegible] fourteen [illegible]

2.3 da [illegible]

[illegible]

ACCEPTED........................
(Exhibitor)

ACCEPTED........................
(Schine Circuit, Inc.)

7041

[redacted] R.K.

Written at Gloversville N.Y.

Seasons 1938-39-39-40-40-41

Palace | Product released and/or [illegible]

4- @ 35% - 3 Da

5- @ 30% - 2-3 " [illegible]

60 % - 2-3 @ 2.50

13 @ [illegible] - 2-3 " [illegible]

18 @ [illegible] 25.00

Bruce

Rialto

[illegible] Agreement dated

ACCEPTED.................... (Distributor)

E. B. McElroy

ACCEPTED.................... (Schine Circuit, Inc.)

7042

4836

[redacted]

Rialto	Product released and/or pending
or	3 @ 30.00 2-3 Day Score
	2 @ 25.00 2-3 " 2nd
	2 @ 25.00 2-3 " Run
Hi-Art	4 @ 20.00 2-3 " Screen
	6 @ 17.50 2-3 "
Lockport	Any additional pictures used to be 15.00 2-3 run
	Plus 2nd score
N Y	
Others	

[illegible] .... E. J. Maloy

[illegible] .... [illegible]

([illegible] Circuit, Inc.)

7043

4897

R37(33) ~~R-37/[illegible]~~ R. K. O.

~~[illegible]~~ 4/2/42

DEAL DATED

Signed at [illegible] 7/1/38.

THEATRE | TERMS

Season 1938-39 ^ 39-40 - 40-41

Product / release and/or [illegible]

Capitol
3 @ 110.00 3-4 days
6 @ 60.00 2-3 "
21 @ 41.50 2-3 "
Score 2.50 per run

Newark N.J.
Same Master Agreement / Signed 11/21/36

[redacted]

7044

4898

R 37(34) ~~M. H. R. 37(34)~~ 4/3/46 R.K.O.

DEAL SHEET

[illegible] 8/15/38

THEATRE	TERMS
	Season 1938-39 40 - 40 - 44

[illegible] and/or [illegible]

	3 - C	62 1/2	2 · 3	Da	Same
	1 - C	40	2 · 3	"	62 1/2
	1 - T	35	2 · 3	"	Per
		25	2 · 3	"	[illegible]

N. Y. — Same [illegible] agreement. Dated 11/1

B. G. McS[illegible]

[redacted]

4899.

R37 (35) [illegible]

DEAL SHEET

[illegible]

THEATRE	TERMS
	[illegible]
[illegible]	[illegible]
	15.00 [illegible]
Ky.	[illegible]
	11/30/36

ACCEPTED......E. L. McEvoy......
(Distributor)

ACCEPTED......[illegible]......
(Schine Circuit, Inc.)

7046

4900

R37(36) R.K.O.

~~ll. & R-37(36)~~ [illegible]

DEAL DATED

Signed at Gloversville 8/16/38

THEATRE | TERMS

Seasons 1938-39 - 39-40 - 40-41

Product released a/or produced

Cameo | 2 - @ 80.00 2-3 DA | Since
 | 5 - @ 40.00 2-3 " | @ 25.00
 | 33 @ 25.00 2-3 " | per film

Rochester N.Y. | Same master agreement dated 11/20/36

COMPANY E. L. McEvoy

ACCEPTED

(Schine Circuit, Inc.)

7047

4901

R37(37)

DEAL SHEET

THEATRE	TERMS
	15 1/2
	15

ACCEPTED E. J. McEvoy
(Distributor)

ACCEPTED....................
(Machine Circuit, Inc.)

7048

4902

R 37(38) Pl. 4 G. 3 (38) R. K. O

Signed at Gloversville 7/11/38

[illegible] [illegible]

Seasons 1938-39 – 39-40 – 40-41

Product released and/or produced

Lake 2 @ 25^{00} 2 3 da
8 @ 17^{50} 2-3 "
@ 15^{00} 2-3 "
76 @

Rochester Score 2^{50} per run

Same master agreement dated
11/20/36

E. B. McEvoy

(Schine Chain Theatres, Inc.)

[illegible]

4903

R37 (79) H1 & R 37(39) R UK O

5/15/58

Seasons 1938-39 - 39-40 - 40-41

Not released and/or produced

3. @ 50.00 2-3 Da

3. @ 20.00 2-3 "

39. @ 15.00 2-3 "

N Y

Lease 2nd per run

See master Agreement

dated 11/20/36

[redacted]

4904

R K O.

R37(407 ~~[illegible]~~ [illegible]

[redacted] [redacted] [illegible]

Signed: [illegible] [illegible]

[redacted] [redacted]

Leases 39? 39-[illegible] 40-41

	Product released and/or produced
[illegible]	3 @ 175.00 3½ of OA
	11 @ 150.00 3-4 "
	140.00 3-4
	8 @
[illegible]	120.00 2-3 "
[illegible]	30 @
[illegible]	Lease 2.50 [illegible]
[illegible]	[illegible] Master Agreement & notice
	11/20/36
[illegible]	

4905

[redacted]

Season 1938-39 - 39-40 - 40-41

Product released and/or Producing

tate

3 @ 75% 2-3 Days Same

3 @ 35% 2-3 " 2nd

3 @ 20% 2-3 " Run

ochester 11/5/38

ACCEPTED E. J. McEvoy
(Distributor)

ACCEPTED........................
(Schine Circuit, Inc.)

7082

4906

[redacted]

Seasons 1938-39-39-40-40-

Product released and/or

Andrews 2 - @ 150.00 3-4 Ok Same

@ 50.00 2-3 " 2nd

7 - @ 45.50 2-3 " Run

Salamanca Run

N.Y.

ACCEPTED E. L. McEvoy
(Distributor)

ACCEPTED
(Schine Circuit, Inc.)

4907

R37(43) [illegible] R.37(43)

[illegible] 7/11/38

[illegible] 1938 [illegible] 111

[illegible]

[illegible] 2 50

[illegible] 2·3

[illegible] 1·2.0

[illegible]

Falk dated 11/[illegible]/36

N.Y

[redacted]

4908

R 37 (44) [illegible] R. K. O.
11/24/42

Signed at Glenville [illegible]

Seasons 1938-39 - 39-40 - 40-41

Product released 2 1/2 [illegible]

Palace 44 @ 35% 3 [illegible]
5 @ 30% 2-2
25% 2-3
" 14 @ 25% 2-3 [illegible]
18 @ [illegible] average [illegible]

Opera House [illegible]
Same (7) [illegible]
pictures [illegible] master agreement

Ashland Same
11/20/36

[redacted]

[redacted] [illegible] Greenville 9-8-38

[redacted] [redacted]

Season 1938-39, 39-40, also 41

Product released and/or produced

2 @ 35 % 2.3 Da

2.3 "

5 @ 30 %

2.3 " } Same 2nd Run

3 @ 4

2.3 "

1 a.

ACCEPTED.......................
([illegible])

ACCEPTED.......................
([illegible] Circuit, Inc.)

[illegible]

4910

R 37(46) R.K.O. [redacted]

Signed at Gloversville 9/1938.

Seasons 1938-39, 39-40, 40-41.

Product released and/or produced.

Holland

4 - @ 35% 2, 3 4

3 - @ 30% 2 2 "

13 @ 20 [illegible]

ACCEPTED E. L. McEvoy (Distributor)

ACCEPTED .... (Schine Circuit, Inc.)

7057

x Bl-& R-37 ~~(47) [illegible]~~
4/2/42 R 37 (47) R.K.O. ✓

DEAL SHEET

Signed at Gloversville 8/15/38.

THEATRE	TERMS
Bucyrus Southern or State Bucyrus Ohio	Seasons 1938-39, 39-40, 40-41 Product released and/or produced. 4 @ 35% 2 days 5 @ 30% 2 15 @ 25 2 16 @ 17.50 2 } Score 25¢ per reel Same master agreement dtd. 7/30/40

ACCEPTED..........

ACCEPTED..........
(Schine Circuit, Inc.)

7058

4912

RKO

DEAL SHEET

R37(48) & Signed at Gloversville 8/17/38.

THEATRE	TERMS
B.&K. R.37(48) ~~[illegible]~~ J 11/2/40	Seasons 19 38-39, 39-40, 40-41. Product released and/or produced
Strand	4-@ 35% - 2-3 Dc 5-@ 30% - 2-3 " 7-@ 35^{00} " 6 @ 25^{00} " 8 @ 20^{00} "
Delaware Ohio	
	Same Master Agreement dated 11/10/36.

ACCEPTED........E. L. McEvoy........
(Distributor)

ACCEPTED..........................
(Schine Circuit, Inc.)

7059

4913

R37(49) RKO

~~H. W. [illegible]~~ R37(49)

DEAL SHEET

Signed at Gloversville 8/5/38.

THEATRE	TERMS
State or Civic or Roxy Fostoria Ohio	Seasons 1938-39, 39-40, 40-41. Product released and/or produced. 4 @ 35% 3/3 days 5 @ 30% " " 14 @ 25% " " 22 @ $25 " Score 25¢ per run exhibitor has privilege of playing seven (7) of the fourteen (14) 25% pictures @ $37.50 3/3 days Same master agreement dated 11/20/36

ACCEPTED: E. L. McEvoy (Distributor)

ACCEPTED:.................................. (Schine Circuit, Inc.)

7060

4914

$. R37(50) R.K.O.

S.I.E. R.37(50) ~~[illegible]~~

DEAL SHEET

~~[illegible]~~ Signed at Zanesville 9/15/38.

THEATRE	TERMS
	Seasons 1938-39, 39-40, 40-41.
Kent or Ravenna Ohio	Product released and/or produced. 4 @ 35% 2/3 days 5 @ 30% 2/3 " 5 @ 25% 2/3 " 7 @ $40. 2/3 " 9 @ $35. 2/3 " 10 @ $25. 2/3 " 6 Westerns 27 50 2/3 days score $2 50 per re
	Same Master Agreement dated 11/20/3

ACCEPTED.....................Eva
(Distributor)

ACCEPTED................................
(Schine Circuits Inc.)

7061

4915

R.C.M. R-37(51) ~~[illegible]~~ Hoff. R37(51) x R.K.O.
4/2/42

[illegible]

Signed at Bernardsville 8/1/38.

THEATRE	TERMS
	Seasons 1938-39, 39-40, 40-41.
	Product released and/or produced.
Kent	4 @ 35% 7/3 days
or	3 @ 75 7/3 " } score $2.50 per run
Rovena	7 @ 35. 7/3 "
ref: it	7 @ 30 7/3 "
	3 @ 20. 7/3 "
	privilege of playing additional pictures @ $20 7/3 days
Cf.	
	Same Master Agreement dated [redacted]

7062

4916

1, [illegible] 1931 R37(52)

DEAL SHEET

[illegible]

THEATRE	TERMS	
	Season [illegible]	
	[illegible]	
Princess	4 @ 35% 1/3 days	
	2 @ 30% 1/3	
Indiana	7 @ \$30. 1/3	score \$2.50 per w
	14 @ 22.50 1/3	
Ohio	13 @ 17.50 1/3	

[illegible] 36

ACCEPTED: [illegible]

ACCEPTED: [illegible]

4917

[illegible] [illegible]

[redacted]

Pl. [illegible] Seminole 9/1938

[redacted]

[illegible]

[illegible] 38-39, 39-40, 40-41

Features released and/or produced.

Vernon
or
Verne
2nd Version

x [illegible]

4 @ 25% 7/8 days
5 @ 30% 7/8
14 @ 25% 1/2 days
7 @ 32½ 1/2 .
6 others @ 35 1/2 days [illegible]

[illegible] [illegible] [illegible] [illegible]
[illegible] (3) of the [illegible] ([illegible])
25% features @ 37½ 7/8 days

[illegible] Agreement dated 1/20/36.

[illegible] ivory
[illegible]
([illegible], Inc.)

4918

[redacted]

Forum
or
Morse

Norwalk
Ohio

4 @ 35% 90 days
5 @ 30% 90 "
20 @ 7.5 90 " } 3 acre
11 @ 15 90 " } [illegible]

[illegible]

ACCEPT: ....
(Distributor)

ACCEPT: ....
(Schine Circuit, Inc.)

7000

4919

[illegible]

DEAL SHEET [illegible] 9-7-38.

THEATRE	TERMS
[illegible]	[illegible] 39-40 40-41
[illegible]	[illegible] and/or [illegible]
[illegible]	3 @ 75 5 @ 35 32 @ 17.50 } 2/3 days
[illegible]	Score 7.50 per reel
	per Master Agreement dated 11/20/36

[redacted]

4920

RKO

R37(56)

DEAL SHEET

[illegible] $1.75

THEATRE	TERMS
[illegible]	season 1935-36, 32 [illegible]
[illegible]	[illegible]
Ritz	4 @ 35% 2/3 days
or	5 @ 30% 2/3
Tiffin	12 @ 32.50 2/3
or	19 @ 25. 2/3
Grand	6 others @ 17.50 2/3 days

Tiffin Ohio

[illegible]

E. L. McEvoy

4921

R37(37) x

RKO [redacted]

Signed at Zanesville 9/1/38

[redacted] [redacted]

P.1.4 R37(07) [illegible]

Season 1938-39, 39-40, 40-41.

Pictures released and/or produced.

Van West

4 @ 35% 7/3 days

7 @ $50. 7/3 ” } Score

19 @ $27.50 7/3 ” } $2.50 per run

Van West Ohio

any additional to be $20 - 2 days

6 Others @ $20 2 days } Cancelled as [illegible]

Score $2.50 per run

See Distributor letter dated 11/30/38

ACCEPTED...E. J. McEvoy
(Distributor)

ACCEPTED.........................
(Schine Circuit, Inc.)

7068

4922

[redacted]

Pl. H. Rs N
Seasons 1938-39, 39-40 40-41.
Product released and/or produced.

Wooster or Wayne
Wooster Ohio

4 @ 35% 7/2 days
5 @ 30% 7/2 "
7 @ 25% 1/2 "
7 @ $50. 1/2 "
7 @ $35. 1/2 "
6 others $25. 1/2 "
} above $250 per run

Same Booster Agreement & dated 11/20/36.

ACCEPTED E. L. McElroy (Exhibitor)

ACCEPTED........................
(Schine Circuit, Inc.)

7000

4923

R 3.7(59) x

Report at Louisville - 4/-/38.

R 3.7(59)
4/5/42

Seasons 1938-39, - 39-40, - 40-41.

Product preferred [illegible] [illegible]

ila Cola

Kentucky

Tenn

lling Ttr

Ky

4 - @ 35% 4 WR
5 - @ 20% 3-4.
3 @ 75% 2-4.
11 - @ 100 2-4.
16 - @ 75 2-4.
11 - @ 50 2-4.

Scarce
2nd [illegible]
[illegible]

Sam Moter Appraisal detail
11/30/38.

4924

p. 37 (60) R K O.

DEAL SHEET

[illegible] 9/1/38.

THEATRE	TERMS
	[illegible] 1938-39, 39-40, 40-41.
	[illegible]
Stl. [illegible] or [illegible] Lexington 3rd [illegible]	3 @ $100. 2-3 days } [illegible] 3 @ 75. 2-3 " } $2.50 [illegible] 10 @ 60. 2-3 " Balance equally divided $25 and $60 above $2.50 per run

[illegible] Agreement [illegible] 11/10/3

ACCEPTED............
(Distributor)

ACCEPTED............
([illegible] Inc.)

7071

4925

R-37(61) [redacted] RKO 6/9/41

(11) THEATRE

E. R-37

~~Yuuf~~ 11/3/42

Opera House
or
State
3rd run
O
xington
Ky

TERMS Season 1940-41

Selection 7
4 @ 50 3 days
5 @ 35 2
you'll find out to be applied
against 50 commitment

ACCEPTED Charles Brasberg
(Distributor)

ACCEPTED L. Schine
(Schine Enterprises Corp.)

7072

N

4926

R37([redacted]

[redacted] [redacted]

M. E. R-37(6-3) ~~furtherst~~ 41-1/2 | Season 1938-39, 39-40, 40-41.

Product released and/or produced.

Bourbon

Paris Ky.

5 @ $75 2 days - 93 days $100
5 @ 40 2 "
5 @ 20 1/2 "
15 @ 12 50 1/2 "

Score $2 50 per reel

ACCEPT.................................
(Distributor)

ACCEPT.................................
(Selling Circuit, Inc.)

7073

R.K.O.

DEAL SHEET

R37(63)x

~~(63)~~ Signed at Gloversville 9/17/36

R.37(

THEATRE | TERMS

11.24

~~[illegible]~~

1/13/40

Seasons 1938-39, 39-40, 40-41.

[illegible]

Piqua or [illegible] Ohio

4 @ 35% 7/8 days
5 @ 30% 7/8 "
5 @ $50. 7/8 "
10 @ $37.50 7/8 "
10 @ $25 7/8 "

} Score $2.50 per run

ACCEPT............(Distributor)

ACCEPT............(Schine Circuit, Inc.)

R.K.O.

R37(64) x

REAL SUBJECT

[illegible] at [illegible] 9/17/38.

THEATRE

E4 R37(64) for

!! ~~List~~

4/1/42

TERMS

Seasons 1938-39, 39-40 40-41.

Redistributed and/or produced.

Madison	2 @ $125 3/3 days
or	3 @ $75 3/3 "
State	5 @ $57⁵⁰ 2 "
	10 @ $25. 2 "
Richmond	10 @ $15. 2 "
Ky.	Above $1⁵⁰ per run

ACCEPTED.................................
(Distributor)

ACCEPTED.................................
(Schine Circuit, Inc.)

4929

R.K.O.ˣ R37 (65)

P.L. 4 R-37½

4/2/42

DEAL SHEET

Signed at Seminole 8/1938.

THEATRE	TERMS
	Seasons 1938-39, 39-40, 40-41.

Product released and /or produced.

2 ② 125— 2 3 Same
② 2 3
② 2 3 25
② 2 3 Per
2 3
② 2 3 Fee
15 ②

Same Master Agreement dated 11/30/[illegible]

[redacted]

7076.

4930

X

11/[illegible]/39.

R. K. O.

R37(66)

DEAL SHEET

THEATRE	TERMS			
	Seasons 1939-40, and 1940-41.			
	2	@	$ 60.00	3-6 Days
	4	@	50.00	3-6 "
EAST ROCHESTER	5	@	30.00	3-5 "
(Rialto Theatre)	5	@	25.00	3-5 "
	10	@	17.50	3-6 "
-or-	10	@	15.00	3-6 "
FAIRPORT	Balance	@	12.50	3-6 "
(Temple Theatre)	CLEARANCE: 30 days after first run Rochester			

REPEAT

Selection of 20 pictures:

2	@	$ 25.00	3-6 Days
6	@	20.00	3-6 "
6	@	17.50	3-6 "
Balance	@	12.50	3-6 "

[illegible] 7 days [illegible] 5.00 3-6 Days
[illegible] (flat [illegible]) @ [illegible] 3-6 Days
MARCH OF TIME (separate deal) @ 5.00 3-6 "

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

7077

4931

DEAL SHEET RKO 4/21/41

THEATRE	R37(67) TERMS Season 1940-41
	[illegible]
Ada Arcade	4 @ $20
or	5 @ $15
State	7 @ $12.50
	1 @ $10
Lexington Ky	Selection of 20 [illegible]
4th Ave	

ACCEPTED Charles [illegible]
(Distributor)

ACCEPTED [illegible]
([illegible] Corp.)

7075

4932

★ [illegible] R37(68) 10/24/38

THEATRE [illegible] RKO

Season 1938-39-39-40 - [illegible] 41

4 @ 35% 3 Days

4 @ 175.00 2-3 "

55.00 2-3 "

22 @ 40.00 2-3 "

16 @

Second run percentage [illegible]

[illegible] Free to

[illegible] to be reduced

[illegible]

to 14 Days

ACCEPTED ... Charles [illegible]
(Distributor)

ACCEPTED ...
(Schine Circuit, Inc.)

7070

M.A. R-37([redacted]

R37(69) 11/2/45

DEAL SHEET

R.K.O 3/9/39

THEATRE	TERMS
	Season 1938-39-39-40-40-41
Schine	4- @ 35% 2 da
	8- @ 30^{00} 2 "
Theatres	5- @ 20^{00} 2 "
	5- @ 17^{50} 2 "
	4- @ 15^{00} 2 "
Pikeville	4- @ 12^{50} 2 "
	6 O'Briens 17^{50} 2 da
Ky.	Service 2^{00} per unit

ACCEPTED E. J. McEvoy
(Distributor)

ACCEPTED
(Schine Circuit, Inc.).

T080

4934

DEAL SHEET R. K. O. R 37 (70) /3/38

THEATRE	TERMS
	K. & K. 37 (70)
	[illegible] 1937-39- 37. 10. 4.
[illegible]	4 @ [illegible] -3-4 [illegible]
	5 @ [illegible]
	7 @ [illegible]
U.	11 @ [illegible] 2 [illegible] } [illegible] 50
	12 [illegible] 2 [illegible] 25
	30 2-3 [illegible]
1117	[illegible]

ACCEPTED.......................(Distributor)

ACCEPTED.......................([illegible] Circuit, Inc.)

7061

4935

DEAL SHEET

R37(71) x 10/9/40

THEATRE	TERMS
	RKO - Season 1940-41
Hurlock Md	6 @ 15.00 1 day 1 RK 37(X) 24 @ 10.00 1 ~~[illegible]~~
	The above prices will prevail also for pictures of 1939-40 season played from this date forward. This deal sheet supersedes previous deal sheets

ACCEPTED .... (Exhibitor)

ACCEPTED .... (Selling Company Rep.)

7082

4936

R.K.O. [redacted]

Pd. R-37 ~~Sent~~ 3/14/42

R-37 (

Signed at Gloversville 8/17/38

[redacted] / [redacted]

Seasons 1938-39, 39-40, 40-41.

Product released and/or produced.

Arcade
or
State
Consider
Void.

4 @ 35% 7/3 days
5 @ 35 7/3 "
6 @ 30 7/3
7 @ [illegible]
17 @ 25 7/3

Final Master Agreement dated 11/20/36.

7080

4937

R.K.O [illegible] R37

[illegible]

Regent at Gloversville 9/15/38

[illegible]	[illegible]
	Season 1938-39, 39-40, 40-41.
	Rodeo released and/or produced.
[illegible]	4 @ 35% 1/3 day
	8 @ 1/3 50 1/3
[illegible]	8 @ 37½ 1/3
	10 @ 1/3 1/3

[illegible] 11/20/38

ACCEPTED..........................
(Distributor)

ACCEPTED..........................
(Schine Circuit, Inc.)

7084

4938

O.R.O. [redacted]

Pres

Season 1938-39 - 39-40 - 40-41

Avalon

or

Music Hall

Pastime

Mid

4 @ 35% 2 da

8 @ 40.00 2 "

10 @ 25.00 2 } If Music Hall 12.50

10 @ 15.00 2 }

6 O'Brien 15.00 1-2 da

ACCEPTED C. L. McEvoy [illegible]

ACCEPTED [illegible]
(Schine Circuit, Inc.)

7086

4939

DEAL SHEET R 3 (1:75)

R. K. O. 11/3/38

THEATRE TERMS H. 4. R 37 (75) ~~[illegible]~~ 5/4/40

Season 19 - 1. 37 - 39. 40 - 40, 41

Fea[illegible] 4 - [illegible] = 5% [illegible]

1 - [illegible] 20 [illegible]

10 - [illegible] 17 [illegible]

Fea[illegible] 6 - [illegible] 15 [illegible]

6 - [illegible] Prices 12 1-2 [illegible]

Mid

ACCEPTED... E. M. McCroy

ACCEPTED ....

(Name of Company)

TODD

4940

Exp'd/ms.

DEAL SHEET

x R 37 (76A)

THEATRE	TERMS — (RKO)
	Seasons of 1939-40 and 1940-41.

Ct. # R37 (76A) filed

4		@	$ 40.00	1-2 Days
5		@	30.00	1-2 "
9		@	22.50	1-2 "
12		@	15.00	1-2 "
6	O'BRIENS	@	12.50	1-2 "

Ritz,

GRANVILLE,
[redacted]
N. Y.

Selection of 30 pictures released and/or produced by RKO.

SHORTS

13 MARCH OF TIME	@	$ 5.00	2 Days
15 Two-Reelers	@	4.00	2 "
15 One-Reelers	@	2.00	2 "

~~CLEARANCE: 30 days ahead of Salem.~~

The clearance in Granville over Salem has been eliminated from the RKO contract.

SGND ....
(Distributor)

SGND ....
(Schine Circuit, Inc.)

34

4941

12/[illegible]/39.

R 37(76 8)

[illegible]

3 - 40

DEAL SHEET

THEATRE	TERMS - (RKO)
	Season of 1939-40.
Ritz,	4 @ $ [illegible] 1-2 Days 8 @ 30.00 1-2 " 8 @ [illegible] 1-2 " 8 @ 15.00 1-2 " 8 [illegible] @ 11.00 1-2 "
GRANVILLE, N.Y.	[illegible] and/or [illegible] by RKO.
	SHORTS
	13 MARCH OF TIME @ $ [illegible] 2 Days 18 Two-Reelers @ [illegible] 2 " 18 One Reelers @ [illegible] 2 " 18 Disneys @ 4.00 2 " 52 NEWS @ 4.00 1 Day

CLEARANCE: 30 days ahead of Salem.

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine [illegible], Inc.)

7068

4942

R.K.O. [redacted]

[redacted]

Signed at Gloversville 9/17/38.

[redacted] [redacted]

Seasons 1938-39, 39-40, 40-41.

Product released and/or produced.

Stern

3 @ 90.00 2-3 [illegible] – Service

2 @ 70.00 2 – 2.50

10 @ [illegible] Per

[illegible]

ACCEPTED........................
(Distributor)

ACCEPTED........................
(Schine Circuit, Inc.)

7089

4943

[redacted]

R37 ([redacted]

[redacted] [illegible]

[illegible]

Pl. & R37 (78) [illegible]

9/4/40

THEATRE	TERMS
	Seasons [illegible] and [illegible].
	[illegible] @ $ [illegible] [illegible] Days
[illegible]	[illegible] @ [illegible] [illegible] "
([illegible] [illegible])	[illegible] @ [illegible] [illegible] "
	[illegible] @ [illegible] [illegible] "
	10 @ [illegible] [illegible] "
	Balance @ [illegible] [illegible] "
	[illegible] @ [illegible] [illegible] "

[illegible] After [illegible], [illegible], [illegible], [illegible] and [illegible]. 7 days ahead of other subsequent runs. 4 days ahead of the [illegible] Theatre.

ACCEPTED Charles [illegible]
(Distributor)

ACCEPTED [illegible]
([illegible] Circuit, Inc.)

[illegible]

4944

11/22/39.

x R-37(79)

R.K.O. R-37(79) [illegible]
[illegible]

RKO

DEAL SHEET

THEATRE	TERMS			
	Seasons 1939-40 and 1940-41.			Up
	2	@	$ 125.00	2-3 Days
	2	@	125.00	2-3 "
	6	@	75.00	2-3 "
ROCHESTER (Monroe Theatre)	6	@	45.00	2-3 "
	10	@	33.50	2-3 "
	Balance	@	25.50	2-3 "
	MARCH OF TIME	@	10.00	2-3 "

CLEARANCE: After Riviera, Liberty, State, Dixie and Capitol. 7 days ahead of other subsequent runs. 7 days ahead of Webster Theatre.

ACCEPTED .... Charles Boasberg
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

7091

4945

11/28/39.

R. K. O.

X R 37 (80)

DEAL SHEET

1/ 41 R 37 (80) [illegible]
3/4/42

THEATRE	TERMS			
	Seasons 1939-40 and 1940-41.			
	Selection of 25 pictures			
	7	@	$ 35.00	2-3 Days
ROCHESTER	6	@	25.00	2-3 "
(West End Theatre)	6	@	20.00	2-3 "
	10	@	15.00	2-3 "
	Balance	@	12.50	2-3 "
	MARCH OF TIME	@	5.00	2-3 "

CLEARANCE: Open booking with Arnett Theatre.

ACCEPTED Charles Boasberg
(Distributor)

ACCEPTED
(Schine Circuit, Inc.)

7082

4946

[illegible]

P-37(M)

[illegible]
DEAL SHEET

	Season 1940-1941 P.1 & P 37(M) [illegible]
THEATRE	TERMS Sent 3/4/40
ROCHESTER Webster Theatre	Selection of 30 pictures: 2 @ 40.00 2-3 Days 6 @ 35.00 2-3 " 6 @ 25.00 2-3 " 6 @ 20.00 2-3 " 5 @ 15.00 2-3 " 5 @ 12.50 2-3 " CLEARANCE: Same as last year.

P. A. Elux

Accepted ....
Exhibitor

Approved ....
(Schine Enterprises Corp.)

7093

4947

R. K. O.
DEAL SHEET

4/2/41

R 37 (E2)

Season: 1940-41

[illegible] R 37 (E2) [illegible]

3/4/42

THEATRE	TERMS			
SYRACUSE Palace Theatre	2	@	100.00	2-3 Days
	4	@	60.00	2-3 "
	6	@	40.00	2-3 "
	10	@	25.00	2-3 "
	½ Balance	@	20.00	2-3 "
	½ Balance	@	17.50	2-3 "

CLEARANCE: Ahead of East Syracuse. 7 days after Cameo Theatre.

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Enterprises Corp.)

7094

4948

DATE SIGNED 10/9/40 4.37 (83)

[illegible] (63)

~~[illegible]~~ 3/4/42

THEATRE TERMS

RKO Season 1940-41

Ritz
Salisbury

4 @ 15 2 days
6 @ 12.50 2 "
Bal @ 10.00 2

selection of 20 pictures

may spot book 4 pixes @ 12.50 2 day

may spot book pictures from 1939-40 season at same prices

ACCEPTED [illegible] (Corp)

ACCEPTED Carter
(Sparks Enterprises Corp.)

7065

[fol. 7096]

Exhibit R-42

Schine Theatrical Co., Inc.
General Offices Gloversville, N. Y.

Gloversville, N. Y.,
October 29th, 1934.

Agreement entered into this 29th day of October 1934 and is in addition to any other agreements entered into with Mr. McEvoy between the Schine Theatrical Co., Inc. and or its subsidiaries and the RKO Distributing Corp. whereby it is agreed that on the deal signed for the 1934-35 pictures the following clauses are to become part and parsel of the deal and the approval of the contracts will be an automatic approval of this letter.

1. It is agreed and understood that where any 25% pictures are played as a double bill or with stage shows or vaudeville the pictures are to revert to 15%.

2. It is also understood and agreed that on both the short subject and feature contracts, in towns where we overplay our commitment the monies obtained by playing over the commitment is to be applied dollar for dollar against towns where the commitment is underplayed.

3. It is understood and agreed that if any of the 30% or 35% pictures are played on a midnight show the terms for the midnight show engagement is to be 20%. If any of the 25% pictures are played on a midnight show the terms for the midnight show is to be 15%. In connection with these two clauses it is understood that this midnight show will start between 11:30 and 12:00 Saturday night and is not to be part of the prior performance.

4. It is also understood and agreed that in all towns and situations where the exhibitor has a selective contract that the pictures which he wishes to reject, he will do so not later than 21 days of availability.

5. It is also understood and agreed that the designation of pictures will be given at the time of availability, and the distributor has the right to allocate these said designations.

6. It is also understood and agreed that there will be no score charge on the pictures played on percentage. On the

pictures played at flat rental basis $2.50 is to be deducted from the flat buys in each situation and is to be set up as the score for the run.

[fol. 7097] C. R. Halligan, Branch Manager, RKO, Albany, RKO Distributing Corp. Harry T. Dixon, Branch Manager, RKO, Buffalo, RKO Distributing Corp. George V. Lynch, Schine Theatrical Co., Inc.

[fol. 7098] EXHIBIT R-43

RKO Distributing Corporation

505 Pearl Street, Buffalo, N. Y.

November 1st, 1934.

Mr. George V. Lynch, Schine Theatrical Co., Inc., Gloversville, N. Y.

DEAR GEORGE:

I am enclosing herewith the Master Agreement referred to in your letter of October 31st, to which I have affixed my signature.

I am also inclosing herewith two additional copies of this agreement, to which I would appreciate your affixing your signature and returning to this office immediately.

Kindest regards.

Very truly yours, RKO Distributing Corporation, Harry T. Dixon, Branch Manager.

H.T.Dixon/LPR.
Inc.

[fol. 7099] **Exhibit F-1**

Twentieth Century-Fox Film Corporation
Head Office 444 West 56th Street, New York

Joseph M. Schenck
Chairman of the Board

Sidney R. Kent
President

Branches In All Principal Cities of the World

Telephone Columbus 5-3320. Cable Address, Foxfilm
New York

February 24, 1937.

Mr. George Lynch, Schine Enterprises Corporation, Gloversville, N. Y.

Dear George:

It has just been called to my attention that a typographical error was made on our three year franchise.

The date on the letter should be August 5, 1936, instead of August 5, 1937. Will you please be good enough to change your copies. I have written to all concerned asking them to do likewise.

Thanks and with kindest regards,

Sincerely yours, Bill, William Sussman.

Feb. 25, 1937.

[fol. 7100] August 5, 1936.

Schine Enterprises Corp. and its Subsidiaries and it's Affiliated Companies, Gloversville, N. Y.

Dear Sirs:

We have this day executed and delivered license agreements covering the exhibition of pictures released and produced by us for the seasons of 1936-37 and which also apply to the 1937-38 and 1938-39 seasons, in the theatres owned and/or operated by you in the following towns:

Town	State	Theatres
Athens	Ohio	Athens, Ohio or Court
Piqua	Ohio	Piqua or Miami
Lexington	Kentucky	Kentucky, Ben Ali, Strand, State
Paris	Kentucky	Bourbon
Richmond	Kentucky	Madison, State
Ashland	Ohio	Opera House or Palace
Bucyrus	Ohio	Bucyrus or State

Town	State	Theatres
Mt. Vernon	Ohio	Vine or Lyric
Tiffin	Ohio	Rits or Grand
Van Wert	Ohio	Van Wert or Strand
Wooster	Ohio	Wooster or Opera House
Norwalk	Ohio	Forum
Delaware	Ohio	Strand
Bellefontaine	Ohio	Holland
Auburn	New York	Strand, Jefferson, Palace
Buffalo	New York	Riverside
Buffalo	New York	Granada
Canandaigua	New York	Playhouse
Corning	New York	Fox, State
Corning	New York	State
Cortland	New York	State, Temple
Geneva	New York	Regent, Geneva
Lockport	New York	Rialto, Hi-Art, Palace
Lockport	New York	Hi-Art or Rialto
Newark	New York	Capitol
Oswego	New York	Capitol, Strand
Oswego	New York	Capitol
Rochester	New York	State, Dixie
Rochester	New York	State, Dixie
Rochester	New York	Riviera, Liberty
[fol. 7101]		
Rochester	New York	Liberty, Riviera
Rochester	New York	Lake
Rochester	New York	Grand
Rochester	New York	Cameo
Salamanca	New York	Andrews
Seneca Falls	New York	Strand
Amsterdam	New York	Rialto, Regent, Strand
Amsterdam	New York	Strand, Regent or Rialto
Glens Falls	New York	Rialto, Empire
Glens Falls	New York	Empire
Gloversville	New York	Glove, Hippodrome
Gloversville	New York	Hippodrome
Hamilton	New York	State
Herkimer	New York	Liberty
Hudson Falls	New York	New Strand
Little Falls	New York	Rialto, Hippodrome
Malone	New York	Malone
Massena	New York	Massena
Norwich	New York	Colonia
Ogdensburg	New York	Strand
Oneonta	New York	Oneonta, Palace
Oneonta	New York	Palace
Tupper Lake	New York	State
Watertown	New York	Avon, Olympic
Watertown	New York	Olympic, Palace

Under all said license agreements you have the right to select the number of pictures which you are obliged to exhibit there-under out of the pictures released and produced by us in all the mentioned situations for the seasons of 1936-37, 1937-38 and 1938-39.

You have no obligation to exhibit any foreign made pictures, but you have the right to select them in your feature contracts if you so desire. Said right, however, does not apply to the picture As You Like It starring Elizabeth Bergner.

The following provisions shall apply to all of said license agreements:

1. If any percentage pictures be played on a midnight show, the terms for said midnight show shall be 20% of the gross receipts.

2. It is understood and agreed that you are to get one-half of the Twentieth Centy-Fox product in Glens Falls. The split to be equal in quality and quantity.

3. If any picture played on percentage is played as part of a double bill, you shall have the right to deduct the price of the second feature from the gross receipts before accounting to us for our percentage. Deduction for the second feature shall not exceed the price of the Twentieth Century-Fox Film Corp. flat rental price.

4. If any of the said pictures are played as part of a double bill, the score charge shall be reduced 50%.

[fol. 7102] 5. It is also understood and agreed that the clearance as set up on the contracts of the 1936-37 product are to also apply to the seasons of 1937-38 and 1938-39.

6. Score charges shall only be paid by the Exhibitor if it is generally the custom to make such payments, but if the Twentieth Century-Fox Film Corp. agrees to eliminate score charges to exhibitors generally, then, the Schine Companies to be entitled to the same consideration and the score charges are to be cancelled.

Very truly yours, Twentieth Century-Fox Film Corporation, by W. Sussman, Eastern Division Sales Manager.

Schine Enterprises Corporation, by Geo. V. Lynch.

PLAINTIFF'S EXHIBIT F-102

DEAL SHEET

THEATRE	TERMS
Hamilton	2 @ 7 1 1 22 @ 22

6 week
@ 22

F102

Pl. 4 F102 for Ident 2/1/42

ACCEPTED.......................
Exhibitor

ACCEPTED.......................
Schine Theatrical Co. Inc.

7102

4956

6/17

DEAL SHEET

THEATRE	TERMS
Imperial	Same terms
	6 - @ 35%

✓ F103

ACCEPTED..........................
Distributor

ACCEPTED..........................
Schine Theatrical Co. Inc.

7104

4957

3

DEAL SHEET 6/17/36

THEATRE	TERMS
	Fox
Liberty	2 @ 35% - 2-3 Dr
	6 @ 30% - 2-3 "
Herkimer	20 @ 35% 2-3 "
	18 @ 25% 2-3 "

[illegible]

F104

ACCEPTED

ACCEPTED .... Schine Theatrical Co. Inc.

7108

4958

DEAL SHEET 6/17/3

THEATRE	TERMS
	Fox
Schine	2-@ 75.00 2-3 "
	6-@ 50.00 2-3 "
Hudson	16 @ 25.00 2-3 "
	22 @ 15.00 2-"
Falls	

F105 Pl & F105 [illegible] 11.14

ACCEPTED..........................

ACCEPTED..........................
Schine Theatrical Co. Inc.

7106

4959

DEAL SHEET 6/17/36

THEATRE	TERMS
	Fox
Rialto Little Falls	2 - @ 35% - 2-3 d
	6 - @ 30% - 2-3 "
	20 @ 35% 2-3 "
	18 - @ 30% 2-3 "

F106

Cl. to F106 [illegible]
4/1/42

ACCEPTED [illegible]

ACCEPTED ....
Schine Theatrical Co. [illegible]

7107

4960

DEAL SHEET 6/17/36

THEATRE	TERMS
	Fox
Sekeris	4 - @ 35% - 2-3 Da
	6 - @ 30% - 2-3
Malone	20 @ 35.00 2-3
	16 @ 30.00 2-3

F107

Pl. 4 [illegible]

ACCEPTED..

Co. Inc.

Y108

4961

3

Aug/36

DEAL SHEET

THEATRE	TERMS
lines	4 - @ 35% - 2-3 Da
	8 - @ 30% - 2-3 "
esterns	4 - @ 100 - 2-3 "
	6 - @ 75 - 2-3 "
tkins	Bal @ 50 2-3 "
	77
	Westerns 77 1/3 days

F 108

+9

1/3

21

(a)

7109

4962

Long

DEAL SHEET 6/17/36

THEATRE	TERMS
Hipp Gloversville & Palace Oneonta Repeat 2 yr Ren	Selection 7 — 10 Pictures $50.00 2-3 Wk F109 Cl. & F109 for [illegible] 4/1/42

ACCEPTED........

Distributor

ACCEPTED........

Schine Theatrical Co. In

7110

4963

9

DEAL SHEET

10/27/37

THEATRE	TERMS
Schine Theatres Fostoria Ohio	20th-Century Fox Season 1937-38-38-39
	7- Centers 35% - 2-3 Dr
	4 @ 35% 2-3 "
	8- @ 30% 2-3 "
	12- @ 25% 2-3 "
	Bal @ 25% 2-3 "
	4 Outdoors 25% 2-3 "
	2 Tarzans 45% 2-3 "
	Shorts & News same as previous Deal
	All terms & conditions of Schine Franchise to apply

ACCEPTED:

ACCEPTED: J. Schine
(Schine Circuit, Inc.)

F110

Pl. 4. F110

~~[illegible]~~

11/9/41

7111

4964

X

10/[illegible]/[illegible]. 10

DEAL SHEET
([illegible])

THEATRE	TERMS			
	Seasons [illegible], [illegible] and 1940-41.			
	5	@	[illegible]	2-3 Days
[illegible]	5	@	[illegible]	2-3 "
-or-				
[illegible]	10	@	[illegible]	2-3 "
[illegible]	Balance	@	[illegible]	2-3 "
—				
[illegible]				
	[illegible]			
	[illegible] Singles	@	[illegible]	2-3 Days
	1 [illegible]	@	[illegible]	2-3 "

Fill

Fill

8/6/4

ACCEPTED ....
(Distributor)

ACCEPTED ....
([illegible] Circuit, Inc.)

7112

4965

10/20/46

Twentieth Century-Fox

Watertown

Palace Theatre

Pictures that play the Olympic 2nd run are to play the Palace 3rd run as follows:

6	@	$35.00	2-3 days
Bal.	@	20.00	2-3 "

Score: $2.50 per day; $5.00 per week.

Double features – 50% film expense.

Clearance: 30 days over 2nd run.

F112

Pl. 24 F-N-2

21/42

ACCEPTED .... Distributor

ACCEPTED .... Schine Theatrical Co., Inc.

7113

4966

DEAL SHEET 8/11/3

THEATRE	TERMS
	20th Century Fox 1937-38 - 1938
Auditorium	4 - @ 35% 2-3 DR 12 - @ 75.00 2-3 " 10 - @ 35.00 2-3 " 10 - @ 25.00 2-3 "
Perry	Bal - @ 25.00
N Y	All Terms & Conditions of Franchise to apply to this deal.

F 113

Pl. Ex. F. 113 for ident. 4/14/

ACCEPTED ....
Distributor

ACCEPTED ....
Theatrical Co., Inc.

7114

4967

DEAL SHEET

13
8/11/37 -

THEATRE	TERMS
	20th Century Fox - 1937-38 - 1938-39
Elmwood	4 @ 35% - 2-3 DA 6 @ - 30% - 2-3 " 10 - @ 50^{oo} 2-3 " Bal. @ 35^{oo} 2-3 "
Penn Yan N.Y.	All Terms & Conditions of Franchise to apply to this deal

F114

F-114 for [illegible]

1.1. 84
4/1/42

ACCEPTED..........
Distributor

ACCEPTED..........
Schine Theatrical Co., Inc.

7115

4968

DEAL SHEET

4/21/41

THEATRE	TERMS
	Seasons of 1937-38 & 38-39
	20th Century Fox.
	2 Centuries 175.00 2-3 DA
Capitol	4 - @ 175.00 2-3 DA
	8 - @ 100.00 2-3 "
	12 - @ 37.50 1-2 "
Ilion	22 @ 20.00 1-2 "
	+ Westerns only & 22 pix.
	~~Outdoors Commitment.~~
	News — 6.00 2-3 DA
P.L. 4. F115 ~~Schedule~~ 3 4/1/41	26 - 2 reelers 2-3 DA 5.00
	56 - 1 " 2-3 3.00
F115	~~26-2~~ ~~56-1~~ Score same as schedule & clauses in master agreement to apply.

ACCEPTED: ....
Distributor

ACCEPTED: ....
Schine Theatrical Co., Inc

7116

[7116a]

Exhibit F-193

Schine Circuit, Inc.
General Offices Gloversville, N. Y.

Gloversville, N. Y.,
June 8, 1939.

Schine Enterprise Corp. and its subsidiaries and its
Affiliated Companies, Gloversville, N. Y.

Dear Sirs:

We have this day executed and delivered license agreements covering the exhibition of pictures released and produced by us for the seasons of 1939-40 and which also apply to the 1940-41 and 1941-42 seasons, in the theatres owned or operated by you in the following towns:

Town	State	Theaters
Athens	Ohio	Ohio, Court, Athena
Lexington	Kentucky	Ben Ali, Strand, State
Lexington	Kentucky	Strand, State, Ben Ali (2nd run)
Paris	Kentucky	Bourbon
Piqua	Ohio	Piqua, Miami
Richmond	Kentucky	Madison, State
Harlan	Kentucky	Margie, Grand
Corbin	Kentucky	Hippodrome or Kentucky
Middlesboro	Kentucky	Manring, Brownie
Maysville	Kentucky	Russell, Hollywood, Washington
Ashland	Ohio	Opera House, Palace
Bellefontaine	Ohio	Holland
Bucyrus	Ohio	Bucyrus, State, Southern
Delaware	Ohio	Strand, Star
Fostoria	Ohio	State, Civic, Roxy
Kent or Ravenna	Ohio	Kent or Ravenna
Kent or Ravenna	Ohio	Kent or Ravenna (2nd run)
Mt. Vernon	Ohio	Vine, Lyric
Norwalk	Ohio	Forum, Moose
Shelby	Ohio	Castamba
Tiffin	Ohio	Rits, Grand
Van Wert	Ohio	Van Wert, Strand
Wooster	Ohio	Wooster, Opera House
Auburn	New York	Strand, Jefferson, Palace, Auburn (1st run)
Bath	New York	Babcock (1st run)
Buffalo	New York	Granada (sub. run)
Buffalo	New York	Riverside (sub. run)
Canandaigua	New York	Playhouse

[fol. 7116b-7116d]

Town	State	Theaters
Corning	New York	Fox, State, Palace
Corning	New York	State, Palace (2nd run)
Cortland	New York	State, Temple
Geneva	New York	Regent, Geneva
Lockport	New York	Rialto, Palace
Lockport	New York	Rialto, Hi-Art (2nd run)

Town	State	Theatres
Newark	New York	Capitol
Oswego	New York	Capitol, Strand
Oswego	New York	Capitol (2nd run)
Penn Yan	New York	Elmwood
Perry	New York	Auditorium
Salamanca	New York	Andrews
Seneca Falls	New York	Strand
Amsterdam	New York	Rialto, Regent, Strand
Amsterdam	New York	Strand, Regent (2nd run)
Carthage	New York	Strand
Glens Falls	New York	Rialto or Empire (½ split in Paramount)
Glens Falls	New York	Empire (2nd run)
Gloversville	New York	Hippodrome, Glove
Gloversville	New York	Hippodrome (2nd run)
Hamilton	New York	State
Herkimer	New York	Liberty
Hudson Falls	New York	New Strand
Ilien	New York	Capitol
Little Falls	New York	Rialto, Hippodrome
Malone	New York	Malone
Massena	New York	Massena
Norwich	New York	Colonia
Ogdensburg	New York	Strand
Oneonta	New York	Oneonta, Palace (1st run)
Oneonta	New York	Palace (2nd run)
Saranac Lake	New York	Pontiac
Tupper Lake	New York	State
Watertown	New York	Avon, Olympic
Watertown	New York	Olympic, Palace
Cambridge	Maryland	Arcade, State
Easton	Maryland	Avalon, Music Hall
Federalsburg	Maryland	Federal
Laurel	Delaware	

Under all said license agreements you have the right to select the number of pictures which you are obliged to exhibit thereunder out of the pictures released and produced by us in all the mentioned situations for the seasons of 1939-40, 1940-41 and 1941-42.

The following provisions shall apply to all of said license agreements:

1. If any percentage pictures be played on a midnight show, the terms for said midnight show shall be 20% of the gross receipts.

[fol. 7116e] 2. If any picture played on percentage is played as part of a double bill, you shall have the right to deduct the price of the second feature from the gross receipts before accounting to us for our percentage. Deduction for the second feature shall not exceed the price of the Twentieth Centy-Fox Film Corp. flat rental price.

3. If any picture played on percentage is played in conjunction with "Bank Night" or similar attractions, you shall have the right to deduct the actual cost of the operation of

such attartcion from the gross receipts and before accounting to us for our percentage.

4. If any picture played on a flat rental basis is held over for extra days' playing time, then the film rental for such extra days shall be one-half of the per diem rate.

5. It is agreed that in the two house situations the Exhibitor commits himself to 100% of the product released and produced by the Twentieth Century-Fox Film Corp.; and in the one house towns it is agreed that the Exhibitor commits himself to 46 pictures out of the 52 released and produced by the Twentieth Century-Fox Film Corp.

6. You have no obligation to exhibit any foreign made pictures, but you have the right to select them in your feature contracts if you so desire.

7. It is agreed that the payment made to Twentieth Century-Fox Film Corp. on their short product will be made in the same manner as payment was made during the season 1938-39.

8. It is understood and agreed that the Schine Enterprises Corp. are to get one-half of the Twentieth Century-Fox Film Corp. product in Glens Falls. The split to be equal in quality and quantity.

Very truly yours, Twentieth Century-Fox Film Corporation, by W. Sussman, Eastern Division Sales Manager.

Schine Enterprises Corporation, by Geo. V. Lynch.

[fol. 7117] Exhibit C-100

Schine Theatrical Enterprises

Gloversville, N. Y.,
October 17, 1938.

It is understood and agreed that the following clauses are to become part and parcel of the Columbia contracts for the 1938-39 and 1939-40 seasons.

Clause No. 1

If pictures allocated at 35% and 30% are double billed, the cost of the second feature is to be deducted from the gross receipts before computing film rental to the Distributor.

Clause No. 2

On the 35% pictures they are to revert to 30%, if the gross receipts (after deduction of cost of double bill or bank night) do not reach the 35% reversion figures indicated on the attached Schedule A. On the 30% pictures they are to revert to 25%, if the gross receipts (after deduction of cost of double bill or bank night) do not reach the 30% reversion figures indicated on the attached Schedule A.

Clause No. 3

On the 25% pictures, if they are played with vaudeville or double billed, terms to be 20%. On the 20% pictures, if they are played with vaudeville or double billed, terms to be 15%.

Clause No. 4

Any percentage pictures played on midnight show that starts at 11:30 or 11:45 P. M. as an entirely new show, terms to be 15% for such midnight showing. Any flat rental pictures that play on midnight show that starts at 11:30 or 11:45 P. M. as an entirely new show, terms to be at the 50% per diem rate, if the midnight show is in excess of the contracted number of days.

Clause No. 5

On flat rental pictures and shorts, if they are used additional days, payment is to be made for each additional day at the 50% per diem rate.

Clause No. 6

If a Bank Night is had during the percentage engage- [fol. 7118] ment, the cost of the Bank Night is to be deducted from the entire gross receipts, cost of which is not to exceed the original amount at the start of the Bank Night.

Clause No. 7

It is understood and agreed that on both the short subjects and feature commitments, in towns where we overplay our contracted commitment, the monies obtained by playing over the commitment is to be applied dollar for dollar against some towns where the commitment is underplayed. The above privilege of overage and underage is limited within the respective zones identified as Albany, Buffalo, Cleveland, Cincinnati and Washington Zones.

Clause No. 8

This agreement covers all towns for which deal sheets have been signed.

Geo. V. Lynch, Schine Interprises Corp.

Louis Weinberg, Columbia Pictures Corp.

[fol. 7119]

Exhibit C-101

Columbia Pictures Corporation
729 Seventh Avenue
New York

November 28th, 1938.

Schine Enterprises Corporation, Gloversville, N. Y.

Attention Mr. George Lynch

Gentlemen:

In order to eliminate the necessity of drawing up and executing individual contracts for each situation and theatre in your circuit for our 1938-39 and 1939-40 product, it is agreed as follows:

1. The complete deal shall consist of—

(a) The deal sheets dated Oct. 17, 1938 and signed by myself for Columbia and by your Mr. George Lynch for Schine;

(b) All the terms, provisions and conditions of the Columbia form of exhibition contract, a copy of which is attached hereto;

(c) The eight clauses contained in a two page typewritten agreement between you and us dated October 17, 1938.

In the event the Columbia form of exhibition contract is inconsistent with the provisions specified in the typewritten agreement dated October 17, 1938, then it is agreed that the provisions of the typewritten agreement shall prevail and apply.

2. In the event we shall enter into any deal for any additional theatre other than those heretofore agreed upon between us, then it is agreed that you and we shall execute a deal sheet with respect thereto, and automatically the terms, provisions and conditions of the Columbia form of exhibition contract and the October 17, 1938 typewritten agreement shall apply.

It is agreed that your acknowledgment of this letter together with the deal sheets, the Columbia form of exhibition contract and the October 17, 1938 typewritten agreement shall constitute the entire agreement between us.

Will you be kind enough to acknowledge your understanding hereto by signing your name on the duplicate copy attached hereto and return same to us.

Sincerely yours, Columbia Pictures Corporation, by
Louis Weinberg.

Schine Enterprises Corporation, by Geo. V. Lynch.
LW:FR.

PLAINTIFF'S EXHIBIT C-102

10 - (1) ~~[illegible]~~

1 - C 102 (1) 4/2/42

Xi

DIST. SHEET Columbia

10/17/—

THEATRE	TERMS
	Seasons 1938 - 39 - 1940
[illegible]	pictures [illegible]
Palace	excepting [illegible] for [illegible]
Auburn	2 @ 100 / 3 days
N.Y.	4 @ 50 / 3
Second run	8 @ 35 / 3 : [illegible] 25
	You Can't Take it With You
	1 @ 100. / 3 days

ACCEPTED .... (Distributor)

ACCEPTED .... ([illegible])

4976

C 102 (2) & 1.1 of C 102 (2) [illegible]

DEAL SHEET

Columbia

THEATRE	TERMS
	[illegible] 11 10 [illegible]
[illegible]	Pictures released and/or produced excepting "Specials" [illegible] 5 @ 60.00 [illegible] 6 - @ 35.00 [illegible] 4 - @ 25.00 2-3 11 Westerns @ 15.00 1-2 [illegible]
Bath	
H.	
	[illegible]

ACCEPTED .... (Distributor)

ACCEPTED .... (Schine Circuit, Inc.)

7121

4977

10/17/39

C-102(3)
K

N.Y. C-102(3)
~~[illegible]~~
4/4/42

DEAL SHEET

Columbia

THEATRE	TERMS
	Seasons of 1938-39 and 1939-40.
anada Buffalo N.Y.	Pictures released and/or produced excepting "Capras" for each season. 2 @ 100.00 2-3 Dr 3 @ 75.00 2-3 " 10 @ 50.00 2-3 " 8 @ 25.00 2-3 " Day & Date with Riverside & If sold to Shea's McPark Kensington & Bailey theatres pictures will be played same as last year Clearance: Same as last year.

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

7122

4978

DEAL SHEET

Columbia C102(4)x

THEATRE &	TERMS
	Seasons of 1938-39 and 1939-40.
	Pictures released and in [illegible] excepting Capra's
Riverside	2 @ 125.00 2.3 days
	3 @ 75.00 2.3 "
	7 @ 60.00 2.3 "
Buffalo	11 @ 40.00 2.3 "
N.Y.	
	Clearance [illegible]

ACCEPTED .... (Distributor)

ACCEPTED .... (Schine Circuit, Inc.)

7128

4979

10/[illegible]

C102(5) [illegible] C102(6)

~~[illegible]~~

4/2/42

DEAL SHEET

[illegible]

THEATRE	TERMS
	Seasons of 1938-39 and 1939-40
Playhouse Canandaigua	Pictures released [illegible] exceeding [illegible] per week each season 2 @ 75 [illegible] 6 @ 40 [illegible] 7 @ 25 [illegible] 4 Westerns 15 1-2 [illegible]

Clear [illegible]

ACCEPTED [illegible]
(Distributor)

ACCEPTED [illegible]
(Schine Circuit, Inc.)

7124

4980

10/7/3

C102(6)

DEAL SHEET

Columbia X P.H.C10

THEATRE	TERMS
	Season of 1938-39 and 1939-40.
	Pictures released and/or produced excepting Capras for ~~the~~ each season.
State & Temple	2 - @ 35% - 2-3 Da
	4 - @ 30% - 2-3 "
	10 - @ 50.00 2-3 "
	10 - @ 30.00 2-3 " } 4 Temple 20.00 - 2-3 Da
	12 - Westerns 75.00 2-3 Da
State Cortland	
N.Y.	Clearance: Same as last year.

ACCEPTED J. Milton Salzburg
(Distributor)

ACCEPTED
(Schine Circuit, Inc.)

7125

4981

10/17/41. 9

C 102 (7)

DEAL SHEET

Colum[illegible] [illegible] C 102 (7) ~~[illegible]~~

4/4/42

THEATRE	TERMS
	[illegible] 14 [illegible]
	Pictures all each and [illegible] produced except [illegible] for each season.
Geneva	2 [illegible]
	7 [illegible]
	7 [illegible]
Penn [illegible]	10 [illegible]
	1[illegible] [illegible]
[illegible]	[illegible]

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

7126

4982

DEAL SHEET

Columbia C102(8X

THEATRE	TERMS
	P. [illegible]
	[illegible] 10 [illegible]
	[illegible]
Lockport	2 @ 25% [illegible]
	4 - @ 30% [illegible]
	4 - @ 7.50 [illegible]
[illegible]	4 - @ 10.00 [illegible]
	6 - @ 25.00 [illegible]
a	10 [illegible]
[illegible]	12 West [illegible]
a	
[illegible]	Clearance [illegible]

ACCEPT [illegible] (Distributor)

ACCEPT [illegible] (Schine Circuit, Inc.)

7127

4983

C 102 (9)

DEAL SHEET

THEATRE	TERMS
[illegible]	[illegible]
[illegible]	4 @ 75 [illegible] 6 @ 17 50 [illegible]

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

4984

10/17/38

C 102 (10) A

All & C-102 (10)

~~[illegible]~~

4/2/42

DEAL SHEET

Columbia

THEATRE	TERMS
	Seasons of 1938-39 & 1939-40.
	Pictures released and/or produced excepting Capra [illegible] specials.
Capitol	2 @ 75 / 3 days.
Newark	6 @ 40 / 3.
x 4	2 @ 25 / 3.

Clearance same as last year.

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

7120

4935

10/17/31

C 10 2 (11)
x

C 102 (11)

DEAL SHEET

Columbia

THEATRE	TERMS
	Season of 1931-32 [illegible]
Strand or Capitol Oswego N.Y.	Pictures which [illegible] [illegible] for each [illegible] 2 @ $175 [illegible] [illegible] [illegible] 5 4 @ 35 10 @ 25. 16 Westerns 1 day 20 2 " 30
	Clearance [illegible]

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

7130

4986

10/7/38

C 108 (12)

DEAL SHEET

Columbia

THEATRE	TERMS
	Seasons of 1938-39 & 1939-40.
	Pictures released as a group [illegible] excepting Capra's for each season.
Elmwood	2 @ $50. 7/3 days
Penn Yan	6 @ $35. 7/3
N.Y.	7 @ $25. 7/3
	4 Westerns @ $15 1/2 days
	Clearance: Same as [illegible]

ACCEPTED .... (Distributor)

ACCEPTED .... (Schine Circuit, Inc.)

7131

4987

10/17/[illegible]

C102 (13)

[illegible] C 102 (13 [illegible] 4/[illegible]/42

DEAL SHEET

Columbia

THEATRE	TERMS
	[illegible] 1938-39 [illegible] 1939-42.
	[illegible]
	[illegible]
Auditorium	2 @ $60. 7/3 days
	4 @ 35. 7/3 "
Perry	18 @ 20. 7/3 "
	4 Westerns 12.50/2 days
N.Y.	
	[illegible]

ACCEPTED [illegible]
(Distributor)

ACCEPTED [illegible]
(Schine Circuit, Inc.)

7132

4988

10/17/38

C 102 (14)

P. & C. 102 (14)

~~for Deal~~ 4/2/42

DEAL SHEET

Columbia

THEATRE	TERMS
	Seasons of 1938-39 and 1939-40.
Comeo Rochester	Pictures released and/or produced excepting Capra for each season.
	2 @ 60 - 2/3 days
	6 @ 35 - 2/3 days
	4 @ 17.50 - 2/3 days
	6 @ 12.50 - 2/3 days
	Immediately after [illegible]; Madison & Monroe theatre
	Clearance: Same as last year

ACCEPTED .... (Distributor)

ACCEPTED .... (Schine Circuit, Inc.)

4989

C 1302 (15) [illegible] ~~[illegible]~~

DEAL SHEET

Columbia N.Y. C 1302 (15) See Sheet

4/2/42

THEATRE	TERMS
	Season of 1938-39 & 1939-40.
	Pictures allocated and/or [illegible] excepting Capra for ~~[illegible]~~ each season.
Strand	2 @ $35. 7 3 days
	4 @ 25 7 3
Rochester	6 @ 17 50 7 3
	14 @ 15 00 7 3
	10 Shorts 1/4 of terms @ 12 50 [illegible]
	Impracticality of [illegible] Open [illegible] Producer [illegible] the [illegible] Open Booking with Strand
	Clearance: Same as last year.

ACCEPTED .... (Distributor)

ACCEPTED .... (Schine Circuit, Inc.)

7134

4930

10/7/38.

C102(16)

DEAL SHEET

Columbia

Ex C-102(16) [illegible] 4/2/42

THEATER	TERMS
Lake Rochester N.Y.	Seasons of 1938-39 & 1939-40 ✕ Pictures released during [illegible] [illegible] excepting [illegible] for ~~[illegible]~~ [illegible] [illegible] 2 @ 40. 7/3 days. 6 @ 22.50 7/3 18 @ 15.00 7/3 4 [illegible] [illegible] 12.50 7/3 days immediately after [illegible] Madison & Monroe theatres Clearance same as last year.

ACCEPTED .... (Distributor)

ACCEPTED .... (Schine Circuit, Inc.)

7135

4991

C102(17) 10/17/38 109

DEAL SHEET

Columbia Pl. & C. 102(17)

4/2/42 X

THEATRE	TERMS
Cinema or Liberty Rochester N.Y.	Season of 1938-39 and 39-40. Pictures released and/or produced excepting [illegible] for each season 2 @ 175 7 days 6 @ 62.50 7 days 14 @ 40. 7 days Second run 21 days over subsequent runs Same clearance as set up on 1937-38 contracts

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

7136

4932

C102(18) 10/7/38

DEAL SHEET

Columbia M.E. C102(1

4/2/42

THEATRE	TERMS
	Seasons of 1938-39 and 1939-40.
	Pictures released and produced excepting Capra's for ~~1st~~ season.
Liberty Rochester (Repeat)	2 @ $50 7/3 days 10 @ 37.50 7/3 " to be played within 21 days clearance of Riviera Second Run Same Clearance as set up on 1937-38 Contract

ACCEPTED James Stribling (Distributor)

ACCEPTED J. Myers (Schine Circuit, Inc.)

7137

4993

DEAL SHEET

Columbia C102(19) 10/7/38

THEATRE	TERMS
State or Dixie Rochester	P.T.C 102(19) ~~[illegible]~~
	Seasons of 1938-39 and 1939-40
	Pictures played in and/or [illegible] excepting Capra for [illegible]
	2 @ 80% [illegible]
	6 @ 50 [illegible]
	12 @ 25 & 7/3 [illegible]
	Second run
	[illegible]
	Same clearance [illegible]
	On 1937-38 contract

~~Stricken~~ 4/2/42

ACCEPTED.............................
(Distributor)

ACCEPTED.............................
(Schine Circuit, Inc.)

7138

DEAL SHEET

Columbia C 102 (70)

THEATRE	TERMS
	Seasons of 1938-39 and 1939-40.
State or Dixie Rochester (Repeat)	Pictures released and/or produced excepting Capras for each season. 2 @ 40% 1/3 [illegible] 10 @ 30% 1/3 [illegible] to be played within the 21 days [illegible] Dixie Second run Same Clearance as on 1937-38 Contract

ACCEPTED..........(District Manager)

ACCEPTED..........(Schine Circuit, Inc.)

C102(21) 10/17/38

DEAL SHEET

Columbia

p1 H. C102(21) ~~de~~ ~~sheet~~ 11/2/42

THEATRE	TERMS
	Seasons of 1938-39 and 1939-40.
	Pictures released and/or produced excepting Capra's for each season
Andrews	2 @ $85. 7 days
Salamanca	6 @ $45 7 "
N.Y.	4 @ $27.50 7 "

Commencing Sunday each year.

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

7140

4996

C 102 (22) 10/17/38

Pl. 4 C. 102 (22) f[illegible] ~~[illegible]~~ [illegible]

DEAL SHEET

Columbia

THEATRE	TERMS
	Seasons of 1938-39 and 1939-40.
Strand Seneca Falls N.Y.	Pictures released and/or produced excepting Capra's for ~~this~~ that season. 2 @ $50. 73 days 6 @ 25. 73 7 @ 17^{50} 73

Clearance: Same as last year

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

7141

10/17/38

C102(23)

DEAL SHEET

Columbia PH C 102(23) Circuit

THEATRE	TERMS
	Buffalo Territory

In the following towns the deal on "You Can't Take it With You" is to be 40% of the gross

Fox - Corning - 2 days

State - Cortland 2/3 "

[illegible] - Elmira 2/3 "

Palace - Lockport 2/3 "

Strand - [illegible]

In the following towns the deal on You Can't Take it With You is to be as follows

			$
Batavia	2/3	days -	100.00
Buffalo	Granada 2/3	"	200.00
"	Riverside 2/3	"	250.00
Canandaigua	2/3	"	150.00
Lockport (2nd run)	2/3	"	100.00
Newark	2/3	"	150.00
Penn Yan	2/3	"	135.00
Bath	[illegible]	"	125.00
Salamanca	2/3	"	100.00
Seneca Falls	2/3	"	50.00

Clearance same as listed on contract 238-9 [illegible]

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

4998

12/7 38

DEAL SHEET

Columbia

THEATRE | TERMS Buffalo Territory

In the following theatres in Rochester N.Y. the deal on "You Can't Take it with You" is to be as follows:

Riviera (2nd Run)	3/4 days –	$300.00
Liberty (Upper ... Run)	3/4 days –	125.00
Dixie (2nd Run)	3/4 days –	200.00
State (Upper ... Dixie)	3/4 days –	125.00
Cameo	2/3 days –	80.00
Grand	2/3 days –	70.00
Lake	2/3 days –	80.00

Clearance: Same as last year or the Contract for the 1938-9 season.

Little Thea
at 35 admission

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

7143

4999

C 10 2 (24) 10/19/38 [illegible]

[illegible] C 102 (24)

~~[illegible]~~

[illegible]

DEAL SHEET

C[illegible]

THEATRE	TERMS
✕	Season of 1938-39 and 1939-40.
	Pictures to be [illegible] produced & [illegible] Copied for [illegible]
Rialto	2 - 35% - 2-3 DR
"	4 - 30% 2-3
Strand	3 - 25% 2-3 "
"	3 - 20% 2-3 "
Regent	10 - @ 75.00 2-3 "
[illegible]terdam	10 - @ 50.00 2-3
	12 Westerns 50.00 2-3 DR
	[illegible]

Clearance [illegible]

[illegible] Inc.)

7244

5000

C 102 (25) 10/17/38 N

DEAL SHEET

Columbia P.K.C. 102 (25) ~~[illegible]~~ 4/2/40

THEATRE	TERMS
	Seasons of 1938-39 and 39-40.
X	Pictures released and/or produced excepting Capitol following season
Capitol	2 - @ 30.00 2-3 Da 6 - @ 20.00 2-4 " 7 - @ 12.50 2-3 "
Balston	
	Clearance same as last year.

ACCEPTED..........................
(Distributor)

ACCEPTED..........................
(Schine Circuit, Inc.)

7146

C 102 (26) 10/17/38 [illegible]
[illegible]

DEAL SHEET

Columbia

THEATRE	TERMS
	Season of 1938-39 and 1939-40
Strand Carthage N.Y.	X [illegible] [illegible] 2 @ 60.00 2-3 or 4 @ 40.00 2-3 " 6 @ 30.00 2-3 " 8 @ 15.00 2-3 " 8 Westerns 15.00 [illegible]

ACCEPTED..............................
(Distributor)

ACCEPTED..............................
(Schine Circuit, Inc.)

7148

5002

C102(27) [illegible]

DEAL SHEET

Columbia [illegible]

THEATRE	TERMS
	Season of [illegible] and [illegible]
	Pictures released and/or produced excepting Capra [illegible]
Rialto or Empire Glens Falls N.Y.	2 @ 35% 2-3 Da
	4 @ 30% 2-3
	3 @ 25% 2-3
	3 @ 20% 2-3
	8 @ 75.00 2-3
	20 @ 40.00 2-3
	16 Westerns $20.00 2-3 Da [illegible]
	Clearance: Same as [illegible]

Privilege of playing 10 Pictures @ [illegible]

ACCEPTED .... (Distributor)

ACCEPTED .... (Schine Circuit, Inc.)

7147

5003

C102 (28)

10/17/38 RD

C102.28

~~[illegible]~~

11/2/42

DEAL SHEET

Columbia

THEATRE	TERMS
	Seasons of 1938-39 and 1939-40
Empire Glens Falls N.Y. Second Run	Pictures released and/or generalised excepting 6 pics for each season. 4 @ 30.00 - 2/3 days 10 @ 17.50 - 2/3 " Clearance: same as last year.

ACCEPTED.............................
(Distributor)

ACCEPTED.............................
(Schine Circuit, Inc.)

7148

1717[illegible]
Rl. & C-102(28)
~~forfeited~~
4/2/42

DEAL SHEET

Columbia C102(29)

THEATRE	TERMS
Glove or Hippodrome Gloversville N.Y.	Seasons of 1938-39 & 1939-40. Pictures released & be produced excepting Capra for each season. X 2 @ 35% - 1/2 days 4 @ 30%. 1/2 " 4 @ 85.00 1/3 " 6 @ 75.00 1/3 " 10 @ 35.00 1/2 Privilege of repeating 4 @ 50.00 - 1/2 days of Hipp. balance 35.00 1/2 days 12 Westerns @ 35.00 1/2 " Clearance: None [illegible] set [illegible]

ACCEPTED .... (Distributor)

ACCEPTED .... (Schine Circuit, Inc.)

DEAL SHEET

Columbia — G10% (30)

10/ [illegible]

H ½ C 10% (30)

THEATRE	TERMS.
	Season of 193[illegible]
	Pictures [illegible]
	excepting [illegible]
State	2 @ 65.00 2/3 days
	4 @ 35.00 2/3 "
Hamilton	6 @ 25.00 2/3
NY	8 @ 15.00 2/3
	Allowance: [illegible]

ACCEPTED.................... (Distributor)

ACCEPTED.................... (Schine Circuit, Inc.)

5006

DEAL SHEET

Columbia C102 (31) 10/[illegible]

THEATRE	TERMS
	Season of 193[illegible] [illegible]
	Pictures [illegible] excepting [illegible]
Liberty Herkimer NY	2 @ 100.00 2/3 day 2 @ 75.00 2/3 6 @ 50.00 2/3 5 @ 30.00 2/3

Clearance: [illegible]

ACCEPTED.................. (Distributor)

ACCEPTED.................. (Schine Circuit, Inc.)

5007

DEAL SHEET Columbia C102(32) 10/17/32

~~[illegible]~~ C102(32) 4/2/42

THEATRE	TERMS
	Season at [illegible] 2

[illegible] and [illegible] produced [illegible] for each season.

Strand	2	@ $45.00	7/3 days
	6	@ 35.00	7/3
Hudson Falls N.Y.	12	@ 15.00	7/3 "

Clearance same as last year.

ACCEPTED............
(Distributor)

ACCEPTED............
([illegible], Inc.)

7182

5008

DEAL SHEET

Columbia C108(33) 10/17/38

Sh. 4 C-102(33) 4/4/42

THEATRE	TERMS
	Seasons of 1938-39 and 1939-40
	Pictures released and/or produced excepting Capra for each season.
Capitol	2 C 80.00 2/3 days
	4 C 60.00 2/3 "
Ilion	8 C 25.00 2/3 "
	12 C 20.00 2/3 "
N.Y.	6 Westerns C 17.50 1/2 "

Clearance: [illegible]

ACCEPTED.................................
(Distributor)

ACCEPTED.................................
(Schine Circuit, Inc.)

7183

DEAL SHEET

Columbia 6102(34)

THEATRE	TERMS
	f. Z. = 10.2.34 [illegible]
	Season of 1934-35 [illegible]
	[illegible]
	[illegible]
ialto X	2 @ 75.00 2/3 days
	4 @ 50.00 2/3 "
~~Hippodrome~~	6 @ 30.00 2/3 "
	12 @ 20.00 2/3 "
Little Falls	12 Westerns @ 20.00 1/2 "
N.Y.	

[illegible]

ACCEPTED............................
(Distributor)

ACCEPTED............................
(Schine Circuit, Inc.)

5010

DEAL SHEET

[illegible] C10 [illegible]

THEATRE	TERMS
	Seasons of 1938-39 and 1939-40
	Pictures released in and/or [illegible] excepting Capra for [illegible]
Malone Malone N.Y.	X 2 @ 85.00 2/3 days 6 @ 40.00 2/3 " 7 @ 20.00 2/3 " 12 Westerns @ 15.00 1/2 "
	Clearance same as last [illegible]

ACCEPTED.................................
(Distributor)

ACCEPTED.................................
(Schine Circuit, Inc.)

DEAL SHEET

Columbia C102(36) 10/7/36

THEATRE	TERMS
State Mechanicsville NY	Season of 1936-37 as follows. Returns allowed on all pictures excepting Capra pic each season. * 2 C 75.00 2/3 days 6 C 40.00 2/3 " 7 C 22.50 2/3. " Clearance same as last year

P/4 C102(36)

J. 4/2/42

ACCEPTED.......................
(Distributor)

ACCEPTED.......................
(Schine Circuit, Inc.)

5012

DEAL SHEET

Columbia C102(37) 10/7/38

THEATRE	TERMS
	Seasons of 1938-39 and 1939-40.
	Pictures released and/or produced excepting Capra for each season
Colonia	3 @ $100.00 7/3 days
	3 @ 75.00 7/3 "
	3 @ 50.00 7/3 "
Norwich	3 @ 35.00 7/3 "
N.Y.	6 ③ @ 25.00 7/2
	Clearance: Same as last year.

ACCEPTED.................... (Distributor)

ACCEPTED.................... (Schine Circuit, Inc.)

7157

5013

Columbia C102

THEATRE	TERMS
	C.102 (38)
	Season of 1938-39 and 1939-40 [illegible] 4/2/42
	✗ Pictures released and/or [illegible] excepting Capra [illegible]
Strand Ogdensburg N.Y.	2 @ $100.00 2/3 days 4 @ 50.00 2/3 " 11 @ 35.00 2/3 " 4 Westerns @ 22.50 1/2 "
	Clearance [illegible]

ACCEPTED Lowenberg
(Distributor)

ACCEPTED [illegible]
(Schine Circuit, Inc.)

7188

5014

C102 (39) 10/17/38

DEAL SHEET

Columbia

P.C.H. C 102 (39) foreclosed 4/2/42

THEATRE	TERMS
	Season of 1938-9 and 1939-40
	Pictures released and/or produced excepting Capras for each season
Oneonta & Palace	2 @ 35% - 2/3 days
	4 @ 30% 2/3 "
	4 @ 50.00 2/3 "
	7 @ 30.00 2/3
	12 @ 25.00 2/3 "
Oneonta	16 Westerns @ 25.00 1/2 "
N.Y.	
	clearance: same as last year

ACCEPTED .... (Distributor)

ACCEPTED .... (Schine Circuit, Inc.)

T159

15015

10/17/38

C102(40)

DEAL SHEET

Columbia R# C102(40) for ~~[illegible]~~ 1/2/42

THEATRE	TERMS
	Season of 1938-39 and 1939-40.
	Pictures, released and/or produced [illegible] Company's each season.
Pontiac Saranac Lake N.Y.	2 @ 75.00 - 2/3 days 4 @ 50.00 - 2/3 " 11 @ 35.00 - 2/3 "
	Clearance: same as last year

ACCEPTED............................
(Distributor)

ACCEPTED............................
(Schine Circuit, Inc.)

7160

10/17/38

C 102 (41)

P.C. & C-102 (41) for
4/2/42

Columbia

DEAL SHEET

THEATRE	TERMS
	Season of 1938-39 and 1939-40
State Tupper Lake N.Y.	Pictures released and/or produced excepting Capras for each season
	2 @ $50.00 2/3 days
	4 @ 35.00 2/3 "
	6 @ 25.00 2/3 "
	6 @ 15.00 2/3 "
	6 Westerns @ 10.00 1/2 "
	Clearance: Same as last years

ACCEPTED .... (Distributor)

ACCEPTED .... (Schine Circuit, Inc.)

716X

DEAL SHEET

Columbia C102(42) 10/17/38

R-E. C 192 (42)

4/2/42

THEATRE	TERMS
	Season of 1938-39 and 1939-40.
	Pictures released and/or produced
	excepting ([illegible]) for each season.
Avon	2 @ $250.00 2/3 days
or	2 @ 150.00 2/3 "
Olympic	3 @ 100.00 2/3 "
Watertown	3 @ 85.00 2/3 "
N.Y.	6 @ 75.00 2/3 "
	8 @ 35.00 2/3 "
	12 Westerns @ 25.00 2/3 "

Clearance: [illegible]

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

5018

[illegible]

C102 (43)

~~C102 (43)~~ [illegible]

DEAL SHEET

Columbia

THEATRE	TERMS
	Season of 1938-39 and 1939-40.
	Pictures released subject to conditions excepting Capra [illegible]
Olympia or Palace	2 @ 25.00 - 2/3 days 8 @ 22.50 - 2/3 bal @ 17.50 - 2/3
Watertown (2nd Run)	
	Pictures that play Avon 1st Run to be played 2nd Run at Olympia or Palace
	Clearances fixed in Contracts.

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

7163

5019

10/9/38

C102 (44)

DEAL SHEET

Columbia [illegible] C-102 (44) ~~[illegible]~~

4/2/42

THEATRE	TERMS
	[illegible] 1939-40.
	[illegible]
Capitol X Whitehall NY	27 @ 35.00 2/3 days 6 @ 22.00 2/3 " 7 @ 15.00 2/3 "

[illegible]

ACCEPTED.......................................
(Distributor)

ACCEPTED.......................................
(Schine Circuit, Inc.)

7164

5020

DEAL SHEET

Columbia C102 (95) 12/17/38.

M-K C102 (40

4/2/40

THEATRE	TERMS
	Seasons of 1938-39 and 1939-40.
	Pictures released and/or produced excepting Capra for each season.
Avalon	4 @ 40^{00} 2-3 DR
	4 @ 35^{00} 2-2 "
or	10 @ 25^{00} 2-3 } if Music Hall 12^{50}
	12 @ 22^{50} 2-3 }
Music	10 Westerns @ 15^{00} 2 DR
	6 " @ 12^{50} 2 "
Hall	Shorts same as present deal excepting repeat deal 3 out of 4 serials 4^{00} 2 DR
Castro	Reissues: Same as last year.
Md.	

Weinberg
ACCEPTED..........
(Distributor)

ACCEPTED..........
(Sabine Circuit, Inc.)

T108

5021

C102(46)

DEAL SHEET OF Columbia ff. 4 C102 (46) ~~[illegible]~~

4-/42

THEATRE	TERMS
	Season [illegible]
	Pictures released and/or [illegible] excepting [illegible] for each ~~[illegible]~~ picture.
Federal ✓ Federalsburg Md	Same deal as last with former owners
	Clearance: [illegible]

ACCEPTED J. Weinberg
Distributor

ACCEPTED
(Schine Circuit, Inc.)

7188

5022

DEAL SHEET

Circuit C102 (47) 10/17/38

THEATRE | TERMS

Pl. of C 102 (47)

Seasons of 1938-39 and 1939-40.

4/2/42

Pictures released and/or produced excepting Ciphers for each season

Hurlock

Same deal as set with former owner.

Hurlock Theatre

Md

Clearance: Same as last year.

OFFERED .... Louis Hurley (Exhibitor)

ACCEPTED .... (Schine Circuit, Inc.)

T167

5023

DEAL SHEET

Columbia C 10 2 (48)x 7/17/50 [illegible]

THEATRE | TERMS

Pl. Ex. C-10-2 (45) for ident. 4/2/42

Season of 1938-39 and 1939-40.

Pictures released and/or produced excepting Capra for each season.

Arcade

or

[illegible]

Salisbury

Md

2 @ 35% 2-3 Dx

6 @ 30% 2-3 "

6 @ 50 2-3 "

2.6 @ 30 2-3 " } If Wicomico 20 2-3 [illegible]

Shorts same as former season

Clearance same as last year.

ACCEPTED..................... (Distributor)

ACCEPTED..................... (Schine Circuit, Inc.)

7108

5024

C 102 (49) Pl. 4 C-102 (49) 14
x ~~[illegible]~~ 4/4/49

DEAL SHEET.

Columbia 10/17/38

THEATRE	TERMS
	Washington Territory
	"You Can't Take It With You"
	& 40% in following towns
	Easton
	Hurlock
	Federalsburg
	Salisbury

ACCEPTED..........................
(Distributor)

ACCEPTED..........................
(Schine Circuit, Inc.)

T162

Cin 10/7/36

C102(50)

DEAL SHEET

Columbia

Pl. & C102(50)

~~for [illegible]~~ 11/2/42

THEATRE	TERMS
	Seasons of 1938-39 and 1939-40.
	Pictures released and produced excepting Capra [illegible]
thens	2 @ 35% 2-3 da
	6 @ 60% 2-3 "
thens	6 @ 40% 2-3 " } first 30%
do	4 @ 40% 2-3 " }
hire	22 @ 30% 2-3 " } of other 22%
do	16 Westerns @ 15.00 / 2-3 da
airl	

ACCEPTED .... (Distributor)

ACCEPTED ... Lynch .... (Schine Circuit, Inc.)

TITLE

5026

10/17

DEAL SHEET Columbia Cin

THEATRE	TERMS
Kentucky or Ben Ali or Strand or State Lexington Ky.	C10 2/3 (51) N-4 C Season of 1938-39 to 19[illegible] Pictures released and/or produced excepting Capra's for inclusion in 44 Picture commitment 2 @ 35% 3-4. Da 4 @ 30% 3-4 " 6 @ 125.00 3-4 50.00 3-4 " Bal @ 16 Western 8 @ 50.00 1-7 8 @ 35.00 1-7 Clearance: same as [illegible]

ACCEPTED........................
(Distributor)

ACCEPTED........................
(Schine Circuit, Inc.)

7171

1

5027

Cun 10/17/[illegible]

C10^{2} (52)

DEAL SHEET Columbia

X.Y.C 10^{2} (52) ~~[illegible]~~

11/2/42

THEATRE	TERMS
	Seasons of 19[illegible]-39 to 19[illegible]-42
	Pictures released and/or produced excepting [illegible] for each season.
	4- @ 27^{50} - 2-3 [illegible]
State	6- @ 22^{50} "
	6- @ 17^{50} "
Lexington	9- @ 15^{00} "
3rd Ave	
	Clearance: same as last year.

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

7172

5028

Cin 10/17/3

[redacted] Calumet C10 (53)

[redacted] [redacted] C-1

Season 1938-39 1939-40

Russell

ville

Ky

4-@ 60.00 2-3 Da

6-@ 40.00 2-3 "

6-@ 30.00 2-3 "

18-@ 25.00 2-3 "

Clearance: Same as last year.

ACCEPTED .... (Distributor)

ACCEPTED .... (Schine Circuit, Inc.)

7173

CM

1/17/38

Columbia C.102 (547)

~~C.102 (546)~~ H.H. 4/14

Season of 1938-39 and 1939-40.

Pictures released and/or produced excepting Capras for each season.

15

Bourbon

Paris

Ky

2 - @ 35% 2 Da.
6 - @ 32.50 1-2 "
6 - @ 20.00 1-2 "
6 - @ 15.00 1-2 "
2 @ 12.50 1-2 "
16 Westerns @ 12.50 1-2 Da.

Clearance: Same as [illegible]

ACCEPTED .... (Distributor)

ACCEPTED .... (Schine Circuit, Inc.)

7128

5030

10/17/38

Cin

DEAL SHEET

Columbia C 102 (55)

THEATRE	TERMS
	Seasons of 1938-39 and 1939-40.
	Pictures released and/or produced excepting Capras for each season
Piqua	2 - @ 110.00 3-4 Da
	8 @ 50.00 3-4 "
or	4 @ 46.00 3-4 "
	12 @ 22.50 2-3 "] N. Piqua 5.00 2-3 Da
Miami	6 Shorts @ 20.00 1-2 Da
Piqua	
Ohio.	Clearance same as last year.

C-102 (55)

ACCEPTED Aug. S. [illegible]
(Exhibitor)

ACCEPTED [illegible]
(Columbia Pictures Corp., Inc.)

10/17 BE [illegible]

Cm

DEAL SHEET

Columbia C102(56) 15-[illegible] ~~[illegible]~~

[illegible] [illegible] J.H.C. [illegible] [illegible]

Summary 1938-39 and 1939-40.

✓ Pictures released and/or produced excepting Capra's for each season

Madison	2- @ 35% 2 on.
	6- @ 37^{50} 1-2 "
Richmond	14- @ 20^{00} 1-2 "
	1/6 Westerns 12^{50} 1-2 on
Ky.	

Clearance: Same as last year

ACCEPTED .... (Exhibitor)

ACCEPTED .... (Schine Circuit, Inc.)

7176

5032

10/17/38 [illegible]

C102(57)

C102 (57) [illegible]

~~[illegible]~~

[illegible]

DEAL SHEET

Columbia [illegible]

THEATRE	TERMS
	Seasons of 1938-39 and 1939-40.
Opera House & Palace Ashland Ohio	Pictures to be played as produced excepting Capra for each season [illegible]
	2 @ 35% - 2/3 days
	2 @ 30% 2/3 "
	8 @ 50.00 2/3 "
	8 @ 30.00 2/3 "
	6 @ 25.00 2/3 " [illegible] 1 day [illegible] 20.00
	12 Westerns @ 20.00 1/2 "

Clearance Seasons [illegible]

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

7177

5033

[illegible]

CM

DEAL SHEET

Columbia 1 C102(58)

C102(58)

4/2/42

THEATRE	TERMS
Holland Bellfontaine Ohio	Seasons of 1931-32 and [illegible] [illegible] adjusting [illegible] 2 - @ 60.00 2-3 Dr. 4 - @ 40.00 2-3 9 - @ 22.50 2-3 "

Clearance [illegible]

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

10/17/38

DEAL SHEET

Columbia C102(59)

Pl. Ex. C102(59) Identified 4/2/42

THEATRE	TERMS
Bucyrus or State or Southern Bucyrus Ohio	Season of 1938-39 and 1939-40. Pictures released and/or produced & excepting Capra for each season. 2 @ ~~100.00~~ 115.00 2/3 days maximum 2 @ 60.00 2/3 " 6 @ 35.00 2/3 " 15 @ 22.50 2/3 " 6 Westerns @ 17.50 2/3 " Clearance: Same as last year.

ACCEPTED E. A. [illegible]
(Distributor)

ACCEPTED Gus Lynch
(Schine Circuit, Inc.)

7170

5035

1

10/17/38. 153

C102(60)

Pl. Ex C-102 (60)

DEAL SHEET

Columbia

THEATRE	TERMS
	Seasons of 1938-39 and 1939-40.
	Pictures released and/or produced excepting Capras for each season.
Strand	Selection @ 25 pictures
	2- @ 75.00 2-3 days
or	4- @ 50.00 2-3 "
	6- @ 40.00 2-3 } If Star 25.00
Star	12- @ 25.00 2-3 } " " 17.50
	Bal @ 70.00 1-2 days
Delaware	13 Westerns 15.00 1-2 days
	13-2 reelers 5.00 2-3 days
	13 1 " 2.00 2-3 "
	Clearance: same as last year.

ACCEPTED.......................(Distributor)

ACCEPTED.......................(Schine Circuit, Inc.)

[illegible]

5036

10/7/31

C102(61)

DEAL SHEET Columbia

C102(61

4 2/42

THEATRE	TERMS
Civic or Rexy or State Fostoria Ohio	Season of 1931-32 [illegible] Pictures released and/or produced [illegible] excepting [illegible] 2 @ 35% - 2/3 days 4 @ 30% - 2/3 " 3 @ 25% - 2/3 " 3 @ 20% 2/3 " 8 @ 50.00 2/3 " 7 @ 35.00 2/3 5 if played at Rexy [illegible] to be [illegible] 16 Westerns @ 17.50

Clearance: [illegible]

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

7181

5037

DEAL SHEET Columbia C102(62) 10/17/38.

THEATRE | TERMS

P.C.U.C. 102 (62

4/2/42

Seasons of 1938-39 and 1939-40.

Pictures released and/or produced excepting Capra for each season.

Kent or Ravenna or Opera House

Kent Ravenna Ohio

$

2 @ 115.00 3/4 days

6 @ 50.00 3/4 "

16 @ 27.50 3/4 "

12 @ 17.50 3/4 "

12 Westerns @ 15.00 ~~3/4~~ 2/3 "

Classics same as last year.

ACCEPTED: .... (Home Office)

ACCEPTED: .... (Schine Circuit, Inc.)

5038

C102 (63)

~~C102 (63)~~ [illegible]

DEAL SHEET

Columbia N.Y. 10/17/3

THEATRE	TERMS
	Season of 1939-40
Kent or Ravenna repeat	Pictures released and/or produced excepting Capras for [illegible] release 2 @ 60 / 3 days 4 @ 40 / 3 " 9 @ 22.50 / 3 "
	Clearance same as last year

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

T185

5039

10/12/38 [illegible]

C102(69)

[redacted] [illegible] [redacted] C102(66) [illegible]

[redacted] [redacted] [illegible]

[illegible] 1938-39 and 1939-40.

[illegible] and/or produced [illegible] for each season.

Forum on Moose Norwalk Ohio

2 @ $100.00 7/3 days
4 @ 75.00 7/3 "
6 @ 50.00 7/3 "
6 @ 30.00 7/3 "
6 @ 20.00 7/3 "
12 Matinee @ 17.00 7/3 "

[illegible]

5040

C102(65)

DEAL SHEET

Columbia

THEATRE	TERMS
	Season of 193[illegible]
	Pictures released and/or [illegible] [illegible] for [illegible]
Ritz or Grand or Tiffin.	2 @ 35% 2/3 days 2 @ 30% 2/3 22 @ 50.00 2/3 6 Westerns @ 25.00 2/3 days
Tiffin Ohio	

[illegible] to play 14 of the 70% features at the Grand [illegible] Tiffin @ 27.50

Clearance: Same as [illegible]

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

7188

5041

10/-1

DEAL SHEET

C102(66)

THEATRE	TERMS
	[illegible]
	each
Van Wert	2 @ $100 – 7/0 days
or	3 @ 75 7/3 "
Strand	3 @ 50. 7/3 "
	12 @ 30. 7/3 [illegible] at Strand 20¢
Van Wert	12 Western @ 15.00 7/3 "
6 [illegible]	

[illegible]

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

7186

5042

C102(67)

DEAL SHEET

Colchester

THEATRE	TERMS
	Seasons of 1938-39 and 1939-40.
	Pictures released and/or [illegible] excepting Capers for [illegible] season
Wooster	2 @ $150.00 1/3 days
or	2 @ 100.00 1/3
	6 @ 75.00 1/3
Wayne	10 @ 50.00 1/3
	6 @ 30.00 1/3
Wooster	6 Westerns @ 25.00 1/3
Ohio	6 Westerns @ 17.50 1/3

Clearance [illegible]

ACCEPTED.....................

ACCEPTED.....................
([illegible] Circuit, Inc.)

7187

5043

C 102 (68)

[illegible]

COLUMBIA

DEAL SHEET

Pl. Ex. C-102 (68) 761
~~[illegible]~~
4/2/42

X

THEATRE	TERMS			
	Season 1938-39.			
	[illegible]	[illegible]	$ [illegible]	[illegible] Days
[illegible]	[illegible]	[illegible]	[illegible]	[illegible] "
([illegible] Theatre)	[illegible]	[illegible]	[illegible]	[illegible] "
	[illegible]	[illegible]	[illegible]	[illegible] "

CLEARANCE: 4 days ahead of [illegible] Theatre.
7 days ahead of all subsequent runs if played within 14 days of availability or clearance waived. 14 days after [illegible] or [illegible]. [illegible] run if and as available. [illegible] or [illegible] must play within 14 days of second run or their clearance will be waived. [illegible].

(This cancels all unplayed 1938-39 product.)

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Enterprises Corp.)

7189

5044

[illegible]

COLUMBIA

DEAL SHEET

C102 (69) X

p. 4 C-102 (69) 11/2/42

THEATRE	TERMS			
	Season [illegible].			
	5	@	$100.00	2-3 Days
[illegible]	5	@	75.00	2-3 "
([illegible] Theatre)	5	@	[illegible]	2-3 "
	10	@	[illegible]	2-3 "

CLEARANCE: 4 days ahead of [illegible] Theatre. 7 days ahead of all subsequent runs if played within 14 days of availability or clearance waived. 14 days after [illegible] or [illegible]. Third run if and as available. [illegible] or [illegible] must play within 14 days of second run or their clearance will be waived. Subsequent run.

([illegible] all unplayed [illegible] product)

ACCEPTED Louis Weinberg
(Distributor)

ACCEPTED ....
(Schine Enterprises Corp.)

V180

5045

12/22/39.

COLUMBIA

DEAL SHEET

X

C102(70)

Ny

THEATRE	TERMS			
	Season 1939-40.			
	4	@	$ 45.00	3-5 Days
	6	@	30.00	3-5 "
[illegible]	6	@	20.00	3-5 "
(West End Theatre)	18	@	12.50	3-5 "

Pl. 4 C 102(70)
4/2/42

CLEARANCE: Open booking with [illegible] Theatre.

(This cancels all unplayed 1939-40 product.)

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Enterprises Corp.)

7180

5046

COLUMBIA
DEAL SHEET

C102 (71)

9/28/39.

P.C.-4 C-102 (71) [illegible]
4/2/42
X

THEATRE	TERMS
	Season: 1939-40.
	2 @ $ 85.00 2-3 Days
Palace Theatre	2 @ 75.00 2-3 "
—	6 @ 50.00 2-3 "
	10 @ 25.00 2-3 "
SYRACUSE	20 @ 22.50 2-3 "

- - -

SHORTS

16 - Colors @ 3.75 2-3 "
7 - Black & Whites @ 3.00 2-3 "

Cancel unplayed 1938-39 Shorts.

- - -

CLEARANCE: 7 days after 4th run. Clearance over E. Syracuse. 30 days over James Theatre.

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

5047

C.102 (72)

P.E. C-102 (72) " ~~[illegible]~~ 4/7/42

Columbia 4/11/39

X

Arcade

a

State

Cambridge

Md.

Season 1938-39

You Can't Take It With You 75% 2-3 Da

2- @ 35% - 2-3 Da } Revivals 30% & 25%

2- @ 30% - 2-3 "

4- @ 75.00 2-3 " (one day [illegible])

6- @ 40.00 2-3 "

10- @ 12.50 2-3 " (Westerns)

16- @ 70.00

Season 1939-40

Capra - 40% 2-3 Da

2 @ 35% 2-3 Da

4 @ 30% 2-3 "

6 @ 75.00 2-3 " (one [illegible])

6 @ 40.00 2-3 "

22 @ 22.50 2-3 Da

16 Westerns @ 70.00 2-3 "

✓ 23-1 reelers @ 3.50 2-3 "

ACCEPTED Louis W[illegible]
(Distributor)

ACCEPTED [illegible]
(Schine Circuit, Inc.)

7192

5048

9/26/39.

C-102 (73)

COLUMBIA

DEAL SHEET

Pl. Ex C-102 (73)
4/2/42

THEATRE	TERMS			
	Season: 1939-40			
Hippodrome or Kentucky — CORBIN	5	@	35%	2 Days
	4	@	40.00	2 "
	6	@	25.00	2 "
	26	@	15.00	2 "
	12 Westerns	@	12.50	2 "

Selection of 2 SERIALS @ $5.00 2 Days

CLEARANCE: First run. 60 days over second run.

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

7163

9/22/39.

COLUMBIA C102 (74)

DEAL SHEET

P.I. & C102 (74)

4/2/42

THEATRE	TERMS
	Season: 1939-40

EAST ROCHESTER
(Rialto Theatre)

-or-

FAIRPORT
(Temple Theatre)

4	@	$ 40.00	2-3 Days
4	@	30.00	2-3 "
6	@	22.50	2-3 "
22	@	15.00	2-3 "
16 Westerns	@	12.50	2-3 "

REPEAT DEAL

2	@	$ 25.00	2-3 Days
6	@	17.50	2-3 "
6	@	15.00	2-3 "
Any additional pictures played	@	12.50	2-3 "

CLEARANCE: 30 days after [illegible] Rochester.

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

5050

C102 (75)

C102(75)

4/11/39 · 4/2/42

DEAL SHEET

Columbia

THEATRE	TERMS
	Season 1938-39 - 39-40
Waller	2-@ 25^{00} 3 da
	4 @ 20^{00} 2 "
	6-@ 17^{50} 2 "
	4-@ 17^{50} 2 " (Westerns)
	8-@ 12^{50}
Laurel	
	Season 1939-40
~~Md~~ Del	2-@ 25^{00} 3 da
	4-@ 20^{00} 2 "
	6-@ 17^{50} 2 "
	11 @ 12^{50} 2 "
	8 Westerns 12^{50} 2 "
	✓13-1 reels - 3^{00} 2 da

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

7196

5051

c102(7.6). 10/23/39.

COLUMBIA
DEAL SHEET

Pl. Ex C 102 (76)
4/2/42

THEATER	TERMS
	Season: 1939-40.
Russell (or) Washington (or) Hollywood Theatres	WESTERNS ● $ 25.00 2 Days 17.50 1 Day
MAYSVILLE, Ky.	

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

7186

5052

9/26/39. 7

C O L U M B I A

DEAL SHEET

C102 (77)

THEATRE	TERMS			
	Season 1939-40			
	Selection of 24 out of 40.			
Manring (or) Brownie	4 @	$ 50.00	1-2 Days	
	6 @	30.00	1-2 "	
—	6 @	22.50	1-2 "	
MIDDLESBORO	8 @	17.50	1-2 "	
	16 Westerns @	12.50	1 Day	

(Any additional pictures used to be $ 15.00.)

P(4 C 102 (17

4/2/42

ACCEPTED ....
(Distributor)

ACCEPTED 7
(Schine Circuit, Inc.)

T187

5053

C 102(78)

DEAL SHEET

[illegible] 4/11/39 X

THEATRE	TERMS
	Season 1938-9 - 1939-40
Miami	4 - @ 50.00 = [illegible]
Plaza	6 - @ 30.00 = [illegible]
	7 @ 30.00 = [illegible]
	1 - @ Western 15.00
	Season 1939-40
Milford	4 - @ 50.00 = [illegible]
[illegible]	6 - @ 30.00 = [illegible]
	[illegible]
	[illegible] 15.00 = [illegible]
	1 [illegible] 30.00 = [illegible]

N. 4 C 102 78

~~[illegible]~~

4/2/42

ACCEPTED [illegible]
(Distributor)

ACCEPTED [illegible]
(Schine Circuit, Inc.)

7180

5054

3/4/40.

COLUMBIA

DEAL SHEET

C10-2 (79)

104

THEATRE	TERMS			
	Season: 1939-40.			
	2 @	$ 100.00	2-3 Days	
LEXINGTON	4 @	75.00	2-3 "	
(Strand or State	34 Balance 34 @	35.00	2-3 "	
or Opera House)	16 Westerns @	25.00	2-3 "	

CLEARANCE: Second run. 60 days over third run.

ACCEPTED FOR: ....
(Distributor)

ACCEPTED: ....
(Schine Enterprises Corp.

7189

"You Can't Take It With You" 11/17/3[illegible]

DEAL SHEET

C 102 (80)

Pi 4 C 102 (80)

THEATRE	TERMS
[illegible] Ithaca	2/3 day 40%
[illegible]	1/3 $[illegible]
[illegible] N.Y.	1/3 $125.00
[illegible]	2/3 $[illegible]
[illegible]	1/3 $[illegible]
[illegible] N.Y.	4/7 [illegible]
[illegible] N.Y.	[illegible] 40%
[illegible] N.Y.	1/3 [redacted] 50.00 - 3 [illegible]
[illegible]	3/3 40%

each

4-27

4/2/42

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

7200

5056

9/20/39.

COLUMBIA

DEAL SHEET

C 102 (91)

THEATRE	TERMS
	Season: 1939-40: [redacted]
Cla-vel (or) Lyric Theatres	4 @ $ 60.00 2-3 Days
	8 @ 40.00 2-3 "
	12 @ 25.00 2-3 " 15.00(1st Lyric)
	16 @ 17.50 2-3 " 12.50(1st Lyric)
BOWLING GREEN	

WESTERNS can be used in place of lower allocated pictures.

SHORTS

26 Single Reel Cartoons(Selection):

2.00 (1st Lyric) 2-3 Days
(13 @) 3.50 (" Cla-vel) 2-3 "
(13 @) 4.00 (" Cla-vel) 2-3 "

8 STOOGES(2 reel comedies): @ $ 3.00(Lyric) 2-3 Days
5.00(Cla-vel)2-3 "

13 ALL STAR(2 reel comedies) @ 3.00(Lyric) 2-3 "
5.00(Cla-vel)2-3 "

CLEARANCE: First run.

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Circuit, Inc.)

7301

[fol. 7202]

EXHIBIT C-180

Agreement

November 19, 1940.

It Is agreed as follows: that the complete deal shall consist of the deal sheets dated November 19, 1940, signed by Louis Weinberg for Columbia Pictures Corporation and by George Lynch and/or Lou Goldstein for Schine Enterprises corporation, and all the terms, provisions, and conditions of the Columbia forms of exhibition contract which is attached hereto.

Clause No. 1

If pictures allocated at 35% and/or 30% are double billed, the cost of the second feature is to be deducted from the gross receipts before computing film rental to Columbia.

Clause No. 2

On the 35% pictures—they are to revert to 30% if the gross receipts (after deduction of cost of double bill and/or Bank Night) do not reach the 35% reversion figures indicated on the attached Schedule A. On the 30% pictures they are to revert to 25% if the gross receipts (After deduction of cost of Double Bill and/or Bank Night) do not reach the 30% reversion figures indicated in the attached Schedule "A."

Clause No. 3

On the 25% pictures, if they are played with vaudeville or double billed, terms to be 20%.

On the 20% pictures, if they are played with vaudeville or double billed, terms to be 15%.

Clause No. 4

Any percentage pictures played on midnight shows that start at 11:30 or 11:45 P. M. as an entirely new show, terms to be 15% for such midnight showing. Any flat rental pictures that play on a midnight show that starts at 11:30 or 11:45 P. M. as an entirely new show, terms to be at the 50% per diem rate if the midnight show is in excess of the contracted number of days.

Clause No. 5

There will be no extra charge on short subjects used for additional days if such additional short or shorts are used with a Columbia feature. On features or shorts not used with Columbia features additional days payment is to be made for each additional day at the 50% per diem rate.

Clause No. 6

Deductions for activities such as Bank Night, Screeno, etc. are to be allowed in the actual amount of such activity and only such actual amount may be deducted from the gross before computing Columbia's share on such percentage engagements.

Clause No. 7

It is understood and agreed that the feature commitments in towns where we overplay our contracted commitment, the monies obtained by playing over the commitment is to be applied dollar for dollar against towns where the commitment is underplayed. The above privilege of overage and underage is limited within the respective zones identified as Albany, Buffalo, Cleveland, Cincinnati and Washington.

Clause No. 8

With regard to the six thousand dollar ($6,000.00) commitment for shorts, it is understood that any underages on this commitment can be offset by any monies obtained by applying any excess to feature and/or short subject and/or serial commitments on circuit wide basis.

[fol. 7203]

Clause No. 9

Anything herein contained in this Agreement to the contrary notwithstanding, it is hereby acknowledged and agreed that either Distributor or Exhibitor shall have the right in their sole discretion to terminate the license herein granted with respect to the 1942-43 product licensed hereunder if Distributor or Exhibitor shall determine that such termination is necessary or advisable because of any change in the method of production, distribution or exhibition of motion pictures which directly affects the Distributor or Exhibitor in any manner whatsoever and as a result of which change either party shall alter generally its methods of doing business. Such right to terminate this agreement with respect to said 1942-43 product may be exercised at any time on or before January 1, 1942, by a notice in writing to such effect sent by registered mail by either party hereto to the other party.

In Witness Whereof, the parties hereto have caused these presents to be duly executed this 19th day of November, 1940.

Columbia Pictures Corporation, by Louis Weinberg,
Schine Enterprises Corporation, by Geo. V. Lynch.

November 19, 1940

Schedule A

Reversion Figures Schine Situations

1940–41, 1941–42, and 1942–43 Seasons

	35% Reversion Figure for Wk.	30% Reversion Figure for Wk.
Albany Territory		
Amsterdam, Rialto	3190.00	3000.00
Glens Falls, Rialto	3800.00	3500.00
Gloversville, Glove	3000.00	2800.00
Oneonta, Oneonta	2000.00	1800.00
Buffalo Territory		
Corning, Fox	1900.00	1700.00
Cortland, State	3300.00	2900.00
Lockport, Palace	2400.00	2000.00
Geneva, Geneva	3000.00	3000.00
Cincinnati Territory		
Athens, Athena	2510.00	....
Paris, Bourbon or Paris	1125.00	....
Richmond, Madison	1465.00	....
Lexington, Kentucky	3600.00	3000.00
Ben Ali	3600.00	3000.00
Cleveland Territory		
Ashland, Palace	1165.00	1000.00
Opera House	750.00	700.00
Fostoria, State	1700.00	1500.00
Tiffin, Ritz	1810.00	1750.00
Tiffin	450.00	400.00
Washington Territory		
Salisbury, Arcade	2000.00	1800.00
Cambridge, Arcade	1750.00	1400.00

For the purpose of determining the 35% or 30% reversion figures on an engagement, the days of the week bear the following proportion of the weekly indicated reversion figures:

Sunday — 3/10
Saturday — 2/10
Each week day — 1/10

Schedule "C"

Reversion Figures Schine Situations
1940–41, 1941–42, and 1942–43 Seasons

In the case of Salisbury and Cambridge which are six day towns, the division shall be as follows:

Saturday — 2/7
Each week day — 1/7

Columbia Pictures Corp.
by: Louis Weinberg (signed)

Schine Enterprises Corp.
by: G. E. W[illegible] (signed)

PLAINTIFF'S EXHIBIT C-181

C181(1)

DEAL SHEET. 11/19/40

Pl. Ex. C181(1)

COLUMBIA 1/3/42 Seasons: 1940-41, 1941-42 and 1942-43.

THEATRE	TERMS		
	Selection of 12 pictures released and/or produced for the above seasons:		
	3 @	60.00	2-3 Days
BATH	7 @	35.00	2-3 "
Babcock Theatre	Balance @	25.00	2-3 "
	4 Westerns @	15.00	1-2 "

CLEARANCE: 30 days ahead of Hammondsport, Cohocton, Prattsburg and Savona.

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Enterprises Corp.)

7206

5062

11/19/40.

DEAL SHEET

C181(2)

COLUMBIA | Seasons: 1940-41, 1941-42 and 1942-43.

THEATRE	TERMS
BUFFALO Granada Theatre	Selection of [illegible] pictures released and/or produced for the above seasons:

4	@	100.00	2-3 Days
5	@	75.00	2-3 "
10	@	50.00	2-3 "
Balance	@	25.00	2-3 "

CLEARANCE: Day and date with Riverside. If sold to Shea's North Park, Kensington and Bailey Theatres, pictures will be played same as last year. 14 days ahead of Varsity, Central Park, Little Kensington and Williamsville.

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Enterprises Corp.)

T208

C181(3)

DEAL SHEET 11/19/40

COLUMBIA Seasons: 1940-41, 1941-42 and 1942-43.

THEATRE	TERMS
BUFFALO Riverside Theatre	Selection of 23 pictures released and/or produced for the above seasons:

4	●	125.00	2-3 Days
5	●	75.00	2-3 "
7	●	60.00	2-3 "
Balance	●	40.00	2-3 "

CLEARANCE: 30 days after first run Buffalo. 14 days ahead of Unity, Jubilee, Kenmore, N. Y., Rialto, Circle, Senate, Allendale, Marlowe, Park and Pastime.

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Enterprises Corp.)

T807

5064

C 181(4)

DEAL SHEET

11/19/40

[illegible] 18014 [illegible]

COLUMBIA

[illegible]

Seasons: 1940-41, 1941-42 and 1942-43.

THEATRE	TERMS
CANANDAIGUA Playhouse Theatre	Selection of 15 pictures released and/or produced for the above seasons:

3	@	75.00	2-3 Days
9	@	40.00	2-3 "
Balance	@	25.00	2-3 "
4 Westerns	@	15.00	1-2 "

CLEARANCE: 14 days ahead of Naples, N. Y.
30 days ahead of Clifton Springs.

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Enterprises Corp.)

[illegible]

C191(5)

DEAL SHEET

11/19/40

Pl. Ex. C-181 [illegible]

COLUMBIA 4/3/42

Seasons? 1940-41, and 1941-42 and 1942-43.

THEATRE	TERMS
CORNING For of State or Palace Theatres	Selection of 40 pictures released and/or produced for the above seasons:

3	@	35%	2-3 Days
5	@	30%	2-3 "
7	@	75.00	2-3 "
7	@	50.00	2-3 "
		30.00(if Palace)	2-3 "
Balance	@	40.00	2-3 "
		35.00(if Palace)	2-3 "
12 Westerns	@	25.00	2-3 "

CLEARANCE: 30 days ahead of Plaza Theatre(Corning), Painted Post and Addison. 60 days over City of Corning.

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Enterprises Corp.)

7209

5066

C181(6) C181(6)

DEAL SHEET 11/19/40

COLUMBIA 4/3/42	Seasons: 1940-41, 1941-42 and 1942-43.
THEATRE	TERMS
	Selection of 26 pictures released and/or produced for the above seasons:
CORTLAND State or Temple Theatres	3 @ 35% 2-3 Days 5 @ 30% 2-3 " 6 @ 50.00 2-3 " Balance @ 30.00 2-3 " 20.00(if Temple)2-3 " 12 Westerns @ 25.00 2-3 "
	CLEARANCE: 30 days ahead of Marathon, Groton,Hom McGrawsville and Tully.

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Enterprises Corp.)

7210

5067

11/19/40.

C191(7)

DEAL SHEET

[illegible]

COLUMBIA	Seasons 1940-41, 1941-42 and 1942-43.
THEATRE	TERMS
	Selection of 28 pictures released and/or produced for the above seasons
EAST ROCHESTER (Rialto Theatre) -or- FAIRPORT (Temple Theatre)	6 @ 40.00 2-3 Days 6 @ 30.00 2-3 " 4 @ 22.50 2-3 " Balance @ 15.00 2-3 " 16 Westerns @ 12.50 2-3 "

CLEARANCE: [redacted] 30 days after first run Rochester.

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Enterprises Corp.)

TB11

5068

DEAL SHEET 11/18/40

C181(B) M.G.C. 181(B)

COLUMBIA 4/4/42

Seasons: 1940-41, 1941-42 and 1942-43.

THEATRE	TERMS
EAST ROCHESTER (Rialto Theatre) -or- FAIRPORT (Temple Theatre) Repeat	Selection of 14 pictures released and/or produced for the above seasons:

4	@	25.00	2-3 Days
8	@	17.50	2-3 "
2	@	15.00	2-3 "
Additionals	@	12.50	2-3 "

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Enterprises Corp.)

7212

5069

C181(9)

DEAL SHEET

11/19/40.

COLUMBIA

Seasons: 1940-41, 1941-42 and 1942-43.

THEATRE	TERMS
	Selection of 30 pictures released and/or produced for the above seasons:

	3	@	35%	2-3 Days
	6	@	30%	2-3 "
GENEVA	6	@	50.00	2-3 "
	6	@	35.00	2-3 "
Geneva or Regent Theatres	Balance	@	35.00 30.00(if Regent)	2-3 " 2-3 "
	16 Westerns	@	25.00	2-3 "

CLEARANCE: 30 days ahead of Lyons, Waterloo, Palmyra, Clifton Springs, Manchester, Phelps and Clyde.

ACCEPTED Louis Weinberg
(Distributor)

ACCEPTED
(Schine Enterprises Corp.)

7818

5070

11/19/40

DEAL SHEET

C181(10) K & C 181(10)

COLUMBIA 4/3/42

Seasons: 1940-41, 1941-42, and 1942-43.

THEATRE	TERMS			
	Selection of 30 pictures released and/or produced for the above seasons:			
	3	●	35%	2-3 Days
	5	●	30%	2-3 "
	2	●	75.00	2-3 "
LOCKPORT	4	●	50.00	2-3 "
	6	●	35.00	2-3 "
Rialto or Palace or Hi-Art Theatres	Balance	●	25.00	2-3 "
	12 Westerns	●	25.00	2-3 "

CLEARANCE: 30 days ahead of Newfane and Middleport.

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Enterprises Corp.)

Y214

5071

11/19/40

DEAL SHEET

C181(11) [illegible] C181(11) for Second

COLUMBIA 4/8/42 | Seasons: 1940-41, 1941-42 and 1942-43.

THEATRE	TERMS
	Selection of 10 pictures released and/or produced for the above seasons:
	8 @ 25.00 2-3 Days
LOCKPORT	Balance @ 17.50 2-3 "
Rialto or Hi-Art Theatres	
Second Run	
	CLEARANCE: Second Run.

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Enterprises Corp.)

7218

5072

11/19/40.

DEAL SHEET

C181(12)

H. A. C-181(12)

COLUMBIA 4/2/42

Seasons: 1940-41, 1941-42 and 1942-43.

THEATRE	TERMS
	Selection of 16 pictures released and/or produced for the above seasons:
	8 @ 50.00 2-3 Days
	6 @ 30.00 2-3 "
NEWARK Capitol Theatre	2 @ 22.50 2-3 "
	CLEARANCE: 14 days ahead of Clyde, Lyons and Palmyra.

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Enterprises Corp.)

7216

5073

C191(13).

DEAL SHEET

11/19/40.

P(Y) C191(13) [illegible]

COLUMBIA

4/2/42

THEATRE	TERMS
	Seasons: 1940-41, 1941-42 and 1942-43.
OSWEGO Strand or Capitol or New Theatre	Selection of 30 pictures released and/or produced for the above seasons:

3	@	175.00	2-3 Days.
3	@	100.00	2-3 "
3	@	75.00	2-3 "
9	@	50.00	2-3 "
6	@	35.00	2-3 "
Balance	@	35.00	2-3 "
16 Westerns	@	30.00(2 days) 20.00(1 day)	

CLEARANCE: 30 days ahead of [illegible], Minetto, Fulton and Mexico.

[redacted]

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Enterprises Corp.)

7817

5074

11/19/40.

DEAL SHEET

C-181(191

COLUMBIA

4/3/42

Seasons: 1940-41, 1941-42 and 1942-43.

THEATRE	TERMS
PENN YAN Elmwood Theatre	Selection of 15 pictures released and/or produced for the above seasons:

3	@	50.00	2-3 Days
7	@	35.00	2-3 "
Balance	@	25.00	2-3 "
4 Westerns	@	15.00	1-2 "

CLEARANCE: [redacted] 30 days ahead of Dundee.

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Enterprises Corp.)

TH:S

5075

C 181(15)

11/19/40.

DEAL SHEET

[illegible] C 181(15) [illegible]

COLUMBIA

4/5/42

Seasons: 1940-41, 1941-42 and 1942-43.

THEATRE	TERMS			
	Selection of 24 pictures released and/or produced for the above seasons:			
PERRY Auditorium	4	@	50.00	2-3 Days
	6	@	30.00	2-3 "
	Balance	@	15.00	2-3 "
	4 Westerns	@	12.50	1-2 "

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Shine Enterprises, Corp.)

7219

5076

C 181(16) M.E.C 181(16)

DEAL SHEET 11/19/40

COLUMBIA 4/3/42

Seasons: 1940-41, 1941-42 and 1942-43.

THEATRE

TERMS

ROCHESTER

Cameo
Theatre

Selection of 18 pictures released and/or produced for the above seasons:

4	@	60.00	3-3 Days
8	@	35.00	3-3 "
4	@	17.50	3-3 "
Balance	@	12.50	3-3 "

CLEARANCE: 14 days ahead of Lyric and Empress Theatres. Immediately after Madison and Monroe Theatres.

ACCEPTED ....
(Distributor)

ACCEPTED
(Schine Enterprises Corp.)

7220

5077

C 181 (17) V. C. & C 181 (17) rescinded

DEAL SHEET 11/19/40

COLUMBIA 4/3/42

Seasons: 1940-41, 1941-42 and 1942-43.

THEATRE	TERMS
	Selection of 22 pictures released and/or produced for the above seasons:
	4 @ 80.00 2-3 Days
ROCHESTER	8 @ 50.00 2-3 "
Dixie Theatre	Balance @ 31.25 2-3 "

CLEARANCE: Second run. 21 days over subsequent runs. 30 days ahead of Plaza, [redacted]

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Sabine Enterprises Corp.)

[illegible]

5078

C181(18)

DEAL SHEET 11/19/40

COLUMBIA 4/3/4 Seasons: 1940-41, 1941-42 and 1942-43.

THEATRE	TERMS			
	Selection of 26 pictures released and/or produced for the above seasons:			
ROCHESTER Grand Theatre	4	@	35.00	2-3 Days
	6	@	25.00	2-3 "
	6	@	17.50	2-3 "
	Balance -	@	15.00	2-3 "
	10 Westerns	@	12.50	2-3 "

CLEARANCE: [redacted] Open booking with Strand Theatre. 14 days ahead of Embassy and Empire Theatres. 7 days ahead of Rivoli Theatre.

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Enterprises Corp.)

TEBB

5079

C181 (19)

P.L.E. C 181 (7) [illegible]

DEAL SHEET

11/19/40

COLUMBIA 4/3/42

Seasons: 1940-41, 1941-42 and 1942-43.

THEATRE	TERMS
	Selection of ______ pictures released and/or produced for the above seasons:
	4 @ 40.00 2-3 Days
ROCHESTER	8 @ 22.50 2-3 "
Lake Theatre	Balance @ 15.00 2-3 "
	4 Westerns @ 12.50 2-3 "
	If theatre operates one(1) change a week, commitment to be for ten(10) pictures.

ACCEPTED Louis Weinberg
(Distributor)

ACCEPTED
(Schine Enterprises Corp.)

7323

5030

C 181 (20)

P. C. E. C-181 (20) for stand

DEAL SHEET 11/19/40

COLUMBIA 4/3/42

Seasons: 1940-41, 1941-42 and 1942-43.

THEATRE	TERMS
	Selection of 12 pictures released and/or produced for the above seasons:
	4 @ 30.00 2-3 Days
ROCHESTER Liberty Theatre	Balance @ 37.5% 2-3 "

CLEARANCE: Second run. 21 days over subsequent runs. (14 days ahead of Madison, Arbor,) Hub, Sea Breeze, N. Y. 30 days ahead of Hollywood Theatre.

ACCEPTED ....
(Distributor)

ACCEPTED ....
(S-Mine Enterprise Corp.)

7224

C181(21 [illegible])

DEAL SHEET 11/19/40

C 181(21)

COLUMBIA 4/2/42

Seasons: 1940-41, 1941-42 and 1942-43.

THEATRE	TERMS
ROCHESTER Madison Theatre	Selection of 36 pictures released and/or produced for the above seasons:

4	@	75.00	2-3 Days
5	@	50.00	2-3 "
8	@	35.00	2-3 "
Balance	@	22.50	2-3 "

CLEARANCE: (14 days after State or Dixie, third run if and as available. State or Dixie must play within 14 days of second run or this clearance will be waived.) 7 days ahead of all subsequent runs if played within 14 days of availability or clearance waived.

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Enterprises Corp.)

7225

5032

C 181(22) **DEAL SHEET** 11/19/40

[illegible] 181(22) [illegible]

COLUMBIA 4/3/42

Seasons: 1940-41, 1941-42 and 1942-43.

THEATRE	TERMS
ROCHESTER Monroe Theatre	Selection of 26 pictures released and/or produced for the above seasons:

4	@	75.00	2-3 Days
5	@	50.00	2-3 "
8	@	35.00	2-3 "
Balance	@	22.50	2-3 "

CLEARANCE: (14 days after State or Dixie, third run if and as available. State or Dixie must play within 14 days of second run of this clearance will be waived.) 7 days ahead of all subsequent runs if played within 14 days of availability or clearance waived.

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Enterprises Corp.)

7236

5083

C181 (23)

DEAL SHEET

N. E. C 181 (23)

11/19/40

COLUMBIA

4/7/42

Seasons: 1940-41, 1941-42 and 1942-43.

THEATRE

TERMS

Selection of 22 pictures released and/or produced for the above seasons:

ROCHESTER

Riviera or Liberty Theatre

4	@	125.00	3-3 Days
8	@	62.50	3-3 "
Balance	@	40.00	3-3 "

CLEARANCE: Second run. 21 days over subsequent runs. (14 days ahead of Hudson, Astor, Hub. Sea Breeze, N. Y. 30 days ahead of [redacted] Hollywood Theatre.

ACCEPTED Louis Weinberg
(Distributor)

ACCEPTED
(Schine Enterprises Corp.)

7327

5084

DEAL SHEET

11/19/40

C 181 (24) ✓ E C 181 (24)

COLUMBIA 4/3/42

Seasons: 1940-41, 1941-42 and 1942-43.

THEATRE	TERMS
ROCHESTER State Theatre	Selection of 12 pictures released and/or produced for the above seasons:

5	@	40.00	2-3 Days
Balance	@	30.00	2-3 "

CLEARANCE: Second run. 21 days over subsequent runs. 30 days ahead of Plaza Theatre.

ACCEPTED .... (Distributor)

ACCEPTED .... (Schine Enterprises Corp.)

7228

5085

C181(p5) N.Y.C. 181/25 [illegible]

DEAL SHEET

11/19/40

COLUMBIA 4/2/42	Seasons: 1940-41, 1941-42 and 1942-43.
THEATRE	TERMS
	Selection of 40 pictures released and/or produced for the above seasons:

THEATRE				
	6	@	20.00	2-3 Days
ROCHESTER	8	@	20.00	2-3 "
Webster Theatre	20	@	15.00	2-3 "
	6	@	12.50	2-3 "

ACCEPTED ....
(Distributor).

ACCEPTED ....
(Schine Enterprises Corp.)

[illegible]

11/19/40

DEAL SHEET

C181(26) H 4 C181(26) [illegible]

COLUMBIA 4/3/42 Seasons: 1940-41, 1941-42 and 1942-43.

THEATRE	TERMS
ROCHESTER West End Theatre	Selection of 36 pictures released and/or produced for the above seasons:
	6 @ 45.00 2-3 Days
	8 @ 30.00 2-3 "
	8 @ 20.00 2-3 "
	Balance @ 12.00 2-3 "
	CLEARANCE: Open booking with Arnett Theatre.

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Enterprises Corp.)

TEGO

5087

11/19/40.

C181(27)

DEAL SHEET

PT & C 184(27) [illegible]

COLUMBIA 4/13/42	Seasons: 1940-41, 1941-42 and 1942-43.
THEATRE	TERMS
SALAMANCA Andrews Theatre	Selection of 12 pictures released and/or produced for the above seasons: 4 @ 55,00 2-3 Days 3 @ 45,00 2-3 " Balance @ 27.50 2-3 " CLEARANCE: [redacted] 30 days ahead of Little Valley, Randolph, Ellicottville and Franklinville. Open booking with Olean.

ACCEPTED Louis Weinberg
(Distributor)

ACCEPTED
(Schine Enterprises Corp.)

V331

5038

11/19/42.

C 181 (28) Pl. G. C181 (2-8)

COLUMBIA 7/3/42

Seasons: 1940-41, 1941-42 and 1942-43.

THEATRE	TERMS
	Selection of 18 pictures released and/or produced for the above seasons:
	4 @ 30.00 2-3 Days
SENECA FALLS	8 @ 25.00 2-3 /
Strand Theatre	Balance @ 17.50 2-3 /

CLEARANCE: [illegible], 30 days ahead of Waterloo. 120 days over second run.

ACCEPTED Louis ....
(Distributor)

ACCEPTED ....
(Schine Enterprises Corp.)

7222

5089

C181 (29)

DEAL SHEET 11/29/40

[illegible] C-181 (29) [illegible]

COLUMBIA 4/2/42

Seasons: 1940-41, 1941-42, 1942-43

THEATRE	TERMS
CAMBRIDGE, MD Arcade or State Theatre	Selection of 40 pictures released and/or produced for the above seasons:

3	@	35%	2-3 Days
5	@	30%	2-3 "
4	@	75.00 (if 75.00 represents more than 25% of the gross, picture to be settled at 25%)	2-3 "
6	@	40.00	2-3 Days
Balance	@	22.50	2-3 "
16 Westerns	@	20.00	2-3 "

CLEARANCE:

ACCEPTED Louis [illegible]
(Distributor)

ACCEPTED ....
(Schine Enterprises Corp.)

[illegible]

5030

C181 (30) P.I.E. C181 (30)

DEAL SHEET. 11/10/40

C O L U M B I A 4/2/40

Seasons: 1940-41, 1941-42, 1942-43

THEATRE	TERMS
	Selection of 32 pictures released and/or produced for the above seasons:

EASTON, Md. Avalon or New Theatre	6	@	40.00	2-3 Days
	8	@	35.00	2-3 "
	10	@	25.00	2-3 "
	Balance	@	22.50 (if any $22.50 pictures play Music Hall or New Theatre, price to be $12.50 - 2-3 Days.)	2-3 "
	10 Westerns	@	15.00	2 Days
	6 Westerns	@	12.50	2 "

CLEARANCE: Ahead of St. Michaels and Hurlock.

ACCEPTED Louis Weinberg
(Distributor)

ACCEPTED
(Schine Enterprises Corp.)

TB34

C181(31)

DEAL SHEET 11/19/40

N-S C181(31)

COLUMBIA 11/3/41

Seasons: 1940-41, 1941-42, 1942-43

THEATRE	TERMS
FEDERALSBURG, Md. Federal Theatre	Selection of 25 pictures released and/or produced for the above seasons:

6	@	35.00	2-3 Days
6	@	20.00	2-3 "
Balance	@	15.00	2 "

Any westerns used to apply against $15.00 commitment.

CLEARANCE: Ahead of Hurlock.

ACCEPTED Louis Weinberg
(Distributor)

ACCEPTED ....
(Schine Enterprises Corp.)

TERMS

5032

C191(40)

DEAL SHEET

C-191(32)

COLUMBIA

Seasons: 1940-41, 1941-42, 1942-43

THEATRE

TERMS

Selection of 21 pictures released and/or produced for the above seasons:

M I L F O R D, Del.

Plaza Theatre

6	@	50.00	2-3 Days
7	@	30.00	2-3 "
Balance	@	22.50	2-3 "
6 Westerns	@	15.00	2-3 "

CLEARANCE:

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Enterprises Corp.)

T236

5093

47

C 191(33) [illegible] 11/19/40

Pl. H. C-191(33) [illegible]

COLUMBIA [illegible]

Seasons 1940-41, 1941-42, 1942-43

[illegible] | [illegible]

Selection of 30 pictures released and/or produced for the above seasons:

SALISBURY, Md. Arcade or Wicomico Theatre	3	@	35%	2-3 Days
	7	@	30%	2-3 "
	4	@	50.00	2-3 "
	Balance	@	30.00 (20.00 if Wicomico 2-3 Das)	2-3 "
	16 Westerns	@	30.00	2-3 "

CLEARANCE: 14 days ahead of Berlin, Snowhill, Princess Anne and Ocean City - if played 14 days after national release date.

ACCEPTED Louis Weinberg
(Distributor)

ACCEPTED [illegible]
(Schine Enterprises Corp.)

[illegible]

5034

C181(591) N. S. C 181 S(54) [illegible] 10/5/40

1/3/42

Columbia - [illegible]

Ritz | 5 @ 15 1-2 days
| 5 @ 12.50 1-2
| Cole 10 1-2
Salisbury | Selection 15 pictures
Md | 16 Westerns @ 12.50 1-2

Season 1940-41

ACCEPTED P. J. Galanty

ACCEPTED Foster

([illegible] Enterprises Corp.)

5095

11/19/40.

DEAL SHEET

C181(35) RT A C181(35) [illegible]
4/3/42

THEATRE	TERMS
COLUMBIA	Seasons: 1940-41, 1941-42 and 1942-43.
ASHLAND (Ohio) Opera House or Palace	Selection of 35 pictures released and/or produced for the above seasons:

2	@	35%	2-3 Days
5	@	30%	2-3 "
4	@	35.00	2-3 "
8	@	30.00	2-3 "
Balance	@	25.00(2-3 Days) 20.00(1 day)	
12 Westerns	@	20.00	1-2 "

CONDITIONS: [redacted] First run, 7 days ahead of Loudonville, Lodi and New London. 30 days [illegible] second run.

ACCEPTED ....
(Exhibitor)

ACCEPTED ....
(Schine Enterprises Corp.)

7200

5036

11/19/40

C181(36) DEAL SHEET

COLUMBIA 11/3/42 Seasons: 1940-41, 1941-42 and 1942-43.

THEATRE	TERMS
BELLEFONTAINE, Ohio Holland Theatre	Selection of 15 pictures released and/or produced for the above seasons: 3 @ 60.00 2-3 days 7 @ 40.00 2-3 " Balance @ 22.50 2-3 "

CLEARANCE: 30 days ahead of Lakeview, DeGraff and West Liberty.

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Enterprises Corp.)

T840

11/19/40.

C.181 (37) DEAL SHEET

THEATRE	TERMS			
COLUMBIA	Seasons: 1940-41, 1941-42 and 1942-43.			
	Selection of 40 pictures released and/or produced for the above seasons:			
	6	@	60.00	2-3 Days
BOWLING GREEN (Ohio)	8	@	40.00	2-3 "
Clazel or Lyric Theatre	14	@	25.00 15.00(if Lyric)	2-3 " 2-3 "
	Balance	@	17.50 12.50(if Lyric)	2-3 " 2-3 "

(WESTERNS can be used in place of lower allocated pictures)

CLEARANCE: [redacted] first run.

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Shine Enterprises Corp.)

1941

DEAL SHEET

2171 (34)

COLUMBIA

Seasons: 1940-41, 1941-42 and 1942-43.

THEATRE	TERMS
BUCYRUS (Ohio) Bucyrus or State or Southern	Selection of 38 pictures released and/or produced for the above seasons:

3	@	115.00	2-3 Days
4	@	60.00	2-3 "
7	@	35.00	2-3 "
Balance	@	20.50	2-3 "
6 Westerns	@	17.50	2-3 "

CLEARANCE: ~~[illegible]~~ First run. 30 days over second run.

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Enterprises Corp.)

T343

11/19/40.

DEAL SHEET C 181 (39)

COLUMBIA Seasons 1940-41, 1941-42 and 1942-43.

THEATRE	TERMS
DELAWARE (Chile) Strand or Star Theatre	Selection of 28 pictures released and/or produced for the above seasons:

4	@	75.00	2-7 Days
6	@	50.00	2-7 "
5	@	40.00	2-5 "
		25.00(1st Star)	2-7 "
49	@	35.00	2-7 "
		17.50(1st Star)	2-7 "
Reissue	@	20.00	2-7 "
15 Westerns	@	15.00	1-3 "

CLEARANCE: ~~[illegible]~~ First run.

ACCEPTED ....
(Distributor)

ACCEPTED ....
([illegible] Enterprises Corp.)

TBS

5100

11/19/40.

C 181 (40)

DEAL SHEET

C-181(40)

4/7/41

COLUMBIA	Seasons: 1940-41, 1941-42 and 1942-43.
THEATRE	TERMS

Selection of 37 pictures released and/or produced for the above seasons:

THEATRE				
FOSTORIA (Ohio) State or Civic or Roxy	3	@	35%	2-3 Days
	5	@	30%	2-3 "
	3	@	25%	2-3 "
	9	@	50.00	2-3 "
	Balance	@	35.00 25.00(if Civic)	2-3 " 2-3 "
	16 Westerns	@	17.50	2-3 "

CLEARANCE: [illegible] First run, 30 days over second run. 7 days over Roxy.

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Enterprises Corp.)

7344

11/19/40.

C181 (41)

DEAL SHEET

VLHC 181/41

COLUMBIA

4/3/42

Seasons 1940-41, 1941-42 and 1942-43.

THEATRE	TERMS			
	Selection of 36 / pictures released and/or produced for the above seasons:			
	4	@	115.00	2-3-4 Days
KENT (Ohio) (Opera House)	8	@	50.00	2-3-4 "
	16	@	27.50	2-3-4 "
RAVENNA (Ravenna)	Balance	@	17.50	2-3-4 "
	12 Westerns	@	15.00	2-3- "

CLEARANCE: [redacted] First run. 90 days over second run.

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Enterprises Corp.)

7348

5102

11/19/40.

DEAL SHEET

C181(43)

COLUMBIA

Seasons: 1940-41, 1941-42 and 1942-43.

4/5/42

THEATRE	TERMS			
	Selection of 15 pictures released and/or produced for above seasons:			
KENT (Ohio) (Opera House) & RAVENNA (Ravenna)	4	@	60.00	2-3 Days
	6	@	40.00	2-3 "
	5	@	22.50	2-3 "
	Any additional pictures price to be	@	15.00	2-3 "
Renewal				

CLEARANCE: Second run.

ACCEPTED Louis Weinberg
(Distributor)

ACCEPTED ....
(Schine Enterprises Corp.)

TRAG

5103

11/19/40.

C 191(43)

DEAL SHEET

COLUMBIA

Seasons: 1940-41, 1941-42 and 1942-43.

THEATRE	TERMS
NORWALK (Ohio) Forum or Moose Theatre	Selection of 24 pictures released and/or produced for the above seasons:

2	@	75.00	2-3 Days
4	@	60.00	2-3 "
6	@	40.00	2-3 "
6	@	30.00	2-3 "
Balance	@	20.00	2-3 "
12 Westerns	@	17.50	2-3 "

CLEARANCE: First run. 7 days over Huron, New London, Willard, and Milan. 90 days over second run.

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Enterprises Corp.)

TB67

5104

12/19/40

C 181 (44)

FINAL SHEET

V.I. Ex. C-181 (4/44)

COLUMBIA 4/2/44

THEATRE	TERMS
	Seasons: 1940-41, 1941-42 and 1942-43.
	Selection of 34 pictures released and/or produced for above seasons:
	5 @ 35% 2-3 Days
TIFFIN (Ohio)	3 @ 30% 2-3 "
Ritz or Tiffin or Grand	20 @ 50.00 2-3 " (14 of these 50.00 pictures can be played at the Grand or Tiffin @ 37.50.)
	6 Westerns @ 25.00 2-3 Days'

CLEARANCE: First run. 90 days over second run.

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Enterprises Corp.)

T348

11/19/40.

C181(45)

DEAL SHEET

Ill. Ex. C-181(45)

COLUMBIA 4-3-

Seasons: 1940-41, 1941-42 and 1942-43.

THEATRE	TERMS
VAN WERT (Ohio) Strand or Van Wert Theatre	Selection of 20 pictures released and/or produced for the above seasons:

2	@	100.00	2-3 Days
3	@	75.00	2-3 "
3	@	50.00	2-3 "
Balance	@	30.00 20.00(in Strand)	2-3 " 2-3 "
12 Westerns	@	15.00	2-3 "

CLEARANCE: First run. 90 days over second run.

ACCEPTED Louis Weinberg
(Distributor)

ACCEPTED ....
(Schine Enterprises Corp.)

JB40

5106

C181 (46)

DEAL SHEET 11/13/40

COLUMBIA Seasons: 1940-41, 1941-42, 1942-43

THEATRE	TERMS
ATHENS, Ohio Athens or Ohio or Court Theatre	Selection of 40 pictures released and/or produced for the above seasons:

3	2	35%	2-3 Days
7	3	60.00	2-3 "
4	[illegible]	40.00	2-3 "
4	[illegible]	40.00 30.00 (if Ohio)	2-3 " 2-3 "
22	C	30.00 22.50 (if Ohio)	2-3 Days 2-3 "
16 Westerns	[illegible]	15.00	1-2 Days

CLEARANCE: First run. 14 days over Nelsonville. 30 days clearance after national release date in Athens County.

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Enterprises Corp.)

[illegible]

5107

C 181 (47)

DUAL SHEET

11/10/40

COLUMBIA

Seasons: 1940-41, 1941-42, 1942-43

THEATRE	TERMS
CORBIN, Ky. Hippodrome or Kentucky or Viv Theatre	Selection of 40 pictures released and/or produced for the above seasons:

4	@	35%	2 Days
5	@	40.00	2 "
6	@	25.00	2 "
Balance	@	15.00	2 "
16 Westerns	@	12.50	2 "

CLEARANCE: First run. 60 days over second-run.

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Enterprises Corp.)

TWO

5108

C 101 (49)

[illegible] C 101 (49) 11/19/40

[illegible]	Seasons 1940-41, 1941-42 and 1942-43
[illegible]	[illegible]
HARLAN, Ky. Margie Grand Theatre [illegible]	Selection of 20 pictures released and/or produced for the above seasons
	3 @ 22.50 / 1-2 Days
	5 @ 15.00 1-2 "
	12 @ 12.50 1-2 "
	[illegible]
	CLEARANCE: 45 days after 1st run.

ACCEPTED ....
(Distributor)

ACCEPTED ....
([illegible] Enterprises Corp.)

[illegible]

5109

C 181(49)

[illegible] 11/19/[illegible]

C-181(49)

COLUMBIA | Seasons 1940-41, 1941-42 and 1942-43

(Theatre)

TERMS

Selection of ________ pictures released and/or produced for the above seasons:

No picture commitment.

3	@	35%	3-4 Days
5	@	30%	3-4 "
4	@	175.00	3-4 "
Balance	@	90.00	3-4 "
16 Westerns			
(8	@	50.00	1-2 Days
(8	@	35.00	1-2 "

LEXINGTON, Ky.

Kentucky or Ben Ali or Strand or State Theatre

First Run

CLEARANCE: First run. 60 days over second run at State. 90 days over Opera House and Ada Meade.

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Enterprises Corp.)

0

5110

C 181 (50)

DEAL SHEET

11/19/40

C 181 (50)

[illegible]

THEATRE

Seasons 1940-41, 1941-42 and 1942-43

TERMS

Selection of 40 pictures released and/or produced for the above seasons:

4	@	100.00	2-3 Days
6	@	75.00	2-3 "
Balance	@	35.00	2-3 "
16 Westerns	@	25.00	2-3 "

LEXINGTON,
Ky.

Strand or State or
Opera House Theatre

Second Run

CLEARANCE:

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Enterprises Corp.)

TERMS

5111

C181(51)

DEAL SHEET 11/19/40

C181 51

COLUMBIA Seasons: 1940-41, 1941-42 and 1942-43

4/21/42

THEATRE	TERMS
LEXINGTON, Ky. State or Opera House ird Run	Selection of 25 pictures released and/or produced for the above seasons:

6	@	27.50	2-3 Days
8	"	22.50	2-3 "
6	"	17.50	2-3 "
Balance	"	15.00	2-3 "

CLEARANCE:

ACCEPTED Louis Weinberg
(Distributor)

ACCEPTED
(Schine Enterprises Corp.)

[illegible]

5112

11/20/40.

C 191 (52)

[illegible] C-191 (52) [illegible]

COLUMBIA	Season 1940-41.
[illegible]	[illegible]

LEXINGTON

Second Run

"Mr. Smith Goes To Washington" @ [illegible]
(2-3 Days)

[illegible] Same as last year.

ACCEPTED............................
(Distributor)

ACCEPTED............................
(Schine Enterprises Corp.)

[illegible]

5113

C 181 (-53)

DEAL SHEET 11/18/40

4/3/41

COLUMBIA

Seasons: 1940-41, 1941-42 and 1942-43.

THEATRE	TERMS
MAYSVILLE, Ohio Russell or Washington Theatre	Selection of 35 pictures released and/or produced for the above seasons.

4	@	50.00	2-3 Days
6	@	30.00	2-3 "
6	@	25.00	2-3 "
Balance	@	17.50	2-3 "
16 Westerns	@	17.50	1-2 "

CLEARANCE: First run: 14 days over Flemingsburg and Augusta, Ripley, Manchester and Brooksville 60 days over second run.

ACCEPTED Louis Weinberg
(Distributor)

ACCEPTED ....
(Schine Enterprises Corp.

TEST

5114

DEAL SHEET 11/19/40

C 181(54) C 181(54)

COLUMBIA	Seasons: 1940-41, 1941-42 and 1942-43.
THEATRE	TERMS
MIDDLESBORO, Ky. Manring or Brownie Theatre	Selection of 24 pictures released and/or produced for the above seasons:

6	@	50.00	1-2 Days
5	@	30.00	1-2 "
6	@	22.50	1-2 "
4	@	17.50	1-2 "
16 Westerns	@	12.50	1-2 "

Any additional pictures used, price to be $15.00.

CLEARANCE:

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Enterprises Corp.)

5115

11/29/40

C181 (S.S) FINAL SHEET O.K. C-181 (S.S)

COLUMBIA

Seasons: 1940-41, 1941-42, 1942-43

THEATRE	TERMS			
	Selection of 22 pictures released and/or produced for the above seasons:			
	3	●	35%	2 Days
	7	●	32.50	2 "
	6	●	20.00	2 "
PARIS, Ky.	6	●	15.00	2 " 2
Bourbon or Paris Theatre	Balance	●	12.50	2 "
	16 Westerns	●	12.50	1-2 Days

CLEARANCE: First run.

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Enterprises Corp.)

[illegible]

5116

11/19/40

DEAL SHEET

C181(56)

R. & C. 181(56)

COLUMBIA

Seasons: 1940-41, 1941-42 and 1942-43

4/2/42

THEATRE	TERMS
PIQUA, Ohio Piqua or Miami Theatre	Selection of 26 pictures released and/or produced for the above seasons:

4	@	110.00	3-4 Days
10	@	50.00	3-4 "
4	@	40.00	3-4 "
Balance	@	22.50 30.00(if Piqua)	2-3 2-3 Days
6 Westerns	@	20.00	1-2 Days

CLEARANCE: Open availability with Troy, Sidney and Greenville.

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Enterprises Corp.)

[illegible]

5117

C181(57)

DEAL SHEET 11/19/40

Pl. Ex. C181(57)

COLUMBIA

Seasons: 1940-41, 1941-42 and 1942-43.

THEATRE

TERMS

Selection of 22 pictures released and/or produced for the above seasons:

3	@	35%	2 Days
7	@	37.50	2 "
Balance	@	20.00	2 "
16 Westerns	@	12.50	2 "

RICHMOND, Ky.

Madison Theatre

CLEARANCE: First run.

ACCEPTED Louis Weinberg
(Distributor)

ACCEPTED
(Schine Enterprises Corp.)

7261

5118

DEAL SHEET 11/19/40

C181(58) [illegible] C181(38) [illegible]

COLUMBIA 4/13/42

Seasons: 1940-41, 1941-42 and 1942-43.

THEATRE	TERMS
AMSTERDAM Rialto or Strand Theatre	Selection of 32 pictures released and/or produced for the above seasons:

3	@	35%	2-3 Days
5	@	30%	2-3 "
5	@	25%	2-3 "
15	@	75.00	2-3 "
Balance	@	50.00	2-3 "
12 Westerns	@	50.00	2-3 "

CLEARANCE: 30 days ahead of Broadalbin, Fonda and Johnstown.

ACCEPTED Louis Weinberg
(Distributor)

ACCEPTED
(Schine Enterprises Corp.)

7262

5119

GEORGIA

BILL SHEET

1/22/42.

C181(59) ~~[illegible]~~ C171(39) [illegible]

4/4/42

Seasons 1940-41, 1941-42 and 1942-43.

TOWNS	TERMS
	Selection of 15 pictures released and/or produced for the above seasons:
	4 @ 30.00 2-3 Days
DALLSTON	5 @ 20.00 2-3 "
Capitol Theatre	5 @ 12.50 2-3 "
	CLEARANCE: Same as last year.

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Enterprises Corp.)

TDRB

5120

DEAL SHEET

C.151 (60) w/ ex. C151(60) [illegible]

COLUMBIA 4/3/42

Seasons: 1940-41, 1941-42 and 1942-43.

THEATRE

TERMS

4-4

CARTHAGE

Strand
Theatre

Selection of 30 pictures released and/or produced for the above seasons:

4	@	60.00	2-3 Days
6	@	40.00	2-3 "
6	@	20.00	2-3 "
Balance	@	15.00	1-2 "
8 Westerns	@	15.00	1-2 "

CLEARANCE: 30 days over City of Carthage. 14 days over Lowville.

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Enterprises Corp.)

T284

5121

[illegible] 11/19/[illegible]

c181(61) [illegible] C181(61) [illegible]

[illegible] 4/12/44	Seasons 1942-43, 1943-44 and 1944-45.
[illegible]	[illegible]
	Selection of 40 pictures released and/or produced for the above seasons
	8 @ [illegible] 2-3 Days
	8 @ [illegible] 2-3 "
[illegible]	8 @ [illegible] 2-3 "
[illegible]	11 @ [illegible] 2-3 "
	Balance @ [illegible] (10 @ [illegible]) 2-3 "
	16 Features @ [illegible] 2-3 "

[illegible] [illegible]

ACCEPTED [illegible]
([illegible])

ACCEPTED [illegible]
([illegible] Corp.)

[illegible]

5122

11/19/40

DEAL MEMO

C191 (62) S.T. & C 151(32) [illegible]

[illegible] 4/3/42	Seasons 1940-41, 1941-42 and 1942-43.
THEATRE	TERMS
	Selection of 16 pictures released and/or produced for the above company:
	8 @ 20.00 2-3 Days
GRAND ISLAND (Empire Theatre)	Balance @ 17.50 2-3 "
Second Run.	
	PROTECTION: Second run. 60 days ahead of third run.

ACCEPTED ....

ACCEPTED ....
([illegible] Corp.)

TERM

5123

6181(67) EXH. NO. 11/19/40

P A R A M O U N T

Seasons: 1940-41, 1941-42 and 1942-43.

THEATRE	TERMS
GLOVERSVILLE	Selection of [illegible] pictures released and/or produced for the [illegible] seasons:
Glove or Hippodrome	

8	@	[illegible]	3-5 Days
8	@	[illegible]	3-5 "
8	@	[illegible]	3-5 "
6	@	75.00	3-5 "
Balance	@	[illegible]	3-5 "
12 Westerns	@	[illegible]	1-2 "

CLEARANCE: 30 days over Johnstown. 30 days over Broadalbin, Mayfield, Sacandaga Park, Fonda, Northville and Canajoharie.

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Enterprises Corp.)

[illegible]

5124

11/10/40.

C 181(64) DEAL MEMO

COLUMBIA 4/4/42	Seasons 1940-41, 1941-42 and 1942-43.
THEATRE	TERMS
GLOVERSVILLE Hippodrome Theatre Second Run	Selection of ______ pictures released and/or produced for the above seasons If repeat: $ @ $0.00 2-3 Days Balance @ 25.00 1-2 "

CLEARANCE: [redacted] to be played within the first run clearance of Gloversville over Johnstown.

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Enterprises Corp.)

7280

5125

COLUMBIA

DEAL SHEET

1/[illegible]/41.

C 181(65)   M. E. C 181(68)

4/2/42

THEATRE	TERMS
	Seasons: 1940-41, 1941-42 and 1942-43.
GRANVILLE Pastime Theatre	Selection of 18 pictures released and/or produced for the above seasons:

6	@	40.00	2-3 Days
6	@	25.00	2-3 "
3	@	15.00	2-3 "
3	@	12.50	2-3 "

15

CLEARANCE: Same as last year.

ACCEPTED .... (Distributor)

ACCEPTED .... (Sabine Enterprises Corp.)

7300

5126

C 181 (#6) DEAL SHEET 11/19/40

COLUMBIA

Seasons: 1940-41, 1941-42 and 1942-43.

THEATRE	TERMS
HAMILTON (State Theatre)	Selection of 20 pictures released and/or produced for the above seasons: 4 @ 45.00 2-3 Days 4 @ 35.00 2-3 " 8 @ 25.00 2-3 " Balance @ 15.00 2-3 "
	CLEARANCE: 21 days ahead of Waterville and Oriskany Falls.

ACCEPTED ....
(Exhibitor)

ACCEPTED ....
(Schine Enterprises Corp.)

7378

5127

11/18/40

DEAL SHEET

C181(67) N.E.C. 181 (67)

COLUMBIA 4/3/42

Seasons: 1940-41, 1941-42 and 1942-43.

THEATRE	TERMS
HERKIMER Liberty Theatre	Selection of 15 pictures released and/or produced for the above seasons:

5	@	100.00	2-3 Days
5	@	75.00	2-3 "
5	@	50.00	2-3 "
Balance	@	30.00	2-3 "

CLEARANCE: 21 days from last date of first run Utica. 14 days ahead of Frankfort and Mohawk.

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Enterprises Corp.)

TET1

5128

C181(68) DEAL SHEET C151(68) 11/19/40

COLUMBIA 4-3-42

Seasons: 1940-41; 1941-42 and 1942-43.

THEATRE

TERMS

Selection of 20 pictures released and/or produced for the above seasons:

HUDSON FALLS

Strand Theatre

D

4	@	45.00	2-3 Days
8	@	35.00	2-3 "
Balance	@	15.00	2-3 "

D

CLEARANCE: 14 days after first run Glens Falls.
14 days ahead of Fort Edward.

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Enterprises Corp.)

7272

C 181 (69) C-181 (69)

DEAL SHEET 11/19/40

COLUMBIA Seasons: 1940-41, 1941-42 and 1942-43.

THEATRE	TERMS
ILION Capitol Theatre	Selection of 26 pictures released and/or produced for the above seasons:

2	●	60.00	2-3 Days
4	●	60.00	2-3 "
8	●	25.00	2-3 "
Balance	●	20.00	2-3 "
6 Westerns	●	17.50	1-2 "

CLEARANCE: 10 days after Herkimer. 30 days ahead of Mohawk and Frankfort. 21 days ahead of Richfield Springs.

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Enterprises Corp.)

7273

6

5130

C181 (70)

DEAL SHEET

11/19/40

[illegible] C-181(70) [illegible]

COLUMBIA

4/3/42 Seasons: 1940-41, 1941-42 and 1942-43.

THEATRE	TERMS			
	Selection of 24 pictures released and/or produced for the above seasons:			
	4	@	75.00	2-3 Days
	5	@	50.00	2-3 "
LITTLE FALLS	7	@	30.00	2&3 "
Rialto Theatre	Balance	@	20.00	2-3 "
	12 Westerns	@	20.00	1&2 "

CLEARANCE: 90 days over City of Little Falls. 14 days over Fort Plain. 20 days ahead of St. Johnsville and Dolgeville.

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Shine Enterprises Corp.)

7874

5131

C181 (71)

DEAL SHEET 11/19/40

Rl. E. C-181(71)

COLUMBIA H 3/4/2

Seasons: 1940-41, 1941-42 and 1942-43.

EXHIBITOR	TERMS
MALONE Malone Theatre	Selection of 15 pictures released and/or produced for the above seasons:

4	@	65.00	2-3 Days
8	@	40.00	2-3 "
Balance	@	20.00	2-3 "
12 Westerns	@	15.00	1-2 "

CLEARANCE: 30 days ahead of Brushton, Chateaugay and Fort Covington.
60 days over second run.

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Enterprises Corp.)

7275

COLUMBIA

1/20/41.

DEAL SHEET

~~C 181 (72)~~

K.L.G. C 181 (72) [illegible]

4/3/42

Season: 1940-41, 1941-42 and 1942-43.

THEATRE	TERMS
MECHANICVILLE State Theatre	Selection of 15 pictures released and/or produced for the above seasons

3	@	75.00	2-3 Days
7	@	40.00	2-3 "
5	@	22.50	2-3 "

CLEARANCE: Same as lastyear.

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Enterprises Corp.)

5133

C181(73)

DEAL SHEET

11/19/40

[illegible] C-181 (73) [illegible]

COLUMBIA

4/3/42

Seasons: 1940-41, 1941-42 and 1942-43.

THEATRE	TERMS
OGDENSBURG Strand or Pontiac Theatre	Selection of 17 pictures released and/or produced for the above seasons:

3	@	100.00	2-3 Days
7	@	50.00	2-3 "
Balance	@	35.00	2-3 "
4 Westerns	@	22.50	1-2 "

CLEARANCE: 30 days ahead of Waddington, ~~Canton~~ and Norwood.

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Enterprises Corp.)

7277

C 181(74)

DEAL SHEET

11/19/40

H. J. C-181(74

COLUMBIA

1/3/42

Seasons: 1940-41, 1941-42 and 1942-43.

THEATRE	TERMS
	Selection of 29 pictures released and/or produced for the above seasons;

3	@	35%	2-3 Days
5	@	30%	2-3 "
2	@	50.00	2-3 "
7	@	30.00	2-3 "
Balance	@	25.00	2-3 "
16 Westerns	@	25.00	1-2 "

ONEONTA

Oneonta or Palace Theatre

CLEARANCE: 30 days ahead of Morris, Delhi, Hartwick and Worcester. 14 days ahead of Cooperstown and Sidney.

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Enterprises Corp.)

7278

5135

C181(75)

DEAL MEMO 11/20/40

Pl. Ex. C-181(75) for Ident.

COLUMBIA	Seasons: 1940-41, 1941-42 and 1942-43.
THEATRE	TERMS

Selection of 37 pictures released and/or produced for the above seasons:

	4	@	70.00	2-3 Days
SARANAC LAKE	6	@	50.00	2-3 "
Pontiac Theatre	Balance	@	35.00	2-3 "

CLEARANCE: 30 days ahead of Lake Placid with open booking during the periods of June 15th to Sept. 15th; Jan. 15th to Feb. 15th. 30 days over Saranac Inn.

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Enterprises Corp.)

YETO

5136

C181(76) DEAL SHEET 11/19/40

[illegible] C-181(76) [illegible]

COLUMBIA Seasons: 1940-41, 1941-42 and 1942-43.

THEATRE	TERMS
	Selection of 16 pictures released and/or produced for the above seasons:
	4 @ 50.00 2-3 Days
	6 @ 35.00 2-3 "
TUPPER LAKE	6 @ 25.00 2-3 "
[illegible] Theatre	Balance @ 15.00 2-3 "
	8 Westerns @ 10.00 1-3 "
	CLEARANCE: 30 days ahead of [illegible] and [illegible].

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Enterprises Corp.)

[illegible]

C 191 (77)

DEAL MEMO 11/19/40

Pl. Ex. C-191 (77) Identified

COLUMBIA 4/3/45

Seasons: 1940-41, 1941-42 and 1942-43.

THEATRE

TERMS

WATERTOWN

Avon or Olympic Theatre

Selection of 36 pictures released and/or produced for the above seasons:

3	@	250.00	2-3 Days
3	@	150.00	2-3 "
4	@	100.00	2-3 "
4	@	85.00	2-3 "
4	@	75.00	2-3 "
Balance	@	35.00	2-3 "
12 Westerns	@	25.00	2-3 "

CLEARANCE: 30 days ahead of Adams, Sackette Harbor, Antwerp, Philadelphia, Dexter and Theresa. 60 days first run over second run.

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Enterprises Corp.)

7281

5138

C 181 (78)

DEAL SHEET 11/19/40.

COLUMBIA

Seasons: 1940-41, 1941-42 and 1942-43.

THEATRE	TERMS
	Selection of ________ pictures released and/or produced for the above seasons:
	(Pictures that play the Avon first run, to be played second run at the Olympic.)
WATERTOWN Olympic Theatre	6 @ 25.00 2-3 Days 8 @ 22.50 2-3 " Balance @ 17.50 3-5 "
	CLEARANCE: Second run. 60 days ahead of third run.

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Enterprises Corp.)

7288

5139

COLUMBIA 1/28/41.

DEAL SHEET

C 131 (79)

Seasons: 1940-41, 1941-42 and 1942-43.

THEATRE	TERMS
WHITEHALL Capitol Theatre	Selection of 15 pictures released and/or produced for the above seasons: 4 @ 35.00 2-3 Day's 8 @ 22.50 2-3 " 3 @ 15.00 2-3 " CLEARANCE: Same as last year.

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Enterprises Corp.)

7283

[fol. 7284] **Exhibit S-73**

Lockport, New York,
October 10th, 1936.

Palace Lockport Corp., Seneca Theatres, Inc., Schine Realty Corporation.

Gentlemen:

In consideration of the purchase by you of certain interests in the Palace Theatre at Lockport, New York, we, and each of us, will not, at any time during the period ending October 10th, 1946, directly or indirectly, under any circumstances or conditions whatsoever, engage in, or be, or become interested, in any relation or capacity, in any sound and/or motion picture theatre, vaudeville theatre, theatre or place of amusement of any kind in the City of Lockport, New York.

Very truly yours, Nikitas Dipson, John R. Osborne, Peter Grafiades.

Witness: Warren F. Thompson.

[fol. 7285] **Exhibit S-74**

Lexington, Kentucky,
January 11, 1939.

It is mutually agreed by and between the undersigned, who constitute the present stockholders of the Phoenix Maysville Theatre Company, that they or any of them will not engage, either directly or indirectly, personally or by partnership, stockownership, employment, or otherwise, in the business of exhibiting motion pictures or in the picture show business or any other branch of the theatre business within the City of Maysville, Kentucky, for a period of fifteen (15) years after January 11, 1939, but nothing herein contained shall prevent Phoenix Maysville Theatre Company from opening and operating additional theatres within said limits, if within the judgment of its Board of Directors it should desire to do so.

This agreement is executed in triplicate, each to have the full force and effect of an original, this the 11th day of January, 1939.

Jack Frisch, Sam Kaplin, J. Meyer Schine, by Louis Lazar.

[fol. 7286] **Exhibit S-75**

January 14, 1939.

Phoenix Amusement Company, Lexington, Kentucky.

Gentlemen:

In consideration of your execution of the leases covering the Brownie Theatre and the Manring Theatre, Middlesboro, Kentucky, respectively, and of the loan of Fifty-five Thousand Dollars ($55,000.00) which you have caused to be made to us or for our benefit, and of the sum of One Dollar ($1.00) and other good and valuable consideration, to each of us in hand paid, the receipt whereof is hereby acknowledged, we do hereby jointly and severally covenant and agree that we will not, nor will either of us, directly or by partnership, stock ownership, employment, or otherwise, engage or become interested in the operation of any motion picture theatre or theatres, or in the exhibition of any motion pictures or other theatrical performances or exhibitions, in the City of Middlesboro, Kentucky, for a period of fifteen (15) years from the date hereof, provided that lessee has not breached any covenants of said leases.

Charles O. Brown (L.S.). Bessie O. Brown (L.S.).
Chas. O. Brown, Jr. (L.S.).

Witness: Wm. W. Townsend.

[fol. 7287] **Exhibit D-1**

Stage and Screen Attractions

Emerson W. Long & Son, Mgrs.

Memorial Theatre

The House of Perfect Sound

Mt. Vernon, Ohio

Nov. 8, 1935.

Mr. I. J. Schmertz, Twentieth Century-Fox Corp., Cleveland, O.

Dear Mr. Schmertz:

Just a tip, that our opposition have closed their Lyric theatre for all but week end shows, when they are running second-run product.

We have been standing them up and have them coming, especially with our stage shows we now put on once a week; we are reliably informed that at least two of the major producers are getting pretty sore on account of double-featuring at the Vine.

If your company wants representation in the best house in Mt. Vernon with 1100 seats against 560 at the Vine, we are in a position to do business on all or part of your product.

We have all the product we can use until after the first of the year when we will have some dates for outstanding product.

Just giving you the above for what it is worth that you may pass same along t*h* New York—in case.

Sincerely yours, E. W. Long, Manager, Memorial Theatre.

We showed to 2600 people Tues and Wed of this week.

EWL.

[fol. 7288] **Exhibit D-2**

Stage and Screen Attractions

Emerson W. Long & Son, Mgrs.

Memorial Theatre

The House of Perfect Sound

Mt. Vernon, Ohio

Oct. 30, 1935.

Mr. E. L. McAvoy, R.K.O. Bldg., New York, N. Y.

Dear Mr. McAvoy:

You might be interested to know that our opposition (Schines) have closed their Lyric theatre here, except for Saturdays when they run second-run product.

We have more than doubled our attendance in the last month with our 1100 seat house at 20 and 30¢ admissions; we are featuring stage attractions with mid-week shows and are getting the crowds.

We can still use another block of good screen product and give you a break no one else can in Mt. Vernon on your better pictures.

Are also holding a place for your product at Cadiz providing we can get together here, and as promised we are giving you first chance in taking care of us.

We have a real show house and your Cleveland office can tell you about our equipment and ability to put on shows.

This is a home owned and managed proposition now and the public are giving us support that they will not give to the chain outfit.

With kindest personal regards beg to remain

Yours truly, Emerson W. Long.

[fol. 7289] EXHIBIT D-3

Always a Good Show E. W. Long & Sons, Mgrs.

HIGHWAY THEATRES

Western Electric Sound Equipped

Community—Memorial
Cadiz Mt. Vernon

Cadiz, Ohio

Mt. Vernon, O., April 14, 1935.

Mr. I. J. Schmertz, Manager, Fox Film Corporation, Cleveland, O.

DEAR MR. SCHMERTZ:

We are writing you in regard to 1935/36 product for the Memorial Theatre at Mt. Vernon and for your information beg to advise we now have the best equipped theatre in this part of the state, from every standpoint; we have 1075 seats and Western Electric's latest wide range equipment; house is perfect acoustically and all productions will get the best presentation possible.

This is now a home owned and managed theatre and our patronage has been growing by leaps and bounds since our opening the first of the year. We will contract for your entire product and show on a percentage basis all outstanding pictures; also buy contingent with product for Community Theatre at Cadiz, O.

We now understand that we have another block of pictures coming to us, under the survey made by the Department of Justice, whose representative canvassed this town recently; we are giving you this information with a view of doing business first with your company.

Will be pleased to have your represen-ative call in due time or see you by appointment in Cleveland.

With kindest regards, beg to remain,

Yours truly, E. W. Long, Manager, Memorial Theatre, Mt. Vernon, O.

[fol. 7290] **Exhibit D-4**

Always a Good Show E. W. Long & Sons, Mgrs.

HIGHWAY THEATRES

Western Electric Sound Equipped

Community—Memorial

Cadiz Mt. Vernon

Cadiz, Ohio

Mt. Vernon, O., April 14, 1935.

Manager, RKO Distributing Corp., Cleveland, O.

DEAR SIR:

We are writing you in regard to 1935/36 product for the Memorial Theatre at Mt. Vernon and for your information beg to advise we now have the best equipped theatre in this part of the state, from every standpoint; we have 1075 seats and Western Electric's latest wide range equipment; the house is acoustically perfect and all productions will get the best presentation possible.

This — now a home owned and managed theatre and our patronage ~~has~~ been growing by leaps and bounds since our opening here the first of the year; we will contract for your entire product and show on a percentage basis all outstanding pictures; also buy contingent ~~with~~ product for the Community theatre at Cadiz.

We understand that we have coming to us, another block of pictures, under the survey made recently by the Department of Justice here and we are giving you this information with a view of doing business with your company.

Will be pleased to have a represen-ative call in due time or make an appointment with you in Cleveland.

With kindest regards, beg to remain

Yours truly, E. W. Long, Manager, Memorial Theatre, Mt. Vernon, O.

[fol. 7291] **Exhibit D-5**

Stage and Screen Attractions
Emerson W. Long & Son, Mgrs.

Memorial Theatre

The House of Perfect Sound

Mt. Vernon, Ohio

April 20, 1938.

Mr. F. D. Drew, Branch Manager,
Loew's Incorporated
Cleveland, Ohio.

Dear Mr. Drew:

We regret we were unable to get to Cleveland the first of the week as intended, on account of being called to Cadiz over the week end.

Noting your letter of the 12th., we can use substitutes for the two pictures mentioned, already set, and could furnish six more dates for 37/37 product, as well as a selective contract for 2nd. run 38/39 product of 30 pictures; with this we can use all of your 2nd. run shorts for 38/39 and possibly some more of the present season.

All the above, providing you can furnish paper and mats for advertising; We did not get any mats for Good Earth and have had trouble in getting many items for other 2nd. run product shown.

You can write up contracts covering the above and mail to us, making the best proposition you can in the way of price, as you know what our compe-tion is here now.

Please let us hear from you by return mail.

Yours truly

E. W. Long Manager
Memorial Theatre Mt. Vernon O.

P. S. With the above, we will promise to continue with all your first run product at Cadiz for 1928/39.

[fol. 7292] **Exhibit D-6**

April 12th, 1938.

Mr. E. W. Long,
Memorial Theatre,
Mt. Vernon, Ohio.

Dear Mr. Long:

First, let me thank you on behalf of the Will Rogers Memorial Commission for the contribution you gave me yesterday when I visited you at your theatre.

I appreciate all you told me in reference to having an abundance of pictures available for you at this time, and being booked up to July 1st, still having six of our pictures to play.

As per your request, am looking up our booking charts to see if I can suggest a better picture to substitute for either Between Two Women or Sworn Enemies. The booker will write you on this.

Was in hopes that you could find room to use approximately as many of the 1937-38 pictures as you did of the 1936-37 product. Am advising my Home Office that I am holding up any further negotiations for second run product in Mt. Vernon until Monday, April 18th, at which time you have assured me you will be in position to let me know your desires insofar as second run exhibition of our 1937-38 product in Mt. Vernon is concerned; this being due to your having certain deals pending which make the delay necessary on your part.

Am leaving for Toledo today. Expect to return Friday. In the event that you come into Cleveland some day the latter part of the week, as you mentioned you might, will appreciate your wiring the office so that I can return and be here upon your arrival.

Sincerely yours, —— ——, Resident Manager.

FDD:AV

copies to Messrs, Connors and Maloney

[fol. 7293] **Exhibit D-7**

Always a Good Show E. W. Long & Sons, Mgrs.
Highway Theatres
Western Electric Sound Equipped
Community — Memorial
Cadiz Mt. Vernon

Cadiz, Ohio

Mt. Vernon, O., April 14, 1935.

Manager—
Warners-First National Pict. Corp.
Cleveland O.

Dear Sir:

We are writing you in regard to 1935-36 product for the Memorial Theatre at Mt. Vernon, O. and for your information beg to advise we now have the best equipped theatre in this part of the state from every standpoint; we have 1075 seats and Western Electric's latest wide-range equipment; the house is acoustically perfect and all productions will get the best presentation possible.

This is now a home owned and managed theatre and our patronage has been growing by leaps and bounds since our opening the first of the year; we will contract for your entire product and show on a percentage basis all outstanding pictures; also buy contingent with product for Community Theatre at Cadiz, O.

We understand that we have another block of pictures coming to us, under the survey recently made by the Department Of Justice, who recently canvassed the situation here. We are giving you this information with a view of doing business with your company.

Will be pleased to have a representative call in due time or make an appointment with you in Cleveland.

With Kindest regards, beg to remain

Yours Truly, E. W. Long, Manager, Memorial Theatre, Mt. Vernon, O.

[fol. 7294] **Exhibit D-8**

Stage and Screen Attractions
Emerson W. Long & Son, Mgrs.

Memorial Theatre
The House of Perfect Sound

Mt. Vernon, Ohio

Oct. 7, 1935.

Mr. E. L. McAvoy, R K O Bldg., New York, N. Y.

Dear Mr. McAvoy:

Just a tip to inform you that the Schines have lost their case here in both courts where they have been trying to renew their lease for the Lyric theatre, with a view of rebuilding.

One of the parties interested has come to us with a proposition to build on a good location to take the place of the Lyric, and inasmuch as our present lease has a clause protecting us against such a contingency, we are considering same.

Our opposition is running nothing but the cheapest independent pictures in this small house (200) seats and we are confident, for the last six weeks has not taken enough to pay the rent.

Kindly treat this information as confidential, and if it is any help to you in getting our deal across with your company, would be glad to have you check up on same, if opposition gives you any "line" as to what their intentions are here, you can judge for yourself in the matter.

We are doing very satisfactory business, but need another block of pictures to date up beginning about the first of Sept.

Thanking you for your kind consideration and with best regards, beg to remain,

Yours Truly, Emerson W. Long.

[fol. 7295]

Exhibit D-9

Stage and Screen Attractions
Emerson W. Long & Son, Mgrs.

Memorial Theatre
The House of Perfect Sound

Mt. Vernon, Ohio

Oct. 30, 1935.

Mr. E. L. McAvoy, R.K.O. Bldg., New York N. Y.

Dear Mr. McAvoy:

You might be interested to know that our op-osition (Schines) have closed their Lyric theatre here, except for Saturdays when they run second-run product.

~~We have~~ more than doubled our attendance in the last month with our 1100 seat house at 20 and 30¢ admissions; we are featuring stage attractions with mid-week shows and are getting the crowds.

We can still use another block of good screen product and give you a break no one else can in Mt. Vernon on your better pictures.

Are also holding a place for your product at Cadiz providing we can get together here, and as promised we are giving you first chance in taking care of us.

We have a real show house and your Cleveland office can tell you about our equipment and ability to put on shows.

This is a home owned and managed proposition now and the public are giving us support that they will not give to the chain outfit.

With kindest personal regards beg to remain

Yours Truly, Emerson W. Long.

(Here follow 3 Photolithographs. side folios 7296-7298)

Form 33 Rev.—[illegible]—4-34

EXHIBIT D-10

DEFENDANT'S EXHIBIT [illegible]

D-10

Printed in U. S. A.

4

BRANCH
Cleveland

CONTRACT RECOMMENDATION

DATE
September 8th, 1937

Salesman: F H Hathaway

Theatre Memorial

Exhibitor E W Long & Son

Location Mt. Vernon, O.

SUMMARY—COMPARISON 9,370 Population

DEAL SUBMITTED HEREWITH				DEAL PRECEDING SEASON			
PRODUCT	NO. UNITS	TERMS — PER UNIT	TOTAL	PRODUCT	NO. UNITS	TERMS — PER UNIT	TOTAL
WF 37	2	50.00 ag. 40%	100.00			DID NOT SELL	
	4	40.00 ag. 35%	160.00				
	4	30.00 ag. 30%	120.00				
	20	20.00 flat	400.00				
SC	30	2.50	75.00				
TR	30	2.00	60.00				
V 37 1R	67	3.25-3.00-2.50	187.25				
2R	30	6.00-5.00	156.00				
GRAND TOTAL			1258.25	GRAND TOTAL			

9

PERFORMANCE RECORD

SUBJECT	DAYS PLAYED	GROSS RECEIPTS	TERMS	TOTAL RENTAL
		DID NOT SELL		

1937-38 FEATURE WORK SHEET

BRANCH

DATE

THEATRE Memorial

TOWN & STATE Mt Vernon, O

RUN

TERMS 1937-38 PRODUCTIONS

NO.	GUARANTEE	SHARING TERMS
2	50	40%
4	40	35%
4	30	30%
20	20	

CLAUSE I (NO.) (AT)

SCORES:- 2.50 TRAILERS:- 2—

W.B. $ AV. 26

F.N. 30 $ 780-

SCORES $ 75

TRAILERS $ 60

TOTALS 915-

TERMS 1936-37 PRODUCTIONS

NO.	GUARANTEE	SHARING TERMS
	No new	

CLAUSE I (NO.) (AT)

SCORES:- TRAILERS:-

W.B. $ AV.

F.N. $

SCORES $

TRAILERS $

TOTALS

BRANCH		DATE
THEATRE	TOWN AND STATE	POPULATION
	Mt Vernon O	
PROPOSITION 1937-8	VITAPHONE SHORTS WORK SHEET	PREVIOUS 1936-7

CLASSIFICATION	NO	DAYS	RENTAL	TOTAL	CLASSIFICATION	NO	DAYS	RENTAL	TOTAL
2 REEL SUBS.					2 REEL SUBS.				
6 TECHNICOLOR SUBJECTS	6		6-		6 TECHNICOLOR SUBJECTS				
6 BWAY HEAD.									
6 ALL STAR REV.					30				
					BLACK AND				
6 VITA. COMEDIES	4		5-		WHITES				
6 VITA. GAYETIES									
1 REEL SUBJ.					1 REEL SUBJ.				
FLOYD GIBBONS HEADLINERS	13		3^{75}						
M. MELODIES COL.	70		5-		M. MELODIES COL.				
COLOR TOURS					COLOR TOURS				
LOONEY TUNES					PICTORIAL REVIEWS				
	34		4^{50}						
MELODY MASTERS					MELODY MASTERS				
PICTORIAL REVIEWS					BIG TIME VAUD.				
VITA. VARIETIES					VITA. NOVELTIES				
					LOONEY TUNES				
TOTAL	97			343^{75}	TOTAL				

WEEKLY PAYMENT OF FOR WEEKS | WEEKLY PAYMENT OF FOR WEEKS

FIRST " " | FIRST " "

REMARKS

[fol. 7299] **Exhibit D-12**

January 5, 1936.

Mrs. Moore, Ohio Theatre, Van Wert, Ohio.

Dear Mrs. Moore:

In checking over your account I find that there are approximately twenty pictures available for booking.

I know that at the time the deal was made you were very anxious to secure second run and I would appreciate bookings immediately.

Very truly yours, J. Himmelein, Branch Manager.

JH/d

[fol. 7300] **Exhibit D-13**

Miami, Fla., General Delivery,
Apr. 12, 1936.

Dear Bud:

Here we all are in the South—having a wonderful time, Billy is lots better. Glad to hear of your advancement, and fine position, which will mean so much to you, but pretty hard on the Moore's. We have talked it over, we would like to make a deal with Schine, some way o'er other, we feel you are the one to approach, as you know we really do [fol. 7301] business at our little stand. If you can arrange this for us, we will deeply appreciate it, and will do our part. We are leaving for home on Apr. 29th, will arrive there around May 3rd. If you care to write us do so at Miami; you used to tell us not to worry, let you do that, so I guess we still feel that way. Kindest regards. Wishing you all kinds of good luck in your new capacity. We are,

Sincerely yours, The Moore's.

We are also writing the Schine Enterprises to-day.

[fol. 7302] **Exhibit D-14**

Miami, Florida, General Delivery,
Apr. 13, 1936.

Schine Enterprises, Gloversville, N. Y.

Att. Mr. May

Dear Mr. May:

I am at Miami, Fla. Came down to see Mrs. Moore and our son, two weeks ago. They have been here this Season, for our little son's health, he is improving lots down here.

We expect to start for Ohio around April 29th. When I get back would like to make an appointment with you at [fol. 7303] your convenience, regarding your Organization taking over the Ohio Theatre. I believe we will be able to work out something, which would-be agreeable to us all.

Awaiting your answer, if you so desire to do so, our present address is Miami, General Delivery.

Very truly yours, Carl B. Moore.

Good Fishing—The Mackerel are starting to run.

[fol. 7304] **Exhibit D-15**

Van Wert, Ohio,
May 12, 1936.

Mr. Louis Lazar, Celveland, Ohio.

Dear Mr. Lazar:

We accept your offer of $5,000 for our Ohio Theatre complete; with exception of One Cinemaphone Talking Equipment, One Cutor's Pop Corn Machine, to be held by Carl B. Moore. It is understood The Schine Enterprises assume all existing Motion Picture Contracts for Ohio Theatre.

Very truly yours, Carl B. Moore.

[fol. 7305] **Exhibit D-16**

Ohio Theatre, Van Wert, Ohio, June 1st, 1936.

Sam Lichter, Fox Film Co., Inc.

Dear Sam:

Called you by telephone yesterday, learned you were at the Convention, bet you had a fine time; I am enclosing report on "Connecticut Yankee"—$208.30—not bad at 10-15¢, is it? We had strong competition Thurs. & Fri. at Schine's Van Wert—"Big House & Dancing Lady." Sat. only double bill & Bank Nite (award of $200.00) at the Strand Double Bill. I was foolish enough to have on a western with [fol. 7306] mine, as all the houses double-bill here, Fri & Sat. regardless of feature, which hurt me plenty. I turned them away by the score. I should of run it five days. Now Sam, I realize my opposition will want the other Rogers, too. But if you can arrange it, I will take them, at extended runs, also some of your other product. Metro and U. A. have given me second runs, on which I am doing nicely. *Now*, why can't you do the same? Come down and see us, o'er if you are too busy, I will come to Cleveland, but let me hear from you. We are counting on you.

As ever, The Moore's.

[fol. 7307] **Exhibit D-25**

Agreement

This Agreement made and entered into this — day of May, 1939, by and between George K. Angelas, hereinafter called the Seller, and Norwalk Theatre Corporation, a corporation, hereinafter called the Purchaser, Witnesseth:

That the Seller hereby agrees to sell and convey, and the Purchaser agrees to purchase and pay for, for the price and upon and under the provisions terms and conditions hereinafter set forth, the following described real estate situated in the City of Norwalk, County of Huron and State of Ohio; namely, viz:

> "A part of lot number Fifty (50) as the lots in the City of Norwalk, Ohio, are consecutively numbered, and more particularly described as follows:
>
> Commencing at the southwest corner of said lot, thence north Two Hundred Fourteen (214) feet along

the west line of said lot to an iron pin; thence east Fifty One (51) feet parallel with the south line of said lot to an iron pin in the east line of said lot; thence south One Hundred Thirty Nine (139) feet along the east line of said lot to an iron pin; thence west Thirty (30) feet parallel with the south line of said lot to an iron pin; thence south Seventy Five (75) feet parallel with the west line of said lot to an iron pin in the south line of said lot; thence west Twenty One (21) feet along the south line of said lot to the place of beginning.

Also a perpetual easement over the following described portion of said lot:

Commencing at the northwest corner of said lot, thence east Ten (10) feet along the north line of said lot; thence south Fifty (50) feet parallel with the west line of said lot; thence west Ten (10) feet parallel with the south line of said lot to the west line thereof; thence north Fifty (50) feet along the west line of said lot to the place of beginning. It is intended that the above described portion of said lot over which an easement is granted is to be used for ingress and egress perpetually and jointly by the parties, their successors, administrators, executors or assigns, owning the north and south ends of said lot.''

The Seller shall convey said premises to the Purchaser by good and sufficient deed of general warranty with release of dower by the wife of the said Seller, free and clear from all encumbrances.

The Seller shall pay all taxes and assessments levied and assessed against said property and due and payable on or before November 15, 1939, the Purchaser to assume and pay all taxes and assessments thereafter accruing or levied and assessed.

[fol. 7308] The Purchaser shall pay for said property the sum of Fourteen Thousand Two Hundred Fifty and no/100 Dollars ($14,250.00), payable as follows:

(a) The sum of Five Thousand Two Hundred Fifty and no/100 Dollars ($5250.00) cash upon the execution of this agreement, which agreement shall be duly executed by the Purchaser not later than May 20, 1939.

(b) The balance, namely, the sum of Nine Thousand and no/100 Dollars ($9000.00), to be evidenced by a promissory note of the Purchaser properly signed and executed, payable to the Seller, bearing interest at the rate of Five (5) per cent per annum, and due and payable on or before November 15, 1939.

The Seller agrees to furnish to the Purchaser an abstract of title extended to the date of the agreement showing good and marketable title to said premises, free and clear from all encumbrances whatsoever.

It is further understood, stipulated and agreed that upon the full payment of the purchase price, namely, Fourteen Thousand Two Hundred Fifty and no/100 Dollars ($14,-250.00), together with interest on the deferred payment, the Seller will deliver a deed, as hereinbefore stated, to the Purchaser for the above described premises upon which shall be affixed the proper revenue stamps, and the Seller shall thereupon give to the Purchaser the possession of the above described premises.

It is further understood, stipulated and agreed that if the Purchaser shall fail to pay said note as hereinabove described, on or before November 15, 1939, then and in that event the Seller has the right to terminate this agreement and consider it of no further force and effect, and the Seller shall be privileged and fully authorized to retain the sum of Five Thousand Two Hundred Fifty and no/100 Dollars ($5250.00), as liquidated damages for the failure of the purchaser to properly close this agreement and to make full payment of the purchase price, and the Seller shall have the right to the full and undisturbed possession, use and occupancy of the premises free from any claim of the Purchaser, and the Seller shall thereupon deliver to the Purchaser the note hereinabove described and the contract shall be considered by the parties hereto as fully terminated and thereupon each party shall be considered as fully discharged from any further liability, claim or demand to the other.

[fol. 7309] It is understood by and between the parties hereto that at the present time there is a dwelling house upon the premises herein described. The Seller reserves title thereto and has full right and privilege to remove said dwelling house from its present location and position on said premises and to place the same upon the north part of said lot No. 50, or to otherwise locate or dispose of the same. Such right to the possession, use and removal of

RECOMMENDATION

This is second run in this situation. We were unable to sell a complete contract due to the fact that this man runs a number of products first run in Mt. Vernon, but we were successful in obtaining ten pictures on percentage. We also sold him $343.25 worth of shorts but it was impossible to put him on the payment plan. However, this man will use more than this amount as he has picked up all the shorts that Schine has not used and we will get more than this amount out of this house. We feel that this is a good deal and suggest you let us have your approval.

APPROVED

9/13

F H Hathaway
SALESMAN

MANAGER

7296

5152A

such dwelling house was taken into consideration in the determination of the amount to be paid by the Purchaser for the premises herein described.

(There is attached hereto a blue print or drawing showing the portion of the premises that the parties hereto intend shall be sold and conveyed under the terms of this agreement, which property is described herein.)

In witness whereof, the parties hereto have set their hands to duplicate copies hereof, the day and year first above written.

George G. Angels, Seller, —— ——, Purchaser.

In the Presence of: Esther Dunham, C. H. Henkel.

STATE OF OHIO,
County of Richland, ss:

Personally appeared before me, a notory public in and for said County, the said George K. Angelas, the Seller named in the above and foregoing agreement, who acknowledged the signing and execution of said agreement to be his free and voluntary act and deed for the purposes therein stated.

In testimony whereof, I have hereunto set my hand and official seal this 5th day of May, 1939.

Esther Dunham, Notary Public. My Commission Expires Aug. 9, 1940. (Seal)

(Here follows 1 Photolithograph, side folio 7310)

[fol. 7311] Exhibit D-27

January 18th, 1940.

Mr. A. Felice, Park Theatre, Geneva, N. Y.

Dear Mr. Felice:

Attached you will find your approved copies of contracts for the following pictures:

3 Cheers for Miss Bishop.
My Son My Son.
2 Years Before the Mast.
House of Cristo.
Valentino.
Man in the Iron Mask.
Kit Carson.
South of Pago Pago.
Duke of West Point.
Captain Caution.
Of Mice and Men.
Housekeeper's Daughter.
Million Years B. C.
Turnabout.
Captain Fury.
Zenobia.
4 Laurel & Hardys.
Intermezzo.
Rebecca.
2 Untitled Selznicks.
Prisoner of Zenda.
A Star is Born.
Tom Sawyer.
Our Town.
Untitled Lubitsch.
Personal Life.
House Across the Bay.
Send Another Coffin (Now Slightly Honorable).
Stagecoach.
Thief of Bagdad.
Over the Moon.
Four Feathers.
Drums.
Dark Journey.
Things to Come.

Fire over England.
Eternally Yours.

Thanking you for this valued business, we are

Very truly yours, United Artists Corporation, J. A. Bykowski, Office Manager.

JAB:MF.

[fol. 7312] February 3rd, 1940.

Mr. A. Felice, Park Theatre, Geneva, N. Y.

DEAR MR. FELICE:

Attached you will find your approved copies of contracts for the following pictures:

Elephant Boy.
Prison Without Bars.
Lion Has Wings.
You Only Live Once.
History is Made at Night.
Vogues of 1938.
Trade Winds.
Algiers.
Winter Carnival.
Hurricane.
Cowboy & The Lady.
These Three.
Dodsworth.
Beloved Enemy.
Goldwyn Follies.
Stella Dallas.
There Goes My Heart.
Topper Takes A Trip.

Thanking you for this valued business, we are,

Very truly yours, United Artists Corporation, J. A. Bykowski, Office Manager.

JAB:MF.

[fol. 7313]

EXHIBIT D-38

THE BUCYRUS THEATRES COMPANY
Phil Charnas, Resident Manager
Southern Theatre, Phone 4015
Residence Phone 4377

Bucyrus, Ohio, August 24, 1935.

Paramount P. Dist. Corp., 1735 E. 21st Street, Cleveland, Ohio.

ATTENTION CASHIER:

Was unable to meet CK#8348 for $53.50. Please have same returned for collection. Will be able to take care od it when it comes through.

Yours very truly, Southern Theatre, by Phil Charnas, Mgr.

PC:SG.

[fol. 7314]

EXHIBIT D-43

THE BELLEFONTAINE AMUSEMENT COMPANY
M. A. Mooney, President and General Manager
E. B. Mooney, Secretary and Treasurer
E. A. McAuliffe, Resident Manager
Bellefontaine, Ohio
Operating: Strand, Majestic, Grand Opera House.

Copy of Resolution of Stockholders

We, the undersigned, stockholders of The Bellefontaine Amusement Co., of Bellefontaine, Ohio, hereby consent to the sale of the furniture and fixtures in the Strand Theatre and the assignment of the lease therefore, to The Schine Enterprises, Incorporated, for the Sum of Twenty-Five Hundred Dollars ($2500.00) and waive the notice as provided in Section 8623-72 of the General Code of Ohio.

Signed by all the Stockholders, E. Mooney, (Sec.)

[fol. 7315] EXHIBIT D-44

AGREEMENT

This agreement made at Bellefontaine, Ohio, by and between Daniel Gutilla, hereinafter called the Lessor, and The Bellefontaine Amusement Company, hereinafter called the Lessee, Witnesseth: that

Whereas, the Lessor has demised to the Lessee certain premises more fully described in Lease Record #4, pages 142-143-144 of the Logan County Record of Leases, and

Whereas, the terms of said Leases have not expired, and

Whereas, the parties have mutually agreed to cancell and terminate said Leases, as of the 30th. day of June, 1931,

Now, Therefore, the Lessee agrees to surrender and deliver up said premises to the Lessor on the 30th day of June, 1931, and to pay all rents due up to said date.

In consideration whereof the Lessor agrees to accept said payment and to surrender in full satisfaction and discharge of all the obligations of the Lessee in, by or under said Leases.

Executed at Bellefontaine, Ohio, in duplicate this 28th day of July, 1931.

Daniel Gutilla, Lessor, The Bellefontaine Amusement Company, by M. A. Mooney, Pres., Lessee.

[fol. 7316] State of Ohio, Logan County, S. S. Received August 22, 1931 at 10:27 o'clock A.M. Recorded Aug. 27, 1931. Vol. No. 2. Page 270. Ed. W. Kalb, Recorder.

[fol. 7317] EXHIBIT D-46

Cleveland, Ohio, March 18, 1937.

Belpik Theatre Corporation, Holland Building, Bellefontaine, Ohio.

GENTLEMEN:

The Medina Theatre Company is the owner of real estate located in the Village of Medina, County of Medina, Ohio, on the Northeast corner of the public square in said Village.

This building consists of storerooms, offices and a theatre known as the Princess Theatre operated by The Medina Theatre Corporation, a corporation, organized and existing under and by virtue of the laws of the State of Ohio.

This Company proposes to lease the space occupied by the Princess Theatre to the Schine Medina Corporation, a corporation, proposed to be organized, at an annual rental of Eighteen Hundred ($1800.00) Dollars, for a term of ten (10) years and such extension of time as may be agreed upon by the parties hereto. Said extension however, not to be in excess of ten (10) years over and above said term of ten years.

The Belpik Theatre Corporation, an Ohio corporation, is to operate, manage and control the said theatre for and on behalf of the Schine Medina Corporation under the terms of an Operating Contract generally used by said Belpik Theatre Corporation in connection with the operation of similar theatres.

The undersigned further proposes to erect and construct a theatre building on the East side of the public square, in the Village of Medina, on lands owned by George Willis, Florence Willis and Benjamin Yudelevitz. Said new theatre herein contemplated and to be constructed shall contain not less than seven hundred (700) seats, and is to be ready for operation not later than September 1st, 1937, excepting in the event of circumstances and conditions beyond the control of the parties, such as strikes, riots and acts of God.

Upon the completion of said theatre building the aforesaid individuals agree to enter into a lease with the Schine Medina Corporation, whereby said premises are to be leased to said The Schine Medina Corporation for a period of ten (10) years, at an annual rental equal to ten (10%) per cent of the cost of construction of said building plus the valuation of the lands at Fifteen Thousand ($15,000.00) Dollars. Said annual rental shall not exceed the sum of Fifty-five Hundred ($5500.00) Dollars. The said Schine Medina Corporation [fol. 7318] shall have the option of renewing said lease for a further period of ten (10) years, at the same annual rental as hereinabove stipulated, except as to this renewal clause, all rentals payable monthly in advance.

The said Schine Medina Corporation is to suitably and adequately equip said building for theatre purposes at a cost of approximately Fifteen Thousand ($15,000.00) Dollars. The funds for said purposes to be loaned by The Belpik

Theatre Corporation to the Schine Medina Corporation, evidenced by a promissory note, bearing interest at the rate of five per cent (5%), per annum, payable semi-annually. Said note to be secured by a chattel mortgage on said equipment and said note to be paid on or before five (5) years from the execution thereof as the operating profits of The Schine Medina Corporation will warrant.

It is further agreed that no dividends shall be declared or paid to the stockholders of the Schine Medina Corporation until said note is paid.

Upon the opening or commencement of operations of the new theatre, the said Schine Medina Corporation shall have the option of continuing the lease on the present Princess Theatre, at an annual rental of One Thousand ($1,000.00) Dollars, provided, the said Schine Medina Corporation operates said theatre part of the time. In the event the Schine Medina Corporation does not operate said theatre, then it may cancel said lease and Lessors may then lease said premises for any other purposes, except theatre purposes. In no event are Lessors to use, occupy or lease said premises for theatre purposes during the term that the Schine Medina Corporation operates the theatre on the East side of the public square.

It is further proposed that the Schine Medina Corporation is to be organized; fifty per cent (50%) of the stock is to be held and owned by the Belpik Theatre Corporation or Schine Chain, and the remaining fifty per cent (50%) of the stock is to be held and owned by George Willis, Florence Willis and Benjamin Yudelevitz, and by no other persons. Said Corporation to have only one class of stock, to wit: common stock of no par value—250 shares to be issued and held as herein set forth. Said stock to be sold to the aforesaid parties at $2.00 per share.

The said Schine Medina Corporation is not t[illegible]sume any obligations now in existence or to be contract[illegible]y the said George Willis, Florence Willis and Benjamin Yudelevitz and the Medina Theatre Company, except existing film contracts and contract with the American Seating Company for seven Hundred (700) seats, and the National Theatre Supply Company for booth equipment only, for the contem-
[fol. 7319] plated new theatre.

It is further to be agreed that the Belpik Theatre Corporation, the Schine Medina Corporation and The Medina Theatre Company, and George Willis, Florence Willis and

Benjamin Yudelevitz, or any persons connected in any manner with the aforesaid corporation or corporations, or individuals, shall not during the term of this Agreement, or during the term of the Agreements and Leases herein proposed, engage in any other theatre business in the Village of Medina, Ohio.

It is further agreed that the said Schine Medina Corporation shall employ Benjamin Yudelevitz as Manager of said Theatre or Theatres in accordance with the usual Contract of Employment, at a salary of Sixty-five (\$65.00) Dollars per week, and the said George Willis to be employed at a salary of twenty-five (\$25.00) Dollars per week.

It is further understood and agreed that this contract shall take effect on midnight of April 18, 1937.

Yours very truly, G. S. Willis, Benjamin Yudelevitz, Florence Willis. The Medina Theatre Corporation, by G. S. Willis, by Benjamin Yudelevitz, V. P.

Accepted by Louis Lazar, V. President, Belpik Theat. Corp.

[fol. 7320] **Exhibit D-50**

January 16, 1934.

Mr. Pete Grafrades, Palace Theatre, Lockport, N. Y.

Dear Pete:

Sorry that I missed you when you yere in town yesterday, and understand in your conversation with Mr. Bykowski, you wanted to know what product we had available for either 1st, 2nd, or 3rd run in Lockport.

I have some product to offer you under each run, Pete, and if you are interested in going over the setup with me, please arrange to come into the office on Monday next, advising me about what time to expect you, so that I can surely be here and I will be very happy to discuss the outline I have in mind with you.

Kind regards, and best wishes.

Sincerely yours, United Artists Corporation, ——, Sales Manager.

JHK-T.

[fol. 7321] **Exhibit D-51**

Postal Telegraph

January 30, 1934.

Signature requested.

Reliance Theatres Inc., Palace Theatre, Lockport, N. Y.

Your application for following contracts is hereby approved Bitter Sweet Tonight or Never Scarface Cock O Air

Al Lichtman, United Artists Corporation.

Charge: 17 words, 12.05 P. M. MC.

[fol. 7322] **Exhibit D-52**

Postal Telegraph

Jan. 31, 1934.

Signature requested.

Reliance Theatres Inc., Palace Theatre, Lockport, N. Y.

Your application for contracts Arrowsmith and Unholy Garden is hereby approved.

Al Lichtman, United Artists Corporation.

Charge: 11 words. 5.10 P. M. MC.

[fol. 7323] **Exhibit D-53**

Postal Telegraph

February 26, 1934.

Signature requested.

Reliance Theatres Inc., Palace Theatre, Lockport, N. Y.

Your application for contracts Emperor Jones Henry the Eighth and Secrets is hereby accepted.

Al Lichtman, United Artists Corporation.

Charge: 14 words 10.40 A. M. MC.

[fol. 7324] **EXHIBIT D-54**

Postal Telegraph

May 10, 1934.

Reliance Theatres Inc., Palace Theatre, Lockport, N. Y.

Your application for contract Catherine the Great is hereby approved.

Al Lichtman, United Artists Corporation.

Charge: 10 words, 11.15 P. M. MC.

[fol. 7325] **EXHIBIT D-55.**

Postal Telegraph

June 12, 1934.

Signature requested.

Reliance Theatres Inc., Palace Theatre, Lockport, N. Y.

Your application for contract Sorrell and Son is hereby approved.

Al Lichtman, United Artists Corporation.

Charge: 10 words 3.45 P. M. MC.

[fol. 7326] **EXHIBIT D-56**

June 14, 1934.

Mr. Pete Grafiades, Palace Theatre, Lockport, N. Y.

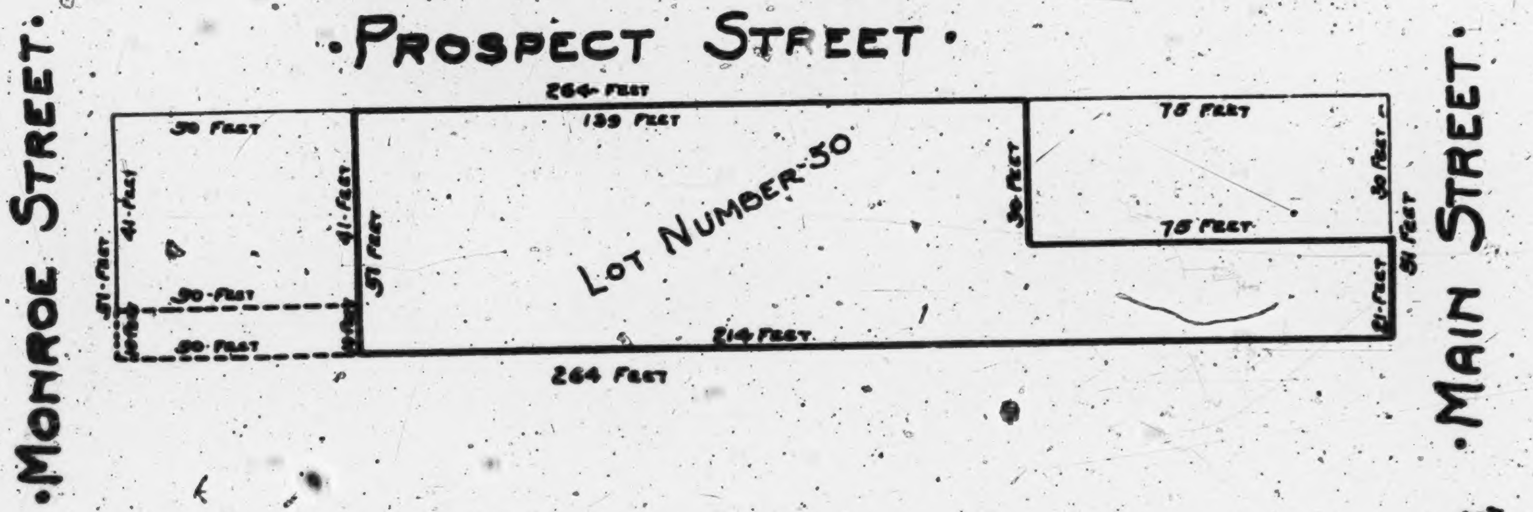
DEAR PETE:

We are attaching copy of contract covering Sorrell and Son at your theatre.

Thanking you for this valued business, we are,

Very truly yours, United Artists Corporation, J. A. Bykowski, Office Manager.

JAB'C.


·PROSPECT STREET·
·MONROE STREET·
·MAIN STREET·
264 FEET
139 FEET
75 FEET
30 FEET
30 FEET
41 FEET
41 FEET
51 FEET
51 FEET
51 FEET
21 FEET
30 FEET
75 FEET
LOT NUMBER 50
90 FEET
90 FEET
214 FEET
264 FEET

7210

5158A

[fol. 7327] **Exhibit D-57**

Postal Telegraph

June 23, 1934.

Signature requested. Serial.

Reliance Theatre Corp., Palace Theatre, Lockport, N. Y.

Your application for contract Kid from Spain is hereby approved.

Al Lichtman, United Artists Corporation.

Charge: 10 words, 12.10 P. M. MC.

[fol. 7328] **Exhibit D-58**

November 7, 1934.

Mr. Peter Grafiades,
Palace Theater,
Lockport, N. Y.

Dear Pete:

We talked with Mr. Kaplan on the phone this morning, and have been looking for you in the office some time today as per your conversation when here on Monday, when I understood you to say you would be in again on Wednesday.

We gave him your message and he advises that if you are agreeable to a guarantee against percentage on a basis that will be acceptable to the producers and our Home Office, he is ready to talk with you the latter part of this week.

He may be in the office on Thursday, and perhaps not until Friday morning, but am sure that you will catch him here on Friday if this is acceptable to you.

Kind wishes.

Yours very sincerely,

United Artists Corporation,

ERF. Secretary to Mr. Kaplan.

[fol. 7329] EXHIBIT D-59

Jan. 18, 1935.

Mr. Peter Grafiades,
Palace Theatre,
Lockport, N. Y.

Dear Pete:

We are attaching copy of contract covering the following features:

Men of Tomorrow
Blue Danube
Thats a Good Girl
Night of the Garter
Cash

Thanking you for this valued business, we are

Very truly yours,

United Artists Corporation

J. A. Bykowski
Office Manager

JAB'C

[fol. 7330] EXHIBIT D-60

September 21, 1935.

Mr. C. E. Dickinson,
Palace Theater,
Lockport, N. Y.

Dear Mr. Dickinson:

We have a couple of pictures from this season's product, which I believe you could use to good advantage on a double feature program, and I will appreciate hearing from you if you are interested and will be able to make a deal on Escape Me Never and Nell Gwynn.

Please advise me.

Yours very sincerely,

United Artists Corporation,

Sales Manager.

JHK-T

[fol. 7331]

EXHIBIT D-61

Nov. 13, 1935.

Reliance Theatres, Inc.,
Palace Theatre,
Lockport, N. Y.

Dear Sirs:

Wish to advise your application for contracts Nell Gwyn and Escape Me Never is hereby approved.

Thanking you for this valued business, we are

Very truly yours,

United Artists Corporation

A. W. Kelly
Vice President

AWK'C
Registered

(Here follows Photolithograph 77—side folio 7332)

[fol. 7333] Exhibit D-120

Oct. 16, 1941.

Special Delivery.

Mr. Harry Wallace,
Strand Theatre,
Syracuse, N. Y.

Dear Harry:—

Will appreciate immediate word from you as to certain passes you are handing out—in fact, to quote several local Syracuse exhibitors,—

"The city is flooded with five cent passes on which they are, allegedly, absorbing the tax which results in an actual two cent admission."

Will appreciate details by return mail as most Syracuse accounts have already pulled my play dates on Tom Dick and Harry.

Sincerely,

RKO Radio Pictures, Inc.

Elmer Lux/SW Branch Manager.

(Here follows 1'' Photolithograph, side folio 7334)

[illegible], AUBURN 5172A.

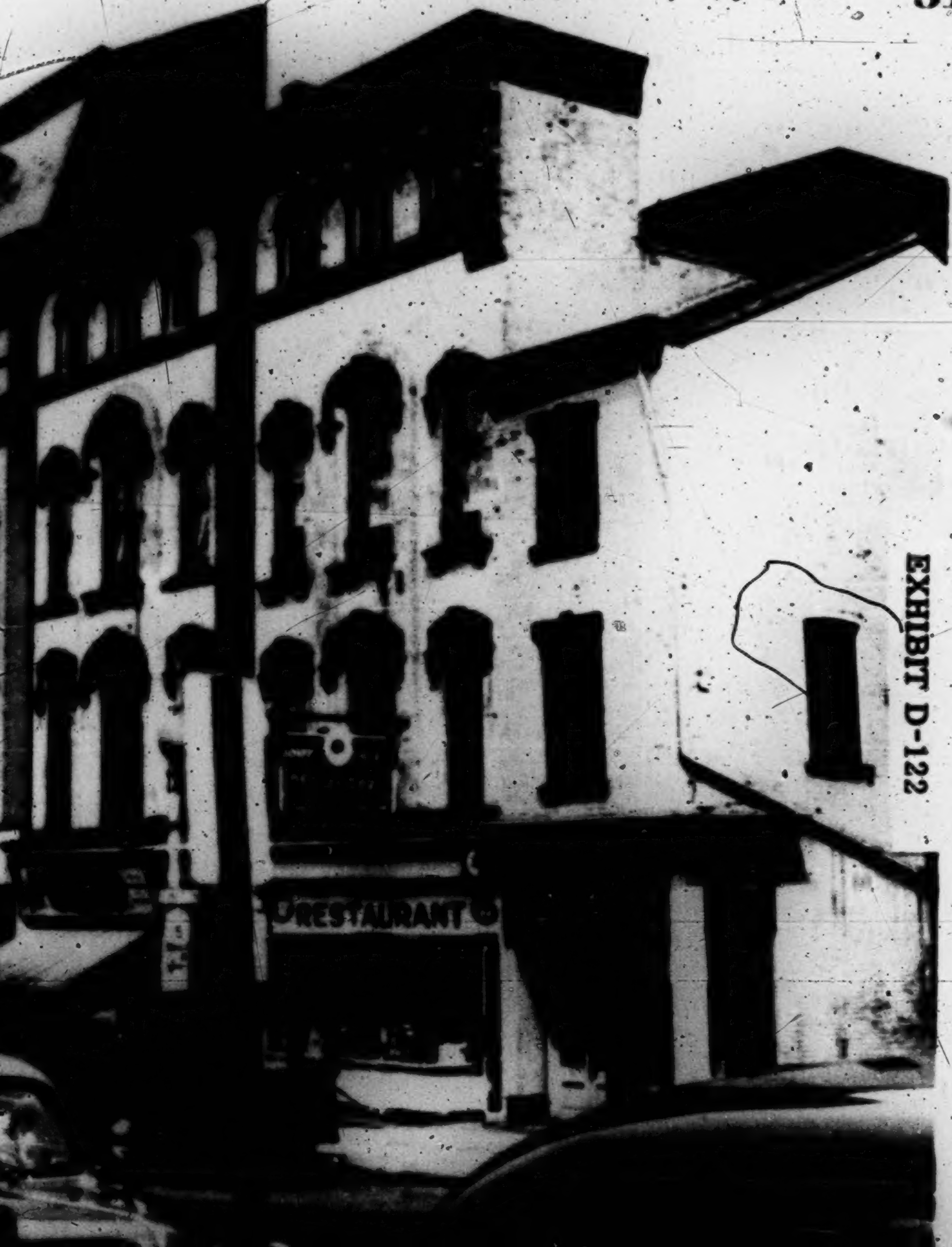

RESTAURANT

EXHIBIT D-122

[fol. 7335] EXHIBIT D-130

Capitol Theatre
20 North Street
Auburn, New York

Manager's Office Phone 1273

July 4th, 1932.

Paramount Publix Corp.,
464 Franklin Street,
Buffalo, New York.

Attention Mr. Kenneth Robinson—

Dear Mr. Robinson:

We are interested in ascertaining whether or not you have any unplayed first run pictures available for our use at this theatre. This includes features and short subjects. In looking over the Paramount proposition for this year it appears to me that the program contains all the ear marks of the best money-making proposition of any of the producers. On the face of what I know of the coming year's pictures I could safely say that we could offer you between eighteen and twenty thousand dollars for the product providing you cannot get an equitable deal from our opposition. I appreciate the fact that they have first call on the product due to using your pictures this past year current.

Best wishes,

Very truly yours

H. P. Wallace
Capitol Theatre

Exhibit D-131

Capitol Theatre
Auburn, N. Y.

June 22nd, 1933.

United Artists Corp.,
505 Pearl Street,
Buffalo, New York

Att'n Mr. J. H. Kaplan, Sales Manager

Dear Sir:

This will acknowledge with thanks the receipt of your letter of recent date with reference to "I Cover the Waterfront".

I have checked over the contract and do not find where there is any particular stipulation as to admission price although I may have missed it. As explained to you in a previous letter, we have instituted a summer policy here and of course we cannot set aside this policy for just one picture. You will agree with me that this would be bad policy for us to do so. In as much as you expressed your desire to sell this picture elsewhere I shall be very happy to cooperate with you in this instance as I have done in the past. You can not only sell this picture but, in view of the fact that "Masquerador" and "Joe Palooka" will probably be released while we are still operating under a summer policy, you can use this as your authority to sell all three of the above pictures. Thus all contractual relations between ourselves are cleared up.

Trusting this arrangement meets with your approval, beg to remain,

Very truly yours

H P Wallace
Capitol Theatre

[fol. 7337] EXHIBIT D-132

January 27, 1939.

Mr. H. P. Wallace
Capitol Theatre
Auburn, New York

Dear Mr. Wallace:

We cannot accept the contract for Gaumont-British pictures inasmuch as the prices for the pictures in question are not adequate, nor in keeping with prices formerly paid by you for Gaumont-British pictures.

The writer will attempt to see you personally in regard to this matter during the coming week.

Incidentally The Lady Vanishes is now on its second week, going into its third, in Buffalo, and in its sixth week in New York.

In reply to your letter regarding open 20th Century-Fox for Auburn, all our current releases have already been used in Auburn, and we have, of course, a contract for the balance of our product with the Jefferson, Palace and Auburn Theatres.

Very truly yours,

Twentieth Century-Fox Film Corp.

Sydney Sampson

CC Mr. Kempner

[fol. 7338] **Exhibit D-133**

Malone, New York
April 4th, 1941

Department of Justice
Washington, D. C.

Re: U.S. v. Schine
H.B.—60-6-30-33-3

Gentlemen:

This is to advise that I have succeeded in disposing of my theatre as planned. I have no further complaints. Everything is satisfactory here.

Very truly yours,

Michael Boumansour

(Here follow 3 Photolithographs, side folios 7339-7341)

EXHIBIT D-137

FORM 94-2PM SETS 2-36 (S) PRINTED IN U.S.A.

Copy No. 1

DAILY REPORT OF SALESMAN'S ACTIVITIES AND EXPENSE

HOME OFFICE COPY

SALESMAN R Strauwe BRANCH Albany DAY Thurs. DATE 2/4/7

THEATRE	LOCATION
Palace	Ft Covington

EXHIBITOR M Clark

Secured dates

PRODUCT SOLD		
CL.	NO.	AMOUNT

METHOD OF TRAVEL AUTO ☑ TRAIN ☐

AMT. FORWARDED	34	96
Fr.: Massena		
To: Ft. Covington		
Miles 24 @ .05	1	20
R. R. Trolley Bus		
Fare		
Misc.		

DATES SECURED: NO. 10 AMOUNT 61.75

THEATRE: Plaza
LOCATION: Malone

EXHIBITOR M. Baumann

This situation intends to go to 2nd run policy starting 5/1. Offered him a sixty picture deal. Only wants 30. Offered him thirty pictures 1935-36 product 2nd run. He would not consider any proposition except ~~a 30 picture deal on this years picture~~

Fr.: Ft Covington
To: Malone
Miles 17 @ .05 | 85
{ R.R. Trolley Bus

Fare
Misc.

DATES SECURED: NO. AMOUNT

THEATRE: Star
LOCATION: Norwood

EXHIBITOR A. Curry

Sold Brigade
11- ag 35%
Sc 1.50
Tr 1-

Feat	1	11	-
Sc	1	1	50
Tr	1	1	-

Fr.: Malone
To: Norwood
Miles 53 @ .05 | 2 65
{ R.R. Trolley Bus

Fare
Misc.

39 65

DATES SECURED: NO. AMOUNT

7339

5176A

EXHIBIT D-138

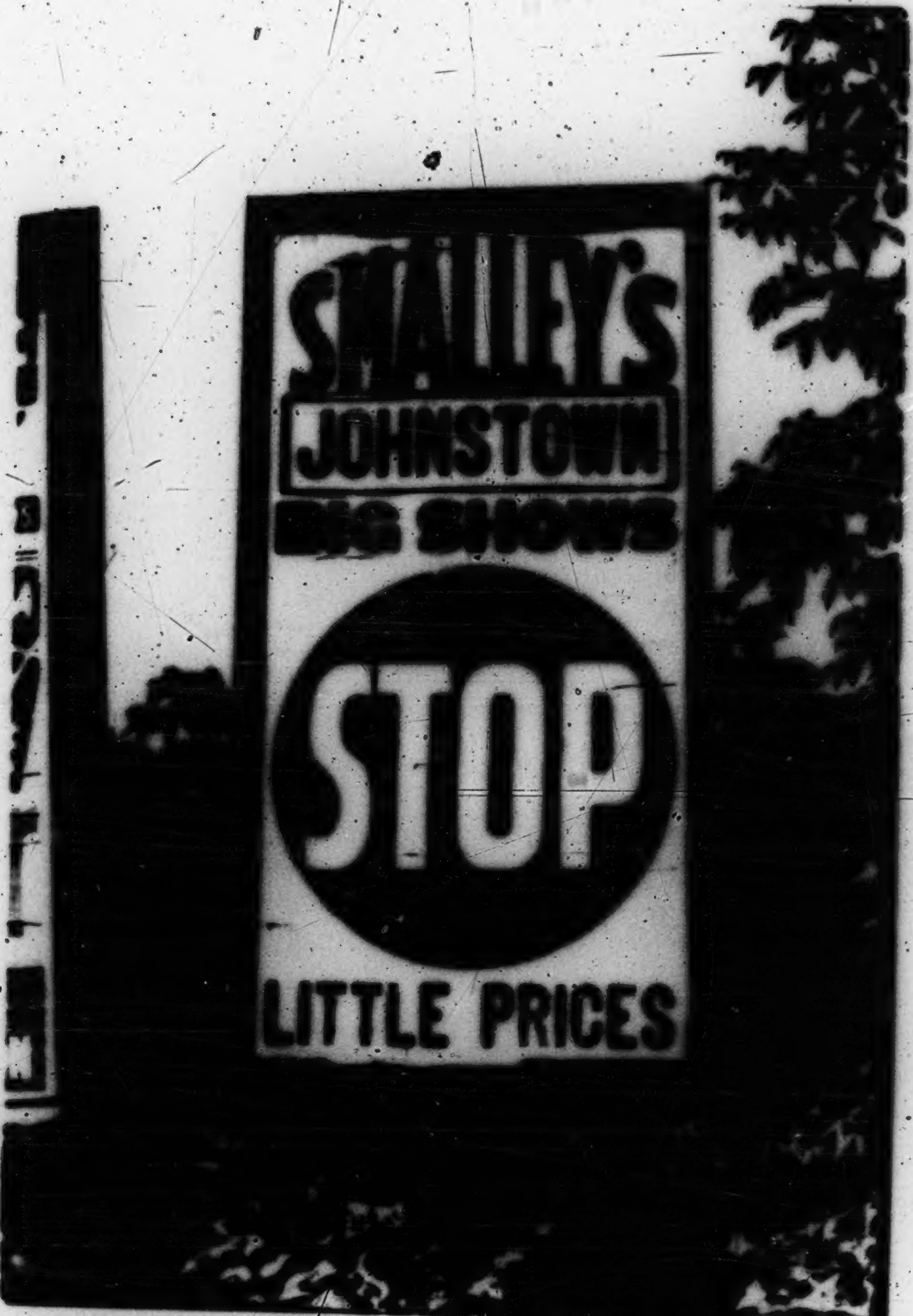
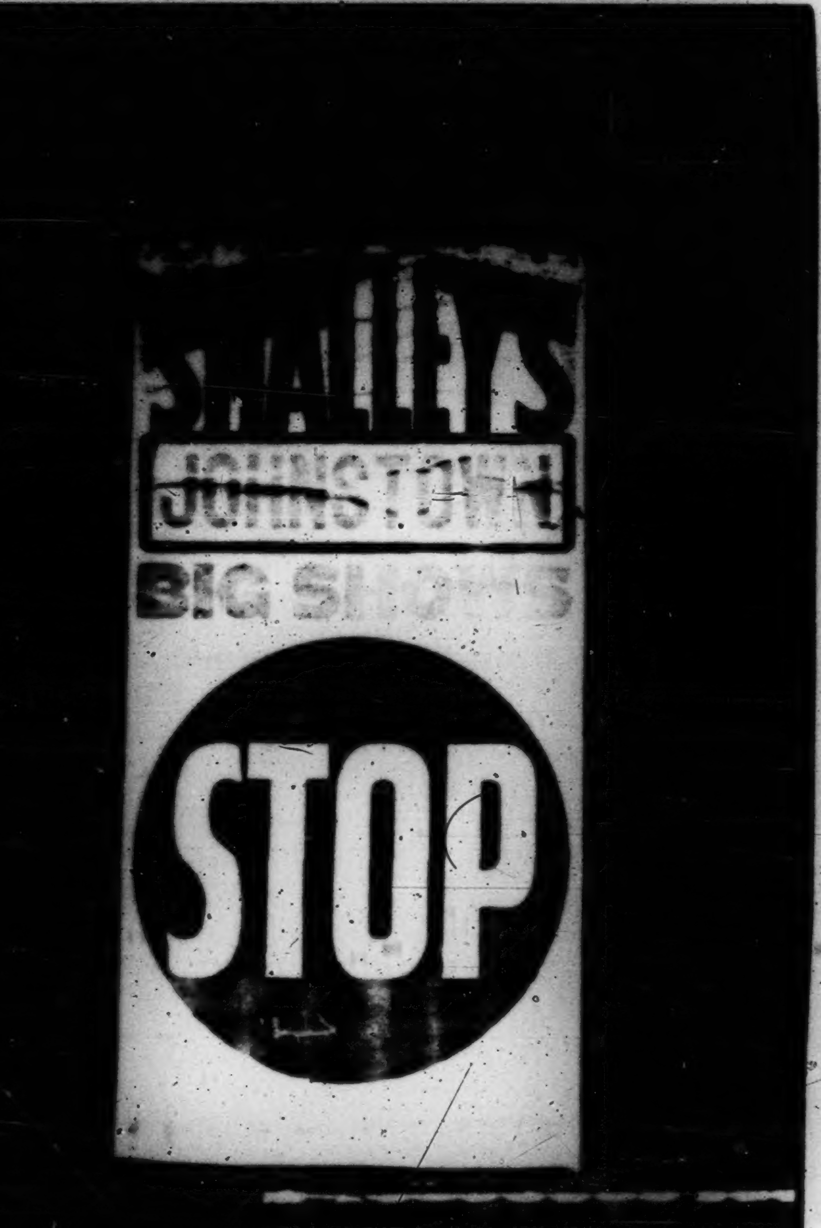

SMALLEY'S
JOHNSTOWN
BIG SHOWS
STOP
LITTLE PRICES

EXHIBIT D-139


STALEYS
JOHNSTOWN
BIG SHOWS
STOP

[fol. 7342] EXHIBIT D-143

June 3rd 1940.

Mr. William C. Smalley,
Smalley Theatres,
Cooperstown, N. Y.

Dear Mr. Smalley:

Your telegram of May 27th addressed to Mr. Abe Montague has been turned over to me for my attention.

I beg to advise you that the offer made by Columbia to you in the past, as repeated in a letter addressed to you by my associate, Mr. Moross, is once again repeated by me, namely—that Columbia Pictures Corporation is ready, willing and able to have its representative meet with you and discuss the licensing of an equitable split of our pictures to you provided you are prepared to pay a fair price for the same.

According to our records, Mr. Louis Weinberg, of our Sales Department wrote you on December 7th, 1939 that he would be glad to meet you at any place convenient to yourself if you would give him forty-eight hours notice, and I am certain that if you had a sincere desire to buy Columbia Pictures you could have found some time between December 7th, 1939 and January 4th, 1940 to meet him. However, despite your failure to meet with our business representative, Columbia has made honest and sincere efforts to contact you and sell you a fair and equitable split, but at no time have you been willing to sit down with Mr. Weinberg to discuss same.

As you undoubtedly know, Mr. Weinberg is leaving today for the Columbia convention and will not be available to discuss this matter with you until June 18th, and if you are sincere in the statement you made in your wire of May 27th, you can make arrangements with Mr. Joe Miller, our

Albany Branch Manager, for an appointment with Mr. Louis Weinberg for any time after June 18th.

Yours very truly,

. . . .

Leonard S. Picker
Legal Department

1sp/k

cc: Mr. L. Weinberg
Mr. R. Jackter
Mr. G. Josephs
Mr. Vince Borelli
Mr. J. Miller

[fol. 7343] **Exhibit D-144**

November 13, 1939.

Smalley's Theatres, Inc., Cooperstown, New York.

Attention: Mr. W. C. Smalley

Gentlemen:

Your letter of November 7th addressed to Mr. A. Montague has been turned over to me for reply.

Upon investigation of your complaint I find that the same is entirely unfounded as for a number of years past we have offered to you at least one-half of our product for exhibition in your theatre in Norwich. Our offer to you has been on fair and reasonable terms. In each instance you have declined to accept such offer and have made a counter offer of terms so low that same were not acceptable to us.

I would be very happy to have our representative meet with you and discuss the licensing of a split of our pictures to you provided you are prepared to pay a fair price for the same.

Yours very truly, Irving Moross, Legal Department.

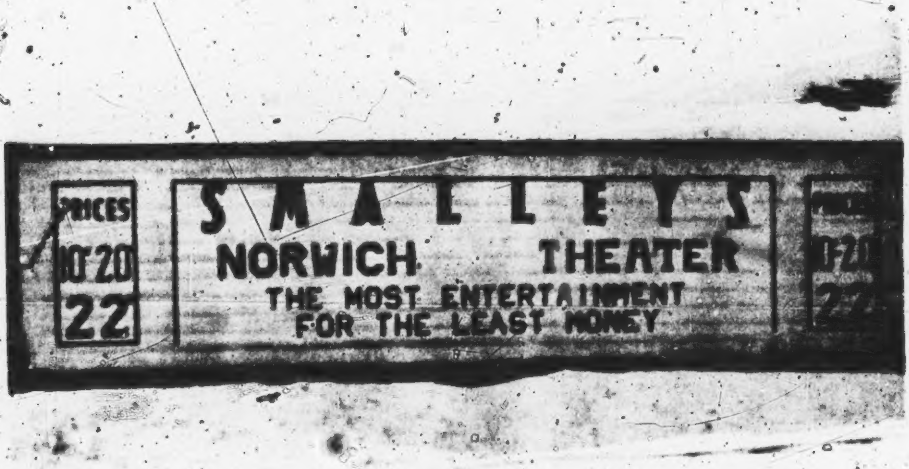
IM:bb

111/15/39. Cc Joe Miller, Albany, N. Y., Abe Montague.

[fol. 7344] EXHIBIT D-145

SMALLEY'S
Norwich Theatre
Special Morning Matinee
Saturday, October 21st
At 10 A.M.
Big Triple Show
—Hit No. 1—
—From the Famous Sunday Comic Strip—
Dick Tracy's G-Men
—Hit No. 2—
Gene Autry
Smiley Burnette
"Home on the Prairie"
—Hit No. 3—
Jack London's
—Famous Story—
"Mutiny of the Elsinore"
This is Positively One of the Greatest
Kiddie Shows Ever to Play in Norwich
Notice—Be Sure to Bring This Ticket
You May Get in Free
Good for All Students

EXHIBIT D-146


PRICES
10·20
22
SMALLEYS
NORWICH THEATER
THE MOST ENTERTAINMENT
FOR THE LEAST MONEY
10·20
22

[fol. 7346] **Exhibit D-148-B**

July 13, 1935.

Re: State, Bucyrus.

Dear Milt:

This is the same deal as last year—except—that on the shorts—and 32 features—I gave him the priviledge of 3 or 4 days instead of 2 or 3 days—he figures he may go to two changes per week—however I gave him no assurance New York or you would approve. I tried to get an increase on this—but—you know the set-up.

I also got the 14 Delux trailer in at 4.00 instead of 3.00 and the 4 pictures at 25% show a 15.00 increase. The paying arrangement is figured to start at expiration of present paying arrangement.

Regards, W.J.B.

[fol. 7347] **Exhibit D-148-C**

July 13, 1935.

It is agreed that in consideration of contracts signed for Warner-First National and Vitaphone 1935-36 product, Vitagraph Inc. agrees to cancel shorts unplayed from season 1934-1935, the amount not to exceed $60.00.

Vitagraph Inc., W. J. Brandt, Rep. The State-Bucyrus Co., M. H. Bryer.

48 Printed in U.S.A.

EXHIBIT D-148-E

Form 77 100M 8-35-U

NOTIFICATION OF CANCELLATION

BRANCH: CLEVELAND OHIO.

DATE: 12/2/35. 2

THEATRE	EXHIBITOR	CITY AND STATE	CONTRACT NUMBER	CONTRACT DATE
STATE	THE STATE BUCYRUS CO.	BUCYRUS OHIO.	4447	7/13/35.

FEATURES — VITAPHONE

REL. No.	TITLE	ORIGINAL RENTAL GUARANTEE	ORIGINAL RENTAL SPLIT OVER	SUPERSEDING RENTAL GUARANTEE	SUPERSEDING RENTAL SPLIT OVER	ORIGINAL RENTAL SCORES	ORIGINAL RENTAL TRAILERS
951	NO TITLE	150.00	35%			3.00	4.00
953	NO TITLE	75.00	30%			3.00	4.00
954	NO TITLE	75.00	30%			3.00	4.00
955	NO TITLE	75.00	30%			3.00	4.00
956	NO TITLE	45.00	25%			3.00	4.00
957	NO TITLE	45.00	25%			3.00	4.00
958	STELLA PARISH	30.00				3.00	3.00
959	NO TITLE	30.00				3.00	3.00
960	NO TITLE	30.00				3.00	3.00
961	NO TITLE	30.00				3.00	3.00
962	NO TITLE	30.00				3.00	3.00
963	BROADWAY HOSTESS	30.00				3.00	3.00
964	NO TITLE	30.00				3.00	3.00
965	NO TITLE	30.00				3.00	3.00
967	GOOSE & GANDER	30.00				3.00	3.00
968	THE PAYOFF	30.00				3.00	3.00
969	MAN OF IRON	25.00				3.00	3.00
970	NOT TITLE	25.00				3.00	3.00
971	NO TITLE	25.00				3.00	3.00
972	NO TITLE	25.00				3.00	3.00
973	NO TITLE	25.00				3.00	3.00
974	NO TITLE	20.00				3.00	3.00
975	NO TITLE	20.00				3.00	3.00
976	NO TITLE	20.00				3.00	3.00
977	NO TITLE	20.00				3.00	3.00
978	NO TITLE	20.00				3.00	3.00
979	NO TITLE	20.00				3.00	3.00
980	NO TITLE	20.00				3.00	3.00

RE
CON
CARDS
TABULATING
35
FILE
DE

Form 77 100M 8-35-U

EXHIBIT D-148-F

49

Printed in U.S.A.

NOTIFICATION OF CANCELLATION

BRANCH	CLEVELAND O.
DATE	12/2/35.

T,

THEATRE	EXHIBITOR	CITY AND STATE	CONTRACT NUMBER	CONTRACT DATE
STATE	THE STATE BUCYRUS CO.	BUCYRUS OHIO	4447	7/13/35.

REL. No.	TITLE	FEATURES ORIGINAL RENTAL GUARANTEE	FEATURES ORIGINAL RENTAL SPLIT OVER	FEATURES SUPERSEDING RENTAL GUARANTEE	FEATURES SUPERSEDING RENTAL SPLIT OVER	VITAPHONE ORIGINAL RENTAL SCORES	VITAPHONE ORIGINAL RENTAL TRAILERS
901	NO TITLE	150.00	50%			3.00	4.00
902	NO TITLE	150.00	35%			3.00	5.00
903	NO TITLE	75.00	30%			3.00	4.00
904	NO TITLE	75.00	30%			3.00	4.00
907	FRISCO KID	45.00	25%			3.00	4.00
909	DR. SOCRATES	30.00				3.00	5.00
910	NO TITLE	30.00				3.00	3.00
911	NO TITLE	30.00				3.00	3.00
912	NO TITLE	30.00				3.00	3.00
913	NO TITLE	30.00				3.00	3.00
914	NO TITLE	30.00				3.00	3.00
915	NO TITLE	30.00				3.00	3.00
916	NO TITLE	30.00				3.00	3.00
918	BIG SHOT	30.00				3.00	3.00
919	I LIVE FOR LOVE	25.00				3.00	3.00
920	PERSONAL MAID	25.00				3.00	3.00
921	NO TITLE	25.00				3.00	3.00
922	NO TITLE	25.00				3.00	3.00
923	NO TITLE	25.00				3.00	3.00
924	NO TITLE	20.00				3.00	3.00
925	NO TITLE	20.00				3.00	3.00
926	NO TITLE	20.00				3.00	3.00
927	NO TITLE	20.00				3.00	3.00
928	MOONLIGHT PRAIRIE	20.00				3.00	3.00
929	NO TITLE	20.00				3.00	3.00
930	NO TITLE	20.00				3.00	3.00

RECEIVED

CARDS

TABULATION

FILE

DEC 14 1935

(Here follows 2 Photolithographs, side folios 7348-7349)

TOTALS	29	1080.00	84.00	90.00

SUPERSEDING CONTRACT No. DATE THEATRE

HAVE YOU DEFINITELY ATTEMPTED TO RESELL OPPOSITION? NEW OWNER?

REASON FOR CANCELLATION:

Score-Cont. #4447 dated 7/13/35.
Trailer-" " " "

This house was taken over by the Schine Theatrical Co., Inc. Resubmitting new contract signed by Schine's.

Brandt.
SALESMAN

DEC 11 1935
W/S

BRANCH MANAGER

7348

5182A

[fol. 7350]

Exhibit D150

Owned Theatres

Town	Theatre	Cost of Land & Building Acquired	Cost of Building & Improvements since Acquisition
Amsterdam	Strand	$200,000.00	$55,000.00
"	Regent	142,000.00	8,000.00
Ashland	Ashland	15,000.00	197,500.00
Athens	Athena	135,000.00	13,000.00
Auburn	Auburn	83,500.00	245,000.00
Bellefontaine	Holland	27,500.00	196,800.00
Bucyrus	Bucyrus	15,500.00	81,500.00
Canandaigua	Lake	15,000.00	38,500.00
"	Playhouse	180,000.00	16,700.00
Carthage	Strand	57,500.00	24,500.00
Corning	Fox	18,000.00	101,500.00
Cortland	State	60,000.00	233,500.00
"	Temple	96,000.00	7,000.00
Cambridge	Arcade	60,000.00	5,500.00
Cumberland	Strand	235,000.00	45,500.00
Easton	Avalon	95,000.00	7,800.00
Federalsburg	Federal	50,000.00	2,500.00
Fairport	Temple	7,700.00	47,500.00
Geneva	Temple	97,900.00	17,000.00
"	Geneva	88,000.00	313,000.00
Gloversville	Hipp	22,500.00	117,500.00
"	Glove	126,000.00	109,300.00
Glens Falls	Rialto	250,000.00	45,000.00
Hamilton	State	22,500.00	47,300.00
Herkimer	Liberty	185,500.00	15,000.00
Hudson Falls	Strand	40,000.00	7,000.00
[fol. 7351]			
Ilion	Capital	250,000.00	14,000.00
Kent	Kent	130,000.00	7,500.00
Lexington	Ben Ali	200,000.00	20,000.00
Little Falls	Rialto	210,300.00	21,000.00
Lockport	Rialto	27,500.00	118,400.00
"	Palace	200,000.00	8,000.00
Malone	Malone	151,800.00	106,000.00
Middlesboro	Manning	85,000.00	10,600.00
Milford	Plaza	62,500.00	50,500.00
Norwalk	Capital	20,000.00	143,700.00
Norwich	Calonia	80,700.00	29,500.00
Ogdensburg	Strand	137,000.00	155,800.00
Oswego	Oswego	42,500.00	249,800.00
"	Strand	75,000.00	2,000.00
"	Capital	60,000.00	3,500.00
Oneonta	Palace	161,800.00	4,500.00
"	Oneonta	130,000.00	24,300.00
Paris	Paris	24,000.00	71,000.00
Penn Yan	Elmwood	110,000.00	10,000.00
Ravena	Ravena	128,500.00	9,500.00
"	Ohio	33,000.00	44,500.00
Richmond	Madison	75,000.00	5,500.00
Rochester	Riviera	304,100.00	7,500.00
"	Cameo	60,000.00	25,500.00
"	Grand	95,000.00	19,000.00
"	State	145,000.00	9,000.00
[fol. 7352]			
Salamanca	Salamanca	24,300.00	164,300.00
Saranac Lake	Pontiac	135,000.00	165,500.00
Salisburg	Wicomico	26,000.00	7,600.00
		$6,500,100.00	$3,506,400.00

[fol. 7353]

Leased Properties

Town	Theatre	Additions & Improvements
Ashland	Palace	$10,500.00
Auburn	Palace	14,500.00
Amsterdam	Rialto	68,000.00
Auburn	Jefferson	4,500.00
Bath	Babcock	9,500.00
Bellefontaine	Strand	4,500.00
Delaware	Strand	48,500.00
East Rochester	Rialto	6,000.00
Corbin	Hipp	3,500.00
"	Viv	2,500.00
Geneva	Regent	3,000.00
Glens Falls	Empire	10,000.00
Laurel	Waller	14,500.00
Lexington	Kentucky	27,500.00
"	Strand	6,500.00
Massena	Strand	72,500.00
Mt. Vernon	Vivic	3,300.00
"	Memorial	6,100.00
"	Vernon	48,600.00
Ogdensburg	Pontiac	8,700.00
Piqua	Miami	8,000.00
"	Ohio	10,500.00
Paris	Bourbon	15,000.00
Pikeville	Liberty	2,800.00
Purry	Auditorium	7,500.00
Seneca Falls	Strand	19,500.00
Salisburg	Arcade	29,300.00

[fol. 7354]

Town	Theatre	Additions & Improvements
Syracuse	Eckel	78,000.00
Tupper Lake	State	8,800.00
Van Wert	Van Wert	3,500.00
Watertown	Avon	38,500.00
"	Olympic	37,500.00
		$631,600.00

[fol. 7355]

Less Than 100% Owned

Town	Theatre	Land	Improvements
Norwalk	Norwalk	$16,350.00	$123,100.00
"	Forum		17,500.00
Wooster	Wayne	12,000.00	66,000.00
"	Wooster		37,500.00
Tiffin	Ritz		6,900.00

[fol. 7356].

Exhibit D-153

Ordinance No. A

Granting a Permit to Phoenix Amusement Company, Its Successors and Assigns for the Erection, Maintenance and Operation of a Theatre for the Display of Motion Pictures and/or the Exhibition of Stage Shows on the Lot or Parcel of Ground Described in this Ordinance in The City of Paris.

Whereas, Phoenix Amusement Company desires to acqure the property located in the City of Paris, Kentucky, hereinafter described, in order to construct, maintain and operate a theatre for the display of motion pictures and/or the exhibition of stage shows thereon; and

Whereas, the erection of a modern theatre building, and the maintenance and operation of a theatre on the property hereinafter described, will greatly improve the appearance of the vicinity in which it is located, will result in additional taxes being paid into the treasury of the City of Paris, and will be a public benefit to said City.

Now, therefore, in consideration of the premises, and in the further consideration of the execution of a certain agreement of purchase dated September 18, 1937, by Phoenix Amusement Company to the present owners of said property and the delivery of said agreement to said owners.

Be It Ordained by the Board of Council of the City of Paris:

1. That Phoenix Amusement Company, its successors and assigns, be and they are hereby granted permission to construct, maintain and operate a theatre for the display of motion pictures and/or the exhibition of stage shows on the [fol. 7357] following described property or any part thereof, to-wit:

A certain lot or parcel of ground together with all improvement and appurtenances thereunto belonging situated on the southwest corner of Main and Eight Streets in Paris, Kentucky, fronting on Main Street a distance of fifty-four and two-thirds (54⅔) feet, more or less, and extending back between parallel lines a distance of one hundred and fifty-seven (157) feet, more or less, to the filling station property of the said first parties situated on the corner of High and Eight Streets in said City. Said property is bounded on the south by the property now owned by the heirs of Martin Doyle and also by the property now owned by John Mattox, on the west by the said filling station property of the said *said* first parties, on the north by Eighth Street as to be extended by the City of Paris, Kentucky, for a distance of twelve feet southwardly, and on the east by Main Street, and being a part of the same property conveyed to James M. O'Brien and George W. Stuart by John T. Hinton and wife by deed which is of record in the office of the Clerk of the Bourbon County Court in Deed Book 102 Page 634. The said James M. O'Brien having devised said property to his brother, Harry O'Brien by his last will and testament which is of record in said office in Will Book V Page 491.

Such permit shall continue so long as the theatre is operated on said property by Phoenix Amusement Company, its successors and assigns.

2. That the Mayor and City Clerk be and they are hereby authorized, empowered and directed for and on behalf of the City of Paris, Kentucky, to immediately issue and deliver to the Phoenix Amusement Company such permit in writing.

3. This ordinance shall take effect when signed, recorded and published in the manner required by law.

Passed by the Board of Council this — day of ——, 1937.

Geo. L. Doyle, Mayor.

Attest: Boone Baldwin, City Clerk.

The undersigned, Boone Baldwin, hereby certifies that he is the duly designated and acting Clerk of the City of Paris, Kentucky, and that the foregoing copy ordinance granting a permit to the Phoenix Amusement Company of Lexington, Ky., is a true, correct and accurate copy of the ordinance enacted by the Board of Commissioners of the City of Paris, Kentucky, on Tuesday, October 5, 1937.

Witness my hand and the seal of said City of Paris, Ky., this October 8, 1937.

Boone Baldwin, Clerk, City of Paris, Kentucky.

(Seal).

[fol. 7358]

EXHIBIT D-153-A

Permit to Phoenix Amusement Company for Erection, Maintenance and Operation of a Theatre in the City of Paris, Kentucky.

Pursuant to ordinance No. A, duly enacted by the Board of Commissioners of the City of Paris on October 4, 1937, permission is hereby granted by the City of Paris to Phoenix Amusement Company, its successors and assigns to erect, maintain and operate a theatre for the display of motion pictures and/or the exhibition of stage shows on that lot or parcel of ground located at the Southwest corner of Main and Eighth Street in the City of Paris, Kentucky, which said lot or parcel of ground is more particularly described and set out in said ordinance, and this permit shall continue so long as a theatre is operated on said property by Phoenix Amusement Company, its successors or assigns.

This October 7, 1937.

City of Paris, Kentucky. By: Geo. L. Doyle, Mayor.
(Seal)

Attest: Boone Baldwin, City Clerk.

Here follows 1 Photolithograph, side folio 7359.)

SOCIAL ACTIVITIES ◆ FOR WOMEN READERS

…p To …nd Play

…er Mrs. Rob…

…aced over the …eated Mrs. E. … Mrs. Robert A. … Carroll and … match will … R. Helm Jr.

…points from …p 13, points …ayne Bucyrus

…ide-Elect

The King's … Ann Kash… …gift, and the … presented … Thursday … surprised her … South Bus…

[illegible]

…At U. B.

[illegible]

RECENT BRIDE

Mrs. James Bryant

Cleveland will be the future home of Mrs. James Bryant, the former Jeanne Gooch, whose wedding took place in Trinity Cathedral, Cleveland, August 31. Mrs. Bryant graduated from Bucyrus High school and also a beauty school in Cleveland.

GALION NEWS BRIEFS

At the regular meeting of the Galion lodge No. 1191 B. P. O. Elks Thursday night, plans were completed for the annual fall stag picnic of the lodge to be held at the Armstrong farm west of Galion, Wednesday, Sept. 11. Both a noonday luncheon and evening meal will be served.

Chemicals were used to extinguish a blaze in the city lot [illegible] which ignited Thursday afternoon near the Fred C. Miller residence on Harding Way West. The local fire department was called.

Several transfers in the Free Methodist church have been made. Rev. Slade Frees, formerly of Montpelier, has been transferred to Galion as pastor of the local church. He succeeds Rev. L. C. Walters who goes to Cambridge. R. B. Niles of Galion, district elder of the church, has accepted a pastorate at the Canton Free Methodist church. Rev. L. E. Gaffey of Toledo comes to Galion as district elder.

[illegible]

…ter in the council, it was decided. The next regular meeting will be held at the home of Mrs. H. T. [illegible]

The condition of Ruth Mitchell [illegible] who underwent a major operation at Good Samaritan hospital Wednesday evening, was reported as satisfactory.

[illegible]

The nursery school which has been conducted under the Ohio Emergency schools will probably reopen Oct. 1, according to announcement made by J. F. [illegible], local superintendent, who is in charge of the schools here. [illegible] who have been in charge of the schools, are now completing courses at Ohio State university.

A class in Americanization may be conducted this fall, and it is probable that the commercial and school shop classes will continue. Teachers wishing to qualify for these positions are asked to enroll with the unemployment bureau at Bucyrus.

Three sections of the Ladies' Aid society of First Methodist church met Thursday.

Section A was held at the home of Miss Alice Krohn. Twenty-five members and four guests were present. Devotions were led by Mrs. Nellie [illegible], and business was in charge of Mrs. F. E. Foster. Contests were won by [illegible]

A program featured the meeting of Section D held at the home of Mrs. J. A. Appleman. [illegible]

[illegible]

[illegible]

Work for the year was planned when the Ladies Aid of Market Street Methodist church met Thursday [illegible]

[illegible]

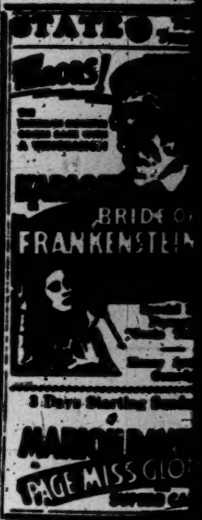
THE SUREST WAY
SELL BY CLASSIFIED

Teachers And Students Return Home For Beginning Of Sch…

[illegible]

NEVADA

[illegible]



STATE

BRIDE OF FRANKENSTEIN

PAGE MISS GLO…

FLY-TOX
Kills
MOSQUITOES
FLIES-SPIDERS
and
OTHERS

— Ohio's Finest Cabaret Restaurant —

The MAYFAIR

140 Park Ave. West

Mansfield, Ohio

ANNOUNCES—NO COVER CHARGE
AT ANY TIME

50c Minimum Charge After 9:00 P. M. Nightly
Except Saturdays and Special Nights

TOTALS 26	1030.00		75.00	83.00

SUPERSEDING CONTRACT No. DATE THEATRE

HAVE YOU DEFINITELY ATTEMPTED TO RESELL OPPOSITION? NEW OWNER?

REASON FOR CANCELLATION:

Score-Cont. #4447, dated 7/13/35.
Trailor-4 " " "

This house was taken over by the Schine Theatrical Co., Inc. Resubmitting new contract signed by Schine's.

DEC 11 1935

SALESMAN Brandt.

W/S

BRANCH MANAGER

7349

5182B

156

79543
Sup. Ct

Vol. VII

TRANSCRIPT OF RECORD

(Pages 5189 to 6213)

Supreme Court of the United States

OCTOBER TERM, 1947

No. 10

SCHINE CHAIN THEATRES, INC., ET AL.,
APPELLANTS,

vs.

THE UNITED STATES OF AMERICA

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE WESTERN DISTRICT OF NEW YORK

FILED OCTOBER 4, 1946.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 10

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APPELLANTS,
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THE UNITED STATES OF AMERICA

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE WESTERN DISTRICT OF NEW YORK

VOL. VII

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Judd & Detweiler (Inc.), Printers, Washington, D. C., August 5, 1947.

—1879

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613(A-B)	Loew's contracts for Watertown	7925	5434
622A	RKO contracts for unspecified town, Norwalk, Van Wert, Tiffin, Corbin, Paris, Shelby, Mt. Vernon, Delaware, Bucyrus, Auburn, Norwich, Amsterdam, Little Falls	7927	5436
628(A-F)	Photostats of RKO contracts for Corning, N. Y., 1933-34 and 1934-35 seasons	7928	5437

EXHIBITS PRINTED IN PART—Continued

		Original	Print
635(A-K)	Warner contracts for Auburn, Norwich, Amsterdam, Little Falls, Norwalk, Van Wert, Fostoria, Medina, Tiffin, Corbin, Paris	7934	5443
637(A-H)	Warner contracts for Corning	7952	5461
642(A)	Warner contracts for Cumberland, St. Michaels, Easton, Maysville, Federalsburg, Hurlock, Harlan, Salisbury, Richmond, Paris, Corbin.	7971	5480
672(A-F)	Columbia contracts for Norwalk, Van Wert, Tiffin, Corbin, Paris, Delaware, Norwich, Amsterdam, Little Falls, Ashland	7972	5481
698(A & B)	Contracts Universal and Schine, State Theatre, Corning, 1933–34	7978	5487
698(c)	Contract Universal and Gaby & Cohen, Plaza Theatre, Corning, 1933–34	7980	5489
720	Contract, Warner Bros. & Fenyvessy, Madison, 7/20/31	7981	5490
721	Contract, First National & Fenyvessy, Madison, 7/20/31	7982	5491
722	Contract, Warner Bros. & Fenyvessy, Madison, 11/14/32	7983	5492
723	Contract, First National & Fenyvessy, Madison, 11/14/32	7984	5493
724	Contract, Warner Bros. & Fenyvessy, Madison, 11/20/33	7985	5494
725	Contract, First National & Fenyvessy, Madison, 11/20/33	7986	5495
726	Contract, RKO & Fenyvessy, Madison, 1/15/31.	7987	5496
727	Contract, RKO & Fenyvessy, Madison, 1/15/31.	7988	5497
728	Contract, RKO & Fenyvessy, Strand and Madison, 9/28/32	7989	5498
729	Contract, RKO & Fenyvessy, Madison, 12/8/33.	7990	5499
730	Contract, RKO & Fenyvessy, Monroe, 12/8/33.	7991	5500
731	Contract, RKO & Fenyvessy, 1935–36, Monroe, 1/25/35	7992	5501
732	Contract, RKO & Fenyvessy, 1935–36, Madison, 1/16/35	7993	5502
733	Contract, Paramount and Fenyvessy, Madison, 12/11/31	7994	5503
734	Contract, Paramount and Fenyvessy, Madison, 3/2/33	7995	5504
735	Contract, Paramount and Fenyvessy, Monroe, 10/29/34	7996	5505
736	Contract, Paramount & Fenyvessy, Madison, 10/29/34	7997	5506
737	Contract, Loew's & Fenyvessy, 1934–35, Monroe, 11/28/34	7998	5507
738	Contract, Loew's & Fenyvessy, 1934–35, Madison, 11/28/34	7999	5508
739	Contract, Loew's & Fenyvessy, 1935–36, Madison, 10/11/35	8000	5509

EXHIBITS PRINTED IN PART—Continued

		Original	Print
740	Contract, Loew's & Fenyvessy, 1935–36, Monroe, 10/11/35	8001	5510
741	Contract, Loew's & Fenyvessy, 1937–38, Madison, 6/23/38	8002	5511
742	Contract, Loew's & Fenyvessy, 1937–38, Monroe, 6/23/38	8003	5512
743	Contract, Loew's & Fenyvessy, 1938–39, Madison, 6/23/38	8004	5513
744	Contract, Loew's & Fenyvessy, 1938–39, Monroe, 6/23/38	8005	5514
745	Contract, Fox and Fenyvessy, 1932–33, Madison, 10/2/32	8006	5515
746	Contract, Fox and Fenyvessy, 1933–34, Madison, 8/18/33	8007	5516
747	Contract, Fox and Fenyvessy, 1933–34, Monroe, 8/18/33	8008	5517
748	Contract, Fox and Fenyvessy, 1934–35, Monroe, 3/20/35	8009	5518
749	Contract, Fox and Fenyvessy, 1934–35, Madison, 3/20/35	8010	5519
750	Contract, Columbia and Fenyvessy, 1937–38, Monroe, 6/18/37	8011	5520
751	Contract, Columbia and Fenyvessy, 1936–37, Madison, 11/2/36	8012	5521
752	Contract, Warner and Fenyvessy, after Schine Madison, 10/11/35	8013	5522
753	Contract, Warner and Fenyvessy, Monroe, 12/10/37	8014	5523
754	Contract, Warner and Fenyvessy, Madison, 12/10/37	8015	5524
755	Contract, RKO and Fenyvessy, Madison, 12/7/36	8016	5525
756	Contract, RKO and Fenyvessy, Monroe, 12/7/36	8017	5526
757	Contract, Loew's—Liberty, 10/11/34	8018	5527
758	Contract, Loew's—Dixie or State, 10/11/34	8019	5528
759	Contract, Loew's—State or Dixie, 10/11/34	8020	5529
760	Contract, Loew's—Riviera or Liberty, 10/12/34	8021	5530
761	Contract, Loew's—State or Dixie, 7/26/35	8022	5531
762	Contract, Loew's State or Dixie, 7/26/35	8023	5532
763	Contract, Loew's Liberty, 7/26/35	8024	5533
764	Contract, Loew's Riviera or Liberty, 7/26/35	8025	5534
779	Contract, RKO and Fenyvessy, Madison, 11/30/32	8026	5535
780	Contract, RKO and Fenyvessy, Monroe, 1/14/32	8027	5536
781	Contract, RKO and Fenyvessy, Madison, 1/14/38	8028	5537
782	Contract, RKO and Fenyvessy, Monroe, 9/15/38	8029	5538

EXHIBITS PRINTED IN PART—Continued

		Original	Print
783	Contract, RKO and Fenyvessy, Madison, 9/15/38	8030	5539
784	Contract, Fox and Fenyvessy, 12/8/31	8031	5540
785	Contract, MGM–Fenyvessy, 1/15/37	8032	5541
786	Contract, Warner–First National and Fenyvessy, 11/5/36	8033	5542
787	Contract, Warner–First National and Fenyvessy, 11/5/36	8034	5543
788	Contract, Warner–First National and Fenyvessy, 1/30/35	8035	5544
789	Contract, First National and Fenyvessy, 1/30/35	8036	5545
791	Contract, 1/6/39, Columbia and Fenyvessy, Madison	8037	5546
792	Contract, 1/6/39, Columbia and Fenyvessy, Monroe	8038	5547
793	Contract, Columbia and Belinson, Little, Craig's Wife—Theodora Goes Wild—2nd Pennies from Heaven	8039	5548
794	Contract, Columbia and Belinson, Little, When You Are in Love—2nd	8040	5549
795	Contract, Columbia and Belinson, Little, Holiday—2nd	8041	5550
796	Contract, Columbia and Belinson, Little, Awful Truth—2nd	8042	5551
797	Contract, Columbia and Belinson, Little, Lost Horizon—2nd	8043	5552
798	Contract, Columbia and Belinson, Little, You Can't Take It With You—2nd	8044	5553
799	Contract, Columbia and Belinson, Little, Mr. Smith Goes to Washington—2nd	8045	5554
813	Contract, RKO and Auburn Capitol Theatrical Corp., Capitol, Auburn, 11/15/32	8046	5555
814	Contract, Paramount and Auburn Capitol Theatrical Corp., Capitol, Auburn, 3/3/34	8047	5556
829	Photostatic copy of Fox contract, 8/6/37	8048	5557
840	Contract, Fox and Vournakis, 10/21/35, 1935–36	8049	5558
841	Contract, Fox and Vournakis, 6/22/36, 1936–37	8050	5559
842	Contract, Fox and Vournakis, 11/2/36, 1936–37	8051	5560
847	Contract, Fox and Vournakis, 10/4/33, 1933–34	8052	5561
848	Contract, Warner and Vournakis, 11/20/33, 1933–34, Strand	8053	5562
849	Contract, Warner and Vournakis, 11/8/35, 1935–36, Strand	8054	5563
850	Contract, Warner and Vournakis, 12/7/36, 1936–37, Strand	8055	5564
851	Contract, Warner and Vournakis, 10/18/37, 1937–38, Strand	8056	5565
852	Contract, Warner and Vournakis, 9/18/39, 1939–40, Strand	8057	5566

EXHIBITS PRINTED IN PART—Continued

		Original	Print
853	Contract, Warner and Vournakis, 11/22/40, 1940–41, Strand	8058	5567
937	Lease, Opera Block Co. to Schine Theatrical Co., Inc., 8/14/40, Opera House, Bellefontaine, to 8/31/41	7664	5256
938	Lease, Opera Block Co. to Schine Theatrical Co., Inc., 8/18/41, Opera House, Bellefontaine, to 8/31/42	7669	5256
939	Lease, Dan Gutilla and Schine Enterprises, Inc., 7/28/31, Strand, Bellefontaine, to 6/1/34	7675	5256
940	Lease, Dan Gutilla and Schine Treatrical Co., Inc., 3/29/34, Strand, Bellefontaine, to 6/1/36	7681	5258
941	Lease, Dan Gutilla and Schine Theatrical Co., Inc., 5/22/36, Strand, Bellefontaine, to 6/1/38	7685	5259
942	Lease, Thos. Osborne to M. A. Shea, 3/9/18, Jefferson, Auburn, to 10/15/28	7690	5261
943	Lease, Thos. Osborne Estate to M. A. Shea, 8/5/29, Jefferson, Auburn, to 10/15/34	7696	5261
944	Lease, M. A. Shea to Upstate Amusement Co., 5/5/37, Jefferson, Auburn, to 10/15/41	7702	5262
945	Lease, Osborne Estate to Upstate Amusement Co., 7/9/38, Jefferson, Auburn, to 5/15/48	7712	5263
946	Agreement, Hi-Art Theatre Corp. and Lockport Enterprises, Inc., 10/1/27, Assigns lease of Hi-Art, Lockport, N. Y.	7716	5264
947	Lease, J. & S. Palfi to Sidney Theatre Corp., 5/20/36, Opera House, Kent, Ohio, to 5/31/41	7720	5265
960	Lease, 9/16/33, City of Wooster to Wooster Theatres, Inc., Opera House, Wooster, Ohio, to 8/31/35	7724	5266
961	Agreement, 10/3/35, City of Wooster to Wooster Theatres, Inc., Opera House, Wooster, Ohio, extends lease to 8/31/38	7730	5271
962	Lease, pursuant to resolution of 4/4/38, City of Wooster to Wooster Theatres, I[illegible] Opera House, Wooster, Ohio, to 8/31/41	7733	5273
982	Lease, Bates Estate to G-C Theatre Corp., 6/15/33, Richardson, Oswego, and exercise of option to 7/31/38	7736	5275
983	Lease, Bates Estate to G-C Theatre Corp., 7/5/38, Richardson, Oswego, and exercise of option to 7/31/40	7741	5277
984	Lease, Bates Estate to G-C Theatre Corporation, 6/17/40, Richardson, Oswego, and exercise of option to 7/31/40	7747	5277
1008	Agreement, 11/6/41, between Poli and Norwalk Theatre Corp.	7749	5277
868	Agreement, J. M. Schine, et al. and M. A. Shea, 8/16/35, re purchase of one-half interest, Amsterdam, N. Y.	7754	5281

EXHIBITS PRINTED IN PART—Continued

		Original	Print
S69	Agreement, Bieberson and Belpik Theatre Corp., 1/17/36, re purchase of one-half interest in Athens, Ohio	7762	5285
S70	Agreement, Bieberson and Schine Delaware Corporation, 1/17/36, re purchase of one-half interest	7766	5287
S71	Agreement, J. M. Schine, et al. and Maurice A. Shea, 8/16/37, re purchase of Shea interest	7769	5289
S72	Bill of sale, John Buchmann to Schine Delaware Corp., 3/21/38	7778	5293
S76	Agreement, Hoppes and Chesapeake Theatre Corporation, 7/16/40, re purchase of Wicomico, Salisbury, Md.	7785	5294
S77	Bill of Sale, Jos. Constantino to Schine Theatre Company, Inc.	7790	5299
D112	Map of City of Rochester showing location of theatres	7793	5302

DIGESTS OF LICENSE CONTRACT EXHIBITS

		Original	Print
Statement re digests of License Contract Exhibits		7794	5303
P14	Contract, Paramount 1938-38—11/4/38—Mt. Vernon	7795	5304
P15	Contract, Paramount 1939-40, 1940-41—Mt. Vernon, second run	7797	5306
P19	Contract, Scott—Universal—First run	7798	5307
P23	Contract, 9/1/39, Columbia—Murphy	7799	5308
P24	Contract, 9/1/39, Columbia—Murphy	7800	5309
P27	Contract, 9/21/39, Metro—Schine, Kentucky Theatre, Corbin	7801	5310
P28	Contract, 12/1/38, Paramount—Schine, Hippodrome or Kentucky	7802	5311
P29	Contract, 6/6/39 Fox—Schine, Corbin	7803	5312
P30	Contract, 6/6/39 Fox—Schine, Corbin	7805	5314
P31	Contract, 1/23/39, Fox—Schine, Corbin	7806	5315
P37	Contract, 11/10/38, Universal—Schine, Corbin	7807	5316
P42	Contract, 12/2/38, Fox—Schine, Corbin	7808	5317
P61	Contract, 9/28/35, MGM—Bryer	7809	5318
P62	Contract, Warners—Schine, 7/25/35, Bucyrus	7811	5320
P66	Contract, Fox—Charnas, 8/20/34, Southern, Bucyrus	7812	5321
P67	Contract, Fox—Schine, 8/5/35, Bucyrus	7813	5322
P68	Contract, Fox and Schine, 8/5/35, Bucyrus	7814	5323
P69	Contract, Paramount—Charnas, 9/11/34, Bucyrus	7815	5324
P70	Contract, Paramount—Schine, 9/17/35, Bucyrus	7816	5325
122	Contract, United Artists—Schine—8/22/33—"I Knew Her When"	7818	5327
126	Contract, United Artists—Schine, 11/18/35—"Call of the Wild"	7821	5330

DIGESTS OF LICENSE CONTRACT EXHIBITS—Continued

		Original	Print
128	Contract, United Artists—Schine, 11/18/35—"Dark Angel"	7823	5332
129	Contract, United Artists—Schine, 10/2/35—"Barbary Coast"	7825	5334
131	Contract, United Artists—Schine—undated rider—"Garden of Allah, Star is Born and untitled Colman"	7830	5339
135	Contract, United Artists and Schine—undated rider—"Vogues"	7833	5342
138	Contract, United Artists and Schine—undated rider—"Goldwyn Follies, Hurricane, Marco Polo"	7836	5345
140	Contract, United Artists—Schine—undated rider—"Stella Dallas, Dead End"	7838	5347
141	Contract, United Artists—Schine—undated rider—"Cowboy and Lady, Lost Frontier, Daring Age"	7841	5350
863	Contract, Warners and Boumansour	8059	5568
865	Contract, Paramount to Y & W Inc., 8/20/35, Capitol, Ilion	8060	5569
866	Contract, Paramount to Y & W Inc., The Crusades, undated	8061	5570
867	Contract, Columbia to Y & W Inc., (application undated)	8062	5571
868	Contract, Warners & First National and Y & W Inc., 10/17/35, 1935–36	8063	5572
869	Contracts (5), United Artists & Y & W Inc., 2/1/36, These Three, Strike Me Pink, Splendor, Barbary Coast and Dark Angel	8064	5573
870	Contracts (2), RKO—Y & W Inc., 1/20/36	8065	5574
874(A-D)	Contracts (4), RKO—Y & W Inc., 1932/33, 33/34, 34/35, 1936/37	8066	5575
875(A-E)	Contract, Warner—Y & W, Inc., 1932–33, 2/6/33	8070	5579
	Contract, First National—Y & W, Inc., 1932–33, 2/6/33	8071	5580
	Contract, First National—Y & W, Inc., 1933–34, 10/28/33	8072	5581
	Contract, Warner—Y & W, Inc., 1933–34, 10/28/33	8073	5582
	Contract, First National—Y & W, Inc., 1934–35, 10/11/34	8074	5583
	Contract, Warner—Y & W, Inc., 1934–35, 10/11/34	8075	5584
	Contract, Warner—First National—Y & W, Inc., 1935–36, 10/17/35	8076	5585
	Contract, Warner—First National—Y & W, Inc., 1936–37, 8/31/36	8077	5586
876(A-D)	Contracts (4), MGM—Y & W, Inc., 1933/34, 34/35, 35/36, 36/37	8078	5587

DIGESTS OF LICENSE CONTRACT EXHIBITS—Continued

		Original	Print
877(A-E)	Contracts (5), Fox—Y & W, Inc., 1933–34, 34/35, 35/36, 35/36, 36/37	8082	5591
878(A-E)	Contracts (5), Paramount—Y & W, Inc., 1932/33, 33/34, 34/35, 35/36, 36/37	8087	5591
905(A-E)	Contracts (5), Paramount and Boumansour	8092	5601
906(A-H)	Contracts (8), Loew's Inc., and Boumansour	8097	5606
907(A-E)	Contracts (5), RKO and Boumansour, 1936/37, 37/38, 38/39, 39/40	8105	5614
908(A-E)	Contracts (5), Vitagraph, Inc. and Boumansour, 1938/39, 39/40	8110	5619
909	Contract, Vitagraph, Inc. and Boumansour, app. 6/14/37	8115	5624
948	Contracts (2), War. & F. N. with State-Bucyrus, 8/20/34	8116	5625
949	Contract, MGM and Long, Memorial, Mt. Vernon, 1937–38, 5/31/38	8118	5627
950	Contract, MGM and Long, 5/31/38, Memorial, Mt. Vernon, 1938–39	8119	5628
951	Contract, MGM and Long, 12/14/36, Memorial, Mt. Vernon, 1936–37	8120	5629
952	Contract, MGM and Long, Memorial, Mt. Vernon, 1936–37, Great Ziegfield	8121	5630
953	Contract, Columbia and Schine, Forum, Norwalk, 1936–37	8122	5631
954	Contract, Columbia and Frederick, Moose, Norwalk, 1935–36	8123	5632
955	Contract, Columbia and Schine, Colonial, Norwich, N. Y. 1936–37	8124	5633
956	Contract, Columbia and Carl Moore, Ohio, Van Wert, 1935–36	8125	5634
957	Contract, Columbia and Schine, Van Wert or Strand, 1936–37, 10/5/36	8126	5635
963	Contract, Fox & S. K. E., 10/14/41, Paramount, Strand, 8/8/41	8127	5636
964	Contract, Fox & S. K. E., 10/14/41, Eckel (move-over)	8128	5637
965	Contract, Fox and Syracuse Cameo Theatre, Inc., 9/25/41, Cameo	8129	5638
966	Contract, Fox and Syracuse Novelty Theatre, Inc., 9/24/41, Novelty	8130	5639
967	Contract, Fox and Syracuse Happy Hour Theatre, Inc., 9/24/41, Happy Hour	8131	5640
968	Contract, Fox and Larkin, 9/24/41, Harvard	8132	5641
969	Contract, Fox and Theatorium Co., 10/17/41, Turn Hall	8133	5642
970	Contract, Fox and Sidney Grossman, 10/25/41, Elmwood	8134	5643
971	Contract, Fox and Corrin, 10/30/31, Alcazar	8135	5644
972	Contract, Fox and Merriman, 10/30/31, Franklin	8136	5645

DIGESTS OF LICENSE CONTRACT EXHIBITS—Continued

		Original	Print
973	Contract, Fox and Matty Dale Amusement Corp., 10/30/31, Hollywood	8137	5646
974	Contract, Fox and Stotnick & Cantor, 12/18/41, Acme	8138	5647
975	Contract, Fox and Stotnick, 12/18/41, Globe	8139	5648
976	Contract, Fox and Stotnick, 1/12/42, Grant	8140	5649
977	Contract, Fox and Davidson, 1/21/42, Avon	8141	5650
978	Contract, Fox and Erin Theatre Co., 4/13/42, Erin	8142	5651
979	Contract, Fox and Kallett, Regent, Syracuse	8143	5652
981(1-81)	Contracts, Loew's and Schine, 9/6/40, 1940–41 (81)	8144	5653
981(82-83)	Contracts (2), Loew's and Schine, 11/22/40, 1940–41	8224	5734
W6(1-17)	First run contracts (17), 4/3/36	8262	5736
W6(19-41)	First run contracts (22)	8243	5753
W8(1-2)	First run contracts (2), 8/16/35	8266	5776
W8(3)	First run contract (1), 8/8/35	8268	5778
W8(4-17)	First run contracts (13), 8/16/35	8269	5779
W33(16)	Contracts, First National–Warner–Schine, Rochester, 9/11/34	8283	5793
W33(17)	Contracts, First National–Warner–Schine, Rochester, 9/11/34	8285	5795
W18	Contract, Warner Bros.–First National & Schine, 8/5/35, Liberty or Riviera, Rochester, N. Y.	8287	5797
W19	Contract, Warners–First Nat'l & Schine, 8/5/35, State or Dixie, Rochester, N. Y.	8288	5798
R3	Contract, RKO and Schine, 11/20/36, Auburn, N. Y.	8289	5799
R4	Contract, Bath, N. Y., 11/12/34	8290	5800
R5	Contract, Canandaigua, N. Y., 11/12/34	8291	5801
R6	Contract, Carthage, N. Y., 11/12/34	8292	5802
R7	Contract, Corning, N. Y., 11/12/34	8293	5803
R8	Contract, Cortland, N. Y., 11/12/34	8294	5804
R9	Contract, Geneva, N. Y., 11/12/34	8295	5805
R10	Contract, Glens Falls, N. Y., 11/12/34	8296	5806
R11	Contract, Gloversville, N. Y., 11/12/34	8297	5807
R12	Contract, Hamilton, N. Y., 3/29/35	8298	5808
R13	Contract, Herkimer, N. Y., 11/12/34	8299	5809
R14	Contract, Little Falls, N. Y., 11/12/34	8300	5810
R15	Contract, Lockport, N. Y., 11/12/34, (first run)	8301	5811
R16	Contract, Lockport, N. Y., 11/12/34, (second run)	8302	5812
R17	Contract, RKO–Schine, 1934–35, Malone, Malone, N. Y.	8303	5813
R18	Contract, Massena, N. Y., 11/12/34	8304	5814
R21	Contract, Ogdensburg, N. Y., 11/12/34	8305	5815
R22	Contract, Oneonta, N. Y., 11/14/34	8306	5816
R23	Contract, Oswego, N. Y., 11/12/34	8307	5817

DIGESTS OF LICENSE CONTRACT EXHIBITS—Continued

		Original	Print
R24	Contract, Rochester, N. Y., 11/12/34, (repeat run)	8308	5818
R25	Contract, Rochester, N. Y., 11/12/34, (third run)	8309	5819
R26	Contract, Rochester, N. Y., 11/12/34, (repeat run)	8310	5820
R27	Contract, Rochester, N. Y., 11/12/34, (Subsequent run)	8311	5821
R28	Contract, Salamanca, N. Y., 11/12/34	8312	5822
R29	Contract, Saranac Lake, N. Y., 11/12/34	8313	5823
R30	Contract, Tupper Lake, N. Y., 5/22/35	8314	5824
R31	Contract, Watertown, N. Y., 11/14/34	8315	5825
R32	Contract, Bellefontaine, Ohio, 12/19/34	8316	5826
R33	Contract, Piqua, Ohio, 12/19/34	8317	5827
R34	Contract, Wooster, Ohio, 12/19/34	8318	5828
P168	First run contract, Ballston, N. Y., 9/27/40	8319	5829
P169	First run contract, Carthage, N. Y., 9/27/40	8320	5830
P170	First run contract, Hamilton, N. Y., 9/27/40	8321	5831
P171	First run contract, Saranac Lake, N. Y., 9/27/40	8322	5332
P172	First run contract, Whitehall, N. Y., 9/27/40	8323	5333
P173	First run contract, Salamanca, N. Y., 9/27/40	8324	5334
P174	First run contract, Bath, N. Y., 9/27/40	8325	5335
P175	First run contract, Canandaigua, N. Y., 9/27/40	8326	5336
P176	First run contract, Perry, N. Y., 9/27/40	8327	5337
P177	First run contract, Oswego, N. Y., 9/27/40	8328	5338
P178	Second run contract, Oswego, N. Y., 9/27/40	8329	5339
P179	First run contract, Hurlock, Md., 9/27/40	8330	5340
P180	First run contract, Easton, Md., 9/27/40	8331	5341
P181	First run contract, Cambridge, Md., 9/27/40	8332	5342
P182	First run contract, Richmond, Ky., 9/30/40	8333	5343
P183	First run contract, Paris, Ky., 9/30/40	8334	5344
P184	First run contract, Middlesboro, Ky., 9/30/40	8335	5345
P185	First run contract, Lexington, Ky., 9/30/40	8336	5346
P186	Second run contract, Lexington, Ky., 9/30/40	8337	5347
P187	Third run contract, Lexington, Ky., 9/30/40	8338	5348
P188	First run contract, Milford, Del., 9/27/40	8339	5349
P189	Run blank contract, Laurel, Del., 9/27/40	8340	5350
P190	First run contract, Delaware, Ohio, 9/30/40	8341	5351
P192	First run contract, Harlan, Ky., 9/30/40	8342	5352
P193	First run contract, Maysville, Ky., 9/30/40	8343	5353
P194	First run contract, Pikeville, Ky., 9/30/40	8344	5354
P195	Contract, Cumberland, Md., 1/17/41	8345	5355
P196	First run contract, Salisbury, Md., 1/17/41	8346	5856
P197	First run contract, Amsterdam, N. Y., 9/27/40	8347	5857
P198	First run contract, Auburn, N. Y., 9/27/40	8348	5858
P199	Second run contract, Auburn, N. Y., 9/27/40	8349	5859
P200	First run contract, Corning, N. Y., 9/27/40	8350	5860
P201	Second run contract, Corning, N. Y., 9/27/40	8351	5861
P202	First run contract, Cortland, N. Y., 9/27/40	8352	5862
P203	First run contract, Geneva, N. Y., 9/27/40	8353	5863

DIGESTS OF LICENSE CONTRACT EXHIBITS—Continued

		Original	Print
P204	Second run contract, Geneva, N. Y., 9/27/40..	8354	5864
P205	First run contract, Glens Falls, N. Y., 9/27/40.	8355	5865
P206	First run contract, Gloversville, N. Y., 9/27/40.	8356	5866
P207	First run contract, Herkimer, N. Y., 9/27/40..	8357	5867
P208	First run contract, Hudson Falls, N. Y., 9/27/40.	8358	5868
P209	First run contract, Ilion, N. Y., 9/27/40......	8359	5869
P210	First run contract, Little Falls, N. Y., 9/27/40.	8360	5870
P211	First run contract, Lockport, N. Y., 9/27/40...	8361	5871
P212	Second run contract, Lockport, N. Y., 9/27/40.	8362	5872
P213	First run contract, Malone, N. Y., 9/27/40....	8363	5873
P214	First run contract, Massena, N. Y., 9/27/40...	8364	5874
P215	First run contract, Newark, N. Y., 9/27/40....	8365	5875
P216	First run contract, Norwich, N. Y., 9/27/40...	8366	5876
P217	First run contract, Ogdensburg, N. Y., 9/27/40.	8367	5877
P218	First run contract, Oneonta, N. Y., 9/27/40...	8368	5878
P219	First run contract, Penn Yan, N. Y., 9/27/40..	8369	5879
P220	First run contract, Seneca Falls, N. Y., 9/27/40.	8370	5880
P221	First run contract, Tupper Lake, N. Y., 9/27/40.	8371	5881
P222	First run contract, Watertown, N. Y., 9/27/40.	8372	5882
P223	Second run contract, Watertown, N. Y., 9/27/40	8373	5883
P224	First run contract, Ashland, Ohio, 9/30/40.....	8374	5884
P225	First run contract, Athens, Ohio, 9/30/40.....	8375	5885
P226	First run contract, Bellefontaine, Ohio, 9/30/40.	8376	5886
P227	First run contract, Bucyrus, Ohio, 9/30/40.....	8377	5887
P228	First run contract, Fostoria, Ohio, 9/30/40....	8378	5888
P229	First run contract, Kent or Ravenna, Ohio 9/30/40..................................	8379	5889
P230	Repeat run contract, Kent or Ravenna, Ohio, 9/30/40..................................	8380	5890
P231	First run contract, Medina, Ohio, 9/30/40.....	8381	5891
P232	First run contract, Mount Vernon, Ohio, 9/30/40..................................	8382	5892
P234	First run contract, Norwalk, Ohio, 9/30/40....	8383	5893
P235	First run contract, Shelby, Ohio, 9/30/40.....	8384	5894
P236	First run contract, Tiffin, Ohio, 9/30/40......	8385	5895
P237	First run contract, Van Wert, Ohio, 9/30/40...	8386	5896
P238	First run contract, Wooster, Ohio, 9/30/40....	8387	5897
PP1	Contract, Paramount and Schine, 2/8/40 9/30/40, 1939-40, 1940-41, Piqua, Ohio, first run..................................	8388	5898
PP2	Contract, Paramount and Schine, 2/8/40, 9/27/40, 1939-40, 1940-41, Rochester, N. Y., Cameo, subsequent run.....................	8389	5899
PP3	Contract, Paramount and Schine, 2/8/40, 9/27/40, 1939-40, 1940-41, Rochester, N. Y., Grand subsequent run.....................	8390	5900
PP4	Contract, Paramount and Schine, 2/8/40, 9/27/40, 1939-40, 1940-41, Rochester, N. Y., Liberty, repeat run........................	8391	5901

DIGESTS OF LICENSE CONTRACT EXHIBITS—Continued

		Original	Print
PP5	Contract, Paramount and Schine, 2/8/40, 9/27/40, 1939–40, 1940–41, Rochester, N. Y., Riviera or Liberty, third run	8392	5902
PP6	Contract, Paramount and Schine, 2/8/40, 9/27/40, 1939–40, 1940–41, Rochester, N. Y., Monroe, After Riviera, etc.	8393	5903
PP7	Contract, Paramount and Schine, 2/8/40, 9/27/40, 1939–40, 1940–41, Rochester, N. Y., Madison, After Riviera, etc.	8394	5904
PP8	Contract, Paramount and Schine, 2/8/40, 9/27/40, 1939–40, 1940–41, Rochester, N. Y., State, Repeat run	8395	5905
PP9	Contract, Paramount and Schine, 2/8/40, 9/27/40, 1939–40, 1940–41, Rochester, N. Y., State, Dixie, third run	8396	5906
PP10	Contract, Paramount and Schine, 2/8/40, 9/27/40, 1939–40, 1940–41, Rochester, N. Y., West End Open with Arnett	8397	5907
F2	Contract, Fox and Schine, 6/17/36, Amsterdam, N. Y., 1936–37—1st	8398	5908
F3	Contract, Fox and Schine, Amsterdam, N. Y., 6/17/36, 1936–37, 2nd run	8399	5909
F4	Contract, Fox and Schine, 8/5/36, 1936–37, Auburn, N. Y., 1st run	8400	5910
F5	Contract, Fox and Schine, 8/5/36, 1936–37, Bath, N. Y., 1st run	8401	5911
F6	Contract, Fox and Schine, 8/5/36, 1936–37, Canandaigua, N. Y., 1st run	8402	5912
F7	Contract, Fox and Schine, 8/5/36, 1936–37, Carthage, N. Y., 1st run	8403	5913
F8	Contract, Fox and Schine, 8/5/36, 1936–37, Corning, N. Y., 1st run	8404	5914
F9	Contract, Fox and Schine, 8/5/36, 1936–37, Corning, N. Y., 2nd run	8405	5915
F10	Contract, Fox and Schine, 8/5/36, 1936–37, Cortland, N. Y., 1st run	8406	5916
F11	Contract, Fox and Schine, 8/5/36, 1936–37, Geneva, N. Y., 1st run	8407	5917
F12	Contract, Fox and Schine, 6/17/36, 1936–37, Glens Falls, N. Y., 1st run	8408	5918
F13	Contract, Fox and Schine, 6/17/36, 1936–37, Glens Falls, N. Y., 2nd run	8409	5919
F14	Contract, Fox and Schine, 6/17/36, 1936–37, Gloversville, N. Y., 1st run	8410	5920
F15	Contract, Fox and Schine, 6/17/36, 1936–37, Gloversville, N. Y., 2nd run	8411	5921
F16	Contract, Fox and Schine, 6/17/36, 1936–37, Hamilton, N. Y., 1st run	8412	5922
F17	Contract, Fox and Schine, 6/17/36, 1936–37, Herkimer, N. Y., 1st run	8413	5923

DIGESTS OF LICENSE CONTRACT EXHIBITS—Continued

		Original	Print
F18	Contract, Fox and Schine, 6/17/36, 1936–37, Hudson Falls, N. Y., 1st run	8414	5924
F19	Contract, Fox and Schine, 6/17/36, 1936–37, Little Falls, N. Y., 1st run	8415	5925
F20	Contract, Fox and Schine, 8/5/36, 1936–37, Lockport, N. Y., 1st run	8416	5926
F21	Contract, Fox and Schine, 8/5/36, 1936–37, Lockport, N. Y., 2nd run	8417	5927
F22	Contract, Fox and Schine, 6/17/36, 1936–37, Malone, N. Y., 1st run	8418	5928
F23	Contract, 20th Century-Schine, 8/17/36, Massena, Massena, N. Y.	8419	5929
F24	Contract, 20th Century-Schine, 8/17/36, Colonial, Norwich, N. Y.	8420	5930
F25	Contract, Fox and Schine, 6/17/36, 1936–37, Ogdensburg, N. Y., 1st run	8421	5931
F26	Contract, Fox and Schine, 6/17/36, 1936–37, Oneonta, N. Y., 1st run	8422	5932
F27	Contract, Fox and Schine, 6/17/36, 1936–37, Oneonta, N. Y., 2nd run	8423	5933
F28	Contract, Fox and Schine, 8/5/36, 1936–37, Perry, N. Y., 1st run	8424	5934
F29	Contract, Fox and Schine, 8/11/37, 1937–38, 1938–39, Perry, N. Y., 1st run	8425	5935
F30	Contract, Fox and Schine, 8/5/36, 1936–37, Rochester, N. Y., State or Dixie, 2nd run	8426	5936
F31	Contract, Fox and Schine, 8/5/36, 1936–37, Rochester, N. Y., State or Dixie, repeat run	8427	5937
F32	Contract, Fox and Schine, 8/5/36, 1936–37, Rochester, N. Y., Lake, sub. run	8428	5938
F33	Contract, Fox and Schine, 8/5/36, 1936–37, Rochester, N. Y., Grand, sub. run	8429	5939
F34	Contract, Fox and Schine, 8/5/36, 1936–37, Rochester, N. Y., Cameo, after Madison and Monroe	8430	5940
F35	Contract, Fox and Schine, 8/5/36, 1936–37, Salamanca, 1st run	8431	5941
F36	Contract, Fox and Schine, 8/5/36, 1936–37, Saranac Lake, 1st run	8432	5942
F37	Contract, Fox and Schine, 8/5/36, 1936–37, Seneca Falls, N. Y., 1st run	8433	5943
F38	Contract, Fox and Schine, 6/17/36, 1936–37, Tupper Lake, N. Y., 1st run	8434	5944
F39	Contract, Fox and Schine, 6/17/36, 1936–37, Watertown, N. Y., 1st run	8435	5945
F40	Contract, Fox and Schine, 10/28/36, 1936–37, Watertown, N. Y., third run	8436	5946
F41	Contract, Fox and Schine, 9/5/36, 1936–37, Ashland, Ohio, 1st run	8437	5947

DIGESTS OF LICENSE CONTRACT EXHIBITS—Continued

		Original	Print
F42	Contract, Fox and Schine, 1936–37, Athens, N. Y., 1st run	8438	5948
F43	Contract, Fox and Schine, 8/5/36, 1936–37, Bellefontaine, O., 1st run	8439	5949
F44	Contract, Fox and Schine, 8/5/36, 1936–37, Bucyrus, O., 1st run	8440	5950
F45	Contract, Fox and Schine, 8/5/36, 1936–37, Delaware, O., 1st run	8441	5951
F46	Contract, Fox and Schine, 8/5/36, 1936–37, Mt. Vernon, O., 1st run	8442	5952
F47	Contract, Fox and Schine, 9/5/36, 1936–37, Norwalk, O., 1st run	8443	5953
F48	Contract, Fox and Schine, 6/17/36, 1936–37, Piqua, O., 1st run	8444	5954
F49	Contract, Fox and Schine, 10/20/37, 1937–38, Lexington, Ky., 2nd run	8445	5955
F50	Contract, Fox and Schine, 12/15/36, 1936–37, Lexington, Ky., 1st run	8446	5956
F51	Contract, Fox and Schine, 12/15/36, 1936–37, Richmond, Ky., 1st run	8447	5957
F52	Contract, Fox and Schine, 4/27/37, 1937–38, Ilion, N. Y., 1st run	8448	5958
F53	Contract, Fox and Schine, 4/27/37, 1938–39, Ilion, N. Y., 1st run	8449	5959
F54	Contract, Fox and Schine, 12/22/37, 1937–38, Kent or Ravenna, 1st run	8450	5960
F55	Contract, Fox and Schine, 12/22/37, 1937–38, Kent or Ravenna, repeat run	8451	5961
F56	Contract, Fox and Schine, 6/14/38, 1937–38, Tiffin, O., 2nd run	8452	5962
F57	Contract, Fox and Schine, 8/5/36, 1936–37, Tiffin, O., 1st run	8453	5963
F59	Contract, Fox and Schine, 8/5/36, 1936–37, Oswego, N. Y., 1st run	8454	5964
F60	Contract, Fox and Schine, 8/5/36, 1936–37, Oswego, N. Y., 2nd run	8455	5965
F61	Contract, Fox and Schine, 8/5/35, 1936–37, Penn Yan, N. Y., 1st run	8456	5966
F62	Contract, Fox and Schine, 8/11/37, 1937–38, and 1938–39, Penn Yan, N. Y., 1st run	8457	5967
F63	Contract, Fox and Schine, 8/5/36, 1936–67, Van Wert, Ohio, 1st run	8458	5968
F64	Contract, Fox and Schine, 8/5/36, 1936–37, Wooster, O., 1st run	8459	5969
F87	Contract, Fox–Schine, 6/20/34, State or Dixie, Rochester, N. Y.	8460	5970
F101(1-40)	Contracts, Fox and Schine, 8/5/35, 1935–36, (80)	8461	5971
F101(42,43)	Contracts (4), Fox and Schine, 8/5/35, 1935–36 (Fox and 20th Century)	8537	6047

DIGESTS OF LICENSE CONTRACT EXHIBITS—Continued

		Original	Print
F117	Contract, Fox and Schine, 12/2/38, 1938–39, Pikeville, Ky., 1st run	8541	6051
F118	Contract, Fox and Schine, 12/3/38, 1938–39, Paris, Ky., second run	8542	6052
F119	Contract, Fox and Schine, 12/2/38, 1938–39, Middlesboro, Ky., 1st run	8543	6053
F120	Contract, Fox and Schine, 12/15/38, 1938–39, Granville, N. Y., 1st run	8544	6054
F121	Contract, Fox and Schine, 12/2/38, 1938–39, Harlan, Ky.	8545	6055
F122	Contracts, Fox and Schine, 12/16/39, 1938/39, 1939/40, 7/24/39, 1940/41, 41/42, Lexington, Ky.	8546	6056
F125	Contract, first run, Maysville, Ky., 1/23/39	8547	6057
F126	Contract, first run, Maysville, Ky., 6/6/39	8548	6058
F127	Contract, first run, Milford, Del., 8/10/39	8549	6059
F128	Contract, first run, Lexington, Ky., 6/6/39	8550	6060
F129	Contract, second run, Lexington, Ky., 6/6/39	8551	6061
F130	Contract, first run, Middlesboro, Ky., 6/6/39	8552	6062
F131	Contract, first run, Paris, Ky., 6/6/39	8553	6063
F132	Contract, first season, Richmond, Ky., 6/6/39	8554	6064
F133	Contract, first run, Cambridge, Md., 8/10/39	8555	6065
F134	Contract, first run, Easton, Md., 8/10/39	8556	6066
F135	Contract, first run, Federalsburg, Md., 8/10/39	8557	6067
F136	Contract, first run, Amsterdam, N. Y., 6/9/39	8558	6068
F137	Contract, second run, Amsterdam, N. Y., 6/9/39	8559	6069
F138	Contract, first run, Auburn, N. Y., 6/7/39	8560	6070
F139	Contract, first run, Bath, N. Y., 6/7/39	8561	6071
F140	Contract, first run, Canandaigua, N. Y., 6/7/39	8562	6072
F141	Contract, first run, Corning, N. Y., 6/7/39	8563	6073
F142	Contract, second run, Corning, N. Y., 6/7/39	8564	6074
F143	Contract, first run, Cortland, N. Y., 6/7/39	8565	6075
F144	Contract, first run, East Rochester or Fairport, N. Y., 2/29/40	8566	6076
F145	Contract, second run, East Rochester or Fairport, N. Y., 2/29/40	8567	6077
F146	Contract, first run, Geneva, N. Y., 6/7/39	8568	6078
F147	Contract, second run, Glens Falls, N. Y., 6/9/39	8569	6079
F148	Contract, first run, Glens Falls, N. Y., 10/8/40	8570	6080
F149	Contract, first run, Gloversville, N. Y., 6/9/39	8571	6081
F150	Contract, second run, Gloversville, N. Y., 6/9/39	8572	6082
F151	Contract, first run, Granville, N. Y., 6/9/39	8573	6083
F152	Contract, first run, Hamilton, N. Y., 6/9/39	8574	6084
F153	Contract, first run, Herkimer, N. Y., 6/9/39	8575	6085
F154	Contract, first run, Hudson Falls, N. Y., 6/9/39	8576	6086
F155	Contract, first run, Ilion, N. Y., 6/9/39	8577	6087

DIGESTS OF LICENSE CONTRACT EXHIBITS—Continued

		Original	Print
F156	Contract; first run, Little Falls, N. Y., 6/9/39	8578	6088
F157	Contract, first run, Glens Falls, N. Y., 6/9/39	8579	6089
F158	Contract, first run, Pikesville, Ky., 6/6/39	8580	6090
F159	Contract, first run, Carthage, N. Y., 6/6/39	8581	6091
F160	Contract, first run, Lockport, N. Y., 6/7/39	8582	6092
F161	Contract, second run, Lockport, N. Y., 6/7/39	8583	6093
F162	Contract, first run, Malone, N. Y., 6/9/39	8584	6094
F163	Contract, first run, Massena, N. Y., 6/9/39	8585	6095
F164	Contract, first run, Norwich, N. Y., 6/9/39	8586	6096
F165	Contract, first run, Ogdensburg, N. Y., 6/9/39	8587	6097
F166	Contract, first run, Oneonta, N. Y., 6/9/39	8588	6098
F167	Contract, second run, Oneonta, N. Y., 6/9/39	8589	6099
F168	Contract, first run, Perry, N. Y., 6/9/39	8590	6100
F169	Contract, subsequent run, Rochester, N. Y., 2/29/40	8591	6101
F170	Contract, subsequent run, Rochester, N. Y., 2/29/40	8592	6102
F171	Contract, subsequent run, Rochester, N. Y., 2/29/40	8593	6103
F172	Contract, subsequent run, Rochester, N. Y., 12/14/39	8594	6104
F173	Contract,second run, Rochester, N. Y., 2/29/40.	8595	6105
F174	Contract, repeat run, Rochester, N. Y., 2/29/40.	8596	6106
F175	Contract, subsequent run, Rochester, N. Y., 12/14/39	8597	6107
F176	Contract, first run, Salamanca, N. Y., 6/7/39	8598	6108
F177	Contract, first run,Saranac Lake, N. Y., 6/9/39	8599	6109
F178	Contract, first run, Seneca Falls, N. Y., 6/9/39.	8600	6110
F179	Contract, subsequent run, Syracuse, N. Y., 9/1/39	8601	6111
F180	Contract, first run, Tupper Lake, N. Y., 6/9/39.	8602	6112
F181	Contract; first run, Watertown, N. Y., 6/9/39	8603	6113
F182	Contract, second run, Watertown, N. Y., 6/9/39	8604	6114
F183	Contract, Seven (7) days after first run, Ashland, Ohio	8605	6115
F184	Contract, first run, Athens, O., 6/6/39	8606	6116
F185	Contract, first run, Bellefontaine, O., 6/8/39	8607	6117
F186	Contract, first run, Bucyrus, O., 6/8/39	8608	6118
F187	Contract, first run, Delaware, O., 6/8/39	8609	6119
F188	Contract, first run, Fostoria, O., 6/8/39	8610	6120
F189	Contract, first run, Kent or Ravenna, O., 6/8/39	8611	6121
F190	Contract, second run, Kent or Ravenna, O., 6/8/39	8612	6122
F191	Contract, first run, Medina, O., 10/10/39	8613	6123
F192	Contract, first run, Mount Vernon, O., 6/8/39	8614	6124
F194	Contract, first run, Norwalk, O., 6/8/39	8615	6125
P195	Contract, first run, Piqua, O., 6/6/39	8616	6126
P196	Contract, first run, Shelby, O., 6/8/39	8617	6127
F197	Contract, first run, Tiffin, O., 6/8/39	8618	6128

DIGESTS OF LICENSE CONTRACT EXHIBITS—Continued

		Original	Print
F198	Contract, first run, Van Wert, O., 6/8/39	8619	6129
F199	Contract, first run, Wooster, O., 6/8/39	8620	6130
F200	Contract, first run, Cumberland, Md., 3/24/41	8621	6131
F201	Contract, first run, Ballston, N. Y., 9/17/40	8622	6132
F202	Contract, first run, Mechanicville, N. Y., 9/17/40	8623	6133
F203	Contract, first run, Whitehall, N. Y., 9/17/40	8624	6134
F204	Contract, subsequent run, Rochester, N. Y., 12/14/39	8625	6135
F205	Contract, first run, Newark, N. Y., 6/7/39	8625	6136
F206	Contract, first run, Oswego, N. Y., 6/7/39	8627	6137
F207	Contract, second run, Oswego, N. Y., 6/7/39	8628	6138
F208	Contract, first run, Penn Yan, N. Y., 6/7/39	8629	6139
F209	Contract, first run, Harlan, Ky., 6/6/39	8630	6140
F210	Contract, first run, Hurlock, Md., 1/6/41	8631	6141
F211	Contract, first run, Hurlock, Md., 11/30/39	8632	6142
F212	Contract, first run, Saint Michaels, Md., 1/6/41	8633	6143
D213	Contract, first run, Saint Michaels, Md., 11/30/39	8634	6144
F214	Contract, first run, Laurel, Del., 6/22/39	8635	6145
D42	Contract, RKO and Kemper, 3/23/39, 1938–39	8636	6146
D47	Contract, Columbia and Reliance, Palace	8637	6147
D48	Contract, Columbia and Reliance, Palace	8638	6148
D49	Contract, Columbia and Reliance, Palace	8639	6149
D69	Contract, 1/27/34, U.A. & Reliance, Arrowsmith, 1st run	8640	6150
D70	Contract, 1/27/34, U.A. & Reliance, Scarface, 1st run	8642	6152
D71	Contract, U.A. & Reliance, Tonight or Never, 1st run, 1/27/34	8643	6153
D72	Contract, U.A. & Reliance, Cock of the Air, 1st run, 1/27/34	8644	6154
D73	Contract, U.A. & Reliance, Bitter Sweet, 1st run, 1/27/34	8646	6156
D74	Contract, U.A. & Reliance, Unholy Garden, 1st run, 1/27/34	8647	6157
D75	Contract, U.A. & Reliance, Secrets, 1st run, 2/16/34	8649	6159
D76	Contract, U.A. & Reliance, Emperor Jones, 1st run, 2/16/34	8650	6160
D77	Contract, U.A. & Reliance, Private Life Henry 8th, 1st run, 2/10/34	8651	6161
D78	Contract, U. A. & Reliance, Catherine The Great, 1st run, 5/7/34	8652	6162
D79	Contract, U. A. & Reliance, Greeks Had A Word, 1st run, 2/26/34	8653	6163
D80	Contract, U. A. & Reliance, Sorrell and Son, 1st run, 6/9/34	8655	6165
D81	Contract, U. A. & Reliance, Born To Be Bad, 1st run, 7/28/34	8656	6166

DIGESTS OF LICENSE CONTRACT EXHIBITS—Continued

		Original	Print
D82	Contract, Mundus Distributing Company, 12/15/34	8658	6168
D83	Contract, Mundus Distributing Company, 3/20/35	8659	6169
D84	Contract, U. A. & Reliance, Congo Raid, 4/22/35	8660	6170
D85	Contract, U. A. & Reliance, Private Life Don Juan, 1st run, 4/22/35	8661	6171
D86	Contract, U. A. & Reliance, Runaway Queen, 1st run, 4/22/35	8662	6172
D87	Contract, U. A. & Reliance, Our Daily Bread, 1st run, 4/22/35	8663	6173
D88	Contract, U. A. & Reliance, Transatlantic Merry Go Round, 1st run, 4/ /35	8664	6174
D89	Contract, U. A. & Reliance, Clive of India, 1st run, 4/22/35	8665	6175
D90	Contract, U. A. & Reliance, Folies Bergere, 1st run, 4/22/35	8666	6176
D91	Contract, U. A. & Reliance, Bulldog Drummond, 1st run, 4/22/35	8667	6177
D92	Contract, U. A. & Reliance, Cellini, 1st run, 4/22/35	8668	6178
D93	Contract, U. A. & Reliance, Brewsters Millions, 1st run, 5/14/35	8669	6179
D94	Contract, U. A. & Reliance, Cardinal Richelieu, 1st run, 5/14/35	8670	6180
D95	Contract, U. A. & Reliance, Les Miserables, 1st run, 5/14/35	8671	6181
D96	Contract, U. A. & Reliance, Scarlet Pimpernel, 1st run, 4/22/35	8672	6182
D97	Contract, U. A. & Reliance, Thunder in The East, 1st run, 5/11/35	8673	6183
D98	Contract, U. A. & Reliance, Rain, 1st run, 4/5/34	8674	6184
D99	Contract, U. A. & Reliance, Let Have It, 1st run, 5/11/35	8675	6185
D100	Contract, U. A. & Reliance, Escape Me Never, 1st run, 10/23/35	8676	6186
D101	Contract, U. A. & Reliance, Nell Gwyn, 1st run, 10/23/35	8677	6187
D102	Contract, U. A. & Reliance, Amateur Lady, 1st run, 5/11/35	8678	6188
D103	Contract, U. A. & Reliance, Red Salute, 1st run, 12/27/35	8679	6189
D104	Contract, U. A. & Reliance, Melody Lingers On, 1st run, 5/11/35	8680	6190
D105	Contract, U. A. & Reliance, 2 Kordas, 1st run, 9/21/36	8681	6191
D106	Contract, U. A. & Reliance, Amateur Gentlemen, 1st run, 9/28/36	8682	6192

DIGESTS OF LICENSE CONTRACT EXHIBITS—Continued

		Original	Print
D107	Contract, U. A. & Reliance, Street Scene, 1st run, 4/5/34	8683	6193
D110	Contract, Paramount and Reliance, 3 features, 1st run, 7/27/34	8684	6194
D111	Contract, Paramount and Reliance, 5 features, 4/23/34	8685	6195
D117	Contract, RKO & Wallace, 10/7/41	8686	6196
D118	Contract, RKO & Wallace, 10/7/41	8687	6197
D123	Contract, Columbia and Wallace, 1934–35, Capitol, Auburn	8688	6198
D124	Contract, Columbia and Wallace, 1935–36, Capitol, Auburn	8689	[illegible]
D125	Contract, Columbia and Wallace, 1937–38, Capitol	8690	6200
D126	Contract, Columbia and Wallace, 1938–39, Capitol	8691	6201
D127	Contract, Columbia and Wallace, 1939–40, Capitol	8692	6202
D128	Contract, Columbia and Wallace, 1936–37, Capitol	8693	6203
D129	Contracts (2), Columbia and Wallace, 1940/41, 41/42, Capitol	8694	6204
D140	Contract, RKO and Smalley, 9/7/37, 1937–38, features for Norwich	8698	6208
D141	Contract, Columbia and Smalley, 8/12/35	8699	6209
D142	Contract, Columbia and Smalley, 5/6/37	8700	6210
D147	Contract, Columbia and Smalley, 12/20/40	8701	6211
D148A	Contract, Warner and State-Bucyrus, 7/13/35	8702	6212
D148D	Contract, Warners—First National and State—Bucyrus, 9/5/35	8703	6213

[fol.7360] **EXHIBIT D-156**

Prop.—Strand—Syracuse, N. Y. Return Engagement
Specials

Heidi	$75.00
Happy Landing	75.00
In Old Chicago	75.00
Little Miss Bdy.	75.00
Alex. Ragtime Band	75.00
My Lucky Star	75.00
Suez	75.00
Just Around the Corner	75.00
Jesse James	75.00
Thanks For Everything	75.00
Little Princess	75.00
Alex. Graham Bell	75.00
Rose of Washington Square	75.00
Young Mr. Lincoln	75.00
Second Fiddle	75.00

$40.00 for companion picture to go with picture listed.

Companion picture to be selected from a list you will furnish upon request.

To be selective in groups of five.

[fol.7361] **EXHIBIT D-157**

Prop.—Strand Theatre, Syracuse

Ahead of Empire.

Charlies Aunt, $200.00 or 35%, 4 days, Sat., Sun., Mon., Tues. Available 10/29/41.

Private Nurse, $75.00 flat. Available 11/20/41.

Wild Geese Calling, $150.00 flat. Available 12/10/41.

Sun Valley Serenade, $200.00 ag 35%, 4 days Sat., Sun., Mon., Tue. Available 12/10/41.

Dressed To Kill, $100.00 flat. Sun Valley and Dressed To Kill to be played on same bill.

[fol. 7362] **Exhibit D-158**

Strand—Syracuse—Prop.

Selection of 25 pictures 40/41 season, group K8—no run.

10 at $100.00—15 at $50.00. To be selected from balance of releases—List attached.

Frank James
Down Argentine Way
Mark of Zorro
Chad Hanna
Western Union
Blood & Sand
Moon Over Miami
Great American Broadcast.

10/10/41.

[fol. 7363] **Exhibit D-163**

Strand—Syracuse

Re Bingo and percentage pictures offered to permit ex. to deduct difference between Bingo Ad and Reg. Ad before computing percentage.

[fol. 7364] **Exhibit D-170**

September 9th, 1935.

Mr. M. H. Bryer, Sec'y., State Theatre, Bucyrus, Ohio.

Dear Mr. Bryer:

We are pleased to enclose herewith your approved 1935-36 contracts covering Vitaphone, First National-Warner product for the State Theatre, Bucyrus.

We wish to thank you for this business and assure you of our sincere co-operation at all times.

Very truly yours, M. A. Mooney, Branch Manager.

MAM/AM.

(Here follows 3 Photolithographs, side folios 7365-7366—7368)

EXHIBIT D-171

Form 254 200M 5-35

FIRST NATIONAL PICTURES

VITAGRAPH, Inc.
Distributors of
WARNER BROS. PICTURES

N 135

Printed in U. S. A. 71

VITAPHONE SHORT SUBJECTS

PERCENTAGE ENGAGEMENT REPORT

OPPOSITION	ATTRACTION
Southern	"CURLY TOP"

EXCHANGE Cleveland
THEATRE State
TOWN and STATE Bucyrus
ATTRACTION Page Glory
PLAY DATE 9/8-10

Seating Capacity ______ Admission Price Mat. ______ Admission Price Eve. ______

Day & Date	Weather		Total Admission at Various Prices					Receipts		Daily Totals	
Sun. 9/8		Mat.	10 @ 5	33 @ 10	48 @ 17	79 @ 25	@	31	71		
		Eve.	19 @ 5	14 @ 10	@	@	323 @ 30	99	25	130	96
Mon. 9		Mat.	@	@	@	@	@				
		Eve.	18 @ 5	8 @ 10	@	31 @ 20	122 @ 30	44	50	44	50
Tues. 10		Mat.	@	@	@	32 @ 20	@	6	40		
		Eve.	17 @ 5	10 @ 10	@	16 @ 20	91 @ 30	32	10	38	50
Wed.		Mat.	@	@	@	@	@				
		Eve.	@	@	@	@	@				
Thurs.		Mat.	@	@	@	@	@				
		Eve.	@	@	@	@	@				
Fri.		Mat.	@	@	@	@	@				
		Eve.	@	@	@	@	@				
Sat.		Mat.	@	@	@	@	@				
		Eve.	@	@	@	@	@				

						Gross Receipts		213	96
TOTAL ADMISSION	@	@	@	@	@	Less Tax		6	42
GRAND TOTAL ADMISSION No.						Net Receipts		207	54

GRAND TOTAL ADMISSION No.

NOTE: (a) Gross receipts must include all revenues derived from sale of scrip tickets, charges on passes, and all other miscellaneous cash income for admission to theatre.

(b) If split figure based on house expenses, itemized statement of expenses to be attached hereto.

SUMMARY—CONTRACT TERMS:

2275.4
30
682.62

SUMMARY:

Net Receipts as above $

Items Deductible Prior to Split

$

75.00
Rental Ag.

Net $

Exchange Share at 30 % of G.R. $

Exchange Share at ____ % over $

Net $

Guarantee (If Deductible After Split) $

Net To Exchange (Per Reverse Side) $

REMARKS: Inv. 4649-9/14/35-Cont. 4447

Dated

CERTIFIED CORRECT

THEATRE MANAGER

EXCHANGE MANAGER

7365-7366

5190A

Form 50 W-P 37 [illegible] (10-37)

EXHIBIT D-173

SEASON 1937-1938

Printed in U.S.A.
PAGE TWO

5190B

WARNER BROS.
and
FIRST NATIONAL PRODUCTIONS

SALESMAN	
BRANCH	Cleveland

SCHEDULE—TWENTY-THIRD: The following Schedule and all of the written and printed parts thereof are a part of this license:

CONTRACT NUMBER

SCHEDULE

THEATRE	EXHIBITOR	LOCATION OF THEATRE
Princess	Belpik Theatre Corp.	Medina, Ohio.

WARNER BROS. PRODUCTIONS

Release No.	No. of Consecutive Days	FILM RENTAL: Fixed Rental	FILM RENTAL: Sharing Terms: Guarantee	FILM RENTAL: Sharing Terms: Percentage
201	2-3			$
202	2-3			$
203	2-3			$
204	2-3	40.00		
205	2-3	40.00		
206	2-3	40.00		
207	2-3	40.00		
208	2-3	40.00		
209	1-2	22.50		
210	1-2	22.50		
211	1-2	22.50		
212	1-2	22.50		
213	1-2	22.50		
214	1-2	22.50		
215	1-2	22.50		
216	1-2	22.50		
217	1-2	22.50		
218	1-2	22.50		
219	1-2	22.50		
220	1-2	22.50		
221	1-2	22.50		
222	1-2	22.50		
223	1-2	22.50		
224	1-2	22.50		
225	1-2	22.50		
226	1-2	22.50		
227	1-2	22.50		
228	1-2	22.50		
229	1-2	22.50		
230	1-2	22.50		
TOTALS		695.00		

FIRST NATIONAL PRODUCTIONS

Release No.	No. of Consecutive Days	FILM RENTAL: Fixed Rental	FILM RENTAL: Sharing Terms: Guarantee	FILM RENTAL: Sharing Terms: Percentage
251	2-3			$
252	2-3			$
253	2-3			$
254	2-3	40.00		
255	2-3	40.00		
256	2-3	40.00		
257	2-3	40.00		
258	2-3	40.00		
259	1-2	22.50		
260	1-2	22.50		
261	1-2	22.50		
262	1-2	22.50		
263	1-2	22.50		
264	1-2	22.50		
265	1-2	22.50	All 35% & 30% pictures not	
266	1-2	22.50	to play with double bill	
267	1-2	22.50	or vaudeville.	
268	1-2	22.50		
269	1-2	22.50		
270	1-2	22.50		
271	1-2	22.50		
272	1-2	22.50		
273	1-2	22.50		
274	1-2	22.50		
275	1-2	22.50		
276	1-2	22.50		
277	1-2	22.50		
278	1-2	22.50		
279	1-2	22.50		
280	1-2	22.50		
TOTALS		695.00		

D-173

EXHIBIT
FRANK H. [illegible]

RECEIVED
K. S.
CANCE
NOV 18

ADDITIONAL TERMS. Rel. 201-202-251-252 @ 35% to split 2-3 days
" 203-253 @ 35% (Reversion to 30%) to split if 35%

It is agreed that on the 35% and 30% reversion pictures that unless pictures so designated equal the average gross on the 35% and 30% of the 1936-37 season, that they are to be reduced 5%. It is further agreed that a schedule is to be computed agreeing upon a set reversion figure in each situation which will cover actual playing dates based on 10 point system.

Subject to all terms and conditions of Master Agreement.

PLAYING ARRANGEMENT.

RUN:

CLEARANCE:

The photoplays TOVARICH, VARSITY SHOW, LIFE OF EMILE ZOLA, ADVENTURES OF ROBIN HOOD, FOOD FOR SCANDAL, GOLDDIGGERS IN PARIS, HOLLYWOOD HOTEL, GOLD IS WHERE YOU FIND IT, SUBMARINE D-1 and THE PERFECT SPECIMEN will be generally released by Distributor. Any such photoplay, including any other photoplay referred to in the schedule, will be generally released subject to all terms and conditions of this agreement either as a "Warner Bros. production" or a "First National production", as determined by the producers thereof, and under such release numbers as the Distributor may, in its sole discretion, designate. This agreement shall be deemed to cover only such photoplays as are designated by the release numbers opposite which there is a film rental specified in the schedule.

The Exhibitor agrees that all advertising materials which Exhibitor may lease from the Distributor will be used only in conjunction with the exhibition of the respective motion pictures identified in such materials at the theatre or theatres specified in the schedule, and only for the purpose of properly advertising and exploiting said respective motion pictures at such theatre or theatres, and the Exhibitor agrees not to trade, sublease, sell, give away, nor otherwise use or permit others to use such advertising materials.

ADDITIONAL CLAUSES

1. IT IS AGREED THAT THE EXHIBITION DATES OF THE FOLLOWING MOTION PICTURES FOR WHICH THE RENTAL IS TO BE DETERMINED EITHER IN WHOLE OR IN PART UPON THE ADMISSION RECEIPTS SHALL INCLUDE A SATURDAY AND/OR A SUNDAY.

2. Distributor may in its discretion by giving Exhibitor notice in writing on or before "the available date" of the particular photoplay designate not more than four of the photoplays licensed hereunder for which the film rental and terms agreed to be paid by Exhibitor shall be, instead of the film rental and terms hereinabove provided ______ percent of the gross box office receipts of such photoplays, such photoplays to be exhibited in the ______ theatre for ______ days each.

3. Distributor may in its discretion, by giving Exhibitor notice in writing on or before "the available date" of the particular photoplay, interchange the film rental and terms (including the theatre, if more than one theatre is mentioned above, and exhibition dates) of any one or more of the photoplays with the film rental and terms of any other photoplay or photoplays of the same or different brand licensed hereunder, it being understood that the provisions of this paragraph shall include the right of Distributor in its discretion to substitute the film rental and terms, as defined herein, of any motion picture excluded from this license by Exhibitor pursuant to the provisions of Article "Fifteenth" hereof, in place of the film rental and terms of any other photoplay or photoplays of the same or different brand, thereafter made available, by giving Exhibitor notice in writing within fourteen (14) days after the receipt of the written notice specified in said Article of the Exhibitor's election to exclude such motion picture.

4. ADMISSION PRICES—The Exhibitor during the whole of the licensed exhibition period of each of the motion pictures exhibited hereunder agrees to and shall charge for admission to said theatre the following prices:

EVENINGS: Adults: Orchestra ______ Balcony ______ Children ______ MATINEES: Adults: Orchestra ______ Balcony ______ Children ______

Unless a greater minimum admission charge is herein specified, the Exhibitor agrees to and shall charge for admission to said theatre during the whole of the licensed exhibition period of each of the motion pictures, an actual admission fee which shall not be less than fifteen cents (15¢) for each adult person for each matinee performance and not less than fifteen cents (15c) for each adult person for each evening performance.

If during any such period less than said admission prices is charged, the Distributor in addition to all other rights hereunder shall have the right: (a) to immediately terminate the license of the motion picture then being exhibited, by written notice to such effect to the Exhibitor and upon the giving of such notice, the license of such motion picture shall forthwith terminate and revert to the Distributor; or (b) provided the Exhibitor is granted herein a period of "clearance" to reduce such period by not to exceed one-half in respect to each of the pictures thereafter deliverable hereunder or (c) provided no period of clearance is specified in the schedule to withhold for a period not to exceed sixty (60) days notice of the date when each motion picture thereafter deliverable hereunder will be available for exhibition by the Exhibitor; and as to each such motion picture the "run" thereof, if any, granted the Exhibitor, shall be deemed revoked and the Exhibitor agrees to exhibit each such motion picture after notice of the available date thereof upon the date or dates determined as provided in Clause Fourth hereof.

5. It is conceded by the Exhibitor that the exhibition by it of any photoplay licensed hereunder on the same program and as a part of the program with any other feature photoplay of five reels or more in length, substantially reduces the exhibition value of such photoplay to other exhibitors in the same city or general territorial division in which the Exhibitor's theatre is located, and furthermore, substantially reduces the film rental which the Distributor is entitled to receive from other exhibitors who have either a prior or subsequent run to the exhibitor licensed in this agreement. Therefore it is covenanted and agreed that the Exhibitor will not exhibit any of the above licensed photoplays as a part of programs or on the same program or bill with any other feature photoplay, and that a violation of this covenant by the Exhibitor entitles the Distributor to all the rights and remedies herein given to it on violation or breach of any other covenant, term or provision in this contract.

6. In the event that Exhibitor shall violate the provisions of any other agreement between Distributor and Exhibitor for feature photoplays therein agreed to be leased, or shall fail to date, play and pay for the film rental provided for in such other agreement, Distributor may at its option exercise with respect to this agreement all or any of the rights granted Distributor under Paragraph Eighteenth.

7. The parties hereto recognize that the National Appeal Board referred to in Article Twenty-second is not now and may not during the term of this agreement be in existence. It is agreed, therefore, that until the said National Appeal Board shall be organized, the sixth paragraph of said Article shall be deemed to read as follows:

"The Arbitration Board shall have general power to determine such dispute or controversy as shall be submitted, to make findings of fact in respect thereof and to direct specific performance of a contract, and/or that the same has been breached in whole or in part, and/or that damages on such account shall be paid. The Board of Arbitration shall have the power only to give force and effect to the provisions of this license agreement and the rights or obligations of the parties thereunder."

8. Distributor grants the Exhibitor and the Exhibitor accepts a limited license, subject to the terms and conditions of this agreement, under the respective copyrights of the number of trailers (which term shall be deemed to mean films or prints ordinarily not in excess of one reel in length, designed to advertise and introduce the photoplays licensed hereunder) described in this schedule, and under the copyright of any matter included in any sound recorded therewith, to exhibit publicly said trailers and to reproduce for public performance such recorded sound in synchronism therewith, but only at the theatre and for the number of consecutive days specified in this schedule, and for no other use or purpose, on dates to be determined as follows:

In the absence of special provisions for special dates agreed upon in this schedule, Exhibitor agrees to commence the first exhibition of each of the said trailers seven (7) days prior to the first exhibition date determined as herein provided of the photoplay to which said trailer relates. Exhibitor agrees to pay Distributor for the rights herein granted with respect to each such trailer, the trailer rental indicated in this schedule therefor, and to make such payment at least five (5) days prior to the first agreed exhibition date of each such trailer, determined as herein provided.

9. Number of pictures offered: 60 Number licensed: 60

(END OF SCHEDULE)

OPTIONAL ARBITRATION CLAUSE—The foregoing Clause Twenty-second is optional with the parties hereto. If it is desired to make such clause a part of this license, the Exhibitor and the duly authorized representative of the Distributor shall sign their respective names where indicated, immediately following this paragraph and unless so signed the said Clause shall be deemed excluded from this license agreement.

It is agreed by and between the parties that Clause Twenty-second, providing for voluntary arbitration of disputes arising hereunder, shall be included as a part of this license.

Representative of the Distributor duly authorized to agree to the following Clause Twenty-second. ______ Exhibitor.

In witness whereof Belpik Theatre Corporation Exhibitor, operating the Princess Theatre, located at ______ in the Medina, Ohio. (City and State) has on Oct. 13, 1937. (Date) executed this application, which upon written acceptance thereof by the Distributor shall be deemed to be the license of the said Exhibitor for the exhibition of the motion pictures specified in the Schedule, but only at the said Theatre in accordance with the terms and conditions hereof.

The foregoing application is hereby accepted. Sears

VITAGRAPH, INC.

VITAGRAPH, INC.

By

(The above signature of Vitagraph, Inc., is made only for the purpose of authenticating this application and is not an acceptance thereof.)

By ______ OCT 27 1937
General Manager of Distribution

EXHIBITOR ______
By ______

Date ______

WARNER BROS. and FIRST NATIONAL PRODUCTIONS
SEASON 1937-1938
EXHIBITION CONTRACT

AGREEMENT of license under copyright made in one or more counterparts between VITAGRAPH, Inc., a corporation (hereinafter referred to as the Distributor), party of the first part, and the Exhibitor, (hereinafter named and referred to as the Exhibitor, operating the theatre hereinafter designated), party of the second part.

WITNESSETH: The parties hereto agree as follows:

LICENSE—FIRST: The Distributor grants the Exhibitor and the Exhibitor accepts, a limited license under the respective copyrights of the motion pictures designated and described in the Schedule [illegible] as the Schedule specifically provided in writing.

TERM AND WARRANTY—SECOND: (a) The term of this Agreement shall begin with the date [illegible]

DAMAGES—FAILURE TO DELIVER—(b) If the Distributor shall fail or refuse to deliver, or the Exhibitor shall fail or refuse to exhibit, during the term hereof, any of said motion pictures, [illegible]

PAYMENT—THIRD: (a) Exhibitor agrees to pay for each license as to each such motion picture, the fixed sums specified in the Schedule [illegible]

PERCENTAGE BOOKINGS—(b) If the rental of any such motion picture is to be determined either in whole or in part upon the admission receipts of said theatre [illegible]

LIQUIDATED DAMAGES—PERCENTAGE BOOKINGS—(c) If the Exhibitor fails or refuses to exhibit any of said motion pictures [illegible]

DELIVERY AND RETURN OF PRINTS—FOURTH: (a) After each of said motion pictures is generally released for public exhibition and becomes available for exhibition hereunder [illegible]

(b) [illegible]

(c) [illegible]

(d) [illegible]

(e) [illegible]

(f) [illegible]

LOSS AND DAMAGE TO PRINTS—FIFTH: [illegible]

SELECTION OF PLAY DATE—SIXTH: [illegible]

1. [illegible]

2. [illegible]

3. [illegible]

CLEARANCE AND RUN—SEVENTH: [illegible]

DESCRIPTION OF PICTURES—EIGHTH: (a) [illegible]

(b) [illegible]

(c) [illegible]

ADVERTISING PRIOR TO FIRST RUN—NINTH: (a) [illegible]

(b) [illegible]

(c) [illegible]

ACCEPTANCE BY DISTRIBUTOR—TENTH: [illegible]

CHANGES IN WRITING—ELEVENTH: [illegible]

ASSIGNMENT ON SALE OF THEATRE—TWELFTH: [illegible]

TAXES—THIRTEENTH: The Exhibitor shall pay to the Distributor upon demand, any tax, fee or other like charge now and/or hereafter imposed or based upon the delivery and/or the exhibition of prints of feature pictures [illegible] the sums payable under this license by the Exhibitor to the Distributor. If under any statute or ordinance any such tax, fee or other like charge, shall be payable or paid by the Distributor and the exact amount payable hereunder by the Exhibitor is not therein definitely fixed or cannot be exactly determined, then the Exhibitor shall pay such part of any such tax, fee or other like charge paid or payable by the Distributor as shall be fixed in the manner determined by the then President of the American Arbitration Association.

PREVENTION OF PERFORMANCE—FOURTEENTH: If the Exhibitor shall be prevented from exhibiting or the Distributor from delivering any of the said motion pictures for reasons beyond their direct control then this license in respect to each such motion picture shall terminate and revert to the Distributor without liability on the part of either party, provided reasonable written notice of such termination and the cause thereof is given.

OPTION TO EXCLUDE IF GROUP LICENSED—FIFTEENTH: (a) If in this license agreement the total number of feature motion pictures offered to the Exhibitor by the Distributor, at any time, shall have been licensed by the Distributor hereunder and the license fees of all thereof average not more than Two Hundred and fifty ($250.00) Dollars, the Exhibitor shall have the privilege to exclude from this license agreement not to exceed ten (10%) percent of the total number of feature motion pictures licensed hereunder; provided that the Exhibitor

(1) Is not in default hereunder, and

(2) Shall have fully complied with all of the provisions, if any, set forth in this agreement for the exhibition of such feature motion pictures at specified intervals.

[illegible] of exclusion may be exercised only upon the following terms and conditions:

(1) The [illegible] to the Distributor written notice of the Exhibitor's election to exclude any of said feature motion pictures within fourteen (14) days after [illegible] [illegible] of the [illegible] of which the Exhibitor is served.

(2) The Exhibitor may exclude, without payment therefor one (1) motion picture out of each group of ten (10) of the number of feature motion pictures specified in this license agreement, [illegible] the Exhibitor has paid for the other nine (9) of such group.

(3) If such privilege of exclusion is not exercised as provided in paragraph (b) (2) above, the Exhibitor may nevertheless exercise such privilege by paying the license fee of such motion picture excluded with the notice of its exclusion. In such case, such payment shall be credited against such tenth or succeeding tenth motion picture, as the case may be, which the Exhibitor would otherwise be privileged to exclude as provided in paragraph (b) (2) above.

If the only or last group licensed is less than ten (10) and more than five (5) motion pictures, the privilege to exclude shall apply provided the Exhibitor has paid for all motion pictures but one in such group.

(c) Upon the failure or refusal of the Exhibitor to comply with any term or condition of this license agreement, or to comply with any arbitration award in respect thereto, the privilege of exclusion forthwith shall be revoked and the Exhibitor shall be liable for and pay to the Distributor the license fees of all motion pictures theretofore excluded.

(d) If the license fee of any feature motion picture specified in this license agreement is to be computed in whole or in part upon a percentage of the receipts of the Exhibitor's theatre, such license fee (for the purpose of computing the average license fee of all the motion pictures licensed) shall be determined as follows:

(1) Average the license fees of all of the Distributor's feature motion pictures exhibited upon a percentage basis at the Exhibitor's theatre during the period of one year prior to the term of this license agreement.

(2) If none of the Distributor's feature motion pictures were exhibited upon a percentage basis at such theatre during said period, average the license fees of all feature motion pictures exhibited upon a percentage basis at such theatre during the said period.

(e) If the rental of any motion picture excluded is to be computed in whole or in part upon a percentage of the receipts of the Exhibitor's theatre, the sum to be paid by the Exhibitor as provided in paragraph (b) (3) hereof shall be determined as follows:

(1) Average the gross receipts of all the Distributor's feature motion pictures exhibited at the Exhibitor's theatre during the ninety (90) day period preceding the Exhibitor's notice of exclusion, and apply to such average the percentage terms specified in this license agreement for the picture excluded.

(2) If no feature motion pictures of the Distributor were exhibited at the Exhibitor's theatre during said ninety (90) day period, average the daily gross receipts of the Exhibitor's theatre for the period of thirty (30) operating days preceding the Exhibitor's notice of exclusion and apply to such average the percentage terms specified in this license agreement for the picture excluded.

(f) In computing the number of feature motion pictures which may be excluded hereunder, fractions of more than one-half (½) shall be regarded as one (1).

(g) Upon the exclusion of each feature motion picture, the license thereof, and all rights thereunder shall terminate and shall revert to the Distributor.

FIRST RUN EXHIBITIONS—SIXTEENTH: (a) If the Exhibitor is granted a first run of the said motion pictures, the Exhibitor shall exhibit each of the feature motion pictures excepting those described in Paragraph (d) of this Clause within the period beginning with the date scheduled and announced by the Distributor for the general release of each feature motion picture in the territory wherein is located the exchange of the Distributor out of which the Exhibitor is served and ending one hundred and twenty (120) days thereafter, notwithstanding any provision of Clause Sixth hereof to the contrary. If the first exhibition date of any of the said motion pictures shall occur on a date later than ninety (90) days after its scheduled and announced general release date, then the period of clearance of such motion picture shall be reduced so as to expire one hundred and twenty (120) days after said scheduled date of its general release. If the Exhibitor is granted a first run of the said motion pictures and the Exhibitor fails to exhibit any feature motion picture within said period of one hundred and twenty (120) days, the grant of the said first run and the clearance period in respect thereof shall be deemed waived by the Exhibitor and the license fee as to such feature motion picture shall thereupon forthwith become due and payable to the Distributor, with the right to the Exhibitor to exhibit such feature motion picture as hereinafter in Paragraph (e) of this Clause provided.

SECOND RUN EXHIBITIONS—(b) If the Exhibitor is granted a second run of the said motion pictures and any other exhibitor having been granted the first run thereof immediately prior to such second run fails to exhibit any of the feature motion pictures, excepting those described in Paragraph (d) of this Clause within the said period of one hundred and twenty (120) days specified in Paragraph (a) of this Clause, the Exhibitor shall exhibit each such feature motion picture within the period beginning with the date of the expiration of the said one hundred and twenty (120) days period and ending fourteen (14) days thereafter, notwithstanding any provision of Clause Sixth hereof to the contrary. If the Exhibitor is granted a second run of the said motion pictures and the Exhibitor fails to exhibit any feature motion picture within said fourteen (14) days period the grant of such second run and the clearance period if any in respect thereof shall be deemed waived by the Exhibitor and the license fee as to such feature motion picture shall thereupon forthwith become due and payable to the Distributor with the right to the Exhibitor to exhibit such feature motion picture as hereinafter in Paragraph (e) of this Clause provided.

SUBSEQUENT RUNS EXHIBITIONS—(c) If the Exhibitor is granted a run subsequent to a second run of the said motion pictures and any other Exhibitor having been granted the second run thereof immediately prior to such subsequent run fails to exhibit any of the feature motion pictures, excepting those described in Paragraph (d) of this Clause within the said period of fourteen (14) days specified in Paragraph (b) of this Clause the Exhibitor shall exhibit each feature motion picture within the period beginning with the date of the expiration of the said fourteen day period and ending seven (7) days thereafter, notwithstanding any provision of Clause Sixth hereof to the contrary. If the Exhibitor is granted a run subsequent to a second run of the said motion pictures and the Exhibitor fails to exhibit any feature motion picture within said seven (7) day period, the grant of such subsequent run and the clearance period if any in respect thereof shall be deemed waived by the Exhibitor and the license fee as to such feature motion picture shall thereupon forthwith become due and payable to the Distributor with the right to the Exhibitor to exhibit such feature motion picture as hereinafter in Paragraph (e) of this Clause provided.

EXTENDED RUNS—(d) Any of the motion pictures which shall have been exhibited at any theatre in the said territory for more than one clear week prior to the run granted the Exhibitor shall be excepted from the provisions of this Clause and of Paragraph (b) of Clause Fourth.

EXHIBITION AFTER REVOCATION OF RUN AND CLEARANCE—(e) Upon the waiver of the grant of the run and/or the clearance period of any feature motion picture as provided in Paragraphs (a), (b) or (c) of this Clause, the Exhibitor upon payment of the sum or sums payable hereunder as provided in this Clause for the license to exhibit such feature motion picture, shall have the right to exhibit the same hereunder upon a date or dates not in conflict with any run and/or clearance period granted or hereafter granted to other exhibitors, upon written request mailed or delivered to the Distributor within sixty (60) days after the last date upon which such feature motion picture should have been exhibited by the Exhibitor as provided in this Clause. Failing to make such request within said period of sixty (60) days the license to exhibit such feature motion picture granted hereunder shall terminate and revert to the Distributor.

If the provisions of this Clause shall be [illegible] in conflict with the provisions of any other license agreement [illegible] September 1, 1935, the provisions of this Clause shall be deemed to be [illegible] and subject to the provisions of such other license agreement.

PICTURES NOT GENERALLY RELEASED—SEVENTEENTH: If any of the said motion pictures described in the Schedule [illegible] shall not be generally released by the Distributor for distribution in the United States during the period beginning [illegible] excluded from this license, upon written notice to such effect given to the Exhibitor by the Distributor prior to fifteen (15) days [illegible] to the Distributor not later than thirty (30) days after the end of said period that the Exhibitor elects to exhibit hereunder [illegible] following the end of said period. If such notice of election is given as aforesaid the Distributor shall deliver and the Exhibitor [illegible] of this license excepting that any thereof which are not so generally released within the said following year shall also be [illegible] exhibit and license for exhibition each of such motion pictures so excluded when and where desired by the Distributor and [illegible] and the Distributor released and discharged therefrom by the Exhibitor.

REMEDIES FOR BREACH—EIGHTEENTH: If the Exhibitor shall fail or refuse to pay the rental of any of such motion pictures [illegible] receipts of said theatre, if any are required hereunder, or to give the Distributor's representative access to the said theatre [illegible] motion pictures the rentals of which are based upon the said theatre's admission receipts as herein provided, or if the [illegible] there at any time or place other than as herein specified, or if the Exhibitor becomes insolvent or is adjudicated a bankrupt [illegible] receiver is appointed for any of the property of the Exhibitor, or if the Exhibitor voluntarily or by operation of law [illegible] it impossible for the Exhibitor to exhibit the said motion pictures at the said theatre, then upon the happening of any such [illegible] minate this license agreement, or (2) suspend the delivery of additional motion pictures hereunder until such default or [illegible] of said remedies by the Distributor shall be in addition to and without prejudice to any right or remedy of the Distributor against the Exhibitor at law, or in equity and/or otherwise provided for in this license agreement.

CUTTING OR ALTERATION OF PRINTS—NINETEENTH: The Exhibitor shall exhibit each print in its entirety [illegible] The Exhibitor shall not cut or alter any print, excepting to make necessary repairs thereto, or when required by any duly constituted public official or authority [illegible] consent of the Distributor. The Exhibitor however may cut the print of a news reel, and in such case shall [illegible] or shipment elsewhere if so directed by the Distributor, in the same condition as received by the Exhibitor.

MIDNIGHT SHOWS—TWENTIETH: The license herein granted for the number of days specified in the Schedule shall not include the right of exhibition at any time previous to dawn of the first licensed and booked date of exhibition without securing express written permission hereunder.

ROADSHOWS—TWENTY-FIRST: (a) The Distributor shall have the right to exhibit and/or cause to be exhibited [illegible] such of the motion pictures licensed hereunder as the Distributor may from time to time select and determine, provided [illegible] cities of New York and Los Angeles, not more than two of such motion pictures shall be so roadshown.

(b) If and when any such roadshow exhibition shall be in the City of New York and/or the City of Los Angeles, [illegible] the Distributor's exchange or exchanges located in New York or in Los Angeles, as the case may be, the Distributor [illegible] of such motion pictures as roadshows in each or both of said territories, upon sending to the Exhibitor written notice [illegible] such roadshow exhibition and provided that the Distributor shall by like notice except and exclude such motion picture from [illegible] exhibition of such motion picture in such territory. The exception and exclusion of any such motion picture in the territory [illegible] City of Los Angeles, or in the City of New York, as the case may be, shall not be deemed to require the Distributor to [illegible]

(c) If and upon any such roadshow exhibition, excepting those in the City of New York and/or in the City of Los Angeles, [illegible] exchanges serving the Exhibitor's theatre, the Distributor shall have the right to except and exclude from this license [illegible] Exhibitor written notice to such effect within seven (7) days after the commencement of such roadshow exhibition and provided [illegible] motion picture from all other license agreements containing this Clause and licensing the exhibition of such motion picture [illegible]

(d) The Distributor's omission to send to any such other exhibitors the notice provided for in Paragraphs (a) and (b) of this Clause shall not be deemed to affect the exception and exclusion from this license of any such motion picture.

(e) The Distributor may so exercise such right to except and exclude any such motion picture from time to time, [illegible] motion picture as roadshows in any place in the United States, and not excepted and excluded from this license as aforesaid [illegible] completion of such road-showing of such motion picture in the United States, and such motion picture shall be exhibited hereunder [illegible] able for exhibition by the Exhibitor, and the term of this license agreement, specified in Clause Second shall be by respect to [illegible] of exhibition by the Exhibitor hereunder of such thereof.

(f) For each motion picture that the Distributor shall except and exclude, as aforesaid, the Exhibitor is hereby granted the option to except and exclude from this license (in addition to those which may be excluded as provided in Clauses Fifteenth and Seventeenth) one of the other motion pictures licensed hereunder [illegible] notice to such effect not later than fourteen days before the date fixed for the exhibition hereunder of such other motion picture [illegible] and all motion pictures excepted and excluded from this license by the Distributor and/or the Exhibitor, as aforesaid, [illegible] Exhibitor in respect thereof and the license of each thereof shall forthwith upon exclusion as hereinbefore provided terminate and revert to the Distributor.

ARBITRATION—TWENTY-SECOND: The Exhibitor and the Distributor respectively, freely and voluntarily agree that [illegible] in any court by either of them, to determine, enforce or protect the legal rights of either hereunder, each shall submit all claims [illegible] Arbitration Board (hereby expressly waiving the oath of the arbitrators) which shall consist of four members, each of whom [illegible] appointed by the Exhibitor; and the remaining two to be appointed by the Distributor.

Upon the written request of the Distributor or the Exhibitor for the arbitration of any dispute or controversy arising hereunder [illegible] stating the business address and business or business connection of each and shall designate therein the date, time and place [illegible] earlier than seven (7) days from the date of the mailing of such notice, unless it shall be claimed in such notice that [illegible] controversy in which case such hearing may be designated to be held earlier than said seven (7) day period.

Within five (5) days after the mailing of such request for arbitration, the party upon whom such request is made shall [illegible] party, stating therein the business address and business or business connection of each arbitrator. If either party fails or refuses [illegible] shall fail or refuse to act or be unable to serve or shall be challenged and others [illegible] or another arbitrator [illegible] may be appointed by the other party as the case may be.

No member of the Arbitration Board shall hear or determine any controversy in which he has an interest direct or indirect [illegible]

If the arbitrators or a majority of them are unable to reach a decision, then they, or a majority of them shall [illegible] business. In such case the hearing before the umpire shall be at such time and place as the umpire shall designate and shall [illegible] the hearing before the umpire. If the arbitrators or a majority of them are unable to agree upon the selection of an umpire, [illegible]

The Arbitration Board shall have general power to determine such dispute or controversy as shall be submitted to [illegible] contract, and/or that the same has been breached in whole or in part, and/or that damages in such amount shall be paid. The [illegible] provisions of this license agreement and the rights or obligations of the parties thereunder; provided that if after a full hearing [illegible] submission to an umpire (hereinabove provided), the arbitrators or a majority of them are of the opinion that [illegible] agreement and beyond the direct control of the parties hereto disclosed at such hearing [illegible] parties, the arbitrators or a majority of them may recommend in writing to the parties a settlement of such controversy [illegible] settlement is not agreed to by the parties within five (5) days after the receipt of a copy of such recommendation the controversy [illegible] with a written statement of all the facts adduced at the hearing before the arbitrators together with all documentary evidence [illegible] Appeal Board of any such recommendation shall be final and binding upon the parties hereto.

The hearing of any such controversy shall be had before the Arbitration Board in the city wherein is situated the [illegible] parties agree in writing that such hearing be had in some other place. If either party fails or refuses to submit to arbitration [illegible] States District Court, or to any other Court, including a court of a State in which such hearing would otherwise not be had [illegible] had in such place as the court to which application is made may lawfully direct.

The parties hereto further agree to abide by and forthwith comply with any decision or award of the arbitrators, or a [illegible] enforceable in or by any Court of competent jurisdiction pursuant to the law of such jurisdiction now or hereafter in force.

If the Exhibitor shall fail or refuse to submit to arbitration any such claim or controversy or to abide by and comply [illegible] the Distributor may at its option suspend the deliveries of the motion pictures provided for in this and in such other [illegible] such other license agreement; and upon such termination the aggregate of the license fees of all motion pictures [illegible] shall become due and payable by the Exhibitor.

If the Distributor shall fail or refuse to submit to arbitration any such claim or controversy or to abide by and comply [illegible] within seven (7) days, the Exhibitor may at the option of the Exhibitor terminate this and any other existing license agreement [illegible] Distributor within seven (7) days after such failure or refusal; and the Distributor shall have the rights and remedies [illegible]

Any such termination by either party shall be without prejudice to any other right or remedy which the party so terminating [illegible] other existing agreement between the parties.

Each of the parties hereto, without notice to the other, may apply to any Court having jurisdiction to make this agreement [illegible]

EXHIBITION CONTRACT [illegible]

[fol. 7369] **Exhibit D-174**

Western Union

Canandaigua, New York.
June 15th, 1938.

A. J. Lauer, Esq., Auburn, New York.

Our final answer is no stop letter will follow.
Hobert L. Himes, 90 South Main Street, Canandaigua, N. Y.

[fol. 7370] **Exhibit D-176**

Properties Sales Rentals Appraisals Insurance
Investments Realtor Mortgages
A. J. Lauer, Inc.
1 South St.—Corner Genesee
Telephone 2322

Auburn, N. Y.
June 16, 1938.

Mr. Hobert L. Himes, Jenkins Bldg., Canandaigua, N. Y.

Dear Mr. Himes:

Thank you for your telegram of yesterday.

In the absence of your letter which you stated would follow, I do not know what your final decision is regarding your refusal to rent the main floor and basement of the Jenkins Bldg.

From my past experience I do know it is nothing unusual for owners of properties in smaller cities to recognize the importance of having presented to them a plan whereby a definite income is assured from the property. The reason for this attitude is when a prospect becomes interested in renting the property, the owner always feels it has a greater value than if the property were offered for rent or sale by the owner himself. I am putting you on the list as a seventh party who during the past four years refused to make a deal relieving them of the responsibility in the management of the property. Each and everyone of them during the past year, including two parties this year, have come to me and asked me if it would be possible to close a deal for them. In other words, I make this prophecy, that you are making a terrific mistake and while you may not give me the satisfaction of coming to me at some future date, you will always remember this communication; particularly so whereas you are not requested to spend any money for improvements.

In closing I wish to say I am not grieved excepting we have had promise after promise that a definite decision would be made before this date and we were held off to such a late date, that it will be almost impossible to start making improvements for the fall and winter business unless the transaction is closed before July 1st.

[fol. 7371] We, of course, ask you to kindly keep this matter in confidence as to the nature of business we had in mind in opening the store.

With kindest regards to you and Mrs. Himes and Mr. Jenkins, I am.

Very truly yours, A. J. Lauer.

AJL:GA.

[fol. 7372] Exhibit D-177

90 South Main Street
Canandaigua, N. Y.

Canandaigua 864. June 17, 1938.

A. J. Lauer, Esq., 1 South Street, Auburn, N. Y.

Dear Mr. Lauer:

Our letters must have crossed in the mail. In any event I thank you for your letter of the 16th, instant which arrived this morning and have carefully noted it's contents. No I do not think our property is any more valuable than before.

I certainly want you to feel free to call on me at any time as I want to be able to contact you. If we have made a mistake it probably will not be the first one and no doubt not the last.

Our discussions will be kept in confidence.

Wishing you and Mr. Wallis continued success, I am

Yours very truly, —— ——.

HLH/h.

[fol. 7373] **Exhibit D-178**

Properties Sales Rentals Appraisals Insurance
Investors Realtor Mortgages
A. J. Lauer, Inc.
1 South St.—Corner Genesee
Telephone 2322

Auburn, N. Y.
June 23, 1938.

Mr. Hobert L. Himes, 90 South Main St., Canandaigua, New York.

Dear Mr. Himes:

Thank you for your letter of June 17th.

Will you state definitely what your lease terms will be? Expecting of course that they are within reason and of fairness to all parties concerned.

With best wishes to you and Mrs. Himes, I am

Very truly yours, A. J. Lauer.

[fols. 7374-7376] **Exhibit 81**

Lease of February 14, 1941 for 10 years from February 16, 1941, Michael Boumansour to Schine Theatrical Co., Inc., of the Plaza theatre at 10 Pearl Street, Malone, New York, with rental of $8,000 a year and deposit of $8,000 in advance for last year of term.

• • • • • • •

[fols. 7377-7380] 10. The Tenant agrees to operate the theatre hereby demised an average minimum of two days per week during the term of this lease.

[fol. 7381] **Exhibit 83**

This Agreement

Made the 23rd day of August, 1940, between William G. Croucher of the Village of Newark, County of Wayne and State of New York, and Altus P. Croucher of 254 Genesee Park Blvd., in the City of Rochester, County of Monroe and

State of New York, parties of the first part, and Dominion Operating Company, Ltd., a domestic corporation, duly organized and existing under the laws of the State of New York, with principal office in the City of Gloversville, County of Fulton, and State of New York, party of the second part,

Witnesseth, that the parties of the first part have agreed to lease and hereby do lease to the party of the second part and the party of the second part has agreed to take and hereby does take from the parties of the first part, the following premises, viz:

The entire building commonly known as the Newark Theatre building located on the south side of East Union Street in the Village of Newark, New York, with the privileges and appurtenances for and during the term of five years from the 1st day of October, 1941, which term will end on the 30th day of September, 1946.

And the party of the second part covenants and agrees that it will pay to the parties of the first part for the use of said premises the annual rental of Three thousand dollars ($3000.00) to be paid in twelve equal monthly installments in advance. And provided further if said party of the second part shall fail to pay said rent or any part thereof when the same shall become due, it is agreed that the parties of the first part may sue for the same or re-enter said premises or resort to any legal remedy.

The parties of the first part further agree that the theatre as leased shall be fully equipped, as during the lease expiring, October 1, 1941, as a theatre in running order with sound device, chairs and all the usual equipment of such a theatre.

The parties of the first part also agree to pay all taxes to be assessed on said premises during the term of this lease [fol. 7382] including the water tax, and they are to pay all insurance on the premises except liability insurance, which second party is to carry, for the benefit of itself and first parties.

It is further expressly agreed between the parties that if the party of the second part shall allow the premises to become vacant or unoccupied during the term of this lease, that it will pay to the parties of the first part an additional sum of One Hundred Dollars ($100.00) per year, to be used to keep the building heated.

It is further expressly agreed between the parties that the party of the second part shall not sub-let said premises, nor assign this lease without the written consent of the parties of the first part, and it is hereby agreed by the party of the second part that in the event that first parties consent to a sub-letting of the said premises, or an assignment of the lease, that the sublessee or assignee shall assume the payment of the rent, but that in no event shall second party be discharged or released from the payment of the rent.

It is further expressly agreed between the parties hereto, that if first parties have the opportunity, during the term of this lease to sell the premises herein leased to a purchaser other than second party, second party shall be given the option of purchasing the premises for the sum of Fifty-eight thousand dollars ($58,000.00), said option to be exercised by second party within ten days after the receipt by second party of written notification from first parties, and second party agrees to notify first parties of its acceptance or rejection, in writing, of the option to purchase on or before the tenth day after the receipt of the written notification.

In Witness whereof the parties of the first part have set their hands and seals and the party of the second part has [fols. 7383-7385] caused its corporate seal to be hereunto affixed and these presents to be signed by its duly authorized officer, all on the day and year first above written.

Altus P. Croucher, L. S.; Wm. G. Croucher, L. S.; Dominion Operating Company, Ltd., John A. May, L. S., Pres. (Seal.)

[fols. 7386-7405] **Exhibit 85**

Purchase contract, dated May 24, 1937, between Young and Whitney, Inc. and Perry Theatre Corporation for sale to latter of property in Ilion, New York, known as the Capitol theatre, also property in Ilion, New York, known as the Opera House, used for commercial and office purposes, and assignment of lease of Temple theatre, Ilion, New York. A copy of said Temple lease is attached to said contract and is for a term of 5 years from May 5, 1937 at a rental of $1750 per year. The purchase price mentioned in said contract is $250,000.

[fol. 7406] **Exhibit 96**

Agreement

Agreement made and entered into this 21st day of September, 1937, by and between Halmer D. Shreffler, of Shelby, Ohio, hereinafter called "Shreffler", party of the first part, and Belpik Theatre Corporation, an Ohio corporation having its principal office in the City of Cleveland, Ohio, hereinafter called "Belpik", party of the second part,

Witnesseth:

Belpik is engaged, directly or through affiliated corporation, in the operation of motion picture theatres in the State of Ohio. Shreffler leases and operates the theatre known as The Castamba Theatre in the City of Shelby, Ohio. Belpik desires to acquire an interest in the operation of said theatre and Shreffler has agreed to dispose of a half interest therein as hereinafter set forth.

Now, therefore, in consideration of the premises, and of the mutual covenants, promises, and agreements herein contained, the parties hereto have agreed and do hereby agree as follows:

1. Shreffler and Belpik agree to cause to be organized promptly upon the execution of this agreement, an Ohio corporation to be known as the Schine Shelby Corporation, the stock thereof to be divided into two classes, both without par value, to be issued in the name of Shreffler, or his nominees, fifty (50) shares to be known as Class A stock, and fifty (50) shares to be known as Class B stock. Said corporation shall have four (4) directors, two (2) of whom shall be elected by the Class A shareholders, and two (2) of whom shall be elected by the Class B shareholders. The class A and class B shares shall have equal rights in all other respects. The officers of the corporation shall consist of a President, Vice-President, Secretary and Treasurer, and such Assistant Treasurers and Assistant Secretaries as may be designated by the Board of Directors from time to time.

[fol. 7407] 2. The Certificate of Incorporation and the By-laws of the Schine Shelby Corporation, and all corporate proceedings with respect to the incorporation thereof, and the issuance of its stock shall be subject to the approval of counsel for Belpik and Shreffler.

3. Shreffler agrees that, promptly upon the execution of this Agreement, he will obtain from The Castamba Realty Company, as owner of the Castamba Theatre, a lease in the name of the Schine Shelby Corporation, for a term of twenty (20) years, at a rental not to exceed Two Hundred and Fifty Dollars per month ($250.00).

4. Shreffler, represents, warrants and guarantees that the said Castamba Theatre is being altered and remodelled, and that it will have a seating capacity of at least seven hundred and forty-eight seats, and that there are no outstanding obligations against said theatre or the equipment or personal property contained therein, or to be hereafter installed, except film contracts which have been exhibited to Belpik and approved by it, and except a contract for Mirrophonic Western Electric Sound Equipment on which there is a balance due of approximately fourteen hundred dollars, which certain contracts are to be assumed by the Schine Shelby Corporation. It is understood and agreed that there is a mortgage upon the real estate of The Castamba Realty Company on record at the present time, which mortgage is held by The Citizens Bank of Shelby, and is in the face amount of eighteen thousand dollars. This mortgage is specifically excepted from the warranty above stated and is to be paid off by Shreffler and The Castamba Realty Company in accordance with terms hereinafter mentioned.

5. Shreffler agrees, promptly upon the formation of the Schine Shelby Corporation, to assign to said corporation all his rights in and to the sound equipment contract, and the film contracts hereinabove referred to, together with all of his rights if any, in and to the personal property, furnishings and equipment located in said Castamba Theater, or upon the personal property, furnishings and [fol. 7408] equipment hereafter to be installed in said Castamba Theater. Shreffler covenants, represents and warrants and guarantees that the said theatre, at the time it is transferred to the Schine Shelby Corporation, shall be duly and completely equipped for operation as a motion picture theatre, and that all equipment and personal property therein shall be owned by Shreffler free and clear of any and all liens, claims, charges, mechanics liens, mortgages or incumbrances of any and every nature whatsoever, except as hereinabove or hereinafter specified.

6. Upon the formation of the Schine Shelby Corporation, and after the transfer to and acquisition by it of the rights; contracts, and leases as hereinabove provided, Shreffler agrees to sell to Belpik, and Belpik agrees to purchase, fifty (50) shares of Class B stock of the Schine Shelby Corporation and Belpik agrees to pay therefore the sum of Fifteen Thousand Dollars, payable Seventy-five Hundred Dollars at or before the delivery of said stocks, and the balance of $7500.00 on January 10th, 1938. It is agreed that Shreffler, immediately upon receipt of said payments, shall apply the same against the indebtedness of The Castamba Realty Company to the Citizens Bank of Shelby upon the mortgage above mentioned, and Shreffler agrees to cause the said Class B stock to be issued in the name of Belpik, its nominee or any subsiduary owned or controlled by either Belpik or Schine Theatricals, Inc.

It is further agreed that after Shreffler has applied said sum of Fifteen Thousand Dollars towards the partial liquidation of the mortgage indebtedness of the Castamba Realty Company to The Citizens Bank of Shelby, that Shreffler, will cause the amount remaining due, to be paid by The Castamba Realty Company, (which amount is not to exceed Four Thousand Dollars), within a reasonable time after the execution of the within mentioned agreement.

[fol. 7409] 7. Each of the parties agrees with the other that after the sale of the Class B stock to Belpik, as hereinbefore provided, neither party will, at any time, sell, hypothecate, or otherwise dispose of the stock of the Schine Shelby Corporation owned by such party, without first offering such stock to the other party upon the same terms and conditions as those upon which it is proposed to sell, hypothecate or otherwise dispose of said stock, and giving such other party an opportunity, for ten days, to acquire the same upon such terms. A notation to this effect shall be made on each stock certificate issued by the Schine Shelby Corporation and shall be included in the By-laws of the corporation.

8. It is mutually agreed that the parties hereto will cause the Schine Shelby Corporation to enter into a contract with Belpik, and Belpik agrees to enter into such contract, for the supervision and general management of the Castamba Theatre, Shelby, Ohio, and any other theatre or theatres

thereafter acquired in said city, with the exclusive right of Belpik to purchase and book all motion pictures and other attractions for said theatre or theatres, for which services Belpik is to receive five per cent (5%) of the gross receipts of said theatre or theatres, a copy of said operating contract has been exhibited and read by the parties hereto and approved, a copy of which for convenience is marked Exhibit A and attached hereto.

9. It is mutually agreed that the parties hereto will cause the new corporation to enter into a contract of employment with Shreffler and his son, A. D. Shreffler, said contract to be for a term of two (2) years at the combined salary of Fifty Dollars ($50.00) per week.

10. Each of the parties hereto agrees that any theatre or theatres in the City of Shelby, Ohio, or interest therein, which may hereafter be acquired, either directly or indirectly, by either of the parties hereto, and any and all [fols. 7410-7411] agreements relating thereto, shall be acquired for the benefit of the Schine Shelby Corporation, and any and all evidences of ownership, or interest therein, shall be transferred or conveyed to said corporation.

11. The parties hereto agree that the amounts which may be required by the Schine Shelby Corporation for working capital shall be advanced fifty per cent by Belpik, and fifty per cent by Shreffler, and shall be repaid in the same proportion. Neither party shall be required to advance at this time as operating capital a sum in excess of Two Hundred and Fifty Dollars ($250.00) each.

12. The parties hereto agree that current operating expenses shall be paid by the local manager in Shelby, and all sums over and above said operating expenses shall be transferred to the Reserve Account to be opened in the name of the Schine Shelby Corporation in the Citizens Bank of Shelby, Ohio, the surplus remaining in said reserve account, after paying for rent, film management fees, and all other proper charges shall be distributed to the stockholders as dividends if, as and when they are duly declared by the directors by proper corporate action.

13. This agreement shall be binding upon the parties hereto and their respective legal representatives, successors and assigns.

In Witness Whereof, the parties hereto have caused this agreement to be executed under seal the day and year first above written.

Halmer D. Shreffler. Belpik Theatre Corporation,
by Louis Lazar, Assistant Secretary.

Witnessed: Robert T. Green. [Illegible.]

[fol. 7412]

EXHIBIT 111

Arcade Theatre, Salisbury, Md.

Employment Contract

Agreement made and entered into this 12th day of August, 1938, by and between Chesapeake Theatres Corporation, a Maryland corporation, hereinafter called the "Employer", party of the first part, and Lee Insley, a resident of Salisbury, Maryland, hereinafter called the "Employee", party of the second part.

Witnesseth:

First: The Employer hereby employs and engages the Employee to render his exclusive services as hereinafter provided, for and during the term of this agreement, as Division Manager of all motion picture theatres (except as hereinafter provided) operated by the Employer during the term hereof within the territory hereinafter described and upon the terms and conditions hereinafter set forth.

Second: The Employee hereby accepts such employment and agrees to keep and perform all of the duties, obligations and agreements assumed and entered into by him hereunder.

The Employee agrees that he will throughout the term hereof, render his exclusive services for and as requested by the Employer as such Division Manager, in connection with the business of the Employer in and about the acquisition, management and operation of motion picture theatres.

The Employee agrees that he will at all times comply with all reasonable instructions, directions, requests, rules and regulations made or issued by the Employer in connection with its business of acquiring, managing and operating motion picture theatres; that he will render his services under the jurisdiction and control of the officers and Board of Directors of the Employer; and that he will perform and render his services hereunder conscientiously and to the full limit of his ability.

Third: The term of employment hereunder shall be for five (5) years commencing on the 12th day of September, [fol. 7413] 1938, and terminating upon the 11th day of September, 1943.

Fourth: The territory within which the Employee shall render his services hereunder as Division Manager, shall consist of the states of Delaware, Maryland and Virginia.

Fifth: The employee's duties hereunder shall consist of the general supervision (subject to the orders of the officers and Board of Directors of the Employer), of the management and operation of the motion picture theatres operated by the Employer within the above described territory, and of aiding, and assisting the Employer (subject to the orders of its officers and Board of Directors and their duly authorized representatives) in negotiating for the acquisition of motion picture theatres within the above described territory, on terms satisfactory to the Employer, and of such other duties not inconsistent with the position of Division Manager, as the officers and Board of Directors of the Employer, and their duly authorized representatives, may from time to time assign to the Employee.

Sixth: As full payment and compensation for the services to be rendered by the Employee to the Employer hereunder the Employee shall pay to the Employee and the Employee shall accept compensation at the rate of One Hundred Fifty Dollars ($150.00) per week, payable on Wednesday of each week during the term hereof, for the services rendered during the preceding week, plus a sum (hereinafter called "additional compensation") computed upon a percentage of the profits derived from the operation by the Employer of the motion picture theatres operated by it in said territory and determined as follows:

Commencing September 11th, 1939 and each year thereafter during the term hereof, the net profits derived by the Employer during the preceding year from the operation of the theatres operated by it within the above described [fols. 7414-7415] territory, shall be computed according to the standard accounting practice used by the Employer.

It is agreed and understood between the parties hereto that in computing such profits a charge of six per cent (6%) of the gross receipts of the said theatres is and shall continue to be made for "home office overhead", and that no question shall at any time be raised as to the propriety of this charge.

It is further understood and agreed between the parties hereto that in computing such net profits a charge shall be made against the net profits before Federal or State Income Taxes, equivalent to the percentage charged during the year in question for normal Federal Corporation Income Tax, plus a charge equivalent to the percentage charged by any State within the territory for normal State Corporation Income Tax (it being understood, of course, that such last named change shall apply only to the theatres operated within the State in which such income tax is collected).

After such net profits shall have been computed as aforesaid, there shall be deducted therefrom ten per cent (10%) upon the investment of the Employer in said theatres and the Employee shall be entitled to receive as his "additional compensation" hereunder, a sum equal to ten percent (10%) of the balance. Such "additional compensation" shall be computed within sixty (60) days after the close of each year during the term hereof, and paid to the Employee within thirty (30) days after the completion of such computation.

• • • • • • •

[fol. 7416] Eleventh: It is understood and agreed that the Employer shall be entitled to the Employee's exclusive services during the term of his employment hereunder.

It is further understood and agreed (without limiting the generality of the foregoing) that the Employee shall not [fols. 7417-7418] during the term hereof, be or become, directly or indirectly, either individually or through any partnership, association, joint venture or corporation (other than as an employee or associate of the Employer) interested in the ownership or operation of any motion picture theatre or other amusement enterprise within the above described territory. The Employee further agrees, conditioned as aforesaid, that if during the first year after the termination of his contract, he shall be or become, directly or indirectly, either individually or through any partnership, association, joint venture or corporation (other than as an employee or associate of the Employer) interested in the ownership or operation of any motion picture theatre or other amusement enterprise, within the territory described in this contract, then and in that event the Employer shall have the right and option to purchase and acquire a half interest in such motion picture theatre, or theatres, or other amusement enterprise, upon the same terms as those upon which such interest was acquired by the Employee. Nothing herein contained shall prevent the Employee from investing money in stocks or bonds of Companies engaged in the amusement business, which stocks or bonds are regularly traded in upon a recognized exchange.

In Witness Whereof, the parties hereto have caused these presents to be executed the day and year first above written.

Chesapeake Theatres Corporation, by J. M. Schine, Pres. Lee W. Insley. (L.S.)

Attest: Hannah Fahrer, Asst. Secretary.

[fol. 7419] Exhibit 118

Employment Agreement

CHESAPEAKE THEATRES CORPORATION

— and —

MARSH GOLLNER

AGREEMENT

Willard S. McKay
630 Fifth Avenue
New York

[fol. 7420] Agreement made and entered into this 29th day of September, 1938, by and between Chesapeake Theatres Corporation, a Maryland corporation, hereinafter called the "Employer", party of the first part, and Marsh Gollner, a resident of Salisbury, Maryland, hereinafter called the "Employee", party of the second part.

Witnesseth:

First: The Employer hereby employs and engages the Employee to render his exclusive services as hereinafter provided, for and during the term of this agreement, as District Manager of such motion picture theatres as the Employer may designate during the term hereof, within the territory hereinafter described and upon the terms and conditions hereinafter set forth.

Second: The Employee hereby accepts such employment and agrees to keep, render and perform all of the duties, obligations and agreements assumed and entered into by him hereunder.

The Employee agrees that he will, throughout the term hereof, render his exclusive services for and as required by the Employer, as such District Manager, in connection with [fol. 7421] the business of the Employer in and about the acquisition, management and operation of motion picture theatres.

The Employee agrees that he will at all times comply with all instructions, directions, requests, rules and regulations made or issued by the Employer, in connection with its business of acquiring, managing and operating motion picture theatres; that he will render his services under the jurisdiction and control of the officers and Board of Directors of the Employer and their duly authorized representatives; and that he will perform and render his services hereunder conscientiously and to the full limit of his ability.

Third: The term of employment hereunder shall be for three (3) years, commencing on the 1st day of October, 1938 and terminating on the 30th day of September, 1941.

Fourth: The territory within which the Employee shall render his services hereunder as District Manager, shall consist of the territory commonly known as the "Eastern Shore" of Maryland, but the Employer shall have the right to change such territory at any time, or from time to time, as hereinafter provided.

Fifth: The Employee's duties hereunder shall be such as are assigned to him by the Employer in connection with its business of acquiring, managing and operating motion picture theatres.

[fol. 7422-7423] Sixth: As full payment and compensation for the services to be rendered by the Employee to the Employer hereunder, the Employer shall pay to the Employee and the Employee shall accept compensation at the rate of One Hundred Dollars ($100.00) per week, payable on Wednesday of each week during the term hereof, for the services rendered during the preceding week.

[fol. 7424] Ninth: It is understood and agreed that the Employer shall be entitled to the Employee's exclusive services during the term of his employment hereunder, except that so long as the Employee's headquarters are in Salisbury, Maryland, the Employee shall be entitled to act as a member of the Operating Committee, under a certain operating agreement, with relation to the operation of the Arcade Theater, Salisbury, Maryland, and the Wicomico Theater, Salisbury, Maryland, and in connection therewith shall be entitled to do all things necessary to maintain the operation of the said Wicomico Theater on a high standard.

Tenth: It is understood and agreed that the assignment of this contract by the Employer, pursuant to paragraph Eighth herein, shall not relieve the Employer from its obligation to see that the Employee's compensation is paid by such assignee; provided that the Employee shall fully perform all of his obligations hereunder.

With relation to the provisions of paragraph Seventh hereof, it is understood and agreed that in the event of the disability or incapacity, due to injuries incurred in line of duty, the period or periods of such disability or incapacity shall not be considered in computing the amount of time after which the Employer has the right to cancel and terminate this contract.

As witness the corporate seal of the Chesapeake Theatres Corporation, and the signature of Willard S. McKay, Vice-President, attested by Harold Sliter, Assistant Secretary thereof, and the hand and seal of Marsh Gollner, the day and year first above written.

Chesapeake Theatres Corporation. By: Willard S. McKay, Vice-President. Marsh Gollner (L.S.)

Attest: Harold Sliter, Assistant Secretary.
Test: Isabelle R. Johnson.

[fol. 7425] STATE OF MARYLAND,
County of Wicomico, ss:

On this 29th day of September, 1938, before me personally appeared Willard S. McKay, to me known, who, being by me duly sworn, did depose and say that he resides in Greenwich, Conn.; that he is the Vice-President of Chesapeake Theatres Corporation, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal so affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that he signed his name thereto by like order.

Isabelle R. Johnson, Notary Public.

STATE OF MARYLAND,
County of Wicomico, ss:

On this 29th day of September, 1938, before me personally appeared Marsh Gollner, the individual mentioned in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.

Isabelle R. Johnson, Notary Public.

[fol. 7426] EXHIBIT 644-A

SCHINE THEATRICAL CO., INC.
General Offices: Gloversville, N. Y.

1934-1935.
Gloversville, N. Y.

Agreement entered into this 29th day of August in the year of 1934, between Vitagraph, Inc., and Schine Theatrical Co. Inc. whereby it is agreed and understood that the following clauses become part and parcel of all contracts signed this 29th day of August, 1934, and an approval of the contracts will be an automatic approval of this letter.

Clause No. 1

In all situations where 30% pictures are played on Saturday and/or Sunday, terms to be 25%.

Clause No. 2

In all situations where 25% pictures are played on a Saturday and/or Sunday, terms to be 20%. In all situations where 25% or 20% pictures are used with a double feature bill or with vaudeville (unit or four acts), terms to be 15%.

Clause No. 3

The exhibitor has the option at the time of booking to play any one or more of the allocated flat buys at 20% of the gross if so desired. If any one or more of the flat buys are played at 20% of gross and used either on a Saturday and/or a Sunday, terms to be 15%. However, exchanges must be notified within five days after it is dated.

Clause No. 4

On the pictures that carry split figures, the split figure is to be determined as follows:

The distributor is to receive 35% of the gross receipts up until such time as the exhibitor shows a profit equal to 50% of the amount the distributor receives as a film rental and to split 50-50 from this point on.

Clause No. 5

In all towns, exhibitor agrees to use Warner First National trailers and is to pay as follows:

1 change — $10.00
2 changes — 5.00
3 changes — 3.00
4 changes — 2.00
5 changes — 1.50

Clause No. 6

It is also understood and agreed that on both the short subjects and feature commitments in towns where we overplay, our contracted commitment, the monies obtained by [fol. 7427] playing over the commitment is to be applied dollar for dollar against some towns where the commitment is underplayed.

Clause No. 7

It is also understood and agreed that in the following towns, exhibitor has privilege of eliminating 13 pictures from the Warner First National contracts.

Carthage
Malone
Ogdensburg
Salamanca
Piqua
Mt. Vernon
Herkimer
Massena
Saranac Lake
Bath
Bellefontaine
Little Falls
Norwich
Newark
Canandaigua
Wooster

and in the following towns, exhibitor has the privilege of eliminating 7 pictures from the Warner First National contracts.

Gloversville
Lockport
Corning
Buffalo, Granada
Oneonta
Oswego
Geneva,
Rochester,
Riviera or Liberty
Watertown
Cortland
Buffalo, Riverside
Rochester,
State or Dixie

Clause No. 8

It is also agreed that on the 35% and 30% pictures, they are not to play with vaudeville or double bills.

Clause No. 9

It is understood and agreed that on the Vitagraph 1934-35 short subjects contracted for this 29th day of August, 1934, the contract is to start playing on December 1st, 1934.

Harry Seed, Buffalo Warner Branch Manager.
Ray Smith, Albany Vitagraph, Inc.
George Lynch, Schine Theatrical Co. Inc.

(Here follow 3 Photolithographs, side folios 7428-7430)

DEAL SHEET

Warner Bros 9/11/40

THEATRE	TERMS
	Season 1940-41
Vernon	4-@ 35% to 37½ – 40% 2-3 R 8-@ 35% (revert to 30%) 2-3 R
a Vine	8-@ 60^{00} 2-3 Dr 28 @ 30^{00} 2-3 "

c 3/6/41

Mt Vernon

Ohio,

Clearance Same as 1939-40

ACCEPTED ....

(Distributor)

ACCEPTED Geo Lynch

(Schine Enterprises Corp.)

7428

5208

3M [illegible]

FIRST NATIONAL
Pictures

WARNER BROS.
Pictures

VITAPHONE
Short Subjects

CIRCUIT SCHINE

OPERATING CO.

BRANCH CLEVELAND NO.

TOWN MT. VERNON, OHIO (2ND RUN)

SEASON 1940-41

THEATRES	NO. PICT.	NO. DAYS	FILM RENTAL	TRAILERS
MEMORIAL	4	2/3	$30.00	
	8	2/3	$20.00	
OR				
	8	2/3	$15.00	
VINE				
			This deal subject to review after 10 pictures have played.	
			This deal cancels third run deal signed 9/11/40.	

DEAL SHEETS Warner Bros 9/11/40

THEATRE	TERMS
	Season 1940-41
Vine	4-@ 25% 2-3 run 8-@ 17½ Bal @ 12½
Mt Vernon	Minimum commitment 12 pictu

[fol. 7431]

Schine Theatrical Enterprises

Legend of Tenths

Week Days	1/10	Special Holidays—	Labor Day	3/10	July 4th	2/10
Saturdays	2/10		Xmas	3/10	Decoration Day	2/10
Sundays	3/10		New Years	3/10		
			Thanksgiving	3/10		

Washington Territory

No Sundays—Figures based on 7th

Town & State	Run	40% Control per 1/10 per Legend	37½% Control per 1/10 per Legend	35% Reversion to 30%	30% Reversion to 25%
Cambridge, Md.	1st	212.	202.		
Salisbury, Md.	"	368.	344.	1,100.-MTW of TFS	

[fol. 7432-7433]

Sept. 11th, 1940.

Schine Theatres

Agreement Covering Reversion Pictures Season 1940-1941

	35% Reversion to 30%	30% Reversion to 25%
Albany		
Amsterdam, N. Y.	350.	330.
Glens Falls	(240. Rialto (297.26-Paramount	(210. Rialto (256.73 Paramount
Gloversville	300.	250.
Herkimer	170.	
Little Falls	200.	
Massena	170.	
Norwich	160.	
Ogdensburg	250.	
Oneonta	200.	
Saranac Lake	130.	
Watertown	320.	
Buffalo		
Auburn, N. Y.	395.	345.00
Canandaigua	150.	
Corning	190.	
Cortland	330.	
Geneva	260.	
Lockport	240.	
Newark	140.	
Oswego	220.	
Salamanca	150.	
Cincinnati		
Athena, Ohio	200.	
Lexington, Kentucky	270.	230.
Piqua	140.	
Cleveland		
Kent or Ravenna, Ohio	150.	
Mt. Vernon	(150. Vine Theatre (210. Vernon "	
Tiffin	205.	
Wooster	210.	
Washington		
Salisbury, Md.	1100. MTW or TFS	

Accepted Geo. V. Lynch
Schine Enterprises Corporation

Arthur Sarbioy
Vitagraph, Inc.

Schine Theatrical Enterprises

Schedule of Control Figures on 4 Top Pictures

Legend on Tenths			Special Holidays			
Week Days	1/10		Labor Day	3/10	July 4th	2/10
Saturdays	2/10		Xmas	3/10	Decoration Day	2/10
Sundays	3/10		New Year's	3/10		
			Thanksgiving	3/10		

**Situations Not Operating Sundays To Be On Basis Of Sevenths

Town		1	2	3	Total	Average per Unit	40% Control plus 15%	37½% Control plus 7½%
Albany Territory								
Amsterdam, N. Y.	1st	2015.–6	1949.–5	1823.–5	5787.–16	362.	416.	389.
Carthage, N. Y.	"	541.–4	408.–4	395.–4	1344.–12	112.	129.	120.
Glens Falls, N. Y.	"	2150.–7	2150.–7	2150.–7	6450.–21	307.	353.	330.
Gloversville, N. Y.	"	1345.–5	1305.–5	1247.–5	3897.–15	260.	299.	280.
Hamilton, N. Y.	"	417.–4	400.–4	357.–5	1174.–13	90.	104.	97.
Herkimer, N. Y.	"	745.–4	660.–4	626.–4	2031.–12	169.	194.	182.
Hudson Falls, N. Y.	"	337.–4	262.–4	207.–4	806.–12	67.	77.	72.
Little Falls, N. Y.	"	919.–4	826.–4	809.–4	2554.–12	213.	245.	229.
Malone, N. Y.	"	577.–4	629.–5	551.–4	1757.–13	135.	155.	145.
Massena, N. Y.	"	913.–4	687.–4	681.–4	2281.–12	190.	219.	200.
Mechanicsville, N. Y.	"	714.–4	586.–4	566.–4	1866.–12	155.	178.	167.
Norwich, N. Y.	"	767.–4	603.–4	673.–5	2043.–13	157.	181.	169.
Ogdensburg, N. Y.	"	1257.–4	903.–4	802.–4	2962.–12	247.	284.	266.
Oneonta, N. Y.	"	1140.–6	1086.–5	968.–5	3194.–16	200.	230.	215.
Saranac Lake, N. Y.	"	767.–5	613.–4	585.–4	1965.–13	151.	174.	162.
Watertown, N. Y.	"	1691.–5	1319.–5	1270.–5	4280.–15	285.	328.	306.
Whitehall, N. Y.	"	392.–4	336.–4	323.–4	1051.–12	88.	101.	95.
Buffalo Territory								
Auburn, N. Y.	"	2699.–6	1805.–6	1900.–6	6494.–18	361.	415.	388.
Bath, N. Y.	"	504.–5	450.–4	414.–4	1368.–13	105.	121.	113.
Buffalo, N. Y.–Granada		837.–5	661.–5	648.–5	2146.–15	143.	164.	154.
Buffalo, N. Y.–Riverside		1100.–5	990.–5	841.–5	2931.–15	195.	224.	210.
Canandaigua, N. Y.	"	798.–4	600.–4	518.–4	1916.–12	160.	184.	172.
Corning, N. Y.	"	1280.–6	1058.–6	1044.–6	3382.–18	188.	216.	202.
Cortland, N. Y.	"	1479.–5	1334.–5	1190.–5	4003.–15	267.	307.	287.
Geneva, N. Y.	"	1809.–5	1435.–5	1410.–5	4654.–15	310.	356.	333.
Lockport, N. Y.	"	1638.–5	1523.–5	1408.–5	4569.–15	305.	351.	328.
Newark, N. Y.	"	856.–4	653.–4	562.–4	2071.–12	173.	199.	186.
Oswego, N. Y.	"	1586.–7	1186.–6	1163.–6	3935.–19	207.	238.	223.
Penn Yan, N. Y.	"	493.–5	436.–4	423.–4	1352.–13	104.	120.	112.

Schine Theatrical Enterprises—Continued

Schine Theatrical Enterprises—Continued

Town		1	2	3	Total	Average per Unit	40% Control plus 15%	37½% Control plus 7½%
Perry, N. Y.	"	473.-4	337.-5	292.-4	1102.-13	85.	98.	91.
Salamanca, N. Y.	"	732.-4	628.-4	620.-5	1980.-13	152.	174.	163.
Seneca Falls, N. Y.	"	521.-4	384.-4	359.-4	1264.-12	105.	120.	112.
Rochester, N. Y.–Madison		551.-5	549.-5	386.-5	1486.-14	99.	114.	106.
Rochester, N. Y.–Monroe		454.-5	410.-5	356.-5	1220.-15	81.	93.	87.
Rochester, N. Y.–Riviera		1049.-5	775.-5	775.-5	2599.-15	173.	199.	186.
Rochester, N. Y.–Dixie	"	547.-5	442.-5	428.-5	1417.-15	94.	108.	101.
Washington Territory								
Cambridge, Md.**	"	510.-3	499.-3	467.-2	1476.- 8	184.	212.	202.
Salisbury, Md.**	"	1483.-5	1389.-5	1291.-3	4163.-13	320.	368.	344.
Cleveland Territory								
Ashland, Ohio	"	726.-5	505.-5	553.-5	1784.-15	119.	137.	128.
Bellefontaine, Ohio	"	772.-4	717.-5	621.-4	2110.-12	176.	202.	189.
Bowling Green, Ohio	"	600.-3	579.-4	571.-3	1750.-10	175.	201.	188.
Bucyrus, Ohio	"	724.-4	582.-4	527.-4	1833.-12	153.	176.	164.
Delaware, Ohio	"	889.-4	722.-5	601.-4	2212.-13	170.	195.	183.
Fostoria, Ohio	"	921.-4	590.-4	567.-4	2078.-12	173.	199.	186.
Kent or Ravenna, Ohio	"	800.-4	800.-4	723.-4	2323.-12	194.	223.	209.
Medina, Ohio	"	441.-4	420.-4	391.-4	1252.-12	104.	120.	112.
Mt. Vernon, Ohio	"	893.-4	793.-4	668.-5	2354.-13	181.	208.	195.
Norwalk, Ohio	"	543.-4	491.-4	421.-4	1455.-12	121.	139.	130.
Shelby, Ohio	"	335.-4	353.-4	325.-4	1013.-12	84.	97.	90.
Tiffin, Ohio	"	1189.-4	850.-4	826.-4	2874.-12	239.	275.	257.
Van Wert, Ohio	"	752.-5	615.-4	484.-4	1851.-13	142.	163.	153.
Wooster, Ohio	"	904.-4	839.-4	832.-4	2575.-12	215.	247.	231.
Cincinnati Territory								
Athens, Ohio	"	1130.-4	837.-5	907.-4	2874.-13	221.	254.	238.
Lexington, Ky.	"	3166.-10	2850.-10	2788.-10	8813.-30	294.	338.	316.
Lexington, Ky.	2nd	942.-6	918.-6	741.-6	2601.-18	144.	166.	155.
Middlesboro, Ky.	1st	512.-4	464.-4	449.-4	1425.-12	119.	137.	128.
Paris, Ky.	"	444.-4	403.-4	371.-4	1218.-12	101.	116.	109.
Piqua, Ohio	"	970.-5	612.-4	507.-4	2179.-13	168.	193.	181.
Richmond, Ky.	"	664.-4	576.-4	517.-4	1757.-12	146.	168.	158.

Agreed to:
Geo. V. Lynch
Schine Theatrical Enterprises, Inc.

Arthur Sarbioy
Vitagraph, Inc.

[fol. 7435]

EXHIBIT 646

LEASE

Dated this 30th day of April, 1938.

This Lease Witnesseth: That Daniel Gutilla, Lessor, in consideration of the rents and covenants hereinafter stipulated, to be paid and performed by the Schine Theatrical Co., Inc., Lessee, its successors and assigns, does hereby grant, demise and lease unto the said Lessee, its successors and assigns, the following premises, for theatre use only:

> The ground floor of the property known as the Strand Theatre and being located on the south half of Lot Number One Hundred Forty-Three (143), in Bellefontaine, Logan County, Ohio.

To Have and to Hold the premises herein described to the said Lessee, its successors and assigns, beginning with the 1st day of June, 1938, and ending on the 1st day of June, 1940.

Yielding and paying therefore, during said term the sum of Nine Thousand Six Hundred Dollars ($9,600.00), payable as follows: Four Hundred Dollars ($400.00) on the first day of each and every month, beginning with the First day of June, 1938, in advance.

[fol. 7436] It is further understood and agreed that if at any time during the operation of this Lease, the Lessee herein places new equipment in said building, that at the end of the period of the lease herein, the Lessee herein may have the right and option to remove said equipment placed herein by it, provided, the Lessee has performed the conditions of this Lease upon its part to be performed.

It is further agreed that at the termination of the period of this Lease that the Lessee will place in said Theatre all the equipment purchased by it from The Bellefontaine Amusement Company in workable condition, reasonable wear and tear excepted, except that portion which the Lessor herein is permitted to remove. It is further agreed that the Lessor herein is to have Three (3) passes for the Schine Holland Theatre and Strand Theatre for two (2) persons each.

It is further agreed by and between the parties that the Lessee will operate said Theatre at least once a week for fourteen (14) weeks during each year of the operation of this Lease. It is further understood and agreed that the Lessee will, during the months of December, January, February and March of each year, during the operation of this Lease, heat the building at least once a week to a temperature of at least sixty-eight degrees (68°) for eight hours. It is further understood by and between the parties that the Lessee shall have the right to use that portion of the second floor of said building that is necessary in the operation of a moving picture Theatre.

The Lessee further agrees that while the said Theatre is not operated it may erect a temporary partition along the street side of the lobby, with a small door therein to permit ingress and egress to the Theatre, upon which partition it is agreed the Lessee may put advertising matter. It being understood that the purpose of this partition is to eliminate in so far as possible the collection of dirt in said lobby [fol. 7437] and the making of said lobby a nuisance place by the public.

Should the premises herein leased be lawfully condemned by public authority and said building cannot be used for a theatre or picture show business, the Lessee must surrender said building, during the time it cannot be used for said business. Lessee further agrees that it will not do or suffer any waste therein, nor use said premises for any unlawful purpose. The Lessee may freely assign or sub-let this Lease, but no such assignment or subletting shall in any way release the Lessee of its full liability.

[fols. 7438-7439] Daniel Gutilla, Lessor, Schine Theatrical Co. Inc., by John A. Mays, Vice-Pres., by F. D. Thompson, Ass't Secretary, Lessee. (Seal.)

Signed in the presence of: John P. Dickinson, Olive E. Weston, Howard M. Antevil, R. E. Wallace.

[fol. 7440] [Endorsed:] Lease between Daniel Gutilla, Lessor and The Schine Theatrical Co. Inc., Lessee.

[fol. 7441] **Exhibit 647**

Made this 1st day of July, 1940.

This Lease Witnesseth: that Daniel Gutilla, Lessor, in consideration of the rents and covenants hereinafter stipulated to be paid and performed by the Schine Theatrical Co. Inc., Lessee, its successors and assigns, does hereby grant, demise and lease unto the said Lessee, its successors and assigns, the following premises, for theatre use only:

> The ground floor of the property known as the Strand Theatre and being located on the south half of lot Number One Hundred Forty Three (143) in Bellefontaine, Logan County, Ohio, and being the same premises conveyed to Daniel Gutilla by Isaac Neer, together with the privilege of the use of the wall on the south side of the north half of said lot as conveyed to the said Gutilla by the Opera Block Company, both conveyances being evidenced by deeds of record in Logan County, Ohio.

To Have and to Hold the premises herein described to the said Lessee, its successors and assigns, beginning on the 1st day of June, 1940, and ending on the 31st day of May, 1950.

The Lessee yielding and paying therefor the sum of Ten Thousand Dollars ($10,000.00) cash, upon the signing of this lease, the receipt whereof is hereby acknowledged, and the further sums of Three Hundered Dollars ($300.00) on the 1st day of each and every calendar month, in advance, during the term of this lease.

It is understood that the Ten Thousand Dollars ($10,000.) is a rental payment, applicable to the term of this lease, and should the premises be destroyed by fire or other casualty, or the use thereof as a theatre be prohibited [illegible] governmental authority, or this lease terminated b[illegible]utual consent, then and in any such event, but under no other [fol. 7442] circumstance or condition whatsoever, the unearned portion of said Ten Thousand Dollars ($10,000) computed on an annual basis of One Thousand Dollars ($1,000.00) per year, shall be refunded to Lessee. However, Lessor shall have sixty (60) days after destruction of or damage to the premises by fire or other casualty to restore or repair the same; and shall have a like period to correct any condition that forms the basis of a governmental order preventing the use of said premises for theatre purposes and should the premises be restored and/or the order rescinded within said period of sixty (60) days, then no refund shall be demanded or required.

It is understood that Lessee shall have a lien on said premises to the extent of its rights under this provision and that said premises shall be insured in not less than Ten Thousand Dollars ($10,000.00) against damage or destruction by fire with a clause in each policy of insurance making loss, if any, payable to Lessee as its interest may appear. Should Lessor fail to keep in force insurance to the extent herein required, Lessee may so insure said premises and charge the premium against rentals prescribed herein.

It is agreed that if at any time during the term of this lease, the Lessee herein places new equipment in said building, it shall have the option to remove said equipment placed therein by it at the end of the term, provided, the Lessee has performed the conditions of this lease on its part to be performed.

It is agreed that all of the equipment now in said building which was originally the property of The Bellefontaine Amusement Company is owned by the Lessor herein. That Lessee shall have the right to use this equipment during the term of this lease or until the Lessee changes the equip- [fol. 7443] ment or any part thereof during the term of this lease; upon the termination of this lease or upon the change of such equipment or part thereof, all of the equipment or such part as is changed and other equipment installed, shall be delivered immediately to Lessor herein in as good condition as the same is now in, reasonable wear and tear excepted.

It is agreed that Lessor shall install a new heating plant in said building at a cost not to exceed Twelve Hundred Dollars ($1,200.00) and that Lessee shall pay one half (½) thereof; that said improvement shall be completed on or before September 1st, 1940, and that the plans and specifications therefor shall be approved by both parties prior to the commencement of the work.

It is agreed that Lessee shall repair the interior of the theatre consisting of plastering, decoration, painting and general repairs at a cost not to exceed Thirteen Hundred Dollars ($1,300.00) and that such repairs shall be completed on or before September 1st, 1940.

It is agreed that Lessor shall have three (3) passes for the Schine Holland Theatre and 3 passes for the Strand Theatre for two (2) persons each during the term of this lease.

It is agreed that Lessee will operate said theatre at least once a week for fourteen (14) weeks during each year of the term of this lease and to enable Lessee to operate this theatre, the Lessee shall have the right to use such portion of the second floor of said building as is necessary for that purpose.

It is agreed that Lessee will, during the months of November, December, January, February, March and April of each year during the term of this lease, heat the building at least twice a week to a minimum temperature of 68° for eight (8) hours; however, if the average temperature [fols. 7444-7445] outside the building on any day shall be 68° or more, it shall not be necessary to build a fire on that day.

It is agreed that while the theatre is not operated the Lessee may erect a temporary partition along the street side of the lobby, with a small door therein to permit ingress and egress to and from the theatre, upon which Lessee may put advertising matter. That the purpose of this partition is to eliminate insofar as possible, the collection of dirt in the lobby and the making of the same a loafing place by the public.

[fol. 7446] In Witness Whereof, the Lessor has subscribed his name and the Lessee by J. Guy Selmser, its Vice-President, and F. D. Thompson, its Assistant Secretary, has subscribed its name and caused its seal to be affixed, all in [fols. 7447-7449] duplicate, on the day and year above written.

Daniel Gutilla
Lessor

Signed in the presence of:
Jas Laxar
Margaret E. Woodruff

Schine Theatrical Co. Inc., by J. Guy Selmser, Vice President; and F. D. Thompson, Assistant Secretary, Lessee. (Corporate Seal.)

Signed in the presence of:
Howard M. Antevil
Louis Lazar

[fol. 7450] **Exhibit 806**

The Daily Messenger, Canandaigua, N. Y.,
Tuesday, May 10, 1938.

Early Land Mark to Make Way for Another Theatre

—

Famous Flannigan Block Sold to Seneca Theatres, Inc., Soon Will Be Razed

—

Among the major building operations scheduled for Canandaigua during the current season is one which will mark the passing of one of the best known landmarks in this section of the State, and the establishment here of another modern motion picture theatre.

Announcement was made today by William J. MacFarlane, manager of The Playhouse, that purchase of the Flannigan Block in South Main Street has been completed by the Seneca Theaters, Inc., a subsidiary of the Schine Circuit, which operates The Playhouse.

Stating that the purchase of the Flannigan property was completed late yesterday, Mr. MacFarlane advised that the present structure will be demolished to make way for the erection of a new Main Street theater for the service of this area.

It was also recalled by Mr. MacFarlane that ground was broken 17 years ago this Spring for the erection of The Playhouse, which he has since conducted as manager.

This change in the business section of the city will mark the passing of a structure which became famous almost a century ago as the home of Flannigan Restaurant, which was founded in 1865, by the late John Flannigan, Democratic leader in the county and one of the most astute restauranteurs in the country. At the same time Mr. Flannigan conducted a wholesale and retail oyster business.

Beginning with a basement room which for years was a rendezvous for prominent Canadaiguans, as well as actors, actresses, politicians and other prominent figures, the Flannigan Restaurant expanded until it occupied four rooms and a hallway on the second floor, as well as its basement beginning.

It has been claimed that Flannigan's was the first restaurant in Western New York to cater to the automobile trade.

2nd run

Clearance same as in 1939-40

[illegible]

ACCEPTED ....
(Distributor)

ACCEPTED ....
(Schine Enterprises Corp.)

7430

52080

It is also claimed that at one time Flannigan's was the only place from coast to coast, in the United States, where shore dinners and the serving of seafoods was a specialty, and that it was the first inland restaurant to introduce the serving of sea foods.

Among the notables of an earlier day who dined at Flannigan's, were: DeWolf Hopper, Rose Coghlan, Rolland Reed, Kyle Bellow, and Jane Brown Potter, prominent actors and actresses. Other notables who patronized Flannigan's in a bygone day, as well as many other prominent in military and naval affairs, were: James Whitcomb Riley, Bill Nye, and James Polk, their manager; Margaret Wilson, daughter of President Woodrow Wilson, David B. Hill, Governors Whitman and Odell, and Senator Wolcott.

The establishment of another theater here will mark the first time in 15 years that two theaters have been operated in Canandaigua. Besides The Playhouse, the Liberty Theatre, formerly known as the Bijou Dream, was continued in operation for a year or two as an auxiliary house.

[fol. 7451] Exhibit 807

Perry Record

Wyoming County

Established in 1894

Perry, N. Y., Thursday, July 11, 1935

Exercise Option on Theatre Site

—

Deeds and Abstracts Are Being Prepared For Transfer

—

Begin Construction Soon

—

New $100,000 Theatre Will Be Erected on Davis Garage Site By Schine Chain

Option on the Davis garage property recently taken by the Schine Theatrical Co. was taken up on Tuesday and preparations are under way for the erection of a new theatre in Perry at an estimated cost of $100,000. Abstracts and deeds are being prepared for transfer, including a 50-foot strip in the rear purchased from Joseph Ireland. The size of the lot will be 47½ x 160, which allows for a 10 ft. driveway at the rear.

Tentative plans call for a store on Main street in addition to the theatre lobby. The building will be of brick and concrete fireproof construction and the theatre will seat 1000 people, according to present plans. The sale was negotiated thru the Hodges agency.

The new theatre here is part of an expansion program of the Schine interests, who now have a chain of some 20 houses, including five in Rochester. The Perry location is one of four purchased this month as sites for new motion picture houses.

[fol. 7452] EXHIBIT 811

This Lease made and entered into this 24th day of August, 1939, by and between Syracuse-Strand Theatre Company, Inc., a New York corporation (hereinafter called "the Lessor") and S.K.E. Operating Company, Ltd., a New York corporation (hereinafter called "the Lessee"),

Witnesseth:

Article I

Demise

The Lessor for and in consideration of the rents, covenants, terms, conditions and agreements hereinafter reserved and contained on the part of the Lessee to be kept, observed and performed, does by these presents demise and lease unto the Lessee, and the Lessee does hereby hire and take from the Lessor, all the real property and the building thereon erected known as the Strand Theatre located at 501 South Salina Street, Syracuse, New York, together with all appurtenances, entrances, exits, passageways, alleys, courtways and easements belonging or appertaining thereto, or used in connection therewith, together with all furniture, furnishings and other personal property and all fixtures and equipment upon or in said premises or used in connection therewith.

[fol. 7453]

Article II

Term

The term of this Lease is for a period of two (2) years commencing on September 1, 1939 at 12:01 A. M. and ending at midnight on August 31, 1941.

[fol. 7454]

Article IV

Use of Demised Premises

The Lessee shall have the right to use the demised premises during the term of this Lease for theatrical purposes and for all forms of public entertainment and for all purposes identical thereto and for such activities in connection therewith as are or shall be customary and usual, all to be conducted in a proper and lawful manner.

The Lessee covenants and agrees to keep the theatre open for business and in operation at all times during the term of this Lease except that the theatre may be kept closed from May 15 to Labor Day in each year and the theatre may be kept closed for not more than four days each week during all or any part of the remainder of each year and except that the theatre may be kept closed during the period of any emergency or pursuant to any law, ordinance or regulation of any governmental authority or during the period required to make necessary repairs.

[fols. 7455-7471] If at any time during the term of this Lease, it shall become illegal for any reason (other than the fault of the Lessee) to operate such theatre and it shall continue for a period of sixty days to be illegal to operate such theatre, the Lessee is hereby given an option to cancel this Lease upon notice in writing to the Lessor. Rent shall abate during the period, if any, that it shall be illegal to operate such theatre and the pro rata part of any rent paid in advance by the Lessee for a period during which it shall be illegal to operate such theatre, shall be refunded forthwith to the Lessee.

[fol. 7472] **Exhibit 854**

Schine Revives Plans for New Theatre Here

Dickerson Says Building to Be Erected Before May 1st on Main St. Site Owned by Chain

Schine Revives

A new theatre on Main street will be built by the Schine Enterprises here during the next four months, C. R. Dickerson, manager of the Andrews Theatre reported today, in a revival of plans announced periodically since 1929.

John Eberson, architect for the Schine interests and C. C. Young, district manager, were here Friday, Mr. Dickerson said, to inspect the property owned by the company on the east side of Main street, near the corner of Clinton.

Plans for the new theatre will be submitted shortly after January 1 and bids sought immediately. Plans call for the completion of the building by May 1.

Several times during the past nine years, the operators of the Andrews Theatre have announced similar proposals for theatre construction in Salamanca.

As on past occasions, the present plans call for the construction of a 1,200 seat theatre, with two stores flanking the theatre entrance on Main street. It would be completely air-conditioned and would include all modern theatre equipment and fixtures.

The Schine interests plan to continue the management of the Andrews even though the new theatre is constructed, Mr. Dickerson declared.

The site for the proposed theatre was purchased about ten years ago and is located between the Nies lot at the corner of Main and Clinton streets, and the Clayton store. It has a frontage of 91 feet on Main street, but spreads out behind the building where the Clayton store is located, extending on the north side to East Race stre-t and on the east nearly to the Frank delivery barn.

[fol. 7473] **Exhibit 871**

Memorandum of agreement entered into this tenth day of December, 1936, between Young & Whitney, Inc., a new York corporation having its principal office in the Village of

Ilion, Herkimer County, New York, party of the first part, and Perry Theatre Corporation, a New York corporation having its principal office in the city of Gloversville, Fulton County, New York, party of the second part,

Witnesseth:

1. The party of the first part agrees to convey to the party of the second part the following described property:

(a) The fee simple of the property known as the Capitol Theatre Building, located on Otsego Street in the Village of Ilion, Herkimer County, New York, consisting of a theatre, and commercial and office space, together with all furniture, furnishings, and equipment contained therein.

(b) The fee simple of the property known as the Opera House located on First Street, in the Village of Ilion, Herkimer County, New York, consisting of a building formerly occupied by the old Opera House and now used for commercial and office space.

The above described properties are subject to a mortgage and bond issue in the sum of approximately One Hundred Twenty-Five Thousand Dollars ($125,000.00), of which the Ilion National Bank and Trust Company is the trustee.

(c) The lease covering premises known as the Temple Theatre located at Morgan and First Streets in the village of Ilion, Herkimer County, New York.

2. The party of the second part agrees to purchase from the party of the first part the above mentioned properties and the lease, and to pay therefore the sum of Two Hundred Fifty Thousand Dollars ($250,000.00) as follows:

(a) The sum of Fifty Thousand Dollars ($50,000.00) in cash on the date of closing of the title to the said properties.

(b) The sum of One Hundred Twenty-Five Thousand Dollars ($125,000.00) more or less by taking the said property subject to the aforementioned mortgage and bond issue.

[fols. 7474-7475] (c) The sum of Seventy-Five Thousand Dollars ($75,000.00) by giving to the party of the first part a purchase mortgage, payable at the rate of five per cent (5%) per annum, the sum of Twenty-Five Thousand Dollars ($25,000.00) to be paid off on the principal of said mortgage within three years from the date of closing. The balance of the second mortgage shall be due on January 1, 1952, and shall be payable at the rate of $2500 per year on the principal, with the privilege to second party to make additional payments on any interest date.

3. The date of closing shall be not later than January 15, 1937, and the party of the first part agrees to deliver possession of the above mentioned properties to the party of the second part at least three days prior to the said date of closing upon receipt of notice from the party of the second part as to when such closing shall take place.

4. The party of the first part agrees to deliver to the party of the second part all paid-up insurance policies now in force, in connection with the above mentioned properties.

5. The purchaser agrees at all times to carry insurance on the aforementioned properties in an amount equal to the amount of the unpaid principal of the mortgages hereinabove referred to.

In Witness Whereof, the parties hereto have caused these presents to be executed the day and year first above mentioned,

Young & Whitney, Inc., by Frank C. Whitney. (Seal.)
Attest: Robt. I. Pierce, Secy.
Perry Theatre Corporation, by John A. May, Vice Pres. (Seal.)

Attest: Louis W. Schine, Sec'y.

[fol. 7476] **Exhibit 872**

Agreement made and entered into this 24th day of May, 1937, by and between Frank C. Whitney, of Ilion, New York, party of the first part, Robert I. Pierce, of Ilion, New York, party of the second part, and Perry Theatre Corporation, a New York corporation, having its principal office in the city of Gloversville, Fulton County, New York, party of the third part,

Witnesseth:

Whereas, first party is president, director, and the owner and holder of a large amount of the capital stock of Young and Whitney, Inc., a New York corporation, and second party is secretary and director of said corporation, and in charge of the operation of the Capitol Theatre, Ilion, New York, which is owned by said corporation, and

Whereas, the said Young and Whitney, Inc. has agreed to sell and convey to third party, by agreement executed concurrently herewith, certain real and personal property in the Village of Ilion, New York, to wit: The Capitol Theatre Building in which is located the said Capitol Theatre; the Opera House Building; and the lease of the Temple Theatre, together with the furniture, fixtures and equipment contained therein, and

Whereas, first and second parties have been for many years connected with or engaged in the motion picture business in the Village of Ilion, New York, and more particularly in the operation of the said Capitol Theatre, and have experience in, and a thorough knowledge of, said business, and

Whereas, a valuable and substantial part of the consideration to be paid by third party for the said property will be [fols. 7477-7478] the agreement herein contained, and first and second parties will derive great profit, benefit and advantage from and in consequence of the said purchase.

Now, Therefore, in consideration of the sum of One Dollar ($1.00), lawful money of the United States, and of other good and valuable consideration paid by third party to first and second parties, and by first and second parties to third party, the receipt whereof is hereby acknowledged, the parties hereto hereby mutually agree as follows:

1. First and second parties, and each of them, do hereby covenant and agree with third party, its successors and assigns, that they will not, nor will either of them, at any time during the period of ten (10) years from and after the date of closing referred to in the agreement of sale executed concurrently herewith, directly or indirectly, under any circumstances or conditions whatsoever, either personally, or by partnership, stock ownership, employment or otherwise, engage in the operation of any motion picture or other theatre or theatres, or any similar business in the Village of Ilion, or within a radius of Thirty-five (35) miles of said Village of Ilion, New York.

In Witness Whereof, the parties hereto have caused this agreement to be executed under seal the day and year first above written.

Frank C. Whitney, Robert I. Pierce. Perry Theatre Corporation, by J. Guy Selmser, Vice Pres. (Seal.)

[fol. 7479] **EXHIBIT 883**

This Agreement

Made the twenty-eighth day of September, in the year One Thousand Nine Hundred and Forty, between the City of Ogdensburg, a municipal corporation located in the County of St. Lawrence and State of New York, hereinafter called the Landlord, and Lawrence J. Carkey of the City of Utica, County of Oneida and State of New York, hereinafter called the Tenant.

Witnesseth:

The Landlord has agreed to let and hereby does let, and the Tenant has agreed to take and hereby does take, those certain premises situate in the City of Ogdensburg, New York, known as the McNaughton Public Market, ~~located at~~ 214-222 Isabella Street, Ogdensburg, New York, together with all the equipment now in said building and upon the premises which belongs to the Landlord, for and during the term of ten years, which term shall begin October 1st, 1940, and terminate September 30th, 1950, with the privilege and option of the Tenant to renew said lease on the same terms and conditions as herein provided for an additional period of five years. Said election to renew said lease shall be made by notifying the Landlord in writing at least six months before the expiration of this lease.

The Tenant agrees to pay the Landlord for the use of said premises the yearly rental of One Thousand Eight Hundred Dollars ($1,800.00), payable in monthly installments of One [fol. 7480-7483] Hundred Fifty Dollars ($150.00) on the first day of each and every month in advance.

[fol. 7484] It is further understood and agreed by the parties hereto that the Landlord, City of Ogdensburg, and State of New York, shall be saved harmless of any damages suffered by the Tenant or any other person by reason of the occupancy of the Tenant of the demised premises for purposes other than the conducting of a public market.

[fols. 7485-7486] And it is further understood and agreed that the covenants and agreements herein contained are binding on the parties hereto and their legal representatives.

In Witness Whereof, the party of the first part has caused these presents to be signed in its name by the Mayor and its corporate seal to be affixed by its Clerk, and the party of the second part has hereunto set his hand and seal the day and year first above written.

City of Ogdensburg, by —— ——, Mayor. —— ——
(L.S.)

Attest. E. J. W. Crawford, Clerk of the City of Ogdensburg.

[fol. 7486-1] **Exhibit 910**

This Agreement of Lease Witnesseth: That Stanhope Boal, of Piqua, Ohio, —— ——, Lessor, in consideration of the rents and covenants hereinafter stipulated to be paid and performed by The Sidney Theater Corporation, a Delaware corporation, lessee and its assigns, does hereby Grant, Demise and Lease unto the said lessee, its successors and assigns, the following described premises, to-wit:

Situated in the State of Ohio, in the County of Miami and in the City of Piqua, and being a part of lot number Fifty-nine (59) more particularily described as follows:

The Bijou Theater also sometimes known as The Ash Street Theater located between Main and Wayne Streets on West Ash Street in said city, together with the two small business rooms at the entrance together with the basement under said building.

It is agreed further that—Lessor is not liable for any damage from water, from any cause, such as bursting of pipes, leaky roofs, or floods, or any other damage done by water.

Cost of redecorating shall be paid one-half (½) by the lessor and one-half (½) by the lessee.

Changes or alterations which are mutually agreed to shall be paid for by the lessor and the lessee shall pay increased rent equal to ten (10) per cent of the cost of same.

The lessee is also to pay its proportionate share of the monthly cost of gas based on the capacity of space occupied and is to pay this item monthly each month as lessor pays the gas bills, and is to be fifty-one and nine tenths (51.9) per cent of the entire building owned by lessor on West Ash Street.

To Have and to Hold the same, with the appurtenances, unto the said lessee its successors and assigns, for and during the full term of Three (3) years and Two (2)

Months next ensuing from the 1st day of May in the year of our Lord nineteen hundred and thirty-one (1931) and to be fully completed and ended on the 30th day of June in the year of our Lord nineteen hundred and thirty-four (1934). [fols. 7486-2–7486-3] Yielding and Paying *therefor, during the said term,* the sum of Two Hundred five ($205.00) Dollars per month payable monthly on the 15th day of each month for the then current month, payable promptly when due without solicitation.

[fol. 7486-4] In Witness Whereof, The said lessor and lessee have hereunto set their hands in duplicate on the 16th day of May in the year of our Lord nineteen hundred and thirty-one (1931).

Signed and Acknowledged in Presence of: Malachi Harris, A. W. DeWeese, Pauline Karch.

Stanhope Boal, The Sidney Theatre Corporation, by J. M. Schine, Pres.

[fol. 7487] Exhibit 911

This Agreement of Lease Witnesseth: That The Piqua National Bank and Trust Company, of Piqua, Ohio, Trustee under the Will of Stanhope Boal, deceased, by August S. Clouse, Assistant Trust Officer thereof, —— ——, Lessor, in consideration of the rents and covenants hereinafter stipulated to be paid and performed by The Belpik Theatre Corporation, of Ohio ,—— ——, lessee and its assigns, do hereby Grant, Demise and Lease unto the said lessee, its successors and assigns, the following described premises, to-wit:

Situated in the City of Piqua, Ohio, County of Miami and State of Ohio, and being a part of Lot Number Fifty-nine (59) more particularly described as follows:

The Bijou Theatre located between Main and Wayne Streets on West Ash Street in said city, excepting therefrom the small business room located on the west side of the entrance to said theatre. This lease includes the theatre proper including the basement connected therewith, and excepting the small basement under the west store room aforesaid.

It is further agreed that Lessor is not liable for any damage from water, from any cause, such as bursting of pipes, leaky roofs, or floods, or any other damage done by water.

It is also agreed that when said theatre is open to the public for business that said lessee, in addition to the increased rent, is to pay its proportionate share of the monthly cost of gas used in heating the entire building owned by lessor on West Ash Street, which by agreement is fixed at Forty-five Per cent thereof and same shall be paid cash month of occupancy as lessor pays the gas bill; and if gas is abandoned by heating then the same per cent of cost of heating same by other methods is to be paid as aforesaid.

It is also agreed that this lease is of no effort and binding on either party until said lessee has indemnified said lessor for the payment of the rent and fuel bills, which indemnity is to be to the satisfaction of said lessor.

To Have and to Hold the same, with the appurtenances, unto the said lessee its successors and assigns, for and during the full term of Two (2) years next ensuing from the 1st day of March in the year of our Lord nineteen hundred and Thirty-four and to be fully completed and ended on the 28th day of February in the year of our Lord Nineteen hundred and thirty-six (1936).

[fol. 7488] Yielding and Paying therefor, during the said term, the sum of One Hundred ($100.00) per month payable in advance as long as said theatre is not opened to the public, and if opened to the Public, an additional sum of Twenty-five ($25.00) per month is to be paid in advance each and every month same is opened, and in addition thereto to pay the heat as above agreed upon.

It is agreed that if possession cannot be given on March 1st, 1934, on account of present tenant not vacating by that time, the rent is to commence five days after notifying lessee of the vacancy and ready for lessee's possession.

And said Lessee, for itself and for its successors and assigns, does hereby Covenant and Agree with said lessor, its successors, that it will pay said rents in manner aforesaid, unless said premises shall be de-troyed or rendered untenantable by fire or unavoidable accident; that it will not do or suffer any waste therein, nor use said premises for any unlawful purpose, nor assign this lease, nor underlet said premises, nor any part thereof, without the written consent of said lessor, and that at the end of said term it will deliver up said premises in as good order and condition as they now are, or may be put by said lessor, reasonable use and ordinary wear and tear thereof, and damage by fire and other unavoidable casualty, condemnation or appropriation excepted.

It is mutually agreed that said lessee is to keep said premises clean so as to protect the furnishings therein and is to properly ventilate said theatre; and said lessor or any of its agents is to have access to said premises at any reasonable time and shall have one (1) admission to performances and attractions at any time free of charge.

[fols. 7489-7491] In Witness Whereof, The said lessor and lessee duly authorized in the premises have hereunto set their hands to duplicate copies on the 23rd day of February in the year of our Lord nineteen hundred and Thirty four.

Signed and Acknowledged in Presence of: A. W. DeWeese, as to Lessor; J. H. DeWeese, Francis Baxter, Florence D. Thompson, as to Lessee.

Piqua National Bank & Trust Co., Piqua, Ohio, by August S. Clouse, Asst. Trust Officer; Belpik Theatre Corp., by John A. May, President.

[fol. 7491-1] EXHIBIT 912

This Agreement of Lease Witnesseth:

That The Piqua National Bank and Trust Company, of Piqua, Ohio, Trustee under the Will of Stanhope Boal, deceased, by George M. Peffer, Trust Officer thereof, Lessor, in consideration of the rents and covenants hereinafter stipulated to be paid and performed by The Belpik Theatre Corporation, of Ohio, lessee and its assigns, do hereby Grant, Demise and Lease unto the said lessee, its successors and assigns, the following described premises, to-wit:

Situated in the City of Piqua, Ohio, County of Miami and State of Ohio, and being a part of Lot Number Fifty-Nine (59) more particularly described as follows:

The Bijou Theatre, located between Main and Wayne Streets on West Ash Street in said city, excepting therefrom the small business room located on the west side of the entrance to said theatre. This lease includes the theatre proper including the basement connected therewith, and excepting the small basement under the west room aforesaid.

It is further agreed that Lessor is not liable for any damage from water, from any cause, such as bursting of pipes, leaky roofs, or floods, or any other damage done by water.

It is also agreed that when said theatre is open to the public for business, or used by the public, that said lessee, in addition to the increased rent, is to pay its proportionate share of the monthly cost of gas used in heating the entire building owned by Lessor on West Ash Street, which by agreement is fixed at Forty-Five Percent thereof, and same shall be paid each month of occupancy, as Lessor pays the gas bill; and if gas is abandoned for heating, then the same percent of cost of heating same by other methods is to be paid as aforesaid.

It is also agreed that this lease is of no effect and binding on either party until said lessee has indemnified said lessor for the payment of the rent and fuel bills, which indemnity is to be to the satisfaction of said lessor.

To Have and to Hold the same, with the appurtenances, unto the said lessee its successors and assigns, for and during the full term of Two (2) Years next ensuing from the First day of March in the year of our Lord nineteen hundred and Thirty Six and to be fully completed and ended on the Twenty-eighth day of February in the year of our Lord Nineteen Hundred and Thirty Eight (1938)

[fols. 7491-2–7491-5] Yielding and Paying therefor, during the said term, the sum of One Hundred ($100.00) dollars per month, payable in advance as long as said Theatre is not opened to the public, and if opened to the public an additional sum of Twenty Five ($25.00) per month is to be paid in advance each and every month same is opened, and in addition thereto to pay the heat as above agreed upon.

[fol. 7492] EXHIBIT 914

This Lease

Witnesseth: That The Piqua National Bank and Trust Company, of Piqua, Ohio, Trustee under the Will of Stanhope Boal, deceased, Lessor, in consideration of the rents and covenants hereinafter stipulated to be paid and performed by The Belpik Theatre Corporation of Ohio, lessee and its assigns, do as hereby Grant, Demise and Lease unto the said lessee, its successors and assigns, the following described premises, to-wit:

Situated in the City of Piqua, Ohio, County of Miami and State of Ohio, and being a part of Lot Number Fifty-nine (59) more particularly described as follows:

The Bijou Theatre, located between Main and Wayne Streets on West Ash Street in said city, excepting therefrom the small business room located on the West side of the entrance to said theatre. This lease includes the theatre proper including the basement connected therewith, and excepting the small basement under the west room aforesaid.

It is further agreed that the Lessor is not liable for any damage from water, from any cause, such as bursting of pipes, leaky roofs, or floods, or any other damage done by water.

It is also agreed that when said theatre is open to the public for business, or used by the public, that said lessee, in addition to the increased rent, is to pay its proportionate share of the monthly cost of gas used in heating the entire building owned by Lessor on West Ash Street, which by agreement is fixed at Forty-five Per cent thereof, and same shall be paid each month of occupancy, as Lessor pays the gas bill; and if gas is abandoned for heating, then the same percent of cost of heating same by other methods is to be paid as aforesaid.

It is also agreed that this lease is of no effect and not binding on either party until said lessee has indemnified said lessor for the payment of the rent and fuel bills, which indemnity, is to be to the satisfaction of said lessor.

[fol. 7493] To Have and to Hold the same, with appurtenances, unto the said lessee, its successors and assigns, for and during the full term of Five years next ensuing from the first day of March in the year of our Lord nineteen hundred and forty and to be fully completed and ended on the 28th day of February in the year of our Lord —— Forty-five.

Yielding and Paying therefor, during the said term, the sum of One Hundred Dollars ($100.00) per month, payable, in advance as long as said Theatre is not opened to the public, and if opened to the public an additional sum of

Twenty-five Dollars ($25.00) per month is to be paid in advance each and every month same is opened, and in addition thereto to pay the heat as above agreed upon.

[fols. 7494-7496] Duly authorized by resolution of their respective Boards of Directors,

In Witness Whereof, The said lessor and lessee have hereunto set their hands to duplicate copies on the 10th day of January, in the year of our Lord nineteen hundred and Forty.

The Piqua National Bank & Trust Co., Trustee under the will of Stanhope Boal, Deceased, by Geo. W. Peffer, Its Trust Officer. Belpik Theatre Corporation, by John A. May, Pres.

Signed and acknowledged in presence of: E. N. Myers, Wm. M. McCulloch, Howard M. Antevil, Elizabeth M. Howard.

[fol. 7497] **Exhibit 915**

Duplicate Original

Lease

and

Option to Purchase

Robert A. Landry, Individually
and Robert A. Landry and Mildred C. Madlin as
Executors of the Estate of Ruby F. Castle, deceased

To

Schine Chain Theatres, Inc.

Star Theatre

Ogdensburg, N. Y.

Commencing September 6th, 1941
Expiring September 6th, 1946, at noon.

[fols. 7498-7499]

Robert A. Landry
Attorney and Counselor at Law
806 Ford Street Ogdensburg, N. Y.

October 27, 1941

Schine Chain Theatres, Inc.
Gloversville, N. Y.

Re: Star (Pontiac), Ogdensburg, N. Y.

Gentlemen:

Referring to the new lease covering the above mentioned theatre, relative to the temporary reduction of rental, I took this matter up with Mildred and we hereby agree to accept a reduction of $75.00 per month on this lease, starting November 1, 1941, until such time as local business conditions warrant the payment of the full rental in said lease stipulated. However, except as to this rental modification, all of the other terms, provisions and conditions of the said lease shall continue to remain in full force and effect.

With kindest regards to yourself and my other friends in your organization, I am,

Very truly yours, Robert A. Landry.

RAL:N.

[fol. 7500] 5. The lessee covenants and agrees to pay as rental for the herein described premises the sum of Four Thousand ($4,000.00) per year, payable in equal monthly installments of Three Hundred Thirty-three Dollars and Thirty-three cents ($333.33) in advance, on the first day of each month during the said term. The lessee shall also pay all water rents or charges for water used on said premises.

6. The lessors covenant and agree to pay all taxes and assessments which may be levied or assessed on said real estate during the term of this lease, but should the average of the real property taxes levied and assessed against the said Star Theatre exceed the sum of Six Hundred Ninety-eight Dollars and eighty-five cents ($698.85) (being the average of the taxes and assessments on said Star Theatre for the years 1927-1931 inclusive), then it is agreed that each of the parties hereto shall pay one-half of the amount of taxes in excess of said sum of Six Hundred Ninety-eight Dollars and Eighty-five cents ($698.85).

[fols. 7501-7505] 7. The premises hereby leased may be used only for lawful theatrical purposes, including the exhibition of moving picture- and vaudeville performances.

[fols. 7506-7508] 16. The lessee further covenants and agrees that it will maintain heat in said Star Theatre building from the first day of October to the first day of May in each year at not less than 50° F. for the purpose of protecting the property, and contents in said building and will protect the interior of the building and the equipment therein and not permit the same to be damaged by frost or the accumulation of moisture.

[fols. 7509-7512] 24. It is hereby further agreed that the lessee shall have the right and privilege of purchasing the premises and property hereby leased for the sum of Forty Thousand Dollars ($40,000,00); that such right and privilege to purchase shall be exercisable only as of the sixth day of September of any year of the term of this lease; that should the lessee elect, to exercise its option to purchase said property as herein provided, it shall, by notice in writing, notify the lessors of such intention, on or before the 6th day of September of the preceding year.

[fols. 7513-7514] EXHIBIT 916

Lease

and

Option to Purchase

Ogdensburg Strand Theatre Co. Inc.

to

Schine Chain Theatres, Inc.

Star Theatre

Ogdensburg, N. Y.

Dated: Sept. 6th, 1936

Expiring: Sept. 5th, 1941

[fols. 7515-7519] 4. The term of this lease shall be for a period of five (5) years, commencing on the sixth day of September, 1936, and extending to and expiring on the fifth day of September, 1941, at twelve (12) o'clock noon.

5. The lessee covenants and agrees to pay as rental for the herein-described premises the sum of Three Thousand Six Hundred Dollars ($3,600.00) per year, payable in equal monthly installments of Three Hundred Dollars ($300.00) in advance, on the first day of each month during the said term. The lessee shall also pay all water rents or charges for water used on said premises.

6. The lessee covenants and agrees to pay all taxes and assessments which may be levied or assessed on said real estate during the term of this lease.

7. The premises hereby ~~leased may be used only~~ for lawful theatrical purposes, including the exhibition of moving pictures and vaudeville performances.

[fols. 7520-7522] 16. The lessee further covenants and agrees that it will maintain heat in said Star Theatre building from the first day of October to the first day of May in each year at not less than 50° F. for the purpose of protecting the property, pipe organ and other contents in said building and will protect the interior of the building and the equipment therein and not permit the same to be damaged by frost or the accumulation of moisture.

[fols. 7523-7524] 24. It is hereby further agreed that the lessee shall have the right and privilege of purchasing the premises and property hereby leased for the sum of Forty Thousand Dollars ($40,000.00); that such right and privilege to purchase shall be exercisable only as of the sixth day of September of any year of the term of this lease; that should the lessee elect, to exercise its option to purchase said property as herein provided, it shall, by notice in writing, notify the lessor of such intention, on or before the 6th day of September of the preceding year.

[fol. 7525] STATE OF NEW YORK,
County of Saint Lawrence, ss:

On this 20th day of August, in the year One Thousand Nine Hundred and Thirty-six, before me, the subscriber, personally appeared Mildred C. Madlin, to me known who, being by me duly sworn, did depose and say that she resides in Ogdensburg; that she is the Vice President of Ogdensburg Strand Theater Company, Inc., the corporation described in and which executed the foregoing Instrument; that he knows the seal of said corporation; that the seal affixed to said Instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

Howard G. Murray, Notary Public. (Seal.)

[fols. 7525-1–7525-2] **Exhibit 917**

Triplicate

Lease Between Ogdensburg Strand Theater Company, Inc., and Schine Chain Theatres, Inc., Star Theatre. Dated September 6, 1926.

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[fols. 7525-3–7525-7] 4. The term of this lease shall be for a period of ten (10) years, commencing on the sixth day of September, 1926, and extending to and expiring on the fifth day of September, 1936, at twelve (12) o'clock noon.

5. The lessee covenants and agrees to pay as rental for the herein-described premises the sum of Four Thousand ($4,000.00) Dollars per year, payable in equal monthly installments of $333.33 in advance, on the first day of each month during the said term. Payments shall be made in gold coin of the United States of America of the present standard of weight and fineness, or by New York Exchange, if required by the lessor, which requirement shall be made by thirty days' notice in writing to the lessee. The lessee shall also pay all water rents or charges for water used on said premises.

6. The lessor covenants and agrees to pay all taxes and assessments which may be levied or assessed on said real estate during the first five years of the term hereof, but should the real property taxes levied and assessed against said Star Theatre after the first five years of the term hereof be increased, it is agreed that the parties hereto shall pay such increase in the taxes equally.

7. The premises hereby leased may be used only for lawful theatrical purposes, including the exhibition of moving pictures and vaudeville performances.

• • • • • • •

[fols. 7525-8–7525-10] 16. The lessee further covenants and agrees that it will maintain heat in said Star theatre building from the first day of October to the first day of May in each year at not less than 50° F. for the purpose of protecting the property, pipe organ and other contents in said building and will protect the interior of the building and the equipment therein and not permit the same to be damaged by frost or the accumulation of moisture.

• • • • • • •

[fols. 7525-11–7525-13] 24. It is hereby further agreed that the lessee shall have the right and privilege of purchasing the premises and property hereby leased at the expiration of the term of this lease for the sum of Forty Thousand ($40,000.00) Dollars, and in the event of the lessee exercising its option to purchase said premises, it shall serve upon the lessor at least ninety (90) days before the expiration of this lease a written notice of its election to exercise said option and, in the event of the exercise of said option, the lessor agrees to execute and deliver to the lessor upon payment of said purchase price a warranty deed conveying a good and marketable title to said premises free and clear from all liens and encumbrances, and furnish an abstract of title of the said premises certified by the clerk of the county of Saint Lawrence showing such good and marketable title.

• • • • • • •

[fol. 7526] **Exhibit 918**

This Lease Made and Concluded at Norwalk, Ohio, this 31st day of October, 1934, by and between Henry Pohl and Rebecca Pohl, of Norwalk, Ohio, the Lessors, and J. Steel, of Oberlin, Ohio, and William K. Selman, of Cleveland, Ohio, the Lessees, Witnesseth:

• • • • • • •

To Have and To Hold the same with the appurtenances thereunto belonging for the full term of ten (10) years, beginning on the 1st day of January, 1935, and ending on the 31st day of December, 1944, for the purpose of conducting, operating, and exhibiting therein motion pictures and other theatrical shows, in connection with exhibiting motion and talking pictures. Yielding and Paying therefor during the term aforesaid the yearly rental of Forty-two Hundred ($4200.00) dollars, payable in equal monthly installments of Three Hundred fifty ($350.00) dollars, payable in advance between the 1st and 10th of each month at the business address of said Henry Pohl, Norwalk, Ohio, or such other address as may be directed by him. Said rental as aforesaid shall be a guaranteed rental for said premises, payable as aforesaid, but in the event that ten per cent. (10%) of the yearly gross receipts, less Federal and State tax on admissions, from the operation in said building of said motion picture and theatre business as aforesaid, shall exceed the yearly guaranteed rent of forty- [fols. 7527-7535] two hundred ($4200.00) dollars, then Lessees shall pay to Lessors at the end of each year, the excess of the amount of ten per cent. of said gross receipts, less Federal and State tax on admissions, above said guaranteed yearly rental of $4200.00. Said Lessees shall submit to Lessors quarterly statements showing the gross receipts from said business and Lessors shall have the right to inspect the books of Lessees and make such other check of the gross receipts of said motion picture and theatre business aforesaid, as to them seem reasonable for determining the amount of said gross receipts.

• • • • • • •

3. That they will make all repairs and do all decorating to the interior of the building on said premises and that they will indemnify and save harmless said Lessors from and against all liens or damages by reason of any repairs or improvements which may be made by said Lessees on said premises.

4. Lessees agree to remodel and equip building as a motion picture theatre and lease contains a provision for renewal at increased rental.

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[fols. 7536-7539] **Exhibit 919**

Cancellation of Steele and Selman lease of October 31, 1934, covering Forum theatre in Norwalk, Ohio. Cancellation dated January 5, 1942.

[fols. 7540-7543] **Exhibit 920**

Lease from G. W. Croucher to Newark Theatres, Inc., dated April 15, 1926, of the Crescent theatre in Newark, New York, for 5 years from April 15, 1926 at annual rental of $4750.

[fol. 7544] **Exhibit 921**

This Agreement made the 15th day of May, 1934, between Rose E. Croucher of the Village of Newark, New York, party of the first part, and Dominion Operating Co., Ltd., of Gloversville, New York, party of the second part,

Witnesseth, that the party of the first part has agreed to lease and hereby does lease to the party of the second part and the party of the second part has agreed to take and hereby does take from the party of the first part, the following premises, viz:

The entire building commonly known as the Newark Theatre building and located on the south side of East Union Street in the village of Newark, New York, with the privileges and appurtenances for and during the term of two years from the first day of October, 1934, which term will end on the 30th day of September, 1936.

And the party of the second part covenants and agrees that they will pay to the party of the first part for the use of said premises the annual rental of Two Thousand Six Hundred ($2600.00) Dollars to be paid in twelve equal monthly installments in advance. And provided further if said party of the second part shall fail to pay said rent or any part thereof when the same shall become due, it is agreed that the party of the first part may sue for the same or reenter said premises or resort to any legal remedy.

The party of the first part further agrees that the theatre as leased shall be fully equipped as a theatre in running order with sound devise, chairs and all the usual equipment of such a theatre.

The party of the first part also agrees to pay all taxes to be assessed on said premises during the term of this lease including the water tax, and she is to pay all insurance on the premises except liability insurance, which second party is to carry.

It is further expressly agreed between the parties that the party of the second part shall not sub-let said premises, nor assign this lease without the written consent of the party of the first part.

It is further expressly agreed between the parties that if the party of the second part shall allow the premises to become vacant or unoccupied during the term of this lease, that they will pay to first party an additional rental of One [fol. 7545] Hundred Dollars per year to be used to keep the building heated.

It is further expressly agreed between the parties that at any time during the term of this lease, the party of the second part shall have the privilege of purchasing said premises for the sum of Fifty-eight Thousand Dollars.

In Witness Whereof, the said parties have hereunto set their hands and subscribed their names this 15th day of May, 1934.

Rose E. Croucher.

Dominion Operating Co., Ltd. By John A. May, Comptroller.

[fols. 7546-7547] **Exhibit 922**

It is hereby agreed by and between Rose E. Croucher, of Newark, New York, and Dominion Operating Co., Ltd., of Gloversville, New York, that the lease dated May 15th, 1934, between the said parties covering premises known as the Newark Theatre Building in Newark, New York, shall be extended for a term of five years from the first day of October, 1936, to the 30th day of September, 1941, at a yearly rental of Three Thousand Dollars to be paid in twelve equal monthly installments in advance.

Dated, May 14, 1936.

Rose E. Croucher.

Dominion Operating Co., Ltd. By John A. May, Comptroller.

[fols. 7548-7562] **Exhibit 923**

Lease by J. J. Lannigan to Hi-Art Theatre Corporation, dated January 8, 1926, of the Hi-Art theatre in Lockport, New York, for 10 years from January 10, 1926, at $9,500 per year for the first 5 years and $10,000 per year for the second 5 years.

* * * * * * *

[fol. 7563] In Witness Whereof, the lessor has hereunto placed his hand and seal, and the lessee has caused these presents to be executed by its officers thereunto duly authorized, all the day and year first above written.

(Signed) John J. Lannigan (L.S.)

Hi-Art Theatre Corporation. By Austin C. Keough, President.

Attest: F. L. Metzler, Secretary. (Seal.)

[fol. 7564] State of New York,
County of New York, ss:

Whereas, New England Theatres, Inc., a Delaware Corporation, is engaged in the business of exhibiting motion pictures and other theatrical productions and to a large extent conducts its business through subsidiary corporations, including Hi-Art Theatre Corporation, a New York Corporation, all of the issued and outstanding stock of said Hi-Art Theatre Corporation being owned by New England Theatres, Inc.; and

Whereas, J. J. Lannigan and said Hi-Art Theatre Corporation on the 8th day of January, 1926 entered into an Indenture of Lease whereby and whereunder J. J. Lannigan leased to the Hi-Art Theatre Corporation the "Hi-Art Theatre' in the City of Lockport, County of Niagara, State of New York, together with lobby entrance thereto, permanent fixtures therein and appurtenances thereof, as are more fully described in said Indenture, for a term beginning on the 10th day of January, 1926 and to continue for a full term of ten (10) years thereafter, upon the terms and rentals set forth in said Indenture, all of which will more fully appear by reference to said indenture.

Now, therefore, in consideration of the premises and the sum of one ($1.00) dollars, to each in hand paid, said New England Theatres Inc. does hereby covenant and guarantee to said J. J. Lannigan that said Hi-Art Theatre Corporation will comply with all the terms and conditions contained in said Indenture of Lease, and will perform all the covenants and agreements therein, and particularly will pay the rents in the amounts and at the times as stipulated in said Indenture of Lease, and should said Hi-Art Theatre Corporation at any time fail to pay any installment of [fols. 7565-7568] rent or to perform any other agreement or covenant set forth in said Indenture of Lease, New England Theatres, Inc. does hereby covenant that upon notice it will pay such unpaid rent, and will discharge and make good any breach of any agreement or covenant as aforesaid.

It is understood that the failure to notify said New England Theatres, Inc. of any such breach shall in no way release said New England Theatres, Inc., or impair its liability under this agreement.

This agreement is attached to said Indenture of Lease, the terms of which are to be regarded as though they were more fully set forth in this contract of guaranty.

New England Theatres, Inc., in pursuance of a resolution of its Board of Directors at a meeting held on the 8th day of January, 1926, has caused this agreement to be executed by its proper officers, and to be sealed with its seal this 8th day of January, 1926.

New England Theatres, Inc., by Harold B. Franklin, President.

Attest: F. L. Metzler, Secretary. (Seal.)

[fols. 7569-7587] Exhibit 924

Lease by J. J. Lannigan to Schine Theatrical Co. as of May 25, 1933 of Hi-Art theatre in Lockport, New York, for 2 years 10 months from March 10, 1933 at $4,000 a year.

[fols. 7588-7590] Exhibit 925

Whereas heretofore and on the 25th day of May, 1933, a certain Indenture of Lease was made and executed between J. J. Lanigan, of the City of Buffalo, Erie County, New York, and Schine Theatrical Co., Inc., a New York Corporation, which said Lease was for a term of two years and ten months commencing on the 10th day of March, 1933 and ending on the 9th day of January, 1936, and

Whereas, the said J. J. Lanigan is now desirous of giving and granting to Schine Theatrical Co., Inc. an option to extend and renew said Lease for a longer period of time.

Now, therefore, in consideration of the sum of One Dollar ($1.00) to J. J. Lanigan in hand paid, the receipt of which is hereby acknowledged, does hereby give and grant to Schine Theatrical Co., Inc. the right and privilege of renewing and extending the said Indenture of Lease above referred to for a period of five years from and after the 9th day of January 1936, and on all the terms and conditions therein contained; provided, however, that said Schine Theatrical Co., Inc. shall take advantage of said option and exercise its rights hereunder by giving written notice to said J. J. Lanigan by registered mail not later than the 9th day of January, 1935. In the event that notice is not given by Schine Theatrical Co., Inc. to exercise the optional privileges herein granted, then and in that event this option is to be null, void and of no effect.

Witness: the hand and seal of said J. J. Lanigan, this 5th day of October, 1933.

J. J. Lanigan. L.S.

[fol. 7591] **Exhibit 926**

Agreement made and entered into this 31st day of December, 1937, by and between J. J. Lanigan, of Buffalo, Erie County, New York, hereinafter called the "Lessor", party of the first part, and Schine Theatrical Co., Inc., a New York Corporation, hereinafter called the "Lessee", party of the second part,

Witnesseth:

Whereas, the Lessor heretofore rented and leased unto the Lessee those certain premises known as the Hi-Art Theatre, situate at No. 11 West Main Street, in the City of Lockport, Niagara County, New York, under and by virtue of that certain indenture of lease bearing date of May 25, 1933, and duly recorded in the Office of the Clerk of Niagara County, and

Whereas, by instrument executed by the Lessor on October 5, 1933, and duly recorded in the Office of the Clerk of Niagara County, the said Lessor granted to the Lessee an option to renew and extend said lease for a period of five (5) years from and after the expiration date thereof, to-wit, January 9, 1936, which said option was duly exercised by the Lessee on December 5, 1934, by notice in writing addressed to the Lessor and duly received by it, and

Whereas, the parties hereto desire to extend the term of said lease, as so extended, for a further period of ten (10) years, from and after the present expiration date thereof, to wit, January 9, 1941,

Now, therefore, in consideration of the premises, and of the mutual covenants, promises and agreements herein contained, the parties hereto have agreed and do hereby agree as follows:

First: The term of said lease covering the said Hi-Art Theatre, Lockport, New York, as extended by the exercise by the Lessee of the option granted to it by the Lessor, is hereby extended for a further period of ten (10) years [fol. 7592] from and after the 9th day of January, 1941, to and including the 9th day of January, 1951, rent fixed at $5,500 a year.

[fols. 7593-7596] In Witness Whereof, the parties hereto have caused these presents to be executed under seal the day and year first above written.

J. J. Lanigan (L.S.). Schine Theatrical Co., Inc., by John A. May, Pres.

[fol. 7597] **Exhibit 927**

Lease and Agreement

This Lease, made and executed by and between the Odd Fellows' Temple Association, a domestic corporation, of the City of Little Falls, County of Herkimer and State of New York, as owner and party of the first part, and Schine Theatrical Co., Inc., a domestic corporation, having its principal office in the City of Gloversville, County of Fulton and State of New York, as tenant and party of the second part, is of these terms;

In consideration of the rents and covenants hereinafter expressed, said party of the first part has leased and does hereby lease to the said party of the second part, and the said party of the second part does hereby take as such tenant the following premises, viz: The auditorium room and stage on the main floor of the Odd Fellows Temple building, located on the westerly side of William Street, in said City of Little Falls, New York, together with the use of the toilet room and check room on said main floor of said building, and the emergency exit running through the said building to the westerly side of William Street, all for and during the term of five years beginning on the 1st day of July, 1936, and ending on the 30th day of June, 1941.

Said party of the second part covenants and agrees that it will take and does hereby take said demised premises and will pay to said party of the first part the sum of Twenty-five Hundred Dollars ($2,500.00) per year for the five year term of said agreement, said rent to be paid in equal monthly installments, in advance, on the 1st day of each month during the whole term of said five years.

It is expressly understood and agreed that said premises are hereby leased to second party for and to be used by them for theatrical purposes and uses, such as, vaudeville, [fol. 7598] stock companies, motion picture shows and other theatrical performances and lectures, and for no other purposes, and that all performances and shows so given by the party of the second part therein shall be orderly and moral, and that the party of the second part shall conduct said shows and performances in an orderly and proper manner and conform strictly in every respect to the laws of the State of New York, and with the rules, regulations and ordinances of the City of Little Falls, New York, and its various boards and duly appointed officers, it being expressly understood and agreed that any breach of the said conditions and covenants on the part of the party of the second part, its agents, servants and/or employees, shall, at the election of the party of the first part, immediately work a forfeiture and cancellation of this lease and agreement. Said party of the first part shall thereupon have the right and privilege to declare this lease ended and terminated, and to remove party of the second part from said premises.

It is understood and agreed that the party of the first part shall furnish heat to a comfortable degree for said auditorium and stage, and dressing rooms, provided such heat is necessary, and provided also that said theatre is being used for the purposes herein mentioned.

It is also understood and agreed that the party of the second part shall have the use in common with the party of the first part of the main hall for and as an entrance to said auditorium.

It is also understood and agreed that the party of the second part shall be entitled and have the right to sub-let the above described premises, it being expressly understood and agreed, however, that, in no event, shall said party of the second part be relieved from the payment of rent, as herein provided, or in any wise released from any of the covenants herein contained.

[fols. 7599-7600] It is also understood and agreed that all improvements and betterments to said leased premises made by the said party of the second part are to remain thereon at the expiration of this lease and shall become the property of the first party, but this provision is not to be applied to business or trade fixtures or appliances or furnishings of second party.

[fol. 7601] It is understood and agreed that at the time of the execution of this instrument, said party of the second part hereby agrees to pay the sum of Twelve Hundred and Fifty Dollars ($1,250.00), being six months' rental, in advance, for said premises.

Said party of the second part shall not be required to conduct motion pictures or shows in said theatre at any particular time. It may do so at such times during the term of said lease as second party so desires.

The party of the second part is hereby given the right [fols. 7602-7606] and privilege of renewing and continuing this lease and agreement for an additional period of five years from the 1st day of July, 1941, upon all the same terms and conditions herein stated, upon said second party giving to said first party written notice of such intention at least ninety days prior to the expiration of the term of the lease herein expressed.

[fol. 7607] **Exhibit 928**

This Agreement

Made this 8th day of April, 1942, between the United Odd Fellows Association of Ilion, a domestic corporation with offices in the Village of Ilion, Herkimer County, New York, herein designated as Lessor, and Schine Ilion Corporation, a domestic corporation with offices in the City of Gloversville, Fulton County, New York, herein designated as Lessee, Witnesseth:

That the Lessor hereby leases to the Lessee, and the Lessee does hereby hire from the Lessor, a part or portion of the building known as the Temple Building or Odd Fellows Building, at the northwest corner of First and Morgan Streets, in the said Village of Ilion, as follows:

That part or portion of the building now and heretofore used for theatre purposes, including the auditorium, stage, dressing rooms and all other space or rooms used for theatrical purposes; also, the entire second floor of said building including any rooms or offices thereon; and also use of ticket office, lobby and all entrances and exits connected with the auditorium or any other part or portion of the said theatre, for the term of five years, to commence on May 5th, 1942 and to end on May 4th, 1947.

The Lessee hereby covenants to pay to the Lessor a rental of Seventeen Hundred Fifty ($1750.00) Dollars per annum, payable in equal quarterly installments in advance.

The Lessee hereby agrees to furnish the necessary and proper amount of heat for heating the entire building at its own expense.

It is hereby agreed that the Lessor shall furnish and provide a fireman to properly heat said building and that the Lessee shall pay towards his salary the sum of Five Dollars ($5.00) per week each and every week during said term.

The Lessee shall not be liable for the damages of not [fols. 7608-7609] properly heating said building, unless it shall fail promptly to supply the fuel for said heating purposes.

The Lessee shall pay one-half of the expense of lighting a portion of said building as shown by the meter thereof numbered 1290 in said building.

The Lessor hereby agrees to pay all taxes and water rents upon the aforesaid premises.

Privilege is hereby given to the Lessee to sub-let or sublease the theatre, upon condition, however, that the Lessee remains primarily liable to the Lessor for payment of rental and compliance with other terms and conditions of this lease.

In case the Lessor should sell said building or remodel the part thereof herein demised, the Lessor promises and agrees that no part of said building shall be used for theatre or theatrical purposes.

In case the Lessee should desire to make any alterations or repairs to the premises herein demised, it may do so upon the consent of the Lessor obtained for that purpose, and such alterations and repairs, if made, cannot be changed without consent, and shall be the sole property of the Lessor.

The Lessee covenants that at the expiration of said term it will surrender up said premises to the Lessor in as good condition as now, necessary wear and damage by the elements excepted.

In Witness Whereof, the parties hereto have caused these presents to be executed by their duly authorized officers, in duplicate, of even date and tenor, and their corporate seals to be affixed thereto, the day and year first above written.

United Odd Fellows Association of Ilion, by Chas. W. Wright, Treasurer; Schine Ilion Corporation, by John A. May, President.

[fol. 7610] **Exhibit 929**

Witnesseth, That the first party hath let and leased and hereby doth let and lease unto the second party and his heirs, executors and administrators, the messuage or tenement situated in the City of Fostoria, County of Seneca, and State of Ohio, known and described as follows:

Being the first floor and basement of the business room located at Number 115 North Main Street, Fostoria, Seneca County, Ohio, together with the front, ticket booth, etc., now a part of said room, and also any other equipment or fixtures located in or used in connection with the picture show business [now] conducted in said room, and belonging to the parties of the first part.

[fol. 7611] To Have and to Hold the same for the term of Five years commencing on the First day of July A.D. one thousand nine hundred and Thirty-five, and ending on the Thirtieth day of June A.D. one thousand nine hundred and Forty, upon the terms and conditions herein mentioned.

Said second party doth hereby agree to pay the sum of One Thousand Five Hundred Dollars ($1500.00) rent per year during the continuance of this lease, which rent is to be paid by the second party in equal consecutive monthly installments of $125.00 each, payable on the First day of each month, in advance, from the commencement of the term of this lease.

As a part of the consideration for this lease, the second party agrees to furnish his own fuel, light, power and water used in the business, conducted on the leased premises * * * Second party also agrees to make all necessary repairs, of inside decorations, at his own cost and expense.

The right and option is also given to second party to build onto said room, and extend the same from the rear of the present room to the alley, but if such extension is made, the same shall be of brick walls to conform to and match the walls of the present room, and second party shall pay all of the expenses thereof. If such extension is made, then on forfeiture of this lease, or on the termination of the same, the improvements so made in such extension shall become the property of the parties of the first part.

Party of the second part also agrees to install a new furnace in place of the furnace now located in said building, and on the termination of this lease, or forfeiture of the same for any cause whatsoever, such furnace shall become the property of the parties of the first part.

Party of the second part agrees to install new seats in said theatre room.

The party of the second part hereby gives and grants to the first parties a lien on all of the property and equipment owned by the party of the second part in said room, or which he may hereafter place therein, as security for the payment of the rents due or hereafter to become due under the terms of this lease. It is expressly understood and agreed, however, that any equipment belonging to third parties, and which it is usual to lease or rent for picture show purposes shall not be covered by the lien hereby created.

Party of the second part agrees to furnish and deliver to the first parties and to Don O. Mickey and family, free passes for all shows conducted or held in said room, during the term of this lease.

And it is mutually covenanted and agreed, by and between the parties hereto, that the aforesaid demised premises shall be used and occupied in a careful, safe and proper manner by the said second party; that all fires therein to be kept shall be safely secured, kept and conducted; that the premises aforesaid, or any part thereof, shall not be underlet, nor shall this lease be assigned, nor shall liquor, whether spirituous, vinous or fermented, be sold either at wholesale or retail on said premises, without the consent, in writing, of the first party, under pain of forfeiting the residue of the term hereby granted, at the election of the first party.

That the second party will deliver up and surrender to the first party, or to the heirs, executors, administrators or assigns of said first party, the possession of the premises hereby leased, at the expiration of the term aforesaid, in as good condition and repair as the same shall be in at the commencement of said term, the natural wear and decay, and the destruction or damage by the elements or electricity, or by any act of God, or by means by invasion, insurrection, riot or civil commotion, or of any military or usurped power, only excepted.

That if the rent aforesaid shall at any time be in arrear and unpaid, the first party may avoid this lease and enter into possession of the demised premises; and sue for and recover all the rent due, at the rate aforesaid: up to the time of such entry: every demand for rent, made after it falls due, shall have the same effect in law as if made on the day and at the time it falls due, any law of the land to the contrary notwithstanding.

That if any waste be committed upon or unnecessary damage be done to the demised premises, the first party may, for that cause, enter upon the same and avoid this lease, and bring his action for such waste or damage; or he may bring his action and recover for such damage, without avoiding this lease, at his election.

It is agreed, by and between the parties to this lease, that in case any building now standing on said premises shall be destroyed or injured by the elements, or other cause, so as to be unfit for occupancy, without any fault or neglect on the part of the second party, said second party shall not be liable to pay rent for said premises from and and after the time the said second party shall have surrendered possession of said premises to said first party.

[fols. 7612-7613] It is expressly agreed by and between the parties hereto, for and as a part of the consideration hereof that the parties of the first part will not, directly or indirectly, let, lease or rent any real estate owned or controlled by them, within 500 feet of the premises herein above described, for theatre or picture show purposes, during the time this lease shall be effective.

[fols. 7614-7617] EXHIBIT 930

Lease of June 11, 1940 to the Fostoria Theatre Corporation, for 5 years from July 1, 1940 at $1,500 a year covering the premises.

Witnesseth, That the first parties have let and leased and hereby do let and lease unto the second party and its successors and assigns, the messuage or tenement situated in the City of Fostoria, County of Seneca, and State of Ohio, known and described as follows:

> Being the first floor and basement of the business room located at Number 115 North Main Street, Fostoria, Seneca County, Ohio, together with the front, ticket booth, etc., now a part of said room, and also any other equipment or fixtures located in or used in connection with the picture show business conducted in said room, and belonging to the parties of the first part.

[fol. 7618] 12. It is expressly agreed by and between the parties hereto, for and as a part of the consideration hereof, that first parties will not, directly or indirectly, let, lease or rent any real estate owned or controlled by them, within 500 feet of the premises herein above described, for theatre or picture show purposes, during the time this lease shall be effective.

14. First parties hereby grant unto second party the right and option to extend the term of this lease for a period of five years from and after the expiration date hereof, at the rental and upon the terms and conditions herein contained. Said option may be exercised by second party at any time prior to June 30, 1945, by notice in writing addressed to first parties.

In Witness Whereof, the parties to this lease set their [fols. 7619-7620] hands to duplicates hereof, the day and year first above written.

Charles L. Mickey (L.S.), Claude W. Mickey (L.S.), The Fostoria Theatre Corporation, by John A. May, Pres.

Signed and acknowledged in presence of: Ruth E. Briggs, R. C. Quincy, Howard M. Antevil, F. N. Thompson.

[fol. 7621] **Exhibit 931**

Lease of April 1, 1936 from National City Bank of Cleveland, Trustee to Crawford Theatre Company of the Southern theatre in Bucyrus, Ohio, for 5 years from April 1, 1936.

The Lessee hereby covenants and agrees to pay to the Lessor as rent for said premises the sum of Seven Thousand Seven Hundred Forty Dollars ($7,740.00), payable [fol. 7622] in installments as follows:

> $100.00 per month from April 1, 1936 to March 31, 1937; $125.00 per month from April 1, 1937 to March 31, 1938; $135.00 per month from April 1, 1938 to March 31, 1940; $150.00 per month from April 1, 1940 to March 31, 1941, and in addition thereto, a certain bonus as hereinafter set forth; said above rental to be due and payable as follows: The rental for the first month to be paid in advance, receipt of which is hereby acknowledged, and thereafter to be paid either monthly in advance, or in weekly payments, at the option of the Lessee. In event Lessee elects to make weekly payments, the same shall be made in the month prior to the month for which said rental accrues.

As further consideration for said lease, and further rent for said premises, Lessee agrees to pay a bonus at the end of each year's occupancy of Ten Percentum (10%) of the aggregate gross receipts from the operation of said theatre for said preceding year, over and above receipts in the sum of Eighteen Thousand Two Hundred Dollars ($18,200.00) for the first year of said occupancy; Twenty Thousand Eight Hundred Dollars ($20,800.00) for the second, third and fourth years of said occupancy, and Twenty-six Thousand Dollars ($26,000.00) for the fifth year of said occupancy; said bonus to be payable within sixty (60) days of the close of each year's occupancy. The Lessee covenants and agrees to keep accurate records of all receipts, which shall be open at all reasonable times to the inspection of the lessor or any authorized agent of Lessor. In computing gross receipts, whenever an entertainment is shown on a percentage basis, only that percent of the receipts from the same accruing to Lessee shall be considered as gross receipts. Also, in computing said gross receipts, there shall be deducted from the box office receipts, all amounts payable to the United States Government, or the State of

Ohio, or local government as taxes on admission. Each installment or payment of rent provided for herein shall be payable to John C. Carroll, Agent for The National City Bank of Cleveland, Trustee, at his office in the Carroll Building, Bucyrus, Ohio, or at such other place or places which may be designated in writing from time to time by the Lessor.

The Lessee is hereby given the privilege of renewing this lease for a term of five (5) years, commencing on the expiration of the term aforesaid, and ending on the 31st day of March, 1946, for a yearly rental of Two Thousand Four Hundred Dollars ($2,400.00), payable in monthly installments of Two Hundred Dollars ($200.00) each, payable in advance on the first day of each and every month during [fols. 7623-7630] said term, or at the option of Lessee in weekly instal-ments, as above provided, plus a bonus on gross receipts computed and payable as above provided, of Ten Percentus (10%) on the gross receipts for each year of occupancy over and above the sum of Twenty-six Thousand Dollars ($26,000.00) under and subject to all the other covenants, provisions, terms, provises and conditions of this lease; provided, however, that notice of the exercise of such option shall be given by said Lessee to said Lessor at least thirty (30) days before the expiration of the term of this lease. And provided further that said option may be exercised only in the event that all rents have been fully paid, and all covenants, agreements, provisions, terms and conditions of this lease on the part of the Lessee to be performed, kept and observed have been fully performed, kept and observed.

[fols. 7631-7636] **Exhibit 932**

Lease of April 1, 1941, to Crawford Theatre Company of the Southern theatre in Bucyrus, Ohio, for 2 years from April 1, 1941 at $2,400 a year.

• • • • • • •

[fols. 7637-7639] In Witness Whereof, the parties to this lease have hereunto set their hands and seals to duplicates hereof this 1st day of April, A. D. 1941.

> The National City Bank of Cleveland, Trustee of the Phoebe S. Carroll et al. Trust, by —— ——, Vice President, and —— ——, Estates Trust Officer, Lessor. The Crawford Theatre Company, by John A. May, Pres., Lessee.

Signed and Acknowledged in the Presence of: L. M. Smith, Ray C. Pease, Howard M. Antevil, Elizabeth M. Howard.

[fols. 7640-7641] Exhibit 933

This contract of lease made this 1st day of August, 1933 by and between The Opera Block Company of Bellefontaine, Ohio, a corporation organized under the laws of the State of Ohio, party of the first part, and The Schine Theatrical Company, Inc., a corporation organized under the laws of the State of New York, authorized to do business in the State of Ohio, party of the second part, Witnesseth:

That said party of the first part does hereby demise, let and lease unto said party of the second part, the following described premises:

> Situated in the City of Bellefontaine, County of Logan and State of Ohio, and known and described as follows, to-wit: Part of the property of said Opera Block Company located in Bellefontaine, Ohio, and being the Opera House on East Court Street in said City;

together with all the entrances and exits connected therewith, and also all machinery and fixtures owned by said Opera Block Company and located and used in connection with said Opera House. Said Opera House, fixtures and premises hereby leased to be used only as a moving picture theater and for other proper entertainments and amusements which do not interfere with or violate any laws of the State of Ohio or ordinances of the City of Bellefontaine, or violate any rules and regulations of Fire Marshall's Department of the State of Ohio.

To have and to hold the same with all the appurtenances thereunto belonging for the term of one year beginning on the 1st day of September, 1933 and ending on the 31st day of August, 1934, yielding and paying therefore for the said term a yearly rental of Twelve Hundred Dollars ($1200.00) payable in equal monthly installments of $100.00 to be paid in advance beginning September 1, 1933 and subsequent installments on the 1st of each and every succeeding month thereafter and ending with and including August 1st, 1934.

The party of the second part, its successors and assigns, does hereby covenant and agree with said party of the first part as follows:

* * * * * * *

[fol. 7642] Party of the first part hereby grants to party of the second part an option to renew this lease for the term of one year at the same rental and two additional years at an annual rental to be agreed upon by and between the parties to this lease at the time of the exercise of this option; notice of the exercise of this option shall be given to party of the first part by party of the second part in writing at [fols. 7643-7645] least ninety days prior to the expiration of this lease.

* * * * * * *

[fols. 7646-7652] **Exhibit 934**

Lease of August 31, 1937 to Schine Theatrical Company, Inc. of the Opera House in Bellefontaine, Ohio, for one year from September 1, 1937 at $1,200.

* * * * * * *

[fols. 7653-7657] **Exhibit 935**

Lease of August 31, 1938 to Schine Theatrical Company, Inc. of the Opera House in Bellefontaine, Ohio, for one year from September 1, 1938 at $1,200.

* * * * * * *

[fols. 7658-7663] **EXHIBIT 936**

Lease of August 31, 1939 to Schine Theatrical Company, Inc. of the Opera House in Bellefontaine, Ohio, for one year from September 1, 1939 at $1,200.

• • • • • • •

[fols. 7664-7668] **EXHIBIT 937**

Lease of August 14, 1940, to Schine Theatrical Company, Inc. of the Opera House in Bellefontaine, Ohio, for one year from September 1, 1940 at $1,200.

• • • • • • •

[fol. 7669-7672] **EXHIBIT 938**

Lease of August 18, 1941 to Schine Theatrical Company, Inc. of the Opera House in Bellefontaine, Ohio, for one year from September 1, 1941 at $1200.

• • • • • • •

[fols. 7673-7674] The Opera Block Company, by W. W. Coulter, President; Harry W. Eaton, Secretary, Party of the First Part. The Schine Theatrical Company, Inc., by John A. May, President; W. D. Thompson, Asst. Secretary, Party of the Second Part.

• • • • • • •

[fol. 7675] **EXHIBIT 939**

Lease of July 28, 1931 by Daniel Guttilla to Schine Enterprises, Inc. of the Strand theatre in Bellefontaine, Ohio.

This Lease Witnesseth: That Daniel Gutilla, Lessor, in consideration of the rents and covenants hereinafter stipulated, to be paid and performed by the Schine Enterprises, Inc., Lessee, its successors and assigns, does hereby grant, demise and lease unto the said Lessee, its successors and assigns the following premises:

The property known as the Strand Theatre and being located on the south half of Lot Number One Hundred and Forty-three (143), in Bellefontaine, Logan County, Ohio, and being the same premises conveyed to Daniel Gutilla by Isaac Neer, together with the privilege of the use of the wall on the south side of the north half of said lot as conveyed to the said Gutilla by the Opera Block Company, both conveyances being evidenced by deeds on record in Logan County, Ohio.

The said Lessor in addition agrees to assign to the Lessee the present lease of the Opera Block Theatre and entrance way and rights connected therewith, which said Lease expires on the 31st day of December, 1931; upon the condition that the Lessee shall pay to the said Daniel Gutilla the sum of One Hundred Twenty Dollars and Forty-Seven cents ($120.47) per month, beginning with the 1st day of July, 1931 and ending on the 31st day of December, 1931.

To Have and to Hold the premises herein described to the said Lessee, its successors and assigns, beginning with the 1st day of July, 1931 and ending on the 1st day of June, 1934.

Yielding and paying therefore, during said term the sum of Eight Thousand Seven Hundred Fifty Dollars ($8,750.00), payable as follows: Two Hundred Fifty Dollars ($250.00) on the 1st day of each and every month, beginning with the 1st day of July, 1931.

[fols. 7676-7680] It is further understood by and between the parties that the Lessee will keep the Strand Theatre herein leased, open for two performances daily for at least two days of each week, excepting during the months of May, June, July and August. In the event that said Lessee fails to keep said theatre open other than above provided, Lessor has the option at any time thereafter on 30 days written notice of cancelling said lease. Upon receipt of such notice the Lessee shall either surrender the theatre in accordance with said notice or open and operate the theatre as above provided and in the event that the Lessee elects to keep the theatre open as above provided, the notice of cancellation shall be void and of no effect. The Lessee grants to the Lessor the option of purchasing the equipment now in said theatre for the sum of Twenty-five Hundred Dollars ($2500) payable as follows; Five Hundred Dollars ($500) cash; Five Hundred Dollars ($500) each three (3) months thereafter until the full sum is paid.

Should the premises herein leased be lawfully condemned by public authority and said building cannot be used for a theatre or picture-show business the Lessee must surrender said building and shall not be compelled to pay the rent for said building, during the time it cannot be used for said business. Lessee further agrees that it will not do or suffer any waste therein, nor use said premises for any unlawful purpose, nor assign this lease or underlet said premises nor any part thereof without the written consent of the said Lessor.

It being specifically understood by and between the parties hereto that if the Lessee does not keep the theatre open as herein provided, said Lessee will not be responsible for damage after such failure as the Lessor is given the right to cancel the lease and re-enter upon the premises and to purchase the equipment now in said theatre at the price and upon the terms as herein stipulated.

[fol. 7681] **Exhibit 940**

Lease

Dated this 29th day of March, 1934.

This Lease Witnesseth: That Daniel Gutilla, Lessor, in consideration of the rents and covenants hereinafter stipulated, to be paid and performed by the Schine Theatrical Co., Inc., Lessee, its successors and assigns, does hereby grant, demise and lease unto the said Lessee, its successors and assigns the following premises:

> The ground floor of the property known as the Strand Theatre and being located on the south half of Lot Number One Hundred and Forty-Three (143), in Bellefontaine, Logan County, Ohio, and being the same premises conveyed to Daniel Gutilla by Isaac Neer, together with the privilege of the use of the wall on the south side of the north half or said lot as conveyed to the said Gutilla by the Opera Block Company, both conveyances being evidenced by deeds on record in Logan County, Ohio.

To Have and to Hold the premises herein described to the said Lessee, its successors and assigns, beginning with the

1st day of June, 1934, and ending on the 1st day of June, 1936.

Yielding and paying therefore, during said term the sum of Four Thousand Eight Hundred Dollars ($4,800.00), payable as follows: Two Hundred Dollars ($200.00), on the first day of each and every month, beginning with the first day of June, 1934, in advance.

Should the premises herein leased be lawfully condemned by public authority and said building cannot be used for a theatre or picture-show business the Lessee must surrender said building, during the time it cannot be used for said business. Lessee further agrees that it will not do or suffer any waste therein, nor use said premises for any unlawful [fols. 7682-7684] purpose. The Lessee may freely assign or sub-let this lease, but no such assignment or sub-letting shall in any way release the Lessee of its full liability. The premises herein leased to be used only for a theatre.

[fol. 7685] EXHIBIT 941

Lease

Dated this 22nd day of May, 1936.

This Lease Witnesseth: That Daniel Gutilla, Lessor, in consideration of the rents and covenants hereinafter stipulated, to be paid and performed by the Schine Theatrical Co., Inc., Lessee, its successors and assigns, does hereby grant, demise and lease unto the said Lessee, its successors and assigns, the following premises:

> The ground floor of the property known as the Strand Theatre and being located on the south half of Lot Number One Hundred and Forty-Three (143), in Bellefontaine, Logan County, Ohio, and being the same premises conveyed to Daniel Gutilla by Isaac Neer, together with the privilege of the use of the wall on the south side of the north half of said lot as conveyed to the said Gutilla by the Opera Block Company, both conveyances being evidenced by deeds on record in Logan County, Ohio.

To Have and to Hold the premises herein described to the said Lessee, its successors and assigns, beginning with the 1st day of June, 1936, and ending on the 1st day of June, 1938.

Yielding and paying therefore, during said term the sum of Seven Thousand Two Hundred Dollars ($7,200.00), payable as follows: Three Hundred Dollars ($300.00) on the first day of each and every month, beginning with the First day of June, 1936, in advance, as further stipulated and agreed that the Lessor herein has a right to remove at any time during the operation of this lease the equipment in the projection booth in said Theatre, together with the loud speaker located near the stage and also the safe and one small desk now upon the second floor of said building, and also the piano now located in the front part of the lower [fol. 7686] floor of said Theatre.

It is further understood and agreed that if at any time during the operation of this lease, the Lessee herein places new equipment in said building, that at the end of the period of the lease herein, the Lessee herein may have the right and option to remove said equipment placed herein by it.

It is further agreed that at the termination of the period of this lease that the Lessee will place in said Theatre all the equipment purchased by it from The Bellefontaine Amusement Company, except that portion which the Lessor herein is permitted to remove. It is further agreed that the Lessor herein is to have Three (3) passes for the Schine Holland Theatre for two (2) persons each. It is further agreed that the Lessor herein is to have the right to enter upon said premises and if said premises are not used for the operation of a theatre to permit the Lessor to enter said premises to ventilate the same and to build fires in the boiler, all to be at the expense of the Lessor.

The Lessee further agrees that while the said Theatre is not operated it will erect a temporary partition along the street side of the lobby, with a small door therein to permit ingress and egress to the Theatre, upon which partition it is agreed the Lessee may put advertising matter. It being understood that the purpose of this partition is to eliminate in so far as possible the collection of dirt in said lobby and the making of said lobby a nuisance place by the public.

It is further understood by and between the parties to this lease that if the Lessee desires to operate a moving picture show in said building, that the said Lessee shall have the right to use that portion of the second floor of said building that is necessary in the operation of a moving picture theatre.

Should the premises herein leased be lawfully condemned by public authority and said building cannot be used for [fols. 7687-7689] a theatre or picture show business, the Lessee must surrender said building, during the time it cannot be used for said business. Lessee further agrees that it will not do or suffer any waste therein, nor use said premises for any unlawful purpose. The Lessee may freely assign or sub-let this lease, but no such assignment or subletting shall in any way release the Lessee of its full liability.

[fols. 7690-7695] **Exhibit 942**

Lease of March 9, 1918, from Thomas N. Osborne to Maurice A. Shea of New Jefferson theatre, Auburn, New York, for 10 years from October 15, 1918 at $4,000 a year.

[fol. 7696] **Exhibit 943**

Lease of New Jefferson theatre, Auburn, New York.

A Lease, made and executed in duplicate, this fifth day of August, 1929, by and between Charles D. Osborne and Lithgow Osborne, as Executors of and Trustees under the Last Will and Testament of Thomas M. Osborne, late of the City of Auburn, County of Cayuga and State of New York, hereinafter designed as the Lessors, and Maurice A. Shea of the City, County and State of New York, hereinafter designated as Lessee, Witnesseth—

Whereas, an informal lease having been heretofore entered into by said Thomas M. Osborne and said Lessee, evidenced by a letter from the aforesaid Charles D. Osborne, as attorney in fact for said Thomas M. Osborne, dated October 11, 1926, and a letter from said Lessee to said Thomas M. Osborne dated October 14, 1926, under which informal lease the parties hereto have been operating since the decease of said Thomas M. Osborne on October 20, 1926, pending the drawing of a formal lease, now evidenced by this instrument.

[fols, 7697-7701] To have and to hold the above described premises, with the appurtenances, unto the said Lessee, beginning with the 15th day of October, 1929, for and during the full term of five years, ending October 14, 1934, at midnight, at the yearly rent or sum of Eight Thousand dollars ($8000) in equal monthly payments of one thousand dollars ($1000) each for eight months, beginning October 15th in each year during the period of this lease. Said lessee shall also pay when due all water rates and gas and electric light bills.

[fol. 7702] **Exhibit 944**

Agreement, made in duplicate, each executed copy to be regarded as an original, by and between *Maurice A. Shea*, of the City, County and State of New York, hereinafter designated as the "Lessee", party of the first part, and *The Upstate Amusement Co.*, a corporation organized and existing under the laws of the State of New York, with its principal office located at Auburn, New York, hereinafter designated as "Sublessee", party of the second part;

Witnesseth:

Whereas, the said Lessee has entered into an agreement of lease with Charles D. Osborne and Lithgow Osborne, as Executors of and Trustees under the Last Will and Testament of Thomas M. Osborne, made in the City of Auburn, County of Cayuga, State of New York, wherein and whereby said Lessee leased the premises known as the New Jefferson Theatre, Auburn, New York, as more particularly described in said lease for a period of five years, commencing October 15th, 1936, and terminating on the 14th day of October, 1941, at a yearly rent of Nine Thousand Dollars ($9000) payable in equal monthly payments of One Thousand Dollars ($1000) each for nine months beginning October 15th in each year during the period of said lease, plus all water rents, gas and electric light bills, which lease was made and entered into for the use and benefit of The Upstate Amusement Company and for that reason said Lessee acquired permission to sublet said premises and property to The

Upstate Amusement Co. for the period commencing October 15th, 1936, and ending at midnight October 13, 1941;

——————— Now Therefore, in consideration of the ———————in further consideration of the sum of One ———————to the other in hand paid, and other good [fol. 7703] and valuable consideration each to the other in hand paid, the receipt whereof is hereby acknowledged, it is mutually agreed as follows:

First: The Lessee does hereby sublet to the Sublessee and the Sublessee does hereby sublease from the Lessee the premises known as the New Jefferson Theatre, Auburn, New York, as more particularly described in the aforesaid written lease of October 15th, 1936, for the period commencing as of the 15th day of October, 1936, and terminating as of October 13th, 1941, at midnight.

Second: In consideration of said subletting the Sublessee agrees to pay to the Lessee beginning with October 15th, 1936, an annual rent of Nine Thousand Dollars ($9000) payable in nine equal monthly payments, commencing with October 15th of each year and continuing on the 15th day of the eight following months until the full sum of Nine Thousand Dollars ($9000) per annum is paid.

[fols. 7704-7711] Duly executed at New York City, New York, this 5 day of May, 1937.

Maurice A. Shea

The Upstate Amusement Co.,
By J. Myer Schine President

[fols. 7712-7713] **Exhibit 945**

Lease of July 9, 1938 to Upstate Amusement Company, Inc. of New Jefferson theatre, Auburn, New York, for 10 years from May 11, 1938 at $9,000 a year.

[fol. 7714] Eleventh: It is understood and agreed that this lease supersedes and replaces the lease made and executed [fol. 7715] the 15th day of October, 1936, between the lessors and Maurice A. Shea, covering the premises hereby demised, which said premises were subleased to the lessee, which thereafter acquired and succeeded to the interest of the said Maurice A. Shea in and to said lease, and that the Lessors hereby covenant that they have good and lawful right and title to make and enter into this lease pursuant to and by virtue of the order of Hon. Benn Kenyon, a Justice of the Supreme Court of the State of New York, made at a Special Term of said Court held in and for the County of Cayuga on June 18, 1938, and entered in the office of the Clerk of said County on the same date.

In Witness Whereof, the parties hereto have hereunto set their hands and seals the day and year first above written.

Charles D. Osborne (L.S.)
Lithgow Osborne (L.S.)

As Executors of and Trustees under the Last Will and Testament of Thomas M. Osborne.

Upstate Amusement Company, Inc.

By John A. Mays President

[fol. 7716] Exhibit 946

Assignment.

For value received, Hi-Art Theatre Corporation, a New York Corporation, hereby assigns, transfers and sets over unto Lockport Enterprises, Inc., a New York Corporation, its successors and assigns, all its right, title and interest in and to the certain Indenture of Lease, dated the 8th day of January, 1926, made by and between J. J. Lannigan as Lessor and Hi-Art Theatre Corporation as Lessee, for these certain premises located in the City of Lockport, State of New York, known as the Hi-Art Theatre, which premises are more particularly described as follows:

The first floor of the building known as No. 11 West Avenue, City of Lockport, State of New York, now used as the entrance and lobby to a theatre known as the "Hi-Art Theatre"; the rear of the building known as No. 13 West Avenue, City of Lockport, State of New York, now used as part of the lobby, office, stairway to balcony and entrance to the cellar of said Hi-Art Theatre, together with the theatre building located in the rear of premises Nos. 11, 13 and 15 West Avenue and on Crooked Alley in the City of Lockport, State of New York.

In consideration of the above assignment, said Lockport Enterprises, Inc. does hereby assume and agree to make all the payments and perform all the covenants and conditions of the aforesaid lease by the Lessee therein to be made and performed.

In Witness Whereof, said Hi-Art Theatre Corporation and Lockport Enterprises, Inc. have caused these presents to be executed by their corporate officers thereunto duly [fols. 7717-7719] authorized, this 1st day of October, 1927.

Lockport Enterprises, Inc.,
By
Sam Dembow, Jr.
Vice-President

Hi-Art Theatre Corporation,
By
Austin C. Keough
President

[fols. 7720-7721] Exhibit 947

Lease of May 20, 1936 of Opera House, Kent, Ohio, to Sidney Theatre Corporation for 5 years from June 1, 1936 at $3600 a year. Five year option to renew at same rental. [fols. 7722-7723] It is agreed that the exterior of said premises shall be painted on or before the first day of July, 1936, and the cost of same is to be borne equally by said Lessors and said Lessee.

It is further agreed that said Lessee shall loan to the Lessors herein the sum of One Thousand ($1,000.00) Dollars, which is to be repaid by the Lessors to the Lessee at the rate of twenty-five ($25.00) dollars, in consecutive monthly installments, and it is understood that said amount is to be deducted from the monthly rentals to be paid by the Lessee herein until the said sum of one thousand dollars, together with interest at the rate of six percent (6%) per annum, has been repaid in full, said interest to be computed monthly.

In witness whereof, the parties hereto have set their hands to duplicates hereof, the day and year first above written.

John Palfi, Mrs. Susie Palfi.

Sidney Theatre Corporation, By John A. May, Pres.,
By Louis Lazar, Secy.

In presence of Frank C. Ruco, Arlene Hull. Sidney N. Weitz, E. M. Brown, Witnesses to the signature of Sidney Theatre Corp'n.

[fol. 7724] EXHIBIT 960

Wooster Opera House Lease

Know All Men by These Presents, That whereas, on the 3rd day of April, 1933, the Council of the City of Wooster, State of Ohio, duly passed a certain Ordinance No. 1705, two-thirds of all members elected thereto concurring, authorizing the lease to the highest and best bidder for a term of not to exceed fifteen (15) years of the auditorium in the city hall together with the entrances and approaches thereto, which said premises are not needed for any municipal purposes, and

Whereas, the Director of Public Service and Safety having duly advertised for bids for five (5) consecutive weeks as provided by law and as authorized and directed in said ordinance, and

Whereas, at the time fixed in said advertisement for the receipt of said bids the Wooster Theaters, Inc., presented its certain bid for the leasing of said auditorium known as the opera house which said bid was the highest and best bid therefor and which said bid was duly accepted on the 18th day of May, 1933, and the said lessee, The Wooster Theaters, Inc., being the highest bidder for said auditorium and having given bond in the sum of One Thousand Dollars ($1,000.00) for the faithful performance of the covenants and agreements of said lease on its part to be kept and performed with sureties thereon approved by the said Mayor, the said City of Wooster, State of Ohio, by Jesse W. Ebert, its Mayor, and F. A. Fisher, its Director of Public

Service and Safety, does hereby let and lease unto the Wooster Theaters, Inc., the said lessee, the above described auditorium of the city hall known as the opera house for the term of two (2) years beginning September 1, 1933, and ending the 31st day of August, 1935, with the right and option on the part of the lessees to have said term extended for an additional period of three (3) years from the expiration thereof, to-wit, August 31, 1935, upon the same terms and conditions, providing all of the conditions and agreements of the lease to be kept and performed by said lessee have been by it kept and performed. Said lease shall be for the [fol. 7725] consideration and subject to the stipulations, terms and conditions hereinafter stated, to-wit:

1. That the lessee shall pay to the City of Wooster the sum of One Thousand Dollars ($1,000.00) each year in equal quarterly installments in advance as a rental for said premises.

2. That the lessee, the Wooster Theatres, Inc., shall reseat the auditorium or downstairs part of the opera house, using therefor the seats taken from the Lyric Theater, and in consideration therefor the lessee shall receive a credit of Five Hundred Dollars ($500.00) on the rental for the first year. The lessee further agrees that the best seats taken from the downstairs or auditorium of the opera house shall be used upstairs and that the seats now in the auditorium of the opera house and not used by the lessee for re-seating purposes may be sold by the lessor. The seats installed by the lessee in the auditorium, upstairs or downstairs, at the expiration of said lease, shall belong to and become the property of the lessor.

3. Thet the lessee will re-wire the premises hereby leased and have the work performed so that the same shall comply with the state code. The wiring in the theater proper shall be in conduit or BX, and that the lessee shall receive a credit on the rental for the money expended by it in the re-wiring of the theater as set forth herein, said credit to be applied on the first year's rental and if the cost of re-wiring exceeds the sum of Five Hundred Dollars ($500.00) a sufficient credit shall be allowed on the second year's rental to take care of said cost.

4. That the lessee will put carpet runners on the aisles and hand-rails in the entrances to the theater and steps to

the balcony and make any other necessary improvements required by the order of the State Fire Marshal's Office now on file with the City Auditor of Wooster, Ohio.

5. That the lessee shall have the right and privilege of making these improvements at any time prior to September [fol. 7726] 1, 1933, or a reasonable time afterwards.

6. That the Mayor and Director of Public Service and Safety of the City of Wooster, Ohio, shall have the privilege to approve the awarding of a contract for the re-wiring of said theater.

7. That all improvements made by the Wooster Theaters, Inc., are to become the property of the City of Wooster at the expiration of the term of this lease.

8. That the lessee will not use the auditorium or opera house for motion picture purposes but will rent the same only for vaudeville and legitimate shows, provided, however, that it shall be rented and used for all community and home talent entertainments at a price to be agreed upon between the lessee and the Director of Public Service and Safety, and that the rental price for stock companies shall be Ninety Dollars ($90.00) per week of six (6) days, and that no vaudeville or road shows shall be run or shown on Sunday.

9. That the City of Wooster shall furnish the heat and light for the auditorium or opera house.

10. That the lessee shall pay any seat or ticket tax now levied or hereafter to be levied by the state or federal government and the lessee shall carry such reasonable liability policies as shall be required of it by the Director of Public Service and Safety of the City of Wooster.

11. The lessee agrees that if the auditorium or opera house shall be used more than thirty (30) times each year in which rent is received, exclusive of stock companies, cooking schools, etc., the city shall receive Forty Dollars ($40.00) per night or a price to be agreed upon by the Director of Public Service and Safety and the lessee in addition to the rental of One Thousand Dollars ($1,000.00) per year herein provided to be paid by lessee.

12. That the lessee will keep in repair in the premises hereby leased the lights and light fixtures, the stairways and

[fol. 7727] hand-rails, scenery, curtains, seats, carpets and doors and any re-painting or decoration which lessee deems necessary shall be done by lessee. The lessee is not bound to make any repairs in case of the damage or destruction of the property herein mentioned by fire, riots, any storms, electrical or snow, and the act of God.

13. No boxing or wrestling matches shall be allowed in the auditorium or opera house, except by permit from the Mayor.

14. The lessee hereby agrees to fully comply with and obey all the laws, ordinances, rules, regulations and requirements of all regularly constituted authorities in any way affecting said opera house, or the use thereof or this lease; and the lessee will not present any show or entertainment which will be objectionable.

15. The lessee hereby agrees to repair, replace and pay for any damage, except damage or destruction by fire, riots, storms, either electrical or snow, or the act of God, which may be done to the scenery, curtains, seats and other equipment of said auditorium or opera house during the continuation of this lease. The lessee further agrees to replace and furnish any globes and fuses for all globes and fuses burnt out, destroyed or stolen.

16. The lessee shall give a good and sufficient bond in the sum of One Thousand Dollars ($1,000.00) with two sureties thereon satisfactory to the Director of Public Service and Safety, or shall furnish a surety company bond in said amount to the satisfaction of said Director of Public Service and Safety payable to the City of Wooster, Ohio, conditioned upon the faithful and full performance of this agreement of lease and all terms and conditions thereof on the part of lessee.

17. It is mutually agreed between lessor and lessee that this lease is made subject to the rights of the citizens of Wooster, Ohio, or of any organization, society or group of citizens in said city to use said auditorium or opera house on any date when the same does not conflict with any assigned [fols. 7728-7729] date of the lessee, subject to the payment of the agreed rental price.

18. That this lease shall not be assigned, underlet or sublet without the written permission of the Director of Public Service and Safety of Wooster, Ohio.

19. If any rental or any part thereof shall at any time be in arrears and unpaid, or if any covenant, agreement or condition of this lease to be kept and performed by the lessee shall be broken then this lease shall be null and void at the option of the Director of Public Service and Safety without prejudice, however, to the rights of said city to recover on said lessee's bond or rent due or damages sustained by the city.

20. That the lessee shall charge a minimum of Thirty Dollars ($30.00) per night for the use of the opera house or auditorium for the showing therein of any community or home talent entertainment and that lessee may charge not to exceed Ten Dollars ($10.00) per night for any rehearsals held therein.

In witness whereof, the City of Wooster, Ohio, the lessor, by its Mayor and its Director of Public Service and Safety, has caused to be affixed hereto its name and corporate seal and the names of said officers as provided for in Ordinance No. 1705 passed April 3, 1933, and the lessee, the Wooster Theaters, Inc., by John J. Kinney, its president, and E. P. Mott, its Secretary, has hereunto set its hand and corporate seal.

The City of Wooster, Ohio, By Jesse W. Ebert, Mayor.

Approved by F. A. Fisher, Director of Public Service and Safety.

Wooster Theaters, Inc., By John J. Kinney, President, E. P. Mott, Secretary.

Attest: Helen R. Walter, City Auditor.

Approved: Dean H. Weimer, City Solicitor.

Signed and acknowledged in the presence of C. A. Weiser, Florence Graber.

EXHIBIT 961

Agreement

The City of Wooster, Ohio

and

The Wooster Theatre, Inc.

In exercising their three (3) year option on the Wooster City Opera House, The Wooster Theatre, Inc., the lessee, mutually agrees with The City of Wooster, State of Ohio, the lessor, by William L. Long, its Mayor and Geo. S. Allspaugh, its Director of Service and Safety, to the following provisions, same to supersede like articles in the lease as written by authority granted in Ordinance No. 1706.

1. The terms of this option shall be for three (3) years beginning September 1st, 1935 and ending August 31st, 1938.

2. It is mutually agreed between the Lessor and the Lessee that bids upon a new lease shall be taken six (6) months before the expiration of the present option, to-wit August 31, 1938.

3. The Opera House shall become a combination Play and Motion Picture House.

4. The yearly rental shall be Two Thousand Dollars ($2000.00) each year, same to be paid in quarterly payments of Five Hundred Dollars ($500.00) each in advance.

5. All improvements, fixtures and additions, except picture apparatus, projection booth, projection equipment, sound equipment, screen and screen draperies, shall become the property of The City of Wooster, Ohio, gratis upon the expiration or termination of this lease, with right of Lessee to remove the above exceptions.

6. The lessee shall give a good and sufficient bond in the sum of One Thousand Dollars ($1000.00) with two sureties thereon satisfactory to the Director of Public Service and Safety, or shall furnish a surety company bond in said amount to the satisfaction of said Director of Public Service and Safety payable to the City of Wooster, Ohio, conditioned upon the faithful and full performance of this agreement of

lease and all terms and conditions thereof on the part of lessee.

7. That the Lessee will hold the City of Wooster, Ohio, harmless for any injury or damages, occasioned by their use of the theatre proper and balcony, stage, dressing-rooms, downstairs and upstairs lobbies, rest rooms and stairways, and that the lessee will carry public liability insurance in such an amount as the Director of Public Service and Safety shall deem necessary.

The Lessee agrees to assume the following:

A. Heating of Theatre proper and balcony, stage, dressing-rooms and downstair lobby, same to be on separate meter.

B. Lighting of Theatre proper and balcony, stage, dressing-rooms, downstair and upstair lobbies, and rest-rooms, same to be on separate meter.

C. Janitor service of Theatre proper and balcony, stage, dressing-rooms, downstair and upstair lobbies, and rest-rooms, except in case theatre is closed. Janitor service on lobbies and rest-rooms become the lessor's obligation.

[fols. 7731-7732] D. Decorations, repairs and improvements to Theatre proper and balcony, stage, dressing-rooms, downstair and upstair lobbies, rest-rooms, and stairways, all of which shall comply with the provisions set forth by the Department of Industrial Relations of the State of Ohio.

E. Any further alterations or repairs agreed upon by the City of Wooster, Ohio, and The Wooster Theatre, Inc., shall be at the expense of the lessee.

F. The lessee shall be responsible for any additions or repairs of the old or new heating and lighting equipment.

G. The Lessee agrees to allow any local organization the use of the Opera House upon two (2) weeks notice, except that the granting of such permits over a total of twenty-five (25) nights per year, shall be at the option of the Lessee. Rental charges for such engagements shall be the actual overhead but not to exceed $30.00 per night, for performances and $10.00, per night, for rehearsals which shall be at the option of the Lessee as to time.

H. All roof repairs are the obligation of the Lessor.

I. The lessee to furnish hardware for items 4 and 7 in suggestions offered by State Division of Factory and Building Inspection.

It is mutually understood and agreed to by the parties hereto, that the lease agreement entered into by the said party, dated April 3, 1933, shall remain in full force and effect and constitute a valid agreement between the parties, except as to the particular matters, conditions and agreements modifying or changing the same and set forth in this agreement.

In witness whereof, The City of Wooster, Ohio, the Lessor, by its Mayor and its Director of Public Service and Safety, has caused to be affixed hereto its name and corporate seal, and the names of said officers as provided for in Ordinance No. 1706, passed April 3rd, 1933, and the Lessee, The Wooster Theatre, Inc., by John J. Kinney, its President, and E. P. Mott, its Secretary, has hereunto set its hand and corporate seal.

The City of Wooster, Ohio, by William L. Long, Mayor. Approved by Geo. S. Allspaugh, Director of Service & Safety. Wooster Theatre, Inc., by John J. Kinney, President; by E. P. Mott, Secretary.

Signed & Acknowledged in the Presence of: J. W. Ramsey, Viola E. Hansel.

Attest: Helen R. Walter, City Auditor.

Approved: Marion F. Graven, City Solicitor.

[fols. 7733-7735] EXHIBIT 962

Copy

Wooster City Opera House Lease

Know All Men By These Presents, That whereas, on the 4th day of April, 1938, the Council of the City of Wooster, State of Ohio, duly passed a certain Ordinance No. 1881, two-thirds of all members elected thereto concurring, authorising the Mayor and the Director of Public Service and Safety to lease to the highest and best bidder for a term of not to exceed Five (5) years the Wooster City Opera House, together with the entrances and exits thereto, which said premises are not needed for any municipal purposes, and

Whereas, The Director of Public Service and Safety having duly advertised for bids for Five (5) consecutive weeks, as provided by law, and

Whereas, at the fixed time in the said advertisement for the receipt of said bids, The Wooster Theatre, Inc., presented its certain bid for the leasing of said Wooster City Opera House, which said bid was the highest and best bid, therefor and which said bid was duly accepted on the 17th day of May, 1938, and the said Lessee The Wooster Theatre Inc., being the highest bidder for said Opera House and having given bond in the sum of One Thousand Dollars ($1000.00) for the faithful performance of the covenants and agreements of said lease on its part to be kept and performed with sureties thereon approved by the said City of Wooster, State of Ohio, by Wm. L. Long, its Mayor, and Geo. S. Allspaugh, its Director of Public Service and Safety, does hereby let and lease unto The Wooster Theatre, Inc., the said Lessee, the above described premises of the City Hall, known as the Opera House (entrances and exits included) for the term of Three years (3) beginning June 1, 1938 and quitting May 31, 1941, with the right and option on the part of the Lessee to have said term extended for five (5) additional years, the terms of which shall be upon mutual agreement entered into not less than six (6) months before the expiration of the lease, providing all the conditions and agreements of the lease to be kept and performed by the said Lessee have been by them kept and performed.

The Lessee shall give a good and sufficient bond in the sum of One Thousand Dollars ($1000.00) with two sureties thereon, satisfactory to The Director of Public Safety and Service, or shall furnish a surety bond in said amount to the satisfaction of said Director of Public Service and Safety, payable to the City of Wooster, State of Ohio, conditioned upon the faithful and full performance of this agreement of lease and all terms and conditions thereof on the part of the Lessee.

That the Lessee will hold the City of Wooster, State of Ohio, harmless for any injuries or damages occasioned by their use of the theatre proper and balcony, stage, dressing-rooms, downstairs and upstairs lobbies, rest-rooms and stairways, and that the Lessee will carry public liability insurance in such an amount as the Director of Public Service and Safety shall deem necessary.

Said lease shall be for the consideration and subject to the stipulations, terms and conditions hereinafter stated, to-wit:

The Opera House shall become a combination Play and Motion Picture House.

That the Lessee shall pay to the City of Wooster, State of Ohio, the Lessor, the sum of Two Thousand Dollars ($2,000.00) per year, rental to be paid in quarterly payments, in advance, on June 1st, September 1st, December 1st and March 1st of each year.

• • • • • • •

[fol. 7736] **Exhibit 982**

May 1, 1935.

Estate of Norman L. Bates, Oswego, New York.

Gentlemen:

In connection with the lease of the Richardson Theatre, Oswego, N. Y., please be advised that the undersigned Lessee hereby elects to exercise its option of a further renewal of three years from July 31st, 1935.

Very truly yours, G-C Theatre Corporation, ——, ——, Comptroller.

JAM:B.

[fols. 7737-7739] **Lease**

Lease, Made this 15th day of June 1933 by and between Lawrence M. Morley, as Executor of the Last Will and Testament of Norman L. Bates, late of the City of Oswego, County of Oswego and State of New York, deceased, party of the first part, and G-C Theatre Corp., a domestic corporation, with its principal offices in Gloversville, N. Y., party of the second part.

Witnesseth: In consideration of the rents and covenants hereinafter expressed, the party of the first part has demised and leased and hereby does demise and lease to the party of the second part, premises situate in the fourth ward of the said City of Oswego, New York known as "Richardson Theatre" located at the corner of East First and Oneida Streets:

Together with all the personal property, furniture, furnishings, scenery and equipment now contained therein and owned by the party of the first part except as is herein expressly reserved, none of which is to be removed from the premises at any time without the consent of the party of the first part, a list of such furnishings is hereby attached, but the party of the first part reserves the right to remove and dispose of any such article as shall not be used by the party of the second part.

• • • • • • •

[fol. 7740] This lease is for the period of two (2) years commencing Tuesday August 1, 1933, close of day, and terminating July 31, 1935. Party of the second part shall have the option of a further renewal to this lease for three additional years upon the same terms and conditions and it is agreed by the party of the second part that he will notify the party of the first part at least ninety days prior to the termination of this lease should he elect to exercise such option.

In consideration of the above terms and conditions, party of the second part agrees to pay party of the first part for the use of said leased premises the yearly rental of Six Thousand Five Hundred ($6,500.00) Dollars to be paid in equal monthly payments of Five Hundred Forty-one and 66/100 ($541.66) Dollars payable in advance except that the first payment shall be paid upon the execution of this lease.

This lease may be assigned, transferred, or sub-let but no such assignment, transfer, or sub-letting shall in any way relieve party of the second part from full responsibility for all of the terms and conditions in this lease.

It Witness Whereof, said parties have hereto set their hands and seals the day and year first above written.

Lawrence M. Morley, as Executor of the Last Will & Testament of Norman L. Bates. G-C. Theatre Corp., Louis W. Schine, Vice-President.

John A. May, Secy.

• • • • • • •

[fols. 7741-7746] **Exhibit 983**

Lease of July 5, 1938 to G-C Theatre Corporation of the Richardson theatre in Oswego, New York for 2 years from August 1, 1938 at $6500 a year.

[fols. 7747-7748] **Exhibit 984**

Renewal of lease of the same theatre as in 983 to the same company, dated June 17, 1940, at same rental, for one year from July 31, 1940.

• • • • • • •

Second. The First Party hereby grants an option to the Second Party to extend this lease for one year from August 1, 1941 to July 31, 1942, and a further option of one year from August 1, 1942 to July 31, 1943, said options to be exercised by at least thirty (30) days written notice on the part of the party of the second part.

[fol. 7749] **Exhibit 1008**

Agreement

This agreement made and entered into at Norwalk, Ohio, this 6th day of November, 1941, by and between Henry Pohl and Rebecca Pohl, of Norwalk, Ohio, hereinafter sometimes designated as "the Pohls", first party, and the Norwalk Theatre Corporation, an Ohio corporation, with its principal place of business at Norwalk, Ohio, hereinafter sometimes designated as "Company", second party;

Witnesseth:

Whereas, the Pohls, as Lessors, and J. Steel, of Oberlin, and William K. Selman, of Cleveland, entered into a certain indenture of lease, dated October 31, 1934, covering the following described premises.

> "Situated in the City of Norwalk, County of Huron, and State of Ohio, and known and described as the entire building located at 19-23 East Main Street, then known as the Scott Store Building, and now known as the Forum Theatre Building, so called, as having a

frontage of approximately thirty-nine (39) feet on the north side of East Main Street, and a depth of approximately one hundred twenty-five (125) feet to an alley."

Said lease is for a term expiring December 31, 1944, and provides for a rental of Forty-two Hundred Dollars ($4200.00) per year, and contains an option for ten additional years at Forty-eight Hundred Dollars ($4800.00) per year. Said lease is recorded in Volume 11, Page 268-273 of Huron County Records; and

Whereas, the Lessee's interest in said lease was duly assigned with written consent of the Pohls by the said J. Steel and William K. Selman to the Norwalk Theatre Corporation on July 24, 1935, said assignment being filed for record in Volume 11, Page 273-4-5 of Huron County Records; and

Whereas, said lease was modified by written amendment executed by the Pohls and by the Company under date of [fol. 7750] March 18, 1937, said modification being filed for record in Volume 12, Page 172-3-4 of Huron County Records; and

Whereas, pursuant to the provisions of said lease the Company has executed and delivered to the Pohls a chattel mortgage covering certain personal property of the Company, which chattel mortgage was filed for record on January 17, 1935; and

Whereas, the Company and the Pohls have been negotiating with J. C. Penney Company in an effort to consummate a transaction whereby the above described lease between the Pohls and the Company would be cancelled, and a new lease effected between the Pohls and J. C. Penney Company;

Now, therefore, in consideration of the premises, and the mutual promises each to each other herein contained, the parties hereto hereunto agree as follows:

1. The lease above described between the Pohls and the Company, and the chattel mortgage above described, are hereby cancelled, and such cancellation is to take effect when, as, and if a new lease between the Pohls and J. C. Penney Company, covering the premises above described, is consummated. In the event that said lease between the Pohls and J. C. Penney is not consummated, the lease

between the Pohls and the Company, and said chattel mortgage are, to remain in full force and effect.

2. It is agreed that the following articles and materials shall be deemed personal property of the Company, and that the Company shall have the right to remove all of said articles within three weeks of the date that it is notified that the lease between the Pohls and J. C. Penney Company has been consummated. The Company agrees to use reasonable care in the removal of said articles, so as not to cause any unnecessary damage to the building by such removal.

[fol. 7751] 2 Glass poster frames
Metal windbreakers on box office
4 Exterior poster frames
Marquee signs, transformers and neon tubing
All unattached equipment, including ticket machines, fire extinguishers, venetian blinds, and all door checks, except four
Lobby poster frames
Inside foyer doors and frames
Light fixtures and directional signs
Carpets, seats, drapes
Footlights
Motion picture screens,
Electric fans and motors
Panic bolts, except one on rear door to remain
All projector and sound equipment
Water bubblers (one to remain)
Safe
Paper and towel dispensers
Fibre board ceiling

3. Said proposed lease between the Pohls and J. C. Penney Company provides that J. C. Penney Company will have the right to rescind said lease in the event that it does not receive a delivery of possession of the leased premises within three weeks from the date of the signing and delivery of said lease. In the event that the Company does not vacate the said premises within three weeks of the date of signing and delivery of the Pohl-J. C. Penney Company lease, and in the further event that J. C. Penney Company does on that account rescind its lease with the Pohls, the cancellation of the lease between the Pohls and the Company, and

the cancellation of the chattel mortgage securing the same, for which provision is herein made, shall be rescinded, and said lease between the Pohls and the Company, and said chattel mortgage, will remain in full force and effect, as though this contract had never been made.

4. The Company agrees that it will pay to the Pohls the sum of Three Hundred Fifty Dollars ($350.00) on the first day of December, 1941, and an additional sum of Three Hundred Fifty Dollars ($350.00) on the first day of January, 1942. The rent for the premises demised under said lease has already been paid for the month of November, 1941, and the Company shall not be required to pay any [fol. 7752] further rent under said lease, provided said lease is cancelled as herein set forth, and provided further that the company makes payment of the installments for which provision is made in this paragraph.

5. The parties agree to pay Elmer J. Babin, licensed real estate broker, of Cleveland, Ohio, a commission of Twenty-four Hundred Dollars ($2400.00) in connection with this transaction. Of this sum the Company shall pay the sum of One Thousand Dollars ($1,000.00), and the Pohls shall pay the sum of Fourteen Hundred Dollars ($1400.00).

6. The Company agrees to issue to Henry A. Pohl, his wife, Rebecca Pohl, and his son Stanley Pohl, non-transferrable regulation passes, good up to and including the thirty-first day of December, 1944, to the New Norwalk Theatre, operated by the Company at Norwalk, Ohio.

7. The Pohls covenant and agree that the premises above described shall not be used as a motion picture theatre, or as a theatre of any kind, before the first day of February, 1955, and further agree to restrict said premises against such use in their lease with J. C. Penney Company.

8. The within contract, and all of the agreements herein contained, are predicated and conditioned upon a new lease being effected between the Pohls and J. C. Penney Company. In the event that said lease is not consummated for any reason on or before the thirtieth day of November, 1941, this agreement shall be void as of the date hereof, and nothing herein shall be construed as effecting a cancellation of lease, a cancellation of a chattel mortgage, an agreement to pay money, a restriction of the property, an

issuance of theatre passes, or any other binding commit-
[fol. 7753] ment on the part of either of the parties hereto.

In Witness Whereof, the parties hereto have hereunto set their hands to duplicates hereof this 6th day of November, 1941.

Henry A. Pohl, Rebecca Pohl. Norwalk Theatre Corporation, by Wm. K. Selman, Pres.; Louis Lazar, Asst. Sec.

Earl Miller, Elmer J. Babin. Elmer J. Babin, Earl Miller, Ruth Cranston. F. L. Williams.

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[fol. 7754] Exhibit S-68

Memorandum of Agreement made this 16th day of August, 1935, by and between J. Myer Schine, Louis Schine, Schine Chain Theatres, Inc., all for convenience referred to as "Schine," parties of the first part, and Maurice A. Shea, of the City, County and State of New York, hereinafter referred to as "Shea," party of the second part;

Witnesseth:

Whereas, Schine is the owner of fifty per cent (50%) of the capital stock of Amsterdam Consolidated Corporation; and

Whereas, Shea is the owner of the remaining fifty per cent (50%) of such stock, and

Whereas, certain difficulties have arisen between the parties which make it desirable for either Shea to buy Schine's stock, or Schine to buy Shea's stock, and

Whereas, the parties desire to appoint a Committee of three (3) to effect a sale of one's stock to the other;

Now, Therefore, in consideration of the sum of One Dollar ($1.00) each to the other in hand paid, receipt whereof is hereby acknowledged, the parties hereby agree as follows:

1. Schine hereby nominates, constitutes and appoints Willard S. McKay or Adolph Schimel as their and its representatives on the committee hereinafter referred to.

2. Shea hereby nominates, constitutes and appoints Arthur S. Driscoll or Edward C. Raftery as his representatives on the committee hereinafter referred to.

[fol. 7755] 3. The parties hereby designate Austin C. Keough of 1501 Broadway, New York City, as the impartial member of the Committee and as Chairman thereof.

4. Schine shall forthwith endorse in blank all of its stock, to wit fifty per cent of Class A stock of the said Amsterdam Consolidated Corporation, and deliver said stock to Austin C. Keough to be held by Mr. Keough for the purposes hereinafter described.

5. Shea shall likewise endorse in blank all of his stock of fifty shares of Class B stock of Amsterdam Consolidated Corporation and deliver the same to Austin C. Keough, to be held by Mr. Keough for the purposes hereinafter described.

6. Immediately upon receipt of said stock, the Committee shall decide by lot or otherwise who shall make the first bid, and if Shea be selected, then it shall become Shea's duty or obligation to furnish the Committee, care of Mr. Keough, at his office, 1501 Broadway, New York, with a written bid for Schine's stock. Said bid shall be accompanied by a check for Five Thousand Dollars ($5,000) which Mr. Keough shall forthwith deposit in a special account to be held by Mr. Keough, so that if Shea is the ultimate purchaser of the Schine stock, it shall be applied on account of the purchase price, but if on the other hand, Schine purchases Shea's stock, then Keough on the close of the bidding shall return to Shea the Five Thousand Dollars. The same form shall apply if Schine is selected to make the first bid, and it likewise shall deposit Five Thousand Dollars with its first bid. Within twenty-four hours after receipt by Keough of said first bid, after notification by Keough of the receipt of the first bid, if Shea be the first bidder, then [fol. 7756] it shall be the privilege of Schine to make a counter-bid for Shea's stock, and said counter-bid shall be at least Twenty-five hundred Dollars ($2500)) more than the first bid of Shea, and said first counter-bid shall likewise be accompanied by a payment of Five thousand Dollars ($5,000), which shall be held by Keough in the same manner as the Five thousand Dollars ($5,000) of the other party. The bidding shall remain open for fifteen days from the

date of the receipt of the first bid by Keough. In computing the aforesaid fifteen days, Saturdays and Sundays shall not be included.

Mechanics of bidding. All bids must be in writing up to and including the bidding at 3:00 P. M. on the fifteenth day. On the fifteenth day at 3:00 P. M. if the bidding still be open, the parties shall meet at Keough's office, 1501 Broadway, New York City, and oral bidding shall then commence. Keough shall make known the highest bid and shall call for counter-bids, each counter-bid to be at least Twenty-five hundred Dollars (\$2500) in excess of the previous bid. Each party on said fifteenth day after 3:00 P. M. shall have five minutes within which to make a counter-bid, and the bidding shall remain open on this day as long as the parties continue to make counter-bids Twenty-five hundred Dollars (\$2500) in excess of the previous bid. Upon the expiration of five minutes after any bid or counterbid on said day, Keough shall immediately declare the bidding closed, and the stock sold to the highest bidder.

Mechanics of bidding Previous to 3:00 P. M. Until the last day all bids shall be in writing and shall be delivered to Keough at his office, 1501 Broadway, New York City. Whenever Keough receives a bid, he shall forthwith send a copy [fos. 7757-7758] of said bid to M. A. Shea, c/o Edward C. Raftery, 152 West 42nd Street, New York City, and a copy to Schine, c/o Willard S. McKay, Universal Pictures Corporation, 1250 Sixth Avenue, New York City. For example, if a bid is made to Keough on Monday, he shall between the hours of 9:00 A. M. and 5:00 P. M. on the said day, send the copies to the aforesaid addresses, and the party other than the party making the bid shall have the right to make a counter-bid in writing before 5:00 P. M. on Tuesday. The same mechanics will apply for each day of the week except bids made on Friday. If bids are made on Friday, and notice given on Friday, then the other party shall have until 5:00 P. M. the following Monday to make a counter-bid.

All bids and counter-bids, after the first bid, shall be at least Twenty-five hundred Dollars (\$2500) in excess of the previous bid. If either party fails to make a counter-bid as aforesaid within the period aforesaid, then Keough shall close the bidding and declare the stock sold to the highest bidder at that time. Otherwise, the fifteen-day period shall apply.

* * * * * * * * * * * * *

[fol. 7759] 13. If Shea becomes the purchaser of the Schine stock, then in that event, J. Myer Schine, Louis Schine, and Schine Chain Theatres, Inc. jointly and severally covenant that they will not, directly or indirectly, or through affiliated corporations or subsidiary corporations or partnership arrangements, own, lease or operate any motion picture theatre or other theatre in the City of Amsterdam, New York, for a period of ten (10) years from the date of this instrument, individually or through agents, representatives or employees, nor will they buy or book pictures for exhibition in said city or in any other way enter into the theatrical or motion picture business in said city during said term. If, on the other hand, Schine becomes the purchaser of the Shea stock, then in that event, M. A. Shea agrees that he will not directly or indirectly, or through affiliated corporations or subsidiary corporations or partnership arrangements, own, lease or operate any motion picture theatre or other theatre in the City of Amsterdam, New York, for a period of ten (10) years from the date of this instrument, individually or through agents, representatives or employees, nor will he buy or book pictures for exhibition in said city or in any other way enter into the theatrical or motion picture business in said city during said term.

14. The parties hereto agree that while the aforesaid stock is held in escrow by Keough, all rights in and to the stock except the right of possession and the rights herein conferred on Keough, shall vest in the purchaser of said stock up to and until he shall default in the payments required to be made to the seller pursuant to this agreement, and to effectuate said purpose Keough shall execute a proxy in favor of the purchaser so that the purchaser may vote the stock at all meetings held up and until any default by the purchaser in the payment of the purchase price, and Keough shall further sign such instruments as may be necessary

> [fols. 7760-7761] The party selling his stock to the other party, pursuant to this agreement, hereby assigns to the purchaser, the assignment to take effect upon the close of the bidding, all of his or its right, title and interest in and to certain interest indebtedness due from Amsterdam to it or him, as the case may be, subject to the payment of the purchase price.

to cause the corporation to pay whatever dividends may be declared on such stock to the purchaser up to and until such time as the purchaser shall have defaulted in any payments required to be made to the seller.

15. The fees of the Escrow Agent shall be paid by the person purchasing the other's stock, and the parties hereto agree that said fee shall be Five Hundred Dollars ($500).

16. This agreement shall be binding and inure to the parties, their heirs, executors, administrators, successors and assigns.

In Witness Whereof, the parties have hereunto set their hands and seals the day and year first above written.

J. Myer Schine, Louis Schine, Schine Chain Theatres, Inc., by Maurice A. Shea.

[fol. 7762]

Exhibit S-69

Agreement made and entered into this 17 day of January, 1936 by and between Henry Bieberson, Jr., of Delaware, Ohio, hereinafter referred to as "Bieberson," party of the first part, and Belpik Theatre Corp., an Ohio corporation, hereinafter referred to as "Belpik," party of the second part,

Witnesseth:

Concurrently with the execution hereof, Bieberson has transferred, assigned and set over unto Belpik all of the outstanding and issued capital stock of Athens Theatre Company, an Ohio corporation, and all of the outstanding and issued capital stock of Court Street Theatre Company, Athens, Ohio.

Now, Therefore, in consideration of the premises and of other good and valuable consideration, the receipt whereof is hereby acknowledged, the parties hereto have agreed and do hereby agree as follows:

First: Bieberson hereby represents, warrants, covenants and guarantees:

(a) That the lease now owned by Athens Theatre Company, Athens, Ohio, for premises situate in Athens, Ohio is in all respects valid and that there is no default of any kind thereunder.

(b) That the furniture, fixtures and equipment situate in the theatre premises leased by the said Athens Theatre Company are the sole property of the said Athens Theatre Company, free and clear of any liens, encumbrances, charges and claims of any nature whatsoever.

[fol. 7763] (c) That there are no judgments outstanding and unsatisfied against the said Athens Theatre Company, and that there are no suits of any kind now pending against the said Athens Theatre Company.

(d) That the lease now owned by the Court Street Theatre Company, Athens, Ohio, for premises situate in Athens, Ohio is in all respects valid and that there is no default of any kind thereunder.

(e) That the furniture, fixtures and equipment situate in the theatre premises leased by the said Court Street Theatre Company are the sole property of the said Court Street Theatre Company, free and clear of any liens, encumbrances, charges and claims of any nature whatsoever, except the liability of the said Court Street Theatre Company for the weekly rental payments under lease for sound equipment from the RCA Manufacturing Company.

(f) That there are no judgments outstanding and unsatisfied against the said Court Street Theatre Company, and that there are no suits of any kind now pending against the said Court Street Theatre Company.

Second: Bieberson hereby covenants and agrees, at his own cost and expense, to defend and satisfy any claims of whatsoever name or nature which may be made, held or asserted against the Athens Theatre Company and/or the Court Street Theatre Company and/or Belpik Theatre Corp. for or on account of any matter set forth herein, and to indemnify and hold harmless them, and each of them, their successors and assigns, of and from any and all claims, suits or judgments which may be made, held, asserted or obtained by reason of any matter set forth herein.

[fol. 7764-7765] Third: Bieberson hereby covenants and agrees that he will not, directly or indirectly, personally or through stock ownership in a corporation, build, acquire, lease or operate or be interested in the operation of any motion picture theatre or theatres in the City of Athens, Ohio for and during the term of the leases which the Athens Theatre Company and the Court Street Theatre Company have on premises situate in Athens, Ohio and/or the extension or extensions of the said leases or either of them.

Fourth: It is understood and agreed by and between the parties hereto that in reliance upon the representations, warranties, covenants and agreements herein contained, Belpik has accepted the transfer of the stock of Bieberson in and to the corporations hereinabove referred to and has paid the consideration therefor to Bieberson.

Fifth: This agreement and the warranties and agreements herein contained shall be binding upon and inure to the benefit of the respective parties hereto, their respective heirs, executors, administrators, successors and assigns.

In Witness Whereof, the parties hereto have caused these presents to be executed under seal the day and year first above written.

Henry Bieberson (L.S.), Belpik Theatre Corp., by John A. May.

Attest: Louis Lazar, Ass't Sec'y.

[fol. 7766] **EXHIBIT S-70**

Belpik Theatre
Corporation

Know All Men By These Presents:

That the undersigned, Henry Bieberson, Jr., of Delaware, Ohio, for and in consideration of the sum of One Dollar ($1.00) in hand paid to him, and of other good and valuable consideration in hand paid to him by Schine Delaware Corporation, an Ohio corporation, the "Grantee" herein, the receipt whereof is hereby acknowledged, does hereby bargain, sell, grant, transfer, assign, set over and deliver unto the Grantee all the good will, goods, chattels, stock and trade, fixtures and other personal property of whatsoever name, nature or description pertaining to, situate in and used in connection with the Strand Theatre Building at Delaware, Ohio including specifically, but not limited to, all of the seats, screen, carpets, lighting fixtures, electric organ and vacuum cleaners, clock, electric signs, ticket selling equipment, frames, safe and office equipment, projection outfit, RCA talking equipment, motor generating outfit, supplies, etc. to have and to hold the same unto the said Schine Delaware Corporation, the Grantee, its successors and assigns, forever; and the undersigned, Grantor, does hereby represent, warrant, covenant and agree to and with Schine Delaware Corporation, the Grantee, that he is the sole and lawful owner of the good will, chattels, goods and other property above described and referred to, and that the same are free and clear of any and all claims, liens, encumbrances and characters of whatsoever name or nature and that no part thereof has been removed within thirty (30) days prior to the date hereof; that he has the sole right to sell the same, as aforesaid, and that he will forever warrant and defend the grant and sale hereby made against any and all claims and demands of whatsoever name or nature.

[fols. 7767-7768] Insofar as any contracts for the exhibition of motion pictures in the said theatre are assigned to the Schine Delaware Corporation, the Grantee hereunder, the Grantee shall assume the same.

In consideration of the sale hereby made and of other good and valuable consideration, the receipt whereof is hereby acknowledged, the undersigned hereby covenants and agrees that he will not directly or indirectly, personally or through stock ownership in a corporation, build, acquire, lease or operate or be interested in the operation of any motion picture theatre or theatres in the City of Delaware, Ohio for and during the term of the lease which the said Schine Delaware Corporation has on the said Strand Theatre in Delaware, Ohio and any extension or extensions thereof, provided, however, that the undersigned may own and continue to own stock in the said Schine Delaware Corporation.

The sale and transfer hereby made and the rights herein granted shall inure to the benefit of Schine Delaware Corporation, the Grantee, its successors and assigns, and shall be binding upon the undersigned, his heirs, executors, administrators and assigns.

In Witness Whereof, the undersigned has hereunto set his hand and seal this 17th day of January, 1936.

Henry Bieberson Jr (L. S.)

In the presence of:
Berne Jones

[fol. 7769] **Exhibit S-71**

Agreement

Between

J. Myer Schine
Louis Schine
Schine Chain Theatres, Inc.

And

Maurice Shea

And

Maurice Goodman

Re: *Upstate Amusement Company*

Dated: August 16, 1937.

[fol. 7770] Memorandum of Agreement made this 16th day of August, 1937, by and between J. Myer Schine, Louis Schine, Schine Chain Theatres, Inc., all for convenience referred to as "Schine", parties of the first part, and Maurice A. Shea of the City, County and State of New York, hereinafter referred to as "Shea", party of the second part, and Maurice Goodman of Elberon, New Jersey, hereinafter referred to as "Goodman", party of the third part;

Witnesseth:

Whereas, Schine is the owner of fifty per cent (50%) of the capitol stock of the Upstate Amusement Company; and

Whereas, Shea is the owner of twenty-five per cent (25%) of such stock; and

Whereas, Goodman is the owner of the remaining twenty-five per cent. (25%) of such stock; and

Whereas, Schine desires to purchase the stock of Shea and Goodman, and the latter two desire to sell the stock to Schine;

Now, therefore, in consideration of One Dollar each to the other in hand paid, receipt whereof is hereby acknowledged, the parties hereto agree as follows:

1. The parties hereby designate Austin C. Keough of 1501 Broadway, New York City, as the depositary to hold said stock until all of the payments required to be made by Schine to Shea and Goodman have been made.

[fol. 7771] 2. Shea and Goodman shall forthwith endorse in blank the stock respectively owned by them in the said Upstate Amusement Company and shall deliver said stock to Austin C. Keough to be held by Mr. Keough for the purposes hereinafter described.

3. Shea and Goodman each for himself and not for the other, hereby sells to Schine the aforesaid twenty-five per cent (25%) of the capital stock of the Upstate Amusement Company owned by them respectively, for the sum of One Hundred Twenty-five Thousand Dollars ($125,000), of which Sixty-two Thousand Five Hundred Dollars ($62,500) shall be payable to each as follows:

Upon the execution of this agreement,
$18,700 shall be payable to Shea and
18,700 shall be payable to Goodman;

the balance on the purchase price to be payable as follows:

3,800 to Shea on January 3, 1938;
3,000 to Goodman on January 3, 1938;

10,000 to Shea on February 11, 1933;
10,000 to Goodman on February 11, 1938;

10,000 to Shea on August 11, 1938;
10,000 to Goodman on August 11, 1938;

10,000 to Shea on February 11, 1939;
10,000 to Goodman on February 11, 1939;

10,000 to Shea on August 11, 1939;
10,000 to Goodman on August 11, 1939;

said sale agreement shall be evidenced by ten promissory notes, five payable to the order of Shea and five payable [fol. 7772] to the order of Goodman at the Chemical Bank & Trust Company, 1-01 Broadway, New York City; said notes to bear interest at five per cent (5%) per annum; said notes to be made by Schine Chain Theatres, Inc. to the order of the respective payees, and to be endorsed by J. Myer Schine and Louis Schine. Until all of the notes are paid the stock that is being purchased shall be held by Austin C. Keough as depositary as security for the payment of the notes delivered by Schine, and upon proof that the notes have been paid, Keough shall deliver the stock forthwith to Schine.

4. If Schine defaults in the payment of any one of the notes that it shall give to Shea or Goodman in connection with this transaction, then the entire amount remaining unpaid shall immediately become due and payable, and the party or parties to whom the money is owed shall have all rights afforded in law or in equity under the laws of the State of New York in connection with the security and in connection with the notes.

5. The parties hereby designate William E. Barry and John May to make an audit of the operations of the Upstate Amusement Company up to and including August 11, 1937, and to state a figure of profit as of that date, and all profits earned by the Upstate Amusement Company up to and including that date shall be divided between the parties in the following proportions:

[fol. 7773] Fifty per cent (50%) to Schine;
Twenty-five per cent (25%) to Shea;
Twenty-five per cent (25%) to Goodman.

6. If William E. Barry, representing Shea and Goodman, and John May, representing Schine, are unable to agree on the profit figure, then Austin C. Keough shall appoint a disinterested auditor who shall act as the umpire, and arrive at the profit figure, and the finding of said umpire shall be final and binding upon the parties, the expenses of said umpire to be shared by the parties fifty per cent (50%) by Schine and twenty-five per cent (25%) each by Shea and Goodman.

7. In consideration of Shea's Agreement to sell, and Schine's agreement to purchase, Shea agrees that he will not directly or indirectly, or through affiliate corporations or subsidiary corporations or partnership arrangement, own, lease or operate any motion picture theatre or other theatres in the City of Auburn, New York for a period of five years from the date of this instrument.

8. In re: the Jefferson Theatre, Shea agrees to use his best efforts to secure from the landlords of the Jefferson Theatre a consent to assign the present lease of the Jefferson Theatre to the Upstate Amusement Company. Schine agrees that it will hold Shea harmless from any claims of any kind or character which the owners of the Jefferson Theatre may have against Shea because of the aforesaid lease, it being the intention of the parties that Schine hereby, [fol. 7774] as part of this agreement, assumes performance of each and every term, covenant and condition of said lease to be kept and performed by Shea, and hereby guarantees performance by the Upstate Amusement Company of each and every term, covenant and condition of said lease.

9. The parties hereby agree that while the aforesaid stock is held as security by Austin C. Keough, all rights in and to the stock except the right of possession and the rights herein provided in case of default in payment, shall vest in the purchaser of said stock up to and until it shall default in the payments required to be made to the sellers pursuant to this agreement, and to effectuate this purpose, Mr. Keough shall execute a proxy in favor of the purchaser so that the purchaser may vote the stock at all meetings held up and until any default by the purchaser in the payment of the purchase price, and Mr. Keough shall further sign such instruments as may be necessary to cause the corporation to pay whatever dividends may be declared on such stock to the purchaser up to and until such time as the purchaser shall have defaulted in any payments required to be made to the sellers.

10. The fees of the depositary shall be paid by Shea and Goodman.

11. This agreement shall be binding and shall inure to the parties their heirs, executors, administrators, successors [fols. 7775-7777] and assigns.

In Witness Whereof, the parties hereto have hereunto set their hands and seals as of the day and year first above written.

J. Myer Schine (L.S.)
Louis W. Schine (L.S.)
Schine Chain Theatres, Inc.
By John A. May, Vice Pres.
Maurice A. Shea (L.S.)
Maurice Goodman (L. S.)

[fol. 7778]

Exhibit S-72

Bill of Sale

Know all Men by These Presents:

That the undersigned, John Buchmann, of the City of Delaware, Delaware County, and State of Ohio, the Grantor, for the consideration of Ten ($10.00) Dollars and other valuable considerations received to his full satisfaction of Schine Delaware Corporation, an Ohio corporation, 2010 Union Trust Building, Cleveland, Ohio, the Grantee, has bargained, sold and conveyed and by these presents, does hereby bargain, sell and convey unto the said Schine Delaware Corporation, its successors and assigns, the following described goods, wares, merchandise, chattels and effects, to-wit:

> All furniture, furnishings and equipment located in the Star Theatre now operated by the undersigned, including but not by way of limitation, all chairs, seats, organ, carpets, floor coverings, wall draperies, stage draperies, scenery, curtains, wall coverings, paintings and decorations, office equipment and supplies, projection booth equipment, electric light apparatus, stage lights, ticket booth equipment, ticket chopper, stage furniture, settings and properties, electric signs, frames, safe, sound equipment, motor generating outfit and all other property of every kind and description used in connection with the operation of said Star Theatre at Delaware, Ohio.

A detailed statement of said furniture, furnishings and equipment intended to be conveyed hereby, is set forth in an inventory dated February 20th, 1938 and initialled by the parties hereto for the purpose of identification.

All of the foregoing furniture, furnishings and equipment are located and contained in the Star Theatre, Delaware, Ohio.

Also the good will established by said Grantor in connection with said motion picture business owned, operated and controlled by said John Buchmann and known as the Star Theatre, located in the City of Delaware, Ohio.

Said Grantor hereby agrees to assign and transfer to said Grantee by proper instruments of conveyance, all his interest in the premises occupied by him as Lessee, and further described as being the property known as the Star Theatre on the ground floor of Star Theatre Building on the east side of Sandusky Street in the City of Delaware, Ohio, and said Grantor does by these presents, hereby bargain, sell, transfer and convey all his interest of every kind and description in and to any and all leases, renewals and/or modifications of any leases heretofore made and entered into by him as Lessee with Mary E. Powers, her heirs, executors, administrators and assigns in and to the premises hereinbefore described and referred to as the Star Theatre property.

It is the purpose of this instrument to convey to said Grantee all furniture, furnishings and equipment and personal property of every kind and description, now owned and used by said Grantor in connection with his motion picture business whether or not specifically described herein.

[fols. 7779-7784] To Have and to Hold the same unto the said Schine Delaware Corporation, the Grantee, its successors and assigns forever; and the undersigned Grantor, does hereby represent, warrant, covenant and agree to and with Schine Delaware Corporation, the Grantee, that he is the sole and lawful owner of the good will, chattels, leasehold estate, goods and other property above described and referred to, and that the same are free and clear of any and all claims, liens and encumbrances of whatsover name or nature, and that no part thereof has been removed within thirty (30) days prior to the date hereof; that he has the sole right to sell the same as aforesaid, and that he will forever warrant and defend the sale hereby made against any and all claims and demands of whatsoever name or nature.

In consideration of the sale hereby made and of other good and valuable consideration, the receipt whereof is hereby acknowledged, the undersigned hereby covenants and agrees that he will not directly or indirectly personally or through stock ownership in a corporation or in any other manner build, acquire, lease, operate or be interested in the operation of any motion picture theatre or theatres, or be engaged in the exhibitor of motion pictures in the City of Delaware, Ohio for and during the period of fifteen (15) years from and after date hereof.

The sale and transfer hereby made and the rights herein granted shall inure to the benefit of Schine Delaware Corporation, the Grantee, its successors and assigns, and shall be binding upon the undersigned, his heirs, executors, administrators and assigns.

In Witness Whereof, the undersigned has hereunto set his hand and seal this 21st day of March, 1938.

John Buchmann.

In the presence of: —— ——, and —— ——,

[fol. 7785] **Exhibit S-76**

This Agreement, made and entered into this 16th day of July, Nineteen Hundred and Forty, by and between L. Edwin Hoppes, unmarried, of Springfield, Ohio, by his Agent and Attorney-in-Fact George L. Hoppes, of Salisbury, Maryland, hereinafter called the seller, party of the first part, Chesapeake Theatre Corporation, a body corporate, of the State of Maryland, hereinafter called the purchaser, party of the second part, and Wicomico Theatre Corporation, a body corporate of the State of Maryland, hereinafter called Wicomico, party of the third part, Witnesseth:

Whereas, Wicomico has heretofore leased from the seller certain land, buildings and equipment and other personal property, located in the City of Salisbury, in Salisbury Election District, Wicomico County, State of Maryland, generally known, and hereinafter referred to, as The Wicomico Theatre; and, Whereas, said lease contains an option to Wicomico to purchase the said Wicomico Theatre upon terms and conditions set forth therein, which terms and conditions are hereby made a part hereof; and,

Whereas, Wicomico has transferred said option to the Purchaser; and, Whereas, Wicomico, the Purchaser, and the seller have mutually agreed to certain modifications of the terms of said option and to the immediate purchase of The Wicomico Theatre by the Purchaser from the Seller, upon the terms and conditions hereinafter set forth.

Now, Therefore, in consideration of the promises and the mutual covenants, promises and agreements hereinafter set forth, the parties hereunto have mutually agreed, as follows:

First: The Seller hereby covenants, represents and warrants that he has a good marketable fee simple title, free and clear of all encumbrances, except as herein stated, in and to the said Wicomico Theatre property, including all land, buildings, equipment and other personal property now occupied or used in or in connection with the operation of The Wicomico Theatre.

Second: The Seller agrees to sell, transfer, convey and setover unto the Purchaser by good and sufficient deed and bill of sale, and the Purchaser agrees, to purchase from the Seller all of the real and personal property now known as The Wicomico Theatre, including all land, buildings, equipment and other personal property now owned by said L. Edwin Hoppes and occupied or used in connection with the maintenance and operation of the said Wicomico Theatre, including all alley ways, exits, entrances and other appurtenances thereto. It is understood and agreed that the deed to be executed pursuant to this Agreement shall effectively [fol. 7786] describe said real property and that the bill of sale to be executed pursuant hereto shall effectively describe said personal property.

The Purchaser agrees to purchase said real and personal property and to pay to the Seller therefor the sum of Twenty-six Thousand Dollars ($26,000.00), payable, as follows:

A. Six Thousand Dollars ($6,000.00) upon the Purchaser procuring and delivering to the Seller an effectual waiver of

Wicomico to all rights to a rental deposit of Six Thousand Dollars ($6,000.00) and all interest thereon, heretofore paid by Wicomico to the Seller, the receipt whereof heretofore by the Seller from Wicomico is hereby acknowledged, which waiver Wicomico agrees to execute and deliver.

B. Two Thousand Dollars ($2,000.00) upon the signing of this Agreement, the receipt whereof by the Seller is hereby acknowledged.

C. Eight Thousand Dollars ($8,000.00) upon the date of closing hereunder, as hereinafter specified.

D. Ten Thousand Dollars ($10,000.00) by the Purchaser making, executing and delivering to L. Edwin Hoppes, a good and sufficient purchase money mortgage, containing all covenants customarily used in Wicomico County, in the said sum of Ten Thousand Dollars ($10,000.00), upon the date of closing and payable one (1) year from said date, bearing interest at the rate of six percent (6%) per annum, such interest to be payable semi-annually, and requiring effectual fire insurance contracts to the extent of at least Ten Thousand Dollars ($10,000.00) with mortgagee clauses therein to L. Edwin Hoppes, said policies or copies thereof to be delivered to and held by him.

Third: Closing hereunder shall be at the office of Woodcock, Webb, Bounds & Travers, Salisbury, Maryland, on the 29th day of July, 1940, between the hours of nine o'clock A. M. and five o'clock P. M., which said date is, for all purposes of this Agreement, called the date of closing. Upon said date of closing, the Seller shall deliver to the Purchaser a good and sufficient deed and a good and sufficient bill of sale, as hereabove provided, and the Purchaser shall deliver to the Seller a good and sufficient purchase money mortgage as hereinbefore provided for, and shall make the cash payment herein provided for. It is expressly understood and agreed that irrespective of any power of attorney heretofore executed by L. Edwin Hoppes, or any other owner of the said property, said deed and bill of sale shall [fol. 7787] be duly executed and acknowledged by the then owner of the said property and any and all persons having any interest therein.

Fourth: As further consideration for the said sale, Wicomico shall upon the date of closing return to the Seller the sum of Two Hundred Sixty-four Dollars ($264.00), heretofore paid by the Seller to Wicomico, as interest upon said rent deposit and Wicomico shall release to the Seller any accrued interest upon said rent deposit.

As further consideration for the said sale, Wicomico or the Purchaser, shall pay the 1939 and 1940 State, County, City, School and other taxes or special assessments upon the said property.

As further consideration for the said sale the Seller shall transfer and assign to the Purchaser all unexpired insurance policies, now held by the Seller affecting the said property.

As further consideration for the said sale, the Seller shall transfer to the Purchaser that certain joint savings account now held for the account of Wicomico and Seller in the Farmers and Merchants Bank of Salisbury, Maryland, in which there has been deposited during the term of said lease the sum of Two Dollars ($2.00) weekly.

It is further understood and agreed that upon the closing hereunder, Wicomico and the Seller, or his said Attorney-in-Fact, shall sign mutual releases, relieving each other of all obligations contained in the lease of the Wicomico Theatre, dated June 12, 1939, including, without being limited to, all provisions in relaton to the return of the Six Thousand Dollars ($6,000.00) deposit and the option to purchase. It is further understood and agreed that between the date hereof and the date of closing, Wicomico shall continue to pay to the Seller rent upon the Wicomico Theatre, at the present rate, to wit, Eighty-eight Dollars ($88.00) weekly, but Wicomico shall be entitled to credit against such rent in the amount of six percent (6%) per annum, upon the Two Thousand Dollars ($2,000.00) paid upon the execution of this Agreement.

It is further understood and agreed that if upon the date of closing hereunder upon tender of a good and sufficient deed and bill of sale by the Seller to the Purchaser, in accordance with the terms of this Agreement, the Purchaser shall fail to accept the same, make the cash payment provided for herein, and execute and deliver the mortgage provided for hereby, then and in that event this Agree- [fols. 7788-7789] ment shall become null and void, the same as if it had never been made and the Seller shall be entitled to retain the Two Thousand Dollars ($2,000.00) paid upon the execution of this Agreement and any and all other monies held by him for the account of the Purchaser and/or Wicomico as liquidated damages and not as a penalty.

In consideration of the sale herein provided for, George L. Hoppes and L. Edwin Hoppes, hereby covenant and agree with the Purchaser that they will not nor will either of them, for a period of ten (10) years from and after the date hereof, either directly or indirectly, become interested in the building, operation or maintenance of any motion picture theatre or amusement enterprise within the bounds of Wicomico County, State of Maryland, without the written consent of the Purchaser first had and obtained. The aforegoing covenant is made for the purpose of insuring to the Purchaser the Goodwill of the property, which the Seller is selling and transferring to the Purchaser, under the terms of this Agreement.

If the Seller shall fail validly to execute and deliver to the Purchaser a good and sufficient deed and bill of sale prepared by the Purchaser at his expense, upon the date of closing, it is understood and agreed that the Purchaser and/or Wicomico shall be entitled to use and occupy the said premises, rent free, until valid execution and delivery of a good and sufficient special warranty deed and bill of sale.

As Witness Our Hands and Seals the day and year first above written.

By L. Edwin Hoppes, L. S., George L. Hoppes, Agent and Attorney-in-Fact of L. Edwin Hoppes, Seller; Chesapeake Theatres Corporation, by John A. May, President. Attest: Marsh Collner, Assistant Secretary, Purchaser; Wicomico Theatre Corporation, by John A. May, President. Attest: Marsh Collner, Assistant Secretary, Wicomico.

[fol. 7790] **Exhibit S-77**

Know All Men by These Presents, that the undersigned, Finarb, Inc., a domestic corporation of Syracuse, New York, and James Constantino, of the City of Syracuse, Onondaga County, New York, for and in consideration of the sum of Six thousand Dollars ($6,000.00) to be paid to him, as follows:

Three thousand dollars ($3,000.00) on the execution and delivery of these presents,

> Three thousand dollars ($3,000.00) on January 1, 1941, to be evidenced by a note for said amount, without interest,

and of other good and valuable considerations in hand paid to him by Schine Theatrical Co. Inc., a New York Corporation, does hereby bargain, sell, grant, transfer, assign, set over and deliver unto the said Schine Theatrical Co. Inc., all the goodwill, goods, chattels, stock in trade, fixtures and other personal property, of whatsoever name, nature or description, pertaining to, situate in and used in connection with the James Theatre, 2819-21 James Street, Syracuse, New York, including specifically, but not limited to, all of the seats, screen, carpets, lighting fixtures, electric signs, ticket selling equipment, frames, safe and office equipment, projection equipment, sound equipment, motor generating outfit, supplies, etc.

To Have and To Hold the same unto the said Schine Theatrical Co. Inc., its successors and assigns forever.

And the undersigned does hereby represent, warrant, covenant and agree to and with the said Schine Theatrical Co., Inc., that he is the sole and lawful owner of the goodwill, chattels, goods and other property above described and referred to, and located in said theatre, and that the same are free and clear of any and all claims, liens, encumbrances, and charges of whatsoever name or nature, and that no part thereof has been removed within thirty days [fol. 7791-7792] prior to the date hereof; that he has the sole right to sell the same as aforesaid and that he will forever warrant and defend the grant and sale hereby made against any and all claims or demands of whatsoever name or nature. This Bill of Sale is given subject to the terms and conditions of leasing of said theatre which refers to theatre equipment and operating equipment belonging to the landlord at expiration of the lease. In consideration of the sale hereby made and of other good and valuable considerations, the receipt whereof is hereby acknowledged, the undersigned hereby covenants and agrees that he will not, directly, or indirectly, personally, or through stock ownership in a corporation, or otherwise, build, acquire, lease or operate, or be or become interested in the operation of any motion picture theatre or theatres within a radius of 2½ miles from the said James Theatre for and during the term of the lease of said theatre which is being assigned simultaneously herewith, and which said term expires on January 31, 1947.

The sale and transfer hereby made and the rights hereby granted shall inure to the benefit of the said Schine Theatrical Co. Inc., its successors and assigns and shall be binding upon the undersigned, his heirs, executors, administrators and assigns.

In Witness Whereof, the undersigned has hereunto set his hand and seal this 19th day of June, 1940.

Finarb, Inc., by James Constantino, President. (L.S.)

In the Presence of: —— ——.

(Here follows 1 Photolithograph, side folio 7793)

[fol. 7794] STATEMENT RE DIGESTS OF LICENSE CONTRACT EXHIBITS

Pursuant to the provisions of the stipulation between the attorneys for the Appellants and the Appellee (printed side page 5664), there are printed below the respective printed license forms used by each of the eight (8) major distributors originally named as defendants and co-conspirators in this action, for the season commencing in or about September, 1936, and ending in or about August, 1937. Each of these printed license forms contains a schedule setting forth the rental terms upon which the motion pictures, respectively covered by each particular contract, were licensed. This data is included in the digests prepared by Counsel pursuant to the above mentioned stipulation, under the heading, "List or Summary of Motion Pictures Licensed and Rental Terms," and is furnished in columnar form as it appears on the original contracts under appropriate column headings as indicated in the respective printed license forms on the following numbered pages of this record, to wit:

Columbia	Side Page 5713
Fox	5742
Loews	5776
Paramount	5816
RKO	5844
United Artists	5857
Universal	5892
Warner	5935

Any variance which counsel may regard as important may be specifically called to the attention of the Court.

EXHIBIT NO. P 14

Distributor Paramount Pictures, Inc.
by H.H.Goldstein

Season S 10*

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Vernon or Vine
Mount Vernon, Ohio

Contract application date October 10, 1938

Approval date November 4, 1938

No. of pictures offered all

No. of Pictures Licensed 30

Provisions, if any, re admission prices Evenings, adults 31 cents, children 10 cents. Matinees, adults 27 cents, children 10 cents.

Run and clearance provisions Second run 90 days after first run.

Other typewritten or handwritten clauses including riders, if any. Cost of second feature may be deducted from gross of percentage pictures if double billed. Exchange Cleveland Zone Office.

List or summary of motion pictures licensed and rental terms

Classifications:

A.	4 photoplays	2-3 days	35% of gross	$2.50	Sun.
B.	8 photoplays	2-3	$20.00	$2.50	
C.	Remaining photoplays	2-3	$15.00	$2.50	

*Group S-10 is the designation for Paramount pictures released during the year commencing September 1, 1938 and ending August 31, 1939. In Paramount film license agreements Group S-3 is the designation for pictures released during the year commencing August 1, 1931 and ending July 31, 1932; Group S-4 for pictures released during the year commencing August 1, 1932 and ending July 31, 1933; Group S-5 for pictures released during the year commencing August 1, 1933 and ending July 31, 1934; Group S-6 for pictures released during the year commencing August 1, 1934 and ending July 31, 1935; Group S-7

(footnote continued on next page)

for pictures released during the year commencing August 1, 1935 and ending July 31, 1936; Group S-8 for pictures released during the year commencing August 1, 1936 and ending July 31, 1937; Group S-9 for pictures released during the year commencing August 1, 1937 and ending July 31, 1938; Group S-11 for pictures released during the year commencing September 1, 1939 and ending August 31, 1940; Group S-12 for pictures released during the year commencing September 1, 1940 and ending August 31, 1941; Group S-13 for pictures released during the year commencing September 1, 1941 and ending August 31, 1942.

EXHIBIT NO. P 15

istributor **Paramount Pictures, Inc.** Season **S-11 & S 12**
by H. H. Goldstein

xhibitor **Schine Enterprises Corp.** Theatre **Vernon or Vine**
by Geo. V. Lynch **Mount Vernon, Ohio**

ontract application date **February 8, 1940** Approval date **September 30, 1940**

. of pictures offered **all of S-11 & S-12** No. of Pictures Licensed **30 each of S-11 & S-12**

ovisions, if any, re admission prices **Evenings, adults 15 cents, children 10 cents.**
atinees, adults 15 cents, children 10 cents.

un and clearance provisions **Second run 60 days after first run.**

ther typewritten or handwritten clauses including riders, if any: **Exhibitor may deduct cost of**
econd feature from gross of percentage pictures, if double billed. Exhibitor
ay deduct cost of Bank Night from gross of percentage pictures. Exchange
leveland Zone Office.

st or summary of motion pictures licensed and rental terms

roup S-11 (1939-40):

Four (4) photoplays	**2-3**	**35% Sun.**
Eight (8) photoplays	**2-3**	**$22.50**
Eighteen (18) photoplays	**2-3**	**$17.50**

roup S-12 (1940-41):

Four (4) photoplans	**2-3**	**35% Sun.**
Eight (8) photoplans	**2-3**	**$22.50**
Eighteen (18) photoplans	**2-3**	**$17.50**

EXHIBIT NO. P-19

Distributor Universal Film Exchanges, Inc Season 1938-9
by Paul Kreiger

Exhibitor Roxy Theatre
by G. C. Scott

Theatre Roxy - Corbin, Kentucky

Contract application date October 31, 1938

Approval date November 11, 1938
by W. A. Scully

No. of pictures offered 40

No. of Pictures Licensed 40

Provisions, if any, re admission prices Evenings, adults 25 cents, children 10 cents.

Run and clearance provisions First

Other typewritten or handwritten clauses including riders, if any. The exhibitor agrees to play and pay for four (4) of the above feature productions each and every month beginning April 1, 1939 and exchange M-Cinti. O. Salesman G. B. Gomersall, population 8,029, seating capacity 700.

List or summary of motion pictures licensed and rental terms

Eight (8)	2	Sun., Mon.	$75.00 as against 35% of the gross receipts.
Eight (8)	2		$50.00
Eight (8)	2		$30.00
Eight (8)	2		$20.00
Eight (8)	2		$15.00

Frankenstein and Dracula 2 35% of the gross receipts to be played by April 30, 1939.

Six (6) Bob Baker	2	$20.00	$120.00
Six (6) Ken Maynards	2	$15.00	$90.00

Provisions regarding short subjects not included.

EXHIBIT NO. P 23

stributor **Columbia Pictures Corp.**
by Poline

Season **1938-39**

hibitor **M. K. Murphy**

Theatre **Viv - Corbin, Kentucky**

ontract application date

Approval date **September 8, 1939**
by Rube Jackter

. of pictures offered

No. of Pictures Licensed **28**
10 Westerns

ovisions, if any, re admission prices **Matinees, adults 10 cents, children 10 cents.**
venings, adults 15 cents, children 10 cents.

n and clearance provisions **Second run Corbin, Kentucky**

er typewritten or handwritten clauses including riders, if any. **Exhibitor agrees to play not less**
an 28 features to be selected from Group B-4 -- any features eliminated
e to be from lowest price allocations.

e exhibotor agrees to play and/or pay for at least four (4) subject
ature attractions (Group B-4) every month and at least one Western feature
traction (Group B-5) every month and at least eight (8) single reel short
bjects every month and at least two (2) two-reel short subjects every
nth commencing the 15th day of Oct. 1939. Single or double.

or summary of motion pictures licensed and rental terms

r (4)	2	no	$35.00	N. C.	against 35% gross
ht (8)	1-2	no	$20.00	N. C.	$160.00
ht (8)	1-2	no	$15.00	N. C.	$120.00
ht (8)	1-2	no	$12.50	N. C.	$100.00
(10)	1-2	no	$10.00	N. C.	Western features

visions regarding short subjects not included.

EXHIBIT NO. P 24

Distributor **Columbia Pictures Corp. by Poline** Season **1939-40**

Exhibitor **M. K. Murphy** Theatre **Viv - Corbin, Kentucky**

Contract application date **September 1, 1939** Approval date **September 8, 1939**

No. of pictures offered

No. of Pictures Licensed **40**
16 Westerns

Provisions, if any, re admission prices **Matinees, adults 10 cents, children 10 cents. Evenings, adults 15 cents, children 10 cents.**

Run and clearance provisions **Second run Corbin, Kentucky**

Other typewritten or handwritten clauses including riders, if any. **The exhibitor agrees to plan and/or pay for at least four (4) subject feature attractions (Group C-4) every month and at least one (1) Western feature attraction (Group C-5) every month and at least twelve (12) single reel short subjects every month and at least two (2) two-reel short subjects every month commencing the 1 day of Feb. 1940. Single or double.**

List or summary of motion pictures licensed and rental terms

Six (6)	2	no	$35.00	N. C.	against 35% gross
Eight (8)	1-2	no	$20.00	N. C.	$160.00
Fourteen (14)	1-2	no	$15.00	N. C.	$210.00
Twelve (12)	1-2	no	$12.50	N. C.	$150.00
Sixteen (16)	1-2	no	$10.00	N. C.	Western features

Provisions regarding short subjects not included.

EXHIBIT NO. P-27

Distributor Loew's Incorporated
By T. J. Connors

Season 1939-40

Exhibitor Schine Enterprises Corp.
By Geo. V. Lynch

Theatre Kentucky, Corbin, Kentucky

Contract application date September 21, 1939

Approval date October 6, 1939

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices matinee, children 10, adults 15
evening, children 10, adults 15

Run and clearance provisions 2nd run

None

45 days over third run

Other typewritten or handwritten clauses including riders, if any.

Playing arrangements one feature per week as available 45 days after first-run.

Any pictures playing Kentucky Theatre first run to be cancelled from this second run contract.

List or summary of motion pictures licensed and rental terms

4	2/3		40%
10	2/3		35%
10	2/3	$40.00	
12	2-3	$25.00	
10	2-3	$15.00	
Balance	2-3	$15.00	

Provision re Trailer charge etc. not included.

EXHIBIT NO. P-28

Distributor	Paramount Pictures, Inc. by H.H. Goldstein	Season	S 10
Exhibitor	Schine Enterprises Corp. by Geo. V. Lynch	Theatre	Hippodrome or Kentucky, Corbin, Kentucky
Contract application date	December 1, 1938	Approval date	1-31-39
No. of pictures offered	all (unplayed)	No. of Pictures Licensed	48

Provisions, if any, re admission prices Evenings, adults 25 cents orchestra and balcony, children 10 cents orchestra and balcony. Matinees, adults 25 cents orchestra and balcony, children 10 cents orchestra and balcony.

Run and clearance provisions first

Other typewritten or handwritten clauses including riders, if any.

All percentage pictures to play in the Hippodrome Theatre. Exhibitor agrees to play or pay for if available a minimum of one picture per week starting November 19, 1938 - and continue until contract is completed.

Exchange Cinti. O. Zone one Salesman Cummins

List or summary of motion pictures licensed and rental terms

"E"	(4) photoplays	2		35%	$2.50 Sunday
"F"	(6) photoplays	2-3	$102.50		$2.50
"G"	(8) photoplays	2-3	$ 77.50		$2.50
"H"	Remaining photoplays	2-3	$ 22.50		$2.50

EXHIBIT NO. P-29

Distributor Twentieth Century-Fox Film Corporation By George Roberts

Season K-7-8-9*

xhibitor Schine Enterprises Corp. By Geo. V. Lynch

Theatre Schine's Kentucky, Corbin, Ky.

ontract application date June 6, 1939

Approval date June 6, 1939

o. of pictures offered All

No. of Pictures Licensed Minimum of 20

rovisions, if any, re admission prices

un and clearance provisions Second run Corbin

ther typewritten or handwritten clauses including riders, if any. Exchange Cinti. Date June 6, 1939 Salesman J. J. Grady. All pictures playing first run at the Hippodrome Theatre are to be played second run at the Kentucky Theatre. Minimum of twenty (20) pictures.

Exhibitor agrees to play seventeen (17) pictures listed in 'A' and 'B' groups out of fifty-two (52) offered.

This contract to be effective for the theatrical seasons of 1939-40, 1940-41 and 1941-42.

t or summary of motion pictures licensed and rental terms

5	2		35%
12	1/2	$17.50	Flat
The remaining photoplays	1/2	$12.50	Flat

Provisions regarding Short Subjects not included.

* K-7 is the designation for Fox pictures released during the year commencing August 1, 1939 and ending July 31, 1940 and K-8 is the designation for pictures released during the year commencing August 1, 1940 and ending July 31, 1941. The symbol

(footnote continued on next page)

K-9 refers to Fox pictures released in the 1941-1942 season. K-1 is the designation for Fox pictures released during the year commencing August 1, 1933 and ending July 31, 1934; K-2 for the pictures released during the year commencing August 1, 1934 and ending July 31, 1935; K-3 for the pictures released during the year commencing August 1, 1935 and ending July 31, 1936; K-4 for the pictures released during the year commencing August 1, 1936 and ending July 31, 1937; K-5 for the pictures released during the year commencing August 1, 1937 and ending July 31, 1938; K-6 for the pictures released during the year commencing August 1, 1938 and ending July 31, 1939.

EXHIBIT NO. P-30

Distributor Twentieth Century-Fox Film Corporation
By George Roberts

Season K-7-8-9

Exhibitor Schine Enterprises Corp.
By Geo. V. Lynch

Theatre Hippodrome or Kentucky
Corbin, Kentucky

Contract application date June 6, 1939

Approval date June 6, 1939

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices

Run and clearance provisions Pictures to start not later than October 1, 1939 and to be played in the order released by the Distributor at the rate of one (1) per week, if and as available.

Other typewritten or handwritten clauses including riders, if any. Exhibitor agrees to play twenty (20) pictures listed in 'A' and 'B' groups out of fifty-two (52) offered.

This contract to be effective for the theatrical seasons 1939-40, 1940-41 and 1941-42.

Exchange Cinti. Date June 6, 1939 Salesman J. J. Grady

List or summary of motion pictures licensed and rental terms

8	2/3		35%
12	2/3	$66.25	Flat
20	1/3	$33.75	Flat
The remaining photoplays	1/3	$21.25	Flat

Provisions regarding Short Subjects not included.

EXHIBIT NO. P-31

Distributor Twentieth Century-Fox Film Corporation By George Roberts

Season K-6

Exhibitor Schine Enterprises Corp. By Geo. V. Lynch

Theatre Schine's Kentucky, Corbin, Ky.

Contract application date Jan. 23, 1939

Approval date Jan. 23, 1939

No. of pictures offered All

No. of Pictures Licensed Minimum of 20

Provisions, if any, re admission prices

Run and clearance provisions Second run Corbin. Exhibitor agrees to play or pay for the above features in the order released by the Distributor at the rate of not less than two (2) per month, if available, starting Feb. 1, 1939.

Other typewritten or handwritten clauses including riders, if any, All pictures playing first run at the Hippodrome Theatre are to be played second run at the Kentucky Theatre. Minimum of twenty (20) pictures.

Exchange Cinti., Date Jan. 23, 1939 Salesman J. J. Grady

List or summary of motion pictures licensed and rental terms

Five (5) Photoplays	2		35%	$2.50
Twelve (12) Photoplays	1/2	$15.00	Flat	$2.50
The Remaining Photoplays	1/2	$10.00	Flat	$2.50

EXHIBIT NO. P-37

Distributor Universal Film Exchanges, Inc **Season** 1938-9
By Paul E. Krieger

Exhibitor Schines Circuit Inc.
By - Memo

Theatre Hippodrome and Kentucky
Corbin, Ky.

Contract application date 11-10-38

Approval date Jan. 13, 1939
By W. A. Scully

No. of pictures offered

No. of Pictures Licensed 26

Provisions, if any, re admission prices Matinees, adults 20 - children 10
Evenings, adults 25 - children 10

Run and clearance provisions 1st

Other typewritten or handwritten clauses including riders, if any.

Exchange M Cinti. Ohio Salesman Office Population 3400
Seating Capacity 500 Hipp. 395 Kentucky

Exhibitor has the privilege of canceling any undated 1937-38 product.

Exhibitor will assume Serial deal as set up by former owner.

List or summary of motion pictures licensed and rental terms

4	2/3	$60.00
4	2/3	$50.00
8	2/3	$32.50
10	2/3	$17.50

Provisions regarding re-issues and Westerns not included.

EXHIBIT NO. P-42

Distributor Twentieth Century-Fox Film Corporation
By George A. Roberts

Season K-6

Exhibitor Schine Circuit, Inc.
By Geo. V. Lynch

Theatre Hippodrome or Kentucky
Corbin, Kentucky

Contract application date December 2, 1938

Approval date December 27, 1938

No. of pictures offered 46

No. of Pictures Licensed 46

Provisions, if any, re admission prices Evenings, adults 30 - children 10
Matinees, adults 20 - children 10

Run and clearance provisions The Exhibitor agrees to play or pay for the above subjects in the order released by the Distributor at the rate of not less than one (1) per week if available starting not later than December 1, 1938.

Other typewritten or handwritten clauses including riders, if any.

Exchange Cinti. Date December 2, 1938 Salesman J.J.Grady

Same conditions and agreements as Master Agreement dated August 5th, 1936.

List or summary of motion pictures licensed and rental terms

Six (6) Photoplays	2/3		35%	$2.50
Ten (10) Photoplays	2/3	$65.00	Flat	$2.50
Fifteen (15) Photoplays	1/2	$32.50	Flat	$2.50
The Remaining Photoplays	1/2	$20.00	Flat	$2.50

EXHIBIT NO. P-61

ributor Metro-Goldwyn-Mayer
Distributing Corporation
By F. D. Drew, Res. Mg.

Season 1935-36

ibitor The State Bucyrus Co.
By M. H. Bryer

Theatre State, Bucyrus, Ohio

tract application date 8-28-35

Approval date Sep. 4, 1935

of pictures offered 50

No. of Pictures Licensed 50

isions, if any, re admission prices Matinee, children 10 - adults 15
Evening, children 10 - adults 25

and clearance provisions 1st run after Marion, O. or 21 days after

territory release. None

typewritten or handwritten clauses including riders, if any. Exhibitor agrees to play and/or pay for one per week if and as available.

Branch Cleveland A-Brauer 1F Score $1750.00 $125.00

summary of motion pictures licensed and rental terms

50 $35.00 $2.50

t is agreed that Distributor shall have the right to designate as
pecials not more than 12 of the motion pictures hereby licensed.
or each of such Specials, Exhibitor agrees to pay on 6 pictures, a
uarantee of $100. against 35% of gross receipts; on 6 pictures, a
uarantee of $75. against 30% of gross receipts. 12 Specials on SUN.MON.
UES.

Copy of Rider (P-61)

AGREEMENT ENTERED INTO BETWEEN THE STATE-BUCYRUS CO. and the METRO-GOLDWYN-MAYER DISTRIBUTING CORPORATION on August 28th, 1935, as part of 1935-36 feature contract No. 1-F

Distributor agrees to deliver all photoplays listed in schedule which are generally released prior to December 27th, 1935, and the exhibitor agrees to accept same in order of release upon the terms and conditions embodied in this contract.

It is mutually understood and agreed between distributor and exhibitor that of the subjects listed in schedule which are generally released after December 27th, 1935, the distributor will execute a superseding contract, listing in the schedule a sufficient number of pictures so that the exhibitor will have licensed to him 50% of the entire number of pictures listed in the schedule, which in this instance means that distributor will license in all a total of 25 pictures of the 1935-36 product to the exhibitor. The split of pictures after December 27th, 1935, to be made by the distributor, and the national split used by the larger Circuits to be used as a guide.

This split is made for the reason that the distributor is obligated to serve 25 of the pictures released during the 1935-36 season to Schine's Theatre in Bucyrus, Ohio, now under construction.

Metro-Goldwyn-Mayer Distributing Corporation
by (S) F. D. DREW RES. MG.
(this signature for identification only
and is not an acceptance)

Exhibitor The State Bucyrus Co., Lessee
A corporation
by (S) M. H. BRYER
Officer

Date: Sep 4 1935

Metro-Goldwyn-Mayer Dist.Cor.(L.S.)

by (S) (Illegible)
Vice-President or Sales Manager.

EXHIBIT NO. P-62.

istributor Vitagraph, Inc.
By A. W. Smith, Jr.

Season 1935-36

xhibitor Belpik Theatre Corp'n.
By Geo. V. Lynch

Theatre State, Bucyrus, Ohio

ontract application date 7/13/35

Approval date July 25, 1935

o. of pictures offered 55

No. of Pictures Licensed 55

rovisions, if any, re admission prices Evenings, adults 20 - children 10
Matinees, adults 15 - children 10

un and clearance provisions 1st run Bucyrus, O.

her typewritten or handwritten clauses including riders, if any. 1 per week starting Oct. 1, 1935.
All terms and conditions of the Master Agreement dated April 24, 1935 to be part and parcel of this contract.

Score rentals $3. per motion picture.

Salesman W. J. Brandt Branch Cleveland Contract No. 4797

t or summary of motion pictures licensed and rental terms

WARNER BROS. PRODUCTIONS

1	2-3	35% of gross	7	$4.00
2	2-3	30% of gross	7	$4.00
2	2-3	25% of gross	7	$4.00
10	2-3	$30.00	7	$3.00
5	2-3	$25.00	7	$3.00
7	2-3	$20.00	7	$3.00

FIRST NATIONAL PRODUCTIONS

1	2-3	35% of gross	7	$4.00
3	2-3	30% of gross	7	$4.00
2	2-3	25% of gross	7	$4.00
10	2-3	$30.00	7	$3.00
5	2-3	$25.00	7	$3.00
7	2-3	$20.00	7	$3.00

5821

EXHIBIT NO. P-66

Distributor Fox Film Corporation
By George Roberts

Season K-2

Exhibitor Bucyrus Theatre Co.
By Phil Charnas, Mgr.

Theatre Southern, Bucyrus, Ohio

Contract application date August 20, 1934

Approval date August 23, 1934

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Evenings, adults 20 cents - children 10 cents

Run and clearance provisions

Other typewritten or handwritten clauses including riders, if any.

Exchange Cleveland Date August 20, 1934 Salesman S.N.Lichter

Playing Arrangement - 1 per week starting Sept. 15, 1934, as available.
Group B-5 include Sun. opening.

List or summary of motion pictures licensed and rental terms

6 Photoplays	3	35% of Gross if played midweek or 30% of Gross if played Sun.,Mon.Tues.		$2.50
5 Photoplays	2/3	$40.00 vs 25%		$2.50
5 Photoplays	2/3	$40.00 vs 25%		$2.50
20 Photoplays	2/3	$22.50	Flat Rental	$2.50
The Remaining Photoplays	2/3	$17.50	Flat Rental	$2.50

EXHIBIT NO. P-67

ributor Fox Film Corporation
By George Roberts

Season K-3

ibitor Bellpik Corp.
By Geo. V. Lynch

Theatre (New Theatre), Buyrus, Ohio

tract application date August 5, 1935

Approval date August 26, 1935

of pictures offered All

No. of Pictures Licensed 44

visions, if any, re admission prices

and clearance provisions 1st run Bucyrus, Ohio

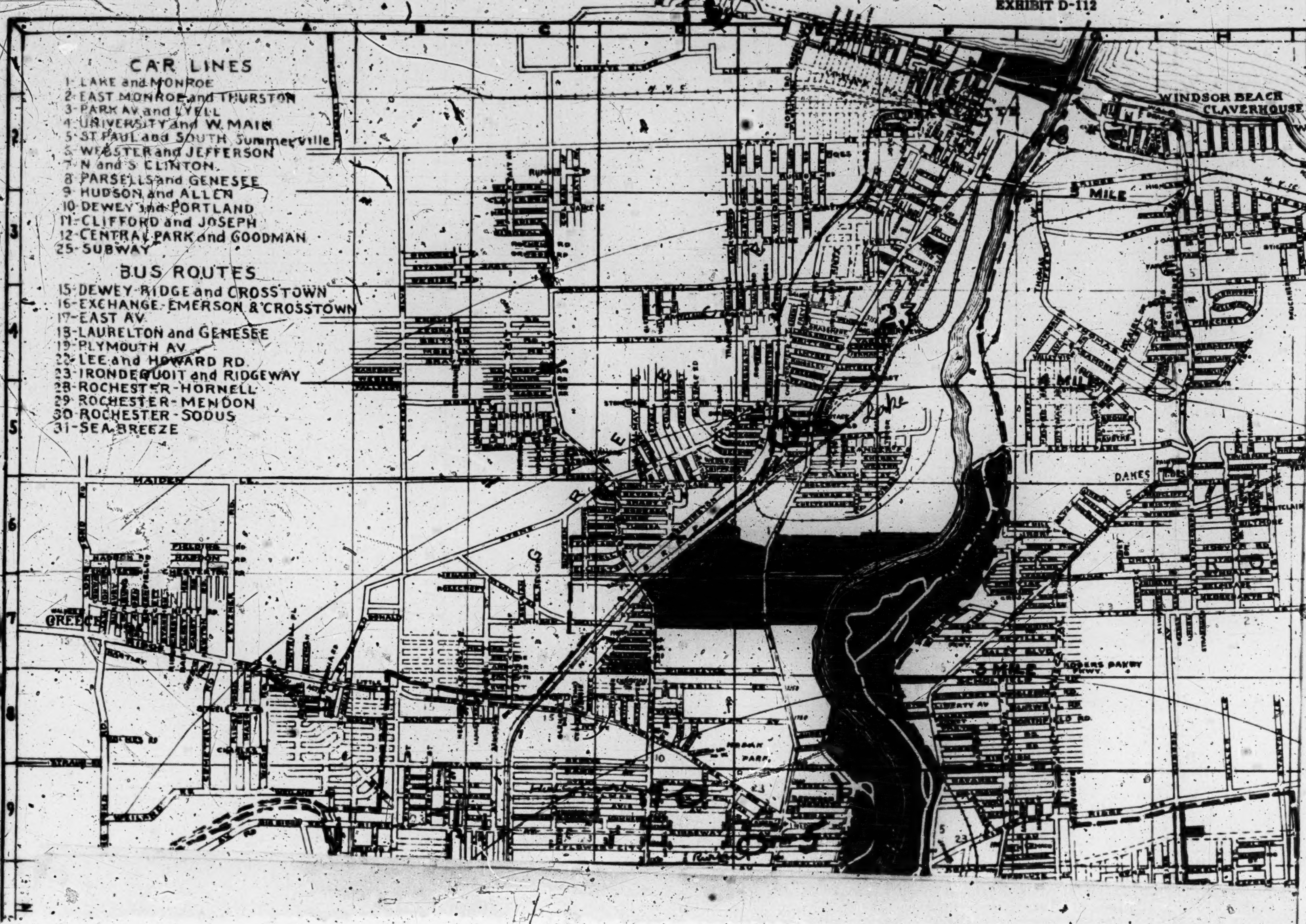
r typewritten or handwritten clauses including riders, if any.

Exchange Cleveland Date August 5, 1935 Salesman Office

r summary of motion pictures licensed and rental terms

8 Photoplays	2/3	30% of gross		$2.50 per day	$5.00 per run
12 Photoplays	2	25% of gross		$2.50 per day	$5.00 per run
24 Photoplays	1/2	$25.00	Flat Rental	$2.50 per day	$5.00 per run

EXHIBIT D-112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3-PARK AV and LYELL
4-UNIVERSITY and W. MAIN
5-ST PAUL and SOUTH Summerville
6-WEBSTER and JEFFERSON
7-N and S CLINTON
8-PARSELLS and GENESEE
9-HUDSON and ALLEN
10-DEWEY and PORTLAND
11-CLIFFORD and JOSEPH
12-CENTRAL PARK and GOODMAN
25-SUBWAY
BUS ROUTES
15-DEWEY-RIDGE and CROSSTOWN
16-EXCHANGE-EMERSON & CROSSTOWN
17-EAST AV
18-LAURELTON and GENESEE
19-PLYMOUTH AV
22-LEE and HOWARD RD.
23-IRONDEQUOIT and RIDGEWAY
28-ROCHESTER-HORNELL
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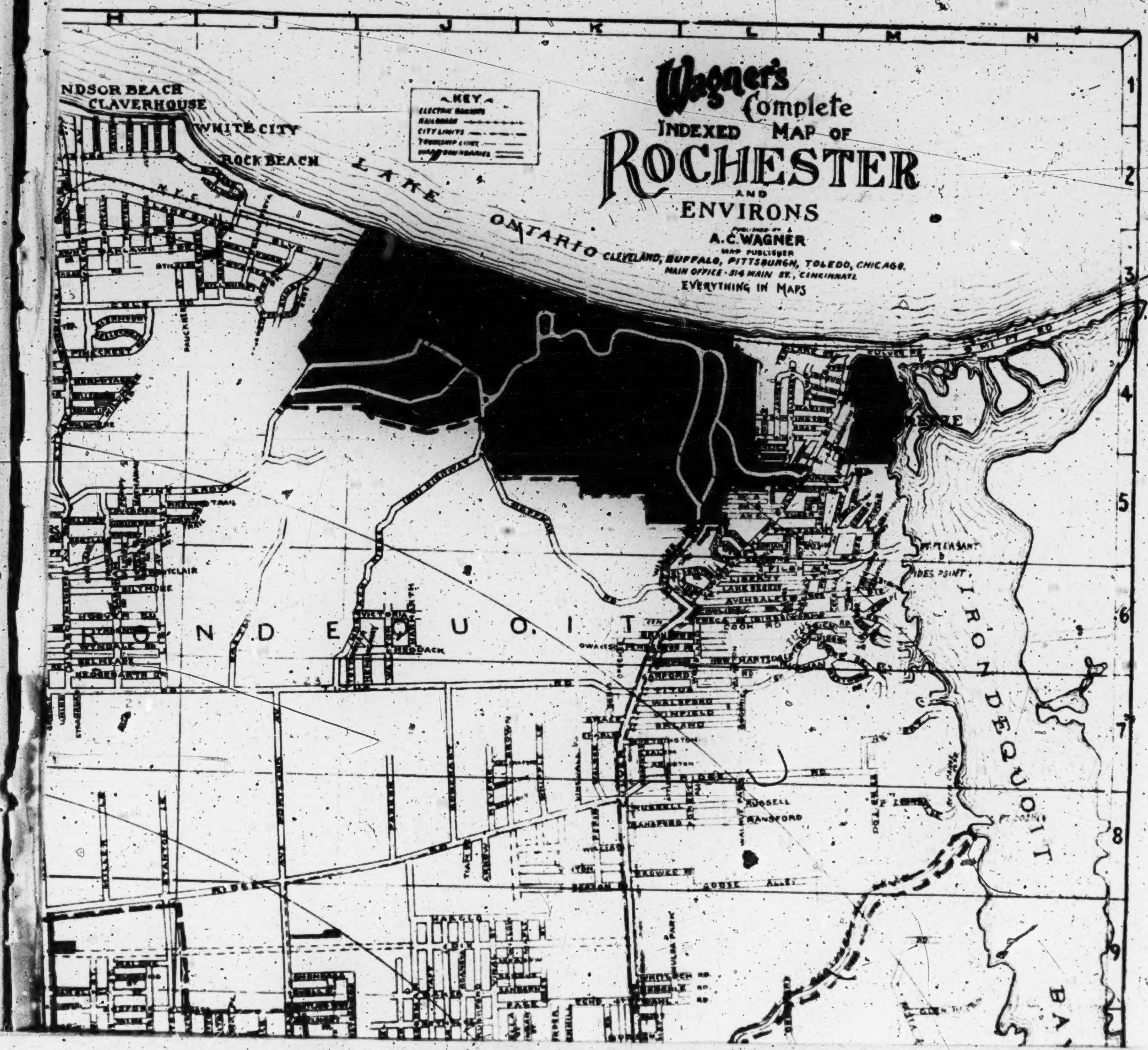
Wagner's Complete
INDEXED MAP OF
ROCHESTER
AND
ENVIRONS
PUBLISHED BY
A.C. WAGNER
MAP PUBLISHER
CLEVELAND, BUFFALO, PITTSBURGH, TOLEDO, CHICAGO.
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WHITE CITY
ROCK BEACH
LAKE ONTARIO
IRONDEQUOIT
IRONDEQUOIT BAY
MONTCLAIR
RUSSELL
RANSFORD
RIDGE RD

EXHIBIT NO. P-68

Distributor Fox Film Corporation
By George Roberts

Season K-3

Exhibitor Bellpix Corp.
By Geo. V. Lynch

Theatre (New Theatre), Bucyrus, Ohio

Contract application date August 5, 1935

Approval date August 26, 1935

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices

Run and clearance provisions 1st run, Bucyrus, Ohio

Other typewritten or handwritten clauses including riders, if any,

Exchange Cleveland Date August 5, 1935 Salesman Office

Playing Arrangement - 1 per month as available

List or summary of motion pictures licensed and rental terms

6	Photoplays	2/3	30% of Gross	$2.50 per day, $5.00 per m
	Remaining Photoplays	2	25% of Gross	$2.50 per day, $5.00 per m

EXHIBIT NO. P-69

tributor Paramount Pictures
Distributing Corporation
By (Unsigned)

Season S-6

hibitor The Bucyrus Theatre Co.
By Phil Charnas, Mgr.

Theatre Southern, Bucyrus, Ohio

ntract application date 9-11-34

Approval date September 24, 1934

of pictures offered All

No. of Pictures licensed All

ovisions, if any, re admission prices Evenings, adults .25 - children .10
Matinees, adults .15 - children .10

n and clearance provisions ✓1st run Bucyrus. Irrespective of surrounding towns.

er typewritten or handwritten clauses including ridges, if any. To be dated when and as available.

Exchange Cleveland Zone Two Salesman (Illegible)

or summary of motion pictures licensed and rental terms

"A"	Four (4) Photoplays	3	$60.00 agst.	35% of gross	$3.50
"B"	Ten (10) Photoplays	2-3	$50.00 "	30% " "	$3.50
"C"	Twenty-five (25) Photoplays	2-3	$30.00		$3.50
"D"	Remaining Photoplays	2-3	$22.50		$3.50

(7 photoplays of the "A" and "B" classifications to include a Sunday)

EXHIBIT NO. P-70

Distributor Paramount Pictures
Distributing Corporation
By (Unsigned)

Season B-7

Exhibitor Schine Theatrical Ent.
By Geo. V. Lynch

Theatre Schine or State, Bucyrus, Ohio

Contract application date September 17,1935

Approval date January 6, 1936

No. of pictures offered All

No. of Pictures Licensed 55

Provisions, if any, re admission prices Evenings, adults, orchestra & balcony .25
children, orchestra & balcony .10
Matinees, adults, orchestra & balcony .20
children, orchestra & balcony .10

Run and clearance provisions

Same as last year

Other typewritten or handwritten clauses including riders, if any. Exchange -Cleveland Zone-Schine

List or summary of motion pictures licensed and rental terms

"A"	Four (4) Photoplays	2-3		35%
"B"	Six (6) Photoplays	2-3		30%
"C"	Four (4) Photoplays	2-3		25%
"D"	Remaining Photoplays	2-3	$50.00	

Score: $2.50 per day - $5.00 per run.

(P-70)

RIDER TO CONTRACT DATED 9/17/35.

Privilege is hereby given to SCHINE THEATRICAL ENT. to play Midnight Shows at their SCHINE OR STATE THEATRE, BUCYRUS, OHIO - same terms to apply.

SCHINE THEATRICAL ENT.

BY GEO. V. LYNCH (S)

Agreed to:

PARAMOUNT PICTURES DISTRIBUTING CORPORATION

BY: J. J. UNGER (S)

5327

EXHIBIT NO. 122

Distributor United Artists Corporation
By A. Lichtman

Season

Exhibitor Schine Theatrical Co., Inc.
By Geo. V. Lynch

Theatre See Rider

Contract application date 8-22-33

Approval date

No. of pictures offered ONE
"I KNEW HER WHEN"

No. of Pictures Licensed One

Provisions, if any, re admission prices

Run and clearance provisions SEE RIDER

Other typewritten or handwritten clauses including riders, if any.

List or summary of motion pictures licensed and rental terms

Copy of Rider to 122

This rider becomes part of contract dated Aug. 22nd 1933 between United Artists Corporation and corporations show below for exhibition of photoplay I KNEW HER WHEN.

Distributor to receive 25% of the gross receipts to a split figure and 50% thereafter.
Split figure to consist of the house expense (based on tenths) plus film rental, plus 50% of film rental.

TOWN	THEATRE	NO. DAYS	WEEKLY HOUSE EXPENSE
Oswego, N.Y.	Strand or	2-3	$1212.63
	Capitol or	2-3	608.90
	Richardson	2-3	
Canandaigua, N.Y.	Playhouse	2	1021.51
Bath, N.Y.	Babcock	2	650.88
Carthage, N.Y.	Strand	2	689.35
Newark, N.Y.	Capitol	2	984.46
Geneva, N.Y.	Geneva or	2-3	3298.40
	Regent	2-3	
Salamanca, N.Y.	Andrews	2-3	908.91
Corning, N.Y.	Fox or	2	1261.52
	State or	2	
Cortlandt, N.Y.	State or	2	2611.28
	Temple	2	
Watertown, N.Y.	Avon or	2-3	1782.68
	Olympic	2-3	1330.04
Bellefontaine, O.	Holland or	2-3	1835.89
	Strand	2-3	
Wooster, O.	Wooster	2-3	1462.04
Glens Falls, N.Y.	Rialto	2-3	
Ogdensburg, N.Y.	Strand	2-3	2001.20
Malone, N.Y.	Malone	2	1681.84
Herkimer, N.Y.	Liberty	2	1097.53
Massena, N.Y.	Massena	2	1258.77
Saranac Lake, N.Y.	Pontiac	2	1395.47
Oneonta, N.Y.	Oneonta or	2-3	1162.21
	Palace	2-3	912.24
Little Falls, N.Y.	Rialto	2-3	1105.00
Norwich, N.Y.	Colonia	2-3	1145.29
Gloversville, N.Y.	Glove or	2-3	1699.21
	Hippodrome	2-3	1151.98
Piqua, O.	Piqua or	2-3	1984.10
	Miami	2-3	

Schine Theatrical Co., Inc.
(S) GEO. V. LYNCH

Lockport, N.Y.	Rialto or	2-3	1619.73
	Hi-art	2-3	

Palace Lockport Thea. Corp. Inc.
(S) GEO. V. LYNCH

Lake Placid, N.Y.	Palace	1-2

G.H.Dobbs
Schine Theatrical Co., Inc., as agent
(S) GEO. V. LYNCH

This rider shall have the same force and effect as if separate exhibition license agreements on the form attached hereto were executed for each theatre for each town or city as the case may be.

(S) GEO. V. LYNCH

Split figure based on tenths to be allocated as follows: 3/10 Sunday, 2/10 Saturday, 1/10 for each week day

Copy of Rider to 122)

BUFFALO BRANCH Nov. 22, 1933

22nd November 3
I KNEW HER WHEN

Riviera & Liberty	ROCHESTER, N.Y.	2nd	3 days 2 days	$200.00	Inc.
	Liberty included but to follow Riviera.				
State or Dixie	ROCHESTER, N.Y.	2nd	3 days	$100.00	Inc.
State or Dixie	ROCHESTER, N.Y.	3rd	3 days	$ 62.50	Inc.
Granada	BUFFALO, N.Y.	Sub	3 days	$ 50.00	Inc.
Riverside	BUFFALO, N.Y.	Sub	3 days	$100.00	Inc.
Capitol	OSWEGO, N.Y.	2nd	2 days	$ 22.50	Inc.
State	CORNING, N.Y.	2nd	2 days	$ 25.00	Inc.
Olympic	WATERTOWN. N.Y.	2nd	2 days	$ 37.50	Inc.
Hi-Art	LOCKPORT. N.Y.	2nd	2 days	$ 30.00	Inc.

Schine Theatrical Co., Inc.
(sgd) Geo. V. Lynch
Rego Schine CorpOration
(sgd) Geo. V. Lynch

State & Liberty Rochester

(S) GEO.V.LYNCH

EXHIBIT NO. 126

Distributor United Artists Corporation **Season**

Exhibitor Schien Theatrical Co., Inc.
By Geo. V. Lynch **Theatre** See Rider

Contract application date November 18, 1935 **Approved date** December 4, 1935

No. of pictures offered One
"CALL OF THE WILD" **No. of Pictures Licensed** One

Provisions, if any, re admission prices

Run and clearance provisions SEE RIDER

Other typewritten or handwritten clauses including riders, if any.

List or summary of motion pictures licensed and rental terms

5331

Copy of Rider for 126

November 18, 1935

This rider becomes part of contract dated November 18, 1935, between United Artist Corporation and corporations shown below, for exhibition of photoplay CALL OF THE WILD.

TOWN	PRICE	THEATRE	NO. DAYS
Gloversville	$115.00	Hippodrome or Glove	2 or 3 days
Oneonta	50.00	Palace or Oneonta	2 or 3 days
Wooster	115.00	Wooster	2 or 3 days
Piqua	50.00	Miami or Piqua	2 or 3 days
Geneva	100.00	Regent or Geneva	2 or 3 days
Cortland	75.00	Temple or State	2 or 3 days
Ogdensburg	75.00	Strand	2 or 3 days
Malone	75.00	Malone	2 or 3 days
Newark	75.00	Capitol	2 or 3 days
Canandaigua	75.00	Playhouse	2 or 3 days
Saranac Lake	75.00	Pontiac	2 or 3 days
Lockport	125.00	Rialto or Hi-Art	2 or 3 days
Hamilton	35.00	State	1 or 2 days
Hudson Falls	25.00	New Strand	1 or 2 days
Carthage	40.00	Strand	1 or 2 days

Schine Theatrical Co. Inc.

(S) GEO. V. LYNCH

This rider shall have the same force and effect as if separate exhibition license agreements on the form attached hereto were executed for each theatre for each town or city as the case may be.

(S) GEO. V. LYNCH

EXHIBIT NO. P-128

Distributor United Artists Corporation
By A. W. Kelly, Vice President
Season

Exhibitor Schine Theatrical Co. Inc.
By Geo. V. Lynch
Theatre See Rider

Contract application date November 18, 1925
Approval date January 31, 1936

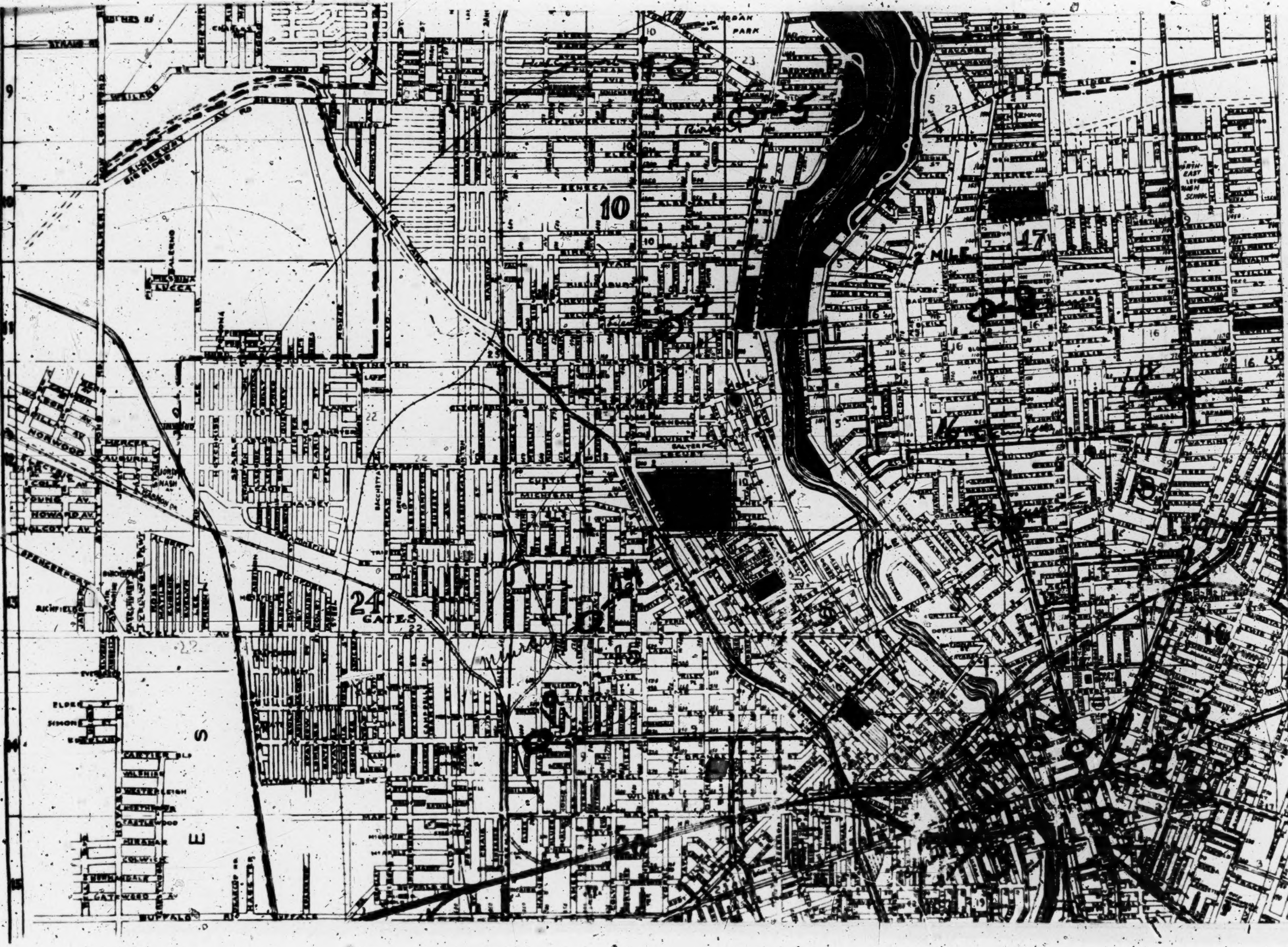
No. of pictures offered One -"Dark Angel"
No. of Pictures Licensed One

Provisions, if any, re admission prices

Run and clearance provisions SEE RIDER

Other typewritten or handwritten clauses including riders, if any,

List or summary of motion pictures licensed and rental terms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HOWARD AV.
WOLCOTT AV.
MICHIGAN
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WILSHIRE
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COLWICK
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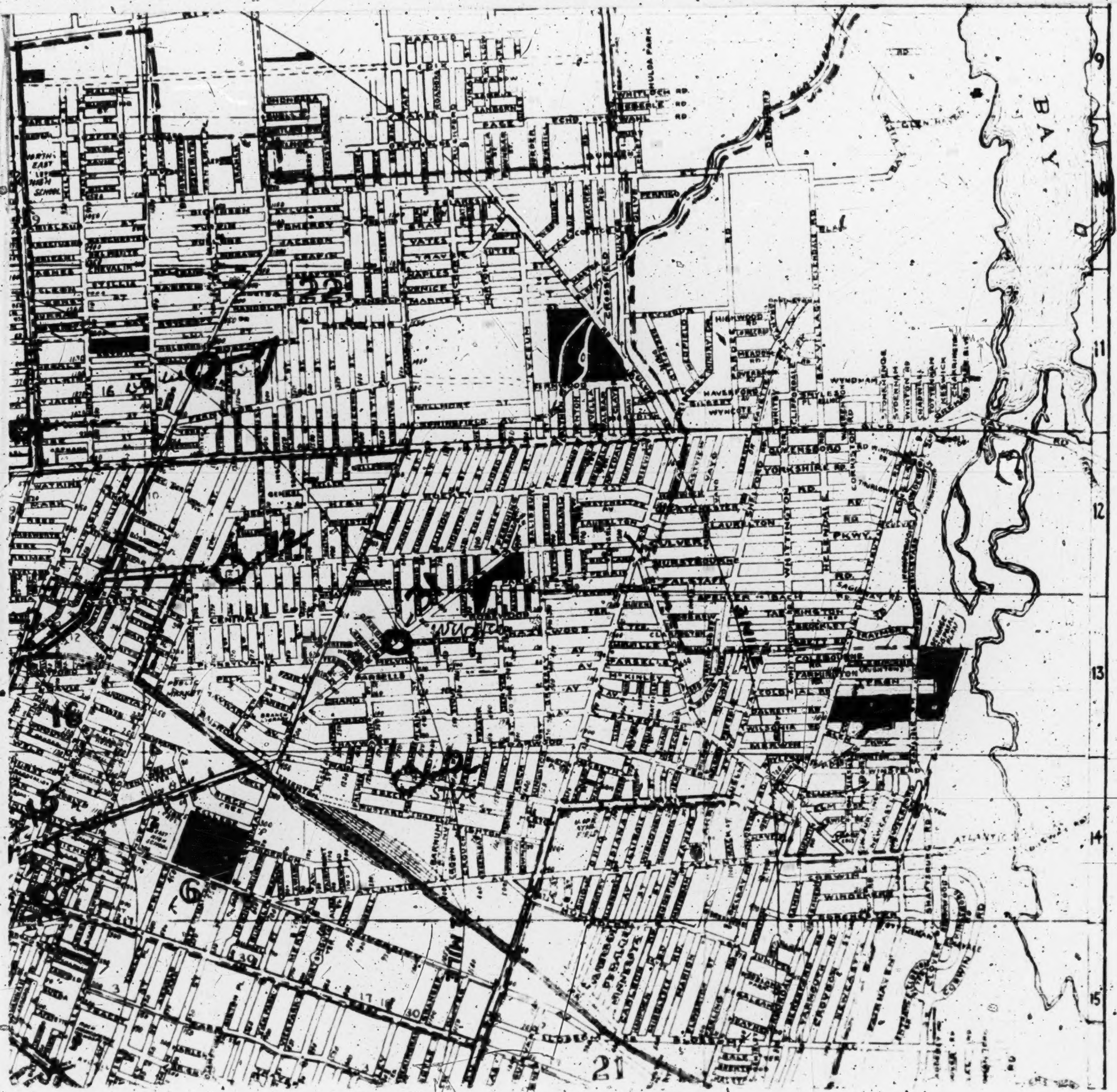
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EBERLE RD.
HULDA PARK
YATES
STAPLES
FILLMORE ST.
HIGHWOOD
HAVERFORD
WYNCOTE
WYNDHAM
YORKSHIRE RD.
LAURELTON
PKWY.
FALSTAFF
TARRINGTON
COLEBOURNE
CENTRAL
ATLANTIC
WINDERMERE
CORWIN

5333

Copy Rider to P-128

November 18, 1935

This rider becomes part of contract dated November 18, 1935, between United Artist Corporation and corporations shown below for exhibition of photoplay DARK ANGEL

Distributor to receive 35% of the gross.

TOWN	THEATRE	NO. DAYS
Lockport	Rialto	2 or 3 days
~~Auburn~~	Jefferson	2 or 3 days
Oswego	Strand	2 or 3 days
Corning	Fox	2 or 3 days
Cortland	State	2 or 3 days
Geneva	Geneva	2 or 3 days
Watertown	Olympic or Avon	2 or 3 days
Ogdensburg	Strand	2 or 3 days
Malone	Grand	2 days
Lake Placid	Palace	2 days
Amsterdam	Rialto	2 or 3 days
Glens Falls	Rialto	3 or 4 days
Norwich	Colonia	2 or 3 days
Oneonta	Oneonta	2 or 3 days
Gloversville	Glove	2 or 3 days
Athens	Athena	2 or 3 days
Wooster	Wooster	2 or 3 days
Mt. Vernon	Vine	2 or 3 days
Norwalk	Forum	2 or 3 days
Piqua	Piqua	2 or 3 days
Ashland	Palace	2 or 3 days

Schine Theatrical Co. Inc.

(s) GEO. V. LYNCH

Belpik Corporation

(s) GEO. V. LYNCH

Palace

Lake Placid, N.Y.

E. G. Dodds
Schine Theatrical Co. Inc. as agent

(s) GEO. V. LYNCH

This rider shall have the same force and effect as if separ te exhibition license agreements on the form attached hereto were executred.for each theatre for each town or city as the case may be.

(s) GEO. V. LYNCH

EXHIBIT NO. 129

Distributor United Artists Corporation
By C. A. Weinberg

Season

Exhibitor Schine Theatrical Co. Inc.
By Geo. V. Lynch

Theatre See Rider

Contract application date November 18, 1935

Approval date 1-30-36

No. of pictures offered One -"Barbary Coast"

No. of Pictures Licensed One

Provisions, if any, re admission prices

Run and clearance provisions SEE RIDER

Other typewritten or handwritten clauses including riders, if any.

List of summary of motion pictures licensed and rental terms

5335

Copy of Rider to P-129

November 18, 1935

This rider becomes part of contract dated November 18, 1935, between United Artist Corporation and corporations shown below for exhibition of photoplay BARBARY COAST

Distributor to receive 30% of the gross.

TOWN	THEATRE	NO. DAYS
Lockport	Rialto	2 or 3 days
Auburn	Jefferson	2 or 3 days
Oswego	Strand	2 or 3 days
Corning	Fox	2 or 3 days
Cortland	State	2 or 3 days
Geneva	Geneva	2 or 3 days
Watertown	Olympic or Avon	2 or 3 days
Ogdensburg	Strand	2 or 3 days
Malone	Grand	2 days
Lake Placid	Palace	2 days
Amsterdam	Rialto	2 or 3 days
Glens Falls	Rialto	3 or 4 days
Norwich	Colonia	2 or 3 days
Oneonta	Oneonta	2 or 3 days
Gloversville	Glove	2 or 3 days
Athens	Athena	2 or 3 days
Wooster	Wooster	2 or 3 days
Mt.Vernon	Vine	2 or 3 days
Norwalk	Forum	2 or 3 days
Piqua	Piqua	2 or 3 days

Schine Theatrical Co. Inc.
(S) GEO. V. LYNCH

Belpik Corporation
(S) GEO. V. LYNCH

Lake Placid, N.Y.

Palace

E. G. Dodds
Schine Theatrical Co. Inc. as agent
(S) GEO. V. LYNCH

This rider shall have the same force and effect as if separate exhibition license agreements on the form attached hereto were executed for each theatre for each town or city as the case may be.

(S) GEO. V. LYNCH

Copy of Rider to P-129

November 18, 1935

This rider becomes part of contract dated November 18, 1935 between United Artist Corporation and corporations shown below for exhibition of photoplay BARBARY COAST

TOWN	PRICE		THEATRE	NO. DAYS
Newark	$100.00	4194	Capitol	2 or 3 days
Bath	115.00	4195	Babcock	2 or 3 days
Canadaigua	100.00	4196	Playhouse	2 or 3 days
Seneca Falls	50.00	4197	Strand	2 or 3 days
Salamanca	110.00	4198	Andrews	2 or 3 days
Carthage	87.50	4199	Strand	2 or 3 days
Rochester	250.00	4200	(Riviera	3 or 5 days
	85.00	4201	(Liberty	2 or 3 days
Rochester	100.00		State	3 or 5 days
"	75.00		Dixie	2 or 3 days
"	40.00		Grand	2 days
2nd run Watertown	85.00		Olympic	2 or 3 days
2nd run Lockport	50.00		Hi-Art	2 or 3 days

Schine Theatrical Enterprises

(S) GEO. V. LYNCH

This rider shall have the same force and effect as if separate exhibition license agreements on the form attached hereto were executed for each theatre for each town or city as the case may be.

(S) GEO. V. LYNCH

5337

Copy of Rider to P-129

November 18, 1935

This rider becomes part of contract dated November 18, 1935, between United Artist Corporation and corporations shown below, for exhibition of photoplay BARBARY COAST

	TOWN	PRICE	THEATRE	NO. DAYS
	Herkimer	$ 125.00	Liberty	2 or 3 days
	Tupper Lake	50.00	State	2 or 3 days
	Hudson Falls	50.00	New Strand	2 or 3 days
	Hamilton	50.00	State	2 or 3 days
	Little Falls	150.00	Rialto	2 or 3 days
	Saranac Lake	150.00	Pontiac	2 or 3 days
	Massena	115.00	Massena	2 or 3 days
2nd run	Glens Falls	75.00	Empire	2 or 3 days

Schine Theatrical Co. Inc.

(S) GEO. V. LYNCH

This rider shall have the same force and effect as if separae exhibition license agreements on the form attached hereto were executed for each theatre for each town or city as the case may be.

(S) GEO. V. LYNCH

Rider to P-129)

November 18, 1935

This rider becomes part of contract dated November 18, 1935, between United Artist Corporation and corporations shown below for exhibition of photoplay BARBARY COAST

TOWN	PRICE	THEATRE	NO. DAYS
Bellefontaine	$115.00	Holland	2 or 3 days
Van Wert	75.00	Van Wert or Strand	2 or 3 days
Bucyrus	75.00	State	2 or 3 days

Belpik Corporation

(S) GEO. V. LYNCH

This rider shall have the same force and effect as if separate exhibition license agreements on the form attached hereto were executed for each theatre for each town or city as the case may be.

(S) GEO. V. LYNCH

EXHIBIT NO. -131

Distributor United Artists Corporation **Season**
By Geo. J. Schaefer, Vice President

Exhibitor Schine Enterprises Corporation **Theatre** See Rider
By Geo. V. Lynch

Contract application date December 23, 1936 **Approval date** June 25, 1937

No. of pictures offered 3 **No. of Pictures Licensed** 3

Provisions, if any, re admission prices

Run and clearance provisions SEE RIDER

Other typewritten or handwritten clauses including riders, if any.

List or summary of motion pictures licensed and rental terms

Copy of Rider to -131

THIS RIDER BECOMES A PART OF CONTRACT DATED DECEMBER 23RD, 1936 BETWEEN UNITED ARTISTS CORPORATION AND THE CORPORATIONS LISTED BELOW, FOR THE EXHIBITION OF "GARDEN OF ALLAH", "A STAR IS BORN" AND "UNTITLED RONALD COLMAN" IN THE TOWNS AND THEATRES LISTED BELOW, AT TERMS OF 35% OF THE GROSS RECEIPTS, EXCEPT WHERE FLAT RENTAL PRICES ARE INDICATED AGAINST THE RESPECTIVE SITUATIONS.

IN THE PERCENTAGE SITUATIONS THE TERMS OF 35% OF THE GROSS RECEIPTS MAY BE REVERTED TO AS LOW AS 30% OF THE GROSS, BUT SUCH REVERSION SHALL ONLY BE UPON MUTUAL AGREEMENT BETWEEN MEYER SCHINE AND A. W. SMITH.

WHEREVER EITHER PICTURE IS USED ON A DOUBLE FEATURE IN A PERCENTAGE SITUATION, THE EXHIBITOR IS ENTITLED TO DEDUCT THE COST OF THE SECOND FEATURE FROM THE GROSS RECEIPTS BEFORE COMPUTING UNITED ARTISTS SHARE.

ON PERCENTAGE SITUATIONS WHERE EITHER PICTURE IS PLAYED ON BANK NIGHT, THE EXHIBITOR IS ENTITLED TO DEDUCT THE COST OF THE ORIGINAL BANK NIGHT GIVEAWAY FROM THE GROSS RECEIPTS BEFORE COMPUTING UNITED ARTISTS SHARE.

TOWN & STATE	THEATRE	NO. DAYS	TERMS
Amsterdam, N.Y.	Rialto	2-3	%
Carthage, "	Strand	2-3	$60.00
Gloversville,"	Glove	2-3	%
	Hippodrome (repeat)	2	$50.00
Glens Falls, "	Rialto	3-4	%
	Empire (2nd run)	2-3	$60.00
Hamilton, "	State	2-3	$60.00
Herkimer, N.Y.	Liberty	2-3	150.00
Hudson Falls,"	Strand	2-3	35.00
Little Falls,"	Rialto	2-3	110.00
Malone, "	Malone	2	% $125.
Maseena, "	Massena	2-3	115.00
Norwich, "	Colonia	2-3	%
Ogdensburg, "	Strand	2-3	%
Oneonta, "	Oneonta	2-3	%
Sarnac Lake, "	Pontiac	2-3	100.00
Tupper Lake, "	State	2-3	50.00
Watertown, "	Avon	2-3	%
	Olympic (2nd run)	2-3	75.00
XXXXXXXX X	XXXXXXXXXX	XXXX	XXX
Bath, "	Babcock	2-3	100.00
Canandiagua, "	Playhouse	2-3	75.00
Corning, "	Fox	2-3	%
Cortland, "	State	2-3	%
Geneva, "	Geneva	2-3	%
Lockport, "	Palace or Rialto	2-3	%
	Hi-Art or Rialto Second Run	2-3	50.00
Newark, "	Capitol	2-3	100.00
Oswego, "	Strand	2-3	%
Salamanca, "	Andrews	2-3	75.00
Seneca Falls,"	Strand	2-3	50.00
Penn Yan, "		2-3	75.00
Perry, "		2-3	60.00
Buffalo, "	Granada	2-3	100.00
	Riverside	2-3	150.00

(Page 2: Rider to 131)

TOWN & STATE	THEATRE	NO. DAYS	TERMS
Rochester, N.Y.	Riviera	3-5	$200.00
	Liberty	2-3	85.00
	Lake	2-3	25.00
	Cameo	2-3	35.00
	Dixie	2-3	75.00
	State	3-5	75.00
	Grand	2	40.00
Ashland, Ohio	Palace	2-3	%
Athens, Ohio	Athena	2-3	%
Bellefontaine, Ohio	Holland	2-3	100.00
Bucyrus, "	Bucyrus	2-3	60.00
Delaware, "	Strand	2-3	100.00
Mt. Vernon, "	Vine	2-3	%
Norwalk, "	Forum	2-3	%
Piqua, "	Piqua	2-3	%
Tiffin, "	Rits	2-3	%
Van Wert, "	Van Wert	2-3	50.00
Wooster, "	Wooster	2-3	%
Lexington, Ky.	Kentucky or Ben Ali	3-4-7 Inc.Sat.-Sun	%
	Strand (2nd run)	2-3	100.00
	State (3rd run)	2-3	75.00
Richmond, Ky.	Madison	1-2	60.00
Paris, "	Bourbon	1-2	60.00

SCHINE ENTERPRISES CORPORATION

(SGD) GEO. V. LYNCH

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[illegible]

THIS RIDER SHALL HAVE THE SAME FORCE AND EFFECT AS IF SEPARATE EXHIBITION LICENSE AGREEMENTS ON THE FORM ATTACHED HERETO WERE EXECUTED FOR EACH THEATRE FOR EACH TOWN OR CITY AS THE CASE MAY BE.

(SGD) G.V.L.

8,

EXHIBIT NO. 135

Distributor United Artists Corp.
by G. J. Schaefer

Season

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre see rider

Contract application date November 4, 1937

Approval date

No. of pictures offered 1 - Vogues of 1938

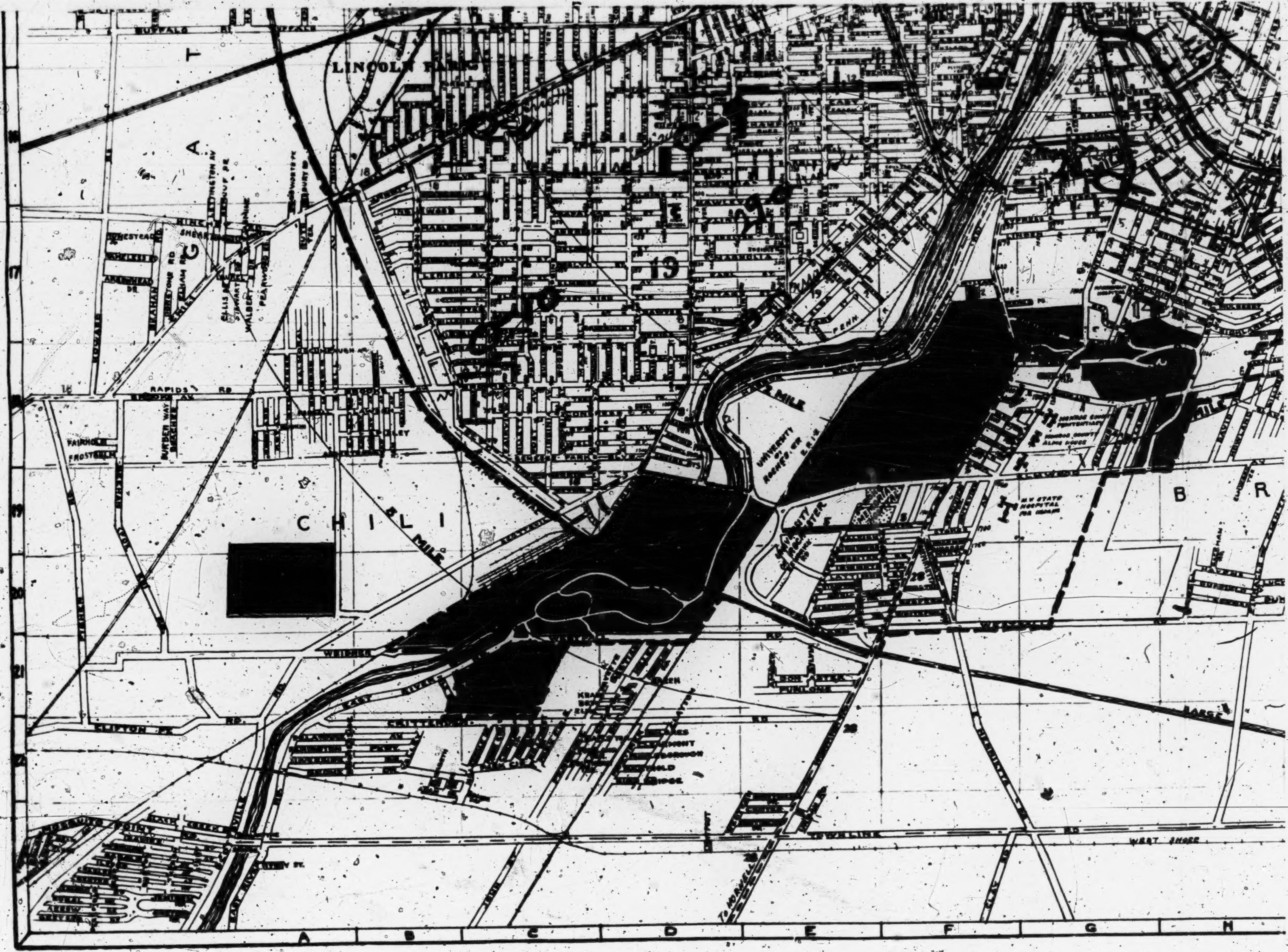
No. of Pictures Licensed 1

Provisions, if any, re admission prices

Run and clearance provisions see rider

Other typewritten or handwritten clauses including riders, if any.

List or summary of motion pictures licensed and rental terms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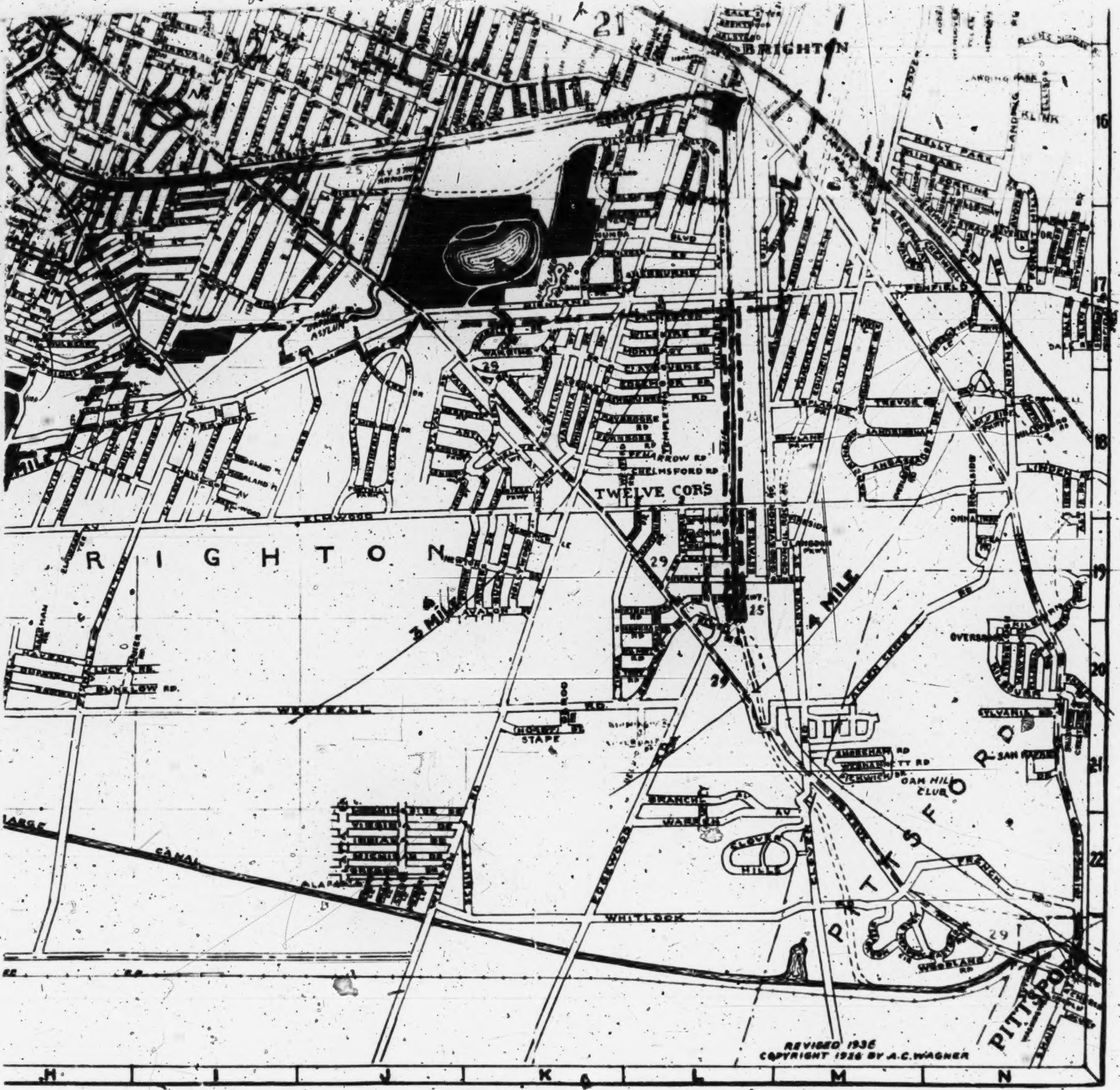
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THIS RIDER BECOMES A PART OF CONTRACT DATED NOVEMBER 4TH, 1937 BETWEEN UNITED ARTISTS CORPORATION AND THE SCHINE ENTERPRISES CORPORATION FOR THE EXHIBITION OF "VOGUES OF 1938" IN THE TOWNS AND THEATRES LISTED BELOW:-

WHEREVER THE PICTURE IS USED ON A DOUBLE FEATURE IN A PERCENTAGE SITUATION, THE EXHIBITOR IS ENTITLED TO DEDUCT THE COST OF THE SECOND FEATURE FROM THE GROSS RECEIPTS BEFORE COMPUTING UNITED ARTISTS SHARE IN DOUBLE FEATURE SITUATIONS.

ON PERCENTAGE SITUATIONS WHERE THE PICTURE IS PLAYED ON BANK NIGHT, THE EXHIBITOR IS ENTITLED TO DEDUCT THE COST OF ACTUAL BANK NIGHT GIVEAWAY FROM THE GROSS RECEIPTS BEFORE COMPUTING UNITED ARTISTS SHARE AND IT IS UNDERSTOOD THAT ONLY ONE OF THESE DEDUCTIONS IS TO BE PERMITTED ON ANY ONE OF THESE ENGAGEMENTS.

TOWN & STATE	THEATRE	NO. DAYS	TERMS
Auburn, N.Y.	Jefferson	2-3	30%
" (2nd run)	Palace	2-3	$50.00
Bath, N.Y.	Babcock	2-3	100.00
Canandaigua, N.Y.	Playhouse	2-3	75.00
Corning, "	Fox	2-3	30%
" (2nd run)	State	2-3	35.00
Cortland, N.Y.	State	2-3	30%
Geneva, "	Geneva	2-3	30%
Lockport, "	Rialto	2-3	30%
" (2nd run)	Hi-Art	2-3	50.00
Newark, N.Y.	Capitol	2-3	100.00
Oswego, "	Strand	2-3	30%
Salamanca,"	Andrews	2-3	75.00
Seneca Falls, N.Y.	Strand	2-3	50.00
Penn Yan, "		2-3	75.00
Perry, "		2-3	35.00
Buffalo, "	Granada	2-3	100.00
" "	Riverside	2-3	150.00
Rochester, "	Riviera	3-5	200.00
" "	Liberty	2-3	85.00
" "	Lake	2-3	25.00
" "	Cameo	2-3	35.00
" "	Dixie	2-3	75.00
" "	State	3-5	75.00
" "	Grand	2	40.00
Amsterdam, "	Rialto	2-3	30%
" (2nd run)	Regent	2	25.00
Carthage, N.Y.	Strand	2-3	60.00
Gloversville, N.Y.	Glove	2-3	30%
" (if repeat at	Hippodrome	2	50.00
Glens Falls, N.Y.	Rialto	3-4	30%
" (2nd run)	Empire	2-3	60.00
Hamilton, N.Y.	State	2-3	60.00
Herkimer, "	Liberty	2-3	100.00
Hudson Falls,"	Strand	2-3	35.00
Little Falls,"	Rialto	2-3	110.00
Malone, "	Malone	2	125.00
Massena, "	Massena	2-3	115.00
Norwich, "	Colonia	3-5	30%
Ilion, N.Y.		2-3	75.00
Ogdensburg, N.Y.	Strand	2-3	30%
Oneonta, "	Oneonta		30%
Saranac Lake,"	Pontiac	2-3	100.00
Tupper Lake, "	State	2-3	50.00
Watertown, "	Avon		30%
" (2nd run)	Olympic	2-3	75.00
Ashland, Ohio	Palace	2-3	30%
Athens, "	Athena	2-3	30%
Bellefontaine, Ohio	Holland	2-3	100.00
Bucyrus, "	Bucyrus	2-3	60.00
Delaware, "	Strand	2-3	100.00
Fostoria, "	Civic or Roxy or State	2-3	100.00
Mt. Vernon, "	Vine	2-3	30%

OWN & STATE	THEATRE	NO. DAYS	TERMS
orwalk, Ohio	Forum	2-3	30%
iqua, "	Piqua	2-3	30%
iffin, "	Ritz	2-3	30%
an Wert, "	Van Wert	2-3	50.00
ooster, "	Wooster		30%
edian, "	(Equal split with Associated Circuit)	2-3	50.00
exington, Ky.	Kentucky		30%
(2nd run)	Ben Ali	3-4	100.00
(3rd run)	Strand	1-2	75.00
ichmond, Ky.	Madison	1-2	60.00
aris, "	Bourbon	1	60.00

OTE: REGARDING THE PERCENTAGE SITUATIONS PLAYDATES TO BE MUTUALLY AGREED UPON.

SCHINE ENTERPRISES CORPORATION

(SGD).Geo..V..Lynch..............

HIS RIDER SHALL HAVE THE SAME FORCE AND EFFECT AS IF SEPARATE EXHIBITION ICENSE AGREEMENTS ON THE FORM ATTACHED HERETO WERE EXECUTED FOR EACH HEATRE FOR EACH TOWN OR CITY AS THE CASE MAY BE.

(SGD)..Geo..V..Lynch.................

EXHIBIT NO. 138

Distributor United Artists Corp.
by G. J. Schaefer

Season

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre see rider

Contract application date March 14, 1938

Approval date

No. of pictures offered 3 - Goldwyn Follies
The Hurricane
Marco Polo

No. of Pictures Licensed 3

Provisions, if any, re admission prices

Run and clearance provisions see rider

Other typewritten or handwritten clauses including riders, if any.

List or summary of motion pictures licensed and rental terms

THIS RIDER BECOMES A PART OF CONTRACT DATED MARCH 14TH, 1938 BETWEEN UNITED ARTISTS CORPORATION AND THE SCHINE ENTERPRISES CORPORATION FOR THE EXHIBITION OF "GOLDWYN FOLLIES", "THE HURRICANE" AND "MARCO POLO" IN THE TOWNS AND THEATRES LISTED BELOW:-

WHEREVER THE PICTURES ARE USED ON A DOUBLE FEATURE, THE EXHIBITOR IS ENTITLED TO DEDUCT THE COST OF THE SECOND FEATURE FROM THE GROSS RECEIPTS BEFORE COMPUTING UNITED ARTISTS SHARE IN DOUBLE FEATURE SITUATIONS.

WHERE PICTURES ARE PLAYED ON BANK NIGHT, THE EXHIBITOR IS ENTITLED TO DEDUCT THE COST OF THE ACTUAL BANK NIGHT GIVEAWAY FROM THE GROSS RECEIPTS BEFORE COMPUTING UNITED ARTISTS SHARE AND IT IS UNDERSTOOD THAT ONLY ONE OF THESE DEDUCTIONS IS TO BE PERMITTED ON ANYONE OF THESE ENGAGEMENTS.

TOWN & STATE	THEATRE	NO. DAYS	TERMS
Auburn, N.Y.	Jefferson	3-4	35%
Corning, "	Fox	2-3	35%
Cortland,"	State	2-3	35%
Geneva, "	Geneva	2-3	35%
Lockport,"	Rialto	2-3	35%
Oswego, "	Strand	2-3	35%
Amsterdam,"	Rialto	2-3	35%
Gloversville, N.Y.	Glove	2-3	35%
Glens Falls, "	Rialto	3-4	35%
Norwick, "	Colonia	2-3	35%
Ogdensburg, "	Strand	2-3	35%
Oneonta, "	Oneonta	2-3	35%
Watertown, "	Avon	2-3	35%
Ashland, Ohio	Palace	2-3	35%
Athens, "	Athena	2-3	35%
Mt. Vernon,"	Vine	2-3	35%
Norwalk, "	Forum	2-3	35%
Piqua, "	Piqua	2-3	35%
Tiffin, "	Rita	2-3	35%
Wooster, "	Wooster	2-3	35%
Lexington, Ky.	Kentucky	3-4-7	35%

NOTE: Regarding the percentage situations playdates to be mutually agreed upon.

SCHINE ENTERPRISES CORPORATION

CLEARANCE as set up in letter dated Nov. 17,1937, to apply.

(SGD)...Geo. V. Lynch.......

THIS RIDER SHALL HAVE THE SAME FORCE AND EFFECT AS IF SEPARATE EXHIBITION LICENSE AGREEMENTS ON THE FORM ATTACHED HERETO WERE EXECUTED FOR EACH THEATRE FOR EACH TOWN OR CITY AS THE CASE MAY BE.

(SGD).....................

EXHIBIT NO. 140

Distributor United Artists Corporation
by G. J. Schaefer

Season

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre see rider

Contract application date November 4, 1937

Approval date

No. of pictures offered 2 - Stella Dallas
Dead End

No. of Pictures Licensed 2

Provisions, if any, re admission prices

Run and clearance provisions see rider

Other typewritten or handwritten clauses including riders, if any.

List or summary of motion pictures licensed and rental terms

THIS RIDER BECOMES A PART OF CONTRACT DATED NOVEMBER 4TH, 1937 BETWEEN UNITED ARTISTS CORPORATION AND THE SCHINE ENTERPRISES CORPORATION FOR THE EXHIBITION OF "STELLA DALLAS" AND "DEAD END" IN THE TOWNS AND THEATRES LISTED BELOW:-

WHEREVER EITHER PICTURE IS USED ON A DOUBLE FEATURE IN A PERCENTAGE SITUATION, THE EXHIBITOR IS ENTITLED TO DEDUCT THE COST OF THE SECOND FEATURE FROM THE GROSS RECEIPTS BEFORE COMPUTING UNITED ARTISTS SHARE IN DOUBLE FEATURE SITUATIONS.

ON PERCENTAGE SITUATIONS WHERE EITHER PICTURE IS PLAYED ON BANK NIGHT, THE EXHIBITOR IS ENTITLED TO DEDUCT THE COST OF THE ACTUAL BANK NIGHT GIVEAWAY FROM THE GROSS RECEIPTS BEFORE COMPUTING UNITED ARTISTS SHARE AND IT IS UNDERSTOOD THAT ONLY ONE OF THESE DEDUCTIONS IS TO BE PERMITTED ON ANYONE OF THESE ENGAGEMENTS.

TOWN & STATE	THEATRE	NO. DAYS	TERMS
Auburn, N.Y.	Jefferson	3-4	35%
" (2nd run)	Palace	2-3	$50.00
Bath, N.Y.	Babcock	2-3	125.00
Canandaigua, N.Y.	Playhouse	2-3	150.00
Corning, "	Fox	2-3	35%
" (2nd run)	State	2-3	35.00
Cortland, N.Y.	State	2-3	35%
Geneva, "	Geneva	2-3	35%
Lockport, "	Rialto	2-3	35%
" (2nd run)	Hi-Art	2-3	100.00
Newark, N.Y.	Capitol	2-3	150.00
Oswego, "	Strand	2-3	35%
Salamanca, N.Y.	Andrews	2-3	150.00
Seneca Falls, N.Y.	Strand	2-3	100.00
PennYan, "		2-3	100.00
Perry, "		2-3	75.00
Buffalo, "	Granada	2-3	110.00
" "	RIVERSIDE	2-3	175.00
Rochester, "	Riviera	3-5	225.00
" "	Liberty	2-3	120.00
" "	Lake	2-3	35.00
" "	Cameo	2-3	50.00
" "	Dixie	2-3	125.00
" "	State	3-5	125.00
" "	Grand	2	50.00
Amsterdam, "	Rialto	2-3	35%
" (2nd run)	Regent	2	50.00
Carthage, "	Strand	2-3	110.00
Gloversville, "	Glove	2-3	35%
" (if repeat at	Hippodrome	2	75.00
Glens Falls, N.Y.	Rialto	3-4	35%
" "	Empire	2-3	100.00
Hamilton, "	State	2-3	100.00
Herkimer, "	Liberty	2-3	175.00
Hudson Falls, "	Strand	2-3	60.00
Little Falls, "	Rialto	2-3	175.00
Malone, "	Malone	2	150.00
Massena, "	Massena	2-3	160.00
Norwich, "	Colonia	2-3	35%
Ilion, N.Y.		2-3	75.00
Ogdensburg, N.Y.	Strand	2-3	35%
Oneonta, "	Oneonta	2-3	35%
Saranac Lake, "	Pontiac	2-3	150.00
Tupper Lake, "	State	2-3	75.00
Watertown, "	Avon	2-3	35%
" "	Olympic	2-3	115.00
Ashland, Ohio	Palace	2-3	35%
Athens, "	Athena	2-3	35%
Bellefontaine, Ohio	Holland	2-3	150.00
Bucyrus, "	Bucyrus	2-3	125.00

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TOWN & STATE	THEATRE	NO. DAYS	TERMS
Delaware, Ohio	Strand	2-3	$150.00
Fostoria, "	Civic or Roxy or State	2-3	150.00
Mt. Vernon, "	Vine	2-3	35%
Norwalk, "	Forum	2-3	35%
Piqua, "	Piqua	2-3	35%
Tiffin, "	Rita	2-3	35%
Van Wert, "	Van Wert	2-3	75.00
Wooster, "	Wooster	2-3	35%
Medina, "	(Equal split with Associated Circuit)	2-3	75.00
Lexington, Ky.	Kentucky	3-4-7	35%
" (2nd run)	Ben Ali	3-4	200.00
" (a 3rd run)	Strand	1-2-3	75.00
Richmond, Ky.	Madison	1-2	100.00
Paris, "	Bourbon	1-2	100.00

NOTE: Regarding the percentage situations playdates to be mutually agreed upon.

SCHINE ENTERPRISES, CORPORATION

(SGD)...Geo. V. Lynch........

THIS RIDER SHALL HAVE THE SAME FORCE AND EFFECT AS IF SEPARATE EXHIBITION LICENSE AGREEMENTS ON THE FORM ATTACHED HERETO WERE EXECUTED FOR EACH THEATRE FOR EACH TOWN OR CITY AS THE CASE MAY BE.

(SIGNED)...Geo. V. Lynch........

EXHIBIT NO. 141

Distributor United Artists Corporation
by P. N. Lazarus

Season

Exhibitor Schine Enterprises Corp.

Theatre see rider

Contract application date December 1, 1938

Approval date

No. of pictures offered 4 - Cowboy & the Lady
Last Frontier
Daring Age
Wuthering Heights

No. of Pictures Licensed 4

Provisions, if any, re admission prices see rider

Run and clearance provisions

Other typewritten or handwritten clauses including riders, if any.

List or summary of motion pictures licensed and rental terms

5351

THIS RIDER BECOMES A PART OF CONTRACT DATED DECEMBER 1ST, 1935, BETWEEN UNITED ARTISTS CORPORATION AND THE SCHINE ENTERPRISES CORPORATION FOR THE EXHIBITION OF "COWBOY AND THE LADY", "THE LAST FRONTIER", "THE DARING AGE" AND "WUTHERING HEIGHTS" IN THE TOWNS AND THEATRES LISTED BELOW.

IN ALL SITUATIONS WHERE A FLAT RENTAL PICTURE IS USED ON A MIDNIGHT SHOW AND THE MIDNIGHT SHOW ENGAGEMENT EXCEEDS THE NUMBER OF DAYS THE PICTURE IS CONTRACTED FOR, THE PRICE OF THE MIDNIGHT SHOW IS TO BE $10.00.

IN ANY FLAT RENTAL SITUATION OR SITUATIONS WHERE A PICTURE IS USED ABOVE THE CONTRACTED NUMBER OF DAYS, THE TERMS FOR SUCH ADDITIONAL DAY OR DAYS TO BE 50% PER DIEM RATE.

			Flat Rental	
TOWN and STATE	THEATRE	NO.DAYS	COWBOY FRONTIER	DARING WUTHERI
Lexington, Ky.	BenAli, Strand or State(2nd run)	3-4	$ 250.00	$ 200.0
Lexington, Ky.	Strand or State(3rd run)	1-2-3	93.75	75.0
Paris, Ky.	Bourbon	2-3	125.00	100.0
Richmond, Ky.	Madison or State	2-3	125.00	100.
Bellefontaine, O.	Holland	2-3	187.50	150.
Bucyrus, O.	Bucyrus or Southern	2-3	158.25	125.
Delaware, O.	Strand or Star	2-3	187.50	150.
Fostoria, O.	Civic, Roxy or State	3-4	187.50	150.
Kent or Ravenna, O.	Kent or Ravenna	2-3	187.50	150.
Kent or Ravenna, O.	Kent or Ravenna(2nd Run)	2-3	160.00	125.
Tiffin, O.	Tiffin or Grand(2nd run)	2-3	50.00	40.
Van Wert, O.	Van Wert or Strand	2-3	93.75	75.
Auburn, N. Y.	Palace or Jefferson(2nd run)	2-3	62.50	50.
Bath, N. Y.	Babcock	2-3	156.25	125.
Canandaigua, N. Y.	Playhouse	2-3	187.50	150.
Carthage, N. Y.	Strand	2-3	137.50	110.
Corning, N. Y.	State or Palace(2nd Run)	2-3	43.75	35.
Newark, N. Y.	Capitol	2-3	187.50	150.
Penn Yan, N.Y.	Elmwood	2-3	125.00	100.
Perry, N.Y.	Auditorium	2-3	93.75	75.
Salamanca, N.Y.	Andrews	2-3	187.50	150.
Seneca Falls, N.Y.	Strand	2-3	125.00	100.
Watertown, N.Y.	Olympic or Palace(2nd Run)	2-3	143.75	115.
Lockport, N.Y.	Hi-Art or Rialto(2nd Run)	2-3	125.00	100.
Buffalo, N.Y.	Granada	3-4	137.50	110.
Buffalo, N.Y.	Riverside	3-4	218.75	175.
Rochester, N.Y.	Cameo	2-3	62.50	50.
Rochester, N.Y.	Dixie(2nd Run)	3-4	156.25	125.
Rochester, N.Y.	Grand	2-3	62.50	50.
Rochester, N.Y.	Lake	2-3	43.75	35.
Rochester, N.Y.	Liberty (2nd run)	2-3	150.00	120.
Rochester, N.Y.	Riviera (2nd run)	3-5	281.25	225.
Rochester, N.Y.	State (2nd run)	3-5	156.25	125.
Amsterdam, N.Y.	Regent or Strand (2nd Run)	2-3	62.50	50.
Glens Falls, N.Y.	Empire(2nd run)	2-3	125.00	100.
Hamilton, N.Y.	State	2-3	125.00	100.
Hudson Falls, N.Y.	Strand	2-3	75.00	60.
Herkimer, N.Y.	Liberty	2-3	218.75	175.
Ilion, N.Y.	Capitol	2-3	93.75	75.
Little Falls, N.Y.	Rialto	2-3	218.75	175.
Malone, N.Y.	Malone	2-3	187.50	150.
Massena, N.Y.	Massena	2-3	200.00	160.
Saranac Lake, N.Y.	Pontiac	2-3	187.50	150.
Tupper Lake, N.Y.	State	2-3	93.75	75.
Ashland, O.	Opera House(2nd run)	2-3	40.00	30.
Middlesboro, Ky.	Manring or Brownie	2-3	135.00	110.
Paris, Ky.	Bourbon(2nd run)	2-3	35.00	25.
Corbin, Ky.	Hippodrome or Kentucky	2-3	75.00	60.

TOWN and STATE	THEATRE	NO. DAYS	Flat Rental COWBOY FRONTIER	Flat Rental DARING AGE WUTHERING
Easton, Md.	Avalon or Music Hall	2-3	$ 115.00	$ 100.00
Milford, Del.	Plaza	2-3	110.00	90.00
Federalsburg, Md.	Federal	2-3	50.00	40.00
Cambridge, Md.	Arcade or State	2-3	150.00	125.00

SCHINE ENTERPRISES CORPORATION

(Sgd.)..............................

THIS RIDER SHALL HAVE THE SAME FORCE AND EFFECT AS IF SEPARATE EXHIBITION LICENSE AGREEMENTS ON THE FORM ATTACHED HERETO WERE EXECUTED FOR EACH THEATRE FOR EACH TOWN OR CITY AS THE CASE MAY BE.

(sgd.)..............................

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EXHIBIT NO. 146

Distributor United Artists Corporation
by P. N. Lazarus

Season

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre see rider

Contract application date November 29, 1939

Approval date

No. of pictures offered 4 - My Son, My Son
- Two Years Before the Mast
- House of Monte Cristo
Valentino

No. of Pictures Licensed 4

Provisions, if any, re admission prices

Run and clearance provisions see rider

Other typewritten or handwritten clauses including riders, if any.

List or summary of motion pictures licensed and rental terms

This Rider becomes a part of contract dated 11/29/39 between **UNITED ARTISTS CORP.** and the SCHINE ENTERPRISES CORP. for the exhibition of four Ed. Small productions, namely, MY SON, MY SON, TWO YEARS BEFORE THE MAST, HOUSE OF MONTE CRISTO AND VALENTINO:

1. In towns and theatres listed below at terms listed opposite each situation.

2. In percentage situations the exhibitor shall have the right to deduct the cost of the second feature and the cost of Bank Night in all situations where the policy prevails. Deduction to be made from the gross receipts.

3. In all situations where a flat rental picture is used on a midnight show and the midnight show exceeds the number of days the picture is contracted for, the price of the midnight show is to be $10.00. In percentage terms where pictures are played on a midnight show, terms for the midnight show to be 5% less than the original terms.

4. In any flat rental situation or situations where a picture is used above the contracted number of days, the terms for such additional day or days to be 50% per diem rate.

wn	Theatre	MY SON	BEFORE MAST HOUSE CRISTO	VALENTINO	Days
BURN	Auburn, Jefferson or Palace	35%	30%	25%	2-3
RNING	Fox, Palace or State	35%	30%	25%	2-3
RTLAND	State or Temple	35%	30%	25%	2-3
NEVA	Geneva or Regent	35%	30%	25%	2-3
CKPORT	Palace, Rialto or Hi-Art	35%	30%	25%	2-3
EGO	Strand or Capitol	35%	30%	25%	2-3
IERTOWN	Avon, Olympic or Palace	35%	30%	25%	2-3

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Town	Theatre	MY SON	BEFORE MAST	HOUSE CRISTO	VALENTINO
AUBURN(2nd run)	Jefferson or Palace	$ 40.00	$ 30.00	$ 30.00	$ 25.00
BATH	Babcock	65.00	50.00	50.00	35.00
BUFFALO	Granada	75.00	50.00	40.00	50.00
"	Riverside	100.00	75.00	75.00	60.00
CANANDAIGUA	Playhouse	75.00	50.00	50.00	35.00
CARTHAGE	Strand	60.00	40.00	40.00	30.00
CORNING(2nd run)	Palace or State	25.00	20.00	20.00	17.50
E.ROCHESTER-or-FAIRPORT	Rialto or Temple	35.00	25.00	25.00	20.00
FAORPORT or E.ROCH.	Temple(if repeat)Rialto	25.00	20.00	20.00	15.00
LOCKPORT(2nd run)	Rialto or Hi-Art	50.00	40.00	40.00	35.00
NEWARK	Capitol	75.00	50.00	50.00	40.00
PENN YAN	Elmwood	60.00	40.00	40.00	35.00
PERRY	Auditorium	50.00	25.00	25.00	20.00
SALAMANCA	Andrews	75.00	60.00	60.00	50.00
SENECA FALLS	Strand	50.00	40.00	40.00	30.00
WATERTOWN(2nd run)	Olympic or Palace	60.00	50.00	50.00	40.00
ROCHESTER	Riviera or Liberty	200.00	112.50	112.50	100.00
"	Liberty (repeat)	75.00	50.00	50.00	40.00
"	Dixie or State	75.00	60.00	40.00	60.00
"	Dixie or State(repeat)	75.00	60.00	60.00	40.00
"	Cameo	35.00	25.00	25.00	20.00
"	Grand	40.00	40.00	25.00	25.00
"	Madison	60.00	60.00	40.00	40.00
"	Monroe	60.00	60.00	40.00	40.00
"	West End	25.00	25.00	22.50	20.00
SYRACUSE	Palace	60.00	50.00	30.00	30.00

THIS RIDER SHALL HAVE THE SAME FORCE AND EFFECT AS IF A SEPARATE EXHIBITION LICENSE AGREEMENTS OF THE FORM ATTACHED HERETO WERE EXECUTED FOR EACH THEATRE FOR EACH TOWN OR CITY AS THE CASE MAY BE.

UNITED ARTISTS CORP.
by:
B. M. Stearn

SCHINE ENTERPRISES CORP.
by: Geo. V. Lynch

EXHIBIT NO. 155

Distributor United Artists Corporation Season
by A. W. Kelly

Exhibitor Schine Enterprises Corp. Theatre see rider
by L. Goldstein

Contract application date February 19, 1941 Approval date March 27, 1941

No. of pictures offered 1 - The Great Dictator No. of Pictures Licensed 1

Provisions, if any, re admission prices

Run and clearance provisions see rider

Other typewritten or handwritten clauses including riders, if any.

List or summary of motion pictures licensed and rental terms

5357

This Rider becomes a part of contract dated 2/19/41 between UNITED ARTISTS CORP. and the SCHINE ENTERPRISES CORP. for the exhibition of the Charles Chaplin production, THE GREAT DICTATOR.

1. In towns and theatres listed below at the following terms:

2. The basic film rental terms shall be 40% of the gross box office receipts with the provision, however, that said film rental terms shall be increased from the first dollar of gross 1% for each 3% by which the gross receipts shall exceed the central figures for each situation, said central figures as set forth below, which is made a part of this contract, but in no case shall the rental exceed 50% of the gross receipts, nor shall the rental be less than 40% of the gross receipts. The film rental terms above set forth shall apply individually to each situation for the playing time established and shown below. For any playing time in excess of that set forth below, the film rental terms shall be straight 33% of the gross receipts.

Town	Theatre	Basic Figure	Playing Time
			(ur
AUBURN, N.Y.	Auburn	$ 3100.00	4 days incl. Sunday or S
CORNING	Fox	1400.00	3 days incl. Sun.
CORTLAND	State	1500.00	2 days incl. Sun. or Sa
GENEVA	Geneva	2200.00	3 days incl. Sun or Sat
LOCKPORT	Palace	1800.00	3 days incl. Sun. or S
OSWEGO	Strand or Oswego	2300.00	3 days incl. Sat.
WATERTOWN	Avon	2100.00	3 days incl. Sun. or Sa

THIS RIDER SHALL HAVE THE SAME FORCE AND EFFECT AS IF A SEPARATE EXHIBITION LICENSE AGREEMENTS ON THE FORM ATTACHED HERETO WERE EXECUTED FOR EACH THEATRE FOR EACH TOWN OR CITY AS THE CASE MAY BE.

SCHINE ENTERPRISES CORP.

by L. Goldstein

UNITED ARTISTS CORP.

by____________________

EXHIBIT NO. 159

Distributor United Artists Corporation
by B. J. Stearns

Season

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre see rider

Contract application date December 16, 1940

Approval date April 8, 1941 by A. W. Kelly

No. of pictures offered 1 - The Westerner

No. of Pictures Licensed 1

Provisions, if any, re admission prices

Run and clearance provisions see rider

Other typewritten or handwritten clauses including riders, if any,

ist or summary of motion pictures licensed and rental terms

4
5359

This Rider becomes a part of contract dated December 16, 1940, between UNITED ARTISTS CORP. and the SCHINE ENTERPRISES CORP. for the exhibition of Samuel Goldwyn's production, THE WESTERNER:

1. In towns and theatres listed below at terms listed opposite each situation.

2. In all situations where a flat rental picture is used on a midnight show and the midnight show exceeds the number of days the picture is contracted for, the price of the midnight show is to be $10.00. In percentage towns where pictures are played on a midnight show, terms for the midnight show to be 5% less than the original terms.

3. In any flat rental situation or situations where a picture is used above the contracted number of days, the terms for such additional day or days to be 50% per diem rate.

TOWN	THEATRE	THE WESTERNER	DAYS
FEDERALSBURG	Federal	$ 40.00	2-3
MILFORD	Plaza	90.00	2-3
EASTON	Avalon or Music Hall	100.00	2-3
CAMBRIDGE	Arcade or State	125.00	2-3
SALISBURY	Arcade of Wiccenice(run 2)	30.00	2-3

THIS RIDER SHALL HAVE THE SAME FORCE AND EFFECT AS IF A SEPARATE EXHIBITION LICENSE AGREEMENTS ON THE FORM ATTACHED HERETO WERE EXECUTED FOR EACH THEATRE FOR EACH TOWN OR CITY AS THE CASE MAY BE.

SCHINE ENTERPRISES CORP.
by:
Geo. V. Lynch

UNITED ARTISTS CORP.
by:
B. J. Stearns

This rider becomes a part of contract dated 12/16/40 between UNITED ARTISTS CORP. and the SCHINE ENTERPRISES CORP. for the exhibition of the Samuel Goldwyn production, THE WESTERNER:

1. In towns and theatres listed below at terms listed opposite each situation.

2. In percentage situations the exhibitor shall have the right to deduct the cost of the second feature or the cost of Bank Night in all situations where the policy prevails. Deduction to be made from the gross receipts - but only one deduction, not both.

3. In all situations where a flat rental picture is used on a midnight show and the midnight show exceed the number of days the picture is contracted for, the price of the midnight show is to be $10.00. In percentage terms where pictures are played on a midnight show, terms of the midnight show to be 5% less than the original terms.

4. In any flat rental situation or situations where a picture is used above the contracted number of days, the terms for such additional day or days to be 50% per diem rate.

Town	Theatre	THE WESTERNER	Days
ASHLAND	Palace or Opera House	35% of gross receipts	2-3
MOUNT VERNON	Vernon or Vine	35% " " "	2-3
NORWALK	Forum or Moose	35% " " "	2-3
TIFFIN	Ritz, Grand or Tiffin	35% " " "	2-3
WOOSTER	Wooster or Wayne	35% " " "	2-3
ASHLAND (2nd run)	Palace or Opera House	$ 30.00	2-3
BELLEFONTAINE	Holland	150.00	2-3
BUCYRUS	Bucyrus or Southern	125.00	2-3
DELAWARE	Strand or Star	150.00	2-3
FOSTORIA	State, Roxy or Civic	150.00	2-3
KENT or RAVENNA	Kent or Ravenna (1st run)	150.00	2-3
" " "	" " " (2nd run)	125.00	2-3
MEDINA	Medina or Princess	75.00	2-3
VAN WERT	Van Wert or Strand	75.00	2-3

THIS RIDER SHALL HAVE THE SAME FORCE AND EFFECT AS IF A SEPARATE EXHIBITION LICENSE AGREEMENTS ON THE FORM ATTACHED HERETO WERE EXECUTED FOR EACH THEATRE FOR EACH TOWN OR CITY AS THE CASE MAY BE.

SCHINE ENTERPRISES CORP.
By:
Geo. V. Lynch

UNITED ARTISTS CORP.
By:
B. J. Stearns

5361.

This rider becomes a part of contract dated 12/16/40 between UNITED ARTISTS CORP. and the SCHINE ENTERPRISES CORP. for the exhibition of Samuel Goldwyn's production, THE WESTERNER:

1. In towns and theatres listed below at terms listed opposite each situation.

2. In percentage situations the exhibitor shall have the right to deduct the cost of the second feature or cost of Bank Night in all situations where the policy prevails. Deduction to be made from the gross receipts.

3. In all situations where a flat rental picture is used on a midnight show and the midnight show exceeds the number of days the picture is contracted for, the price of the midnight show is to be $10.00. In percentage towns where pictures are played on a midnight show, terms of the midnight show to be 5% less than the original terms.

4. In any flat rental situation or situations where a picture is used above the contracted number of days, the terms for each additional day or days to be 50% per diem rate.

Town	Theatre	THE WESTERNER	Days
OGDENSBURG	Strand or Pontiac	35% of gross receipts	2-3
GLOVERSVILLE	Glove or Hippodrome	35% " " "	2-3
GLENS FALLS	Rialto or Empire	35% " " "	2-3
ONEONTA	Oneonta or Palace	35% " " "	2-3
AMSTERDAM	Rialto, Strand or Regent	35% " " "	2-3
NORWICH	Colonia	35% " " "	2-3
AMSTERDAM	Strand or Regent (2nd run)	$ 50.00	2-3
GLENS FALLS	Rialto or Empire (2nd run)	100.00	2-3-4
GLOVERSVILLE	Hippodrome (if repeat)	75.00	2-3
HAMILTON	State	100.00	2-3
HERKIMER	Liberty	175.00	2-3
HUDSON FALLS	Strand	60.00	2-3
ILION	Capitol	75.00	2-3
LITTLE FALLS	Rialto or Hippodrome	175.00	2-3
MALONE	Malone	150.00	2-3
MASSENA	Massena	160.00	2-3
SARANAC LAKE	Pontiac	75.00	2-3
TUPPER LAKE	State	75.00	2-3

THIS RIDER SHALL HAVE THE SAME FORCE AND EFFECT AS IF A SEPARATE EXHIBITION LICENSE AGREEMENTS ON THE FORM ATTACHED HERETO WERE EXECUTED FOR EACH THEATRE FOR EACH TOWN OR CITY AS THE CASE MAY BE.

SCHINE ENTERPRISES CORP.
By:

Geo. V. Lynch

UNITED ARTISTS CORP.
by:

B. J. Stearns

5362

This rider becomes a part of contract dated 12/16/40 between UNITED ARTISTS COPR. and the SCHINE ENTERPRISES CORP. for the exhibition of Samuel Goldwyn's production, THE WESTERNER:

1. In towns and theatres listed below at terms listed opposite each situation.

2. In percentage situations the exhibitor shall have the right to deduct the cost of the second feature or cost of Bank Night in all situations where the policy prevails. Reduction to be made from the gross receipts - but only one deduction, not both.

3. In all situations where a flat rental picture is used on a midnight show and the midnight show exceeds the number of days the picture is contracted for, the price of the midnight show is to be $10.00. In percentage towns where pictures are played on a midnight show, terms of the midnight show to be 5% less than the original terms.

4. In any flat rental situation or situations where a picture is used above the contracted number of days, the terms for each additional day or days to be 50% per diem rate.

Town	Theatre	THE WESTERNER	Days
AUBURN	Auburn,Jefferson or Palace	35% of gross receipts	2-3
CORNING	Fez, Palace or State	35% " " "	2-3
CORTLAND	State or Temple	35% " " "	2-3
GENEVA	Geneva or Regent	35% " " "	2-3
LOCKPORT	Palace, Rialto or Hi-Art	35% " " "	2-3
OSWEGO	Strand or Capitol	35% " " "	2-3
WATERTOWN	Avon, Olympic or Palace	35% " " "	2-3
AUBURN	Jefferson or Palace(2nd run)	50.00	2-3
BATH	Babcock	125.00	2-3
CANANDAIGUA	Playhouse	150.00	2-3
CARTHAGE	Strand	110.00	2-3
CORNING	Palace or State (2nd run)	35.00	2-3
E.ROCHESTER or FAIRPORT	Rialto or Temple	35.00	2-3
FAIRPORT or E.ROCHESTER	(if repeat)Rialto or Temple	35.00	2-3
LOCKPORT	Rialto or Hi-Art (2nd run)	100.00	2-3
NEWARK	Capitol	150.00	2-3
PENN YAN	Elmwood	100.00	2-3
PERRY	Auditorium	75.00	2-3
ROCHESTER	Riviera or Liberty	225.00	3-5
"	Liberty (repeat)	120.00	2-3
"	Dixie or State	125.00	3-4
"	Dixie or State (repeat)	125.00	2-3
"	Cameo	50.00	2-3
"	Grand	50.00	2-3
"	Madison	100.00	2-3
"	Monroe	100.00	2-3
"	West End	35.00	2-3
"	Lake	35.00	2-3
SALAMANCA	Andrews	150.00	2-3
SENECA FALLS	Strand	100.00	2-3
SYRACUSE	Palace	80.00	2-3
WATERTOWN	Olympic or Palace (2nd run)	115.00	2-3
BUFFALO	Riverside	75.00	2-3
"	Granada	75.00	2-3

THIS RIDER SHALL HAVE THE SAME FORCE AND EFFECT AS IF A SEPARATE EXHIBITION LICENSE AGREEMENTS ON THE FORM ATTACHED HERETO WERE EXECUTED FOR EACH THEATRE FOR EACH TOWN OR CITY AS THE CASE MAY BE.

SCHINE ENTERPRISES CORP.
By:
Geo. V. Lynch
UNITED ARTISTS CORP.
By:

7853

5363

This Rider becomes a part of contract dated 12/16/40 between UNITED ARTISTS CORP. and the SCHINE ENTERPRISES CORP. for the exhibition of Samuel Goldwyn's production, THE WESTERNER:

1. In towns and theatres listed below at terms listed opposite each situation.

2. In percentage situations the exhibitor shall have the right to deduct the cost of the second feature or the cost of Bank Night in all situations where the policy prevails. Deduction to be made from the gross receipts - but only one deduction, not both.

3. In all situations where a flat rental picture is used on a midnight show and the midnight show exceeds the number of days the picture is contracted for, the price of the midnight show is to be $10.00. In percentage towns where pictures are played on a midnight show, terms of the midnight show to be 5% less than the original terms.

4. In any flat rental situation or situations where a picture is used above the contracted number of days, the terms for such additional day or days to be 50% per diem rate.

Town	Theatre	THE WESTERNER	Days
ATHENS, OHIO	Athena, Court or Ohio	35% of gross receipts	2-3
LEXINGTON, KY.	Ben Ali, Kentucky or Strand	35% of gross receipts	2-3
PIQUA, OHIO	Piqua or Miami	35% of gross receipts	2-3
CORBIN, KY.	Hippodrome or Kentucky	$ 60.00	3-4
LEXINGTON, KY.-Run2	Ben Ali, Strand or State	200.00	3-4
" Run3	State or Opera House	75.00	2-3
" Run4	State or Opera House	22.50	2-3
MAYSVILLE, KY.	Russell	75.00	2-3
MIDDLESBORO, KY.	Manring or Brownie	110.00	2-3
PARIS, KY.	Bourbon	100.00	2-3
PIKEVILLE, KY.	Liberty	50.00	2-3
RICHMOND, KY.	Madison or State	100.00	2-3

THIS RIDER SHALL HAVE THE SAME FORCE AND EFFECT AS IF A SEPARATE EXHIBITION LICENSE AGREEMENTS ON THE FORM ATTACHED HERETO WERE EXECUTED FOR EACH THEATRE FOR EACH TOWN OR CITY AS THE CASE MAY BE.

SCHINE ENTERPRISES CORP.
By:

Geo. V. Lynch

UNITED ARTISTS CORP.
By:

Bert Stearns

EXHIBIT NO. 192

Distributor 20th Century-Fox Film Corp. Season K-4
by Geo. Roberts

Exhibitor Schine Enterprises Corp. Theatre Kentucky or Ben Ali or Strand or State, Lexington, Ky.
by Geo. V. Lynch

Contract application date 12/15/36 Approval date 2/10/37

No. of pictures offered all No. of Pictures Licensed all

Provisions, if any, re admission prices Evenings, adults, 35 - 25, children, 10. Matinees, adults, 20 - 15, children, 10.

Run and clearance provisions 60 days' clearance over subsequent runs. Pictures to start not later than November 1, 1936 and to be played in the order released by the distributor atthe rate of one per week if and as available.

Other typewritten or handwritten clauses including riders, if any. Subjects in Group A, B, C & D to play Kentucky or Ben Ali or Strand Theatre.

All conditions included in the letter signed by Mr. Sussman dated August 5, 1936, to be part and parcel of the contracts signed for Lexington. Exchange Cincinnati, date December 15, 1936. Salesman, J. J. Grady.

List or summary of motion pictures licensed and rental terms

A.	Four (4)	4	35%
B.	Eight (8)	4	30%
C.	Twelve (12)	3/4	25%
D.	Four (4)	3/4	$150 flat
E.	Seventeen (17)	3/4	$100 flat
F.	Balance		
	one-half	2/4	$75 flat
	one-half	2/4	$50 flat

Recording charge, $5.00 per day $10.00, 3 days, $15.00, 4 days, $25.00, 7 days. If State, $2.50 per day.

EXHIBIT NO. 268

Distributor Paramount Pictures, Inc.
by Unsigned

Season S-11

Exhibitor Helen Ulman

Theatre New or Ulman's, Salisbury, Md.

Contract application date July 18, 1939

Approval date

No. of pictures offered 1/2 product

No. of Pictures Licensed 26

Provisions, if any, re admission prices Evenings, adults, 35 - 25, children, 15 - 10. Matinees, adults, 25, children, 10.

Run and clearance provisions First. For A, B, C pictures:- 7 days ahead of Berlin, Ocean City, Princess Anne, Snow Hill, Pocomoke, Laurel and Seaford; 30 days ahead of Del Mar. Clearance is waived on D and E pictures over Berlin, Seaford and Pocomoke.

Other typewritten or handwritten clauses including riders, if any. Exhibitor agrees to play or pay for, as available, above pictures starting September 15, 1939 and to continue until the completion of this contract.

Exchange Washington, D. C. Zone 2.
Salesman J. E. Fontaine.

List or summary of motion pictures licensed and rental terms

(A)	2 photoplays	6	$175	40%
(B)	6 photoplays	4-6	$150	35%
(C)	6 photoplays	4-6	$110	30%
(D)	6 photoplays	2-3	$ 82.50	
(E)	6 photoplays	2	$ 57.50	

(F) Exhibitor has privilege of playing any A, B and C pictures at Ulman's Theatre as repeat, 2-3 days at 25% of gross.

(AA) Any class A picture played second week, terms to be $75 against 25% for three days additional or $100 against 25% for six days additional.

(BB) Any class B picture played second week, terms to be $50 against 25% for three days additional or $75 against 25% for six additional days

Split of above pictures between the New and Ulman's Theatres and the Arcade Theatre is to be based upon the Loew-Warner Bros. split. New Or Ulman's spli to follow Warner Bros. at start and to alternate with Loew's split. Contract includes all Zane Grey pictures.

EXHIBIT NO. 324 A

Distributor Fox Film Corp.
by John. D. Clark

Season K-1

Exhibitor Schine Theatrical Co., Inc.
by Geo. V. Lynch

Theatre Rialto, Little Falls, New York

Contract application date 8/3/33

Approval date 9/1/33

No. of pictures offered all

No. of Pictures Licensed 45

Provisions, if any, re admission prices Evenings, adults, orchestra, 25, balcony, 15; children, 10. Matinees, adults, orchestra 25, balcony 15; children, 10.

Run and clearance provisions First run Little Falls, New York. Thirty days over St. Johnsville and Fort Plain, New York. Sixty days, City of Little Falls New York.

Other typewritten or handwritten clauses including riders, if any.
Exchange Albany. Date 8/3/33. Salesman: W. A. Ryan.
Pursuant to provisions of Clause 8th of this agreement, it is agreed that included among the photoplans licensed hereunder are four photoplays which are Gaumont-British or Gaumont-British-UFA productions.

List or summary of motion pictures licensed and rental terms

(A)	12	2	30%	50/50 over $800.00
(B)	12	2	25%	
(C)	Remaining	2	$40.00	

It is understood and agreed that the exhibitor will use a minimum of 45 pictures.

Score Charge: $2.50 per day, $5.00 per run.

EXHIBIT NO. 324 A

Distributor 20th Century-Fox Film Corp.
by John D. Clark

Season K-4

Exhibitor Schine Theatrical Co.,Inc.

Theatre Rialto, Regent or Strand
Amsterdam, New York

Contract application date 6/17/35

Approval date 8/12/36

No. of pictures offered 56

No. of Pictures Licensed 43

Provisions, if any, re admission prices Evenings, adults, 25 - 15, children, 10. Matinee: adults, 20, children, 10. Sundays, adults, 30, children 10

Run and clearance provisions 1st usual. Thirty days over Johnstown, Fonda and Broadalbin.

Other typewritten or handwritten clauses including riders, if any.

Exchange Albany. Date June 17, 1936.
Salesman, M. Grassgreen

List or summary of motion pictures licensed and rental terms

AA.	Four (4)	2/3	35% of gross	$5
A.	Eight (8)	2/3	30% of gross	$5
B.	Twelve (12)	2/3	25% of gross	$5
C.	Nineteen (19)	2/3	$100 (Strand $50)	$5

Where pictures are used as part of a double feature bill, score will be 50% of the price listed; also if any of the pictures are used only one day, score to be $2.50.

EXHIBIT NO. 324 A

Distributor 20th Century-Fox Film Corp
by John D. Clark

Season K-3

Exhibitor Belpic Corp.
by Geo. V. Lynch

Theatre Van Wert or Strand, Van Wert, Ohio

Contract application date 10/9/35

Approval date 10/24/35

No. of pictures offered all

No. of Pictures Licensed all

Provisions, if any, re admission prices. Evenings, adults, 25, children, 10.

Run and clearance provisions

Other typewritten or handwritten clauses including riders, if any.

Playing arrangement - one per week, as available.
Exchange Cleveland
Date 10/8/35
Salesman Office

t or summary of motion pictures licensed and rental terms

an Wert Theatre

ight (8)	3	30%	50%	$950.00	$2.50 per day	$5.00 per run

an Wert Theatre or Strand

en (10)	2/3	25%	$2.50 per day	$5.00 per run
even (7)	2/3	$50.00 flat rental	$2.50 per day	$5.00 per run
wenty (20)	1/2	$35.00 flat rental	$2.50 per day	$5.00 per run
emaining	1/2	$20.00 flat rental	$2.50 per day	$5.00 per run

. - If class "A" pictures play in Strand, terms to be three days - $75.00 vs. 30% if played mid-week, or three days - $75.00 vs. 25% if played including Sunday to a split over $350.00.
rms 25% to cover Sunday or Saturday showing only.

5369

EXHIBIT NO. 324 B

Distributor	Fox Film Corp. by John D. Clark	Season	1935-36 (k-3)
Exhibitor	Van Wert Amusement Co. by C. L. Dasher, Mgr.	Theatre	Strand, Van Wert, Ohio
Contract application date	3/12/35	Approval date	3/20/35
No. of pictures offered	all	No. of Pictures Licensed	all

Provisions, if any, re admission prices **Evenings, adults, 25, children, 10.**

Run and clearance provisions

Other typewritten or handwritten clauses including riders, if any.

Exchange Cleveland. Date 3/12/35. Salesman, S. N. Lichter.

Playing Arrangement - one per week as available, starting 11/1/35.
All provisions of the 1935-36 standard exhibition contract will be deemed part of this agreement.

List or summary of motion pictures licensed and rental terms

Eight (8)	3(	$75.00 vs. 30% 50%	$350.00	
	(	$75.00 vs. 25% 50%	$350.00	
		(Sat. or Sun. opening)		
Ten (10)	2/3	$60.00 vs. 25%	$5.00	
Seven (7)	2/3	$50.00 flat rental,		one day,$3.00 2/3 da $5.00
Twenty (20)	1/2	$35.00 flat rental,		one day,$3.00 2/3 da.$5.00
Remaining	1/2	$20.00 flat rental,		one day,$3.00 2/3 da.$5.00

EXHIBIT NO. 324 B

tributor Fox Film Corp.
by John D. Clark

Season K-2

ibitor Schine Theatrical Co.,Inc.
Geo. V. Lynch

Theatre Rialto, Little Falls, New York

tract application date 6/23/34

Approval date 7/12/34

of pictures offered all

No. of Pictures Licensed all

isions, if any, re admission prices Evenings, adults, orchestra, 25, balcony, 15; ildren, 10. Matinees, adults, orchestra, 25, balcony, 15; children, 10.

and clearance provisions First run Little Falls, New York. Thirty days over lgeville. St. Johnsville and Ft. Plain, New York. Sixty days City of ttle Falls, New York.

typewritten or handwritten clauses including riders, if any.
hange Albany
e 6/23/34
esman: M. Grassgreen

summary of motion pictures licensed and rental terms

-	2	30% to $800.00 - 50% over $800.00	$5.00
-	2	25% of the gross	$5.00
aining	1/2	$30.00 flat rental,	one day $2.50,2 da.,$5.00

exhibitor agrees to play or pay for a minimum of 45 pictures.

EXHIBIT NO. 324 B

Distributor 20TH Century-Fox Film Corp. **Season** K-4
by John D. Clark

Exhibitor Schine Theatrical Co., Inc. **Theatre** Strand or Regent, Amsterdam, N. Y

Contract application date 6/17/36 **Approval date** 8/12/36

No. of pictures offered 10 **No. of Pictures Licensed** 10

Provisions, if any, re admission prices Evenings, adults, 25, children, 10. Matinees, adults, 15, children, 10.

Run and clearance provisions 2nd, not earlier than 30 days after first run. As available.

Other typewritten or handwritten clauses including riders, if any,
Exchange Albany.
Date 6/17/36.
Salesman, M. Grassgreen.

List or summary of motion pictures licensed and rental terms
AA. Ten (10) 2/3 $50 $5
Repeat after first run

Where pictures are used as part of a double feature bill, score will be 50% of the price listed; also, if any of the pictures are used only one day, score to be $2.50.

EXHIBIT NO. 324 C

Distributor Fox Film Corp.
by John D. Clark

Season K-3

Exhibitor Schine Theatrical Co., Inc.
by Geo. V. Lynch

Theatre Rialto, Little Falls, New York

Contract application date 8/5/35

Approval date 8/26/35

No. of pictures offered all

No. of Pictures Licensed 40

Provisions, if any, re admission prices Evenings, adults, orchestra, 25, balcony, 15; children, 10. Matinees, adults, orchestra, 25, balcony, 15; children, 10.

Run and clearance provisions. First run - 30 days' clearance over Dolgeville, St. Johnsville., 14 days over Ft. Plain, 60 days over 2nd run Little Falls

Other typewritten or handwritten clauses including riders, if any.
Exchange Albany
Date 8/5/35
Salesman: M. Grassgreen

List or summary of motion pictures licensed and rental terms

6	3	30% to $800.00 50% over $800.00	$5.00
9	2/3	$50.00	
15	1/2	$30.00	$5.00
			$2.50 (one day) $5.00 (two days)

Where pictures are used on a double feature score will be 50% of the prices listed.

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EXHIBIT NO. 326 A

Distributor Fox Film Corporation
By John D. Clark

Season K-3

Exhibitor Schine Theatrical Company, Inc.
By Geo. V. Lynch

Theatre State, Corning, N.Y.

Contract application date August 5, 1935

Approval date August 26, 1935

No. of pictures offered All

No. of Pictures Licensed 48

Provisions, if any, re admission prices

Evenings - adults 35-25 ¢ Orchestra: 25¢ Balcony: Children 10¢
Matinees - adults 20¢ - children 10¢

Run and clearance provisions

2nd run Corning, N.Y.

Other typewritten or handwritten clauses including riders, if any.

Exchange: Buffalo, N.Y. Date: August 5, 1935 Salesman: Sydney Sa

List or summary of motion pictures licensed and rental terms

6	2-3	$ 37.50	$2.50
38	2-3	$ 15.00	$2.50

Should any of the above pictures play the State Theatre first run, they are to be cancelled from the second run contract.

It is understood and agreed that the Exhibitor will use a minimum of 48 pictures.

EXHIBIT NO. 326 B

Distributor Fox Film Corporation
By John D. Clark

Season K-3

Exhibitor Schine Theatrical Company, Inc.
By Geo. V. Lynch

Theatre State, Corning, New York

Contract application date August 5, 1935

Approval date August 26, 1935

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Evenings - adults 15¢ - children 10¢
Matinees - adults 15¢ - children 10¢

Run and clearance provisions 2nd run Corning, N.Y. Sixty (60) days after first run with Sixty (60) days clearance on third run.

Other typewritten or handwritten clauses including riders, if any.

Exchange: Buffalo Date: August 5, 1935 Salesman: Sydney Samson

List or summary of motion pictures licensed and rental terms

6	2-3 da	$37.50	$2.50
6	2-3	$15.00	$2.50

EXHIBIT NO. 326 C

Distributor Twentieth Century-Fox Film Corporation
By: John D. Clark

Season K-3

Exhibitor Gaby and Cohen
By: M. Gaby, Partner

Theatre Plaza, Corning, New York

Contract application date August 24, 1936

Approval date September 11, 1935

No. of pictures offered All

No. of Pictures Licensed 25

Provisions, if any, re admission prices
Evenings - adults 15-20¢, children 10¢
Matinees - adults 15-20¢, children 10¢

Run and clearance provisions After Schine Theatres' clearance - one per week starting 9/1/36.

Other typewritten or handwritten clauses including riders, if any.

Exchange: [illegible]uffalo Date: 8-24-36 Salesman: M.W.Kempner

List or summary of motion pictures licensed and rental terms

Five (5)	2-3	$22.50	$2.50
Two (2)	2-3	$17.50	$2.50
Eighteen (18)	1-2	$10.	$2.50

Exhibitor has the privilege of substituting Twentieth Century Features for the above.

EXHIBIT NO. 326 D

Distributor Fox Film Corporation
by John D. Clark

Season K-2

Exhibitor Schine Theatrical Co..Inc.
by Geo. W. Lynch

Theatre Fox or State, Corning, New York

Contract application date June 20, 1934

Approval date July 12, 1934

No. of pictures offered all

No. of Pictures Licensed all

Provisions, if any, re admission prices Evenings - adults 35¢ (25¢ added in pencil) orchestra
25¢ balcony
children 10¢
Matinees - adults 20¢, children 10¢

Run and clearance provisions
Thirty days on Plaza, Corning; Painted Post Addison
Sixty days on City of Corning

Other typewritten or handwritten clauses including riders, if any.
Exchange: Buffalo Date: 6-20-34

or summary of motion pictures licensed and rental terms
2 30% to split
2 25%
aining 2 $3[illegible].50

ore: 1 day $[illegible].50) 50% if double featured
Run $5.00)

EXHIBIT NO. 326 E

Distributor Fox Film Corporation
by John D. Clark

Season K-2

Exhibitor Schine Theatrical Co. Inc.
by Geo. V. Lynch

Theatre State, Corning, N.Y.

Contract application date June 20, 1934

Approval date July 12, 1934

No. of pictures offered All

No. of Pictures Licensed ~~As above~~

Provisions, if any, re admission prices
Evenings - adults 15¢ - children 10¢
Matinees- adults 15¢ - children 10¢

Run and clearance provisions 2nd run Corning - Sixty (60) days after first run with Sixty (60) days clearance on third run

Other typewritten or handwritten clauses including riders, if any.

Exchange: Buffalo

Date: 6-20-34

List or summary of motion pictures licensed and rental terms

4	2-3	$37.50	$2.50
Balance	2-3	$15.00	$2.50

Score: 50% of above charge if double featured

Should any of the above pictures play the State Theatre first ru
they are to be cancelled from the second run contract.

EXHIBIT NO. 326 F

Distributor Fox Film Corporation
by: John D. Clark

Season K-2

Exhibitor Gaby and Cohen
by: I. Cohen

Theatre Plaza, Corning, N.Y.

Contract application date November 20, 1934

Approval date November 27, 1934

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Evenings - adults 15¢ children 10¢
Matinees - adults 15¢ children 10¢

Run and clearance provisions As available after Shine theatres' clearance. Starting Feb. 1, 1935 and to play one picture a week if available.

Other typewritten or handwritten clauses including riders, if any.

Exchange: Buffalo Date: November 20, 1934 Salesman: M.W.Kempner

List or summary of motion pictures licensed and rental terms

2	2-3	$25.	40%	$2.50
12	2-3	$20.	35%	$2.50
8	2-3	$15.30		$2.50
Remaining	1-2	$10.00		$2.50

7.

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EXHIBIT NO. 326 G

Distributor Fox Film Corporation
By John D. Clark

Season K-1

Exhibitor Schine Theatrical Ent Inc.
By Geo. V. Lynch

Theatre Fox, Corning, N.Y.

Contract application date August 1, 1933

Approval date August 23, 1933

No. of pictures offered

No. of Pictures Licensed 45

Provisions, if any, re admission prices

Run and clearance provisions 30 days Plaza Theatre, Painted Post, Addison, 60 days City of Corning.

Other typewritten or handwritten clauses including riders, if any.

Exchange: Buffalo, N.Y. Date: 8-1-33 Salesman: Office

List or summary of motion pictures licensed and rental terms

2	2		30%	50/50 over $900.	$2.50 per day 5.00 per run
12	2		25%		$2.50 per day 5.00 per run
Remaining	2	$37.50			$2.50 per day 5.00 per run

It is agreed and understood that the Exhibitor will use a minimum of 45 pictures.

EXHIBIT NO. 326 N

Distributor Fox Film Corporation
By John D. Clark

Season K-1

Exhibitor Schine Theatrical Co. Inc.
By Geo. V. Lynch

Theatre State, Corning, New York

Contract application date October 23, 1933

Approval date November 9, 1933

No. of pictures offered

No. of Pictures Licensed

Provisions, if any, re admission prices
Evenings - adults 15¢ - children 10¢
Matinees - adults 15¢ - children 10¢

Run and clearance provisions

2nd run 60 days after first run with 60 days clearance on 3rd run. Features to play at the rate of one per week as available.

Other typewritten or handwritten clauses including riders, if any.

Exchange: Buffalo, N.Y. Date: 10-23-33 Salesman: S. Samson

List or summary of motion pictures licensed and rental terms

2	2-3	$37.50	$2.50
Remaining	2-3	$15.00	$2.50

Should any of the above pictures play the State Theatre, first run, they are to be cancelled from the 2nd run contract.

EXHIBIT NO. 326 I

Distributor Fox Film Corporation
By John D. Clark

Season K-1

Exhibitor Gaby and Cohen
By M. Gaby

Theatre Plaza, Corning, New York

Contract application date December 4, 1933

Approval date December 9, 1933

No. of pictures offered

No. of Pictures Licensed

Provisions, if any, re admission prices Evenings - adults 20¢ - children 10¢
Matinees - adults 20¢ - children 10¢.

Run and clearance provisions 3rd run as available. If the Fox or the State play one run, then this is to be 2nd run, but if they play two runs, then this is to be a 3rd run.

Starting Feb. 1, 1934 and to play one picture a week thereafter.

Other typewritten or handwritten clauses including riders, if any.

Exchange: Buffalo, N.Y. Date: December 4, 1933 Salesman: M.W.Kempner

List or summary of motion pictures licensed and rental terms

6	2-3	$15.00	Against 30% of the gross receipts	$2.50
Remaining	1-2	$12.50		$2.50

EXHIBIT NO. 328 A

istributor **Fox Film Corporation**
By John D. Clark

Season K-1 (33-34

xhibitor Schine Theatrical Co. Inc.
By Geo. V. Lynch

Theatre Olympic, Watertown, N.Y.

ontract application date August 3, 1933

Approval date September 1, 1933

o. of pictures offered

No. of Pictures Licensed

ovisions, if any, re admission prices Evenings - adults 25¢ orchestra - 10¢ balcony

n and clearance provisions 2nd run Watertown, N.Y. 30 days over 3rd run

er typewritten or handwritten clauses including riders, if any.

Exchange: Albany Date: 8-3-33 Salesman: W. A. Ryan

Pursuant to the provisions of clause Eighth of this agreement, it is agreed that included among the photoplays licensed hereunder are four photoplays which are Gaumont-British or Gaumont-British-Ufa productions.

or summary of motion pictures licensed and rental terms

2	2/3	$45.	$5.
Remaining	2/3	$20.	$5.

EXHIBIT NO. 328 B

Distributor Fox Film Corporation
By John D. Clark

Season K-2 (34-35)

Exhibitor Schine Theatrical Co. Inc.
By Geo. V. Lynch

Theatre Olympic, Watertown, N.Y.

Contract application date June 22, 1934

Approval date July 12, 1934

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Evenings - adults 25¢ children 10¢

Run and clearance provisions 2nd run Watertown, N. Y. 60 days over 3rd run.

Other typewritten or handwritten clauses including riders, if any,

Exchange - Albany Date - June 22, 1934 Salesman - M. Grassgr

List or summary of motion pictures licensed and rental terms

4	2/3	$45.00	$5.00
Remaining	2/3	$20.00	$5.00

Any picture that plays first run at this theatre will be eliminated from this contract.

EXHIBIT NO. 328 C

Distributor	Fox Film Corporation By John D. Clark	Season	K-3
Exhibitor	Schine Theatrical Co. Inc. By Geo. V. Lynch	Theatre	Olympic, Watertown, N.Y.
Contract application date	August 5, 1935	Approval date	August 26, 1935
No. of pictures offered	All	No. of Pictures Licensed	50

Provisions, if any, re admission prices Evenings - adults 25¢ children 10¢

Run and clearance provisions 2nd run - 60 days over third run.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Albany Date August 5, 1935 Salesman M. Grassgreen

List or summary of motion pictures licensed and rental terms

6	2/3	$45.00	$5.00
44	2/3	$20.00	$5.00.

Pictures that play first run at Avon are to play second run at Olympic.

Where pictures are used on a double feature - score will be 50% of the price listed.

EXHIBIT NO. 328 C

Distributor Fox Film Corporation (Twentieth Century Feature Productions) by John D. Clark
Season K-3 (35-36)

Exhibitor Schine Theatrical Co. Inc. by Geo. V. Lynch
Theatre Olympic, Watertown, N.Y.

Contract application date August 5, 1935
Approval date August 26, 1935

No. of pictures offered All
No. of Pictures Licensed All

Provisions, if any, re admission prices Evenings - adults 25¢ - children 10¢

Run and clearance provisions 2nd run - Same clearance as Fox feature contract

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Other typewritten or handwritten clauses including riders, if any,

Exchange - Albany   Date - August 5, 1935   Salesman: M. Grassgreen

List or summary of motion pictures licensed and rental terms

6	2/3	$45.00	$5.00
6	2/3	$20.00	$5.00

Where pictures are used on a double feature - score will be 50% of the prices listed.

EXHIBIT NO. 328 D

Distributor Twentieth Century- Fox Film Corporation
by John D. Clark

Season K-4 (36-37)

Exhibitor Schine The. Co. Inc.
by Geo. V. Lynch

Theatre Olympic, Watertown, N.Y.

Contract application date June 17, 1936

Approval date August 12, 1936

No. of pictures offered 56

No. of Pictures Licensed All

Provisions, if any, re admission prices Evenings - adults 25¢ children 10¢

Run and clearance provisions 2nd run - 60 days over 3rd run

Other typewritten or handwritten clauses including riders, if any.

Exchange - Albany Date - 6-17-36 Salesman - M. Grassgreen

List or summary of motion pictures licensed and rental terms

AA	TWO	(2)	2/3	$65.00	$5.00
A	SIX	(6)	2/3	$45.00	$5.00
B	REMAINING		2/3	$20.00	$5.00

All pictures that play first-run in Avon to play second-run Olympic, and pictures playing first-run at the Olympic to be cancelled from this contract.
Where pictures are used as part of a double-feature bill, score will be 50% of the price listed; also, if any of the pictures are used only one day, score to be $2.50.

EXHIBIT NO. 330 A

Distributor Twentieth Century-Fox Film
Corporation
By John D. Clark

Season K-4

Exhibitor Carl B. Moore

Theatre Ohio, Van Wert, Ohio

Contract application date December 18,1936

Approval date January 5, 1937

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Evenings - adults 15¢ children 10¢

Run and clearance provisions 2nd run in Van Wert

Other typewritten or handwritten clauses including riders, if any,

Exchange - Cleveland Date- December 18,1936 Salesman-S.N.Lichter

Playing Arrangement - 1 per week as available.

List or summary of motion pictures licensed and rental terms

Ten(10)	2/3	$30.00 vs 35% of gross	$2.50
Ten(10)	2/3	$20.00 Flat Rental	$2.50
Ten(10)	2/3	$15.00 Flat Rental	$2.50
Remainder	2/3	$12.50 Flat Rental	$2.50

Exhibitor has the privilege of interchanging any K-4 subject with K-3 with the exception of the Class A subjects. In the event the exhibitor plays any K-3 Class A picture it will offset a K-4 Class B-C or D subjec and will be an additional Class A picture.

EXHIBIT NO. 330 B

Distributor Twentieth Century-Fox Film Corporation
By John D. Clark

Season K-5

Exhibitor Carl B. Moore

Theatre Ohio, Van Wert, Ohio

Contract application date June 24, 1937

Approval date July 1, 1937

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices
Evenings - adults 15¢ children 10¢
Matinees - adults 15¢ children 10¢

Run and clearance provisions 2nd run in Van Wert, Ohio

Other typewritten or handwritten clauses including riders, if any.

Exchange - Cleveland Date - June 24, 1937 Salesman - S. M. Lichter

Playing Arrangement - 1 per week as available.

List or summary of motion pictures licensed and rental terms

Eleven (11)	2/3	$30.00 vs 35% of grdes	$2.50
Eleven (11)	2/3	$20.00 Flat Rental	$2.50
Thirteen (13)	2/3	$15.00 Flat Rental	$2.50
Remainder	2/3	$12.50 Flat Rental	$2.50

EXHIBIT NO. 330 C

Distributor Twentieth Century-Fox Film Corporation By John D. Clark
Season K-6 (1938-39)

Exhibitor Carl B. Moore
Theatre Ohio, Van Wert, Ohio

Contract application date January 31, 1938
Approval date March 18, 1938

No. of pictures offered All
No. of Pictures Licensed All

Provisions, if any, re admission prices Evenings - adults 15¢ children 10¢
Matinees - adults 15¢ children 10¢

Run and clearance provisions 2nd run in Van Wert, Ohio

Other typewritten or handwritten clauses including riders, if any.

Exchange - Cleveland Date - January 31st,1938 Salesman - D.B.Lichter

Playing Arrangement - 1 per week as available.

All provisions of the 1938-39 Standard Exhibition Contract shall be deemed part of this agreement.

List or summary of motion pictures licensed and rental terms

Thirteen (13)	2/3	$37.50	Flat Rental	$2.50
Four Jane Withers(4)	2/3	$22.50	Flat Rental	$2.50
Seventeen (17)	2/3	$22.50	Flat Rental	$2.50
Fifteen (15)	2/3	$16.50	Flat Rental	$2.50
Remainder	2/3	$12.50	Flat Rental	$2.50

This contract includes the Eddie Cantor Productions if and when released by the Distributor during the season for which this contract is in effect.

EXHIBIT NO. 333 A

Distributor Twentieth Century-Fox Film Corporation
By John D. Clark **Season** K-5

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch **Theatre** Strand or State or Ben Ali,
Lexington, Ky.

Contract application date October 20, 1937 **Approval date** December 2, 1937

No. of pictures offered All **No. of Pictures Licensed** All

Provisions, if any, re admission prices

Run and clearance provisions 2nd run Lexington - 60 days over 3rd run.

Other typewritten or handwritten clauses including riders, if any.
Exchange - Cincinnati Date - Oct. 20, 1937 Salesman - J. J. Grady

List or summary of motion pictures licensed and rental terms

5	2/3		35%	$2.50 per day	$5. per run
12	2/3	$100.00	Flat	$2.50 per day	$5. per run
16	2/3	$ 40.00	Flat	$2.50 per day	$5. per run
emaining	2/3	$ 35.00	Flat	$2.50 per day	$5. per run

If any percentage pictures be played on a midnight show, the terms for said midnight show shall be 20% of the gross receipts.

If any picture played on percentage is played as part of a double bill, Exhibitor shall have the right to deduct the price of the second feature from the gross receipts before accounting to the Distributor for his percentage. Deduction for the second feature shall not exceed the price of the Twentieth entury-Fox flat rental price.

ubject to all terms and conditions of the franchise.

f any of the above pictures are played as part of a double bill, the score harge shall be reduced 50%.

his contract to be effective for the theatrical seasons 1937-38 and 938-39.

EXHIBIT NO. 339 A

Distributor Paramount Pictures
Distributing Corporation
(Unsigned)

Season S-6

Exhibitor Mamyer Corporation
By Geo. V. Lynch: M.A. Shea

Theatre Jefferson, Strand or Palace,
Auburn, N. Y.

Contract application date September 19, 1934 **Approval date**

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices

Evenings - adults, orchestra 25¢ balcony 20¢ - children 10¢
Matinees - adults 20¢ - children 10¢

Run and clearance provisions

1st

Other typewritten or handwritten clauses including riders, if any.

Exchange - Buffalo Zone #0

Contract to start 10/15/34.

List or summary of motion pictures licensed and rental terms

A	(2) two	2-4		35% to split
B	(4) four	2-4		30%
C	(7) seven	2-4		25%
D	Balance of photoplans	2-4	$112.50	

Score: $2.50 per day, $5.00 for run.

EXHIBIT NO. 339 A

Distributor	Paramount Pictures Distributing Corporation By - (Unsigned)	Season	S-5
Exhibitor	Maurice Kronick	Theatre	Orpheum, Amsterdam, N.Y.
Contract application date	2-26-34	Approval date	
No. of pictures offered		No. of Pictures Licensed	46

Provisions, if any, re admission prices Evenings - adults 20¢ children 10¢
Matinees - adults 20¢ children 10¢

Run and clearance provisions 1st run Clearance: none

Other typewritten or handwritten clauses including riders, if any.

Five or more pictures per month, as available, starting March 1st, 1934.
All pictures to be played & paid for by January 1, 1935.
Exchange - Albany Zone - 1 Salesman - Wolf

List or summary of motion pictures licensed and rental terms **SUPERSEDING CONTRACT:**

) Three photoplays to be designated by Distributor	4	$75. against 35% of gross	$2.50
) Nine photoplays to be designated:	4	$70. against 33-1/3% to $400.00 50/50/ over	$2.50
) One photoplay to be designated:	4	$40. against 33-1/3% to $400.00 50/50 over	$2.50
) Nine photoplays to be designated:	4	$40. against 25% to $400.00 50/50 over	$2.50
) Twenty-four photoplays to be designated:	2-4	$40.00	$2.50

EXHIBIT NO. 339 B

Distributor Paramount Pictures
Distributing Corporation
(unsigned)

Season S-6

Exhibitor Amsterdam Consolidated Corp.
by Beo.V.Lynch - M.A.Shea

Theatre Rialto or Strand, Amsterdam,

Contract application date September 18, 1934

Approval date —

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices
Evenings - adults 25c/ children 10 ¢
Matinees - adults 25¢ children 10¢

Run and clearance provisions
1st - 90 days city of Amsterdam
14 days city of Johnstown
30 days Broadalbin and Fonda

Other typewritten or handwritten clauses including riders, if any. Contract to start 10-15-34

Exchange-Albany Zone-Office Salesman-Eastman

List or summary of motion pictures licensed and rental terms

A	(2) two photoplays	2-3-4		35% to split
B	(4) four photoplays	2-3-4		30%
C	(7) seven photoplays	2-3-4		25%
D	Balance of photoplays	2-3-4	$100.00	

Score: $2.50 per day, $3.00 for run

EXHIBIT NO339 C

Distributor Paramount Pictures Distributing Corporation (unsigned)

Season 8-7

Exhibitor Amsterdam Consolidated Corp. by Geo. V. Lynch

Theatre Rialto or Strand, Amsterdam, N.Y.

Contract application date September 13, 1935

Approval date Jan. 9, 1936

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices

Evenings - adults 35¢ orchestra, balcony 25¢
children 15¢
Matinees - adults 25¢ children 10¢

Run and clearance provisions

1st - 30 days over Johnstown & Broadalbin & Fonda
90 days over city of Amsterdam

Other typewritten or handwritten clauses including riders, if any. Contract to start 10-1-35

Exchange - Albany Zone-Office Salesman-Eastman

List or summary of motion pictures licensed and rental terms

(4) Four photoplays	2-3-4		35%
(6) Six photoplays	2-3-4		30%
(7) Seven photoplays	2-4		25%
Remainder of photoplays	2-4	$100.00	

Score: $2.50 per day
$5.00 for run

EXHIBIT NO. 339 D

Distributor Paramount Pictures Inc. (unsigned) Season S-8

Exhibitor Amsterdam Consolidated Corp. by Geo. V. Lynch Theatre Rialto or Strand, Amsterdam, N.Y.

Contract application date April 10, 1936 Approval date August 3, 1936

No. of pictures offered All No. of Pictures Licensed All

Provisions, if any, re admission prices
Evenings - adults, orchestra .35 balcony .25 children .10
Matinees - adults .25 children .10

Run and clearance provisions

1st - 30 days ahead of Broadalbin, Fonda and Johnstown.
90 days over second run.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Albany Zone - Office Salesman - Eastman

List or summary of motion pictures licensed and rental terms

A	(4) Four photoplays	2-3-4		35%
B	(6) Six photoplays	2-3-4		30%
C	(7) Seven photoplays	2-3-4		25%
D	Remainder of photoplays	2-3-4	$100.00	

Score: $2.50 per day
$5.00 for run

EXHIBIT NO. 339-E 5396

Distributor Paramount **Season** 1931-32

Exhibitor Fox Metropolitan Playhouse, Inc. **Theatre** Rialto, Little Falls, New York

Contract application date October 1, 1931 **Approval date**

No. of pictures offered Not to exceed 50. **No. of Pictures Licensed** Not to exceed 50.

Provisions, if any, re admission prices

Run and clearance provisions 15 days ahead of St. Johnsville,

ther typewritten or handwritten clauses including riders, if any.

To start Oct. 1, 1931, all to be played and paid for by Oct. 1, 1932

Contract bears stamp: "CANCELLED", followed by figures "3131-5052, 3148", which appears in writing.

t or summary of motion pictures licensed and rental terms

	Consecutive Days Run	Minimum Guaranteed License Fee Per Photoplay $	Recording Charge for Photoplay Which Is In Addition to All Other License Fees $
15 photoplays to be designated by the distributor from time to time from the photoplays licensed hereunder.	2-3	25% of the gross	5. day
Remaining photoplays to be selected by the exhibitor	2-3	60.00	5. day

EXHIBIT NO. 339 F

Distributor	Paramount Pictures Distributing Corporation (unsigned)	Season	S-4
Exhibitor	Schine Theatrical Co. Inc. by Geo. V. Lynch	Theatre	Rialto, Little Falls, N.Y.
Contract application date	June 2, 1933	Approval date	
No. of pictures offered		No. of Pictures Licensed	20

Provisions, if any, re admission prices Evenings - adults, orchestra 25¢ balcony 15¢
children, 10¢
Matinees - adults, orchestra 25¢ balcony 15¢
children, 10¢

Run and clearance provisions

1st run 90 days protection over 2nd run. 14 days protection over St.Johnsville.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Albany   Zone - Office   Salesman - Eastman

List or summary of motion pictures licensed and rental terms

Five (5) photoplays to be designated by Distributor	2	25% of gross
Nine (9) photoplays to be designated by Distributor	1-2	$45.00
Six (6) photoplays to be designated by Distributor	1-2	$25.00

Score: $2.50 per day

EXHIBIT NO. 339 G

Distributor Paramount Pictures Distributing Corporation (unsigned)

Season S-5

Exhibitor

by Geo. V. Lynch

Theatre Rialto, Little Falls, N.Y.

Contract application date

Approval date

No. of pictures offered

No. of Pictures Licensed 54

Provisions, if any, re admission prices

Evenings - adults, orchestra 30¢, balcony 15¢
children, 10¢
Matinees - adults 20¢ orchestra, balcony 15¢.
children, 10¢

Run and clearance provisions

1st - Clearance: 90 days over second run;
30 days over St.Johnsville
14 days over Dolgeville

Other typewritten or handwritten clauses including riders, if any.

Exchange - Albany

List or summary of motion pictures licensed and rental terms

(3) Three	photoplays to be designated by Distributor	2	35% to split
(12) Twelve	photoplays to be designated by Distributor	2	25% to split
(39) Thirty-nine	photoplays to be designated by Distributor	2	$45.00

Score: $2.50 per day.
We are to receive 50% over split - per Kusell's rider 10/19/33

EXHIBIT NO. 339 H

Distributor Paramount Pictures Distributing Corporation (unsigned)

Season S-6

Exhibitor Schine Theatrical Co. Inc. by Geo. V. Lynch

Theatre Rialto, Little Falls, N.Y.

Contract application date September 19, 1934

Approval date October 3, 1934

No. of pictures offered All

No. of Pictures Licensed 55

Provisions, if any, re admission prices Evenings - adults .25 - children .10
Matinees - adults .25 - children .10

Run and clearance provisions 1st run Little Falls

30 days ahead of St. Johnsville
14 " " " Dolgeville
90 days City Little Falls

Other typewritten or handwritten clauses including riders, if any.

Contract to start 10/15/34.

Exchange - Albany Zone - Office Salesman - Eastman

List or summary of motion pictures licensed and rental terms

A	(2)	two photoplays	2-3		35% to split
B	(4)	four photoplays	2-3		30%
C	(10)	ten photoplays	2-3		25%
D	(39)	thirty-nine photoplays	2-3	$45.00	

Score: $2.50 per day, $5.00 per run.

EXHIBIT NO. 339 I

Distributor Paramount Pictures Distributing Corporation (unsigned) Season S-6

xhibitor The Van Wert Amusement Co. by T. G. Evans, Sec. Theatre Strand, Van Wert, Ohio

ontract application date September 12, 1934 Approval date

o. of pictures offered All No. of Pictures Licensed All

rovisions, if any, re admission prices Evenings - adults 25¢ children 10¢
Matinees - adults 20¢ children 10¢

un and clearance provisions 1st in Van Wert

her typewritten or handwritten clauses including riders, if any.

To be dated when and as available

Exchange - Cleveland Zone - 2 Salesman - Robb

or summary of motion pictures licensed and rental terms

A	4 Pictures	2/3	$100.00	35% of the Gross	$5.00
B	4 Pictures	2/3	$100.00	30% of the gross	$5.00
C	10 Pictures	2/3	$60.00	25% to $220-50% over	$5.00
	10 Pictures	2/3	$50.00		$5.00
	31 Pictures	2/3	$35.00		$5.00
	Remaining Pictures	2/3	$25.00		$5.00

On any of the above pictures that are used 1 day, score charge is to be $3.

5401

EXHIBIT NO. 339 J

Distributor Paramount Pictures Inc. (unsigned)

Season S-8

Exhibitor Belpik Theatre Corp. by Geo. V. Lynch

Theatre Van Wert or Strand, Van Wert, Ohio

Contract application date 4-13-36

Approval date

No. of pictures offered

No. of Pictures Licensed

Provisions, if any, re admission prices Evenings - adults, .25 children .10
Matinees - adults .20 children .10

Run and clearance provisions 90 days over 2nd run.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Cleveland Zone - Office Salesman- J. Himmelein

List or summary of motion pictures licensed and rental terms

A	Four photoplays	2-3		35%
B	Six photoplays	2-3		30%
C	Four photoplays	2-3		25%
D	30 photoplays	2-3	$50.00	
E	Remaining photoplays	1-2	$25.00	

Score: $3. for run
$2.50 per day.

EXHIBIT NO. 341 A

tributor	Paramount Pictures Distributing Corporation (unsigned)	**Season**	3-4
hibitor	Schine Theatre Co., Inc. by Geo. V. Lynch	**Theatre**	Fox or State, Corning, N. Y.
ntract application date	June 29, 1933	**Approval date**	
. of pictures offered		**No. of Pictures Licensed**	21

ovisions, if any, re admission prices

n and clearance provisions First

30 days over the town of Corning and Painted Post.
14 days ahead of Addison, N. Y.

her typewritten or handwritten clauses including riders, if any,

change - Buffalo, N. Y. Zone - #0 Salesman - K. G. Robinson

t or summary of motion pictures licensed and rental terms

ree	(3)	Pictures	2-3		25% of gross	$2.50 P.D.
nteen	(18)	Pictures	2-3	$60.00		$2.50 P.D

0

5403

EXHIBIT NO. 341 B

Distributor	Paramount Pictures Distributing Corporation By (unsigned)	Season	S-4
Exhibitor	Fred Gerber	Theatre	Palace, Corning, N.Y.
Contract application date	April 11, 1933	Approval date	
No. of pictures offered		No. of Pictures Licensed	All

Provisions, if any, re admission prices Evenings - adults .25 children .15
Matinees - adults .20 children .10

Run and clearance provisions Second

Other typewritten or handwritten clauses including riders, if any.

5-1/2 pictures per month, commencing April, 1933 if and when available. At least ten of the percentage pictures to have a Sunday Date.

Exchange - Buffalo, N.Y. Zone #3 Salesman-M. Rose

Exhibitor has right to lower admission prices, in the event he has to after opening of theatre as follows:

Evenings: After 6 P.M. Adults .20 per person Children 10¢ per person
Matinees: Before 6 P.M. Adults .15 per person children .10 per person

List or summary of motion pictures licensed and rental terms

Two (2) Pictures	3	$22.50	35% of Gross	$2.50
Seventeen (17) Pictures	2	$ 22.50	30% of Gross	$2.50
Ten (10) Pictures	2	$ 17.50		$2.50
Remaining Pictures	2	$ 22.50		$2.50

EXHIBIT NO. 341 C

Distributor Paramount Pictures
Distributing Corporation
(unsigned) **Season** S-5

Exhibitor Schine Theatrical Co., Inc. **Theatre** Fox, Corning, N. Y.
by Geo. [illegible]. Lynch

Contract application date September 27, 1933 **Approval date**

No. of pictures offered **No. of Pictures Licensed** 54

Provisions, if any, re admission prices Evenings - Adults .15 and .25, Children .10
Matinees - Adults .15 and .25, Children .10

Run and clearance provisions
first run - clearance 30 days city of Corning
30 days over Painted Post and Addison

Other typewritten or handwritten clauses including riders, if any.
Exchange - Albany, N. Y. Zone - #C Salesman - K. G. Robinson

ist or summary of motion pictures licensed and rental terms

Three	(3) Pictures	2		35% to weekly split	(See	Below)
Twelve	(12) Pictures	2		25% to weekly split	"	"
Thirty-Nine	(39) Pictures	2	$75.00		"	"

Score charge: $2.50 per day or $5.00 for run

We are to receive 50% over split - per Kusell's rider 10/19/23.

Split figure to be mutually agreed upon.

EXHIBIT NO. 341 D

Distributor	Paramount Pictures Distributing Corporation (unsigned)	Season	S-5
Exhibitor	Schine Theatrical Co. Inc. by Geo. V. Lynch	Theatre	State, Corning, N.Y.
Contract application date	December 23, 1933	Approval date	
No. of pictures offered		No. of Pictures Licensed	All

Provisions, if any, re admission prices

Run and clearance provisions 2nd run - 14 days over Palace and Plaza.

Other typewritten or handwritten clauses including riders, if any.

To play as available at rate of five (5) Pictures per month, starting 1/1/3
all to be played and paid for by Dec. 1, 1935.

Exchange - Buffalo, N.Y. Zone- 0 Salesman - K. G. Robinson

List or summary of motion pictures licensed and rental terms

Three (3) Pictures	2-3	$55.00	$2.50 F.D. $5. for
Six (6) Pictures	2-3	$30.00	"
Remaining Pictures	2-3	$22.50	"

If any picture herein contracted for plays this theatre first run -
is to be cancelled from this contract.

EXHIBIT NO. 341 E

Distributor Paramount Pictures Distributing Corporation (unsigned)

Season 3-5

Exhibitor Fred Gerber

Theatre Palace, Corning, N.Y.

Contract application date August 26, 1933

Approval date

No. of pictures offered

No. of Pictures Licensed

Provisions, if any, re admission prices Evenings - adults .25 - children .10
Matinees - adults .15 - children .10

Run and clearance provisions Second.

Other typewritten or handwritten clauses including riders, if any.

Five Pictures per month, commencing Nov. 1st, 1933, as and if available.

Exchange - Buffalo, N.Y. Zone-#3 Salesman- R.E.Caskey

List or summary of motion pictures licensed and rental terms

Three (3) Pictures	3	$32.50	40% of Gross	$2.50
Six (6) Pictures	2	$27.50	35% of Gross	$2.50
Twenty (20) Pictures	2	$22.50	30% of Gross	$2.50
Remaining Pictures	2	$22.50		$2.50

Ten Percentage pictures to have Sunday dates.

EXHIBIT NO. 343 A

Distributor Paramount Pictures Distributing Corp.
by Unsigned.

Season S-5 (33-34)

Exhibitor Schine Theatrical Co., Inc.
by Geo. V. Lynch

Theatre Olympic, Watertown, New York

Contract application date 11/29/33

Approval date

No. of pictures offered

No. of Pictures Licensed 64

Provisions, if any, re admission prices Evenings, adults, 25; children, 10. Matinees, adults, 25; children, 10.

Run and clearance provisions Second Clearance: 30 days after first run, 14 days ahead 3rd run.

Other typewritten or handwritten clauses including riders, if any. To play as available.
Exchange Albany
Zone Office
Salesman: Eastman

List or summary of motion pictures licensed and rental terms

Three (3) photoplays to be designated by distributor	2-3	$70.00	$5.00
Balance of photoplays to be designated	2-3	$30.00	$5.00

Any picture which has played the Olympic Theatre first run to be cancelled.

EXHIBIT NO. 343 B

Distributor Paramount Pictures Distributing Corporation

Season S-6 (34-35)

Exhibitor Schine Theatrical Co., Inc.
Geo. V. Lynch

Theatre Olympic, Watertown, New York

Contract application date 9/19/34

Approval date

No. of pictures offered all

No. of Pictures Licensed all

Provisions, if any, re admission prices Evenings, adults, 25; children, 10.

Run and clearance provisions Second. . 14 days ahead of 3rd run Watertown.

Other typewritten or handwritten clauses including riders, if any. As available. Exchange Albany Zone Office.
Salesman: Eastman

List or summary of motion pictures licensed and rental terms

A.	Four (4) photoplays	2-3	$70.00	$5.00
B.	Balance of photoplays	2-3	$30.00	$5.00

Any picture that has played the Olympic Theatre, first run, to be cancelled.

EXHIBIT NO. 343 C

Distributor Paramount Pictures Distributing Corporation by Unsigned

Season S-7 (35-36)

Exhibitor Schine Theatrical Co., Inc.

Theatre Olympic, Watertown, New York

Contract application date 9/13/35

Approval date

No. of pictures offered all

No. of Pictures Licensed all

Provisions, if any, re admission prices Evenings, adults, orchestra, 30, balcony, 20; children, 10. Matinees, adults, orchestra, 25, balcony, 15; children, 10.

Run and clearance provisions Second. 14 days over 3rd run.

Other typewritten or handwritten clauses including riders, if any.

Exchange Albany Zone Office
Salesman: Eastman

List or summary of motion pictures licensed and rental terms

A.	Four (4) photoplays	2-3	$70.00	$5.00
B.	Balance of photoplays	2-3	$30.00	$5.00

Any picture that has played the Olympic Theatre first run to be cancelled.

EXHIBIT NO. 343 D.

istributor	Paramount Pictures, Inc. by Unsigned	Season	S-8 (36-37)
xhibitor	Schine Theatrical Co., Inc. Geo. V. Lynch	Theatre	Olympic, Watertown, New York
ontract application date	4/10/36	Approval date	
o. of pictures offered	all	No. of Pictures Licensed	all

rovisions, if any, re admission prices Evenings, adults, orchestra, 30, balcony, 20; children, 10. Matinees, adults, orchestra, 25, balcony, 15; children, 10.

un and clearance provisions Second - 60 days ahead of 3rd run

ther typewritten or handwritten clauses including riders, if any.

xchange Albany Zone Office
alesman: Eastman

t or summary of motion pictures licensed and rental terms

.	Four (4) photoplays	2-3	$70.00	$5.00
.	Balance of photoplays	2-3	$30.00	$5.00

ny picture that has played the Olympic Theatre first run to be cancelled.

5411

EXHIBIT NO. 343 E

Distributor Paramount Pictures, Inc., by Unsigned

Season S-8 (36-37)

Exhibitor Schine Theatrical Co., Inc. Geo. V. Lynch.

Theatre Olympic or Palace, Watertown, New York

Contract application date 10/3/36

Approval date 10/9/36

No. of pictures offered all

No. of Pictures Licensed all

Provisions, if any, re admission prices Evenings, adults, orchestra, 25, balcony, 15; children, 10. Matinees, adults, 15; children, 10.

Run and clearance provisions Second - 60 days ahead of 3rd run.

Other typewritten or handwritten clauses including riders, if any.

Exchange Albany Zone Office
Salesman: Eastman

List or summary of motion pictures licensed and rental terms

C.	Four (4)	photoplays	2-3	$70.00	$5.00
D.	Sixty-one (61)	photoplays	2-3	$35.00	$5.00

SUPERSEDING CONTRACT

EXHIBIT NO. 343 F

Distributor Paramount Pictures, Inc.
by Unsigned

Season S-9 (37-38)

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Olympic or Palace
Watertown, New York

Contract application date 10/28/37

Approval date

No. of pictures offered all

No. of Pictures Licensed all

Provisions, if any, re admission prices Evenings, adults, orchestra, 20, balcony, 15; children, 10. Matinees, adults, orchestra, 20, balcony, 15; children, 10.

Run and clearance provisions Second run - 60 days over 3rd run.

Other typewritten or handwritten clauses including riders, if any.
xchange Albany Zone Office
Salesman: Eastman

List or summary of motion pictures licensed and rental terms

. Four (4) photoplays	2-3	$87.50
B. Six (6) photoplays	2-3	$43.75
C. Twenty(20) photoplays	2-3	$35.00
D. Twenty-Two(22) photoplays	2-3	$25.00

Score: $2.50 per day, $5.00 per run.

EXHIBIT NO. 343 G

Distributor Paramount Pictures, Inc.
by Unsigned

Season S-10 (38-39)

Exhibitor Schine Enterprises Corp.
Geo. V. Lynch

Theatre Olympic or Palace
Watertown, New York

Contract application date 9/22/38

Approval date

No. of pictures offered all

No. of Pictures Licensed all.

Provisions, if any, re admission prices Evenings, adults, orchestra, 20, balcony, 15; children, 10. Matinees, adults, orchestra, 20, balcony, 15; children, 10.

Run and clearance provisions Second - 60 days over 3rd run.

Other typewritten or handwritten clauses including riders, if any.

Exchange Albany Zone Office
Salesman: Eastman

List or summary of motion pictures licensed and rental terms

A.	Four (4)	photoplays	2-3	$87.50
B.	Six (6)	photoplays	2-3	$43.75
C.	Twenty (20)	photoplays	2-3	$35.00
D.	Twenty-Two (22)	photoplays	2-3	$25.00

Score: $2.50 per day, $5.00 for run.

EXHIBIT NO. 344 A

tributor Paramount Pictures, Inc.
by Unsigned

Season S-8

ibitor Carl B. Moore
(unsigned)

Theatre Ohio, Van Wert, Ohio

ntract application date 7/23/36

Approval date

of pictures offered all

No. of Pictures Licensed all

visions, if any, re admission prices Evenings, adults, 15; children, 10. Matinees,
ults, 15; children, 10.

and clearance provisions Second - follows Schine's or Strand, Van Wert, 90 days.

r typewritten or handwritten clauses including riders, if any.
hange Cleveland Zone Office

r summary of motion pictures licensed and rental terms

Four (4) photoplays	3	$35.00 against 35% of gross	$2.50
Six (6) photoplays	3	$20.00 against 30% of gross	$2.50
Fifteen (15) photoplays	2-3	$15.00	$2.50
Remaining photoplays	2-3	$12.50	$2.50

EXHIBIT NO. 344 B

Distributor Paramount Pictures, Inc.
by Unsigned

Season 8-9

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Strand, Van Wert, Ohio

Contract application date 11/23/37

Approval date

No. of pictures offered all

No. of Pictures Licensed all

Provisions, if any, re admission prices Evenings, adults, orchestra, 15; children, 10. Matinees, adults, orchestra, 15, children, 10.

Run and clearance provisions Second run after Schine's Van Wert. 60 days on 3rd run.

Other typewritten or handwritten clauses including riders, if any.
Exchange Cleveland Zone Office

List or summary of motion pictures licensed and rental terms

A.	4 pictures	2	35%	$2.50
B.	8 pictures	1-2	$20.00	$2.50
C.	Remaining pictures	1-2	$15.00	$2.50

Exhibitor can eliminate any picture this theatre, first run in Van Wert for this contract,

EXHIBIT NO. 344 C

stributor Paramount Pictures, Inc.
by Unsigned

Season S-10

ibitor Schine Enterprises Corp.
Geo. V. Lynch

Theatre Strand, Van Wert, Ohio

ntract application date 9/22/38

Approval date

of pictures offered all

No. of Pictures Licensed all

ovisions, if any, re admission prices Evenings, adults, 15; children, 10. Matinees, dults, 15; children, 10.

n and clearance provisions Second run after Van Wert Theatre. 60 days on 3rd run.

r typewritten or handwritten clauses including riders, if any.
xchange Cleveland Zone Office.

r summary of motion pictures licensed and rental terms

Four (4) photoplays	2	. 35% of gross	$2.50
Eight (8) photoplays	1-2	$20.00	$2.50
Remaining photoplays	1-2	$15.00	$2.50

hibitor can eliminate any picture playing this theatre first run in Van rt, Ohio from this contract.

st of second feature may be deducted from gross of percentage pictures double-billed.

EXHIBIT NO. 563

Distributor Vitagraph, Inc.
by W. J. Brandt

Season 1936-37

Exhibitor A. J. Buck

Theatre Colonial, Fostoria, Ohio

Contract application date 5/18/36

Approval date 5/29/36, by A. W. Smith, Jr.

No. of pictures offered 30

No. of Pictures Licensed 30

Provisions, if any, re admission prices Evenings, adults, 25; children, 10. Matinees, adults, 25; children, 10.

Run and clearance provisions First as available.

Other typewritten or handwritten clauses including riders, if any.
Branch Cleveland
Salesman: W. J. Brandt
Contract #4987

List or summary of motion pictures licensed and rental terms

1	2	$100.00	agst.	35%	7	$3.50
4	2	75.00	agst.	30%	7	3.50
3	1-2	50.00	agst.	30%	7	3.50
8	1-2	35.00	agst.	30%	7	3.50
14	1-2	30.00			7	3.50

Score rentals: $5.00 per motion picture 1-2 days.

EXHIBIT NO. 568

tributor Vitagraph, Inc.
by W. J. Brandt

Season 1936-37

ibitor Delpiz Theatrical Corporation
Geo. V. Lynch

Theatre Civic or Roxy, Fostoria, Ohio

ntract application date 10/21/36

Approval date 11/4/36, by G. L. Sears

of pictures offered 30

No. of Pictures Licensed 30

visions, if any, re admission prices

and clearance provisions First as available.

er typewritten or handwritten clauses including riders, if any.
nch Cleveland
esman: W. J. Brandt
tract #5448

r summary of motion pictures licensed and rental terms

2-3	35% to split	7	$3.50
2-3	30% to split	7	3.50
2-3	25%	7	3.50
2-3	$35.00	7	3.50
2-3	30.00	7	3.50

e rentals, $2.50 per day. $5.00 per run.
t figure to be determined as follows:
ributor is to receive percentage terms specified above up to a sum which
ws exhibitor a profit equal to one-half of amount paid distributor as
rental and 50% of gross receipts from than point on.

EXHIBIT NO. 604 A

Distributor Metro-Goldwyn-Mayer Distributing Corporation
by Ralph Pielow

Season 1932-33

Exhibitor Central New York Theatres Corp.
by (illegible)

Theatre Rialto, Little Falls, New York

Contract application date 9/30/32

Approval date 10/5-32, by W. F. Rodgers

No. of pictures offered

No. of Pictures Licensed 48

Provisions, if any, re admission prices Evenings, adults 35; children, 10.

Run and clearance provisions First. Ten days over Dolgeville; 30 days over St. Johnsville, New York.

Other typewritten or handwritten clauses including riders, if any.

Branch Albany, New York
Territory Letter Office
Contract #1003.

It is understood and agreed that playing time covered by this agreement is n to be reduced below the respective number of days specified in this agreement without prior written consent of the Metro-Goldwyn-Mayer Distributing Corporation. It is agreed that exhibitor shall play and or pay for one picture per week commencing   in order to release if, and/or as available, until all pictures licensed hereunder are exhibited and/or paid.

List or summary of motion pictures licensed and rental terms

Terms: 3 specials to be designated by distributor at 35%
23 features at 25%
12 features at 20%
10 features at $40.00

Score Charge: $5.00 for one day, $2.50 each additional day.
35% pictures to play on Sunday and Monday. Thirteen of the 25% pictures to play on Sun., Mon. Six of the 20% pictures to play on Saturday. 35%, 25% and 20% pictures to be designated by the distributor.

EXHIBIT NO. 604 B

Distributor Metro[illegible]ldwyn-Mayer Distributing Corp.
by Ralph Pielow

Season 1932-33

Exhibitor Schine Theatrical Co., Inc. Theatre Rialto - Little Falls, New York
by Geo. V. Lynch

Contract application date 5/13/33

Approval date .5/23/33 by W. F. Rodgers

No. of pictures offered

No. of Pictures Licensed . 37

Provisions, if any, re admission prices Evenings: adults 15 and 25; children 10. Matinees: adults 15; children 10.

Run and clearance provisions First - 14 days ahead of Dolgeville; 30 days ahead of t. Johnsville, New York

Other typewritten or handwritten clauses including riders, if any. It is agreed that exhibitor shall play and/or pay for one picture per week commencing May 15, 1933 in order to release, if and/or as available; only all pictures licensed hereunder and xhibited and/or paid for.

Branch Albany, New York
Territory Letter Office
Contract #1357

List or summary of motion pictures licensed and rental terms
Distributor is to designate 37 features at the following terms:

features at 35% of gross, 2 days, Sun. & Mon.;
features at 30% of gross, 2 days, Sun. & Mon.;
features at 25% of gross, 9 - 2 days, 9 - 1 day;
features at $25.00 flat rental, 1 or 2 days;
Dressler Productions #317, 318, 2 days, Sun. & Mon. (35%).

ore Charge on all features - $2.50 per day.

5421

RIDER REFERRING TO CONTRACT COVERING THE 1932-33 FEATURE PRODUCT

BETWEEN

METRO GOLDWYN MAYER DISTRIBUTING CORPORATION

&

SCHINE THEATRICAL CO., INC.

If any picture in any situation plays on percentage and if such percentage picture is scheduled to play on a double feature program, the actual cost of the second feature is to be deducted from the gross receipts before computing Distributor's share of the film rental, but amount of such deduction is not to exceed the flat rental price paid Metro-Goldwyn-Mayer in such situations. However, no such deduction is to be made on any picture designated by the Distributor at 30%, 35% or 40% terms.

If vaudeville or stage show is used the rental for the feature used in conjunction with such vaudeville or stage show (exclusive of pictures designated by Disbributor at 30%, 35% or 40%) is to be 15% of the gross receipts to a split figure based upon Exhibitor receiving a profit equal to one-half of the earned rental and thereafter Distributor is to receive 50% of the gross receipts.

METRO GOLDWYN MAYER DISTRIBUTING CORPORATION

BY Ralph Pielow

Exhibitor SCHINE THEATRICAL CO., INC.

BY

Accepted, Approved and Countersigned
at New York, N.Y.

Date May 23, 1933

METRO-GOLDWYN-MAYER DISTRIBUTING CORP.

By signature illegible
Vice-President or Sales Manager

EXHIBIT NO. 604 C

Distributor Metro-Goldwyn-Mayer Distributing Corp.
by Ralph Pielow

Season 1933-34

Exhibitor Schine Theatrical Corp.
by Geo. V. Lynch

Theatre Rialto - Little Falls, New York

Contract application date 7/31/33

Approval date 8/10/33 by W. F. Rodgers

No. of pictures offered

No. of Pictures Licensed 46

Provisions, if any, re admission prices Evening: adults 15 & 25; children 10. Matinees: adults 15; children 10.

Run and clearance provisions First. 14 days ahead of Dolgeville; 30 days ahead of St. Johnsville, New York.

Other typewritten or handwritten clauses including riders, if any. It is agreed that exhibitor shall play and/or pay for one picture per week commencing October 1, 1933 in order to release, if and/or as available, only all pictures licensed hereunder and exhibited and/or paid for.

Branch Albany; #27. Territory Letter Office.
Contract #1467.

List or summary of motion pictures licensed and rental terms
Distributor is to designate 46 features at the following terms:

5 at 35% of gross to be played on Sun. Mon.
5 at 30% of gross to be played on Sun. Mon.
12 at 25% of gross to be played 1 or 2 days and the balance not to exceed
24 at flat rental; 10 at $30.00-2 days, 14 at $25.00-2 days.

Score: $2.50 per day.

5423

Between

METRO-GOLDWYN-MAYER DISTRIBUTING CORPORATION

&

SCHINE THEATRICAL CO., INC.,

Operating the

RIALTO THEATRE, LITTLE FALLS, N.Y.

If any picture in this situation plays on percentage and if such percentage picture is scheduled to play on a double feature program, the actual cost of the second feature is to be deducted from the gross receipts before computing Distributo's share of the film rental, but amount of such deduction is not to exceed the flat rental price paid Metro-Goldwyn-Mayer in this situation. However, no such deduction is to be made on any picture designated by the Distributor at 30% or 35% terms.

If vaudeville or stage show is used the rental for the feature used in conjunction with vaudeville or stage show (exclusive of pictures designated by Distributor at 30% or 35%) is to be 15% of the gross receipts to a split figure based upon exhibitor receiving a profit equal to one-half of the earned rental and thereafter Distributor is to receive 50% of the gross receipts.

METRO-GOLDWYN-MAYER DISTRIBUTING CORP.

By R. P.

Exhibitor SCHINE THEATRICAL CO., INC.

By Geo. V. Lynch

Accepted, Approved and Countersigned
at New York, N.Y.

Date Aug. 10, 1933

METRO-GOLDWYN-MAYER DISTRIBUTING CORP.

BY W. F. Rodgers
Vice-President or Sales Manager

EXHIBIT NO. 604 D

Distributor Metro-Goldwyn-Mayer Distributing Corp: by Ralph Pielow

Season 1934-35

Exhibitor Schine Theatrical Co., Inc. by Geo. V. Lynch

Theatre Rialto - Little Falls, New York

Contract application date September. 1934

Approval date October 5, 1934, by W. F. Rodgers

No. of pictures offered

No. of Pictures Licensed 51

Provisions, if any, re admission prices Evening: adults 15 & 25; children 10. Matinees: adults 15; children 10.

Run and clearance provisions First. 14 days ahead of Dolgeville; 30 days ahead of St. Johnsville, New York; 60 days' clearance in City of Little Falls, New York.

Other typewritten or handwritten clauses including riders, if any. Exhibitor agrees to play and/or pay for one picture each week, starting October 1, 1934, if and as available.
If any of the 25% pictures play on a double feature program, cost of second feature (not to exceed our flat rental price) may be deducted from gross receipts before computing distributor's share of gross receipts. If any 25% pictures play with vaudeville, terms to be 15% of a split figure based upon exhibitor receiving a profit equal to one-half our earned rental; and thereafter dist., is to receive 50% of the gross receipts.

List or summary of motion pictures licensed and rental terms Features embraced on this contract are to be played at the following terms which are to be designated by the distributor.

4 at 35% gross, preferred playing time)
4 at 30% gross, preferred playing time) See Class "C" below/
19 at 25% gross, 2 days
Balance not to exceed 24 at flat rental; 10 at $30.00, 2 days, 14 at $25.00, 2 days.

Score: $2.50 per day.

5425

EXHIBIT NO. 604 E

Distributor Metro-Goldwyn-Mayer Distributing Corp.
by Ralph Pielow

Season 1935-36

Exhibitor Schine Theatrical Co., Inc
by Geo. V. Lynch

Theatre Rialto, Little Falls, New York

Contract application date 7/11/35

Approval date 7/26/35 by W. F. Rodgers

No. of pictures offered 50

No. of Pictures Licensed 50

Provisions, if any, re admission prices Matinees: adults 15; children 10. Evening: adults 25; children 15.

Run and clearance provisions First. 30 days ahead of St. Johnsville, New York; 30 days ahead of Dolgeville; 14 days ahead of Fort Plain.

Other typewritten or handwritten clauses including riders, if any. Exhibitor agrees to play and/or pay for one picture per week, starting October 1, 1935 as and if available.
Branch Albany #7
Territory Letter Office
Contract #2879

List or summary of motion pictures licensed and rental terms Features embraced on this contract are to be played on the following terms which are to be designated by the distributor.
4 at 35% of the gross
4 at 30% of the gross
21 at $50.00 flat rental
21 at $40.00 flat rental
The 35% and 30% pictures are to be played two or three days on the preferred days of the week including a Sunday. Exhibitor has the privilege of playing the $50.00 flat rental pictures two or three days each. The $40.00 flat rental pictures to be played two days only.

Score Charge: $2.50 per day.

EXHIBIT NO. 604 F

Distributor Metro-Goldwyn-Mayer Distributing Corp. by E. K. O'Shea
Season 1931-32

Exhibitor Schine's Theatrical Co., Inc. by Geo. V. Lynch
Theatre Rialto or Palace, Lockport, New York

Contract application date 10/30/31
Approval date 11/9/31 by W. F. Rodgers

No. of pictures offered
No. of Pictures Licensed 48

Provisions, if any, re admission prices

Run and clearance provisions First. 10 days ahead of Middleport and Neufane

Other typewritten or handwritten clauses including riders, if any.

Branch Buffalo
Territory Letter Office
Contract #5221

Metro-Goldwyn-Mayer shall have the privilege of designating out of their 1931-32 releases not more than 5 pictures at 35%, but in order for Metro-Goldwyn-Mayer to receive 35%, the picture must do gross business of not less than $2,850.00. If such picture does less than $2,850.00, the terms of the picture is to revert to 25% of the gross, one each week starting December 1, 1931 in order of release, if and as available.

List or summary of motion pictures licensed and rental terms

12 features to be designated by distributor at flat rental of $50.00 to be played 2 or 3 days
31 features to be disignated by distributor at 25% of gross receipts
10 to play at the Palace Theatre for 2 days
6 to play at the Rialto for 3 days
8 to play at the Rialto for 2 days
5 features to be designated by distributor at 35% of the gross. To play at the Palace Theatre for 3 days.

Score Charge: $2.50 per day.

EXHIBIT NO. 604 G

Distributor Metro-Goldwyn-Mayer Distributing Corp.
by E. K. O'Shea

Season 1932-33

Exhibitor Reliance Theatres, Inc.
by N. D. Dipson

Theatre Palace, Lockport, New York

Contract application date 12/29/32

Approval date 1/6/33 by W. F. Rodgers

No. of pictures offered

No. of Pictures Licensed

Provisions, if any, re admission prices Matinees: adults 20; children 10. Evening: adults 25; children 10.

Run and clearance provisions First run Lockport, New York. Ten days ahead of Middleport and Neufane, New York.

Other typewritten or handwritten clauses including riders, if any.

Branch Buffalo - Territory Letter Office - Contract #7100

It is agreed that distributor shall have the right to designate as specials not more than 14 of the photoplays hereby licensed. For each of such specials Exhibitor agrees to pay (instead of the license fee provided for in the Schedule hereof opposite the title of the respective photoplay) 7 against 35% of gross, 5 against 30% of gross and 2 against 40% of gross, and in addition score charge license fee in the amount set forth in the Schedule. Exhibitor may use not more than 12 features from this contract excluding specials with vaudeville at $100.00 flat rental plus score. Said pictures to be designated by distributor. Exhibitor agrees to play and/or pay for at least one picture per week commencing January 7, 1933 in order of release if and as available until all pictures licensed hereunder are exhibited and are paid for. Fourteen specials Sun.-Mon.-Tue. Four photoplays Sun.-Mon.-Tue. Sixteen photoplays - days optional with exhibitor Sixteen photoplays - two days to include Saturday

List or summary of motion pictures licensed and rental terms

50	2-3	25%	$7.50

EXHIBIT NO. 604 H

Distributor Metro-Goldwyn-Mayer Distributing Corp.
by E. K. O'Shea

Season 1933-34

Exhibitor Schine Theatrical Co., Inc.
by Geo. V. Lynch

Theatre Rialto or Hi-Art
Lockport, New York

Contract application date 7/31/33

Approval date 8/10/33 by W. R. Ridgers

No. of pictures offered

No. of Pictures Licensed

Provisions, if any, re admission prices

Run and clearance provisions First. 30 days ahead of Middleport and Neufane

Other typewritten or handwritten clauses including riders, if any.

Branch Buffalo - Territory Letter Office - Contract #7445
It is agreed that exhibitor shall play and/or pay for one picture per week commencing October 1, 1933 in order of release if and/or as available until all pictures licensed hereunder are exhibited and are paid for.
Ten specials as selected by distributor on Sun., Mon., Tues. at the Rialto.

List or summary of motion pictures licensed and rental terms

Distributor is to designate 46 features at the following terms:
5 at 35% of gross to be played on Sun. Mon. Tues. at the Rialto
5 at 30% of gross to be played on Sun. Mon. Tues. at the Rialto
2 at 25% of gross to be played 2 or 3 days at the Rialto or Hi-Art
and the balance not to exceed
4 at flat rental
4 at $60.00
0 at $50.00 - to be played 2 or 3 days at the Rialto or Hi-Art

core: $2.50 per day on each feature

EXHIBIT NO. 604 I

Distributor Metro-Goldwyn-Mayer Distributing Corp.
by F.D.Drew,Res.Mgr.

Season 1934-35

Exhibitor Van Wert Amusement Co.
by T.G.Evans,Sec.

Theatre Strand, Van Wert, Ohio

Contract application date 9/27/34

Approval date 10/5/34 by W. F. Rodgers

No. of pictures offered

No. of Pictures Licensed

Provisions, if any, re admission prices Evening: adults 25 incl. tax; children 10.

Run and clearance provisions First. 13 days after Lima, Ohio

Other typewritten or handwritten clauses including riders, if any. Distributor to have right to designate as specials not more than eleven pictures for each of which exhibitor agrees to pay on three pictures, guar. rental of $125.00 against 40% of gross receipts; on four pictures, guar. rental of $100.00 against 35% of gross receipts; fourteen pictures $75.00 flat rental. All to play three days. Exhibitor agrees to play and/or pay for not less than one picture per week commencing November 1, 1934, if and as available, in order of release, until all pictures licensed are played and/or paid for. Distributor has the right to designate four pictures for which exhibitor agrees to pay a license fee of $50.00 to be played 2 or 3 days.
7 % specials - 3 days mid-week
Branch Cleveland 7 - Territory Letter A. Brauer - Contract #3267

List or summary of motion pictures licensed and rental terms
50 2 $40.00 $5.00

Score to be $3.00 on pictures playing one (1) day.

EXHIBIT NO. 604 J

Distributor Metro-Goldwyn-Mayer Distributing Corp.
by F. D. Drew, Res. Mgr.

Season 1935-36

Exhibitor Glove City Amusement Co.
by Geo. V. Lynch

Theatre Schine's, Van Wert, Ohio

Contract application date 7/11/35

Approval date 7/26/35 by W. F. Rodgers

No. of pictures offered 50

No. of Pictures Licensed 50

Provisions, if any, re admission prices

Run and clearance provisions First. 14 days after first run, Lima, Ohio

Other typewritten or handwritten clauses including riders, if any. Exhibitor agrees to play and/or pay for one picture per week starting October 1, 1935, if and as available.

Branch Cleveland 7
Territory Letter Office
Contract #4700

List or summary of motion pictures licensed and rental terms

Features embraced on this contract are to be played on the following terms which are to be designated by the distributor:

4 at 35% of the gross
4 at 30% of the gross
4 at $150.00 each flat rental
38 at $50.00 each flat rental

Score Charge: $2.50 per day

Percentage pictures to be played on preferred playing time 2 or 3 days including Sunday. Flat rental pictures to be played 2 or 3 days.

EXHIBIT NO. 611 A

Distributor Metro-Goldwyn-Mayer Distributing Corp.
by E. K. O'Shea

Season 1933-34

Exhibitor Schine Theatrical Co., Inc.
by Geo. V. Lynch

Theatre State, Corning, New York

Contract application date Feb. 14, 1934

Approval date Feb. 24, 1934 by W.F.Rodgers

No. of pictures offered 46

No. of Pictures Licensed 46

Provisions, if any, re admission prices

Run and clearance provisions 2nd run, Corning, New York. 30 days over 3rd run. 60 days after 1st run Corning, New York

Other typewritten or handwritten clauses including riders, if any.

Branch - Buffalo; Territory Letter - 0; Contract No. 7779
One per week.
10 specials as selected by Distributor or SM

List or summary of motion pictures licensed and rental terms

Distributor is to designate pictures as follows:

5 at 35% Sun. Mon.
5 at 30% Sun. Mon.
6 at 25% 2 days
Balance not to exceed 30 productions at Flat Rental $25.00 - 2 days
Score: $2.50 per day
Any pictures which play first run at the State Theatre are to be eliminated from the second run contract.

EXHIBIT NO. 611-A

Distributor Vitagraph, Inc.

Season 1931-32

Exhibitor W. Wood

Theatre Hippodrome, Little Falls, New York

Contract application date missing

Approval date Sept. 19, 1931

No. of pictures offered 34

No. of Pictures Licensed 34

Provisions, if any, re admission prices Adults: night - 35
Children: night - 15

Run and clearance provisions First. Ahead of Dolgeville

Other typewritten or handwritten clauses including riders, if any,
3 per month starting 10/1/31.
Branch - Albany
Number - 5834

List or summary of motion pictures licensed and rental terms

18	3	$75.00	50% over $350.00	$5.00	4	$3.00
9	2/3	40.00		5.00	4	3.00
7	2/3	30.00		5.00	4	3.00

EXHIBIT NO. 611 B

Distributor Metro-Goldwyn-Mayer Distributing Corp.
by E. K. O'Shea

Season 1933-34

Exhibitor Gaby & Cohen
by M. Gaby, Partner

Theatre New Plaza, Corning, New York

Contract application date 2/20/34

Approval date Feb. 26, 1934 by W.F. Rodger

No. of pictures offered 48

No. of Pictures Licensed 48

Provisions, if any, re admission prices Evening: adults 15, children 10.
Matinee: adults 15, children 10.

Run and clearance provisions As available after Schine clearance

Other typewritten or handwritten clauses including riders, if any.

12 specials as selected by distributor to be played Sun. Mon.
Dinner at Eight and Eskimo to be played Sun. Mon.
Branch - Buffalo
Territory Letter - Weissman
Contract No. 7901

List or summary of motion pictures licensed and rental terms

2	2	40%	$2.50
23	2	$10.00	2.50
23	2	12.50	2.50

Distributor shall have the right to designate as "specials" not more than 12 of the motion pictures licensed. Exhibitor agrees to pay for them. Guarantee to apply against 35% of the gross receipts.

EXHIBIT NO. 613 A

Distributor Metro-Goldwyn-Mayer Distributing Corp.
by Ralph Pielow

Season 1935-36.

Exhibitor Schine Theatrical Co., Inc.
by Geo. V. Lynch

Theatre. Olympic, Watertown, New York.

Contract application date July 11, 1935

Approval date July 26, 1935 by W. F. Rodgers.

No. of pictures offered 50

No. of Pictures Licensed 50.

Provisions, if any, re admission prices: Evening: adults 15 - 25; children 10.
Matinee: adults 15; children 10.

Run and clearance provisions: Second.
60 days after first run.
30 days over third run.

Other typewritten or handwritten clauses including riders, if any.

Exhibitor agrees to play and/or pay for one picture per week starting December 1st, 1935, if and as available. Any pictures which play first run at the Olympic Theatre are to be eliminated from the second run contract.

Branch - Albany #27.
Territory Letter - Office.
Contract #2888.

ist or summary of motion pictures licensed and rental terms

eatures embraced on this contract are to be played on the following terms hich are to be designated by the distributor:

at 35% of the gross.
at 30% of the gross.
at $35.00 flat rental.

core: $2.50 per day.
ercentage pictures to be played three days, Sun., Mon., Tues. or Sat., Sun.,
on.
lat Rental pictures two or three days.

EXHIBIT NO. 613-B

Distributor Metro-Goldwyn-Mayer Distributing Corp.
by Ralph Pielow

Season 1935-36

Exhibitor Peter Vournahis

Theatre Strand, Watertown, New York

Contract application date Sept. 7, 1935

Approval date Sept. 13, 1935
by W. F. Rodgers

No. of pictures offered 50

No. of Pictures Licensed 50

Provisions, if any, re admission prices Evening: adults 25; children 10
Matinee: adults 20; children 10

Run and clearance provisions Sub.
30 days after 2nd run Watertown, N. Y.

Other typewritten or handwritten clauses including riders, if any. Exhibitor agrees to play and/o pay for one picture per week. 30 days after 2nd run Watertown, N. Y. or as available.

Branch - Albany #27; Territory Letter - B-H.L.Ripps. Contract #11-F

List or summary of motion pictures licensed and rental terms

49	3	$17.50	$2.50
1	3	25.00	2.50

Distributor is to designate 10 pictures at $20.00 flat rental, plus score in addition to the 14 specials.
Distributor shall have the right to designate not more than 14 of the pictures licensed as "Specials" to be played:
4 pictures at $35.00 guarantee against 35% of gross plus $5.00 score
10 pictures at $30.00 guarantee against 30% of gross plus $5.00 score

EXHIBIT NO. 622 A

Distributor R K O Distributing Corp.
by Jules Levy

Season 1933-34

Exhibitor Illegible

Theatre Jefferson or Strand or Palace
Auburn, New York

Contract application date 10/23/33

Approval date July 26, 1934

No. of pictures offered 52

No. of Pictures Licensed 40
Total Feature License Fees
(incl. score) 1680

Provisions, if any, re admission prices

Run and clearance provisions 60 days in City of Auburn - 30 days' clearance on Skaneateles, Union Springs, Weedsport and Aurora, New York
10 days' clearance on Seneca Falls

Other typewritten or handwritten clauses including riders, if any

This Contract Is For Record Purposes Only

This deal subject to Schine keeping town.

The exhibitor shall be entitled only to such feature pictures released by the distributor during the 1933/34 season as shall be identified by production numbers running from 4101 to 4152. The distributor has the right to designate the terms for each of the feature pictures licensed hereunder and agrees to give written notice to exhibitor of such designation upon mailing of notice of availability.

List or summary of motion pictures licensed and rental terms

Exhibitor agrees to play and/or pay for forty (40) feature pictures out of 52 (fifty-two) released by distributor on following terms:

2	2/3	30% of the gross	
10	2/3	25% of the gross	
14	2/3	72.50	$2.50 each
14	2/3	42.50	2.50 each

Note: Provisions regarding short subjects not included.

EXHIBIT NO. 628 A

Distributor R K O Distributing Corp.
by H. Dixon

Season 1933-34

Exhibitor Schine Theatrical Co., Inc.
by Geo. V. Lynch

Theatre Fox or State
Corning, New York

Contract application date Oct. 23, 1933

Approval date Nov. 1, 1933
by Jules Levy

No. of pictures offered 52

No. of Pictures Licensed 40
Total Feature License Fees
(including score) - $1800

Provisions, if any, re admission prices

Run and clearance provisions 30 days' clearance on Painted Post and Plaza Theatre, Addison, New York. 160 days' clearance over 2nd run Corning, New York.

Other typewritten or handwritten clauses including riders, if any.

Salesman - H. T. Dixon
Branch - Buffalo #4
Contract No. 3433
The exhibitor shall be entitled only to such feature pictures released by the distributor during the 1933/34 season as shall be identified by production nos. from 4101 to 4152.
This contract is in all respects subject to the provisions of the Code of Fair Competition for the Motion Picture Industry.

List or summary of motion pictures licensed and rental terms

The exhibitor agrees to play and/or pay for forty (40) feature pictures out of fifty-two (52) released by the distributor at the following terms:
40 (forty) 2/3 $45.00 each

NOTE: Provisions regarding short subjects not included.

EXHIBIT NO. 628 B

istributor R K O Distributing Corp.
by H. T. Dixon

Season 1933-34

xhibitor Fred Geiber

Theatre Palace, Corning, New York

ontract application date Aug. 19, 1933

Approval date Aug. 24, 1933
by Jules Levy

o. of pictures offered 52

No. of Pictures Licensed 52
Total Feature License Fees (incl.score)-
$585.00

ovisions, if any, re admission prices Matinee: adults - 15; children - 10
Evening: adults - 25; children - 10

un and clearance provisions 2nd run Corning

her typewritten or handwritten clauses including riders, if any,

e distributor has the right to interchange the features for any of the ctures in the Lucky Seven Agreement with those for any feature pictures der this agreement, as well as the right to interchange any of the license es and/or sharing terms designated for any other pictures on this agreement.

anch-Buffalo #4; Salesman-Chas. Boasberg; Contract #3042

ibitor agrees to pay and/or pay for not less than one feature per week, mmencing October 1, 1933.

or summary of motion pictures licensed and rental terms

2	$12.50	$2.50
2	10.00	2.50

E: Provisions regarding short subjects not included.

EXHIBIT NO. 628 C

Distributor R K O Distributing Corp.
by H. T. Dixon

Season 1933-34

Exhibitor Gaby and Cohen
by M. Gaby

Theatre Plaza, Corning, New York

Contract application date Feb. 19, 1934

Approval date Feb. 28, 1934.
by Jules Levy

No. of pictures offered 44

No. of Pictures Licensed 15
Total Feature License Fees (incl. score)-
$165.00

Provisions, if any, re admission prices Matinee: adults - 15; children - 10
Evenings: adults - 20; children - 10

Run and clearance provisions 3rd run Corning, New York

Other typewritten or handwritten clauses including riders, if any.

Branch - Buffalo #4; Salesman - Chas. Boasberg; Contract No. 514
Exhibitor shall be entitled only to such feature pictures released by distributor as shall be identified by production numbers running from 4109 to 4152. Exhibitor may reject not exceeding 29 feature pictures at a rate of not to exceed 6 pictures every 3 months. Acceptance or rejection by exhibitor must be given within 14 days from notice of availability.

If any picture is held a third day, the extra day is to cost $2.50 per picture additional

Exhibitor agrees to play and/or pay for not less than 2 features per month commencing April 1, 1934.

List or summary of motion pictures licensed and rental terms

Exhibitor agrees to play and/or pay for 44 feature pictures (excluding one Lucky 7) released by distributor at following terms:

forty-four (44) 1/2 $10.00 $1.00

EXHIBIT NO. 628 D

Distributor R K O Distributing Corp.
by H. T. Dixon

Season 1934-35

Exhibitor Schine Theatrical Co., Inc.
by Geo. V. Lynch

Theatre Fox or State
Corning, New York

Contract application date Oct. 31, 1934

Approval date

No. of pictures offered 50

No. of Pictures Licensed 40
Total Feature License Fees (incl. score)-
$1,935.00

Provisions, if any, re admission prices

Run and clearance provisions 30 days on Painted Post, Plaza Theatre, Addison, N. Y.
160 days on second run

Other typewritten or handwritten clauses including riders, if any.
Branch-Buffalo; Salesman-Harry T. Dixon; Contract No. 813

NOTE: Provision regarding agreement of exhibitor to play and/or pay for specified number of pictures stamped on face of contract is partly illegible.

List or summary of motion pictures licensed and rental terms

Twenty (20) features	2/3	$49.50	$2.50 each
Twenty (20) features	2/3	42.50	2.50 each

NOTE: Provisions regarding short subjects not included.

EXHIBIT NO. 628 E.

Distributor R K O. Distributing Corp.
by H. T. Dixon

Season 1934-35

Exhibitor Schine Theatrical Co., Inc.
by Geo. V. Lynch

Theatre State
Corning, New York

Contract application date Oct. 31, 1934

Approval date

No. of pictures offered

No. of Pictures Licensed

Provisions, if any, re admission prices

Run and clearance provisions 60 days over third run

Other typewritten or handwritten clauses including riders, if any.

The exhibitor agrees that the picture entitled The Three Musketeers or any other picture listed in the Distributor's announcement book shall not be a part of this contract, if same is produced in color or is anything but a regular black and white feature. No color features sold.

Branch-Buffalo #4; Salesman - Harry T. Dixon; Contract No. 814

List or summary of motion pictures licensed and rental terms

It is hereby agreed that the exhibitor will use pictures at the State Theatre 2nd run that play the Fox Theatre 1st run and prices are to be as follows:

50% of the number of pictures used at the State Theatre, Corning, 2nd run, will be 2/3 $15.00 $2.50 each
and 50% of the number of pictures used at the State Theatre, Corning, 2nd run, will be 2/3 $12.50 $2.50 each.

EXHIBIT NO. 628 F

Distributor R K O Distributing Corp.
by H. Dixon

Season 1934-35

Exhibitor M. Gaby

Theatre Plaza, Corning, New York

Contract application date April 15, 1935

Approval date April 30, 1935
by Jules Levy

No. of pictures offered 36

No. of Pictures Licensed 15

Provisions, if any, re admission prices Matinee: adults - 15; children - 10
Evening: adults - 15; children - 10

Run and clearance provisions 3rd run Corning

Other typewritten or handwritten clauses including riders, if any.

The distributor retains the privilege to eliminate from this contract any 14 pictures from 1934/35 product which product is identified by production numbers running from 501 to 550.

Branch - Buffalo #4; Salesman - Chas. Boasberg; Contract No. 1192

The exhibitor agrees to play and/or pay for not less than 3 features per month commencing June 1, 1935.

List or summary of motion pictures licensed and rental terms

15 features	1/2	$10.00	$1.00
Dionne Quintuplets	1/2	3.00	

EXHIBIT NO. 635 A (First National Productions)

Distributor Vitagraph, Inc.
by W. J. Brandt

Season 1936-37

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Civic or Roxy
Fostoria, Ohio

Contract application date 3/18/37

Approval date 4/1/37 by G. L. Sears

No. of pictures offered 30

No. of Pictures Licensed 30

Provisions, if any, re admission prices Evenings: adults 25; children 10.
Matinees: adults 25; children 10.

Run and clearance provisions Repeat. 90 days in Fostoria, Ohio.
To be available 60 days after first run.

Other typewritten or handwritten clauses including riders, if any.
Salesman - W. J. Brandt.
Branch - Cleveland
Contract No. 5975

List or summary of motion pictures licensed and rental terms

2	2-3	35% gross	7	$2.00
3	2-3	$25.00	7	2.00
10	2-3	20.00	7	2.00
15	2-3	15.00	7	2.00

Score Rentals: $2.50 per motion picture, 2-3 days.

EXHIBIT NO. 635 A (Warner Bros. and First National Productions)

Distributor Vitagraph, Inc.
by W. J. Brandt

Season 1935-36

Exhibitor A. J. Buck

Theatre Colonial, Fostoria, Ohio

Contract application date 7/10/35

Approval date 7/24/35 by A. W. Smith, Jr.

No. of pictures offered 59

No. of Pictures Licensed 59

Provisions, if any, re admission prices Evenings: adults 25; children 10.
Matinees: adults 25; children 10.

Run and clearance provisions First, as available.

Other typewritten or handwritten clauses including riders, if any.

Salesman - W. J. Brandt
Branch - Cleveland
Contract No. 4323

As Available.

List or summary of motion pictures licensed and rental terms

2	2	$100.00	ag. 35%	7	$3.50
7	2	75.00	ag. 30%	7	3.50
6	1-2	50.00	ag. 30%	7	3.50
16	1-2	35.00	ag. 30%	7	3.50
8	1-2	30.00	ag. 30%	7	3.50
20	1-2	30.00		7	3.50

Score Rentals: $5.00 per motion picture, 1-2 days.

5445

EXHIBIT NO. 635 A (Warner Bros. Productions)

Distributor Vitagraph, Inc.
by Walter J. Brandt

Season 1934-35

Exhibitor C. O. Frederick, Mgr.

Theatre Moose - Norwalk, Ohio

Contract application date 9/5/34

Approval date 9/18/34
by A. W. Smith, Jr.

No. of pictures offered 30

No. of Pictures Licensed 30

Provisions, if any, re admission prices Evenings: adults 25; children 10
Matinees: adults 20; children 10

Run and clearance provisions First. According to 1934 zoning

Other typewritten or handwritten clauses including riders, if any.
One per week starting October 15, 1934
Branch - Cleveland

List or summary of motion pictures licensed and rental terms

1	3	$150.00	ag.	50%		$3.50	7	$2.50
1	3	60.00	rg.	35%		3.50	7	2.50
3	2-3	60.00	rg.	30%	2 de.	3.00	7	2.50
5	2-3	40.00				3.00	7	2.50
5	2-3	30.00				3.00	7	2.50
1	2-3	25.00				3.00	7	2.50
1	2-3	25.00				3.00	7	
3	2-3	25.00				3.00		
5	1-2	20.00				2.50		
5	1	15.00				2.50		

Score Prices: 1-2 days $2.50; 3 days $3.50

Terms on flat rental pictures can be interchanged.

EXHIBIT NO. 635 A (First National Productions):

Distributor Vitagraph, Inc.
by Walter J. Brandt

Season 1934-35

Exhibitor C. O. Frederick, Mgr.

Theatre Moose, Norwalk, Ohio

Contract application date 9/5/34

Approval date 9/18/34
by A. W. Smith, Jr.

lo. of pictures offered 30

No. of Pictures Licensed 30

rovisions, if any, re admission prices Evenings: adults 25, children 10.
Matinees: adults 20; children 10.

un and clearance provisions First - according to 1934 zoning.

her typewritten or handwritten clauses including riders, if any.
ne per week starting October 15, 1934

Branch - Cleveland

or summary of motion pictures licensed and rental terms.

3	$60.00	ag. 35%		$3.50	7	$2.50
2-3	60.00	ag. 30%	2 da.	3.00	7	2.50
2-3	40.00		2 da.	3.00	7	2.50
2-3	40.00			3.00	7	2.50
2-3	30.00			3.00	7	2.50
2-3	25.00			3.00		
1-2	20.00			2.50		
1	15.00			2.50		

ore Prices: 1-2 days, $2.50, 3 days, $3.50

eras on flat rental pictures can be interchanged.

5447

EXHIBIT NO. 635 B (Warner Bros. Productions)

Distributor Vitagraph, Inc.
By W. J. Brandt

Season 1935-36

Exhibitor L.O.O.M
by C. O. Frederick, Sec.

Theatre Moose, Norwalk, Ohio

Contract application date 7/16/35

Approval date 7/29/35

No. of pictures offered 29

No. of Pictures Licensed 29

Provisions, if any, re admission prices Evenings: adults orchestra - 25, balcony 20; children 10.
matinees : adults orchestra - 25, balcony 20; children 10.

Run and clearance provisions
First run Norwalk - as available after Sandusky 7 days.

Other typewritten or handwritten clauses including riders, if any.
Salesman - W. J. Brandt
Branch - Cleveland
One every other week starting September 1st.

List or summary of motion pictures licensed and rental terms

1	3-4	$100.00 -	agt. 35%	7	$2.50
4	3	75.00	agt. 30%	7	2.50
2	2-3	40.00	agt. 25%	7	2.50
6	2-3	40.00		7	2.50
5	2-3	30.00		7	2.50
7	2	25.00		7	2.50
4	2	20.00		7	2.50

Score Rentals - 2 days - $2.50
balance - illegible

EXHIBIT NO. 635 C

istributor Vitagraph, Inc.
by W. J. Brandt

Season 1935-36

xhibitor Norwalk Theatricchar Corp.
by Geo. V. Lynch

Theatre Forum, Norwalk, Ohio

ontract application date 8/7/35

Approval date 8/19/35

o. of pictures offered 30

No. of Pictures Licensed 30 (First National Productions)

rovisions, if any, re admission prices Evenings: adults 25; children 10.
Matinees: adults 20; children 10.

un and clearance provisions First. Available 7 days after Sandusky, Ohio

ther typewritten or handwritten clauses including riders, if any.
Salesman - W. J. Brandt
Branch - Cleveland
One every other week starting September 15, 1935.

ist or summary of motion pictures licensed and rental terms.

1	3-4	35% gross	7	$2.50
4	3	30% gross	7	2.50
2	3	25% gross	7	2.50
6	2-3	$40.00	7	2.50
5	2-3	30.00	7	2.50
8	2-3	25.00	7	2.50
4	2-3	20.00	7	2.50

Score Rentals - $3.50 per motion picture, 2-3 days.

EXHIBIT NO. 635 C 1 (First National Productio

Distributor Vitagraph, Inc.
by W. J. Brandt

Season 1937-38

Exhibitor The Medina Temple Theatrical Co.
by P. E. Essick, Sec.

Theatre New Medina, Medina, Ohio

Contract application date 1/18/38

Approval date 1/27/38

No. of pictures offered 22

No. of Pictures Licensed 22

Provisions, if any, re admission prices Evenings: adults 25; children 10.
Matinees: adults 25; children 10.

Run and clearance provisions First. As available - 7 days after first run Akron.

Other typewritten or handwritten clauses including riders, if any.
Salesman - Brandt
Branch - Cleveland
Contract No. 6804

List or summary of motion pictures licensed and rental terms

1	Warner Bros. Production	3	35%	gross	
1		3	40%		
1		3	35%		
2		2-3			$60.00
7		2-3			40.00
10		2-3			20.00

Trailer Rental - $2.50
Score Rental - 2.50

EXHIBIT NO. 635 C-2

tributor Vitagraph, Inc. Season 1938-1939

ibitor The Medina Temple Theatre Co. Theatre New Medina

tract application date November 29, 1938 Approval date December 7, 1938

of pictures offered 26 No. of Pictures Licensed 26

visions, if any, re admission prices Matinee: adults, orchestra, 25¢, children 10¢;
Evenings: adults, orchestra, 25¢, children 10¢.

and clearance provisions First; as available, 7 days after first run Akron.

r typewritten or handwritten clauses including riders, if any.

r summary of motion pictures licensed and rental terms

r of Pictures	Number of Consecutive Days	Fixed Rental	Percentage Rental
3	3		35% of gross
5	2-3	$70.50	
9	2-3	42.50	
9	2-3	22.50	

.50 score to apply on percentage pictures only.

EXHIBIT NO. 635 D

Distributor Vitagraph, Inc.
by Unsigned

Season 1936-37

Exhibitor Belpik Theatre Corp.
by Geo. V. Lynch

Theatre Forum, Norwalk, Ohio

Contract application date 3/24/36

Approval date 4/6/36 by G. L. Sears

No. of pictures offered 59

No. of Pictures Licensed 59

Provisions, if any, re admission prices Evenings: adults 30; children 10; Matinees: adults 20; children 10.

Run and clearance provisions 60 days in Norwalk. 14 days ahead of Lyon, Huron, New London and Milan.

Other typewritten or handwritten clauses including riders, if any.
Branch - Cleveland
Contract #5195

Subject to all terms and conditions of Master Agreement.

List or summary of motion pictures licensed and rental terms

2	2	35% split	
7	2	30% split	
4	1-2	25%	
12	1-3		$40.00
10	1-3		$30.00
24	1-3		$20.00

Score Rentals: $2.50 per run

Trailers:	1 change	$10.00
	2 change	5.00
	3 change	3.00
	4 change	2.00
	5 change	1.50

EXHIBIT NO. 635 F

stributor Vitagraph, Inc.
by N. J. Ayers

Season 1936-37

hibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Regent or Strand
Amsterdam, New York

ntract application date 1/15/37

Approval date 1/26/37 by G. L. Sears

. of pictures offered 60

No. of Pictures Licensed 44

rovisions, if any, re admission prices Evenings: adults 20; children 10
Matinees: adults 15; children 10

un and clearance provisions Second run. 60 days after first run and 60 days
head of 3rd run.

ther typewritten or handwritten clauses including riders, if any.
alesman - N. J. Ayers
anch - - Albany
ontract No. 1018

xhibitor is obligated to play all those releases played first run at the
ialto Theatre and enough additional releases to total 44 pictures which is
o be the minimum number played of the 59 above listed. All additional
eleases can be eliminated by the exhibitor.

st or summary of motion pictures licensed and rental terms

2/3	$60.00
2/3	45.00
2/3	40.00
2/3	30.00
2/3	20.00

ore Rental: $2.50 per run

ailers:	1 change	$10.00
	2 change	5.00
	3 change	3.00
	4 change	2.00
	5 change	1.50

5453

EXHIBIT NO. 635 G (First National Producti

Distributor Vitagraph, Inc. **Season** 1932-33

Exhibitor Central New York Theatre Corp. **Theatre** Rialto, Little Falls, New York

Contract application date **Approval date**

No. of pictures offered **No. of Pictures Licensed** 30

Provisions, if any, re admission prices Evenings: adults 25¢ children 10.

Run and clearance provisions First. 15 clear days' protection from last date of engagement on Dolgeville and St. Johnsville. 60 days over all other theatres in Little Falls.

Other typewritten or handwritten clauses including riders, if any.

Branch - Albany

No. 7066

List or summary of motion pictures licensed and rental terms

6	at	25%	2	days
18	at	$50	1/2	days
6	at	40	1/2	days

Trailer Rental: 7 days $2.00 "First National deal"

7944

EXHIBIT NO. 635 G (Warner Bros. Productions)

Distributor Vitagraph, Inc. Season 1932-33

Exhibitor Central New York Theatres, Inc. Theatre Rialto, Little Falls, New York

Contract application date

Approval date

No. of pictures offered

No. of Pictures Licensed 30

Provisions, if any, re admission prices Evenings: adults: 25; children 10.

Run and clearance provisions First. 15 clear days' protection from last date of engagement on Dolgeville and St. Johnsville. 60 days over all other theatres in Little Falls.

Other typewritten or handwritten clauses including riders, if any.

Branch - Albany

No. 7069

List or summary of motion pictures licensed and rental terms

6	at	25%	2	days	
18	at	$50.00	1/2	days	
6	at	40.00	1/2	days	
Trailer Rental			7	days	$2.00

EXHIBIT NO. 635 H (First National Producti

Distributor Vitagraph, Inc. Season 1932-33

Exhibitor Schine Theatrical Co., Inc., Theatre Rialto, Little Falls, N. Y.

Contract application date Approval date

No. of pictures offered No. of Pictures Licensed 12

Provisions, if any, re admission prices Evenings: adults 25; children 10.

Run and clearance provisions First. 15 clear days' protection from last date of engagement on Dolgeville and St. Johnsville. 60 days over all other theatres in Little Falls.

Other typewritten or handwritten clauses including riders, if any.
Branch - Albany

No. 7701

List or summary of motion pictures licensed and rental terms

3	pictures	at	25%	2	days
8	pictures	at	$40.00	1/2	days
1	picture	at	30.00	1/2	days

Score: $2.50 per run

Selective Contract.

EXHIBIT NO. 635 H (Warner Bros. Productions)

stributor Vitagraph, Inc. **Season** 1932-33

hibitor Schine Theatrical Co., Inc. **Theatre** Rialto, Little Falls, New York

ontract application date **Approval date**

of pictures offered **No. of Pictures Licensed** 12

ovisions, if any, re admission prices Evenings: adults 25; children 10.

n and clearance provisions First. 15 clear days' protection from last day
engagement on Dolgeville and St.Johnsville. 60 days over all other
eatres in Little Falls.

er typewritten or handwritten clauses including riders, if any.
nch - Albany

7701

or summary of motion pictures licensed and rental terms

pictures	at	25%	2 days
pictures	at	$40.00	1/2 days
pictures	at	30.00	1/2 days

re: [illegible].50 per run

ective Contract.

EXHIBIT NO. 635 I

Distributor Vitagraph, Inc.
by R. L. Smith

Season 1935-36

Exhibitor Schine Theatrical Co., Inc.
by Geo. V. Lynch

Theatre Rialto, Little Falls, New York

Contract application date 8/5/35

Approval date 8/16/35 by A. W. Smith, Jr.

No. of pictures offered 60

No. of Pictures Licensed 59

Provisions, if any, re admission prices Evenings: adults orchestra 30, balcony 20; children 10.
Matinees: adults 20; children 10.

Run and clearance provisions First run. 90 days over City of Little Falls, 14 days over Ft. Plain, 30 days over St. Johnsville and Dolgeville.

Other typewritten or handwritten clauses including riders, if any.
Salesman - Manager. Branch - Albany, New York. Contract #9150. Split figures on 30% and 35% pictures to be determined as follows: Distributor to receive 30% or 35% of gross receipts respectively up until such time as exhibitor shows profit equal to 50% of amount distributor receives as film rental and to split 50-50 from that point on. Subject to all terms and conditions of Master Agreement, if any.

List or summary of motion pictures licensed and rental terms

2	3	35%	
4	2/3	30%	
3	2/3		$125.00
20	2/3		45.00
30	1/2		30.00

If 30% pictures play Saturday or Sunday terms to be 25%.
35% and 30% pictures cannot play with vaudeville or double bills.
Score Rentals: $2.50 per run.

Trailers:	1 change	$10.00
	2 changes	5.00
	3 changes	3.00
	4 changes	2.00
	5 changes	1.50

EXHIBIT NO. 635 J (Warner Bros. Productions)

Distributor Vitagraph, Inc.
by Walter J. Brandt

Season 1934-35

Exhibitor The Van Wert Amusement Co.

Theatre Strand, Van Wert, Ohio

Contract application date 9/7/34

Approval date 9/12/34. by A.W.Smith, Jr.

No. of pictures offered 30

No. of Pictures Licensed 30

7

Provisions, if any, re admission price Evenings: adults 22; children 10.
Matinees: adults 18, children 10.

Run and clearance provisions First. As available.

Other typewritten or handwritten clauses including riders, if any.

Salesman - W. J. Brandt
Branch - Cleveland

One per week starting November 1, 1934.

List or summary of motion pictures licensed and rental terms

1	3	$125.00	ag. 50%	$5.00	7
1	3	$ 75.00	ag. 35% to $600.00 then 50%	$5.00	7
3	2-3	$ 60.00	ag. 30% to $480.00-2 days, $550.00-3 days, 50% over	$5.00	7
5	2-3	$ 35.00		$5.00	7
5	2-3	$ 30.00		$5.00	
10	1-2	$ 20.00	flat	1-day $3.00	
5	1-2	$ 15.00	flat	1-day $3.00	

Scores: 1-day $3.00; 2 or 3 days $5.00.

Trailer rentals not included.

EXHIBIT NO. 635 J (First National Producti

Distributor Vitagraph, Inc.
by Walter J. Brandt

Season 1934-35

Exhibitor The Van Wert Amusement Co.
by T.G.Evans, Sec.

Theatre Strand, Van Wert,Ohio

Contract application date 9/7/34

Approval date 9/12/34 by A.W. Smith, Jr.

No. of pictures offered

No. of Pictures Licensed 30

Provisions, if any, re admission prices Evenings: adults 22; children 10
Matinees: adults 18; children 10

Run and clearance provisions First. As available.

Other typewritten or handwritten clauses including riders, if any.

Salesman - W. J. Brandt
Branch - Cleveland

One per week starting November 1, 1934.

List or summary of motion pictures licensed and rental terms

1	3	$75.00	ag. 35% to $600.00, then 50% over	$5.00	7
4	2-3	$60.00	ag. 30% to $480.00-2 days, to $550.00-3 days, then 50% over	$5.00	7
3	2-3	$60.00	ag. 30% to $480.00-2 days, to $550.00-3 days, then 50% over	$5.00	7
5	2-3	$35.00		$5.00	7
5	2-3	$30.00		$5.00	7
10	1-2	$20.00	~~1-day~~	1-day $3.00	
5	1-2	$15.00	~~1-day~~	1-day $3.00	

Scores: 1-day $3.00; 2 or 3 days $5.00.

Trailer rentals not included.

EXHIBIT NO. 635 K

Distributor Vitagraph, Inc.
by W. J. Brandt

Season 1935-36

Exhibitor Belpik Theatre Corp.
by Geo. V. Lynch

Theatre Strand or Van Wert, Van Wert, Ohio

Contract application date 8/10/35

Approval date 8/22/35 by A. W. Smith, Jr.

o. of pictures offered 59

No. of Pictures Licensed 59

rovisions, if any, re admission prices Evenings: adults 25; children 10.
Matinees: adults 20; children 10.

un and clearance provisions as available

Other typewritten or handwritten clauses including riders, if any.

Salesman - W. J. Brandt. Branch - Cleveland. Contract #4785.

All percentage pictures to play the Van Wert Theatre.
All terms and conditions of the Master Agreement dated April 24, 1935 to be part and parcel of this contract.

t or summary of motion pictures licensed and rental terms

2-3	35% of gross	7	$2.00
2-3	30% of gross	7	2.00
2-3	$35.00	7	2.00
2-3	30.00	7	2.00
2-3	30.00		
1-2	20.00		
1-2	15.00		

ore Rentals: $3.00 per motion picture; 1-2 days; 3 days, $5.00.

EXHIBIT NO. 637 A(First National Productions)

Distributor	Vitagraph, Inc.	Season	1931-32
Exhibitor	Cohen-Gaby	Theatre	Plaza, Corning, N.Y.
Contract application date		Approval date	
No. of pictures offered	31	No. of Pictures Licensed	13

Provisions, if any, re admission prices Evenings - adults .20 - children .10
Matinees - adults .20 - children .10

Run and clearance provisions 2nd run as available

Other typewritten or handwritten clauses including riders, if any.

Salesman - Levee Branch - Buffalo Contract No. 8076

List or summary of motion pictures licensed and rental terms

13 - 1/2 $10.00 $2.50 5 $1.00

EXHIBIT NO. 637-A (First National Productions).

stributor Vitagraph, Inc.
by (illegible)

Season 1934-35

hibitor Schine Thea. Co. Inc.
by Geo. V. Lynch

Theatre Fox or State, Corning, N.Y.

ontract application date August 29, 1934

Approval date September 11, 1934
by W. A. Smith, Jr.

o. of pictures offered 30

No. of Pictures Licensed 26

ovisions, if any, re admission prices

Evenings - adults, orchestra .25 - balcony .15
children .10
Matinees - adults, orchestra .25 - balcony .15
children .10

n and clearance provisions

FIRST - 30 days on Painted Post, Addison, N.Y.
60 days on City of Corning

her typewritten or handwritten clauses including riders, if any.

Branch - Buffalo, N.Y.

Contract
No. 1326

or summary of motion pictures licensed and rental terms

1	2/3		35%
4	2/3		30%
25	2/3	$50.	

pictures played Sat. or Sun. 25%. 25% pictures played Sat. or Sun 20%.
or 20% pictures double feature or vaudeville - 15%. Exhibitor has option
ying flat rental pictures at 20% - if Sat. or Sun. -15%. Exchange must be
tified within 5 days after dating. Exhibitor has privilege of eliminating
combined WB-FN pictures. 35% and 30% pictures cannot play with vaudeville
double bills. On the pictures that carry split figures, the split figure
to be determined as follows: The distributor is to receive 35% of the gross
ceipts up until such time as the exhibitor shows a profit equal to 50% of
amount the distributor receives as a film rental and to split 50/50 from
s point on.
scores $2.50 per run. Trailer on each subject -
1 change $10.
2 change $5.
3 change $3.
4 change $2.
5 change $1.50.

EXHIBIT NO. 637- . (Warner Bros. Productions)

Distributor Vitagraph, Inc.
by (illegible)

Season 1934-35

Exhibitor Schine Thea. Co. Inc.
by Geo. V. Lynch

Theatre Fox or State, Corning, N.Y.

Contract application date August 29, 1934

Approval date September 11, 1934
by W. A. Smith, Jr.

No. of pictures offered 30

No. of Pictures Licensed 26

Provisions, if any, re admission prices

Evenings - adults, orchestra .25 - balcony .15
children .10
Matinees - adults, orchestra .25 - balcony .15
children .10

Run and clearance provisions

FIRST - 30 days on Painted Post, Addison, N.Y.
60 days on City of Corning

Other typewritten or handwritten clauses including riders, if any.

Branch - Buffalo, N.Y.1327-Contract No.

List or summary of motion pictures licensed and rental terms Terms on #801 to be arranged later.

1	2/3		35%
3	2/3		30%
25	2/3	$50.	

30% pictures played Sat. or Sun. 25%. 25% pictures played Sat.or Sun 20%. 25% or 20% pictures double feature or vaudeville - 15%. Exhibitor has option playing flat rental pictures at 20% - if Sat.or Sun. - 15%. Exchange must be notified within 5 days after dating. Exhibitor has privilege of eliminating 7 combined WB-FN pictures. 35% and 30% pictures cannot play with vaudeville or double bills. On the pictures that carry split figures, the split figure is to be determined as follows: The distributor is to receive 35% of the gros receipts up until such time as the exhibitor shows a profit equal to 50% of the amount the distributor receives as a film rental and to split 50/50 from this point on.

All scores $2.50 per run. Trailer on each subject -
1 change $10.
2 " $5.
3 " $3.
4 " $2.
5 " $1.50

EXHIBIT NO. 637 B (Warner Bros. Productions)

Distributor Vitagraph, Inc.

Season

Exhibitor Gaby & Cohen

Theatre Plaza, Corning, N.Y.

Contract application date

Approval date

No. of pictures offered 30

No. of Pictures Licensed 16

Provisions, if any, re admission prices
Evenings - adults 20¢ children 10¢
Matinees - adults 20¢ children 10¢

Run and clearance provisions 2nd run as available

Other typewritten or handwritten clauses including riders, if any,

Salesman - Levee   Branch - Buffalo   Contract No. 3075

To play or pay for at the rate of two pictures per month - starting on or about June 1 - 1932. If and as available.

List or summary of motion pictures licensed and rental terms

16	1/2	$10.00	$2.50	5	$1.00

EXHIBIT NO. 637 B (2 Contracts covering Warner Bros. Productions and First National Productions)

Distributor Vitagraph, Inc.
by H. Aseed

Season 1934-35

Exhibitor Schine Thea. Co. Inc.

Theatre STATE, Corning, N.Y.

Contract application date August 29, 1934

Approval date September 11, 1934
by A. W. Smith Jr.

No. of pictures offered 60

No. of Pictures Licensed 40

Provisions, if any, re admission prices
Evenings - adults 15¢ children 10¢
Matinees - adults 15¢ children 10¢

Run and clearance provisions 2nd run - Sixty-days on third run

Other typewritten or handwritten clauses including riders, if any.

Branch - Buffalo, N.Y.

Contract
No. 1310 -FNat.
No. 1309 -WBros.

List or summary of motion pictures licensed and rental terms

Exhibitor to use 40 features combined WB-FN to play repeat run at State Theatre as follows:

2 at $25.00 - 2/3 days
38 at 17.50 - 2/3 days

All Scores - $2.50 per Run
SELECTIVE

Trailers on ea. subject

1 change $10.00
2 " 5.00
3 " 3.00
4 " 2.00
5 " 1.50

EXHIBIT NO. 637-C (First National Productions)

Distributor Vitagraph, Inc. Season 1932-33

Exhibitor Gaby & Cohen Theatre Plaza, Corning, N.Y.

Contract application date Approval date

No. of pictures offered No. of Pictures Licensed

Provisions, if any, re admission prices Evenings - adults .25 children .10

Run and clearance provisions 2nd run, Corning

Other typewritten or handwritten clauses including riders, if any.

Salesman - J. R. Levee Branch - Buffalo-Contract No. 8898

List or summary of motion pictures licensed and rental terms

22 2 $10.00 $2.50 5 $1.00

$2.50 additional for extra day

EXHIBIT NO. 637 C(First National Productions)

Distributor Vitagraph, Inc.
by J. R. Levee

Season 1934-35

Exhibitor Morris Gaby

Theatre Plaza, Corning, N. Y.

Contract application date 10-15-34

Approval date October 26, 1934
by A. W. Smith, Jr.

No. of pictures offered 30

No. of Pictures Licensed 30

Provisions, if any, re admission prices Evenings - adults .15 children .10
Matinees - adults .15 children .10

Run and clearance provisions 3rd As available.

Other typewritten or handwritten clauses including riders, if any.

Branch - Buffalo, N.Y. Salesman - J. R. Levee Contract Number-1478

Exhibitor agrees to play and/or pay for at the rate of One (1) combined WB-FN feature per week starting on or about April 1, 1935.

List or summary of motion pictures licensed and rental terms

5	2	$12.50 ag. 35% Gr.	$2.50	7	$1.50
25	2	$10.00	$2.50	7	$1.50

Agrees to 3 Advance Trailers at $1.50 per Trailer for 7 days.

EXHIBIT NO. 637 C (Warner Bros.Productions)

Distributor Vitagraph, Inc.
by J. R. Levee

Season 1934-35

Exhibitor Morris Gaby

Theatre Plaza, Corning, N.Y.

Contract application date 10-15-34

Approval date October 26, 1934
by A. W. Smith, Jr.

No. of pictures offered 30

No. of Pictures Licensed 30

Provisions, if any, re admission prices Evenings - adults .15 children .10
Matinees - adults .15 children .10

Run and clearance provisions 3rd. As available.

Other typewritten or handwritten clauses including riders, if any.

Branch - Buffalo, N.Y. Salesman - J. R. Levee Contract Number - 1479

Exhibitor agrees to play and/or pay for at the rate of One (1) combined WB-FN feature per week starting on or about April 1, 1935.

List or summary of motion pictures licensed and rental terms

1	2	$12.50 ag. 50% gr.	$2.50	7	$1.50
4	2	$12.50 ag. 30% gr.	$2.50	7	$1.50
25	2	$10.00	$2.50	7	$1.50

Agrees to 3 Advance Trailers at $1.50 per Trailer for 7 days

EXHIBIT NO. 637 D (Warner Bros.Productions)

Distributor Vitagraph,Inc. **Season** 1932-33

Exhibitor Gaby & Cohen **Theatre** Plaza, Corning, N.Y.

Contract application date **Approval date**

No. of pictures offered **No. of Pictures Licensed**

Provisions, if any, re admission prices Evenings - adults .25 children .10

Run and clearance provisions 2nd run Corning

Other typewritten or handwritten clauses including riders, if any.

Salesman: Levee Branch: Buffalo Contract No. 8899

To play at rate of 3 pictures per month in conjunction with F.National starting on or about MARCH 1, 1933.

List or summary of motion pictures licensed and rental terms

17 2 $10.00 $2.50 3 $1.00

$2.50 additional for extra day.

EXHIBIT NO. 637 D (First National Productions)

Distributor Vitagraph, Inc.

Season 1933-34

Exhibitor Schine Theatrical Co. Inc.

Theatre Fox, Corning, N.Y.

Contract application date

Approval date

No. of pictures offered

No. of Pictures Licensed

Provisions, if any, re admission prices Evenings - adults .15 and .25 children .10
Matinees - adults .15 and .25 children .10

Run and clearance provisions 1st 30 days Painted Post, Addison, N.Y.
60 days City of Corning

Other typewritten or handwritten clauses including riders, if any.

Branch: Buffalo, N.Y. No. 9524

On pictures that carry split figures, the split figure is to be determined as follows: The Distributor is to receive 30% of 35% of the gross receipts up until such time as the Exhibitor shows a profit equal to 50% of the amount the Distributor receives as a film rental and to split 50/50 from this point on.

List or summary of motion pictures licensed and rental terms

1	2/3	35%
4	2/3	30%
25	2/3	$50.

0% pictures played Sat. or Sun. 25%. Exhibitor has privilege of eliminating
pictures.
% and 30% pictures cannot play with vaudeville or double bills.
ailer on each subject - 1 change $10.
2 " $5.
3 " $3.
4 " $2.
5 " $1.50

1 scores - $2.50 per run

EXHIBIT NO. 637 D(Warner Bros.Productions)

Distributor Vitagraph, Inc.   Season 1933-34

Exhibitor Schine Theatrical Co.Inc.   Theatre Fox, Corning, N.Y.

Contract application date   Approval date

No. of pictures offered   No. of Pictures Licensed

Provisions, if any, re admission prices Evenings - adults .15 and .25 children .10
Matinees - adults .15 and .25 children .10

Run and clearance provisions 1st 30 days Painted Post, Addison, N.Y.
60 days City of Corning

Other typewritten or handwritten clauses including riders, if any.

Branch: Buffalo, N.Y.   Contract No. 9525

On pictures that carry split figures, the split figure is to be determined as follows: The Distributor is to receive 30% or 35% of the gross receipts. up until such time as the Exhibitor shows a profit equal to 50% of the amount the Distributor receives as a film rental and to split 50/50 from this point on.

List or summary of motion pictures licensed and rental terms

1	2/3	35%
3	2/3	30%
25	2/3	$50.

30% pictures played Sat. or Sun. 25%. Exhibitor has privilege of eliminat
4 pictures.
35% and 30% pictures cannot play with vaudeville or double bills.
Trailer on each subject - 1 change $10.
2 " $5.
3 " $3.
4 " $2.
5 " $1.50

All scores - $2.50 per run

EXHIBIT NO. 637-E(First National Productions)

Distributor Vitagraph, Inc.

Season 1931-32

Exhibitor Central N.Y. Theatres Corp.

Theatre Fox or Palace, Corning, N.Y.

Contract application date

Approval date

No. of pictures offered 31

No. of Pictures Licensed 24

Provisions, if any, re admission prices Evenings - adults .40 children .15
Matinees - adults .25 children .10

Run and clearance provisions 1st - 30 days Corning

Other typewritten or handwritten clauses including riders, if any.

Branch - Buffalo, N.Y. Contract No. 7974

List or summary of motion pictures licensed and rental terms

9	2-4	25% Gross	7	$5.00
15	2-4	20% Gross	7	$5.00

If any of the above pictures plays at the Fox Theatre, score to be 1 day 5.00, 2 days, 7.50, 3 days 10.00. If played at Palace, ~~scores to be~~ 1/2 days 3.75.

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EXHIBIT NO. 637 E (First National Productio

Distributor Vitagraph, Inc. **Season** 1933-34

Exhibitor Schine Thea.Co.Inc. **Theatre** State, Corning, N.Y.

Contract application date **Approval date**

No. of pictures offered **No. of Pictures Licensed**

Provisions, if any, re admission prices
Evenings - adults .15 children .10
Matinees - adults .15 children .10

Run and clearance provisions SECOND - 60 days protection over 3rd run

Other typewritten or handwritten clauses including riders, if any.

Branch - Buffalo Contract No. 9526

List or summary of motion pictures licensed and rental terms

1	2/3	$25.00
24	2/3	$17.50
5	2/3	$15.00

Trailers - 1 change		$10
2	"	$5
3	"	$3
4	"	$2
5	"	$1.50

All Scores $2.50 per run

EXHIBIT NO. 637 [illegible] (Warner Bros. Productions)

Distributor Vitagraph, Inc. Season 1933-34

Exhibitor Schine Thea. Co. Inc. Theatre State, Corning, N.Y.

Contract application date Approval date

No. of pictures offered No. of Pictures Licensed

Provisions, if any, re admission prices Evenings - adults .15 children .10
Matinees - adults .15 children .10

Run and clearance provisions SECOND - 60 days protection over 3rd run

Other typewritten or handwritten clauses including riders, if any.

Branch - Buffalo Contract No. 9527

List or summary of motion pictures licensed and rental terms

2	2/3	$25.00
24	2/3	$17.50
4	2/3	$15.00

Trailers -	1	change	$10
	2	"	$5
	3	"	$3
	4	"	$2
	5	"	$1.50

All scores $2.50 per run

EXHIBIT NO. 637 F (Warner Bros Productions)

Distributor Vitagraph, Inc. **Season** 1931-32

Exhibitor Central N.Y.Theatres Corp. **Theatre** Fox or Palace, Corning, N.Y.

Contract application date **Approval date**

No. of pictures offered 30 **No. of Pictures Licensed** 22

Provisions, if any, re admission prices
Evenings - adults .40 children .15
Matinees - adults .25 children .10

Run and clearance provisions 1st run 30 days Corning

Other typewritten or handwritten clauses including riders, if any.

Branch - Buffalo, N.Y.-Contract No. 7975

List or summary of motion pictures licensed and rental terms

15	2-4	25% gross	7	$5.00
7	2-4	20% gross	7	$5.00

If any of the above pictures plays at the Fox Theatre, score to be 1 day 5.00, 2 days 7.50, 3 days 10.00. If played at Palace scores to be 1/2 days 3.75.

EXHIBIT NO. 637 F (Warner Bros. Productions)

utor Vitagraph, Inc. Season 1933-34

or Gaby & Cohen Theatre Plaza, Corning, N.Y.

ct application date Approval date

pictures offered No. of Pictures Licensed

ons, if any, re admission prices Evenings - adults .15 children .10
Matinees -adults .15 children .10

d clearance provisions Clearance - As available. After State Theatre, Corning, N.Y.

ypewritten or handwritten clauses including riders, if any.

Salesman: J.R. Levee Branch: Buffalo, N.Y. Contract No. 1075

To play and or to pay for at the rate of no less than four (4) combined WB & FN features per month starting on or about June 1, 1934.

ummary of motion pictures licensed and rental terms

5	2	$12.50 agst. 35% gr.	$2.50	7	$1.00
25	2	$10.00 "	$2.50	7	$1.00

3rd days rental to be $2.50 on each feature.

EXHIBIT NO. 637 F (First National Productions)

Distributor Vitagraph, Inc. **Season** 1933-34

Exhibitor Gaby & Cohen **Theatre** Plaza, Corning, N.Y.

Contract application date **Approval date**

No. of pictures offered **No. of Pictures Licensed**

Provisions, if any, re admission prices Evenings - adults .15 children .10
Matinees - adults .15 children .10

Run and clearance provisions Clearance - As available. After State Theatre, Corning, N.Y.

Other typewritten or handwritten clauses including riders, if any.

Salesman: J. R. Levee Branch: Buffalo, N.Y. Contract No. 1076

To play and or to pay for at the rate of no less than four (4) combined WB & FN features per month starting on or about June 1, 1934.

List or summary of motion pictures licensed and rental terms

5	2	$12.50 agst. 35% gr.	$2.50	7	$1.00
25	2	$10.00	$2.50	7	$1.00

3rd days rental to be $2.50 on each feature.

EXHIBIT NO. 637 G (First National Productions)

Distributor Vitagraph, Inc.   Season 1932-33

Exhibitor Central NY Theatres   Theatre Fox or Palace, Corning, N.Y.

Contract application date   Approval date

No. of pictures offered   No. of Pictures Licensed

Provisions, if any, re admission prices

un and clearance provisions

ther typewritten or handwritten clauses including riders, if any,

Branch - Buffalo, N.Y. Contract No. 8617

t or summary of motion pictures licensed and rental terms

WB & FN COMBINED:

25 features @ 25% Fox - 2 days
20 features @ 20% Fox - 1/2 days
13 features @ 20% Fox or Palace
15 features @ 50.00, Fox or Palace

centage pictures to be 15% if played with vaudeville or double featured.

re - Fox, $3.50 per day; Palace $2.50 per run as per letter 11-17-32.

ller - 7 days $2. per National Trailer deal.

EXHIBIT NO. 637 H (Warner Bros. Productions)

Distributor Vitagraph, Inc.

Season 1932-33

Exhibitor Central NY Theatres

Theatre Fox or Palace, Corning, N.Y.

Contract application date

Approval date

No. of pictures offered

No. of Pictures Licensed

Provisions, if any, re admission prices

Run and clearance provisions

Other typewritten or handwritten clauses including riders, if any.

Branch - Buffalo, N.Y.-Contract No. 8618

List or summary of motion pictures licensed and rental terms

WB & FN COMBINED:

25 features @ 25% Fox - 2 days
20 features @ 20% Fox - 1/2 days
13 features @ 20% Fox or Palace
15 features @ 50.00, Fox or Palace

Percentage pictures to be 15% if played with vaudeville or double featured.

Score - Fox, $3.50 per day; Palace $2.50 per run as per letter 11-17-32.

Trailer - 7 days, $2. per National Trailer deal.

EXHIBIT NO. 642 A

Distributor Vitagraph, Inc.

Season

Exhibitor Southland Amuse.Co.
By Harry Schwartz

Theatre Opera House, Lexington, Ky.

Contract application date 6/30/39

Approval date Jul. 6, 1939

No. of pictures offered 48

No. of Pictures Licensed 48

Provisions, if any, re admission prices Evenings - adults - Orch. .15; Balcony .10
children .10
Matinees - adults .10 children .10

Run and clearance provisions 4th in Lexington, Ky.

Other typewritten or handwritten clauses including riders, if any.

Salesman - Day Branch- Cincinnati Contract No. 4714
One picture per week if and as available
Group I to play Sun. and Mon.
Group II " " " " "

List or summary of motion pictures licensed and rental terms

2 -	2 -	40% of gross
6 -	2 -	35% " "
12 -	2 -	$25.00
16 -	2 -	$20.00
12 -	2 -	$15.00

EXHIBIT NO. 672-A

Distributor Columbia Pictures Corp. Season 1931-32
by A. E. Feld- C. W. Johnston

Exhibitor Wm. T. Wood Theatre Hippodrome, Little Falls, N.Y.

Contract application date 10/21/31 Approval date 10/23/31
by Jos. McConville

No. of pictures offered No. of Pictures Licensed

Provisions, if any, re admission prices Evenings - adults, orchestra .30, balcony .25
children - .10
Matinees - adults, orchestra .25, balcony.25
children - .10

Run and clearance provisions
1st
Ahead of Dolgeville

Other typewritten or handwritten clauses including riders, if any.

Exchange - Albany Population - 11,000 Seating Capacity - 500
Contract No. 100 Salesman - A. S. Feld

Exhibitor to play and/or pay for at least one picture every two weeks commencing 12/1/31 if and as available and in the order of availability.

List or summary of motion pictures licensed and rental terms

5	2-3	$50.00	N.C.
11	2-3	$35.00	N.C.
8	2-3	$25.00	N.C.

EXHIBIT NO. 672 B

istributor Columbia Pictures Corp. Season 1932-33
by C. N. Johnston

xhibitor Central N.Y.Theatres,Inc. Theatre Rialto, Little Falls, N.Y.
by Harry E. Thompson

ontract application date 10/18/32 Approval date

o. of pictures offered No. of Pictures Licensed

rovisions, if any, re admission prices Matinee - .15
Evening - .30 & .35

un and clearance provisions 1st - clear. 15 clear days protection from last
te of engagement on Dolgeville and St. Johnsville. 60 clear days protection
all other theatres in Little Falls.

ther typewritten or handwritten clauses including riders, if any.

anch - Albany Salesman - C. N. Johnston Seating Capacity- 1000
tract No. 528
ibitor has the privilege of eliminating any 12 pictures named on this
tract at $25.00 each. Any picture not eliminated within 15 days from
e notice of availability, by written notice, is deemed accepted by the
ibitor.

ibitor agrees to play and/or pay for at least two features per month
mencing 11/1/32

t or summary of motion pictures licensed and rental terms

5	features at	2-3	days	$50. each
8	" "	1-2	"	$35.00 "
19	" "	"	"	$25.00 "

Score: No charge
Note: Provisions regarding short subjects and outdoor products
not included.

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EXHIBIT NO. 672 C

Distributor Columbia Pictures Corporation
by C. N. Johnston

Season 1933-34

Exhibitor Schine Theatrical Co.
by Geo. V. Lynch

Theatre Rialto, Little Falls, N.Y.

Contract application date 10-30-33

Approval date November 2, 1933
by Rube Jacxter

No. of pictures offered

No. of Pictures Licensed

Provisions, if any, re admission prices Matinee - .15 and .30 Evening .30 and .35

Run and clearance provisions 120 days city Little Falls, 30 days Dolgeville and St. Johnsville

Other typewritten or handwritten clauses including riders, if any.

Branch, - Albany Salesman - C.N.Johnston Date-10/30/33 Contract No. 80
Seating Capacity - 1000
The exhibitor agrees to play a minimum of 10 pictures hereunder selected from those pictures numbered 1 to 31. The exhibitor's rights to eliminate any pictures hereunder shall be from the lowest price allocation group.

The Exhibitor agrees to play and/or pay for at least one feature every month commencing the first day of December 1933.

List or summary of motion pictures licensed and rental terms

5	2/3	$30.00	NC
26	2/3	$20.00	NC

Note: Provisions regarding Westerns not included.

EXHIBIT NO. 672 D

istributor Columbia Pictures Corporation **Season** 1934-35
by C. N. Johnston

xhibitor Schine Theatrical Co.
by Geo. V. Lynch
Theatre Rialto, Little Falls, N.Y.

ontract application date 11-12-34
Approval date November 19, 1934
by Rube Jacxter

o. of pictures offered 48
No. of Pictures Licensed 24

ovisions, if any, re admission prices
Matinees - .15 and .30
Evenings - .30 and .35

n and clearance provisions
First run. 14 days over Dolgeville, 120 days in City of Little Falls, 30 days on St.Johnsville.

her typewritten or handwritten clauses including riders, if any.

xhibitor agrees to play and/or pay for a minimum of (24) feature pictures. he Exhibitor agrees to play and/or pay for the pictures numbered 1 to 10 nclusive as well as pictures numbered 41 to 48 inclusive and the Exhibitor urther agrees to play and/or pay for (6) other features to be selected rom the balance of the feature pictures released on the 1934-35 program. he Exhibitor's right to eliminate any feature pictures hereunder shall be, rom those licensed at the lowest price."
xhibitor agrees to play and/or pay for at least two features every month ommencing the 15th day of December 1934.
ranch - Albany Salesman - C.N.Johnston Date 11/8/34 Contract #71
eating Capacity - 1000

t or summary of motion pictures licensed and rental terms

4	2/3	$40.	NC
6	2/3	$30.	NC
38	2/3	$20	NC

EXHIBIT NO. 672 E

Distributor Columbia Pictures Corporation
by Phil Fox

Season 193[illegible]36

Exhibitor Schine Theatrical Company
by Geo. V. Lynch

Theatre Rialto, Little Falls, N.Y.

Contract application date 11-18-35

Approval date November 26, 1935
by Rube Jacxter

No. of pictures offered 52

No. of Pictures Licensed 36

Provisions, if any, re admission prices Matinees - .15 and .30
Evenings - .30 and .35

Run and clearance provisions
30 days clearance over Dolgeville and St.Johnsvill
14 days over Fort Plain
90 days in town

Other typewritten or handwritten clauses including riders, if any.

Branch - Albany Salesman - Fox Date 11/18/35 Contract No. 851
Seating Capacity 1000.
Exhibitor agrees to play 24 pictures hereunder. Any right of eliminatio
that the Exhibitor has must be from those pictures which are designated by the Distributor to play at the lowest rental classification.
Exhibitor agrees to play and/or pay for at least 2 special feature attractions every month commencing the first day of December 1935.

List or summary of motion pictures licensed and rental terms

6	2/3	$50.00	NC
6	2/3	$30.00	NC
12	2/3	$20.00	NC
16	2/3	$20.00	NC

Note: Provisions regarding Western feature productions not includ

EXHIBIT NO. 672 F

Distributor Columbia Pictures Corporation
by Phil Fox

Season 1936-37

Exhibitor Schine Theatrical Company
by Geo. V. Lynch

Theatre Rialto, Little Falls, N.Y.

Contract application date July 23, 1936

Approval date July 28, 1936
by Rube Jackter

No. of pictures offered

No. of Pictures Licensed 22

Provisions, if any, re admission prices

Matinees - adults .30 children .15
Evenings - adults .35 children .30

Run and clearance provisions

90 days over the city of Little Falls
14 days over Fort Plain
30 days over St.Johnsville, and Dolgeville.

Other typewritten or handwritten clauses including riders, if any,

Branch - Albany Salesman-Phil Fox Date- July 23, 1936 Contract No. 399
Seating Capacity - 1000.
The Exhibitor agrees to play 22 pictures hereunder. Any right of elimination that the Exhibitor has shall be from those pictures which are designated by the Distributor to play at the lowest rental classification.

Any picture not accepted by the Exhibitor in writing sent to the Distributor within 14 days after any picture shall be made available to the Exhibitor, any such picture shall be deemed to have been rejected by the Exhibitor. This right of rejection shall in no event permit the Exhibitor to reduce his commitment of 22 pictures hereunder.

List or summary of motion pictures licensed and rental terms

4	2/3	$50.00	NC
6	2/3	30.00	NC
12	2/3	20.00	NC
18	2/3	20.00	NC

Note: Provisions regarding Western feature productions and Short Subjects not included.

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EXHIBIT NO. 698 A

Distributor Universal Film Exchanges, Inc. Season 1933-34
By Dave Miller, Manager.

Exhibitor Schine Theatrical Co. Inc. Theatre Fox or State, Corning, N.Y.
by (unsigned)

Contract application date November 21, 1933 Approval date November 3, 1933
by J. R. Grainger

No. of pictures offered

No. of Pictures Licensed 20

Provisions, if any, re admission prices Matinee - 10-15-25¢
Evening - 10-15-25¢

Run and clearance provisions First

Other typewritten or handwritten clauses including riders, if any.

Memo contract. Exchange-Buffalo Salesman- Dave Miller - Office Zone
Population 15777

List or summary of motion pictures licensed and rental terms

Selection of twenty (20) pictures as follows:

Two	(2)	@	25%	- 2-3 days
Eight	(8)	@	20%	- 1-2-3 days each
Ten	(10)	@	$32.50 each	- 2 days.

EXHIBIT NO. 698 B

Distributor Universal Film Exchanges, Inc. by Dave Miller, Manager

Season 1933-34

Exhibitor Schine Theatrical Co. Inc. by Geo. V. Lynch

Theatre State, Corning, N.Y.

Contract application date December 11, 1933

Approval date December 20, 1933 by Frank McCarthy

No. of pictures offered

No. of Pictures Licensed 20

Provisions, if any, re admission prices

Run and clearance provisions SECOND RUN - First run has 60 days over second run and second run has 60 days over third run.

Other typewritten or handwritten clauses including riders, if any.

Exchange-Buffalo Salesman-Dave Miller Contract #434A Office Zone
Population 15777

Distributor reserves the right to designate the (5) $25.00 pictures. Pictures that play the FOX THEATRE first run, are to play second run at the STATE THEATRE.

List or summary of motion pictures licensed and rental terms

Selection of twenty (20) pictures as follows.-

5 @ $25.00 each

15 @ $17.50 each

2 days each

EXHIBIT NO. 698 C

Distributor Universal Film Exchanges, Inc. **Season** 1933-34
by Dave Miller

Exhibitor Gaby & Cohen **Theatre** Plaza, Corning, N.Y.
by M. Gaby

Contract application date September 12, 1933 **Approval date** September 14, 1933
by Frank McCarthy

No. of pictures offered

No. of Pictures Licensed

Provisions, if any, re admission prices Evening .10 and .25

Run and clearance provisions Follows 1st run clearance - Exclusive 2nd run

Other typewritten or handwritten clauses including riders, if any.

Exhibitor agrees to play and pay for three of the above productions each and every month beginning Jan. 1934.
Exchange - Buffalo Salesman - Ward Population - 15,777 Contract #0200, Seating Capacity-300
On releases 7033-7036 inclusive. Dist. to receive 25% of gross but in no event less than specified rental.

List or summary of motion pictures licensed and rental terms

8	2/3'	$15.00

Distributor to receive 25% gross but in no event less than specified rental.

28	2/3	$12.50

Score fee - Incl.
Note - Provisions regarding Westerns not included

EXHIBIT NO. 720 (Warner Bros. Productions)

Distributor Vitagraph, Inc.

Season 1931-32

Exhibitor Exhibitors Theater Corp.

Theatre Madison, Rochester, N.Y.

Contract application date

Approval date

No. of pictures offered

No. of Pictures Licensed

Provisions, if any, re admission prices Evenings - adults 25¢ children 10¢

Run and clearance provisions 2nd run City of Rochester, N.Y. 30 days after 1st run, if any, seven days protection. Day and date with Strand.

Other typewritten or handwritten clauses including riders, if any.

Branch - Buffalo Number 6965

1. Exhibitor agrees to play and/or pay for at the rate of 3 pictures per month if and as available.
2. Little Theater Rochester to play 7 days ahead of Strand and Madison with no prejudice to this contract.

List or summary of motion pictures ~~licensed~~ and rental terms

5	2/3	$66.66	$5.	7	$5.
29	2/3	$45.28	$5.	7	$5.

EXHIBIT NO. 721 (First National Productions)

Distributor Vitagraph, Inc. **Season** 1931-32

Exhibitor Exhibitors Theat. Corp. **Theatre** Madison, Rochester, N.Y.

Contract application date **Approval date**

No. of pictures offered **No. of Pictures Licensed**

Provisions, if any, re admission prices Evening - adults .25 children .10

Run and clearance provisions
2nd run City of Rochester, N.Y.
Day and date with Strand 30 days after first run
7 days protection.

Other typewritten or handwritten clauses including riders, if any.

Branch - Buffalo No. 6966
Exhibitor agrees to play and/or pay for 3 pictures per month if and as available. Little Theatre, Rochester to play 7 days ahead of Strand and Madison with no prejudice to this contract.

List or summary of motion pictures licensed and rental terms

5	2/3	$66.66	$5.00	7	$5.00
30	2/3	45.28	5.00	7	5.00

EXHIBIT NO.722 (Warner Bros. Productions)

Distributor Vitagraph, Inc. Season 1932-33

Exhibitor Exhibitors Theatre Corp. Theatre Madison, Rochester, N.Y.

Contract application date Approval date

No. of pictures offered No. of Pictures Licensed

Provisions, if any, re admission prices Evenings - adults .25 children .10

Run and clearance provisions To follow Riviera, Liberty, State-Webster Theatres protection

Other typewritten or handwritten clauses including riders, if any.

Branch - Buffalo Salesman - Levee Number- 8724

List or summary of motion pictures licensed and rental terms

6	3/4	$60.00	$5.00	7	$5.00
10	3/4	40.00	5.00	7	5.00
12	3/4	30.00	5.00	7	5.00
2	3/4	25.00	5.00	7	5.00

EXHIBIT NO. 723 (First National Productions)

Distributor Vitagraph, Inc. Season 1932-33

Exhibitor Exhibitors Theatre Corp. Theatre Madison, Rochester, N.Y.

Contract application date Approval date

No. of pictures offered No. of Pictures Licensed

Provisions, if any, re admission prices Evenings - adults 25¢ children 10¢

Run and clearance provisions To follow Riviera, Liberty, State-Webster Theatres protection.

Other typewritten or handwritten clauses including riders, if any.

Branch - Buffalo Salesman - Levee No. 8725

List or summary of motion pictures licensed and rental terms

7	3/4	$60.00	$5.00	7	$5.00
7	3/4	40.00	5.00	7	5.00
7	3/4	35.00	5.00	7	5.00
4	3/4	30.00	5.00	7	5.00
5	3/4	25.00	5.00	7	5.00

EXHIBIT NO. 724 (Warner Bros. Productions)

Distributor Vitagraph, Inc. Season 1933-34

Exhibitor Exhibitor's Theatre Corp. Theatre Madison, Rochester, N.Y.

Contract application date Approval date

No. of pictures offered No. of Pictures Licensed

rovisions, if any, re admission prices Evening - adults .25 children .10

un and clearance provisions

After Schine Protection. Clear of Webster. 7 days clearance on subsequent runs. To follow Schine's Riviera, Liberty, State and Dixie. Pictures to be made available for dating at the Strand, Madison, and/or Monroe 14 days after the first booking in any of the above enumerated houses. This applies to the Strand, Madison, and/or Monroe Theatres, Rochester, N.Y.

ther typewritten or handwritten clauses including riders, if any.

Exhibitor agrees to spend not less than $5. for advertising on Specials.
Branch - Buffalo - Salesman - J. R. Levee Contract No.9906

t or summary of motion pictures licensed and rental terms

1	3/4	$200. ag 50% gr.	$5.	7	$5.
1	3/4	200. ag 40% gr.	5.	7	5.
3	3	125.	5.	7	5.
25	3	45.	5.	7	5.

EXHIBIT NO. 725 (First National Productions)

Distributor Vitagraph, Inc. **Season** 1933-34

Exhibitor Exhibitor's Theatre Corp. **Theatre** Madison, Rochester, N.Y.

Contract application date **Approval date**

No. of pictures offered **No. of Pictures Licensed**

Provisions, if any, re admission prices Evenings - adults .25 children .10

Run and clearance provisions

After Schine Protection. Clear of Webster. 7 days clearance on subsequent runs. To follow Schine's Riviera, Liberty, State and Dixie. Pictures to be made available for dating at the Strand, Madison, and/or Monroe 14 days after the first booking in any of the above enumerated houses. This applies to the Strand, Madison, and/or Monroe Theatres, Rochester, N.Y.

Other typewritten or handwritten clauses including riders, if any.

Exhibitor agrees to spend not less than $5. for advertising on Specials.
Branch - Buffalo Salesman - J. R. Levee Contract No. - 9908

List or summary of motion pictures licensed and rental terms

1	3/4	$150. ag. 35% gr.	$5.	7	$5.
4	3	125.	5.	7	5.
25	3	45.	5.	7	5.

EXHIBIT NO. 726

Distributor RKO Distribution Corporation **Season** 1930-31

Exhibitor Exhibitor's Theatre Corp.
by Chester Fenyvessy **Theatre** Madison, Rochester, N.Y.

Contract application date Jan. 8, 1931 **Approval date** Jan. 15, 1931
by Chas. Rosenzweig

No. of pictures offered 33 **No. of Pictures Licensed** 33

Provisions, if any, re admission prices Weekdays 10-15-25¢
Sat.&Sun. 10-15-25¢

Run and clearance provisions Day and date with Strand

Other typewritten or handwritten clauses including riders, if any,

Exchange - Buffalo Salesman: Holden Contract No. 13913
Seating Capacity - 1200

Playing Arrangement - same as Strand

List or summary of motion pictures licensed and rental terms

12	2/3	$40.	$10.
4	2/3	35.	10.

EXHIBIT NO. 727

Distributor RKO Distributing Corporation **Season** 1930-31

Exhibitor Exhibitor's Theatre Corp.
Linwood Amusement Corp.
by Chester Fenyvessy
Theatre Madison, Rochester, N.Y.

Contract application date Jan. 8, 1931 **Approval date** Jan. 15, 1931
by Chas. Rosenzweig

No. of pictures offered 33 **No. of Pictures Licensed** 33

Provisions, if any, re admission prices Weekdays 10-15-25¢
Sat. & Sun. 10-15-25¢

Run and clearance provisions Day and date with Strand

Other typewritten or handwritten clauses including riders, if any.

Exchange - Buffalo Salesman - Holden Contract No. 13912
Seating Capacity 1200
Playing arrangement - same as Strand.

List or summary of motion pictures licensed and rental terms

3	2/3	$20.00	$10.
3	2/3	27.50	10.
2	2/3	25.00	10.

EXHIBIT NO. 728

ster RKO Distributing Corporation **Season** 1932-33

tor Chester Fenyvessy **Theatre** Strand and Madison, Rochester, N.Y.

act application date September 21, 1932 **Approval date** September 28, 1932
by Jules Levy

pictures offered **No. of Pictures Licensed**

sions, if any, re admission prices 10/25 10/20

nd clearance provisions

follow Riviera and State and Webster where they are to play within 10
s of each other. In event they are not played within 10 days Strand
Madison are to have immediate availability. 7 days protection to be
anted the Strand and Madison. Any pictures played 2nd run at the Temple
atre are to be delivered at 50.00 less than the contract price. Total
tract price for the 62 pictures 9600.00 which includes score. Riviera,
te & Webster to have 10 days protection, after which period pictures
ll be made available to Strand and Madison.

r typewritten or handwritten clauses including riders, if any.

anch - Buffalo 4 Salesman - Harry T. Cixon Contract No. 885

r summary of motion pictures licensed and rental terms

2	2/3	$300.
10	2/3	200.
1	2/3	225.
2	2/3	210.
9	2/3	150.
1	2/3	130.
24	2/3	125.
1	2/3	175.
6	2/3	75.
3	2/3	100.

EXHIBIT NO. 729

Distributor RKO Distributing Corporation **Season** 1933-34

Exhibitor Chester Fenyvessy **Theatre** Madison, Rochester, N.Y.

Contract application date November 1, 1933 **Approval date** December 8, 1933
by Jules Levy

No. of pictures offered 52 **No. of Pictures Licensed** 52
Total license fees
including Score - $1644.75

Provisions, if any, re admission prices Matinees - adults .20 children .10
Evenings -- adults .20 children .10

Run and clearance provisions Pictures to play after the State, Riviera, Liberty and Dixie Theatres. To be available fourteen days after the Riviera date, and to be played within fourteen days of availability. Ahead of subsequent run theatres seven days.

Other typewritten or handwritten clauses including riders, if any.

The exhibitor shall be entitled only to such feature pictures released by distributor during the 1933/34 season as shall be identified by production numbers running from 4102 to 4152.

Branch - Buffalo 4 Salesman: H. T. Dixon Contract No. 230

List or summary of motion pictures licensed and rental terms

The exhibitor agrees to play and/or pay for fifty-one (51) feature pictures released by the distributor, at the following terms:

Fifty-one (51) 2/3 $32.25 each

EXHIBIT NO. 730

istributor RKO Distributing Corporation Season 1933-34

xhibitor Chester Fenyvessy Theatre Monroe, Rochester, N.Y.

ontract application date November 1, 1933 Approval date December 8, 1933
by Jules Levy

o. of pictures offered 52 No. of Pictures Licensed 52
Total license fees including Score, $2040.00

rovisions, if any, re admission prices Matinees - adults 25¢ children 10¢
Evenings - adults 25¢ children 10¢

un and clearance provisions Pictures to play after the Riviera, State, Liberty and Dixie Theatres. To be available fourteen days after the Riviera date, and to be played within fourteen days of availability. Ahead of subsequent run theatres seven days.

ther typewritten or handwritten clauses including riders, if any.

The exhibitor shall be entitled only to such feature pictures released by the distributor during the 1933/34 season as shall be identified by production numbers running from 4102 to 4152.
Branch - Buffalo 4 Salesman: H. T. Dixon Contract No. 232

t or summary of motion pictures licensed and rental terms

The exhibitor agrees to play and/or pay for fifty-one (51) feature pictures released by the Distributor at the following terms:

Fifty-one (51) 3 $40.00 each

EXHIBIT NO. 731

Distributor RKO Distributing Corporation **Season** 1934-35

Exhibitor P. A. Fenyvessy **Theatre** Monroe, Rochester, N.Y.

Contract application date Jan. 16, 1935 **Approval date** Jan. 25, 1935
by Jules Levy

No. of pictures offered 50 **No. of Pictures Licensed** 50
Total license fees including score,
$2125.

Provisions, if any, re admission prices Matinees - adults .25 children .10
Evenings adults .25 children .10

Run and clearance provisions

Pictures to be played 21 days after Riviera. Pictures to be dated within 14 days of availability. Open booking with the Webster Theatre. 7 days clearance on subsequent runs.

Other typewritten or handwritten clauses including riders, if any.

Branch - Buffalo 4 Salesman - H. T. Dixon Contract No. 1037

Exhibitor agrees to play and/or pay for not less than one feature per week commencing immediately.

List or summary of motion pictures licensed and rental terms

Fifty features @ $42.50 Inc.

Note: Provisions regarding short subjects not included.

EXHIBIT NO. 732

Distributor RKO Distributing Corporation Season 1934-35

Exhibitor P. A. Fenyvessy Theatre Madison, Rochester, N.Y.

Contract application date Jan, 16, 1935 Approval date Jan. 25, 1935
by Jules Levy

No. of pictures offered 50 No. of Pictures Licensed 50
Total license fees including score
$2125.

Provisions, if any, re admission prices Matinees - adults .20 children .10
Evenings - adults .20 children .10

Run and clearance provisions

Pictures to be played 21 days after Riviera.
Pictures to be dated within 14 days of availability.
Open booking with the Webster Theatre.
7 days clearance on subsequent runs.

Other typewritten or handwritten clauses including riders, if any.

Branch - Buffalo 4 Salesman-H. T. Dixon Contract No. 1038
Exhibitor agrees to play and/or pay for not less than one feature per week commencing immediately.

List or summary of motion pictures licensed and rental terms

Fifty Features 2/3 $42.50 Inc.

Note: Provisions regarding Short Subjects not included.

EXHIBIT NO. 733

Distributor Paramount Publix Corporation
by J. J. Unger

Season S-3 (31-32)

Exhibitor Exhibitor's Theatre Corp.
by P. A. Fenyvessy

Theatre Madison, Rochester, N.Y.

Contract application date December 11, 1931

Approval date

No. of pictures offered

No. of Pictures Licensed

Provisions, if any, re admission prices
Evenings - adults, orchestra 25¢ balcony 15¢
children 10¢
Matinees - adults, orchestra 25¢ balcony 15¢
children 10¢

Run and clearance provisions

Fifth Run. Day and Date with Strand Theatre.
To follow Riveria or Liberty and State or Webster Theatres.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Buffalo, N.Y. Zone: 1 Salesman : N.L.Sper

Four (4) Pictures a month, starting Feb. 14, 1932, as and if available.

List or summary of motion pictures licensed and rental terms

Twenty-five(25)Pictures	2-3	$40.00	$5.00
Remaining Pictures	2-3	40.00	5.00

This contract does not include the following pictures:

Smiling Lieutenant
Murder by the Clock
Huckleberry Finn
American Tragedy
Silence
Secrets of a Secretary
Daughter of the Dragon
Personal Maid
Monkey Business
My Sin
Tabu
Mad Parade
Twenty Four Hours
Road to Reno
Once a Lady

EXHIBIT NO. 734

Distributor	Paramount Pictures Distributing Corp.	Season	S-4 (32-33)
Exhibitor	Exhibitors Theatre Corp. by: Chester Fenyvessy	Theatre	Madison, Rochester, N.Y.
Contract application date	3-2-33	Approval date	
No. of pictures offered		No. of Pictures Licensed	

Provisions, if any, re admission prices

Evenings - adults	.25	children	.15
Matinees - adults	.20	children	.10

Run and clearance provisions

Day and date with Strand Theatre. After Temple Theatre.

To follow Riviera or Liberty and State or Webster Theatres.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Buffalo, N.Y. Zone 2 Salesman: N.L.Sper

Exhibitor agrees to play five and a half (5 1/2) pictures a month, as and if available, starting March 15, 1933 and ending January 15, 1934.

List or summary of motion pictures licensed and rental terms

One (1) Picture	2	$75.00	40% of gross	$5.00
One (1) Picture	2	75.00	35% of gross	5.00
Eight (8) Pictures	2-4	75.00		5.00
Remaining Pictures	2-3	45.00		5.00

Both percentage pictures as Strand Theatre.
Pictures which played at the Arnett and Rivoli Theatres are to be eliminated from this contract.

EXHIBIT NO.735

Distributor	Paramount Pictures Distributing Corporation	**Season**	5-6 (34-35)
Exhibitor	Aulmer Theaters, Inc. by Paul A. Fenyvessy	**Theatre**	Monroe, Rochester, N.Y.
Contract application date	October 29, 1934	**Approval date**	
No. of pictures offered	64	**No. of Pictures Licensed**	64

Provisions, if any, re admission prices Evenings - adults .25 children .10

Run and clearance provisions 14 days following Schine's Rochester run. 7 days ahead of Webster Theatre.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Buffalo, N.Y. Zone 2 Salesman - H.A. Kaufman

Exhibitor agrees to play six (6) pictures per month, beginning about November 1, 1934 and ending about November 1, 1935, as and if available.

List or summary of motion pictures licensed and rental terms

"A" Eight (8) Pictures	2-4	$45.00	$5.00
"B" Remaining Pictures	2-3	45.00	5.00.

EXHIBIT NO. 736

Distributor Paramount Pictures Distributing Corporation

Season S-6 (34-35)

Exhibitor Exhibitor's Theatre Corp. by Paul A. Fenyvessy

Theatre Madison, Rochester, N.Y.

Contract application date October 29, 1934

Approval date

No. of pictures offered 64

No. of Pictures Licensed 64

Provisions, if any, re admission prices Evenings - adults orchestra 25¢ balcony 15¢ children 10¢

Run and clearance provisions 14 days following Schine's Rochester run
7 days ahead of Webster Theatre.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Buffalo, N.Y. Zone 2 Salesman - H. A. Kaufman

Exhibitor agrees to play six (6) pictures per month, beg. 11/1/34, and ending about 11/1/35, as and if available.

List or summary of motion pictures licensed and rental terms

"A" Eight (8) Pictures	2-4	$45.00	$5.00
"B" Remaining Pictures	2-3	45.00	5.00

EXHIBIT NO. 737

Distributor	Metro-Goldwyn-Mayer Distributing Corporation by E.K. O'Shea	**Season**	1934-35
Exhibitor	Aulmer Theaters, Inc. by Chester Fenyvessy	**Theatre**	Monroe, Rochester, N.Y.
Contract application date	11-19-34	**Approval date**	Nov. 28, 1934 by F. W. Rodgers
No. of pictures offered		**No. of Pictures Licensed**	

Provisions, if any, re admission prices Matinees - children .10 adults .20
Evenings - children .10 adults .25

Run and clearance provisions

Open booking with Webster Theatre, Rochester, N.Y.
Available immediately after Capitol, Rochester, N.Y. - if and as available. 7 days clearance on all other subsequent runs if played within 14 days of availability or clearance waived.

Other typewritten or handwritten clauses including riders, if any.

Branch - Buffalo:territory letter- Harris Contract No. 8633
Exhibitor agrees to play and/or pay for at least one picture per week commencing 12/1/34.

List or summary of motion pictures licensed and rental terms

50· 2 $40.00 $5.00

Distributor to have the right to designate as Specials not more than 9 pictures for which Exhibitor agrees to pay - 5 at $140. vs 35% of gross receipts; 4 at $110. vs 30% of gross receipts. If played 3 days, flat rental to be $52.50.

EXHIBIT NO. 738

Distributor Metro-Goldwyn-Mayer
Distributing Corporation
by E. K. O'Shea

Season 1934-35

Exhibitor Exhibitor's Theatre Corp.
By Chester Fenyvessy

Theatre Madison, Rochester, N.Y.

Contract application date 11-19-34

Approval date November 28, 1934
by W. F. Rodgers

No. of pictures offered 50

No. of Pictures Licensed 50

Provisions, if any, re admission prices Matinees - children .10 adults .15
Evenings - children .10 adults .15 balcony
.25 orchestra

Run and clearance provisions

Open booking with Webster Theatre, Rochester, N.Y.
Available immediately after Capitol Theatre, Rochester N.Y. if and as available. 7 days clearance on all other subsequent runs if played within 14 days of availability or clearance waived.

Other typewritten or handwritten clauses including riders, if any.

Branch - Buffalo Territory Letter: Harris Contract No. 8634
Exhibitor agrees to play and/or pay for at least one picture per week commencing 12-1-34 in order of release if and as available until all pictures licensed hereunder are exhibited and paid for.

List or summary of motion pictures licensed and rental terms

50	2	$40.00	+5.00

Distributor to have the right to designate as Specials not more than 9 pictures for which Exhibitor agrees to pay 5 at $140.00 vs 35% of gross receipts; 4 at $110.00 vs 30% of gross receipts. If played 3 days, flat rental to be $52.50. 5 Specials SUN. MON. TUES; 4 Specials FRI. SAT.

EXHIBIT NO. 739

Distributor Metro-Goldwyn-Mayer
Distributing Corporation
by E. K.O'Shea

Season 1935-36

Exhibitor Exhibitor's Theatre Corp.
by Chester Fenyvessy

Theatre Madison, Rochester, N.Y.

Contract application date 10-4-35

Approval date October 11, 1935
By W. F. Rodgers

No. of pictures offered 50

No. of Pictures Licensed 50

Provisions, if any, re admission prices Matinees - adults .20 children .10
Evenings - adults .15 children .10

Run and clearance provisions

Subsequent - 14 days after State or Dixie, 3rd run, if and as available. State or Dixie must play within 14 days of second run or their clearance waived. 4 days ahead of Webster, 7 days clearance on all subsequent runs if played within 14 days of availability, or clearance waived.

Other typewritten or handwritten clauses including riders, if any.

Branch - Buffalo Territory Letter- Harris Contract No. 125 F

Exhibitor agrees to play and or pay for at least one picture per week commencing 12-1-35 in order of release if and as available until all pictures listed hereunder are exhibited and or paid for.

List or summary of motion pictures licensed and rental terms

50 2 $40.00 $5.00

Distributor to have the right to designate as Specials not more than 9 pictures for which Exhibitor agrees to pay 5 at $140. vs 35% of gross receipts SMT; 4 at $140 flat rental - 2 or 3 days (Optional to exhibitor whether $140.00 flat or $110.00 vs. 30% upon designation by Distributor SMT). If Flat Rental pictures are played 3 days, price to be $52.50.
5 Specials SMT
4 Specials 2 or 3 optional days.

EXHIBIT NO. 740

Distributor Metro-Goldwyn-Mayer
Distributing Corporation
by E. K. O'Shea

Season 1935-36

Exhibitor
Ulmer Theaters, Inc.
by Chester Fenyvessy

Theatre Monroe, Rochester, N.Y.

Contract application date 10-4-35

Approval date October 11, 1935
by W. F. Rodgers

No. of pictures offered 50

No. of Pictures Licensed 50

Provisions, if any, re admission prices Matinees - adults .20 children .10
Evenings - adults .25 children .10

Run and clearance provisions

Subsequent - 14 days after State or Dixie, 3rd run, if and as available. State or Dixie must play within 14 days of 2nd run, or their clearance waived. 4 days ahead of Webster, 7 days clearance on all other subsequent runs if played within 14 days of availability or clearance waived.

Other typewritten or handwritten clauses including riders, if any.

Branch - Buffalo, Territory Letter- Harris Contract No. 129 F

Exhibitor agrees to play and-or pay for at least one picture every week commencing 12-1-35 in order of release if and as available until all pictures licensed hereunder are exhibited and or paid for.

List or summary of motion pictures licensed and rental terms

50 2 $40.00 $5.00

Distributor shall have the right to designate as Specials not more than 9 pictures for which Exhibitor agrees to pay - 5 at $140. vs 35% of gross receipts SMT: 4 at $140. flat rental -- 2 or 3 days. (Optional to Exhibitor whether $140.00 flat or $110.00 vs 30% upon designation by Distributor SMT).
If flat rental pictures are played 3 days, price to be $52.50.
5 Specials SMT
4 Specials 2 or 3 optional days.

5511

EXHIBIT NO. 741

Distributor Loews Incorporated
by R. W. Maw

Season 1937-38

Exhibitor Exhibitor's Theatre Corp.
by P. A. Fenyvessy

Theatre Madison, Rochester, N.Y.

Contract application date June 16, 1938

Approval date June 23, 1938
by T. S. Connors

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Matinees - adults .20 children .10
Evenings - adults .25 children .10

Run and clearance provisions

Subsequent. 14 days after State or Dixie, 3rd run, if and as available. State or Dixie must play within 14 days of 2nd run or their clearance wa
4 days ahead of Webster, 7 days clearance on all other subsequent runs i
played within 14 days of availability or clearance waived.

Other typewritten or handwritten clauses including riders, if any.

Branch - Buffalo Territory Letter - Weissman Contract No. 2851
Exhibitor agrees to play and/or pay for one feature per week in order of
release if and as available starting June 1, 1938.

List or summary of motion pictures licensed and rental terms

4	3	$175.00	40%	Sun-Mon-Tues.
4	3	175.	35%	Sun-Mon-Tues:
4	3	150.		
8	3	125.		
12	2/3	75.		
Balance	2/3	35.		

Pictures on the 1937-38 contract that have been released to subsequent run theatres that follow this theatre are to be eliminated from this contract, based on National designation.
Score charge $5.
Trailer fee $3.

EXHIBIT NO. 742

Distributor Loew's Incorporated
by R. W. Maw

Season 1937-3[illegible]

Exhibitor Aulmer Theatres, Inc.
by P. A. Fenyvessy

Theatre Monroe, Rochester, N.Y.

Contract application date June 16, 1938

Approval date June 23, 1938
by T. J. Connors

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Matinees - adults .20 children .10
Evenings - adults .25 children .10

Run and clearance provisions

Subsequent. 14 days after State or Dixie, 3rd run if and as available. State or Dixie must play within 14 days of 2nd run or their clearance waived, 4 days ahead of Webster, 7 days clearance on all other subsequent runs if played within 14 days of availability or clearance waived.

Other typewritten or handwritten clauses including riders, if any.

Branch - Buffalo Territory Letter - Weissman Contract No. 2847
Exhibitor agrees to play and/or pay for one feature per week in order of release if and as available starting June 1, 1938.

List of summary of motion pictures licensed and rental terms

4	3	$175.	40%	Sun-Mon-Tue.
4	3	150.	35%	Sun-Mon-Tue.
4	3	125.		
8	3	100.		
12	2/3	65.		
Balance	2/3	30.		

Pictures on the 1937-38 contract that have been released to subsequent run theatres that follow this theatre are to be eliminated from this contract, based on National designation.
Score charge - $5. Trailer fee - $3.
Note: There are attached to this contract 3 Cancellation of Contract forms covering various pictures eliminated from contract.

EXHIBIT NO. 743

Distributor Loew's Incorporated
by R. W. Maw

Season 1938-39

Exhibitor Exhibitor's Theatre Corp.
by P. A. Fenyvessy

Theatre Madison, Rochester, N.Y.

Contract application date June 16, 1938

Approval date June 23, 1938
by T. J. Connors

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Matinees - adults .20 children .10
Evenings - adults .25 children .10

Run and clearance provisions

Subsequent. 14 days after State or Dixie, 3rd run, if and as available. State or Dixie must play within 14 days of 2nd run or their clearance waived. 4 days ahead of Webster, 7 days clearance on all other subsequent runs if played within 14 days of availability or clearance waived.

Other typewritten or handwritten clauses including riders, if any.

Branch - Buffalo Territory Letter - Weissman Contract No. 2852

Exhibitor agrees to play and/or pay for one feature every week in order of release if and as available, starting December 1, 1938

List or summary of motion pictures licensed and rental terms

4	3	$175.	40%	Sun-Mon-Tue.
4	3	175.	35%	Sun-Mon-Tue.
4	3	150.		
8	3	125.		
16	2/3	75.		
Balance	2/3	35.		

Score fee $5. Trailer fee $3.
Note: Provisions regarding Shorts and Re-issues not included.

EXHIBIT NO. 744

Distributor Loew's Incorporated
by R.W.Maw

Season 1938-39

Exhibitor Aulmer Theatres, Inc.
by P. A. Fenyvessy

Theatre Monroe, Rochester, N. Y.

Contract application date June 16, 1938

Approval date June 23, 1938
by T.J.Connors

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Matinees - adults .20 children .10
Evenings - adults .25 children .10

Run and clearance provisions

Subsequent. 14 days after State or Dixie, 3rd run, if and as available. State or Dixie must play within 14 days of 2nd run or their clearance waived. 4 days ahead of Webster, 7 days clearance on all other subsequent runs if played within 14 days of availability or clearance waived.

Other typewritten or handwritten clauses including riders, if any.

Branch - Buffalo Territory Letter - Weissman ~~Contract No. 2848~~

Exhibitor agrees to play and/or pay for one feature per week in order of release if and as available, starting December 1, 1938.

ist or summary of motion pictures licensed and rental terms

4	3	$175.	40%	Sun-Mon-Tue.
4	3	175.	35%	Sun-Mon-Tue.
4	3	125.		
8	3	100.		
16	2/3	65.		
Balance	2/3	30.		

Note: Provisions regarding Short Subjects and Re-issues not included. There is attached to this contract a 'Cancellation of Contract form pertaining to Short Subjects.

EXHIBIT NO. 745

Distributor Fox Film Corporation
by J. L. Grainger

Season 1932-33

Exhibitor Exhibitor's Theatre Corp.
by Chester Fenyvéssy, Pres.

Theatre Madison, Rochester, N.Y.

Contract application date October 13, 1932

Approval date

No. of pictures offered

No. of Pictures Licensed

Provisions, if any, re admission prices Evenings - adults .25 children .10
Matinees - adults .10 children .10

Run and clearance provisions

After first runs and Riveria, Liberty, State, Webster and ahead of other subsequent run houses in Rochester if played when available. With [illegible].

Other typewritten or handwritten clauses including riders, if any.

Exchange - Buffalo Salesman - Rowell

Exhibitor agrees to play in order of release not later than November 1 to be played and/or paid for at the rate of not less than four photoplays per week as available.

List or summary of motion pictures licensed and rental terms

6	2-3.	$100.	$5.	$105.
12	2-3	65.	5.	70.
1	2-3	55.	5.	60.
18	2-3	40.	5.	45.
6	2-3	35.	5.	40.

The Exhibitor agrees to play the above forty-three (43) features for a total sum of $2580.00 including score, individual feature prices to be allocated by distributor.

EXHIBIT NO. 746

Distributor Fox Film Corporation
by John D. Clark

Season 1933-34

Exhibitor Exhibitor's Theatre Corp.
by Chester Fenyvessy

Theatre Madison, Rochester, N.Y.

Contract application date Aug. 18, 1933

Approval date

No. of pictures offered

No. of Pictures Licensed

Provisions, if any, re admission prices

Evenings - adults, orchestra .25 balcony .15
children .10
Matinees - adults, orchestra .25 balcony .15
children .10

Run and clearance provisions

After Riviera, Liberty, State, Webster, Dixie. Seven days cleasance balance Rochester neighborhood theatres.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Buffalo, N.Y. Salesman - Rowell

If played when available playing arrangement Nov. '33 4 1/2 per mo. as available.
Pursuant to the provisions of clause Eighth of this agreement, it is agreed that included among the photoplays licensed hereunder are four photoplays which are Gaumont-British or Gaumont-British-Ufa productions.

ist or summary of motion pictures licensed and rental terms

A	6 photoplays	3-4	$135.	against 25% of all gross receipts	$5.00
B	Remaining photoplays	2-4	55.		5.00

5517

EXHIBIT NO. 747

Distributor Fox Film Corporation
by John D. Clark

Season 1933-34

Exhibitor Aulmer Theatre Corp.
by Chester Fenyvessy

Theatre Monroe, Rochester, N.Y.

Contract application date August 18, 1933

Approval date

No. of pictures offered

No. of Pictures Licensed

Provisions, if any, re admission prices Evenings - adults .25 children .10
Matinees - adults .25 children .10

Run and clearance provisions

After Riviera, Liberty, State, Webster, Dixie.
Seven days clearance balance Rochester neighborhood theatres.

Other typewritten or handwritten clauses including riders, if any.

If played when available playing arrangement Nov. '33 4 1/2 per mo., at available.
Pursuant to the provisions of clause Eighth of this agreement it is agreed that included among the photoplays licensed hereunder are four photoplays which are Gaumont-British-Ufa productions.

Exchange - Buffalo, N.Y. Salesman - Rowell.

List or summary of motion pictures licensed and rental terms

A	6 photoplays	3-4	$100.	Against 25% of all gross receipts	45.0
B	Remaining photoplays	2-4	45.		5.0

EXHIBIT NO. 748

ributor Fox Film Corporation
by John D. Clark

Season K-2 (34-35)

hibitor Aulmer Theatre Corp.
by P. A. Fenyvessy

Theatre Monroe, Rochester, N. Y.

ntract application date 3-6-35

Approval date

. of pictures offered All

No. of Pictures Licensed 33

ovisions, if any, re admission prices Evenings - Adults .25, children .10
Matinees - Adults .15, children .10
Adults - SUNDAY after 3 PM - .25

un and clearance provisions

As available - after Riviera, Liberty, State, Dixie, Capitol - open book with Webster - ahead remaining subsequent run houses Rochester if played when available.

Other typewritten or handwritten clauses including riders, if any.

Commencing March 10, 1935 - to be played rate one per week as available.

Exchange - Buffalo
Salesman - W. C. Rowell

List or summary of motion pictures licensed and rental terms

A	6 photoplays	2-3	$137.50	25%	$5.00
B	5 photoplays	2-3	75.00		5.00
C	5 photoplays	2-3	65.00		5.00
D	17 photoplays	2-3	37.50		5.00

Six photoplays as selected by Distributor on Sun. - Mon. - Tues.

EXHIBIT NO. 749

Distributor Fox Film Corporation
by John D. Clark

Season K-2 (34-35)

Exhibitor Exhibitors Theatre Corp.
by P. A. Fenyvessy

Theatre Madison, Rochester, N.Y.

Contract application date March 6, 1935

Approval date

No. of pictures offered All

No. of Pictures Licensed 33

Provisions, if any, re admission prices Evenings - adults orchestra .25 balcony. 15
children - .10
Matinees - adults, orchestra .25 balcony. 15
children - .10

Run and clearance provisions

As available - after Riviera, Liberty, State, Dixie, Capitol - open booking with Webster - ahead remaining subsequent run houses Rochester if played when available.

Other typewritten or handwritten clauses including riders, if any.

Commencing March 10, 1935 - to be played at rate of one per week as availabl

Exchange - Buffalo
Salesman: W. C. Rowell

List or summary of motion pictures licensed and rental terms

A	6 photoplays	2-3	$137.50	25%	$5.00
B	5 photoplays	2-3	75.00		5.00
C	5 photoplays	2-3	65.00		5.00
D	17 photoplays	2-3	37.50		5.00

Six photoplays as selected by Distributor on Sun.Mon.Tues.

EXHIBIT NO. 750

Distributor Columbia Pictures Corporation
by J. C. Bullwinkel
J. A. Miller

Season 1937-38

Exhibitor Aulmer Theatres, Inc.
by Chester Fenyvessy

Theatre Monroe, Rochester, N.Y.

Contract application date June 14, 1937

Approval date June 18, 1937
by Rube Jackter

No. of pictures offered

No. of Pictures Licensed

Provisions, if any, re admission prices (Matinee - adults .25 - .15 children .10
(SAt.&Sun)
Evenings - adults .25 - .15 children .10

Run and clearance provisions

2nd run City of Rochester
14 days clearance over all subsequent runs.

Other typewritten or handwritten clauses including riders, if any.

Branch - Buffalo - Salesman J. C. Bullwinkel | Contract No. 1828
Seating Capacity 1197.
Exhibitor agrees to play and/or pay for at least 7 Special feature attractions every two months commencing December 15, 1937.
Double Feature.

List or summary of motion pictures licensed and rental terms

4	3	Sat.Sun.	$150.	NC agst 30% gross
4	3	Sat.Sun	120.	NC agst. 25% gross
4	2/3		120.	NC
8	2/3		75.	NC
10	2/3		55.	NC
10	2/3		40.	NC

Note: Provisions regarding Westerns and Short Subjects not included.

5521

EXHIBIT NO. 751

Distributor Columbia Pictures Corp.
by J. C. Bullwinkel
J. A. Miller

Season 1936-37

Exhibitor Exhibitors Theatre Corp.
by Chester Fenyvessy

Theatre Madison, Rochester, N.Y.

Contract application date 10-27-36

Approval date November 2, 1936
by Rube Jackter

No. of pictures offered

No. of Pictures Licensed

Provisions, if any, re admission prices Matinees (Sat.Sun) adults .25 - 15: children .10
Evening - adults 25-15: children .10

Run and clearance provisions 2nd run City of Rochester

Other typewritten or handwritten clauses including riders, if any.

Branch - Buffalo - Salesman J. C. Bullwinkel Contract No. 1467
Seating Capacity 1200.
Exhibitor agrees to play and/or pay for at least 7 special feature attractions every 2 months commencing December 15,1936. Double Feature.

List or summary of motion pictures licensed and rental terms

4	3	$90.00	NC agst. 25%
2	2/3	90.00	NC
6	2/3	60.00	NC
10	2/3	40.00	NC
18	2/3	30.00	NC

Note: Provisions regarding Short Subjects not included.

EXHIBIT NO. 752.

Distributor Vitagraph, Inc.
by J. R. Levee

Season 1935-36

Exhibitor Exhibitor's Theatre Corp.
by Paul A. Fenyvessy

Theatre Madison, Rochester, N.Y.

Contract application date September 30, 1935

Approval date October 11, 1935
by A. W. Smith, Jr.

No. of pictures offered 60

No. of Pictures Licensed 59

Provisions, if any, re admission prices
Evenings - adults, orchestra 25, balcony 15
children, 10
Matinees - adults, orchestra 25, balcony 15
children 10

Run and clearance provisions

Clear of Webster Theatre. After Schine's protection. To be made available for dating 14 days after first booking at any one of the following theatres: Schine's Riviera, Liberty, State or Dixie.

Other typewritten or handwritten clauses including riders, if any.

Salesman - J. R. Levee
Branch - Buffalo, N.Y.
Contract No. 19821
Exhibitor agrees to play and/or pay for at the rate of 1 combined WB-FN feature per week starting if and when available.

List or summary of motion pictures licensed and rental terms

1	3-4	$170. ag. 35% gr.	7	$5.00
1	3-4	165. ag. 35% gr.	7	5.00
2	3-4	150. ag 30% gr.	7	5.00
5	3-4	175.	7	5.00
50	3-4	32.50	7	5.00

Score Rentals: $5. each picture for number of days designated.

EXHIBIT NO. 4753

Distributor Vitagraph, Inc.
by M. Rose

Season 1937-38

Exhibitor Chester Fenyvessy

Theatre Monroe, Rochester, N.Y.

Contract application date 11-30-37

Approval date December 10, 1937
by G. L. Sears

No. of pictures offered 60

No. of Pictures Licensed 60

Provisions, if any, re admission prices

Evenings - adults orchestra .25 balcony .15
children .10
Matinees - adults orchestra .25 balcony .15
children .10

Run and clearance provisions

After Schine clearance - Clear of Webster Theatre.
(7 days) - and subsequent runs of Rochester.

Other typewritten or handwritten clauses including riders, if any.

Branch - Buffalo, N.Y. Salesman M. Rose Contract No. 3377
Exhibitor agrees to play and/or pay for at the rate of 1 combined WB-FN feature per week if and when available.

List or summary of motion pictures licensed and rental terms

6	3-4	$110. Ag. 30% Gr.
4	3-4	125.
6	3-4	75.
44	3-4	35.

Score rentals $3. per picture for number of days designated.
Trailers $3. per picture.
Exhibitor has the privilege of buying six percentage pictures at an increase of $60.00 each - One or all.

EXHIBIT NO. 754

Distributor Vitagraph, Inc.
by M. Rose

Season 1937-38

Exhibitor Chester Fenyvessy

Theatre Madison, Rochester, N.Y.

Contract application date 11-30-37

Approval date December 10, 1937
by G. L. Sears

No. of pictures offered 60

No. of Pictures Licensed 60

Provisions, if any, re admission prices
Evenings - adults, orchestra 25, balcony 15: children 10
Matinees - adults, orchestra 25, balcony 15; children 10

Run and clearance provisions

After Schine clearance. Clear of Webster Theatre, (7 days) and subsequent runs of Rochester.

Other typewritten or handwritten clauses including riders, if any.

Branch - Buffalo, N.Y.
Salesman - M. Rose
Contract No. 33774.
Exhibitor agrees to play and or pay for at the rate of one combined WB-FN feature per week if and when available.

List or summary of motion pictures licensed and rental terms

6	3-4	$110. ag 30% gr.
4	3-4	125.
6	3-4	75.
44	3-4	35.

Score rentals $3. per picture
Trailers $3.00 7 days
Exhibitor has the privilege of buying six percentage pictures at an increase of $60.00 each. One or all.

EXHIBIT NO. 755

Distributor RKO Distributing Corporation Season 1936-37

Exhibitor Exhibitors Theatre Corp.
by P. A. Fenyvessy
Theatre Madison, Rochester, N.Y.

Contract application date November 13, 1936 Approval date December 7, 1936
by Jules Levy

No. of pictures offered 46 No. of Pictures Licensed 46

Provisions, if any, re admission prices
Matinees - orchestra & balcony, adults .15
children .10
Evenings - orchestra .25, balcony .15 adults
children .10

Run and clearance provisions

After Schine clearance as granted by all major companies.
Clearance on Webster Theatre. 7 days ahead of all subsequent runs in city of Rochester, N.Y.

Other typewritten or handwritten clauses including riders, if any.

Salesman - J. G. Chinell
Branch - Buffalo
Contract No. 1465
Exhibitor agrees to play and/or pay for not less than 1 feature per week commencing as available.

List or summary of motion pictures licensed and rental terms

2 Features	3	Sun.	$175.00	Inc.	30%
2 Features	3	Sun.	125.00	Inc.	30%
6 Features	2/3		80.00	Inc.	
12 Features	2/3		50.00	Inc.	
24 Features	2/3		30.00	Inc.	

Note: Provisions regarding Short Subjects not included.

EXHIBIT NO. 756

Distributor RKO Distributing Corporation Season 1936-37

Exhibitor Aulmer Theatres Inc.
by P. A. Fenyvessy
Theatre Monroe, Rochester, N.Y.

Contract application date November 13, 1936 Approval date December 7, 1936
by Jules Levy

No. of pictures offered 46 No. of Pictures Licensed 46

Provisions, if any, re admission prices
Matinee: adults, orchestra .15 - balcony .15 - children .10
Evening: Adults, orchestra .25 - balcony .15 - children .10

Run and clearance provisions

After Schine clearance as granted by all major companies.
Clearance on Webster Theatre, 7 days ahead of all subsequent runs in city of Rochester, N.Y.

Other typewritten or handwritten clauses including riders, if any.

Branch - Buffalo 4
Salesman - J. G. Chinell
Contract No. 1470
Exhibitor agrees to play and/or pay for not less than one feature per week commencing as available.

List or summary of motion pictures licensed and rental terms

2 Features	3	Sun.	$175.00	Inc.	30%
2 Features	3	Sun.	125.00	Inc.	30%
6 Features	2/3		80.00	Inc.	
12 Features	2/3		50.00	Inc.	
24 Features	2/3		30.00	Inc.	

Note: Provision regarding Short Subjects not included.

EXHIBIT NO. 757

Distributor Metro-Goldyn-Mayer
Distributing Corporation
by E. K. O'Shea

Season 1934-35

Exhibitor Schine Theatrical Co., Inc.
by Geo. V. Lynch

Theatre Liberty, Rochester, N.Y.

Contract application date September 28, 1934

Approval date

No. of pictures offered 51

No. of Pictures Licensed 51

Provisions, if any, re admission prices
Matinees - adults .25 children .10
Evenings - adults .25 children .10

Run and clearance provisions

3rd. After Riviera 2nd run. To be played within the 21 days clearance or run waived.

Other typewritten or handwritten clauses including riders, if any.

Branch - Buffalo
Territory Letter - Office
Contract No. - 8393
Exhibitor agrees to play and/or pay for at least 1 per week starting November 1, 1934 or as available.

List or summary of motion pictures licensed and rental terms

Features embraced on this contract are to be played at the following terms which are to be designated by the Distributor:

See Clause "C" below
(4 @ 35% of gross
Preferred playing time,
(4 @ 30% of gross,
Preferred playing time.

13 at 25% 2 or 3 days,
Balance not to exceed 30 at Flat rental,
at $25.00, 2 or 3 days
Score $2.50 per day. Include Sun.
Note: There is attached to this contract an amendment of contract form changing the designation of certain pictures listed in the contract.

EXHIBIT NO. 758

Distributor Metro-Goldwyn-Mayer
Distributing Corporation
by E. K. O'Shea

Season 1934-35

Exhibitor Schine Theatrical Co. Inc.
by Geo. V. Lynch

Theatre Dixie or State, Rochester, N.Y.

Contract application date September 28, 1934

Approval date October 11, 1934
by W. F. Rodgers

No. of pictures offered 51

No. of Pictures Licensed 51

Provisions, if any, re admission prices
Matinee - adults .25 children .10
Evenings - adults .25 children .10

Run and clearance provisions

2nd run. 14 days ahead of Hudson, Aster, Hub-Sea Breeze. May be played day and date 2nd run or within 10 days of Riviera or Liberty 2nd run. Must be played within 21 days Riviera or Liberty Clearance or run waived.

Other typewritten or handwritten clauses including riders, if any.

Branch - Buffalo
Territory Letter - Office
Contract No. 8427
Exhibitor agrees to play and or pay for at least 1 picture per week starting October 15, 1934 or as available.

List or summary of motion pictures licensed and rental terms

Features embraced on this contract are to be played at the following terms which are to be designated by the Distributor.

See Clause "C" Below:
- 4 @ 35% of gross
  Preferred playing time
- 4 @ 30% of gross
  Preferred playing time

13 @ 25%, 2 or 3 days
Balance not to exceed 30 at Flat Rental, at $40.00, 2 or 3 days
Score, $2.50 per day
8 Specials inc. SUN.
Note: There is attached to this contract an amendment of contract form changing the designation of certain pictures listed in the contract.

EXHIBIT NO. 759

Distributor	Metro-Goldwyn-Mayer Distributing Corp. by E. K. O'Shea	**Season**	1934-35
Exhibitor	Schine Theatrical Co., Inc. by George V. Lynch	**Theatre**	State or Dixie, Rochester, N Y
Contract application date	September 28, 1934	**Approval date**	October 11, 1934 W. F. Rodgers
No. of pictures offered	51	**No. of Pictures Licensed**	51

Provisions, if any, re admission prices Matinee: Children-10, Adults-25
Evenings Children-10, Adults-25

Run and clearance provisions Third run.
To be played within the 21 days clearance or run waived.
Immediately after State or Dixie-Riviera or Liberty second run. 14 days on Webster Theatre.

Other typewritten or handwritten clauses including riders, if any.

Branch-Buffalo Territory Letter Office; Contract No. 8460

See schedule for terms.

Exhibitor agrees to play and/or pay for at least one picture per week starting November 1, 1934, or as available.
8 specials to include Sunday date.

List or summary of motion pictures licensed and rental terms

Features embraced on this contract are to be played at the following terms which are to be designated by the Distributor:

(4 @ 35% of gross
(Preferred playing time

(4 % @ 30% of gross
(Preferred playing time
13 @ 25%, 2 or 3 days.
Balance not to exceed 30 at Flat Rental.
at $32.50 , 2 or 3 days.
Score: $2.50 per day
Note: Agreement attached dated November 28, 1934 changes designations of Production Number 509, 510, 511, 513, 514.

EXHIBIT NO. 760

Distributor Metro-Goldwyn-Mayer Distributing Corporation by E. K. O'Shea

Season 1934-35

Exhibitor Schine Theatrical Co., Inc. by George V. Lynch

Theatre Riviera or Liberty Rochester, N. Y.

Contract application date September 28, 1934

Approval date October 12, 1934 W.F. Rodgers

No. of pictures offered 51

No. of Pictures Licensed 51

Provisions, if any, re admission prices

Matinees: Children-10, Adults-25
Evenings: Children-10, Adults-25

Run and clearance provisions

Second run-
Thirty days on Lake, 14 days on all subsequent runs, Rochester, N. Y.
Forty-five days after Loew's -Rochester, N. Y.

Other typewritten or handwritten clauses including riders, if any.

Branch-Buffalo; Territory Letter Office; Contract No. 8457
See schedule for terms. 8 Specials to include Sunday date.
Exhibitor agrees to play and/or pay for at least one picture per week starting October 15, 1934, or as available.

List or summary of motion pictures licensed and rental terms

Features embraced on this contract are to be played at the following terms which are to be designated by the Distributor:
(4 @ 35% of gross
(Preferred playing time

(4 @ 30% of gross.
(Preferred playing time
13 @ 25%, two or three days
Balance not to exceed 30 at Flat Rental, at $40.00, two or three days.
Score: $2.50 per day
Note: [redacted]Agreement attached dated November 28, 1934 changes designationsof Production Number 509,510,511,513,514.

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EXHIBIT NO. 701

Distributor Metro-Goldwyn-Mayer Distributing Corporation, by E. K. O'Shea

Season 1935-36

Exhibitor Schine Theatrical Co., Inc.
by George V. Lynch

Theatre State or Dixie, Rochester, N. Y.

Contract application date July 11, 1935

Approval date July 26, 1935
by W. F Rodgers

No. of pictures offered 50

No. of Pictures Licensed 50

Provisions, if any, re admission prices Matinees: Children-10, Adults-25
Evenings: Children-10, Adults-25

Run and clearance provisions Third run.
Immediately after Stateor Dixie - Rivieraor Liberty, Second run. 14 days on Webster Theatre. To be played within the 21 days clearance or run waived.

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Other typewritten or handwritten clauses including riders, if any.

Branch-Buffalo; Territory Letter-Office; Contract No. 9176
See Schedule for Terms.
Exhibitor agrees to play and/or pay for one picture per week.
Starting October 1, 1935, as and if available.

List or summary of motion pictures licensed and rental terms

Features embraced on this contract are to be played on the following terms which are to be designated by the distributor.

4@ 35% of the gross
4 @ 30% of the gross
42 @ $45.00 flat rental

Percentage pictures to be played on the preferred days of the week, two or three days, to include a Sunday.
Flat rental pictures to be played two or three days.

Score: $2.50 per day.

EXHIBIT NO. 762

Distributor: Metro-Goldwyn-Mayer-Distributing Corporation by E. K. O'Shea

Season: 1935-36

Exhibitor: Schine Theatrical Co., Inc. by George V. Lynch

Theatre: State or Dixie, Rochester, N. Y.

Contract application date: July 11, 1935

Approval date: July 26, 1935 by W.F.Rodgers

No. of pictures offered: 50

No. of Pictures Licensed: 50

Provisions, if any, re admission prices:
Matinees: Children-10: Adults-25
Evenings: Children-10, Adults-25

Run and clearance provisions: Second run.
Fourteen days ahead of Hudson, Astor, Hub, SeaBreeze. May be played day and date second run or within ten days of Riviera or Liberty second run. Must be played within 21 days Riviera or Liberty clearance or run waived.

Other typewritten or handwritten clauses including riders, if any.

Branch-Buffalo; Territory Letter Office; Contract No. 9177

See schedule for terms.
Exhibitor agrees to play and/or pay for one picture per week starting October 1, 1935, [illegible] as and if available.

List or summary of motion pictures licensed and rental terms

Features embraced on this contract are to be played on the following terms which are to be designated by the distributor.
4 @ 35% of gross
4 @ 30% of gross
42 @ $45.00 flat rental.
Percentage pictures are to be played on the preferred days of the week, two or three days, including a Sunday.
Flat rental pictures are to be played two or three days.

Score: $2.50 per day.

EXHIBIT NO. 763

Distributor Metro-Goldwyn-Mayer Distributing Corporation by E. K. O'Shea

Season 1935-36

Exhibitor Schine Theatrical Co., Inc. by George V. Lynch

Theatre Liberty, Rochester, N. Y.

Contract application date July 11, 1935

Approval date July 26, 1935 by W. F. Rodgers

No. of pictures offered 50

No. of Pictures Licensed 50

Provisions, if any, re admission prices Matinee: Children-10, Adults-25
Evenings: Children-10, Adults-25

Run and clearance provisions Third run
After Riviera second run. To be played within 21 days clearance or run waived.

Other typewritten or handwritten clauses including riders, if any.

Branch-Buffalo; Territory Letter-office; Contract No. 9182

See schedule for terms.
Exhibitor agrees to play and/or pay for one picture per week starting October 1, 1935, as and if available.

List or summary of motion pictures licensed and rental terms

Features embraced on this contract are to be played at the following terms which are to be designated by the distributor:

4 @ 35% of the gross
4 @ 30% of the gross
42 @ $45.00 flat rental

Percentage pictures to be played on the preferred days of the week, two or three days, including a Sunday.

Flat rental pictures to be played two or three days
Score: $2.50 per day.

EXHIBIT NO. 764

Distributor Metro-Goldwyn-Mayer Distributing Corporation by E. K. O'Shea

Season 1935-36

Exhibitor Schine Theatrical Co., Inc. by George V. Lynch

Theatre Riviera or Liberty, Rochester, N Y.

Contract application date July 11, 1935

Approval date July 26, 1935 by W F.Rodgers

No. of pictures offered 50

No. of Pictures Licensed 50

Provisions, if any, re admission prices

Matinees: Children-10, Adults-25
Evenings: Children-10, Adults-25

Run and clearance provisions

Second run
Thirty days on Lake; 14 days on all subsequent runs in Rochester, N. Y.
Forty-five days after Loew's Rochester, N. Y.

Other typewritten or handwritten clauses including riders, if any.

Branch-Buffalo; Territory Letter.Office; Contract No. 9181

See schedule for terms.

Exhibitor agrees to play and/or pay for one picture per week starting October 1, 1935, as and if available.

List or summary of motion pictures licensed and rental terms

Features embraced on this contract are to be played on the following terms which are to be designated by the distributor.

4 @ 35% of the gross.
4 @ 30% of the gross.
22 @ $100 flat rental.
20 @ $75.00

Percentage pictures to be played three days, Sunday Monday Tuesday at the Riviera Theatre.
Flat rental pictures to be played two or three days.
Score: $2.50 per day.

5535

EXHIBIT NO. 779

Distributor RKo DistributingCorporation **Season** 1932-33

Exhibitor Exhibitor's Theatre Corp.
by Chester Fennyvessy

Theatre Madison, Rochester, N. Y.

Contract application date November 22, 1932

Approval date November 30, 1932
by Jules Levy

No. of pictures offered

No. of Pictures Licensed 56 pictures to total
$1,806.00

Provisions, if any, re admission prices 10/20

Run and clearance provisions Same run as designated on Strand contract.
No allowance for Temple Run.

Other typewritten or handwritten clauses including riders, if any.

Salesman-H. T. Dixon; Branch-Buffalo, N. Y.; Contract No. 1167
One feature per week commencing immediately.

List or summary of motion pictures licensed and rental terms

56 2/3 32.25 including score fee.

EXHIBIT NO. 780

Distributor RKO Radio Pictures, Inc.

Season 1937-38

Exhibitor Aulmer Theatres, Inc.
by Lester Fenyvessy

Theatre Monroe, Rochester, N. Y.

Contract application date January 7, 1938

Approval date January 14, 1938
by Jules Levy

No. of pictures offered 48

No. of Pictures Licensed 48

Provisions, if any, re admission prices. Matinees: Adults-15, Children-10
Evenings: Adults, Orchestra-25, Balcony-15, Children-10

Run and clearance provisions Run and clearance to be the same as all other major companies relative to Schine's Riviera, Dixie, Liberty, State, Ahead of Webster
7 days ahead of all subsequent runs.

Other typewritten or handwritten clauses including riders, if any.

Salesman-J. G. Chineel; Branch-Buffalo, N. Y.; Contract No. 8

The distributor agrees to cancel Park Avenue Logger and Hideaway. Exhibitor agrees to pay and/or pay for not less than 4 features per mo. as available.

List or summary of motion pictures licensed and rental terms

4 features	1/4	$130.00 Score incl.
10 features	1/4	70.00 Score incl.
12 features	1/4	45.00 Score incl.
22 features	1/4	25.00 score incl.

Note: Provisions regarding short subjects not included.

5537

EXHIBIT NO. 781

Distributor RKO Radio Pictures, Inc.

Season 1937-38

Exhibitor Aulmer Theatres, Inc.
by Chester Fenyvessy

Theatre Madison, Rochester, N. Y.

Contract application date January 7, 1938

Approval date January 14, 1938
by Jules Levy

No. of pictures offered 48

No. of Pictures Licensed 48

Provisions, if any, re admission prices

Matinees: Adults-15, Children-10
Evenings: Adults, Orchestra-25, Balcony-15, Children-1

Run and clearance provisions

Run and clearance to be the same as all other major companies relative to Schine's Riviera, Dixie, Liberty, State. Ahead of Webster.
7 days ahead of all subsequent run.

Other typewritten or handwritten clauses including riders, if any.

Salesman- J. G. Chinsel; Branch-Buffalo #4, Contract No. 11
The distributor agrees to cancel Park Avenue Logger and Hideaway. Exhibitor agrees to pay and/or pay for not less than 4 features per month commencing as available.

List or summary of motion pictures licensed and rental terms

4 features	1/4	$130.00 Score incl.
10 features	1/4	70.00 Score incl.
12 features	1/4	45.00 Score incl.
22 features	1/4	25.00 Score incl.

Note: Provisions regarding short subjects not included.

EXHIBIT NO. 782

Distributor RKO Radio Pictures, Inc.   Season 1938-39

Exhibitor Paul Strand, Inc.
by Chester Fenyvessy   Theatre Monroe, Rochester, N. Y.

Contract application date September 7, 1938   Approval date September 15, 1938
by Jules Levy

No. of pictures offered 54   No. of Pictures Licensed 54

Provisions, if any, re admission prices   Matinees: Adults- 15, Children- 10
Evenings: Adults, Orchestra-25, Balcony-15,
Children-10

Run and clearance provisions   Run and clearance to be the same as all other companies relative to Schine's Riviera, Dixie, Liberty, State, Ahead of Webster, 7 days ahead of all subsequent runs.

Other typewritten or handwritten clauses including riders, if any.

Salesman- J. G. Chineel; Branch-Buffalo #4; Contract No. 371.

Exhibitor agrees to play and/or pay for not less than one feature per week commencing as available.

List or summary of motion pictures licensed and rental terms

4	Features	2/3	$125.00	Score incl.
12	Features	2/3	60.00	Score incl.
12	Features	2/3	45.00	Score incl.
20	Features	2/3	25.00	Score incl.
981 through 986	6 O'Briens	2/3	25.00	Score incl.

Note: Provisions regarding short subjects not included.

EXHIBIT NO. 783

Distributor RKO Radio Pictures, Inc. Season 1938-39

Exhibitor Exhibitor's Theatre Corp.
by Chester J. Fenyvessy
Theatre Madison, Rochester, N. Y.

Contract application date September 7, 1938 Approval date September 15, 1938

No. of pictures offered 54 No. of Pictures Licensed 54

Provisions, if any, re admission prices Matinees: Adults-15, Children-10
Evenings: Adults-25, Children-10

Run and clearance provisions Run and clearance to be the same as all other major companies relative to Schine's Dixie, Riviera, Liberty State; Ahead of Webster. 7 days ahead of all subseque runs.

Other typewritten or handwritten clauses, including riders, if any.

Salesman- J. G. Cheneel; Branch-Buffalo #4. Contract No. 57

Exhibitor agrees to play and/or pay for not less than one feature per week, commencing as available.

List or summary of motion pictures licensed and rental terms

4	Features	2/3	$125.00	Score Inc.
12	Features	2/3	60.00	Score Inc.
12	Features	2/3	45.00	Score Inc.
20	Features	2/3	25.00	Score Inc.
981 thru 986-6 O'Briens		2/3	25.00	Score Inc.

[illegible]te: Provisions regarding short subjects not included.

EXHIBIT NO. 784

Distributor Fox Film Corporation
by J. R. Grainger

Season 1931-32

Exhibitor Exhibitor's Theatre Corp.
by Chester Fenyvessy

Theatre Madison, Rochester, N. Y.

Contract application date November 4, 1931

Approval date

No. of pictures offered 48

No. of Pictures Licensed 46

Provisions, if any, re admission prices Par. 12 of this contract is amended to read that the feature pictures listed hereon will be exhibited at a minimum admission of twenty-five (25¢) cents for Orchestra at night, 15 cents in Balcony at night.

Run and clearance provisions

Ahead of Arn[illegible]tt, Majestic, Rivoli, Capitol on Plymouth Ave., West End, if played when available. May be played day and date with Strand.

Other typewritten or handwritten clauses including riders, if any.

Exchange-Buffalo. Salesman-Ravell

Exhibitor to start playing not later than November 1931, to be played and/or paid for as available.

List or summary of motion pictures licensed and rental terms

6	2/3	$75.00 Flat	$5.00
3	2/3	50.00 Flat	5.00
18	2/3	30.00 Flat	5.00
19	2/3	25.00 Flat	5.00

5541

EXHIBIT NO. 785

Distributor	Loew's, Inc. by E. K. O'Shea	**Season**	1936-37
Exhibitor	Aulmer Theatres, Inc. by Paul A. Fenyvessy	**Theatre**	Monroe, Rochester, N. Y
Contract application date	January 7, 1937	**Approval date**	January 15, 1937 by T. J. Connors
No. of pictures offered	All	**No. of Pictures Licensed**	All

Provisions, if any, re admission price Matinees: Children-10, Adults-20
Evenings, Children-10, Adults-25

Run and clearance provisions Subsequent run.
Fourteen days after State or Dixie, third run, if and as available.
State or Dixie must play within fourteen days of second run, or their clearance waived. Four days ahead of Webster, seven days clearance on all other subsequent if played within fourteen days of availability or clearance waived.

Other typewritten or handwritten clauses including riders, if any.

Branch-Buffalo; Territory Letter-Office; Contract No. 1910F

Exhibitor agrees to pay and/or pay for at least one picture per week commencing January 17, 1937 in order of release, if and as available until all pictures licensed hereunder are exhibited and/or paid for

Note: Also contains provisions limiting number of free admissions to 150

List or summary of motion pictures licensed and rental terms

3	3	40%	$5.00	Sun-Mon-Tues
4	3	$150 vs. 35%	5.00	Sun- Mon-Tues
8	3	125.00 flat	5.00	
14	3	100.00 flat	5.00	$75.00 if played two days.
Balance	2	40.00 flat	5.00	

Note: Attached to above contract are two cancellations of contract forms providing for cancellation of three pictures and two pictures respectively

EXHIBIT NO. 786

Distributor Vitagraph, Inc.
by J. R Levee

Season 1936-37

Exhibitor Exhibitor's Theatre Corp.
by P. A. Fenyvessy

Theatre Madison, Rochester, N Y

Contract application date October 29, 1936

Approval date November 5, 1936
by G. L. Sears

No. of pictures offered 60

No. of Pictures Licensed 59

Provisions, if any, re admission prices Evenings: Adults, Orchestra-25, Balcony-15, Children-10
Matinees: Adults, Orchestra-25, Balcony-15, Children-10

Run and clearance provisions After Schine Protection.
Clear of Webster Theatre.

Other typewritten or handwritten clauses including riders, if any.

Salesman- J. R Levee; Branch-Buffalo; Contract No. 2694

Exhibitor agrees to play and/or pay for at the rate of one (1) combined WB-FN feature per week, if and when available.

List or summary of motion pictures licensed and rental terms.

4	3-4	$160.00 ag. 35% gr.	7	$5.00
5	3-4	175.00	7	5.00
50	3-4	35.00	7	5.00

Score: $5.00 per picture-for number of days designated.

EXHIBIT NO. 787
Warner Bros. & First National Productions

Distributor Vitagraph, Inc.
by J. R. Levee

Season 1936-37

Exhibitor Aulmer Theatres, Inc.
by P. A Fenyvessy

Theatre Monroe, Rochester, N. Y.

Contract application date October 29, 1936

Approval date November 5, 1936
by G. L. Sears

No. of pictures offered 60

No. of Pictures Licensed 59

Provisions, if any, re admission prices Evenings: Adults, Orchestra-25, Balcony-15, Children-10
Matinees: Adults, Orchestra-25, Balcony-15, Children-10

Run and clearance provisions After Schine Protection
Clear of Webster Theatre.

Other typewritten or handwritten clauses including riders, if any.

Salesman- J. R. Levee; Branch-Buffalo; Contract No. 2596

Exhibitor agrees to play and/or to pay for at the rate of One (1) combined WB-FN features per week, if and when available.

List or summary of motion pictures licensed and rental terms

4	3-4	$160.00 Ag. 35% gr.	7	$5.00
5	3-4	175.00	7	5.00
50	3-4	35.00	7	5.00

Score: $5.00 per picture-for number of days designated.

EXHIBIT NO. 788
Warner Bros. Productions

Distributor Vitagraph, Inc.
by J. R Levee

Season 1934-35

Exhibitor Aulmer Theatres, Inc.
by P. A. Fenyvessy

Theatre Monroe, Rochester, N. Y

Contract application date January 17, 1935

Approval date January 30, 1935
by A. W Smith, Jr.

No. of pictures offered 30

No. of Pictures Licensed 29

Provisions, if any, re admission prices Evenings: Adults, Orchestra-25, Balcony-15, Children-10
Matinees: Adults, Orchestra-25, Balcony-15, Children-10

Run and clearance provisions After Schine's protection.
To be made available for dating fourteen days after first booking at any one of the following theatres.
Schine's Riviera, Liberty, State or Dixie

Other typewritten or handwritten clauses including riders, if any.

Salesman- J. R. Levee; Branch-Buffalo, N Y. Contract No. 1709

Exhibitor agrees to play and/or pay for at the rate of one (1) or more combined WB-FN features per week, starting if and when available.

List or summary of motion pictures licensed and rental terms

3	2-4	$150.00 ag. 30% gr.	$5.00	7	$5.00
26	2-3	32.50	5.00	7	5.00

EXHIBIT NO. 789

Distributor Vitagraph, Inc.
by ~~B.~~ Levee
J.R

Season 1934-35

Exhibitor Aulmer Theatres, Inc.
by Paul A Fenyvessy

Theatre Monroe, Rochester, N. Y

Contract application date January 17, 1935

Approval date January 30 1935
by A. W Smith, Jr.

No. of pictures offered 30

No. of Pictures Licensed 30

Provisions, if any, re admission prices Evenings: Adults, Orchestra-25, Balcony-15, Children-10
Matinees: Adults, Orchestra-25, Balcony-15, Children-10

Run and clearance provisions After Schines Protection

To be made available for dating 14 days after first booking at any one of the following theatres; Schine's Riviera, Liberty, State or Dixie.

Other typewritten or handwritten clauses including riders, if any.

Salesman- J. R Levee; Branch-Buffalo, N. Y.; Contract No. 1710

Exhibitor agrees to play and/or to pay for at the rate of One (1) or more combined WB-FN features per week, starting if and when available.

List or summary of motion pictures licensed and rental terms

1	2-4	$170.00 ag. 35% gr.	$5.00	7	$5.00
1	2-4	165.00 ag. 35% gr.	5.00	7	5.00
4	2-4	150.00 ag. 30% gr.	5.00	7	5.00
24	2-3	32.50	5.00	7	5.00

EXHIBIT NO. 791

Distributor Columbia Pictures Corp.
by J. C.Bullwinkel

Season 1938-39

Exhibitor Chester Fenyvessy

Theatre Madison, Rochester, N. Y.

Contract application date January 6, 1939

Approval date January 6, 1939
by Rube Jackter

No. of pictures offered

No. of Pictures Licensed 40

Provisions, if any, re admission prices Matinees: Adults-(Sat & Sun) 15, Children-10
Evenings: Adults-25, Children-15-20

Run and clearance provisions Third run.

Other typewritten or handwritten clauses including riders, if any.

Branch-Buffalo; Salesman- J C.Bullwinkel, Contract No 498

Exhibitor agrees to pay and/or pay for at least three special feature attractions every month, commencing February 15, 1939 if and as available
Double feature policy.
Fenyvessy circuit.

List or summary of motion pictures licensed and rental terms

3	2/3	9001-3	$100.00	No score
5	2/3	9004-8	75.00	No score.
12	2/3	9009-20	35.00	No score
20	2/3	9021-40	21.25	No score

Note: Provisions regarding short subjects not included.

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EXHIBIT NO. 792

Distributor Columbia Pictures Corp.
by J. C. Bullwinkel

Season 1938-39

Exhibitor Chester Fenyvessy

Theatre Monroe, Rochester, N. Y.

Contract application date January 6, 1939

Approval date January 6, 1939
by Rube Jackter

No. of pictures offered

No. of Pictures Licensed 40

Provisions, if any, re admission prices Matinees: (Sat & Sun) Adults-15, Children-10
Evenings: Adults-25, Children-15-10

Run and clearance provisions Third run.

Other typewritten or handwritten clauses including riders, if any.

Branch-Buffalo; Salesman- J. C. Bullwinkel

Exhibitor agrees to play and/or pay for at least three special feature attractions every month commencing Feburary 15, 1939, if and as abailable

Double feature policy

Fenyvessy Circuit.

List or summary of motion pictures licensed and rental terms

3	2/3	9001-3	$100.00 No score
5	2/3	9004-8	75.00 No score
12	2/3	9009-20	35.00 No score
20	2/3	9021-40	21. 25 No score

Note: Provisions regarding short subjects not included.

EXHIBIT NO. 793

Distributor Columbia Pictures Corp.
by J. C Bullwinkel

Season 1936-37

Exhibitor Civic Cinema [illegible],
Association, Inc.
by F. F. Belinson

Theatre Little Theatre, Rochester, N Y

Contract application date December 2,1936

Approval date December 8, 1936
by Rube Jackter

No. of pictures offered 3

No. of Pictures Licensed 3

Provisions, if any, re admission prices Matinees: Adults-25, Children-25
Evenings: Adults-35 Children-25

Run and clearance provisions

Other typewritten or handwritten clauses including riders, if any.

Branch-Buffalo, N. Y.; Salesman- J. C. Bullwinkel, Contract No. 1508

Single feature policy

List or summary of motion pictures licensed and rental terms

Craig's Wife - Min. 7 days against 25% of the gross
Theodora Goes Wild-Min. 7 days against 25% of the gross
Pennies From Heaven-Min. 7 days against 25% of the gross.

EXHIBIT NO. 794

Distributor Columbia Pictures Corp.
by J.C Bullwinkel

Season 1936-37

Exhibitor Civic Cinema Association, Inc.
by F. F. Belinson

Theatre Little Theatre, Rochester, N Y

Contract application date February 23, 1937

Approval date March 1, 1937
by Rube Jackter

No. of pictures offered 1

No. of Pictures Licensed 1

Provisions, if any, re admission prices Matinees: Adults-25, Children-25
25¢ to 7o'clock; 35¢ 7 til closing

Run and clearance provisions Second run, Rochester, N. Y.

Other typewritten or handwritten clauses including riders, if any.

Branch-Buffalo; Salesman- J. C Bullwinkel, Contract No. 1679

List or summary of motion pictures licensed and rental terms

When You're In Love 7 25% of gross receipts

EXHIBIT NO. 795

Distributor Columbia Pictures Corp.
by J. Miller

Season 1938-39

Exhibitor Civic Cinema Association, Inc.
by F.F. Belinson

Theatre Little Theatre, Rochester, N Y

Contract application date June 6, 1938

Approval date July 13, 1938

No. of pictures offered 1

No. of Pictures Licensed 1

Provisions, if any, re admission prices Matinees: Adults-25, Children-10
Evenings: Adults-35, Children-25

Run and clearance provisions Second run Rochester.

Other typewritten or handwritten clauses including riders, if any.

Salesman- J. C. Bullwinkel, Contract No. 175

Single feature policy
If held over for a second week, percentage terms to be 25% of the gross
Above to include four single reels.

List or summary of motion pictures licensed and rental terms

Holiday 7 Sat-Sun 30% of the gross.

EXHIBIT NO. 796

Distributor Columbia Pictures, Corp.
by J. Miller

Season 1937-38

Exhibitor Civic Cinema Association, Inc.
by F. F. Belinson

Theatre Little Theatre, Rochester, N Y.

Contract application date December 14, 1937

Approval date
by Rube Jackter.

No. of pictures offered 1

No. of Pictures Licensed 1

Provisions, if any, re admission prices
Matinees: Adults-25; Children-10
Evenings: Adults-35, Children-25

Run and clearance provisions

Second run in Rochester, starting January 1, 1938 and day and date with Strand. Madison and Monroe.

Other typewritten or handwritten clauses including riders, if any.

Salesman- J. C. Bullwinkel, Branch-Buffalo, Contact No. 2168
Single feature policy.

If held over for a second week, percentage terms to be 25% of the gross
Above to include four single reels.

List or summary of motion pictures licensed and rental terms

Awful Truth	7	Sat-Sun	30% of the gross.

EXHIBIT NO. 797

Distributor Columbia Pictures Corp. **Season** 1937-38
by J. Miller

Exhibitor Civic Cinema Association, Inc. **Theatre** Little Theatre, Rochester, N Y.
by F. F. Belinson

Contract application date November 1, 1937 **Approval date** November 15, 1937

No. of pictures offered 1 **No. of Pictures Licensed** 1

Provisions, if any, re admission prices Matinee and Evening: Adults-35, Children-25

Run and clearance provisions Second run in Rochester for the 19th and 20th of November and day and date with Strand, Madison and Monroe beginning November 21, 1937.

Other typewritten or handwritten clauses including riders, if any.
Salesman- J. C Bullwinkel; Branch-Buffalo Contract No. 2096

List or summary of motion pictures licensed and rental terms
Lost Horizon 7 Saturday and Sunday 40% of the gross

The above to include three single reels.

EXHIBIT NO. 798

Distributor Columbia Pictures Corp. by J. C Bullwinkel

Season 1938-[illegible]

Exhibitor Civic Cinema Association, Inc. by F. F. Belinson

Theatre Little Theatre, Rochester N. Y.

Contract application date November 15, 1938

Approval date

No. of pictures offered One

No. of Pictures Licensed One

Provisions, if any, re admission prices Matinee and Evenings: Adults-35, Children-25

Run and clearance provisions Picture to open up and playdate and date with Schine's Riviera, State, Dixie and Liberty on November 24, 1938.

Other typewritten or handwritten clauses including riders, if any.

Salesman- J. C. Bullwinkel; Branch-Buffalo; Contract No.______

List or summary of motion pictures licensed and rental terms

You Can't Take It With You 7 to 14 Sat.& Sun $300.00 No score guarantee against 40% of the

Second (2nd) weak of run to be 30% of gross, subsequent weeks to be 25% of gross receipts.

The above booking to include two (2) single

EXHIBIT NO. 799

Distributor	Columbia Pictures Corp. by J. C. Bullwinkel	Season	1939-40
Exhibitor	Civic Cinema Association, Inc. by F.F. Belinson	Theatre	Little Theatre, Rochester, N. Y
Contract application date	November 14,1939	Approval date	November 22, 1939 by Rube Jackter
No. of pictures offered	one	No. of Pictures Licensed	one

Provisions, if any, re admission prices Matinees: Adults-25, Children-25
Evenings: Adults-35, Children-25

Run and clearance provisions Second run.
Day and date with Riviera-State-Dixie and Liberty.

Other typewritten or handwritten clauses including riders, if any.

Salesman- J. C. Bullwinkel; Branch-Buffalo; Contract No. 929

Single feature policy.

List or summary of motion pictures licensed and rental terms

Mr. Smith Goes to Washington	7. to 14	$300.00 No score Guarantee against 40% of the gross If played second week price to be 35% the third and subsequent weeks 25% of the gross receipts.

EXHIBIT NO. 813

Distributor RKO Distributing Corp. **Season** 1932-33

Exhibitor Auburn Capitol Theatre Corp.
by H. P. Wallace, Treas. **Theatre** Capitol, Auburn, N. Y.

Contract application date October 4, 1932 **Approval date** November 5, 1932
by Jules Levy

No. of pictures offered **No. of Pictures Licensed**

Provisions, if any, re admission prices 25¢ and 40¢

Run and clearance provisions

Sixty days protection over second run.

Other typewritten or handwritten clauses including riders, if any.

Salesman- Harry Dixon; Branch-Buffalo; Contract No. 8869
Exhibitor agrees to play and/or pay for not less than three features per month commencing as available.
Note: Lists 15 pictures sold to Skouras Theatres for first run and provides: "The Auburn Capitol Theatre Corporation also agrees to use one-half of the remaining 1932/33 features released by the Distrib at an average, rental of $167.30 each, excluding Tom Keene Westerns These additional pictures are to be divided equally between Skouras and Auburn Capitol Theatre Corporation at a later date when the identity of pictures is known.

List or summary of motion pictures licensed and rental terms

1	4/7	Saturday or Sunday	$500.	50%	No score
1	4/7	Saturday or Sunday	350.	40%	No score
7	4/7	Saturday or Sunday	350.	35%	No score
1	4/7	Saturday or Sunday	300.	40%	No score
1	4/7		350.		No score
1	4/7		250.		No score
1	4/7		200.		No score
2	4/7		75.		No score

Note: Provisions regarding serials and short subjects not included.

EXHIBIT NO. 814

Distributor Paramount Pictures Distributing Corp. **Season** 8-5 1933-4

Exhibitor Auburn Capitol Theatre Corp. by H. [illegible] Wallace, Treas. **Theatre** Capitol, Auburn, N Y

Contract application date February 8, 1934 **Approval date**

No. of pictures offered All **No. of Pictures Licensed** All

Provisions, if any, re admission prices Evenings: Adults-20, Children-10
Matinees: Adults-15, Children-10

Run and clearance provisions Follow first run-Syracuse, N. Y.

Other typewritten or handwritten clauses including riders, if any.

Exchange-Buffalo, N. Y.; Zone #3; Salesman-R. E. Caskey

To play at the rate of seven (7) pictures per month, beginning March 1st, 1934 until completed.

List or summary of motion pictures licensed and rental terms

Two (2) pictures	4-7	$125.00 ag. 40% gross	$5.00
Four (4) pictures	4-7	125.00 ag. 35% gross	5.00
Twenty-five (25) pictures	4-7	125.00 ag. 25% to $750. 50% ov. 750.	5 00
Remaining Pictures	3-4	75.00	5.00

Percentage pictures to play Friday, Saturday, Sunday and Monday dates.
Any class "C" production which plays seven days, split figure to be $1070.00.

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EXHIBIT NO. 829

Distributor Twentieth Century-Fox Film Corp. **Season** K-5 1937-38

Exhibitor Southland Amusement Co. **Theatre** Opera House, Lexington, Ky

Contract application date August 6, 1937 **Approval date** August 13, 1937

No. of pictures offered All **No. of Pictures Licensed** All

Provisions, if any, re admission prices Evenings: Adults-15, Children-10
Matinees: Adults-10, Children-10

Run and clearance provisions Third run Lexington, Ky.

Other typewritten or handwritten clauses including riders, if any.

Exchange-Cincinnati; Salesman- E. C Naegel
Exhibitor agrees to play or pay for the above features in the order released by the distributor at the rate of ~~xx~~ one per week, if available, starting not later than March 1, 1938.
4 group "A" photoplays on Sunday
2 Group "B" photoplays on Sunday.

List or summary of motion pictures licensed and rental terms

A	Twelve (12) photoplays	2/3	$100.00 (8 vs.35% gross)	$2.50
B	Sixteen (16) photoplays	2/3	70.00 (8 vs. 30% gross)	2.50
C	Sixteen (16) photoplays	2/3	30.00 flat	2.50
D	The remaining photoplays	2	17.50 flat	2.50

EXHIBIT NO. 840

ibutor Twentieth Century-Fox Film Corporation by Tom H Bailey **Season** K-3 1935-36

bitor P. C. Vournakis **Theatre** Strand, Watertown, N Y.

ract application date October 21, 1935 **Approval date**

of pictures offered All **No. of Pictures Licensed** All

isions, if any, re admission prices

Evenings: Adults: -15, Children-10
Matinees: Adults-10, Children-10

and clearance provisions

Third run . Usual.

r typewritten or handwritten clauses including riders, if any.

Exchange-Albany; Salesman- J. Jennings
To be played at the rate of four pictures per month, as available.

or summary of motion pictures licensed and rental terms

A	6	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder	3	$35.00	30% to $350 50% over $350.	$3.00
B	6	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	3	$30.00	25% to $300. 50% over $300.	3.00
C	10	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2/3	$25.00		3.00
D	14	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2/3	20.00		3.00
Remaining		Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2/3	15 00		3.00

Exhibitor reserves the right to play pictures in the "A" and "B" group 4 days at same terms in view of percentage arrangement. Exhibitor further

EXHIBIT NO. 841

Distributor Twentieth Century-Fox Film Corp. by Tom H. Bailey

Season K-4 1936-37

Exhibitor P. C. Vournakis

Theatre Strand, Watertown, N. Y.

Contract application date June 22, 1936

Approval date

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Evenings: Adults-15, Children-10
Matinees: Adults-10, Children-10

Run and clearance provisions Third run. Usual, as available.

Other typewritten or handwritten clauses including riders, if any.
Exchange-Albany; Salesman. K. Goldsmith

List or summary of motion pictures licensed and rental terms

AA	Twelve (12)	3	$35.00 ag. 35% to 350.00 then 50/50	$3.00
A	Twelve (12)	2/3	25.00	3.00
B	Sixteen (16)	2/3	20.00	3.00
C	Remainder	2/3	15.00	3.00

EXHIBIT NO. 842

Distributor Twentieth Century-Fox Film Corp. by Tom H. Bailey

Season K-4 1936-37

Exhibitor P. C. Vournakis

Theatre Strand, Watertown, N. Y

Contract application date November 2, 1936

Approval date

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Evenings: Adults-15, Children-10
Matinees: Adults-10, Children-10

Run and clearance provisions Fourth run-30 days after third run.

Other typewritten or handwritten clauses including riders, if any.

Exchange-Albany, N. Y.; Salesman- T. Scheinberg

4/5 Photoplays per month as available.

List or summary of motion pictures licensed and rental terms

AA	Twelve (12)	2/3	$25.00	$3 00
A	Sixteen (16)	2/3	15.00	3.00
B	Remaining	2/3	12.50	3.00

EXHIBIT NO. 847

Distributor Fox Film Corporation
by Tom H. Bailey

Season K-1
1933-34

Exhibitor Peter C. Vournakis

Theatre Strand or Liberty, Watertown, N Y

Contract application date October 4, 1935

Approval date

No. of pictures offered

No. of Pictures Licensed All

Provisions, if any, re admission prices Evenings: Adults-20, Children-10
Matinees: Adults-15, Children-10

Run and clearance provisions Subsequent run.
As available.

Other typewritten or handwritten clauses including riders, if any.

Exchange-Albany; Salesman- G. H. Rosenbaum
Pursuant to the provisions of clause Eighth of this agreement, it is agreed that included among the photoplays licensed hereunder are four photoplays which are Gaumont-British or Gaumont-British-Ufa productions.

List or summary of motion pictures licensed and rental terms

12Photoplays	3	$50.00	30%	$5.00
18 Photoplays	2/3	30.00		5.00
Remaining photoplays	2/3	25.00		5.00

The above prices subject to a second run in Watertown-
Second run thirty days after first run Avon or Olympic Theatres.

or

12 photoplays	2	$30.00	3.00
18 photoplays	2	20.00	3.00
Remaining photoplays	2	15.00	3.00

The above prices subject to third run in Watertown.
Fourteen days after Olympic Theatre.

EXHIBIT NO. 848

istributor Vitagraph, Inc. **Season** 1935-36

xhibitor Peter C. Vournakis **Theatre** Strand, Watertown, N. Y.

ontract application date October 4, 1935 **Approval date**

o. of pictures offered **No. of Pictures Licensed** All

rovisions, if any, re admission prices Evenings: Adults-25, Children-10
Matinees: Adults-20, Children-10

un and clearance provisions Third run.
Seven days ahead of Palace and Victoria Theatres.
As available.

ther typewritten or handwritten clauses including riders, if any,

Exchange-Albany, N. Y.; Contract No. 8230

ist or summary of motion pictures licensed and rental terms

2	3	$50.00	50% gross	$5.00	7	$2.50
3	3	40.00	30% gross	5.00	7	2.50
13	2-3	25.00		5.00	7	2.50
12	3	20.00		5.00	7	2.50

Any picture playing second run, rental to be $5.00 more per picture.
above pictures can play either at Strand or Liberty but not at both houses.

EXHIBIT NO. 849

Warner Bros. & First National Productions

Distributor Vitagraph, Inc.
by George Goldberg

Season 1935-36

Exhibitor P. C. Vournakis

Theatre Strand, Watertown, N. Y.

Contract application date October 29, 1935

Approval date November 8, 1935
by A. W. Smith, Jr

No. of pictures offered 60

No. of Pictures Licensed 60

Provisions, if any, re admission prices Evenings: Adults, Orchestra-20, Balcony.15, Children-10
Matinees: Adults-15, Children-10

Run and clearance provisions Subsequent run.
Seven days ahead of Palace and Victoria Theatres.
As available.

Other typewritten or handwritten clauses including riders, if any.

Salesman-George Goldberg; Branch-Albany, N. Y.; Contract No. 9305

List or summary of motion pictures licensed and rental terms

1	3	$40.00	50%	7	$3.00
2	3	40.00	35%	7	3.00
7	3	30.00	30%	7	3.00
4	3	30.00	25%	7	2.50
46	2-3	17.50		7	2.50

Score: $2.50 each picture.

EXHIBIT NO. 850

Warner Bros. & First National Productions

Distributor Vitagraph, Inc.
by George Goldberg

Season 1936-37

Exhibitor Peter C. Vournakis

Theatre Strand, Watertown, N. Y.

Contract application date November 23, 1936

Approval date December 7, 1936
by G. L. Sears

No. of pictures offered 60

No. of Pictures Licensed 60

Provisions, if any, re admission prices Evenings: Adults, Orchestra-20, Balcony-15, Children-10
Matinees: Adults, -15, Children-10

Run and clearance provisions Fourth run.
Follows Palace Theatre
As available

Other typewritten or handwritten clauses including riders, if any.

Salesman-George Goldberg; Branch- Albany, Contract No. 9868

List or summary of motion pictures licensed and rental terms

4	2/3	$25.00	35%	7	$2.50
11	2/3	25.00		7	2.50
16	2/3	15.00		7	2.00
29	2/3	12.50		7	2.00

Score: $2.50 each feature.

EXHIBIT NO. 851
Warner Bros. & First National Productions

Distributor Vitagraph, Inc.

Season 1937-38

Exhibitor P. Vournakis

Theatre Strand, Watertown, N. Y.

Contract application date October 6, 1937

Approval date October 10, 1937 by G L. Sears

No. of pictures offered 60

No. of Pictures Licensed 60

Provisions, if any, re admission prices Evenings: Adults-15, Children-10
Matinees: Adults-15, Children-10

Run and clearance provisions Third run.
Thirty days after Schine Second run Theatre.

Other typewritten or handwritten clauses including riders, if any.

Salesman- R. Strube; Branch-Albany, N. Y Contract No. 1429

Productions 201,202,203,251,252,253 to include a Saturday and/or Sunday As available.

List or summary of motion pictures licensed and rental terms

2	2	40% of gross
3	2	35% of gross
1	2	25% of gross
10	2	$25.00
18	2	17.50
24	2	12.50

Score: $2.50

EXHIBIT NO. 852

Warner Bros. & First National Productions

Distributor Vitagraph, Inc.
by R. Struwe

Season 1939-40

Exhibitor P. C. Vournakis

Theatre Strand, Watertown, N. Y

Contract application date September 6, 1939

Approval date September 18, 1939
by G. L. Sears

No. of pictures offered 48

No. of Pictures Licensed 48

Provisions, if any, re admission prices Evenings: Adults, Orchestra-20, Balcony-15, Children-10
Matinees: Adults-15, Children-10

Run and clearance provisions Third run.
Sixty days after second run.

Other typewritten or handwritten clauses including riders, if any.

Salesman-R. Struwe; Branch-Albany; Contract No 2347

Group 1-2 - Sun-Mon-Tues.
Group 11-6 - Sun-Mon-Tues-

In the event theatre goes to one change weekly during summer, distributor agrees to cancel two pictures per month. If theatre closes permanently contract void. If prior run reduces admissions prices for adults, admissions herein are subject to change without notice.

List or summary of motion pictures licensed and rental terms

2	3	40% of gross
6	3	35% of gross
11	3	$25.00
29	3	17.50

EXHIBIT NO. 853

Distributor Vitagraph, Inc.
by R.Struwe

Season 1940-41

Exhibitor Peter C. Vournakis

Theatre Strand, Watertown, N Y.

Contract application date

Approval date November 22, 1940
by G L. Sears

No. of pictures offered 48

No. of Pictures Licensed 48

Provisions, if any, re admission prices Evenings: Adults-20

Run and clearance provisions Subsequent run.
Thirty days following second run.

Other typewritten or handwritten clauses including riders, if any.

Salesman-R. Struwe; Branch-Albany; Contract No. 3444

G roup 1-4- Sun-Mon..Tues.

Any picture in Groups IV and V used two days, terms to be $15.00

List or summary of motion pictures licensed and rental terms

4	3	$35.00 (27.50 ag. 40% of gross.
8	3	27.50 (22.50)
8	3	25.00 (22.50)
28	3	17.50

Trailers, 20 DeLuxe 7 $2.00
28 DeLuxe 7 1.50

EXHIBIT NO. 863

Distributor Vitagraph, Inc.

Season

Exhibitor Plaza Theatre
by Michael Bounassour

Theatre Plaza, Malone, N. Y.

Contract-application date June 14, 1937

Approval date June 29, 1937
by G. L. Sears

No. of pictures offered 60

No. of Pictures Licensed 60

Provisions, if any, re admission prices Evenings: Adults-25, Children-10
Matinees: Adults-15, Children-10

Run and clearance provisions Second in Malone.
Sixty days after First Run.

Other typewritten or handwritten clauses including riders, if any.

Salesman-R. Struwe; Branch-Albany, N. Y.; Contract No. 1201

Features-Five each month, if and as available.
Trailers: 7 days in advance of feature.

List or summary of motion pictures licensed and rental terms

4	2	$50.00	repeats (35%)	7	$2.00
9	2	40.00	repeats (30%)	7	2.00
17	2	25.00		7	1.50
15	2	20.00		7	1.50
15	2	17.50		7	1.50

Score: $2.50 per picture.

EXHIBIT NO. 865

Distributor Paramount Pictures Distributing Corp. by M. S. Kusell **Season**

Exhibitor Young and Whitney, Inc. by Robert I. Pierce **Theatre** Capitol, Ilion, N. Y

Contract application date July 5, 1935 **Approval date** August 20, 1935

No. of pictures offered 6 **No. of Pictures Licensed** 6

Provisions, if any, re admission prices
Evenings: Adults, Orchestra-30, Balcony-20, Childre
Matinees: Adults-20, Children-10

Run and clearance provisions
First run.
Ten days after Herkimer
Ahead of W. Winfield, Richfield Springs and Poland
As available.

Other typewritten or handwritten clauses including riders, if any.
Exchange-Albany; Zone-one, Salesman-Wolf

List or summary of motion pictures licensed and rental terms
6 Photoplays (Westerns) 2 $25.00 $2.50

EXHIBIT NO. 866

Distributor Paramount Pictures Distributing Corp.

Season

Exhibitor Young & Whitney, Inc. by Robert L. Pierce

Theatre Capitol, Ilion, N. Y.

Contract application date

Approval date

No. of pictures offered 1

No. of Pictures Licensed 1

Provisions, if any, re admission prices Evenings: Adults, Orchestra-30, Balcony-20, Children-10
Matinees: Adults-20, Children-10

Run and clearance provisions Ten days after Herkimer.

Other typewritten or handwritten clauses including riders, if any.
Exchange-Albany; Zone-1 Salesman-Hayes

List or summary of motion pictures licensed and rental terms

The Crusade	2	$75.00	$2.50

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EXHIBIT NO. 867-Undated Application

Distributor Columbia Pictures Corp. **Season** 1935-36

Exhibitor Young & Whitney, Inc.
by Robert I. Pierce
Theatre Capitol, Ilion, N. Y

Contract application date **Approval date**

No. of pictures offered **No. of Pictures Licensed** 32

Provisions, if any, re admission prices

Run and clearance provisions

Other typewritten or handwritten clauses including riders, if any.

Branch Salesman Contract No

The Exhibitor agrees to play 32 pictures hereunder. Any right of elimination that the Exhibitor has shall be from those pictures which are designated by the Distributor to play at the lowest rental classificatio

Any picture not rejected in writing within 14 days after availability shall be deemed accepted. Right of rejection shall in no event permit Exhibitor to reduce his commitment of 32 pictures

List or summary of motion pictures licensed and rental terms

$60.00
25.00
25.00

Note: Provisions regarding short subjects and Westerns not included

EXHIBIT NO. 868
Warner Bros. & First National Productions

Distributor Vitagraph, Inc.
by R.S. Smith

Season 1935-36

Exhibitor Young & Whitney, Inc.
by Robert I. Pierce

Theatre Capitol, Ilion, N. Y.

Contract application date October 7, 1935

Approval date October 17, 1935
by A W. Smith, Jr.

No. of pictures offered 60

No. of Pictures Licensed 59

Provisions, if any, re admission prices Evenings: Adults-30, Children-10

Run and clearance provisions First run.
Ten days after Herkimer
Thirty days clearance over Mohawk.
As available.

Other typewritten or handwritten clauses including riders, if any.

Salesman-A. S. Smith; Branch-Albany, N. Y.; Contract No. 9262

List or summary of motion pictures licensed and rental terms

2	2/3	$50.00	35% to 500.	7	$2.50
7	2/3	35.00	30% gross	7	2.50
4	1/2	35.00		7	2.00
46	1/2	22.50		7	2.00

Score: $2.50 per run
Releases 4902 and 951 to be $150.00-35% to $500-50/50 over.

EXHIBIT NO. 869

Distributor United Artists Corp.

Season

Exhibitor Young & Whitney, Inc.

Theatre Capitol, Ilion, N. Y

Contract application date February 1, 1936

Approval date by A. W. Kelly

No. of pictures offered 1

No. of Pictures Licensed 1

Provisions, if any, re admission prices Evenings: Adults-30-20, Children-10

Run and clearance provisions. First run.
Following Herkimer 10 days.

Other typewritten or handwritten clauses including riders, if any.
Exchange-N. Y.; Salesman-Herman, Contract No. 4010

List or summary of motion pictures licensed and rental terms
These Three $50.00 Score Inc.

EXHIBIT NO. 870
(2 contracts)

ibutor RKO Distributing Copp. Season 1935-36

bitor Young & Whitney, Inc.
by Robert I. Pierce
Theatre Capitol, Ilion, N. Y.

ract application date January 20, 1936
Approval date January 28, 1936
by Jules Levy

of pictures offered 48
No. of Pictures Licensed 36

isions, if any, re admission prices Evenings: Adults, Orchestra-30, Balcony-20, Children-10
Matinees: Adults-20, Children-10

and clearance provisions Ten (10) days after Herkimer-As available

typewritten or handwritten clauses including riders, if any.

Branch-Albany; Salesman- C. R. Halligan, Contract Nos 739, 738

Exhibitor agrees to play and/or pay for as available.

er summary of motion pictures licensed and rental terms

2	Technicolor Product.	1-2	No Sat.or Sun.	$50.00 Flat	Score Inc
3	Astaire-Rogers	2	Sat. or Sun.	50.00 ag. 35%	Score Inc.
1	Feature	2	Sat. or Sun.	50 00 ag. 30%	Score Inc.
3	Features	1-2	No Sat.or Sun.	$50.00	Score Inc.
7	Features	1-2	No Sat.or Sun	30.00	Score Inc
20	Features	1-2	No Sat.or Sun.	20.00	Score Inc.

Exhibitor agrees to play and pay for 34 feature pictures during the 1935-36 season.
It is further agreed that the exhibitor's rate of rejection shall be limited to two pictures out of each nine released.

Note: Provisions regarding short subjects not included.

EXHIBIT NO. 874-A

Distributor RKO Distributing Corp.

Season 1932-33

Exhibitor Young & Whitney, Inc.
by Robert I. Pierce

Theatre Capitol, Ilion, N Y

Contract application date March 2, 1933

Approval date March 10, 1933
by Jules Levy

No. of pictures offered 45

No. of Pictures Licensed 30

Provisions, if any, re admission prices Matinees: Adults-20, Children-10
Evenings: Adults, Orchestra-30, Balcony-20, Childre

Run and clearance provisions Fourteen days after Herkimer-As available except those rejected by Herkimer which are to be thirty days after first run Utica-as available.

Other typewritten or handwritten clauses including riders, if any.

Branch - Albany; Salesman- C.R. Halligan; Contract No. 1301

List or summary of motion pictures licensed and rental terms

30	1-2	$20.00	Score Inc.

Note: Provisions regarding short subjects not included.

EXHIBIT NO. 874-B

istributor RKO Distributing Corp.

Season 1933-34

xhibitor Young & Whitney, Inc.
by Robert I. Pierce

Theatre Capitol, Ilion, N. Y.

ontract application date January 13, 1934

Approval date February 21, 1934
by Jules Levy

o. of pictures offered 52

No. of Pictures Licensed 40

rovisions, if any, re admission prices Matinee: Adults-20, Children-10
Evening: Adults, Orchestra-30, Balcony-20, Children-10

un and clearance provisions Fourteen (14) days after Herkimer-As available,
Except those rejected by Herkimer which are to be twenty-one (21) days after first run Utica-as available.

Other typewritten or handwritten clauses including riders, if any.

Branch-Albany; Salesman- C.R. Halligan; Contract No. 2537
Upon Satisfactory Completion of this contract, Distributor agrees to cancel five (5) 1932-33 features.

Exhibitor reserves the right to reject pictures released prior to "Little Women" but not to exceed rejection privilege. Exhibitor also reserves the right to pick up these rejected pictures and to use this money to offset delinquent short product if necessary.

ist or summary of motion pictures licensed and rental terms

(2)	Lucky Seven	2	$50.00	Score Inc. Against 30% of gross.
(5)	Lucky Seven	1-2	30.00	Score Inc
(44)	Features	1-2	20.00	Score Inc.

Distributor has the right to interchange the license fees designated for any of the pictures on the "Lucky Seven" Agreement with those for any feature picture or pictures licensed under this agreement, as well as the right to interchange any of the license fees designated for any other pictures on this agreement.

The Exhibitor shall be entitled only to such feature pictures released by the distributor during the 1933-34 season as shall be identified by production numbers ~~xx~~ running from #4101 to 4152.

The Exhibitor may reject, not exceeding 12 feature pictures such rejections to come from the lowest allocated license fees only and at a rate of not to exceed 3 pictures every 3 months. Acceptance or rejection by exhibitor must be given within 14 days from notice of availability.

The Distributor has the right to designate the terms for each of the feature pictures licensed hereunder and agrees to give written notice to the exhibitor of such designation upon mailing of notice of availability.

Note: Provisions regarding short subjects not included.

EXHIBIT NO. 874-C

Distributor RKO Distributing Corp.

Season 1934-35

Exhibitor Young & Whitney, Inc.
by Robert I. Pierce

Theatre Capitol, Ilion, N. Y.

Contract application date October 11, 1934

Approval date November 5,1934
by Jules Levy

No. of pictures offered 50

No. of Pictures Licensed 40

Provisions, if any, re admission prices Matinee: Adults-20, Children-10
Evening: Adults, Orchestra-30, Balcony-20, Children-10

Run and clearance provisions Fourteen (14) days after Herkimer-As available.

Other typewritten or handwritten clauses including riders, if any.

Branch-Albany; Salesman-C. R. Halligan; Contract No. 3073

Exhibitor agrees to play and pay for 40 feature pictures generally released by RKO during the 1934-35 season.....rejection privilege limited to one out of each five pictures.

List or summary of motion pictures licensed and rental terms

4 Specials	2	Sat-Sun	$50.00 Score Inc. Against 30% of gross.
5 Features	1-2		50.00 Score Inc.
7 Features	1-2		30.00 Score Inc.
24 Features	1-2		20.00 Score Inc.

Note: Provisions regarding short subjects not included.

EXHIBIT NO. 874-D

Distributor RKO Radio Pictures, Inc.

Season 1936-37

Exhibitor Young & Whitney, Inc.
by Robert I. Pierce

Theatre Capitol, Ilion, N. Y.

Contract application date February 23, 1937

Approval date Capitol March 3, 1937

No. of pictures offered 46

No. of Pictures Licensed 29

Provisions, if any, re admission prices
Matinee: Adults-20, Children-10
Evening: Adults, Orchestra-30, Balcony-20, Children-10

Run and clearance provisions
Ten (10) days after Herkimer- As available.
Thirty (30) days ahead of Mohawk and Frankfort.
Ahead of Richfield Springs.

Other typewritten or handwritten clauses including riders, if any.
Branch-Albany #1; Salesman- C. R. Halligan; Contract No. 268

Exhibitor agrees to play and pay for 29 features pictures generally released by RKO during the 1936-37 season- - - - rejection privilege limited to one out of each three pictures.

List or summary of motion pictures licensed and rental terms

3	Features 2 Sat-Sun	$50.00	Score Inc. Against 35% of gross
2	Features 2 Sat-Sun	50.00	Score Inc. Against 30% of gross
2	Features 1-2	50.00	Score Inc.
7	Features 1-2	30.00	
15	Features 1-2	20.00	

Note: Provisions regarding short subjects not included.

EXHIBIT NO. 875-A

Warner Bros. Productions

Distributor Vitagraph, Inc.

Season

Exhibitor Young & Whitney, Inc.

Theatre Capitol, Ilion, N Y.

Contract application date

Approval date

No. of pictures offered

No. of Pictures Licensed 24

Provisions, if any, re admission prices Matinee: Adults-25,
Evening: Adults-35, Children-10

Run and clearance provisions Fourteen days after Herkimer, N. Y
As available.

Other typewritten or handwritten clauses including riders, if any.

Branch-Albany; Contract No. 1409
Superseding Contract.

List or summary of motion pictures licensed and rental terms

2	1/2	$20.00	30% of gross	$2.50	7	$2.00
2	1/2	20.00	25% of gross	2.50	7	2.00
20	1/2	20.00		2.50	7	2.00

EXHIBIT NO. 875-A
First National Productions

Distributor Vitagraph, Inc.

Season

Exhibitor Young & Whitney, Inc.

Theatre Capitol, Ilion, N. Y.

Contract application date

Approval date

No. of pictures offered

No. of Pictures Licensed 22

Provisions, if any, re admission prices Matinee: Adults-25
Evening: Adults-35, Children-10

Run and clearance provisions First run.
Fourteen days after Herkimer.
As available.

Other typewritten or handwritten clauses including riders, if any.
Branch - Albany; Contract No. 7408
Superseding contract.

List or summary of motion pictures licensed and rental terms

3	1/2	$20.00	30% of gross	$2.50	7	$2.00
3	1/2	20.00	25% of gross	2.50	7	2.00
16	1/2	20.00		2.50	7,	2.00

EXHIBIT NO. 875-B
First National Productions

Distributor Vitagraph, Inc.

Season

Exhibitor Young & Whitney, Inc.

Theatre Capitol, Ilion, N.Y.

Contract application date

Approval date

No. of pictures offered

No. of Pictures Licensed 30

Provisions, if any, re admission prices Evening: Adults-30, Children-10

Run and clearance provisions First run.
14 days after Herkimer, 30 days clearance over Herkimer, N Y
As available.

Other typewritten or handwritten clauses including riders, if any.

Branch-Albany, N. Y.; Contract No. 8137

List or summary of motion pictures licensed and rental terms.

1	2/3	$150.00	35% to $500 &50% over	$2.50	7	2.00
4	2/3	35.00	against 30% of gross	2.50	7	2.00
25	1-2	22.50		2.50	7	2.00

EXHIBIT NO. 875-B
Warner Bros. Productions

Distributor Vitagraph, Inc.

Season

Exhibitor Young & Whitney, Inc.

Theatre Capitol, Ilion, N. Y.

Contract application date

Approval date

No. of pictures offered

No. of Pictures Licensed 30

Provisions, if any, re admission prices
Evening: Adults-30, Children-10

Run and clearance provisions
First run.
Fourteen days after Herkimer.
Thirty days clearance over Mohawk, N. Y.
As available.

Other typewritten or handwritten clauses including riders, if any.
Branch-Albany; Contract No. 8136

List or summary of motion pictures licensed and rental terms

2	3	$150.00 35% to $500 and 50% over	$2.50	7	$2.00
3	2/3	$35.00 against 30% of gross	2.50	7	2.00
25	1/2	$22.50	2.50	7	2.00

EXHIBIT NO. 875-G
First National Productions

Distributor Vitagraph, Inc.
by R. S. Smith

Season 1934-35

Exhibitor Young & Whitney, Inc.
by Robert I. Pierce

Theatre Capitol, Ilion, N. Y.

Contract application date October 2, 1934

Approval date October 11, 1934
by A W. Smith, Jr.

No. of pictures offered 30

No. of Pictures Licensed 30

Provisions, if any, re admission prices Evenings: Adults-30 , Children-10

Run and clearance provisions First run.
Fourteen days clearance after Herkimer.
Thirty days clearance over Mohawk.

Other typewritten or handwritten clauses including riders, if any.

Branch-Albany, N. Y.; Contract No. 8714

Five advance trailers at $2.00 per trailer.

List or summary of motion pictures licensed and rental terms

1	3	$150.00	35% to $500.00 50/50 over	$2.50	7	$2.00
4	2/3	35.00	30% of gross	2.50	7	2.00
25	1/2	22.50		2.50	7	2.00

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EXHIBIT NO. 875-C
Warner Bros. Productions

Distributor Vit agraph, Inc.
by R.S. Smith

Season 1934-35

Exhibitor Young & Whitney, Inc.
by Robert L. Pierce

Theatre Capitol, Ilion, N. Y.

Contract application date October 2, 1934

Approval date October 11, 1934
by A W. Smith, Jr.

No. of pictures offered 30

No. of Pictures Licensed 29

Provisions, if any, re admission prices

Evenings: Adults-30, Children-10

Run and clearance provisions

First run
Fourteen days clearance after Herkimer.
Thirty days clearance over Mohawk.
As available.

Other typewritten or handwritten clauses including riders, if any.

Branch- Albany, N. Y.; Contract No. 8713

Four Sppecial trailers at $2.00 per trailer.

List or summary of motion pictures licensed and rental terms

1	3	$150.00-	35%. to $500.00 50/50 over	$2.50	7	$2.00
3	2/3	35.00	35% gross	2.50	7	2.00
25	1/2	22.50		2.50	7	2.00

EXHIBIT NO. 875-D
Warner Bros. & First National Productions

Distributor Vitagraph, Inc.
by R.S. Smith

Season 1935-36

Exhibitor Young & Whitney, Inc.
by Robert I. Pierce

Theatre Capitol, Ilion, N. Y.

Contract application date October 7, 1935

Approval date October 17, 1935
by A.W. Smith, Jr.

No. of pictures offered 60

No. of Pictures Licensed 59

Provisions, if any, re admission prices Evenings: Adults-30, Children-10

Run and clearance provisions First run.
Ten days after Herkimer.
Thirty days over Mohawk.

Other typewritten or handwritten clauses including riders, if any.

Salesman-R. S. Smith; Branch- Albany, N. Y. Contract No 9262

List or summary of motion pictures licensed and rental terms

2	2/3	$150.00	35% to $500.00 50/50 over	7	$2.50
7	2/3	35.00	30% gross	7	2.50
4	1/2	35.00		7	2.00
46	1/2	22.50		7	2.00

Score: $2.50 per run

EXHIBIT NO. 875-E

Warner Bros. & First National Productions

Distributor Vitagraph, Inc.
by H. Elder

Season 1936-37

Exhibitor Young & Whitney, Inc.
by Robert I. Pierce

Theatre Capitol, Ilion, N Y

Contract application date August 25, 1936

Approval date August 31, 1936
by G. L. Sears

No. of pictures offered 60

No. of Pictures Licensed 60

Provisions, if any, re admission prices
Evenings: Adults-30, Children-10

Run and clearance provisions
Ten days after Herkimer.
Thirty days over Frankfort, Mohawk.

Other typewritten or handwritten clauses including riders, if any.
Salesman- H. E Elder; Branch-Albany, N. Y.; Contract No. 9692

List or summary of motion pictures licensed and rental terms

4	2/3	$150.00 35% to $500. 50/50 over	7	$2.50
8	2/3	35.00 -30%	7	2.50
10	1/2	35.00	7	2.00
38	1/2	22.50	7	2.00

Score: $2.50 per run.

EXHIBIT NO. 876-A

Distributor Metro-Goldwyn-Mayer Distributing Corp. by Ralph Pielow **Season** 1933-34

Exhibitor Young & Whitney, Inc. by Robert I. Pierce **Theatre** Capitol, Ilion, N. Y.

Contract application date September 16, 1933 **Approval date** September 23, 1933 by W. F. Rodgers

No. of pictures offered **No. of Pictures Licensed** All

Provisions, if any, re admission prices Matinee: Adults-20, Children-10
Evening: Adults-Orchestra-30, Balcony-20, Children-10

Run and clearance provisions ten days after Herkimer, N Y.

Other typewritten or handwritten clauses including riders, if any.

Branch-Albany; Territory Letter-Goldberg, Contract No. 1517
Exhibitor agrees to play and/or pay for one picture each week ten days after Herkimer, N Y. or as available starting December 1st, 1933
14 Specials. Sunday and Monday.

2 pictures to be designated by distributor to be played 3 days, Sun-Mon-Tues

List or summary of motion pictures licensed and rental terms

46	2	$25.00	$5.00

Distributor shall have the right to designate as "Specials" not more than 14 of the photoplays hereby licensed.
2 pictures to be designated at $50.00 guarantee against 40% of gross plus score.
6 pictures to be designated at $50.00 guarantee against 35%/gross plus score.
6 pictures to be designated at $50.00 guarantee against 30% of gross plus score.

EXHIBIT NO. 876-B

Distributor Metro-Goldwyn-Mayer Distributing Corp. by Ralph Pielow

Season 1934-35

Exhibitor Young & Whitney, Inc. by Robert I. Pierce

Theatre Capitol, Ilion, N. Y.

Contract application date August 4, 1934

Approval date August 17, 1934 by W F.Rodgers

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Matinees: Adults-20, Children-10
Evenings: Adults, Orchestra-30, Balcony-20, Children-10

Run and clearance provisions 10 days after Herkimer.

Other typewritten or handwritten clauses including riders, if any.

Branch-Albany; Territory Letter-Jess Greenberg; Contract No 2121

Exhibitor agrees to play and/or pay for one picture each week ten days after Herkimer, N. Y. or as available starting December 1st, 1934.
4 specials. Sunday and Monday.
2 Specials. Sun-Mon and Tues.

List or summary of motion pictures licensed and rental terms

50 2 $25.00 $5.00

Distributor shall have the right to designate as "Specials" not more than 31 of the motion pictures hereby licensed.

5 pictures at $50.00 guarantee against 35% of gross.
6 pictures at 50.00 guarantee against 30% of gross.
20 pictures at $30.00 guarantee ~~against~~ flat rental.

EXHIBIT NO. 876-C

Distributor Metro-Goldwyn-Mayer Distributing Corp. by Ralph Pielow **Season** 1935-36

Exhibitor Young & Whitney by Robert L. Pierce **Theatre** Capitol, Ilion, N. Y.

Contract application date June 26, 1935 **Approval date** July 5, 1935 by W. F. Rodgers

No. of pictures offered 50 **No. of Pictures Licensed** 50

Provisions, if any, re admission prices Matinees: Adults-20, Children-10
Evenings: Adults, Orchestra-30, Balcony-20, Children-10

Run and clearance provisions

First Run Ilion.
Ten days after Herkimer, N. Y.

Other typewritten or handwritten clauses including riders, if any.

Branch-Albany; Territory Letter-H. L. Ripps; Contract No. 2794.

Exhibitor agrees to play or pay for one feature each week ten days after Herkimer, N. Y. or as available starting November 1, 1935.

3 Specials-Sun-Mon
3 Specials-Sun-Mon.

List or summary of motion pictures licensed and rental terms

49	2	$25.00	$5.00
1	2	40.00	5.00

Distributor shall have the right to designate as "Specials" not more than 12 of the motion pictures hereby licensed
3 at $100 guarantee against 35% of gross.
3 at $75.00 guarantee against 30% of gross.
6 at $65.00 Flat Rental.
For every percentage picture played three days, exhibitor has privilege of playing one flat rental picture three days at no additional charge.

Distributor has the right to designate in addition tb above specials, twenty pictures at $30 and $5 score instead of rental specified in schedule above.

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EXHIBIT No. 876-D

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Distributor Metro-Goldwyn-Mayer Distributing Corp. by RalphPielow

Season 1936-37

Exhibitor Young & Whitney, Inc. by Robert I. Pierce

Theatre Capitol, Ilion, N. Y.

Contract application date July 1, 1936

Approval date July 16, 1936

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Matinees: Adults-20, Children-10
Evenings: Adults, Orchestra-30, Balcony-20, Children-10

Run and clearance provisions

First run.
Thirty days over Frankfort and Mohawk.
Ten days after Herkimer, N. Y.

Other typewritten or handwritten clauses including riders, if any.

Branch- Albany; Territory Letter-A. C. Horn; Contract No. 1461F

Exhibitor agrees to play and /or pay for at least one picture per week commencing October 1, 1936, if and as available.

List or summary of motion pictures licensed and rental terms

3	2 or 3	None	40%	$5.00	Sun-Mon-Tues
4	2 or 3	$85.00	35%	5.00	Sun-Mon-Tues.
8	2 or 3	85.00	none	5.00	
14	2	50.00	none	5.00	
balance	2	27.50	none	5.00	

EXHIBIT NO. 877-A

Distributor - Fox Film Corporation
by John D. Clark

Season 1933-34

Exhibitor Young & Whitney, Inc.
by Robert I. Pierce

Theatre Capitol, Ilion, N. Y.

Contract application date September 6, 1933

Approval date

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Evenings: Adults: Orchestra, 30; Balcony-20, Children-10
Matinees: Adults, 20, Children-10

Run and clearance provisions Fourteen days after Herkimer, N. Y. as available.

Other typewritten or handwritten clauses including riders, if any.

Exchange-Albany, N. Y.; Salesman- G. H. Rosenbaum

Pursuant to the provisions of clause Eighth of this agreement, it is agreed that included among the photoplays licensed hereunder are four photoplays which are Gaumont-British or Gaumont-British-Ufa productions.

List or summary of motion pictures licensed and rental terms

12	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2	30% to $200 50% over	$5.00
18	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2	$30.00	3.00
	Remaining photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2	$20.00	3.00

EXHIBIT NO. 877-B

Distributor Fox Film Corporation
by John D. Clark

Season K-2 1934-35

Exhibitor Young & Whitney, Inc.
by Robert I. Pierce

Theatre Capitol, Ilion, N. Y

Contract application date September 20, 1934

Approval date September 26, 1934

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Evenings: Adults, Orchestra-30, Balcony-20, Children-10
Matinees: Adults, 20, Children-10

Run and clearance provisions Firstrun.
Clearance usual.

Other typewritten or handwritten clauses including riders, if any.

Exchange-Albany; Salesman- Keith Goldsmith

4 pictures a month, As available.

This contract is subject to the ruling of the clearance and zoning committee "A"-"B"-"C" photoplays as selected by Distributor on Sunday-Monday or Thursday-Friday.

List or summary of motion pictures licensed and rental terms

A-2	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2	$75.00	35%-$450. then 50% over	$5.00
B 4	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2	$60.00	35%-$350.00 then 50% over	5.00
C 12	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2	$50.00	30%-$300.00 then 50% over	5.00
D 18	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	1/2	$30.00		3.00
	Remaining photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	1/2	$20.00		3.00

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EXHIBIT NO. 877-C

Distributor Fox Film Corporation
by John D. Clark

Season K-3

Exhibitor Young & Whitney Inc.
By Robert L. Pierce

Theatre Capitol, Ilion, N.Y.

Contract application date April 20, 1935

Approval date April 30, 1935

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Evenings: Adults - 25; Children - 10
Matinees: Adults - 20; Children - 10

Run and clearance provisions First run. Clearance usual.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Albany ; Salesman - Goldsmith
4 Pictures each month, as available.

"A" - "B" photoplays as selected by Distributor on Sun-Mon or Thursday-Friday. All provisions of the Standard 1935-36 Exhibitor Contract shall be deemed part of this agreement.

List or summary of motion pictures licensed and rental terms

A	8	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2	$125. ag. 35% to $750. then 50% over	$5.00
B	10	Photoplays to be designated by the Distributor from time to time the photoplays licensed hereunder.	2	$65.00 30% to $500 then 50% over	5.00
C	16	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	1/2	$30.00	3.00
D		Remaining photoplays to be designated by the Distributor from time to time from the photoplays licensend hereunder.	1/2	$20.00	3.00

Note: Provision limiting passes to 150 on percentage pictures.

EXHIBIT NO. 877-D

Distributor Twentieth Century-Fox Film Corporation
by John D.Clark

K-3

Exhibitor Young & Whitney, Inc.
by Robert I. Pierce

Theatre Capitol, Ilion, N Y

Contract application date Oct. 22,1935

Approval date October 28, 1935

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices

Run and clearance provisions First Run. Clearance usual. As available.

7

Other typewritten or handwritten clauses including riders, if any.

Exchange-Albany; Salesman- J. Jennings

+"A"-"B" photoplays as selected by Distributor on Sun-Mon or Thurs-Fri.

List or summary of motion pictures licensed and rental terms.

A -	3	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2	$75 ag. 35% to $500 then 50/50	$5.00
B	3	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2	$75.00-30% to $500	5.00
		Remaining photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	1/2	$50.00	5.00

EXHIBIT NO. 377-E

Distributor Twentieth Century-Fox Film Corporation by John D. Clark

Season K-4

Exhibitor Young & Whitney, Inc.. by Robert I. Pierce

Theatre Capitol, Ilion, N. Y.

Contract application date May 19, 1936

Approval date May 22, 1936

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Evenings: Adults, Orchestra-30, Balcony-20, Children-10
Matinees: Adults-20, Children-10

Run and clearance provisions First run. Usual clearance-
Thirty days ahead of Frankfort and Mohawk and ahead of
of Richfield Springs, N. Y.

Other typewritten or handwritten clauses including riders, if any.

Exchange-Albany; Salesman- K. Goldsmith
4/5 pictures each month as available.

List or summary of motion pictures licensed and rental terms

AA	16 Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2	$125.00 ag. 35% to $750 then 50/50	$5.00
A	12 Photoplays to be designated by the Distributor from time to tiem from the photoplays licensed hereunder.	2	$75.00 ag. 30% to $500 then 50/50	5.00
B	17 Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	1/2	$30.00	3.00
C	Remaining photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	1/2	$20.00	3.00

EXHIBIT NO. 878-A

Distributor Paramount Distributing Corp. Season S-4

Exhibitor Young & Whitney, Inc. Theatre Capitol, Ilion, N. Y.

Contract application date January 24, 1935 Approval date

No. of pictures offered No. of Pictures Licensed 50

Provisions, if any, re admission prices Evenings: Adults, Orchestra-25, Balcony-20, Children-10
Matinees: Adults-20, Children-10

Run and clearance provisions First run
Fourteen days after Herkimer.

Other typewritten or handwritten clauses including riders, if any.
Exchange-Albany; Zone #1

List or summary of motion pictures licensed and rental terms

Two (2) photoplays to be designated by the distributor from time to time from the photoplays licensed hereunder.	2	$25.00 agst 35% of gross	$2.50
Thirteen (13) photoplays to be designated by the distributor from time to time from the photoplays licensed hereunder.	2	$22.50 ag 25% to $250 & 50% over	2.50
Twenty (20) photoplays to be designated by the distributor from time to time from the photoplays licensed hereunder.	1-2	$20.00	2 50
Fifteen (15) photoplays to be designated:	1-2	17.50	2.50

"Farewell to Arms" and "Sign of the Cross" to play on Sunday and Monday. To start January 29, 1933

EXHIBIT NO. 878-B

Distributor Paramount Pictures Distributing Corporation

Season S-5

Exhibitor Young & Whitney, Inc. by Robert I. Pierce

Theatre Capitol, Ilion, N.Y.

Contract application date October 20, 1933

Approval date

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices
Evenings: Adults, Orchestra - 25, Balcony-20, Children-10
Matinees: Adults-20, Children-10

Run and clearance provisions First run.
Clearance - 14 days after Herkimer
30 days ahead of Mohawk

Other typewritten or handwritten clauses including riders, if any.

Exchange-Altany; Zone-1; Salesman-Wolf

List or summary of motion pictures licensed and rental terms

(3) Three photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2	$25. ag. 35% gross	$2.5
(16) Sixteen photoplays to be designated:	2	$25. 25% $250., 50/50 over	2.5
(25) Twenty-five photoplays to be designated:	1-2	$20.	2.5
Balance photoplays to be designated:	1-2	$17.50	2.5

EXHIBIT NO.878-C

Distributor Paramount Pictures Distributing Corp. **Season** S-6

Exhibitor Young & Whitney, Inc. by Robert I. Pierce **Theatre** Capitol, Ilion, N Y.

Contract application date January 18, 1935 **Approval date**

No. of pictures offered All **No. of Pictures Licensed** 35

Provisions, if any, re admission prices Evenings: Adults-30, Children-10
Matinees: Adults-20, Children-10

Run and clearance provisions First run.
Ten days after Herkimer.

Other typewritten or handwritten clauses including riders, if any.

Exchange-Albany; Zone-one; Salesman-Wolf

To play as available.

List or summary of motion pictures licensed and rental terms

A	(5) Five photoplays	1-2	$70.00	$2.50
B	(15) Fifteen photoplays	1-2	45.00	2.50
C	(15) Fifteen photoplays	1-2	25.00	2.50

EXHIBIT NO. 878-D

Distributor	Paramount Pictures Distributing Corp.	**Season**	S-7
Exhibitor	Young & Whitney, Inc. by Robert I. Pierce	**Theatre**	Capitol, Ilion, N. Y.
Contract application date	July 5, 1935	**Approval date**	-
No. of pictures offered	All	**No. of Pictures Licensed**	All

Provisions, if any, re admission prices Evenings: Adults, Orchestra-30, Balcony-20, Children-10
Matinees: Adults-20, Children-10

Run and clearance provisions First run.
Ten days after Herkimer.
Ahead of W. Winfield, Richfield Sp. and Poland

Other typewritten or handwritten clauses including riders, if any.

Exchange-Albany; Zone-one; Salesman-Wolf

As available.

List or summary of motion pictures licensed and rental terms

A	(6) Six photoplays	2	$75.00	$2.50
B	(26) Twenty-six photoplays	2	40.00	2.50
C	(33) Thirty-three photoplays	2	25.00	2.50

EXHIBIT NO. 878-E

Distributor Paramount Pictures, Inc. Season S-8

Exhibitor Young & Whitney, Inc.
by Robert I. Pierce

Theatre Capitol, Ilion, N. Y.

Contract application date August 20, 1936

Approval date

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Evenings: Adults-Orchestra-30, Balcony-20, Children-10
Matinees: Adults-Orchestra-20, Balcony-15, Children-10

Run and clearance provisions First run.
Fourteen days after Herkimer.
Ahead of Richfield Springs; W. Winfield and Poland
Thirty days ahead of Frankfort and Mohawk.

Other typewritten or handwritten clauses including riders, if any.

Exchange-Albany; Zone-one; Salesman-Hayes

As available-6 per month. Start October 1936. All to be played and paid for by October 1937.

List or summary of motion pictures licensed and rental terms

A	(4) Four Photoplays	2	$100.00	$2.50
B	(2) Two Photoplays	2	75.00	2.50
C	(26) Twenty-six Photoplays	2	40.00	2.50
D	(35) Thirty-five Photoplays	2	25.00	2.50

EXHIBIT NO. 905-A

Distributor **Paramount Pictures, Inc.** Season **S-10**

Exhibitor **Michael Boumansour** Theatre **Plaza, Malone, N.Y.**

Contract application date **September 19, 1938** Approval date

No. of pictures offered **All** No. of Pictures Licensed **All**

Provisions, if any, re admission prices

Evenings: Adults-25, Children-10
Matinees: Adults-25, Children-10

Run and clearance provisions

Second run.
Forty-five days after first run.

Other typewritten or handwritten clauses including riders, if any.

Exchange-Albany; Zone-2; Salesman-Richardson.

As available-Exhibitor agrees to play or pay for one feature per week starting October 15, 1938

List or summary of motion pictures licensed and rental terms

A	(5) Five Photoplays	2	$35.00	35% gross	$2.50	Sat or
B	(8) Eight Photoplays	1-2	$22.50		2.50	
C	(12) Twelve Photoplays	1-2	$17.50		2.50	
D	(14) Fourteen Photoplays	1-2	$12.50		2.50	
E	(13) Thirteen Photoplays	1-2	$10.00		2.50	

EXHIBIT NO. 905-B

Distributor Paramount Pictures, Inc. Season S-10

Exhibitor Michael Boumansour Theatre Plaza, Malone, N. Y.

Contract application date September 19, 1938 Approval date

No. of pictures offered 1 No. of Pictures Licensed 1

Provisions, if any, re admission prices Evenings: Adults-25, Children-10
Matinees: Adults-25, Children-10

Run and clearance provisions Second run.
Forty-five (45) days after first run.

Other typewritten or handwritten clauses including riders, if any.
Exchange-Albany

List or summary of motion pictures licensed and rental terms

Men With Wings	40%	$2.50	Sun-Mon.

EXHIBIT NO. 905-C

Distributor Paramount Pictures, Inc. **Season** S-11

Exhibitor Michael Boumansour **Theatre** Plaza. Malone, N. Y

Contract application date April 3, 1940 **Approval date**

No. of pictures offered All **No. of Pictures Licensed** 25

Provisions, if any, re admission prices

Evenings: Adults-25, Children-10
Matinees: Adults-15, Children-10

Run and clearance provisions

Second run.
Available 45 days after first run, Malone.

Other typewritten or handwritten clauses including riders, if any.

Exchagge-Albany; Zone-2; Salesman-W. Waters.

To play or pay for, if available, at rate of four per month starting June 15, 1940 and continue until completed.

List or summary of motion pictures licensed and rental terms

A	(1) One photoplay	2	40%	Sun.
B	(3) Three photoplays	2	35%	Sun.
C	(6) Six photoplays	1-2	$22.00	
D	Remaining photoplays	1-2	12.50	

Note: This contract covers pictures released on and after March 1, 1940. Prior releases not included.

Distributor agrees to allow exhibitor to deduct an amount not to exceed $35.00 per engagement from gross on pictures played in "A" and "B" classifications to cover cost of Lucky played on Sunday

EXHIBIT NO. 905-D

Distributor **Paramount Pictures, Inc.** Season **8-12**

Exhibitor **Michael Boumansour** Theatre **Plaza, Malone, N.Y.**

Contract application date **April 3, 1940** Approval date

No. of pictures offered **All** No. of Pictures Licensed **All**

Provisions, if any, re admission prices **Evenings: Adults-25, Children-10**
Matinees: Adults-15, Children-10

Run and clearance provisions

Second run.
Forty-five days after first run Malone

Other typewritten or handwritten clauses including riders, if any.

Exchange-Albany; Zone-2, Salesman-Waters.
Play at the rate of three per month, if available starting January 1, 1941 and continue until completed.

List or summary of motion pictures licensed and rental terms

A	(1) One Special	2	40%	Sun.
B	(2) Two photoplays	2	40%	Sun.
C	(7) Seven photoplays	2	35%	Sun.
D	(12) Twelve photoplays	1-2	$22.00	
E	Remaining photolplays	1-2	$12.50	

Distributor agrees to allow exhibitor to deduct an amount not to exceed $35.00 per engagement from gross on pictures in "A", "B" and "C". Classifications to cover cost of Lucky game played on Sunday.

EXHIBIT NO. 905-E

Distributor Paramount Pictures, Inc.
Season S-12 (1940-41)

Exhibitor Michael Boumansour
Theatre Plaza, Malone, N Y.

Contract application date April 3, 1940
Approval date

No. of pictures offered All
No. of Pictures Licensed All

Provisions, if any, re admission prices Evenings: Adults-25, Children-10
Matinees: Adults-15, Children-10

Run and clearance provisions Second run.
Available 45 days after first run Malone.

Other typewritten or handwritten clauses including riders, if any.

Exchange- Albany; Zone-2; Salesman-Waters.
To play or pay for, if available, at the rate of one every other month starting January 1, 1941 and continue until completed.

List or summary of motion pictures licensed and rental terms

2 Special Hopalong Cassidys 1-2	$12.50
4 Regular Hopalong Cassidys 1-2	12.50.

EXHIBIT NO. 906-A

Distributor Loew's, Inc.
by Ralph Pielow

Season

Exhibitor Michael Boumansour

Theatre Plaza, Malone, N.Y.

Contract application date January 27, 1937

Approval date February 2, 1937
by T. J. Connors

No. of pictures offered 5

No. of Pictures Licensed 5

Provisions, if any, re admission prices
Evenings: Adults-25, Children-10

Run and clearance provisions

Other typewritten or handwritten clauses including riders, if any.

Branch-Albany #27; Territory Letter-A; Contract No. 1947-F

Above features to be played and paid for by May 1st, 1937.

List or summary of motion pictures licensed and rental terms

618	Kind Lady	2	$25.00	$2.50	Feb. 17-18
708	Mad Holiday	3	$25.00	$2.50	Feb. 14-16
615	Perfect Gentlemen	3	$25.00	$2.50	Feb. 21-23
609	Absolute Quiet	2	$25.00	$2.50	Feb. 24-25
706	April Romance	2	$25.00	$2.50	As available.

EXHIBIT NO.. 906-B

Distributor Loew's, Inc.
By Ralph Pielow

Season 1936-37

Exhibitor Michael Boumansour

Theatre Plaza, Malone, N.Y.

Contract application date Sept. 24, 1937

Approval date Oct. 8, 1937
by T. J. Connors

No. of pictures offered All

No. of Pictures Licensed 15

Provisions, if any, re admission prices Matinee: Children-10; Adults-15 and 25
Evenings: Children-10; Adults-15 and 25

Run and clearance provisions Second run Malone

Sixty days after first run Malone, N.Y.

Other typewritten or handwritten clauses including riders, if any.

Branch-Albany; Territory Letter-A. A. S. Horn; Contract No. 2433F

To be played and or paid for at the rate of one a week starting November 1st, 1937 if and as available.

List or summary of motion pictures licensed and rental terms

Two	2	None	40%	$2.50	Sun and Mon or Fri and Sat.
Two	2	None	35%	2.50	Tues and Wed or Wed and Thurs
Three	2	$27.50		Inc.	
Four	2	$22.50		Inc.	
Four	2	$17.50		Inc.	

This contract shall begin with production #732.

EXHIBIT NO. 906-C

Distributor Loew's, Inc.
by Ralph Pielow

Season 1938-39

Exhibitor Michael Boumansour

Theatre Plaza, Malone, N. Y.

Contract application date May 4, 1938

Approval date May 18, 1938
by T J. Connors

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Matinee: Children-10, Adults-15 and 25
Evening: Children-10, Adults-15 and 25

Run and clearance provisions Second run.
Sixty days after first run, Malone, N. Y

Other typewritten or handwritten clauses including riders, if any.

Branch-Albany; Territory Letter-A, A. Horn; Contract No. 2796
~~[illegible]~~

To be played as available.

List or summary of motion pictures licensed and rental terms

Four	two	$40.00	40%	Sunday and Monday
Eight	Two	25.00	35%	Tues and Wed or Wed and Thurs.
Sixteen	Two	25.00		
Ten	two	18.50		
Six	Two	17.50		

Score: $2.50
Trailer: $1.50

Note: Includes six re-issues @ $20.00 each, to be played as available.

EXHIBIT NO. 906-D

Distributor Loew's, Inc.
by Ralph Pielow

Season

Exhibitor Michael Boumansour

Theatre Plaza, Malone, N Y.

Contract application date July 27, 1938

Approval date August 1, 1938
by T. J. Connors

No. of pictures offered

No. of Pictures Licensed Seven

Provisions, if any, re admission prices

Run and clearance provisions

Other typewritten or handwritten clauses including riders, if any.

Branch-Albany; Territory Letter A, A Horn; Contract No. 2938F

Exhibitor agrees to play and/or pay for all features during August, 1938

List or summary of motion pictures licensed and rental terms

7 2 $17.50
Score: None

Trailer: $1.50

EXHIBIT NO. 906-E

Distributor Loew's, Inc.
by Ralph Pielow

Season 1937-38

Exhibitor Michael Boumansour

Theatre Plaza, Malone N. Y.

Contract application date August 4, 1938

Approval date August 10, 1938
by T J. Connors

No. of pictures offered

No. of Pictures Licensed 15

Provisions, if any, re admission prices Matinee: Children-10; Adults-15 and 25
Evening: Children-10; Adults-15 and 25

Run and clearance provisions Second run.

Other typewritten or handwritten clauses including riders, if any.

Branch-Albany; Territory Letter, A-A. Horn; Contract No. 2944F

Exhibitor agrees to play and/or pay for two features per month in order of release if and as available, starting September 1, 1938, except #657 and 654, which are to be played during August 1938.

List or summary of motion pictures licensed and rental terms

15 2 $17.50
Score: None

Trailer: None

5611

EXHIBIT NO. 906-F

Distributor Loew's, Inc.
by Ralph Pielow

Season 1939-40

Exhibitor Michael Boumamour

Theatre Plaza, Malone, N.Y.

Contract application date Oct. 26, 1939

Approval date Nov. 2, 1939
by T. J. Connors

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Matinee:Children-10; Adults-15 and 25
Evening:Children-10; Adults-15 and 25

Run and clearance provisions Second run.
45 days after first run Malone, N.Y. or as available.

Other typewritten or handwritten clauses including riders, if any.

Branch-Albany, 27; Territory Letter-A.A.Horn;Contract No. 3488

Exhibitor agrees to play and/or pay for one picture per week in order of release if and as available, starting December 1, 1939.

List or summary of motion pictures licensed and rental terms

4	2		40%	Sunday and Monday
10	2	$27.50	35%	
10	2	25.00		
12	2	20.00		
10	2	18.50		
Balance	2	17.50		

Trailer: $1.50 for Black and White; $2.25 for Technicolor.

EXHIBIT NO. 906-G

Distributor Loew's, Inc.
by Ralph Pielow

Season 1940-41

Exhibitor Michael Boumansour

Theatre Plaza, Malone, N. Y

Contract application date November 7/40

Approval date Nov. 14, 1940
by T. J. Connors

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Matinee: Sat. Sun & Hol. Children-10, Adults -15 & 22
Evenings: Children-10, Adults-15 & 22

Run and clearance provisions Second run.
Forty-five days after first run Malone, N. Y.

Other typewritten or handwritten clauses including riders, if any.

Branch-Albany #37; Territory Letter -A- A. Horn; Contract No. 4303

Exhibitor agrees to play and/or pay for one feature per week in order of release if and as available, starting 12/1/40.

List or summary of motion pictures licensed and rental terms

4	2/3	40%	Sun & Mon
10	2/3	37.50- 5@ 35%	
10	2	27.50	
12	2	22.50	
10	2	20.00	
Balance	2	17.50	

Distributor to have the privilege of designating five features of the second group at 35% of the gross receipts.

Trailer $1.50 Black and White; $2.25 -Technicolor.

Note: Provisions regarding short subjects not included.

EXHIBIT NO. 906-H

Distributor Loew's, Inc.
by H. L. Ripps

Season

Exhibitor Michael Boumansour

Theatre Plaza, Malone, N. Y.

Contract application date January 14, 1941

Approval date January 22, 1941

No. of pictures offered 1

No. of Pictures Licensed 1

Provisions, if any, re admission prices Matinee: Children-10, Adults-15-22
Evening: Children-10, Adults-15-22

Run and clearance provisions Repeat Run.
Clearance-None

Other typewritten or handwritten clauses including riders, if any.

Branch-Albany; Territory Letter-A. A. Horn; Contract No. 4403

List or summary of motion pictures licensed and rental terms

Babes In Arms 2 $25.00 $1.50 Jan. 31-Feb. 1st.

EXHIBIT NO. 907 A :

Distributor RKO **Season** 1937-38

Exhibitor Michael Boumansour **Theatre** Plaza, Malone, New York

Contract application date January 31, 1938 **Approval date** February 10, 1938

No. of pictures offered 48 **No. of Pictures Licensed** 6

Provisions, if any, re admission prices Matinee: Adults, orchestra, 25-15; balcony, None; children, orchestra, 10; balcony, None; Evening: Adults, orchestra, 25-15; balcony, None; children, orchestra, 10; balcony, None.

Run and clearance provisions

60 days after 1st run - As available.

Other typewritten or handwritten clauses including riders, if any.

List or summary of motion pictures licensed and rental terms

5 Pictures	2	No	20.00	Inc.	Flat
1 Picture	2	No	15.00	Inc.	Flat

(Provisions concerning short subjects not included)

EXHIBIT NO. 907 B

Distributor RKO **Season** 1936-37

Exhibitor Michael Boumansour **Theatre** Plaza, Malone, New York

Contract application date January 31, 1938 **Approval date** February 10, 1938

No. of pictures offered 48 **No. of Pictures Licensed** 14

Provisions, if any, re admission prices Matinee: Adults, orchestra, 25-15; balcony, None; children, orchestra, 10; balcony, None; Evening: Adults, orchestra, 25-15; balcony, None; children, orchestra, 10; balcony, None.

Run and clearance provisions

60 days after first run - As available.

Other typewritten or handwritten clauses including riders, if any.

List or summary of motion pictures licensed and rental terms

10 pictures	2	No	15.00	Inc.	Flat
4 pictures	2	No	20.00	Inc.	Flat

EXHIBIT NO. 907 C

Distributor RKO Season 1938-1939

Exhibitor Michael Boumamecur Theatre Plaza, Malone, New York

Contract application date October 31, 1938 Approval date November 11, 1938

No. of pictures offered 48 No. of Pictures Licensed 48

Provisions, if any, re admission prices. Matinee: Adults, orchestra, 25; balcony, 25; children, orchestra, 15; balcony 15; Evening: Adults, 25; balcony 25; children, orchestra, 15; balcony, 15.

Run and clearance provisions

2nd run Malone - As available

Other typewritten or handwritten clauses including riders, if any.

List or summary of motion pictures licensed and rental terms

6 Features	2	No	35.00	Inc.	35%
6 Features	2	No	20.00	Inc.	Flat
12 Features	2	No	17.50	Inc.	Flat
12 Features	2	No	15.00	Inc.	Flat
12 Features	2	No	12.50	Inc.	Flat

(Provisions concerning short subjects not included)

EXHIBIT NO. 907 D

Distributor RKO

Season 1939-40

Exhibitor Michael Boumansour

Theatre Plaza, Malone, New York

Contract application date May 6, 1940

Approval date May 7, 1940

No. of pictures offered All.

No. of Pictures Licensed 20

Provisions, if any, re admission prices Matinee: Adults, orchestra, 25; balcony, 25; children, orchestra, 10; balcony, 10; Evening: Adults, orchestra, 25; balcony, 25; children, orchestra, 10; balcony, 10.

Run and clearance provisions

As available. — 2d

Other typewritten or handwritten clauses including riders, if any.

Exhibitor may reject all releases previous to May 1st, but any such previous features booked, are to apply against this commitment.

List or summary of motion pictures licensed and rental terms

Classifications	Number of Pictures	No. of Consec. Days Run	Saturday Sunday Included	Minimum Guarantee or License Fee	Percentage of Gross Receipts	Additional Terms-Sharing Terms of Gro
A	2	2	No	35.00	—	Against 35% of the gross
B	6	2	No	20.00	—	Flat
C	12	2	No	12.50	—	Flat

EXHIBIT NO. 907 B

Distributor RKO

Season 1939-40

Exhibitor Michael Boumanscur

Theatre Plaza, Malone, New York

Contract application date October 31, 1940

Approval date November 7, 1940

No. of pictures offered Walt Disney's Pinocchio

No. of Pictures Licensed Same.

Provisions, if any, re admission prices

Matinee: Adults, orchestra, [illegible]; balcony, 25; children, orchestra, 10; balcony, 10;
Evening: Adults, orchestra, 25; balcony, 25; children, orchestra, 10; balcony, 10.

Run and clearance provisions

2nd.

Other typewritten or handwritten clauses including riders, if any.

List or summary of motion pictures licensed and rental terms

Prod. No.	Title	No. Consec. Days	Sat. Sun. Incl.	License Fee Guaranteed	Sharing Arrangement
091	Pinocchio	2	Sun. Mon.	20.00 flat	Gross Receipts from First Dollar

EXHIBIT NO. 908-A
Warner Bros. & First National Productions

Distributor Vitagraph, Inc.
by R. S. Struve

Season 1939-40

Exhibitor Michael Boumansour

Theatre Plaza, Malone, N. Y.

Contract application date January 23, 1940

Approval date January 30, 1940
by G. L. Sears

No. of pictures offered 48

No. of Pictures Licensed 8

Provisions, if any, re admission prices Evenings: Adults-15, Children-10
Matinees: Adults-15, Children-10

Run and clearance provisions Second run.
Forty-five days after first run.

Other typewritten or handwritten clauses including riders, if any.

Salesman-R. Struve; Branch-Albany, N. Y.

All pictures in group three may play two or three days
Amendatory letter June 26, 1940 attached.

List or summary of motion pictures licensed and rental terms

8	2/3	$30.00 50% over $150.	4 on Sun-Mon.
12	2	22.50	
16	2	15.00	
12	2	12.50	

Trailers: $1.50

Note: Attached to contract is letter dated June 26, 1940, above referred to, also three notifications of elimination forms.

EXHIBIT NO. 908-B

Warner Bros. & First National Productions

Distributor Vitagraph, Inc.

Season

Exhibitor Michael Boumansour

Theatre Plaza, Malone, N. Y.

Contract application date January 23, 1939

Approval date January 27, 1939
by G. L. Sears

No. of pictures offered 8

No. of Pictures Licensed 8

Provisions, if any, re admission prices Evenings: Adults-25, Children-10
Matinees: Adults-25 Children-10

Run and clearance provisions First run.

Other typewritten or handwritten clauses including riders, if any.

Salesman-R. Struive; Branch-Albany, N Y.; Contract No. 2092

List or summary of motion pictures licensed and rental terms

8 1/2 $15.00 7 $1.50

5621

EXHIBIT NO. 998-C
Warner Bros. & First National Productions

Distributor Vitagraph, Inc.
by R. Struige

Season 1938-39

Exhibitor Michael Boumansour

Theatre Plaza, Malone, N. Y.

Contract application date March 20, 1939

Approval date March 24, 1939
by G. L. Sears

No. of pictures offered 52

No. of Pictures Licensed 52

Provisions, if any, re admission prices
Evenings: Adults-15, Children-10
Matinees: Adults-15, Children-10

Run and clearance provisions
Second run.
Sixty days after first run.

Other typewritten or handwritten clauses including riders, if any.
Salesman-R. Struige; Branch-Albany, N. Y.
As available.

List or summary of motion pictures licensed and rental terms

6	2	35% of gross.
10	2	$22.50
18	2	17.50
18	2	15.00

Trailers: $1.50 and $2.00

Score: $2.50 on percentage pictures

Note: Notification of cancellation form attached covering 13 pictures

EXHIBIT NO. 908-D

Distributor Vitagraph, Inc.
by R.S. Struire

Season

Exhibitor Michael Boumansour

Theatre Plaza, Malone, N. Y.

Contract application date January 23, 1940

Approval date January 30, 1940
by G. L.Sears

No. of pictures offered 6

No. of Pictures Licensed 6

Provisions, if any, re admission prices Evenings: Adults-15, Children-10
Matinees: Adults-15, Children-10

Run and clearance provisions Second run.
Forty-five days after first run.

Other typewritten or handwritten clauses including riders, if any.

Salesman-R. Struire; Branch-Albany, N. Y.; Contract No. 5694

List or summary of motion pictures licensed and rental terms

6 John Wayne Westerns 2 $10.00

Trailers: $1.50

EXHIBIT NO. 908-E
Warner Bros. Productions

Distributor Vitagraph, Inc.
by N. J. Ayers

Season 1934-35

Exhibitor Michael Boumansour

Theatre Plaza Malone, N. Y

Contract application date December 28, 1936

Approval date December 30, 1930
by G. L. Sears

No. of pictures offered 8

No. of Pictures Licensed 8

Provisions, if any, re admission prices Evenings: Adults-25, Children-10
Matinees: Adults-25, Children-10

Run and clearance provisions First run.

Other typewritten or handwritten clauses including riders, if any.

Salesman- R. Struke; Branch-Albany; Contract No. 9953
7- Jan.
1-Feb.

List or summary of motion pictures licensed and rental terms

7 2/3 $25.00 $2.50

EXHIBIT NO. 909

Warner Bros. & First National Productions

Distributor Vitagraph, Inc.

Season

Exhibitor Michael Boumansour

Theatre Plaza, Malone, N. Y.

Contract application date June 14, 1937

Approval date June 29, 1937
by G L. Sears

No. of pictures offered 6

No. of Pictures Licensed 6

Provisions, if any, re admission prices Evenings: Adults-25, Children-10
Matinees: Adults-15, Children-10

Run and clearance provisions First in Malone

Other typewritten or handwritten clauses including riders, if any.

Salesman-R. Struye; Branch-Albany, N. Y.; Contract No. 1200

3 in July, 1937
3 in August 1937

List or summary of motion pictures licensed and rental terms

6 2/3 $20.00 $2.50

5625

6

EXHIBIT NO. 948

Warner Bros. Productions

Distributor	Vitagraph, Inc. by W. J. Brandt	Season	
Exhibitor	The State-Bucyrus Co. by M. H. Bryer, Sec.	Theatre	State, Bucyrus, Ohio
Contract application date	August 20, 1934	Approval date	August 28, 1934 By A.W.Smith, Jr.
No. of pictures offered	30.	No. of Pictures Licensed	30

Provisions, if any, re admission prices

Evenings: adults, 25, children, 10
Matinees: adults, 15, children, 10.

Run and clearance provisions

Other typewritten or handwritten clauses including riders, if any.

Branch-Cleveland; Contract No. 3659

List or summary of motion pictures licensed and rental terms

1	4	$150.00 against 50%	$3.00	7	$3.00
1	4	$150.00 against 35%-$650.	3.00	7	3.00
3	3-4	$ 75.00 against 30%-$400. 3 days, $500-4 days then 50/50	3.00	7	3.00
13	2-3	$ 30.00	3.00	7	3.00
5	2-3	$ 25.00	3.00	7	3.00
1	2-3	$ [illegible]0.00	3.00	7	3.00
6	2-3	$ 20.00	3.00	7	3.00

EXHIBIT NO. 948
First National Productions

Distributor Vitagraph, Inc.
by W. J. Brandt

Season 1934-35

Exhibitor The State, Bucyrus Co.
by M. H. Bryer

Theatre State, Bucyrus, Ohio

Contract application date August 20, 1934

Approval date August 28, 1934
by G. L. Sears

No. of pictures offered 30

No. of Pictures Licensed 30

Provisions, if any, re admission prices Evenings: Adults-25, Children-10
Matinees: Adults-15, Children-10

Run and clearance provisions

Other typewritten or handwritten clauses including riders, if any.

Branch-Cleveland; Contract No. 2660

List or summary of motion pictures licensed and rental terms

1	4	$150.00 ag. 35% -$650 then 50%	$3.00	7	$3.00
4	3-4	75.00 ag. 30%-$400 3 days, $500 4 days, then 50%	3.00	7	3.00
13	2-3	30.00	3.00	7	3.00
5	2-3	25.00	3.00	7	3.00
1	2-3	20.00	3.00	7	3.00
6	2-3	20.00	3.00		

EXHIBIT NO. 949

Distributor Loew's, Inc.
by F. D. Drew, Res. Mgr.

Season 1937-38

Exhibitor E.W. Long & Son.
by E.W.Long

Theatre Memorial, Mt. Vernon, Ohio

Contract application date May 16, 1938

Approval date May 31, 1938
by T J. Connors

No. of pictures offered 22 to 26

No. of Pictures Licensed 17 to 21

Provisions, if any, re admission prices
Matinee: Children-10: Adults-25
Evenings: Children-10, Adults-30

Run and clearance provisions
Second run available 45 days after first run.

Other typewritten or handwritten clauses including riders, if any.

Branch-Cleveland #7; Territory Letter-A.Brauer; Contract No. 5690

Exhibitor agrees to play and/or pay for two features per month in order of release of and as available, starting July 1, 1938.

List or summary of motion pictures licensed and rental terms

2	2	40%	Days to be mutually agreed upon.
4	2	$40.00 35%	Days to be mutually agreed upon.
4	2	40.00 Flat	
6	2	27.50 Flat	
Balance	2	20.00 Flat	

Distributor agrees to cancel Between Two Women and Old Hutch.

Exhibitor to have privilege of eliminating 5 pictures in addition to pictures playing Vine Theatre after opening of Vernon Theatre.

Score: $2.50
Trailer: $1.50

Note: Provisions regarding short subjects not included.

EXHIBIT NO. 950

Distributor Loew's, Inc.
by F. D. Drew, Res. Mgr.

Season 1938-39

Exhibitor E. W. Long & Son
by E. W. Long

Theatre Memorial, Mt.Vernon, Ohio

Contract application date May 16, 1938

Approval date May 31, 1938
By T. J. Connors

No. of pictures offered 22 to 26

No. of Pictures Licensed All

Provisions, if any, re admission prices

Matinee: Children, 10, adults, 25
Evening: Children, 10, adults, 30

Run and clearance provisions

Second run-45 days after first run or as available.

Other typewritten or handwritten clauses including riders, if any.

Branch-Cleveland #7; Territory Letter-A; Contract No. 5695

Exhibitor agrees to play and/or pay for two features per month in order of release if and as available, starting as available.

List or summary of motion pictures licensed and rental terms

2	2	40%	Days to be mutually agreed upon.
4	2	35%-$40.00	Days to be mutually agreed upon.
4	2	$40.00 Flat	
8	2	$27.50 Flat	
5	2	$22.50 Flat	
Balance	2	$20.00 Flat	

Exhibitor to have the privilege of eliminating pictures playing the Vine Theatre.
Score: $2.50
Trailer: $1.50
Note: Provisions regarding short subjects not included.

EXHIBIT NO. 951

Distributor Loew's, Inc.
By F. D. Drew, Res. Mgr.

Season 1936-37

Exhibitor E. W. Long & Son
by E. W. Long

Theatre Memorial, Mt. Vernon, Ohio

Contract application date December 1, 1936

Approval date December 14, 1936
by T. C. Connors

No. of pictures offered All

No. of Pictures Licensed 30

Provisions, if any, re admission prices
Matinees: Children, 10, adults-20
Evenings: Children, 10, adults, Orchestra-25
Balcony-20

Run and clearance provisions
Second run, Mt. Vernon, Ohio
Available 90 days after first run.

Other typewritten or handwritten clauses including riders, if any,

Branch-Cleveland #7; Territory Letter, A-Brauer; Contract No. 2902F

Exhibitor agrees to play and/or pay for not less than two pictures per month commencing February 1, 1937, if and as available, until all pictures licensed are played and/or paid for.

Note: Contains provisions limiting passes to 100 on percentage pictures.

List or summary of motion pictures licensed and rental terms

3	2	40%	To be mutually agreed upon	$2.50
4	2	$50.00 35%	To be mutually agreed upon	2.50
8	2	$50.00 Flat		2.50
14	2	$25.00 Flat		2.50
Balance	2	$20.00 Flat		2.50

This agreement cancels 1935-36 contract, with exception of features that are dated. Included in this agreement are productions Nos. 632-639-649-658-656-654.

Exhibitor is committed to play not less than 30 pictures to be selected from features covered by this agreement.

EXHIBIT NO. 952

Distributor Loew's, Inc.
by F. D. Drew, Res. Mgr.

Season 1936-37

Exhibitor E. W. Long & Son
by E. W. Long

Theatre Memorial, Mt. Vernon, Ohio

Contract application date December 1, 1936

Approval date December 14, 1936
by T. J. Connors

No. of pictures offered 1

No. of Pictures Licensed 1

Provisions, if any, re admission prices Matinee: Children-10, Adults-25, ~~Orchestra~~
Evwnings: Children-10, Adults, Orchesta-35, Balcony-25

Run and clearance provisions Second run-available 90 days after first run.

Other typewritten or handwritten clauses including riders, if any.

Br anch-Cleveland#7; Territory Letter A-Brauer; Contract No. 29022
Note: Contains provision limiting passes to 100.

List or summary of motion pictures licensed and rental terms

The Great Ziegfeld 2 40% $2.50 Sun-Mon-

EXHIBIT NO. 953

Distributor Columbia Pictures Corp.
by H.C. Bissell

Season 1936-37

Exhibitor Schine Theatrical Co., Inc.
by George V. Lynch

Theatre Forum, Norwalk, Ohio

Contract application date September 26, 1936

Approval date October 5, 1936
by Rube Jackter

No. of pictures offered

No. of Pictures Licensed

Provisions, if any, re admission prices

Run and clearance provisions To be played as and when available. First run Norwalk. Seven days clearance over Huron, New London, Willard, Bellevue and Milan, Ohio. 90 days over second run. To be played within 21 days after national release date.

Other typewritten or handwritten clauses including riders, if any.

Branch-Cleveland, Ohio; Salesman- H. C. Bissell; Contract No. 152

Exhibitor agrees to play and/or pay for at least two special feature attractions every month...commencing October 15, 1936. Single and double feature policy.

List or summary of motion pictures licensed and rental terms

4	2/3	$75.00
6	2/3	50.00
6	2/3	30.00
24	2/3	20.00

The exhibitor agrees to play 22 pictures hereunder. Any right of elimination that the exhibitor has shall be from those pictures which are designated by the distributor to play at the lowest rental classification.
Any picture not accepted by the exhibitor in writing sent to the distributor within 14 days after any picture shall be made available to the exhibitor, any such picture shall be deemed to have been rejected by the exhibitor. This right of rejection shall in no event permit the exhibitor to reduce his commitment of 22 pictures hereunder.
Note: Provisions regarding Westerns and short subjects not included.

EXHIBIT NO. 954

Distributor Columbia Pictures Corp.
by H. C. Bissell

Season 1935-36

Exhibitor L. O. O. M. 1248
by C.O. Frederick, Sec'y

Theatre Moose, Norwalk, Ohio

Contract application date August 9, 1935

Approval date August 15, 1935
by Rube Jackter

No. of pictures offered 52

No. of Pictures Licensed 52

Provisions, if any, re admission prices
Matinee: 10
Evening: 10 and 15

Run and clearance provisions

When and as available, first run Norwalk, Ohio

Other typewritten or handwritten clauses including riders, if any.

Branch-Cleveland; Salesman-George J. Becker; Contract No. 39

The Exhibitor agrees to play and/or pay for at least three special feature attractions every month------commencing October 15, 1935. Straight picture policy.

List or summary of motion pictures licensed and rental terms

6	2 or 3	Sun.	$75.00 No score against 30% of gross.
6	2 or 3		50.00 No score against 25% of gross.
12	2 or 3		30.00 No score
16	2 or 3		17.50 No score

Note: provisions regarding Westerns and short subjects not included.

EXHIBIT NO. 955

Distributor Columbia Pictures Corp.
by Phil Fox

Season 1936-37

Exhibitor Schine Theatrical Co.
by George V. Lynch

Theatre Colonia, Norwich, N.Y.

Contract application date July 23, 1936

Approval date July 28, 1936
by Rube Jackter

No. of pictures offered

No. of Pictures Licensed 12

Provisions, if any, re admission prices Matinee: Adults-25, Children-10
Evenings: Adults-30, Children-10

Run and clearance provisions Thirty days over Sherburne, Oxford, Greene New Berlin and Sidney

Other typewritten or handwritten clauses including riders, if any.

Branch-Albany; Salesman- Phil Fox, contract no. 401
The Exhibitor agrees to play and/or pay for at least one special feature attraction every month commencing September 15, 1936.
The Exhibitor agrees to play 12 pictures hereunder. Any right of elimination that the exhibitor has shall be from those pictures which are designated by the Distributor to play at the lowest rental classification. Any picture not accepted by the exhibitor in writing sent to the exhibitor, within fourteen days after any picture shall be made available to the exhibitor, any such picture shall be deemed to have been rejected by the exhibitor. This right of rejection shall in no event permit the exhibitor to reduce his commitment of 12 pictures hereunder.

List or summary of motion pictures licensed and rental terms

3	2/3	$100.00	No score
3	2/3	75.00	No score
3	2/3	50.00	No score
3	2/3	35.00	No score
9	2/3	35.00	No score.

EXHIBIT NO. 956

Distributor Columbia Pictures Corp.
by H. C. Bissell

Season 1935-36

Exhibitor Carl B. Moore

Theatre Ohio, Van Wert, Ohio

Contract application date April 8, 1935

Approval date April 17, 1935
by Rube Jackter

No. of pictures offered 64

No. of Pictures Licensed 64

Provisions, if any, re admission prices Matinee-10, Evening-15

Run and clearance provisions Only Run, Van Wert.
When and as available.

Other typewritten or handwritten clauses including riders, if any.

Branch-Cleveland; Salesman-George J. Becker; Contract No 313

The Exhibitor agrees to play and/or pay for at least one feature every week--- commencing September 15, 1935.

Straight picture policy.

List or summary of motion pictures licensed and rental terms

6	3/4	$85.00 each against 35% of gross
6	3/4	75.00 each against 25% of gross

All remaining features-2 or 3 days-$25.00 each.

Note: Provisions regarding Westerns and Short subjects not included.

EXHIBIT NO. 957

Distributor Columbia PicturesCorp.
by H. C.Bissell

Season 1936-37

Exhibitor Schine Theatrical Co., Inc.
by George V. Lynch

Theatre Van Wert or Strand, Van Wert, O

Contract application date Sept ember 26, 1936

Approval date October 5, 1936
by Rube Jackter.

No. of pictures offered

No. of Pictures Licensed 18

Provisions, if any, re admission prices

Run and clearance provisions To be played as and when available.
First run Van Wert. 90 days over second run.
To be played within 21 days after national release date.

Other typewritten or handwritten clauses including riders, if any.

Branch-Cleveland, Ohio, Salesman-H. C. Bissell; Contract No 153
The exhibitor agrees to play and/or pay for at least three special feature attractions every two months-------commencing October 15, 1936: Exhibitor agrees to play 18 pictures hereunder.. Any right of elimination that the exhibitor has shall be from those pictures which are designated by the distributor to play at the lowest rental classification.

Any picture not accepted by the exhibitor in writing sent to the distributor within fourteen days after any picture shall be made available to the exhibitor, any such picture shall be deemed to have been rejected by the exhibitor. This right of rejection shall in no event permit the exhibitor to reduce his commitment of 18 pictures hereunder.

List or summary of motion pictures licensed and rental terms

3	2/3	$75.00
3	2/3	50.00
34	2/3	30.00 If used at Strand, price to be $20.00.

Note: Provisions regarding short subjects not included.

EXHIBIT NO. 963

Distributor Twentieth Century-Fox Film Corp.

Season 1941-42

Exhibitor S.K.E. Operating Corp. by RKO Film Booking Corp. as Agent Max Fellerman

Theatre Paramount, Strand, Keith or Eckel, Syracuse, N.Y

Contract application date Aug 8, 1941

Approval date 10-14-41 By H. Wobber

No. of pictures offered

No. of Pictures Licensed 5

Provisions, if any, re admission prices

Run and clearance provisions

First run Syracuse: 30 days clearance over all other theatres in Syracuse and within a radius of 25 miles. No clearance over Auburn, Fulton or Cortland.

Other typewritten or handwritten clauses including riders, if any.

Exchange-Buffalo Zone 2

List or summary of motion pictures licensed and rental terms

#201 Carley's Aunt (to play Keith or Paramount)	7	35%
#202 Dressed to Kill	7	$360.00
#203 Wild Geese Calling (To play Keith or Paramount)	7	30%
#204 Private Nurse	7	$360.00
#205 Sun Valley Serenada (To play Keith or Paramount)	7	35%

Exhibitor may deduct cost of second feature from double bill from the gross of productions 201, 203, 205 - such deduction not to exceed $360.00.
Exhibitor may deduct actual cost of "Bank Night" in the particular theatres involved.

EXHIBIT NO. 964

Distributor Twentieth Century-Fox Film Corporation

Season 1941-42

Exhibitor S.K.E. Operating Corp. By RKO Film Booking Corp. as Agent - Max Fellerman

Theatre Eckel, Syracuse, N.Y.

Contract application date August 8, 1941

Approval date 10-14-41 by H. Wobber

No. of pictures offered

No. of Pictures Licensed 5

Provisions, if any, re admission prices

Run and clearance provisions

Other typewritten or handwritten clauses including riders, if any.

Branch-Buffalo Zone - 2
Optional moveovers following first week's engagement in First Run Syracuse.

List or summary of motion pictures licensed and rental terms

#201	Charley's Aunt	7	25%)	
#202	Dressed to Kill	7	$165.00)	
#203	Wild Geese Calling	7	25%)	
#204	Private Nurse	7	$165.00)	(Don't take)
#205	Sun Valley Serenade	7	25%)	

Exhibitor may deduct cost of second feature, if double billed, from gross of productions #201, 203, 205, such deduction not to exceed $165.00.

EXHIBIT NO. 965

5638

Distributor Twentieth Century-Fox FilmCorp. Season 1941-42

Exhibitor Syracuse Cameo Theatre, Inc.
by J. Karp

Theatre Cameo, Syracuse, N. Y.

Contract application date Sept. 12, 1941

Approval date Sept. 25, 1941
by Herman Wobber

No. of pictures offered

No. of Pictures Licensed 5

Provisions, if any, re admission prices Evenings: Adults - 20¢, Children - 10¢
Matinees: Adults - 20¢, Children - 10¢

Run and clearance provisions Third run, Syracuse - Seven (7) days after Regent Theatre, 7 days clearance on all subsequent runs.

Other typewritten or handwritten clauses including riders, if any.

Exchange- Buffalo, Salesman - W.C. Rowell - Zone -2
201- 205 to be exhibited on Sun - Mon-Tues.

List or summary of motion pictures licensed and rental terms

201	Charley's Aunt	3	$100.00	35%
205	Sun Valley Serenade	3	$100.00	35%
203	Wild G eese Calling	2/3	100.00	
202	Dressed To Kill	2/3	30.00	
204	Private Nurse	2/3	30.00	

Exhibitor may deduct cost of second feature, not to exceed price of Distributor's bottom flat, from gross receipts of Productions 201 and 205, before computing Distributor's share.

EXHIBIT NO. 966

Distributor Twentieth Century-Fox FilmCorp. **Season** 1941-42

Exhibitor Syracuse Novelty Theatre Corp.
by G. E. Smith, Treas.

Theatre Novelty, Syracuse, N. Y.

Contract application date Sept. 12/41

Approval date Sept. 24, 1941
by Herman Wobber

No. of pictures offered

No. of Pictures Licensed 5

Provisions, if any, re admission prices Evenings: Adults - 15, Children - 10¢
Matinees: Adults - 10¢, Children - 10¢

Run and clearance provisions 7 days after third run, ahead of Rivoli,
To be played when available.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Buffalo, Salesman - Rowell - Zone-2

List or summary of motion pictures licensed and rental terms

201 - Charlie's Aunt	1/2	$25.00
202 - Dressed to Kill	1/2	15.00
203 - Wild Geese Calling	1/2	17.50
204 - Private Nurse	1/2	12.50
205 - Sun Valley Serenade	1/2	25.00

EXHIBIT NO. 967

5640

Distributor Twentieth Century-Fox Film Corp **Season** 1941-42

Exhibitor Syracuse Happy Hour, Inc.
By G.E. Smith, Treas.

Theatre Happy Hour, Syracuse, N. Y.

Contract application date Sept. 12/41

Approval date Sept. 24, 1941
By Herman Wobber

No. of pictures offered

No. of Pictures Licensed 5

Provisions, if any, re admission prices Evenings: Adults - 20¢ Children - 10¢
Matinees: Adults - 20¢ Children - 10¢

Run and clearance provisions 7 days after third run - ahead Rivoli- Turn Hall.
To be played when available.

Other typewritten or handwritten clauses including riders, if any,
Exchange - Buffalo: Salesman - Rowell - Zone-2

List or summary of motion pictures licensed and rental terms

201	Charlies' Aunt	2/3	$85.00
202	Dressed to Kill	2/3	30.00
203	Wild Geese Calling	2/3	45.00
204	Private Nurse	2/3	15.00
205	Sun Valley Serenade	2/3	85.00

5641

EXHIBIT NO. 968

Distributor Twentieth Century-Fox Film Corp **Season** 1941-42

Exhibitor Albert G. Larkin

Theatre Haward,Syracuse, N. Y.
Harvard

Contract application date Sept. 12/41

Approval date Sept. 24, 1941

No. of pictures offered

No. of Pictures Licensed 5

Provisions, if any, re admission prices Evenings: Adults - 20¢ Children - 10¢
Matinees: Adults - 20¢ Children - 10¢

Run and clearance provisions 7 days after third run.
To be played when available.

Other typewritten or handwritten clauses including riders, if any.
Exchange - Buffalo : Salesman - Rowell, Zone-2

List or summary of motion pictures licensed and rental terms

201	Charlie's Aunt	2/3	$27.50
202	Dressed to Kill	2/3	17.50
203	Wild G eese Calling	2/3	22.50
204	Private Nurse	2/3	15.00
205	Sun Valley Serenade	2/3	27.50

EXHIBIT NO. 969

Distributor Twentieth-Century, Fox Film Corp Season 1941-42

Exhibitor Theatorium Co.
By Jack Roe, Secretary

Theatre Turn Hall, Syracuse, N. Y.

Contract application date October 9/41

Approval date 10/27/41

No. of pictures offered

No. of Pictures Licensed 5

Provisions, if any, re admission prices
Evenings: Adults-18, Children -10 Net
Matinees: Adults-18, Children -10

Run and clearance provisions
Available after Happy Hour.
To be played when available.

Other typewritten or handwritten clauses including riders, if any.

Exchange-Buffalo : Salesman-Rowell; Zone-2

List or summary of motion pictures licensed and rental terms

201	Charlie's Aunt	2/3	$40.00	
202	Dressed to Kill	2/3	15.00	
203	Wild G eese Calling	2/3	27.50	
204	Private Nurse	2/3	12.50	
205	Sun Valley Serenade	2/3	40.00	- $135.00

5643

EXHIBIT NO. 970

Distributor Twentieth Century-Fox Film Corp **Season** 1941-42

Exhibitor Sidney L. Grossman **Theatre** Elmwodd, Syracuse, N. Y.

Contract application date Oct. 14, 1941 **Approval date** Nov. 1, 1941 by H. Wobber

No. of pictures offered

No. of Pictures Licensed 5

Provisions, if any, re admission prices Evenings: Adults- 20¢ Children - 10¢
Matinees: Adults -10-15-20¢, Children - 10¢

Run and clearance provisions

Available seven (7) days after Cameo.
Same availability as Franklin and Riviera Theatres.
To be played when available.

Other typewritten or handwritten clauses including riders, if any,

Exchange-Buffalo; Salesman-Rowell, Zone-2

List or summary of motion pictures licensed and rental terms

201	Charlie's Aunt	3/4	$67.50	
202	Dressed To Kill	3/4	20.00	
203	Wild Geese Calling	3/4	35.00	
204	Private Nurse	3/4	15.00	
205	Sun Valley Serenade	3/4	67.50	$205.00

EXHIBIT NO. 971

Distributor Twentieth Century-Fox Film Corp. Season 1941-42

Exhibitor AbeCorrin Theatre Alcazar, Syracuse, N. Y.

Contract application date Oct. 24, 41 Approval date 10-30-41 By H. Wobber

No. of pictures offered

No. of Pictures Licensed 5

Provisions, if any, re admission prices Evenings: Adults-18¢, Children-10¢) Net
Matinees: Adults-18¢, Children-10¢) Net

Run and clearance provisions

7 days after Cameo.
be played when available.

Other typewritten or handwritten clauses including riders, if any.

Exchange-Buffalo, Salesman Rowell-Zone-2

List or summary of motion pictures licensed and rental terms

201	Charlie's Aunt	2/3	$25.00	
202	Dressed To Kill	2/3	13.50	
203	Wild Geese Calling	2/3	17.50	
204	Private Nurse	2/3	11.25	
205	Sun Valley Serenade	2/3	25.00	92.25

EXHIBIT NO. 972

Distributor Twentieth Century-Fox Film Corp **Season** 1941-42

Exhibitor R. P. Merriman **Theatre** Franklin

Contract application date Oct. 24/41 **Approval date** 10-30-41 By H. Wobber

No. of pictures offered **No. of Pictures Licensed** 5

Provisions, if any, re admission prices Evenings: Adults -20¢, children-10¢)Net
Matinees: Adults-20¢ children-10¢) Net

Run and clearance provisions 7 days after Cameo- same availability as Elmwood.
To be played when available.

Other typewritten or handwritten clauses including riders, if any.
Exchange-Buffalo; Salesman-Rowell-Zone-2

List or summary of motion pictures licensed and rental terms

201	Charlie's Aunt	2/3	$30.00	
202	Dressed To Kill	2/3	20.00	
203	Wild Geese Calling	2-3	25.00	
204	Private Nurse	2/3	15.00	
205	Sun Valley Serenade	2/3	30.00	$120.00

5646

EXHIBIT NO. 973

Distributor Twentieth Century-Fox Film Corp. **Season** 1941-42

Exhibitor Matty Dale Amusement Corp.
By Louis Byer, Pres.
Theatre Hollywodd, Syracuse, N. Y.

Contract application date Oct. 24/41
Approval date 10-30-41 By H. Wobber

No. of pictures offered
No. of Pictures Licensed 5

Provisions, if any, re admission prices Evenings: Adults-22¢, Children-10¢)Net
Matinees: Adults-22¢, Children-10¢)Net

Run and clearance provisions 7 Days after Cameo.
To be played when available.

Other typewritten or handwritten clauses including riders, if any.
Exchange-Buffalo; Salesman-Rowell-Zone-2

List or summary of motion pictures licensed and rental terms

201	Charlie's Aunt	2/3,-	$ 37.50	
202	Dressed To Kill	2/3	17.50	
203	Wild Geese Calling	2/3	27.50	
204	Private Nurse	2/3	12.50	
205	Sun Valley Serenade	2/3	37.50	132.50

5647

EXHIBIT NO. 974

Distributor Twentieth Century-Fox Film Corp. **Season** 1941-42

Exhibitor Slotnick & Cantor
By S. P.Slotnick

Theatre Acme, Syracuse, N. Y.

Contract application date 11/28/41

Approval date 12/18/41 By H. Wobber

No. of pictures offered

No. of Pictures Licensed 5

Provisions, if any, re admission prices Evanings: Adults-18¢, Children-10¢

Run and clearance provisions

Available 7 days after Cameo-same availability as Happy Hour and Palace.
To be played as available, starting December 1941.

Other typewritten or handwritten clauses including riders, if any.

Exchange-Buffalo;Salesman-Rowell;,Zone-2

List or summary of motion pictures licensed and rental terms

201	Charlies' Aunt	2/3	$ 37.50	
202	Dressed To Kill	2/3	20.00	
203	Wild Geese Calling	2/3	30.00	
204	Private Nurse	2/3	15.00	
205	Sun Valley Serenade	2/3	37.50	140.00

5648

EXHIBIT NO. 975

Distributor Twentieth Century-Fox Film Corp. Season [illegible]41-42

Exhibitor S. P. Slotnick

Theatre Globe, Syracuse, N. Y.

Contract application date 11/28/41

Approval date 12-18-41 By H. Wobber

No. of pictures offered

No. of Pictures Licensed 5

Provisions, if any, re admission prices Evenings: Adults-18¢, Children-10¢

Run and clearance provisions Available 7 days after Cameo. Same availability as Happy Hour and Palace.
To be played as available starting December '41.

Other typewritten or handwritten clauses including riders, if any.
Exchange-Buffalo; Salesman-Rowell; Zone-2

List or summary of motion pictures licensed and rental terms

201	Charlies' Aunt	2/3	$. 27.50	
202	Dressed To Kill	2/3	15.00	
203	Wild Geese Calling	2/3	20.00	
204	Private Nurse	2/3	12.50	
205.	Sun Valley Serenade	2/3	27.50	102.50

5649

EXHIBIT NO. 976

Distributor Twentieth Century-Fox Film Corp. **Season** 1941-42

Exhibitor Slotnick & Cantor

by F. Cantor

Theatre Grant; Syracuse, N. Y.

Contract application date 1/5/42

Approval date 1-12-42

No. of pictures offered

No. of Pictures Licensed 5

Provisions, if any, re admission prices Evenings: Adults-15¢, children-10¢
Matinees: Adults-15¢, children-10¢

Run and clearance provisions

7 days after Cameo-same availability as Palace, Acme and Globe Theatre.
To be played when available.

Other typewritten or handwritten clauses including riders, if any.

Exchange-Buffalo; Salesman- Rowell; Zone-2

List or summary of motion pictures licensed and rental terms

201	Charlie's Aunt	2/3	20.00	
202	Dressed To Kill	2/3	12.50	
203	Wild Geese Calling	2/3	15.00	
204	Private Nurse	2/3	12.50	
205	Sun Valley Serenade	2/3	20.00	$80.00

If theatre closes permanently, unplayed portion of contract is void.

EXHIBIT NO. 977

Distributor Twentieth Century-Fox Film Corp. Season 1941-42

Exhibitor Mary A. Davidson by
James Constantino, Agent

Theatre Avon, Syracuse N. Y.

Contract application date 1/8/42

Approval date 1-21-42
By H. Wobber

No. of pictures offered

No. of Pictures Licensed 5

Provisions, if any, re admission prices Evenings: Adults-18¢ children-10¢
Matinees: Adults-18¢, children-10¢

Run and clearance provisions

7 days after third run- to be played when available.

Other typewritten or handwritten clauses including riders, if any,

Exchange-Buffalo; Salesman-Rowell; Zone-2

List or summary of motion pictures licensed and rental terms

201	Charlie's Aunt	2/3	$ 25.00	
202	Dressed To Kill	2/3	15.00	
203	Wild Geese Calling	2/3	20.00	
204	Private Nurse	2/3	12.50	
205	Sun Valley Serenade	2/3	25.00	$97.50

EXHIBIT NO. 978

Distributor Twentieth Century-Fox Film Corp Season 1941-42

Exhibitor Erin Theatre, Inc.
by Meyer Golding Pres.

Theatre Erin, Syracuse, N. Y.

Contract application date 4/3/42

Approval date 4-13-42 by H. Wobber

No. of pictures offered

No. of Pictures Licensed 5

Provisions, if any, re admission prices Evenings: Adults-22¢, children-10¢
Matinees: Adults-15¢ Children-10¢
Matinees: Sat. Sun & Hol. Adults-22¢ Children-10¢

Run and clearance provisions

7 days after fourth run.
To be played at rate of not less than one per week, starting Ajpril 24, 1942

Other typewritten or handwritten clauses including riders, if any,

Exchange-Buffalo; Salesman-Rowell; Zone-2

List or summary of motion pictures licensed and rental terms

201	Charlie's Aunt	2/3	$ 25.00	
202	Dressed To Kill	2/3	15.00	
203	Wild GeeseCalling	2/3	20.00	
204	Private Nurse	2/3	12.50	
205	Sun Valley Serenade	2/3	25.00	$97.50

EXHIBIT NO. 979

Distributor Twentieth Century-Fox Film Corporation

Season K-8, K-9 and K-10

Exhibitor Kallet Theatres, Inc. by S. J. Kallet

Theatre Regent, Syracuse, N Y.

Contract application date Aug. 8, 1940

Approval date Sept. 11, 1940 by Herman Wobber

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Evenings: Adults 25, children 10
Matinees: Adults 15, children 10

Run and clearance provisions

Second run Syracuse. 30 days after first run.
7 days ahead of third run.

Other typewritten or handwritten clauses including riders, if any.

Exchange-Buffalo; Salesman-Sydney Samson
All Provisions of the Standard Exhibition Contract for the Theatrical Seasons of 1940-41 1941-42 and 1942-43 shall be deemed part of this agreement.
10 photoplays on date to include Sunday.

List or summary of motion pictures licensed and rental terms

A-4	3/4	40%
B-6	3/4	35%
C-8	2/3/4	30%
D-12	2/3/4	$85.00
E-12	2/3/4	$60.00
F Remaining	2/3/4	$30.00

Groups "A", "B" and "C" 5% less if double feature.
This contract does not include such feature motion pictures to which the Distributor is required to obtain the consent or approval of the Producer thereof to the terms and conditions of licensing the exhibition thereof which will be licensed under separate contract.

EXHIBIT NO. 981 (1)

Distributor Loew's Incorporated
by Ralph Pielow

Season 1940-41

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Rialto or Strand
Amsterdam, N. Y.

Contract application date 9/6/40

Approval date 12/31/40

No. of pictures offered all

No. of Pictures Licensed all

Provisions, if any, re admission prices

Matinees: orchestra children 10;adults 25-30;balcony children 10; adults 30
Evenings: orchestra children 10;adults 30-40;balcony children 10; adults 30

Run and clearance provisions

1st run. 45 days in City of Amsterdam, N.Y.; 30 days over Broadalbin, Johnstown and Fonda, N. Y.

Other typewritten or handwritten clauses including riders, if any.

Exhibitor agrees to play and/or pay for 1 feature per week in order of rele if and as available, starting October 1, 1940.

Branch - Albany #27
Territory Letter - Office
Contract No. 4248

List or summary of motion pictures licensed and rental terms

4	4		40%	Sun-Mon-Tues-Wed
10	2/3		35%	
10	2/3		30%	
12	2/3		25%	
10	2/3	$75.00		
Balance	2/3	75.00		If played in Strand Theatre, rental t by $50.00 each.

License fee per Trailer: Black and White three & 50/100 dollars ($3.50), Technicolor five & 25/100 dollars ($5.25). Each trailer to be shipped to Exhibitor seven days in advance of the first playdate of the motion picture to which it relates; and to be returned by Exhibitor to Distributor's Exchange or as otherwise directed by Distributor not later than such first playdate.

Note: Provisions regarding short subjects not included.

EXHIBIT NO. 981 (2) 5654

Distributor Loew's Incorporated
by R. W. Maw

Season 1940-41

Exhibitor Schine Enterprises Corp.
by Geo. W. Lynch

Theatre Jefferson or Palace
Auburn, N. Y.

Contract application date 9/6/40

Approval date

No. of pictures offered all

No. of Pictures Licensed all

Provisions, if any, re admission prices
Matinee: children orch. 10, Sat-Sun. 10; adults 20 (SS 30)
children balcony 10, Sat-Sun. 10; adults 20 (ss 25)

Run and clearance provisions Evening: children orch. 10, adults 30
children balcony 10, adults 25.

2nd Run. 42 days after 1st run Auburn, N. Y.

Other typewritten or handwritten clauses including riders, if any.
Exhibitor agrees to play and/or pay for one feature per week in order of release if and as available, starting October 1, 1940.

Branch - Buffalo
Territory Letter - Office
Contract No. 4378 FT -

List or summary of motion pictures licensed and rental terms

4	2/3		
10(5-5)	2/3		40%
10	2/3	$60.00	35%
12	2/3	50.00	
10	2/3	40.00	
Balance	2/3	30.00	
		30.00	

License Fee per Trailer: Black and White Three 00/100 dollars ($3.00), Technicolor Four 50/100 dollars ($4.50). Each Trailer to be shipped to Exhibitor 7 days in advance of first playdate.

5655

EXHIBIT NO. 981 (3)

Distributor Loew's Incorporated
by Ralph Pielow

Season 1940-41

Exhibitor Schine-Benton Corp.
by L. Goldstein

Theatre Capitol

Contract application date 9/6/40

Approval date 12/31/40

No. of pictures offered all

No. of Pictures Licensed all

Provisions, if any, re admission prices

Matinee: orchestra children 10, adults 20(Sun.only)
Evening: orchestra children 10, adults 25-35

Run and clearance provisions

1st run.

Other typewritten or handwritten clauses including riders, if any.

Exhibitor agrees to play and/or pay for 1 feature per week in order of r
if and as available, starting October 1, 1940.

Branch - Albany #27
Territory Letter - Office
Contract No. 4268

List or summary of motion pictures licensed and rental terms

4	2		40%	Sun-Mon.
10	2		35%	Sun-Mon.
10	2	$40.00		
12	2	27.50		
10	2	20.00		
Balance	2	20.00		

License Fee per Trailer: Black and White two dollars ($2.00), Technicolo
three dollars ($3.00). Each Trailer to be shipped to Exhibitor seven day
in advance of the first playdate***

Note: Provisions regarding short subjects not included.

EXHIBIT NO. 981 (4)

Distributor Loew's Incorporated
by R. W. Maw

Season 1940-41

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Babcock
Bath, N. Y.

Contract application date 9/6/40

Approval date

No. of pictures offered all

No. of Pictures Licensed all

Provisions, if any, re admission prices
atinee:orch.children 10,adults 25(Sun-35);evenings:children 10,adults 35
balcony:children 10,adults 25(Sun-35);children evenings:10,adults 35

Run and clearance provisions
st Run. 30 days ahead of Hammondsport, N. Y.

Other typewritten or handwritten clauses including riders, if any.
xhibitor agrees to play and/or pay for one feature per week in order of elease if and as available, starting October 1, 1940.

ranch - Buffalo
erritory Letter - Office
ontract No. 4302-FST

List or summary of motion pictures licensed and rental terms

4	3		40%	SMT
10	2/3		35%	SM
10	2/3	$60.00		
12	2/3	45.00		
10	2/3	32.50		
alance	2/3	32.50		

License Fee per Trailer: Black and White Two 00/100 dollars ($2.00), Technicolor Three 00/100 dollars ($3.00). Each Trailer to be shipped to Exhibitor 7 days in advance of the first playdate***

ote: Provisions regarding short subjects not included.

EXHIBIT NO. 981 (5)

Distributor Loew's Incorporated
by R. W. Maw

Season 1940-41

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Playhouse
Canandaigua, N. Y.

Contract application date 9/6/47

Approval date

No. of pictures offered all

No. of Pictures Licensed all

Provisions, if any, re admission prices

	MATINEE	EVENING
orchestra:	children 10, adults 25(Sun-35)	children 10; adults 35
Balcony:	children 10, adults 25	children 10; adults 25

Run and clearance provisions

1st Run. Clearance: 10 days ahead of Clifton Springs, N. Y.

Other typewritten or handwritten clauses including riders, if any.

Exhibitor agrees to play and/or pay for one feature per week in order of rel
if and as available, starting October 1, 1940.

Branch - Buffalo
Territory Letter - 0
Contract No. 4303

List or summary of motion pictures licensed and rental terms

4	3		40%	SMT
10	2/3		35%	SM
10	2/3	$90.00		
12	2/3	65.00		
10	2/3	40.00		
Balance	2/3	40.00		

License Fee per Trailer: Black and White Two 00/100 dollars ($2.00), Technic
Three 00/100 dollars ($3.00). Each Trailer to be shipped to Exhibitor 7 day
in advance of the first playdate***

Note: Provisions regarding short subjects not included.

EXHIBIT NO. 981 (6)

stributor Loew's Incorporated
by Ralph Pielow

Season 1940-41

hibitor Schine-Benton Corp.
by L. Goldstein

Theatre Ritz
Granville, N. Y.

ntract application date 9/6/40

Approval date 12/31/40

o. of pictures offered all

No. of Pictures Licensed all

ovisions, if any, re admission prices

MATINEE

chestra: children 10, adults 25 (sun. only.)

EVENING

children: 15, adults 25-35

lcony:

n and clearance provisions

t run.

her typewritten or handwritten clauses including riders, if any,

hibitor agrees to play and/or pay for 1 feature per week in order of release and as available, starting October 1, 1940.

anch - Albany #27
rritory Letter - Office
ntract No. 4269

t or summary of motion pictures licensed and rental terms

4	2			
0	2		40%	Sun-Mon.
0	2		35%	Sun-Mon.
2	2	$65.00		
0	2	42.50		
	2	30.00		
alance	2	20.00		

icense Fee per Trailer: Black and White Two dollars ($2.00), Technicolor hree dollars ($3.00). Each trailer to be shipped to Exhibitor seven days n advance of the first playdate***

ote: Provisions regarding short subjects not included.

EXHIBIT NO. 981 (7)

Distributor Loew's Incorporated
by Ralph Pielow

Season 1940-41

Exhibitor Schine-Benton Corp.
by L. Goldstein

Theatre State
Mechanicville, New York

Contract application date 9/6/40

Approval date 12/31/40

No. of pictures offered all

No. of Pictures Licensed all

Provisions, if any, re admission prices

MATINEE	EVENING
Orchestra: children 10, adults 25	children 10, adults 25-35

Run and clearance provisions

1st run.

Other typewritten or handwritten clauses including riders, if any.

Exhibitor agrees to play and/or pay for 1 feature per week in order of release if and as available, starting October 1, 1940.

Branch - Albany #27
Territory Letter - Office
Contract No. 4270

List or summary of motion pictures licensed and rental terms

4	3		40%	Sun-Mon-Tues.
10	2/3		35%	Sun-Mon. or Sun-Mon-Tues.
10	2/3	$125.00		
12	2/3	80.00		
10	2/3	40.00		
Balance	2/3	40.00		

License Fee per Trailer: Black and White two & 50/100 dollars ($2.50), Technicolor three & 75/100 dollars ($3.75). Each trailer to be shipped to Exhibitor seven days in advance of the first playdate***

Note: Provisions regarding short subjects not included.

EXHIBIT NO. 981 (8)

Distributor Loew's Incorporated
by R. W. Maw

Season 1940-41

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Fox or Palace or State
Corning, N. Y.

Contract application date 9/6/40

Approval date

No. of pictures offered all

No. of Pictures Licensed all

Provisions, if any, re admission prices

FOX	MATINEE	EVENING
Orchestra;	children 10, adults 25 (Sun-35)	children 10, adults 35
Balcony:	children 10, adults 25	children 10, adults 25

Run and clearance provisions

1st run. 30 days ahead of Painted Post and Addison. 45 days on city of Corning, N. Y.

Other typewritten or handwritten clauses including riders, if any.

Exhibitor agrees to play and/or pay for one feature per week in order of release if and as available, starting October 1, 1940.

Branch - Fuffalo
Territory Letter - Office
Contract No. 4304

List or summary of motion pictures licensed and rental terms

4	3		40%	SSM
10	2/3		35%	
10	2/3		30%	
12	2/3	$70.00		
10	2/3	45.00		
Balance	2/3	45.00		

License Fee per Trailer: Black and White Three 00/100 ($3.00), Technicolor Four 50/100 dollars ($4.50). Each Trailer to be shipped to Exhibitor 7 days in advance of the first playdate***

Note: Provisions regarding short subjects not included.

EXHIBIT NO. 981 (9)

Distributor Loew's Incorporated by R. W. Maw

Season 1940-41

Exhibitor Schine Enterprises Corp. by Geo. V. Lynch

Theatre State or Temple Cortland, N. Y.

Contract application date 9/6/40

Approval date

No. of pictures offered all

No. of Pictures Licensed all

Provisions, if any, re admission prices

	MATINEE	EVENING
Orchestra;	children 10, adults 24(Sun-40)	children 10, adults 40
Balcony:	children 10, adults 25	children 10, adults 25

Run and clearance provisions

1st run. 30 days ahead of Marathon and Homer, N. Y.

Other typewritten or handwritten clauses including riders, if any.

Exhibitor agrees to play and/or pay for one feature per week in order of lease if and as available, starting October 1, 1940.

Branch - Buffalo
Territory Letter - Office
Contract No. 4304

List or summary of motion pictures licensed and rental terms

4	3		40%	SMT
10	2/3		35%	
10	2/3		30%	
12	2/3		25%	
10	2/3	$45.00		
Balance	2/3	45.00		

License Fee per Trailer:, Black and White, State, $4.00, Temple, $2.00, Technicolor, $6.00, $3.00. Each Trailer to be shipped to exhibitor seve days in advance of the first playdate of the motion picture to which it r lates.

EXHIBIT NO. 981 (10)

Distributor Loew's Incorporated
by R. W. Maw

Season 1940-41

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Rialto or Temple
E. Rochester or Fairport, N. Y.

Contract application date 9/6/40

Approval date

No. of pictures offered all

No. of Pictures Licensed all

7

Provisions, if any, re admission prices

	MATINEE	EVENING
Orchestra:	children 10, adults 25	children 10, adults 25
Balcony:	children 10, adults 25	children 10, adults 25

Run and clearance provisions

1st. First run East Rochester and Fairport. 30 days after first run Rochester, N. Y.

Other typewritten or handwritten clauses including riders, if any.

Exhibitor agrees to play and/or pay for one feature per week in order of release if and as available, starting October 1, 1940.

Branch - Buffalo
Territory Letter - Office
Contract No. 4314

List or summary of motion pictures licensed and rental terms

4	2/3		40%	SM
10	2/3		35%	SM
10	2/3	$60.00		
12	2/3	40.00		
10	2/3	22.50		
Balance	2/3	22.50		

License Fee per Trailer: Black and White, $2.00; Technicolor $3.00. Each trailer to be shipped to exhibitor seven days in advance of the first play-date***

EXHIBIT NO. 981 (11)

Distributor Loew's Incorporated
by R. W. Maw

Season 1940-41

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Rialto or Temple
E. Rochester or Fairport, N. Y.

Contract application date 9/6/40

Approval date

No. of pictures offered all

No. of Pictures Licensed all

Provisions, if any, re admission prices

	MATINEE	EVENING
Orchestra:	children 10, adults 25	children 10, adults 25
Balcony:	children 10, adults 25	children 10, adults 25

Run and clearance provisions

2nd Run East Rochester or Fairport.

Other typewritten or handwritten clauses including riders, if any.

Exhibitor agrees to play and/or pay for one feature per week in order of
lease if and as available.

Branch - Buffalo
Territory Letter - Office
Contract No. 4315

List or summary of motion pictures licensed and rental terms

4	2/3			
10 (5-5)	2/3		40%	SM
10	2/3	$65.00	35%	SM
12	2/3	50.00		
10	2/3	35.00		
10	2/3	20.00		
Balance	2/3	20.00		

License Fee per Trailer: Black and White $2.00, Technicolor $3.00. Each Trailer to be shipped to Exhibitor....days in advance of the first play-date***

EXHIBIT NO. 981 (12)

Distributor Loew's Incorporated
by R. W. Maw.

Season 1940-41

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Geneva or Regent
Geneva, N. Y.

Contract application date 9/6/40

Approval date

No. of pictures offered all

No. of Pictures Licensed all

Provisions, if any, re admission prices

	MATINEE	EVENING
Orchestra:	children 10, adults 25 (Sun-40)	children 10, adults 40
Balcony:	children 10, adults 25 (Sun-30)	children 10, adults 30

Run and clearance provisions

1st Run. 7 days ahead of Penn Yan, N.Y. 30 days ahead of Seneca Falls, Waterloo, Phelps, Clifton Springs, Lyons & Palmyra, N. Y.

Other typewritten or handwritten clauses including riders, if any,

Exhibitor agrees to play and/or pay for one feature per week in order of release if and as available, starting October 1, 1940.

Branch - Buffalo
Territory Letter - Office
Contract No. 4306

List or summary of motion pictures licensed and rental terms

4	3		
10	2/3	40%	SMT
10	2/3	35%	
12	2/3	30%	
10	2/3	25%	
	2/3	$47.50	
Balance	2/3	47.50	

License Fee per Trailer: Black and White, Geneva $4.00, Regent $2.00, Technicolor $6.00, $3.00. Each Trailer to be shipped to Exhibitor 7 days in advance of the first playdate***

Note: Provisions regarding short subjects not included.

EXHIBIT NO. 981 (13)

Distributor Loew's Incorporated
by Ralph Pielow

Season 1940-41

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Paramount or Rialto
Glens Falls, N. Y.

Contract application date 9/6/40

Approval date 12/31/40

No. of pictures offered all

No. of Pictures Licensed all

Provisions, if any, re admission prices

	MATINEE	EVENING
Paramount:	children 10, adults 15-25	children 10, adults 25-40
Rialto:	children 10, adults 20-25	children 10, adults 25-40

Run and clearance provisions

1st run. 45 days over 2nd run; 14 days over Hudson Falls, N. Y.; 7 days over Lake George, N. Y.

Other typewritten or handwritten clauses including riders, if any.

Exhibitor agrees to play and/or pay for one feature per week in order of r
lease if and as available, starting October 1, 1940.

Branch - Albany #27
Territory Letter - Office
Contract No. 4251

List or summary of motion pictures licensed and rental terms

4	4		40%	If Rialto, Sun-Mon-Tues-Wed. If Paramount, Sat-Sun- Mon-Tues.
10	4		35%	If Rialto, Sun-Mon-Tues-Wed. If Paramount, Sat-Sun-Mon-Tues.
10	3		30%	If Rialto, Sun-Mon-Tues If Paramount, Sat-Sun-Mon.
12	2/3		25%	
10	2/3	$50.00		
Balance	2/3	50.00		

License Fee per Trailer: Black and White three & 50/100 ($3.50) dollars, Technicolor five & 25/100 dollars ($5.25). Each Trailer to be shipped to Exhibitor seven days in advance of the first playdate***

Note: Provisions regarding short subjects not included.

EXHIBIT NO. 981 (14)

Distributor Loew's Incorporated
by Ralph Pielow

Season 1940-41

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Empire
Glens Falls, N. Y.

Contract application date 9/6/40

Approval date 12/31/40

No. of pictures offered all

No. of Pictures Licensed all

Provisions, if any, re admission prices

	MATINEE	EVENING
Orchestra:	children 10, adults 15	children 10, adults 15-25
Sun,	children 10, adults 15-25	children 10, adults 15-25

Run and clearance provisions

2nd run; 60 days after 1st run. 30 days over third run.

Other typewritten or handwritten clauses including riders, if any.

Exhibitor agrees to play and/or pay for one feature per week in order of release if and as available, starting as available 60 days after 1st run.

Branch - Albany #27
Territory Letter - Office
Contract No. 4250

List or summary of motion pictures licensed and rental terms

4	2/3		40% Sun-Mon-.or - Tues-Wed-Thurs..
10	2/3	$80.00	Dist. has privilege of designating five pictures from this group at 35% of gross to be played Sun-Mon. or Tues-Wed-Thurs.
10	2/3	50.00	
12	2/3	40.00	
10	2/3	30.00	
Balance	2/3	30.00	

License Fee per Trailer: Black and White One & 50/100 dollars ($1.50), Technicolor two & 25/100 dollars($2.25). Each Trailer to be shipped to Exhibitor seven days in advance of the first playdate***

EXHIBIT NO. 981 (15)

Distributor	Loew's Incorporated by Ralph Pielow	Season	1940-41
Exhibitor	Schine Enterprises Corp. by Geo. V. Lynch	Theatre	Glove or Hippodrome Gloversville, N. Y.
Contract application date	9/6/40	Approval date	12/31/40
No. of pictures offered	all	No. of Pictures Licensed	all

Provisions, if any, re admission prices

	MATINEE	EVENING
Glove	children 10, adults 25	children 10, adults 35
Hippodrome	children 10, adults 25	children 10, adults 25

Run and clearance provisions

1st run. 30 days in City of Gloversville, N. Y.; 30 days over Johnstown, Northville, Fonda, Broadalbin and Sacandaga Park, N. Y.

Other typewritten or handwritten clauses including riders, if any.

Exhibitor agrees to play and/or pay for one feature per week in order of release if and as available, starting Oct. 1, 1940.

Branch - Albany #27
Territory Letter - Office
Contract No. 4252

List or summary of motion pictures licensed and rental terms

4	4	40%	Sun-Mon-Tues-Wed.
10	2/3	35%	
10	2/3	30%	
12	2/3	25%	
10	2	$60.00	
Balance	2	60.00	

License Fee per Trailer: Glove, $3.00; Hippodrome $2.00. Technicolor, Glove $4.50, Hippodrome $3.00. Each trailer to be shipped to Exhibitor days in advance of the first playdate***

Note: Provisions regarding short subjects not included.

EXHIBIT NO. 981 (16)

stributor	Loew's Incorporated by Ralphh Pielow	Season	1940-41
hibitor	Schine Enterprises Corp. by Geo. V. Lynch	Theatre	Hippodrome, Gloversville, N. Y.
ontract application date	9/6/40	Approval date	12/31/40
o. of pictures offered	all	No. of Pictures Licensed	30

ovisions, if any, re admission prices

MATINEE	EVENING
Orchestra: children 10, adults 25	children 10, adults 25

n and clearance provisions

2nd run.

her typewritten or handwritten clauses including riders, if any.

To be played as available.

Branch: Albany #27
Territory Letter : Office
Contract No. 4253

t or summary of motion pictures licensed and rental terms

4	2/3		40% Mid-Week
10	2/3	$100.00	Distributor has the privilege of designating five pictures in this group at 35% of gross to be played 2/3 days, mid-week.
10	2/3	75.00	
6	2/3	50.00	

icense Fee per Trailer: Black and White $2.00, Technicolor $3.00. Each railer to be shipped to Exhibitor seven days in advance of the first laydate***

EXHIBIT NO. 981 (17)

Distributor Loew's Incorporated by Ralph Pielow **Season** 1940-41

Exhibitor Schine Enterprises Corp. by Geo. V. Lynch **Theatre** State, Hamilton, N. Y.

Contract application date 9/6/40 **Approval date** 12/31/40

No. of pictures offered all **No. of Pictures Licensed** all

Provisions, if any, re admission prices

	MATINEE	EVENING
Orchestra:	children 10, adults 25	children 10, adults 30
Sun.	children 10, adults 30	children 10, adults 30

Run and clearance provisions

1st run. 14 days ahead of Waterville and 21 days ahead of Oriskany Falls, New York.

Other typewritten or handwritten clauses including riders, if any.

Exhibitor agrees to play and/or pay for one feature per week in order of release if and as available, starting October 1, 1940.

Branch - Albany #27
Territory Letter - Off.
Contmact No. - 4254

List or summary of motion pictures licensed and rental terms

4	2/3		40%	Sun-Mon. or Sun-Mon-Tues.
10	2/3		35%	Sun-Mon. or Sun-Mon-Tues.
10	2/3	$80.00		
12	2/3	60.00		
10	2	35.00		A total of eight pictures may be selected from the 5th and 6th classifications to play one day at $25.00 each.
Balance	2	32.50		

License Fee per Trailer: Black and White, $2.00, Technicolor $3.00. Each trailer to be shipped to Exhibitor seven days in advance of the first playdate***

Note: Provisions regarding short subjects not included.

EXHIBIT NO. 981 (18)

stributor Loew's Incorporated
by Ralph Pielow

Season 1940-41

hibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Liberty
Herkimer, N. Y.

ontract application date 9/6/40

Approval date 12/31/40

o. of pictures offered all

No. of Pictures Licensed all

rovisions, if any, re admission prices

	MATINEE	EVENING
Orchestra:	children 10, adults 25	Children 10, adults 25-35

n and clearance provisions

1st run Herkimer; 21 days after 1st run Utica, N. Y. 10 days ahead of llion, N. Y.

her typewritten or handwritten clauses including riders, if any.

xhibitor agrees to play and/or pay for one feature per week in order of elease if and as available, starting October 1, 1940.

ranch - Albany #27
rritory Letter - Office
ontract No. 4255

st or summary of motion pictures licensed and rental terms

4	3		40%	Sun-Mon-Tues.
10	2/3		35%	Sun-Mon. or Sun-Mon-Tues.
10	2/3	$100.00		
12	2/3	65.00		
10	2/3	45.00		
Balance	2/3	45.00		

License Fee per Trailer: Black and White $2.00, Technicolor $3.00. Each Trailer to be shipped to Exhibitor seven days in advance of the first playdate***

ote: Provisions regarding short subjects not included.

EXHIBIT NO. 981 (19)

Distributor Loew's Incorporated
by Ralph Pielow

Season 1940-41

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Strand, Hudson Falls, N. Y.

Contract application date 9/6/40

Approval date 12/31/40

No. of pictures offered all

No. of Pictures Licensed all

Provisions, if any, re admission prices

	MATINEE	EVENING
Orchestra:	children 10, adults 15-25	children 10, adults 20-30
Sun:	children 10, adults 20-30	children 10, adults 20-30

Run and clearance provisions

1st run Hudson Falls, N. Y. 14 days after 1st run Glens Falls, N. Y.
14 days over Ft. Edward, N. Y.

Other typewritten or handwritten clauses including riders, if any.

Exhibitor agrees to play and/or pay for one feature per week in order of release if and as available, starting October 1, 1940.

Branch - Albany #27
Territory Letter - Office
Contract No. 4256

List or summary of motion pictures licensed and rental terms

4	3		40%	Sun-Mon-Tues.
10	2/3		35%	Sun-Mon. or Sun-Mon-Tues.
10	2/3	$45.00		
12	2/3	30.00		
10	2/3	25.00		
Balance	2/3	25.00		

License Fee per Trailer: Black and White $2.00, Technicolor $3.00. Each Trailer to be shipped to Exhibitor seven days in advance of the first playdate.

Note: Provisions regarding short subjects not included.

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EXHIBIT NO. 981 (20)

Distributor	Loew's Incorporated by Ralph Pielow	Season	1940-41
Exhibitor	Schine Enterprises Corp. by Geo. V. Lynch	Theatre	Rialto Little Falls, N. Y.
Contract application date	9/6/40	Approval date	12/31/40
No. of pictures offered	all	No. of Pictures Licensed	all

Provisions, if any, re admission prices

	MATINEE	EVENING
Orchestra:	children 10, adults 25	children 10, adults 25-35

Run and clearance provisions

1st run Little Falls, N. Y.
14 days ahead of Dolgeville and St. Johnsville, N. Y.

Other typewritten or handwritten clauses including riders, if any.

Exhibitor agrees to play and/or pay for one feature per week in order of release if and as available, starting October 1, 1940.

Branch -- Albany #27
Territory Letter - Office
Contract No. 4258

List or summary of motion pictures licensed and rental terms

4	3	40%	Sun-Mon-Tues.
10	2/3	35%	Sun-Mon. or Sun-Mon-Tues.
10	2/3	$110.00	
12	2/3	75.00	
10	2/3	45.00	
Balance	2/3	42.50	If played one day rental, $40.00 each.

License Fee per Trailer: Black and white $2.00, Technicolor $3.00. Each Trailer to be shipped to Exhibitor seven days in advance of the first playdate***

Note: Provisions regarding short subjects not included.

EXHIBIT NO. 981 (21)

Distributor Loew's Incorporated
by R. W[illegible]law

Season 1940-41

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Palace, Rialto or Hi-Art
Lockport, N. Y.

Contract application date 9/6/40

Approval date

No. of pictures offered all

No. of Pictures Licensed all

Provisions, if any, re admission prices

	MATINEE	EVENING
Orchestra:	children 10, adults 25 (Sun-40)	children 10, adults 40
Balcony:	children 10, adults 25 (Sun-30)	children 10, adults 30

Run and Clearance provisions

1st run. 30 days ahead of Middlesport and Newfane. 50 days City of Lockport New York.

Other typewritten or handwritten clauses including riders, if any.

Exhibitor agrees to play and/or pay for one feature per week in order of release if and as available, starting October 1, 1940.

Branch - Buffalo
Territory Letter- Office
Contract No. 4307

List or summary of motion pictures licensed and rental terms

4	3		40%	SMT
10	2/3		35%	
10	2/3		30%	
12	2/3		25%	
10	2/3	$50.00		
Balance	2/3	50.00		

License Fee per Trailer: Black and White, Palace $4.00, Rialto $1.50, Technicolor, $6.00, $2.25. Each Trailer to be shipped to Exhibitor .... days in advance of the first playdate***

Note: Provisions regarding short subjects not included.

EXHIBIT NO. 981 (22)

tributor Loew's Incorporated
by R. W. Maw

Season 1940-41

hibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Rialto or Hi-Art
Lockport, N. Y.

ontract application date 9/6/40

Approval date

o. of pictures offered all

No. of Pictures Licensed all

rovisions, if any, re admission prices

	MATINEE	EVENING
rchestra:	children 10, adults 15	children 10, adults 20

un and clearance provisions

nd run. 30 days over third run. 50 days after first run Lockport, N. Y.

ther typewritten or handwritten clauses including riders, if any,

xhibitor agrees to play and/or pay for one feature per week in order of release if and as available, starting October 1, 1940.

ranch - Buffalo
erritory Letter - Office
ontract No. 4390 FNT -

st or summary of motion pictures licensed and rental terms

4	2/3		40%	FS
0	2/3		35%	FS
0	2/3	$65.00		
2	2/3	45.00		
0	2/3	25.00		
alance	2/3	25.00		

icense Fee per Trailer: Black and White $1.50, Technicolor $2.25. Each
railer to be shipped to Exhibitor seven days in advance of the first
laydate***

EXHIBIT NO. 981 (23)

Distributor Loew's Incorporated
by Ralph Pielow

Season 1940-41

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Malone, Malone, N. Y.

Contract application date 9/6/40

Approval date 12/31/40

No. of pictures offered all

No. of Pictures Licensed all

Provisions; if any, re admission prices

	MATINEE	EVENING
Orchestra;	children 10; adults 20	children 10, adults 20-30
Sun.	children 10, adults 20-30	children 10, adults 20-30

Run and clearance provisions

1st run Malone, N. Y. 30 days ahead of Chateaugay and Ft. Covington, N. Y.

Other typewritten or handwritten clauses including riders, if any.

Exhibitor agrees to play and/or pay for one feature per week in order of release if and as available, starting October 1, 1940.

Branch - Albany #27
Territory Letter - Office
Contract No. 4259

List or summary of motion pictures licensed and rental terms

4	3	40%	Sun-Mon-Tues.
10	2/3	35%	Sun-Mon. or Sun-[illegible]-Tues.
10	2/3	$90.00	
12	2/3	60.00	
10	2/3	35.00	
Balance	2/3	32.50	

License Fee per Trailer: Black and White $2.00, Technicolor $3.00. Each Trailer to be shipped to Exhibitor seven days in advance of the first playdate***

Note: Provisions regarding short subjects not included.

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EXHIBIT NO. 981 (24)

Distributor Loew's Incorporated
by Ralph Pielow

Season 1940-41

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Massena, Massena, N. Y.

Contract application date 9/6/40

Approval date 12/31/40

No. of pictures offered all

No. of Pictures Licensed all

Provisions, if any, re admission prices

	MATINEE	EVENING
Orchestra:	children 10, adults 25	children 10, adults 25-35

Run and clearance provisions

1st run. 45 days ahead of 2nd run; 30 days ahead of Norfolk and Norwood, N.Y.

Other typewritten or handwritten clauses including riders, if any.

Exhibitor agrees to play and/or pay for one feature per week in order of release if and as available, starting October 1, 1940.

Branch - Albany #27
Territory Letter - Office
Contract No. 4260

List or summary of motion pictures licensed and rental terms

4	3		40%	Sun-Mon-Tues.
10	2/3		35%	Sun-Mon. or Sun-Mon-Tues.
10	2/3	$90.00		
12	2/3	65.00		
10	2/3	35.00		
Balance	2/3	25.00		

License fee per Trailer: Black and White, $2.00, Technicolor, $3.00. Each Trailer to be shipped to Exhibitor seven days in advance of the first playdate***

Note: Provisions regarding short subjects not included.

8166½

EXHIBIT NO. 981 (25)

Distributor Loew's Incorporated
by Ralph Pielow

Season 1940-41

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Colonia, Norwich, N. Y.

Contract application date 9/6/40

Approval date 12/31/40

No. of pictures offered all

No. of Pictures Licensed all

Provisions, if any, re admission prices

	MATINEE	EVENING
Orchestra:	children 10, adults 25	children 10, adults 30
Sunday:	children 10, adults 30	children 10, adults 30

Run and clearance provisions

1st run. 60 days over 2nd run; 30 days ahead of New Berlin and Sher
14 days ahead of Sidney, N. Y.

Other typewritten or handwritten clauses including riders, if any.

Exhibitor agrees to play and/or pay for one feature per week in orde
release if and as available, starting 10/1/40.

Branch - Albany #27
Territory Letter - Office
Contract No. 4261

List or summary of motion pictures licensed and rental terms

4	3		40%	Sun-Mon-Tues.
10	2/3		35%	
10	2/3		30%	
12	2/3		25%	
10	2	$35.00		
Balance	2	35.00		

License Fee per Trailer: Black and White $2.00, Technicolor $3.00.
Trailer to be shipped to Exhibitor seven days in advance of the firs
playdate***

Note: Provisions regarding short subjects not included.

EXHIBIT NO. 981 (26)

Distributor Loew's Incorporated
by R. W. Maw

Season 1940-41

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Capitol
Newark, N. Y.

Contract application date 9/6/40

Approval date

No. of pictures offered all

No. of Pictures Licensed all

Provisions, if any, re admission prices

	MATINEE	EVENING
Orchestra:	children 10, adults 25 (Sun-35)	children 10, adults 35
Balcony:	children 10, adults 25	children 10, adults 25

Run and clearance provisions

1st. 14 days ahead of Lyons, Palmyra and Clyde, N. Y.

Other typewritten or handwritten clauses including riders, if any.

Exhibitor agrees to play and/or pay for one feature per week in order of release if and as available, starting October 1, 1940.

Branch - Buffalo
Territory Letter - Office
Contract No. 4308

List or summary of motion pictures licensed and rental terms

4	3		40%	SMT
10	2/3		35%	SM
10	2/3	$90.00		
12	2/3	65.00		
10	2/3	35.00		
Balance	2/3	35.00		

License Fee per Trailer: Black and White $2.00, Technicolor $3.00. Each Trailer to be shipped to Exhibitor....days in advance of the first playdate***

Note: Provisions regarding short subjects not included.

EXHIBIT NO. 981 (27)

Distributor Loew's Incorporated
by Ralph Pielow

Season 1940-41

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Strand or Pontiac
Ogdensburg, New York

Contract application date 9/6/40

Approval date 12/31/40

No. of pictures offered all

No. of Pictures Licensed all

Provisions, if any, re admission prices

	MATINEE	EVENING
Orchestra:	children 10, adults 25	children 10, adults 30-40
Sunday:	children 10, adults 30-40	children 10, adults 30-40

Run and clearance provisions

1st run. 14 Days ahead of Canton, N. Y.

Other typewritten or handwritten clauses including riders, if any.

Exhibitor agrees to play and/or pay for one feature per week in order of release if and as available, starting Oct. 1, 1940.

Branch - Albany #27
Territory Letter - Office
Contract No. 4262

List or summary of motion pictures licensed and rental terms

4	3		40%	Sun-Mon-Tues.
10	2/3		35%	
10	2/3		30%	
12	2/3		25%	
10	2/3	$40.00		
Balance	2/3	40.00		

License Fee per Trailer: Black and White $2.00, Technicolor $3.00. Eac
Trailer to be shipped to Exhibitor seven days in advance of the first playdate***

NOTE: Provisions regarding short subjects not included.

EXHIBIT NO. 981 (28)

Distributor Loew's Incorporated
by R. W. Maw

Season 1940-41

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Strand or Capitol
Oswego, N. Y.

Contract application date 9/6/40

Approval date

No. of pictures offered all

No. of Pictures Licensed all

Provisions, if any, re admission prices

	MATINEE	EVENING
Orchestra:	children 10, adults 25 (Sun-40)	children 10, adults 40
Balcony:	children 10, adults 25 (Sun-30)	children 10, adults 30

Run and clearance provisions

1st Run. 14 Days ahead of Mexico, N. Y. 30 days ahead of Minetto. 14 days ahead of Fulton and 7 days ahead of Pulaski, N. Y.

Other typewritten or handwritten clauses including riders, if any.

Exhibitor agrees to play and/or pay for one feature per week in order of release if and as available, starting October 1, 1940.

Branch - Buffalo
Territory Letter - 0
Contract No. 4309

List or summary of motion pictures licensed and rental terms

4	3		40%	SSM
10	2/3		35%	
10	2/3		30%	
12	2/3		25%	
10	2/3	$35.00-Capitol 50.00-Strand		
Balance	2/3	35.00-Capitol 50.00-Strand		

License Fee per Trailer: Black and White, Strand $4.00, Capitol $2.00, Technicolor, $6.00, $3.00. Each Trailer to be shipped to Exhibitor ....days in advance of the first playdate***

NOTE: Provisions regarding short subjects not included.

EXHIBIT NO. 981 (29)

Distributor Loew's Incorporated
by R. W. Maw

Season 1940-41

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Elmwood, Penn Yan, N. Y.

Contract application date 9/6/40

Approval date

No. of pictures offered all

No. of Pictures Licensed all

Provisions, if any, re admission prices

	MATINEE	EVENING
Orchestra:	children 10, adults 25 (Sun-35)	children 10, adults 35
Balcony:	children 10, adults 25	children 10, adults 25

Run and clearance provisions

1st Run. 30 Days ahead of Dundee, 7 days after Geneva, N. Y.

Other typewritten or handwritten clauses including riders, if any.

Exhibitor agrees to play and/or pay for one feature per week in order of release if and as available, starting October 1, 1940.

Branch - Buffalo
Territory Letter - Office
Contract No. 4310

List or summary of motion pictures licensed and rental terms

4	3		40%	SMT
10	2/3		35%	5-SMT 5-SM
10	2/3	$80.00		
12	2/3	55.00		
10	2/3	35.00		
Balance	2/3	35.00		

License Fee per Trailer: Black and White $3.00, Technicolor $4.50. Eac Trailer to be shipped to Exhibitor seven days in advance of the first playdate***

NOTE: Provisions regarding short subjects not included.

EXHIBIT NO. 981 (30)

Distributor Loew's Incorporated
by R. W. Maw

Season 1940-41

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Auditorium, Perry, N. Y.

Contract application date 9/6/40

Approval date

No. of pictures offered all

No. of Pictures Licensed all

Provisions, if any, re admission prices

	MATINEE	EVENING
Orchestra:	children 10, adults 24(Sun-30)	children 10, adults 30
Balcony:	children 10, adults 25	children 10, adults 25

Run and clearance provisions

-1st Run. 1st Run, Perry, N. Y.

Other typewritten or handwritten clauses including riders, if any.

Exhibitor agrees to play and/or pay for one feature per week in order of release if and as available, starting October 1, 1940.

Branch - Buffalo
Territory Letter - Office
Contract No. 4311

List or summary of motion pictures licensed and rental terms

4	3		40%	SMT
10	2/3		35%	SM
10	2/3	$65.00		
12	2/3	45.00		
10	2/3	30.00		
Balance	2/3	30.00		

License Fee per Trailer: Black and White $3.00, Technicolor $4.50. Each Trailer to be shipped to Exhibitor seven days in advance of the first playdate***

NOTE: Provisions regarding short subjects not included.

EXHIBIT NO. 981 (31)

Distributor Loew's Incorporated
by R. W. Maw

Season 1940-41

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Cameo, Rochester, N. Y.

Contract application date 9/6/40

Approval date

No. of pictures offered all

No. of Pictures Licensed all

Provisions, if any, re admission prices

	MATINEE	EVENING
orchestra:	children 10, adults 25	children 10, adults 25
balcony:	children 10, adults 15	children 10, adults 15

Run and clearance provisions

Sub, 14 Days ahead of Lyric and Empress Theatres.

Other typewritten or handwritten clauses including riders, if any.

Exhibitor agrees to play and/or pay for one feature per week in ord of release if and as available, starting October 1, 1940.

Branch - Buffalo
Territory Letter - O
Contract No. 4317

List or summary of motion pictures licensed and rental terms

4 -	3		40%	SMT
10-5)	3		35%	SMT
5)		$115.00		
10	2/3	85.00		
12	2/3	55.00		
10	2/3	30.00		
Balance	2/3	30.00		

License Fee per Trailer: Black and White $2.00, Technicolor $3.00. Each Trailer to be shipped to Exhibitor seven days in advance of the first playdate***

EXHIBIT NO. 981 (32)

Distributor Loew's Incorporated
by R. W. Maw

Season 1940-41

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Grand, Rochester, N. Y.

Contract application date 9/6/40

Approval date

No. of pictures offered all

No. of Pictures Licensed all

Provisions, if any, re admission prices

	MATINEE	EVENING
Orchestra:	children 10, adults 15	children 10, adults 15
Balcony:	children 10, adults 15	children 10, adults 15

Run and clearance provisions

Sub. 7 days ahead of Family and Empire Theatres.

Other typewritten or handwritten clauses including riders, if any.

Exhibitor agrees to play and/or pay for one feature per week in order of release if and as available, starting October 1, 1940.

Branch - Buffalo
Territory Letter - Office
Contract No. 4319

List or summary of motion pictures licensed and rental terms

4	2			
10-5)	2		40%	SM
5)			35%	
10		$75.00		SM
12	2	60.00		
10	2	45.00		
	2	30.00		
Balance	2	30.00		

License Fee per Trailer: Black and White $2.00, Technicolor $3.00. Each Trailer to be shipped to Exhibitor....days in advance of the first playdate***

EXHIBIT NO. 981 (33)

Distributor Loew's Incorporated
by R. W. Maw

Season 1940-41

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Lake, Rochester, N. Y.

Contract application date 9/6/40

Approval date

No. of pictures offered all

No. of Pictures Licensed all

Provisions, if any, re admission prices

	MATINEE	EVENING
Orchestra:	children 10, adults 20	children 10, adults 20
Balcony:	children 10, adults 20	children 10, adults 20

Run and clearance provisions

Sub. Subsequent Run, Rochester, N. Y.
If theatre operates on one change a week policy commitment to be reduced 50%.

Other typewritten or handwritten clauses including riders, if any.

Exhibitor agrees to play and/or pay for one feature per week in order of release if and as available, starting October 1, 1940

Branch - Buffalo
Territory Letter - Office
Contract No. 4397FNT

List or summary of motion pictures licensed and rental terms

4	2/3		40%	Incl. Sunday.
10	2/3	$50.00		
10	2/3	35.00		
12	2/3	25.00		
10	1/2	15.00		
Balance	1/2	15.00		

License Fee per Trailer: Black and White $1.50, Technicolor $2.25. Each Trailer to be shipped to Exhibitor seven days in advance of the first playdate***

EXHIBIT NO. 981 (34)

Distributor Loew's Incorporated
by R. W. Maw
Season 1940-41

hibitor Schine Enterprises Corp.
by Geo. V. Lynch
Theatre Liberty, Rochester, N. Y.

ontract application date 9/6/40
Approval date

o. of pictures offered all
No. of Pictures Licensed all

rovisions, if any, re admission prices

	MATINEE	EVENING
Orchestra:	children 10, adults 25	children 10, adults 25
Balcony:	children 10, adults 25	children 10, adults 25

n and clearance provisions

Sub. Third run after Riviera or Liberty. Second run to be played within 21 days clearance or run waived.

ther typewritten or handwritten clauses including riders, if any.

Exhibitor agrees to play and/or pay for one feature per week in order of release if and as available, starting October 1, 1940.

Branch - Buffalo
Territory Letter - Office
Contract No. 4398FMT

ist or summary of motion pictures licensed and rental terms

4	3		40%	SMT
10-5	3		35%	SMT
5		$125.00		
10	2/3	90.00		
12	2/3	70.00		
10	2/3	40.00		
Balance	2/3	40.00		

License Fee per Trailer: Black and White $2.50, Technicolor $3.75.. Each Trailer to be shipped to Exhibitor seven days in advance of the first playdate***

EXHIBIT NO. 981 (35)

Distributor Loew's Incorporated
by R. W. [illegible]

Season 1940-41

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Madison, Rochester, N. Y.

Contract application date 9/6/40

Approval date

No. of pictures offered all

No. of Pictures Licensed all

Provisions, if any, re admission prices

	MATINEE	EVENING
Orchestra:	children 10, adults 15	children 10, adults 25(Loge-30)
Balcony:	children 10, adults 15	children 10, adults 15

Run and clearance provisions

Sub. 4 Days ahead of Webster Theatre. 14 Days after State or Dixie, third run, if and as available. State or Dixie must play within 14 days of second run or their clearance will be waived. 7 Days ahead of all subsequent runs if played within 14 days of availability or clearance waived.

Other typewritten or handwritten clauses including riders, if any.

Exhibitor agrees to play and/or pay for one feature per week in order of release if and as available, starting October 1, 1940.

Branch - Buffalo
Territory Letter - Office
Contract No. 4399FNT

List or summary of motion pictures licensed and rental terms

4	3		40%	SMT
10-5	3		35%	SMT
5		$135.00		
10	2/3	110.00		
12	2/3	75.00		
10	2/3	35.00		
Balance	2/3	35.00		

License Fee per Trailer: Black and White $3.00, Technicolor $4.50. Each Trailer to be shipped to Exhibitor seven days in advance of the first playdate***

EXHIBIT NO. 981 (36)

Distributor Loew's Incorporated
by R. W. Maw

Season 1940-41

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Monroe, Rochester, N. Y.

Contract application date 9/6/40

Approval date

No. of pictures offered all

No. of Pictures Licensed all

Provisions, if any, re admission prices

	MATINEE	EVENING
Orchestra:	children 10, adults 25	children 10, adults 25
Balcony:	children 10, adults 15	children 10, adults 25

Run and clearance provisions

Sub. 4 Days ahead of Webster Theatre. 7 Days ahead of all subsequent runs if played within 14 days of availability or clearance waived. 14 Days after State or Dixie, third run, if and as available.. State or Dixie must play within 14 days of subsequent run or their clearance will be waived.

Other typewritten or handwritten clauses including riders, if any.

Exhibitor agrees to play and/or pay for one feature per week in order of release if and as available, starting October 1, 1940.

Branch - Buffalo
Territory Letter - Office
Contract No. 4400FMT

List or summary of motion pictures licensed and rental terms

4	3		40%	SMT
10-5	3		35%	SMT
5		$115.00		
10	2/3	90.00		
12	2/3	65.00		
10	2/3	30.00		
Balance	2/3	30.00		

License Fee per Trailer: Black and White $3.00, Technicolor $4.50. Each Trailer to be shipped to Exhibitor seven days in advance of the first playdate...

EXHIBIT NO. 981 (97)

Distributor Loew's Incorporated
by R. W. Maw

Season 1940-41

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Riviera - Rochester, N. Y.

Contract application date 9/6/40

Approval date

No. of pictures offered all

No. of Pictures Licensed all

Provisions, if any, re admission prices

	MATINEE	EVENING
Orchestra:	children 10, adults 25	children 10, adults 25
Balcony:	children 10, adults 25	children 10, adults 25

Run and clearance provisions

2nd. 14 Days on all subsequent runs. 30 Days ahead of Lake; 45 days after first run Rochester. 14 Days ahead of Hub, Sea Breeze, N. Y.

Other typewritten or handwritten clauses including riders, if any.

Exhibitor agrees to play and/or pay for one feature per week in order of release if and as available, starting October 1, 1940.

Branch - Buffalo
Territory Letter - Office
Contract No. 4324

List or summary of motion pictures licensed and rental terms

4	3		40%	SMT
10	3		35%	
10	2/3		30%	
12	2/3	$100.00		
10	2/3	75.00		
Balance	2/3	75.00		

License Fee per Trailer: Black and White $4.00; Technicolor $6.00. Each Trailer to be shipped to Exhibitor seven days in advance of the first playdate***

EXHIBIT NO. 981 (38)

Distributor Loew's Incorporated
by R. W. Maw

Season 1940-41

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre State - Rochester, N. Y.

Contract application date 9/6/47

Approval date

No. of pictures offered all

No. of Pictures Licensed all

Provisions, if any, re admission prices

	MATINEE	EVENING
Orchestra:	children 10, adults 25	children 10, adults 25
Balcony:	children 10, adults 15	children 10, adults 15

Run and clearance provisions

2nd Run. 14 Days all subsequent runs. 30 Days ahead of Lake; 14 Days ahead of Hub, Sea Breeze. 45 Days after 1st Run Rochester.

Other typewritten or handwritten clauses including riders, if any.

Exhibitor agrees to play and/or pay for one feature per week in order of release if and as available, starting October 1, 1940.

Branch - Buffalo
Territory Letter - 0
Contract No. 4403FNT

List or summary of motion pictures licensed and rental terms

4	3		40%	SMT
10	3		35%	
10	2/3	$100.00		
12	2/3	75.00		
10	2/3	50.00		
Balance	2/3	50.00		

License Fee per Trailer: Black and White $2.50, Technicolor $3.75. Each Trailer to be shipped to Exhibitor seven days in advance of the first playdate***

EXHIBIT NO. 981 (39)

Distributor Loew's Incorporated
by R. W. Maw

Season 1940-41

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre West End - Rochester, N. Y.

Contract application date 9/6/49

Approval date

No. of pictures offered all

No. of Pictures Licensed all

Provisions, if any, re admission prices

	MATINEE	EVENING
Orchestra:	children 10, adults 20	children 10, adults 20
Balcony:	children 10, adults 15	children 10, adults 20

Run and clearance provisions

Sub. Open booking with Arnett.

Other typewritten or handwritten clauses including riders, if any.

Exhibitor agrees to play and/or pay for one feature per week in ord
of release if and as available, starting October 1, 1940.

Branch - Buffalo
Territory Letter - Office
Contract No. 4402 FMT

List or summary of motion pictures licensed and rental terms

4	3		40%	SMT
10-5	3		35%	SMT
5		$75.00		
10	2/3	50.00		
12	2/3	40.00		
10	2/3	20.00		
Balance	2/3	20.00		

License Fee per trailer: Black and White $2.00, Technicolor $3.00. Each Trailer to be shipped to Exhibitor seven days in advance of the first playdate***

EXHIBIT NO. 981 (40)

Distributor Loew's Incorporated
by R. W. Maw

Season 1940-41

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Andrews, Salamanca, N. Y.

Contract application date 9/6/40

Approval date

No. of pictures offered all

No. of Pictures Licensed all

Provisions, if any, re admission prices

	MATINEE	EVENING
Orchestra:	children 10, adults 25(Sun-35)	children 10, adults 35
Balcony:	children 10, adults 25	children 10, adults 25

Run and clearance provisions

1st Run. 30 Days ahead of Little Valley, Randolph and Ellicottville, N.Y.

Other typewritten or handwritten clauses including riders, if any.

Exhibitor agrees to play and/or pay for one feature per week in order of release if and as available, starting October 1, 1940.

Branch - Buffalo
Territory Letter - Office
Contract No. 4312

List or summary of motion pictures licensed and rental terms

4	3		40%	SMT
10	2/3		35%	5-SMT
				5-SM
10	2/3	$90.00		
[illegible]	2/3	60.00		
10	2/3	35.00		
Balance	2/3	35.00		

License Fee per Trailer: Black and White $2.00, Technicolor $3.00. Each Trailer to be shipped to Exhibitor seven days in advance of the first playdate.

NOTE: Provisions regarding short subjects not included.

EXHIBIT NO. 981 (41)

Distributor Loew's, Incorporated
by Ralph Pielow

Season 1940-41

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Pontiac - Saranac Lake, N. Y.

Contract application date 9/6/40

Approval date 12/31/40

No. of pictures offered all

No. of Pictures Licensed all

Provisions, if any, re admission prices

	MATINEE	EVENING
Orchestra:	children 10, adults 30	children 10, adults 25-40
Sunday:	children 10, adults 30	children 10, adults 25-40

Run and clearance provisions

1st Run. 14 days ahead of Lake Placid except during periods of December 24th to Jan. 24th and June 15th to Sept. 15th, when open booking shall exist. 45 days ahead of Saranac Inn.

Other typewritten or handwritten clauses including riders, if any.

Exhibitor agrees to play and/or pay for one feature per week in order of release if and as available, starting 10/1/40.

Branch - Albany #27
Territory Letter - Office
Contract No. 4264

List or summary of motion pictures licensed and rental terms

4	3		40%	Sun-Mon-Tues.
10	2/3		35%	Sun-Mon. or Sun-Mon-Tues.
10	2/3	$100.00		
12	2/3	60.00		
10	2/3	40.00		
Balance	2/3	40.00		

License Fee per Trailer: Black and White $2.00, Technicolor $3.00. Each Trailer to be shipped to Exhibitor seven days in advance of the first playdate***

NOTE: Provisions regarding short subjects not included.

EXHIBIT NO. 981 (42)

Distributor Loew's Incorporated
by R. W. Maw

Season 1940-41

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Strand - Seneca Falls, N. Y.

Contract application date 9/6/40

Approval date

No. of pictures offered all

No. of Pictures Licensed all

Provisions, if any, re admission prices

	MATINEE	EVENING
Orchestra:	children 10, adults 25(Sun-35)	children 10, adults 35
Balcony:	children 10, adults 25	children 10, adults 25

Run and clearance provisions

1st Run. 30 days ahead of Waterloo, N. Y.

Other typewritten or handwritten clauses including riders, if any.

Exhibitor agrees to play and/or pay for one feature per week in order of release if and as available, starting October 1, 1940.

Branch - Buffalo
Territory Letter - O
Contract No. 4313

List or summary of motion pictures licensed and rental terms

4	2		40%	SM
10	2		35%	SM
10	2	$60.00		
12	2	42.50		
10	2	35.00		
Balance	2	35.00		

License fee per Trailer: Black and White $2.00, Technicolor $3.00. Each Trailer to be shipped to Exhibitor seven days in advance of the first playdate***

NOTE: Provisions regarding short subjects not included.

EXHIBIT NO. 981 (43)

Distributor Loew's Incorporated
by Ralph Pielow

Season 1940-41

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre State, Tupper Lake, N.Y

Contract application date Sep. 6, 1940

Approval date Dec. 31, 1940

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices
Matinee - children .10 adults .25-35
Evening - children .10 adults .25-35

Run and clearance provisions

1st run - 45 days ahead of Tupper Lake Junction NY

Other typewritten or handwritten clauses including riders, if any:

Branch - Albany
Territory Letter - Office
Contract No. 4265
Exhibitor agrees to play and/or pay for one feature per week in order of release if and as available, starting 10/1/40.

List or summary of motion pictures licensed and rental terms

4	3		40%	Sun-Mon-Tues
10	2		35%	
10	2	$50.00		
12	2	35.00		
10	2	25.00		
Balance	2	25.00		

License fee per Trailer: B&W $2. Technicolor $3. Each to be shipped to Exhibitor 7 days in advance of 1st playdate ***

Note: Provision regarding Short Subjects not included.

EXHIBIT NO. 981 (44)

stributor Loew's Incorporated
by Ralph Pielow

Season 1940-41

hibitor Schine Enterprises Corp.
By Geo. V. Lynch

Theatre Avon or Olympic, Watertown, N.Y.

ntract application date Sep. 6, 1940

Approval date Dec. 31, 1940

. of pictures offered All

No. of Pictures Licensed All

ovisions, if any, re admission prices
Avon - Matinee - children .10:adults .25-Sun. .25&.35
Evening - children .10:adults .25-35:Sun. 35
lympic -Matinee-children .10:adults 15 &20: Sat. 15 & 25: Sun. .25
Evening - children 10; adults 20 & 25: Sat. & Sunday .25

n and clearance provisions

st run - 60 days over 2nd run; 30 days ahead of Adams, and Sacketts Harbor, N)

her typewritten or handwritten clauses including riders, if any.
laying Arrangement - Exhibitor agrees to play and/or pay for 1 feature
r week in order of release if and as available, starting Oct. 1, 1940.

ranch - Albany
erritory Letter:Office
ontract No. 4266

or summary of motion pictures licensed and rental terms

4	3		40%	Sun-Mon-Tues.
10	2/3		35%	
10	2/3		30%	
12	2/3		25%	
10	2/3	$50.00		
Balance	2/3	50.00		

ense fee per Trailer: B&W Avon $4. Olympic $2. Technicolor Avon $6.
pic $3. Each trailer to be shipped to Exhibitor 7 days in advance of
first playdate ***

: Provision regarding Short Subjects not included.

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EXHIBIT NO. 981 (45)

Distributor	Loew's Incorporated by Ralph Pielow	Season	1940-41
Exhibitor	Schine Enterprises Corp. by Geo. V. Lynch	Theatre	Olympic, Watertown, N.Y.
Contract application date	Sep. 6, 1940	Approval date	Dec. 31, 1940
No. of pictures offered	All	No. of Pictures Licensed	All

Provisions, if any, re admission prices Matinee - children 10 - adults 15-20: Sat. 15-25
Sun. 25
Evenings - children 10 - adults 20-25 Sat&Sun. 25

Run and clearance provisions

2nd Run.
60 days after 1st run
30 days ahead of 3rd run.

Other typewritten or handwritten clauses including riders, if any.

Playing Arrag. Exhibitor agrees to play and/or pay for one feature per week in order of release if and as available, starting as available.
Branch - Albany
Territory Letter - Office
Contract No. 4267

Pictures which play first run in this theatre will not be played as repeats second run.

List or summary of motion pictures licensed and rental terms

4	3		40%	Sat-Sun-Mon.
10	3		35%	Sat-Sun-Mon.
10	2/3	$100.		
12	2/3	65.		
10	2/3	40.		
Balance	2/3	40.		

License fee per Trailer - B&W $1.50: Technicolor $2.25: Each Trailer to be shipped to Exhibitor 7 days in advance of the first playdate***

~~[illegible]~~

EXHIBIT NO. 981 (46)

Distributor Loew's Incorporated
by Ralph Pielow

Season 1940-41

Exhibitor Schine-Benton Corp.
by L.Goldstein, Asst. Buyer

Theatre Capitol, Whitehall, N.Y.

Contract application date Sep. 6, 1940

Approval date Dec. 31, 1940

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Matinee: children 10 Adults 25 (Sun. only)
Evenings children 10 Adults 25-35

Run and clearance provisions

1st run

Other typewritten or handwritten clauses including riders, if any.

Playing Arrangements: Exhibitor agrees to play and/or pay for 1 feature per week in order of release if and as available, starting October 1, 1940.
Branch: Albany
Territory Letter Office
Contract No. 4271

List or summary of motion pictures licensed and rental terms

4	2		40%	Sun-Mon.
10	2		35%	Sun-Mon.
10	2	$70.00		
12	2	45.00		
10	2	30.00		
Balance	2	30.00		

License fee per Trailer: B&W $2.: Technicolor $3. Each Trailer to be shipped to Exhibitor 7 days in advance of the first playdate ***

Note: Provision regarding Short Subjects not included

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EXHIBIT NO. 981 (47)

Distributor	Loew's Incorporated by F. D. Drew, Res.Mgr.	**Season**	1940-41
Exhibitor	Schine Enterprises Corp. by Geo. V. Lynch	**Theatre**	Palace or Opera House, Ashland, Ohio
Contract application date	Sep. 6. 1940	**Approval date**	Jan. 28, 1941
No. of pictures offered	All	**No. of Pictures Licensed**	All

Provisions, if any, re admission prices

Opera House - Mat - child. 10: adults .20: Evenings-children .10:adult

Palace: Mat. -children .10: adults.20 wkd. 20-30 Sun.&Holidays.
Evenings: children .10; adults .30.

Run and clearance provisions

1st run. 7 days after Mansfield.
60 days over Ashland. If pictures play Palace; Ahead of Loudonville & Lo
If pictures play Opera House; no clearance over Loudonville & Lodi.

Other typewritten or handwritten clauses including riders, if any.

Exhibitor agrees to play and/or pay for one feature per week in order of release if and as available, as available.
Branch - Cleveland
TerritoryLetter F-Office
Contract No. 8666

List or summary of motion pictures licensed and rental terms

4	3		40%	SMT
10	2/3		35%	2/3 days including a Sunda
10	2/3	$95.00		
12	2/3	70.00		
10	2/3	50.00		
Balance	2/3	50.00		Play Palace - (If played O.House pri (to be $35.00 for 2/3

License fee per Trailer: B&W $2.50: Tech. $3.75. Each Trailer to be shipp to Exhibitor seven days in advance of the first playdate***

Note: Provision regarding Short Subjects not included.

EXHIBIT NO. 981 (48)

Distributor	Loew's Incorporated by E. M. Booth	Season	1940-41
Exhibitor	Schine Enterprises Corp. by Geo. V. Lynch	Theatre	Athena or Ohio or Court, Athens, O.
Contract application date	Sep. 6, 1940	Approval date	Dec. 30, 1940
No. of pictures offered	All	No. of Pictures Licensed	All

Provisions, if any, re admission prices
Matinee - children 10; adults 35- 25
Evenings children 10; adults 35

Run and clearance provisions

1st 30 days in Athens, O.

Other typewritten or handwritten clauses including riders, if any.

Exhibitor agrees to play and or pay for feature per in order of release if and as available, starting as available.
Branch: Cincinnati, O.
Territory Letter Off
Contract No. 7082

List or summary of motion pictures licensed and rental terms

4	3		40%	SMT
5)	3		35%	SMT
5)	2		35	S
10	2/3	$140.		
12	2/3	85.		
10	2	50.		
Balance	2	50.		

License fee per Trailer B&W $2.50; Technicolor $3.75. Each trailer to be shipped to Exhibitor 7 days in advance of the first playdate***

Note: Provision regarding Short Subjects not included.

EXHIBIT NO. 981 (49)

Distributor Loew's Incorporated
E. M. Booth

Season 1940-41

Exhibitor Schine Enterprises Corp.
Geo. V, Lynch

Theatre Holland, Bellefontaine, O.

Contract application date Sep. 6, 1940

Approval date Dec. 30, 1940

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Matinee - children .10 adults .25
Evening children .10 adults .25 balcony
.35 orchestra

Run and clearance provisions

1st run
60 days in Bellefontaine; 14 days ahead of West Liberty, De Graff and Lakeview, Ohi

Other typewritten or handwritten clauses including riders, if any,

Playing arrangements: as available.

Branch - Cincinnati, O.
Territory Letter: Off
Contract No. 7083

List or summary of motion pictures licensed and rental terms

4	3		40 Sun/Mon/Tue
10	2/3		35 Incl Sun
10	2/3	$100.	
12	2/3	75.	
10	2/3	45.	
Balance	2/3	45.	

License fee per Trailer B&W $2. Technicolor $3. Each Trailer to be shipped
Exhibitor 7 days in advance of the first playdate***

Note: Provision regarding Short Subjects not included.

EXHIBIT NO. 981 (50)

Distributor Loew's Incorporated
by F. L. Drew, Res. Mgr.

Season 1940-41

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Clazel or Lyric, Bowling Green, Ohio

Contract application date Sep. 6, 1940

Approval date

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices

Clazel - Matinee: children 10: student 21: adult 31
Evening: children 10; student 21; adult 31

Run and clearance provisions

first run. None

Other typewritten or handwritten clauses including riders, if any.

Exhibitor agrees to play and/or pay for one feature per week in order of release if and as available, starting as available.

Branch - Cleveland
Territory Letter F-Office
Contract No. 8667

List or summary of motion pictures licensed and rental terms

4	2/3		
10	2/3		40% 2/3 days incl. Sunday or 3 days mid-
10	2/3		35% 2/3 days incl. Sunday or 3 days week
12	2/3	$65.00	30% 2/3 days mid-
10	2/3	35.00	week
Balance	2/3	30.00	Play Clazel (not more than 5 may play

(Lyric 2/3 days at rental
(of $20. each

License fee per Trailer B&W $2. Technicolor $3. Each Trailer to be shipped to Exhibitor seven days in advance of the first playdate***

Note: Provision regarding Short Subjects not included.

EXHIBIT NO. 981 (51)

Distributor Loew's Incorporated
by F. D. Drew, Res. Mgr.

Season 1940-41

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Bucyrus or Southern
Bucyrus, Ohio

Contract application date Sep. 6, 1940

Approval date Jan. 2, 1941

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Bucyrus -
Matinee:Orchestra children.10. adults .25-Sun.Hol. 35:Evening-O/B childr
Balcony " .10 " .25 O-35: B-25 - adult

Run and clearance provisions

1st run - 7 days after Marion,O. or 28 days after Nat'l. Release.
Clearance:None

Other typewritten or handwritten clauses including riders, if any.

Exhibitor agrees to play and/or pay for one featuer per week in order of release if and as available, starting as available.

Branch - Cleveland
Territory letter - Office
Contract No. 8668

List or summary of motion pictures licensed and rental terms

4	3		40% Sun. Mon. Tues.
10	2/3		35% 2/3 days including Sunday
10	2/3	$85.00	
12	2/3	50.00	
10	2/3	35.00	
Balance	2/3	35.00	

License fee per Trailer B&W $2. Technicolor $3. Each Trailer to be shipped to Exhibitor seven days in advance of the first playdate***

Note: Provision regarding Short Subjects not included.

EXHIBIT NO. 981 (52)

Distributor Loew's Incorporated
by F. D. Drew, Res. Mgr.

Season 1940-41

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Strand, Delaware, Ohio

Contract application date Sep. 6, 1940

Approval date Jan.2, 1941

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices

Matinees: Children 10. Adults 26 Wkd. 30 Sun.&Holidays
Evenings: Children 10. Adults O.-35 Wkd. Sun & Holidays
B.-30 Wkd. 35 Sun.&Hol.

Run and clearance provisions

1st run 7 days after 1st run Columbus, O. Clearance:None
Available 28 days after nat'l. release

Other typewritten or handwritten clauses including riders, if any,

Exhibitor agrees to play and/or pay for one feature per week as available.
Branch - Cleveland
Territory Letter - Office
Contract No. 8669

List or summary of motion pictures licensed and rental terms

4	3	-	40% Sun.Mon.Tues.
5)	3	-	35% Sun.Mon.Tues.
5)	2/3	-	35% 2/3 days inc. Sun.
10	2/3	$90.00	
12	2/3	65.00	
10	2/3	40.00	
Balance	2/3	40.00	

License fee per Trailer B&W $2.50; Technicolor $3.25. Each Trailer to be shipped to Exhibitor seven days in advance of the first playdate***

Note: Provision regarding Short Subjects not included.

EXHIBIT NO. 981 (53)

Distributor Loew's Incorporated
by F. D. Drew, Res. Mgr.

Season 1940-41

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre State or Civic, Fostoria, Ohio

Contract application date Sep. 6, 1940

Approval date Jan. 2, 1941

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices

Civic: Mat.& Evening:Children 10: Adults 26

State: Matinee			State - Evenings		
Orch.	Children	.10	Orch.	Children	.10
	Adults	.25 Wkd.		Adults	.35
	Sun.&Hol.	35	Bal.	Children	.10
Bal.	Children	.10	"wkd.	Adults	.25
	Adults	.25	" Sat.Sundays		.35

Run and clearance provisions

1st run 60 days ahead of 2nd run.

Other typewritten or handwritten clauses including riders, if any.

Exhibitor agrees to play and/or pay for one feature per week in order of release if and as available, starting as available.
Branch - Cleveland
Territory F-Office
Contract No. 8670

List or summary of motion pictures licensed and rental terms

4	3	-	40%	Sun.Mon.Tues.
10	2/3	-	35%	2/3 days inc. Sunday
10	2/3	-	30%	2/3 days
12	2/3	-	25%	2/3 days
10	2/3	$35.00		
Balance	2/3	35.00		

License fee per Trailer: B&W $3. Technicolor $4.50. Each Trailer to be shipped to Exhibitor seven days in advance of the first playdate.

Note: Provision regarding Short Subjects not included.

EXHIBIT NO.981 (54)

Distributor Loew's Incorporated
by F. D. Drew, Res.Mgr.

Season 1940-41

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Kent or Ravenna,
Kent or Ravenna, Ohio

Contract application date Sep. 6, 1940

Approval date Jan. 2, 1941

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices

Kent- Matinee & Evenings - children .10
Adults - Matinee -.25 wkd. 35 Sun.
" Evenings .25 Bal. Orch.35 wkd.
.35 for both on Sunday

Run and clearance provisions

Ravenna Matinee & Evening - children .10
Adults Matinee -.25 wdk. 35 Sun.
Evening -.25 Bal. Orch. 35 wkd.
.35 for both on Sun.

1st run. 14 days after completion 1st run Akron. O.
Clearance: 21 days over Garrettsville, Ohio. Exhibitor to have 21 days to clear pictures.

Other typewritten or handwritten clauses including riders, if any.

Exhibitor agrees to play and/or pay for one feature per week in order of release if and as available, starting as available.

Branch - Cleveland
Territory Letter - F-Office
Contract No. 8672

List or summary of motion pictures licensed and rental terms

4	3	-	40%	Sun.Mon.Tue.
10	2/3	-	35%	2/3 days ic. Sunday
10	2/3	-	30%	2/3 days
12	2/3	-	25%	2/3 days
10	2/3	$50.	-	
Balance	2/3	50.00		

License fee per Trailer B&W $2.50:Technicolor $3.75. Each Trailer to be shipped to Exhibitor seven days in advance of the first playdate***

Note: Provision regarding Short Subjects not included.

EXHIBIT NO. 981 (55)

Distributor Loew's Incorporated
by F. D. Drew, Res. Mgr.

Season 1940-41

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Kent or Ravenna,
Kent or Ravenna, Ohio

Contract application date Sep. 6, 1940

Approval date Jan. 2, 1941

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices

Kent - Matinee & Evenings - children .10
Adults - Matinee - 25.wkd. 35 Sunday
" Evenings 25 Bal. Orch. 35 wkd.
35 for both on Sunday

Ravenna Matinee & Evening - children .10
Adults - Matinee - 25 wkd. 35 Sunday
Evenings 25 Bal. Orch. 35 wkd.
35 for each on Sunday

Run and clearance provisions

14 days after completion 1st run, Akron O.
2nd.

Clearance: 21 days over Garrettsville, O. Ex. to have 21 days to clear pictu

Other typewritten or handwritten clauses including riders, if any.

Exhibitor agrees to play and/or pay for one feature per week in order of rele
if and as available, starting as available.

Branch: Cleveland
Territory Letter FOffice
Contract No., 8673

List or summary of motion pictures licensed and rental terms

4	3 -		40% Sun. Mon. Tues.
10	2/3		35% 2/3 days inc. Sunday
10	2/3		30% 2/3 days
12	2/3	$55.00	
10	2/3	40.00	
Balance	2/3	40.00	

License fee per Trailer: B&W $2.50 Technicolor $3.75. Each Trailer is to be shipped to Exhibitor seven days in advance of the first playdate***

Note: Provision regarding Short Subjects not included.

EXHIBIT NO. 981 (56)

Distributor Loew's Incorporated
by F. D. Drew, Res. Mgr.

Season 1940-41

Exhibitor Schine Enterprises, Corp.
by Geo. V. Lynch

Theatre Medina or Princess, Medina, O.

Contract application date Sep. 6, 1940

Approval date Jan. 2, 1941

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Matinees:children 10. Adults 20.wkd. 30 Sun.
Evening children 10 Adults 30

Run and clearance provisions

7 days after 1st run Akron Ohio

None

Other typewritten or handwritten clauses including riders, if any.

Exhibitor agrees to play and/or pay for one feature per week in order of release if and as available, starting as available.

Branch:Cleveland
Territory Letter: F Office
Contract No. 8674

List or summary of motion pictures licensed and rental terms

4	3		40% Sun.Mon.Tues.
10	2/3		35% 2/3 days inc. Sunday
10	2/3	$80.00	
12	2/3	55.00	
10	2/3	30.00	
Balance	2/3	30.00	

License fee per Trailer B&W $1.50 Technicolor $2.25. Each Trailer to be shipped to Exhibitor seven days in advance of the first playdate***

Note: Provision regarding Short Subjects not included.

EXHIBIT NO. 981 (57)

Distributor Loew's Incorporated
by F. D. Drew, Res.Mgr.

Season 1940-41

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Vernon or Vine, Mt.Ver

Contract application date Sep. 6, 1940

Approval date Jan. 2, 1941

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices

Vine - Children 10¢
Adults - Matinee 20
Evening 20
Vernon - Children 10¢
Adults: Matinee 25 wkd.Sund. 25 B. 3
Evenings 25 B.wkd.
35 O.wkd.
35 Sunday

Run and clearance provisions

1st 45 days city of Mt.Vernon, Ohio

Other typewritten or handwritten clauses including riders, if any.

Exhibitor agrees to play and/or pay for one feature per week in order of release if and as available, starting as available.

Branch: Cleveland
Territory Letter: F-Office
Contract No. 8675

List or summary of motion pictures licensed and rental terms

4	3			
10	2/3		40%	Sun.Mon.Tues.
10	2/3		35%	2/3 days inc. Sunday
12	2/3		30%	2/3 days
10	2/3		25%	2/3 days
Balance	2/3	$35.00		
		35.00		

License fee per Trailer B&W $2. Technicolor $3. Each Trailer to be shipped to Exhibitor seven days in advance of the first playdate***

Note: Provision regarding Short Subjects not included.

EXHIBIT NO. 981 (58)

Distributor Loew's Incorporated
by F. D. Drew, Res.Mgr.

Season 1940-41

Exhibitor Schine Enterprises Corp.
Geo. V. Lynch

Theatre Vine, Mt. Vernon, Ohio

Contract application date Sep. 6, 1940

Approval date Jan. 2, 1941

No. of pictures offered 26

No. of Pictures Licensed All

Provisions, if any, re admission prices
Matinee: children .10 adults .20
Evening: children .10 adults .20

Run and clearance provisions

45 days after 1st run None

Other typewritten or handwritten clauses including riders, if any.

Exhibitor agrees to play and/or pay for one feature per EOWeek in order of release if and as available, starting as available.

Branch - Cleveland
Territory Letter: F Office
Contract Nol 8676

List or summary of motion pictures licensed and rental terms

2	3	
5	2/3	
5	2/3	$45.00
6	2/3	35.00
5	2/3	20.00
3	2/3	20.00
	2/3	

40% 3 days inc. Sun.
35% 2/3 days

Exhibitor to receive "A" split of product even numbers.

License fee per Trailer: B&W $1.50; Technicolor $2.25. Each trailer to be shipped to Exhibitor seven days in advance of the first playdate

EXHIBIT NO. 981 (59)

Distributor Loew's Incorporated
by F. D. Drew, Res. Mgr.

Season Season 1940-41

Exhibitor Schine Enterprises Cor.
by Geo. V. Lynch

Theatre Forum or Moose, Norwalk, Ohio

Contract application date Sep. 6, 1940

Approval date Jan. 2, 1941.

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Forum - Matinee

Children 10
Adults 25 wkd.
35 Sun.&Hol.

Evenings
Children .10
Students .25wkd
Adults .35wkd
Sundays .35

Run and clearance provisions

7 days after 1st run Sandusky, O. or 21 days after Natl. Release.
1st run

None.

Other typewritten or handwritten clauses including riders, if any.

Exhibitor agrees to play and/or pay for one feature per week in order of release if and as available, starting as available.

Branch: Cleveland
Territory Letter: F Office
Contract Number 8677

List or summary of motion pictures licensed and rental terms

4	3	-	40% Sun.Mon.Tues.
5}	3	-	Sun.Mon.Tues.
5}	2/3	-	2/3 days inc. Sun.
20	2/3	$75.	
12	2/3	55.	
10	2/3	35.	
Balance	2/3	35.	

License fee per Trailer: B&W $2.00: Technicolor $3. Each Trailer to be shipped to Exhibitor seven days in advance of the first playdate of the motion pictur to which it relates;

Note: Provision regarding Short Subjects not included.

EXHIBIT NO. 981 (60)

Distributor Loew's Incorporated
by E. M. Booth

Season 1940-41

Exhibitor Schine Enterprises Corp.
Geo. V. Lynch

Theatre Piqua or Miami, Piqua, Ohio

Contract application date Sep. 6, 1940

Approval date Dec. 30, 1940

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices
PIQUA
Matinee - children 10. Adults .35
Evening - children 10 Adults 35

Run and clearance provisions
MIAMI
Matinee - children 10 Adults 20
Evening - children 10 Adults 20

1st
14 days after 1st run Dayton, O. Open booking with Troy O.
Same availability as Troy, Ohio

Other typewritten or handwritten clauses including riders, if any.

Playing Arrangements. As available.

Branch: Cincinnati, O.
Territory Letter: Off.
Contract No. 7094

List or summary of motion pictures licensed and rental terms

4	3	40%	Sun. Mon. Tue.
10	2/3	35	Incl. Sun.
10	2/3	$80.00	
12	2/3	60.00	
10	2/3	40.00	
Balance	2/3	40.00	

License fee per Trailer B& W. Piqua $3. Technicolor Piqui $4.50
Miami $2. Miami $3.00
Each Trailer to be shipped to Exhibitor ***
Note: Provision regarding Short Subjects not included.

EXHIBIT NO. 981 (61)

Distributor Loew's Incorporated
F. D. Drew, Res. Mgr.

Season 1940-41

Exhibitor Schine Enterprises Corp.
Geo. V. Lynch

Theatre Castamba, Shelby, Ohio

Contract application date Sep. 6, 1940

Approval date Jan. 2, 1941

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Matinee-Sun. only-children .10:students 20:adult
Evening children .10: adults 27

Run and clearance provisions

7 days after 1st run Mansfield, Ohio
Ahead of Plymouth, O.

Other typewritten or handwritten clauses including riders, if any.

Exhibitor agrees to play and/or pay for one feature per week in order of release if and as available, starting as available.
Branch - Cleveland
Territory Letter F-Office
Contract Number 8678

List or summary of motion pictures licensed and rental terms

4	3	-	40%	Sun. Mon. Tues.
10	2/3	-	35%	2/3 days inc. Sun.
10	2/3	-	30%	2/3 days
12	2/3	$27.50		
10	2/3	22.50		
Balance	2/3	22.50		

License fee per Trailer: B&W $2.00:Technicolor $3.00. Each Trailer to shipped to Exhibitor seven days in advance of the first playdate

Note: Provision regarding Short Subjects not included.

EXHIBIT NO. 981 (62)

Distributor Loew's Incorporated
by F. D. Drew, Res. Mgr.

Season 1940-41

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Van Wert or Strand,
Van Wert, Ohio

Contract application date Sep. 6, 1940

Approval date Jan. 2, 1941

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices

VAN WERT
Matinee: children .10: adults Orch. .20 wkd. 25 Sun.
" Bal. .15 wkd. 20 Sun.
Evenings: children .10 adults .25

Run and clearance provisions

1st run Van Wert, O. Available 14 days after 1st run Lima, O. or 21 days after Nat'l Release.
None

Other typewritten or handwritten clauses including riders, if any.

Exhibitor agrees to play and/or pay for one feature per week in order of release if and as available, starting as available.

Branch - Cleveland
Territory Letter F-Office
Contract No. 8680

st or summary of motion pictures licensed and rental terms

4	3	-	40% Sun. Mon. Tues.
5)	3	-	35% Sun. Mon. Tues.
5)	2/3	-	35% 2/3 inc. Sun.
10	2/3	$100.	
12	2/3	65.	
10	2/3	40.	
Balance	2/3	40.	

License fee per Trailer: B&W $2.00:Technicolor $3.00. Each Trailer to be shipped to Exhibitor seven days in advance of the first playdate***

Note: Provision regarding Short Subjects not included.

EXHIBIT NO. 981 (63)

Distributor Loew's Incorporated
by F. D. Drew, Res. Mgr.

Season 1940-41

Exhibitor Schine Enterprises Corp.
Geo. V. Lynch

Theatre Ritz or Grand, Tiffin, Ohio

Contract application date Sep. 6, 1940

Approval date Jan. 2, 1941

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices

RITZ
Matinee: children .10-adults Orch. 25 wkd. 35 Sun.&Hol
" Bal. 25 wkd. 25 Sun.&Hol

Evening: children .10 adults Orch. 35:
Bal. 25

Run and clearance provisions

1st run
Clearance: 45 days over Tiffin, O.

Other typewritten or handwritten clauses including riders, if any.

Exhibitor agrees to play and/or pay for one feature per week in order of release if and as available, starting as available.

Branch: Cleveland
Territory Letter F-Office
Contract Number 8679

List or summary of motion pictures licensed and rental terms

4	3	-	40%	Sun.Mon.Tues.
5)	3	-	35%	Sun.Mon.Tues.
5)	2/3	-	35%	2/3 days inc. Sunday
10	2/3	$135.00		
12	2/3	90.00		
10	2/3	55.00		
Balance	2/3	55.00		

License fee per Trailer: B&W $2. Technicolor $3.00 Each Trailer to be shipped to Exhibitor seven days in advance of the first playdate***

Note: Provision regarding Short Subjects not included.

EXHIBIT NO. 981 (64)

Distributor Loew's Incorporated
by F. D. Drew, Res. Mgr.

Season 1940-41

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Wooster or Wayne, Wooster, Ohio

Contract application date Sep. 6, 1940

Approval date

No. of pictures offered All

No. of Pictures Licensed All

WOOSTER

Provisions, if any, re admission prices Mat. children .10:adults Orc.25 wkd. 35 Sun.&Holidays
" Bal.25
Eve. children .10 adults Orch. 35:Balcony .25

Run and clearance provisions

1st run 45 days city of Wooster
14 days ahead of Orville, Rittman, Wadsworth.

Other typewritten or handwritten clauses including riders, if any.

Exhibitor agrees to play and/or pay for one feature per week in order of release if and as available, starting as available.

Branch: Clevdand
Territory Letter F-Office
Contract No. 8682

List or summary of motion pictures licensed and rental terms

4	3	-	40%	Sun. Mon. Tues.
10	2/3	-	35%	2/3 days inc. Sunday
10	2/3	-	30%	2/3 days
12	2/3	-	25%	2/3 dys
10	2/3	$40.00	-	
Balance	2/3	40.00	-	

License fee per Trailer: B&W $2. Technicolor $3. Each Trailer to be shipped to Exhibitor seven days in advance of the first playdate***

Note: Provision regarding Short Subjects not included.

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EXHIBIT NO. 981 (65)

Distributor Loew's Incorporated
by E. M. Booth

Season 1940-41

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Viv or Hippodrome
Corbin, Ky.

Contract application date Sep. 6, 1940

Approval date Dec. 31, 1940

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices
DROME - 15¢ Matinee and evening
VIV - children .10
adults .15 Matinee -.25 Evening

Run and clearance provisions

1st 45 days in Corbin, Ky.

Other typewritten or handwritten clauses including riders, if any.

Exhibitor agrees to play and/or pay for as available.

Branch: Cincinnati,O.
Territory Letter Off
Contract No. 7084

List or summary of motion pictures licensed and rental terms

4	2		40% Sun/Mon
10	2		35% Sun/Mon
10	2	$65.	
12	2	40.	
10	2	25.	
Balance	2	25.	

License fee per Trailer: B&W $2.00: Technicolor $3. Each Trailer to be shipped to Exhibitor 7 days in advance of the first playdate of ***

Note: Provision regarding Short Subjects not included.

EXHIBIT NO. 981 (66)

Distributor Loew's Incorporated
by E. M. Booth

Season 1940-41

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Kentucky, Ben Ali or Strand,
Lexington, Ky.

Contract application date Sep. 6, 1940

Approval date Dec. 30, 1940

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices
Matinee - Children .10: Adults 25-37
Evening - Children .10: Adults 37

Run and clearance provisions
1st 60 days in Lexington, Ky.

Other typewritten or handwritten clauses including riders, if any,

Exhibitor agrees to play and/or pay for as available.

Branch: Cincinnati, O.
Territory Letter: Off.
Contract No. 7086

List or summary of motion pictures licensed and rental terms

4	4/7		40%	Incl. Sun.
16	3/4/7		35%	
10	3/4/7		30%	
12	3/4/7		25%	
10	3/4	$100.		
Bal.	3/4	100.		

License fee per Trailer; B&W $5. Technicolor $7.50 Each Trailer to be shipped to Exhibitor 7 days in advance of the first playdate***

Note: Provision regarding Short Subjects not included.

EXHIBIT NO. 981 (67)

Distributor Loew's Incorporated
by E. M. Booth

Season 1940-41

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Strand or State,
Lexington, Ky.

Contract application date Sep. 6, 1940

Approval date Dec. 30, 1940

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Matinee: children 10: adults 15 and 23
Evening: children 10: adults 15 and 23

Run and clearance provisions

Second 30 days over subsequent runs

Other typewritten or handwritten clauses including riders, if any.

Exhibitor agrees to play and/or pay for as available

Branch:	Territory Letter	Contract Number
Cincinnati, O	Off	7087

List or summary of motion pictures licensed and rental terms

4	3/4		40% SMT
10	3/4	$200.	
10	3/4	150.	
12	2/3	85.	
10	2/3	60.	
Bal,	2/3	60.	

License fee per Trailer: B&W $2.50: Technicolor $3:75. Each Trailer to b
shipped to Exhibitor 7 days in advance of the first playdate***

[illegible]

EXHIBIT NO. 981 (68)

Distributor Loew's Incorporated
by E. N. Booth

Season 1940-41

Exhibitor Schine Enterprises Corp.
Geo. V. Lynch

Theatre State or Opera House,
Lexington, Ky.

Contract application date Sep. 6, 1940

Approval date Dec. 30, 1940

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Matinee: children 10 - adults 10-15
Evening: children 10 - adults 15

Run and clearance provisions

[illegible] 30 days after 2nd run

Other typewritten or handwritten clauses including riders, if any.

Exhibitor agrees to play and/or pay for as available.

Branch - Cincinnati O.
Territory Letter: Off
Contract No. 7088

List or summary of motion pictures licensed and rental terms

4.	2/3		40% Inc. Sun.
10	2/3	$75.	
10	2/3	60.	
12	2/3	40.	
10	2/3	25.	
Bal.	2/3	25%.	

OP $1.50 OP $2.25
License fee per Trailer B&W S $2.50 Technicolor S $3.25. Each Trailer to be shipped to Exhibitor 7 days in advance of the first playdate***

[redacted]

5721

EXHIBIT NO. 981(69)

2

Distributor Loew's Incorporated
by E. M. Booth

Season 1940-41

Exhibitor Schines Enterprises Corp.
by Geo. V. Lynch

Theatre Opera House or State,
Lexington, Ky.

Contract application date Sep. 6, 1940

Approval date Dec. 30, 1940

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices
Matinee: children .10 adults 10-15
Evening: children 10 adults 15

Run and clearance provisions

4th Ahead of Ada Meade

Other typewritten or handwritten clauses including riders, if any.

Exhibitor agrees to play and/or pay for as available.

Branch :Cincinnati,O.
Territory Letter: Off
Contract No. 7089

List or summary of motion pictures licensed and rental terms

4	2		40%	Sun/Mon
10	2	$45.		
10	2	35.		
12	2	25.		
10	2	15.		
Balance	2	15.		

OP $1.50 OP $2.25
License fee per Trailer B&W S $2.50: Technicolor S $3.25. Each Trailer to be shipped to Exhibitor 7 days in advance of the first playdate***

[redacted]

5722

EXHIBIT NO. 981 (70)

Distributor Loew's Incorporated
by E. M. Booth

Season 1940-41

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Russell or Washington,
Maysville, Ky.

Contract application date Sep. 6, 1940

Approval date Dec. 30, 1940

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices
Matinee: children .10 adults .23
Evenings children .10 adults .23

Run and clearance provisions

1st Ahead of Flemingsburg, Augusta, Brookville, Ky, and Ripley Manchester & Georgetown, O. providing pictures are played in Maysville within 7 days of availability for Maysville, Ky.

Other typewritten or handwritten clauses including riders, if any.

Exhibitor agrees to play and/or pay for as available.

Branch: Cincinnati, O.
Territory Letter: Off
Contract No. 7090

List or summary of motion pictures licensed and rental terms

4	3		40% Sun/Mon/Tue.
10	2/3		35% Sun/Mon
10	2/3	$75.00	
12	2/3	50.00	
10	2/3	35.00	
Balance	2/3	25.00	

License fee per Trailer B&W $3.00: Technicolor $4.50. Each Trailer to be shipped to Exhibitor 7 days in advance ***

Not : Provision regarding Short Subjects not included.

EXHIBIT NO. 961 (71)

Distributor Loew's Incorporated
by E. M. Booth

Season 1940-41

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Bourbon or Paris,
Paris, Ky.

Contract application date Sep. 6, 1940

Approval date Dec. 30, 1940

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices
Matinee - children .10 adults 18-28 Orch. 15
Evenings - children .10 adults 28 Orch. 15-28

Run and clearance provisions

1st None

Other typewritten or handwritten clauses including riders, if any.

Exhibitor agrees to play and/or pay for as available.

Branch: Cincinnati, O.
Territory Letter - Off.
Contract No. 7092

List or summary of motion pictures licensed and rental terms

35.

4	2		40%	SM
10	2		35%	SM
10	2	$60.00		
12	2	40.00		
10	2	25.00		
Balance	2	25.00		

License fee per Trailer: B&W $1.50. Technicolor $2.25. Each Trailer to shipped to Exhibitor 7 days in advance of the first playdate***

Note: Provision regarding Short Subjects not included.

EXHIBIT NO. 981 (72)

Distributor Loew's Incorporated
by E. M. Booth

Season 1940-41

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Liberty, Pikeville, Ky.

Contract application date Sep. 6, 1940

Approval date Dec. 30, 1940

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Matinee - children .10 adults 18-25
Evenings- children .10 adults 18-25

Run and clearance provisions

1st None

Other typewritten or handwritten clauses including riders, if any.

Exhibitor agrees to play and/or pay for as available.

Branch: Cincinnati,O.
Territory Setter: Off.
Contract No. 7093

List or summary of motion pictures licensed and rental terms

4	2		40%	Sun/Mon
10	2		35%	Sun/Mon
10	2	$60.		
12	2	35.		
10	2	25.		
Balance	2	22.50		

License fee per Trailer B&W $1.50. Technicolor $2.25. Each Trailer to be shipped to Exhibitor 7 days in advance of the first playdate***

Note: Provision regarding Short Subjects not included.

EXHIBIT NO. 981 (73)

Distributor Loew's Incorporated by E. M. Booth

Season 1940-41

Exhibitor Schine Enterprises Corp. by Geo. V. Lynch

Theatre Madison or State, Richmond,Ky.

Contract application date Sep. 6, 1940

Approval date Dec. 30, 1940

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices

Matinee: children 10. adults 15-18-28
Evenings: children .10 adults 15-28

Run and clearance provisions

1st None

Other typewritten or handwritten clauses including riders, if any.

Exhibitor agrees to play and/or pay for as available.

Branch: Cincinnati,O.
Territory Letter Off.
Contract Number 7095

List or summary of motion pictures licensed and rental terms

4	2		40%	Sun/Mon.
10	2		35%	Sun/Mon.
10	2	$90.		
12	2	65.		
10	2	30.		
Balance	2	30.		

License fee per Trailer B&W. $1.50 Technicolor $2.25 Each Trailer is to be shipped to Exhibitor 7 days in advance of the first playdate***

Note: Provision regarding Short Subjects not included.

EXHIBIT NO. 981 (74)

Distributor Loew's Incorporated
by B. Meyer

Season 1940-41

Exhibitor Schine Enterprises Corporation
by Geo. V. Lynch

Theatre Arcade or State, Cambridge, Maryland

Contract application date Sep. 6, 1940

Approval date Nov. 16, 1940

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices

ARCADE: Matinee - children 10 - adults 15-25
Evening - children 15 - adults 20-35

STATE Matinee - children 10 - adults 15
Evening - children 10 - adults 25

Run and clearance provisions

Clearance - Ahead of Hurlock, Maryland

Other typewritten or handwritten clauses including riders, if any

Exhibitor agrees to play and/or pay for one feature per week in order of release if and as available, starting OCTOBER 15, 1940.

Branch: Washington, D.C.
Territory Letter: O
Contract No. 9398FST

List or summary of motion pictures licensed and rental terms

4	3		40%	TFS (ARCADE)
10	3		35%	(5 MTW (5 TFS (ARCADE)
10	2-3	$125.		
12	2-3	65.		
10	2-3	35.		
Balance	2-3	35.		

License fee per Trailer BW $3.00. Technicilor $4.50. Each Trailer to be shipped to Exhibitor seven days in advance of the first playdate***

Not : Provision regarding Short Subjects not included.

EXHIBIT NO. 981 (7[illegible])

Distributor Loew's Incorporated
by B. Meyer

Season 1940-41

Exhibitor Schine Enterprises Corporation
by Geo. V. Lynch

Theatre Avalon or New Theatres,
Easton, Maryland

Contract application date Sep. 6, 1940

Approval date Nov. 16, 1940

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices

AVALON: Matinee: children 10 - adults 25
Evening: children 15 adults 20-30-40

NEW: Matinee; children .10 - adults .20
Evening: children .10 - adults .25

Run and clearance provisions

FIRST RUN IN EASTON. MD.

14 days ahead of Hurlock, Maryland and (10)
days ahead of St. Michaels, Maryland

Other typewritten or handwritten clauses including riders, if any.

Exhibitor agrees to play and/or pay for one feature per week in order of release if and as available, starting OCTOBER 15, 1940.

Branch: Washington, D.C.
Territory Letter: 0
Contract Number 9399FST

Top bracket pictures to play the Avalon Theatre.

List or summary of motion pictures licensed and rental terms

4	3		40% TFS
10	3		35% (5 MTW - 5 TFS
10	2-3	$125.	
12	2-3	65.	
10	2-3	35.	
Balance	2-3	35.	

The rental for any picture of the "balance" groups played in the new hous
is to be $20.

License fee per Trailer B&W $2.00. Technicolor $3.00. Each Trailer to be
shipped to Exhibitor seven days in advance of the first playdate***

Note: Provision regarding Short Subjects not included.

EXHIBIT NO. P 981 (76)

Distributor Loew's Incorporated
by B. Meyer

Season 1940-41

Exhibitor Schine Enterprises Corporation
Geo. V. Lynch

Theatre Federal,
Federalsburg, Maryland

Contract application date Sep. 6, 1940

Approval date Nov. 16, 1940

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Matinee: children .10 adults .25
Evening: children .10 adults .25-35

Run and clearance provisions

FIRST RUN IN FEDERALSBURG — (14) DAYS AHEAD OF HURLOCK, MARYLAND

Other typewritten or handwritten clauses including riders, if any.

Exhibitor agrees to play and/or pay for one feature per week in order of release if and as available, starting OCTOBER 15, 1940.

Branch: Washington, D.C.
Territory Letter: O
Contract No. 9400 FST

List or summary of motion pictures licensed and rental terms

4	3		40% MTW
10	2		35% MT
10	2-3	$50.	
12	2-3	35.	
10	1-2	20.	
Balance	1-2	20.	

License fee per Trailer: B&W $1.50. Technicolor $2.25 Each Trailer to be shipped to Exhibitor seven days in advance of the first playdate***

Note: Provision regarding Short Subjects not included.

EXHIBIT NO. 981 (77)

Distributor Loew's Incorporated
by B. Meyer

Season 1940-41

Exhibitor Schine Enterprises
Corporation
by L. Goldstein

Theatre Hurlock,
Hurlock, Maryland

Contract application date Nov. 22, 1940

Approval date Dec. 14, 1940

No. of pictures offered All

No. of Pictures Licensed 26

Provisions, if any, re admission prices Matinee-None
Evening - children .10 adults .25

Run and clearance provisions

(14) days after Cambridge and Federalsburg, Maryland

Other typewritten or handwritten clauses including riders, if any.

Exhibitor agrees to play and/or pay for two features per month in order of release if and as available, starting NOVEMBER 15, 1940.

Branch: Washington, D.C.
Territory Letter: O
Contract Number 9424 FST

List or summary of motion pictures licensed and rental terms

4	1-2	40%
10	1-2	$15.
10	1-2	12.50
12	1-2	12.50
10	1-2	12.50
Balance	1-2	12.50

Exhibitor agrees to play a minimum of (26) features as follows: 4 @ 4
5 @ $15. and 17 @ $12.50.

License fee per Trailer: B&W $1.50. Technicolor $2.25. Each Trailer
shipped to Exhibitor seven days in advance of the first playdate...

[illegible]

EXHIBIT NO. 981 (78)

Distributor Loew's Incorporated
by B. Meyer

Season 1940-41

Exhibitor Schine Enterprises Corporation
by Geo. V. Lynch

Theatre Waller,
Laurel, Delaware

Contract application date Sep. 6, 1940

Approval date Nov. 16, 1940

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Matinee - children .10 adults .20
Evening - children .10 adults 25-30

Run and clearance provisions

(7) days after Seaford, Delaware, but to become available not later than (21) days after Seaford's availability.

Other typewritten or handwritten clauses including riders, if any.

Exhibitor agrees to play and/or pay for one feature per week in order of release if and as available, starting NOVEMBER 1, 1940.

Branch: Washington, D.C.
Territory Letter: 0
Contract Number 9402FST

List or summary of motion pictures licensed and rental terms

4	2		40%
5	2	$32.50	
5	2		
10	2	27.50	
12	2	22.50	
10	2	15.00	
Balance @	2	15.00	

This contract is effective with opening of new theatre.
License fee per Trailer: B&W $2.00. Technicolor $3. Each Trailer to be shipped to Exhibitor seven days in advance of the first playdate of the motion picture.

Note: Provision regarding Short Subjects not included.

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EXHIBIT NO. 961 (79)

Distributor Loew's Incorporated
by E.M.Booth

Season 1940-41

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Manring or Brownie,
Middlesboro, Ky.

Contract application date Sep. 6, 1940

Approval date Dec. 30, 1940

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices

MANRING: Mat. children .10 adults .25
Ev. children .10 adults .28
BROWNIE: Mat. children .10 adults .14
Ev. adults .14

Run and clearance provisions

1st None

Other typewritten or handwritten clauses including riders, if any.

Exhibitor agrees to play and/or pay for as available.
Branch: Cincinnati, O.
Territory Letter: Off.
Contract No. 7091

List or summary of motion pictures licensed and rental terms

4	2/3	40%	Incl. Sun
10	2/3	35%	Incl Sun
10	2/3	$70.	
12	2/3	50.	
10	2/3	30.	
Balance	2/3	20.	

License fee per Trailer B&W $2. Technicolor $3. Each Trailer to be shipped to Exhibitor 7 days in advance of the first playdate***

Note: Provision regarding Short Subjects not included.

EXHIBIT NO. 961 (80)

Distributor Loew's Incorporated
B. Meyer

Season 1940-41

Exhibitor Schine Enterprises Corporation
by Geo. V. Lynch

Theatre Plaza,
Milford, Delaware

Contract application date Sep. 6, 1940

Approval date Nov. 16, 1940

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Matinee - children .10 adults .25
Evening - children .10 adults 25-35

Run and clearance provisions

(10) days after first
run Wilmington, Delaware.

None

Other typewritten or handwritten clauses including riders, if any.

Exhibitor agrees to play and/or pay for one feature per week in order of release if and as available, starting October 15, 1940.

Branch: Washington D.C.
Territory Letter : O
Contract Number: 9401 FST

List or summary of motion pictures licensed and rental terms

4	3	40% MTW
10	2-3	35% MT or MTW
10	2-3	$70.
12	2-3	50.
10	2-3	35.
Balance	2-3	35.

License fee per Trailer: B.& W. $1.50. Technicolor $2.25. Each Trailer to be shipped to Exhibitor seven days in advance of the first playdate.

Note: Provision regarding Short Subjects not included.

EXHIBIT NO. 981 (81)

Distributor Loew's Incorporated
by B. Meyer

Season 1940-41

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Arcade or Wicomico,
Salisbury, Maryland

Contract application date Sep. 6, 1940

Approval date Nov. 16, 1940

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices

ARCADE
Children .10 adults 20-25 Orchestra:Matinee
Children .10 adults 30-35 Orchestra:Evening

Children .10 adults 15-20 Orchestra:Matinee
Children .10 adults 15-25 Orchestra:Evening

Run and clearance provisions

FIRST RUN IN SALSIBURY (14) days ahead of Delmar, Laurel, Berlin, Snow
Princess Anne, Pocomoke and Ocean City, Ma
(7) days ahead of Seaford, Delaware.

Other typewritten or handwritten clauses including riders, if any.

Exhibitor agrees to play and/or pay for one feature per week in order of release if and as available, starting October 1, 1940.

Branch: Washington, D.C.
Territory Letter - 0
Contract Number 9403FST

List or summary of motion pictures licensed and rental terms

4	4		40%	WTFS (ARCADE)
10	3		35%	TSF (ARCADE)
10	3		30%	(4-TFS 6-MTW or TFS
12	2-3		25%	
10	2-3	$60.		ARCADE
Balance	2-3	35.		WICOMICO

License fee per Trailer: B&W $3. Technicolor $4.50. Each Trailer to be shipped to Exhibitor seven days in advance of the first playdate***

Note: Provision regarding Short Subjects not included.

EXHIBIT NO. 981 (82)

Distributor Loew's Incorporated
by B. Meyer

Season 1940-41

Exhibitor Schine Enterprises Corporation
by L. Goldstein

Theatre Ritz
Salisbury, Maryland

Contract application date 11/22/40

Approval date 12/14/40

No. of pictures offered all

No. of Pictures Licensed 26

Provisions, if any, re admission prices
Evening: children 10, adults 20

Run and clearance provisions
30 days after first
White Run in Salisbury, Maryland.

Other typewritten or handwritten clauses including riders, if any.

Exhibitor agrees to play and/or pay for two features per month in order of release if and as available, starting December 15, 1940.

Branch - #4-Washington, D. C.
Territory Letter - 0
Contract No. 9432 FT

List or summary of motion pictures licensed and rental terms

4	1-2	40%	Exhibitor agrees to play a minimum of (26) features as follows: 4 at 40%; 5 at $15. and 17 at $12.50.
10	1-2	$15.00	
10	1-2	12.50	
12	1-2	12.50	
10	1-2	12.50	
Balance	1-2	12.50	

License Fee per Trailer: Black and White $1.50, Technicolor $2.25. Each Trailer to be shipped to Exhibitor seven days in advance of the first playdate**

EXHIBIT NO. 981 (83)

Distributor Loew's Incorporated
by B. Meyer

Season 1940-41

Exhibitor Schine Enterprises Corp.
by L. Goldstein

Theatre Marada, St. Michaels, Marylan

Contract application date 11/22/40

Approval date 12/14/40

No. of pictures offered all

No. of Pictures Licensed 26

Provisions, if any, re admission prices

Evening: children 10, adults 25

Run and clearance provisions

7 days after Easton, Md.

Other typewritten or handwritten clauses including riders, if any.

Exhibitor agrees to play and/or pay for two features per month in order of release if and as available, starting November 15, 1940.

Branch - #4-Washington, D. C.
Territory Letter - O
Contract No. 9245 FT

List or summary of motion pictures licensed and rental terms

4	1-2		40%
10	1-2	$15.00	
10	1-2	12.50	
12	1-2	12.50	
10	1-2	12.50	
Balance	1-2	12.50	

Exhibitor agrees to play a minim of (26) features as follows: 4 at 40%; 5 at $15. and 17 at $12.50.

License Fee per Trailer: Black and White $1.50, Technicolor $2.25. Each Trailer to be shipped to Exhibitor seven days in advance of the first playdate***

EXHIBIT NO. W-6 (1)
Warner Bros & First National Productions

ributor Vitagraph, Inc. Season 1936-37

hibitor Schine Theatrical Co., Inc. Theatre Rialto or Strand, Amsterdam, N.Y.

ntract application date 3/23/36 Approval date 4/3/36
by A. W. Smith, Jr.

o. of pictures offered 60 No. of Pictures Licensed 59

ovisions, if any, re admission prices Evenings: Rialto: 35, Strand-25
Matinees: Rialto: 25, Strand-15

n and clearance provisions

First run.
30 days ahead of Broadalbin and Fonda
30 days ahead of Johnstown

Other typewritten or handwritten clauses including riders, if any.

Salesman-Manager; Branch-Albany, N.Y. contract No. 9530
Subject to all terms and conditions of Master Agreement

List or summary of motion pictures licensed and rental terms

2	3/4	35% split	See below
7	2/3/4	30% split	
14	2/3	30% split	
12	2/3	$125.00	
24	2/3	$100.00	

Score: $2.50 per day

Trailers: 1 change per week $10.00
2 changes per week 5.00
3 changes per week 3.00
4 changes per week 2.00
5 changes per week 1.50

EXHIBIT NO. W-6 (2)
Warner Bros. & First National Productions.

Distributor Vitagraph, Inc.
by H. A. Seed

Season 1936-37

Exhibitor Schine Theatrical Co., Inc.
by George V. Lynch

Theatre Babcock, Bath, N. Y.

Contract application date March 23, 1936

Approval date April 3, 1936
by A. W. Smith, Jr.

No. of pictures offered 60

No. of Pictures Licensed 46

Provisions, if any, re admission prices
Evenings: Adults-25, Children-10
Matinees: Adults-15, Children-10

Run and clearance provisions

30 days on Hammondsport, Avoca, Savona, Prattsburg and Cohocton.

Other typewritten or handwritten clauses including riders, if any.

Salesman - H. A. Seed; Branch-Buffalo; Contract No. 2322

Exhibitor has the privilege of eliminating 13 combined W.B.-F.N. features from 1936-37 contract.

Subject to all terms and conditions of master agreement.

List or summary of motion pictures licensed and rental terms

2	2-3	35%, etc.
7	2-3	30%, etc.
4	2-3	$65.00
15	2-3	35.00
31	2-3	25.00

Score: $2.50 per run

Trailers:	1 change -	$10.00
	2 changes	5.00
	3 changes	3.00
	4 changes	2.00
	5 changes	1.50

EXHIBIT NO. W-6 (3)
Warner Bros. & First National Productions

Distributor Vitagraph, Inc.
by H. A. Seed

Season 1936-37

Exhibitor Schine Theatrical Co., Inc.
by George V. Lynch

Theatre Playhouse, Canandaigua, N. Y.

Contract application date March 23, 1936

Approval date April 3, 1936
by A. W. Smith, Jr.

No. of pictures offered 60

No. of Pictures Licensed 46

Provisions, if any, re admission prices

Run and clearance provisions

Other typewritten or handwritten clauses including riders, if any.

Salesman - H. A. Seed; Branch-Buffalo; Contract No. 2326

Exhibitor has the privilege of eliminating 13 combined WB-FN features from 1936-37 contract.

Subject to all terms and conditions of Master Agreement.

List or summary of motion pictures licensed and rental terms

2	2-3	35%, etc.
7	2-3	30%, etc.
6	2-3	$50.00
44	2-3	35.00

Score: $2.50 per run

Trailers:	1 change	$10.00
	2 changes	5.00
	3 changes	3.00
	4 changes	2.00
	5 changes	1.50

EXHIBIT NO. W-6 (4)
Warner Bros. & First National Productions

Distributor Vitagraph, Inc.
by R.S. Smith

Season 1936-37

Exhibitor Schine Theatrical Co., Inc.
by George V. Lynch

Theatre Strand, Carthage, N. Y.

Contract application date March 23, 1936

Approval date April 3, 1936
by A. W. Smith, Jr.

No. of pictures offered 60

No. of Pictures Licensed 59

Provisions, if any, re admission prices Evenings: Adults-25, Children-10
Matinees: Adults-20, Children-10

Run and clearance provisions First run.
Ninety days over City of Carthage.
Fourteen days over Lowville.

Other typewritten or handwritten clauses including riders, if any.

Salesman-Manager; Branch-Albany N. Y. Contract No. 9532.

Subject to all terms and conditionsof Master Agreement.

List or summary of motion pictures licensed and rental terms

2	2/3	35% to split	See below
7	2/3	30% to split	
4	1/2	$50.00	
10	1/2	25.00	
36	1/2	17.50	

Score: $2.50 per run

Trailers: 1 change per week $10.00
2 changes per week 5.00
3 changes per week 3.00
4. changes per week 2.00
5 changes per week 1.50

EXHIBIT NO. W-6 (5)
Warner Bros & First National Productions

Distributor Vitagraph, Inc.
by H. A. Seed

Season 1936-37

Exhibitor Schine T heatrical Co., Inc.
by George V. Lynch

Theatre State, Corning, N Y.

Contract application date March 23, 1936

Approval date April 3, 1936
by A. W. Smith, Jr.

No. of pictures offered 60

No. of Pictures Licensed 40

Provisions, if any, re admission prices Evenings: Adults-25, Children-10
Matinees: Adults-20, Children-10

Run and clearance provisions Second run
Thirty days on Painted Post, Addison
Sixty days on City ofCorning
Sixty days on third run.

Other typewritten or handwritten clauses including riders, if any.

Salesman-H. A. Seed; Branch -Buffalo, Contract No. 2329

Exhibitor may substitute a picture that is designated with one that is not specifically designated.

List or summary of motion pictures licensed and rental terms

2	2-3	$25.00
38	2-3	17.50

Score: $2.50 per run

Trailers:	1 change-	$10.00
	2 changes	5.00
	3 changes	3.00
	4 changes	2.00
	5 changes	1.50

EXHIBIT NO. W-6 (6)
Warner Bros & First National Productions

Distributor Vitagraph, Inc.
by H.A. Seed

Season 1936-37

Exhibitor Schine Theatrical Co., Inc.
by George V. Lynch

Theatre Regent or Geneva, Geneva, N.Y.

Contract application date March 23,1936

Approval date April 3, 1936
by A.W. Smith,Jr.

No. of pictures offered 60

No. of Pictures Licensed 52

Provisions, if any, re admission prices Evenings: Adults-30, Children-10
Matinees: Adults-25, Children-10

Run and clearance provisions Thirty days on Clifton Springs, Lyons, Phelps, Seneca Falls and Waterloo.

Seven days on Penn Yan.

Other typewritten or handwritten clauses including riders, if any.

Salesman-H. A. Seed; Branch-Buffalo; Contract No. 2332

Exhibitor has the privilege of eliminating seven combined WB-FN features from 1936-37 contract.

Subject to all terms and conditions of Master Agreement.

List or summary of motion pictures licensed and rental terms

2	3	35% etc.
7	2-3	30% etc.
12	2-3	25% gr.
5	2-3	$100.00
10	2-3	75.00
23	2-3	60.00

Score: $2.50 per day

Trailers:	1 change	$10.00
	2 changes	5.00
	3 changes	3.00
	4 changes	2.00
	5 changes	1.50

EXHIBIT NO. W-6 (7)
Warner Bros & First National Productions

Distributor Vitagraph, Inc.
by R. S. Smith

Season 1936-37

Exhibitor Schine Theatrical Co., Inc.

Theatre Glove and Hippodrome, Gloversville, New York

Contract application date March 23, 1936

Approval date April 3, 1936
by A. W. Smith, Jr.

No. of pictures offered Sixty

No. of Pictures Licensed 59

Provisions, if any, re admission prices Evenings: Adults: Glove-40
Hipp.- 35; Children-10
Matinees: Adults-25, Children-10

Run and clearance provisions

First run.

45 days over Johnstown.
30 days over Broadalbin, Mayfield,
Sacandaga Park and Fonda.

Other typewritten or handwritten clauses including riders, if any.

Salesman-Mahager; Branch-Albany, N. Y.; Contract No. 9537

Subject to all terms and conditions of Master Agreement.

List or summary of motion pictures licensed and rental terms

See below

2	3/4	35% split
7	2/3/4	30% split
14	2/3	25%
17	2/3	$100.00
19	2/3	80.00

Score: $2.50 per day

Trailer:	1 change per week	$10.00
	2 changes per week	5.00
	3 changes per week	3.00
	4 changes per week	2.00
	5 changes per week	1.50

EXHIBIT NO. W-6 (8)

First National Productions

Distributor	Vitagraph, Inc. by R. S. Smith	**Season**	1936-37
Exhibitor	Schine Theatrical Co., Inc.	**Theatre**	Rialto, Glens Falls, N. Y.
Contract application date	March 23, 1936	**Approval date**	30
No. of pictures offered	30	**No. of Pictures Licensed**	30

Provisions, if any, re admission prices

Evenings: Adults-35, Children-10
Matinees: Adults-25, Children-10

Run and clearance provisions

First run.
Fourteen days ahead of Hudson Falls and Fort Edward
Seven days ahead of Lake George.
Sixty days ahead of second run Glens Falls.

Other typewritten or handwritten clauses including riders, if any.

Salesman-Manager; Branch-Albany, N. Y. Contract No. 9535

Subject to all terms and conditions of Master Agreement

List or summary of motion pictures licensed and rental terms

1	3/5	35% split	See below
4	2/3	30% split	
11	2/3	25%	
11	2/3	20%	
3	2/3	$50.00	

Scor[illegible]2.50 per day

Trailers:	1 change per week	$10.00
	2 changes per week	5.00
	3 changes per week	3.00
	4 changes per week	2.00
	5 changes per week	1.50

EXHIBIT NO. W-6 (9)
Warner Bros. & First National Productions

Distributor Vitagraph, Inc.
by R. S. Smith

Season 1936-37

Exhibitor Schine Theatrical Co., Inc.
by George V. Lynch

Theatre Empire, Glens Falls, N. Y.

Contract application date March 23, 1936

Approval date April 3, 1936
by A. W. Smith, Jr.

No. of pictures offered 60

No. of Pictures Licensed 59

Provisions, if any, re admission prices Evenings: Adults-20, Children-10
Matinees: Adults-20, Children-10

Run and clearance provisions Second run.
Sixty days ahead of third run.

Other typewritten or handwritten clauses including riders, if any.

Salesman-Manager; Branch-Albany, N. Y.; Contract No. 9533.

Subject to all terms and conditions of Master Agreement.

List or summary of motion pictures licensed and rental terms

2	2/3	$75.00
7	2/3	35.00
4	2/3	25.00
44	2/3	17.50

Score: $3.00 per run

Trailers: 1 change per week $10.00
2 changes per week 5.00
3 changes per week 3.00
4 changes per week 2.00
5 changes per week 1.50

EXHIBIT NO. W-6 (10)
Warner Bros. & First National Productions

Distributor Vitagraph, Inc.   Season 1936-37

Exhibitor Schine Theatrical Co., Inc.   Theatre State, Hamilton, N. Y.

Contract application date March 23, 1936   Approval date April 3, 1936 by A. W. Smith, Jr.

No. of pictures offered Sixty   No. of Pictures Licensed 59

Provisions, if any, re admission prices Evenings: Adults: 30¢, Children-10¢
Matinees: Adults-25¢, Children-10¢

Run and clearance provisions First run.

Twenty-one days ahead of Waterville and Oriskany Falls.

Other typewritten or handwritten clauses including riders, if any.

Salesman-Manager; Branch-Albany, N. Y.; Contract No. 9539

Subject to all terms and conditions of Master Agreement.

List or summary of motion pictures licensed and rental terms

2	2/3	35% split	See below
7	2/3	$65.00	
4	2/3	35.00	
46	1/2	20.00	

Score: $2.50 per run

Trailers:	1 change per week	$10.00
	2 changes per week	5.00
	3 changes per week	3.00
	4 changes per week	2.00
	5 changes per week	1.50

EXHIBIT NO. W-6 (11)

Warner Bros. & First National Productions

Distributor Vitagraph, Inc.
by R.S. Smith

Season 1936-37

Exhibitor Schine Theatrical Co., Inc.
by George V. Lynch

Theatre Liberty, Herkimer, N. Y.

Contract application date March 23, 1936

Approval date April 3, 1936
by A.W. Smith, Jr

No. of pictures offered 60

No. of Pictures Licensed 59

Provisions, if any, re admission prices Evenings: Adults-35¢, Children-10
Matinees: Adults-20¢, Children-10

Run and clearance provisions First run.
21 days from last date of first-run Utica.
14 days ahead of Ilion, Mohawk and Frankfort.

Other typewritten or handwritten clauses including riders, if any.

Salesman-Manager; Branch-Albany, N. Y ; Contract Nol 9541

Subject to all terms and conditionsof Master Agreement.

List or summary of motion pictures licensed and rental terms

2	2/3	35% split	See below
7	2/3	30% split	
4	2/3	$75.00	
46	2/3	35.00	

Score: $2.50 per run

Trailers: 1 change per week	$10.00
2 changes per week	5.00
3 changes per week	3.00
4 changes per week	2.00
5 changes per week	1.50

EXHIBIT NO. W-6 (12)
Warner Bros. & First National Productions

Distributor Vit agraph, Inc.
by R. S. Smith

Season 1936-37

Exhibitor Schine Theatrical Co., Inc.
by G eorge V. Lynch

Theatre Strand, Hudson Falls, N. Y.

Contract application date March 23, 1936

Approval date April 3, 1936
by A.W. Smith, Jr.

No. of pictures offered 60

No. of Pictures Licensed 59

Provisions, if any, re admission prices
Evenings: Adults-25, children-10¢
Matinees: Adults-15, Children-10¢

Run and clearance provisions
First Run.
14 days after first run Glens Falls
14 days ahead of second run, Glens Falls
14 days ahead of Fort Edward.

Other typewritten or handwritten clauses including riders, if any.
Salesman-Manager; Branch-Albany, N. Y.; Contract No. 9543

Subject to all terms and conditions of Master Agreement.

List or summary of motion pictures licensed and rental terms

2	2/3	35% split	See below
7	2/3	$50.00	
26	1/2	25.00	
24	1/2	15.00	

Score: $2.50 per run

Trailers: 1 change per week	$10.00
2 changes per week	5.00
3 changes per week	3.00
4 changes per week	2.00
5 changes per week	1.50

EXHIBIT NO. W-6 (13)

Warner Bros. & First National Productions

Distributor	Vitagraph, Inc. by R.S. Smith	Season	1936-37
Exhibitor	Schine TheatricalCo., Inc. by George V. Lynch	Theatre	Rialto, Little Falls, N. Y.
Contract application date	March 23, 1936	Approval date	April 3, 1936 by A.W.Smith, Jr.
No. of pictures offered	60	No. of Pictures Licensed	59

Provisions, if any, re admission prices Evenings: Adults, Orchestra-30, Balcony-20, Children-10
Matinees: Adults-20, Children-10

Run and clearance provisions
First run.
Ninety days over the city of Little Falls
Fourteen days over Fort Plain.
Thirty days over St. Johnsville and Dolgeville.

Other typewritten or handwritten clauses including riders, if any.

Salesman-Manager; Branch-Albany, N Y., Contract No. 9546.

Subject to all terms and conditions of Master Agreement.

List or summary of motion pictures licensed and rental terms

2	3	35% split	See below
7	2/3	30% split	
20	2/3	$45.00	
30	1/2	30.00	

Score: $2.50 per run.

Trailers: 1 change per week $10.00
2 changes per week 5.00
3 changes per week 3.00
4 changes per week 2.00
5 changes per week 1.50

EXHIBIT NO. W-6 (14)
Warner Bros. & First National Productions

Distributor Vitagraph, Inc.
by H. A. Seed

Season 1936-37

Exhibitor Schine Theatrical Co., Inc.
by George V. Lynch

Theatre Rialto or Hi-Art, Lockport, N. Y.

Contract application date March 23, 1936

Approval date April 3, 1936
by A.W. Smith, Jr.

No. of pictures offered 60

No. of Pictures Licensed 52

Provisions, if any, re admission prices Evenings: Adults-30, Children-10
Matinees: Adults-20, Children-10

Run and clearance provisions Thirty days on Newfane and Middleport
Second run- 60 days over third run.

Other typewritten or handwritten clauses including riders, if any.

Salesman- H. A. Seed; Branch-Buffalo; Contract No. 2334
Exhibitor has the privilege of eliminating 7 combined WB-FN features from 1936-37 contract.

Subject to all terms and conditions of Master Agreement.

List or summary of motion pictures licensed and rental terms

2	3	35% etc.
7	3	30% etc.
12	2-3	25% gr.
6	2-3	$100.00
10	2-3	75.00
23	2-3	60.00

Score: $2.50 per day

Trailers: 1 change-	$10.00
2 changes	5.00
3 changes	3.00
4 changes	2.00
5 changes	1.50

EXHIBIT NO. W-6 (15)

Warner Bros. & First National Productions

Distributor	Vitagraph, Inc. by H. A. Seed	Season	1936-37
Exhibitor	Schine Theatrical Co., Inc. by George V. Lynch	Theatre	Hi-Art, Lockport, N. Y.
Contract application date	March 23, 1936	Approval date	April 3, 1936 by A.W.Smith, Jr.
No. of pictures offered	60	No. of Pictures Licensed	30

Provisions, if any, re admission prices Evenings: Adults-25, Children-10
Matinees: Adults-25, Children-10

Run and clearance provisions
Second run
Thirty days on Newfane and Middleport
Second Run-60 days over third run.

Other typewritten or handwritten clauses including riders, if any.

Salesman- H. A. Seed; Branch-Buffalo; Contract No. 2335

Exhibitor may substitute a picture that is designated with one that is not specifically designated.

List or summary of motion pictures licensed and rental terms

2	2-3	$25.00
28	2-3	17.00

Score: $2.50 per run

Trailers: 1 change-	$10.00
2 changes	5.00
3 changes	3.00
4 changes	2.00
5 changes	1.50

EXHIBIT NO. W-6 (16)
Warner Bros. & First National Productions

[illegible] Vitagraph, Inc.
by R.S. Smith

Season 1936-37

Exhibitor Schine Theatrical Co., Inc.
by George V. Lynch

Theatre Massena, Massena, N. Y.

Contract application date March 23, 1936

Approval date April 3, 1936
by A W. Smith, Jr.

No. of pictures offered 60

No. of Pictures Licensed 59

Provisions, if any, re admission prices Evenings: Adults, Orchestra-30, Balcony-25, Children-10
Matinees: Adults, 25, Children-10

Run and clearance provisions First run.
Sixty days over the city of Massena.

Other typewritten or handwritten clauses including riders, if any.

Salesman-Manager; Exchange-Albany; N. Y.; Contract No. 9550

Subject to all terms and conditions of Master Agreement.

List of summary of motion pictures licensed and rental terms

2	2/3	35% to split	See below
7	2/3	30% to split	
6	1/2	$50.00	
44	1/2	35.00	

Score: $2.50 per run

Trailers: 1 change per week	$10.00
2 changes per week	5.00
3 changes per week	3.00
4 changes per week	2.00
5 changes per week	1.50

7

EXHIBIT NO. W-6 (17)

Warner Bros & First National Productions

Distributor Vitagraph, Inc.
by R. S. Smith

Season 1936-37

Exhibitor Schine Theatrical Co., Inc.
by George V. Lynch

Theatre Malone, Malone, N. Y.

Contract application date March 23, 1936

Approval date April 3, 1936
by A.S. Smith, Jr.

No. of pictures offered 60

No. of Pictures Licensed 59

Provisions, if any, re admission prices Evenings: Adults, Orchestra-40, Balcony-30, Children-10
Matinees: Adults-30, Children-10

Run and clearance provisions First Run.
Thirty days ahead of Brushton and Chateaugay-Ft. Covington.

Other typewritten or handwritten clauses including riders, if any.

Salesman-Manager; Branch-Albany, N. Y.; Contract No. 9548

Subject to all terms and conditions of Master Agreement.

List or summary of motion pictures licensed and rental terms

2	2/3	35% to split	See below
7	2/3	30% to split	
4	1/2	$75.00	
10	1/2	50.00	
36	1/2	40.00	

Score: $2.50 per day

Trailers: 1 change per week $10.00
2 changes per week 5.00
3 changes per week 3.00
4 changes per week 2.00
5 changes per week 1.50

EXHIBIT NO. W-6 (19)

Warner Bros. & First National Productions

Distributor Vitagraph, Inc.
by R. S. Smith

Season 1936-37

Exhibitor Schine Theatrical Co., Inc.
by George V. Lynch

Theatre Strand, Ogdensburg, N. Y.

Contract application date March 23, 1936

Approval date April 3, 1936
by A. W. Smith, Jr.

No. of pictures offered 60

No. of Pictures Licensed 59

Provisions, if any, re admission prices Evenings: Adults: Orchestra-40, Balcony-30, Children-1
Matinees: Adults-25, Children-10

Run and clearance provisions First run.
Thirty days ahead of Waddington, Canton and Norwood.

Other typewritten or handwritten clauses including riders, if any.

Salesman-Manager; Branch-Albany, N. Y.; Contract No. 9554.

Subject to all terms and conditions of Master Agreement.

List or summary of motion pictures licensed and rental terms

2	2/3	35% to split	See below
7	2/3	30% to split	
12	1/2	25%	
11	1/2	$60.00	
27	1/2	52.50	

Score: $2.50 per day

Trailers: 1 change per week $10.00
2 changes per week 5.00
3 changes per week 3.00
4 changes per week 2.00
5 changes per week 1.50

EXHIBIT NO. W-6 (20)
Warner Bros. & First National Productions

ributor Vitagraph, Inc.
by R. S. Smith

Season 1936-37

hibitor Schine Theatrical Co., Inc.
by George V. Lynch

Theatre Oneonta or Palace, Oneonta, N. Y.

ontract application date March 23, 1936

Approval date April 3, 1936
by A. W. Smith, Jr.

. of pictures offered 60

No. of Pictures Licensed 59

ovisions, if any, re admission prices Evenings: Adults, Orchestra Oneonta-40
Palace-35, Balcony-25,
Children-10

ns and clearance provisions Matinees: Adults-25, Children-10

First run
Thirty days over Cooperstown, Morris, Delhi.

her typewritten or handwritten clauses including riders, if any.

Salesman-Manager; Branch-Albany, N. Y.; Contract No. 9556

Subject to all terms and conditions of Master Agreement.

ist or summary of motion pictures licensed and rental terms

2	3	35% to split	See below
7	2/3	30% to split	
14	1/2/3	25% to split	
10	1/2/3	$75.00	
26	1/2	57.50	

Score: $2.50 per day

Trailers:	1 change per week	$10.00
	2 changes per week	5.00
	3 changes per week	3.00
	4 changes per week	2.00
	5 changes per week	1.50

EXHIBIT NO. W-6 (21)
Warner Bros & First National Productions

Distributor Vitagraph, Inc.
by H. A. Seed

Season 1936-37

Exhibitor Schine Theatrical Co., Inc.
by George V. Lynch

Theatre Capitol, Oswego, N. Y.

Contract application date March 23, 1936

Approval date April 3, 1936
by A. W. Smith, Jr.

No. of pictures offered 60

No. of Pictures Licensed 30

Provisions, if any, re admission prices Evenings: Adults-25, Children-10
Matinees: Adults-25, Children-10

Run and clearance provisions Second run.
Sixty days on third run.

Other typewritten or handwritten clauses including riders, if any.

Salesman-H. A. Seed; Branch-Buffalo; Contract No. 2340

Exhibitor may substitute a picture that is designated with one that is not specifically designated.

List or summary of motion pictures licensed and rental terms

2	2-3	$25.00
28	2-3	17.50

Score: $2.50 per run

Trailers: 1 change $10.00
2 changes 5.00
3 changes 3.00
4 changes 2.00
5 changes 1.50

EXHIBIT NO. W-6 (22)
Warner Bros. & First National Productions

Distributor Vitagraph, Inc.
by H. A. Seed

Season 1936-37

Exhibitor Schine Theatrical Co., Inc.
by George V. Lynch

Theatre Strand or Cap[illegible]l, Oswego, N. Y.

Contract application date March 23, 1936

Approval date April 3, 1936
by A.W. Smith, Jr.

No. of pictures offered 60

No. of Pictures Licensed 52

Provisions, if any, re admission prices Evenings: Adults-25, Children-10
Matinees: Adults-25, Children-10

Run and clearance provisions (See letter dated November 4th)
Thirty days on Fulton, Minetto and Pulaski.
Clearance to be mutually agreed upon.

Other typewritten or handwritten clauses including riders, if any.

Salesman- R. A. Seed, Branch-Buffalo; Contract No. 2338

Exhibitor has the privilege of eliminating 7 combined WB-FN features from 1936-37 contract.

Subject to all terms and conditions of Master Agreement.

List or summary of motion pictures licensed and rental terms

2	3	35% etc.
7	2-3	30% etc.
4	2-3	$100.00
13	2-3	75.00
26	2-3	60.00

Score: $2.50 per run

Trailers: 1 change-$10.00
2 changes 5.00
3 changes 3.00
4 changes 2.00
5 changes 1.50

EXHIBIT NO. W-6(23)
Warner Bros. & First National Productions

Distributor Vitagraph, Inc.
by H. A. Seed

Season 1936-37

Exhibitor Schine Theatrical Co., Inc.
by George V. Lynch

Theatre Grand, Rochester, N. Y.

Contract application date March 23, 1936

Approval date April 3, 1936
by A. W. Smith, Jr.

No. of pictures offered 60

No. of Pictures Licensed 59

Provisions, if any, re admission prices Evenings: Adults.-15, Children-10
Matinees: Adults-15, Children-10

Run and clearance provisions 7 days on Family and Empire Theatres. Pictures to become available immediately after Strand - Madison Theatres.

Other typewritten or handwritten clauses including riders, if any.

Salesman-H. A. Seed; Branch- Buffalo; Contract No. 2341

List or summary of motion pictures licensed and rental terms

3	2-3	$35.00
7	2-3	25.00
4	2-3	22.50
45	2-3	17,50

Score: $2.50 per run

Trailers: 1 change-	$10.00
2 changes	5.00
3 changes	3.00
4 changes	2.00
5 changes	1.50

EXHIBIT NO. W-6 (24)
Warner Bros & First National Productions

Distributor Vit agraph, Inc.
by H. A. Seed

Season 1936-37

Exhibitor Schine Theatrical Co., Inc.
by George V. Lynch

Theatre Andrews, Salamanca, N. Y.

Contract application date March 23, 1936

Approval date April 3, 1936
by A. W. Smith, Jr.

No. of pictures offered 60

No. of Pictures Licensed 46

Provisions, if any, re admission prices Evenings: Adults-25, Children-10
Matinees: Adults-20, Children-10

Run and clearance provisions Thirty days on Randolph, Little Valley and Ellicottville.

Other typewritten or handwritten clauses including riders, if any.

Salesman- H. A. Seed, Branch-Buffalo; Contract No. 2346

Exhibitor has the privilege of eliminating 13 combined WB-FN features from 1936-37 contract.

Subject to all terms and conditions of Master Agreement.

List or summary of motion pictures licensed and rental terms

2	2-3	35% etc.
7	2-3	30% etc.
4	2-3	$55.00
10	2-3	45.00
23	2-3	35.00

Score: $2.50 per run

Trailers; 1 change-$10.00
2 changes-5.00
3 changes-3.00
4 changes 2.00
5 changes 1.50

EXHIBIT NO. W-6 (25)
Warner Bros. & First National Productions

Distributor Vitagraph, Inc.
by R.S. Smith

Season 1936-37

Exhibitor Schine Theatrical Co., Inc.
by George V. Lynch

Theatre Pontiac, Saranac Lake, N. Y,

Contract application date March 23, 1936

Approval date April 3, 1936
by A. W. Smith, Jr.

No. of pictures offered 60

No. of Pictures Licensed 59

Provisions, if any, re admission prices Evenings: Adults, Orchestra-40, Balcony-30, Children-
Matinees: Adults-30, Children-10

Run and clearance provisions First run,
Thirty days ahead of Lake Placid with open booking during the periods:
June 15th to September 15th
Jan. 15 toFeb. 15

Other typewritten or handwritten clauses including riders, if any.

Salesman-Manager, Branch-Albany, N. Y.; Contract No. 9558

Subject to all terms and conditions of Master Agreement.

List or summary of motion pictures licensed and rental terms

2	2/3	35% split	See Below
7	2	30% split	
4	1/2	$75.00	
14	1/2	50.00	
32	1/2	40.00	

Score: $2.50 per day

Trailers:	1 change per week	$10.00
	2 changes per week	5.00
	3 changes per week	3.00
	4 changes per week	2.00
	5 chagges per week	1.50

EXHIBIT NO. W-6 (26)

Warner Bros. & First National Productions

Distributor Vitagraph, Inc.
by H. A. Seed

Season 1936-37

Exhibitor Schine Theatrical Co., Inc.
by George V. Lynch

Theatre Strand, Seneca Falls, N. Y.

Contract application date March 23, 1936

Approval date April 3, 1936
by A.W. Smith,Jr.

No. of pictures offered 60

No. of Pictures Licensed 49

Provisions, if any, re admission prices Evenings: Adults-25, Children-10
Matinees: Adults-25, Children-10

Run and clearance provisions Fourteen days after Geneva Theatre, Geneva
Ten days after Regent Theatre, Geneva.

Other typewritten or handwritten clauses including riders, if any.

Salesman- H A. Seed: Branch-Buffalo; Contract No. 2348

Exhibitor has the privilege of eliminating 10 combined WB-FN program pictures from 1936-37 contract.

Subject to all terms and conditions on Master Agreement.

List or summary of motion pictures licensed and rental terms

2	2	35% etc.
2	2	30% etc.
6	2	$60.00
39	1-2	35.00

Score: $2.50 per run

Trailers: 1 change	$10.00
2 changes	5.00
3 changes	3.00
4 changes	2.00
5 changes	1.50

EXHIBIT NO. W-6 (27)
Warner Bros. & First National Productions

Distributor Vitagraph, Inc.
by R. S. Smith

Season 1936-37

Exhibitor Schine Theatrical Co., Inc.
by George V. Lynch

Theatre State, Tupper Lake, N. Y.

Contract application date March 23, 1936

Approval date April 3, 1936
by A. W. Smith, Jr.

No. of pictures offered 60

No. of Pictures Licensed 59

Provisions, if any, re admission prices Evenings: Adults, Orchestra-35-25, Balcony-20, Children-
Matinees: Adults-25, Children-10

Run and clearance provisions First run.
30 days ahead of Faust and Sunmount

Other typewritten or handwritten clauses including riders, if any.

Salesman-Manager; Branch-Albany, N. Y.; Contract No. 9560

Subject to alll terms and conditions of Master Agreement.

List or summary of motion pictures licensed and rental terms

2	2/3	35% split	See below
7	2/3	$50.00	
26	1/2	20.00	
18	1/2	17.50	
6	1/2	15.00	

Score: $2.50 per run

Trailers: 1 change per week	$10.00
2 changes per week	5.00
3 chahges per week	3.00
4 changes per welak	2.00
5 changes per week	1.50

EXHIBIT NO. W-6 (28)
Warner Bros. & First National Produtions

Distributor Vitagraph, Inc.
by R. Smith

Season 1936-37

Exhibitor Schine Theatrical Co., Inc.
by George V. Lynch

Theatre Avon or Olympic, Watertown, N. Y.

Contract application date March 23, 1936

Approval date April 3, 1936
by A. W. Smith, Jr.

No. of pictures offered 60

No. of Pictures Licensed 59

Provisions, if any, re admission prices Evenings: Orchestra(Avon-40
Olympic-25,Balcony,Avon-30,
Children-10
Matinees, Adults-25,Children-10

Run and clearance provisions
First run
Thirty days on Adams and Sacketts Harbor
Sixty days first run over second run.

Other typewritten or handwritten clauses including riders, if any.
Salesman-Manager; Branch-Albany, N. Y.; Contract No. 9561

Subject to all terms and conditions of Master Agreement.

List or summary of motion pictures licensed and rental terms

2	3/4	~~35% split~~ See below
7	2/3/4	30% split
14	2/3	25%
9	2/3	$110.00
27	2/3	100.00

Score: $2.50 per day

Trailers: 1 change per week $10.00
2 changes per week 5.00
3 changes per week 3.00
4 changes per week 2.00
5 changes per week 1.50

EXHIBIT NO. W-6 (29)
Warner Bros. & First National Productions

Distributor Vitagraph, Inc.
by R. S. Smith

Season 1936-37

Exhibitor Schine Theatrical Co., Inc.
by George V. Lynch

Theatre Olympic, Watertown, N. Y.

Contract application date March 23, 1936

Approval date April 3, 1936
by A. W. Smith, Jr.

No. of pictures offered 60

No. of Pictures Licensed All pictures that play the Avon Theatre, first run

Provisions, if any, re admission prices Evenings: Adults-25, Children-10
Matinees: Adults-25, Children-10

Run and clearance provisions Second run.
Sixty days ahead of third run.

Other typewritten or handwritten clauses including riders, if any.

Salesman-Manager; Branch-M Albany, N. Y.; Contract No. 9562

List or summary of motion pictures licensed and rental terms

All pictures that play the Avon Theatre to play the Olympic Theatres Second run at $30.00 flat-2/3 days.

Score: $2.50 per run

Trailer: 1 change per week $10.00
2 changes per week 5.00
3 changes per week 3.00
4 changes per week 2.00
5 changes per week 1.50

EXHIBIT NO. W-6 (30)
Warner Bros. & First National Productions

tributor Vitagraph, Inc.

Season 1936-37

ibitor Belpik Theatre Corp.
by George V. Lynch

Theatre Athena or Ohio or Court, Athens, Ohio

ntract application date 3/24/36

Approval date April 3, 1936
by A.W. Smith, Jr.

. of pictures offered 60

No. of Pictures Licensed 59

ovisions, if any, re admission prices

n and clearance provisions

Thirty days aheadof Nelsonville, Glouster and Pomeroy

her typewritten or handwritten clauses including riders, if any.

Branch-Cincinnati; Contract No . 1039

Subject to same terms and conditions of Master Agreement.

Exhibitor has the privilege of eliminating seven combined W. B. and F. N. features from this contract.

t or summary of motion pictures licensed and rental terms

2	2	35% split
7	2	30% split
4	1-2	25%
15	1-3	$75.00
6	1-3	65.00
12	1-3	50.00
13	1-3	40.00

Score: $2.50 per run

Trailers: 1 change per week $10.00
2 changes per week 5.00
3 changes per week 3.00
4 changes per week 2.00
5 changes per week 1.50

5765

EXHIBIT NO. W-6 (31)
Warner Bros. & First National Productions

Distributor Vitagraph, Inc. Season 1936-37.

Exhibitor Belpik Theatre Corp.
by George V. Lynch
Theatre Bucyrus, or State, Bucyrus,

Contract application date March 24, 1936
Approval date April 6, 1936
by A. W. Smith, Jr.

No. of pictures offered 59
No. of Pictures Licensed 59

Provisions, if any, re admission prices
Evenings: Adults, Orchestra-35, Balcony-25, Children-10
Matinees: Adults, Orchestra-25, Balcony-25, Children-10

Run and clearance provisions

Thirty days ahead of Attica and Nevada.

Other typewritten or handwritten clauses including riders, if any.

Branch-Cleveland; Contract No. 5193

Subject to all terms and conditions of Master Agreement.

List or summary of motion pictures licensed and rental terms

2 @ 35%	2 days
7 @ 30%	2 days
4 @ 24%	1-2 days
20 @ 30.00	1-3 days
16 @ 20.00	1-3 days
10 @ 25.00	1-3 days

Score: $2.50 per run

Trailers:	1 change per week	$10.00
	2 changes per week	5.00
	3 changes per week	3.00
	4 changes per week	2.00
	5 changes per week	1.50

EXHIBIT NO. W-6 (32)
Warner Bros. & First National Productions

utor Vitagraph, Inc.

Season 1936-37

ty Belpik Theatre Corp.
by George V. Lynch

Theatre Piqua or Miami, Piqua, Ohio

ct application date 60

Approval date April 3, 1936
by A. W. Smith, Jr.

pictures offered

No. of Pictures Licensed

ons, if any, re admission prices

nd clearance provisions To receive same availability as Troy.

typewritten or handwritten clauses including riders, if any.

Branch-Cincinnati; Contract No. 1038

Subject to all terms and conditions as Master Agreement.

Exhibitor has the privilege of eliminating 13 combined WB & FN features from this contract.

summary of motion pictures licensed and rental terms

2	2	35% Split
7	2	30% Split
12	1-2	25%
38	1-3	$42.50

Score: $2.50 per run

Trailers:	1 change per week	$10.00
	2 changes per week	5.00
	3 changes per week	3.00
	4 changes per week	2.00
	5 changes per week	1.50

EXHIBIT NO. W-6 (33)

Distributor Vitagraph, Inc.
by H. A. Seed

Season 1936-37

Exhibitor Schine Theatrical Co., Inc.
by George V. Lynch

Theatre Elmwood, Penn Yan, N Y

Contract application date Nov. 3, 1936

Approval date November 11, 1936
by G. L. Sears

No. of pictures offered 60

No. of Pictures Licensed 47

Provisions, if any, re admission prices Evenings: Adults-25, Children-10
Matinees: Adults-25, Children-10

Run and clearance provisions Thirty days ahead of Dundee (see letter 1/27)

Other typewritten or handwritten clauses including riders, if any.

Salesman-H. K. Seed, Branch-Buffalo, Contract No. 2603

Subject to all terms and conditions of Master Agreement.

Exhibitor has the privilege of eliminating 13 combined WB-FN features from 1936-37 contract.

List or summary of motion pictures licensed and rental terms

4	2-3	35% etc.
7	2-3	$60.00
14	2-3	40.00
15	2-3	32.50
20	2-3	25.00

Score: $2.50 per run

Trailers: 1 change-$10.00
2 changes 5.00
3 changes 3.00
4 changes 2.00
5 changes 1.50

EXHIBIT NO. W-6 (34)

Warner Bros. & First National Productions

Distributor Vitagraph, Inc.
by H. A. Seed

Season 1936-37

Exhibitor Schine Theatrical Co., Inc.
by George V. Lynch

Theatre Auditorium, Perry, N. Y

Contract application date November 4, 1936

Approval date November 11, 1936
by G. L. Sears

No. of pictures offered 60

No. of Pictures Licensed 46

Provisions, if any, re admission prices Evenings: Adults-25, Children-10
Matinees: Adults-25, Children-10

Run and clearance provisions

Other typewritten or handwritten clauses including riders, if any.

Salesman- H. A. Seed; Branch-Buffalo; Contract No. 2009

Terms of Master Agreeement to apply to this contract.

Exhibitor has the privilege of eliminating thirteen (13) combined WB-FN features from 1936-37 contract.

List or summary of motion pictures licensed and rental terms

2	2-3	35% etc.
7	2-3	30% etc.
4	2-3	$75.00
15	2-3	50.00
20	2-3	37.50
5	2- 3	35.00
6	2-3	25.00

Score: $2.50 per run

Trailers: 1 change-$10.00
2 changes 5.00
3 changes 3.00
4 changes 2.00
5 changes 1.50

5769

EXHIBIT NO. W-6 (35)

Warner Bros. & First National Productions

Distributor	Vitagraph, Inc.	Season	1936-37
Exhibitor	Belpik Theatre Corp. by George V. Lynch	Theatre	Palace or Opera House, Ashland, Ohio
Contract application date	March 24, 1936	Approval date	April 6, 1936 by G. L. Sears
No. of pictures offered	59	No. of Pictures Licensed	59

Provisions, if any, re admission prices Evenings: Adults-30, Children-10
Matinees: Adults-20, Children-10

Run and clearance provisions Thirty days ahead of Ludaire.

Other typewritten or handwritten clauses including riders, if any, Contract No. 5197
Subject to all terms and conditions of Master Agreement.

List or summary of motion pictures licensed and rental terms

2	2	35% split
7	2	30% split
26	1-3	$50.00
24	1-3	40.00

Score: $2.50 per run

Trailers: 1 change per week $10.00
2 changes per week 5.00
3 changes per week 3.00
4 changes per week 2.00
5 changes per week 1.50

5770

EXHIBIT NO. W-6 (36)
Warner Bros & First National Productions

Distributor Vitagraph, Inc.

Season 1936-37

Exhibitor Belpik Theatre Corp.
by George V. Lynch

Theatre Strand, Delaware, Ohio

Contract application date March 24, 1936

Approval date April 6, 1936

No. of pictures offered 59

No. of Pictures Licensed 59

Provisions, if any, re admission prices Evenings: Adults-31, Children-10
Matinees: Adults-26, Children-10

Run and clearance provisions

Same as last year.

Other typewritten or handwritten clauses including riders, if any.

Branch-Cleveland; Contract No. 5201

List or summary of motion pictures licensed and rental terms

2	2	35% split
7	2	30% split
4	1-3	$75.00
10	1-3	60.00
9	1-3	50.00
13	1-3	40.00
14	1-2	25.00

Score: $2.50 per run

Trailers: 1 change per week $10.00
2 changes per week 5.00
3 changes per week 3.00
4 changes per week 2.00
5 changes per week 1.50

EXHIBIT NO. W-6 (37)
Warner Bros. & First National Productions

Distributor	Vitagraph, Inc.	**Season**	1936-37
Exhibitor	Belpik Theatre Corp. by George V. Lynch	**Theatre**	Forum, Norwalk, Ohio
Contract application date	March 24, 1936	**Approval date**	April 6, 1936 by G. L. Sears
No. of pictures offered	59	**No. of Pictures Licensed**	59

Provisions, if any, re admission prices

Evenings: Adults-30, Children-10
Matinees: Adults-20, Children-10

Run and clearance provisions

60 days in Norwalk.
14 days ahead of Lyons, Huron, New London and Milan.

Other typewritten or handwritten clauses including riders, if any.

Branch-Cleveland, Contract No. 5195

Subject to all terms and conditions of Master Agreement.

List or summary of motion pictures licensed and rental terms

2	2	35% split
7	2	30% split
4	1-2	25%
12	1-3	$40.00
10	1-3	30.00
24	1-3	20.00

Score: $2.50 per run

Trailers: 1 change per week $10.00
2 changes per week 5.00
3 changes per week 3.00
4 changes per week 2.00
5 changes per week 1.50

EXHIBIT NO. W-6 (38)
Warner Bros. & First National Productions

Distributor Vitagraph, Inc.

Season 1936-37

Exhibitor Belpik Theatre Corp.
by George V. Lynch

Theatre Ritz or Grand, Tiffin, Ohio

Contract application date March 24, 1936

Approval date April 6, 1936
by G. L. Sears

No. of pictures offered 59

No. of Pictures Licensed 59

Provisions, if any, re admission prices
Evenings: Adults, Orchestra-30, Balcony-20, Children-10
Matinees: Adults-29, Children-10

Run and clearance provisions
Ninety days city of Tiffin.

Other typewritten or handwritten clauses including riders, if any
Branch-Cleveland, Contract No. 5199

Subject to all terms and conditions of Master Agreement.

List or summary of motion pictures licensed and rental terms

2	2	35% split
7	2	30% split
6	1-3	$75.00
16	1-3	60.00
13	1-3	50.00
15	1-3	25.00

Score: $2.50 per run

Trailers: 1 change per week	$10.00
2 changes per week	5.00
3 changes per week	3.00
4 changes per week	2.00
5 changes per week	1.50

EXHIBIT NO. W-6 (39)
Warner Bros. & First National Productions

Distributor Vitagraph, Inc.

Season 1936-37

Exhibitor Belpik Theatre Corp.
by George V. Lynch

Theatre Wooster or Opera House, Wooster, O

Contract application date March 24,1936

Approval date April 6, 1936
by G. L. Sears

No. of pictures offered 59

No. of Pictures Licensed 59

Provisions, if any, re admission prices Evenings: Adults, Orchestra-35, Balcony-25, Children-10
Matinees: Adults-25, Children-10

Run and clearance provisions Fourteen days ahead of Orrville.

Other typewritten or handwritten clauses including riders, if any.

Branch-Cleveland- Contract No: 5191

Subject to all terms and conditions of Master Agreement.

List or summary of motion pictures licensed and rental terms

2	2	35% split
7	2	30% split
12	1-2	25%
6	1-3	$55.00
32	1-3	42.50

Score: $2.50 per run

Trailers: 1 change per week $10.00
2 changes per week 5.00
3 changes per week 3.00
4 changes per week 2.00
5 changes per week 1.50

EXHIBIT NO. W-6 (40)
Warner Bros & First National Productions

Distributor Vitagraph, Inc.
by H. A. Seed

Season 1936-37

Exhibitor
Schine Theatrical Co., Inc.
by George V. Lynch

Theatre Fox or State, Corning, N. Y.

Contract application date March 23, 1936

Approval date April 3, 1936
by A. W Smith, Jr.

No. of pictures offered 60

No. of Pictures Licensed 52

Provisions, if any, re admission prices Evenings: Adults-25, Children-10
Matinees: Adults-20, Children-10

Run and clearance provisions

Thirty days on Painted Post, Addison
Sixty days on City of Corning
Sixty days on Third run.

Other typewritten or handwritten clauses including riders, if any.

Salesman- H. A Seed; Branch-Buffalo_ Contract No. 2328

Exhibitor has the privilege of eliminating 7 combined WB-FN features from the 1936-37 contract.

Subject to all terms and conditions of Master Agreement.

List or summary of motion pictures licensed and rental terms

2	2-3	35% etc.
7	2-3	30% etc.
4	2-3	$75.00
46	2-3	50.00

Score: $2.50 per run

Trailers: 1 change-$10.00
2 changes 5.00
3 changes 3.00
4 changes 2.00
5 changes 1.50

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EXHIBIT NO. W-6 (41)

Warner Bros. & First National Productions

Distributor Vitagraph, Inc.
by R. S. Smith

Season 1936-37

Exhibitor Schine Theatrical Co., Inc.

Theatre Colonia, Norwich, N. Y.

Contract application date

Approval date April 3, 1936
by A. W. Smith, Jr.

No. of pictures offered 60

No. of Pictures Licensed 59

Provisions, if any, re admission prices Evenings: Adults-25, Children-10
Matinees: Adults-25, Children-10

Run and clearance provisions

First run.
Thirty days on Sherburne, Oxford
Greene, New Berlin and Sidney.

Other typewritten or handwritten clauses including riders, if any.

Salesman-Manager; Branch-Albany, N. Y. - Contract No. 9552

Subject to all terms and conditions of Master Agreement.

List or summary of motion pictures licensed and rental terms

2	2/3	35% to split	See below
7	2/3	30% to split	
6	1/2	$75.00	
10	1/2	60.00	
10	1/2	50.00	
24	1/2	30.00	

Score, $2.50 per day

Trailers:	1 change per week	$10.00
	2 changes per week	5.00
	3 changes per week	3.00
	4 changes per week	2.00
	5 changes per week	1.50

EXHIBIT NO. W-8 (1)

Warner Bros. & First National Productions

istributor	Vitagraph, Inc. by R.S. Smith	Season	1935-36
xhibitor	Schine Theatrical Co., Inc. by George V. Lynch	Theatre	Strand, Carthage, N. Y.
Contract application date	Aug. 5, 1935	Approval date	August 16, 1935 by A. W. Smith, Jr.
o. of pictures offered	60	No. of Pictures Licensed	59

rovisions, if any, re admission prices
Evenings: Adults-25, Children-10
Matinees: Adults-20, Children-10

un and clearance provisions
First run.
90 days over city of Carthage.
14 days over Lowville.

Other typewritten or handwritten clauses including riders, if any.

Salesman-Manager; Branch-Albany, N. Y Contract No. 9139

Split figures on 30% and 35% pictures to be determined as follows: Distributor to receive 30% or 35% of gross receipts respectively up until such time as exhibitor shows profit equal to 50% of amount distributor receives as film rental and to split 50/50 from that point on.

Subject to all terms and conditions of Master Agreement, if any.

List or summary of motion pictures licensed and rental terms

2	2/3	35% (See terms below)
4	2/3	30% (See terms below)
3	1/2	$50.00
50	1/2	17.50

Score: $2.50 per run
Trailers: 1 change per week $10.
2 changes per week 5.
3 changes per week 3.
4 changes per week 2.
5 changes per week 1.50

If 30% pictures play Saturday or Sunday, terms to be 25%. If 25% pictures play Saturday or Sunday, terms to be 20%. If 25% and 20% pictures are used with a double feature or vaudeville, terms to be 15%.
Exhibitor has option of playing flat pictures at 20% - if Saturday or Sunday terms to be 15%. Exchange to be notified within 5 days after it is booked.
35% and 30% pictures cannot play with vaudeville or double bills.

EXHIBIT NO. W-8 (2)
First National Productions

Distributor Vitagraph, Inc.
by R. S. Smith

Season 1935-36

Exhibitor Schine Theatrical Co., Inc.
by George V. Lynch

Theatre Rialto, Glens Falls, N. Y.

Contract application date Aug. 5, 1935

Approval date August 16, 1935
by A. W. Smith, Jr.

No. of pictures offered 30

No. of Pictures Licensed 30

Provisions, if any, re admission prices Evenings: Adults-35, Children-10
Matinees: Adults-25, Children-10

Run and clearance provisions First run.
Fourteen days ahead of Hudson Falls, Fort Edward.
Seven days ahead of Lake George.
Sixty days ahead of second run Glens Falls.

Other typewritten or handwritten clauses including riders, if any.

Salesman-Manager; Branch-Albany, N. Y. Contract No. 9141

Split figures on 30% and 35% pictures to be determined as follows: Distributor to receive 30% or 35% of gross receipts respectively up until such time as exhibitor shows profit equal to 50% of amount distributor receives as film rental and to split 50/50 from that point on.

Subject to all terms and conditions of Master Agreement, if any.

List or summary of motion pictures licensed and rental terms

1	3/5	35%	See terms below
4	2/3	30%	See terms below
10	2/3	25%	
15	2/3	20%	

If 30% pictures play Saturday or Sunday, terms to be 25%.
If 25% pictures play Saturday or Sunday, terms to be 20%.
If 25% and 20% pictures are used with a double feature or vaudeville, terms to be 15%. Exhibitor has option of playing flat rental pictures at 20% if Saturday or Sunday terms to be 15%.
Exchange to be notified within five days after it is booked. 35% and 30% pictures cannot play with vaudeville or double bills.
Score: $2.50 per day
Trailers: 1 change per week $10.00
2 changes per week 5.00
3 changes per week 3.00
4 changes per week 2.00
5 changes per week 1.50

(3)

EXHIBIT NO. W 8

Warner Bros. & First National Productions

stributor	Vitagraph, Inc. by R. S. Smith	Season	1935-36
hibitor	Schine Theatrical Co., Inc.	Theatre	Glove or Hippodrome, Gloversville, N. Y.
ntract application date	August 5, 1936	Approval date	August 16, 1935 by A. W. Smith, Jr.
. of pictures offered	60	No. of Pictures Licensed	59

ovisions, if any, re admission prices
Evenings: Adults (Glove-40 Children-10
(Hipp.-35 Children-10
Matinees: Adults -25, Children-10

n and clearance provisions

First run.
Forty-five days over Johnstown
Thirty days over Broadalbin, Mayfield, Sacandaga Park and Fonda.

her typewritten or handwritten clauses including riders, if any.

Salesman-Manager; Branch-Albany, N. Y. Contract No. 9144.

Split figures on 30% and 35% pictures to be determined as follows: Distributor to receive 30% or 35% of gross receipts respectively up until such time as exhibitor shows profit equal to 50% of amount distributor receives as film rental and to split 50/50 from that point on.

Subject to all terms and conditions of Master Agreement, if any.

or summary of motion pictures licensed and rental terms

2	3/4	35%	(See terms below)
7	2/3/4	30%	(See terms below)
12	2/3	25%	
10	2/3	$100.00	
28	2/3	80.00	

If 30% pictures play Saturday or Sunday, terms to be 25%.
If 25% pictures play Saturday or Sunday, terms to be 20%.
If 25% and 20% pictures are used with a double feature or vaudeville, terms to be 15%. Exhibitor has option of playing flat rental pictures at 20% if Saturday or Sunday terms to be 15%.
Exchange to be notified within five days after it is booked. 35% and 30% pictures cannot play with vaudeville or double bills.
Score: $2.50 per day.

Trailers:		
	1 change per week	$10.00
	2 changes per week	5.00
	3 changes per week	3.00
	4 changes per week	2.00
	5 changes per week	1.50

EXHIBIT NO. W-8 (4)
Warner Bros. & First National Productions

Distributor Vitagraph, Inc.
by R. S. Smith

Season 1935-36

Exhibitor Schine Theatrical Co., Inc.
by George V. Lynch

Theatre State, Hamilton, N. Y.

Contract application date August 5, 1935

Approval date August 16, 1935
by A. W. Smith, Jr.

No. of pictures offered 60

No. of Pictures Licensed 59

Provisions, if any, re admission prices Evenings: Adults-30, Children-10
Matinees: Adults-24, Children-10

Run and clearance provisions

First run.
Twenty-one days ahead of Waterville and Oriskany Falls.

Other typewritten or handwritten clauses including riders, if any.

Salesman-Manager; Branch-Albany, N. Y., Contract No. 9145 split figures on 30% and 35% pictures to be determined as follows: Distributor to receive 30% or 35% of gross receipts respectively, up until such time as exhibitor shows a profit equal to 50% of the amount distributor receives as film rental and to split 50/50 from that point on. 35% pictures cannot play with vaudeville or double-bill

Subject to all terms and conditions of Master Agreement.

List or summary of motion pictures licensed and rental terms

2	2/3	35%	See below	7	$2.00
7	2/3	$50.00		7	2.00
50	1/2	20.00		7	2.00

Score: $2.50 per run.

EXHIBIT NO. W-8 (5)

Warner Bros. & First National Productions

Distributor Vitagraph, Inc.
by R. S. Smith

Season 1935-36

Exhibitor Schine Theatrical Co., Inc.
by George V. Lynch

Theatre Liberty, Herkimer, N. Y.

Contract application date August 5, 1935

Approval date August 16, 1935
by A. W. Smith, Jr.

No. of pictures offered 60

No. of Pictures Licensed 59

Provisions, if any, re admission prices Evenings: Adults-35, Children-10
Matinees: Adults-20, Children-10

Run and clearance provisions First run.
Twenty-one days from last date of first run Utica.
Fourteen days ahead of Ilion, Mohawk and Frankfort.

Other typewritten or handwritten clauses including riders, if any.

Salesman-Mnager- Branch-Albany, N. Y.; Contract No. 9147
Split figures on 30% and 35% pictures to be determined as follows: Distributor to receive 30% or 35% of gross receipts respectively up until such time as exhibitor shows profit equal to 50% of amount distributor receives as film rental and to split 50/50 from that point on.

Subject to all terms and conditions of Master Agreement, if any.

List or summary of motion pictures licensed and rental terms

2	2/3	35% (see terms below)
4	2/3	30% (see terms below)
3	2/3	$75.00
50	2/3	35.00

If 30% pictures play Saturday or Sunday terms to be 25%
35% and 30% pictures cannot play with vaudeville or double bills.

Score: $2.50 per run

Trailers:	1 change per week	$10.00
	2 changes per week	5.00
	3 changes per week	3.00
	4 changes per week	2.00
	5 changes per week	1.50

EXHIBIT NO. W-8 (6)
Warner Bros. & First National Productions

Distributor Vitagraph, Inc.
by R. S. Smith

Season 1935-36

Exhibitor Schine Theatrical Co., Inc.
by George V. Lynch

Theatre Strand, Hudson Falls, N. Y.

Contract application date September 12, 1935

Approval date September 23, 1935
by A. W. Smith, Jr.

No. of pictures offered 60

No. of Pictures Licensed 59

Provisions, if any, re admission prices Evenings: Adults-25, Children-10
Matinees: Adults-15, Children-10

Run and clearance provisions
First run.
Fourteen days after first run Glens Falls.
Fourteen days ahead of second run Glens Falls.
Fourteen days ahead of Fort Edward.

Other typewritten or handwritten clauses including riders, if any.

Salesman-Manager; Branch-Albany, N. Y.; Contract No. 9248

Split figures on 30% and 35% pictures to be determined as follows: Distributor to receive 30% or 35% of gross receipts respectively up until such time as exhibitor shows profit equal to 50% of amount distributor receives as film rental and to split 50/50 from that point on.

Subject to all terms and conditions of Master Agreement, if any.

List or summary of motion pictures licensed and rental terms

2	2/3	35% to split
7	2/3	$35.00
26	1/2	20.00
24	1/2	15.00

Score: $2.50 per run

Trailers: 1 change per week	$10.00
2 changes per week	5.00
3 changes per week	3.00
4 changes per week	2.00
5 changes per week	1.50

35% pictures cannot play with vaudeville or double bills.

EXHIBIT NO. W-8 (7)

Warner Bros. & First National Productions

Distributor Vitagraph, Inc.
by R.S. Smith

Season 1935-36

Exhibitor Schine Theatrical Co., Inc.
by George V. Lynch

Theatre Rialto, Little Falls, N Y.

Contract application date August 5, 1935

Approval date August 16, 1935
by A. W. Smith, Jr.

No. of pictures offered 60

No. of Pictures Licensed 59

Provisions, if any, re admission prices Evenings: Adults, Orchestra-30, Balcony-20, Children-10
Matinees: Adults-20, Children-10

Run and clearance provisions First run.
Ninety days over city of Little Falls.
Fourteen days over Fort Plain.
Thirty days over St. Johnsville and Dolgeville.

Other typewritten or handwritten clauses including riders, if any.

Salesman-Manager; Branch-Albany, N Y; Contract No-9150

Split figures on 30% and 35% pictures to be determined as follows: Distributor to receive 30% or 35% of gross receipts respectively up until such time as exhibitor shows profit equal to 50% of amount distributor receives as film rental and to split 50/50 from that point on.

Subject to all terms and conditions of Master Agreement, if any.

List or summary of motion pictures licensed and rental terms

2	3	35% See terms below
4	2/3	30% See terms below
3	2/3	$125.00
20	2/3	40.00
30	1/2	30.00

If 30% pictures play Saturday or Sunday, terms to be 25%.
35% and 30% pictures cannot play with vaudevilleor double bills.

Score: $2.50 per run

Trailers: 1 change per week $10.00
2 changes per week 5.00
3 changes per week 3.00
4 changes per week 2.00
5 changes per week 1.50

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EXHIBIT NO. W-8 (8)
Warner Bros. & First National Productions

Distributor Vitagraph, Inc.
by R. S. Smith

Season 1935-36

Exhibitor Schine Theatrical Co., Inc.
by George V. Lynch

Theatre Malone, Malone, N. Y.

Contract application date August 5, 1935

Approval date August 16, 1935
by A. W. Smith, Jr.

No. of pictures offered 60

No. of Pictures Licensed 59

Provisions, if any, re admission prices Evenings: Adults, Orchestra-40, Balcony-30, Children-1
Matinees: Adults-30, Children-10

Run and clearance provisions First run.
Thirty days ahead of Brushton, Chateaugay, Fort Covington

Other typewritten or handwritten clauses including riders, if any.

Salesman. Manager; Branch. - Albany, N. Y. ; Contract No. 9152

Split figures on 30% and 35% pictures to be determined as follows: Distributor to receive 30% or 35% of gross receipts respectively up until such time as exhibitor shows profit equal to 50% of amount distributor receives as film rental and to split 50/50 from that point on.

Subject to all terms and conditions of Master Agreement, if any.

List or summary of motion pictures licensed and rental terms

2	2/3	35% See terms below
7	2/3	30% See terms below
50	1/2	$40.00

If 30% pictures play Saturday ahd/or Sunday terms to be 25%.
35% and 30% pictures cannot play with vaudeville or double bills.

Score: $2.50 per day

Trailers:	
1 change per week	$10
2 changes per week	5.
3 changes per week	3.
4 changes per week	2.
5 changes per week	1.50

EXHIBIT NO. W-8 (9)

Warner Bros. & First National Productions

Distributor Vitagraph, Inc.
by R. S. Smith

Season 1935-36

Exhibitor Schine Theatrical Co., Inc.
by George V. Lynch

Theatre Massena, Massena, N. Y.

Contract application date August 5, 1935

Approval date August 16, 1935
by A. W. Smith, Jr.

No. of pictures offered 60

No. of Pictures Licensed 59

Provisions, if any, re admission prices Evenings: Adults, Orchestra-30, Balcony-25, Children-10
Matinees: Adults-25, Children-10

Run and clearance provisions First run.
Sixty days over the city of Massena.

Other typewritten or handwritten clauses including riders, if any.

Salesman-Manager, Branch- Albany, N. Y.; Contract No. 9154

Split figures on 30% and 35% pictures to be determined as follows:

Distributor to receive 30% or 35% of gross receipts respectively up until such time as exhibitor shows profit equal to 50% of amount distributor receives as film rental and to split 50/50 from that point on.

Subject to all terms and conditions of Master Agreement, if any.

List or summary of motion pictures licensed and rental terms

2	2/3	35% See terms below
4	2/3	30% See terms below
3	2/3	$75.00
50	1/2	35.00

If 30% pictures play Saturday or Sunday terms to be 25%.
35% and 30% pictures cannot play with vaudeville or double bills.

Score: $2.50 per run

Trailers: 1 change per week $10.
2 changes per week 5.
3 changes per week 3.
4 changes per week 2.
5 changes per week 1.50

EXHIBIT NO. W-8 (10)
Warner Bros. & First National Productions

Distributor Vitagraph, Inc.
by R. S. Smith

Season 1935-36

Exhibitor Schine Theatrical Co., Inc.
by George V. Lynch

Theatre Colonia, Norwich, N. Y.

Contract application date August 5, 1935

Approval date August 16, 1935
by A. W. Smith, Jr.

No. of pictures offered 60

No. of Pictures Licensed 59

Provisions, if any, re admission prices Evenings: Adults-25, Children-10
Matinees: Adults-25, Children-10

Run and clearance provisions First run.
Thirty days over Sherburne, Oxford, Greene, New Berlin and Sidney.

Other typewritten or handwritten clauses including riders, if any.

Salesman- Manager; Branch- Albany, N Y.; Contract No. 9156

Split figures on 30% and 35% pictures to be determined as follows:

Distributor to receive 30% or 35% of gross receipts respectively up until such time as exhibitor shows profit equal to 50% of amount distributor receives as film rental and to split 50/50 from that point on.

Subject to all terms and conditions of Master Agreement, if any.

List or summary of motion pictures licensed and rental terms

2	2/3	35% See terms below
7	2/3	30% See Terms below
10	1/2	$60.00
10	1/2	50.00
30	1/2	30.00

If 30% pictures play Saturday or Sunday terms to be 25%.
35% and 30% pictures cannot play with vaudeville or double bills.

Score: $2.50 per run.

Trailers: 1 change per week	$10.
2 changes per week	5.
3 changes per week	3.
4 changes per week	2.
5 changes per week	1.50

EXHIBIT NO. W-8 (11)
Warner Bros. & First National Productions

istributor Vitagraph, Inc.
by R. S. Smith

Season 1935-36

xhibitor Schine Theatrical Co., Inc.
by George V. Lynch

Theatre Strand, Ogdensburg, N. Y.

ontract application date August 5, 1936

Approval date August 16, 1935
by A.W. Smith, Jr.

o. of pictures offered 60

No. of Pictures Licensed 59

rovisions, if any, re admission prices Evenings: Adults-Orchestra-40, Balcony-30, Children-10
Matinees: Adults-25, Children-10

un and clearance provisions First run.
Thirty days ahead of Waddington, Canton and Norwood.

ther typewritten or handwritten clauses including riders, if any.

Salesman-Manager; Branch- Albany, N. Y.; Contract No. 9158

Split figures on 30% and 35% pictures to be determined as follows:

Distributor to receive 30% or 35% of gross receipts respectively up until such time as exhibitor shows profit equal to 50% of amount distributor receives as film rental and to split 50/50 from that point on.

Subject to all terms and conditions of Master Agreement, if any.

st or summary of motion pictures licensed and rental terms

2	2/3	35% See terms below
7	2/3	30% See terms below
10	1/2	25%
12	1/2	$60.00
28	1/2	52.50

If 30% pictures play Saturday or Sunday, terms to be 25%
If 25% pictures play Saturday or Sunday terms to be 20%.
If 25% and 20% pictures are used with a double feature or vaudeville, terms to be 15%. Exhibitor has option of playing flat rental pictures at 20% - if Saturday or Sunday, terms to be 15%. Exchange to be notified within five days after it is booked. 35% and 30% pictures cannot play with vaudeville or double bills.

Score: $2.50 per day

Trailers: 1 change per week	$10.00
2 changes per week	5.00
3 changes per week	3.00
4 changes per week	2.00
5 changes per week	1.50

5787

EXHIBIT NO. W-8 (12)

Warner Bros. & First National Productions

Distributor Vitagraph, Inc,
by R. S. Smith

Season 1935-36

Exhibitor Schine Theatrical Co., Inc.,
by George V. Lynch

Theatre Oneonta or Palace,
Oneonta, N. Y.

Contract application date August 5, 1935

Approval date August 16, 1935
by A. W. Smith, Jr.

No. of pictures offered 60

No. of Pictures Licensed 59

Provisions, if any, re admission prices Evenings: Adults, Orchestra, Oneonta-40
Palace-35; Balcony-25, Children-10
Matinees: Adults-25, Children-10

Run and clearance provisions

First run.
Thirty days over Cooperstown, Morris, Delhi.

Other typewritten or handwritten clauses including riders, if any.

Salesman-Manager; Branch-Albany, N. Y., Contract No. 9160

Split figures on 30% and 25% pictures to be determined as follows:

Distributor to receive 30% or 35% of gross receipts respectively up until such time as exhibitor shows profit equal to 50% of amount distributor receives as film rental and to split 50/50 from that point on.

Subject to all terms and conditions of Master Agreement, if any.

List or summary of motion pictures licensed and rental terms

2	3	35%	See terms below
7	2/3	30%	See terms below
12	1/2/3	25%	
6	1/2.3	$75.00	
32	1/2	57.50	

If 30% pictures play Saturday or Sunday, terms to be 25%.
If 25% pictures play Saturday or Sunday terms to be 20%.
If 25% and 20% pictures are used with a double feature or vaudeville, terms to be 15%. Exhibitor has option of playing flat rental pictures at 20% - if Saturday or Sunday, terms to be 15%. Exchange to be notified within five days after it is booked. 35% and 30% pictures cannot play with vaudeville or double bills.

Score: $2.50 per day

Trailers:	1 change per week	$10.00
	2 changes per week	5.00
	3 changes per week	3.00
	4 changes per week	2.00
	5 changes per week	1.50

EXHIBIT NO. W-8 (13)
Warner Bros. & First National Productions

Distributor Vitagraph, Inc.

Season 1935-36

Exhibitor Schine Theatrical Co., Inc.
by George V. Lynch

Theatre Pontiac, Saranac Lake, N. Y.

Contract application date August 5,1935

Approval date August 16, 1935
by A. W. Smith, Jr.

No. of pictures offered 60

No. of Pictures Licensed 59

Provisions, if any, re admission prices Evenings: Adults, Orchestra-40, Balcony-30, Children-10
Matinees: Adults-30, Children-10

Run and clearance provisions First run.
Fourteen days ahead of Lake Placid with open booking during the periods June 15th to September 15th and January 15th to February 15th.

Other typewritten or handwritten clauses including riders, if any.

Salesman-Manager; Branch-Albany, N. Y.; Contract No. 9162

Split figures on 30% and 35% pictures to be determined as follows:

Distributor to receive 30% or 35% of gross receipts respectively up until such time as exhibitor shows profit equal to 50% of amount distributor receives as film rental and to split 50/50 from that point on.

Subject to all terms and conditions of Master Agreement, if any.

List or summary of motion pictures licensed and rental terms

2	2/3	35% See terms below
7	2	30% See terms below
18	1/2	$50.00
32	1/2	40.00

If 30% pictures play Saturday or Sunday, terms to be 25%.
35% and 30% pictures cannot play with vaudeville or double bills.

Score: $2.50 per day

Trailers,	1 change per week	$10.00
	2 changes per week	5.00
	3 changes per week	3.00
	4 changes per week	2.00
	5 changes per week	1.50

EXHIBIT NO. W-8 (14)
Warner Bros. & First National Productions

Distributor Vitagraph, Inc.
by R. S. Smith

Season 1935 - 36

Exhibitor Schine Theatrical Co., Inc.
by George V. Lynch

Theatre State, Tupper Lake, N. Y.

Contract application date August 5, 1935

Approval date August 16, 1935
by A. W. Smith, Jr.

No. of pictures offered 60

No. of Pictures Licensed 59

Provisions, if any, re admission prices Evenings: Adults, Orchestra-35-25, Balcony-20, Children-10
Matinees: Adults-25, Children-10

Run and clearance provisions

First run
Thirty days ahead of Faust and Summount.

Other typewritten or handwritten clauses including riders, if any.

Salesman-Manager; Branch-Albany, N. Y.; Contract No. 9163

Split figures on 30% and 35% pictures to be determined as follows:

Distributor to receive 30% or 35% of gross receipts respectively up until such time as exhibitor shows profit equal to 50% of amount distributor receives as film rental and to split 50/50 from that point on.

Subject to all terms and conditions of Master Agreement, if any.

List or summary of motion pictures licensed and rental terms

2	2/3	35%	See terms below	7	$2.00
7	2/3	$35.00		7	2.00
26	1/2	20.00		7	2.00
24	1/2	15.00		7	2.00

35% pictures cannot play with vaudeville or double bills

Score: $2.50 per run.

EXHIBIT NO. W-8 (15)

Warner Bros. & First National Productions

ributor Vitagraph, Inc. Season 1935-36

hibitor Schine Theatrical Co., Inc. (unsigned) Theatre Avon or Olympic, Watertown, N. Y.

tract application date August 5, 1935 Approval date 19

of pictures offered 60 No. of Pictures Licensed 59

visions, if any, re admission prices Evenings: Adults, Orchestra (Avon-40 Balcony-Avon-30
(Olympic-25, Children-10
Matinees: Adults-25, Children-10

n and clearance provisions

First run.
Thirty days on Adams and Sacketts Harbor.
Sixty days first run over second run.

er, typewritten or handwritten clauses including riders, if any.

Salesman-Manager; Branch-Albany, N. Y.; Contract No. ________

Split figures on 30% and 25% pictures to be determined as follows:

Distributor to receive 30% or 35% of gross receipts respectively up until such time as exhibitor shows profit equal to 50% of amount distributor receives as film rental and to split 50/50 from that point on.

Subject to all terms and conditions of Master Agreement, if any.

t or summary of motion pictures licensed and rental terms

2	3	35%	See terms below
7	2/3	30%	See terms below
12	1/2/3	25%	
5	1/2/3	$75.00	
32	1/2	57.50	

If 30% pictures play Saturday or Sunday, terms to be 25%.
If 25% pictures play Saturday or Sunday terms to be 20%.
If 25% and 20% pictures are used with a double feature or vaudeville, terms to be 15%. Exhibitor has option of playing flat rental pictures at 20% - if Saturday or Sunday, terms to be 15%. Exchange to be notified within five days after it is booked. 35% and 30% pictures cannot play with vaudeville or double bills.

Score: $2.50 per day

Trailer:	1 change per week	$10.00
	2 changes per week	5.00
	3 changes per week	3.00
	4 changes per week	2.00
	5 changes per week	1.50

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EXHIBIT NO. P 62 (W-8 (16) for Ident.)
Warner Bros. & First National Productions

Distributor Vitagraph, Inc. **Season** 1935-36

Exhibitor Belpik TheatreCorporation by George V. Lynch **Theatre** State, Bucyrus, Ohio

Contract application date July 13, 1935 **Approval date** July 25, 1935 by A. W. Smith, Jr.

No. of pictures offered 55 **No. of Pictures Licensed** 55

Provisions, if any, re admission prices
Evenings: Adults-20, Children-10
Matinees: Adults-15, Children-10

Run and clearance provisions First run, Bucyrus, Ohio.

Other typewritten or handwritten clauses including riders, if any.

Salesman-W. J. Brandt; Branch-Cleveland; Contract No. 4797
All terms and conditions of the Master Agreement dated April 24, 1935 to be part and parcel of this contract.

1 per week starting October 1, 1935.

List or summary of motion pictures licensed and rental terms

2	2-3	35% of gross	7	$4.00
5	2-3	30% of gross	7	4.00
4	2-3	25% of gross	7	4.00
20	2-3	$30.00	7	3.00
10	2-3	25.00	7	3.00
14	2-3	20.00	7	3.00

Score: $3.00 per motion picture

EXHIBIT NO. W-8 (17)

Warner Bros. & First National Productions

Distributor Vitagraph, Inc.
by W. J. Brandt

Season 1935-36

Exhibitor Belpik Theatre Corp.
by George V. Lynch

Theatre Strand of Van Wert, Van Wert, Ohio

Contract application date August 10, 1935

Approval date August 22, 1935
by A. W. Smith, Jr.

No. of pictures offered 59

No. of Pictures Licensed 59

Provisions, if any, re admission prices

Evenings: Adults-25, Children-10
Matinees: Adults-20, Children-10

Run and clearance provisions

As available.

Other typewritten or handwritten clauses including riders, if any

Salesman-W. J. Brandt; Branch-Cleveland; Contract No. 4795

All percentage pictures to play the Van Wert Theatre
All terms and conditionsof the Master Agreement dated April 24, 1935
to be part and parcel of this contract.
One per week starting November 1, 1935.

List or summary of motion pictures licensed and rental terms

2	2-3	35% of gross	7	$2.00
7	2-3	30% of gross	7	2.00
10	2-3	$35.00	7	2.00
10	2-3	20.00		
10	1-2	[illegible].00		

Score: $3.00 per motion picture, 1-2 days, 3 days $5.00.

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EXHIBIT NO. W 33 (16)

First National Productions

Distributor Vitagraph, Inc.
by H. A. Seed

Season 1934-35

Exhibitor Schine Theatrical Co., Inc.
by George V. Lynch

Theatre Riviera or Liberty, Rochester, N

Contract application date Aug. 29, 1934

Approval date Sept. 11, 1934
A.W Smith, Jr.

No. of pictures offered 30

No. of Pictures Licensed

Provisions, if any, re admission prices Evenings: Adults-25¢, Children-10¢
Matinees: Adults-25¢, Children-10¢

Run and clearance provisions Fourth run if played within 21 days after notice of availability.

Other typewritten or handwritten clauses including riders, if any.

Branch Buffalo, N. Y.; Number 1306.

List or summary of motion pictures licensed and rental terms

Exhibitor to use 30 features combined W.B.-F.N. to play repeat run at Liberty or Riviera Theatres as follows:

3 @ $45.00	2/3 days each
27 @ 25.00	2/3 days each

All scores $2.50 per run

Trailers on each subject:

1 change	$10.00
2 changes	5.00
3 changes	3.00
4 changes	2.60
5 changes	1.50

EXHIBIT NO. W 33 (16)
Warner Bros. Productions

Distributor Vitagraph, Inc.
by H. A. Seed

Season 1934-35

Exhibitor Schine Theatrical Co., Inc.
by George V. Lynch

Theatre Liberty or Riviera, Rochester, N. Y.

Contract application date Aug. 29, 1934

Approval date September 11, 1934
A. W. Smith, Jr.

No. of pictures offered 30

No. of Pictures Licensed 15

Provisions, if any, re admission prices Evenings: Adults-25, Children-10¢
Matinees: Adults- 25, Children-10¢

Run and clearance provisions Fourth run if played within 21 days after notice of availability.

Other typewritten or handwritten clauses including riders, if any.

Branch- Buffalo, N. Y.; Number 1305.

List or summary of motion pictures licensed and rental terms

Exhibitor to use 30 features combined W.B.-F.N. to play repeat run at Liberty or Riviera Theatre as follows:

3 @ $45.00	2/3 days each
27 @ 25.00	2/3 days each

All scores $2.50 per run.

Trailers on each subject:

1 change	$10.00
2 changes	5.00
3 changes	3.00
4 changes	2.00
5 changes	1.50

EXHIBIT NO. W 33 (17)

First National Productions

Distributor Vitagraph, Inc.
by H.A. Seed

Season 1934-35

Exhibitor Schine Theatrical Co., Inc.
by George V. Lynch

Theatre State or Dixie, Rochester, N Y.

Contract application date Aug. 29, 1934

Approval date Sept. 11, 1934
A.W. Smith, Jr.

No. of pictures offered 30

No. of Pictures Licensed 26

Provisions, if any, re admission prices Evenings: Adults-25¢, Children-10¢
Matinees: Adults-25¢, Children-10¢

Run and clearance provisions Third run. To be played day and date with Riviera or Liberty Theatres or within tendays. State to have 14 days over Webster. Dixie to have 10 days on Hub, Sea Breeze, Hudson and Astor. Pictures must be played within 21 days of availability.

Other typewritten or handwritten clauses including riders, if any.

Branch-Buffalo, N. Y. Number 1307
Exhibitor to have the privilege of eliminating 7 combined W. B.-F.N. pictures on 1934-35 contract.

List or summary of motion pictures licensed and rental terms

1	3/4	35% See terms below
4	3/4	$65.00
25	3/4	40.00

On the pictures that carry split figures, the split figure is to be determined as follows: The distributor is to receive 35% of the gross up until such time as the exhibitor shows a profit equal to 50% of amount distributor receives as rental, then split 50/50 from that point on.

All scores $2.50 per run
Trailers on each subject:

1 change	$10.00
2 changes	5.00
3 changes	3.00
4 changes	2.00
5 changes	1.50

EXHIBIT NO. W 33 (17)

Warner Bros. Productions

Distributor Vitagraph, Inc.
by H. A. Seed

Season 1934-35

Exhibitor Schine Theatrical Co., Inc.
by George V. Lynch

Theatre State or Dixie, Rochester, N. Y.

Contract application date Aug. 29, 1934

Approval date September 11, 1934
A. W. Smith, Jr.

No. of pictures offered 30

No. of Pictures Licensed 26

Provisions, if any, re admission prices Evenings: Adults-25¢; Children-10¢
Matinees: Adults-25¢, Children-10¢

Run and clearance provisions Third run. To be played day and date with Riviera or Liberty Theatres or within 10 days. State Theatre to have 14 days on Webster; Dixie to have 10 days on Hub, Sea Breeze, Hudson and Astor.

Pictures to be played within 21 days of availability.

Other typewritten or handwritten clauses including riders, if any.

Branch-Buffalo, N. Y.; Number 1308
Exhibitor has privilege of eliminating 7 combined WB-FN pictures on 1934-35 contract.

List or summary of motion pictures licensed and rental terms

Terms on # 801 to be arranged later.

1	3/4	35% See terms below.
3	3/4	$65.00
25	3/4	40.00

On the pictures that carry split figures, the split figure is to be determined as follows: The distributor is to receive 35% of gross receipts up until such time as the exhibitor shows a profit equal to 50% of amount distributor receives as film rental, then split 50/50 from that point on.

All scores-$2.50 per run
Trailers on each subject:

1 change	$10.00
2 changes	5.00
3 changes	3.00
4 changes	2.00
5 changes	1.50

EXHIBIT NO. W-18

Warner Bros. & First National Productions

Distributor Vitagraph, Inc. **Season** 1935-36

Exhibitor Schine Theatrical Co., Inc. **Theatre** Liberty or Riviera, Rochester, N

Contract application date July 24, 1935 **Approval date** August 5, 1935
by A. W. Smith, Jr.

No. of pictures offered 60 **No. of Pictures Licensed** 30

Provisions, if any, re admission prices Evenings: Adults-25, Children-10
Matinees: Adults-25, Children-10

Run and clearance provisions

Fourth run if played within 21 days after notice
availability.
Repeat run.

Other typewritten or handwritten clauses including riders, if any.

Branch-Buffalo, N. Y.; Contract No. 1829

List or summary of motion pictures licensed and rental terms

Exhibitor to use 30 combined Warner Bros.-First National features to play repeat run at Liberty or Riviera Theatre as follows:

2 @	$45.00	2/3 days
27 @	25.00	2/3 days

Score: $2.50 per run

Trailers:	1 change per week	$10.00
	2 changes per week	5.00
	3 changes per week	3.00
	4 changes per week	2.00
	5 changes per week	1.50

EXHIBIT NO. W-19
Warner Bros. & First National Productions

tor Vitagraph, Inc. Season 1935-36

or Schine Theatrical Co., Inc. Theatre State or Dixie, Rochester, N. Y.
by George V. Lynch

ct application date July 24, 1935 Approval date August 5, 1935
by A. W. Smith, Jr.

pictures offered 60 No. of Pictures Licensed 30

ons, if any, re admission prices Evenings: Adults-25, Children-10
Matinees: Adults-15, Children-10

d clearance provisions
Repeat fourth run.
State Theatre-14 days clearance on Webster Theatre
Dixie Theatre-10 days clearance on Hub, Seabreeze,
Hudson, Astor.
Pictures must be played within 21 days of availability.

typewritten or handwritten clauses including riders, if any.

Branch-Buffalo, N. Y.; Contract No. 1827

summary of motion pictures licensed and rental terms
Exhibitor to use 30 combined WB-FN features repeat run at the State or Dixie Theatres as follows:

3 @ $45.00 2/3 days
27 @ $20.00 2/3 days

Score: $2.50 per run

Trailers: 1 change - $10.00
2 changes 5.00
3 changes 3.00
4 changes 2.00
5 changes 1.50

EXHIBIT NO. R-3

Distributor RKO Distributing Corporation **Season** 1934-35
by J. A. Ahern

Exhibitor Manyer Corp.
by Geo. V. Lynch

Theatre Palace or Jefferson,
Auburn, N. Y.

Contract application date Jan. 23, 1935 **Approval date**

No. of pictures offered 50 **No. of Pictures Licensed** 40

Provisions, if any, re admission prices

Run and clearance provisions

60 days in City - 30 days on Skeneateles, Union Springs, Weedsport, Auror
10 days on Seneca Falls.

Other typewritten or handwritten clauses including riders, if any.

Exhibitor agrees that the Distributor shall have the right to designate not more than 20 photoplays to be played on the percentage terms listed in this license***

Exhibitor agrees to play and pay for 40 feature pictures generally releas by the RKO Distributing Corporation during the 1934-35 Season and further agrees that he shall be entitled to a selection only from such pictures a are identified by production numbers running from 501 to 550. It is furt agreed that the Exhibitor's objection privilege shall be limited to one picture out of each 5 released and the Exhibitor further agrees that acceptance or rejection of a feature shall be given to the distributor within 21 days after its day of availability in the exchange territory.

Branch-Buffalo . Salesman: Harry T. Dixon Contract No. 1047

List or summary of motion pictures licensed and rental terms

Two	(2) Features	2/3		35% of gross each
Four	(4) Features	2/3		30% of gross each
Fourteen	(14) Features	2/3		25% of gross each
Ten	(10) Features	2/3	$72.50	2.50 each
Ten	(10) Features	2/3	42.50	2.50 each

Provisions regarding Short Subjects not included.

EXHIBIT NO. B-4 5800

Distributor RKO Distributing Corporation Season 1934-35
by J.A.Ahern

Exhibitor Schine Theat Co Inc. Theatre Babcock, Bath, N.Y.
by Geo. V. Lynch

Contract application date Nov. 12, 1934 Approval date -

No. of pictures offered 50 No. of Pictures Licensed 25

Provisions, if any, re admission prices

Run and clearance provisions

30 days on Cohocton, Hammondsport, Prattsburg, Savona.

Other typewritten or handwritten clauses including riders, if any.

Branch- Buffalo Salesman: Harry T. Dixon Contract No. 809

List or summary of motion pictures licensed and rental terms

Twelve (12) Features	2/3	$43.50	$2.50 each
Thirteen (13) Features	2/3	37.50	2.50 each

Note: Provision regarding Short Subjects not included.

EXHIBIT NO. R-5

Distributor RKO Distributing Corporation
by: J.A.Ahern

Season 1934-35

Exhibitor Schine Theat.Co., Inc.
by Geo. V. Lynch

Theatre Playhouse, Canandaigua, N.Y.

Contract application date Nov. 12, 1934

Approval date

No. of pictures offered 50

No. of Pictures Licensed 25

Provisions, if any, re admission prices

Run and clearance provisions

30 days on Naples, N.Y.

Other typewritten or handwritten clauses including riders, if any.

Branch: Buffalo #4
Salesman: Harry T. Dixon
Contract No. 812

List or summary of motion pictures licensed and rental terms

Twelve (12) Features	2/3	$49.25	$2.50 each
Thirteen (13) Features	2/3	42.50	2.50 each

Note: Provision regarding Short Subjects not included.

EXHIBIT NO. R-6

Distributor RKO Distributing Corporation by J. A. Ahern — Season 1934-35

Exhibitor Schine Theatrical Co., Inc. by Geo. V. Lynch — Theatre Strand, Carthage, N. Y.

Contract application date Nov. 12, 1934 — Approval date

No. of pictures offered 50 — No. of Pictures Licensed 25

Provisions, if any, re admission prices
Matinee: adults .20 children .10
Evening: adults .30 children .10

Run and clearance provisions -

90 days over City of Carthage - 120 days over second run

Other typewritten or handwritten clauses including riders, if any,

Branch - Albany
Salesman - C. R. Halligan
Contract No. 3142

Exhibitor agrees to play and/or pay for - as available.

List or summary of motion pictures licensed and rental terms

5 Features	1-3	$57.50	Inc.
13 Features	1-3	27.50	Inc.
7 Features	1-3	31.63	Inc.

Total Feature License Fees (Including Score) $866.41

Note: Provision regarding Short Subjects not included.

5863 EXHIBIT NO. R-7

Distributor RKO Distributing Corporation by J. A. Ahern
Season 1934-1935

Exhibitor Schine Theat.Co.,Inc. by Geo.V.Lynch
Theatre Fox or State, Corning, N.Y.

Contract application date Nov.12,1934
Approval date

No. of pictures offered 50
No. of Pictures Licensed 40

Provisions, if any, re admission prices

Run and clearance provisions

30 days on Painted Post, Plaza Theatre, Addison, N.Y.
180 days on Second run.

Other typewritten or handwritten clauses including riders, if any.

Branch - Buffalo #4
Salesman - Harry T. Dixon
Contract No.

List or summary of motion pictures licensed and rental terms

Twenty	(20) Features	2/3	$49.25	$2.50 each
Twenty	(20) Features	2/3	42.50	2.50 each

Note: Provision regarding Short Subjects not included.

EXHIBIT NO. R-8

istributor RKO Distributing Corporation Season 1934-35
by J.A. Ahern

hibitor Schine Theat. Co., Inc. Theatre Temple or State, Cortland, N. Y.
By Geo. V. Lynch

ontract application date Nov. 12, 1934 Approval date

o. of pictures offered 50 No. of Pictures Licensed 40

rovisions, if any, re admission prices

un and clearance provisions

30 days ahead of Tully, Homer, McGrawsville, Marathon, Moravia, Groton, and Whitney Point.

Other typewritten or handwritten clauses including riders, if any.

Exhibitor agrees that the Distributor shall have the right to designate not more than 20 photoplays to be played on the percentage terms listed in this license, ***

Branch: Buffalo #4
Salesman: Harry T. Dixon
Contract No.

List or summary of motion pictures licensed and rental terms

Two	(2)	Features	2/3		35% of gross each	
Four	(4)	Features	2/3		30% of gross each	
Fourteen	(14)	Features	2/3		25% of gross each	
Twenty	(20)	Features	2/3	$47.50		** $2.50 each

Note: Provision regarding Short Subjects not included.

EXHIBIT NO. R-9

Distributor RKO Distributing Corporation
by J. A. Ahern

Season 1934-35

Exhibitor Schine Theat. Co., Inc.
by Geo. V. Lynch

Theatre Geneva or Regent, Geneva, N. Y.

Contract application date Nov. 12, 1934

Approval date

No. of pictures offered 50

No. of Pictures Licensed 40

Provisions, if any, re admission prices

Run and clearance provisions

30 days ahead of Lyons, Waterloo, Seneca Falls, Willard, Palmyra, Phelps, Clifton Springs, Rushville - 10 days on Pen Yan.

Other typewritten or handwritten clauses including riders, if any.

Exhibitor agrees that the Distributor shall have the right to designate not more than 20 photoplays to be played on the percentage terms listed in this license ***

Branch - Buffalo 4
Salesman - Harry T. Dixon
Contract No. -

List or summary of motion pictures licensed and rental terms

Two	(2)	Features	2/3		35% of gross each	
Four	(4)	Features	2/3		30% of gross each	
Fourteen	(14)	Features	2/3		25% of gross each	$2.50
Twenty	(20)	Features	2/3	$37.50		

Note: Provision regarding Short Subjects not included.

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EXHIBIT NO. R-10

tributor RKO Distributing Corporation Season 1934-35
by J. A. Ahern

hibitor Schine Theatrical Co., Inc. Theatre Rialto or Empire, Glens Falls, N. Y.
by Geo. V. Lynch

ntract application date Nov. 14, 1934 Approval date

of pictures offered 50 No. of Pictures Licensed 40

visions, if any, re admission prices Matinee: Adults .25 children .10
Evening: Adults .35 orchestra; balcony .25
children .10

and clearance provisions

econd run clearance) 1st
ourteen (14) days over third) run (45 days over 2nd run - 14 days
n Glens Falls) Clearance (ahead of Hudson Falls - 30 days
(ahead of Fort Edward - 7 days
(ahead of Lake George

typewritten or handwritten clauses including riders, if any.

xhibitor agrees that the Distributor shall have the right to designate not ore than 20 photoplays to be played on the percentage terms listed in this icense ***

xhibitor agrees to play and/or pay for - as available

ranch - Albany
lesman - C. R. Halligan
ontract No. 3143

summary of motion pictures licensed and rental terms

2	Features	2-3		35% of Gross	
	Features	2-3		30% of Gross	
	Features	2-3		25% of Gross	
	Features	2-3	$72.50		$2.50
	Features	2-3	47.50		2.50

y picture which plays the Rialto first run is to play the Empire second n at $17.50 2-3 days.
e pictures rejected by the Rialto can be played first run at the Empire $30.00 - 2-3 days.
ch pictures are to be over and above the minimum commitment of forty (40) ctures.

te: Provision regarding Short Subjects not included.
tal Feature License Fees (Including Score) $1150.

EXHIBIT NO. R-11

Distributor RKO Distributing Corporation Season 1934-35
By J. A. Ahern

Exhibitor Schine Theatrical Co.Inc. Theatre Glove or Hippodrome,
by Geo. V. Lynch Gloversville, NY

Contract application date Nov. 14, 1934 Approval date

No. of pictures offered 50 No. of Pictures Licensed 40

Provisions, if any, re admission prices Matinee: Adults, orchestra 30: balcony 30:childre
Evening: Adults, orchestra 40' balcony 40:childre

Run and clearance provisions

30 days ahead of Johnstown, Fonda, Broadalbin, Mayfield, Sacandaga Park

Other typewritten or handwritten clauses including riders, if any.

Exhibitor agrees that the Distributor shall have the right to designate not more than 20 photoplays to be played on the percentage terms listed in this license***

Exhibitor agrees to play and/or pay for as available.

Branch-Albany
Salesman- C.R.Halligan
Contract No. - 3145

List or summary of motion pictures licensed and rental terms

2	Features	2-3			35% of gross	
4	Features	2-3			30% of gross	
14	Features	2-3			25% of gross	
10	Features	2-3	$72.50	$2.50		$2.80
10	Features	2-3	47.50	2.50		2.80

Total Feature License Fees (Including Score) ~~$1750.00~~ 1250.

Note: Provision regarding Short Subjects not included.

EXHIBIT NO. R-12

Distributor RKO Distributing Corporation Season 1934-35
by J. A. Ahern

Exhibitor Schine Enterprises, Inc. Theatre Schine's, Hamilton, N. Y.
by Geo. V. Lynch

Contract application date March 29, 1935 Approval date

No. of pictures offered 50 No. of Pictures Licensed 20

Provisions, if any, re admission prices Matinee: Adults .25, children .10
Evening: Adults .25, children .10

Run and clearance provisions

Other typewritten or handwritten clauses including riders, if any.

Exhibitor agrees to play and pay for 20 feature pictures generally released by the RKO Distributing Corporation during the 1934-35 season and further agrees that he shall be entitled to a selection only from such pictures as are identified by production numbers running from 501 to 550.

Exhibitor agrees to play and/or pay for not less than as available.

Branch - Albany
Salesman - C. R. Halligan
Contract No. 3399

List or summary of motion pictures licensed and rental terms

5	Features	2-3	$50.00	Inc.
10	Features	2-3	25.00	Inc.
5	Features	2-3	22.50	Inc.

Total Feature License Fees (Including Score) $612.50

Note: Provision regarding Short Subjects not included.

EXHIBIT NO. R-13

Distributor RKO Distributing Corporation
by J.A.Ahern **Season** 1934-35

Exhibitor Schine Theatrical Co.Inc. **Theatre** Liberty, Herkimgr.N.Y.

Contract application date Nov.12,1934 **Approval date**

No. of pictures offered 50 **No. of Pictures Licensed** 25

Provisions, if any, re admission prices. Matinee: adults .20 - children .10
Evening: adults .30 - children .10

Run and clearance, provisions

30 days ahead of Mohawk, Frankfort, West Winfield
14 days ahead of Illion
Fourteen (14) days after first run Utica - As available.

Other typewritten or handwritten clauses including riders, if any.

Exhibitor agrees to play and/or pay for AS AVAILABLE

Branch: Albany
Salesman: C.R. Halligan
Contract No. 3146

List or summary of motion pictures licensed and rental terms

5	Features	2-3	$71.88	Inc.
13	Features	2-3	37.50	Inc.
7	Features	2-3	43.13	Inc.

Total Feature License Fees (Including Score) $1148.81
Not : Provision regarding Short Subjects not included.

EXHIBIT NO. R-14

Distributor RKO Distributing Corporation **Season** 1934-35
by J. A. Ahern

Exhibitor Schine Theatrical Co., Inc. **Theatre** Rialto; Little Falls, N. Y.
by Geo. V. Lynch

Contract application date Nov. 12, 1934 **Approval date**

No. of pictures offered 50 **No. of Pictures Licensed** 35

Provisions, if any, re admission prices Matinee - Adults .20, children .10
Evening - Adults .30, children .10

Run and clearance provisions

120 days City of Little Falls - 14 days over Dolgeville
30 days ahead of St. Johnsville.

Other typewritten or handwritten clauses including riders, if any,

The Exhibitor agrees to play and/or pay for AS AVAILABLE

Branch - Albany
Salesman - C. H. Halligan
Contract No. 3148

List or summary of motion pictures licensed and rental terms

5	Features	2-3	$69.00	Inc.
18	Features	2-3	40.00	Inc.
12	Features	1-2	46.00	Inc.

Total Feature License Fees (Including Score) $1,617.00
Note: Provision regarding Short Subjects not included.

5811

C

EXHIBIT NO. R-15

Distributor	RKO Distributing Corp. by J.A. Ahern	Season	1934-35
Exhibitor	Schine Theatrical Co.Inc. by Geo. V. Lynch	Theatre	Rialto or HiArt, Lockport, N.Y.
Contract application date	Nov. 12, 1934	Approval date	
No. of pictures offered	50	No. of Pictures Licensed	40

Provisions, if any, re admission prices

Run and clearance provisions

30 days ahead of Nufane and Middleport
60 days over second run

Other typewritten or handwritten clauses including riders, if any.

The Exhibitor agrees that the Distributor shall have the right to designat
not more than 20 photoplays to be played on the percentage terms listed
in this license ***

Branch: Buffalo
Salesman - Harry T. Dixon
Contract No. 817

List or summary of motion pictures licensed and rental terms

Two	(2)	Features	2/3		35% of gross each	
Four	(4)	Features	2/3		30% of gross each	
Fourteen	(14)	Features	2/3		25% of gross each	$2.50 eac
[illegible]ty	(20)	Features	2/3	$37.50		

Note: Provision regarding Short Subjects not included.

8301

EXHIBIT NO. R-16

Distributor RKO Distributing Corporation **Season** 1934-35
by J. A. Ahern

Exhibitor Schine Theat.Co.,Inc.
by Geo.V.Lynch

Theatre HiArt; Lockport, N.Y.

Contract application date Nov.12,1934

Approval date

No. of pictures offered

No. of Pictures Licensed

Provisions, if any, re admission prices

Run and clearance provisions

60 days over third run

Other typewritten or handwritten clauses including riders, if any.

Branch - Buffalo 4
Salesman: Harry T. Dixon
Contract No. 818

List or summary of motion pictures licensed and rental terms

It is hereby agreed that the exhibitor will use pictures at the HiArt Theatre 2nd run that play the Rialto Theatre 1st run and prices are to be as follows:

50% of the number of pictures used at the HiArt Theatre,Lockport
2nd run will be 2/3 $17.63 $2.50 each

and 50% of the number of pictures used at the HiArt Theatre, Lockport
2nd run will be 2/3 $15.00 $2.50 each

EXHIBIT NO. R-17

Distributor RKO Distributing Corporation
by J. A. Ahern

Season 1934-35

Exhibitor Schine Theatrical Co., Inc.
by Geo. V. Lynch

Theatre Malone - Malone, N. Y.

Contract application date 11/12/34

Approval date

No. of pictures offered 50

No. of Pictures Licensed 25

Provisions, if any, re admission prices

	MATINEE	EVENING
Orchestra:	adults 30, children 10	adults 40, children 10
Balcony:	adults 30, children 10	adults 30, children 10

Run and clearance provisions

30 days ahead of Chateaugay and Brushton.

Other typewritten or handwritten clauses including riders, if any. The Exhibitor agrees that the
butor shall have the right to designate not more than 20 photoplays to
on the percentage terms listed in this license***
The exhibitor agrees to play and pay for 25 feature pictures generally
by the RKO Distributing Corporation during the 1934-35 Season and furthe
that he shall be entitled to a selection only from such pictures as are
fied by production numbers running from 501 to 550. It is further agre
that the exhibitor's rejection privilege shall be limited to one picture
each....released and the exhibitor further agrees that acceptance or re
of a feature shall be given to the distributor within twenty-one days a
date of availability in the exchange territory/***
The exhibitor agrees to play and/or pay for----as available---
Branch-Albany Salesman-Home Office Contract No. 3149

List or summary of motion pictures licensed and rental terms

2	Features	2		35% of Gross	
4	Features	2		30% of Gross	
14	Features	1-2		25% of Gross	
5	Features	1-2	$32.50		$2.50

Total Feature License Fees (incl. Score) - $175.00

NOTE: Provisions regarding short subjects not included.

EXHIBIT NO. R-18

Distributor RKO Distributing Corporation Season 1934-35
by J. A. Ahern

Exhibitor Schine Theatrical Co., Inc. Theatre Massena, Massena, N. Y.
by Geo. V. Lynch

Contract application date 11/12/34 Approval date

No. of pictures offered 50 No. of Pictures Licensed 25

Provisions, if any, re admission prices

	MATINEE	EVENING
Orchestra:	adults 25, children 15	adults 35, children 15
Balcony:	adults 25, children 15	adults 35, children 15

Run and clearance provisions
30 days ahead of Norfolk and Norwood.

Other typewritten or handwritten clauses including riders, if any.
Branch - Albany
Salesman - C. R. Halligan
Contract No. 3150

The exhibitor agrees to play and/or oay for -- as available --

List or summary of motion pictures licensed and rental terms

4 Features	2-3	$43.13	Inc.	--
6 Features	2-3	37.50	Inc.	--
4 Features	2-3	31.63	Inc.	--
3 Features	2-3	27.50	Inc.	--
4 Features	2-3	20.13	Inc.	--
4 Features	2-3	17.50	Inc.	--

Total Feature License Fees (incl. Score) - $757.06

NOTE: Provisions regarding short subjects not included.

EXHIBIT NO. R-21

A

Distributor RKO Distributing Corp.
by J. A. Ahern

Season 1934-35

Exhibitor Schine Theatrical Co., Inc.
by Geo. V. Lynch

Theatre Strand, Ogdensburg, N.Y.

Contract application date 11/12/34

Approval date

No. of pictures offered 50

No. of Pictures Licensed 25

Provisions, if any, re admission prices

	Matinee	Evening
Orchestra:	adults 30, children 10	adults 40, children 10
Balcony:	adults 30, children 10	adults 30, children 10

Run and clearance provisions

30 days ahead of Waddington. 14 days over Canton.

Other typewritten or handwritten clauses including riders, if any.

The Exhibitor agrees to play and/or pay for -- as available --

Branch - Albany
Salesman - C. R. Halligan
Contract No. 3177

List or summary of motion pictures licensed and rental terms

2 Features	2		35% of gross	
4 features	2		30% of gross	
14 Features	1-2		25% of gross	
5 Features	1-2	$32.50		$2.50

Total Feature License Fees (incl. Score) - $175.00.

Note: Provisions regarding short subjects not included.

EXHIBIT NO. R-22

Distributor RKO Distributing Corp.
by J. A. Ahern

Season 1934-35

Exhibitor Schine Theatrical Co., Inc.
by Geo. V. Lynch

Theatre Oneonta or Palace
Oneonta, N.Y.

Contract application date 11/14/34

Approval date

No. of pictures offered 50

No. of Pictures Licensed 40

*Provisions, if any, re admission prices

	Matinee	Evening
Orchestra:	adults 25, children 10	adults 40, children 10
Balcony:	adults 25, children 10	adults 25, children 10

Run and clearance provisions

14 days ahead of Delhi. 30 days ahead of Morris, Hartwick. Open booking with Stamford. 14 days ahead of Cooperstown.

Other typewritten or handwritten clauses including riders, if any.

The Exhibitor agrees to play and/or pay for --- as available.---

The Exhibitor agrees that the Distributor shall have the right to designate not more than 20 photoplays to be played on the percentage terms listed in this license ***

Branch - Albany
Salesman - C. R. Halligan
Contract No. 3178

List or summary of motion pictures licensed and rental terms

2 Features	2-3		35% of gross	
4 Features	2-3		30% of gross	
14 Features	2-3		25% of gross	
10 Features	2-3	$47.50		$2.50
10 Features	2-3	35.00		2.50

Total Feature License Fees (incl. Score) - $875.00.

Note: Provisions regarding short subjects not included.

EXHIBIT NO. R-23

Distributor RKO Distributing Corp.
by J. A. Ahern

Season 1934-35

Exhibitor Schine Theatrical Co., Inc.
by Geo. V. Lynch

Theatre Capitol or Strand
Oswego, N.Y.

Contract application date 11/12/34

Approval date

No. of pictures offered 50

No. of Pictures Licensed 45

Provisions, if any, re admission prices

Run and clearance provisions

30 days on Fulton, Minetto, Pulaski. 2nd run Oswego.

Other typewritten or handwritten clauses including riders, if any.

Branch - Buffalo
Salesman - Harry T. Dixon
Contract No. 820

List or summary of motion pictures licensed and rental terms

Two (2) Features	2/3	$135.50	$2.50 each
Eighteen (18) Features	2/3	66.50	2.50 each
Twenty-five (25) Features	2/3	57.50	2.50 each

Note: Provisions regarding short subjects not included.

EXHIBIT NO. R-24

Distributor RKO Distributing Corporation Season 1934-35
by J. A. Ahern

xhibitor Schine Theatrical Co., Inc. Theatre State or Dixie
by Geo. V. Lynch Rochester, N. Y.

Contract application date 11/12/34 Approval date

o. of pictures offered 50 No. of Pictures Licensed 25

rovisions, if any, re admission prices

un and clearance provisions

4 days on Hub Theatre, Sea Breeze, N. Y., Hudson and Aster Theatres, Rochester.
4 days on Webster Theatre. Must be played within the 21 days clearance.

ther typewritten or handwritten clauses including riders, if any.

Branch - Buffalo #4
alesman - Harry T. Dixon
ontract No. 824

st or summary of motion pictures licensed and rental terms

wenty-five (25) features 2/3 $20.00 $2.50 each

EXHIBIT NO. R-25

Distributor RKO Distributing Corporation **Season** 1934-35
by J. A. Ahern

Exhibitor Schine Theatrical Co., Inc. **Theatre** Riviera, State and/or Dixie
by Geo. V. Lynch Rochester, N. Y.

Contract application date 11/12/34 **Approval date**

No. of pictures offered 50 **No. of Pictures Licensed** 42

Provisions, if any, re admission prices

Run and clearance provisions

3rd run. To be played day and date or within 10 days. 21 days on sub
runs. 30 days on the Lake Theatre.

Other typewritten or handwritten clauses including riders, if any.

Branch - Buffalo
Salesman - Harry T. Dixon
Contract No. 823

List or summary of motion pictures licensed and rental terms

Forty-two (42) Features 2/3 $120.00 $2.50 each

EXHIBIT NO. R-26

Distributor RKO Distributing Corporation Season 1934-45
by J. A. Ahern

Exhibitor Schine Theatrical Co., Inc. Theatre Liberty - Rochester, N. Y.
by Geo. V. Lynch

Contract application date 11/12/34 Approval date

No. of pictures offered 50 No. of Pictures Licensed 42

Provisions, if any, re admission prices

Run and clearance provisions

Repeat Run. To be played within the 21 days clearance.

Other typewritten or handwritten clauses including riders, if any.

Branch - Buffalo #4
Salesman - Harry T. Dixon
Contract No. 822

List or summary of motion pictures licensed and rental terms

Forty-two (42) Features 1/2 $2.50 each

EXHIBIT NO. R-27

Distributor RKO Distributing Corporation **Season** 1934-35
by J. A. Ahern

Exhibitor Schine Theatrical Co., Inc. **Theatre** Grand, Rochester, N. Y.
by Geo. V. Lynch

Contract application date 11/12/40 **Approval date**

No. of pictures offered 50 **No. of Pictures Licensed** 42

Provisions, if any, re admission prices

Run and clearance provisions

Immediately after Fenyvessy's Strand, Madison, Monroe.

Other typewritten or handwritten clauses including riders, if any.

Branch - Buffalo #4
Salesman - Harry T. Dixon
Contract No. 821

List or summary of motion pictures licensed and rental terms

Forty-two (42) Features 1/2 $12.50 $2.50 each

EXHIBIT NO. R-28

Distributor RKO Distributing Corporation **Season** 1934-35
by J. A. Ahern

Exhibitor Schine Theatrical Co., Inc. **Theatre** Andrew's - Salamanca, N. Y.
by Geo. V. Lynch

Contract application date 11/12/34 **Approval date**

No. of pictures offered 50 **No. of Pictures Licensed** 25

Provisions, if any, re admission prices

Run and clearance provisions
30 days on Randolph, Ellicottville, Little Valley.

Other typewritten or handwritten clauses including riders, if any.
Branch - Buffalo #4
Salesman - Harry T. Dixon
Contract No. 825

List or summary of motion pictures licensed and rental terms

Twelve (12) Features	2/3	$43.50	$2.50 each
Thirteen (13) Features	2/3	37.50	2.50 each

NOTE: Provisions regarding short subjects not included.

EXHIBIT NO. R-29

Distributor RKO Distributing Corporation **Season** 1934-35
by J. A. Ahern

Exhibitor Schine Theatrical Co., Inc. **Theatre** Pontiac - Saranac Lake, N. Y.
by Geo. V. Lynch

Contract application date 11/12/34 **Approval date**

No. of pictures offered 50 **No. of Pictures Licensed** 40

Provisions, if any, re admission prices

	MATINEE	EVENING
Orchestra:	adults 30, children 10	adults 40, children 10
BALCONY:	adults 30, children 10	adults 30, children 10

Run and clearance provisions

14 Days over Lake Placid - open booking between July 15th to Sept. 15th and Jan. 15th to Feb. 15th

Other typewritten or handwritten clauses including riders, if any.

The Exhibitor agrees that the Distributor shall have the right to desig not more than 20 photoplays to be played on the percentage terms listed i this License***

The Exhibitor agrees to play and/or pay for - as available -

Branch - Albany
Salesman - C. R. Halligan
Contract No. 3179

List or summary of motion pictures licensed and rental terms

2 Features	1-2		35% of Gross	
4 Features	1-2		30% of Gross	
14 Features	1-2		25% of Gross	
10 Features	1-2	$57.50		$2.50
10 Features	1-2	37.50		2.50

Total Feature License Fees (incl. Score) - $1000.00

NOTE: Provisions regarding short subjects not included.

EXHIBIT NO. R-30

ributor RKO Distributing Corp.
by J. A. Ahern

Season 1934-35

hibitor Gleve City Amusement Co.
by Geo. V. Lynch

Theatre State-Tupper Lake, N.Y.

ontract application date 5/22/35

Approval date

o. of pictures offered 44

No. of Pictures Licensed 20

rovisions, if any, re admission prices

	Matinee	Evening
rchestra:	adults 25, children 10	adults 25, children 10
alcony:	adults 15, children 10	adults 15, children 10

ns and clearance provisions

eatures - Thirty (30) days before Faust and Sunmount.

er typewritten or handwritten clauses including riders, if any. The Exhibitor agrees to play and pay or 20 feature pictures generally released by the RKO Distributing Corporation uring the 1934-35 season and further agrees that he shall beentitled to a election only from such pictures as are identified by production numbers unning from 501 to 550.

he Exhibitor agrees to play and/or pay for not less than 3 features per onth commencing May 27, 1935.

ranch - Albany
alesman - C. R. Halligan
ntract No. 3563

t or summary of motion pictures licensed and rental terms

Features	2-3	$35.00	Inc.
Features	2-3	25.00	Inc.
Features	2-3	20.00	Inc.

tal Feature License Fees (incl. Score) - $500.00

te: Provisions regarding short subjects not included.

EXHIBIT NO. R-31

Distributor RKO Distributing Corp.
by J. A. Ahern

Season 1934-35

Exhibitor Schine Theatrical Co., Inc.
by Geo. V. Lynch

Theatre Avon or Olympic
Watertown, N.Y.

Contract application date 11/14/34

Approval date

No. of pictures offered 50

No. of Pictures Licensed 40

Provisions, if any, re admission prices

	Matinee	Evening
Orchestra:	adults 30, children 10	adults 40, children 10
Balcony:	adults 30, children 10	adults 30, children 10

Run and clearance provisions

First run clearance. 60 days over second run. 30 days over Sacketts Harbo
Adams, Antwerp, Philadelphia and Dexter. Second run Olympic to have sixty
(60) days clearance over third run Watertown. Avon 7 days over Lowville.
Olympic open booking with Lowville.

Other typewritten or handwritten clauses including riders, if any.

The Exhibitor agrees that the Distributor shall have the right to designat
not more than 20 photoplays to be played on the percentage terms listed in
this license ***
The Exhibitor agrees to play and/or pay for not less than - as available -

Branch - Albany
Salesman - C. R. Halligan
Contract No. 3180

List or summary of motion pictures licensed and rental terms

2 Features	2-3		35% of gross	
4 Features	2-3		30% of gross	
14 Features	2-3		25% of gross	
20 Features	2-3	$72.50		$2.50

Any flat rental pictures playing Olympic (not to exceed fourteen (14)
price to be $50.00 - 2-3 days.
Any picture that plays the Avon Theatre first run, is to play the Olympic,
Theatre second run at $20.00 plus $2.50 Score - 2-3 days.

Total Feature License Fees (incl. Score) - $1500.00.

Note : Provisions regarding short subjects not included.

EXHIBIT NO. R-32

ributor RKO Distributing Corporation
by J.A.Ahern

Season 1934-35

hibitor Schine Theatrical Co.,Inc.

Theatre Holland or Strand,
Bellefontaine,Ohio

tract application date Dec. 19, 1934

Approval date

of pictures offered 50

No. of Pictures Licensed 25

visions, if any, re admission prices Matinee - adults, Orchestra 15; balcony 10:children 10
Evenings - adults .15 children .10

s and clearance provisions First run - usual run

typewritten or handwritten clauses including riders, if any. The Exhibitor agrees that the Dis-
ibutor shall have the right to designate not more than 5 photoplays
be played on the percentage terms listed in this license see
Exhibitor agrees to play and/or pay for not less than two features per
th commencing at once.
Exhibitor agrees to play and pay for 25 feature pictures generally re-
ased by the RKO Distributing Corporation during the 1934-35 season and
ther agrees that he shall be entitled to a selection only from such
tures as are identified by production numbers running from 501 to 550.
eptance or rejection of a feature shall be given to the distributor
hin 21 days after its date of availability in the exchange territory.

nch - Cleveland Salesman - Home Office Contract No. 6688

ummary of motion pictures licensed and rental terms

Features	2/3	yes	none	-	30%
Features	2/3	-	$20.00	-	none

bitor also agrees to pay to the distributor score fees of $2.50 per day
5.00 for entire run of each feature.

pictures used in excess of commitment price to be mutually agreed upon.

5827

EXHIBIT NO. R-33

Distributor RKO Distributing Corp.
by J. A. Ahern

Season 1934-35

Exhibitor Schine Theatrical Co.,Inc.
by Geo. V. Lynch

Theatre Miami or Piqua, Piqua, Ohio

Contract application date Dec. 19, 1934

Approval date

No. of pictures offered 50

No. of Pictures Licensed 40

Provisions, if any, re admission prices Matinee-adults 20, children 10
Evening-adults 20, children 10

Run and clearance provisions

First run-Usual clearance-Open booking with Troy. Piqua to receive same availability as Troy.

Other typewritten or handwritten clauses including riders, if any. The Exhibitor agrees that the Di tributor shall have the right to designate not more than 5 photoplays to be played on the percentage terms listed in this license ***
The Exhibitor agrees to play and/or pay for not less than 1 feature ea. 9 days commencing at once ***
Exhibitor agrees to play and pay for 40 feature pictures generally released by the RKO Distributing Corporation during the 1934-35 season and further agrees that he shall be entitled to a selection only from such pictures as are identified running from 501 to 550, acceptance or rejection of a feature shall be given to the distributor within 21 days after its date of availability in the exchange territory.

Branch: Cincinnati Salesman-Home Office Contract No. 6826 1/2

List or summary of motion pictures licensed and rental terms

5	Features	2/3	-	none	-	30%	
10	Features	2/3	-	$50.00 ea	-		none
25	Features	2/3	-	$25.00 ea	-		none

Exhibitor also agrees to pay the distributor score fees of $2.50 for 1 day o $5.00 for entire run on each feature.

Any pictures used in excess of commitment, prices to be mutually agreed upon

EXHIBIT NO. R-34

Distributor RKO Distributing Corp.
by J.A.Ahearn

Season 1934-35

Exhibitor Schine Theatrical Co.Inc.
by Geo. V. Lynch

Theatre Wooster, Wooster, Ohio

Contract application date Dec. 19. 1934

Approval date

No. of pictures offered 50

No. of Pictures Licensed 30

Provisions, if any, re admission prices Matinee - adults, orchestra 15, balcony 10
children 10
Evenings - adults 15, children 10

Run and clearance provisions

First run - usual clearance

Other typewritten or handwritten clauses including riders, if any. The Exhibitor agrees that the Dis-
tributor shall have the right to designate not more than 20 photoplays to be
layed on the percentage terms listed in this license ***
e Exhibitor agrees to play and/or pay for not less than 1 feature ea.12 days
mmencing at once.
hibitor agrees to play and/or pay for 30 feature pictures generally released
the RKO Distributing Corp. during the 1934-35 season and further agrees
at he shall be entitled to a selection only from such pictures as are id-
tified by production numbers running from 501 to 550. Acceptance or re-
ction of a feature shall be given to the distributor within 21 days after
s date of availability in the exchange territory.

anch - Cleveland - Salesman - Home Office - Contract No. 6687

t or summary of motion pictures licensed and rental terms

Features	2/3	yes	none	35%
Features	2/3	yes	none	30%
Features		-	none	25% - 2/3 days
Features	1/2/3	-	$40.00	none

ibitor also agrees to pay the distributor score fees of $2.50 for one
or $5.00 for the entire run of each picture.

pictures used in excess of commitment, price to be mutually agreed upon.

EXHIBIT NO. P-168

Distributor Paramount Pictures Inc.
by (illegible)

Season Group S-11 & S-12

Exhibitor Benton-Schine Corp.
by Geo. V. Lynch

Theatre Capitol - Ballston, N. Y.

Contract application date 9/27/40

Approval date 10/2/40

No. of pictures offered all

No. of Pictures Licensed all

Provisions, if any, re admission prices
Evenings; adults, orch. 25, balc. 25; children orch. 10, balc. 10
Matinees; adults, orch. 20, balc. 20; children orch. 10, balc. 10

Run and clearance provisions
1st.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Albany
Zone - off.
Salesman - Eastman

This license agreement also covers releases during the commencing 9/1/40 ending 8/31/41 to be known as Group S-12.

List or summary of motion pictures licensed and rental terms

A.	6 (six) Photoplays	2-3		35%	Sunday
B.	14 (fourteen) Photoplays	2-3	$30.00		
C.	Remaining Photoplays	2-3	20.00		

EXHIBIT NO. P-169

Distributor Paramount Pictures, Inc.
unsigned

Season S-11 & S-12

Exhibitor Schine Enterprises Corp.
Geo.V.Lynch

Theatre Strand, Carthage, N.Y.

Contract application date Sep.27,1940

Approval date

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Evening - adults-O .30:B .30 - children .10
Matinees- adults .30 children .10

Run and clearance provisions
1st run
14 days ahead of Lowville
90 days City of Carthage

Other typewritten or handwritten clauses including riders, if any.
Exchange - Albany
Zone - Office
Salesman - Eastman

This license agreement also covers releases during the year commencing 9/1/40 and ending 8/31/41 to be known as group S-12

t or summary of motion pictures licensed and rental terms

(6) Six photoplays	2-3		35% gross Sunday
(11) Eleven photoplays	2-3	$39.00	
Remaining photoplays	2-3	26.50	

(Deduct cost of 2nd feature from gross or percentage pictures, if double billed)

Midnight show permitted preceding regular engagement.

Exhibitor may deduct from the gross on percentage pictures before computing our share the actual cost of Bank Nite, Ten-O-Win, Bingo, Bango and other money give-aways played in conjunction with percentage pictures.

5831

EXHIBIT NO. P-170

Distributor Paramount Pictures, Inc.
unsigned

Season S-11 & S-12

Exhibitor Schine Enterprises Corp.
by Geo.V.Lynch

Theatre State, Hamilton, N.Y.

Contract application date Sep.27 1940

Approval date

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices

Evenings - adults .25 children .10
Matinees - adults .20 children .10

Run and clearance provisions

1st 21 days ahead of Waterville & Oriskany Falls.

Other typewritten or handwritten clauses including riders, if any.

This license agreement also covers releases during the year commencing 2/1/40 and ending 8/31/41 to be known as Group S-12.

Exchange - Albany
Zone - Office
Salesman - Eastman

List or summary of motion pictures licensed and rental terms

A	(4) Four photoplays	2-3	$96.75
B	(8) Eight photoplays	2-3	63.00
C	(2) Two photoplays	2-3	53.00
D	(Remaining photoplays	2-3	28.00

EXHIBIT NO. P-171

Distributor Paramount Pictures Inc.
unsigned

Season S-11 & S-12

Exhibitor Schine Enterprise Corp.
by Geo. V. Lynch

Theatre Pontiac, Saranac Lake, N.Y.

Contract application date Sep.27,1940

Approval date

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Evenings - adults orchestra .35- balcony .25
children .10
Matinees - adults.25 - children .10

Run and clearance provisions

1st 14 days ahead Lake Placid with open booking during the period of 6/15 9/15 and 1/15 - 2/15.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Albany
Zone - Off.
Salesman - Eastman

This license agreement also covers releases during the year commencing 9/1/40 and ending 8/31/41 to be known as group S-12.

Midnight show permitted preceding regular engagement.

Ex. may deduct from the gross before computing our share, the actual cost of Bank Nite, Ten-O-Win, Bingo, Bango, and other money give-aways played in conjunction with percentage pictures.

ist or summary of motion pictures licensed and rental terms

A	(6) Six Photoplays	2-3		35%	Sunday
B	(6) Six photoplays	2-3	$103.50		
C	(18) Eighteen photoplays	2-3	61.00		
D	(Remaining Photoplays	2-3	51.00		

Deduct cost of 2nd feature from gross on percentage pictures, if double billed.

EXHIBIT NO. P-172

Distributor Paramount Pictures, Inc.
by - illegible

Season S-11 & S-12

Exhibitor Benton-Schine Corp.
by Geo.V.Lynch

Theatre Capitol, Whitehall, N.Y.

Contract application date Sep.27,1940

Approval date Oct. 8 1940

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Evenings - adults .25 children .10
Matinees - adults .20 children .10

Run and clearance provisions
1st None

Other typewritten or handwritten clauses including riders, if any.

Exchange - Albany
Zone - off
Salesman - Eastman

This license agreement also covers releases during the year commencing 9/1/40 and ending 8/31/41 to be known as Group S-12.

List or summary of motion pictures licensed and rental terms

A	(6) Six photoplays	2-3		35%	Sunday
B	(14) Fourteen photoplays	2-3	$45.00		
C	(Remaining photoplays	2-3	27.50		

EXHIBIT NO. P-173

Distributor	Paramount Pictures Inc. by - illegible	Season	S-11
Exhibitor	Schine Enterprises Corp. by Geo.V.Lynch	Theatre	Andrews, Salamanca, N.Y.
Contract application date	Sep.27,1940	Approval date	Oct. 1, 1940
No. of pictures offered	All	No. of Pictures Licensed	All

Provisions, if any, re admission prices Evening - adults .25 children .10
Matinees - adults .20 children .10

Run and clearance provisions

1st run 30 days on Ellicotville, Randolph, and Little Valley, N.Y.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Buffalo, N.Y.

This license agreement also covers releases during year commencing 9/1/40 and ending 8/31/41 known as Group S-12.

List or summary of motion pictures licensed and rental terms

"A"	Six (6) Pictures	2-3		35%	Sunday
"B"	(10) Ten Pictures	2-3	$104.00		
"C"	Remaining Pictures	2-3	54.00		

Deduct cost of 2nd feature from percentage pictures.

Exhibitor may deduct from the gross before computing our share, the actual cost of BANK NITE. TEN-O-WIN, BINGO, BANGO and other money giveaways played in conjunction with percentage picts.

EXHIBIT NO. P-174

Distributor Paramount Pictures Inc.
by - illegible

Season S-11

Exhibitor Schine Enterprises Corp.
by Geo.V.Lynch

Theatre Babcock, Bath,N.Y.

Contract application date Sep.27,1940

Approval date Oct.1,1940

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Evenings - adults. .25 children .10
Matinees - adults .20 - children .10

Run and clearance provisions

1st run 30 days on Avoca, Prattsburgh, Hammondsport, Savona, and Cohocton,N.Y.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Buffalo,N.Y. Zone 0
This license agreement also covers releases during year commencing 9/1/4
and ending 8/31/41 known as group S-12.

Exhibitor may deduct from gross before computing our share the actual cost of BANK NITE, TEN-O-WIN, BINGO, BANGO and other money giveaways pla in conjunction with percentage pictures.

Deduct cost of 2nd feature from percentage pictures.

List or summary of motion pictures licensed and rental terms

"A"	Six (6) Pictures	2		35%	Sunday
"B"	Four (4) Pictures	2	$75.00		
"C"	Ten (10)Pictures	2	48.50		
"D"	Remaining Pictures	2	26.00		

EXHIBIT NO. P-175

Distributor Paramount Pictures Inc.
by - fllegible

Season S-11

hibitor Schine Enterprises Corp.
by Geo.V.Lynch

Theatre Playhouse, Canandaigua,N.Y.

Contract application date Sep.27,1940

Approval date Oct.1,1940

o. of pictures offered All

No. of Pictures Licensed All

rovisions, if any, re admission prices Evenings - adults .25 children .10

Matinees - adults .25 children .10

n and clearance provisions

1st run 10 days ahead of Clifton Springs and Phelps.N.Y.

her typewritten or handwritten clauses including riders, if any.

Exchange - Buffalo,N.Y. Zone 0
This license agreement also covers releases during year commencing 9/1/40 & ending 8/31/41 known as group S-12.

Exhibitor may deduct from the gross before computing our share, the actual cost of BANK NIGHT, TEN-O-WIN, BINGO, BANGO and other money give-aways played in conjunction with percentage pictures.

educt cost of 2nd feature from percentage pictures.

r summary of motion pictures licensed and rental terms

A"	Six (6)	Pictures	2-3		35%	Sunday
B"	Four (4)	Pictures	2-3	$90.00		
C"	Ten (10)	Pictures	2-3	53.50		
"	Remaining	Pictures	2-3	41.00		

EXHIBIT NO. P-176

Distributor Paramount Pictures Inc.
by - illegible

Season S-11

Exhibitor Schine Enterprises Corp.
by - Geo. V. Lynch

Theatre Auditorium, Perry, N.Y.

Contract application date ~~Sep. 27, 1940~~

Approval date Oct. 1, 1940

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices

Run and clearance provisions 1st

Other typewritten or handwritten clauses including riders, if any.

Exchange - Buffalo, N.Y. Zone 0

This license agreement also covers releases during year commencing 9/1/
& ending 8/31/41 known as group S-12.

List or summary of motion pictures licensed and rental terms

"A"	Four (4) Pictures	2-3	$103.00
"B"	Six (6) Pictures	2-3	78.00
"C"	Two (2) Pictures	2-3	65.50
"D"	Twenty One (21) Pictures	2-3	33.00
"E"	Remaining pictures	2-3	30.50

EXHB. NO. P-177

Distributor Paramount Pictures Inc.
by - illegible

Season S-11

Exhibitor Schine Enterprises Corp.
~~by Geo.V.Lynch~~

Theatre Capitol or Strand

Contract application date Sep.27,1940

Approval date Oct. 1,1948

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Evenings - adults .25 children .10
Matinees - adults. 20 children .10

Run and clearance provisions

1st 30 days on Minetto, Mexico, Red Creek, and 5 days Pulaski,N.Y.
14 days on Fulton, N.Y.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Buffalo,N.Y. Zone 0

This license agreement also covers releases during year commencing 9/1/40 and ending 8/31/41 known as Group S-12.

Deduct cost of 2nd feature from percentage pictures.
Exhibitor may deduct from the gross before computing our share, the actual cost of BANK NIGHT, TEN-O-WIN, BINGO, BANGO and other money give-aways played in conjunction with percentage pictures.

List or summary of motion pictures licensed and rental terms

A"	SIX (6) Pictures	2-3		35% gross Sun
B"	ELEVEN (11) Pictures	2-3		30% gross 7 pix. to inc. Sun.
C"	TEN (10) Pictures	2-3	$84.50	
D"	TEN (10) Pictures	2-3	74.50	
E"	Remaining pictures	2-3	54.50	

EXHIBIT NO. P-178

Distributor Paramount Pictures Inc.
by - illegible

Season S-11

Exhibitor Schine Enterprises Corp.
Geo.V.Lynch

Theatre Capitol or Strand

Contract application date September 27,1940

Approval date Oct. 1,1940

No. of pictures offered All

No. of Pictures Licensed 16

Provisions, if any, re admission prices Evenings - adults .15 children .10
Matinees - adults .15 children .10

Run and clearance provisions

2nd run

Other typewritten or handwritten clauses including riders, if any.

Exchange - Buffalo Zone 0
This license agreement also covers releases during year commencing 9/1/4
and ending 8/31/41 known as group S-12.

List or summary of motion pictures licensed and rental terms

"A"	FOUR (4)	Pictures	2-3	$52.50
"B"	SIX (6)	Pictures	2-3	25.00
"C"	Six (6)	Pictures	2-3	20.00

ANY ADDITIONAL PICTURES TO BE $20.00

EXHIBIT NO. P-179

stributor Paramount Pictures Inc.
by - illegible

Season S-11 & S-12

hibitor Schine Enterprises Corp.
by Geo.V.Lynch

Theatre Hurlock, Hurlock, Md.

ntract application date Sep.27,1940

Approval date Oct. 1, 1940

o. of pictures offered All

No. of Pictures Licensed 32

ovisions, if any, re admission prices Evenings - adults .20 children .10
Matinees - adults .20 children .10

n and clearance provisions

1st 14 days after Federalsburg, Md.

her typewritten or handwritten clauses including riders, if any.

xchange - Washington,D.C. Zone 0 Salesman J.E.Fontaine

his contract also covers (32) thirty-two pictures from releases during the ear commencing 9/1/40 and ending 8/31/41 to be known as Group S-12.

r summary of motion pictures licensed and rental terms

6	photoplays	2	$28.
26	photoplays	2	15.50

EXHIBIT NO. P-180

Distributor Paramount Pictures Inc.
by - illegible

Season S-11 & S-12 ~~45 for S-11~~

Exhibitor Schine Enterprises Cor. -
Geo. V. Lynch

Theatre Avalon - Music Hall,
Easton, Md.

Contract application date Sep. 27, 1940

Approval date Oct. 1, 1940

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Evenings - adults .30 children .10
Matinees - adults .25 children .10

Run and clearance provisions

1st run - 7 days ahead of Hurlock, Md,
7 days ahead of St.Michaels, Md.

Other typewritten or handwritten clauses including riders, if any,

Exchange - Washington, D.C. Zone 0 Salesman J. E. Fontaine

This contract also includes features released during the year commencing 9/1/40 and ending 8/31/41 to be known as Group S-12.
Midnight show permitted preceding regular engagement.
Exhibitor may deduct cost of 2nd feature from gross of percentage pictures if double billed. Exhibitor may deduct cost of Bank Night from any percentage picture.

List or summary of motion pictures licensed and rental terms

"A"	6	photoplays	Avalon	2-3		35%
"B"	8	photoplays	Avalon	2-3	$103.	
"C"	10	photoplays	Avalon	2-3	48.	
"D"	8	photoplays	Avalon	2-3	38.	
"E"	Remaining photoplays			2-3	18.	

EXHIBIT NO. P-181

ributor Paramount Pictures Inc.
by - illegible

Season S-11 & S-12 45 for S-11

ibitor Schine Enterprises Corp.
by Geo.V.Lynch

Theatre Arcade or State,
Cambridge,Md.

ract application date Sep.27,1940

Approved date Oct. 1,1940

of pictures offered All

No. of Pictures Licensed All

visions, if any, re admission prices Evening - adults .30 children .10
Matinee - adults .25 children .10

and clearance provisions

t 7 days ahead of Hurlock

r typewritten or handwritten clauses including riders, if any.

change - Washington,D.C.
e 0
lesman J.F.Fontaine
hibitor may deduct cost of Bank Night from any percentage picture.
duct cost of second feature from all percentage pictures, if double billed.
s contract also includes pictures released during the year commencing
/40 and ending 8/31/41, to be known as Group S-12.
night show permitted preceding regular engagement.

r summary of motion pictures licensed and rental terms

6 photoplays	2-3		35%
4 photoplays	2-3		30%
10 photoplays	2-3	$70.	
20 photoplays	2-3	50.	
Remaining photoplays	2-3	40.	

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EXHIBIT NO. P-182

Distributor Paramount Pictures Inc.
by H.Goldstein

Season S-11 and S-12

Exhibitor Schine Enterprises Corp.
by Geo.V.Lynch

Theatre Madison or State,Richmond,Ky.

Contract application date 9/30/40

Approval date Oct.5,1940

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices
Evenings - adults .15 children .10
Matinees - adults .15 children .10

Run and clearance provisions

1st

Other typewritten or handwritten clauses including riders, if any.

Exchange - Cinti.O. Zone 1 - Salesman Cummins

Midnight show permitted preceding regular engagement.
Exhibitor may deduct cost of 2nd feature from gross of percentage pictures if double-billed.
Exhibitor may deduct cost of Bank Night from any percentage picture.

List or summary of motion pictures licensed and rental terms

Group S-11 (1939040)			
A - Six (6) Photoplays	2-3		35%
B - Ten (10) Photoplays	1-2	$52.50	
C - Three (3) Photoplays	1-2	37.50	
D - Remaining Photoplays	1-2	20.00	
Group S-12 (1940-41)			
A - Six (6) Photoplays	2-3		30%
B - Ten (10) Photoplays	1-2	52.50	
C - Three (3) Photoplays	1-2	37.50	
D - Remaining Photoplays	1-2	20.00	

EXHIBIT NO. P-183

Distributor Paramount Pictures Inc.
by H. Goldstein

Season S-11 and S-12

Exhibitor Schine Enterprises Corp.
Geo.V.Lynch

Theatre Bourbon or Paris,
Paris, Ky.

Contract application date 9/30/40

Approval date Oct. 5, 1940

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Evenings - adults 15 children 10
Matinees - adults 10 children 10

Run and clearance provisions

1st

Other typewritten or handwritten clauses including riders, if any:

Exchange Cinti.O. Zone 1 Salesman Cummins

Midnight show permitted preceding regular engagement.
Exhibitor may deduct cost of 2nd feature from gross of percentage pictures, if double-billed.
Exhibitor may deduct cost of Bank Night from any percentage picture.

List or summary of motion pictures licensed and rental terms

Group S-11 (1939-40)			
A - Six (6) Photoplays	2-3		35%
B - Ten (10) Photoplays	1-3	$37.50	
C - Four (4) Photoplays	1-2	27.50	
D - Remaining Photoplays	1-2	17.50	
Group S-12 (1940-41)			
A - Six (6) Photoplays	2-3		35%
B - Ten (10) Photoplays	1-2	37.50	
C - Four (4) Photoplays	1-2	27.50	
D - Remaining Photoplays	1-2	17.50	

EXHIBIT NO. P-184

Distributor Paramount Pictures Inc.
by H. Goldstein

Season S-11 and S-12

Exhibitor Schine Enterprises Corp.,
by Geo. V. Lynch

Theatre Manring or Brownie,
Middlesboro, Ky.

Contract application date 9/30/40

Approval date Oct. 5, 1940

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices
Evening - adults .25 children .10
Matinee - adults .25 children .10

Run and clearance provisions

1st

Other typewritten or handwritten clauses including riders, if any.

Exchange - Cinti. O. Zone 1 Salesman - Cummins

Midnight show permitted preceding regular engagement.
Exhibitor may deduct cost of 2nd feature from gross of percentage pictures, if double-billed.
Exhibitor may deduct cost of Bank Night from any percentage picture.

List or summary of motion pictures licensed and rental terms

Group S-11 (1939-40)				
A - Six (6) Photoplays (Manring)	2		35%	Sun.Mon.
B - Twelve (12) Photoplays	2	$67.50		
C - Twenty (20) Photoplays	1-2	37.50		
D - Remaining Photoplays	1-2	25.00		
Group S-12 (1940-41)				
A- Six (6) Photoplays (Manring)	2		35%	Sun.Mon.
B- Twelve (12) Photoplays	2	67,50		
C - Twenty (20) Photoplays	1-2	37,50		
D - Remaining Photoplays	1-2	25.00		

EXHIBIT NO. P-185

Distributor Paramount Pictures, Inc.
by H. Goldstein

Season S-11 and S-12

Exhibitor Schine Enterprises, Corp.
by Geo. V. Lynch

Theatre Ben Ali or Kentucky or Strand,
Lexington, Ky.

Contract application date 9/30/40

Approval date Oct. 5, 1940

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Evenings-adults 25, children 10
Matinees-adults 25, children 10

Run and clearance provisions

1st 60 days over second run

Other typewritten or handwritten clauses including riders, if any.

Exchange-Cinn., Ohio
Zone - Office
Salesman-Office

Exhibitor may deduct cost of BANK NIGHT from any percentage picture

Midnight show permitted preceding regular engagement

Exhibitor may deduct cost of 2nd featurefrom gross of percentage pictures, if double billed.

or summary of motion pictures licensed and rental terms

roup S-11 (1939-40)

			(13
Six (6) Photoplays	4-7		(percentage
Eleven (11)Photoplays	3-4-7	35% of the gross	(pictures to
Remaining one-half Photoplay	3-4	$145.00 30% of the gross	(play Sunday
Remaining one-half Photoplays	3-4	$110.00	

Any flat rental picture having preferred time, playing in Ben Ali or Kentucky theatres, the price to be $210. excepting if double-billed.

roup S-12 (1940-41)

Six (6) Photoplays	4-7		(13 percentage
Eleven (11) Photoplays	3-4-7	35% of the gross	(pictures to
Remaining one-half Photoplays	3-4	$145.00 30% of the gross	(play Sunday
Remaining one-half Photoplays	3-4	$110.00	

Any flat rental picture having preferred time, playing in Ben Ali or Kentucky theatres, the price to be $210. excepting if double-billed.

EXHIBIT NO. P-186

Distributor Paramount Pictures Inc.
by H. W. Goldstein

Season Group S-11 and S-12

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre State, Strand, Ben Ali
Lexington, Ky.

Contract application date 9/30/40

Approval date

No. of pictures offered all

No. of Pictures Licensed all

Provisions, if any, re admission prices

Evenings: adults, orch. 15, balc. 15; children, orch. 10, balc. 10
Matinees: adults, orch. 10, balc. 10; children, orch. 10, balc. 10

Run and clearance provisions

2nd. 30 days over 3rd run.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Cincinnati, Ohio
Zone - Office
Salesman - Office

List or summary of motion pictures licensed and rental terms

GROUP S-11 (1939-40)

A.	Four (4) Photoplays		2-3		35%
B.	Six (6)	"	2-3	$55.00	
C.	Ten (10)	"	2-3	40.00	
D.	Remaining	"	2-3	25.00	

GROUP S-12 (1940-41)

A.	Four (4) Photoplays		2-3		35%
B.	Six (6)	"	2-3	55.00	
C.	Ten (10)	"	2-3	40.00	
D.	Remaining	"	2-3	25.00	

Midnight show permitted preceding regular engagement.
Exhibitor may deduct cost of 2nd feature from gross of percentage pictur
double-billed.
Exhibitor may deduct cost of Bank Night from any percentage picture.

EXHIBIT NO. P-187

Distributor Paramount Pictures Inc.
by H. W. Goldstein

Season Group S-11 & S-12

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Opera House
Lexington, Ky.

Contract application date 9/30/40

Approval date 10/5/40

No. of pictures offered all

No. of Pictures Licensed all

Provisions, if any, re admission prices
Evenings; adults 15, children 10
Matinees; adults 10, children 10

Run and clearance provisions
45 days over 4th run. Pictures to be used as available after 1st and 2nd run Lexington clearance.

Other typewritten or handwritten clauses including riders, if any.
Exchange - Cincinnati, Ohio
Zone - 1
Salesman - Cummins

ist or summary of motion pictures licensed and rental terms

roup S-11 (1939-40)

Four (4)	Photoplays	2-3	$78.00
Eight (8)	"	2-3	53.00
Thirty (30)	"	2-3	35.00
Remaining	"	2-3	18.00

Group S-12 (1940-41)

A. Four (4)	Photoplays	2-3	78.00
B. Eight (8)	"	2-3	53.00
C. Thirty (30)	"	2-3	33.00
D. Remaining	"	2-3	18.00

Midnight show permitted preceding regular engagement.

EXHIBIT NO. P-186

Distributor Paramount Pictures Inc.
by (illegible)

Season Group S-11 & S-12

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre New Plaza, Milford, Del.

Contract application date 9/27/40

Approval date 10/1/40

No. of pictures offered all

No. of Pictures Licensed all

Provisions, if any, re admission prices

Evenings: adults 30, children 10
Matinees: adults 25, children 10

Run and clearance provisions

10 days after Wilmington, Del. Same availability as Georgetown, Harrington and Dover, Del.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Washington, D. C.
Zone - 0
Salesman - J. E. Fontaine

List or summary of motion pictures licensed and rental terms

A.	4	photoplays	2		35%
B.	5	"	1-2	$53.00	
C.	Remaining"		1-2	28.00	

This contract also covers pictures released during the year commencing 9/1/40 and ending 8/31/41 to be known as group S-12.

Midnight show permitted preceding regular engagement.
Exhibitor may deduct cost of 2nd feature from gross of percentage pictures, if double billed.
Exhibitor may deduct cost of Bank Night from any percentage picture.

EXHIBIT NO. P-189

tributor Paramount Pictures Inc.
by (illegible)

Season Group S-11 & S-12

hibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre New Waller - Laurel, Del.

ntract application date 9/27/40.

Approval date 10/1/40

o. of pictures offered all

No. of Pictures Licensed 30

rovisions, if any, re admission prices

Evenings: adults 25, children 10
Matinees: adults 20, children 10

ns and clearance provisions

21 days after Seaford with the understanding pictures are to become available 35 days after Salisbury.

her typewritten or handwritten clauses including riders, if any.

Exchange - Washington, D. C.
Zone - 1
Salesman - J. E. Fontaine

ef summary of motion pictures licensed and rental terms

5	Photoplays	1-2	$23.00
5	"	1-2	18.00
8	"	1-2	15.00
12	"	1-2	13.00

his contract also includes (30) thirty features released during the year ommencing 9/1/40 and ending 8/31/41 to be known as group S-12.

EXHIBIT NO. P-190

Distributor Paramount Pictures Inc.
by H. W. Goldstein

Season Group S-11 and S-12

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Strand or Star
Delaware, Ohio

Contract application date 9/30/40

Approval date 10/1/40

No. of pictures offered all

No. of Pictures Licensed all

Provisions, if any, re admission prices
evenings:adults, orchestra 30, balcony 20; children, orchestra 10, balcony 1
matinees:adults, orchestra 20 children, orchestra 10, balcony 1

Run and clearance provisions
Pictures to be available on national release date.

Other typewritten or handwritten clauses including riders, if any.
Exchange - Cleveland
Zone - Office

List or summary of motion pictures licensed and rental terms

Group S-11 (1939-40)

A.	Six (6) Photoplays (Strand)	2-3		35% Sun.
B.	Eight (8) Photoplays (Strand)	2-3		30% (7 to include Su
C.	Ten (10) Photoplays	2-3	$64.50	
D.	Twenty-One (21) Photoplays	2-3	49.50	
E.	Remaining photoplays	2-3	34.50	

Group S-12 (1940-41)

A.	Six (6) Photoplays (Strand)	2-3		35% Sun.
B.	Eight (8) Photoplays (Strand)	2-3		30% (7 to include Su
C.	Ten (10) Photoplays	2-3	$64.50	
D.	Twenty-One (21) Photoplays	2-3	49.50	
E.	Remaining Photoplays	2-3	34.50	

Midnight show permitted preceding regular engagement.
Exhibitor may deduct cost of 2nd feature from gross of percentage pictur
double billed.
Exhibitor may deduct cost of bank night from gross of percentage pictures

EXHIBIT NO. P-192

Distributor Paramount Pictures Inc.
by H. W. Goldstein

Season Group S-11 and S-12

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Margie Grand - Harlan, Ky.

Contract application date 9/30/40

Approval date 10/5/40

No. of pictures offered all

No. of Pictures Licensed all

Provisions, if any, re admission prices
evenings: adults 30, children 10
matinees: adults 15, children 10

Run and clearance provisions
1st:

Other typewritten or handwritten clauses including riders, if any.
Exchange - Cincinnati, Ohio
Zone - 1
Salesman - Cummins

ist or summary of motion pictures licensed and rental terms

GROUP S-11 (1939-40)				
A. Six (6) Photoplays	2		35%	Sun. Mon.
B. Six (6) Photoplays	2	$52.50		
C. Twelve (12) Photoplays	2	37.50		
D. Fourteen (14) Photoplays	1-2	27.50		
E. Remaining Photoplays	1	22.50		
GROUP S-12 (1940-41)				
A. Six (6) Photoplays	2		35%	Sun. Mon.
B. Six (6) Photoplays	2	52.50		
C. Twelve (12) Photoplays	2	37.50		
D. Fourteen (14) Photoplays	1-2	27.50		
E. Remaining Photoplays	1	22.50		

Midnight show permitted preceding regular engagement.
Exhibitor may deduct cost of 2nd feature from gross of percentage pictures, if double billed.
Exhibitor may deduct cost of Bank Night from any percentage picture.

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EXHIBIT NO. P-193

Distributor Paramount Pictures Inc.
by H. W. Goldstein

Season Group S-11 and S-12

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Russell-Hollywood-Washington
Maysville, Ky.

Contract application date 9/30/40

Approval date 10/5/40

No. of pictures offered all

No. of Pictures Licensed all

Provisions, if any, re admission prices

evenings: adults 25, children 10
matinees: adults 25, children 10

Run and clearance provisions

1st.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Cincinnati, Ohio
Zone - 1
Salesman - Cummins

List or summary of motion pictures licensed and rental terms

GROUP S-11 (1939-40)

A.	Six (6) Photoplays	2-3		35%	Sunday
B.	Nine (9) Photoplays	2-3	$68.00		
C.	Six (6) Photoplays	2-3	50.00		
D.	Fifteen (15) Photoplays	2-3	38.00		
E.	Remaining Photoplays	2-3	28.00		

GROUP S-12 (1940-41)

A.	Six (6) Photoplays	2-3		35%	Sunday
B.	Nine (9) Photoplays	2-3	68.00		
C.	Six (6) Photoplays	2-3	50.00		
D.	Fifteen (15) Photoplays	2-3	38.00		
E.	Remaining Photoplays	2-3	20.00		

Midnight show permitted preceding regular engagement.
Exhibitor may deduct cost of 2nd feature from gross of percentage picture if double billed.
Exhibitor amy deduct cost of Bank Night from any percentage picture.

EXHIBIT NO. P-194

ibutor Paramount Pictures Inc.
by H. W. Goldstein

Season Group S-11 and S-12

ibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Liberty - Pikeville, Ky.

tract application date 9/30/40

Approval date 10/5/40

of pictures offered all

No. of Pictures Licensed all

visions, if any, re admission prices
venings: adults 30, children 10
atinees: adults 15, children 10

and clearance provisions

st.

er typewritten or handwritten clauses including riders, if any.
xchange - Cincinnati, Ohio
one - 3
alesman - Kramer

or summary of motion pictures licensed and rental terms

OUP S-11 (1939-40)

Six (6) Photoplays	2		35%	Sun. Mon.
Six (6) Photoplays	2	$42.50		
Twelve (12) Photoplays	2	25.00		
Remaining Photoplays	2	20.00		

OUP S-12 (1940-41)

Six (6) Photoplays	2		35%	Sun. Mon.
Six (6) Photoplays	2	42.50		
Twelve (12) Photoplays	2	25.00		
Remaining Photoplays	2	20.00		

dnight show permitted preceding regular engagement.
hibitor may deduct cost of 2nd feature from gross of percentage pictures, if uble billed.
hibitor may deduct cost of Bank Night from any percentage picture.

EXHIBIT NO. P-195

Distributor Paramount Pictures Inc.
by (illegible)

Season Group S-12

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Strand - Cumberland, Md.

Contract application date 1/17/41

Approval date 1/20/41

No. of pictures offered all

No. of Pictures Licensed all

Provisions, if any, re admission prices

evenings: adults, orchestra 39, balcony 28; children 10
matinees: adults 28 children 10

Run and clearance provisions

1st.

30 days clearance in Cumberland. 21 days clearance in Allegheny County and [illegible] days over Piedmont and Keyser, W. Va.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Washington, D. C.
Zone - 0
Salesman - J. E. Fontaine

List or summary of motion pictures licensed and rental terms

	1 Special Photoplay	7		40%
A	7 Photoplays	4-7		35%
B	8 Photoplays	4-7		30%
C	4 Photoplays	3-4		30%
D.	12 Photoplays	2-4	$110.00	
E.	Rem. Photoplays	1	50.00	
"EE"	Photoplays	2	75.00	

"CC" Photoplays in the "C" Classification may revert to 25%.

EXHIBIT NO. P-196

Distributor	Paramount Pictures Inc. by (illegible)	Season Group	S-12
Exhibitor	Schine Enterprises Corp. by Geo. V. Lynch	Theatre	Arcade or Wicomico Salisbury, Md.
Contract application date	1/17/41	Approval date	1/20/41
No. of pictures offered	19	No. of Pictures Licensed	19

Provisions, if any, re admission prices

evenings: adults, orchestra A-35, W-25, balcony A-30, W-15, children A-10, W-10
matinees: adults, orchestra A-25, W-20, balcony A-20, W-15, children A-10, W-10

Run and clearance provisions

1st.
14 days ahead of Berlin, Ocean City, Snow Hill, Pocomoke City, Princess Anne & Laurel; 7 days ahead of Seaford; 30 days ahead of Del Mar.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Washington, D. C.
Zone - 0
Salesman - J. E. Fontaine

List or summary of motion pictures licensed and rental terms

	1 Special Photoplay	4	40%	Arcade Theatre.
A.	4 Photoplays	3-4	35%	" "
B.	6 Photoplays	3	30%	" "
C.	8 Photoplays	2-3	25%	Arcade or Wicomico

Split of above pictures between the New and Ulman's Theatres and the Arcade or Wicomico Theatres is to be based upon the Loew-Warner split. Arcade or Wicomico split to follow Loew's at start and to alternate with Warner Bros. split.

EXHIBIT NO. P-197

Distributor Paramount Pictures Inc.
by (illegible)

Season Group S-11 and S-12

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Rialto or Strand
Amsterdam, N. Y.

Contract application date 9/27/40

Approval date 10/2/40

No. of pictures offered all

No. of Pictures Licensed all

Provisions, if any, re admission prices

evenings: adults orchestra 35, balcony 30 & 25, children orchestra 10, balc. 10
matinees: adults orchestra 30, balcony 25, children orchestra 10, balc. 10

Run and clearance provisions

1st.
30 days ahead of Broadalbin, Fonda and Johnstown, 90 days ahead of second run.

Other typewritten or handwritten clauses including riders, if any.

exchange - Albany
zone - off.
Salesman - Eastman

List or summary of motion pictures licensed and rental terms

A.	(6) Six Photoplays	2-3-4		35%	Sun or Sat.
B.	(11) Eleven Photoplays	2-3-4		30%	7 to inc. Su or Sat.
C.	(10) Ten Photoplays	2-3-4	$119.50		
D.	Remaining Photoplays	2-3-4	84.50		

(Deduct cost of 2nd feature from percentage pictures, if double billed.)

Midnight show permitted preceding regular engagement.

Exhibitor may deduct from the gross before computing our share, the actua cost of Bank Nite, Ten-O-Win, Bingo, Bango and other money give-aways played in conjunction with percentage pictures.

EXHIBIT NO. P-198

Distributor Paramount Pictures Inc.
by (illegible)

Season Group S-11

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Jefferson, Palace, Auburn
Auburn, N. Y.

Contract application date 9/27/40

Approval date 10/1/40

No. of pictures offered all

No. of Pictures Licensed all

Provisions, if any, re admission prices

evenings:adults orchestra 30,balcony 30-children orchestra 10,balcony 10
matinees:adults orchestra 25, balcony 25-children orchestra 10,balcony 10

Run and clearance provisions

First Run.
30 days ahead of Skaneateles, N. Y. and Weedsport, N. Y.

ther typewritten or handwritten clauses including riders, if any.

Exchange - Buffalo, N. Y.
Zone - #0

t or summary of motion pictures licensed and rental terms

Six (6) Pictures	2-4		35%	Sunday
Eleven (11) Pictures	2-4		30%	7 pix to incl. Sun.
Ten (10) Pictures	2-4	$130.00		
Remaining Pictures	2-4	95.00		

his license agreement also covers releases during the year commencing
/1/40 and ending 8/31/41, known as Group S-12.
educt cost of 2nd feature from all percentage pictures.
xhibitor may deduct from the gross before computing out share, the actual
ost of Bank Night, Ten-O-Win, Bingo, Bango and other money give-aways
ayed in conjunction with percentage pictures.

EXHIBIT NO. P-199

Distributor Paramount Pictures Inc.
by (illegible)

Season Group S-11

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Jefferson - Palace
Auburn, N. Y.

Contract application date 9/27/40

Approval date 10/1/40

No. of pictures offered all

No. of Pictures Licensed

Provisions, if any, re admission prices

evenings: adults orchestra 20, balcony 20-children orchestra 10, balcony
matinees: adults orchestra 15, balcony 15-children orchestra 10, balcony

Run and clearance provisions

2nd run.
60 days over 3rd run.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Buffalo
Zone - #0

List or summary of motion pictures licensed and rental terms

All pictures that play Auburn Theatre, 1st run.

A.	Ten (10) Pictures	2-4	$54.50
B.	Remaining Pictures playing Auburn Theatre, 1st run	2-4	39.50

This license agreement also covers releases during year commencing 9/1/ and ending 8/31/41 known as Group S-12.

Note: Exhibitor to have privilege of picking up any picture after the Jefferson Theatre to play Palace Theatre at $20.00.

5860

EXHIBIT NO. P-200

Distributor	Paramount Pictures Inc. by (illegible)	**Season**	Group S-11
Exhibitor	Schine Enterprises Corp.	**Theatre**	Fox, State, Palace Corning, N. Y.
Contract application date	9/27/40	**Approval date**	10/1/40
No. of pictures offered	all	**No. of Pictures Licensed**	all

Provisions, if any, re admission prices

evenings: adults orchestra 25, balcony 25-children orchestra 10, balcony 10
matinees: adults orchestra 25, balcony 25-children orchestra 10, balcony 10

Run and clearance provisions

1st run.
30 days ahead of Painted Post, Addison, 60 days on City of Corning, N. Y.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Buffalo, N. Y.
Zone - #3

List summary of motion pictures licensed and rental terms

a. Six (6) Pictures	2-3		35%	Sunday
b. Four (4) Pictures	2-3		30%	Sunday
c. Ten (10) Pictures	2-3	$85.00		
D. Five (5) Pictures	2-3	65.00		
E. Remaining Pictures	2-3	45.00		

ns license agreement also covers releases during year commencing 9/1/40
ending 8/31/41, known as Group S-12.

educt cost of 2nd feature from percentage pictures.

ibitor may deduct from the gross before computing our share, the actual
t of Bank Night, Ten-O-Win, Bingo, Bango and other money give-aways played
onjunction with percentage pictures.

18350

EXHIBIT NO. P-201

Distributor Paramount Pictures Inc.
by (illegible)

Season Group S-11

Exhibitor Schine Enterprises Corp.

Theatre State, Palace
Corning, N. Y.

Contract application date 9/27/40

Approval date 10/1/40

No. of pictures offered all

No. of Pictures Licensed 30

Provisions, if any, re admission prices
evenings: adults 15, children 10
matinees: adults 15, children 10

Run and clearance provisions
2nd. 60 days on 3rd run.

Other typewritten or handwritten clauses including riders, if any.
Exchange - Buffalo, N. Y.
Zone - #0

List or summary of motion pictures licensed and rental terms

A. Four (4) Pictures	2-3	$59.50
B. Six (6) Pictures	2-3	34.50
C. Twenty (20) Pictures	2-3	27.00

If any additional features are played the price to be $27.00.

This license agreement also covers releases during year commencing 9/1/40 and ending 8/31/41 known as group S-12.

EXHIBIT NO. P-202

Distributor Paramount Pictures Inc.
by (illegible)

Season Group S-11

Exhibitor Schine Enterprises Corp.
Geo. V. Lynch

Theatre State or Temple
Cortland, N. Y.

Contract application date 9/27/40

Approval date 10/1/40

No. of pictures offered all

No. of Pictures Licensed all

Provisions, if any, re admission prices

evenings: adults orchestra 25, balcony 25-children orchestra 10, balcony 10
matinees: adults orchestra 25, balcony 25-children orchestra 10, balcony 10

Run and clearance provisions

1st. 30 days on Homer, Marathon, Tully, McGrawsville, Groton and Moravia.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Buffalo, N. Y.
Zone - #0

List or summary of motion pictures licensed and rental terms

A. Six	(4) Pictures	2-3		35%	Sun.
B Eleven	(11) "	2-3		30% - 7 pix to inc. Sun.	
C Nineteen	(19) "	2-3	$129.00		
D Remaining	"	2-3	91.50		

duct cost of 2nd feature from percentage pictures.

his license agreement also covers releases during year commencing 9/1/40
d ending 8/31/41, known as Group S-12.

hibitor may deduct from the gross before computing our share, the actual
ost of Bank Nite, Ten-O-Win, Bingo, Bango and other money give-aways
layed in conjunction with percentage pictures.

EXHIBIT NO. P-203

Distributor Paramount Pictures Inc.
by (illegible)

Season Group S-11

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Regent, Geneva
Geneva N. Y.

Contract application date 9/27/40

Approval date 10/1/40

No. of pictures offered all

No. of Pictures Licensed all

Provisions, if any, re admission prices

evenings: adults orchestra 25, balcony 25-children orchestra 10, balcony 10
matinees: adults orchestra 20, balcony 20-children orchestra 10, balcony 10

Run and clearance provisions

Exhibition Agreement: As available.

1st run.
30 days on Lyons, Clifton Springs, Phelps, Clyde, Palmyra, Waterloo.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Buffalo, N. Y.
Zone - #0

List or summary of motion pictures licensed and rental terms

A.	Six (6) Pictures	2-3		35%	Sunday
B.	Eleven (11) Pictures	2-3		30%	7 pix to incl.Su
C.	Nineteen (19) Pictures	2-3	$104.50		
D.	Remaining Pictures	2-3	94.50		

Exhibitor may deduct from the gross before computing our share, the actual cost of Bank Night, Ten-O-Win, Bingo, Bango and other money give-aways pla in conjunction with percentage pictures.

Deduct cost of 2nd feature from percentage pictures.

This license agreement also covers releases during year commencing 9/1/40 and ending 8/31/41 known as Group S-12.

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EXHIBIT NO. P-204

Distributor Paramount Pictures Inc.
by (illegible)

Season Group S-11

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Regent, Geneva
Geneva, N. Y.

Contract application date 9/27/40

Approval date 10/1/40

No. of pictures offered all

No. of Pictures Licensed 15

Provisions, if any, re admission prices

evenings: adults orchestra 25, balcony 25-children orchestra10, balcony 10
matinees: adults orchestra 20, balcony 20-children orchestra 10, balcony 10

Run and clearance provisions

2nd.
60 days over third run.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Buffalo, N. Y.
Zone - 0

List or summary of motion pictures licensed and rental terms

A.	Four (4) Pictures	2-3	$60.00
B.	Six (6) Pictures	2-3	35.00
C.	Remaining Pictures	2-3	27.50

This license agreement also covers releases during year commencing 9/1/40 and ending 8/31/41, known as Group S-12.

EXHIBIT NO. P-2050

Distributor Paramount Pictures Inc.
by (illegible)

Season Group 8-12

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Rialto or Paramount or Empire
Glens Falls, N. Y.

Contract application date (illegible)

Approval date

No. of pictures offered all

No. of Pictures Licensed all

Provisions, if any, re admission prices

evenings: adults orchestra 40, balcony 25-children orchestra 10, balcony 10
matinees: adults orchestra 25, balcony 20-children orchestra 10, balcony 10

Run and clearance provisions

1st.
45 days over 2nd run Glens Falls. 14 days over Hudson Falls. 7 days over Lake George.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Albany
Zone - off.
Salesman - Eastman

List or summary of motion pictures licensed and rental terms

	(1)	one Photoplay - Special:	2-3-4	40%	Sunday
A.	(7)	seven Photoplays	2-3 -4	35%	Sunday
B.	(8)	eight Photoplays	2-3-4	30%	Sunday or Satur
C.	(4)	Photoplays	2-3-4	30%	
		(This group to revert to (if pictures do not gross (average of other 8 at 30%.		25%	
D.	(12)	twelve Photoplays	2-3-4	25%	
E.	(6)	six Photoplays	2-3-4	$50.00	

(Deduct cost of 2nd feature from percentage pictures, if double billed.)
(Midnight show permitted preceding regular engagement.)
(Exhibitor may deduct from the gross before computing our share, the actual cost of Bank Nite, Ten-O-Win, Bingo, Bango and other money give-aways in conjunction with percentage pic.)

EXHIBIT NO. P-206

Distributor Paramount Pictures Inc.
by (illegible)

Season Group S-11 & S-12

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Glove or Hippodrome
Gloversville, N. Y.

Contract application date 9/27/40

Approval date 10/2/40

No. of pictures offered all

No. of Pictures Licensed all

Provisions, if any, re admission prices

evenings: adults orchestra 35, balcony 35-children orchestra 10, balcony 10
matinees: adults orchestra 25, balcony 25-children orchestra 10, balcony 10

Run and clearance provisions

1st. 45 days ahead of Johnstown. 30 days ahead of Broadalbin, Mayfield, Fonda and Sacandaga Park, and Northville.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Albany
Zone - off.
Salesman - Eastman

List or summary of motion pictures licensed and rental terms

.	(6) six photoplays	2-3-4		35%	Sun. or Sat.
.	(11) elevan photoplays	2-3-4		30%	- 7 to incl. Sat. or Sun."
.	Remaining photoplays	2-3-4	$104.50		

his license agreement also covers releases during the year commencing /1/40 and ending 8/31/41 to be known as Group S-12.
educt cost of 2nd feature from gross on percentage pictures, if double illed:
idnight show permitted preceding regular engagement.
xhibitor may deduct from the gross before computing our share, the actual ost of Bank Nite, Ten-O-Win, Bingo, Bango and other money give-aways played in conjunction with percentage pictures.
ote: Exhibitor to have privilege of repeating any picture in the Hippodrome heatre at $39.50 except 10 top pictures. Repeat price on these pictures o be $54.50. Not to be played sooner than 43 days after 1st run"

EXHIBIT NO. P-207

Distributor Paramount Pictures Inc.
by (illegible)

Season Group S-11 & S-12

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Liberty - Herkimer, N. Y.

Contract application date 9/27/40

Approval date 10/2/40

No. of pictures offered all

No. of Pictures Licensed all

Provisions, if any, re admission prices

evenings: adults orchestra 30, balcony 30-children orchestra 10, balcony 1
matinees: adults orchestra 25, balcony 25-children orchestra 10, balcony 10

Run and clearance provisions

1st. 21 days from last date of first run in Utica. 14 days ahead Mohaw
and Frankfort.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Albany
Zone - off.
Salesman - Eastman

List or summary of motion pictures licensed and rental terms

A.	(6) six photoplays,	2-3		35%	Sunday
B.	(4) four photoplays	2-3	$125.00		
C.	(10) ten photoplays	2-3	53.50		
D.	Remaining photoplays	2-3	38.50		

This license agreement also covers releases during the year commencing 9/1/40 and ending 8/31/41 to be known as Group S-12.
Deduct cost of 2nd feature from gross on percentage pictures, if double billed.
Midnight show permitted preceding regular engagement.
Exhibitor may deduct from the gross before computing our share the actua
cost of Bank Nite, Ten-O-Win, Bingo, Bango and other money give-aways pl
in conjunction with percentage pictures.

EXHIBIT NO. P-208

Distributor Paramount Pictures Inc. **Season** Group S-11 & S-12

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Strand - Hudson Falls, N. Y.

Contract application date 9/27/40 **Approval date**

No. of pictures offered all **No. of Pictures Licensed** all

Provisions, if any, re admission prices

evenings: adults orchestra 25, balcony 25-children orchestra 10, balcony 10
matinees: adults orchestra 20, balcony 20-children orchestra 10, balcony 10

Run and clearance provisions

1st. 14 days after 1st run Glens Falls. 14 days ahead second run Glens Falls. 14 days ahead Fort Edrard.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Albany
Zone - off.
Salesman - Eastman

listor summary of motion pictures licensed and rental terms

(2) two photoplays	1-2	$46.25
(7) seven photoplays	1-2	33.75
(3) three photoplays	1-2	21.25
Remaining photoplays	1-2	17.50

his license agreement also covers releases during the year commencing /1/40 and ending 8/31/41 to be known as Group S-12.

EXHIBIT NO. P-209

Distributor Paramount Pictures Inc. **Season** Group S-11 & S-12

Exhibitor Schine Enterprises Corp. **Theatre** Capitol - Ilion, N. Y.
by Geo. V. Lynch

Contract application date 9/27/40 **Approval date**

No. of pictures offered all **No. of Pictures Licensed** all

Provisions, if any, re admission prices

evenings: adults orchestra 30, balcony 20-children orchestra 10, balcony 10
matinees: adults orchestra 20, balcony 15-children orchestra 10, balcony 10

Run and clearance provisions

1st. Ahead of Richfield Springs, W. Winfield and Poland. 30 days ahead of Frankfort and Mohawk.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Albany
Zone - off.
Salesman - Eastman

List or summary of motion pictures licensed and rental terms

A.	(4)	four photoplays	2-3	$127.50
B.	(2)	two photoplays	2-3	96.25
C.	(6)	six photoplays	2-3	42.50
D.	(20)	twenty photoplays	2-3	32.50
E.		Remaining photoplays	2-3	22.50

This license agreement also covers releases during the year commencing 9/1/40 and ending 8/31/41 to be known as Group S-12.

EXHIBIT NO. P-210

Distributor Paramount Pictures Inc.
by (illegible)

Season Group S-11 & S-12

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Rialto - Little Falls, N. Y.

Contract application date 9/27/40

Approval date 10/2/40

No. of pictures offered all

No. of Pictures Licensed all

Provisions, if any, re admission prices

evenings: adults orchestra 35, balcony 25-children orchestra 10, balcony 10
matinees: adults orchestra 25, balcony 25-children orchestra 10, balcony 10

Run and clearance provisions

1st. 90 days City of Little Falls. 14 days ahead Fort Plain, Canajoharie, 30 days ahead St. Johnsvill[illegible] Dolgeville.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Albany
Zone - office
Salesman- Eastman

List or summary of motion pictures licensed and rental terms

A.	(6) six photoplays	2-3		35%	Sunday
B.	(4) four photoplays	2-3	$150.00		
C.	(10) ten photoplays	2-3	53.00		
D.	Remaining Photoplays	2-3	38.00		

Deduct cost of 2nd feature from gross on percentage pictures, if double billed.
Midnight show permitted preceding regular engagement.
Exhibitor may deduct from the gross before computing our share, the actual cost of Bank Nite, Ten-O-Win, Bingo, Bango and other money give-aways ~~in~~ played in conjunction with percentage pic.

EXHIBIT NO. P-211

Distributor Paramount Pictures Inc.
by - illegible

Season S-11

Exhibitor Schine Enterprises Corp.
by Geo.V.Lynch

Theatre Rialto, Hiart, Palace,
Lockport, N.Y.

Contract application date Sep. 27, 1940

Approval date Oct. 1, 1940

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Evenings - adults .25 children .10
Matinees - adults .20 children .10

Run and clearance provisions

1st run 30 days ahead of Newfane and Middleport, N.Y.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Buffalo, N.Y. Zone 0
Exhibitor may deduct from the gross before computing our share, the actual cost of BANK NIGHT, TEN-O-WIN, BINGO, BANGO and other money give-aways played in conjunction with percentage pictures.

Deduct cost of 2nd feature from percentage pictures.

This license agreement also covers releases during year commencing 9/1/4
& ending 8/31/41, known as Group S-12.

List or summary of motion pictures licensed and rental terms

"A" Six (6) Pictures	2-3 To play Palace or Rialto	35%	Sunday
"B" Eleven (11)	2-3 To play Palace or Rialto	30%	7 pix to Inc.Sun.
C" Ten (10)	2-3 To play Palace, Rialto or Hiart	$105.00	
"D" Remaining Pictures	2-3 To play Palace, Rialto or Hiart	80.00	

EXHIBIT NO. P-212

Distributor Paramount Pictures Inc.
by - illegible

Season S-11

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Rialto, Hiart, Palace,
Lockport, N.Y.

Contract application date Sep.27,1940

Approval date Oct. 1, 1940

No. of pictures offered All

No. of Pictures Licensed 30

Provisions, if any, re admission prices
Evenings - adults .15 children .10
Matinees - adults .15 children .10

Run and clearance provisions

2nd run

Other typewritten or handwritten clauses including riders, if any.

Exchange - Buffalo, N.Y. Zone 0

This license agreement also covers releases during year commencing 9/1/40 and ending 8/31/41 known as Group S-11

List or summary of motion pictures licensed and rental terms

"A"	Four (4) Pictures	2-3	$92.50
"B"	Six (6) Pictures	2-3	48.75
"C"	Twenty (20) Pictures	2-3	40.00

If any additional pictures are played the price to be $30.00

EXHIBIT NO. P-213

Distributor Paramount Pictures, Inc. unsigned **Season** S-11 & S-12

Exhibitor Schine Enterprises Corp. by Geo. V. Lynch **Theatre** Malone, Malone, N.Y.

Contract application date Sep. 27, 1940 **Approval date**

No. of pictures offered All **No. of Pictures Licensed** All

Provisions, if any, re admission prices Evenings - adults, orchestra .25 - balcony .15
children .10
Matinees - adults .20 - children .10

Run and clearance provisions

1st 30 days ahead Brushton, Fort Covington, Chateaugay and Bangor.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Albany
Zone - Off.
Salesman - Eastman

This license agreement also covers releases during the year commencing 8/1/40 and ending 8/31/41 to be known as Group S-12.

List or summary of motion pictures licensed and rental terms

A (6) Six Photoplays	2-3		35%	Sunday
B (8) Eight Photoplays	2-3		30%	7 to include Su
C (10) Ten Photoplays	2-3	$53.50		
D (Remaining Photoplays	2-3	43.50		

Deduct cost of 2nd feature from gross on percentage pictures, if doub billed.

Midnight show permitted preceding regular engagement.

Exhibitor may deduct from the gross before computing our share, the ac cost of Bank Nite, Ten-O-Win, Bingo, Bango and other money give-aways played in conjunction with percentage pictures.

EXHIBIT NO. P-214

Distributor Paramount Pictures Inc.
by - illegible

Season S-11 & S-12

Exhibitor Schine Enterprises corp.
by Geo. V. Lynch

Theatre Massena, Massena, N.Y.

Contract application date Sep. 27, 1940

Approval date Oct. 2, 1940

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Evenings - adults, orchestra .35 balcony .25
children .10
Matinees Adults, orchestra .35 balcony .25
children .10

Run and clearance provisions

1st 60 days City of Massena

Other typewritten or handwritten clauses including riders, if any.

Exchange - Albany
Zone - Off.
Salesman - Eastman

This license agreement also covers releases during the year commencing 9/1/40 and ending 8/31/41 to be known as Group S-12.

List or summary of motion pictures licensed and rental terms

A	(6)	Six photoplays	2-3		35%	
B	(4)	Four photoplays	2-3	$125.00		Sunday
C	(10)	Ten Photoplays	2-3	58.50		
D.		Remaining Photoplays	2-3	38.50		

Deduct cost of 2nd feature from gross on percentage pictures, if double billed.

Midnight show permitted preceding regular engagement.

Exhibitor may deduct from the gross before computing our share, the actual cost of Bank Nite, Ten-O-Win, Bingo, Bango and other money give-aways played in conjunction with percentage picture.

EXHIBIT NO. P-215

Distributor Paramount Pictures Inc.
by - illegible
&

Season S-11

Exhibitor Schine Enterprises Corp.
by Geo.V.Lynch

Theatre Capitol, Newark, N.Y.

Contract application date Sep.27,1940

Approval date Oct.1,1940

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Evenings - adults, .25 children .10
Matinees - adults .25 children .10

Run and clearance provisions

1st run 30 days on Clyde, Lyons & Palmyra, N.Y.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Buffalo, N.Y.
Zone 0

This license agreement also covers releases during year commencing 9/1/40 and ending 8/31/41 known as group S-12.

List or summary of motion pictures licensed and rental terms

"A"	Six	(6) Pictures	2-3		35%	Sunday
"B"	Four	(4) Pictures	2-3	$75.00		
"C"	Ten	(10) Pictures	2-3	64.00		
"D"	Remaining Pictures		2-3	49.00		

Deduct cost of 2nd feature from percentage pictures.

EXHIBIT NO. P-216

Distributor Paramount Pictures Inc.
by - illegible

Season S-11 & S-12

Exhibitor Schine Enterprises Corp.
by - Geo. V. Lynch

Theatre Colonia, Norwich, N.Y.

Contract application date Sep. 27, 1940

Approval date Oct. 2, 1940

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Evenings - adults .25 children .10
Matinees - adults .25 children .10

Run and clearance provisions

1st - 30 days ahead of Sidney, Sherburne, Oxford, Greene, New Berlin and Earlville.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Albany
Zone -Off.
Salesman - Eastman.

This license agreement also covers releases during the year commencing 9/1/40 and ending 8/31/41 to be known as Group S-12.

Midnight show permitted preceding regular engagement.

List or summary of motion pictures licensed and rental terms

A	(6)	Six Photoplays	2-3			
B	(8)	Eight Photoplays	2-3		35%	Sunday
C	(10)	Ten photoplays	2-3	$63.80	30%	7 to inc.Sunday
D		Remaining Photoplays	2-3	$46.80		

Exhibitor may deduct from the gross before computing our share, the actual cost of Bank Nite, Ten-O-Win, Bingo, Bango and other money give-aways played in conjunction with percentage pic.

6

EXHIBIT NO. P-217

Distributor Paramount Pictures Inc.
by - illegible

Season S-11 & S-12

Exhibitor Schine Enterprises Corp.
by Geo.V.Lynch

Theatre Strand or Pontiac, Ogdensburg,N.Y.

Contract application date Sep.27,1940

Approval date Oct. 2, 1940

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Evenings - adults,orchestra .40 balcony. .30
children .10
Matinees - adults .25 children .10

Run and clearance provisions

1st 30 days ahead of Waddington, Canton & Norwood.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Albany
Zone off.
Salesman - Eastman

This license agreement also covers releases during the year commencing 9/1/40 and ending 8/31/41 to be known as group S-12.

List or summary of motion pictures licensed and rental terms

A (6) Six Photoplays	2-3		35%	Sunday
B (8) Eight photoplays	2-3		30%	7 to inclu
				Sunday
C (Ten/ Ten Photoplays	2-3	$78.50		
D Remaining Photoplays	2-3	63.50		

Deduct cost of 2nd feature from percentage pictures, if double billed.

Midnight show permitted preceding regular engagement

Exhibitor may deduct from the gross before computing our share, the act cost of Bank Nite, Ten-O-Win, Bingo, Bango, and other money give-aways played in conjunction with percentage pictures.

EXHIBIT NO. P-218

Distributor Paramount Pictures Inc.
by - illegible

Season S-11 & S-12

Exhibitor Schine Enterprises Corp.
by Geo.V.Lynch

Theatre Oneonta or Palace,
Oneonta, N.Y.

Contract application date Sep.27,1940

Approval date Oct. 2, 1940

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Evening - adults 25 & 35 children .10
Matinees - adults .25 children .10

Run and clearance provisions

1st 30 days ahead of Cooperstown, Morris, Delhi, Stamford, Hartwick and Worcester.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Albany Zone - Off. Salesman - Eastman

This license agreement also covers releases during the year commencing 9/1/40 and ending 8/31/41 to be known as Group S-12.

Midnight show permitted preceding regular engagement.

t a summary of motion pictures licensed and rental terms

(6) SIX PHOTOPLAYS	2-3-4		35%	Saturday or Sunday
(11) ELEVEN PHOTOPLAYS	2-3-4		30%	7 inc.Sunday
(10) TEN PHOTOPLAYS	2-3-4	$79.50		
(REMAINING PHOTOPLAYS	2-3-4	84.50		

hibitor may deduct from the gross before computing our share, the actual % of Bank Nite, Ten-O-Win, Bingo, Bango and other money give-aways led in conjunction with percentage pictures.

uct cost of 2nd feature from gross on percentage pictures, if double billed.

EXHIBIT NO. P-219

Distributor Paramount Pictures Inc.
by illegible

Season S-11

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Elmwood, Penn Yan, N.Y.

Contract application date 2/8/40

Approval date Oct. 1, 1940

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices

Run and clearance provisions

1st 30 days over Dundee, N.Y.

Other typewritten or handwritten clauses including riders, if any.

Exchange – Buffalo, N.Y. Zone O

This license agreement also covers releases during year commencing 9/1/4
and ending 8/31/41 known as Group S-12

List or summary of [illegible]on pictures licensed and rental terms

"A"	Twelve (12) Pictures	2-3	$63.00
"B"	Remaining Pictures	2-3	43.00

EXHIBIT NO. P-220

Distributor Paramount Pictures Inc.
by - illegible

Season S-11

Exhibitor Schine Enterprises Corp.

Theatre Strand, Seneca Falls, N.Y.

Contract application date Sep. 27, 1940

Approval date Oct. 1, 1940

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Evening - adults .25 children .10
Matinees - adults .20 children .10

Run and clearance provisions

1st run 30 days ahead of Waterloo, N.Y.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Buffalo, N.Y. Zone #0

This license agreement also covers releases during year commencing 9/1/40 and ending 8/31/41 known as Group S-12

List or summary of motion pictures licensed and rental terms

[illegible]"	Ten (10) Pictures	2-3	$66.00
[illegible]"	Two (2) Pictures	2-3	34.75
[illegible]"	Remaining Pictures	2-3	28.50

EXHIBIT NO. P-221

Distributor Paramount Pictures, Inc. -unsigned

Season S-11 & S-12

Exhibitor Schine Enterprises Corp. by Geo.V.Lynch

Theatre State, Tupper Lake, N.Y.

Contract application date Sep. 27, 1940

Approval date

No. of pictures offered, All

No. of Pictures Licensed All

Provisions, if any, re admission prices

Evening - adults .25 children .10

Matinee - adults .25 children .10

Run and clearance provisions

1st 60 days ahead of Faust & Surmount.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Albany Zone - Off. Salesman - Eastman

This license agreement also covers releases during the year commencing 9/1/ and ending 8/31/41 to be known as group S-12.

List or summary of motion pictures licensed and rental terms

A	(4) Four photoplays	2-3	$96.25
B	(4) Four photoplays	2-3	85.00
C	(4) Four photoplays	2-3	46.25
D	(11) Eleven photoplays	2-3	37.50
E	Remaining photoplays	2-3	22.50

EXHIBIT NO. P-222

Distributor Paramount Pictures Inc.
by - illegible

Season S-11 & S-12

Exhibitor Schine Enterprises Corp.
by Geo.V.Lynch

Theatre Avon or Olympic, Watertown, N.Y.

Contract application date Sep.27,1940

Approval date Oct. 2, 1940

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Evening - adults, orchestra .35 - balcony .25
children .10

Matinee - adults .25 children .10

Run and clearance provisions

1st 30 days ahead of Adams and Sacketts Harbor.
60 days ahead second and third runs.

Other typewritten or handwritten clauses including riders, if any.

xchange - Albany. Zone - office Salesman - Eastman

his license agreement also covers releases during the year commencing
/1/40 and ending 8/31/41 to be known as group S-12.

idnight show permitted preceding regular engagement

Summary of motion pictures licensed and rental terms

(1) Six photoplays	2-3-4		35%	
(1) Eleven photoplays	2-3-4		30%	Sunday or Saturday 7 to include Sunday or Saturday
(4) Fourteen photoplays	2-3-4	$137.50	-	
emaining photoplays	2-3-4	105.00		

t cost of 2nd feature from gross on percentage pictures, if double-billed.

itor may deduct from the gross before computing our share, the actual
to Bank Nite, Ten-O-Win, Bingo, Bango and other money give aways played
junction with percentage pic.

EXHIBIT NO. P-223

Distributor	Paramount Pictures Inc. unsigned	Season	S-11 & S-12
Exhibitor	Schine Enterprises Corp. by Geo. V. Lynch	Theatre	Olympic, Watertown, N.Y
Contract application date	Sept. 27, 1940	Approval date	
No. of pictures offered	All	No. of Pictures Licensed	All

Provisions, if any, re admission prices Evening-adults, orchestra 20-balcony 15
children 10
Matinee-adults, orchestra 20-balcony 15
children 10

Run and clearance provisions

2nd 30 days over third run

Other typewritten or handwritten clauses including riders, if any,

Exchange-Albany Zone-Off. Salesman - Eastman

List or summary of motion pictures licensed and rental terms

A	(4) Four photoplay	2-3	$92.50
B	(6) Six photoplays	2-3	48.75
C	(20) Twenty photoplays	2-3	40.00
D	(22) Twenty-two photoplays	2-3	30.00

Any picture that has played the Olympic Theatre 1st run to be cancell

EXHIBIT NO. P-224

Distributor Paramount Pictures Inc.
by - H. Goldstein

Season S-11 and S-12

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Palace or Opera House,
Ashland, Ohio

Contract application date 9/30/40

Approval date Oct.1,1940

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Evenings - adults .15-.30 children .10
Matinees - adults .15 -.20 children .10

Run and clearance provisions

Usual
7 days after 1st run Mansfield 90 days over second run.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Cleveland
Zone - Office

Midnight show permitted preceding regular engagement.

Exhibitor may deduct cost of 2nd feature from gross of percentage pictures, if double-billed.

Exhibitor may deduct cost of Bank Night from any percentage picture.

List or summary of motion pictures licensed and rental terms

Group S-11 (1939-40)

A. Six (6) Photoplays	2-3		35%	Sun.
B. Eight (8) Photoplays	2-3	$134.50		
C. Ten (10) Photoplays	2-3	64.50		
D. Twenty Four (24) Photoplays	2-3	54.50		
E. Remaining photoplays	2-3	39.50		

Group S-12 (1940-41)

A. Six (6) Photoplays	2-3		35%	Sun.
B. Eight (8) Photoplays	2-3	$134.50		
C. Ten (10) Photoplays	2-3	64.50		
D. Twenty Four (24) Photoplays	2-3	54.50		
E. Remaining Photoplays	2-3	39.50		

EXHIBIT NO. P-225

Distributor	Paramount Pictures Inc. by H. Goldstein	Season	S-11 and S-12
Exhibitor	Schine Enterprises Corp. by Geo.V.Lynch	Theatre	Athena or Ohio or Cort, Athens, Ohio
Contract application date	9/30/40	Approval date	Oct. 5, 1940
No. of pictures offered	All	No. of Pictures Licensed	All

Provisions, if any, re admission prices
Evenings - adults .35 children .10
Matinees - adults .25 children .10

Run and clearance provisions

1st 14 days over Nelsonville
30 days over Glouster

Other typewritten or handwritten clauses including riders, if any.

Exchange - Cincinnati
Zone 4
Salesman - Powers

List or summary of motion pictures licensed and rental terms

Group S-11 (1939-40)

A- Six (6) Photoplays	2-3		35% of the gross Sunda
B - Eight (8) Photoplays	2-3		30% of the gross (7 to i
C. Ten (10) Photoplays	2-3	$104.50	
D. Remaining Photoplays	2-3	44.50	

Group S-12 (1940-41)

A. Six (6) Photoplays	2-3		35% of the gross Sunda
B Eight (8) Photoplays	2-3		30% of the gross (7 to i
C Ten (10) Photoplays	2-3	$104.50	
D. Remaining Photoplays	2-3	44.50	

Midnight show permitted preceding regular engagement
Exhibitor may deduct cost of 2nd feature from gross of percentage pi
if double billed.
Exhibitor may deduct cost of Bank Night from any percentage picture.

EXHIBIT NO. P-226

Distributor Paramount Pictures Inc.
by H.A.Goldstein

Season S-11 and S-12

Exhibitor - Schine Enterprises Corp.
by Geo.V.Lynch

Theatre Holland,
Bellefontaine,Ohio

Contract application date 9/30/40

Approval date Oct. 1, 1940

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Evenings - adults, orchestra .30 balcony .20
children .10
Matinees - adults .20 children .10

Run and clearance provisions

1st 30 days over DeGraff, Lakeview & W.Liberty
14 days over West Mansville.

Other typewritten or handwritten clauses including riders, if any,

Exchange - Cleveland
Zone - Office

itor summary of motion pictures licensed and rental terms

Group S-11 (1939-40)

A.	Six (6) Photoplays	2-3		35%	Sun.
B.	Eight (8) Photoplays	2-3		30%	7 inc.Sun.
C.	Ten (10) Photoplays	2-3	$64.50		
D.	Remaining Photoplays	2-3	44.50		

Group S-12 (1940-41)

A.	Six (6) Photoplays	2-3		35%	Sun
B.	Eight (8) Photoplays	2-3		30%	7 inc. Sun.
C.	Ten (10) Photoplays	2-3	$64.50		
D.	Remaining Photoplays	2-3	44.50		

Midnight show preceding regular engagement permitted.
Exhibitor may deduct cost of 2nd feature from gross of percentage pictures, if double billed.
Exhibitor may deduct cost of Bank Night from gross of percentage pictures.

EXHIBIT NO. P-227

Distributor Paramount Pictures Inc.
by H. Goldstein

Season S-11 and S-12

Exhibitor Schine Enterprises Corp.
by Geo.V.Lynch

Theatre Bucyrus, State or Southern,
Bucyrus, Ohio

Contract application date 9/30/40

Approval date Oct. 1,1940

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices
Evenings - adults .25 children .10
Matinees - adults .20 children .10

Run and clearance provisions

Usual
21 days after release

90 days over second run

Other typewritten or handwritten clauses including riders, if any.

Exchange - Cleveland
Zone - Office

List or summary of motion pictures licensed and rental terms

Group S-11 (1939-40)

A.	Six (6) Photoplays	2-3		35%	Sun.
B.	Eight (8) Photoplays	2-3	$119.50		
C.	Remaining Photoplays	2-3	54.50		

Group S-12 (1940-41)

A.	Six (6) Photoplays	2-3		35%	Sun.
B.	Eight (8) Photoplays	2-3	$119.50		
C.	Remaining Photoplays	2-3	54.50		

Midnight show permitted preceding regular engagement.
Exhibitor may deduct cost of 2nd feature from gross of percentage pic
if double billed.
Exhibitor may deduct cost of bank night from gross of percentage pict

EXHIBIT NO. P-228

Distributor Paramount Pictures Inc.
by H.Goldstein

Season 8-11 and 8-12

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre State or Civic or Roxy,
Fostoria, Ohio

Contract application date 9/30/40

Approval date Oct. 1, 1940

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Evenings - adults, orchestra 25, children 10
Matinees - adults, 20 children 10

Run and clearance provisions

1st run Fostoria 90 days over 2nd run

Other typewritten or handwritten clauses including riders, if any,

Exchange-Cleveland
Zone-Office

ist or summary of motion pictures licensed and rental terms

roup 8-11 (1939-40)

Six (6) Photoplays	2-3		35%	Sun.
Eight (8) Photoplays	2-3	$119.50		
Fifteen (15) Photoplays	2-3	64.50		
Remaining photoplays	2-3	39.50		

roup 8-12 (1940-41)

Six (6) Photoplays	2-3		35%	Sun.
Eight (8) Photoplays	2-3	$119.50		
Fifteen (15) Photoplays	2-3	64.50		
Remaining PhotOplays	2-3	39.50		

idnight show permitted preceding regular engagement.
xhibitor may deduct cost of 2nd feature from gross of percentage picture,
f double billed.
xhibitor may deduct cost of Bank Night from any percentage picture.

EXHIBIT NO. P-229

Distributor Paramount Pictures, Inc.
by H. Goldstein

Season S-11 and S-12

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre New Kent or Opera House, or Ravenna,
Kent or Ravenna, O.

Contract application date 9/3(/40

Approval date Oct. 1, 1940

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices

Evenings - adults, orchestra .25 balcony .15
children .10

Matinees - adults, orchestra .20 balcony .15
children .10

Run and clearance provisions

1st run - 14 days after 1st run Akron 90 days over 2nd run

Other typewritten or handwritten clauses including riders, if any.

Exchange - Cleveland
Zone - Office

List or summary of motion pictures licensed and rental terms

Group S-11 (1939-40)

A. Six (6) Photoplays	2-3		35%	Sun.
B. Eight (8) Photoplays	2-3		30%	7 inc. Sunday.
C. Fifteen (15) Photoplays	2-3	$79.00		
D. Remaining Photoplays	2-3	44.00		

Group S-12 (1940-41)

A. Six (6) Photoplays	2-3		35%	Sun.
B. Eight (8) Photoplays	2-3		30%	7 inc. Sunday
C. Fifteen (15) Photoplays	2-3	$79.00		
D. Remaining Photoplays	2-3	44.00		

Midnight show permitted preceding regular engagement.
Exhibitor may deduct cost of 2nd feature from gross of percentage pictu
if double billed.
Exhibitor may deduct cost of bank night from gross of percentage pictur

EXHIBIT NO. P-230

Distributor Paramount Pictures Inc.
by H.Goldstein

Season S-11 & S-12

Exhibitor Schine Enterprises Corp.
by Geo.V.Lynch

Theatre New Kent, Opera House-Ravenna,
Kent or Ravenna, Ohio

Contract application date 9/30/40

Approval date Oct.1,1940

No. of pictures offered All

No. of Pictures Licensed Half of All

Provisions, if any, re admission prices Evenings - adults, orch. 25; bal. .15 - children .10
Matinees - adults orchestra .20 bal.15 - children .1

Run and clearance provisions

Repeat on 1st run Kent or Ravenna, Ohio

Other typewritten or handwritten clauses including riders, if any.

Exchange - Cleveland
Zone - Office

summary of motion pictures licensed and rental terms

Group S-11 (1939-40)

A.	Six (6) Photoplays	2-3	$102.50
B.	Four (4) Photoplays	2-3	77.50
C.	Sixteen (16) Photoplays	2-3	37.50

Group S-12 (1940-41)

A.	Six (6) Photoplays	2-3	$102.50
B.	Four (4) Photoplays	2-3	77.50
C.	Sixteen (16) Photoplays	2-3	37.50

Any additional pictures used, price to be - $37.50 - 2-3 days.

EXHIBIT NO. P-231

Distributor	Paramount Pictures Inc. by H. Goldstein	**Season**	S-11 & S-12
Exhibitor	Schine Enterprises Corp. by Geo.V.Lynch	**Theatre**	Medina or Princess, Medina, Ohio
Contract application date	9/30/40	**Approval date**	Oct. 1, 1940
No. of pictures offered	All	**No. of Pictures Licensed**	All

Provisions, if any, re admission prices
Evenings, adults .25 children .10
Matinees, adults .25 children .10

Run and clearance provisions

1st in Medina 90 days over 2nd run
available 7 days after 1st run Akr

Other typewritten or handwritten clauses including riders, if any.

Exchange - Cleveland
Zone - Office

List or summary of motion pictures licensed and rental terms

Group S-11 (1939-40)

A.	Six (6) Photoplays	2-3		35%	Sun.
B.	Four (4) Photoplays	2-3		30%	Sun.
C.	Thirty (30) Photoplays	2-3	$25.50		
D.	Remaining Photoplays	2-3	18.00		

Group S-12 (1940-41)

A.	Six (6) Photoplays	2-3		35%	Sun.
B.	Four (4) Photoplays	2-3		30%	Sun.
C.	Thirty (30) Photoplays	2-3	$25.50		
D.	Remaining Photoplays	2-3	18.00		

Midnight show permitted preceding regular engagement.
Exhibitor may deduct cost of 2nd feature from gross of percentage pictures, if double billed.
Exhibitor may deduct cost of Bank Night from any percentage picture.

EXHIBIT NO. P-232

Distributor Paramount Pictures Inc.
by G. Goldstein

Season S-11and S-12

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Vernon or Vine, Mt. Vernon, Ohio

Contract application date 9/30/40

Approval date Oct. 1, 1940

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Evenings, adults, orch. 31 - bal. 15: children .10
Matinees, adults, orch. 27 bal. 15: children .10

Run and clearance provisions

1st 90 days over 2nd run
30 days over Utica

Other typewritten or handwritten clauses including riders, if any.

Exchange - Cleveland
Zone - Office

c summary of motion pictures licensed and rental terms

Group S-11 (1939-40)

A.	Six (6) Photoplays	2-3	35%		Sun.
B.	Eleven (11) Photoplays	2-3	30%		(7 to include Sun)
C.	Ten (10) Photoplays	2-3		$79.00	
D.	Remaining Photoplays	2-3		49.00	

Group S-12 (1940-41)

A.	Six (6) Photoplays	2-3	35%		Sun.
B.	Eleven (11) Photoplays	2-3	30%		(7 to include Sun.)
C.	Ten (10) Photoplays	2-3		$79.00	
D.	Remaining Photoplays	2-3		49.00	

Midnight show permitted preceding regular engagement.
Exhibitor may deduct cost of 2nd feature from gross of percentage pictures, if double billed.
Exhibitor may deduct cost of bank night from gross of percentage pictures.

EXHIBIT NO. P-234

Distributor Paramount Pictures Inc.
by H. Goldstein

Season S-11 & S-12

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Forum or Moose, Norwalk, Ohio

Contract application date 9/30/40

Approval date Oct. 1, 1940

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices
Evenings, adults, .25 -children .10
Matinees, adults, .25 - children .10

Run and clearance provisions

1st in Norwalk 90 days over 2nd run
7 days after Sandusky
In any event to be available 21 days after release date.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Cleveland
Zone - Office

List or summary of motion pictures licensed and rental terms

Group S-11 (1939-40)

A.	Six (6) Photoplays	2-3		35%	Sun.
B.	Eight (8) Photoplays	2-3	$79.50		
C.	Ten (10) Photoplays	2-3	54.50		
D.	Twenty (20) Photoplays	2-3	34.50		
E.	Remaining Photoplays	2-3	24.50		

Group S-12 (1940-41)

A.	Six (6) Photoplays	2-3		35%	Sun.
B.	Eight (8) Photoplays	2-3	$79.50		
C.	Ten (10) Photoplays	2-3	54.50		
D.	Twenty (20) Photoplays	2-3	34.50		
E.	Remaining Photoplays	2-3	24.50		

Midnight show permitted preceding regular engagement.
Exhibitor may deduct cost of 2nd feature from gross of percentage pictur
if double billed.

Exhibitor may deduct cost of Bank Night from any percentage picture.

EXHIBIT NO. P-235

Distributor Paramount Pictures Inc.
by - H.Goldstein

Season S-11 & S-12

Exhibitor Schine Enterprises Corp.
by Geo.V.Lynch

Theatre Castamba, Shelby-Ohio

Contract application date 9/30/40

Approval date Oct. 1, 1940

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Evening, adults .25 children .10
Matinees, adults .25 children .10

Run and clearance provisions

1st in Shelby
7 days after Mansfield

90 days over second run

Other typewritten or handwritten clauses including riders, if any.

Exchange - Cleveland
Zone - Office

List or summary of motion pictures licensed and rental terms

Group S-11 (1939-40)

A.	Six (6) Photoplays	2-3		35%	Sun.
B.	Six (6) Photoplays	2-3		30%	Sun.
C.	Eight (8) Photoplays	2-3	$54.50		
D.	Remaining Photoplays	2-3	26.50		

Group S-12 (1940-41)

A.	Six (6) Photoplays	2-3		35%	Sun
B.	Six (6) Photoplays	2-3		30%	Sun.
C.	Eight (8) Photoplays	2-3	$54.50		
D.	Remaining Photoplays	2-3	26.50		

Midnight show permitted preceding regular engagement.
Exhibitor may deduct cost of 2nd feature from gross of percentage pictures, if double billed.
Exhibitor may deduct cost of Bank Night from any percentage picture.

5895

EXHIBIT NO. P-236.

Distributor	Paramount Pictures Inc., by H. Goldstein	Season	S-11 and S-12
Exhibitor	Schine Enterprises Corp. by Geo. V. Lynch	Theatre	Ritz or Tiffin or Grand, Tiffin, Ohio
Contract application date	9/30/40	Approval date	Oct. 1, 1940
No. of pictures offered	All	No. of Pictures Licensed	All

Provisions, if any, re admission prices Evenings - adults 25, children 10
Matinees - adults 25, children 10

Run and clearance provisions

1st in Tiffin 90 days over 2nd run

Other typewritten or handwritten clauses including riders, if any.

Exchange-Cleveland
Zone Office

List or summary of motion pictures licensed and rental terms

Group S-11 (1939-40)

A.	Six (6) Photoplays	2-3		35%	Sun.
B.	Eight (8) Photoplays	2-3		30%	7 inc. Sun.
C.	Fifteen (15) Photoplays	2-3	$54.50		
D.	Fifteen (15) Photoplays	2-3	39.50		
E.	Remaining Photoplays	2-3	29.50		

Group S-12 (1940-41)

A.	Six (6) Photoplays			35%	Sun.
B.	Eight (8) Photoplays			30%	7 inc. Sun.
C.	Fifteen (15) Photoplays	2-3	$54.50		
D.	Fifteen (15) Photoplays	2-3	39.50		
E.	Remaining Photoplays	2-3	29.50		

Midnight show permitted preceding regular engagement.
Exhibitor may deduct cost of 2nd feature from gross of percentage pictu
if double billed.
Exhibitor may deduct cost of bank night from gross of percentage pictur

EXHIBIT NO. P-237

Distributor Parsmount Pictures Inc.
by H. Goldstein

Season S-11 & S-12

Exhibitor Schine Enterprises Corp.
by Geo.V.Lynch

Theatre Van Wert or Strand,
Van Wert, Ohio

Contract application date 9/30/40

Approval date Oct. 1, 1940

o. of pictures offered All

No. of Pictures Licensed All

ovisions, if any, re admission prices
Evening - adults .25 children .10
Matinee - adults .25 children .10

n and clearance provisions

1st Van Wert
Available 21 days after release date. 90 days over second run

r typewritten or handwritten clauses including riders, if any.

Exchange - Cleveland
Zone - Office

r summary of motion pictures licensed and rental terms

Group S-11 (1939-40)

A.	Six (6) Photoplays	2-3			
B.	Eight (8) Photoplays	2-3	$99.00	35%	Sun.
C.	Thirty (30) Photoplays	2-3	54.00		
D.	Remaining Photoplays	1-2	29.00		

Group S-12 (1940-41)

	Six (6) Photoplays	2-3			
	Eight (8) Photoplays	2-3	$99.00	35%	Sun.
	Thirty (30)Photoplays	2-3	54.00		
	Remaining Photoplays	1-2	29.00		

idnight show permitted preceding regular engagement.
xhibitor may deduct cost of 2nd feature from gross of percentage pictures,
f double billed.
xhibitor may deduct cost of Bank Night from any percentage picture.

EXHIBIT NO. P-238

Distributor Paramount Pictures, Inc.
by H. Goldstein

Season S-11 and S-12

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Wooster, Wayne or Opera House,
Wooster, Ohio

Contract application date 9/30/40

Approval date Oct. 1, 1940

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices
Evenings - adults .25 children .10
Matinees - adults .20 children .10

Run and clearance provisions

1st run Wooster Same as last year - 90 days over 2nd run.

Other typewritten or handwritten clauses including riders, if any,

Exchange - Cleveland
Zone - Office

List or summary of motion p res licensed and rental terms

Group S-11 (1939-40)

A.	Six (6) Photoplays	2-3		35%	Sun.
B.	Eight (8) Photoplays	2-3		30%	7 Inc.Sun
C.	Ten (10) Photoplays	2-3	$69.50		
D.	Remaining Photoplays	2-3	54.50		

Group S-12 (1940-41)

A.	Six (6) Photoplays	2-3		35%	Sun.
B.	Eight (8) Photoplays	2-3		30%	7 Inc. Su
C.	Ten (10) Photoplays	2-3	$69.50		
D.	Remaining Photoplays	2-3	54.50		

Midnight show permitted preceding regular engagement.
Exhibitor may deduct cost 2nd feature from gross of percentage picture
if double billed.
Exhibitor may deduct cost of bank night from gross of percentage pictu

2

EXHIBIT NO. PP 1

Distributor Paramount Pictures, Inc.
by H. H. Goldstein

Season S-11 and S-12

Exhibitor Schine Enterprises Corp.
by George V. Lynch

Theatre Miami or Piqua, Piqua, Ohio

Contract application date February 8, 1940

Approval date September 30, 1940

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Evenings: Adults-25¢, Children-10¢
Matinees: Adults-20¢, Children-10¢

Run and clearance provisions First. Open booking with Troy. To receive same availability dates as Troy.

Other typewritten or handwritten clauses including riders, if any.

Exchange-Cincinnati; Zone-Office Indep.; Salesman-Office
Midnight show permitted preceding regular engagement.
Exhibitor may deduct cost of 2nd feature from gross of percentage pictures, if double billed.
Exhibitor may deduct cost of Bank Night from any percentage pictures.

List or summary of motion pictures licensed and rental terms

Group S-11 (1939-40)			
A- Six (6) Photoplays	2-3	35%	) 13 percentage pictures to play Sunday.
B- Eleven (11) Photoplays	2-3	30%)	
C- Ten (10) Photoplays	2-3	64.50	
D-Ten (10) Photoplays	2-3	54.50	
E-Remaining Photoplays	2-3	49.50	
Group S-12 (1940-41)			
A-Six (6) Photoplays	2-3	35%)	13 percentage pictures to play Sunday.
B-Eleven (11) Photoplays	2-3	30%)	
C-Ten (10) Photoplays	2-3	64.50	
D-Ten (10) Photoplays	2-3	54.50	
E-Remaining Photoplays	2-3	49.50	

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EXHIBIT NO. PP-2

Distributor	Paramount Pictures, Inc. by M.S. Kusell	**Season**	S-11 and S-12
Exhibitor	Schine Enterprises Corp. by George V. Lynch	**Theatre**	Cameo, Rochester, N. Y.
Contract application date	February 8, 1940	**Approval date**	September 27, 1940
No. of pictures offered	All	**No. of Pictures Licensed**	All

Provisions, if any, re admission prices Evenings: Adults, Orchestra-20, Balcony-15, Children-10
Matinees: Adults, Orchestra-20, Balcony-15, Children-10

Run and clearance provisions 10 days ahead of Empress and Lyric Theatres.
Immediately after Monroe and Madison.

Other typewritten or handwritten clauses including riders, if any.

Exchange-Buffalo, N. Y.; Zone #0

This License Agreement Also covers releases during year commencing September 1, 1940 and ending August 31, 1941known as group S-12

List or summary of motion pictures licensed and rental terms

"A"	Ten (10) pictures	2-3	$48.75
"B"	Twenty-one (21) pictures	2-3	40.00
"C"	Remaining Pictures	2-3	30.00

EXHIBIT NO. PP-3

Distributor Paramount Pictures, Inc.
by M. S. Kusell

Season S-11 and S-12

Exhibitor Schine Enterprises Corp.
by George V. Lynch

Theatre Grand, Rochester, N. Y.

Contract application date February 8, 1940

Approval date September 27, 1940

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Evenings: Adults-15¢, Children-10¢
Matinees: Adults-15¢, Children-10¢

Run and clearance provisions Open booking with Strand Theatre,
7 days over Embassy and Empire Theatres.
Immediately after Madison and Monroe Theatres.

Other typewritten or handwritten clauses including riders, if any.

Exchange-Buffalo, N. Y.; Zone #0
This License Agreement Also Covers Releases During Year Commencing September 1, 1940 and ending August 31, 1941 known As Group S-12.

t or summary of motion pictures licensed and rental terms

"A"	Four (4) Pictures	2-3	35%
"B"	Five (5) Pictures	2-3	39.50
"C"	Remaining pictures	2-3	27.00

Deduct Cost of Second Features From Percentage pictures.
Exhibitor may deduct from the gross before computing our share, the actual cost of Bank Nite, Ten-O-Win, Bingo, Bango, and other money giveaways played in conjunction with percentage pictures.

EXHIBIT NO. PF-4

Distributor Paramount Pictures, Inc.
by M. S. Kusell

Season S-11 and S-12

Exhibitor Schine Enterprises Corporation
by George V. Lynch

Theatre Liberty, Rochester, N. Y.

Contract application date February 8, 1940.

Approval date September 27, 1940

No. of pictures offered 52

No. of Pictures Licensed 30

Provisions, if any, re admission prices
Evenings: Adults-15, Children-10
Matinees: Adults-15, Children-10

Run and clearance provisions Repeat Run.
To be played within clearance of Riviera-Liber
First Run Contracts same date.

Other typewritten or handwritten clauses including riders, if any.

Exchange-Buffalo, N.Y.; Zone-).

This License Agreement Also Covers Releases During Year Commenc
September 1, 1940, and Ending August 31, 1941 known As Group S-

List or summary of motion pictures licensed and rental terms

"A"	Ten (10)	Pictures	2-3	37.50
"B"	Twenty (30)	Pictures	2-3	30.00

EXHIBIT NO. PP-5

Distributor Paramount Pictures, Inc.
by M. S. Kusell

Season S-11 and S-12

Exhibitor Schine Enterprises, Inc.
by George V. Lynch

Theatre Riviera or Liberty, Rochester, N. Y.

Contract application date February 8, 1940

Approval date September 27, 1940

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Evenings: Adults: 25, Children-10¢
Matinees: Adults-25, Children-10¢

Run and clearance provisions Third
21 days on subsequent runs.

Other typewritten or handwritten clauses including riders, if any.

Exchange-Buffalo, N. Y.; Zone-0

This License Agreement Also covers releases during year commencing September 1, 1940 and ending August 31, 1941 Known as Group S-12.

List or summary of motion pictures licensed and rental terms

"A" Six (6) Pictures	2-3	35% of gross
"B" Four (4) Pictures	2-3	$185.00
"C" Remaining Pictures	2-3	65.00

Deduct cost of second feature on percentage pictures.
Exhibitor may deduct from the gross before computing our share, the actual cost of Bank Night, Ten-O-Win, Bingo, Bango, and other money giveaways played in conjunction with percentage pictures.

EXHIBIT NO. PP-6

Distributor Paramount Pictures, Inc. by M. S. Kusell

Season S-11 and S-12

Exhibitor Schine Enterprises Corporation by George V. Lynch

Theatre Monroe, Rochester, N. Y.

Contract application date 2/8/40

Approval date September 27, 1940

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices

Evenings: Adults, Orchestra-25¢, Balcony-15, Children-10
Matinees: Adults, Orchestra-15, Balcony-15, Children-10

Run and clearance provisions

After Schine Clearance (Riviera, Liberty, State, Dixi
4 days ahead of Webster Theatre, provided Exhibitor plays within 14 days of availability.

Other typewritten or handwritten clauses including riders, if any.

Exchange-Buffalo, N. Y.; Zone-O

This License Agreement Also Covers Releases During Year Commencing September 1, 1940 and Ending August 31, 1940 Known as Group S-12

List or summary of motion pictures licensed and rental terms

"A" Four (4)	Pictures	2-3	$163.00
"B" Sixteen (16)	Pictures	2-3	63.00
"C" Thirty-two (32)	Pictures	2-3	38.00

EXHIBIT NO. PP-7

Distributor Paramount Pictures, Inc.
by M. S. Kusell

Season S-11 and S-12

Exhibitor Schine Enterprises Corp.
by George V. Lynch

Theatre Madison, Rochester, N. Y.

Contract application date February 8, 1940

Approval date September 27, 1940

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Evenings: Adults, Orchestra-25¢, Balcony-15
Children-10
Matinees: Adults, Orchestra-15, Balcony-15
Children-10

Run and clearance provisions
After Schine Clearance (Riviera, Liberty, State, Dixie) 4 days ahead of Webster Theatre, provided Exhibitor plans within 14 days of availability

Other typewritten or handwritten clauses including riders, if any.

Exchange-Buffalo, N.Y. Zone-0

This license agreement also covers releases during year commencing September 1, 1940 and ending August 31, 1941 known as group S-12.

List or summary of motion pictures licensed and rental terms

"A"	Four (4)	Pictures	2-3	$163.00
"B"	Sixteen (16)	Pictures	2-3	63.00
"C"	Thirty-two (32)	Pictures	2-3	38.00

EXHIBIT NO. PP-8

Distributor	Paramount Pictures, Inc. by M. S. Kusell	**Season**	S-11 and S-12
Exhibitor	Schine Enterprises Corp. by George V. Lynch	**Theatre**	State, Rochester, N. Y.
Contract application date	February 8, 1940	**Approval date**	September 27, 1940
No. of pictures offered	All	**No. of Pictures Licensed**	30

Provisions, if any, re admission prices Evenings: Adults-25¢, Children-10¢
Matinees: Adults-25¢, Children-10¢

Run and clearance provisions Repeat Run.
To be played within clearance State or Dixie Contracts
First Run same date.

Other typewritten or handwritten clauses including riders, if any.

This License Agreement Also Covers Releases During Year Commencing September 1, 1940 and Ending August 31, 1941 Known As Group S-12.

List or summary of motion pictures licensed and rental terms

"A" Ten (10) Pictures	2-3	$37.50
"B" Twenty (20) Pictures	2-3	30.00

EXHIBIT NO. PP-9

Distributor Paramount Pictures, Inc.
by M. S Kusell

Season S-11 and S-12

Exhibitor Schine Enterprises Corporation
by George V. Lynch

Theatre State, Dixie, Rochester, N. Y.

Contract application date February 8 1940

Approval date September 27, 1940

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Evenings: Adults-25, Children-10¢
Matinees: Adults-25¢, Children-10¢

Run and clearance provisions Third run.
21 days ahead of subsequent runs.
14 days ahead of Webster, Hudson, Astor and Hub Theatre, Sea Breeze, N. Y.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Buffalo, N Y.; Zone-O

This License Agreement Also Covers Releases During Year Commencing September 1, 1940 and Ending August 31, 1941 Known As Group S-12.

List or summary of motion pictures licensed and rental terms

"A" Six (6) Pictures	2-3	35%
"B" Four (4) Pictures	2-3	$80.00
"C" Ten (10) Pictures	2-3	55.00
"D" Remaining Pictures	2-3	45.00

Deduct cost of second feature on percentage pictures.
Exhibitor may deduct from the gross before computing our share the actual cost of Bank Night, Ten-O-Win, Bingo, Bango and other money give-aways played in conjunction with percentage pictures.

EXHIBIT NO. PP-10

Distributor Paramount Pictures, Inc.
by M. S. Kusell

Season S-11 and S-12

Exhibitor Schine Enterprises Corporations
by George V. Lynch

Theatre West End, Rochester, N. Y.

Contract application date February 8, 1940

Approval date September 27, 1940

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Evenings: Adults-20¢, Children-10¢
Matinees: Adults-15¢, Children-10¢

Run and clearance provisions Open booking with Arnett.

Other typewritten or handwritten clauses including riders, if any.

Exchange-Buffalo, N.Y.; Zone-0

This License Agreement also covers releases during year commencing September 1, 1940 and ending August 31, 1941 known as Group S-12.

List or summary of motion pictures licensed and rental terms

"A"	Four (4)	Pictures	2-3	$47.50
"B"	Sixteen (16)	Pictures	2-3	22.50
"C"	Thirty-two (32)	Pictures	2-3	17.00

EXHIBIT NO. F-2

Distributor Twentieth-Century-Fox Film Corporation
by (illegible)

Season K-4

Exhibitor Schine Theatrical Co., Inc.
by Geo. V. Lynch

Theatre Rialto or Strand
Amsterdam, New York

Contract application date 6/17/36

Approval date 8/17/36

No. of pictures offered 56

No. of Pictures Licensed 43

Provisions, if any, re admission prices Evenings: adults 30 & 25; children 10
Matinees: adults 20 & 15; children 10

Run and clearance provisions 1st. usual. 30 days over Johnstown, Fonda & Broadalbin.

Other typewritten or handwritten clauses including riders, if any.
Exchange - Albany
Date - 6/17/36
Salesman - M. Grassgreen

st or summary of motion pictures licensed and rental terms

. Four (4)	2/3	35% of gross	$5.00
. Eight (8)	2/3	30% of gross	5.00
. Twelve (12)	2/3	25% of gross	5.00
. Nineteen(19)	2/3	$100.00(STRAND $50.00)	5.00

here pictures are used as part of a double-feature bill, score will be 0% of the price listed; also. if any of the pictures are used only one ay, score to be $2

EXHIBIT NO. F-3

Distributor Twentieth Century-Fox Film Corporation
by (illegible)

Season K-4

Exhibitor Schine Theatrical Co., Inc.
by Geo. V. Lynch

Theatre Strand or Regent
Amsterdam, N. Y.

Contract application date 6/17/36

Approval date 8/17/36

No. of pictures offered 10

No. of Pictures Licensed 10

Provisions, if any, re admission prices
Evenings: adults 25; children 10
Matinees: adults 15; children 10

Run and clearance provisions
2nd. Not earlier than 30 days after first-run.
As available.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Albany
Date - 6/17/36
Salesman - M. Grassgreen.

List or summary of motion pictures licensed and rental terms

Ten (10) 2/3 $50.00 $5.00

REPEAT AFTER FIRST-RUN.

Where pictures are used as part of a double-feature bill, score will be 50% of the price listed; also, if any of the pictures are used only one day, score to be $2.50.

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EXHIBIT NO. F-4

Distributor: Twentieth Century-Fox
Film Corporation
by (illegible)

Season: K-4

Exhibitor: Maymayer Corporation
by Geo. V. Lynch

Theatre: Palace or Strand or Jefferson
Auburn, N. Y.

Contract application date: 8/5/36.

Approval date: 8/17/36

No. of pictures offered: 56

No. of Pictures Licensed: 49

Provisions, if any, re admission prices

Run and clearance provisions: 30 days on Skaneateles and Seneca Falls, N. Y.
First run Auburn, N. Y.
As available.

Other typewritten or handwritten clauses including riders, if any,

Exchange - Buffalo
Date - Aug. 5, 1936
Salesman - Sydney Samson

ist or summary of motion pictures licensed and rental terms

A	Four	(4)	2-4	35%
B	Eight	(8)	2-4	30%
C	Twelve	(12)	2-4	25%
D	Remaining		2-4	

$75. if Jefferson
50. if Palace or Strand

Store $2.50 per day
$5.00 per run

EXHIBIT NO. F-5

Distributor Twentieth Century-Fox Film Corporation by (illegible)

Season K-4

Exhibitor Schine Theatrical Co., Inc. by Geo. V. Lynch

Theatre Babcock, Bath, N. Y.

Contract application date 8/5/36

Approval date 12/30/36

No. of pictures offered all

No. of Pictures Licensed 46

Provisions, if any, re admission prices
Evenings: adults 35; children 10
Matinees: adults 25; children 10

Run and clearance provisions — First run Bath, N. Y. As available.
30 days ahead of Cohocton, Prattsburg, Hammondsport and Savona, N. Y.

Other typewritten or handwritten clauses including riders, if any.
Exchange - Buffalo
Date - 8/5/36
Salesman - Sydney Samson

List or summary of motion pictures licensed and rental terms

A	Four	(4)	2-3	35%
B	Four	(4)	2-3	30%
C	Two	(2)	2-3	$75.00
D	Twenty	(20)	2-3	35.00
E	Sixteen	(16)	2-3	25.00

IT IS UNDERSTOOD AND AGREED THAT THE EXHIBITOR WILL USE A MINIMUM OF 46 PICTURES. THE DISTRIBUTOR AGREES TO ALLOCATE ALL PICTURES RELEASED PRIOR TO OCTOBER 23RD FROM THE FLAT PRICE GROUPS AND THE EXHIBITOR MAY PLAY AT HIS OPTION, ANY SUCH PICTURES AS PART OF THEIR TOTAL COMMITMENT. THIS CLAUSE APPLIES FOR THE SEASON OF 1936-37 ONLY.

Score:	1 day	$2.50
	Run	5.00

EXHIBIT NO. F-6

Distributor Twentieth Century-Fox Film Corporation by George Roberts

Season K-4

Exhibitor Schine Theatrical Co., Inc. By Geo. V. Lynch

Theatre Playhouse, Canandaigua, N. Y.

Contract application date 8/5/36

Approval date

No. of pictures offered all

No. of Pictures Licensed 46

Provisions, if any, re admission prices Evenings: adults orchestra 35, balcony 25; children orchestra 10, balcony 10
Matinees: adults orchestra 35, balcony 25 children orchestra 10, balcony 10

Run and clearance provisions
10 days on Clifton Springs, N. Y. First run Canandaigua, N. Y.
As available.

Other typewritten or handwritten clauses including riders, if any.
Exchange - Buffalo
Date - 8/5/36
Salesman - Sydney Samson

List or summary of motion pictures licensed and rental terms

A.	Two	(2)	2-3		
B.	Six	(6)	2-3		35%
C.	Twenty	(20)	2-3	$60.	30%
D.	Eighteen	(18)	2-3	35.	

IT IS AGREED AND UNDERSTOOD THAT THE EXHIBITOR WILL USE A MINIMUM OF 46 PICTURES.

Score: $2.50 per day
5.00 per run

EXHIBIT NO. F-7

Distributor Twentieth Century-Fox Film Season K-4
Corporation
by (illegible)

Exhibitor Schine Theatrical Co., Inc. Theatre Strand, Carthage, N. Y.
by Geo. V. Lynch

Contract application date 8/5/36 Approval date

No. of pictures offered all No. of Pictures Licensed 40

Provisions, if any, re admission prices Evenings: adults 25-15; children 10
Matinees: adults 20-10; children 10

Run and clearance provisions 1st. 14 days clearance over Lowville & 60 days over second-run Carthage: As available.

Other typewritten or handwritten clauses including riders, if any.
Exchange - Albany
Date - 8/5/36
Salesman - M. Grassgreen

List or summary of motion pictures licensed and rental-terms

A.	TWO (2)	2/3	35% of gross	$5.00
A.	TWO (2)	2/3	30% of gross	5.00
B.	FOUR 94)	2/3	$50.00	5.00
C.	TWENTY (20)	2/3	30.00	5.00
D.	TWELVE (12)	2/3	20.00	5.00

Where pictures are used as part of a double-feature bill, score will be 50% of the price listed; also, if any of the pictures are used only one day, score to be $2.50.

Exhibitor agrees to use 46 pictures. Any pictures which were released pri
to November 1st, if played, are to be allocated at either of the two lowes
flat allocated groups.

This clause only applies to the season of 1936-37.

EXHIBIT NO. F-8

Distributor Twentieth Century-Fox Film Corporation by George Roberts

Season K-4

Exhibitor Schine Theatrical Co., Inc. by Geo. V. Lynch

Theatre For or State, Corning, N. Y.

Contract application date 8/5/36

Approved date 8/17/36

o. of pictures offered 56

No. of Pictures Licensed 49

rovisions, if any, re admission prices Evenings: adults orchestra 35, balcony 25
children orchestra 10, balcony 10
Matinees: adults orchestra 20, balcony 20
children orchestra 10, balcony 10

n and clearance provisions

K-3. 30 days on Plaza Theatre, Corning and 30 days on Painted Post and Addison, 60 days on City of Corning.

er typewritten or handwritten clauses including riders, if any.

Exchange - Buffalo
Date - 8/5/36
Salesman - Sydney Samson

or summary of motion pictures licensed and rental terms

A:	Two (2)	2-3		35%
B.	Six (6)	2-3		30%
C.	Twenty (20)	2-3	$65.00	
D.	Remainder	2-3	32.50	

IT IS AGREED AND UNDERSTOOD THAT THE EXHIBITOR WILL USE A MINIMUM OF 46 PICTURES.

SCORE: 1 day $2.50
Run $5.00

EXHIBIT NO. F-9

Distributor Twentieth Century-Fox Film Corporation by George Roberts

Season K-4

Exhibitor Schine Theatrical Co., Inc. by Geo. V. Lynch

Theatre State, Corning, N. Y.

Contract application date 8/5/36

Approval date 8/17/36

No. of pictures offered all

No. of Pictures Licensed 45

Provisions, if any, re admission prices Evenings: adults orchestra 35, balcony 25
children orchestra 10, balcony 10
Matinees: adults orchestra 20, balcony 20
children orchestra 10, balcony 10

Run and clearance provisions
Second run Corning, N. Y.
60 days over third run.

Other typewritten or handwritten clauses including riders, if any.
Exchange - Buffalo
Date - 8/5/36
Salesman - Sydney Samson

List or summary of motion pictures licensed and rental terms

A.	Two (2)	2-3	$50.00	$2.50
B.	Six (6)	2-3	37.50	2.50
C.	Remaining	2-3	15.00	2.50

IT IS UNDERSTOOD AND AGREED THAT THE EXHIBITOR WILL USE A MINIMUM OF 46 PICTURES.

Should any of the above pictures play the State Theatre first run, they are to be cancelled from the second run contract.

EXHIBIT NO. F-10

Distributor Twentieth Century-Fox Film Corporation by George Roberts

Season K-4

Exhibitor Schine Enterprises, Inc. by Geo. V. Lynch

Theatre State or Temple, Cortland, N. Y.

Contract application date 8/5/36

Approval date 8/17/36

No. of pictures offered 56

No. of Pictures Licensed 49

Provisions, if any, re admission prices Evenings: adults orchestra 40-30, balcony 25
children orchestra 15, balcony 10
Matinees: adults orchestra 40-30, balcony 25
children orchestra 15, balcony 10

Run and clearance provisions

30 days on McGrawville, Homer, Marathon, N. Y., Tully and Groton (see letter of 10/2d). First run Cortland, N. Y. As available.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Buffalo
Date - 8/5/36
Salesman - Sydney Samson

List or summary of motion pictures licensed and rental terms

A.	Four (4)	2		35%
B.	Eight (8)	2		30%
C.	Twelve (12)	2		25%
D.	Twelve (12)	2	$65.00	
E.	Remaining	2	35.00	

Score: 1 day $2.50
Run $5.00

IF ANY OF THE PERCENTAGE PICTURES PLAY THREE DAYS, EXHIBITOR HAS THE RIGHT TO PLAY FLAT BUYS THREE DAYS.

EXHIBIT NO. F-11

Distributor Twentieth Century-Fox Film Corporation by George Roberts

Season K-4

Exhibitor Schine Theatrical Co., Inc. Geo. V. Lynch

Theatre Regent or Geneva Geneva, N. Y.

Contract application date 8/5/36

Approval date 8/17/36

No. of pictures offered 56

No. of Pictures Licensed 49

Provisions, if any, re admission prices Evenings: adults orchestra 40-30, balcony 30
children orchestra 10
Matinees: adults orchestra 30, balcony 25
children orchestra 10

Run and clearance provisions
30 days of Seneca Falls, Waterloo, Phelps, Lyons and Clifton Springs,
First Run Geneva, N. Y. Ten days on Penn Yan, N. Y.

Other typewritten or handwritten clauses including riders, if any.
Exchange - Buffalo
Date - 8/5/36
Salesman - Sydney Samson

List or summary of motion pictures licensed and rental terms

A. Four (4)	2		35%
B. Eight (8)	2		30%
C. Twelve (12)	2		25%
D. Twelve (12)	2	$65.00	
E. Remaining	2	35.00	

Score: 1 day $2.50
Run $5.00

IF ANY OF THE PERCENTAGE PICTURES PLAY THREE DAYS, EXHIBITOR HAS THE
TO PLAY FLAT BUYS THREE DAYS.

PICTURES PLAYED AT THE REGENT THEATRE MAY PLAY 2-3 DAYS.

EXHIBIT NO. F-12

Distributor Twentieth Century-Fox Film Corporation by (illegible)

Season K-4

Exhibitor Trical Co., Inc. Geo. V. Lynch

Theatre Empire or Rialto
Glens Falls, New York

Contract application date 6/17/36

Approval date 8/17/36

No. of pictures offered all

No. of Pictures Licensed all

Provisions, if any, re admission prices Evenings: adults 25, children 10
Matinees: adults 20, children 10

Run and clearance provisions 1st. 14 days over Hudson Falls; 60 days over second-run over Glens Falls; 7 days over Lake George.

Other typewritten or handwritten clauses including riders, if any.
Exchange - Albany
Date - 6/17/36
Salesman - M. Grassgreen

List or summary of motion pictures licensed and rental terms

A.	Two (2)	2/3	35% of gross	
B.	Four (4)	2/3	30% of gross	$5.00
C.	Six (6)	2/3	25% of gross	5.00
D.	Ten (10)	2/3	$50.00	5.00
E.	Six (6)	2/3	37.50	5.00
				5.00

Where pictures are used as part of a double-feature bill, score will be 50% of the price listed; also, if any of the pictures are used only one day, score to be $2.50.

It is understood and agreed that the exhibitor is to receive an equal split in quality and quantity.

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EXHIBIT NO. F-13

Distributor Twentieth Century-Fox Film Corporation by (illegible)
Season K-4

Exhibitor Schine Theatrical Co., Inc. by Geo. V. Lynch
Theatre Empure, Glens Falls, N. Y.

Contract application date 6/17/36
Approval date 8/17/36

No. of pictures offered 56
No. of Pictures Licensed all

Provisions, if any, re admission prices Evenings: adults 25, children 10
Matinees: adults 20, children 10

Run and clearance provisions 2nd. 60 days over third-run.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Albany
Date - 6/17/36
Salesman - M. Grassgreen

List or summary of motion pictures licensed and rental terms

A.	Two (2)	2/3	$45.00	$5.00
B.	Six (6)	2/3	35.00	5.00
C.	Remaining	2/3	17.50	5.00

All pictures that play first-run in Rialto to play second-run Empire
pictures playing first-run at the Empire to be cancelled from this c
Where pictures are used as part of a double-feature bill, score will
50% of the price listed; also, if any of the pictures are used only
day, score to be $2.50.

EXHIBIT NO. F-14

Distributor Twentieth Century-Fox Film
Corporation
by (illegible)

Season K-4

Exhibitor Schine Theatrical Co., Inc.
by Geo. V. Lynch

Theatre Glove or Hippodrome
Gloversville, N. Y.

Contract application date 6/17/36

Approval date 8/17/36

No. of pictures offered 56

No. of Pictures Licensed 43

Provisions, if any, re admission prices Evenings: adults orchestra 40-30, balcony 25
children 10
Matinees: adults 25, children 10
HIPP: Eve. 35-10; Mat. 25-10

Run and clearance provisions
1st run. Clearance usual. 45 days over Johnstown; 30 days over Fonda, Broadalbin, Northville & Sacandaga Park.

Other typewritten or handwritten clauses including riders, if any.
Exchange - Albany
Date - 6/17/36
Salesman - M. Grassgreen

List or summary of motion pictures licensed and rental terms

A.	Four (4)	2/3	35% of gross	$5.00
B.	Eight (8)	2/3	30% of gross	5.00
C.	Twelve (12)	2/3	25% of gross	5.00
D.	Nineteen (19)	2/3	$65.00	5.00

(if played Hippodrome, to be $40.00 & $5.00 score)

Where pictures are used as part of a double-feature bill, score will be 50% of the price listed; also, if any of the pictures are used only one day, score to be $2.50.

EXHIBIT NO. F-15

Distributor Twentieth Century-Fox Film Corp.
by (illegible)

Season K-4

Exhibitor Schine Theatrical Co., Inc.
by Geo. V. Lynch

Theatre Hippodrome
Gloversville, N. Y.

Contract application date 6/17/36

Approval date 8/17/36

No. of pictures offered

No. of Pictures Licensed 10

Provisions, if any, re admission prices Evenings: adults 35, children 10
Matinees: adults 25, children 10

Run and clearance provisions 2nd. Not earlier than 30 days after first-run.

Other typewritten or handwritten clauses including riders, if any.
Exchange - Albany
Date - 6/17/36
Salesman - M. Grassgreen

List or summary of motion pictures licensed and rental terms

A. Ten (10)	2/3	$50.00	$5.00

REPEAT AFTER FIRST-RUN.

Where pictures are used as part of a double-feature bill, score wil
50% of the price listed; also, if any of the pictures are used only
day, score to be $2.50.

EXHIBIT NO. F-16

Distributor, Twentieth Century-Fox Film Corporation by (illegible)
Season K-4

Exhibitor Schine Theatrical Co., Inc.
Theatre State, Hamilton, N. Y.

Contract application date 6/17/36
Approval date 8/17/36

No. of pictures offered 56
No. of Pictures Licensed 40

Provisions, if any, re admission prices Evenings: adults 30, children 10
Matinees: adults 25, children 10

Run and clearance provisions
1st. 21 days clearance over Oriskany Falls and Waterville.

Other typewritten or handwritten clauses including riders, if any.
Exchange - Albany
Date - 6/17/36
Salesman - M. Grassgreen

List or summary of motion pictures licensed and rental terms

A.	Two (2)	2/3	$75.00	$5.00
B.	Six (6)	2/3	50.00	5.00
C.	Sixteen (16)	2/3	35.00	5.00
D.	Sixteen (16)	2/3	22.50	5.00

Where pictures are used as part of a double-feature bill, score will be 50% of the price listed; also, if any of the pictures are used only one day, score to be $2.50.

EXHIBIT NO. F-17

Distributor Twentieth Century-Fox Film Corporation by (illegible) Season K-4

Exhibitor Schine Theatrical Co., Inc. by Geo. V. Lynch Theatre Liberty, Herkimer, New York

Contract application date 6/17/36 Approval date 8/17/36

No. of pictures offered 56 No. of Pictures Licensed 40

Provisions, if any, re admission prices Evenings: adults 30
Matinees: adults 20

Run and clearance provisions 1st. 30 days clearance over Mohawk and Frankfort; 14 days clearance over Ilion.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Albany
Date - 6/17/36
Salesman - M. Grassgreen

List or summary of motion pictures licensed and rental terms

A. Two (2)	2/3	35% of gross	$5.00
B. Six (6)	2/3	30% of gross	5.00
C. Twenty (20)	2/3	$35.00	5.00
D. Twelve (12)	2/3	25.00	5.00

Where pictures are used as part of a double-feature bill, score will be 50% of the price listed; also, if any of the pictures are used only one day, score to be $2.50.

EXHIBIT NO. F-18

Distributor Twentieth Century-Fox Film Corporation by (illegible)

Season K-4

Exhibitor Schine Theatrical Co., Inc. - Geo. V. Lynch

Theatre Schine's, Hudson Falls, N. Y.

Contract application date 6/17/36

Approval date 8/17/36

No. of pictures offered 56

No. of Pictures Licensed 40

Provisions, if any, re admission prices
Evenings: adults 25, children 10
Matinees: adults 15, children 10.

Run and clearance provisions
1st. 14 days after Glens Falls and 14 days ahead of Fort Edward.

Other typewritten or handwritten clauses including riders, if any.
Exchange - Albany
Date - 6/17/36
Salesman - M. Grassgreen

List or summary of motion pictures licensed and rental terms

A.	Two (2)	2/3	$75.00	$5.00
B.	Six (6)	2/3	50.00	5.00
C.	Sixteen (16)	2/3	25.00	5.00
D.	Sixteen (16)	2/3	15.00	5.00

Where pictures are used as part of a double-feature bill, score will be 50% of the prices listed; also, if any of the pictures are used only one day, score to be $2.50.

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EXHIBIT NO. P-19

Distributor Twentieth Century-Fox Film Corporation by (illegible)

Season K-4

Exhibitor Schine Theatrical Co., Inc. by Geo. V. Lynch

Theatre Rialto, Little Falls, N. Y.

Contract application date 6/17/36

Approval date 8/17/36

No. of pictures offered 56

No. of Pictures Licensed 40

Provisions, if any, re admission prices Evenings: adults orchestra 25, balcony 15, children 10
Matinees: adults orchestra 25, balcony 15, children 10

Run and clearance provisions

1st. 30 days clearance over Dolgeville, St. Johnsville; 14 days over Fort Plain; 60 days over second-run Little Falls.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Albany
Date - 6/17/36
Salesman - M. Grassgreen

List or summary of motion pictures licensed and rental terms

A.	Two (2)	2/3	35% of gross	$5.00
B.	Six (6)	2/3	30% of gross	5.00
C.	Twenty (20)	2/3	$35.00	5.00
D.	Twelve (12)	2/3	30.00	5.00

Where pictures are used as part of a double-feature bill, score will be 50% of the price listed; also, if any of the pictures are used only one day, score to be $2.50.

EXHIBIT NO. F-20

Distributor Twentieth Century-Fox Film Corporation by Geo. Roberts

Season K-4

Exhibitor Schine Theatrical Co., Inc.

Theatre Rialto or Hi-Art
Lockport, N. Y.

ontract application date 8/5/36

Approval date 8/17/36

k of pictures offered all

No. of Pictures Licensed all

ovisions, if any, re admission prices

Evenings: adults:orchestra 30, balcony 25, children:orchestra 10, balcony 10
Matinees: adults:orchestra 20, balcony 20, children: orchestra 10, balcony 10

n and clearance provisions

Exchange - Buffalo
Date - 8/5/36
Salesman - Sydney Samson

her typewritten or handwritten clauses including riders, if any,

A.	Four (4)	2		35%
B.	Eight (8)	2		30%
C.	Twelve (12)	2	$100.00	
D.	Remaining	2	45.00	

If any of the percentage pictures play three days, exhibitor has the right to play flat buys three days.

SCORE: 1 day 2.50
~~Run 5.00~~

t or summary of motion pictures licensed and rental terms

EXHIBIT NO. F-21

Distributor Twentieth Century-Fox Film Corporation by George Roberts Season K-4

Exhibitor Schine Theatrical Co., Inc. Theatre Hi-Art, Lockport, N. Y.

Contract application date 8/5/36 Approval date 8/17/36

No. of pictures offered all No. of Pictures Licensed 46

Provisions, if any, re admission prices Evenings: adults 15, children 10
Matinees: adults 15, children 10

Run and clearance provisions
Second run Lockport, N. Y. 60 Days after first run; 60 days clearance on third run.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Buffalo
Date - 8/5/36
Salesman - Sydney Samson

List or summary of motion pictures licensed and rental terms

A.	Two (2)	2-3	$65.00	$2.50
B.	Six (6)	2-3	50.00	2.50
C.	Remaining	2-3	20.00	2.50

IT IS AGREED AND UNDERSTOOD THAT THE EXHIBITOR WILL USE A MINIMUM OF 46 PICTURES.

If any of the above pictures play the Hi-Art Theatre first run, they are to be cancelled from the second run contract.

EXHIBIT NO. F-22

Distributor Twentieth Century-Fox Film Corporation by (illegible)

Season K-4

Exhibitor Schine Theatrical Co., Inc. by Geo. V. Lynch

Theatre Malone, Malone, N. Y.

Contract application date 6/17/36

Approval date 8/17/36

No. of pictures offered 56

No. of Pictures Licensed 40

Provisions, if any, re admission prices

Evenings: adults, orchestra 40-30, balcony 25, children 10
Matinees: adults, orchestra 30, children 10

Run and clearance provisions

1st. 30 days clearance over Chateaugay, Brushtown & Fort Covington.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Albany
Date - 6/17/36
Salesman - M. Grassgreen

List or summary of motion pictures licensed and rental terms

A.	Four (4)	2/3	35% of gross	$5.00
B.	Six (6)	2/3	30% of gross	5.00
C.	Twenty (20)	2/3	$35.00	5.00
D.	Ten (10)	2/3	30.00	5.00

Where pictures are used as part of a double-feature bill, score will be 50% of the price listed; also, if any of the pictures are used only one day, score to be $2.50

EXHIBIT NO. F-23

Distributor Twentieth Century-Fox Film Corporation by (illegible)

Season K-4

Exhibitor Schine Theatrical Co., Inc. by Geo. V. Lynch

Theatre Massena, Massena, N. Y.

Contract application date 6/17/36

Approval date 8/17/36

No. of pictures offered 56

No. of Pictures Licensed 40

Provisions, if any, re admission prices

Evenings: adults orchestra 30, balcony 25; children 10
Matinees: adults orchestra 25, balcony 25; children 10

Run and clearance provisions

1st. 60 days clearance over second-run. 30 da. Norfolk,

Other typewritten or handwritten clauses including riders, if any,

Exchange - Albany
Date - 6/17/36
Salesman - M. Grassgreen

List or summary of motion pictures licensed and rental terms

A.	Two (2)	2/3	35% of gross	$5.00
B.	Six (6)	2/3	30% of gross	5.00
C.	Twenty (20)	2/3	$30.00	5.00
D.	Twelve (12)	2/3	20.00	5.00

Where pictures are used as part of a double-feature bill, score will be 50% of the price listed; also, if any of the pictures are used only one day, score to be $2.50.

EXHIBIT NO. F-24

Distributor Twentieth Century-Fox Film Corporation by (illegible) Season K-4

Exhibitor Schine Theatrical Co., Inc. by Geo. V. Lynch

Theatre Colonia
Norwich, N. Y.

Contract application date 6/17/36

Approval date 8/17/36

No. of pictures offered 56

No. of Pictures Licensed 40

Provisions, if any, re admission prices Evenings: adults 25, children 10
Matinees: adults 25, children 10

Run and clearance provisions 1st. 30 days over Oxford, Earlville, Greene, New Berlin, Sherburne & Sidney; 60 days over second-run Norwich.

Other typewritten or handwritten clauses including riders, if any.
Exchange - Albany
Date - 6/17/36
Salesman - M. Grassgreen

List or summary of motion pictures licensed and rental terms

A.	Four (4)	2/3	$375.00	$5.00
B.	Eight (8)	2/3	200.00	5.00
C.	Twelve (12)	1/2	50.00	5.00
D.	Sixteen (16)	1/2	35.00	5.00

Where pictures are used as part of a double-feature bill, score will be 50% of the price listed; also, if any of the pictures are used only one day, score to be $2.50.

EXHIBIT NO. F-25

Distributor Twentieth Century-Fox Film Corporation
, by (illegible) **Season** K-4

Exhibitor - Schine Theatrical Co., Inc.
by Geo. V. Lynch **Theatre** Strand
Ogdensburg, N. Y.

Contract application date 6/17/36 **Approval date** 8/17/36

No. of pictures offered 56 **No. of Pictures Licensed** 40

Provisions, if any, re admission prices
Evenings: adults, orchestra 40, balcony, 30; children,orchestra 25,balcony 1
Matinees: adults, orchestra 25; children, orchestra 10

Run and clearance provisions
1st. Usual clearance. 30 days over Canton & Norwood.

Other typewritten or handwritten clauses including riders, if any.
Exchange - Albany
Date - 6/17/36
Salesman - M. Grassgreen

List or summary of motion pictures licensed and rental terms

A.	Four (4)	2/3	$500.00	$5.00
B.	Eight (8)	2/3	185.00	5.00
C.	Twelve (12)	1/2	65.00	5.00
D.	Sixteen (16)	1/2	45.00	5.00

Where pictures are used as part of a double-feature bill, score will be 50% of the price listed; also, if any of the pictures are used only one day, score to be $2.50.

EXHIBIT NO. F-26

Distributor Twentieth Century-Fox Film Corporation by (illegible) Season K-4

Exhibitor Schine Theatrical Co., Inc. Theatre Oneonta or Palace
Oneonta, N. Y.

Contract application date 6/17/36 Approval date 6/17/36

No. of pictures offered 56 No. of Pictures Licensed 43

Provisions, if any, re admission prices
Evenings: adults orchestra 35, balcony 25; children 10) PALACE: EVE. ~~35~~-25-10
Matinees: adults orchestra 25, balcony 25; children 10) MAT. 25-10

Run and clearance provisions
1st. Usual. 30 days over Morris & Hardwick, Cooperstown, Sidney, Delhi, and Stamford.

Other typewritten or handwritten clauses including riders, if any.
Exchange - Albany
Date - 6/17/36
Salesman - M. Grassgreen

List or summary of motion pictures licensed and rental terms

A.	Four (4)	2/3	35% of gross	$5.00
B.	Six (6)	2/3	30% of gross	5.00
C.	Fourteen (14)	2/3	$70.00	5.00
D.	Nineteen (19)	2/3	40.00	5.00

Where pictures are used as part of a double-feature bill, score will be 50% of the price listed; also, if any of the pictures are used only one day, score will be $2.50.

EXHIBIT NO. F-27

Distributor Twentieth Century-Fox Film
Corporation
by (illegible)

Season K-4

Exhibitor Schine Theatrical Co., Inc.
by Geo. V. Lynch

Theatre Palace
Oneonts, N. Y.

Contract application date 6/17/36

Approval date 8/17/36

No. of pictures offered

No. of Pictures Licensed 10

Provisions, if any, re admission prices
Evenings: adults orchestra 25, balcony 25; children 10
Matinees: adults orchestra 25; children 10

Run and clearance provisions 2nd. Not earlier than 30 days after first-run.

Other typewritten or handwritten clauses including riders, if any.
Exchange - Albany
Date - 6/17/36
Salesman - M. Grassgreen

List or summary of motion pictures licensed and rental terms

A.	Ten (10)	2/3	$50.00	$5.00

REPEAT AFTER FIRST-RUN.

Where pictures are used as part of a double-feature bill, score will be 50% of the price listed; also, if any of the pictures are used only one day, score to be $2.50.

EXHIBIT NO. F-28

Distributor Twentieth Century-Fox Film Corporation by George Roberts

Season K-4

Exhibitor Schine Theatrical Co., Inc. by Geo. V. Lynch

Theatre Auditorium
Perry, N. Y.

Contract application date 8/5/36

Approval date 12/30/36

No. of pictures offered all

No. of Pictures Licensed 46

Provisions, if any, re admission prices

Run and clearance provisions As available.

Other typewritten or handwritten clauses including riders, if any.
Exchange - Buffalo
Date-8/5/36
Salesman - Sydney Samson

List or summary of motion pictures licensed and rental terms

A.	Four (4)	2-3		35%
B.	Six (6)	2-3	$100.00	
C.	Ten (10)	2-3	50.00	
D.	Balance	2	25.00	

IT IS UNDERSTOOD AND AGREED THAT THE EXHIBITOR WILL USE A MINIMUM OF 46 PICTURES. THE DISTRIBUTOR AGREES TO ALLOCATE ALL PICTURES RELEASED PRIOR TO OCTOBER 23RD FROM THE FLAT PRICE GROUPS AND THE EXHIBITOR MAY PLAY, AT HIS OPTION, ANY SUCH PICTURES AS PART OF THEIR TOTAL COMMITMENT. THIS CLAUSE APPLIES FOR THE SEASON OF 1936-37 ONLY.

Score: 1 Day $2.50
Run 5.00

EXHIBIT NO. F-29

Distributor Twentieth Century-Fox Film Corporation
by George Roberts

Season K-5 and K-6

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Auditorium
Perry, N. Y.

Contract application date 8/11/37

Approval date

No. of pictures offered all

No. of Pictures Licensed 46 (each season)

Provisions, if any, re admission prices Evenings: adults 25-30; children 10
Matinees: adults 25-30; children 10

Run and clearance provisions
As available.

Other typewritten or handwritten clauses including riders, if any.
Exchange - Buffalo
Date - 8/11/37
Salesman - Sydney Samson

List or summary of motion pictures licensed and rental terms

A.	Four (4)	2-3		35%	As below
B.	Twelve (12)	2-3	$75.00		As below
C.	Ten (10)	2-3	35.00		As below
D.	Remaining	2-3	25.00		As below

SCORE CHARGE: $2.50 per day. $5.00 per run (50% if double-feature)

EXHIBITOR may deduct cost of second feature from gross receipts before computing Distributor's share, provided said deduction does not exceed price of Twentieth Century-Fox flat picture.

All other terms and Conditions of Franchise to apply to this deal.

All provisions of the standard exhibition contract for the seasons during which this agreement is in effect shall be deemed part of this contract.

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EXHIBIT NO. F-30

Distributor Twentieth Century-Fox Film Corporation by George Roberts

Season

Exhibitor Schine Theatrical Co., Inc. Geo. V. Lynch

Theatre State or Dixie Rochester, N. Y.

Contract application date 8/5/36

Approval date 8/17/36

No. of pictures offered all

No. of Pictures Licensed 46

Provisions, if any, re admission prices
Evenings: adults 25, children 10
Matinees: adults 25, children 10

Run and clearance provisions Second run Rochester, N.Y. Day and date with Riviera or Liberty. 30 days on Plaza Theatre.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Buffalo
Date - 8/5/36
Salesman - Sydney Samson

List or summary of motion pictures licensed and rental terms

A.	Four (4)	2-3-4	$200.00
B.	Six (6)	2-3-4	150.00
C.	Twelve (12)	2-3	75.00
D.	Twenty-four (24)	2	30.00
		3	37.50

SCORE;	1 day	$2.50
	Run	5.00

IT IS UNDERSTOOD AND AGREED THAT THE EXHIBITOR WILL USE A MINIMUM OF 46 PICTURES.

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EXHIBIT NO. F-31

Distributor	Twentieth Century-Fox Film Corporation by George Roberts	Season	K-4
Exhibitor	Schine Theatrical Co., Inc. by Geo. V. Lynch	Theatre	State or Dixie Rochester, N. Y.
Contract application date	8/5/36	Approval date	8/17/36
No. of pictures offered	all	No. of Pictures Licensed	46

Provisions, if any, re admission prices
Evenings: adults 25; children 10
Matinees: adults 25; children 10

Run and clearance provisions
Fourteen days over Plaza, Culver and Webster.

Other typewritten or handwritten clauses including riders, if any.

Exchange	-Buffalo
Date	-8/5/36
Salesman	-Sydney Samson

List or summary of motion pictures licensed and rental terms

A.	Two (2)	2-3	$75.00
B.	Eight (8)	2-3	50.00
C.	Fifteen (15)	2-3	30.00
D.	Twenty-one (21)	2-3	25.00

SCORE: 1 day $2.50
Run 5.00

IT IS AGREED AND UNDERSTOOD THAT THE EXHIBITOR WILL USE A MINIMUM OF 46 PICTURES.

Repeat run.

In order to secure third run this repeat run must be played within 14 days of first day of Riviera playdate.

EXHIBIT NO. F-32

Distributor Twentieth Century-Fox Film Corporation by George Roberts

Season K-4

Exhibitor Schine Enterprises, Inc. by Geo. V. Lynch

Theatre Lake
Rochester, N. Y.

Contract application date 8/5/36

Approval date illegible

No. of pictures offered all

No. of Pictures Licensed 46

Provisions, if any, re admission prices

Evenings: adults 25-20; children 10
Matinees: adults 25-20; children 10

Run and clearance provisions

As available

Other typewritten or handwritten clauses including riders, if any.

Exchange - Buffalo
Date - 8/5/36
Salesman - Sydney Samson

List or summary of motion pictures licensed and rental terms

A.	Two (2)	2-3	$50.00
B.	Six (6)	2-3	40.00
C.	Fourteen (14)	2-3	20.00
D.	Twenty-Four (24)	2-3	12.50

/IT IS AGREED AND UNDERSTOOD THAT THE EXHIBITOR WILL USE A MINIMUM OF 46 PICTURES.

SCORE: 1 day $2.50
Run 5.00

EXHIBIT NO. F-33

Distributor Twentieth Century-Fox Film Corporation by Geo. Roberts **Season** K-4

Exhibitor Schine Theatrical Enterprises Inc. By Geo. V. Lynch **Theatre** Grand, Rochester, N. Y.

Contract application date 8/5/36 **Approval date** 8/17/36

No. of pictures offered all. **No. of Pictures licensed** 46

Provisions, if any, re admission prices Evenings: adults 15, children 10
Matinees: adults 15, children 10

Run and clearance provisions
As available.

Other typewritten or handwritten clauses including riders, if any.
Exchange - Buffalo
Date - 8/5/36
Salesman - Sydney Samson

List or summary of motion pictures licensed and rental terms

A.	Two (2)	2-3	$30.00
B.	Fifteen (15)	2-3	22.50
C.	Twenty-nine (29)	2-3	15.00

IT IS AGREED AND UNDERSTOOD THAT THE EXHIBITOR WILL USE A MINIMUM OF 46 PICTURES.

SCORE: 1 day $2.50
Run 5.00

EXHIBIT NO. F-34

Distributor Twentieth Century-Fox Film Corporation by George Roberts

Season K-4

Exhibitor Schine Theatrical Co., Inc. by Geo. V. Lynch

Theatre Cameo, Rochester, N. Y.

Contract application date 8/5/36

Approval date 8/17/36

No. of pictures offered all

No. of Pictures Licensed 46

Provisions, if any, re admission prices Evenings: adults 25; children 10
Matinees: adults 25; children 10

Run and clearance provisions 14 days on Lyric and Empress Theatres. Immediately after Madison and Monroe.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Buffalo
Date - 8/5/36
Salesman - Sydney Samson

List or summary of motion pictures licensed and rental terms

A.	Two (2)	2-3	$100.00
B.	Six (6)	2-3	75.00
C.	Fourteen (14)	2-3	35.00
D.	Twenty-four (24)	2-3	22.50

Score: 1 day - $2.50
" Run - 5.00

IT IS AGREED AND UNDERSTOOD THAT THE EXHIBITOR WILL USE A MINIMUM OF 46 PICTURES.

EXHIBIT NO. F-35

Distributor Twentieth Century-Fox Film Corporation by George Roberts

Season K-4

Exhibitor Schine Theatrical Enterprises, Inc. by Geo. V. Lynch

Theatre Andrews
Salamanca, N. Y.

Contract application date 8/5/36

Approval date 8/17/36

No. of pictures offered all

No. of Pictures Licensed 46

Provisions, if any, re admission prices Evenings: adults 30; children 10
Matinees: adults 20; children 10

Run and clearance provisions K-3. 30 days on Little Valley, Randolph and Ellicottville and Franklinville. Open booking with Olean. First run Salamanca.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Buffalo
Date - 8/5/36
Salesman - Sydney Samson

List or summary of motion pictures licensed and rental terms

A.	Four (4)	2-3	$275.00
B.	Eight (8)	2-3	100.00
C.	Twelve (12)	2	42.50
D.	Twenty-Two (22)	2	27.50

SCORE: 1 Day $2.50
Run 5.00

IT IS AGREED AND UNDERSTOOD THAT THE EXHIBITOR WILL USE A MINIMUM OF 46 PICTURES.

EXHIBIT NO. F-36

Distributor Twentieth Century-Fox Film
Corporation
by (illegible). **Season** K-4

Exhibitor Schine Theatrical Co., Inc.
By Geo. V. Lynch **Theatre** Pontiac, Saranac Lake, New York

Contract application date 8/5/36 **Approval date** 12/30/36

o. of pictures offered all **No. of Pictures Licensed** 40

rovisions, if any, re admission prices
venings: adults orchestra 40-30, balcony 30; children 10
atinees: adults orchestra 30; children 10

un and clearance provisions
st. 14 days clearance over Lake Placid excepting during period from January
5th to February 15th and June 15th to September 15th, when open booking to
revail; 60 days over Saranac Inn. As available.

Other typewritten or handwritten clauses including riders, if any.
xchange - Albany
ate - 8/5/36
alesman - M. Grassgreen

st or summary of motion pictures licensed and rental terms

Four (4)	2/3	35% of gross	$5.00
Four (4)	2/3	30% of gross	5.00
Two (2)	2/3	$75.00	5.00
Twenty (20)	2/3	40.00	5.00
Ten (10)	2/3	30.00	5.00

ere pictures are used as part of a double-feature bill, score will be 50%
' the price listed; also, if any of the pictures are used only one day,
core to be $2.50.
hibitor agrees to use 46 pictures. Any pictures which were released prior
o November 1st, if played are to be allocated at either of the two lowest
at allocated groups. This clause only applies to the season of 1936-37.

EXHIBIT NO. F-37

Distributor Twentieth Century-Fox Film Corporation by George Roberts

Season K-4

Exhibitor Schine Theatrical Co., Inc. by Geo. V. Lynch

Theatre Strand, Seneca Falls, N. Y.

Contract application date 8/5/36

Approval date 8/17/36

No. of pictures offered all

No. of Pictures Licensed 46

Provisions, if any, re admission prices
Evenings: adults 25; children 10
Matinees: adults 15; children 10

Run and clearance provisions
Thirty days (30) days clearance Waterloo - after Geneva. 120 days clearance in Seneca Falls. FIRST RUN Seneca Falls.

Other typewritten or handwritten clauses including riders, if any.
Exchange - Buffalo
Date - 8/5/36
Salesman - Sydney Samson

List or summary of motion pictures licensed and rental terms

A. Two (2)	2-3	$100.00
B. Six (6)	2-3	75.00
C. Fourteen (14)	2-3	32.50
D. Twenty-Four (24)	2-3	25.00

Score: 1 da $2.50
Run 5.00

IT IS UNDERSTOOD AND AGREED THAT EXHIBITOR WILL USE MINIMUM OF FORTY-SIX PICTURES.

EXHIBIT NO. F-38

Distributor Twentieth Century-Fox Film Corporation by (Illegible) **Season** K-4

Exhibitor Schine Theatrical Co., Inc. by Geo. V. Lynch **Theatre** State, Tupper Lake, New York

Contract application date 6/17/36 **Approval date** 8/17/36

No. of pictures offered 56 **No. of Pictures Licensed** 40

Provisions, if any, re admission prices Evenings: adults 25; children 10
Matinees: adults 15; children 10

Run and clearance provisions 1st. Clearance usual. 60 days clearance over Faust.

Other typewritten or handwritten clauses including riders, if any.
Exchange - Albany
Date - 6/17/36
Salesman - M. Grassgreen

List or summary of motion pictures licensed and rental terms

A. Two (2)	2/3	$75.00	$5.00
B. Six (6)	2/3	50.00	5.00
C. Sixteen (16)	2/3	35.00	5.00
D. Sixteen (16)	2/3	15.00	5.00

Where pictures are used as part of a double-feature bill, score will be 50% of the price listed; also, if any of the pictures are used only one day, score to be $2.50.

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EXHIBIT NO. F-39

*Distributor Twentieth Century-Fox Film Corporation by (illegible)
Season K-4

Exhibitor Schine Theatrical Co., Inc. by Geo. V. Lynch
Theatre Avon or Olympic, Watertown, N. Y.

Contract application date 6/17/36
Approval date 8/17/36

No. of pictures offered 56
No. of Pictures Licensed 43

Provisions, if any, re admission prices
Evenings:adults orchestra 40-30,balcony 30;children 10) OLYMPIC: Eve.25-10
Matinees:adults orchestra 25; children orchestra 10 Mat. 25-10

Run and clearance provisions
1st.. Usual. 60 days over second-run; 30 days over Adams, antwerp, Dexter, Philadelphia, Theresa, Sacketts Harbor.

Other typewritten or handwritten clauses including riders, if any.
Exchange - Albany
Date - 6/17/36
Salesman - M. Grassgreen

List or summary of motion pictures licensed and rental terms

A.	Four (4)	2/3	35% of gross	$5.00
B.	Eight (8)	2/3	30% of gross	5.00
C.	Twelve (12)	2/3	$120.00	5.00
D.	Nineteen (19)	2/3	60.00	5.00

Where pictures are used as part of a double-feature bill, score will be 50% of the price listed; also, if any of the pictures are used only one day, score to be $2.50.

EXHIBIT NO. F-40

Distributor Twentieth Century-Fox Film Corporation by (illegible).

Season K-4

Exhibitor Schine Theatrical Co., Inc. by Geo. V. Lynch

Theatre Palace, Watertown, N. Y.

Contract application date 10/28/36

Approval date 12/3/36

No. of pictures offered all

No. of Pictures Licensed all

Provisions, if any, re admission prices Evenings: adults 20, children 10
Matinees: adults 15, children 10

Run and clearance provisions 3rd run - 30 days over Bull'Run

Other typewritten or handwritten clauses including riders, if any.

Exchange - Albany
Date - 10/28/36
Salesman - M. Grassgreen

List or summary of motion pictures licensed and rental terms

A.	Eight (8)	2/3	$55.00	$5.00
B.	Remaining	2/3	20.00	5.00

SCORE: $2.50 per day
5.00 per run

Where pictures are used as part of a double-feature bill, score will be 50% of the price listed; also, if any of the pictures are used only one day, score to be $2.50.

Pictures that play the Olympic second run are to play the Palace third run, and any pictures playing the Palace second run are to be eliminated from this contract.

EXHIBIT NO. F-41

Distributor Twentieth Century-Fox Film Corporation by George Roberts

Season K-4

Exhibitor Schine Theatrical Co., Inc. by Geo. V. Lynch

Theatre Opera House or Palace Ashland, Ohio

Contract application date 9/5/36

Approval date 9/30/36

No. of pictures offered all

No. of Pictures Licensed 49

Provisions, if any, re admission prices Evenings: adults 25, children 10

Run and clearance provisions First run Ashland, Ohio.
Clearance over Loudonville, Ohio.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Cleveland
Date - 9/5/36
Salesman - Office

List or summary of motion pictures licensed and rental terms

A.	Four (4)	2/3	35% of gross [illegible]eipts	$2.50 per day 5.00 per run
B.	Eight (8)	2/3	30% of gross receipts	2.50 per day 5.00 per run
C.	Twenty-four (24)	2/3	$40.00 Flat Rental	2.50 per day 5.00 per run
D.	Thirteen (13)	2/3	25.00 Flat Rental	2.50 per day 5.00 per run

EXHIBIT NO. F-42

Distributor Twentieth Century-Fox Film Corporation by (illegible)

Season K-4

Exhibitor Belpik Theatre Corp. by Geo. V. Lynch

Theatre Schines' Theatres: Athens, Ohio, Court - Athens, Ohio

Contract application date 6/17/36

Approval date 8/17/36

No. of pictures offered 56

No. of Pictures Licensed 49

Provisions, if any, re admission prices 0

Run and clearance provisions

*See Above. To be played in order released by distributor at rate of One (1) per week, starting not later than Sept. 1, 1936.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Cincinnati, Ohio
Date - 6/17/36

List or summary of motion pictures licensed and rental terms

A.	Four (4) Photoplays	2/3	35% gross	$5.00 per run
B.	Eight (8) Photoplays	2/3	50% gross	5.00 per run
C.	Four (4) Photoplays	2/3	$100.00 flat	5.00 per run
D.	Six (6) Photoplays	2/3	75.00 flat	5.00 per run
E.	Remaining Photoplays:	2/3	50.00 flat	5.00 per run
	Exhibitor has the privilege of playing twelve (12) pictures from the "E" Group	2/3	25.00 flat	5.00 per run

CLEARANCE: The distributor and exhibitor agree to the following provisions: (1) That no picture (feature) will be played in any other theatre in Athens County earlier than thirty (30) days after national release date, excepting Nelsonville, O., which the exhibitor grants the distributor the privilege of booking fourteen (14) days after Athens. (2) That the distributor, upon notification of violation, will not serve any theatre in Athens County charging less than 15 cents adult admission including tax, earlier than ninety (90) days after national release date.

EXHIBIT NO. F-43

Distributor Twentieth Century-Fox Film
Corporation
by (illegible)

Section K-4

Exhibitor Belpik Theatre Corp.
by Geo. V. Lynch

Theatre Holland
Bellefontaine, Ohio

Contract application date 8/5/36

Approval date 8/17/36

No. of pictures offered all

No. of Pictures Licensed 46

Provisions, if any, re admission prices
Evenings: adults orchestra 25, balcony 15; children orchestra 10,balcony 10
Matinees: adults orchestra 25, balcony 15; children orchestra 10,balcony 10

Run and clearance provisions
30 days clearance over Lakeview and DeGraff, Ohio, and West Liberty, Ohio

Other typewritten or handwritten clauses including riders, if any.
Exchange - Cleveland
Date - 8/5/36
Salesman - Office

List or summary of motion pictures licensed and rental terms

A. Two (2)	2/3	35% of gross receipts	$2.50 per day 5.00 per run
B. Six (6)	2/3	30% of gross receipts	2.50 per day 5.00 per run
C. Ten (10)	2/3	$80.00 flat rental	2.50 per day 5.00 per run
D. Ten (10)	2/3	50.00 flat rental	2.50 per day 5.00 per run
E. Remaining	2/3	30.00 flat rental	2.50 per day 5.00 per run

Selection of forty-six (46) pictures. Exhibitor has privilege of eliminating Foreign pictures.

EXHIBIT NO. F-44

Distributor Twentieth Century-Fox Film Corporation by (illegible)

Season K-4

Exhibitor Belpik Theatre Corp.

Theatre Bucyrus or State
Bucyrus, Ohio

Contract application date 8/5/36

Approval date 8/17/36

No. of pictures offered 56

No. of Pictures Licensed 49

Provisions, if any, re admission prices

Run and clearance provisions
1st run Bucyrus, Ohio

Other typewritten or handwritten clauses including riders, if any.
Exchange - Cleveland
Date - 8/5/36
Salesman - Office

List or summary of motion pictures licensed and rental terms

A. Four (4)	2/3	35% of gross receipts	$2.50 per day 5.00 per run
B. Six (6)	2/3	30% of gross receipts	2.50 per day 5.00 per run
C. Twenty (20)	2/3	$37.50 Flat Rental	2.50 per day 5.00 per run
D. Ten (10)	2/3	25.00 Flat Rental	2.50 per day 5.00 per run
E. Eight (8)	2/3	17.50 Flat Rental	2.50 per day 5.00 per run

1 extra added to lowest flat rental.

EXHIBIT NO. F-45

Distributor Twentieth Century-Fox Film Corporation by (illegible)

Season K-4

Exhibitor Belpik Theatre Corp. by Geo. V. Lynch

Theatre Strand, Delaware, Ohio

Contract application date 8/5/36

Approval date 8/17/36

No. of pictures offered all

No. of Pictures Licensed 46

Provisions, if any, re admission prices Evenings: adults 25, children 10

Run and clearance provisions 1st run Delaware, Ohio..

Other typewritten or handwritten clauses including riders, if any.

Exchange - Cleveland
Date - 8/5/36
Salesman - Office

List or summary of motion pictures licensed and rental terms

A.	Four (4)	2/3	35% of gross receipts	$2.50 per day 5.00 per run
B.	Eight (8)	2/3	30% of gross receipts	2.50 per day 5.00 per run
C.	Six (6)	2/3	$80.00 flat rental	2.50 per day 5.00 per run
D.	Ten (10)	2/3	50.00 flat rental	2.50 per day 5.00 per run
E.	Ten (10)	2/3	40.00 flat rental	2.50 per day 5.00 per run
F.	Eight (8)	2/3	22.50 flat rental	2.50 per day 5.00 per run

EXHIBIT NO. F-46

Distributor Twentieth Century-Fox Film Corporation by (illegible)
Season K-4

Exhibitor Belpik Theatre Crop. by Geo. V. Lynch
Theatre Vine or Lyric, Mt. Vernon, Ohio

Contract application date 8/5/36
Approval date 8/27/36

No. of pictures offered all
No. of Pictures Licensed 49

Provisions, if any, re admission prices Evenings: adults 25, children 10

Run and clearance provisions 1st run Mt. Vernon, Ohio

Other typewritten or handwritten clauses including riders, if any.
Exchange - Cleveland
Date - 8/5/36
Salesman - Office

List or summary of motion pictures licensed and rental terms

Four (4)	2/3	35% of gross receipts	$2.50 per day 5.00 per run
Eight (8)	2/3	30% of gross receipts	2.50 per day 5.00 per run
Twelve (12)	1/2	25% of gross receipts	2.50 per day 5.00 per run
Twenty-four (24)	1/2	$22.50 Flat Rental	2.50 per day 5.00 per run

EXHIBIT NO. F-47

Distributor Twentieth Century-Fox Film Co. Season K-4
by George Roberts

Exhibitor Schine Theatrical Co., Inc. Theatre Forum, Norwalk, Ohio
by Geo. V. Lynch

Contract application date 9/5/36 Approval date 9/30/36

No. of pictures offered All No. of Pictures Licensed All

Provisions, if any, re admission prices Evenings: adults 25, children 10

Run and clearance provisions first run Norwalk, Ohio

Other typewritten or handwritten clauses including riders, if any.

Exchange-Cleveland
Date-9/5/36
Salesman - Office

List or summary of motion pictures licensed and rental terms

A.	Four (4)	2/3	35% of gross receipts	$2.50 per day 5.00 per run
B.	Eight (8)	2/3	30% of gross receipts	$2.50 per day 5.00 per run
C.	Twenty (20)	2/3	$40.00 Flat rental	$2.50 per day 5.00 per run
D.	Fourteen (14)	2/3	$22.50 Flat rental	$2.50 per day 5.00 per run

EXHIBIT NO. F-48

Distributor Twentieth Century-Fox Film
Corporation
by (illegible)

Season K-4

Exhibitor Bellpik Corp.
Geo. V. Lynch

Theatre Piqua or Miami

Contract application date 6/17/36

Approval date 8/17/36

No. of pictures offered 56

No. of Pictures Licensed 49

Provisions, if any, re admission prices

Run and clearance provisions

Open booking with Troy, O. - Piqua to receive same availability as Troy.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Cincinnati, Ohio
Date - 6/17/36

List or summary of motion pictures licensed and rental terms

A.	Two (2) Photoplays	2/3	35% gross	$2.50 per day 5.00 per run
B.	Six (6) Photoplays	2/3	30% gross	2.50 per day 5.00 per run
C.	Ten (10) Photoplays	2/3	$50.00 flat	2.50 per day 5.00 per run
D.	The Remaining Photoplays:	1/2	32.50 flat	2.50 per day 5.00 per run

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EXHIBIT NO. F-49

Distributor Twentieth Century-Fox Film Corp
by George Roberts

Season K-5

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Strand or State or Ben Ali
Lexington, Ky.

Contract application date 10/20/37

Approval date 12/9/37

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices

Run and clearance provisions Second run Lexington. 60 days over third run

Other typewritten or handwritten clauses including riders, if any.

Exchange - Cincinnati
Date - 10/20/37
Salesman - J. J. Grady

List or summary of motion pictures licensed and rental terms

A.	Five (5) Photoplays	2/3		35%	$2.50 per day 5.00 per run
B.	Twelve (12) Photoplays	2/3	$100.00 flat		$2.50 per day 5.00 per run
C.	Sixteen (16) Photoplays	2/3	40.00 flat		$2.50 per day 5.00 per run
D.	The Remaining Photoplays	2/3	35.00 flat		$2.50 per day 5.00 per run

If any percentage pictures be played on a midnight show, the terms for said midnight show shall be 20% of the gross receipts.
If any picture played on percentage is played as part of a double bill, exh bitor shall have the right to deduct the price of the second feature from t gross receipts before accounting to the distributor for his percentage. Re duction for the second feature shall not exceed the price of the Twentieth Century-Fox Flat Rental Price.
Subject to all terms and conditions of the franchise.
If any of the above pictures are played as part of a double bill, the score charge shall be reduced 50%.
This contract to be effective for the theatrical seasons of 1937-38 and 1938-39.

EXHIBIT NO. F-50

Distributor Twentieth Century-Fox Film Corp Season K-4
by George A. Roberts

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Kentucky or Ben Ali or Strand
or State,
Lexington, Ky.

Contract application date 12/15/36

Approval date 1/28/37

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Evenings: adults 35-25; children 10
Matinees: adults 20-15; children 10

Run and clearance provisions Sixty days clearance over subsequent runs. Pictures to start not later than Nov. 1, 1936 and to be played in the order released by the distributor at the rate of one (1) per week, if and as available.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Cincinnati
Date - 12/15/36
Salesman - J. J. Grady

List or summary of motion pictures licensed and rental terms

A.	Four (4)	4		35%	$ 5.00 per day 10.00 3 days 15.00 4 days 25.00 7 days
B.	Eight (8)	4		30%	25.00 7 days
C.	Twelve (12)	3/4		25%	25.00 7 days
D.	Four (4)	3/4	$150.00 flat		25.00 7 days
E.	Seventeen (17)	3/4	100.00 flat		25.00 7 days
F.	Balance:				
	(one-half)	2/4	75.00 flat		25.00 7 days
	(one-half)	2/4	60.00 flat		25.00 7 days

Subjects in Group A, B, C, and D to Play Kentucky or Ben Ali or Strand Theatre.

(If State $2.50 per day)

All conditions included in the letter signed by Mr. Sussman dated August 5, 1936, to be part and parcel of the contract signed for Lexington.

EXHIBIT NO. F-51

Distributor Twentieth Century-Fox Film Corporation
by George Roberts

Season K-4

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Madison or State, Richmond, Ky.

Contract application date 12/15/36

Approval date 1/28/37

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices. Evenings: adults 15; children 10
Matinees: adults 10; children 10

Run and clearance provisions Sixty days clearance over subsequent runs. Pictures to start not later than December 1st, 1936 and to be played in the order released by the distributor at the rate of one (1) per week if and as available.

Other typewritten or handwritten clauses including riders, if any.

Exchange-Cincinnati
Date - 12/15/36
Salesman-E.C. Naegel

List or summary of motion pictures licensed and rental terms.

A.	Four (4)	2		35% of gross	$2.50
B.	Six (6)	1/2	$90.00 flat		2.50
C.	Fourteen (14)	1/2	50.00 flat		2.50
D.	Eleven (11)	1/2	30.00 flat		2.50
E.	Fifteen (15)	1/2	20.00 flat		2.50
F.	Balance	1	17.50 flat		2.50

All conditions included in the letter signed by Mr. Sussman dated August 5, 1936, to be par and parcel of the contracts signed for Richmond.

EXHIBIT NO. F-52

ributor Twentieth Century-Fpx Film Corporation by (illegible) Season K-5

bitor Schine Enterprises Corporation by Geo. V. Lynch Theatre Capitol - Ilion, N. Y.

ract application date 4/27/37 Approval date

of pictures offered all No. of Pictures Licensed 40

isions, if any, re admission prices Evenings: adults orchestra 30, balcony 20; children 10
Matinees: adults orchestra 20; children 10

and clearance provisions 30 days ahead of Frankfort & Mohawk & 10 days ahead of Richfield Springs, N. Y.

t typewritten or handwritten clauses including riders, if any.

change - Albany
te - 4/27/37
lesman - M. Grassgreen

r summary of motion pictures licensed and rental terms

Four (4)	2/3	$175.00	$5.00
Eight (8)	2/3	100.00	5.00
Twelve (12)	1/2	37.50	5.00
Sixteen (16)	1/2	20.00	5.00

re pictures are used as part of a double-feature bill, score will be of the price listed; also, if any of the pictures are used one , score to be $2.50.

conditions included in the letter signed by Mr. Sussman dated August 5, , to be part and parcel of the contracts signed for Ilion.

EXHIBIT NO. F-53

Distributor Twentieth Century-Fox Corporation
by (illegible)

Season K-6, 1938-39

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Capitol

Contract application date 4/27/37.

Approval date

No. of pictures offered all

No. of Pictures Licensed 40

Provisions, if any, re admission prices Evenings: adults orchestra 30, balcony 20; children 10
Matinees: adults 20; children 10

Run and clearance provisions 30 days ahead of Frankfort & Mohawk & 10 days ahead of Richfield Springs, N. Y.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Albany
Date - 4/27/37
Salesman - M. Grassgreen

List or summary of motion pictures licensed and rental terms

A. Four (4)	2/3	$175.00	$5.00
B. Eight (8)	2/3	100.00	5.00
C. Twelve (12)	1/2	37.50	5.00
D. Sixteen (16)	1/2	20.00	5.00

Where pictures are used as part of a double-feature bill, score will be 50% of the price listed; also, if any of the pictures are used one day, score to be $2.50.

All conditions included in the letter signed by Mr. Sussman dated August 5, 1936, to be part and parcel of the contracts signed for Ilion.

EXHIBIT NO. F-54

Distributor	Twentieth Century-Fox Film Corporation by George Roberts	Season	K-5
Exhibitor	Schine Enterprises Corp. by Geo. V. Lynch	Theatre	First run - Kent or Ravenna Kent or Ravenna, Ohio
Contract application date	12/22/37	Approval date	2/17/38
No. of pictures offered	/	No. of Pictures Licensed	

Provisions, if any, re admission prices

Run and clearance provisions

Other typewritten or handwritten clauses including riders, if any.

Exchange - Cleveland
Date - 12/22/37
Salesman - Office

List or summary of motion pictures licensed and rental terms

A.	Three (3)	2/3	35% of gross receip..	$2.50 pem day 5.00 per run
B.	Five (5)	2/3	30% of gross receipts	$2.50 per day 5.00 per run
C.	Ten (10)	2/3	25% of gross receipts	$2.50 per day 5.00 per run
D.	Ten (10)	2/3	$50.00 Flat Rental	$2.50 per day 5.00 per run
E.	Remainder (approximately 17)	2/3	$35.00 Flat Rental	$2.50 per day 5.00 per run

All terms of the franchise to apply to these agreements.

This cancels all other existing contracts, except outdoor, Cantor, Tarzan, and short subjects and News.

EXHIBIT NO. F-55

Distributor Twentieth Century-Fox Film
Corporation
By George Roberts

Season K-5

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Second Run - Kent or Ravenna.
Kent or Ravenna, Ohio

Contract application date 12/22/37

Approval date 2/17/38

No. of pictures offered

No. of Pictures Licensed

Provisions, if any, re admission prices

Run and clearance provisions

Other typewritten or handwritten clauses including riders, if any.
Exchange - Cleveland
Date - 12/22/37
Salesman - Office

List or summary of motion pictures licensed and rental terms

A.	Three (3)	2/3	30% of gross receipts	$2.50 per da 5.00 per ru
B.	Three (3)	2/3	25% of gross receipts	2.50 per da 5.00 per ru
C.	Eighteen (18)	2/3	$35.00 Flat Rental	2.50 per da 5.00 per ru
D.	Remainder (approximately 20)	2/3	25.00 Flat Rental	2.50 per da 5.00 per ru

ALL TERMS OF THE FRANCHISE TO APPLY TO THESE AGREEMENTS.

THIS CANCELS ALL OTHER EXISTING CONTRACTS, EXCEPT OUTDOOR, CANTOR, TARZAN, AN
SHORT SUBJECTS AND NEWS.

EXHIBIT NO. F-56

Distributor Twentieth Century-Fox Film
Corporation
by George Roberts

Season K-5

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Tiffin
Tiffin, Ohio

Contract application date 6/14/38

Approval date 8/31/38

No. of pictures offered all

No. of Pictures Licensed all

Provisions, if any, re admission prices Evenings: adults 20; children 10
Matinees: adults 15; children 10

Run and clearance provisions Second Run

Other typewritten or handwritten clauses including riders, if any.

Exchange - Cleveland
Date - 6/14/38
Salesman - Office

List or summary of motion pictures licensed and rental terms

A.	Ten (10)	2/3	$50.00 Flat Rental	$2.50
B.	Ten (10)	1/2	35.00 Flat Rental	2.50
C.	Ten (10)	1/2	20.00 Flat Rental	2.50
D.	Remainder	1/2	15.00 Flat Rental	2.50

Playing Arrangement - One per week as available.

EXHIBIT NO. F-57

Distributor Twentieth Century-Fox Film Corporation by (illegible)

Season K-4

Exhibitor Belpik Theatre Corp. by Geo. V. Lynch

Theatre Ritz or Grand
Tiffin, Ohio

Contract application date 8/5/36

Approval date 8/27/36

No. of pictures offered 56

No. of Pictures Licensed 49

Provisions, if any, re admission prices Evenings: adults 25; children 10
Matinees: adults 15; children 10

Run and clearance provisions
1st run in Tiffin, Ohio.

Other typewritten or handwritten clauses including riders, if any.
Exchange - Cleveland
Date - 8/5/36
Salesman - Office

List or summary of motion pictures licensed and rental terms

A. Four (4)	2/3	35% of gross receipts	2.50 pe 5.00 pe
B. Eight (8)	2/3	30% of gross receipts	2.50 pe 5.00 pe
C. Eight (8)	2/3	$75.00 Flat Rental	2.50 pe 5.00 pe
D. Twnety-five (25)	2/3	45.00 Flat Rental	2.50 pe 5.00 pe
Exhibitor has the privilege of playing twelve pictures from the "B" group	2/3	25.00 Flat Rental	2.50 pe 5.00 pe

EXHIBIT NO. F-59

Distributor Twentieth Century-Fox Film Corporation by George Roverts

Season K-4

Exhibitor Schine Theatrical Co., Inc. by Geo. V. Lynch

Theatre Capitol or Strand Oswego, N. Y.

Contract application date 8/5/36

Approval date 8/17/36

No. of pictures offered 56

No. of [illegible]ures Licensed 49

Provisions, if any, re admission prices Sunday and Evenings: adults 30 and 40, Matinees 25
Evenings: children 10
Matinees: children 10

Run and clearance provisions
30 days ahead of Fulton, Minette and Pulaski. 60 days City of Oswego. First run Oswego. As available.

Other typewritten or handwritten clauses including riders, if any.
Exchange - Buffalo
Date - 8/5/36
Salesman - Sydney Samson

List or summary of motion pictures licensed and rental terms

A. Four (4)	2		35%
B. Eight (8)	2		30%
C. Twelve (12)	2		25%
D. Remaining	2	$55.00	

SCORE: 1 day $2.50
Run 5.00

Exhibitor has the privilege of playing 15 pictures in Group "d" at the Capitol Theatre at $30.00 each. - (This includes Zane Grey - Harold Bell Wright Productions).

If any of the percentage pictures play three days, exhibitor has the right to play flat buys three days.

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EXHIBIT NO. F-60

Distributor Twentieth Century-Fox Film Corporation by George Roberts

Season K-4

Exhibitor Schine Theatrical Co., Inc. by Geo. V. Lynch

Theatre Capitol Oswego, N. Y.

Contract application date 8/5/36

Approval date 8/17/36

No. of pictures offered all

No. of Pictures Licensed 46

Provisions, if any, re admission prices Evenings: adults 15, children 10
Matinees: adults 15, children 10

Run and clearance provisions
Second Run Oswego, N. Y. 60 days after first run - 60 days clearance on third run.

Other typewritten or handwritten clauses including riders, if any.
Exchange - Buffalo
Date - 8/5/36
Salesman - Sydney Samson

List or summary of motion pictures licensed and rental terms

A.	Two (2)	2-3	$65.00	$2.50
B.	Six (6)	2-3	50.00	2.50
C.	Remaining	2-3	20.00	2.50

IT IS AGREED AND UNDERSTOOD THAT THE EXHIBITOR WILL USE A MINIMUM OF 46 PICTURES.

If any of the above pictures play The Capital Theatre first run, they are be cancelled from the second run contract.

EXHIBIT NO. F-61

Distributor Twentieth Century-Fox Film Corporation
by George Roberts

Season K-4

Exhibitor Schine Theatrical Co., Inc.
by Geo. V. Lynch

Theatre Elmwood, Penn Yan, N. Y.

Contract application date 8/5/36

Approval date 12/30/36

No. of pictures offered all

No. of Pictures Licensed 46

Provisions, if any, re admission prices

Run and clearance provisions As available. 30 days ahead of Dundee.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Buffalo
Date - 8/5/36
Salesman - Sydney Samson

List or summary of motion pictures licensed and rental terms

A.	Four (4)	2-3		35%
B.	Four (4)	2-3		30%
C.	Two (2)	2-3	$75.00	
D.	Ten (10)	2-3	50.00	
E.	Balance	2-3	35.00	

IT IS UNDERSTOOD AND AGREED THAT THE EXHIBITOR WILL USE A MINIMUM OF 46 PICTURES. THE DISTRIBUTOR AGREES TO ALLOCATE ALL PICTURES RELEASED PRIOR TO OCTOBER 23RD FROM THE FLAT PRICE GROUPS AND THE EXHIBITOR MAY PLAY, AT HIS OPTION, ANY SUCH PICTURES AS PART OF THEIR TOTAL COMMITMENT. THIS CLAUSE APPLIES FOR THE SEASON OF 1936-37 ONLY.

Score: 1 day $2.50
Run 5.00

EXHIBIT NO. F-62

Distributor Twentieth Century-Fox Film
Corporation
by George Roberts

Season K-5 and K-6

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Elmwood, Penn Yan, N. Y.

Contract application date 8/11/37

Approval date 9/30/37

No. of pictures offered all

No. of Pictures Licensed 46

Provisions, if any, re admission prices Evenings: adults 35-25; children 10
Matinees: adults 35-25; children 10

Run and clearance provisions 30 days ahead of Dundee. As available.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Buffalo
Date - 8/11/37
Salesman - Sydney Samson

List or summary of motion pictures licensed and rental terms

A. Four (4)	2-3		35%	As Below
B. Six (6)	2-3		30%	As Below
C. Ten (10)	2-3	$50.00		As Below
D. Remaining	2-3	35.00		As Below

SCORE CHARGE: $2.50 per day, $5.00 per run (50% if double feature).

Exhibitor may deduct cost of second feature from gross receipts before computing distributor's share, provided said deduction does not exceed price of Twentieth Century-Fox flat picture.

All other terms and conditions of Franchise to apply to this deal.

All provisions of the Standard Exhibition Contract for the Seasons during which this Agreement is in effect shall be deemed part of this contract.

EXHIBIT NO. F-63

Distributor Twentieth Century-Fox Film Corporation by (illegible)

Season K-4

Exhibitor Belpik Theatre Corp. by Geo. V. Lynch

Theatre Van Wert or Strand
Van Wert, Ohio

Contract application date 8/5/36

Approval date 8/25/36

No. of pictures offered all

No. of Pictures Licensed 49

Provisions, if any, re admission prices Evenings: adults orchestra 25; children orchestra 10

Run and clearance provisions 1st run Van Wert, Ohio

Other typewritten or handwritten clauses including riders, if any.

Exchange - Cleveland
Date - 8/5/36
Salesman - Office

ist or summary of motion pictures licensed and rental terms

A. Four (4)	2/3	35% of gross receipts	$2.50 per day 5.00 per run
B. Six (6)	2/3	30% of gross receipts	2.50 per day 5.00 per run
C. Ten (10)	2/3	$35.00 Flat Rental	2.50 per day 5.00 per run
D. Fifteen (15)	2/3	35.00 Flat Rental	2.50 per day 5.00 per run
E. Eleven (11)	2/3	20.00 Flat Rental	2.50 per day 5.00 per run

3 extra added to lowest flat rental.

EXHIBIT NO. F-64

Distributor Twentieth Century-Fox Film Corporation by (illegible)

Season K-4

Exhibitor Belpik Theatre Corp. by Geo. V. Lynch

Theatre Wooster or Opera House
Wooster, Ohio

Contract application date 8/5/36

Approval date 8/12/36

No. of pictures offered 56.

No. of Pictures Licensed 49

Provisions, if any, re admission prices

Evenings: adults orchestra 25, balcony 15; children orchestra 10, balcony 10
Matinees: adults orchestra 25, balcony 15; children orchestra 10, balcony 10

Run and clearance provisions

30 days clearance over Orville, Rittman and Wadsworth, Ohio

Other typewritten or handwritten clauses including riders, if any.

Exchange - Cleveland
Date - 8/5/36
Salesman - Office

List or summary of motion pictures licensed and rental terms

A. Four (4)	2/3	35% of gross receipts	$2.50 pe 5.00 pe
B. Eight (8)	2/3	30% of gross receipts	2.50 pe 5.00 pe
C. Twelve (12)	2/3	25% of gross receipts	2.50 pe 5.00 pe
D. Twenty-five (25)	2/3	$50.00 Flat Rental	2.50 pe 5.00 pe
Exhibitor has the privilege of playing ten (10) pictures from the "B" group	2/3	30.00 Flat Rental	2.50 pe 5.00 pe

EXHIBIT NO. F 87

Distributor **Fox Film Corporation**
by George Roberts

Season **K-2**

Exhibitor **Schine Theatrical Co., Inc.**
by Geo. V. Lynch

Theatre **State or Dixie, Rochester, N.Y.**

Contract application date 6/20/34

Approval date

No. of pictures offered All

No. of Pictures Licensed 35

Provisions, if any, re admission prices **Evenings: adults, 25, children 10**
Matinees: adults 25, children 10

Run and clearance provisions **14 days over Plaza, Culver and Webster. Repeat run. In order to secure third run this repeat run must be played within 14 days of first day of Riviera playdate.**

Other typewritten or handwritten clauses including riders, if any.

Exchange-Buffalo

List or summary of motion pictures licensed and rental terms

A	7 Photoplays to be designated by the Distributors from time to time from the photoplays licensed hereunder.	2/3	$50.00
B	15 Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2/3	30.00
C	Remaining photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2/3	25.00

Score: 1 day 2.50) 50% if double featured
Run 5.00)
understood and
If is agreed that the exhibitor will use a minimum of 35 pictures

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EXHIBIT NO. F101 (1)

Distributor ~~Twentieth-Century~~-Fox Film Corp. **Season** K-3
By George Roberts

Exhibitor Mamyer Corporation **Theatre** Strand, Jefferson or Palace
By George V. Lynch Auburn, N. Y.
A. J. Kearney Agent

Contract application date Aug. 5 1935 **Approval date**

No. of pictures offered All **No. of Pictures Licensed** 48

Provisions, if any, re admission prices

Run and clearance provisions Thirty days on Skaneateles and Seneca Falls, N. Y.
First run, Auburn, N. Y.
As available.

Other typewritten or handwritten clauses including riders, if any.
Exchange-Buffalo; Salesman- SydneySamson.

List or summary of motion pictures licensed and rental terms

A-8 Photoplays to be designated by the Distributor from time to time from the Photoplays licensed hereunder	2-4	30% to split (4 days $2500. (3 days $2100
B-16 Photoplays to be designated by the Distributor from time to time from the Photoplays licensed hereunder	2-4	25%
C-Remaining photoplays to be designated by the Distributor from time to time from the Photoplays licensed hereunder.	2-4	$75.00 if Jefferson $50.00 if Palace

Score: $2.50 one day
5 00 per run

It is understood and agreed that the Exhibitor will use a minimum of 48 pictures.

EXHIBIT NO. F-101 (1) (20th Century Pictures)

Distributor ~~Twentieth Century~~-Fox Film Corp. Season K-3

Exhibitor Mamyer Corporation
George V. Lynch
A. J. Kearney, Agent

Theatre Strand-Palace-Jefferson
Auburn, N. Y.

Contract application date Aug. 5 1935

Approval date

No. of pictures offered 12

No. of Pictures Licensed 12

Provisions, if any, re admission prices

Run and clearance provisions 30 days on Skaneateles and Seneca Falls.
First run Auburn, N. Y.

Other typewritten or handwritten clauses including riders, if any.

Exchange-Buffalo; Salesman-Sydney Samson

List or summary of motion pictures licensed and rental terms

A-6 photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder 2-4 30% to split (4 days $2500
]3 days $2100

B-6 photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder 2-4 25%

Scores: $2.50 - 1 day
5.00 - per run

EXHIBIT NO. F-101 (2)

Distributor Fox Film Corp.
by George Roberts

Season K-3

Exhibitor Schine Theatrical Co., Inc.
by George V. Lynch

Theatre Babcock Bath, N. Y.

Contract application date Aug. 5, 1935

Approval date Aug. 28, 1935

No. of pictures offered All

No. of Pictures Licensed 45

Provisions, if any, re admission prices
Evenings: Adults-35¢ children-10¢
Matinees: Adults-25¢ children-10¢

Run and clearance provisions
Thirty days on Cohocton, Prattsburg
Hammondsport and Savona, N. Y.
First run Bath, N. Y. as available.

Other typewritten or handwritten clauses including riders, if any.

Exchange-Buffalo; Salesman- Sydney Samson

List or summary of motion pictures licensed and rental terms

A	8	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder	2	30% to $770
B	20	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder	2-3 days	$40.00
C	13 & 4	O'Briens Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder	1-2	$25.00

Score: 1 day $2.50
Run 5.00

It is Understood and Agreed That the Exhibitor Will Use a Minimum of 45 Pictures.

EXHIBIT NO. F 101 (2) (20th Century Pictures)

Distributor [redacted]-Fox Film Corp. **Season** K-3

Exhibitor Schine Theatrical Co. Inc. **Theatre** Babcock Bath N. Y.

Contract application date Aug. 5 1935 **Approval date** Aug. 28, 1935

No. of pictures offered All **No. of Pictures Licensed** All

Provisions, if any, re admission prices Evenings: Adults-35¢ children-10¢
Matinees: Adults-25¢ children-10¢

Run and clearance provisions

Thirty days on Cohocton Prattsburg Hammondsport Savona
First run Bath, N. Y. as available.

Other typewritten or handwritten clauses including riders, if any.

Exchange-Buffalo; Salesman. Sydney Samson

summary of motion pictures licensed and rental terms

A	6 Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder	2	30% to $770.
B	6 photoplays to be designated by the distributor from time to time from the photoplays licensed hereunder.	2	25%

Score 1 day $2.50
Run 5.00

EXHIBIT NO. F101 (3)

Distributor Fox Film Corp.
by George Roberts

Season

Exhibitor Schine Theatrical Co., Inc.
by George V. Lynch

Theatre Playhouse, Canandaigua, N. Y.

Contract application date Aug. 5, 1935

Approval date

No. of pictures offered All

No. of Pictures Licensed 45

Provisions, if any, re admission prices Evenings: Adults, orchestra-35¢ Balcony-25¢
Children-10¢
Matinees: Adults, orchestra -35¢ Balcony-25¢
Children-10¢.

Run and clearance provisions
Ten days on Clifton Springs, N. Y.
First run Canandaigua, N. Y.
As available.

Other typewritten or handwritten clauses including riders, if any.

Exchange-Buffalo; Salesman-Sydney Samson

List or summary of motion pictures licensed and rental terms

A	6 Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder	2	30% to $950.
B	20 Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder	2-3	$75.00
C	15 & 4 O'Briens-Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder	1-2	$35

Score: $2.50 per day
5.00 per run

It Is Agreed and Uderstood that the Exhibitor Will Use a Minimum of 45 Pictures.

EXHIBIT NO. F-101 (3) (20 Century Pictures)

Distributor [redacted] -Fox Film Corp. **Season.** K-3

Exhibitor Schine Theatrical Co., Inc.
By George V. Lynch

Theatre Playhouse, Canandaigua, N. Y.

Contract application date Aug. 5, 1935

Approval date August 28, 1935

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Evenings: Adults, Orchestra-35¢, Balcony-25¢, Children-10¢
Matinees: Adults, Orchestra-35¢, Balcony-25¢, Children-10¢

Run and clearance provisions
Ten days on Clifton Springs, N. Y.
First run Canandaigua, N. Y.
As available.

Other typewritten or handwritten clauses including riders, if any.
Exchange-Buffalo; Salesman-Sydney Samson

List or summary of motion pictures licensed and rental terms

A	6 Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder	2	30% to $950.
B	6 Photoplays to be designated by the Distributors from time to time from the photoplays licensed hereunder	2	25%

Score: 1 day $2.50
Run 5.00

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EXHIBIT NO. F 101 (4)

Distributor Fox Film Corp.
By Tom H. Bailey

Season K-3

Exhibitor Schine Theatrical Co., Inc.
By George V. Lynch

Theatre Strand, Carthage, N. Y.

Contract application date August 5, 1935

Approval date

No. of pictures offered All

No. of Pictures Licensed 40

Provisions, if any, re admission prices
Evenings: Adults 25-15, Children-10¢
Matinees: Adults 29-10, Children-10¢

Run and clearance provisions
1st run
14 days clearance over Lowville and 60 days over second run Carthage

Other typewritten or handwritten clauses including riders, if any,
Exchange-Albany; Salesman - M. Grassgreen

List or summary of motion pictures licensed and rental terms

A	6 Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder	2/3	30% to $550.00 50% over $550 (2 da.) $687.50 - 3 days	$5.
B	19 Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder	2/3	$35.00	$5.
C	15 Remaining Photoplays to be designated by Distributor from time to time from the photoplays licensed hereunder	1/2	$20.00	1 day $2. 2 days $5

Where pictures are used on a double feature- score will be 50% of the prices listed.

EXHIBIT NO. F101 (4) (20th Century Pictures)

Distributor ~~Twentieth Century~~-Fox Film Corp.
By Tom H. Bailey

Season K-3

Exhibitor Schine Theatrical Co., Inc.
By George V. Lynch

Theatre Strand, Carthage, N. Y.

Contract application date Aug. 5, 1935

Approval date

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Evenings: Adults, 15-25, Children -10¢
Matinees: Adults, 10-20, Children-10¢

Run and clearance provisions 1st run
Same clearance as Fox feature contract

Other typewritten or handwritten clauses including riders, if any.

Exchange-Albany; Salesman- M. Grassgreen

List or summary of motion pictures licensed and rental terms

A	6 Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder	2/3	30% of gross to $550 50% over $550.00	$5.00
B	6 Remaining Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2/3	25% of the gross	$5.00

It is Agreed that half the pictures released will be at 30% of the gross and half the pictures released will be at 25% of the gross.

Where pictures are used on a double feature, score will be 50% of the prices listed.

EXHIBIT NO. F-101 (5)

Season K-3

Distributor Fox Film Corp.
By George Roberts

Exhibitor Schine Theatrical Co., Inc.
By George V. Lynch

Theatre Fox or State, Corning, N. Y.

Contract application date Aug. 5, 1935

Approval date Aug. 28, 1935

No. of pictures offered All

No. of Pictures Licensed 48

Provisions, if any, re admission prices Evenings: Adults, 35-25, Children-10¢
Matinees: Adults, 20¢, Children-10¢

Run and clearance provisions

30 days on Plaza Theatre, Corning and 30 days on Painted Post and Addison.
Sixty days on City of Corning.

Other typewritten or handwritten clauses including riders, if any.

Exchange-Buffalo, N. Y.; Salesman-Sydney Samson

List or summary of motion pictures licensed and rental terms

A	6 Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder	2 days	30% to $900
B	20 Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder	2-3	$75.00
	16 Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder & 4 O'Briens	2	$32.50

Score: one day $2.50
per run $5.00

It is Agreed and Understood that the Exhibitor will use a minimum of 48 pictures.

EXHIBIT NO. F 101 (5). (20th Century Pictures)

Distributor T~~wentieth Century~~-Fox Film Corp. **Season** K-3
By George Roberts

Exhibitor Schine Theatrical Co., Inc.
By George V. Lynch

Theatre Fox or State
Corning, N. Y.

Contract application date Aug. 5, 1935

Approval date Aug. 28, 1935

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Evenings: Adults, 35-85, Children-10¢
Matinees: Adults, 20, Children-10¢

Run and clearance provisions Thirty days in Plaza Theatre, Corning; Painted Post and Addison, N. Y.

Sixty days on City of Corning.
First run Corning, N. Y. as available.

Other typewritten or handwritten clauses including riders, if any.
Exchange-Buffalo, N. Y.; Salesman-Sydney Samson

List or summary of motion pictures licensed and rental terms

A	6 Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder	2	30% to $900.
B	6 Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder	2	25%

Score: 1 day $2.50
per run $5.00

EXHIBIT NO. F 101 (6)

Distributor Fox Film Corp. **Season** K-3

Exhibitor Schine Theatrical Co., Inc.
by George V. Lynch
Theatre State, Corning, N. Y.

Contract application date Aug. 5, 1935 **Approval date** Aug. 28, 1935

No. of pictures offered All **No. of Pictures Licensed** 48

Provisions, if any, re admission prices
Evenings: Adults-35-25; Children -10¢
Matinees; Adults-20 Children -10¢

Run and clearance provisions
Second run, Corning, N. Y.

Other typewritten or handwritten clauses including riders, if any.

Exchange-Buffalo, N. Y.; Salesman-Sydney Samson

List or summary of motion pictures licensed and rental terms

A	6 Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder	2/3	$37.50	2.50
B	38 Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder & 4 O'Briens	2/3	15.00	2.50

Should Any of the Above Pictures Play the State Theatre First Run, They are to be Cancelled from the Second Run Contract.

It is Understood and Agreed that the Exhibitor Will Use a Minimum of 48 Pictures.

EXHIBIT NO. F 101 (6) (20th Century Pictures)

Distributor ~~Twentieth Century~~ Fox Film Corp.
by George Roberts

Season K-3

Exhibitor Schine Theatrical Co., Inc.
by George V. Lynch

Theatre State, Corning, N. Y.

Contract application date Aug. 5, 1935

Approval date Aug. 28, 1935

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices
Evenings: Adults-15; Children-10¢
Matinees: Adults-15; Children-10¢

Run and clearance provisions

Second run Corning-Sixty (60) days after first run with Sixty (60) days clearance on third run.

Other typewritten or handwritten clauses including riders, if any.

Exchange-Buffalo, N. Y.; Salesman. Sydney Samson

List or summary of motion pictures licensed and rental terms

A	6 Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2-3 days	$37.50	2.50
B	6 Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder	2-3 days	15.00	2.50

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EXHIBIT NO. F 101 (7)

Distributor	Fox Film Corp. by George Roberts	Season	K-3
Exhibitor	Schine Enterprises, Inc. by George V. Lynch	Theatre	State or Temple, Cortland, N. Y.
Contract application date	Aug. 5, 1935	Approval date	Aug. 28, 1935
No. of pictures offered	All	No. of Pictures Licensed	48

Provisions, if any, re admission prices

Evenings: (Adults, Orchestra 40-30; Balcony-25¢
(Children, Orchestra 15, Balcony-10

Matinees: Adults, Orchestra 40-30; Balcony-25¢
Children, Orchestra-15, Balcony-10

Run and clearance provisions

Thirty days on McGrawville, Homer, Marathon, N. Y.
First run, Cortland, N. Y.
As available.

Other typewritten or handwritten clauses including riders, if any.

Exchange-Buffalo, N. Y.; Salesman-Sydney Samson

List or summary of motion pictures licensed and rental terms.

A	8	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2	30% to $1600
B	16	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2	25%
C	12	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2	$65.00
D	8	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder & 4 O'Briens.	2	$50.00

Score: 1 day $2.50
Run 5.00

If any of the percentage pictures play 3 days, exhibitor has the right to play flat buys three days

It is Understood and Agreed that the Exhibitor will use a Minimum of 48 pictures.

EXHIBIT NO. F 101 (7) (20th Century Pictures)

Distributor Fox Film Corp.
by George Roberts

Season K-3

Exhibitor Schine Enterprises, Inc.
by George V. Lynch

Theatre State or Temple
Cortland, N. Y.

Contract application date Aug. 5, 1935

Approval date Aug. 28, 1935

No. of pictures offered 12

No. of Pictures Licensed 12

Provisions, if any, re admission prices
Evenings: (Adults, Orchestra, 40-30, Balcony-25
(Children, Orchestra 15, Balcony-10
Matinees: (Adults, Orchestra 40-30, Balcony-25

Run and clearance provisions

Thirty days on McGrawville, Homer, Marathon
First run Cortland, N. Y.

Other typewritten or handwritten clauses including riders, if any.

Exchange-Buffalo, N. Y.; Salesman-Sydney Samson

List or summary of motion pictures licensed and rental terms

A	6	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2	30% to $1600
B	6	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2	25%

Score: 1 day $2.50
Run 5.00

EXHIBIT NO. F101(8)

Distributor Fox Film Corp.
By George Roberts

Season K-3

Exhibitor Schine Theatrical Co., Inc.
by George V. Lynch

Theatre Regent or Geneva,
Geneva, N. Y.

Contract application date Aug. 5, 1935

Approval date Aug. 28, 1935

No. of pictures offered All

No. of Pictures Licensed 48

Provisions, if any, re admission prices

Evenings:	Adults	(Orchestra, 40-30 (Balcony-30	Children-10
Matinees:	Adults	Orchestra-30 Balcony-25	Children-10

Run and clearance provisions

Thirty days on Seneca Falls, N. Y., Waterloo, Phelps, Lyons and Clifton Springs, N. Y.
First run Geneva, N. Y. Ten days on Penn Yan, N. Y.
As available.

Other typewritten or handwritten clauses including riders, if any.

Exchange-Buffalo, N. Y.; Salesman-Sydney Samson

List or summary of motion pictures licensed and rental terms

A 8	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2	30% to $2200-
B 16	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2	25%
C 20	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder & 4 O'Briens.	2	$65.00

If any of the percentage pictures play three days, exhibitor has the right to playflat buys three days.

It is Agreed and Understood that the Exhibitor Will Use a Minimum of 48 Pictures.
Pictures Played at the Regent Theatre May Play 2-3 days.

EXHIBIT NO. F 101 (8) (20th Century Pictures)

Distributor Fox Film Corp.
by George Roberts

Season K-3

Exhibitor Schine Theatrical Co., Inc.
by George V. Lynch

Theatre Regent or Geneva,
Geneva, N. Y.

Contract application date Aug. 8, 1935

Approval date Aug. 28, 1935

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices

Evenings:	Adults	(Orchestra, 40-30	Children-10¢
		(Balcony-30,	Children-10¢
Matinees:	Adults	(Orchestra-30	Children-10¢
		(Balcony-25	Children-10¢

Run and clearance provisions

Thirty days on Seneca Falls, Waterloo, Phelps, Lyons and Clifton Springs.
Ten days on Penn Yan
First Run Geneva, N. Y. As available.

Other typewritten or handwritten clauses including riders, if any.

Exchange-Buffalo, N. Y.; Salesman-Sydney Samson

List or summary of motion pictures licensed and rental terms

A	6 Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2	30% to 32200
B	6 Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2	25%

Score: 1 day $2.50
Run 5.00

EXHIBIT NO. F 101 (9)

Distributor Fox Film Corp.
by Tom H. Bailey

Season K-3

Exhibitor Schine Theatrical Co., Inc.
by George V. Lynch

Theatre Empire or Rialto,
Glens Falls, N. Y.

Contract application date Aug. 5, 1935

Approval date

No. of pictures offered All

No. of Pictures Licensed 24

Provisions, if any, re admission prices Evenings: Adults-25¢, Children-10¢
Matinees: Adults-20¢, Children-10¢

Run and clearance provisions

1st run. 14 days over Hudson Falls
60 days over second run Glens Falls.
7 days Lake George.

Other typewritten or handwritten clauses including riders, if any.

Exchange-Albany; Salesman — H. Grassgreen

List or summary of motion pictures licensed and rental terms

A	4 Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2/3	30% to $1750 50% over $1750	$5.00
B	8 Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2/3	25% of the gross.	5.00
C	9 Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2/3	$75.00	5.00
D	3 Remaining photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2/3	$37.50	5.00

Where pictures are used on a double feature, score will be 50% of the prices listed.

EXHIBIT NO. F 101 (9) (20th Century Pictures)

Distributor ~~Twentieth Century~~ Fox-Film Corp.
by Tom H. Bailey

Season K-3

Exhibitor Schine Theatrical Co., Inc.
By George V. Lynch

Theatre Rialto or Empire
Glens Falls, N. Y.

Contract application date Aug. 5, 1935

Approval date

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Evenings: Adults-25¢, Children-10¢
Matinees: Adults-20¢, Children-10¢

Run and clearance provisions 1st run.
Same clearance as Fox feature contract.

Other typewritten or handwritten clauses including riders, if any.

Exchange-Albany; Salesman-M. Grassgreen

List or summary of motion pictures licensed and rental terms

A	6 Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2/3	30% of gross to $1750 50% over $1750	$5.00
B	6 Remaining photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2/3	25% of gross	5.00

It is Agreed that half the pictures released will be at 30% of the gross and half the pictures released will be at 25% of the gross.

Where pictures are used on a double feature, score will be 50% of the prices listed.

EXHIBIT NO. F 101 (10)

Distributor ~~Twentieth Century~~ Fox Film Corp. **Season** K-3

Exhibitor Schine Theatrical Co., Inc.
By George V. Lynch

Theatre Empire, Glens Falls, N Y.

Contract application date Aug. 5, 1935

Approval date

No. of pictures offered All

No. of Pictures Licensed 50

Provisions, if any, re admission prices Evening: Adults-25¢, Children-10¢
Matinees: Adults-20¢, Children-10¢

Run and clearance provisions 2nd run
Sixty days over third run.

Other typewritten or handwritten clauses including riders, if any.

Exchange-Albany Salesman-M. Grassgreen

List or summary of motion pictures licensed and rental terms

A	5	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2/3	$35.00	$3.00
B	45	Remaining photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2/3	17.50	3.00

Pictures that play first run at Rialto to play second run at Empire.

Where pictures are used ona double feature, score will be 50% of the price listed.

EXHIBIT NO. F 101 (10) (20th Century Pictures)

Distributor [redacted]-Fox Film Corp.
by Tom H. Bailey

Season K-3

Exhibitor Schine Theatrical Co., Inc.
By George V. Lynch

Theatre Empire, Glens Falls, N. Y.

Contract application date Aug. 5, 1935

Approval date

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Evenings: Adults-25¢, Children-10¢
Matinees: Adults-20¢, Children-10¢

Run and clearance provisions Second run.
Same clearance as Fox feature contract.

Other typewritten or handwritten clauses including riders, if any.

Exchange-Albany; Salesman-M. Grassgreen

List or summary of motion pictures licensed and rental terms

A	6 Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2/3	$35.00	$3.00
B	6 Remaining photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2/3	$17.50	$3.00

Where pictures are used on a double feature, score will be 50% of the prices listed.

EXHIBIT NO. F 101 (11)

Distributor ~~Twentieth-Century~~-Fox Film Corp.
by Tom H. Bailey

Season K-3

Exhibitor Schine Theatrial Co., Inc.
By George V. Lynch

Theatre Glove or Hippodrome,
Gloversville, ~~N. Y.~~

Contract application date Aug. 5, 1935

Approval date

No. of pictures offered All

No. of Pictures Licensed 43

Provisions, if any, re admission prices Evenings: Adults (Orchestra, 40-30, Childrem
(Balcony, 25, Children 10¢
Matinees: Adults-25¢, children-10¢
Hipp: Eve: 35-10; Mat. 25.10

Run and clearance provisions
1st run- 45 days clearance over Johnstown.
30 days over Fonda, Broadalbin; Northwille
and Sacandaga Park.

Other typewritten or handwritten clauses including riders, if any.

Exchange-Albany: Salesman-M. Grassgreen

List or summary of motion pictures licensed and rental terms

A	8	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2/3	30% to $2400 50% over 2400
B	15	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2/3	25% of gross
C	20	Remaining photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2/3	$65.00

Where pictures are used on a double feature, score will be 50% of p
If played 1 day, score to be $2.50.
It is Agreed that not more than 50% of the pictures released will be

EXHIBIT NO. F 101 (11) (20th Century Pictures)

Distributor ~~Twentieth Century~~-Fox Film Corp.
by Tom H. Bailey

Season K-3

Exhibitor Schine Theatrical Co., Inc.
by George V. Lynch

Theatre Glove or Hippodrome, Gloversville, N. Y.

Contract application date Aug. 6, 1935

Approval date

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Evenings: Adults, 40-30-25; Children, -10¢
Matinees: Adults, 25 Children-10¢
Hippodrome-Eve.35-10; Mat. 25-10

Run and clearance provisions

First run
Same clearance as Fox feature contract.

Other typewritten or handwritten clauses including riders, if any.

Exchange-Albany; Salesman. M. Grassgreen

List or summary of motion pictures licensed and rental terms

A	6	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2/3	30% of the gross to $2400. 50% over 2400	5.00
B	6	Remaining Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2/3	25% of the gross	5.00

It is Agreed that half the pictures released wil be at 30% of the gross and half the pictures released will be at 25% of the gross.

Where pictures are used on a double feature, score will be 50% of the prices listed.

$5.00

5.00

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5993

EXHIBIT NO. F 101 (12)

Distributor Fox Film Corp.
by Tom H. Bailey

Season K-3

Exhibitor Schine Theatrical Co., Inc.
by George V. Lynch

Theatre State, Hamilton, N. Y.

Contract application date Aug. 5, 1935

Approval date

No. of pictures offered All

No. of Pictures Licensed 43

Provisions, if any, re admission prices Evenings: Adults-30, Children-10¢
Matinees; Adults-25, Children-10¢

Run and clearance provisions

1st run
21 DAYS CLEARANCE OVER Oriskany Falls and Waterville

Other typewritten or handwritten clauses including riders, if any.
Exchange-Albany; Salesman - L. Grassgreen

List or summary of motion pictures licensed and rental terms

A	8	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2/3	$50.00	$5.00
B	15	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2/3	35.00	5.00
C	20	Remaining photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2/3	22.50	5.00

Where pictures are used on a double feature, score will be 50% of the prices listed. If played one day, score to be $2.50.

EXHIBIT NO. F 101 (12) (20th Century Pictures)

Distributor Fox Film Corp.
by Tom H. Bailey

Season K-3

Exhibitor Schine Theatrical Co., Inc.
by George V. Lynch

Theatre State, Hamilton, N. Y.

Contract application date Aug. 5, 1935

Approval date

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Evenings, Adults-35¢, Children-10¢

Run and clearance provisions

1st run
Same clearance as Fox feature contract.

Other typewritten or handwritten clauses including riders, if any.

Exchange-Albany; Salesman- M. Grassgreen

List or summary of motion pictures licensed and rental terms

A	6 Photoplays to be designated by the Distributor from time to time, from the photoplays licensed hereunder.	2/3	$50.00	$5.00
B	6 Remaining photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2/3	25.00	5.00

here pictures are used on a double feature, score will be 50% of the
rices listed.

5995

EXHIBIT NO. F 101 (13)

Distributor Fox Film Corp.
by Tom H. Bailey

Season K-3

Exhibitor Schine Theatrical Co., Inc.
by George V. Lynch

Theatre Liberty, Herkimer, N. Y.

Contract application date Aug. 5, 1935

Approval date

No. of pictures offered All

No. of Pictures Licensed 40

Provisions, if any, re admission prices Evenings: Adults-30¢
Matinees: Adults-20¢

Run and clearance provisions

1st run - 30 days clearance over Mohawk and Frankfort.
14 days clearance over Ilion.

Other typewritten or handwritten clauses including riders, if any.

Exchange-Albany; Salesman - M. Grassgreen

List or summary of motion pictures licensed and rental terms

A	6	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2/3	30% to $800 (2 days) $1000 (3 days) 50% over $800		$5.00
B	19	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2/3	$50.00		5.00
C	15	Remaining photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	1/2	$25.00	1 day 2 days	$2.50 5.00

Where pictures are used on a double feature, score will be 50% of the prices listed.

EXHIBIT NO. F 101 (13) (20th Century Pictures)

Distributor Fox Film Corp.
by Tom H. Bailey

Season K-3

Exhibitor Schine Theatrical Co., Inc.
by George V. Lynch

Theatre Liberty, Herkimer, N. Y.

Contract application date Aug. 5, 1935

Approval date

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices
Evenings: Adults-30¢
Matinees: Adults-20¢

Run and clearance provisions

First run
Same clearance as Fox feature contract.

Other typewritten or handwritten clauses including riders, if any.

Exchange-Albany, Salesman - M. Grassgreen

List or summary of motion pictures licensed and rental terms

A	6 Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2/3	30% of gross to $800 50% over $800	$5.00
B	6 Remaining photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2/3	25% of gross.	

It is Agreed that half the pictures released will be at 30% of the gross and half the pictures released will be at 25% of the gross.

Where pictures are used on a double feature, score will be 50% of the prices listed.

5997

EXHIBIT NO. F 101 (14)

Distributor Fox Film Corp.
by Tom H. Bailey

Season K-3

Exhibitor Schine Theatrical Co., Inc.
by George V. Lynch

Theatre Schine's - Hudson Falls, N. Y.

Contract application date Aug. 23, 1935

Approval date

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices

Evenings: Adults-25c; Children-10¢
Matinees: Adults-15¢; Children-10¢

Run and clearance provisions

1st run. 14 days after Glens Falls and 14 days ahead of Ft. Edward. To be played at the rate of 3 or 4 features per month, as available.

Other typewritten or handwritten clauses including riders, if any.

Exchange-Albany; Salesman- M. Grassgreen

List or summary of motion pictures licensed and rental terms

A	6	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2/3	$50.00	$5.00
B	15	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	1/2/3	25.00	5.00
C		Remaining photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	1/2/3	15.00	5.00

If used one day, score to be $2.50. Where pictures are used on a double feature, score will be 50% of the prices listed.

Exhibitor agrees to play or pay for a minimum of forty (40) photoplays.

EXHIBIT NO. F 101 (14) (20th Century Pictures)

Distributor Fox Film Corp.
by Tom H. Bailey

Season K-3

Exhibitor Schine Theatrical Co., Inc.
by George V. Lynch

Theatre Schine's-Hudson Falls, N. Y.

Contract application date Aug. 23, 1935

Approval date

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Evenings: Adults-25¢, Children-10¢
Matinees: Adults-15¢, Children-10¢

Run and clearance provisions First run Clearance same as Fox feature contract.
As available

Other typewritten or handwritten clauses including riders, if any.
Exchange-Albany; Salesman-M. Grassgreen.

List or summary of motion pictures licensed and rental terms

A	6	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder	2/3	$50.00	$5.00
B		Remaining photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2/3	20.00	5.00

Where pictures are used on a double feature, score will be 50% of the prices listed.

EXHIBIT NO. F 101 (15)

Distributor	Fox Film Corp. by Tom H. Bailey	Season	E-3
Exhibitor	Schine Theatrical Co., Inc. by George V. Lynch	Theatre	Rialto, Little Falls, N.Y.
Contract application date	Aug. 5, 1935	Approval date	
No. of pictures offered	All	No. of Pictures Licensed	40

Provisions, if any, re admission prices

Evenings: adults, Orchestra-25, Balcony 15
Children 10
Matinees: adults, Orchestra-25, Balcony 15
Children 10

Run and clearance provisions

First run - 30 days clearance over Dolgeville, St.Johnsville, 14 days over Fort Plain, 60 days over second run Little Falls

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Other typewritten or handwritten clauses including riders, if any.

Exchange-Albany; Salesman - M. Grassgreen

List or summary of motion pictures licensed and rental terms

A	6 Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2/3	30% to $800 (2 days) $1000(3 days) 50% over $800	$5.00
B	19 Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2/3	$50.00	5.00
C	15 Remaining photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	1/2	$30.00	1 day $2.50 2 day $5.00

Where pictures are used on a double feature, score will be 50% of the prices listed.

6000

EXHIBIT NO. F 101 (15) (20th Century Pictures)

Distributor Fox Film Corp.
by Tom H. Bailey

Season K-3

Exhibitor Schine Theatrical Co.Inc.
by George V. Lynch

Theatre Rialto, Little Falls, N.Y.

Contract application date Aug 5, 1935

Approval date

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Evenings: adults, Orchestra 25; Balcony 15, Children 10
Matinees: adults, Orchestra 25; Balcony 15, Children 10

Run and clearance provisions

First run.
Same clearance as Fox feature contract.

Other typewritten or handwritten clauses including riders, if any.

Exchange-Albany; Salesman - M. Grassgreen

List or summary of motion pictures licensed and rental terms

A	5	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2/3	30% of gross to $800., 50% over $800.	$5.00
B	6	Remaining photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2/3	25% of the gross	$5.00

It is agreed that half the pictures released will be at 30% of the gross and half the pictures released will be at 25% of the gross.

Where pictures are used on a double feature, score will be 50% of the prices listed.

6661

EXHIBIT NO. F 101 (16)

Distributor Fox Film Corp.
by George Roberts

Season K-3

Exhibitor Schine Theatrical Co., Inc.
by George V. Lynch

Theatre Rialto or Hi-Art, Lockport, N.Y

Contract application date Aug 5, 1935

Approval date Aug 28, 1935

No. of pictures offered All

No. of Pictures Licensed 48

Provisions, if any, re admission prices Evenings; Adults, orchestra-30, Balcony-25
Children-10
Matinees: Adults, 20 (Sundays 30)

Run and clearance provisions
Thirty days on Newfane, Middleport, N.Y.
First run Lockport, N.Y.
As available.

Other typewritten or handwritten clauses including riders, if any.

Exchange-Buffalo, N.Y.; Salesman-Sydney Samson

List or summary of motion pictures licensed and rental terms

A	8	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2	30% to split $1750.
B	16	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2	25%
C	20	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder and 4 O'Briens	2	$55.00

Score: 1 day $2.50
2 days 5.00

If any of the percentage pictures play three days, exhibitor has the right to play flat buys three days.
It is Agreed and understood that the Exhibitor will use a minimum of 48 pict

EXHIBIT NO. F 101 (16) (20th Century Pictures)

Distributor ~~Twentieth Century-~~Fox Film Corp. **Season** K-3
by George Roberts

Exhibitor Schine Theatrical Co., Inc.
by George V. Lynch

Theatre Rialto or Hi-Art, Lockport, N. Y.

Contract application date Aug. 5, 1935

Approval date Aug. 28, 1935

No. of pictures offered All

No. of Pictures Licensed All

7

Provisions, if any, re admission prices
Evenings: Adults, Orchestra-30¢, Balcony-25¢, Children-10¢
Matinees: Adults-20¢, (Sundays-30¢, Children-10¢

Run and clearance provisions
Thirty days on Newfane, Middleport
First run Lockport, N. Y.
As available.

Other typewritten or handwritten clauses including riders, if any.
Exchange-Buffalo, N. Y.; Salesman-Sydney Samson

List or summary of motion pictures licensed and rental terms

A	6 Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2	30% to split $1750.
B	6 Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2	25%

Score 1 day $2.50
2 days 5.00

EXHIBIT NO. F 101 (17)

Distributor Fox Film Corp.
by George Roberts

Season K-3

Exhibitor Schine Theatrical Co., Inc.
by Geo. V. Lynch

Theatre Hi-Art, Lockport, N.Y.

Contract application date Aug. 5, 1935

Approval date Aug. 28, 1935

No. of pictures offered All

No. of Pictures Licensed 48

Provisions, if any, re admission prices Evenings: Adults 15, children 10
Matinees: Adults 15, children 10

Run and clearance provisions

Second run Lockport, N.Y.
Sixty days after first run - sixty days clearance on third run

Other typewritten or handwritten clauses including riders, if any.

Exchange-Buffalo, N.Y.; Salesman - Sydney Samson

List or summary of motion pictures licensed and rental terms

A	6	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2/3	$50.00	$2.50
B	38	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereun and 4 O'Briens	2/3	20.00	2.50

It is Agreed and Understood that the Exhibitor will use a minimum of 48 pictures.

Should any of the above pictures play the Hi-Art Theatre first run they are to be cancelled from the second run contract.

EXHIBIT NO. F 101 (17) (20th Century Pictures)

Distributor ~~Twentieth Century~~-Fox Film Corp.
by GeorgeRoberts

Season K-3

Exhibitor Schine Theatrical Co., Inc.
byGeorge V. Lynch

Theatre Hi-Art, Lockpprt, N. Y.

Contract application date Aug. 5, 1935

Approval date Aug. 28, 1935

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Evenings: Adults-15¢; Children-10¢
Matinees: Adults-15¢, Children-10¢

Run and clearance provisions Second run Lockport-Sixty (60) days after first run.
Sikty days (60) days clearance on third run.

Other typewritten or handwritten clauses including riders, if any.

Exchange-Buffalo, New York; Salesman-Sydney Samson

List or summary of motion pictures licensed and rental terms

A	6	Photoplays to be designated by the Distributor from time to time from thephotoplays licensed hereunder.	2/3	$50.00
B	6	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2/3	$20.00

Score $2.50 each.

EXHIBIT NO. F. 101 (18)

Distributor Fox Film Corporation
by Tom H. Bailey

Season K-3

Exhibitor Schine Theatrical Co., Inc.
by George V. Lynch

Theatre Malone, Malone, N.Y

Contract application date Aug 5, 1935

Approval date

No. of pictures offered All

No. of Pictures Licensed 42

Provisions, if any, re admission prices Evenings: adults, orchestra 40-30-Balcony 25
children 10
Matinees: adults 30, children 10

Run and clearance provisions

First run
30 days clearance over Chateaugay and Brushtown, Ft. Covington

Other typewritten or handwritten clauses including riders, if any.

Exchange-Albany; Salesman - M. Grassgreen

List or summary of motion pictures licensed and rental terms

A	8	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2/3	30% to $958 (2 days) $1197.50 (3 days) 50% over $958.	$5.00
B	19	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2/3	$50.00	5.00
C	15	Remaining photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder	2	$30.00	5.00

Where pictures are used on a double feature, score will be 50% of the prices listed. If played one day, score to be $2.50.

EXHIBIT NO. F 101 (18) (20th Century Pictures)

Distributor Fox Film Corporation by Tom H. Bailey

Season K-3

Exhibitor Schine Theatrical Co., Inc. by George V. Lynch

Theatre Malone, Malone, N.Y.

Contract application date Aug. 5, 1935

Approval date

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Evenings: Adults, Orchestra 40-30; Balcony-25 Children 10¢
Matinees: Adults-30 Children-10¢

Run and clearance provisions First run.
Same clearance as Fox feature contract.

Other typewritten or handwritten clauses including riders, if any:

Exchange-Albany; Salesman-M. Grassgreen

List or summary of motion pictures licensed and rental terms

6 Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2/3	30% of gross to $958. 50% over $958.	$5.00
6 Remaining photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2/3	25% of gross	5.00

It is Agreed that half the pictures released will be at 30% of the gross and half the pictures released will be at 25% of the gross.

Where pictures are used on a double feature, score will be 50% of the prices listed.

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EXHIBIT NO. F 101 (19)

Distributor Fox Film Corporation
by Tom H. Bailey

Season K-3

Exhibitor Schine Theatrical Co. Inc.
by George V. Lynch

Theatre Massena, Massena, N.Y.

Contract application date Aug. 5, 1935

Approval date

No. of pictures offered All

No. of Pictures Licensed 40

Provisions, if any, re admission prices Evenings: Adults, Orchestra-30¢, Balcony-25
Children-10¢
Matinees: Adults-25¢, Children-10¢

Run and clearance provisions First Run
Sixty days clearance over second run.

Other typewritten or handwritten clauses including riders, if any.

Exchange-Albany; Salesman-M. Grassgreen

List or summary of motion pictures licensed and rental terms

A	6*	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2	30% to $800	$5.00
B	19	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2/3	$50.00	$5.00
C	15	Remaining Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	1/2	$20.00	1 day 2.50 2 days 5.00

Where pictures are used on a double feature, score will be 50% of the prices listed.

EXHIBIT NO. F 101 (19) (20th Century Pictures)

Distributor	Fox Film Corporation by Tom. R. Bailey	Season	K-3
Exhibitor	Schine Theatrical Co., Inc. by George V. Lynch	Theatre	Massena, Massena, N.Y.
Contract application date	Aug. 5, 1935	Approval date	
No. of pictures offered	All	No. of Pictures Licensed	All

Provisions, if any, re admission prices Evenings; Adults, Orchestra-30¢, Balcony-25¢
Children-10¢
Matinees: Adults-25¢, Children-10¢

Run and clearance provisions
First run.
Same clearance as Fox feature contract.

Other typewritten or handwritten clauses including riders, if any.
Exchange-Albany; Salesman-M. Grassgreen

List or summary of motion pictures licensed and rental terms

A	6	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2	30% of gross to $800	$5.00
B	6	Remaining Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2	25% of gross	$5.00

It is agreed that half the pictures released will be at 30% of the gross and half the pictures released will be at 25% of the gross.

Where pictures are used on a double feature, score will be 50% of the prices listed.

6069 **EXHIBIT NO.** E 101 (20)

Distributor Fox Film Corporation
by Tom H. Bailey

Season K-3

Exhibitor Schine Theatrical Co., Inc.
by George V. Lynch

Theatre Colonia, Norwich, N.Y.

Contract application date Aug.25, 1935

Approval date

No. of pictures offered All

No. of Pictures Licensed 40

Provisions, if any, re admission prices Evenings: Adults-25¢, Children-10¢
Matinees: Adults-25¢, Children-10¢

Run and clearance provisions First run-30 days over Oxford, Earlville, Greene, New Berlin, Sherburne, Sidney,
60 days over second run Norwich.

Other typewritten or handwritten clauses including riders, if any.

Exchange-Albany; Salesman-A. Grassgreen

List or summary of motion pictures licensed and rental terms

A	8	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2	30% to $960	$5.00
B	15	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2	25% of gross	5.00
C	17	Remaining Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	1/2	$35.00	1 day 2.50 2 days 5.00

Where pictures are used on a double freature, score will be 50% of the prices listed.

EXHIBIT NO. F 101 (20)(20th Century Pictures)

Distributor Fox Film Corporation
by Tom H. Bailey

Season K-3

Exhibitor Schine Theatrical Co., Inc.
by George V. Lynch

Theatre Colonia, Norwich , N Y.

Contract application date Aug. 5, 1935

Approval date

No. of pictures offered All

No. of Pictures, Licensed All

Provisions, if any, re admission prices Evenings: Adults-25¢, Children-10¢
Matinees: Adults-25¢, Children-10¢

Run and clearance provisions First run.
Same clearance as Fox feature contract.

Other typewritten or handwritten clauses including riders, if any.
Exchange-Albany; Salesman- M. Grassgreen

List or summary of motion pictures licensed and rental terms

A	6	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2	30% of gross to $960 50% over $960	$5.00
B	6	Remaining Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2	25% of gross	5.00

It is Agreed that half the pictures released will be at 30% of the gross and half the pictures released will be at 25% of the gross.

Where pictures are used on a double feature, score will be 50% of the prices listed.

6011

EXHIBIT NO. F 101 (21)

Distributor	Fox Film Corporation by Tom H. Bailey	**Season**	K-3
Exhibitor	Schine Theatrical Co., Inc. by George V. Lynch	**Theatre**	Strand, Ogdensburg, N.Y.
Contract application date	Aug. 5, 1935	**Approval date**	
No. of pictures offered	All	**No. of Pictures Licensed**	40

Provisions, if any, re admission prices Evenings: Adults, Orchestra 40-30, Balcony-25¢
Children 10¢
Matinees: Adults-25¢, Children 10¢

Run and clearance provisions

First run
Thirty days clearance over Canton and Norwood.

Other typewritten or handwritten clauses including riders, if any.

Exchange-Albany; Salesman- M. Grassgreen

List or summary of motion pictures licensed and rental terms

A	8	Photoplays to be designated by the Distributor from time to time from from the photoplays licensed hereunder.	2	30% to $1321 50% over $1321	$5.00
B	15	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2	25% of gross	5.00
C	17	Remaining photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	1/2	$45.00	1 day $2.5 2 days 5.0

Where pictures are used on a double feature, score will be 50% of the prices listed.

EXHIBIT NO. F 101 (21) (20th Century Pictures)

Distributor Fox Film Corporation
by Tom H. Bailey

Season K-3

Exhibitor Schine Theatrical Co., Inc.
by George V. Lynch

Theatre Strand, Ogdensburg, N.Y.

Contract application date Aug. 5, 1935

Approval date

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Evenings: Adults, Orchestra 40-30, Balcony-25¢, Children 10¢
Matinees: Adults-25¢

Run and clearance provisions First run
Same clearance as Fox feature contract.

Other typewritten or handwritten clauses including riders, if any.

Exchange-Albany; Salesman-M. Grassgreen

List or summary of motion pictures licensed and rental terms

6	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2	30% of gross to $1321	$5.00
6	Remaining photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2	25% of gross	5.00

It is Agreed that half the pictures released will be at 30% of the gross and half the pictures released will be at 25% of the gross.

Where pictures are used on a double feature, score will be 50% of the prices listed.

6013

EXHIBIT NO. F 101 (22).

Distributor Fox Film Corporation
by Tom H. Bailey

Season K-3

Exhibitor Schine Theatrical Co., Inc.
by George V. Lynch

Theatre Oneonta or Palace, Oneonta, N.Y.

Contract application date Aug. 5, 1935

Approval date

No. of pictures offered All

No. of Pictures Licensed 43

Provisions, if any, re admission prices Evenings: Adults, Orchestra 35¢, Balcony-25¢, Children 10¢
Matinees: Adults-25¢, Children-10¢
Palace: Evenings: 35-25-10;
Matinees: 25-10

Run and clearance provisions

First run
Thirty days clearance over Morris and Hartwick, Sidney, Cooperstown, Delhi and Stamford.

Other typewritten or handwritten clauses including riders, if any.

Exchange-Albany; Salesman-M. Grassgreen

List or summary of motion pictures licensed and rental terms

A 8	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	3	30% to $1850 50% over $1850 (If 2 days split $1450)	$5.00
B 15	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2/3	25% of gross	5.00
C 20	Remaining photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2/3	$40.00	5.00

Where pictures are used on a double feature, score will be 50% of the prices listed.

It is agreed that not more than 50% of the pictures released will be on percentage. If played one day, score to be $2.50

EXHIBIT NO. F 101 (12) (20th Century Pictures)

Distributor Fox Film Corporation
by Tom H. Bailey

Season K-3

Exhibitor Schine Theatrical Co., Inc.
by George V. Lynch

Theatre Palace or Oneonta, Oneonta, N.Y.

Contract application date Aug. 5, 1935

Approval date

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices
Evenings: Adults, Orchestra-35¢, Balcony-25¢
Children-10¢.
Matinees: Adults-25¢, Children-10¢
Palace- Evenings: 35-25-10¢
Matinees: 25-10

Run and clearance provisions
First run
Same clearance as Fox feature contract.

Other typewritten or handwritten clauses including riders, if any.

Exchange-Albany; Salesman-M. Grassgreen

List or summary of motion pictures licensed and rental terms

6	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2/3	30% of the gross to $1850 50% over $1850 (If two days split $1450)	$5.00
6	Remaining photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2/3	25% of gross	5.00

It is agreed that half the pictures released will be at 30% of the gross and half the pictures released will be at 25% of the gross.

Where pictures are used on a double feature, score will be 50% of the prices listed.

EXHIBIT NO. F 101 (23)

Distributor Fox Film Corporation
by Tom H. Bailey

Season K-3

Exhibitor Schine Theatrical Co., Inc.
by George V. Lynch

Theatre Palace, Oneonta, N. Y.

Contract application date Aug. 5, 1935

Approval date

No. of pictures offered

No. of Pictures Licensed 10

Provisions, if any, re admission prices Evenings: Adults, Orchestra -35; Balcony-25¢, Children-10¢
Matinees: Adults-25¢, Children-10¢

Run and clearance provisions Second Run.
Not earlier than 30 days after first run.

Other typewritten or handwritten clauses including riders, if any.
Exchange-Albany; Salesman-M. Grassgreen

List or summary of motion pictures licensed and rental terms

A	10	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2	$50-00	$5.00

Repeat afte[illegible]st Run.

Where pictures are used on a double feature, score will be 50% of the prices listed.

If played one day, score to be $2.50.

EXHIBIT NO. F 101 (24)

Distributor Fox Film Corporation
by G eorge Roberts

Season K-3

Exhibitor Schine Theatrical Co., Inc.
by George V. Lynch

Theatre State or Dixie, Rochester, N. Y.

Contract application date Aug. 5, 1939

Approval date

No. of pictures offered All

No. of Pictures Licensed 48

Provisions, if any, re admission prices Evenings, Adults-25¢, Children-10¢
Matinees, Adults-25¢, Children-10¢

Run and clearance provisions Second run Rohester, N. Y.
Day and date with Riviera or Liberty
30 days Plaza.

Other typewritten or handwritten clauses including riders, if any.

Exchange-Buffalo, N. Y.; Salesman-Sydney Samson

List or summary of motion pictures licensed and rental terms

A	6	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2	30% to $800.00
B	12	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2	25%
C	26 (& 4 O'Briens)	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.		if 2 days -30.00 if 3 days- 37.50

Score 1 day $2.50
Run 5.00

It is Understodd and Agreed that the Exhibitor will use a minimum of 48 pictures.

6017

EXHIBIT NO. F 101 (24) (20th Century Pictures)

Distributor Fox Film Corporation
by George Roberts

Season K-3

Exhibitor Sghine Theatrical Co., Inc.
by George V. Lynch

Theatre State or Dixie, Rochester, N. Y.

Contract application date Aug. 5, 1938

Approval date

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices

Evenings: Adults-25¢, Children-10¢
Matinees, Adults-25¢, Children-10¢

Run and clearance provisions

Second run Rochester, N. Y. - day and date with Riviera or Liberty.

As available.

Other typewritten or handwritten clauses including riders, if any,

Exchange-Buffalo, N. Y.; Salesman-Sydney Samson

List or summary of motion pictures licensed and rental terms

A	6	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2-3	30% to $800-
B	6	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2-3	25%

Score-1 day $2.50
Run 5.00

8507

EXHIBIT NO. F 101 (25)

Distributor Fox Film Corporation
by George Roberts

Season K-3

Exhibitor Schine Theatrical Co., Inc.
by G eorge V. Lynch

Theatre, State or Dixie, Rochester, N.Y.

Contract application date Aug. 5, 1935

Approval date

No. of pictures offered All

No. of Pictures Licensed 39

Provisions, if any, re admission prices Evenings: Adults-25¢, Children-10¢
Matinees, Adults-25¢, Children-10¢

Run and clearance provisions

Fourteen days over Plaza, Culver and Webster, Repeat run. In order to secure third run this repeat run must be played within fourteen days of first day of Riviera playdate.

Other typewritten or handwritten clauses including riders, if any.

Exchange-Buffalo, N. Y. Salesman Sydney Samson

List or summary of motion pictures licensed and rental terms

A	8	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2-3	$50.00
B	15	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2-3	$30.00
C	12 (& 4 O'Briens)	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2-3	$25.00

Score: [illegible]day $2.50
Run 5.00

It is understood and agreed that the exhibitor will use a minimum of 39 pictures.

EXHIBIT NO. F 101 (25) (20th Century Pictures)

Distributor Fox Film Corporation
by George Roberts

Season K-3

Exhibitor Schine Theatrical Co., Inc.
by George V. Lynch

Theatre State or Dixie, Rochester, N. Y.

Contract application date August 5, 1935

Approval date

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Evenings, Adults-25¢, Children-10¢
Matinees: Adults-25¢, Children-10¢

Run and clearance provisions 14 days over Plaza, Culver and Webster Theatres, Rochester, N. Y. As available
Repeat run. In order to secure third run this repeat run must be played within 14 days of first day of Rivera playdate.

Other typewritten or handwritten clauses including riders, if any.

Exchange-Buffalo, N. Y.; Salesman-Sydney Samson

List or summary of motion pictures licensed and rental terms

A	6	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2-3	$50.00
B	6	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2-3	$25.00

Score: 1 day $1.50
run 5.00

EXHIBIT NO. F 101 (26)

Distributor Fox Film Corporation
by George Roberts

Season K-3

Exhibitor Schine Theatrical Enterprises, Inc.
by George V. Lynch

Theatre Grand, Rochester, N. Y.

Contract application date August 5, 1935

Approval date

No. of pictures offered All

No. of Pictures Licensed 45

Provisions, if any, re admission prices
Evenings: Adults-15¢, Children-10¢
Matinees: Adults-15¢, Children-10¢

Run and clearance provisions

Seven days on Family and Empire, Rivoli, Available immediately after Strand and Madison Theatres. Available after Monroe Theatre.

Other typewritten or handwritten clauses including riders, if any.

Exchange-Buffalo, N. Y.; Salesman-Sydney Samson

List or summary of motion pictures licensed and rental terms

A	17 Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2-3	$22.50
B	24 & 4 O'Briens - Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2-3	15.00

Score 1 day $2.50
Run 5.00

It is Understood and Agreed that the Exhibitor will use a minimum of 45 pictures.

EXHIBIT NO. F 101 (26) (20th Century Pictures)

Distributor	Fox Film Corporation by George Roberts	Season	K-3
Exhibitor	Schine Theatrical Enterprises, Inc. by George V. Lynch	Theatre	Grand, Rochester, N. Y.
Contract application date	Aug. 5, 1935	Approval date	
No. of pictures offered	All	No. of Pictures Licensed	All

Provisions, if any, re admission prices

Evenings: Adults-15¢, Children-10¢
Matinees: Adults-15¢, Children-10¢

Run and clearance provisions

7 days on Family and Empire Theatres. Available immediately after the Strand and Madison Theatres, Rochester, N. Y. As Available. Available after Monroe Theatre.

Other typewritten or handwritten clauses including riders, if any.

Exchange-Buffalo, N. Y.; Salesman-Sydney Samson

List or summary of motion pictures licensed and rental terms

A	6	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2	$25.00
B	6	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2	15.00

Score: 1 day $2.50
Run 5.00

EXHIBIT NO. F 101 (27)

Distributor Fox Film Corporation
by George Roberts

Season K-3

Exhibitor Schine Theatrical Enterprises, Inc. by George V. Lynch

Theatre Andrews, Salamanca, N.Y.

Contract application date Aug. 5, 1935

Approval date Aug. 28, 1935

No. of pictures offered All

No. of Pictures Licensed 45

Provisions, if any, re admission prices Evenings: Adults-30, Children-10¢
Matinees: Adults-20¢, Children-10¢

Run and clearance provisions Thirty days Little Valley, Randolph and Ellicottville
Open booking with Olean, N.Y. 30 Franklinville
First run Salamanca, N.Y. As available.

Other typewritten or handwritten clauses including riders, if any.

Exchange-Buffalo, N.Y.; Salesman-Sydney Samson

List or summary of motion pictures licensed and rental terms

A	8	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2	30% to $800
B	16	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2	25%
C	17	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder, & 4 O'Briens	2	$27.50

Score: 1 day 2.50
Run 5.00

It is agreed and understood that the exhibitor will use a minimum of 45 pictures.

EXHIBIT NO. F 101 (27) (20th Century Pictures)

Distributor Fox Film Corporation
by George Roberts

Season K- 3

Exhibitor Schine Theatrical Enterprises, Inc.
by George V. Lynch

Theatre Andrews, Salamanca, N. Y.

Contract application date Aug. 5, 1935

Approval date Aug. 28, 1935

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices

Evenings: Adults-30¢, Children-10¢
Matinees; Adults-20¢, Children-10¢

Run and clearance provisions

Thirty days Little Valley, Randolph, Ellicottville
Open booking with Olean, N. Y.
First run Salamanca, N. Y. As available.

Other typewritten or handwritten clauses including riders, if any.

Exchange-Buffalo, N. Y.; Salesman-Sydney Samson

List or summary of motion pictures licensed and rental terms

A	6 Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2	30% to $800-
B	6 Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2	25%

Score: 1 day $2.50
Run 5.00

EXHIBIT NO. F 101 (28)

Distributor Fox Film Corporation
by Tom H. Bailey

Season K-3

Exhibitor Schine Theatrical Co., Inc.
by George V. Lynch

Theatre Pontiac, Saranac Lake, N.Y.

Contract application date Aug. 5, 1935

Approval date

No. of pictures offered All

No. of Pictures Licensed 42

Provisions, if any, re admission prices Evenings: Adults, Orchestra-40-30, Balcony-30, Children 10
Matinees: Adults, Orchestra-30, Children-10

Run and clearance provisions First run. 14 days clearance over Lake Placid excepting during period from Jan. 15 to Feb. 15 and June 15 to Sept. 15 when open booking to prevail. 60 days over Saranac Inn.

Other typewritten or handwritten clauses including riders, if any.

Exchange-Albany; Salesman-M. Grassgreen

List or summary of motion pictures licensed and rental terms

8	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2	30% to $1200	$5.00
19	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2	$60.00	5.00
15	Remaining photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	1/2	$30.00	1 day $2.50 2 days 5.00

Where pictures are used on a double feature, score will be 50% of the prices listed.

EXHIBIT NO. F 101 (28) (20th Century Pictures)

Distributor Fox Film Corporation
by Tom H. Bailey

Season K-3

Exhibitor Schine Theatrical Co., Inc.
by George V. Lynch

Theatre Pontiac, Saranac Lake, N Y.

Contract application date Aug. 5, 1935

Approval date

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices
Evenings: Adults, Orchestra 40-30, Balcony -30,Children-1
Matinees: Adults-30 ,Children-10¢

Run and clearance provisions
First run.
Same clearance as Fox feature contract.

Other typewritten or handwritten clauses including riders, if any,
Exchange-Albany; Salesman-M. Grassgreen.

List or summary of motion pictures licensed and rental terms

A	6 Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2	30% of gross to $1200 50% over 1200	$5.00
B	6 Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2	25% of gross	5.00

It is agreed that half the pictures released will be at 30% of the gross and half the pictures released will be at 25% of the gorss.

Where pictures are used on a double feauture, score will be 50% of the price listed.

EXHIBIT NO. F 101 (29)

Distributor Twentieth Century-Fox Film Corp
by George Roberts

Season K-3

Exhibitor Schine Theatrical Co., Inc.
by George V. Lynch

Theatre Strand, Seneca Falls, N. Y.

Contract application date Oct. 2,1935

Approval date

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Evenings: Adults-25¢, Children-10¢
Matinees: Adults-15¢, Children-10¢

Run and clearance provisions 30 days clearance Waterloo. After Geneva, 120 days clearance in Seneca Falls. This is first run Seneca Falls, N. Y. To play as available.

Other typewritten or handwritten clauses including riders, if any.

Exchange-Buffalo, N. Y.; - Salesman- H. G Sydney Samson

List or summary of motion pictures licensed and rental terms

A	6 Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2-3	$75.00	as Below
B	2 Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2-3	$50.00	As Below
C	12 Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder	1-2	32.50	As Below
D	24 Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	1-2	$25.00	As below

Score charge:
1 day $2.50
Run 5.00

EXHIBIT NO. F 101 (29) (20th Century Pictures)

Distributor Twentieth Century-Fox Film Corp. **Season** K-3
by George Roberts

Exhibitor Schine Theatrical Co., Inc. **Theatre** Strand, Seneca Falls, N Y.
by George V. Lynch

Contract application date October 2, 1935 **Approval date**

No. of pictures offered All **No. of Pictures Licensed** All

Provisions, if any, re admission prices Evenings: Adults-25¢, Children-10¢
Matinees; Adults-15¢, Children-10¢

Run and clearance provisions

30 days clearance Waterloo. After Geneva-120 days clearance in Seneca Falls.

First run Seneca Falls, N. Y. to play as available.

Other typewritten or handwritten clauses including riders, if any.

Exchange-Buffalo; Salesman-Sydney Samson

List or summary of motion pictures licensed and rental terms

A	6 Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2-3	$75.00	As Below
B	3 Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2-3	$50.00	As Below
C	3 Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2-3	$32.50	As Below

Score Charge:
1 day $2.50
Run 5.00

EXHIBIT NO. F 101 (30)

Distributor Fox Film Corporation
by Tom H. Bailey

Season K-3

Exhibitor Schine Theatrical Co., Inc.
by George V. Lynch

Theatre State, Tupper Lake, N.Y.

Contract application date Aug. 5, 1935

Approval date

No. of pictures offered All

No. of Pictures Licensed 43

Provisions, if any, re admission prices Evenings: Adults-25¢, Children-10¢
Matinees: Adults-14¢, Children-10¢

Run and clearance provisions First run-clearance usual.
30 days clearance over Faust.

Other typewritten or handwritten clauses including riders, if any.

Exchange-Albany; Salesman-M. Grassgreen

List or summary of motion pictures licensed and rental terms

8	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2/3	$50.00	$5.00
15	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2/3	35.00	5.00
20	Remaining Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	1/2	15.00	2.50 per day 5.00 per run

Where pictures are used on a double feature, score will be 50% of the prices listed.

6029

EXHIBIT NO. F 101 (30) (20th Century Pictures)

Distributor Fox Film Corporation
by Tom H. Bailey

Season K-3

Exhibitor Schine Theatrical Co., Inc.
by George V. Lynch

Theatre State, Tupper Lake, N Y.

Contract application date Aug. 5, 1936

Approval date

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Evenings: Adults-25¢, Children-10¢
Matinees: Adults-15¢, Children-10¢

Run and clearance provisions First run.
Same clearance as Fox feature contract.

Other typewritten or handwritten clauses including riders, if any.
Exchange-Albany; Salesman- M. Grassgreen.

List or summary of motion pictures licensed and rental terms

A	6	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2/3	$50.00	$5.00
B	6	Remaining photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2/3	15.00	5.00

Where pictures are used on a double feature, ~~there~~ charge will be 50% of the prices listed.

8519

EXHIBIT NO. F 101 (31)

Distributor Fox Film Corporation
by Tom H. Bailey

Season K-5

Exhibitor Schine Theatrical Co., Inc.
by George V. Lynch

Theatre Avon or Olympic, Watertown, N.Y.

Contract application date Aug. 5, 1935

Approval date

No. of pictures offered All

No. of Pictures Licensed 43

Provisions, if any, re admission prices
Evenings: Adults Orchestra 40-30, Balcony-30, Children-10
Matinees: Adults-25¢, Children-10¢
Olympic: Evenings: Adults-25-10; Matinees: 25-10

Run and clearance provisions
First run - 60 days over second run, 30 days over Adams, Antwerp, Dexter, Philadelphia, Theresa, Sacketts Harbor.

Other typewritten or handwritten clauses including riders, if any.

Exchange-Albany; Salesman-M. Grassgreen

List or summary of motion pictures licensed and rental terms

8	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2/3	30% to $2200 (2days) $2750-(3 days) 50% over $2200	$5.00
15	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2/3	25% of gross	
20	Remaining photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2/3	$85.00	$5.00

Where pictures are used on a double feature, score will be 50% of the prices listed.
It is agreed that not more than 50% of the pictures released will be on percentage.
If played one day, score to be $2.50.

6031

EXHIBIT NO. F 101 (31) (20th Century Pictures)

Distributor Fox Film Corporation
by Tom H. Bailey

Season K-3

Exhibitor Schine Theatrical Co., Inc.
by George V. Lynch

Theatre Olympic or Avon, Watertown, N.Y.

Contract application date Aug. 5, 1935

Approval date

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Evenings: Adults, Orchestra 40-30, Balcony-30, Children-10
Matinees: Adults-25, Children-10
Olympic Evenings: 25-10, Matinees 25-10

Run and clearance provisions First run
Same clearance as Fox feature contract.

Other typewritten or handwritten clauses including riders, if any.

Exchange-Albany; Salesman, M. Grassgreen

List or summary of motion pictures licensed and rental terms

A	6	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2/3	30% of gross to $2200	$5.00
B	6	Remaining photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2-3	25% of gross	5.00

It is agreed that half the pictures released will be at 30% of the gross and half the pictures released will be at 25% of the gross

Where pictures are used on a double feature, score will be 50% of the prices listed.

6632

EXHIBIT NO. F 101 (32)

Distributor Fox Film Corporation
by Tom H. Bailey

Season K-3

Exhibitor Schine Theatrical Co., Inc.
by George V. Lynch

Theatre Olympic, Watertown, N. Y.

Contract application date Aug. 5, 1935

Approval date

No. of pictures offered All

No. of Pictures Licensed 50

Provisions, if any, re admission prices Evenings: Adults-25¢, Children-10¢

Run and clearance provisions Second run.
Sixty days over third run.

Other typewritten or handwritten clauses including riders, if any.

Exchange-Albany; Salesman- M. Grassgreen

List or summary of motion pictures licensed and rental terms

A	6 Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2/3	$45.00	$5.00
B	44 Remaining photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2/3	20.00	5.00

Pictures that play first run at Avon are to play second run at Olympic.

Where pictures are used on a double feature, score will be 50% of the price listed.

If played one day, score to be $2.50.

EXHIBIT NO. F 101 (32) (20th Century Pictures)

Distributor Fox Film Corporation
by Tom H. Bailey

Season K-3

Exhibitor Schine Theatrical Co., Inc.
by George V. Lynch

Theatre Olympic, Watertown, N.Y.

Contract application date Aug. 6, 1935

Approval date

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Evenings; Adults-25¢, Children-10¢

Run and clearance provisions Second run.
Same clearance as Fox feature contract.

Other typewritten or handwritten clauses including riders, if any.

Exchange-Albany; Salesman-M. Grassgreen

List or summary of motion pictures licensed and rental terms

A.	6	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2/3	$45.00	$5.00
B	6	Remaining photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2/3	20.00	5.00

Where pictures are used on a double feature, score will be 50% of the prices listed.

EXHIBIT NO. F 101 (33)

Distributor Fox Film Corporation
by George Roberts

Season K-3

Exhibitor Schine Theatrical Co., Inc.
by George V. Lynch

Theatre Holland, Bellefontaine, Ohio

Contract application date Aug. 5, 1935

Approval date Aug. 28, 1935

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Evenings: Adults-25, Children-10¢
Matinees: Adults-25, Children-10¢

Run and clearance provisions Thirty days clearance over Lakeview and DeGraff, Ohio and West Liberty, Ohio

Other typewritten or handwritten clauses including riders, if any.

Exchange-Cleveland; Salesman - Office
Playing arrangement - 1 per month as available.

List or summary of motion pictures licensed and rental terms

6	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2/3	30% of gross to $1264 then 50/50	$2.50 per day 5.00 per run
	Remaining photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2	25% of gross	$2.50 per day 5.00 per run

EXHIBIT NO. F 101 (33)

Distributor Fox Film Corporation
by George Roberts

Season K-3

Exhibitor Schine Theatrical Co.,Inc.
by George V. Lynch

Theatre Holland, Bellefontaine, Ohio

Contract application date Aug. 5, 1935

Approval date Aug. 28, 1935

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Evenings: Adults, Orchestra-25, Balcony-15, Children-10¢
Matinees: Adults, Orchestra-25, Balcony-15, Children-10¢

Run and clearance provisions

Thirty days clearance over Lakeview and DeGroff, Ohio and West Liberty, Ohio

Other typewritten or handwritten clauses including riders, if any.

Exchange-Cleveland; Salesman-Office

Playing arrangement-1 per week starting August 11, 1935.

List or summary of motion pictures licensed and rental terms

A	6	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2/3	30% of gross to $1264, then 50/50	$2.50 per day 5.00 per run
B	20	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2/3	$80-00 flat rental	$2.50 per day 5.00 per run
C	15	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2/3	$30.00 flat rental	$2.50 per da 5.00 per ru

EXHIBIT NO. F 101 (34)

Distributor Fox Film Corporation
by George Roberts

Season K-3

Exhibitor Belpik Corporation
by George V. Lynch

Theatre New Theatne, Bucyrus, Ohio

Contract application date Aug. 5, 1935

Approval date Aug. 28, 1935

No. of pictures offered All

No. of Pictures Licensed 44

Provisions, if any, re admission prices

Run and clearance provisions 1st run Bucyrus, Ohio

Other typewritten or handwritten clauses including riders, if any.

Exchange-Cleveland; Salesman-Office

List or summary of motion pictures licensed and rental terms

8	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2/3	30% of gross	$2.50 perday 5.00 per run
12	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2	25% of gross	$2.50 perday 5.00 per run
24	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	1/2	$25.00 Flat Rental	$2.50 perday 5.00 per run

EXHIBIT NO. F 101 (34) (20th Century Pictures)

Distributor Fox Film Corporation
by George Roberts

Season K-3.

Exhibitor Belpik Corporation
by George V. Lynch

Theatre New Theatre, Bucyrus, Ohio

Contract application date Aug. 5, 1935

Approval date Aug. 28, 1935

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices

Run and clearance provisions First run Bucyrus, Ohio

Other typewritten or handwritten clauses including riders, if any.
Exchange-Cleveland; Salesman-Office

Playing arrangement-1 per month as available.

List or summary of motion pictures licensed and rental terms

A	6	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2/3	30% of gross	$2.50 per day 5.00 per ru
B		Remaining photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2	25% of gross	2.50 per day 5.00 per ru

EXHIBIT NO. F 101 (35)

Distributor Fox Film Corporation
by George Roberts

Season K-3

Exhibitor Schine Theatrical Co., Inc.
by George V. Lynch

Theatre Vine or Lyric, Mt. Vernon, Ohio

Contract application date Aug. 5, 1935

Approval date Aug. 28, 1935

No. of pictures offered All

No. of Pictures Licensed 44

Provisions, if any, re admission prices Evenings: Adults-25¢, Children-10¢

Run and clearance provisions First run Mt. Vernon, Ohio

Other typewritten or handwritten clauses including riders, if any.

Exchange-Cleveland; Salesman-Office

Playing arrangement-1-per week starting September 1st, 1935.

List or summary of motion pictures licensed and rental terms

8	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2/3	30% of gross to $1400 (2 days), $1750 3 days then 50/50	$2.50 per day 5.00 per run
16	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	1/2	25% of gross	$2.50 per day 5.00 per run
20	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	1/2	$22.50 Flat Rental	$2.50 per day 5.00 per run

EXHIBIT NO. F 101 (35) (20th Century Pictures)

Distributor Fox Film Corporation
by George Roberts

Season K-3

Exhibitor Schine Theatrical Co., Inc.
by George V. Lynch

Theatre Vine or Lyric, Mt. Vernon, Ohio

Contract application date Aug. 5, 1935

Approval date Aug. 28, 1935

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Evenings: Adults-25¢, Children-10¢

Run and clearance provisions First run Mt. Vernon, Ohio

Other typewritten or handwritten clauses including riders, if any.

Exchange-Cleveland; Salesman-Office

Playing arrangement-1 per month as available.

List or summary of motion pictures licensed and rental terms

A	6	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2/3	30% of gross to $1400 then 50/50	$2.50 per day 5.00 per run
B		Remaining Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	1/2	25% of gross	$2.50 per day 5.00 per run

EXHIBIT NO. F 101 (36)

Distributor	Fox Film Corporation by George Roberts	Season	K-3
Exhibitor	Bellpic Corporation by George V. Lynch	Theatre	Forum, Norwalk, Ohio
Contract application date	Oct. 9, 1935	Approval date	
No. of pictures offered		No. of Pictures Licensed	

Provisions, if any, re admission prices Evenings: Adults-25¢, Children-10¢

Run and clearance provisions

Other typewritten or handwritten clauses including riders, if any.

Exchange-Cleveland; Salesman-Office

This contract is an equal split of product with the Moose Theatre, Norwalk, Ohio.

Playing arrangement-1 every other week as available.

List or summary of motion pictures licensed and rental terms

4	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	3	30% of gross receipts to split	$2.50 per day 5.00 per run
8	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2/3	25% of gross receipts	$2.50 per day 5.00 per run
10	Photoplays to be designated by Distributor from time to time from the photoplays licensed hereunder.	2/3	$25.00, Flat Rental	$2.50 per day 5.00 per run
	Balance Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2/3	$22.50 Flat Rental	$2.50 per day 5.00 per run

EXHIBIT NO. F 101 (37)

Distributor Fox Film Corporation
by George Roberts

Season K-3 -

Exhibitor Bellpik Corporation
by George V. Lynch

Theatre Piqua or Miami, Piqua, Ohio

Contract application date Aug. 5, 1935

Approval date Aug. 28, 1935

No. of pictures offered All

No. of Pictures Licensed 44

Provisions, if any, re admission prices

Run and clearance provisions Open booking with Troy, Ohio-Piqua to receive same availability as Troy.

Other typewritten or handwritten clauses including riders, if any.

Exchange-Cincinnati.

List or summary of motion pictures licensed and rental terms

A 6	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2/3	30% of gross to $1500 (2 days) $1875 (3 days) then 50/50	$2.50 per day 5.00 per run
B 20	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2/3	$65.00 Flat Rental	$2.50 per day 5.00 per run
C 18	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	1/2	$32.50 Flat Rental	$2.50 per day 5.00 per run

6042

EXHIBIT NO. F 101 (37) (20th Century Pictures)

Distributor Fox Film Corporation
by George Roberts

Season K-3

Exhibitor Bellpik Corporation
by George V. Lynch

Theatre Piqua or Miami, Piqua, Ohio

Contract application date Aug. 5, 1935

Approval date Aug. 28, 1935

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices

Run and clearance provisions Open booking with Troy, Ohio.
Piqua to receive same availability as Troy.

ier typewritten or handwritten clauses including riders, if any.

Exchange-Cincinnati

Playing arrangement-1 per month as available.

or summary of motion pictures licensed and rental terms

Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2/3	30% of gross to $1500 then 50/50	$2.50 per day 5.00 per run
Remaining photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2	25% of gross	$2.50 per day 5.00 per run

EXHIBIT NO. F 101 (38) (20th Century Pictures)

Distributor Fox Film Corporation
by George Roberts

Season K-3

Exhibitor Belpik Theatre Corporation
by George V. Lynch

Theatre Van Wert (New Theatre)
Van Wert, Ohio

Contract application date Aug. 30, 1935

Approval date

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices

Run and clearance provisions

Other typewritten or handwritten clauses including riders, if any.

Exchange-Cleveland; Salesman-Office

Playing Arrangement-1 per month as available

List or summary of motion pictures licensed and rental terms

A-	6 Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2	30% of gross	$2.50 per day 5.00 per run
B-	Remaining Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2	25% of gross	$2.50 per day 5.00 per run

EXHIBIT NO. F 101 (39)

Distributor	Twentieth Century-Fox Corporation by George Roberts	Season	K-3
Exhibitor	Bellpic Corporation by George V. Lynch	Theatre	Van Wert or Strand, Van Wert, Ohio
Contract application date	October 9, 1935	Approval date	October 22, 1935
o. of pictures offered	All	No. of Pictures Licensed	All

rovisions, if any, re admission prices Evenings: Adults-25¢, Children-10¢

un and clearance provisions

ther typewritten or handwritten clauses including riders, if any.

Exchange Cleveland; Salesman-Office

Playing arrangement-1 per week as available.

ist or summary of motion pictures licensed and rental terms

Van Wert Theatre 3 Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	3	30%	50%	$950	$2.50 per day 5.00 per run
Van Wert or Strand 0 Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2/3	25%			$2.50 per day 5.00 per run
Van Wert or Strand 7 Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2/3	$50.00 Flat Rental			$2.50 per day 5.00 per run
Van Wert or Strand 0 Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	1/2	$35.00 Flat Rental			$2.50 per day 5.00 per run

over

6045

EXHIBIT NO. F 101 (40)

Distributor Fox Film Corporation
by George Roberts

Season K-3

Exhibitor Schine Theatrical Co:,Inc.
by George V. Lynch

Theatre Wooster, Wooster, Ohio

Contract application date Aug. 5, 1935

Approval date Aug. 28, 1935

No. of pictures offered All

No. of Pictures Licensed 41

Provisions, if any, re admission prices Evenings: Adults, Orchestra-25¢, Balcony-15¢, Children-10¢
Matinees: Adults, Orchestra-25¢, Balcony-15¢, Children-10¢

Run and clearance provisions

30 days clearance over Orrville, Rittman and Wadsworth, Ohio

Other typewritten or handwritten clauses including riders, if any.

Exchange-Cleveland; Salesman-Office

Playing arrangement-1 per week starting September 1st, 1935.

List or summary of motion pictures licensed and rental terms

A	8 Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2/3/4	30% of gross to $1400 then 50/50 for 2 days-split figure to be increased $350 for each day over 2	$2.50 per day 5.00 per run
B	16 Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2	25% of gross	$2.50 per day 5.00 per ru
C	17 Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2	$50.00	$2.50 per da 5.00 per ru

EXHIBIT NO. F 101 (40) (20th Century Pictures)

Distributor Fox Film Corporation
by George Roberts

Season K-3

Exhibitor Schine Theatrical Co., Inc.

Theatre Wooster, Wooster, Ohio

Contract application date Aug. 5, 1935

Approval date Aug. 28, 1935

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Evenings: Adults, Orchestra-25¢, Balcony-15¢, Children-10¢
Matinees: Adults, Orchestra-25¢, Balcony-15¢, Children-10¢

Run and clearance provisions

Thirty days clearance over Orrville, Rittman and Wadsworth, Ohio

Other typewritten or handwritten clauses including riders, if any.

Exchange-Cleveland; Salesman-Office

Playing arrangement-1per month as available.

List or summary of motion pictures licensed and rental terms

6	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2/3/4	30% of gross to $1400, then 50/50 for 2 days split figure to be increased $350 for each day over 2.	$2.50 per day 5.00 per run
	Remaining photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2	25% of gross	

6047

EXHIBIT NO. F 101 (42)

Distributor Fox Film Corporation
by George Roberts

Season K-3

Exhibitor Schine Theatrical Co., Inc.
by George V. Lynch

Theatre Capitol or Strand, Oswego, N.Y.

Contract application date Aug. 5, 1935

Approval date Aug. 28, 1935

No. of pictures offered All

No. of Pictures Licensed 48

Provisions, if any, re admission prices Sundays & Evenings: Adults-30 & 40; Children-10
Matinees, Adults-25¢, Children-10¢

Run and clearance provisions Thirty days on Fulton, Minetto and Pulaski, N.Y.
Sixty days on city of Oswego, N.Y.
First run Oswego, N.Y. As available

Other typewritten or handwritten clauses including riders, if any,
Exchange-Buffalo, N.Y.; Salesman-Sydney Samson

List or summary of motion pictures licensed and rental terms

A	8	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2	30% to split $1650
B	16	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2	25%
C	20	Photoplays & 4 O'Briens to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2	$35.00

Score 1 day - $2.50
run - 5.00

If any of the percentage pictures play three days, exhibitor has the right to play flat buys three days.

It is understood and agreed that the exhibitor will use a minimum of 48 pictures.

6048.

EXHIBIT NO. F 101 (42) (20th Century Pictures)

Distributor Fox Film Corporation
by George Roberts

Season K-3

Exhibitor Schine Theatrical Co., Inc.
by George V. Lynch

Theatre Capitol or Strand, Oswego, N.Y.

Contract application date Aug. 5, 1935

Approval date Aug. 28, 1935

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Sundays & Evenings: Adults-30 and 40, Children-10¢
Matinees: Adults-25¢, Children-10¢

Run and clearance provisions Thirty days on Fulton, Minetto, Pulaski.
Sixty days on City of Oswego.
First run Oswego, N.Y. As available.

Other typewritten or handwritten clauses including riders, if any.

Exchange-Buffalo, N.Y.; Salesman-Sydney Samson

List or summary of motion pictures licensed and rental terms

A	6 Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2	30% to split $1650.
B	6 Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2	25%

Score: 1 day $2.50
Run 5.00

EXHIBIT NO. F 101 (43)

Distributor Fox Film Corporation
by George Roberts

Season K-3

Exhibitor Schine Theatrical Co., Inc.
by George V. Lynch

Theatre Capitol, Oswego, N.Y.

Contract application date Aug. 5, 1935

Approval date Aug. 28, 1935

No. of pictures offered All

No. of Pictures Licensed 48

Provisions, if any, re admission prices Evenings: Adults-15¢, Children-10¢
Matinees: Adults-15¢, Children-10¢

Run and clearance provisions Second run Oswego, N. Y. Sixty days after first run
Sixty days clearance on third run. At available.

Other typewritten or handwritten clauses including riders, if any.

Exchange-Buffalo, N.Y., Salesman-Sydney Samson

List or summary of motion pictures licensed and rental terms

A	6 Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2 - 3	$50.00	$2.50
B	38 Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder, & 4 O'Briens.	2 - 3	$20.00	2.50

It is agreed and understood that the exhibitor will use a minimum of 48 pictures.

Should any of the above pictures play Capitol First Run they are to be cancelled from Second Run Contract.

EXHIBIT NO. F 101 (43) (20th Century Pictures)

Distributor Fox Film Corporation
by George Roberts

Season K-3

Exhibitor Schine Theatrical Co., Inc.

Theatre Capitol, Oswego, N. Y.

Contract application date Aug. 5, 1935

Approval date Aug. 28, 1935

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Evenings: Adults-15¢, Children-10¢
Matinees: Adults-15¢, Children-10¢

Run and clearance provisions Second run-Oswego Sixty (60) days clearance on third run.

Other typewritten or handwritten clauses including riders, if any.

Exchagge - Buffalo; Salesman-Sydney Samson

List or summary of motion pictures licensed and rental terms

A	6	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2-3	$50.00	$2.50
B	6	Photoplays to be designated by the Distributor from time to time from the photoplays licensed hereunder.	2-3	$20.00	2.50

EXHIBIT NO. F-117

Distributor Twentieth Century-Fox Film Corporation by George Roberts

Season K-6

Exhibitor Schine Circuit, Inc. by Geo. V. Lynch

Theatre Liberty, Pikeville, Ky.

Contract application date 12/2/38

Approval date 12/27/38

No. of pictures offered 45

No. of Pictures Licensed 45

Provisions, if any, re admission prices Evenings: adults 25, children 10
Matinees: adults 25, children 10

Run and clearance provisions Sixty (60) days over subsequent runs. The exhibitor agrees to play or pay for the above subjects in the order released by the distributor at the rate of not less than one (1) per week if available, starting not later than Dec. 1, 1938.

Other typewritten or handwritten clauses including riders, if any.
Exchange - Cincinnati
Date - 12/2/38
Salesman - J. J. Brady

List or summary of motion pictures licensed and rental terms

A. Six (6) Photoplays	2	35%	$2.50
B. Ten (10) Photoplays	1/2	$60.00 Flat	2.50
C. Thirteen (13) Photoplays	1/2	30.00 Flat	2.50
D. The Remaining Photoplays	1/2	17.50 Flat	2.50

SAME CONDITIONS AND AGREEMENTS AS MASTER AGREEMENT DATED AUGUST 5, 1936.

EXHIBIT NO. F-118

Distributor Twentieth Century-Fox Film
Corporation
by George Roberts

Season K-6

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Schines - Paris, Ky.

Contract application date 12/3/38

Approval date

No. of pictures offered all

No. of Pictures Licensed 40

Provisions, if any, re admission prices

Run and clearance provisions

Second Run Paris. Exhibitor agrees to play or pay for the above features in the order released by the distributor at the rate of 3 (three) per month, if available, starting when theatre is opened.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Cincinnati
Date - 12/3/38
Salesman - J. J. Brady

List or summary of motion pictures licensed and rental terms

A. Five (5) Photoplays	2	.35%	$2.50
B. Twelve (12) Photoplays	1/2	$15.00 flat	2.50
C. At least twenty-three (23) of the remaining photoplays	1/2	10.00 flat	2.50

Same conditions and agreements as Master Agreement dated August 5, 1936.

6053

EXHIBIT NO. F-119

Distributor Twentieth Century-Fox Film Corporation by George Roberts

Season [illegible]

Exhibitor [illegible] Circuit, Inc. By Geo. V. Lynch

Theatre Manring or Brownie
Middlesboro, Ky.

Contract application date 12/2/38

Approval date 12/27/38

No. of pictures offered 50

No. of Pictures Licensed 50

Provisions, if any, re admission prices

Evenings: adults orchestra 28-15, balcony 28-15; children orchestra 10, balcony 10
Matinees: adults orchestra 28-15, balcony 28-15; children orchestra 10, balcony 10

Run and clearance provisions

Group "A" - photoplays as selected by distributor may be played on Sunday

Exhibitor agrees to play or pay for the above features in the order released by the distributor at the rate of one (1) per week, if available, starting not later than Dec. 1, 1938.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Cincinnati
Date - 12/2/38
Salesman - J. J. Grady

List or summary of motion pictures licensed and rental terms

A	Six (6) Photoplays	2/3	35%	$2.50
B	Twelve (12) Photoplays	2/3	$80.00 flat	2.50
C	Sixteen (16) Photoplays	2	40.00 flat	2.50
D	The Remaining Photoplays	1/2	17.50 flat	2.50

SAME CONDITIONS AND AGREEMENTS AS MASTER AGREEMENT DATED AUGUST 5, 1936.

EXHIBIT NO. F-120

Distributor Twentieth Century-Fox
Film Corporation
by(illegible)

Season K-6

Exhibitor Benton Schine Corporation
by Geo.V.Lynch

Theatre Ritz, Granville, N.Y.

Contract application date December 15, 1938

Approval date Jan 4, 1939

No. of pictures offered All

No. of Pictures Licensed 30

Provisions, if any, re admission prices Evenings - Adults .25 children .10

Run and clearance provisions

1st - Usual, To start not later than January 1st, 1939 and play 4/5 photoplays per month, as available.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Albany
Date-12/15/38
Salesman- M. Grassgreen

List or summary of motion pictures licensed and rental terms

A	TWO (2)	2/3	$75.00	$2.50
B	FOUR (4)	2/3	50.00	2.50
C	TEN (10)	2/3	30.00	2.50
D	FOURTEEN(14)	2/3	17.50	2.50

The Exhibitor agrees to play or pay for only a minimum of thirty (30) features.

EXHIBIT NO. F-121

Distributor Twentieth Century-Fox Film Corporation by George A. Roberts

Season K-6

Exhibitor Schine Circuit, Inc. by Geo. V. Lynch

Theatre Margie Grand, Harlan, Ky.

Contract application date Dec. 2, 1938

Approval date Dec. 27, 1938

No. of pictures offered 44

No. of Pictures Licensed 44

Provisions, if any, re admission prices
Evenings - adults .25 children .10
Matinees - adults .25 children .10

Run and clearance provisions

Sixty (60) days over subsequent runs. The Exhibitor agrees to play or pay for the above subjects in the order released by the Distributor at the rate of not less than One (1) per week if available, starting not later than Dec. 1, 1938.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Cincinnati
Date - Dec. 2, 1938
Salesman - J.J. Grady

List or summary of motion pictures licensed and rental terms

A	SEVEN (7) PHOTOPLAYS	2		35%	$2.50
B	SEVEN (7) PHOTOPLAYS	1/2	$65.00	Flat	2.50
C	FOURTEEN (14) PHOTOPLAYS	1/2	35.00	Flat	2.50
D	REMAINING PHOTOPLAYS	1/2	20.00	Flat	2.50

SAME CONDITIONS AND AGREEMENTS AS MASTER AGREEMENT DATED AUGUST 5, 1936.

EXHIBIT NO. F-122

Distributor Twentieth Century-Fox Film Corporation
George A. Roberts

Season K-6; K-7; K-8; K-9

Exhibitor Schine Enterprises Corp.
Geo. V. Lynch

Theatre Opera House,
Strand or State, Lexington, Ky..

Contract application date July 24, 1939

Approval date Dec. 16, 1939

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices

Run and clearance provisions

Third Run Lexington, Thirty (30) days clearance over subsequent runs.

Other typewritten or handwritten clauses including riders, if any.

Exchange: Cincinnati   Date: July 24, 1939   Salesman: J. J. Grady

Exhibitor agrees to play seventeen (17) pictures listed in "A" and "B" Groups out of fifty-two (52) offered.

On K-6 Season only (1938-39) the Exhibitor is obligated to play a minimum of twenty-six (26) pictures.

This contract to be effective for the theatrical seasons of 1938-39, 1939-40, 1940-41, 1941-42.
The acceptance of this contract conditional upon the cancellation of the unplayed product under contract to the previous owner.

List or summary of motion pictures licensed and rental terms

5 Pictures to be designated by Distributor	2-3		38%
12 " " " "	1/2-3	$75.	Flat
15 " " " "	1/2-3	40.	Flat
Remaining Photoplays " "	1/2-3	25.	Flat

SHORT SUBJECT PRODUCTIONS
K-6-7-8-9.

1-2-Reel Subjects	1/2/3	$2.50

This contract to be effective for the Theatrical Seasons 1938-39, 1939-40, 1940-41, 1941-42.

EXHIBIT NO. F-125

Distributor Twentieth Century-Fox Film Corporation
by George Roberts

Season K-6

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Russell or Hollywood or Washington, Maysville, Ky.

Contract application date Jan. 23, 1939

Approval date Jan. 26, 1939

No. of pictures offered 34

No. of Pictures Licensed 34

Provisions, if any, re admission prices

Run and clearance provisions

First Run Maysville.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Cincinnati
Date Jan. 23, 1939
Salesman J.J.Grady

Exhibitor agrees to play or pay for the above features in the order released by the Distributor at the rate of one (1) per week, if available, starting Feb. 1, 1939. 120 days clearance over subsequent runs.

This contract covers the 1938-39 product unplayed as of Jan. 19, 1939. Same conditions and agreement as Master Agreement dated August 5th, 1936.

List or summary of motion pictures licensed and rental terms

Five (5) Photoplays	2/3		35%	$2.50
Seven (7) Photoplays	2/3	$125.00	Flat	2.50
Fourteen (14) Photoplays	2/3	60.00	Flat	2.50
Remaining Photoplays	2/3	30.00	Flat	2.50

EXHIBIT NO. F-126

Distributor Twentieth Century-Fox Film Corporation
by George Roberts

Season K-7-[illegible]

xhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Russell, Hollywood, Washington
Maysville, Ky.

Contract application date June 6, 1939

Approval date Oct. 26, 1939

o. of pictures offered All

No. of Pictures Licensed All

rovisions, if any, re admission prices

n and clearance provisions

120-day clearance over subsequent runs

er typewritten or handwritten clauses including riders, if any.

Exchange - Cincinnati
Date - June 6, 1939
Salesman - J. J. Grady
Exhibitor agrees to play twenty (20) pictures listed in 'A' and 'B' groups out of fifty-two (52) offered.
This contract to be effective for the theatrical seasons 1939-40, 1940-41 and 1941-42.

r summary of motion pictures licensed and rental terms

A	8	2/3		38%
B	12	2/3	$125.00	Flat
C	20	2/3	60.00	Flat
D	Remaining	2/3	30.00	Flat

SHORT SUBJECT PRODUCTIONS

52 1-Reel Subjects 2/3 $5.00

EXHIBIT NO. F-127

Distributor Twentieth Century-Fox
Film Corporation
by Edgar Moss

Season K-7-8-9

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Plaza, Milford, Del.

Contract application date 22nd of June 1939

Approval date Aug. 10, 1939

No. of pictures offered All

No. of Pictures Licensed 46

Provisions, if any, re admission prices

Run and clearance provisions

10 days after Wilmington. 30 days clearance in Milford.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Washington, D.C.
Date - June 22, 1939
Salesman - O. N. Wheeler
Exhibitor agrees to play 8 pictures in percentage group "A" out of the 52 offered.
This contract to be in effect for the theatrical seasons of 1938-40, 1940-41 and 1941-42
46 picture commitment
Exhibitor agrees to play Short Subjects licensed hereunder as available commencing 8/14/39 and to pay the total license fee of $156. in 12 monthly installments of $13.00 each Mo. starting 8/14/39.

List or summary of motion pictures licensed and rental terms

A	8	Pictures	2-3		35%
B	12	Pictures	2-3	$75.00	
C	20	Pictures	2-3	45.00	
D	Remaining		2-3	25.00	

Short Subjects

52	1-Reel Subjects	2-3	$3.00	$3.00

EXHIBIT NO. F-128

Distributor Twentieth Century-Fox Film Corporation
by George Roberts

Season [illegible]-7-8-9

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Kentucky-Ben Ali-Strand-State, Lexington, Ky.

Contract application date June 8, 1939

Approval date

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices

Run and clearance provisions

Sixty (60) days clearance over subsequent runs.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Cincinnati Date-June 6, 1939 Salesman - Home Office

- Exhibitor agrees to play fourteen (14) pictures listed in "A" and "B" groups out of fifty-two (52) offered.
Groups 'A' and 'B' photoplays to play the Kentucky, Ben Ali, or Strand Theatres.
This contract to be effective for the theatrical seasons of 1939-40, 1940-41 and 1941-42.

List or summary of motion pictures licensed and rental terms

A	6		4		35%	
B	8		4		30%	
C	10		3/4	$160.00	Flat	
D	20		3/4	105.00	Flat	
E	6		2/4	75.00	Flat	
F	Remaining photo-plays	(one half)	2/4	50.00	Flat	
		(one half	2/4	75.00	Flat	
		SHORT SUBJECT				
52	1 Reel Subjects		1/4		$7.50	$8.00

EXHIBIT NO. F-129

Distributor Twentieth Century-Fox Film Corporation by George Roberts

Season K-7-8-9

Exhibitor Schine Enterprises.Corp. by Geo: W. Lynch

Theatre Strand, State or Ben Ali, Lexington, Ky.

Contract application date June 6, 1939

Approval date Oct. 26, 1939

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices

Run and clearance provisions

Second run Lexington, Thirty (30) days clearance over subsequent runs.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Cincinnati Date June 6, 1939 Salesman Home Office

Exhibitor agrees to play seventeen (17) pictures listed in 'A' and 'B' groups out of fifty-two (52) offered.

This contract to be effective for the theatrical seasons 1939-40, 1940-4 and 1941-42.

List or summary of motion pictures licensed and rental terms

A	5	2/3		35%
B	12	2/3	$102.50	Flat
C	16	2/3	42.50	Flat
D	Remaining Photoplays	2/3	37.50	Flat

SHORT SUBJECT PRODUCTIONS

40	1 Reel Subjects	2/3	$2.50	$3.00

EXHIBIT NO. F-130

Distributor Twentieth Century-Fox Film Corporation
by George Roberts

Season K-7 - 8 - 9

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Manring or Brownie
Middlesboro, Ky.

Contract application date 6/6/39

Approval date 10/26/39

No. of pictures offered all

No. of Pictures Licensed ~~XB~~ all

Provisions, if any, re admission prices

Run and clearance provisions

Other typewritten or handwritten clauses including riders, if any.

Exchange - Cincinnati
Date - 6/6/39
Salesman - J. J. Grady

List or summary of motion pictures licensed and rental terms

A. 8 Pictures to be designated by Distributor	2/3		30%
B. 12 " " " " " "	2/3	$80.00	Flat
C. 20 " " " " " "	2/3	40.00	Flat
D. The Remaining Photoplays	2/3	23.50	Flat

Of the Photoplays hereby licensed the respective number set forth below shall be exhibited on the days specified below:
Group 'A' - photoplays as selected by Distributor on - Sunday -

Exhibitor agrees to play Twenty (20) pictures listed in 'A' and 'B' groups out of Fifty-two (52) offered.

This contract to be effective for the theatrical seasons 1939-40, 1940-41 and 1941-42.

NOTE: Provisions regarding short subjects not included.

EXHIBIT NO. F-131

Distributor Twentieth Century-Fox Film Corporation
by George Roberts

Season K-7 - 8 - 9

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Bourbon - Paris, Ky

Contract application date 6/6/39

Approval date 10/26/39

No. of pictures offered all

No. of Pictures Licensed 49 all

Provisions, if any, re admission prices

Run and clearance provisions

Sixty (60) days clearance over subsequent runs.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Cincinnati
Date - 6/6/39
Salesman - Home Office

List or summary of motion pictures licensed and rental terms

A. 4 Pictures to be designated by Distributor	2		35%
B. 10 " " " " " "	1/2	$75.00	Flat
C. 14 " " " " " "	1/2	35.00	Flat
D. The Remaining Photoplays	1/2	23.50	Flat

Exhibitor agrees to play fourteen (14) pictures listed in 'A' and 'B' Groups out of fifty-two (52) offered.

This contract to be effective for the theatrical seasons of 1939-40, 1940-41 and 1941-42.

NOTE: Provisions regarding short subjects not included.

EXHIBIT NO. F-132

Distributor Twentieth Century-Fox Film Corporation by George Roberts

Season K-7 - 8 - 9

Exhibitor Schine Enterprises Corp. by Geo. V. Lynch

Theatre Madison or State Richmond, Ky.

Contract application date 6/6/39

Approval date 10/26/39

No. of pictures offered all

No. of Pictures Licensed ~~49~~ all

Provisions, if any, re admission prices

Run and clearance provisions

Sicty (60) days clearance over subsequent runs.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Cincinnati
Date - 6/6/39
Salesman - Home Office

List or summary of motion pictures licensed and rental terms

A. 4 Pictures to be designated by Distributor	2		35%
B. 10 " " " " " "	1/2	$95.00	Flat
C. 14 " " " " " "	1/2	50.00	Flat
D. 11 " " " " " "	1/2	33.50	Flat
E. The Remaining Photoplays	1/2	20.00	Flat

Exhibitor agrees to play fourteen (14) pictures listed in 'A' and 'B' Groups out of Fifty-Two (52) offered.

This contract to be effective for the theatrical seasons 1939-40, 1940-41 and 1941-42.

NOTE: Provisions regarding short subjects not included.

EXHIBIT NO. F-133

Distributor Twentieth Century-Fox Film
Corporation
by Edgar Moss

Season K-7, K-8, K-9
1939-40; 1940-41; 1941-42.

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Arcade or State
Cambridge, Md.

Contract application date 6/22/39

Approval date 8/10/39

No. of pictures offered all

No. of Pictures Licensed all

Provisions, if any, re admission prices

Run and clearance provisions

7 days ahead of Federalsburg and Hurlock.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Washington, D. C.
Date - 6/22/39
Salesman - S. N. Wheeler

List or summary of motion pictures licensed and rental terms

A. 6 Pictures to be designated by Distributor	2-3	35%
B. 8 " " " " " "	2-3	30%
C. Remaining	2-3	$46.50

Exhibitor has the privilege to play 10 "C" pictures at the State Theatr
at $31.50.

Exhibitor agrees to play 14 pictures in percentage groups "A" and "B" o
of 52 offered.

This contract to be in effect for the theatrical seasons of 1939-40, 1940-41 and 1941-42.

NOTE: Provisions regarding short subjects not included.

EXHIBIT NO. F-134

Distributor Twentieth Century-Fox Film
Corporation
by Edgar Moss

Season K-7, K-8, K-9

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Avalon or Music Hall
Easton, Md.

Contract application date 6/22/39

Approval date 8/10/39

No. of pictures offered all

No. of Pictures Licensed all

Provisions, if any, re admission prices

Run and clearance provisions

7 days ahead of St. Michaels, Tilghman Island and Hurlock.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Washington, D. C.
Date - 6/22/39
Salesman - S. N. Wheeler

List or summary of motion pictures licensed and rental terms

A. 8 Pictures to be designated by Distributor	2-3		35%
B. 12 " " " " " "	2-3	$77.50	
C. 18 " " " " " "	2-3	40.00	
D. Remaining	2-3	27.50	

Exhibitor has the privilege to play 10 "D" pictures at the Music Hall at $12.50 (2-3 days).

Exhibitor agrees to play 8 pictures in percentage group "A" out of the 52 offered.

This contract to be in effect for the Theatrical Seasons of 1939-40, 1940-41 and 1941-42.

NOTE: Provisions regarding short subjects not included.

EXHIBIT NO. F-135

Distributor Twentieth Century-Fox Film Corporation
by Edgar Moss

Season K-7, K-8, K-9

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Federal, Fedefalsburg, Md.

Contract application date 6/22/39

Approval date 8/10/39

No. of pictures offered all

No. of Pictures Licensed 46

Provisions, if any, re admission prices

Run and clearance provisions

14 days ahead of Hurlock.

Other typewritten or handwritten clauses including riders, if any,

Exchange - Washington, D. C.
Date - 6/22/39
Salesman - S. H. Wheeler

List or summary of motion pictures licensed and rental terms

A. 8 Pictures to be designated by Distributor	2-3		35%
B. 12 " " " " " "	2-3	$30.00	
C. 20 " " " " " "	2-3	22.50	
D. Remaining	2-3	17.50	

This contract to be in effect for the theatrical seasons of 1939-40, 1940-41 and 1941-42.

Exhibitor agrees to play 8 pictures in percentage group "A" out of the 52 offered.
46 Picture Commitment.

NOTE: Provisions regarding short subjects not included.

EXHIBIT NO. F-136

Distributor Twentieth Century-Fox Film Corporation
by (illegible).

Season A-7, K-8, K-9

Exhibitor Schine Enterprises Corporation
by George V. Lynch

Theatre Rialto - Regent - Strand
Amsterdam, N. Y.

Contract application date 6/9/39

Approval date

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices

Run and clearance provisions

1st. 60 days clearance over second-run Amsterdam. 30 days ahead of Johnstown, Fonda and Broadalbin.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Albany
Date - 6/9/39
Salesman - M. Grassgreen

List or summary of motion pictures licensed and rental terms

6 Pictures to be designated by Distributor	2/3		
10 " " " " " "	2/3		35% of gross
12 " " " " " "	2/3		30% " "
Remaining	2/3		25% " "
	2/3	$102.50 - 52.50 -	Rialto Regent or Strand

Exhibitor agrees to play 28 pictures in percentage groups "A", "B" and "C" out of 52 offered.

This contract to be in effect for the theatrical seasons of 1939-40, 1940-41 and 1941-42.

NOTE: Provisions regarding short subjects not included.

EXHIBIT NO. F-137

Distributor Twentieth Century-Fox Film Corporation by (illegible) **Season** K-7, K-8, K-9

Exhibitor Schine Enterprises Corporation by George V. Lynch **Theatre** Strand or Regent Amsterdam, N. Y.

Contract application date 6/9/39 **Approval date**

No. of pictures offered All **No. of Pictures Licensed** 10

Provisions, if any, re admission prices

Run and clearance provisions

2nd. 60 days after first-run Amsterdam.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Albany
Date - 6/9/39
Salesman - M. Grassgreen

List or summary of motion pictures licensed and rental terms

A	10 Pictures to be designated by Distributor	2/3	$52.50
B	Remaining " " " " " "	2/3	27.50-Regent second run after 1st run Rialto, or,
		2/3	17.50-Regent 2nd run after 1st run Strand (Spot Booking)

This contract to be in effect for the theatrical seasons of 1939-40, 1940-41 and 1941-42.

EXHIBIT NO. F-138

istributor	Twentieth Century-Fox Film Corporation by George Roberts	Season	K-7, K-8, K-9
xhibitor	Schine Enterprises Corp. by Geo. V. Lynch	Theatre	Strand-Jefferson-Palace-Auburn Auburn, N. Y.
ontract application date	6/7/39	Approval date	
o. of pictures offered	All	No. of Pictures Licensed	All

rovisions, if any, re admission prices

Evenings: Adults 25 - 30 - 40
children 10

un and clearance provisions

30 days on Skaneateles. First run Auburn, N. Y.

Other typewritten or handwritten clauses including riders, if any.

Exchange	-	Buffalo
Date	-	6/7/39
Salesman	-	Sydney Samson

st or summary of motion pictures licensed and rental terms

6 Pictures to be designated by Distributor	2-4	35%
10 " " " " " "	2-4	30%
12 " " " " " "	2-4	25%
Remaining " " " " " "	2-4	($78.75 if Auburn (Theatre ($53.75 if Palace Theatre (or Jefferson or Strand)

xhibitor agrees to play twenty-eight (28) percentage pictures from the "A", "B" and "C" groups out of the 52 offered.

his contract to be in effect for the theatrical seasons of 1939-40, 940-41 and 1941-42.

NOTE: Provisions regarding short subjects not included.

EXHIBIT NO. F-139

Distributor Twentieth Century-Fox Film Corporation by George Roberts

Season K-7, K-8 and K-9

Exhibitor Schine Enterprises Corp. by Geo. V. Lynch

Theatre Babcock, Bath, N. Y.

Contract application date 6/7/39

Approved date 8/18/39

No. of pictures offered all

No. of Pictures Licensed all

Provisions, if any, re admission prices

Run and clearance provisions

First run Bath. 30 days ahead of Cohocton, Prattsburg, Hammondsport and Savona.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Buffalo
Date - 6/7/39
Salesman - Sydney Samson

List or summary of motion pictures licensed and rental terms

A.	6 Pictures to be designated by Distributor	2-3		35%
B.	8 " " " " " "	2-3	$125.00	
C.	12 " " " " " "	2-3	46.50	
D.	Remaining " " " " " "	2-3	27.50	

Exhibitor agrees to play fourteen (14) from the "A" and "B" groups out of the 52 offered.

This contract to be in effect for the theatrical seasons of 1939-40, 1940-41 and 1941-42.

NOTE: Provisions regarding short subjects not included.

EXHIBIT NO. F-140

Distributor Twentieth Century-Fox Film Corporation by George Roberts

Season K-7, K-8, K-9

Exhibitor Schine Ent. Corp. by Geo. V. Lynch

Theatre Playhouse, Canandaigua, N. Y.

Contract application date 6/7/39

Approval date 8/15/39

No. of pictures offered all

No. of Pictures Licensed 46

Provisions, if any, re admission prices

	MATINEE	EVENING
Orchestra:	adults 35, children 10	adults 25, children 10
Balcony:	adults 25, children 10	adults 25, children 10

Run and clearance provisions

10 days clearance on Clifton Springs. First run Canandaigua.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Buffalo
Date - 6/7/39
Salesman - Sydney Samson

List or summary of motion pictures licensed and rental terms

A.	3 Pictures to be designated by Distributor	2-3		
B.	7 " " " " " "	2-3		35%
C.	2 " " " " " "	2-3		30%
D.	16 " " " " " "	2-3	$100.00	
E.Remaining	" " " " " "	2-3	64.50	
		2-3	35.00	

Exhibitor agrees to play twelve (12) from the "A", "B" and "C" groups out of the 52 offered.

This contract to be in effect for the theatrical seasons of 1939-40, 1940-41 and 1941-42.

NOTE: Provisions regarding short subjects not included.

EXHIBIT NO. F-141

Distributor Twentieth Century-Fox Film Corporation by George Roberts

Season K-7, K-8 and K-9

Exhibitor Schine Ent. Corp. by Geo. V. Lynch

Theatre Fox - State - Palace
Corning, New York

Contract application date 6/7/39

Approval date 8/15/39

No. of pictures offered all

No. of Pictures Licensed all

Provisions, if any, re admission prices

Run and clearance provisions

30 days on Plaza Theatre, Corning and Painted Post and Addison, New York.
60 days on City of Corning.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Buffalo
Date - 6/7/39
Salesman - Sydney Samson

List or summary of motion pictures licensed and rental terms

A.	3	Pictures to be designated by Distributor	2-3		35%
B.	7	" " " " " "	2-3		30%
C.	20	" " " " " "	2-3	$65.00	
D.	Remaining	" " " " " "	2-3	37.00	

Exhibitor agrees to play ten (10) percentage pictures on the "A" and "B" groups out of the 52 offered.

This contract to be in effect for the theatrical seasons of 1939-40, 1940-4 and 1941-42.

NOTE: Provisions regarding short subjects not included.

EXHIBIT NO. F-142

Distributor Twentieth Century-Fox Film Corporation by George Roberts

Season K-7, K-8 and K-9

Exhibitor Schine Ent. Corp. by Geo. V. Lynch

Theatre State or Palace Corning, New York

Contract application date 6/7/39

Approval date 8/15/39

No. of pictures offered all

No. of Pictures Licensed as above

Provisions, if any, re admission prices

Run and clearance provisions

Second run Corning, New York - 60 days over third run.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Buffalo
Date - 6/7/39
Salesman - Sydney Samson

List or summary of motion pictures licensed and rental terms

A.	4 Pictures to be designated by Distributor	2-3	$51.25
B.	8 Pictures to be designated by Distributor	2-3	38.75
C.	Remaining " " " " "	2-3	16.25

If any of the above photoplays play the State or Palace Theatre first run they are to be cancelled from this second run contract.

Contract to be in effect for the theatrical seasons of 1939-40, 1940-41 and 1941-42.

EXHIBIT NO. F-143

Distributor Twentieth Century-Fox Film Corporation by George Roberts

Season K-7, K-8 and K-9

Exhibitor Schine Ent. Corp. by Geo. V. Lynch

Theatre State - Temple Cortland, N. Y.

Contract application date 6/7/39

Approval date 8/15/39

No. of pictures offered all

No. of Pictures Licensed all

Provisions, if any, re admission prices

Run and clearance provisions

30 days clearance on McGrawville, Homer and Marathon, Tully and Groton, N. Y.
First run Cortland, N. Y.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Buffalo
Date - 6/7/39
Salesman - Sydney Samson

List or summary of motion pictures licensed and rental terms

A.	6	Pictures to be designated by Distributor	2		35%
B.	10	" " " " " "	2		30%
C.	12	" " " " " "	2		25%
D.	10	" " " " " "	2	$65.00	
E.	Remaining	" " " " " "	2	41.00	

Exhibitor agrees to play twenty-eight (28) percentage pictures from the "A", "B" and "C" groups out of the 52 offered.

This contract to be in effect for the theatrical seasons of 1939-40, 1940-41 and 1941-42.

NOTE: Provisions regarding short subjects not included.

EXHIBIT NO. F-144

Distributor Twentieth Century-Fox Film Corporation by George Roberts

Season K-7, K-8 and K-9

Exhibitor Schine Enterprises Corp. by Geo. V. Lynch

Theatre Rialto or Temple East Rochester or Fairport, N. Y.

Contract application date 9/1/39

Approval date 2/29/40

No. of pictures offered all

No. of Pictures Licensed 48

Provisions, if any, re admission prices

Run and clearance provisions
30 days after first run Rochester

Other typewritten or handwritten clauses including riders, if any.
Exchange - Buffalo
Date - 9/1/39
Salesman - Sydney Samson

ist or summary of motion pictures licensed and rental terms

A.	8	Pictures to be designated by Distributor		
B.	6	" " " " " "	2-3	$75.00
C.	10	" " " " " "	2-3	50.00
D.	24	" " " " " "	2-3	35.00
			2-3	22.50

ll conditions of Master agreement to apply to this contract.

his contract to be in effect for the theatrical seasons of 1939-40, 940-41 and 1941-42.

EXHIBIT NO. F-145

Distributor Twentieth Century-Fox Film
by George Roberts

Season K-7, K-8 and K-9

Exhibitor Schine Theatrical Corp.
by Geo. V. Lynch

Theatre Rialto or Temple
East Rochester or Fairport, N. Y.

Contract application date 9/1/39

Approval date 2/29/40

No. of pictures offered all

No. of Pictures Licensed 30

Provisions, if any, re admission prices

Run and clearance provisions
Second run.

Other typewritten or handwritten clauses including riders, if any.
Exchange - Buffalo
Date - 9/1/39
Salesman - Sydney Samson

List or summary of motion pictures licensed and rental terms

A.	8	Pictures to be designated by Distributor	2-3	$37.50
B.	12	" " " " " "	2-3	27.50
C.	10	" " " " " "	2-3	17.50

All conditions of Master Agreement to apply to this contract.

This contract to be in effect for the theatrical seasons of 1939-40, 1940-41 and 1941-42.

EXHIBIT NO. F-146

Distributor	Twentieth Century-Fox Film Corporation by George Roberts	Season	K-7, K-8 and K-9
Exhibitor	Schine Ent. Corp. by Geo. V. Lynch	Theatre	Regent - Geneva Geneva, N. Y.
Contract application date	6/7/39	Approval date	8/15/39
No. of pictures offered	all	No. of Pictures Licensed	all

Provisions, if any, re admission prices

Run and clearance provisions

30 Days clearance on Seneca Falls, Waterloo, Phelps, Lyons and Clifton Springs, New York. 10 Days clearance on Penn Yan, New York. First run Geneva, N. Y.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Buffalo
Date - 6/7/39
Salesman - Sydney Samson

List or summary of motion pictures licensed and rental terms

.	6 Pictures to be designated by Distributor	2		35%
i.	10 " " " " " "	2		30%
(.	12 " " " " " "	2		25%
l.	10 " " " " " "	2	$68.50	
l.	Remaining " " " " " "	2	38.50	

Exhibitor agrees to play twenty-eight (28) percentage pictures from the "A", "B" and "C" group out of the 52 offered.

This contract to be in effect for the theatrical seasons of 1939-40, 1940-41 nd 1941-42.

NOTE: Provisions regarding short subjects not included.

EXHIBIT NO. F-147

Distributor Twentieth Century-Fox Film Corporation by (illegible)

Season K-7, K-8, K-9

Exhibitor Schine Enterprises Corp. by Geo. V. Lynch

Theatre Empire - Glens Falls, N. Y.

Contract application date 6/9/39

Approval date

No. of pictures offered all

No. of Pictures Licensed all

Provisions, if any, re admission prices

Run and clearance provisions

2nd. 60 days after first-run Glens Falls. 60 days clearance over third-run Glens Falls.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Albany
Date - 6/9/39
Salesman - M. Grassgreen

List or summary of motion pictures licensed and rental terms

A.	4 Pictures	2/3	$47.50
B.	8 "	2/3	37.50
C.	Remaining Pictures	2/3	20.00

Any picture playing the Empire Theatre first run to be cancelled from this contract.

Exhibitor agrees to play twelve (12) pictures in "A" and "B" groups out of 52 offered.

This contract to be in effect for the theatrical seasons of 1939-40, 1940-41 and 1941-42.

EXHIBIT NO. F-148

Distributor Twentieth Century-Fox Film Corporation by (illegible)

Season K-8 & K-9, 1940-41 and 1941-42

Exhibitor Schine Enterprises Corp. by Geo. V. Lynch

Theatre Rialto, Paramount or Empire
Glens Falls, N. Y.

Contract application date 9/17/40

Approval date 10/8/40

No. of pictures offered all

No. of Pictures Licensed all

Provisions, if any, re admission prices

Paramount &)evenings:adults 40(orch).children 10, balcony adults 25)
Rialto)matinees:adults 25 " children 10, " children 10)

EMPIRE
25-15-10
15-10

Run and clearance provisions

1st run. 60 days ahead of second-run Glens Falls. 14 days ahead of Hudson Falls. 7 days ahead of Lake George.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Albany
Date - 9/17/40.
Salesman - M. Grassgreen

List or summary of motion pictures licensed and rental terms

A.	6 Pictures	2/3	35% of gross
B.	10 "	2/3	30% of gross
C.	12 "	2/3	25% of gross
D.	16 "	2/3	$52.50
E.	Remaining "	2/3	40.00

All provisions of the Standard 1940-41 Exhibition Contract shall be deemed part of this agreement.

NOTE: Provisions regarding short subjects not included.

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EXHIBIT NO. F-149

Distributor	Twentieth Century-Fox Film Corporation by (illegible)	**Season**	K-7, K-8 & K-9
Exhibitor	Schine Enterprises Corporation by Geo. V. Lynch	**Theatre**	Glove or Hippodrome Gloversville, N. Y.
Contract application date		**Approval date**	
No. of pictures offered	All	**No. of Pictures Licensed**	All

Provisions, if any, re admission prices

Run and clearance provisions

1st. 45 days clearance over Johnstown. 30 days clearance over Fonda, Broadalbin, Northville and Sacandaga Park and second-run Gloversville.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Albany
Date - 6/9/39
Salesman - M. Grassgreen

List or summary of motion pictures licensed and rental terms

A	6 Pictures	2/3		35% of gross
B	10 "	2/3		30% of gross
C	12	2/3		25% of gross
D	Remaining "	2/3	$67.50-Glove 42.50-Hippodrome	

Exhibitor agrees to play twenty-eight (28) pictures in percentage groups "A", "B" and "C" out of 52 offered.

This contract to be in effect for the theatrical seasons of 1939-40, 1940-41 and 1941-42.

NOTE: Provisions regarding short subjects not included.

EXHIBIT NO. F-150

Distributor Twentieth Century-Fox Film Corporation by (illegible)
Season K-7, K-8 & K-9

Exhibitor Schine Enterprises Corporation by Geo. V. Lynch
Theatre Hippodrome Gloversville, N. Y.

Contract application date 6/9/39
Approval date

No. of pictures offered all
No. of Pictures Licensed 12

Provisions, if any, re admission prices

Run and clearance provisions

2nd. 30 days after first-run Gloversville.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Albany
Date - 6/9/39
Salesman - M. Grassgreen

List or summary of motion pictures licensed and rental terms

12 Pictures	2/3	$52.50
Remaining "	2/3	37.50 (Spot Booking)

his contract to be in effect for the theatrical seasons of 1939-40, 1940-41 nd 1941-42.

EXHIBIT NO. F-151

Distributor Twentieth Century-Fox Film Corporation by (illegible)

Season K-7, K-8 & K-9

Exhibitor Schine Enterprises Corp. by Geo. V. Lynch

Theatre Ritz - Granville, N. Y.

Contract application date 6/9/39

Approval date

No. of pictures offered all

No. of Pictures Licensed all

Provisions, if any, re admission prices

Run and clearance provisions

1st.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Albany
Date - 6/9/39
Salesman - M. Grassgreen

List or summary of motion pictures licensed and rental terms

A.	3	Pictures	[illegible]	$75.00
B.	5	"	[illegible]	50.00
C.	12	"	[illegible]	35.00
D.	Remaining	"	2/3	17.50

Exhibitor agrees to play eight (8) pictures in "A" and "B" groups out of 52 offered.

This contract to be in effect for the theatrical seasons of 1939-40, 1940-41 and 1941-42.

NOTE: Provisions regarding short subjects not included.

EXHIBIT NO. F-152

Distributor Twentieth Century-Fox Film Corporation by (illegible)

Season K-7, K-8 & K-9

Exhibitor Schine Enterprises Corporation by Geo. V. Lynch

Theatre State - Hamilton, N. Y.

Contract application date 6/9/39

Approval date

No. of pictures offered all

No. of Pictures Licensed all

Provisions, if any, re admission prices

Run and clearance provisions

1st. 21 days clearance over Oriskany Falls and Waterville. 60 days clearance over Earlville.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Albany
Date - 6/9/39
Salesman - M. Grassgreen

ist or summary of motion pictures licensed and rental terms

A.	4 Pictures	2/3	$77.50
B.	8 "	2/3	52.50
C.	12 "	2/3	37.50
D.	Remaining "	2/3	25.00

Exhibitor agrees to play twelve (12) pictures in "A" and "B" groups out of 52 offered.

This contract to be in effect for the theatrical seasons of 1939-40, 1940-41 and 1941-42.

NOTE: Provisions regarding short subjects not included.

EXHIBIT NO. F-153

Distributor Twentieth Century-Fox Film Corporation by (illegible)

Season K-7, K-8 & K-9

Exhibitor Schine Enterprises Corporation by Geo. V. Lynch

Theatre Liberty Herkimer, N. Y.

Contract application date 6/9/39

Approval date

No. of pictures offered all

No. of Pictures licensed all.

Provisions, if any, re admission prices

Run and clearance provisions

1st. 14 days after first-run Utica. 30 days clearance over Mohawk and Frankfort.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Albany
Date - 6/9/39
Salesman - M. Grassgreen

List or summary of motion pictures licensed and rental terms

A.	3 Pictures	2/3		35% of gross
B.	7 "	2/3		30% of gross
C.	2 "	2/3	$77.50	
D.	20 "	2/3	37.50	
E. Remaining	"	2/3	27.50	

Exhibitor agrees to play ten (10) pictures in percentage groups "A" and "B" and two (2) "C" pictures out of 52 offered.

This contract to be in effect for the theatrical seasons of 1939-40, 1940-41 and 1941-42.

NOTE: Provisions regarding short subjects not included.

EXHIBIT NO. F-154

Distributor Twentieth Century-Fox Film Corporation
by (illegible)

Season K-7, K-8 & K-9

Exhibitor Schine Enterprises Corporation
by Geo. V. Lynch

Theatre New Strand, Hudson Falls, N. Y.

Contract application date 6/9/39

Approval date

No. of pictures offered all

No. of Pictures Licensed all

Provisions, if any, re admission prices

Run and clearance provisions

1st. 14 days after first-run Glens Falls. 14 days clearance over Fort Edward.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Albany
Date - 6/9/39
Salesman - M. Grassgreen

List or summary of motion pictures licensed and rental terms

A.	4	Pictures	2/3	$78.00
B.	8	"	2/3	53.00
C.	12	"	2/3	28.00
D.	Remaining	"	2/3	18.00

Exhibitor agrees to play twelve (12) pictures in "A" and "B" groups out of 52 offered.

This contract to be in effect for the theatrical seasons of 1939-40, 1940-41 and 1941-42.

NOTE: Provisions regarding short subjects not included.

EXHIBIT NO. F-155

Distributor Twentieth Century-Fox Film Corporation
by (illegible)

Season K-7, K-8 & K-9

Exhibitor Schine Enterprises Corporation
by Geo. V. Lynch

Theatre Capitol
Ilion, N. Y.

Contract application date 6/9/39

Approval date

No. of pictures offered / all

No. of Pictures Licensed all

Provisions, if any, re admission prices

Run and clearance provisions

1st. 10 days clearance over Richfield Springs. 30 days clearance over Frankfort and Mohawk.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Albany
Date - 6/9/39
Salesman - M. Grassgreen

List or summary of motion pictures licensed and rental terms

A.	4	Pictures	2/3	$152.50
B.	8	"	2/3	77.50
C.	12	"	2/3	40.00
D. Remaining		"	2/3	22.50

Exhibitor agrees to play twelve (12) pictures in "A" and "B" groups out o
32 offered.

This contract to be in effect for the theatrical seasons of 1939-40, 1940-
and 1941-42.

NOTE: Provisions regarding short subjects not included.

EXHIBIT NO. F-156

Distributor Twentieth Century-Fox Film Corporation by (illegible)

Season K-7, K-8 & K-9

Exhibitor Schine Enterprises Corporation by Geo. V. Lynch

Theatre Rialto or Hippodrome
Little Falls, N. Y.

Contract application date 6/9/39

Approval date

o. of pictures offered all

No. of Pictures Licensed all

rovisions, if any, re admission prices

un and clearance provisions

1st. 14 days clearance over Fort Plain. 30 days clearance over Dolgeville and St. Johnsville. 60 days clearance over second-run Little Falls.

her typewritten or handwritten clauses including riders, if any.

Exchange - Albany
Date - 6/9/39
Salesman - M. Grassgreen

or summary of motion pictures licensed and rental terms

3	Pictures	2/3		35% of gross
7	"	2/3		30% of gross
20	"	2/3	$40.00	
Remaining	"	2/3	30.00	

hibitor agrees to play ten (10) pictures in percentage groups "A" and "B" t of 52 offered.

is contract to be in effect for the theatrical seasons of 1939-40, 40-41 and 1941-42.

TE: Provisions regarding short subjects not included.

EXHIBIT NO. F-157

Distributor Twentieth Century-Fox Film Corporation by (illegible) **Season** K-7, K-8, K-9

Exhibitor Schine Theatrical Corporation by Geo. V. Lynch **Theatre** Rialto - Empire Glens Falls, N. Y.

Contract application date 6/9/39 **Approval date**

No. of pictures offered 26 **No. of Pictures Licensed** 26

Provisions, if any, re admission prices

Run and clearance provisions

1st. 60 days clearance over second-run Glens Falls. 7 days clearance over Lake George. 14 days clearance over Hudson Falls.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Albany
Date - 6/9/39
Salesman - M. Grassgreen

List or summary of motion pictures licensed and rental terms

A.	3	Pictures	2/3		35% of gross
B.	5	"	2/3		30% of gross
C.	6	"	2/3		25% of gross
D.	8	"	2/3	$52.50	
E. Remaining		"	2/3	40.00	

Exhibitor agrees to play fourteen (14) pictures in percentage groups "A", "B" and "C" out of 52 offered.

It is understood and agreed that the exhibitor is to receive an equal split in quality and quantity.

This contract to be in effect for the theatrical seasons of 1939-40, 1940-41 and 1941-42.

NOTE: Provisions regarding short subjects not included.

EXHIBIT NO. F-158

Distributor Twentieth Century-Fox Film Corporation
by George Roberts

Season K-7, K-8, K-9

Exhibitor Schine Circuit, Inc.
by Geo. V. Lynch

Theatre Liberty - Pikeville, Ky.

Contract application date 6/6/39

Approval date 10/26/39

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices

Run and clearance provisions

Sixty (60) days clearance over subsequent runs.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Cincinnati
Date - 6/6/39
Salesman - J. J. Grady

List or summary of motion pictures licensed and rental terms

A	8 Pictures	2		35%
B	12 "	1/2	$62.50 Flat	
C	20 "	1/2	32.50 Flat	
D	Remaining Photoplays	1/2	20.00 Flat	

Exhibitor agrees to play twenty (20) pictures listed in 'A' and 'B' groups out of fifty-two (52) offered.

This contract to be effective for the theatrical seasons 1939-40, 1940-41 and 1941-42.

NOTE: Provisions regarding short subjects not included.

EXHIBIT NO. F-159

Distributor Twentieth Century-Fox Film Corporation
by (illegible)

Season K-7, K-8, K-9

Exhibitor Schine Enterprises Corporation
by Geo. V. Lynch

Theatre Strand - Carthage, N. Y.

Contract application date 6/9/39

Approval date

No. of pictures offered all

No. of Pictures Licensed all

Provisions, if any, re admission prices

Run and clearance provisions

1st. 60 days clearance over second-run Carthage. 14 days clearance over Lowville.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Albany
Date - 6/9/39
Salesman - M. Grassgreen

List or summary of motion pictures licensed and rental terms

A.	3 Pictures	2/3		35% of gross
B.	7 "	2/3		30% of gross
C.	20 "	2/3	$30.00	
D.Remaining	"	2/3	25.00	

Exhibitor agrees to play ten (10) pictures in percentage groups "A" and "B" out of 52 offered.

This contract to be in effect for the theatrical seasons of 1939-40, 1940-4 and 1941-42.

NOTE: Provisions regarding short subjects not included.

EXHIBIT NO. F-160

Distributor Twentieth Century-Fox Film Corporation by George Roberts

Season K-7, K-8 and K-9

Exhibitor Schine Ent. Corp. by Geo. V. Lynch

Theatre Rialto - Palace Lockport, N. Y.

Contract application date 6/7/39

Approval date 8/15/39

No. of pictures offered all

No. of Pictures Licensed all

Provisions, if any, re admission prices

Run and clearance provisions

30 days clearance on Newfane and Middleport. First run Lockport, N. Y.

Other typewritten or handwritten clauses including riders, if any,

Exchange - Buffalo
Date - 6/7/39
Salesman - Sydney Samson

List or summary of motion pictures licensed and rental terms

A.	6 Pictures	2		35%
B.	8 "	2		30%
C.	12 "	2	$100.00	
D.Remaining	"	2	49.25	

Exhibitor agrees to play fourteen (14) percentage pictures from the "A" and "B" groups out of the 52 offered.

This contract to be in effect for the theatrical seasons of 1939-40, 1940-41 and 1941-42.

NOTE: Provisions regarding short subjects not included.

EXHIBIT NO. F-161

Distributor Twentieth Century-Fox Film Corporation by George Roberts

Season K-7, K-8 and K-9

Exhibitor Schine Ent. Corp. by Geo. V. Lynch

Theatre Rialto or Hi-Art Lockport, New York

Contract application date 6/7/39

Approval date 8/15/39

No. of pictures offered all

No. of Pictures Licensed as above

Provisions, if any, re admission prices

Run and clearance provisions

Second run Lickport, New York. 60 days after first run. 60 days on third run.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Buffalo
Date - 6/7/39
Salesman - Sydney Samson

List or summary of motion pictures licensed and rental terms

A.	4 Pictures	2-3	$66.25
B.	8 "	2-3	51.25
C.	Remaining "	2-3	21.25

If any of the above photoplays play the Rialto or Hi-Art Theatres first r they are to be cancelled from this second run contract.

This contract in effect for the theatrical seasons of 1939-40, 1940-41 and 1941-42.

NOTE: Provisions regarding short subjects not included.

EXHIBIT NO. F-162

Distributor Twentieth Century-Fox Film Corporation by (illegible)

Season K-7, K-8 and K-9

Exhibitor Schine Enterprises Corporation by Geo. V. Lynch

Theatre Malone
Malone, N. Y.

Contract application date 6/9/39

Approval date

No. of pictures offered

No. of Pictures Licensed

Provisions, if any, re admission prices
Evenings: adults orchestra 40-30, balcony 25; children 10
Matinees: adults orchestra 30 ; children 10

Run and clearance provisions

1st. 30 days clearance over Chateaugay, Brushton and Fort Covington.
60 days clearance first run over second run.

Other typewritten or handwritten clauses including riders, if any.
Exchange - Albany
Date - 6/9/39
Salesman - H. Grassgreen

List or summary of motion pictures licensed and rental terms

A.	4	Pictures	2/3		35% of gross
B.	7	"	2/3		30% of gross
C.	20	"	2/3	$39.50	
D. Remaining		"	2/3	30.00	

Exhibitor agrees to play eleven (11) pictures in percentage groups "A" and "B" out of 52 offered.

This contract to be in effect for the theatrical seasons of 1939-40, 1940-41 and 1941-42.

NOTE: Provisions regarding short subjects not included.

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EXHIBIT NO. F-163

Distributor Twentieth Century-Fox Film Corporation

Season K-7, K-8 & K-9

Exhibitor Schine Enterprises Corporation by Geo. V. Lynch

Theatre Massena - Massena, N. Y.

Contract application date 6/9/39

Approval date

No. of pictures offered

No. of Pictures Licensed

Provisions, if any, re admission prices

Run and clearance provisions

1st. 30 days clearance over Norfolk. 60 days clearance over second-run Massena.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Albany
Date - 6/9/39
Salesman - M. Grassgreen

List or summary of motion pictures licensed and rental terms

A.	3	Pictures	2/3		35% of gross
B.	7	"	2/3		30% of gross
C.	2	"	2/3	$150.00	
D.	16	"	2/3	35.00	
E.	Remaining	"	2/3	20.00	

Exhibitor agrees to play ten (10) pictures in percentage groups "A" and " and two (2) "C" pictures out of 52 offered.

This contract to be in effect for the theatrical seasons of 1939-40, 1940-41 and 1941-42.

NOTE: Provisions regarding short subjects not included.

EXHIBIT NO. F-164

Distributor Twentieth Century-Fox Film Corporation by (illegible)

Season K-7, K-8 & K-9

Exhibitor Schine Enterprises Corporation by Geo. V. Lynch

Theatre Colonia - Norwich, N. Y.

Contract application date 6/9/39

Approval date

No. of pictures offered all

No. of Pictures Licensed all

Provisions, if any, re admission prices

Run and clearance provisions

1st. 30 days clearance over Oxford, Earlville, New Berlin, Sherburne and Mount Upton. 14 days clearance over Sidney. 60 days clearance over second-run Norwich. 14 days clearance over Greene.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Albany
Date - 6/9/39
Salesman - M. Grassgreen

List or summary of motion pictures licensed and rental terms

A.	4 Pictures	2/3	$377.50
B.	8 "	2/3	202.50
C.	12 "	2/3	52.50
D.	Remaining "	2/3	37.50

Exhibitor agrees to play twelve (12) pictures in "A" and "B" groups out of 52 offered.

This contract to be in effect for the theatrical seasons of 1939-40, 1940-41 and 1941-42.

NOTE: Provisions regarding short subjects not included.

EXHIBIT NO. F-165

Distributor Twentieth Century-Fox Film Corporation
by (illegible)

Season K-7, K-8 & K-9

Exhibitor Schine Enterprises Corporation
by Geo. V. Lynch

Theatre Strand or Pontiac
Ogdensburg, N. Y.

Contract application date 6/9/39

Approval date

No. of pictures offered all

No. of Pictures Licensed all

Provisions, if any, [illegible] admission prices

Run and clearance provisions
1st. 14 days clearance over Canton.. 30 days clearance over Norwood.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Albany
Date - 6/9/39
Salesman - M. Grassgreen

List or summary of motion pictures licensed and rental terms

A.	4 Pictures	2/3	$502.50
B.	8 "	2/3	187.50
C.	12 "	2/3	67.50
D.Remaining	"	2/3	47.50

Exhibitor agrees to play twelve (12) pictures in "A" and "B" groups out 52 offered.

This contract to be in effect for the theatrical seasons of 1939-40, 1940-41 and 1941-42.

NOTE: Provisions regarding short subjects not included.

EXHIBIT NO. F-166

Distributor Twentieth Century-Fox Film Corporation by (illegible)   Season K-7, K-8 & K-9

Exhibitor Schine Enterprises Corporation by Geo. V. Lynch   Theatre Oneonta or Palace, Oneonta, N. Y.

Contract application date 6/9/39   Approval date

No. of pictures offered   No. of Pictures Licensed

Provisions, if any, re admission prices

Run and clearance provisions

1st. 14 days clearance over Cooperstown and Worcester. 30 days clearance over Morris, Hartwick, Delhi, Cherry Valley and second-run Oneonta.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Albany
Date - 6/9/39
Salesman - M. Grassgreen

List or summary of motion pictures licensed and rental terms.

A.	5 Pictures	2/3		35% of gross
B.	7 "	2/3		30% of gross
C.	16 "	2/3	$73.00	
D.	Remaining "	2/3	43.00	

Exhibitor agrees to play twelve (12) pictures in percentage groups "A" and "B" out of 52 offered.

This contract to be in effect for the theatrical seasons of 1939-40, 1940-41 and 1941-42.

NOTE: Provisions regarding short subjects not included.

EXHIBIT NO. F-167

Distributor Twentieth Century-Fox
Film Corporation
by - illegible

Season K-7-8-9

Exhibitor Schine Enterprises Corporation
By Geo.V.Lynch

Theatre Palace, Oneonta, N.Y.

Contract application date 6/9/39

Approval date

No. of pictures offered All

No. of Pictures Licensed 10

Provisions, if any, re admission prices

Run and clearance provisions 2nd - 30 days after first-run Oneonta

Other typewritten or handwritten clauses including riders, if any.

Exchange - Albany
Date 6/9/39
Salesman - M.Grassgreen

This contract to be in effect for the theatrical seasons of 1939-40,1940-4
and 1941-42.

List or summary of motion pictures licensed and rental terms

A	10 Pictures	2/3	$52.50

EXHIBIT NO. P-168

Distributor Twentieth Century-Fox
Film Corporation
By George Roberts

Season K-7-8-9

Exhibitor Schine Ent.Corp.
Geo.V.Lynch

Theatre Auditorium, Perry,N.Y.

Contract application date Jun 7,1939

Approval date Aug.15,1939

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices

Run and clearance provisions

Other typewritten or handwritten clauses including riders, if any,

This contract to be in effect for the theatrical seasons of 1939-40, 1940-41 and 1941-42.

Exchange-Buffalo
Date Jun 7,1939
Salesman - Sydney Samson

List or summary of motion pictures licensed and rental terms

A	4 Pictures	2-3		35%
B	12 Pictures	2-3	$65.	
C	12 Pictures	2-3	40.	
D	Remaining Pictures	2-3	25.	

Exhibitor agrees to play eighteen (18) pictures from the "A" and "B" group out of the 52 offered.

Note: Provision regarding Short Subjects not included.

EXHIBIT NO. F-169

Distributor Twentieth Century Fox
Film Corporation
by George Roberts

Season K-8 and K-9

Exhibitor Schine Enterprises Corp.
by Geo.V.Lynch

Theatre Cameo, Rochester, New York

Contract application date 9/1/39

Approval date Feb. 29, 1940

No. of pictures offered All

No. of Pictures Licensed 46

Provisions, if any, re admission prices

Run and clearance provisions

14 days clearance on Lyric and Empress Theatres. Immediately after Madison and Monroe Theatres.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Buffalo
Date 9/1/39
Salesman - Sydney Samson

All conditions of Master Agreement to apply to this contract.
This contract to be in effect for the theatrical seasons of 1939-40, 1940-41 and 1941-42.

List or summary of motion pictures licensed and rental terms

A	4 Pictures	2-3	$100.
B	6 Pictures	2-3	75.
C	12 Pictures	2-3	45.
D	24 Pictures	2-3	27.50

EXHIBIT NO. F-170

Distributor Twentieth Century-Fox Film Corporation
by George Roberts

Season K-7-8-9

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Grand, Rochester, New York

Contract application date 9/1/39

Approval date Feb 29, 1940

No. of pictures offered All

No. of Pictures Licensed 46

Provisions, if any, re admission prices

Run and clearance provisions

Ahead of Family and Empire Theatres - as available.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Buffalo
Date 9/1/39
Salesman - Sydney Samson

This contract to be in effect for the theatrical seasons of 1939-40, 1940-41 and 1941-42.

All conditions of master agreement to apply.

List or summary of motion pictures licensed and rental terms

A	4	Pictures	2-3	$35.
B	6	Pictures	2-3	27.50
C	12	Pictures	2-3	22.50
D	24	Pictures	2-3	17.50

EXHIBIT NO. F-171

Distributor Twentieth Century-Fox
Film Corporation
by George Roberts

Season K-7-8-9

Exhibitor
Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Lake, Rochester, N.Y.

Contract application date 9/1/39

Approval date Feb. 29, 1940

No. of pictures offered all

No. of Pictures Licensed 46

Provisions, if any, re admission prices

Run and clearance provisions

Other typewritten or handwritten clauses including riders, if any.

Exchange - Buffalo
Date 9/1/39
Salesman - Sydney Samson

All conditions of Master Agreement to apply to this contract. This contract to be in effect for the theatrical seasons of 1939-40, 1940-41 and 1941-42.

List or summary of motion pictures licensed and rental terms

A	4	Pictures	2-3	$50.00
B	6	Pictures	2-3	40.00
C	12	Pictures	2-3	22.50
D	24	Pictures	2-3	15.00

EXHIBIT NO. F-172

Distributor Twentieth Century-Fox Film Corporation by George Roberts

Season K-7

Exhibitor Schine Enterprises Corp. by Geo.V.Lynch

Theatre West End, Rochester,New York

Contract application date 12/14/39

Approval date

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices

Run and clearance provisions Open booking with Arnett Theatre

Other typewritten or handwritten clauses including riders, if any,

Exchange - Buffalo
Date 12/14/39
Salesman Sydney Samson

All clauses in the master agreement to apply

t or summary of motion pictures licensed and rental terms

A	6	Pictures	2-4	$75.
B	6	Pictures	2-4	50.
C	18	Pictures	2-4	27.50
D		Remaining Pictures	2-4	20.00

EXHIBIT NO. F-173

Distributor Twentieth Century-Fox Film Corporation by George Roberts

Season K-7-8 & 9 (see letter agreement folde (dated 2/28/40)

Exhibitor Schine Enterprises Corp. by Geo. V. Lynch

Theatre State or Dixie, Rochester, N.Y.

Contract application date September 1, 1939

Approval date Feb. 29, 1940

No. of pictures offered All

No. of Pictures Licensed - 46

Provisions, if any, re admission prices

Run and clearance provisions Second run Rochester - Day and Date with Riviera or Liberty - 30 Days on Plaza

Other typewritten or handwritten clauses including riders, if any,

Exchange: Buffalo
Date: 9/1/39
Salesman: Sydney Samson

All conditions of Master Agreement to apply to this contract. This contract to be in effect for the theatrical seasons of 1939-40, 1940-41 and 1941-42.

List or summary of motion pictures licensed and rental terms

A	4	Pictures	2/3	$200.
B	6	Pictures	2/3	150.
C	12	Pictures	2/3	75.
D	24	Pictures	2/3	35.

EXHIBIT NO. F-174

Distributor Twentieth Century-Fox Film Corporation
by George Roberts

Season K-7-8-9

Exhibitor Schine Enterprises Corp.

Theatre State or Dixie, Rochester, New York

Contract application date 9/1/39

Approval date Feb. 29,1940

No. of pictures offered All

No. of Pictures Licensed 46

Provisions, if any, re admission prices

Run and clearance provisions Repeat run - 14 days on Plaza, Culver and Webster.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Buffalo   Date 9/1/39   Salesman: Sydney Samson

All conditions of Master Agreement to apply to this contract.
This contract to be in effect for the theatrical seasons of 1939-40, 1940-41 and 1941-42.

List or summary of motion pictures licensed and rental terms

A	4 Pictures	2/3	$100.
B	6 Pictures	2/3	65.
C	12 Pictures	2/3	40.
D	24 Pictures	2/3	25.

EXHIBIT NO. F-175

Distributor Twentieth Century-Fox Film Corporation by George Roberts

Season K-7

Exhibitor Schine Enterprises Corp. by Geo. V. Lynch

Theatre Madison, Rochester, N.Y.

Contract application date December 14, 1939

Approval date

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices

Run and clearance provisions

After Riviera, Liberty, State, Dixie and Capitol. 7 days ahead of other subsequent runs. 4 days ahead of the Webster Theatre.

Other typewritten or handwritten clauses including riders, if any.

Exchange: Buffalo
Date: 12/14/39
Salesman: Sydney Samson

All clauses in the Master Agreement to Apply

List or summary of motion pictures licensed and rental terms

A	6 Pictures	2-4	$150.
B	6 Pictures	2-4	100.
C	12 Pictures	2-4	50.
D	Remaining Pictures	2-4	37.50

EXHIBIT NO. F-176

Distributor Twentieth-Century-Fox
Film Corporation
by George Roberts

Season K-7-8-9

Exhibitor
Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Andrews,
Salamanca, N.Y.

Contract application date Jun 7, 1939

Approval date Aug. 16, 1939

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices

Run and clearance provisions

30 days on Little Valley, Randolph, Ellicottville and Franklinville. Open booking with Olean - First run Salamanca.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Buffalo Date June 7, 1939 Salesman Sydney Samson

This contract to be in effect for the theatrical seasons of 1939-40, 1940-41 and 1941-42.

List or summary of motion pictures licensed and rental terms

A	6	Pictures	2-3	$275.
B	8	Pictures	2-3	110.
C	12	Pictures	2	47.
D	Remainder		2	27.50

Exhibitor agrees to play fourteen (14) pictures from the "A" and "B" group out of the 52 offered.

Note: Provision regarding Short Subjects not included.

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EXHIBIT NO. F-177

Distributor Twentieth-Century-Fox Film Corporation by illegible

Season K-7-8 & 9

Exhibitor Schine Enterprises Corporation by Geo.V.Lynch

Theatre Pontiac, Saranac Lake, N.Y.

Contract application date 8/9/39

Approval date

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices

Run and clearance provisions

1st - 14 days clearance over Lake Placid excepting pictures released during period from Jan. 15 to Feb. 15 and June 15 to Sept. 15 when open booking is to prevail - 60 days clearance over Saranac Inn.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Albany   Date: 8/9/39   Salesman: M.Grassgreen

This contract to be in effect for the Theatrical Seasons 1939-40,1940-41 an
1941-42.

List or summary of motion pictures licensed and rental terms

A	5	Pictures	2/3		35% of gross
B	7	Pictures	2/3		30% of gross
C	2	Pictures	2/3	$90.00	
D	18	Pictures	2/3	42.50	
E	Remaining Pictures		2/3	32.50	

Exhibitor agrees to play twelve (12) pictures in percentage groups "A" and "B" and two (2) "C" pictures out of 52 offered.

Note: Provision regarding Short Subjects not included.

EXHIBIT NO. F 178

Distributor	Twentieth Century-Fox Film Corporation by George Roberts	Season	K-7-8-9
Exhibitor	Schine Ent. Corp. by Geo. V. Lynch	Theatre	Strand, Seneca Falls, N.Y.
Contract application date	Jun. 7, 1939	Approval date	Aug. 15, 1939
No. of pictures offered	All	No. of Pictures Licensed	All

Provisions, if any, re admission prices

Run and clearance provisions

30 days clearance on Waterloo - after Geneva - 120 clearance in Seneca Falls - first run Seneca Falls.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Buffalo
Date - Jun 7, 1939
Salesman - Sydney Samson

This contract to be in effect for the theatrical seasons of 1939-40, 1940-41 and 1941-42.

List or summary of motion pictures licensed and rental terms

A	4	Pictures	2-3	$110.
B	8	Pictures	2-3	85.
C	12	Pictures	2-3	35.
D	Remainder		2-3	25.

Exhibitor agrees to play twelve (12) pictures from the "A" and "B" group out of the 52 offered.

Note: Provision regarding Short Subjects not included.

EXHIBIT No. F-179

Distributor Twentieth Century-Fox
Film Corporation
by George Roberts

Season K-7-8-9

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Palace, Syracuse, N.Y.

Contract application date 9/1/39

Approval date

No. of pictures offered All

No. of Pictures Licensed 48

Provisions, if any, re admission prices

Run and clearance provisions

Ahead of East Syracuse - 30 days on James Theatre

Other typewritten or handwritten clauses including riders, if any.

Exchange - Buffalo Date - 9/1/39 Salesman - Sydney Samson

All conditions of Master Agreement to apply to this contract. This contract to be in effect for the Theatrical Seasons of 1939-40, 1940-41 and 1941-42.

List or summary of motion pictures licensed and rental terms

A	4	Pictures	2-3	$150.
B	10	Pictures	2-3	75.
C	12	Pictures	2-3	50.
D	22	Pictures	2-3	30.

EXHIBIT NO. F-180

Distributor Twentieth Century-Fox Film Corporation by - illegible

Season K-7,8-9

Exhibitor Schine Enterprises Corporation by Geo. V. Lynch

Theatre State, Tupper Lake, N.Y.

Contract application date June 9, 1939

Approval date

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices

Run and clearance provisions

1st - 60 days clearance over Faust.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Albany
Date 6/9/39
Salesman - M. Grassgreen
Exhibitor agrees to play twelve (12) pictures in "A" and "B" groups out of 52 offered.
This contract to be in effect for the theatrical seasons of 1939-40, 1940-41 and 1941-42.

List or summary of motion pictures licensed and rental terms

A	4	Pictures	2/3	$77.50
B	8	Pictures	2/3	52.50
C	16	Pictures	2/3	37.50
D	Remaining	Pictures	2/3	17.50

Note: Provision regarding Short Subjects not included.

EXHIBIT NO. F-181

Distributor Twentieth Century-Fox
Film Corporation
by - illegible

Season k-7, 8 and 9

Exhibitor Schine Enterprises Corporation
by Geo. V. Lynch

Theatre Avon or Olympic, Watertown, N.Y.

Contract application date 6/9/39

Approval date

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices

Run and clearance provisions

1st - 30 days clearance over Adams, Antwerp, Dexter, Philadelphia, Theresa, Sacketts Harbor - 60 days clearance over second-run Watertown.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Albany
Date 6/9/39
Salesman - M. Grassgreen

This contract to be in effect for the theatrical seasons of 1939-40, 1940-
and 1941-42

List or summary of motion pictures licensed and rental terms

A	5	Pictures	2/3	35% of gross
B	8	Pictures	2/3	30% of gross
C	14	Pictures	2/3 $123.00	
D	Remaining Pictures		2/3 63.00	

Exhibitor agrees to play thirteen (13) pictures in percentage groups "A" and "B" and fourteen (14) pictures in "C" group out of 52 offered.

Note: Provision regarding Short Subjects not included

EXHIBIT NO. F-182

Distributor Twentieth Century-Fox Film Corporation by - illegible

Season K-7-8-9

Exhibitor Schine Enterprises Corporation by Geo. V. Lynch

Theatre Olympic, Watertown, N.Y.

Contract application date 6/9/39

Approval date

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices

Run and clearance provisions

2nd - 60 days after first-run Watertown -- 60 days clearance over third-run Watertown.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Albany
Date 6/9/39
Salesman - M. Grassgreen

This contract to be in effect for the theatrical seasons of 1939-40, 1940-41, and 1941-42.

Any pictures playing Olympic or Palace theatres first run may be cancelled from this contract.

List or summary of motion pictures licensed and rental terms

A	4	Pictures	2/3	$67.50	(Olympic)
B	8	Pictures	2/3	47.50	(Olympic)
C		Remaining Pictures	2/3	22.50	(Olympic)

Exhibitor has option of playing pictures second run at the Palace Theatre (ie) those pictures playing first run at Olympic Theatre on the following basis:

3 days $22.50
2 " 17.50

Exhibitor agrees to play twelve (12) pictures in "A" and "B" groups out of 52 offered.

EXHIBIT NO. F-183

Distributor Twentieth Century-Fox Film Corporation by George Roberts

Season K-7-8-9

Exhibitor Schine Enterprises Corp. by Geo. V. Lynch

Theatre Opera House or Palace, Ashland, Ohio

Contract application date June 8, 1939

Approval date

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices

Run and clearance provisions

Seven (7) days after first run Mansfield, Ohio. Pictures to become available no later than thirty-five (35) days after date of availability for Mansfield.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Cleveland
Date June 8th, 1939
Salesman: I.J.Schm-rtz

This contract to be in effect for the theatrical seasons of 1939-40, 1940-41 and 1941-42.

List or summary of motion pictures licensed and rental terms

A	4	Pictures	2/3	35% of gross
B	10	Pictures	2/3	30% of gross
C	20	Pictures	2/3	$45.00 Flat Rental
D	Rem.	Pictures	2/3	$25.00 Flat Rental

Exhibitor agrees to play 14 pictures on percentage in "A" and "B" groups out of the 52 offered.

Note: Provision regarding Short Subjects not included.

EXHIBIT NO. F-184

Distributor Twentieth Century-Fox Film Corporation by George Roberts

Season k-7-8-9

Exhibitor Schine Enterprises Corp. by Geo. V. Lynch

Theatre Athena-Ohio-Court, Athens, Ohio

Contract application date June 6, 1939

Approval date Oct. 26, 1939

No. of pictures offered All

No. of Pictures Licensed ~~49~~ All

Provisions, if any, re admission prices

Run and clearance provisions

Clearance: The Distributor and Exhibitor agree to the following provision: (1) that no picture (feature) will be played in any other theatre in Athens County earlier than 30 days after National Release Date, excepting Nelsonville, O, which Exhibitor grants the Distributor the privilege of booking 14 days after Athens. (2) that the Distributor, upon notification of violation, will not serve any theatre in Athens County charging less than 15¢ adult admission including tax, earlier than 90 days after Nat'l Release Date.

Other typewritten or handwritten clauses including riders, if any

Exchange - Cincinnati
Date - June 6, 1939
Salesman - Home Office

This contract to be effective for the theatrical seasons 1939-40, 194--41 and 1941-42.

List or summary of motion pictures licensed and rental terms

A	5	Pictures	2/3		35%
B	9	Pictures	2/3		30%
C	2	Pictures	2/3	$100.00	Flat
D	6	Pictures	2/3	75.00	Flat
E	The remaining photoplays		2/3	50.00	Flat

Exhibitor has privilege of playing twelve (12) pictures from 'E' group at 2/3 days $35.00.

Exhibitor agrees to play fourteen (14) pictures listed in 'A' and 'B' groups out of fifty-two (52) offered.

Note: Provision regarding Short Subjects not included.

EXHIBIT NO. F-185

Distributor Twentieth Century-Fox Film Corporation by George Roberts

Season K-7-8-9

Exhibitor Schine Enterprises Corporation by Geo. V. Lynch

Theatre Holland, Bellefontaine, Ohio

Contract application date June 8, 1939

Approval date

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices

Run and clearance provisions

Thirty (30) days clearance over Lakeview, DeGraff and West Liberty, Ohio

Other typewritten or handwritten clauses including riders, if any.

Exchange - Cleveland
Date - June 8, 1939
Salesman - A. J. Schmertz

This contract to be in effect for the theatrical seasons of 1939-40, 1940-41 and 1941-42.

List or summary of motion pictures licensed and rental terms

A	3 Pictures	2/3	35% of gross
B	7 Pictures	2/3	30% of gross
C	2 Pictures	2/3	$117.50 Flat rental
D	8 Pictures	2/3	85.00 Flat rental
E	10 Pictures to be designated by Distributor	2/3	55.00 Flat rental
F	Rem. Pictures to be designated by Distributor	2/3	30.00 Flat rental

Exhibitor agrees to play ten (10) percentage pictures from "A" and "B" groups out of the 52 offered.

NOTE: Provision regarding Short Subjects not included.

EXHIBIT NO. F-186

Distributor Twentieth Century-Fox Film Corporation by George Roberts

Season K-7-8-9

Exhibitor Schine Enterprises Corp. by Geo. V. Lynch

Theatre Bucyrus, State or Southern, Bucyrus, Ohio

Contract application date June 8th, 1939

Approval date

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices

Run and clearance provisions

First run in Bucyrus, Ohio

Other typewritten or handwritten clauses including riders, if any.

Exchange - Cleveland
Date - June 8th 1939
Salesman - L. J. Schmertz

This contract to be in effect for the theatrical seasons of 1939-40, 1940-41 and 1941-42.

List or summary of motion pictures licensed and rental terms

A	5	Pictures	2/3	
B	6	Pictures	2/3	35% of gross
C	2	Pictures	2/3	30% of gross
D	18	Pictures	2/3	$100.00 Flat Rental
E	10	Pictures	2/3	37.50 Flat Rental
F	Rem	Pictures	2/3	30.00 Flat Rental
				17.50 Flat Rental

Exhibitor agrees to play eleven pictures on percentage in "A" and "B" groups out of 52 offered.

Note: Provision regarding Short Subjects not included.

EXHIBIT NO. F-137

Distributor Twentieth Century-Fox Film Corporation by George Roberts

Season K-7-8-9

Exhibitor Schine Enterprises Corp. by Geo. V. Lynch

Theatre Strand or Star, Delaware, Ohio

Contract application date June 8,1939

Approval date

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices

Run and clearance provisions

First run in Delaware, Ohio

Other typewritten or handwritten clauses including riders, if any.

Exchange - Cleveland
Date June 8th, 1939
Salesman I.J.Schmertz

This contract to be in effect for the theatrical seasons of 1939-40,1940-41 and 1941-42

List or summary of motion pictures licensed and rental terms

A	5 Pictures	2/3	35% of gross
B	9 Pictures	2/3	30% of gross
C	6 Pictures	2/3	$90.00 Flat Rental
D	8 Pictures	2/3	52.50 Flat Rental
E	10 Pictures	2/3	40.00 Flat Rental
F	Rem Pictures	2/3	22.50 Flat Rental

Exhibitor agrees to play fourteen (14) percentage pictures from "A" and "B" Groups out of the 52 offered.

Note: Provision regarding Short Subjects not included.

EXHIBIT NO. F-188

Distributor Twentieth Century-Fox Film Corporation by George Roberts

Season K-7-8-9

Exhibitor Schine Enterprises Corporation by Geo.V.Lynch

Theatre State, Civic, or Roxy, Fostoria, Ohio

Contract application date June 8th, 1939

Approval date

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices

Run and clearance provisions

First run in Fostoria, Ohio

Other typewritten or handwritten clauses including riders, if any.

Exchange - Cleveland
Date - June 8th, 1939
Salesman - I.J.Schmertz

This contract to be in effect for the theatrical seasons of 1939-40, 1940-41 and 1941-42.

List or summary of motion pictures licensed and rental terms

A	6	Pictures	2/3	35% of gross
B	10	Pictures	2/3	30% of gross
C	12	Pictures	2/3	25% of gross
D	Rem.	Pictures	2/3	$27.50 Flat rental

Exhibitor agrees to play 28 pictures on percentage in "A", "B" & "C" Groups out of 52 offered.

Note: Provision regarding Short Subjects not included.

EXHIBIT NO. F-189

Distributor Twentieth Century-Fox
Film Corporation
by George Roberts

Season K-7-8-9

Exhibitor Schine Enterprises Corp.
by Geo.V.Lynch

Theatre Kent or Ravenna,
Kent or Ravenna, Ohio

Contract application date June 8th, 1939

Approval date

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices

Run and clearance provisions

To become available fourteen (14) days after first run Akron,Ohio

Other typewritten or handwritten clauses including riders, if any.

Exchange - Cleveland
Date - June 8th, 1939
Salesman - I.J.Schmertz

This contract to be in effect for the Theatrical Seasons of 1939-40, 1940-41 and 1941-42.

List or summary of motion pictures licensed and rental terms

FIRST RUN

A	6	Pictures	2/3	35% of gross
B	10	Pictures	2/3	30% of gross
C	12	Pictures	2/3	25% of gross
D	6	Pictures	2/3	$52.00 Flat Rental
E	Rem.	Pictures	2/3	37.50 Flat Rental

Exhibitor agrees to play twenty eight (28) pictures on percentage in "A" "B" "C" groups out of the 52 offered.

Note: Provision regarding Short Subjects not included.

EXHIBIT NO. F-190

Distributor Twentieth Century-Fox Film Corporation by George Roberts

Season K-7-8-9

Exhibitor Schine Enterprises Corporation by Geo. V. Lynch

Theatre Kent or Ravenna, Kent or Ravenna, Ohio

Contract application date June 8th, 1939

Approval date

No. of pictures offered 40

No. of Pictures Licensed 40

Provisions, if any, re admission prices

Run and clearance provisions

Second run in Kent or Ravenna, Ohio. To follow first run Kent or Ravenna, Ohio

Other typewritten or handwritten clauses including riders, if any.

Exchange - Cleveland
Date - June 8, 1939
Salesman - I.J.Schmertz
This contract to be in effect for the theatrical seasons of 1939-40, 1940-41 and 1941-42.

List or summary of motion pictures licensed and rental terms

SECOND RUN

A	4	Pictures	2/3	35% of gross
B	4	Pictures	2/3	30% of gross
C	18	Pictures	2/3	$37.50 Flat Rental
D	14	Pictures	2/3	27.50 Flat Rental

Exhibitor agrees to play eight pictures on percentage in "A" & "B" groups out of the 40 offered.

EXHIBIT NO. F-191

Distributor Twentieth Century-Fox Film Corporation by George Roberts

Season K-7-8-9

Exhibitor Schine Enterprises Corporation by Geo. V. Lynch

Theatre Medina or Princess, Medina, Ohio

Contract application date October 10,1939

Approval date

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices

Run and clearance provisions

First run in Medina, Ohio

Other typewritten or handwritten clauses including riders, if any.

Exchange: Cleveland
Date: 10/10/39
Salesman: I.J.Schmertz
This contract to be in effect for the theatrical seasons of 1939-40,1940-4
and 1941-42.

List or summary of motion pictures licensed and rental terms

A	5	Pictures	2/3		35%
B	8	Pictures	2/3		30%
C	15	Pictures	2/3	$32.50	
D	Balance	Pictures	2/3	22.50	

Note: Provision regarding Short Subjects not included

EXHIBIT NO. F-192

Distributor Twentieth Century-Fox Film Corporation by George Roberts

Season K-7-8-9

Exhibitor Schine Enterprises Corp.

Theatre Vine, Lyric, or Vernon, Mt.Vernon, Ohio

Contract application date June 9th, 1939

Approval date

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices

Run and clearance provisions First run in Mt.Vernon, Ohio

Other typewritten or handwritten clauses including riders, if any.

Exchange - Cleveland
Date - June 9th, 1939
Salesman - I.J.Schmertz

This contract to be in effect for the theatrical seasons of 1939-40, 1940-41 and 1941-42.

List or summary of motion pictures licensed and rental terms

A	6	Pictures	2/3	35% of gross
B	10	Pictures	2/3	30% of gross
C	12	Pictures	1/2/3	25% of gross
D	Rem	Pictures	1/2/3	$25.00 Flat Rental

Exhibitor agrees to play 28 Pictures on Percentage in Groups A,B and C out of the 52 offered.

Note: Provision regarding Short Subjects not included.

EXHIBIT NO. F-194

Distributor Twentieth Century-Fox Film Corporation
byGeorge Roberts

Season K-7-8-9

Exhibitor Schine Enterprises Corporation
Geo. V. Lynch

Theatre Forum or Moose,
Norwalk, Ohio

Contract application date June 8,1939

Approval date

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices

Run and clearance provisions

First run in Norwalk, Ohio

Other typewritten or handwritten clauses including riders, if any.

Exchange - Cleveland
Date - June 8, 1939
Salesman - I.J.Schmertz

This contract to be in effect for the theatrical seasons of 1939-40,1940-41 and 1941-42.

List or summary of motion pictures licensed and rental terms

A	5	Pictures	2/3	35% of gross
B	9	Pictures	2/3	30% of gross
C	18	Pictures	2/3	$44.50 Flat rental
D	Rem.	Pictures	2/3	22.50 Flat rental

Exhibitor agrees to play Fourteen (14) percentage pictures from "A" and "B" groups, out of the 52 offered.

Note: Provision regarding Short Subjects not included.

EXHIBIT NO. F-195

Distributor Twentieth Century-Fox
Film Corporation
by George Roberts

Season K-7-8-9

Exhibitor Sphine Enterprises Corp.
by Geo. V. Lynch

Theatre Piqua or Miami, Piqua,Ohio

Contract application date June 6, 1939

Approval date Oct. 26, 1939

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices

Run and clearance provisions

Open booking with Troy,O. Piqua to receive same availability as Troy.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Cincinnati
Date - June 6, 1939
Salesman - Home Office

This contract to be effective for the theatrical seasons of 1939-40, 1940-41 and 1941-42.

List or summary of motion pictures licensed and rental terms

A	3	Pictures	2/3		35%
B	7	Pictures	2/3		30%
C	18	Pictures	2/3	$50.00	Flat
D	Remaining Photoplays		2/3	38.50	Flat

Exhibitor agrees to play ten (10) pictures listed in 'A' and 'B' groups out of Fifty-Two (52) offered.

Note: Provision regarding Short Subjects not included.

EXHIBIT NO. F-196

Distributor Twentieth Century-Fox
Film Corporation
by George Roberts

Season K-7-8-9

Exhibitor Schine Enterprises Corporation
by Geo. V. Lynch

Theatre Castamba, Shelby, Ohio

Contract application date June 8, 1939

Approval date

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices

Run and clearance provisions

Seven (7) days after first run Mansfield, Ohio. Pictures to become available no later than thirty-five (35) days after date of availability for Mansfield.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Cleveland
Date June 8, 1939
Salesman - I.J.Schmertz

This contract to be in effect for the theatrical seasons of 1939-40, 1940-41 and 1941-42.

List or summary of motion pictures licensed and rental terms

A	5	Pictures	3	35% of gross
B	8	Pictures	2/3	30% of gross
C	12	Pictures	2/3	$63.00 flat rental
D.	Rem,	Pictures	2/3	28.00 flat rental

Exhibitor agrees to play 13 percentage pictures in "A" and "B" groups out of 52 offered.

Note: Provision regarding Short Subjects not included.

EXHIBIT NO. F-197

Distributor Twentieth Century-Fox Film Corporation by George Roberts

Season K-7-8-9

Exhibitor Schine Enterprises Corp. by Geo. V. Lynch

*Theatre Ritz, Grand, or Tiffin, Tiffin, Ohio

Contract application date June 8, 1939

Approval date

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices

Run and clearance provisions

First run in Tiffin, Ohio

Other typewritten or handwritten clauses including riders, if any.

Exchange - Cleveland
Date - June 8, 1939
Salesman - I.J.Schmertz

This Contract to be in effect for the theatrical seasons of 1930-40, 1940-41 and 1941-42.

List or summary of motion pictures licensed and rental terms

A	4	Pictures	2/3	35% of gross
B	10	Pictures	2/3	30% of gross
C	6	Pictures	2/3	$77.50 Flat Rental
D	Rem.	Pictures	2/3	47.50 Flat Rental

Exhibitor has the privilege of playing twelve (12) pictures from the "D" group at $27.50.

Exhibitor agrees to play 14 percentage pictures in "A" and "B" groups out of 52 offered.

Note: Provision regarding Short Subjects not ncluded.

EXHIBIT NO. F-198

Distributor	Twentieth Century-Fox Film Corporation by George Roberts	**Season**	K-7-8-9
Exhibitor	Schine Enterprises Corporation by Geo. V. Lynch	**Theatre**	Van Wert or Strand, Van Wert, Ohio
Contract application date	June 8, 1939	**Approval date**	
No. of pictures offered	All	**No. of Pictures Licensed**	All

Provisions, if any, re admission prices

Run and clearance provisions First run in Van Wert, Ohio

Other typewritten or handwritten clauses including riders, if any,

Exchange - Cleveland
Date - June 8, 1939
Salesman - I. J. Schmertz

This contract to be in effect for the theatrical seasons of 1939-40, 1940-4
and 1941-42.

List or summary of motion pictures licensed and rental terms

A	5	Pictures	2/3	35% of gross
B	7	Pictures	2/3	30% of gross
C	2	Pictures	2/3	$78.00 Flat rental
D	25	Pictures	2/3	38.00 Flat rental
E	Remaining	Pictures	2/3	23.00 Flat rental

Exhibitor agrees to play twelve (12) percentage pictures in "A" and "B" groups out of the 52 offered.

Note: Provision regarding Short Subjects not included.

EXHIBIT NO. F-199

Distributor Twentieth Century-Fox
Film Corporation
by George Roberts

Season K-7-8-9

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Wooster or Wayne,
Wooster, Ohio

Contract application date June 8, 1939

Approval date

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices

Run and clearance provisions

Fourteen (14) days clearance over Orville and Rittman, Ohio, and Wadsworth

Other typewritten or handwritten clauses including riders, if any.

Exchange - Cleveland
Date - June 8, 1939
Salesman - I.J.Schmertz

This contract to be in effect for the theatrical seasons of 1939-40, 1940-41 and 1941-42.

List or summary of motion pictures licensed and rental terms

A	6	Pictures	2/3	35% of gross
B	10	Pictures	2/3	30% of gross
C	12	Pictures	2/3	25% of gross
D	Rem.	Pictures	2/3	$52.50 Flat Rental

Exhibitor has the privilege of playing ten (10) pictures from the "D" group at $32.50

Exhibitor agrees to play 28 Pictures on Percentage in Groups A, B, and C out of the 52 offered.

Note - Provision regarding Short Subjects not included.

EXHIBIT NO. F-200

Distributor Twentieth Century-Fox
Film Corporation
by Edgar Moss

Season K-8 & 9

Exhibitor Schine Enterprises Corp.
by Geo.V.Lynch

Theatre Strand,
Cumberland, Md.

Contract application date Oct. 25, 1940

Approval date March 24, 1941

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices
Evenings - adults, Orch.35 - 25 balcony; children .10
Matinees: adults Orch. 25 - 20 balcony: children .10

Run and clearance provisions
1st run Cumberland, Md. 90 days over Cumberland, Md. 30 days over any other theatre in Allegheney County. 14 days over Keyser & Piedmont, W.Va. To play at rate of 4 per month, starting Aug. 1940--as available.

Other typewritten or handwritten clauses including riders, if any.
Exchange - Washington,D.C.
Date: Oct. 25, 1940
Salesman: S.N.Wheeler

All provisions of the 1940-41 & 1941-42 exhibition contracts shall be deemed part of this agreement.

List or summary of motion pictures licensed and rental terms

A	6	Pictures	7	35% gross
B	10	Pictures	3/7	30% gross
C	12	Pictures	3/7	25% gross
D	Rem	Pictures	2/4	20% gross

DD:Exhibitor has privilege of playing "D" pictures with VAUDEVILLE
1 day $50.00 or 2/3 days $95.00

Note: Provision regarding Short Subjects not included.

EXHIBIT NO. F-201

Distributor Twentieth Century-Fox
Film Corporation
by - illegible

Season K-8 & K-9
Seasons 1940-41 - 1941-42

Exhibitor Schine Enterprises Corp.
by Geo.V.Lynch

Theatre Capitol, Ballston, N.Y.

Contract application date 9/17/40

Approval date

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Evenings: Adults,Orchestra .35: balcony .25: children.10
Matinees: Adults .20 - children .10

Run and clearance provisions 1st run - open booking

Other typewritten or handwritten clauses including riders, if any.

Exchange - Albany
Date - 9/17/40
Salesman - M.Grassgreen

"All provisions of the Standard 1940-41 and 1941-42 Exhibition Contracts shall be deemed part of this agreement."

List or summary of motion pictures licensed and rental terms

A	8	Pictures	2		35% of gross
B	8	Pictures	2	$40.00	
C	20	Pictures	1/2	25.00	
D	Remaining Pictures		1/2	15.00	

Note: Provision regarding Short Subjects not included.

EXHIBIT NO. F-202

Distributor Twentieth Century-Fox
Film Corporation
by -illegible

Season K-8-9
Seasons 1940-41 & 1941-42

Exhibitor Schine Enterprises Corp.
by Geo.V.Lynch

Theatre State, Mechanicville, N.Y.

Contract application date 9-17-40

Approval date Sep. 30,1940

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices
Evenings: Adults; orchestra .[illegible]5 balcony .25: children
Matinee: Adults .25 - children .10

Run and clearance provisions 1st run - open booking

Other typewritten or handwritten clauses including riders, if any.

Exchange - Albany
Date - 9/17/40
Salesman - M.Grassgreen

"All provisions of the Standard 1940-41 and 1941-42 Exhibition Contracts shall be deemed part of this agreement."

List or summary of motion pictures licensed and rental terms

A	8	Pictures	2		35% of gross
B	8	Pictures	2	$90.00	
C	20	Pictures	1/2	40.00	
D	Remaining Pictures		1/2	22.50	

Note: Provision regarding Short Subjects not included.

EXHIBIT NO. F-203

Distributor Twentieth Century-Fox Film Corporation
by - illegible

Season K-8-9
Seasons 1940-1 & 1941-2

Exhibitor Schine Enterprises Corp.
Geo.V.Lynch

Theatre Capitol, Whitehall, N.Y.

Contract application date 9/17/40

Approval date Sep. 30,1940

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices Evenings-Adults,Orchestra 35-Balcony 25-children 10
Matinees-Adults 25 - children 10

Run and clearance provisions 1st run - open booking.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Albany
Date 9/17/40
Salesman - M.Grassgreen

"All provisions of the Standard 1940-41 and 1941-42 Exhibition Contracts shall be deemed part of this agreement.

List or summary of motion pictures licensed and rental terms

A	8	Pictures	2		
B	8	Pictures	2	$40.00	35% of gross
C	20	Pictures	1/2	25.00	
D	Remaining Pictures		1/2	17.50	

Note: Provision regarding Short Subjects not included.

EXHIBIT NO. F-204

Distributor Twentieth Century-Fox
Film Corporation
by George Roberts

Season K-7

Exhibitor Schine Enterprises Corp.
by Geo. V.Lynch

Theatre Monroe,Rochester,N.Y.

Contract application date 12/14/39

Approval date

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices

Run and clearance provisions After Riviera, Liberty, State, Dixie and Capitol Theatres. 7 Days ahead of other subsequent runs. 4 days ahead of Webster Theatre.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Buffalo
Date - 12/14/39
Salesman - Sydney Samson

All clauses in the Master Agreement to apply.

List or summary of motion pictures licensed and rental terms

A	6	Pictures	2-4	$150.
B	6	Pictures	2-4	100.
C	12	Pictures	2-4	50.
D	Remaining Pictures		2-4	37.50

EXHIBIT NO. F-205

Distributor Twentieth Century-Fox
Film Corporation
by George Roberts

Season K-7-8-9

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Capitol, Newark, New York

Contract application date 6/7/39

Approval date Aug. 15, 1939

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices

Run and clearance provisions 30 days over Palmyra and Lyons. 14 days clearance over Clyde.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Buffalo
Date - 6/7/30
Salesman - Sydney Samson

This contract to be in effect for the theatrical seasons of 1939-40, 1940-41 and 1941-42.

List or summary of motion pictures licensed and rental terms

A	5 Pictures	2-3		35%
B	7 Pictures	2-3		30%
C	2 Pictures	2-3	$100.	
D	16 Pictures	2-3	46.	
E	Remaining Pictures	2-3	35.	

Exhibitor agrees to play fourteen (14) pictures from the "A", "B" and "C" groups out of the 52 offered.

Note: Provision regarding Short Subjects not included.

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EXHIBIT NO. F-206

Distributor Twentieth Century-Fox Film
Corporation
by George Roberts

Season K-8-A-9

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Capitol - Strand, Oswego, New Yor

Contract application date 6/7/39

Approval date

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices

Run and clearance provisions

60 days clearance on City of Oswego - First run Oswego, New York 14 days ahead of Fulton and Pulaski. 30 days ahead of Minetto.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Buffalo
Date 6/7/39
Salesman Sydney Samson

This contract to be in effect for the theatrical seasons of 1939-40, 1940-41 and 1941-42.

List or summary of motion pictures licensed and rental terms

A	6	Pictures	2		35%
B	10	Pictures	2		30%
C	12	Pictures	2		25%
D	Remaining Pictures		2	$55.	

Exhibitor may play 15 Group "D" pictures at the Capitol Theatre at 34.50.

Exhibitor agrees to play twenty eight (28) percentage pictures from the "A" "B" and "C" groups out of the 52 offered.

Note - Provision regarding Short Subjects not included.

EXHIBIT NO. F-207

Distributor Twentieth Century-Fox Film Corporation by George Roberts

Season K-7-8-9

Exhibitor Schine Ent.Corp. by Geo.V.Lynch

Theatre Capitol, Oswego, New York

Contract application date Jun 7, 1939

Approval date

No. of pictures offered All

No. of Pictures Licensed As above

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Provisions, if any, re admission prices

Run and clearance provisions

Second run Oswego - 60 days after first run - 60 days on third run.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Buffalo
Date - Jun 7, 1939
Salesman - Sydney Samson

This contract to be in effect for the theatrical seasons of 1939-40, 1940-41 and 1941-42.

List or summary of motion pictures licensed and rental terms

A	3 Pictures	2-3	$66.25
B	7 Pictures	2-3	51.25
C	Remaining Pictures	2-3	21.25

In any of the above pictures play the Capitol first run, they are to be cancelled from this second run contract.

EXHIBIT NO. F-208

Distributor Twentieth Century-Fox
Film Corporation
by George Roberts

Exhibitor Schine Ent. Corp.
Geo. V. Lynch

Contract application date Jun 7, 1939

Season E-7-8-9

Theatre Elmwood, Penn Yan, New York

Approval date Aug. 15, 1939

No. of pictures offered All

No. of Pictures Licensed All

Provisions, if any, re admission prices

Run and clearance provisions

30 days ahead of Dundee, New York

Other typewritten or handwritten clauses including riders, if any.

Exchange - Buffalo
Date - Jun 7, 1939
Salesman - SydneySamson

This contract to be in effect for the theatrical seasons of 1939-40, 1940-41 and 1941-42.

List or summary of motion pictures licensed and rental terms

A	5	Pictures	2-3		35%
B	12	Pictures	2-3	$115.	
C	12	Pictures	2-3	45.	
D	Remaining Pictures		2-3	37.	

Exhibitor agrees to play seventeen (17) pictures from the "A" and "B" groups out of the 52 offered.

Note - Provision regarding Short Subjects not included.

EXHIBIT NO. F-209

Distributor Twentieth Century-Fox Film Corporation by George Roberts — Season K-7-8-9

Exhibitor Schine Enterprises Corp. by Geo. V. Lynch — Theatre Margie Grand, Harlan, Ky.

Contract application date June 6, 1939 — Approval date

No. of pictures offered All — No. of Pictures Licensed All

Provisions, if any, re admission prices

Run and clearance provisions

Sixty (60) days clearance over subsequent runs.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Cincinnati
Date - June 6, 1939
Salesman - J. J.[illegible]Grady

This contract to be effective for the theatrical seasons 1939-40, 1940-41 and 1941-42.

List or summary of motion pictures licensed and rental terms

A	8	Pictures	2		35%
B	12	Pictures	1/2	$67.50	Flat
C	20	Pictures	1/2	37.50	Flat
D	Remaining Photoplays		1/2	22.50	Flat

Exhibitor agrees to play twenty (20) Pictures listed in "A" and "B" groups out of fifty-two (52) offered.

Note: Provision regarding Short Subjects not included.

EXHIBIT NO. F-210

Distributor Twentieth Century-Fox Film Corporation by Edgar Moss

Season K-8

Exhibitor Schine Enterprises Corp. by L. Goldstein

Theatre Hurlock, Hurlock, Md.

Contract application date Jan. 6,1941

Approval date Feb 7,1941

No. of pictures offered All

No. of Pictures Licensed 26

Provisions, if any, re admission prices Evenings: Adults - 25-15
children .10

Run and clearance provisions

1st run Hurlock, Md. 14 days after Federalsburg,Md. and Cambridge,Md. to play at rate of 3 per month as available.

Other typewritten or handwritten clauses including riders, if any.

All provisions of the standard 1940-41 exhibition contract shall be deemed part of this agreement.

Exchange: Washington, D.C.
Date: Jan. 6, 1941
Salesman - S.M.Wheeler

List or summary of motion pictures licensed and rental terms

A	8	Pictures	2	$15.00
B	18	Pictures	2	12.50

EXHIBIT NO. F-211

Distributor Twentieth Century-Fox
Film Corporation
by Edgar Moss

Season E-7

Exhibitor Schine Enterprises Corp.
by Geo. V. Lynch

Theatre Hurlock, Hurlock, Md.

Contract application date Nov. 30, 1939

Approval date Feb. 7, 1940

No. of pictures offered All

No. of Pictures Licensed 26

Provisions, if any, re admission prices. Evenings: adults 25-15
children 10

Run and clearance provisions

1st run Hurlock, Md. 14 days after Federalsburg, Md., and Cambridge, Md.
To play at rate of 2/3 per month, starting Dec. 1, 1939 - as available.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Washington, D.C.
Date - Nov. 30, 1939
Salesman - S.N. Wheeler

List or summary of motion pictures licensed and rental terms

A	8	Pictures	2	$17.50
B	18	Pictures	2	12.50

EXHIBIT NO. F-212

Distributor Twentieth Century-Fox
Film Corporation
by Edgar Moss

Season K-8

Exhibitor Schine Enterprises Corp.
L. Goldstein

Theatre Marada, St.Michaels,Md.

Contract application date Jan. 6,1941

Approval date Feb.7,1941

No. of pictures offered All

No. of Pictures Licensed 26

Provisions, if any, re admission prices Evening - adults 25-15 children 10

Run and clearance provisions

1st run St.Michaels,Md. 7 days after Easton,Md.

Other typewritten or handwritten clauses including riders, if any.

To play at rate of 3 per month, as available.

All provisions of the standard 1940-41 exhibition contract shall be deemed part of this agreement.

Exchange - Washington, D.C.
Date Jan. 6, 1941
Salesman - S.M.Wheeler

List or summary of motion pictures licensed and rental terms

A	8	Pictures -	2	$15.00
B	18	Pictures	2	12.50

Note: Provision regarding Short Subjects not included.

EXHIBIT NO. F-213

Distributor Twentieth Century-Fox Film Corporation by Edgar Moss

Season K-7

Exhibitor Schine Enterprises Corp. by Geo.V.Lynch

Theatre Marada, St. Michaels, Md.

Contract application date Nov.30,1939

Approval date Feb. 7, 1940

No. of pictures offered All

No. of Pictures Licensed 26

Provisions, if any, re admission prices Evenings: adults 25-15
children 10

Run and clearance provisions

1st run St.Michaels, Md. 7 days after Easton, Md. To play at rate 2/3 per month, starting Dec. 1, 1939 - as available.

Other typewritten or handwritten clauses including riders, if any.

Exchange - Washington, D.C.
Date - Nov.30,1939
Salesman - S.N.Wheeler

List or summary of motion pictures licensed and rental terms

A	8	Pictures	2	$22.50
B	8	Pictures	2	17.50
C	10	Pictures	2	12.50

Note- Provision regarding Short Subjects not included.

EXHIBIT NO. F-214

Distributor Twentieth Century-Fox Film Corporation by Edgar Moss

Season K-7:K-8:K-9

Exhibitor Schine Enterprises Corp. & Geo.V.Lynch

Theatre Waller, Laurel, Del.

Contract application date June 22,1939

Approval date Aug.10,1939

No. of pictures offered All

No. of Pictures Licensed 46

Provisions, if any, re admission prices

Run and clearance provisions 7 days after Seaford

Other typewritten or handwritten clauses including riders, if any.

Exchange - Washington,D.C.
Date - June 22, 1939
Salesman - S.N.Wheeler

This contract to be in effect for the theatrical seasons of 1939-40, 1940-41 and 1941-42.

56 picture comitment.

List or summary of motion pictures licensed and rental terms

A	8 Pictures	2-3	$38.00
B	18 Pictures	2-3	20.00
C	Remaining Pictures	2-3	12.50

Note: Provision regarding Short Subjects not included

EXHIBIT NO D-42

Distributor RKO Radio Pictures, Inc.

Season

Exhibitor R. T. Kemper

Theatre State or Opera House, Shelby, Ohio

Contract application date March 23, 1939

Approval date March 28, 1939

No. of pictures offered

No. of Pictures Licensed 15

Provisions, if any, re admission prices Matinee: Adults, Orchestra-15, Balcony-10, Children-10
Evenings: Adults, Orchestra-15, Balcony-10, Children-10

Run and clearance provisions First run in Shelby.

Other typewritten or handwritten clauses including riders, if any.

Branch-Cleveland, Ohio; Contract No. 273

Subjects to play at the rate of one per week starting April 15, 1939.

List or summary of motion pictures licensed and rental terms

4	Re-issues	2/3	20.00 Score Inc.
2		2/3	20.00 Score Inc.
4		2/3	12.50 Score Inc.
5		2/3	15.00 Score Inc.

EXHIBIT NO. D 47

Distributor Columbia **Season** 1935-36

Exhibitor Reliance Theatres, Inc. **Theatre** Palace, Lockport, New York

Contract application date February 27, 1935 **Approval date** March 1, 1935

No. of pictures offered 52 **No. of Pictures Licensed** 48

Provisions, if any, re admission prices

Run and clearance provisions

First run Lockport -- 30 days clearance

Other typewritten or handwritten clauses including riders, if any.

List or summary of motion pictures licensed and rental terms

No. Pict. Bought	Consec. No. Days Run	Inc. Sat. Sun.	License Fee or Minimum Guaranteed Rental	Score Fee Per Day	Special Terms
6	4		300.00		Against 40% of gross
6	4		250.00		Against 35% of gross
10	3-4		125.00		
10	3-4		100.00		
Balance	3-4		50.00		
8 westerns	2-3		50.00		

(Provisions concerning short subjects not included.)

EXHIBIT NO. D 48

Distributor Columbia **Season** 1934-35

Exhibitor Reliance Theatres, Inc. **Theatre** Palace, Lockport, New York

Contract application date February 27, 1935 **Approval date** March 1, 1935

No. of pictures offered 44 **No. of Pictures Licensed** 44

Provisions, if any, re admission prices Matinee: 15-20; evening: 20-25

Run and clearance provisions

First Run Lockport -- 30 days clearance

Other typewritten or handwritten clauses including riders, if any.

Seating capacity 1700

List or summary of motion pictures licensed and rental terms

No. Pict. Bought	Consec. No. Days Run	License Fee or Minimum Guaranteed Rental	Score Fee Per Day	Special Terms
4	4	250.00	NC	Against 35% of gross receipts
6	4	200.00	NC	Against 30% of gross receipts
10	3-4	125.00	NC	
10	3-4	100.00	NC	
8	3-4	50.00	NC	
6	2-3	40.00	NC	

(Provisions concerning short subjects not included)

EXHIBIT NO. D 49

Distributor Columbia

Season 1934-35

Exhibitor Reliance Theatres, Inc.

Theatre Palace, Lockport, New York

Contract application date March 12, 1934

Approval date March 14, 1934

No. of pictures offered

No. of Pictures Licensed

Provisions, if any, re admission prices
Matinee, 15; Evening, 10, 15, 20.

Run and clearance provisions
First run Lockport, New York.

Other typewritten or handwritten clauses including riders, if any.

Seating capacity 1700.

List or summary of motion pictures licensed and rental terms

	Consecutive No. Days run	Score Fee Per Day	License Fee or Minimum Guaranteed Rental
1 picture	2-3	none	30
9 pictures	2-3	none	25

EXHIBIT NO. D 69

Distributor United Artists **Season** 1933-34

Exhibitor Reliance Theatres, Inc. **Theatre** Palace, Lockport, New York

Contract application date January 27, 1934 **Approval date**

No. of pictures offered 1 **No. of Pictures Licensed**

Provisions, if any, re admission prices

Run and clearance provisions

Other typewritten or handwritten clauses including riders, if any.

List or summary of motion pictures licensed and rental terms

Flat rental, $50.00.

Consecutive number of days run: 2.

0

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EXHIBIT NO. D 69
(Covering extra day showing)

Distributor	United Artists	Season	1933-34
Exhibitor	Reliance Theatres, Inc.	Theatre	Palace, Lockport, New York
Contract application date	March 16, 1934	Approval date	
No. of pictures offered	1	No. of Pictures Licensed	

Provisions, if any, re admission prices

Run and clearance provisions

Other typewritten or handwritten clauses including riders, if any.

Extra day.

List or summary of motion pictures licensed and rental terms

Flat rental, $25.00.

EXHIBIT NO. D 70

Distributor United Artists

Season 1933-34

Exhibitor Reliance Theatres, Inc.

Theatre Palace, Lockport, New York

Contract application date January 27, 1934

Approval date

No. of pictures offered 1

No. of Pictures Licensed

Provisions, if any, re admission prices

Run and clearance provisions

Other typewritten or handwritten clauses including riders, if any.

List or summary of motion pictures licensed and rental terms

Flat rental, $50.00.

Consecutive number of days run, 2.

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EXHIBIT NO. D 71

Distributor United Artists

Season 1933-34

Exhibitor Reliance Theatres, Inc.

Theatre Palace, Lockport, New York

Contract application date January 27, 1934

Approval date

No. of pictures offered 1

No. of Pictures Licensed

Provisions, if any, re admission prices

Run and clearance provisions

Other typewritten or handwritten clauses including riders, if any.

List or summary of motion pictures licensed and rental terms

Flat rental, $50.00.

Consecutive number of days run: 2.

EXHIBIT NO. D 72

Distributor United Artists Season 1933-34

Exhibitor Reliance Theatres, Inc. Theatre Palace, Lockport, New York

Contract application date January 27, 1934 Approval date

No. of pictures offered 1 No. of Pictures Licensed

Provisions, if any, re admission prices

Run and clearance provisions

Other typewritten or handwritten clauses including riders, if any.

List or summary of motion pictures licensed and rental terms

-Flat rental, $50.00.

Consecutive days run: 2.

EXHIBIT NO. D 72

Distributor United Artists **Season** 1933-34

Exhibitor Reliance Theatres, Inc. **Theatre** Palace, Lockport, New York

Contract application date March 13, 1934 **Approval date**

No. of pictures offered 1 **No. of Pictures Licensed**

Provisions, if any, re admission prices

Run and clearance provisions

Other typewritten or handwritten clauses including riders, if any.

Additional day's rental.

List or summary of motion pictures licensed and rental terms

Flat rental, $25.00.

EXHIBIT NO. D 73

Distributor United Artists **Season** 1933-34.

Exhibitor Reliance Theatres, Inc.. **Theatre** Palace, Lockport, New York

Contract application date January 27, 1934 **Approval date**

No. of pictures offered 1 **No. of Pictures Licensed**

Provisions, if any, re admission prices

Run and clearance provisions

Other typewritten or handwritten clauses including riders, if any.

List or summary of motion pictures licensed and rental terms

Consec. number of days run: 2

Flat rental, $50.00,

6157

EXHIBIT NO. D 74

Distributor United Artists | Season 1933-34

Exhibitor Reliance Theatres, Inc. | Theatre Palace, Lockport, New York

Contract application date January 27, 1934 | Approval date

No. of pictures offered | No. of Pictures Licensed

Provisions, if any, re admission prices

Run and clearance provisions

First.

Other typewritten or handwritten clauses including riders, if any.

List or summary of motion pictures licensed and rental terms

Consecutive number of days run: 2.

Flat rental, $50.00.

6158

EXHIBIT NO. D 74

(Additional day rental)

Distributor United Artists **Season** 1933-34

Exhibitor Reliance Theatres, Inc. **Theatre** Palace, Lockport, New York

Contract application date February 28, 1934. **Approval date**

No. of pictures offered 18 **No. of Pictures Licensed**

Provisions, if any, re admission prices

Run and clearance provisions

Other typewritten or handwritten clauses including riders, if any.

List or summary of motion pictures licensed and rental terms

Consecutive number of days run: 1.

Flat rental: $25.00.

6159

EXHIBIT NO. D 75

Distributor United Artists

Season 1933-34

Exhibitor Reliance Theatres, Inc.

Theatre Palace, Lockport, New York

Contract application date February 16, 1934.

Approval date

No. of pictures offered 1

No. of Pictures Licensed

Provisions, if any, re admission prices

Run and clearance provisions

Other typewritten or handwritten clauses including riders, if any.

List or summary of motion pictures licensed and rental terms

Consecutive number of days run: 3.

Flat rental, $50.00.

EXHIBIT NO. D 76

Distributor United Artists Season 1933-34

Exhibitor Reliance Theatres, Inc. Theatre Palace, Lockport, New York

Contract application date February 16, 1934 Approval date

No. of pictures offered 1 No. of Pictures Licensed

Provisions, if any, re admission prices

Run and clearance provisions

Other typewritten or handwritten clauses including riders, if any.

List or summary of motion pictures licensed and rental terms

Consecutive number of days run: 2.

Flat rental, $35.00.

EXHIBIT NO. D 77

Distributor United Artists **Season** 1933-34

Exhibitor Reliance Theatres, Inc. **Theatre** Palace, Lockport, New York

Contract application date February 16,1934 **Approval date**

No. of pictures offered 1 **No. of Pictures Licensed**

Provisions, if any, re admission prices

Run and clearance provisions

Other typewritten or handwritten clauses including riders, if any.

List or summary of motion pictures licensed and rental terms

Consecutive days run: 2

Flat rental: $35.00

EXHIBIT NO. D 78

Distributor United Artists **Season** 1933-34

Exhibitor Reliance Theatres, Inc. **Theatre** Palace, "ockport, "ew York

Contract application date May 7, 1934 **Approval date**

No. of pictures offered 1 **No. of Pictures Licensed**

Provisions, if any, re admission prices

Run and clearance provisions

Other typewritten or handwritten clauses including riders, if any.

List or summary of motion pictures licensed and rental terms

Consecutive number of days run: 3

30% of gross receipts

6163

EXHIBIT NO. D 79

Distributor United Artists **Season** 1933-34

Exhibitor Reliance Theatres, Inc. **Theatre** Palace, Lockport, New York

Contract application date February 26, 1934 **Approval date**

No. of pictures offered **No. of Pictures Licensed**

Provisions, if any, re admission prices

Run and clearance provisions

Other typewritten or handwritten claus [illegible] ders, if any.

List or summary of motion pictures licensed and rental terms

Consecutive number of days run: 2

Flat rental, $50.00

EXHIBIT NO. D 79
(Additional days rental)

Distributor	United Artists	Season	1933-34
Exhibitor	Reliance Theatres, Inc.	Theatre	Palace, Lockport, New York
Contract application date	March 15, 1934	Approval date	
No. of pictures offered	1	No. of Pictures Licensed	

Provisions, if any, re admission prices

Run and clearance provisions

Other typewritten or handwritten clauses including riders, if any.

Additional days rental.

List or summary of motion pictures licensed and rental terms

Flat rental, $50.00

EXHIBIT NO. D 80

Distributor	United Artists	Season	1933-34
Exhibitor	Reliance Theatres, Inc.	Theatre	Palace, Lockport, New York
Contract application date	June 9, 1934	Approval date	
No. of pictures offered	1	No. of Pictures Licensed	

Provisions, if any, re admission prices

After 5 p.m., adults, 25 cents; children, 10 cents.

Run and clearance provisions

First run.

Other typewritten or handwritten clauses including riders, if any.

List or summary of motion pictures licensed and rental terms

Consecutive dates or days - 3/4

Flat rental, $100.00

EXHIBIT NO. D 81

Distributor United Artists

Season 1933-34

Exhibitor Reliance Theatres, Inc.

Theatre Palace, Lockport, New York

Contract application date July 28, 1934

Approval date

No. of pictures offered 1

No. of Pictures Licensed

Provisions, if any, re admission prices

Matinee, adults, 20, 25; children, 10 - After 5 p.m., adults, 20, 30; children, 10

Run and clearance provisions

First run

Other typewritten or handwritten clauses including riders, if any.

List or summary of motion pictures licensed and rental terms.

Consecutive dates or days: 3

Distributor to receive 30% of the gross receipts

EXHIBIT NO. D 81

(Additional day)

Distributor	United Artists	**Season**	1933-34
Exhibitor	Reliance Theatres, Inc.	**Theatre**	Palace, Lockport, New York
Contract application date	March 30, 1934	**Approval date**	
No. of pictures offered	1	**No. of Pictures licensed**	

Provisions, if any, re admission prices

Run and clearance provisions

First run.

Other typewritten or handwritten clauses including riders, if any.

Additional day.

List or summary of motion pictures licensed and rental terms

Consecutive number of days run: 1

Flat rental, $25.00

6168

EXHIBIT NO. D 82

Distributor Fundus Distributing Corp. **Season** 1934-35

Exhibitor Reliance Theatres, Inc. **Theatre** Palace, Lockport, New York

Contract application date December 15, 1934 **Approval date**

No. of pictures offered 5 **No. of Pictures Licensed**

Provisions, if any, re admission prices
After 5 p.m., adults, 25; children, 10

Run and clearance provisions

First

Other typewritten or handwritten clauses including riders, if any.

List or summary of motion pictures licensed and rental terms

	License Fee	No. of Consec. Days
3 pictures	35.00	3
2 pictures	25.00	2

EXHIBIT NO. D 83

Distributor Mundus Distributing Corp. **Season** 1934-35

Exhibitor Reliance Theatres, Inc. **Theatre**

Contract application date March 20, 1935 **Approval date**

No. of pictures offered 2 **No. of Pictures Licensed**

Provisions, if any, re admission prices

Run and clearance provisions

Other typewritten or handwritten clauses including riders, if any.

List or summary of motion pictures licensed and rental terms

	License Fee	Score Fee	No. of Consec. Days
2 pictures	10.00	Inc.	1

6170

EXHIBIT NO. D 84

Distributor United Artists **Season** 1934-35

Exhibitor Reliance Theatres, Inc. **Theatre** Palace, Lockport, New York

Contract application date April 22, 1935 **Approval date**

No. of pictures offered 1 **No. of Pictures Licensed**

Provisions, if any, re admission prices

Run and clearance provisions

First

Other typewritten or handwritten clauses including riders, if any.

List or summary of motion pictures licensed and rental terms

Consecutive dates or days: 3

Percentage: 25% of gross receipts

6171

EXHIBIT NO. D 85

Distributor United Artists **Season** 1934-35

Exhibitor Reliance Theatres, Inc. **Theatre** Palace, Lockport, New York

Contract application date April 22, 1935 **Approval date**

No. of pictures offered 1 **No. of Pictures Licensed**

Provisions, if any, re admission prices

Run and clearance provisions

1st

Other typewritten or handwritten clauses including riders, if any.

List or summary of motion pictures licensed and rental terms

Consecutive number of days: 3

Flat rental, $75.00

EXHIBIT NO. D 86

Distributor United Artists **Season** 1934-35

Exhibitor Reliance Theatres, Inc. **Theatre** Palace, Lockport, New York

Contract application date April 22, 1935 **Approval date**

No. of pictures offered 1 **No. of Pictures Licensed**

Provisions, if any, re admission prices

Run and clearance provisions

First

Other typewritten or handwritten clauses including riders, if any.

List or summary of motion pictures licensed and rental terms

Consecutive dates or days: 3

Flat rental, $50.00

EXHIBIT NO. D 87

Distributor United Artists **Season** 1934-35

Exhibitor Reliance Theatres, Inc. **Theatre** Palace, Lockport, New York

Contract application date April 22, 1935 **Approval date**

No. of pictures offered 1 **No. of Pictures Licensed**

Provisions, if any, re admission prices

Run and clearance provisions

First

Other typewritten or handwritten clauses including riders, if any.

List or summary of motion pictures licensed and rental terms

Consecutive dates or days: 3

Percentage: 25% gross receipts

6174

EXHIBIT NO. D 88

Distributor United Artists **Season** 1934-35

Exhibitor Reliance Theatres, Inc. **Theatre** Palace, Lockport, New York

Contract application date April , 1935 **Approval date**

No. of pictures offered 1 **No. of Pictures Licensed**

Provisions, if any, re admission prices

Run and clearance provisions

First

Other typewritten or handwritten clauses including riders, if any.

List or summary of motion pictures licensed and rental terms

Consecutive dates or days: 3-4 days including Sunday

Percentage: 30% of gross receipts

EXHIBIT NO. D 89

Distributor United Artists **Season** 1934-35

Exhibitor Reliance Theatres, Inc. **Theatre** Palace, Lockport, New York

Contract application date April 22, 1935 **Approved date**

No. of pictures offered 1 **No. of Pictures Licensed**

Provisions, if any, re admission prices

Run and clearance provisions

First

Other typewritten or handwritten clauses including riders, if any.

List or summary of motion pictures licensed and rental terms

Consecutive dates or days: 3-4 days including Sunday

Percentage: 30% gross receipts

EXHIBIT NO. D 90

Distributor United Artists **Season** 1934-35

Exhibitor Reliance Theatres, Inc. **Theatre** Palace, Lockport, New York

Contract application date April 22, 1935 **Approval date**

No. of pictures offered 1 **No. of Pictures Licensed**

Provisions, if any, re admission prices

Run and clearance provisions

First

Other typewritten or handwritten clauses including riders, if any.

List or summary of motion pictures licensed and rental terms

Consecutive dates or days: 3-4 days including Sunday

Percentage: 30% gross receipts

EXHIBIT NO. D 91

Distributor United Artists **Season** 1934-35

Exhibitor Reliance Theatres, Inc. **Theatre** Palace, Lockport, New York

Contract application date April 22, 1935 **Approval date**

No. of pictures offered 1 **No. of Pictures Licensed**

Provisions, if any, re admission prices

Run and clearance provisions

First

Other typewritten or handwritten clauses including riders, if any.

List or summary of motion pictures licensed and rental terms

Consecutive dates or days: 3-4 days including Sunday

Percentage: 30% of gross receipts

EXHIBIT NO. D 92

Distributor United Artists **Season** 1934-35

Exhibitor Reliance Theatres, Inc. **Theatre** Palace, Lockport, New York

Contract application date April 22, 1935 **Approval date**

No. of pictures offered 1 **No. of Pictures Licensed**

Provisions, if any, re admission prices

Run and clearance provisions

First

Other typewritten or handwritten clauses including riders, if any.

List or summary of motion pictures licensed and rental terms

Consecutive dates or days: 3

Percentage: 30% of gross receipts

6179

EXHIBIT NO. D 93

Distributor United Artists

Season 1934-35

Exhibitor Reliance Theatres, Inc.

Theatre Palace, Lockport, New York

Contract application date May 11, 1935

Approval date

No. of pictures offered 1

No. of Pictures Licensed

Provisions, if any, re admission prices

Run and clearance provisions

Other typewritten or handwritten clauses including riders, if any.

List or summary of motion pictures licensed and rental terms

Consecutive dates or days: 3

Flat rental, $50.00

EXHIBIT NO. D 94

Distributor United Artists **Season** 1934-35

Exhibitor Reliance Theatres, Inc. **Theatre** Palace, Lockport, New York

Contract application date May 14, 1935 **Approval date**

No. of pictures offered 1 **No. of Pictures Licensed**

Provisions, if any, re admission prices

Run and clearance provisions

Other typewritten or handwritten clauses including riders, if any.

List or summary of motion pictures licensed and rental terms

Consecutive dates or days: 4 including Saturday and Sunday

Percentage: 35% of gross receipts

EXHIBIT NO. D 95

Distributor United Artists **Season** 1934-35

Exhibitor Reliance Theatres, Inc. **Theatre** Palace, Lockport, New York

Contract application date May 14, 1935 **Approval date**

No. of pictures offered 1 **No. of Pictures Licensed**

Provisions, if any, re admission prices

After 5 p.m., adults, 25; children, 10

Run and clearance provisions.

Other typewritten or handwritten clauses including riders, if any.

List or summary of motion pictures licensed and rental terms

Consecutive dates or days: 5

Percentage: 40% gross receipts

EXHIBIT NO. D 96

Distributor United Artists **Season** 1934-35

Exhibitor Reliance Theatres, Inc. **Theatre** Palace, Lockport, New York

Contract application date April 22, 1935 **Approval date**

No. of pictures offered 1 **No. of Pictures Licensed**

Provisions, if any, re admission prices

Run and clearance provisions

First

"

Other typewritten or handwritten clauses including riders, if any.

List or summary of motion pictures licensed and rental terms

Consecutive dates or days: 3/4 days including Saturday or Sunday

Percentage: 25% gross receipts

EXHIBIT NO. D 97

Distributor United Artists **Season** 1933-34

Exhibitor Reliance Theatres, Inc. **Theatre** Palace, Lockport, New York

Contract application date April 5, 1934 **Approval date**

No. of pictures offered 1 **No. of Pictures Licensed**

Provisions, if any, re admission prices

Run and clearance provisions

Other typewritten or handwritten clauses including riders, if any.

List or summary of motion pictures licensed and rental terms

Consecutive number of days run: 2

Flat rental: $35.00

EXHIBIT NO. D 98

Distributor United Artists

Season 1934-35

Exhibitor Reliance Theatres, Inc.

Theatre Palace, Lockport, New York

Contract application date May 11, 1935

Approval date

No. of pictures offered 1

No. of Pictures Licensed

Provisions, if any, re admission prices

Run and clearance provisions

Other typewritten or handwritten clauses including riders, if any,

List or summary of motion pictures licensed and rental terms

Consecutive dates or days: 3

Flat rental: $75.00

EXHIBIT NO. D 99

Distributor United Artists **Season** 1934-35

Exhibitor Reliance Theatres, Inc. **Theatre** Palace, Lockport, New York

Contract application date May 11, 1935 **Approval date**

No. of pictures offered 1 **No. of Pictures Licensed**

Provisions, if any, re admission prices
After 5 p.m., adults, 25; children, 10

Run and clearance provisions

Other typewritten or handwritten clauses including riders, if any.

List or summary of motion pictures licensed and rental terms

Consecutive dates or days: 4, including Saturday or Sunday

Percentage: 30% gross receipts

EXHIBIT NO. D 100

Distributor United Artists

Season 1935-36

Exhibitor Reliance Theatres, Inc.

Theatre Palace, Lockport, New York

Contract application date October 23, 1935

Approval date

No. of pictures offered 1

No. of Pictures Licensed

Provisions, if any, re admission prices

Run and clearance provisions

First

Other typewritten or handwritten clauses including riders, if any.

List or summary of motion pictures licensed and rental terms

Consecutive dates or days: 3-4

Flat rental, $50.00

EXHIBIT NO. D 101

Distributor United Artists **Season** 1934-35

Exhibitor Reliance Theatres, Inc. **Theatre** Palace, Lockport, New York

Contract application date October 23, 1935 **Approval date**

No. of pictures offered 1 **No. of Pictures Licensed**

Provisions, if any, re admission prices

Run and clearance provisions

First

Other typewritten or handwritten clauses including riders, if any.

List or summary of motion pictures licensed and rental terms

Consecutive dates or days: 3-4

Flat rental, $40.00

EXHIBIT NO. D 102

Distributor United Artists **Season** 1934-35

Exhibitor Reliance Theatres, Inc. **Theatre** Palace, Lockport, New York

Contract application date May 11, 1935 **Approval date**

No. of pictures offered 1 **No. of Pictures Licensed**

Provisions, if any, re admission prices

After 5 p.m., adults, 25; children, 10

Run and clearance provisions

Other typewritten or handwritten clauses including riders, if any,

List or summary of motion pictures licensed and rental terms

Consecutive dates or days: 4, including Saturday or Sunday

Percentage: 30% of gross

6189

EXHIBIT NO. D 103

Distributor United Artists **Season** 1935-36

Exhibitor Reliance Theatres, Inc. **Theatre** Palace, Lockport, New York

Contract application date December 27, 1935 **Approval date**

No. of pictures offered 1 **No. of Pictures Licensed**

Provisions, if any, re admission prices
After 5 p.m., adults, 25; children, 10

Run and clearance provisions
First

Other typewritten or handwritten clauses including riders, if any.

List or summary of motion pictures licensed and rental terms

Consecutive dates or days: 4, including Saturday or Sunday

Percentage: 30% gross receipts

EXHIBIT NO. D 104

Distributor United Artists **Season** 1934-35

Exhibitor Reliance Theatres, Inc. **Theatre** Palace, Lockport, New York

Contract application date May 11, 1935. **Approval date** .

No. of pictures offered 1 **No. of Pictures Licensed**

Provisions, if any, re admission prices

After 5 p.m., adults, 25; children, 10

Run and clearance provisions

Other typewritten or handwritten clauses including riders, if any.

List or summary of motion pictures licensed and rental terms

Consecutive dates or days: 4

Percentage: 30% gross

6191

EXHIBIT NO. D 105

Distributor United Artists **Season** 1936-37

Exhibitor Reliance Theatres, Inc. **Theatre** Palace, Lockport, New York

Contract application date September 21, 1936 **Approval date**

No. of pictures offered 2 **No. of Pictures Licensed**

Provisions, if any, re admission prices

Run and clearance provisions

First

Other typewritten or handwritten clauses including riders, if any.

List or summary of motion pictures licensed and rental terms

Consecutive days run: 2-3

Flat license fee: $50.00 (each picture)

EXHIBIT NO. D 106

Distributor United Artists

Season 1935-36

Exhibitor Reliance Theatres, Inc.

Theatre Palace, Lockport, New York

Contract application date September 28, 1936

Approval date

No. of pictures offered 1

No. of Pictures Licensed

Provisions, if any, re admission prices

Run and clearance provisions

First

Other typewritten or handwritten clauses including riders, if any.

List or summary of motion pictures licensed and rental terms

Consecutive days run: 3-4

Flat license fee: $50.00

EXHIBIT NO. D 107

Distributor United Artists **Season** 1933-34

Exhibitor Reliance Theatres, Inc. **Theatre** Palace, Lockport, New York

Contract application date April 5, 1934 **Approval date**

No. of pictures offered 1 **No. of Pictures Licensed**

Provisions, if any, re admission prices

Run and clearance provisions

Other typewritten or handwritten clauses including riders, if any.

List or summary of motion pictures licensed and rental terms

Consecutive number of days run:, 2

1st rental: 35.00

EXHIBIT NO. D-110

Distributor Paramount Pictures Distributing Corp.

Season S-5

Exhibitor Reliance Theatres, Inc. by Peter Grafiades, Pres.

Theatre Palace, Lockport, N. Y.

Contract application date July 27, 1934

Approval date

No. of pictures offered

No. of Pictures Licensed 3

Provisions, if any, re admission prices Evenings: Adults, Orchestra-25, Balcony-15, Children-10
Matinee: Adults,-15, Children-10

Run and clearance provisions First run.

Other typewritten or handwritten clauses including riders, if any.

Exchange-Buffalo, N. Y; Zone-2, Salesman- N. L. Sper.

List or summary of motion pictures licensed and rental terms

3 2-3 $125. $2.50 per day.

6195

EXHIBIT NO. D-111

Distributor Paramount Pictures Distributing Corp.

Season S-4

Exhibitor Reliance Theatres, Inc. by Peter Grafiades, Pres.

Theatre Palace, Lockport, N. Y.

Contract application date April 23, 1934

Approval date

No. of pictures offered

No. of Pictures Licensed 5

Provisions, if any, re admission prices Evenings: Adults, Orchestra-25, Balcony-15, Children-10
Matinees: Adults, 15, Children-10

Run and clearance provisions

Other typewritten or handwritten clauses including riders, if any.

Exchange-Buffalo, N. Y.; Zone-2; Salesman-N. L. Sper.

List or summary of motion pictures licensed and rental terms

1	3	$75.00	Ag. 30% gross	$5.00
4	2-3	35.00		5.00

EXHIBIT NO. D-117

Distributor RKO Radio Pictures, Inc.

Season

Exhibitor Syracuse Community
Theatre Corporation
by H. P. Wallace

Theatre Strand, Syracuse, N Y.

Contract application date October 3, 1941

Approval date October 7, 1941
by Ned E. Depinet

No. of pictures offered

No. of Pictures Licensed

Provisions, if any, re admission prices
Matinee: Adults-20, Children-15
Evening: Adults-25, Children-15

Run and clearance provisions
Saturday run-Syracuse, N. Y.
As available.

Other typewritten or handwritten clauses including riders, if any.
Branch-Buffalo #4; Contract No. 818

List or summary of motion pictures licensed and rental terms

2	3/4	$80.00
3	3/4	50.00

EXHIBIT NO. D-118

Distributor RKO Radio Pictures, Inc.

Season

Exhibitor Syracuse Community Theatre Corporation by H. P. Wallace

Theatre Strand, Syracuse, N. Y.

Contract application date October 3,1941

Approval date October 7, 1941 by Ned E. Depinet

No. of pictures offered

No. of Pictures Licensed 1

Provisions, if any, re admission prices Matinee: Adults-20, Children-15
Evenimg: Adults-20, Children-15

Run and clearance provisions Saturday run-Syracuse, N. Y.
As available.

Other typewritten or handwritten clauses including riders, if any.
Branch-Buffalo, N. Y.; Contract No. 817

List or summary of motion pictures licensed and rental terms

Convoy	3/4	$60.00

EXHIBIT NO. D 123

Distributor Columbia Season 1934-35

Exhibitor Auburn Capitol Theatre Corp. Theatre Capitol, Auburn, New York

Contract application date Februar 2[illegible], 1935 Approval date March 4, 1935

No. of pictures offered 47 No. of Pictures Licensed 47

Provisions, if any, re admission prices
Matinee: 10, 15, evening: 10, 20

Run and clearance provisions

First run Auburn -- 30 days clearance

Other typewritten or handwritten clauses including riders, if any.

Seating capacity 850

List or summary of motion pictures licensed and rental terms

	Consec. No. Days Run	Inc. Sat. Sun.	License Fee or Minimum Guaranteed Rental	Score fee per day	Special Terms
4 pictures	4-7	Sat & Sun.	300.00	n.c.	Against 40% gross receipts
6 pictures		Sat. & Sun.	200.00	n.c.	Against 30% gross receipts
20 pictures	3-4		112.50	n.c.	
17 pictures	3-4		50.00	n.c.	

(Provisions concerning short subjects not included)

EXHIBIT NO. D 124

Distributor	Columbia	**Season**	1935-36
Exhibitor	Auburn Capitol Theatre Corp.	**Theatre**	Capitol
Contract application date	February 28, 1935	**Approval date**	March 4, 1935
No. of pictures offered	52	**No. of Pictures Licensed**	52

Provisions, if any, re admission prices

Matinee, 10, 15; evening, 10,20

Run and clearance provisions

First run Auburn -- 30 days clearnace

Other typewritten or handwritten clauses including riders, if any.

Seating capacity 850.

List or summary of motion pictures licensed and rental terms

No. Pict. Bought	Consec. No. Days Run	Score Fee Per Day	License Fee or Minimum Guaranteed Rental	Special Terms
6	4-7 (Sat.-Sun.)	n.c.	400.00	Against 40% of gross
6	4-7 (Sat.-Sun.)	n.c.	300.00	Against 35% of gross
10	3-4	n.c.	125.00	
10	3-4	n.c.	112.50	
Balance	3-4	n.c.	75.00	
8 westerns	3-4	n.c.	60.00	

(Provisions concerning short subjects not included)

EXHIBIT NO. D 125

Distributor Columbia **Season** 1937-38

Exhibitor Auburn Capitol Theatre Corp. **Theatre** Capitol

Contract application date June 17, 1937 **Approval date** June 24, 1937

No. of pictures offered

No. of Pictures Licensed

Provisions, if any, re admission prices

Matinee: adults, 15, children, 10; Evening, adults, 20, children, 10

Run and clearance provisions

First run Auburn
14 days clearance on Weedsport, Skaneateles, Moravia and Seneca Falls

Other typewritten or handwritten clauses including riders, if any.

Seating capacity 850

List or summary of motion pictures licensed and rental terms

No. Pict. Bought	Consec. No. Days Run	Inc. Sat. Sun.	License Fee or Minimum Guaranteed Rental Per Picture	Score Fee Per Day	Special Terms
6	4-7	Sat. & Sun.	500.00	n.c.	Against 40% of gross
8	4-7	Sat.orSun.	300.00	n.c.	Against 35% of gross
12	3-4		125.00	n.c.	
7	3-4		112.50	n.c.	
7	3-4		75.00	n.c.	
8 westerns	3-4		60.00	n.c.	
8 westerns	3-4		50.00	n.c.	

(Provisions concerning short subjects not included)

6201

EXHIBIT NO. D 126

Distributor Columbia **Season** 1938-39

Exhibitor Auburn Capitol Theatre Corp. **Theatre** Capitol

Contract application date June 17, 1937 **Approved date** June 24, 1937

No. of pictures offered

No. of Pictures Licensed

Provisions, if any, re admission prices

Matinee: adults, 15, children, 10; evening, adults, 20, children, 10

Run and clearance provisions

First run Auburn
14 days clearance on Weedsport, Skaneateles, Moravia and Seneca Falls

Other typewritten or handwritten clauses including riders, if any.

Seating capacity 850

List or summary of motion pictures licensed and rental terms

No. Pict. Bought	Consec. No. Days Run	Inc. Sat. Sund.	Score Fee Per Day	License Fee or Minimum Guaranteed Rental Per Picture	Special Terms
6	4-7	Sat. & Sun	n.c.	500.00	Against 40% of gross
8	4-7	Sat. or Sun	n.c.	300.00	Against 35% of gross
12	3-4		n.c.	125.00	
7	3-4		n.c.	112.50	
7	3-4	n	n.c.	75.00	
8 westerns	3-4		n.c.	60.00	
8 westerns	3-4		n.c.	50.00	

(Provisions concerning short subjects not included)

8691

6202

EXHIBIT NO. D 127

Distributor Columbia Season 1939-40

Exhibitor Auburn Capitol Theatre Corp. Theatre Capitol

Contract application date June 17, 1937 Approval date June 24, 1937

No. of pictures offered No. of Pictures Licensed

Provisions, if any, re admission prices

Matinee, adults, 15, children, 10; evening, adults, 20, children, 10

Run and clearance provisions

First run Auburn
14 days clearance on Weedsport, Skaneateles, Moravia

Other typewritten or handwritten clauses including riders, if any.

Seating capcaity 850

List or summary of motion pictures licensed and rental terms

No. Pict. Bought	Consec. No. Days Run	Inc. Sat. Sun.	Score Fee Per Day	License Fee or Minimum Guaranteed rental Per Picture	Special Terms
6	4-7	Sat. & Sun	n.c.	500.00	Against 40% of gross
8	4-7	Sat. or Sun	n.c.	300.00	Against 35% of gross
12	3-4		n.c.	125.00	
7	3-4		n.c.	112.50	
7	3-4		n.c.	75.00	
8 weste-ns	3-4		n.c.	60.00	
8 "	3-4		n.c.	50.00	

(Provisions concerning short subjects and serials not included)

8692

EXHIBIT NO. D 128

Distributor Columbia **Season** 1936-37

Exhibitor Auburn Capitol Theatre Corp. **Theatre** Capitol

Contract application date April 15, 1936 **Approved date** April 21, 1936

No. of pictures offered 56 **No. of Pictures Licensed** 56

Provisions, if any, re admission prices

Matinee, adults, 15, children, 10; evening, adults, 20, children, 15

Run and clearance provisions.

First run Auburn - Day and Date first run Syracuse - 14 days clearance on Weedsport, Skaneateles, Moravia and Seneca Falls

Other typewritten or handwritten clauses including riders, if any.

Seating capacity 850

List or summary of motion pictures licensed and rental terms

No. Pict. Bought	Consec. No. Days Run	Inc. Sat. Sun.	License Fee or Minimum Guaranteed Rental Per Picture	Score Fee Per Day	Special Terms
2	4-7	Sat. or Sun.	500.00	n.c.	Against 40% of gros
4	4-7	Sat. or Sund	400.00	n.c.	Against 40% of gros
6	4-7	Sat. or Sun	300.00	n.c.	Against 35% of gros
10	3-4		125.00	n.c.	
10	3-4		112.50	n.c.	
8	3-4		75.00	n.c.	
8 westerns	3-4		60.00	n.c.	
8 westerns	3-4		50.00	n.c.	

(Provisions concerning short subjects not included)

EXHIBIT NO. D 129
Consists of 3 contract forms and "Amendment" (dated 7/2/41)
(1st page)

Distributor Columbia **Season** 1940-41

Exhibitor Auburn Capitol Theatre Corp. **Theatre** Capitol

Contract application date December 17, 1940 **Approval date** December 23, 1940

No. of pictures offered

No. of Pictures Licensed

Provisions, if any, re admission prices Matinee: adults, 15¢, children 10¢
Evening: adults, 20¢, children 10¢

Run and clearance provisions

First run Auburn
14 days clearance Weedsport, Skaneateles, Moravia

Other typewritten or handwritten clauses including riders, if any.

Seating capacity 850.

List or summary of motion pictures licensed and rental terms

No. Pict. Bought	Consec. No. Days Run	Inc. Sat. Sun.	License Fee or Minimu Guaranteed Rental Per Picture	Special Terms
2	4-7	Sat.or Sun.	400.00	Against 40% of gross
4	4-7	Sat.or Sun.	400.00	Against 35% of gross
6	4-7	Sat.or Sun.	200.00	Against 30% of gross
8	3-4		125.00	
12	3-4		75.00	
12	3-4		45.00	
8 westerns	3-4		40.00	
8 westerns	3-4		30.00	

Exhibit No. D 129

(2nd page)

Contract for four (4) serial motion pictures

dated December 17, 1940.

EXHIBIT NO. D 129
(third page)

Distributor Columbia **Season** 1941-42

Exhibitor Auburn Capitol Theatre Corp. **Theatre** Capitol

Contract application date December 29, 1941 **Approval date** December 23, 1940

No. of pictures offered **No. of Pictures Licensed**

Provisions, if any, re admission prices Matinee: adults, 15¢, children, 10¢
Evening: adults, 20¢, children, 10¢

Run and clearance provisions

First run Auburn
14 days clearance Weedsport, Skaneateles, Moravia

Other typewritten or handwritten clauses including riders, if any.

Seating capacity 850.

List or summary of motion pictures licensed and rental terms

No. Pict. Bought	Consec. No. Days Run	Inc. Sat. Sun.	License Fee or Minimum Guaranteed Rental Per Picture	Special Terms
2	4-7	Sat.orSun.	400.00	Against 40% of gross
4	4-7	Sat.orSun.	400.00	Against 35% of gross
8	4-7	Sat.orSun.	200.00	Against 30% of gross
10	3-4		125.00	
12	3-4		75.00	
12	3-4		45.00	
8 westerns	3-4		40.00	
8 westerns	3-4		30.00	

Exhibit No. D 129

(Fourth page)

AMENDMENT TO CONTRACTS 1940-41; 1941-42

This amendment specifically refers to a group of contracts entered into on December 18, 1940 covering features, serials andvarious short subjects. It now appears that the productions for the 1941-42 season have been increased from forty-four to forty-eight pictures. It is the desire of Columbia Pictures Corporation to re-allocate this contract to be more in conformity with their production schedule and general sales policy, therefore; IT IS AGREED BETWEEN COLUMBIA PICTURES CORPORATION and theAUBURN CAPITOL THEATRE CORPORATION that the contracts referred to above, be amended with particular reference to features, as follows:

8 Features @ $200.00 each against 30% of the gross
10 Features @ $125.00 each flat rental

This to supersede that part of the contract which reads:

6 Features @ $200.00 each against 30% of the gross
8 Features @ $125.00 flat rental

To which we mutually agreed this second day of July 1941.

AUBURN CAPITOL THEATRE CORP.
BY H.P. WALLACE, Treas (s/d)
COLUMBIA PICTURES CORP.
BY PHIL FOX (s/d)

EXHIBIT NO. D 140

Distributor RKO **Season** 1937-38

Exhibitor Smalley Chain Theatres, Inc. **Theatre** Smalley's, Norwich, New York

Contract application date September 7, 1937 **Approval date** September 9, 1937

No. of pictures offered 28 **No. of Pictures Licensed** 28

Provisions, if any, re admission prices

Matinee: Adults, orchestra, 20, balcony, 20; children, orchestra, 10, balcony, 10;
Evening: Adults, orchestra, 25, balcony, 25; children, orchestra, 10, balcony, 10

Run and clearance provisions

Other typewritten or handwritten clauses including riders, if any.

Exhibitor agrees to use allpictures rejected by Schine, not to exceed thirty-four (34) pictures, or to be less than twenty-eight (28) pictures, if distributor produces fifty-four features as scheduled.

For every O'Brien picture that the exhibitor plays in Smalley's Theatre, the distributor agrees to reduce the feature commitment under this contract accordingly.

List or summary of motion pictures licensed and rental terms

Terms to be 20% for all said features, with 5% off if double featured.

2-3 days.

EXHIBIT NO. D 141

Distributor Columbia **Season** 1935-36

Exhibitor Wm. C. Smalley **Theatre** Smalley, Norwich, New York

Contract application date August 12, 1935 **Approval date** August 21, 1935

No. of pictures offered 52 **No. of Pictures Licensed** 52

Provisions, if any, re admission prices

Matinee, 15, 20; evening, 25; 35

Run and clearance provisions

First run.

Other typewritten or handwritten clauses including riders, if any.

It is agreed and understood between both parties that Columbia Pictures Corporation shall have the privilege of withdrawing one-half of the fifty-two pictures from this contract, sold to Wm.C.Smalley of the Smalley's Theatre, Norwich, New York, this date. It is also understood and agreed that the one-half of the product which shall be withdrawn will be determined by Mr. Wm.C.Smalley of the Smalley Theatre, Norwich, arranging two even splits of the product, and the opposition theatre, which may buy the other one-half of the split, shall have the privilege of selecting which split they wish to buy, or the opposition theatre may arrange the split and Mr. Wm.C.Smalley of the Smalley Theatre, Norwich, New York will have the privilege of selecting which one-half of the product they shall retain.

List or summary of motion pictures licensed and rental terms

No. Pict. Bought	Consec. No. Days Run	Inc. Sat. Sun.	License Fee or Minimum Guaranteed Rental	Score Fee Per Day
6	2-3		100.00	n.c.
6	2-3		60.00	n.c.
12	2-3		37.50	n.c.
16	2-3		25.00	n.c.
12 Western Features	2-3		25.00	n.c.

(Provisions regarding short subjects not included.

EXHIBIT NO. D-142

Distributor Columbia **Season** 1936-37

Exhibitor Wm. C. Smalley **Theatre** Smalley, Norwich, New York

Contract application date April 29, 1937 **Approval date** May 6, 1937

No. of pictures offered **No. of Pictures Licensed**

Provisions, if any, re admission prices

Matinee, adults, 35, children, 10; Evening, adults, 35, children, 10.

Run and clearance provisions

First run only on pictures rejected by the Colonial.
Exhibitor has the privilege of playing any second run picture at the same price as listed above and same is to be applied against the first run commitment.

Other typewritten or handwritten clauses including riders, if any.

Following stamp appears on contract:

SMALLEY (written)
CIRCUIT

List or summary of motion pictures licensed and rental terms

20 pictures; 2-3 days run; license fee or minimum guaranteed rental per picture, $25.00; no score charges

8 westerns, 2-3 days, $25.00; no score charges

(Provisions concerning short subjects not included)

D-
EXHIBIT No. 147

Distributor Columbia Pictures Corp.
by J. Miller

Season 1940-41

Exhibitor
Smalley Theatres, Inc.
by H. J. Johnson

Theatre Smalley's, Norwich, N. Y.

Contract application date December 17, 1940

Approval date December 20, 1940
by Rube Jackter

No. of pictures offered

No. of Pictures Licensed 10

Provisions, if any, re admission prices
Matinee: Adults-25, Children-10
Evening: Adults-25, Children-10

Run and clearance provisions
First run pictures rejected by Colonia Theatre

Other typewritten or handwritten clauses including riders, if any.

Branch-Albany; Salesman- J. Miller; Contract No. 975

List or summary of motion pictures licensed and rental terms

10 2-3 $25.00
First run pictures rejected by Glonia Theatre.

EXHIBIT NO. D 118 A

Distributor Warner Bros. & First National **Season** 1935-36

Exhibitor The State Buoyrus Co. **Theatre** State, Buoyrus, Ohio

Contract application date **Approval date**

No. of pictures offered 60 **No. of Pictures Licensed** 60

Provisions, if any, re admission prices

Evenings: Adults: Orchestra, 20, Balcony--, Children, 10;
Matinees: Adults: Orchestra, 15, Balcony--, Children, 10.

Run and clearance provisions

First run Bucyrus

Other typewritten or handwritten clauses including riders, if any.

List or summary of motion pictures licensed and rental terms

No. Pict. Bought	Consec. No. Days Run	Film Rental Guarantee	Additional sharing terms
1	4	150.00	Against 50%
2	4	150.00	Against 35%
6	3-4	75.00	Against 30%
4	3-4	45.00	Against 25%
11	3-4	30.00	
5	3-4	25.00	
4	2-3	20.00	

Exhibit No. D 148-D

Distributor: Warner Bros. and First National Season: 1935-36

Exhibitor: The State Bucyrus Co. Theatre: State, Bucyrus, Ohio

Contract application date: Approval date: Sept. 5, 1935

No. of pictures offered: 60 No. of Pictures Licensed: 60

Provisions, if any re admission prices: Evenings: adults, 20, children, 10
Matinees: adults, 15, children, 10

Run and clearance provisions: First run Bucyrus - one per week, Oct.1, 1935

Other typewritten or handwritten clauses including riders, if any:

List or summary of motion pictures licensed and rental terms:

Warner Bros.

No. Pict. Bought	Consec. No. Days Run	Guarantee	Additional Sharing Terms	Score Rentals
1	4	$ 150.00	against 30%	$3.00
1	4	150.00	against 35%	
1	3-4	75.00	against 30%	
1	3-4	75.00	against 30%	
1	3-4	75.00	against 30%	
1	3-4	45.00	against 25%	
1	3-4	45.00	against 25%	
11	3-4	30.00		
5	3-4	25.00		
4	2-3	20.00		
3 westerns	2-3	20.00		

(Provisions regarding trailer rentals omitted)

First National

No. Pict. Bought	Consec. No. Days Run	Guarantee	Additional Sharing Terms	Score Rentals
1	4	$ 150.00	against 35%	$3.00
1	3-4	75.00	against 30%	
1	3-4	75.00	against 30%	
1	3-4	75.00	against 30%	
1	3-4	75.00	against 30%	
1	3-4	45.00	against 25%	
1	3-4	45.00	against 25%	
11	3-4	30.00		
5	3-4	25.00		
4	2-3	20.00		
3 westerns	2-3	20.00		

(Provisions regarding trailer rentals omitted)

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No. 572 10

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CHARLES ELMORE CROPLEY
CLERK

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Dup. Ct.

United States District Court

WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
Plaintiff,
against
SCHINE CHAIN THEATRES, INC., *et al.*,
Defendants.

Civil No. 223
Appeal No. 2

Jurisdictional Statement

(Under Rule 12, Paragraph 1 of the Revised Rules of the Supreme Court of the United States)

This is an appeal from an order of the United States District Court for the Western District of New York entered on July 5, 1946 and designated "Order Setting Forth Plan Effectuating Judgment."

The jurisdiction of the Supreme Court of the United States of the appeal in the above entitled case is based on section 238 of the Judicial Code as amended by the Act of February 13, 1925, 43 Stat. 936, 938, 28 U. S. Section 345, incorporating section 2 of the Act of February 11, 1903, 32 Stat. 823, 15 U. S. C. Section 29, as follows:—

Title 28, Section 345: A direct review by the Supreme Court of an interlocutory or final judgment or decree of a district court may be had where it is so provided in the following sections and not otherwise: (1) Section 29 of Title 15. . . .

Title 15, Section 29: In every suit in equity brought in any district court of the United States under Sections 1-7 of this title, wherein the United States is complainant, an appeal from the final decree of the district court will lie only to the Supreme Court and must be taken within sixty days from the entry thereof.

The above entitled civil action is a complaint by the United States under section 4 of the Act of Congress of July 2, 1890, 26 Stat. 203, entitled an act to protect trade and commerce against unlawful restraints and monopolies, against nine defendants, alleging violations by them of sections 1 and 2 of said Act.

Said sections 4, 1 and 2 are included within sections 1-7 of the aforesaid title 15.

Judgment was originally entered herein on November 1, 1945. On November 8, 1945, the Court entered a supplementary judgment to suspend the operation of the judgment entered November 1, 1945 until December 7, 1945. On that day the defendants filed a motion in the District Court pursuant to Rule 62(b) and (c) of the Rules of Civil Procedure to stay the execution of or any proceeding to enforce any judgment or decree or order effective or presumably effective herein pending final determination of defendants' motion pursuant to Rule 52(b) *infra*. Said Motion expressly stated that the defendants did not by making the motion admit that any judgment or decree then was or could become effective against them until final determination of their motion under Rule 52(b). At the request of the plaintiff, and with consent of the defendants, the Court postponed the hearing of said motion until February 4, 1946.

On November 8, 1945, on motion and consent of both parties, the Court entered an order extending the time in which any of the parties might move to amend the Court's findings or to make additional findings, or to amend the judgment to December 7, 1945.

On November 10, 1945, the defendants filed a motion pursuant to Rule 52(b) of the Rules of Civil Procedure, to amend the Court's findings of fact and conclusions of law, to make additional findings and conclusions of law, and to amend the judgment accordingly. This motion sought a reconsideration of certain basic findings of fact and the alteration of the conclusions of the Court. It was not addressed to mere matters of form, but raised questions of substance.

This motion tolled the time to appeal, *United States* v. *Crescent Amusement Co.,* 323 U. S. 173, 177.

As so decided, the allowance of an appeal before the decision of that motion would have been premature and the sixty days limited by the aforesaid section 29 would not expire, at the earliest, until sixty days after the decision of the aforesaid motion to amend. An application within the sixty days aforesaid is timely and can be allowed effectively either before or after the expiration of the sixty days, *Matton Co.* v. *Murphy,* 319 U. S. 412, 414.

On or about February 1, 1946 the plaintiff filed a motion, pursuant to Rule 52(b) of the Rules of Civil Procedure, to amend the Court's findings of fact and conclusions of law, and the judgment. This motion, together with the defendants' motion under Rule(52), was heard by the Court on February 25, 1946, and on March 11, 1946 the Court filed its opinion and decision granting and denying in part each of said motions.

On March 29, 1946 the Court filed amended findings of fact and conclusions of law as indicated in said opinion and decision, and concurrently therewith the Court filed an amended judgment.

On February 25, 1946, the plaintiff filed its "Plan Of Reorganization of the Schine Circuit Proposed by Plaintiff and Memorandum in Support Thereof". On April 1, 1946, the defendants filed their "Defendants' Objections To Plaintiff's So-called Plan of Reorganization", in which they claimed, among other things, that the consideration of any plan was premature.

On April 16, 1946, the defendants filed their notice of appeal and petition for allowance thereof from the judgment entered on or about the 1st day of November, 1945 and the amended judgment entered on March 29, 1945. Said appeal was duly allowed by order dated April 17, 1946 and the District Court duly issued its citation dated April 17, 1946, returnable within forty days thereafter. The time to docket said appeal and file the record thereof with the Clerk of the United States Supreme Court has been enlarged and extended by orders made pursuant to Paragraph 1, Rule 11 of the Revised Rules of the Supreme Court, until the 30th day of September, 1946.

On April 16, 1946, the defendants moved the court to stay all proceedings under the second and third sentences of Paragraph III of the judgment dated November 1, 1945, on the ground that said sentences had been eliminated from said paragraph by the amended judgment dated March 29, 1946.

On May 28, 1946, the defendants filed "Defendants' Proposals Regarding Re-alignment of the Schine Circuit", expressly reserving all objections theretofore made with respect to the formulation, adoption or approval at any time prior to the determination of their pending appeal in this case by the Supreme Court, of any plan for the dissolution, reorganization or re-alignment of the Circuit. At the same time, to wit, on May 28, 1946, and again reserving all rights to claim that any further order of the District Court with respect to the performance of paragraph III of the amended judgment, prior to the determination of the appeal herein by the Supreme Court of the United States, is premature, the defendants moved the Court for an order decreeing that, prior to the approval or adoption by the Court of any method of compliance with Paragraph III of the amended judgment, hearings be held at which testimony might be taken pertinent and necessary to the method of compliance with Paragraph III of the said judgment, and of plans submitted by the respective parties or any amendments or modifications thereof.

On or about May 31, 1946, the plaintiff filed in the District Court a statement pursuant to Rule 12, Paragraph 3, of the Revised Rules of the Supreme Court of the United States entitled, "Statement of the United States Opposing Jurisdiction of the Supreme Court and Motion To Dismiss Or Affirm." In and by the said statement the plaintiff claimed that the appeal theretofore taken by the defendants and allowed on April 17, 1946 was premature. Within twenty days thereafter the defendants filed in the office of the Clerk of the Supreme Court of the United States, their "Brief in Opposition to Motion by Appellee to Dismiss or Affirm." Said motion is now pending undetermined.

On June 7, 1946, defendants filed in the District Court a motion for a stay of all proceedings in connection with the consideration, approval or enforcement of any plan or plans of dissolution, reorganization or re-alignment, said stay to continue until the determination by the Supreme Court of the United States of plaintiff's motion to dismiss defendant-appellants' appeal and in the event of the denial by the Supreme Court of said motion, to continue until the final disposition by the Supreme Court of said appeal. Said motion was heard by the District Court on June 17, 1946.

On June 2[illegible], 1946, the Court, by separate orders entered on that day, denied defendants' motion to take further testimony and also denied defendants' motion for a stay.

On July 5, 1946, the Court handed down an opinion or decision approving the general features of the plan of divestiture theretofore submitted by the plaintiff and concurrently therewith entered an order purporting to be an "order setting forth plan effectuating judgment." On July 15, 1946 the defendants moved the Court for an order amending and/or resettling and/or clarifying its said order of July 5, 1946 in the following respects:

(a) By expressly stating that the Stay provided for in Paragraph IV of said Order is effective immediately and applies to all parts of said Order, including, without being limited to, the provision for the filing of an election by the Defendants under Paragraph I of said Order, and the provision for the designation by the parties of a person to be appointed as Trustee under Paragraph II of said Order, and

(b) Directing the entry of a formal Judgment in conformity with the terms of said Order, or, in the alternative, designating said Order as a final appealable order, and the defendants, as part of said motion, expressly reserved all claims to jurisdiction previously asserted.

Said motion was heard by the Court on Juy 15, 1946 and the Court thereupon ruled that the stay contained in said order of July 5, 1946 applies to the entire order and that all of said order is now stayed and that the order entered on June 5, 1946 is to be construed as a final order.

This case is within the jurisdictional provisions relied on. (*United States* v. *Crescent Amusement Co.*, 323 U. S. 173).

Appended hereto is a copy of the Opinion of John Knight, U. S. D. J., dated July 5, 1946, and delivered upon the rendering of the order sought to be reviewed and a copy of the opinion of John Knight, U. S. D. J., dated October 8, 1946, and delivered upon the rendering of the original judgment in this case.

Respectfully submitted,

WILLARD S. MCKAY,
Attorney for the Nine
Defendants Severally

ARTHUR GARFIELD HAYS,
Of Counsel

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Office Supreme Court, U. S.
FILED
JAN 13 1947
CHARLES ELMORE CROPLEY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946

No. 572   10

SCHINE CHAIN THEATRES, INC., *et al.*,
Appellants,

vs.

THE UNITED STATES OF AMERICA.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NEW YORK.

STATEMENT AS TO JURISDICTION SUBMITTED WITH PETITION FOR REHEARING

WILLARD S. McKAY,
Counsel for Appellants.

HAROLD R. MEDINA,
ARTHUR GARFIELD HAYS,
OSMOND K. FRAENKEL,
RICHARD T. DAVIS,
Of Counsel.

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STATUTES

Section 2 of Expediting Act of Feb. 11, 1903 as amended (32 Stat. 823; 36 Stat. 1167; 58 Stat. 272; 15 U. S. C. § 29) 2

Section 238 of Judicial Code, as amended by Act of Feb. 13, 1925 (43 Stat. 938, 28 U. S. C. § 345) 2

Sherman Act of July 2, 1890, 26 Stat. 209, as amended (15 U. S. C. §§ 1, 2) 2

Supreme Court of the United States

October Term, 1946

No. 572

Schine Chain Theatres, Inc., *et al.*,

Appellants,

vs.

The United States of America

STATEMENT AS TO JURISDICTION SUBMITTED WITH PETITION FOR REHEARING

In compliance with Rule 12 of the Rules of the Supreme Court of the United States, as amended, defendants-appellants Schine Chain Theatres, Inc., Schine Circuit, Inc., Schine Theatrical Co., Inc., Schine Enterprises Corporation, Schine-Lexington Corporation, Chesapeake Theatres Corporation, J. Myer Schine, Louis W. Schine, and John A. May, submit herewith their statement particularly disclosing the basis upon which the Supreme Court has jurisdiction on appeal to review the judgment of the District Court entered in this cause on July 5, 1946. A petition for appeal was filed in the District Court on August 26, 1946, and was allowed by order of the same date.

Jurisdiction

The jurisdiction of the Supreme Court to review by direct appeal the judgment entered in this cause is conferred by Section 2 of the Expediting Act of February 11, 1903, as amended (32 Stat. 823; 36 Stat. 1167; 58 Stat. 272, 15 U. S. C. § 29), and Section 238 of the Judicial Code, as amended by the Act of February 13, 1925 (43 Stat. 938, 28 U. S. C. § 345).

The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case:

Crescent Amusement Co. v. *United States*, 323 U. S. 173;

United States v. *Bausch & Lomb Optical Co.*, 321 U. S. 707;

Interstate Circuit, Inc. v. *United States*, 306 U. S. 208;

Paramount Famous Lasky Corporation v. *United States*, 282 U. S. 30;

United States v. *American Tobacco Co.*, 221 U. S. 106;

United States v. *Reading*, 226 U. S. 324.

Statutes Involved

The Sherman Act of July 2, 1890, 26 Stat. 209, as amended (15 U. S. C. §§ 1, 2):

> "§ 1. Trusts, etc., in restraint of trade illegal; exception of resale price agreements; penalty

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal: *Provided,* That nothing contained in sections 1-7 of this title shall render illegal, contracts or agreements prescribing minimum prices for the resale of a commodity which bears, or the label or container of which bears, the trade mark, brand, or name of the producer or distributor of such commodity and which is in free and open competition with commodities of the same general class produced or distributed by others, when contracts or agreements of that description are lawful as applied to intrastate transactions, under any statute, law, or public policy now or hereafter in effect in any State, Territory, or the District of Columbia in which such resale is to be made, or to which the commodity is to be transported for such resale, and the making of such contracts or agreements shall not be an unfair method of competition under section 45, as amended and supplemented, of this title: *Provided further,* That the preceding proviso shall not make lawful any contract or agreement, providing for the establishment or maintenance of minimum resale prices on any commodity herein involved, between manufacturers, or between producers, or between wholesalers, or between brokers, or between factors, or between retailers, or between persons, firms, or corporations in competition with each other. Every person who shall make any contract or engage in any combination or conspiracy declared by sections 1-7 of this title to be illegal shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding $5,000, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court."

"§ 2. Monopolizing trade a misdemeanor; penalty

Every person who shall monopolize or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding $5,000, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court."

The Issues and the Rulings Below

The original complaint in this action was filed on or about August 1, 1939. A first amended complaint was filed on May 7, 1941. A second amended complaint was served at the opening of the trial and the clerk of the District Court has certified that it was not formally filed. The principal producers and distributors of motion pictures in the United States were named as defendants in the original complaint, but were not named defendants in the second amended complaint upon which this proceeding went to trial.

The second amended complaint charged the appellants with violating Sections 1 and 2 of the Sherman Act by combining and conspiring with each other, and with each of the distributors of motion pictures, to restrain interstate commerce in motion pictures in practically all situations where the appellants operate theatres, and by having attempted to monopolize, by having monopolized, and by having combined and conspired with each other and with the distributors to monopolize, the first- and preferred-run exhibition of motion pictures in practically all situations where the appellants operate theatres. Plaintiff alleged that these illegal restraints were accomplished by action on the part of distributors in (1) granting Schine theatres first- and preferred-run in preference to all competing theatres; (2) refusing to license pictures on a local competitive basis in any situation where Schine operated theatres; (3) granting greater privileges to the Schine theatres than normally granted to other exhibitors; (4) refusing, in many instances, to sell a second or subsequent run to theatres in opposition to the Schine theatres; (5) granting unreasonable protection to the Schine theatres over other theatres; (6) licensing pictures to Schine at rentals considerably less than those charged other exhibitors; and, (7) licensing to Schine theatres pictures greatly in excess of their requirements. It was alleged that the Schine theatres have secured these advantages by virtue of their combined purchasing power. It was alleged, further, that the appellants have forced competitors out of business and have discouraged competition in towns in which appellants operated theatres.

By their answer appellants denied each and every conclusory allegation of wrong-doing and each and every allegation of fact in support thereof.

Trial of the case began on May 31, 1944 before Judge John Knight of the United States District Court. The Government's case did not deal with any facts or circumstances occurring after May 19, 1942. Its case in substance consisted of (1) contracts entered into by the appellants with the distributors; (2) testimony concerning the size of appellants' theatre operations, and the history of their acquisition of theatres; (3) evidence of advertisements issued by appellants concerning the opening of new theatres; (4) testimony of other motion picture exhibitors concerning their conversations with agents of the distributors and contracts entered into by them with distributors; (5) inter-office memoranda between agents of the distributors.

Appellants objected strenuously to the admission in evidence of these inter-office memoranda and conversations by exhibitors other than Schine with agents of the distributors. Appellants urged that these writings and conversations were not binding on them. Appellants also urged that since these declarations constituted the *only* matter tending to connect the distributors with any conspiracy they were not admissible over the objection of appellants, who were not present when they were made. Appellants further urged that these communications should in no event be received as proof of the statements contained therein. The trial court, however, admitted these declarations subject to connection. Although never connected, practically all of them were retained in evidence in spite of appellants' later motion to strike them from the record.

The trial concluded on November 10, 1944. Plaintiff submitted its brief on December 26, 1944, therein gave its version of the evidence and asked for injunctive relief and "the sale of specific theatres in each town where the defendants were shown to have eliminated previously existing independent competition." Appellants filed their requests for findings and brief in support thereof on January 24, 1945, and asked that the complaint be dismissed.

On October 8, 1945, Judge Knight handed down his opinion in which he found each and all of the appellants to have violated Sections 1 and 2 of the Sherman Act. This opinion is annexed hereto as Appendix A.

On November 1, 1945, the Court entered its judgment and filed its findings of fact and conclusions of law. The same had been submitted by the plaintiff and were signed without change by Judge Knight. Section I of the judgment adjudged each of the appellants to have violated Sections 1 and 2 of the Sherman Act. Section II enjoined each of the appellants in specified respects; Section III ordered that appellants and their affiliated corporations be dissolved, realigned, or reorganized, and directed the submission of plans therefor. Section IV ordered a retention of jurisdiction.

On November 10, 1945, the appellants filed a motion pursuant to Rule 52(b) of the Rules of Civil Procedure to amend and supplement the Court's findings of fact and conclusions of law and to amend the judgment accordingly. At plaintiff's request, hearing of said motion was postponed until February 4, 1946, and on February 1, 1946 plaintiff filed its motion to amend the findings of fact, conclusions of law, and judgment.

In their brief in support of their motion under Rule 52(b), appellants pointed out, among other matters, that the evidence showed: that 25 of the theatres operated by Schine were so operated only because they had reverted to Schine upon the bankruptcy of Fox-Metropolitan Theatres, Inc. which had previously leased them from Schine; that in most of the situations in which Schine operated the only theatre in a town there had been no theatre there until Schine came there or that the theatre purchased was then the only theatre in the town; that in many cases where Schine owned all the theatres in a town, these theatres had been under single ownership before the purchase by Schine; that there was no evidence whatever of any pressure exerted by Schine on the distributors; that Schine did not deprive other exhibitors of any first or second run pictures; that there was no evidence whatever that the clearances granted to Schine were unreasonable; that the agreements not to compete entered into between Schine and persons from whom it purchased theatres were of reasonable duration, and were usual and proper in the sale of good will; that no special privilege to Schine was involved in allowing Schine to deduct the expense of special attractions from gross receipts in determining the license fees to be paid for motion pictures on a percentage of gross receipts basis; that the evidence in the case related only to the period up to May 19, 1942; that in all matters the individual appellants herein were acting for the corporate appellants; that there was no evidence whatever of any conspiring by the distributors; that there was no improper lowering of admission prices by Schine; that the appellants are in fact a single exhibitor.

In this brief appellants urged, further, that there was no evidence of a violation of Sections 1 and 2 of the Sherman Act, and that there could be no contract, combination, or conspiracy in restraint of trade since the Schine appellants were in fact one exhibitor and there was no evidence that the distributors had combined or conspired with this exhibitor to restrain trade.

On March 8, 1946, Judge Knight handed down his opinion and decision granting appellants' motion to amend the findings only in a few and least material respects, and plaintiff's motion in practically all respects. This opinion is annexed hereto as Appendix B. The Court stated therein:

> "The Findings made by the court follow closely the opinion. It is usually the practice of this court to ask the prevailing party to submit Findings. No need has been seen for asking an unsuccessful party to submit Findings. The latter has the opportunity to present the record on appeal."

On March 29, 1946, the Court filed its amended findings of fact and conclusions of law and also an amended judgment. The original judgment was amended by the amplification of the injunctive provisions and the elimination of the direction for the submission of plans for the dissolution, realignment or reorganization of the appellants. An appeal from this amended judgment to this Court was allowed by order of the District Court dated April 17, 1946, but on December 16, 1946 this Court dismissed the appeal for want of a final judgment (*Schine Chain Theatres, Inc., et al.* v. *United States,* No. 571, October Term, 1946).

On February 25, 1946, the plaintiff had filed its "Plan of Reorganization of the Schine Circuit Proposed by Plaintiff and Memorandum in Support Thereof." This plan proposed that all but 38 of appellants' theatres be sold by a trustee to be appointed by the Court. It provided, further, that no appellant be allowed to buy or book pictures for a theatre in which it did not have a financial interest, and that no appellant be allowed to acquire a financial interest in any theatre except upon an affirmative showing that such acquisition will not unreasonably restrain competition.

On April 1, 1946, appellants filed their objections to the plaintiff's plan. While reiterating their objection to the Court's findings of fact and conclusions of law, appellants pointed out at length that even assuming the validity of these findings and conclusions, there was no basis whatever for the drastic and unprecedented relief sought by the plaintiff. The trial of *United States* v. *Paramount Pictures, Inc., et al.* (which later resulted in the opinion published in 66 F. Supp. 323) was then in progress and Judge Augustus N. Hand, presiding over the Statutory Court in that case had indicated that the Court was not disposed to divest of their theatres the major distributors-exhibitors of motion pictures in that case. This was pointed out to Judge Knight.

Appellants pointed out that plaintiff's evidence had related solely to appellants' operations in 32 towns, that in many instances plaintiff sought to divest appellants of theatres as to which there had been no evidence whatever, no evidence showing that they were involved in any restraint of competition. Appellants treated separately each town in which plaintiff asked that they be divested of their theatres and pointed out the situations as to which there had been no evidence, and the situations where the evidence clearly showed divestiture to be an inappropriate and improper remedy for the violations as found by the Court.

Appellants also protested vigorously against the propriety of ordering the sale of their property by a trustee. They asked that plaintiff's plan be rejected *in toto*.

On May 28, 1946, appellants filed "Defendants' Proposals Regarding Re-alignment of the Schine Circuit." Appellants therein proposed three separate plans of realignment, each of which contemplated the creation of separate and different corporations to own and operate theatres in specified localities, each corporation to have officers, directors, and stockholders different and distinct from those of the other corporations. Plan 3, for example, provided for three corporations, one of which would own or lease, and manage, the theatres involved located in the State of New York, a second, the theatres involved located in the State of Ohio, and the third, the theatres located in Delaware, Maryland, and Kentucky. J. Myer Schine would own all the stock of the first corporation, Louis W. Schine all the stock of the second, and Mrs. J. M. Schine and Mrs. L. W.

Schine all the stock of the third. Appellants proposed that each corporation should license motion pictures separately and maintain separate office facilities, and that each should be subject to the injunctive provisions of the judgment, except those having to do with the sale or acquisition of theatres. The appellants further proposed that each corporation would arbitrate the question of the reasonableness of any clearance obtained by it and would not enter into any franchise agreements with the distributors.

Appellants submitted these proposals as consonant with the relief approved by this Court in *United States* v. *Crescent Amusement Co.*, 323 U. S. 173.

At the same time as appellants filed these proposals concerning the realignment of the Schine Circuit, they made a motion before the District Court for an order directing that hearings be held at which testimony might be taken concerning the means of effectuating Section III of the amended judgment, relating to the realignment, reorganization, or dissolution of the Schine Circuit, and concerning the plans for said realignment submitted by the respective parties.

Appellants called to the attention of Judge Knight the decision in the *Paramount* case immediately after it was rendered on June 11, 1946, and pointed out to him that there the Court, despite its findings of conspiracy and violations of the Sherman Act, had refused to require the major distributors-exhibitors to sell their theatres.

On June 24, 1946, the District Court denied the motion to take testimony.

On July 5, 1946, the Court handed down its opinion, without any additional findings, adopting the general features of the plan proposed by the plaintiff. This opinion is annexed hereto as Appendix C. Concurrently with handing down this opinion, the Court entered its order (entered on July 5, 1946, but stating on its face "Entered this 2d day of July, 1946.") for the purpose of effectuating Section III of the amended judgment. This order (annexed hereto as Appendix D) decreed that appellants' interest in 40 or more theatres be sold by a trustee to be appointed by the Court subject to the approval of the Court, and that the proceeds of the sales be held in the custody of the Court. The theatres involved are in many instances theatres concerning which there is no evidence whatever in the record other than the fact that they are part of the Schine Circuit of theatres. The order further required the dissolution of pooling arrangements in three towns, and forbade each appellant from acquiring financial interests in any additional theatres except on an affirmative showing that such acquisition will not unreasonably restrain competition, and from buying or booking films for any theatre other than those in which the appellant owns a financial interest.

The order also contained a stay pending final determination of any appeal taken therefrom. On July 15, 1946, appellants made a motion to have the order amended or clarified to provide that the stay was applicable to all parts of the order and to direct the entry of a formal judgment in conformity with the terms of the order, or, in the alternative, to designate the order as a final appealable order. Said motion was heard the same day, and the Court ruled that the stay contained in the order of July 5, 1946 applied to the entire order and that said order is to be construed as final.

The Questions are Substantial

The questions raised by this appeal relate both to the sufficiency of the admissible evidence to support the District

Court's conclusion that the appellants violated Sections 1 and 2 of the Sherman Act and the propriety of the relief granted by that Court. All the questions which are here stated to be substantial were properly raised before the District Court. Questions relating to the admissibility of proof were raised by objections to the admission of the evidence and by motions to strike the same; questions relating to the sufficiency of the evidence to support material findings of fact and conclusions of law were raised by appellants' requests concerning findings of fact and conclusions of law and by appellants' motion to amend and supplement the findings of fact and the conclusions of law; questions relating to the propriety of the relief here granted were raised by appellants' requests concerning findings of fact and conclusions of law, by appellants' objections to plaintiff's plan, by proposals concerning the method of effectuating Section III of the amended judgment, and by appellants' motion to take testimony concerning the plans submitted to effectuate said section of said judgment. All the points here stated to be substantial are fully covered by appellants' assignment of errors.

1. The first substantial question raised by this appeal concerns the propriety of requiring the sale of theatres which were not shown by the evidence to have any relation to, or to have any part in, any restraint of trade or commerce or monopolization of, or attempt to monopolize trade or commerce.

The District Court has ordered the sale of many theatres as to which there is no evidence in the record apart from the fact that they are part of the Schine Circuit of theatres. Since the purpose of injunctive relief under the

Sherman Act is remedial and not penal (*Hartford-Empire Co.* v. *United States*, 323 U. S. 386, 409), a most serious question is certainly raised by the imposition on appellants of provisions which are admittedly not remedial of any violations of the Act as found by the Court but explainable only on the theory of punishment. The lack of any relationship between the relief granted and the violations found was clearly conceded by the District Court. When this matter was brought up with respect to certain theatres on the argument of appellants' motion to take testimony on the plans submitted to effectuate Section III of the amended judgment, the Court stated:

> "You would have the benefit of that on appeal. If it were necessary to have shown in this case the necessity of selling those five theatres, you would have the benefit of it, if it were necessary to be shown, and it was not shown on the trial.
>
> "Mr. Hays: How would I have the benefit of it?
>
> "The Court: Because of lack of proof."
>
> Later the Court stated:
>
> "Well, then, the question is whether the Court, by and large, in the absence of any testimony as to competition or anything else, has the right to include that town in the whole plan of reorganization."

The resultant decree as concerns divestiture is accordingly absolutely arbitrary, having no relation to the Court's findings or the violations of the Sherman Act claimed to have been committed. No better example can be given than the fact that the decree requires appellants to give up one of their two theatres in Cumberland, Maryland, although their acquisition of the second theatre in that town was approved by the Court in this very proceeding.

2. The second substantial question raised on this appeal concerns the propriety of the District Court's denial of appellants' motion of May 28, 1946 to take testimony concerning the means of effectuating Section III of the amended judgment and concerning the plans submitted by the parties for that purpose. If, as appellants claim, any relief by way of realignment, reorganization, or dissolution of appellants' theatre holdings should have been remedial of the violations found, then it was certainly error to refuse to take testimony on this point. Plaintiff's plan then before the Court recommended divestiture of theatres in many towns where there was not a scintilla of evidence as to the existing competitive situation; and the Court ultimately ordered divestiture in such towns. Appellants' motion to take testimony was made in order that such relief as might be granted would have basis in facts before the Court, and the subsequent failure to adopt a decree having such a basis will not only prejudice appellants by needlessly requiring them to dispose of their theatres, but will, appellants assert, seriously damage the public interest by impairing and restricting the competition now existing in the towns involved.

3. The third substantial question involved in this appeal is whether the record in this case affords any basis for the Court's granting relief by way of realignment, reorganization, or dissolution of appellants' theatre holdings. When the District Court entered its judgment of November 1, 1945, and its amended judgment of March 29, 1946, in which it decreed that appellants' theatre interests be re-

aligned, reorganized, or dissolved, it was under the distinct impression that the relief in this proceeding should be punitive. On May 28, 1946, in the course of argument on appellants' motion to take further testimony, the Court stated:

> "The Court: Well, it isn't solely a question of restoration of competition. The question is, perhaps, a question of punishment. The Court has found a violation of the Anti-Trust Law. Assuming that the evidence pertaining to a single theatre town, the theatre owned by Schine, disclosed that as a result of their conspiracy or their actions somebody has been wiped out of existence, it wouldn't simply be a question of competition; it would be a question of penalizing the defendant under those particular circumstances because of his acts."

Although the Court disclaimed any purpose to punish appellants, when it later handed down its decree ordering divestiture rather than realignment or reorganization, it is clear, both from the above quotation and the provisions of the order itself, that the Court acted upon an incorrect and improper theory of relief in deciding upon this type of decree rather than upon any basis of fact appearing in the record. Accordingly, appellants' assertion that there is nothing in the record in the case to justify such relief merits plenary review on appeal.

4. The fourth substantial question on this appeal is whether the District Court was justified in ordering divestiture, the most drastic remedy conceivable and as here applied without precedent in the enforcement of the Sherman Act. In *United States* v. *Paramount Pictures, Inc., et al.*, 66 F. Supp. 323, the Government asked the Court to

divest the major distributors of motion pictures, who are also the major exhibitors of motion pictures, of their theatres. While the Court found these defendants to have violated the Sherman Act, and while the number of theatres operated by them by comparison makes appellants' interests appear insignificant, the Court refused to order divestiture. It stated (66 F. Supp. 323, 353):

> "It would seem unlikely that theatre owners having aggregate interests of little more than one-sixth of all the theatres in the United States are exercising such a monopoly of the motion picture business that they should be subjected to the drastic remedy of complete divestiture in order to effect a proper degree of free competition."

Appellants contend that the plans which they submitted to the Court provide for completely adequate relief—assuming the adjudicated violations to exist in fact—and that in any event it was wholly improper to order the sale of appellants' land and buildings, without giving appellants the opportunity to convert this substantial property to some use in no way connected with the motion picture business.

5. The fifth substantial question on this appeal is whether the District Court was justified, in any event, in ordering the appointment of a trustee to sell appellants' property and the payment of the proceeds of the sale into Court for disposition according to order of the Court. It seems certain that such an order is beyond the power and jurisdiction of the Court in this proceeding. *De Beers Consolidated Mines, Ltd.*, v. *United States,* 325 U. S. 212, 219-220. Furthermore, and in any event, the order constituted a clear abuse of discretion. There is no evidence or indication whatever that appellants would not comply in

good faith with any order of the Court directing them to sell their property, and the order directing the appointment of a trustee to sell the property not only makes appellants liable for the compensation and expenses of the trustee and harasses appellants' business by giving the trustee access to appellants' books and records and to the time of its officers and employees, but has the prime vice of disallowing appellants from negotiating these sales on such terms as will involve the least pecuniary loss to them.

6. The sixth substantial question involved is the propriety of enjoining the appellants from selling any theatre interest pending further order of the Court. This provision is contained in paragraph 4 of Section II of the amended judgment of March 29, 1946. The gravamen of the complaint herein centers around the alleged magnitude of appellants' theatre interests, and the drastic relief here granted orders the sale of many of these interests. Enjoining appellants from selling any other theatre interests unduly proscribes appellants' disposition of their property and can have no conceivable relationship to the furtherance of the relief sought or granted in this proceeding.

7. The seventh substantial question involved is the propriety of enjoining the individual appellants herein as individuals. Everything done in the matters here involved by the individual appellants herein, J. Myer Schine, Louis W. Schine, and John A. May, was done as officer, director, or agent for the corporate appellants. It was therefore improper to enjoin them as individuals. *Hartford-Empire Co.* v. *United States*, 323 U. S. 386, 428, 433-434.

8. The eighth substantial question is whether the District Court committed error in receiving as evidence many

letters or reports written by employees of certain of the major distributors to other employees or officers in the same company, and whether, in like manner, the Court erred in allowing testimony concerning oral communications made by these employees to appellants' competitors in the motion picture business. No one having any connection with appellants was present when these communications were made, and appellants contend that the declarations were inadmissible since they constituted the only proof tending to connect the distributors with any combination or conspiracy. *Glasser* v. *United States*, 315 U. S. 60, 74-75. The District Court did not abide by the rule that there must be proof of his participation in a conspiracy *aliunde* before the declarations of the non-defendant conspirator are admissible. The Court stated in its opinion: "Statements and [illegible] of agents or representatives within the scope of their authority indubitably are admissible to show a conspiracy."

The admission of these communications prejudiced appellants in two most material respects. In the first place, finding the distributors to be parties to some combination or conspiracy was absolutely essential to the conclusion that appellants had violated the Sherman Act as charged. The corporate appellants herein are in fact a single exhibitor, since the appellant Schine Chain Theatres, Inc. owns 100% of the stock of all the other corporate appellants, and there is nothing unlawful in this single exhibitor doing the acts here charged and found. See *United States* v. *Crescent Amusement Co.*, 323 U. S. 173, 183. The corporate appellants could not conspire with the individual appellants, who were their own officers, directors, and agents, and accordingly did not violate the Sherman Act unless they conspired with the distributors. The Court was therefore in error in holding that it was immaterial whether the distributors or any one of them were members of a conspiracy. Moreover, the use of these communications as the sole support for finding the distributors parties to any combination or conspiracy, was gravely prejudicial to appellants.

The second respect in which appellants were seriously prejudiced by the admitting of these communications was the Court's subsequent use of statements contained therein as the factual basis for the conclusion that appellants had violated the Sherman Act as charged. In *United States* v. *Griffith Amusement Co.*, 68 F. Supp. 180, a Sherman Act proceeding against another circuit of theatres, the Court refused to admit the distributors' inter-office memoranda and later gave judgment for the defendants.

9. The ninth substantial question raised by this appeal is whether there is evidence to support the District Court's findings and whether the findings supported by evidence are sufficient to sustain the judgment of the Court that appellants have violated the Sherman Act. The findings which led the Court to this conclusion were clearly stated by the Court and it requires no extensive analysis of the record to show that they are either not supported by the evidence or fail to support the conclusion of violation of the Sherman Act. The finding that appellants arbitrarily deprived other exhibitors of first and second run pictures is based on the fact that where the distributors sold first or second run to Schine theatres they were unavailable to other exhibitors, the distributors having only one of such commodities to sell in any given town. The only hint that any favoritism was shown to Schine is found in certain

testimony by Schine's competitors of declarations made by certain of the distributors' agents. As stated, the admissibility of such testimony of itself raises a substantial question.

The Court found, further, that Schine secured unreasonable clearances, and stated that "the matter of clearance is of major importance in the consideration of the issues herein." There is no proof whatever that the clearances sold to the Schine Circuit were unreasonable. The reasonableness of clearance in any given instance depends on a great variety of factors (see opinion in *United States* v. *Paramount Pictures, Inc.*, 66 F. Supp. 323, 343) as to which there was no evidence before the Court. For this finding the Court again relied on certain declarations of the distributors' agents which appellants contend were inadmissible for any purpose, and in any event, incompetent and irrelevant as concerns the reasonableness of clearance.

The making of "threats" to build or open theatres, found by the Court, was in fact nothing other than the normal and usual business practice of merchants in announcing opening of new places of business; the lowering of admission prices is a normal consequence of the competitive process and certainly does not sustain a judgment of violation of the Sherman Act; obtaining film rental concessions from the distributors was not shown to involve any favoritism to the Schine theatres; non-competing agreements entered into with persons who sold theatres to Schine were the usual type of agreements normally to be found in any sale of a business involving good will; the franchise agreements in this case did not violate the Sherman Act. *United States* v. *Griffith Amusement Co.*, 68 F. Supp. 180.

10. The tenth substantial question raised by this appeal is whether the District Court properly drew an inference unfavorable to appellants' case from the fact that appellants did not call more than six of the distributors' branch and exchange managers to testify on their behalf. Relying on the case of *Interstate Circuit* v. *United States,* 306 U. S. 208, the District Court held that appellants' failure to call more agents of the distributors "weakened" the defense herein and was persuasive that their testimony would have been unfavorable to appellants.

Before any inference whatever can be drawn from the failure of a party to call a person as a witness, it must be shown that the person was under the control of the party against whom the inference is to be drawn. *Tin Decorating Co.* v. *Package Corporation,* 37 F. (2d) 5 (C. C. A., 2nd, 1930). The agents of the motion picture distributors were certainly not under appellants' control. The District Court apparently overlooked the fact that in the *Interstate Circuit* case the distributors were defendants, and that it was from the failure of the distributors to call their own employees as witnesses that this Court drew the inference which the District Court erroneously drew in the present case.

The extent to which the Court's findings and judgment rest on this erroneous inference raises a substantial question which should be reviewed by this Court.

The questions raised on this appeal were not disposed of in *United States* v. *Crescent Amusement Co.,* 323 U. S. 173. While the question of the admissibility of the distributors' inter-office memoranda was there raised, this Court did not pass on the question since the appellants had failed to show any prejudice. There can be no doubt of prejudice in the present case, if as appellants herein claim, these memoranda and other communications were improperly received.

The appellants in the *Crescent* case claimed that the United States had failed to prove the allegations of the complaint, but the Court refused to consider this question, since it had not been assigned as error. This question, and similar questions raised by appellants herein, are fully covered by the assignments of error.

The appellants in the *Crescent* case complained of the divestiture provisions in the decree. But those provisions are far different from those imposed in the present case. The decree in the *Crescent* case merely required a realignment of stock interests in the corporate defendants; it did not require the corporate defendants to dispose of their theatres, and did not provide for the appointment of a trustee to dispose of the property to be divested.

The other questions raised by this appeal were not in anywise involved in the *Crescent* case. Appellants are of the belief that all the questions here raised are substantial and respectfully petition this Court to pass on them after plenary hearing.

Respectfully submitted,

WILLARD S. McKAY,
Counsel for Appellants.

January 7, 1947

Harold R. Medina,
Arthur Garfield Hays,
Osmond K. Fraenkel,
Richard T. Davis,
Of Counsel.

APPENDIX A

Opinion of John Knight, *U.S.D.J.*

(October 8, 1945)

United States District Court

WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
Plaintiff,

v.

SCHINE CHAIN THEATRES, INC., *et al.*,
Defendants.

Civil No. 223

Appearances:

WENDELL BERGE, *Assistant Attorney General;*

ROBERT L. WRIGHT, JOHN P. CLAGGETT, HAROLD L. SCHILZ, ALBERT BOGGESS, *Special Assistants to The Attorney General;*

PHILIP MARCUS, MILTON KALAS, *Special Attorneys;*

GEORGE L. GROBE, *United States Attorney; For the United States;*

EDMUND MCCARTHY, *Attorney of record;*

WILLARD S. MCKAY, EDWARD F. MCCLENNEN, SAUL F. ROGERS, ARTHUR J. HOMANS, ARTHUR H. WHITEMORE, HOWARD M. ANTEVIL, *of Counsel for Defendants.*

KNIGHT, *District Judge:*

This suit is brought by the United States to restrain violations of Sections 1 and 2 of the Sherman Act (28 Stat. 209, 15 U. S. C. Secs. 1 and 2). Schine Chain Theatres, Inc., a New York holding and service corporation, five other corporations in which Schine Chain Theatres, Inc. owns all the stock, to wit, Schine Theatrical Co., Inc., an operating company, Schine-Lexington Corporation, a holding company, Schine Enterprise Corporation, a service corporation, Schine Circuit, Inc., a service corporation, and Chesapeake Theatre Corporation, a holding corporation, and also three individuals, J. Meyer Schine, Louis Schine and John A. May, are the defendants. Hereinafter the corporate defendants will be referred to as "Schine", the "Schine Circuit" or as "the Circuit".

This organization has seen an exceedingly rapid growth. Its origin was the purchase by defendants J. Meyer Schine and Louis Schine of three theatres in Gloversville, New York, in 1920. In the twenty-one years following, these defendant corporations acquired, either as purchaser or as lessee, an interest in 175 theatres and in addition some 42 separate parcels of real estate for theatre purpose, or connected with such purpose. The development came about in this manner. Schine Chain Theatre, Inc., the parent corporation, was organized in 1920. The above-named subsidiary corporations came into being in the several years 1926, 1935, 1937 and 1938.

Steps following in line with the purpose of the "Schine Circuit" were the organization of realty holding corporations and what may be termed local corporations, or the taking over of others of such for the operations of theatres. Since 1931, there have been 118 theatre corporations in which an interest has been acquired by "Schine". As of the time of the commencement of this suit there were 62 of such operating corporations and in 48 of these "Schine" owned 100 percent of the stock, in 12, 50 percent. Schine operates 93 theatres in 73 towns (including cities). The towns run generally in population from 5000 to 35000 and include 39 in New York, 16 in Ohio, 8 in Kentucky, 7 in Maryland, 2 in Delaware and 1 in Virginia. In addition to its theatrical and realty operations, "Schine" has booked and bought for and supervised 37 theatres since 1931, and when this suit was brought there were 27 for which it so acted. Since 1928 the closed towns (those in which there was no opposition) show a total increase of 56. In 1941 there were only 3 towns in which Schine's competitors (hereinafter called independents) were playing major film product. In a single season, 1939-1940, Schine paid $1,647,000 to six film companies. The "Schine Circuit" buying power beyond peradventure was extremely large, and its opportunity to utilize this power in the purchase of films to the detriment of its competitors is apparent. These defendants together control the largest independent theatre circuit in the country. For theatre acquisitions and capital improvements there has been expended admittedly upwards of $10,948,100, not including dividend payments on operating expenses and cash on hand.

Some of the computations as hereinbefore shown are not the same as those claimed either by the government or by the defendants. These computations are made from defendants' extensive answers to interrogatories. The differences are not of material moment. There are eight so-called major film companies: Fox, Loew, Paramount, Radio-Keith-Orpheum (RKO), Warner, Columbia, Universal and United Artists. Columbia and Universal produce and distribute films; United Artists only distributes; and the other companies both produce and distribute films and operate theatres. These eight companies supply "Schine" a large percent of the feature films used by him and together receive upwards of 75 percent of the total film rental paid by Schine. All of them originally were made parties to this suit, but all have since been dropped as such. However, each is claimed to have participated separately with Schine in the conspiracy charged and in aid of Schine's monopolization of the film exhibiting business. The principal sales office of each major distributor company is in New York City and that city serves theatres here involved. The methods of licensing and servicing of films is similar with each. Each has its district manager and branch manager. The feature films are mostly produced in California where the negatives are taken, the prints being generally manufactured in New York and New Jersey. Film license applications are solicited by salesmen from the branch office, and the delivery and return of films are made through the branch. Prints of films are sent from the various exchange offices in the various states to the exhibitors of the main office, though the recommendation for approval ordinarily is made by the branch manager who is close to the situation. It was the usual custom for the distributors to make license agreements for feature films for a period of a year commencing about September. These license agreements were made before the films were produced. Ordinarily each major producing company put out 40 to 60 feature films a year and these were released at the rate of about one a week. Now the practice generally is to sell group pictures only after production and in groups rather than for a year.

The individual defendants hold the principal offices in the defendant corporations and hold other offices in the various so-called local corporations. They are the principal stockholders in the parent corporation and have general supervision of the operations of the circuit. The film buying for the circuit and the companies in which it had an interest was conducted through "Schine" or one of its subsidiaries. Lazar, a regional manager for "Schine" covering several states, and Silverman and Hensler, district managers, and one Insley, principally carried on negotiations for acquisitions, though the defendants Schine and May engaged directly in some, while one Lynch was "the Circuit's" chief film buyer. In circuit buying "Schine" generally negotiated deals with the division manager. The agreements so made are referred to as "master agreements and deal sheets," but these were usually followed by license agreements signed by the chief sales executive of the distributors.

To substantiate its claims that these defendants have violated the aforesaid provisions of the Sherman Act, the government contends that they have used their great buying power to suppress competition by bringing about various restrictions on the competitors' ability to compete, resulting in persuading the competitor either to sell to "Schine", operated on an inferior basis or join in pooling his interests with "Schine"; that this suppression has been brought about in various ways, to wit: by depriving independents of first and second run products, either entirely or to such a time as materially lessened income and force sales or abandonment, by implied threats voicing "Schine's" great buying power, by threats to construct theatre buildings to discourage other construction, by cutting admission prices, by inducing theatre sales through agreements to employ sellers, by fixing by agreement the duration of time and the distance within which an independent selling should not be permitted to compete and by unreasonable clearances obtained from the distributor. These generally are the claims. The defendants' denial make the issues.

Section 1 of the Sherman Act provides that "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states * * * is hereby declared to be illegal * * *", and

Section 2 of that Act provides that "Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several states, * * * shall be guilty of a misdemeanor."

Said the court in *Northern Securities Co. v. United States,* 193 U. S. 197 (404): "All that is added to the first section by section 2 is that like penalties are imposed upon every single person who, without combination, monopolizes or attempts to monopolize commerce among the States; and that the liability is extended to attempting to monopolize any part of such trade or commerce." "* * * the two sections overlap in the sense that a monopoly under section 2 is a species of restraint of trade under section 1." United States *v.* Socony-Vacuum Oil Co., 310 U. S. 150 (226).

Any question as regards the applicability of the Sherman Act in certain respects here shown has been clearly answered by the decision of the Supreme Court in *United States* v. *Crescent Amusement Co.*, 323 U. S. 173. Under definitely comparable facts that Court held: 1. That this court has jurisdiction. 2. That it is immaterial whether the distributors or any one of them were members of a conspiracy or joined in the effort to monopolize. 3. That while the business or the showing of motion pictures is local, a combination of exhibitors may violate the Sherman Act by using their collective buying power to restrict or restrain competitors. 4. That the relationship between the circuit members is such that they may be capable of conspiring or combining with each other in violation of the Act. 5. That the circuit, in essence, is not a single exhibitor. "All three phases of the motion picture business * * * constitutes a part of interstate commerce." *William Goldman Theatres, Inc.* v. *Loew's,* opinion filed August, 1945 (3d C.).

In the Crescent case twelve theatre operating companies, and certain individual stockholders, as well as distributor companies, were charged with the violation of the Sherman Act in combining with each other and with major distributors to effect monopolies. This language from the opinion supports the statement as to the aforesaid conclusions: "And as we have said, the course of business which involves the regular exchange of film in interstate commerce is adequate to bring the exhibitors within the reach of the Sherman Act" and "The District Court found that some of the exhibitors were co-conspirators on certain phases of the program. But we can put that circumstance to one side * * *. For it is immaterial whether the distributors technically were or were not members of the conspiracy." and "But action by a combination of exhibitors to obtain an agreement with a distributor whereby commerce with a competing exhibitor is suppressed or restrained is a conspiracy in restraint of trade and a conspiracy to monopolize a part of the trade or commerce among the States." Sustaining the action, the court necessarily held the Circuit is not in essence a single exhibitor; and that there can be concerted action between a corporation and its wholly owned subsidiaries, and the fact that defendants owned one-half or less per cent of the stock of corporations who are not parties herein does not preclude consideration of acts done by these corporate officers or by defendant's acts in connection with such corporation. Vide also: *Chicago Board of Trade* v. *United States,* 246 U. S. 231; *Paramount Famous Lasky Corp.* v. *United States,* 282 U. S. 30; *Interstate Circuit* v. *United States,* 306 U. S. 208; *United States* v. *General Motors Corp.,* 121 F. (2d) 376, cert. denied 314 U. S. 618, 708.

The defendants assert that buying the only theatre in a town and building additional theatres, or buying additional theatres, or advising of intention to open another theatre, or making known the product buying ability of the chain, or buying product on better terms than a competitor, or becoming large by normal growth, causing inability of inferiorly operated theatres to get good product, or agreeing with the seller of a theatre not to compete within defined limits for any period of time, cutting or raising admission prices, obtaining clearances, or using so many pictures that demand for product of minor distributors is increased, does not monopolize or restrain trade or commerce among any of the several states. "We may assume that if a single exhibitor launched such a plan of economic warfare he would not run afoul of the Sherman Act." Cresent case supra. Obviously, doing any one of the aforementioned things, disassociated from any other act, would not be violative of the Sherman Act; but surely a circuit may so utilize one or more of such efforts as to illegally stifle competition or monopolize the theatre business in different locations. Motive is essential.

The defendants say that the Sherman Act prohibits only unreasonable restraint of trade and that it must affect trade or commerce between states. *Apex Hosiery Co.* v. *Leader,* 310 U. S. 469. There can be no question that this is a correct statement of law. The Act does not condemn monopolies as such, but prohibits monopolization or attempts to monopolize trade or commerce between the states. The verb monopolize comprehends conduct or actions. *Standard Oil Co.* v. *United States*, 221 U. S. 1. Through monopolization a monopoly may be secured. We are concerned here with what are claimed to be unreasonable restraints of trade. The word unreasonable as so used is broad enough to include a conspiracy in restraint of trade and monopolization of a business in restraint of trade. Unreasonable, as used in the statute, refers to a degree of restraint. Defendants further assert that the Act does not condemn restraints of trade which do not have a direct and immediate effect upon interstate commerce. The contrary of this assertion, as applicable here, is decided by the Crescent case, supra. Defendants also say that an agreement for purchase of product coupled with clearances over succeeding runs is valid, citing *Standard Oil Co.* v. *United States*, *supra*. Of course the mere agreement for the purchase of first runs and reasonable clearances is within the law; but the charge of a conspiracy contemplates a "combination of two or more persons by some concerted action to accomplish * * * an unlawful purpose" and monopolization contemplates acts to monopolize or control trade or commerce between the states to the exclusion and disadvantage of others.

The record herein includes 4728 pages of testimony and 1380 exhibits. We are here concerned with 32 different situations, each involving the testimony of various witnesses and numerous exhibits. It is not only practically impossible to set out in this opinion every phase of the testimony which has been presented, but it is unnecessary.

Many objections were raised by the defendants to the reception of evidence of inter-department communications and statements of and communications from representatives of the distributors. These objections were based, both on the ground that such were incompetent in the absence then of proof of a conspiracy, and also that there was no proof of the authority of such representatives to make the declarations or give the communications.

It is not necessary that proof of the conspiracy be made before overt acts are proved. The order of the proof lies within the discretion of the court. "There is no hard and fast rule that the evidence of concert should be first put in. * * * The order of production of evidence is one largely in the discretion of the court." *Doyle* v. *United States*, 169 F. 625. Among other cases supporting this view are: *Eastern States Retail Lumber Ass'n* v. *United States*, 234 U. S. 600; *Cohen* v. *United States*, 157 F. 651, cert. denied 207 U. S. 596; *Paramount Pictures Inc.* v. *United Motion Picture T. O.* 93 F. (2d) 714; *Glaser* v. *United States*, 315 U. S. 60, cited by defendants, does not support their view.

Statements and acts of agents or representatives within the scope of their authority indubitably are admissible to show a conspiracy. *Hitchman Coal & Coke Co.* v. *Mitchell*, 245 U. S. 229; *Erie RR. Co.* v. *Winter*, 143 U. S. 60; *Johnson* v. *J. H. Yost Lumber Co.*, 117 F. (2d) 53. Further, in conspiracy cases a great deal of latitude is permitted the court in the reception of evidence: "The rule will be sustained if the testimony which is admitted tends even remotely to establish the ultimate fact." *Clune* v. *United States*, 159 U. S. 590. See also: *Williamson* v. *United States*, 207 U. S. 425; *Wiberg* v. *United States*, 163 U. S. 32; *Isenhouer* v. *United States*, 256 F. 842; *White* v. *United States*, 80 F. (2d) 515.

There is a conflict in the testimony in many of the situations. The court recognizes the burden is cast upon the plaintiff to establish its cause and or causes of action by a fair preponderance of the proof. It is quite patent from the nature of the charges here that they have to be established by numerous acts and transactions having relation some way to the charge. These acts must be considered together to show intent, and intent to "combine," "conspire" and/or "monopolize" must be the reasonable and natural conclusions from the acts or transactions, as believed by the court. Ordinarily proof of such acts comes from circumstantial evidence and the inferences which are ordinarily drawn from these. As was said in *William Goldman Theatres, Inc.* v. *Loew's, supra:* "The picture of conspiracy as a meeting of a trio of sinister persons in pointed hats close together belongs to the dark ages," and further: "The requirement is to fit the inferential facts into the framework of the primary parts * * *." "It is elementary, however, that conspiracies are seldom capable of proof by direct testimony and may be inferred from the things actually done, * * *." *Eastern States Retail Lumber Ass'n* v. *United States, supra.*

It is the opinion of this court that the defendants have violated Section 1 and Section 2, supra, of the Sherman Act, in that they have maintained an unlawful combination among themselves by means of which they have unreasonably restrained trade or commerce among the several states and have monopolized the business of operating theatres and the supplying of major films in various towns and cities, and that each of the major distributors hereinbefore named, by the methods which it has employed in its dealings with Schine and the independents, has aided and abetted these defendants in unreasonably restraining trade or commerce between the states and the "monopolization" of theatre operations.

The great film buying power of the defendant corporations gave opportunity to exert pressure on the distributors to obtain preferences. The extent of this film buying is demonstrated by the exceedingly large number of theatres controlled by "Schine" and the large amount of money which must have been paid for film rentals. The aggregate of the amount paid all distributors in total or for one season is not shown, but what the "Circuit" paid six of the major distributors, for features for a single season, does appear. This buying power included both closed and open towns. By combining the open and closed towns in Schine's deals with the distributors, Schine was enabled to dictate terms to the distributors. This ability to dictate terms was further increased by the authority of Schine to buy product for theatres not owned or operated by it. Schine acquired by purchase or lease 55 theatres from 1922 to 1931, and 80 from 1936 to 1941, inclusive, 15 in 1938 and 15 in 1939.

The means and methods employed by the different defendant corporations through their officers and authorized representatives to obtain a "monopolistic" control were numerous. Principally among these were arbitrarily depriving independents of first and second run pictures, securing unreasonable clearances, making threats to build or open closed theatres to prevent construction or operation by independents, lowering admission prices, obtaining rental concessions, restricting independents who sold to Schine as to periods and places of operation, making long time franchise agreements covering the "Circuit."

Standing out as clearly indicative of intent to "monopolize" are communications and statements made by May, Lynch, Lazar, Hensler and Insley, undisputably authorized representatives of the defendant corporations. There are others from defendant J. Meyer Schine as well.

Some specific instances showing the predatory means used by "Schine" follow.

The Schine defendants arbitrarily deprived independents of the first run product which they had previously enjoyed in several towns. Independents were deprived of 1936-37 Columbia product at Norwalk; 1935-36 Fox product at Van Wert and Bucyrus; Loew's product for 1930-31 at Bellefontaine and for 1935-36 at Van Wert; Paramount's 1935-36 product at Van Wert and Bucyrus; RKO product for 1933-34 at Auburn and 1935-36 at Norwalk; of United Artists 1936-37 at Norwalk; and of Warner for 1933-34 at Norwich, 1936-37 at Norwalk, and 1941-42 at Harlan.

Independents were arbitrarily deprived of second run product which they had previously exhibited, losing 1938-39 Columbia at Rochester, Loew's 1935-36 at Van Wert, and 1934-35 Warner at Watertown. After "Schine" secured the product from the independents for the aforementioned seasons, he retained it and the independent was unable to secure it in subsequent seasons. Relative to six towns including Corning, Lynch wrote on October 21, 1933, Metro: "If there are any other opposition towns where you believe you can sell a second run, I would appreciate it if you would take the matter up with me first before selling." In 1932 Lynch wrote Flynn a letter saying, among other things: "I want you to refrain from selling him (independent) any pictures whatsoever." and Metro through Flynn agreed not to do so. Lynch also wired Fox to withhold selling to this independent and wrote Fox' agent saying "have also asked him (Schmertz—Fox agent) to refrain from selling this man second run."

"Schine" was able to secure unreasonable clearances year after year in many towns. A few only need be mentioned. At Corning, New York, RKO permitted 90 to 180 days, and Fox permitted 160 days. At Seneca Falls, New York, Columbia and United Artists permitted 120 days. At Little Falls, New York, RKO, Columbia and Universal permitted 120 days and United Artists permitted 115 days. At Carthage, RKO permitted 120 days and United Artists 90. United Artists permitted 90 days at Watertown, New York, and 90 days at Amsterdam, New York; Bucyrus, Kent, Norwalk, Tiffin and Fostoria, Ohio; and Lexington and Van Wert, Kentucky.

The license contracts with "Schine" in many instances specified minimum admission prices for the various runs as well as clearance period. To an extent this affects adversely the time given the competitor. *Interstate Circuit* v. *United States, supra,* clearly points the reasons for condemning such provisions in a film license contract or agreement. Schine got clearance of Herkimer over Ilion where none existed before.

"Schine" made threats to build in various towns, such as Paris, where there was a sign up, Canandaigua by a sign and newspaper article published, and where he eventually did build. In Perry, a statement by May and a newspaper article announcing that land had been bought for theatre purposes came at a time when "Schine" was trying to purchase the independent's lease. "Schine" did not build, but later got the lease. In Salamanca, just after independents acquired a site for a contemplated theatre, through the press "Schine" announced its intention to build. In Medina, "Schine" announced the making of an agreement to erect a new theatre immediately after independents started construction. In Mount Vernon, May contacted the independent to buy, saying "Schine" would build unless the deal could be put through.

Defendants' authorized agents made statements to independents which are reasonably construed as threats.

At Bellefontaine, during negotiations for the renewal of a lease with an independent, Lazar threatened to re-open the Opera House, if the independent opened the Strand.

With reference to Paris, Lazar told the independent, who was taking steps to build, that if the independent went ahead with his projects "Schine" would build a 1200 seat theatre in Lexington where the independent had a theatre and that the house would be run with 10¢ policy at all times. At Paris, Schine and an independent began construction at practically the same time. Lazar asked the independent to stop construction and see him about a deal. Subsequently Schine took over the independent's Lexington and Paris theatres under an agreement prohibiting for fifteen years the independent from engaging in the theatre business in any town in Kentucky where Schine had a theatre.

Just before Schine acquired the "Forum" theatre in Norwalk, Lazar advised an independent to "get in with us * * * we are a big company. You know what it means if you are not in with us." and further stated: "If you lease your theatre Mr. William Selman (part owner of the "Forum") will walk out of town."

At Van Wert, the operator of the "Ohio" theatre could not get first run product it had had. During negotiations for the sale of the "Ohio" to Schine, Lazar said that Moore would have trouble getting product; Schine would have the first runs; and that Schine was interested in buying in order to raise prices.

At Lockport, during negotiations with "Schine" for the "Palace" theatre, May said it would be necessary to reopen the Hi-Art owned by "Schine" to use up "the large volume of product they had bought." This statement evidently was made to induce Reliance to sell the "Palace." In this instance it is to be noted that the independents experienced great difficulty in getting product. Hi-Art had then been closed for seven years. Metro, Fox, Universal and Loew's refused major product to the independent. Indicative of the attitude of the distributors is the letter from the Eastern Salesmanager of Loew's who wrote:

> "In our negotiations with the Schine interests it will very likely be that we will have to give them consideration for our product at Lockport, as well as other situations, and as we are hardly in a position to forego or jeopardize the business from their other situations, and for the further reason that they have for a number of years been a very representative account, we feel that our interests would be best served by giving them such consideration."

At Perry, May told the independent that "Schine" had bought a lot to build a 1000 seat theatre there. This was a town of less than 5000 population. The independent theatre building was owned by the town and leased to the independent. When May said this, a local newspaper article to the same effect was given out. Schine did not build but Herzberger sold shortly thereafter, and through the purchaser of this interest Schine acquired the lease.

Insley and May tried to buy an independent theatre at Seaford and Georgetown. Insley said it was foolish that the independent did not make a deal with "Schine" because he had recently purchased the theatre at Laurel and "Very likely, with the buying power they had they would get away the product" from the independent. Insley said Schine had bought a lot with the intention to build a theatre in Seaford, and also said: "Well, if I were you I would sell the theatres to Schine because they are going to build a theatre there, and, naturally, they are going to get the product." Insley, under a written contract with "Schine", had authority "in negotiations for the acquisition of motion picture theatres within the above-described territory" (Delaware, Maryland, Virginia). Seaford and Georgetown are in Delaware.

At Rochester, J. Meyer Schine told independents, who were then building the "Webster", that the location was not appropriate, that it was too near the "State" (Schine's) and not justified; and Schine said he would build a theatre near the Murray theatre (owned by independents). The "State" and the "Webster" theatres were ¾ mile apart. Schine later took over the "Webster". Schine testified he said that it would not be sensible to build the "Webster", but denied that he said he would build near the "Murray."

At Seneca Falls, after an independent had taken steps toward building a theatre, a sign was placed on the Seneca theatre (shortly theretofore purchased by Schine) which read: "Closed for alterations. Will re-open soon as a Schine theatre." Independent then discontinued efforts to build. "Schine" did not re-open. Practically the same things recurred two years later. The same independent took steps to build. The sign re-appeared on the "Seneca". The independent did not go through with his plan. The "Seneca" did not open. It had not been open in several years.

After "Schine" opened a theatre within a town, it was arbitrarily able to keep the independents from opening a theatre in the town with suitable run products, as in Auburn, Lockport, Mt. Vernon, Paris and Bellefontaine.

"Schine" was able to monopolize first run product at Corbin, Medina and Lockport even though the physical facilities of the independents in those towns were better than Schine's. He was able to monopolize the first neighborhood run in Rochester even though the physical facilities of the independent were better.

The evidence discloses that "Schine" cut admission prices at Corbin, Geneva, Lexington, Malone, Ogdensburg and other towns; gave out cut rate tickets in Addison, good in his Corning theatre for students, and frequently engaged in two for ones and bank nights in other towns.

In cases of purchase or the assumption of leases other than those hereinbefore referred to, the agreements therefor provided for no competition by the independents for long periods of time. The non-competitive feature was also extended to cover outside towns, i. e.: Amsterdam, Ilion, Malone, Paris and Lexington.

By reason of franchise agreements entered into prior to May 19, 1942, (voided thereafter, see Decree herein of that date) permitting special film rentals not given independents, "Schine" was able to repeat benefits unavailable to independents and these were utilized against independent operators as a means of restraint. These have a definite bearing on the competitive effect of buying power. Rather than make contracts for a single year, as appears to have been Schine's practice prior to 1936, he then began making such for a period of two or three years. These contracts included both the entire circuit and also those theatres for which Schine did the booking. The great buying power of "Schine" enable him to obtain concessions not obtainable by independents. In 1936 Schine made a three year agreement with Fox, and as a result he obtained the Fox feature product in all the towns which "Schine" then operated, and this agreement was later made to include subsequently acquired theatres. In 1938 a subsequent three year agreement was made. These agreements provided for payment of certain percentage of gross receipts after deduction of operating costs, and also fixed minimum admission charges. With Loew in 1936, a four year agreement was made under substantially the same terms as made with Fox. In 1937 a comparable three year agreement was made with Warner; in 1938 a similar one with RKO; a similar two year one with Columbia in the same year and a three year agreement was made with Universal in 1939. In the instance of United Artists, a distributing corporation, separate contracts were made for each feature for all Schine theatres. Another feature of these agreements was in the inclusion of unfair and inequitable clearance provisions.

Proofs connecting the distributors with certain of the aforesaid acts of defendants come from the provisions of the franchise agreements and acts of the distributors, inter-department communications of the distributors and statements made by their authorized representatives, of which numerous ones have been set forth herein. It is hardly believable that the executive officers of the distributors did not know some of the methods employed by "Schine" in its efforts to restrict competition. Distributors' salesmen, branch managers and district managers are necessarily in constant touch with "Schine's" operations. By the very terms of the franchise agreements they insured strength against competition. These long term deals were made by each of the distributors, except United Artists whose term deals were necessarily somewhat different, and they were in effect profit sharing agreements and created a virtual partnership with "Schine." To the same end were the unreasonable clearances given "Schine" by each of the distributors. Attention has heretofore been directed to some of these. The plaintiff has submitted in connection with its brief papers purporting to be arbitration awards fixing clearances in certain instances and which arbitrations are purported to have been made pursuant to the Consent Decree entered in the District Court of the United States for the Southern District of New York on November 20, 1940. These arbitration awards are not in evidence. They have no binding effect as res adjudicata or otherwise, and this court has not considered them as evidence. However, it is hardly necessary to look to any other decision to support the view that clearances of 180 or 120 or 90 or 60 days are not reasonable in the instances herein in which they have been allowed. It is true some of these were clearances over third runs but many were over second run. In numerous instances these unreasonable clearances were allowed over towns in which Schine did not operate, and some towns distant from 10 to upwards of 20 miles, and towns in which there were no theatres. Gloversville got clearance of 45 days over Johnstown, and "Schine" was given clearance both over Newfane and Mohawk where there were no theatres. Many clearances were over outside towns of comparably small population, distant so far that no clearance is justified, such as Randolph, Little Valley and Ellicottville, New York. Many recently were given over towns over which there had been no previous clearance. Metro gave clearance in Ashland over Londenville and Lodi, Ohio; United Artists gave clearance in Auburn over Skaneateles, New York, and Fox in Hornell over Earlville, New York.

The record is replete with inter-department communications between major film representatives which recognize the unreasonableness of the clearances given to Schine at his demand. This is shown by the communications and representations made by Lehman of United Artists, Pielow of M.G.M., Dana and Sauber of Universal, Smith of Warner, and Sussman and Grassgreen of Fox, which are admissible in evidence because these men all held positions in their respective companies so that it was within the scope of their duties to make the representations in the communications that they did as a natural incident of the office, *i.e.:* branch or district manager.

Pielow, MGM resident manager, wrote: "I feel that in some of the situations (unnamed) (discussing Schine contracts), the clearance that he (Lynch) is demanding is unfair * * * ." Dana, branch manager of Universal wrote the district manager that he had asked Louis Schine relative to clearances over the Smalley circuit (Norwich) and that he refused to grant the privilege of serving the pictures with shorter clearance. Universal branch manager Sauber wrote Lynch that they wanted to serve Waterloo in less time than the 30 days clearance after Seneca Falls because other majors were, but Lynch refused though Universal had the right under its contract to so do. At Rochester Scully, of Universal, said it would be satisfactory if the Madison and Monroe came within the Schine 21 day clearance.

Smith, branch manager of Warner, wrote to the Home office that Canton would do more business if it were not for Schine at Ogdensburg having 30 days clearance and if it was reduced: "It will make a better condition for us all * * *." Smith also wrote relative to Seneca Falls stating that he hoped Lynch would break down their 60 days clearance: "As I told you this morning over the phone, the clearance set up is all wet * * *."

Sussman, of Fox, wrote to Grassgreen that the 60 day clearance in Glens Falls and elsewhere seemed excessive. Sussman went on to comment that he noted that 60 day clearance was given over second run at Malone when Fox had no second run in Malone, and furthermore, as previously stated, 60 days over second run seemed excessive. Grassgreen replied that while the 60 days at Glens Falls might seem excessive, Lynch insisted upon it. Grassgreen said that Schine insisted upon the 60 day clearance because they wanted to be consistent with their demands for 60 days over subsequent independent runs.

In certain instances the distributors refused to negotiate with the independents for runs not bought by Schine. Such are seen in the refusal of RKO, Fox, Paramount, MGM and Universal to furnish second run at Auburn; of MGM at Amsterdam until the "Schine" deal did not materialize; by United Artists at Geneva; and by RKO, Universal and Fox at Paris.

In many instances the distributors refused to negotiate with the independents for runs. After "The Circuit" came into the town, in many instances it was impossible for the independent to get a good run of major product, or even to have his requests to purchase considered. RKO would not sell to the independent after "The Circuit" came in for 1933-34 in Auburn, 1935-36 in Mt. Vernon; MGM would not sell 1930-31 in Bellefontaine, 1933-34 in Lockport and Norwich, 1935-36 in Van Wert, 1936-37 in Lexington, 1938-39 in Medina; Paramount would not sell 1933-34 in Lockport, 1934-35 in Auburn, 1935-36 in Mt. Vernon; Fox would not sell 1933-34 in Norwich, 1935-36 in Amsterdam and Mt. Vernon; Universal would not sell 1933-34 in Lockport and Norwich; United Artists would not sell 1935-36 in Mt. Vernon and Van Wert; and Warner would not sell 1933-34 in Norwich, 1935-36 in Amsterdam, 1938-39 in Medina and 1941 in Norwich. In these instances, when the independent attempted to make application for product, he was simply advised that the product had been sold to "Schine" in a circuit deal.

Special privileges were granted, as in the option of paying a per cent of the gross receipts from product or flat rental, and as in deducting cost of competitive devices (bank nights, etc.) from gross before computing the distributor's share.

Special license provisions were given by tying up second runs, as in Lockport and Corning.

In certain instances Schine's film contracts called for lower minimum admission charge than those for the independent for subsequent run. This happened in Lexington and Corning.

United Artists with respect to the Capitol theatre in Ilion wrote: "We do not want to encounter any difficulty with the Schine Circuit * * *, we want to be definitely assured that the clearance as submitted in the contracts is satisfactory to the Schine Company."

Sichelman, assistant sales manager for Fox, wrote Schine that Fox was free to sell ten pictures of first run and also 100% second run in Bellefontaine and that the branch manager was being directed to sell these. In reply, Lynch said, in part: "The only product which he (independent) has been able to buy has been from independent companies. There has not been a major company that has sold him any product. * * * We are charging a top of 40¢ admission * * * and we don't want to have the distributing companies make it impossible for us to continue getting this price. * * * I have also written Mr. Schmertz advising him that we will take the remaining pictures which we did not buy first run, and, have also asked him to refrain from selling this second run house." Lynch also wrote to the Fox branch manager asking him to hold off selling the independent.

Further, Lynch wrote United Artists that "Schine" "should be allowed the privilege of playing pictures ahead of a situation (Sodus) charging a lesser admission price." To this the reply, in part, was: "Therefore, in the future, we will grant you fourteen days, or whatever clearance you see fit to take on towns like Elmira etc. in that locality." The Fox home office wrote its branch with reference to Glens Falls, second run: "I note that you have changed the clearances hereby providing for sixty days over third run Glens Falls. Sixty days clearances here and elsewhere seem to be excessive.", and to this the branch manager replied that Schine always provided for this clearance over third run and "George Lynch insisted in carrying it through for the future."

There is much other evidence going to show the influence of "Schine" with the distributors to gain preference over independent competitors and also the cooperation of the distributors with "Schine" to the same end.

Sales managers for each of the major distributors who had authority to approve film leases, called by the defendants, gave testimony, in substance, that to their knowledge there has not been any conversations with any defendants or their executives or employees not to deal with any competing exhibitors to restrict the terms of such dealings. These sales managers can be only a small number of those employed as such during the period in question, and they speak only of their own knowledge. Some six branch and exchange managers have testified as to transactions in contradiction of the plaintiff's proof as to five of the situations in question. In *Interstate Circuit* v. *United States*, *supra,* the court said that the failure to call those officers who had authority to act for the distributors and were in a position to know whether they acted in pursuance of an agreement "is itself persuasive that their testimony, if given would have been unfavorable to appellants." While that case was stronger with respect to the proof in this connection, the defense herein as weakened both by the failure to call others of the officers authorized to act and by the nature of the testimony given by these. "The production of weak evidence when strong is available can lead only to the conclusion that the strong would have been adverse. * * * Silence then becomes evidence of the most convincing character." *Interstate Circuit* v. *United States, supra.*

Proof herein that these defendants conspired is shown by something more than inferences, and this together with the reasonable inferences to be drawn from the direct proof, suffices to show intent to conspire.

It is recognized that the matter of clearances is of major importance in the consideration of the issues herein. One position taken by the defendants is that adequate relief in so far as clearances are concerned may be had under the Consent Decree hereinbefore mentioned in *United States* v. *Paramount Pictures, Inc. et al.* Such Consent Decree was for a trial period of three years from the date of its entry, and it further provided that during such period the petitioner, the United States, would not seek any relief prayed in certain sections of the petition and of the amended and supplemental complaint and in certain other directions. After the expiration of said three year period, the government filed an application for modification of the decree. The defendants therein not admitting the existence of violations to which the application for modification was primarily directed, the suit as originally brought has been continued and has not yet been determined. This seeks the divorcement of theatres from the film producing companies. It is to be noted that Columbia, Universal and United Artists were not parties to the Consent Decree, and as heretofore noted the other major distributors originally parties defendant in this suit have been dropped as such. The arbitration features have continued to remain in effect since the expiration period by agreement of the parties, and so far as the record discloses there has been no arbitration under this Decree of any clearances involved herein existing at any time. We are called upon in this suit to decide whether there were any violations by these defendants of the law as laid in the complaint. Paramount et al. are not parties here. The violations herein are alleged to have occurred prior to the date of the Consent Decree. There is now no method by which either party can compel arbitration. The action taken in the adoption of the Consent Decree and the present availability of arbitration by agreement, however, do have a bearing on the extent of the judgment or decree to be made herein.

Some of the major companies are exhibitors as well as distributors. The government by the Consent Decree entered in an agreement setting up procedure purported to provide a fair and equitable sale, distribution and showing of pictures to all distributors. Just what was accomplished by the Decree, other than some arbitration of clearances, does not appear. The government in entering into the Consent Decree evidently contemplated that such decree would obviate the necessity of a trial of the issues and intended to let by-gones be by-gones. As compared with some of the major distributors, these defendants when combined are relatively small. The Consent Decree, therefore, brings up the question of whether the harsh determination of dissolution as urged by the government should be compelled or whether some adjustment or reorganization can be agreed on or fixed by the court which will as definitely as possible prevent future violations.

The motion picture business in production, distribution and exhibition has come to be a leading industry in this country. The producer-distributors and chains of exhibitors occupy positions from which "monopolization" is easily brought about. Each have lawful advantages which are sufficiently remunerative. The public, as well as the individual independent exhibitor, has an interest in fair competition, and it is entitled to have exhibitions at reasonable prices, well selected products and reasonable clearances between available theatres. A theatre owner naturally seeks to furnish those pictures which attract the greatest revenue. The record does not disclose any different attitude on the part of "Schine". The record does not disclose that it has not furnished sufficiently attractive entertainment. Fair competition should benefit the public, but "monopolization" when exercised by a strong wide reaching organization or group of affiliated organizations crushes or weakens opposition, eliminates fair competition to the disadvantage of the public and the individual competitor.

The defendants have maintained an unlawful combination among themselves and with their affiliated corporations and have monopolized the licensing of the exhibition of motion picture films in various cities and towns in violation of the aforesaid sections of the Sherman Act and, through the unlawful combination between themselves and their affiliates by their predatory practices, have monopolized the business of operating motion picture theatres in various towns and have attempted to monopolize in various other towns; and the defendants have contracted, conspired and combined with each other and their affiliated corporations and with each of the aforesaid major film corporations for the purpose, and with the effect of suppressing competition and monopolizing exhibition of films distributed by each of said film corporations in various towns and cities, in violation of aforesaid statute.

The plaintiff is entitled to a judgment enjoining the defendants:

(1) from monopolizing the supply of major first run films in any situation where there is a competing theatre suitable for first run exhibition thereof, and from monopolizing the supply of second run films in any situation where

there is a suitable theatre for second run exhibitions thereof;

(2) from demanding or receiving clearance over theatres operated by others which unreasonably restrict their ability to compete with a theatre owned or operated by a defendant, or corporation controlled by it;

(3) from conditioning the licensing of films in any competitive situation, outside of Buffalo, New York, upon the licensing of films in any other situation;

(4) from selling or acquiring any theatre interests pending the further order of this Court;

(5) from enforcing any existing agreements heretofore entered into by the defendants not to compete, or to restrict the use of any real estate to non-theatrical purposes; from the use of any threats or deception as a means whereby a competitor is induced to sell;

(6) from continuing the heretofore described "conspiracy" or "monopolization" in restraint of trade and commerce between the states and the entering into any combination or conspiracy for the purpose or with the effect of restraining trade and commerce between the states;

(7) and directing the entering of a decree adjudging that the defendants and their affiliated corporations be dissolved, re-aligned or reorganized in their ownership and control, so that fair competition between them and other theatres be restored and hereafter maintained; and that the determination of the question of the dissolution, re-alignment of reorganization of the parties aforesaid and the method to be employed in the accomplishment of the same be left to be fixed by this court after further consideration with the parties.

As to the objections of the defendants that certain testimony is hearsay, it is to be said this was received in evidence on the explict statement of the attorneys for the government that the authority to make the statements and write the communications would be shown. The Court reserved the right to strike out in default of making of such connections. This connection has not been made in certain instances, and the court is attaching and submitting herewith a statement of its action with respect thereto. However, it is believed that the exclusion or inclusion of this testimony does not affect the decision on the issues.

In the instant case voluminous records of the distributors were received in evidence on stipulation of the parties. These, among others, included many agreements made by the distributors with the defendants and others. Various interdepartment communications to which objections were made were properly received as a part of the record of the distributors, and further many of them were made by officials acting in their ordinary and usual capacity as representatives of the distributors. Acceptance of this type of evidence is supported by many authorities. *Murray* v. *United States,* 10 F. (2d) 409, cert. denied 271 U. S. 673; *Lewis* v. *United States,* 38 F. (2d) 406; *Johnson* v. *J. H. Yost Lumber Co.,* 117 F. (2d) 53; *Patterson* v. *United States,* 222 F. 599, cert. denied 238 U. S. 635; *United States* v. *Corn Products Refining Co.,* 234 F. 964; *Hartford Empire Co.* v. *United States,* 323 U. S. 386.

The parties herein have heretofore submitted lengthy proposed Findings of Fact and Conclusions of Law. It seems that it would simplify matters if, in the light of this opinion, new Findings were submitted. This seems specially advisable because of the numerous situations involved in the suit. However, this matter will be left to the desires of counsel.

October 8, 1945.

(Sgd.) JOHN KNIGHT,
United States District Judge.

Acting upon the objections made by defendants, the following are stricken from the record:

Testimony by Long (R 127) that Granger, Fox general sales manager, told him that Fox could not afford to give up $50,000 worth of business in order to get $5,000.

Testimony by Dasher (R 352-353) that MGM branch manager Drew told him, "Schine has 60 theatres, you have got one. What do you expect us to do."

Testimony by Cohen (R 3201) that Seed, Warner exchange manager, told him that Schine would pay $25.00 more if Warner did not sell the independent.

Testimony by De Toto (R 808-809) as to what Lehman said Schine was going to do in relation to opening additional theatres.

Testimony by Moore (R 383-384) as to what "Schine" asked that Metro hold (product) for them.

Testimony by Ayres (R 2963-2970) relative to the showing of Metro picture "Gone With The Wind".

Testimony by Warner (R 2350-2355) relative to his being called before the Film Board of Trade by a representative of RKO for a violation of the National Recovery Act in selling "two for one" tickets.

While we have generally held in favor of inter-office communications or memoranda, certain of them are hearsay and are stricken out:

In exhibit 370; "Lynch claims that he does not want a second run policy to prevail at the second run opposition and has promises from other major companies that they will not sell second run" is stricken.

Exhibit 456 refers in part to the fact that the independent told the local branch manager that he might be forced to charge 10¢ balcony and 15¢ main floor at night in order to meet his competition, and that is stricken.

The part of exhibit 519 which refers to the opinion of the branch manager that conditions were "chaotic" is not evidence against "Schine".

Exhibits 163, 229, 542, 546 and 554 are not stricken but are strictly construed. We believe them to be within the authority of the distributor's agent to make such statements, being incident to their scope of authority.

Objection was frequently made to the testimony by the independent that when he requested product of the exhibitor, he was told that it had been sold to "Schine". It is not felt that this is hearsay or beyond the scope of authority of the branch or district manager, or of the salesman. He knew that it was sold, and to whom. The statement that it was sold is admissible, and it is also admissible to state to whom it had been sold.

JOHN KNIGHT,
U.S.D.J.

APPENDIX B

Opinion of John Knight, *U.S.D.J.*

(March 8, 1946)

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
Plaintiff,
v.
SCHINE CHAIN THEATRES, INC., *et al.*,
Defendants.

Civil No. 223.

Appearances:

ROBERT L. WRIGHT, LOUIS B. SCHWARTZ, *Special Assistants to the Attorney-General;*

WENDELL BERGE, *Assistant Attorney-General;*

GEORGE L. GROBE, *United States Attorney; for Plaintiff.*

EDWARD F. MCCLENNEN, SAMUEL S. ISSEKS, WILLIARD S. MCKAY, *for the Defendants.*

KNIGHT, *District Judge:*

Both parties have moved under Rule 52(b) of the Federal Rules of Civil Procedure to amend the Findings of Fact and Conclusions of Law and the Judgment heretofore filed herein.

The Findings made by the court follow closely the opinion. It is usually the practice of this court to ask the prevailing party to submit Findings. No need has been seen for asking an unsuccessful party to submit Findings. The latter has the opportunity to present the record on appeal

The amendments proposed by the defendants set out in detail large portions of the testimony. Many of these also contain conclusions contrary to the Findings made.

It is believed that the Findings and Judgment as made are sufficient. It is not the duty of the court to set out the details of the testimony as proposed.

The question has been raised that the relief sought by the defendants is grantable only by motion under Rule 59 and not under Rule 52(b). It is true that the granting of defendants' motion in toto would amount to a reversal of the Judgment. In view of the action herein taken, it seems unnecessary to determine this question. Irrespective, however, of any obligation of the court so to do, certain amendments are allowed.

DEFENDANTS' PROPOSED FINDINGS

Proposed Finding No. 1—Allowed—

> "Among the theatres in which Schine became financially interested there are 25 theatres situated respectively in 16 towns, Auburn, Bath, Canandaigua, Carthage, Corning, Gloversville, Herkimer, Little Falls, Newark, Norwich, Oneonta, Oswego, Salamanca, Saranac Lake, Syracuse and Watertown, New York, which had belonged to Schine before 1930 and had been leased to the Fox-Metropolitan Circuit in 1929, and which reverted to Schine in 1933 as a consequence of the termination of the leases in the Fox-Metropolitan bankruptcy proceedings. The result of this reversion was that it was necessary for Schine to resume the operation of the said theatres. At the end of the year 1930 Schine had no motion picture theatres, except suburban theatres in Buffalo and Rochester, motion picture theatres in Cortland, East Rochester, Fairport, Rockport, Geneva, Malone, Medina and Ogdensburg, and a half interest in Amsterdam and a theatre under construction in Bellefontaine, Ohio."

and to be added to Finding No. 3 as found and not substituted therefor. The remainder of the proposed Finding is disallowed.

Proposed Finding No. 2—Allowed—

> "Schine has expended for the cost of land and buildings acquired by it the sum of $6,509,100.00 and for the cost of building additions and improvements the sum of $4,439,000.00."

and to be added to Finding No. 4 as found and not substituted therefor. The remainder of the proposed Finding is disallowed.

Proposed Finding No. 3—Disallowed.

Proposed Finding No. 4—Disallowed.

Proposed Finding No. 5—Allowed—

> "Schine acquired by purchase or lease 55 theatres from 1922 to 1931 and 80 from 1936 to 1941, inclusive, 15 in 1938 and 15 in 1939. The 55 theatres included the 25 which, as above stated, had been acquired by Schine and sold or leased to Fox-Metropolitan and which reverted to Schine in 1933 in the Fox-Metropolitan bankruptcy proceedings."

and to be added to Finding No. 7 as found. The remainder of the proposed Finding is disallowed.

Proposed Finding No. 6 to No. 14, inclusive,—Disallowed.

Proposed Finding No. 15—Allowed and to be added to Finding of Fact No. 20, but not in substitution therefor.

Proposed Finding No. 16—Allowed and to be added to Finding of Fact No. 21, and not to be substituted therefor.

Proposed Finding No. 17—Disallowed.

Proposed Finding No. 18—Disallowed.

Proposed Finding No. 19—Disallowed.

Proposed Finding No. 20—Allowed.

Proposed Finding No. 21 to No. 26, inclusive,—Disallowed.

Proposed Finding No. 27 to No. 31, inclusive,—Disallowed.

Proposed Finding No. 32—Allowed, except that the record shows approximately 87% are located in cities and villages.

Proposed Finding No. 33 to 44, inclusive,—Disallowed.

Proposed Finding No. 45—Allowed, except that "or 40" percent should be stricken.

Proposed Finding No. 46 to No. 84, inclusive,—Disallowed.

CONCLUSIONS OF LAW

V-1-9, inclusive, Denied.

VI—Denied.

VII—Denied.

PLAINTIFF'S PROPOSED FINDINGS.

1. Add at the end of Finding No. 22 the following: "Minimum admission prices were omitted from Schine's contracts, although the contracts of his independent competitors specified minimum admission prices.

> "The Plaza contracts in evidence prohibited it from charging less than 15 cents. The Fox contracts for the 1933-34 season permitted Schine's State Theatre with a 60-day clearance over the Plaza, to charge an adult evening orchestra admission price five cents lower than the Plaza was required to charge. Metro's 1933-34 contract for Schine's State Theatre omitted any minimum admission price requirement, as did the Universal contract for the State and RKO contracts for the Fox and State Theatres in both the 1933-34 and 1934-35 contracts.
>
> "In Lexington, Kentucky, Schine's contract with Fox for the 1936-37 first run product provided for minimum admission prices in Schine's Lexington Theatre for the first run showing of Fox pictures. Schine cut its admission price below the minimum prices fixed. Schwartz complained to Fox and Paramount about these. Fox advised Schine of this complaint and Myer Schine replied that the cuts were 'quite essential and proved to be beneficial.' Fox then omitted all minimum admission price requirements in the Schine second and third run contracts for the succeeding seasons, but provided for minimum evening adult admission prices of 15 cents for the independent theatre."

In other respects the proposed finding is disallowed.

2. Disallowed.

Nos. 3 to 7, inclusive, Allowed. It seems to me that the proposed amendments are reasonably based on the opinion herein.

8. It is believed that the court should not at this time include any Finding with respect to authorizing representatives of the Department of Justice to have access to books, etc. of a defendant corporation and to interview officers of a defendant corporation. It is believed that the court has the authority to make this direction. (*United States v. Bausch & Lomb*, 321 U. S. 707.) A plan of reorganization of the defendants or re-alignment of the theatres in suit has been submitted by the plaintiff and action on it is pending. We see no reason why the matter proposed in No. 8, *supra*, should not await consideration of the plan or some further action relative to the judgment.

March 8, 1946.

JOHN KNIGHT,
United States District Judge.

APPENDIX C

Opinion of John Knight, *U.S.D.J.*

(July 5, 1946)

United States District Court

WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
Plaintiff,

v.

SCHINE CHAIN THEATRES, INC., *et al.,*
Defendants.

Civil No. 223

Appearances:

ROBERT L. WRIGHT,

LOUIS B. SCHWARTZ, *Special Assistants to the Attorney-General;*

WENDELL BERGE, *Assistant Attorney-General;*

GEORGE L. GROBE, *United States Attorney; for plaintiff,*

WILLARD S. MCKAY, *of New York City, for Defendants;*

ARTHUR GARFIELD HAYS, *of Counsel.*

KNIGHT, *District Judge:*

The Decision of this court in this suit directs "the entering of a decree adjudging that the defendants and their affiliated corporations be dissolved, re-aligned or reorganized in their ownership and control, so that fair competition between them and other theatres be restored and maintained; and that the determination of the question of the dissolution, re-alignment or reorganization of the parties aforesaid and the method to be employed in the accomplishment of the same be left to be fixed by this court after further consideration with the parties."

Pursuant to the foregoing direction, the court, together with the parties, has had under consideration the adoption of several different plans. The general features of the plan submitted, by the plaintiff have been adopted. The principal difference is that the plan as approved does not include the divestiture of the interests of the defendants in numerous towns where the defendants' now own or control the only theatre.

The plan as approved directs these things:

1. That the defendants' interests in theatres located in certain towns, except in one theatre selected by them be sold.

2. That defendants' interests in theatres located in certain towns, except in two theatres selected by them, be sold.

3. That the defendants' interests in the Riviera or Liberty and in the Monroe or Madison theatres in Rochester, N. Y., be sold.

4. That the existing pooling arrangements be made in the manner and at the time directed.

5. That the theatre interests of the defendants remaining and undisposed of under the consent order of May, 1942, be sold.

6. That a trustee as an agent of the court be appointed to make the aforesaid sales; that no defendant shall acquire any financial interest in additional theatres except after affirmatively showing that such acquisition will not unreasonably restrain competition; and that no defendant shall buy or book films for any theatre other than those in which the defendant owns a financial interest.

The decree herein also provides that its provisions may be stayed pending a final determination of any appeal. This is conditioned upon the diligent prosecution by the defendants of such appeal, so that the ultimate enforcement of this order may not be prejudiced.

The defendants submitted three so-called "Proposed Re-alignment" plans. No one of these is acceptable. The so-called proposed Re-alignment plan No. IV has been specially urged on the court. This plan contemplates the division of Schine Chain Theatres, Inc., and its subsidiaries, into three separate corporations, in one of which J. Myer Schine would own all of the stock of the New York theatres, in another of which Louis W. Schine would own all of the stock of the Ohio theatres, and the third of which Mrs. J. Myer Schine and Mrs. Louis W. Schine would own all of the stock of the Delaware, Maryland and Kentucky theatres. It proposes that J. Myer Schine own or lease and manage, buy and book for all New York theatres; Louis W. Schine own or lease and manage and buy and book for all Ohio theatres; and Mrs. J. Myer Schine and Mrs. Louis W. Schine to own or lease and manage and buy and book for all theatres in Delaware, Maryland and Kentucky. This plan does not include the divestiture of ownership in any theatre, other than would be caused by the organization of the three corporations and by the holding of the stock interests as aforesaid. The fatal objection to this plan, aside from the question of divestiture, as it appears to me, is that as a practical matter the type of violations of the law found in this suit and condemned by this court could readily be pursued by a continuation of the three interests. The entire present interests in all this great chain of theatres would be continued in the two Schines, brothers, and their wives. Were this plan proposed with the inclusion of divestiture of the theatres of which the defendants are directed to be divested, it would justify favorable consideration. But the plan adopted by the court is more favorable to the defendants herein than such a division of the corporation together with such divestitures would be. The plan adopted by the court is not a re-alignment in the sense intended in the Decision. The direction was in the alternative. It is now made to appear that a re-alignment is not feasible.

The purpose of this and like suits by the government, under its announced policy, is not for the purpose of penalizing defendants but rather the "Restoration of free enterprise and open competition amongst all branches of the motion picture industry." In order to effectuate this policy the divestiture of theatres, as hereinbefore stated, is deemed necessary.

July 5, 1946.

JOHN KNIGHT,
United States District Judge

APPENDIX D

In the

District Court of the United States

for the Western District of New York

United States of America, *Plaintiff,* *v.* Schine Chain Theatres, Inc., *et al.*, *Defendants.*	Civil No. 223

ORDER OF JULY 5, 1946

Upon consideration of the plans heretofore filed herein by the plaintiff and the defendants for the purpose of effectuating Section III of the amended judgment heretofore entered herein, the objections filed to said plans by the said parties, and the argument of counsel with respect thereto, it is hereby

Ordered, that the following plan should be and it is adopted for said purpose:

I

THEATRE INTERESTS TO BE DIVESTED

A. All of the defendant's interests in theatres located in the following towns, except in one theatre to be selected by them, shall be sold in the manner hereinafter outlined:

Amsterdam, New York
Ashland, Ohio
Athens, Ohio
Bellfontaine, Ohio
Bucyrus, Ohio
Cambridge, Maryland
Canandaigua, New York
Corning, New York
Cortland, New York
Delaware, Ohio
Easton, Maryland
Geneva, New York
Herkemer, New York
Ilion, New York
Kent, Ohio
Little Falls, New York
Lockport, New York
Malone, New York
Maysville, Kentucky
Middlesboro, Kentucky
Newark, New York
Norwalk, Ohio
Ogdensburg, New York
Oneonta, New York
Paris, Kentucky
Piqua, Ohio
Ravenna, Ohio
Richmond, Kentucky
Salamanca, New York
Seneca Falls, New York
Tiffin, Ohio
Watertown, New York
VanWert, Ohio

B. All of the defendants' interest in theatres located in the following towns, except in two theatres to be selected by them, shall be sold in the manner hereinafter outlined:

Auburn, New York
Lexington, Kentucky
Oswego, New York
Wooster, Ohio

C. In Rochester, New York, the defendants shall sell all of their interest in the Riviera or Liberty Theatres and in the Monroe or Madison Theatres in the manner hereinafter outlined.

The names of the theatres which the defendants elect to retain in the towns named in paragraphs A, B, and C above shall be filed with the court within 30 days after the defendants shall have received a copy of this order.

D. The existing pooling arrangements at Fostoria and Medina, Ohio; and Syracuse, New York, shall be dissolved. Such dissolution in Syracuse may be effected pursuant to the decision rendered in *United States* v. *Paramount Pictures, Inc., et al.* on June 11, 1946, and consideration of such further orders as may be appropriate in this suit in this connection is reserved until after final judgment shall have been entered in that case. Such dissolution in Fostoria and Medina may be effected either by dissolution of the respective corporations through which the defendants' theatre interests in these towns are jointly held with non-defendants and return of the theatres involved to the respective stockholders who owned them prior to the formation of the corporation or by a sale of the defendants' stock in such corporations. In the event that said corporations have not been dissolved as outlined above within one year from the entry of this order, the defendants' stock therein shall be sold in the manner hereinafter outlined.

E. The following theatre interests remaining undisposed of under the consent order of May 19, 1942, and more particularly described therein, shall also be sold in the manner hereinafter outlined:

Strand Theatre—Cumberland, Maryland

Ada Meade and Opera House Theatres—Lexington, Ky.

½ interest in the Margie Grand Theatre—Harlan, Ky.

II

METHOD OF SALE

The theatre interests described in Section I hereof shall be sold as rapidly as possible upon such terms and to such purchasers as this court may approve, to the end that the theatres disposed of may operate in competition with theatres retained by the defendants. A trustee is to be appointed herein as the agent of the court for making such sales and is hereinafter designated as the trustee. Within thirty (30) days from the entry of this order the parties hereto may designate the name of a person to be appointed as trustee. In the event of their failure to agree upon the person to be so designated, the court will appoint a trustee. The trustee is hereby authorized:

(1) to examine such books and records of the defendants and make such inquiries of their employees as may be necessary to ascertain the value of the theatre interests in question;

(2) to take such action and to employ such assistance as may be necessary to negotiate and close sales of such interests, including real estate brokers, accountants, and legal counsel.

The defendants shall at all times provide the trustee with free access to the theatres to be sold, for the purpose of showing them to prospective purchasers and shall cooperate with the trustee to facilitate said sales, while continuing to maintain and operate said theatres in the ordinary and usual manner. The trustee shall present sales to the court for approval as they are negotiated and shall give reasonable notice to the defendants and the plaintiff of the terms and purchasers involved in such sales as he desires to submit for approval, to the end that they may have a fair opportunity to bring to the attention of the trustee and the court such objections as they deem appropriate.

The sales provided in Section I-E above shall be completed within six months and the remaining sales shall be completed within two years from the entry of this order, subject to such extensions with respect to specific interests as the court may grant, for good cause shown, upon the petition of the trustee or any party.

The trustee shall be compensated and his expenses paid, in such amounts as the court may from time to time approve, from the proceeds of sales made by him. Said proceeds shall be deposited by him in a special account created for this purpose and disbursed only upon further orders of this court.

III

RESTRICTIONS ON FUTURE THEATRE ACQUISITIONS

No defendant shall acquire a financial interest in any additional theatres except after an affirmative showing that such acquisition will not unreasonably restrain competition. Such showing shall be made before this court upon reasonable notice to the Attorney General at Washington, D. C. No defendant shall buy or book films for any theatre other than those in which the defendant owns a financial interest.

IV

STAY

The provisions of this order may be stayed pending a final determination of any appeal taken therefrom. Such stay shall be conditioned upon the diligent prosecution by the defendants of such appeal as may be allowed them and the maintenance and operation by them of the theatres here involved, pending such appeal, in a manner which will not prejudice the ultimate enforcement of this order.

Entered this 2d day of July, 1946.*

/s/ JOHN KNIGHT
United States District Judge

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*Actually entered July 5, 1946.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1947

No. 10

SCHINE CHAIN THEATRES, INC., *et al.*,
Appellants,

vs.

THE UNITED STATES OF AMERICA.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NEW YORK.

BRIEF FOR APPELLANTS

WILLARD S. MCKAY,
Attorney for Appellants.

BRUCE BROMLEY,
ALFRED MCCORMACK,
RICHARD T. DAVIS,
Of Counsel.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1947

SCHINE CHAIN THEATRES, INC., *et al.*,
Appellants,
vs.
THE UNITED STATES OF AMERICA.

No. 10

BRIEF FOR APPELLANTS

The opinion of the District Court is reported at 63 F. Supp. 229.

Jurisdiction

The jurisdiction of the Supreme Court to review by direct appeal the judgment entered in this cause is conferred by Section 2 of the Expediting Act of February 11, 1903, as amended (32 Stat. 823; 36 Stat. 1167; 58 Stat. 272, 15 U. S. C. § 29), and Section 238 of the Judicial Code, as amended by the Act of February 13, 1925 (43 Stat. 938, 28 U. S. C. § 345).

The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case:

U. S. v. *Crescent Amusement Co.*, 323 U. S. 173;

U. S. v. *Bausch & Lomb Co.*, 321 U. S. 707;

Interstate Circuit v. *U. S.*, 306 U. S. 208;
Paramount Famous Corp. v. *U. S.*, 282 U. S. 30;
United States v. *Reading Co.*, 226 U. S. 324;
United States v. *American Tobacco Co.*, 221 U. S. 106.

Questions Presented

This is an appeal from an Amended Judgment (hereinafter referred to as "the judgment") entered March 29, 1946, by the District Court for the Western District of New York, and from a Final Order of that Court, entitled "Order Setting Forth Plan Effectuating Judgment" entered July 5, 1946, in a civil action under the Sherman Act. The questions presented are:

1. Whether the provisions of said Final Order (hereinafter referred to as "the order of divestiture") and the provision of the judgment pursuant to which the order of divestiture was made, were necessary and appropriate or, as appellants contend, were improvident and an abuse of discretion by the District Court.

2. Whether, by reason of certain erroneous rulings with respect to the findings and the admission and effect of evidence, the findings and judgment may be sustained or whether, as appellants contend, the findings and judgments are vitiated by such erroneous rulings.

3. Whether the findings of the District Court are supported by the evidence and are sufficient to support the judgment.

4. Whether the injunctive provisions of the judgment and the order of divestiture may be sustained or whether, as appellants contend, such provisions violate Section 19 of the Clayton Act and Rule 65(d) of the Rules of Civil Procedure, are invalid for indefiniteness and are in excess of any appropriate remedy, in addition to being unwarranted by the findings below or by the evidence.

Statutes Involved

The Sherman Act of July 2, 1890, 26 Stat. 209, as amended (15 U. S. C. §§ 1, 2, 4):

> "§ 1. Trusts, etc., in restraint of trade illegal; exception of resale price agreements; penalty
>
> "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal: * * *"
>
> "§ 2. Monopolizing trade a misdemeanor; penalty
>
> "Every person who shall monopolize or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding $5,000, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court."
>
> "§ 4. The several district courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; * * *"

Statement of the Case

The appellants, who are all the defendants named in the second amended complaint (R. 39-57), on which the case was tried, are a single business entity or interest, operators of a so-called "chain" of motion picture theatres. They comprise (1) Schine Chain Theatres, Inc., (2) its officers and directors, J. Myer Schine, Louis W. Schine and John A. May, and (3) five other corporations which are wholly-owned subsidiaries of Schine Chain Theatres, Inc. They are referred to collectively as "Schine".

The lower Court's findings were in terms "limited to acts committed or course of conduct pursued prior to May 19, 1942, plaintiff's counsel having stated at the opening of the trial that he would not offer any evidence beyond that date" (Finding 30, R. 3225). May 19, 1942, was the date of a consent order entered below in connection with a 2-year postponement of the trial (R. 256-63). It is the last date as of which the record speaks, and the statistical information hereinafter set forth presents the situation as of that date.

The theatres which comprised the Schine Circuit as of May 19, 1942, were distributed geographically as follows:

78 theatres in 41 towns in New York
36 theatres in 17 towns in Ohio
18 theatres in 8 towns in Kentucky
12 theatres in 7 towns in Maryland
2 theatres in 2 towns in Delaware
2 theatres in 1 town in Virginia

or a total of 148 theatres in 76 towns, scattered over 6 States.* Of these theatres, 22 were marginal or submarginal theatres that were ordinarily kept closed, or were closed during the summer or other slack seasons, or were kept open only for week-ends or at particular seasons (R. 223-45).

---

*Not including 10 theatres in New York, 6 in Ohio and 2 in Kentucky which had been permanently closed and either had been or were to be converted to commercial use.

As of May 19, 1942, the Schine Circuit consisted of

(a) 125 theatres located in small cities and towns, with populations ranging from 5,000 to 35,000, of which towns 21 had only one theatre and only 6* had more than 3 theatres;

(b) 11 neighborhood theatres in Rochester and 2 in Buffalo, N. Y.;

(c) 6 theatres in Lexington, Ky.; and

(d) 6 theatres in Syracuse, N. Y., in which Schine was jointly interested with RKO, which Schine managed, but for which RKO bought the pictures (Ex. 1004, R. 4415, 2982; Ex. 1005, R. 4422, 2982).

In addition, Schine was buying and booking films for a summer-resort theatre in Sacandaga Park, N. Y. (R. 247).

Background of the Case

This case is one of a series of civil actions under the Sherman Act against units in the motion picture industry, of which cases two others—*United States* v. *Paramount Pictures,* 66 F. Supp. 323, 70 F. Supp. 53, and *United States* v. *Griffith Amusement Co.,* 68 F. Supp. 180, are on the docket of this Court for the present term. Another of the same series of cases was decided in December, 1944, *U. S.* v. *Crescent Amusement Co.,* 323 U. S. 173.

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*Auburn, Corning, Glens Falls and Watertown, N. Y.; and Cumberland and Salisbury, Md.

The *Paramount* case is the principal case of the series, dealing as it does with the major producer-distributor-exhibitor units in the industry. The present case and the *Griffith* case deal, and the *Crescent* case dealt, with relatively small independent units in the exhibition branch of the industry. The 148 theatres which Schine was operating in May, 1942, compare with some 17,000 motion picture theatres in the United States,* of which one-sixth, including most of the important metropolitan theatres, are controlled by the 5 theatre-owning producer-distributors,** who are defendants in the *Paramount* case (66 F. Supp. at 353).

When the complaint in the *Paramount* case was filed in July, 1938, the Department of Justice explained in a press release that its principal purpose was to break up the producer-exhibitor combinations by requiring the large units in the industry to dispose of their theatres.*** The conditions in the industry to be cured by such measures were later summarized by the Department as follows:

---

*R. 2790. See also T. N. E. C. Monograph No. 43, "The Motion Picture Industry—A Pattern of Control."

**For brevity, the 8 large distributors of motion pictures (who were originally defendants in this case) will be referred to in this brief, as in the Trial Court's findings (R. 3214), by the characteristic parts of their respective names, i.e., Fox (sometimes called Twentieth Century-Fox), Loew's (sometimes called Metro or MGM), Paramount, RKO and Warner, the 5 "majors" which produce and distribute pictures and also operate theatres, and Columbia, Universal and United Artists, the 3 large distributors which do not operate theatres. The 5 large producer-distributor-exhibitors are ordinarily called the "majors", and are so referred to in the *Paramount* case. To avoid confusion, therefore, it is to be noted that the Court below in its findings has referred to all 8 companies as the "major film companies" (R. 3214) and to their product as "major film product" (R. 3213).

***Department of Justice Press Release of July 20, 1938, announcing the commencement of the *Paramount* action. New York Times, July 21, 1938, p. 6, col. 1.

> "(1) Independently owned theatres are being driven out of business; (2) The construction and operation of new theatres is handicapped because any new enterprise is subject to the arbitrary control of a presently existing monopoly; (3) New or independent enterprise in the production of pictures is handicapped in the same way because the existing combination substantially controls the most important theatre outlets on a Nation-wide scale; (4) Independently owned theatres are so narrowly limited in the choice of films that they cannot by competition and experimentation suit the particular tastes of their communities."*

On April 28, 1939, the Government started its first case against an independent chain of theatres (the *Griffith* case). The Department press release explaining its purpose** said that the *Griffith* case was "an essential complement to the pending equity suit in New York" (the *Paramount* case), since the objectives of the Department in the *Paramount* case could not be attained

> "* * * so long as there exist chains of theatres exercising monopoly power in various sections of the country, even if the affiliation between such chains and the major companies is broken. If the major producers are deprived of control over local theatres,

---

*Department of Justice Press Release of April 28, 1939, announcing the commencement of the *Griffith* case; reported in New York Times, April 28, 1939, p. 38, col. 1.

***Ibid.*

> they must have for themselves a competitive market of truly independent theatres in which to distribute their product. * * * To leave the chain theatres in control of the market after divestiture by the major companies would be simply to substitute a number of local monopolies for the national monopoly which is now charged to exist. * * * Local monopoly control may be quite as effective in stifling competition as national monopoly control and at the same time be more disorderly.
>
> * * * * * * * *
>
> "This proceeding, aimed against local monopolies, has the same general purpose as the suit in New York which is aimed against national monopoly. These theatres are able to make blanket contracts for all the desirable pictures without competing with local independent exhibitors.
>
> * * * * * * * *
>
> "In fairness to the defendants in this particular proceeding, it should be added that there are many other chains of theatres in the United States whose situation is similar. The first proceeding is brought against these particular defendants only because the investigation involving them happened to be completed first."*

The complaint in the present case, which follows closely the pattern established in the *Griffith* case, was filed on August 7, 1939 (R. 1-20).

The defendants named in the original complaint, in addition to appellants, were the 5 major producer-distributor companies and the other 3 large distributors (R. 1, 3-5).

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*Department of Justice Press Release of April 28, 1939.

Violations Charged in the Complaint

The complaint charged the defendants with violating Sections 1 and 2 of the Sherman Act by combining and conspiring with each other to restrain interstate commerce in motion pictures in practically all situations where Schine operated theatres, and by attempting to monopolize, by monopolizing, and by combining and conspiring with each other to monopolize, the first and preferred run exhibition of motion pictures in practically all such situations (R. 10).

More specifically it was charged that the distributors (a) in practically every such situation uniformly gave Schine the first and preferred run of motion pictures in preference to all competing theatres and with protection over such theatres; (b) refused to license motion pictures on a local competitive basis to competitors in Schine towns; (c) uniformly granted Schine privileges, benefits and advantages not generally granted to other exhibitors; (d) in many instances uniformly refused to sell second or subsequent runs of pictures in opposition to a Schine theatre; (e) uniformly granted unreasonable protection to Schine over other theatres; (f) in many instances charged Schine lower rental for pictures than they charged other exhibitors for comparable or less favorable runs, and (g) on many occasions licensed to Schine motion pictures greatly in excess of its reasonable requirements, thus preventing other exhibitors from getting the pictures at all or from getting them while still new (R. 11-12).

The complaint also alleged that Schine, having a large number of theatres, possessed large "circuit buying power", which it used to induce the distributors to grant privileges to Schine theatres and impose restrictions on competing theatres; that because Schine had the only theatre or theatres in operation in many towns (i.e., "closed towns") it was able to use such local "monopolies" to negotiate favorable terms for pictures in towns where there was competition (i.e., "open towns") (R. 12-13).

The complaint further alleged that Schine had acquired and attempted to acquire theatres, and had forced or attempted to force competitors out of business, by the following methods, in cases where the competitor would not sell out to Schine: (1) threatening to build an opposition theatre, (2) building an opposition theatre, taking product away from the competitor and relegating him to an inferior position, (3) threatening to deprive competitors of desirable product or run, (4) depriving another exhibitor of desirable product, thereby relegating him to an inferior position, (5) announcing the proposed construction or opening of a theatre, (6) acquiring superior title in another exhibitor's theatre and taking over its operation, (7) cutting admission prices in competitive situations, (8) resorting to unusual and costly games and give-aways in such situations and (9) taking unreasonable protection over competing theatres (R. 13-14).

It was further alleged that Schine had restrained trade and monopolized the exhibition of motion pictures in the Schine towns by (1) monopolizing first and preferred runs, (2) contracting for more feature pictures than it could reasonably exhibit, (3) demanding and receiving unreasonable protection over competitors, (4) demanding and receiving more favorable rental terms than other exhibitors, (5) demanding and receiving more favorable rejection privileges than other exhibitors and (6) inducing such privileges from the distributors by entertainment, gifts and favors to their representatives (R. 14-15).

It was further alleged that Schine, in order to perpetuate its monopoly and discourage competition, had engaged in certain practices designed to prevent others from opening competing theatres by (1) opening or announcing the opening of closed theatres; (2) keeping or acquiring theatre sites and announcing the proposed construction of a theatre; (3) communicating with distributors and reserving feature pictures and runs that might otherwise be available to another exhibitor who intended to open a theatre in a Schine town and (4) interfering with arrangements being negotiated by other exhibitors designed to bring competition into a Schine town (R. 15).

The allegations of the original complaint were substantially repeated in the second amended complaint, upon which the case was tried (R. 39-57). The appellants, by their answers to the three successive complaints, denied each and every conclusional allegation of wrongdoing and each and every allegation of fact in support thereof (R. 58-66).

Upon the verified complaint and certain affidavits the Government moved on January 17, 1940, for a preliminary injunction restraining Schine from acquiring or operating additional theatres and from opening, during the pendency of the suit, any of their theatres which were then closed. That motion the Court denied (31 F. Supp. 270) "upon the condition, however, that it may be renewed upon a showing that the Schine defendants have acquired or are about to acquire additional theatres or have opened or are about to open any closed theatres under circumstances showing intimidation, threats or coercive tactics directed to any competitor or prospective competitor" (*Id.* at 276). The Government did not renew the motion, although Schine acquired 16 additional theatres between the date of denial of the motion and the date of the consent order entered herein.

Consent Order

The case was called for trial in May, 1942. Meanwhile, on November 20, 1940, a consent decree had been entered in the *Paramount* case which (a) in effect postponed for three years the issue of whether the Government would prosecute its case against the larger companies to compel divestiture of their theatres and (b) gave the industry an opportunity to set up a scheme of self-government and arbitration which would eliminate the trade practices that the Government considered to be, in their total effect, violative of the Sherman Act. See *United States* v. *Paramount Pictures,* 66 F. Supp. at 331-3.

As a result of the *Paramount* consent decree, the 5 major companies which had accepted that decree were dismissed as defendants in the present case, by agreement between them and the Government. The other 3 distributors were dismissed a few days before the trial, again by agreement with the Government and over objection by appellants, leaving appellants as the only defendants in the case.

When the case came on for trial, it was adjourned to May, 1944, by stipulation, upon entry of a temporary order, hereinafter referred to as the "consent order" (R. 256-63), by the terms of which Schine agreed (a) to refrain from two specific trade practices to which the Government objected and (b) to endeavor to dispose of those theatres which it had acquired since the commencement of the action, so as to reestablish the status quo at the date of the action.

In agreeing to the consent order, so as to avoid going to trial during the critical period of the war, counsel for Schine made the following statement (R. 267):

> "The defendants in this case, the exhibitor defendants, have consented to the entry of this order and they are motivated very largely by consideration of the fact that under the conditions as they exist now the time of this Court, the time of Government attorneys and the time of their own attorneys and their executives should not be taken up for a period which we estimate at six months in the trial of this case.
>
> "For that reason we have made what we consider very substantial sacrifices, and for that reason we have consented, subject to your Honor's approval, to the entry of this order."

The statement has been quoted to emphasize that Schine *in fact* consented to the conditions which the Government insisted on, because, when the case actually came to trial, both the Government and the Court persisted in treating the consent order as if it had been imposed upon Schine for wrongdoing.

The trade practices which the consent order enjoined were (a) the making or continuing of so-called "franchise" agreements with distributors, and (b) the inclusion of both "closed" and "open" towns in the same contract for pictures.

Franchises

A "franchise" is one of the methods of buying and selling* pictures for exhibition in theatres. As correctly defined in the *Paramount* case (66 F. Supp. at 333), a franchise is

---

*The term "buying and selling pictures" and similar terminology are used for convenience of expression to describe the contracts between exhibitors and distributors for the licensing of rights to exhibit pictures under copyright.

> "A licensing agreement, or series of licensing agreements, entered into as part of the same transaction, in effect for more than one motion picture season and covering the exhibition of pictures released by one distributor during the entire period of the agreement."

The consent decree in the *Paramount* case had enjoined the major distributors from making any new franchise agreements. The consent order in the present case went further, in that all existing franchises between Schine and distributors were declared void (R. 260); and Schine has not had a franchise from any distributor since 1942.

Closed towns not to be combined with open towns in buying of pictures

Under the consent order Schine agreed to refrain from combining "closed" towns with "open" towns in the purchase of pictures (R. 260-61). The Government contended that Schine's "buying power" for "closed" towns gave it an unduly advantageous bargaining position for pictures in "open" towns.

Restoration and maintenance of status quo

Between the filing of the complaint and the date of the consent order, Schine had acquired interests in 16 additional theatres in 13 scattered towns in New York, Maryland, Ohio, Kentucky, Delaware and Virginia (R. 257-58). Under the consent order Schine agreed to offer, to the former owner or last operator of each such theatre, the opportunity to reacquire the same for the amount of Schine's capital investment therein, and, if such offer were not accepted, then to make the same offer generally to "independent exhibitors". (R. 258-59). The consent order also provided that Schine should not acquire any additional theatre or interest therein without first satisfying the Court that such acquisition would not be against the public interest, after giving due consideration to the competitive situation, if any (R. 260).

The consent order was extended to November 15, 1944 (R. 426, para. (3)), at which time it expired by its own terms (R. 256, para. II). By that time Schine had disposed of 11 of the 16 theatres named in that order (R. 2988-89).

The Trial

The case came to trial on May 31, 1944, before Judge John Knight of the United States District Court for the Western District of New York.

The Government's evidence, in spite of the allegations of the complaint that Schine had violated the Sherman Act "in practically all situations" where Schine operated theatres (76 towns in all), related to only 32 towns. For the remaining 44 towns the Government put in no evidence on what Schine did or did not do in such towns.

With respect to some of the allegations of the complaint—*e.g.*, that Schine had restrained trade by contracting for more pictures than it could reasonably exhibit and by inducing privileges from distributors by entertainment, gifts and by favors to their representatives—the Government introduced no evidence. On some issues the Government put in no evidence except inter-office memoranda taken from the files of the distributors and representing hearsay of the most extreme character.

With respect to the 32 towns about which at least some evidence was introduced, the Government's evidence included oral testimony by a number of competing exhibitors and others, testimony concerning the size of appellants' theatre operations and the history of their acquisitions of theatres, and contracts entered into by Schine with the distributors. A very large part of the evidence, however, consisted of (a) testimony of other exhibitors concerning their conversations with employees of distributors and contracts entered into by them with the distributors; and (b) inter-office memoranda between employees of the distributors.

Appellants objected strenuously to the admission in evidence of those inter-office memoranda and conversations by exhibitors other than Schine with employees of the distributors,* and urged that such writings and conversations were not binding on them, and that, since such declarations constituted the *only* matter tending even remotely to establish the existence of any conspiracy, they were not admissible over the objection of appellants, who were not present when they were made. Appellants further urged that such communications should in no event be received as proof of the statements contained therein. The Trial Court, however, admitted the declarations subject to their being stricken if not connected (R. 618). Although never connected, practically all were retained in evidence in spite of appellants' later motion to strike them from the record (R. 2594); and, as will be shown in the Argument, these inadmissible declarations constitute the only support for many of the Court's findings (R. 3212-28).

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*R. 615-24; 2250-52; 2327-42; 2412-21; 2422-23.

The trial was concluded on November 10, 1944. The Government submitted its brief on December 26, 1944, giving its version of the evidence and asking for injunctive relief and "the sale of specific theatres in each town where the defendants were shown to have eliminated previously existing independent competition to the end that such competition may be restored".* Appellants filed their requests for findings and brief on January 24, 1945, and asked that the complaint be dismissed (R. 2990-3065).

On October 8, 1945, Judge Knight handed down his opinion, in which he found each and all of the appellants to have violated Sections 1 and 2 of the Sherman Act (R. 3067-89).

On November 1, 1945, the Court entered its judgment and filed its findings of fact and conclusions of law. The same had been submitted by the Government and were signed without change by Judge Knight. Section I of the judgment adjudged each of the appellants to have violated Sections 1 and 2 of the Sherman Act. Section II enjoined each of the appellants in specified respects. Section III ordered that appellants and their affiliated corporations be dissolved, realigned, or reorganized, and directed the submission of plans therefor (R. 3107-09).

On November 10, 1945, appellants filed a motion pursuant to Rule 52(b) of the Rules of Civil Procedure to amend and supplement the Court's findings of fact and conclusions of law and to amend the judgment accordingly (R. 3109-41). At the Government's request, hearing of that motion was postponed until February 4, 1946, and on that day the Government filed its motion to amend the findings of fact, conclusions of law and judgment (R. 3141-45).

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*Pl. Br., Point III, C.

In framing their proposed amendments to the Court's findings (R. 3110-29), appellants attempted to preserve the language of the original findings to the extent that there was any evidence to support them, changing the language no more than appeared absolutely necessary to conform to the proof. Such proposed amended findings therefore represent what appellants regard as a statement of the maximum that the Court could have found on each of the subjects with which its findings deal. The additional findings proposed by appellants (R. 3130-40) were believed to be necessary for a true understanding of the case, and are based entirely upon the Government's formal admissions and uncontradicted testimony.

It is significant, therefore, that the Court stated that if it were to accept the appellants' findings it would have to reverse the judgment (R. 3207).

On March 8, 1946, Judge Knight handed down his opinion and decision granting appellants' motion to amend the findings only in a few and least material respects, and the Government's motion in practically all respects (R. 3207-11. The Court stated in the opinion:

> "The Findings made by the court follow closely the opinion. It is usually the practice of this court to ask the prevailing party to submit Findings. No need has been seen for asking an unsuccessful party to submit Findings. The latter has the opportunity to present the record on appeal" (R. 3207).

On March 29, 1946, the Court filed its amended findings of fact and conclusions of law (R. 3212-28) and also an amended judgment (R. 3228-30). The original judgment was amended by amplification of the injunctive provisions and elimination of the direction for submission of plans for dissolution, realignment or reorganization.

On February 25, 1946, the Government had filed its "Plan of Reorganization of the Schine Circuit." (R. 3231-36; 3236-43). Therein the Government abandoned its request for the sale of specific theatres "in each town where the defendants were shown to have eliminated previously existing independent competition" (Pl. Br., Pt. III C) and asked for an entirely different scheme of relief. It proposed that all but 40 of appellants' 133 theatres* be sold by a trustee to be appointed by the Court and that the injunctive provisions of the judgment should be enlarged by forbidding each of the appellants (a) from buying or booking pictures for any theatre in which it or he does not have a financial interest and (b) from acquiring any financial interest in any additional theatre except upon an affirmative showing that such acquisition would not unreasonably restrain competition (R. 3243).

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*The number of theatres was reduced from 148 to 133 between May 19, 1942, and February 25, 1946, by the following transactions:

A. Schine disposed of 11 theatres pursuant to the consent order—2 in Bowling Green, O., 2 in Appalachia, Va., and 1 in each of the following 7 towns: Clifton Springs, Glens Falls, Rochester and Scotia, N. Y.; Mt. Vernon, O.; and Corbin and Pikeville, Ky.

B. Schine acquired an additional theatre in Cumberland, Md., with the Government's consent and approval of the Court (R. 425-26).

C. 5 theatres not named in the consent order are no longer held by Schine, *i.e.*, 1 in each of the following towns: Oneonta, Oswego and Syracuse, N. Y.; Bellefontaine, O., and Salisbury, Md.

On April 1, 1946, appellants filed their objections to the Government's plan (R. 3243-3311), pointing out that, even assuming the validity of the Court's findings and conclusions, there was no reason for the drastic and unprecedented relief sought by the Government. The trial of the *Paramount* case was then in progress and it was pointed out to Judge Knight that Judge A. N. Hand, presiding over the Statutory Court in that case, had indicated that the Court was not disposed to divest the major producer-distributor-exhibitors of their far more extensive theatre holdings (R. 3244-45).

Appellants also protested vigorously against the propriety of ordering the sale of their property by a trustee (R. 3298-99). They asked that the Government's plan be rejected *in toto* (R. 3311).

On May 28, 1946, appellants filed "Defendants' Proposals Regarding Realignment of Schine Circuit," in an effort to obtain a decree which would satisfy the Government's desire to break up the Schine Circuit, thereby avoiding the necessity for an appeal, but without destroying the property and business which appellants had built up over a period of nearly 30 years. In such Proposals appellants advanced three separate plans of realignment, each of which contemplated the creation of separate corporations to own and operate theatres in specified localities, each corporation to have officers, directors, and stockholders distinct from those of the other corporations (R. 3415-31).

Plan 3, for example, provided for three corporations, one of which would own or lease, and manage, the theatres in New York, a second the theatres in Ohio, and the third the theatres in Delaware, Maryland and Kentucky. J. Myer Schine would own all the stock of the first corporation, Louis W. Schine all the stock of the second, and Mrs. J. M. Schine and Mrs. L. W. Schine all the stock of the third. Appellants proposed that each corporation should buy its pictures for exhibition separately and maintain separate office facilities, and that each should be subject to the injunctive provisions of the judgment, except those having to do with the sale or acquisition of theatres. (R. 3424-29).

On May 22, 1946, appellants made a motion before the District Court for an order directing that hearings be held at which testimony might be taken concerning the means of effectuating Section III of the amended judgment, relating to the realignment, reorganization or dissolution of the Schine Circuit, and concerning the plans submitted by the respective parties to carry out that provision (R. 3378).

In support of their motion appellants pointed out (1) that the evidence in the record was limited to acts prior to May 19, 1942; (2) that by reason of the consent order in this and the *Paramount* case and other factors, conditions and practices in the industry had changed substantially since that date; and (3) that in the case of most of the theatres affected by the Government's plan for sale there was no proof to show how such sale would affect either the appellants and their subsidiaries or competitive conditions in the area where such theatres were located. Thus there was no proof from which it could be determined whether the Government's plan or the appellants' plan would afford more effective relief under the circumstances. For the most part, such proof would not have been relevant during the course of the trial, because at that time no claim for such relief had been made by the Government.

Appellants called to the attention of Judge Knight the decision in the *Paramount* case immediately after it was rendered on June 11, 1946, and pointed out to him that there the Court, despite its findings of conspiracy and violations of the Sherman Act, had refused to require the major distributor-exhibitors to sell their theatres (R. 3447, 3459).

On June 24, 1946, the District Court denied the motion to take testimony (R. 3461).

On July 5, 1946, the Court handed down its opinion, without any additional findings, adopting the general features of the plan proposed by the Government, and entered its order for the purpose of effectuating Section III of the amended judgment (R. 3462-64; 3464-68).

The order decreed that appellants' interest in 58 theatres be sold, subject to the approval of the Court, by a trustee to be appointed by the Court, and that the proceeds of the sales be held in the custody of the Court (R. 3466-67).

The order required the dissolution of so-called "pooling agreements" in 3 towns, and forbade each appellant from acquiring financial interests in any additional theatres, except on an affirmative showing that such acquisition would not unreasonably restrain competition, and from buying or booking films for any theatre other than those in which such appellant owns a financial interest (3465-67).

The order contained a stay pending final determination of any appeal taken therefrom (R. 3467-68). On July 5, 1946, appellants made a motion to have the order amended or clarified to provide that the stay was applicable to all parts of the order and to direct the entry of a formal judgment in conformity with the terms of the order, or, in the alternative, to designate the order as a final appealable order. (R. 3468). Said motion was heard the same day, and the Court ruled that the stay contained in the order of July 5, 1946, applied to the entire order and that said order was to be construed as final (R. 3471-72). A petition for appeal was filed in the District Court on August 26, 1946, and was allowed on the same day (R. 3526-27).

The appeal was dismissed by this Court on December 16, 1946 (329 U. S. 686), for failure to comply with Rule 12 of the Rules of this Court, and a petition for rehearing was later filed. On January 13, 1947, this Court granted appellants' motion for leave to file a new statement as to jurisdiction. 67 Sup. Ct. 500. One week later this Court granted the petition for rehearing, vacated its prior judgment of dismissal, and noted probable jurisdiction. 329 U. S. 817 (R. 3755).*

History of the Schine Circuit

One of the important respects in which this case differs from the *Crescent* case is that the appellants are not a group of theatre operators who have joined together to increase their competitive power, but are, and have always been, a single business organization.

That organization was started on the proverbial "shoestring" by its present head more than 30 years ago. Like any other successful "chain" of theatres, it has grown from year to year as the organization has found and taken advantage of opportunities to acquire theatres by lease or purchase or to build theatres in places where they were needed and the prospects of earnings looked bright.

In 1917 J. Myer Schine, who had previously been connected with a theatre in Syracuse, learned that the Hippodrome in Gloversville, owned and operated by the Odd Fellows Lodge, was available for lease. Mr. Schine met with the Trustees of the Lodge and agreed to lease the theatre for 15 years for a rental of $1,500 per year. Mr. Schine was then 25 years old (R. 2629).

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*The record reference erroneously indicates June 20, 1947, as the date on which probable jurisdiction was noted.

Mr. Schine quickly demonstrated his ability as a theatre operator. When he took over the Hippodrome, it was one of 3 theatres in Gloversville, and it was the least desirable of the three—a converted skating rink with 750 seats, poorly ventilated and with inadequate facilities. Business was bad. He analyzed the situation and came to the conclusion that people were not patronizing his theatre because they did not like it. Accordingly, he inaugurated a policy which has made him one of the most successful theatre operators in the country—the policy of spending money liberally to give the patrons of his theatres the most pleasant and comfortable surroundings. He redecorated and remodeled the theatre with new and improved facilities, in addition to playing the best pictures that he could obtain. Soon the Hippodrome was doing capacity business, and the Odd Fellows Lodge offered to sell the building to Schine. He bought it for $22,500 (R. 2632).

The other 2 theatres in Gloversville in 1917 were the Glove, a new motion picture theatre, and the Family, an older theatre which played both vaudeville and pictures. They were in a single ownership. Schine's operation of the Hippodrome was so successful that in 1920 the owner of the Glove and the Family approached Schine through a broker and offered to sell him the 2 theatres. Schine bought them (R. 2632).

Gloversville, headquarters of the Schine Circuit, where the individual defendants reside, has been a "closed" town since 1920. The Hippodrome has been progressively remodeled and improved from time to time during the intervening years, and it is now a large modern theatre, seating 1,151 persons, and with an investment in building and improvements of $117,500. The Glove Theatre, for which Schine paid $126,000 in 1920, has been improved to the extent of an additional $109,300, and it is also a large modern theatre, with 1,298 seats (Ex. D-150, R. 5183, 2634). The Family, which became a surplus theatre in view of the modernization and enlargement of the other two, has been converted to commercial use (R. 2730).

There is no evidence to show, nor has the Government even argued, that the Schine Circuit, in the oldest of its "closed" towns (or elsewhere), has failed to provide the public with first class entertainment at reasonable prices* or that there was anything improper in the acquisition or operation of the Gloversville theatres, or that the people of Gloversville have suffered by reason of the fact that for many years Schine has had—in the economic sense—a "monopoly" of the exhibition of motion pictures in that town.

In 1919, Schine had extended its operations beyond Gloversville by buying the Strand Theatre in Oneonta. Here again, as in Gloversville, Schine bought the least desirable of the 3 theatres in the town—one which by 1933 had become obsolete and unusable (R. 229). Nevertheless, Schine operated successfully in competition with the other theatres and in 1922 was able to buy the largest theatre in the town, the Oneonta. In 1923, the owner of the town's third theatre, the Palace, leased it to Schine (R. 229).

Oneonta has been a "closed" town since 1923. Here again there is not a shred of evidence to suggest that there was anything improper in Schine's acquisition of the theatres in Oneonta or that anybody in Oneonta had ever been injured by, or had ever complained about Schine's acquisition or retention of those theatres. In Oneonta, however, unlike Gloversville, Schine is to be divested of one of its 2 theatres by the order of the Court below (R. 3465).

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*See Finding 29 (R. 3225).

The third town in which Schine obtained a theatre was Norwich, N. Y., in 1921 (R. 229); and in the phenomenal period of business expansion from 1922 to 1928, Schine plowed its earnings back into the business and gradually extended its operations to other cities and towns in New York, until by 1928 it had assembled, by purchase or lease, and was operating, 55 theatres (including 4 in which it had a 50% interest) in 27 cities and towns, all in the State of New York (R. 223-33).

There was not in 1928, nor is there today, any geographic concentration in the Schine Circuit. The 27 towns in which Schine had theatres in 1929 were located in 23 different counties in the State—from Amsterdam in the eastern part of the State to Buffalo in the west, and from Malone near the Canadian border to Salamanca, just above the Pennsylvania line. There is no "monopoly" pattern in Schine's selection of towns in which to invest in theatres, either before or after 1929. There is no pattern whatever, in fact, except that which results from a policy of investing in only the most promising available situations in the general area of operations.

In 1929 Schine greatly reduced the scale of its operations by leasing 25 of its theatres (R. 223-45) to Fox-Metropolitan Playhouses, Inc., a distributor-affiliated chain, and at the end of 1930 Schine was operating 25 theatres in 11 towns, including a new theatre which it built in that year in Cortland, New York (R. 223-45).

In 1930 Schine's attention was directed to theatre opportunities in Ohio, after a group of citizens of Bellefontaine, anxious to have an up-to-date local theatre, called on J. Myer Schine to interest him in completing construction of a theatre which another operator had started but had been unable to finish (R. 2668-69). Schine bought the unfinished building at public auction and put up a large modern theatre; and thereafter, from 1931 to 1941, each year saw the addition to the Schine Circuit of at least one theatre in Ohio.

Schine's expansion in Ohio involved the construction of 6 large and modern theatres, the Holland in Bellefontaine in 1931, the Van Wert Theatre in Van Wert in 1935, the Bucyrus Theatre in Bucyrus in 1936, the Vernon Theatre in Mt. Vernon in 1938, the Wayne Theatre in Wooster in 1938 (50% Schine interest) and the Norwalk Theatre in Norwalk in 1941 (2/3rds Schine interest), all towns that had been inadequately served with motion picture theatres before Schine came in (R. 234-37). It also involved the remodeling and improvement of theatres in Ashland, Athens, Delaware, Kent, Mt. Vernon, Norwalk, Piqua, Ravenna, Tiffin and Wooster (Ex. D-150, R. 5183, 2634).

Meanwhile, Fox-Metropolitan had gone into equity receivership, and the 25 Schine theatres in New York State, which had been leased to that company, reverted to Schine in 1933 (R. 223-45).

In 1936 Schine extended its operations to Kentucky by acquiring 4 theatres in Lexington and 4 in 2 other towns in Kentucky (all from the same owner). Further expansion took place from 1938 to 1941, when Schine acquired 13 additional theatres in 5 Kentucky towns (R. 238-39).

Schine entered the State of Maryland in 1938 and from 1938 to 1940 acquired 10 theatres in 7 towns in that State (R. 240).

In 1939 Schine acquired 2 theatres in Delaware, one in Milford and the other in Laurel (R. 241), and in 1941 2 theatres in Appalachia, Virginia (R. 241).*

In Kentucky, Maryland and Delaware, as in Ohio, Schine made large expenditures of money to remodel, refit and, in some cases, to reconstruct the theatres which it acquired—greatly improving the motion picture facilities of the towns into which it entered (Ex. D-150, R. 5183, R. 2634).

The Schine Circuit is an example of the typically American phenomenon of growth by means of successful operation in a changing and expanding industry and the plowing back of operating profits into the business. While it is today a business of substantial size, it is small in relation to the whole motion picture theatre industry, as will be seen from the number of theatres operated by Schine in relation to the total number of theatres in the 6 states where Schine was operating at the date of the consent order:

State	Total Number** of Theatres	Number of Schine Theatres	Percentage of Schine Theatres
New York	1,433	78	5.4%
Ohio	1,015	36	3.5%
Kentucky	348	18	5.1%
Maryland	245	12	4.9%
Delaware	36	2	5.5%
Virginia	246	2	.6%
TOTAL	3,323	148	4.4%

Scattered as they were over wide areas in 6 states, the Schine theatres presented no question of "monopoly" (in either the economic or the legal sense) on a national scale, or on the scale of a State or any large area within a State.

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*The Virginia theatres have since been disposed of pursuant to the consent order of May 19, 1942 (R. 256-63).

**Film Daily Year Book (1943), p. 51.

There was nowhere any such regional concentration as would permit Schine to control the flow of pictures into, or the admission price structure within, any such area. There is nowhere such a regional concentration as led this Court in the *Crescent* case to conclude that the defendants there were seeking a monopoly in the areas where they were operating (323 U. S. 173, 181 and footnote on p. 182).

Within 60 of the 76 towns in which Schine had theatres as of May 19, 1942, there were "monopolies" in the popular sense of the word, in that Schine had the only motion picture theatre in each of 21 towns, operated both the theatres in 21 towns which had 2 theatres each, and had all the theatres in 16 towns that had 3 theatres each (R. 223-45). In addition, Schine had 6 theatres in Lexington, Ky., and 4 theatres in Oswego, N. Y., and no other operator had a theatre in those cities (R. 229-30, 238).

In the lower court the Government, by the manner in which it used the industry terms "closed town" and "open town", sought—and not without some success with the Court—to give the impression that there is something sinister and illegal about a "closed town". The fact is, however, that the term is used to describe the many thousands of places throughout the country in which there is only one theatre in the town, or in which the two or more theatres in the town are under a single operation.

A census taken by the industry publication, "The Film Daily", following the *Paramount* decision, revealed that some 6,800 theatres in the United States, or almost 40% of all the motion picture theatres in the country, are in one-theatre towns, and that the percentage of theatres in one-theatre towns to all theatres in the various states ranged from 15% in New Jersey to 65% in Nebraska.*

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*The Film Daily, Vol. 90, No. 41, August 27, 1946.

As will be seen from the discussion under Point III, there are economic factors that tend to put both or all the theatres in a 2-theatre or 3-theatre town into a single operation. That there is nothing either unusual or evil in the existence of "closed towns" is well demonstrated by the fact that, of the 60 "closed" towns in the Schine Circuit, only 18 were "open" towns when Schine went into them. In the other 42 cases, Schine either acquired the theatre, or both or all the theatres, from a single owner, or put up a new theatre in the town and bought out the previous operator.*

The 18 towns that were "open" when Schine entered them, but which were "closed" as of May 19, 1942, fall into the categories listed below:

> Three are towns in which Schine has been operating since before 1925 (Gloversville, Oneonta and Lockport):
>
> One (Fostoria) is a case in which Schine and the other theatre operator merged their businesses, each taking a 50% interest and Schine taking over the operation of the theatres.
>
> One (Mt. Vernon) is a case where the theatre was owned by the County and put up periodically for short-term lease at public auction. Schine first had the theatre, another operator then acquired the lease at public bidding, and six years later Schine reacquired it in the same manner.

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*In the *Crescent* case (323 U. S. at 180-81) 73 of the 78 towns in which the defendants operated were "closed" towns; and, since no two of the defendants operated theatres in the same town, the decree in that case did not have the effect of "opening" any towns.

One (Seneca Falls) is a case where the competitor went out of business because the bank which owned the theatre building refused to renew the lease and sold the building to Schine after the lessee had declined to buy it himself.*

Twelve (Ashland, Athens, Bucyrus, Carthage, Cortland, Delaware, Kent, Lexington, Maysville, Norwalk, Tiffin and Wooster) are cases where the other operator sold out to Schine.

In all such instances, the Government has attributed the result to some act or acts by Schine allegedly calculated to "monopolize", rather than to the operation of business factors and competition within the economic structure of the industry as Schine found it; and, as is shown under Point III, the lower Court found restraints of trade in acts of Schine merely *because* those acts may have induced or helped to induce the other theatre operator to sell out or go out of business and thereby give Schine a "monopoly" in the particular town, and without applying to those acts any of the standards laid down by this Court under the Sherman Act.

When the findings of the Court below are analyzed, it will be seen that it broadly condemned any conduct on the part of Schine which tended to give Schine a "monopoly"—in the economic sense of the word—in any town, or which enabled it to retain a "monopoly", in the economic sense, in any town.

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*It is indicative of the character of the Government's case that this instance is the sole basis for the charge in the complaint that appellants "have forced and attempted to force competitors out of business * * * by * * * (6) Acquiring the superior title in a theatre controlled or operated by another exhibitor, and taking over the control or operation of such theatre" (R. 51-52).

How far the lower Court went in ignoring the operation of economic factors may be illustrated by the case of Bellefontaine, the first Ohio town in which Schine operated. Before Schine came in, it was a "closed" town, its three theatres being in single ownership and leased to a single theatre operator, who kept one of them—the Strand—open and the other two closed. The Strand seated 480 people (R. 1416). Schine entered the town and built an expensive, modern theatre, with the latest equipment, seating 1,400 persons, and commenced to operate it on February 1, 1931, playing first-run the pictures of those distributors whose product the other operator had not bought for that season* (R. 1350, 1365). The public patronized the Schine theatre and the other operator began to lose money. About the first of June, 4 months after Schine's theatre started operating, the other operator sold out to Schine (R. 1367). Schine then took the Strand Theatre and thereafter operated it part-time, when the available business justified (R. 234, 244).

Instances like this one are a necessary result of the competitive process in the theatre business. If a progressive operator comes into a town like Bellefontaine, which is poorly served with motion pictures, and puts up a large, first-class theatre, the operator of the older theatre is bound to lose some of the patronage that he enjoyed when he had a "monopoly" in the town; and if, in a depression year like

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*This is the first of many references in this brief to the purchase by a theatre of the "product" of a distributor. There are two things to be borne in mind in connection with such references, (a) that the reference is to the first run of the product, unless otherwise stated, and (b) that it is to all the feature product of that distributor in the particular season, since during the period involved the normal method of selling pictures was by "block booking", *i.e.* the sale of the whole product to a single theatre in any town.

1931, he cannot retain enough business to pay his expenses, he has no alternative but to shut up shop or sell out to some one who can run the theatre profitably as a part-time operation.

It seemed to be the view of the Government and the Court below, however, that Schine—because it possessed an evil property called "circuit buying power"*—should be disenabled from exercising the normal means of competing, and that the operator of the Strand—because he was an "independent"—had some kind of a vested right to be free from the competition of what the Government frequently characterized by such terms as "a powerful circuit intent on absorbing competitors".

In the Trial Court the Government made much of the fact that the lessee of the Strand sold the lease and equipment of the Strand to Schine (for $2,500) and that Schine thus acquired a "monopoly" in Bellefontaine.

But in a situation like that in Bellefontaine,—when the town is not supporting the full-time operation of 2 theatres —the operator of the new theatre is a logical (and perhaps the only) lessee for the old one (cf. R. 1026, 1040-42; 234). He can provide management for the 2 theatres with little, if any, more cost than for one. If the town will support both theatres on week ends, he can open on week ends, and similarly during school vacations, County Fair week and on special occasions.** During the slack summer months, or when business is bad, he can close down one theatre and keep the other open, providing the public with as much entertainment as there is a demand for (cf. R. 226). If business conditions improve, so that the town will support 2 full-time theatres, he can provide the public with selective entertainment, at selective prices, by playing his best (A) pictures in the big theatre and his less attractive (B) pictures, at lower admission prices, in the smaller theatre (cf. R. 236).

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*At a time, it will be noted, when the Holland Theatre in Bellefontaine was the only theatre that Schine had in the State of Ohio (R. 233-37).

**It may be noted that Mooney, the former operator of the Strand, had done the same thing. He operated the Strand full time and opened the Opera House only when business warranted it (R. 1415-16).

In other words, the operator of the Holland Theatre in Bellefontaine was—and any other experienced and efficient operator of that theatre would have been—the person in the most favorable position to operate the Strand without losing money. Schine was, therefore, the best customer for the operator who wanted to sell out and naturally, from the standpoint of the owner of the theatre, was the most desirable tenant (cf. R. 228, 234).

The Government, at the trial, and the Court in its opinion and findings, laid great stress on the ability of Schine to go into a new town and get the first runs of the distributor's products for its theatre—as if there could be no explanation for that except a "conspiracy" with the distributors. But the explanation is simple and obvious. Even the most casual study of the growth of the Schine Circuit and its expansion into new towns will reveal that Schine was an investor in underdeveloped situations; that it went into towns which, by and large, no other skilled operator had gone into, and which offered opportunities for more business than the existing operator or operators were getting from the public.

By and large, Schine went into towns that needed a new theatre, or an improved theatre, or more skillful management—in short, a better outlet for the product of the distributor. That was what Schine had to offer to the distributors as an inducement to get their pictures on first runs—good and well-managed theatres, involving good physical facilities, as a result of Schine's policy of making his theatres as attractive as possible to the public; skill in the selection of programs and in advertising and exploiting pictures; know-how as to what the public wanted, in any particular town; and a proved ability to keep theatre attendance at a high level—all factors that were reflected in the gross receipts of theatres and hence in the rentals paid to distributors.

It is unnecessary to look for a "conspiracy" between Schine and the distributors, in order to account for Schine's success in buying pictures, because that success is fully explained by the operation of business factors which are obvious from the evidence in the case.

Relation of this case to the *Paramount* case

We understand that the Government intends to argue the present case, the *Griffith* case and the *Paramount* case before this Court as interrelated cases; and it may therefore be helpful to discuss the nature of the economic problem which the present case brings into focus and its relation to the problems dealt with in the *Paramount* case.

There are certain specific issues in the present case, as to whether Schine did or did not engage in particular practices—such as making threats to open closed theatres in order to scare off potential competitors—as to which issues we show in the Argument that the findings are based upon unsubstantial evidence or relate to matters that are of no significance.

But issues of that sort are not of the essence of the Government's case, insofar as it bears upon important problems of the motion picture industry. The essence of the case—as shown by the persistent emphasis on "buying power" by both the Government and the District Court—is that in the industry as it existed Schine had certain advantages over other theatre operators who were less powerful or less successful in the competitive struggle for product.

We do not contend for a moment that the ability of the smaller theatre operators throughout the country to get product in competition with the larger units in the industry is not, or has not been, one of the important economic problems of the motion picture business. On the contrary, we recognize it to be an important problem; and it is a problem that affects Schine, just as its affects other theatre operators. The lower Court has attributed to Schine "great buying power" and ability to "dictate terms to the distributors", but it should be noted that Schine, in spite of its success as a theatre operator, has never been able to acquire more than a subordinate position in any of the large cities, from which the bulk of the revenues of the distributors is derived.

It may be noted—to emphasize the inherent improbability of the finding that Schine "was enabled to dictate terms to the distributors"—that the 5 largest unaffiliated circuits in the country (presumably including Schine) together pay less than 5% of the total domestic film rentals received by the 8 large distributors (*Paramount* case, Finding 126).

If Schine had superior competitive power as compared with smaller units in the industry, it also had—and for the same reasons—inferior competitive power in relation to the larger units in the industry. That is apparent from the competitive position that it occupies in the large cities, where the major chains operate the principal theatres. Schine has been a theatre operator in Syracuse, a town of 200,000 population, since 1927; but its position there since 1935 has been only as a partner of RKO. Schine has been operating theatres in Rochester since 1924, and in Buffalo since 1926, but in neither city has it ever been able to rise above a second-run status, operating neighborhood and suburban houses. It simply has not had sufficient competitive power to get into the first-run business in cities where larger units were operating theatres.

Whether the comparison be made between Schine and an operator with greater competitive power, or between Schine and an operator with less competitive power, the superiority of one competitor over another cannot be considered, from the standpoint of the Sherman Act, apart from a consideration of the industry's method of doing business, particularly the methods employed by the distributors in selling pictures, including the system of runs and clearance and the practices of block booking and selective selling.

Block booking and selective selling were referred to in the *Paramount* case (66 F. Supp. at 348) as follows:

> "For many years the distributor-defendants licensed their films in 'blocks', or indivisible groups, before they had been actually produced. * * * In many cases licenses for all the films had to be accepted in order to obtain any, though sometimes the exhibitor was given a right of subsequent cancelation for a certain number of pictures * * *."

Selling on an all-or-none basis is "block booking"; selling with rejection privileges is a variant of block booking, called "selective selling". The theatre operator contracts for the whole product that a particular distributor is expecting to release, but he does not expect to play it all. He expects to use his rejection privilege to exclude "B" pictures, playing only "A" pictures if enough of them are available.

Because of those methods of selling, the exhibitor in a superior competitive position in a particular town—who by and large would be the exhibitor who could produce the maximum of revenue for the distributor in that town—could buy all the product of those distributors that he considered the most reliable—or from which he could get the best terms—and then make selective contracts with other distributors, thereby assuring himself of their best pictures.

Again because of those methods of selling, the exhibitor in a superior competitive position could, by his determination of the policy on which his house would play, influence—or even determine—the policy on which his competitor's house would have to play. This point we desire to emphasize and to make specific by means of an illustration.

To understand that illustration, it is necessary to understand what is meant by a theatre's "policy" and to appreciate one unique characteristic of the motion picture business.

The term "policy", as applied to a theatre, refers principally to the run or runs of product which the theatre plays and the frequency with which it changes programs. A theatre may have a "first-run policy", a "second-run policy", a "one picture per week policy", a "four changes per week policy", etc. It may have an "A-picture policy", meaning that it plays only the "A" pictures of particular distributors, *i.e.,* those of the feature pictures which are costly and elaborate and have a greater drawing power than the "B" pictures, which are the ordinary run of features. The term "policy" is also used with reference to admission prices, as in the statement that a theatre has a "20¢ policy".

The unique characteristic of the theatre business, which distinguishes it from other businesses, and which is more fully explained under Point III, is this: The smaller the population in the area where the theatre operates the greater the number of feature pictures it must offer to the public. A large house in the theatrical district of New York, because of the large population that it has to draw upon, may play only 20 or 30 feature pictures in a year; whereas a theatre in a one-theatre town may play several hundred, changing its program 3 or 4 times a week, and often playing double features. It is therefore in the small 2-theatre or 3-theatre town that the greatest demand for first-run product will be found to exist.

Where, in a 2-theatre town, both theatres are under the control of a single exhibitor, he is free to set the policy for both theatres in the way that he thinks will provide the public with the maximum amount of amusement that they will pay for, and hence yield him the maximum revenues; and a usual method of doing business in such a situation is to run the better house on an "A" policy and the other house on a "B" policy, with a substantial admission price differential between them—attracting to the "A" theatre the more discriminating audiences, who are willing to pay the higher price to see the better pictures, and attracting to the "B" house those who are more easily entertained and prefer to pay the lower price.

In such a situation, the operator of the two theatres may buy and play all the product of the 8 large distributors, and then, when the pictures are released, book the outstanding pictures in the "A" house and the balance in the "B" house, supplementing the latter with second-run of the "A" product to the extent that it is profitable to do so.

This illustration leads us to our specific example of how the selling methods of the distributors, as they existed before the *Paramount* consent decree, made it possible for the superior competitor, by means of the policy that he set for his theatre, to have an influence—or even a determinative effect—on the policy that his competitor would have to adopt. Our example is a 2-theatre town, where one theatre was superior to the other, so that the distributor preferred it for their pictures, but where there was no wide disparity between the physical facilities or the ability of the two managements, and where both operators wanted to play the pictures of the large distributors on the earliest run that they could get.

In such a situation Theatre X, the superior theatre, could buy the whole product of some distributors on first run and the product of the remaining large distributors, also on first run, under a selective contract, with the result that the competitor, Theatre Y, would have available to it only (a) the product of any large distributor with whom in any season Theatre X could not agree on terms,* (b) first run of the pictures rejected by Theatre X, which would generally be "B" pictures, (c) first run of the pictures of "independent" producers, which are numerous but generally not above "B" grade and (d) second runs of the pictures of the large distributors. In other words, the superior competitor, by making his own theatre an "A" house, automatically forces his competitive theatre to become a "B" house, or, if the competitor prefers, a second-run house.

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*A number of illustrations of this type of situation appear under Point III of the Argument.

A situation resembling that above described existed in Norwich, N. Y., where the competing operators were Schine and the Smalley Circuit. That situation, on which there is evidence in the record, did not result from any common purpose between Schine and the distributors to hurt Smalley, or to put his circuit out of business, or to deprive him "arbitrarily" of product, or anything of the sort. The distributors had no conceivable interest in hurting him, especially since in his area of operations he was a relatively substantial customer for the distributors' pictures and had theatres in 12 "closed" towns—giving him "buying power" that he freely admitted using in bargaining with distributors for his "open" towns (R. 2458-59).

The situation in Norwich resulted simply from the fact that Schine embraced the competitive opportunities that were available to it because of the distributors' methods of selling.

There are not many situations in the present case that resemble the case of Norwich. In most instances where Schine obtained the preferred position in a town, there was a wide disparity between Schine's theatre and that of the competitor, and it would be unreasonable to expect the distributors, from the standpoint of their revenues, to do business on a preferred run with the competitor if they could agree on terms with Schine. However, to the extent that there are other situations in the case which exemplify the economic power of the stronger competitor, they were nothing more nor less than a natural result of the distributors' methods of selling.

Whatever may be the true view of the law, as to whether the distributors *ought* to have offered their pictures on the basis of block booking, or *ought* to have offered selective contracts or given out franchises, the fact is that the distributors did conduct their business in that manner. They offered the superior competitor in any situation the opportunity to get their first-run product (or second run, as the case might be) on the basis described.

In such a situation it would be asking a great deal of the theatre operator to expect him to refrain from taking advantage of the opportunities thus presented to him, if by doing so he could make the best use of his theatre or theatres and derive the maximum profit from them.

Specifically, it is asking a great deal of an exhibitor who needs and can use the product that the large distributors offer him, if we expect him to say to the distributors: "No, I do not want to accept all your product. I want you to give some of it to my competitor."

Such restraint is not ordinarily expected of those who engage in the competitive struggle called "business".

If taking advantage of the opportunities offered by the distributors amounted to a conspiracy with the several distributors, then there was—before the consent decree in *Paramount* case—an innumerable series of such conspiracies throughout the country—involving the distributor-affiliated chains, the independent chains, large and small, the operators of groups of houses and the operators of individual houses—because all the theatre operators of the country bought their pictures, and had no choice but to buy them, under the system of selling that the distributors maintained. Perhaps that is what the Government meant, in its press release in the *Griffith* case, when it said that there were many other chains of theatres in the United States whose situations were similar to that of the Griffith chain.

The economic issue that underlines the present case is a minor phase of the issues presented in the *Paramount* case. The issues in the *Paramount* case were *cause*, those in the present case *effect*. Since the consent decree in the *Paramount* case, Schine has not been in a position to buy pictures in the manner above described, because under that decree a different system of selling was put into effect. Since the consent order in the present case, Schine has been required to buy pictures in all "open" towns on the equivalent of a town-by-town basis (R. 260-61). Finally, the judgment in the *Paramount* case established a method of selling pictures on a theatre-by-theatre and picture-by-picture basis.

The conspiracies charged to Schine and the several distributors, which Government counsel said "continued up to the date of the entry of that order on May 19, 1942", ended then; and the Government so admitted, when counsel said that "the continuance of the conspiracies was not permitted by the order, of course, and I assume it didn't occur" (R. 487-88). For that reason, and because of the radical innovations that the *Paramount* consent decree, and later the judgment in the *Paramount* case, introduced into the industry, the present case is not only old, but is stale.

It is the ultimate decision in the *Paramount* case, much more than the decision in the present case, that will determine how Schine and other theatre operators conduct their business in the future and what their competitive positions will be, whether in relation to the larger units in the industry or to the smaller ones.

Summary of Argument

I—The order of divestiture was neither necessary nor appropriate but was improvident and an abuse of discretion by the Trial Court.

1. There is no support in the authorities for an order of divestiture in this case.
2. The findings of the Court do not support an order of divestiture.
3. The order of divestiture was based upon theories which this Court has never sanctioned and which are plainly erroneous.
4. Even if divestiture were an appropriate remedy, the Court could not properly have made the order of divestiture because, having refused to take testimony as to conditions existing when the order was made, it did not have before it the evidence necessary as a basis for such an order.
5. The order of the Court appointing a trustee to sell appellants' theatres was particularly improvident, and far beyond the discretion of the Court.
6. The order of the Court was especially arbitrary as it applied to the sale of theatres remaining undisposed of under the consent order of May 19, 1942.

II—Both the findings and the judgment of the Court are vitiated by erroneous rulings with respect to the admission and the effect of evidence.

The error in the admission of evidence is substantial.

III—The findings of the Trial Court are not supported by the evidence and are insufficient to support the judgment.

IV—The injunctive provisions of the judgment and order of divestiture appealed from (a) violate Section 19 of the Clayton Act and Rule 65(d) of the Rules of Civil Procedure, (b) are invalid for indefiniteness and (c) are in excess of any appropriate remedy, in addition to being unwarranted by the findings below or by the evidence.

Point I

THE ORDER OF DIVESTITURE WAS NEITHER NECESSARY NOR APPROPRIATE BUT WAS IMPROVIDENT AND AN ABUSE OF DISCRETION BY THE TRIAL COURT.

The relevant assignments of error are Nos. 1 to 64 (R. 3473-90).

The divestiture relief asked by the Government was based upon paragraph 57 of the complaint, which alleged that "the circuit buying power of the Schine defendants is now so great that its continued existence will unreasonably restrain trade and stifle competition in the exhibition of motion pictures * * * in all towns where the Schine defendants have or may hereafter acquire theatres, and will subject competing exhibitors to other and additional restraints, even if the foregoing restraints are enjoined, unless the circuit buying power is eliminated. Said circuit buying power can be eliminated only by the dissolution of the Schine circuit". (R. 55).

In the prayer for relief the Government asked that "the corporate Schine defendants, and each of them, be dissolved, and that the respective properties of said corporate defendants and of the individual Schine defendants be divested and rearranged under several separate and independent corporations or companies in such manner as to terminate effectively the aforesaid monopolistic control in the licensing and exhibition of motion pictures and to prevent further violations of the Sherman Anti-Trust Act, and that said Schine defendants, their officers, directors, agents and representatives be required to make such divestiture and conveyances of their stockholdings and properties as shall be necessary in order to accomplish such dissolution" (R. 56-57).

The Court was also asked to appoint such receivers and trustees as might be necessary to effectuate a dissolution of the corporate defendants, and "a divestiture and rearrangement of the respective properties of said corporate defendants and of the individual Schine defendants in such manner as may effectively bring about the elimination of the aforesaid monopoly in the licensing and exhibition of motion pictures" (R. 57).

In the judgment the Court directed that:

> "The defendants and their affiliated corporations be dissolved, realigned, or reorganized in their ownership and control so that fair competition between them and other theatres may be restored and thereafter maintained * * *"

and that the parties should submit plans "for such dissolution, realignment or reorganization as they believe will attain this end" (R. 3108-09).

The proposal submitted by the Government called for appointment of a trustee who would sell "as rapidly as possible" (R. 3242):

(a) The one theatre in each of 17 towns where Schine had the only theatre in the town;

(b) All but one of the theatres in each of 34 towns where Schine had more than one theatre;

(c) Interests in 5 theatres, which had been offered for sale under the consent order of May, 1942, but for which no buyers had been found;

(d) Two of 4 named theatres in Rochester;

(e) One or more theatres in 9 named towns (four of them one-theatre towns), where the Government said there were "pooling arrangements" that should be dissolved;

(f) Eight theatres in one or the other of each of 8 pairs of nearby towns (*i.e.*, within about 25 miles or less of each other), and 2 out of 3 theatres, in a case where Schine had a theatre in each of 3 nearby towns.

Thus the Government proposed (a) that Schine should be divested of at least one theatre in every town where it was operating, except Buffalo, and (b) that the Schine Circuit should be reduced from 133 theatres in 71 towns to the point where it would be operating 2 theatres in Syracuse, some neighborhood theatres in Rochester and Buffalo, and one theatre in each of 30 smaller towns (R. 3231-34). It is believed that no such wholesale destruction of a business and confiscation of property had ever before been asked in a Sherman Act case; and certainly no remedy so harsh and unfair had ever been granted.

Nevertheless, the Court stopped only a little short of granting the relief that the Government asked for. It eliminated from the divestiture decree (a) the one-theatre towns, permitting Schine to retain the theatres in such towns; (b) the 10 towns in which a theatre would have to be sold, under the Government's proposal, because it was within 25 miles of a town where there was another Schine theatre; and (c) the town of Shelby, Ohio, where Schine had only one of the three theatres in the town. In each of four towns where Schine had three or more theatres—Auburn, Lexington, Oswego and Wooster—Schine was to be allowed to keep two theatres, instead of one. With respect to Malone, N. Y., where the consent order had called for the sale of a theatre acquired in 1941, the Court gave an option to the appellants as to which of the two Malone theatres would be given up, by including that town among those in which all but one of the Schine theatres was to be disposed of.

Finally, the Court eliminated from the divestiture decree the two theatres in Gloversville, apparently because the Court, dispensing a broad kind of fireside equity, chose to let the situation stand as it was in the town that was the birthplace of the business, the headquarters of the company and the residence of the individual defendants (R. 3153).

In all other respects the Court gave the Government the relief that it asked for by way of divestiture. It ordered divestiture in 43 of the 71* towns in which Schine was operating. To put it in another way, the Court ordered divestiture in 43 out of the 51 towns that were not 1-theatre towns. Out of a total of 132** Schine theatres, Schine is to be divested of 58 (R. 3464-66).

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*Schine had withdrawn from 5 towns—Appalachia, Va., Bowling Green, O., Clifton Springs, N. Y., Scotia, N. Y., and Pikeville, Ky.—pursuant to the consent order (R. 275-76, 2988).

**The theatres totaled 133 at the date of the judgment, February 25, 1946. In the following month Schine's lease of the James Theatre in Syracuse, N. Y., expired, so that it had 132 theatres at the date of the divestiture order, July 5, 1946.

1. There is no support in the authorities for an order of divestiture in this case.

Section 4 of the Sherman Act confers "jurisdiction" upon the federal courts "to prevent and restrain violations" of the Act. The ordinary method of preventing and restraining such violations is by use of the injunctive processes of the equity court. Divestiture is an extreme remedy, to be granted only when a violation exists which cannot be prevented or restrained by injunction. The principles that have always controlled the granting of such relief are stated in *Standard Oil Co.* v. *United States*, 221 U. S. 1, 77-8, where the necessity for dissolution was rested on the fact that "* * * the condition which has been brought about in violation of the statute, in and of itself, is not only a continued attempt to monopolize, but also a monopolization * * *".

All cases in which the courts have resorted to the extreme remedy of dissolution or divestiture are cases in which an injunction directed to future conduct would have been insufficient to remove the violation of the Sherman Act that existed. They fall into 2 classes:

(a) Cases in which monopoly power has been found to be vested in and exercised by a single corporation: *Standard Oil Co.* v. *United States*, 221 U. S. 1; *United States* v. *American Tobacco Co., supra*; *United States* v. *Corn Products Refining Co.*, 234 Fed. 964; *United States* v. *Eastman Kodak Co.*, 226 Fed. 62; *United States* v. *E. I. Du Pont de Nemours & Co.*, 188 Fed. 127; and

(b) Cases in which monopolies or restraints of trade have been carried out by a combination, and where the combination itself has been found to be in violation of

the Act: *U. S.* v. *Crescent Amusement Co., supra; United States* v. *Southern Pac. Co.*, 259 U. S. 214; *United States* v. *Reading Co.*, 256 U. S. 26; *United States* v. *Lehigh Valley R. R. Co.*, 254 U. S. 255; *United States* v. *Union Pacific R. R. Co.*, 226 U. S. 61; *Northern Securities Co.* v. *United States*, 193 U. S. 197.

In either type of case what the courts have done has been to restrain and prevent the violation—the monopoly in the first class of cases, and the combination in the second class—from continuing to exist.

The courts have never ordered the divestiture of property for the purpose of "creating competition" or as a means of restraining unlawful practices which can effectively be prevented by prohibitions directed to future conduct. In *Hartford-Empire Co.* v. *U. S.*, 323 U. S. 386, and in *United States* v. *National Lead Co.*, 332 U. S. 319, the Government sought divestiture of property, in one case the nullification of patents and in the other the sale of physical properties, as a means of creating competition. In both cases this Court denied relief, pointing out in substance that it was the misuse, and not the possession, of the patents or physical properties that violated the statute, and that relief against the misuse of such property had been afforded by the judgment in both cases—in the one case the nullification of agreements based on the patents, and in the other the cancellation of agreements to which the acquisition or use of property "may have been incidental or related" (332 U. S. 319, at 351).

U. S. v. *Crescent Amusement Co., supra,* affords no precedent for the divestiture order in the present case. In the *Crescent* case there were several corporations and a co-partnership, representing a number of chains of theatres with interlocking ownerships. The District Court ordered each corporate exhibitor to divest itself of ownership of any stock interest in the other exhibitors and enjoined two of the individual defendants from acquiring control over any of the defendant exhibitors except his own company.

There was nothing in the decree in the *Crescent* case that even resembled the town-by-town divestiture which has been ordered here, although the Court in the *Crescent* case specifically found (as the Court in this case did not find) that the defendants there had been guilty of "Coercing or attempting to coerce independent operators into selling out to it, or to abandon plans to compete with it by predatory practices" (323 U. S. at 179); and although the Court in the *Crescent* case specifically found (as the Court here did not find) that competitors had been driven out of business by the predatory practices of the defendant (*Id.* at 181); furthermore the Court found in the *Crescent* case that the defendants had prevented competition among themselves by dividing territory and had in substance a regional monopoly, as witness the finding which this Court quoted (323 U. S. at 182) that:

> "Of the forty-five towns in Tennessee listed in the 1940 census as having populations between 2,500 and 10,000, Crescent and its affiliates now operate theatres in all but nine. The independents operating in three of those nine towns have already been approached by Sudekum emissaries with the suggestion that they sell out to one of the defendant exhibitors."

This Court's description of the basic violation of law in the *Crescent* case (323 U. S. 183) was that "* * * the vice of this undertaking was the combination of several exhibitors in a plan of concerted action * * *"; and the order of divestiture did no more than to restrain them from continuing that unlawful combination.

With reference to the lower Court's purpose (stated in the divestiture order) "that the theatres disposed of may operate in competition with theatres retained by the defendants" (R. 3466), it is pertinent to recall what this Court said in the *National Lead* case,*

> "* * * It is not for the courts to realign and redirect effective and lawful competition where it already exists and needs only to be released from restraints that violate the antitrust laws."

Broad as is the inherent power of courts of equity, they have never undertaken to create situations, of competition or otherwise, to meet their particular notions of public policy.

2. The findings of the Court do not support an order of divestiture.

In respect of none of the 43 towns covered by the divestiture order is there a finding by the Court (a) that Schine had acquired the theatres to be disposed of by illegal means, or (b) that continued possession of a theatre or theatres in that town was a violation of the law, or (c) that divestiture was necessary to remedy a condition existing in that town, which could not be remedied by the injunctive processes of the equity court.

For most of the towns there was no evidence before the Court except (a) the bare fact that the theatres in such towns are listed among those covered by Schine's contracts with distributors for pictures, and (b) the bare facts concerning control, ownership, lease, date of acquisition and other historical and financial details listed in appellants' answers to the Government's interrogatories.

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*332 U. S. 319, 353.

Eleven of the 43 towns, in fact, are not even mentioned in the Court's findings. They are:

Athens, O.
Cambridge, Md.
Cumberland, Md.
Delaware, O.
Easton, Md.
Maysville, Ky.
Middlesboro, Ky.
Piqua, O.
Ravenna, O.
Richmond, Ky.
Wooster, O.

The following 4 additional towns in which divestiture was ordered are mentioned only in Finding 3, an historical recital which lists (a) theatres leased to Fox-Metropolitan in 1929, and (b) theatres which Schine was operating in 1930:

Cortland, N. Y.
Oneonta, N. Y.
Oswego, N. Y.
Syracuse, N. Y.

With respect to the remaining 28 towns, the findings are insufficient to support an order of divestiture. Such findings are analyzed and discussed under Point III. We note here some of the more obvious cases where the insufficiency of the findings appears on their face.

Harlan, Ky.

For Harlan there is no finding except 9(a), where it is said that Schine "arbitrarily deprived" a competing theatre of 10 pictures of a single distributor—Warner—in that town in a single season—1941-42 (R. 3216).

Ashland, O.

The sole finding with respect to Ashland (No. 17, R. 3221) is that "Metro gave clearance [to a Schine theatre in Ashland] over Loudenville* and Lodi, Ohio;" * * * (R. 3221). In other words, a single distributor gave Ashland, a county seat with 12,500 population, a period of clearance over 2 nearby towns, having respective populations of 2,300 and 1,300. The Court, it may be noted here, neglected to point out that Ashland was in turn subject to clearance in favor of a larger town in the same area—Mansfield—which had a population of 37,000 and where there was no Schine theatre.**

Ogdensburg, N. Y.

Ogdensburg is mentioned only in Finding 14 (R. 3219), where the simple fact is stated that "Schine cut admission prices at * * * Ogdensburg", without anything to show what circumstances, if any, made the cutting of admission prices—on its face a public advantage—a violation of the Sherman Act, and in Finding 17 (R. 3220-21) where the Court quotes an inadmissible memorandum in which a Warner branch manager expressed the opinion; in a letter to his home office, that "Canton would do more business if it were not for Schine at Ogdensburg having 30 days clearance and if it was reduced; 'It will make a better condition for us all * * *' ".

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*Spelled Londenville in the Finding.

**Among the various contracts in the record which show the clearance of Mansfield over Ashland are Ex. 981 (47), R. 5699, 2547; Ex. F-183, R. 6115, 1181.

Canandaigua and Salamanca, N. Y.

Canandaigua and Salamanca are mentioned only in Finding 10 (R. 3217), where it is said " 'Schine' made threats to build in various towns, such as * * * Canandaigua by a sign and newspaper article published, *and where he eventually did build* [Italics supplied]. * * * In Salamanca, just after independents acquired a site for a contemplated theatre, through the press 'Schine' announced its intention to build" (R. 3217). It should be noted here that, actually, no Schine competitor ever acquired any site in Salamanca.

Fostoria, Herkimer, Kent, Little Falls and Tiffin

Five towns are mentioned (outside of the historical Finding 3) only in Finding 9(b), having to do with unreasonable periods of clearance (R. 3216):

Fostoria, O.
Herkimer, N. Y.
Kent, O.
Little Falls, N. Y.
Tiffin, O.

and the evidence for those towns consists of nothing more than the periods of clearance written into some of the contracts for pictures, without anything to show the circumstances considered to make the periods of clearance excessive, or to show that anybody was injured by them, or in fact that they had any practical application in real life; and, as shown under Point III, the periods of clearance written into certain contracts for those towns are irrelevant to any issue in the case.

Newark, N. Y.

Newark is mentioned in Finding 3, the historical recital referred to above, and is alluded to (though not named) in Finding 25, which relates to an agreement by United Artists, a single distributor, to give clearance to that town over the town of Sodus, which was charging a lesser admission price (R. 3224).

Thus, of the 43 towns in which the lower Court has ordered the sale of theatres of the Schine Circuit,

11 towns are not mentioned in the findings;

4 towns appear in the findings only in an historical list; and

11 other towns appear, outside of such historical list, in findings which on their face are insufficient as the basis for a divestiture order.

With respect to the remaining 17 towns involved in the order of divestiture, it is shown elsewhere in this brief that the findings with respect to each of them are also insufficient as the basis for an order of divestiture.

3. The order of divestiture was based upon theories which this Court has never sanctioned and which are plainly erroneous.

The view of the lower Court that it was entitled to grant relief by way of divestiture was based upon a number of novel propositions, for which the authorities under the Sherman Act furnish no support. In the first place, the Court said:

> "Well, it isn't solely a question of restoration of competition. The question is, perhaps, a question of punishment. The Court has found a violation of the Anti-Trust Law. Assuming that the evidence pertaining to a single theatre town, the theatre owned by Schine, disclosed that as a result of their conspiracy or their actions somebody has been wiped out of existence, it wouldn't simply be a question of competition; it would be a question of penalizing the defendant under those particular circumstances because of his acts (R. 3386)."

It may be noted at this point that there is no finding by the Court that anybody has "been wiped out of existence" in any town, at any time, as the result of a restraint of trade by Schine.

Later, the Court said that in describing divestiture as a penalty it had not used the word "penalty" in its ordinary sense but as meaning "in the nature of a remedy to which the Government is entitled" (R. 3407). But it is clear that the Court continued to think in terms of punishing the defendants for what it had found to be violations of the Sherman Act. For instance, in a discussion of the need for contemporary information in order to frame an appropriate decree looking toward the future, counsel made the point that evidence as to clearance in a particular situation as of 1935 or 1936 was not germane to the problem of dealing with clearance in the same situation in 1946. The Court replied:

> "Well, of course, that again begs the question. You may today strictly be observing the provisions of the law in all respects as to clearances, cumulative buying, and things of that kind. But the Court has found the fact to exist that there has been a conspiracy here and has made some directions in regard to it" (R. 3413).

It was also pointed out to the Court that the consent decree in the *Paramount* case had completely changed the clearance system used in the industry and had set up machinery for enforcing reasonable clearance provisions in the contracts of the major distributors. But the Court said it would make no difference in the relief to be granted even if the practice of clearance had been entirely eliminated from the motion picture industry, because, "assuming the law has been violated, I don't see how the fact that the situation was changed today, or a little earlier, affects the right of the Court to order reorganization or some change" (R. 3400). Counsel then pointed out that the Court had already granted injunctions "that protect the Government and protect the public," but the reply was:

> "The Court: That is very true, but that is an entirely different situation" (R. 3400).

What the Court meant by "an entirely different situation" is revealed in another colloquy with counsel, as follows (R. 3407-08):

> "Mr. Hays: Well, my point is that if it is a remedy then it must be based on conditions today and on evidence as to what will maintain future competition.
>
> "The Court: Well, you say we can do that just by stopping any further violations of the Anti-Trust Laws, and leaving the organization as it is?
>
> "Mr. Hays: That may be in some cases. But I would want evidence to show that.
>
> "The Court: Well, we would have no lawsuit then at all. Just put the defendants on probation for a while."

Thus the Court, using an analogy from the criminal law, again revealed its conception of the relief in the case as punitive. If a decree in a Sherman Act suit is limited to injunctive relief alone, there is "no lawsuit then at all", according to the District Court.

It was the Court's view that relief did not have to be limited to towns for which the Court had made findings of restraint of competition, or even to towns for which the Government had introduced evidence. The following colloquy is pertinent:

> "Mr. Hays: Then your Honor knows there were many towns here where the Government proposes to sell our theatres where there was no evidence in the record?
>
> "The Court: That is true.
>
> "Mr. Hays: On what basis do they present such a novel proposition?
>
> "The Court: Well, the basis, as I construe it, is on the large basis that the Court has authority to reorganize the whole setup of the corporation." (R. 3401).

Then, at R. 3405, the Court formulated the question before it, with respect to one of the towns for which there was no evidence, as follows:

> "Well, then, the question is whether the Court, by and large, in the absence of any testimony as to competition or anything else, has the right to include that town in the whole plan of reorganization."

Then the Court proceeded to decide—exercising authority "to reorganize the whole setup of the corporation" (R. 3401)—that, with respect to each of 15 towns for which there was no evidence whatever, it had "the right to include that town in the whole plan of reorganization" (R. 3405). Gloversville, the original Schine town, was excluded. Buffalo, where the Government asked no relief, was also excluded.

In its brief before this Court in *United States* v. *National Lead Co., supra,* the Government explained the action of the court below as follows:

> "* * * In the *Schine* case the district court ordered a divestiture of theatres in towns where there was no evidence of elimination of existing competitors as a means of creating competition for the defendants. That court recognized that the possession of certain physical assets not independently used in connection with any specific law violation was also a continuing threat to independent competition. * * *"

It seems hardly necessary to argue that this Court has never sanctioned either (a) the lower Court's theory that it had a broad discretion to "reorganize the whole setup of the corporation", or (b) the Government's theory that a district court has an equally broad discretion to order divestiture of physical assets merely because they are a "threat to independent competition". The jurisdiction of the federal courts under Section 4 of the Sherman Act is remedial, not penal (see *Swift and Company v. United States,* 196 U. S. 375, 396) and it is to be exercised in accordance with accepted principles of equity.

"An appeal to the equity jurisdiction conferred on federal district courts is an appeal to the sound discretion which guides the determinations of courts of equity." *Meredith* v. *Winter Haven,* 320 U. S. 228, 235. In *Hecht Co.* v. *Bowles,* 321 U. S. 321, 329-30, this Court, after referring to "the requirements of equity practice with a background of several hundred years of history", said:

> "* * * The historic injunctive process was designed to deter, not to punish. The essence of equity jurisdiction has been the power of the Chancellor to do equity and to mould each decree to the necessities of the particular case. Flexibility rather than rigidity has distinguished it. The qualities of mercy and practicality have made equity the instrument for nice adjustment and reconciliation between the public interest and private needs as well as between competing private claims * * *."

Certainly no one could fairly describe the decree in the present case as partaking of either mercy or practicality or as involving a "nice adjustment and reconciliation between the public interest and private needs."

4. Even if divestiture were an appropriate remedy, the Court could not properly have made the order of divestiture because, having refused to take testimony as to conditions existing when the order was made, it did not have before it the evidence necessary as a basis for such an order.

When the Government submitted its proposal for the virtual destruction of their business, appellants made a motion to take further testimony "relevant, pertinent and necessary to the consideration of the method of compliance" with the provision of the judgment that ordered the defendants and their affiliated corporations to be "dissolved, realigned, or reorganized in their ownership and control so that fair competition between them and other theatres may be restored and thereafter maintained" (R. 3230, 3378). That motion was denied.

The case was tried on a stale record, not only because the Government limited its evidence to a period of time which ended more than two years before the trial, or because much of the evidence related to events that occurred in the early and middle 1930's, but also because the consent decree in the *Paramount* case had completely reorganized the business of selling and buying motion pictures.

The Court was plainly in error when it said, in substance, that such considerations were irrelevant to the framing of its order (R. 3413). Not only were they relevant to the framing of such an order of divestiture, but they were equally relevant to the framing of a decree enjoining what the Court found to be violations of the law, since "Equity acts in the present tense", and moulds its decree to actualities, not history." *Champion Spark Plug Co.* v. *Reich*, 121 F. (2d) 769, 772, *cert. den.*, 314 U. S. 669; see Restatement of Torts, Vol. IV, § 935. The rule was stated by the New York Court of Appeals as follows:

> "Differing from the rule in actions on the law side of the court, which limits the judgment to the facts as they existed at the commencement of the action, when the action is in equity, relief will be administered as the nature of the case and the facts, as they exist at the close of the litigation, demand." *Russell H. & I. M. Co.* v. *Utica D. F. & T. Co.,* 195 N. Y. 54, 6[illegible]).

When the Court asked the parties to submit plans for the reorganization or realignment of the defendants it was proposing to take action in a situation that existed in 1946, more than 4 years after the last date for which there was evidence in the record. There was nothing in the record to show what the current competitive situation was in any of the towns affected by the decree. Shifts of population had occurred during the war, towns had grown or diminished in size. Theatres had been built, theatres had burned down, theatres had been closed and put out of use. For all the record showed, Schine's position in the industry may have been widely different from what it was in 1942.

The theatres which the Court has directed to be sold are owned or leased and operated by 54 different corporations, only 3 of which are defendants in the case. These corporations are wholly-owned in 43 cases, two-thirds owned in one case, 50% owned in 5 cases, 25% owned in one case and about 90% owned in the other 2 cases (R. 221-22). None of the 51 subsidiary companies is before the Court, and many of them are outside the territorial jurisdiction of the Court.

As of May 19, 1942, the last date for which the evidence spoke, of the theatres affected by the decree (*i.e.*, those in towns where one or more theatres must be sold) 23 were held in fee by whatever wholly or partly-owned subsidiary held them, and 32 were held under lease. In ordering the fee-held property and the leases of such companies to be sold, while refusing to take evidence about them, the Court ignored such considerations as the rights of mortgagees and other creditors, contracts with 50% and minority partners, provisions of leases which might affect the exercise of the power assumed by the Court (such as the requirement of landlord's consent to an assignment or sale of the lease), the existence or non-existence of mortgage clauses which might mature the principal in the event of sale, and all similar mundane considerations.

Such considerations were apparently not deemed relevant to the exercise of a sweeping power "to reorganize the whole set-up of the corporation" (R. 3401).

5. The order of the Court appointing a trustee to sell appellants' theatres was particularly improvident, and far beyond the discretion of the Court.

The Court's order appointing a trustee to conduct the sales of appellants' theatres "as rapidly as possible upon such terms and to such purchasers as this court may approve" (R. 3466) was based upon an unfair, and in fact a vicious, attack by Government counsel on Schine's failure to dispose of all the theatres named in the consent order.

Schine had complied fully with the provisions of that order, which required it to offer the fees of 3 theatres, the leaseholds on 12 others and a 50% interest in a thirteenth leasehold to the persons from whom such interests had been acquired, or to the last operator of the theatre, for the amount of Schine's capital investments in the respective theatres; and which further required Schine, in the event such offers were not accepted, to make similar offers to independent exhibitors for the same purchase prices and upon fair and reasonable terms and conditions, including payment of brokers' commissions (R. 259). There were provisions in the order for reports and compliance, and the Court reserved the right to make further orders, but it was provided that "no order shall be made which will require the consenting defendants to dispose of any theatre interest at less than the capital investment therein as set forth in said schedules A and B" (R. 260).

The offers to the owners or previous operators were made as required. Only 2 of them took up the offers. The order, and the monthly reports filed by Schine pursuant thereto, received wide publicity in the various trade papers. In addition, appellants advertised in those papers, offering the properties for sale (R. 276-85, 2989). At the time of presentation of the Government's plan of reorganization, all but 6 of the 16 theatre interests had been disposed of; and an additional theatre, the Memorial, in Mt. Vernon—which Schine had been unable to dispose of—was given up when the lease expired at the end of 1945. All that remained when the Government's Plan of Reorganization was filed were 5 theatres (including one where Schine's interest was 50%) that nobody wanted to buy at Schine's cost.

The Government's contention that "Even if now reconciled to the court's decision, the defendants' prior failure to perform a bargain which they themselves made is conclusive evidence that under no circumstances may the execution of a plan be left to them," was an unfair attack, made without the slightest basis (R. 3238).

It is, nevertheless, the sole basis for the unprecedented order for the seizure of appellants' properties by the Court, their sale by a trustee and the impounding of the proceeds of sale (R. 3466-67).

No such relief has ever been granted, so far as we know, in a case under the Sherman Act. The granting of such relief is inconsistent with the theories of relief as expounded in previous Sherman Act cases (*Standard Oil Co.* v. *United States,* 221 U. S. 1; *United States* v. *American Tobacco Co.,* 221 U. S. 106), and with the principles that govern the appointment of receivers or trustees in equity cases, (*Johnson* v. *Manhattan Ry. Co.,* 289 U. S. 479; *Strickland* v. *Peters,* 120 F. (2) 53).

6. The order of the Court was especially arbitrary as it applied to the sale of theatres remaining undisposed of under the consent order of May 19, 1942.

Misconstruing the nature and effect of the consent order, the Court included in the order of divestiture the five theatres named in the consent order, for no other or better reason than that they were named in that order.*

The arbitrary character of the order of divestiture in this situation is well illustrated by the case of the Strand Theatre in Cumberland, Md. In March, 1944, after it had become obvious that the Strand was unsalable at the amount of Schines' investment therein, one of the competing exhibitors in the town went to the Assistant Attorney

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*In the case of Malone where Schine had 2 theatres, the order of divestiture gave Schine an option to relinquish either the Plaza Theatre named in the consent order, or the other theatre which Schine had operated since 1926.

General in charge of the Anti-Trust Division and asked permission to sell his theatre, the Liberty, to Schine. The Assistant Attorney General wrote to Burke, the exhibitor, as follows (R. 330):

> "* * * as explained to you, we will have no objection to the purchase of this theatre provided it is submitted to and approved by the court."

When the matter was presented to the Court, Government counsel, in spite of the official position of the Department, opposed the application and brought in as a witness Mrs. Grace Fisher, who operated the other first-run theatre in Cumberland.

Mrs. Fisher, however, testified that she had no objection to Schine's acquiring the theatre; that she had put in a bid for the theatre when she thought that it was going to be bought by Warner, but that she had withdrawn the bid when she learned that Schine was the prospective buyer. She also testified that Schine had never bought pictures on first run from the distributors whose product she had been buying on first run before Schine came into the town (R. 380, 382).

After hearing the evidence and argument, the Court on May 31, 1944, entered an order approving the sale of the Liberty Theatre to Schine. At the same time he directed Schine to continue to make all reasonable efforts to dispose of the theatres named in the consent order and then remaining undisposed of; but he ruled (it having been pointed out in the argument that in certain instances the properties had substantially increased in value) that Schine should "not be held strictly to the terms of sale provided in the order of May 19, 1942"; and he also granted a stay, pending further order of that part of the consent order which related to the Strand Theatre in Cumberland (R. 426 ~~246~~).

At the same time the Court denied a motion which the Government had made (R. 426) for an order appointing a trustee to sell the properties remaining undisposed of under the consent order.

Schine then continued its efforts to sell the remaining theatres; and during the summer of 1944, the trial having already commenced, it was successful in disposing of 4 of the 10 not previously disposed of. Such sales were approved by the Court (R. 2988-89). The lease on another one of the theatres expired and was not renewed, so that at the date of expiration of the consent order (Nov. 19, 1944) 5 theatres remained unsold. With the expiration of the consent order, there was no longer any obligation upon Schine to dispose of those 5 theatres, and the fact that they were named in the consent order became irrelevant and had no relation to the issue presented in the final decree.

Nevertheless, the Court in the order of divestiture has ordered those theatres to be sold, including a theatre in Cumberland—the very town in which Schine was allowed to acquire a second theatre by order of the Court—and as to which the Court's stay operated until the expiration of the consent order. In other words, Schine may keep the second theatre in Cumberland, as to which the Court found there would be no adverse effect on competition in Cumberland if Schine had two theatres there, instead of one (R. 420-21; order approving acquisition); but the original Schine theatre in Cumberland is to be sold by a trustee, "to the end" that it "may operate in competition with" the theatre acquired with the Court's approval (R. 3466).

Nothing could better illustrate the slap-dash manner in which the Court has undertaken to "reorganize the whole setup of the corporation" (R. 3401).

It is submitted that the order of divestiture should be reversed on the ground that the lower Court abused its discretion in all the respects mentioned in this Point I, and because divestiture is not an appropriate remedy in this case.

Point II.

BOTH THE FINDINGS AND THE JUDGMENT OF THE COURT ARE VITIATED BY ERRONEOUS RULINGS WITH RESPECT TO THE ADMISSION AND THE EFFECT OF EVIDENCE.

The relevant assignments of error are Nos. 65-99, 114-115, 121, 124 (R. 3490-99, 3502-06, 3507).

The Conspiracy or Conspiracies

The lower Court found, in accordance with the allegations of the complaint (R. 48-49), that appellants conspired "with each other and their affiliated corporations and with each of the aforesaid major film corporations" for purposes violative of the Sherman Act (R. 3226). There is no finding that the distributors combined among themselves for such purposes. The Court found, in accordance with the theory upon which the Government based its case (R. 486-87), that there were 9 supposed conspiracies, viz.,

One conspiracy by Schine Chain Theatres, Inc. with its officers, directors and subsidiary companies;

One conspiracy by Schine with each of the 8 large distributors.

With respect to the supposed conspiracy among the appellants themselves, and to which the distributors were not parties, the Court thought that the *Crescent* case was a precise authority, and said of that case (R. 3071):

> "Sustaining the action, the court necessarily held the Circuit is not in essence a single exhibitor; and that there can be concerted action between a corporation and its wholly-owned subsidiaries; * * *"

But the *Crescent* case did not hold that there was a conspiracy in violation of the Sherman Act between a corporation and its wholly-owned subsidiaries, because the *Crescent* case did not involve that issue.

We know of no precedent for the proposition that a corporation can conspire with its subsidiary companies to restrain trade, or that it can conspire with its officers and directors to the same end. The officers and directors are merely agents for the corporation; and in the present case no act or offense was charged to the individual appellants in the Court below in any capacity except as officers and directors of the corporate defendants.

With respect to wholly-owned subsidiary companies, while they may serve to insulate the parent company from liability on leases and mortgages, and to conform to local requirements with respect to the holding of title to real estat[illegible]nd while for many purposes their identity is separate and distinct from that of the parent company, they can hardly be regarded from the standpoint of the Sherman Act as having separate and independent wills, so that their coming together with the parent company in a common purpose can create a conspiracy.

This is sufficiently clear from the testimony in the case and from the findings. No witness purported to distinguish Schine Chain Theatres, Inc. from its subsidiaries, or to attribute this or that act to any subsidiary. The subsidiaries, in fact, were never mentioned in the testimony as having done anything, or said anything, or been responsible for anything; and the findings simply lump all the appellants together, using the term "the Schine defendants" or "Schine"—the latter in the singular number.

It is submitted that the charge of conspiracy among the appellants to restrain trade and to monopolize is a charge without legal content. "The union of two or more persons, the conscious participation in the scheme of two or more minds, is indispensable to an unlawful combination", per Sanborn, *J.* in *Union Pacific Coal Co.* v. *United States,* 173 Fed. 737.

There was but one will and one authority among the appellants; that was the will and authority of appellant Schine Chain Theatres, Inc., acting through its officers and board of directors and its corporate instrumentalities in the various States and the towns therein.

For that reason if for no other, proof of a conspiracy or conspiracies between Schine and one or more of the distributors was an essential part of the Government's case. On that issue the Court found (R. 3080):

> "Proofs connecting the distributors with certain of the aforesaid acts of defendants come from the provisions of the franchise agreements and acts of the distributors, inter-department communications of the distributors and statements made by their authorized representatives, of which numerous ones have been set forth herein."

But the franchises and other agreements between the distributors and the appellants cannot prove a conspiracy. Quite the reverse. The question before the Court, with respect to such agreements, was *whether they were* entered into pursuant to a common undertaking, plan or purpose to exclude competitors from the towns in which Schine was operating.

The use of franchises and license agreements was industry-wide. They provide, in and of themselves, no basis for a determination that the appellants exerted the pressure of superior buying power to force the distributors into a conspiracy. They are at least equally consistent with the view that the pressure came from the distributors and was exerted for their own purposes and benefit, or that there was no pressure, but merely the acceptance of a general trade practice.

Even if the franchises were found to violate Section 1 of the Sherman Act, because their necessary effect was unreasonably to restrain trade, that would not make the parties to them parties to a conspiracy to restrain trade or monopolize, without proof of intent. This the Court recognized (R. 3073-74).

The other "proofs" which the Court found to connect up the distributors in a conspiracy with appellants were "acts of distributors, inter-department communications of the distributors and statements made by their authorized representatives, of which numerous ones have been set forth herein" (R. 3080).

It is those acts and declarations of employees of distributors to which the errors dealt with in this Point II relate. There were two errors of a most serious character:

1. The Court received in evidence a large number of inter-office memoranda written by employees of distributors to one another and letters written by such employees to exhibitors other than Schine, and also a considerable amount of oral testimony concerning statements made by employees of distributors, which were not addressed to or made in the presence of appellants and were not in furtherance of any common undertaking or conspiracy independently proved, and the Court accepted such evidence both as proof of the

alleged conspiracies and as proof of the truth of the statements contained in such declarations, without any opportunity for appellants to cross-examine the persons who made them.

2. The Court held that the failure of appellants to call as witnesses a larger number of agents of the distributors was in itself evidence against appellants "of the most convincing character" (R. 3084), thus wholly misunderstanding and misapplying the decision of this Court in *Interstate Circuit* v. *United States, supra,* at 225.

The admission of evidence under the declarations rule, as an exception to the hearsay rule, is governed by 4 principles which have been clearly laid down by this Court.

1. Before the declarations of an alleged co-conspirator can be received as evidence against a defendant, the existence of the conspiracy and the defendant's relation to it must be proved by independent evidence. Neither the conspiracy itself nor the alleged co-conspirator's relation to the conspiracy can be proved by the declarations themselves. *Glasser* v. *United States,* 315 U. S. 60, 74, 75; *Hitchman Coal & Coke Co.* v. *Mitchell,* 245 U. S. 229, 249; see also *Fiswick* v. *United States,* 329 U. S. 211, 217; *Logan* v. *United States,* 144 U. S. 263, 309; *United States* v. *Goodman,* 129 F. (2d) 1009, 1013; *Minner* v. *United States,* 57 F. (2d) 506, cited with approval in the *Glasser* case.

2. Acts of alleged co-conspirators and their statements to third persons, made in the defendant's absence, are admissible against him only if performed or uttered in furtherance of the objects of the conspiracy. *Pinkerton* v. *United States,* 328 U. S. 640, 646-48.

3. More specifically, such acts and declarations must be in furtherance of the conspiratorial undertaking as the defendant understood it. See *Fiswick* v. *United States, supra,* 320 U. S. at 648; *United States* v. *Peoni,* 100 F. (2d) 401, 403.

4. Admissions or narrative statements of past events are never in furtherance of the objects of the conspiracy, and so are never admissible against anyone except the person who uttered them. *Pinkerton* v. *United States, supra,* 328 U. S. at 646-47; *La Abra Silver Mining Co.* v. *United States,* 175 U. S. 423, 498-99; *Wiborg* v. *United States,* 163 U. S. 632, 657-58; *Vicksburg & Meridian Railroad* v. *O'Brien,* 119 U. S. 99, 104-05; *Beaver* v. *Taylor,* 68 U. S. (1 Wall.) 637, 642; *Barreda* v. *Silsbee,* 62 U. S. (21 How.) 146, 164-65.

The above rules result from basic principles of the law of agency. As was said in *United States* v. *Lekacos,* 151 F. (2d) 170, 172:

> "The acts and declarations of confederates, past or future, are never competent against a party except in so far as they are steps in furtherance of a purpose common to him and them. Declarations are no different from other acts; they become competent only when they are uttered in order to accomplish the common purpose. * * *"

The situations in which declarations of one *proved* co-conspirator are not admissible against another one were summarized by this Court in the *Pinkerton* case (328 U. S. at 647-48) as follows:

> "A different case would arise if the substantive offense committed by one of the conspirators was

> not in fact done in furtherance of the conspiracy, did not fall within the scope of the unlawful project, or was merely a part of the ramifications of the plan which could not be reasonably foreseen as a necessary or natural consequence of the unlawful agreement. * * *"

The principal contested issue in this case was whether the appellants combined and conspired with distributors to deprive competitors of product. There is little conflict in the evidence as to what pictures the distributors actually sold to Schine or what they sold or did not sell to competitors. The question is: Did the distributors act as they did because it was in their interests to do so, or because they were parties, willing or unwilling, to a conspiracy to put Schine's competitors out of business or reduce them to a status where their competition would not be effective?

For the purpose of connecting the distributors with the alleged conspiracies the Court relied on:

> (a) Letters and memoranda out of the distributors' files pertaining to Schine, which Government counsel had obtained from the distributors prior to the trial, and from which they had culled, and offered at the trial, a large batch of material; and
>
> (b) Testimony of competitors concerning conversations with employees of distributors.

The letters and inter-office memoranda related largely to clearances, as to which appellants and the distributors appear to have been often in disagreement—as might be expected, because of the different interests that a distributor and an exhibitor have in matters of clearance. *United States* v. *Paramount Pictures, supra* (66 F. Supp. at 343).

The oral testimony consisted principally of explanations, by district managers of distributors and their local salesmen, of reasons for their company's failure, refusal or inability to provide a particular exhibitor with a particular run of product that he wanted to buy, the statement usually being that Schine had bought that product on that run.

With respect to appellants all this evidence was hearsay, not binding upon them and not admissible against them because there was no independent proof of the conspiracy. The nature of the hearsay that was found to connect up the distributors with the 8 supposed conspiracies is enough to show the soundness of the rule that requires the existence of the conspiracy, and the alleged co-conspirators' connection with it, to be proved by evidence *aliunde*.

For example, the following is accepted by the Court as proof of unreasonable clearance in the Schine contracts:

> "Sussman, of Fox, wrote to Grassgreen [also of Fox]* that the 60 day clearance in Glens Falls and elsewhere seemed excessive. Sussman went on to comment that he noted that 60 day clearance was given over second run at Malone when Fox had no second run in Malone, and furthermore, as previously stated, 60 days over second run seemed excessive. Grassgreen replied that while the 60 days at Glens Falls might seem excessive, Lynch insisted upon it. Grassgreen said that Schine insisted upon the 60 day clearance because they wanted to be consistent with their demands for 60 days over subsequent independent runs. (Opinion, R. 3082; Finding 17, R. 3222).

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> "* * * The Fox home office wrote its branch with reference to Glens Falls, second run: 'I note

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*Matter in brackets ours.

> that you have changed the clearances hereby providing for sixty days over third run Glens Falls. Sixty days clearances here and elsewhere seem to be excessive.', and to this the branch manager replied that Schine always provided for this clearance over third run and 'George Lynch insisted in carrying it through for the future.'" (Opinion, R. 3083; Finding 26, R. 3224).

The above examples are fairly illustrative of the extent to which the trial judge relied upon hearsay narrative statements as proof of facts.* Out of the 21 findings (Nos. 8-28) which deal with alleged unlawful action by appellants and by the distributors, at least 11 rest wholly or in part on the hearsay testimony (Nos. 8, 9, 11, 12, 13, 17, 18, 19, 21, and 26).

The use of the hearsay statements thus improperly admitted was not limited to the particular assumed conspiracy in connection with which they were claimed to have been made,** nor was it limited to the 8 alleged conspiracies between the appellants and the distributors. On the contrary, such evidence was resorted to and accepted generally by the trial judge as proof of the appellants' acts, statements, purposes and policies and of the unreasonableness, impropriety and unlawfulness thereof. It was read into the alleged underlying conspiracy among the appellants to restrain trade in and to monopolize the motion picture theatre business, though none of the distributors was claimed to be a party to that conspiracy.

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*With respect to some of the correspondence of employees of the distributors, the Court in admitting it ruled that it "be strictly construed" (R. 3089); nevertheless, in its opinion and findings, it treated that correspondence as fully probative of all statements therein contained, and as a proper basis for all inferences that might be drawn from such statements.

**A declaration received in support of one conspiracy is not proof of another, even though the two conspiracies are related. *Kotteakos* v. *United States*, 328 U. S. 750.

The damaging effect of the receipt of such evidence cannot be avoided or mitigated by treating the 8 alleged conspiracies between the appellants and the distributors as unnecessary to the decision. As stated, proof of such a conspiracy was an essential part of the Government's case, and what is more, the evidence was heavily relied on by the trial judge as proof upon contested issues of fact underlying the entire case, upon which the decision, the judgment and the relief granted necessarily rest. The Court in its opinion stated (R. 3073-74):

> "There is a conflict in the testimony in many of the situations. The court recognizes the burden is cast upon the plaintiff to establish this cause and/or causes of action by a fair preponderance of the proof. It is quite patent from the nature of the charges here that they have to be established by numerous acts and transactions having relation some way to the charges. These acts must be considered together to show intent, and intent 'to combine', 'conspire' and/or 'monopolize' must be reasonable and natural conclusions from the acts or transactions, as believed by the court."

In the *Glasser* case, this Court said that, if a declaration of alleged co-conspirators were received as proof of both (a) the existence of the conspiracy and their connection with it and (b) the truth of the declarations themselves, the result would be that "hearsay would lift itself up by its own bootstraps to the level of competent evidence" (315 U.S. at 175). The Trial Court not only did that, but made clear that it was doing just that. The Court expressly stated that it was using the declarations of distributors' employees to connect up the conspirators with the alleged conspiracy; and it further stated that the crucial finding of intent was being made on the basis of all the evidence, including such declarations; and in its findings it quoted at length from those declarations and obviously accepted them as fully probative.

Most of the declarations so relied on were mere narratives of past events, inadmissible under the fourth principle of law above cited. Many of them (and most of those relating to clearances) were also inadmissible under the second principle cited, because they were not in furtherance of any common undertaking between Schine and a distributor but were statements criticizing or objecting to contract terms that Schine wanted—the very opposite of a declaration in furtherance of a conspiracy.

Misapplication of *Interstate Circuit* case

In its opinion, after 3 pages of recitals of hearsay evidence, the Court said: "There is much other evidence going to show the influence of 'Schine' with the distributors to gain preference over independent competitors and also the cooperation of the distributors with 'Schine' to the same end" (R. 3084). In spite of the fact that such "other evidence" also was largely hearsay, the Court made the following ruling (R. 3084):

> "Sales managers for each of the major distributors who had authority to approve film leases, called by the defendants, gave testimony, in substance, that to their knowledge there has not been any conversations with any defendants or their executives or

employees not to deal with any competing exhibitors to restrict the terms of such dealings. *These sales managers can be only a small number of those employed as such during the period in question and they speak only of their own knowledge.** Some six branch and exchange managers have testified as to transactions in contradiction of the plaintiff's proof as to five of the situations in question. In Interstate Circuit v. United States, supra, the court said that the failure to call those officers who had authority to act for the distributors and were in a position to know whether they acted in pursuance of an agreement 'is itself persuasive that their testimony, if given, would have been unfavorable to appellants.' "

The Court added:

> "While that case was stronger with respect to the proof in this connection, the defense herein is weakened both by the failure to call others of the officers authorized to act and by the nature of the testimony given by these. 'The production of weak evidence when strong is available can lead only to the conclusion that the strong would have been adverse. * * * Silence then becomes evidence of the most convincing character.' Interstate Circuit v. United States, supra."

The Court completely misunderstood and misapplied the *Interstate Circuit* case. In that case, unlike the present case, the distributors were defendants. There the manager of a chain of first-run theatres had written a letter to a representative of each of the 8 large distributors, demanding that certain restrictions be put upon theatres playing the same pictures on second run, and each of the distributors had proceeded to impose such restrictions. The particular question was whether the trial court's finding that the distributors had engaged in concerted action could be sustained. This Court held that an inference of conspiracy could properly be drawn from their unanimity of action, in the absence of any denial of concerted action by any officer or agent of any of the distributors who knew, or was in a position to know, whether in fact each distributor had acted separately, or whether they had reached an understanding for concerted action (306 U. S. at 232).

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*Italics supplied.

In the present case there was no such circumstance as the unanimity of action in the *Interstate* case, which could have been the basis of the inference of the type drawn in that case. Moreover, insofar as there was any basis for an inference that any acts of Schine or the respective distributors, affecting competing exhibitors, were the result of a common plan of action by, or agreement between, Schine and such distributors, appellants called as witnesses those who were in a position to testify of their own knowledge as to the existence or non-existence of such a common plan or agreement.

Specifically, appellants called J. Myer Schine, founder of the circuit and ranking executive of the corporate appellants, and one or more representatives of each of the distributors, all of whom were concerned with the sales policies of the respective companies, and all of whom must necessarily have known whether such a common plan or purpose existed.

Appellant J. Myer Schine, after testifying on matters within his knowledge concerning which the Government had offered evidence, expressly denied advising or requesting any representative of a distributor in any instance that such distributor should not deal with competing exhibitors, or stating or implying that, if it did so, Schine would not do business with that distributor (R. 2697).

The witnesses whom appellants called from among the distributors likewise denied the charges of conspiracy, explained how the distributors conducted their business and that the distributors were acting in their own interests in their dealings with Schine and its competitors and not in the interest, or under the compulsion, of Schine. Those witnesses included:

Ned E. Depinet, President of RKO, who had formerly been Sales Manager for Universal and previously Vice-President of First National (one of the two distributing companies of Warner) (R. 2857).

William F. Rodgers, Vice-President and General Sales Manager of Loew's, who had been employed by that company or its predecessors since 1920 (R. 2876).

Gradwell LeB. Sears, Vice-President of United Artists, formerly Branch Manager for First National and Warner (R. 2917).

Andrew W. Smith, Jr., Eastern Sales Manager for Fox, who had previously been General Sales Manager for RKO, General Sales Manager for United Artists, General Sales Manager for Warner and an Eastern Branch Manager for Pathe (R. 2782).

Herman Wobber, Division Manager for Fox, who had formerly been a Division Manager for Paramount for 20 years (R. 2902).

Frank J. A. McCarthy, Southern and Canadian Sales Manager for Universal, formerly General Sales

Manager for Fox, Special Representative for Paramount and Manager for First National (R. 2908).

Neil F. Agnew, Representaive of David Selznick (an independent producer), Vice-President of Vanguard Film Company and formerly General Sales Manager for Paramount (R. 2926).

It would be difficult to find a more impressive list of witnesses to speak for the sales policies of all the major distributors.

Clearly the above witnesses, within the meaning of the *Interstate Circuit* case, "were in a position to know whether they had acted in pursuance of an agreement" (306 U. S. at 226). In addition, appellants called 5 particularly qualified branch managers and salesmen for several of the companies.

In spite of the direct and positive testimony of those witnesses, negativing the existence of a common plan or conspiracy between Schine and any distributor, the Court accepted the hearsay testimony as "Proof connecting the distributors with certain * * * acts of defendants" (R. 3080).

The Court's application of the *Interstate Circuit* case had the effect of raising the hearsay, not only to the status of probative evidence, but to the status of evidence which is "of the most convincing character". (R. 3084).

The error in the admission of evidence is substantial

Section 269 of the Judicial Code (28 U. S. C. § 391) provides that "On the hearing of any appeal, * * * in any case, civil or criminal, the court shall give judgment after an examination of the entire record before the court, without regard to technical errors, defects, or exceptions which do not affect the substantial rights of the parties." According to the sponsors of the legislation, it "affects only technical errors. If the error is of such a character that its natural effect is to prejudice a litigant's substantial rights, the burden of sustaining a verdict will, notwithstanding this legislation, rest upon the one who claims it."*

It is clear that the receipt of hearsay evidence may involve substantial error, and may constitute ground for reversal. In the *Kotteakos* case this Court said (328 U. S., at p. 761):

> "Moreover, lawyers know, if others do not, that what may seem technical may embody a great tradition of justice, *Weiler* v. *United States, supra,* or a necessity for drawing lines somewhere between great areas of law; that, in other words, one cannot always segregate the technique from the substance or the form from the reality. * * * Yet that narrow line, and many others like it, must be drawn. The 'hearsay' rule is often grossly artificial. Again in a different context it may be the very essence of justice, keeping out gossip, rumor, unfounded report, second, third, or further hand stories."

The error was particularly substantial in such a case as this, where not only the judgment itself, but also the character, scope and severity of the relief depended upon what the trier of the facts believed to be proved. See the *Kotteakos case* (328 U. S. at pp. 764-65).

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*H. R. Rep. No. 913, 65th Cong., 3rd Sess. 1, quoted in *Kotteakos* v. *United States*, 328 U. S., at p. 760.

Point III.

THE FINDINGS OF THE TRIAL COURT ARE NOT SUPPORTED BY THE EVIDENCE AND ARE INSUFFICIENT TO SUPPORT THE JUDGMENT.

The relevant assignments of error are Nos. 64 to 114, 116 to 119, 123 to 208 (R. 3489-3502, 3505-25).

This point is argued in full awareness of the principle that the Court will not disturb a finding of fact merely upon the ground that it is against the weight of evidence, and that a finding of fact by a trial court will be set aside only if (1) it is not supported by substantial evidence and is manifestly wrong, (2) it is against the clear weight of the evidence, (3) it discloses that the lower court has acted upon an erroneous concept of the law, or (4) it is insufficient because of the failure of the trial court to make other essential findings. *Interstate Circuit, Inc.* v. *United States, supra; Morley Co.* v. *Md. Casualty Co.*, 300 U. S. 185; *Harkin* v. *Brundage*, 276 U. S. 36; *Lawson* v. *United States Mining Co.*, 207 U. S. 1; *Collier* v. *United States*, 173 U. S. 79.

We believe that, of the Court's 32 findings of fact in the present case, all but the first 6—the introductory findings*—and the last 5 (Nos. 28-32) are vulnerable to attack on one or more of the grounds cited above.

Furthermore, our position does not rest upon the setting aside of any particular finding or findings of fact. The Trial Court's adverse judgment is based upon a conclusion of conspiracy, for which "motive" is essential, and which, as the Court said (R. 3073-74) had to be "established by numerous acts and transactions having relation someway to the charge", which "must be considered together to show intent" and must be "the reasonable and natural conclusions from the acts and transactions, as believed by the court", based primarily on "circumstantial evidence and the inferences" to be drawn therefrom.

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*The last sentence of Finding 3 is also contrary to fact and contrary to the evidence.

In other words, the conclusions of motive and conspiracy were based upon all the evidence and findings. Therefore when it appears, as it does, that the most important findings—on the most important issues—are literally riddled with factual error, the conclusions of motive and conspiracy cannot stand, because of the influence which such errors must have had on the mind of the Court.

The first six findings identify the defendants and give certain facts about the business (R. 3212-14). Finding 7 relates to the "buying power" of Schine. Our objections to it are stated at the end of this Point.

Finding 8 contains the Court's conclusions of fact with respect to violations of the Sherman Act. Findings 9 to 27 are specific recitals in support of those conclusions. It is stated in Finding 8 that the "means and methods employed by the different defendant corporations through their officers and authorized representatives to obtain a 'monopolistic' control are numerous", and the methods "principally" used are listed. Findings 9 to 27 will be discussed under the headings of that list, as follows:

1. Arbitrarily depriving independents of first and second run pictures.

2. Securing unreasonable clearances.

3. Making threats to build or open closed theatres to prevent construction or operation by independents.

4. Lowering admission prices.

5. Obtaining rental concessions.

6. Restricting independents who sold to Schine as to periods and places of operation.

7. Making long-term franchise agreements covering the "circuit".

1. "Arbitrarily depriving independents of first and second run pictures".

The relevant Findings are 9(a), 12, 13, 18, 19, 21 and 24.

Finding 9(a) is to the effect that Schine "arbitrarily deprived independents" of product which they had previously enjoyed. Finding 18 cites instances where distributors "refused to negotiate with the independent for runs not bought by Schine". Finding 19 gives instances where "distributors refused to negotiate with the independent" for runs that were bought by Schine. Finding 21 refers to "tying up second runs".

Finding 12 states that "after 'Schine' opened a theatre within a town, it was arbitrarily able to keep the independents from operating a theatre in the town with suitable run product, as in Auburn, Lockport, Mt. Vernon, Paris and Bellefontaine. The specific situations in the named towns are dealt with in the analysis of Findings 9(a), 18 and 19, and there will be no separate heading for Finding 12.

Finding 13 is to the effect that Schine was able "to monopolize first-run product" in 3 towns and "first neighborhood run in Rochester, even though the physical facilities of the independents were better". The instances cited will be dealt with where the towns are discussed in connection with Findings 9(a), 18 and 19.

Finding 24 refers to a specific occurrence in Bellefontaine, O., and will be discussed where that town is dealt with in connection with the last 2 sentences of Finding 9(a), which refers to the same situation.

In order to realize how utterly erroneous were the findings that Schine had "arbitrarily deprived" some exhibitors of product, it is necessary for the Court to understand certain characteristics of the market in motion pictures and the unusual theory advanced by the Government with respect to this charge.

The Court below did not find that, because of Schine's activities, any exhibitor was unable to obtain a sufficient number of *some run* of motion pictures to operate his theatre. All the Court has found was that in certain instances certain exhibitors were not able to obtain the particular run of particular pictures that they would have liked to get for their theatres. Of course, it needs no argument to demonstrate that if exhibitor A plays a certain distributor's pictures first-run in a certain competitive area, no other exhibitor is going to be able to play the same pictures on the same run in that area. In that sense, all other exhibitors in the area are "deprived" of first run of those pictures.

However, it cannot reasonably be argued that such deprivation was *arbitrary* on the part of the exhibitor who bought the run, unless it can be shown that he bought it, not because he needed the pictures to show in his own theatre, but because he wanted to keep them away from some other exhibitor. But the Court made no finding that Schine had ever engaged in such a practice, and the evidence is clearly to the effect that, whatever pictures Schine bought for any particular theatre, it played in that theatre. It did not buy pictures to put them on the shelf and keep them away from competitors.

In the very nature of the motion picture business it is inevitable that there will be some competitive areas in which the entire output of the 8 large distributors will not be sufficient to enable every theatre operating within the area to play the run of those pictures which the owner would select if he had his unlimited choice.

The opinion in the *Paramount* case shows that the producer-distributors rely upon the large theatres in heavily populated areas for by far the major part of their income, and that it is unprofitable for them to make a picture unless it has a reasonable chance of being exhibited in the large theatres in the large cities. Though it may at first glance seem paradoxical, it is the fact that the more heavily populated the area in which a theatre is located the fewer number of pictures it will need to operate successfully. Thus the Radio City Music Hall in New York City, the largest theatre in the largest metropolitan area in the world, uses fewer pictures than any other motion picture theatre in this country operating on a regular schedule.

On the other hand, a motion picture theatre in a small community must change its program frequently because, in order to operate at a profit, the theatre must attract the same customers much more frequently than would be the case in a thickly populated community, where there are more potential customers per seat.*

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*An examination of the picture licensing contracts in the record will reveal that, in general, the smaller the town in which a theatre was located, the larger the number of pictures Schine played in that theatre. For example, in such a place as Bath, N. Y. (a one-theatre town), Schine contracted to exhibit pictures for a maximum of 2 days (Ex. P-174, R. 5835, 1170); in larger towns, such as Amsterdam and Gloversville, the number of days that the pictures were to be played was usually 4 (Ex. P-197, R. 5857, 1170; Ex. P-206, R. 5866, 1170); whereas in a town the size of Lexington, with a population of approximately 50,000, the contracts called for playing pictures up to 7 days (Ex. P-185, R. 5846, 1170).

It is for this reason that the large producers make their pictures with an eye to the heavily populated markets, and cannot afford to make more pictures than those markets will support. None of the major producers could afford to make the number of pictures that it could sell in the smaller communities, at the prevailing scales of picture rentals. That is the reason why the smaller, so-called independent, producers have catered largely to the smaller towns. Wholly apart from subsequent runs of product of the larger producer-distributors, the independent producers have always afforded a large supply of pictures for the smaller towns, where in many instances their product—for example "Westerns"—is more popular than some of the majors' pictures.

FINDING 9(a)

Finding 9(a) (R. 3215-16) states that Schine "arbitrarily deprived independents"* of product that they had previously had in certain towns in certain years, and that Schine, having secured such product, retained it and the independent was unable to get it for subsequent years. It then recites evidence concerning two particular situations.

The following lists in chronological order the specific instances given by the Court in Finding 9(a) as cases where independents were "arbitrarily deprived" of first-run product which they had previously enjoyed and, in three cases, of second-run product:

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*It may be noted that the Court's use of the term "independents" is different from the general usage in the industry. The term generally means a theatre operator not affiliated with one of the major producer-distributor chains, and in that sense Schine is as much of an "independent" as any of its competitors not so affiliated. In the findings, however, the Court defines the term as meaning "Schine's competitors" (Finding 3, R. 3213).

1930-31 season—Loew's product in Bellefontaine
1933-34 season—RKO in Auburn
1934-35 season—Warner (second-run) in Watertown
1935-36 season—Fox, Loew's and Paramount in Van Wert
—Fox and Paramount in Bucyrus
—RKO and second-run Loew's in Norwalk
1936-37 season—Columbia, United Artists and Warner in Norwalk
1938-39 season—Columbia second-run in Rochester
1941-42 season—Warner in Harlan, Ky.

In none of the above instances does the evidence support the Court's finding, assuming that the word "arbitrarily" in the finding has any meaning. In each instance Schine contracted for product of a distributor whose pictures a competitor had played in a previous year or years; but in no instance was it shown that the product so bought by Schine was not needed by it for the operation of its theatres, or that it was obtained by any unfair means used against the competitor, as an analysis of the situations will show.

1930-31 season—Loew's product in Bellefontaine

In this instance Findings 9(a) and 19 both refer to the same facts.

In the year before Schine entered the town there were 3 theatres, all owned by the same individual and all leased by him to another individual, as follows:

(a) The Opera House, 75 years old, with 680 wooden seats and no sound equipment. It had never been open since 1924 except on Saturday nights (R. 1414-16).

(b) The Majestic, an old theatre seating 250 persons. It had never been open since 1924 except during the County Fair (R. 1413-15).

(c) The Strand, an "ordinary theatre" seating 480 persons, which was in operation (R. 1416).

In the year before Schine built a new theatre in the town, Mooney, as lessee of the three old theatres, made a profit of about $10,000 (R. 1445-46).

Bellefontaine, a city of 9,500 population, was not well served with motion picture theatres, when its only theatre that was open had but 480 seats. Schine took advantage of the business opportunity thus presented by entering the town in 1930 and building a new and modern theatre of brick and steel construction, having the latest equipment and seating 1,400 persons. It was called the Holland and was designed to give a Dutch atmosphere (R. 2670). It was opened on February 1, 1931; and, for the balance of the 1930-31 season, it played pictures from among those which the Strand had not contracted for (R. 1365). There is not the slightest basis for the Court's statement that Schine deprived the Strand of pictures, arbitrarily or otherwise, during the 1930-31 season.

From the time of the opening of the Holland, Mooney began to lose money; which was not unnatural, considering that he was carrying 3 theatres and operating only one, which had only 480 seats, as compared with 1400 for the Holland; and that business conditions were bad in Bellefontaine in 1931 (R. 1442, 1446).

Because there is no evidence whatever that Mooney was unable to get the product that he wanted in the 1930-31 season as the Court found, we assume that the Court made a typographical error and intended to refer to the 1931-32 season, with respect to which there is some evidence of Mooney's efforts to buy pictures. Specifically, there is evidence that he applied for Loew's pictures for that season and was told that they had been sold to the new Holland (R. 1364).

Schine had bought them; but the record is barren of even a suggestion that Schine was actuated by any purpose except to buy and play the Loew's product in its new theatre, or that Schine used any unfair means to buy the Loew's pictures, or that it was unnatural for Loew's to prefer to put its pictures into the new and large theatre, rather than the old and small one. The Court's findings exemplify a thread that runs through the Government's case and the Court's opinion, namely, that whenever Schine entered a town and contracted for pictures, it was guilty of something wrong—something unfair—if the pictures were those of a distributor who in previous years had sold its pictures to Schine's competitor.

Bellefontaine is simply an example of old and inadequate facilities being supplanted by new and adequate ones. It is an example of the very competitive process which the Sherman Act is designed to serve.

In order to get the full picture of the situation in Bellefontaine, it should be noted that Mooney bought the leases of his 3 theatres in 1924, plus the equipment of the Strand and some other equipment, for $15,000 (R. 1417). The Strand lease ran until 1934, the others until 1931 (R. 1336-37, 1419). In March, 1931, after Mooney began to lose money, Schine offered to buy the remaining terms of the leases for $5,000, but Mooney rejected the offer. About the first of June, however, he accepted another offer, this time for $2,500 (R. 1366-67, 1445).

Mooney testified that he had two reasons for selling the leases, (1) that he was losing money and (2) that he was afraid he could not get any first-run product for the 1931-32 season (R. 1368). The basis of his fear was that Schine had bought the Loew's first run and that the salesmen of other distributors that had previously dealt with him had not called on him during the month of May, as was customary during the previous years when he was alone in the town (R. 1367). There is nothing, however, to connect up Schine with the failure of the distributors to send their salesmen around. Nor is it surprising that, with a new and modern theatre opening in the town, the distributors' salesmen should postpone their calls on the second-rate theatre until they had found out what they could sell to the first-rate theatre.

Second recital of evidence in Finding 9(a)

Since it relates to Bellefontaine, we take up here the recital of evidence contained in the last sentence of Finding 9(a) (R. 3126), as follows:

> "In 1932 Lynch wrote Flynn a letter saying, among other things: 'I want you to refrain from selling him (independent) any pictures whatsoever.' and Metro through Flynn agreed not to do so. Lynch also wired Fox to withhold selling to this independent and wrote Fox' agent saying: 'Have also asked him (Schmertz-Fox' agent) to refrain from selling this man second run'" (R. 3216).

The communications referred to are Ex. 412, R. 3907, 2604; Ex. 163, R. 3798, 2605; Ex. 171, 3804, 2605. What they show is as follows:

When the lease of the Opera House ran out at the end of 1931, Schine did not renew it. Thereafter, according to the correspondence above referred to, the Opera House was taken on a short-term lease by Moller, whom Schine had discharged as the manager of the Holland. Moller interested two local people in reopening the Opera House and embarked on a trade war against Schine, including a newspaper campaign charging that the Holland's admission prices were too high, and that local people should patronize a local operation rather than a chain theatre. He announced admission prices of 10¢ and 15¢, children 5¢, "flooded the entire town with passes" and generally launched on a program of "economic warfare" against the theatre that he had formerly managed (Ex. 171, R. 3804, 2605; Ex. 412, R. 3907, 2604).

In this situation Lynch wrote to 2 distributors, pointing out the facts and arguing that such distributors should not lend their aid to Moller's unfair tactics by selling him their pictures. The cited exhibits show that Loew's assured Lynch it had no intention of doing so, but that Fox used the opportunity to force Schine to take 10 more pictures than Schine had bought for the ensuing season (Exs. 170-172, R. 3803-06, 2605). The remaining major distributors, so far as the record shows, did not even consider selling their pictures to Moller's fly-by-night operation; and there is no evidence that Schine had anything to do with their conduct in the matter.

The practice of opening theatres with low admission prices for the purpose of establishing a nuisance value to existing theatres is a familiar one in the industry, and that was obviously what Moller was doing. Schwartz did the same with his Opera House in Lexington (Ex. 455, R. 3916, 2249; Ex. 457, R[illegible]18, 2249), and Boumansour with his Plaza Theatre in Malone (Ex. D-133, R. 5176, 2305; R. 2324-26).

But even if we assume that Lynch's action was a specific restraint of trade and a specific violation of the Sherman Act, that specific violation would give no support to the general conclusions of the court below, relating to an intent to monopolize and to restrain trade. Lynch's action was not directed at competition as such. It was directed at what he considered to be—and certainly not without some justification—unfair competition (R. 3908); and the incident was an isolated one; which occurred 12 years before the trial.

1933-34 season—RKO product in Auburn

Finding 19 repeats the substance of Finding 9(a) under the above heading, *i.e.*, that RKO would not sell to the independent in Auburn in 1933-1934, and adds that Paramount would not sell to the same theatre operator in 1934-1935. Finding 18, without specifying any particular year, states that RKO, Fox, Paramount, MGM and Universal would not negotiate with the independent for second-run product not bought by Schine.

In 1929, Schine had a 50% interest and the Shea Circuit a 50% interest in 3 theatres in Auburn (R. 223). In the same year the theatres were leased to Fox-Metropolitan; and after the receivership of that company they reverted to Schine and Shea in 1933 (*Ibid.*). A fourth theatre, the Capitol, an "upstairs" house, was acquired by an operator named Wallace in 1931 (R. 1957).

For the 1931-32 season, RKO sold Wallace its entire product on first-run, which in previous years it had sold to the other theatres. In 1932-33, RKO "split" the product, giving half to Wallace and half to Fox-Metropolitan. In the 1933-34 season, after Schine-Shea had resumed operation of the 3 theatres in Auburn, RKO sold its whole product to Schine-Shea (R. 1961-62). Here is the evidence as recited in the Government's brief below (Pl. Br., Appendix, p. 5):

> "After the Schine-Shea pool resumed operation of the Jefferson, Palace and Strand in 1933, Wallace never had a regular first-run RKO contract, although Wallace had been sold* and played 42 RKO features. RKO did not even solicit him for the 1933-34 product. Charles Boasberg, RKO salesman, told him that RKO had sold its full line product to Schine-Shea as part of a circuit deal made with Schine which included the city of Auburn. Boasberg advised Wallace he could not stop this deal but would give him Schine rejects. Wallace did get 3 pictures first-run which Schine had rejected. During the 1933-34 season, Schine bought the RKO product first-run at the Jefferson and Palace theatres."

This is a good example of the Government's insistence on attributing improper motives to Schine in all situations, though crediting all "independents" with laudable motives for precisely the same conduct in all similar situations. For all the evidence shows is that the theatres in which Schine had a 50% interest had purchased the RKO product prior

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*The tense used makes the statement unclear. What it means is that *after* 1933 Wallace, though not having a regular RKO contract, nevertheless did get and play 42 RKO feature pictures in the seasons 1933-35 (Ex. 813, R. 5555, 1960).

to 1931-32, lost it to Wallace in 1931-32, got half of it back in 1932-33, and then bought all of it in 1933-34. In this competitive see-saw there is nothing to indicate that the means used by Schine to get the product in 1933-34 were in any way different, or more evil, than those used by Wallace in 1931-32. Schine's conduct is made "arbitrary" only by the Government's supplying an inference (without evidence) that Schine's purpose was evil.

With respect to Paramount product, the evidence shows that the Schine-Shea theatres had bought and played the first run prior to the 1933-34 season (R. 2142-43). Wallace applied for Paramount product for that season, and in his letter to Paramount he referred to the Schine-Shea theatres and said: "I appreciate the fact that they have first call on the product due to using your pictures this past year current" (Ex. D-130, R. 5173, 2150). However, when Schine-Shea and Paramount were unable to come to an agreement on terms for 1933-34, the product went to Wallace and he played the Paramount pictures first-run for the 1933-34 season (R. 2149-50).

In the following year, Schine-Shea and Paramount negotiated again, and this time they came to terms, and the product was sold to Schine-Shea rather than Wallace (R. 1962-63).

With respect to the second runs mentioned in Finding 18, Wallace testified that in 1936 and 1937 he attempted to obtain such runs from various distributors but was told that it was against their policies to sell second run in Auburn (R. 1970-76). Wallace was then playing the whole first-run product of Columbia and was obtaining various other product, including first-run and re-issues, from other distributors. Apparently he was not short of product, as he was playing 8 pictures per week at the Capitol Theatre (R. 2150-54).

Although Wallace himself did not attempt to connect Schine with the decision of the distributors not to sell him second runs, that is the implication of Finding 18. Wallace was permitted to testify as to the reasons given to him by the various distributors for not selling second runs in Auburn. The reasons were various, but in general it had not been the practice of distributors to sell such second runs in Auburn since 1932 (R. 1965-76, 2643-45). Neither the testimony of Wallace nor anything contained in the conversations between him and the distributors suggested that the unwillingness of distributors to sell second runs in Auburn was due to anything more than a business decision based on their own self-interest. The Court failed to mention that, in case of the distributor whose whole product Wallace was buying and playing first-run, *i.e.*, Columbia, a request by Schine for the second-run was turned down (R. 2643-45).

In general, the distributors did not sell second runs in Auburn until after the opening of the new Auburn Theatre by Schine in September, 1938. As there was not then a sufficient supply of first-run product, second runs began to be sold (R. 1976).

Wallace was still running his theatre in Auburn at the time of the trial (R. 1957). In the meantime he apparently had not been deterred by the competition of Schine in Auburn, because it was he who made an offer for the Jenkins property in Canandaigua, for the purpose of putting up a new theatre on a lot adjacent to the Schine theatre there (R. 1976-77).

The finding with respect to the second-runs would be relevant in an action against the distributors. It is irrelevant in the present action, when the testimony does not connect Schine with the decisions of the distributors with respect to second runs.

1934-35 season—Warner (second-run) in Watertown

In 1934 there were 6 theatres in Watertown, a city of 32,000 population. There were 3 active theatre operators, each with 2 theatres—Graham & Ludlow, Vournakis and Schine. Schine's theatres had reverted to it in the previous year from the Fox-Metropolitan receivership (R. 2173). The situation with respect to runs in Watertown was somewhat chaotic, and up to 4th and 5th runs were sometimes played in that town (R. 2184). All that the record shows, with respect to the second run of Warner product for the 1934-35 season, is that in that season Vournakis dropped down from second run to third run, on product of which Schine had bought the first run for one of its theatres and the second run for the other (R. 2173-74).

What happened in Watertown is very simple. Schine put in a second-run policy in one of its theatres and so bought the Warner second-run product, together with another second-run product. Vournakis, in his own words, played in that season "part second and part third" (R. 2180), *i.e.*, he had some product second-run but got only the third run of that product, including Warner, of which his competitors had bought first and second runs.

Second and third-run theatres, and even fourth-run theatres, are not necessarily unprofitable theatres. They are in general the smaller and less elaborate houses, which represent smaller investments (and hence smaller carrying charges) and which buy pictures cheaply and attract the public by lower admission prices. There were 9 towns in which Schine theatres were playing on a second-run policy during the period involved in the present case.* There were 8 instances where Schine changed its policy from first-run to second-run.** If second-runs or subsequent runs meant unprofitable theatres or undesirable theatres, then the whole structure of the motion picture business—founded as it is on runs and clearance—would fall to the ground.

Reduction of a theatre from first-run status to second-run, or from second-run to some subsequent run, is to be expected from the normal forces of competition in a competitive business. That anything other than normal competitive forces were operating in Watertown in 1934-35 is not shown by the record.

Voarnakis was still in the theatre business in Watertown when the case was tried, 10 years after the incident referred to in the Court's findings (R. 2172-73).

1935-36 season—Fox, Loew's and Paramount product in Van Wert

Under this heading we will also deal with the portion of Finding 19 which relates to Van Wert, namely,

> "* * * MGM would not sell * * * 1935-36 in Van Wert; * * * United Artists would not sell 1935-36 in * * * Van Wert; * * * In these instances, when the independent attempted to make ap-

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*Amsterdam, Piqua, Cortland, Glens Falls, Kent, Lexington, Oswego, Mt. Vernon and, for a time, Fostoria and Kent.

**Auburn, Geneva, Gloversville, Lockport, Oneonta, Ogdensburg, Watertown, Corning. We have not cited record references for this or the preceding footnote, because any of the licensing contracts covering the Schine theatres will show the towns in which second runs were bought.

> plication for product, he was simply advised that the product had been sold to 'Schine' in a circuit deal."

Van Wert is one of the clearest examples to be found in the record of the operation of normal competitive forces.

In 1934 there was but one theatre in operation in Van Wert, the Strand, which had been managed by the same individual, C. L. Dasher, since 1918. Being the only theatre in town it got whatever product it wanted, and in the 1934-35 season bought and played the product of all 5 major companies—Paramount, MGM, Fox, RKO and Warner—on first run (R. 651).

In October, 1934, Mr. and Mrs. Moore acquired and reopened a small store-show theatre, the Ohio, with 347 seats (R. 655-56). The Moores bought for the 1934-35 season the product of the other 3 large distributors, United Artists, Columbia and Universal, all first-run, together with some first-run pictures of "independent" producers (R. 651).

In May, 1935, Schine began construction of a new theatre, the Van Wert, with 802 seats, and it opened in August (R. 237, 651, 657).

For the 1935-36 season, Schine bought, for the new Van Wert, the product of ~~Paramount, Loew's and United~~ Artists, and applied for product of Fox. The Strand had bought RKO and Warner product, and also had applied for the product of Fox (R. 652-53, 658).

The operator of the Strand had had a pre-selling season conversation with a Fox salesman, in which he apparently agreed on terms for the Fox 1935-36 product, but he had not made a contract (R. 652, 654).

After Schine opened up the new theatre, Dasher was at the Fox office in Cleveland, where Schmertz, the District

Manager, called him in and said: "You've got me in a hell of a mess. * * * I have a letter from Schine. You said they weren't coming in, not to save any pictures. It looks like I am going to have to take half of it [*i.e.*, the Fox product] away from you" (R. 654).

Thus Fox decided to sell half of its 1935-36 product first-run to the new Schine theatre and half to the Strand; and the Strand, which in the previous season had purchased on first run the product of all five of the major distributors, got for the 1935-36 season the product* of Warner, RKO and half of Fox, while the third theatre, the Ohio, got Universal and Columbia (R. 657-61), together with the product of Monogram, Republic and some of the smaller companies (R. 651).

In this situation it is difficult to see what could have been in the Court's mind when he arrived at the conclusion that Schine, which was not a party to any of the dealings between Fox and Dasher, or to the dealings between Dasher and Paramount or Loew's, had "arbitrarily deprived" the Strand of the product of those distributors.

Schine took a lease on the Strand Theatre before the 1935-36 season began. How that came about was testified to by Dasher, who said that, while at a meeting in the Fox office in Cleveland, he and Schmertz had had the following conversation:

> "Then he [Schmertz] said, 'Why don't you get together with Schine, make a deal with him?' I said, 'He isn't interested in my theatre or he would

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*In this instance and elsewhere, in referring to "product", we mean the first run of the product unless the context otherwise requires. In the 1935-36 season, all 3 theatres in Van Wert were playing on a first run policy.

> have come and saw me. He had plenty of time.' He said, 'If I sent him down will you talk to him?' I said I would be willing to but I would have to take it up with Mr. Evans [owner of the theatre], if he was willing to, it would be perfectly all right with me" (R. 655-56).

Two representatives of Schine later called on Dasher and Evans and, after some negotiations, agreed on a lease of the theatre to Schine (R. 656).

There is no evidence to suggest that Evans leased the Strand to Schine because Dasher could not get sufficient product in the 1935-36 season to operate the theatre profitably. On the contrary, it appears affirmatively that Dasher was able to get first runs of RKO, Warner and half of Fox, and there is no evidence either that such product was not sufficient for him or, if it was, that he did not get enough good "independent" product to make up any deficit.

What happened at Van Wert is a simon-pure case of competition, not restraint of competition; and if Evans and Dasher preferred to sell out, rather than continue to compete—in a town where for years they had had no competition—their decision can be attributed to no act on Schine's part which *restrained* competition. It must be attributed to Schine's *competition*.

Consider the realities of this situation. The operator of the town's only theatre is confronted by a small theatre opening in 1934 and a new large theatre opening in 1935—with an increase in the number of theatre seats in the town from 710 to 1,857. Is there any reason to suppose that in such a situation he will necessarily be able to buy the same distributors' product as when he had a "monopoly" in the town?

The net result of what happened in Van Wert was that a one-theatre town got the service of 2 full-time theatres and of one that was open for business at times when the demand was sufficient.

Finding 19 states that United Artists and MGM "would not sell to the independent" in Van Wert in the 1935-1936 season. This finding relates to the Ohio Theatre, which was opened in October, 1934, by the Moores, and to avoid repetition is considered together with Finding 11(d), reading as follows:

> "At Van Wert, the operator of the 'Ohio' theatre could not get first run product it had had. During negotiations for the sale of the 'Ohio' to Schine, Lazar said that Moore would have trouble getting product; Schine would have the first runs; and that Schine was interested in buying in order to raise prices.".

When the Moores opened in 1934, they obtained United Artists, Columbia and Universal pictures on first run, those pictures not having been sold to the only competing theatre, the Strand. Mrs. Moore testified that she and her husband attempted to get United Artists first run again for 1936, but that she was told that the product had been sold by the New York office to Schine (R. 656-58). With respect to the MGM product, the Court appears to have been mistaken, as Mrs. Moore testified that the Ohio Theatre had that product in 1935-1936, and a letter from her husband to Fox dated June 1, 1936, was introduced into evidence (Ex. D-16, R. 5155, 708), which said, in part:

> "Metro and U.A. have given me second runs, on which I am doing nicely."

In spite of this clear evidence to the contrary, the Court found that United Artists and MGM "would not sell to the independent" in the year in question. In the same year Mrs. Moore refused an offer of 20 Paramount pictures (R. 683).

With respect to Finding 11(d), the Court correctly states, that the Moores could not get the first-run product which they had had—and naturally so, since the product was taken by 2 vastly better theatres than the "store-show" that the Moores were operating. With respect to the "threat" that Lazar is charged with making—to the effect that the Moores would have trouble getting product, because Schine would have the first runs—the evidence shows that in the winter of 1936 Lazar called on Mr. and Mrs. Moore and transmitted an offer from Schine to buy their theatre (R. 673-74). If, during the course of his conversation, Lazar was rash enough to predict that the Moores would have difficulty in getting product, his prediction was never borne out by events. The evidence fully supports Mr. Moore's statement, quoted above, that they were getting all the product they needed for their theatre and were "doing nicely". The Moores were still "doing nicely" at the time of the trial.

1935-36 season—Fox and Paramount in Bucyrus

Bucyrus is another case of the same sort. In 1935, it had two old theatres, the State with 450 seats and the Southern with 525 seats. Each was playing product of major distributors on first run (R. 1035).

The theatre opportunities in Bucyrus were first brought to the attention of Schine early in 1935, when a group of citizens of that town called on J. Myer Schine to interest him in completing a theatre building which another operator had started but had been unable to finish (R. 1044).

Schine investigated the situation in the town and, during the summer of 1935, made an offer for the lease of the State Theatre and acquired it in September (R. 1040-42).

Meanwhile, the uncompleted theatre building had been put up for sale at public auction in August, and Schine was the successful bidder (R. 1048-49). The previous operator of the State was hired by Schine to manage it and then to manage the new theatre, the Bucyrus, after it was opened in March, 1936 (R. 1041, 251). The Bucyrus was a beautiful modern theatre with 1097 seats—a seating capacity more than the combined capacity of the other two houses (R. 234, 1045). Schine then closed the State, and in 1937 the lease was canceled and the property converted to commercial use (R. 234).

The operator of the Southern Theatre was Charnas, and it is he, the Court found, who was "deprived" of Fox and Paramount product in the 1935-36 season.

The evidence shows, however, with respect to Fox, that Charnas was offered that product on first run for the 1935-36 season but wanted it at a price lower than he had paid in the previous season, and no deal was closed (R. 1061). As Charnas said of another distributor's product that he did not buy, this was a case where "you couldn't get together on the price" (R. 1077).

With respect to the Paramount product, for which Charnas's Southern Theatre had been the outlet in previous years, the evidence shows that Charnas tried to get it on first run for 1935-36 but was told that it was not available in Bucyrus (R. 1051). The evidence also shows that the Southern was not an established outlet for Paramount product when Schine came along, but that, in fact, in two previous seasons Charnas had refused to buy Paramount product, and Paramount had had no outlet in Bucyrus (R. 1077).

However that may be, there is nothing in the evidence to show that Schine used any improper means to obtain the Paramount product for its theatre in Bucyrus. It merely bought the product which it needed and which Paramount wanted to sell to it.

Bucyrus is simply another case where a new, large theatre is built in a town and becomes the house in which the distributors prefer to play their first runs, if the house will meet their terms. Whatever damage Charnas suffered (if he suffered any) was a normal result of the competitive process. It came from competition, not from any restraint on competition.

Charnas sold the lease of the Southern Theatre to Schine in 1937 and it has since been operated as a part-time theatre (R. 234, 244).

1935-36 season—RKO and second-run Loew's in Norwalk

1936-37 season—Columbia, United Artists and Warner in Norwalk

Norwalk is a typical story of the operation of competitive forces. A town has only one theatre, an old one, which buys the first run pictures of some or all of the distributors, to the extent of its requirements. Then a new theatre is put up in the town and, in the course of a couple of seasons, it takes the place of the previous theatre as the first-run outlet, and the old theatre becomes the second-run outlet.

In 1934, the Moose Lodge operated the only theatre in Norwalk, the Moose. It had bought and was playing on first run the product of 5 of the large distributors, viz., all except Columbia, Paramount and Loew's (R. 1027).

Then 3 individuals built a new theatre, the Forum, and opened it during the 1934-1935 season, buying and playing the product that the Moose had not bought, viz., Columbia, Paramount and Loew's (R. 1027). In July, 1935, Schine bought a two-thirds interest in the Forum and took over the management of it (R. 236).

In the 1935-1936 season, the Forum bought the product of RKO and other distributors, while the Moose bought what was left—United Artists, Columbia, half of Fox and half of Warner (R. ~~985~~). 989-90

In the following year the Forum found it profitable to buy the first runs of all the major distributors and did so, leaving the Moose in the position of a second-run theatre. The Moose had no difficulty in getting the major product on second run, except in the case of Loew's, which decided not to sell any second run in that town (R. 998).

There was nothing "arbitrary" in the "deprivation of product" which the Moose suffered, provided the better of 2 theatres in a town is permitted to buy all the product on first run that it needs and can use. The entry of a new theatre into a town—when the conditions are such that it needs a large number of pictures, and when pictures are sold according to the methods used in the 1930's—can easily result, from the operation of normal competitive forces, in reducing the old theatre to the second-run or "B" position. That the operator of the Moose fully recognized what would be the natural and normal effect of the opening of the new Forum Theatre upon the competitive situation in Norwalk is demonstrated by the fact that after the Forum Theatre opened, and before Schine had bought an interest in it, he himself tried to buy the Forum and thus preserve his competitive position in the town (R. 1007).

1938-39 season—Columbia second-run in Rochester

Rochester, with a population of some 200,000, is a city in which Schine operated neighborhood houses, and the Court's finding relates to 4 Schine houses and 2 neighborhood houses of a competitor, Fenyvessy.

While the film license agreements covering Schine's theatres (the State, Dixie, Riviera and Liberty) and Fenyvessy's Madison and Monroe for the seasons 1932-39 are confused and indefinite, the general scheme in those years was that the Schine theatres played second runs, with clearance over Fenyvessy's theatres, and the Fenyvessy houses played third runs.* The specific finding with respect to Columbia's second-run product for the 1938-39 season arises from the fact that Fenyvessy obtained Columbia second-run in Rochester for his theatres in 1936-37 and 1937-38 (R. 1699-1700); and that Schine then made a 2-year deal with Columbia for 1938-39 and 1939-40 second runs; and thus obtained product that Fenyvessy had previously had.**

Up to that point the evidence is that Fenyvessy, operating theatres that ordinarily had third runs, was able to buy Columbia product second-run, which Schine had previously used, for 2 seasons, but that Schine, in turn, was able to buy the product for the following 2 seasons.

The Government's argument in the Court below was based upon the proposition that Columbia ought to have preferred to play its pictures in Fenyvessy's houses, because he would pay higher rentals than Schine paid; and that therefore Columbia was preferring Schine in Rochester, in order not to lose the overall business of the Schine Circuit.

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*Exs. 720-749, R. 5490-5519, 1674; Exs. 752-756, R. 5522-26, 1681; Exs. 757-764, R. 5527-34, 1682, 1697.

**Exs. C-102 (17)-(20), R. 4991-94, 1189.

There was no direct evidence to that effect, but the play-off records of Columbia for 2 of the 4 seasons mentioned were produced, and they showed that the returns to Columbia from the 2 Fenyvessy theatres in 1937-38 exceeded the returns to Columbia from the 4 Schine theatres in 1938-39, the respective figures being approximately $5,200 and $4,500.

But certainly the evidence does not establish that Schine "arbitrarily deprived" Fenyvessy of product merely because Schine was able to "beat down" the price structure of the distributors, and was able to buy the Columbia product for 4 theatres in 1938-39 at a lower price than Fenyvessy paid to Columbia for 2 theatres in 1937-38. For if Schine is entitled to buy the product at all, it is entitled to buy it at the best price that is obtainable by trading with the distributor, and there is no rule of law that prevents Schine from trading the price to a point lower than what the competitor has been paying.

The very essence of competition is an effort to do better than the next man. There was nothing unfair or surreptitious in what Schine did to obtain the best prices from the distributors. It was an example of successful competition, and of reduction of prices of articles moving to the public.

1941-42 season—Warner product in Harlan

In 1938, Schine undertook the management of the Margie Grand Theatre in Harlan, and at the same time it acquired an option to buy a one-half interest in the theatre. It exercised that option in January, 1941 (Ex. P-25, R. 3777, 830, R. 238).

There was one other theatre in Harlan, the New Harlan (R. 238). The evidence with respect to the Warner

1941-42 product, as set forth by the Government below, is as follows:

> "Coomer had operated the New Harlan in opposition to the Margie Grand since 1934. Since at least 1936, Coomer was the regular first-run customer of Warner Brothers. For the 1941-42 season, Warner and other film companies were selling their pictures as they were released in blocks of five. Without giving Coomer an opportunity to negotiate for the second block of five, Warner sold that block of five to Schine. This was also true of the third block. Coomer, therefore, made no further attempts to continue his first run of Warner product" (Pl. Br., p. 31).

What there is in this testimony which leads the Court to conclude that Coomer was "arbitrarily deprived" of Warner first-run product by Schine is indeed a mystery. The Margie Grand had been playing Warner product, and also that of Universal (among others), when Coomer began to operate the New Harlan. Subsequently, Coomer was able to buy both Warner and Universal first runs away from the Margie Grand (R. 861-65). Then, in the 1941-42 season, the Margie Grand bought 2 blocks of 5 Warner pictures (Coomer having bought the first block), but was not able to buy the Universal product (R. 862, 864-65, 850, 869). Apparently the deprivation of 10 Warner pictures was not serious enough for Coomer to make any efforts to get later blocks of Warner pictures on first run for the same season.

First recital of evidence in Finding 9(a)

After making the specific references to loss by competitors of particular product in particular towns and years, in Finding 9(a), the Court recites certain evidence. The first such recital (R. 3216) is:

> "Relative to six towns including Corning, Lynch wrote on October 21, 1933, Metro: 'If there are any other opposition towns where you believe you can sell a second run, I would appreciate it if you would take the matter up with me first before selling.'"

The Court's implication would seem to be that Lynch, the Schine film buyer, was interested in knowing what second runs might be available in other "open" towns, in order to "arbitrarily deprive" competitors of such runs. Not only is such an inference unfair, taking the letter by itself, but it is quite inconsistent with the circumstances in which the letter was written, 11 years before the trial.

Second runs are not sold in all towns that have more than one theatre; and the consent decree in the *Paramount* case, while in general it required each distributor to sell an exhibitor *on some run* any picture for which the exhibitor was willing to meet the distributor's terms, recognized that there might be some situations in which the distributor would have a good reason for not selling a second or subsequent run, and therefore contained an exception to the requirement in cases where "the granting of a run on any terms [to a particular theatre] will have the effect of reducing the distributor's total film revenue in the competitive area in which such exhibitor's theatre is located" (66 F. Supp. at 331).

When Lynch referred to "other opposition towns where you believe you can sell a second run", he was recognizing that in some towns Loew's would not sell a second run.

Lynch was buying the Loew's second run for 2 "closed" towns (Piqua and Oswego) and 4 "open" towns (Corning, Lockport, Glens Falls and Watertown), in each of which Schine had 2 theatres. Schine had just acquired the 2 theatres in Glens Falls, was just reopening the Hi-Art in Lockport after a joint operation with Paramount in that town had terminated, and the Corning and Oswego Theatres had just reverted to Schine from the Fox-Metropolitan receivership. There were at that time at least 2 other "open" or "opposition" towns where Schine had more than one theatre—Amsterdam and Auburn. In either of those towns Schine would be a customer for Loew's second run if (a) Loew's wanted to sell second run and (b) Schine was operating a second-run house or might consider changing the policy of a house to include second runs.

It is of advantage to an operator, who has both a first-run and a second-run theatre in a town, to play his second-run from among the pictures that he has played first-run, since then he can fix the timing of both runs—within the limits of availability and clearance—so as to attract the greatest public patronage to both showings. It is also of advantage to a distributor, as was brought out at the trial (R. 2867, 2904), to have the same operator play both runs of a particular picture in a particular town. It was entirely normal, therefore, for Lynch to be interested in any Loew's second runs that might be available in other towns.

It is difficult to see what is wrong with a request that a buyer be informed if the seller should decide to sell some additional thing—something other than what the buyer has purchased. It is even more difficult to see how such a request gives support to the proposition of Finding 9(a) that "Independents were arbitrarily deprived of second-run product which they had previously exhibited."

FINDINGS 18 AND 19

We now deal with those portions of Finding 18 (refusal of distributors to sell "runs not bought by Schine"), and Finding 19 (refusal to sell runs that were bought by Schine), which have not been discussed under the previous headings of this Point.

Findings 18 and 19, after eliminating references to towns that have already been discussed, are as follows:

> "18. In certain instances the distributors refused to negotiate with the independents for runs not bought by Schine. Such are seen in the refusal of * * * MGM [to furnish second run] at Amsterdam until the 'Schine' deal did not materialize; by United Artists at Geneva; and by RKO, Universal and Fox at Paris.
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> "19. In many instances the distributors refused to negotiate with the independent for runs. After 'the Circuit' came into the town, in many instances it was impossible for the independent to get a good run of major product, or even to have his requests to purchase considered. RKO would not sell to the independent after 'the Circuit' came in for * * * 1935-36 in Mt. Vernon; MGM would not sell * * * 1933-34 in Lockport and Norwich, * * * 1936-37 in Lexington, 1938-39 in Medina; Paramount would not sell 1933-34 in Lockport, * * * 1935-36 in Mt. Vernon; Fox would not sell 1933-34 in Norwich, 1935-36 in Amsterdam and Mt. Vernon; Universal would not sell 1933-34 in Lockport, and Norwich; United Artists would not sell 1935-36 in Mt. Vernon * * *; and Warner would not sell 1933-34 in Norwich, 1935-36 in Amsterdam, 1938-39 in Medina and 1941 in Norwich. In these instances, when the independent attempted to make application for product, he was simply advised that the product had been sold to 'Schine' in a circuit deal."

Amsterdam

The Court found that Fox and Warner would not sell to the "independent" in Amsterdam, in 1935-36, and (without specifying in what year) that MGM would not sell second run in Amsterdam "until the 'Schine' deal did not materialize".

The operator of the Orpheum, in Amsterdam, was Morris Kronick. According to Kronick's testimony, his theatre had 299 seats and no toilet facilities, and was not in continuous operation (R. 1714-15, 1719). It had no major product on first run in 1935-36, but always had sufficient second run of major product, at first from Paramount, Warner, Fox and Columbia, and then from MGM, Paramount, Universal and Columbia (R. 1714-18). Kronick testified he could not get Warner product in 1935-36, because Warner was committed to Schine; but that Warner's representative told him, in effect, that he would be glad to sell Kronick any picture that Schine did not play (R. 1712-13). He also testified that he tried to get Fox product but was unsuccessful. There is an inadmissible Loew's inter-office memorandum dated November 30, 1936, stating that a Schine representative, George Lynch, had asked Loew's not to sell the Orpheum second-run (Ex. 497, R. 3925, 2605), and there is an equally inadmissible Warner inter-office memorandum dated February 26, 1935, stating, *inter alia,* that Lynch did not want Warner to sell the Orpheum second-run, mentioning that "You were not in favor of selling second-run in Amsterdam even prior to the Schine set up", and referring to the hope that "we can work out something here that would satisfy Mr. Schine" (Ex. 554, R. 3925, 2605).

But whatever may be the merits of George Lynch's position on whether second runs should be sold in Amsterdam, or of the opinion of the Warner official who did not favor selling second runs in Amsterdam even before Schine came into the town, the fact is that Kronick, after "the Schine deal did not materialize"—i.e., after Schine ceased to negotiate for second run of Loew's in the town—did get the Loew's product second run as well as a sufficient supply of other second-run product that he needed for his theatre (R. 1716, 1718).

It can hardly be argued that any distributor in its right senses would play its pictures in Kronick's theatre on first run, if it could play them on that run in a modern, up-to-date theatre in the same town.

Geneva

The Court found that United Artists "refused to negotiate with the independent for runs not bought by Schine" in Geneva, New York.

This finding is incorrect. In August, 1939, before the Park Theatre, which was being constructed from the remains of a hotel destroyed by fire, had opened, DeToto, booking agent for the theatre, and De Pillo, its owner, went to see a representative of United Artists and asked for current second-run pictures (R. 909-12, 968-69). They were offered 1938-39 pictures second-run (R. 973). However, they turned down the offer, one of the reasons being that they thought the price asked was too high (R. 973).

The Park Theatre opened on Thanksgiving Day, 1939 (R. 977), and in January and February, 1940, United Artists licensed practically all its current product to the Park (Ex. D-27, R. 5199, 971; Ex. 717, R. 4294-95, 2538): Meanwhile, the Park had been playing the product of other distributors (R. 970, 974).

After 3 or 4 months of operation, the theatre shut down because business was unprofitable (R. 977). There is nothing in the record, however, to show that its failure to make a profit was due to any difficulty in getting product, rather than to the fact that Geneva, with a population of 15,000, had two large theatres in operation, seating a total of some 3,000 people, at the time the Park Theatre opened (R. 226, 913).

Lexington

The Court found that Loew's would not sell to the "independent" in Lexington in 1936-37.

That finding is plainly erroneous, as well as insignificant. The fact is that the "independent" was offered, and did buy, Loew's product in Lexington in 1936-37 (R. 2028-30).

In 1936 Schine entered the Lexington field, buying 4 theatres, two of them first-run, one second-run and one third-run—all from the same owner. There were two other theatres in Lexington, the Opera House, primarily a third-run theatre, and the Ada Meade, a fourth-run house (R. 2026-29). The Opera House was operated by Harry Schwartz, who testified as a witness for the Government. Neither the owner of the Ada Meade nor anyone else introduced any evidence as to that theatre. The finding that Loew's would not sell to "the" independent refers to Schwartz.

Schwartz testified that in 1935-36, one year before Schine came to Lexington, he played MGM's prior season's product second-run and its current product third-run (R. 2027-28). The testimony which apparently led the Court to find that MGM "would not sell" for 1936-37 is that Schwartz "talked to Mr. Booth, the MGM Manager," and that he said "that the first three runs [in Lexington] had been sold to the Schine interests* and that I could have fourth run" (R. 2028).

Schwartz went on to state that, after protesting to Loew's, he did in the end accept the offer of fourth run, and did play MGM product fourth-run in 1936-37 (R. 2028-30). There is absolutely no other evidence of any character regarding dealings between MGM and a Lexington "independent" for 1936-37. There is no correspondence on the subject between Schine and MGM or between Schine and anyone else. There is not even a suggestion that Schine ever discussed the subject with anyone, far less that he restrained anyone or conspired with anyone.

In summary, the evidence showed only that Schine bought the first three runs of MGM product for 1936-37 for its first, second and third-run theatres, and that the fourth run of MGM product for that season was sold to Schwartz. The Court was under a serious misapprehension of the testimony when it found that Loew's "would not sell to the independent" in 1936-37.

Lockport

In Finding 19, the Court found that MGM, Paramount and Universal would not sell to the "independent" in Lockport in 1933-1934. In Finding 11(e), the Court made additional findings as follows:

> "At Lockport, during negotiations with 'Schine' for the 'Palace' theatre, May said it would be necessary to re-open the Hi-Art owned by 'Schine' to use up 'the large volume of product they had bought'. This statement evidently was made to induce Reli-

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*Schwartz testified that this conversation occurred late in 1936 or early in 1937—in other words, long after the 1936-37 product would normally be sold for that season (R. 2028).

ance to sell the 'Palace.' In this instance it is to be noted that the independents experienced great difficulty in getting product. Hi-Art had then been closed for seven years. Metro, Fox, Universal and Loew's refused major product to the independent. Indicative of the attitude of the distributors is the letter from the Eastern Salesmanager of Loew's who wrote:

> " 'In our negotiations with the Schine interests it will very likely be that we will have to give them consideration for our product at Lockport, as well as other situations, and as we are hardly in a position to forego or jeopardize the business from their other situations, and for the further reason that they have for a number of years been a very representative account, we feel that our interests would be best served by giving them such consideration.' "

In Finding 21, it was stated that in Lockport there were "special license provisions * * * tying up second runs", and that in Lockport Schine "bought some product second run and during the currency of the Schine contracts this run did not remain open for sale to others."

In addition, Finding 12 cites Lockport as a case where Schine, "having opened a theatre within a town", "was arbitrarily able to keep the independent from opening a theatre in the town with suitable [sic] run product."* Finally, in Finding 13, Lockport is cited as a case where Schine "was able to monopolize first-run product * * * even though the physical facilities of the independents * * * were better than Schine's".

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*Since Schine had been operating in Lockport since 1922, and the Finding relates to 1933, the expression "having opened a theatre within a town", is hardly descriptive of the facts.

All the above findings rest upon a situation which occurred in Lockport at the end of 1932 and the beginning of 1933, when the owner of the Palace Theatre, which had been operated by Schine, terminated the lease.

Schine had been operating in Lockport since 1922 (R. 2639). Prior to 1927 Schine had 2 theatres in Lockport, the Rialto and the Temple, while Paramount had the other 2 theatres, the Palace and the Hi-Art (R. 2658). The Palace and the Rialto were the large and desirable theatres (R. 228, 2659-61).

Paramount played vaudeville and pictures in the Palace and Schine played "A" pictures in the Rialto and "B" pictures and second-runs in the Temple (R. 2658). The town would not support that number of theatres, and both Schine and Paramount were losing money (R. 2658-59).

In 1927 they merged their operations, each taking a 50% interest in the 4 theatres; and thereafter the Hi-Art was closed and the Temple was torn down (R. 2657).

While Schine and Paramount held, and Schine operated, the Rialto and Palace, the previous policies of the theatres, as above described, were continued for a time, but they were then changed so that the "A" pictures were played in the Palace and the "B" pictures in the Rialto (R. 2659-60).

At the end of 1932, as a result of a controversy with Paramount and Schine, the owners of the Palace terminated the lease and Schine, being unable to negotiate a new lease or to buy the theatre, lost the Palace (R. 1524).

It is at this point that the first part of Finding 11(e) comes in—to the effect that Schine had made a "threat" to induce the owner of the Palace to sell the theatre to Schine. The threat consisted of stating that, if Schine could not buy or lease the Palace, it would have to reopen the Hi-Art, in order to use up the large volume of product that it had bought for that season.

In other words, Schine tried to persuade the owner of the Palace to lease or sell by pointing out that it had an alternative course by which it could continue its long established 2-theatre operation in Lockport.

The "threat" was not effective, however. Reliance did not sell out, and Schine opened the Hi-Art, playing the first-run product which it had bought for the 1932-33 season—in the Rialto on an "A" policy and the Hi-Art on a "B" and second-run policy. The result of this was that when the owners of the Palace, in association with the head of the Dipson Circuit, started to operate the Palace themselves at the beginning of 1933, the only product that they could buy on first run for the current season was that of Loew's—and that only because Loew's, which Schine had previously bought, had been unable to come to terms with Schine for the pictures of that season (R. 1525, 2877-78).

It seems to have been the Government's theory below that, in the circumstances recited, Schine should have refrained from opening the Hi-Art, should have retained the Rialto in a "B" status, and should have gracefully bowed out in favor of the new operators of the Palace, relinquishing to them the first-run "A" pictures.

The sole basis for expecting such self-abnegation from Schine was that the Palace had previously played the "A" pictures, and therefore must have been a better theatre. Hence the finding that Schine was able to "monopolize" the product even though the competitor had a theatre with better physical facilities.

Schine continued its 2-theatre operation in Lockport, and in the following season (1933-34) composed its differences with Loew's and bought that product on first run, as well as the product of the other 7 large distributors. In other words, Schine resumed the practice which it had followed prior to the 1932-33 season, when it could not come to an agreement with Loew's, of buying and playing the first runs of the 8 principal distributors.

For the 1933-34 season, Reliance attempted to buy the product of Paramount and Universal, as well as Loew's. There is no indication that it tried to buy the pictures of any other distributors. Paramount declined to sell the first run to the Palace, stating that it was a partner with Schine in the Rialto (R. 1529). Universal stated that it was committed by a franchise agreement to give that run to the Rialto, but that it would be glad to negotiate with Reliance "as we have in the past" for any pictures that the Rialto did not play (R. 1528).

Loew's simply stated that it preferred to sell the pictures to Schine (R. 1529).

The letters from the 3 companies, declining to sell their first runs to the operators of the Palace, were put in evidence by the Government. They were perfectly frank statements of the reasons why the 3 companies, in their own interests, preferred to sell their product to Schine, as they had for many years past.

The situation in Lockport was another example of the operation of the competitive forces, and nothing more than that.

With respect to the finding that second runs were "tied up" in Lockport (R. 3223) and that "during the currency of the Schine contracts this run did not remain open for sale to others", the statement is a truism, since any run of pictures, when sold to one theatre in a town, is not available to any other theatre in the town so long as the contract with the first theatre is in force.

What happened in Lockport was that, because of the competitive position of Schine *in the town*, and its long established relations with the distributors *in respect of that town*, it was able to maintain the position of its theatres as the preferred outlet for first-run pictures, equally well when it had the Rialto and the Hi-Art as when it had the Palace and the Rialto.

Medina

Finding 19 states that MGM and Warner would not sell to the "independent" in Medina in 1938-39. Finding 13 cites Medina as one of the cases where Schine was able to "monopolize first-run product", even though the physical facilities of the "independent" were better, and in Finding 10 the Court stated:

> "In Medina, 'Schine' announced the making of an agreement to erect a new theatre immediately after independents started construction."

At the outset we point out that the finding with respect to Warner product in 1938-39 is flatly erroneous, since Warner sold one-half of its product for that season and the preceding season to the Medina Theatre, operated by Schine's competitor (R. 1458; Ex. 509, R. 3927, 2882).

The story with respect to Medina is as follows:

On March 18, 1937, Schine concluded an agreement with Yudelevitz, the operator of the only theatre in the town, the Princess, to acquire a 50% interest in the theatre, under an agreement whereby the parties were to proceed to construct a new theatre in the town (Ex. D-46, R. 5162, 1496).

Thereafter, J. Myer Schine received a letter dated March 25, 1937, from the Masonic Lodge in Medina, stating that the Lodge had made arrangements for the remodeling of its building to house a new theatre, to be operated by Messrs. Essick and Fine; that the remodeling had commenced on March 15; and that the Lodge wanted Schine to refrain from building its theatre on the ground that the town (population 4,000) was too small for 2 new, large theatres. As a result of that letter (Ex. 1006, R. 4425, 2981), the contract between Yudelevitz and Schine was renegotiated to call for the remodeling of the Princess Theatre, instead of the building of a new theatre (R. 1510-13).

With respect to the Court's finding that Schine announced its agreement with Yudelevitz "immediately after independents started construction", we do not find evidence of that fact in the record, and Essick testified that he first learned of the plan for the new theatre in June, 1937 (R. 1494).

In any event, the Masonic Lodge and Messrs. Essick and Fine, who operated 2 chains of theatres in Ohio (R. 1479), completed their plans, and the new theatre, the Medina, was opened on January 11, 1938 (R. 1475).

With respect to the alleged deprivation of Warner product, we have already pointed out that the new theatre, the Medina, actually got half of the Warner product for 1938-39, so that there was no refusal to sell. In the case of Loew's product, Essick testified that in the summer of 1938 he and his partner applied for Loew's product but did not get it (R. 1459). The Princess had been playing Loew's product in the previous season (R. 1488) and had spoken for it for the next season (Ex. 500, R. 3927, 2607); and Loew's sold the Princess that product.

Essick testified that before the new theatre in the Masonic Lodge was built he and Fine tried to acquire the

Princess, in order that in the operation of their new theatre they would not be "hampered", explaining that he meant

> "Obstructed in any way, because a theatre of that size can be varied [sic], because they can get admission prices and they can do a lot of things that can harm the other theatre, and the best operation would be for the theatres to be together so that you can control the situation". (R. 1484).

Essick testified that he and Fine broke even in the operation of the Medina Theatre for the first two or three months of operation, but lost money from then on (R. 1458-59). A mutual friend of the operators of the two theatres, Mr. Connors of Loew's, suggested that the best solution would be for them to merge their interests (R. 1471, 1507) and brought the two parties together. In April, 1939, a new corporation was organized, in which each interest was to have a 50-50 share, Schine to operate both theatres (Ex. 648, R. 4143, 1466). Schine's interest in the two theatres was 25%.

The net result of Schine's entry into Medina, which was a closed town when Schine bought a half interest in the Princess, was that Schine came out with a 25% interest in a company that held the Princess and the Medina.

Mt. Vernon

The Court found that Fox, Paramount, RKO and United Artists would not sell to the independent in Mt. Vernon in 1935-36.

In Finding 19 it is stated that the Court found that Fox, Paramount, RKO and United Artists would not sell to the "independent" in Mt. Vernon in 1935-36. In Finding 10 it is stated, "In Mt. Vernon, May contacted the independent to buy, saying 'Schine' would build unless the deal could be put through." In Finding 12 Mt. Vernon is mentioned as one of the towns where Schine, having opened a theatre, was "arbitrarily" able to keep the independent from opening a theatre with "suitable" run product. The evidence shows:

At the end of 1933 and the beginning of 1934, Schine acquired all 3 of the theatres in Mt. Vernon, the Vine, the Memorial and the Lyric. In 1934 Schine remodeled the Vine (R. 2670-73). Schine ran the Memorial for a while, but it was not successful and was closed (R. 2731). Schine also ran the Lyric, but it too was not successful. Schine then acquired additional land adjoining the Lyric, tore down the Lyric and erected on the site the Vernon, a modern, fire-proof theatre, with 1,300 seats (R. 2673-75, 235), which was opened on April 29, 1938 (R. 537-38).

Meanwhile, the Memorial, which was part of the County Building, and which was put up at auction periodically for short-term lease, passed out of Schine's possession by expiration of the lease, and was bid in by Emerson W. Long, an operator from the nearby town of Cadiz, who opened the Memorial on New Year's Eve, 1935, and ran it for 6 years, when it was again offered for lease by the County and Schine was the highest bidder (R. 645-48). Long is the individual who was involved in the alleged threat.

With respect to the alleged threat, Long testified that in the summer of 1937, just before Schine built the new Vernon, a Schine employee named Custer asked Long if he wanted to sell out to Schine in Mt. Vernon and take a position in the Schine organization. According to Long, Custer stated that "if we had the chance to deal with [Schine], they would treat us right" (R. 544). Long further testified that, two weeks later, appellant May went to see Long and told him that Schine wanted to get a larger theatre in Mt. Vernon and that, unless it could lease the Memorial from Long, it was planning to build a new theatre of its own; and May showed Long sketches of the theatre that Schine was considering building (R. 544).

Long was not receptive to Schine's offer, and the matter was dropped. Long testified, "I told him we weren't interested" (R. 544). Schine then went ahead, as "threatened", tore down the Lyric, and built the new Vernon. Long stayed in business in Mt. Vernon for 3 more years after the alleged conversations with Custer and May. He finally gave up the Memorial lease in December, 1940, not because of any threats, but because, in his own words, "we were unable to secure product that was attractive enough that we could afford to keep open" (R. 569-70).

With respect to the deprivation of product, Long testified that during 1934 he saw representatives of the 4 distributors named in the Court's findings and they all told him that their first-run product had been sold to Schine (R. 516-26). It was the fact that Schine had 2 theatres and had bought the product (R. 235-36, 516-26).

It would seem that Long, who was an experienced theatre operator (R. 570-71), who explained on the stand how he had bought out the opposition in his own town in 1927, and who used his "closed" town for the purpose of inducing the distributors to sell him in an open town (Ex. D-2, R. 5144, 592), certainly took a business risk when he opened the Memorial Theatre, which Schine had previously dropped as unprofitable.

In the course of his testimony, Long admitted that he had an offer of Warner second-run pictures and had told the salesman that he was not interested in second run, and admitted also that he was getting plenty of first-run product (R. 602-03). As stated, he operated the Memorial for 6 years.

Norwich

The Court found that Fox, MGM, Universal and Warner in 1933-34, and Warner in 1941, would not sell to the "independent" in Norwich.

Schine's theatre in Norwich was the Colonia, a large, modern, first-run house which was the outstanding theatre within a radius of 40 miles (R. 2635-36). The opposition theatre was the Strand, a smaller house, owned by W. C. Smalley, operator of a chain of 14 theatres (R. 2463-64, 2409 ~~2543~~).

The Strand had been a Schine theatre, but Schine gave it up in 1929 (R. 2465). Smalley acquired the theatre in November, 1930. In March, 1932, it burned down. Smalley reconstructed it and reopened it eight months later (R. 2409-10).

The Colonia reverted to Schine from Fox-Metropolitan in 1933 (R. 2410).

Smalley testified that in 1930-31 the Strand had RKO, First National, United Artists and Columbia product on first run; that in 1931-32 it had Warner and Columbia product on first run; and that in 1932-33 it had on first run Columbia and United Artists product and half of Warner (R. 2409-11).

In the 1933-34 season Smalley attempted to get product of Loew's, Fox and Universal, none of which he had had in the 3 previous years when Schine was not operating the Colonia, and also Warner, which he had had in one of the

3 years, and a split of which it had had in another of those years. Regarding Loew's product, the only evidence was Smalley's testimony that in the seasons 1933-1934 through 1940-41 no offer was made to him by Loew's for a season deal (R. 2436-37).

Smalley's testimony concerning Fox was that he talked with Mr. Grassgreen of Fox in an effort to get Fox product first-run in Norwich beginning with the 1933-1934 season and that Grassgreen "told me that Schines had all the products bought, and they were a satisfactory customer and that there was no pictures for sale for me." (R. 2438).

There was also introduced into evidence a letter dated November 4, 1937, from Universal to Smalley, stating *inter alia,* that Universal was:

> "tied up with Schine's theatres on a franchise arrangement, whereby we are obligated, by the terms thereof, to make available our feature product to all Schine theatres." (Ex. 897, R. 4389; 2433).

There was also introduced in evidence a letter from Warner to Smalley, dated May 22, 1934 (Ex. 887, 4382, 2423), which said:

> "Please be advised that we have a satisfactory customer in Norwich and are not in a position at this time to deal with you for our next season's product".

Smalley's complaint was that he could not compete with Schine for first run. He admitted that he had no difficulty in obtaining on second run any of the major product that he wanted (R. 2496). Smalley had 12 closed towns and only two open towns in his chain of theatres, and he admitted that quite a few times he told the distributors that he would not buy their pictures in his closed towns unless they sold him the pictures first-run in Norwich (R. 2457-58).

Thus it will be seen that Smalley's idea of how to deal with the powerful producer-distributors was no different from that which the Government has attributed to Schine.

The evidence on Norwich presents once again the situation where Schine and a competing chain vied for major product. For various reasons—including the fact that Schine had the larger theatre in Norwich (R. 229, 2443)—the distributors preferred to play their pictures on first run in Schine's theatre, rather than in Smalley's theatre. The Government expressly conceded that Norwich was one of the towns in which "other existing theatres offer substantial competition" to Schine (R. 3236).

Paris

The Court found that Fox, RKO and Universal "refused to negotiate with the independent for runs not bought by Schine" in Paris, Kentucky.

The "independent" in question was Harry Schwartz, who was contemplating the building of a theatre in Paris. The Government placed in evidence letters to Schwartz from Fox, RKO and Universal, and Schwartz himself testified as to follow-up conversations that he had with the three companies, as follows:

(1) *Fox*. The Government put in evidence a letter from Fox to Schwartz, dated November 7, 1938, stating (Ex. 824, R. 4360, 2040):

> "Thank you for your letter of November 4. We regret that our product will not be available for you in Paris, inasmuch as we have a contract with Schine

> and, of course, inasmuch as they are our old account in the town, we shall continue to offer our product to them in accordance with the policy of our company."

Schwartz testified that after he got the Fox letter he went to see Mr. Grady of Fox in Cincinnati, and that he told Grady he realized Schine had already bought the first run but asked Grady for second-run product. According to Schwartz,

> "He said that he was sorry but he could not say at that time whether I could have second-run for the town (Paris) or not. He had heard Schines were going to build a theatre in Paris and they were their first-run account, and they would have to protect them as far as the second-run is concerned, if they were going to build." (R. 2041-42).

(2) *RKO.* The Government placed in evidence a letter from RKO to Schwartz, dated November 7, 1938, stating (Ex. 825, R. 4360, 2040):

> "Replying to your letter of November 4, all of our services are under contract to play first-run at Paris, Kentucky, but by the time you begin operation in that situation, which according to your letter will be March 1, 1938, we may have some services available for you."

Schwartz testified that he went to see Mr. Jacques of RKO and asked him for second-run product and that,

> "He also told me that Schines had anticipated building another theatre in Paris; as long as they were their [RKO's] first-run account he would have to wait and see whether they [the Schine interests] wanted the second-run or not." (R. 2042).

(3) *Universal.* The Government placed in evidence a letter from Universal to Schwartz, dated November 10, 1938, stating (Ex. 826, R. 4361, 2040):

> "Note from your letter of November 4 that you anticipate building a new theatre in Paris and expect to be in operation by March 1. For your information, our product has already been sold in Paris, but, however, there is a possibility of serving you with various pictures that have not been played in Paris during the past year. It is my suggestion that you let the matter rest until you are ready to open this new house."

Schwartz testified that he went to see Krieger of Universal after receiving the latter's letter and that Krieger told him Schine was their first-run account in Paris and that,

> "He had heard they [Schine] were going to build another theatre, and would not be able to give me any information about the second-run until later." (R. 2042).

The letters which the three companies wrote and the follow-up conversations which Schwartz had with each of the three are all of the same tenor. The companies knew that Schine was going to open another theatre in Paris, Schine was already their first-run customer in the town, and, if Schine wanted to bid on second-run product, the companies preferred to sell to it.

J. Myer Schine testified that he received bids for the construction of the theatre in Paris in "the spring or summer of 1938" and that the theatre was completed in 1939 (R. 2686-87). On November 8, 1938, Schine had written to Fox as follows:

> "We are arranging to build a second theatre in Paris, Kentucky, which will be completed around the first of February and we would like to have you hold your product for second-run for our use. Trusting you will give us whatever consideration you can * * *" (Ex. 216, R. 3813, 2603).

To summarize: The Court found that the 3 distributors in question "refused to negotiate * * * for runs not bought by Schine". This sounds as if Schwartz already had a theatre, that he was asking for runs that Schine did not want to buy, and that he was refused. Actually he did not have a theatre; he was asking for runs for the following season, for which Schine had also asked, and the 3 companies thought it better business, in the event that Schine's contemplated theatre was built, to use that theatre as their second run outlet. They had a good first-run customer in Schine, and they proposed to give Schine their second runs if it wanted them.

FINDING 21

Finding 21 reads as follows:

> "Special license provisions were given by tying up second runs, as in Lockport and Corning. In Lockport and Corning Schine bought some product second run and during the currency of the Schine contracts this run did not remain open for sale to others."

Of all the Court's findings none, it is submitted, is more lacking in meaning and relevance than this. The practice of selling both first and second runs in a town to the same exhibitor is both usual and sensible. The obvious explanation for the practice was supplied at the trial by Herman Wobber, Fox Division Manager, who testified that it is most desirable to have the first and second-run in the same ownership, that when one of two competing theatres plays the first run of a picture and the other second run, "we found frequently that the first run seldom advertised to the maximum" (R. 2902-04).

When Schine bought a second run in Lockport, or in Corning, or anywhere else, then obviously, in the Court's language, that run "during the currency of the Schine contracts did not remain open for sale to others." The Court could hardly mean to imply that there was anything improper or illegal or surprising in such a situation. By the very definition of "run" that would be the result.

The situation in Lockport is discussed above.

In Corning, Schine operated 2 theatres and later 3. Irving Cohen operated the fourth and much the poorest, the Plaza. Cohen played some second run, some third run and a good many Westerns (R. 2197-98, 2651).

Cohen testified that he had difficulty getting product for the Plaza and that he went to see J. Myer Schine to find out "if we couldn't work something out", but that Schine said that "they didn't have enough product themselves." (R. 2202-03).

At least 6 of the 8 larger distributors—Fox, Loew's, Paramount, RKO, Universal and Warner—sold both first and second run of their product in Corning to the Schine theatres, but in each case they offered the Plaza the third run and such of the second-run pictures as Schine did not play (R. 2204-09).

If the Court's finding simply means that Schine bought and used all the first run and second run that Schine could locate for theatres in Corning and that the opposition could not buy anything better than third-run and some second-run product then the evidence supports such a finding. But if that is all the finding means—and apparently it is—then it is difficult to understand why the Court bothered to make such a finding or what significance the Court believed should be attributed to it.

Conclusion

All the instances cited in Findings 9(a), 12, 13, 18, 19, 20 and 21 involve situations where particular distributors—for reasons which are apparent, and which—whether the reasons were good or bad—are related to their own business interests, chose to sell their pictures on the first run to Schine, rather than to the competing operator or (as in Paris) potential operator.

2. "Securing Unreasonable Clearances"

The relevant findings are Findings 9(b), 17, 25, 26.

The findings on clearance afford perhaps the best illustration of the Trial Court's lack of understanding of the business involved in the case and his readiness to accept hearsay testimony and the assertions of Government counsel as the equivalent of evidence with probative value.

Clearance is "The period of time, usually stipulated in license contracts, which must elapse between runs of the same feature within a particular area or in specified theatres." *United States* v. *Paramount Pictures, supra* (66 F. Supp. at 333).

In the *Paramount* case the Government, taking a position different from the one which it took in the present case, argued "* * * that clearance practices inherently operate to produce unreasonable restrictions of competition among theatres and are therefore per se violative of the Sherman Act * * *" (66 F. Supp. at 341), but the Statutory Court held to the contrary, saying:

> "* * * With this we do not agree, for it seems to us that a grant of clearance, when not accompanied by a fixing of minimum prices or not unduly extended as to area or duration, affords a fair protection to the interests of the licensee without unreasonably interfering with the interests of the public. * * *"

The position which the Government took in this case was that clearance was a customary and proper method of doing business. Government counsel said (R. 493-94):

> "* * * I lay stress on this method of licensing [*i.e.*, by runs and clearance] because the method of licensing that is characteristic of the business and customary in it is one which in itself is obviously of such a nature that there is a constant restraint of trade because every time a distributor makes a film contract with any exhibitor trade is restrained in the sense that the contract he makes with one exhibitor to some extent determines the terms on which that same film can be made available to other competing exhibitors. That is it will fix a run and give a clearance protection and provide admission prices which will to a great extent directly determine the terms on which the film can be played by the competitor. And, as I say, each contract that is made, of course, does restrain competition in that sense,

> "Now, we do not here attack those restraints as such. Whatever may have been the position originally this method of licensing films through clearance and minimum admission prices has been established in the industry and it is the way in which the industry operates and so long as those restraints are reasonable, as far as we are concerned, there clearly is no conflict with the Sherman Act. * * *"

The system of distributing pictures in a sequence of runs with intervening clearance was established by all producer-distributors of motion pictures some twenty-five years ago as the method of distribution best calculated to bring them the maximum revenues from the rental of their films (R. 2794-95). Exhibitors, dependent for product on the producer-distributors, have been compelled to do business and to bargain within the framework thus created. In determining which exhibitor shall have the prior runs, the producer-distributors choose those who can provide the most satisfactory combination of theatre property, willingness and ability to pay substantial film rentals, and experience and skill in the business of operating theatres (R. 2809, 2862, 2931). Thus to obtain prior runs, exhibitors have had to offer the producer-distributors high rental fees, to make large investments in theatre property, and to maintain good standards of showmanship and financial integrity.

As the inducement to the exhibitor to pay the price for prior runs, producer-distributors have nothing to offer but clearance over other theatres; and the amount of clearance that can be obtained is a matter of bargaining between them and the exhibitor. In this bargaining the interests of the producer-distributor and the exhibitor are opposing. As the Court found in the *Paramount* case (66 F. Supp. at 343):

> "* * * There is a difference between a distributor's and an exhibitor's interest in the period of clearance granted. The distributor wants to get the most possible in film rental from all the runs, the exhibitor to get as much clearance over a succeeding run as possible, because he has no interest in any succeeding run. The distributor, however, has a definite interest. * * *"

It might appear from a reading of the opinion and the findings of the Court below that clearance is a simple matter. Actually it is a very complicated matter. As the Temporary National Economic Committee has found (Monograph No. 43, "The Motion Picture Industry—A Pattern of Control", p. 40):

> "The establishment of clearance schedules is an intricate procedure. It involves a complex bargaining process and the balance of a variety of opposing economic interests. It may be stated initially that the primary objective of the distributor is, of course, to maximize his total revenue from each picture. This aim gives him a very direct interest in clearance periods. The higher rental fees paid by the prior-run exhibitor are directly conditioned on the extent of the protection which he is granted, and in general the longer the clearance period before subsequent showing, the higher the rental fee the prior-run exhibitor will pay.
>
> "On the other hand, the distributor's revenue from subsequent-run exhibition is also important to him; this income may mean the difference between black or red ink on his ledgers. But the longer the clearance period, the smaller will be these returns—not only because more customers will have attended the prior showing rather than wait for subsequent exhibition, but also because the effects of the advertising and exploitation efforts made when

> the picture was released will have been vitiated over this time. In general, the greater the total box-office return earned by a film in all showings, the greater will be the distributor's revenue."

An understanding of this conflict of interest is of paramount importance as concerns the findings of unreasonable clearance in the present case, inasmuch as both the Court and the Government have here taken the unsupportable position that clearance is reasonable only if it satisfies completely the interest of the distributor.

The question of what constitutes reasonable clearance has always been the most controversial question in the motion picture industry. Its complexity was certainly not appreciated by the Court in the present case, inasmuch as the Court found many specific clearances "unreasonable" without, as will be demonstrated, any evidence concerning the factors which, in the understanding of the industry and by judicial decision, must enter into any determination of the reasonableness of a specific clearance.

In the consent decree in the *Paramount* case, provision was made for the arbitration of clearance controversies, according to standards which the decree set forth. The pertinent provision of the decree as outlined in the Court's opinion (66 F. Supp. at 331) are abstracted in the margin.*

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*Controversies arising upon the complaint of an exhibitor that the clearance applicable to his theatre is unreasonable shall be subject to arbitration under the following provisions:

It is recognized that clearance, reasonable as to time and area, is essential in the distribution and exhibition of motion pictures.

In determining whether any clearance complained of is unreasonable, the arbitrator shall take into consideration the following factors and accord to them the importance and weight to which each is entitled, regardless of the order in which they are listed:

While the Paramount consent decree sets forth 7 types of arbitrable controversies between producer-distributors and exhibitors, the complaints filed under Section VIII, the clearance section, far outnumbered all other complaints. Of the total 473 complaints filed under the decree through the year 1946, 349—or about 74%— were filed under Section VIII exclusively. 397 complaints, or about 84% of the total complaints, involved a complaint under Section VIII.*

In the decision in the *Paramount* case, the Court found that numerous and complex factors must be taken into account in determining the reasonableness of a particular clearance. The Court stated (at 343):

> (1) The historical development of clearance in the particular area wherein the theatres involved are located;
>
> (2) The admission prices of the theatres involved;
>
> (3) The character and location of the theatres involved, including size, type of entertainment, appointments, transit facilities, etc.;
>
> (4) The policy of operation of the theatres involved, such as the showing of double features, gift nights, give-aways, premiums, cut rate tickets, lotteries, etc.;
>
> (5) The rental terms and license fees paid by the theatres involved and the revenues derived by the distributor defendant from such theatres;
>
> (6) The extent to which the theatres involved compete with each other for patronage; and
>
> (7) All other business considerations, except that the arbitrator shall disregard the fact that a theatre involved is affiliated with a distributor or with a circuit of theatres.

*The figures for the years 1941 and 1942 are to be found in the Quarterly Reports of the Motion Picture Arbitration Tribunals, issued by the American Arbitration Association, the administrator of the Consent Decree. No official figures have been published for the subsequent years but the data here used for these years was obtained from the records of the American Arbitration Association.

"In determining whether any clearance complained of is unreasonable, the following factors should be taken into consideration and accorded the importance and weight to which each is entitled, regardless of the order in which they are listed:

"(1) The admission prices, as set by the exhibitors, of the theatres involved;

"(2) The character and location of the theatres involved, including size, type of entertainment, appointments, transit facilities, etc.;

"(3) The policy of operation of the theatres involved, such as the showing of double features, gift nights, give-aways, premiums, cut-rate tickets, lotteries, etc.;

"(4) The rental terms and license fees paid by the theatres involved and the revenues derived by the distributor-defendant from such theatres;

"(5) The extent to which the theatres involved compete with each other for patronage;

"(6) The fact that a theatre involved is affiliated with a defendant-distributor or with an independent circuit of theatres should be disregarded; and

"(7) There should be no clearance between theatres not in substantial competition."

It is this background, then, against which must be measured the finding and conclusion of the Court in the instant case that appellants violated the Sherman Act by obtaining unreasonable clearance for their theatres over independent theatres.

FINDING 9(b)

In Finding 9(b) the Court found that " 'Schine' was able to secure unreasonable clearances year after year in many towns," and specifies the following clearances which are all clearances of first run theatres over second-run theatres in the towns named (R. 3216):

Town	Distributor	Clearance
Corning, N. Y.	RKO	90 to 180 days
	Fox	160 days
Seneca Falls, N. Y.	Columbia	120 days
	United Artists	120 days
Little Falls, N. Y.	RKO	120 days
	Columbia	120 days
	Universal	120 days
	United Artists	115 days
Carthage, N. Y.	RKO	120 days
	United Artists	90 days
Watertown, N. Y.	United Artists	90 days
Amsterdam, N. Y.	United Artists	90 days
Bucyrus, Ohio	United Artists	90 days
Kent, Ohio	United Artists	90 days
Norwalk, Ohio	United Artists	90 days
Tiffin, Ohio	United Artists	90 days
Fostoria, Ohio	United Artists	90 days
Lexington, Ky.	United Artists	90 days
Van Wert, Ohio	United Artists	90 days

In addition, it is found that "Schine got clearance for Herkimer over Ilion where none existed before."

These findings are in many instances incorrect as concerns the number of days clearance which Schine secured for its theatres in these towns.

Before discussing the incorrectness of the Findings, it is worth pointing out that for all the towns listed above except Carthage, Kent and Tiffin, the Government had witnesses on the stand who testified concerning such towns and were in a position to give testimony on the subject of clearances in those towns. Yet in not a single instance was such a witness examined on the matter of clearance; and no testimony on clearance was given with respect to any of the towns. The Government made no effort to present the issue, except on the broad basis that all Schine contracts for clearance were unreasonable on their face.

The most clearance which Schine ever secured from RKO in Corning, N. Y. was 160 days (Ex. R-7, 5803, 1183)*, not 180 days as found. Schine did not secure 160 days clearance on Fox product in Corning, but only 60 days (and that over its own theatre) and 30 days over the Plaza theatre (Exs. F-101 (5)(6), R. 5979-5982, 2545, Exs. F-141, F-142, R. 6073-6074, 1181, Exs. F-8, F-9, 5914-5915, 2577).

In Little Falls, the most clearance Schine received on Universal product was 90 days (Ex. 1009, R. 4428, 2987), not 120 days as found.

In Amsterdam, Schine did not receive 90 days clearance on United Artists' product as found. The only evidence of United Artists' clearance in Amsterdam is a 30-day clearance over the towns of Broadalbin, Fonda, and Johnstown, N. Y. (Ex. 958, R. 4393, 2537).

As for the finding that "Schine got clearance for Herkimer over Ilion where none existed before," nothing could be further from the fact. In the period 1929-1933, when Fox-Metropolitan Playhouses, Inc. operated the theatres in Herkimer, Herkimer had 14 days clearance over Ilion. Shortly after Schine took over the operation of the Herkimer theatres in 1933, the clearance of Herkimer over Ilion was reduced to 10 days (R. 2382-83). The evidence further shows that Herkimer and Ilion are only 3 miles apart; that there are good roads connecting them and a population residing between them; that Herkimer is the county seat and the shopping center for residents of Ilion, and that there is competition between the theatres in the two towns, inasmuch as clearance between them has substantial commercial advantage (R. 2381, 2383).

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*See original Exhibit. The digest thereof in the printed record is incorrect in this respect.

More significant than the errors in these basic findings is the fact that the Court apparently failed to realize that most of the clearances which it found unreasonable were clearances that operated only against Schine's own theatres.

The only evidence that Columbia granted Schine 120 days clearance in Seneca Falls, is a contract dated November 19, 1940 (Ex. C-181 (28), R. 5088, 1190). The only evidence that United Artists granted Schine 120 days clearance in that town is a clearance schedule effective November 16, 1938 (Ex. 958, R. 4393, 2537) and a clearance schedule for the 1940-1941 season (Ex. 959, R. 4397, 2537). Since April 1936, all the theatres in Seneca Falls have been operated by Schine (R. 231).

The only evidence that Universal granted Schine 90 days clearance (not 120 as found) in Little Falls, is a clearance schedule for the 1936-37 season (Ex. 1009, R. 4428, 2987). Since June, 1936, Schine has operated all the theatres in Little Falls (R. 227-28).

The only evidence that United Artists granted Schine 90 days clearance in Bucyrus, is a clearance schedule to be effective November 16, 1938, and a schedule for the 1940-41 season (Ex. 958, R. 4393, 2537, Ex. 903, R. 4392, 2537). Since April, 1937, Schine has operated all the theatres in Bucyrus (R. 234).

The only evidence that United Artists granted Schine 90 days clearance in Kent is a clearance schedule for the 1940-1941 season (Ex. 903, R. 4392, 2537), and one effective November 16, 1938 (Ex. 958, R. 4393, 2537). Since December, 1937, Schine has operated all the theatres in Kent (R. 235).

The only evidence that United Artists granted Schine 90 days clearance in Norwalk, is a clearance schedule effective November 16, 1938 (Ex. 958, R. 4393, 2537), and one for the 1940-1941 season (Ex. 903, R. 4392, 2537). Schine has operated all the theatres in Norwalk since December, 1936 (R. 236).

The only evidence that United Artists granted Schine 90 days clearance in Tiffin, is a clearance schedule for the 1940-41 season (Ex. 903, R. 4392, 2537), and a schedule effective November 16, 1938 (Ex. 958, R. 4393, 2537). Since February 1938 Schine has operated all the theatres in Tiffin (R. 237).

The only evidence that United Artists granted Schine 90 days clearance in Fostoria, is a clearance schedule effective November 16, 1938, and a clearance schedule for the 1940-1941 season (Ex. 903, R. 4392, 2537, Ex. 958, R. 4393, 2537). Since July, 1937, Schine has operated all the theatres in Fostoria (R. 235).

While there were competing theatres in Corning, when RKO in the 1934-1935 season licensed its pictures to

Schine's Fox and State theatres in that town on first run, with 160 days clearance over second run (R. 225, Ex. 628-D, R. 5440, 2986, Ex. R-7, R. 5803, 1183), RKO in that season licensed its pictures on second run in Corning to Schine's State Theatre (Ex. 628-E, R. 5441, 2986), so that the clearance, again, was directed against Schine's own theatre. Likewise, while Fox granted the Schine first-run theatre in Corning 60 days clearance over second run, the second-run theatres were also Schine theatres (Exs. F-101 (5)(6), R. 5979-5982, 2545, Exs. F-141, F-142, R. 6073-74, 1181).

In the 1933-34 season, United Artists granted Schine's first-run theatre in Watertown 120 days clearance over second run (Ex. 281, R. 3827, 2537). In the 1938-39 season, and in the 1940-41 season, this clearance was 60 days (Ex. 958, R. 4393, 2537, Ex. 959, R. 4397, 2537). While there were theatres in Watertown in competition with the Schine theatres there, United Artists' pictures were licensed to Schine theatres on second run in Watertown in the 1933-34 season (Ex. 122, R. 5327, 2537), with the result that the clearance granted to the first-run theatre was again clearance over Schine's own theatres.

This leaves for consideration the 120 and 115-day clearances granted by RKO, Columbia and United Artists in Little Falls; the 120-day clearance granted by RKO, and the 90-day clearance granted by United Artists, in Carthage; the 90-day clearance granted by United Artists in Lexington; and the 90-day clearance granted by United Artists in Van Wert.

Little Falls

In the 1933-1934 season, United Artists licensed its pictures to Schine's Rialto Theatre in Little Falls with 115 days clearance (Ex. 281, R. 3827, 2537). The other theatre in Little Falls was the Hippodrome (R. 228). There is no evidence that the Hippodrome played United Artists' product in the 1933-34 season, and there is no evidence that it had any interest whatsoever in licensing that product second run on any terms. In the next season, 1934-35, United Artists' pictures were "sold away" from Schine and licensed to the Hippodrome theatre on first run (R. 1722-23). In the same season RKO and Columbia licensed their pictures to Schine's Rialto with 120 days clearance (Ex. R-14, R. 5810, 1183, Ex. 672D, R. 5484, 2531). While the Hippodrome did not play RKO pictures on second run that season (R. 1725, 1728-29), it did play Columbia pictures second run (R. 1722). However, there is no evidence sufficient for a finding that the 115-day or 120-day clearance granted to Schine's 1200-seat Rialto Theatre (R. 227) over the 555-seat Hippodrome (R. 228)—which charged a 20¢ adult orchestra admission price against the Rialto's 30¢ (R. 1723)—was unreasonable. Since June, 1936, Schine has operated all the theatres in Little Falls (R. 227-28).

Carthage

In the 1934-35 season, RKO granted a clearance of 120 days (Ex. R-6, R. 5802, 1183), and United Artists a clearance of 90 days (Ex. 281, R. 3827, 2537), to Schine's Strand Theatre in Carthage over the only other theatre in Carthage, the State (R. 224). During the same season Schine acquired the State (R. 254). There is no evidence that the State was interested, in that part of the 1934-35 season in which it was not operated by Schine, in licensing RKO or United Artists' pictures second-run on any terms whatever. Nor is there evidence sufficient for a finding that the 120-day or 90-day clearance granted to the 786 seat Strand Theatre (R. 224) in a town with a population of about 4000 (R. 2573) was unreasonable.

Lexington

In the 1938-1939 season, United Artists licensed some of its pictures first run in Lexington to Schine's Kentucky, Ben Ali and Strand theatres. These theatres were given 60 days clearance over Schine's State and 90 days clearance over the Opera House and Ada Meade (Ex. 958, R. 4393, 2537). There is no evidence that the Opera House or Ada Meade played or had any interest in playing United Artists' pictures second-run on any terms in the season concerned. On the other hand, Schine's theatres in that season did play United Artists' pictures second-run (Ex. 141, R. 5350, 2537, Ex. 142,* R. 2537). There is no evidence that the operators of the Opera House or Ada Meade ever complained of this clearance, and there is certainly no such evidence concerning the factors which determine the reasonableness of clearance as to justify the finding that the clearance was unreasonable.

Van Wert

In the 1938-1939 season United Artists granted a first run clearance of 90 days to Schine's Van Wert or Strand (Ex. 958, R. 4393, 2537). There is no evidence that the opposition theatre, the Ohio, was interested in licensing United Artists' pictures in this season second run on any terms whatsoever. Moreover, there is no evidence that the clearance, if actually imposed on the Ohio, would have been unreasonable. Such evidence as there is is to the contrary. Schine's Strand Theatre seats 710, and Schine's Van Wert Theatre, newly built in 1935, seats 802 (R. 237, 657). The Ohio Theatre on the other hand is a converted store, 40 feet by 120 feet, and seating 347 (R. 675).

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*This exhibit is not a part of the printed record but, by stipulation, may be referred to (R. 3553).

There is nothing whatever to support the finding that the clearances enumerated in Finding 9(b) were unreasonable.

FINDING NO. 17

The next finding concerning unreasonable clearance is Finding No. 17. The Court there first makes a general finding that "In numerous instances unreasonable clearances were allowed to Schine over towns in which Schine did not operate, and some towns distant from 10 to upwards of 20 miles, and towns in which there were no theatres" (R. 3220-21).

Since the very idea of clearance is to prevent competing exhibitors from exhibiting pictures simultaneously, it is common throughout the industry for one town to have clearance over another town. Nor is there anything abnormal about the fact that a Schine theatre took clearance over a town (Norwich over Sidney) distant "to upwards of 20 miles" (Ex. 981 (25), R. 5677, 2547, R. 2445).

There is no rule of law that theatres 24 miles apart cannot be competitive. In fact the Appeal Board of the Motion Picture Arbitration Tribunals under the Consent Decree in the *Paramount* case found it reasonable for theatres 66 miles distant from Schine's Plaza Theatre in Milford, Delaware, to have clearance over said Plaza Theatre (*In the Matter of the Arbitration between Sidney Theatre Corp. and Loew's, Inc., et al.*, Decision No. 61). As for

Schine's clearance over towns in which there were no theatres, the alleged specific instances of this practice will be considered later.

In Finding No. 17, the Court finds unreasonable the following specific clearances (R. 3221):

Town	Clearance	Distributor
Gloversville, N. Y.	45 days over Johnstown, N. Y.	
Lockport, N. Y.	Over Newfane, N. Y.	
Ilion, N. Y.	Over Mohawk, N. Y.	
Salamanca, N. Y.	Over Randolph, N. Y.	
	Over Little Valley, N. Y.	
	Over Elliottville, N. Y.	
Ashland, Ohio	Over Loudenville, Ohio	Loew's
	Over Lodi, Ohio	Loew's
Auburn, N. Y.	Over Skaneateles, N. Y.	United Artists
Hornell	Over Earlville	

Schine's Hippodrome and Glove theatres in Gloversville have had 45 days clearance over theatres in Johnstown, (*e.g.*, Ex. 618, R. 3952, 2524). The two towns are adjacent, their centers being 3 miles apart (R. 2446), and the operator of the Johnstown theatres conceded that his theatres and Schine's Gloversville theatres compete for patronage (R. 2451-52). There is not a scintilla of evidence to support the finding that this clearance is unreasonable.

Schine's Rialto, Palace and Hi-Art theatres in Lockport have had clearance over Newfane and Schine's Capitol Theatre in Ilion, has had clearance over Mohawk (Ex. P-209, R. 5869, 1170, Ex. P-210, R. 5870, 1170). There is no admissible evidence in the record that there are no theatres in Newfane or Mohawk. What is more, it seems clear that the reasonableness of a clearance is not subject to determination if there is no theatre upon which the clearance is imposed. Furthermore, a finding that clearance against a non-existent theatre is unreasonable cannot stand in the absence of proof that the clearance would have been unreasonable against an existing theatre in the same location. This "finding" by the Court was purely hypothetical.

Salamanca.

The Court next goes on to find that "Many clearances were over outside towns of comparably small population, distant so far that no clearance is justified, such as Randolph, Little Valley and Elliottville, New York." The fact is that Schine's Andrews Theatre in Salamanca had clearance over Randolph, Little Valley and Ellicottville (not Elliottville as found) (*e.g.*, Ex. 618, R. 3952, 2524). There is no evidence concerning the distance between those towns and Salamanca, no evidence concerning the competition between the theatres, or concerning the admission prices charged by the theatres in the 3 towns over which the clearance was taken, or concerning the character and location of the theatres (including size, type of entertainment, appointments, transit facilities, etc.) or concerning the operating policies of these theatres, no evidence of the rental terms and license fees paid by them to the distributors—in other words, no evidence of any one of the factors which are material to the determination of the reasonableness of clearance.

Ashland, etc.

The Court then finds that "Many [clearances] recently were given over towns over which there had been no previous clearance. Metro gave clearance in Ashland over Loudenville and Lodi, Ohio; United Artists gave clearance in Auburn over Skaneateles, New York, and Fox in Hornell over Earlville, New York."

The clearance of Ashland over Loudenville and Lodi is discussed under Point I, where it is pointed out that the Court neglected to mention that Schine, in turn, was subject to clearance in Ashland, Ohio in favor of the larger and more distant city of Mansfield, Ohio. It may be added here that the Court's statement that the clearance of Ashland over Loudenville and Lodi had been given "recently" was wrong, since the Loew's and Fox clearance dates back to 1936 for Loudenville and 1937 for Lodi (Ex. 618, R. 3952, 2524; Ex. F-42, R. 5947, 2577; Ex. 618, R. 3952, 2524), whereas Schine acquired the Ashland theatre only in November, 1935 (R. 233).

No reason is suggested why the historical pattern of clearance must remain inviolate. Indeed, in the *Paramount* case, the producer-distributors' practice of fixing clearance on an historical basis was condemned by the Court (66 F. Supp. at 341-46); and surely if appellants were able to resist the practice it would seem to their credit. Actually the evidence shows that Schine's Palace Theatre in Ashland had clearance over Loudenville on Loew's (Metro) and Fox product as early as 1936 (Ex. 618, R. 3952, 2524, Ex. F-41, R. 5947, 2577). Schine had acquired the Palace Theatre in Ashland in November, 1935 (R. 233).

As for Auburn's clearance over Skaneateles on United Artists' product, there is no first run Auburn clearance in evidence which does not include a clearance over Skaneateles*; and again there is no evidence to support a finding that this clearance is unreasonable. Schine's competitor, Wallace, likewise had clearance over Skaneateles (Ex. D-125, R. 6200, 2139).

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*Ex. 618, R. 3952, 2524, Ex. F-101(1), R. 5971, 2545, Ex. F-4, R. 5910, 2577, Ex. F-138, R. 6070, 1181, Ex. P-198, R. 5858, 1170, Ex. W-3, R. 4429, 1159-62.

As for the alleged clearance of "Hornell over Earlville, New York" on Fox product, Schine has no theatre in Hornell. Schine's Colonia Theatre in Norwich did have clearance over Earlville on Fox product since 1935 at least (Ex. F-101 (20); R. 6009, 2545), and there is no evidence that that clearance was either recent or unreasonable.

The balance of Finding 17 (R. 3221-22), which is quite lengthy, commences with the statement that:

> "The record is replete with inter-department communications between major film representatives which recognize the unreasonableness of the clearances given to Schine at his demand."

The Court then cites various "communications and representations" made by representatives of the distributors, which, it says, "are inadmissible in evidence because these men all held positions in their respective companies so that it was within the scope of their duties to make the representations in the communications that they did as a natural incident of the office, i.e., branch or district manager" (R. 3221).

Then follow some of the most extreme examples of the use of hearsay statements and opinions as proof of the alleged unreasonableness of clearance. Some of those statements and opinions have been quoted and commented on in Point II. The others, equally inadmissible and equally unreliable as evidence, are as follows:

> "Pielow, MGM resident manager, wrote: 'I feel that in some of the situations (unnamed) (discussing Schine contracts), the clearance that he (Lynch) is demanding is unfair * * *.' Dana, branch manager of Universal wrote the district manager that he had

asked Louis Schine relative to clearances over the Smalley circuit (Norwich) and that he refused to grant the privilege of serving the pictures with shorter clearance. Universal branch manager Sauber wrote Lynch that they wanted to serve Waterloo in less time than the 30 days clearance after Seneca Falls because other majors were, but Lynch refused though Universal had the right under its contract to do so. At Rochester, Scully, of Universal, said it would be satisfactory if the Madison and Monroe came within the Schine 21 day clearance. Smith, branch manager of Warner, wrote to the Home office that Canton would do more business if it were not for Schine at Ogdensburg having 30 days clearance and if it was reduced; 'it will make a better condition* for us all * * *' Smith also wrote relative to Seneca Falls stating that he hoped Lynch would break down their 60 days clearance: 'As I told you this morning over the phone, the clearance set up is all wet * * *.'

The admission of these producer-distributor inter-office communications over appellants' objection, and their use as evidence to support the finding that clearances obtained by Schine theatres were unreasonable, was a most obvious and gravely prejudicial error, disclosing a thorough misunderstanding of appellants' principal objection and a complete misunderstanding concerning the producer-distributor's interest in clearance.

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*The Court ruled, in its written opinion, that the exhibit containing the statement (Ex. 546, R. 3941, 2605) would be "strictly construed" (R. 3089). However, it is apparent that the Court gave no effect whatever to its ruling.

Note: The ruling of the Court quoted in the next preceding footnote applies to these statements also. The pertinent exhibits are Ex. 542 (R. 3940, 2607) and Ex. 229 (R. 3818, 2606).

The opinions of the producer-distributors concerning the reasonableness of clearance are not to be regarded as authoritative for the purpose of the enforcement of the Sherman Act (*Paramount* case, 66 F. Supp. at 323). The producer-distributors test the reasonableness of clearance from the point of view of their own economic interest, not from the point of view of the Sherman Act. As the Court clearly pointed out in the *Paramount* case, the interests of the exhibitor and the interests of the producer-distributor differ in the matter of clearance. That the exhibitor has been successful in bargaining with the producer-distributor for clearance, to the extent that he obtains a clearance which the producer-distributor labels "unreasonable", "excessive" or "unfair", means only that the economic interest of the producer-distributor is not completely satisfied—not that the Sherman Act has been violated.

The admission of these inter-office memoranda is subject to many other objections including the general objections stated elsewhere in this brief. They are in addition replete with double hearsay. Furthermore, declarations of alleged co-conspirators are admissible only when in furtherance of the alleged conspiracy; and certainly the evident attempt of the producer-distributors by means of these communications to reduce Schine's clearances cannot be said to be in furtherance of any conspiracy by Schine to restrain trade by securing unreasonable clearances.

FINDING 26

Finding 26, which also deals with clearance (R. 3224), recites a clearly inadmissible inter-office communication of Fox, which has been quoted and commented upon under Point II. No further comment is necessary.

FINDING 25

Finding No. 25 reads as follows (R. 3224):

> "25. Lynch wrote United Artists that 'Schine' should be allowed the privilege of playing pictures ahead of a situation (Sodus) charging a lesser admission price.' To this the reply, in part, was: 'Therefore, in the future we will grant you fourteen days, or whatever clearance you see fit to take on towns like Elmira* etc. in that locality.'"

The reference here is to Exhibits 318 (R. 3846, 2604), and 319 (R. 3846, 2604), the first being a letter dated December 16, 1940, in which Lynch states that Schine's theatre in Newark should have clearance on United Artists' product over the theatre in Sodus which is showing that product at a lesser admission price than that charged at Schine's Newark theatre, and the second being United Artists' reply dated December 18, 1940. What alone is significant is the clearance that Schine's Newark theatre actually received on United Artists' product in the 1940-1941 season, since it is clearance actually given to Schine which the Court has found unreasonable. In that season Schine got 14 days clearance over Lyons, Palmyra, and Clyde (Ex. 959, R. 4397, 2537). This is to be compared with the clearance which Schine's theatre in Newark received on United Artists' product in the 1933-1934 season: 30 days over Lyons, Palmyra, and Clyde (Ex. 281, R. 3827, 2537). There is no evidence that these clearances were unreasonable.

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*In the letter referred to the town mentioned is Palmyra, not Elmira.

FINDING 23

Finding No. 23 reads as follows (R. 3224):

> "23. United Artists with respect to the Capitol Theatre in Ilion wrote: 'We do not want to encounter any difficulty with the Schine Circuit * * *, we want to be definitely assured that the clearance as submitted in the contracts is satisfactory to the Schine Company.'"

This finding is based on a United Artists' inter-office memorandum (Ex. 292, R. 3833, 2606) which appellants contended at the trial (R. 2586-87, 2594-96), and now contend, was not admissible for any purpose.

The whole memorandum reads as follows:

"UNITED ARTISTS CORPORATION

Inter Office Letter

Date, February 5th, 1936

From: (Office) Home, (Dept.) Sales, (Name) S. W. McGrath.

To: (Office) New York, (Dept.) Sales, (Name) Nat Beier.

Re: Ilion, N. Y., Capitol Theatre

It is necessary for us to hold the contracts recently submitted covered by #41's, #106747-#106751 inclusive.

Before considering the deal, we want to be absolutely certain as to the clearance following ten days after Herkimer.

We do not want to encounter any difficulty with the Schine Circuit insofar as clearance is concerned;

therefore, we want to be definitely assured that the clearance as submitted in the contracts is satisfactory to the Schine Company.

SWM:SS.

cc: Harry L. Gold, Chas. Stern."

It is evident that the only matter under consideration was the clearance of Schine's theatre in Herkimer over the Capitol Theatre in Ilion. In the 1933-1934 season, Herkimer had had 28 days clearance over Ilion on United Artists' product (Ex. 281, R. 3827, 2537). On April 20, 1935, Fox entered into the following agreement with the operator of the Capitol Theatre in Ilion (Ex. 873, R. 4378, 2376):

> "It is understood and agreed that in the event that all Major Companies serving Herkimer during season 1935-36 sell and serve Ilion with a Clearance of 10 days after Herkimer, The Fox Film Corporation's feature product and short subjects are to become available likewise."

It is evident then that what concerned United Artists was whether it should join (which it did—Ex. 869, R. 5573, 2369) a united front with the other distributors to reduce Schine's clearance over Herkimer to 10 days. That United Artists should in such circumstances be concerned with Schine's reaction is not unnatural, and far from indicating a conspiracy with Schine to restrain commerce, indicates to the contrary a purpose to thwart Schine's legitimate business interest, albeit in as genteel a fashion as possible.

In any event, whatever may have been United Artists' disposition concerning the granting of clearance to Schine in Herkimer the decisive question remains whether the clearance actually granted was unreasonable, and as previously pointed out at length, there is no evidence on which to base a finding that Herkimer's clearance over Ilion was unreasonable.

Conclusion

The Government in the Court below had a theory that clearance has no purpose except to protect the distributors' revenues, and that any clearance period that goes beyond that necessary (in the opinion of Government counsel) for such protection is "*per se* unreasonable." (Pl. Br., p. 44). This is a pat and convenient theory, which apparently the Court accepted. All other authorities who have spoken on the matter, however, have arrived at a contrary conclusion. *United States* v. *Paramount, supra; Gary Theatre Co.* v. *Columbia Pictures Corporation*, 120 F. (2d) 891; *Westway Theatre* v. *Twentieth Century-Fox Film Corp.*, 30 F. Supp. 830, 113 F. (2d) 932; and see TNEC Report, quoted above.

The District Court's finding that appellants "secured unreasonable clearances" for their theatres over independent theatres is not supported by any evidence. The reasonableness of a particular clearance depends on a great variety of factors, as to which there are no adverse findings and no evidence on which such findings could be based. Furthermore, a great many of the clearances which the Court found unreasonable were clearances which could be imposed only on Schine's own theatres. It is evident, further, that in finding that Schine had secured unreasonable clearances the Court relied principally on inter-office communications of the producer-distributors, which were inadmissible for any purpose, and particularly inadmissible as proof of the unreasonableness of clearances, in which the producer-distributors had an interest adverse to the exhibitor.

The Court stated in its opinion (R. 3084): "It is recognized that the matter of clearances is of major importance in the consideration of the issues herein." The fact that the Court's erroneous findings with respect to clearance so strongly influenced its decision on the merits of the ultimate issue herein is a substantial ground on which the judgment and order herein should be reversed.

3. "Making threats to build or open closed theatres to prevent construction or operation by independents"

FINDING 10

Finding 10, which deals entirely with "threats to build," reads as follows:

> " 'Schine' made threats to build in various towns, such as Paris, where there was a sign up, Canandaigua by a sign and newspaper article published, and where he eventually did build. In Perry, a statement by May and a newspaper article announcing that land had been bought for theatre purposes came at a time when 'Schine' was trying to purchase the independent's lease. 'Schine' did not build, but later got the lease. In Salamanca, just after independents acquired a site for a contemplated theatre, through the press 'Schine' announced its intention to build. In Medina, 'Schine' announced the making of an agreement to erect a new theatre immediately after independents started construction. In Mount Vernon, May contacted the independent to buy, saying 'Schine' would build unless the deal could be put through." (R. 3217).

The language used by the Court in the above finding would compel the reader to conclude that Schine threatened to build theatres in all six of the towns cited, but that there was only one—Canandaigua—where it "eventually did build." In actuality, however, the evidence shows incontrovertibly that Schine "eventually did build" in four of those 6 towns and that it leased theatres, thus obviating the need to build, in the other two. The evidence, by towns, is as follows:

Paris

In November, 1936, when Schine bought the 634-seat Bourbon Theatre in Paris, Kentucky, it was the only theatre in the town. In 1937 Schine decided to build a new theatre in the town, bought a site and put up a sign on the building advertising the projected new theatre (R. 2038-39); and on October 5, 1937, the City Council passed an ordinance authorizing construction of the new Schine theatre (Exs. D-153, D-153-A, R. 5185, 5187, 2686). In the "spring or summer" of 1938, contractors' bids on the new theatre were received, and the theatre was begun and completed in 1939 (R. 2686-87).

Meanwhile, according to his own testimony in the case (R. 2038), Harry Schwartz, operator of a theatre in Lexington, had driven through Paris in the summer of 1937, and had noticed the announcement that Schine was going to build. In the following summer, 1938, Mr. Schwartz again drove through Paris and noticed that the sign was in a broken-down condition (R. 2038-39). Schwartz leased a piece of property in Paris in November, 1938, and in July, 1939, he commenced to put up a building on the premises, a few days before construction of the Schine theatre was begun (R. 2043-44).

Schwartz testified that two days after he signed his lease in November, 1938, a Schine representative, Mr. Lazar, called him on the telephone and told him that Schine "had every intention of building a theatre in Paris" but had "not decided on just what type or what size, and that is why they had not begun earlier" (R. 2044-46). According to Schwartz, he and Lazar met later that day and Lazar told him the town would not support three theatres and that he was making a mistake to try to compete with Schine. Schwartz continued: "He said, 'If you care to, I will take this lease off your hands, and I said 'For how much?' and he said, 'Are you trying to hold me up?' " (R. 2044-46).

Schwartz next applied to distributors for product in Paris. For that purpose he selected the 3 distributors whose pictures Schine was then playing in Paris and he was advised—as no doubt he expected to be advised—that Schine was their customer in Paris and had already spoken for the second runs.* Nevertheless, Schwartz was not deterred, although it was his opinion "Paris was not big enough for more than two theatres" (R. 2056). Without going to any other distributors for product, he went ahead and partially erected the side walls of a building on his leasehold (R. 2047). At that stage, Lazar again made him an offer, which Schwartz accepted, for the Paris lease and a theatre that Schwartz was operating in Lexington. Schwartz admitted that in his dealings with the Schine interests he met only with courtesy and fair discussion, and that no threats were made to him (R. 2056-57).

There is no evidence of Schine's "threat to build" in Paris other than what is summarized above. That evidence, it is submitted, permits only one fair inference: that if any threats were made in Paris, they were made, not by Schine but by Schwartz, who (1) did not lease a site until he knew Schine was planning to build a second theatre, (2) went ahead with his bluff and erected walls, even though he had obtained no product and even though he admitted the town would not support 3 theatres, (3) sold out to Schine as soon as he got an offer which he thought represented his maximum nuisance value.

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*This aspect of the competition in Paris is discussed in more detail in the attack on Finding 18.

Canandaigua

The Playhouse Theatre in Canandaigua, which Schine bought in 1924, was for many years the only theatre in the town. In 1937 Schine began to consider the construction of an additional theatre in Canandaigua, in view of a report that a large government hospital was going to be built in the town, which it was expected would bring several hundred additional families to Canandaigua (R. 2645-47). In 1938 Schine put up a sign in Canandaigua, on what was known as the Flanagan property, advertising that a new theatre was going to be constructed (R. 1977-78), and in May of that year the local newspaper carried a story on Schine's plan to build a new theatre in the town (Ex. 53, R. 3783, 2544). In 1939 Schine acquired a site, half a block away from the Flanagan lot, on which it did build. During the ensuing construction one of the walls collapsed and a worker was killed and, as a result, the project was tied up for some time by litigation. The theatre was finally completed and opened in April, 1941 (R. 2647-48; 224).

In April, 1938, two other interests appear to have been attracted by the prospects in Canandaigua. In that month Richard De Toto, according to his testimony discussed with a Mr. Marks the possibility of building a new theatre in Canandaigua. Nothing ever came of those discussions; why, is not clear, but there is no suggestion or implication in the evidence that it had anything to do with "threats" by Schine. The discussions simply never got beyond the preliminary stage (R. 960-61).

The other individuals who contemplated building a theatre in Canandaigua were Hubert P. Wallace, who operated the Capitol Theatre in Auburn, and Anthony Lauer. Wallace and Lauer had their eye on a piece of property abutting Schine's Playhouse Theatre and known as the Jenkins lot. Although they had seen Schine's sign advertising the new theatre and although they had read the newspaper article on Schine's plans, Wallace and Lauer went ahead and made an offer for the Jenkins lot (R. 1976-77). That offer was rejected by the estate which owned the property (Ex. D-174, R. 5191, 2942), and Wallace and Lauer then abandoned their plan. There is nothing in the evidence that could possibly be construed as indicating that Wallace and Lauer were intimidated by any "threats" by Schine. On the contrary, they went ahead and made an offer to buy in the face of information that Schine was planning to build.

The Lake Theatre, which Schine began in 1939 and finally finished in April, 1941, represented an initial expense of $15,000, and building and improvements valued at an additional $38,500 (Ex. D-150, R. 5183, 2634). It ran continuously for 4 or 5 months after it opened, but it lost money and had to close. The expected increase in population did not materialize and the Lake has since been operated only part-time, when business justified (R. 2648, 2414).

7 The worst that can be said about this situation, upon any construction of the evidence, and drawing all inferences in favor of the Government, is that Schine heard that two

competing groups were considering building a theatre in Canandaigua and decided to beat them to the punch by building one itself. To apply the word "threat" to such a state of affairs is, to say the least, a novel use of the word.

Perry

In November, 1934, an official of Universal wrote Schine that the Auditorium Theatre in Perry, being the only theatre there, was doing a large business and that Schine might be interested in Perry (Ex. 361, R. 3884, 2605). Schine looked into the situation and in July, 1935, bought a vacant lot on the main street belonging to Porter Davis (R. 1851). On October 4, 1935, Schine solicited and received bids for the construction of a theatre in Perry (R. 2684-85).

In July appellant May had called on J. C. Herzberger, the operator of the Auditorium, and said that he hoped they would be friends (R. 1849-51). He told Herzberger that Schine had just bought the Davis lot and that it was going to put up a new theatre seating 1,000 persons and costing about $100,000 (R. 1848-51). In the summer of 1935 the local newspaper, the *Perry Record*, ran an article on the fact that Schine had bought a piece of property in the town and had received contractors' bids for a theatre (Ex. 807, R. 5218, 2289).

Sometime later a Warner representative arranged for Herzberger to meet J. Myer Schine in Rochester and at that time Mr. Schine offered Herzberger $5,000 for his lease on the Auditorium (R. 1853-55). Herzberger accepted the offer, subject to the consent of the Town Board, which was necessary (R. ~~1845~~ 1852-55). The Town Board first refused, but finally left it up to Herzberger to decide whether to sell.

and he then decided he would not sell to Schine after all, and accordingly continued to operate the Auditorium himself (R. 1856-57). Thereafter he received a better offer from competitors of Schine, the Dipson Circuit, and that offer he decided to accept (R. 1857).

The Auditorium was an old theatre, built before the turn of the century. The Dipson Circuit spent $13,000 to improve and rebuild the theatre, increasing the seating capacity to 700 and making it a modern motion picture house. Schine did not go through with its plan to build a second theatre, since the rebuilding of the Auditorium, as Herzberger himself testified, "removed any occasion for having another theatre built in (Perry)" (R. 1858-60). A year later, however, Schine offered to buy the Auditorium lease from the Dipson Circuit, and they sold it to Schine (R. 1855-56). There is no word of testimony anywhere in the record to suggest that Dipson was motivated by any "threat" by Schine or by anything except an offer that was too attractive to resist.

Salamanca

Schine entered Salamanca, N. Y., in 1924, by acquiring the Andrews, the only theatre in town. In July, 1927, Schine bought a second piece of property in Salamanca, and it was on that piece of property that Schine began construction of its new theatre, the Seneca, eleven years later (R. 2663-64). Specifications for the Seneca Theatre were sent to the architect on August 23, 1938. On December 24, 1938, the *Salamanca Republican Press* reported that Schine was going ahead with plans to build a new theatre in the town (Ex. 854, R. 5221, 2292). Construction was started in 1939 (R. 2664-65). Thereafter, work on the

Seneca was held up for almost 2 years by a shortage of materials (R. 2715-18). In 1941, the Common Council of Salamanca approved the final plans and specifications for the theatre (R. 2981), and construction was completed in August, 1942 (R. 2717-18). The finished theatre was modern, air-conditioned, seating approximately 1200, and was, in the words of the local newspaper editor, a "very lovely theatre" (R. 2292-93).

The only evidence that any other interests ever contemplated the possibility of building in Salamanca was the testimony of Irving Cohen, who has been mentioned as the owner of a third-run theatre in Corning. Cohen testified that in 1937 he made "two or three visits to Salamanca" to look over the situation there, and that in October, 1938—by which time Schine had already sent specifications for the Seneca Theatre to the architect—he and two associates investigated theatre sites in Salamanca and looked at several pieces of property (R. 2209-12). No one ever spoke or wrote to Cohen to attempt to persuade him not to compete in Salamanca. In response to a question put to him, Cohen said that he had read the newspaper account of Schine's plans (R. 2209-10), but he did not say or imply that it was the "threat" of a second Schine theatre in the town that made him decide not to buy. In fact, although Cohen had been studying the situation in Salamanca for over a year before the newspaper account of Schine's plan appeared, he had never even made an offer for a piece of property, let alone hiring an architect, or asking for bids.

To summarize: Schine, having had the only theatre in Salamanca for many years—and having considered the construction of another theatre and bought a lot for that purpose as early as 1927—decided in 1938 to build a new theatre there. After Schine had commissioned an architect for the theatre, a potential competitor inspected several possible sites in the town. Some months later the competitor read in a newspaper that Schine was building a second theatre. It was that evidence, and that alone, which the Court felt justified its finding that Schine had used "threats" to discourage competition in Salamanca.

FINDING 11

Finding 11, dealing with "statements to independents which are reasonably construed as threats", consists of 9 instances, set forth in paragraphs (a) to (i), inclusive, and covers nearly 3 pages in the printed record. Each of the 9 instances is either trivial, inaccurate or flatly wrong. Paragraphs (c) to (f), inclusive, dealing respectively with the towns of Norwalk, Van Wert, Lockport and Perry, have been discussed above in connection with the other findings dealing with those towns.

Finding 11(a) reads as follows:

> "At Bellefontaine, during negotiations for the renewal of a lease with an independent, Lazar threatened to reopen the Opera House if the independent opened the Strand."

The first comment to be made on this finding is that it did not involve an "independent" at all, but rather the owner of a theatre—the Strand—which Schine had under lease. When the time came to discuss terms for renewal of the lease in 1940, the parties had some difficulty in coming to terms—especially about the number of weeks that Schine would bind itself to keep the theatre open during a year, the Strand being a marginal theatre that was operated only part time. The owner, Gutilla, had a son who was running a theatre in another town; and when there was reluctance on Schine's part to meet Gutilla's terms, the latter threatened not to renew the lease, but to open the theatre himself. Schine's representative, in the heat of negotiations, said that in that event Schine would open the Opera House, another marginal theatre that was then closed (R. 1345-46). This amounted to no more than the assertion that, if he could not get the Strand, he had another theatre available for the same purpose. How, in connection with a business noted for "horse-trading", such an incident can be regarded as significant, it is difficult to see.

Finding 11(b), omitting that part of it that relates to Paris, Ky., which has already been discussed, is:

> "With reference to Paris, Lazar told the independent, who was taking steps to build, that if the independent went ahead with his projects 'Schine' would build a 1200 seat theatre in Lexington where the independent had a theatre and that the house would be run with 10¢ policy at all times."

This story is so ridiculous on its face as to be unworthy of credence. Schine was the principal theatre operator in Lexington, having 4 of the 6 theatres, including all the first-run and second-run houses. One of the other 2 theatres was run by Harry Schwartz who, as explained above, started to build a theatre in Paris after he learned that Schine was going to build one. The story related is that Schine would put up a 1200-seat theatre in Lexington and run it with an admission price of 10¢. If anything could be calculated to destroy the profitableness of Schine's own theatres in Lexington, it would be such a fantastic operation.

Apart from that, the story cropped up quite incidentally in the record; the witness who testified to it was not Schwartz himself but another operator in another town. He never claimed that he or any one had repeated the "threat" to Schwartz, let alone that Schine had repeated it to Schwartz; and Schwartz, who testified, was not questioned on the subject and did not mention it. Schwartz testified that Schine made no threats to him (R. 2056-57).

In other words, the alleged threat was not made to "the independent" but to a third party who never communicated it to the "independent"! And when the testimony of the alleged threat was given, *the Court struck it from the record* (R. 858). The finding is hardly more than frivolous.

Finding 11(f), which deals with Perry, has been discussed above, in connection with Finding 10.

Finding 11(g) states:

> "Insley and May tried to buy an independent's theatre at Seaford and Georgetown. Insley said it was foolish that the independent did not make a deal with 'Schine' because he had recently purchased the theatre at Laurel and 'very likely, with the buying power they had they would get away the product' from the independent. Insley said Schine had bought a lot with the intention to build a theatre in Seaford, and also said: 'Well, if I were you I would sell the theatres to Schine because hey are going to build a theatre there, and, naturally, they are going to get the product.' Insley, under a written contract with 'Schine', had authority 'in negotiations for the acquisition of motion picture theatres within the above-described territory' (Delaware, Maryland, Virginia). Seaford and Georgetown are in Delaware."

If Insley, a local Schine manager, made the quoted statements, his remarks were as ineffective as they were inappropriate, for Ayers turned him down with a flat "not interested". Not only did Schine not get a theatre in Seaford or Georgetown (a fact that is characteristically omitted from the finding) but Ayers went ahead with his own plans to build a new theatre in Seaford, and at the time when he testified he was operating 2 theatres in that town (R. 2070-78). Thus, the finding is irrelevant.

Finding 11(h) states:

> "At Rochester, J. Myer Schine told independents, who were then building the 'Webster', that the location was not appropriate, that it was too near the 'State' (Schine's) and not justified, and Schine said he would build a theatre near the Murray theatre (owned by independents). The 'State' and the 'Webster' theatres were 3/4 mile apart. Schine later took over the 'Webster'. Schine testified he said that it would not be sensible to build the 'Webster', but denied that he said he would build near the 'Murray'."

The "independents" referred to in this finding were a firm of theatre operators, Messrs. Tishkoff & Fogel. In 1927 Schine had 4 theatres in Rochester, one of which, the State, had neighborhood competition from the opposition Plaza Theatre. In 1927 Messrs. Tishkoff & Fogel began to erect still a third theatre in the vicinity, the Webster. J. Myer Schine testified that he called on Messrs. Tishkoff & Fogel, who also owned the Murray in another part of the town, and that he said:

> "there was no sense to it, any more than there would be sense in building a theatre in the neighborhood near the Murray Theatre" (R. 2654):

Nevertheless, Tishkoff & Fogel went ahead and built the Webster Theatre and then offered Schine a half interest in it, which Schine bought.

There was conflicting testimony as to whether the statement made by J. Myer Schine in 1927 (17 years before the trial) was as Mr. Schine testified (quoted above), or whether, as testified by Tishkoff on direct examination, Schine at that time had threatened, in reprisal, to build a theatre near one of the Tishkoff & Fogel theatres.

In resolving that conflict against Schine, the Court simply ignored the testimony of Tishkoff on cross-examination, where he admitted that what Schine had actually said, in the conversation in question, was that it was no more sensible to build an additional theatre in the neighborhood of Schine's State Theatre than it would have been to build one in the neighborhood of Tishkoff & Fogel's Murray Theatre (R. 2231). In the one case Schine did not think there was enough business for a second theatre (R. 2653-55), and in the other case Tishkoff held the same opinion (R. 2655).

Any court would be hesitant about putting too great reliance on testimony given 17 years after the event, when it concerns the precise language of a conversation. But to give credence to such testimony, when the witness himself has contradicted it on cross-examination, is most extraordinary.

Finding 11(i) states:

> "At Seneca Falls, after an independent had taken steps toward building a theatre, a sign was placed on the Seneca Theatre, (shortly theretofore purchased by Schine) which read: 'Closed for alterations. Will reopen soon as a Schine theatre.' Independent then discontinued efforts to build. 'Schine'

> did not reopen. Practically the same things recurred two years later. The same independent took steps to build. The sign re-appeared on the 'Seneca.' The independent did not go through with his plan. The 'Seneca' did not open. It had not been open in several years."

This finding is based on the testimony of Richard De Toto who had operated the Seneca Theatre in Seneca Falls before Schine took it over and closed it. Schine operated the big theatre in Seneca Falls, the Strand, seating about 900. De Toto testified that in May, 1936, he investigated an "old laundry building" in Seneca Falls with the idea of converting it into a theatre, and that two years later, in June, 1938, he discussed the "converting a garage" in the town but that in each case he decided not to go through with his plans because he saw a sign on the Seneca Theatre announcing that it would reopen (R. 897-98, 902-03).

There is no evidence that De Toto ever spoke to any representative of Schine about his contemplated project, which never got beyond the most preliminary stage, or that Schine or any representative of Schine was aware of either of De Toto's "investigations" in Seneca Falls. All that appears is that De Toto, *having in his mind* the possibility of opening a theatre in the town, went to the town in May, 1936, and again in June, 1938, and each time, when passing the closed theatre, saw a sign announcing that Schine was going to open it.

As is repeatedly illustrated in the record, it was the custom of Schine to announce the opening of theatres by means of such signs. In the other cases the theatres were opened. In Seneca Falls the announced plan was never carried out; the record does not disclose why.

It may be permissible to infer, though it is an extreme inference, that except for the signs De Toto would have gone ahead with the contemplated project. But to pile upon that inference a further inference that the sign was put up to discourage De Toto in his undisclosed project, and that it "reappeared" at the time of De Toto's second visit—when for all that the record shows the sign was there throughout the 2-year interval and may still be there—is an error of the most fundamental character in dealing with evidence.

It is submitted that the whole of the Court's findings on "threats" is nothing more than the piecing together of a series of inconsequential details, taken out of their context of circumstances and time, and presented with characterizations which give them a significance that they never could have had in the actual times and circumstances involved.

4. "Lowering admission prices"

FINDING 14

Finding 14 reads as follows:

> "'Schine' cut admission prices at Corbin, Geneva, Lexington, Malone, Ogdensburg and other towns; gave out cut rate tickets in Addison, good in his Corning theatre for students, and frequently engaged in two for ones and bank nights in other towns."

The mere inclusion of any paragraph such as this in the findings serves to illustrate the Court's prevailing misconception as to both the economic theory underlying the Sherman Act and the practical operation of all American business, including the highly competitive motion picture business.

Of course, Schine engaged in price competition, as well as many other forms of competition. When the situation required special efforts to attract the public to a particular theatre, Schine employed cut-rate tickets, two-for-ones and bank nights. And of course—and this is what the Court neglected to include in its finding, though there was certainly more than ample evidence of it—Schine's competitors all utilized the same devices. But the most important and most obvious point is, not that all of these competitive tactics were common throughout the industry, but that their adoption by Schine or anyone else has nothing to do with the antitrust laws. These methods were aimed at attracting customers, away from the opposition theatres in open towns, and away from their radios in closed towns. However annoying bingo games and give-aways and the various other "added attractions" may have become to customers who want only to see a good picture, they nevertheless represent examples of the very competition which the Sherman Act is designed to foster.

The following is a brief digest of the evidence concerning the six towns cited in the Finding:

Corbin

The 2 Schine theatres in Corbin were the Kentucky and the Hippodrome. The opposition Viv Theatre was run by Mitchell K. Murphy, who modestly admitted, although he had been in the business 32 years, "I don't profess to be any professional theatre man." (R. 774-75, 793-95).

Murphy testified that he employed give-aways in Corbin, that he "sometimes" operated on a two-for-one policy, that he had a bargain day one day a week at the Viv Theatre, during which he charged an adult admission price of only 10¢, and that "there was a time or two" when children were charged 5¢ (R. 801-04).

The sole evidence as to Schine's lowering of admission prices in Corbin was Murphy's testimony that after the Viv was opened the Hippodrome, which had been charging 25¢ throughout the house, lowered the price of balcony seats to 15¢. Murphy added that when he thereafter sold the Viv to Schine the Hippodrome prices were again raised to 30¢ (R. 790-91).

When a theatre like the Viv charges 10¢ for adults and 5¢ for children, and institutes a give-away and two-for-one policy, a rival theatre like the Hippodrome has to lower its prices if it is to meet the competition.

Geneva

Richard De Toto testified that after the closing of the Park Theatre in Geneva, for which De Toto bought and booked product, the admission price at Schine's Regent Theatre in Geneva was raised from 20¢ to 30¢ and that still later it went up to 40¢ (R. 916-17). There is no other evidence in the record regarding the raising—or the lowering—of prices in Geneva.

In other words, there was no evidence that Schine "cut" prices in Geneva, but only that it raised prices. Perhaps, if that had been pointed out to the Court, it would have added a separate finding on the raising of prices. Such a finding, it is submitted, could not have been any more irrelevant than the present one.

Lexington

Schine's price competition in Lexington is discussed above in detail, under Finding 22. As pointed out there, the Schine policy of lower admission prices was instituted only as a summer measure, and prices were raised again in the fall. Harry Schwartz, Schine's opposition in Lexington, testified that Schine's admission prices were not cut in the summer of 1939 but only in the summers of 1937 and 1938 (R. 2052-53). Schwartz added that during those summers he himself maintained the usual price at the Opera House of 10¢ for matinees and 16¢ at night (R. 2030-37).

Malone

There was spirited price competition in Malone. Michael Boumansour opened the Plaza Theatre in Malone in the fall of 1936. He played double features exclusively and charged a 25¢ admission price (R. 2264-65). Boumansour testified that soon after he opened the Plaza he adopted a scheme of inserting advertisements in the local newspaper, offering to admit two adults for 25¢, upon presentation of a copy of the advertisement at the theatre box-office. He also instituted a dish give-away and a bingo game (R. 2324-26). The Schine theatre in Malone was changing its program 3 or 4 times a week and was alternating between double features and single features. It charged 40¢ in the orchestra and 30¢ in the balcony (R. 2264-66). Boumansour testified that when he changed to second-run pictures in the summer of 1938, the Schine Theatre lowered its admission prices from 40¢ to 30¢ in the orchestra and from 30¢ to 20¢ in the balcony, and also introduced give-away nights (R. 2268-69, 2275-76). Boumansour then began charging 15¢ between 6:30 and 7:00 o'clock in the evening. Thereafter Schine reduced its prices to 15¢ in the balcony, and 15¢ in the orchestra from 7:00 to 7:30 in the evening (R. 2276, 2295-96).

Ogdensburg

Lawrence J. Carkey, who had once managed a Schine theatre in Ogdensburg, testified that in the summer of 1940 he considered erecting a theatre of his own in the town. Carkey said that "sometime in August or September" he had plans prepared by an architect and contemplated signing a lease but that he did not go through with the plan (R. 2392-94). The only evidence in the record as to a cut in admission prices in Ogdensburg was an announcement in the local newspaper of September 26, 1940, stating that Schine was going to open the Pontiac Theatre full-time on the following Friday—the Pontiac had previously been open only on week-ends—and that "all programs will be double features, one a first-run picture, the other picture second-run and that admission prices will also be reduced" (Ex. 884,* R. ~~3576~~ 2406).

Addison

Walter A. Smith operated the only theatre in Addison, a town of about 1400 people, which got pictures 30 days after first run in nearby Corning (R. 1862-64). The admission prices at the 3 Corning theatres were 10¢ and 25¢ at the Palace, 10¢ and 20¢ at the State and 40¢ and 25¢ at the Fox, with a price of 10¢ for children (R. 1862-63). In the year 1937 and for about two years thereafter Schine issued "student tickets" which admitted "students" to its Corning theatres on week nights for 15¢ (R. 1863-65). Smith testified that he thought the Corning student tickets hurt his business in Addison, and said that he had gone to see a Warner representative to complain about the matter, and that the latter then suggested that he employ the same device himself, but that he did not want to do it because he did not have enough seats (R. 1865-67). Smith said that the student tickets were distributed in Addison only once (R. 1867-68).

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*This exhibit is not part of the printed record but, by stipulation, may be referred to (R. 3553).

It is nothing less than shocking that, on the basis of such evidence as that above summarized, the Court could have found that "The means and methods employed by" Schine "to obtain a 'monopolistic' control" in the theatre business included "lowering admission prices" (R. 3215).

FINDINGS 9(c) AND 22

While Finding 8 makes no reference to the subject of minimum admission prices, Findings 9(c) and 22 refer to that subject.

Finding 9(c) reads as follows:

> "The license contracts with 'Schine' in many instances specified minimum admission prices for the various runs as well as clearance periods. This affects adversely the time given the competitor."

We do not comment here on Finding 9(c), because we are unable to understand what it means. It is discussed under Point IV.

It seems unnecessary to quote Finding 22, which is approximately a page long. It deals particularly with minimum admission prices which the distributors included in their contracts for theatres in Corning and Lexington. It states that "In certain instances Schine's film contracts called for lower minimum admission charge than those for the independent for subsequent run," and that "Minimum admission prices were omitted from Schine's contracts, although the contracts of his independent competitors specified minimum admission prices."

We shall take up the specific cases referred to in Finding 22.

Corning

The Court found that the distributors' contracts for Schine's opposition, the Plaza Theatre, prohibited a minimum admission price of less than 15 cents, whereas in 1933-34 neither Loew's nor Universal had any minimum admission clause in their contracts for Schine's State, and whereas Fox, both in 1933-34 and 1934-35, had no minimum admission clause in its contracts for Schine's State or for Schine's Fox. The Court also found that the Fox contracts for 1933-34 permitted Schine's State, with a 60-day clearance over the Plaza, to charge an admission price five cents lower than the Plaza.

The facts selected by the Court for its finding on Corning invite comparison with the evidence which the Government itself introduced on the subject. Irving Cohen, who owned the Plaza, testified that the price his theatre charged in 1933-34 was 25¢, and that none of Schine's theatres charged less (R. 2200-02). In other words, although the Court chose to base a finding on the fact that in 1933-34 the Plaza was prevented by contracts with distributors from charging less than 15¢, the Court saw no need to point out that the Plaza actually charged 25¢ that year, 10¢ over the minimum specified in the contracts referred to.

Further, although the Court chose to base a finding on the fact that Schine's State had a 15¢ minimum in its 1933-34 contract with Fox, whereas the Plaza had a 20¢ minimum in its contract with Fox, the Court saw no need to point out that both theatres actually played Fox pictures that year at a 25¢ minimum.

Finally, although the Court chose to base a finding on the fact that Loew's and Universal had no minimum clauses in their 1933-34 contracts with Schine, but that all the distributors had clauses in their contracts for the Plaza fixing minimum admission of 15¢, the Court nevertheless saw no need to point out that none of Schine's theatres charged an admission price of less than 25¢ and that the Plaza likewise did not reduce its price below 25¢.

The finding on Corning is not only incomplete and misemphasized, but it is also, of course, meaningless. It is a finding on the activities and practices of distributors. It deals with contract terms imposed by distributors; it does not even imply that Schine suggested those terms to the distributors; and there could have been no such finding or inference or suggestion, for there would be no evidence whatever to support it.

Lexington

That part of the Finding 22 which relates to Lexington is equally misleading and equally meaningless.

The Court found that Fox had a first-run minimum admission price clause in its 1936-37 contract with Schine; that Schine cut prices during the summer months to below the prescribed minimum; that Harry Schwartz, the proprietor of the Opera House, a 15¢ and 10¢ house, complained to Fox (and to Paramount); and that, in response to an inquiry from Fox, Schine replied that the lowering of prices was made for the summer and that it was "quite essential and proved to be beneficial" (Ex. 202, R. 3811, 2241). The Court also found that Fox thereafter omitted minimum admission price requirements in the Schine second and third-run contracts, but imposed a fifteen cent minimum admission price in its contracts with the opposition theatre.

It seemed to be the view of the Government below that, inasmuch as there were minimum admission prices in the contracts of other exhibitors in and around Lexington, Schine's action in breaking its contract with Fox, in order to get business during the severe heat of the summer in Lexington, was somehow or other a violation of the rights of other theatre operators. But in the *Paramount* case the court condemned and enjoined the fixing of minimum admission prices, and Schine's action—while from the standpoint of Fox it was a breach of contract—was fully in accord with what the court in the *Paramount* case regarded as the type of action that the theatre operator should be free to take in such a situation.

If Fox continued to put minimum admission prices in the contracts of other exhibitors in the Lexington area it was not done at Schine's instance, it was not for Schine's benefit, and it was not Schine's fault.

The finding on Lexington, like the finding on Corning, traces a course of unilateral practices by distributors and is without relevance in an action against exhibitors.

5. "Obtaining rental concessions"

FINDINGS 20 AND 27

Finding 20, dealing with special film rental concessions, reads as follows:

> "Special privileges were granted, as in the option of paying a per cent of the gross receipts from product or a flat rental, and as in deducting cost of competitive devices (bank nights, etc.) from gross

> before computing the distributor's share. In certain instances the distributors made contracts providing for film rental based upon a percentage of the gross receipts and in certain other instances, the rental was a flat rental. When a percentage picture was played, with a competitive device (bank nights, etc.) sometimes provision was made for the deduction from the gross receipts of the cost of such competitive device before computing the distributor's rental. These provisions were also in contracts with independents."

Nowhere is the Court's persistent misemphasis better illustrated than by its passing mention, at the very conclusion of this finding, that the various special provisions granted to Schine "were also in contracts with independents." In its brief in the District Court the Government, while admitting that "Schine's film rentals as such have no direct restraining effect on independent opposition", maintained that "the granting to Schine of special privileges not open to independents must be considered in determining the competitive effect of Schine's buying power" (p. 47). But not even the Government has urged that any significance could be attached to the granting of privileges to Schine when the same privileges were also granted to Schine's opposition.

Finding 27 reads as follows:

> "27. There is much other evidence going to show the influence of 'Schine' with the distributors to gain preference over independent competitors, and also the cooperation of the distributors with 'Schine' to the same end."

As indicated under Point II, most of the "other evidence" is inadmissible.

If Finding 27 means that Schine was more successful than its business competitors in various instances, or that it took full advantage of the opportunities presented by the distributors' method of selling, or that it sometimes made better trades with the distributors than its competitors, it is wholly inconclusive as a basis for an ultimate finding for conspiracy or motive.

We do not know what else it could mean.

6. "Restricting independents who sold to Schine as to periods and places of operation"

FINDING 15

Finding 15 deals with covenants not to compete, and reads as follows:

> "In cases of purchase or the assumption of leases other than those hereinbefore referred to, the agreements therefor provided for no competition by the independents for long periods of time. The noncompetitive feature was also extended to cover outside towns, *i.e.*: Amsterdam, Ilion, Malone, Paris, and Lexington."

We point out, as an indication of the misleading character of the findings as a whole, that although Finding 15 purports to list only towns "other than those hereinbefore referred to," it actually includes both Paris and Lexington, which were *the only* towns referred to in any previous mention of covenants not to compete (Finding 11(b)).

It will be noted that the Court gave no reasons why the covenant in any instance that it cited was unreasonable as to time or area. It simply lumped all the covenants together in one sweeping denunciation, accepting the theory advanced by Government counsel that these agreements "obviously" had "no relation to the preservation of the good will of the business sold but were simply intended to protect Schine from competition" (Pl. Br., p. 28), and apparently relying on the reference which this Court made in the *Crescent* case (323 U. S. at 173) to covenants not to compete, in the entirely different situation which that case presented.

It seems hardly necessary to point out to this Court that there is no more common provision in contracts for the sale of business properties than the covenant not to compete. Of course such covenants "protect" the vendee from competition of the vendor. That is their purpose. They are intended to "restrain" competition. Whether they are lawful is to be determined, not by whether they restrain competition, but by whether the covenant is ancillary to the sale of a business property, is founded upon good consideration, and is reasonably limited as to time and area. *United States* v. *Addyston Pipe & Steel Co.,* 85 Fed. 271, 280-82, 175 U. S. 211; *United States* v. *Joint Traffic Association,* 171 U. S. 505, 567-68. Such covenants are lawful in both New York and Kentucky, the 2 states in which are the towns mentioned in Finding 15. *Metropolitan Opera Co.* v. *Hammerstein,* 162 App. Div. 691, 700-02, *aff'd.* 221 N. Y. 507; *Elkins* v. *Barclay,* 243 Ky. 144. As the Court said in the *Paramount* case (66 F. Supp. at 341):

> "* * * At common law a vendor of income-producing property may validly covenant with his purchaser not to compete for a given time or within a given area so long as the restrictions are reasonably necessary to protect the value of the property purchased." [Citing *Cincinnati, Portsmouth, Big Sandy & Pomeroy Packet Co.* v. *Bay,* 200 U. S. 179; *Rogers* v. *Parry,* 2 Cro. 326 (K. B. 1613); and the *Addyston Pipe* case, cited *supra.*]

We shall discuss briefly the specific cases mentioned in Finding 15.

Amsterdam

In 1937, because he realized that Amsterdam, New York, "wasn't large enough to maintain two second-run theatres" (R. 1710), Kronick, the competing exhibitor, went on his own initiative to see Myer Schine to talk about a deal for the sale of his Orpheum Theatre (R. 1717). In May, 1941, Kronick sold to Schine the good will and equipment, the furniture and fixtures of the Orpheum for $7,000 (R. 1707). Kronick testified that at the time of the sale he also agreed not to engage in the same line of business in the City of Amsterdam for a period of five or six years (he could not recall which) (R. 1709). Kronick's testimony concerning this agreement was accepted because the contract evidencing the agreement was not produced at the trial. The covenant having been limited to the City of Amsterdam, and extending for only five or six years, was clearly reasonable under the rules laid down by the authorities above cited. The Court's statement that the covenant in this situation was "extended to cover outside towns" is simply erroneous and is one of the innumerable inaccuracies in the findings.

Ilion

Pursuant to an agreement dated December 10, 1936 (Ex. 871, R. 5221, 2368), Schine bought the Capitol Theatre and the Opera House in Ilion for $250,000 from Young & Whitney, Inc., the fee owners and acquired from the same owners a lease of the Temple Theatre for a term of 5 years at a rental of $1,750 a year (Ex. 85, R. 5195, 2522).

As an incident to this transaction, Frank Whitney and Robert Pierce, president and secretary, respectively, of Young & Whitney, Inc., agreed that they would not for a period of ten years "engage in the operation of any motion picture or other theatre or theatres, or any similar business in the Village of Ilion, or within a radius of thirty-five (35) miles of said Village of Ilion, New York" (Ex. 872, R. 5223, 2368).

Here again is a covenant, limited to a narrow area and to a reasonable period of years—and in a transaction involving very large sums of money—which under all the authorities, and specifically under the law of New York (*Metropolitan Opera Company* v. *Hammerstein, supra*), was entirely lawful.

Malone

Schine held the Plaza Theatre in Malone from 1929 to 1936 (R. 2253-54), when the lease expired. Then the owner, Boumansour (who had owned the theatre since 1922), took over the operation of it and ran it for 5 years in competition with Schine (R. 2256). In February, 1941, Schine reacquired a leasehold interest in the Plaza for a period of ten years at $8,000 a year (Ex. 81, R. 5193, 2300).

In connection with the acquisition of the lease, Schine agreed to employ Boumansour for one year at $70 a week as manager of ~~the Plaza~~ (R. 2301), and Boumansour agreed to deliver to Schine an agreement not to engage in the motion picture business in Malone or in any town in which Schine operated a moving picture theatre, or within a radius of twenty miles thereof during the term of the lease (Ex. 82, R. 3789, 2300). Boumansour remained as manager of the Plaza for two years (R. 2301).

Boumansour, when asked at the trial as to the terms of the lease to Schine, testified, "I gave them my terms, and it was perfectly O.K." (R. 2299). On April 4, 1941, Boumansour wrote the Department of Justice that he had disposed of his theatre "as planned" and "everything is satisfactory here" (Ex. D-133, R. 5176, 2305).

Again the covenant was limited as to area and, we believe, reasonable as to time, especially when coupled with the employment of the vendor by the vendee.

Paris and Lexington

These two situations are discussed together because the covenant not to compete was made in connection with a transaction involving both towns. This is a case where the covenant was justified, not only on the basis of legal principles, but because of the activities of the particular individual from whom the covenant was taken.

Schwartz owned the Opera House at Lexington, a 15¢ and 10¢ house. After he learned that Schine was going to build a theatre in Paris, Schwartz rented a piece of land in Paris and commenced putting up a building—though Schine's plans for its new theatre had been completed and construction was to begin in a few days (R. 2038-39) and although Schwartz himself testified that the town, which up to that time had had only one theatre, could not support more than two (R. 2056). This situation has been discussed under Findings 10 and 11, from which it is entirely clear that Schwartz presented Schine with the alternative of buying him out or going ahead with a theatre which, if Schwartz built his, would be at most a dubious venture in a town that could not support 3 theatres.

In that kind of a situation, it was eminently reasonable that Schine, having paid $22,500 for the Opera House in Lexington, and $5,000 for the lease of a property improved by nothing more than the partially erected walls of a building, should have taken from Schwartz a covenant not to compete. The covenant was for a period of 15 years and was to apply in any city or town in Kentucky in which Schine was then engaged in business (Ex. 828, R. 4362, 2051). The agreement provided that the covenant should not prevent Schwartz or his associates from investing in stock or securities listed upon any recognized stock exchange.

What could be more reasonable than for Schine to protect itself, in the other Kentucky towns where it was operating, against having to buy off Schwartz again?

7. "Making long time franchise agreements covering the 'Circuit'."

This portion of Finding 8 is exemplified by the more specific Finding 16.

The term "franchise" has the same meaning in this case as in the *Paramount* case, where it was defined (66 F. Supp. at 333) as

> "A licensing agreement, or series of licensing agreements, entered into as part of the same transaction, in effect for more than one motion picture season and covering the exhibition of pictures released by one distributor during the entire period of the agreement."

In connection with the 2-year postponement of trial during the war, appellants agreed to a provision in the consent order of May 19, 1942, that they would not enter into "any franchise or other license agreement which shall license the exhibition of motion pictures released by any distributor during a period of more than one year" and to a further provision that all such agreements then in effect should be "void as to all motion pictures released after the thirtieth day following the entry of this order" (R. 260). Prior to that time, the consent decree in the *Paramount* case had prohibited the making of any further franchises by the 5 major distributors.

The Court in the *Paramount* case enjoined all franchises, saying (66 F. Supp. at 346-47):

> "Formula deals, certain master agreements, and franchises have tended to restrain trade in the distribution and exhibition of motion picture features and in view of the history and relation to the moving picture business of the various parties to this action have exercised unreasonable restraints. * * *
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> * * * * * * *
>
> "Franchises which so far as the five major defendants are concerned were forbidden by the consent decree are also objectionable because they cover too long periods (more than one season) and also because they embrace all the pictures released by a given distributor. They necessarily contravene the plan of licensing each picture, theatre by theatre, to the highest bidder."

The plan to require distributors to license their individual pictures theatre by theatre was the means devised by the Statutory Court in the *Paramount* case for eliminating the practices of the distributor-exhibitors which the Court condemned as in violation of the Sherman Act; and of course franchise agreements, by which exhibitors might buy all the pictures of a distributor for one or many theatres for a period of years, were entirely inconsistent with that plan, regardless of their propriety or impropriety as a method of licensing pictures. Adoption of such a plan necessarily required the voiding of franchises, as the Court pointed out.

FINDING 16

Finding 16 (R. 3220) relates to the period from 1936 to 1942. Because of its length it is printed in the margin.*

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*"16. By reason of franchise agreements entered into prior to May 19, 1942 (voided thereafter, see Decree herein of that date) permitting special film rentals not given independents, 'Schine' was able to reap benefits unavailable to independents and these were utilized against independent operators as a means of restraint. These have a definite bearing on the competitive effect of buying power. Rather than make contracts for a single year, as appears to have been Schine's practice prior to 1936, he then began making such for a period of two or three years. These contracts included both the entire circuit and also those theatres for which Schine did the booking. The great buying power of 'Schine' enabled him to obtain concessions not obtainable by independents. In 1936 Schine made a three year agreement with Fox, and as a result he obtained the Fox feature product in all the towns which 'Schine' then operated, and this agreement was later made to include subsequently acquired theatres. In 1938 a subsequent three year agreement was made. These agreements provided for payment of certain percentages of gross receipts after deduction of operating costs, and also fixed minimum admission charges. With Loew in 1936, a four year agreement was made under substantially the same terms as made with Fox. In 1937 a comparable three year agreement was made with Warner; in 1938 a similar one with RKO; a similar two year one with Columbia in the same year and a three year agreement was made with Universal in 1939. In the instance of United Artists, a distributing corporation, separate contracts were made for each feature for all Schine theatres. Another feature of these agreements was the inclusion of unfair and inequitable clearance provisions."

The history of the franchise method of licensing pictures is well summarized in the opinion in *United States v. Griffith Amusement Co., supra,* at 189-190, as follows:

> "As to the franchises, the evidence is that prior to the time covered by the complaint, the distributors conceived the idea of licensing their films for a longer period than one season. They sought out the exhibitors and endeavored to license them for a term of years, which resulted in contracts that were called franchises. They not only sought out the exhibitor operating a circuit of theatres, but also the exhibitor operating one theatre. Such licensing became a part of the ordinary method and many operators of theatres had franchises for a term of two, three, and even five years. Later most of the distributors concluded that in practical operation, a franchise was not desirable and discontinued the practice.
>
> "That such franchises were considered as a part of the ordinary method of contracting for moving picture films by all the trade is borne out by Section IV of the Consent Decree which provides: 'The provisions of this decree shall not apply to any franchise which was signed prior to June 6, 1940.' "

It will be noted that the Court below, in summarizing the Schine franchises, states that Schine "began making" franchise contracts in 1936, as if the making of such contracts were a unilateral matter, entirely within the determination and control of Schine. Actually the record shows that franchises were one of the several methods employed by the distributors in licensing pictures. The President of RKO testified at the trial and explained why the distributors offered franchises to theatre operators, as follows (R. 2869):

> "Well, at the time we felt that a franchise would give us a continuous source of exhibition for our pictures in that particular theatre. It saved us the expense of going back and selling them each year. It gave us a sense of security in the production of our pictures. We knew we had an outlet."

Franchises were not a device thought up by Schine. They were an accepted method of doing business in the industry.* They were employed in distributors' contracts with the large distributor-affiliated chains, with independent chains and with operators of single theatres. The findings in the *Paramount* case show that 154 out of 213 franchises of Loew's were with "independent theatres"; that of 400 franchises of Fox in 1938-39, 361 were with "independent exhibitors"; and that 727 out of 770 Universal franchises were with "independent exhibitors" (70 F. Supp. at 63).

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*In the *Paramount* case, the origin of franchises was described as follows in the Court's Findings 4 and 5:

> "4. In 1916 or 1917, a group of exhibitors which controlled many of the then best theatres throughout the country organized First National Exhibitors Circuit, Inc. Although this corporation was initially organized to function as a film buying combine, it evolved into a film producing company first by financing the production of pictures by others for exhibition in the theatres of its members and finally by producing its own motion pictures.
>
> "5. The members of this First National group, consisting of many of the most important exhibitors in the United States controlling many of the best theatres, became franchise holders of the distributing company which they formed. They acquired not only the right to exhibit in their own theatres the pictures produced and distributed by First National, but also they each obtained the right to sub-franchise other exhibitors in their respective territories. In a short time there were some 3500 franchise holders, representing as many or more theatres.

A Fox division manager who testified at the trial stated that at least 150 out of some 200 Fox franchises were with single theatre operators (R. 2906).

In the lower Court the Government appeared to approve of franchises to individual theatres, for in its brief it said:

> "For an independent a franchise may be the means of protection against a loss of product which might otherwise occur when a powerful circuit enters his town. When made by a powerful circuit intent on absorbing competitors its effect is simply to solidify for a period of years such licensing discriminations as the circuit might otherwise have been able to incorporate in the customary annual deals" (Pl. Br. p. 44).

In other words, franchises are not bad *per se* but only if they "solidify for a period of years * * * licensing discriminations" which the Government considers in violation of the Sherman Act.

If the franchises were unlawful because they perpetuated previously existing unlawful practices, it would seem that, the franchises having been terminated in 1942, and the franchise method of doing business having been eliminated from the industry in the meantime, the issue of the franchises in this case would be academic. However, the Court's findings with respect to franchises were so exaggerated and so erroneous that its conclusions and the relief granted must have been influenced by a gross misapprehension of the evidence. It is for that reason that we think it necessary to analyze Finding 16.

As Finding 16 is in a somewhat jumbled order, it may facilitate discussion of it if we break it down into its constituent parts and put those parts into a logical order, as follows:

(1) Prior to May 19, 1942, to wit, in 1936, Schine, which had previously bought pictures for exhibition in its theatres year by year, began making franchise contracts with the distributors, *i.e.*, contracts for the purchase of pictures for two or more years.

(2) The first of those contracts was made with Fox in 1936. It was later amended to include subsequently acquired theatres; and it was renewed for 3 years in 1938.

(3) In 1936 a 4-year franchise agreement "under substantially the same terms" was made with Loew's.

(4) In 1936 a "comparable" 3-year agreement was made with Warner.

(5) In 1938, "similar" agreements were made with RKO and Columbia.

(6) In 1939 a "three year agreement" was made with Universal.

(7) The Fox franchise, and hence the one with Loew's on "substantially the same terms", the "comparable" and "similar" agreements with Warner, RKO and Columbia, and, presumably, the 3 year agreement with Universal

(a) covered "both the entire [Schine] circuit and also those theatres for which Schine did the booking", as well as "all towns in which Schine * * * operated" and all "subsequently acquired theatres".

(b) permitted "special film rentals not given independents" and provided for "concessions not obtainable by independents", but which Schine obtained because of its "great buying power";

(c) enabled Schine "to reap benefits unavailable to independents";

(d) provided for payment of certain percentages of gross receipts after deduction of operating costs;

(e) fixed minimum admission prices for the Schine theatres; and

(f) contained unfair and inequitable clearance provisions.

(8) The franchises have a definite bearing on the competitive effect of buying power.

(9) The franchises (or the "benefits" derived therefrom) were used against independent operators as a means of restraint.

(10) No franchise agreement was made with United Artists. Instead, "separate contracts were made for each [United Artists] feature for all Schine theatres".

The only exception that we take to paragraphs 1 to 6 of the above rearrangement of Finding 16 is that, as indicated in the analysis below, the various franchises were clearly not "on substantially the same terms", or entirely "comparable" or "similar". Each one varied in numerous respects from every other one.

Paragraph 8 above, to the effect that the franchises ~~that~~ "have a definite bearing on the competitive effect of buying power" is an incomprehensible statement, and will not be referred to further.

The remaining paragraphs—7, 9 and 10—will be analyzed to show how far they depart from uncontrovertible evidence in the record.

In the first place, the Court found the franchises to be all-embracing—to cover *all* the pictures of the particular distributors for the *entire* circuit, and for *all* after-acquired theatres, as well as presently owned theatres, and for *all* theatres for which Schine did the booking.

Nothing could be further from the facts.

The franchise agreements took a number of forms. Two (Warner and Loew's)* were complete in themselves, and included a list of the theatres to which they were to apply, with the rentals and other terms for such theatres. Others were master agreements, stating certain terms and conditions that would apply to the pictures and theatres involved, but had to be supplemented by "deal sheets" for particular towns, by which the number of pictures, the rentals and some other terms and conditions would be fixed.** In no instance was the franchise the all-embracing contract which the Court found it to be.

Specifically, there was no franchise which included "the entire circuit". The first franchise, Fox for 1936-39, excluded 9 theatres which Schine was then operating. Nor was there any franchise which specifically included after-acquired theatres, or into which all after-acquired theatres were brought. Though the Court said that the first Fox franchise was amended to include after-acquired theatres, it was not so amended, and there were 30 theatres, acquired during the term of the franchise, which the franchise contract was not made to include, as well as 5 additional theatres for which the contracts, though incorporating the provisions of the franchise, were purchases of pictures for a single season.

The Fox franchise for 1939-42 excluded 16 theatres which Schine was operating at the date of the franchise.

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*Record references to the franchises are given in the long footnote *infra*.

**In the case of Paramount there was no master agreement or general franchise, but merely a standard form of license agreement, covering more than one season, which applied to particular towns, and which was separately executed for particular towns.

and there were 12 subsequently acquired theatres to which that franchise did not apply.*

The Loew's franchise, covering 1936-40, did not include 11 theatres operated by Schine on the date of the franchise. It did not include any after acquired theatres whatsoever.

The Warner franchise excluded 10 theatres which Schine was operating when the franchise was made, and 12 additional theatres, acquired during the term of the franchise, were likewise not included in it.

No Paramount franchise was obtained for 25 theatres that Schine was operating when the taking of Paramount franchises was commenced, and no Paramount franchises were obtained for 15 after-acquired theatres.

The RKO franchise excluded 13 theatres that Schine was operating when the franchise was made, and the franchise was not extended to 26 theatres acquired during the term of the franchise.

The Columbia franchise for 1938-40 excluded 18 theatres which Schine was then operating and 18 theatres acquired during the term of the franchise. The Columbia franchise for 1940-43 excluded 30 theatres which Schine was then operating and 5 theatres acquired during the franchise period.

The Universal franchise excluded 10 theatres that Schine was operating when the franchise was made and 15 theatres thereafter acquired.**

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*The theatres excluded from this and the other franchises are listed in the long footnote *infra*.

**Theatres operated by Schine on date of Fox franchise for 1936-1939 seasons (Exs. F-1 to F-55, F-57, F-59 to F-64, F-102 to F-110, F-112 to F-115, R. 4951, 5908-61, 5963-69, 4955-63, 4965-68, 2577-78) and not included therein: Rialto

Nor did the franchises include all pictures of the distributors. A glance at the first few of the Fox contracts (R. 5908 *et seq.*), made pursuant to the first of the fran-

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Theatre, East Rochester, N. Y.; Temple Theatre, Fairport, N. Y.; Pontiac Theatre, Ogdensburg, N. Y.; Strand Theatre, Bellefontaine, Ohio; Opera House Theatre, Kent, Ohio; Eckel Theatre, Syracuse, N. Y.; Keith Theatre, Syracuse, N. Y.; Paramount Theatre, Syracuse, N. Y.; Strand Theatre, Syracuse, N. Y. This franchise did not include the following theatres acquired by Schine during the term thereof: Moose Theatre, Norwalk, Ohio; Alhambra Theatre, Richmond, Ky.; Capitol Theatre, Ballston Spa, N. Y.; Southern Theatre, Bucyrus, Ohio; State Theatre, Mechanicsville, N. Y.; Castamba Theatre, Shelby, Ohio; Capitol Theatre, Whitehall, N. Y.; Ohio Theatre, Ashland, Ohio; Auburn Theatre, Auburn, N. Y.; Arcade Theatre, Cambridge, Md.; State Theatre, Cambridge, Md.; Kentucky Theatre, Corbin, Ky.; Hippodrome Theatre, Corbin, Ky.; Palace Theatre, Corning, N. Y.; Star Theatre, Delaware, Ohio; Music Hall Theatre, Easton, Md.; Avalon Theatre, Easton, Md.; Federal Theatre, Federalsburg, Md.; Ritz Theatre, Granville, N. Y.; Hurlock Theatre, Hurlock, Md.; Russell Theatre, Maysville, Ky.; Washington Theatre, Maysville, Ky.; Vernon Theatre, Mt. Vernon, Ohio; Arcade Theatre, Salisbury, Md.; Wico-Mico Theatre, Salisbury, Md.; Tiffin Theatre, Tiffin, Ohio; Wayne Theatre, Wooster, Ohio; Manring Theatre, Middlesboro, Ky.; Brownie Theatre, Middlesboro, Ky.; Plaza Theatre, Milford, Del.; Liberty Theatre, Pikeville, Ky.; Madison Theatre, Rochester, N. Y.; Monroe Theatre, Rochester, N. Y.; West End Theatre, Rochester, N. Y.; Marada Theatre, St. Michaels, Md.

Theatres operated by Schine at date of Fox franchise for 1939-1942 seasons (Exs. F-193, F-122, F-126 to F-171, F-173, F-174, F-176 to F-192, F-194 to F-203, F-205 to F-209, F-214, R. 4969, 1180, 6056, 2579, 6058-6103, 6105-06, 6108-24, 6125-34, 6136-40, 6145, 1180-82, 2579) and not included therein: Liberty Theatre, Rochester, N. Y.; Riviera Theatre, Rochester, N. Y.; Madison Theatre, Rochester, N. Y.; Monroe Theatre, Rochester, N. Y.; West End Theatre, Rochester, N. Y.; Eckel Theatre, Syracuse, N. Y.; Keith Theatre, Syracuse, N. Y.; Paramount Theatre, Syracuse, N. Y.; Strand Theatre, Syracuse, N. Y.; Strand Theatre, Bellefontaine, Ohio; Palace Theatre, Watertown, N. Y.; Ohio Theatre, Ashland, Ohio; Hurlock The-

chises, will show at once that the number of pictures bought depended upon the number required for the particular towns and theatres. Among those contracts there are two in

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atre, Hurlock, Md.; Arcade Theatre, Salisbury, Md.; Wico-Mico Theatre, Salisbury, Md.; Marada Theatre, St. Michaels, Md.

Theatres operated by Schine at date of Loew's franchise for 1936-1940 seasons (Ex. 618, R. 3952, 2524) and not included therein: Rialto Theatre, East Rochester, N. Y.; Hippodrome Theatre, Little Falls, N. Y.; Temple Theatre, Fairport, N. Y.; Pontiac Theatre, Ogdensburg, N. Y.; Strand Theatre, Bellefontaine, Ohio; Opera House Theatre, Wooster, Ohio; Rialto Theatre, Glens Falls, N. Y.; Eckel Theatre, Syracuse, N. Y.; Keith Theatre, Syracuse, N. Y.; Paramount Theatre, Syracuse, N. Y.; Strand Theatre, Syracuse, N. Y. Theatres acquired by Schine during term of this franchise and not included therein: Alhambra Theatre, Richmond, Ky.; Southern Theatre, Bucyrus, Ohio. State Theatre, Fostoria, Ohio; Kent Theatre, Kent, Ohio; Princess Theatre, Medina, Ohio; Castamba Theatre, Shelby, Ohio; Ohio Theatre, Ashland, Ohio; Auburn Theatre, Auburn, N. Y.; Arcade Theatre, Cambridge, Md.; State Theatre, Cambridge, Md.; Kentucky Theatre, Corbin, Ky.; Hippodrome Theatre, Corbin, Ky.; Star Theatre, Delaware, Ohio; Music Hall Theatre, Easton, Md.; Avalon Theatre, Easton, Md.; Federal Theatre, Federalsburg, Md.; Ritz Theatre, Granville, N. Y.; Hurlock Theatre, Hurlock, Md.; Russell Theatre, Maysville, Ky.; Vernon Theatre, Mt. Vernon, Ohio; Arcade Theatre, Salisbury, Md.; Wico-Mico Theatre, Salisbury, Md.; Tiffin Theatre, Tiffin, Ohio; Wayne Theatre, Wooster, Ohio; Opera House Theatre, Lexington, Ky.; Washington Theatre, Maysville, Ky.; Temple Theatre, Medina, Ohio; Manring Theatre, Middlesboro, Ky.; Brownie Theatre, Middlesboro, Ky.; Plaza Theatre, Milford, Del.; Paris Theatre, Paris, Ky.; Liberty Theatre, Pikeville, Ky.; Madison Theatre, Rochester, N. Y.; Monroe Theatre, Rochester, N. Y.; West End Theatre, Rochester, N. Y.; Marada Theatre, St. Michaels, Md.; Viv Theatre, Corbin, Ky.; Paramount Theatre, Glens Falls, N. Y.; Norwalk Theatre, Norwalk, Ohio; Palace Theatre, Syracuse, N. Y.; James Theatre, Syracuse, N. Y.

Theatres operated by Schine on date of Warner franchise for the 1937-1940 seasons (Ex. W-3, R. 4429, 1166) and not included therein: Rialto Theatre, East Rochester, N. Y.; Temple Theatre, Fairport, N. Y.; Strand Theatre, Bellefontaine, Ohio;

which Fox offered "all" and Schine bought "all"; several in which Fox offered either "all" or 56, and Schine bought from 40 to 49; and one instance where Fox offered only

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Ohio Theatre, Ashland, Ohio; Palace Theatre, Corning, N. Y.; Star Theatre, Delaware, Ohio; Eckel Theatre, Syracuse, N. Y.; Keith Theatre, Syracuse, N. Y.; Paramount Theatre, Syracuse, N. Y.; Strand Theatre, Syracuse, N. Y. Theatres acquired by Schine during term of this franchise and not included therein: Ritz Theatre, Granville, N. Y.; Wayne Theatre, Wooster, Ohio; Washington Theatre, Maysville, Ky.; Temple Theatre, Medina, Ohio; Plaza Theatre, Milford, Del.; Paris Theatre, Paris, Ky.; Liberty Theatre, St. Michaels, Md.; Viv Theatre, Corbin, Ky.; Paramount Theatre, Glens Falls, N. Y.; Palace Theatre, Syracuse, N. Y.; James Theatre, Syracuse, N. Y.

Theatres operated by Schine on date of Paramount franchise for 1939-1941 seasons (Exs. P-168 to P-194, P-197 to P-204, P-206 to P-238, PP-1 to PP-10, R. 5829-54, 5857-64, 5866-97, 5898-5907, 1170) and not included therein; Rialto Theatre, East Rochester, N. Y.; Riverside Theatre, Buffalo, N. Y.; Granada Theatre, Buffalo, N. Y.; Temple Theatre, Fairport, N. Y.; Eckel Theatre, Syracuse, N. Y.; Keith Theatre, Syracuse, N. Y.; Paramount Theatre, Syracuse, N. Y.; Strand Theatre, Syracuse, N. Y.; Regent Theatre, Amsterdam, N. Y.; Strand Theatre, Bellefontaine, Ohio; Rialto Theatre, Glens Falls, N. Y.; Empire Theatre, Glens Falls, N. Y.; Hippodrome Theatre, Little Falls, N. Y.; Lake Theatre, Rochester, N. Y.; Palace Theatre, Watertown, N. Y.; State Theatre, Mechanicsville, N. Y.; Ohio Theatre, Ashland, Ohio; Kentucky Theatre, Corbin, Ky.; Hippodrome Theatre, Corbin, Ky.; Federal Theatre, Federalsburg, Md.; Ritz Theatre, Granville, N. Y.; Arcade Theatre, Salisbury, Md.; Wico-Mico Theatre, Salisbury, Md.; Marada Theatre, St. Michaels, Md. Theatres acquired by Schine during term of this franchise and not included therein: Viv Theatre, Corbin, Ky.; Strand Theatre, Cumberland, Md.; Paramount Theatre, Glens Falls, N. Y.; Ada Meade Theatre, Lexington, Ky.; Norwalk Theatre, Norwalk, Ohio; Webster Theatre, Rochester, N. Y.; Ritz Theatre, Salisbury, Md.; Palace Theatre, Syracuse, N. Y.; James Theatre, Syracuse, N. Y.; Empire Theatre, Syracuse, N. Y.; Appalachian Theatre, Appalachia, Va.; State Theatre, Appalachia, Va.; Lyric Theatre, Bowling Green, Ohio; Cla-Zell Theatre, Bowling Green, Ohio; Palace Theatre, Clifton Springs, N. Y.; Oswego Theatre, Oswego, N. Y.

10 and Schine bought only 10. A glance at the first few pages of the deal sheets under the Universal franchise (R. 4725 *et seq.*) will show that the number of

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Theatres operated by Schine on date of RKO franchise for 1938-1941 seasons (Exs. R-37 (1-60), (62-66), (68-70), (72-76-A), (77-80), R. 4866-4924, 4926-30, 4932-34, 4936-40, 4942-45, 1187) and not included therein: Riverside Theatre, Buffalo, N. Y.; Granada Theatre, Buffalo, N. Y.; Pontiac Theatre, Ogdensburg, N. Y.; Strand Theatre, Auburn, N. Y.; Eckel Theatre, Syracuse, N. Y.; Keith Theatre, Syracuse, N. Y.; Paramount Theatre, Syracuse, N. Y.; Strand Theatre, Syracuse, N. Y.; Strand Theatre, Bellefontaine, Ohio; Strand Theatre, Van Wert, Ohio; Ohio Theatre, Ashland, Ohio; Auburn Theatre, Auburn, N. Y.; Star Theatre, Delaware, Ohio. Theatres acquired by Schine during term of this franchise and not included therein: Kentucky Theatre, Corbin, Ky.; Hippodrome Theatre, Corbin, Ky.; Viv Theatre, Corbin, Ky.; Washington Theatre, Maysville, Ky.; Temple Theatre, Medina, Ohio; Manring Theatre, Middlesboro, Ky.; Brownie Theatre, Middlesboro, Ky.; Plaza Theatre, Milford, Del.; Paris Theatre, Paris, Ky.; Marada Theatre, St. Michaels, Md.; Strand Theatre, Cumberland, Md.; Paramount Theatre, Glens Falls, N. Y.; Ada Meade Theatre, Lexington, Ky.; Norwalk Theatre, Norwalk, Ohio; Webster Theatre, Rochester, N. Y.; Ritz Theatre, Salisbury, Md.; Palace Theatre, Syracuse, N. Y.; James Theatre, Syracuse, N. Y.; Empire Theatre, Syracuse, N. Y.; Appalachian Theatre, Appalachia, Va.; State Theatre, Appalachia, Va.; Lyric theatre, Bowling Green, Ohio; Cla-Zell Theatre, Bowling Green, Ohio; Palace Theatre, Clifton Springs, N. Y.; Margie-Grand Theatre, Harlan, Ky.; Oswego Theatre, Oswego, N. Y.

Theatres operated by Schine on date of Columbia franchise for 1938-1940 seasons (Exs. C-100, C-101, C-102 (1-22), (24-48), (50-67), (72), (75), (78), R. 4971, 4973, 4975-96, 4999-5023, 5025-42, 5047, 5050, 5053, 1188-89) and not included therein: Fox Theatre, Corning, N. Y.; Rialto Theatre, East Rochester, N. Y.; Temple Theatre, Fairport, N. Y.; Massena Theatre, Massena, N. Y.; Pontiac Theatre, Ogdensburg, N. Y.; Eckel Theatre, Syracuse, N. Y.; Keith Theatre, Syracuse, N. Y.; Paramount Theatre, Syracuse, N. Y.; Strand Theatre, Syracuse, N. Y.; Strand Theatre, Bellefontaine, Ohio; Vine Theatre, Mt. Vernon, Ohio; State Theatre, Richmond, Ky.; Princess Theatre, pictures covered for 5 towns were, respectively, 16, 20, 24, 26 and 36. The Paramount franchises were made town by town and the number of pictures varied according to the

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Medina, Ohio; Castamba Theatre, Shelby, Ohio; Ohio Theatre, Ashland, Ohio; Auburn Theatre, Auburn, N. Y.; Palace Theatre, Corning, N. Y.; Vernon Theatre, Mt. Vernon, Ohio. Theatres acquired by Schine during term of this franchise and not included therein: Ritz Theatre, Granville, N. Y.; Opera House Theatre, Lexington, Ky.; Washington Theatre, Maysville, Ky.; Temple Theatre; Medina, Ohio; Manring Theatre, Middlesboro, Ky.; Brownie Theatre, Middlesboro, Ky.; Paris Theatre, Paris, Ky.; Liberty Theatre, Pikeville, Ky.; Madison Theatre, Rochester, N. Y.; Monroe Theatre, Rochester, N. Y.; West End Theatre, Rochester, N. Y.; Marada Theatre, St. Michaels, Md.; Viv Theatre, Corbin, Ky.; Kentucky Theatre, Corbin, Ky.; Hippodrome Theatre, Corbin, Ky.; Paramount Theatre, Glens Falls, N. Y.; Palace Theatre, Syracuse, N. Y.; James Theatre, Syracuse, N. Y.

Theatres operated by Schine on date of Columbia franchise for 1940-1943 seasons (Exs. C-180, C-181 (1-33), (35-51), (53-79), R. 5057, 5061-93, 5095-5111, 5113-39, 1189-90) and not included therein: Colonia Theatre, Norwich, N. Y.; Palace Theatre, Auburn, N. Y.; Jefferson Theatre, Auburn, N. Y.; Auburn Theatre, Auburn, N. Y.; Massena Theatre, Massena, N. Y.; Eckel Theatre, Syracuse, N. Y.; Keith Theatre, Syracuse, N. Y.; Paramount Theatre, Syracuse, N. Y.; Strand Theatre, Syracuse, N. Y.; Regent Theatre, Amsterdam, N. Y.; Strand Theatre, Bellefontaine, Ohio; Wooster Theatre, Wooster, Ohio; Vine Theatre, Mt. Vernon, Ohio; Hippodrome Theatre, Little Falls, N. Y.; State Theatre, Richmond, Ky.; Palace Theatre, Watertown, N. Y.; Kent Theatre, Kent, Ohio; Princess Theatre, Medina, Ohio; Castamba Theatre, Shelby, Ohio; Ohio Theatre, Ashland, Ohio; Hurlock Theatre, Hurlock, Md.; Vernon Theatre, Mt. Vernon, Ohio; Wayne Theatre, Wooster, Ohio; Temple Theatre, Medina, Ohio; Liberty Theatre, Pikeville, Ky.; Marada Theatre, St. Michaels, Md.; Ada Meade Theatre, Lexington, Ky.; Ritz Theatre, Salisbury, Md.; Palace Theatre, Syracuse, N. Y.; James Theatre, Syracuse, N. Y. Theatres acquired by Schine during term of this franchise and not included therein: Lake Theatre, Canandaigua, N. Y.; Appalachian Theatre, Appalachia, Va.; State Theatre, Appalachia, Va.; Palace Theatre, Clifton Springs, N. Y.; Empire Theatre, Syracuse, N. Y.

requirements of the theatre or theatres in the towns involved (R. 5829 *et seq.*). Only under the Loew's and Warner franchises did Schine have the right to get all the distributor's pictures for the theatres to which those respective franchises applied.

One of the most misleading statements in Finding 16 is that the franchises, in addition to covering the "entire circuit" covered "also those theatres for which Schine did the booking". When the first franchise was entered into with Fox, Schine was not doing the booking for a single theatre outside of its circuit. That is to say, it was not booking any theatres that it did not operate or in which it did not have a financial interest of at least 50%.*

Theatres operated by Schine on date of Universal franchise for 1939-1942 seasons (Exs. U-207, U-207 (1-50), (53-61), (63-89), R. 4724, 4725-74, 4777-85, 4787-4813, 1191) and not included therein: Strand Theatre, Bellefontaine, Ohio; Court Theatre, Athens, Ohio; Eckel Theatre, Syracuse, N. Y.; Keith Theatre, Syracuse, N. Y.; Strand Theatre, Syracuse, N. Y.; Moose Theatre, Norwalk, Ohio; Castamba Theatre, Shelby, Ohio; Ohio Theatre, Ashland, Ohio; Star Theatre, Delaware, Ohio. Theatres acquired by Schine during term of this franchise and not included therein: Lake Theatre, Canandaiuga, N. Y.; Liberty Theatre, Pikeville, Ky.; Viv Theatre, Corbin, Ky.; Strand Theatre, Cumberland, Md.; Paramount Theatre, Glens Falls, N. Y.; Ada Meade Theatre, Lexington, Ky.; Norwalk Theatre, Norwalk, Ohio; Ritz Theatre, Salisbury, Md.; James Theatre, Syracuse, N. Y.; Appalachian Theatre, Appalachia, Va.; State Theatre, Appalachia, Va.; Palace Theatre, Clifton Springs, N. Y.; Margie-Grand Theatre, Harlan, Ky.; Empire Theatre, Syracuse, N. Y.; Oswego Theatre, Oswego, N. Y.

*A misprint in the Answers to the Interrogatories (R. 246) which shows 1930 (instead of 1938) as the year in which Schine started booking for the Tiffin Theatre in Tiffin, O., would indicate that from 1930 until 1938, when Schine acquired a 50% interest, and took over the operation of, the Tiffin Theatre, Schine had a booking contract for that theatre. Actually, however, the commencement of booking was contemporaneous with acquisition of a 50% interest and the taking over of operating control.

The record makes clear that Schine has never been in the business of buying pictures for theatres other than those in which it had a financial interest and was operating. The only instances since the first franchise in which Schine had booked the pictures for theatres, outside of a summer resort theatre in Sacandaga Park in the Adirondacks, which it booked from 1937 on, were the following: 2 theatres in Bowling Green for about 2 years; one theatre in Pikeville and one in Harlan for less than one year, and single theatres in Appalachia and Big Stone Gap, Va., for 3 or 4 months; and in every case, except Bowling Green and the summer theatre in the Adirondacks, Schine undertook the booking in connection with a contract giving it an option to acquire an interest in the theatres involved.

Equally unsupported by the evidence is the statement that separate contracts were made for "each feature" of United Artists "for all Schine theatres". The record contains a number of United Artists contracts, but not one covering any feature for "all Schine theatres". For example, one United Artists picture was licensed to Schine in only 7 towns (Ex. 155, R. 5356, 2537), another in 14 towns (Ex. 127,* R. 2537), and another in 15 towns (Ex. 126, R. 5330, 2537). Two were licensed in 18 towns (Ex. 137,* R. 2537) and 17 in 21 towns (Exs. R. 5332, 5345, 2537; 128, Exs. 139,* 143,* 144,* 147,* R. 2537).

With respect to the finding that the franchises permitted "special film rentals not given independents" and provided for "concessions not obtainable by independents", it is difficult to understand what the Court was referring to. In Finding 20 the Court went on to list the "special privileges" which Schine is supposed to have obtained from distributors; but, as was pointed out elsewhere, Finding 20 ends with the words: "These provisions were also in contracts with independents", which deprive the finding of any legal significance.

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*These exhibits are not part of the printed record but, by stipulation, may be referred to (R. 3553).

Finding 20 clearly covers the franchises, because it refers specifically to "the option of paying a percent of gross receipts from product or flat rental" (a provision of the Warner franchise) and to deducting from the gross receipts of theatres the cost of competitive devices (bank nights, etc.) "before computing the distributor's share" (a provision also found in the franchises). It must therefore be assumed that the special privileges that the Court is referring to in Finding 16 are those listed in Finding 20 (and so are privileges also accorded to competitors) plus the "privileges" mentioned in Finding 16, *i.e.*, the privilege of getting all the pictures for all of the theatres (discussed above) and the privilege referred to in the following sentence of Finding 16: "These agreements provided for payment of certain percentages of gross receipts after deduction of operating costs".

That finding is flatly contradicted by the terms of every franchise except that of Warner. There was no provision in any of the others which even referred to "operating costs". Only under the Warner franchise was it possible for operating costs to play a part in the determination of the license fees to be paid by Schine, and there was no proof that this was not a normal provision of all Warner franchises.

The particular provision in the Warner franchise was a complicated definition of a term used in percentage contracts, *viz.*, "35% (reversion to 30%) to Split if 35%"

(R. 4430-31). The definition fixed the point at which Warner's rentals would jump from 35% to 50% of the gross receipts, *i.e.*, it was a provision for increasing the rental to the distributor in the case of pictures that produced very large grosses. It is difficult to understand why the Court regarded such a provision as of any significance in the case.

The Government in its brief below, and the Court in its findings, seemed to proceed from the premise that all contracts for the rental of pictures—unless there is something abnormal or unlawful in the situation—are uniform in terms, and that any variation from such terms is a "special privilege" or "concession". Actually, there is no exact correspondence, with respect to *any* of the contract provisions, between any one Schine franchise and any other Schine franchise, or between any such franchise and other Schine rental contracts; and the record affords no basis for the assumption that any variation in terms between Schine contracts and other contracts must be assumed to be a concession "not obtainable by independents", or a benefit "unavailable to independents" or a "special privilege". The only basis that the Court had for such findings was the persistent assertion by the Government to that effect.

With respect to the finding that the franchises fixed minimum admission prices for the Schine theatres, it is to be noted that the Court did not find that Schine had violated the law by agreeing with the distributors on minimum admission prices. Moreover, as shown elsewhere, where minimum admission prices were fixed in contracts, they were ordinarily (if not always) lower than the actual admission prices of the Schine theatres involved. For that reason the Court could not have found, and it did not find, that the fixing of minimum admission prices in such contracts had had the effect of creating a price structure for the Schine theatres or raising prices to the public.

Apart from that, this finding is also grossly inaccurate, since an examination of the franchises will show that no minimum admission prices were fixed in the original Fox franchise for 1936-39, or in the RKO franchise, the Universal franchise or the Columbia franchises. With respect to the Fox franchise for 1939-42, minimum admission prices were fixed for only a few of the theatres which that franchise covered.

With respect to the finding of the Court that the franchise provisions contain "unfair and inequitable clearance provisions", we have shown above that the Court's findings on specific clearances are without support in the evidence, and are contrary to the evidence. That being so, the sweeping generalization contained in Finding 16 must fail for indefiniteness and because it affirmatively appears that the Court failed to take into consideration any of the factors that have been held by the courts to be relevant in connection with the determination of reasonable clearance.

The only part of Finding 16 that remains to be discussed is the one that we have in the conclusion that the franchises "were used against independent operators as a means of restraint".

If this finding means that, a franchise having been made for a number of years, covering a particular run of product for a particular town in which there were competing theatres, the competing operators could not buy the same runs of the pictures in the same towns for the period of the franchise, then it is correct. As Government counsel pointed out (R. 493-94), the nature of the motion picture business is such that every contract for the purchase of pictures by any operator in a competitive town restrains trade, in the sense that it limits the freedom of the distributor, who has sold a particular run of his pictures, to sell the same run to somebody else.

Whether that restraint of trade is unreasonable, however, is another question. The fact that the Court in the *Paramount* case held that, "In view of the history and relation to the moving picture business of the various parties to this action" (66 F. Supp. at 346), the use of franchises by the major distributors was a restraint of trade, does not require the conclusion that acceptance by exhibitors of franchises involved them in either (a) a purpose to restrain trade or (b) a restraint of trade in the particular situation.

It is submitted that neither the findings nor the evidence in the present case support the conclusion that Schine entered into franchises for the purpose of restraining trade unreasonably or attempting to monopolize, as distinguished from the competitive purpose of getting the pictures that Schine needed and wanted for its theatres.

Finding 16 is one of the many instances in which the Court's findings were so exaggerated, and so unjustified by the evidence, that the Court's acceptance of the statements in those findings must have strongly influenced his conclusions, both on the vital issue of motive and conspiracy and on the necessity or propriety of the drastic relief contained in the judgment and the order of divestiture.

8. Other findings

The findings that remain to be discussed are certain portions of No. 7 and two sentences from Finding 3, one of which contains an ambiguity that needs to be pointed out and one of which is contrary to the evidence.

FINDING 7

Finding 7 (R. 3215) contains some statistics relating to the Schine Circuit; it refers to the "great film buying power" of Schine, its "opportunity to exert pressure on the distributors to obtain preferences," "the exceedingly large number of theatres" controlled by Schine,* "the large amount of money which must have been paid for film rentals,"** its ability to combine "open" and "closed" towns in buying pictures and thereby "to dictate terms to the distributors." Then it says: "This ability to dictate terms was further increased by the authority of Schine to buy product for theatres not owned or operated by it."

The sweeping generalizations of Finding 7, except for the sentence just quoted, can be supported only if the subsidiary findings on which they rest, Nos. 8 to 27, are sustained by substantial evidence. We have shown that they are not. With respect to the finding just quoted, about Schine's buying product for theatres not owned or operated by it, it is the simple fact that the finding is absolutely wrong. The fact is that Schine's "buying power" was not increased at all by "authority to buy product for theatres not owned or operated by it." The facts have been stated in the discussion of franchises, where it was shown that Schine was never in the business of buying pictures for

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**I.e.*, about three-fourths of 1% of the theatres in operation in the United States.

***I.e.*, about 1% of the total domestic film rentals of Paramount, for example (R. 3137, para. 71 of motion to amend findings).

theatres in which it had no interest; that the only cases where it did so, outside of a summer theatre in the Adirondacks,* were instances where Schine had acquired an option to buy into the theatres, and that the periods while the booking arrangements were in effect were short (because Schine in those cases exercised its option and bought into the theatres).

A number of these theatres that Schine was booking for at any time was so small, and they were located in such small towns, that they could not have had more than an infinitesimal effect on Schine's "buying power".

FINDING 3

In the same connection it is necessary to note the following sentence in Finding 3, the ambiguous wording of which is apparently what led the Court into its error in Finding 7, and into the further error of including in the order of divestiture an injunction against the buying of pictures for theatres in which appellants were not financially interested:

> "In addition to its theatrical and realty operations, 'Schine' has booked and bought for and supervised 37 theatres since 1931, and when this suit was brought there were 27 for which it so acted."

This is an accurate statement, provided it is understood that in all such cases, except the trivial instances mentioned above, the theatres in question were theatres in which Schine had a financial interest and which it managed; but the Court apparently forgot that fact, and concluded that Schine had increased its "buying power" by going into the business of buying pictures for other theatre operators—thus giving it control over the placing of large additional amounts of product.

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*Before 1936, Schine's booking activities for others consisted of buying pictures for two theatres in the summer and winter resort of Lake Placid, New York.

Finding 3 contains another gross inaccuracy for which there is no supporting evidence, in the statement that

> "In 1941 there were only three towns in which Schine's competitors (hereinafter called independents) were playing major film product."

It has already been seen from Point III that there were no instances, where the subject of "deprivation of product" was concerned, in which Schine's competitors were *not* able to get "major film product" or were *not* playing "major film product". In some instances (Rochester and Buffalo) the competitors got the product on first run and Schine got it on second run. In other cases Schine got some product first run and the competitor got some product first run. In other instances, Schine got some product first run and the competitor got some product on second or some subsequent runs.

But in every case the competitor got product *on some run*—so that the Court's statement that competitors in only 3 towns were "playing major film product" in 1941 is contrary to the undisputed evidence.

Conclusion

The errors in the Trial Court's findings are so substantial, they related to so many issues in the case, and they so clearly affected the Court's decision, that a reversal of the judgment is required under Judicial Code § 269 (28 U. S. C. § 391). *Kotteakos* v. *United States, supra.*

Point IV

THE INJUNCTIVE PROVISIONS OF THE JUDGMENT AND ORDER OF DIVESTITURE (a) VIOLATE SECTION 19 OF THE CLAYTON ACT AND RULE 65(d) OF THE RULES OF CIVIL PROCEDURE, (b) ARE INVALID FOR INDEFINITENESS AND (c) ARE IN EXCESS OF ANY APPROPRIATE REMEDY, IN ADDITION TO BEING UNWARRANTED BY THE FINDINGS BELOW OR BY THE EVIDENCE.

The relevant assignments of error are Nos. 100 to 110 (R. 3499-02).

Section 19 of the Clayton Act (28 U. S. C. § 383) provides:

> "Every order of injunction or restraining order shall set forth the reasons for the issuance of the same, shall be specific in terms, and shall describe in reasonable detail, and not by reference to the bill of complaint or other document, the act or acts sought to be restrained, * * *"

The main provisions of the judgment below are drawn in utter disregard of the requirements of that statute and of Rule 65(d) of the Rules of Civil Procedure, which is in almost identical language.

Part I of the judgment, which purports to state "the reasons for the issuance" of the injunctions, is a 16-line declaration, substantially in statutory language and with no supporting detail whatever. Part II contains the injunctive provisions, in 7 paragraphs. We shall discuss them in order.

> *"1. from monopolizing the supply of major first run films in any situation where there is a competing theatre suitable for first run exhibition thereof*

> *and from monopolizing the supply of second run film in any situation where there is a suitable theatre for second run exhibition thereof."*

This provision should be contrasted with those of the judgment in the *Paramount* case. There the Court arrived at a conclusion of law that the defendants had unreasonably restrained trade in the distribution and exhibition of motion pictures and had attempted to monopolize such trade, in two respects. Then, when it came to the judgment, the Court issued an injunction, not against "monopolizing" (which is a matter of law, not fact), but against specific practices of the kind by which, as the Court found, such monopolization had been attempted.

Injunction No. 1 is a broad prohibition in the language of the statute, is not directed at specific practices and its inclusion in the judgment was an abuse of discretion under the principles laid down many times by this Court. *Hartford-Empire Co.* v. *United States, supra* (320 U. S. 386); *National Labor Relations Board* v. *Express Pub. Co.,* 312 U. S. 426.

The injunction is also objectionable for indefiniteness, in view of the use of the ambiguous term "monopolize" (which in its findings the Court appears to have used in two senses*) and the use of the vague word "suitable" as a test to be applied to other theatres.

The difficulties of such words as "monopolize" and "suitable" can be avoided if the sound rule is followed that injunctions should be restricted to the specific offenses which have been found to exist.

**I.e.,* (a) the popular meaning—to possess the whole of something, and (b) the Sherman Act meaning, which, as understood by the framers of the statute, and applied from the beginning by the courts, is "the sole engrossing to a man's self by means which prevent other men from engaging in fair competition with him." (Senator Hoar, 21 Cong. Rec. 3152).

> "2. *From demanding or receiving clearances over theatres operated by others which unreasonably restricts their ability to compete with a theatre owned or operated by a defendant* [or a] *corporation controlled by it and from attempting to control the admission prices charged by others by agreement with distributors, demands made upon distributors, or by any means whatsoever.*"

The two subjects with which this injunction deals—unreasonable clearances and "attempting to control the admission prices charged by others"—will be dealt with separately.

Clearance

It has been shown under Point III that the Court's findings on clearances are either irrelevant or devoid of support in the evidence.

But even accepting the findings that Schine received unreasonable clearances, such findings still do not support an injunction against "clearance over theatres operated by others which unreasonably restricts their ability to compete" with Schine. For the proper test of the reasonableness of clearance is not what effect it has on the "ability" of another to compete, but whether it goes further (as to either period of time or area) than is necessary to serve its economic purpose, which is to give the prior-run exhibitor fair protection for his run. The point will be made clear by a comparison of Injunction No. 2 with the injunction that was granted in the *Paramount* case (70 F. Supp. at 73), where the defendants were restrained:

> "4. From granting or enforcing any clearance against theatres in substantial competition with the theatre receiving the license for exhibition in excess of what is reasonably necessary to protect the licensee in the run granted."

The Court in the *Paramount* case appreciated that clearance is a device for inducing the prior-run exhibitor to pay a high price for pictures, and so made the reasonable protection of that exhibitor the test of fair clearance. The Court below ignored the class of persons who buy and pay for clearance, and adopted a test of clearance which looks only to the economic interest of the class of persons over whom clearance is given—who, it is important to note, fall also within the first class when the question of clearance is between them and a subsequent-run theatre.

The situation may well exist, or may arise, where a marginal competitor would be able to compete successfully if there were no clearance, or if the clearance were very short, but where a normal period of clearance would make his operations unprofitable. The application of Injunction No. 2 to that type of situation is at least ambiguous.

The whole subject of clearance was tried out in the *Paramount* case. As shown under Point III, the Court below did not ever purport to try out that issue, but accepted the assertions of the Government that particular clearances shown in the contracts were unreasonable. In view of that fact, and for the sake of uniformity of decision, it is submitted that Injunction No. 2 should be modified to conform to the judgment in the *Paramount* case, and should read as follows:

> "2. Demanding or receiving clearances over theatres operated by others in excess of what is reason-

ably necessary to protect the defendants in the runs licensed to them.* * *"

Controlling admission prices of others

The Court's findings of fact do not include a finding that Schine had controlled or attempted to control the admission prices of others. The injunction on that subject is based upon paragraph 4(h) of the Conclusions of Law which appear at the end of the findings (R. 3227). There, after repeating the "8 means and methods employed by" Schine "to obtain a 'monopolistic' control", as set forth in Finding 8, the Court added a 9th, to wit,

> "(h) Controlling the existence and extent of admission price differentials between Schine's and other competing theatres by agreement with distributors and by demanding that distributors refrain from licensing other theatres charging admission prices objectionable to Schine."

This "Conclusion of Law" is supported by no findings, and by no evidence, and it therefore must be disregarded. *Interstate Circuit, Inc.* v. *United States, supra.*

There is no evidence in the record that Schine ever demanded that distributors "refrain from licensing other theatres charging admission prices objectionable to Schine", except insofar as the situation in Bellefontaine in 1931, discussed above under Point III, Finding 9(a)—where Moller embarked on a trade war against the Schine theatre in that town—could be regarded as such evidence. And if it could be so regarded, this isolated instance in 1932 could hardly be the basis for such an injunction in 1944.

Nor is there any evidence that Schine had ever controlled, or attempted to control "the existence and extent of admission price differentials between Schine's and other competing theatres by agreement with distributors". The only finding that has any conceivable bearing on the quoted portion of the Conclusion of Law 4(h) is 9(c), which reads (R. 3216):

> "(c) The license contracts with 'Schine' in many instances specified minimum admission prices for the various runs as well as clearance periods. This affects adversely the time given the competitor."

We stated under Point III that this finding is incomprehensible to us. That the making of license contracts which specify "minimum admission prices for the various runs, as well as clearance * * * adversely affects the time [presumably the playing dates for pictures] given the competitor" is a thought that entirely escapes us.

The first sentence of Finding 9(c) standing alone is understandable, and it seems to be the only basis for the Conclusion of Law about controlling admission prices, which is in turn the only basis for the second part of Injunction No. 2. What that sentence refers to is the expression of clearances in terms of admission prices, *e.g.*, 30 days over 25¢ houses, 40 days over 15¢ houses.

The sentence is wrong, because—while it is quite common in the industry to express clearances in terms of the admission prices of houses taking the subsequent runs—there are not "many instances" in the record of Schine contracts containing such a provision. But even if there were, the sentence would be quite irrelevant to the quoted conclusion of law, because (a) as held in the *Paramount* case, admission prices on successive runs are one of the important factors that enter into the determination of reasonable clearance (66 F. Supp., at 343), and (b) as found by the

Court in the *Paramount* case admission prices are one of the many "terms" in which clearance can be stated, as witnessed by that Court's listing of the various methods of stating clearance (66 F. Supp., at 341), where it said that clearance could be stated: "in terms of a given period between designated runs," or "in terms of admission prices charged by competing theatres, as, 20 days over 30¢ theatres, 28 days over 25¢ theatres," or "in terms of a given period of clearance over specifically named theatres", or "in terms of so many days' clearance over specified areas or towns", or "in terms of clearances as fixed by other distributors", or "in terms of combinations of these formulae".

There is nothing in Finding 9(c) to suggest that, in the few instances where Schine contracts contained clearances expressed in terms of admission prices, Schine had anything to do with fixing such prices, whether they were minimum or actual.

It should be noted that in that part of its opinion in which the Court states that "the license contracts with 'Schine' in many instances specified minimum admission prices for the various runs as well as clearance periods," the Court cites the *Interstate Circuit* case as clearly pointing to "the reasons for condemning such provisions in a film license contract or agreement" (R. 3076). But what was done by the defendant-exhibitors in the *Interstate Circuit* case—conditioning the buying of film upon the distributors' requiring competitors to charge certain minimum admission prices—was not done by Schine, and accordingly the Court committed serious error in holding the *Interstate Circuit* case to be a precedent on this point.

Finding 9(c) therefore gives no support to Conclusion of Law 4(h). Since there is no finding, and no evidence, that Schine ever attempted to control the admission prices charged by others by agreement with distributors, demands upon distributors or any other means, there is no basis for the second part of paragraph 2 of the injunction, and it should be stricken from the judgment.

> *"3. From conditioning the licensing of films in any competitive situation outside of Buffalo, New York, upon the licensing of films in any other situation and from entering into any film franchises."*

The Court below did not find, nor was there any evidence, that Schine ever said to a distributor that it would not buy his pictures in other towns unless the distributor sold Schine its pictures for some particular town. There is a good deal of evidence (practically all inadmissible) to the effect that distributors, in explaining why they could not sell a particular run to a particular theatre, stated that they had sold it to the Schine theatre in the particular town and mentioned that Schine's business was important to them because he had a lot of theatres—a natural excuse and explanation to be given in such a situation.

There is also the finding of the Court that, "By combining the open and closed towns in Schine's deals with the distributors, Schine was enabled to dictate terms to the distributors" (a finding improbable on its face, as we have pointed out, and unsupported by evidence), and that Schine had great "buying power": but it is submitted that those and like findings are not a sufficient basis for so broad an injunction as No. 3.

With respect to the matter of "film franchises", since all Schine's franchises were voided in 1942, and since the franchise method of selling has now disappeared from the industry, no injunction would seem to be necessary. Nothing in the findings below even suggests that there is any probability or possibility that the distributors will re-establish the franchise method of selling. *Champion Spark Plug Co.* v. *Reich*, 121 F. (2d) 769, *cert. den.* 314 U. S. 669.

It will be noted that the Court excepted Buffalo from this particular injunction, a town with respect to which the Government had asked no relief and introduced no evidence. It is submitted that the Court should also have excepted all other towns for which there was no evidence.

"4. From selling or acquiring any theatre interest pending further order of this Court."

The prohibition against "selling" any theatre, including theatres in towns as to which there was no evidence, goes beyond any proper range of discretion of the Trial Court. There has been no "further order" lifting the prohibition against sales; and the stay pending appeal, contained in the divestiture order (R. 3467-68), is conditioned upon "the maintenance and operation by them [appellants] of the theatres here involved, pending such appeal, in a manner which will not prejudice the ultimate enforcement of this order." On their face these orders would seem to require that the integrity of the Circuit be maintained until final disposition of the appeal and any further proceedings in the case.

Thus the injunction against selling theatres appears to be based upon the premise on which the Government tried the case—that the whole proceeding is penal. Schine must hold its theatres together until the day when the Court's trustee can come in and sell them "as rapidly as possible" (R. 3466). The properties must be preserved intact for the judicial ax.

Perhaps it is not entirely clear that the injunction against selling, contained in the judgment, is still in effect; but if the Government considers that it is, then we ask the Court to annul that part of the judgment as unnecessary and improper.

With respect to the acquiring of theatres, Injunction No. 4 has been supplanted by the provisions of the order of July 5, 1946, which, in Part III, provides (R. 3467):

> "No defendant shall acquire a financial interest in any additional theatres except after an affirmative showing that such acquisition will not unreasonably restrain competition. Such showing shall be made before this court upon reasonable notice to the Attorney General at Washington, D. C. No defendant shall buy or book films for any theatre other than those in which the defendant owns a financial interest."

The Court did not find that acquisition of theatres by Schine in itself restrained or diminished competition. All that is inferable from the Court's findings is that, as Schine's "circuit buying power" was dependent upon the number of its theatres, the more theatres it acquired the greater the buying power would be. If the Sherman Act condemned "buying power", or provided a standard for determining when a further increase of "buying power" must be prevented, then there might be a basis for a flat prohibition against Schine's acquiring additional theatres; but it is difficult to see on what basis the acquisition of additional theatres can properly be made to depend upon a judicial hearing in each instance and an "affirmative showing that such acquisition will not unreasonably restrain competition" (R. 3467).

In the *Crescent* case this Court, at the instance of the Government, ordered the decree to be revised "so as to prohibit future acquisitions of a financial interest in additional theatres outside of Nashville 'except after an affirmative showing that such acquisition will not unreasonably restrain competition'" (323 U. S. 185-87).

Thus the order of divestiture in this case is modeled after the order in the *Crescent* case, differing only in that, while in the *Crescent* case the City of Nashville was excepted, no town in this case was excepted, not even Buffalo, which was excepted in the judgment, Part II, para. 3 (R. 3229).

In the *Crescent* case, in discussing the need for such a modification of the decree, the Court referred to the success of the defendants in the destruction or absorption of competitors and stated that "the decree should operate as an effective deterrent to the repetition of unlawful conduct and yet not stand as a barrier to healthy growth on a competitive basis", adding that, "The acquisition of a competing theatre terminates at once its competition" (323 U. S. at 186).

Since the defendants in the *Crescent* case had concentrated holdings of theatres in a geographical area, in which they had competition in only 5 of the 78 towns in which they had theatres, there was a special reason for the requirement that future acquisitions of theatres must be approved by the Court.

In the present case, where the theatre holdings are in scattered areas of 5 States, it seems inevitable that the prohibition of the final order would be "a barrier to healthy growth on a competitive basis", if only because of the necessity of transporting witnesses to Buffalo, from widely separated points, to testify in support of acquisitions.

Moreover, in view of the number of towns, especially one-theatre towns, in which Schine has provided the public with greatly improved theatre facilities, it would seem that the consideration of healthy competition would make it undesirable to put obstacles in its way.

Our position is that Part III of the final order is unnecessary, and should be eliminated. If not eliminated, then it should be confined to situations in which there might be a likelihood, or at least some possibility, that acquisitions would reduce competition, *i.e.*, it should be limited to acquisition of additional theatres in towns where Schine already has theatres and there are theatres of another operator or other operators.

Specifically,

(a) The injunction should not apply to Buffalo, just as the *Crescent* decree, as modified, did not apply to Nashville;

(b) For similar reasons it should not apply to any of the 44 towns for which the Government introduced no evidence;

(c) It should be confined to the general areas or the States in which Schine now operates, since there is no conceivable basis for a nation-wide—in fact a world-wide—injunction prohibiting appellants, or any of them, from acquiring any "financial interest in any additional theatres";

(d) The injunction should not be framed so as to deter Schine from building new theatres, either in towns where Schine operates or in additional towns, since otherwise the effect will be to remove from the theatre business a constructive competitive force, which has served in the past to make great improvements in the public's facilities for entertainment;

(e) The injunction should not apply to any town where Schine has the only theatres, especially with reference to the building of new theatres by Schine;

(f) The injunction should not apply to the building of new theatres in any towns, whether or not there are other theatre operators in such towns, since Schine should not be deterred from improving the theatre facilities of any town by the building of a new theatre.

> *"5. From enforcing any existing agreements heretofore entered into (1) not to compete or (2) to restrict the use of any real estate to non-theatrical purposes."*

As shown under Point III, the covenants not to compete, taken from individuals who sold theatres to Schine, were reasonable as to area and time and were sanctioned by the laws of the States where the properties were located.

With respect to the prohibition against restricting the use of any real estate to non-theatrical purposes, the Court made no finding relating in any respect to such an issue. Therefore, the injunction is without basis and must be stricken from the judgment.

Apart from those objections, it will be noted that Injunction No. 5 is not limited to the motion picture business. It prohibits the individual appellants, for example, from enforcing, against the owner of property abutting their residences, covenants restricting the property to residential purposes.

> *"6. From using any threats or deception as a means whereby a competitor is induced to sell."*

The Court made no finding on which to base an order against the use of "deception" as a means whereby a competitor is induced to sell.

Furthermore, while the Court found that Schine had made "threats" in a number of types of situations, there was no finding that the threats were "means whereby a competitor is induced to sell", and there is no instance cited in which the competitor was actually induced to sell by the alleged threats. As was shown under Point III, the alleged threats were surprisingly ineffective, because none of the "threatened" exhibitors actually sold out to Schine.

It is submitted that Injunction No. 6 is not justified by the evidence or the findings.

> *"7. From continuing any contract, conspiracy or combination with each other or with any other person which has the purpose or effect of maintaining the exhibition or theatre monopolies of the defendants or of preventing any other theatre or exhibitor from competing with the defendants or any of them, and from entering into any similar contract, conspiracy, or combination for the purpose or with the effect of restraining or monopolizing trade and commerce between the States."*

This is another broad prohibition against violating the Sherman Act and is invalid for the reasons pointed out above with respect to paragraph 1. It will be noted that the last part of paragraph 7 is not limited to the motion picture business, but broadly enjoins the defendants "from entering into any *similar* contract, conspiracy, or combination for the purpose or with the effect of restraining or monopolizing trade and commerce between the States."

It is submitted that the Trial Court failed in its judgment to meet the statutory requirements and the requirements of the Federal Rules, or to limit the relief to the kind of misconduct found. The decree modified by this Court in the *Hartford-Empire* case was criticized by the parties there as punitive, and as an outstanding example of reckless draftsmanship. It was a model of accuracy, conservatism and restraint in comparison with the decree in the present case.

The injunction contained in the order of divestiture provides (R. 3467):

> "No defendant shall buy or book films for any theatre other than those in which the defendant owns a financial interest."

Inasmuch as the defendants never bought or booked films for theatres in which they did not have a financial interest—as we have shown under Point III—except in several isolated cases where the amount of "buying power" derived from the booking arrangement was infinitesimal, this injunction has no relation to any issue in the case, and no basis in any of the evidence in the case.

Part IV of the order of divestiture should be stricken as beyond the authority of the Trial Court and a clear abuse of discretion.

Finally, the individual defendants should be eliminated from the injunctive provisions of the decree, inasmuch as no evidence was presented against them, and no finding made with respect to them, except in their capacities as officers or directors of the appellant corporation (see *Hartford-Empire Co.* v. *United States, supra,* 404-406).

Conclusion

For the reasons stated herein it is respectfully submitted that the judgment of the Court below should be reversed.

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Of Counsel.

(2298)

IN THE

Supreme Court of the United States

OCTOBER TERM, 1947

No. 10

SCHINE CHAIN THEATRES, INC., *et al.*,
Appellants,

vs.

THE UNITED STATES OF AMERICA.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NEW YORK.

REPLY BRIEF FOR APPELLANTS

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REPLY BRIEF FOR APPELLANTS

As we attempted to make clear in our main brief, the underlying issues in this case are (a) whether the Sherman Act was violated by reason of the economic structure of the motion picture industry, which permitted Schine to obtain—in a relatively small number of small cities and towns—the kind of economic position which in the large cities and many of the smaller cities and towns was enjoyed by the distributor-affiliated chains, other "independent" chains and many "independent" theatre operators, *i.e.*; the preferred position as an outlet for the pictures of the principal distributors; and (b) if so, whether the exercise by Schine of its competitive ability to obtain such a position in a number of towns involved Schine in a violation of the anti-trust laws in respect of one or more towns.

The Government's brief does its best to obfuscate these underlying issues.

The most noteworthy feature of the Government's brief is its failure to meet the challenge that we make to the Court's findings, and especially to the findings that Schine "arbitrarily deprived" competitors of product. In our brief (pp. 86-214), we took each and every situation and pointed out that what was involved was the purchase by Schine of pictures in the competitive market; and we showed why the forces of competition favored Schine rather than its competitor. We did not suggest, as the Government says in its brief (p. 72), "that with respect to each of such 16 towns it always developed because of fortuitous circumstances favoring Schine that the distributor determined on the merits of each situation to sell to 'Schine'."

On the contrary, we demonstrated that the "circumstances favoring Schine" were not "fortuitous" but were the natural and normal result of competition within the economic structure created by the distributors' methods of doing business.

The Government disposes of our analysis by a number of sarcastic references and by dumping into the laps of this Court a mass of "town digests" purporting to summarize the evidence with respect to each of 46 towns. The Government has lifted from its brief in the lower Court the 34 "town digests" which appeared in that brief, and has added similar digests for 12 towns for which it did not bother to present digests in the lower Court, for the good and sufficient reason that the evidence respecting those towns was inadequate to make even a colorable presentation. An examination of the digests for those additional towns will show how far the Government has gone to stretch the testimony to make a colorable presentation. The towns in question are Ashland, Athens, Cambridge, Cortland, Delaware, Easton, Maysville, Middlesboro, Newark, Oneonta, Piqua and Wooster.*

The "town digests" represent the type of advocacy that is often found at the stage of a litigation where the evidence is in and the case is about to be submitted to the judge or jury. It presents the most extreme interpretation of the evidence against the opposite party—a structure in which testimony is superimposed upon assumptions and assertions and inference is piled upon inference.

The "town digests" refer to testimony that the Court relied on as well as testimony that the Court did not rely on, testimony that was contradicted on cross-examination, testimony that was controverted by unimpeachable evidence, testimony which the Court did not believe, hearsay, gossip, assertions, inferences piled on inferences—all pieced together to produce as unfavorable an impression as possible. Apparently the Government—admitting by its silence that many of the findings cannot be sustained—expects this Court to go through these digests, check them against the testimony, and then make new findings to supplant those which the lower Court has made. It is submitted, however, that it is improper for the Government to come into this Court and ask the Court to wade through this type of material.

By submitting the "town-digests" to this Court, and by arguing its case without reference to the findings below, the Government is throwing away the Trial Court's findings and in substance and effect is asking this Court to decide the case on a new set of findings. It seems hardly necessary to point out to this Court that the orderly disposition of appeals is impossible if the parties before this Court do not make the findings the starting points of their arguments, or if, when findings are attacked, the opposite party refuses to meet the issues thus raised by giving the Court specific references to the evidence that bears on those findings.

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*The towns of Cumberland, Oswego, Richmond and Tiffin, though included in the divestiture order, are not included in the "town digests".

Our challenge to each finding was very specific. It would have been easy for the Government to point out, with respect to all or some of the instances cited in the findings, what testimony we had failed to take into account or wherein our attack was insufficient. With particular reference to the Finding, 9(a), that Schine "arbitrarily deprived" competitors of product—and that is the most important of the findings—it would have been simple for the Government to give the Court in each instance the evidence that it thought we had misinterpreted or omitted to take into account. The Court could then decide, with very little trouble, whether we are right in our contention that particular findings are without support in the evidence, or are contrary to the evidence, or are inconsequential or irrelevant, or based upon an erroneous view of the law.

The reason for the Government's failure to answer our specific attacks is that they are not answerable, because the findings below are plainly insufficient. Unwilling to admit that, the Government advances the novel doctrine that the Court's findings "do not purport to summarize all of the relevant evidence, nor are they concerned with the resolution of testimonial conflicts. They reflect merely the Court's view as to the significance in this suit of evidentiary facts which are for the most part beyond dispute by their very nature" (Gov. Br. p. 18).

To admit that findings do not *summarize* all the *relevant* evidence is to admit that they are defective and insufficient. To admit that findings are not "concerned with the resolution of testimonial conflicts" is to admit that the Court has not discharged its judicial function, especially in a case where the Court specifically said that there was "a conflict in the testimony in many of the situations" (R. 3073).

There could be no better proof of the insufficiency of the lower Court's findings, or of the lack of adequate evidence to support them, than the attempt of the Government to offer a new set of findings instead of defending those that were made below.

Government's Theory of the Case

The Government persuaded the Court below that, having found restraints of trade and local "monopolies", it had a broad authority to "reorganize the whole setup of the corporation" to promote and create competition. As explained to this Court in *United States* v. *National Lead Co.*, 332 U. S. 319, Schine was to be divested of assets, the characteristic of which was that the mere possession of them was "a continuing threat to independent competition".

Forced out of that position by the decision in the *National Lead* case, the Government now has great difficulty in phrasing a coherent statement of its latest position. "Buying power" seems to be the objectionable characteristic that the appellants have. But apparently—and in spite of the effort to "blow up" Schine's position in the industry, by figures and by frequent references to its being the "largest independent circuit"*—the mere size of the buying power is not the important thing. When all is said and done, it seems that the vice in the Schine Circuit is its ability to combine closed towns and open towns in the same contract for the licensing of pictures.

So evil is the buying power derived from closed towns, in the eyes of the Government, that a large circuit composed entirely of theatres in one-theatre towns would be certain to run afoul of the Sherman Act in its operations, since its competitive position in each town would be so strong—by reason of control of the other towns—that competitors would be discouraged from coming into the town and opening up new theatres. That is the necessary implication of the Government's theory.

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*There is no evidence in the record to show that Schine is the "largest independent circuit". The only testimony is that of a distributor witness, who said he thought it was "just about the largest" (R. 2819 but compare R. 3460).

Furthermore, an operator with one theatre in a one-theatre town and one theatre in an open town, if he attempted to buy pictures for both at the same time, and used his position in the closed town in bargaining for pictures in the open town, would be committing a violation *per se* of the Sherman Act. That, as we understand it, is the asserted position of Government counsel.

We suggest that the Government is involved in a demonstrable *reductio ad absurdum.*

The Government was admittedly unable to produce a witness who would testify that Schine ever conditioned its willingness to purchase pictures for its "closed" towns upon the willingness of the distributors to sell to Schine to the exclusion of its competitor in the "open" towns. Nevertheless, the Government asks this Court to spell out this type of coercion from the franchise agreements introduced in evidence which the Government says demonstrated this cornerstone of its case without the necessity of proving by the witnesses who negotiated the agreements that the condition was actually imposed.

But, having marked these agreements in evidence, the Government has fallen back on the assertion that its point has been proved without even attempting to demonstrate in a single case that the franchise does what the Government says it does.

As a matter of fact when the agreements are analyzed (see our main brief, pp. 193-206), quite the contrary appears. Every one of the silent witnesses relied upon by the Government to fill the void left by non-existent participants in coercive bargaining on the part of Schine, shows very clearly that in no case did the franchise do what the Government claims it did but, on the contrary, that some of the Schine towns, both open and closed, were omitted in every case.

The same observation applies to the so-called master agreements. It should be borne in mind, moreover, that none of the Schine master agreements contained the features of (1) blanket price for the entire circuit and (2) privilege of playing out of order of release which the Government found so objectionable in *United States* v. *Griffith Amusement Co.*, 68 F. Supp. 180.

Just what would happen to the motion picture business throughout the country—which like most other businesses has been built up by individuals and groups who started with small units and were successful in increasing the size and area of their operations—if the Government's theory were to be put into general application, may well be left to the imagination. But it can hardly be doubted that it would not be a very attractive business for the enterprising operator.

Considering the emphasis that the Government puts on closed towns, it is interesting to note that nobody testified that Schine ever made the licensing of closed towns in any instance a condition to the licensing of the same films in open towns, and that the Court made no finding to that effect. All the Court found (R. 3215) was that,

> "By combining the open and closed towns in Schine's deals with the distributors, Schine *was enabled* to dictate terms to the distributors."

This finding means no more than that Schine had the power to do something; but whether the power was ever exercised, or whether the conditions in the industry were such that it could have been exercised, is a matter on which the Court made no finding.

There were in the record—and they were much relied upon by the Court—numerous quotations from distributors' employees, made to competitors of Schine, that they wanted to sell their pictures to Schine, or considered it good business to sell them to Schine, or even found it necessary as a matter of business to do so, because Schine had a big circuit and they did not want to lose its business.

But those statements never had anything to do with closed towns; and the amount of business that Schine could give a particular distributor depended upon the total number of Schine's theatres and their ability to consume product, rather than on whether the towns where the theatres were located were "closed" or "open".

In this connection, though Schine's rentals of $1,647,000 paid to distributors in a single year are sizeable, it must not be forgotten that the 5 largest independent circuits in the country, presumably including Schine, were found by the Court in *United States* v. *Paramount Pictures,* 66 F. Supp. 323; 70 F. Supp. 53 (F. 126, Paramount R. 3685) to pay less than 5% of the total domestic film rentals of the 8 large distributors; whereas the 5 circuits of the major distributors were found to account for 35% to 45% of such revenues.

The Government asserts again and again, without proof, that the action and policies of the distributors, all of whom operate nation-wide businesses that are enormously larger than Schine's business were controlled in their actions and policies by the dictation of Schine, because of the "strategic" value of closed towns. The Government would have the

Court believe that the closed towns are closed permanently; that competitors may not invade them. But there is nothing in the record to support that contention, and the history of the industry, as developed in the *Paramount* case, is to the contrary. The only condition that has ever "closed" a town to the entry of a new theatre is the existence in the town of adequate theatre capacity, satisfactory appointments and an entertainment policy that satisfies the requirements of the public.

The matter of closed towns has been greatly stressed by Government counsel, far beyond any possible significance that it has in the industry; and as we indicated above, it is submitted that the Government has taken a position which by its own arguments it has reduced to an absurdity.

The term "closed" town is in one sense misleading, for it tends to suggest that a town is isolated from competition. Actually, there is no Schine town which is thus cut off. Many Schine towns are contiguous to opposition towns of equal size; and, though each town may be "closed", there is in such a case keen competition between their respective theatres. That is the precise situation in Gloversville, a Schine town, and adjacent Johnstown, an opposition town. It should also be borne in mind that many Schine towns are near to large population centers. For example, Ballston Spa and Amsterdam are in the "shopping radius", *i.e.*, 10 to 20 miles, of Schenectady. Fairport and East Rochester are a comparable distance from Rochester; Ilion and Herkimer from Utica; Seneca Falls from Auburn; Carthage from Watertown; Corning from Elmira; Lockport from Buffalo; and Mechanicville from Troy.

Argument on Clearances

We take up the arguments of the Government under this head because it is the only subject on which any serious attempt is made to counter our attack on the findings.

But even here the Government simply ignores the actual questions that are here raised, admits in effect that the precise findings are not supported by evidence, and offers this Court a new set of findings; but those have no better support in the evidence than do the findings made below. They afford no support for the judgment and order herein.

The Court found that Schine had obtained clearances from specified distributors of a specified number of days, and that those particular clearances were unreasonable and a major reason for concluding that appellants had violated the Sherman Act. In our main brief we pointed out (a) that those findings were incorrect in many instances as to the number of days clearance granted to Schine; (b) that the Court was apparently unaware that most of the clearances found to be unreasonable were over Schine's own theatres; and, most important of all, (c) that there was not, in any instance, such evidence concerning the factors relevant to the reasonableness of a particular clearance as to justify a finding that such clearance was either reasonable or unreasonable.

The Government has not been able to point out to this Court a single item of evidence to show that any clearance received by Schine was unreasonable, except for (a) opinions expressed in various inadmissible inter-office memoranda of distributors' employees; and (b) certain decisions of the Appeal Board of the Motion Picture Arbitration Tribunal which were *expressly excluded* from the evidence in this case (R. 2561-64).

Clearances over Schine theatres

In answer to our argument that most of the long clearances mentioned in the Court's findings were clearances of one Schine theatre over another, and therefore did not affect competitors, the Government states in its brief (p. 76):

> "In making this argument, appellants overlook the fact that the clearances are an effective means of keeping potential competition out of the towns and that most of the clearances extended over other towns than those in which Schine had theatres."

Here the Government is indulging in two irrelevancies. First, the Court found the clearances unreasonable between first and second-run theatres, and did not find that the clearances were employed to keep other, potential competition out of the town. Second, the findings in question did not relate *in any instance* to clearance of one town over another. Clearance of one town over another is a matter that relates to first runs; it has nothing to do with clearance of the first-run theatre over a second-run theatre in the same town. The Government's answer to our argument on this point is a purely verbal one, the words having no content.

Clearance over distant towns

One of the new findings that the Government is offering to the Court is that Schine obtained clearance in Norwich "over Delhi and Stamford, towns of over 50 road miles away" (Gov. Br. pp. 77-78, f.n. 34). This is supposed to show that Schine obtained an unreasonable clearance for its theatres in a particular town over other towns in the same area. Here the Government ignores the factors that enter into clearance, and ignores the fact (pointed out in our main brief, p. 151) that the Appeal Board of the Motion Picture Arbitration Tribunal found it reasonable for theatres in Wilmington, 66 miles distant from Schine's Plaza Theatre in Milford, Del., to have clearance over that theatre.

All the evidence shows, on the case cited, is that *one* distributor (United Artists) in *one* season (1933-34) granted the clearance that is mentioned. There is no evidence whatsoever concerning the competition between the towns, the distribution of the population, the character of the theatres in any of the three towns involved, or any of the other factors upon which the reasonableness of clearance must be judged.

Here again the Government is simply proposing a new finding, from which it makes the following argument (Br. p. 78):

> "The possession of such clearance gave Schine control over the bookings of the independent as he could only exhibit the film covered by the clearance in accordance with an availability determined by the dates on which Schine chose to play them in its theatre. Such clearance, in effect, surrendered to Schine the booking control normally and properly exercised by the distributor."

At first reading, this statement sounds like an important pronouncement; but if it is analyzed, it will be seen that all it actually says is that a theatre over which clearance is taken cannot play the pictures until the theatre that has the clearance has played them and until the clearance period has expired. The statement, therefore, is no more than a definition of clearance. It is of universal application throughout the motion picture business.

In citing the awards of the Motion Picture Arbitration Tribunal, which are not in evidence, the Government gives the Court the impression that there has been an adjudication that Schine clearances, as distinguished from other exhibitors' clearances, are unreasonable. In our main brief (pp. 141-42), we pointed out that clearance is the most controversial subject in the motion picture industry, and one that is in constant dispute before the Arbitration Tribunal. We feel justified in following the Government outside the record for the purpose of pointing out that Schine was often on the complaining end of clearance controversies and in 1942-43, was successful in obtaining, through complaints to the Arbitration Tribunal, the following reductions of clearances:

(a) Wilmington over Milford, Delaware, 66 miles away, from 10 days to 7 days;

(b) Utica over Herkimer, New York, 16 miles away, from 7-21 days to 7 days;

(c) Two Shea Circuit theatres in Buffalo over Schine theatres in Buffalo, from 21 days to 3-7 days;

(d) Sandusky over Norwalk, Ohio, 17 miles away, from 7 days to 1 day;

(e) Dayton over Piqua, Ohio, 29 miles away, from 14 days to 7 days; and

(f) Lima over Van Wert, Ohio, 29 miles away, from 14 days to 3 days.

Clearance cumulation.

The Government then goes on at page 78 to develop a theory of public injury by reason of "clearance cumulation", citing 2 cases to support the theory. The first relates to Smalley, a chain operator for a number of theatres in the vicinity of Norwich, N. Y., where Schine had a first-run theatre, with clearance over some of Smalley's towns. The case that the Government puts is one in which Norwich has a clearance over town A, which is in the competitive area of Norwich, but does not have a clearance over town B, which is outside the competitive area of Norwich but within the competitive area of town A. Smalley, on the stand, when asked whether clearance was important in his business, pointed out that in such a situation, if he did not take a clearance over town B for town A, town B would play the pictures ahead of town A—an obvious proposition of universal application in all similar situations throughout the country. To cite this as a case of "clearance cumulation" is thoroughly disingenuous. The Government knows better.

What Smalley testified to with respect to this situation was that he wanted to take clearance over "the other little town the other side of me" (R. 2452-53). It seems obvious that his desire to take clearance over the small towns adjacent to him was not affected one way or the other by the clearance which the Schine theatres had over his theatres.

The same is true of the argument that the Government makes with respect to an incident in December, 1940, when Schine wrote to United Artists, pointing out that a theatre that had opened in the town of Sodus (a town of some 2,000 population, 14 miles from Newark) was playing pictures ahead of Schine's theatre in Newark and at a lower admission price. United Artists agreed to give Schine clearance for Newark over Sodus, but pointed out that Schine would also have to ask for clearance over Wolcott, since "there is no clearance to and from either of these towns" (Ex. 319, R. 2604, 3846).

The Government derives the following conclusion from the Newark-Sodus-Wolcott situation (Br. p. 79):

> "Thus one restraint begets another, and we find an entire network of restraints on competition all ultimately based upon a clearance taken by Schine in the first instance."

Clearance of Newark over Sodus either was justified or not justified—a matter not dealt with in the findings or in the evidence. The attempt by United Artists to add Wolcott to the clearance was evidently made because this distributor did not want to change the equality that existed between Sodus and Wolcott. There is no evidence that Schine made any request for clearance over Wolcott, either before or after receipt of the letter from United Artists, and there is no evidence that it ever received such clearance from any distributor.

Clearance over towns with no theatres

To support its proposition that it is improper to take clearance over a town having no theatres, the Government cites the instance, referred to in the Court's findings (R. 3221) in which Schine's theatre in Lockport (population about 24,400) had clearance over Mohawk (2,882 population) and Newfane (population 1,134), where the Court said there were no theatres. The Government also refers to the fact that a Schine theatre in Ilion (approximately 9,000 population) also had clearance over Mohawk. The Government then draws the following conclusion (Br. p. 80):

> "Such clearances, of course, not only have the effect of retarding the construction of theatres in such towns but insure that when a theatre is built it will be subjected to a Schine clearance."

There is not a word in the record to indicate that a reasonable clearance of one town over a smaller town has ever had, or ever could have, the effect of retarding the construction of a theatre in the smaller town. In the cases cited, any theatre operator who constructed a theatre in the smaller town would *expect* to be subject to reasonable clearance in favor of the much larger towns in the same area. He would *expect* Mohawk and Newfane to follow Lockport on the clearance schedule and Mohawk to follow Ilion.

The Government's argument is speculative and theoretical. It has no relation to any *real* issue in the case.

The Government also neglects to mention the important fact that Schine's competitors in the towns in question also received clearances over Newfane and Mohawk. (Ex. 604G, R. 5427, 2532, Ex. 868, R. 5572, 2369.)

Clearance over towns, instead of theatres

Another new theory which the Government advances, as a basis for one of its newly advanced findings, is (Br. p. 80):

> "An outstanding vice of Schine's clearance is that invariably the Circuit has secured from the dis-

> tributors a clearance in favor of a specific theatre of theirs in certain towns not over specified theatres but over other named towns. Such towns are thereby put into a second class category."

This is another one of the "shot in the dark" arguments of the Government, which has no relation to the Court's findings and no support in the evidence. It is the general practice in the industry, where theatres in large towns have clearance over smaller towns, to state the clearance as clearance over the town rather than as clearance over specific theatres (for example, see the following contracts showing Schine theatres subject to clearance in favor of towns rather than specific theatres: Ex. 981 (47), R. 5699, 2547, Ex. 981 (51), R. 5703, 2547, Ex. P-234, R. 5893, 1170, Ex. P-188, R. 5849, 1170, Ex. U-137 (73), R. 4721, 1191, Ex. F-101 (14), R. 5997, 2545). Of course, clearance over a town is in fact clearance only over the first theatre in that town to play the picture (*i.e.*, the first-run theatre) and thus in effect is clearance over a specific theatre.

Of course it can be said that the smaller towns are thereby "put into a second class category", although it would be more accurate to say a "fourth class category" or a "fifth class category", because, commencing with the largest cities of the country, the larger population centers have clearance over nearby smaller population centers, and so on down the line to the towns of the size involved in the instances referred to by the Government.

This particlar argument of the Government is hardly more than shadow boxing; and it can have no purpose except to confuse.

Demand for third-run clearance in Rochester

Again substituting a new finding for those made by the Court below, the Government advances the proposition that "The attainment of unreasonable results in establishing clearance within the Schine towns and in favor of the Schine towns over independent towns was inherent in the methods pursued in negotiating them". For this proposition, the Government cites (Br. p. 82) a certain Warner interoffice memorandum (Ex. 550, 3943, 2836), which reads as follows:

> "Regarding protections—they are set up the same as last year with the exception of the city of Rochester, and Mr. Schine absolutely refuses to take any part of his entire deal, unless we stipulate in his third run contracts that he will follow only Capitol and Temple Theatres, Rochester. This was brought about by the fact that Schine had intended to take over Madison and Monroe Theatres from Fenyvessys, which deal fell thru and there is some talk of Commerford taking over these two houses. Mr. Schine advises that whether or not that deal goes thru, he wants same run as he had last year (3rd run to follow only Capitol and Temple).
>
> "We are waiting your decision so that all contracts can be typed up for final approval."

This interoffice memorandum was written by Warner's Branch Manager to his superior in the Home Office, to justify to the Home Office the proposed deals which the Branch Manager had made with Schine. Appellants objected to the admission of this memorandum for any purpose, and it seems plain that a memorandum written by a Branch Manager to justify his conduct in the eyes of his superiors should not be taken as proof of the statements of fact made in such memorandum.

But in any event the memorandum, when considered with the contracts that Schine actually made with Warner in the season concerned (1934-35), proves the exact opposite of the Government's contention that Schine dictated clearance terms to the distributors. For while the Warner Branch Manager stated that Schine would not take any part of his "entire deal" (meaning the "deal" for the towns in the area of Warner's Buffalo Branch) unless Warner gave Schine the third-run clearance provisions that it wanted, the fact is that Warner did not give Schine the terms it demanded and that Schine, nevertheless, accepted the Warner contract for Rochester, without the stipulation that the Warner Manager said Schine was insisting on (Ex. W-33 (17), R. 5795-96, 2539).

There are other assertions in the Government's brief—most of them irrelevant to the findings—which we do not answer because they appear to be of too little importance.

On the whole argument of the Government on clearances and related matters—and, in fact, on the whole viewpoint revealed in the Government's brief—the following quotation from the trial court's opinion in the *Griffith* case is relevant, and may be applied to this case by substituting "Schine" for "Griffith" (68 F. Supp. at 88-89):

> "The evidence discloses that the defendants took advantage of the opportunities afforded them in the ordinary course of dealing during the time covered by the complaint. That was their privilege and there was nothing illegal or immoral about it, merely because they represented large interests or were able to make large deals. The evidence shows that the licensing was all arrived at by barter and trade; and the exhibitors all placed upon the same footing.

"The attitude of the Government is one of suspicion. Many of the normal and natural occurrences and situations are given a sinister meaning and argued from that standpoint. The proposition of what 'could be done' or 'might be done' under given situations is argued vigorously. But we are not concerned with that approach. Our concern is what the evidence discloses *was done,* and any fair inferences we can gather from those acts regarding the *intent* of those who acted. A fair indication of this attitude can be gathered from the Government's brief (p. 14) which states:

> 'The ability of the defendant to withdraw from a particular major distributor the entire revenue from its closed towns was of course a major threat it possessed. When this is controlled by one individual negotiating with a distributor its effect is self evident.'

"The evidence fails to disclose that any threat was so made by R. E. Griffith or any other defendant in the negotiations for films, but to the contrary. The suggestion that any distributor on account of that ability was intimidated or compelled to sell films to the defendants is not supported by the evidence. If the mere ability to withdraw all purchases from a distributor in noncompetitive situations, unless the purchaser grants favors in competitive situations, is a threat then all exhibitors possessing two theatres, one in a competitive situation and one in a noncompetitive situation, violate the Sherman Act. Such argument is unsound and falls of its own weight."

The point of view of the Court in the present case was quite different. It accepted the Government's *assertions* of evil motive, and in its hands the evidence assumed a chameleon character. Where the United Artists manager agreed that Newark should have clearance over Sodus and another nearby town, the Court rejects the opinion of the United Artists manager as to the reasonableness of such an arrangement and holds, without evidence and on the basis of an *assertion* by the Government, that United Artists was under the domination of Schine and that the arrangement was, therefore, unreasonable (F. 25, R. 3224).

On the other hand, whenever the distributor disagreed with Schine, as, for example, when Pielow wrote that he thought particular clearances were unfair (Ex. 430, R. 3912, 2605), his opinion was accepted, and cited by the Court, as evidence that Schine was receiving unreasonable clearances. Thus the evidence works both ways, and Schine is wrong either way.

The record is replete with instances of the chameleon character of the declaration of distributors' employees, when examined by the lower Court under the peculiar microscope furnished by the Government. If the distributor stated a business reason for doing something that suited Schine, the Court simply disbelieved his testimony and it becomes evidence of subterfuge and of under-the-table dealing between the distributor and Schine. But where the distributors' employee indulged in some criticism of Schine, the criticism is accepted as Gospel and elevated *in haec verba* to the dignity of a finding.

Thus, when Wallace (with tongue in cheek, we think) threw out the suggestion to some distributor representatives that he might like to buy second run in Auburn (R. 1969, 1972-75, 2141-42) and was told that the distributors did not think it would be good business to sell second runs in that town, the Court rejected the reason given by the distributor and attributed the refusal to domination and dictation by Schine—although there was not a scintilla of evidence that Schine was consulted in the matter or even considered.

But when Smith of Warner wrote that if Schine's clearance in Ogdensburg over Canton were reduced, it would "make a better condition for us all"—obviously meaning that *if* Schine would reduce his clearance and pay the same film rental for a less desirable playing position and *if* the independent would pay a higher rental for a playing position closer to Schine, it would be better for Warner—the Court quotes the opinion *in haec verba* as a finding of unreasonable clearance obtained by Schine.

This point of view on the case is one of the reasons why, as we pointed out in our main brief, the Court's findings are literally *riddled* with demonstrable error.

Argument on Divestiture

Alleged failure to comply with Consent Order

In purporting to answer our argument that the divestiture order and the appointment of a trustee are unnecessary and inappropriate, and that injunctive relief is an adequate means of accomplishing the Government's announced purpose of reducing Schine's "buying power", the Government leans heavily on (1) the proposition of fact that Schine wilfully disobeyed the consent order; and (2) the proposition of law that *U. S.* v. *Crescent Amusement Co.*, 323 U. S. 173 dealt with and disposed of the very divestiture question here presented.

Both propositions are patently erroneous.

In our main brief we took pains to show that Schine had complied fully with the provisions of the consent order of May 19, 1942, under which it agreed to dispose of its interest in 16 theatres, upon conditions stated in the order. We went so far as to say that the Government's attempt to convey the contrary impression was "an unfair and in fact a vicious attack". Undeterred, the Government in its brief before this Court has seen fit to repeat—*not once but four times*—its effort to prove a point that is flatly contradicted by the terms of the relevant orders of the lower Court.

We emphasize again that the obligation which Schine assumed by the consent order was conditioned upon the provision that it should not be required to sell any property for a price below the amount of its investment. That condition applied not only to Schine's original obligation as set forth in the order (R. 258), but also to the Court's authority under its reserved jurisdiction to make additional orders (R. 260).

The Government's argument that the consent order required sales of the properties *at all events* was litigated on its motion, made prior to the trial, for the appointment of a trustee to sell the theatres then undisposed of (R. 318-20). The motion was denied and the decision of the Court on this and the several other motions decided at the same time (R. 425-27) not only *did not hold* that the price condition was no longer applicable to the obligation of Schine to sell the theatres, but went further and held that Schine would not necessarily be required to sell at that price (R. 426).

Thus the Court necessarily held that the obligation to sell was not unconditional; and 6 months later the order, as extended, expired by its own terms (R. 256, para. II).

How, on such a state of facts, the Government can seriously maintain before this Court that the obligation of Schine was to sell the theatre interests *at all events,* that the obligation survived the termination of the contract, and that Schine had failed to perform its agreement, we are at a loss to explain. The assertion of these propositions is enough to show the Court the tenacity with which Government counsel hold on to untenable propositions and to cast doubt upon all of their *assertions* on other issues of the case.

We pointed out in our main brief (p. 67) the absurdity of the Government's contention in the light of the fact that in Cumberland, one of the towns named in the divestiture order, the Court allowed Schine to acquire a second theatre, upon a finding that there would be no restraint of competition in Cumberland if Schine had 2 theatres instead of one. The Government's answer to this argument is typical and deserves close attention. The Government states (Br. p. 9):

> "At the hearing it appeared that Burke, the owner of the Liberty, had complained to the Department of Justice that Schine had persuaded Warner to discriminate against him in Cumberland shortly after Schine acquired the Strand Theatre (R. 334-35), and that the same sort of discrimination occurred with respect to the films of Universal shortly after he had been subpoenaed as a Government witness in 1942 (R. 337)."

It is recommended that the Court read the direct examination of Mr. Burke and his cross-examination by Government counsel, at R. 326-39 and following. It is a good example of the point of view which has made it possible for Government counsel to take such extreme and unreasonable positions in this case.

The Court will note especially the terminology "Schine had persuaded Warner to discriminate against [Burke] in Cumberland shortly after Schine acquired the Strand Theatre" (Gov. Br. p. 9). This is the Government's way of saying that Schine purchased certain top pictures of Warner in the particular year, through contracts made in New York, as a result of which the particular pictures were not available on first run to Burke. The reference to "the same sort of discrimination" with respect to Universal has to do with the fact that in the particular season Universal split its product equally between Schine and Burke.

This is the sort of thing that appears throughout the Government's Appendix A, in almost every pargraph. Instead of stating the evidence, the Government draws its conclusion with the aid of an inference of evil motive, and states the conclusion.

Crescent case

The hodge-podge of sophistries which comprises the Government's argument that the *Crescent* case is authority for the divestiture relief granted in the present case appears to contain the following propositions:

1. Since the Court below knew of the injunctions that it had granted and of those granted in the *Paramount* case, it must have decided that such injunctions would "not afford the necessary relief in this case". (Actually the Court went upon the erroneous theory that "we would have no lawsuit then at all" (R. 3408) if relief were limited to injunctions.)

2. Divestiture in a Sherman Act case is "routine relief".

3. Since there was no finding in the *Crescent* case that the stock interests to be divested had been illegally acquired, Schine's theatres may be ordered sold without proof that they had been illegally acquired.

4. The divestiture order of the lower Court was mild and favorable to the appellants, "less drastic" than the divestiture order of the *Crescent* case, because "the *Crescent* formula of dissolving the unlawful combination by complete separation of the various corporate entities" would have justified a complete breaking up of the Schine structure by separation and sale of all the 100 or more subsidiary companies which held title to or leases of theatres. The Government did not press for its full advantage under the *Crescent* case because "the district court's order deliberately invited" a more or less benign solution of the problem, which the Government calls "limited divestiture". However, the plan adopted "may be open to criticism as inadequate to perform the task traditionally assigned to such plans by the past decisions of this Court".

5. In fact, the *sole* ground on which the Court's plan is open to criticism is its failure to give *positive* assurance of any *substantial diminution* of the appellants' buying power. This is because Schine is given the right to decide which theatres will be sold in the various affected towns—so that the only opportunities that the plan offers to potential purchasers of the theatres to be sold "is a chance to operate an inferior theatre with an inferior policy."

6. The Government's plan was a better plan than the one that the Court adopted, because it also required the sale of theatres in one-theatre towns, which would mean that theatres in the future would "be operated by owners who would be dependent for success upon their skill in theatre operation rather than upon arbitrary control of the major films supplied."

7. The appellants should not be permitted to object to the plan adopted, because the appellants failed to offer a "bona fide plan for dissolving the combination", and the Court therefore was limited to considering the general type of plan offered by the Government. Moreover, appellants did not submit any plan at all until some months after the original judgment was entered.

8. The relief is appropriate because "The violations found were not isolated instances of illegal theatre acquisitions in specific localities. On the contrary, they were based upon a buying power derived from the size of their circuit as well as possession of a number of closed towns, used to obtain maximum competitive advantages in every town in which the circuit operated. * * * Once the Court decided to allow (*sic*) appellants to continue to function as a unit,

it was obviously (*sic*) necessary to approach the problem of restoring the opportunity to compete with the appellants' circuit, as such, by diminishing the power of the circuit as a whole to control the exhibition of films in any town."

9. "Such treatment was particularly appropriate here, since the Court permitted (*sic*) the appellants to retain theatres [unspecified] which would have been divested upon any theory of divestiture as a remedy appropriate to particular theatre situations in which the evidence had shown specific predatory practices."

All of this sophistry is designed merely to obscure the plain distinctions that exist between the *Crescent* case and this one. Here, briefly stated, was the nature of the combination that was dissolved in the *Crescent* case, according to the findings in that case, as they appear in the Record of the *Crescent* case in this Court, pages 1352 to 1473:

1. Those who combined to take joint action were two separately owned corporations and a partnership, together with 10 affiliated companies linked up with one or another of the three principal units by 50% stock ownership* (F. 11-23).

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*In the Schine Circuit the partly owned corporations (except in Medina, Fostoria and Syracuse) do not result from any combination between Schine and the local exhibitor. In each case, Schine, not having any theatre in the town, offered to purchase the local theatre or theatres. The local exhibitor in each case found the offer attractive but "hedged" by converting part of his investment into cash and continuing to hold the remainder. The competitive situation in the town remained the same. (In June, 1947, the RKO-Schine pool in Syracuse was dissolved so that Schine now owns 2 first-run theatres outright and competes with RKO and Loew's. This dissolution was approved by Judge Knight.)

2. The 50% affiliates came into being through transactions in which small theatre circuits sold one or more theatres to a member of the combination and were then brought under the umbrella of the combination and protected from competition in the other towns where they operated (F. 24-27).

3. The 13 members of the combination pooled their competition power and launched on a campaign to acquire control of the theatre business in an important geographical region consisting of parts of Tennessee, Kentucky and the several adjacent States (F. 32-37).

4. The group divided territory so that no member had to compete with any other member in any town, and they also refrained from competition in the buying of theatres, so that, although all of them were acquiring or trying to acquire additional theatres, no one of them bid against any other for any theatre (F. 28).

5. When theatres were bought, covenants not to compete were taken from the sellers, not only for the benefit of the buyer but for the benefit of all other members of the combination, and such covenants applied, not only to the particular locality, or to the area in which the particular buyer operated, but to the whole area in which the members of the combination operated (F. 29-30).

7. In their franchises and other contracts for pictures, the combination not only bought the pictures that its members needed, and that they played, but by means of options on second runs they made it impossible, or nearly impossible, for the second run theatres in their territories to obtain pictures on second run until long after the time when the

second run would normally be played (E.g., F. 70, 119; F. 122 at R. 1442-43; F. 123).

On those facts and a number of others along the same line—not a single one of which was found to exist in the present case—the Court held that the creation of the combination—the coming together of the 3 principal units and their 10 affiliates—was for unlawful purposes and therefore in itself unlawful; that "common control was one of the instruments in bringing about unity of purpose and unity of action and in making the conspiracy effective" (323 U. S. at 189); and the further continuation of "common control" was therefore unlawful.

This is a far cry from a plan which proposes to reduce the size of the operations of an independent exhibitor by making him sell one or more theatres in 43 towns, so that competition may be "created" for him in those towns. No such competition, incidentally, was created by the relief granted in the *Crescent* case. The 10 sub-chains there involved did not compete with one another in any town; and when the cross-holdings among the chains were eliminated, they still did not compete with one another in any town.

Practical aspects of divestiture

The Government's experience under the consent order should give it some idea of the practical difficulties involved in the sale of theatres. Schine had paid fairly high prices for the theatres involved in the consent order and, as heretofore pointed out, sales were to be made at no lower than the amount of Schine's investment.

It is apparent from their later attitude on this subject that Government counsel, in framing the consent order, envisaged the happy situation in which there would be plenty of buyers and bidders for the theatres in question, at a price equal to Schine's cost.

As it turned out, in only 2 of the 16 cases did the previous operator or previous owner of the theatre want to undo his bargain. When the remaining 14 properties were publicly advertised for sale, there was no rush of bidders; and over the period of time involved there was not more than 1 bona fide offer for any one property; and there were no offers at all for 5 of the properties.

The Schine theatres are located in relatively small communities. There is not any large class of persons in such communities ready to jump at the opportunity to buy or lease and operate a motion picture house.

In arguing the divestiture point in its brief, the Government in a rare moment of illumination explains that some of the theatres that the trustee will sell have been operated only part time or have been closed, or have small seating capacities and not as good facilities as larger theatres which Schine may keep. Then the Government says (Br. p. 52):

> "Thus, the only opportunity that the plan adopted by the court presents to potential purchasers of the theatre sold is a chance to operate an inferior theatre with an inferior policy or no past actual operating policy in competition with superior theatres with an established policy, owned by a powerful circuit which still retains a number of closed (*sic*) one-theatre towns. Whether or not such an opportunity will actually result in the creation of operating competition against Schine in any of these towns is at this moment wholly speculative."

It is safe to assume that potential buyers of the theatres will be no less aware than is the Government of the speculative character of marginal or sub-marginal theatres which the trustee will offer for sale. In a 2-theatre or 3-theatre town, where one theatre is operated only during-periods of peak demands for entertainment, a single operator may get a profit (or at least no loss) out of the second or third theatre. But it does not follow (as our main brief shows) that a new operator can come in and get a profit out of the particular theatre. It is not only possible, it is in fact likely —in view of experience under the consent order—that the net effect of the divestiture order would be to sell Schine's properties at sacrifice values, with losses to Schine not compensated for by any public advantage, or by any private advantage except to the speculator who may come in and buy up the properties at auction block values.

Arguments on the Admissibility and Effect of Evidence

In Point IV of its brief, the Government takes issue with the statements of legal principles concerning the admissibility and effect of evidence, as presented in Point II of our main brief. Authorities in support of contrary propositions are asserted, but the Government's authorities do not support its conclusions.

The Government cites the *Crescent* case as one in which inter-office memoranda of the sort here involved were relied on to support the ultimate conclusion of guilt. But this Court, in the first place, did not review the question whether the conclusion of guilt was supported by the evidence because no such error was assigned by the appellants (p. 180), and because, in the second place, this Court declined to rule upon the question whether such proof was admissible, or had been properly admitted against the appellants (p. 184), finding it unnecessary to decide that question.

The Government cites *United States* v. *Corn Products Refining Co.*, 234 Fed. 964, *appeal dismissed*, 249 U. S. 621, as sanctioning the use of inter-office memoranda as proof of "the highest validity". But in that case the Corn Products Refining Company was the principal defendant in the action; the alleged conspiracy was fully proven by independent evidence; the documents in question were prepared by the "officers of the Corn Products Refining Company", and they were received in evidence simply as proof of "the intent, which plays so large a part in" cases of this sort (234 Fed., at p. 978) and not as proof of the supposed facts recited in the memoranda.

With respect to this question of intent, the Government cites *Norwich Transportation Company* v. *Flint,* 13 Wall. 3, and *Greater New York Live Poultry C. of C.* v. *United States,* 47 F. 2d 156 (C. C. A. 2), *cert. den.,* 283 U. S. 837; as holding that statements proving intent are not within the hearsay rule. The exception relating to intent, however, comes into operation *only* if (1) the act, the intent of which is in issue, has been proved, and (2) if an agency relation between the defendant and the maker of the statement has been proved independently, and in the case of such agents (3) if the statement and the act to which it applies are contemporaneous. Moreover, when hearsay is received to prove intent, it cannot be used as proof of the alleged facts recited. The cases which the Government cites generally illustrate the application of those rules.

In *Norwich Transportation Company, supra,* a passenger on board ship had been shot by a member of a detachment of soldiers, and statements by one officer in charge of the detachment, to another, made at the very time of the occurrence, were received in evidence. The action was against the ship-owner for negligence. This Court said that the statements were received as part of the *res gestae* of the accident, and "not * * * for the purpose of proving the facts stated" by the speaker.

In *Greater New York Live Poultry C. of C.* v. *United States, supra,* a conspiracy was proved independently. Contemporaneous statements of proven conspirators were held admissible "to prove the state of mind *of the declarant* if that be in issue, * * *. They are not admissible, however, to prove the truth of the facts recited as explanation of the state of mind of the declarant." 47 F. (2d) at p. 159 (emphasis supplied.).

The general principles applying to this class of evidence are stated in detail in *Vicksburg & Meridian Railr'd* v. *O'Brien*, 119 U. S. 99.* This Court said (pp. 104-105):

> "* * * The acts of an agent, within the scope of the authority delegated to him, are deemed the acts of the principal. * * * So, in consequence of the relation between him and the principal, his statement or declaration is, under some circumstances, regarded as of the nature of original evidence, 'being,' says Phillips, 'the ultimate fact to be proved, and not an admission of some other fact.' 1 Phil. Ev. 381. * * *"

It then stated the requirement that act and statement be simultaneous as follows:

> "This court had occasion in *Packet Co.* v. *Clough*, 20 Wall. 540, to consider this question. Referring to the rule as stated by Mr. Justice Story in his Treatise on Agency § 134, that 'where the acts of the agent will bind the principal, there his representations, declarations, and admissions respecting the subject-matter will also bind him, *if made at the same time, and constituting part of the res gestae,*' the court, speaking by Mr. Justice Strong, said: 'A close attention to this rule, which is of universal acceptance, will solve almost every difficulty. But an act done by an agent cannot be varied, qualified, or explained, either by his declarations, which amount to no more than a mere narrative of a past occurrence, or by an isolated conversation held, or an isolated act done, at a later period. * * *" (Italics in the original).

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*Cited, appellant's first brief, p. 75.

The same principle was applied by this Court in *Palmer v. Hoffman*, 318 U. S. 109. There the Court held, in an accident case, that a written statement made by the engineer of the train involved in the accident two days after the accident might not be received in evidence, and that it was not a statement made in the regular course of business within the meaning of 28 U. S. C. 695, 49 Stat. 1561.

The Government next argues that the documents were properly received because they constituted business records within the protection of 28 U. S. C. 695. Apparently counsel assumes that under that statute any business record of any person may be received in any action, whether or not he is a party to it, and regardless of the number or character of objections which may be raised against it. But the statute had no such purpose, and has no such effect. Its only purpose and effect is to make documents admissible without the strict proof of authenticity which had theretofore been required. *Palmer v. Hoffman, supra*, at 111, 112*; *Harper v. United States*, 143 F. (2d) 795, 805, 806 (C. C. A. 8); *Massachusetts Bonding & Ins. Co. v. Norwich Pharmacal Co.*, 18 F. (2d) 934, 937 (C. C. A. 2nd). But our present objection to this evidence is not directed against the authenticity of those documents as records of the exhibitors. It is, rather, that even if authentic they are inadmissible as hearsay, because not in support of a conspiracy independently proved.

Finally, the Government cites a group of cases involving conspiracies in which, it states, "inter-office communications of the sort here offered in evidence" were received as proof. In those cases, according to counsel, such communications were "in furtherance of the common object."* *Hitchman Coal & Coke Co.* v. *Mitchell,* 245 U. S. 229, 249. We have no doubt that inter-office communications may be received if in support of a conspiracy, independently proven, and if other legal requirements are met; and that is all that can be gathered from the cases cited.

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*This Court there points out that the purpose of the sponsors of the Statute was simply to change "The old common-law rule [which] requires that every book entry be identified by the person making it."

In our main brief we pointed out that the lower Court, in drawing an inference adverse to Schine because of its failure to call all the "sales managers" of the distributors (R. 3084), had misapplied this Court's decision in *Interstate Circuit* v. *U. S.,* 306 U. S. 208. The Government, in an attempt to explain away this patent error, argues that while in the *Interstate Circuit* case the conspiracy proved "was between the distributors, whose normal contact with each other is through their New York executives", the conspiracies in this (Schine) case "were between Schine and the distributors, whose normal contacts with each other is [*sic*] through a chain of minor executives on both sides * * *."**

Evidently we are not alone in failing to grasp that subtle (and unproved) distinction. The lower Court's opinion speaks not of "minor executives on both sides" but of the "Sales managers for each of the major distributors who had authority to approve film leases", who had been "called by the defendants", and who "gave testimony" for them. He thought that "These sales managers can be only a small number of those employed as such during the period in question", and he cited the *Crescent* case as holding

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*Gov. Br., p. 96.

**Gov. Br., p. 97.

(as it did) that "failure to call those *officers* who had authority to act for the distributors" was "persuasive that their testimony, if given, would have been adverse." And he thought that in this case "the defense herein is weakened * * * by failure to call others of the *officers* authorized to act * * *".

Thus the Government's explanation of the lower Court's ruling simply advances the case from the frying pan to the fire, since it is entirely clear that that Court did not do the thing which the Government justifies, and that the Court was quite as wrong under the Government's view as under ours.

The Government's attempted distinction fails to attain its purpose. The basis of the unfavorable inference in the *Interstate Circuit* case was the distributors' failure "to call as witnesses those officers who did have authority to act for the distributors and who were in a position to know whether they acted in pursuance of agreement * * *."* That statement had reference to the fact that the local managers whom the distributors called to testify had no authority to make such agreement as the Government claimed and the proof indicated. So, likewise, the "minor executives on both sides" who the Government suggests should have been called as witnesses had no authority to commit either Schine or the distributors to such an agreement as the lower Court found to exist. Further, J. Myer Schine and the representatives of the distributors who gave testimony "were in a position to know" whether any conspiracy existed in fact. To say that "minor executives on both sides" formed and carried on the conspiracy here alleged without the authorization or knowledge of J. Myer

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*306 U. S., at p. 226.

Schine or of the representatives of the distributors who were called as witnesses is tantamount to saying that there was no such conspiracy.

The Government suggests, somewhat diffidently, that in many (but unspecified) instances "these documents contained either instructions to subordinate officials or explanations to superior officials", and that they "were the contemporary tools by which the distributors carried on their activities."*

Even if this statement were true it would meet, at most, only one of the four requirements for admissibility, namely, that the documents in point were verbal acts, admissible in support of a conspiracy if any was proved. It would not meet the basic requirement that such a conspiracy, and the appellants' connection therewith, be proved by independent evidence.

Moreover, one of the errors assigned by the appellants relates to the lower Court's failure to limit the effect of these documents so that they would not be taken as evidence of the statements they contained. It is clear that the Trial Court did accept and use them as such proof. The Government does not claim to the contrary; indeed, it is only as supposed proof of the alleged facts recited that the documents were of any value to the Government, or played any substantial part in the decision or findings. Thus the Government's argument, in this respect, is necessarily that if the documents are admissible as verbal acts in support of a conspiracy they also constitute proof of whatever alleged facts they recite on their face, even though, with respect to such facts, they are inadmissible as hearsay. That has never been the law. They constitute proof "of the nature of original evidence, 'being' * * * 'the ultimate fact to be proved, and not an admission of some other fact.'" *Vicksburg & Meridian Railr'd* v. *O'Brien, supra,* at p. 104.

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*Gov. Br., p. 95.

If any of the 100-odd documents now under consideration can be considered as "instructions to subordinate officials", or as "contemporary tools by which the distributors carried on their activities", they are few and unimportant. The Government fails to specify any of the documents as being of that class. Certainly those referred to in the lower Court's findings and its opinion are not of either sort. Statements such as that "the clearance * * * is unfair"; that Schine "refused to grant * * * shorter clearance"; that a shorter clearance "will make a better condition for us all"; and that "the clearance setup is all wet" (R. 3221-22), are neither tools nor instructions. They are, however, representative of all the documents, and their inclusion, verbatim, in a finding of fact (No. 17) is illustrative of the use which the lower Court made of all of them.

Finally the Government argues that, since "extensive" testimony of higher officials of the distributors "who were remote from the day to day dealings of their companies" [a flat misstatement of fact, as applied to the distributor witnesses] was offered by the appellants, the inter-office records should have been admitted to contradict or qualify that testimony, and would have to be held admissible "under any concept of evidence as a device for ascertaining truth".

But if the documents were not otherwise admissible, they could not be made admissible by reason of the fact that, because they had been erroneously received in evidence, defendants as a practical matter had to put witnesses on the stand to show what the truth was in connection with the dealings of Schine with the distributors. Evidence that is inadmissible cannot be made admissible merely by the fact that the other party tries to prove the opposite of what such inadmissible evidence might tend to show.

There is no need to grope for a ground for the use of the evidence in question under a "concept of evidence as a device for ascertaining truth", because it would have been perfectly proper for the Government to use the inter-office memorandum of any distributor on the cross-examination of that distributor's witnesses. But the Government did no such thing; and it is strange, indeed, if the written records did in fact contradict or qualify the oral testimony of the distributors' employees, that the Government did not make the slightest use of such memoranda on cross-examination.

Even if such memoranda had been admitted for use on cross-examination, that would not have made them admissible to prove the statements that they contained. Such statements would be proved only if the witness admitted them.

The Government's argument in this respect is simply another effort to do what this Court condemned in *Glasser* v. *United States*, 315 U. S. 60, at 75, namely, to permit hearsay to "lift itself up by its own bootstraps to the level of competent evidence."

The receipt of inter-office communications and their use by the Court as proof of the statements contained in the evidence was clearly error. The arguments made and authorities cited by the Government serve to establish the appellants' construction of the law.

The claim that the error was not substantial is made only in the title of the Government's Point. There is no attempt in the argument to support it. The judgment must be reversed, because such evidence clearly influenced the whole decision of the Court and its entire viewpoint on the relief to be granted.

Conclusion

For the reasons stated herein it is respectfully submitted that the judgment of the Court below should be reversed.

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No. 10

In the Supreme Court of the United States

OCTOBER TERM, 1947

SCHINE CHAIN THEATRES, INC., ET AL., APPELLANTS

v.

UNITED STATES OF AMERICA

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NEW YORK

BRIEF FOR THE UNITED STATES OF AMERICA

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In the Supreme Court of the United States

OCTOBER TERM, 1947

No. 10

SCHINE CHAIN THEATRES, INC., ET AL., APPELLANTS

v.

THE UNITED STATES OF AMERICA

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the district court is reported in 63 F. Supp. 229. Subsequent opinions of the district court granting and denying in part motions to amend findings of fact and conclusions of law and the judgment (R. 3207), and approving a plan of divestiture of theatres (R. 3461) are not reported. A prior opinion denying the Government's motion for a preliminary injunction is reported in 31 F. Supp. 270. A prior opinion denying in part the Government's motion for a trustee, denying the appellants' motions for dismissal of the proceeding and for vacation of an order requiring them to divest themselves of certain theatres, and granting the appellants' motion for leave to acquire a certain theatre (R. 419) is not reported.

JURISDICTION

A judgment of the district court was entered on October 31, 1945 (R. 3107). A supplemental judgment was entered on November 13, 1945 (R. 3146). An amended judgment of the district court was entered on March 29, 1946 (R. 3228). An order adopting a plan of divestiture for the purpose of effectuating Section III of the amended judgment was entered on July 5, 1946 (R. 3464). An appeal of the six corporate defendants and three individual defendants was allowed on August 26, 1946 (R. 3755). The jurisdiction of this Court is conferred by Section 2 of the Expediting Act of February 11, 1903, as amended (32 Stat. 823, 36 Stat. 1157, 38 Stat. 938, 28 U. S. C. 345). Probable jurisdiction was noted on January 20, 1947 (R. 3755).

QUESTIONS PRESENTED

1. Whether the findings of the district court are supported by the evidence and whether those findings are sufficient to support the conclusion of the district court that the appellants had violated the Sherman Act.

2. Whether the plan of theatre divestiture adopted by the district court was an appropriate means of terminating violations of the appellants and of restoring illegally suppressed competitive opportunities in the area in which motion pic-

ture theatre operations have been monopolized by the appellants.

3. Whether the district court was justified in appointing a trustee to sell theatres named in the plan including those the appellants had agreed to sell themselves within one year after the entry of a consent order on May 19, 1942, but which are still unsold.

4. Whether the procedure by which the particular plan of divestiture embodied in the final judgment was selected was fair to the appellants.

5. Whether the injunction against the appellants' future use of restrictive practices found to have been used by them in the past was proper.

6. Whether certain business letters and memoranda of the major film distributors were properly admitted by the district court and whether, if not, the judgment may nevertheless stand.

STATUTE INVOLVED

The Act of July 2, 1890, 26 Stat. 209, known as the Sherman Act, provides in part as follows:

SECTION 1 (as amended by the Act of August 17, 1937, 50 Stat. 693). Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal: * * * (15 U. S. C. 1.)

SEC. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, * * * (15 U. S. C. 2.)

* * * * *

SEC. 4 (as amended by the Act of March 3, 1911, Sec. 291, 36 Stat. 1167). The several district courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. * * * (15 U. S. C. 4).

STATEMENT

INTRODUCTION

The basic question presented by this suit is whether application of the legal doctrine established in *United States* v. *Crescent Amusement Co.*, 323 U. S. 173, to another combination of film exhibitors which had similarly acquired and used monopoly power over the major film supply should result in the granting of similar relief. Since the same basic question is also presented in *United States* v. *Griffith Amusement Co.*, No. 64, this Term, which will be heard with this case and in which we have already submitted our brief, we have not repeated here facts relating to the general conduct of the film business stated there. The facts in this Statement are, however, intended to supply an adequate basis for the argument in this brief. They both supplement and contradict the statement in the appellants' brief in important respects. In so far as contradictions are concerned, we rely simply upon the supporting record references set forth herein and the absence or inaccuracy of record references cited in the appellants' brief to support their contradictory statements. The pre-trial proceedings, as well as those relating to the trial itself, have been summarized here because they played an important part in the evolution of the plan of relief adopted in the final judgment.

A. PRE-TRIAL PROCEEDINGS

Within five months after the suit was filed, the Government moved for a preliminary injunction to restrain pending the trial on the merits, *inter alia,* the further acquisition of theatres by the appellant exhibitors, which motion the district court denied in an opinion filed on January 17, 1940, and reported in 31 F. Supp. 270. The motion was supported and defended by affidavits setting forth facts concerning the appellants' alleged acquisition of competitors' theatres through illegal control of the film supply and the court found that the affidavits established a prima facie case (p. 274). It denied the injunction, however, upon the ground that the equities were with the appellants since there was then no immediate threat by the exhibitor appellants to acquire any specific theatre (p. 276).

Between that date and May 19, 1942, when the case was called for trial, the appellants acquired 16 theatre interests in 13 towns (R. 257–258). In five of these towns, the theatres acquired had been operated in competition with Schine prior to the acquisitions.[1] Several of the former operators of these theatres testified as complaining witnesses at the trial on the merits.[2] As a condition of securing a two-year continuance of the trial date, the appellants agreed, in the temporary order of May 19, 1942 (R. 255–263), to divest themselves of these theatre interests within a period of one year (R. 257), and to submit to injunctive relief which was intended to prevent further violations of the Sherman Act by the appellants pending a trial on the merits; the temporary order also prohibited any further theatre acquisitions without prior court approval (R. 260). The divestiture order provided that the theatres should first be offered at a price equivalent to Schine's investment therein, stated in an appendix to the order, to the operators from whom Schine had acquired them, and that in the event of their failure to purchase within 30 days of the offer, they were to be offered generally to other independent exhibitors at the same price (R. 258–259). The order contained no provision for enforcement other than the keeping of records by the appellants which would disclose to the Department of Justice the extent of compliance, the making of progress reports by the appellants, and the customary retention of jurisdiction to make such further orders as might be necessary (R. 262). The consent order also provided that in the event that at any time after the entry of the order a more favorable order should be entered in any other Sherman Act suit brought against an operator of motion picture theatres, the appellants would have the right to apply for a modification to conform the provisions of the temporary order to the more favorable order (R. 263).[3]

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[1] See summaries of evidence relating to Corbin, Ky., Lexington, Ky., Malone, N. Y., Mt. Vernon, Ohio, Rochester, N. Y. Appendix A, pp. 30–35, 62–67, 85–93, 104–107, 133–145.

[2] See Murphy (R. 774–820), Long (R. 548–614), Boumansour (R. 2252–2276) and Schwartz (R. 2025–2054).

In July, 1943, the appellants filed a report (R. 274–316) of performance and non-performance under the temporary order, which recited the sale of six of the 16 theatre interests which they had agreed to sell by May 17, 1943, alleged that they had been unable to dispose of any of the other 10, although exercising great diligence in this respect, and asked to be relieved of any further efforts to dispose of these theatres upon the grounds (1) that they were letting them deteriorate to the point where they failed to give adequate service to the public since they had no interest in ultimately retaining them under the existing order (R. 287), (2) that the order was harsh and improper because it was more drastic than the consent order entered in *United States v. Paramount Pictures, Inc., et al.,* in November, 1940 (18 months before the defendants agreed to the entry of this order) (R. 291), (3) that the 1940 consent decree in the *Paramount* case so effectively restricted the activities of the major distributors that there was no occasion for the entry of this order, in any event (R. 312–313), and (4) that the entire proceeding should be dismissed because the five principal defendants in the *Paramount* case were no longer parties to this suit (R. 313–316).

---

[3] On March 3, 1943, *United States* v. *Crescent Amusement Company*, 323 U. S. 173, was decided in the district court and a judgment entered therein containing provisions less favorable to the defendants than those set forth in the temporary order. This judgment was affirmed by this Court with a modification of one provision, sought by the United States, on December 11, 1944.

In February, 1944, the Government petitioned the court for the appointment of a trustee to sell the unsold theatre interests upon the ground that the terms of the order were absolute in requiring disposition of the theatres therein listed and that the appellants had taken the position that they would make no further sales (R. 318–320). An answer was filed asserting that the order by its terms merely required them to offer the theatres for sale in the manner stated, that they had fully discharged their obligation with respect to these theatres under the order by making unaccepted offers (R. 320), and denying that the appellants proposed to make no further efforts to dispose of the theatres (R. 324). At the same time, they moved to modify the restriction in the order against theatre acquisitions by conforming it to the milder acquisition terms of the 1940 *Paramount* consent decree and to dismiss the suit for want of necessary parties (R. 317–318).

They also moved for leave to acquire a competitor's theatre, the Liberty, in Cumberland, Maryland, which was one of the towns in which they had been ordered to divest a theatre, the Strand, under the temporary order. At the hearing it appeared that Burke, the owner of the Liberty, had complained to the Department of Justice that Schine had persuaded Warner to discriminate against him in Cumberland shortly after Schine acquired the Strand Theatre (R. 334–35), and that the same sort of discrimination occurred with respect to the films of Universal shortly after he had been subpoenaed as a Government witness in 1942 (R. 337).

The trial court disposed of this motion, the Government's petition for a trustee, and the appellants' motions for dismissal of the suit or modification of the order by an opinion rendered on May 4, 1944 (R. 419–424), pursuant to which the following rulings were made:

(1) The appellants' motion for leave to buy the Liberty Theatre was granted (R. 421);

(2) The appellants' motion to dismiss the suit was denied (R. 421);

(3) The appellants' motion to modify the order so as to release them of their obligation to sell the ten unsold theatres was denied, but the appellants were relieved of the obligation to sell on the terms specified in the 1942 order and were offered a six months' extension of time in which to make these sales (R. 423);

(4) The Government's petition for a trustee was denied "save on the condition that Schine does not elect to accept a continuation of time in which to sell such interests as hereinbefore set forth when a trustee shall be appointed" (R. 423-424).

The court further noted in its opinion:

> It is to be impressed upon Schine that it is the present intent of the Court to see that the order aforesaid directing the sale of these theatres be enforced and that this extra time is given as a leeway, if it chooses to make the sales rather than have them made through the agency of a trustee (R. 423).

The order entered in accordance with this opinion on May 31, 1944, approved the Liberty Theatre purchase "without prejudice to the disposition of said theatre which may be proper upon a final decree in this cause" (R. 425-26), and stayed the requirement of the 1942 order that the Strand Theatre be sold until a further application for such a sale by the Government (R. 427).

The order further provided that the six months' extension from May 15, 1942, to sell the remaining unsold theatres, was conditioned upon the filing within fifteen days by the appellants of a notice that "they will accept this extension of time for the purpose of disposing of said theatres within that time" (R. 426), in the absence of which a trustee would be appointed without further notice. It also contained the customary reservation of jurisdiction to enter such further orders as might be necessary to carry out the orders entered and to enforce compliance (R. 427). Notice of acceptance was filed (R. 427), a sale of four of these theatres was approved on October 16, 1944 (R. 2986), and the appellants reported on November 16, 1945 that they had been unable to sell the remaining five (R. 2982). The trial had commenced on May 31, 1944, and the taking of evidence had been concluded when the final report of the appellants was filed.

No further proceedings under the order of May 31, 1944, or other proceedings to enforce, modify, or set aside the divestiture provisions of the 1942 consent order were had until the trial court decided the main litigation on October 8, 1945 (R. 3066). The Government then submitted a proposal for disposition of the unsold theatres ordered divested by the 1942 and 1944 orders

(R. 3239–3240); this proposal was included in the plan of reorganization submitted by it on February 25, 1946 (R. 3236–43), pursuant to the court's direction, of October 31, 1945, to submit such a plan (R. 3107–3109). The appellants' objections to this plan (R. 3243–3311), in so far as they dealt with theatres ordered divested by these orders were based upon the fact that the consent order "shows expressly that no wrong doing of any kind was conceded by the defendants or asserted by the plaintiff" (R. 3285), and that "the terms upon which Schine acquired these theatres were so favorable to the sellers that it was impossible to find another purchaser who would duplicate the terms" (R. 3286). These objections thus again presented considerations for relieving the appellants from compliance with their consent order, which had already been rejected by the order of May 31, 1944 to which order they had consented on June 15, 1944 (R. 427), in order to avoid the appointment of a trustee at that time.

B. THE TRIAL

1. *The ultimate conclusions of the trial court*

In its decision on the merits after a six months' trial and consideration of the evidence and briefs during a further period of almost a year, the court concluded that the appellants had maintained an unlawful combination among themselves and with their affiliated companies to monopolize, and that they had monopolized and restrained, the licensing of the exhibition of motion picture films in the various cities and towns in which they operate theatres (R. 3226). The court therefore determined that the Government was entitled to a judgment requiring that appellants and their affiliated companies be dissolved, realigned, or reorganized in their ownership and control in such a way that fair competition between them and other theatres would be restored and maintained. It stated that a determination of the question of dissolution, realignment, or reorganization of appellants, and the methods to be employed in the accomplishment of the same should be left to be fixed by the court after further consideration with the parties (R. 3228).

The court also found that the appellants had conspired with each of the major film distributors to restrain and monopolize as aforesaid and that the appellants were also guilty of predatory practices which stifled competition (R. 3226). It concluded that the Government was entitled to a judgment enjoining the appellants (1) from monopolizing the supply of major first run and second run films; (2) from demanding or receiving unreasonable clearance over theatres operated by others; (3) from conditioning the licensing of film in any competitive situation upon the licensing of films in any other situation; (4) from selling or acquiring any theatre interests pending the further order of the court; (5) from enforcing any existing agreements not to compete, or to restrict the use of real estate to non-theatrical purposes; (6) from the use of threats or deception as a means of inducing a competitor to sell, and from continuing the aforesaid conspiracies (R. 3229–3230).

While the court had before it at the time of its opinion findings of fact and conclusions of law proposed by both parties, it adopted neither, but requested that further proposed findings be submitted in the light of its opinion (R. 3088). The Government thereafter submitted proposed findings of fact and conclusions of law and a proposed judgment, all substantially in the language of the court's opinion (R. 3091). On October 31, 1945, the court adopted findings and entered a judgment such as was described in its opinion and proposed by the Government. (R. 3093–3109). Section III of this judgment provided:

> The defendants and their affiliated corporations be dissolved, realigned, or reorganized in their ownership and control so that fair competition between them and other theatres may be restored and thereafter maintained. The plaintiff and the defendants shall each within 60 days from the entry hereof submit a plan to this Court for such dissolution, realignment or reorganization as they believe will attain this end and serve copies thereof upon op-

posing counsel. Within 30 days after the service of such a plan upon counsel for the parties they shall advise the Court in writing of their objections, if any, to such plans and such counter or substitute proposals for the carrying out of this provision of this judgment as they may desire to submit (R. 3108-3109).

Appellants moved on November 10, 1945, to amend the findings of fact and conclusions of law and to amend the judgment by substituting therefor a judgment of dismissal (R. 3109–3141). This motion, and a later motion by the Government to amend the findings in minor respects (R. 3141–3145) were heard together by the court on February 25, 1946, following the submission of briefs by appellants both in support of their own motion and in opposition to the Government's motion (R. 3146–3206). The court's opinion, rendered on March 8, 1946, provided for amendment of its findings in only minor particulars (R. 3207–3211), and such amended findings of fact and conclusions of law were entered on March 29, 1946 (R. 3212–3230).

The court had, in connection with a postponement of the hearing of the motions to amend the findings, extended until February 25, 1946, the time within which the parties were required to submit plans under section III of the judgment. On February 20, 1946, the Government filed a proposed plan of divestiture with a supporting memorandum (R. 3236–3243). On February 25, a hearing on the Government's plan and appellants' objections thereto was set down for April 16, a date selected by appellants' counsel (R. 3206). Counsel stated at this hearing that it was impossible for appellants to submit a plan pursuant to section III (R. 3185–3186). On April 1, 1946, appellants filed lengthy objections to the Government's plan of divestiture (R. 3243–3311) and, on April 12, 1946, the Government filed a reply to the objections (R. 3311–3329).

On April 15, appellants filed an appeal from the amended judgment of March 29 (R. 3349) [3a] and, on April 16, their counsel appeared and asked for additional time in which to reply to the Government's reply and to submit a plan of their own (R. 3342). The court allowed the appellants until May 7 to file a brief and a plan and allowed the Government until May 14 to answer that plan (R. 3346–3347).

On May 7, 1946, the appellants filed a document entitled "Defendants' Tentative Plan of Realignment of Schine Circuit" and on May 8, 1946, they were heard orally in support of this plan (R. 3364–3378). On May 14, 1946, the Government filed its answer to appellants' plan. On May 23, 1946, appellants filed a motion returnable on May 28, 1946, for an order that testimony be taken "relevant, pertinent and necessary to the consideration of the method of compliance with Paragraph III of the said judgment" and that a master be appointed for that purpose (R. 3378). In support of this motion, counsel for Schine filed an affidavit and a memorandum and were heard orally at length by the court on May 28, 1946 (R. 3373-3415). At this argument, the appellants submitted an alternative plan of realignment, with a supporting memorandum (R. 3431-3443), which also argued that the trial court then lacked jurisdiction to consider any plan (R. 3435).

[3a] This appeal was dismissed by this Court "for want of a final judgment" on December 16, 1946, 329 U. S. 686.

On June 7, 1946, appellants filed a motion for a stay of all proceedings with respect to any kind of dissolution, realignment or reorganization until determination by this Court of the Government's motion to dismiss appellants' appeal, and, if the Government's motion should be denied, until final disposition of the case by this Court (R. 3444). In support of this motion, appellants' counsel filed a memorandum and were heard orally (R. 3444-60).

On June 24, 1946, the trial court denied appellants' motions for leave to take further testimony and for a stay, without opinion (R. 3461). On July 5, 1946, the court rendered an opinion (R. 3462-3464), in which it reviewed the various plans which had been submitted by the parties to implement section III of its judgment. It entered an order (R. 3464-3468), adopting a plan summarized *infra* at pp. 31-36, similar in outline to that submitted by the Government but with important modifications of its own. Section IV of this order stayed the effective date of its plan pending final determination of any appeal (R. 3467-3468). The plan, therefore, has not been put into effect.

2. *The facts underlying the court's conclusions*

The court's findings of fact do not purport to summarize all of the relevant evidence (Finding 27, R. 3224-3225) nor are they concerned with the resolution of testimonial conflicts. They reflect merely the court's view as to the significance in this suit of evidentiary facts which are for the most part beyond dispute by their very nature. Thus the size and character of the appellants' theatre operations, their relationship to one another, the written licensing arrangements they made with the major film distributors, their acquisition of competing theatres, and the covenants not to compete that they took from their operators were all subject to documentary proof. There were some minor disputes as to the substance of conversations between complaining witnesses and appellants and between such witnesses and distributor representatives, but there could be, and was, no serious dispute as to what the ultimate effect on these witnesses was of the appellants' extraordinary and arbitrary control over the major film supply which resulted from the appellants' enormous circuit buying power.

The court found that the "defendants together control the largest independent theatre circuit in the country" (R. 3213), that major film buying was done through "master agreements" negotiated for the entire circuit (R. 3215), and that by "combining the open and closed towns in Schine's deals with the distributors" Schine could "dictate terms" and "obtain preferences" (R. 3215). The principal means by which Schine used this power to control and suppress the competition of theatre owners operating in opposition to the combination were found to be "arbitrarily depriving independents of first and second run pictures, securing unreasonable clearances, making threats to build or open closed theatres to prevent construction or operation by independents, lowering admission prices, obtaining rental concessions, restricting independents who sold to Schine as to periods and places of operation, making long-time franchise agreements covering the 'Circuit'" (R. 3215).

The ensuing findings merely single out illustrative instances in which such means were used. A summary of the undisputed facts in the record follows, and a comprehensive statement of the evidence relating to the specific towns covered at the trial is set out in alphabetical order in Appendix A to this brief.

(a) Description of the Appellants

The corporate appellants are Schine Chain Theatres, Inc., organized as a holding and service company in 1920 and five of its wholly owned subsidiaries. They are Schine Theatrical Co., Inc., an operating company organized in 1926; Schine Enterprise Corporation, a service company organized in 1935; Schine Lexington Corporation, an operating company organized in 1936; Schine Circuit, Inc., a service company organized in 1937; and Chesapeake Theatre Corporation, a holding company organized in 1938. The first five of these corporations are New York corporations. The sixth is a Maryland corporation (R. 40–41, 58, 222).

The six corporate appellants own stock in over 100 other corporations, through which the business of owning and operating theatres is conducted in six States. The stock interest owned in all of the realty corporations is 100 percent. The stock interest held by the appellants in corporations operating theatres is for the most part 100 percent. In some ten instances, appellants' stock interest in such corporations is 50 percent, in one instance 25 percent (R. 221–222).

The individual appellants, J. Myer Schine, Louis Schine, and John A. May, are the principal officers in the appellant corporations. They hold additional offices in various operating subsidiaries and are the principal and substantial stockholders in the parent corporation, Schine Chain Theatres, Inc. While the corporations in which the appellants own 50 percent or less generally have local operating management representing the owners of the remainder of the stock, the film buying is handled under so-called booking contracts made with the appellants or one of their wholly owned subsidiaries. The appellant corporations and all of their subsidiaries are hereinafter collectively referred to as Schine or the Schine circuit (R. 214–216, 246–247).

(b) How the Schine Circuit Functions

The principal office of all of the appellant corporations and their subsidiaries is at Gloversville, New York. The individual appellants, J. Myer Schine, Louis Schine, and John May, have been the principal executive officers and have had general supervision of the operation of the circuit. The program for acquisition of theatres was in the immediate charge of various regional or district managers, but Myer Schine and John May at times participated directly in acquisition negotiations (F. 6, R. 3214–3215).

The major film buying negotiations for the appellants' circuit were handled by George Lynch (F. 6, R. 3215), who signed substantially all of the franchises and master agreements (listed *infra* at pages 28-29 ~~20–21~~) on behalf of the circuit.[4]

While the Schine circuit did negotiate individual deals for towns acquired during the season and sometimes made circuit deals for less than all of the towns in the circuit, generally the circuit deal took the form of a master agreement or franchise which included in one deal substantially all of the towns in the circuit (see *infra* p. 13 [illegible]). In some cases the deal took the form of an agreement which outlined the general terms of the transaction, including special licensing provisions applicable through the circuit and enumerating the towns and seasons covered, supplemented by "deal sheets" setting forth the more specific terms for individual towns (Ex. W-3, R. 4429-4455, 1166; Ex. W-4 (1)-(2), R. 4456-4557, 1166). Sometimes it merely consisted of a series of license agreements for each of the circuit's towns, executed at about the same time on the distributor's regular printed form, supplemented by riders or typewritten modifications on the form itself (Exs. P-168-P-238, R. 5829-5897, 1170).

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[4] Neither Lynch, nor any other circuit official save J. Myer Schine directly implicated by verbal testimony or written evidence as actors in the restraints, monopoly, and conspiracy charged and found was called as a witness by the appellants.

(c) The Monopoly Position of the Appellants

At the commencement of the suit Schine had a financial interest in over 150 theatres.[5] They operated theatres in more than 70 towns located in the western and northern parts of New York State; the northern part of Ohio, the eastern part of Kentucky, the Eastern Shore of Maryland, and

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[5] The trial court in its findings (F. 3, R. 3213) stated that Schine operated 93 theatres in 73 towns, apparently referring only to theatres directly and continuously operated by Schine. There is uncontradicted evidence supplied by the appellants to the effect that Schine then had an interest in at least 150 theatres (Int. Ans. 17, R. 223-245), (appellants' final report of July, 1943, p. 16, R. 274); (hearing of June 17, 1946, R. 3444).

Delaware (F. 3, R. 3213). The appellants control the largest independent[6] motion picture theatre circuit in the United States. In a single season, 1939-40, Schine paid a total of $1,647,000 in film rentals to six major film distributors (F. 3, 4; R. 3213-3214).

From 1920 through 1941, appellants acquired an interest as purchaser or lessee in 175 theatres and, in addition, some 42 separate parcels of real estate for theatre purposes or connected with such purposes (F. 2, R. 3213). Most of this growth occurred after 1931, since which time interests in 118 theatre corporations have been acquired (F. 3, R. 3213).

A tabulation of Schine's expansion since 1928 in terms of open and closed towns follows:[7]

Year	New York		Ohio		Kentucky		Maryland		Delaware		Virginia	
	O	C	O	C	O	C	O	C	O	C	O	C
Aug. 1928	12	14										
Aug. 1935	12	20	3	4								
Aug. 1939	12	26	3	13	3	4	0	5	0	2		
Nov. 1941	11	28	2	15	2	6	2	2	0	2	0	1
July 1943	10	29	2	14	3	5	2	5	0	2	0	1

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[6] This term is used to identify circuits not affiliated with the defendants in the *Paramount* suit, pending before this Court, No. 79, this Term.

[7] Data in this tabulation is based on R. 2572-2575, Defts. I. A. 17-A, 18, and 22 (R. 223-253), and divestiture report of July, 1943 (R. 274), pursuant to May 19, 1942, order. November, 1941, is date of interrogatory information. August, 1939, is date suit was filed.

The foregoing expansion by progressive elimination of competitors was accompanied by the making of express agreements not to compete in the future with the eliminated independents. In Paris (Appendix A, p. 126 128), the independent agreed not to compete for fifteen years in the future although he had never operated the incompleted theatre that Schine acquired or any other theatre in the town. When the same independent sold out in Lexington (Appendix A, p. 62 67), he agreed not to compete for the same period of time in a group of other Kentucky towns in which Schine operated but in which he had never even attempted to operate. In Ilion (Appendix A, p. 57 59) and Malone (Appendix A, p. 84 98), the independents agreed not to compete for ten years in towns within a radius of 35 miles and 20 miles, respectively, although they had never operated outside of those two towns. These agreements obviously had no relation to the preservation of the goodwill of the business sold but were simply intended to protect Schine from competition. This was also true of the agreement taken at Amsterdam (Appendix A, p. 26), where the theatre acquired was promptly dismantled and closed.

In addition to agreements made in connection with outright acquisitions such as those referred to above, independent competition was also eliminated by the use of partnership arrangements whereby all theatres in a town or competitive area would be operated as a unit with management supplied by the independent, the films bought by Schine for a fee under a booking contract, and the profits from the entire operation split between Schine and the independent through an equally divided ownership of an operating corporation. Such pooling occurred in the following towns and the corporations named operated the pooled interest:

Ballston Spa, Mechanicville, Whitehall, and Granville, New York (Benton Schine Corporation); Fostoria, Ohio (Fostoria Theatre Corporation); Wooster, Ohio (Kinney-Mott Corporation and Wooster Theatres, Inc.); Medina, Ohio (Medina-Princess Corporation); Norwalk, Ohio (Norwalk Theatres Corporation); Shelby, Ohio (Schine Shelby Corporation); and Tiffin, Ohio (Schine Tiffin Corporation and Seneca Theatres, Inc.) (Int. Ans. 17-B, C; R. 246). Similar partnership arrangements were originally made at Amsterdam (Appendix A, p. 2) and Auburn (Appendix A, p. 10), New York, Ashland and Delaware, Ohio, through Mamyer Corporation, Schine Ashland Corporation, and Schine Delaware Corporation, respectively, which were later converted into 100 percent Schine operations as a result of the acquisitions of the partners' stock by Schine (Int. Ans. 17A, 19; R. 223-245, 248-252).

The appellants' control over independent competition was further extended by similar pooling agreements made with affiliates of the major distributors. Agreements of this class directly eliminated competition between the appellants and the theatre operations of the distributors involved, and also had the indirect effect of further restricting the opportunity of independent competitors of the appellants in dealing with such distributors. Thus, the Schine-Paramount pool in Lockport (Appendix A, p. ~~75~~ 77) was used as an excuse by Paramount for refusing to deal with Dickinson, and the Schine-RKO pool in Syracuse (Appendix A, p. 160), was directly responsible for the inability of Wallace and Martina to get major product to operate the Strand and Empire in Syracuse, while these theatres were outside the pool.

In addition to such pooling, Schine further extended its control over competitive operations by contracting with theatres in which it had no proprietary interest, as at Harlan (Appendix A, p. ~~52~~ 54) and Bowling Green (Int. Ans. 17-B, 17-C, R. 246) to buy and book their films for a flat fee or percentage of the gross receipts. The effect of such agreements, as in the case of pools, was to augment Schine's buying power and make sure that films were bought for the independent interests involved in a manner which would protect Schine.

In many towns Schine retained possession of closed or partially operated theatres as a means of intimidating competition and monopolizing the film product (F11 (c. i), R. 3217, 3129). The obligations assumed by the appellants in renewing such leases up to May 19, 1942, totalled more than $400,000, as shown by the following table:[8]

Theatres closed	Amount	Theatres Operated Part Time	Amount
Opera House, Kent, Ohio	$18,000	Strand, Bellefontaine, Ohio	$38,400
Opera House, Bellefontaine, Ohio	36,000	Pontiac, Ogdensburg, N. Y	26,000
Crescent, Newark, N. Y	35,200	Hippodrome, Little Falls, N. Y	12,600
Bijou, Piqua, Ohio	12,220	Southern, Bucyrus, Ohio	7,200
Richardson, Oswego, N. Y	58,500	Opera House, Wooster, Ohio	6,000
Temple, Ilion, N. Y	8,750	Hi-Art, Lockport, N. Y	55,000
Opera House, Wooster, Ohio (since 1938).	16,000	Jefferson, Auburn, N. Y	90,000
Roxy, Fostoria, Ohio	7,500		
Total	193,170	Total	243,100
			193,170
		Grand total	436,270

In every competitive town in which Schine operated, except Buffalo and Rochester, N. Y., where the major distributors operated theatres, and possibly in Pikeville, Kentucky,[9] Schine had all or the majority of first run product of the major distributors, year after year, and Schine's competitors were not given an opportunity to negotiate for such product.[10] In numerous situations Schine, through the device of selective contracts, kept films of distributors away from Schine's competitors without being committed to buy or play such pictures.[11]

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[8] Int. Ans. 17, 18, 23 (R. 223–245); Ex. 83 (R. 5193, 2516); Ex. 85 (R. 5195, 2522); Ex. 646 (R. 5212, 1338); Ex. 647 (R. 5214, 1347); Exs. 910–912 (R. 5226–5229, 2514); Ex. 913 (R. 2514—Index p. xl but not printed); Exs. 914–917 (R. 5230–5236, 2514–2515); Exs. 920–945 (R. 5239–5263, 2516–2520); Ex. 947 (R. 5265, 2521); Ex. 960–962 (R. 5266–5273, 2542); Exs. 982–984 (R. 5275–5277, 2567); Ex. 985 (R. 4399, 2568).

[9] The record does not show the product distribution in Pikeville, Kentucky, where Schine acquired a theatre interest in 1939.

John May, one of the individual appellants and a policy-making official of Schine, admitted that it was the definite policy of Schine to acquire all of the first run theatres in any particular community which Schine entered (R. 362-363). The long-term film licensing agreements, called franchises, by which Schine tied the first run exhibition of the major distributors' films to its theatres for several seasons at a time are summarized in the following table:

Distributor	Date approved	Seasons covered	No. of towns licensed	No. of other towns over which clearance is taken	Exhibit No.
Loew..........	Oct. 1, 1936	1936-37 1937-38 1938-39 1939-40	49	67	618 (R. 2524, 3952-4077).
Fox..........	Aug. 5, 1936	1936-37 1937-38 1938-39	44	(1)	F-1—F-123, (R. 1179, 2577-79, 4951, 5906-6056).

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[10] See town summaries, Appendix A, pp. 2–193, and Exs. 122–160 (R. 2537, 5327–5363); Ex. 312 (R. 2604, 3844); Ex. 313 (R. 2537, 3844); Ex. 618 (R. 2524, 3952); Ex. 981 (R. 2547, 5735); Ex. C–181 (R. 1190, 5061–5139); Ex. F–157 (R. 1182, 6089); Ex. P–163 (R. 2605, 3798); Ex. P–213 (R. 1170, 5873); Ex. R–10 (R. 1183, 5806); Ex. U–137 (R. 1191, 4649); Ex. U–207 (R. 1191, 4724); Ex. W–3 (R. 1166, 4429–55); Ex. W–6 (6) (R. 1165, 5741); Ex. W–34 (R. 1167, 4565–4644).

[11] See town summaries, Appendix A, for Amsterdam, Auburn, Corbin, Little Falls, Lockport, Malone, Norwalk, and Rochester.

Distributor	Date approved	Seasons covered	No. of towns licensed	No. of other towns over which clearance is taken	Exhibit No.
Fox	Aug. 10, 1939	1939-40 1940-41 1941-42	58	91	F-125—F-214, (R. 1182, 6067-6145).
Warner	Aug. 22, 1938	1937-38 1938-39 1939-40	56	81	W-3, W-4 (1-90) (R. 1166, 4429-55, 4456-57).
Paramount	Sept. 27, 1940	1939-40 1940-41	59	76	P-168—P-238, pp. 1-10, (R. 5829-5897, 1170).
Columbia	Oct. 17, 1938	1938-39 1939-40	63	[1]	C-100 (R. 1188, 4971), C-101 (R. 1188, 4973), C-102 (1-61) (R. 1189, 4975-5056).
Columbia	Nov. 19, 1940	1940-41 1941-42 1942-43	61	112	C-181 (1-79) (R. 1190, 5061-5139).
RKO	Aug. 15, 1938	1938-39 1939-40 1940-41	58	[2]	R-37 (1-83) (R. 1187, 4866-4948).
Universal	June 27, 1939	1939-40 1940-41 1941-42	69	[3]	U-207 (1-89) (R. 1191, 4725-4813).

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[1] Same as preceding season. These deal sheets referred to clearance on the preceding season's contracts. Such contracts, except for particular town situations, are not in evidence.

[2] Deal sheets—Clearance same as Master Agreement Nov. 20, 1936.

[3] Deal sheets—Clearance not shown.

Agreements establishing blanket terms for the circuit for a single year, called master agreements, were made with Loew for 1940-41 (Ex. 981, R. 2547, 5653-5735); United Artists for 1933-34, 1934-35, 1935-36, 1936-37, 1937-38, 1938-39, 1939-40, and 1940-41; Exs. 121-161, R. 2537-8, 5327-5363 (some not printed but by stipulation may be referred to, R. 3553).

The trial court not only found that each of the major distributors conspired with the appellants to violate Sections 1 and 2 of the Sherman Act, but its findings also contain some reference to specific instances of illicit cooperation (Fs. 9, 11, 16–27, R. 3215–3216, 3217–3219, 3220–3225). Schine's franchises and master agreements with these distributors are alone sufficient to support the findings of conspiracy, but they are also supported by the persistent discriminations in dealing or refusing to deal with Schine's competitors set forth in the town summaries in Appendix A to this brief. These discriminations may be summarized as follows: (1) loss by the independent of an established run without any opportunity to negotiate for its continuance;[12] (2) the independents' inability to negotiate for runs not bought by Schine;[13] (3) subjecting the independent to unreasonable clearance;[14] and (4) permitting Schine's prior run theatres to charge the same or lower admission prices than Schine's subsequent run competitors were bound to charge.[15]

The only factual dispute created by the appellants' brief concerns the precise extent of these effects and the extent to which a particular competitor of Schine was injured by them. Their widespread existence stands undisputed.

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[12] See Bucyrus, Ohio; Watertown, N. Y.; Lexington, Ky.; Auburn, N. Y.; Van Wert, Ohio; Amsterdam, N. Y.; Appendix A, pp. 24–26, 185–191, 62–67, 10–16, 178–184, 2–6.

[13] See Malone, N. Y.; Auburn, N. Y.; Geneva, N. Y.; Little Falls, N. Y.; Appendix A, pp. 84-93 ~~88–93~~, 10–16, 47-51 ~~50–51~~, 68–74.

[14] See Little Falls, N. Y.; Ilion, N. Y.; Watertown, N. Y.; Appendix A, pp. 68–74, 57–59, 185–191.

[15] See Lexington, Ky.; Corning, N. Y.; Appendix A, pp. 62–67, 36–45.

3. The plan of divestiture embodied in the final judgment

The judgment of divestiture entered on July 5, 1946, is not self-executing in this case since it merely outlines a proposed future method of divesting the appellants of certain theatre interests through action of a trustee for sale, who must present every sale to the court for approval upon reasonable notice to the Government and to the appellants "to the end that they may have a fair opportunity to bring to the attention of the trustee and the court such objections as they deem appropriate" (R. 3467). A stay pending appeal has so far prevented the appointment of a trustee and, as a result of the same stay, the appellants have not yet even had to file their election as to the theatres they desire to retain in the situations where the court has ordered the divestiture of all of their theatres except one or two to be selected by them (R. 3468). The towns in which such divestiture is to occur are: (1) 33 small towns in which they may retain one theatre of their selection (R. 3464–65), (2) 4 larger towns in which they may retain two theatres of their selection, and (3) Rochester, New York, where they may elect to retain two of four named neighborhood theatres (R. 3465).

The dissolution of pooling agreements in two small towns may be effected either by return of the theatres to the respective interests contributing them to the pools in question, or by a sale of the appellants' stock in such corporations, and that in Syracuse, with RKO, is made subject to the terms of the decree in the *Paramount* case (R. 3465–3466). The only specific theatre interests ordered divested by the judgment of July 5, 1946 are those remaining unsold under the consent order of May 19, 1942 (R. 3466). The number of theatres to be divested in the 33 towns in each of which Schine is to retain one theatre total 47, and the number in the four towns in each of which it is to retain two, total 9. Assuming that Schine elects to retain the best theatres in these towns, those to be divested will in every case be inferior to those retained, and, in all except three of these towns, one or more of the divested theatres will be those which have been kept closed or operated only on a part-time basis.[16]

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[16] The facts as to the size and operating condition of the theatres in the towns where such selections are to be made are as follows:

1. Towns where all except one theatre is to be sold

Amsterdam, New York: Regent, 925 seats; Rialto, 1380 seats; Strand, 1086 seats; Orpheum. Regent has been operated part-time. Schine acquired control and equipment of Orpheum in 1941 and the theatre was condemned in 1941 (R. 223, 3261).

Ashland, Ohio: Palace, 634 seats; Ashland, 1200 seats; Ohio, 307 seats; Opera House. Opera House was dismantled

There are no directions as to terms of sale of any of these theatres except to sell them "as

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in 1941. Ohio is in part-time operation (R. 233, 3262, 1947 Film Daily Year Book, p. 995).

Athens, Ohio: Athena, 893 seats; Court, 267 seats; Ohio, 299 seats. Court closed part-time (R. 233–234).

Bellefontaine, Ohio: Holland, 1319 seats; Strand; Opera House. Strand has generally been kept closed. Opera House has been kept closed (R. 234).

Bucyrus, Ohio: Bucyrus, 1097 seats; Southern, 450 seats; State, a small theatre. State has been converted to commercial use and Southern has had part-time operation (R. 234, 3266).

Cambridge, Maryland: Arcade, 933 s[illegible]ate, 833 seats; Grand. Grand has been kept clos[illegible]

Canandaigua, New Yor[illegible] seats; Playhouse, 1070 seats. Lake has been kep[illegible]osed (R. 224, 2647–48).

Corning, New York: Fox, 1933 seats; State, 906 seats; Palace, 398 seats. State has been kept closed (R. 225, 243).

Cortland, New York: State, 1632 seats; Temple, 588 seats; Cortland. Temple has had part-time operation. Cortland (Opera House) has been kept closed and leased for commercial purposes (R. 225, 3269).

Delaware, Ohio: Strand, 777 seats; Star, 266 seats. Star has been partially operated (R. 234).

Easton, Maryland: Avalon, 616 seats; Easton, 646 seats (R. 240).

Geneva, New York: Geneva, 1868 seats; Regent, 1055 seats; Temple. Temple was regarded as obsolete and kept closed and replaced by Geneva Theatre, but has been remodeled and reopened. Regent was in part-time operation (R. 226, 3270).

Herkimer, New York: Liberty; Richmond, 891 seats. Liberty has been kept closed and is obsolete (R. 227).

Ilion, New York: Capitol, 1238 seats; Temple. Temple has been kept closed and is obsolete (R. 227).

Kent, Ohio: Opera House, 598 seats; Kent, 943 seats. Opera House has been kept closed (R. 235).

Little Falls, New York: Rialto, 1200 seats; Hippodrome;

rapidly as possible upon such terms and to such purchasers as this court may approve to the end that the theatres disposed of may operate in competition with the theatres retained by the defend-

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555 seats. Hippodrome has been kept closed part-time (R. 227, 228).

Lockport, New York: Rialto, 1484 seats; Hi-Art, 1062 seats; Palace, 1698 seats. Hi-Art has been kept closed part-time (R. 228).

Malone, New York: Malone, 1181 seats; Plaza, 610 seats (R. 228).

Maysville, Kentucky: Russell, 700 seats; Washington, 500 seats; Hollywood, 300 seats. Hollywood has been kept closed (R. 239).

Middlesboro, Kentucky: Manring, 965 seats; Brownie, 418 seats (R. 2391).

Newark, New York: Capitol, 1210 seats; Crescent. Crescent has been kept closed and is obsolete and unuseable (R. 227).

Norwalk, Ohio: Forum, 537 seats; Moose, 838 seats; Norwalk 1111 seats. Forum has been kept closed. Moose has had part-time operation (R. 236).

Ogdensburg, New York: Strand, 1311 seats; Pontiac, 460 seats. Pontiac has been kept closed part-time (R. 229).

Oneonta, New York: Oneonta, 1217 seats; Palace, 866 seats; Strand. Strand was kept closed and has been sold and converted to commercial use (R. 229, 3278).

Paris, Kentucky: Bourbon, 634 seats; Paris, 932 seats. Bourbon has been kept closed (R. 239).

Piqua, Ohio: Piqua, 958 seats; Miami, 712 seats; Bijou, 375 seats. Piqua has had part-time operation. Bijou has been kept closed (R. 236).

Ravenna, Ohio: Ravenna, 375 seats; Ohio, 871 seats. Ravenna has been kept closed (R. 236).

Richmond, Kentucky: Madison, 987 seats; State, 666 seats; Alhambra. Alhambra has been converted into a store. State has been kept closed part-time (R. 239).

Salamanca, New York: Andrews, 735 seats. Schine built ants" (R. 3466). The sales of the remaining unsold theatres under the 1942 order are to be completed within six months, and the remaining sales are to be completed within two years, but both limitations are subject to such extensions with respect to specific sales as the court may grant for good cause shown upon the petition of the trustee or any party (R. 3467).

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and opened another theatre in August, 1942, the Seneca, 1108 seats (R. 231, 3281, 1947 Film Daily Year Book, p. 991).

Seneca Falls, New York: Strand, 943 seats; Seneca. Seneca has been kept closed. Equipment was removed by former operator (R. 231, 3282).

Tiffin, Ohio: Ritz, 1322 seats; Grand, 750 seats; Tiffin, 825 seats. Tiffin has been kept partially open and Grand has been kept closed (R. 237).

Van Wert, Ohio: Van Wert, 802 seats; Strand, 710 seats. Strand has had part-time operation (R. 237).

Watertown, New York: Avon, 1376 seats; Olympic, 1649 seats; Palace, 594 seats. Palace has been kept closed part-time (R. 233).

2. Towns where all except two theatres are to be sold

Auburn, New York: Jefferson, 1100 seats; Palace, 850 seats; Auburn, 1800 seats (R. 223).

Lexington, Kentucky: Ban Ali, 1375 seats; Kentucky, 1257 seats; State, 895 seats; Strand, 1255 seats; Opera House, 1188 seats; Ada Meade, 668 seats. Ada Meade and Opera House were required to be sold under the consent order of May 19, 1942 (R. 238, 258).

Oswego, New York: Strand, 950 seats; Capitol, 696 seats; Oswego, 1704 seats; Richardson; State. Richardson and Oswego have been kept closed and Strand has had part-time operation (R. 229–30).

Wooster, Ohio: Wooster, 1123 seats; Opera House, 1100 seats; Wallace; Wayne, 679 seats. Opera House has had part-time operation. Wallace has been dismantled (R. 237).

The trustee's power is strictly limited to the purposes of sale and he is completely excluded from any part in the operation of the appellants' theatres. No compensation is fixed, but his compensation and expenses are to be paid "in such amounts as the court may from time to time approve, from the proceeds of sales made by him," which proceeds are to be deposited in a special account and disbursed only upon further orders of the court (R. 3467).

The only remaining provision of the plan is the provision for court approval of any future theatre acquisitions by the appellants in the same terms as those decreed by this Court as appropriate in *United States* v. *Crescent Amusement Co.*, 323 U. S. 173, and a restriction against buying or booking films for theatres in which the appellants own no financial interest in substantially the same terms as those approved by the expediting court in *United States* v. *Paramount Pictures, Inc.*, No. 79 before this Court, this Term.

SUMMARY OF ARGUMENT

I

The record here presents precisely the same kind of violations of law as those charged and proved in *United States* v. *Crescent Amusement Co.*, 323 U. S. 173. In both cases the gist of the offenses found was a concerted use of film buying power to expand the theatre operations of a combination of exhibitors by the suppression of the competition that would otherwise be supplied by theatres outside the combination. The main difference between the records made here and there is that here the film buying combination or circuit in question possessed greater buying power and monopolized theatre operations in larger communities. The franchises and master agreements between the appellants and the major film distributors which prevented the independent opposition from competing with the circuit were of the same character and made with the same distributors in both cases. The expansion of the circuit in both cases was further aided by agreements not to compete in the future, taken from competitors who sold out, which were on their face so extensive as to be unrelated to the protection of the goodwill of the business sold. As in *Crescent,* the court here found that the appellants had not only attempted to monopolize, but had actually succeeded in monopolizing the motion picture theatre business in a substantial number of towns by acquiring competing theatres. It also found, in this case, that such monopolization was a product of a conspiracy between the circuit and each of the eight major film distributors to achieve these results. The findings here as to the illegality of appellants' combination were compelled by the application of the legal principles established by the *Crescent* decision to the undisputed facts in this record.

II

The court in this case properly ordered a dissolution, realignment, or reorganization of the appellants' business since the propriety of such relief had been carefully considered and expressly approved by the *Crescent* decision. While the divestiture in the *Crescent* case was limited to stock interests, the divestiture of theatre properties ordered here is intended to have the same effect, that is, diminution of the illegally acquired and used film buying power. In employing a theatre divestiture plan to implement this judgment, the court here reached a far less drastic result that would have been reached by a literal application of the *Crescent* formula of stock interest divestiture, since the stock interests here involved extended to more than 100 separate corporations as opposed to the nine there involved. The plan here, in essence, proposes only to dilute Schine's circuit buying power principally by selling one or more theatres in towns where Schine now has a complete monopoly of all theatre operations or owns all of the first run theatres. The plan also includes the divestiture of theatres which the appellants agreed to sell by May, 1943, under a consent order entered in [illegible]942, but which are still unsold.

The scope and character of the plan is not only squarely supported by the *Crescent* decision, but also falls within the general pattern of plans for divesting assets to restore competition embodied in prior antitrust judgments.

The court properly appointed a trustee to sell all of the theatres involved in the plan, in view of the established failure of the appellants to demonstrate that they could and would make sales as ordered without further judicial intervention. The appointment of a trustee is in accord with established equity practice in antitrust suits and the trustee's powers are so limited and subject to such continuous judicial supervision that no prejudice to the appellants can result from his activities.

III

The other provisions of the judgment merely enjoined Schine from committing in the future specific acts by which it was found to have unreasonably and illegally restricted the competition of other theatre operators in the past. Appellants' challenge to the supporting findings is limited to a showing that certain subsidiary findings are wrong in minor respects. The court's ultimate finding that such violations had been committed is supported by undisputed evidence. Some of the injunctive provisions were in the same form as provisions which were sustained in the *Crescent* case and all are of the kind sustained by prior judgments of this Court.

IV

The documentary evidence challenged by the appellants as improperly admitted was both competent and material. The documents were clearly admissible, both as business records and as statements of persons who "associated themselves together in the prosecution of a common plan or enterprise." *Hitchman Coal & Coke Co.* v. *Mitchell,* 245 U. S. 229, 249. Since the appellants themselves offered testimony purporting to summarize the course of business in question and draw conclusions as to its reasonableness, this underlying evidence as to what the course of business actually was could in no event have been properly excluded from the court's consideration. Even if all of this evidence was found to be erroneously admitted, the unchallenged admitted evidence supports the ultimate findings on which the judgment is based.

ARGUMENT

I

THE APPELLANTS' VIOLATIONS OF THE SHERMAN ACT ARE CONCLUSIVELY ESTABLISHED BY THE APPLICATION OF THE CRESCENT DOCTRINE TO THE UNDISPUTED FACTS

The basic pattern of illegal acquisition and use of circuit buying power charged and proven here is identical with that disclosed in *United States* v. *Crescent Amusement Co.,* 323 U. S. 173. The principal difference between the record there and here is that in this case the appellant combination was not merely a large circuit, but the largest domestic circuit of exhibitors not owned by a major distributor, and that the illegal discriminations in question occurred in larger towns spread over a wide area. Schine's use of film franchises made with the major distributors was similar to *Crescent's,* but correspondingly more extensive.

As in *Crescent,* the appellants were shown to have combined the film purchases of numerous theatres in which they own entire or partial financial interests, located in both closed [17] and open towns, for the purpose and with the effect of excluding smaller theatre operating competitors from any opportunity to license major films upon a competitive basis. 323 U. S. at 179; see *supra,* pp. 21–22. The film licensing restrictions so imposed on these competitors were similarly effective in inducing a substantial number of them to sell out to, or merge their theatre interests with, the appellants. 323 U. S. at 181; see *supra,* p. 23.

The actual theatre operating monopolies [18] which such acquisitions frequently produced, were further cemented, as in *Crescent*, by the making of agreements not to compete in the future with the former operators, which, as in *Crescent*, in some instances not only excluded the former competitor from the motion picture theatre business in the town in which the business sold had been operated for a number of years, but also from the motion picture business in the wider areas in which the appellants operated theatres, 323 U. S. at 181; see *supra*, p. 24. Such express agreements in each case afforded conclusive evidence that the purpose of the appellants was not so much the protection of the goodwill of the business acquired as exclusion of the seller from the business at any point where he might offer competition to the appellants. 323 U. S. at 183; *supra*, p. 24.

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[17] Towns in which all of the motion picture theatres are under common ownership or management.

[18] Towns in which film licensing discriminations were followed by acquisitions which eliminated all theatre operating competition were Amsterdam, Bellefontaine, Corbin, Geneva, Fostoria, Lexington, Little Falls, Lockport, Malone, Medina, Mt. Vernon and Norwalk. See Appendix A, *infra*, pp. 2–6, 16–23, 30–35, 50–51, 52–53, 62–67, 68–74, ~~75–84, 85–93, 95–102~~, 104–107, 109–155. 74-83, 84-92, 94-102

While the variety of supplemental devices used to restrict theatre operating competition, such as threats to reopen closed theatres or construct new ones, etc., was wider than that disclosed in *Crescent* they were of essentially the same character. Apparently the only distinction asserted by appellants between the general character of the evidence in this record and that in the *Crescent* record is that there some of the corporate appellants were only partially owned by the principal corporate appellants, while here the appellant corporations are a unified whole since each corporate appellant is a wholly owned subsidiary of the principal corporate appellant

(Br. 70–71). Viewing the film licensing activities of the appellants in both cases as a whole, there is no significant factual difference, since these appellants' financial interests in the theatres for which Schine bought films were also only partial in a number of instances. See *supra*, pp. 20–21. In any event, this Court has but recently held that "the common ownership and control of the various corporate appellees are impotent to liberate the alleged combination and conspiracy from the impact of the Act. A restraint may result as readily from a conspiracy among those who are affiliated or integrated under common ownership as from a conspiracy among those who are otherwise independent." *United States* v. *Yellow Cab Co.*, 332 U. S. 218, 227; see also *General Motors* v. *United States*, 121 F. 2d 376, 404 (C. C. A. 7), certiorari denied, 314 U. S. 618, rehearing denied, 314 U. S. 708.

The appellants' chief contention with respect to the question as to whether they have violated the Sherman Act seems to be that the trial court's ultimate conclusion of guilt was in error because it made errors in subsidiary findings of fact relative to some of the discriminations in specific competitive situations, which were allegedly induced largely by improperly admitted evidence (Br. 86–214). The propriety of admitting the evidence in question is shown in a later section of this brief.[19] We shall turn now to a brief discussion of the evidentiary support for the trial court's findings of fact and conclusions of law.

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[19] See *infra*, pp. 92–98.

Paragraphs 2 and 3 of the conclusions of law (R. 3226) are the ultimate conclusions of the trial court that the appellants violated Sections 1 and 2 of the Sherman Act by monopolizing, attempting to monopolize, combining and conspiring unreasonably to restrain trade and monopolize the business of operating theatres and the supplying of major films. Paragraph 4 of the conclusions of law (R. 3226–3227) lists means used by the appellants to achieve these ends. The conclusions are plainly supported by the findings of fact (see especially findings 1 to 15, R. 3212–3220; and we are content to rely entirely upon our statment (*supra,* pp. 21–30) and the town by town summary of the evidence in Appendix A (*infra,* pp. 2–193) to demonstrate that these findings are amply supported by competent evidence. It is sufficient to note here that assuming the exclusion of all of the challenged documentary evidence, the remaining documentary evidence and undisputed oral testimony would have compelled the same ultimate findings as to liability, since, as in *Crescent,* this other evidence

> established the position of the distributors and their relations to the theatres involved, what the distributors in fact did, the combination of the defendants, the character and extent of their buying power, and how it

> was in fact used. This other evidence was sufficient to establish the restraints of trade and monopolistic practices; the purpose, character, and extent of the combination are inferable from it alone. Thus even if error be assumed in the introduction of the letters and reports, the burden of showing prejudice has not been sustained. (p. 184.)

The defense in this case paralleled the defense in the *Crescent* case in endeavoring to show that the appellants had superior financial and other resources which would, in any event, have enabled them to triumph over their independent opposition without resort to the illegal restraints they admittedly did employ for this purpose (Br. 33-35). They also rely upon the fact, conceded in *Crescent* and here, that the illegal restrictions did not, in any case, prevent the opposition theatres from securing a supply of inferior film adequate to keep them open on some policy (Br. 214). The restraints in both cases were thus only partial restraints in the sense that they were limited to the prevention of a competitive distribution of the best available films on the best runs, and that this was only one among several factors tending to hamper the ability of the opposition theatres to stay in business against Schine. Nothing has been shown to suggest any reasons why these defenses, which were carefully considered and rejected in *Crescent* (323 U. S. at p. 183) should prevail here. Thus we will address the major portion of this brief to the form and extent of the divestiture relief granted because we deem that to be the only question here presented which is of sufficient substantiality to justify a review of this case by this Court.

II

THE TRIAL COURT'S PLAN OF DIVESTITURE IS A PROPER METHOD OF DEALING WITH THE APPELLANTS' MONOPOLY POWER

The main questions raised by the appellants as to the propriety of the divestiture relief in this case are, first, a claim that the court was wrong in ordering any dissolution, realignment, or reorganization of the appellants' business whatsoever, and second, that assuming the validity of such an order, the means chosen by the district court to implement it were too drastic. We propose to show in the ensuing argument that the order of dissolution, realignment, or reorganization was a necessary consequence of the particular violations found, and that the plan chosen by the court to make its general direction effective is open to question only upon the ground that it may not in fact be sufficiently stringent to achieve its lawful purpose.

A. A judgment of dissolution, realignment, or reorganization is well established judicial relief against monopoly power such as appellants were found to possess

The trial court made its order of divestiture with full knowledge of the injunctive relief it had already granted, as well as the injunctive relief established by the expediting court's decree in the *Paramount* case, which necessarily would affect trade practices in the industry generally. It apparently felt, we think rightly, that these injunctions could not afford the necessary relief in this case. In reaching this conclusion, the court was simply following this Court's decision in the *Crescent* case. As we have already shown, the nature of the offenses in the present case and in the *Crescent* case is precisely the same. In each the defendants had combined and by the same technique acquired an unlawful monopoly power. Since the propriety of the dissolution relief was expressly considered and approved in that case, the granting of similar relief in the present case was virtually compelled. In disposing of the *Crescent* defendants' argument against the dissolution granted there, the Court noted that dissolution of unlawful combinations created in violation of the Sherman Act was routine relief. But the appellants here suggest that since the cases cited in the *Crescent* opinion in support of this proposition (p. 189) dealt with specific mergers or stock acquisitions which were found to be illegal when made, this is the only kind of combination subject to dissolution relief. They say that *Crescent* is such a case and *Schine* is not because there is no proof that Schine Chain Theatres, Inc. illegally acquired its stock control of the other corporate appellants.

The appellants' argument, that the form of the unlawful combination or the particular manner in which it was created could be a defense to dissolution, cannot survive the immediately following explicit language of the *Crescent* opinion (323 U. S. at 189–190):

> Those who violate the Act may not reap the benefits of their violations and avoid an undoing of their unlawful project on the plea of hardship or inconvenience. That principle is adequate here to justify divestiture of all interest in some of the affiliates since their acquisition was part of the fruits of the conspiracy. But the relief need not, and under these facts, should not be so restricted. The fact that the companies were affiliated induced joint action and agreement. Common control was one of the instrumentalities in bringing about unity of purpose and unity of action and in making the conspiracy effective. If that affiliation continues, there will be tempting opportunity for these exhibitors to continue to act in combination against the independents. The proclivity in the past to use that affiliation for an unlawful end warrants effective assurance that no such opportunity will be available in the future.

The approach to divestiture relief reflected in the foregoing language was necessary to sustain the *Crescent* judgment because that judgment was not limited to divesting Crescent's stock in other defendant corporations which was found to have been illegally acquired, but was extended to divestiture of defendants' stock interests in other non-defendant corporations for which Crescent had merely bought film and which together with the defendant Crescent formed the illegal film buying combination. Another defendant in that case, also a member of the combination, was Rockwood Amusement Company, which had no stock affiliation with Crescent, but was tied to it by common film buying and a mere community of interest. Rockwood was also effectively divorced from Crescent, although there was no suggestion that any illegality attended the origin of this community of interest. Thus, the *Crescent* opinion and holding stand unequivocally for the proposition that it is both proper and necessary to do more than merely grant negative injunctive relief against an illegal film buying combination which has achieved and has exercised monopoly power,[20] and that in granting such relief, a court is not bound to limit itself to the disruption or dissolution of ties which were themselves illegal when created.[21]

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[20] Such a judgment would merely preserve the status quo of the defendants' illegal monopoly by judicial decree. As was said in a well known divestiture case, "the mere removal of incidental evils and practices would tend to legalise the monopoly." *United States* v. *Eastman Kodak Co.*, 230 Fed. 522, 523 (W. D. N. Y.), appeal dismissed, 255 U. S. 578.

In entering its preliminary judgment in this case the court deliberately gave the parties the greatest possible flexibility in working out an adequate remedy for dealing effectively with the monopoly power of the appellants' combination by not limiting such relief to dissolution. Had the *Crescent* formula of dissolving the unlawful combination by complete separation of the various corporate entities involved been literally applied here, the result would have been wholly to dismember the appellants' circuit, since its theatre holdings were distributed among more than 100 corporations as against the nine involved in *Crescent.* The alternative form of the district court's order deliberately invited a less drastic solution of the problem presented by Schine's combination, and the Government accordingly submitted one which was necessarily different in its mechanics from the *Crescent* plan because of differences in the form of the Crescent and Schine combinations. Since the plan adopted does not dissolve the appellants' combination, but merely envisages a possible neutralization of the appellants' circuit buying power by sales of theatres in towns where they hold a dominant position as theatre operators, it may be open to criticism as inadequate to perform the task traditionally assigned to such plans by the past decisions of this Court, but it was clearly within the general pattern of past antitrust judgments dealing with similar combinations.

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[21] In *United States* v. *Pullman Co.*, 50 F. Supp. 123, 53 F. Supp. 908 (E. D. Pa.), affirmed on other grounds, 330 U. S. 806; the Court did not hold that the combination of the three related companies was itself the violation found, but that the monopoly power exercised through the combination had to be broken up by a divorcement of the combined interests. But in any event, appellants assert that dissolution or divestiture cases fall into two classes (a) cases in which monopoly has been found to be vested in and exercised by a single corporation and (b) cases in which monopolies or restraints have been carried out by a combination, where the combination itself has been found to be in violation of the Act. We deny the relevance of such a classification. But in any event appellants contend that they are a single business entity (App. Br. 4). If this is so, Schine should come within classification (a). The court found (Concls. 2, 3, R. 3226) that appellants violated Sections 1 and 2 of the Sherman Act "in that they have maintained an unlawful combination among themselves by means of which they have unreasonably restrained trade * * *"; and that they "have maintained an unlawful combination among themselves and with their affiliated corporations and have monopolized * * * through the unlawful combination * * *." These conclusions are broader than the corresponding conclusions (Concls. 10, 11) in the *Crescent Amusement* case, and if the *Crescent* case belongs in (b), as put there by appellants, room should be made to include this case.

B. *The plan of reorganization approved by the court was a proper exercise of its power to implement section III of its judgment*

1. *The sole ground on which the court's plan is open to criticism is its failure to give positive assurance of any substantial diminution of the appellants' buying power.*—The plan of divesti-

ture adopted by the trial court is intended to dilute Schine's buying power by creating opportunities for competition with Schine, but, even when fully executed it would still leave Schine in a preferred competitive position in every town in which it operates. In at least 17 of the 33 towns in which Schine is required to divest itself of all except one theatre, it owns only two, and in a substantial number of these towns one of the two has been kept closed for substantial periods of time or operated on a weekend or other part-time policy.[22] In 25 of these towns, most of the theatres Schine would have to dispose of are of this sort, and in most of them the difference in seating capacity and in physical condition between Schine's best theatres and the other theatres is substantial. See, *supra*, pp. 32–35. Thus, the only opportunity that the plan adopted by the court presents to potential purchasers of the theatre sold is a chance to operate an inferior theatre with an inferior policy or no past actual operating policy in competition with superior theatres with an established policy, owned by a powerful circuit which still retains a number of closed one-theatre towns. Whether or not such an opportunity will actually result in the creation of operating competition against Schine in any of these towns is at this moment wholly speculative.

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[22] Appellants describe such theatres as "marginal or submarginal" theatres (App. Br. p. 4).

The plan submitted by the Government not only contemplated the disposition by the appellants of many more theatres than the court ordered sold, but was also intended to remove the important competitive advantage which the court's plan permits the appellants to retain through continued ownership of the only theatre in each of 17 towns. The court apparently rejected such divestiture on the assumption that it would have penal characteristics not present in the divestiture of some theatres while permitting the appellants to retain one or more others in the same community. The asserted justification for divestiture of these one-theatre closed towns was wholly remedial in that such towns, in Schine's hands, represented a continuing threat to competition throughout the circuit in view of the past extensive use of such closed situations to secure unfair advantages where competition existed. Under the Government's plan, it was contemplated that in those towns theatres would henceforth be operated by owners who would be dependent for success upon their skill in theatre operation [23] rather than upon arbitrary control of the major film supply. Schine's removal from these towns would thus have opened these towns to potential competition if the new venture failed to meet their entertainment needs and a substantial reduction in appellants' buying power would have been assured since a theatre in any one of these towns is obviously a more attractive purchase than any of the sales contemplated in the plan adopted.

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[23] Appellants' statement in their brief, p. 34, that the towns Schine went into were, by and large, towns which no other "skilled" theatre operator had gone into has no support in the record.

In an effort to diminish Schine's domination in certain local areas maintained by the concentration of Schine's buying power in such areas and by clearance restrictions over other towns in the vicinity,[34] the Government's plan also proposed to require Schine to elect, as to each group of towns within 25 miles of another, in which one it desired to remain as a theatre operator. The court also rejected this provision.

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[34] Aside from the undisputed fact that in many towns Schine had all the theatres, the record shows large area concentration of theatre holdings. This fact, as pointed out to the court below, was the very basis of part F of the Government's plan of divestiture (R. 3237–3238). In the northwestern and northeastern parts of New York State, Schine has theatres in most towns of substantial size. Schine has theatres in the following counties in that area: Niagara, Erie, Cattaraugus, Wyoming, Monroe, Wayne, Ontario, Yates, Steuben, Seneca, Cayuga, Onondaga, Cortland, Chenango, Oswego, Jefferson, St. Lawrence, Franklin, Otsego, Herkimer, Fulton, Warren, Saratoga, Montgomery, and Washington. A glance at an atlas will readily disclose the contiguity of the area and its size. It has all or most of the theatres in the county seats of the following counties in that area: Niagara, Ontario, Steuben, Yates, Cayuga, Cortland, Chenango, Herkimer, Franklin, Jefferson, and Washington. In Ohio, appellants' theatres are for the most part concentrated in the north central part of the state and in almost all of the county seats in the counties where they are located. In Kentucky, Schine's holdings are concentrated in the eastern part of the state and are in most of the county seats in that area and in Maryland on Maryland's eastern shore (R. 223–245).

We prosecuted no appeal from the court's decision since we felt that the choice made was within its discretion and that if in actual practice the plan failed to achieve the result intended, the measures which would achieve it might be adopted upon a proper showing at a later date. If, however, this Court should undertake to recast the terms of the plan now in effect, we respectfully submit that consideration should be given to the plan advanced below by the Government and the supporting reasons for its adoption there presented (R. 3239–43).

The appellants assert that even the limited divestiture which the court below contemplated was imposed as a penalty (App. Brief 57–59). The short answer to this assertion is the court's own affirmation of its motivation in its opinion of July 5, 1946, in the following language:

> The purpose of this and like suits by the government, under its announced policy, is not for the purpose of penalizing defendants but rather the "Restoration of free enterprise and open competition amongst all branches of the motion picture industry." In order to effectuate this policy the divestiture of theatres, as here-

inbefore stated, is deemed necessary.[28] (R. 3462, 3463–64.)

2. *The appellants' failure to offer the court a bona fide plan for dissolving the combination left the court with no practical alternative but the adoption of a plan of reorganization intended to neutralize the illegal combinations' monopoly power.*—In inviting the parties to submit plans for effectuating Section III of its judgment and providing for the submission of objections by each to such plan as the other proposed, the trial court was following procedure calculated to give the appellants' the maximum opportunity to secure a solution of the problem presented in terms favorable to them. If any action was to be taken with respect to the complex corporate organization of the appellants by way of a redistribution of assets among them or creation of new corporations to receive and operate such assets, the cooperation of the appellants' would normally be

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[28] This, we submit, in itself would suffice to repudiate appellants' claim that the court gave relief of divestiture as a penalty. The appellants apparently have fixed upon a casual remark made by the court in the course of the colloquy between him and appellants' counsel at a hearing on May 28, 1946 (R. 3386). The remarks of the court at other points during that same hearing (R. 3383–3415) make it clear that it did not have in mind divestiture as a penalty. The particular remark made by the court to which appellants have referred was made with reference to the towns where Schine had only one theatre, as to which no divestiture was decreed.

indispensable, since the adoption of any such plan would generally involve decisions which the appellants themselves would have to make before the court could act intelligently.

The original position of the appellants in this case was that they would submit no plan whatsoever because they felt that any dissolution, realignment or reorganization would be improper and result in a reversal of the judgment by this Court. They relied on this position and their objections to the plan proposed by the Government until after the time fixed by the court below for submission of plans had expired. In a last minute reversal of this prior position, appellants finally submitted an alleged plan of dissolution which, on its face, broke their circuit into three parts, for each of which the film buying would be carried on separately. Unity of ownership was, of course, unbroken by the proposed transfer of two of its three parts to each of the wives of the two principal individual appellants, and this plan could scarcely have been regarded as a bona fide compliance with the direction in Section III of the court's judgment even if submitted at an earlier date. The plan did nothing but change the form of the appellants' control of the combination without in substance dissolving, realigning or reorganizing the combination in any way which would carry out the court's announced objective to restore and maintain fair competition between the appellants' theatres and others in the future.[20]

In such circumstances, the court's consideration of a plan was, as a practical matter, necessarily confined to one of the general character submitted by the Government. This plan was conceived in terms of theatre divestiture under judicial supervision rather than internal corporate reorganization. Having given the appellants every opportunity to devise a plan of a different character, the court was clearly not bound to evolve a third type of plan when the appellants failed to offer one adequate to perform the assigned task, and its failure to do so certainly was not an abuse of discretion.

3. *In adopting a plan of theatre divestiture, the court was bound to look to future competition with the circuit as a continuing combination.*—The violations found were not isolated instances of illegal theatre acquisitions in specific localities. On the contrary, they were based upon a buying power derived from the size of the circuit as well as possession of a number of closed towns, used to obtain maximum competitive advantages in every town in which the circuit operated. Under those circumstances the primary duty of the court was to neutralize that power. It was es-

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[20] Appellants' plan appears to be similar to that unsuccessfully used by Standard Oil to avoid the effects of an adjudication of violations of state antitrust laws. See *Standard Oil Co. v. United States*, 221 U. S. 1, 38–40.

sential, therefore, that any plan of divestiture should view the circuit as a whole rather than its position in any particular town. Once the court decided to allow appellants to continue to function as a unit, it was obviously necessary to approach the problem of restoring the opportunity to compete with the appellants' circuit, as such, by diminishing the power of the circuit as a whole to control the exhibition of films in any town. The court was, therefore, fully justified in adopting a plan intended to create competition for the circuit generally rather than in specific situations with which the evidence had dealt.[27] In this light there is nothing anomalous about the court's ordering divestiture in towns where specific predatory practices had not been shown. Such treatment was particularly appropriate here since the court permitted the appellants to retain theatres which would have been divested upon any theory of divestiture as a remedy appropriate to particular theatre situations in which the evidence had shown specific predatory practices.

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[27] The court's own experience with the consent order of 1942 was a fairly conclusive demonstration that competition which would substantially neutralize the circuit buying power of the appellants' combination could not be achieved by efforts to restore to their former position specific competitors of Schine who had been unlawfully eliminated from the business. Of the ten former operators of theatres acquired by the appellants subsequent to the filing of the suit who were given the opportunity to repurchase their theatres, and resume competition with Schine, only two availed themselves of this privilege.

The court's primary concern in adopting a plan of divestiture was properly with ensuring future competition, not with redressing past wrongs. The latter is the primary function of an action at law for damages; the former the primary function of an equity proceeding such as that at bar.

This Court has recently held that an antitrust decree should properly "deal with the future economic condition of the enterprise as well as past violations." *International Salt Co.* v. *United States,* 68 Sup. Ct. 12, 17, fn. 10. The plans for divesting assets approved in prior antitrust judgments have frequently placed them in the hands of new owners for the express purpose of creating new competition. Where this has been done, the defendants' control of these assets has been regarded as sufficient basis for the court's action without reference to illegality attendant upon their acquisition or prior use. See discussion of the *Crescent* case, *supra,* pp. 48–50.

In *United States* v. *American Tobacco Co.,* 221 U. S. 106, the Court directed the entry of a decree dissolving the combination and creating from the elements of the dissolved combination a new condition "in harmony with * * * the law" (p. 187). The judgment entered redistributed the business properties of the illegal combination in a manner calculated to create competition. 1 Decrees & Judgments in Federal Anitrust Cases 162, 165. There is nothing in the opinion or judgment to suggest that the redistribution was limited to parts of the combination found to be infected by any illegality more specific than their prior existence as a part of the unlawful combination.

In *United States* v. *Corn Products Refining Co.*, 234 Fed. 964 (S. D. N. Y.), the judgment provided that the "combination shall be forever dissolved, and to that end and in order to restore competitive conditions and to bring about a situation in harmony with law, the factories, business, and assets of the Corn Products Refining Company shall be divided in such manner and into such parts of separate and distinct ownership as shall be necessary for that purpose." 1 D & J 440, 443. The final decree provided that only persons or corporations intending to continue the business should be eligible as purchasers of the plants divested for this purpose." 1 D & J 433.

In *United States* v. *Cement Securities Co.* (D. Col., Eq. No. 7295, 1922) a judgment entered on December 13, 1924 decreed that the combination was unlawful and should be dissolved and, to that end, that the plants, business, and assets of Cement Securities Co. should be divided into separate and distinct ownerships, so as to bring about competitive conditions and a situation in harmony with the law. It was required that the defendants' interest in a plant and one-half interest in six acres of land containing raw material deposits at Concrete, Colorado, be disposed of with reasonable diligence and subject to the approval of the court to a person, firm, or corporation intending to continue the business.

In *United States* v. *International Harvester*, 274 U. S. 693, 705; 1 D & J 337, 339, the Harvester Company was required to divest itself of almost five thousand retail dealerships in order to enable other manufacturers to secure retail outlets so as to be able to compete with Harvester.

The foregoing cases show that divestiture plans looking to the creation of future competition are an established form of relief. While they do not exhaust those which have actually divested assets to create competition, they seem adequate to refute the unsupported assertion at page 50 of appellants' brief that the courts "have never ordered the divestiture of property for the purpose of 'creating competition'." *Hartford Empire Co.* v. *United States*, 323 U. S. 386 and *United States* v. *National Lead Co.*, 332 U. S. 319, are cited by appellants at the same page for the proposition that divestiture will not be ordered where injunctive relief alone is sufficient, but in both those cases divestiture, in the only sense in which it has been ordered here, was also ordered. The defendants in those cases were not compelled to offer their patents free, but they were compelled to make them available to all comers for a reasonable royalty to be fixed by the court. They were thus actually divested of the patent monopoly privileges they had previously enjoyed and they were so divested with respect to some patents possessing no taint of illegality except actual or possible inclusion in the defendants' unlawful combination.[28] If the plan approved in this case purported to divest Schine of its theatres without any compensation, it might present a parallel to the royalty-free licensing relief rejected in those cases, but there is not the slightest suggestion in any action of the court below that any theatre must be sold for less than a price reasonable under all the circumstances.

4. *The appointment of a trustee to execute the plan of divestiture is not prejudicial and is fully justified by the appellants' record under the consent order and established equity practice.*—Appellants object to the appointment of a trustee to carry out the divestiture provisions of the court's order. Since the trustee's powers are strictly limited to negotiating sales, there can be no prejudice to the appellants from such an appointment, unless more vigorous effort to sell the theatres

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[28] In *Hartford-Empire Co.* v. *United States*, 323 U. S. 386, the defendants had control over a large number of patents through which they dominated the glass container industry. With respect to many of such patents, there was no evidence of particular wrongdoing; many of the patents were issued on applications of defendants' own inventors. There was proof of combination with other patents in the creation and exercise of monopolistic power. This Court ruled that the defendants should be divested of their right of exclusivity not only as to all the patents in the pool, but also as to future patents.

than would be made by a party having a substantial financial interest in not selling them is regarded as prejudicial. The court's judgment that a representative of its own was essential to make the plan work was based not only upon the record made at the trial but upon a pre-trial record partially summarized at pages 5-12 of this brief, showing reluctant [29] and unsuccessful efforts by the appellants to dispose of theatres they agreed to sell under the 1942 consent order. The unfulfilled obligation of the consent order made it necessary for the district court to appoint a trustee in any event to divest the appellants of those theatres acquired after the suit was filed which they had agreed to sell by May 19, 1943, but which were still unsold when the judgment in this case was entered.

The trial court, on the basis of its own experience with the appellants' "voluntary" efforts to sell theatres, was entitled to exercise its discretion to appoint a trustee, not only to give assurance that its order would be carried out expeditiously, but to avoid repeated litigation as to whether or not the appellants had honestly attempted to make sales which they had not the slightest financial incentive to make. In framing final relief in this case, the established inability of the appellants to make sales by voluntary means over an extended period of time pointed clearly to the necessity for the appointment of an officer of the court to perform this task.

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[29] For appellants' position with respect to the burden imposed upon their organization by the duty themselves to sell the theatres named in the consent order, see R. 284-286.

The provisions for the sale of theatres are eminently fair to the appellants. Before a sale is made, it must be approved by the court. The parties are given an opportunity to present objections of any nature to the trustee and to the court. The trustee is to be paid out of the proceeds of the sales.

A court of equity has inherent power to appoint a receiver or other court officer to carry out its decrees (*Wiswall* v. *Sampson,* 14 How. 52, 63) and in antitrust cases it is well settled that, where circumstances warrant, receivers or other officers of the court may be appointed to carry out the decrees of the court. *United States* v. *Union Pacific R. Co.,* 1 D. & J. 208, 217; *Columbus Packing Co.* v. *State,* 100 Ohio St. 285, 126 N. E. 291 (1919). See *United States* v. *American Tobacco Co.,* 221 U. S. 106, 188; *United States* v. *Great Lakes Towing Co.,* 217 F. 656, 659 (N. D. Ohio), appeal dismissed, 245 U. S. 675.[30]

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[30] In a number of unreported antitrust cases, court officers have been appointed to dispose of the property of defendants. Under paragraph 4 of the consent decree entered on February 27, 1920, in *United States* v. *Swift & Co.* (S. Ct. D. C. Eq. No. 37623), Swift & Co. was required to dispose of its interests in any plants or manufacturing establishments engaged in producing or dealing in any of the commodities enumerated in that paragraph. The defendants susequently asked for an extension of time and the United States filed an answer requesting the appointment of a trustee to take possession of

5. The procedure by which the plan was evolved was fair to the appellants and their claim of a stale record is without merit.—Appellants urge that divestiture was decreed on a stale record and that the trial court should have taken testimony as to the current competitive situation in each of the towns in which divestiture was ordered. There is no merit in this suggestion.

The claim of staleness based upon lack of evidence in the record as to the up-to-date competitive situations in each of the towns affected has no application to the theory on which the court has proceeded. The plan adopted by the court was by its terms not intended to remedy specific competitive evils in the communities directly affected. It was intended to offer assurance that there would be a fair opportunity to compete with the combination in the future in any area in which it chooses to operate. In essence, the court required Schine to divest itself of at least one theatre in those towns where Schine had at least two theatres and had either a com-

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the stockholdings of the defendants in such plants or manufacturing establishments for the purpose of disposing of the same. The court denied defendants' petition and granted the Government's request for the appointment of a trustee. Similar orders were made in the same case with respect to other property. In *United States* v. *Reading Co.* (E. D. Pa., Eq. No. 1095), the court, in a decree of June 6, 1921, appointed trustees to take certain steps to carry out the decree. Trustees were also appointed to dispose of certain stock interests of the defendants in *United States* v. *Fox Theatre Corp.* (S. D. N. Y., Eq. No. 51112).

plete monopoly of all theatres in the town or a complete monopoly of all first-run theatres. Thus the court sought to restore competition in each of the more sizeable monopolized towns, while leaving Schine undisturbed in communities in which the only theatre was owned by Schine.

The court's decision in which it directed the entry of a judgment embodying a plan of dissolution, reorganization, or realignment was rendered in October, 1945, and the judgment embodying the plan was not entered until July of the following year. In the meantime, the appellants had been given repeated opportunities not only to be heard with respect to their objections to the plan proposed by the Government but in support of a plan of their own, notwithstanding the fact that no such plan was even offered by them until May, 1946. Under these circumstances, their complaint that the record was too stale to permit a proper plan to be put into effect seems not *bona fide* but designed to prolong evasion of adequate relief.[31] If the procedure advocated by them were adopted, that is, appointment of a master to take testimony with respect to each of the towns in which divestiture was ordered, the final judgment would be rendered even more remote from the trial on the merits.

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[31] The reliance on the *Paramount* consent decree (App. Br. 62) is obviously without merit since that decree was entered in 1940, before the *Crescent* case was decided, and was superseded, in 1946, by a litigated decree now before this Court in Nos. 79–86, this Term.

On April 1, 1946, the appellants filed a lengthy document entitled "Defendants' Objections to Plaintiff's So-Called Plan of Reorganization" (R. 3243–3311). In it the appellants discussed the situation with respect to the towns in which divestiture was ordered. They discussed the existing situation, in some instances representing to the court changes which had occurred since the trial and historical facts not brought out at the trial. The Government did not object to this presentation, although its accuracy in several respects was challenged (R. 3311–3329). These objections show the nature of the evidence Schine proposed to introduce (Cf. R. 3381). None of it suggested any substantial change in the extent of the circuit's buying power or in the theatre situation in any particular town. Therefore, even if all the additional purported facts presented therein were true, they would not call for any change in the order of divestiture.

Insofar as future competitive developments in any of the towns in which divestiture was ordered may become relevant to the disposition of the theatres involved, the court's appointment of a trustee for sale, with each sale subject to court approval, is the only method by which up-to-date information as to the competitive situations affected could be made available to the court without protracted litigation. Even so, the unlimited opportunity granted by the terms of the order to the appellants to object to every sale on any ground will not prevent the appellants from attempting to litigate the issues foreclosed by the court's decision every time a sale is proposed, if past experience is a reliable guide. No attempt to foreclose the mere possibility of such litigation was proposed by the Government since the plan's success must depend, in any event, upon judicial firmness in execution, which no procedural rules can supply.

We submit that litigation must have an end and that vague claims of changed conditions do not merit the reopening of a judgment at any time, let alone within a few years after it has been entered. *Chase Nat. Bank* v. *Cheston,* Nos. 178-193, this Term. If the contrary were true, final judicial disposition might often be prevented altogether by the mere fact that it takes time. Cf. *I. C. C.* v. *Jersey City,* 322 U. S. 503, 514-519, and cases cited; *United States* v. *Pierce Auto Freight Lines,* 327 U. S. 515, 534-536. We think it clear that if the appellants have any substantial claim of exoneration from the decree with respect to any particular theatre or town, they are at liberty to invoke the trial court's reserved powers under the decree (R. 3230) for consideration of such claim. We know of no basis for any such claim.

6. *The trial court properly restricted future acquisitions of theatres by Schine.*—Paragraph III of the trial court's order of July 5, 1946, pro-

hibits [illegible] defendant from acquiring "a financial interest in any additional theatres except after an affirmative showing that such acquisition will not unreasonably restrain competition" (R. 3467). In this case, as in the *Crescent* case, acquisition of theatres was a primary element in the growth and misuse of the appellants' buying power, as well as a means of eliminating and deterring competition. In that case, the Court held that the district court there erred in denying this form of relief upon similar findings of violations and its inclusion in the judgment here was compelled by that decision.

III

THE INJUNCTIVE PROVISIONS ARE ALSO PROPER AND NECESSARY ELEMENTS OF RELIEF

Appellants have assigned as error each of the injunctive provisions in the court's judgment on three identical grounds (Assigns. 100–110, R. 3499–3501). They say, first, that the injunctive provisions are not warranted by the evidence; second, that they are too general and indefinite in their terms; and third, that they are broader in scope than is appropriate. We consider, seriatim, the several injunctive provisions in the light of these contentions.

A. *Monopolization of first or second run product*

Paragraph 1 of Section II of the judgment prohibits the appellants from monopolizing the supply of major first-run films in any situation where there is a competing theatre suitable for first-run exhibition thereof, and from monopolizing the supply of second-run films in any situation where there is a competing theatre suitable for second-run exhibition. This provision was responsive to the court's findings, among others, that the appellants arbitrarily deprived independents of first-run and second-run features; that this was a principal means by which Schine obtained its unlawful monopoly; that Schine was able to monopolize first-run in a number of towns and first neighborhood runs in Rochester; and that, in a number of instances, it used its monopoly control of film product to induce a competitor to sell out to it (Fngs. 8, 9 (a), 11 (e), 11 (g), R. 3215–3219).

In an effort to refute these findings, appellants explore at length in their brief (pp. 94–137) the situation with respect to product in some sixteen competitive towns as to each of which the district court found that Schine had fully or partially monopolized product to the exclusion of Schine's competitor. Invariably, the explanation is offered that Schine and the independent each competed for product and that in the competitive race the distributor preferred Schine because he had a superior theatre facility, or was an old customer, or for some such similar reason. A highly selective recitation or distortion of the facts of record are used by appellants in this challenge to the court's finding. These distortions are made apparent in the town summaries in Appendix A, which marshall the detailed evidence which supports the court's findings with respect to each town. We merely point out here the inherent improbability of Schine's position. They would have this Court believe that with respect to each of such sixteen towns it always developed because of fortuitous circumstances favoring Schine that the distributor determined on the merits of each situation to sell to Schine. The plain fact is that Schine, with its massed buying power, was almost universally successful in dictating to distributors its own decision as to the product it desired in competitive towns. The fact of this monopolistic power and its abuse in stifling competition becomes more apparent as appellants extend their lengthy explanation of how it always developed that Schine prevailed in efforts to obtain product from the distributors.

Independent exhibitors were well aware of Schine's power to monopolize major film product and Schine not infrequently brought pressure to bear upon independents whom it sought to buy out, by express reference to its power to monopolize film licensing.[32]

The findings and evidence thus clearly required precisely the type of relief which the court afforded. Next to the provisions for divestiture, the relief granted against monopolization of first and second run films is the provision of the judgment best calculated to eliminate restraints on existing and potential competition. An essential requisite to the success of the divestiture plan is knowledge on the part of purchasing independents that Schine can no longer monopolize the film supply in these towns by any means whatsoever.

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[32] See summaries for Norwalk, Seaford, Shelby, and Van Wert. Appendix A, pp. 109–115, 150, 155–159, 178–184.

There is no substance to the claim of appellants that the prohibition against monopolization of first and second run product in competitive towns is too vague. What the Sherman Act itself forbids among other things is "monopolization" and both criminal and civil actions are commonly based on this proscription. The decrees entered in cases in which monopoly has been found to exist not infrequently prohibit such monopoly. See e. g., *Swift & Co.* v. *United States,* 276 U. S. 311, 327–328; *United States* v. *First National Pictures, Inc.,* 51 F. 2d 552 (S. D. N. Y.); *Dorfman* v. *Federal Trade Commission,* 144 F. 2d 737 (C. C. A. 8); cf. *Standard Oil Co.* v. *United States,* 221 U. S. 1, 69–70, 79–81.[33]

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[33] In Paragraph 2 of the decree of December 18, 1946, entered in the case of *William Goldman Theatres, Inc.* v. *Loew's, Inc.* (E. D. Pa. Civil No. 2877), the defendants were restrained from "monopolizing or attempting to monopolize the exhibition of feature motion pictures on first run in the City of Philadelphia; or from entering into, engaging in, or consummating, directly or indirectly, expressly or impliedly, by means of discrimination in prices and terms, or by other

In *United States* v. *Crescent Amusement Co., supra,* appellants contended that certain provisions of the decree similar to those here in question were too vague and failed to provide an ascertainable standard of conduct. This Court responded that the decree was as specific as it could

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means or device, any such monopolization or any such restraint of interstate trade or commerce." The decree contains other provisions of a similar breadth.

The judgment entered in *Theatre Investment Co.* v. *RKO Radio Pictures, Inc., et al.*, 72 F. Supp. 650 (W. D. Wash.), prohibits the defendant motion picture exhibitors and distributors from

"11 (a) monopolizing or attempting to monopolize the exhibition of feature motion pictures on third run in the City of Seattle, or from entering into, engaging in or consummating, directly or indirectly, expressly or impliedly, by means of discrimination in prices and terms, or by any other means or device, any such monopolization or any such restraint of interstate trade or commerce."

Paragraph 6 of the decree in *United States* v. *The Pullman Company et al.* (C. C. H. Trade Reg. Serv. 57,242) provides:

"The Corporate Defendants, their successors and their respective officers, directors, agents, and employees, and each of them, and all persons and corporations acting or claiming to act on behalf of them or any of them, shall not enter into, participate in, or perform, any contracts, agreements, arrangements, or understandings, with each other, with any railroads, or with any manufacturers or owners of railroad rolling stock, or with any of them, for the furnishing, servicing, manufacturing, or selling, of railroad sleeping cars, the individual or collective effect of which will be unreasonably to lessen competition between the Corporate Defendants and their successors, the railroads, and manufacturers or owners of railroad rolling stock, or any of them, or to create a monopoly, in the furnishing, servicing, manufacturing, or selling, of railroad sleeping cars."

be made and that, under such circumstances, any burden involved in its interpretation is an inescapable one which must be borne by those who violated the law (323 U. S. at 188). It is difficult to see how the prohibition here could be made any more specific without spelling out a ready means of evasion, and the appellants offer no alternative phrasing.

B. *Unreasonable clearance*

The trial court enjoined Schine (Amended Judgment, sec. II, R. 3229) from demanding or receiving "clearances" over other theatres which unreasonably restrict their ability to compete with Schine. Clearance is an agreement between an exhibitor and a distributor whereby the distributor undertakes not to permit another exhibitor to play a picture until a specified time after it has been played by the first exhibitor. Schine has objected to this provision of the judgment on the ground that there was no evidence of unreasonable clearance. A further objection is that if any such provision is retained here it should be conformed to the judgment in the *Paramount* case, and should read as follows:

> Demanding or receiving clearances over theatres operated by others in excess of what is reasonably necessary to protect the defendants in the runs licensed to them. * * *

The district court found that obtaining unreasonable clearances was a principal means by which Schine had obtained its monopolistic control; that Schine was able to secure unreasonable clearances year after year in many towns; and that "the record is replete with interdepartment communications between major film representatives which recognize the unreasonableness of the clearances given to Schine at his demand" (Fings. 8, 9 (b), 17, R. 3215, 3216, 3220–22).

In their brief (pp. 146–148) the appellants assert that the court apparently failed to realize that most of the clearances which it found unreasonable were those which operated only against Schine's own theatres. They refer specifically to Seneca Falls, Little Falls, Bucyrus, Kent, Norwalk, Tiffin, Fostoria, Corning, and Watertown for the proposition that when inordinately lengthy clearances were given, Schine had the only theatres in the town. In making this argument, appellants overlook the fact that the clearances are an effective means of keeping potential competition out of the towns and that most of the clearances extended over other towns than those in which Schine had theatres.[34] Most of these clearances, moreover, are part of franchise deals which set the distribution and exhibition pattern in a particular town for several years. The court further found that Schine obtained unreasonable clearances over towns in which it did not operate, in towns distant 10 to 20 miles,[35] and in towns in which there were no

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[34] Appellants point out errors in the court's findings as to specific clearances. That such errors are insignificant when contrasted with those appellants cannot impugn is shown by appellants' failure to challenge the accuracy of the findings they now attack (R. 3096–7, 3101–02) in their motion to amend the findings (R. 3100–41). Appellants, moreover, cannot, as to some of these towns, correctly state that there

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was no opposition at the time such clearances were given. In Seneca Falls, a 120-day clearance was given Schine by one or more of the distributors from at least the 1935–36 season through 1941–42 season (Exs. F–101 (29), R. 2545, 6026–27; F–37, R. 2577, 5943; F–178, R. 1182, 6110; 958, R. 2537, 4393). In Little Falls, 90, 115, and 120-day clearances were obtained by Schine since at least 1933–34 from one or more of these distributors (Exs. 635G, R. 5453–54; W–8 (7), R. 1164, 5782; W–3, R. 1166, 4429; 672C, R. 5483; 339F, R. 5397; 339G, R. 5398; P–210, R. 1170, 5870; R–14, R. 1183, 5810; 281, R. 2537, 3827; 958, R. 2537, 4393; 312, R. 2604, 3844; 313, R. 2537, 3844; C–181 (7), R. 1190, 5067; 1009, R. 2987, 4428). In Norwalk one or more of the distributors have given Schine a 90-day clearance from at least the 1936–37 season (Exs. 953, R. 2534, 5631; 958, R. 2537, 4393; P–234, R. 1170, 5893; 903, R. 2537, 4392). In Tiffin one or more of the distributors have given Schine a 90-day clearance since at least the 1936–37 season (Exs. W–6 (38), R. 1165, 5772; W–34 (45), R. 1167, 4609; 958, R. 2537, 4393; C–181 (44), R. 1190, 5104; P–236, R. 1170, 5895). During some of the time these clearances were in effect Schine had actual opposition in these towns (Int. Ans. R. 223–245). There was uncontradicted testimony in this case that the normal protection from first run in the same town was 30 days (R. 2782), and see Exs. 228–229, R. 2606, 3816–22.

[35] There were many clearances over even more extended areas. For the 1933–34 season, United Artists gave the Schine theatre in Norwich clearance over Delhi and Stamford, towns over 50 road miles away (Ex. 281, R. 2537, 3827). Fox and Paramount gave Schine's Strand Theatre in Cum-

theatres (Fng. 17, R. 3220–3221). The possession of such clearance gave Schine control over the bookings of the independent as he could only exhibit the film covered by the clearance in accordance with an availability determined by the dates on which Schine chose to play them in its theatre (R. 3666–3667). Such clearance, in effect, surrendered to Schine the booking control normally and properly exercised by the distributor.

But the harm to the public and to the pattern of competition in a wide area is considerably greater than this. As Mr. Smalley, one of the Government's witnesses, testified in respect to some of the towns in which he operated, and over which Schine took a clearance, Smalley felt compelled in many instances to take a clearance over other towns some distance away in order that he might not find himself in a position of having to play pictures later than such towns since he was bound by the clearance in favor of the Schine town (R. 2452–53). Another striking instance of clearance cumulation is found in the record. George Lynch, chief film buyer for Schine, wrote to United Artists, in December of 1940, that he

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berland, Maryland, for the 1940–41, 1941–42 seasons a clearance of 30 and 20 days, respectively, over Allegany County and 14 days over two towns in West Virginia (Exs. F 200, R. 1182, 6131, P 115 not printed. Columbia, Fox and United Artists have given Schine a substantial clearance over Athens County in Ohio (Exs. C. 181 (46), R. 1190, 5106; F. 42, R. 2577, 5948; 958, R. 2537, 4393).

thought a theatre in Sodus, New York, should follow Schine's theatre in Newark, New York (Ex. 318, R. 2604, 3846). Not only did United Artists' branch manager write back that they would be glad to give Newark clearance over Sodus "but I believe you will have to ask clearance over Wolcott, in addition to Sodus, due to the fact there is no clearance to or from either of these towns" (Ex. 319, R. 2604, 3846).[36] Thus one restraint begets another, and we find an entire network of restraints on competition all ultimately based upon a clearance taken by Schine in the first instance. The presence of an existing clearance in favor of Schine or the knowledge that a clearance over a town would be forthcoming upon demand of Schine, is of course a strong deterrent to the opening of a new theatre or the improvement of an existing one in such a town.

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[36] Appellants' discussion of Newark on page 158 of their brief lacks some important details. In October of 1937, United Artists' office manager at Buffalo wrote his branch manager as follows:

"*Newark*

"The thirty days protection that they have over Clyde, Lyons and Palmyra should be cut down to not more than ten days. As near as I can determine one of the major Distributors serves these three situations ten days after Newark, whereas ours calls for 30."

But Schine in subsequent seasons continued to get a 30-day clearance over Clyde, Lyons and Palmyra (Ex. 958, R. 2537, 4393). The unreasonableness of the Newark clearances given Schine is discussed and found in Appeal Board Decision No. 32.

There is plainly no occasion for granting any clearance over a town where no theatre exists except to protect an exhibitor from such competition as may arise in the future. Appellants' assertion that the reasonableness of a clearance is not subject to determination if there is no theatre against which it is imposed (App. Br. 152) misses the point entirely. Such clearances, of course, not only have the effect of retarding the construction of theatres in such towns but insure that when a theatre is built it will be subjected to a Schine clearance. Such clearances are indeed an acute aspect of Schine clearances generally.

An outstanding vice of Schine's clearances is that invariably the circuit has secured from the distributors a clearance in favor of a specific theatre of theirs in certain towns not over specified theatres but over other named towns. Such towns are thereby put into a second class category. Clearances of this type, particularly when provided for in long-term agreements, give Schine a contractual stranglehold over early run showings of pictures over very wide areas and cannot be responsive to changing conditions. Such clearances have subordinated the public interest to whatever extent Schine thinks is best for Schine.

Another common vice in Schine's clearances is that almost uniformly, where Schine has operated more than one theatre in a particular town, they have taken the same clearance for all their theatres despite wide variations in the condition, size, and type of pictures played in the various theatres.[37] It is obvious that such a clearance is arbitrary.

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[37] For example: Prior to May 19, 1942, at least five of the major distributors, Warners, R. K. O., Metro, Fox and Paramount had been giving a thirty-day clearance to the three theatres of Schine in Auburn, the Auburn, the Palace and the Jefferson, over Skaneateles, New York. This clearance operated against the Colonial Theatre in Skaneateles. Auburn is about 7 miles from Skaneateles. After the consent decree in the *Paramount* case, a complaint was filed by a threatre operator, who apparently had acquired the Colonial in 1940, alleging that this clearance was unreasonable.

The Appeal Board, in Appeal Decision No. 79, summarized the differences in operation and condition and revenue possibilities of the three Auburn theatres, and not only held that as to the best of these three theatres, the Auburn, the clearance over the Colonial at Skaneateles should be reduced to 21 days, but considered that as to the Jefferson, the clearance should be only 14 days except with respect to pictures moved over from the Auburn, in which event it should be 21 days from the end of the move-over run at the Jefferson. It also found that as to the Palace Theatre it was not entitled to a clearance over the Colonial of more than one day.

A similar clearance enjoyed by Schine in Gloversville, N. Y., was considered in Appeal Decision No. 67, and similar disposition was made.

The contracts introduced in evidence show that typically Schine got the same clearance for its theatres however variant in size and condition, even though in many instances the distributors charged a lower rental for films playing at the inferior theatre. E. G. Easton (Ex. F-134, R. 6066); Athens (Ex. C. 181 (46), R. 1190, 5021); Auburn (Ex. F-4, F-138, R. 1182, 2777, 5910, 6070); Cortland (Ex. C-181 (6), R. 1190, 5066); Oswego (Ex. F-59, R. 2577, 5964); Corning (Ex. C-181 (8), R. 1190, 5068); Int. Ans. 17-A, 18, R. 223-245.

The attainment of unreasonable results in establishing clearances within the Schine towns and in favor of the Schine towns over independent towns was inherent in the methods pursued in negotiating them. Thus, when the Warner Buffalo branch manager reported to the home office that "Mr. Schine absolutely refuses to make any part of his entire deal" unless he got certain clearances in Rochester (Ex. 550, R. 2836, 3943),[36] he was merely reporting the obvious fact that in negotiating a deal with a circuit intent on eliminating competitors, which occupies a monopoly position in most of the towns in which it operates, the distributors' opportunity to exercise their own judgment in determining what, if any, clearances the circuit's independent competitors should be subjected to, is virtually non-existent.

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[36] In Rochester, two independent neighborhood theatres, the Madison and Monroe, which were comparable to Schine's Riviera and Liberty and superior to Schine's State and Dixie, were compelled to play behind all four Schine houses, although the Schine houses were permitted to play day and date with each other. The Monroe and Madison were given no opportunity to even negotiate for the prior runs enjoyed by the Schine houses except on Columbia product, on which they got a second run, but when the Columbia franchise was made, this run was taken away from them and given back to the Schine houses at substantially lower film rentals. (See Rochester town summary in Appendix, pp. 133–145.)

A memorandum of May 23, 1939, from the Universal branch manager, is to the effect that since Schine had taken over the management of the Madison and Monroe theatres in Rochester from Fenyvessy (See town summary of Rochester in Appendix A) it was satisfactory for these theatres to play within the clearance period which had been reserved for the Schine houses (Ex. 396, R. 2606, 3903).

Columbia was not loath to act as Schine's spokesman to one of Schine's competitors in order to persuade the latter to give Schine greater clearances than they already had. Thus, when Smalley sought pictures from Columbia for his Norwich theatre, Columbia required not only that Smalley buy Columbia pictures for all of his towns but also that he take a clearance in those towns further behind that of Schine than was true in the case of the clearance given Schine by the other major companies, and therefore, he was unable to make a deal with Columbia for Norwich (R. 2494–95).

As indicative of the manner in which Schine dominated the distributors, the court also found that many of the clearances accorded Schine were given over towns as to which there had never previously been any clearance (F. 9 (b), 17, R. 3216, 3220-22).

Schine's relationships with the major distributors and Schine's manifested intent to get unreasonable clearances have, we submit, put all of Schine's clearances in a suspect class.[30] An exposition of use of unreasonable clearances against competing independents appears in the town summaries of Amsterdam, Corning, Ilion, Little Falls, Rochester, Syracuse, Van Wert, and Watertown in Appendix A. The trial court on this record might well have required all of Schine's clearances to be abolished and renegotiated on a plane of fair dealings with the independent exhibitor, which has not existed in the past. In the *Paramount* case, the judgment as to clearances was not limited to the provision quoted at pp. 218–219 of appellants' brief. That judgment also provided that all existing clearances granted by the defendant-distributors were presumptively invalid. The entire judgment in that case, in so far as it relates to clearance, is now under attack by both the distributors and the Government, in Nos. 79–86, this Term, but there is nothing in that decision which would suggest an injunction any more moderate than a mere injunction against future imposition of clearances which would unreasonably curtail the ability of competitors to compete with appellants.

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[30] In the following instances, even under the limited criteria of the consent decree in the *Paramount* case, Schine was found to have secured unreasonable clearances in the following towns: *Auburn*—Appeal Board Decision No. 79; *Cortland*—Arbitration Case No. 16-7F-42; *Gloversville*—Appeal Board Decision No. 67; *Ogdensburg*—Appeal Board Decision No. 4A; *Geneva*, *Seneca Falls*—Arbitration Case No. 16-6F-42; *Oneonta*—Appeal Board Decision No. 52, Arbitration Case No. 15-4E-42; *Newark*—Appeal Board Decision No. 32; *Norwich*—Appeal Board Decision No. 45.

C. *Control of admission prices charged by others*

Appellants have assigned as error (Assign. 103, R. 3500) the injunction in Paragraph 1, Section II of the judgment against Schine's attempting to control the admission prices charged by others. The illegality of such practice is obvious. The need for condemnation and prohibition in this case rests upon the court's findings (Fngs. 9 (c), 22, R. 3216, 3223).

Finding 22 gives two examples of competitive situations (Corning, N. Y., and Lexington, Ky.)

where Schine's film contracts with distributors provided for lower minimum admission prices at the Schine theatres than the independents' contracts with distributors required at their respective theatres. In each case Schine was playing an earlier run. The circumstances in each town clearly disclose that Schine was using its superior buying power to force film contracts from the distributors which would cripple or eliminate the competition of the independents. In Lexington, the independent eventually was required to sell to Schine, but in Corning, Schine's overtures to buy out the independent, whose competition it was stifling did not succeed. Full details and record references indicating the evidence supporting the court's findings are set forth in the town summaries covering Corning and Lexington, in Appendix A, pp. 36–45, 62–67.

The trial court, both in its opinion and judgment, by its juxtaposition of treatment, recognized the relationship of clearance in this case to admission price fixing. Finding 9 (c) is another recognition of this relationship. The clearance agreements that Schine entered into with the distributors were themselves an indirect form of admission price control over Schine's competitors, since their position in the admission price structure necessarily had a direct relationship to the run or picture which they played and to the time when they were able to play a particular picture.[40] The court was clearly right in prohibiting such control by any device whatsoever.

D. *Conditioning licensing of films in one competitive situation upon licensing of films in any other situation*

The court enjoined the appellants from conditioning the licensing of films in competitive situations outside of Buffalo upon the licensing of films in any other situation (Amended judgment, Section II, paragraph 3, R. 3229). As is apparent, this is a mere directive not to commit in the future a form of unreasonable restraint extensively employed by Schine in the past. The only way in which such a directive could effectively be enforced is a complete separation of the ownership and operation of the Schine theatres in each town from those in every other town, and the only possible argument against the provision as it stands is that it does not go far enough, since Schine can still operate as a circuit. This sort of relief merely supplements the relief given by the court against master agreements and franchises by attempting to put each competitive situation on its own feet and to take away Schine's power to use the distributors' desire to license Schine in its closed town situations, to give it preference in its competitive situations. We have cited elsewhere (Appendix A, pp. 75–89) the distributors' asquiescence in Schine's demands in one town and its refusal to deal with others there, because of a desire to retain the circuit as such as a customer. This provision was contained in the temporary order and a similar injunction against the defendants in the *Crescent Amusement Company* case, 323 U. S. C. 176, was there expressly approved by this Court.

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[40] In several instances, a Schine clearance itself makes express the relationship which is implicit in Schine's other clearances. For Schine's theatres in Athens, Ohio, Fox gave the following clearance (Exs. F-42, F-184, R. 1182, 2577, 5948, 6116):

"No picture (feature) will be played in any other theatre in Athens County earlier than 30 days after National Release Date, excepting Nelsonville, O., which the exhibitor grants the distributor the privilege of booking 14 days after Athens. Upon notification of violation, [the distributor] will not serve any theatre in Athens County charging less than 15 cents adult evening admission, including tax, earlier than 90 days after national release date:"

A clearance given to Schine by United Artists in Glens Falls, N. Y., provided for 120 days over any house charging less than 20¢ evening admission for adults (Ex. 281, R. 2537, 3827).

E. *Execution of franchise*

Paragraph 3 of Section II of the Amended Judgment enjoins Schine from entering into franchises (R. 3229). This prohibition is specifically responsive to the court's finding that Schine reaped benefits unavailable to independents by virtue of its franchise agreements and that "these were utilized against independent operators as a means of restraint" (Fng. 16, R. 3220). Schine commenced execution of franchises about 1936 in departure from its apparent prior practice of executing contracts for only one year (*ibid.*).

This finding is amply supported by the evidence and clearly requires the prohibition of franchises, particularly in the light of the court's further finding that franchises were a principal means whereby Schine obtained its monopolistic control (Fng. 8, R. 3215). In the past, franchise agreements have been commonly used to freeze out any potential competition. Schine was able to monopolize film product over long periods of time in almost all of its situations, by virtue of franchises with all of the distributors except United Artists. United Artists, by entering into master agreements with Schine year after year, accomplished the same result as accomplished by the other distributors through franchise agreements.

There is evidence in the record that there was consciousness on the part of the distributors that franchises tended to protect a favored exhibitor from competition (Ex. 190, R. 2603, 3809). Undoubtedly, monopolistic intent was the motivation behind Schine's entering into franchises. Furthermore, almost all of the distributors used the existence of a franchise with Schine as an excuse not to deal with competitors of Schine. (Exs. 195, R. 2271, 3809; 650, R. 1527, 4168; 770–72, R. 1682, not printed in record; 824, R. 2040, 4360; 836, R. 2178, not printed in record; 896, R. 2433, 4388; 987, R. 2568, 4405; 901, R. 2493, 4391; 902, R. 2493, 4392.)

The judgment in the *Paramount* case on appeal to this Court contains a prohibition against franchises, and only one distributor defendant among the eight in that case has appealed from that provision. The temporary consent order in this case also prohibited Schine from entering into franchises.

F. *Agreements not to compete and to restrict the use of realty to non-theatrical purposes*

The appellants have assigned as error (Assign. 108) the court's injunction against Schine's enforcing existing agreements not to compete or to restrict the use of real estate to non-theatrical purposes. This type of agreement was one found by the court to be an element in Schine's monopoly and restraint of trade. (Fngs. 8, 11 (b), 15, R. 3215, 3217, 3220). Such agreements have been a frequent means of Schine's eliminating potential competition (See Exs. S-68—S-76 R. 1174-76, 5281-94). The trial court might also have forbidden Schine's securing such covenants in the future, but the requirement that Schine receive the court's approval of future acquisitions made such a prohibition unnecessary. Without the instant injunction, however, there might have been removed from the class of purchasers for theatres required to be sold by Schine some of those most interested and best able to make the purchase and compete with Schine.

Agreements of this sort have been singled out for adverse comment in *United States* v. *American Tobacco Co.*, 221 U. S. 106, 174; *United States* v. *Eastman Kodak Co.*, 226 Fed. 62, 75–76 (W. D. N. Y.). Paragraph (11) of the judgment affirmed by this Court in *United States* v. *Crescent Amusement Co.*, 323 U. S. 173, has a similar prohibition.

G. *Use of threats or deception to induce a competitor to sell*

The appellants have assigned as error (Assign. 109, R. 3501) the provision of the amended judgment which prohibits them from using threats or deception to induce a competitor to sell (Amend. Judg. II, 6, R. 3230). The court found the appellants guilty of predatory practices, which included threats and deception to induce a competitor to sell (Fngs. 8, 10, 11, R. 3215, 3217–19). The court's findings refer to some thirteen towns in which Schine coerced independents by such means as threatening to build new theatres (e. g., Canandaigua), to reopen long-closed theatres (e. g., Lockport), and to monopolize product (e. g., Van Wert). We submit this injunction properly results from the uncontradicted evidence, detailed in the town summaries, as to such conduct on the part of the appellants. See Appendix A.

H. *Continuance of restraints and monopolization*

Appellants have assigned as error (Assign. 110, R. 3501), the trial court's injunction against "continuing any contract, conspiracy, or combination with each other or with any other person which has the purpose or effect of maintaining the exhibition or theatre monopolies of the defendants or of preventing any other theatre or exhibitor from competing with the defendants or any of them, and from entering into any similar contract, conspiracy, or combination for the purpose or with the effect of restraining or monopolizing trade and commerce between the States * * *" (Amend. Judg., II, 7, R. 3230). It is said the injunction was not warranted by the findings of fact and by the evidence, was contrary thereto, was too general and indefinite in terms, and went beyond that which would be appropriate.

It hardly needs to be urged that it was well within the trial court's discretion to enjoin continuation by the appellants of the contracts, conspiracies, combinations, and monopoly violative of the Sherman Act. Provisions of this sort have been common in antitrust decrees. And where intent and scope of violation are on as broad a scale as in this case, it is submitted that the limited generality of this provision is much preferable to an attempt to describe, enumerate, and enjoin only the identical major and subsidiary details of wrongdoing which might be culled from the record. See *United States* v. *Crescent Amusement Co.,* 323 U. S. 173, 186; *Standard Oil Co.* v. *United States,* 221 U. S. 1, 77–78; *United States* v. *Trans-Missouri Freight Ass'n,* 166 U. S. 290, 308; *Local 167, International Brotherhood of Teamsters* v. *United States,* 291 U. S. 293.

IV

THERE WAS NO ERROR IN THE ADMISSION OF EVIDENCE

Appellants have assigned error (Assignment 115, R. 3502) to the court's admission in evidence of over 100 exhibits, and the denial of their motion to strike or limit the effect of such documents so that they would not be taken as evidence of the statements they contained. Their assignment of error contains argumentative matter challenging the authenticity of these documents and urging, among other things, that there was no proof that the writers were acting within the scope of their authority or that they were sent or received. Arguments of this character now appear to be abandoned, and appellants contend only that this challenged list of exhibits was improperly admitted as constituting hearsay evidence. An argument that oral conversations between the complaining witnesses and the distributor representatives with whom they dealt should also have been excluded as hearsay is now made, but there is no assignment of error which raises the question.[41] Such conversations were not assigned as error in *United States* v. *Crescent Amusement Co.*, 323 U. S. 173, and were relied upon to support the ultimate findings of guilt in both the district court and this Court. The attempt to argue this question is, therefore, not only foreclosed by the failure to assign error but by an obvious lack of merit as well. Any inquiry into the effects of a defendant's alleged monopolistic practices usually involves a consideration of such conversations.[42]

We have summarized the contents of each exhibit attached in appellants' assignments of error as erroneously admitted (Assignments 114, 115, R. 3502) in Appendix B of this brief and the precise form and character of each of these documents is made apparent in that summary. Appellants do not now argue in their brief that those which were letters written by Schine to the distributors or by them to Schine were improperly admitted and we treat these assignments of error as abandoned as to these exhibits.

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[41] Assignment 114 assigns as error certain findings of the court said to be based exclusively on the documents specified in assignment 115 to have been erroneously admitted. Assignment 124 urges error in the district court's determination of the reasonableness of clearance as based on hearsay declarations, but these declarations were only made in documents attacked in assignments 114 and 115, R. 3502.

[42] See *Lawlor* v. *Loewe*, 235 U. S. 522, 536; *Johnson* v. *J. H. Yost Leather Co.*, 117 F. 2d 53, 60 (C. C. A. 8) and *American Cooperative Serum Ass'n.* v. *Anchor Serum Co.*, 153 F. 2d 907, 912 (C. C. A. 7).

The appellants' argument is now principally directed at interoffice communications of the distributors which were obtained from their files in response to a subpoena and their authenticity, thus vouched for, has been unquestioned. In *United States* v. *Corn Products Refining Co.*, 234 Fed. 964, 978 (S. D. N. Y., 1916), appeal dismissed on stipulation, 249 U. S. 621, Judge Learned Hand held that typewritten, unsigned intra-office memorandum of officers of one of the corporate defendants had "the highest validity." The court characterized such documents as "never intended to meet the eyes of anyone but the officers themselves, and * * * as it were, cinematographic photographs of their purposes at the time when they were written." Many of those exhibits were offered to show the intent and state of mind of the distributors. As such they neither fall within nor are barred by the hearsay rule. *Norwich Transportation Co.* v. *Flint,* 13 Wall. 3, 6; *Greater New York Live Poultry C. of C.* v. *United States,* 47 F. 2d 156 (C. C. A. 2), certiorari denied, 283 U. S. 837.

These documents were part of the corporate records of the distributors, made in the regular course of their business. They, therefore, come squarely within the Federal statute permitting the reception of evidence of business records regularly made and kept in the course of business. 28 U. S. C. 695. It is, of course, not necessary that the records, if regularly made, be books of account or contained in a bound volume. Recent cases in which letters and memoranda comparable to those received here have been admitted under this statute are *Harper v. United States*, 143 F. 2d 795 (C. C. A. 8); *Slifka v. Johnson*, 161 F. 2d 467, 469 (C. C. A. 2); and *United States v. General Motors Corp.*, 121 F. 2d 376, 409 (C. C. A. 7). See also *Gus Dattilo Fruit Co. v. Louisville & N. R. Co.*, 238 Ky. 322, 37 S. W. 2d 856, 858 (1931).

It is important to note that in many instances these documents contained either instructions to subordinate officials or explanations to superior officials. They were the contemporary tools by which the distributors carried on their activities. They have high probative value, since they were designed to be seen and acted upon by those having a common interest in the accuracy of the statements made and in the state of mind of the distributor vis-a-vis Schine and Schine's competitors.

Aside from these considerations, the inter-office communications were clearly competent evidence against the appellants under "the principle that when any number of persons associate themselves together in the prosecution of a common plan or enterprise, * * * the act or declaration of one, in furtherance of the common object, is the act of all, and is admissible as primary and original evidence against them." *Hitchman Coal & Coke Co.* v. *Mitchell,* 245 U. S. 229, 249. Inter-office communications of the sort here offered in evidence have often been admitted in evidence in conspiracy cases under the antitrust laws. *Patterson* v. *United States,* 222 Fed. 599 (C. C. A. 6), certiorari denied, 238 U. S. 635; *United States* v. *Corn Products Refining Co.,* 234 Fed. 964 (S. D. N. Y.); *United States* v. *The Pullman Co.,* 50 F. Supp. 123 (E. D. Pa. 1943); *United States* v. *Hartford Empire Co.,* 46 F. Supp. 541 (N. D. Ohio, 1942). See *Pfotzer* v. *Aqua Systems, Inc.,* 162 F. 2d 779 (C. C. A. 2).

Extensive testimony of higher officials of these distributors who were remote from the day-to-day dealings of their companies with both Schine and its independent competitors was offered by the appellants and received in a general conclusory form intended to show that their course of dealing with both was normal and non-discriminatory (R. 2869, 2880, 2935). Their contemporaneous written records of what this course of business actually was either contradicted or qualified that testimony, and the records could not have been excluded while admitting such testimony under any concept of evidence as a device for ascertaining truth.

The appellants complain that the testimony of these distributor executives and similar testimony of J. Myer Schine should have been accepted as conclusive evidence that no conspiracy existed between them and Schine, and that the court was quite unfair in drawing an adverse inference from their failure to call lesser executives more intimately involved with the damaging documentary evidence and complaints of Schine's competitors. This is so, they tell us, because the unfavorable inferences drawn in *Interstate Circuit, Inc.* v. *United States,* 306 U. S. 208, were the product of the neglect of the distributor defendants in that case to call their New York officials to deny the conspiracy charged there, and that omission has been corrected here. The fact that the conspiracy charged and proven there was between the distributors, whose normal contact with each other is through their New York chief executives, and that the conspiracies charged and proven here were between Schine and the distributors, whose normal contacts with each other is through a chain of minor executives on both sides, is apparently regarded as immaterial. Seldom, if ever, have the rules of evidence been pushed so far outside any context that could give them meaning as by the appellants' argument in this case.

CONCLUSION

The judgment below should be affirmed.

Respectfully submitted.

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DECEMBER, 1947.

APPENDICES A AND B

APPENDIX A

Town Summaries

In the following summaries we have assembled the evidence in the record as to each town where divestiture was ordered or as to which oral evidence was received. Since every one of these towns was admittedly a part of the appellants' circuit for film buying purposes, we have not attempted to identify all of the film licenses in which each was included. Every one was included in one or more of the franchises and master agreements tabulated at p. 29 of the appellee's brief. In each case where the summary refers to memoranda or letters challenged by the appellants' brief as inadmissible, the exhibit and any reference to its contents are set off by brackets. Where the court strictly construed the evidence, that fact is footnoted.

AMSTERDAM, NEW YORK

(Pop. 1940, 33,329—R. 2573)

The Orpheum Theatre was operated by Morris Kronick from July 1931 to May 1941 (R. 1707). The other theatres operated during this period were the Rialto, Strand, and Regent, which were pooled between the Shea and Schine circuits from 1927 until August 16, 1935, when Schine bought out Shea's Amsterdam interests[1] (Int. Ans. 17–A, 18 and 23, and supp. sched., R. 223, 224). The Regent was kept closed from the fall of 1931 until the fall of 1936 (R. 1714).

With the exception of a few pictures obtained from independent producers, which he played first-run, Kronick was playing all product second-run at the Orpheum in the year 1935 (R. 1712). It was then, and since 1931 had been, the only second-run theatre in the town (R. 1712). During the seasons preceding 1935, Kronick's second-run product included Warner, Paramount, Fox, and Columbia (R. 1716).

Ex. 554 strictly construed by the court.

[In February 1935, Ray Smith, branch manager of Warner at Albany (R. 1325), reported to A. W. Smith, Jr., Warner general sales manager (R. 1325), that Kronick had written him several letters trying to purchase Warner product for second-run in Amsterdam, that the writer had talked to George Lynch about this, and Lynch had requested him to refrain from selling the product to Kronick. Smith further recited that Lynch "left us holding the bag for $1,200 in short product," that Kronick ran his theatre "on a businesslike basis and does not cut his admissions," and favored such a deal with Kronick (Ex. 554, R. 3945).][2] On February 25, 1935, A. W. Smith, Jr., (Warner general sales manager) (R. 1325) directed Warner's Albany office not to sell "any of our pictures" to the Orpheum although stating that he would again discuss this with Ray Smith (branch manager of Warner) (R. 1325).

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[1] The sale agreement contained a covenant that Shea would not directly or indirectly operate any theatres in Amsterdam for a period of ten years (Ex. S–68, R. 1173–4, 5281).

Kronick made a number of trips to the Warner office in Albany in an effort to obtain this second-run product for the Orpheum during 1935 (R. 1712–13). Smith put him off by promising to send salesmen to see him (R. 1713). Finally Kronick demanded a direct answer from Smith, and was told by the latter that he had an oral commitment of the Warner product to the Schine interests (R. 1713). He further told Kronick that if Schine had a selective contract, under which certain pictures were left over and not played, he would sell such rejected pictures to Kronick (R. 1713). Kronick replied he wasn't interested in left-over pictures; he wanted a full deal on second-run pictures or none; and was told by Smith that he could not do business with him (R. 1713).

Schine reopened the Regent on a second-run policy in the fall of 1936 (R. 1714), and a second-run for Amsterdam was included in the 1936-37 season master agreement between Schine and Warner, dated March 24, 1936 (Ex. W-6, R. 5736); although this run was not included in their 1935-36 season master agreement, dated April 24, 1935 (Ex. W-7, R. 1163, 4561). The second-run license for Amsterdam (Ex. 635-F, 5452, approved January 26, 1937, obligated Schine to play only forty-four of the fifty-nine 1936–37 features covered by the license, to be played at the Regent or Strand "60 days after First-Run and 60 days ahead of Third-Run."

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[2] Ex. 554 strictly construed by the court (R. 3089).

[On November 30, 1936, Ralph Pielow, branch manager of Loew's at Albany (R. 1289) wrote J. E. Flynn, district manager (R. 1288), as follows:

> With further reference to second-run, Amsterdam, N. Y. When in Gloversville last week George Lynch mentioned that he would like to play a selective contract, second-run, in the Regent Theatre, Amsterdam, and the writer informed George that we could not do business that way, and he then later mentioned that he doubted if the theatre would be opened, but he did not want us to sell the Orpheum Theatre, *which request is unfair for him to make.* [Italics supplied.] (Ex. 497, R. 3925.)

After deciding the terms of the Orpheum's offer for a second-run deal on the 1935–36 product Pielow went on to say that he would give the Orpheum a definite answer regarding this proposition:

> * * * as we do not feel that in selling this theatre product a year old that it would in any way affect the first run theatre and in view of the fact that other national companies are selling this theatre second run, there certainly should not be any objection

> to our selling the theatre in the event that we are agreeable to accepting this business.]

Kronick (finally) did obtain (this) (Loew) 1935–36 product second-run, either late in 1936 or early in 1937 (R. 1716). He had similar products of this company second-run until he sold out to Schine in 1941 (R. 1716) only because Schine did not choose to use it as the Loew franchise with Schine made on October 1, 1936, provided for sale of Metro product first-run to the Rialto, Strand, or Regent theatres and second-run, 45 days after first-run, to the Regent or Strand (Ex. 618, R. 3952, 3975) for the four seasons beginning with 1936–37. During the same period Kronick was able to continue as a second-run customer of Paramount,[3] Universal and Columbia (R. 1718).

During 1935, Kronick had a number of conversations with M. Grassgreen, Albany exchange manager of Fox (R. 1214), trying to buy a second-run but was finally told by Grassgreen that on instructions from his New York office he could not sell Kronick (R. 1713). Two runs of the Fox features for the 1936–37, 1937–38 and 1938–39 seasons were bought for Amsterdam by Schine as part of the three-year deal made on August 5, 1936 (Ex. F–1, R. 4951).[4] These two runs were also continued through the 1939–40, 1940–41 and 1941–42 seasons by the second franchise dated June 8, 1939 (Ex. F–193, p. 2, R. 4969).

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[3] Paramount contracts made with Schine for first-run at the Rialto or Strand in the 1936–37 and 1937–38 seasons gave Schine 90 days clearance over the Orpheum (Ex. 339–C, D, R. 5394–5).

[4] The 1936–37 season second-run license for Amsterdam (Ex. F–3, R. 5909), which supplements the three-year agreement (Ex. F–1, R. 4951), obligates Schine to play only ten features, to be played at the Strand or Regent "not earlier than 30 days after first run."

Kronick saw Myer Schine at Gloversville, New York, in 1937 after the Regent was opened by Schine, and told Schine he did not believe that since the Regent was a second-run policy, the city was large enough to maintain both it and the Orpheum as second-run theatres, and would be willing to sell to Schine for $10,000 (R. 1710). His business had been profitable prior to 1935, even during the depression years (R. 1719–1720), but he had begun to lose money after the Regent was opened (R. 1718–1719). In May 1941 (R. 1707), he sold the good will and equipment of the Orpheum to Schine for $7,000 (R. 1707), also making an agreement not to engage in theatre operation in Amsterdam for a period of five or six years (R. 1709).

ASHLAND, OHIO

This town was frequently included in franchises and master agreements covering other towns. Theatres in this town were acquired as part of a general expansion program by Schine in Ohio (Ex. 76, R. 3789). According to the appellants (R. 3262) Schine acquired the largest theatre, the Palace, in 1935; it acquired the Opera House, characterized by the defendants as an old theatre in 1936 and the Ohio, characterized by the appellants, as a converted store show in 1938.

After Schine took over theatre operations in the town the Ohio was kept open only part time, and four years after acquisition of the Opera House it was dismantled because of its condition (Int. Ans. 17, R. 233).

Despite the fact that the Opera House was an old house and apparently in poor condition, only Metro, and Metro only for 1940–41 season, differentiated in the clearance given Schine for both the Palace and the Opera House (Exs. P–224, C181 (35), R. 5095; F–41, R. 5947; 958, R. 4393; W–3, R. 4429; 618, R. 3952; 981 (47), R. 5699). While Schine had opposition in Ashland and afterward Schine secured a 90-day clearance over existing and potential theatres and a clearance of from 7 to 30 days over the towns of Lodi, Loudenvile, Shelby, New London. (Exs. C181 (35), R. 5095; P–224, R. 5884; F–41, R. 5947, F–183, R. 6115; 958, R. 4393; W–3, R. 4429; 618, R. 3952; 981 (47), R. 5699).

ATHENS, OHIO

In September 1935 Schine acquired the Athens theatre with 893 seats. In January of 1936 Schine acquired the other two theatres, the Court, 267 seats and the Ohio, 299 seats. The Court was kept closed and opened occasionally or part time. Defendants in their objections to plaintiff's plan characterized the Court and Ohio as converted store shows, R. 3262. Not only the Athena but these converted store shows were given clearance over all theatres in Athens County by Columbia, Fox and United Artists. (Exs. C181 (46), R. 5106; F-184, R. 6116; 958, R. 4393). The clearance given by Fox was as follows: "No picture (feature) will be played in any other theatre in Athens County earlier than 30 days after National Release Date, excepting Nelsonville, O., which the exhibitor grants the distributor the privilege of booking 14 days after Athens * * * upon notification of violation the distributor will not serve any theatre in Athens County charging less than 15¢ adult admission, including tax, earlier than 90 days after National Release Date." Exs. F-(42), H. 4959, F-184, R. 6116.)

[A letter from Dana, Albany branch manager of Universal, dated October 28, 1936, to Krieger, Cincinnati branch manager, stated that contracts covering the Schine Circuit for Piqua, Athens and Delaware, Ohio were enclosed, and went on to say: "If clearances stated on these contracts are not what other major companies granted Schine, you are then to take this matter up directly with George Lynch in Gloversville. It is my understanding with him that clearances as written in these contracts are the same as granted to him by other major companies." (Ex. 374, R. 3894.)] 3894.)].

Through numerous franchises Schine could and did keep existing and potential competition in Athens County in subservience not only by monopolizing major first run product in Athens but by taking clearances in these franchises over other towns and in Athens. (Exs. C181 (46), R. 5106; F-184, R. 6116; W-3 Sched. E, R. 4452; W-34 (33), R. 4597; 618, R. 3952; 981 (48), R. 5700; 958, R. 4393; 374, R. 3894).

AUBURN, NEW YORK

(Pop. 1940, 35,753—R. 2573)

Of the four theatres in Auburn, three are controlled by Schine—the Auburn, Jefferson and Palace. The fourth, the Capitol, is operated by Hubert P. Wallace (R. 1957). Schine acquired the Palace in 1923 (Int. Ans. 17–A, 18 and 23, R. 223), and operated it in opposition to Shea's Jefferson (R. 2735). In 1927, Schine and Shea formed a partnership, acquired the Strand,[1] and pooled the three theatres, each owning a one-half interest (R. 2734–2735). In 1929, these three theatres were leased to Fox-Metropolitan and operated by them until 1933 (R. 1960–1961, 2142, Ex. 813, R. 5555), when the pool resumed operation. In 1937 Schine bought out Shea in Auburn (Int. Ans. 17–A, 18, and 23, R. 223)[2] and has since operated them alone.

Wallace began to operate the Capitol in April 1931 (R. 1957) and has continued to operate it ever since (R. 1957, 2142). At that time the Jefferson and Strand were being operated full time and the Palace part time (R. 1957, 1958). During 1931 and 1932, the Capitol had all of the RKO product first-run, including short subjects (R. 1957, 2142–44, 2148). In addition, the Capitol played United Artists and Columbia product first-run (R. 2148). During the 1932–33 season, the Capitol had a split of RKO first-run with Fox-Metropolitan (R. 1957, 1958, 1960–1961, 2148).

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[1] Schwartzwalder, the operator of the Strand, sold out a few months after Schine bought an abandoned church property for the purpose of erecting another theatre (R. 2698, 2726). No theatre was built there until 1938, when Schine constructed the Auburn (R. 2641).

[2] The sales agreement (Ex. S–71, R. 5289) provides: "In consideration of Shea's Agreement to sell, and Schine's agreement to purchase, Shea agrees that he will not directly or indirectly, or through affiliate corporations or subsidiary corporations or partnership arrangement, own, lease, or operate any motion picture theatre or other theatres in the City of Auburn, New York, for a period of five years from the date of this instrument" (R. 5292).

After the Schine-Shea pool resumed operation of the Jefferson, Palace, and Strand in 1933 (R. 1958), Wallace never had a regular first-run RKO contract (R. 1960, 2146, 2147). Although Wallace had been sold and played 42 RKO 1932–33 features (Ex. 813, R. 5555; R. 1960, 1961), RKO did not even solicit him for the 1933–34 product (R. 1961). Charles Boasberg, RKO salesman, told him that RKO had sold its full line product to Schine-Shea as part of a circuit deal made with Schine which included the city of Auburn (R. 1962). Boasberg advised Wallace he could not stop this deal but would give him Schine rejects (R. 1962). Wallace did get three pictures first-run which Schine had rejected (R. 1958, 1959). During the 1933–34 season, Schine bought the RKO product first-run at the Jefferson and Palace theatres (R. 2147).

During the 1933–34 season, when Paramount was out of the Shea circuit (R. 2927), the Capitol had the full line of Paramount first-run (Ex. 814, R. 5556). When Wallace made this deal, the representative of Paramount assured him that he would continue to be Paramount's regular first-run customer in Auburn (R. 1963, 1964). Wallace was not offered a first-run contract by Paramount for the 1934-35 season (R. 1962). He discussed this matter several times with both Kenneth Robinson, the branch manager, and Robert Caskey, salesman (R. 1962). Caskey first told him about October 10, 1934, that he would not get the product (R. 1962, 1963). He saw Caskey and Robinson a week later (R. 1963, 1964). Robinson said that the Capitol was a good account, that Paramount had received more money from the Capitol than it had expected,[3] that he had discussed this matter with J. J. Unger, Eastern District Manager, but could do nothing to prevent a sellaway to Schine (R. 1963, 1964). Thereafter Wallace heard nothing further from Paramount (R. 1963, 1964).

During this season (1934-35), Wallace played between 14 and 16 RKO pictures rejected by Schine (R. 1959, 2134). In addition, Wallace got United Artists pictures first-run early in 1935 (R. 1959, 2151, 2153, 2154) and Columbia first-run in February 1935 (Ex. D-123, R. 6198). The only other product he had for the 1934-35 season was between 90 and 100 independent and western pictures (R. 2151, 2153, 2154).

During the period from 1935 to 1938, Wallace made continuous efforts to negotiate for a regular first-run with various managers of the major distributors[4] (R. 1964, 1965), but succeeded only in retaining his first-run of Columbia product. In 1937 he made a three-year deal with Columbia for the 1937–38, 1938–39 and 1939–40 seasons (Exs. D–125, R. 6200; D–126, R. 6201; D–127, R. 6202), which prevented a sellaway of this product when the Schine franchise with Columbia (Ex. C–100, 101, 102, R. 4971, 4973, 4975) was made in 1938.

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[3] The Paramount play-off record (Ex. 986, R. 4400) shows that Wallace paid more for the 1932-33 pictures than Schine paid for the 1933-34 features.

From 1935 to the opening of Schine's New Auburn Theatre in September 1938, no Schine theatre played any regular second-run product (R. 1969). During this period Wallace made repeated efforts to buy second-run for the Capitol. He wrote to Fox (R. 1969, 2141, 2142) and in the fall of 1937 talked with Sydney Samson, Buffalo branch manager of Fox, and reminded him that Fox did not have any pictures playing in Auburn second-run. Samson replied that Fox was selling only an exclusive first-run to Schine and no other runs in Auburn (R. 1970, 2141, 2142). In April 1938, Wallace received a letter from Sidney Kent, president of Fox, to the effect that exclusive sales were not his general policy and that he would investigate Wallace's complaint when he returned from Europe (Ex. 815, R. 1970–71). Wallace heard nothing further from Fox (R. 1971).

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[4] He was offered the pictures Schine rejected or reissues by Fox (R. 1967), Paramount (R. 1972), RKO (R. 1973), United Artists (R. 1960), and Warner (R. 1968); Loew (R. 1967) and Universal (R. 1975) offered him nothing. Wallace paid $5,125.68 for 23 1934–35 United Artists pictures, while Schine paid $1,457.84 for 11 1935–36 United Artists pictures (Ex. 718–A, R. 4296). In none of the four succeeding seasons did United Artists receive from Schine's three theatres in Auburn (Ex. 719, p. 16, R. 4322) as much as it got from Wallace's one for 1934–35.

In 1936, Weissman, a Metro salesman, told Wallace that Metro had a first-run account in Auburn with whom it dealt on an exclusive run basis (R. 1974). In 1938, Wallace talked with Abe Harris, another Metro salesman about second-run. Harris advised him that he would discuss the matter with the branch manager and see Wallace later, but Wallace never heard from him (R. 1974, 1975).

With reference to a second-run contract with Paramount, Wallace talked with Kenneth Robinson, branch manager, and Fred Meyers, salesman, several times in 1936. Meyers said he saw no good reason why a second-run deal could not be made with the usual protection of 30 days. Robinson told him that he had discussed the matter of a second run with Unger, and was advised by the latter that Paramount would not sell a second-run in Auburn (R. 1972, 1973). Wallace was told by Boasberg of RKO that he would discuss a second-run proposition with the company and advise Wallace, but Wallace heard nothing further (R. 1973).

Early in 1938 Wallace talked with Leiser, a salesman for Universal, about a second-run (R. 1975, 1976), but Wallace heard nothing further from Universal. In the fall of 1937, Wallace asked Zurich for a complete second-run deal and was informed that Warner's had no second-run in Auburn because Warner's sold only one run in this city (R. 1972). After Schine opened the Auburn theatre in September 1938, Schine began to play all major product second-run except Fox and Columbia at either the Palace or Jefferson (R. 1976).

Thus, since the 1934–35 season Wallace has had no regular major first-run deal except Columbia and no regular major second-run at any time. Since the 1938–39 season Schine has had under franchise all of the other major product except United Artists on first-run and all but Fox and United Artists on second-run.[8]

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[8] *Fox:* 1st run at the Strand, Jefferson, Palace, Auburn, by master agreement dated June 8, 1939 (Exs. F–193, R. 4969; F–138, R. 6070), for 1939–40, 1940–41, and 1941–42 seasons.

Metro: 1st run Jefferson, Palace, or Strand, by master agreement dated Oct. 1, 1936 (Ex. 618, p. 26, R. 3979); and second-run for Strand or Palace by deal sheet attached thereto dated Aug. 31, 1937, for 1937–38, 1938–39, and 1939–40 seasons.

Paramount: 1st run at Jefferson, Palace, Auburn (Ex. P–198, R. 1170, 5858); 2nd run at Palace or Jefferson. All pictures that play Auburn theatre first-run, and with the "privilege of picking up any picture after the Jefferson Theatre to play Palace Theatre at $20.00" (P–199, 5859) for 1939–40 and 1940–41 seasons.

RKO: Jefferson or Palace or Schine's Auburn, 1st run (Ex. R–37 (23), R. 4887); Jefferson or Palace, second-run (Ex. R. 37 (24), R. 4888) for 1938–39, 1939–40, 1940–41.

Warner: "Jefferson, Palace, Strand (closed)" 1st or 2nd run (Ex. W–3, sched. "D," sheet 1, R. 4429, 4446); with Palace or Strand for 2nd run (Ex. W–3, sched. "E," sheet 2, R. 4429, 4450) for 1937–38, 1938–39, 1939–40.

Universal: 1st run Auburn, Palace, or Jefferson (Ex. U–207 (25), R. 4749); 2nd run Jefferson or Palace (selection of 20 pictures) (Ex. U–207 (26), R. 4750) for 1939–40, 1940–41, 1941–42.

Columbia: 2nd run, Jefferson or Palace (Ex. C–102 (1), R. 4975; C–100, R. 4971; and C–101, R. 4973) for 1938–39, 1939–40, Schine apparently did not use this product (R. 1976).

BELLEFONTAINE, OHIO

(Pop. 1940, 9,805—R. 2574)

The Strand, Opera House, and Majestic, the only theatres in the town prior to 1931, were leased by Milton Mooney, then a Warner salesman (R. 1336, 1414–16). The Majestic had been closed during the two or three years preceding 1931 and the Opera House had been open only on weekends until 1927, being then permanently closed by him upon the advent of sound equipment (R. 1413–14, 1715–16). In the fall of 1930, Schine started construction of the Holland and opened it in February 1931 (I. A. 17–A, R. 234).

During the 1930–31 season the Strand played Fox, First National, Paramount and F. B. O. (now RKO) (R. 1349–51) and for six years prior to that season, it had Metro product (R. 1350). Mooney attempted to obtain Metro for 1930–31 from Booth, Cincinnati manager, after its salesman had failed to call on him that season as in preceding seasons (R. 1349, 1350, 1363–64). When he finally saw Booth in October or November 1930, Booth told him that the Metro product had been sold by New York for the new Holland Theatre (R. 1364–65). Metro releases during the months of September, October, November and December 1930 and during January, 1931 were not made available to Mooney although his was the only theatre then operating, but were picked up and played at Schine's Holland Theatre along with the current 1930–31 season releases when it opened in February 1931 (R. 1365).

The balcony of the Holland seated about 500 persons (R. 1365). When that theatre opened in February, 1931 (R. 1350), its evening admission price charge in the balcony (R. 1365) was less than Mooney's Strand price of 30 or 35 cents (R. 1365, 1436, 1703). The Strand continued to charge 30 cents until the Holland dropped its balcony price to 15 cents (R. 1366). The Strand then dropped its price to 25 cents and the Holland continued to charge a price of 15 cents (R. 1365–1366). The Strand was finally offering two tickets for one and 15-cent bargain hours in a futile attempt to compete with the Holland in May 1931 (R. 1436, 1705).

Between the last of February and the first of May 1931, John A. May saw Mooney in Cleveland and offered him $5,000 for his theatre interests in Bellefontaine, (R. 1366), which had cost him $15,000 in 1924 (R. 1366). Mooney rejected this offer and continued to operate the Strand at a loss (R. 1366). In the last of May or the first of June 1931, May offered Mooney $2,500, which he accepted (R. 1367).

In the seasons prior to 1931–32, the film salesmen of all major companies usually came to see him just after their conventions in May of each year (R. 1367–68). A number of the exchanges had sold him their product before the conventions, in January or February of the preceding years (R. 1367). No one from any of the major film companies had approached him with reference to selling him their 1931–32 season's product (R.

1367). He sold out because he had lost $8,000[1] after the Holland Theatre opened (R. 1368, 1446) and because he was afraid he wouldn't get any major product for the approaching 1931-32 season (R. 1368).

On September 10, 1932, George Lynch wrote Jack Flynn, district manager of Metro at Detroit (R. 1288), as follows:

> I understand that Mr. Harry Moller, our former manager of the Holland Theatre, Bellefontaine, has taken a short term lease on the Opera House, Bellefontaine. Mr. Moller was discharged from this organization for a number of reasons which I am unable to explain to you in this letter. Since his discharge, which is now over a period of six months, he has been causing us considerable trouble in regard to the propaganda he has been spreading, his main issue being that our admission prices are too high and that no one should have to pay over ten and fifteen cents for a show. He has now been able to sell this idea to the few people in Bellefontaine who have backed him to operate this Opera House. He personally has nothing and I want you to refrain from selling him any pictures whatsoever. Should your Cincinnati office sell or serve him with any pictures you will only be encouraging cheaper admission prices, double features and all in all unfair competition notwithstanding the fact that you will also hurt the film rentals which you are receiving from our theatre.
>
> I know it is not your desire to hurt us and this is therefore the reason I am writing you this letter before the harm is done.

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[1] In the prior year he made a profit of about $10,000 operating with the four major products (R. 1446).

> I would appreciate receiving a letter from you regarding this (Ex. 412, R. 3907).[2]

On September 12, 1932, Flynn replied and agreed not to sell second-run to Moller (Ex. 413, R. 3908).[3]

On September 13, 1932, I. J. Schmertz, Cleveland branch manager for Fox (R. 1216), wrote J. Sichelman, administrative assistant to the general sales manager (R. 1216), that they had received a wire from Lynch "asking us to withhold selling any pictures of last year or a second-run of this year's product" to Moller (Ex. P–163, R. 3798).

On October 21, 1932, Sichelman wrote Myer Schine as follows:

> You made a deal with Mr. J. R. Grainger [Eastern Division Sales Manager, R. 1214] for Bellefontaine, to take 32 pictures on the following basis:
>
> 8 features at 25% of the gross.
> 8 features at 20% of the gross.
> 16 features at $40,000 flat rental.
>
> This means that there are ten pictures open in this town, and at the time you made this deal, you told Mr. Grainger you could not use more than the number of pictures you bought.
>
> This means that we can sell second run and maybe the balance of the first run pictures that you do not use.

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[2] [The letter bears a pen or pencil notation "copy made for W. F. R., E. M. B.," W. F. Rodgers was then eastern sales manager of Metro (R. 1289); E. M. Booth was branch manager of the Cincinnati exchange territory (R. 1286).]

[3] [This office copy of the reply letter has printed at its top "Copy for W. F. Rodgers" and a typewritten notation at the foot "cc. Cincy.—together with copy of Mr. Lynch's letter September 10, 1932."]

> Mr. Schmertz now advises me that in a conversation he had with you, you advised him that Mr. Grainger promised that we would not sell anyone in Bellefontaine. This is not so as you know that I was present when the deal was made and Mr. Grainger would never make a statement that would be detrimental to the Fox Film Corporation and whereby we lose 10 pictures on first run and also second run revenue.
>
> We now have a chance to sell the ten pictures that you will not use as first run, and also sell 100% second run, and I am writing Mr. Schmertz to go ahead and sell the balance of the 10 pictures which you haven't bought on first run, and also sell second run.
>
> However, if you decide you want the balance of the 10 pictures first run, you can take the matter up with Mr. Schmertz direct. We have got to sell second run and get the revenue in where it rightfully belongs (Ex. P-170, R. 3803).

On October 24, 1932, Lynch wrote to Sichelman as follows:

> Myer Schine has referred me to your letter dated Oct. 21st regarding Bellefontaine. Perhaps, Jack, you, are not acquainted with what has happened in Bellefontaine. The man who has opened up the Court Theatre was a former employee of ours and due to numerous things which happened during his employment he was let out. He then took over the old Opera House in Bellefontaine and got two men to put up some money and opened up in opposition to us.

> The only product which he has been able to buy has been from independent companies. There has not been a major company that has sold him any product. He has advertised in the newspapers that they should patronize local people. He has bucked chain operation and is selling the product for 10 cents and 15 cents, children 5 cents, not only this but he has flooded the entire town with passes and I am quite sure that it is not your company's intent to encourage opposition of this kind.
>
> If it was possible for us to play second run you may rest assured that we would certainly do it but I believe you will agree with me that a town such as the size of Bellefontaine is not large enough for a first and second run house. We are charging a top of 40¢ admission at our Holland Theatre and we don't want to have the distributing companies make it impossible for us to continue getting this price. I am quite positive that if you will take this matter up and explain to Mr. J. R. Grainger, the things which I have mentioned to you in this letter, he will agree with me that you should not sell second run.
>
> I have also written Mr. Schmertz advising him that we will take the remaining pictures which we did not buy first run, and, have also asked him to refrain from selling this second run house.
>
> If you would like to have me forward some of the opposition's ads, if you will write me I will be very glad to mail them to you (Ex. P-171, R. 3804).

On the same day, Lynch wrote a letter to Schmertz saying that he would take the ten additional first-run pictures but that Myer "would appreciate very much if you hold off selling the Court Theatre." The reasons suggested in the letter for not selling this account were that such action would encourage 10- and 15-cent houses which might jeopardize the 40-cent admission price established in Bellefontaine and that "there is no room in a town the size of Bellefontaine for a second-run house" (Ex. P-172, R. 3805).

During the 1932-33 season the Opera House was operated in opposition to Schine, but since that time the Holland Theatre has had no opposition (R. 234).

Moller's competition with Schine's Bellefontaine theatre ceased within the same motion picture season, i. e. 1932-33; as the Holland Theatre has had no opposition since August 31, 1933 (Int. Ans. 23, p. 12, R. 234).

Daniel Gutilla has continuously leased the Strand Theatre at Bellefontaine to the defendants since 1931, by four successive leases (Exs. 939, R. 5256, 940, R. 5258, 646, R. 5212, 647, R. 5214), the term of the last lease being from June 1940 to May 1950 (Ex. 647, R. 5214). The 1938 lease (Ex. 646, R. 5212) and the 1940 lease (Ex. 647, R. 5214) both provided that Schine must operate the theatre once a week for 14 weeks each year of the lease. During most of the period from 1934 to 1938, the Strand was kept closed (R. 1337, 1342). In negotiating the 1940 lease, Gutilla wanted a provision keeping the Strand Theatre open 26 weeks a year, but Lazar would not agree (R. 1343). Gutilla's son, who was then operating a small theatre eleven miles from Bellefontaine, wanted to operate the Strand (R. 1343, 1344), and Gutilla wanted Lazar to get together with them for this purpose (R. 1344). In a conversation with Lazar before signing the 1940 lease, Gutilla said that he and his son would open the Strand Theatre and play second-run product (following Schine's Holland) if they couldn't agree on the 1940 Strand lease terms (R. 1345). Lazar then stated that in that event Schine would re-open the Opera House,[4] continuously leased and kept closed by it since 1934 and run second-run product in that theatre (R. 1346). Gutilla then signed the present Strand lease with Schine (R. 1346).

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[4] Opera House was leased to defendants by successive one-year leases commencing September 1, 1933 (Ex. 934, 935, 936, 937, 938, R. 5255–5256).

BUCYRUS, OHIO

(Population, 1940, 9,727—R. 2574)

In 1935 Philip Charnas had operated the Southern Theatre in Bucyrus for a number of years. The State, the only other theatre, was operated by Milton H. Bryer, another independent. For the 1934–35 season Charnas had Fox, Paramount, United Artists, and Columbia, and Bryer had Metro, Warner, RKO, and Universal (R. 1035–36, 1048–49).

There was also in the town a partially completed theatre building acquired by Schine in August 1935. Although the new theatre was not completed until 1936 (Int. Ans. 17–A, R. 234), Schine was able to buy away from Charnas for the 1935–36 season all of his major product (Fox, Paramount, United Artists and Columbia) and from Bryer half of Metro and Universal (R. 1037–40, 1049–54, [Exs. 369, R. 3891, 370, R. 3892]). Bryer was apparently able to retain half of Metro only because Schine did not have its theatre open in time to use the releases of the first half of the season. A rider attached to Bryer's contract provided that he should have all of the releases until the end of December 1935, and thereafter such additional picture as would give him a split (Ex. P–61, R. 5318).

Bryer testified that he signed an application for 1935–36 Warner product but did not receive an approved contract (R. 1040). In this latter statement he was mistaken as he received a contract (Ex. D148–D, R. 2575, 6213) approved September 5, 1935, in a letter dated September 9, 1935, from the Cleveland branch office (Ex. D–170, R. 5190), and a percentage report (Ex. D–170, R. 5190A) shows that he played the first 1935–36 release, "Page Miss Glory", on September 8, 9, and 10, 1935 (Ex. 645, R. 4109). Bryer sold his theatre to Schine in the same month but continued to manage it for Schine (R. 1041), and all of the remaining Warner product which the State played in the 1935–36 season was delivered under the Schine contract for the same theatre and season (Ex. P–62, R. 5320), which contract bears an approval date of July 25, 1935, and states "all terms and conditions of the Master Agreement dated April 24, 1935, to be part and parcel of this contract." Although Andrew W. Smith, Jr., general sales manager of Warner, who issued that contract, testified as to the method of numbering contracts in an abstract of contract form prepared in the branch offices which showed that the Schine-Warner contract was made up by the Cleveland branch in December 1935 (R. 2784), Smith offered no explanation whatever as to why the approval date was July 25, 1935. Mooney testified that the Cleveland branch had nothing to do with negotiating the Schine deals but merely made up the contract forms on instructions from New York after the deals were made by New York (R. 1379–82, 1388–97), and this might be as much as nine months after the deal had actually been set up in New York (R. 1396, 1397).

After he had been deprived of half of the Metro product for 1935–36, and after Lazar told him that Schine was going to make a beautiful theatre out of the unfinished building, Bryer sold his interest in the State Theatre to Schine at the end of September 1935, and accepted a contract of employment as manager (R. 1041). The State was closed in 1936 after Schine's new theatre (called the Bucyrus) was opened (R. 1047), and was converted to commercial use after the Southern was acquired from Charnas (Int. Ans. 17–A, R. 234).

Charnas was contacted by Lazar as early as three months after Schine acquired the partially completed theatre building with reference to selling the Southern Theatre, but he continued to operate on second-run product until April 1937, when he sold out to Schine (R. 1054). Schine notified various distributors that the Southern was to be closed indefinitely (Exs. P–72, 73, R. 3787). Thereafter the theatre was operated only occasionally part time (R. 234). Nevertheless, Schine extended the Southern lease for a further period of two years beginning April 1, 1941, agreeing to pay a rental of $3,600 a year (Ex. 932, R. 5253). The new lease provided for a three-year privilege of renewal at $2,400 a year (Ex. 932, R. 5253).

CAMBRIDGE, MD.

(Pop. 1940, 10,102—R. 2574)

In April of 1938 Schine acquired all three theatres in Cambridge, Md. One of the theatres, the Grand, has been kept closed but opened occasionally or part time (R. 240). Schine has retained the Grand although the contracts in evidence show film licenses were not taken for this theatre (Exs. C181 (29), R. 5089); F-133, R. 6065; W34 (58), R. 4622; 981 (74), R. 5726; P-181, R. 5842; U207 (82, R. 4806). For the other two theatres Fox gave Schine a clearance, in a franchise of three years' duration, of seven days over Federalsburg, a town which, according to standard road maps is over twenty miles away. (Ex. F-133, R. 6065.)

CANANDAIGUA, NEW YORK

(Pop. 1940, 8,321—R. 2573)

In 1938 the only theatre in Canandaigua was owned by Schine (R. 908, 1976, 1977). In April 1938, Richard De Toto had discussed with a Mr. Marks the proposition of constructing an additional theatre in the town (R. 908, 960). At the same time Hubert Wallace went to Canandaigua to negotiate a deal for the construction of a theatre on the Jenkins property on the main street (R. 1976–77). Wallace and A. J. Lauer, real estate broker of Auburn, made several trips to Canandaigua and talked with the owners and their attorneys about the proposition of converting the Jenkins property into a theatre (R. 1977, 2131, 1843, 2940–41, 2952).

Wallace and Lauer proposed a deal to Jenkins before May 10, 1938 (R. 1845, 2960) and had plans drawn for the proposed theatre (R. 1844, 1848). The proposed new theatre was brought to the attention of Schine (R. 2647) and a sign was posted on the Flannigan property, on the main street of Canandaigua, which stated that a theatre would be built on that site by Schine (R. 1977, 2014). On May 10, 1938, the first page of the Canandaigua Daily newspaper carried a story supplied by Macfarland, manager of the Schine theatre, announcing that Schine had bought the Flannigan block on the main street on May 9, 1938,[1] and that the present structure would be demolished and a new theatre would be built thereon (R. 2359, 2362–63, Ex. 806, R. 5217). Both De Toto and Lauer saw this news item (R. 908, 1845–46). On the same day the newspaper announcement was printed (May 10, 1938), Lauer received a telegram which was signed by J. W. Jenkins, Jr., reading "Have decided to turn down your proposal at this time" (Ex. 805, R. 4335). Neither Wallace nor De Toto went ahead with their plans (R. 909–10, 1847, 1977–78).

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[1] This statement was false. When Schine finally did build a new theatre in April 1941 it built on other property bought in 1939 (Int. Ans. 17–A, 18, p. 2, R. 224; Int. Ans. 31, p. 1, R. 254).

CORBIN, KENTUCKY

(Pop. 1940, 7,893—R. 2572, 2574)

The nearest town to Corbin which has a theatre is about 14 miles away (R. 731) and the nearest in Kentucky which approaches Corbin in size is Harlan, about 75 miles away (R. 731). In 1938 Hiram Owens began construction of a theatre in Corbin (R. 737–738), and about October 24 made a contract with Grover Scott, with respect to the construction and operation of this property (R. 731–32, 735, 736, 745). Prior to this time there were two theatres in town—the Hippodrome and Kentucky (R. 742), which were operated by Louis Merenbloom and acquired by Schine in November 1938 (Int. Ans. 17–A, 18, 23, R. 238). Scott was then operating the Liberty at Pikeville, and the Margie Grand in Harlan, Kentucky (R. 744).

Within ten days after Scott made the agreement with Owens (R. 746), he attempted to get film product for the new theatre. He signed an application (R. 747–48) for a first-run of Universal for the 1938–39 season on October 31, 1938, at the Cincinnati branch which was approved at the home office as of November 11, 1938 (Ex. 19, R. 5307).[1] Despite the normal practice in the industry to send a copy of an approved contract to the exhibitor signing an application, so he may know whether or not he is getting the product and make the necessary booking arrangements (R. 2764, 971, 972, 1230, 1277), the approved contract was not sent to Scott. He never saw it until the time of the instant trial (R. 748, 749). Two or three weeks after he signed the application, Scott went back to Cincinnati to inquire about his Universal deal (R. 749), and was advised by Reiger, the branch manager (R. 747), that he did not think Scott could have the product. Scott's deal was cancelled[2] and Universal later contracted with Schine on January 13, 1939, for the same product (Ex. 37, R. 5316) at less advantageous terms[3] than those approved for Scott (Ex. P–19, R. 5307).

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[1] Scott tentatively adopted the name of Roxy for the theatre (R. 749, 763), and this was the name he used in making the application (R. 749).

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[2] [The cancellation memorandum dated Dec. 15, 1938, states (Ex. P–39, R. 3782): "This deal was intended for a new theatre to be built in Corbin by Mr. Scott. In the meantime, the Schine Circuit have acquired the Hipp and Ky Theatres and have made a deal with Mr. Scott whereby the new theatre will not be built. Mr. Miller negotiated a new contract with Schine, making it necessary to cancel this contract with Mr. Scott. Please approve."]

[3] See the following table:

SCHINE'S CONTRACT (EX. P–37, R. 5316) CALLS FOR

	Number of features	Consecutive days run	Rental terms
	4	3/5	60.00.
	4	3/5	50.00.
	8	3/5	32.50.
	10	3/5	17.50.
Feature reissues	1	3/2	30.00.
Westerns:			
(Baker)	6	3/5	20.00
(Maynard)	6	4/5	75.00.
No short subjects.			

Footnote continued.

Although the branch manager of United Artists took an application from Scott, they would not give him a contract (R. 752, 753). Metro refused even to negotiate with him for second-run product in Corbin (R. 754-57). After his failure to get any major film product, Scott assigned his agreement with Owens to Schine by agreements of November 25, 1938, and December 2, 1938 [4] (Exs. P-20, P-21, R. 3772, 3775).

Schine did not perform the assigned contract and it was cancelled by Owens (R. 739). In December 1938, Lazar suggested to Owens that Schine would pay him $7,500 not to complete construction of the theatre (R. 737-739). It was also suggested to Owens that because of Schine's greater buying power he would have difficulty in operating the theatre himself or securing a tenant

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Footnote 3 continued—

SCOTT'S CONTRACT (EX. P-19, R. 5307) CALLS FOR

	Number of features	Consecutive days run	Rental terms
	8	2	75.00 as against 35% of the gross receipts.
	8	2	50.00.
	8	2	30.00.
	8	2	20.00.
	8	2	15.00.
Feature reissues	1	2	35% of the gross receipts.
Westerns:			
(Baker)	6	2	Total $120.00.
(Maynard)	6	2	Total $90.00.
Shorts	65	2	Total $195.00.

Grand Total, Schine Contract (Ex. P. 37, R. 5316), $1,090.00.

Grand Total, Scott Contract (Ex. P. 19, R. 5307): $1,925.00 guarantee plus possible additional percentage rental on nine features.

[4] This assignment was part of an agreement between Scott and the defendants which gave Schine 5% of the gross receipts of his theatres at Harlan and Pikeville, Kentucky, in return for buying the films for them.

to operate it (R. 739–740) but Owens declined the offer (R. 737–739).

Other persons contacted Owens with reference to leasing the theatre (R. 739), including Price Coomer, who told Owens he would have to investigate the situation as to buying film before he could make him a proposition (R. 844). In the spring of 1939 Coomer inquired of Allen Martz, branch manager of Columbia, of Max Stahl, branch manager of United Artists, and of Al Schmitkin, branch manager of Warner Brothers, about first- or second-run product for Corbin. Stahl told him that United Artists had no product in Corbin to sell (R. 847–848); Schmitkin stated first- and second-run had been sold in Corbin (R. 849). Martz said that first-run was sold and told Coomer he would have to take it up with the home office whether he could sell Coomer second-run, but that he thought it would be poor business to sell Coomer a second-run (R. 847–848). Coomer made no proposition to Owens (R. 848–849).

By June 1939 Owens completed the theatre which was named the Viv (R. 741, 789). It was more attractive and modern than either of the other two theatres (R. 741), with better equipment than the Hippodrome (R. 792), and far superior to the Kentucky, the other theatre operated by Schine (R. 793). The Viv was leased to M. K. Murphy in May of 1939 (Ex. P–22, R. 757–758). Fox, Paramount, Metro, Warner, RKO, and Columbia all refused to negotiate with Murphy for first-run (R. 777, 784, 786). Murphy subsequently tried to get second-run product from the major distributors (R. 784). Fox, Paramount, RKO, and Metro would not negotiate with him for second-run (R. 784–786). Warner would not negotiate with Murphy for a current second-run, but was willing to sell some pictures several years old (R. 786). Columbia sold Murphy a second-run contract in September 1939 for the 1938–39 product (Ex. P–23, R. 5308) and also for the 1939–40 season, but the play-off of the latter product was to commence February 1, 1940 (Ex. P–24, R. 5309). This had the effect of giving Schine a clearance over second-run on the current product (1939–40) of at least 150 days.

Although Murphy paid rent from June 15, 1939 (R. 789, 801) he could not get a picture to open with until October 30, 1939.[5] The pictures he played were old pictures (R. 790, Exs. P–26, R. 837; 619, R. 3998; 645, R. 4109; 717, R. 2538, 4285), and the theatre did not make expenses (R. 805, 814–815, Ex. P–26, R. 837). During this period between the fall of 1938 and the spring of 1940 when the defendants were threatened with, and experienced competition in Corbin, Schine had tied up all the first- and second-run[6] product of all majors except Columbia second-run (R. 775–790, 754–755, 800, 845–849). This amount of product was more than the operation of their two theatres in Corbin could use [R. 793–797, Exs. P–29, R. 5312, U–207 (31) R. 1191, 4755].

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[5] The equipment for the theatre was ready by July 1, 1939 (R. 800) and Murphy had the equipment shipped as soon as he had a picture to open with (R. 801).

[6] The 1938–39 and 1939–40 second-run contracts of Fox with Schine moreover committed Schine to only 20 pictures (Exs. P–29, P–31, R. 842, 5312, 2529, 5315) less than half of all the pictures actually released for that season by Fox (Ex. 337, R. 2539, 3850). Not until several weeks after refusing to negotiate with Murphy for the first-run did Fox enter into a first-run contract for the 1939–40 product with Schine (R. 774–775, 778, Ex. P–30, R. 5314). After the time when Murphy was trying to get second-run Metro product during the summer of 1939 (R. 784–785, 787–789), without success,

After the Viv opened, Schine reduced the balcony admission prices at the Hippodrome (R. 790–791). Fox assisted Schine in this reduction by omitting from the license any minimum admission prices for the exhibition of Fox films in Schine's theatres in Corbin (see Ex. P–29, R. 5312, with which compare P–30, R. 5314, P–31, R. 5315, and P–42, R. 5317). In May of 1940 Murphy sold out to Schine (R. 789, Int. Ans. 17, A, 18, 23, R. 238). After Schine took over the Viv, the admission prices were increased at the Hippodrome and Viv (R. 790–791), and the Kentucky was closed (Int. Ans. 17 A, 18, 23, R. 238).

Schine was able to procure a second-run 1939–40 contract (Ex. P–27, R. 5310). This was true also with respect to the Fox second-run 1939–40 contract (R. 784–785, Ex. P–29, R. 5312).

CORNING AND ADDISON, NEW YORK

(Pop. 1940, Corning, 16,212—R. 2573; Addison 1,400—R. 1863)

The Plaza Theatre was operated in Corning from 1926 (R. 2195–2196) to 1943 by Irving Cohen and Morris Gaby. Since 1943 Cohen has been sole owner (R. 2196). The other theatres in the city are the Fox, State, and Palace (Ins. Ans. 17–A, 18 and 23, R. 225). The Fox (formerly the Liberty) and State were owned by Schine but operated by Fox Metropolitan from 1929 to 1933 (R. 2196–97; Int. Ans. 17–A, 18 and 23, R. 225). The Palace was closed for a time during that period (R. 2197) and then bought and reopened by Frederick Gerber. In the 1931–32 season, the Plaza had Warner, First National and other major product second-run, as it did for the 1932–33 season (Ex. 637 A, B, C, D, R. 5461–5471). In 1933, the Palace, under Gerber's operation, played Columbia and United Artists first-run, which the Plaza played second-run after the Palace (R. 2198).

When Schine resumed operation of the State and Fox in 1933, it commenced playing pictures of major producers first-run at the Fox, and then repeated a second-run of the better pictures at the State, relegating the Plaza Theatre to a third-run position with a very long period of clearance against it from the time pictures were played first-run until they were received by the Plaza for third-run use, namely 90 to 220 days afer first-run[1] (R. 2198–99; Ex. 326 G, H, and I, R. 2528,

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[1] The Fox contract for first run of its features at the Fox, made by Lynch for Schine Theatrical Enterprises, Inc., on August 1, 1933, provided a 60-day protection in Corning (Ex. 326–G, R. 5379). A contract for such pictures for second-run use was made by Lynch on Nov. 9, 1933, with clearance "60 days after first-run with 60 days clearance on 3rd run" (Ex. 326 H, R. 5380), and a contract signed by Gaby and Cohen with Fox under date of December 9, 1933, was for "3rd run as available. If the Fox or State play one run, then this is to be 2nd run, but if they play two runs, then this is to be a 3rd run" (Ex. 326 I, R. 5381).

The Metro 1933–34 contract made by Lynch for Schine Theatrical Company, Inc., for its State Theatre provided that it receive the pictures 60 days after first run and protection for it of 30 days over 3rd run (Ex. 611 A, R. 5431).

The contract between Metro and Gaby and Cohen for their use of Metro product at the New Plaza Theatre provided they were to receive the product "as available after Schine clearance" (Ex. 611 B, R. 5433). The First National and Warner contracts for the same season for use of their product by Schine Theatrical Company at the Fox Theatre contained 60 days protection provision over 2nd run (Ex. 637 D, R. 5469–70), with the State having 60 days over Cohen's third-run (Ex. 637 A, R. 5463, 637 C, R. 5466).

Universal contracts for the same season gave the Fox or State Theatres first-run. Gaby and Cohen's Plaza Theatre was sold on "exclusive 2nd run" (Ex. 698–A, R. 5487) by contract approved on September 14, 1933 (Ex. 698–C, R. 5489), but on December 20, 1933, a contract was made with Lynch of Schine Theatrical Company for the State Theatre giving its second-run and providing "first-run has 60 days over second-run and second-run has 60 days over third-run" (Ex. 698–B, R. 5488). The first-run contract for the Fox or State had been approved November 18, 1933.

On November 1, 1933, a contract for 40 RKO features was approved for the Fox or State first-run, giving them 160 days clearance over 2nd run. Gerber's Palace Theatre obtained the second-run by contract approved August 19, 1933 (no

5379–5381). Whatever pictures of major producers Schine did not use second-run at the State, became available for second-run use at the Plaza during the period from 1933 to 1938 (R. 2198).

Defendants acquired the Palace from Gerber in April 1938 (Int. Ans. 17–A, 18 and 23, R. 225), and the best run the Plaza could get major product on thereafter was third-run[2] (R. 2199), with the exception of a Columbia second-run (R. 2200).

Prior to 1933, the Plaza charged an evening adult admission price of 35 cents, (R. 2200) and the Fox charged 40 cents. After the defendants reacquired the Fox and State, during the 1933–34 season the prevailing adult evening admission price at the Fox was 35 cents (R. 2200), the Palace 35 cents, and the State, 25 cents (R. 2200–01, Exs. 326 A, B, R. 5373–4).[3] The Plaza then re-

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clearance over 3rd run stated); and the Plaza obtained the same pictures 3rd run by contract approved February 28, 1943. In the 1934–34 season the Fox or State first-run contract with RKO specified 160 days clearance on second-run (approved November 10, 1934), the second-run for the State Theatre specified "60 days over third-run," and Gaby and Cohen's Plaza had the product 3rd run by contract approved April 30, 1935 (Ex. 628 A, B, C, D, E, and F, R. 5437–5442).

[2] Cohen explained that all his contracts stated as to run that pictures were to be furnished "as available," and this meant that Schine had the privilege of running pictures at the Fox, at the State, or at the Palace, and then the pictures were made available to the Plaza (R. 2200).

[3] The First National-Warner contracts for Schine's Fox Theatre in the 1933–34 season required only an evening admission price of 25 cents (Ex. 637 D, R. 5470); only 15 cents at the State (Ex. 637 E, R. 5473, 5474); and 15 cents was required at the Plaza (Ex. 637 F, R. 5476).

duced its adult evening admission price to 25 cents, which generally prevailed with the exception of certain "bargain night" prices (R. 2215–2217), for the reason that it could obtain major product only on second or third run (R. 2201). The State then slashed its prices (R. 2201) during the next six months, compelling the Plaza to reduce its prices to 20 cents (Exs. 637, A, B, C, R. 5461–68). The State cut its adult evening admission price to 15 cents, during a part of the period from 1934 to 1938, compelling the Plaza to then cut to the same price (R. 2201),[4] but the general admission price level of the Plaza did not go below that of the State (R. 2202–3, 2217). The Plaza contracts in evidence all prohibited it from charging less than 15 cents for an evening adult admission (Exs. 698 C, R. 5489, 611 B, R. 5433, 637 C., R. 5466–68, 628 C, R. 5439; February 19, 1934; April 30, 1935; 326 C, R. 5375, 326 F, R. 5378).

Schine also introduced admission price ticket "give-aways" in the form of a student ticket, admitting students to the Fox, the first-run theatre, for the price of 15 cents, while its regular evening admission price was 35 cents in the orchestra and 25 cents in the balcony (R. 2202–04).

The Fox contracts for the 1933–34 season actually permitted Schine's State Theatre, with 60-day clearance over the Plaza, to charge an adult evening orchestra admission price 5 cents lower than the Plaza was required to charge.[5] Under the 1935–36 season Fox contracts, for Twentieth Century features the State was allowed to charge an orchestra evening adult admission price of 15 cents (Ex. 326 B, R. 5374), while the Plaza, following at least 60 days later, was also required to maintain the same price (Ex. 326 C, R. 5375). Fox contracts for the preceding season imposed the same clearance and admission price restrictions as between the State and Plaza theatres for all features (Ex. 637, A, B, C, R. 5461–68; 326 E, F, R. 5377–78).

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[4] See Fox, Warner-First National, contracts for 1934–35 season (Ex. 326 E, F, R. 5377–8; Ex. 637 A, B, C, D, E, F, R. 5461–77).

For the 1933–34 season, Universal had on September 14, 1933 sold Gaby and Cohen a second run of its 47 features, including 9 westerns, for the Plaza for which they were obliged to pay $582.50 (Ex. 698 C, R. 5489). On December 20, 1933, a contract was made with Schine for a selection of twenty features to be played at the State, with those playing first run at the Fox "to play second run" at the State for a total rental of $262.50, with 60-day protection over third run (Ex. 698 B, R. 5488).

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[5] The contract for first run at the Fox contained no minimum admission price requirements (Ex. 326 G, R. 5379), that for second run at the State allowed it to charge evening admission prices of 15 cents in the orchestra (Ex. 326 H, R. 5380), and the third-run contract for the Plaza required evening admission prices of 20 cents in the orchestra (Ex. 326 I, R. 5381).

Similarly, the Metro 1933–34 contract for Schine's State theatre omitted any minimum admission price requirement (Ex. 611 A, R. 5431); as did the Universal contract for the State (Ex. 698 B, R. 5488) and the RKO contracts for the Fox or State theatres in both the 1933–34 and 1934–35 contracts dated November 1, 1933, and November 10, 1934, among file of Exs. 628 A to E, R. 5437–41.

The State Theatre in 1933–34 obtained two top Warner-First National pictures at flat rentals of $25 each, and the balance at flat rentals of $17.50, and the last four at $15 flat (Ex. 637 E, R. 5474). On the other hand, Gaby and Cohen, playing these pictures third run, sixty days after the State and 120 days after the Fox, were required to guarantee flat rentals of $12.50 each against 35 percent of the gross receipts on the nine top pictures, the balance at flat rentals of $10 per picture (Ex. 637 F, R. 5475–77). These same contract conditions prevailed in the 1934–35 season (Exs. 637, A, B, C, R. 5462–68).

Under the 1933–34 contracts between Fox and the defendants the State paid only $37.50 for the two top pictures and $15 flat for the remaining 43 (Ex. 326 H, R. 5380). Running them 60 days after the State, Gaby and Cohen paid 30 percent for the six best pictures, with a $15 guaranty against each, and paid $12.50 apiece for the remaining 39 pictures (Ex. 326 I, R. 5381). The next season still with 60 days clearance against it, held by the State, the Plaza actually paid more for Fox pictures than the State did.[a]

[On October 21, 1933, George Lynch wrote Jack Flynn, district manager of Metro (R. 1288), relative to Schine theaters in six towns, including the State at Corning, requesting that "if there are any other opposition towns where you believe you can sell at second run, I would appreciate it if you will take the matter up with me first before selling" (Ex. 425, R. 3910).] Second-run opposition on Metro product was prevented by a second-run contract made on February 24, 1934 (Ex. 611 A, R. 5431), which did not obligate Schine to play any specific number of pictures on this run, as it provided for the elimination of "any pictures which play first-run at" the State.

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[a] On the two best pictures they paid $25 apiece against 40 percent of the gross receipts, on 12 they paid $20 apiece against 35 percent of the gross receipts, on eight they paid $15 apiece, and on 23 they paid $10 apiece (Ex. 326 F, R. 5378), whereas the State Theatre was only paying $15 apiece for 41 of these pictures and $37.50 flat for the four best (Ex. 326 E, R. 5377).

[Before accepting a contract to allow some RKO 1934–35 product to be played second-run at Gerber's Palace Theatre late in the season, E. L. McEvoy, eastern sales manager (R. 1294), required an answer whether "the Schine Organization at any time have complained about the low admission charged by this theatre"; he also demanded to know "what other major distributors have sold this exhibitor their 1934–35 product" (Ex. 527; R. 3937).] Although Gerber (finally) bought a second run (from RKO), Schine was allowed to violate Gerber's contract by playing "Becky Sharp" both first- and second-run in Corning (Ex. 530, R. 3938).[7]

During the time that E. K. O'Shea was the branch manager of the Buffalo, New York, exchange of Metro (R. 1289), between 1933 and 1937, O'Shea told Cohen his company sold its product to Schine in New York, and that the only way his product could be sold Cohen was to follow after the Schine theatres (R. 2204). About 1935 or 1936, Cohen tried to get Fox second-run pictures and was told by Sampson, Buffalo manager (R. 1215) that the Schine deal was made in New York City, and his product would have to be sold to Cohen as available after Schine's theatres (R. 2205–06). Dave Miller of Universal made the same response to a request for this product second run (R. 2206). Harry Seed, Warner exchange manager at Buffalo (R. 1324), told Cohen he was "lucky to get pictures" at all, (R. 2207). Both Kenneth Robinson, exchange manager of Paramount at Buffalo (R. 1238) and Charles Boasberg (R. 2208–09, 1292), RKO's Buffalo manager, told Cohen they could only sell their product as available after the Schine theaters had used it (R. 2209).

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[7] Released in July 1935 (Ex. 634, R. 4078).

In July 1939, Cohen and Gaby went to Gloversville and saw J. Myer Schine in an attempt to persuade him to release some second-run pictures for their use at the Plaza. They stated they could charge an adult evening admission price of 25 cents if they had second-run pictures, and contrasted Schine's operation of many theatres with their own of but one theatre. Schine replied that every situation had to take care of itself, and stated "they (Schine) didn't have enough product themselves" (R. 2202, 2203). When Schine inquired whether Cohen and Gaby would sell the Plaza, they replied it was the only source of their income (R. 2203). They then asked Schine to trade them a theatre in some situation which was too small for his company. He replied that he did not know of any at that particular time, but would get in touch with them if he learned of such a situation (R. 2204).

Walter A. Smith, a former Schine manager (R. 1860–61), operated a small theatre in Addison, New York, about 12 miles from Corning, from 1937 to 1940 charging an adult evening admission price of 25 cents per person, and children's admission of 10 cents. At that time the Palace theatre of Corning was charging an adult evening admission of 25 cents, with a children's charge of 10 cents (R. 1862–63). The Fox theatre at Corning charged a balcony admission price of 25 cents and an orchestra admission price of 40 cents, and the State Theatre was at the same time charging an orchestra admission of 20 cents. Both theatres were charging 10 cents for children. The major pictures played first-run in Schine's Corning theatres 30 days ahead of Addison (R. 1863, 1864, 1868).

In the year 1937 the Schine theatres in Corning, i. e., the Fox and State, issued a student ticket at a 15-cent per person admission price (R. 1864–65), which tickets were distributed in Addison by one of the Schine theatre managers (R. 1865). Such tickets were honored by the defendants for one and one-half or two years (R. 1865,* 1868). Smith protested against the student ticket practice to Harry Seed, Warner branch manager at Buffalo (R. 1865), to E. K. O'Shea of Metro's Buffalo exchange office (R. 1289), and to Sidney Samson, exchange manager of Fox at Buffalo, because the practice diminished the attendance of Addison high school students at his theatre (R. 1866). They advised him to adopt the same tactics; but when he replied that he couldn't because of his small seating capacity, and requested permission to drop to a 10-cent per person admission price, this requested cut in his admission price was refused (R. 1866–68).

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* Such tickets were not good for use on Saturdays or Sundays, but were good any other evening of the week (R. 1865).

CORTLAND, N. Y.

(Pop. 1940, 15,881—R. 2573)

Schine owns all the theatres in Cortland. It has owned and operated the State, a 1,632 seat house, since 1930. In September of 1932 it acquired the other two theatres in the town. One, the Temple, has 588 seats. The other, the Cortland, has been kept closed since acquisition and converted to commercial use (Int. Ans. 17, 18, R. 225).

According to standard road maps, the towns of Groton and Marathon are respectively about 12 and 14 miles from Cortland. Although the 1933–34 Schines-United Artists deal did not provide for clearance over Groton (Ex. 281, R. 3827), subsequently Schine was able to secure a clearance from United Artists over Groton (Exs. 958, R. 4395, 959, R. 4397).

For many years, the major distributors gave Schine's theatres in Cortland a 30-day clearance over Groton and Marathon. Loews' branch manager regarded this clearance as excessive, and in May of 1939, recommended to his home office that the clearance over Groton be reduced to 14 days. (Ex. 488, R. 3920). But many of the distributors, including Metro, continued to give Schine this clearance (Exs. 618, R. 3952, 958, R. 5066, P. 202, 5862, W3, R. 4429, W34 (1), R. 4565)).

The distributors also gave Schine's theatres in Cortland a clearance over Tully, a town in which there was no motion picture theatre (Exs. 226–229, R. 3813–22). Such clearance of course had the intended effect of deterring potential competition in Tully, especially since this clearance was commonly part of a franchise deal.

DELAWARE, OHIO

(Pop. 1940, 8,944—R. 2574)

In Delaware, Schine acquired the Strand theatre, 777 seats, in January 1936. H. Bieberson owned a 50% interest until January 11, 1940. Schine acquired the other theatre in the town, the Star, 266 seats, in March of 1938. Schine kept the Star closed, opening it occasionally or part time (R. 234).

When Schine acquired the Star they had the vendor agree not to compete in Delaware for 15 years (Ex. S. 72, R. 5293).

At the time Schine acquired the Strand from Bieberson, they secured a covenant from the latter not to compete in Delaware during the term of the lease on the premises "and any extension or extensions thereof." (Ex. S. 70, R. 5287). At the same time Schine obtained a similar agreement from Bieberson not to compete in Athens, Ohio. (Ex. S. 69, R. 5285).

Easton, Maryland

(Pop. 1940, 4,528—R. 2574)

In October 1938 Schine acquired both of the theatres in the town. In 1940 Schine surrendered the lease on one of the theatres to the county commissioners and began construction of another theatre (R. 240).

FOSTORIA, OHIO

(Pop. 1940, 13,453—R. 2574)

In 1935, the Buck brothers were operating the Colonial which is now known as the State (R. 1368), and a Mr. Kahn operated the only other theatres, the Roxy and Civic. In May of 1936 the defendants acquired a 50 percent interest in the Civic and Roxy (Int. Ans. 17, 18, and 23, R. 235). In December 1935, Arthur Buck came to Mooney, Cleveland branch manager of Warner's, and asked for a two-year deal for product because Schine was taking over the other houses (R. 1369, 1371, Ex. 559, R. 3946). In March 1936, Mooney took a signed application for a two-year deal and sent it to his home office, recommending acceptance (R. 1371–72). Buck then had Warner's first-run product for the 1935–36 season (R. 1371–72, Ex. 635–B, R. 5447). [The home office rejected the application, and Mochrie, assistant to Warner's Eastern sales manager (R. 1403), telegraphed Mooney on April 1, 1936, that Buck could be offered only one-half of one season's product and that the other half would be sold to Schine (R. 1383, Ex. 561, R. 3497). Mooney, accordingly,] But Warner's sold Buck only one half the product (R. 1377), even though the deal later sold to Schine involved considerably less money than Warner's were getting from the Bucks with whom they had been doing business a number of years (Ex. 563, R. 1398, 5417, 567, R. 3948, 568; Cf. Ex. 566, R. 3948, 635A, R. 5443–4). In April of 1937 Warner's also sold Schine a repeat run of the product played first-run by the Bucks (Ex. 635–A, R. 5443).

In May of 1937 the Bucks and the defendants made a pooling arrangement under which the defendants were to buy and book the films for all three Fostoria theatres for 5 per cent of the gross receipts (Ex. 89, R. 3791) and split the profits equally with the Bucks. The Roxy was closed permanently in 1938 (Int. Ans. 17A, 18, 23, R. 235). The Roxy lease, made in 1935 for a five-year term (Ex. 930, R. 5251), was renewed in 1940 for another five years with the following provision:

> 12. It is expressly agreed by and between the parties hereto, for and as a part of the consideration hereof, that first parties (lessors) will not, directly, or indirectly, let, lease or rent any real estate owned or controlled by them, within 500 feet of the premises herein above described, for theatre or picture show purposes, during the time this lease shall be effective.

It also contained an option of renewal for another five years (Ex. 930, R. 5251).

GENEVA, NEW YORK

(Pop. 1940, 15,555—R. 2573)

Prior to 1939 the only theatres in Geneva were the Geneva, Regent and Temple, all controlled by Schine. The Temple was closed and the Regent was operated on a week-end policy in the summer time (R. 912–13, Int. Ans. 17A, 18, R. 226). The Park Hotel in Geneva was converted into a theatre by Louis Dipillo and opened in October 1939 (R. 968–9, 977). In August 1939, Dipillo and Richard De Toto, who was then operating a theatre in Clifton Springs (R. 910), went to Buffalo to buy product for the Park (R. 910). They stopped at the offices of United Artists, Paramount and Warner (R. 910–915, 944–947), in each instance asking for 1939–40 second-run for the Park (R. 911–12, 915–920). At that time Schine had no second-run policy in Geneva (R. 911–12). Lehman, branch manager of United Artists offered De Toto and Dipillo the 1937–38 and 1938–39 second-run product for the Park (R. 973), saying that Schine had already reserved the current (1939–40) second-run in Geneva (R. 912). When De Toto reminded Lehman that Schine had no second-run policy there, the latter replied that Schine had seen fit to reopen the Temple and had reserved second run for it (R. 911–12). The Temple did not reopen at that time and has been continuously closed from 1931 to 1942 (R. 912–14).

Paramount first offered Dipillo and De Toto first-run pictures of the 1937-38 and 1938-39 releases (R. 973-5), and when the salesman called on De Toto at Clifton Springs in August or September of 1939, and told De Toto that he could not sell the Park any current second-run pictures but the old pictures and some first-run Schine rejects were available (R. 915-16). At about the same time, the Warner exchange sent its salesman Minsky to see De Toto at Clifton Springs, and he offered De Toto a deal to read *either* second- or third-run, depending upon whether Schine reserved the second-run (R. 947).

Before the Park opened, Schine's Regent charged 10 and 25 cents, but after the Park began operating the adult admission price at the Regent was lowered to 20 cents (R. 916-17). The Park operated only about three or four months, and when it closed the adult admission price at the Regent was raised to 30 cents (R. 917).

HARLAN, KENTUCKY

(Pop. 5,122–R. 2574)

In 1938 Grover Scott was operating the Margie Grand in Harlan (R. 758) and the Liberty in Pikeville, Kentucky (R. 744). Price Coomer was operating the New Harlan in Harlan (R. 849).

In the course of his operations as a movie exhibitor, Scott had experienced an increase in film rentals from year to year (R. 759). As part of his Corbin deal with Schine,[1] he entered into an agreement with them in November of 1938 whereby for 5 per cent of the gross receipts the defendants agreed to buy and book pictures for the Margie Grand and Liberty (Exs. P. 20, R. 756, 3772; P. 25, R. 830, 3777). After this contract was made, Scott found that the defendants were able to get rebates on film rentals which he, as an independent operator, had not been able to secure. As a result, his film rentals were lower than when he had operated independently (R. 760–61). He found, however, that he did not benefit by this arrangement because of the fee charged by Schine for their services (R. 773). In August 1939, the defendants acquired the Liberty in Pikeville (Int. Ans. 17–A, 18, 23, R. 239), and in January 1941 acquired a half interest in the Margie Grand, giving Leon Scott, the son of Grover and the then owner, a contract as manager (R. 769; Int. Ans. 17–A, 18, 23, R. 238).

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[1] See Corbin, p. 30.

Coomer had operated the New Harlan in opposition to the Margie Grand since 1934 (R. 861). Since at least 1936, Coomer was the regular first-run customer of Warner Brothers (R. 849, 864–5). For the 1941–42 season, Warner and the other film companies were selling their pictures as they were released in blocks of five (R. 849). Without giving Coomer an opportunity to negotiate for the second block of five, Warner sold that block of five to Schine (R. 849–50). This was also true of the third block (R. 852–54). Coomer, therefore, made no further attempts to continue his first run of Warner product (R. 850, 869). Prior to the time when Schine began to buy pictures for the Margie Grand, the latter had not played a second-run of the same product which Coomer played first-run at the New Harlan (R. 854, 867–68). After that time the Margie Grand played on second-run the pictures which played first-run at the New Harlan (R. 854)[2] and Lazar and Hensler tried to get Coomer to sell his theatre to Schine (R. 857).

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[2] In response to an inquiry from the home office as to whether or not this run should be sold (Ex. 597, R. 3949), the Warner branch wrote on December 13, 1940:

"* * * in regards to selling Schine for second run in Harlan, Ky., if there is any possible way of getting out of selling this account we would greatly appreciate it. We have a very good first run in this situation who pays us tops for this size town and we definitely know it will hurt him considerably to sell a second run in this situation * * * upon checking up we find there is no contract existing for second run product at all in this particular town" (Ex. 598, R. 3949).

To which the home office replied "we intend to sell Schine second-run in Harlan" (Ex. 599, R. 3950).]

Unsuccessful in this effort, they went to Coomer's landlord, while Coomer's lease still had some time to run, and attempted to persuade him either to break Coomer's lease or to make a lease with them to be effective after the expiration of Coomer's lease (R. 878–80). The landlord refused (R. 880).

ILION, NEW YORK

(Pop. 1940, 8,927—R. 2573)

In 1925, Young and Whitney, Inc., built the Capitol Theatre in Ilion. They also owned the Opera House and Big Ben theatres, and leased the Temple (R. 2364, Ex. 871, R. 5221). Herkimer (1940 population 9,617, R. 2573), located three miles east of Ilion, had two theatres, the Liberty and Richmond, which were acquired by Schine in 1925 (Int. Ans. 17-A, p. 5, R. 227). The Richmond has been kept closed since 1933 (Int. Ans. 18, p. 5, R. 227).

The Capitol was a magnificent theatre; it had about 1,300 seats, 200 of which were in the balcony, and it cost over $300,000 (R. 3499). The Liberty was about two years older than the Capitol and had 1,238 seats (Int. Ans. 18, p. 5, R. 227), some 600 of which were in the balcony (R. 2372-3). The Capitol and Liberty both charged the same admission prices (R. 2373).

Robert I. Pierce, part owner and manager of the Capitol, testified that before 1928, which he recalled as the date Schine came into Herkimer,[1] there was open booking between the two towns (R. 2365), but that in 1928 Schine took clearance for Herkimer over the Capitol in Ilion (R. 2366). This clearance apparently persisted throughout the operation of the Herkimer and Ilion theatres by Fox Metropolitan from 1929 to 1933 (R. 2385–87), and was 14 days at the time Young and Whitney resumed operation of the Capitol (R. 2382, 2385–6).[2]

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[1] According to the interrogatory answers (I. A. 17-A, R. 227) Schine acquired the Herkimer theatres in 1925, but the exact date is immaterial in any event.

During the period from 1933 until the time Schine took over the Capitol, all the major companies gave Schine's Herkimer theatre clearance of 14 or 10 days over the Capitol at Ilion.[3] Warner (R. 2370–73), Paramount (R. 2373–75), RKO (R. 2375), Metro (R. 2377) and Universal (R. 2377–78) sold their product to Schine at Herkimer with protection over the Capitol before they would sell to the Capitol. These companies refused to reduce or eliminate the clearance despite the efforts of Pierce when negotiating the Capitol contracts (R. 2373–78). In 1935, in response to one such request Fox agreed to reduce the clearance to 10 days if all the other distributors would do likewise (Ex. 873, R. 4378) but at no time was Pierce ever given an opportunity to discuss terms except on the assumption that the Capitol must follow Herkimer (R. 2373–78). [United Artists held up contracts for the Capitol Theatre in February 1936 because:

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[2] Young and Whitney leased the Capitol to Fox Metropolitan at the same time Schine leased the Liberty and Richmond (R. 2365–66; I. A. 17–A, R. 227), but got the Capitol back shortly before Schine resumed operations in Herkimer (R. 2363–67).

[3] In some instances the clearance was reduced from 14 to 10 days by RKO (Exs. 874–A to D, R. 5575–78) and Warner (Exs. 875–A to E, R. 5579–86); in the case of Fox it remained at 14 days (R. 2384, Exs. 877–A to E, R. 5591–95), while with Paramount it started at 14, dropped to 10, and went back to 14; Metro was always 10 days.

> We do not want to encounter any difficulty with the Schine Circuit insofar as clearance is concerned; therefore, we want to be definitely assured that the clearance as submitted in the contracts is satisfactory to the Schine Company (Ex. 292, R. 3833)].

In December 1936, an agreement was entered into between the owners of the Capitol and Schine (Ex. 871, R. 5221) covering the sale of the fee of the Capitol, the fee to commercial property (formerly the site of the Opera House), and the lease of the Temple, and in May of 1937, as a condition of the sale, Frank C. Whitney and Robert Pierce agreed not to compete with the Schines in Ilion or within a radius of 35 miles of Ilion for 10 years (Ex. 872, R. 5223). The final transfer apparently did not occur until August 1937 (Int. Ans. 17–A, 18, p. 5, R. 227). The Temple was closed when acquired and apparently has remained closed ever since but in April 1942, the defendants took another lease on it for a five-year term at an annual rental of $1,750.00 (Ex. 928, R. 5246).

KENT AND RAVENNA, OHIO

(Pop. 1940, Kent, 8,581; Ravenna, 8,538—R. 2574)

In 1936 there were two theatres in Kent, the Kent and the Opera House operated by different independent operators (R. 1401). In that year in Ravenna, Ohio, there were also two theatres, the Ravenna and Ohio, both operated by the independent who had the Kent theatre at Kent (R. 1401). The defendants acquired the Opera House in June 1936 and closed it in September 1937 (Int. Ans. 17-A, R. 235). Prior to the 1937-38 season the Kent, Ravenna and Ohio had been served with Warner pictures for many years (R. 1401-02). But no Warner pictures were played in those towns during September to December of 1937 because Mooney, the manager of the branch which served them, was instructed by either Andy Smith, Warner's Eastern sales manager, or Mochrie, Smith's assistant, not to negotiate any deal for Kent or Ravenna (R. 1401-06),[1] and Mooney, accordingly told the manager of the Kent, Ravenna, and Ohio theatres that he was not in a position to negotiate a deal (R. 1404-05). Schine acquired these three theatres in December 1937; the Ohio which was closed when acquired was remodeled and reopened in June 1941 (Int. Ans. 17-A, 18, 23, 14, R. 235-6). When the defendants' five-year lease on the Opera House, which apparently had remained closed, expired in 1941 it was renewed for another five years (R. 2521-22).

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[1] Smith, who testified for the defendants, did not deny giving such instructions or explain the reason for them (R. 2782-86). Mochrie was not produced by the defendants as a witness.

LEXINGTON, KENTUCKY

(Pop. 1940, 49,304—R. 2574)

Lexington is the third largest city in Kentucky (Federal Census, 1940). Since September 1940, Schine has had all the moving picture theaters in the city (Int. Ans. 17 A, 18, 23, R. 238). In 1935 Harry Schwartz was the owner and operator of the Opera House (R. 2025), and the five other theaters then operating were, the Kentucky, Ben Ali, Strand, and State (operated by Phoenix Amusement Co.), and Ada Meade (operated by one Switow) (R. 2025–26). The Kentucky and Ben Ali were the first-run houses; the Strand was a second-run house (R. 2026). Schwartz's Opera House was a third run, followed by the State and Ada Meade (R. 2027). In November 1936, the defendants acquired the Ben Ali, Kentucky, Strand, and State (Int. Ans. 17 A, 18, 23, R. 238).

Schwartz had United Artists first run of the 1934–35 season, some of which he was playing in 1936, because of lateness in delivery by United Artists (R. 2026–28). In 1936 he had a second-run contract of Metro for the 1934–35 season (R. 2028), and a third-run Metro contract for the 1935–36 season (R. 2028). In the fall of 1936 he asked Metro for a third-run contract for the 1936–37 season (R. 2028). Without being given an opportunity to have an offer considered for third run, he was told by Booth, Metro's branch manager, that he would not be able to get third run because Schine had bought the third as well as the first two runs (R. 2028–30). Schwartz had to take a fourth-run Metro contract (R. 2030). The State played the Metro third run ahead of the Opera House (R. 2030–31).

In 1935 the Kentucky and Ben Ali were charging 40 cents admission at night and 25 cents at matinee; the Strand was charging 25 cents at night and 15 cents matinee. The State and the Ada Meade charged 10 cents at all times (R. 2026). The Opera House was charging 15 cents at night and 10 cents matinee (R. 2026). When Schwartz played United Artists pictures first run, he raised his prices to 25 cents at night (R. 2027). In the fall of 1936 the admission prices were the same except that the State was charging 15 cents at night and 10 cents at matinees (R. 2030). Schwartz was then following the State, as well as the Kentucky, Ben Ali, and Strand in the exhibition of major pictures (R. 2030). In the summer of 1937 and again in the summer of 1938 Schine cut the admission prices of the Ben Ali to 27 cents at night in the balcony and to 15 or 16 cents matinee in the balcony, and the Strand to 17 cents at night in the balcony and 27 to 22 cents main floor, and matinee 16 cents all over. Schwartz meanwhile retained his regular 16 cents night and 10 cents matinee price (R. 2037–8).

Schine's contract with Fox for their 1936–37 first-run product provided for minimum admission prices in Schine's Lexington theatre for the first-run showing of Fox pictures (Ex. 192, R. 5364). Despite the existence of this contract, Schine cut its admission price below the minimum prices fixed (R. 2030–33). Schwartz complained to Fox and Paramount about these admission price cuts by Schine (Ex. 209, R. 3812), and the Fox branch manager brought these cuts to the attention of the Fox home office (Ex. 200, R. 3810), advising that Schine's:

> * * * are advertising these prices (16¢) exclusively within a radius of sixty miles of Lexington, with the result that all surrounding towns are complaining to us and other distributors.

The home office in turn complained to Schine about these cuts, calling attention to the fact that they were in violation of the contract (Ex. 201, R. 3811), but Myer Schine merely replied that the cuts were "quite essential and proved to be beneficial" (Ex. 202, R. 3811). Fox then omitted all minimum admission price requirements in the Schine second- and third-run contracts for the succeeding seasons (Exs. F 49, R. 5955, F 122, R. 6056), while at the same time providing in its contract with Schwartz's Opera House for minimum evening adult admission prices of 15 cents for that theatre (Ex. 829, R. 5557). In the same period, George Lynch complained to Metro that Schwartz was charging only 10 cents at night (Ex. 455, R. 3916). [The local branch manager of Metro, after advising O'Shea, his district manager, that Lynch's claim was false, went on to say:

> In my opinion the situation in Lexington is very bad. While it is not my desire to suggest any changes of theatre operation where it tends to lessen our gross, nevertheless, Schine's policy is materially affecting the surrounding towns. For instance, the price at the Ben Ali is 16 cents balcony, 22 cents main floor matinee and 22 cents

> balcony, 33 cents main floor at night with practically all changes double bills.
>
> The Strand, second-run, plays some slough first-runs and always double bills at 16 cents at all matinee, and 16 cents balcony, 22 cents main floor at night. State—10 cents matinee and 16 cents at night.
>
> When we sold Mr. Schwartz of the Opera House fourth-run in Lexington, Schine's were not operating under this policy. It has made it very difficult for the Opera House to continue under the present contract. He is going to try a few more pictures and then if he cannot possibly stand the prices charged, it will be necessary to make an adjustment. As above stated, he is charging 10 cents matinee and 16 cents at night, playing fourth-run after Schine's double bill at the Ben Ali, Strand, and State on a comparable admission price. (Ex. 456, R. 3917).

He received the following reply on September 1, 1937 (Ex. 457, R. 3918):

> When I wrote you regarding admission prices in the Opera House, Lexington, it was not with any thought of an adjustment for this theatre.
>
> Insofar as the Opera House charging 10 cents balcony and 16 cents main floor to meet the competition, I would like to have the gentlemen who operate this theatre understand that M-G-M pictures are not being shown anywhere at night for 10 cents and we shall expect him to conform to the prices on his contract. Two wrongs do not make a right and this house going into a 10-cent policy would only force the Schine house to cut their price to meet the wrong kind of competition.]

After November of 1937, Schwartz had no first run of any major company and all the major product he played followed the Schine houses (R. 2038).

During these periods of reduced admission prices by Schine, Schwartz had to play most major product at admission prices comparable to what persons in Lexington could see the same pictures for at the Schine theatres on a much earlier run (R. 2030–33, 2036, 2038). Furthermore, during this period of reduction of admission prices at the Ben Ali and the Strand, the defendants were buying first-run product under contracts which permitted them to play first run at the Kentucky or the Ben Ali or the Strand, as they wished [Ex. W. 4 (79), R. 4534, Ex. R. 2 (51, R. 4864)]; or first run at the Ben Ali or the Strand or the State as they desired (Ex. F. 49, R. 5955); or first run at the Kentucky or the Ben Ali or the Strand or the State as they desired (Ex. F. 50, R. 5956); or second run at the Strand or the State as they desired [Ex. W. 4 (80), R. 4535]; or third run at the Strand or the State as they wished [Ex. W. 4 (81), R. 4536].

The rental terms for the Fox third run for Opera House for the 1937–38 season (Ex. 829, R. 5557), approximated or were greater than the terms called for in the Schine 1937–38 Fox contract for second run in the Ben Ali, Strand, or State (Ex. F. 49, R. 5955). The rental terms for the Opera House for fourth-run Warner's product for the 1939–40 season were greater and more onerous than the rental terms for Schine's third run at the State or Strand [Ex. 642–A, W–4 (81). R. 4536].

Schine acquired the Opera House in September 1939 (Ex. 823, R. 4355), as part of the deal by which it got Schwartz's theatre at Paris. The agreement of sale contained a covenant by the Southland Amusement Company, Harry Schwartz, Vernon K. Schwartz, and George J. Schwartz that they would not

> "for and during a period of fifteen (15) years from and after the date hereof, be or become engaged in or participate or have any interest of any nature whatsoever in, the motion picture, theatrical or amusement business in the capacity of owner, employee, partner, stockholder or in any other manner whatsoever, either directly or indirectly, in any town or city in the State of Kentucky, in which the Lessee or any of its affiliated or associated companies are now engaged in business, provided, however, that this covenant shall not prevent the Lessor or the Stockholders from investing in stocks or securities listed upon any recognized stock exchange" (Ex. 823, R. 4355, 2048–49).

At the time of the covenant the defendants were engaged in the theatrical business in Corbin, Harlan, Maysville, Middlesboro, Paris, Pikeville, Lexington, and Richmond, Kentucky (Int. Ans. 17 A, 18, 23, R. 238–39). The record does not indicate whether the defendants or their associated companies engaged in other kinds of business in other places in Kentucky, but the covenant is broad enough to include such places if they existed (R. 920, R. 2048).

In September 1940, Schine acquired the sole remaining competing theatre in Lexington, the Ada Meade (I. A. 17 A, R. 238).

LITTLE FALLS, NEW YORK

(Pop. 1940, 10,163—R. 2573)

There are only two theatres in this town, the Rialto, owned by Schine since 1925 and the Hippodrome, acquired by it in 1936 (Int. Ans. 17–A, 18, and 23, R. 227–28). The Hippodrome was closed for about six weeks prior to September 1, 1934, upon the death of its then owner, William J. Wood (R. 1722, 1738–39). Thomas E. Warne, a former theatre manager for Schine (R. 1722) then became associated in the management of this theatre with Wood's widow, Mrs. Marion D. Wood (R. 1722, 1724). It had been operating on a second-run policy prior to Wood's death (R. 1722). At that time the Rialto was playing the first-run product of all major companies except United Artists; that is, the Rialto had the first-run features of Fox, Metro, Warner, RKO, Paramount, Columbia and Universal (R. 1722–23).

After Warne took over the management of the Hippodrome, in attempting to secure additional second-run product for the Hippodrome (R. 1724–25), he went to Albany, New York, in September 1934 (R. 1724), and saw the following exchange managers: Halligan of RKO (R. 1293–4, 1724); Pielow of Metro (R. 1289, 1724); Grassgreen of Fox (R. 1214, 1724); and R. S. Smith of Warner (R. 1325, 1724). He informed each that he was about to reopen the Hippodrome and requested their product for second-run exhibition at his theatre. Halligan and Pielow said they had not closed their first-run deal for Schine's Rialto theatre and were not ready to make a deal for second-run (R. 1724–26). Warne requested that they notify him when ready to negotiate the second-run deal and Halligan promised to do so (R. 1725). Grassgreen and Smith also stated they were not then ready to make a deal for second-run, and Warne requested them to notify him when they were ready to make definite arrangements for their product, as he was in the market for second-run pictures (R. 1725–26). Halligan was again asked about feature product at the time Warne purchased the RKO short subject pictures from him in the fall of 1935. Warne wanted features, and Halligan wanted only to sell him short subjects, saying he wasn't quite ready to sell the feature product (R. 1748–49). He heard nothing further from these exchange managers with regard to feature pictures, and made repeated trips to their Albany offices for over a year, between October 1934 until October 1935 (R. 1727–28). None of the managers or salesmen of these four major companies ever offered him an application for their pictures nor did they ever contract to sell him their product, either first- or second-run (R. 1728–29). During the period from September 1934 to June 1936, none of this second-run product was ever used at the Rialto theatre there (R. 1736–37).

He continued the operation of the Hippodrome with Paramount, Columbia, Universal, and independent product (R. 1727) which he used on a double-feature program policy (R. 1730) as the Rialto was also playing double features on its first-run program policy (R. 1729). During the 1934–35 season, he also had contracted for about 20 United Artists pictures on first-run (R. 1722–23, 1730) and whenever he played one of the United Artists' pictures, which he used at the rate of about one every three weeks, he played such pictures on a single-feature program policy, using short subject pictures with it (R. 1730–31). He lost the United Artists first-run to Schine in the 1935–36 season (Ex. 718 H. R. 4310–11, 2510).

Warne continued double-featuring his second-run pictures until December 1935, or January 1936 (R. 1730). From then until he closed the the Hippodrome in June 1936, he intermittently played double and single-featured pictures, for the reason that there were times in that period when he could only secure one feature picture (R. 1731). He closed the Hippodrome for the summer, to make alterations (R. 1740) for lack of sufficient salable product to make any money, and because he and Mrs. Wood were running short of funds (R. 1731).

When Warne commenced operating the Hippodrome in September 1934, it charged evening admission prices of 10 cents for children and 20 cents for adults (R. 1723); the Rialto charged evening admission prices of 10 cents for children, 20 cents in the balcony, and 30 cents in the orchestra for adults (R. 1723). There was a short period of time, in the spring of 1935, when Warne resorted to the practices of selling on week ends "Family Tickets," good for one week, whereby one adult admission payment entitled two persons to enter the theatre (R. 1731–32, 1742–43).

After the 1933-34 season, the clearance which defendants' Rialto theatre secured over the Hippodrome became increasingly onerous, finally becoming 90 to 120 days for most of the producer companies, during Warne's operation of the theatre (R. 1723–24).[1]

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[1] The Rialto, acquired by Schine in 1925, had been under the operation of Fox Film Corporation, through one of its affiliates, from 1929 to 1933 (I. A. 17–A, 18, and 23, R. 227). The Warner and First National contracts for the first-run sale of their products to the Rialto theatre in the 1932–33 and 1933–34 seasons provided only 60 days' clearance over the Hippodrome (Ex. 635 G, R. 5453–4); but in the 1935–36 season, in a contract with Schine approved August 16, 1935, this clearance was extended to 90 days (Ex. 635 I, R. 5457).

The Paramount contract for the use of its product first-run at the Rialto in 1931–32 contained no clearance provision against the Hippodrome (Ex. 339 E, R. 5396); but the next season's contract with Schine provided 90 days' protection over second-run (Ex. 339 F, R. 5397); the 1933–34 season contract carried the same clearance provision (Ex. 339 G, R. 5398) as did the 1934–35 contract (Ex. 339, H, R. 5399, 2531, 2881).

In the 1931–32 season, Wm. J. Wood had Columbia product first-run at the Hippodrome (Ex. 672–A, R. 5481); in 1932–33 it played first-run at the Rialto with 60 days' clearance "over all other theatres in Little Falls" (Ex. 672–B, R. 5482); in 1933–34, by contract approved November 2, 1933, Schine obtained this product first-run for the Rialto with "120 days' [clearance over] City of Little Falls" (Ex. 672–C, R. 5483); this provision was carried into the Schine-Columbia contract for the Rialto, Little Falls, for the next season (Ex. 672–D, R. 5484); being reduced to 90 days in the 1935–36 and 1936–37 season contracts (Ex. 672–E, F, R. 5485–6).

Wm. Wood at the Hippodrome had contracted for all the

J. G. Selmser, assistant treasurer and director of Schine Theatres, Inc. (R. 1734), called on Warne in June 1936 and asked why he had closed the theatre. Warne replied that it would be remodeled during the summer. Selmser said he would make an offer for it if Warne "wasn't going to be too tough to do business with." Warne closed a deal for Selmser to take over the theatre at his second meeting with him, consisting

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features of Columbia for the 1931-32 season (Ex. 672-A, R. 5481). For the 1932-33 season, the Fox-operated Rialto had contracted for the 32 pictures available with an elimination privilege of 12 out of the lowest rental group of 19 (Ex. 672-B, R. 5482); yet Schine secured from Columbia a contract for the 1933-34 season providing for lower film rentals than had been paid by either Wood or Fox, and obligating Schine to play only 10 pictures (Ex. 672-C, R. 5483), but allowing the exhibitor the right to eliminate any picture from the lowest price allocation group.

At film rentals lower than those provided in the Columbia contracts with Wood and Fox-Metropolitan, in the 1931-32 and 1932-33 seasons, Columbia allowed Schine a contract in the 1934-35 season obligating it to take only 24 out of 48 feature pictures available and providing for 120 days' clearance (Ex. 672-D, R. 5484).

Schine's contract with RKO for the Rialto first-run for the 1934-35 season provided 120 days' clearance over the other Little Falls theatre, despite the fact that this contract was for only 35 pictures out of 50 available for contract from this company this season (Ex. R-14, R. 5810).

During this period Universal apparently gave Schine a clearance of 120 days, which during the 1936-37 season was changed to 90 (Ex. 1009, R. 4428). During this period United Artists gave Schine a clearance of 115 days (Ex. 281, R. 3827).

The Metro contract for the *Fox*-operated Rialto for the 1932-33 season had no clearance provisions against the Hippodrome (Ex. 604-A, R. 5419), but its 1934-35 contract of sale of the good will and theatre equipment. Schine assumed payment of $1,300 of outstanding debts and paid Warne and Mrs. Wood a total of $400 to be divided between them (R. 1734–35).

Schine leased the Hippodrome theatre from the Odd Fellows' Temple Association of Little Falls for five years for $2,500 per year, beginning July 1, 1936 (Ex. 927, R. 5244), but kept the theatre closed most of the time during the rest of 1936 and 1937 (R. 1744).[2] In 1938 it was operated part time to February 5, when it was closed. In 1939 it was operated part time to May 20, then closed for the summer (Supp. Sched. to Int. Ans. 18, R. 243).

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for the same theatre with Schine gave the latter a 60 days' clearance over the Hippodrome, although the minimum admissions prescribed were lower than those set in its 1932–33 contract while operated by Fox (Ex. 604–A, R. 5419; 604 D, R. 5424).

[2] The lease contains as an express convenant:

"Said party of the second part (Schine Theatrical Company, Inc.) shall not be required to conduct motion pictures or shows in said theatre at any particular time. It may do so at such times during the term of said lease as second party so desires" (R. 5246). The lease contained an option provision providing renewal of it for another five year term, if notification was given 90 days of expiration, which option has been exercised (R. 2521).

LOCKPORT, NEW YORK

(Pop. 1940, 24,379—R. 2573)

In December 1932, there were three theatres in Lockport (Int. Ans. 17 A, R. 228, 1523–25, 2656, 2657, 2660–61, 2638). The Palace, a very fine theatre (R. 2657), was the newest with a seating capacity of 1,800 (R. 1525). It was leased by Paramount upon its completion in 1925 (R. 2710, 2711, 2657). The Rialto had been converted from a skating rink to a garage, and later to a theatre which seated 1,500 (R. 1525). The Hi-Art was an old theatre, seating 1,100 (R. 1525), and had been converted from a business block (R. 1525, 2656). Schine acquired the Rialto in 1924 (Int. Ans. 17 A, R. 228) and in 1927 formed a partnership to operate all the Lockport theatres with Paramount (Int. Ans. 17 A, R. 228, 2638, 2658–59, 2711–13), under which Paramount and Schine agreed to split the profits, have Schine manage the theatres and buy and book the pictures (R. 2711–12). The Schine-Paramount partnership moved all the best first-run pictures from the Rialto to the Palace (R. 2660–61). For seven years prior to 1933, the Hi-Art had been continuously closed (R. 1525, 2660–61, 2712).

In December 1932, Schine was evicted from the Palace (R. 2712, 2659, 1524) and its pooling agreement with Paramount was terminated at the same time (R. 2713). In consequence, the owners of the building immediately formed a corporation, known as Reliance Theatres, Inc., to operate the theatre (R. 1524–25; Ex. 173, R. 3806). Nikitas Dipson, who owned other theatres in New York, was a principal officer and stockholder (R. 1524–25, 1552–54).

Reliance commenced the operation of the Palace on January 1, 1933, playing Metro as its only major product (R. 1524–25). The Schine-Paramount partnership had made contracts for the other 1932–33 major product before that time (R. 2661–62). Because of a disagreement between Schine and Loew's, relative to the 1932–33 season, Schine did not buy or play any of that Metro product for any part of its circuit (R. 2880). For this reason the Palace was able to buy first-run Metro product for the 1932–33 season (R. 1525–26, 2880). The Palace opened with this Metro product (R. 1525), and continued for many months on a single-feature basis (R. 1536). The Rialto was then using all of the remaining major product as the Hi-Art remained closed (R. 1551).

[On December 28, 1932, Sydney Samson, Manager of the Fox Exchange at Buffalo (R. 1215–16), wrote a letter to Sichelman, at the New York office (R. 1216), advising that theretofore Schine had operated both the Palace and Rialto, but was now running only the latter, as the lease on the former had not been renewed. He further stated that Schine had accordingly requested Fox to transfer to the Rialto all unplayed pictures assigned to the Palace. Samson stated that Fox would receive more income if the percentage pictures continued to be played at the Palace, and that when the owners of the Palace Theatre building reopened the Palace, they would want this Fox product, but he did not object to transferring the unplayed Fox pictures from the Palace to the Rialto. In setting forth the reasons for his attitude, he said that Fox was serving Schine throughout the circuit and that he thought this was sufficient to overcome any objections to taking these pictures away from the Palace and playing them at the Rialto (Ex. P–173, R. 3806).]

With reference to the 1933–34 season, Reliance, through Charles E. Dickinson, its vice-president (R. 1525, 1554), whose father was the principal owner of the Palace (R. 1523–24), and other employees, made strenuous efforts to buy a major product for it. They called on various film exchanges in Buffalo (R. 1526), and in addition wrote numerous letters to the film companies (R. 1526).

Metro, on May 5, 1933 (R. 1527, Ex. 649, R. 4167), advised Reliance that it could not make a definite commitment for its 1933–34 product, but would keep the Palace in mind.

[On July 23, 1933, William F. Rodgers, who was then Eastern Sales Manager of Loew's, again wrote to Reliance stating in part as follows:

> In our negotiations with the Schine interests it will very likely be that we will have to give them consideration for our product at Lockport, as well as other situations, and as we are hardly in a position to forego or jeopardize the business from their other situations, and for the further reason that they have for a number of years been a very representative account, we feel that our interests would be best

served by giving them such consideration.
Under the circumstances, we are not in a position to offer you our 1933–34 product (R. 1529–30, Ex. 653, R. 4170).]

After Reliance received this letter, Dickinson went to New York and called on Rodgers of Metro (R. 1530–31, 2876). He told Rodgers that ever since Reliance had opened the Palace it had contracted for and had played the Metro product, that the Palace had done very well with this product, considering the type of the theatre and the pictures played, that under the Reliance management the Palace had given the Metro pictures long runs as single features and that he, Dickinson, hoped Rodgers would reverse the decision announced in his letter of July 23, 1933, as to the 1933–34 product and consider the fact that Reliance had been a satisfactory customer of Loew (R. 1531). Rodgers replied that "he would like to have his pictures played in the Palace Theatre, that Metro-Goldwyn-Mayer always liked to have their pictures played in the best house in any town, the most outstanding house" (R. 1531) but declined to deal with Dickinson (R. 2877–78).

On May 8, 1933, Universal wrote Reliance that it could not commit itself to the Palace because of a long-term franchise with the Schine theatres in that city, but was willing to negotiate as to pictures eliminated by Schine (R. 1528, Ex. 650, R. 4168). Paramount wrote Reliance on May 16, 1933, saying that it was too early to make plans for the next season, but Paramount would keep the request of Reliance at hand (R. 1528, Ex. 651, R. 4169).

Two weeks later, Paramount again wrote to Reliance saying that it would be impossible to offer its product for the 1933–34 season because of its partnership with Schine (R. 1529, Ex. 652, R. 4170) in the Rialto Theatre. The Lockport pool had been dissolved more than five months before this letter was written (R. 2637, 2713; Int. Ans. 17 A, R. 228). During the summer of 1933, the Palace was not able to contract for any major product first-run for the 1933–34 season (R. 1531).

After Dickinson returned to Lockport from his New York trip, he had a conference with John May of the Schine organization. The latter offered to buy the lease which Reliance had on the Palace (R. 1531). At the same time, May told him that Schine had a large volume of product and in order to play it Schine had to reopen the Hi-Art, which had been closed for seven years (R. 1533–34). About October 18, 1933, Dickinson received a visit from Howard Carroll (R. 1535, 1588), an employee of Schine who later became a district manager working out of the Rochester office (R. 1585, 1586). He told Dickinson that Schine was holding back the reopening of the Hi-Art to give him and his associates a few more days to decide whether they would accept Schine's offer to buy the lease on the Palace (R. 1588). Dickinson replied that they were not interested (R. 1588).

The Hi-Art then opened on October 21, 1933 (R. 1588). It continued operating until at least the spring of 1936, when Dickinson severed his connection with the Palace (R. 1523, 1536).

After opening the Hi-Art, Schine announced and advertised a playing policy there of major double features, first- and second-run, with several changes a week, at an admission price of 20 cents, and at times various give-aways (R. 1628–29, 1632, 1536–37, 1548). During October and November of 1933, the Rialto also played major double features, sometime with give-aways (R. 1629, 1632). After the Hi-Art opened, the Palace, charging 20 and 25 cents, was playing the remainder of the Metro 1932–33 product, independent pictures, and some major product of prior seasons (R. 1536–37). During the 1933–34 season, it contracted for several United Artists pictures for first or later runs. Most of them were 1931–32 and 1932–33 releases (Def. Ex. D–69 (R. 6150), D–81 (R. 6167), P–197 (R. 5857), D–107 (R. 6193), 717 (R. 4285); R. 1581–84).

With reference to the 1934–35 pictures, Dickinson and his associates again attempted to obtain major product (R. 1537). In the spring they wrote to all the major companies in Buffalo (R. 1537). They were solicited by no major company for first- or second-run of its product (R. 1537). During the summer of 1934, Dickinson went to New York City and saw executives of Metro, RKO, Paramount, Columbia, Warner, Fox, and United Artists (R. 1537–39, 1540–41, 1542, 1544). Rodgers, Eastern Sales Manager, told him that Metro was then negotiating with Schine and could not talk to Dickinson until they definitely knew the results of their negotiations (R. 1539). McEvoy, Eastern Sales Manager of

RKO,[1] told him that his company probably could do nothing as they were negotiating with Schine (R. 1294, 1539). Dickinson heard nothing further from them (R. 1540). J. J. Unger, Eastern Sales Manager of Paramount (R. 1239), told him that Paramount had no pictures to offer (R. 1540).

Rube Jackter, Assistant General Sales Manager of Columbia (R. 1603–04), told him that Columbia was not in a position to negotiate at that time (R. 1540, 1541). Dickinson heard nothing further from Columbia (R. 1541) until March 1935. The Eastern Sales Manager of Warner, Andrew W. Smith (R. 1325, 2783), advised Dickinson that his company was negotiating with Schine but that there might be a possibility of a split of the 1933–34 product and Warner would communicate with Dickinson later (R. 1541). Dickinson heard nothing further from Warner (R. 1541).

Harry L. Gold, Eastern Division Sales Manager of United Artists (R. 1243), told Dickinson that he was negotiating with Schine, they had not as yet signed the contract, and Dickinson would, therefore, have to wait until the negotiations were ended. However, United Artists never communicated with Dickinson (R. 1544–45) until March 1935. The result was that during 1934 the Palace, under Reliance Management, did not have any 1934–35 releases of major product (R. 1545). It was not until March 1935 that the Palace succeeded in receiving a Columbia first-run deal for the 1934–35 and the 1935–36 seasons, and a number of 1934–35 United Artists contracts (R. 1545–46, 1581–82, 1583, 1584; Ex. D–47 (R. 6147), Ex. D–48 (R. 6148).

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[1] RKO, for the 1934–35 season sold Schine the pictures "that play the Rialto 1st run" to play at the Hi-Art second-run at a top rental of $17.63 for half of the pictures used, and $15 for the rest, with no minimum admission prices prescribed (Ex. R–16, R. 5812). Its first-run contract with Schine for the Rialto *or* Hi-Art committed the defendants to only 40 out of 50 pictures available for contract (Ex. R–15, R. 5811).

For the 1935–36 season, Dickinson wrote all the eight majors (R. 1546) and personally solicited at least one (R. 1545–46). He was not solicited by any of them either in the spring or summer for their product (R. 1546). Excepting Columbia and three United Artists pictures (Def. Ex. D–101, D–103, D–104, R. 6187, 6189–90; R. 1546), he had no 1935–36 first-run contracts with any of the majors (R. 1546), and never had a regular second-run deal (R. 1547). Dickinson terminated his connection with the Palace Theatre in the spring of 1936 (R. 1523).

His father died in December 1933, and executors were appointed early in 1934 (R. 1606). Among the assets was the interest in the Palace (R. 1607). In May 1935, the executors met with J. Myer Schine and John May to discuss the possibility of selling the Palace (R. 1607–8). Schine made an offer of $159,000 (R. 1609, Ex. 688, R. 4248). Considering this insufficient, the executors declined (R. 1610). One month later, J. Myer Schine again talked with one of the executors, but no deal was closed (R. 1613). On April 20, 1936, the property was sold at public auction after public advertisement (R. 1613–15) to Mr. Osborne, representative for Nikitas Dipson, for $151,427.79, with Schine the only other bidder

(R. 1613–15, 1617). The sale included the lease on the Palace, the stock in Reliance Theatre, Inc., and all other interest in the theatre, and was completed on May 20, 1936 (R. 1616–17).

Warner F. Thompson of Lockport was attorney for Dipson in 1936 (R. 1618). Willard McKay was then vice president and general counsel of Universal, and also did legal work for Schine (R. 1619, 1622–23, 1720). Pursuant to a telephone call which Thompson made to McKay, the two held a conference in the former's office in New York on June 16, 1936 (R. 1621–22). McKay suggested a pooling arrangement between Schine and Dipson of the Rialto, Hi-Art and Palace, and the closing of the Hi-Art (R. 1624). Schine was to receive 65 percent of the first $50,000 of profits and to have exclusive management of all the theatres because of his superior buying position (R. 1624–25). This offer was declined on June 18, 1936 (R. 1626). In July 1936, Schine and Dipson closed a deal with reference to the Palace, in consequence of which, Dipson transferred possession and operation of the Palace to Schine, sometime between August 1 and October 10, 1936 (R. 1618–19). The purchase price was $200,000 (Def. Ex. D–150, R. 5183; Int. Ans. 17 A, 18, R. 228).

Although the record shows that the Hi-Art operated only part-time after the fall of 1936, and that from 1925 to October 1933 it had been continuously closed (R. 1525, 2661, 2712), Schine renewed its lease on this theatre several times (R. 2517–18). The original lease of the premises made in 1926 was for a term of 10 years with a rental of $9,500 a year for the first five years and $10,000 for the rest of the term. It had a renewal option to extend the term 11 years at $12,000 a year. The defendants made a superseding lease of the premises in May 1933, for two and one-half years at an annual rental of $4,000. Other provisions were similar to those in the 1926 lease (Ex. 923, 924, 925, 926, R. 5241–44). In 1936 that option was exercised and in 1937 another agreement was made under which the defendants leased the premises for 10 years on the same terms, except that the rental was $5,500 a year (Ex. 926, R. 5243).

MALONE, NEW YORK

(Pop. 1940, 8,743—R. 2573)

Since 1922 Michael Boumansour has owned the Plaza theatre (R. 2252–53; Int. Ans. 17–A, 18, and 23, R. 228). Between 1923 and 1928 he leased this theatre to another operator named Meehan, who in turn leased it to the defendants R. 2253; Int. Ans. 17–A, 18, and 23, R. 228), then operating the only other theatre in the town, the Grand. About 1931 the defendants remodeled the Grand, renamed it the Malone (R. 2253; Int. Ans. 17–A, 18, and 23, R. 228), and closed the Plaza (R. 2254). The Plaza lease expired in September 1936 and in 1935 John May told Boumansour the Plaza was condemned and Schine would discontinue rent payments (R. 2255). Boumansour then requested Schine to release the theatre to him. Schine refused to give it up (R. 2255) but continued to pay the rent and keep it closed (R. 2256). Boumansour remodeled the Plaza in the summer of 1936, starting repairs on the outside of the building a few months before the lease expired (R. 2256), spending about $20,000 (R. 2256) and reopened it about November 1936 (R. 2256), under his own management.

While he was remodeling, Boumansour visited all exchange managers located at Albany, New York, to find out what product was available (R. 2256–57). Eastman, branch manager of Paramount, told him that he would get enough Paramount pictures because Schine had only used 65 per cent of that product in Malone in the past few years (R. 2257). Halligan, branch manager of RKO (R. 1293–94), said one-quarter of that product would be available to him, Schine having only used 75 per cent for a couple of years (R. 2257). The Warner branch manager, Smith, advised him not to reopen the theatre, but assured him of a few rejected pictures of the Warner company if he did reopen it (R. 2259).[1] Grassgreen, Fox manager (R. 1214), said that as his company had one account in the community from which it was deriving a good revenue, it was not interested in opening another account (R. 2260), but he might furnish the Plaza with a few Gaumont British pictures (R. 2260). Dana, Universal's manager (R. 1275), said that half of the current product of that company would be available to the Plaza, and several pictures of the preceding seasons (R. 2261). Phil Fox, Columbia manager (R. 1603), gave Boumansour assurance of 20 of its pictures of the current season, the same amount from the releases of the two preceding seasons, stating that defendants had used only 60 per cent of Columbia product at Malone (R. 2262).

Boumansour opened the remodelled Plaza theatre the second week of November 1936 (R. 2262). About two weeks before opening, he saw Halligan of RKO again in Albany, informed him he was about to open the theatre, and was told by Halligan that it was impossible for him to do any business with the Plaza theatre, and that his hands were tied up in this regard (R. 2263). Warner gave him similar information (R. 2263). Eastman of Paramount further added: "I am not going to be the goat. After somebody sells you the majors, I will do the same" (R. 2263). Pielow, Metro exchange manager at Albany (R. 1289), said that while nearly all their product was sold to Schine, a few rejected pictures might be available to Boumansour by the time he opened the Plaza (R. 2263). Grassgreen of Fox again told him that his company had one account in Malone and would not take on another (R. 2264).

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[1] Warner at this time, as part of its franchise deal with Schine, was giving them an elimination privilege of 13 pictures (Ex. 644A, R. 5206–5208C).

When Boumansour opened the Plaza theatre in November 1936, he had no major product and could get none for his theatre operation during the fall of 1936 (R. 2265).[2] During this period the Malone double-featured major pictures during each week, making three to four changes per week, with single-features only on weekends (R. 2265–66). It played no second runs (R. 2264–67).

Before February 1937, Boumansour talked with Halligan (RKO), Pielow (Metro), Ayres or Smith (Warner), Eastman (Paramount), Grassgreen (Fox), Dana (Universal), and Fox (Columbia) relative to the possibility of getting second-run product for the Plaza theatre (R. 2319–20). Richard Struewe, then a Warner salesman (R. 2837), learned that Boumansour intended going into a second-run policy in Malone starting about May 1, 1937, and reported to Albany on February 4th that although Boumansour wanted half of the current (1936–37) pictures on second-run, he refused to consider this proposition but offered Boumansour 30 pictures of the preceding season's product. Boumansour, he reported, would not consider any proposition except a 30-picture deal on the current season's product (Def. Ex. D. 137, R. 5176A), but Struewe told Boumansour that if he wanted current product, he would have to take the entire group of 60 pictures (R. 2840–41). Struewe declined the 30-picture offer, knowing that it was his job to get additional revenue from the towns in this territory, notwithstanding the fact that a sale of 30 pictures second-run to Boumansour would have given the Warner company more revenue than it was then receiving in Malone (R. 2840).

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[2] He got eight Warner 1935 pictures by contract approved December 30, 1936 (Ex. 908–E, R. 5623; cf. Release Sched. Ex. 645, R. 4109).

In February of 1937 Boumansour obtained five first-run Metro pictures which had been rejected by Schine's Malone theatre (Ex. 906–A, R. 5606, 2511, 2266). At about the same time Paramount let him have five or six first-run pictures and three or four re-issues (R. 2266). In the conference he had with Pielow of Metro at this time relative to second run product, Pielow said he would answer him later after hearing from his home office. Grassgreen of Fox said his company would not be interested in selling second-run in Malone (R. 2269–70, 2314–15).[3] Halligan of

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[3] Grassgreen (Fox) also wrote Boumansour on May 21, 1937, that he was not interested in serving second-run in Malone, it would cut into the first-run revenue of pictures served on a percentage basis under its franchise (Ex. 195, R. 3809).

RKO could not discuss a second-run for Malone at that time, and Phil Fox of Columbia postponed the question (R. 2270), as did the Warner exchange manager (R. 2271).

On June 30, 1937, Boumansour complained to the United States Department of Justice concerning his inability to get product (R. 2347). Earlier in June, Ayres of Warner's Albany office, telephoned Boumansour and said he had a contract in his office ready for his signature. Boumansour went to Albany, was shown the contract, a second-run deal for all of the 1936–37 pictures, and complained that the prices were too high (R. 2274). He was told by Ayres "either take it or leave it" (R. 2275). He again complained that he was giving Warner a present of $500 or $600 on the contract, but would rather do so than close his theatre, and signed (Ex. 863, R. 5568, 909, R. 5624). The application date was June 14, 1937. [It went to New York with the following branch office recommendation, dated June 22, 1937:

> Until about six months ago this theatre was under lease to Schine, who kept it closed. Mr. Boumansour, the owner, would not renew the lease unless the theatre was opened, which Schine refused to agree to. Consequently Mr. Boumansour opened the theatre and for the past several months has been running only first-run pictures, all of them being Schine rejects from former seasons. It now develops that he is unable to secure sufficient first-run product to operate the house on this policy, forcing him to a second-run policy or close the house, which he will not do as he has spent considerable

> money remodeling it. He has applied to other distributors for second-run product and to the best of my knowledge at this writing has been unable to secure a contract. I believe the attached deal is the only one actually negotiated at this time. The terms of this deal, in my opinion, are excellent for second-run in this town and do not hesitate to recommend acceptance of same in so far as the terms are concerned. I have discussed this deal with Mr. Kalmenson and he suggested submitting same for approval but prefers for the time being at least, to spot book the pictures as per the terms set up on the contract. In other words, we will not forward the approved copy of these contracts to the exhibitor unless advised to the contrary. (Ex. 574, R. 3948C)].

The contract was approved on June 29, 1937. (Ex. 863, R. 5568). It called for a total guaranteed payment of $2,262.00 with four features to play at 35% and nine at 30%[4] [(Ex. 574, R. 3948)]. After the Warner contract was made, Paramount also made a deal for second-run and was followed by Metro (R. 2275, Ex. 906-B, R. 5607).[5]

When the Plaza opened in November 1936, the Malone charged adult evening admission prices of 40 cents in the orchestra and 30 cents in the balcony (R. 2266), which seated 400 (R. 2266).

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[4] Schine's Malone theatre had guaranteed Warner feature picture rentals of but $2,000 for first run in the 1935–36 season and $2,240 for first-run of the 1936–37 films (Exs. W–8, (8), and W–6 (17), R. 5783, R. 5752).

[5] The Metro contract, dated Oct. 8, 1937, was for the 1936–37 product, which was then no longer current.

When the Plaza started playing second-run product, the Malone cut the orchestra evening admission price to 30 cents and its balcony price to 20 cents (R. 2275–76). The Plaza was charging 25 cents (R. 2276, Ex. 863, R. 5568, 909, R. 5624). Schine's Malone then instituted a money give-away night and Boumansour dropped his evening admission prices to 15 cents for the period between 6:30 and 7 p. m. (R. 2295). Later, about 1939, the Malone prices for first-run major product,[*] between 7 and 7:30 p. m. were 15 cents adult admission in both balcony and orchestra; and 15 cents balcony, and 25 cents orchestra, during the remainder of the evening; while Boumansour was compelled by his contracts to charge minimum evening admission price on second-run pictures playing 60 days later, of 25 cents (R. 2295–96, Ex. 907 A to E, R. 5614–18 RKO contracts, 1938–39, 1940–41, R. 2511–12; 905 A to E, R. 5601–05, Paramount contracts, 1938–39, 1940–41, R. 2511; 906 B to H, R. 5607–613, Metro contracts, 1938–39, 1940–41).

On January 10, 1939, defendants acquired an option to buy or lease on certain property on

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[*] During the 1937–38, 1938–39, and 1940–41 seasons, Schine's Malone theatre had first-run product of the following major distributors by virtue of master agreements or franchises:

Warner [Exs. W–4 (16), R. 4471; W–34 (14), R. 4578].

Fox [Exs. F–1, R. 4951; F–193, R. 4969; F–101 (18), R. 6005; F–162, R. 6094].

Metro [Ex. 981 (23); R. 5675, Ex. 618, R. 3952].

Paramount [Ex. P–213, R. 5873].

Universal [Exs. U–137 (14), R. 4663; U–207 (14), R. 4734].

R. K. O. [Ex. R–2 (15), R. 4829].

Columbia [Exs. C–102 (35), R. 5010; C–181 (71), R. 5131].

Pearl Street, Malone, New York, which interest terminated on February 10, 1939 (Int. Ans. No. 31, R. 254). The Plaza is located at No. 10 Pearl Street, Malone (Ex. 81, R. 5193). In the fall of 1939, at Albany, New York (R. 2297), George Lynch told Boumansour it would be better to lease his theatre to Schine and "let this fight be over with" (R. 2298). Boumansour said he would lease the theatre and stated his terms. Lynch left to make a telephone call. When he returned, he said he had telephoned J. Myer Schine, then in Florida, and the latter had agreed to lease the Plaza on the terms stated by Boumansour (R. 2299), which was a rental of $8,600 per year for the theatre (R. 2301), and a $70 per week contract as manager of the Malone theatre for one year (R. 2301).

Lynch again saw Boumansour in 1940, a few days before the deal for the sale of the Plaza theatre was to be closed (R. 2352–53). At that time, Boumansour furnished Lynch with a copy of an affidavit relative to his dealings with the defendants and major distributor that he had given to a representative of the United States Department of Justice in October 1939 (R. 2346–47). Willard McKay, Schine vice president (Int. Ans. R, 214), told Boumansour the proposed deal for the Plaza theatre could not be concluded unless the latter caused the original of the affidavit to be returned to him (R. 2353–54). Boumansour telephoned Seymour Krieger at the United States Department of Justice in Washington and unsuccessfully tried to withdraw the said affidavit (R. 2354).

On January 21, 1941, Boumansour agreed to rent the Plaza to defendants for $8,000 per annum, and to make a separate agreement not to engage in the motion picture business in Malone or within 20 miles thereof during the ten-year term of the lease (Ex. P–82, R. 3789).[7] On February 14, 1941, Boumansour fulfilled the above agreement by leasing the Plaza to Schine (Ex. 81, R. 5193, 2300), the lease provided that it operate a minimum of two days per week.

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[7] By the same agreement, Schine agreed to hire Boumansour for one year at $75.00 per week (Ex. P–82, R. 3789) and he managed the Malone theatre for Schine from February 1941 until the spring of 1943 (R. 2300–2302).

MAYSVILLE, KENTUCKY

(Pop. 1940, 6,572—R. 2574)

In January of 1938 Schine acquired a majority interest in the Russell theatre, 700 seats. In January of 1939 Schine acquired a majority interest in the other two theatres, the Washington, a 500 seat theatre and the Hollywood with 300 seats. In December of 1940 Schine acquired the remaining interest in these theatres. Another theatre opened December 1940 and closed shortly thereafter. Schine has kept the Hollywood closed (Int. Ans. 17, 18, R. 239).

At the time Schine came into the town, the Phoenix Amusement Company operated the theatres in the town (Int. Ans. 15, R. 222). In January of 1939 Schine secured from the stockholders of the Phoenix Maysville Theatre Company an agreement not to compete in Maysville for 15 years (Ex. S-74, R. 5141-2).

The record shows that Schine took clearances in Maysville, Ky., as high as 120 days over subsequent runs (Ex. F. 125, R. 6057).

MEDINA, OHIO

(Pop. 1940, 4,359—R. 2574)

In 1936 the Princess theatre, operated by Yudelvitz and Willis, seating 350, was the only theatre in Medina (R. 1407, Int. Ans. 17–A, 18 and 23, R. 235). For many years Mooney, then Cleveland branch manager for Warner (R. 1349), had solicited the business of the Princess each season but failed to sell it any pictures, including the year 1936 (R. 1407). About September 1936 a committee of the Masonic organization owning the Medina Temple building approached P. E. Essick, a theatre operator located in Cleveland, and asked him to survey the possibilities regarding placing a theatre in this building (R. 1449, 1450, 1476, 1479). After various meetings and negotiations with the committee (R. 1451; Ex. 1006, R. 4425), Essick and M. S. Fine (R. 1407, 1449–50, 1514) decided to construct a theatre in the Temple building (R. 1451, 1514; Ex. 1006, R. 4425), and committed themselves to the building owners' committee to that effect about the latter part of December 1936, or the first part of January 1937 (R. 1478–79). Prior to this time, Essick had, during the Fall of 1936, learned what product was being played in the Princess theatre (R. 1451, 1477–78), and that Warner, Columbia, Universal, and United Artists pictures were not being used in Medina (R. 1451–52).

In the latter part of December 1936, Essick talked to Mooney in Cleveland relative to obtaining Warner pictures for use in Essick's new theatre to be built in Medina (R. 1408–09; 1452–53). Also present in Mooney's office, was Benjamin Kalmenson, then central district manager of Warner, supervising its Cincinnati and Cleveland offices (R. 1326, 1408, 1452–53). Essick informed Mooney that he was about to close the deal to build a theatre in Medina and inquired whether he could count on having Warner product for use in the new Medina theatre (R. 1408–9; 1452–53). Kalmenson said definitely that he could count on having it. When Kalmenson and Mooney came into the office of Pine and Essick some time later, Kalmenson repeated to Pine his promise made to Essick and said "That goes double. The product is yours for Medina whenever you open up." (R. 1520).

Essick and Fine started the construction of the Medina Temple theatre in the last of February or early in March 1937 (R. 1407, 1453). The theatre, seating about 900, was not, however, completed and opened to the public until January 1938 (R. 1453). On March 18, 1937, Schine made a contract with Yudelvitz and Willis, owners of the Princess, to lease it and to erect a new theatre in Medina on other lands owned by them (Def. Ex. D-46, R. 5162), both theatres to be controlled by a corporation in which Schine and they would be equal partners. [On the same day, Lynch wired J. E. Flynn, Metro's district manager, requesting its product for Medina and its inclusion in the Schine Circuit franchise (Ex. 500, R.

3927).[1] He wrote F. D. Drew, Metro branch manager at Cleveland (R. 1287–88), on the following day to the same effect (Ex. 499, R. 3926).] On March 23, 1937, a committee of six persons, consisting of the directors of the Medina Temple building and Trustees of the lodges who owned it, wrote Myer Schine that his proposal to build a new theatre in Medina had come to their attention (Ex. 1006, R. 4425). They pointed out that revenue from a theatre in the Temple building was needed to prevent loss of their investment in that building and that they had, therefore, signed a contract with Fine and Essick "to start a picture show theatre in the Temple," after "two of the largest banks in Cleveland reported them as being one hundred percent responsible." Fine and Essick were to lease the theatre for twenty-five years "with a fair guarantee against a percentage." They implored Schine not to carry out his contemplated plan[2] to build "a theatre here after we have already started ours," saying that the success of their Temple theatre meant "saving the money our people have invested in the stock and the insurance and the life savings of some who have personally signed notes for the Temple Company". (Ex. 1006, R. 4425).

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[1] The Loew first-run product was included in the franchise by a deal sheet dated August 7, 1937 (Ex. 618, R. 3952) although Schine had no theatre in Medina at the time. The 50% interest in the Princess lease was not acquired until September 1937 (R. 1412, 1467, Int. Ans. 17–A, R. 235), and the proposed new theatre never materialized. The deal sheet describes the theatre covered merely as "Schine's."

[2] In July 1937 Myer Schine showed Fine and Essick a sketch of a proposed new theatre for Medina, but he never started actual construction of one there (R. 1513). Instead Yudelvitz spent a considerable sum remodeling the Princess (R. 1510).

Fine commenced negotiations for the United Artists product about the time construction of the theatre began (R. 1514–15). He saw A. C. Goodman, Cleveland exchange manager of that company (R. 1243–44), and its district manager, Bert M. Stearn (R. 1429), and asked for United Artists product for Medina (R. 1514–15). He was assured that this product would be available to this theatre (R. 1515). Late in the summer of 1937, prior to opening the Temple theatre, he saw Goodman and Stearn, and told them the Temple theatre would probably open around October 1937. He discussed the United Artists product available for the 1937–38 season and agreed on prices for the pictures (R. 1515–16). Later in the fall of 1937, Fine again saw Goodman, who inquired when the theatre would open (R. 1516–7). Fine told him it would be about November or December, and signed an application for all United Artists pictures for the 1937–38 season (R. 1517). Before the Temple theatre was opened, Fine was notified by telegram from United Artists that he could only have a split of its product for use in that theatre (R. 1517–18).

In September of 1937 (R. 1412) Mooney was advised by Warner's New York office that its product had been sold to Schine for use in the Princess theatre (R. 1410; Ex. W–4 (37), R. 4492). In talking with Essick in November, he told him it was impossible to negotiate a deal on this product for the Temple, and when reminded of Kalmenson's promise, advised Essick to take the matter up with New York (R. 1410, 1453–54; Ex. 635 C 1, R. 5449). Fine and Essick then went to New York and at the Warner office saw Kalmenson, Carl Leserman, assistant general sales manager (R. 1326), R. H. Haines, eastern sales manager (R. 1322) and H. J. Ochs, another Warner employee (R. 1455). Essick said Kalmenson had sold the Warner product for Medina to Schine contrary to his previous promise to Fine and Essick. Kalmenson denied he had made such a promise (R. 1455–56). Leserman promised to go to Gloversville within two weeks, to see Myer Schine or Lynch, and attempt to secure a split of the Warner product between the Schine theatre and the Temple (R. 1456). About the first part of January 1938, when the Temple theatre was opened, Essick heard from Leserman again and was given a contract for the First National half of the Warner product (Ex. 635, R. 5449, 1457, 1826).[3]

In the fall of 1937, after notification of the split of United Artists product for Medina between them and Schine, Fine and Essick saw A. W. Smith, Jr., at the United Artists' offices in New York City[4] (R. 1518–19). Fine said he had bought all this product for use in the Temple theatre; Smith replied someone in the office had sold a split of the product to Schine; all he could give them was just one-half; he would see what he could do about getting the rest (R. 1518-19). When Fine was in New York a short time later he telephoned Smith and was advised that he would have to be satisfied with half of this product (R. 1519).

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[3] Originally marked Ex. 635–C–1 contract dated Jan. 27, 1938, approved by G. L. Sears for Warner. All of the Warner-First National Product had previously been sold to defendants under a contract dated Oct. 27, 1937 (R. 3918–19, Ex. D 173, R. 5190–B) following the making of a deal sheet for all this product for use in Schine's Medina theatre dated Sept. 27, 1937, signed by Kalmenson and Lynch [Ex. W–4 (37), R. 4492].

[4] At that time Smith held the position of general sales manager of United Artists Corporation (R. 1246, 2782–83).

Fine and Essick invested $53,253.66 in the construction of the Temple theatre (R. 1465-6, Ex. 648, R. 4143). When it opened in January 1938, it was short of product, as it had only Columbia, one-half of Warner, and one-half of United Artists. At the same time defendants' 300-seat Princess theatre was playing all of Metro, Paramount, Fox, RKO, Republic, and one-half of Warner and United Artists product (R. 1458). [The Universal product was still open but had been withheld by its district manager, Dave Miller (R. 1278) for more than six months for possible use by defendants.[5] (Ex. 384, 385, R. 3895-96). Fine and Essick had persistently endeavored to purchase this product in March and December 1937, and January 1938 (Ex. 385, R. 3896, 386, R. 3897, 388, R. 3899).[6] Lynch finally

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[[5] Letter Jan. 4, 1938, Miller to George Lynch, with copy to F. J. A. McCarthy, eastern division manager of Universal (R. 1278); and inter-office report of Miller to McCarthy dated Jan. 21, 1938.

[6] Ex. 386, R. 3897, is a letter from McCarthy to Lynch dated Jan. 27, 1938, stating the facts above set forth and intimating that in the future Lynch's requests to "hold" product would not be honored unless he at the same time closed a deal for it.

gave Miller what the latter termed "permission" to sell Universal product to Fine and Essick "ten months after he had asked us to hold the product" (Ex. 385, *ad*).]

For the 1938–9 season Fine and Essick were unable to negotiate for any additional product from Warner or United Artists (R. 1457–58; 1521–22). The Temple about balanced its profits and losses during the first three months of operation; then lost money thereafter (R. 1458–59, 1492). In the summer of 1938, in an effort to obtain more product, Fine and Essick saw W. P. Rodgers, then General Sales Manager of Loew's, Inc. (R. 1284) at New York; who referred them to T. J. Connors, Division sales manager (R. 1286). Connors refused to negotiate with them for Metro product (R. 1459).

In June or July of 1938 Essick had also requested Connors to sell him Metro product second-run, and at the same time discussed a split of the first-run pictures, which Connors said was impossible (R. 1470–1471).[7] At that time Connors suggested that a pooling arrangement be worked out between Fine and Essick and Schine (R. 1471). Connors later suggested that he use his offices to bring Fine and Essick together with

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[7] Rodgers on July 29, 1938, caused this situation to be investigated by Connors (Ex. 510, R. 3928, 2883). On August 2, 1938, Rodgers received a report from his assistant E. W. Aaron (R. 1284–85) stating Schine had been sold the Metro product through 1938–39 and 1939–40 (under the franchise, Ex. 618, R. 3952), but that Essick said his house was the best in Medina "and one where some of our product should be playing" (Ex. 509, R. 3927, 2882). There was no suggestion from Aaron that was not the case.

Schine in a deal (R. 1460). On December 7, 1938, Connors wrote them that he had seen Myer Schine and discussed the difficulty in the Medina situation (Ex. 511, R. 3929). He then arranged an appointment for them to see Schine at Albany. They proceeded to Albany and worked out a deal with Schine there (R. 1462, 3). On December 22, 1938, Essick wrote Connors that most of the details of the deal had been completed and expressed appreciation of the cooperation of Connors (Ex. 515, R. 1463)[8] in enabling them to salvage their investment, although he was disappointed in the terms on which they were to get it back.

The final agreement, dated February 28, 1939 (Ex. 648, R. 4143), provides for the organization of a corporation to operate both theatres, with Schine getting 25 percent of the stock for itself, 25 percent for the owners of the Princess (Int. Ans. 17-A, R. 235) and 50 percent to Essick and Fine. Schine was to be employed to manage the theatres and buy the films, for which it is paid $40 per week, plus one-half of the first $3,000 profits. After payment of all expenses, including the $40 per week management charge, Fine and Essick were to receive one-half of the first $3,000 profits, plus the next $1,500 of profits (computed on an annual basis) to be applied on the $53,253.66 investment, and to continue only until such cost to them is liquidated. Schine, with no investment, was thus assured of income from the operation before Essick and Fine got any return of their invested capital, which they may recoup in about thirty-five years. After payment of the above sums, any remaining profits are to be equally divided.

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[8] Saul Silverman, district manager for Schine, told George Angelas and C. H. Henkel (R. 925-26) in January 1939 that the individual operator in Medina who refused to cooperate with Schine went broke in a year's time and begged Schine to take the theatre over (R. 926).

The Princess, after the pool was completed, was only kept open for intermittent periods of time, and was permanently closed in 1941 (R. 1468-69).

MIDDLESBORO, KENTUCKY

(Pop. 1940, 11,777—R. 2574)

In January of 1939 Schine acquired both of the theatres in the town, the Manring, 965 seats, and the Brownie, 418 seats (Int. Ans. 17, R. 239). At the same time Schine took from the vendor and his family a covenant not to compete in Middlesboro for 15 years (Ex. S-75, R. 5142).

MT. VERNON, OHIO

(Pop. 1940, 10,122—R. 2574)

In 1934, there were three theatres in Mt. Vernon, the Memorial, owned by Knox County, with 1100 seats, the Vine, 600 seats, and the Lyric, 250 seats. The Memorial and Vine were acquired by Schine from an operator named Smoots (R. 2671) about one month before the Lyric was acquired from another operator named Platt, in February 1934 (R. 2672). Platt, as part of the terms of the sale of the Lyric, was made local manager (R. 2672). The Memorial lease expired September 30, 1934, and was not renewed (Int. Ans. 17–A, R. 236). Emerson Long took over the Memorial on a five-year lease in December 1934, and the Lyric which had been closed was opened by Schine a few days after Long reopened the Memorial (R. 512–14, 537).

Both before and after the Memorial was reopened Long tried to license first-run product for the 1934–35 season and called at all the exchanges except Universal (R. 516–21). He finally succeeded in obtaining a deal from Columbia in February 1935 (R. 515) after it was held up nearly two months (R. 523–24) [while Columbia unsuccessfully tried to make a circuit deal with Schine (Ex. P. 11, R. 3769).]

Long also got a first-run deal from United Artists for 1934–35 (R. 525), but when he tried to license United Artists' product first-run for 1935–36 out of the Cleveland branch, he was told that the product had already been sold through New York (R. 525). The play-off records (Ex. 718–E, R. 4304–05) show that for this season Schine selected seven pictures and paid $331.41 for four of them.[1] Seven rejected pictures were later made available to the Memorial, for which it paid $860.00,[2] and it had paid $1,677.50 for the sixteen pictures in its 1934–35 deal (Ex. 718–E, R. 4304–05).

In July 1935, Long made a trip to New York and called upon general sales executives of Fox, Paramount, and RKO in an effort to license first-run product. He was unable even to negotiate for any first-run product with them although he had the largest theatre in the town (R. 512, 525–26).

Long used second-run of Metro product for the 1935–36 and 1936–37 seasons (R. 534, Ex. 951, R. 5629), but Schine licensed the second-run for 1937–38 by adding to the Loew franchise a separate deal sheet dated August 7, 1937, which provides for second-run at the Lyric on pictures playing the Vine first-run (Ex. 618, R. 3952). Long complained to the Department of Justice, and Loew's home office counsel (Ex. P. 13, R. 3771, 625) wrote Drew, Cleveland branch manager, on April 7, 1938, requesting the reason for changing the second-run account for the 1937–38 season.[3] Long then got half of that season's product on a second-run contract bearing an application date May 16, 1938 (Ex. 949, R. 5627), and also got half of the 1938–39 product on the same run (R. 548, Ex. 950, R. 5628).

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[1] Three additional pictures were played under a blanket contract and film rental is not shown.

[[2] The United Artists' inter-office correspondence (Exs. P. 12, 321, 322, 323, R. 3769, 3847, 3848, 3849) relating to Mt. Vernon and Van Wert show that the Cleveland branch sought to obtain the consent of Schine before selling the independent exhibitors in these towns the English pictures first run which Schine had not bought, although Long was "in desperate need of first-run product" (Ex. P. 12, R. 3769) and was willing to pay prices "way ahead of the prices we had on Schine" (Ex. 323, R. 3849).] The Vine and Lyric were then running double features and continued to do so until the Lyric was demolished in 1937 (R. 612–13).

Long attempted over a period of several years to buy a second-run from Paramount, Fox, and RKO, but they refused even to negotiate (R. 552-63). The Lyric was demolished in October 1937 (R. 537) and Long made his first second-run deal with Warner about September 1937 (Def. Ex. D 10, R. 5152). From October 1937 to April 1938 when Schine's new Vernon was opened (R. 538), Schine had only the Vine in which to play its first-run product and the second-run that Metro sold away from Long.

About a year before Schine started to build the Vernon, May called on Long and wanted to know if a deal could not be worked out for the Memorial saying that if they could not get together Schine was going to build a new theatre. He showed Long the plans but Long was not interested at that time (R. 539–43). Schine then proceeded to build the Vernon and opened it at admission prices of 35 cents downstairs and 25 cents in the balcony (R. 568–69). The Vine had charged 35 cents before the Vernon was opened, but afterwards cut to 30 cents, then to 20 cents on week ends and 15 cents in the middle of the week, and still later to 15 cents throughout the week (R. 538–39). Admission prices at the Vine were raised back to 20 cents, when Long finally gave up the operation of the Memorial in 1940 (R. 539).

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[3] Drew wrote Long on April 12, 1938, falsely stating that he was holding up disposing of this run in Mt. Vernon until he heard from Long (Df. Ex. D 6, R. 5148).

Long's lease on the Memorial terminated in December 1939, and in July of that year Schine offered the county a lease on it at a higher rental, with the stipulation that the Memorial be closed as a theatre and used only for public meetings (R. 633, 637, 639). As the county preferred to keep it operating as a theatre, they extended Long's lease for another year (R. 639). This lease terminated on December 31, 1940, but because of inability to get attractive product Long ceased operation on December 10, 1940 (R. 569). Schine had then re-leased the Memorial from the county for a term of five years to commence at the end of Long's lease (R. 642–44). The county, however, was only willing to make a lease with Schine on the condition that the Memorial would be operated as a theatre for at least one performance daily showing the best product on second-run at an admission price not to exceed 25 cents (R. 643).

NEWARK, NEW YORK

(Pop. 1940, 9,646—R. 2573)

In Newark Schine acquired one theatre in October 1924 and the other theatre in April 1926. Between 1929–1933 these theatres were under Fox operation but were then returned to Schine. Schine has kept one of the theatres closed (Int. Ans. 17, 18, R. 227), although renewing its lease from time to time at a commitment of $35,200 (Ex. 921, R. 5239, Ex. 922, R. 5240, Ex. 83, R. 5193).

The trial court in its findings refers to letters between Schine and United Artists respecting this town which tend to show the conspiracy between them (F. 25, R. 3224).

NORWALK, OHIO

(Pop. 1940, 8,211—R. 2574)

In 1934 the Forum theatre, seating 537, was constructed in Norwalk by Jerome Steele and William Selman (R. 983, Int. Ans. 17-A, 18, and 23, R. 236). In operation at that time was the Moose theatre, seating 838, owned by the Moose Lodge for which Joseph H. Felter was the buyer and booker (R. 982-83, Int. Ans. 17-A, 18, and 23, R. 236). In the summer of 1935, John A. May and Louis Lazar approached Felter and Mr. Frederick, manager of the Moose, relative to defendants' leasing the Moose (R. 983-84). Lazar returned with the same request on periodic visits for a year or so (R. 939, 940) and was informed each time that the Lodge did not care to lease the theatre (R. 985).

Defendants acquired the Forum in July 1935 (Ex. P. 97, R. 3793; Int. Ans. 17-A, 18, and 23, R. 236) under a deal whereby Selman retained a stock interest and went to work for Schine which bought the films for a percentage of the gross (Ex. P. 97, R. 3793). Just before this purchase Lazar advised Felter to "get in with us," stating "we are a big company. You know what it means if you are not in with us," and that the owners of the Forum would quit if the Moose theatre were leased to defendants (R. 986-87).

The Moose had the RKO product first run in 1934-35 (R. 987) (Ex. 953, R. 5631). It also had

Warner, Universal and United Artists and half of Fox (R. 1005, 1006, 1027). The Forum had Columbia, Paramount, Metro and the other half of Fox (R. 1027–28). Felter went to see Greenblatt, Cleveland exchange manager of RKO (R. 1298), about product for the 1935–36 season on several occasions during May, June and July 1935 and about the first of June Greenblatt took an application and sent it to New York (R. 989–990). About two weeks later Greenblatt told him he did not believe the RKO contract was going to be returned to his office (R. 990). He told Felter several days later that he had telegraphed his home office, that if Felter insisted any more he (Greenblatt) would lose his job, and that Felter could not have the RKO product for the reason it had been sold to defendants (R. 988–990).

In the spring of 1935 Steele saw Greenblatt numerous times about a 1935–36 deal for the Forum and was told that the Moose Theatre had been their customer for the past twelve years and that RKO was going to stick with the Moose (R. 719). That season Felter obtained some independent productions, retained his half of the Columbia and Fox product (Ex. 954, R. 5632, F–101 (36), R. 6040), lost half of the Warner product (Ex. 635–A, B; R. 5444, 5445), picked up Columbia (R. 990),[1] and lost almost all of United Artists[2] (R. 990, Ex. 718–F, R. 4306).

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[1] [Columbia was out of the Schine circuit for this season (Ex. P. 11, R. 3769).]

[2] Felter testified that he had one-half of the United Artists for that season (R. 990), but the play-off record of that company shows him to have been mistaken as he actually played

When Felter saw Mooney, Warner exchange manager at Cleveland (R. 1349, 1323), relative to buying all the Warner product for the 1935–36 and 1936–37 seasons after Schine acquired the Forum he was told that he did not have a chance (R. 991–93) as "the Schine's have got the house and they are going to use it" (R. 994).

Felter was unable to obtain any first-run product for the Moose for the 1936–37 season.[4] When

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only two United Artists pictures while Schine played 11 (Ex. 718–F, R. 4306). The film rental received by United Artists at Norwalk, Ohio, for twenty-two features played at the Moose Theatre in the 1934–35 season had been $1,632.53 (Ex. 718–F, *Id.*, Ex. 719, p. 15, R. 4316); in 1935–36, six of the fifteen features released were bought by Schine for $269.54; the Moose paid $132.20 for two, and three more were sold to Schine under blanket contract, making it impossible to exactly compute the rental paid by Schine for these pictures for this town (Cf. Ex. 719, p. 15, and B. C. schedule R. 4314 *et seq.*); but the fact that Schine paid only forty-five dollars per picture for the six on which Norwalk rentals are shown against the seventy-five dollar average rental paid by the Moose indicates that United Artists got much less in the 1935–36 season than it had received from the Moose in 1934–35 (Cf. Ex. 719, p. 15, and B. C. schedules, *Id.*).

[4] By master agreements, franchises, and circuit deals, defendants had the following major product under contract for the Forum theatre in the 1936–37 season: *Metro*, Forum or Moose theatre first run, by agreement dated *October 1, 1936*, prior to acquisition of the Moose in December 1936 (Int. Ans. 17–A, 18 and 23, R. 236), (Clearance schedule, p. 3, Ex. 618, R. 3952, 2524). *Warner*, Forum theatre, first run 1936–37 (Ex. W–6 (37), R. 5771); R. 1165; Forum or Moose theatre first run, 1936–37, 1937–38, 1938–39 (W–4 (38), R. 4493, 1166). *RKO* (theatre not named), 1936–37, (Ex. R–2 (40), R. 4854, 1186), *Fox*, 1935–36, equal split with Moose (Ex. F. 101 (36), R. 6040, 2545), 1936–37, for Forum alone (Ex. F–47, R. 5953, 2577).

he first saw Goodman, exchange manager of United Artists at Cleveland (R. 1243) about getting 1936–37 product of that distributor, Goodman first stalled him; a few weeks later told him he had a "kind of a deal on with Mr. Schine," and later told him the product was not available (R. 995). He also talked with Schmertz, Cleveland exchange manager of Fox (R. 1216), with whom he had dealt for a period of years (R. 995) who said "I never turn down my customers. You can have half of my product," made him a price for it, and gave him a contract to be signed in 15 days (R. 996–97). Three days after the time expired he telephoned Schmertz and was told the pictures had been sold to Schine (R. 997). He then bought a second-run of Warner features (R. 997). In July 1936, Bissell, the Columbia manager not only refused to negotiate for a continuance of his first run but told him "you had better hurry if you want second run"[5] (R. 994).

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[5] The Moose under its 1935–36 (Ex. 954, R. 5632, 2533–34) contract had paid more for the Columbia product than Schine did under its 1936–37 deal (Ex. 953, R. 5631). The play-off records for Moose exhibitions of its product in 1935–36 show a return of $1,234 to Columbia (Ex. 685–D, R. 4191); the return in 1936–37 for features was only $745 (Ex. 685–E, R. 4192). The Columbia contract with the Moose theatre in the 1935–36 season was for 40 features, with no first-run clearance specified over second-run, minimum evening admission prices specified, and in the case of 6 of the best pictures required a guarantee of $75 each against 30% of the gross receipts, and for 6 more, $50 each against 25% of the gross receipts (Ex. 954, R. 5632). By contrast, the Columbia contract for Schine's Forum for the 1936–37 season contained no minimum admission price requirements, allowed Schine to

He then contacted Frank Drew, Metro exchange manager at Cleveland, Ohio (R. 1287), who told Felter he would pick out a group of second-run pictures for him, and furnished a contract which Felter signed and sent in (R. 997). Felter saw Drew about two weeks later, and was told that it did not appear that Metro would sell any second-run pictures in Norwalk (R. 998), saying his company did not want to establish a second-run policy there (R. 998). Felter then got in touch with Lazar and told him the Lodge had decided to sell the Moose to Schine (R. 998). They acquired it for $15,000[6] (R. 999), plus commission payments to Felter and another employee of $1,250 each (R. 1011, 1026). Between the time the deal was made for this acquisition, in October 1936, and assumption of control of the theatre by defendants in December, Felter worked for them as its manager; then resigned (R. 999–1000). Thereafter the theatre was operated on a part-time basis (R. 999–1000, Int. Ans. 17–A, 18 and 23, R. 236). Its evening adult admission prices were increased from a former price of 15 cents to 20 cents (R. 1000). The evening adult admission price of the Forum theatre was at the same time increased from 30 to 35 cents (R. 1000).

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eliminate 18 out of the 40 pictures for which the contract was made, single or double-feature those played, required only a flat rental of $75 for each of 4 top pictures and a flat rental of $50 each for the next six best features, and additionally gave the Forum 90 days' clearance over second run—the Moose (R. 997, Ex. 953, R. 5631).

[6] The capital investment of the Lodge in this theatre was $60,000 (R. 1027).

On January 27, 1939, George K. Angelas, of Mansfield, Ohio, delivered an option to purchase a lot on East Main and Prospect Streets in Norwalk to Schine and agreed to lease to Schine any theatre built on it (Ex. P-60, R. 3784). He had bought this property in the year 1938 for $19,000 (R. 924) and intended to build a restaurant and theatre there (R. 925). The option resulted from a call made upon him by Saul (Bud) Silverman, district manager for Schine,[7] who inquired whether Angelas intended to personally operate the prospective theatre or lease it (R. 925). Silverman suggested that if Angelas would not close a deal for the operation of the theatre with Schine he would be broke within a year after he started (R. 925). When Angelas asked why, Silverman replied that the defendants controlled the first and second class pictures in Norwalk and had them tied up for two years in advance.[8] Angelas said he was not the type to be scared out of a deal but suggested they see his attorney, C. H. Henkel, of Mansfield (R. 925). A second meeting of Silverman, Henkel, and Angelas followed, at which Silverman offered a lease to Schine for 20 years, based on a rental of 10 percent of the gross (R. 925-26). He also referred to the fact that in Medina, Ohio, an individual operator who refused to cooperate with Schine Circuit, Inc., went broke in a year's time and begged Schine to take over the theatre (R. 926).

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[7] Affidavit filed by Saul Silverman on September 27, 1939, in opposition to preliminary injunction.

[8] See franchise references in note 4.

The negotiations at first broke off because Schine refused to give the security required for the type of building supposed to be built there (R. 937). Silverman then called in Louis Lazar, Schine division manager (R. 736–37, 926) and the option to sell or lease to Schine was finally negotiated with both of them (Ex. P–60, R. 3784). However, it was never exercised, as Schine acquired two lots east of Angelas' property (Int. Ans. 31, R. 254) and on it constructed their own new theatre, the Norwalk, in 1941 (Int. Ans. 17–A, 18, and 23, R. 236).

Since completion of the Norwalk, the appellants have kept the Forum closed (Int. Ans. 17–A, 18 Supp. Sched. to 18, and 23, R. 245).[9] On November 6, 1941, the owner of the Forum made an agreement with Schine that their lease could be cancelled; that the premises

> "shall not be used as a motion-picture theatre, or as a theatre of any kind, before the first day of February 1955,"

and agreed "to restrict said premises against such use" in lease they then proposed to make with J. C. Penny Company [Ex. 1008, R. 5277].

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[9] In 1940 the evening admission price charged at the Forum was 44 cents (R. 1000, 1001). In the same year the top admission price for first-run pictures in Van Wert, a competitive situation of comparable size, was 25 cents (R. 703).

NORWICH, N. Y.

(Pop. 1940, 8,694—R. 2573).

William Smalley has been in the theatre business about 30 years and now operates full-time theatres in 12 small New York towns, and two theatres in two other towns that are operated in the summer only (R. 2409-10). All of these towns except Johnstown and Norwich are one-theatre towns of less than 4,000 population (R. 2443). Smalley took over the Strand Theatre at Norwich, November 4, 1930. At that time Fox Metropolitan was operating the Colonia, 1,045 seats, the only other theatre in town, and continued to operate it until 1933 when it was re-acquired by Schine (R. 2410, Int. Ans. 17-A, 18, R. 229). The Strand was destroyed by fire in March 1932 and was rebuilt and re-opened November 1932 as the Smalley Theatre (R. 2410); it was of Spanish type, modern and had 850 seats (R. 2442-43).

For the 1930-31 season Smalley used on first run the product of RKO, Pathe, 1st-National, United Artists, and Columbia; for the 1931-32 season, he had all of 1st-National, Warner, and Columbia; for the 1932-33 season, he had an equal split of RKO, Warner, 1st-National, Columbia, and United Artists (R. 2410).

Starting about June 1933 and continuing to November 1933, Smalley tried to negotiate for a continuance of his Warner split for the 1933–34 season, but was finally advised that Warner could not sell him any pictures in Norwich all of the product for that season had been bought by Schine (R. 2410–12, Ex. 886, R. 4381). For the 1934–35 season, Smalley again tried to license 50 percent of the Warner product beginning in May 1934, but was advised then, and subsequently, that the pictures for Norwich, had been sold, and that Warner had a satisfactory customer and would not be in a position to deal with Smalley (Exs. 887, 888, R. 4382–83). Smalley was unable to obtain a deal with Warner for the 1935–36 season and from then on to 1941–42, except for an occasional rejected picture (R. 2423–24). After Warner began selling in blocks of five in the fall of 1941, its representatives would discuss terms with Smalley on blocks for his other theatres, but not for Norwich (R. 2424).

With respect to the United Artists' product for 1933–34, Smalley received a letter of June 27, 1933, from Streimer, New York branch manager, advising him that Streimer had been instructed to work out a split of product for Smalley (Ex. 889, R. 4384). Smalley saw Streimer next in August, at which time he was told that Schine had made a complaint that he, Smalley, had been cutting admission prices in some of his towns and that before they could discuss the split further United Artists would have to see what it was all about. Smalley gave him the correct data on his admission prices which showed that Schine's complaint was untrue, and Streimer said he would try again (R. 2426). Smalley continued to carry on negotiations from August to November (R. 2426, Ex. 892, R. 2427, 4386, Ex. 893, R. 2428, 4387, Ex. 894, R. 2429, 4387). On November 4 he received a letter from Streimer in which Streimer quoted Myer Schine to the effect that Schine was not "in a position to give up a split of your product in Norwich" (Ex. 892, R. 2427), but on November 11 Streimer advised Smalley that he was going to Gloversville "to try to force an issue direct with the Schines for a split" (Ex. 894, R. 2429, 4387). In December Streimer advised Smalley that he could not get any pictures for him (R. 2429).

For the 1934–35 season Smalley began negotiating in May for a split of United Artists' product; and in August he was advised that United Artists had an obligation to Schine for all of their pictures "as he bought them last year," and "because they are good customers of ours and they usually buy our pictures for all their theatres" (Ex. 891, R. 4385, 2429). When Schine and United Artists, however, did not make a deal for 1934–35, the product was offered to and bought by Smalley on November 12, 1934 (R. 2430–31, Ex. 895, R. 2429). Smalley carried on negotiations for the United Artists' product for 1935–36, starting at the beginning of the buying season. Streimer said he was going to try to get the product for him because he had it the previous year, and that there was certainly no reason why he should not at least get a split (R. 2430–31). But about the middle of December 1935, Streimer advised Smalley that the deal had been taken out of his hands by someone higher up who sold the product as a circuit deal (R.

2431–32).[1] Smalley continued his efforts to get United Artists' product from 1936–37 to 1942 without success (R. 2432).

Smalley had a first-run deal with Columbia for 1933–34 (R. 2434), and paid approximately $1,750.00 for 38 pictures and 12 westerns (Ex. 685 F, R. 4193). Although Smalley did not mention the 1934–35 season in his testimony, the Columbia play-off records show that Schine licensed the product first-run that year, paying about $1,170.00 for a selection of 27 pictures—19 features and 8 westerns, but that Smalley played 21 features, which consisted of rejections and second runs, paying $480.00 (Exs. 685 G, H, R. 4194–95). Thus the combined total for Schine's first-run deal and Smalley's deal for rejections and second-runs for 1934–35 did not return as much film rental to Columbia as Smalley paid in 1933–34. Smalley got a split of Columbia for the 1935–36 season, but lost it in 1936–37 (R. 2436).[2] Thereafter only rejected pictures were available to Smalley (R. 2435, Ex. 900, R. 4391).[3]

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[1] The United Artists play-off records show that Smalley paid $2,044.56 for 21 pictures in the 1934–35 season, but that Schine paid $420.61 in the 1935–36 season for five of eight pictures played (the remaining three being paid for under a blanket contract and the amount is not shown). Smalley, however, played six rejected pictures from the 1935–36 product and paid $451.55 for them (Ex. 718 I, R. 4313).

[2] The Colonia contract for 1936–37 (Ex. 955, R. 5633) calls for 12 selected features and the Smalley contract for this season (Def. Ex. D–142, R. 6210) specifies "pictures rejected by the Colonia."

[3] On the cross-examination of Smalley an effort was made, through the introduction of two self-serving letters written to Smalley by Columbia's legal department on *June 3, 1940*, and *November 13, 1939*, to make it appear that Smalley had

Smalley had a split of RKO in 1933–34 (R. 2434–36). For the 1934–35 season he was advised that Schine had a selective deal, and that he could have whatever pictures were rejected. From that time on the only RKO pictures he could get were rejections (R. 2436).[4]

Smalley tried to get Metro product for 1933–34. He was advised that they had a good customer in Norwich, and no deal was offered to him through 1940–41; but the only pictures he could get were rejections (R. 2436–37). After the method of selling in blocks were in, he tried to buy a picture once in a while out of one of the blocks, but the Metro representative merely said "You know the situation. We have been over that for years" (R. 2436–37).

Smalley likewise tried to negotiate a first-run deal with Fox for the 1933–34 season, but was told that Fox had a satisfied customer and that no pictures were for sale. The only Fox pictures he could get were rejections. Starting in the fall of 1941 he tried to license a block of pictures but was told they were sold to Schine (R. 2437–41).

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been offered a fair split of the Columbia product and was still being offered the opportunity to license such a split, but that Smalley had been unwilling *to pay a fair price* (Def. Exs. D–143, D–144, R. 5177, 5178). The legal department was apparently unaware that the sales department had already acknowledged to Smalley that the Schine franchise (Ex. C–102 (37), R. 5012) made in October 1938 for the 1938–39 and 1939–40 seasons, prevented consideration of Smalley's offer to buy a split at "the same price flat or percentage that you are receiving" (Exs. 901, 902, R. 4391–92).

[4] Def. Ex. D–140, R. 6208 is the Smalley contract for the rejected RKO pictures for the 1937–38 season.

Although Smalley did not have a split of Universal product in 1932–33, he tried to license a split for the 1933–34 season; he was advised, however, that Universal had a franchise agreement with Schine which had been in effect since August 1, 1931, and that this franchise covered "all towns they are now operating, or any additional theatre they might acquire during the life of our agreement" (Exs. 896, 897, R. 4388, 4389, 2433).[5]

In May of 1934 Smalley met Myer Schine in Johnstown, and in the course of their conversation Schine asked him if he would sell his theatre in Norwich; Smalley retorted by asking Schine to sell his theatre. Myer Schine said he wasn't selling—"I am buying theatres" (R. 2447). In September 1940 Willard McKay made a proposition to Smalley for the purchase of his circuit by Schine but Smalley wasn't interested (R. 2447–48).

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[5] Thus when the Colonia Theatre came back into Schine's hands in 1933 the Universal product was automatically available to him, regardless of any price that Smalley might offer.

OGDENSBURG, NEW YORK

(Pop. 1940, 16,346—R. 2573)

Lawrence J. Carkey managed the Strand theatre in Ogdensburg for the defendants from September 1926 to March 1927 (R. 2389), and was a division manager for them from 1926 to 1928 (R. 2389). The only other theatre in this town is the Pontiac (formerly named the Star) (Int. Ans. 17–A, 18, and 23, R. 229). Both of these theatres have been leased by the defendants since 1926 from the same landlord. Since its acquisition by defendants the Pontiac has been operated only part time since 1926, except for a period in 1930 when the Strand was being remodeled. It was closed altogether from 1931 to 1938 (Int. Ans. 17–A, 18, and 23, R. 229; and Supp. Sched. to 18, 23, R. 244).

In July 1940, Carkey, who was then operating a theatre at Utica, went to Ogdensburg and noticed that the Pontiac was closed except for weekend operation (R. 2389–90). He then talked to the Mayor and City Clerk relative to leasing unoccupied space in the City Market Building for the purpose or remodeling it into a theatre (R. 2390–91). His bid for a five-year lease, with a five-year option, on this property was accepted by the City Council (Ex. 879, R. 4378), and plans for the proposed theatre were prepared (R. 2393). On September 30, 1940, the Corporation Counsel of Ogdensburg sent him a lease acceptable to that city (Ex. 882, 883, R. 4380, 5225). Carkey did not sign the lease, however, nor could he go ahead with his Ogdensburg theatre project for the reason that, while he had been assured of film product before contacting the City officials (R. 2398), when he was ready to sign contracts for product late in August, he was advised that it had been sold to defendants (R. 2399-2400).

He had contacted Gene Vogel, Metro salesman (R. 2396); George Tucker, an RKO salesman; J. Spandau, Albany branch manager of Universal (R. 1279); Richard Struewe, a Warner salesman (R. 2837); Jacob Arms, a Columbia salesman (R. 2841); Fred Sliter, a Fox salesman; and a salesman for United Artists 2394-95) between July 1 and July 15, 1940. He also contacted Richard Haas, of Paramount (R. 2396), requesting second-run product for the proposed theatre, and was assured he could have it from each company (R. 2396-97). Each of these was contacted later, when the deal for the lease was completed, and each advised, except Spandau of Universal, that the product had been sold to Schine in Ogdensburg (R. 2400-01). Spandau told Carkey he was ready to sell him at that time but Carkey could make no deal because he had no assurance of other major product (R. 2400).

On September 26, 1940, the Ogdesburg Journal, a daily newspaper published an article entitled "Schine Pontiac to open on Seven Day Basis" (R. 2404). It contained information supplied by Jacob Weber, Manager of Schine's Strand theatre (R. 2405). In this article it was reported that "with the curtailment of outdoor activities, opening the Pontiac will give the theatre patrons a choice of pictures at any time," and "the operating policy will be the most liberal ever offered in this part of the country * * * all programs will be double-featured," and "the admission price will also be reduced" (Ex. 884, R. 2406). On November 2, 1940, an advertisement announced that the Pontiac would again operate only on Saturdays and Sundays (R. 2407) and the Pontiac ads ceased entirely on December 19, 1940 (R. 2406–07, Ex. 885.) Although the theatre was apparently still closed the lease[1] was renewed on September 6th, 1941, for five years (Ex. 915, R. 5232).

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[1] This lease was also made for five years in 1936 (Ex. 916, R. 5234), when the theatre was also closed (Int. Ans. 17-A, R. 229).

ONEONTA, N. Y.

(Pop. 1940, 11,731—R. 2573)

In Oneonta, Schine acquired the Strand in October 1919, the Oneonta, 1217 seats in November 1922, and the Palace 866 seats in March 1923. These are all the theatres in Oneonta. During 1927–33, the Oneonta and Palace were under Fox operation but in 1933 were returned to Schine. According to Schine's answers to interrogatories (Int. Ans. 17, 18, R. 229) filed in 1941 the Strand has been kept closed by Schine and opened occasionally or part time. According to its objections to plaintiff's proposed plan of reorganization, filed in 1946, the Strand, between 1929–33 was sold and converted by the purchaser to commercial use (R. 3278).

The record shows that both the Palace and Oneonta received an identical clearance over 5 or 6 towns from the distributors despite the fact that some of the distributors acknowledged the difference in revenue possibilities of the two theatres by permitting film rental or admission price differentials (Exs. W. 3, R. 4429, W. 34 (20), R. 4584). Clearances given Schine's theatres in Oneonta over other towns have been considered unreasonable in arbitration proceedings under the Paramount consent decree. Appeal Board Decision No. 53; Arbitration Case No. 15–4F–42. [As to the distributors' relations with Schine respecting clearance in Oneonta see Exs. P–228, R. 5888; P–229, R. 5889; 958, R. 4393; 312, R. 3844.]

PARIS, KENTUCKY

(Pop. 1940, 6,697—R. 2574)

Harry Schwartz, the operator of the Opera House at Lexington, in the early summer of 1937 drove through Paris (R. 2025, 2038). He noticed Schine's Bourbon Theatre there (R. 2038), and a sign on a building stating that Schine was going to build a new theatre in Paris (R. 2039). In the summer of 1938 he returned to Paris and noticed that the sign he had previously seen was in a broken-down condition and the reading matter practically obliterated (R. 2039). On November 2, 1938, he entered into a lease of certain property in Paris with the intent of erecting a theatre on the premises leased (Ex. 828, R. 2051, 4362).

After making the lease, he wrote all the film companies (R. 2040). Fox replied that its product would not be available to him in Paris because Schine was their old customer there (Ex. 824, R. 2040, 4360). RKO replied that their first run was under contract in Paris, but by the time Schwartz began to operate they might have some service for him (Ex. 825, R. 2040, 4360). Universal replied that it had its product sold in Paris but there was a possibility of serving him with pictures which had not played in Paris during the past year (Ex. 826, R. 2041, 4361). After receiving Fox's reply, Schwartz tried to get second run from Fox, calling on Grady, branch manager of Fox, for that purpose (R. 2041). Grady was unwilling to negotiate with Schwartz for second run because of the possibility that Schine would build another theatre in Paris and desire second run (R. 2041–42). [On November 8, 1938, George Lynch, on behalf of the defendants, wrote to Fox asking Fox to hold its second-run product for them at Paris because they were arranging to build a new theatre there (Ex. 216, R. 3813). Fox acquiesced in this request (Ex. 218, R. 3813).] Jacques, branch manager of RKO, also refused to negotiate with Schwartz for second run for the same reason (R. 2042). This was likewise true of Krieger of Universal (R. 2042). Warner Brothers apparently was willing to give Schwartz a second-run contract for Paris, but when Schwartz could not obtain product from the other film companies he did not take the Warner second run (R. 2042–43).[1]

Schwartz started the construction of his theatre in Paris around July 1939, after leasing additional property necessary for this purpose in June 1939 (R. 2044, 2057–58) (Ex. 828, R. 4362). Schine then started construction of a third theatre there (R. 2044). Both before and after Schwartz started his construction Schine made several attempts to buy him out at Paris (R. 2044–48). Louis Lazar told Price Coomer, a former associate of Schwartz, that if Schwartz went ahead with his theatre in Paris, Schine would build a 1,200-seat theatre in Lexington and run it on a ten-cent policy (R. 858). Schine finally bought out Schwartz's interest in his Paris property on September 15, 1939 (Ex. 828, R. 2051, 4362), while his theatre was still under construction. Although the defendants assumed the obligation of the long-term leases taken by Schwartz on the property and paid Schwartz $5,000[3] (Ex. 828, R. 4362), they did not complete his theatre (Int. Ans. 31, R. 254). They completed their own new theatre and then closed the Bourbon (Int. Ans. 17-A, 18, 23, R. 239).

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[1] That Schine overbought at Paris to prevent Schwartz from getting sufficient second-run product appears from the fact that after they had bought out Schwartz they cancelled the second-run contract they had made with Paramount for Paris (Ex. 273, R. 3826).

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[3] This was apparently the consideration for the agreement by Schwartz and his associates not to compete in Paris or any other Kentucky location of the defendants contained in paragraph 3 of this sales agreement, Ex. 828, R. 4362.

PERRY, NEW YORK

(Pop. 1940, 4468—R. 2573)

In July 1935 the Auditorium was the only theatre in Perry (R. 1850). It was owned by Perry Township (Int. Ans. 17-A, R. 230, 1854). John Herzberger had been operating it continuously and profitably since 1913 under a lease from the township (R. 1850, 1854–56, 1859, Ex. 361, R. 3884). Before July 1935 he had no reason for selling or quitting the theatre (R. 1858).

[On November 28, 1934, Dave Miller, Resident Manager of Universal at Buffalo, wrote a letter (Ex. 361, R. 3884) to J. Myer Schine, pursuant to a previous telephone conversation between them, concerning the theatre situation in Perry. He set forth Herzberger's gross receipts on sixteen Universal pictures played in Perry during the 1932–1933 season, stated that "it is very apparent that the average daily business, in this theatre, is well over $100.00", gave details as to the population and industry of the town, asserted that Herzberger was not a "showman" but that he had "made a lot of money in this town, despite himself".]

In July 1935, Schine bought the Davis property in Perry (Int. Ans. 31, R. 254, 1850–51). May promptly thereafter called on Herzberger at his theatre to tell him that Schine had just closed a deal on a lot in Perry and was going to build a 1000 seat theatre there costing $100,000 (R. 1850).

May also gave this story to Read Clarke, Publisher of the Perry Record (R. 2276–79, 2285). On the information which May furnished him, Clarke wrote news items which were printed in three issues of his paper, on the front page, stating what the plans of the Schines were with reference to building of a theatre, its cost and seating capacity (Exs. 807, 808, 809, R. 5218; 2278–79, 2285). Herzberger regularly read the Perry Record (R. 1851), and saw these stories on the front pages of the paper (R. 1852–53, 1855). Thereafter, Harry Seed, manager of the Warner Exchange at Buffalo, asked Herzberger to meet J. Myer Schine in Rochester (R. 1853). A meeting was accordingly held there sometime before September 1, 1935, between Herzberger, Schine, May, and Seed, at which Schine offered Herzberger $5,000 for his lease (R. 1854). Herzberger accepted this proposition on condition that the township would consent to his assigning the lease to Schine before September 1 (R. 1854). May thereupon drew an agreement which both Schine and Herzberger signed (R. 1854). Objecting to Schine as a tenant, the township withheld its consent to the assignment and the deal did not materialize (R. 1854–55).

The village of Perry was not large enough to support Herzberger's theatre, which seated 600, and also a 1,000 seat house, such as Schine contemplated (R. 1858–9). Because of this fact and because Dipson offered Herzberger more money than Schine did (R. 1857), Herzberger negotiated with and sold to Dipson in September or October of 1935 (R. 1855). Herzberger continued working in the theatre as Dipson's manager (R. 1856), during which time Dipson spent about $13,000 improving the theatre (R. 1858), but at the end of the year's operation, Dipson sold to Schine (Int. Ans. 17-A, R. 230, 1859). Herzberger then quit the theatre and left Perry (R. 1855-56, 1859). Although Schine had blueprints, which were dated September 1935 (R. 2684) and specifications drawn for a new theatre (R. 2685), no new theatre has yet been built on its Davis property or elsewhere, although Schine still owns the property (R. 1856).

PIQUA, OHIO

(Pop. 1940, 16,049—R. 2574)

In Piqua, Schine in May of 1931 acquired all three theatres in the town, the Piqua, with 958 seats, the Miami, 712 seats, the Bijou, 375 seats. The Bijou has been kept closed (Int. Ans. 17, 18, 23, R. 236). Schine has renewed the lease on the Bijou from time to time at a commitment of $13,220 (Exs. 911–914, R. 5227–5232).

ROCHESTER, NEW YORK

(Pop. 1940, 324,975—R. 2573)

Chester Fenyvessy has been connected with the motion picture industry in Rochester continuously since 1918, and his father's connection goes back to about 1909 (R. 1662). The family acquired the fee of the Madison Theatre about 1929, the fees of the Liberty and West End, in 1932, and the fee of the Monroe, in 1933 (R. 1662–63). At the time the fee of the Liberty was acquired in 1932, the theatre was under lease to Schine (R. 1663), and Schine continued to hold the lease until February 1939, when the fee of that theatre, along with the fees of the Madison, Monroe, and West End, were sold to Schine (R. 1662, Int. Ans. 17–A, R. 230–31). The Fenyvessys still own the Capitol, a downtown theatre (operated by Comerford and Paramount), and they were lessees of the Strand until about 1938 (R. 1665–66). Schine secured its first theatre in Rochester, the Grand, in 1924, and up to the time of the Fenyvessy deal had acquired by lease, or fee, six additional theatres.[1]

The Fenyvessy's Madison and Monroe and the Schine Riviera, Liberty, Dixie, and State were neighborhood theatres[2] and charged the same admission—25 cents for adults and 10 cents for children (R. 1672). The Monroe was the only neighborhood theatre in Rochester with an air-conditioning system, and the Madison had a complete stage, which was an unusual feature (R. 1668–70).

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[1] The State, Riviera, and Liberty in 1926, the Dixie in 1932, and the Cameo and Lake in 1936. A half interest in the operation of the Webster was acquired in 1927 and relinquished in 1933 (R. 2224, I. A. 17–A, R. 230–31).

For the 1931–32 season, the Madison had a second run in the city of Rochester (R. 1672) of the product of Warner (Exs. 720, 721, R. 5490–91) and RKO (Exs. 726, 727, R. 5496–97). But for the 1932–33 season the Madison had a run following Riveria, Liberty, State, and Webster on Warner (Ex. 722, R. 5492), RKO (Ex. 728, R. 5498), Fox (Ex. 745, R. 5515), and Paramount (Ex. 734, R. 5504). The RKO contract (Ex. 728, R. 5498) provides 10 days clearance for the Schine theatres, but a definite clearance period is not stated in the other contracts (Exs. 722, 745, 734, R. 5492, 5515, 5504). For the 1933–34 season, the Warner and RKO contracts with Fenyvessy specified that the Madison and Monroe theatres follow Riviera, Liberty, State, and Dixie by 14 days (Exs. 724, 725, 729, 730, R. 5494, 5495, 5499, 5500), but the Fox contracts (Exs. 746, 747, R. 5516, 5517), the only other contracts avail-

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[2] See the following table:

Theatre	Seating capacity	Location
Madison	1,381	Southwest.
Monroe	1,186	Southeast.
Dixie	892	Northeast.
State	1,062	East.
Liberty	1,256	North.
Riviera	1,508	North.

(R. 1667-72, I. A. 18, R. 230-31.)

able for this season, do not specify a definite number of days of clearance.

Schine acquired the Dixie in August 1932 and relinquished the Webster, the first time, in December 1933 (Int. Ans. 17–A, R. 230, 231).[3] When Schine acquired the Dixie the Madison lost its clearance over the Dixie, although the Dixie is a much smaller theatre; whereas when the Webster was dropped by Schine it ceased to enjoy the clearance it had previously held over the larger Madison and Monroe (R. 1680–81).

For the 1934–35 season, the clearance provisions in the Fenyvessy contracts with Paramount (Exs. 735, 736, R. 5505, 5506) and Warner (Exs. 788, 789, R. 5544, 5545) reserved to the four Schine theatres 14 days in which to play before the films became available to other theatres; the RKO contracts gave them 21 days (Exs. 731, 732, R. 5501,

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[3] The Webster was reacquired in September 1940 from Max Fogel (I. A. 17–A, p. 9, R. 231) and retransferred to him pursuant to the Temporary Order of May 19, 1942. Schine's original interest in the Webster (R. 3231, R. 1672, I. A. 17–A, p. 9, R. 231) was acquired in 1927 for the purpose of controlling threatened competition with Schine's State. William Tishkoff had operated the Murray Theatre for a number of years when he, Max Fogel, and associates started construction of the Webster about three-quarters of a mile from the State. After construction was begun, Myer Schine and John May called upon Tishkoff and Fogel at the Murray Theatre. Schine said that the new theatre was too close to the State and was as economically unjustified as a new Schine theatre near the Murray would be (R. 2220–22, 2228, 2653–55). A few weeks later a partnership arrangement was worked out whereby the building was completed by the owning corporation and leased to an operating corporation in which Schine was given a one-half interest and a contract to buy and book the films for it (R. 2276–79, 2283).

5502), while the Fox contracts merely specified a run for the Madison and Monroe after the Schine houses (Exs. 748, 749, R. 5518, 5519). For this season, the Fenyvessy contracts with Metro do not refer to any clearance in favor of the Schine theatres (Exs. 737, 738, R. 5507, 5508), but the clearance provisions in the Metro-Schine contracts (Exs. 757-760, R. 5527-30) provide for a second (first neighborhood) run in the Riviera or Liberty, and Dixie or State, plus a third (repeat) run for Liberty, State or Dixie, within 21 days. Thus Schine was allowed a 21-day period within which to play such runs as Schine saw fit in all four theatres before the films became available to other Rochester neighborhood houses.

The run and clearance provisions of the Schine-Metro contracts for the 1935-36 season (Exs. 761-764, R. 5531-34) are identical with those found in the 1934-35 contracts. The Fenyvessy Metro contracts for the 1935-36 season (Exs. 739-740, R. 5509-10), however, specify that the clearances to which the Madison and Monroe are subjected is "14 days after State or Dixie, third run, if and as available. State or Dixie must play within 14 days of second-run or their clearance waived." Under this provision the clearance of the Schine houses over the Madison and Monroe could be extended to as much as 28 days, and this was often the case, particularly on pictures requiring a Sunday dating (R. 1675-6, 1678, 1685-86, 1690-91). The clearance provisions in the Fenyvessy contracts with Metro remained the same through the 1938-39 season (Exs. 785, 741-744, R. 5541; 5511-14).

The Fenyvessy Warner contract for 1935–36 (Ex. 752, R. 5522) limited the Schine clearance to 14 days, the same as the 1934–35 contract, but the contracts for 1936–37 and 1937–38 (Exs. 786, 787, 753, 754, R. 5542, 5543, 5523, 5524) merely provide "after Schine clearance" so that the provisions in the Schine contracts as to the actual number of days controlled. The Warner "repeat" run contracts, for the Liberty or Riviera (Ex. W–18, R. 5797), and for the State or Dixie (Ex. W–19, R. 5798) for the 1935–36 season, give Schine 21 days after notice of availability in which to date pictures on such repeat run in one or more of those theatres. The same provisions were carried forward in the clearance schedule which is part of the Warner franchise for the 1937–38 through 1939–40 seasons (Ex. W–3, R. 4429).

The Fenyvessy RKO contracts for three successive years, 1936–37 through 1938–39 (Exs. 755–756, 780, 783, R. 5525–26, 5536, 5539) all contain the unusual provision that Schine theatres are to receive the same clearance as granted by all major companies.[6]

Although the Schine contracts with the five major companies, referred to above, permitted additional runs, if desired, it appears from the play-off records of Universal and Columbia (Exs. 704–B to Q, R. 4262–77, 685–M to W, R. 4200–

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[6] No RKO-Schine contracts are available after the 1934–35 season (Exs. R–3 through R–34, R. 5799–5828), and the deal sheets for the 1936–37 season (R–2 (1–51), R. 4815–4864) and those covered by the franchise for the 1938–39 through 1940–41 seasons (R–37 (1–83), R. 4866–4948) do not contain any clearance provisions.

4210), referred to below, that the manner in which Schine booked and played pictures was to have simultaneous first neighborhood runs in the Riviera and in the Liberty or State or Dixie, followed by an additional simultaneous run in the two remaining theatres which did not play the first-run (R. 1675–76, 1678, 1685–86, 1690–91). That these runs, giving priority to the Schine theatres over the Fenyvessy theatres, were arbitrarily set by Schine without any consideration of rentals received from the theatres involved by the major distributors, is shown by the following film rental comparisons:

For the 1934–35 season Schine paid Fox much less for his two prior runs at the State and Dixie than the Madison and Monroe paid for their later run.[5] For the 1935–36 season Warner got from Schine for each of the two prior runs at the State, Dixie, Liberty or Riviera less than a quarter as much as Fenyvessy paid for his later run at the Madison.[6] RKO in 1936–37 sold Schine two prior runs at the State, Dixie, or Liberty for less than a third of the film rental paid by the Madison and Monroe for their later runs.[7] Metro sold Schine three prior runs for 1938–39 at the State, Dixie, or Liberty at prices far below those paid by Fenyvessy for the later runs at the Madison and Monroe.[8]

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[5] The contract for the State or Dixie (Ex. F-87, R. 5970) for 35 pictures, all bought on flat rentals, amounts to approximately $1,125.00. For the same product, the Fenyvessy contracts for 33 pictures each at the Madison and Monroe (Exs. 748–749, R. 5518–19) amount to about $962.00 in flat rentals, and guaranteed an additional $825.00 against 25 percent of the gross on the six top pictures. Fenyvessy was required to book these six pictures for Sunday dates as selected by the distributor, but Schine was not required to give any preferred playing time.

[6] Schine's contracts for the Liberty or Riviera (Ex. W-18, R. 5797) and for the State or Dixie (Ex. W-19, R. 5798) for 30 pictures selected in each situation from the combined Warner-First National product, all at flat rentals, totaled about $675. The Fenyvessy contract for 59 pictures of the

The Universal play-off records for the seasons, 1934–35 through 1937–38, show the dates of, and

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same season's product for the Madison Theatre (Ex. 752, R. 5522) totalled approximately $2,500 in flat rentals and guaranteed an additional $65 against percentage terms of 30 percent on two pictures and 35 percent on two more. Fenyvessy paid $5.00 score charge per picture; Schine, $2.50.

[7] The Liberty contract (Ex. R-2 (26), R. 4840) is for 45 flat rental pictures and totals about $795.00; the State or Dixie contract (Ex. R-2 (24), R. 4838) is for 25 pictures at flat rentals and totals about $710.00. The Madison and Monroe contracts (Exs. 755–756, R. 5525, 5526) each called for 46 pictures at identical prices, and each contract totals about $1,800.00 in flat rentals, and guarantees $600.00 additional rental against 30 percent of the gross on the four top pictures on each contract.

[8] The Loew franchise (Ex. 618 (Par. B, p. 6, and Schedule II), R. 3952, 3958, 3985) shows that Schine licensed for the Liberty, State, and Dixie 54 features (Ex. 619, R. 3998), 8 to be played at from 25 percent to 40 percent, depending on what each particular picture grossed, and the remainder at flat rentals. The total flat rental, assuming all 54 pictures were made and released, for the run at the State or Dixie would amount to approximately $2,220.00; and the total for the Liberty run would amount to about $1,760.00. The Madison and Monroe contracts are for all of the pictures, with the top four at 40 percent against a guranteed rental of $175.00 each, and the next four at 35 percent against $175.00 each. Assuming 54 pictures, the total for the flat rental pictures on the Madison contract (Ex. 743, R. 5513) would be approximately $3,454.00, and on the Monroe contract (Ex. 744, R. 5514) about $2,880.00.

film rentals received for, the respective runs of features at the Riviera, Liberty, State, Dixie, Madison and Monroe theatres each season; the records for the 1937–38 season (Ex. 704–E, I, M, and Q, R. 4265, 4269, 4273, 4277) contain a carry-over of the yearly film rentals of the four Schine theatres, and for the Madison and Monroe, respectively, and for the four seasons indicated total figures are as follows:

Theatre	Ex. No.	Number of pictures	Film rental
Riviera or Liberty (initial run)	704 M	101	$6,270.00
State or Dixie (initial run)	704 Q	102	2,105.00
Liberty (repeat run)	704 M	97	1,987.50
State or Dixie (repeat run)	704 Q	97	1,070.00
Total, four prior Schine runs			12,287.50
Madison	704 E	110	5,221.11
Monroe	704 I	110	5,392.56
Total, two succeeding Fenyvessy runs			10,613.67

Fenyvessy licensed second-run in the city of Rochester from Columbia for the 1936–37 and 1937–38 seasons (R. 1680–81, 1700, Exs. 750–751, R. 5520–21). The clearance provision in the 1937–38 contract is for 14 days over all "subsequent" runs. Fenyvessy tried to negotiate for a continuance of this run for the 1938–39 season (R. 1700–01) but Schine had made a two-year franchise with Columbia for the 1938–39 and 1939–40 seasons which provided two simultaneous second-runs (Ex. C–102 (17) (19), R. 4991, 4993) at the Riviera or Liberty, and State or Dixie, respectively, with 21 days clearance over subsequent runs, and two repeat runs (Ex. C–102 (18) (20), R. 4992, 4994) at the Liberty, and State or Dixie, respectively, to be played within that clearance period. The Columbia play-off records covering the two Fenyvessy and four Schine theatres for the 1937–38 and 1938–39 seasons (Exs. 685–M to W, R. 4200–4210) show that the film rental paid by the Madison and Monroe in 1937–38 for the second-run exceeded the aggregate film rental paid by the Riviera, State, Dixie, and Liberty for two second runs and two repeat runs in 1938–39 by approximately $679, as indicated in the following tabulation:

Exhibit No.	Season	Theatre	Run	Number of pictures	Amount
685-M	1937-38	Madison	2	28	$2,463.24
685-N	1937-38	Monroe	2	24	2,773.88
Total					5,237.12
685-R	1938-39	State or Dixie	2	25	1,122.50
685-S	1938-39	State or Dixie	Repeat	25	865.00
685-V	1938-39	Liberty or Riviera	2	25	1,520.00
685-W	1938-39	Liberty	Repeat	25	1,050.00
Total					4,557.50

As all six theatres charged the same admission prices, the competitive effect of holding the Madison and Monroe behind the four Schine houses was simply to channel into the four Schine houses the bulk of the neighborhood patronage without any corresponding sharing of the benefits of that patronage with the distributors by Schine in the form of film rental. The value of the prior runs enjoyed by Schine or even open booking with the Schine houses was so great that Fenyvessy offered to pay even higher prices than he was then paying (Ex. 765; R. 1682, 4328), but, with the exception of the Columbia second-run, noted above, he could not buy an earlier run from any of the major distributors at any price (R. 1802). Fenyvessy tried particularly to secure a better run of Metro product (R. 1752–1760) and a number of letters passed between him and sales executives of Loew's bearing on this subject (Exs. 765 through 778, R. 1752–1759, 4328–30). They never at any time denied his claim that the character of his theatres (R. 1752) entitled them to a better run, but simply sought to evade the issue (Ex. 766, R. 1753, Ex. 769, R. 1755, Ex. 776, R. 1759), and it was not until July 1938 nearly two years after the Loew franchise was made with Schine that it was admitted that the franchise prevented any improvement in Fenyvessy's run (Ex. 770, R. 1755; Ex. 778, R. 1758).

Fenyvessy did not recall having written correspondence with other distributors on the question of run (R. 1760), but he talked to the branch manager of Warner, who said that he could not improve the run, but would give Fenyvessy the run Metro or other majors gave him (R. 1760–61). He talked to the RKO salesman who told him that whatever run Metro gave, he would give (R. 1761, 1764), and as noted above, page 5, the RKO contracts, starting with the 1936–37 season, provided that the Schine clearance would be like that granted by all other majors (Exs. 755–756, R. 5525–26, 780, R. 5536, 783, R. 5539). He also talked with the salesman of Paramount who simply refused to consider a better run (R. 1764).

The Fenyvessys finally sold the Madison, Monroe, Liberty and West End to Schine (R. 1764–65) for an amount approximately equal to what these theatres had cost (R. 1768). Chester Fenyvessy, whose father was then 84 years old

(R. 1776), and his brother, Paul, agreed not to compete in Rochester, except in the downtown area where they still owned the Capitol (R. 1665), for a period of 20 years from February 10, 1939 (Ex. 790, R. 4331).

Mrs. Florence Belinson (sister of Chester Fenyvessy) and her husband have operated the Little Theatre, 299 seats, located on the edge of the downtown section since 1931 (R. 1814–15, 1837). The Little always maintained a single feature policy and its evening admission price of 35 cents was well above the neighborhood price of 25 cents and always very close to the 40-cent price of the large downtown first-run houses. The Little never used any give-aways, and catered to a discriminating audience (R. 1815–16). Loew's Rochester theatre used Metro, Columbia, and United Artists product first run, and this product did not have a holdover or second-run in any downtown theatre; however, the product of the other major distributors (played first-run at the RKO and Paramount houses) was subject to a hold-over or second-run downtown (R. 1817–18).

From about 1931 to 1937 the Little played pictures that had been eliminated by the other downtown houses, foreign language and British pictures, and reissues of the major companies (R. 1815–16). About 1936 or 1937 the foreign-language pictures which the Little had used were no longer available and British Gaumont had gone off the market; the only pictures available were reissues or old pictures and this meant that the Little had to rely on pictures that had played every house in town, including the 10-cent houses (R. 1817); as a result Mrs. Belinson had to look around to see what other product she could get (R. 1817). For the 1936-37 and 1937-38 seasons, while her brother had the second-run of Columbia product for the Madison and Monroe (R. 1818), she licensed a second-run of seven Columbia pictures which she played simultaneously with the Strand, Madison, or Monroe on the basis of a minimum 7-day showing and on terms from 25 percent to 40 percent of the gross (Exs. 793, 797; R. 5548, 5552). After her brother's second-run contract terminated she got two additional Columbia pictures, "You Can't Take It With You," and "Mr. Smith Goes to Washington," on a day and date run with Schine's Riviera, State, Dixie, or Liberty. These pictures were bought for a run of 7 to 14 days at $300.00 against 40 percent of the gross (Exs. 798-799, R. 5553-4). Nevertheless, when Mrs. Belinson tried to license the next important Columbia release "His Girl Friday," available shortly after "Mr. Smith Goes to Washington," she was informed that Columbia was unable to serve her any further pictures day and date with the Schine houses (R. 1824-25).

As the Metro and United Artists' pictures did not have a second-run downtown, Mrs. Belinson also tried to license these pictures second-run, or day and date with the Schine neighborhood theatres (R. 1825, 1831). When she tried to license a day and date run of Metro, its salesman advised her to take it up with the New York office (R. 1826-27); but when she took it up in great detail with Mr. Rodgers, general sales manager (Ex. 800, R. 1827, 4332), he advised her to see the branch manager (Ex. 801, R. 1828, 4333);

and in the end she was advised by the district manager (Ex. 802, R. 1830, 4334) that "another contract with the Schine interests for their subsequent run theatres in the city of Rochester" precluded any offer of pictures to her. Lehman, the branch manager of United Artists, said he would like the additional revenue but that she should present the matter to the home office. He also advised her to take the question up with Schine because without some concession from him he did not think that United Artists could serve her (R. 1831). When she followed Lehman's suggestion and made a special trip to Gloversville in July 1939 to explain to Myer Schine that she wanted only the privilige of playing selected pictures of United Artists on the same basis as the Columbia pictures, he refused to agree to such a run for her theatre (R. 1831–32) and she got no United Artists pictures (R. 1833).

SALAMANCA, NEW YORK

(Pop. 1940, 9,011—R. 2573)

During 1938, the only theatre in Salamanca, the Andrews, was operated by Schine (R. 231). At that time it owned a lot on the main street which it had bought in 1927 (R. 2663, Int. Ans. 31, R. 254). In the fall of 1938, three persons became interested in constructing a new theatre in Salamanca (R. 2210–11). They were Morris Gaby and Irving Cohen, who as partners had operated a theatre in Corning since 1926 (R. 2195–6), and Jack Zafron, a resident of Salamanca and a brother-in-law of Cohen (R. 2210). Gaby, Cohen and Zafron, accordingly, took various steps between October and December 1938, to acquire a site for their contemplated theatre. They inspected various properties, conducted negotiations, and Zafron prior to December 24, 1938, bought a building (R. 2210–12).

On December 24, 1938, C. R. Dickerson, Schine's manager in Salamanca, told Matthew Weber, publisher of the Salamanca Republican-Press, a daily newspaper, that Schine was going to build a new theatre on its lot on Main Street, that both Schine's district manager and an architect had been in Salamanca the day before to inspect this lot, that the new theatre would open about May 1, 1939,[1] and that Schine planned on continuing to operate the Andrews after completion of the new theatre (R. 2290-91). The same day Weber wrote a news story setting forth this information, which was printed on the first page of his newspaper in the December 24, 1938, issue (R. 2290, 2293, Ex. 854, R. 5221). Cohen saw this newspaper announcement four or five days later (R. 2209). Thinking that a new theatre was going to be built, as Schine had announced (R. 2213), he and his two associates dropped their plans and never did build on Zafron's property or anywhere else in Salamanca (R. 2213).

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[1] This information was false in that the municipal authorities of Salamanca did not grant a permit for the construction of Schine's new theatre until October 6, 1941 (Ex. 1003, R. 2981), and the theatre was not opened until August 1942 (R. 2718).

SALISBURY, MARYLAND

(Pop. 1940, 13,313—R. 2575)

In September 1938, the defendants acquired the Arcade Theatre in Salisbury from Lee Insley, and the Wicomico from Marsh Gollner (R. 2060, Int. Ans. 17–A, R. 240). Both former owners weer taken into the employment of Schine (R. 2068). At that time, the Ulman interests were operating the Ulman and the New theatres in Salisbury (R. 2066–67). There are five[1] theatres in the town, the Arcade, Ulman and New Theatres being the first-run houses (R. 2060).

For the 1938–39 season, Ulman had Paramount, Fox, and United Artists (R. 2060–61.) He signed an application for all of the 1939–40 Paramount product (R. 2061), but Paramount refused to sell him more than half because, according to the Paramount salesman, the other half was to be sold to Schine (R. 2063). The Paramount franchise with Schine for the 1939–40 and 1940–41 seasons, made in February 1940, shows no contract for Salisbury (Exs. P–168—P–238, R. 5829–97); but in April 1940, the 1939–40 product began to play in the Schine theatres there (Ex. 1007, R. 4427). Ulman's contract for his half is dated July 18, 1939 (R. 2064, Ex. 268, R. 5365). Paramount thus reserved the other half for Schine without requiring either a contract or a play-off until almost a year after Ulman's offer to license all had been rejected.[2]

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[1] In addition to the Arcada and Wicomico, Schine also has the Ritz, a colored theatre (I. A. 17–A, R. 240).

Since the 1939–40 season Ulman has had to take a split of the Paramount product (R. 2065) and Schine has had for their theatres in Salisbury all of Warner, Metro, RKO, Columbia, and Universal, in addition to one half of Paramount [R. 2065–66, Ex. R37 (70), R. 1187, 4934].[3]

Schine, through several representatives, has attempted on several occasions to buy the Ulman theatres (R. 2067–68). A fire occurred in the Ulman in June 1941 (R. 2068), whereupon May offered to buy the property and agree not to rebuild a theatre on it (R. 3068). Subsequently, Ulman was contacted by Lee Insley, who tried to persuade Ulman to lease his theatres to Schine by pointing out that Schine was in a better position to buy pictures for them (R. 2068–69).

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[2] Only 15 pictures were played by Schine's of the 52 pictures released by Paramount for that season, 31 were released before April. Ulman played 27. (Ex. 687, R. 4228, 1007, R. 4427).

[3] In addition they had Republic product (R. 2065) and were buying some second run United Artists (Ex. 159, R. 5358).

SEAFORD, DELAWARE

(Pop. 2,804—Federal Census 1940)

Thomas P. Ayres has been operating the only theatres at Seaford and Georgetown, Delaware, since 1933 (R. 2069-70). In January 1939, the appellants acquired the Waller Theatre in Laurel, Delaware, and the Plaza Theatre in Milford, Delaware (Int. Ans. 17-A, 18, 23, R. 241). Laurel is six miles from Seaford and Milford is twenty (R. 2070). The towns of Harrington, Dover, Milford, Georgetown, and Seaford do not take clearance over one another and play pictures together (R. 2076).

On several occasions since 1938 the appellants have tried to buy out Ayres at Seaford and Georgetown (R. 2071). Myer Schine, Willard McKay, and John May offered him a partnership and he was told they could get pictures more cheaply than he could (R. 2072). On one occasion Lee Insley, a Schine representative, told Ayres he was foolish not to make the deal because Schine now had Laurel, Delaware, and that with their buying power they would very likely get the product away from him and Ayres probably would wind up by playing pictures of independent companies rather than the type of picture he was then playing (R. 2073). After Ayres refused to deal, Schine bought a lot in Seaford and Insley told Ayres they were going to build a theatre there and "naturally" would get the product (R. 2077, Int. Ans. 31, R. 254). Ayres then built a second theatre in Seaford (R. 2073, 2077-78), and Schine has not yet built on its lot (Int. Ans. 31, R. 254).

SENECA FALLS, NEW YORK

(Pop. 1940, 6,452—R. 2573)

In 1935 there were two theatres in Seneca Falls (R. 889). One, the Strand, was operated by the Berenstein brothers (R. 889–90); the other theatre was the Seneca (R. 889), which Richard De Toto operated from July of 1934 through June 30, 1936 (R. 882–84). During this period De Toto ran a matinee and evening performance every day (R. 889), playing about five or six features a week (R. 906). He did a fair business and quite occasionally had full houses during the evening performance (R. 890).

In September 1935, Schine bought out the Berensteins (R. 893, Int. Ans. 17–A, R. 231), and then in April 1936 bought the building in which the Seneca was located (R. 893, Ex. P–47, R. 3783, Int. Ans. 17–A, R. 231). De Toto received a notice to this effect from the landlord (R. 892–93, Ex. P–47, R. 893, 3783) and a letter from Young, Schine's district manager, stating that he should pay the rent on the Seneca to Schaefer, manager of the Strand (R. 893, 894). In accordance with the letter, De Toto paid the May and June rent to Schaefer (R. 893–94, 897). Early in May of 1936, De Toto talked with Schaefer about a renewal of the lease on the Seneca (R. 897), which Schaefer said was impossible (R. 897). When Schaefer told De Toto that the lease would not be renewed De Toto hired an architect and had plans and specifications drawn for another theatre in Seneca Falls (R. 898, 899, 958, Exs. P-48, P-49, R. 900).

De Toto vacated the Seneca theatre on June 30, 1936 (R. 884, 901-02). The following day he saw a sign on the Seneca which was placed there after he left, and which read "closed for alterations. Will reopen soon as a Schine theatre" (R. 901, 902). After De Toto saw this sign posted in front of the Seneca he did not go through with his plans to build the theatre (R. 902). Schine did not reopen the Seneca as announced (R. 902).

De Toto waited two years and then renewed his plans to construct a theatre on a site other than the first he had in mind (R. 902-03, 958-59). As in the first instance, he discussed the matter with an architect, and plans and specifications were drawn (R. 902-03, 958, Ex. 51). De Toto again saw a sign on the Seneca theatre in July 1938, which said that the Seneca would be open on August 20, 1938 (R. 906). His attention was also drawn to an announcement on the first page of the July 13, 1938, issue of the Seneca Falls newspaper relative to the reopening of the Seneca (R. 904-05). De Toto again did not go through with his plans for the construction of the theatre (R. 905) after this announcement. The Seneca did not open in August 1938 (R. 906) and has been kept closed continuously since June 30, 1936, when De Toto's lease expired (R. 902, 906, 920).

When the Berensteins operated the Strand there were no bank nights and no "give-aways" at this theatre (R. 907), but under the Schine management the Strand had both bank nights and give-aways (R. 907, 959). During De Toto's operation of the Seneca his admission price was 15 cents (R. 889, 919, 944). Never during this period did the Strand ever charge more than 25 cents (R. 920). Shortly after the Seneca closed, Schine increased the admission price from 25 cents to 35 cents at the Strand (R. 919–20).

SHELBY, OHIO

(Pop. 1940, 6,643—R. 2574)

In 1936 H. D. Shreffler was operating the Castamba Theatre in Shelby, which he had leased since 1922 (R. 1080–81). Louis Lazar wrote on January 14, 1936, to the owners of the Castamba Theatre inquiring whether they would be interested in renting or selling this theatre (Ex. 998, R. 2580), as Schine was expanding its properties in the State of Ohio, having "recently acquired a number of towns in the vicinity of Shelby, namely, Norwalk, Ashland, and Bucyrus." Shreffler wrote to Lazar on January 23, 1936, saying the letter to the owners had been handed to him, referred to a visit of Lazar and May and reaffirmed an understanding that "in event I decided to sell, you would have the first opportunity" (Ex. P–74, R. 3787, 1082). Lazar talked to Shreffler about leasing the Castamba two or more times during the Spring of 1936 and also suggested a partnership deal (R. 1083). Shreffler said he did not want to sell, that it was his theatre, and he wanted to run it (R. 1083). Shreffler began to remodel his theatre in June 1937 at an expense of over $30,000 (R. 1100).

During the 1936–37 motion picture season Shreffler played Fox,[1] Metro, Warner, and some

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[1] He had Fox product for three seasons, 1936–37, 1937–38, and 1938–39, under a franchise agreement made in April 1936 (R. 1113–14).

RKO first run (R. 1084, 1146). Paramount's exchange manager at Cleveland took an application from him for a two-year (1937–38 and 1938–39) deal in January 1937 (R. 1089), but held up action on it.

Lazar renewed his request to Shreffler to join in a partnership with Schine, by letter dated July 3, 1937, stating in part "The time is rapidly approaching when the support and protection of a concern as large as ours would be of tremendous value, and I urge you to carefully consider the many advantages, against the possible disadvantages, which an association with us would give you" (R. 1091, Ex. P–75, R. 3788).

During the last of August or the first part of September 1937, while the Castamba was closed for remodelling (R. 1090, 1094), Lazar saw Shreffler in Shelby, told him that a circuit theatre operator named Dipson was coming into Shelby and that Lazar would like to work out a partnership with Shreffler (R. 1092). The substance of this conversation was that Dipson was ruthless and would smother Shreffler; that Schine would buy a new theatre which was begun in the town in the latter part of September by Richard Kemper, known as the State (R. 1092–93, 1127), if Shreffler would not join with them, and would pay one thousand dollars more for it than Shreffler could pay; that Schine would then take the product out of Shreffler's theatre and he would be unable to operate (R. 1092–93, 1094). Lazar returned three days later and was advised by Shreffler that he would join defendant's organization (R. 1094–95), and on September 21, 1937, an agreement to this effect was signed by Shreffler and Lazar.[2] The pending Paramount deal was then approved by Paramount (R. 1089–90), nine months after they took the application (R. 1089).

Kemper opened the State, seating 450, late in November 1937 (R. 1127). At that time another theatre, known as the Opera House, located on the upper or second floor of the building in which it was housed, and seating about 325 (R. 1132), was operating in Shelby for several days a week (R. 1127, 1140–41). This theatre was playing RKO pictures, but the Cleveland exchange manager of that company, H. H. Greenblatt (R. 1130, 1298) in August of 1937 told Kemper that the exhibitor at the Opera House was unsatisfactory to RKO, had been causing it difficulty, and Kemper could have this product if he arranged to take over operation of the Opera House (R. 1128–29; 1148–50). Before opening the State he also contacted the Cleveland exchange managers and obtained the product of Universal, United Artists and Columbia on first run (R. 1127, 1131–32, 1146). In the Spring of 1938, Kemper took over the operation of the Opera House but did not get the RKO product (R. 1130). Greenblatt told him this product was committeed by his New York office to Schine, but if Kemper would contact Lazar, possibly he would release some of the RKO product (R. 1130–31). Lazar refused to release any of it to Kemper (R. 1131–32).

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[2] The agreement, between Shreffler and Belpik Theatre Corporation, provided that Shreffler would organize the Schine Shelby Corporation, obtain for it a 20-year lease on the Castamba Theatre, assign all his sound and other motion-picture projection and seating equipment to the new corporation, and assign one-half of the stock of the new corporation to Belpik. It also provided that Belpik was to have a contract for general management of the theatre, for which services it has received 5% of the gross receipts of the theatre. Each party was to advance 50% of the working capital. $15,000 was to be paid Shreffler and was to be applied toward the mortgage debt resulting from the theatre remodelling, and represented one-half that cost. Shreffler guaranteed the remodelled theatre would seat 748. Shreffler and his son were to be employed by the defendants for two years at a combined salary for the two of them of $50 per week. This contract was performed (Ex. 96, R. 5196, 1100; I. A. 17–A, R. 1078, 236; I. A. 15, R. 1080, 221, 1079; I. A. 19–C, R. 250, 1079–80; R. 1105–06).

Saul Silverman[a] approached Kemper while the State was under construction in 1937 (R. 1132), while Lazar was negotiating with Shreffler, and suggested that Kemper work out a deal with Lazar, but Kemper refused (R. 1133–34). In the Spring of 1938, Silverman introduced Lazar to Kemper (R. 1134–35) and Lazar arranged to meet him in Bellefontaine. At that meeting he told Kemper that the Castamba operation wasn't too profitable, said Kemper could not expect to get any more product, and suggested Kemper sell to Schine and become one of their theatre managers (R. 1135–36; 1137). Over a period of six or seven months in 1938 Lazar saw Kemper numerous times at Cleveland, Bellefontaine, and Mansfield (R. 1136). In July 1939 Lazar said he would discuss a deal with J. Myer Schine for the State with Kemper (R. 1137–38), and if it was concluded they would close the State and operate the Opera House because of lease provisions of the latter requiring it be kept open two days per week (R. 1138, 1139, 1141–42). Kemper heard nothing further from Lazar, turned over his interest in the theatre to his associates and retired from the operation (R. 1139, 1145).

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[a] District Manager of Schine Theatres in Ohio (R. 1133; Silverman Aff. filed on behalf of defendants Sept. 27, 1939, re motion for Prel. Inj.).

SYRACUSE, NEW YORK

(Pop. 1942, 205,967—R. 2573)

In 1935 the five first-run theatres in Syracuse were the Eckel, Keith, Paramount, Loew, and Strand (R. 2019–20, 2713). The Empire, a downtown 1,500-seat theatre (R. 1892), was sometimes a first-run house (R. 1918) and at various times played all runs and operated under all policies (R. 1883, 1918, 2165). Prior to 1929, the Syracuse-Strand Theatre Corporation acquired a ground lease of the site of the present Strand Theatre and constructed the Strand Theatre building thereon. In 1929 the company gave a ten-year lease on the theatre to Warner, which operated it until about 1935 (R. 1939–41).

At this time RKO was operating the Paramount and Keith theatres, and Schine was operating the Eckel (R. 2665, 2713), which it had acquired in 1927 (R. 2665, Int. Ans. 17–A, R. 231). During 1935 Schine and RKO formed a partnership and pooling arrangement of all their first-run Syracuse theatres and first-run product, and organized the S. K. E. Operating Company for this purpose (R. 2665, 2712–14, Ex. 1004, 1005, R. 4415, 4422). RKO, in addition to its own product, then had a franchise on the Paramount product, and Schine had a franchise on Fox pictures. After the S. K. E. Company was formed, Schine and RKO assigned their franchises and product rights to it, and it obtained a franchise for the Warner product (Ex. 1004, R. 4415). Shortly thereafter, the S. K. E. Operating Company acquired the Strand Theatre lease from Warner (R. 1939–41).

Under the pooling agreement, the control of this corporation was equally divided between RKO and Schine. Schine operated the theatres and RKO booked and bought the pictures (R. 1941, 1942, 2666, 2713). From 1935 to 1940, Schine received 40 percent of the profits and RKO 60 percent. Since that time Schine has received 30 percent and RKO 70 percent of the profits (R. 2666, 2713–14, Ex. 1004, 1005, R. 4415, 4422). The partnership between RKO and Schine is still in force (R. 2666, 2714, Ex. 1005, R. 4422).

In the fall of 1939 Charles V. Martina, operator of a theatre at Albion, New York (R. 1869), told the Buffalo branch managers of Columbia, Fox, Metro, Paramount, RKO, United Artists and Universal and a salesman of Warner that he was planning on taking over the Empire, wanted to negotiate for pictures and desired to buy some first and second runs and carryovers (R. 1870–72, 1874–79). In reply to his request for product, a Warner representative told him that Schine had the product all tied up and could do nothing for him (R. 1874). Paramount, Fox, RKO, Universal and Metro said that he should wait until he obtained a lease on the Empire (R. 1875, 1876–78). In January 1940, Martina leased the Empire (R. 1869, 1879–80). On or about the first of February 1940, Martina again talked with branch managers and representatives of all of the major film companies, in each instance advising that he had received the lease on the Empire, and desired to buy first and second-run pictures and carryovers (R. 1880–84). Maw, Metro branch manager, told him that he could not make a commitment for pictures (R. 1880–81). Robinson, Paramount branch manager, said that Schine had engaged all the Paramount pictures, and the best Paramount could do would be to give Martina a cowboy picture (R. 1881–82). Boasberg, RKO branch manager, told him that Schine had all the product, and all that he could give Martina would be some news reels (R. 1882). Samson, Fox branch manager, advised Martina that Schine played all the Fox product and that he had no opportunity of buying any pictures (R. 1882–83). Scully, Universal branch manager, told Martina that Schine had tied up the product and that he, Scully, did not see how Martina could obtain any of it (R. 1882–83). Fox, Columbia branch manager, stated to Martina that all Columbia product was contracted for, but he would advise Martina if there were any rejected pictures (R. 1883). Lehman, United Artists branch manager, said he would see what he could do (R. 1883–84). Rich, Warner salesman, told Martina that Schine had all the Warner product, but Schine might reject some pictures (R. 1883). Martina was offered no other major product (R. 1885).

The result of these attempts to obtain product was that Paramount gave Martina only a cowboy picture which had never played before in Syracuse, and nothing else (R. 1884, 1886, 1889). RKO gave him nothing but news reels (R. 1884). Fox, Universal, Metro, and Columbia gave him nothing (R. 1884–85). For a rental of $600 Warner gave Martina a foreign Schine reject (R.

1884, 1886–87), the picture never having played in Syracuse before (R. 1884–85). United Artists gave him two pictures (R. 1885), one of which was a British propaganda film (R. 1886), and neither had theretofore been shown in Syracuse (R. 1884–85, 1886, 1887). In addition to this major product, Martina bought some independent western pictures (R. 1886, 1892).

Martina took possession of the Empire on March 10, 1940 (R. 1869), at which time the theatre was closed (R. 1883). Before Martina opened the Empire on March 23, 1940 (R. 1884), he actually spent between about $21,000 and $26,000 in cash on the theatre (R. 1911, 1925, 1926–27, 1937). Within about a week thereafter, he renewed his efforts to buy product (R. 1887). In this behalf, he spoke to all branch managers, making at least one trip to Buffalo for this purpose (R. 1887, 1889, 1891). He asked for first and second runs, reissues and carry-overs (R. 1891). Warner, RKO, and Paramount offered him nothing (R. 1889–90). The branch manager of RKO remarked that Martina should know that Schine had tied up all the product (R. 1889). Fox's manager said that it had nothing and could not take the product away from Schine (R. 1889–90). Universal's manager told him the same thing (R. 1890). Metro's manager said that nothing was available and could make no future commitments (R. 1890). Columbia's manager withheld any offer of good product (R. 1890).

Martina's operation of the Empire lasted three weeks and six days, ending on April 18, 1940 (R. 1884, 1887–88). When he closed the theatre on that date, he had sustained losses on the theatre venture of about $35,000 (R. 1911): Schine took over operation of the Empire about January 1, 1941, and has operated it ever since (R. 1893, 1981, Int. Ans. 17-A, R. 232).

In the fall of 1939, Schine operated the Strand (R. 1895). During this period Schine played double features with one change a week and sometimes three pictures with no stage shows (R. 1896, 1898). This playing policy continued through December 1939 (R. 1895). Shortly after Martina signed an application for a lease on the Empire, Schine started to present stage shows and to use three or four pictures a week with two changes (R. 1895–96). On the day of Martina's opening, Schine presented a big movie star in person and a big Fox feature (R. 1896). Prior to January 1, 1940, Schine did not operate every day at the Strand, did not play stage shows, and played less pictures than it did after the first of the year (R. 1897–98). During the following January and February, Schine made two changes a week unless he had a stage show when he would have one change a week (R. 1898). This new playing policy, which Schine inaugurated shortly after Martina applied for his lease, was consistently followed by Schine until the week after Martina closed the Empire. Schine then closed the Strand (R. 1896).

In 1939 the S. K. E. Operating Company lease on the Strand had been renewed for the period September 1, 1939, to September 1, 1941, for a rental of $27,500 a year (R. 1939–40, 1941, Ex. 811, R. 5219). The Strand was again closed in the summer of 1941 shortly before the expiration of their two-year lease, and Schine began negotiating for a new lease (R. 1943–44, 2738). At this time, the carrying charges alone on the Strand Theatre were between $21,000 and $24,000 a year, covering such items as taxes, maintenance, and insurance (R. 1949, 1951). Myer Schine offered to take a new lease on the Strand at a rental of $18,000 a year plus a percentage of the net profits, if any (R. 1948). The owners rejected this offer (R. 1948), Schine refused to pay more and by the end of August his interest in the Strand ended (R. 1942, 1949).

The owners of the Strand took immediate steps to find a tenant and communicated with the major film companies (R. 1950). No interest was displayed by any of the five major distributors who operate theatres (R. 1950–51). Hubert P. Wallace, who had been operating the Capitol Theatre in Auburn (R. 1950), and the owners of the Strand Theatre Building then formed a new corporation to operate the Strand called the Syracuse Community Strand Theatre Company, each acquiring an equal interest therein. This corporation took a lease on the Strand at $20,000 a year plus a percentage of the profits (R. 1951–52, Ex. 812, R. 4335, 1978) and operated it from September 20, 1941 (R. 2002, 2092), to January 26, 1942 (R. 1953, 1979).

After acquiring the Empire on January 1, 1941 (R. 1893, 1981, Int. Ans. 17–A, p. 10, R. 232), Schine played some road shows there until the summer (R. 1981). It was then closed until about a week before the Strand opened (R. 1981, 2021). It was then operated during the entire period Wallace ran the Strand (R. 1979), and closed two weeks later (R. 1983). During this period, the Empire played twenty-one major pictures, two of which were Fox, five Metro, three Paramount, one RKO, five Universal, and six Warner features. All of these were either 1940–41 or 1941–42 releases (Ex. 832, R. 4374). Its evening adult admission prices were twenty cents plus tax for double features, without stage shows.

Wallace, who managed the Strand, sent telegrams on September 9, 1941, to all the major companies except Warners (R. 1983). Thereafter, he negotiated for product with their salesmen (R. 1983). About September 11 or 12, Wallace saw Maw and Harris, Metro branch manager and salesman, reespectively (R. 1983), and asked them for any first-run pictures which the Loew theatre was not playing, and for second-, third- or subsequent-run product (R. 1984). Maw said that he had no first-run pictures which the Loew theatre was not playing, that he had second- and third-run customers, but would try to supply the Strand with product (R. 1984).

Two days later Wallace asked Maw for some pictures made since 1930 which had been definite box-office attractions (R. 1985). Maw replied that Schine had asked for these pictures in July for the Empire, but he would do what he could to make a deal on 1940–41 product (R. 1985). Thereafter Harris offered Wallace a split of 52 pictures of the 1940–41 product (R. 1985–86). These pictures were to be played at admission prices of 28 to 35 cents, after all other theatres in Syracuse, including the neighborhood houses, had shown them (R. 1986–87). The other 26 pictures were to be played by the Empire, and Maw himself was to select the split which went to the Strand and that which went to the Empire. Wallace was to have no voice in the selection of any of the 52 pictures (R. 1986). To this offer Wallace objected as being unreasonable (R. 1986). When he pointed out that these pictures had run in theaters charging admission prices of 15 and 20 cents and asked Harris to justify the fairness of his offer, Harris made no effort to defend it (R. 1986). That discussion ended the negotiations for the Metro product (R. 1987).

About September 14, 1941, Wallace asked Rosineau, Paramount Syracuse salesman, for some first, second, third, or subsequent-run product and was told he could have several films which were from three to eight years old and a production called "World in Flames," which Wallace rejected (R. 1992). Rosineau refused to sell Wallace any second or third runs because he had customers for these but said he would talk with Robinson, branch manager, about subsequent runs. About October 1, Rosineau told Wallace that he could offer a block of five pictures after they had been played by all of the runs in Syracuse (R. 1992). He said that therefore they would not be available to Wallace until after January 1, 1942 (R. 1992–93). In the course of the conversation, he advised that the Strand would have to charge a minimum admission price of 28 cents because it was a large, beautiful theater (R. 1993). A few days later he again saw Wallace and offered him three western pictures to be available in February, April and June 1942, respectively. Wallace declined this offer (R. 1993). Thereafter, he had no further discussion with or offers from Paramount (R. 1994).

Pursuant to the telegram which Wallace sent to Fox on September 9, 1941 (R. 1983, 2083, 2750), Samson, Fox branch manager (R. 1882, 2752, and Rowell, Syracuse salesman for twenty-five years (R. 2749, 2764), called at the office of the Strand on September 11, 1941 (R. 1986, 2749-50). Wallace said he wanted some first, second, third or subsequent runs for the theatre. (R. 1987, 2751). Samson replied that because Schine had been an established account in Syracuse (R. 1987, 2751), no first-run would be available to the Strand (R. 2751). Wallace then asked Samson for some pictures rejected by Schine (R. 1987). Samson thereupon stated that Schine did not reject pictures (R. 1987). Samson and Rowell said no second-run pictures were available since Fox had an established account at the Regent Theatre (R. 1987, 2751), and no third-run pictures were available because Fox had an established third run which they had sold many years (R. 1987, 2751), and further that the Strand "was not entitled" to play as a third-run house (R. 1987). Wallace then asked for any other kind of product (R. 2751), but Samson replied that he could not offer Wallace any subsequent runs, as a sale of such runs to the Strand would upset his subsequent-run business in Syracuse (R. 1987). Rowell then said he would consider the possibility of giving Wallace some old and revival pictures (R. 1988).

Fox made no deal that day, but as Samson and Rowell left the Strand office they told Wallace they would consider the matter and see him later (R. 2751). Rowell called on Wallace on October

3 at the Strand office (R. 1988, 2123, 2752). The theatre was then already operating (R. 1988).

Rowell told Wallace that Samson had decided to make an offer (R. 1988). A discussion relative to the playing policy of the theatre then followed (R. 2125–26, 2753, 2765). Wallace said that he would charge 25 cents five days a week for pictures without bingo and 50 cents admission two days a week when $650 in bingo prizes were given away (R. 2754, 2763). Wallace further said that he would have two changes in pictures a week and would run from Saturday through Tuesday and Wednesday through Friday first and second-run pictures if available and any other product which was for sale (R. 2754). Wallace had already instituted bingo games, giving away $650 on Thursdays (R. 2125–26, 2130). He and Rowell talked about excluding from the total receipts on bingo nights, in computing film rental, the difference in admission price between the regular admission without bingo and that charged when the game was played (R. 2125–26, 2761).

Rowell then made a definite proposal reduced to writing on three deal sheets in Rowell's handwriting (R. 1988, 1990, 2123, 2752–53, 2754, Ex. 818, R. 4353, Def. Ex. D–156, D–157, D–158; R. 5189–90). Ex. 818, consisting of three sheets, are carbon copies of Defendants' Exs. 156, 157, and 158 except for the words "650 Bingo—from gross" and "50–50 over $1200" which Wallace later added to his copies of these deal sheets (R. 1988–89, 2123, 2125, 2767). Attached to the copies handed to Wallace was a release schedule (R. 1986, 2123, 2125). On each of the three sheets of Ex. 818 is Rowell's signature (R. 2125). Each of the deal sheets constituted a separate offer for pictures and Wallace could have bought one or all (R. 2759–60, 2761). There was no duplication of pictures among those listed on the three sheets (R. 2759).

On page one are listed two columns of pictures. In the left-hand column is shown a group of outstanding or top grossing old pictures (R. 1989–90, 2754). These pictures were probably from five to eleven years old (R. 2127), some of which had had some box-office value (R. 2127), and most of which had played in Syracuse many years before October 1941 (R. 2128).

The other column contains a list of pictures which had relatively little box-office value (R. 1989, 2127–28). Rowell said that Wallace could buy the pictures shown on the front page in blocks of five (R. 2754).

The second page of these deal sheets (Ex. 818, R. 4353; Def. Ex. D–157, R. 5189) shows a block of five pictures of current products (R. 2129). On the top of the page Rowell wrote the words "Ahead of Empire Theatre" (R. 2124, 2757, 2767). The five pictures, their prices and availability dates[1] were listed as follows:

> Charlie's Aunt—35 percent with guarantee of $200, available October 29, 1941.
>
> Private Nurse—$75, available November 20.
>
> Wild Geese Calling—$150, available December 10.

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[1] Rowell further stated that the dates on which Wallace would play these pictures would have to be inserted in his contract (R. 1990, 2757).

Sun Valley Serenade—35 percent with guarantee of $200, available December 10.

Dressed to Kill—$100, available December 10.

The last two pictures were to be played on the same bill (R. 2130, Ex. 818, R. 4353, Def. Ex. D-157, R. 5189). The dates written opposite each picture were dates when all of the Syracuse theatres except the Empire might have already played these pictures (R. 2165). At the time of his visit to Wallace on October 3, Rowell had already sold this group of five pictures to seven Syracuse theatres, including the first-, second-, and third-run houses (Exs. 963–968, 979, R. 5636–41, 5652). He represented to Wallace that they would play first run at Schine's Paramount, Eckel or Keith theatres. Then, after a clearance of thirty days, a second run at the Regent and then a third run at the Cameo seven days after the Regent, being followed generally by all other theatres throughout Syracuse in the order in which they happened to buy (R. 2768–70, 2771, 2772, Exs. 963, 968, 979, R. 5636, 5641, 5652). When Rowell made the offer of this block of five pictures to Wallace and wrote the availability dates on the deal sheet (R. 2757), neither he nor the contract he proposed gave Wallace any assurance that these pictures would not be sold thereafter to the other Syracuse theatres, which had not already bought them, except the Empire, and made available to them before the availability dates for the Strand (R. 2757, 2776). Rowell said that Fox then could have sold all the subsequent-run theatres in Syracuse, including those charging a 10-cent admission, after contracting with Wallace and could have permitted them to play the pictures before Wallace did (R. 2776). The runs, admission prices and film rentals specified in the contracts of the other Syracuse theatres which had already bought this block, are tabulated below, with the offer to Wallace.

Application date of contract	8/8	8/8	8/8	9/12	9/12	9/12	9/12	Offer to Wallace
Theatre	Paramount, Keith, Eckel or Strand.	Eckel	Regent	Cameo	Novelty	Happy Hour	Harvard	Strand.
Runs	First	Move-over	Second	Third	Sub	Sub	Sub	Sub.
Eve. Adult Min. Adm. Price:	None	None	$0.25	$0.20	$0.15	$0.20	$0.20	$0.28.
Charlie's Aunt	35%	25%	(Sold under franchise specifying various terms for films in various brackets. No price for these particular films specified.)	35% with guarantee $100.	$25	$85	$27.50	35% with guarantee of $200.
Dressed to Kill	$360	$165		$30.00	$15	$30	$17.50	$100.
Wild Geese Calling	30%	25%		$100	$17.50	$45	$22.50	$150.
Private Nurse	$360	$165		$30	$12.50	$15	$15	$75.
Sun Valley Serenade	35%	25%		$100	$25	$85	$27.50	35% with guarantee of $200 to be played with Dressed to Kill.
Total Guarantee	$720	$330	See above	$360	$95	$260	$110	$725.
Number sold on percentage.	3	3		1	None	None	None	2.
	Ex. 963	Ex. 964	Ex. 979	Ex. 965	Ex. 966	Ex. 967	Ex. 968	Ex. 818

The third page of Ex. 818, R. 4353 (Def. Ex. D–158, R. 5190) shows a group of 25 selected pictures of the 1940–41 season, 10 to be sold for $100 each and 15 for $50 each (R. 1989–90, 2128, 2759). This sheet bears the words "no run" which was written by Rowell while in Wallace's office (R. 2128). Almost every theatre in Syracuse had already played these pictures (R. 2129).

Wallace told Rowell that the proposition he made for the pictures on the three sheets of Exhibit 818 did not constitute a valid offer (R. 1991). Rowell replied that Samson had instructed him to make the proposition, that he and Samson had considered the matter thoroughly, and that Fox could not make a better offer (R. 1991). Wallace thereupon rejected the offer (R. 1991, 2781).

In September 1941, before the Strand opened, Ed Smith, the RKO salesman, took five contract applications from Wallace for a subsequent run on "Tom, Dick and Harry" at $100.00; a second run on "Reluctant Dragon" for $150.00; a second run of "They Met in Argentina" for $100.00 and first runs of "Hurry, Charlie, Hurry" and "They Meet Again" for $200.00 each (Ex. 819, R. 1998, 2896, 2898), which were duly forwarded to the RKO exchange at Buffalo (R. 1998, 2888, 2896–97). At the same time he forwarded a memorandum he made of the dates on which these and two other features were to play the Strand (Def. Ex. D–168, R. 2849, 2891, 2892, 2898) in accordance with conversations had by him with Wallace (R. 1995, 2087, 2088, 2094, 2896), Lux, the RKO exchange manager (R. 1995–96, 2850, 2851, 2883), and the booker at the exchange (R. 1995–96). This memorandum shows that the dates of September 20 to 23 were OK'd for "Jungle Cavalcade," an animal picture (R. 2002, 2848), and "Flying Down to Rio," a reissue (R. 2093). The Strand opened with those two pictures (R. 2005). The same memorandum shows that dates of September 24 through 26 were OK'd for "Hurry, Charlie, Hurry" and "They Met in Argentina," dates of September 27 through 30 were OK'd for "They Meet Again" and "Reluctant Dragon" (Def. Ex. 148), and "Tom, Dick and Harry" was OK'd for October 15 through 17. After the memorandum reached the RKO exchange, lines were drawn through the notations as to "They Met in Argentina" and "They Meet Again" (R. 2896), and on September 18, 1941, RKO wired Wallace that it could not supply these pictures (Ex. 820, 831, R. 4355, 1996, 2162, 2084–85). The contracts for the second and subsequent-run pictures were approved, and the Strand was permitted to play them (R. 2002–03, 2021, Ex. 832, R. 4374).

"Hurry, Charlie, Hurry" and "They Meet Again" were released and made available for first run in Syracuse on July 25, 1941, and July 11, 1941, respectively (Ex. 634, R. 4078), but had not been picked up by the RKO–Schine first-run houses at the time Smith negotiated for them with Wallace (R. 2093, 2095, 2100). "Hurry, Charlie, Hurry" was played first-run at the Eckel on October 30 through November 5, 1941, and "They Meet Again" was played first-run at the

Eckel from September 25 through October 1, 1941 (R. 2986).[2]

Wallace had advertised those pictures before he got the telegram of September 18 (R. 1996, 2098), and when Wallace complained to Smith shortly after the message arrived (R. 2001), Smith said he tried to prevent this action and had discussed the matter with Lux but with no success (R. 2002).

On October 7, 1941, Wallace again applied to RKO for pictures for the Strand (R. 2107). RKO thereupon agreed to sell him six pictures (Def. Ex. D-117, D-118, R. 6196-97). One was a foreign film at least one year old. The other five were from three to eight years old (R. 2170-71).

The Strand, under the Wallace management, operated from September 20, 1941, through January 25, 1942 (R. 1951, 1978-1980, 2002, 2092, 2170). During this time Wallace did not operate on forty days, having kept the theatre closed for lack of films that were box office attractions (R. 2007) on eight occasions aggregating twenty-nine days and leased it for eleven days (R. 2006-08, 2114-20). With the exception of one Columbia and three RKO features, he played nothing but ten stage shows, some foreign and independent product and single-reel and short-subject pictures (R. 2005-08, 2094, 2112-15, 2117-18, 2166-68).

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[2] "They Meet Again" was played on a double bill with "Sun Valley Serenade," a Fox picture, although Fox stipulated that Wallace had to play this film on a double bill with another Fox feature in its offer to him (R. 2986, Def. Ex. D-157, R. 5189).

During the operation of the Strand under Wallace, the theatre lost between $15,000 and $20,000 (R. 1952–53, 1954). At no period did it make any profit (R. 2003). The failure of the theatre was due to a lack of suitable major product commensurate with the desirabilty of the Strand as a theatre (R. 2003, 2006).

After Wallace withdrew from the Strand operation on January 26, 1942 (R. 1978–79, 2170), the owners ran the theatre themselves for three or four months (R. 1953). Stanley Falk, president of the owning company, tried to buy product for the theatre from Maw, Buffalo branch manager of Metro but he received only inferior pictures (R. 1953–54). Falk also talked with Sydney Samson, Fox branch manager in Buffalo, who told him that Fox had no pictures of any kind for the Strand and that it was foolhardy to run the theatre (R. 1952–53). During this period, the Strand played stage shows plus old, poor and independent pictures (R. 1953–54), and Falk and his associates lost considerable money (R. 1954) before they finally closed the theatre in the spring of 1942.

VAN WERT, OHIO

(Pop. 1940, 9,227—R. 2574)

Schine bought property in Van Wert in February 1935 (Int. Ans. 17, R. 237) and began construction of a new theatre about May 1935 (R. 651) which was opened about August 1935 (R. 657). It was called the Van Wert and seated 802 (Int. Ans. 18, R. 237). Prior to 1935, there were already two theatres, the Strand, 710 seats (Int. Ans. 18, R. 237), operated for a number of years by Clifford Dasher and Tom Evans (R. 651), and the Ohio, 345 seats, operated by Mr. and Mrs. Carl Moore since October 1934 (R. 656–57). For the 1934–35 season Dasher used the product of Paramount, Metro, Fox, RKO, and Warner first-run (R. 651) and the Ohio had a first-run of United Artists, Columbia, and Universal (R. 657).

Dasher had heard that somebody was coming into Van Wert with a new theatre (R. 652) and in the spring of 1935, a couple of months before the selling season, made a deal for the 1935–36 Fox and RKO products (R. 652). Paramount told him in March that they were not ready to sell and then told him in June that the product had been sold to Schine (R. 652–53) although the Schine contract (Ex. P–45) not printed bears application date of September 17, 1935, and was not approved until March 27, 1936. Dasher also tried to negotiate a deal with Metro in March but was informed that they were not ready to sell at that time, and when he saw Drew, the branch manager, in June, he was told "Schine . . . . won't just stand for selling your town, he wouldn't take any of the other towns" (R. 653–54).

In June 1935, at the time Dasher was unsuccessfully trying to license the Metro and Paramount 1935–36 product, he called at the Fox office relative to dating of the current pictures on his 1934–35 contract. The branch manager, Schmertz, told him that he had received a letter from Schine, that Dasher had got him "in a hell of a mess" by buying the Fox 1935–36 product, and it looked like they would have to take half of it away from him. When Dasher said he wouldn't stand for such treatment Schmertz suggested that he get together with Schine on a deal and offered to send Schine to see him (R. 654–55). A short time later May and Lazar called on Dasher and Evans and wanted to know whether they would be interested in selling or leasing; they said they preferred to sell, but Schine preferred to lease, and in August a lease was made, and Schine took over the operation of the Strand on September 1, 1935 (R. 655–56).

The Moores tried unsuccessfully to negotiate for a continuance of their United Artists' first-run before the start of the 1935–36 selling season (Exs. P. 17, P. 18, R. 3772), but were finally informed in August that the product had been sold to Schine out of the New York office (R. 657–58).[1] The Moores were able to license Columbia pictures first-run for the 1935–36 season, but for the 1936–

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[1] For the 1934–35 season the Ohio had paid a total of $1,234.50 for 29 United Artists' pictures. For the 1935–36 season the Van Wert and Strand paid $296.33 for 5 pictures, and the Van Wert played three more pictures on a blanket contract from which the film rental paid cannot be computed (Ex. 71[illegible] G. R. 4308–09).

37 season their negotiations were terminated when the branch manager told them that a deal with Schine had been made in New York (R. 660).[2]

The Moores licensed Universal first-run for the 1935–36 season (R. 661) on April 3, 1935 (Ex. 704 S, R. 4279), but did not play off the contract because the first-run deal was exchanged for a second-run (R. 662, 665) and the first-run was cancelled as of February 28, 1936 (Ex. 704 S, R. 4279). The second-run pictures were not played either as the Universal salesman asked them to cancel the second-run contract and take a new first-run contract (R. 662–63). Mrs. Moore then told the salesman that if they made a new first-run deal it would have to be for the 1936–37 season as well as the 1935–36 season (R. 663), but the salesman stated he could not do that because Schine might buy the product (R. 663).[3]

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[2] For the 1935–36 season the Ohio paid about $1,337.50 for 37 Columbia features and $157.50 for 12 westerns, or a total film rental of $1,495.00. For the 1936–37 season the Strand-Van Wert deal paid Columbia $680.00 for 20 pictures, including no westerns (Exs. 685 X, Y, R. 4211–12).

[3] The final sheet in the Universal play-off records (Exs. 704 R through W, R. 4278–4283), which is for the 1939–40 season, contains the following recapitulation of the film rentals and number of pictures played by the Ohio and by the Van Wert or Strand from 1934–35 to 1939–40:

Theatre	Season	Number pictures released	Number pictures played	Rental
Ohio	1934–35	33	31	$1,053.50
Van Wert-Strand	1935–36	22	21	372.50
Van Wert-Strand	1936–37	34	21	697.50
Van Wert-Strand	1937–38	40	23	743.50
Van Wert-Strand	1938–39	42	19	824.00
Van Wert-Strand	1939–40	42	27	995.75

[These switches are explained in the letter of September 23, 1935, from the Albany office of Universal to McCarthy, eastern sales manager (Ex. 370, R. 3892), which reads as follows:[4]

> In Van Wert, Dave Miller (District Manager) advises that upon Mr. Grainger's (General Sales Manager) suggestion, he took away the first run from the opposition and sold him a second run. Lynch claims that he does not want a second run policy to prevail at the second run opposition and has promises from other major companies that they will not sell second run. Wants Dave Miller to reinstate first run at opposition as they will give up the pictures for this town. [Parentheses ours.]

Starting with the 1936–37 season the Moores had no first-run product (R. 667), but were able to license a second-run of Metro for the 1935–36 and 1936–37 seasons (R. 667–68; Ex. 606 B, R. 2535). In the summer of 1937, the Metro salesman called at the Moores' home and said he could not offer the 1937–38 second-run at that time but for them to see Mr. Drew (R. 669). About September they saw Drew who told them that the second-run had been sold to Schine (R. 669). In the spring of 1938, however, Drew called up the Moores and asked them to meet him at Lima, Ohio, where he asked them if they would be interested in a part of the Metro product second-run; that Schine had not bought the product (R. 671–72).[5] The Moores turned this proposition down because they wanted all of the pictures, but Drew said he couldn't make such a deal on account of his agreement with Schine (R. 673).[5]

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[4] Partially stricken by the court (R. 3089).

[5] This statement was false as the second-run product for Van Wert for the 1937–38 season had been bought by Schine on August 7, 1937, the same date the second-run deal at Mt. Vernon was made, by a rider to the Schine Franchise (Ex.

The Moores licensed a second-run of Fox product for 1936–37 (Ex. 330-A, R. 5387), on January 5, 1937, and licensed second-run again for the 1937–38 and 1938–39 seasons (Exs. 330 B, C, R. 5388–89). The Moores had Paramount product second-run for the 1935–36 season (Def. Ex. D–12), R. 5153), and also licensed the second-run for the 1936–37 season (Ex. 344-A, R. 5414),[7] but Schine bought this product second-run for the Strand for the 1937–38 and 1938–39 seasons (Exs. 344 B, C, R. 5415–16).[8]

618, R. 3952). [The offer of half of the product to the Moores was apparently another result of the letter written by Loew's counsel in the Mt. Vernon situation requesting an explanation as to why that second-run account had been changed for the 1937–38 season (Ex. P. 13, R. 3771).]

[6] The Moores, however, apparently played some of the Metro product second run for the 1938–39 and 1939–40 seasons (R. 684).

[7] The application for this contract is dated July 23, 1936, or more than six months after Paramount had requested the Moores to catch up on their booking (Def. Ex. D–12, R. 5158), and as the Moores were offered all of the Paramount pictures and licensed all, it appears that the Moores were up to date on their bookings when the contract for the 1936–37 season was made.

[8] For the 1937–38 season Schine agreed to play eight pictures at $20.00 and the remaining flat rental pictures at $15.00. The four top pictures were at 35% (without any guarantee) and the contract provided that whatever pictures were played at the Strand first run would be eliminated from the contract. Neither of the Schine contracts specified any period of clearance after first run. The Moore's contract for the 1936–37 season, on the other hand, called for four pictures at

Admission prices at the Ohio had varied considerably prior to the time Schine commenced operations in Van Wert (R. 705–06), and evening admission prices had been reduced from 10 cents and 25 cents to 10 cents and 15 cents (R. 706). In 1935 the Strand charged 10 cents and 20 cents, and the Van Wert had a sliding scale with a top admission at 35 cents. Later, in 1935 or 1936, the top admission at the Van Wert was dropped to 25 cents and the Strand went to 10 cents and 15 cents, and these prices were the same in 1940 (R. 700–01, 703).

The Moores had some informal discussion with Myer Schine and Lazar in the summer of 1935 relative to the possible sale of the Ohio Theatre (R. 685–86, 701–02), and after Bud Silverman went to work for Schine in 1936, he saw the Moores frequently and asked them from time to time whether they had made up their minds (R. 702). The Moores told him that they expected a job for Mr. Moore or a new theatre location (R. 691–92, 702). Their desire to sell their theatre was "due to the situation of pictures in the town" (R. 693). In 1937 (R. 685) Lazar told the Moores that Schine wanted the theatre so that he could raise admission prices and make more money; that it would be the smart thing to sell out; that the Moores would have difficulty getting product and that Schine would have all the first-runs (R. 673–74). In 1937, Silverman

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$35.00 against 35%, six pictures at $20.00 against 30%, fifteen pictures at $15.00 flat, and the balance at $12.50. The clearance period of 90 days after the first run is written into the contract.

approached Carl Moore as a friendly advisor, having formerly worked for the Moores (R. 661), saying that the Schines were tough and the product would be hard to get, and if Moore did not sell, he would probably find himself short of product (R. 702-03). The Moores, however, stood by their proposition that they would not sell unless Mr. Moore got a job or they got another theatre (R. 674, 703) and no sale has eventuated.

WATERTOWN, NEW YORK

(Pop. 1940, 32,385—R. 2574)

Vournakis started to operate the Strand Theatre in 1924 and acquired the fee in 1926. He acquired the fee of the Liberty in April 1933 (R. 2173). Schine leased the Avon and the Olympic in January 1927. Fox operated these theatres from 1929 to 1933, when Schine resumed operation. Schine acquired a lease on the Palace in September 1936 (Int. Ans. 17 A, 18, and 23, R. 233) from Graham and Ludlow, who continued to operate the Victoria (R. 2185). These six theatres were all theatres that had been operated there since 1931 (R. 2173, 2180, 2185).

In 1932 four theatres were being operated in Watertown—the Avon and Olympic by Fox, Victoria by Graham and Ludlow; and the Strand by Vournakis (R. 2173). For the 1932–33 season the Strand had the product of Paramount, Warner, and Fox second run, and first run of independent product (R. 2173). For the 1933–34 season, [after Schine had resumed operation of the Avon and Olympic and had demanded second-run product (Exs. 425, 519, R. 3910, 3932)], Vournakis could only get third run from Paramount, Warner and Fox (R. 2174, although he was then operating the Liberty in addition to the Strand (R. 2174).

For the 1934–35 season Vournakis made efforts to re-establish his second run of Fox, Paramount, and Warner product but was advised by each distributor that the second run had been disposed of (R. 2175–77, Exs. 833–835).[1] Vournakis' efforts to negotiate a second-run deal with Universal for the 1934–35 season met with the response that the product was under franchise to the Olympic (R. 2178, Ex. 836). Metro also declined to deal with him because Schine was then using this run (R. 2179, Ex. 837).

Vournakis continued to have third run of Fox for the 1935–36 season (R. 2183, Ex. 840, R. 5558), and he made a contract for the same run for the 1936–37 season dated June 22, 1936 (R. 2183, Ex. 841, R. 5559). After Schine acquired the Palace in September 1936, Grassgreen, Fox branch manager, persuaded Vournakis to release this third run to Schine on the representation that Schine had then bought the product of the other majors, third run, and that he would give Vournakis a better deal for the Strand on fourth run (R. 2184). Vournakis then exchanged his third-run contract for the Strand for a fourth-run contract (R. 2183, 2184–2185, Ex. 842, R. 5560).[2]

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[1] However, in the 1934–35 season he did receive a second run on the "B" pictures that played the Olympic first run. On the pictures that played the Olympic second run, he got third run (R. 2180). Schine played the Avon on a straight first-run policy and played both first and second runs at the Olympic (R. 2180).

[2] A comparison of the Vournakis third-run contract (Ex. 841, R. 5559) with the Schine third-run contract (Exs. F–40, F–112. R. 5946 4965) shows the substantial sacrifice in film

Schine also played three runs of the Paramount and Warner product for the 1936–37 season, the same as with Fox (R. 2185, Exs. 849, 850, R. 5563, 5564). For the 1937–38 season, and thereafter, Schine discontinued his third-run policy and Vournakis went back to third run at the Strand Theatre and fourth run at the Liberty. (R. 2186–87).

In the year immediately after Schine took over second run for Fox, Paramount, Warner, Metro, and RKO product (Exs. 343–A, B, R. 5407–08; Ex. 849, R. 5563; Ex. 328–A, R. 5382) the clearance of second over third run was extended from 14 to 60 days on some of the major product (Ex. 343–D; R. 5410; Ex. 852, R. 5566; Ex. 328–B; R. 5383; Ex. 613–A, R. 5434; Ex. R–31, R. 5825), where it remained until after this suit was filed.

On September 20, 1939 pursuant to a telephone call from Myer Schine, who said he had something that would be of benefit (R. 2189–90), Vournakis went to Schine's office and saw George Lynch. Lynch said they were going to do something for him and gave him a memorandum already prepared, whereby Lynch agreed to reduce clearance of 60 days over third run to 30 days on the

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rental that Fox had to make in order to comply with Schine's demand for the third run:

Vournakis Deal:	Schine Deal:
12 at $35.00 (against 35%).	8 at 35% (no guarantee).
12 at $25.00.	Remaining* at $20.00.
16 at $20.00.	
Remaining* at $15.00.	

* Note.—63 pictures were scheduled for release by Fox for the 1936–37 season (Ex. 337, R. 3850).

product of Paramount, Fox, Warner, RKO and United Artists (R. 2190–91, Ex. 845, R. 4376).

About an hour or so later, Vournakis saw Myer Schine, and told him it would be better if they closed up two of the Watertown theatres and Schine said maybe they would do something like that, because there were too many theatres (R. 2190). Schine then asked Vournakis if he wanted to dictate an affidavit for him and when Vournakis said he couldn't dictate (R. 2190), Schine dictated an affidavit bearing the title of this case, which Vournakis signed at Schine's request (R. 2190–91, Ex. 846, R. 4376). The affidavit lauded Schine as a fair competitor and said that Vournakis had no difficulty buying pictures (R. 2192, Ex. 846). As Vournakis said on the stand, he could always buy them when Schine got through with them (R. 2194).

Subsequently, without any request being made by Vournakis to the distributors the Schine protection was cut to 30 days by Warner, Paramount, and United Artists (R. 2191). The Paramount-Schine contract for the Olympic, which is part of the Schine franchise for the 1939–40 and 1940–41 seasons, appears clearly to have been written up originally on the basis of 60 days after third run, but this provision is stricken out and "30 days over third run" substituted therefor (Ex. P–223, R. 5883). The Vournakis third-run contract with Warner for 1939–40 provides for 60 days' clearance; whereas, the 1940–41 contract provides for 30 days (Exs. 852, 853, R. 5566–67). Fox made no reduction (R. 2191, Ex. F–182, R. 6114), and the RKO and Metro clearance in the Schine contracts had been 30 days for the prior seasons (R. 2191).

Before Schine resumed operation of the Avon and Olympic, the Olympic was charging 25 cents and 35 cents, and the Avon 35 cents and 40 cents,[3] and the Strand and Victoria were charging 25 cents[4] (R. 2187). In 1933 the Olympic went to 25 cents all over the house (for adults) (R. 2187, Ex. 343–A, R. 5407), and the Strand and Liberty went to 20 cents (R. 2187). The Olympic went down to 15 cents in the balcony (R. 2187, Ex. 343–B, R. 5408), and after the Palace was taken over by Schine, the Olympic went back to 25 cents, and the Palace charged 15 cents and 20 cents (R. 2188, Ex. 343–A to D, R. 5407–10, Ex. 328–D, R. 5386, Ex. F–40, R. 5946).

About August 29, 1934, Vournakis met Myer Schine at Gloversville at Schine's request (R. 2181–82, 2192–93). Schine wanted to buy the Strand Theatre for $15,000 or make a buying and booking arrangement at $25.00 per week, neither arrangement was made and Schine said to think it over (R. 2181–82, 2192–93). About 1938 Myer Schine and his district manager, Bill Tupper, called on Vournakis at Watertown and Schine again asked him if he was interested in selling out (R. 2185). Some time later Tupper contacted Vournakis and said that Schine had called him up and he offered Vournakis $35,000 for the Liberty; Vournakis said he would sell both houses for $85,000 (R. 2186, 2194). No deal was made (R. 2186–87), and Watertown remained a competitive situation with Schine playing the first two runs on all major product[8] at the Avon,

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[3] These appear to refer to adult evening prices for balcony or orchestra, respectively.

[4] This appears to refer to the adult evening price for orchestra.

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[8] By virtue of franchises and master agreements, Schine had first run of Warner product at the Avon or Olympic theatre for the 1937–38, 1938–39, and 1939–40 seasons (Ex. W–4 (28), R. 4483) and second run of that product for the same seasons at the Olympic or Palace (Ex. W–4 (29), R. 4484); second run of RKO product for the Olympic or Avon or Palace for the 1936–37 season (Ex. R–2 (34), R. 4848); first run at the Avon or Olympic or Palace and second run for the Olympic or Palace for the 1938–39, 1939–40, and 1941–42 seasons (Ex. R. 37 (20), R. 4884, R–37 (21), R. 4885); first run of Fox product at the Olympic or Avon theatres and second run at the Olympic for the 1935–36 season (Exs. F–39, R. 5945, F. 40, R. 5946, F. 112, R. 4965, F. 101 (31), R. 6031, F. 101 (32), R. 6032), which arrangement was continued by letter agreement of August 5, 1936, for the 1937–38 and 1938–39 seasons (Ex. F–1, R. 4952); and for the 1939–40, 1940–41, and 1941–42 seasons this product was sold to Schine's Avon or Olympic first run (Ex. F–181, R. 6113) and to the Olympic second run (Ex. F–182, R. 6114) with 120 days' clearance of first over third run (id.); Metro product was sold first run to the Avon or Olympic and second run to the Olympic by the agreement of October 1, 1936 (Ex. 618, R. 3952) for the 1936–37, 1937–38, 1938–39, and 1939–40 seasons; Paramount was sold first-run to the Avon or Olympic, and second run to the Olympic for the 1939–40, 1940–41, and 1941–42 seasons (Ex. P–222, P–223, R. 5882–3); Columbia product was sold for the 1938–39, 1939–40 seasons first run at the Avon or Olympic theatres (Ex. C–102 (42), R. 5017) and second run at the Olympic or Palace theatres (Ex. C–102 (43), R. 5018); the first run for the Avon and Olympic and the second-run deal for the Olympic being repeated for the 1940–41, 1941–42, and 1942–43 seasons (Ex. C–181 (77), R. 5137); (C–181 (78), R. 5138); and Universal was sold first run to the Avon or Olympic for the 1938–39 season (Ex. U–137 (22), R. 4671), second run to the Olympic or Palace

Olympic and Palace, with Vournakis and Graham and Ludlow continuing to operate the Strand, Liberty and Victoria (R. 2186–87).

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that season (Ex. U–137 (23), R. 4672); first run to the Avon or Olympic or Palace (Ex. U–207 (22), R. 4746), second run to the Olympic or Palace for the 1939–40, 1940–41, and 1941–42 seasons (Ex. U–207 (23), R. 4747).

WOOSTER, OHIO

Wooster in 1940 was a town of 11,543 and had experienced an appreciable increase in population since 1930 (R. 2574). In 1932 there were three theatres operating in Wooster; the Wooster, with 1123 seats; the Opera House with 1100 seats, and the Wallace. The defendants acquired as lessee, the Wooster in July 1931, the Wallace in 1932 and the Opera House in November 1932.

In 1938 the Wayne Theatre, a theatre of 679 seats was acquired by the defendants. The Wallace was dismantled and the lease thereon has lapsed. The Opera House when first acquired by the defendants was operated full time as a vaudeville and legitimate theatre house (Ex. 960, R. 5266); then part time to summer of 1936 when it was closed until reopened for part time operation. It was closed again upon the opening of the Wayne Theatre (Int. Ans. 17 (a), 18, 23, p. 15, Supp. Schedule to 18, R. 237, 245).

In 1933 Schine was the successful bidder for lease of the Opera House, leasing it for two years at $1000 a year, with an option for three more years. This lease limited the use of the premises to vaudeville and legitimate productions (Ex. 960, R. 5266).

In 1935 the defendants exercised an option to lease the Opera House for three years at a $2000 yearly rental. The lessee obligated itself to heat the theatre and to furnish janitor service when theatre was open. This lease permitted its operation as a movie house. (Ex. 961, R. 5273). In 1938 the lessee was the successful bidder and took another lease from the City of Wooster for a term of three years with an option of renewal for five years. The rental fixed was $2000 a year. The repair obligations were more extensive than under the 1935 lease (Ex. 962, R. 5273). The option of renewal has been taken up. (R. 3851.)

Loew gave both of Schine's operating theatres a clearance over towns which had not been subjected to a clearance before that time (Ex. 618, R. 3952).

Wooster has been one of the towns included in franchises and masters agreements in which Schine bought pictures for other towns.

APPENDIX B

THE ADMISSION OF WHICH WAS SUMMARY OF EXHIBITS ASSIGNED AS ERROR

Ex. No. P-10; offered and received, R. 616, 620

Letter dated February 26, 1935, from H. G. Bissell, branch manager of Columbia at Cleveland, to Rube Jackter, assistant sales manager at Columbia's home office, with a copy to Mr. McConville, Columbia sales supervisor.

Letter recommends approval of attached contract for 1934-35 film product for the Memorial Theatre, Mt. Vernon, Ohio, which is in opposition to Schine. Writer states that the contract is for a greater sum than had been secured from Schine in that theatre the previous years. Bissell writes that in Mr. McConville's letter the latter had stated he disliked selling this account against Schine and then later perhaps having to go back to Schine for business in Mt. Vernon. Bissell writes that if Columbia had taken up the deal when originally submitted, Mr. Long, the exhibitor, would have been up to date on the contract, but unfortunately Columbia had to hold up the deal on account of Schine.

Ex. No. P-12; offered and received, R. 620

Interoffice letter dated February 8, 1937, from A. N. Goodman, branch manager of United Artists at Cleveland, to Paul N. Lazarus, contract manager at United Artists in its home office, with a copy to Mr. Stearn, district manager of United Artists.

The letter states that the operator of the Memorial Theatre at Mt. Vernon, Ohio, did not want second run, but that United Artists used his need for first run English pictures as a club to sell him second run. The letter states that after Lazarus had informed Goodman that he could not act on first run contracts because Schine, might pick up the English pictures later on, he talked to Charlie Stearn and explained to him that Schine did not need the English pictures and that they would probably be booked to play at the Lyric Theatre where not much money would be derived from playing them. Goodman states that subsequently Bill Barron, United Artists salesman, had talked to George Lynch and Lynch had said that Lazarus had contacted him and he was agreeable to having the Memorial get the English pictures; but that later someone contacted Myer Schine, and Schine would not give up the pictures. Goodman asked Lazarus to take the matter up with Mr. Stearn to find out whether Stearn was able to get Schine's permission to sell the English pictures to the Memorial Theatre.

Ex. No. 76; offered and received, R. 2604

Letter of January 14, 1936 on Belpik Theatre Corp. letterhead. Letter signed by Louis Lazar, Schine Theatrical Company. (Lazar was a Schine executive.) Letter is written to the Shelby Globe, Shelby, Ohio, advising them that Schine Theatrical Co. was now expanding its properties in the state; that they had recently acquired a number of towns in the vicinity of Shelby, and would like to know if a deal could be worked out with respect to theatre building which Lazar had been advised they were the owner of.

Ex. No. 163; offered and received, R. 2605

Interoffice letter dated September 13, 1932 from I. J. Schmertz, branch manager of Fox at Cleveland, to J. Sichelman, administrative assistant to Fox general sales manager, reminding him that Mr. Grainger, vice president in charge of sales, had made a deal with Schine for Bellefontaine, Ohio, covering 30 pictures. The letter states that a wire had been received from George Lynch, asking them to withhold selling any pictures of last year or a second run of this year's product to the opposing house which was just about to open.[1]

Ex. No. 164; offered and received, R. 2606

Interoffice letter of September 19, 1932, from Sidney Sampson, Fox branch manager at Buffalo, to J. Sichelman, administrative assistant to Fox general sales manager, asking to be advised of the status of the Schine deal and reminding him that Sampson's Rochester City proposition gave the circuit preference throughout the city and that he could not deal with the rest of the exhibitors until he knew what the home office would do about accepting the Schine proposition.

Ex. No. 165; offered and received, R. 2605

Interoffice letter of September 24, 1932, from I. J. Schmertz, Fox Cleveland branch manager, to J. Sichelman, administrative assistant to Fox general sales manager, asking to be advised of what had become of his contracts for the Schine situations in Wooster and Bellefontaine, Ohio. The letter states that Schmertz had just heard from George Lynch and asked him to communicate with Sichelman regarding a change in the deal for Bellefontaine. Schmertz stated he recommended to Lynch that he buy their entire product in view of Lynch's asking them not to sell an opposition theatre, opening in the town, first run, second run, or any other run.

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[1] Strictly construed by trial court (R. 3089).

Ex. No. 166; offered and received, R. 2605

Letter of September 27, 1932, from J. Sichelnan, administrative assistant to Fox general sales nanager, to I. J. Schmertz, Fox branch manager n Cleveland, Ohio. Letter refers to Schmertz's etter of September 24 and states the contracts are being returned. Writer states that regarding Bellefontaine, he believed Lynch, Schine chief ilm buyer, would see it Schmertz's way and buy 100% in Bellefontaine, in view of the fact that here was an opposition theatre where a subsequent run could be sold.

(Ex. No. 167; offered and received, R. 2605

Letter of October 3, 1932, from I. J. Schmertz, Fox branch manager, to J. Sichelman, administrative assistant to Fox general sales manager. etter states that he had written two or three etters to George Lynch with reference to purhasing 100% of their product in Bellefontaine. t states that they received several communicaons from the opposition theatre asking them to let them have their product which had not been purchased this year or last year for second run. It states that Lynch had been given every opportunity to take 100% of the product as there was no good reason for Schine to get a selective contract of 30 pictures.

Ex. No. 168; offered and received, R. 2605

Letter of October 13, 1932, from I. J. Schmertz, branch manager of Fox at Cleveland, to J. Sichelman, Fox home office official. Letter states that Lynch had said he could not do anything about the 100% deal in Bellefontaine at that time; that they would still get communications from the opposition theatre and that he had not answered the opposition theatre's letters for the reason that he could not answer that they were entirely sold. He said that Lynch had said that when Myer Schine was in New York, he had discussed the proposition with J. R. Grainger, vice president in charge of sales, who promised Schine Fox would not sell the opposition theatre any of their product.

Ex. No. 169; offered and received, R. 2605

Letter of October 21, 1932, from J. Sichelman, administrative assistant to Fox general sales manager, to I. J. Schmertz, Fox branch manager at Cleveland, Ohio, stating that a copy of a letter sent to Myer Schine regarding Bellefontaine was attached. Sichelman advised Schmertz not to sell anyone first or second run until he heard from Sichelman.

Ex. No. 170; offered and received, R. 2605

Letter of October 21, 1932, from J. Sichelman, administrative assistant to the general sales manager of Fox, to Myer Schine. The letter reviews Schine's deal with J. R. Grainger, Fox vice president in charge of sales in Bellefontaine. It states that he was writing Mr. Schmertz to go ahead to sell the balance of the 10 pictures and also second run, but that if Schine decided he wanted the balance of the 10 pictures, to take the matter up with Mr. Schmertz. It states that they had to sell second run to get the revenue.

Ex. No. 171; offered and received, R. 2605

Letter of October 24, 1932, from George V. Lynch, chief film buyer for Schine, to J. Sichelman, administrative assistant to Fox general sales manager. Letter states that Myer Schine had referred to him Sichelman's letter of October 21 regarding Bellefontaine. Letter states that a former employee had opened up an opposition theatre in Bellefontaine and that the only product he had been able to buy had been from independent companies; that this competitor has bucked Schine operation and was selling the product at 10¢ and 15¢ and 5¢ for children, and was flooding the town with passes. It states that a town the size of Bellefontaine was not large enough for a first and second run house; that Schine was charging 40¢ at the Holland Theatre and that he did not want the distributing companies to make it impossible to maintain this price. He asked Sichelman to take the matter up with J. R. Grainger and felt sure Grainger would agree that Fox should not sell second run.

Ex. No. 172; offered and received, R. 2605

Letter of October 24, 1932, from George V. Lynch of Schine to I. J. Schmertz, Fox branch manager in Cleveland, stating he was willing to take the ten additional pictures for Bellefontaine and that Myer Schine wanted Lynch to explain to Schmertz that he would appreciate Schmertz' holding off selling the opposition theatre, that Schmertz if he sold such accounts would merely be encouraging 10 and 15 cent houses. He says that there was no room in a town the size of Bellefontaine for a second run house.

Ex. No. 173; offered and received, R. 2605

Interoffice letter of December 28, 1932, from Sidney Samson, Fox branch manager at Buffalo, N. Y., to J. Sichelman, administrative assistant to general salesmanager of Fox. Letter states that copies of letters received from Schine in connection with the Lockport, New York situation were being attached. He says that these letters ask Fox to transfer the remaining unplayed pictures to be played at the Rialto Theatre; that with the exception of straight percentage pictures on which Fox earnings would be decreased by playing them at the smaller theatre, the Rialto, there would be no objection to the transfer. It states that when the Palace is reopened, the owner would be in the market for pictures, but that in view of Fox's pleasant relations with the Schine organization "and the fact that we serve them throughout their circuit" he did not believe there would be any objection to serving Schine in Lockport at the Rialto.

Ex. No. 176; offered and received, R. 2607

Letter of July 9, 1934, from M. Grassgreen, Fox branch manager at Albany, to T. H. Bailey, Fox district sales manager, stating that George Rosenbaum had asked for first run at Carthage and that he had told him that first run had been sold to Schine; that Rosenbaum had then asked for second run, but that Grassgreen, in view of his conversation with George Lynch, chief film buyer for Schine, when he was in Gloversville, was under the understanding that he was not going to sell Rosenbaum second run in Carthage.

Ex. No. 178; offered and received, R. 2607

Letter of August 20, 1934, from M. Grassgreen, Fox branch manager at Albany, to T. H. Bailey, Fox district manager, stating that he had found that most of the major companies supply the opposition theatre in Carthage first and second run pictures, first run pictures being of course those that were passed up by Schine. He asked whether it was advisable to contact George Lynch, Schine's chief film buyer, in order to get his reaction.

Ex. No. 179; offered and received, R. 2607

Letter of August 21, 1934, from Tom H. Bailey, district sales manager of Fox, to Moe Grassgreen, branch manager at Albany. Bailey thought it was all right for Grassgreen to contact Rosenbaum if other companies were selling him last year's product second run in Carthage.

Ex. No. 190; offered and received, R. 2603

Letter of December 8, 1936, from J. J. Grady, Fox branch manager, to L. Merrenbloom, Kentucky Theatre, Corbin, Ky. Letter states that the surest way to keep opposition out of Merrenbloom's town was to have a long time franchise.

Ex. No. 200; offered and received, R. 2241

Letter of July 10, 1937, from J. J. Grady, Fox Cincinnati branch manager, to William Sussman, Fox Eastern Division sales manager, copy for George E. Roberts, Fox district manager, stating that Shine's first run Lexington contracts provided for specified minimum admission prices and that Schine was advertising their shows at prices below these admission prices. Grady asked that Sussman rectify this condition.

Ex. No. 201; offered and received, R. 2241

Letter of July 13, 1937, from William Sussman, Fox Eastern Division sales manager, to Myer Schine, copy to J. J. Grady, Fox Cincinnati branch manager, advising him of Schine's advertising in Lexington at prices below, minimum admission prices fixed in Schine's Fox contracts and asking to be advised what Schine intended to do in this regard.

Ex. No. 202; offered and received, R. 2241

Letter from J. Myer Schine to William Sussman, Fox Eastern sales manager, received July 20, acknowledging receipt of Exhibit 201, stating that certain modifications in their admissions had been made for the summer, which were essential and proved to be beneficial, and that Schine would be glad to discuss the matter with Sussman when he would see him at an early date.

Ex. 216; offered and received, R. 2603

Letter of November 8, 1938, from G. V. Lynch, chief Schine film buyer, to J. J. Grady, Fox branch manager at Cincinnati, Ohio. Letter states that Schine was arranging to build a second theatre at Paris, Kentucky, and would like Fox to hold their product for second run for Schine's use.

Ex. 218; offered and received, R. 2603

Letter of November 17, 1938, from William Sussman, Fox Eastern Division manager, to J. J. Grady, Fox Cincimmati branch manager, copy for G. A. Roberts, Fox district sales manager, stating that Schine desired to buy second run in Paris and that he had agreed.

Ex. No. 226; offered and received, R. 2606

Letter of June 26, 1939, unsigned but as appears from Exhibit 227, written by William Sussman, Eastern division manager of Fox, to Sidney Samson, Fox branch manager at Buffalo. Sussman reviews Schine contracts. He states that as to Cortland, he notes that the clearance had been changed by adding the towns of Tulley and Groton, which were not in the previous year's schedule. He notes that as to Lockport, clearance was given to Newfane, but that they had no record of any theatre in that town. At the Salamanca, he observes that clearance is given over Little Valley, but they have no record of a theatre in Little Valley.

Ex. No. 227; offered and received, R. 2606

Interoffice letter of June 27, 1939 from Sidney Samson, Fox Buffalo branch manager, to William Sussman, Fox Eastern Division manager, copy to G. A. Roberts, Fox district sales manager. Samson refers to Sussman's letter (Exhibit 226). He states that Tully and Groton were added to the Cortland clearance; that there was no theatre in Tully; that Cortland had had a clearance over Groton for the previous two years. As to Lockport, he says Newfane has no theatre but it is adjacent to Lockport and it is possible that a theatre might go into this town. As to Salamanca, there is no theatre in Little Valley, but it is adjacent to Salamanca and the high school occasionally runs a show.

Ex. No. 228; offered and received, R. 2606

Letter of June 27, 1939, from William Sussman, Eastern Division manager of Fox, to M. Grassgreen, Albany branch manager of Fox, copy to T. H. Bailey, Fox district sales manager, reviewing Schine contracts. With reference to Glens Falls second run, he notes that the clearance had been changed by providing for 60 days over third run and that 60 days' clearance there would seem to be excessive. With reference to Ilion, he notes that clearance is given over Mohawk, although their records do not indicate any theatre in Mohawk. With reference to Malone, he says that there is clearance over Brushton, although they have no record of a theatre there, and that the record provides for 60 days over second run. He says that they do not have a second run in Malone, and furthermore 60 days over second run seems excessive. With respect to Norwich, he notes that the clearance mentions Mt. Upton, although it was not in the previous deal, nor do they have a record of a theatre there. With respect to Oneonta, he notes that the clearance has been changed by the addition of the towns of Cherry Valley and Worcester. As to Watertown, he notes that the clearance covers Dexter, there they do not have a record of any theatre.

Ex. No. 229; offered and received, R. 2606[2]

Letter of June 30, 1939, from M. Grassgreen, Fox Albany branch manager, to William Sussman, Fox Eastern division manager, copy to Tom H. Bailey, Fox district sales manager. With respect to Glens Falls second run clearance, he states that previous contracts with Schine always provided for 60 days' clearance over third run, and while it may be excessive, that clearance had been set up and George Lynch insisted in carrying it through for the future. As to the clearance of Ilion over Mohawk, he states that while there was no theatre in Lockport, contracts always provided for clearance over this situation and Schine insisted that the clearance over Mohawk be included in the contract the same as previous years, in view of the way theatres were springing up in small towns. He states there is no theatre in Brushton, but Schine's contracts always carry clearance over it. As to the clearance over third run in Malone, Schine set up its own subsequent run of 60 days, which is the same clearance they take and get over independent subsequent runs. The previous year's contracts did not provide for Mt. Upton in favor of Norwich, but in previous years there was such provision, and if a theatre should open there, Schine was entitled to 30 days' clearance. While the previous year's contract did not provide for clearance for Oneonta over Cherry Valley and Worcester, Schine has always enjoyed clearance over these situations, and while the previous years' contracts provided for 30 days' clearance over first run in Oneonta, Schine insisted on setting up 60 day clearances. As to Watertown's clearance over Dexter, while there was no theatre there, one did operate in the silent days, which also applies to Philadelphia and Theresa, and Schine's contracts always carried clearance over these situations.

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[2] Strictly construed by the trial court (R. 3089).

Ex. No. 230; offered and received, R. 2606

Letter of June 30, 1939, from William Sussman, Eastern division manager of Fox to Sidney Samson, Fox Buffalo branch manager, copy to G. A. Roberts, Fox district sales manager. Letter states that as far as clearances are concerned, Samson's explanations for Courtland, Lockport, and Salamanca seem to be reasonable.

Ex. No. 236; offered and received, R. 2606

Interoffice letter of February 13, 1940, from William Sussman, Fox Eastern division sales manager, to Jack Bloom, in charge of Fox contract department, copy to S. Samson, Fox Buffalo branch manager, stating that it has been decided that East Rochester, Fairport, and the Palace Theatre at Syracuse are a part of the three year franchise with Schine.

Ex. No. 243; offered and received, R. 2605

Telegram of September 10, 1942, from Lynch, chief film buyer of Schine, to Paramount Publix Corp., Columbus, Ohio, asking that 1931, 1932, and 1933 product be held for him second run, Bellefontaine.

Ex. No. 259; offered and received, R. 2604

Letter of September 30, 1937, from Harry Schwartz, independent theatre operator of the Opera House in Lexington, Kentucky, to Paramount at Cincinnati, Ohio, attention J. Oulahan, Paramount Cincinnati branch manager, insisting upon a reduction on some of Paramount's product, because of low admission prices at which Schine was playing first run and second run product at the Ben Ali and Strand Theatres in Lexington.

Ex. No. 273; offered and received, R. 2603

Paramount cancellation of contract for Paris, Kentucky, dated 3/4/40, relating to Schine's Paris Theatre, with notation at bottom that at the time the deal was sold, Schine contemplated second run in Paris and didnot go through with it.

Ex. No. 282; offered and received, R. 2606

Letter of February 23, 1934, to P. N. Lazarus, contract manager of United Artists, from J. J. Kaplan, United Artists branch manager at Buffalo, referring to second run contracts in Lockport, New York, stating that their agreement with Schine was that the second runs were to play in the Class B house, as well as any pictures which Schine could not play at the Class A first run, in the latter case the second run contract being cancelled out. Letter stated that the two pictures mentioned in the letter were played at Schine's Class B house first run and then they were able to resell the second run to the opposition house at more money.

Ex. No. 283; offered and received, R. 2606

United Artists Contract Change Report dated February 23, 1934, relating to Schine's Hi-Art Theatre in Lockport, New York, containing the same comment as in Exhibit 282.

Ex. No. 286; offered and received, R. 2606

Interoffice letter of October 8, 1934, from Jack Kaplan, United Artists Buffalo branch manager, to Paul Lazarus, United Artists home office official. Referring to the Watertown, New York situation, he states that up to the last season they had sold the Avon or Olympic Theatres first run and then the Strand second run, but that last year Schine also made a deal for second run at the Olympic because there was an additional theatre opening up, the Palace, and to protect his first run, Schine felt if he bought the pictures second run also, he could protect himself by getting longer clearances. After selling Schine both runs, they sold the Strand Theatre third run, although this had always been the second run account. They got from him the same prices they had gotten for second run in prior years. The exhibitor found his grosses were about one half of what they had been and would not play the pictures until the prices were adjusted. Kaplan said that the Strand Theatre was paying more for third run than Schine paid for second run. Kaplan recommended a reduction of 25% in price charged the independent exhibitor.

Ex. No. 288; offered and received, R. 2606

Interoffice letter of May 7, 1935, from Jack Kaplan, United Artists Buffalo branch manager, to S. W. McGrath, United Artists assistant contract manager, re Palace Theatre in Lockport, New York, stating that unplayed pictures had been sold to the Schine opposition, which was the best theatre in the town, and recommending a deal on three pictures for this theatre. Notation that the contracts as submitted were approved.

Ex. No. 292; offered and received, R. 2606

Interoffice letter of February 5, 1936, from S. W. McGrath, United Artists assistant contract manager, to Nat Beier, United Artists salesman, stating that with respect to the Capital Theatre in Ilion, New York, it was necessary to hold the contracts and before considering the deal "we want to be absolutely certain as to the clearance following 10 days after Herkimer"; that they did not want any difficulty with Schine insofar as clearance was concerned, and therefore wanted to be sure that the clearance as submitted in the contracts was satisfactory to Schine.

Ex. No. 300; offered and received, R. 2604

Interoffice letter of 9/16/37, from J. A. Bykowski, office manager of United Artists Buffalo exchange, to S. Lehman, United Artists branch manager at Buffalo. Letter reviews Schine's clearances which Bykowski regarded as unfair and which he wrote should be altered. Refers particularly to clearance of Geneva over Lyons; Newark over Clyde, Lyons, and Palmyra; Oswego over Fulton; Salamanca over Franklinville. Exhibit contains Schine's clearances for towns included within the area covered by United Artists Buffalo exchange.

Ex. No. 307; offered and received, R. 2604

Interoffice letter of December 7, 1938, from P. N. Lazarus, contract manager of United Artists, to M. Stahl, Cincinnati branch manager of United Artists, enumerating certain specific clauses to apply to the Schine deal for 1938–39, including the statement that although playing time was stipulated on the percentage contracts, United Artists had incorporated the following—"playing time to be mutually agreed upon." At the bottom of the letter, it is stated that a copy is for Mr. Gold, United Artists Eastern Division sales manager, and many other named United Artists officers.

Ex. No. 308; offered and received, R. 2606

Letter of March 18, 1939, from J. A. Bykowski, office manager of United Artists, to W. Kraemer, Schine Circuit, Inc., Gloversville, New York. Letter confirms dates on a picture pursuant to booking request by Kraemer. He states that they have always had trouble with subsequent runs in Watertown, because of the fact that the Schines held out for second run booking 60 days after first run and insisted on 60 days' protection over third run, and that they could not wait five or six months before making a picture available for subsequent runs if that were to be the availability on the dates given them by Schine. He was therefore making pictures available to third run 120 days after first run Watertown, which he thought was reasonable.

Ex. No. 310; offered and received, R. 2604

Letter of December 15, 1939, signed by Frances Turner, secretary to Mr. B. M. Stearn (Stearn was United Artists district manager) to Edward Mullen of the New York Exchange, attaching a copy of a clearance schedule for the Schine circuit covering the New York territory for 1939-40.

Ex. No. 318; offered and received, R. 2604

Letter of December 16, 1940, from George V. Lynch, chief film buyer for Schine, to S. Lehman, United Artists branch manager at Buffalo, calling his attention to United Artists' allowing a new theatre in Sodus to play a picture ahead of Newark and asserting that Newark, which was charging a greater admission price, should be allowed to play pictures ahead of a situation charging a lesser admission price.

Ex. No. 319; offered and received, R. 2604

Letter of December 18, 1940, from Syd Lehman, United Artists Buffalo branch sales manager, to George Lynch, chief Schine film buyer, referring to Exhibit 318 and stating that although Lynch had never asked for clearance over Sodus in the past, they would be glad to give it to him, but thought he would also have to ask for clearance over Wolcott, due to the fact that there was no clearance to or from either of these towns. He went on to say, "Therefore, in the future, we will grant you 14 days, or whatever clearance you see fit to take in towns like Palmyra, etc., in that locality."

Ex. No. 321; offered and received, R. 2606

Letter of January 21, 1937, from branch sales manager of United Artists to Charles Stern, United Artists branch manager in New York, listing pictures he would like to sell in Mt. Vernon and Van Wert to Schine's opposition, stating that as regards Van Wert, he was not so much concerned, since he could sell a second run there, without giving the opposition any first run pictures, but as to Mt. Vernon, the only way they could get a second run deal was if they gave the exhibitor first run pictures. It goes on to say that he was sure George Lynch, Schine chief film buyer, would cooperate with Stern in allowing United Artists to sell those pictures to the opposition in Mt. Vernon. He refers to these pictures as pictures left out of the Schine deal.

He asked for Stern's advice, since he was holding both first and second run pending Stern's advice that with Lynch's approval they would sell those pictures in Mt. Vernon.

Ex. No. 322; offered and received, R. 2606

Letter of February 8, 1937, from Charles Stern, United Artists New York branch manager, to A. M. Goodman, United Artists Cleveland branch manager, referring to Exhibit 318 and stating that he had tried to contact George Lynch, but the latter was away on a vacation and he would follow it up when Lynch returned.

Ex. No. 323; offered and received, R. 2606

Letter of March 8, 1937, from Bert N. Stearn, United Artists sales division manager, to Charles Stern, United Artists branch manager, referring to the Mt. Vernon situation. Letter states that certain specified pictures had been omitted from the Schine deal; that the Cleveland office had been able to sell the opposition second run, using as an inducement the few pictures Schine did not buy first run which Schine's opposition did buy; states that the prices secured were way ahead of the prices they had from Schine; that the exhibitor would not take second run until they approved selling the specified pictures first run to him. He asked that Mr. Stern see what he could do about this matter, because he was more intimate with Schine than he was.

Ex. No. 338; offered and received, R. 2605

Letter of October 24, 1932, from G. W. Lynch, chief film buyer for Schine, to Jack Sichelman, administrative assistant to Fox general sales manager. He refers to a letter written by Sichelman respecting Bellefontaine. He states that the man who had opened up the opposition theatre had formerly been an employee of theirs; that no major company had sold the opposition any product; that the opposition was bucking chain operation and was selling the product for 10 and 15 cents and flooding the town with passes; that Bellefontaine was not large enough to support a first and second run; and urged that a second run not be sold. He states that he has written to Mr. Schmertz, Fox branch manager, advising him that Schine would take the remaining pictures they had not bought first run and asked him not to sell the second run house.

Ex. No. 356; offered and received, R. 2603

Letter of May 8, 1934, from G. V. Lynch, chief film buyer for Schine, to Dave Miller, Universal district sales manager. Lynch states that although Schine's contract with Universal requires him to play 20 pictures second run at the Capital Theatre in Oswego, the deal sheet states that Schine was to repeat at the Capital Theatre second run all pictures which were played first run at the Strand. Also a reply from Miller to Lynch dated May 10, 1934, stating that the contract controlled and that in view of the impending complaints being brought against him by opposition exhibitors in just such situations as that, Miller suggested that Lynch follow through on the terms of the contract rather than allow the record to stand on the basis of Schine's deal sheets with another Universal representative "which merely allows you to hold up the playing of all these pictures in these situations without any definite commitment."

Ex. No. 361; offered and received, R. 2605

Letter of November 28, 1934, from Dave Miller, district sales manager of Universal, to Myer Schine, labeled "personal" and stating that in accordance with telephone conversation regarding Perry, New York, he was submitting grosses of pictures which had played at the theatre of the exhibitor in that town and was giving other data with respect to the theatre possibilities of the town of Perry.

Ex. No. 363; offered and received, R. 2603

Universal comparative price schedule, dated 2/26/35, relating to second and third run for the Plaza Theatre in Corning. This schedule contains the statement that it is agreed that features are to be third run in Corning to follow the Schine houses Fox and State or a Schine house in the Palace and that Buck Jones westerns are to be second run.

Ex. No. 366; offered and received, R. 2603

Letter of July 16, 1935, from Nate Sauber, Universal branch manager, to Schimel, Universal home office counsel regarding the Reliance Theatres, Inc. Letter states that copies of correspondence and contracts were attached and that they had pointed out in their letter to Reliance Theatres that Universal had a franchise with Schine which prevented Universal from negotiating deals with Reliance until Schine eliminated pictures. The letter lists pictures they had sold to Reliance. The letter states that the financial responsibility of Reliance is good and states that Universal apparently was interested only in the sale and delivery of product after Schine's operations. A notation on the bottom indicates that copies of this letter were sent to F. J. McCarthy, Universal Eastern division sales manager, and W. B. Kraemer, Universal contract manager.

Ex. No. 367; offered and received, R. 2603

Letter of September 11, 1935, from G. V. Lynch, chief film buyer of Schine, to Nate Sauber, Universal branch manager at Buffalo. Letter states that Lynch understands someone has leased the Opera House in Phelps which is operated under an admission price of 10 and 15 cents. Lynch asks that this town be held back 30 days after Geneva, and states that Schine is charging 40¢ in Geneva.

Ex. No. 368; offered and received, R. 2604

Letter of September 14, 1935, from Nate Sauber, Universal branch manager at Buffalo, to George V. Lynch, chief film buyer of Schine. Letter refers to Exhibit 367 and states that if they sell Phelps, they would be glad to comply with Lynch's wish to keep this town 30 days after Geneva.

Ex. No. 369; offered and received, R. 2606

Letter of September 23, 1935, from P. T. Dana, Universal branch manager in Buffalo, to Dave Miller, Universal district sales manager at Cleveland, referring to the conversation Dana had with George Lynch, Schine chief film buyer with respect to Wooster, Bucyrus, and Van Wert. He states that with respect to Van Wert, Lynch wanted Miller to get out of Universal second run and resell first run, as he does not want this other theatre to establish a second run policy in the town; that Lynch claimed that he had spoken to Mr. McCarthy about it and McCarthy had agreed that it would be best to let the other fellow play Universal pictures first run and Lynch was afraid that if he allowed Universal to sell this other theatre second run, the other companies would follow and establish a second run in the town.

Ex. No. 370; offered and received, R. 2606

Unsigned letter of September 23, 1935, from P. T. Dana, Universal branch manager at Albany, to Frank McCarthy, Universal Eastern sales manager, attaching sheets showing short product commitment for Schine, stating that it was not a very healthy commitment, and that George Lynch gave the following reasons for not buying shorts in the towns left out. (The reasons are listed.) The letter states that in Van Wert, Dave Miller, Universal general sale manager, advises that upon the suggestion of Mr. Grainger, Universal general sales manager, he took away the first run from the opposition and sold them a second run.

Lynch does not want a second run policy to prevail and has promises from other major companies that they would not sell second run[3] and wants Dave Miller to reinstate first run in opposition theatres.

Ex. No. 374; offered and received, R. 2604

Letter of October 28, 1936, from P. T. Dana, Universal Albany branch manager, to Paul Krieger, Universal branch manager at Cincinnati, stating that contracts covering the Schine circuit at Piqua, Athens, and Delaware, Ohio were enclosed, and that if the clearances stated in the contracts were not what the other major companies granted Schine, they were then to take the matter up directly with George Lynch in Gloversville. Dana states that it was his understanding with Lynch that the clearances were the same as granted to him by the major companies. Underneath the signature appears the following: 90 days ahead of Athens, 30 days ahead of Glouster and Nelsonville, Logan, and Pomeroy. Underneath Logan and Pomeroy appears "X'd out.".

Ex. No. 381; offered and received, R. 2604

Letter of June 22, 1937, from F. J. A. McCarthy, Universal Eastern sales manager, to Paul Krieger, Universal Cincinnati branch manager, stating that in any situation that Schine takes over where the terms of the former exhibitors' contract were in excess of what Schine pays as a circuit, Mr. Grainger, Universal general sales manager, has agreed to changing them to meet the terms of the Schine deal. It will be, therefore, necessary to resell "My Man Godfrey" in Paris and Richmond, Kentucky at 30% of the gross. Notation at bottom: Copy for Mr. Lynch.

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[3] Stricken by trial court (R. 3089).

Ex. No. 384; offered and received, R. 2604

Letter of January 4, 1938, from Dave Miller, district sales manager of Universal, to George Lynch, chief Schine film buyer, reminding Lynch that nothing had been heard from him regarding taking the 1937-38 product in Medina, Ohio; that the new opposition theatre which had opened in Medina had made numerous requests for the product. Letter states that the product had been held for Lynch for the past 6 months and that his attitude in this particular instance was most unfair. Letter states that unless he hears from Lynch by the end of the week, he will proceed to make a deal with the opposition house. Notation: Copy to F. J. A. McCarthy, Universal Eastern sales manager.

Ex. No. 385; offered and received, R. 2605

Letter of January 21, 1938, from Dave Miller, Universal district sales manager, to F. J. A. McCarthy, Universal Eastern sales manager. It is stated that after receiving a letter from Fine and Essick, asking that Universal hold their product for them in Medina, Miller had received a letter from George Lynch that Schine had taken over a theatre in Medina and would like to make a deal for their product. Miller states that he sent a copy of the letter to J. B. Grainger, Universal general sales manager, and that Miller acknowledged the letter and asked Lynch if he would be in Cleveland or whether Miller should come to Gloversville to arrange the deal; that later the Schine deal was received with no mention of Medina and that Miller had written several times to the home office about Medina, but had gotten no action from Schine; that he had written to Lynch (Exhibit 384), and not hearing from him had called him on the phone, and Lynch had said it would be OK for Universal to sell their product in Medina, this permission being given 10 months after he had asked us to hold it.

Ex. No. 386; offered and received, R. 2605

Letter of January 27, 1938, from F. J. A. McCarthy, Universal Eastern sales manager, to George Lynch, chief film buyer of Schine, reviewing the Medina situation and stating that Schine in effect had been persistently endeavoring to buy Universal product from the Cleveland office without success, because of Lynch's letter to Miller; that Lynch had told Miller that he could sell Universal products in Medina 10 months after Lynch had requested them to hold the product and that Miller was put in a position of being unable to close the deal with Schine's opposition because of Universal's previous refusal to negotiate.

Ex. No. 387; offered and received, R. 2604

Letter of January 28, 1938, from Nate Sauber, branch manager of Universal, to G. V. Lynch, chief film buyer for Schine, stating that it had been brought to his attention that various major companies were serving Waterloo within the 30 day period after the Seneca Falls showing and that they would want to be extended the same consideration. Letter states that the type of clearance and availability on their Waterloo contract provides that we serve them within the 30 day period if any other major distributor does so. He states that it has been generally understood with Lynch that Lynch would grant equal consideration to Sauber if any differences were made for the clearance set up. The letter states that for obvious reasons, he would prefer to discuss the matter with Lynch in person, but did not have an opportunity to be in Gloversville at an early date.

Ex. No. 388; offered and received, R. 2605

Letter of February 1, 1938, from W. B. Kraemer, on behalf of the Schine Circuit, Inc., to F. J. A. McCarthy, Universal Eastern sales manager, stating that George Lynch was ill and therefore no definite reply could be given regarding Medina.

Ex. No. 389; ordered and received, R. 2916

Letter of February 7, 1938, from P. T. Dana, Universal Albany branch manager, to A. J. Herman, Universal district manager, with copy to F. J. A. McCarthy, Universal Eastern sales manager. Letter states he saw Louis Schine with reference to clearances over the Smalley circuit and that Mr. Schine absolutely refused to grant Universal the privilege of serving pictures other than at clearances under which their contracts were taken. He states that Mr. Schine warned that if they served Smalley, he would stop booking their pictures. He states that he had wired Smalley that he could not accept contracts as written.

Ex. No. 390; offered and received, R. 2604

Letter of February 15, 1938, from Schine Circuit, Inc., by L. Goldstein to Nate Sauber, Universal branch manager at Buffalo, stating that with respect to Exhibit 387, they could not permit Waterloo to be served within the 30-day clearance period after Seneca Falls.

Ex. No. 391; offered and received, R. 2911

Letter of November 14, 1938, from Paul Baron, acting branch manager of Universal at Washington, to A. J. Herman, Universal district sales manager, referring to deal made by Dave Miller, a district sales manager of Universal, with Schine for the Arcade Theatre in Salisbury, and stating it was lousy in comparison to their former deal. He states that he had been informed that George Lynch, chief film buyer of Schine, was arranging with Mr. Scully, Universal general sales manager, to wash out all the existing deals they had in the towns they had taken over.

Ex. No. 392; offered and received, R. 2911

Letter of December 14, 1938, from F. J. A. McCarthy, Universal Eastern sales manager, to Dave Miller, Universal district manager, stating that Baron, a Universal salesman, had written to them regarding the Schine contract for Salisbury, Maryland, and that George Lynch had advised him he was arranging with Mr. Scully to wash out the existing deals in the Washington territory. He asked what information Miller could give Baron as to their understanding of what was to be done on the old product.

Ex. No. 393; offered and received, R. 2603

Universal cancellation of authorization of contract dated 12/15/38, referring to the Roxy Theatre at Corbin, Kentucky and G. Scott as exhibitor. Enumerates the deal cancelled. Contains a notation that this deal intended for a new theatre to be built in Corbin by Mr. Scott, and in the meantime Schine acquired other theatres in the town and made a deal with Mr. Scott whereby the new theatre would not be built, and Mr. Miller negotiated a new contract with Schine. Cancellation contains approval signatures of Krieger, branch manager, and Scully, Universal sales manager.

Ex. No. 396; offered and received, R. 2606

Letter of May 23, 1939, from John J. Scully, Universal branch manager at Buffalo, to F. J. A. McCarthy, Eastern sales manager at Universal, with copies to W. A. Scully, Universal general sales manager, and Dave Miller, Universal district manager. Letter acknowledges receipt of McCarthy's letter asking for information to assist him in negotiating with the Schine circuit. The writer suggests the clearances to be set up for Schine theatres in Buffalo. With respect to the Madison and Monroe theatres in Rochester, the writer states that since Schine now operates, if they wish to come within Riviera's 21 day clearance, this is satisfactory. Also a letter of May 19, 1939, from F. J. A. McCarthy to J. J. Scully, asking him to send him all the information he might have that might assist in their negotiations with the Schine circuit on a deal for the new product. Notation: Same letter to Albany, Cincinnati, and Cleveland.

Ex. No. 397; offered and received, R. 2604

Letter of June 8, 1939, from B. B. Kreisler, Universal branch manager, in Washington, D. C., to F. J. A. McCarthy, Universal Eastern Division manager, with copies to W. A. Scully, Universal general sales manager, and A. J. Herman, Eastern sales manager. Letter states that they had made the chart for the Schine circuit deal and had submitted it to McCarthy the preceding day. Letter called attention to the fact that several of the majors had better deals in Salisbury, Cambridge, and Easton, and Universal was entitled to better terms in Hurlock and Federalsburg, as well as in the other mentioned towns. He states that their blind checking records substantiate the fact that the circuit was buying their product at peanut prices, and that since Schine had invaded the Eastern shore, the business of all surrounding town situations had been greatly depleted. He complains of the circuit's policy of bank nights and double billings.

Ex. No. 409; offered and received, R. 2916

Letter of September 23, 1935, from P. T. Dana, Universal branch manager, to Frank McCarthy, Universal Eastern sales manager, stating that Lynch had insisted upon having reversion figures inserted on all the contracts and that figures accepted were less than those set up by Fox.

Ex. No. 412; offered and received, R. 2604

Letter of September 10, 1932, from George Lynch, chief film buyer for Schine, to Jack E. Flynn, Loew district sales manager, informing him that a former employee of theirs had leased the Opera House in Bellefontaine and had spread propaganda that Schine's admission prices were too high. Lynch stated that he wanted Flynn to refrain from selling him any pictures whatsoever; that if their Cincinnati office sold him any pictures, they would be encouraging unfair competition and would be hurting the film rentals they were receiving from Schine's theatres.

Ex. No. 413; offered and received, R. 2604

Letter of September 12, 1932, unsigned, but with initials J. E. F. and notation "copy for W. F. Rogers", Loew Eastern sales manager, to George V. Lynch, Schine chief film buyer, referring to Exhibit 412 and stating that Loew did not feel that selling a second run account in Bellefontaine would be to their best interest, and would inform the opposition should they be approached by him.

Ex. No. 424; offered and received, R. 2882

Letter of October 13, 1933, from E. K. O'Shea, Loew Buffalo branch manager, to W. F. Rodgers, Loew Eastern sales manager, stating that in

Seneca Falls, despite Schine's increasing its clearance from 10 days to 30 days for Geneva over Seneca Falls, he got the same amount on flat rental pictures. Notation: Copy to J. E. Flynn, Loew District sales manager.

Ex. No. 425; offered and received, R. 2604

Letter of October 21, 1933, from G. V. Lynch, chief film buyer for Schine, to Jack Flynn, Loew district manager, listing a number of theatres in towns in which Schine would use Loew product second run and stating that if there were any other towns where Flynn believed he could sell a second run, Lynch would appreciate if Flynn would take the matter up with Lynch first before selling.

Ex. No. 426; offered and received, R. 2604

Interoffice letter of January 4, 1934, from Ralph Pielow, Albany branch manager of Loew, to J. E. Flynn, Loew district manager, stating that he had just returned from Gloversville, where he had talked with Myer and Louis Schine and George Lynch. He said they would not agree to the second run contracts in Watertown and Glens Falls, because they wanted the right to play percentage pictures on the days they chose and still insisted on 60 days' clearance over third runs and wanted the privilege of playing flat rentals 3 days when they so desired. Pielow said that Myer Schine discussed with him the reasons why Loew should not sell second runs in towns under 7,500, but that he believed Schine did not want them to sell these situations because Schine was against their selling third runs, and rather than have them selling third run, Schine would want Loew to pass up a second run.

Ex. No. 430; offered and received, R. 2605

Letter of August 1, 1935, from Ralph Pielow, Loew Albany branch manager, to J. E. Flynn, Loew district manager, stating that Lynch has signed the Schine contracts but was holding the contracts for two theatres in Buffalo because he wanted to discuss the clearance for them with Mr. O'Shea, a Loew branch manager. Pielow said that in some situations he felt the clearance asked was unfair and told him that where Schine had clearances over other towns, it would be expected that the pictures would be played as soon as they became available to Schine and that if they were not so played, Loew would have to reduce the clearance.

Ex. No. 435; offered and received, R. 2550

Letter of September 27, 1935, from G. V. Lynch, chief film buyer for Schine, to Ralph Pielow, Loew Albany branch manager, stating that he had not yet received an answer to letters of his regarding protection in the Ogdensburg district to remain 30 days over Canton until they saw Mr. Flynn.

Ex. No. 441; offered and received, R. 2882

Unsigned letter of February 7, 1936, with dictator's initials WFR, copy to Flynn, Loew district sales manager, and O'Shea, Loew Buffalo branch manager, to G. V. Lynch, chief film buyer for Schine. Rodgers asks that the clearance matter affecting Oswego and Fulton be taken up with Myer Schine in Florida or be decided by Louis Schine and Lynch. He states that although Loew is bound to a 30 day clearance for Schine in Oswego over Fulton, he believes the clearance is excessive, and that a 10 or 14 day clearance at the outset was sufficient.

Ex. No. 444; offered and received, R. 2605

Letter of June 15, 1936, from E. K. O'Shea, Loew Buffalo branch manager, to J. E. Flynn, Loew district manager, with copies to Mr. Connors, Loew Eastern and Southern sales manager, and Mr. Pielow, Albany branch manager. He complains about the difficulty of getting extended playing time because of Schine's bank nights. He states that Schine wants additional flat rental pictures in those situations and they are not willing to play percentage pictures on the nights when they have bank night.

Ex. No. 455; offered and received, R. 2249

Letter of August 28, 1937, without signature, dictator's initials EK O'S, which are those of Mr. O'Shea, Loew branch manager at Buffalo, with copy for T. J. Connors, Loew Eastern and Southern sales manager. Letter is to Loew's branch manager in Cincinnati, E. M. Booth. Letter asks Booth to check a statement by George Lynch, chief film buyer for Schine, that Loew was selling the Opera House in Lexington at a 10¢ adult night admission price.

Ex. No. 456; offered and received, R. 2607

Letter of August 30, 1937, from E. M. Booth, Loew branch manager at Cincinnati, to E. K. O'Shea of Loew. Letter refers to Exhibit 455 and states that Lynch was in error and that the admission at the Opera House at night was 16¢. Letter states that the situation in Lexington was very bad and that Schine's policy was materially affecting the surrounding towns. He lists the admission prices of Schine theatres in Lexington. He states that when they sold the independent Opera House fourth run, Schine was not operating under this policy, and that that policy had made it difficult for the Opera House to continue under the contract. The Opera House was playing fourth run after Schine double billed the three other theatres on a comparable admission price.

Ex. No. 457; offered and received, R. 2249

Letter of September 1, 1937, from E. K. O'Shea, Loew sales executive, to E. M. Booth, Loew branch manager at Cincinnati, referring to Ex. 456 and stating that Loew would expect the independent operator to conform to the prices on his contract and that two wrongs do not make a right.

Ex. No. 459; offered and received, R. 2607

Letter of November 1, 1937, from E. M. Booth, Loew branch manager at Cincinnati, to E. K. O'Shea, Loew sales executive, with copy to T. J. Connors, Loew's Eastern and Southern sales manager, comparing the independent's admission prices with Schine's in Lexington, Kentucky, and stating that because of Schine's policy of oppression, adjustments were made with respect to the independent's contract and recommends approval of attached alterations to that contract.

Ex. No. 476; offered and received, R. 2607

Letter of July 13, 1938, from G. V. Lynch, Schine chief film buyer, to Ralph Maw, Loew Buffalo branch manager, advising that Schine would require clearance starting with the 1938–39 season for the Grand Theatre at Rochester over the Strand Theatre in Rochester, and asking for consideration in this respect.

Ex. No. 488; offered and received, R. 2604

Letter of May 15, 1939, from R. W. Maw, Loew Buffalo branch manager, to E. K. O'Shea, Loew district sales manager, with copy to T. J. Connors, Loew Eastern and Southern sales manager. Refers to clearances of Schine in Newark over other towns and in Seneca Falls over Waterloo and in Cortland over several towns, stating that in his opinion they were too long and suggesting reductions in each case.

Ex. No. 491; offered and received, R. 2882

Letter of June 8, 1939, from W. F. Rodgers, Loew general sales manager, to T. J. Connors, Loew Eastern and Southern sales manager, stating that J. Myer Schine had called him and advised him he would reduce his clearance over Clyde, N. Y. from 30 days to 14 days, but he could not agree to Lyons' playing 14 days after Newark. Rodgers refers to the fact that Loew had sold Lyons on equal availability with Clyde and that Dillard, legal advisor, had suggested that they try to persuade Schine to let the clearance be reduced to 14 days in both situations for the remainder of the season and then next year when Lyons was sold they would not be able to sell them day and date, but Newark would have to get a greater clearance against them than they had against Clyde. Rodgers suggested Connors take it up with Dillard and then Connors might want to talk with Mr. Schine over the phone.

Ex. No. 494; offered and received, R. 2605

Letter of November 7, 1935, from Ralph Pielow, Loew branch manager, to J. E. Flynn, Loew district sales manager, stating that George Lynch, Schine chief film buyer, had mentioned he was going to discuss with Flynn clearance of Ogdensburg over Canton. He says that at the time of signing the contracts, he insisted on 30 days' clearance over Canton for the 1935–36 product in view of the 1934–35 product only having 14 days. He stated that he had advised Lynch that Flynn refused to permit the 30 days, but that Flynn would discuss the matter with them further.

Ex. No. 497; offered and received, R. 2605

Letter of November 30, 1936, unsigned but with initials of dictator RP and title of resident manager of Loew and printed name Mr. Ralph Pielow, Albany, to J. E. Flynn, district manager of Loew, copy for T. J. Connors. Letter states that

George Lynch, Schine chief film buyer, had said he would like to buy a selective contract second run in Amsterdam at the Regent Theatre. The writer reviewed this offer and Lynch later mentioned he doubted if the theatre would be opened but that he did not want Loew to sell the Orpheum Theatre (the independent). Ralph Pielow thought it was unfair for Lynch to make this request. Pielow set out the proposition on which they could sell the Orpheum Theatre the 1935–36 product. Pielow recommends selling the Orpheum second run.

Ex. No. 499; offered and received, R. 2607

Letter of March 19, 1937, from G. V. Lynch, Schine chief film buyer, to F. Drew, Loew Cleveland branch manager, advising him that Schine had taken over the Princess Theatre in Medina and was in a position to use Loew product.

Ex. No. 500; offered and received, R. 2607

Telegram of March 18, 1937, from Lynch, chief film buyer for Schine, to J. E. Flynn, Loew district sales manager, advising him that Schine had acquired the Princess Theatre in Medina, Ohio, and would like to include that town in Schine's franchise.

Ex. No. 509; offered and received, R. 2882

Interoffice letter of August 2, 1938, from E. W. Aaron, assistant to Loew's general sales manager, to W. F. Rodgers, Loew general sales manager, reviewing their deal with Schine in Medina and stating that Schine had a 350-seat house and that

Mr. Essick's house was a brand new one seating 800 and that some of their products should be playing in that theatre.

Ex. No. 510; offered and received, R. 2883

Interoffice letter of July 29, 1938, from W. F. Rodgers, Loew General sales manager, to T. J. Connors, Loew Eastern and Southern sales manager, stating that Fine had been in to see him with respect to the Medina, Ohio situation and Fine felt they were entitled to at least half of Loew's product. Rodgers asked Connors to investigate this situation.

Ex. No. 518; offered and received, R. 2604

Interoffice letter of September 16, 1932, from C. R. Halligan, RKO Albany branch manager, to E. L. McEvoy, RKO Eastern division sales manager, discussing the Schine circuit deal. He states he is enclosing contracts for the Schine circuit, except for Lake Placid. He says that Schine wants 60 days over a mythical run that might open in various towns, as well as 90 days over Lake Placid Club. He said that it was all right with him because in all those towns Schine had theatres which could be opened second run and the danger of another second run theatre was so slight that Halligan did not hesitate to grant it. Regarding Lake Placid, Halligan had gotten in touch with Marshal Taylor and Harry Thompson who agreed to 14 days' protection over Lake Placid, with exception of July and August when protection would be waived if Lake Placid did not charge a lesser admission than Saranac Lake.

That was agreeable to Lynch, subject to taking it up with Mr. Dodds of Lake Placid, but after a conference, they decided that since several companies had sold them without any protection over Saranac Lake, they would not take a contract with protection. Thompson stated that he had protection with Fox and that if Schine had a contract to the contrary, it was a trick contract. Halligan suggests that McEvoy get in touch with Mr. Peskay since he did not see why RKO should be discriminated against by any circuit regardless of their buying power and that he thought Lynch did have a trick contract for Lake Placid.

Ex. No. 519; offered and received, R. 2606

Letter of October 17, 1933, from C. R. Halligan, Albany branch manager of RKO, to E. L. McEvoy, RKO Eastern division sales manager, re the Palace and Victoria Theatres in Watertown, New York. He states that the attached contracts for these theatres for third and fourth run was a very good deal considering the fact that Schine is buying second run in that town for $22.50. He says Schine had brought about a very chaotic condition by buying second run and leaving four other subsequent runs holding the bag for third run.[4] He states that with the Schine second run of $22.50 and the third and fourth run of $60, it was almost as much as they got out of first run the previous year. Because of Schine's double feature policy he thought they would be able to sell a fifth run in the town.

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[4] This sentence was stricken by the trial court (R. 3089).

Ex. No. 526; offered and received, R. 2604

Interoffice letter of January 8, 1935, from H. Dixon, RKO Buffalo Branch manager, to E. L. McEvoy, RKO Eastern sales manager, with a copy for H. J. Michalson, stating he was enclosing deals for 1934–35 product for the Palace Theatre in Corning, New York, where they had sold first and second run to Schine. He said that of course all of the pictures would not be played second run by Schine in Corning. He says the contract was written up in an unusual manner but to their advantage and on a rental he believed to be fair considering that their best pictures no doubt would be played first and second run by Schine.

Ex. No. 527; offered and received, R. 2604

Letter of January 10, 1935, from E. L. McEvoy, RKO Eastern sales manager, with a copy to Mr. Michalson, to Harry Dixon, RKO branch manager at Buffalo, advising that before they accepted the deal for the Palace Theatre in Corning he would like to know if Schine at any time had complained about the low admission charged by that theatre and what other major distributors had sold the exhibitor their 1934–35 product.

Ex. No. 528; offered and received, R. 2604

Letter of February 18, 1935, from H. Dixon, RKO Albany branch manager, to E. L. McEvoy, RKO Eastern division sales manager, with copy to J. Michalson, stating that all other companies were serving the Palace and that he felt the contract would not create any bad feelings with Schine.

Ex. No. 530; offered and received, R. 2603

RKO cancellation notice dated December 11, 1935, for the Palace Theatre of Corning, New York, referring to one picture, and for an explanation, stating that the exhibitor had bought a second run contract but the picture was played first and second run by Schine and the Palace refused to play this subject and since the exhibitor's contract was violated they could not insist upon a play-off. The notice has the signature of H. Dixon as branch manager, and home office approval.

Ex. No. 539; offered and received, R. 2604

Interoffice letter of September 10, 1932, from S. B. Kramer, Warner Cleveland branch manager, to A. W. Smith, Jr., Warner General sales manager, with a copy to R. H. Haines, Warner Cincinnati branch manager, quoting a wire he had received from Lynch, chief film buyer for Schine, to hold a 1931–32–33 product for second run Bellefontaine. Kraemer writes that it was evident that someone was taking over the Opera House in competition with Schine and Kraemer was passing the information along so that when the first run deal was made with Schine, Smith could also handle the second run deal.

Ex. No. 542; offered and received, R. 2607

Interoffice letter of January 12, 1934, from R. S. Smith, Warner Albany branch manager, to A. W. Smith, Jr., Warner General sales manager, copy to R. Smeltzer, Washington, D. C. Warner branch manager, specifying a proposition he had from the State Theatre at Glens Falls, New York. The letter states that the theatre was operated by Fred Mausert and that Schine had 60 days' clearance over the theatre at Schine's second run house. Smith said he thought it was a very good deal and hoped before long that Lynch, Schine's chief film buyer, would break down the 60 day clearance. In Smith's opinion, the clearance setup was all wet but that it would eventually be straightened out.[5]

Ex. No. 546; offered and received, R. 2605

Interoffice letter of June 25, 1934, from R. S. Smith, Warner Albany branch manager, to A. W. Smith, Jr., Warner General Sales Manager, with copy to R. Smeltzer, Washington, D. C. Warner branch manager, stating that Alex Papayanakos of Canton, New York was in to see him and had said that he had to wait 30 days after Ogdensburg for pictures and that they would depreciate because Canton was a college town and that most of the pictures were much older than 30 days as Schine did not play them on release day. Smith said he thought it would make a better condition for all if the clearance could be eliminated.

Ex. No. 549; offered and received, R. 2605

Interoffice letter of August 31, 1934, from R. S. Smith, Warner Albany branch manager, to

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[5] This exhibit was strictly construed by the trial court (R. 3089).

R. Mochrie, Assistant to Warner General sales manager, referring to Schine clearances. He says that Little Falls' clearance read 30 days over Dolgeville and that the code authority had already decided that it should be 14 days but that Lynch insisted they go on along on the 30 day basis. That in Watertown Schine wanted 30 days over Lowville as in the preceding year, even though the Board had decided it should be 7 days' clearance at the Avon Theatre, and open booking with the Olympic.

Ex. No. 550; offered and received, R. 2836

Interoffice letter of September 1, 1934, from H. Seed, Warner Buffalo branch manager, to A. W. Smith, Jr., Warner general sales manager. It reviews negotiations respecting shorts with Schine, and states that with respect to subsequent runs in Buffalo, Rochester, Lockport, Oswego, and Corning, he could not get more percentage pictures for features than last year. The reason for the 40 picture contract instead of the 60, second run in those situations, was that Mr. Schine did not want to get into a mess with the Code Authorities as he did the previous year. Schine advised if they did not sell the opposition the other 20 pictures second run, he would try to use them. Mr. Schine refuses to take any part of his entire deal unless his third run contracts stipulate he follow only two specified theatres in Rochester. This is because his deal to take over the Madison and Monroe fell through.

Ex. No. 554; offered and received, R. 2605

Interoffice letter of February 26, 1935, from R. S. Smith, Warner branch manager, to A. W. Smith, Jr., Warner general sales manager, advising that Mr. Kronick, who operated the Orpheum Theatre in Amsterdam, New York had written several letters regarding purchasing second run; that in talking to Lynch, Schine's chief film buyer, Lynch did not want Warner to sell them. Smith said that since Paramount was selling Kronick second run, he could not see why they should not. Smith says that George Lynch had left Warner holding the bag for $1,200 in shorts. Smith said that there were towns smaller than Amsterdam where they had set up second run deals.[*]

Ex. No. 559; offered and received, R. 2606

Interoffice letter of December 27, 1935, from M. A. Mooney, Warner Cleveland branch manager, to R. Mochrie, assistant to Warner general sales manager, stating he was enclosing a two-year deal for the Colonial theatre in Fostoria, Ohio and recommending its approval.

Ex. No. 560; offered and received, R. 2606

Telegram of March 25, 1936, from A. W. Smith, Jr., Warner general sales manager, to M. A. Mooney, Warner Cleveland branch manager, stating that if absolutely necessary that Mooney give the Fostoria exhibitor an answer that day, to tell him that the two-year deal had been rejected and that Smith would advise Mooney further the following week.

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[*] This exhibit was strictly construed by the trial court R. 3089).

Ex. No. 561; offered and received, R. 2606

Telegram of April 1, 1936, from R. Mochrie, assistant to Warner general sales manager, to M. A. Mooney, Warner Cleveland branch manager, advising that the Fostoria deal was rejected but that he could offer the exhibitor one half of the product for one season only and that for Mooney's personal information Warner was selling Schine half the product.

Ex. No. 566; offered and received, R. 2606

Warner contract recommendation dated September 16, 1936, with signature of W. J. Brandt, salesman, and M. A. Mooney, manager, referring to the Colonial Theatre at Fostoria, Ohio, enumerating the deal submitted and stating that Anthony Adverse was not included in Schine contracts, that it was felt Warner would get considerably more money from this house than if they sold the Schine situation and asking for approval.

Ex. No. 567; offered and received, R. 1387

Warner contract recommendation for October 21, 1936, same signatures as in Exhibit 566, referring to Civic or Roxy Theatres in Fostoria, Ohio, and Belpic Theatre Corp. as exhibitor. It sets out a picture deal and states that this deal was sold by Mr. Kalmenson and involved considerable less money than they were getting from the opposition house with which they had been doing business for a number of years.

Ex. No. 574; offered and received, R. 2605

Warner contract recommendation from Albany, New York branch dated June 22, 1937, referring to Plaza Theatre at Malone, New York, with M. Boumansour as exhibitor; sets out deal submitted and states that until about six months ago the theatre was under lease to Schine and kept closed. Boumansour would not renew the lease until the theatre was opened, which Schine refused to agree to. Boumansour opened a theatre and has been running Schine reject pictures first run. He is unable to secure sufficient first run to operate on that policy, forcing him to a second run policy. He has applied to other distributors for second run and to the best of the branch manager's knowledge has not been able to secure the contract. The manager recommended the second run deal set up, stated that he discussed the deal with Kalmenson who suggested it be submitted for approval, but preferred, for the time being at least, to spotbook the pictures. In other words, they would not forward the approved copy of the contracts to the exhibitor unless advised to the contrary.

Ex. No. 597; offered and received, R. 2604

Interoffice letter of December 9, 1940, from Arthur Sachson, Warner official, to R. H. Dunbar, Warner Cincinnati branch manager, advising that

Schine wanted to buy a second run in Harlan, Kentucky, and a fourth run at the Ada Mead, Lexington, Kentucky, and asking that Dunbar look into the situation and let him know what would be a fair proposition. This exhibit has pencilled notations noting that the Ada Mead was a 10¢ theatre and that Warner then had four runs in Lexington.

Ex. No. 598; offered and received, R. 2604

Letter of December 13, 1940, from Warner Cincinnati branch manager Dunbar, unsigned but with his initials, to Arthur Sachson, Warner home office official, with copy to Mr. Smeltzer, refers to Exhibit 597, stating they would appreciate it if Warner could avoid selling second run to Schine in Harlan since they had a very good first run there and that it would hurt him to sell a second run in that situation; that in Lexington they had four runs and that the Ada Mead was a 10¢ theatre and they would rather not get into a contract with that theatre. They would rather spotbook at the Ada Mead since even though he was charging 10¢ it would not interfere with the surrounding theatres and at any time they could withdraw their product if it caused any trouble.

Ex. No. 599; offered and received, R. 2064

Interoffice letter of December 20, 1940, from Arthur Sachson, Warner home office official, to R. H. Dunbar, Warner Cincinnati branch manager, referring to Exhibit 598 and advising they intended to sell Schine second run in Harlan, Kentucky, and that with respect to the Ada Mead they had decided not to sell that run.

Ex. No. 600; offered and received, R. 2604

Letter of December 23, 1940, from R. H. Dunbar, Warner Cincinnati branch manager (unsigned but with initials RKD), to Arthur Sachson, Warner home office official, acknowledging receipt of Exhibit 599, stating that should they negotiate a deal with Schine for second run in Harlan, it would be to their advantage to have it at least 60 days after first run and they would not sell the Ada Mead in Lexington a fifth run.

Ex. No. 601; offered and received, 2604

Letter of December 27, 1940, from Arthur Sachson, Warner home official, to George V. Lynch, Schine chief film buyer, advising him that as to the second run deal for Harlan, Ky., it was OK to book on the basis of 60 days after first run and that the next time he saw Lynch he would set up a deal for him.

Ex. No. 653; offered and received, R. 1527

Letter of July 28, 1933, from W. F. Rodgers, Loew general sales manager, to Peter Graffiades, Palace Theatre, Lockport, N. Y., advising him that Loew could not offer him their 1933–34 product because in his negotiations with the Schine interests it was likely that they would have to give them consideration in Lockport as well as elsewhere, since Loew was not in a position to jeopardize Schine's business from Schine's other situations and also because for a number of years Schine had been a very representative account.

Ex. No. 662; offered and received, R. 2604

Columbia alteration of contract form, dated 12/10/35, from Cleveland branch office, covering the Southern Theatre in Bucyrus, operated by an independent. Lists a change in terms for two pictures and states that the exhibitor was forced to change his policy, due to Schine opposition having all major product under contract, and that the exhibitor would have to make four changes a week instead of three, as he was unable to buy major product second run.

U. S. GOVERNMENT PRINTING OFFICE: 1947

FILE COPY

DEC 6

Supreme Court of the United States

October Term, 1947

No. 40

SCHINE CHAIN THEATRES, INC., et al.,
Appellants,
against
THE UNITED STATES OF AMERICA.

Appeal From The United States District Court For The Western District Of New York.

MOTION FOR LEAVE TO FILE BRIEF AS AMICI CURIAE AND BRIEF OF AMICI CURIAE.

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Supreme Court of the United States

October Term, 1947

No. 10

SCHINE CHAIN THEATRES, INC., et al.,
Appellants,

—against—

THE UNITED STATES OF AMERICA.

Appeal From The United States District Court For The Western District Of New York.

MOTION FOR LEAVE TO FILE BRIEF AS AMICI CURIAE.

To the Honorable the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

The undersigned, as counsel for some of the theatre owners and operators, injury to whose business forms the basis for the judgment of the District Court, respectfully moves this Honorable Court for leave to file the accompanying brief in the above-entitled case. The appellee, but not the appellants, has consented to the filing of the brief.

December, 1947.

Respectfully submitted,

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Irving Cohen,
Richard De Toto,
Charles V. Martina,
William C. Smalley,
William Tischkoff,
Hubert P. Wallace,
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Amici Curiae.

SUPREME COURT OF THE UNITED STATES

October Term, 1947

No. 10

SCHINE CHAIN THEATRES, INC., et al.,
Appellants,
—against—
THE UNITED STATES OF AMERICA.

Appeal From The United States District Court For The Western District Of New York.

BRIEF OF AMICI CURIAE.

OPINION BELOW.

The opinion of the District Court on the merits is reported at R. 3066 and at 63 F. Supp. 229.

STATUTES INVOLVED.

Section 4 of the Clayton Act (15 U. S. C. § 15) provides:

> That any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee.

Section 5 of the Clayton Act (15 U. S. C. § 16) provides:

> That a final judgment or decree hereafter rendered in any criminal prosecution or in any suit or proceeding in equity brought by or on behalf of the United States under the antitrust laws to the effect that a defendant has violated said laws shall be prima facie evidence against such defendant in any suit or proceeding brought by any other party against such defendant under said laws as to all matters respecting which said judgment or decree would be an estoppel as between the parties thereto: *Provided,* This section shall not apply to consent judgments or decrees entered before any testimony has been taken: *Provided further,* This section shall not apply to consent judgments rendered in criminal proceedings or suits in equity, now pending, in which the taking of testimony has been commenced but has not been concluded, provided such judgments or decrees are rendered before any further testimony is taken.
>
> Whenever any suit or proceeding in equity or criminal prosecution is instituted by the United States to prevent, restrain, or punish violations of any of the antitrust laws, the running of the statute of limitations in respect of each and every private right of action arising under said laws and based in whole or in part on any matter complained of in said suit or proceeding shall be suspended during the pendency thereof.

STATEMENT OF POSITION OF THE AMICI CURIAE.

The *amici curiae* concur in the position of the United States, the appellee, in this Court. They agree that the findings of fact made by the District Court are sufficient to support the decree. They urge, therefore, that the judgment of the District Court be affirmed.

Such an affirmance will necessitate a remand to the District Court for the purpose of supervising the effectuation of the decree. The *amici curiae* submit that this Court, in affirming the judgment, should either direct that the District Court make more complete findings of fact, or, at the least, indicate to the District Court that the judgment of this Court is without prejudice to the making of such findings. Only if such findings are made can there be realized the full purpose of Congress in enacting section 5 of the Clayton Act. That purpose makes it mandatory for the District Court to make complete findings of fact as to all issues presented at the trial relating to the injury of the individual theatre owners and operators resulting from the defendants' activities in violation of the antitrust laws.

ARGUMENT.

The purpose of the *amici curiae* in submitting this brief is to secure the assistance of this Court in making effective one of the principal sanctions provided by Congress to enforce the antitrust laws. To this end, we request that the Court, upon the remand of this case, which will follow affirmance, either direct the District Court to make more complete findings, or, at the very least, indicate to the District Court that the judgment of this Court is without prejudice to the making of such findings.

In 1914, section 4 of the Clayton Act was enacted to provide federal statutory relief for those persons who were injured by acts in transgression of the federal antitrust laws.[1] Congress provided in that section that the persons so injured were entitled to treble damages. Further to inhibit such transgressions, Congress provided in section 5 of the Act, that the wronged persons were entitled to the benefit of a judgment secured by the United States against the malefactors.[2]

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[1] This section is set out at p. 2, *supra*. 38 Stat. 731 (1914); 15 U. S. C. §15. Section 4 of the Clayton Act replaced section 7 of the Sherman Law, 26 Stat. 210 (1890) and section 77 of the Wilson Tariff Act, 28 Stat. 570 (1894). As to this history, see *United States* v. *Cooper Corporation*, 312 U. S. 600, 608-609 (1941).

[2] This section is set out at p. 3, *supra*. 38 Stat. 731 (1914); 15 U. S. C. §16.

It was, of course, clear that without such statute a judgment or decree obtained by the United States against a violator of the antitrust laws could not be admitted into evidence or used as an estoppel by a private litigant suing for treble damages. See *Buckeye Powder Co. v. E. I. DuPont Powder Co.*, 248 U. S. 55, 63 (1918).

It is with section 5 of the Clayton Act that this brief is primarily concerned. For that reason, we set forth here a short statement of its history in the Congress.

As the Judiciary Committees state in their reports, this section was "in keeping with a recommendation made by the President [Wilson] in his message to Congress, on the general subject of trusts and monopolies."[3] The President, in his message to Congress on January 20, 1914, said:

> "There is another matter in which imperative considerations of justice and fair play suggest thoughtful remedial action. Not only do many of the combinations effected or sought to be effected in the industrial world work an injustice upon the public in general; they also directly and seriously injure the individuals who are put out of business in one unfair way or another by the many dislodging and exterminating forces of combination. I hope that we shall agree in giving private individuals who claim to have been injured by these processes the right to found their suits for redress upon the facts and judgments proved and entered in suits by the Government where the Government has upon its own initiative sued the combinations complained of and won its suit, and that the statute of limitations shall be suffered to run against such litigants only from the date of the conclusion of the Government's action. It is not fair that the private litigant should be obliged to set up and establish again the facts which the Government has proved. He can not afford, he has not the power, to make use of such processes of inquiry as the Government has command of. Thus shall individual justice be done while the processes of business are rectified and squared with the general conscience."

The bill, as first drafted, provided that a decree in an equity suit between the Government and a party accused of monopolistic practices should be a conclusive estoppel, not only between the parties to the action, but as to all others, whether the decree was in favor of the Government or of the defendant.[4] Two vital amendments to this section were made before the bill became a law.[5] The first of these amendments eliminated the availability of a decree in favor of the defendant as an estoppel against third parties.[6] The change was brought about primarily to avoid a question of the constitutionality of creating an estoppel against a person who is not a party to the Government suit.[7] This amendment may be attributed also to a feeling among the legislators that a mutual estoppel would unfairly benefit the defendants.[8] The second amendment changed the effect of the estoppel from a conclusive one to one of *prima facie* value only.[9] The reason for this change was a fear that any conclusive estoppel would be unconstitutional.[10]

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[3] H. R. Rep. No. 627, 63rd Cong. 2d Sess. (1914) 14; S. Rep. No. 698, 63rd Cong. 2d Sess. (1914) 10.

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[4] "That whenever in any suit or proceeding in equity hereafter brought by or on behalf of the United States under any of the antitrust laws there shall have been rendered a final judgment or decree to the effect that a defendant has or has not entered into a contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce, or has or has not monopolized, or attempted to monopolize or combined with any person or persons to monopolize, any part of commerce, in violation of any of the antitrust laws, said judgment or decree shall, to the full extent to which such judgment or decree would constitute in any other proceeding an estoppel as between the United States and such defendant, constitute in favor of or against such defendant conclusive evidence of the same facts, and be conclusive as to the same questions of law in favor of or against any other party in any action or proceeding brought under or involving the provisions of any of the antitrust laws." 51 Cong. Rec. 9487.

[5] In fact four important amendments to this section were made. But two of these are not relevant here. They provide that no estoppel is available where there is a consent decree or a decree is entered prior to the introduction of any testimony, and that an estoppel exists though the Government action is a criminal suit.

[6] 51 Cong. Rec. 15589.

[7] *Id.* at 9487 *et seq.*

[8] *E.g., id.* at 9079, 9169, 9491, 9493.

[9] *Id.* at 15589.

[10] The Senate Committee stated at 51 Cong. Rec. 13851:

> "The material difference between the House provision and the Senate amendment is, of course, whether the decree in favor of the Government shall be prima facie evidence against the same defendant in a subsequent suit by another party or be conclusive against such defendant. The committee think there are considerations of public policy which favor the House provision of conclusiveness; but in the state of the decisions of the Supreme Court of the United States in kindred cases they believe the law should go no further than to make the decree prima facie evidence."

See also *id.* at 13851-56, 13898-99.

The purpose behind the enactment of this section is not in doubt. A reading of the Presidential message,[11] the committee reports,[12] and the debates of Congress,[13] quickly reveals that the section was put into the statute to permit a person successfully to bring a treble damage suit. The objective was to avoid the necessity for a plaintiff to prove again all of the matters already proved by the United States. Congress feared that the practically prohibitive cost in time and money that would be necessary to establish those matters which had already been established by the Government would be an unfortunate deterrent to such actions. It, therefore, provided for the use of the Government decree as an estoppel, so that a plaintiff need do no more than introduce that decree, prove the amount of damages, and rest.[14]

Today, more than thirty years after the enactment of the Clayton Act, enforcement of the antitrust laws by way of treble damage actions which rely on prior governmental decrees has proved more a myth than a reality. "There seems to be no case in which a Government decree had any weight with the court." [15]

Many explanations are given for the failure as a practical matter of the treble damage remedy. Doubtless, the business man's understandable desire to remain in the occupation festered with the illegal practices, his unwillingness to engage in protracted, vexatiously defended, and costly litigation to secure relief due as of right, and the difficulty of proving damages are some of the reasons for this failure.[16] One of the major causes for the inability of the courts to utilize a prior decree obtained by the Government, however, has been that the normal findings supporting such decrees are not sufficiently comprehensive to be of real assistance to a plaintiff in a treble damage action. In such an action, a plaintiff wants to be able to show by the Government decree not only that there was a monopoly or an attempt to monopolize or combination or conspiracy in restraint of trade, but he also wants to use the prior decree to demonstrate that he was directly affected by the illegal activities of the defendant. And yet the normal findings do not bring home the particular reasons on which the general decree must rest. The District Court should vindicate—by particular findings—the Congressional purposes which includes the sanction of the private suit to follow the decree in the Government's case. If the decree or the findings which support the decree do not state in particular the injury which has occurred, the plaintiff is unnecessarily obliged in his treble damage action to prove not only damages but also a connection between the defendant's illegal activity and the injury to his own business. Section 5 was enacted for the very purpose of removing such a barrier to successful prosecution of treble damage suits. "In such situations society makes individuals the representatives of the public for the purpose of enforcing a policy explicitly formulated by legislation." Mr. Justice Frankfurter, dissenting, in *Priebe & Sons, Inc.* v. *United States*, No. 16, October Term, 1947.

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[11] See page 5, *supra*.

[12] See note 3, *supra*.

[13] 51 Cong. Rec. 9073, 9079, 9169, 9487-95, 16276, 16319, 13659, 13849-59, 13897-902, 13906-907, 14214, 15589, 15822-27, 15938-39, 16003, 16046, 16058-59, 16149.

[14] See 51 Cong. Rec. at 9492-93, 13851, 15822-23, 15825, 16003.

[15] Note, *Procedure In Private Suits Under The Sherman and Clayton Acts* (1932) 32 Col. L. Rev. 335, 342-43 and n. 55; see also Comment, *Fifty Years Of Sherman Act Enforcement* (1939) 49 Yale L. J. 284, 296-99.

[16] See, *e.g.*, S. Rep. No. 1502, 74th Cong., 2d Sess. (1936) 8:

> "Private remedies in damages for violations of the antitrust law have been authorized since its first enactment; but their use has been much impeded, due partly to the speculative character of damages based on loss of business, and to the limited facilities of private parties for obtaining evidence of a kind to satisfy the narrow requirements of the common law, to which such suits were unknown."

The case before the Court provides an illustration of a litigant's difficulty where the findings are inadequate. In this case evidence was presented by the United States in the District Court showing that the defendants had committed violations of sections 1 and 2 of the Sherman Law with reference to certain theatres owned or leased by private exhibitors, some of whom are *amici curiae* here. Yet, in many instances, the District Court made no findings with respect to such violations. It made no findings despite the fact that the Government strenuously urged that these violations had occurred and despite the fact that the defendants sought to rebut the proof offered by the Government. Thus, on the present state of the record, when the treble damage action now contemplated is instituted, these injured exhibitors will be forced—against the Congressional intent—to retry the issues of the defendants' activities respecting themselves and their theatres.[17] Consequently much of the proof respecting these exhibitors adduced by the United States in this case will have to be presented again in the treble damage suit. Yet this waste of time, energy, and money can be avoided and the treble damage remedy made effective, if the District Court on remand of this case makes findings respecting these exhibitors and their theatres.

It is our contention that the Congressional purpose behind section 5 can be fulfilled only if adequate findings of fact are made in Government equity antitrust actions.[18] Judicial

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[17] Two examples of the District Court's failure to make findings of fact suffice for this brief.

No finding of fact was made as to the activities of the defendants with respect to the Syracuse-Strand Theatre in Syracuse. This theatre was owned by the Syracuse-Strand Corporation and leased to the Schines. In 1941 the Schines refused to pay a higher theatre rent, although operating expenses necessitated the raise in rental, and the lease was terminated. Subsequently, a corporation known as the Syracuse Community Theatre Corporation was formed to operate the theatre, Hubert P. Wallace and the Syracuse-Strand Corporation each held a half interest. According to the evidence, on which findings should have been made, the Empire Theatre, in which the defendants were interested, was reopened after it had been closed for six months. Inferentially, this reopening was undertaken in order to frustrate the operation of the Syracuse-Strand Theatre as a competitor of the local Schine Circuit. The Empire Theatre was reopened for this purpose a week before the opening of its competitor. The Syracuse-Strand Theatre was unable to obtain any "good product" from the major distributors because the Schine theatres, including the Empire, in Syracuse had preempted all the desirable product. Because of the poor quality of the remaining product, the Syracuse-Strand Theatre was forced to close after a few months' operation. R. 1978-2010, 2015-25, 2102-31, 2132-72.

Nor did the Court make findings of fact relating to the clearance obtained by the defendants over theatres owned by William C. Smalley in Cooperstown, Delphi, Dolgeville, Oxford, St. Johnsville, and Sydney. *E.g.*, R. 2444-46, 2448-59, 5633, 5870, 6088.

[18] *Cf.* colloquy between Senators Walsh and Cummins at 51 Cong. Rec. 13901:

> "[Mr. Cummins] Now, if the thing was a single transaction, if it was a single act, there would be no difficulty about it; but when the thing forbidden, or the thing of which the Standard Oil Co. was found guilty, is a long series of acts and combinations and incorporations, it is my opinion that what we propose to do now, whether we make it prima facie

husbandry dictates that "What was involved and determined in the former suit should be tested by an examination of the record proceedings therein, including the pleadings, the evidence submitted, the respective contentions of the parties, and the findings and opinion of the court * * *." *Oklahoma* v. *Texas*, 256 U. S. 70, 88 (1921).[19]

Although it perhaps be true that general litigation may not demand findings of fact as to all matters in controversy,[20] we submit that by the enactment of section 5 of the Clayton Act, Congress removed Government antitrust suits from this general category. In section 5 of the Act, Congress expressly provided that a plaintiff in a treble damage

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evidence or whether we make it conclusive evidence, will be of little avail to the person who sues to recover. I think he will still have to show that the thing by which he was hurt was a violation of the antitrust law, and in nine cases out of ten the decree does not adjudge that that particular thing was a violation of the antitrust law. I should like in some way, although I do not know how we could do it, to make it much clearer than it is.

Mr. WALSH. Mr. President——

The VICE-PRESIDENT. Does the Senator from Iowa yield to the Senator from Montana?

Mr. CUMMINS. I yield.

Mr. WALSH. I was going to suggest to the Senator from Iowa that I assume that in all of these cases findings of fact are made.

Mr. CUMMINS. Oh, no.

Mr. WALSH. It may be charged, for instance, that local price cutting was practiced with intent to drive Jones or Smith or some one else out of business, and——

Mr. CUMMINS. I think there are very few cases in which there are findings of fact of the sort the Senator from Montana has in mind.

Mr. WALSH. If that is the case, the rule of implied findings would apply."

[19] "It is said that the statutes of Idaho do not provide for findings of fact in a case like this; and that therefore the recitals in such findings must be ignored. If it be proved that the statutes of Idaho do not authorize findings of fact, it is none the less true that such findings are declarations by the court of the matter it determines. Even if not conclusive as against all testimony, they are certainly persuasive evidence of what the court did in fact decide." *Last Chance Mining Co.* v. *Tyler Mining Co.*, 157 U. S. 683, 690 (1895).

"These findings were pertinent to the issues, and upon them the Court pronounced its decree. Under a familiar rule the facts thus determined are not open to dispute in a subsequent suit between the same States." *Wyoming* v. *Colorado*, 286 U. S. 494, 507 (1932).

[20] Recent commentators, however, have recognized that one of the reasons for making findings of fact is that the parties in future litigation may be able, for purposes of estoppel, to know precisely what was decided. Note of the Advisory Committee to Rule 52 of the Amended Federal Rules of Civil Procedure; Nordbye, *Improvements in Statement of Findings of Fact and Conclusions of Law*, 1 F. R. D. 25, 26-27 (1940). *Cf. Minnesota-Honeywell Regulation Co.* v. *Thermoco*, 116 F. (2d) 845 (C. C. A. 2, 1941).

action should have the *benefit* of a decree in a prior Government suit "as to all matters respecting which said judgment or decree would be an estoppel as between the parties thereto." The doctrine of estoppel so expressly incorporated is that parties in a subsequent suit on a different cause of action are concluded by everything that was actually litigated and determined between them in a prior suit.[21] Inadequate findings necessarily create difficulty in applying this doctrine by leaving in doubt exactly what was litigated and decided in the earlier suit.[22] The benefit of the statute is lost where the case is such that any one series of facts will support a judgment, and because of inadequate findings it is not possible to say which series of facts the court relied upon in reaching its decision. The only real solution is to require, in a Government antitrust suit involving proof of more than one series of facts, that the trial court make findings as to each of the issues presented to it so that such findings may be available to establish the Congressionally intended estoppel.[23] Unless the plaintiff in the subsequent action can show the court that the litigation between the defendant and the United States established both the fact of violation and the impact of this violation on the plaintiff, the sanction of section 5 becomes lip-service doctrine—useless to the injured person—and the Congressional mandate is annulled by default.

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[21] *Cromwell* v. *County of Sac.*, 94 U. S. 351 (1877); Scott, *Collateral Estoppel by Judgment* (1942) 56 Harv. L. Rev. 1.

[22] "* * * It must appear, either upon the face of the record or be shown by extrinsic evidence, that the precise question was raised and determined in the former suit. If there be any uncertainty on this head in the record—as, example: if it appear that several distinct matters may have been litigated, upon one or more of which the judgment may have passed, without indicating which of them was thus litigated and upon which the judgment was rendered—the whole subject matter of the action will be at large, and open to a new contention, unless this uncertainty be removed by extrinsic evidence showing the precise point involved and determined." *Russell* v. *Place*, 94 U. S. 606, 608 (1877).

[23] Where judgment is given for a party on alternative grounds, either of which is sufficient to support the judgment, the judgment is conclusive as to both grounds. *Railroad Companies* v. *Schutte*, 103 U. S. 118, 143 (1881); Restatement, Judgments (1942) 307; Scott, *Collateral Estoppel by Judgment* (1942) 56 Harv. L. Rev. 1, 11-12.

These views are submitted in an *amici curiae* brief as the only presently available method of bringing this vital and practical issue before the Court in this typical case. Prior to the time that the District Court made its findings of fact, the *amici curiae* could not know that the court would only select examples [24] to establish liability and would not make sufficiently detailed findings. Therefore, we had no reason to ask for intervention. Indeed the statutes do not demand as a price of protection, the rigid requirement of specialized legal talent to observe each step of the Government suit under penalty of loss of the benefits of section 5 due to objective inadequacy of the District Court's action. Nor was it feasible for the *amici curiae* to intervene after the findings had been made in order to make the appropriate motion to amend under Rule 52(b) of the Federal Rules of Civil Procedure. The ten days provided by Rule 52(b) of the Federal Rules for motions to amend the findings were hardly sufficient time to permit the *amici curiae*, who were not familiar with all the evidence, to detail the findings which they wished and to submit an appropriate motion to the District Court. Moreover, the District Court's power to grant intervention is wholly discretionary,[25] and the permissive intervention theoretically possible in a Government suit again burdens a clear right with seemingly needless and premature legal action by private persons, whose injuries have moved the Government to sue. As was indicated in *Allen Calculators* v. *National Cash Register Co.*, 322 U. S. 137, 141-42 (1944), intervention in the District Court by a private party in a Government suit under the antitrust laws may unduly delay and prejudice the adjudication of the rights of the original parties. *A fortiori*, the

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[24] See, *e.g.*, amended findings numbers 9 at R. 3215-16, 10 at R. 3217, 17 at R. 3220-22, 18 at R. 3222, 19 at R. 3222, and especially 27 at R. 3224-25.

[25] See Rule 42(a) of the Federal Rules of Civil Procedure; *Allen Calculators* v. *National Cash Register Co.*, 322 U. S. 137 (1944); *United States* v. *California Canneries*, 279 U. S. 553 (1929).

amici curiae should not be obliged to intervene at the appellate stage of such a case.[26]

The *amici curiae* have presented their views in this form in order not to delay or confuse the litigation by unnecessary and possibly ineffective motions for permissive intervention. We ask only for vindication of our rights and the aid of the Court in making section 5 of the Clayton Act a substantial and effective means of enforcing the antitrust laws. Indeed this Court, for another reason, has admonished the District Court to make full findings of fact in equity antitrust actions brought by the United States. *Interstate Circuit* v. *United States*, 304 U. S. 55, 56-57 (1938).[27]

The establishment of a standard for findings in these cases would be a salutory and much-needed guide from this Court.

Respectfully submitted,

MILTON POLLACK,
Attorney for

Lawrence J. Carkey,
Irving Cohen,
Richard De Toto,
Charles V. Martina,
William C. Smalley,
William Tischkoff,
Hubert P. Wallace,
and their corporate affiliates,
Amici Curiae.

MILTON POLLACK,
GERALD SAPERSTEIN,
Of Counsel.

December, 1947

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[26] Such intervention will be permitted only under the most extraordinary conditions. See *United States* v. *St. Louis Terminal*, 236 U. S. 194 (1915).

[27] "A discussion of portions of the evidence and the court's reasoning in its opinion do not constitute the special and formal findings by which it is the duty of the courts appropriately and specifically to determine all the issues which the case presents. This is an essential aid to the appellate court in reviewing an equity case * * * and compliance with the rule is particularly important in an anti-trust case which comes to this Court by direct appeal from the trial court."

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1946

No. 572 10

SCHINE CHAIN THEATRES, INC., *et al.*,

Appellants,

vs.

THE UNITED STATES OF AMERICA.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NEW YORK.

PETITION FOR REHEARING AND MOTION FOR LEAVE TO FILE NEW STATEMENT AS TO JURISDICTION UNDER RULE 12 OF THE RULES OF THE COURT.

WILLARD S. McKAY,
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HAROLD R. MEDINA,
ARTHUR GARFIELD HAYS,
OSMOND K. FRAENKEL,
RICHARD T. DAVIS,
Of Counsel.

Supreme Court of the United States

OCTOBER TERM, 1946

No. 572

SCHINE CHAIN THEATRES, INC., *et al.*,
Appellants,

vs.

THE UNITED STATES OF AMERICA.

PETITION FOR REHEARING AND MOTION FOR LEAVE TO FILE NEW STATEMENT AS TO JURISDICTION UNDER RULE 12 OF THE RULES OF THE COURT.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

The appellants herein respectfully petition the Court to grant a rehearing in this cause and move for leave to file a new statement as to jurisdiction under Rule 12 of the Rules of the Court.

Appellants further respectfully pray that on rehearing this Court vacate its order of December 16, 1946, dismissing this appeal for failure to comply with Rule 12 of the Rules of this Court, and reinstate the appeal on the docket and calendar of the Court for plenary hearing on the merits.

This appeal was taken, as of right, under Section 2 of the Expediting Act of February 11, 1903, as amended (32

Stat. 823; 36 Stat. 1167; 58 Stat. 272; 15 U. S. C. § 29), and Section 238 of the Judicial Code, as amended by the Act of February 13, 1925 (43 Stat. 938, 28 U. S. C. § 345), from a final decree of the United States District Court for the Western District of New York in this proceeding in equity brought under Sections 1 and 2 of the Sherman Act (15 U. S. C. §§ 1, 2), wherein the United States is the complainant. The appeal was allowed by the District Court by order dated August 26, 1946, and no statement opposing jurisdiction, or motion to dismiss or affirm, was filed by the appellee.

On December 16, 1946, this Court entered an order herein dismissing this appeal "for failure to comply with Rule 12 of the Rules of this Court."

It is believed that the refusal of this Court to rule on the merits of the appeal, or to provide for plenary hearing on the same, resulted from the filing of what the Court considered to be an inadequate statement as to jurisdiction under Rule 12, particularly as regards the statement of the issues involved in the case and the substantial questions presented thereby.

Accordingly, appellants ask leave to file, and do present to the Court herewith, a new statement as to jurisdiction under Rule 12 which it is believed remedies any defect in the statement previously filed.

The gravity of appellants' situation is obvious. The decree entered by the District Court herein is drastic and ruinous to appellants' business. It requires the sale by a trustee of 40 or more of appellants' theatre properties; and, as to the theatres they are allowed to retain, severely limits and restricts the manner in which they may be operated. As set forth in the statement of jurisdiction submitted herewith, the propriety of finding appellant to have violated the

Sherman Act and of granting the extraordinary and drastic relief here ordered, raises many and most serious questions.

Appellants respectfully urge that they are entitled to an appeal in which these questions, now believed properly to be brought to the attention of this Court, will be disposed of on their merits. Appellants respectfully urge, further, that the questions involved are clearly of such a character as to warrant plenary hearing by the Court.

Appellants have not had their case considered on its merit on appeal, and cannot obtain such consideration, unless the Court reconsiders its order dismissing this appeal. The present appeal stands dismissed. Appellants cannot now take a new appeal since the statute governing appeals in this proceeding (15 U. S. C. § 29) provides that appeals must be taken within sixty days of the entry of the decree appealed from, and such period had expired when this Court entered its order dismissing this appeal.

Appellants accordingly respectfully petition the Court to grant a rehearing, and, on considering the new statement as to jurisdiction submitted herewith, to reinstate this appeal on the docket and calendar of the Court so that plenary hearing may be had on the issues raised thereby.

Respectfully submitted,

WILLARD S. McKAY,
Counsel for Appellants.

January 7, 1947.

Harold R. Medina,
Arthur Garfield Hays,
Osmond K. Fraenkel,
Richard T. Davis,
Of Counsel.

CERTIFICATE OF COUNSEL

I do hereby certify that this petition is presented in good faith and not for delay.

WILLARD S. McKAY,
Counsel for Appellants.

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No. 10

In the Supreme Court of the United States

OCTOBER TERM, 1947

SCHINE CHAIN THEATRES, INC., ET AL., APPELLANTS

v.

THE UNITED STATES OF AMERICA

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NEW YORK

PETITION OF THE UNITED STATES FOR CLARIFICATION

In the Court of Claims of the United States

OCTOBER TERM, 1947

No. 10

SCHINE CHAIN THEATRES, INC., ET AL., APPELLANTS

v.

THE UNITED STATES OF AMERICA

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NEW YORK

PETITION OF THE UNITED STATES FOR CLARIFICATION

The purpose of this petition is to call attention to a matter presented to this Court for decision which was apparently not dealt with in its opinion.

The opinion set aside the divestiture provisions of the decree "so that the district court can make the findings necessary for an appropriate decree" and deferred consideration of the district court's decision to appoint a trustee to sell theatres "as that merely implements the divestiture provisions which must be reconsidered by the District Court" (slip opinion, pp. 17, 18). We believe that this language is inconclusive with respect to the action taken by the district court with reference to theatres still unsold under the consent order of May 19, 1942. The facts relevant to this matter are recited at pages 6 through 12 of the appellee's brief. Briefly summarized, they are as follows: Between the filing of this suit on August 7, 1939, and May 19, 1942, when the case was called for trial, the appellants acquired sixteen theatre interests in thirteen towns (R. 257-258). In the temporary order of May 19, 1942 (R. 255-263), the appellants agreed, as a condition of securing a two-year continuance of the trial date (R. 255), within one year to "dispose of all their interests in" theatres acquired since the suit was filed (R. 257).

In July, 1943, the appellants reported the sale of six of the sixteen theatre interests and asked that they be relieved of the obligation to sell the other ten (R. 274-316). After further proceedings (R. 318-337), the district court refused to relieve the appellants of this obligation although it modified the terms on which the sales were to be made and granted the appellants a six months' extension from May 15, 1944, within which to make the sales (R. 423). The district court stated (*id*):

> It is to be impressed upon Schine that it is the present intent of the Court to see that the order aforesaid directing the sale of these theatres be enforced and that this extra time is given as a leeway, if it chooses to make the sales rather than have them made through the agency of a trustee (R. 423).

The appellants accepted these terms, set out in an order of May 31, 1944 (R. 425-426), which recited that if no acceptance were filed, a trustee to make the sales would be appointed without further notice (R. 427). Subsequently, four of the ten remaining theatre interests were sold, and the sales were approved on October 16, 1944. Since the court had previously stayed its divestiture order with respect to one theatre (R. 427), there remained five theatre interests which the appellants were required to sell but which they had not yet sold on November 16, 1945 (R. 2988-2989).

No further proceedings under the divestiture provisions of the 1942 consent order were had until after the district court decided the main litigation on October 8, 1945 (R. 3066). The final order of the district court (R. 3466) directed the divestiture of the theatre interests remaining unsold under the consent order of May 19, 1942; this direction to be carried out by a trustee within six months (R. 3467).[1]

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[1] Appellee's plan of divestiture included all of the six remaining unsold interests. (R. 3290). The court omitted the Memorial Theatre at Mt. Vernon, Ohio, from its divestiture order because the appellants' objections recited that their lease had expired (R. 3285).

These facts show that the district court's decision to appoint a trustee to sell these theatres (R. 3466) was rested upon the court's construction, in May 1944 (R. 425-427), of the consent order (R. 256-263), and upon consideration of the defendants' subsequent failure to make such sales. The propriety of that decision was challenged here by the appellants upon the ground that the consent order only required appellants to offer the theatres for sale until November 15, 1944 (Main Brief, pp. 16, 168; Reply Brief, p. 25), and that they had attempted in good faith to comply with that order (Main Brief, pp. 64-65).[2]

The opinion does not appear to consider these questions. Since they do not depend upon the making of the kind of findings which the opinion states are required for a final divestiture judgment, the further proceedings ordered by this Court will not resolve these questions.

We submit that these questions should now be resolved by this Court because such action is essential to enforcement of the consent order pending the entry of a final judgment of divestiture. The appellee believes that enforcement of the consent

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The Plaza Theatre at Malone, New York, was not included in Section I-E (R. 3466) of the order because Malone was included in the options specified in Section I-A (R. 3465).

[2] The appellants also point out that the 1944 order modified the provisions of the 1942 order so that higher prices than those specified in the order could be realized by Schine (Reply Brief, p. 25). This has no relevance to the argument against the decision to appoint a trustee since that trustee was empowered only to make sales subject to court approval as to price and all other terms after full opportunity for hearing appellants' objections (R. 3466-3467).

order should not await the entry of a final judgment as the further proceedings which must precede a final judgment are of uncertain duration. The appellants agreed six years ago to do what the district court was finally constrained to appoint a trustee to do. That agreement was made in consideration of a two-year continuance and its enforcement should no longer be delayed.

If this Court believes that the trial court correctly decided that a trustee for sale should be appointed to enforce the consent order, appellee should have the right to move forthwith for the entry of an order appointing a trustee for this purpose. If the Court believes that such decision was incorrect, it is important that this Court specify the error involved, as a guide to what further action the district court may take to enforce the consent order.

We respectfully request that the opinion be clarified so as to dispose of the questions raised as to the appointment of a trustee to enforce the consent order.

Respectfully submitted,

PHILIP B. PERLMAN,
Solicitor General.

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CHARLES ELMO

IN THE

Supreme Court of the United States

OCTOBER TERM, 1947

No. 10

SCHINE CHAIN THEATRES, INC., *et al.*,
Appellants,

vs.

THE UNITED STATES OF AMERICA.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NEW YORK.

ANSWER TO PETITION OF THE UNITED STATES FOR CLARIFICATION

WILLARD S. MCKAY,
Attorney for Appellants.

BRUCE BROMLEY,
ALFRED MCCORMACK,
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The purpose of the Government's petition for "clarification" is patently not clarification of any ambiguity in the opinion of the Court, but an obvious attempt to persuade the Court to reverse itself as to the determination which it made with respect to Section I E of the order of divestiture of the District Court. The decision of this Court was that the divestiture provisions of the order of the District Court were set aside. The "divestiture provisions" are set forth under Section I of the order of the District Court, which is entitled "Theatre Interests to be Divested". These provisions included a direction for the sale of three theatres and a one-half interest in another theatre remaining unsold under the consent order of May 19, 1942. All of the divestiture provisions in the decree of the District Court were set aside, and this Court's opinion recognizes that this included Section I E.* That is clearly indicated by footnote 14 on page 14 of the slip opinion, which reads:

> "It [the order of divestiture] also requires Schine to sell specific theatres remaining unsold under the consent decree of May 19, 1942."

Further proof that the Court had Section I E clearly in mind when referring to "divestiture provisions" of the order is found in the following statement in the opinion (page 14):

> "The towns affected are over 40 out of the 70-odd in which Schine is operating."

Immediately preceding that statement, the opinion recites that the plan of divestiture adopted by the District Court required the appellants to sell their interest in all but one theatre in each of 33 towns, all but two theatres in each of four larger towns, and two of the four theatres in Rochester—a total of 38 towns. In order that the "towns affected" should total "over 40", it was necessary to include the I E towns among them.

The Government apparently argues that because this Court considered the consent order of so little importance that it did not mention it in its opinion except by way of three footnote references (8, 14 and 15), it was guilty of an oversight, in spite of the clear evidence to the contrary in the language above quoted. As a matter of fact, even the District Court did not mention the consent order in any of its opinions, in any of the findings or conclusions, or in either of the judgments, except that in the course of describing the theatres to be divested it adopted the classification and designation used by the Government in its "plan of reorganization" (R. 3239). If the District Court had intended to decide as appellee contends (p. 5) that

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*It cannot be argued that since the Court affirmed the dissolution of pooling agreements it was approving any part of the divestiture ordered by the District Court, since this provision of the decree did not require divestiture of any theatres owned by the defendants. The provision expressly provided for the return to the defendants of the theatres that they had owned at the time the pooling arrangements were entered into. Actually, paragraph D should not have been included under Section I of the decree, but should have been treated as a separate section, just as this Court did in its opinion.

> "* * * a trustee for sale should be appointed to enforce the consent order"

such a direction would necessarily have appeared in the original judgment and the amended judgment of March 29, 1946, and the reasons therefor would necessarily have appeared in the findings and opinion. The District Court made no such ruling and the Government never requested it either in its request for findings or in its motion to amend the findings. Instead, in the original judgment and in the amended judgment (R. 3108, 3229) the District Court included a prohibition against sales of theatres by the defendants which would have rendered impossible any attempt by them to continue their efforts to sell the "consent order" theatres even if that order had still been in force.

The Government's contention, appearing on page 3 of the petition, that the District Court had decided to appoint a trustee *for sale to enforce the consent order* is based upon a serious distortion of the language of the order of the District Court dated May 31, 1944, (R. 425-26), which we assume was not deliberate. Appellee there states that the order

> "recited that if no acceptance* were filed, a trustee to *make the sales* would be appointed without further notice." (emphasis supplied).

What the order actually said was:

> "* * * if the exhibitor defendants, within fifteen days from the date of the entry of this order do not notify the Court in writing that they will accept this extension of time for the purpose of disposing of said theatres within that time, then, without further notice, the Court shall name a trustee *who shall make a survey* of the undisposed theatre properties and *shall advise the Court* as to what action should be taken with regard to said theatres." (emphasis supplied).

The order then goes on to indicate that all that the Court required of the defendants was that they should make all reasonable efforts to comply with the provisions of the consent order. In line with this the Court gave the Government the right to renew its motion for the appointment of a trustee upon a showing that such reasonable efforts had not been made. The Government never made any such motion and at no time presented any evidence that the defendants had failed to comply with the consent order, even after November 16, 1944, when the defendants handed to the trial justice a report (R. 2988-89) showing the completion of the sale of four theatres as approved by the Court by order dated October 16, 1944 (R. 2987-88), and containing the following statement:

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*The consent order was about to expire by its terms and the order provided for an extension for a period of six months which, since the order was a consent order, would be ineffective unless consented to by the defendants.

"With respect to the remaining five (5) Theatres, covered by said Temporary Consent Order, to wit:

1. Opera House, Lexington, Ky. (Leasehold).
2. Plaza Theatre, Malone, N. Y. (Leasehold).
3. Ada Meade Theatre, Lexington, Ky. (Leasehold).
4. Memorial Theatre, Lexington, Ky. (Leasehold).*
5. One-half Interest in Corporation holding lease of Margie Grand Theatre, Harlan, Ky.

the undersigned report that notwithstanding repeated efforts to dispose of said five (5) Theatres, they have not been able to dispose of said Theatres."**

This report has never been questioned by the trial court, nor challenged by the Government except by the wholly unsupported charges contained in the memorandum accompanying plaintiff's plan of reorganization (R. 3238) and in briefs filed by the Government in this Court.

The District Court did not make and could not have made any finding to the effect that the defendants had failed to comply with the consent order. Accordingly, at the time that the District Court signed the final decree in this case, some eighteen months after the consent order as extended had expired by its terms, the unsold theatres mentioned in the consent order necessarily should have been dealt with by the Court upon exactly the same basis as the other theatres owned by the defendants; and the Court had no power to treat those theatres any differently from any of the other theatres owned by the defendants.

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*This is error. The Memorial Theatre is in Mt. Vernon, Ohio.

**The record indicates (R. 2988) that this report was filed November 16, 1945, but the fact is that it was delivered personally to Judge Knight on November 16, 1944, the day after the expiration of the six months extension and apparently retained by him until some later date when it was delivered to the Clerk.

The language of the opinion which the Government contends to be ambiguous or inconclusive in so far as it affects I E of the divestiture order includes the following wholly unambiguous statements:

> "Nor do the findings reflect an inquiry to determine what theatres had been acquired by Schine through methods which violate the Act. So far as the findings reveal, the theatres which are ordered divested may be properties which in whole or in part were lawfully acquired; and theatres which Schine is permitted to retain may, so far as the findings reveal, be ones which it obtained as the result of tactics violating the Act." (Pamphlet Opinion p. 15)
>
> "Divestiture or dissolution must take account of the present and future conditions in the particular industry as well as past violations." (Pamphlet Opinion p. 16)
>
> "We accordingly set aside the divestiture provisions of the decree so that the District Court can make the findings necessary for an appropriate decree." (Pamphlet Opinion p. 17)

What the Government means when it says that making the kind of findings which the opinion states are required for a final divestiture judgment will not resolve its contentions regarding the consent order is that it is aware of the fact that neither upon the evidence already in the record, nor upon any evidence which the Government might present in future proceedings, could the District Court make any findings which would warrant divestiture of these particular theatres under the rules laid down by the opinion. Without attempting to review the entire record with respect to these particular theatres, we direct the attention of the Court to the fact that in the order of May 31, 1944 which is the very order upon which the Government relies as constituting a holding by the District Court that these theatres should be sold in any event, the Court authorized the defendants to acquire an additional theatre in the City of Cumberland, on the ground that it would not be against the public interest (R. 421, 425), and stayed the provisions of the consent order in so far as they related to the Strand Theatre, Cumberland, until the further order of the Court (R. 427). In the face of this stay, how is it possible for the Government to argue that the defendants were violating the consent order when they failed to dispose of the Strand Theatre, and how is it possible for the Government to argue that the retention of the Strand Theatre by the defendants is against the public interest when the District Court after a full hearing had authorized the defendants to acquire an additional theatre in the same town?

The divestiture of theatres specified in the consent order of May 19, 1942, was one of the most extensively and thoroughly briefed subject-matters in the entire appeal. It is discussed at pages 12 and 13, 47, 48 and 64 through 69 of the appellant's first brief; at pages 6 through 12, 32, 35, 39, 63 and 64 of the Government's brief in answer; and at pages 24 through 26, 31 and 32 of the appellants' reply. The Government contended that the appellants had unqualifiedly agreed to sell all the theatres specified in the order, and that their failure to do so constituted an "unfulfilled obligation" and was the result of "reluctant and unsuccessful efforts" which "made it necessary * * * to appoint a trustee in any event to divest the appellants of those theatres * * * which they had agreed to sell by May 19, 1943 * * *" (Br. p. 64). The appellants answered that their agreement and the order based thereon (which had then expired)* had required them to offer to sell "for the same purchase price [which they had paid] and upon fair and reasonable terms" (R. 259), and pointed out that they had disposed of 11 of the 16 theatres named therein and that no one had been willing to pay that price for the others (Br., p. 64 *et seq.*). The opinion does not refer to the Government's contentions concerning the consent order, or suggest that sale of the remaining five theatres might be directed upon any ground other than for violation of the antitrust laws, under the principles which the opinion states, but the fact that this was no oversight is clearly shown by the references to the consent order mentioned above.

There is no ground to assume that the District Court would have directed the sale of these theatres except as a part of the general scheme of relief upon which the entire decree rested, and which this Court has held to be without support in the findings and erroneously grounded in law. The May 19, 1942 consent order provides explicitly that the appellants would offer such theatres for sale "for the same purchase price" which they had paid for them (R. 259), and further, that if all of them had not been sold within a year the District Court might, by order, extend the time for sale or make other appropriate provision,

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*The provision therein, requiring the appellants to offer their theatre interests for sale was ultimately extended until November 15, 1944 (R. 426). It was not renewed thereafter.

> "but no order shall be made which will require the consenting defendants to dispose of any theatre interest at less than the capital investment therein as set forth in said Schedules A and B." (R. 260)

Since the order had been entered, without the submission of any proof, solely upon the consent of the appellants (R. 267) and had been agreed to by the Government (R. 265), the District Court could not have altered its terms prior to entry of the final decree and could not, in such decree, have directed sale upon different terms except either upon proof of violation of the Sherman Act of the character described in this Court's opinion relating to divestiture or upon proof that the appellants had not performed their agreement in good faith. There has never been a finding, determination or any evidence that the appellants could have sold any of the theatres in question for the price which they paid for them. Thus, divestiture cannot be justified upon the basis of the consent order, either now or later, even if (as is not the fact) such order survived after the entry of a final decree and the close of the period during which, under the agreement of the parties, it was to remain in effect (R. 256, 426). Indeed, as has been pointed out, early in 1944 the Government petitioned for the appointment of a trustee for the very purpose of selling these theatres (R. 318-320), the appellants opposed (R. 320-325), and the application was denied by order entered on May 31, 1944 (R. 425-427), which was the date when the trial commenced. We submit it to be clear, therefore, that divestiture of these theatres cannot be justified by the May 19, 1942 order or the underlying agreement of the appellants.

Under the facts of the present case, the divestiture of the theatre interests specified in Section I E of the District

Court's divestiture order necessarily must be based upon a determination either that the appellants' acquisition or ownership of such interests is unlawful because of violation of the Sherman Act, or that the appellants' retention of such interests is unlawful because contrary to their agreement, which underlies the consent order of May 19, 1942. In either case, such determination of unlawfulness must necessarily rest upon appropriate findings of fact.

This Court has determined that the findings of fact of the District Court do not support the divestiture order in so far, at least, as it rests upon the Sherman Act, and upon that ground has set aside the divestiture provisions of that order in their entirety.

The District Court has made no finding, in any form, that the appellants failed to perform their agreement underlying the consent order, or that their retention of such theatre interests is violative of such agreement. If that Court had made such a finding the evidence would not have supported it. The Government has never attempted to introduce such evidence. Indeed it is doubtful whether the Government even now contends that such theatre interests could ever have been sold upon the terms to which the parties agreed. We believe it to be too clear for argument that the provisions of Section I E of the divestiture order cannot be based upon the prior consent order and that such provisions, like the other divestiture provisions therein contained, were necessarily vacated upon the grounds stated in the opinion of this Court.

If the question of appointment of a trustee be regarded independently of the question of divestiture, it is clear that no right to such appointment can be based upon the May 19, 1942 consent order. That order did not provide for the appointment of a trustee under any circumstances. The appellants did not consent to any such relief, and would not have done so. Such an appointment cannot be squared with the specific stipulation therein that "no order shall be made which will require the consenting defendants to dispose of any theatre interest at less than the capital investment therein as set forth in said Schedules A and B" (R. 260). The intent of that stipulation is clear—that the appellants shall not be required to dispose of the described theatre interests at a loss to them. It will hardly be contended, under the circumstances shown by this record, that a sale by a trustee will produce for the appellants a sum sufficient to meet this requirement of the order, and of their agreement which expressly provided (R. 259) for "the payment by the *purchaser* of a reasonable commission when the services of a broker are necessary to consummate the sale." (Emphasis supplied). Certainly a sale all expenses of which, including the expense of real estate, brokers, accountants and legal counsel employed by the trustee (R. 3466), and the fees of the trustee himself, would be chargeable against the defendant-sellers, which sale is directed to be made "as rapidly as possible * * * to the end that the theatres disposed of may operate in competition with theatres retained by the defendants", and that the proceeds of sales "shall be deposited by him [the trustee] in a special account created for this purpose and disbursed only upon further orders of this court", as now provided in the divestiture order (R. 3466-67), will not do so.

The conclusion necessarily follows that the sale or other divestiture of the theatres named in the order is controlled by precisely the same principles and considerations which apply to the appellants' other theatres; that no ground has been advanced for placing them in a category in any respect different from such other theatres; that, in their case also, the appointment of a trustee "merely implements the divestiture provisions which must be reconsidered by the District Court"; that this Court's failure to differentiate such theatres was not "inconclusive"; and that the appointment of a trustee is inappropriate and unjustifiable on any ground.

It is respectfully submitted that the petition should be denied.

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P. 11

SUPREME COURT OF THE UNITED STATES

No. 10.—October Term, 1947.

Schine Chain Theatres, Inc., et al., Appellants, v. The United States of America. | Appeal from the District Court of the United States for the Western District of New York.

[May 3, 1948.]

Mr. Justice Douglas delivered the opinion of the Court.

This is a companion case to No. 64, *United States* v. *Griffith, ante,* p. —, and is here by way of appeal from the District Court. The appellants, who were defendants below, are a parent company, three of its officers and directors, and five of its wholly owned subsidiaries—to whom we refer collectively as Schine. As of May 19, 1942, Schine owned or had a financial interest in a chain of approximately 148 motion picture theatres[1] located in 76 towns in 6 states,[2] the greater portion being 78 theatres in 41 towns in New York and 36 theatres in 17 towns in Ohio. Of the 76 towns, 60 were closed towns, *i. e.,* places where Schine had the only theatre or all the theatres in town.[3] This chain was acquired beginning in 1920 and is the largest independent theatre circuit in the country. Since 1931 Schine acquired 118 theatres. Since 1928 the closed towns increased by 56. In 1941 there were only three towns in which Schine's competitors were playing major film products.

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[1] These figures do not include 18 which were closed and had been or were being converted to other uses.

[2] New York (78), Ohio (36), Kentucky (18), Maryland (12), Delaware (2), Virginia (2).

[3] Schine had the only theatre in each of 21 towns, both theatres in 21 towns that had two each, all theatres in 16 towns that had three each, and all theatres in one town that had six theatres and in another that had four theatres.

Of these theatres approximately 87 per cent are located in cities or villages with populations under 25,000 and 60 per cent in cities or villages with populations under 10,000.

The United States sued to prevent and restrain appellants from violating §§ 1 and 2 of the Sherman Act. 26 Stat. 209, 50 Stat. 693, 15 U. S. C. §§ 1, 2. The complaint charged that the Schine interests by pooling their entire circuit buying power in the negotiation of films from the distributors so as to combine its closed and open towns got advantages for itself and imposed restrictions on its competitors which otherwise would not have been possible. It charged that the distributors granted certain favors to Schine which were withheld from Schine's competitors, *e. g.*, giving Schine the first run, refusing at times second runs to Schine's competitors, charging Schine with lower rentals than it charged others, licensing to Schine films in excess of Schine's reasonable requirements.

The complaint also charged that Schine had forced or attempted to force competitors out of business and where competitors would not sell out to Schine had threatened to build or had built an opposition theatre, had threatened to deprive or had deprived competitors of a desirable film or run, had cut admission prices, and had engaged in other unfair practices. In these and other ways it was charged that Schine had used its circuit buying power to maintain its monopoly and to restrain trade. The conspiracy charged was between the Schine defendants themselves and between them and the distributors.

The District Court found that the appellants had conspired with each other and with the eight major film distributors[4] to violate § 1 and § 2 of the Sherman Act. Its findings may be summarized as follows:

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[4] Fox, Loew, Paramount, RKO, Warner, Columbia, Universal, and United Artists.

The entire circuit buying power was utilized to negotiate films for all the theatres from the distributors, the negotiations ending in master agreements between a distributor and the exhibitor. This large buying power[5] gave Schine the "opportunity to exert pressure on the distributors to obtain preferences." Moreover, Schine by combining its closed and open towns in its negotiations for films was able "to dictate terms to the distributors." Schine bought films for some theatres in which it had no financial interest (but as respects most of which it had an option to purchase). It also performed the service (under so-called pooling agreements) for groups of theatres in which it and others were interested. Through the use of such buying power Schine arbitrarily deprived competitors of first- and second-run pictures, was able in many towns to secure unreasonable clearances[6] year after year of from 90 to 180 days, obtained long-term agreements for rental of film (franchises) which gave it preferences not given independent operators,[7] and received more advantageous concessions from the distributors respecting admission prices than competitors were able to get. Schine made threats to build or to open closed theatres in order to force sales of theatres in various towns or to prevent entry by an independent operator. Schine cut admission prices. Schine obtained from competitors whom it bought out agreements not to compete for long terms of years which agreements at times extended to other towns as well. Schine obtained film-rental concessions not made available to independents. The District Court entered a decree enjoining these practices and requiring a divestiture by Schine of various of its theatres. 63 F. Supp. 229.

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[5] In the 1939–1940 season Schine paid $1,647,000 to six distributors in film rental.

[6] By clearance is meant the period of time agreed upon which must elapse between runs of the same feature within a particular area or in specified theatres.

[7] The District Court used "independents" or "independent operators" to mean competitors other than the exhibitor-distributors. Schine, of course, is an independent circuit, as that term is used in the industry.

First. For the reasons stated in *United States* v. *Griffiths, ante,* p. —, the combining of the open and closed towns for the negotiation of films for the circuit was a restraint of trade and the use of monopoly power in violation of § 1 and § 2 of the Act. The concerted action of the parent company, its subsidiaries, and the named officers and directors in that endeavor was a conspiracy which was not immunized by reason of the fact that the members were closely affiliated rather than independent. See *United States* v. *Yellow Cab Co.*, 332 U S. 218, 227; *United States* v. *Crescent Amusement Co*, 323 U. S. 173. The negotiations which Schine had with the distributors resulted in the execution of master agreements between the distributors and exhibitors. This brought the distributors into unlawful combinations with the Schine defendants. See *United States* v. *Paramount Pictures, Inc., post,* p. —. The course of business makes plain that the commerce affected was interstate *United States* v. *Crescent Amusement Co. supra,* pp. 180, 183–184.

Second. Appellants object to admission in evidence of numerous inter-office communications between officials of the distributors with whom Schine dealt. The District Court placed considerable reliance on them in making its findings. We will advert later to the use of these documents to prove the unreasonableness of clearances. It is sufficient at this point to say that since a conspiracy between Schine and each of the named distributors was established by independent evidence, these inter-office letters and memoranda were admissible against all conspirators as declarations of some of the associates so far as they were in furtherance of the unlawful project. *Hitch-*

man Coal & Coke Co. v. *Mitchell,* 245 U. S. 229, 249; *United States* v. *Crescent Amusement Co., supra,* p. 184; *United States* v. *Gypsum Co.,* 333 U. S. —.

Third. Appellants make detailed challenges to many of the other findings of the District Court on which it based its holdings that appellants violated the Act.

(1) They vigorously attack the findings that Schine arbitrarily deprived independents of first- and second-run pictures. Their chief contention is that there is no support for the finding of arbitrary action on the part of Schine, that Schine did not buy pictures beyond its needs in order to keep them away from its competitors, that any successful purchaser of a first- or second-run picture has an exclusive privilege that necessarily deprives competitors of the film for the period of the run, and that any advantage which Schine obtained in this regard was the result of the operation of forces of competition.

As we read the evidence underlying this finding, it was the use of Schine's monopoly power—represented by combining the buying power of the open and closed towns—which enabled it to obtain that which its competitors could not obtain. Deprivation of competitors of first- and second-run pictures in that way was indeed arbitrary in the sense that it was the product of monopoly power, not of competitive forces. That is the construction we give the finding of the District Court; and as so construed it is supported by substantial evidence. There may be exceptions in the case of some subsidiary findings. But we do not stop to relate them. For even if we lay them aside as clearly erroneous for lack of support in the evidence, the conclusion is irresistible that Schine so used its monopoly power to gain advantages and preferences which, on a purely competitive basis, it could not have achieved.

(2) Defense of the long-term film-rental agreements—the franchises—is made on the ground that they were ac-

cepted methods of doing business in the industry,[8] that they were favored by distributors as devices to stabilize their end of the business and to save expense, and that they were not chosen by Schine as instruments to suppress competition. But it seems to us apparent that their use served to intensify the impact of Schine's monopoly power on its competitors. For when Schine's buying power was used to acquire films produced by a distributor for two or three years rather than for one year alone, it plainly strengthened through the exercise of monopoly power such dominant position as Schine had over each of its competitors.

Appellants also challenge the finding that Schine obtained preferences through the franchises, in addition to long-term supplies of pictures, which were not granted independent operators. One of these preferences was found to be the unfair and inequitable clearance provisions; another, special film-rental concessions. We will consider these later. The other aspects of the findings we do not stop to analyze. For the franchise agreements as employed by Schine are unreasonable restraints of trade for the reasons stated; and they must be permanently enjoined, even though we assume their collateral aspects are not accurately described by the District Court and so may not be condemned.

(3) Appellants challenge the finding that Schine made threats to build theatres or to open closed ones in order to force sales of theatres in various towns or to prevent entry by an independent operator. There are inaccuracies in some of the subsidiary findings. There are episodes

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[8] A consent order was entered in the present case on May 19, 1942, which provided, *inter alia*, that appellants would not enter into any agreement licensing films released by any distributor during a period of more than one year and that all agreements in existence having a longer term should be void as to all films released after the thirtieth day following the date of the consent order.

which are susceptible of two interpretations, one wholly innocent and the other unlawful. There are still other episodes which have the unmistakable earmarks of the use of monopoly power with intent to expand an empire and to restrain competition. On the whole we think the District Court was justified in drawing the inference of unlawful purpose from the ambiguous episodes and that those coupled with the others are adequate to support these findings of the District Court.

(4) We reach the same result as respects the agreements not to compete which Schine exacted from competitors whom it bought out. It is not enough that the agreements may be valid under local law. Even an otherwise lawful device may be used as a weapon in restraint of trade or in an effort to monopolize a part of trade or commerce. Agreements not to compete have at times been used for that unlawful purpose. See *United States* v. *American Tobacco Co.*, 221 U. S. 106, 174; *United States* v. *Crescent Amusement Co., supra,* p. 181. If we had here only agreements not to compete, the inferences drawn by the District Court might not be warranted. But in the setting of this record, and against the background of Schine's other monopolistic practices, it seems to us that the District Court might infer that the requisite purpose was present and that these agreements were additional weapons in Schine's arsenal of power through the use of which its monopoly was sought to be extended.

(5) The finding that Schine obtained film-rental concessions not made available to independent operators is not intelligible to us. For the District Court went on to state that "These provisions were also in contracts with independents." How those concessions constitute a restraint of trade is therefore not apparent. We set aside this finding so that it may be clarified on remand of the cause.

(6) There is challenge to the findings that Schine's rental agreements contained minimum admission prices, or minimum admission prices lower than those to be charged by the independent operators for subsequent runs, or relieved Schine of requirements for minimum admission prices though imposing them on its competitors. There is evidence to support the findings that minimum prices were fixed. It is well settled that the fixing of minimum prices like other types of price fixing, is unlawful *per se*. *United States* v. *Socony-Vacuum Oil Co.*, 310 U. S. 150. The findings that Schine was either granted minimum admission prices more favorable than those required of its competitors, or that Schine, unlike its competitors, was relieved of all requirements for minimum prices, are also supported by evidence. It is said that these provisions of the agreements were not adhered to. But since they did exist, it is not for us to speculate as to what force or sanction they may have had.

(7) There is also challenge to the finding that Schine cut admission prices. This seems uncontroverted. But price cutting without more is not a violation of the Sherman Act. It is indeed a competitive practice which this record shows to have been common in the industry. It may be used in violation of the Act. Thus it may be the instrument of monopoly power to eliminate competitors or to bring them to their knees. But since it is not unlawful *per se*, facts and circumstances must be adduced to show that it was in purpose or effect employed as an instrument of monopoly power. Here there is nothing except a bare finding that at times Schine cut admission prices. That finding is not sufficiently discriminating to withstand analysis and is not adequate to support an injunction against price cutting.

(8) The finding as to unreasonable clearances presents rather large issues. We have elaborated the point in *United States* v. *Paramount Pictures, Inc.*, *post*, —, and

need not repeat what is said there. Clearance is an agreement by a distributor not to exhibit a film nor to license others to do so within a given area and for a stated period after the last date of the showing of the film by the licensee with whom the agreement is made.[9] It is, in other words, an agreement by a distributor to license films only for specified successive dates. It is in part designed to protect the value of the license which is granted. While it thus protects the income of the first exhibitor, there is no contention that clearance agreements are *per se* unlawful restraints on competition by reason of the effect they may have on admission prices or otherwise. All the District Court purported to condemn, and all the appellee maintains is unlawful, are "unreasonable clearances." If reasonableness is the test, the factors which bear on it would appear to be numerous.[10] The findings and opinion of the District Court, however, do not greatly

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[9] See note 6, *supra*.

[10] See Bertrand, Evans & Blanchard, The Motion Picture Industry—A Pattern of Control 40–41 (TNEC Monograph No. 43, 1941):

"The establishment of clearance schedules is an intricate procedure. It involves a complex bargaining process and the balance of a variety of opposing economic interests. It may be stated initially that the primary objective of the distributor is, of course, to maximize his total revenue from each picture. This aim gives him a very direct interest in clearance periods. The higher rental fees paid by the prior-run exhibitor are directly conditioned on the extent of the protection which he is granted, and in general the longer the clearance period before subsequent showing, the higher the rental fee the prior-run exhibitor will pay.

"On the other hand, the distributor's revenue from subsequent-run exhibition is also important to him; this income may mean the difference between black or red ink on his ledgers. But the longer the clearance period, the smaller will be these returns—not only because more customers will have attended the prior showing rather than wait for subsequent exhibition, but also because the effects of the advertising and exploitation efforts made when the picture illuminate the problem. What standards or criteria of unreasonableness were applied does not clearly appear. There are, however, in some of the subsidiary findings in this case a few clues as to the basis used by the District Court in classifying clearances as unreasonable. Thus it said that Schine got some clearances "over towns in which Schine did not operate." But that is irrelevant to the problem of reasonableness of clearances, since by definition clearances run to both theatres and towns not owned by him who has the clearance.

The District Court also found that clearances "were given over towns over which there had been no previous clearance." But that without more would not make a clearance "unreasonable." The District Court found that Schine got clearances over "some towns distant from 10 to upwards of 20 miles" and that clearances were also obtained over "outside towns of comparably small population, distant so far that no clearance is justified." If the basis for these findings is that the towns were in different competitive areas, it would come closest to revealing the standard used by the District Court in determining whether the clearances were or were not reasonable, unless possibly it be the finding that in a few instances Schine got clearances over towns where there were no theatres.

The District Court cites instances of clearances which in its view were illegal because unreasonable as to time.

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was released will have been vitiated over this time. In general, the greater the total box-office return earned by a film in all showings, the greater will be the distributor's revenue.

. . . .

"The relation between run, clearance and zoning, admission price, seating capacity, and rental fees is indeed a complex one. The range covered by these factors is indicated by this fact: a license fee amounting to many thousands of dollars may be paid for the first showing of a film in a large metropolitan theater, and within a year the same film may be exhibited in some small theater in the same city for a fee of less than $20."

But some of these turn out to be situations where clearances were granted over towns where Schine had the only theatre in town. So perhaps the District Court used as a basis for some of its findings of unreasonable clearances the absence of any competition between the theatres in question. But as to that we can only guess in each case and then wonder whether our guess was correct, because appellee suggests that one vice of Schine's clearances was that they ran not to specified theatres but to specified towns. We are, however, left somewhat in the dark whether the District Court followed that theory or made the reasonableness of clearances turn on whether or not the theatres affected were in different competitive areas.

Appellee also suggests that proof of the unreasonableness of Schine's clearances is that their periods were almost uniformly the same even though there were wide variations in the condition and size of theatres and of the type of pictures played in the various theatres. But we are given no clue in the findings whether that was the view of the District Court. On its face it seems more like an attempt of the appellee to show what findings could have been made on the basis of the record had some discrimination been made in appraising the evidence.

Appellee seems to argue that standards of reasonableness can be dispensed with by reason of statements in the inter-office memoranda of the distributors that many of Schine's clearances were "unreasonable." On the matter of clearances, however, the interests of distributors and exhibitors are not necessarily identical. For the self-interest of exhibitors which would call for long clearances would militate against the best interests of distributors.[11] So it is not clear that these declarations can properly be said to fall within the scope of the unlawful project which the two groups were sponsoring. Cf. *Pinkerton* v. *United States,* 328 U. S. 640, 647–648. But however that may be, these statements do not advance us very far with the problem because they too fail to give specific content to the concept of unreasonable as applied to clearances.

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[11] See note 10, *supra*.

As a last resort appellee seeks to sustain these findings on the ground that Schine got at least some of its clearances by refusing to make any deal for the circuit unless its terms were met. But any clearance so obtained, though otherwise reasonable, would be unlawful, for it would be the product of the exercise of monopoly power. It is evident, however, that that was not the theory adopted by the District Court for it did not look to see what clearances had been obtained in that manner.

The short of the matter is that since we do not know for certain what the findings of the District Court on clearances mean, they must be set aside. In doing so we of course do not intimate here, any more than we do in case of the other findings we have set aside in the case, that the record would not sustain findings adverse to Schine. We only hold that before we can pass on the questions tendered, findings on clearances must be made which reflect an appraisal of the complex of factors bearing on this question of reasonableness. That is a function of the District Court.

Fourth. The decree entered by the District Court enjoins appellants from specified acts or practices.[12] To the

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[12] This part of the decree provides:

"Each of the defendants is hereby enjoined and restrained:

"1. From monopolizing the supply of major first run films in any situation where there is a competing theatre suitable for first run exhibition thereof and from monopolizing the supply of second run film in any situation where there is a suitable theatre for second run exhibition thereof.

"2. From demanding or receiving clearance over theatres operated by others which unreasonably restricts their ability to compete with extent that these provisions are directed to practices reflected in findings which we set aside, they must be re-examined by the District Court on remand of the case.

Appellants object to the generality of the injunction against "monopolizing" first- and second-run films.[13] The statutory requirement is that these injunctions "shall be specific in terms, and shall describe in reasonable detail, and not by reference to the bill of complaint or other document, the act or acts sought to be restrained." 38 Stat. 738, 28 U. S. C. § 383. And see Fed. R. Civ. P., 65 (d). We need not determine whether the provision in question if read, as it must be, in light of the other paragraphs of the decree (*Swift & Co.* v. *United States*, 274 U. S. 311, 328) would pass muster. For we think the public interest requires that a more specific decree be entered on this phase of the case. The precise prac-

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a theatre owned or operated by a defendant corporation controlled by it and from attempting to control the admission prices charged by others by agreement with distributors, demands made upon distributors, or by any means whatsoever.

"3. From conditioning the licensing of films in any competitive situation outside of Buffalo, New York, upon the licensing of films in any other situation and from entering into any film franchise.

"5. From enforcing any existing agreements heretofore entered into (1) not to compete or (2) to restrict the use of any real estate to non-theatrical purposes.

"6. From using any threats or deception as a means whereby a competitor is induced to sell.

"7. From continuing any contract, conspiracy or combination with each other or with any other person which has the purpose or effect of maintaining the exhibition or theatre monopolies of the defendants or of preventing any other theatre or exhibitor from competing with the defendants or any of them, and from entering into any similar contract, conspiracy, or combination for the purpose or with the effect of restraining or monopolizing trade and commerce between the States."

[13] See note 12, *supra*, paragraph 1.

tices found to have violated the act should be specifically enjoined.

We have considered the objections to the other parts of the injunction (apart from provisions as to divestiture which we discuss later) and find them without merit.

Fifth. The District Court included in its decree a divestiture provision adjudging that appellant companies be "dissolved, realigned, or reorganized in their ownership and control so that fair competition between them and other theatres may be restored and thereafter maintained." The parties subsequently submitted various plans and after hearings the one submitted by the Department of Justice was approved with modifications. The plan does not provide for the dissolution of the Schine circuit through the separation of the several affiliated corporations as was done in *United States* v. *Crescent Amusement Co., supra,* pp. 188–189. It keeps the circuit intact in that sense but requires Schine to sell certain theatres. The plan requires Schine to sell its interest in all but one theatre of its selection in each of 33 towns, all but two in each of four larger towns, and two of four theatres in Rochester, New York.[14] Schine is to be divested of more than 50 of its theatres. The towns affected are over 40 out of the 70-odd in which Schine is operating.[15] The one-theatre towns of Schine are unaffected.

The decree also dissolves the pooling agreements. A trustee is appointed to make the sales which are ordered. Schine is prohibited from acquiring any financial interest in additional theatres "except after an affirmative showing that such acquisition will not unreasonably restrain competition." Schine is ordered not to buy or book films for any theatre other than those in which it owns a financial interest. The District Court concluded that this program of divestiture was necessary in order to restore "free enterprise and open competition amongst all branches of the motion picture industry."

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[14] It also requires Schine to sell specific theatres remaining unsold under the consent decree of May 19, 1942.

[15] Schine had withdrawn from five towns pursuant to the consent order of May 19, 1942.

As we have noted, the District Court did not follow the procedure of *United States* v. *Crescent Amusement Co.*, *supra*, and order the dissolution of the combination of the affiliated corporations. Schine presented such a plan and it was rejected. That plan contemplated the division of the Schine theatres among three separate corporations, with members of the Schine family owning each corporation. The District Court rejected that plan because it did not furnish such separation of ownership as would assure discontinuance of the practices which had constituted violations of the Act. The District Court did not pursue further the prospect of dismemberment of the Schine circuit through separation of the theatres into geographical groupings under separate and unaffiliated ownerships. Nor do the findings reflect an inquiry to determine what theatres had been acquired by Schine through methods which violate the Act. So far as the findings reveal, the theatres which are ordered divested may be properties which in whole or in part were lawfully acquired; and theatres which Schine is permitted to retain may, so far as the findings reveal, be ones which it obtained as the result of tactics violating the Act.

In this type of case we start from the premise that an injunction against future violations is not adequate to protect the public interest. If all that was done was to forbid a repetition of the illegal conduct, those who had unlawfully built their empires could preserve them intact. They could retain the full dividends of their monopolistic practices and profit from the unlawful restraints of trade which they had inflicted on competitors. Such a course would make enforcement of the Act a futile thing unless perchance the United States moved in at the incipient stages of the unlawful project. For these reasons divestiture or dissolution is an essential feature of these decrees. See *United States* v. *Crescent Amusement Co., supra,* p. 189, and cases cited.

To require divestiture of theatres unlawfully acquired is not to add to the penalties that Congress has provided in the antitrust laws. Like restitution it merely deprives a defendant of the gains from his wrongful conduct. It is an equitable remedy designed in the public interest to undo what could have been prevented had the defendants not outdistanced the government in their unlawful project. Nor is *United States* v. *National Lead Co.,* 332 U. S. 319, 351–353, opposed to this view. For in that case there was no showing that the plants sought to be divested were either unlawfully acquired or used in a manner violative of the antitrust laws.

Divestiture or dissolution must take account of the present and future conditions in the particular industry as well as past violations. It serves several functions: (1) It puts an end to the combination or conspiracy when that is itself the violation. (2) It deprives the antitrust defendants of the benefits of their conspiracy. (3) It is designed to break up or render impotent the monopoly power which violates the Act. See *United States* v. *Crescent Amusement Co., supra,* pp. 188–190; *United States* v. *Griffith, ante,* p. —.

The last two phases of this problem are the ones presented in this case. But the District Court purported to deal with only one of them. It did not determine what dividends Schine had obtained from the conspiracy. In *United States* v. *Crescent Amusement Co., supra,* pp. 181, 189, some of the affiliated corporations through which that empire was built were products of the conspiracy.

Hence that fact without more justified the direction in the decree to unscramble them. There are no findings which would warrant such a course in this case. But an even more direct method of causing appellants to surrender the gains from their conspiracy is to require them to dispose of theatres obtained by practices which violate the antitrust acts. We do not know what findings on that score would be supported by the record, for the District Court did not address itself to the problem. The upshot of the matter is that the findings do not reveal what the rewards of the conspiracy were; and consequently the court did not consider what would be the preferable way of causing appellants to surrender them. The case must therefore be remanded so that the District Court may make appropriate findings on this phase of the case.

While such an inquiry is the starting-point for determining to what extent divestiture should be ordered, the matter does not end there. For it may be that even after appellants are deprived of the fruits of their conspiracy, the Schine circuit might still constitute a monopoly power of the kind which the Act condemns (see *American Tobacco Co.* v. *United States*, 328 U.S. 781, 809, 811), in spite of the restrictive provisions of the decree. Monopoly power is not condemned by the Act only when it was unlawfully obtained. The mere existence of the power to monopolize, together with the purpose or intent to do so, constitutes an evil at which the Act is aimed. *United States* v. *Griffith*, *ante*, p. —; *United States* v. *Aluminum Co. of America*, 148 F. 2d 416, 432. But whether that condition will obtain in this case must await the findings on the other phase of the case.

We accordingly set aside the divestiture provisions of the decree so that the District Court can make the findings necessary for an appropriate decree. We approve the dissolution of the pooling agreements, the prohibition against buying or booking films for theatres in which Schine has no financial interest, and the restriction on future acquisitions of theatres. See *United States* v. *Crescent Amusement Co., supra,* pp. 185–187. We do not reach the question of the appointment of a trustee to sell theatres as that merely implements the divestiture provisions which must be reconsidered by the District Court.

The judgment of the District Court is affirmed in part and reversed in part and the cause is remanded to it for proceedings in conformity with this opinion.

So ordered.

MR. JUSTICE FRANKFURTER concurs in the result.

MR. JUSTICE MURPHY and MR. JUSTICE JACKSON took no part in the consideration or decision of the case.